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PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

SENATE—*Wednesday, September 13, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT MORGAN, a Senator from the State of North Carolina.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Thou who art holy and just, full of grace and mercy, new every morning is Thy love. Draw near to us this moment and keep us penitent and reverent through the changing scenes of this day. Guard us from being surprised or trapped by unworthy compromises, by unholy alliances, by betrayals of integrity or by disobedience to conscience. Spare us from scoring a point but missing a principle. So often when we would do good, evil is present with us, and we know it not.

In winning keep us humble, in losing make us magnanimous, and in the changing vicissitudes of life keep us ever close to Thee, for Thou art our light and our salvation, the strength of our lives, in whom we trust now and forever. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 13, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT MORGAN, a Senator from the State of North Carolina, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. MORGAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The majority leader, the Senator from West Virginia, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are four nominations on the Executive Calendar which I believe have been cleared. I ask unanimous consent that the Senate go into executive session, only for 2 minutes, to consider those nominations.

Mr BAKER. Mr. President, reserving the right to object—and I will not object—I wish only to advise the majority leader that the nominations that he identifies are cleared on our calendar as well, and we have no objection to proceeding to their consideration and their confirmation.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations will be stated.

CIVIL AERONAUTICS BOARD

The second assistant legislative clerk read the nomination of Gloria Schaffer, of Connecticut, to be a member of the Civil Aeronautics Board for the remainder of the term expiring December 31, 1978.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The second assistant legislative clerk read the nomination of Gloria Schaffer, of Connecticut, to be a member of the Civil Aeronautics Board for the term of 6 years, expiring December 31, 1984.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMBASSADOR

The second assistant legislative clerk read the nomination of Edith Huntington Jones Dobelle, of Massachusetts, to be Ambassador during her tenure of service as Chief of Protocol for the White House.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF STATE

The second assistant legislative clerk read the nomination of William H. Luers, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Venezuela.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield 2 minutes to Mr. PROXMIRE.

Mr. PROXMIRE. I thank the distinguished majority leader.

EDUCATING OURSELVES TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, less than 5 months ago the U.S. Senate by unanimous vote proclaimed April 18 "Education Day—U.S.A." in honor of Rabbi Menachem M. Schneerson. At that time Rabbi Schneerson said:

> Education must put greater emphasis on the promotion of fundamental human rights.

Education, not to earn more money, but education for a better society. Education that builds character, that teaches moral and ethical values.

Mr. President, I could not agree with Rabbi Schneerson more. For over 30 years this body has failed to ratify an important human rights treaty—the Genocide Convention—which seeks to guarantee the most basic of rights: the right to live.

Its aim is simple: to prevent mass murder. Yet, year after year, the Senate refuses to consider the merits of this treaty by taking an up-and-down vote.

But why, Mr. President? Why?

Have we forgotten the context in which this treaty was drafted? Over 6 million Jews lie dead. The world, stunned by these brutal atrocities, resolved to take action. And they have. More than 80 countries across the world have ratified this human rights convention, including nearly all our allies.

But what about the U.S. Senate? Why were we not in the forefront of this effort? Perhaps we need some re-education ourselves. We have prided ourselves on our prowess in science, technology, and business. But what about moral and ethical values?

Have they been sacrificed in the educational process?

I certainly hope not.

But Rabbi Schneerson has called attention to our need for constant vigilance.

The type of vigilance that will continue our fine domestic record of respect for human rights.

The type of vigilance that may someday give respect for human rights the primacy it deserves in our foreign affairs.

The type of vigilance, Mr. President, which demands the ratification of the Genocide Convention.

RECOGNITION OF LEADERSHIP

Mr. ROBERT C. BYRD. Mr. President, does any other Senator wish me to yield time from my time at this moment? If not, I yield back my time.

The ACTING PRESIDENT pro tempore. The minority leader, the Senator from Tennessee, is recognized.

Mr. BAKER. Mr. President, I have no requirement for my time under the standing order, and I have no requests for it. If there are none at this time, I will be happy to yield it back. I yield back my time under the standing order.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the pending business, the conference report on H.R. 5289, which will be stated by title.

The legislative clerk read as follows:

> Conference report on H.R. 5289, an act for the relief of Joe Cortina of Tampa, Fla.

THIRTY-MINUTE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 10:07 a.m., recessed until 10:37 a.m.; whereupon, the Senate reassembled when called to order by the Acting President pro tempore (Mr. MORGAN).

The ACTING PRESIDENT pro tempore. The absence of a quorum being noted, the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS UNTIL 11:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 11:30 a.m. today.

There being no objection, the Senate, at 10:40 a.m., took a recess until 11:30 a.m., whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. BURDICK).

Mr. ROBERT C. BYRD. Mr. President, I hope that Senators will come to the floor and debate the natural gas conference report. I had a meeting on yesterday afternoon and again this morning in an effort to reach a time agreement. The principals who have been attending the meetings for the purpose of getting a time agreement wanted some additional time—well, those who opposed the conference report want some additional time—which is, I think, understandable. But, in the meantime, I recessed the Senate now until 11:30, and I hesitate to continue to recess it, because I have a feeling that those who wanted additional time to discuss the time agreement did not mean to take until 2 o'clock, at which time we expect to meet again for that discussion.

So I think the Senate can very well be debating the conference report at this time. I understand the Senator from Texas is so prepared, and I yield the floor to the Senator from Texas.

Mr. TOWER. Mr. President, I might say to the distinguished majority leader that an agreement might be at hand, and that should brighten the Senator's day.

Mr. ROBERT C. BYRD. It will brighten my day.

Mr. TOWER. The administration has argued that the gas bill is needed to save the U.S. dollar. The argument is that the gas bill would reduce oil imports, thereby reducing the trade deficit and thereby strengthening the U.S. dollar. This argument is misleading for the following reasons:

There is no relationship between oil imports and changes in a currency's exchange rate.

Oil imports account for only 30 percent of all U.S. imports. Oil imports account for a higher percentage of imports in Japan and Germany, and oil imports account for a higher percentage of the gross national product in both of those countries than in the United States. Yet, the Japanese yen and the German mark have appreciated against the U.S. dollar and most other major currencies.

The gas bill will not reduce oil imports enough to eliminate the trade deficit.

The U.S. trade deficit totaled $27 billion in 1977. In order to eliminate a trade deficit of this magnitude, oil imports would have to be cut by about 60 percent, which would not be accomplished by the gas bill.

A reduction in oil imports this year has not prevented the dollar from depreciating.

Oil imports declined 10 percent in the first 6 months of this year, but the dollar has continued to decline in foreign exchange markets.

There is no clear-cut relationship between the U.S. trade deficit and the dollar's exchange rate.

What is important is the total amount of dollars supplied in foreign exchange markets through trade and capital flows. A trade deficit could be completely offset by an inflow of capital from abroad, resulting in no exchange in the dollar's exchange rate. To some extent this has occurred, with almost 50 percent of the U.S. trade deficit with oil-exporting nations being offset by capital inflows from oil-exporting countries.

The dollar has declined because the supply of dollars has exceeded the demand for dollars in foreign exchange markets.

The problem is that there is an oversupply of U.S. dollars. The Federal Reserve has been increasing the money supply too rapidly. Even if all U.S. oil imports were eliminated, this rapid growth in money would result in increased spending by U.S. citizens for other imported goods or for goods that otherwise would be exported. In either case, the trade deficit would remain unchanged.

The U.S. trade deficit has occurred for other reasons than oil imports.

The trade deficit reflects the fact that the U.S. economy has been expanding more rapidly than the economies of its major trading partners. This has encouraged U.S. imports and discouraged U.S. exports.

The trade deficit reflects an imbalance among products other than oil. A growing trade imbalance has emerged in manufactured goods, where imports exceeded exports by more than $5 billion during the first 6 months of this year,

accounting for one-third of the trade deficit during that period.

The trade deficit reflects the declining competitiveness of U.S. business abroad. Between 1974 and 1977, the share of all exports by major industrialized nations accounted for by the United States dropped from 18½ percent to less than 17 percent. The U.S. share of these exports to Japan declined from 52 percent to 48 percent during that period, and the share going to the European community declined from 11 percent to 10 percent. The share of U.S. exports going to developing nations fell from 27 to 25 percent.

The trade deficit has occurred because the United States has been pricing itself out of foreign markets, making it difficult to remain competitive abroad. The rate of inflation in Japan over the 12 months ending this past June was only 3.6 percent. It was 2.7 percent in West Germany. The rate of inflation in the United States during that period was 7½ percent. Indeed, the U.S. dollar has depreciated against the currencies of countries with lower rates of inflation. The higher rate of inflation in the United States reflects the slowdown in productivity, high unit cost of production and the lag in technological developments across a broad range of products.

The decline in the dollar reflects the higher rate of inflation in the United States and the fear of more inflation in the future.

The dollar has declined against the currencies of other nations with lower rates of inflation. Inflation erodes the purchasing power, and rapid monetary growth in the United States has raised the fear of more inflation, encouraging dollar holders abroad to sell dollars, causing in turn the dollar to decline in foreign exchange markets.

The decline in the dollar is a serious problem. It has caused a great deal of uncertainty in international financial markets, raised the cost of imports and thereby added to the rate of inflation and increased the prospects for another oil price increase by the OPEC nations.

However, it is a monetary phenomenon caused by an excess supply of dollars relative to demand, and it can only be solved by bringing the growth in money down to a noninflationary rate—a goal that is yet to be achieved by the Federal Reserve.

I think, therefore, to repeat, that the argument of the administration that this energy bill is needed to save the dollar is not a valid argument. It would not reduce oil imports; it would not reduce the trade deficit; it would not strengthen the dollar. Indeed, I think it would have virtually no impact on the value of the dollar abroad.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CULVER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. I ask unanimous consent that Kathryne Bruner of Senator HAYAKAWA's staff be permitted access to the floor during the consideration and debate of the energy conference report, and any votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I wish to state my position respecting the current natural gas compromise conference report which is now before us.

Mr. President, in all my years in Congress, few pieces of legislation have been marked by the controversy that surrounds the natural gas bill. The financial stakes involved are enormous, with billions of dollars hanging on the outcome of our actions here. Not surprisingly, every conceivable interest group that will be affected by this bill—producers, consumers, industry, regional interests, and so on—has fought as hard as possible to see to it that its particular goals are incorporated in the compromise. That is the normal legislative process, and I do not view it negatively. However, in this case, with so much at stake and so many interests heavily involved, the result has been a lengthy stalemate on a vital piece of energy legislation, at a time when this country cannot afford such delay.

I believe the time has come to ask one question about this compromise: Is it good for the Nation? The country and the Congress have well nigh torn themselves apart asking whether this compromise is good for producers, or whether it is good for consumers, or even whether it is good for each particular State. Parochialism, regionalism, and just plain greed have all had a field day at the expense of the national interest.

I am not an expert or even very experienced in natural gas—it will be recalled that I did not take too active a part in the debate on the natural gas bill here—but I have examined the compromise carefully. It is far from the best we ought to have done. I am familiar with the serious questions that have been raised by its opponents.

Indeed, Mr. President, I believe they serve the country in the challenging questions which they ask and in putting the strong proponents to their proof.

Nonetheless, having examined it carefully, I support this compromise. I think it is important not to lose sight of the fact that this compromise is a package and will be adopted as such. Thus, we must ask whether, despite problems with particular sections, such as emergency allocation, incremental pricing, complexity of administration, the compromise as a whole is worthy of support. Second, I believe we must ask whether, given the economic situation in our Nation and in the world today, an immediate resolution of the gas regulation controversy is essential. This question is critical to me as I do have some expertise in this area.

Mr. President, I answer both questions in the affirmative. Despite the difficulties and injustices which may inure in particular sections, the compromise as a whole, I think, is worthy of support, and, it is highly essential and in the national interest that this question be resolved now.

As I answer both questions in the affirmative, I believe that the basic question—is this bill good for the Nation—must also be answered in the affirmative, and I do so.

This is not a step that I take lightly. In the past, I have opposed legislation designed to deregulate natural gas. Although this bill is not, strictly speaking, a deregulation bill, it moves us there after some years. Nevertheless, I believe that changed circumstances, brought on by the sharp decline in the U.S. dollar, our own and the world's precarious monetary situation, and our continued heavy dependence on imported oil at a highly uneconomic price and unstable political conditions in the area from which most of it comes, requires us to reexamine our position.

There are several aspects of this compromise that, were it first coming before the Senate, would have to be revised to win my support.

For example, the bill does not adequately combine the interstate and intrastate gas markets into a unified national system; it does not streamline the regulatory process, indeed it makes it more complicated; nor does it give proper priority to the home consumer. But the report before us today is a compromise, and the nature of compromise is that no one can be entirely satisfied.

Accordingly, despite my personal reservations, I believe this bill to be in the national interest for the following reasons:

First, it recognizes what has been a fact for at least 5 years now—that the era of cheap energy is over. This country wastes a tremendous amount of energy every year, and the replacement cost of that energy is far above what we charge for it—and it is now coming right out of our financial bone and sinew. More realistic pricing will result in conservation of our natural gas resources, and, very importantly, should also encourage the development of alternate technologies.

This Nation does not take kindly, apparently, to voluntary conservation efforts. In this way, through the natural gas compromise, some degree of conservation will be conferred.

Second, passage of the compromise would provide a degree of certainty to producers, investors, and consumers that is essential to the proper development of our national economy. The continued uncertainty over the price and availability of gas that would result from failure to pass this compromise is against the national interest.

Mr. President, as I say, in the economic field I do claim some competence. It is my profound conviction that what has been troubling our economy the most is

the state of complete uncertainty faced by the business community in its forward decisionmaking.

Third, incentives in the report will result in increased domestic production of natural gas, and thus will have an effect—perhaps not decisive but an effect nonetheless—on our oil imports. Lessening our dependence on foreign source of oil is of paramount importance to the Nation. The Department of Energy has estimated that the compromise will save 1.4 million barrels of oil a day by 1985, but even if the full amount is not saved, the compromise will still make a significant contribution.

Fourth, the world economic community of which we are the most important element and which also controls us, like it or not, perceives our failure to enact meaningful energy legislation so far as one of the root causes of the dollar's precipitous decline. We can argue whether this perception is accurate or not, but nonetheless, it is a fact. If we reject the compromise, and in effect announce to the world that the Congress of the United States, after nearly 18 months of consideration is still unable to agree on an energy policy—and this gas measure is its centerpiece—I believe the effect on the declining dollar would be catastrophic.

Mr. President, this compromise is not a panacea for the energy crisis. Standing by itself, it does not guarantee that we will have the natural gas we need or that heavy oil imports will no longer be required; or that the dollar will be started on the way back to its real value. But it is a step in that direction, a step I believe we must take now. I suspect that no one in this Chamber is satisfied with every provision of the compromise. But I believe it is a workable solution, a solution that is in the national interest, and a solution whose time has come and which will not wait. I must be for it in the interests of our Nation and of the 18 million New Yorkers who sent me here because they had confidence I could use my head in difficult situations!

I believe the world's perception of the importance of this bill cannot be underestimated. Mr. President, we lawyers have an adage which says it is not what the facts are; rather, it is what the judge thinks they are that counts. I have heard many of the arguments on the floor of the Senate holding that the decline of the dollar is not going to be affected by a natural gas compromise. Mr. President, that may well be true on the basic facts and merits. But the dollar will be affected by the degree confidence is restored in the world by the appearance that we know what we are doing here, and that we are not fumbling and we are not mired in indecision and uncertainty and delay and that we in Congress are not powerless to act and to act effectively.

Mr. JACKSON. Will the Senator yield?

Mr. METZENBAUM. Will the Senator yield?

Mr. JAVITS. Not yet.

I might say to my colleagues that it is my profound conviction, and I have been around here a while, that nothing good is going to happen from delay. I think we shall get more mired, more embroiled in more difficulties, and it will be a long time, and the result is very unlikely to be any better and will probably be worse than the compromise before us now. That is my judgment as to the future.

I now want to yield both to Senator JACKSON and to Senator METZENBAUM.

Mr. JACKSON. Mr. President, I commend the distinguished senior Senator from New York for his statement. I think he has put his finger on one of the key elements of the problem that we face. One can argue that, in fact, there is no relationship between this bill and the dollar. However, the perception in the world is that if this bill goes down, we are unwilling or unable to deal with one of the principal problems that we face in any kind of an energy program—namely, are we going to do something to cut imports? It is a problem of perception. Is that not what the Senator is saying?

Mr. JAVITS. Exactly.

Mr. JACKSON. That goes to the heart of the problem. One can live in a community where there is a very fine bank, totally solvent, but if the rumor is that the bank is insolvent, there is a run on the bank and the bank goes under. I think the same analogy, to a lesser extent, applies in connection with what is going on with relation to the dollar in the world.

I commend the distinguished Senator from New York for addressing himself to one of the key problems that we face. I think, finally, in this connection, I say if someone has a better program to offer that will tackle the problem of supply, protect the consumer, and give us some integrity vis-a-vis the dollar, I should like to see it. We do not have it.

Mr. JAVITS. Also one that can be agreed on, which is the criterion to me.

Mr. JACKSON. Absolutely, one that can be approved by Congress.

I have been here all the time the Senator from New York has in connection with the debate over natural gas. Going back to Mr. Truman's day, when they tried to take away the power of the Federal Power Commission to deal with gas, down to the present time, we have not been able to get a truly effective natural gas statute. I think the existing law is totally inadequate. We have struggled all these years to get one. This is the first time that we have presented to Congress, with an assurance that it is going to be signed by the President, a statutory proposal that will update our effort in this field.

I commend the Senator from New York for a fine statement.

Mr. JAVITS. I thank the Senator. I shall yield in a minute to Senator METZENBAUM, but I want to add this:

I took the pains before the Bonn summit, because I was very interested in another matter—the development of the developing countries to afford greater markets to the industrialized countries—to visit with every one of the major leaders, except for the Prime Minister of Canada, who participated in that summit.

Really, I found, without in any way disclosing conversations which should be personal and confidential, that one of the principal problems which these leaders face is whether the United States could ever act—not how it acted. It is like businessmen who tell you, look, give us any rules so long as we know what they are. That has been a very critical factor in my appraisal of this situation.

I yield, of course.

(Mr. SPARKMAN assumed the chair.)

Mr. METZENBAUM. Mr. President, it is with some reservation that I speak after the distinguished Senator from New York and the distinguished Senator from Washington on this subject having to do with perception, symbolism, and what it appears to be, because both of them are so experienced and so knowledgeable and travel so much and have such great respect from others that it is difficult for me to stand on the floor and say what I know about them and their perception. It is difficult for me to say to both of them that I cannot really believe that they honestly believe that we can pass a piece of legislation that Robert Strauss describes as being a C-minus bill, that investment bankers and economic analysts are describing as really having no impact upon the dollar, a bill that, at best, its proponents claim would only increase natural gas production in extremely small amounts, and that they really believe that the Japanese, the Germans, the Swiss, and all others who have an interest in the economy of the United States—and I guess that has to include the Arabs as well—are really going to be taken in by this kind of a piece of legislation.

I agree that Helmut Schmidt has said that we need energy legislation. But he cannot draft an energy bill for us. This energy bill is not going to solve any problems. You can talk about it possibly saving so much in oil imports. The best bankers are now saying that that is really not the problem with our economy and the value of our dollar, but, rather, that the whole problem of inflation is our problem.

I really have difficulty understanding how anybody can argue for a piece of legislation that everyone knows will not do the job, that somehow, we are going to kid them and we are going to make them believe that, well, at least, we have an energy bill. We cannot overlook the fact that if we just want an energy bill, we could have had three parts of it almost a year ago. The utility rate reform bill, the coal conversion bill, and the conservation measure have all been awaiting passage for periods ranging from October of last year to November of last year. The conferees have been in agreement but the House, with the approval of the administration, has been unwilling to bring them forth. They held those bills hostage so that we might get a natural gas bill.

But this natural gas bill is not going to solve our problems internationally. I know of almost no prominent economist who claims that it will. Yes, George Ball, who is not an economist but who is on the telephone constantly these days to Senators, is saying that it is a question of perception. With a man such as that, from a large investment banking house,

Lehman Brothers, I am not sure what his special interests are, what his special concerns are. I am not sure whether he really wants that energy bill or whether he has other motivations. But when you talk to people like Eliot Janeway, whose telegram I read to the Senate yesterday, when you check with people such as City Bank of New York or the senior vice president for economic affairs with Chase Manhattan Bank, or the authorities who spoke for the Federal Reserve Board out in St. Louis, rather recently, on this same subject, none of them claimed that we are going to help the dollar. Many will tell you frankly that the issue of oil imports did have an impact on the value of the dollar within the past couple of years but that that issue is behind us and that now, the spending that is being done in this country with those oil dollars is offsetting that factor and the real problem in our economy comes about by reason of inflation. This bill is inflationary.

Alice Rivlin can say that is one-half of 1 percent or whatever the CBO has said; but all you have to do is ask the consumers of America whether they think it is inflationary to get a gas bill where the fuel cost adjustment rate went from 19 cents per mcf in January of 1977 to 34 cents per mcf in June of 1978. They will tell you that it is not one-half of 1 percent; they will tell you that is inflation that they understand.

Now, beyond the question of this whole matter of the perception overseas, I think we have to concern ourselves with the impact in our own country.

I am sure that I reflect the concerns of the distinguished Senator from New York when I point out that there has been much movement of industry from the northeastern part of the Nation and the midwestern part of the Nation to the southwestern part of the Nation.

Unfortunately, this bill which comes back from the conference committee does something that neither the House nor the Senate intended it to do. This bill makes it possible for industrial users in the producing States to buy natural gas at a lower price than industrial users in all other States in the Nation.

As a matter of fact, that is exactly opposite to the situation as it presently exists. Today, industrial users in the producing States are paying more for natural gas and those in the consumer States, which is under regulation, are paying less.

This bill is like sending a message out to the industries in Ohio, to industries in New York, to industries in Maine—not Maine, necessarily—to industries in Indiana, to all those States where industrial users consume a lot of natural gas, and saying to them, "Move to the Southwest, move down to those States where they are producing natural gas and you will be able to operate your business at a lower cost and better competitive advantage than those industries that continue to operate in the consuming States."

That, to me, is a great disadvantage and there is no argument that that is what this measure does.

In addition to that, I cannot believe that the distinguished Senator from New York really believes there is an advantage to shifting the burden of natural gas costs from industrial users to residential users.

When the bill left the House and the Senate, the burden was placed upon industry and the residential users were protected from incremental pricing. But, contrary to the intent of either the House or Senate, when the bill came back that burden had shifted according to the Energy Information Administration of the Department of Energy.

Now, I recognize that there is a question of symbolism. But it is not enough to have a piece of legislation that is not much more than a charade, not much more than a piece of paper, that winds up costing the American people between $29 billion and $41 billion between now and 1985.

That cannot be justified in order to somehow satisfy the concerns of Helmut Schmidt because he is too smart, and he is too wise, and his economists will point out to him that this bill will not do that which some are pretending it will do and that which some are representing that it will do.

It will not solve the energy problems of this Nation, it will not solve the dollar problems, but it will place a tremendous burden on the American people. It will certainly enrich the gas and oil producers of this country.

Mr. JAVITS. Mr. President, I am very grateful to the Senator for a review of his side of this case. I will do my utmost to present my case, which is exactly what he has done in quoting all the authorities which favor him and none of the authorities which favor the other side.

But, if he will forgive me, I will tell him I am distinctly unimpressed. The reason I am distinctly unimpressed, Mr. President, is that inflation is already with us. There is no question about that. The question is, how can we abate it? In my judgment, one of the major ways in which it can be abated is to demonstrate to ourselves and to the world that we know how to govern and that we have stopped being paralyzed.

Mr. President, in my judgment, the biggest thing about this compromise that commends it is it gets the United States Congress off the dime. We have been disgracing ourselves until the people think that 80 percent of us are out of our minds.

They give Congress a 20-percent rating as to its value to the country. And why? Because we cannot seem to decide.

Mr. President, if we go the Senator's route, we will never decide. I would like to give an analogy based upon a prior experience of mine.

When I came here, Mr. President, I succeeded one of the most venerable, one of the most marvelous, human beings who ever lived—Herbert Lehman of New York.

Mr. President, the water of Niagara floated over the brink at Niagara for 7 years without one bit of power going to the State of New York because my revered and beloved predecessor felt he just could not agree to any bill which would not guarantee to any municipality that wanted public power a first priority on power from Niagara. He just could not get a bill.

A man sat almost where Senator METZENBAUM is sitting named Bob Kerr of Oklahoma. He was not a dictator, but he could persuade enough people in the Senate so that there would be no Niagara bill.

When I came along with the same philosophy I am using in respect of this compromise, I said, if we lived to be a hundred years of age, how much power would these municipalities get from Niagara, and the answer was 25 percent.

So I said to Bob Kerr, "Bob, will you make a deal for 25 percent? That is going to be the limit of the municipality wheeling of power?" He said, "OK, you've got a bill." And power flowed in 2 years. Now, one could have said that was perception, too.

Senator METZENBAUM, I love you, you are a fighter. I really mean it. I am not kidding. You are a fighter. You never give up. You are in there and we need you. You are just as vital as anyone here.

But some of us have to come to a conclusion sometimes. We have to get off the dime.

Let me give an example of what I mean. I have served in the other body, too. I served in the other body for 8 years, enough to get to know what it is all about. What the Senator says about the rationality of accepting the three pieces of the House bill which we passed in the way of the energy program makes unquestioned sense. Let us pass those, get them done, and then we will fight about this one. But that is not the way they want to play, and unless we change the Constitution, that is their attitude. They could be right. They could be wrong.

In any event, the question of whether we can or cannot get what can be called a U.S. energy policy now centers upon the two remaining pieces of legislation; this one and the crude oil equalization tax. I think the crude oil tax is dead. I think that is generally agreed. So that leaves this one.

On this one, if we pass it, something can happen. If we do not pass it, I believe—and again I could be dead wrong—nothing will happen for a long time, and time is of the essence.

I might tell my colleague, and here I do not claim the expertise in natural gas he has, I fully yield to him on that, but when we speak of the economy of our country, and the economy of the world, I do claim some expertise.

I would like to tell my colleagues and my colleague from Ohio that what he feels about the discrimination in the bill against northeastern and Ohio manufacturers because of this bill is peanuts compared to what is going to happen to us and what is at stake if we do not straighten out this international monetary situation.

Whether or not a man will work his fingers to the bone for 25 or 30 years because we give him a promise that in 35 or 50 years we are going to give him x return depends on his confidence in the system.

Confidence is what I am talking about, and this legislation is very important to that confidence. The importance of the world economic community's perception of this bill, and the importance of certainty to the business and the economic community of the country, is the basis for my support of this conference report.

I might point out that I have an estimate from my own State—to get down to the finite details—which shows that in the period in which this bill will run, if we accept the conference report, the aggregate cost to my State is going to be $1.726 billion. These figures are given to us by the New York State Energy Office.

If the Senate bill had passed, with its decontrol, it would have cost New York $4.332 billion. Senator METZENBAUM and I fought against the Senate bill. He fought actively, as I do in many other things. He carried the ball for me and many others in this Chamber.

There is little question about the fact that my State is disadvantaged, as is the Senator's State and other States, by the fact that we do not have adequate control over the price differential on intrastate gas sold to industrial users. But it also is a fact that the situation would be even more precarious if there were immediate decontrol instead of the controls contained in the compromise. Further the price differential which will now be the rule, will go on for a short enough period—to wit, until 1985—so that it hardly pays for any appreciable concern to pick up and move on that account, even if the gas price were the determining factor.

So, taking what New York has with respect to economic viability—its banking, its commerce, its insurance, its transportation, its tourism—and comparing it with this disadvantage—it is a disadvantage, and it is an unfair part of the bill—I still feel that, on balance, I am serving my people best if I approve this compromise.

I deeply believe that I was sent here to use my head. The acid test on this bill is when the vote is counted. When the vote is counted, the compromise cannot pass except with a majority of the Senate and a majority of the House. I am deciding that, if a majority can be constructed, I want to be part of it because I think that, everything taken together, the compromise is better than doing nothing.

I will say this to the Senator: I am confident that we would not be here with what we have if it were not for Senator METZENBAUM. I think this wave of deregulation, like proposition 13, would have swept us right over the precipice. Sure, you are against this compromise—and bless you—but I do not think you would even have had any continued Federal vote in natural gas pricing if it had not been for the sterling, powerful, effective, and very clever opposition to this bill which you mounted with your colleague from South Dakota.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. METZENBAUM. Mr. President, I thank the distinguished Senator from New York for his kind comments. I truly have tremendous respect for him, and very seldom does the occasion arise that we are on opposite sides of the issue. Once in a while we are on opposite sides of the tennis court, but not opposite sides of the issue.

The Senator would do me a great favor if he would make it possible for me to have the same power on the Senate floor as did Senator Kerr when he occupied either this seat or one nearby. It would be helpful on some days.

Mr. JAVITS. It would be in good hands.

Mr. METZENBAUM. I thank the Senator.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. RIBICOFF. Mr. President, I came into the Chamber toward the end of the Senator's remarks, and I associate myself completely with the distinguished Senator from New York.

Later this afternoon, I, too, intend to speak about the necessity for the conference report being approved. It is my feeling, as it is the feeling of the Senator from New York, that I have always been against and voted against deregulation of natural gas. But we have reached the stage in this country today, with our economic problems of inflation and the value of the dollar, that this conference report has become a symbol. It can be said that it is not a reality, but sometimes a symbol is more important than the reality.

In speaking to world leaders, economic leaders, across this globe, to them the American will and the ability to deal with its economic problem is now riding on the way they conceive the ability of Congress and the executive branch to start to solve its energy problem.

I associate myself with the distinguished Senator from New York.

Mr. JAVITS. It is very gracious of the Senator from Connecticut, and I thank him very much.

Mr. President, I yield the floor.

Mr. MELCHER. Mr. President, I think the value of this discussion of the natural gas bill has been diluted somewhat during the past 3 days because not enough specifics have been debated. The so-called greatest debating body in the world—the U.S. Senate—often finds itself involved with repetitious discussion of each side.

I think it perhaps would be of some advantage in this discussion if there were some specific rebuttal at times to the comments made on one side or the other; and if the Senator from Ohio is willing, I would like to provide some sort of colloquy on some of the points the Senator from Ohio established as his side of the argument.

The Senator spoke of a telegram from Eliot Janeway, whom I admire greatly and whose usually long article is published in newspapers across the country. It usually appears in the Washington Star on Sunday, and I like to read it. I think the experience of Mr. Janeway during, let us say, the past four decades entitles him to address very astutely some of the economic questions of this country.

I am just reviewing now Eliot Janeway's telegram to the Senator from Ohio, and I point out that a key sentence reads:

> On the contrary, the bill will advertise the strangulation of our regulatory procedures and red tape, and it will accelerate the liquidation of independent gas producing enterprises.

Eliot Janeway and thousands of other people in this country have addressed this problem of strangulation by redtape.

The Senator from Ohio talked about this bill and said that until it is passed, the other parts of the President's energy package which have been agreed to in conference are held hostage. He listed some of those pertinent aspects in those bills. What he did not list is that contained in one of those bills, in the regulatory rate reform, is the expediting procedures for such an oil pipeline—an oil pipeline—as Northern Tier pipeline, which, if we do not pass those expediting procedures, will leave Northern Tier pipeline in the redtape strangulation that Eliot Janeway is talking about.

Mr. METZENBAUM. Mr. President, will the Senator from Montana yield for a question?

Mr. MELCHER. I yield.

Mr. METZENBAUM. The Senator from Montana has mentioned the pipeline on several occasions, and there is no secret about it. There is considerable sentiment among a number of Members of the Senate to provide support for the pipeline, and it is a fact, as the Senator probably is aware, that in a Dear Colleague letter that I and some other Senators signed recently we indicated that there is a consensus of support in Congress for the Alaska pipeline and even if it were not included herein it could be passed under suspension of the rules because I know of no particular opposition to it.

Does the main reason for support of this legislation of the Senator from Montana come about by reason of the containment of the Alaska pipeline in the measure, or is it based upon other considerations?

Mr. MELCHER. It is based on other considerations also. But I wish to clarify the point that the northern tier pipeline is a proposed oil pipeline across the northern tier States into the Midwest. In talking about pipelines, we often find that what we are saying is misinterpreted as this is obviously misinterpreted.

Mr. METZENBAUM. I stand corrected. The Senator is talking about the northern tier pipeline, the oil pipeline. I thought he was referring to the Alaska gas pipeline.

Mr. MELCHER. That is right.

Mr. METZENBAUM. I appreciate the clarification.

Mr. MELCHER. The northern tier pipeline, of course, if it is permitted both by Federal Government and by State governments and gets constructed over a 2-year construction period, will relieve the oil glut on the west coast that we are now enduring.

Mr. METZENBAUM. I misunderstood the Senator. I will not interrupt the Senator further.

Mr. MELCHER. No. The Senator is right on target as far as I am concerned

because the next point I wish to bring out is the fact that the Alaskan Northwest pipeline, which is the pipeline that the Senator was referring to, a proposed pipeline from Prudhoe Bay to Fairbanks and following the Alcan Highway down to the Lower 48 and into the Midwest, will, when constructed, transport natural gas from the Prudhoe Bay Alaskan oil and gas fields.

Yes, the conference report as presented does provide the statutory relief that will permit that pipeline company to go into the money market and say because we have it fixed into law now we can roll in not only the price of the gas at wellhead but the construction costs which are substantial into the final price of the gas that will be transported over that pipeline down to the Lower 48.

If that is not passed into law, the Northwest Alaskan pipeline will not be able to start the procedure in the money market to prepare themselves to sell bonds to pay for the construction so they can start construction.

I say to the Senator from Ohio that is one reason to support this conference report. But specifically if this conference report fails could we reasonably be sure that another piece of legislation just for that purpose could be passed by the Senate and the House of Representatives this fall?

From my own standpoint, I say my best guess is that the Senate would pass it quickly, and my best judgment is that when it got to the House of Representatives, or a like bill was introduced in the House of Representatives, it would have a real tough time. It probably could not be passed easily in the House of Representatives.

The Senator from Ohio knows, I think, as well as I do that some of the Congressmen and some of the Congressmen in the House of Representatives who have jurisdiction over this subject are adamantly opposed to relaxation in the law to amend the law which will permit rolling in the construction costs along with the wellhead price costs of natural gas to arrive at the final figure for the sale of natural gas.

Under those conditions, will the Senator from Ohio advise me if he has more recent information of the position of a number of people in the House of Representatives on this point and has he ever been assured that they would treat it as a single piece of legislative affirmatively?

Mr. METZENBAUM. I have no other information as to what the House of Representatives will do this afternoon let alone what they might do tomorrow, so I am in no position to advise my good friend from Montana what the House of Representatives will do. But in view of the fact that they have already accepted the concept of the Alaskan pipeline and since I have not heard of any strong opposition to it, I guess they would accept a separate piece of legislation and it would move with dispatch because I think everyone wants that gas to flow from Alaska into the lower 48.

Mr. MELCHER. I would hope that were the case, but I have to face up to the realities that exist, and the fact is that the House conferees only got a majority on the basis that they would accept this part solely to get a comprehensive bill, and the comments that have been made by the conference leaders of the House conferees on the bill, and I think I can quote rather accurately, are that it is virtually a certainty that in the event of recommittal there will be no bill. But that is quoting only.

Mr. METZENBAUM. Mr. President, will the Senator from Montana yield on that question?

Mr. MELCHER. I yield.

Mr. METZENBAUM. I simply wish to say to him and to those who make these comments, and it is not he who makes these threats, but I heard that threat made now over and over again, that there will be no bill if this is not the bill.

I believe that as 1 Member out of 100 here in the Senate I have a responsibility and part of that responsibility is to be responsible.

I believe that those who say that, "If you do this there will be no bill," indicate a kind of irresponsible attitude. I cannot believe that 435 Members of the House of Representatives would like to be a party to killing the Natural Gas Pricing Act which we hope to send them if and when the motion to recommit is agreed to by this body.

I cannot believe that they want to be a party to killing it, sounding its death knell.

Those of us who are proposing the motion to recommit are saying that the President should have emergency power as he had until it expired. We are saying that the Federal Energy Regulatory Commission should have the authority to permit the movement of surplus gas in the intrastate market into the interstate market. We are saying that we want to take a responsible position.

When somebody gets up on the floor or calls a press conference and says, "If you do not take this bill there will be no bill," then I say, well, first of all, I do not react very well to threats; second of all, I do not believe that is responsible; third of all, I do not believe that will be their position; and, fourth of all, I cannot believe that 435 Members of the House of Representatives want to go home and say they were the ones who killed the Natural Gas Pricing Act.

The fact is if we send it back to them, as I hope we will do on the motion to recommit, it will be an affirmative alternative as proposed by the U.S. Senate. It will indicate that we want a bill but we do not want to pay $29 to $41 billion for it.

I am not willing to accept these statements that are made and repeated over and over again that if we do not take this bill there will be no bill. I am confident that the chairman of the Senate Energy Committee, in spite of his public protestations to the contrary, will reverse his position and will fight and do the will of this body.

The Senator from Washington is probably one of the most responsible of this body, and if it is the will of this body that we want a bill stripped of any pricing provisions and giving the President emergency powers and giving other powers with respect to the movement of gas from the intrastate market into the interstate market I feel confident he will provide the necessary leadership.

I am not convinced that there are any leaders in the House of Representatives who are prepared to sink a bill just out of pique, just out of obstinacy, and I believe there will be a bill; and if there is not, then those who will have killed it will have to accept the responsibility. It is unfair to ask Members of the Senate to act on that basis of what might happen tomorrow or next week or next month.

Mr. MELCHER. Well, the Senator makes some very good points. Permit me to say that I, too, hope that if the bill is recommitted it would not sound the death knell for the natural gas bill.

But would the Senator from Ohio want to include in that motion to recommit, because the motion to recommit with instructions is a lot different from a motion to recommit, because the motion to recommit with instructions infers that only those points included in the instruction would be taken up by the conferees—would the Senator from Ohio be willing to accept it, if the provision was contained in the conference report before us for stripper gas well pricing?

Mr. LEAHY. I apologize to the Senator from Montana for distracting the attention of the Senator from Ohio, and I hope he will excuse the intrusion.

Mr. MELCHER. Indeed I excuse it because I am delighted to see the Senator from Vermont listening to some of the points that might be included in the motion to recommit with instructions.

Mr. LEAHY. I wish to assure the Senator from Montana that I have listened to virtually every word of it either here on the floor or back in my office during the past couple of days.

Mr. MELCHER. I well realize the Senator from Vermont has a huge capacity for absorbing the information that is discussed on the Senate floor, and is one of our truly bright minds.

Mr. METZENBAUM. Did the Senator from Montana ask a question?

Mr. MELCHER. Yes. I asked the Senator from Ohio in this motion to recommit with instructions which, after all, is a very firm mandate for the conferees and limits the conferees to doing only what is in the motion to recommit, and coming back, if possible, and reporting to the Senate just on those points after the conference is concluded, if it is concluded, would the Senator from Ohio advocate that the motion to recommit also contain a provision for stripper gas well pricing, which is in the conference report, remembering that stripper oil wells have been relieved of price restraints on old oil?

Mr. METZENBAUM. Not with my approval.

Mr. MELCHER. It would have the Senator's approval?

Mr. METZENBAUM. Not with my approval. If stripper wells were relieved of pricing not with my approval.

Mr. MELCHER. Then here we are in a quandary. I would have assumed that one

feature on stripper gas wells would be something that all 100 of the Senate would approve.

Mr. METZENBAUM. Why?

Mr. MELCHER. Because we are all for conservation and we ought to all be for increased production.

Mr. METZENBAUM. We can agree on that. Why should we be for increasing the price and relieving stripper gas wells from price control, which is what the Senator is asking?

Mr. MELCHER. Absolutely.

Mr. METZENBAUM. And which was in the conference committee report.

Mr. MELCHER. Absolutely. Might I point out to the Senator from Ohio if he is willing to mandate in those instructions to the conferees to come back with a final bill that will say the Northwest Alaskan pipeline can have relief from existing law and will be capable of rolling in not only the wellhead price but constructions costs—and we are talking about natural gas that will cost consumers well above $4 a thousand cubic feet—I do not know how much above, but it would be $4-plus per thousand cubic feet—if you are willing to do that why would not the Senator from Ohio be willing to allow stripper gas wells to get $2.19 on the basis of escalation and whatever inflationary factors that follow from that?

Mr. METZENBAUM. Well, as a matter of fact, what the Senator is really saying is why do I not support the idea of all of the changes that are made in the conference committee report which would provide for relief from price controls for rollover contracts, for gas that is more than 15,000 feet deep, for gas where you sink a hole in the ground a little bit differently from the place where the present hole is.

Mr. MELCHER. No, I believe this is a special situation. I believe stripper gas wells are much different than what the Senator is referring to.

Mr. METZENBAUM. Let me say this: I think there are unquestionably people who are supporting the motion to recommit who would totally agree with the Senator. But I happen to come from a posture and a firm belief that the gas producers of this country are doing extremely well as is, too well, and I was impressed by the arguments of the distinguished Senator from South Carolina yesterday, Senator Hollings, when he spoke to the point of about how he had an investment in gas and it was a great place to invest.

I think those who have stripper wells and those who have all kinds of gas have done extremely well in the economy. I know it was not too many years ago that the gas industry indicated that at 26 cents they would agree to settle a case before the Federal Power Commission, and they could make out extremely well at that figure. I think, if my recollection serves me right, it was in the New Orleans case or something of that kind.

Then I know at a later point the Federal Power Commission set a figure—I cannot remember that figure, but I think it was something like 42 cents or something in that area—which was based on giving the industry a return of 15 percent on their investment after taxes. That was not too bad.

But now we are at about $1.50. This bill will go to $1.93, and then better than 10 percent per year thereafter, and this bill will say that those of us who represent consumer States or our constituents will be paying more for natural gas, and those who come from the producer States will wind up paying less for natural gas.

I just believe we ought not to let the bars down at all. There is a lot of argument and there are a lot of differences of opinion as to whether stripper wells or wells that are more than 15,000 feet deep or newly developed wells that are more than 2½ miles—I am not even sure of the mileage figure because they kept changing and they did not show me the bill every time they made a change—more than 2½ miles from the place where the well was producing—there are all sorts of exceptions.

But when you get all done, there is one simple bottom line, and that is that the American consumers, the American people, will pay more and more and more.

So, therefore, when I say to my good friend from Montana, "No, I would not agree to any special exception for the stripper wells," it is because I do not believe that is necessary.

Mr. MELCHER. When you said——

Mr. METZENBAUM. Let me finish my thought; then I will yield the floor.

When you ask me about the Alaska situation, I think it is a fact that there is a tremendous supply of natural gas there. You cannot get that natural gas into the lower 48 unless you have a pipeline. We know it cannot just be picked up and carried. We know you cannot build a pipeline unless you have a tremendous investment of capital, and you have to have a return on that capital.

Therefore, I think you make a different case out, really, for the Alaska pipeline than you do for the stripper wells, some of which are presently operating and some of which will be new, but I think they can operate very well and are doing extremely well under the present law, and do not need any additional relief.

(Mr. HART assumed the chair.)

Mr. MELCHER. Well, the Senator is telling me that it is all right for my State of Montana to pay, as Montana Power has to pay under the newest contracts for Alberta gas, about $2.16 per thousand cubic feet, but that it would not be all right to allow a bill to be passed that would provide stripper gas well production at the basis of $2.09 per thousand cubic feet. The Senator is saying, "You do not have to worry about it, because there are a lot of gas companies that have got contracts at 26 cents per thousand cubic feet."

Well, they are not available to us now. Whatever contract Montana Power Co. has, or Montana-Dakota Utility Co. has, which distributes gas in Montana, they are old; they are going to expire. If they have contracts at such low figures, well and good. But when they have to replace those contracts, they cannot replace them at $2 for stripper gas, but must pay more than that for imported gas. Now, where is the sense in that?

On the other hand, the Senator from Ohio tells us that it is all right to go ahead and build the northwest Alaskan pipeline to bring down Prudhoe Bay gas, and go right through Montana; it will be all right for us to have that there, at $4-plus per thousand cubic feet, but we cannot have any stripper production in Montana at $2.09, or stripper production in Wyoming at $2.09 per thousand cubic feet, that could be brought into our State through Montana Power or Montana-Dakota Utilities.

I think this is an example of that fact that when you make a motion to recommit with instructions, there will not be much of an agreement on that motion to recommit with instructions that carries out a balanced approach at all, even of the very strong and good points that are not argued much on the floor of the Senate or in the House of Representatives, or among the members of the American public who are looking at this proposition.

I daresay that the Senator from Ohio would like to ask Eliot Janeway or almost anybody who was dealing with the economics of energy that specific question: "Do you believe that we ought to allow some price incentive for stripper gas wells?"

About 90 percent of those people would say, promptly and firmly, "Yes. Absolutely." We are faced with paying a higher price than $2.09 per thousand cubic feet for Alberta gas that is purchased by utility companies in my State or other States, and consumed by the American public. We are faced, if our Federal Government permits the gas companies to buy from Mexico, with a price of about $2.65 per thousand cubic feet. That is substantially higher than the $2.09 for stripper gas wells.

They would point out that liquefied natural gas brought in under current contracts sells for about $4 per thousand cubic feet. They would point out that all of these purchases are part of the drain on the American dollar, and create a problem of balance of payments for the United States, that it would be good for the economy to have that gas production here within the United States, and entirely reasonable from an economic standpoint.

But let me go to the other aspect of stripper gas wells. It is entirely practical and necessary from a conservation standpoint. They have got the well there, in many instances, and it has petered out. There are methods to enhance recovery of the gas that is still there. Now, that is conservation; to enhance that recovery and get it is true conservation. That is different from drilling a new gas well that is only going to produce a very small amount of gas. I want to emphasize that difference, because the conservation end of it comes in producing out of an existing gas field that gas that is locked below, using the enhancement recovery features that are available to recover the gas that is there in the field,

that has already been opened up and part of it has been taken.

In addition, when the Senator from Ohio returns, perhaps he would like to address himself to whether or not one of the instructions to the conferees should be that something should be done about the nonprice regulations contained in section 4 of the Natural Gas Act, and whether or not the requirement of the overwhelming paperwork of the 30-day monthly reporting by gas producers should be left in the law as it is now. Would the Senator from Ohio care to respond to that, whether one of the instructions to the conferees should be that the nonpricing regulations requirement under section 4 in the existing law, the Natural Gas Act, should be amended whether the overwhelming paperwork requirement of very detailed 30-day reporting should be retained in the law, or whether there should be relief granted, as has been recommended by the Federal Energy Regulatory Commission Chairman and by the conferees?

Mr. METZENBAUM. I must confess that the Senator from Montana inquires of me about a specific as to which I am not familiar. I will be glad to check into the matter and attempt to respond prior to this matter being finally disposed of.

Mr. MELCHER. I thank the Senator. I would draw his attention to the fact that there has been a great deal of discussion on the Senate floor the past 3 days on the chairman of the Federal Energy Regulatory Commission's comment that the existing case load under section 4 is overwhelming, and is bogging them down in paper.

Mr. METZENBAUM. I would say to my good friend from Montana that perhaps it would be helpful to him in learning about the answers to some of these questions to know that the chairman of the Federal Energy Regulatory Commission has been summoned by the chairman of the Subcommittee on Administrative Practice and Procedure of the Judiciary Committee, the Senator from South Dakota (Mr. ABOUREZK) and will appear before his subcommittee tomorrow to discuss exactly how many additional employees will be required by passage of this legislation; and at that time I am certain that the Senator from Montana could sit in the meeting and perhaps the Senator would find a direct answer to that particular inquiry.

Will the Senator yield?

Mr. MELCHER. I yield to the Senator from Ohio. I ask unanimous consent to do so.

Mr. METZENBAUM. I just want to come over and talk to you for a minute.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

Mr. MELCHER. I ask that the Senator withhold that, if he would.

Mr. FORD. Mr. President, I withhold my request.

Mr. MELCHER. The Senator from Ohio, speaking about the oversight hearing before Senator ABOUREZK of the subcommittee of the Judiciary Committee, was very timely. I am sure that the chairman of the Regulatory Commission will inform that subcommittee that (a) relief under section 4 of the Natural Gas Act will relieve them of a tremendous amount of paperwork. To the extent that relief is granted, the Federal Energy Regulatory Commission can relieve themselves of an overwhelming burden. They have reported to us that in fiscal 1976 alone there are 28,407 cases under section 4 of the Natural Gas Act.

Let us view how huge that figure is. Fiscal 1978 is going to end a few days from now, and they have accumulated that many cases. They have to dispose of them under section 4 of the Natural Gas Act.

Let me say, it is not just a question of how many people the Federal Energy Regulatory Commission has to have employed to handle those cases. Let me say that there are tens of thousands of other employees throughout this country working for the gas companies which have to report, who are employed for that specific purpose.

If we want to truly address one of the pertinent parts of what is in this conference report now before us, it would serve the interests of the proposers of the recommittal motion to include that in their motion to recommit with instructions. To ignore it would be to ignore not only commonsense; it would be to ignore a responsibility that had been well outlined and verified by not only the Federal employees but by industry as being a waste of time, serving no useful purpose, requiring such detail that nobody wants to read it, and requiring storage capabilities which are an outrage, just for those reports required under section 4 of the Natural Gas Act.

I think it is clear that the motion to recommit will not contain the provision to accept the incentives for stripper gas well production.

Perhaps the motion to recommit will contain the proviso, the amendment to existing law, which will permit the northwest Alaskan pipeline to roll-in the cost of construction. If it does, I am all for that particular feature. I think it would be wise for them to include it, but I think it is obvious that it might have extreme difficulty in the House of Representatives.

Some of the leaders in the House of Representatives who have jurisdiction over this subject matter have made very explicit the provision to allow the rolling in of construction costs of that gas pipeline proposed from Alaska down to the Lower 48 was a concession, a concession that they were willing to swallow in terms of getting out a bill. "Do not give it back to us with that in it if you are not going to have a bill."

I will repeat what I have said earlier in the course of the debate on this subject that while the proposal is not entirely satisfactory to me, it is the only game in town. If we want a bill this fall we better go with this one because there really is not much likelihood that there is going to be another bill.

Mr. STONE. Will the Senator yield?

Mr. MELCHER. I yield.

Mr. STONE. I thank the distinguished Senator from Montana.

Mr. President, after careful study of the conference report on natural gas, hammered out after months of hard work by the Senate-House Energy Conference, I have decided to vote for its passage. I intend to vote for the conference report because it offers increased incentives for new domestic gas exploration and production. It is the only realistic, effective policy alternative at the present time to no bill at all.

As an original consponsor and active supporter of the Pearson-Bentsen bill—adopted by the Senate—I am disappointed that the conference report does not go even further in providing more incentives for greater domestic natural gas production. I am also disappointed that the conference report continues and extends the heavy hand of Federal regulation in this area.

Nevertheless, Mr. President, this conference report does not offer the prospect of significant increases in domestic natural gas production. Most experts predict that this bill will result in almost 8 Tcf of additional production over present law, and result in a reduction of oil imports of over 1 million barrels per day in 1985. The legislation has the additional features of deregulating within 1 year high cost gas resources. Estimates of increased production vary, but there is no question that this bill means more domestic natural gas and less dependence on foreign energy sources than would otherwise be the case under present law. It offers a breakthrough in the right direction after months of debate, disagreement, and delay. And Mr. President, a breakthrough in developing a national energy policy is critical to our national well-being.

While this legislation, if adopted, will be just the beginning toward a comprehensive energy policy, it is a reasonable compromise on a policy matter which has divided the Congress for decades. This is the first time a natural gas bill has been conferenced and reported to the floor since 1956. The conference report represents the culmination of a legislative process which began in October, 1975 when the Senate passed by a vote of 50 to 41, S. 2310. This measure provided emergency relief for high priority gas consumers in the short-term. In the long-term, S. 2310 phased out onshore controls for new natural gas effective April 5, 1976 and for new natural gas offshore effective January 1, 1981.

In December 1975, the House Interstate and Foreign Commerce Committee passed H.R. 9464 a measure designed only to provide short-term emergency relief. A substitute proposal similar to S. 2310 was rejected 205 to 201 as the House instead adopted a proposal to end price controls for small gas producers, but which increased regulation for major producers. An attempt to recommit this bill and substitute a deregulation proposal also failed 198 to 204. These two votes effectively insured that there would be no gas pricing legislation in the 94th Congress.

Congressional debate on natural gas pricing resumed in the 95th Congress with the President's energy proposals and the introduction of the Pearson-Bentsen bill of which I was a cosponsor. The House of Representatives narrowly adopted the President's proposal for con-

tinued and expanded natural gas regulation. In the Senate, the deadlocked Energy Committee rejected the President's original proposal without recommendation or amendment.

As we all remember, a full-scale, extended Senate debate on natural gas pricing resulted. After weeks of procedural votes and intense debate, the Senate approved the Pearson-Bentsen substitute 50 to 46. Subsequently, the Senate-House Energy Conference has worked tirelessly in search of a workable and acceptable compromise.

The choice for the Congress is not between this compromise conference report and another compromise; the choice is between this compromise bill and no bill at all. To have no natural gas bill at all after all these months of debate would be a great set-back in our efforts to develop a comprehensive national energy program.

Mr. President, I ask unanimous consent that the attached Miami Herald Editorial of August 19, 1978, relating to this subject, be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

ENERGY BILL MUST BE PASSED TO CHECK THE DOLLAR'S SLIDE

President Carter's belated, nick-of-time rescue of the natural-gas legislation from a deadlocked House-Senate conference committee raises hope, at least, that an energy bill can be passed this year. With that hope a parachute is attached to the plummeting American dollar, and a gust of confidence could elevate it to a plateau of stability for a time at least.

There were times this week when world confidence in the intention of the U.S. Government to do something—almost anything—to bolster the dollar was so low that a crisis nearing panic was nigh.

On Monday and again on Tuesday the dollar dropped to new post-World War II lows in Japan, Germany, Switzerland, and the Netherlands. Even in England, which reported its own trade-deficit problems were worse, the dollar fell, making the pound worth more than $2 for the first time in 29 months.

On Wednesday, as the Swiss Cabinet met to discuss the dollar's frailty and the resultant disarray among other currencies, there was no apparent concern evident within our own Government. Treasury Secretary Blumenthal's office said it would intervene only when there were "conditions that make for a disorderly market."

Lo and behold, that afternoon President Carter said he detected disorder in the market and would ask his economic advisers for remedies.

The effect was electric and immediate. Even such a slight sign of concern and interest by the Administration resulted in the dollar opening higher in Tokyo. Frankfurt, Zurich, London, Paris, Brussels, Amsterdam, and Milan. Then when Mr. Carter announced no firm rescue plans at his press conference Thursday afternoon all bets on recovery were off.

Overnight, however, the breakthrough on the energy legislation changed everything again. Whether Mr. Carter used arm-twisting, sweet talk, or an appeal for the greater good of the country, it worked. The mere possibility of passing an energy bill ranks as good news after bleak months of no hope at all.

If a threatened Senate filibuster against the compromise on gas develops, pressure on the dollar will return. But now that the Administration has moved in the one area, perhaps the pressure can be offset by movement in other areas. The giant imbalance in trade, caused greatly by oil imports, can be eased by Japan's agreement to cut exports to this country and to increase U.S. purchases.

At base, however, the Administration has to get an effective handle on inflation. While the economy grew at a rate of 8 per cent during the second quarter, figures released Friday show inflation crept even higher to 10.7 per cent. Increased consumer spending, and a rush to buy homes before the price goes even higher, indicates the public's lack of confidence that the dollar will be worth as much tomorrow as it is today, thus building in inflation.

The Administration's efforts to cool the economy by voluntary restraints have produced few volunteers and fewer restraints. Because nothing else has worked, the people, according to this month's Gallup Poll, now believe wage-price controls are the answer. The sentiment in that direction is up to 52 per cent now from 44 per cent in February. We do not favor such controls, nor does Mr. Carter, who must devise other, better solutions.

The question comes back, now, to the President: Why not the best?

That's what the dollar used to be.

Mr. STONE. Mr. President, I yield the floor.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MELCHER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, there has been delay, and it is obvious that very few Senators are present—none except the Chair and I. Several meetings are going on. The leadership on both sides are meeting with the policy committees. Senators will be on the floor in a few moments.

I had anticipated making a motion for a recess but will not do that, because when the committees finish, there will be some action on the Senate floor.

I wanted to get the doors opened back here and bring everybody out, to see what I was going to do.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that Stuart Brahs, of my staff, be granted the privilege of the floor during debate and votes on the Natural Gas Act conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIBICOFF. Mr. President, this is an important debate. For almost 18 months the question of a U.S. energy policy has tied the President, the Congress, and the Nation in knots. This top legislative priority has, however, proved an elusive goal and a disaster.

The past two winters have brought home to most Americans the reality of our energy problem—that it will not disappear. Too often the energy challenges facing the Nation have been treated as short-term difficulties. This is a dangerous fallacy.

The Arab oil embargo showed us just how vulnerable we are. Both the 1973–74 embargo and the 1977–78 natural gas crisis provided ample evidence that we are neither conserving our energy resources nor producing enough for a growing economy.

No one expected the creation of a national energy policy to be easy. After all, the natural gas controversy has been around for nearly 40 years. The national energy plan submitted by President Carter in April 1977 contained over 100 interdependent proposals. Grappling with these complex parts truly tested our political skills.

Throughout this debate the world has waited and watched to see if the United States has the capacity and the will to deal with her energy problems. Our trading partners in Western Europe and Japan have been especially interested in the progress—or the lack of it—on the energy question. Our failure to take affirmative action on the energy front has been an important factor in the dollar's decline; it has been a major cause of our record trade deficits. Treasury Secretary Blumenthal stated last year, for example, that in a 5-year period "the cost to us of imported oil has increased tenfold * * * from $4.7 billion in 1972 to $45 billion estimated for this year * * *." Because of the increase in purchases of imported oil, the United States has had to export 2 percent of its GNP to pay for them. Over the past 10 years we have had to pay almost $5 billion for imported natural gas alone.

And further, this failure to take decisive and hard action is a symbol to the rest of the world. There is a growing belief that the United States does not have the political will to develop and to implement an energy program, but we lack the capacity of a President or a Congress working together to solve our basic problems. Some believe that we have abandoned our world leadership role—and thus the strength of our international economic position has been undermined. In the absence of a meaningful energy program, there is fear that oil imports will accelerate; that the large trade deficits will continue well into the next decade, and that the dollar will fall still further.

This international atmosphere adds a new dimension to the natural gas compromise before us today. As Federal Reserve Board Chairman Miller recently testified before the Finance Committee:

The world, for whatever reason, has built up the question of the energy bill as almost the essential element in our determination to cope with our problem of inflation and the problem of the dollar. . . .

If we reject this natural gas agreement—an agreement hammered out over many long months—the world will read it as a sign that America is unable or unwilling to make the hard choices—to develop an energy policy. It will be a sign that the United States cannot be relied upon to exercise world leadership in this

critical area. This is a dangerous consequence of disastrous proportions.

Mr. President, no one believes that the natural gas compromise alone will solve America's energy problems. This compromise is not even the final resolution of the natural gas issue. It is, however, a step forward and a concrete action to show the world that the United States wants to act and that it is capable of reaching agreement on a course of action. Approval of this conference report will be proof that the Congress and the President are not impotent in this important area. We cannot fail to take the steps necessary to deal with the energy crisis.

As approval of the natural gas compromise has a favorable impact on the value of the dollar, it will help to break the inflationary spiral now gripping our economy. The depreciation of the dollar feeds domestic inflation. It has been established that every 10 percent decrease in the value of the dollar adds eight-tenths of 1 percent to the Consumer Price Index. Our economy simply cannot sustain such increases for long.

This natural gas compromise will permit interstate pipelines to compete with intrastate pipelines for new supplies of natural gas, thereby increasing supplies for the interstate market and preventing future shortages. Prices will be less than that of alternative fuels such as expensive foreign oil, liquid natural gas (LNG) and synthetic natural gas (SNG). The Connecticut Energy Office advises me, for example, that natural gas prices in my State will actually be lower under the compromise than under the status quo. The Connecticut Natural Gas Co. presently pays about $5.10 to $5.20 per thousand cubic feet for synthetic natural gas (SNG) which is made from naphtha, a petroleum product. It also pays about $3 to $4 per thousand cubic feet for liquefied natural gas (LNG). With decontrol, less of these expensive alternate gases will be used. Average residential gas prices will rise at a compounded annual rate of only 8 percent between now and 1985. Thus, Connecticut consumers would benefit from the increased supply of lower priced regular natural gas. Based on preliminary estimates, the State energy office anticipates a $20 million annual saving under the compromise.

Mr. President, the failure to enact an energy program is an economic tragedy. We are hemorrhaging with the problems of inflation and the deterioration of the dollar—both of which are worsened by the $42 billion annual bill for imported oil. The Department of Energy anticipates a $6 to $8 billion-a-year reduction in our trade deficit should the natural gas compromise be adopted. In addition, Secretary Schlesinger estimates the savings of approximately 1.4 million barrels per day from this bill, which is equal to the savings from all the other parts of the national energy plan combined.

Certainly this conference report is not a perfect piece of legislation. It is not the program the President originally envisioned. It is not what those opposed to any deregulation or those supporting the industry desire. It is a compromise and is an important start. It serves as a base on which we can build.

No compromise satisfies everyone but let us not ignore the positive aspects of this conference report. In addition to those benefits I have already mentioned, we should note that—

The outmoded dual market system is abolished and a single national gas market is created;

The construction of a pipeline to carry new supplies of natural gas from Alaska to the Lower 48 States will be undertaken;

Through the incremental pricing mechanism the initial burden of increased gas prices will be placed on industrial users while residential and small commercial users will be shielded from sudden increases;

An estimated 30 percent increase in interstate gas will be realized by 1985;

Incentives for exploration and production of new natural gas will be increased;

Burdensome Federal Energy Regulatory Commission regulatory requirements on all new natural gas will be removed;

Substantial quantities of gas for new home connections will be provided; and

The increase in the price of gas to the level of competing fuels will persuade industry to convert to more plentiful coal supplies—a major objective of the national energy plan.

Mr. President, the time has come to make those hard decisions on the manner in which we will produce, use, and conserve energy in this country. We must put aside theory, rhetoric, and regional differences. We must face the issue and demonstrate to the world that we have the ability and the determination to deal with energy questions in an orderly and reasonable manner.

Failure to act on this compromise would constitute a failure of Government. The impasse of the past 16 months has caused a serious loss of standing in the international community and has gravely damaged our own economic well-being. Let us stop doodling and dawdling. Let us give the American people results.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HODGES). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair, but for not to exceed 1 hour.

There being no objection, the Senate, at 2:03 p.m., took a recess, subject to the call of the Chair.

The Senate reassembled at 2:57 p.m., when called to order by the Presiding Officer (Mr. SPARKMAN).

Mr. BELLMON. Mr. President, I rise in opposition to the natural gas pricing conference report, and I wish to register, also, the opposition of natural gas producers as well as the consumers, and by far, the majority of the citizens of my State of Oklahoma.

As I look around this Chamber and note with some amazement those of my colleagues who stand in opposition to this extension of Federal regulation, I can only wonder who, besides President Carter, is for it. Certainly no one who cares about the consumer. Certainly no one who cares about the producer. Certainly, no one who thinks Government is already too big, too intrusive, too expensive.

When you consider any commodity, any product, whether it be wheat, natural gas, or widgets, there are three actors in the picture; producers, consumers, and Government: producers produce, consumers consume, Government meddles.

Experience in many fields shows that the more that Government meddles, the worse we all are for it. If Government successfully comes to the aid of the producer, we get a surplus. If Government aids the consumer by unrealistically holding down prices, then we get a shortage. If Government is especially inept, or so large and unwieldy that the right hand does not know what the left hand is doing, it is even possible for Government to accomplish a shortage and a surplus of a commodity at the same time. Aside from being tragically amusing, the cost of Government accomplishing shortages and surpluses at the same time is enormous.

Federal regulation has already been responsible for feast and famine in my own State. Federal regulation is responsible for the simultaneous surplus and shortage of natural gas in Oklahoma. This bill, if enacted, will make that situation even worse.

Mr. President, I wish to refer to the fact that the Federal Government, by its unrealistic controls, has produced a shortage of natural gas in the interstate market and at the same time, because of the heavy-handed bureaucracy which makes many producers unwilling to sell gas in the interstate market, we have a surplus in the intrastate market.

If we only had to debate the merits of this bill, the debate would be ridiculously one-sided. There is no one to argue for the bill on its merits, for the simple reason that it has very few.

The only reason we are debating the bill at all is that it has become symbolic—symbolic of the President's leadership. It is also symbolic of the resolution of the Congress to "do something" about the energy problem. Actually, it is not even the energy problem that is at issue. It is the dollar.

The dollar has been falling against the currency of countries that import all their oil. We import a lot of oil, too. The advocates of this bill, such as they are, would have us believe that vastly increasing Federal regulation of production and sales of natural gas will check the fall of the dollar. The advocates of this bill, such as they are, would have us believe that more meddling in the affairs of producers and consumers of natural gas will result in a decrease in the amount of

oil this country imports. There is only one thing that this bill is guaranteed to do, if enacted—that is to increase the amount of oil this country imports.

The only way a gas bill could reduce the amount of oil this country imports would be for it to cause consumers to shift from oil to gas.

This bill, and the Coal Conversion Act we have just passed, will cause consumers to shift from natural gas to oil. This bill will have just the opposite effect from what its advocates claim. If industry, if electric utilities, shift from natural gas, there will be a Government-contrived surplus of gas. If there is a surplus of gas, prices will fall. If prices fall, exploration activity will decrease. If exploration activity decreases, additions to proven reserves will cease. If additions to proven reserves cease, more consumers will shift to a more reliable source of energy. And so on. And so on. The more reliable source of energy they will shift to is oil. The demand for oil will increase. The importation of oil to this country will increase.

How do I know that producers—especially industrial consumers—will shift to oil if this bill passes? Because they tell me so. Who am I to say they are wrong. They want a dependable supply of energy. Most of them have standby capability to burn oil now. If this bill passes, they will simply burn oil all the time. They can no longer afford to rely on Government which places their energy needs last among all consumers. And there is no law forbidding their making that shift to oil. For example, Armco, Inc.'s Baltimore plant has a million gallon storage tank now for oil and will use oil all the time if it becomes cheaper.

How do I know that producers—especially wildcatters—will reduce their exploration activity for natural gas if this bill passes? Because they tell me so. Who am I to say that they are wrong. They want to make a living. Right now, a lot of gas could be sold in the federally regulated market—could be, but it is not being sold. There is no law requiring a producer to submit to Federal regulation and there are many independent producers who would prefer not producing to submitting to massive bureaucratic regulation of their lives. They will simply forsake the risky business of drilling wells hoping to find gas and invest their time and money elsewhere. This is what has already helped in the interstate gas market.

Many of my colleagues, some of whom voted for the Pearson-Bentsen bill, who were persuaded that an unregulated gas market was best for the consumer, have stated their intention to vote for this conference report. They have chided some of us for refusing to compromise on gas deregulation, some who want deregulation and some who oppose deregulation. Well, this conference report is not a compromise. That is why you see before you agreement. Agreement between the proponents of gas deregulation and the opponents of gas deregulation. We are in absolute agreement that this bill is worse than no bill at all.

Will my colleagues not be influenced by the producers that practically plead with us not to pass this bill. I am aware that there are others, on their knees, pleading with you to pass the bill. But they don't know much about gas production. Will my colleagues not be influenced by the consumer organizations that practically plead with us not to pass this bill. If my colleagues are not influenced by either producers or consumers, who will they be influenced by? We have an agreement between proponents and opponents of gas deregulation. That agreement is to recomit this bill to the conference, with or without instructions. It is agreement.

How is it possible that President Carter, against all evidence to the contrary, claims that this bill will result in increased gas production, increased consumption, and shifts from oil to gas?

It comes because this bill was originally designed to get industry and many other consumers off natural gas. It was well designed to accomplish that result. It certainly would do that. The President's proposals were originally based upon his belief that the sky is falling. He used to believe, and must surely still believe, that there is no more oil or natural gas to be found in this country. His entire energy package was based upon this belief. And yet, he advocates this gas pricing bill. He claims that it will result in increased gas production and shifts from oil to gas by consumers. It will do just the opposite, which is what he originally intended. Why then has he changed his tune?

We all know the answer. He thinks he needs a bill—an energy bill—any energy bill—a bill that will result in reduced oil imports. Never mind that this bill was designed to cause shifts from gas to alternative fuels. Never mind that this bill actually result in increased oil imports. The Senate has to show resolution to the world by passing a bill—any bill that can be labeled an "energy bill." Mr. President, I submit that this attitude is an insult to the intelligence of the American people as well as to the leaders of foreign countries.

I think President Carter still believes the "sky is falling." I think he still believes that there is no more oil or gas to be found in this country at any price. He will not allow price controls on domestically produced oil or gas to expire until he is somehow convinced that doing so would result in increased domestic production. Maybe we can convince him if we defeat this bill. If producers and consumers can convince him that this bill is the wrong thing for America, maybe he can then see what is right.

What we have to convince the President is that the laws that will solve this energy problem, the import problem, the dollar problem—are already on the books. The laws of supply and demand have been on the books for a long time. We must begin to obey those laws, rather than trying to repeal them. We must reduce Government meddling. If the President cannot be convinced, then let the Senate demonstrate again as when we passed S. 256 that we are convinced. Let us return to the picture. Producers produce. Consumers consume. Government meddles. It aids producers by raising the price above that consumers will pay. When Government aids producers in this manner, a surplus results. The law of supply tells us production will increase if the price increases. Government aids consumers by limiting the price that consumers are allowed to pay. When Government aids consumers in this manner, a shortage results. The law of demand tells us consumption will increase if the price decreases.

Together the laws of supply and demand tell us that the actions of government in the marketplace will be to provide either a surplus or a shortage. It can even contrive, at times, to produce both. It can happen when the left hand of Government does not know what the right hand is doing. Who can deny that an administration that pushes a bill like this, which will cause shifts from gas to oil and a bill that will reduce oil imports, knows its right from its left.

The evidence of what will happen if this bill passes is already before us. I urge my colleagues to look at it. The laws of supply and demand have not been repealed. The sky is not falling. We are not running out of gas next week. In those markets where the Government has not meddled, our proven reserves are increasing year by year.

The evidence that President Carter refuses to believe, is there, in the unregulated market. Natural gas used to be found almost as a byproduct of oil exploration. A large amount of proven reserves existed almost by accident. Production and consumption rose until the proven reserves fell to only a 10-year supply. At that time, the need for additional reserves was seen and, in the unregulated market, the price began to rise. Proven reserves dedicated to the unregulated market began to rise as a result. Each year more is added to reserves than is produced. The law of supply say that will continue to happen so long as the price rises, provided the resource base is present which it is.

A trap that a lot of people have fallen into is confusing resource with proven reserves. Proven reserves are the amount of a resource, for example of natural gas, that industry or the USGS, which polls the industry and then exercises its independent judgment knows can be produced at a profit at current prices.

(Mr. SASSER assumed the Chair.)

Mr. BELLMON. When OPEC jacked up the price of their oil fourfold, many people looked at the proven reserves appropriate to the old oil price and promptly announced that the sky was falling. But the proven reserves that go with the old price of oil is not the same as the proven reserves that go with a fourfold price increase. The first time that our Government tried to get a handle on how much energy was in the proven reserves category as a function of price occurred last spring, just after President Carter announced to the world that the sky was falling. The first attempt took place within the planning office of ERDA. The estimate was so embarrassing that it was

suppressed. Then industry and government met together at the USGS office in Reston, Va.—May 24–26, 1977—for the purpose of getting a better estimate. The resource base, the amount obtainable at some price, was determined to be more than ten times the amount of proven reserves at pre-OPEC prices.

Mr. President, I cannot emphasize that point too much. Using the higher prices that came as a result of the OPEC action, the resource base, which is to say the amount of fossil fuel available in this country, was realized to be 10 times the amount of proven reserves at the pre-OPEC prices.

In particular, the amount of oil that could be produced at $15/barrel was more than 3 times the amount that could be produced at $5/barrel. The amount of gas that could be produced at $3/MCF was substantially greater than three times the amount that could be produced at $1/MCF.

This all makes a great deal of commonsense, but a lot of people have not stopped to think about it, and unfortunately President Carter is one of those.

Senator JACKSON, who was on the floor a moment ago but seems to have left the Chamber at the moment, in his opening defense of this bill, gave estimates of the amount of gas that would become available if this bill became law, from Tight Sands and Devonian Shale, from coal seams, and from geopressurized zones. The amount of gas is immense and I will not quarrel with his estimates. But it is not the passage of this bill that will make those reserves producible. If anything, this bill makes those reserves less producible. That gas will not be produced until it is economical to produce it. The market will dictate when geopressurized zones will be produced. And if this bill is enacted, the market may never get a chance to provide incentive for that gas. The bill will cause shifts to oil, because of the incremental pricing provisions. If consumers shift, the demand for gas will fall. If demand falls, the price will fall. If the price falls, less gas will be added to proven reserves.

The price of natural gas in the unregulated market in Oklahoma has stabilized. You can buy all the natural gas you want in Oklahoma if you are willing and are allowed to pay the price. The average price in the unregulated market in Oklahoma is less than the price ceiling in this conference report.

Mr. President, I emphasize that again: Our current price in the unregulated market in Oklahoma is less than the price ceiling in this report. Some producers want more. Some will take less.

But even though many consumers in Oklahoma, and in other States, are willing to pay $1.75/MCF, they are not allowed to. The Federal Government will not let them. The Federal Government "aids" them. It will not allow them to pay more than $1.50/MCF, and not many producers are willing to sell for that. So consumers either have to shift to oil or shut down their plants.

Even in the regulated market, there is some evidence that the law of supply has not been repealed. Until 1975, the Federal Government would not allow any customer they controlled to pay more than 52 cents/MCF. Not many producers were able to find and sell gas for that price and were certainly not about to go looking for more gas to dedicate to the federally regulated market. Then, the Federal Power Commission, in a hotly contested (by consumer interest groups) ruling, based upon cost of production, allowed a new ceiling price of $1.40/MCF. That price increase, even though not certain to survive court challenge, caused producers to start drilling for more gas to dedicate to the regulated market. For a number of years when the regulated price was 50 cents/MCF, no new onshore gas was added to proven reserves dedicated to the regulated market. Now that the new FPC price has begun to take hold, 2.8 TCF was added in 1976, and 8.7 TCF was added in 1977. So even in the regulated market, when the ceiling is raised high enough, some producers will find it worthwhile to look for more gas.

Some of you may wonder why I oppose this bill, since the regulated ceiling price that will take effect is about $2/MCF, which is considerably higher than the current Federal ceiling price, and even higher than the average price in the presently uncontrolled market in Oklahoma. So, if the demand is there, producers will look for gas, and find it, and add to our proven reserves. Why, then, do I oppose it.

I oppose it because it is a completely unnecessary and costly regulatory nightmare. If this bill is enacted, much less gas will be produced and consumers will have to pay far more for it. Because the cost of regulation has to be deducted from the price a producer gets, he will produce less. Because the cost of regulation is included in the price a consumer pays, he will consume less. Some consumers will quit using gas altogether because this bill would require them to bear the price of the highest priced gas produced. This bill will cause them to shift to oil.

I oppose it because experience has shown once regulation begins, pressures on regulators make deregulation impossible. I oppose it because economics refuse to obey the preconceived notions of politicians. Imbalances are certain to result. I oppose it because the intrastate market has been free of controls and their supplies have been abundant and we should apply this policy nationally rather than abandon it for the bankrupt policy of bureaucratic meddling and control.

You may think that the regulatory cost will not be very high. It will be very high. Prohibitively high. Anyone who has any acquaintance with the DOE entitlements program knows how high the regulatory costs are there. It will be much higher for gas if this bill passes.

Regulatory costs do more than add to the price of gas. Some of the factors of production, such as the willingness of the producer to put up with the bureaucratic nitpicking, are difficult to evaluate in terms of price. But there comes a point where producing gas is not worth the hassle. It is unquestionably true that there is gas being sold in the unregulated market that would not be sold at all if DOE got into the act. Many producers have told me that they would get out of the business if this bill passes. One of the reasons that large oil and gas producers have not been more vehement in their opposition to this bill is that they are already so browbeaten by the regulators in their oil operations that they figure things cannot get much worse. The entitlements program is already a nightmare. "How bad can nightmares be?" And so they resign themselves to what they feel is inevitable.

Large oil can have platoons of attorneys and accountants to cope with regulators. This bill does not hurt big oil so much. It does hurt independents who find most oil and gas in the United States. They cannot afford big legal staffs and platoons of accountants because their operations do not justify that kind of expense.

And I might say that, being rugged individualists, many of them resent this kind of meddling, and on that basis alone will probably look for other places to invest their time and money.

The solution is not to compound nightmares. The solution is to wake up. It should be recognized that the laws of supply and demand are still operative. Obey the law; do not try to repeal it. Reduce regulation; do not extend it.

It is not generally realized that a lot of gas that is consumed in producing States, such as Oklahoma, is already controlled by Federal regulators * * * that is gas that is sold to a federally regulated pipeline, but is then sold by pipelines to consumers before leaving the State. There have been curtailments to these Oklahoma customers (ordered, I might say, by Federal regulators) even though there is plenty of gas to be had all around them.

The pipelines can buy all you want at $1.75/MCF, but the DOE would not let you pay but $1.50/MCF. The people of Oklahoma do not understand why the Federal Government is performing this wonderful service of cutting off their gas for them. But they understand one thing very well. This is a Government service they could do without.

I am convinced that consumers nationwide are going to learn this same lesson. Consumers have proven again and again that they much prefer to pay production costs of gas than to do without. Gas is not only the cheapest fuel available, it is the cleanest, safest and most dependable. President Carter thinks the present situation is intolerable. He wants to control all gas. As a candidate, he preached deregulation of natural gas but he sent us a bill which would institute control over all gas, and that is what we have before us.

There can be no doubt as to why there is plenty of gas in the unregulated market and shortages in the regulated market. There is plenty of gas in the unregulated market because that market is unregulated. It is that simple. There is a shortage of gas in the regulated market because that market is regulated. Seldom is any affliction so easily diagnosed. Seldom is any remedy so easily prescribed. The affliction is Federal regu-

lation. The remedy is to end Federal regulation.

Having diagnosed the disease and prescribed the remedy, you might think the President would thank me and proceed to end Federal regulation of oil and gas. Yet, he does just the opposite. He proposes to extend Federal controls on oil and gas and to keep those controls on indefinitely. Why?

The simplest answer is that there are more voters in nonproducing States than there are in producing States. Besides, he did not carry Oklahoma, anyway. But I am afraid the answer is more subtle and more disturbing. Let me quote from page 50 of the President's national energy plan, a document put out by the Executive Office of the President, a document that accompanied the energy bills he sent the Congress to pass.

In 1973–74, the oil-producing countries raised the world oil prices fourfold. Deregulation of oil and gas prices would make the U.S. producers the beneficiaries of those arbitrary price rises and yield windfall profits from the increased value of oil and gas in existing fields. The producers have no equitable claim to that enhanced value because it is unrelated to their activities or economic contributions.

First of all, the oil-producing countries did not raise the world oil price fourfold. The OPEC cartel raised the OPEC price fourfold. At the time, the United States was an oil-producing country, and our price was substantially greater than the OPEC price. In fact, imports of OPEC oil were restricted because it was so much cheaper. What the OPEC cartel did was realize that they were selling their oil at less than its true replacement cost. They did not choose an arbitrary price to post their oil. They determined, as well as they could, what the true replacement cost of the non-OPEC world was. They have not been able to keep that price up. Inflation and the falling dollar have resulted in a 1978 price (in 1973 dollars) of about $7 a barrel. The reason they have not been able to keep that high price in effect is that a lot of oil has been discovered that they did not count on (in the North Sea, in Alaska, in Mexico, in Indonesia). The important point to be made here is that the free market price is the true replacement cost and that the OPEC cartel cannot make an arbitrary price stick for long.

But returning to the President's statement I quoted, the most disturbing part is where he says that oil and gas producers should not, and will not be allowed to, realize a gain on their assets. That is an incredible view for the President of the world's premier capitalistic country to have. If there is anything that is critical to our future health and development—and not just in the energy field—it is to have an assured growth in capital formation. The OPEC cartel demonstrated to the world that they, and we, had vastly undervalued our gas and oil resources.

If oil and gas producers are to find and produce oil and gas, they must have capital. Their only source of capital is the sale of the oil and gas they have already found. If they cannot get a price for a barrel of oil sufficient to find and add to proven reserves another barrel of oil, then they will not have gotten the true replacement cost for that oil. They have not been allowed true replacement costs for the oil and gas that they produce and predictably our proven reserves in oil and in gas dedicated to the federally controlled interstate market, have declined in recent years. But, in the uncontrolled intrastate market, free market prices have been allowed and proven reserves have been increasing in recent years.

The view of this administration that producers "have no equitable claim to the enhanced value" of their assets is folly. They claim it would not be "fair." Maybe not. But it would result in a solution to the energy problem. That is what we are supposed to be doing, is it not? In any event, if the price is high, enhanced supplies and reduced consumption resulting from an uncontrolled market will soon bring the price down.

Sometimes you wonder what this administration is up to. It is not just the gas bill. It is not even just the whole Carter energy package. It is the basic approach to this Nation's policies, both foreign and domestic. He preaches fine. Unfortunately, some of his actions do not live up to his words. It seems to me at times that he would rather go down with the ship than save it. Let me quote a recent editorial from the Wall Street Journal.

Mr. President, I believe it makes the point much better than I can. I am not going to take the time of the Senate to read the entire article. We simply have to get away from this notion that we are running out of oil.

To go on with the editorial, it says:

The Europeans would be just as happy with price deregulation. This would also "solve" their mythical problem, which derives from an unthinking belief that consumer prices on energy are set on an average instead of on the margin. But Mr. Carter thinks this will cost consumers billions of dollars that will go to energy producers, which he believes the American people would rather have going, in tax dollars, to building a bigger and better Department of Energy.

Our friendly advice to the President having been systematically ignored these past 17 months tempts us to replace advice to him with mere comment. But that would be giving up. Instead, we advise that he watch his step on that slippery summit. He has slipped a long way in the esteem of his constituents. But he can slide further still.

Mr. President, I ask unanimous consent that the full text of this editorial be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SLIPPERY SUMMIT

The collapse of public confidence in President Carter's performance, as evidenced by his record-breaking lows in the opinion polls, will not be reversed at the European "summit" meeting he will attend next week. Like the fellow who doubles his speed when he loses sight of his goal, Mr. Carter seems intent on pursuing strategies that the man in the street knows are destructive.

What is the point of the summit? To coordinate the economic plans among the major industrial nations, we are told. What is the deal the Carter people are seeking? Our trading partners are asked to expand their economies, and in return Mr. Carter pledges austerity. Specifically, West Germany promises a $6 billion tax cut. Mr. Carter wants to promise that he will be successful in taxing the daylights out of the U.S. economy, specifically on its use of energy. What a deal.

The root of the problem is not that Mr. Carter turns out to be some kind of Manchurian Candidate, who somehow slipped into the Oval Office intent on perversity. It is that he continues to believe in the notion of resource scarcity. Amid a world-wide energy glut, Mr. Carter believes the world is running out of the stuff.

Not a cab driver in Brooklyn, not a steelworker in Buffalo, not a banker or businessman in Los Angeles believes this. Nor do we. The only substantial support Mr. Carter has is among people who possess energy amid the glut and would like to dispose of it before new producers find even more, which would be the inevitable result if incentives were restored to the independent oil and gas snoopers.

The centerpiece of Mr. Carter's strategy had been his energy bill, which in original form would have taxed American energy consumption so heavily that the citizens would have to ponder life in the caves. The bill has been dead in Congress for months, but Energy Secretary Schlesinger still pretends it is alive by placing fresh flowers around the casket every day. Sen. Russell Long is to be congratulated for doing everything he can to kill it.

The people President Carter represents, the American people, want him to deregulate oil and gas, as he promised he would. Again, the evidence is the 2-to-1 margin in the opinion polls that widens month by month. Instead, Mr. Schlesinger talks about rationing two gallons of gas per motorist, slapping import duties on imported oil or dictating quotas.

All this to strengthen Mr. Carter's hand at the summit. The Europeans, the Carter people keep saying, are demanding that we do something about energy. These phantom Europeans, we suggest, should be produced in Washington. They should be invited to read the several hundred pages of fine print in Mr. Carter's energy bill before taking a walking tour of the fun house that would have to administer it, the Department of Energy. They would, we are sure, return to Europe and clam up.

There are no doubt Europeans who have been sold on the erroneous idea that the United States is subsidizing oil consumption by holding the price down via government regulation. They think this gives us a competitive edge that should be taxed away. But why should our President agree with the prescription, even if he accepts their view of the problem?

The Europeans would be just as happy with price deregulation. This would also "solve" their mythical problem, which derives from an unthinking belief that consumer prices on energy are set on an average instead of on the margin. But Mr. Carter thinks this will cost consumers billions of dollars that will go to energy producers, which he believes the American people would rather have going, in tax dollars, to building a bigger and better Department of Energy.

Our friendly advice to the President having been systematically ignored these past 17 months tempts us to replace advice to him with mere comment. But that would be giving up. Instead, we advise that he watch his step on that slippery summit. He has slipped a long way in the esteem of his constituents. But he can slide further still.

Mr. BELLMON. The editorial I have just quoted, made reference to a 17-month campaign. A campaign to enlighten Mr. Carter. I have read and applauded and hoped that Mr. Carter would be enlightened by the editorials of that 17-month campaign. They make

interesting reading, even today. They were consistent. They were convincing. They were dead right.

It may be that at some appropriate time I will want to read more of these articles and perhaps place others in the RECORD, but for the moment I am going to forego that opportunity.

I would like to say in conclusion that if, for some reason, and I cannot imagine what that reason might be, there are those in the Senate who have not listened to what I have said today, I hope they will get a copy of these editorials and read them at their leisure.

Mr. President, to conclude, I would simply say that I strongly urge that the Senate vote to recommit this bill. I feel that the conferees, while they have worked over a long period of time and worked very hard, have not had the advantage of the kind of enlightened leadership they need from the administration on this question.

The President seemed to be persuaded from the beginning that our resource base was limited, that we simply did not have the opportunity to increase our reserves of oil and gas, and he has fashioned his entire energy program on that premise. It is a premise that will not stand close examination. I am convinced that, especially now in the natural gas area, with these large surpluses we have in the intrastate market, if Congress and the President will simply allow the price mechanism to work, there will not be sharp upward adjustments in the natural gas price, and that such adjustments as do come over time will be of such a gradual nature that they will have a very minor impact on the Nation's economy.

I am concerned that if we go along with the compromise, so-called, that the House and Senate conferees have brought before us, we will put in place a system of regulation of all types of oil and gas and we shall never get rid of it.

We know the so-called EPCA bill was supposed to bring oil prices up to such a point that those controls would be removed as of next May, but I shall make a guess that there is practically no chance that that will happen. My concern is that if we go ahead and put controls on intrastate gas, even though those who fashioned this so-called compromise may expect those controls to go off 8 years from now, that will simply not happen. Having gotten a bureaucracy in place to administer those controls and having persuaded a lot of people that controls are needed, Congress will find it pretty impossible to get rid of them when the years have run their course and the law is expected to expire.

Mr. President, I strongly urge that this bill be recommitted, that it be brought back without controls on the intrastate market, and that we set the stage for consideration of total decontrol when the EPCA expires next spring.

Mr. HANSEN. Mr. President, if the Senator from Ohio, who, I know, is eager to speak, will yield to me for just a moment, I should like to compliment our colleague from Oklahoma. I think he has uttered some very profound and lasting truths and I hope that Senators who may have been importuned by the administration to vote for the so-called compromise will take time to read the Senator's comments. I certainly would be persuaded by the logic and the clarity of his convictions.

Mr. BELLMON. I thank my friend from Wyoming.

Mr. President, I yield the floor.

PROPOSED MOTION TO RECOMMIT

Mr. METZENBAUM. Mr. President, there has been considerable discussion about a motion to recommit that a number of us expect to file and call up at an appropriate time in connection with the debate on this particular subject. There have been a number of inquiries made as to what exactly is the language that will be contained in that motion to recommit.

In order to make it possible for all the Members of the Senate to be advised sufficiently in advance of the actual calling up of the motion as to the language that it is anticipated will be in that motion, I ask unanimous consent that a motion to recommit which will be proposed at an appropriate time by myself and Senators ABOUREZK, KENNEDY, BARTLETT, TOWER, and others be printed prior to its being filed at the desk and that it not be subject to being called up except by one of the sponsors.

Mr. FORD. Will the Senator from Ohio allow me to ask him a question? I shall not object.

Mr. METZENBAUM. Yes.

Mr. FORD. Is there any need for him to have it printed? Could it not be just in the RECORD and let us read the RECORD, rather than go to all the trouble and expense of having it printed?

Mr. METZENBAUM. It is just a one-page amendment and I think——

Mr. FORD. If it is going in the RECORD—it will not be in the RECORD, is that it?

Mr. METZENBAUM. I just have the feeling that people normally look at an amendment that they talk about and they do not go to the RECORD to find it.

Mr. FORD. I notice you kept in the incremental pricing and did not put in wellhead price. Is that correct?

Mr. METZENBAUM. I know the Senator would like to discuss the merits of it at this point.

Mr. FORD. I merely asked the question, could we not save the expense of having an amendment printed and we could just have it in the RECORD and let everybody read the RECORD?

The Senator is going to oppose this motion?

Mr. METZENBAUM. I know the Senator from Kentucky is very cost conscious, but I would say the cost of printing this would not be more than $25 and I would suggest doing it.

Mr. FORD. $25 is $25 and it will buy a couple of pounds of coffee and maybe a little natural gas in Ohio this fall.

Mr. President, I withdraw the objection if the Senator wants to print it.

Mr. STEVENS. Mr. President, reserving the right to object, I ask the Senator from Ohio if the motion that will be filed will contain the same provisions that apply to the Alaska natural gas pricing and the treatment of Alaska natural gas as they currently appear in the conference committee report, and if those provisions will be included in the Senator's motion now?

Mr. METZENBAUM. In response to the Senator from Alaska, he is correct that in the past there has been considerable discussion along that line. It is not included, but it is my understanding that various Senators have indicated their intent to move to amend the motion to recommit with instructions to include language pertaining to the Alaska pipeline.

Mr. STEVENS. May I inquire if the Senator would object if I move to amend his motion at this time to make that inclusion?

Mr. METZENBAUM. I cannot object to his doing it, nor can I agree to it, since I do not have the motion that is filed at this moment. I am merely asking for the matter of its being printed.

I should like to suggest to my good friend from Alaska that he indicate for the RECORD, as certain other Members of of the Senate have also indicated—I believe it is Senator HUMPHREY and Senator BAYH—that they intend to offer such an amendment. I had understood that the Senator from Alaska was possibly going to join them in that respect.

I do say to the Senator from Alaska that if such an amendment is offered at a subsequent point in time to that when we offer this particular motion, the Senator from Ohio has no intention to object to its being added. I think it would be premature at this moment, since I have not actually offered any motion, so I cannot very well agree to an amendment to something I have not offered.

Mr. STEVENS. I understand the Senator's position. I ask the Chair if it might be in order for me to make a similar request to have an amendment offered to the recommittal motion suggested by the Senator from Ohio. The amendment language would be that language contained in the conference report presently before us relating to the pricing and treatment of Alaska gas.

The PRESIDING OFFICER. (Mr. MATSUNAGA). A unanimous-consent request may be made after the pending request has been disposed of.

Mr. FORD. Is this another $25 on top of the other $25? We have gone to $50, now, you see.

Mr. STEVENS. I say to my good friend from Kentucky that it is my understanding that the Senator from Minnesota (Mrs. HUMPHREY) and the Senator from Indiana (Mr. BAYH) had intended to be here to raise the question. I am delighted to see the interest in the Alaska gas provisions. I make no indication to the Senator from Ohio that should the provision be in there, I would support the motion. However, I do state that I will move to amend the motion to recommit by adding an instruction to include in the bill to be reported out, should it be approved, the same provisions for pricing and treatment on Alaska gas as appear in the conference report. I think that will save the $25.

The PRESIDING OFFICER. Is there objection?

Mr. JACKSON. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Washington.

Mr. JACKSON. Would the distinguished Senator from Ohio restate the unanimous-consent request?

Mr. METZENBAUM. Certainly.

I ask unanimous consent that a motion to recommit, which will be proposed at an appropriate time by myself and Senators ABOUREZK, KENNEDY, HANSEN, BARTLETT, TOWER, and others, be printed prior to its being filed at the desk and that it not be subject to being called up except by one of the sponsors.

Mr. JACKSON. In other words, if I may ask my friend from Ohio, what he is asking is that it be printed as an amendment—in this case, a motion to recommit——

Mr. METZENBAUM. Yes.

Mr. JACKSON. A motion to recommit which will be available as a printed motion to recommit and that such motion to recommit cannot be called up except by the authors of the motion to recommit.

Now, he is not asking that when it is called up it not be subject to a motion to table?

Mr. METZENBAUM. At this point, I am not. When and if a time agreement might be reached with the entire subject, it is entirely likely that subject might be on the agenda.

But I thought it inappropriate at this point and premature to make that suggestion.

Mr. JACKSON. Might I also ask that he amend his unanimous-consent request to state that the motion to recommit be printed in the RECORD at this point so that Members will be able, in reading the RECORD, to have it available?

Mr. METZENBAUM. I was only concerned about the cost of doing that. But as long as the Senator from Kentucky has no concern, I have not.

Mr. FORD. All this talk going on now, $25, $50, $75, it does not make a lot of difference to me.

Mr. JACKSON. I am willing to accept that cost.

Mr. FORD. I will accept the cost, too.

But will the Senator yield? I want a little parliamentary procedure here, if I may.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. JACKSON. I yield to the Senator from Kentucky.

Mr. FORD. Am I correct in parliamentary procedure now that this is a motion the Senator intends to make, only if the sponsors make it? This is a motion to recommit with various numbers, and I see the incremental pricing is still in it; the Alaskan pipeline is not.

Is it the parliamentary procedure that the Senator could alter or change his motion any time he wants to or whenever he brings it up? Is it subject to change?

Mr. METZENBAUM. First, let me correct my good friend from Kentucky.

Mr. FORD. I want to be corrected. I want to be correct.

Mr. METZENBAUM. To the best of my knowledge, and certainly in accordance with our intent, and incremental pricing is not in the motion to recommit, and it specifically provides it is to be reported back with all references to the pricing of natural gas deleted therefrom.

Now. if the incremental pricing is in, then it is by reason of an error of draftsmanship.

But, answering the Senator's question more directly, I think he is asking whether or not we might change it.

Mr. FORD. The authors might change it.

Mr. METZENBAUM. That is correct. The authors might.

Let me respond to my good friend from Kentucky, because in the last several days on several occasions he kept talking about the fact that he did not know what we intended to do.

Mr. FORD. I still do not know and the Senator cannot tell me now what the motion is going to be.

Mr. METZENBAUM. I am trying to apprise the Senator and keep him as up to date and well informed as we are.

This is what we intend to do as of this moment, but that does not mean any of us in the Senate are duty-bound or obligated in any way not to change our position, including the Senator from Kentucky, who might even join our side at some point.

Mr. FORD. It is going to have to be the bill before I join it.

I have no objection, Mr. President.

The PRESIDING OFFICER. Is there objection?

The Chair hears none.

Mr. HANSEN addressed the Chair.

The PRESIDING OFFICER. Is the Senator from Wyoming making a reservation on the unanimous-consent request?

Mr. HANSEN. No; I am not.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the motion to recommit follows:

Mr. METZENBAUM (for himself, Mr. ABOUREZK, Mr. KENNEDY, Mr. HANSEN, Mr. BARTLETT, and Mr. TOWER) submitted the following motion intended to be proposed in connection with the conference report on H.R. 5289, an Act for the relief of Joe Cortina of Tampa, Fla.:

I move that the conference report on H.R. 5289, the Natural Gas Policy Act of 1978, be recommitted to the Committee on Conference with instructions, that it be reported back with all references to the pricing of natural gas deleted therefrom, and that it embody the language contained in titles III, V, and VI of the conference report with such conforming language and/or definitions as may be required. The conferees are specifically instructed to report back with the following sections excluded from the conference report: Sections 101 through 208; section 303(d); sections 401 through 404; sections 502(d), 503, 504(a)(1), 504(b)(3), 505, 506(d), 507, and 508; and sections 601 (a)(1)(A), 601(a)(1)(B), 601(a)(1)(E), 601 (b)(1)(A), 601(b)(1)(E), 601(c)(1), 601(c) (2)(B), and 602(a).

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. METZENBAUM. Did the Senator from Alaska get his consent agreement agreed to, because it seemed to me——

The PRESIDING OFFICER. He has not made his unanimous consent.

Mr. STEVENS. If the Senator will yield, Mr. President——

The PRESIDING OFFICER. Does the Senator from New Hampshire yield to the Senator from Alaska?

Mr. McINTYRE. Yes.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I might state to the Senator from Ohio, I merely announced the intention to offer the amendment on my behalf and on behalf of the Senator from Indiana and the Senator from Minnesota when the Senator's recommital motion is offered.

I am hopeful both sides of this controversy will understand the situation, that those provisions that appear in the conference report regarding pricing and treatment of Alaskan North Slope gas, will appear in both bills, no matter which one prevails. I only want to assure that this subject will be treated the same way the conference committee originally agreed it would be treated.

I thank the Senator.

Mr. HANSEN. Mr. President, would the Senator from New Hampshire yield me not to exceed 2 minutes?

I do have a very brief statement I would like to offer in order to better clarify this.

Mr. McINTYRE. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Wyoming for 2 minutes without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming is recognized.

Mr. HANSEN. I thank my friend from New Hampshire.

Mr. President, there are basically two portions of the conference report as now before us. The first part, the wellhead pricing provisions and the associated incremental pricing provisions of titles I and II, along with the administrative and coordination portions of titles V and VI that apply to them are the results of the months of negotiations, secret meetings, and painful step-by-step haggling that has resulted in the creature that is now before us.

The second portion of the conference report, however, contains other provisions, primarily in title III on which there was little controversy. If this were a normal legislative situation and not a conference report, our course would be simple. We could simply move to amend the portions of the bill that were bad and unworkable and leave the remainder. However, as this is a conference report, with amendments not permitted, the only road available to this same end is a motion to recommit with instructions.

When those of us who would like to see something salvaged from the debacle of the past year decided on this course, we were united in the belief that we would prefer not simply to kill the conference report.

In this vein, we realize that if the conference committee needed considerable

additional haggling over controversial issues, this could not be accomplished. Therefore, we initially resolved that the motion to recommit with instructions would include instructions to adopt only such sections as we could ascertain among the Senators would be genuinely noncontroversial. This was because we had no desire to kill the bill by tying it up in a conference committee.

We had originally been able to ascertain that the provisions for Presidential emergency authority, for permitting the sale and assignment of surplus intrastate gas, and for allowing authority for expeditious transportation of gas by both intrastate and interstate pipelines were in that category. We were also resolved we had no objection in principle to adding other provisions which might be useful and noncontroversial.

I would note that I initially felt, and still feel, that the Alaskan pipeline can be built in the absence of these provisions. The President so assured the Congress when he sent up his Presidential decision on the Alaska pipeline in late 1977, and certainly the Congress in ratifying that decision was not of the impression that it was being asked to do a useless act. We have become convinced, however, that a situation has arisen where the adoption of the Alaskan provisions of this bill would add some additional certainty, and expedite the building of the pipeline under optimal conditions. I am pleased to state my support and the support of all GOP signers in our original group of 24.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. McINTYRE. Mr. President, it is time to resolve the conflict over natural gas pricing policy.

During the debate nearly a year ago, I was against the proposal to decontrol the price of natural gas. Instead, I favored a policy that would have provided incentives to the natural gas industry to bring in more gas, yet at the same time protect consumers from unwarranted increases and the inflationary effects of sudden price increases.

Now the compromise has reached the Senate floor, and I am disturbed that we as a deliberate body seem to be stalemated; we seem to be locked into the same extreme positions that forced the Senate to the extended debate last fall, and put the energy conferees through months of intense negotiation and bargaining over this one section of the energy program.

Moreover, this stalemate has a new and even more frustrating twist: The two opposing sides seem to be united against a solution.

Gas producers want Congress to defeat this bill; they expect that next year they can win the fight and bring about an end to all controls on natural gas.

They did not have any program to protect consumers against sudden price increases nor any plan to prevent the gouging that has become the trademark of big oil—and they have no such plan now.

On the other side, consumer lobbyists want the price of gas rolled back to correct the excesses perpetrated by the oil and gas lobby with the help of compliant bureaucrats in the past. And they rightly want to see the gas that is now being held from the public in the oil and gas States brought under Federal control.

No one knows better than I what the excesses of the oil and gas industries have been. No one wants to see the big petroleum and gas companies put in their place more than I.

And yet, my friends in the consumer lobby have not shown me a program that will produce enough oil and gas to end the shortages.

Clearly we need a compromise between these two extremes. Clearly we must establish a Federal policy that protects consumers and at the same time provides assurances and incentives to gas producers. Congress as a whole and the energy conferees have labored for nearly 17 long months to come up with a bill that provides this policy. They have put their collective wisdom into the compromise bill that is now before us.

It is apparent to all of us that the compromise is not perfect. Some of its flaws are obvious. For example, both the Senate and the House passed so-called incremental pricing provisions to protect residential consumers of gas from being hit with the biggest increases. Somehow, the compromise ended up with an incremental pricing provision that protects residential consumers less than either the Senate or House bill.

And it is argued that this compromise is extremely complex—a regulatory nightmare.

But the Chairman of the Federal Energy Regulatory Commission has told the Senate that the compromise can be enforced, given sufficient resources. And let us not forget that the regulatory system it is replacing, has created a backlog of some 15,000 cases.

I have no doubt that, given time, Congress could eventually come up with a marginally better bill. But if we spent the entire next 4 weeks on this bill, and the entire next Congress on it, I doubt that we would have a bill that would be a whole lot better. Furthermore, if we were to take all that time, we might risk losing what little remains in public confidence that we can do the job.

Granted, this bill is not perfect. But let us look at what it does do, and what it does not do.

First, it is not the "decontrol" bill that the gas and oil lobbies are trying to force on us. The compromise does deregulate new natural gas and some old, hard-to-produce gas after 1985. In the interim, it does provide price increases for both old and new gas.

It also extends regulations. For the first time, it brings large volumes of so-called intrastate natural gas—that is, the gas now sold within gas-producing States—under Federal controls.

In addition, it provides emergency authority to allocate natural gas in case of winter emergencies like those of 1976–77 and 1977–78. And it provides price relief necessary for the construction of the Alaskan gas pipeline, which will bring new supplies of natural gas to the Eastern United States.

On the negative side, it increases the revenues of gas producers by $29 billion over the next 7 years, according to the calculations of the Energy Information Administration.

To many of us, this seems like a gigantic raiding of the public pocketbook. But that $29 billion translates into less than a 6-percent increase in the average citizen's gas bill across the Nation—not 6 percent per year but 6 percent cumulatively between now and 1985. Under present law, average residential prices would rise to $3.14 per million Btu of gas; under the compromise, the price would rise to $3.31.

And what does the bill give consumers in return for prices 6 percent higher than they would be without the legislation?

First, it is projected that existing surpluses of a trillion cubic feet of gas per year would be made available to consumers. These surpluses are now being held back in the gas-producing States outside Federal regulation.

Second, it is projected that higher prices will stimulate a 12-percent increase in production in the lower 48 States.

Third, it is projected that this legislation will bring in an additional 800 billion cubic feet of gas a year from Alaska by 1983—a 5-percent increase in the national supply from this source alone.

Together, these three actions will increase supplies available to consumer States by 32 percent, according to the Department of Energy.

In addition, these increases in domestic production will result in 33 percent less gas being imported by 1985 than would be imported under present law. And petroleum imports would be 300,000 barrels per day less than without this legislation.

The production increases projected under this bill can wipe out the national shortage of natural gas by 1985; they can end the layoffs and plant closings that have characterized our last two winters; and they can help make us immune to threats from petroleum producers abroad.

To get these results, families across the Nation are asked to pay, on the average, less than 6 percent more for natural gas than they would be expected to pay under existing law.

This compromise is of particular advantage to New Hampshire. While gas users elsewhere would have to pay slightly more, gas users in New Hampshire are expected to save $3 million because we would be able to buy more domestic gas at lower prices than we now pay for imported gas and synthetic gas.

Because New Hampshire is at the end of the gas pipeline, our local gas utilities have had to supplement the gas they buy from the pipeline with synthetic gas and imported liquefied natural gas. These supplemental supplies cost from $4.00 to $6.00 per million BTU—which is double to triple the price of gas in the unregulated Texas market today.

If domestic production is increased, gas can be delivered to New Hampshire at prices of $2.80 to $3.50, according to calculations made at my request by the Department of Energy. This gas, even at

$3.50 is a bargain compared to the $4 to $6 we now must pay for supplemental gas supplies.

The Department of Energy estimates that this compromise bill could save New Hampshire consumers $3 million per year by 1985, compared to what we would be paying under existing regulations. New England as a whole could have $100 million per year by then.

But even if my State did not receive special benefits from this legislation, I would vote for it.

What is most important about this and the other energy bills awaiting congressional action is that the American people want—and have the right to expect—an energy program. They have the right to expect a whole energy program, not three-fifths or four-fifths of an energy program. Five years after the Arab oil embargo, and 17 months after President Carter proposed an energy program, Congress is still debating a bill that is long past due.

And if we defeat this compromise, what policy will we put in its place for the long run? Are we to cave in to full decontrol, which would create about as much new supply as this bill, but at substantially higher cost? That is what the gas lobby is hoping for. That is why they are prowling the halls of Congress. And the other opponents of this compromise—the consumer organizations, whom I count as my friends—they want to defeat the compromise in the hope that the Federal bureaucracy will roll back gas prices and will on its own begin regulating the gas that producers are now keeping in their own States.

But this is Congress job. The time has come for this body to put aside regional differences and partisan bickering. Both sides of the debate in this Congress have fought hard for what each thought was best. We now have before us a gas bill that gives neither side all that it wants. But this compromise does provide certainty; it does provide a unified Federal policy for the first time. It does provide substantial incentives for the production of more domestic natural gas. And at the same time it provides a measure of protection for consumers from sudden and unwarranted price increases.

It is not a perfect policy. But it is also not the disaster that its detractors in the gas and oil lobby want us to believe it is, and it provides far more assurance to consumers than the hope that Federal bureaucrats will do right by consumers without guidance from Congress.

The public has given Congress a mandate to resolve divisive issues and create a national energy policy. This bill, despite its imperfections, is the cornerstone of that policy, and I will cast my vote for it.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. McINTYRE. I am happy to yield to the Senator from Washington.

Mr. JACKSON. Mr. President, as chairman of the Senate Committee on Energy and Natural Resources, which has the responsibility of managing this bill in conference, and as one who, like the Senator from New Hampshire, has supported strong regulation, I commend him for the statement he has just made on this bill.

The distinguished Senator from New Hampshire has outlined the basic issues very well and has made clear what our choices are.

I can sum it all up by saying that I must reemphasize to the Senate that this bill—on which we hope we will be voting before long—is a better bill than we have at the present time, in terms of the existing Natural Gas Act. I point out that the consumer will be better off, and we will have a better supply, and the dollar will be better off in terms of the international monetary problem.

Mr. McINTYRE. I thank the distinguished chairman of the Energy Committee, and I yield the floor at this time.

Mr. JACKSON. Mr. President, last Friday, September 8, I received two analyses of the administrative and enforcement aspects of the Natural Gas Policy Act conference report. The analyses were prepared by the chairman of the Federal Energy Regulatory Commission, the Honorable Charles B. Curtis, and the Director of the Commission's Office of Enforcement, Ms. Sheila S. Hollis.

I believe these analyses will lay to rest the charges that the conference report is an administrative nightmare. I recognize that the Natural Gas Policy Act is not problem free. But we must remember that the Natural Gas Act is certainly not problem free.

The FERC chairman's analysis graphically describes the problems with the current law as follows:

> FERC's current caseload is substantial, its backlog unacceptably large. This circumstance derives from a number of causes. First, the regulatory scheme, as presently implemented, is particularly cumbersome and appears incapable of keeping pace with the dynamics of the market. Second, this Commission's predecessor, the Federal Power Commission, was singularly unsuccessful in obtaining from the Congress adequate resources to perform the Commission's duties. Third, the evolution of the various producer-price methodologies, changing from producer-by-producer regulation to area rates, and lastly, to national rates for different gas vintages has created its own set of administrative problems and uncertainty in the marketplace. But perhaps the most difficult aspect which attends the administration of the current regulatory system is grounded in the bimodal character of the market and the limited regulatory reach of the Commission under the Natural Gas Act. These deficiencies place great stress on the regulatory system and add substantially to the administrative and enforcement duties of the Commission.

It is important to note the Commission chairman's conclusion that, "If one accepts the policy conclusions of the conferees as given, the question still remains whether the Natural Gas Policy Act can be effectively administered and enforced. It is my basic conclusion that it can be."

Contrary to the assertions of the opponents of the legislation, the conference report will actually greatly simplify the administrative duties of FERC and reduce the onerous burden of current regulations on natural gas producers and pipelines. The chairman's memorandum concludes that:

> Generally speaking, except for gas which is committed or dedicated to interstate commerce on the day before the date of enactment, the current utility-type regulatory mechanisms would be terminated. Thus, it would no longer be incumbent on producers to obtain certificate authorization for new sales in interstate commerce, dedications of new gas reserves would not be required nor would a producer need abandonment permission from the Commission to allow it to sell gas to another upon the conclusion of the contractual term. Also, in the case of sales of gas not previously committed or dedicated to interstate commerce occurring after date of enactment, tariff filings and rate increase applications would be dispensed with. This would also be true in the case of production from new onshore producing wells, new gas wells, and high-cost wells even if the gas is currently committed or dedicated. . . . It is reasonable to expect that the Commission's present caseload attributable to functions now conducted under the Natural Gas Act will significantly diminish in future years.

The memorandums discuss several areas in the conference report and accompanying joint statement of managers that may be ambiguous and would benefit from further clarification.

Because of the very wide differences in approach between the House and Senate passed natural gas bills, the conferees were faced with a considerable task in attempting to reconcile the two bills. We chose to proceed by developing an outline of a proposed compromise rather than working with statutory language. After we concluded our deliberations, the staff was instructed to draft the conference report and joint statement of managers. On July 31, 1978, the chairman of the conference, the Honorable HARLEY O. STAGGERS, circulated the staff's draft. That draft was reviewed by Mr. Curtis and Ms. Hollis, among others. Ms. Hollis and the general counsel of the Commission, Mr. Robert Nordhaus, participated with members of the staff in the further development of the final version of the conference report. It is that final version which has been presented to the Senate for its consideration.

The draft conference report and joint statement of managers were revised significantly during the course of the review process. In many areas the conferees had not discussed some of the details that the staff found it necessary to resolve in the course of drafting the documents. The staff, in essence, had to guess how the conferees would have filled in the details of the statute had they thought about them. The conferees specifically requested that the staff attempt a complete draft for circulation prior to its being reviewed by the conferees, the Commission, or anyone else. Upon review of that draft, the conferees determined that certain changes were to be made in the staff's draft documents. This somewhat unusual procedure was developed to expedite the completion of the documents.

Both Mr. Curtis and Ms. Hollis mention various revisions in the draft document which were made prior to the final version's presentation and consideration. I want to stress that the conferees do not—and I stress the words—do not intend that changes made in the draft are to be given any significance by the Commission or the courts in interpreting the

Congress intent. The draft which was circulated was simply that: a draft.

With this background in mind, I want to comment upon and resolve those areas of ambiguity and uncertainty which are discussed in the FERC memorandums. I do so at this time so that my colleagues will have an opportunity to understand and evaluate the intent of the conferees with as much clarity and as litle ambiguity as possible prior to voting in the conference report. My comments appear in the same order in which the referenced sections appear in the conference report.

SECTION 2—DEFINITION OF NATURAL GAS

The Natural Gas Policy Act does not intend to change the rule of law that synthetic gas comes under the jurisdiction of the Commission only when it is mixed with natural gas in interstate commerce. However, the regulation of synthetic gas commingled with natural gas would occur only under the Natural Gas Act, and not under the Natural Gas Policy Act. As the joint statement of managers points out, synthetic gas would not be regulated under the Natural Gas Policy Act, even if commingled.

SEC. 2—DEFINITION OF NEW LEASE

A "new lease" is a lease of submerged acreage on the Outer Continental Shelf entered into with the Secretary of Interior on or after April 20, 1977. Any OCS acreage which was leased prior to April 20, 1977, can qualify under the definition of "new lease" only if the old lease was terminated with the Secretary of the Interior. There is not intent to allow one party to "swap" or otherwise trade leases with another party, for the purpose of attempting to qualify under the definition of new lease.

SEC. 101(B)(5)—SALES QUALIFYING UNDER MORE THAN ONE PROVISION

This provision stands for the proposition that a producer may claim or apply for the highest price to which he is entitled. It does not imply an administrative duty to compel a State or Federal agency to search through the various price classifications under the act and find the highest permissible price.

SEC. 104 AND SEC. 109—MAXIMUM LAWFUL PRICES

The maximum lawful price computed in accordance with subsection 104(b) is the same as the maximum lawful price computed in accordance with subsection 109(b). The base rate used in both computations is subject to an inflation adjustment. In other words, the just and reasonable rates set by the Federal Power Commission and in effect as of April, 1977 are frozen as of that date and the inflation adjustment provided under this Act is to be added from that date forward. For example, the new gas rate set in FPC Opinion No. 770–A applicable to certain eligible producers was $1.45 in April, 1977.

Thus, $1.45 would be the base rate applicable to certain eligible producers subject to section 104 and for all gas subject to section 109. The conferees do not intend to allow both the escalators of 1 cent each calendar quarter provided by Opinion No. 770–A, and the inflation adjustment provided by this act, to operate. Only the inflation adjustment provided by this act will be allowed to operate after April, 1977.

SEC. 105 (b)(3)(A)—INTRASTATE ROLLOVERS

This subsection deals with price increases resulting from indefinite price escalator clauses in existing intrastate contracts. It is intended to apply only to contracts that were intrastate in nature prior to the date of enactment of the act. Some existing interstate contracts also contain indefinite price escalator clauses. However, operation of those clauses is prohibited by current Commission regulations. There is no intent to change or otherwise modify that prohibition.

SEC. 107(d)—TAX CREDITS

Subsection 107(d) is intended to dovetail the Natural Gas Policy Act high-cost natural gas maximum lawful prices with pending energy tax legislation that may be enacted. In the absence of approval of the tax bill, subsection 107(d) has no effect.

SEC. 311—AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION

Subparagraphs (b)(6)(A)(ii) and (b)(7)(B) are intended to apply only to contracts that an intrastate pipeline enters into with its suppliers after the date of enactment. The prohibition is not intended to apply to existing contracts between intrastate pipelines and suppliers.

SEC. 315(b)—RIGHT OF FIRST REFUSAL

Paragraph 315(b)(1) is not intended to restrict the authority of the Commission under section 7 of the Natural Gas Act to consider, among other factors, relative need for natural gas in certificating the transportation of natural gas produced from the Outer Continental Shelf.

SECTION 510(B)—GENERAL RULEMAKING AUTHORITY

The conference report and joint statement of managers provide the Commission authority to define additional terms as necessary for the purpose of implementing the act. As is indicated on page 69 of the joint statement of managers, it is the clear intent that the Commission shall have authority to define additional terms not defined in the act, and to further define or refine the definitions provided in the act, so long as the Commission does so in a manner that is consistent with the definitions provided.

SECTION 503(E)—INTERIM COLLECTION OF MAXIMUM LAWFUL PRICE

Subsection 503(e) contains two drafting errors which must be corrected by concurrent resolution before the legislation is signed into law. First, the procedure for collection of the section 109 price for new wells provides in subsection (e)(1)(B)(ii) that the seller must file a petition to a Federal or State agency for a determination of eligibility "within 90 days after the date of enactment of this act." The phrase should read "within 90 days after the date of enactment, or, if later, before any collection is made." This correction is in accord with the intent as expressed in the joint statement of managers—page 119. Second, the Commission's authority to order a refund with interest under subsection (e)(3)(B) appears to be limited to those cases in which it determines that the applicable maximum lawful price is "lower than that provided under section 109." It is not intended to be so limited. The phrase should read "lower than that charged and collected."

SEC. 503(b)(2)—REMAND ON BASIS OF COMMISSION INFORMATION

The Commission is permitted to remand a State or Federal agency determination if the Commission finds that the State or Federal determination "is not consistent with the information contained in the public records of the Commission, and which was not part of the record upon which such determination was made." The conferees recognize that the Commission maintains some confidential records and documents which are not presently a part of the public records of the Commission. There is no intention to prevent a Commission remand based upon information which was previously confidential, if the Commission makes the information public at the time of the remand. However, this does not confer any new authority on the Commission to make public any documents it is otherwise required to keep confidential.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I understand the distinguished Senator from Vermont wishes to make some remarks, and I yield to him.

The PRESIDING OFFICER. The Senator from Vermont seeks recognition. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, being from the most energy-conscious area of the country and from one of the country's most energy-conscious States, I have weighed my decision on the natural gas conference report with a great deal of concern.

I have talked with strong supporters of the conference report, but I have talked with equally articulate opponents. I have studied its potential effects on my State and my country and the effect U.S. action will have on the world.

But ultimately, of course, the decision as a Senator from Vermont has to be my own.

I have decided to vote for the conference report and, Mr. President, to actively support it. Every Member of this body could disagree with some aspects of the report. Certainly I can. Every one of us could draft a bill more to his or her liking, and certainly I could. But we do not have the luxury of 100 bills or 435 more in the other body. We have one conference report.

The United States could speak with one voice on energy, and this has become more than a local issue, more than a national issue. It is an international issue. The world is asking whether our President can exercise leadership on

energy that the free world needs from its greatest member.

The country is asking whether the Senate can support the President in that leadership role. As a Senator from Vermont I answer yes on both counts.

Mr. President, as I said, this has not been an easy decision. If I were to think of the three or four most difficult votes I have cast or I planned to cast in the time that I have been in the Senate, certainly this would fall in that small handful.

I think the first decision I have to make is on the question of whether I would vote for cloture because of a filibuster, and that is easy. I always vote for cloture because I feel that, many times, we have a propensity to speak overly long on issues.

So let me come to the question of whether we should vote to recommit with specific instructions, a proposal made by some of my very good friends here in this body.

I considered that, Mr. President, and I considered their reasons. Some of the reasons appealed to me greatly, and some of the instructions on a motion to recommit appeal to me greatly. But when I looked at that plan, one thing became crystal clear, and that is that a motion to recommit was a motion to kill. There is no question in my mind that there would not be enough time for the conferees to get back together, report out another conference report, and have it voted on by the House and Senate.

So I decided, whether I was going to support the conference committee report or not, I could not support a motion to recommit because I felt, on an issue of this enormous import, the U.S. Senate had a duty to stand up and vote, either vote for the conference report or against it, but vote it up-or-down. The President of the United States has every right to expect that degree of cooperation from the legislative body, one of the three coequal branches of Government.

So, having made that decision, Mr. President, I came to the final decision of, whether we got past the filibuster and whether we got past the motion to recommit, how I would vote on the conference committee report itself. Once again I am faced with a decision which has to be made, which is a personal one, certainly one that I can live with not only with my conscience but following my duties as I see them under my oath of office.

It is a decision I have to make, keeping in mind the duties to my constituents, to my native State of Vermont, the people I represent and the people I love so dearly. But I also vote as a Member of a national body, a body which I feel is the greatest legislative body in the world.

In that regard, it becomes a duty to the United States and also a duty the United States owes to the rest of the world. I do not think I overstate the case, Mr. President, when I say this is an issue that falls into those major categories.

We vote on big issues and we vote on little issues here. We vote many times on little issues we try to make big issues, but we all know they have importance only of a passing moment. But this is not a matter of minuscule moment. This is a matter of great moment. It is a matter of great concern to the rest of the world, as it is to this country.

So, as I have said, Mr. President, not only will I vote for the conference committee report but I will work very actively to help those who are in support of it.

I might also say, Mr. President, I have talked at least three times longer than I had intended to.

I yield to the Senator from Washington.

Mr. JACKSON. Mr. President, will the Senator yield? I want to commend the distinguished Senator from Vermont for an excellent statement. I would point out that in many ways the people in my State have similar problems that the Senator from Vermont had to face in making this decision. We are a consuming State. We get a lot of our gas, incidentally, from Canada, and I believe you get a certain amount of gas——

Mr. LEAHY. All of it.

Mr. JACKSON [continuing]. All of it from Canada. We get 80 or 90 percent of it.

I am anxious to protect our consumers and, at the same time, make sure they have an adequate supply and are not caught in a difficult supply situation.

In all the 26 years I have been in the Senate I have supported strong regulation. I want to say to my good friend from Vermont that I am convinced in my own mind that our consumers are going to be a lot better off with the conference report bill than with the existing law. I would mention that under existing law the price of natural gas for new gas since 1970 has gone from 17 cents to $1.50.

I think the stand taken by the Senator from Vermont is the kind of action that is going to be helpful to his people as consumers, and it is going to be helpful to the people of Vermont and all of the United States in terms of strengthening the dollar and to demonstrate to the world that the Senate and the Congress of the United States are prepared to take action in the field of energy.

I want to commend the Senator.

Mr. LEAHY. I thank my friend from Washington.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

(Mr. LEAHY assumed the chair.)

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, the conference report before the Senate addresses without doubt the most comprehensive and important domestic issue faced by the 95th Congress. H.R. 5289, the Natural Gas Policy Act of 1978, will long be remembered as the most significant accomplishment by this Congress in response to the call for action voiced by the President more than 16 months ago.

During these many months of intense and often emotion-laden debate over the issue of natural gas pricing, virtually every segment of our society has had the opportunity to have its views heard. If anything clear has emerged from the debate, it is that almost everyone can find some feature in the bill in which to disagree. The truth of the matter is that the measure before us will require burdens and sacrifices from all of us in the common interest of our Nation.

Mr. President, we must begin by recognizing that our country faces a serious energy crisis which imperils the future well-being of our Nation. Failure to enact this legislation could lead to disastrous consequences for our economic and national security.

On the international front, we see alarming evidences of a weakness in our economy, for which the lack of a strong energy policy must take much of the blame. Our trade deficit is headed toward being the highest in our Nation's history with payments for imported petroleum now running at an annual rate of over $42 billion.

At the same time, the value of the dollar has plunged to record depths in relation to other currencies. The dollar's value has declined 16 percent against the German mark, 34 percent against the Swiss franc, and 31 percent against the Japanese yen, all since the President declared the normal equivalent of war on our energy problem last year.

In recent months, Mr. President, as a member of this great body, I have had the opportunity to confer with many leaders of other nations—leaders of the European economic community, leaders of Japan, and leaders of other Asian nations as well. They have, on their own initiative, urged me as a member of the Energy and National Resources Committee to do all that I can within my influence to get the energy legislation passed, because it was their view that unless the United States resolves its energy problem, the dollar will continue to deteriorate, the United States will lose leadership in the world economy, and when that happens the United States will also lose leadership in maintaining the world's security. And when that happens, Mr. President, we will, of course, jeopardize our own national security. Our ability to defend ourselves and to maintain our national security depend upon maintaining a strong military defense. That, of course, cannot be done without a strong national economy. Our Nation's ability to pursue its foreign policy objectives as a free and independent nation is determined not only by our national will, but also by the strength of our economy.

More imminently, here at home, inflation is becoming a disease which threatens to get out of hand. We simply cannot afford to continue the present rate of double-digit inflation without eventually suffering severe dislocations in our economy.

Mr. President, the problems of our Nation here and abroad grow more serious each day and will continue to worsen unless we come to grips with the energy crisis.

It should not be surprising to find controversy surrounding natural gas pricing policy, an issue which has been debated for over 20 years in our search for the elusive solution.

On the contrary, it is surprising that any agreement at all was reached by the conference committee, considering the deep division which has existed among the members. I believe the compromise solution is the result of sincere and dedicated efforts by the majority of the conferees, and represents the best that could be realistically expected during this Congress. The alternative is to have no solution at all.

I, too, find myself in disagreement with some parts of the compromise. But I support the conference report because it is far better to have this legislation in the aggregate than to reject it for any particular provision contained therein. Mr. President, the moment has come in which we must look at the overall impact of the bill and leave the narrow issues behind. This is the nature of a conference report which forces us to agree to accept the whole or nothing.

I am convinced that the compromise will, on the whole, be good for the Nation, for a number of good reasons:

First. It will produce more gas than the status quo.

Second. It will remove the current inequities between the interstate and intrastate markets.

Third. It will insure construction of the Alaska gas pipeline, increasing interstate gas supplies by as much as 30 percent by the year 1990.

Fourth. It will maintain prices for homeowners and industrial users well below the cost of any other substitute fuel.

Fifth. It will save over 1 million barrels of imported oil per day by 1985, with savings of $5 to $8 billion a year in our balance of payments.

While consumer prices will rise under the bill, they will continue to be far below the cost of replacement gas, a condition which in itself calls for alarm. Natural gas consumers will also continue to pay the lowest price for the highest quality, cleanest and most valuable energy source. Last year, the average cost of gas for homeowners amounted to one-third less than the equivalent cost of oil, and in 1985, natural gas will continue to be priced well below the equivalent cost of oil and one-quarter the price of electricity.

Mr. President, no one would suggest that the conference report is a perfect document. But I urge my colleagues to support it because we can no longer afford to delay in meeting our responsibility of enacting a national energy program, of which this is a key part, in the face of a grave energy crisis. Passage of this legislation will be a demonstration of our willingness to accept the risks and sacrifices required in order to safeguard our economic freedoms and security for the generations to come.

Mr. President, I suggest the absence of a quorum.

Mr. FORD. Will the Senator withhold that suggestion?

Mr. MATSUNAGA. I do.

Mr. FORD. Mr. President, I compliment the distinguished Senator from Hawaii. As usual, he has made a decision, not necessarily one that he thinks is 100 percent, but in the spirit of what we are doing here he has made a decision which, in his opinion, is in the best interests of this country. I compliment him on a very fine statement and would like to associate myself with his remarks.

Mr. MATSUNAGA. I thank the distinguished Senator from Kentucky for his kind remarks. In turn, I congratulate and commend him for the strong leadership which he has continuously shown in the energy issue. Without his leadership I am certain we would not be in the position we are today to take this conference report through passage.

Mr. FORD. I thank the Senator.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATHAWAY). Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, while we are waiting for other Senators to come over here, I want to take this opportunity to announce that I will hold a hearing tomorrow morning at 10 o'clock of the Administrative Practice and Procedure Subcommittee of the Judiciary Committee, in room 228 of the Dirksen Office Building, which will concern the feasibility of administration of the Natural Gas Act.

The primary witness will be Mr. Charles Curtis, who is the chairman of the Federal Energy Regulatory Commission. Other witnesses will testify on this aspect as well.

Mr. President, we have come across new evidence that indicates the estimated size and magnitude of the bureaucracy that would be created if this act were to become law, and we will take testimony in that regard tomorrow.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question?

Mr. ABOUREZK. I am happy to yield for a question.

Mr. METZENBAUM. Does the Senator think that, based upon this new evidence, he may be persuaded to be opposed to the natural gas compromise bill?

Mr. ABOUREZK. I am not announcing my position on the bill yet. I want to say that my mind is open on the question; and if the evidence warrants it tomorrow, I may announce my position on the natural gas bill.

Mr. METZENBAUM. I know the Senator is always objective in viewing legislation.

Mr. BAKER. I am sure the country will await with anticipation the disclosure of that.

Mr. ABOUREZK. Of my decision? I thank the Senator.

Mr. BARTLETT. Mr. President, will the Senator yield?

Mr. ABOUREZK. I yield.

Mr. BARTLETT. Since we had a sort of debate yesterday, has there been any change in the position of the Senator since that debate?

Mr. ABOUREZK. On the natural gas bill?

Mr. BARTLETT. Yes.

Mr. ABOUREZK. No. My mind is still open.

[Laughter.]

Mr. BARTLETT. Well, so is mine.

Mr. GRIFFIN. Mr. President, I decided that I will vote in support of the conference report.

Mr. President, during 22 years of service in Congress, I have been confronted with a lot of difficult decisions. Few have been as tough as the call on this conference report.

Recently Robert Samuelson wrote in the National Journal:

> So Congress can choose between the disaster of passing an atrocious bill and the calamity of rejecting an "energy plan." It is a chapter straight from Dante.

The compromise plan we have before us is not as bad as opponents say, nor as good as supporters claim. But it is all we have—and it is the best we are going to get. Although it is not the kind of a bill I wish we were voting on, we are voting on it—and I will be among those voting "aye."

Were this merely a matter of politics, I would vote "no." But the interests of my State—and the interests of our Nation—transcend the "easy out" of a narrow political decision.

As distasteful as some provisions of this bill are, on balance, I believe it will be good for Michigan. It will increase energy supplies for consumers and industry through conservation and increased production; it will provide some needed certainty over the next 6 years; and it will protect supplies of natural gas for homeowners at little or no increase in cost.

As distasteful as some provisions of this bill are, on balance, I believe it will be good for the United States. It will reduce our dependence on foreign oil; it will improve our balance of trade; and it will help to reverse serious erosion of the dollar.

As a member of the Foreign Relations Committee, I cannot ignore the fact that the failure of this country to develop an "energy policy" is viewed as a sign of American weakness in the world community.

I am concerned that defeat of this conference report would intensify that world view; failure to adopt it would tend to make the United States the laughing stock of Europe, the whipping boy of OPEC, the easy mark of Japan.

I, for one, cannot stand by, nor stand silent, while that happens.

I realize that this bill is not adequate in all respects. But it is a long and important step in the right direction—and it is highly symbolic, both at home and abroad, of our national resolve to cope with our energy problems. It will stimulate increased conservation and production of natural gas, and I believe it will ease some of the severe economic pressures that are nudging us relentlessly

toward recession. In the final analysis, the choice we have is between this policy—or no policy at all. I believe the Senate should adopt this conference report.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. If we cannot get order, Mr. President, will the big, husky, Sergeant at Arms get order in the Senate? I have confidence that Nordy Hoffman can get order.

Mr. ABOUREZK. Get the Sergeant at Arms to sit down, first.

Mr. JACKSON. If not, we should take him out of the Hall of Fame.

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, numerous efforts have been made to secure an agreement which would allow the Senate to vote up or down on a motion to recommit the conference report on natural gas pricing, with instructions; and that failing, if it should, an agreement on a vote up or down on the conference report itself, at a specified date and time.

These meetings have been attended by proponents and opponents of the conference report. There have been give and take discussions, and we have arrived at what we hope will be an agreement that will meet with the approval of the Senate.

First, before I present that agreement, let me thank the distinguished minority leader, Mr. BAKER; the distinguished manager of the conference report, Mr. JACKSON; the distinguished Senator from Kentucky (Mr. FORD), who is a member of the conference; the distinguished Senator from New Mexico (Mr. DOMENICI), who is a member of the conference on the part of the Senate; the distinguished Senator from Idaho (Mr. MCCLURE), who also is a conferee on the part of the Senate; Mr. METZENBAUM, who is a very worthy Senator and is opposed to the conference report; Mr. ABOUREZK, who is a very worthy antagonist—

[Laughter.]

Mr. ABOUREZK. Is that the same as an unworthy opponent?

[Laughter.]

Mr. ROBERT C. BYRD. No, a very worthy opponent.

Also, Mr. LONG, who is chairman of the Committee on Finance; Mr. HANSEN, who is a very able member of the conference on the part of the Senate; and Mr. TOWER, who is a very worthy opponent of the conference report.

I believe that just about completes the list of those who have been in the conferences, but they have represented both sides of the aisle and both sides of the issue.

It is felt that with the workload that confronts the Senate and inasmuch as hope springs eternal from the human Senate breast that the Senate can complete its work by mid-October and hope-elections, and realizing that the debate has gone on now for quite a number of fully not have to return following the months, the time should come when the Senate votes up or down on the motion to recommit and up or down on the conference report and that everyone do his best to marshal support for his point of view. Every Senator will be on notice as to the hour of the vote and we will all approach high noon knowing that, win or lose, the matter will be disposed of.

So, with that being the basis of our discussions, we have arrived at the following tentative agreement which I now present:

UNANIMOUS-CONSENT REQUEST

Mr. President, I ask unanimous consent that a vote on a motion to recommit the conference report with instructions occur next Tuesday at 2:15 p.m. and that should the motion to recommit fail of recommittal a vote then occur on the conference report up or down at the hour of 5:15 p.m. with the time for debate to be equally divided between the manager of the conference report, Mr. JACKSON, and Mr. HANSEN, the distinguished Senator from Wyoming, also a member of the conference, and that the time for debate begin running following the adoption of this agreement, with the understanding that should Senators between this date and next Tuesday decide that they did not at that time wish to debate the conference report then other measures cleared for action on both sides could be called up. But anyhow that is the requst.

And it will be understood, Mr. President, that there will be no motion to table the motion to recommit that would be in order and that the Senator from Ohio (Mr. METZENBAUM) could call up his motion at any time and he would be assured that no motion to table that motion to recommit would be in order and that similarly no motion to table the conference report would be in order at any time.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, I join with the majority leader in submitting this request to the Senate.

I very much hope there will not be an objection. I do not believe, in all candor, that either side has 50 votes on the motion to recommit. I think the issue is still up in the air. Only time will tell. Time is of the essence at this point in this session of the Senate.

While I oppose this conference report and while I will vote for the motion to recommit, I believe that it has a chance to prevail, and if it does not prevail I will vote against the conference report. These facts notwithstanding, I do believe it best serves the interests of those of us who oppose the report of the Senate and the country to get on with the business of deciding this issue.

With that in mind, then, Mr. President, I have consulted with many Senators on this side and I am hopeful that the unanimous-consent request will be granted.

I have asked the Republican cloakroom to notify all Senators on this side that this request would be made at this time so that everyone could be present. I believe the distinguished majority leader may have done the same.

I want it clearly understood, however, that in agreeing to this, those of us who oppose the conference report, the distinguished Senator from Texas, the distinguished Senator from Wyoming, and others who have been involved, in no way are suggesting that we have diminished our optimism or enthusiasm for trying to recommit this conference report in order to improve it, because I believe if we do recommit it we can significantly improve it and that it will come back and we will do a better service for the country.

In any event, I do not believe an extended debate beyond next Tuesday would serve anyone's best interests. I do not object.

Mr. ABOUREZK. Mr. President, reserving the right to object, I direct a question to the leader.

Was it part of the majority leader's request that there be 3 hours of debate or debate until 5:15 p.m.?

Mr. ROBERT C. BYRD. No. The debate would be until 5:15 pm.

Mr. ABOUREZK. Will the majority leader amend that to read 3 hours of debate, because there is a 15-minute rollcall?

Mr. ROBERT C. BYRD. Yes. I will so modify the request, which would mean that the first vote which would begin at 2:15 p.m. would end at 2:30 p.m. and then the second vote would begin at 5:30 p.m.

Mr. ABOUREZK. The second question I shall direct to the distinguished chairman of the Energy Committee.

I did not see anything in the press, but I was told by one of my staff that the distinguished chairman of the Energy Committee, Senator JACKSON, held a press conference yesterday saying that if this conference report were recommitted with instructions, he and the House of Representatives would not hold the conference meeting any further, that they themselves could kill the bill.

Will the distinguished chairman verify that or deny it?

Mr. JACKSON. I did not hold a press conference. There have been a lot of rumors around there was going to be a press conference. I did not hold one. I indicated to the press that it is my information that if the bill is recommitted to the conference it is dead. I think that is right. I have been so advised by the three leading principals on the House side of the conference.

That is just the reality of the situation. Obviously we cannot recommit a conference report with instructions to the House of Representatives to adopt it. We can recommit it to the conference and then we are going to be, of course, at the mercy, especially of the House of Representatives. The Speaker has made it clear previously that if a bill is recommited to the conference on this subject the chances of any action are nil. I think that is correct.

Mr. ABOUREZK addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me first?

Mr. JACKSON. I yield.

Mr. ROBERT C. BYRD. Does he not agree that is a matter for the House of Representatives to decide?

Mr. JACKSON. That is a matter for the House of Representatives to decide.

Mr. ROBERT C. BYRD. We in the

Senate cannot say that the House of Representatives will not meet.

Mr. JACKSON. All I am passing on is what they have informed me.

Mr. ABOUREZK. Mr. President, I have one further question. Does the Chairman of the Energy Committee, Senator JACKSON, intend to try to kill the entire bill if it is recommitted?

Mr. JACKSON. If it is recommitted with instructions, I will do my duty. I will bring it back to the conference. That does not require me, of course, to indicate that we should or should not. I will simply give to the conferees the instructions that have been mandated to me by the Senate if that should be the will of the Senate.

I think this body should know, and every Member, I mean Members, of this body should know that if they vote to recommit what the likelihood will be of any action on the part of the conference. I am passing on only that which I have received informally from the leaders on the House side.

Mr. ABOUREZK. The Senator certainly does not support what the House will try to do——

Mr. JACKSON. I will——

Mr. ABOUREZK. Let me finish—their attempt to kill even an emergency allocation bill?

Mr. JACKSON. I follow the instructions of the Senate. But I think Members of this body ought to know what the House is apt to do, and I am passing on what they have informed me they will do.

Mr. ABOUREZK. We cannot control what the House does, obviously.

Mr. JACKSON. This is not like a referral back to a committee. That is an entirely different matter. This is a referral to a bi-representative system and not to a unirepresentative system.

Mr. METZENBAUM. Mr. President, reserving the right to object——

Mr. BARTLETT. Mr. President, reserving the right to object, and I will object, first, let me say I was part of a few here on the floor who were not at the meeting, and I do not feel slighted at all. I did talk to our minority leader, and I would like the minority leader's attention. I did talk to him today, however, and I think I did convey before I knew of this unanimous-consent discussion request at 5 o'clock my concerns about this same matter.

I am of the opinion that if the recommittal motion would fail to pass that, perhaps, another recommittal motion with different instructions extracted from the conference report might pass, might meet the approval of this body, and I would like to have that opportunity to take a good look at the conference report to see if we think we can get some kind of report for such action.

So after you, Senator BYRD, our distinguished majority leader, and Senator JACKSON and everyone else have had an opportunity of saying what they like about my objection, I shall object.

Mr. BAKER. Mr. President, will the Senator withhold his objection for the moment so that I can respond?

Mr. BARTLETT. I am just reserving my right so that I can object and I am not recording my objection.

Mr. BAKER. If I might be recognized, Mr. President, at this point, on my reservation?

The PRESIDING OFFICER. Does the Senator from Oklahoma yield?

Mr. BAKER. Mr. President, will the Senator yield to me so that I can have a colloquy with him on this point?

Mr. BARTLETT. Of course.

Mr. BAKER. The Senator from Oklahoma did call me and indicated that he was in conference with the House of Representatives on another matter and that he had understood a request would be propounded sometime this afternoon. He requested that I protect him until he could reach the floor, which I would certainly want to do, and I represented to him that I would do so.

He has indicated to me since that time, and since he has reached the floor, that he felt inclined to object to this request. I think I breach no confidence when I say that I indicated to the Senator from Oklahoma that I was kind of hoping he would not object. But, of course, that is his privilege.

What I would like to do now, Mr. President, is to ask the distinguished Senator from Oklahoma if there is some way we can accommodate to his additional requirements.

For instance, I wonder if we might consider modifying the unanimous-consent request to provide a little additional time in the event the motion to recommit fails initially? May I reiterate, Mr. President, and to my friend from Oklahoma that I do not believe the motion to recommit will fail, and I do not agree with my esteemed friend and colleague from Washington that if it is recommitted we will never see it again. I believe we will because I think it is important to have a bill, and I have said that from the very outset. But in any event, is there some way by which we can address the particular concern the Senator from Oklahoma is expressing?

Mr. BARTLETT. I will say to my distinguished colleague, the Senator from Tennessee, our minority leader, that I feel very strongly we could vote on this matter tomorrow—I am talking about a motion to recommit which has been suggested—or the next day or the next day we are in session. I am ready to vote. I am not trying to hold up a vote, but I would like to keep our options open and I would like to keep the opportunity open without the unanimous-consent request, so I shall object.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Ohio wanted to reserve the right to object, and I yield to him.

Mr. METZENBAUM. Mr. President, reserving the right to object, and I will not object, I have for a considerable period of time now indicated that I thought we ought to move forward with a motion to recommit.

I think, I still believe, we should move forward with respect to a motion to recommit. I think my good friend from Oklahoma has a valid point that there may be modifications thereof that he would like to suggest after the original motion to recommit, and I would guess that the majority leader would be amenable to accepting that kind of time element.

I am only concerned at the moment that we try to work out something to move forward and bring this matter to a conclusion. I think there is much work which has been done, as much as can possibly be done, with various members of the Senate.

I do wish to inquire of the majority leader, and I am certain he had intended to indicate, and certainly implied he did indicate, that the motion to recommit, which is the subject under consideration, is that motion which I and various other Senators are propounding or some variation thereof, and that it will be no other person's or group of persons' motion to recommit about which we are speaking, the motion that Senator HANSEN, Senator BAKER, Senator TOWER, Senator ABOUREZK, Senator KENNEDY, Senator BARTLETT, and others have joined in?

Mr. HANSEN addressed the Chair.

Mr. ROBERT C. BYRD. I beg the Senator's pardon. What is the question?

Mr. METZENBAUM. I just want to tie down the motion we are talking about is that motion that is being considered by myself and a group of other Senators or something similar to it which we will have under our control.

Mr. ROBERT C. BYRD. That is what I had in mind, and I believe I indicated it was being offered by the distinguished Senator from Ohio (Mr. METZENBAUM) and the other Senators.

Mr. METZENBAUM. I appreciate that.

Mr. BAKER. Mr. President, if the Senator will yield to me, I can illuminate that a little. The distinguished majority leader asked me if this particular motion to recommit with instructions was what we had in mind, and I suggest to him an alternative, that it be a motion to recommit with instructions, and I had in mind it would be this or something similar to this.

Mr. METZENBAUM. I just wanted to be certain there would be no question in the RECORD but that it was that motion which those of us who are propounding the motion to recommit have under our control. I know the majority leader intended that.

Mr. ROBERT C. BYRD. Yes, absolutely. That is what we discussed in our meetings.

Mr. METZENBAUM. I have no objection.

Mr. ROBERT C. BYRD. Mr. President, may I say, I understand objection has been made, Mr. President, that I want to pursue this a little further.

I would like to call attention to the fact that a motion to recommit and instruct would be open to modification and change and the distinguished Senator from Oklahoma would certainly have an opportunity to contribute to the verbiage of that motion to recommit and, perhaps, something can be worked out whereby he would have that opportunity. He would have it anyhow. He can discuss it with

the Senator from Ohio. He can make whatever contribution he has in mind to that very motion and include it in that motion to recommit with instructions.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. DOLE. Could you have another separate motion to recommit?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum—I withhold that suggestion.

Mr. HANSEN. Mr. President, if I could, I would like to be recognized to address some questions to my friend, the chairman of the Energy Committee, if I might, in order that I might clarify my thinking and, hopefully, clarify a little bit of what the situation is.

If the Senate were, by a majority vote, to recommit the bill with instructions, would that be illegal or inappropriate, insofar as the Senator from Washington understands?

Mr. JACKSON. Of course not. If the Senate instructs the Senate conferees to take a certain course of action, obviously that would be done.

Mr. HANSEN. That would be done, you say?

Mr. JACKSON. Yes, there is no question.

Mr. HANSEN. And under your leadership, too?

Mr. JACKSON. Yes. Well, I do not have any leadership. Whatever I am supposed to do, I will do. But I felt obligated to tell various Members of this body that I have been advised by the leaders on the House side that if there is a motion to recommit, they are going to be in serious trouble; the House is simply not going to entertain it. That is just being truthful.

Mr. HANSEN. A further question. When you speak of the leaders on the House side, you are speaking of the Democratic leadership on the House side; am I correct in that?

Mr. JACKSON. I am referring to the leaders on the House side of the conference. The House is not bound, as the Senator knows.

Mr. HANSEN. I am not trying to be impertinent, but when you speak of the leaders, of whom are you speaking?

Mr. JACKSON. I am referring to the chairmen of the three subcommittees, or the three committees, specifically.

Mr. HANSEN. A further inquiry. I know that Senator JACKSON has been humble, honest, and in my opinion very fair in trying to handle this conference; but as one who was not a participant in a great number of the sessions, I guess technically they were not meeting as a conference committee, because it lacked that special imprimatur that would have given them that special status, and made possible fewer numbers than the full membership of the conference to participate.

But my next question, then, to my friend from Washington is, what would he consider the responsibility of the Senate conferees to be, if we were to be instructed to recommit the bill and to take instructions with us to the conference between the Senate and the House as regards the wishes of the Senate? Would it be the duty of each and every one of us to try to see that that position was to prevail between the House and Senate conferees?

Mr. JACKSON. Our obligation would be to present it to the conference as a whole, after having appropriately notified the chairman of the conference and the members of the conference of the action taken by the Senate; and then, of course, it is up to them if they will even meet, as the Senator knows.

Mr. HANSEN. Yes.

Mr. JACKSON. I would discharge, obviously, any instructions voted by the majority of this body.

Mr. HANSEN. Well, if I could, then, pursue one further question: Assuming that the Senate were to instruct the conferees that a scaled-down version of the conference report which would include specific items, such as an extension of the President's emergency powers and title III of the bill, but would permit the movement of gas from areas where it is in surplus to areas where it might be needed, would the Senator from Washington, the chairman of the Energy Committee, make a prediction as to what might be the consensus of the Senate conferees in trying actively to pursue the achievement of those instructions coming from the Senate?

Mr. JACKSON. Let me say to my good friend I do not want to discuss the substance of purely suppositious motions to recommit with instructions. I can only say that I have been advised that if this proposition comes back on a motion to recommit to the conference, after all these months, and in the closing days of the session, they have indicated to me that they are simply not going to entertain any action on the part of the House conferees, that is, the majority of the House conferees.

I assume that they would take a vote to ascertain what the views are, but that, again, is up to the House conferees.

Mr. HANSEN. Would the Senator from Washington speculate on what the action of the Senate conferees might be if we were instructed by a majority vote to support a scaled down version of this bill?

Mr. JACKSON. This Senator is quite conservative on these matters, and he does not like to speculate.

Mr. HANSEN. Then, if I may say so, Mr. President, I think what really must be obvious here is that while the Senator has refrained from any speculation, I would be more encouraged enthusiastically to support, as I have earlier indicated I would, this scenario which would assure a precise time for voting on a bill, if I had assurances from the chairman of the Senate conferees that he indeed would try to see that the conference between the House and the Senate reflected the position that had earlier been indicated as that of the Senate, by a majority vote.

I do not know if we are going to be faced with the situation that a fair majority of the Senate conferees, despite the precise instructions which would follow, if this motion to recommit with instructions were to be passed—if that is not going to have the support of a majority of the conferees, it would seem to me that there is some indication as to where the responsibility would lie if we do not get a gas bill this year.

I think there is a lot of merit in that, and it would seem to me that if the Senate, by a majority vote, instructed us to go back to conference, and if we were supposed to try to push for those specific items contained in that instruction, I would say that there certainly would be some question as to the sincerity of our effort if I failed to hear from those who take a different view than I have on this bill that no matter what we say in the way of instructions, it will not matter anyway.

Mr. JACKSON. What the Senator is trying to propose here, and I do not see any point in trying to push this any further——

Mr. HANSEN. Well, I do not blame you.

Mr. JACKSON. No, wait a minute. What the Senator is trying to overcome is a rather difficult and impossible situation indeed, and that is to try to instruct the House conferees.

Mr. HANSEN. No, I did not say that at all. All I said was——

Mr. JACKSON. No, but it takes two to tango. It takes two to tango, and the so-called motion to recommit will not have much meaning if the other side is not going to cooperate.

I tried to do the decent thing, Senator. I tried to find out what the House position would be on a motion to recommit, and I have indicated the information that I have received from them. If there is any doubt about it, I suggest that my colleagues call Representative DINGELL, Representative STAGGERS, and Representative ASHLEY. They have to make the decision, as I related to you.

I think I would be dishonest and misleading to the Senate if I stood up here and said, obviously, that if the motion to recommit has been agreed to and is adopted, and we go over there, the House is going to go along with it. I think I have an obligation to convey to the Members of this body the fact that if we move to recommit we run the risk of killing it, not having it come back again. That is all I am saying.

Mr. HANSEN. Mr. President, I want to make this point——

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a moment?

Mr. HANSEN. Yes, I yield, but I would like, if I may, to respond, before we get clear off base on this point.

Mr. ROBERT C. BYRD. Yes. Mr. President, I would hope we can get an agreement. That is the first place we have to go. I would hope we could get an agreement as to a time and date. I know Mr. BARTLETT has objected, and I am not going to press for that any further today, but I would hope we could get an agreement as to a time for a vote up or down on a motion to recommit with instructions, and that—Mr. President, may we have order in the Senate? The Senator from Wyoming has graciously yielded to me; I hope we may have order.

Mr. President, I am waiting on order in the Senate, and if the Senator from

Wyoming will allow me, I will not proceed until we get order.

The PRESIDING OFFICER. The Senate will be in order. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I understand the apprehension with respect to what may happen if a motion to recommit with instructions carries.

I understand that. That motion will be made whether we get an agreement or not. That motion will be made, I am sure. Somebody will make that motion. We will have to take our chances then.

Obviously, a motion to recommit with instructions is only a motion to instruct Senate conferees. I have no doubt of the sincerity of the Senate conferees, that if they are instructed to take a certain position they will do their best to take that position. But I would hope that we would concentrate at this point, as much as possible, on our endeavor to get an agreement, to vote on a certain date at a certain time on a motion to recommit with instructions, and a vote for a certain time and date to vote on the conference report. Then we can debate up and down the aisle on the instructions. I have seen a motion at the desk, but it can be changed and undoubtedly will be changed.

I do not think we ought to get too involved in what may happen once they get back to the conference, if they are sent back there. First they have to be sent back by the Senate. I would like to see us reach a time and a date on a vote for that. Once they are sent back, we will see what happens, if that happens. I have no doubt of their sincerity, none at all.

The motion to recommit with instructions is merely advisory. It is not mandatory. But I have no doubt about the sincerity of the Senate Members to take their instructions.

We cannot say what the House conferees may do. Today they might say one thing and tomorrow something else. It is up to the House to determine, and those conferees over there to determine, whether or not they will accept a motion to recommit. They have not seen what we are going to recommit. It would seem to me they would like to see what will be recommitted and what the instructions are.

Mr. ABOUREZK. Will the Senator yield?

Mr. HANSEN. If I may, I would like to say one other thing. To me, this is the crux of the whole matter. I have never asked the Senator from Washington to guarantee me what the House conferees might do. I know, though certainly not as well as he, that there is no way on Earth that anyone in this Chamber can say what the House may decide to do. I did not ask that question. I simply asked the question which I thought was fairly simple and straightforward. What would be the position of the Senate conferees?

Realistically and candidly there is not much point in us going through the charade of trying to persuade a majority of the Members of this body that there is merit in recommitting the bill with instructions if we do not have an indication from the chairman of the Senate conferees that he is going to follow through in good faith and say to the House Members, "This is our position."

If we cannot leave this body knowing that the Senate conferees—and there are 17 of us, I believe—are not willing to say, "We will go in good, earnest purpose to the House and try to persuade them that there is merit in looking at a scaled-down version of the bill, and if we all agree in this country that we do need an energy package, that this is one on which people can agree," then I would say let us leave up to the House the decision and the burden of responsibility if they decide that they want to kill the whole bill.

I did not ask for any guarantee as to what the House might do, but it seems unreasonable to say that under this scenario I would hope that the majority of the Senate conferees, at least, would keep faith with the Senate and say, "This is our offer." Let them turn us down, if they want to, but for heaven's sakes let us not go over there and say no matter how we may be instructed there will be a majority of Senate conferees voting against it anyway. If that is the deal, then I must say I think that is a display of less than full faith in what the Senate instructed us to do, and I would not be quite so enthusiastic about it.

Mr. JACKSON. Will the Senator yield?

Mr. HANSEN. I will be happy to yield.

Mr. JACKSON. I want to reiterate what I said. I said I would act in good faith. I will remind my friend that in accordance with the Senate procedures, I am quoting from Dr. Riddick's book on Senate procedure, 1974, so we know what the precedents are, on page 310——

Mr. HANSEN. As of that time, 1974. We have made quite a few changes since then.

Mr. JACKSON. Could I read the precedents? I do not know of anything later than that.

Conferees are not bound by instruction; "the conferees could even ignore the instruction."——

Mr. HANSEN. And they have.

Mr. JACKSON. To continue:

and the report would not be subject to a point of order.

I am saying if the conferees on our side are instructed, as chairman on the Senate side I will act in good faith on those instructions.

Mr. ABOUREZK. Will the Senator yield?

Mr. HANSEN. I will be happy to yield in a moment.

We passed the so-called Pearson-Bentsen bill, granted by a small majority but we did pass it. Yet, with everyone having a perfect right to do as his own conscience indicated and dictated he should do, we came up with a different result. I am not complaining about that. I am saying now if we want to make a good faith effort, I think it is incumbent on us as Senators who are concerned with representing our constituencies, being fair to the Senate and keeping faith with the country, to try to follow through and keep with what might be instructions coming out on the issue. I am happy to yield to my friend from South Dakota.

Mr. ABOUREZK. I will try to answer the question on what would the conference committee do if we recommit the bill with instructions. The conference committee, in my view, will do exactly what President Carter and James Schlesinger tell them to do because that is exactly what has been going on. At least a bare majority of the conference will do that. I have talked to any number of the conferees after they have come out of their secret meetings. The ones I have talked to have said, "Well, we do not like this bill but, you know, the President wants it. He is hung out on a limb on this bill. We have to try to help the President."

That is what will happen. Let us not try to fool anybody. I think SCOOP is right, the House probably did tell him that they would not come back with a bill, that the bill would be dead. But I do not believe what the House is saying, and I do not think SCOOP believes it.

I think what is going to happen if we recommit it is they will come back out so fast you will not be able to blink your eyes with anything that has "Energy Bill" written on top of it so that they can pass it and get the President off that limb that he got himself onto. That is exactly what is going to happen. Let us not try to fool anybody to get votes against recommittal by saying we are going to kill the bill. We know it will not kill the bill.

Mr. LONG. Will the Senator yield?

Mr. HANSEN. I yield.

Mr. LONG. I believe the Senator from Wyoming as well as many other Senators have had experience in going back with a conference report. I submit it is somewhat disappointing to have the Senate turn you down on a conference report, but in my view, to say that the House will not talk to the Senate about a conference report, if we vote to recommit with instructions, is ridiculous.

This is a bill of great significance. The House passed a bill which was more or less oriented toward the consumer. The Senate passed a bill which is generally perceived to be more a producer-oriented bill. The conference then sent back a bill that does not please the producer or the consumer. This bill pleases only those people who were inside the room in the closed meetings, that is, the bureaucracy. They are tickled pink with it. They are the only people who are pleased with the bill.

Mr. President, what the conferees have sent back to the Senate is a counterproductive, administrative nightmare.

So they compelled LONG to get in bed with ABOUREZK. I never planned on that situation. But then they compelled LONG to get in bed with METZENBAUM. "My goodness, save us. What next?" We are not particularly concerned with who saves us at this point, but certainly if we recommit this bill with instructions we can make considerable improvement.

In my view, now that consumer groups and producers have attempted to digest what is in this bill, concessions may be much more easily achieved. Many producers would be willing to make some

concession on price if we just "save them from the bureaucracy."

So, the conference can send us back a bill where the producers and consumers come to terms. I submit that a compromise is in reach if we recommit this bill with instructions.

What is the alternative? To ram through something where the best argument for it is, "we have to do something," or "it is this or nothing." That is their only real good argument, that it is this bill or nothing. But that is a very poor argument. The only defense of that argument is they do not have any better one for their conference report. And they do not have a better one.

They cannot defend the conference report. It is a monstrosity from the administrative point of view. The enforcement office at the FERC, whose job it is to administer bills, have been highly critical of this bill.

So we asked them: "Tell us what you want," and what they wanted was even more bureaucracy to administer this morass of redtape.

What some of us want is the opportunity, to vote on a motion to recommit; if that does not carry, we would like to see if we cannot attempt to make a broader agreement, that is, to accept more of the things in the conference report.

Frankly, I can find enough things in the conference report to make a good bill provided you leave the rest of them out. I think those on the consumer side will be able to agree.

It seems to me, Mr. President, that to say, "I hate to say it fellows, but my best argument is that if you don't take this bill as is, nothing can be done"—that is pretty ridiculous. Everybody agrees we need to pass a bill to do something to increase gas production. Everybody knows we need to pass a bill that is going to make it possible to move gas from intrastate commerce into the interstate market, and that we need to do things that will expedite production. We all know that. We all know that, in doing so, we are going to have to accommodate the consumer interests. We know that.

To say that the House will not talk to us if the Senate votes to recommit this conference report just does not make a lot of sense. The fact is that the House wants to legislate just as much as we do. What the House would like is an expression from the Senate.

What would the Senate like to do? I do not have the slightest doubt that you will find one or two committee people who would say, "If they don't do what I say, there will be no bill." The day when the committee chairman was supreme and ruled the House absolutely is gone. It is gone in the Senate and it is gone in the House of Representatives. Today, the majority rules. When the majority wants a bill, we can get a bill. In fact, Mr. President, it is possible to work out a gas bill without any conferees. Just send the House a bill, saying what we would like to do, and let them amend it and send it back. Then we could send it back with a further indication of what we would like to do and let them amend it again. So, therefore, it could be worked out without conferees. But to say, "You have to accept this and nothing else can be considered, it is this or nothing"—that old saw has been worn out.

When we pass something of such great significance, a matter of great significance to the President, the Senate, the House, the country, and the entire world, it is ludicrous to say "Oh, we have to do it this way or that particular committee chairman or that subcommittee chairman won't even talk to us." Mr. President, that just does not make sense in this type of situation.

In this type of situation, if the Senate can agree to some reduced version of a gas bill that the producers, the consumers, labor, and business would prefer, there is no reason why the Senate cannot express itself. It is utterly ridiculous to say the House would not consider our proposition. If they do not want to consider it, we can put it on the tax bill or the debt limit bill and send it back to them. It is easy enough to get their attention.

Mr. BARTLETT. Mr. President, when the majority leader is finished with his discussion, is anybody else going to have a chance to comment on this?

Mr. ROBERT C. BYRD. I was only going to go to morning business, but I yield.

Mr. BARTLETT. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, before I make this consent request, may I suggest that we do what we can overnight to meet, visit, and, in the morning, get together to see if we can possibly come up with an agreement that meets with everybody's approval?

Mr. BAKER. Mr. President, there are very few subjects which have consumed more time in this body than the debate over a national energy policy. No one doubts the need for a policy which is effective, coherent, and comprehensive; but we part company over how such a policy should be devised and what its components should be.

After emphasizing the need for a national energy policy and characterizing the situation as "the moral equivalent of war," the President sent his troops into the field with a battle plan that would spell defeat for even the best battalions. Simply put, the administration's proposal guaranteed higher prices to consumers with no concomitant increase in the domestic supply. The fact that the House of Representatives passed the bill basically intact is more a tribute to the legislative skills of the Speaker than it is to the merits of the proposals.

Fortunately, the Senate passed a much improved bill which would provide some of the incentives necessary to increase the domestic supply of natural gas while protecting consumers from an assortment of so-called conservation taxes.

I have long advocated the deregulation of natural gas because it is necessary to establish a market price at which the extraordinary costs of finding and producing natural gas are offset by the price received for the sale of the fuel. However, I have also long supported adoption of a "plowback" provision which would require producers to either plow much of their pretax income back into exploration or pay inordinately high tax rates on it. That position was advocated by the Republican Conference over a year ago.

However, the gas bill which passed the Senate did not include a plowback provision or any significant excess profit tax. To its credit though, it did include phased decontrol of interstate natural gas prices. There were many other improvements upon the House bill enacted by the Senate.

The conferees worked long and hard on resolving the differences over the House and Senate bills. In my judgment, they deserve very high praise for attempting to resolve this problem before the end of the present Congress. But they should know that if we fail to enact the so-called compromise which they have developed, it is not because some lack the will to face a tough problem and try to solve it, but rather because the solution proposed is worse than no solution at all.

Therefore, Mr. President, I plan to oppose the gas conference report and support the motion to recommit it with instructions, when that motion is made.

The reasons for my decision are numerous. They stem from the anticipated impact of the conference report upon both the natural gas industry and the consuming public. The effects of this bill would include an extension of controls over prices paid for both interstate and intrastate gas, a sharp increase in the regulatory or administrative burden imposed upon both the Federal Government and the producers, and, finally, little or no increase in the supply of domestic gas. Let us look at the bill from the standpoint of the industry, then from the standpoint of the consumer, and finally from the vantage of the dollar overseas.

The conference report would increase the amount of regulation that exists in the industry by extending the regulatory powers of the Federal Government to the intrastate market. It would not provide for rapid decontrol of the price of natural gas but rather would extend controls and regulation until 1985. At that point, only about 40 percent of the gas supply would be sold at decontrolled prices.

Thus, this measure would not allow the market system, which is the backbone of our economy, to dictate the supply of gas, but rather would rely upon administrative regulation. In my judgment, until we restore the free market system in this area, we will never be able to insure the supply of natural gas necessary to meet our present and future needs.

It has been effectively proven over the past year and a half that a sufficient increase in the price allowed for natural gas will increase the supply available. And yet, this bill would simply perpetuate the present price setting mechanisms while not insuring that even in 1985 there would be a removal of price controls. Such uncertainty breeds apprehension on the part of producers, and uncertainty as to the cost of gas for the consumers of this Nation.

It is, and has been, my desire to provide the necessary incentives for natural gas producers that will insure an ample supply of gas for the consuming public. But this measure simply would not guarantee that.

In the course of this debate, I have heard some repeat the old adage that "It's better to have half a loaf than no loaf at all." But, what if the loaf is lacking in nutritional value and would actually be unhealthy for the body as a whole? That is precisely the type of "half loaf" that this compromise report represents. It provides little nourishment to the market system and would be unhealthy for producers and consumers alike.

In addition to the extension of price controls over more of the gas industry, this bill would create a regulatory nightmare. It would establish between 17 and 23 new categories of gas to be overseen by both the Federal Energy Regulatory Commission (FERC) and the States' public service commissions.

Conflicting memoranda have surfaced from within the Government regarding the administrative feasibility of the bill. But regardless of which memorandum one believes, the fact remains that the creation of so many new complex categories of gas flies in the face of the effort to deregulate the industry. It is difficult to see how doubling or tripling the burden of paperwork and redtape imposed upon the producer, coupled with the extension of price controls to intrastate gas is going to encourage new exploration and production. Indeed, I am afraid that it will have just the opposite effect.

From the standpoint of the consumer, there is even less to be gained from the conference report. Any proposal which would increase the price of gas paid to the producer in order to encourage exploration and production is going to cost the consumer money. The question is how to devise a plan so as to maximize the increase in the discovery and production of new domestic gas reserves for every dollar increase in the consumer's fuel bill.

According to the Energy Information Agency, the bill passed by the Senate last year would have had a net cost to the consumer which was less than is now projected under the pending conference report. Moreover, it has been shown that this bill would not increase the gas supply in future years over what could be achieved by simply permitting the Federal Energy Regulatory Commission to set a new, higher price for natural gas. In other words, the conference report will cost consumers an estimated $41 billion in additional costs between now and the end of 1985, with no commensurate increase in the domestic supply.

Finally, it is worth reviewing the effect of the compromise bill from the vantage of the dollar overseas. The administration and others have argued that enactment of the bill is necessary to bolster the sagging dollar and reduce our balance of payments deficit. While I will readily concede that passage of this bill, or any other significant bill, would have a positive, and perhaps stabilizing, effect upon the dollar, I am convinced that the effect would be temporary.

While leaders of the industrialized world might be encouraged by the fact that the United States finally adopted an energy policy, I seriously doubt it would engender much confidence in the dollar once it was realized that the policy would do very little to increase the domestic supply of gas and, therefore, reduce dependence on foreign imports. Moreover, many economists and bankers believe that the problems facing the dollar abroad are not so much the result of an excessive dependence upon imported oil, but rather an inability to come to grips with the problem of inflation and Government spending. I share that view and find the arguments in favor of the conference report based upon the status of the dollar unpersuasive.

For those reasons, Mr. President, I intend to oppose the pending gas conference report and support the motion to recommit.

The merits of the motion to recommit the report with instructions are several. The intrastate market would remain free of controls, thereby creating the optimum incentive for greater gas production. In times of emergency, the President could order allocation of certain gas, and could permit sales at unregulated prices, but still under his control. Interstate and intrastate pipelines would be able to move gas for each other without bringing any new parties under general Federal regulation. The Federal Energy Regulatory Commission would set the price for interstate gas based upon 1977–78 data. And finally, retail gas pricing would be left to the State regulatory commissions.

In my judgment, Mr. President, the motion to recommit the conference report with instructions to report back with the bill just outlined is a far better way to address the energy situation confronting this country. It would maximize the increase in the supply of domestic gas at a justifiable cost to the consumer. It represents a solution that we can be proud of both at home and abroad.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with the statements therein limited to 5 minutes, and that the period not extend beyond 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 10:37 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills without amendment:

S. 3119. An act to transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency; and

S. 3120. An act to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3075) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes.

At 3:29 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House has passed the bill S. (3375) to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines, with an amendment in which it requires the concurrence of the Senate.

The message also announced that the House has passed the following bills, each with amendments in which it requests the concurrence of the Senate:

S. 1103. A bill to permit States the reciprocal right to sue in the Supreme Court of the District of Columbia to recover taxes due the State;

S. 1895. A bill to amend the Natural Gas Pipeline Safety Act of 1968 to authorize appropriations for fiscal year 1979; and

S. 2556. A bill to change the name of the District of Columbia Bail Agency.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 10311. An act to amend the District of Columbia Redevelopment Act of 1945, and for other purposes;

H.R. 12116. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to repeal the authority of the President to sustain vetoes by the Mayor of the District of Columbia of acts passed by the Council of the District of Columbia and repassed by two-thirds of the Council, to change the period during which acts of the Council of the District of Columbia are subject to congressional review, and for other purposes;

H.R. 12165. An act to extend until the close of June 30, 1981, the existing suspension of duties on certain metal waste and scrap, unwrought metal, and other articles of metal; and

H.R. 13243. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to authorize the Council of the District of Columbia to delegate its authority to issue revenue bonds for undertakings in the area of housing to any housing finance agency established by it and to provide that payments of such bonds may be made without further approval.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 3075. An act to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize international security assistance programs for fiscal year 1979, and for other purposes;

S. 3119. An act to transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency;

S. 3120. An act to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia;

S. 3454. An act to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for

the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes; and

H.R. 13087. An act to authorize the issuance of substitute Treasury checks without undertakings of indemnity, except as the Secretary of the Treasury may require.

The enrolled bills were subsequently signed by the President pro tempore (Mr. EASTLAND).

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 10311. An act to amend the District of Columbia Redevelopment Act of 1945, and for other purposes; to the Committee on Governmental Affairs;

H.R. 12116. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to repeal the authority of the President to sustain vetoes by the Mayor of the District of Columbia of acts passed by the Council of the District of Columbia and repassed by two-thirds of the Council, to change the period during which acts of the Council of the District of Columbia are subject to congressional review, and for other purposes; to the Committee on Governmental Affairs;

H.R. 12165. An act to extend until the close of June 30, 1981, the existing suspension of duties on certain metal waste and scrap, unwrought metal, and other articles of metal; to the Committee on Finance; and

H.R. 13243. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to authorize the Council of the District of Columbia to delegate its authority to issue revenue bonds for undertakings in the area of housing to any housing finance agency established by it and to provide that payments of such bonds may be made without further approval; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Res. 544. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to consideration of H.R. 11092, a bill to amend the act of December 22, 1974 (88 Stat. 1712), relating to the Navajo and Hopi Indian Relocation Commission (Rept. No. 95–1189).

S. Res. 549. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to consideration of S. 2083 (Rept. No. 95–1190).

By Mr. GLENN, from the Committee on Governmental Affairs, without amendment:

S. Res. 560. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 7700. Referred to the Committee on the Budget.

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment:

H.R. 7700. An act to amend title 39, United States Code, to insure the continuation of public services performed by the United States Postal Service, and for other purposes (together with additional views of the Committee on Commerce, Science, and Transportation) (Rept. No. 95–1191).

By Mr. MOYNIHAN, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 4007. An act to amend the Internal Revenue Code of 1954 to designate the home of a State legislator for income tax purposes, and for other purposes (Rept. No. 95–956).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Rules and Administration:

John Warren McGarry, of Massachusetts, to the Federal Election Commission (together with additional and minority views) (Ex. Rept. No. 95–28).

(The above nomination from the Committee on Rules and Administration was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DANFORTH:

S. 3495. A bill for the relief of Alexis Maria Davaraj; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. BAYH, Mr. CASE, Mr. DECONCINI, Mr. DOMENICI, Mr. HATCH, Mr. PAUL G. HATFIELD, Mr. GARN, Mr. MATHIAS, Mr. MARK O. HATFIELD, and Mr. METZENBAUM):

S. 3496. A bill to amend title 35 of the United States Code, to establish a uniform Federal patent procedure for small businesses and nonprofit organizations; to create a consistent policy and procedure concerning patentability of inventions made with Federal assistance; and for other related purposes; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 3497. A bill to amend the Internal Revenue Code of 1954 to allow a taxpayer who does not itemize his deductions to deduct amounts paid as State and local income taxes from gross income; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. BAYH, Mr. CASE, Mr. DECONCINI, Mr. DOMENICI, Mr. HATCH, Mr. PAUL G. HATFIELD, Mr. GARN, Mr. MATHIAS, Mr. MARK O. HATFIELD, and Mr. METZENBAUM):

S. 3496. A bill to amend title 35 of the United States Code, to establish a uniform Federal patent procedure for small businesses and nonprofit organizations: to create a consistent policy and procedure concerning patentability of inventions made with Federal assistance; and for other related purposes; to the Committee on the Judiciary.

SMALL BUSINESS NONPROFIT ORGANIZATION PATENT PROCEDURE ACT

● Mr. DOLE. Mr. President, today Senator BIRCH BAYH and I and others are introducing the "Small Business, Nonprofit Organization Patent Procedures Act. This bill will not only remove an unfortunate bottleneck in the flow of technology to the public, it will also underscore the need for the public and private sectors to work in partnership on the many problems facing this Nation.

FEDERAL PATENT POLICY BOTTLES UP INNOVATIONS

Inventions developed with Government support at this country's major universities and research institutes are wasting away on the shelves of bureaucracies all across Government. The present Government policy mandates the Government to take title to all inventions it has had a hand in funding. The policy discourages participation by the private sector, with the end result being that the innovation will never be brought to the marketplace for use by the public. Inventions that could make the difference for this Nation's most pressing problems of jobs, inflation, energy, and health are being relegated to the scrap heap.

Why is the Government willing to bottle up much of this country's most important technological innovations? Rather than acknowledging the need for the public and private sectors to work in partnership on the many problems facing this Nation, we maintain policies that foster an adversary relationship between Government and private industry. I can assure you that this attitude will not encourage startups of new small businesses, nor will it enhance economic growth, nor increase employment, nor trade competitiveness, nor solve our energy shortage.

It is time we stop paying lip service to the contributions of the private sector. Although patents may be but a small factor in establishing meaningful private-public collaborations, it does provide an opportunity for the Government and private sectors to display mutual trust and willingness to work together on common problems.

To this end Senator BIRCH BAYH and I are introducing today the Small Business, Nonprofit Organization Patent Procedures Act. The bill provides to universities, nonprofit organizations, and small businesses patent rights to inventions they have made with Government grant and contract support. The intent of the bill is to provide the incentives necessary to unleash the creative energies of the private sector in tackling the societal challenges of health, energy, and urban decay.

SUPPRESSION OF TECHNOLOGY IN HEW

Nowhere are the problems raised by Government patent policy more catastrophic than in the biomedical research programs of the Department of Health, Education, and Welfare. At this moment, people are being condemned to needless suffering because of the refusal of HEW to release the rights to medical devices and pharmaceuticals developed with Government support.

For more than a year now, potentially lifesaving medical technology from the world's most renowned medical research laboratories supported by the National Institutes of Health has been shut down. HEW has decided to pull the plug on development of biomedical research, and withhold from the American public potential cures and revolutionary new diagnostic techniques for treating such diseases as cancer, arthritis, hepatitis, and emphysema.

In August when I raised this issue on the floor of the Senate, I was informed

by the General Counsel of HEW, Mr. Peter Lebassi, that the delay in the release of the more than 30 cases was only a matter of paperwork. But now another month has gone by and still nothing has been released by HEW. We are not witnessing in HEW "an unavoidable bureaucratic delay," but a calculated policy of "search and destroy" aimed at innovations from this country's scientific research programs.

THE DEMISE OF A LIFE SAVING INVENTION

Let me illustrate the attitude of some of the zealous bureaucrats in HEW who are now determining the policies for this country. Yesterday, I was informed by the legal counsel of the Weissman Institute of Israel, one of the world's most prominent medical research centers, that the petition for ownership rights submitted by its president, Professor Sella, who is a renowned scientist in cancer research, had been denied. Under a contract from NCI for an investigation of carcino-embryonic antigens (CEA) as a diagnostic marker for cancer, Dr. Sella invented a revolutionary new blood test for detecting cancer of the breast, digestive tract, and pancreas. From all indications it appears to be superior to all presently available procedures, and is especially important for postoperative followup diagnosis and prognosis of these dreaded cancers. Clinical trials of this marvelous new discovery that were to take place in collaboration with a private pharmaceutical firm have been canceled in light of the decision by HEW. I fear we will never know how many lives this invention would have saved.

What possibly could have prompted the HEW General Counsel to reach the decision to deny to Dr. Sella the rights to his own invention? I can only wonder who is served by HEW's policy? Certainly not the taxpayers who pay for this country's medical research. Certainly not Dr. Sella who has devoted so much of his life to conquering cancer. And certainly not the hundreds of thousands of us unfortunate enough to be stricken with cancer who need this technology to sustain life.

Rarely have I witnessed a more unfortunate example of overmanagement by the bureaucracy. In the anticipation of a presently nonexistent abuse, or perhaps out of a preoccupation with the rising cost of health care, HEW is willing to shut down the innovative process.

We must not allow this unfortunate state of affairs to be repeated. Legislation of a Government-wide patent policy is needed, and it is needed now.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3496

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Nonprofit Organization Patent Procedures Act."

AMENDMENT OF TITLE 35, UNITED STATES CODE, PATENTS

SEC. 2. Title 35 of the United States Code is amended by adding after Chapter 17, a new chapter as follows:

Chapter 18—PATENTABILITY OF INVENTIONS MADE WITH FEDERAL ASSISTANCE

Sec.
200. Policy and Objective.
201. Definitions.
202. Disposition of Rights.
203. March-in Rights.
204. Return of Government Investment.
205. Preference for United States Industry.
206. Confidentiality.
207. Background Rights.
208. Relationship to Anti-trust Laws.
209. Uniform Clauses.
210. Foreign Patent Protection and Federally Owned Patents.
211. Regulations Governing Federal Licensing and Small Business Preference.
212. Coordination of Federal Licensing Practices.
213. Restrictions on Exclusive and Partially Exclusive Licenses of Federally Owned Patents.
214. Precedence of Chapter.
215. Effective Date.

POLICY AND OBJECTIVE

SEC. 200. It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from Federally-supported research or development by nonprofit organizations and small business firms; to encourage maximum participation of small business firms in Federally-supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to insure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; to insure that the Government obtains sufficient rights in Federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

DEFINITIONS

SEC. 201. As used in this Chapter—

(a) The term "Federal agency" means any "executive agency", as defined in 5 USC 105, and the military department, as defined by 5 USC 102,

(b) The term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency and any person for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government, such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(c) The term "subject inventor" means any person that is a party to funding agreement.

(d) The term "subject invention" means any invention of the subject inventor conceived or first actually reduced to practice in the performance of work under a contract.

(e) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or government regulations available to the public on reasonable terms from the subject inventor or licensee or assignee of the subject inventor.

(f) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(g) The term "small business firm" means a small business concern as defined at section 2 of Public Law 85–536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration.

(h) The term "nonprofit organization" means universities and other institutions of higher education and organizations of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 USC 501(a)).

DISPOSITION OF RIGHTS

SEC. 202. (a) Each nonprofit organization or small business firm may, within a reasonable time, elect to retain title to any subject invention; provided, however, that each Federal agency may promulgate regulations otherwise (i) when the subject invention is made under a contract for the operation of a Government-owned research or production facility, (ii) when such election to retain title might cause disclosure of classified information or otherwise impair national security; or (iii) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title will better promote the policy and objective of this Chapter. The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (b) of this section and the other provisions of this Chapter.

(b) The subject inventor shall disclose to each Federal agency which is a party to a funding agreement under which the subject invention was made within a reasonable time after the making of a subject invention, and in any event at least 6 months before public disclosure thereof, the subject matter of the subject invention and whether the subject inventor intends to retain title to the subject invention or to relinquish title to the Government. The subject inventor shall file United States patent applications where appropriate within a reasonable time from making such disclosure and not later than six months after filing such United States applications shall inform the Federal agency as to the foreign countries in which the subject inventor intends to file patent applications.

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

(1) The right of the Federal Government upon request, to receive title to any subject invention not reported to the Federal agency within such times as are prescribed in Section 202(b) hereof and in the regulations promulgated hereunder.

(2) The right of the Federal Government, upon request, to receive title to any subject inventions in the United States or other countries in which the subject inventor has not filed patent applications on a subject invention within such times as are prescribed in Section 202(b) and in the regulations promulgated hereunder.

(3) The right of the Federal Government, upon request, to receive title to any subject invention in which the subject inventor does not elect to retain rights or fails to elect rights within such times as are prescribed in Section 202(b) and in the regulations promulgated hereunder.

(4) With respect to any invention in which the subject inventor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world, and may, if provided in the funding agreement, have additional rights to sublicense any foreign government pursuant to foreign policy considerations or any existing or future treaty or agreement.

(5) The right of the Federal agency to re-

quire periodic reporting on the utilization or efforts at obtaining utilization that are being made by the subject inventor or his licensees or assignees; provided that any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under the Freedom of Information Act.

(6) An obligation on the part of the subject inventor, in the event a United States patent application is filed by or on its behalf or by any assignee of the subject inventor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention.

(7) In the case of a nonprofit organization, (a) a prohibition upon the assignment of rights to a subject invention in the United States without the approval of the Federal agency, except where such assignment is made to an organization having prior approval of the Federal agency which has as one of its primary functions the management of inventions and which is not, itself, engaged in the manufacture or sale of products or processes that might utilize the invention or be in competition with embodiments of the invention and provided that such assignment is made subject to regulations promulgated hereunder governing rights in inventions and assignments of subject inventions; (b) a prohibition against the granting of exclusive licenses under United States Letters Patent in a subject invention by the Contractor or by a person deriving rights directly or indirectly from the Contractor for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the time before regulatory agencies necessary to date of the exclusive license excepting that obtain premarket clearance unless, on a case-by-case basis, the Federal agency approves a longer exclusive license. Exclusive field of use licenses may be granted and commercial sale or use in one field of use shall not be deemed to end the exclusive period as to unrelated fields of use; (c) a requirement that the balance of any royalties or income earned by the subject inventor with respect to subject inventions, after payment of expenses (including any payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education.

(8) If a subject inventor does not elect to retain title to a subject invention in cases subject to this Chapter, the Federal agency may consider and grant requests for retention of rights by the inventor subject to the provisions of this Act and regulations promulgated hereunder.

(9) In any case when a Federal employee is a co-inventor of any subject invention under this Chapter, the Federal agency employing such co-inventor is authorized to transfer or assign whatever rights it may require in the subject invention from its employee to a subject inventor electing to acquire rights hereunder subject to the conditions set forth in this Chapter.

MARCH-IN RIGHTS

SEC. 203. With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this Chapter, the Federal agency under whose funding agreement the subject invention was made shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder to require the subject inventor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are resonable under the circumstances, and if the contractor, assignee or exclusive licensee refuses such request, to grant such a license, itself, if the Federal agency determines either—

(a) That such action is necessary because the subject inventor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; or

(b) That such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the subject inventor, assignee, or their licensees; or

(c) That such action is necessary to meet requirements for public use satisfied by the contractor, assignee, or licensees.

RETURN OF GOVERNMENT INVESTMENT

SEC. 204. (a) If a nonprofit organization or small business firm receives $250,000 in after tax profits from the licensing of any subject invention, in a period of ten years following reporting of the invention the United States shall be entitled to a share, to be negotiated, of up to 50 percent of all net income during said period from licensing received by contractor above $250,000; provided, however, that in no event shall the United States be entitled to an amount greater than that portion of the Federal funding under the funding agreement under which the subject invention was made which was expended on activities related to the making of the invention.

(b) In addition, if a nonprofit organization or small business firm receives after tax profits in excess of $2,000,000 on sales of products embodying or manufactured by a process employing a subject invention, during a period of ten years commencing with commercial exploitation of the subject invention, the Government shall be entitled to a share, to be negotiated, of all additional income accruing from such sales up to the amount of the portion of the Government funding under the contract under which the invention was made which was expended on activities related to the making of the invention less any amounts received by the Government in accordance with paragraph (a) of this section 204.

(c) The Director of the Office of Federal Procurement Policy is authorized and directed to revise the figures of $250,000 and $2,000,000 in paragraphs (a) and (b) of this section at least every three years in light of changes to the consumer price index or other indices which he considers reasonable to use.

PREFERENCE FOR UNITED STATES INDUSTRY

SEC. 205. (a) Notwithstanding any other provision of this Chapter, no small business firm or nonprofit organization which receives title to any subject invention and no person which receives an assignment of the subject invention shall assign the right to practice such invention in the United States or grant an exclusive license to practice the invention in the United States to any foreign corporation or any other organization substantially owned or controlled by foreign interests. However, in individual cases, this restriction may be waived by the Federal agency under whose funding agreement the invention was made.

(b) Notwithstanding any other provision of this Chapter, no small business firm or nonprofit organization which receives title to a subject invention and no person which receives an assignment of the subject invention from them shall assign the right to practice the invention outside the United States or grant an exclusive license to practice the invention outside the United States to any foreign corporation or any other organization substantially owned or controlled by foreign interests unless it shall have first undertaken reasonable efforts, as defined by regulations promulgated pursuant to this Chapter, to interest domestic, United States organizations or corporations in such foreign rights.

CONFIDENTIALITY

SEC. 206. Any report of a subject invention under this Chapter may be treated by the Federal agency as a record exempt from disclosure pursuant to 5 USC 552 (b)(4) unless (i) a United States patent application describing the invention has been filed (provided that copies of the actual patent application may be treated by the Federal agency as records exempt from disclosure pursuant to 5 USC 552 (b)(4)), (ii) a description of the invention has been published elsewhere by the inventor, (iii) the subject inventor has not elected to retain title and/or a subject inventor or inventor has not requested the retention of title or other commercial rights, or (iv) the subject inventor has not elected to retain title and/or the Federal agency has denied the request of the subject inventor to retain title or other commercial rights.

BACKGROUND RIGHTS

SEC. 207. Nothing in this Chapter shall be deemed to preclude a Federal agency from obtaining rights in any background invention of a subject inventor or other contractor.

RELATIONSHIP TO ANTI-TRUST LAWS

SEC. 208. Nothing in this Chapter shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law.

UNIFORM CLAUSES

SEC. 209. The Office of Federal Procurement Policy, after receiving recommendations of the Office of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies establishing standard funding agreement provisions required under this chapter.

FOREIGN PATENT PROTECTION AND FEDERALLY OWNED PATENTS

SEC. 210. Each Federal agency is authorized to—

(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or, interest;

(2) promote the licensing of inventions covered by federally owned patent applications, patents, or other forms of protection obtained with the objective of maximizing utilization by the public of the inventions covered thereby;

(3) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of title 35, United States Code, as determined in the public interests;

(4) make market surveys and other investigations for determining the potential of inventions for domestic and foreign licensing and other forms of utilization, acquire technical information, and engage in negotiations and other activities for promoting the licensing and for the purpose of enhancing their marketability and public utilization;

(5) withhold publication or release to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest for a reasonable time in order for a patent application to be filed;

(6) undertake all other suitable and necessary steps to protect and administer rights to inventions on behalf of the Federal Government either directly or through contract;

(7) transfer custody and administration, in whole or in part, to the Department of

Commerce or to another Federal agency, of the right, title, or interest in any invention for the purpose of carrying out the provisions of paragraphs (1) through (4), without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471); and

(8) designate the Department of Commerce as recipient of any or all funds received from fees, royalties, or other management of federally owned inventions authorized under this Act.

REGULATIONS GOVERNING FEDERAL LICENSING AND SMALL BUSINESS PREFERENCE

SEC. 211. The Administrator of General Srevices is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention may be licensed on a nonexclusive, partially exclusive, or exclusive basis. First preference in licensing federally owned inventions shall go to small business firms.

COORDINATION OF FEDERAL LICENSING PRACTICES

SEC. 212. The Secretary of Commerce is authorized in cooperation with other Federal agencies to—

(1) coordinate a program for assisting all Federal agencies in carrying out the authority set forth in section 210;

(2) publish notification of all federally owned inventions that are available for licensing;

(3) evaluate inventions referred by Federal agencies, and patent applications filed thereon, in order to identify those inventions with the greatest commercial potential and to insure promotion and utilization by the public of inventions so identified;

(4) assist the Federal agencies in seeking and maintaining protection on inventions in the United States and in foreign countries, including the payment of fees and costs connected therewith;

(5) accept custody and administration, in whole or in part, of the right, title, and interest in any invention for the purposes set forth in paragraphs (1) through (4) of section 210, with the approval of the Federal agency concerned and without regard to the provisions of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 471);

(6) receive funds from fees, royalties, or other management of federally owned inventions authorized under this Chapter, but such funds shall be used only for the purposes of this Chapter; and

(7) undertake such other functions directly or through such contracts as are necessary and appropriate to accomplish the purposes of this title.

RESTRICTIONS ON EXCLUSIVE AND PARTIALLY EXCLUSIVE LICENSES OF FEDERALLY OWNED PATENTS

SEC. 213. (a)(1) Each Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that—

(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public.

(2) A Federal agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

(b) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, any Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

(c) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

(d) Any grant of an exclusive or partially exclusive license shall contain such terms and conditions as the Federal agency determines appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

(1) periodic written reports at reasonable intervals including, when specifically requested by the Federal agency, the extent of the commercial or other use by the public that is being made or is intended to be made of the invention;

(2) a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for the Federal Government the licensed invention throughout the world by or on behalf of the Federal Government (including any Federal agency), and the additional right to sublicense any State or domestic local government or to sublicense any foreign government pursuant to foreign policy considerations, or any treaty or agreement if the Federal agency determines it would be in the national interest to retain such additional rights;

(3) the right of the Federal agency to terminate such license in whole or in part unless the licensee demonstrates to the satisfaction of the Federal agency that the licensee has taken effective steps, or within a reasonable time is expected to take such steps, to accomplish substantial commercial or other use of the invention by the public; and

(4) the right of the Federal agency, commencing three years after the grant of a license, to require the licensee to grant a nonexclusive or partially exclusive license to a responsible applicant, upon terms reasonable under the circumstances to terminate the license in whole or in part, after public notice and opportunity for a hearing, upon a petition by an interested person justifying such hearing, if the Federal agency determines, upon review of such material as it determines relevant and after the licensee or other interested person has had the opportunity to provide such relevant and material information as the Federal agency may require, that such license has tended substantially to lessen competition or to result in undue concentration in any section of the country in any line of commerce to which the technology relates, or to create or maintain other situations inconsistent with the antitrust laws.

PRECEDENCE OF ACT

SEC. 214. This Chapter shall take precedence over any other act which would require a disposition of rights in subject inventions in a manner that is inconsistent with this Chapter, including but not necessarily limited to the following:

(1) Section 10(a) of the Act of June 29, 1935, as added by Title 1 of the Act of August 14, 1946 (7 USC 427l(a); 60 Stat. 1085);

(2) Section 205(a) of the Act of August 14, 1946 (7 USC 1624(a); 60 Stat. 1090);

(3) Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 USC 951(c); 83 Stat. 742);

(4) Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 USC 1935(c); 80 Stat. 721);

(5) Section 12 of the National Science Foundation Act of 1950 (42 USC 1871(a); 82 Stat. 360);

(6) Section 152 of the Atomic Energy Act of 1954 (42 USC 2182, 68 Stat. 943);

(7) Section 305 of the National Aeronautics and Space Act of 1958 (42 USC 2457);

(8) Section 6 of the Coal Research Development Act of 1960 (30 USC 666; 74 Stat. 337);

(9) Section 4 of the Helium Act Amendments of 1960 (50 USC 167b; 74 Stat. 920);

(10) Section 32 of the Arms Control and Disarmament Act of 1961 (22 USC 2572; 75 Stat. 634);

(11) Subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 USC App. 302(e); 79 Stat. 5);

(12) Subsection (a)(2) of section 216 of title 38, United States Code;

(13) Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 USC 5901; 88 Stat. 1978);

(14) Section 3 of the Act of June 22, 1976 (42 USC 1959d, note; 90 Stat. 694);

(15) Subsection (d) of section 6 of The Saline Water Conversion Act of 1971 (42 USC 1959(d); 85 Stat. 161);

(16) Section 303 of the Water Resources Research Act of 1964 (42 USC 1961c-3; 78 Stat. 332);

(17) Section 5(d) of the Consumer Product Safety Act (15 USC 2054 (d); 88 Stat. 1211);

(18) Section 3 of the Act of April 5, 1944 (30 USC 323; 58 Stat. 191); and

(19) Section 8001 of the Solid Waste Disposal Act (42 USC 6981; 90 Stat. 2829).

The Act creating this Chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

EFFECTIVE DATE

SEC. 215. This Chapter shall take effect 180 days after the date of enactment of this Chapter, except that the regulations referred to in Section 209, or other implementing regulations, may be issued prior to that time.●

● Mr. BAYH. Mr. President, I am pleased today to join in introducing the University and Small Business Patent Procedures Act. This bill is the result of a substantial amount of investigation and consultation involving both Senator DOLE and his staff and me and my staff. I am pleased to join in the leadership of this bipartisan effort with my distinguished colleague from Kansas, and

I am pleased also that our colleagues, Senators MATHIAS, DECONCINI, PAUL HATFIELD, GARN, HATCH, MARK HATFIELD, METZENBAUM, and DOMENICI have joined us as cosponsors.

The bill addresses a serious and growing problem: Hundreds of valuable medical, energy, and other technological discoveries are sitting unused under Government control, because the Government, which sponsored the research that led to the discoveries, lacks the resources necessary for development and marketing purposes, yet is unwilling to relinquish patent rights that would encourage and stimulate private industry to develop discoveries into products available to the public.

The cost of product development exceeds the funds contributed by the Government toward the initial research by a factor of at least 10 to 1. This together with the known failure rate for new products, makes the private development process an extremely risky venture, which industry is unwilling to undertake unless sufficient incentives are provided.

The problem is substantial in HEW, the Department of Defense, the Department of Agriculture, and the National Science Foundation. But nowhere is the patent situation more disturbing than in the biomedical research programs. Many people have been condemned to needless suffering because of the refusal of agencies to allow universities and small business sufficient rights to bring new drugs and medical instrumentation to the marketplace.

For example, Department of Energy and Department of Health, Education, and Welfare procedures of reviewing all of the requests for patent rights from universities are resulting in delays of almost 2 years. In many cases these inventions could make significant contributions to the health and welfare of the American people, but are being frustrated by this present patent policy.

The bill that we are introducing today strikes a careful balance between the rights of the Federal Government to use for itself and the public good inventions arising out of research that the Federal Government helps to support, and the equally important rights of the inventor and the public to see that the inventions receive their full potential in the marketplace and reach the people they may benefit. This bill will allow universities, nonprofit organizations, and small businesses to obtain limited patent protection on discoveries they have made under Government-supported research, if they spend the additional private resources necessary to bring their discoveries to the public. Our experience has shown that unless inventors, universities, small businesses, and the private sector generally are given sufficient incentives to work together and bring inventions to the public, new technology is likely to languish.

This bill addresses part of a larger problem that I find very disturbing, namely, that America seems to be falling behind in technological innovation and inventiveness.

In a two-part series which appeared in the Washington Post on September 3, and September 10, 1978, Mr. Bradley Graham pointed out a number of indicators that something is going wrong with American industry's long-recognized ability to lead the world in technological developments. Mr. Bradley mentions several troubling statistics:

The number of U.S. patents issued per year to U.S. inventors reached a peak in 1971 and has declined steadily since. But the number granted to foreign inventors has increased steadily since 1963. In 1977, foreigners claimed 35 percent of all patents issued in the U.S. across a broad range of fields.

The U.S. balance of trade has worsened, due not only to increased oil imports, but also to more imports of foreign manufactured goods.

Productivity, which is partly a function of technological innovation, has slumped severely. In the past decade, the rate of growth in U.S. productivity has averaged only half of what it was the previous 20 years. In contrast, productivity growth rates in Europe and Japan have been on the rise.

From 1953 to 1966, U.S. investment in research grew at an impressive rate of 10 percent annually in inflation-adjusted dollars. However, investment in research by all sectors in the U.S. over the past 10 years has shown essentially no growth in constant dollars. Further, a number of major U.S. corporations have announced recently they intend to spend even less on long-term basic research and more on development of short-term, quick-profit products.

There are, of course, a number of theories which have been offered to explain this situation. Some observers have cited the dropoff in Government-supported research, the nature of the modern corporation, changes in lifestyle, the entrance into the work force of inexperienced workers, and overregulation of businesses by the Government. Others have said that this technological lag is merely a misperception, and that new technological developments are being made, but that they are of necessity not as exciting as the unprecedented technological breakthroughs that followed World War II.

I do not wish to speculate on these theories beyond saying that many of our prominent scientists, educational leaders and businessmen believe that this problem is a very real one, one in fact so serious that it strikes at the traditional heart of the American economy—our ability to adapt to a changing world.

A September 4, 1978 column by Jack Anderson and a July 3, 1978 article in Business Week discuss the unique problems facing small businesses with respect to our declining national role in technological innovation. I ask unanimous consent that all four of these articles be printed at the conclusion of my remarks.

It is time that we start identifying the causes of this troubling trend, and seek solutions. One such area where I am confident progress can be made immediately is with inventions arising from federally supported university and small business research. That is why we are introducing the University and Small Business Patent Procedures Act. In many cases research efforts of small businesses and universities are being frustrated by the policy of the Government of retaining patent rights in most cases, on inventions arising out of research funded in whole or in part by the Federal Government. Small businesses and our universities have been among the most innovative sectors of our economy and have a proven capacity to develop the sort of bold, new inventions that our country needs to maintain its leadership in the world economic community.

The University and Small Business Patent Procedures Act is designed to meet this aspect of the larger problem of lagging technological innovation.

Mr. President, I would like to outline some of the important sections of the bill. I would particularly like to draw the attention of my colleagues to section 204 which provides that if the invention achieves a certain level of success payment must be made back to the Government until this payment equals that amount invested in the invention by the Government.

Section 202 provides that each nonprofit organization (defined in the bill to include universities) and small business shall have a reasonable amount of time to elect to retain title to subject inventions. The federal agency may retain title if the invention is made under a contract for operation of a government owned research or production facility, might cause the disclosure of classified information or imperil national security, or if granting patents would not be in the public interest in terms of the purpose to be served by this legislation.

Section 202(c) provides that each funding agreement shall contain provisions to: (1) insure the right of the federal government to receive title to any subject invention not reported to it within the prescribed times of the contract; (2) insure the government's right to receive title to inventions when the inventor does not intend to file for patent rights; and (3) provide that the agency shall have a nonexclusive, nontransferable, paid-up license to use the invention.

Section 202(c)(7) prohibits nonprofit institutions from assigning rights without the approval of the federal agency; prohibits granting such rights in excess of the earlier of 5 years from the date of first commercial use or 8 years from the date of invention, whichever comes first; and provides that all proceeds shall be used to support scientific research or education.

Section 203 gives the federal agency the right to require the subject inventor or his assignee to grant additional licenses if the agency feels that sufficient steps are not being taken to achieve commercialization. Additional licensing may also be required to alleviate health and safety needs, or under provisions for public use as specified by federal regulations.

Section 204 provides that if the patent holder receives $250,000 in after tax profits from licensing any subject invention during a ten-year period, or receives in excess of $2,000,000 on the sales of products embodying or manufactured by a process employing the subject invention within the ten-year period, that the government shall be entitled to collect up to 50% of all net income above those figures until such time as the amount of government research money has been repaid.

Section 205 specifies that no foreign owned or controlled firm shall be eligible to receive patent rights under this Act unless the federal agency determines that this is the only available means of achieving commercialization; a similar provision covers licensing the invention outside the U.S.

Section 210 will allow federal agencies to grant exclusive, partially exclusive, or nonexclusive licenses on government owned patents to achieve commercialization; the De-

partment of Commerce is authorized to receive patents held by other agencies and to make the necessary steps to determine the market potential of the patent and to receive any fees or royalties due to the government.

Section 211 authorizes the Administrator of GSA to issue regulations regarding such licenses and gives first preference in licensing federal patents to small businesses.

Section 213 specifies that federal licenses be issued only after public notification and opportunity for filing objections and that exclusive or partially exclusive licenses not be granted if the result would be a lessening of competition; the agency has the right to require more licensing if it feels that this is necessary after three years and to require periodic written reports on progress toward commercialization.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 3, 1978]

SOMETHING'S HAPPENED TO YANKEE INGENUITY

(By Bradley Graham)

It's been 89 years since Angus Campbell put the first automatic cotton picker to work, 70 years since Henry Ford gassed up his first Model T, 39 years since Du Pont introduced a super fiber called nylon and 30 years since Edwin H. Land marketed the first instant picture camera.

All of which helps recall a time America's inventive spirit seemed unbounded and unceasing. Ideas flowed to the marketplace as fast and furious as mountain rapids flow downhill.

But what was once thought to be an endless stream of U.S. inventions has of late been trickling out less startling and less competitive products. Meantime, adding pain to the drain, the inventive powers of foreign nations have been in ascendance. The question, once raised in a whisper, is now asked in loud and urgent tones. Has American enterprise lost its innovative touch?

Consider the facts.

The number of U.S. patents issued per year to U.S. inventors reached a peak in 1971 and has declined steadily since. But the number granted to foreign inventors has increased steadily since 1963. In 1977, foreigners claimed 35 percent of all patents issued in the U.S. across a broad range of fields.

The U.S. balance of trade has worsened, due not only to increased oil imports, but also to more imports of foreign manufactured goods.

Productivity, which is partly a function of technological innovation, has slumped severely. In the past decade, the rate of growth in U.S. productivity has averaged only half of what it was the previous 20 years. In contrast, productivity growth rates in Europe and Japan has been on the rise.

From 1953 to 1966, U.S. investment in research grew at an impressive rate of 10 percent annually in inflation-adjusted dollars. However, investment in research by all sectors in the U.S. over the past 10 years has shown essentially no growth in constant dollars. Further, a number of major U.S. corporations have announced recently they intend to spend even less on long-term basic research and more on development of short-term, quick-profit products.

In a world where power and progress are often measured in terms of technological breakthroughs and scientific prowess, such trends are indeed disturbing.

For a nation that has always prided itself on its tinkerers—on those lone souls who brought forth from their garages and basement labs such revolutionary devices as power steering, the office copier and the zipper—they are downright depressing.

From boardroom to research lab, there is a deepening sense that something has happened to the once unchallengeable Yankee ingenuity. Just what, though, no one quite knows.

Some insist it is in rapid decline, choked by an unfavorable economic climate, government regulation and, perhaps, by the lethargy and shortsightedness of big business. Others say it has simply taken new forms, becoming more subtle and incremental in nature than grand and revolutionary. Either way, the country's genius for invention does not appear, at least, to be what it once was.

Alarm bells are going off all over. First, Michael Boretsky, a senior policy analyst in the Commerce Department: "All the indicators imply that the rate of U.S. innovation is measurably down. It's very disconcerting."

Next, Dr. Alden Bean, director of research for the National Science Foundation: "There's no solid evidence to suggest that the U.S. is going to hell in a handbasket in science and technology. But there is serious cause for concern about some trends we've seen."

After several years of arm-waving and shouting about waning U.S. innovation, the nation's research establishment finally caught the ear of the White House. Several months ago, the Carter administration launched a major policy review of things to be done to foster innovation in private industry. The study is being coordinated by the Commerce Department and involves more than 15 agencies. A final report, including recommendations for the president, is expected by April.

But many experts say another study is hardly necessary. The worrisome state of innovation in America has been assessed and reported on many times since the first major policy review conducted by Commerce in 1967. In the interim, the problems only have become more obvious.

For one, the economic climate for innovation is poor. The financial incentives that in the past encouraged the rich and the bold to risk their money on slim-chance projects no longer exist, thanks to increases in the capital gains tax and tighter rules on stock options. Inflation, too, has put the squeeze on capital investment by existing corporations.

Also, with the winding down of space and defense programs, government support of industrially performed research has diminished. Throughout the 1950s, the government annually supported more than one-third of industrial research activity. This level of support reached almost 40 percent in 1962, but has been falling consistently and is 25 percent today.

Increased government regulation, too, has increased operating costs and shrunk the share of profits formerly available for research. So has the higher cost of energy.

Together, these developments have forced a shift in industrial research activities from the offensive to the defensive. "Major effort is being diverted into defensive research," said Howard Nason, president of the Industrial Research Institute in St. Louis. "Much more emphasis is being placed on short-term cost reductions than on long-term product and process improvements."

But as important as such external economic factors may be in explaining the innovation slump, there are certain features about the internal structure of corporate America today which some say have had a debilitating effect on innovation.

Writing in the July-August issue of the Harvard Business Review, Alfred Rappaport, professor of business at Northwestern University, blames the research lag on the increasing emphasis American business places on short-term results. Rappaport asserts that management incentive programs are biased toward quick profits at the expense of perhaps smarter long-term investment.

"American business would do well to reexamine its own self-administered incentive systems," Rappaport concludes.

Industrial research today is dominated by a small number of very large corporations. The top 10 percent of those firms doing R&D in 1976 performed almost 70 percent of the total U.S. R&D effort. Ten firms accounted for more than 36 percent of all expenditures that year. This concentration may itself work against innovation.

"A large part of the blame for the lack of innovation lies with the oligopoly nature of American industry," said Mark Green, director of Ralph Nader's Congress Watch. "Big companies get habituated to their products and there is a reluctance to break through. If you already dominate an industry, where is the incentive to take a chance on a new and costly approach?"

But the history of innovation in America is ambiguous on this point. Studies done on whether big business or little business is more inventive have come to no conclusive end as a whole.

Certainly, many major innovations have come from outside an established industry. The ballpoint pen, for instance, was invented by a sculptor, the dial telephone by an undertaker. It took an electrical engineer employed by a shipbuilding firm in the 1930s to develop the automatic transmission, called by some the last major innovation of the auto industry. IBM's disk memory unit, the heart of today's computer, was not the logical outcome of a decision made by IBM management—rather, it was developed in one of its labs as a bootleg project, over the stern warning from management that the project had to be dropped because of budget difficulties.

At the same time, certain large firms in the fields of electronics, pharmaceuticals, telecommunications and computers have been highly innovative.

In their seminal study in 1958 on the sources of invention, Harvard professor John Jewkes and his colleagues said they could not conclude that inventions flow primarily from any one source. When the study was revised in 1969, the authors stated only the obvious; that inventions can come from firms of varying size.

Business leaders, of course, refute the charge that they are less innovative today than in the past. "There's no lack on the part of big business to be innovative," said General Motors Corp. Chairman Thomas Murphy in a phone interview. "It's a big country, so we have to be big. We couldn't do all of the things we do if we weren't as large as we are."

To the public, a car may still look like a car. But auto officials say the changes which have taken place inside during the past five years have been as revolutionary as anything which has come before.

"There's a perception problem," said Thomas J. Feaheny, the man in charge of car engineering for Ford Motor Co., where "better ideas" were once not only a management dictum but a successful ad slogan. "We've never been as innovative as we are now. But the things we're doing aren't as glamorous and aren't noticed much by the consumer."

Critics note, however, that what the auto industry heralds as advances in development (the catalytic converter, on-board use of minicomputers to govern fuel efficiency and control pollution, greater use of aluminum and other lightweight durable materials) are, in fact, only more logical applications of off-the-shelf technologies rather than breakthroughs in the state of the art.

Of even greater concern, though, than what has or hasn't happened is the prospect for the future. Many major corporations have tailored research budgets to yield more practicable and immediate results. In 1958, industry allocated as much as 38 percent of its R&D dollar to the "R" part. By last year, this had dropped to 25 percent.

Corporations say the reasons for this shift from research into development have noth-

ing to do with being too big or too comfortable. The reasons, basically, are greater pressures from government regulators to meet health, safety and environmental standards as soon as possible, and greater uncertainty about the likely profitability of longer-term, riskier ventures.

"It used to be much easier to bring new products to market," said Du Pont Chairman Irving Shapiro in an interview. "If you hit something, you'd have more time to develop it. Now it's more difficult.

"Also, the pot of gold at the end of the rainbow just isn't there. The economic environment has changed. Our thinking has had to change, too. It's become more short range."

Added Richard Hechert, Du Pont's senior vice president for R&D: "We're not exploring wholly new areas. We're concentrating instead on opportunities for research in established areas. . . . We are less able to take risks. We have to concentrate on surer projects."

The degree of such thinking does vary from company to company and industry to industry. Certain high-technology fields (instrumentation, computers and electronics) remain rooted in innovation and continue to churn out impressive new products. In other industries, though—particularly those most apt to be subject to regulation and high energy costs (steel, chemicals, paper, packaged goods and autos)—product innovation has levelled.

Part of the difficulty in deciding what to do about the innovation lag is figuring out how to define it. To begin with, innovation defies measurement.

"There are no indicators which you can look at to measure the advancement of knowledge," said NSF's Dr. Bean. "Some people count patents, but that's unreliable in part because some firms don't like to patent things and would rather rely on trade secrets rather than disclose important discoveries. Others count citations in the research literature, but that's unreliable, too."

But even without sure data, many have not hesitated to push the panic button. "You can't use statistics to say there's a problem," said Jordan J. Baruch, the assistant Secretary of Commerce who is directing the government's innovation policy review. "But you'd have to be blind not to see it."

Urgency about the problem is all the greater because America seems uniquely stricken. Western Europe and Japan grow more inventive, or so it appears, while U.S. firms age. Examples abound of foreign firms taking the lead in both new and traditional product areas. The Japanese, for instance, totally eclipsed the American communications industry in the development of video tape recorders. The Germans and Swiss now set the pace in textiles. Inventiveness in the steel industry has centered in Belgium and Austria. Some U.S. cities are even going abroad to scout for new ways to handle old problems. (The Council for International Urban Liaison here publishes a monthly newsletter called Urban Innovations Abroad that goes to 5,000 city officials in the U.S.)

Moreover, U.S. productivity rates have been in a rut for a decade—and that has serious consequences for everyone's real income and for the nation's overall standard of living. Of course, technological change by itself does not make or break productivity. There are other contributing factors, most important among them being capital investment and improved labor skills. But technology is an important ingredient in the mix.

With industry's current bent toward the here and now, there is concern that the U.S. may be cutting its innovative bridges. Some economists, notably Charles P. Kindleburger at MIT, have drawn disturbing parallels between the way U.S. firms are responding to America's battered competitive leads and the responses of British firms in the twilight of the English empire. British firms, just as American firms now, became defensive—that is, rather than redoubling efforts to generate innovations, they curtailed investment and demanded government protection against imports.

Does the current emphasis on small, incremental kinds of advances rather than on big breakthrough threaten the dominant position the U.S. still holds?

No one is sure. Despite all the studies of innovation and productivity, no one can say whether there is an optimum rate of invention a society should adhere to, or how much innovation is enough.

There does seem to be general agreement, though, on this. The rapid technological growth which th U.S. experienced during the first two decades after World War II was unusual and is not likely to be repeated.

"We made an enormous investment in the war, made some great technological advances during it, and came out of it with a great belief in the power of technological progress," said J. Herbert Hollomon, director for the Center of Policy Alternatives at MIT. "We also were handed an accidental lead, in having survived the war better than anyone else. But one of the things that is increasingly going to be the case is that new technological innovations are going to happen outside the U.S."

Holloman said that American business has in the past displayed an NIH (not-invented-here) complex, meaning that U.S. managers have been arrogant toward anything not thought up first in America and slow to embrace it. This is one of the things that he said will have to change if American firms hope to continue to compete in world markets. American businesses must learn to be quick to adapt, to exploit foreign inventions as well as their own, he warned.

"The problem is not with basic science," Holloman said. "The problem really is how effective we can be in adjusting and adapting."

Some have argued that U.S. multinationals may themselves have hastened this competitive bind on America by transferring their best technologies to foreign markets in recent years. Those who say this also urge legislation that would restrict further transfers of technology.

But most who have studied the innovation problem say the solution lies in fostering a innovation at home—through more liberal tax policy, a relaxed regulatory policy, less aggressive antitrust practices and, in general, a more cooperative spirit between business and government such as exists in Japan and the leading Western European countries.

And above all, they argue for greater certainty in government policy. "I think that more than an increase in government support of R&D or a reduction in regulation, what private industry people are interested in is a reduction in uncertainty about government action," said Dr. Bean. "Look, there's enough economic uncertainty in the R&D process without the government."

[From the Washington Post]

U.S. PRODUCTIVITY: GOLDEN DAYS OVER

(By Bradley Graham)

(NOTE.—This is the second of two articles discussing whether, as is widely perceived today, the dynamic vitality of the American economy is faltering. Last week's piece examined the lag in U.S. innovation. This week's describes the forces behind the nation's productivity slump.)

Like a movie that changes from fast- to slow-motion and then gets stuck on a single frame, America's productivity rate is creeping closer and closer to a dead stop.

For two decades following World War II, the productivity in the U.S. sprinted up the growth charts untiringly. Spurred by a labor force anxious to get back to peaceful industrial employment and by a string of technological breakthrough that gave the U.S. a commanding lead in product markets around the world, the American economy seemed unfailing and unstoppable.

But the rise began to slacken about a decade ago. In the past 10 years, productivity gains averaged 1.6 percent a year, only half the rate of the golden-growth days. This year, productivity has taken an even sharper turn for the worse, showing almost no increase at all.

Barry Bosworth, director of the President's Council on Wage and Price Stability, told a congressional committee recently: "We're turning into the British situation of the early '70s when they had almost no productivity growth." Calling the slowdown "a real puzzle," Bosworth said the U.S. has practically stopped showing gains in output per hour worked.

Moreover, the slump has been widespread. About two-thirds of the 67 industries regularly surveyed by the government have registered productivity declines. What makes the slowdown even more critical is that while productivity has been falling in the United States, it has been rising in Europe and Japan. Since 1967, the productivity rate has surged ahead 105 percent in Japan, 54 percent in Italy and France, and 39 percent in Canada. Even Great Britain topped America, edging past the U.S., 25 percent to 24 percent.

The meaning of all this is simple enough—and deeply disturbing. Without a gain in productivity:

Inflation will be more difficult—probably impossible—to control.

America's ability to compete in world markets will continue to weaken.

Real wealth in America will shrink effectively strangling the campaign against poverty and eroding everyone's standard of living.

But what is behind the slump is much less simple and less certain. Some say it is the result of basic shifts in the economy—we have been transformed, so the story goes, from a nation of industrial workers to one of lawyers, insurance agents and real estate brokers. Others blame the lag in productivity on environmental and safety rules which have redirected business investment into less productive (though perhaps more socially desirable) ends. Still others cite a change in both worker and management attitudes—people, they say, don't want to work as hard as they used to, and corporate managers have lost the sense of adventure and the willingness to take risks that was once their mark in trade.

In any case, the sense of desperation mounts as productivity indicators slide. The national doomsayers club has never had so many illustrious members.

"America's economic survival will depend on its ability to increase its rate of productivity advance to former levels," General Motors Corp. Chairman Thomas Murphy said in a recent interview, "That is no exaggeration."

"You've got to be worried," said Irving Shapiro, chairman of Du Pont. "You can't be comfortable about the future, you can't be sure your earnings will be real earnings without gains in productivity."

The term "productivity" has different meanings to different people. It is often associated with other words like "efficiency," "automation" and "hard work." In some minds, it conjures up images of a production line running faster and faster.

But basically the productivity rate is a measurement of outputs divided by inputs, computed quarterly by the Bureau of Labor Statistics. It is, simply, what you can get out (automobiles, ice cream cones and so on) for what you put in (labor, capital and other resources).

Despite all the fuss over what's happened to U.S. productivity, no one on the national level appears to be doing much to meet the

emergency. The one federal agency specifically charged with attacking the problem is going out of business at the end of this month. Established in 1970 to find ways of improving productivity, the National Center on Productivity and the Quality of Working Life runs out of money on Sept. 30, with both Congress and the White House content to see it go. Underfunded and politically orphaned from the start, the center was ruled ineffective and expendable in a General Accounting Office report this year.

George Kuper, the center's director, calls it a mistake to eliminate the center without providing something in its place. "Productivity growth is not automatic," Kuper said. "In view of the dismal productivity record of the American economy over the past ten years, there is an urgent need for a concerted effort to bolster the forces that sustain productivity growth."

But administration officials contend that the productivity problem is not something the government can solve by creating a center. "The best thing we can do for productivity is to create a healthy climate for private investment," said one administration official. "In the final analysis, productivity is basically the responsibility of the private sector."

A few businesses and industries have made encouraging efforts to spur efficiency on their home turf. Methods tried range from streamlining production lines and reorganizing work teams to fattening up compensation plans and instituting so-called "flextime" programs that allow employes some latitude in setting working hours.

On the whole, though, the self-help record of American industry on this score is sadly deficient. Spoiled by the ease with which productivity gains flowed during in the early postwar period, managers have been slow to respond to the current crisis.

"They figured it was something that would always be there," said C. Jackson Grayson, former business school dean and head of the wage and price council during the Nixon administration. "Managers have ignored productivity and played the game of money and demand management. Most companies have no explicit program to improve productivity."

To foster greater national awareness of the problem, and to help corporations establish their own productivity improvement programs, Grayson last year set up his own center on productivity in Houston founded on $8.5 million contributed by more than 80 companies.

But the reason for management's sluggishness in tackling this issue may have more to do with a lack of inspiration than with any lack of awareness. The mood of the American business community today is characterized more by despair than by diligence, and the sense of malaise is worsening.

Surveys by the Conference Board, a New York-based economic research group, show business confidence in the economy has declined steadily since the surveys began two years ago. This lack of faith has translated into a reluctance on the part of many managers to invest in new equipment and larger plants. Termed by some a "capital strike," such lag in investment has been a major contributor to the slowdown in productivity growth in recent months.

The malaise feeds on itself because, without new investment, business processes age, productivity declines, profits shrink and industries grind to a halt. It is true that unemployment has dropped to record lows in recent months. But what this suggests is that output has been increased by putting more people on payrolls, not by improving each person's capacity to produce. This can go on only so long.

What accounts for management's depressive state of mind? "A heritage of economic trauma of the past decade," said Edgar Fiedler, director of research for the Conference Board, who proceeded in an interview to tick off a list of economic jerks and jolts that have shaken the confidence American managers once had in their economic machine, leaving members of the business community scurrying or their security blankets.

His list included the acceleration of inflation, the erosion of profits, the aid to the old international exchange rate system, shortages of goods and resources, the first peacetime wage and price controls, the oil embargo and two recessions. "Little wonder that everyone is feeling shaky about the future," Fiedler concluded.

But sagging confidence and a falloff in capital investment only go part way in explaining what might be behind the slump in productivity. A good bit of the slowdown, say the experts, may have been inevitable.

Edward Denison, a Brookings Institution economist and one of the nation's leading authorities on productivity, says some of the steam was bound to run out of the U.S. economic engine. He notes two forces—the migration of farmers to factory jobs and the mass education of society—that initially powered America's postwar industrial drive have now run their course. Also, he says, the influx of relatively inexperienced teenagers and women into the work force has acted as a productivity depressant, albeit a temporary one.

Beyond these, Denison blames the growth of government regulation for squeezing out much of the productive energy that was left.

Of course, productivity alone neither makes nor breaks a nation. It is just one element—although an important one—in the overall growth equation. Other factors include a nation's resource base, its entrepreneurial spirit, and its rate of savings and investment.

Also, in weighing political choices, a nation often finds itself balancing certain quality-of-life goals such as cleaner air and guaranteed safety against the moneyed concerns of efficiency and economic growth. To the extent American industry's slower growth is the natural outcome of ensuring greater health and safety for consumers, it is plainly and simply the peoples' choice.

Denison, however, is worried that the trade-off might have tilted too far, particularly in recent months. "The outlook is extremely uncertain," he said. "I've never seen a period like this before."

Part of the uncertainty reflects not only confusion about the source of the downward trend, but also misgivings about the numbers themselves. The situation may not be as alarming as the figures suggest.

This is because the methods used to collect national input/output data leave room for inaccuracies. Also, the traditional way of measuring productivity ignores many social welfare gains and only incompletely accounts for improvements in quality.

Still, the figures always have been subject to such qualifications. Many experts say what counts in the current debate is not so much the accuracy of the measurements but their startling, stubborn slide relative to the way they always have been computed.

In any case, there is cause for hope. As the negative effect of the influx of unskilled workers reverses itself, and as industry becomes accommodated to regulatory standards, U.S. productivity should climb again. The Bureau of Labor Statistics estimates that it will be back to about the 2.5 percent rate by the early 1980s.

But few experts believe America will return to its postwar rate of more than 3 percent. As Denison put it, "In the long sweep of history, the high postwar rate is an aberration."

Many businessmen tend now to write off the economy's stumbling performance during the Seventies as a costly learning experience, a period of expensive adjustment from which American managers soon will emerge with renewed vigor and a stronger sense of direction. "The Seventies had an enormously revolutionary impact," said Du Pont's Shapiro. "It's been one of those periods. Now we have a whole new ball game."

With the old forces that propelled America's postwar blastoff now on the wane, the nation's productive future rests on two principle factors: the ability to innovate and, as it has been put, the ability to "work smarter."

Innovation will cue off of an improved economic climate for risk capital, though not everyone agrees on how best to achieve this. Business is arguing for lower taxes and less regulation. Labor says that if tax cuts go anywhere, they should go to consumers to spur spending and, in that way, improve general business conditions. Congress and the White House are debating what the mix should be.

There also is no easy way to get people to "work smarter." Observers note that U.S. business generally has been good at harnessing intelligence.

Much of the internal challenge that corporations faced in the last decade concerned adjusting to a change in employee attitudes toward work and the work place. The robot theory of mass production is out; in its place has risen the "quality of worklife" program, stressing teamwork and giving workers a greater voice in determining what they do and how they do it.

Such changes can lead to a happier, more productive plant. But movement here generally has been sluggish, slowed both by management resistance and union reluctance.

"You can't do the things you did before," said GM's Murphy of the change in labor-management relations. "It's not enough today to follow the old Army tradition of 'do as we say and don't ask questions.' But what do you do? It's always been a difficult thing to find the better way."

[From the Washington Post, Sept. 4, 1978]

SMALL FIRMS STINTED ON RESEARCH

(By Jack Anderson)

Following their epochal 1903 Kitty Hawk flight, the Wright brothers got a five-year runaround from Washington before receiving any government financial help to pursue their aeronautical research. Small-time inventors and innovative businessmen today are getting the same short shrift, even though billions are being doled out by the federal government for research and development.

Butter-fat corporations lap up the cream from the research subsidies, even though they're interested more in profits and cost-cutting than new inventive breakthroughs. Small companies with fewer than 1,000 employees get skim milk from the federal churn.

Yet the little enterprising businesses rather than the corporate giants have been responsible for such developments in this country as insulin, zippers, power steering, ball point pens and self-winding watches. This was in keeping with the tradition of individual inventive geniuses symbolized by the Wright brothers, Alexander Graham Bell, Samuel Morse and Thomas Edison.

The superiority of small business research has been cited in a study which the Office of Management and Budget strangely never published. The study credited firms having than 1,000 employes with almost half of the industrial innovations between 1953 and 1973.

According to the study, 16 small technology firms created 25,558 jobs for American workers during the 20-year period because they came up with new ideas. Yet the budget office was advised that small firms were drawing inadequate funding from the government, getting less than 4 percent of the research and development layouts.

Spurred by the report, the budget office drafted a memo intended for all federal agencies, urging vigorous efforts to channel more of the research to small businesses "which are having difficulty in competing in the big leagues."

The memo added, "there is considerable evidence that the small proportion of federal research and development work that is being awarded to small technologically based firms is contributing to a serious loss of high technology capabilities in our nation. It is important that we see some real progress within the first 18 months of the administration."

This ringing call for a new deal was never sent to the agencies. Les Fettig, head of the office that was supposed to be directing the crusade, said the report and the memo were news to him until we asked what happened. He explained that the documents "fell through the cracks" during the transition period between the Ford and Carter administrations.

Fettig said his office is alert to the problem and is taking steps to make it easier for small businesses to get research and development help.

Footnote: Investigation shows that the Energy Department under James Schlesinger has been perhaps the worst offender in government in encouraging research at the Little League level. The department claimed it awarded 10.3 percent of its research contracts to small operators in the 1977 fiscal year. The General Accounting Office has challenged the statistic. GAO auditors found the amount was about 2.6 percent, because the Energy Department has counted subcontracts that trickle down from the big corporations.

[From Business Week, July 3, 1978]

VANISHING INNOVATION

A grim mood prevails today among industrial research managers. America's vaunted technological superiority of the 1950s and 1960s is vanishing, they fear, the victim of wrongheaded federal policy, neglect, uncertain business conditions, and shortsighted corporate management. They complain that their labs are no longer as committed to new ideas as they once were and that the pressures on their resources have driven them into a defensive research shell, where true innovation is sacrificed to the certainty of near-term returns. Some researchers are bitter about their own companies' lax attitudes toward innovation, but as a group they tend to blame Washington for most of their troubles. "[Government officials] keep asking us, 'Where are the golden eggs?'" explains Sam W. Tinsley, director of corporate technology at Union Carbide Corp., "while the other part of their apparatus is beating hell out of the goose that lays them."

That message—and its implications for the overall health of the U.S. economy—is starting to get through. Following months of informal but intense lobbying led by such executives as N. Bruce Hannay, vice-president for research and patents at Bell Telephone Laboratories Inc., and Arthur M. Bueche, vice-president for research and development at General Electric Co., the White House has ordered up a massive, 28-agency review of the role government plays in helping or hindering the health of industrial innovation. "Federal policy affecting industrial R&D and innovation must be carefully reconsidered," wrote Stuart E. Eizenstat, the White House's domestic policy adviser, in a recent memo outlining the review's intent.

One thing that the study clearly will not accomplish is a quick fix for the deepening innovation crisis. The problem is regarded as immensely complex by the Administration, and is inextricably tied to other economic dilemmas now facing Carter's White House.

"Historically, the government's role has been to buy more science and R&D," says Martin J. Cooper, director of the strategic planning division at the National Science Foundation (NSF). "Now maybe we better go with investment incentives." Says Jordan J. Baruch, Assistant Commerce Secretary for science and technology, who will be the review's day-to-day manager: "This study developed in an environment of people concerned about economics, business, and technology."

The Administration's concern is underscored by the fact that it is organized as a domestic policy review, the highest sort of attention a problem can receive within the executive branch. Among its objectives, such a review must produce options for corrective action by the President. According to Ruth M. Davis, Deputy Under Secretary of Defense for research and development, "this is the only such review at the policy level in 20 years that transcends the interests of more than one agency."

The White House also seems determined not to conduct the study in a governmental vacuum. Baruch is soliciting input from groups such as the Industrial Research Institute (IRI), the Business Roundtable, and the Conference Board. "We want both CEOS and R&D vice-presidents," says a White House official. Labor groups have been asked to participate, too, along with public-interest groups. Congressional leaders such as Senator Adlai E. Stevenson (D.-Ill), chairman of the Senate subcommittee on science, technology, and space, have been brought into the early planning. And the 28 agencies involved extend beyond obvious candidates, such as the Environmental Protection Agency, to the Justice Dept. and even the Small Business Administration.

The study's scope is so sweeping, in fact, that some Federal officials are talking about a "thundering herd" approach to policymaking. But one government science manager demurs. "It beats having one guy write a national energy program in three months," he sniffs.

Philip M. Smith, an assistant to Presidential science adviser Frank Press and an early organizer of the study, concedes that "a lot of people have told us that we are likely to fail." But such skepticism, he believes, does not take into account the considerable clout of those involved in the effort. Commerce Secretary Juanita M. Kreps, for example, is chairing the study, and she heads a coordinating committee whose members include Charles L. Schultze, chairman of the Council of Economic Advisers, Administration inflation fighter and chief trade negotiator Robert S. Strauss, and Zbigniew Brzezinski, Carter's national security adviser. Even more important is the support of Eizenstat, who, says Smith, "is very interested in this particular review."

FINDING "NEW DIRECTION"

On the other hand, there is already grumbling within the Agriculture Dept., which was left off Krep's committee. "We are red-faced," says a high-ranking Agriculture official. "We are out of the project because this Administration and those before it do not place any priority on agricultural reesarch." However, Jordan Baruch insists that the department will play a role in the study. Agriculture experts point out that farm commodity exports of over $24 billion play a key role in the U.S. balance of payments. They note also that superior technology is the basis of the commanding American position among world food exporters.

Whatever its outcome, the White House policy review is being undertaken at a time when, as Frank Press puts it, "we badly need some new directions." Many experts view with alarm the declining federal dollar commitment to R&D, which has dropped from 3% of gross national product in 1963 to just 2.2% this year. For its part, industry as a whole has more or less matched the inflation rate and then some with its own spending. But such macroscale indicators do not tell all. "We've got to find out what the story is sector by sector, because each industry is going to be different," says Press. "We also have to find out what's going on abroad."

Better data on the relationship between industrial innovation and the health of the economy are becoming available. According to a 1977 Commerce Dept. report, for instance, technological innovation was responsible for 45% of the nation's economic growth from 1929 to 1969. The study went on to compare the performance of technology-intensive manufacturers with that of other industries from 1957 to 1973, and found that the high-technology companies created jobs 88% faster than other businesses, while their productivity grew 38% faster.

The numbers help to establish the central role of industrial innovation in stimulating economic development, but they also are beginning to reveal the changing character of industrial research. The amount of basic research that industry performs, for instance, has dropped to just 16% two years ago from 35% of the national total in 1955.

And a new IRI survey of member companies for the National Science Foundation demonstrates how federal policy has directly altered the nature of the research effort in another way, making it more and more defensive. The study shows that surveyed companies increased R&D spending devoted to proposed legislation by a striking 19.3%, compounded annually, from 1974 to 1977. And the rate was 16% a year for R&D devoted to Occupational Safety & Health Administration (OSHA) requirements. "When overall R&D spending is not growing nearly this fast," note the survey's authors, George E. Manners Jr. and Howard K. Nason, "other categories of effort—especially research—must be suffering."

Other observers compare the viability of industrial innovation in the U.S. with that of foreign countries. One expert is J. Herbert Hollomon, director of the Center for Policy Alternatives at Massachusetts Institute of Technology. According to Hollomon, a reason the U.S. is losing its leadership is that "we're arrogant—we have an NIH [not invented here] complex at the very time a majority of technological advances is bound to come from outside the U.S." Consequently, he argues, the U.S. has not organized itself to capitalize on these advances, as foreign countries have done for years with American knowhow. Since as much as two-thirds of all R&D is now conducted by foreign laboratories, Hollomon says, it should be no surprise that they have taken the lead in such technologies as textile machinery and steel production.

"We essentially prohibited West Germany and Japan from defense and space research," says Hollomon. "So it's no accident they concentrated on commercial fields." He adds: "I believe other nations better understand that the innovation process is important."

Says a research director for one high-technology company: "For a country like ours, the technology leader of the world, what has been happening is downright embarrassing." Indeed, even the presumed sources of strength in a consumer-oriented society are today under intense pressure. "Our experience with Japan in the consumer electronics industry—namely televisions, radios, audio, and transceiver equipment—shows some of our weaknesses," testified Gary C. Hufbauer, a Deputy Assistant Treasury Secretary, before a congressional subcommittee. In 1977, he said, "we had a $3.6 billion trade deficit with Japan in high-technology goods, and

about two-thirds of this was accounted for by imports of consumer electronic goods."

THE ROLE OF REGULATION

The cumulative response to these developments has been alarm. "The system has now sharpened its pencils in a way that discourages changes that are major," worries Robert A. Frosch, head of the National Aeronautics & Space Administration. "We have been so busy with other things that we may have inadvertently told the people who think up ideas to go away."

Even labor unions, which historically have left R&D decision-making up to corporate board rooms, now are complaining about lack of innovation. "Having helped to develop and pay for this technology," says Benjamin A. Sharman, international affairs director of the International Association of Machinists, "American workers have a right to demand government responsibility for using it to create new products, more jobs, better working conditions, and general prosperity." And Charles C. Kimble, research director of the Electrical, Radio & Machine Workers union, goes so far as to suggest that labor should now have a say in how industrial research money is spent.

Among research managers themselves, excessive or contradictory federal regulatory policy is the single greatest complaint. Hannay of Bell Labs points to Food & Drug Administration requirements as a case in point. According to one study, says Hannay, a 1938 application for adrenaline in oil was presented to the FDA in 27 pages. In 1958, a treatment for pinworms took 439 pages to describe. "By 1972," he says, "a skeletal muscle relaxant involved 456 volumes, each 2 in. thick—76 ft. in total thickness and weighing one ton."

Regulation, says Tinsley of Union Carbide, has put a bottleneck on new-product development in the chemical industry and has so added to the cost of getting any new chemical approved that only those targeted at a vast, assured market are attempted today. Food and drug industry researchers echo that complaint. "Today," says Al S. Clausi, director of technical research at General Foods Corp., "our industry does work that is fostered by unreal and invalid public concerns."

But regulation can have less obvious impacts, such as forcing an industry to stick with old technology rather than to experiment with new approaches to problems. "The overall effect of regulations on the auto industry has been to build an envelope around the internal-combustion device and the whole car structure," says Harvard Business School Professor William J. Abernathy, who specializes in technology management. "'Don't do anything really new, don't change.' That's what these regulations say." Paul F. Chenea, vice-president for research at General Motors Corp., agrees. "You just don't have time to explore wild new ideas when a new rule is so closely coupled to your current business," he says.

"THE SCIENCE OF THE MATTER"

In Congress, where the regulatory laws are written, such thinking has so far found a small audience. "A great number of the regulations that we would call environmental . . . may actually be self-defeating," muses Harrison H. Schmitt, the former astronaut from New Mexico who is the ranking Republican on Stevenson's Senate subcommittee. "Instead of looking at pollution controls, if we were looking at building a more efficient and therefore less-polluting engine, we would not only be solving our environmental problems, but we would be producing a new thing for export."

Schmitt is one of only three federal legislators with the semblance of a science background. "We probably have exercised very poor judgment in the past," he says, "because the Congress overall—members as well as staff—have not been able to understand what is possible technologically and what is not, and therefore not been able to relate the costs [of legislation]."

Jason M. Salsbury, director of the chemical research division at American Cyanamid Co., pleads, "Before the lawyers write the legislation, let them know the science of the matter." Not only may some mandates be beyond what industry can legitimately perform, he says, but the rules force a conservative approach to science. One key indicator of this trend is the increasing number of toxicologists now employed in chemical company research labs. "Toxicologists don't innovate," notes Frank H. Healey, vice-president for research and engineering at Lever Bros. Co.

Then there is the regulatory bias against new ideas. In the EPA's grant programs for waste-water treatment at the municipal level, for instance, equipment specifications must be written so that gear can be procured from more than one source. That means a company with a unique process is discriminated against. What is more, the mandate for cost effectiveness precludes trying out innovative approaches whose value can only be measured if someone is willing to gamble on them.

If the domestic policy review is to solve such questions, it will depend in large part on the willingness of regulators to see matters in a new light. According to Philip Smith, there is "a sense that people like [EPA Administrator] Doug Costle and [FDA Administrator] Don Kennedy want to work with industry, and they don't want to fight all the time. I think we have a team of people now in government that may be able to do something."

THE INVESTMENT CLIMATE

But industry should not expect a major overhaul of regulatory practices to emerge from the study. EPA Administrator Douglas M. Costle concedes "a tremendous growth in the last decade in health and safety regulations—13 major statutes in our area alone." Though Costle agrees that the economic impact of such rules should be more closely quantified, he contends that "this rapidly widening wedge of regulation has been a response to a massive market failure—failure of the marketplace to put an intrinsically higher value on pollution-free processes."

Most regulators agree that not enough research has been done on the true nature of the environmental problems they are empowered to combat, but they also argue that regulation has led to cost-saving practices, especially in the area of resource recovery, where closed-cycle processes now help capture reusable material. OSHA officials also cite examples where the agency has laid down rules that have led to cost-cutting innovations. But Eula Bingham, the OSHA administrator, emphasizes that the "legislatively determined directive of protecting all exposed employees against material impairment of health or bodily function" requires tough regulation without quantitative weighing of costs and benefits. "Worker safety and health," she insists, "are to be heavily favored over the economic burdens of compliance."

Bingham and her boss, Labor Secretary Ray Marshall, may represent an increasingly isolated view, however. Economic issues have come to dominate thinking within the Carter Administration, and it is precisely these questions that industry has stressed in its discussions with science adviser Press and other White House officials. Just over a month ago, Treasury Secretary W. Michael Blumenthal told a meeting of financial analysts in Bal Harbour, Fla., "We are now devoting a very sizable chunk of our private investment to meeting government regulatory standards . . . and in some of these areas we may well be reaching a breaking point." Blumenthal also noted: "Our technological supremacy is not mandated by heaven. Unless we pay close attention to it and invest in it, it *will* disappear."

A month before the Blumenthal speech, GE's Bueche suggested to an American Chemical Society gathering that "we step back and look at R&D for what it really is, an investment. It is an investment that, like more conventional investments, has become increasingly less attractive."

Bueche, along with most other research managers, rejects the idea of direct federal subsidies to industrial R&D. Instead, he points out that "perhaps 90% of the total investment required for a successful innovation is downstream from R&D [and thus] it becomes . . . clear why we must concentrate on the overall investment climate." Bueche attacks Administration proposals to eliminate special tax treatment of long-term capital gains, plumps for more rapid investment write-offs, and says "it is extremely important to provide stronger incentives for technological innovation by making permanent and more liberal the 10% investment tax credit."

CRITICS IN INDUSTRY

Bueche's arguments suggest the broad—yet often indirect—way in which federal policy runs counter to the best interests of innovation. Fear of antitrust moves from the Federal Trade Commission or the Justice Dept., for instance, has prevented many companies from sharing research aimed at a problem common throughout an industry—including new technology aimed at solving regulatory questions. At General Electric, the legal staff must now be notified if a competitor visits a company research facility, even if no proprietary material is involved.

For their part, Justice Dept. trustbusters claim that fears that their policies stifle innovation are not justified. They say they are flexible enough to recognize the differences in the pace of innovation from industry to industry, and that is why they allow a fair number of mergers among electronics companies. "That's an industry where you don't have to worry about someone cornering the market," says Jon M. Joyce, an economist in the Justice Dept.'s antitrust division. "There's just a lot of guys out there with good ideas."

Industry further claims that the inability to secure exclusive licenses on government-sponsored research leaves much good technology on the shelves, while federal attempts to market new products are often silly at best. Richard A. Nesbit, director of research at Beckman Instruments Inc., recalls a government circular that waxed rhapsodic over the federal commitment of billions of dollars to R&D. Included with the letter was a syringe for sampling fecal matter, and the suggestion that Beckman might want to license the technology. "I wondered if they spent billions to develop that," Nesbit recalls. "The contrast was ludicrous."

Even national accounting procedures draw criticism from industry. A major target is the 1974 ruling by the Financial Accounting Standards Board that stipulated that R&D spending could no longer be treated as a balance sheet item, but must be listed as a direct profit or loss item in the year spent. R. E. McDonald, president and chief operating officer at Sperry Rand Corp., recently told an executive management symposium, "The ramifications of that rule change are quite complex, but the next effect has been to dry up a lot of potential venture capital investments. . . . I can say quite candidly that Univac would not be here today if we had not had the advantage of the old rule for so many years."

The shortage of risk capital has had a tremendous impact on small, technology-oriented companies trying to arrange new

public financing. According to a Commerce Dept. survey, 698 such companies found $1.367 billion in public financing in 1969. In 1975, only four such companies were able to raise money publicly, and their numbers rose to just 30 in 1977. Equally ominous is the experience at Union Carbide, which, according to Tinsley, has not been able to compete for venture capital and has thus canceled plans to start a number of small operations built around interesting new technology. Years ago, says Tinsley, Carbide was reasonably successful at getting such funding. "And you must remember that these ideas are perishable," he says. "They don't have much shelf life."

The Treasury Dept., in fact, has an ongoing capital-formation task force that will be integrated into the policy review under the direction of Deputy Secretary Robert Carswell. Carswell notes that "you can't draw a clear line" between R&D support and investment in general, but "if it turns out that we find some form of capital formation gives the economy a greater multiplier effect than another form, we at the Treasury would not shy away from whatever policy would help most."

WASHINGTON'S CHANGING ROLE

Even as it has pursued policies detrimental to industrial R&D, the federal government has withdrawn as a major initiator of innovation. Research managers generally believe that companies are better equipped than government to bring new technology to society because they are more attuned to market pull. But Lawrence G. Franko of Georgetown University, an international trade expert, recently pointed out to a congressional committee that the U.S. government has in the past played an important role "as a source of demand for new products and processes, and as a constant, forbearing customer in computers, semiconductors, jet aircraft, nuclear-power generation, telecommunications, and even some pharmaceuticals and chemicals. . . ."

According to the Defense Dept.'s Davis, both Defense and NASA "have faded" in this role, the result of the Vietnam war and concerns over the military-industrial complex. "The consumer marketplace and other government agencies have not been able to pick up where DOD and NASA left off," she says. "The Department of Energy should be able to help with this, but it hasn't yet. And the Department of Transportation just never blossomed in this role." An unreleased IRI study for the Energy Dept. summed up industry's views. The company officers interviewed said government could spur industry's energy R&D only by creating a national energy policy, increasing its managerial competence, and offering financial incentives rather than massive contracts.

On the other hand, there have been some recent, notable government efforts to spur the innovation process. "We've talked to the leading semiconductor companies about our hopes for their innovation," says Davis. She says that the Defense Dept. expects to program $100 million over the next five years for industrial innovation in optical lithography, fabrication techniques involving electron-beam technology, better chip designing and testing to meet military specifications, and system architecture and software implementation.

At the Transportation Dept., chief scientist John J. Fearnsides wants to involve the private sector much earlier in the government's R&D process, thereby allowing industrial contractors to develop technology alternatives instead of having to cope with rigid specifications at the outset. Such a policy, some believe, might have resulted in major savings for the Bay Area Rapid Transit system, for instance. "It is more expensive to fund a wider range of choices, but only at first," says Fearnsides.

The NSF also has announced a new industry-university grant program for cooperative exploration of "fundamental scientific questions." The aim is to make "a long-term contribution toward product and/or process innovation."

THE FAILURES OF BUSINESS

While agreeing on the need for federal policies that bolster innovation, those knowledgeable about industrial research think that the companies themselves share some of the blame for stagnation and must be willing to examine their practices critically. Alfred Rappaport, a professor of accounting and information systems at Northwestern University's graduate school of management, believes that one reason the U.S. lags in R&D is that the incentive compensation systems that corporate executives live under tend to deter intelligent risk-taking. "Incentive programs are almost invariably accounting-numbers oriented and based on short-term earnings results," he says. "That puts management emphasis on short-term business considerations." Another criticism has been of the haphazard way in which companies have launched new R&D programs. In essence, industry should try to learn how to weed out bad ideas early on, say the detractors. To that end, Dexter Corp. has instituted an eight-factor "innovation index" approach to research management that weighs questions such as effectiveness of communications, competitive factors, and timing, and comes up with an "innovation potential" for new ideas. At Continental Group Inc., D. Bruce Merrifield, vice-president of technology, says that "constraint analysis" of new ideas now means that eight of 10 projects that survive the review will generate cash flow within two to four years. That contrasts with accepted estimates that only one in 50 ideas that come out of research labs even generates cash flow, and not for seven to 10 years.

Large companies often fail to exploit their own resources effectively. In the 1950s and 1960s, some companies set up centralized research facilities, but many of these did not yield the hoped-for synergism—in many cases, apparently, because the different parts of the company were in businesses too unrelated to one another.

On the other hand, Raytheon Co. was highly successful in transferring its microwave expertise to its newly acquired Amana appliance subsidiary in 1967, resulting in the counter-top microwave oven. That was done through a new-products business group set up specifically for such purposes. And more recently, this group, headed by Vice-President Palmer Derby, brought the company's microwave talent to bear on its Caloric subsidiary's product line, resulting in a new, combination microwave-electric range.

In such ways, industry can maximize its potential for innovation in the most adverse environment. But the future health of the nation's economy, many experts believe, requires a much more benign environment for industrial R&D than has existed over the past decade. And Jordan Baruch, the enthusiastic leader of the multi-agency federal study, believes that such an environment is likely to emerge as a result of the Administration's concern.

"We may have bitten off more than we can chew," notes Frank Press, "and it may be that we can't get much done in a year. But even if it takes three or five or 10 years, I think it is historically very important." ●

● Mr. MATHIAS. Mr. President, I welcome the opportunity to join Senator DOLE, Senator BAYH and others in introducing the "University and Small Business Patent Procedures Act."

The patent system has served this country well since the beginning of the Republic. It protects and nurtures the creative genius of our inventors, and accounts in great measure for the industrial might of the country. Not only does it give the inventor a chance to make a profit from his discoveries, but it gives his competitors a chance to "invent around" his discovery—refining it, improving it, even making it obsolete.

Abraham Lincoln observed that the patent system "added the fuel of interest to the fire of genius." Our bill will restore the fuel that the Department of Health, Education, and Welfare has cut off.

I say this because of the freeze the Department has imposed on the granting of greater rights in inventions that were made under Department-funded grants and contracts to universities that do not hold Institutional Patent Agreements with the Department.

Specifically, I have been informed that the Johns Hopkins University petitioned the Department for greater rights in two such inventions over a year ago and that, to date, no determination has been made. One of the inventions is a pharmaceutical composition that is contemplated to be useful in the treatment of various liver disorders. In fact, related drugs invented under Department-funded grants by the same investigator have been licensed in a number of countries and are already being marketed in Europe. The Johns Hopkins University is apprehensive that failure to obtain greater rights in the invention could jeopardize efforts to commercialize the drug, resulting in loss of its benefit to the public.

Our bill will solve this problem by allowing universities, nonprofit organizations, and small businesses to obtain limited patent protection on discoveries they have made under Government-supported research if they spend the additional private resources necessary to bring their discoveries to the public. It will restore that "fuel or interest" that Abraham Lincoln thought so important.

The bill is a good one, Mr. President, and I urge all of our colleagues to support it.●

By Mr. MOYNIHAN:

S. 3497. A bill to amend the Internal Revenue Code of 1954 to allow a taxpayer who does not itemize his deductions to deduct amounts paid as State and local income taxes from gross income; to the Committee on Finance.

Mr. MOYNIHAN. Mr. President, I am today introducing a bill which addresses a problem of great seriousness to millions of taxpayers—the problem of ever-increasing State and local income taxes.

State and local income taxes have more than doubled as a percentage of personal income in the last two decades, and have risen much more quickly than Federal income taxes. Since the inception of the graduated income tax in 1913, State and local taxes have been deductible from income for Federal tax purposes. However, as the zero bracket amount has risen, fewer and fewer taxpayers find it advantageous to itemize deductions. As a result, fewer and fewer Americans are in fact able to deduct State and local in-

come taxes on their Federal tax returns. With State and local income taxes rising, it is obvious that many Americans are very much caught in this crunch.

My bill would allow all taxpayers to deduct their State and local income taxes, regardless of whether they itemize deductions. Most of the benefits of this bill will go to taxpayers earning under $30,000, many of whom have seen their tax burden increase significantly in the last few years.

I urge my colleagues to support this measure.

I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3497

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 193. STATE AND LOCAL INCOME TAXES.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a deduction for the taxable year within which paid or accrued State and local income taxes (within the meaning of section 164(a) (3)).

"(b) APPLICATION WITH SECTION 164.—No deduction shall be allowed under this section for any taxable year for which the taxpayer claims the deduction allowed by section 164 (relating to taxes).".

(b) Section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting after paragraph (13) the following new paragraph:

"(14) STATE AND LOCAL INCOME TAXES.—The deduction allowed by section 193.".

(c) (1) Paragraph (1) of section 57(b) of such Code (defining adjusted itemized deductions) is amended—

(A) by inserting "(determined without regard to paragraph (14) of section 62" after "adjusted gross income" in subparagraph (A), and

(B) by striking out "the taxpayer's adjusted gross income for" and inserting in lieu thereof "the taxpayer's adjusted gross income (determined without regard to section 193) for".

(2) Subparagraph (E) of section 170(b) (1) of such Code (relating to definition of contribution base) is amended by inserting "and without regard to section 193" after "section 172".

(3) Paragraph (1) of section 213(a) of such Code (relating to allowance of deduction for medical, dental, etc., expenses) is amended by inserting "(determined without regard to paragraph (14) of section 62)" after "adjusted gross income".

(4) Subsection (b) of section 213 of such Code (relating to limitation with respect to medicine and drugs) is amended by inserting "determined without regard to paragraph (14) of section 62)" after "adjusted gross income".

(5) Subparagraph (A) of section 3402 (m) (2) of such Code (defining estimated itemized deductions) is amended by striking out "paragraph (13)" and inserting in lieu thereof "paragraphs (13) and (14)".

(d) The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 192 the following new item:

"SEC. 193. State and local income taxes.".

SEC. 2. The amendments made by the first section of this Act shall apply to taxable years beginning after December 31, 1978.

ADDITIONAL COSPONSORS

S. 1845

At the request of Mr. BAYH, the Senators from Minnesota (Mrs. HUMPHREY and Mr. ANDERSON), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Montana (Mr. MELCHER), the Senator from Illinois (Mr. PERCY), the Senator from Maryland (Mr. MATHIAS), and the Senator from Alaska (Mr. GRAVEL) were added as cosponsors of S. 1845, a bill to control the use of polygraphs in employment.

SENATE JOINT RESOLUTION 159

At the request of Mr. WALLOP, the Senator from Kansas (Mr. DOLE), and the Senator from New Mexico (Mr. SCHMITT) were added as cosponsors of Senate Joint Resolution 159, providing for disapproval of implementation of national water resources policies, and for other purposes.

SENATE RESOLUTION 560—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. GLENN, from the Committee on Governmental Affairs, reported the following original resolution, which was referred to the Committee on the Budget:

SENATE RESOLUTION 560

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of H.R. 7700. Such waiver is necessary because the bill would authorize expenditures estimated at between $25 million and $33.2 million for Fiscal Year 1979 and the Committee was unable to report on H.R. 7700 by May 15, 1978. H.R. 7700 was referred to the Committee on April 11, 1978, and a companion bill on which the Committee amendment is based was introduced in the Senate on June 23, 1978. Consideration of the legislation was deferred by the Committee's consideration of other priority legislation, including Civil Service Reform (S. 2640) and because the Committee believed it advisable to defer action until the U.S. Postal Service and representatives of its bargaining unit employees had substantially completed negotiations for a new labor-management agreement pursuant to Chapter 12 of title 39, United States Code.

SENATE RESOLUTION 561—SUBMISSION OF A RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. RIBICOFF submitted the following original resolution, which was referred to the Committee on the Budget:

S. RES. 561

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such act are waived with respect to the consideration of S. 2, the Program Reauthorization and Evaluation Act of 1978. Such waiver is necessary because the bill authorizes the enactment of appropriations in fiscal year 1979 and the Committee on Rules and Administration did not report S. 2 until July 13 (legislative day, May 17) 1978. The Committee on Governmental Affairs reported S. 2 on July 1, 1977.

The Congressional Budget Office estimates that the cost of implementing the provisions of S. 2 which go into effect in Fiscal Year 1979 would be approximately $1 million, an amount so small that its consideration will not significantly affect the Federal budget. Because the requirements of S. 2 effective in Fiscal Year 1979 which were reported by the Committee on Rules and Administration are nearly identical to the provisions of S. 2 as reported by the Committee on Governmental Affairs the authorization for this activity clearly could have been contemplated to be part of the national budget to the exent that it has any significant fiscal impact.

● Mr. RIBICOFF. Mr. President, I am submitting today a resolution to waive section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2, the Program Reauthorization and Evaluation Act of 1978.

This legislation was reported unanimously by the Committee on Governmental Affairs on July 1, 1977. We are asking a waiver of the Budget Act provisions, however, so that S. 2 may be considered by the Senate in light of the fact that the Committee on Rules and Administration was unable to report this measure until July 13, 1978.

The Congressional Budget Office has estimated that the cost of implementing the provisions of S. 2 which would go into effect in fiscal year 1979 would be approximately $1 million, an amount so small that its consideration would not significantly affect the Federal budget.

Because the requirements of S. 2 as reported by the Rules Committee which go into effect in fiscal year 1979 are nearly identical to the provisions of S. 2 as reported by the Committee on Governmental Affairs, it is fair to say that the authorization for this activity clearly could have been contemplated to become part of the national budget to the extent that it will have any significant fiscal impact.●

AMENDMENTS SUBMITTED FOR PRINTING—DEPARTMENT OF EDUCATION—S. 991

AMENDMENT NO. 3588

(Ordered to be printed and to lie on the table.)

Mr. STEVENS (for himself, Mr. YOUNG, Mr. GOLDWATER, Mr. CHILES, Mr. ANDERSON, Mr. BARTLETT, Mr. CHURCH, Mrs. HUMPHREY, Mr. HANSEN, Mr. BURDICK, Mr. JACKSON, Mr. GRAVEL, and Mr. MATHIAS) submitted an amendment intended to be proposed by them, jointly, to S. 991, a bill to establish a Department of Education, and for other purposes.

Mr. STEVENS. Mr. President, on behalf of myself and Senators YOUNG, GOLDWATER, CHILES, ANDERSON, BARTLETT, CHURCH, HUMPHREY, HANSEN, BURDICK, JACKSON, GRAVEL, and MATHIAS, I submit an amendment to S. 991, a bill to establish a Department of Education, and for other purposes, and ask that it be printed.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. CHILES. Mr. President, the Subcommittee on Federal Spending Practices and Open Government is announc-

ing the continuation of hearings on the General Services Administration contract fraud investigation on Monday, September 18, at 10 a.m., in 3302 Dirksen Senate Building.

Any inquiries regarding the hearing should be directed to Mr. Ronald Chiodo, subcommittee chief counsel and staff director (244–0211).●

SUBCOMMITTEE ON THE CONSTITUTION

● Mr. BAYH. Mr. President, the Subcommittee on the Constitution has scheduled 2 additional days of hearings on S. 1845 proposing legislation to protect the rights of individuals guaranteed by the Constitution of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of polygraph type equipment for certain purposes, for Tuesday, September 19, 1978, beginning at 9 a.m. in room 6226, Dirksen Senate Office Building, and Thursday, September 21, 1978, beginning at 9 a.m. in room 5110, Dirksen Senate Office Building.

Any persons wishing to submit written statements for the hearing record should send them to the Subcommittee on the Constitution, suite 102–B, Russell Senate Office Building, Washington, D.C. 20510.●

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

● Mr. ABOUREZK. Mr. President, I wish to announce that the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, will hold a hearing Thursday, September 14, 1978, at 10 a.m., concerning the feasibility of administering the natural gas conference report. Hearing will be in room 2228, Dirksen Building.●

ADDITIONAL STATEMENTS

ALCOHOL FUELS IN BRAZIL

● Mr. BAYH. Mr. President, there has been quite a bit of publicity given recently to the Brazilian Government's strong support of the use of alcohol fuels in that country. Earlier this summer, the Wall Street Journal published an article on the subject, which I reprinted in the RECORD for the information of my colleagues.

Recently, Mr. President, the Washington Post also contained an article on the use of alcohol—both in pure form and in blends with gasoline—by Brazilians in their automobiles. There are still those who say that alcohol fuels cannot work, or are economically feasible, but the Brazilian experience is proving them wrong.

Mr. President, I ask that the Washington Post article entitled "Gas Guzzlers Becoming Alcoholics in Brazil," be printed in the RECORD at this point.

The article follows.

GAS GUZZLERS BECOMING ALCOHOLICS IN BRAZIL

(By Larry Rohter)

SAO PAULO, BRAZIL.—For the last year, hundreds of state-owned cars with stickers saying "This Vehicle Is Powered by Alcohol" have been driven around this city of more than 8 million people.

Local auto parts shops sell a $200 kit to run on pure alcohol.

A nearby industrial center has just ordered a fleet of non-polluting alcohol-powered buses. In half a dozen major cities, Brazilians now fill the tanks of their car with "gasohol"—a mixture of 80 percent gasoline and 20 percent ethyl alcohol.

That mixture requires no engine modification. By 1980, when alcohol production is to reach 1 billion gallons annually, all pumps are to offer only gasohol or alcohol.

The president of the Brazilian Automobile Manufacturers' Association, Mario Carrero, has predicted that by 1981 more than 16 percent of all cars built here—currently 1 million per year—will come equipped with engines that burn pure alcohol.

Only a few years ago, none of these projects would have been considered practical. In the heady days of Brazil's economic upsurge in the early 1970s, planners here followed the example of the United States and other industrialized countries and looked to cheap gasoline to fuel the booming economy. They gave little thought to "nonconventional" energy sources.

Today, however, Brazil imports 83 percent of its petroleum, costing $4 billion yearly—the largest oil import bill in the Southern Hemisphere. Now, Brazil is seeking its salvation in one of the oldest and most plentiful substances known to man: alcohol distilled from sugar cane, manioc and other tropical plants that grow abundantly in this giant land.

The effort is already far enough along that energy experts consider Brazil the world leader in using alcohol as a motor fuel. This year alone, Brazil's alcohol program will result in the consumption of 635 million gallons of ethyl alcohol either as a gasoline substitute or supplement.

"This is one area of energy research and development in which the Brazilians have an advantage not only over us, but over everybody else," said a White House aide during President Carter's March visit here, when the United States and Brazil agreed on an energy information exchange program. "There are really a lot of things for us to learn from them."

The process by which vegetable material—or "biomass," as it is technically known—is transformed into alcohol fuel is simple. Brazilians have been converting sugar cane into alcohol by fermentation since colonial days, and ethyl alcohol was mixed with gas as early as the 1930s, when record low prices of sugar brought on by the worldwide depression forced Brazil to divert part of its bumper crop into fuel.

But systematic investigation of the large-scale use of alcohol as a gasoline substitute or additive began only with the advent of the international energy crunch in 1973. In the last five years Brazil's National Alcohol Commission has approved some 170 projects and earmarked $800 million for biomass conversion and engine modification efforts.

"The emphasis has been not so much on research and development as on the expansion and implementation of programs that already existed on paper," says an American official in Brasilia. "They've mostly done things like modernize old sugar mills and improve their distribution system."

But at the aerospace and technology Center, a government research facility near here, scientists have undertaken 34 different programs to design engines that will run on pure alcohol or to convert gasoline engines to alcohol at minimum cost. Elsewhere, agronomists are engaged in genetic research in an attempt to increase yields of crops that will be distilled into alcohol.

Thus far, sugar cane alcohol has received more attention from the Brazilians, but Petrobras, the giant state oil monopoly, has recently begun operating a manioc distillery near the industrial city of Belo Horizonte that turns out 16,000 gallons of manioc alcohol daily.

Experimental programs conducted in major cities have shown that alcohol, whether derived from sugar cane or manioc, has several major advantages over ordinary gasoline. Although it leaves a slight odor, it burns cooler, cleaner and more efficiently, giving virtually the same mileage as gasoline, but without leaving lead or sulphur pollutants. Hydrocarbon residues "can be lowered to negligible levels," according to a recent study.

While alcohol engines are harder to start than ones that run on gasoline, this is less of a problem in Brazil's tropical climate than it would be in the temperate United States. The Brazilians attach a gadget to the motor that starts the car each day on a small quantity of pure gasoline. After that, they say, the residual heat is sufficient for the pure alcohol to catch without difficulty.

The converted cars use normal gas tanks and the experts say they have encountered no problems with evaporation. For all the interest in alcohol as fuel, the government—which is pouring billions of dollars into nuclear and hydroelectric energy programs—has proven more reluctant to take what one foreign energy expert calls "the big leap" to pure alcohol.

"There are no technological reasons whatsoever to prevent alcohol from eventually taking the place of gasoline," said Professor Jose Goldemberg of the University of Sao Paulo, president of the Brazilian Society of Physics and one of the strongest advocates of the biomass program. "What's holding them back are political and economic considerations."

"Petrobras opposes the alcohol program because the pump price it charges for gasoline is a purely artificial one that is four times the actual cost," Goldemberg said. "Since alcohol currently costs twice as much to make as gasoline, that means both Petrobras' profits and government tax revenues would drop if a crash program to replace gasoline with alcohol were put into effect."

Proponents of the alcohol program say these economic shortcomings are offset by other gains. In widely publicized speeches recently, two influential government ministers argued that a full-scale pure alcohol effort would generate jobs in Brazil and that all expenses incurred would be in cruzeiros not dollars—thus avoiding adverse effects on Brazil's uncertain balance-of-payments situation.

In the long run, say both foreign and Brazilian energy experts, there is no doubt that alcohol will emerge as an economically attractive source of energy, both for Brazil and for other nations.

"The trend seems to be that while oil prices will rise, the price of alcohol will continue to drop, perhaps by as much as 20 percent as methods of production become more efficient," says a U.S. official.

Some Brazilian officials are already looking ahead a decade and predicting that their nation will be able to export alcohol and alcohol technology to Africa, Latin America and perhaps even the industrialized world. Patents have already been taken out by Brazil on engine modifications and distillers improvements that have been developed here.

"Biomass energy just may be the wave of the future," says the U.S. official. "If it is, the Brazilians are going to have the jump on the rest of us."

Biomass fuels were once associated with underdevelopment and Brazilians have had to overcome their pride to enter the field. They note, however that others are following West German and Scandinavian scientists have bought the results of Brazil's studies.●

NATIONAL GALLERY DESERVES KUDOS FOR HIRING VIETNAM-ERA VETERANS

● Mr. CRANSTON. Mr. President, I would like to take this opportunity to bring to the attention of my colleagues the efforts being made by the National Gallery of Art to hire Vietnam-era veterans under the veterans readjustment appointments (VRA) authority in section 2014 of title 38, United States Code. As Members know, VRA appointments are excepted appointments in the Federal civil service designed to help veterans who served on active duty during the Vietnam era and who have less than 14 years of education find suitable employment during the year following their release from the service. The VRA program has provided employment opportunities for over 100,000 Vietnam-era veterans since the program's inception in 1970.

As my colleagues are aware, on June 1, 1978, the new East Wing of the National Gallery was opened to the public. In anticipation of the opening, the National Gallery began increasing its security staff in January 1978; and, between January 1 and May 31, 62 Vietnam-era veterans received VRA appointments as security guards.

These veterans were actively recruited by the Gallery's personnel office, which placed advertisements in the local newspapers describing the eligibility requirements for a VRA appointment. In addition, the Gallery asked the Department of Manpower of the District of Columbia and the Civil Service Commission for lists of VRA eligibles. Finally, persons applying for security guard positions at the National Gallery were questioned to determine their eligibility for a veterans readjustment appointment.

Mr. President, as chairman of the Committee on Veterans' Affairs, I would like to congratulate the National Gallery for its policy of hiring educationally disadvantaged Vietnam-era veterans under the VRA program and to express thanks and appreciation for a job well done to those officials of the National Gallery who are responsible for this policy.●

SENATOR KENNEDY AND THE SOVIET UNION

● Mr. RIBICOFF. Mr. President, during the past several months our relations with the Soviet Union have been difficult. I have shared with many of my colleagues a sense of apprehension that we and the other great super power might be entering a period of rising tension. Lately there have been signs that give cause for some encouragement. The most recent is the successful trip to the Soviet Union by the distinguished senior Senator from Massachusetts.

In November Senator BELLMON and I will lead a delegation of 13 Senators to the Soviet Union.

Mr. President, I believe that the United States and the Soviet Union must learn to live with each other.

Senator KENNEDY returned to the United States with the welcome news that 18 families will be allowed to emigrate; all 18 had previously been denied permission to leave the Soviet Union. There are some other signs which could be cause for hope that relations are improving. The release of International Harvester official Francis Crawford, despite the dubious grounds for arresting him in the first place, is welcome news. And the decision to relegate to a minor issue the accusations against reporters from the Baltimore Sun and the New York Times suggest the realization that such treatment of reporters is not conducive to good relations.

Mr. President, we are indebted to our colleague from Massachusetts for a productive week in the Soviet Union, for having renewed the basis for cooperation between the Soviets and Americans. His statement upon returning from the Soviet Union is an account of the positive directions we should be pursuing. I ask that the statement be printed in the RECORD.

Today's Washington Post has an editorial entitled "Senator KENNEDY and the Kremlin" which underscores the importance of this mission to Moscow. The Post observes that "The Senator played his part expertly." I ask that this editorial be printed in the RECORD.

The material follows:

STATEMENT OF SENATOR EDWARD M. KENNEDY ON HIS VISIT TO THE SOVIET UNION

I returned yesterday evening from a one-week visit to the Soviet Union, where I had the opportunity to raise a number of major issues in the areas of health care, foreign policy and human rights.

The purpose of this visit was to attend an international conference on primary health care in Alma Ata, which was attended by representatives of over 100 nations. The conference was sponsored by WHO and UNICEF, and the United States delegation was headed by Assistant Secretary of Health Julius Richmond.

As a member of the delegation, I addressed the conference on the issues of international health priorities in the industrial world and the developing nations. Each year, tens of millions of people, particularly children and the elderly, die of curable diseases. The industrial nations have an obligation to do far more than they are now doing to alleviate this needless worldwide tragedy. The Alma Ata Conference was an important step in helping all nations to understand this challenge and move forward to meet it.

I was also able to visit the Soviet cities of Samarkand and Tashkent, where I had the opportunity to meet with students and health professionals and to visit urban and rural clinics. One of the most impressive aspects of my visits to these cities was the overwhelming desire for peace expressed by the many Soviet people I met. They often emphasized their friendship for the United States, and spoke with great feeling of the loss of over 20 million Soviet lives in their common cause with America in World War II.

In Moscow, I met for two hours with President Brezhnev and was also able to meet with other Soviet officials. The primary emphasis of our discussions was on arms control and military deployments, the political issues between our two nations, and the issue of human rights.

The relationship between the United States and the Soviet Union today is more tense and difficult than when I last met with President Brezhnev in 1974. He indicated to me, however, that he is strongly committed to an effective and equitable SALT II agreement, to the rapid negotiation of a comprehensive nuclear test ban, and to other agreements to end the nuclear and conventional arms races.

While obvious obstacles remain in the way of satisfactory U.S.-Soviet relations, this commitment to ending the arms race is shared by the Carter Administration and by the overwhelming majority of the American people. The prevention of nuclear war is too important to the fate of our two nations and the world to be made hostage to other political issues between us.

This does not mean, of course, that we must ignore the other issues that divide us. In particular, in my discussions with President Brezhnev, I emphasized three other areas of deep concern—the need for military restraint by the Soviet Union around the globe, the need for greater political cooperation between our two nations on issues that divide us and the need for greater respect for human rights and social justice.

First, I stressed the concern of the United States about destabilizing military deployments that fuel the arms race. Examples on their side are th SS–18 heavy strategic missile, the SS–20 intermediate-range missile, and the Soviet tank deployments in Central Europe. They stressed to me their concern about our cruise missiles and our M–X and MAP options for strengthening our ICBM forces.

Second, I emphasized the need to develop a more constructive, predictable and enduring relationship between our two nations. I suggested as examples the desirability of greater cooperation in reaching just and comprehensive settlements in the Middle East and Southern Africa. They emphasized to me their perception of a global, anti-Soviet campaign in which their interests and responsibilities are undermined. They stressed, for example, that they would have no objection to normalization of relations between the United States and the People's Republic of China. But they warned sharply against any anti-Soviet manipulation by the United States of our developing relations with China.

Third, I spoke of the strong commitment of the American government and the American people to human rights and social justice. I emphasized the depth of concern in the United States and other Western nations for Soviet dissidents, especially as symbolized by the trials of Anatoly Shcharansky and other Soviet men and women of conscience sentenced over the past few months.

At the same time, I welcome the high emigration rates permitted by the Soviet Union thus far this year. I emphasized that Soviet actions facilitating the emigration process for those desiring to leave—including dissidents already sentenced—would make a profound contribution to detente and cooperation between our two countries. Although I was disappointed with the conviction of Francis Crawford, I was pleased with his release by the Soviet authorities while I was in Moscow.

The most important tangible result of the visit came in the discussions concerning the refuseniks. While in the Soviet Union I raised a large number of cases involving individuals wishing to emigrate. Some of these cases will be pursued over the longer term.

But I am pleased to be able to report that the Soviet Government has already agreed to reconsider the cases of 18 specific families. I have every expectation that all of these families will be permitted to leave for the United States or Israel in the very near future.

One of these cases involves Dr. Benjamin Levich and his wife. Dr. Levich is a world-renowned physical chemist and a member of the Soviet Academy of Sciences. He has been invited to accept an appointment as a professor on the faculty of the Massachusetts Institute of Technology, and he has also been offered positions in numerous other distinguished universities in the United

States and overseas. Permission for Dr. Levich and his wife to emigrate will be an extraordinary gesture by the Soviet Government and will, I believe, contribute to the improvement of relations between our nations.

In addition, it is my expectation that Mr. and Mrs. Boris Katz and their daughter Jessica will be permitted to join their relatives in Massachusetts. The Katz family has attracted special concern in the United States because of Jessica's inability to digest normal food. It will be particularly appropriate if she and her family are permitted to emigrate in the aftermath of the international health conference in Alma Ata.

In addition to these two cases, there are 8 additional cases of divided families who will be permitted to join their relatives in Massachusetts, and eight cases of families who will be permitted to emigrate to Israel.

All 18 of these families represent individuals who have been denied permission to emigrate for periods as long as eight years. In many cases, members of these families had demonstrated, unsuccessfully, for the right to emigrate as recently as last spring.

On the night before leaving Moscow, I was able to meet privately with Andrei Sakharov and both the mother and brother of Anatoly Scharansky. Boris Katz was also a member of the group, and others included Jacob Alpert, Ellen Bonner, Eitan Finkelstein, Alexander and Juliet Lerner, Naom Meman, Abe Stolar and Victor Yelistratov.

The meeting was extremely moving. These brave people spoke eloquently and with great passion about their plight and about their commitment to human rights. They also spoke with deep feeling of their appreciation for the continuing support they have received from the American people, the Congress and the Administration.

Almost all of the dissidents agreed with Dr. Sakharov that our two nations have an obligation to make progress on arms control. They urged us to conclude the SALT II agreement as soon as possible, on its own merits. They felt strongly not only that the agreement would be in the highest interest of peace, but also it would create a more favorable environment to pursue our concerns about human rights.

This is a critical time for our two countries. Tensions and areas of confrontation have increased in recent years, and they have reached a peak this summer.

But both nations must see the danger of continued confrontation. As the only two nations with the power to destroy the world, the United States and the Soviet Union have a special obligation to reduce the risk of confrontation, to enhance the cause of peace, and to lay the groundwork for greater cooperation in the future.

In recent weeks, there have been positive signals from the Soviet Union. These developments offer hope that the recent downward spiral of Soviet-American relations may be at an end, and that an opportunity for progress may be available.

I have expressed my views to the Carter Administration and I continue to give my strong support to the Administration's efforts on SALT and in other areas. My hope is that both Congress and the Administration will be able to seize the moment and use the current fragile thaw to achieve the successful conclusion of the long-awaited SALT agreement and to move forward on all the other areas that concern us.

The 18 family cases are listed on the following page.

LIST OF EIGHTEEN FAMILY CASES CITED BY SENATOR KENNEDY

FAMILY EXPECTED TO LEAVE THE SOVIET UNION

Dr. and Mrs. Benjamin Levich, Soviet Academy of Sciences.

PERSONS EXPECTED TO LEAVE THE SOVIET UNION AND JOIN RELATIVES IN MASSACHUSETTS

1. Mr. Jonas Cijunelis of Vilnuis, Lithuania to join Mrs. Glayds Cijunelis, Mother, Brockton, Mass.

2. Mr. and Mrs. Boris Katz and daughter Jessica of Moscow to join Mr. Victor Katz, Cambridge, Mass.

3. Mr. and Mrs. Mikhail Alexandrovich Kochergin of Moscow to join Mrs. Eita Sheinin, Mother, Brighton, Mass.

4. Ms. Erna Kirkums of Latvia to join Ms. Arvids Kirkum, Sister, Westwood, Mass.

5. Mr. and Mrs. Stepan Mounjoukian and Family Members of Yerevan, Armenia to join Ms. Katherine Keshishian, Daughter Malden, Mass.

6. Mrs. Daiva Sabina Puzauskiene of Vilnuis, Lithuania to join Ms. Kazys Tamosaitis, Aunt, South Boston, Mass.

7. Mrs. Rachil Lvovna Shechtmar of Moscow to join Mrs. Emanuel Borok, Daughter, Newton Center, Mass.

8. Mr. Antanas Stuoka of Kaunas, Lithuania to join Mr. Longines Svenlis, Cousin, Needham, Mass.

9. Mrs. Vera Zarins of Latvia to join Mr. Leonids Tomsons, Brother-in-law, Jamaica Plain, Mass.

PERSONS EXPECTED TO LEAVE THE SOVIET UNION AND JOIN RELATIVES IN ISRAEL

1. Ms. Regina Isaacouna Berman, Moscow.
2. Mr. Alexander Amos Bolshoi, Moscow.
3. Ms. Galena Gregory Niznyekova, Moscow.
4. Ms. Gegagena Jacob Rezker, Moscow.
5. Mr. Lev David Roytburg, Odessa.
6. Ms. Olga Constantinovna Serova, Moscow.
7. Mr. Vadim Eusay Struzman, Leningrad.
8. Mr. Michael Anatole Zinberg, Moscow.

SENATOR KENNEDY AND THE KREMLIN

It's hard to exaggerate the extent to which relations between the Soviet Union and the United States rise and fall on readings and misreadings of the other country's domestic political scene. In the last 18 months, for instance, President Carter overloaded the Soviet political circuit, which consists of about a dozen people, with excessive public demands for major internal changes and "deep" cuts in strategic arms. Meanwhile, the Soviet leadership sent waves of distaste and alarm through the American political community by its human-rights violations, African adventures and arms-building programs. More recently, both countries have seemed aware that if they did not act more carefully toward each other, all prospect of substantive improvement in their relations would have to be put off for an indefinite time. Yet a narrowing of the gap sufficient to allow them to work effectively on their most important piece of common business, a strategic arms limitation treaty, has seemed to lie beyond their grasp.

Precisely here lies the potential importance of Senator Edward Kennedy's visit to Moscow. He went (ostensibly to a health conference) at a moment when the Kremlin was surely grateful to find a prominent American politician, one closely identified with a moderate viewpoint, ready to breach the no-visits line imposed by the administration after the Kremlin's recent human-rights trials. Presumably, the Kremlin also has heard that Mr. Kennedy may some day run for the presidency.

The senator played his part expertly. With a discretion contrasting sharply with the up-front moralistic tones of Jimmy Carter, he asked Leonid Brezhnev about Soviet Jews denied permission to emigrate. As a result, not only the families he asked about, but also a number of families he had not asked about, were assured of release. The Soviet authorities obviously were ready to show that, if their pride and sense of the proprieties are respected, they can behave more flexibly on human rights. Mr. Kennedy's tactful approach let them show it.

On the strategic arms the senator seems to have taken the most responsible course a "liberal" in such circumstances could take. Rather than merely profess his desire for détente, he tried to convey a sense of the political difficulties that have been created in Washington for both the negotiation and ratification of SALT by the Soviet Union's own policies. That let Mr. Brezhnev express his concern over the United States' new high-technology weapons programs. He also expressed his belief, shared by his guest, that a failure to consummate a mutually acceptable SALT agreement soon would have harmful results extending considerably beyond strategic arms.

The Carter-Kennedy relationship is the stuff of endless popular fascination. In this instance, the senator, by acting in his own way, was in an excellent position to make the administration's point that progress in SALT hinges in large measure on the Kremlin's readiness to "disarm" the American right by conducting a reasonable policy. That does not mean that the strategic equation itself is of no consequence. It means that the political equation is of great consequence. That is what "linkage" is all about. The evidence of the Kennedy visit is that Moscow is getting the message.●

ERA

● Mr. BAYH. Mr. President, on August 15, the House of Representatives approved House Joint Resolution 638, a resolution to extend the deadline for ratification of the ERA by a vote of 233 to 189. In the days ahead, I am confident that the Senate will approve this necessary legislation as well.

In considering the resolution to extend the deadline for the ERA, the House of Representatives relied strongly on the majority views of the House Judiciary Committee. So that my colleagues in the Senate may share these views on this important topic, I ask that the majority views as reported in House Report No. 95–1405 be printed in the RECORD at this point.

REPORT NO. 95–1405—PROPOSED EQUAL RIGHTS AMENDMENT EXTENSION

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 638) extending the deadline for the ratification of the equal rights amendments, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution as amended do pass.

The amendment is as follows:

On the first page, beginning in line 8, strike out "within" and all that follows through line 10, and insert in lieu thereof "not later than June 30, 1982.".

EXPLANATION OF AMENDMENT

The committee amendment to reduce from 7 years to approximately 3 years and 3 months the extension of time being granted was adopted because the committee believes the shorter time reflects a more reasonable extension than the original proposal for 7 additional years. The extended period—approximately 3 years and 3 months—is more in keeping with this Congress' view of the contemporaneous consensus required for valid ratification of a constitutional amendment.

The original ratification period designated by the 92d Congress for the equal rights amendment will end on March 22, 1979. This date coincides with the anniversary of the amendment's final passage by the Congress. The final date for ratification was changed by the amendment from March 22 to June 30

in order to coincide with State legislative sessions in the unratified States in 1982 and thereby give those States an opportunity to consider the amendment in 1982.

PURPOSE

The purpose of House Joint Resolution 638 is to extend the ratification period for the proposed equal rights amendment until June 30, 1982. The current ratification period ends on March 22, 1979.

HISTORY OF LEGISLATION

On October 26, 1977, House Joint Resolution 638 was introduced to extend the ratification period for the proposed equal rights amendment an additional 7 years beyond the 7 years previously provided for in the original resolution passed by the 92d Congress in 1972. The resolution was referred to the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary which conducted 6 days of hearings. The subcommittee took testimony from 19 witnesses, including the U.S. Department of Justice and three panels of constitutional experts, as well as State legislators and individuals and organizations involved in the ratification process. The subcommittee also solicited comments from a number of additional constitutional scholars and received statements from dozens of individuals and organizations.

On June 5, 1978, the subcommittee recommended House Joint Resolution 638 for favorable action by the full committee. The full committee met on July 18, 1978, to consider the joint resolution and, on that day, ordered it reported favorably to the House, with an amendment. The full committee vote on House Joint Resolution 638, as amended, was 19 yeas and 15 nays.

GENERAL STATEMENT

The equal rights amendment was first introduced in Congress in 1923. It took nearly 50 years for the amendment to win congressional approval. But when it finally came, that approval was overwhelming: On October 12, 1971, the House passed the resolution proposing the amendment to the States (H.J. Res. 208) by a vote of 354 to 23. The Senate passed the resolution on March 22, 1972, by a vote of 84 to 8. The resolution reads as follows:

"HOUSE JOINT RESOLUTION 208

"Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That

"The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SECTION 3. This amendment shall take effect two years after the date of ratification."

Since the amendment was first proposed in 1972, 35 States have ratified it. At the present time, three more are necessary to achieve the three-fourths required by the Constitution before the amendment can become a permanent part of our fundamental law.[1]

HISTORY OF THE TIME LIMITATION ON RATIFICATION OF THE ERA

As has become customary in recent constitutional amendments, House Joint Resolution 208 contains a 7-year period for ratification in its proposing clause.[2] This period expires on March 22, 1979, 7 years to the day after final passage of the amendment by the Congress.

There is little record of the reasons for including a time limitation in the resolution. As originally introduced in 1923, the equal rights amendment contained no limitation. Indeed, during the 91st Congress, prior to passage of House Joint Resolution 208, the House adopted a resolution proposing the amendment to the States which did not contain a time limit for ratification. On August 10, 1970, during the floor debate immediately prior to passage of this earlier version of the amendment, House Joint Resolution 264, Congressman Emanuel Celler, then chairman of the House Judiciary Committee, pointed to the absence of a time limit for ratification as one of the reasons for his opposition to the amendment (116 Cong. Rec. 28012). Nevertheless, the resolution was passed by a two-thirds vote in the House without a deadline for ratification (116 Cong. Rec. 28036–37).

On October 9, 1970, as the Senate considered House Joint Resolution 264, Senator Marlow Cook, one of the Senate sponsors of the amendment, addressed himself to a number of objections to the resolution, among them the absence of a time limit (116 Cong. Rec. 35956). He included in his statement a letter from Prof. Thomas I. Emerson, of Yale Law School, which argued that such a provision was not needed.

Nevertheless, objections to the absence of a time limitation continued and later in the session amendments were proposed by Senator Sam Ervin and others adding a 7-year deadline for ratification. In proposing the deadline, Senator Ervin stated that:

"My other proposed alteration of the original purpose of the resolution would require that this resolution be ratified by three-fourths of the States within 7 years after submission by Congress to them for consideration. This is necessary because we still have floating around some unratified amendments that were submitted at the time of the original submission of the Bill of Rights. We have some other amendments that have been floating around since about 1860. There is no date for their expiration, no time limit for their ratification, and they could be ratified at any time. I do not think it is wise for Congress to submit a proposed constitutional amendment to the States without a time limit for its ratification." [116 Cong. Rec. 36302.]

However, despite the attempts to compromise, no final vote on the resolution was taken by the Senate during the 91st Congress.

In the 92d Congress, the House passed House Joint Resolution 208, containing a 7-year ratification period in the proposing clause. No discussion of the inclusion of this provision appears in the floor debates on the date of passage, October 12, 1971, 117 Congressional Record 35782–35815, but it appears that the provision was added to meet the arguments of the amendment's critics in both the House and the Senate. On March 22, 1978, the Senate passed House Joint Resolution 208 with no further discussion of the time limit. See generally 117 Congressional Record 9517–9598.

Although there was very little discussion on the addition of a deadline for ratification of the amendment on the floor of either House, apart from the few instances mentioned above, there were some references to the issue during the hearings on House Joint Resolution 208 held by the Subcommittee on Civil and Constitutional Rights of this committee in March and April of 1971. These references indicate that the amendment's sponsor, Representative Martha Griffiths, had no objection to a time limit, although she believed none was necessary.

The legislative history reveals no reason for inclusion of the deadline provision other than that such a provision had become customary and several influential Members of both Houses objected to its absence strongly enough that it was eventually added. In addition, the 7-year limitation had received a stamp of approval from the Supreme Court in *Dillon* v. *Gloss*, 256 U.S. 368 (1921). In that case the Court had held that with regard to the deadline in the 18th amendment, Congress had the authority under article V to fix a reasonable time for ratification after the proposal of an amendment. This authority was found to be incident of congressional power to designate the mode of ratification. With regard to the specific 7-year time period involved, the Court simply stated that "it is not questioned that 7 years * * * was reasonable * * *" 256 U.S., at 376.

AUTHORITY OF CONGRESS TO EXTEND

Introduction

The question whether Congress has the authority to extend the time for ratification in the manner proposed, is one of first impression and involves issues of significant constitutional magnitude. Those issues apply not only to House Joint Resolution 638 or the proposed equal rights amendment but to all constitutional amendments, to the role of the Congress in proposing them, and to the role of the States in ratifying them.

Consideration of this resolution by the committee raised an issue no less significant than the extent of the power of Congress under article V of the Constitution. In order to answer this question, the committee's inquiry focused on the existing judicial, congressional, and historical precedents. In addition, the committee consulted a number of constitutional scholars and compiled an extensive record based on the efforts of some of the country's ablest legal minds. Some of the most eminent students of American constitutional law were placed on the record regarding the issues raised by the resolution. The committee also relied heavily on the legal opinion and advice of the Office of Legal Counsel of the U.S. Department of Justice. The Department's opinion was presented to the committee in the form of a legal memorandum prepared for Robert J. Lipshutz, Counsel to the President, in response to a request from the White House for the Justice Department's views on the authority of Congress to extend a time limit for ratification of a constitutional amendment.

The committee concluded that, based on the reasoning in the two relevant Supreme Court cases[3] and the broad powers granted to Congress under artivle V, the authority of Congress to extend a time limit once established may be implied, if the time limis is reasonable and if the action of the 92d Congress in proposing the original time limit is not binding on subsequent Congresses. In favorably reporting House Joint Resolution 638 to the full House, the committee resolves both of those questions in the affirmative and endorses the principle that the Congress has the authority to extend the time period within which the proposed 27th amendment to the Constitution may be ratified.

Discussion of legal authority

Under article V of the Constitution, the Congress has broad authority over the amendment process. The Supreme Court has recognized that as an incident to its article V power to propose amendments to the Constitution, Congress has the power to set a time limit for ratification in order to assure that an amendment has been ratified "within some reasonable time after the proposal" and that the amendment reflects the reasonably contemporaneous "expression of the approbation of the people" in three-fourths of the States. *Dillon* v. *Gloss*, 256 U.S., at 375. The Court considered the question of timeliness of ratification to be one of several "subsidiary matters of detail,"

Footnotes at end of article.

matters which do not go to the substance of the proposed amendment, but which necessarily are delegated to Congress as an incident of its control over the ratification process More specifically, according to *Dillon,* it is the power of Congress under article V to designate the mode of ratification which gives rise to its authority to determine such matters of detail as a reasonable time for ratification. The Court went on to state that Congress may settle this matter of detail in such manner as "the public interests and changing conditions may require."

If it is the power of Congress to designate the mode of ratification from which the power to determine the question of timeliness, it may also be inferred that the exercise of this authority requires only a majority vote. The Constitution is quite explicit about those few instances in which the extraordinary procedure of super majority vote is required. In all other situations, the Founding Fathers clearly intended the principle of majority rule to govern. For example, article V of the Constitution provides, in pertinent part, that—

"Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution or, on the Application of the Legislatures of two thirds of the Several States, 'shall call a Convention for proposing Amendments."

The language of article V thus requires a two-thirds vote for action by Congress in proposing an amendment and in calling a Convention in response to the applications of two-thirds of the State legislatures. Article V goes on to provide that, whether an amendment is being proposed by Congress or a convention called to propose an amendment, the amendment "shall be valid to all Intents and Purposes, as Part of the Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions of three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress." Thus, article V authorizes Congress to propose a "mode of ratification," and does not specify, or even intimate, that Congress must do so by more than a simple majority vote of each House.

It follows that the period for an amendment's ratification lies exclusively within congressional control, to be disposed of by a simple majority of each House.[4] Of course, if a proposed article of amendment contains a time limitation as one of the terms in the text of the amendment itself, a decision by Congress to extend that period after the date would be an attempt retroactively to change the character of an amendment on which other states had already voted. In such cases, based on our reading of the concurring opinion in *Coleman,* some Justices of the Supreme Court might well hold that the matter is one left exclusively to Congress as a non-justiciable political question, but it is possible that a court would decide it had jurisdiction to rule a retroactive alteration in the very terms of an already submitted amendment to be beyond the power of Congress.

The critical considerartion here is that *this is not such a case.* For the proposed 27th amendment, like the 23d, 24th, 25th, and 26th amendments, contained *no* time limitation in its own terms but instead was proposed through a joint resolution whose proposing clause contained the 7-year limitation.

In *Dillon,* the Court was upholding against constitutional challenge the authority of Congress to include a time limitation in the text of a proposed amendment (the 18th amendment—the first to ever contain such a limitation). In a subsequent case, *Coleman* v. *Miller,* 307 U.S. 433 (1939), the Court reaffirmed its holding in *Dillon* and also held that, after an amendment has been proposed and sent to the States for ratification without a specific time limit, Congress has the authority to determine the reasonableness of the intervening time period in deciding the validity of the ratification of the amendment once three-fourths of the States have actually ratified. Thus, in *Coleman,* the Court confirmed the prerogative of Congress to consider and resolve the question of timeliness when "the time arrives for the promulgation of the adoption of the amendment."

In short, the Supreme Court has held that Congress may deal with timeliness as a threshold matter, as *Dillon* held, or as an ultimate question as *Coleman* stated. The question presented to the Congress by House Joint Resolution 638 is whether a middle course may also be pursued. The committee concluded that when the original time limitation was not contained in the text of the amendment itself, and the legislative history does not indicate that the 92d Congress intended the 7-year limitation to be immutable, such a middle course may be pursued. This conclusion was based upon the reasoning set forth above and an analysis of the historical understanding of the previous Congresses which have made use of the time limit device.

History of time limits in constitutional amendments generally

Article V is silent on the subject of time limitations for ratification of constitutional amendments. Congress did not provide for such limitations at any time during the first 125 years of our constitutional history.

The first amendment to contain a time limitation for ratification was the 18th (prohibition), proposed by the 65th Congress in 1917. The legislative history of that amendment indicates that a time limit was added primarily because of the concern expressed by some Members of Congress about a number of unratified amendments which had been pending for over 100 years. In first proposing that a time limitation be added to the amendment, Senator Ashurst made the following statement during the Senate debate:

"Mr. President, it is startling to investigate and then reflect for a moment as to the abuses that have come and that may in the future come by a failure or a refusal to set a time within which an amendment may be adopted. * * *

"On September 15, 1789, 12 constitutional amendments were presented by the first Congress to the various States for their adoption or their ratification. * * *

"The first two amendments were not adopted.

"The other 10, numbered from 3 to 12, inclusive, became a part of our governmental system and a part of our Constitution, and and they may be found on page 97 of the First Statute. Opposite amendments Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 is marked by the early printers the word "Adopted"; "Adopted"; and so forth; but after the first two that were proposed to the Constitution there is a blank, indicating to us, of course, that those two amendments are still pending. They are before the American people now and have been for 128 years, and are subject to ratification or rejection by the States. And now, Mr. President, after those two proposed amendments, to wit, Nos. 1 and 2, had been in nubibus, 'in the clouds,' for 84 years, the State Senate of the State of Ohio in 1873 resurrected amendment No. 2, that was proposed in 1789, and passed a resolution of ratification through the Senate of the State of Ohio. It would seem to me that a period of 128 years or 84 years within which a State may act is altogether too long, and I am prepared to and will support an amendment limiting the time in the case of this amendment or any other amendment to 10, 12, 14, 16, 18, or even 20 years, so that we will not hand down to posterity a conglomerate mass of amendments floating around in a cloudy, nebulous, hazy way, which a State here may resurrect and ratify and a State there may galvanize and ratify. I believe that we ought to have a homogeneous, constant, united exertion and certainly a contemporaneous action with reference to these various proposed amendments." [55 Cong. Rec. 5556–57 (1917).]

Despite Senator Ashurst's initial suggestion of 10 to 20 years, the time limit eventually agreed on was 7 years. Since that time, with the exception of the 19th amendment (women's suffrage), which contained no time limit, each subsequent amendment to the Constitution has contained a 7-year ratification period.[5] The legislative history regarding time limits after the 18th amendment is quite sketchy, but 7 years appears to have been chosen largely as a matter of custom and because the original 7-year limit in the 18th amendment had received the stamp of approval of the Supreme Court in *Dillon* v. *Gloss,* referred to above.

In recent years, Congress has altered the manner in which it has handled time limitations. The 18th, 20th, 21st, and 22d amendments provided for ratification within 7 years in the text of the amendments themselves. Thus, in each of those cases, the time limit was ratified by the States when they ratified the amendments. From the 23d amendment to the present proposed equal rights amendment, the time period has appeared in the proposing clause, rather than the actual amendment. The legislative history of the 23d amendment indicates that the reason for the change was a desire on the part of Congress to avoid "cluttering up" the Constitution with language that had no bearing on the substance of the amendment itself, or on the merits of the issue the States were being asked to consider.[6]

In deciding that it was more appropriate to deal with such matters as time limits in the proposing clause of a proposed amendment, than to place them in the text of the amendment itself, where, once ratified, they would remain for all time, a permanent part of our Constitution, Congress made a decision with significant legal consequences. In so treating the time limit, Congress separates the question of appropriate time limits and the issue of what constitutes contemporaneous approval from the initial decision of Congress to propose an amendment. By separating the time limit from the body of the amendment itself, Congress retains authority to review the limit should the circumstances so warrant.

In examining the legal consequences of this separation, the committee found persuasive the testimony of the Department of Justice:

"*Dillon* and *Coleman* make clear that this determination of the time period for reasonably contemporaneous ratification is a separate and distinct question from the decision of the Congress which proposed the amendment.

"The question of timeliness of ratification is, in the words of the *Dillon* case, a question of detail that does not go to the substance of the amendment. Congress had the power to make the time period a substantive part of the amendment by including the time limit within the text of the amendment itself. However, Congress did not do so. Instead, the 92d Congress stated in the proposing resolution that the States should have at least 7 years within which to consider the equal rights amendment. * * *

"The effective operation of that clause was a determination by the 92d Congress that 7 years was a reasonable time; that the States should have at least 7 years within which to consider ratification of this amendment. That did not, under our analysis, foreclose

Footnotes at end of article.

the Congress from exercising its power and its responsibility as found by the decision in *Coleman* at a later time to reexamine the circumstances, the changed circumstances, from the time of adoption of the amendment to determine at that time whether those circumstances were such that the ratifications that had taken place during this period were in fact valid. * * *

"The question of timeliness, the period of time, is a question qualitatively different from the question of the text of the amendment itself.

"The language that * * * referred to here that setting a time period is a matter of detail to be dealt with as necessary by the Congress. That, as distinguished from the requirement of two-thirds vote, or of three-fourths ratification, or the text of the amendment itself, is a separate matter to be decided by the Congress. * * *

"[T]hat matter of detail could be in my opinion elevated to a matter of substance by the inclusion of that matter of detail in the text of the amendment itself. * * *

"[I]t is possible as did several Congresses before with respect to three amendments, to take this matter of detail and elevate it to a matter of substance by putting it in the text. However, when that is not done, then it remains in my view within the power of Congress to regulate that detail, that question of timeliness."

Thus, when the committee recently considered House Joint Resolution 554, to provide for representation for the District of Columbia in Congress, an amendment was adopted to add the time limit language into the body of the proposed amendment. The stated purpose of this amendment was to clarify that this Congress intends to set a binding 7-year limitation in which the State legislatures may ratify this proposed constitutional amendment. The basis for this change was a recognition on the part of the committee that unless the language appeared in the body of the proposed amendment it may not be controlling on subsequent Congresses or on the State legislatures.

Reasonableness of time limit

In answering the question as to how Congress is to determine the reasonableness of the time limit, the Court in *Coleman* v. *Miller* set out a number of factors for Congress to consider. Congress must determine whether the conditions giving rise to the amendment in question have so far changed since its submission to the States as to make the proposal no longer responsive to the needs which inspired it or whether conditions are such as to intensify the feeling of need and the appropriateness of the proposed remedial action. Congress must make this determination by taking into consideration all the political, social and economic conditions which have prevailed during the period since the submission of the amendment.

In order to make that determination in this instance, Congress must assess whether the proposed equal rights amendment remains a vital political issue on which public debate and state legislative consideration should be allowed to continue. More specifically, the Court in *Coleman* referred to the following factors to be considered by Congress in determining a reasonable time for ratification of an amendment and, accordingly, the validity of that ratification:

"Where are to be found the criteria for such a judicial determination? None are to be found in Constitution or statute. In their endeavor to answer this question petitioners' counsel have suggested that at least 2 years should be allowed; that 6 years would not seem to be unreasonably long; that 7 years had been used by the Congress as a reasonable period; that 1 year, 6 months and 13 days was the average time used in passing upon amendments which have been ratified since the first 10 amendments; that 3 years, 6 months and 25 days has been the longest time used in ratifying. To this list of variables, counsel add that "the nature and extent of publicity and the activity of the public and of the legislatures of the several States in relation to any particular proposal should be taken into consideration." That statement is pertinent, but there are additional matters to be examined and weighed. When a proposed amendment springs from a conception of economic needs, it would be necessary, in determining whether a reasonable time had elapsed since its submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions were such as to intensify the feeling of need and the appropriateness of the proposed remedial action. In short, the question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic * * * [T]hese conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political * * * [T]hey can be decided by the Congress with the full knowledge and appreciation ascribed to the National Legislature of the political, social, and economic conditions which have prevailed during the period since the submission of the amendment." [307 U.S. 433, 453–4 (1939).]

In reporting the resolution favorably, the committee finds that the standards set out in *Coleman* are met. The committee does not believe it appropriate to debate the merits of the proposed amendment in deciding whether extension is either permissible or appropriate. That debate has already taken place; the decision has already been made. At most, we need only examine the current political, legal, and economic situation and determine whether the amendment is still vital, whether the need for the amendment still exists and whether it still represents an appropriate solution to the problems it was originally designed to solve. Nothing the committee or subcommittee heard in its hearings and debates indicated other than an affirmative response to those questions.

Moreover, as Professor Tribe pointed out:

"It bears emphasis that the only issue posed here is the power of the Congress to extend the time for ratifying an amendment whose terms themselves contain no time limit. The committee need not be concerned with the initial power of Congress to impose a time limit outside an amendment's text; if no such power existed, then the 7-year limit in this case would be void even without a time extension. Further, the committee need not consider the power to amend a time limit contained in the text of a pending amendment; no such time limit was contained in the text of the proposed 27th amendment. Nor need the committee address the validity of a State's attempt to reverse a prior ratification or rejection * * * And, above all, the committee has no occasion to consider the wisdom of the proposed amendment itself. In any given case, a judgment that more time should be allowed for the States to choose between ratification and rejection ought to reflect Congress' determination of the conditions needed to permit full and fair consideration of the amendment rather than Congress' current views on whether or not the amendment should be approved. Even more clearly, one's answer to the question whether Congress has constitutional authority to determine that more time is needed in a given case should reflect an assessment about the amendment process and not an evaluation of this proposed amendment, or even of this proposed extension of time."

RESCISSION

Throughout the committee's deliberations on the resolution, the question was raised as to whether the determination that the resolution is constitutional turns in some way on whether an extension would free ratifying States to rescind their ratifications. Although the witnesses disagreed on the political wisdom of accepting or rejecting rescission, there was virtual unanimity among the constitutional scholars that extension of the time period for ratification does not automatically give rise to a constitutional right of rescission. Several believed that extension of the time period makes the argument for rescission stronger, but none felt it was dispositive.[7] Moreover, a majority of the witnesses felt that Congress should do nothing at this point to indicate to the States that they might have the power to rescind.

Prof. William Van Alstyne stated that to do so would be profoundly ill-advised constitutional policy. He went on to say:

"The ratification of constitutional amendments is not a poker game. No State ought to consider an amendment to the Constitution under the misimpression from this body that it may do it with some sort of celerity or spontaneity because it will always have this interval of additional years while other States are looking at it to reconsider.

"That, in my view, is an atrocious way to run a Constitution. The policy that the States may consider at several times, within a reasonable time reject or table or put it over, but that when done, it is done irrevocably, is terribly important, it seems to me, to the integrity of the role of Congress and the States."

The resolution as it is currently written is silent on the issue. It neither permits nor prohibits it.[8] There was general agreement among the constitutional experts that for the committee to establish mechanical rules that Congress must accept rescissions or that Congress must reject them would be inappropriate and unwise. They generally agreed that the decision as to whether rescissions are to be counted is a decision solely for the Congress sitting at the time the 38th State has ratified, as part of its decision as to whether an amendment has been validly ratified. Any action taken by a Congress prior to that time would be premature, misleading, and not binding. In the committee's view, Prof. Laurence Tribe best described the role of Congress in dealing with rescission:

"The power to rescind is the power on the part of a State to advise the Congress that, in determining whether an amendment has been validly ratified, the State is no longer in favor of the amendment; how Congress treats that action by the most recent legislature is a matter of delicate congressional judgment, depending on a wide variety of facts and circumstances in each case.

"It seems to me unwise to say, as a matter of some mechanical per se rule, either that Congress must always accept rescissions, or that Congress can never accept them. It seems to me that Congress must decide what the significance of the rescission was in light of all the circumstances. And that is a power, under *Dillon* v. *Gloss*, and *Coleman* v. *Miller*, that Congress plainly has a duty to exercise.

"I think it [the resolution before us] should be regarded as leaving that issue to the Congress which finally has to determine, perhaps 7 years after this resolution is voted, whether three-fourths of the States are in favor of the resolution.

"It seems to me that this sort of judgment can only be made finally at the time a given Congress votes to decide whether an amendment has been validly ratified. Once

Footnotes at end of article.

that action is taken, the amendment becomes a part of the Constitution, and it is no longer open to a Congress simply to retract it by majority vote. Until then, it is a matter of congressional judgment."

Although the decision most properly belongs to a subsequent Congress to determine the efficacy of any attempted withdrawals of ratifications of the proposed equal rights amendment, nevertheless the committee believes it important to point out that its own analysis of this issue revealed that past congressional and judicial precedent stand for the proposition that rescissions are to be disregarded. Over the years Congress has taken the position that a State's attempt to rescind is ineffectual, both when confronted with actual rescissions, as in the case of the 14th amendment, and when drafting legislation clarifying the amendment process.

14th amendment

The 14th amendment was submitted by Congress to the States in June 1866. By July 1868, 29 States had ratified that amendment. At that time there were 37 States: 28 constituted the three-fourths majority required by the Constitution for ratification. However, the legislatures of 2 States, Ohio and New Jersey, had passed a resolution withdrawing their prior ratification of the amendment. On July 8, 1868, the Senate adopted a resolution requesting the Secretary of State to transmit to the Senate a list of the States which had ratified the amendment. In reporting to the Senate in compliance with the resolution, the Secretary drew attention to the actions of the Ohio and New Jersey Legislatures. Subsequently, the Secretary published a document reciting ing the 29 States which had ratified, including Ohio and New Jersey. With respect to those two States, he observed:

"* * * It is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent of the said 2 State * * * to the * * * amendment."

He then certified that:

"If the resolutions of the Legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified in the manner hereinbefore mentioned, and so has become valid, to all intents and purposes, as a part of the Constitution of the United States."

He thus indicated that the effectiveness of the amendment was contingent on the power of the State legislatures to withdraw their consent from the ratification.

The following day, July 21, 1868, Congress adopted a resolution declaring that the 14th amendment had been ratified.[2] The resolution stated that whereas the 14th amendment had been ratified by the legislatures of 29 States (listing Ohio and New Jersey among them), the amendment was "hereby declared to be a part of the Constitution of the United States and it shall be duly promulgated as such by the Secretary of State."

Seventy years later, in its opinion in *Coleman* v. *Miller, supra,* the Supreme Court recited the historical facts surrounding congressional treatment of Ohio and New Jersey's attempts to rescind their ratifications of the 14th amendment and observed that this "decision by the political departments of the government as to the validity of the adoption of the 14th amendment has been accepted." [307 U.S., at 450.] The Court found the 14th amendment precedent to be an example of "a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment." *Id.* This view was subsequently approved by the Court in *Baker* v. *Carr,* 369 U.S. 186 (1962).

Over the years, subsequent Congresses have reaffirmed the view that State withdrawals of approval of constitutional amendments are invalid. In 1924, Senator Wadsworth of New York and Congressman Garrett of Tennessee introduced an amendment to article V which would have enabled States to rescind their ratifications of constitutional amendments. Both sponsors conceded that their proposal was contrary to existing law and was in fact designed to remedy what they considered to be a defect in the Constitution.

The issue arose again in connection with legislation drafted and introduced by Senator Ervin of North Carolina in the 90th and 93rd Congresses to establish procedures for calling Constitutional Conventions. In the report accompanying the legislation, the Senate Judiciary Committee conceded that, under existing law, a State would not rescind its ratification of a constitutional amendment, but took the position that the law should be changed. Senator Ervin's legislation passed the Senate twice but was never voted on in the House of Representatives.

There appear to be two primary arguments in the favor of permitting rescission in connection with enacting the extension. The first is that failure to provide for rescission would permit an amendment to be ratified without the "contemporaneous consensus" required by the Constitution, as interpreted by the Supreme Court in *Dillon* v. *Gloss, supra.* The second argument that article V permits rescission during an extension is based on the idea that State legislatures may have relied on the original 7-year period established in House Joint Resolution 208. In its analysis of those arguments, the committee found itself most persuaded by the response of the Department of Justice:

"[The first argument] confuses two issues that should * * * be sharply differentiated in the consideration of House Joint Resolution 638. First is the issue whether the period of 14 years proposed in House Joint Resolution 638 is "reasonable" in view of the interpretation placed on article V in *Dillon* v. *Gloss* and with which we are in agreement. If 14 years or possibly a lesser period is, in the judgment of Congress, 'reasonable,' then the question of the power of States to rescind in the last 7 years of the 14-year period is irrelevant. The second issue is, of course, whether the States may rescind a prior ratification during the extension period because the will of its people has in fact changed since initial ratification. This argument would appear to reduce to the proposition that a 7-year extension can be viewed as "reasonable" only if no substantial number of States actually attempt to rescind their ratifications during the extension period. Under this view, the power to rescind functions as a sort of escape valve permitting the States themselves to determine what is or what is not a 'reasonable' period of time by acts of rescission.

"We are unable to agree with that analysis. In our view, the lesson of history, including prior congressional interpretation of article V with regard to the 14th amendment, is that States may not rescind a ratification. And we think *Dillon* v. *Gloss* and *Coleman* v. *Miller* and equally dispositive in rejecting any possibility that States, rather than Congress, are to have the final say concerning whether an amendment has been ratified within a 'reasonable' time.

In response to the second argument regarding reliance on the initial 7-year period, the Justice Department examined the 35 certifications of ratification submitted to the General Services Administration and were unable to conclude that any such reliance was indicated. Moreover, the Department devoted a substantial portion of its opinion to the question whether, even assuming such reliance could be shown, that reliance had any legal or constitutional significance. The Justice Department found that it did not. In a letter to the subcommittee chairman, the Assistant Attorney General for the Office of Legal Counsel explained the Justice Department's view:

"It is true * * * that everyone at the [subcommittee's] hearings assumed that 35 States had ratified the text of the proposed ERA rather than the text of the entire resolution. House Joint Resolution 208 * * * proposing that text. This assumption was then and is presently justified because article V of the Constitution provides for States to ratify amendments to the Constitution. It does not provide for ratification of language in so-called proposing clauses. The fact that no language in proposing clauses has ever been thought to be part of the substance of an amendment to the Constitution is, we think, conclusive on this point."

PRESIDENTIAL SIGNATURE

The question was raised during the committee's deliberations on House Joint Resolution 638, whether the President's signature is required, particularly in the absence of a requirement that the resolution be enacted by a two-thirds vote of both Houses. The consensus of the witnesses testifying before the subcommittee was that Presidential approval is not constitutionally mandated. The amendment process is no less than a redefinition of the basic compact of our political union. The President is merely a creature of that compact, whose only functions derive from the terms of the compact. Those functions do not include a substantive role in the compact's initial formation or its subsequent alteration. The duty, power, and accompanying obligation to alter the basic compact—to propose an amendment to the Constitution—is reserved solely to Congress under article V of the Constitution. The Supreme Court opinion in *Hollingsworth* v. *Virginia,* 3 Dall. 378 (1798), reaffirmed in subsequent decisions, e.g. *Hawks* v. *Smith,* 253 U.S. 221 (1920), supports this view of the role of the Congress vis-a-vis the Executive in the amendment process. *Hollingsworth* held that the President's signature was not needed on a constitutional amendment. The opinion is generally cited for the proposition that the Executive plays no role in the amendment process.

It seems clear that the President has no role in originally proposing the mode of ratification; under article V that responsibility belongs exclusively to Congress. For the President to be involved in that decision would be unnecessary. It is no more necessary for the President to be involved subsequently. However, history shows that the President has played a symbolic role in the amendment process, in signing a proposed amendment (in the case of President Lincoln and the 13th amendment) and in signing certifications of ratification (in the case of President Johnson and the 24th and 25th amendments). Such a role is not improper, nor does it detract from the role of Congress.

FOOTNOTES

[1] Four State legislatures have attempted to withdraw their previous approval of the amendment. The efficacy and validity of their action is in doubt. House Joint Resolution 638 takes no position on the validity of the rescissions, nor does this committee feel it is appropriate for it to take a position at this time.

[2] It should be noted that throughout the subcommittee's hearings on House Joint Resolution 638, the witnesses and members of the committee used the terms "resolving clause" and "preamble" interchangeably to describe that portion of House Joint Resolution 208 containing the time limit and the mode of ratification. Technically, the resolv-

ing clause of House Joint Resolution 208 is that portion of the resolution which states: "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That * * *." The portion immediately following the resolving clause, but preceding the substance of the proposed amendment itself is technically referred to as the text of the resolution preceding or prior to the text of the amendment. That is the portion of House Joint Resolution 208 to which the subcommittee's witnesses and the members of the committee normally are referring when they speak of the "resolving clause" or "preamble" of House Joint Resolution 208. That language read as follows: "The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress. * * *" For the sake of simplicity, that language will hereinafter be referred to as the "proposing language" of House Joint Resolution 208.

[3] *Dillon* v. *Gloss*, supra, and *Coleman* v. *Miller*, 307 U.S. 433 (1939).

[4] The question as to whether an extension should require a two-thirds vote or a simple majority of the House was put to the committee in the form of a question of consideration. Pursuant to rule XVI of the rules of the House, the question of consideration was demanded in the committee after the motion to recommend House Joint Resolution 638 to the House was made.

The purpose of raising the question of consideration was to focus on the issue of whether an extension of a ratification deadline requires a two-thirds vote by the Congress or whether it can be accomplished by a simple majority. The issue was presented in this matter because the resolving clause of House Joint Resolution 638 on its face appears to require only a simple majority and the resolving clause may not be amended. Thus, the only way to indicate that a two-thirds vote of the House may be required was for the committee to recommend a different resolution containing a resolving clause requiring a two-thirds vote by the House. Such a resolution could be considered and recommended by the committee only if the committee did not agree to consider recommending House Joint Resolution 638. The committee vote on the question of consideration (to continue consideration of House Joint Resolution 638 in lieu of an alternative requiring a two-thirds vote) was 28 ayes and 8 nays.

[5] When the 66th Congress came to propose the 19th amendment, the congressional fears expressed in the previous Congress with regard to the 18th amendment were apparently put aside. The issue of a time limit never arose until an attempt to include a 7-year limit was made and without debate, rejected. [58 Cong. Rec. 93 (1919).]

In addition, the proposed child labor management, submitted to the States in 1924, contained no time limit. That amendment, never ratified by three-fourths of the States, was the subject of the dispute giving rise to the Supreme Court's opinion in *Coleman* v. *Miller*, supra.

[6] The argument was made that Congress could not extend the time limit for ratification of the proposed 27th amendment because States may have relied on the time limit in ratifying the amendment, that their approval of the amendment may have been conditioned on the time limit. Thus, to extend the time period would be to alter the terms of the agreement made by the Congress in submitting the amendment to the States. The committee found that argument unpersuasive. If the time limit had been contained in the amendment itself, then to change it would be an attempt to alter the subsance of the amendment—a resubmission of a new amendment to the States. Such retroactive alteration of the very terms of an already submitted amendment may well be beyond the power of Congress, at least in the absence of a two-thirds vote of both Houses. But the critical fact here is that we are not presented wih such a case. The amendment itself, as voted on by the States, contains no time limit. Thus, in the words of Prof. Laurence Tribe: it cannot be said that a congressional vote to extend . . . the time for the 27th amendment's ratification beyond March 22, 1979, would retroactively alter the terms of an amendment upon which votes had already been taken. It follows that a decision by Congress to alter the ratification period would prejudice no State that has already voted and would not affect the validity of any prior State vote. * * * Only a time limit that is expressly included in the text of the amendment being voted on by a State can form a nonspeculative basis for that State's claim of reliance.

Thus, the committee emphasizes that House Joint Resolution 638 is not a resubmission of the amendment to the States, or an alteration of the terms of the amendment itself. It is an extension of the time period during which the States may continue to consider the proposed equal rights amendment.

[7] This was during consideration of a 7-year extension; most of the witnesses agreed that a shorter time period would substantially weaken the argument for accepting rescissions.

[8] An amendment to permit rescission was offered during the committee's consideration of House Joint Resolution 638. The amendment was rejected by a vote of 13 ayes to 21 nays, reflecting the committee's conclusion that the appropriate time in which to consider the validity of rescissions is when the time comes for Congress to determine whether in fact three-fourths of the States have ratified the amendment.

[9] The resolution adopted was a concurrent resolution not presented to the President and apparently requiring only a simple majority.●

"HEE HAW"

● Mr. SASSER. Mr. President, I would like to call to the attention of my colleagues the 10th anniversary of the nationally syndicated television show "Hee Haw." As my fellow Senators know, "Hee Haw" is produced in Nashville, and, as they say on the show, we Tennesseans are "right proud" of the show, the performers and the staff.

The 10th anniversary show of "Hee Haw" is scheduled to be aired on October 22 on the NBC television network. This appearance will mark a return to network television for "Hee Haw" which began as a CBS network television show in 1969. In that year, the show rose to the number 16 position in the national ratings. Despite that rating, the first year show was cancelled by the network.

The following year, the creators of "Hee Haw," Frank Peppiatt and John Aylesworth, along with their partner, Nick Vanoff, decided to create their own network to air the series, which after a year of network exposure had a well-earned national following. At great personal risk and expense, these gentlemen financed the entire cost of production for "Hee Haw's" second year.

The foresight of the producers of "Hee Haw" has paid off many times over. The show has consistently been, by rating and demographic standards, one of the most successful syndicated television series. It is seen 52 times a year on 220 stations in the United States and Canada.

Mr. President, the people of Nashville and Tennessee are justly proud of "Hee Haw." The show has brought recognition of Tennessee's contributions to the Nation's music industry and it has shown that quality television shows can be produced in Tennessee.

I am proud of "Hee Haw" and of its Tennessee origin, and I want to take this opportunity to commend and congratulate the producers of the series, the production staff, the stars of the show, the guest artists, and all those other people who have contributed so much to the success of this all American television show. I look forward to viewing the 10th anniversary show of "Hee Haw" on October 22.●

PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the notification I have just received.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C. September 12, 1978.

Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 78-97, concerning the Department of the Air Force's proposed Letter of Offer to Canada for defense articles and services estimated to cost $95 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Lt. Gen. ERNEST GRAVES,
Director, Defense Security Assistance Agency.

TRANSMITTAL NO. 78-97

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Canada.
(ii) Total Estimated Value:

	Million
Major Defense Equipment*	$0.0
Other	95.0
Total	95.0

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services

Offered: Data processing and display equipment, software, and associated USG and contractor services for fielding two (2) Region Operations Control Centers (ROCCs).

(iv) Military Department: Air Force.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: September 12, 1978.●

POLYGRAPHS IN EMPLOYMENT

● Mr. BAYH. Mr. President, next Tuesday and Thursday, September 19 and 21, the Subcommittee on the Constitution is reopening hearings on S. 1845, a bill to control the use of polygraphs and similar equipment in employment. In November of last year, testimony before the subcommittee indicated that, at least in some segments of our country's business community, taking a "lie detector" test has become a condition of getting or keeping a job for a great percentage of Americans. A large part of these employees, it was learned, are nonunion, and placed in lower level jobs. From representatives of the polygraph and voice analyser industries themselves the subcommittee heard that refusal to take a test almost invariably means that the employee is either not hired or is fired. An article on the personal business page of the Business Week of September 4, therefore, is of twofold interest. For one, that the article is addressed to the readers of Business Week indicates that the problems and dilemmas presented by the lie detector have now become of personal, firsthand concern to management and professional employees. Second, and more importantly, the message of the article in brief is, if you have to take a polygraph, do not. The implications of both of these factors have potentially far reaching effect on the future of "lie detection" in American business.

Mr. President, I would like to have the September 4 Business Week article printed in the RECORD.

The article follows:

LIE DETECTORS: WHAT TO DO WHEN ASKED TO TAKE THE TEST

As an employee or prospective employee, you have little to gain when a company asks you to take a lie detector test. Agree to it, and the consequences range from loss of privacy to loss of a job. Decline, and as it now stands in all but 16 states, you could get fired from a job or turned down as an applicant.

Your best course depends on the circumstances, but firm resistance to the polygraph—up to reasonable limits—may do you the least overall harm.

If a company asks you to take a lie detector test, check your legal standing. No federal law restricts polygraph use. Some states have weak laws on it. But New Mexico and Vermont, at least, limit lines of questioning. Alaska, Connecticut, Delaware, Minnesota, and New Jersey all say employers can't require it. Massachusetts and Rhode Island ban all jobs-related lie detecting.

USES AND ABUSES OF POLYGRAPHS

Check whether you can be denied state unemployment compensation when you get fired for not taking a lie detector test. Also see if your state allows your boss to tell other employees about your aversion to the polygraph.

If your state offers no protection, find out why the test is being given. "Each year in this country, hundreds of thousands of ordinary workers and job applicants are forced to submit to mass lie detector sweeps," says Senator Birch Bayh (D-Ind.), whose judiciary subcommittee on the Constitution will hold hearings on polygraph abuse on Sept. 19 and 21. Some companies test all employees, including high executives, on vague security grounds. Other employers use lie detectors only when wrongdoing has been alleged.

"I would not, as an innocent person, want my fate to rest on a lie detector test," says psychology Professor David Lykken of the University of Minnesota. "A truthful person has an especially high chance of flunking." But reputable polygraph operators differ sharply with such assessments. John E. Reid, a Chicago polygrapher, claims "90% to 95% accuracy" for his exams.

Apart from the controversy over polygraph accuracy is the question of polygraph abuse. Senator Bayh's subcommittee has evidence of companies using lie detectors to determine the political views, religion, and sexual preferences of job applicants. And while 23 states license polygraph operators, the requirements are often lax. In most states, anyone with a $1,500 polygraph machine can hang out a shingle as a professional polygraph operator.

WHAT DO RESULTS REALLY MEAN?

But your greatest polygraph risks stem from the fact that few company supervisors are qualified to evaluate the findings. Careers can be destroyed by unfair use of test results—while the fibs of favored employees go overlooked. "Lie detector tests are like Russian roulette," says Professor Edgar A. Jones Jr., an expert on labor law at the University of California at Los Angeles. "Innocent employees are found to be deceptive; guilty employees come up innocent—there is simply no reliable correlation."

If you must take a lie detector test, ask that the operator be a member of the American Polygraph Assn., a group of about 1,400 testers who maintain high standards. Also demand a written release. Make sure it expressly prevents both the examiner and your company from divulging any aspect of your test to any other parties without your consent.

Be sure you get some trial runs before your responses are recorded. The polygraph operator should review all the test questions with you and let you eliminate any that you find impertinent or offensive. Surprise questions are strictly for detective stories. Also bring up any questions you find touchy. A good examiner can sometimes rephrase them to minimize confusion.

Dr. Martin Orne, a psychiatrist at the University of Pennsylvania, warns that "highly socialized" people, individuals with a well-developed moral sense, do worse than the general populace on lie detector tests. But he holds, "If you have nothing to hide, and the examiner is competent, your odds of being determined a liar are very small."

Professor Lykken says you might beat the machine by biting your tongue or tensing a muscle during the test, but Orne says competent examiners can spot such trickery. If you do fail a polygraph exam, get a second opinion, and keep copies of both tests. You may have the makings of a malpractice suit.●

WELFARE REFORM OR WELFARE EXPANSION?

● Mr. HATCH. Mr. President, President Carter's welfare reform program is dead for this session of Congress, and it is important that we understand its defects before a similar program is introduced again next session. Martin Anderson provides a clear analysis of the program in his article in the summer issue of "Policy Review."

Anderson explains that Carter's welfare reform program was actually a welfare expansion program, since it would cost $20 billion more a year than our current system. And the bulk of these $20 billion would not go to the poor, but would be distributed mostly to people in the middle-income brackets. Nowhere in the program, however, were there any plans to add work incentives or deal with the problems concerning medicaid or public housing. And the overall complexity of the welfare bureaucracy would be compounded.

I ask that Martin Anderson's article "Why Carter's Welfare Reform Plan Failed" be printed in the RECORD.

The article follows:

WHY CARTER'S WELFARE REFORM PLAN FAILED

(By Martin Anderson)

Congressional leaders informed President Carter on June 22, 1978 that his proposed welfare reform plan was dead for this session of Congress. There was not even enough support in the House to pass a compromise bill costing less than half the $20 billion price of the original bill.

Why did this much-heralded "reform" plan fail? The core of any valid welfare reform is the number of people affected and how they are affected. One of the first items the Congressional Budget Office (CBO) tackled when it began its analysis of President Carter's Program for Better Jobs and Income (PBJI) was what it called the program's "distributive impact," namely (1) how the program would affect "the distribution of (welfare) recipients and benefits by income level," and (2) "the number and types of families that would gain or lose benefits relative to the current welfare system."

The preliminary results were astonishing. According to the estimates of the CBO, approximately 44 million people in the United States currently receive some form of welfare aid from such programs as Aid to Families with Dependent Children, Supplemental Security Income, state general assistance, the earned income tax credit, and food stamps. Carter's welfare reform proposal would have increased by almost 22 million the number of Americans receiving some form of welfare. Once President Carter's PBJI was in full operation some 66 million Americans would be receiving welfare. That is just about one-third of the nation.

This would be massive welfare expansion, not welfare reform. Some $20 billion more would be spent on welfare by the federal government every year and that raised some serious questions. The massive increase in welfare spending during the past decade has dramatically reduced poverty in the United States—so much so that there are few poor people left. Would Carter's plan have substantially increased welfare payments to the poor? The answer is no.

The welfare changes proposed by President Carter would have had an unexpected effect. The vast majority of the people who would have received welfare checks for the first time came from the middle-income group. A few came from the upper-income group. The number of people from families with pre-welfare incomes of less than $5,000 a year would have increased only slightly (5 percent) under the proposed reform. As we move up into the higher-income classes, however, Carter's welfare reform would have a greater impact. The number of people included in families earning between $5,000 and $10,000 a year would have increased by 36 percent.

But the greatest impact was to be in the income brackets between $10,000 and $25,000. Carter's plan would have given welfare benefits, including earned income tax "credits," to 11.6 million more Americans who come from families earning between $10,000 and

$15,000 a year, an increase of 322 percent in the number of families. And 4 million Americans who now receive no welfare and come from families with incomes between $15,000 and $25,000 a year would also have benefited a 154 percent increase.

The CBO's analysis of how the distribution of welfare benefits would have changed under Carter's proposed welfare reform clearly and dramatically shows that most of the new beneficiaries under PBJI would have come from America's middle-income class. There was to have been a minimal effect on people in poverty. Of the almost 22 million additional people who would have received welfare under Carter's plan 74 percent would have come from families having incomes of over $10,000 a year. And more than 94 percent of them would have been from families with incomes that exceed $5,000 a year. Carter's welfare plan, in its broad thrust, would have focused on aiding people not now receiving any welfare.

In summation, the welfare reform that President Carter originally proposed in 1977 would have probably cost somewhere in the neighborhood of $20 billion a year more than our current welfare system. Nearly 22 million more Americans would have received some form of welfare. Effective marginal tax rates would continue to remain very high and act as a serious disincentive to work. The administrative complexity of welfare would have been compounded and more welfare workers would have probably been needed to handle the increased caseload.

The problems caused by the separate existence of medicaid, day care, and housing assistance programs were ignored. An examination of the gainers and losers under PBJI shows clearly that those who need welfare the least would have gained in the greatest numbers. Those who cannot truly care for themselves and are on welfare now would have benefited little. The thrust of Carter's plan was to further the idea of a guaranteed income, expanding welfare into the heart of the middle class of America. This is not welfare reform. This is a potential social revolution of great magnitude, a revolution that, if it should come to pass, could result in social tragedy.

Those who followed past efforts at radical welfare reform were not surprised that President Carter's plan failed like the rest. From past experience, however, one can with some confidence predict that a new plan will soon spring, phoenix-like, from the intellectual ashes of the old ones.

DISTRIBUTION OF WELFARE RECIPIENTS BY PREWELFARE FAMILY INCOME CLASSES UNDER CURRENT WELFARE POLICY AND UNDER PRESIDENT CARTER'S WELFARE REFORM PLAN (PBJI)

Family income class	Number of people receiving benefits under—		Number of people added by Carter's reform plan	Percent increase
	Current welfare policy [1]	Carter's reform plan		
Less than $5,000	[2] 25,600,000	26,900,000	1,300,000	5
$5,000 to $9,999	12,000,000	16,300,000	4,300,000	36
$10,000 to $14,999	3,600,000	15,200,000	11,600,000	322
$15,000 to $24,999	2,600,000	6,600,000	4,000,000	154
More than $25,000	600,000	1,000,000	400,000	67
Total	44,400,000	66,000,000	21,600,000	49

[1] Includes aid to families with dependent children, supplemental security income, State general assistance, food stamps, and the earned income tax credit.

[2] Number of people rounded to nearest 100,000.

Source: Robert D. Reischauer, Assistant Director for Human Resources and Community Development, Congressional Budget Office, statement to task force on distributive impacts of budget and economic policy, Committee on the Budget, "Preliminary Analysis of the Distributional Impacts of the Administration's Welfare Reform Proposal," Oct. 13, 1977, p. 13, table 2(a). Preliminary estimates as of Oct. 12, 1977. Based on earlier CBO studies, an average family size of 2.824 was used to convert numbers of families to people. ●

ANOTHER RHODESIAN TRAGEDY

● Mr. DOLE. Mr. President, 1 week ago the world witnessed an event of tragic proportions, when members of a Rhodesian guerrilla unit shot down a civilian passenger aircraft, and then methodically murdered most of the survivors. The death of these 38 innocent Rhodesian citizens—all civilians—was not the first atrocity of this unfortunate conflict, but, by its nature, was perhaps one of the most chilling crimes committed by members of opposition terrorist forces.

The barbaric act took place in the wake of yet another unsuccessful effort to open some avenue of communication between the Salisbury government and opposition guerrillas, in the form of a private meeting between Prime Minister Ian Smith and "Patriotic Front" Leader Joshua Nkomo. The transition government has earnestly sought to accomplish a peaceful transition to majority rule in Rhodesia since it was established last March. But, in the face of continuing rebuff from Marxist-inspired guerrilla forces, the chances for accomplishing peaceful transition grow more slim with each passing week.

Prime Minister Smith's declaration of martial law in portions of Rhodesia indicates that there may be little alternative left but full scale conflict—conflict that will benefit no race and no political faction in the long run.

RHODESIA ALONE

One cannot help but wonder whether the support of the United States, Great Britain, and other Western powers for the Salisbury transition government might have prevented or at least discouraged the atrocities and conflicts that have become such a reality. An inescapable conclusion is that the withholding of our Government's support for peaceful transition has only played into the hands of guerrilla groups. Time is on their side, and time is running out for the present Government of Rhodesia. It is possible that by withholding support, Western nations have even encouraged guerrillas to fight on, knowing that the Government of Rhodesia lacks the economic and moral support that it needs to survive.

The more openly violent the situation in Rhodesia becomes, the more difficult it will be for the internal settlement to survive, or for responsible Rhodesian leaders to deal with guerrilla leaders as they have attempted to do with Joshua Nkomo. At the very least, our own leaders should condemn the irresponsible and barbaric acts of cruelty that so typify Rhodesian guerrilla activity, and lament its victims.

WHERE IS PROTEST?

At a memorial service last week for the victims of the airline disaster, attended by more than 2,000 mourners, the Dean of Salisbury, Rev. John Da Costa, expressed horror at the bestiality of the terrorists involved and condemned the lack of protest in the West.

Rev. De Costa stated that—

This bestiality, worse than anything in recent history, stinks in the nostrils of heaven. But are we deafened with the voice of protest from nations which call themselves civilized? We are not like men in the story of the good Samaritan, they pass on the other side. One listens for loud condemnation by Dr. David Owen, himself a medical doctor, trained to extend mercy and help to all in need. One listens and the silence is deafening. One listens for loud condemnation from the President of the United States, himself from the Bible Baptist Belt, and again the silence is deafening. One listens for loud condemnation by the Pope, by the Chief Rabbi, by the Arch Bishop of Canterbury, by all who love the name of God. Again the silence is deafening.

Finally, the dean condemned the United Nations and the World Council of Churches, saying:

Each parades a pseudo-morality which, like all half truths, is more dangerous than the lie direct. From the safety and comfort of New York and Geneva, high moral attitudes can safely be struck. For us in the sweat, the blood, the suffering, it is somewhat different.

They are thoughts for all of us to reflect upon. ●

GOVERNMENT SUPPORTS ECONOMIC STAGNATION

● Mr. HATCH. Mr. President, I would like to bring to the attention of my colleagues an article by George Gilder in Harper's magazine.

Mr. Gilder provides some insightful remarks about tax policy. He points out that by taking the side of economic stagnation instead of fostering economic growth, the U.S. Government is rigging the odds against America. If the Senate were to examine its own activities, it would find itself subsidizing problems, shoring up essentially moribund patterns of economic and social activities, and creating incentives for unemployment, inflation, family breakdown, housing decay, and municipal deficits. In short, we make problems worse by making them profitable. And, of course, it is these problems which feed the growth of Government.

I ask that Mr. Gilder's article be printed in the RECORD.

The article follows:

PROMETHEUS BOUND

(By George Gilder)

RIGGING THE ODDS AGAINST AMERICA

John Maynard Keynes, the General Theory of Employment, Interest, and Money: "Enterprise only pretends to itself to be mainly actuated by the statements in its own prospectus, however candid and sincere. Only a little more than an expedition to the South Pole is it based on an exact calculation of benefits to come. Thus, if the animal spirits are dimmed and the spontaneous optimism falters, leaving us to depend on nothing but a mathematical expectation, enterprise will falter and die."

To many people, the past seems inevitable and the future impossible. History is seen to have arisen not from unpredictable flows of genius and heroism, but more or less inevitably, from preordained patterns of natural resources and population. For those who doubt the decisive role of genius, courage, and chance in history, the future always appears impossible; they can see no way for free nations to escape a fate of decline, decay, and coercion, as their growing populations press against a closing frontier.

These attitudes lead to distortions of vision and policy. Strangely enough, the man who sees a future blighted by coercion and scarcity also tends to believe that the present can be made as free of risk and uncertainty

as the past, receding reassuringly in the reliable lenses of hindsight. He calls upon government to create an orderly and predictable economy, with known energy reserves always equaling prospective needs; with jobs always assured in current geographic and demographic patterns; with monetary demand always expanding to absorb expected output of current corporate goods; with disorderly foreign intruders banished from the marketplace or burdened by tariffs and quotas; with invention and creativity summoned by bureaucrats for forced marches of research and development; with inflation insurance in every contract and unemployment insurance in every job; with all windfall wealth briskly taxed away and unseemly poverty removed by income guarantees. In this view, risk and uncertainty are seen to be the problem and government the solution in the fail-safe quest for a managed economy of steady and predictable long-term growth.

These follies of false security and rationality are the characteristic delusion of the modern age. Abstractions everywhere are confused with things. But despite a pretense of scientific objectivity, the vision of a comfortably calculable world has been almost completely abandoned by serious thinkers in the hard sciences. While modern physicists begin to concede freedom to microscopic particles, social scientists still begrudge it to human beings. While chemists and mathematicians accept chance and uncertainty, politicians and sociologists cling to the determinist dream of an orderly, predictable, and risk-free world.

CAPITAL LOSS

Most of our ideological debates revolve around the attempt to banish danger and uncertainty from human affairs. A vivid current example is the dispute over tax policy. Early this spring, Washington underwent a small legislative upheaval on the issue of how much to tax the profits of speculative investment.

A young Republican Congressman on the House Ways and Means Committee sought to reverse the high levies imposed by the Nixon Administration, only to meet with the fierce hostility and resistance of the present Administration. Joining President Carter against the Congressman's idea were the Chairman of Ways and Means, the House Democratic leadership, the united forces of organized labor, the Business Roundtable—speaking for the executives of some 190 major corporations—and the editorial boards of both the New York Times and the Washington Post. It has been some time since the works of Richard Nixon have enjoyed so fervent and prestigious a defense.

One might assume that the fight was over before it began. Rising in support of the young Republican from Wisconsin, however, were powers nearly as impressive: a majority of the Ways and Means Committee; more than sixty U.S. Senators; and an interesting motley of others, including Rep. Ron Dellums of Berkeley, California, and other young Democrats, the editorial board of the Wall Street Journal, and virtually every American organization of small businessmen and venture capitalists.

The Wisconsin Congressman was William Steiger, and the proposal that created this strange but illuminating cleavage was reversal of Nixon's tax reform on capital gains. Capital gains are profits derived from the sales of assets or equity, such as real estate or corporate securities. In order to protect incentives for risky but possibly productive investment, many countries, like Germany and Japan, refrain from taxing capital gains at all, and even socialist Sweden taxes them at less than half the American level. As part of a tax reform signed by Nixon in 1969, however, the statutory top rate, as later impacted by minimum tax provisions, was lifted from 25 to 49 percent in the United States. Even this high nominal rate sometimes understated the effective rates. Not only are capital gains also taxed by some states, but during an inflationary period, the apparent increase in the value of an asset may well be illusory. Thus, the government may be taxing ostensible gains in companies that have declined in actual value. Partly because of this interplay of inflation and taxes, new stock issues by smaller firms plummeted in the early 1970s from several hundred annually to exactly four in 1975. Yet in 1978, President Carter proposed to raise the tax again, to a top rate of 52 percent, in order to prevent "windfalls for the rich."

The businessmen who were willing to accept such drastic taxation of rapid growth were all from mature and established companies. They preferred to cling to the Carter program of corporate and personal income tax reductions, an expanded investment tax credit, and accelerated depreciation.

This conflict appears minor: a technical choice among ways of lowering taxes and promoting enterprise. But the choice is anything but minor and technical. It embodies what Jane Jacobs has called the central conflict in every economy. This is not the split between capitalists and workers, technocrats and humanists, government and business, liberals and conservatives, rich and poor. It is the struggle between past and future, between the existing configuration of industries and the industries that someday will replace them. It is the conflict between the risk takers and the risk averters, established factories, technologies, formations of capital, and ventures that today may not even exist, that today may flicker only as ideas, or tiny companies, or obscure research projects, or fierce but penniless ambitions, that today are unidentifiable and incalculable from above, but which, in time, in a progressing economy, must rise up if growth is to occur. In fact, long-range growth may be defined as the replacement of current industries and techniques and products by better or more efficient ones.

Sir Henry Bessemer, the creator of the Bessemer method of large-scale steel production, vividly described such a nineteenth-century moment of discovery and displacement. After his first breakthrough in tests for making steel he wrote: "I could now see in my mind's eye, at a glance, the great iron industry of the world crumbling away under the irresitible forces of the facts so recently elicited." As economist Joseph Schumpter wrote in Capitalism, Socialism, and Democracy:

Creative destruction is the essential fact about capitalism . . .; it is by nature a form or method of economic change, and not only never is, but never can be stationary. . . . The fundamental impulse that sets and keeps the capitalist engine in motion comes from the new consumers' goods, the new methods of production or transportation, the new markets, the new forms of industrial organization that capitalist enterprise creates."

Progress absolutely depends on the willingness of government to allow the future to prevail.

As capitalist governments weave their tentacles ever more deeply into the economic fabric, however, their bureaus enlist more and more on the side of the established order, and thus on the side of stagnation as opposed to growth. A legislator usually supports the most powerful businesses in his district. Labor unions are deeply influential in politics, and they normally back the interests of the big companies that they have already organized. Bureaucracies often are closely allied with the industries they regulate or patronize, and in any case the regulations tend to favor the old ways of doing things. Even when governments choose to help business, they often act through investment credits, tariffs, quotas, and tax incentives that favor existing industries.

These government tendencies are reinforced by the media. While more than 300,000 small businesses involving many millions of jobs expire annually without notice, the death throes of a corporate leviathan provide a drama that captivates the press. Boeing loses the contract for a supersonic transport, and the networks descend on Seattle to depict that thriving city in images of the Great Depression because a few thousand well-paid technicians with ample unemployment insurance may be out of work for a while. The halls of Congress begin to ring with a rhetoric of emergency programs and subsidies.

Governments everywhere are torn between the clamor of troubled obsolescene and the claims of unmet opportunity; between the sufferers of aging pains and the sufferers of growing pains; between enterprises shrinking from competition or asking subsidies for their errors, and companies seeking human and capital resources to meet new demands.

The threatened industries of the past always turn to politics to protect them from change. Failure demands finance. A government preoccupied with the statistics of of crisis will often find itself subsidizing problems, shoring up essentially moribund patterns of economic and social activity, creating incentives for unemployment, inflation, family breakdown, housing decay, and municipal deficits, making problems worse by making them profitable.

Throughout Washington today, behind the inevitable rhetoric of innovation and progress, the facades of futurity, these forces of obstruction are gathering: an energy department exalting counterproductive new taxes and price controls; a department of housing promoting rent controls; even a National Center for Productivity forced to celebrate the least productive of all unions—both the steelworkers and the American Federation of State, County, and Municipal Employees.

Despite his best intentions, the government planner will tend to live in the past, for only the past is sure and calculable. In response to the inevitable crises of scarcity, he will prescribe, as progress, a series of faintly disguised anachronisms: a revival of canals and windmills, or a renaissance of consumer cooperatives, or a return to small-lot farming.

Current government programs, in fact, can be seen as a far-reaching and resourceful defense of the status quo against all emerging competitors. Economic policy focuses on stimulating aggregate demand for existing products rather than on promoting the supply of new ones. Investment credits and rapid depreciation allowances favor the re-creation of current capital stock rather than the creation of new forms of capital and modes of production. Antitrust activity is directed chiefly against successful competitors (IBM) rather than against industries that refuse to compete (the steel industry). Government regulatory policy rewards the company that follows prescriptions, rather than the company that avoids them with new techniques and products. Our floating exchange rates deal with U.S. lapses in international trade by depreciating the dollar rather than by forcing a competitive response of greater productivity or new products. Our taxation and subsidy systems artfully cushion failure (of businesses, individuals, and municipalities), reward the creativity and resourcefulness chiefly of corporate lawyers and accountants, and wait hungrily in ambush for all unexpected and thus unsheltered business success.

There is a similar bias in our social and employment programs. The civil service joins with affirmative-action rules to grant jobs and promotions on the basis of nearly immutable credentials like test scores, diplomas, race, and sex, rather than on competitive performance of work. The nation's employment policies are increasingly based on new forms of tenure and entitlement rather

than on expanding opportunities and new kinds of jobs.

Most of these policies are designed to protect businesses and individuals from risk and competition, inflation and unemployment. But the effort to escape inflation by indexing the incomes of favored groups and to fight unemployment by subsidizing outmoded jobs merely makes these problems worse, and foists them onto the unorganized majority: onto small businesses, onto nonunion workers, and onto the public at large in a stagnant economy. As Burton Klein has shown in his brilliant new book, "Dynamic Economics," the effect of the government's efforts to shield itself and its clients from uncertainty and risk is to place the entire system in peril. It becomes at once too rigid and too soft to react resourcefully to the new shocks and sudden challenges that are inevitable in a dangerous world.

Supporting the future is technically easy for government to do. It can perform economic miracles merely by enforcing the laws equally, by fighting monopoly, by removing barriers to trade, and by lifting the dead hand of taxation and bureaucracy. Only slightly more difficult is imposing a sensible structure of penalties and incentives on industries that pollute or defile the environment, protecting patents and property rights, promoting educational excellence—above all in science and technology—and maintaining a reasonable balance in its own accounts (in relation to the level of economic activity and employment). That is, government best supports the future by refraining as much as possible from attempting to shape it, for in a democracy the shape of government policy nearly always conforms with the current incidence of political power, which derives from the configuration of existing capital and labor: with an overlay of rhetoric and bureaucratic expansion in its name.

This is why the current debate over tax policy is so crucial and revealing. The distinctions are relatively simple. Cuts in the tax on capital gains chiefly benefit companies that expect to grow fast, i.e., new and innovating companies. The few that succeed will indeed "hit the jackpot," win "obscene windfall riches," if that rhetoric appeals. Cuts in corporate income taxes and enlargements in the investment tax credit, on the other hand, are less likely to bring such untoward results. The chief benefits will go to companies that are established and profitable, and subject to union pressures. The money will tend to be spent for higher wages and for the repair and reduplication of current capital formations rather than for the development of new ones—for inflation rather than innovation. Expansion will come through homogenous growth or through mergers. In recent years, in fact, the stock market has been largely preoccupied not with anticipating innovations and growth but with speculating on takeover attemps, as big companies give up on generating progress and try to avoid risk by diversification. When big companies avoid risk, however, they become reactionary, because all important progress and innovation is dependent on accepting risk and entering the realms of the unknown.

THE "HIDING HAND"

The damage of fail-safe policies is most vivid in the small and struggling economies of the Third World. With a passionate devotion to the ideals of welfare and central control and an undeniable need for public works and investments, the developing countries provide continuing lessons in the perplexities of planning. Economist Albert O. Hirchman has discovered in the trials and errors—and occasional successes—of these countries, a crucial principle of economic progress.

In an article in The Public Interest (winter, 1967), Hirschman recounted the story of a hydroelectric station that was built to stimulate industrial development in rural Uganda. No boom occurred, and five years later the project seemed a complete fiasco, until transmission lines were built to deliver the power first to neighboring Kenya and later to smaller towns elsewhere in Uganda. The station thus thrived, and when Hirschman studied it enlargement was underway. The hydroelectric station was a success, despite the fact that few of its expected effects or intended purposes were fulfilled.

Another case was the Karnaphuli pulp-and-paper mill in East Pakistan (now Bangladesh). Built in 1953 to exploit the vast bamboo forests along the upper reaches of the Karnaphuli River, the mill had been in fitful operation for several years and had passed into private hands, when the bamboo unexpectedly burst into flower—as bamboo does every sixty summers or so—and became useless. It turned out that many years would elapse before the seeds would grow into usable timber. The catastrophe was apparently total. But, instead, the network of East Pakistan's rivers and canals was used to transport random pulpwood from throughout the country. Not only was this approach a success for the mill, it also provided profitable activity in towns all over East Pakistan. In his article Hirschman offered similar examples from other Third World countries—successful results that totally failed to correspond to the plans and intentions that gave them birth—and proposed as a theory "the principle of the hiding hand." Leaders in less developed countries seem able to muster in themselves and their followers the confidence and willpower to commence a major undertaking only if its dangers and difficulties are obscured. This "hiding hand" takes the form of a vast overestimation of benefits and underestimation of difficulties. There is usually a pretense of planning and expertise that suggests that all problems have been anticipated and the solutions are known.

Such a "hiding hand" seems to have been active in the industrial development of the United States during the first half of the nineteenth century. Economic historian John Sawyer has observed that "miscalculation or sheer ignorance" of costs and difficulties was important in the launching of a number of great and ultimately successful businesses, from canals and railroads to mining and manufacture. Hirschman writes in his article:

"Creativity always comes as a surprise to us, therefore we can never count on it and we dare not believe in it until it has happened. . . . Since we necessarily underestimate our creativity, it is desirable that we underestimate to a roughly similar extent the difficulties. . . ."

Then we will undertake tasks—

"Which we can, but otherwise would not dare tackle. . . . The Hiding Hand is essentially a mechanism which makes a risk averter take risks and turns him into less of a risk averter in the process."

Of course, the entrepreneurs themselves will not see it this way. They will not imagine that they may have stumbled into their greatest achievements. As Hirschman puts it, in a linguistic aperçu: "We fall into error, but do not usually speak of falling into truth."

Hirschman has fallen into some of the most vital truths of human society, but does not quite dare to extend them beyond the less developed world. Things are different, he seems to assume, in modern economies, with their panoply of computers and econometric models, their coolly Galbraithian managers and entrepreneurs, their increasingly routinized research and development techniques, their new methods of market analysis and manipulation, their populations of "risk-taking, achievement-motivated men."

Hirschman implies (though he surely knows better) that in modern societies planning is successful: costs are correctly estimated and benefits clearly foreseen. Yet it seems obvious that if Hirschman had directed his attentions to contemporary modern societies, he would have discovered the same pattern that he found in nineteenth-century America and in the Third World: Planning sometimes succeeds in manipulating markets or governments, but rarely in generating new enterprise or substantial growth. From France to the Philippines, plans are propounded, given lip service, and flouted. Countries like Taiwan and the Ivory Coast, which leave room for uncontrolled private ventures, grow faster than their more centralized neighbors.

Governments and businesses must have some concept of goals and directions. Detailed blueprints can be useful in seeking gains through imitation. Nonetheless, the developing countries are littered with projects undertaken in the false assurance that any random river valley is a site for "another TVA" and that steel and auto industries can be copied by bureaucrats mobilized in military array. Progress and creativity cannot be forced or prescribed, except at costs far beyond the reach of any Third World country or of any competitive firm anywhere. There is no way to escape for long the necessity of openness and risk.

This truth is anathema to those who seek a risk-free scheme of development and growth, whether unlettered leftist generals assuming control of small nations or smooth-talking corporate leaders in the U.S. The rule of risk applies alike to national planning and private business, to advanced technical industries and even to the movies. John Gregory Dunne's extraordinary book *The Studio* tells of the foibles of planning during a year of high expectations under new leadership at Twentieth Century Fox. In preparation—and preoccupying the executives—were several colossal "sure things," including *Doctor Doolittle* with Rex Harrison, *Star!* with Julie Andrews (coming off her *Sound of Music* bonanza), and *Hello Dolly* with Barbra Streisand. The sure-thing superhits, however, would have brought the company near bankruptcy, if it had not been for an afterthought cheapie (several times nearly canceled in the interests of economy) named *Planet of the Apes*. *Star Wars* was later to perform a similar miracle for the studio.

The unpredictability that Hirschman took to be a malady of underdevelopment is, in fact, the incalculable condition of all economic progress. To deal with uncertainty, one must have enough faith in the future to take risks. Faith moves mountains, evokes commitments, and lowers interest rates; risk propels adventure and innovation.

To a great extent, plans are the mythology of a secular rationalist world; they are designed, paradoxically, to get the planners out of the way, to appease the bureaucrats and financiers, so work and faith and ingenuity can proceed. As clothing executive Richard Salomon told the Wall Street Journal, "Everybody praises carefully tested methods and long-range planning. Yet the most successful moves are often on-the-spot responses to completely unexpected situations, taking a company to places it never before imagined." When the planning is taken too seriously, as in totalitarian states, stagnation results and most creativity has to be imported in the form of goods from abroad.

RISK, FAITH, AND THE FRONTIER

The attempt of the welfare state to deny, suppress, and plan away the dangers and uncertainties of our lives—to domesticate the inevitable unknown—affronts human nature. Even the most primitive of men tend to invent forms of gambling (dice in most societies preceded the wheel) as well as religions (faith always precedes works). The government devoted to suppressing uncer-

tainty finds itself forever having to channel or suppress the human will to risk.

In this country, the impulse to gamble and risk is often driven from the economy, from serious life, into fantasy and frivolity—games and wagers—or diverted from productive activity into courtroom assaults against the productive. One of the best remaining ways to strike it rich—the best remaining scene for gambling, with the odds against the productive stacked ever higher by government—is the civil suit: malpractice, product liability, discrimination, antitrust, libel, pollution, whatever, the government has created a vast new sweepstakes open to the man willing to play for high stakes and to the law firms that join in the new champerty. In a good many cases the victim is a man of courage and faith who dares risk his own money to bring a new product or service to the public. Caveat productor is the new rule.

For citizens without the means or litigious bent to sue for a living, the state is widely setting up simpler lotteries of its own, opening on every block a storefront for the gambling impulse, advertising on billboards the government games. And everywhere it tells the incredible lie that its lottery affords a better deal ('where no one has a better chance than you"), a fairer opportunity than the real and continuing lotteries of lower-class life; that it is more promising to place your wagers on "The New York Bets" than in the U.S. economy. The effect is to trivialize and stultify the will to risk and work that is the only real hope of the poor. It is to deprive our economy of the new businesses and activities that the poor otherwise would engender by their hard work and enterprise.

A society that immobilizes its poor by excessive welfare and trivial games—government bread and circuses—removes a major source of economic growth and change. The economic history of America is largely the sage of successive generations of the poor, toughened by hardship, who ovecame all odds to move up: launching new businesses and spurring the middle class into greater efforts and accomplishments. By pampering and demoralizing the poor, government impoverishes the whole society.

Similarly with the rich, the government makes the dubious claim that it can use wealth more productively than a free capitalist. So its tax policy raises the always adverse odds of enterprise to the point that they no longer invite the investor. While the poor man swings between welfare and the state lottery, the rich man alternates between personal gambling and municipal bonds. The stochastic margin of progress—the frontier of the economy—is being closed off by obtuse taxation and bureaucracy.

Most redistributive activity is based on serious misunderstandings of the nature and sources of wealth and innovation. Seeing the high levels of chance involved in each particular business success, many officials and intellectuals conclude that most large capital gains are in a sense both unearned and unanticipated, and no factor in either personal motivation or efficient allocation of resources. Two of the nation's leading thinkers on the Left, Lester C. Thurow and Christopher Jencks, ended their ambitious studies of inequality* with the conclusion that crucial in most fortunes, great and small, is luck. The beneficiary, like a raffle winner, was at the right place at the right time, and in a rational system should not be permitted to convert his luck into real economic power, any more than the myriad losers should suffer more limited liability for their losses.

Indeed, risk and faith do produce much more waste and inefficiency than any well-trained planner could tolerate or defend. Some 300,000 new businesses start every year in America, two-thirds fail within five years, and the median small businessman earns less than a New York City garbage collector. Of the thousands of plausible inventions, only scores are tested by business, and only a handful of these are an economic success. Perhaps 90 percent of trade hardcover books lose money for the publisher, and a still higher proportion represent a net loss for the author; an even greater number, comprising untold months or years of labor, are never published at all. But such waste and irrationality is the secret of economic growth. Because no one knows which venture will succeed, which number will win the lottery, a society rule by faith and risk rather than by ration calculus, a society open to the future rather than planning it, will call forth an endless stream of invention, enterprise, and art. The greatest irony of modern economics is that the kind of "economic man" at its center, the rational optimizer of wealth, could rarely create wealth, or dare invest in the frontier enterprises of growth.

The issue goes far beyond economics. Charles Peirce, perhaps America's greatest philosopher and leading theoretician of probability, has shown that chance not only is at the center of human reality, but also is the deepest source of reason and morality. "The idea that chance begets order is the cornerstone of modern physics," and, he might have added, of biology as well.

The movement of chance and probability toward order and truth, however, is not assured in any one lifetime. The odds are against each individual in the serial lotteries of his own life, which inevitably end, after all, in decline and death. Risk cannot be shown to work except in the long run of trial and error; in fact, a rational calculation of personal gain would impel an individual above all to avoid risk and seek security. In our world of fortunity, one would conclude, the invisible hand of self-interest would lead to an ever-enlarging welfare state—to stasis and sterility. This is the root of our crisis today.

The acceptance of risk implies a commitment to values that go beyond rational self-interest to embrace family and future. Progress springs ultimately from morality and faith, from beliefs, usually religious, that transcend the individual life and reach into the future of the race.

The narrow economic and sociological perspective engenders a despairing pessimism about our prospects as a free people. Economist Robert Heilbroner and anthropologist Marvin Harris speak for a consensus of security-minded intellectuals in arguing that the future cannot be mastered in freedom—that without authoritarian controls the race is doomed to a grim decline, as rising populations press against a wasting earth.

What they fail to comprehend is that the visibly possible achievements, the clearly available resources, are always limited. All plans based on the calculable present, on the existing statistics, necessarily presume a declining field of choice, a contraction of possibilities, an exhaustion of resources, a diminishing of returns—entropy and decay. The only unlimited resource, the one that can release us from all the others, is the imagination and creativity of free men.

The most dire and fatal hubris for any leader is to cut his people off from providence, from the miraculous prodigality of chance, by substituting a closed system of human planning. Innovation is always unpredictable, and thus an effect of faith and freedom.

In the United States today we are facing the usual calculus of impossibility, recited by the familiar aspriants to a master plan. It is said we must abandon economic freedom because our frontier is closed: because our biosphere is strained, because our resources are running out, because our technology is perverse, because our population is dense, because our horizons are closing in. We walk, it is said, in a shadow of death, depleted air, poisoned earth and water, a fallout of explosive growth showering from the clouds of our future in a quiet carcinogenic rain. In this extremity, we cannot afford the luxuries of competition and waste and freedom. We have reached the end of the open road; we are beating against the gates of an occluded frontier. We must tax and regulate and plan, redistribute our wealth and ration our consumption, because we have reached the end of openness.

But quite to the contrary, these problems and crises are in themselves the new frontier, are themselves the mandate for individual and corporate competition and creativity, are themselves the reason why we cannot afford the consolations of planning and stasis. The old frontier of the American West also appeared closed at first. Only in retrospect could the achievements of the past be seen as easy or inevitable. America became an open reservoir of wealth only in retrospect, because the pioneers dared to risk their lives and families in the quest for riches, looking for gold (of which there was relatively little in the U.S.) and eventually finding oil. Only in retrospect were the barrens of Texas and Oklahoma an energy cornucopie, the flat praries a breadbasket for the world, or Thomas Edison a catalytic genius and Henry Ford the salvation of capitalism in the grips of an earlier closing circle. The future is forever incalculable. Its challenges can be mastered only by those who are willing and permitted to enter the unknown.●

*Lester C. Thurow, *Generating Inequality*, 1975; Christopher Jencks, et al., *Inequality*, 1972.

ADDRESS BY SENATOR BELLMON ON ENERGY

● Mr. BARTLETT. Mr. President, my distinguished colleague and friend, HENRY BELLMON, recently presented an address at the fourth annual Department of Energy Symposium on Enhanced Oil and Gas Recovery at Tulsa, Okla. His remarks were well received by government and industry leaders in the technology of enhanced energy recovery. I concur wholeheartedly with what he had to say, and in order that my colleagues might benefit from reading his remarks, I ask that a copy be printed in the RECORD.

The address follows:

REMARKS OF SENATOR HENRY BELLMON

Thank you for asking me to this Fourth Annual DOE Symposium on Enhanced Oil & Gas Recovery. There seem to be a lot of you interested in Enhanced Recovery. I'm glad that there are so many of you here tonight If I were to confine my remarks to what I know about Enhanced Recovery, we would be out of here in no time.

Since you didn't ask me here to educate you about Enhanced Recovery, I conclude you're interested in knowing how the Congress feels about the work you're doing. Well, I think what you're doing is just fine. I wish you would do more of it.

It has seemed a shame to me that so much oil has been left in the ground. We know where it is and how much is there, and yet most of the oil (and a lot of the gas) we find is being left in the ground. Some of the reasons are technical. Some are economic.

In the Senate Appropriations Committee, I have been helping to get money for enhanced oil recovery research, development, and demonstration. The funny thing is, the government never wants to spend it. I don't know which is a stranger sight, old tight fisted Bellmon pushing money on a gov-

ernment agency, or a government agency that doesn't want any more money. For although the name of the agency has changed several times during the past five years, and some of the bureaucrats have changed, too, they never seem to want the enhanced recovery money. First, in 1973, it was the Bureau of Mines They didn't want the money. Then, later on, it was the Energy Research and Development Administration. They didn't want the money. Now, it's the Department of Energy. They still say they don't need any more money for Enhanced Recovery.

At first, you could understand why they didn't think Enhanced Recovery was something the government ought to get involved in. Oil was cheap. Arab oil was very cheap. In 1973, the Arabs hadn't realized that they were selling us their oil at less than our true replacement cost. When they finally did realize it, and jacked up their price to what they figured our true replacement costs were, we obliged them by slapping on our oil a price ceiling. That price ceiling was less than half the cost of any oil we might have produced by enhanced recovery. If it didn't make economic sense to enhance recovery before, it surely didn't afterwards!

Now the reason DOE says it doesn't need any more money is that they have already done all the necessary research and demonstration, and it's time for private industry to take the ball and run. (Which is exactly the same story I get from Secretary Schlesinger about oil shale.) I guess I must have dozed off and missed all that demonstration. For those of us who blinked twice, perhaps DOE will repeat a little of that demonstration with the funds we will supply in FY 1979.

This reluctance on the part of the Federal government to push enhanced oil and gas recovery has existed under three Presidents. But it is only since Jimmy Carter became President that our enhanced recovery policy . . . our energy policy . . . indeed, our economic and foreign policy, has taken on the aspects of a morality play. I want to talk about those aspects tonight, and I'll use the recently issued "DOE Additional Price Incentives for Tertiary Enhanced Recovery Techniques" to illustrate my points.

The actors in the morality play are: Producers, Consumers, and Government. Producers produce. Consumers consume. Government soars high above the stage, swooping down from time to time to correct injustice. Consumers play the part of the good guys. Producers play the part of the bad guys.

Injustice occurs, in this morality play, whenever Producer and Consumer agree on a price that Government doesn't consider "fair". What is "fair"? Let me quote from page 50 of President Carter's "The National Energy Plan", a document issued by the Executive Office of the President to accompany his Comprehensive Energy Bill.

"In 1973–74, the oil-producing countries raised the world oil prices four-fold. Deregulation of oil and gas prices would make U.S. producers the beneficiaries of those arbitrary price raises and yield windfall profits from the increased value of oil and gas in existing fields. The producers have no equitable claim to that enhanced value because it is unrelated to their activities or economic contributions."

Now that is the kind of statement that belongs front and center in our morality play. That quote is not just the view of some faceless bureaucrat concerning our existential situation. The evidence is all around that this view of the world is pervasive in this administration. It makes no difference that deregulation of oil and gas prices would probably solve the energy problem. Somebody might make a lot of money.

In the Moral Equivalent of War, oil and gas producers have become "War Profiteers". In the view of this Administration, and many supporters in Congress, all revenue becomes profit. Their eye is not on the doughnut (increased domestic production of oil and gas). Their eye is on the hole (producers' revenue).

Anyone in the Energy bureaucracy who knew anything about oil and gas (or had any reason to hope that the oil and gas industry would somehow make a profit) was run out of town on a rail. Experience became disqualifying. Anyone who knew anything about a subject was not allowed to be associated with it. But even after you decide what constitutes heresay, it is difficult to root out all the heretics. I am willing to believe that there are DOE officials (some of whom may be in this very room) who secretly hope this country can increase domestic production of oil and gas. There may even be some Closet Free-Marketers in DOE. How else to explain the reports DOE issues from time-to-time, then recalls, then re-issues full of blank pages.

The things that ought to be recalled, never are. From page 11 of Chapter II of the DOE "Price Incentives for Tertiary Recovery Techniques": "However, a tertiary enhanced recovery project does not qualify for the incentive merely because it falls within the description of one or more of the defined techniques. Such a project is eligible to receive the incentive only if it is qualified, i.e., 'is certified pursuant to (applicable certification procedures) as being uneconomic at the otherwise ceiling prices.' "

In other words, DOE will only allow you to get the free market price for the oil you produce using enhanced recovery if you would lose your shirt, otherwise. If it's a real loser, they'll even loan you some "up-front" money. But you've got to pay it back. Got to be fair about this.

Based upon what high DOE officials have testified to before the Appropriations Committee, I can only conclude that they think this "incentive" package is going to do the trick. I don't. And I don't think many people in industry or at lower levels in DOE think so, either. Suppose you want to employ an enhanced recovery technique. You better apply to DOE. It's not clear what happens if you go ahead without saying "May I?".

First, you've got to figure out how much oil you would produce if you didn't use an enhanced recovery technique.

Then, you've got to estimate how much additional oil you might produce if you used an enhanced recovery technique.

Next, you figure out how much money you'd lose if you went ahead and the government only allowed you the DOE ceiling price they would allow you if you only produced the oil you would have produced if you didn't employ an enhanced recovery technique.

Finally, you figure out how much you'll make (if anything) if you employ an approved technique and DOE allows you to get the fair market price for the additional oil you produce over what you would have produced if you didn't employ an enhanced recovery technique. That last figuring includes (1) a cost analysis, (2) a cash flow analysis, (3) a real rate-of-return analysis and (4) a risk and sensitivity analysis.

Are you all still with me?

Did you all remember to say "may I"?

Now, you have got to convince someone at the Economic Regulatory Administration (a semi-independent part of DOE) that you did all your figuring right. This is a different part of DOE from where there may yet be hiding some heretics who want, secretly, for this country to produce more oil and gas. This is the part where the Swoopers hang out.

Believe it or not, they (the ERA) do not consider themselves able to make a final judgment on so sensitive a matter, and so they turn over all your figurings to the "relevant cooperating Federal or State agency".

If everyone, including this mysterious "relevant cooperating Federal or State agency, "agrees that you would be a fool to go ahead with the project, an announcement to that effect is placed in the Federal Register. After thirty days has passed, you are authorized to take one giant stride. Unless . . . Unless someone objects (in writing) within that thirty days. (Like, for example, a frightened stockholder).

As you can imagine, not every producer is falling all over himself in the rush to sign up for this Federal program.

Since we know that this program is not going to result in much increased oil and gas production, lets go back and figure out what might. Consumers still consume. Only producers produce. But Government need not examine every transaction to see if it is "fair". If producer and consumer agree on a price, there is no injustice. No "probable violation".

(You know, when I got to Washington, I discovered that the Laws of Supply and Demand had already been enacted. That saved me a lot of trouble. Besides, President Carter might have tried to veto those laws if they came to his desk; some Congressmen have been trying to repeal them ever since they heard about them.)

But, knowing the Law of the Land, I can tell you what would happen if Government decided that the price producers and consumers agree upon is not the right price. Government could raise the price. (To do that, Government would have to get the difference between the higher price it sets and the price the consumers are willing to pay from someone. But let's not worry about that Budget problem right now. I worry enough about it when I'm in Washington.) If government were to be successful in arbitrarily raising the price producers actually get for their oil, they will produce more oil than consumers will buy. So if government raises the price for producers, a surplus results.

If, on the other hand, Government decides to lower the price consumers are allowed to pay to producers, producers will produce less oil. This Government action results in a shortage.

In the Carter morality play, the Laws of Supply and Demand don't exist. Higher prices for producers produce no new oil or gas. Only higher profits for producers. And that's Bad. Controlled prices for consumers don't result in less production. Only lower fuel bills for consumers. And that's Good.

I thought for a while that we were making some progress, educating President Carter about the real world. He has said on a number of occasions that our gas and oil has got to be priced at its true replacement cost. He is so right and I have applauded him for saying it. But it turns out that he doesn't mean the same thing by that. He means that it has to be priced at true replacement cost to the consumer. It has to hurt the consumer. He doesn't mean that it has to be priced at true replacement cost to the producer. It can't help the producer.

The critical value in the real world is what the producer winds up with. It is his net cash flow from operations that counts. Unless the amount of money the producer has in his possession after all expenses is enough to go out and find another barrel of oil, that barrel of oil has not been priced at it's true replacement cost.

In 1978, the true replacement cost for oil in this country is between $6 and $8 a barrel. That means for constant production to be maintained every barrel of oil will have to bring about $7 PLUS royalties, taxes, and production costs. A similar situation prevails for natural gas.

One point I am trying to make is that it will not be commercially economic to employ enhanced recovery techniques until the cost of finding and developing new reserves gets to be more than the production costs of

enhanced recovery. That is not usually the case today.

Another point is that increased domestic oil and gas production depends more than anything else upon the net cash flow from operations that actually gets into the hands of producers.

We already know what oil and gas producers do with the net cash flow from operations. They plough it back into the business. They go out and find more oil and gas. They will employ enhanced oil and gas recovery techniques if, and only if, the net cash flow from those operations can be reasonably expected to exceed the net cash flow from some other use of their available funds.

If we wish to increase domestic oil and gas production, we must see to it that Government does not lower the price to producers that consumers are willing to pay.

If we wish to increase the employment of enhanced oil and gas techniques in the near term, it will (in most cases) be necessary for government to subsidize producers. Producers cannot be expected to go for enhanced recovery in a big way until net cash flow from those operations equals (or exceeds) that from more conventional exploration and development. There are several possible approaches for this government action. There are three bills in the Senate for which hearings have already been held.

The Bentsen bill (S. 2623) would allow the free market price for all oil produced in an enhanced oil recovery project. The Bartlett bill (S. 3306) would allow the free market price for all oil produced in secondary and tertiary recovery projects. And you wouldn't have to say "May I?". The Hart bill (S. 2999) is more research oriented. It would supply loan guarantees for the up-front costs and price supports for production. A price of $25/barrel would be allowed for some limited production, and the world price would be allowed for subsequent production. I hope we can get at least one of these bills passed, because I don't think this DOE Incentive Package is going to do the job. It is too oriented toward making sure nobody gets away with anything. It doesn't offer enough incentive to make complying with the regulatory hassle worth while.

To you participants in this symposium, I can say that you are doing an important job. You are solving the technical problems. You are solving the economic problems. Keep up the good work. I hope that you can eventually get these known deposits of oil and gas out of the ground economically.

As far as the philosophic things I have had to say, they apply to many other fields. Because although most Americans may be consumers when it comes to oil and gas, they are producers when it comes to wheat, and steel, and furniture, and textiles . . . and widgets. The same problems, the same solutions I have talked about here, it is the same in those other fields.

There is entirely too much swooping down by Government. There are far too many bargains struck by Producer and Consumer that Government wants to change. It has gotten to the point that "profit" has become a dirty word. "Profit from" means for many "take advantage of". No wonder the stock market drifts listlessly. No wonder the dollar plummets.

Think about it. Think about the "little people" who get a royalty check once a month, or once a year, for their share of the production from the old family farm. Maybe there was a little oil or gas production from that well and the producer wants to re-work it. Maybe if the price was high enough it would pay to try to increase production. Well, those descendants are the people who "have no equitable claim to that enhanced value because it is unrelated to their activities or economic contributions."

When President Carter attacks as "war profiteers" the major oil and producers he attacks no less the little people who receive oil and gas royalty checks. They want to see that gas sold at a fair price as much as the majors do.

When he attacks those who profit from increased value of oil and gas, he is attacking no less those pensioners who hold stock in the nation's oil and gas companies. Or whose pension fund holds such stock. When Government swoops down on Producer and Consumer, who have long ago struck their bargain and gone their separate ways, it swoops down on royalty holders as well as on major oil companies. With dogged determination, Government follows these evil profiteers, follows them to the grave, and sometimes beyond. I had a cousin who got what the government thought was too much royalty. The last I heard, the Government was trying to get $48 from her heirs.

If I have seemed too harsh on President Carter, it was not my intention. We had short sighted, ill informed, and counterproductive government intervention in the market place and the affairs of all our citizens long before Jimmy Carter came to Washington. In fact, he got there in the first place by blasting that kind of government interference. But somehow, since he has been President, whenever he has had a chance to lessen government interference, he has ended up pursuing a policy that increases it. The Gas Bill he is urging us to pass in Congress right now is an example. He campaigned on a platform of deregulating natural gas. He wants a bill that regulates all gas, even that gas that was formerly unregulated.

It is my hope that we have reached the high-water mark in this flood of government intervention. I think a letter some of us Senators sent to our colleagues in the Senate about this Gas bill President Carter is pushing, reflects our having "had enough".

I'd like to close by reading a few paragraphs from that letter.

"DEAR COLLEAGUE: The Senate will soon be called upon to consider the Conference Report on the Natural Gas Bill. The Compromise which has been reported represents no coherent policy beyond a desire to say 'we have passed an energy bill.' The undersigned include both supporters and opponents of gas deregulation. But we are united in stating that this bill will lead to a situation worse than under the status quo.

"The arguments against the bill have been set forth at great length, but can be summarized as follows:

"The compromise will not produce more gas than the status quo.

"The regulatory complexities and the restrictions placed on the free intrastate market will reduce producer incentive.

"The compromise will also mean higher prices to consumers in the interstate market, without assuring additional supply.

"The incremental pricing provisions will seriously damage many industrial areas dependent on the interstate market without adequately protecting consumer interests."

It goes on. It's signed by Edward Kennedy of Massachusetts, Dewey Bartlett of Oklahoma, John Durkin of New Hampshire, John Tower of Texas, Muriel Humphrey of Minnesota, Clifford Hansen of Wyoming . . . and eighteen other Senators.

The point is that too much government intervention is viewed by a wide constituency as not being a good thing. For consumers. For Producers.

It was an honor to be asked to address you at this symposium. Thank you.●

THE ECONOMICS OF NATIONAL SURVIVAL

● Mr. HATCH. Mr. President, on July 13 the Honorable J. William Middendorf II made an important speech at the University of Virginia to the Invest-in-America National Council, Inc. Mr. Middendorf pointed out that our position in the world is directly related to the health of our economy. As goes the health of the economy, so goes our ability to provide a strong national defense.

Mr. Middendorf points out that:

U.S. companies, U.S. citizens and the world as a whole have lost confidence in the U.S. economy. Unfortunately, this lack of confidence is justified. The reputation of the U.S. economy as an engine for continually improving productivity through investment and technological development is rapidly disappearing. Our role as the world's leading innovator is being eroded. We cannot continue to trail the other industrialized nations of the world in investment, productivity and innovation and expect to survive as a world economic power. Nor can we expect our national defenses to remain strong if our economy is weak.

Mr. President, I believe that the Senate must pay more attention to this interrelationship. Although the reality is now different, we continue to assume that our economy has an inexhaustible economic strength that we can continue to abuse without suffering any adverse consequences. Thinking people no longer believe this and are becoming alarmed by our cavalier disregard of our economic base. Mr. Middendorf points out that Edward Denison of the Brookings Institution estimates that about 25 percent of the recent decline in productivity growth that our economy has suffered resulted directly from Government regulations. The Senate had to pass these productivity-destroying regulations. Did we realize the cost of these regulations in terms of lost productivity when we passed them? Who would admit that we knew this and consciously took action to reduce the living standards of the American people and the job opportunities of their children? On the other hand, if we deny that we knew, it amounts to an admission that we legislate without knowing what we are doing. Which admission do we prefer—that we consciously harm the people. or that we do not know what we are doing?

I ask that Mr. Middendorf's speech be printed in the RECORD.

The speech follows:

THE ECONOMICS OF NATIONAL SURVIVAL

(Speech by J. William Middendorf, II)

Ladies and Gentlemen:

It is a great pleasure to be here this morning to discuss "The Economics of National Survival." The title of this session may be perhaps a bit melodramatic, but it does point out an essential theme.

When we think of national survival we normally conjure up images of battleships, tanks, ICBM's and satellites. These are, of course, essential to our national defense. But investment, productivity, innovation, technology, trade, growth, employment and stability are the keys to our national economic health and our economic health is, in turn, the key to our survival as a world power. I can safely say without the slightest chance of exaggeration that the ability of our economy to efficiently marshal resources is at the very core of an effective national defense. Our position in the world is directly related to the health of our economy.

The economic history of the United States is truly remarkable. The list of our technological achievements that have transformed our economy and the world's way of life is

nearly endless. The telephone, the telegraph, the automobile, the airplane, the computer, the transistor, the semiconductor: these are just a few of the most familiar American innovations.

Perhaps even more dramatic is our seemingly unerring ability to bring these innovations into mass production—a technique also of American invention—and to bring their benefits to bear for the good of all our citizens. We also have shown a remarkable ability to save, to invest and to channel the individual investments of millions of Americans into the productive process.

The results are unparalleled in world history. The U.S. has achieved the highest standard of living in the world. Our ability to counter wage increases with improvements in productivity has normally kept our economy relatively free of inflation. For decades the U.S. dollar was the stable world currency, the standard against which other currencies, other economies and world trade was measured.

The strength of the U.S. economy allowed us not only to win two world wars but to do so with remarkably little economic distortion while later financing the recovery of our allies and former enemies alike.

By the 1960's, the United States appeared to the world as an unstoppable economic juggernaut of such power that our very success began to arouse nationalistic fears abroad. In 1968 the French author, editor and politician Jean-Jacques Servan-Schreiber wrote an influential study called "The American Challenge" in which he expressed the fears of many Europeans over the power of the U.S. economy.

"Fifteen years from now," he said, "it is quite possible that the world's third greatest industrial power, just after the United States and Russia, will not be Europe, but American industry in Europe."

Ten years ago when he wrote these words it seemed entirely possible that Servan-Schreiber would be proven right. We now see all too clearly, however, that the U.S. economy has not even come close to justifying these nationalistic fears. In fact, the strength of our economy—and therefore our position in the world—is in serious jeopardy.

Frankly, the picture of the U.S. economy today is not a pretty one:

Inflation, which remained under control through the 1950's and early '60's is now stuck at entirely unacceptable levels of six to nine percent per year, thus seriously distorting the entire economy.

Unemployment, particularly among the young and minorities, is a national disgrace.

Our balance of payments deficit set a new record last year—nearly six times the previous record. In spite of a slight decline in May, we seem destined to set another new record this year.

As a result of massive trade deficits and constant inflation the value of the dollar continues to decline, reflecting increasing lack of confidence in the U.S. economy.

Investment in new plant and equipment is well below necessary levels.

As a direct result of reduced investment and inflation, the growth of productivity over the past decade has been at the lowest level since World War II.

Individuals increasingly shy away from savings and investment, switching instead to consumption as the best method for beating inflation.

With decreasing supplies of private capital available for equity investment, and corporate profits essentially stagnant over the past 10 years, corporations increasingly are forced into financing essential new equipment by borrowing. Today, debt finances 60 percent of corporate capital spending versus 30 percent 10 years ago.

Taxes have risen sharply over the past decade, as inflation forces individuals into higher tax brackets, creates artificial capital gains and raises the value of our homes.

Yet in spite of rapidly rising taxes, the Federal government continues to mount massive annual budget deficits.

Why is the economy in such chaos?

It has become almost a cliche to blame our economic woes on government, but this is one cliche that is true. And for good reason.

Government, at all levels, now employs one out of every four U.S. workers.

Government spends over 40 percent of our total national annual income.

The mere fact that government is so big and so monolithic assures that whatever ails our economy must—by definition—be largely the responsibility of government.

That is perhaps a strong statement. But no other sector of our economy is big enough to stand up to government. Even those who are critical of big business, big labor or big agriculture will almost always admit that the enormous diversity within these economic sectors effectively prevents their holding sway over the prevailing health of the economy.

General Motors alone cannot influence the overall rate of investment in new plant and equipment.

The oil industry cannot control inflation.

Organized labor cannot reverse our balance of payments deficit or improve the productivity of workers.

Government, particularly the Federal government, through its taxation, spending and regulatory policies, must bear the blame for our economic problems and must be viewed as responsible for developing solutions. We in the private sector can suggest ideas, but government has now grown into such an overwhelming economic force that it alone can act effectively. The trouble is the Federal government seems unable to understand the problems and unwilling to effectively deal with them.

I think it is fair to say that the Federal government at least is coming to recognize its central role in our economy. It is a long way from recognizing the problem to effectively dealing with it, however.

Over the past decade, policy makers in Washington have tended to concentrate their efforts alternately on unemployment and inflation. Clearly both are troublesome. But it is essential to understand that both are symptoms of more serious underlying economic problems. There seems to be a strong belief in Washington that if unemployment exists, we should simply set up governmental bureaucracies to hire the unemployed. On the other hand, if inflation exists, government should set up bureaucracies to hold down wages and prices—either voluntarily or through outright controls.

I am convinced—as are most people in the private sector—that such programs simply will not work. Government employment programs help politicians get through the next election, but they don't create permanent, meaningful, productive jobs. Government wage and price controls may hold down inflation over a brief period, but without attacking the underlying causes of inflation, such controls only guarantee that both wages and prices will rise even more sharply in the future while very possibly leading the country into a recession.

So what are the underlying causes of our problems and how do we deal with them? That's exactly what I would like to discuss this morning, focusing specifically on two points:

The crisis of capital formation, which has led directly to inflation through cuts in productivity, and

The diversion of productive resources to nonproductive uses.

Let's take these issues one at a time and examine what they mean and how they cause and are caused by the more visible problems of inflation, unemployment and taxation.

THE CRISIS OF CAPITAL FORMATION

In its simplist terms, capital is formed when individuals or companies forego immediate consumption in favor of saving a part of their incomes, turning those savings to productive use through investment. The process involves literally putting money to work, earning an income in the same way individuals earn wages and make companies make profits.

The amount of capital formed depends on the incentives available to individuals and companies to encourage savings and investment rather than immediate consumption. These incentives, together, must fully compensate for any risk involved in the investment and must show promise of paying a real return great enough to compensate for giving up immediate consumption.

In the past, the stability and growth of the American economy has proven a uniquely effectively incentive for capital formation. In turn, capital formation led to continuous technological advancement which increased productivity, held down inflation and increased real wages, permitting both added consumption and added saving.

In short, our economy became a gigantic machine, constantly building on itself, forming new capital to serve as the foundation for future growth and continuously upgrading our standard of living. Unfortunately, the gears of this machine became fouled in the mid-1960's and today the growth of new capital has been reduced dramatically, slowing the increase in productivity, fueling inflation and threatening the stability of the U.S. economy.

The incentive and the ability of people and companies to save and invest is directly related to their confidence in the overall economy. Numerous surveys have shown that over the last several years the individual's confidence in the health of our economy has been severely shaken. They simply are no longer willing to risk investing in U.S. business.

Some startling statistics illustrate this lack of confidence:

In the last ten years, individuals have actually withdrawn a total of $42.6 billion from the capital stock of U.S. companies. In short, they have decided the stock market is too risky.

While individuals have been net buyers of corporate bonds and government securities, these purchases of less risky investments have, together, not kept up with the rate of inflation and have been outweighed by amounts held in savings accounts or invested in insurance policies and real estate. Clearly the public is becoming more conservative, increasingly seeking hedges against inflation. Rather than looking for profits through relatively higher risk investments, the aim of most private saving and investment is simply not to incur losses.

Worse yet, annual increases in individual savings available for investment have actually declined in real terms over the past ten years. In 1967, Americans saved nearly $41 billion. But in 1977, after deducting inflation, savings dropped nearly ten percent to $37.5 billion. Obviously a lot of people have decided that consumption is the best possible hedge against inflation.

If we look at the stock market, it's easy to see that lack of confidence in risk-oriented investment is well justified. From 1950 until 1970, the New York Stock Exchange composite index showed a nearly continuous upward trend. With only minor adjustments, stock prices rose over 400 percent in the 50's and 60's or about ten times the rate of inflation.

From 1969 through 1977, however, stock prices, on average, declined slightly even in inflated terms. Discounting inflation, the

real value of all stocks today is actually less than half of what it was in 1969.

Other than personal investing, the principal sources of corporate capital formation are corporate profits, borrowing, and equity investment by institutions—insurance companies, penson funds, mutual funds, bank trust departments, etc. But even here, the picture is gloomy. After discounting inflation, profits for non-financial corporations actually declined by about ten percent between 1967 and 1977, thus seriously eroding that vital source of new capital.

Needless to say, since continued replacement of plant and equipment is essential just to keep going, corporations have in recent years had no choice but to borrow in increasingly large amounts. Today, about 60 percent of all capital investment is made with borrowed funds versus 30 percent in 1964.

The results of declining confidence, reduced private investment, lower profits and increase corporate debt have, together, greatly weakened the economy and seriously threaten the future.

Productivity, which grew at a healthy 3.2 percent average annual rate between 1945 and 1965, declined to a growth rate of 1.6 percent after 1965 and only one percent in the past two years. That's bad news for both inflation and unemployment.

But the decline in capital formation is only part of the problem. The syphoning off of productive resources for nonproductive purposes only further weakens the economy.

DIVERSION OF PRODUCTIVE RESOURCES

This syphoning-off process comes in three basic areas:

Increased corporate and personal taxes which reduce income available for investment;

Massive government budget deficits which must be financed by borrowing in the public marketplace; and

Mushrooming government regulations which cost industry billions of dollars every year.

Since 1967, the effective corporate tax rate has climbed steadily from about 41 percent to over 49 percent. Total corporate taxes have increased for more than the rate of inflation while, as I mentioned, real corporate profits have actually declined.

Personal federal income taxes have performed about the same way, rising, on average, from 13.1 percent of personal income in 1967 to 14.8 percent in 1977. That may not look very dramatic but it amounts to an increase of 13 percent. And that's nothing compared to the total tax burden imposed by state and local entities as well as the federal government.

Taken altogether, taxes in the U.S. today eat up 41 percent of our total national income. As inflation continues to artificially pump up wages and real estate values, this percentage will almost definitely increase, taking ever larger amounts of our national income away from productive private investment.

Although government at all levels is devouring nearly half our national income, that obviously is not enough to satisfy the voracious appetite of Washington. The Federal government last completed a year with a budget surplus in 1969. Since then, the total national debt has nearly doubled, rising far faster than the rate of inflation. The President's budget for fiscal year 1979 calls for a deficit of over $60 billion—that's more than the entire federal budget in 1950! More important, that is $60 billion that will be diverted from the private capital market—$60 billion that could be far more productively used as investment capital for private industry.

It has become fashionable among some economists to praise large budget deficits, claiming that they pump up the economy, increase employment and provide a relatively cheap method of financing government expenditures since debt will be repaid in inflated dollars. In times of economic recession, this line of reasoning may have some validity. Deficit spending, however, has no place in our economy on a continuing basis.

First, as I mentioned, deficits unnecessarily divert capital from more productive uses.

Second, they contribute directly to inflation, and

Third, they act as a hidden tax by borrowing dollars at present value and repaying debt in less valuable dollars.

Finally, government is eating into our limited supply of productive capital in a relatively new way by forcing industry to spend billions of dollars annually to comply with federal health, safety, environmental and other regulations.

At first blush, the cost of regulation seems relatively modest; after all, only $4.8 billion or less than one percent of next year's budget is allocated to the various regulatory agencies. But that's just the tip of a gigantic iceberg. According to a study by Professor Murray Weidenbaum of Washington University in St. Louis, industry will spend nearly $100 billion in 1979 alone just to comply with various regulations. In case there is any doubt of the inflationary impact of these costs, Professor Weidenbaum estimates that regulations add $666 to the average price of a new car in 1978 and $1,500 to $2,500 to the cost of a new house. Just filling out government paperwork costs business $25 to $32 billion a year.

Obviously, these costs must be passed on to consumers in the form of higher costs and obviously this contributes to inflation. But these compliance costs are even more insidious. By diverting huge amounts of money, management time and research and development skill away from productive uses, regulations severely restrict future productivity gains, thus virtually assuring future inflation. As a matter of fact, Edward Denison of the Brookings Institute estimates that about 25 percent of the recent decline in productivity growth resulted directly from government regulations.

So not only are we having an increasingly difficult time building an adequate supply of capital, but those limited resources that could be put to productive use are being diverted by government policy.

Fortunately, we do not have to sit back and continue to watch our economy go downhill. We can learn from history. In 1962, President Kennedy faced a similar, though less severe, problem.

"The single most effective fiscal weapon available to strengthen the national economy is the federal tax policy," the President said. "The right kind of tax cut at the right time is the most effective measure this government could take to spur our economy forward. For the facts of the matter are that our present tax system is a drag on economic recovery and economic growth."

Against substantial opposition, President Kennedy persuaded Congress to enact a major tax cut for individuals and corporations in 1963. The result was very interesting. Prior to the cut, the Treasury Department estimated that the government would lose $89 billion in revenues over the next six years. In fact, revenues increased by $54 billion in the same period. The reason is remarkably simple. By placing substantial amounts of added disposable income into the hands of corporations and individuals the tax cut stimulated both consumption and investment, increasing employment and profits, thereby increasing overall taxes to the government while cutting taxes on each dollar of wages and profits. In short, relatively unproductive government spending was turned to more productive use in the hands of the private sector.

There is absolutely no reason to believe that we cannot accomplish the same thing today.

I am convinced that an immediate and substantial tax cut for individuals and corporations is essential to end our economic stagnation. Only a tax cut will encourage capital formation great enough to improve productivity gains. And only increased research, technological development and productivity will simultaneously cut inflation and unemployment while restoring both domestic and international confidence in our economy.

The only question is what kind of a tax cut, and I would like to briefly venture some suggestions.

First, we must reverse the disastrous 1969 tax increase that doubled the maximum tax on capital gains.

Second, we must eliminate the double taxation of dividends in an effort to bring individuals back into the stock market.

Third, we must increase both the size and scope of the investment tax credit, particularly for business investments in nonproductive technology required by government for compliance with regulations.

Fourth, we need a meaningful, across-the-board reduction in individual and corporate income tax rates.

The first two suggestions—reduced capital gains taxes and elimination of double taxes on dividends—are both designed to encourage individuals to invest in American companies by reducing the risks and increasing the return on such investments.

Until 1969, the maximum rate of taxation on capital gains was 25 percent. In that year the maximum tax was substantially increased. As a result, individual investors simply decided that stock purchases weren't worth it since much of their profit would be eaten up by taxes.

With the recent onslaught of inflation, the effect of the 1969 tax law has become even more severe, since capital gains taxes fail to recognize that much of any recent gain is entirely due to inflation. In other words, the government taxes gains from inflation, even though these gains may actually turn into losses in real terms.

Let me give you an example: Assume that in 1967 you had some money to invest for your child's education. You decided to buy a share of stock in each of five corporations—AT&T, Dupont, IBM, Kodak and General Motors. Let's also assume you bought those stocks at their lowest prices in 1967. Your total investment would have been $466.

Now your child is ready for college. To pay the tuition, you sold all the stock on June 27, 1978 for a total of $542.75. In theory, you made a taxable profit or capital gain of $76.75—a 16.5 percent return on your investment. That's not an enormous amount, but at least it's a profit, right?

Wrong.

In the same period that you owned your stock, the consumer price index increased by 82.5 percent. As a result, to simply stay even with inflation, your investment would have had to be worth $850.33 when you sold it. In fact, you would have to show a so-called "profit" of $307.58 just to break even. Actually, in real dollars, your profit of $76.75 suddenly became a loss of $230.83.

Yet the government doesn't agree. The tax law ignores inflation. Come tax time next April, you will owe a capital gains tax on that nonexistent profit of $76.75, thus increasing your actual loss even more.

Reducing capital gains taxes will not, itself, cure inflation—although I do believe all of my proposals, taken together will. But at least a reduction will assure investors that their real profits will not be largely eaten up by taxes.

And there's another reason for reducing capital gains taxes. Every dollar of capital gains taxes paid reduces the capital stock available for reinvestment. Thus again, government is found siphoning off scarce capital from productive investment. If you have made an investment profit of $1000 and pay $200 in capital gains taxes, you only have $800 of that profit left to reinvest.

Treasury Secretary Michael Blumenthal told the Senate Finance Committee the other day that the government will collect $10.3 billion in capital gains taxes in 1978. That's $10.3 billion that cannot be reinvested for productive purposes, and amounts to 15 percent of total personal savings last year.

Congressman William Steiger of Wisconsin has proposed repealing the 1969 capital gains tax increase. This is a vitally important step in the right direction and should be enacted without delay.

I strongly suspect that most individual investors do not realize it, but dividends they receive on their stock are actually taxed twice. First, dividends are taxed as profits of the corporation and then again as income to the individual. This double dipping by government must be stopped. Congressman Al Ullman, Chairman of the House Ways and Means Committee, has proposed a gradual phase-out of at least part of this double taxation, and his proposal also deserves prompt enactment.

Together, cutting capital gains taxes and double taxation of dividends will undoubtedly help to restore individual confidence in investment. Again, confidence is the key to capital formation and a strong economy.

The investment tax credit is an effective incentive for business to invest in new plant and equipment. It is clear, however, that today's credit is not sufficient to encourage an adequate level of investment.

First, the basic rate should be raised from 10 to 12 percent.

Second, the credit should be made applicable to 90 percent of corporate tax liability and not simply 50 percent, as is now the case.

Third, special recognition should be given to the unproductive facilities and equipment required to comply with federal regulations by allowing companies a 20 percent tax credit on such investments and allowing them to rapidly write off such investments and recover their capital for more productive uses.

This all sounds very technical, but the purpose is simple. Since investment tax credits are only available to companies that actually purchase new facilities and equipment, the credit must be seen as an investment in the growth and stability of our economy.

Finally, it is essential that we have an overall cut in tax rates for individuals and corporations similar to the cut proposed by President Kennedy in 1963. To a great extent, such a cut would simply recognize that inflation has increased everyone's tax burden. As wages have risen to cover inflation, workers have been kicked into higher tax brackets. As a result, many people now find that inflation plus higher taxes have *reduced* their real income, forcing an ever increasing percentage to be spent on consumption, while reducing savings and investment. President Carter has proposed a small tax cut, aimed basically at compensating for past and future increases in social security taxes. Frankly, this is not enough. We need meaningful cuts that will increase savings and investment, lead to higher employment, great productivity and, therefore, reduced inflation.

The chief criticism of tax cuts generally is that they would increase the current huge budget deficit and lead to greater inflation. But history shows the exact opposite to be the case. The Kennedy tax cut was opposed for the same reasons. Yet government revenues increased substantially. Budget deficits, while they continued, were reduced as a percentage of total government spending. Inflation continued at a very modest rate until the Vietnam War overheated the economy.

We can—in fact, we must—repeat the experience of the 1960's.

U.S. companies, U.S. citizens and the world as a whole have lost confidence in the U.S. economy. Unfortunately, this lack of confidence is justified. The reputation of the U.S. economy as an engine for continually improving productivity through investment and technological development is rapidly disappearing. Our role as the world's leading innovator is being eroded. We cannot continue to trail the other industrialized nations of the world in investment, productivity and innovation and expect to survive as a world economic power. Nor can we expect our national defenses to remain strong if our economy is weak.

In conclusion, I want to explode a very common myth, used by many to explain away all our problems. It is nearly impossible to go through any discussion of our economy without recent oil price increases and oil imports being blamed for everything. Frankly, this is nonsense. Of course, our increasing reliance on expensive foreign oil should be of concern. However, the reasons for inflation, huge balance of trade deficits and reduced confidence in our economy are to be found elsewhere. Keep one fact in mind. Japan imports virtually every drop of oil it uses while we import less than half of what we use. Yet Japan invests more than twice as large a percentage of national income as we do. Japan's growth in output per man-hour—or productivity—is nearly four times ours. Japan exported nearly 10 percent more than it imported last year. Industrial production in Japan has grown twice as fast as ours over the past 10 years. And unemployment in Japan is almost nonexistent.

Clearly, we do have economic problems and Band-Aids are not the answer. Small tax cuts to compensate for other tax increases will not spur investment. Nor will massively complex energy programs reduce our dependence on foreign oil. Government spending will not increase employment and will only add to inflation. Only a return to our traditional role as innovators will result in meaningful economic improvement. But so long as taxes remain so high as to discourage investment, innovation will not take place.●

ANTI-INFLATION STATEMENT

● Mr. BAKER. Mr. President, as we in the Congress discuss various programs and policies to deal with inflation, I believe it is important to heed the concerns of businesses who inevitably bear the burdens of Federal fiscal and regulatory policy. The National Lumber and Building Material Dealers Association, under the leadership of its 1978 president, Mr. Grady R. Haynes of Murfreesboro, Tenn., has recently formulated an anti-inflation policy which deserves the full consideration of the Senate. The association, which represents 15,000 dealer members from all parts of the country, has called for governmental action to control Federal spending and the size of the Federal bureaucracy, regulatory reform, a responsible energy policy, and improved management of public lands and resources. In addition, the NLBMDA has called upon its own members to help in the fight against inflation within their own businesses and by becoming involved at the local level.

I ask that the NLBMDA's anti-inflation statement be printed in the RECORD, and I urge my colleagues to review the association's recommendations carefully.

ANTI-INFLATION STATEMENT BY NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION

Inflation, increasingly, is a clear and present danger to our nation's economy and to our standard of living.

Public concern over inflation has intensified as the Consumer Price Index (CPI) climbed to double-digit levels. Predictions of further increases in wages are heard as the rising CPI threatens to trigger cost of living adjustment clauses in union contracts. Labor is estimated to aggregate nearly three-quarters of the costs of U.S. production.

And so, inflationary "ratcheting" goes on.

The basic causes of the current inflationary surge include:

Socially-motivated, costly government programs resulting in increased Federal budget deficits approaching $60 billion for FY 1979, requiring new highs in government borrowings at greater interest costs.

Increased importation of oil (45% of our needs—and growing) at high prices (about $14.00 per barrel), while government policies tend to discourage production of domestic energy resources (domestic oil held to about $8.00 per barrel).

Recent laws and regulations establishing restrictive environmental and safety standards, as well as enlarged natural resource conservation programs have proved costly to business and to consumers.

As the general public comes to expect more inflation, the greater incentive it has to spend for current and anticipated needs. The cumulative effect of this is to put increased demands on supplies, creating shortages and escalating prices, thus creating more inflation.

The 15,000 retail lumber and building material companies which are members of this twenty-seven Association National Federation, recognize and are greatly concerned over the hardships and dangers inherent in this drift toward national financial ruin.

As concerned citizens and as responsible businessmen, our members are determined to resist factors contributing to inflation while seeking to enlist support for programs to restrain inflationary trends. Specifically, our Association urges:

1. A reordering of governmental expenditure priorities to the end that Federal budget balancing becomes a true national policy goal.

2. That each Federal government agency with regulatory authority be required to:

Review all its existing regulations to determine what changes would reduce their inflationary impacts, if any.

Screen all new regulations to ascertain their inflationary impacts, if any.

Hold public hearings and invite public comment on the inflationary impacts of both existing and new regulations and to issue detailed reports and conclusions on such hearings and comments.

3. Reduce government employment utilizing normal attrition and avoid increase in public employment except in situations where clear cost-benefit results can be demonstrated.

4. Develop governmental energy policies and programs providing no less emphasis on production of traditional and innovative energy resources than on energy conservation.

5. Implement policies for the improved management of public lands and resources; for example, with rising housing costs critically affected by the availability of timber from Federal lands, the President's recent call for an increase in the supply of that renewable resource as an anti-inflationary step should be implemented immediately. Of critical importance is the early completion,

preferably by the end of 1978, of the current Roadless Area Review Evaluation (RARE II) program.

Failure to take inflation-defensive actions eventually will lead some to recommend or to urge government economic controls. Such controls do not work; are counter-productive and serve only to fuel greater inflation when they are ultimately removed, as they must eventually be.

Our association urges building material dealer members and others in the private sector to:

First, resist all proposals to impose government economic controls of any nature.

Second, examine each and every cost increase for goods and services purchased to the end that only clearly justified increases may be accepted.

Third, establish methods to assure lowest possible operating costs consistent with needed public service and productivity.

Fourth, resist the assumption that inflation is inevitable.

Government efforts to enlist private sector cooperation by restraining price and/or salary adjustments are to be commended—as are reported actions by prominent companies such as AT&T and GM, in response to such government requests.

A cautionary note should be sounded. A proportion of the current inflation can be attributed to government actions or inactions in fiscal and monetary fields, as well as in the environmental and conservation areas. Private sector belt-tightening and restraint can not bail government out of its dilemma of trying to solve all of society's problems with tax devices or government subsidies.

No government budgetary slight-of-hand can obscure the inflationary effects of excessive budget deficits. As history demonstrates, no economy can indefinitely postpone the inevitable economic disaster resulting from excessive inflation.

Clearly, the time has come for government, labor, business, and all citizens to close ranks against this common threat to our national well-being.●

WASTE IN THE BUDGET: THE CASE OF HUD

● Mr. HATCH. Mr. President, during the debate on the Budget Resolution on September 6, I pointed out that there was enough waste in the Federal budget that it could be reduced 3 percent without sacrificing any worthy program. Again I was told, as I was last year, that there is no waste in the budget, that the Budget Committee had done their job and cut to the bare bone. Two days later an article appeared in the September 8 edition of the Washington Star entitled "HUD Spending Millions on Unnecessary Activities." Obviously the Budget Committee did not do its job.

The article stated that HUD's chief goal was "The elimination of substandard and other inadequate housing through the clearance of slums and blighted areas and providing a decent home and suitable living environment for every American family."

Yet, after spending $66 billion of the taxpayers' money since 1965, millions of Americans continue to live in grossly substandard housing. Realization of the goal seems to be nowhere in sight.

Since its inception, HUD and other agencies have financed construction of over a million "housing units." If the Government had simply purchased housing for the poor, it could have purchased over 1.3 million new $50,000 single-family homes.

Nonhousing overhead costs consume as much as 75 percent of the funds provided for HUD's activities, leaving as little as 25 percent to provide housing for the poor. It is apparent from these figures that the chief beneficiary of HUD programs is not the poor, but the bureaucracy and its minions.

How can Senators conscientiously argue that a budget reduction eliminating useless bureaucratic overhead is not in the national interest, as they did in the debate on the Budget Resolution?

I ask that the article from the Washington Star be printed in the RECORD, and I congratulate the Washington Star and UPI for dong the work that the Budget Committee has failed to do.

The article follows:

[From the Washington Star, Sept. 8, 1978]

HUD SPENDING MILLIONS ON UNNECESSARY ACTIVITIES

Since the department of Housing and Urban Development was established in 1965, it has spent nearly $66 billion in pursuit of the official national goal of decent housing for every American.

Thirteen years later, that goal still has not been reached. Millions of Americans continue to live in grossly substandard urban and rural housing.

Over the years, federal housing programs of HUD and other agencies have financed the construction of over a million housing units. Had the government simply spent HUD's $66 billion to purchase housing for the poor, it could have bought—at today's prices—1.3 million new $50,000 single-family homes.

HUD currently is spending $10 billion a year. A five-week examination by United Press International found that tens, perhaps hundreds of millions of dollars are being spent on activities that have done little to provide better housing or improved communities for the nation's disadvantaged.

The survey found that HUD has begun a $13 million public relations campaign to improve its image and promote its programs among the interests which benefit from them. The survey also found that:

HUD is spending more than $50 million a year on low-priority or unnecessary research which duplicates work already done or overlaps what other agencies are doing.

A significant chunk of HUD money appears to be benefiting, not the poor, but the banks, private investors, consulting firms and university researchers.

Overhead costs for community development grants, which the administration is increasing this year, in some instances are as high as 74 percent.

Although HUD already spends about $3 million a year on its public information activities, it has quietly begun work on a $13 million public relations campaign conceived by a Philadelphia consulting firm at a cost of $64,000.

The proposed "national communication program" would mount a massive public relations blitz at a time when the Carter administration is trying to curb public information programs.

The plan was drawn up after Systems Research, Inc., had interviewed 91 top HUD officials to solicit their views on the department's public image. Transcripts were turned over to HUD information officials, but Warren Dunn and Bill Wise, the assistant information chiefs overseeing the project, said they read only "two or three" of the interviews.

Rather than wade through what HUD's own top officials said about their public image, Dunn said he hired a second consultant to read the interviews conducted by the first.

"Too often," the report summarized, "the perception is that . . . the department is fragmented, scandal-ridden, inefficient and an agent of last resort whose clientele is on welfare."

The image-building campaign, which Dunn says has the full support of HUD Secretary Patricia Roberts Harris, includes a "nation-wide urban promotion encouraging community and private industry support" for the administration's expanded action grant program.

The plan further proposes a nation-wide communication effort "to disseminate basic energy conservation information," and "promotion of greater public awareness of assisted housing developments which are successes."

The campaign would run the entire gamut of public relations techniques, including fairs, expositions, conferences, symposia, exhibits, a speakers bureau, as well as broader use of the news media.

Other activities would include surveys of consumer attitudes toward HUD, plus a series of interviews with "important HUD constituency groups" to measure their attitudes toward HUD programs.

The plan also calls for development of "a new system to identify, categorize and prioritize primary audiences for messages needed to communicate HUD programs and products."

Said one HUD official who is familiar with the program, "This has got to be one of the biggest boondoggles around here."

HUD was created during the Johnson administration to pull together a number of housing and community development programs that, over many years, had been scattered throughout the government by Congress.

One of HUD's chief goals was outlined in the National Housing Policy Act of 1949: "The elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."

Toward that end, HUD is spending $522.3 million a year in public housing operating subsidies, more than $368 million a year in rental subsidies for low and moderate income people, and $850 million in housing assistance for the elderly.

But like other newly-created departments formed to coordinate scattered but related government programs, HUD's overhead costs, along with other budget items, have grown along with its programs.

Salaries now total $268 million a year for a fulltime staff of 15,052 which is authorized to rise by a full 15 percent—to 17,400—in fiscal 1979 beginning Oct. 1. At least 2,440 HUD employes currently earn more than $30,000 per year.

When rents, utilities and other overhead are added to salaries, HUD's yearly operating and administrative costs total more than $530 million.

The department is growing so fast, in fact, that it has already filled up a relatively new 10-story building which cost over $26 million—with no room to spare.

Spending $10 billion a year isn't as easy as it may sound, even with 15,000 people to help. But HUD bureaucrats constantly are coming up with new ideas.

A case in point is the $4.8 million "urban observatory program," launched by HUD to

funnel research money to local universities for work on community problems.

Much of the money was spent in public opinion surveys conducted by telephone to produce reports like "the supply and demand for small boats and associated services in northeastern New Jersey." It said a survey of local marinas and boat manufacturers showed "a large demand exists for recreational boat facilities."

Other studies under this program overlapped responsibilities given to the Law Enforcement Assistance Administration and the Interior and Labor Departments, among others.

Many of the studies undertaken by HUD are referred to privately as "turkeys" by some of HUD's own employees. They say a significant proportion of the contracts let by HUD are either "misdirected or unnecessary."

One of them, for $184,000, was to study the feasibility of undertaking "post occupancy evaluations" of HUD-financed housing projects. The final report numbered 466 pages, almost 200 pages of which were nothing more than a list of persons and organizations with expertise in related fields.

Two on the list were dead, and others were listed with no address.

HUD officials say the report was mandated by Congress. But Al Ripskis, an official with the office of evaluation and one of HUD's persistent critics, says the study ignored what Congress wanted: A study of the special housing needs of the elderly and the handicapped, among others.

"The report is a complete waste of the taxpayer's money," says Ripskis. "It is nothing more than propaganda for post occupancy evaluations which under this proposal would be undertaken by consultants like the ones who prepared this report."

Such evaluations, if mandated by HUD, could cost as much as $750,000 each and "add considerable red tape and millions of dollars to housing costs," the HUD critic said.

Moreover, the proposal would violate HUD's own findings issued last May which found that "poorly conceived and cost-inducing regulation" was adding millions to housing costs.

HUD spends $8 million a year on printing, issuing a voluminous amount of reports, brochures and pamphlets, including literature about the uses of grasses and palm leaves in building huts, Europe's housing subsidy systems and "New Communities in the U.S.S.R."

The report on "Palms—Their Use In Building" reveals that among plants, "the palm family may be conceded to rank second only to the grass family from the standpoint of its usefulness to native tropical man."

Directories also are popular, such as the 175-page "Community Development Block Grant program" which lists every community in the country that got money under the program in fiscal 1977.

The book is useful in that it reveals how wealthy communities like Santa Barbara, Calif., and West Palm Beach, Fla., among others, get community development money. Community block grants—which the law says are intended "principally for persons of low and moderate income"—went to such well-to-do communities as Mount Kisco, N.Y. ($389,000) and Stamford, Conn. (more than $2 million).

It was for this reason that Sec. Harris proposed changing the program's formula so that 75 percent of the grants would be directed to the neediest communities. However, she was forced to back down when House members vigorously objected because some less deserving communities in their own districts would lose grant money.

Meanwhile, a House Appropriations subcommittee investigation into the $4 billion block grant program found that large portions of the funds often is eaten up by excessively high overhead costs.

In Houston, the panel found, nearly 47 percent of grant funds went for planning, management and administration. Nearly 75 percent of funds spent by Buffalo as of June 30, 1977 went for similar "nonprogram" costs. The District of Columbia spent over 51 percent of its funds in the same period for administrative and planning costs.

Is the community block grant program effective in improving conditions in some of America's poorest cities?

No one really knows. A two-year, 527-page study of the program by the Brookings Institution concluded that it could not answer that question because "different observers will interpret the history of a given program differently. . ."

HUD recently extended the Brookings contract for four years to continue evaluating the block grant program.

It is difficult to determine where most of HUD's resources go and who benefit most from its multi-billion dollar programs.

In terms of investment, HUD has been involved in more losing propositions than most government departments. In the last six years, HUD has had to pay out more than $7.6 billion to banks and other lenders for defaulted housing loans.

As a result of these loans alone, HUD in the past half dozen years has had to take over some 2,000 housing projects totaling more than 241,000 dwelling units.

As of June 1, HUD owned 28,658 single-family residences and 386 multi-family projects with 39,443 units.

At the beginning of this year, HUD had approximately $6 billion in outstanding loans.

Beyond that, there are numerous activities within HUD which appear either excessive or ineffectual.

The department, for example, spends more than $22 million a year on travel, an activity which one HUD officer who asked not to be identified said is "rampant with unnecessary trips."

Thirty-seven HUD employes are assigned fulltime to work on congressional liaison activities, costing nearly $1.3 million a year. HUD also operates an office of international affairs costing $600,000 which Office of Management and Budget officials say doesn't even belong in HUD.

OMB wants to either abolish the office or shift it to the State Department.●

PROPOSALS ON TAX REDUCTION AND TAX REFORM

● Mr. KENNEDY. Mr. President, this morning I had the opportunity to participate in the opening day of a 2-day Conference on Taxation sponsored by Time, Inc.

In the remarks I prepared for the conference I outlined a number of proposals with respect to the major tax reduction legislation pending in Congress, and I ask that my remarks may be printed in the RECORD.

The remarks follow:

REMARKS OF SENATOR EDWARD M. KENNEDY

(Time, Inc. Conference on Taxation, Madison Hotel, Washington, D.C., September 13, 1978)

One of the most important remaining tasks for the 95th Congress is the passage of the Revenue Act of 1978, the major tax reduction bill now pending in the Senate Finance Commitee.

As a member of the Senate with a special interest in tax policy, and particularly in tax reform, I wanted to use the opportunity this morning to outline my views on the most significant issues involved in that legislation.

Major tax bills are always major events in the life of a particular Congress, and the current tax bill is no exception. In fact, however, the pending legislation has a special additional importance, because of the precarious and beleaguered condition of the national economy. Working with the Carter Administration. Congress has an opportunity to take effective steps in fiscal policy to improve, not undermine, the health of the economy and ease the current pressure on the Federal Reserve—pressure that has been causing an ominous tightening of the screws of monetary policy.

Because the overriding economic challenge facing the United States today is inflation, the first priority of Congress in enacting responsible tax legislation is to adopt tax reductions of responsible size. And by that I mean tax reductions of the order of $15-20 billion in calendar year 1979. The reductions should be large enough to hold taxpayers harmless against both the payroll tax increase scheduled for next year and the inflation tax increase by which taxpayers with constant real incomes are pushed into higher tax brackets by inflation. But the reductions should also be small enough to prevent any significant effect of the tax cut in fueling our already unacceptable inflation.

The pending bill should also include a number of necessary tax reforms, in order to insure a fairer and simpler income tax law. In addition, it should make changes designed to improve the efficiency of our economic system in providing jobs and capital and improving productivity.

TAX SUBSIDIES TO COMBAT INFLATION

Ideally, the bill should include specific provisions as well to deal with the legitimate concerns of the American people about inflation. We now use the Internal Revenue Code to provide over one hundred twenty billion dollars a year in subsidies to encourage a vast array of economic and social activities. These provisions range from subsidies for home ownership, charitable gifts, or oil production, to incentives for taxpayers to purchase goods on credit, to subscribe to prepaid legal insurance programs, or even to contribute to the political candidates of their choice.

All of these tax subsidies—more than eighty in all—are now fertilizing the Internal Revenue Code. And they are all forms of federal spending. As I have stated on many occasions in the past, if we are concerned about federal spending, we also have to be concerned about tax spending. In fact, we should be even more concerned, because federal tax spending in recent years has grown even more rapidly than other forms of federal spending.

As chart 1 reveals, between 1971 and 1978, "direct" federal spending, as measured by annual budget outlays, grew from $211 billion to $448 billion, an increase of 112 percent. By contrast, federal tax spending rose from $51 billion to $124 billion, a gain of 141 percent.

The message of Proposition 13 is clear for federal as well as state and local spending. But so far, the cutting edge of Proposition 13 has seemed unnecessarily dull when federal tax spending is on the chopping block.

In fact, in many areas, there may well be more fat and waste—and even outright fraud—to be eliminated by cuts in tax spending than by cuts in other forms of federal spending.

Many of the existing tax subsidies are wasteful and inefficient. Some are little more than windfalls to favored constituents or well-endowed special interest groups with the muscle to persuade Congress to enact new tax loopholes at the expense of the hard-pressed average taxpayers who always have to pay the bill.

Strangely, however, one of the few areas where we have not adopted tax incentives is the area of most urgent concern today—the fight against inflation.

In recent weeks, a movement has been growing in Congress and the country to consider a tax-based incomes policy as a new weapon in the fight against inflation—that is, to use the tax code in much the same way we attempt to us it in myriad other areas, to encourage American taxpayers to engage in particular types of activity.

I believe this effort deserves serious consideration. At a time when we use the tax laws to subsidize an incredible range of different activities, it makes sense to explore the use of such subsidies in the most critical area of all—subsidies to encourage taxpayers to hold the line against inflation.

Unfortunately, in the several variations of "TIP" programs proposed so far, there are difficult substantive and political obstacles to overcome. As a result, it seems unlikely that any significant inflation-fighting tax incentive can be enacted as part of the pending legislation in the Senate. But I intend to pursue this issue closely in the future. At the very least, the Administration and the Federal Reserve should be asked to study such proposals and submit their recommendations for action by Congress early in 1979, so that possible action on TIP can become one of the top tax reform priorities of the 96th Congress that convenes next January.

DEFECTS IN THE HOUSE BILL

In July 1977, I put forward a tax reform package to deal with a large number of the other major issues in the federal income tax laws in a comprehensive fashion. In early 1978, President Carter sent to Congress an impressive and far-reaching set of tax reform and tax reduction proposals—one of the most significant such proposals ever submitted by any President to Congress.

Unfortunately, the House of Representatives did not take kindly to tax reform. Not only did the House fail to adopt many of the President's most important recommendations—but also, on some important issues, the House sought to turn back the clock and reverse the hard-won reforms achieved by Congress over the past ten years.

The bill as it came to the Senate is primarily a tax reduction bill. It is not a tax reform bill. But even the needed tax reductions are flawed. They provide inadequate tax relief against inflation for low and middle income taxpayers. As Table 1 reveals, the House bill does not even meet the basic test of holding low and middle income taxpayers harmless against inflation and the payroll tax increases—although the bill is thoroughly considerate of taxpayers earning $50,000 or more, who need the protection the least, but who are in fact completely protected against the twin tax ravages of inflation and higher payroll taxes.

Nor does the House bill provide fair and efficient measures to respond to the problems of unemployment, capital formation and inflation. Instead, particularly in the area of capital gains, it adopts an unsatisfactory approach that enjoys only threadbare support in the economics profession and that depends to an unacceptable degree on "wishful" methods of revenue estimating that do not bear serious or impartial scrutiny.

Because of the limited amount of time available to the Senate to consider the tax bill, the truly comprehensive tax reforms that I believe are essential cannot be achieved. Nonetheless, there are three important actions that can and must be taken by the Senate to insure that the Revenue Act of 1978 represents forward, not backward, motion:

First, the distribution of the income tax reductions for individuals should be modified to insure that middle and low income taxpayers do not experience a tax increase in 1979 from the combined effects of inflation and scheduled Social Security tax increases.

Second, the incentives for job creation and capital investment should be restructured to make them more efficient and to insure that they do not create new or added inequities in the tax system.

Third, at least a handful of significant tax reforms should be adopted, with emphasis on areas that have previously been considered by the Senate.

In my remarks today, I would like to outline the specific actions that the Senate should take to meet these objectives. It is my hope that, under the able leadership of Senator Long, the bill reported out by the Senate Finance Committee will include many of the measures I am recommending. And, of course, I will work with like-minded Senators when the bill reaches the Senate floor to obtain favorable action on needed additional amendments.

CORPORATE AND INVESTMENT TAXATION

The area of corporate and investment taxation requires the most extensive revision by the Senate. The House-passed bill reflects a genuine and overdue concern on important issues such as capital formation, unemployment and inflation. But the solutions adopted by the House are in too many instances ineffective, inefficient and inequitable.

To provide additional funds for business investment, the Senate should reduce the top tax rate on corporations to 44%—a major reduction of two additional percentage points in the basic corporate tax rate. This additional cut in rates should be adopted as a substitute for the capital gains tax reductions proposed in the House bill.

The corporate sector of our economy is the primary source of capital investment and is the area to which tax proposals to stimulate capital formation should be directed. As the attached chart indicates, and as has been ably demonstrated by Chairman Miller of the Federal Reserve Board, only a small portion of the benefits from reducing the capital gain tax rates actually flows into the corporate sector in the form of funds for additional capital investment. By contrast, direct corporate rate reductions will provide additional capital to corporations in an even-handed, efficient, and equitable manner.

It is a difficult, if not impossible, exercise in Congressional psychoanalysis to fathom how the well-known caterpillar of capital gains relief was transformed in this Congress into the dubious tax butterfly we know today. As Chart 2 reveals, the capital gains tax approach is a Rube Goldberg device if the goal is to promote capital formation. If the goal is to line the pockets of wealthy investors, of course—if ordinary, hard-headed business leaders have put their own portfolios and pocketbooks ahead of the interests of their corporations—then the approach is understandable, if not excusable.

In fact, according to the Random House Dictionary, the definition of "Rube Goldberg" is as follows:

". . . 2. deviously complex and impractical; a Rube Goldberg scheme for reducing taxes. . ."

Whatever the explanation of the present situation, I believe that we can adopt a better approach to the goal I share of enhancing capital formation.

The Senate should reject, therefore, the House provisions reducing the tax on capital gains and indexing capital assets for inflation. It would be a serious reversal of tax reform progress over the past decade to weaken the minimum tax.

Only after passage of the 1976 Tax Reform Act have we finally begun to see a reduction in the number of wealthy individuals who pay no federal income tax at all. Secretary Blumenthal recently reported to the Senate Finance Committee that in 1976, the number of nontaxpaying individuals with over $200,000 income fell dramatically. No case has been made that justifies going back to the "bad old days," in which hundreds of taxpayers in this country each year enjoyed incomes of $200,000 or more, yet paid not a cent in federal income taxes.

The Senate should also reject the House proposal to index capital assets for inflation. The question of the proper response of the tax system to an inflationary economy is a serious and complex one. It deserves intensive study by the Treasury and the Congress. But the piecemeal approach in the House bill simply creates new inequities. And it does so in an extraordinarily complex fashion.

There are many other elements in an income tax system that are affected by inflation. For example, individuals with savings accounts suffer annual losses from inflation. So do individuals with savings in life insurance policies.

Why aren't these ordinary taxpayers given a deduction for their inflation-produced losses? If we move down the road of tax adjustments for inflation, these taxpayers have a far greater claim for relief than the owners of capital assets, who already receive substantial tax-preferred treatment.

Other problems also exist. To index a tax system for inflation in an equitable manner requires that we adjust the basis of assets for depreciation, adjust inventory valuations, and provide deductible losses for holders of debts. Moreover, in a true indexing system, borrowers would realize taxable income as they repay debts with deflated dollars.

All this suggests that it is unwise and unfair to proceed now with piecemeal inflation adjustments in the tax laws. The matter is too complex and too wide-ranging to accept a House provision that simply provides one more tax preference for already highly tax-preferred income. The House liberalization of the rules or capital gains has little to recommend it on capital formation grounds—and nothing at all to recommend it on equity grounds.

We can provide needed capital for the corporate sector more efficiently and more fairly. And a corporate rate reduction to 44 percent will do precisely that.

One caveat should also be stated here. The present minimum and maximum tax techniques are not the only means to insure that the preferential treatment of capital gains is not abused. Perhaps other, equally effective techniques can be developed by the Finance Committee. But alternative plans should receive favorable consideration by the Senate only if two general requirements are met:

First, the top tax rate on capital gains must be approximately the rate produced by the present minimum tax.

Second, any reduction in the rate on realized capital gains must be accompanied by introduction of an effective tax on all gains on property transferred by gift or at death—the so-called capital-gains-at-death proposal that I have made on previous occasions, and that President Kennedy proposed as long ago as 1963 in insisting that such a reform must accompany any additional reduction in the tax on capital gains.

DISC AND DEFERRAL

The revenues lost by reducing corporate tax rates to 44 percent will not be fully offset by the revenue gain obtained by dropping the ill-advised capital gains changes in the House bill. The Senate, therefore, should enact two additional reforms in the corporate area:

Repeal of DISC: The time has come to end this costly, unproductive and wasteful tax experiment designed to encourage exports. We have objective Treasury studies demonstrating that DISC does little to stimulate exports. And no one even claims any

longer that DISC produces jobs. The Senate should adopt the Administration's proposal to phase out DISC over a three-year period.

Repeal of tax deferral for U.S.-controlled foreign subsidiaries. The Senate failed to adopt this proposal by a narrow margin in 1976. President Carter has strongly recommended that tax deferral be eliminated. The supposed benefits to the United States of the deferral privilege are speculative at best. But the losses in the form of jobs exported away from U.S. workers and in the form of needed capital funds held abroad are clear and tangible.

INVESTMENT TAX CREDIT

The investment tax credit has proved to be a valuable tool to encourage investment in machinery and equipment. Its benefits, however, have historically been denied to several important categories of investing firms—those businesses in the commercial sector, particularly new firms and rapidly growing firms, that are experiencing current losses, yet are obviously deserving of the benefits available under the investment credit subsidy; and charitable organizations in the non-profit sector, particularly universities and hospitals, which are often heavy investors in capital equipment.

The inequity inherent in the investment credit under current law occurs because the credit is limited to 50 percent of tax liability. Thus, newly started businesses, firms hit hard by recession, and non-profit organizations such as universities and hospitals are denied the credit, even though they need to make exactly the type of capital investment that the investment tax credit is designed to encourage and support. If the Commerce Department, for example, were managing this investment subsidy—as it ought to be—it is difficult to believe that the subsidy would be so arbitrarily denied to so many deserving firms.

To remedy this situation, I have proposed that the current investment credit be made refundable. The House bill moves in that direction, by raising the 50 percent limit and allowing the investment credit to offset 90 percent of tax liability. Senator Long has joined me in supporting this idea in the past, and the Senate should carry out the logic of the House position. After a reasonable transition period, the investment credit should be fully refundable, so that this important subsidy for investment may at last be widely available to all investing firms.

SMALL BUSINESS

The House bill contains some worthwhile changes designed to provide tax relief for small business. The most important of these changes is the increase and shift in the present $50,000 corporate surtax exemption to provide four tax brackets ranging from 17% on the first $25,000 of taxable income, to 40% on taxable income between $75,000 and $100,000.

I support the basic purpose of the House action. Small business needs a revised rate schedule and deserves it. Many of the same considerations that have long justified the progressive rate schedule for individuals also justify the application of a similar progressive taxation principle to corporations. I hope, therefore, that the Senate will approve lower corporate tax rates designed to help small business.

I am concerned, however, that the House bill contains no protective measures to insure that the benefits of the new rate schedule go only to genuinely "small" businesses and to firms who are using the corporate form for legitimate "business" purposes. With significant amounts of income to be taxed at rates of 17%, 20% and 30%, there may well be an irresistible temptation on the part of individuals in the upper tax brackets to use the corporate shell as a "tax shelter" to build up income in the corporation at low tax rates. Our experience in recent years indicates that this temptation can become a significant tax shelter problem.

It is not the purpose of those who advocate tax relief for small business to create a new tax shelter gimmick. What we seek instead is aid for the myriad small corporations that form the backbone of our economy. Therefore, the Senate should amend the House bill to insure that the new reduced tax rates are not used to convert the corporate form into tax shelters, and to insure that the benefits of the new schedule are targeted to small businesses.

EXPENSE ACCOUNT LIVING

The most visible source of tax abuse is produced by tax deductible expense account living. Some favored individuals pursue a lifestyle of luxury and elegance that is possible solely because the United States Treasury pays for 50% to 70% of the costs. The tax-subsidized high living of this privileged few is visible in many ways:

They always travel first class.

They eat in the most expensive restaurants.

They occupy the best box seats at sports events.

They enjoy front-center orchestra seats at every theatrical event.

By contrast, the average taxpayer pays for these costly enjoyments out of hard-earned after-tax dollars. He flies three-abreast in the coach section of the airplane. He sits in the bleachers at Fenway Park and in the third balcony at the theater—if he is fortunate enough to get tickets at all for major events.

There is no justification for permitting our tax laws to subsidize this type of elitist, caste system of entertainment, a system that is contrary to the basic principles of our democracy.

I have no objection to wealthy persons and corporate executives flying first class, eating at five-star restaurants, buying season tickets to professional football, or speeding to the Ali-Spinks fight in their Lear-jet luxury.

My only objection—and it is a strong one—is to the practice by which these undeserving taxpayers stick Uncle Sam for the cost of their profligate joyrides.

President Carter rightly called for an end to tax-subsidized "three martini lunch" living. The House declined to act. But it is not too late for the Senate to turn the tide, by adopting an amendment to:

Deny a tax deduction for the excess of first class air fare over coach fare.

Deny a tax deduction for meals (other than for the cost of meals of a person on business travel status).

Deny a tax deduction for entertainment facilities and the cost of tickets to sports events, theaters and other entertainment functions.

JOBS TAX CREDIT

The House bill includes a targeted jobs tax credit for hiring several categories of unemployed persons. The goal of the provision is praiseworthy and deserves support. It is based on President Carter's proposal to give Federal encouragement to hire persons who are now too often left behind in the job market.

The House-passed proposal, however, involves unnecessary duplication and excessive Federal bureaucracy. In order to obtain the tax credit, employers must obtain certificates of qualification—usually from the Secretary of Labor—specifying that the person employed in fact is a member of one of the tax groups. Then, the employer must claim the credit on his tax return, and thereby becomes subject to all the rules, regulations and audit procedures of the Internal Revenue Service.

This bureaucratic duplication is unnecessary, expensive and time-consuming for both employers and the government. The obvious question is: When the Secretary of Labor certifies that an employee is within one of the target groups, why does he not also issue the government subsidy check?

We have seen how unsatisfactory the duplication of Labor and Treasury Department efforts has been under ERISA. One department, one set of regulations, and one set of forms are all that should be involved. The House approach is simply a prescription for a new round of government paperwork that threatens to overwhelm many businesses.

The Senate should convert the targeted jobs tax credit into an identically-structured direct grant program administered only by the Labor Department. The necessary certifications, regulations, payments and audits of the program can then be carried out within one agency, the Department of Labor. Unnecessary paperwork and compliance problems can be eliminated. And the IRS can stick to its work of collecting taxes, without also being required by Congress to play Secretary of Labor and police this worthwhile jobs program.

INDIVIDUAL TAX REDUCTIONS

I fully support the recommendation of the President to provide badly needed tax cuts to individuals. But the distribution of the tax reduction benefits in the House bill is disturbing. I hope that the Senate Finance Committee will modify the House bill in two respects:

The tax cuts, primarily through rate reductions, should be aimed more heavily toward the $10,000–$50,000 income ranges than is true under the House bill.

Low income workers should be helped by expanding the earned income credit to single and married workers without dependents, other than full time students.

The earned income credit is an imaginative concept developed by Senator Long. But contrary to the direction in which Senator Long now proposes to move, I believe that the benefits of the credit should be broadened to cover all low income workers, before it is increased in amount for the greater benefit of the select few (those with dependents) who now enjoy it.

Both these actions will continue efforts of past Congresses to insure that first priority for tax reduction is given to those who need it most—the millions of low and middle income taxpayers.

OTHER AMENDMENTS

In addition, the Senate should adopt certain other amendments to improve items covered in the House bill. These include:

Investment credit for pollution control facilities. The five-year amortization deduction should be reduced by the amount of any investment credit taken. This action is necessary to prevent a double tax benefit, and is similar to techniques adopted with other credits in recent legislation.

Investment credit for rehabilitation of non-residential buildings. A five year termination date should be placed on this new provision, and the Treasury should be required to study and submit a report to Congress after four years on the actual effects of the measure.

Industrial development bonds. The "small issue" exemption should be confined to bonds issued for facilities located in economically distressed areas. The Treasury recommendations for repeal of the exemptions for pollution control bonds, private hospital bonds, and industrial park bonds should be adopted.

Accounting method for large farm corporations. Accrual accounting should be required for all farm corporations with annual gross receipts of $1 million or more. The House bill moves in the wrong direction, by making

permanent the special tax shelter benefits now temporarily granted to huge poultry farmers in the guise of tax relief for small enterprises. The change I propose would treat all large farm operations equitably, while providing a legitimate exception for small family farms.

Tax shelters. Finally, more effective techniques should be provided to enable the IRS to audit tax shelter partnership transactions.

The changes I have recommended will hardly convert the Revenue Act of 1978 into an ideal tax reform and tax reduction bill. They will, however, insure that Congress continues on the desirable course charted over the past two decades. We must carry on the endeavor to make our federal income tax system more equitable for all taxpayers and more efficient in all the areas where we use tax subsidies to achieve important national objectives.

TABLE 1.—*Effect of inflation, social security, and House tax cut on individual liability (1979).*

Total tax change (million)

Income:	
Below $5,000	+$183
$5,000–$10,000	+637
$10,000–$15,000	+343
$15,000–$20,000	+262
$20,000–$30,000	+429
$30,000–$50,000	+173
$50,000–$100,000	−226
$100,000–$200,000	−181
Over $200,000	−573

Inflation: $8.8 billion tax increase.
Social Security: $3.2 billion tax increase.
House tax cut: $10.9 billion tax decrease.

Chart 1 and chart 2 not included.●

FURTHER DESTABILIZATION OF THE PACIFIC BASIN

Mr. GOLDWATER. Mr. President, today it was my distinct honor to address the assembled members of the Army War College who are in Washington for their annual study. I took this occasion to address them on the subject of U.S. mistakes, past, present and continuing in Asia, particularly the far reaches of the Pacific. There will probably be another paper presented by me on this subject, but the one that I gave this morning is but a continuation of the argument that I started in my first presentation, namely, that if the United States wants to lose the Pacific, wants to really start problems that will lead to war, then we should continue with the administration's rather dismal, unintelligent and somewhat stupid suggestions that we abandon our relationship with our friends on Taiwan. I urge my colleagues to read this. It has been a subject of concern to me ever since World War II when I served in that general area, and it will continue to be.

I ask unanimous consent that my speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

FURTHER DESTABILIZATION OF THE PACIFIC BASIN

Recently, I made a speech on the Floor of the Senate and have repeated that speech elsewhere. The title was "The Destabilization of the Pacific Basin." My thesis on that occasion was that the abandonment of the Republic of China on Taiwan would be a disaster of immense proportions for the Pacific Basin and thus for the U.S.A. I contended that with our abandonment of the Republic of China, that country would be likely to establish a relationship with the U.S.S.R.

This relationship could bring Soviet naval power into a new and powerful posture in the Pacific Basin. It in turn could break the U.S.-Japanese alliance and especially could add to the current threat by the Soviets to the Peoples' Republic of China itself: the very nation that the Administration mistakenly assumes will be a U.S. aligned counterfoil to the Soviets. Today, I would like to continue with an extension of my first analysis. I will deal with yet further developments in the Pacific Basin which I believe will further destabilize the region.

Again, I will point out the vital role that Taiwan can play and appeal yet again to the American people to rise up in wrath at the Administration's policies as they are now unfolding and demand through Congress that the President cease and desist in his reckless jeopardization of our vital Pacific Basin interests—jeopardization which will arise should we pursue what seems to be the intended policy of the Administration to abandon the Republic of China.

We must now leave the varying locales of my first speech; that is Taiwan, the Peoples' Republic of China, Japan and Korea and travel to southeast Asia. Here, important events are unfolding. Now, I know that Americans as of today do not want to hear about southeast Asia. Most of us, each in his own way, would like to forget that sad and sorry example of twelve years of American folly, ineptitude, crass political and strategic incompetency—we would like to forget our ignorance and our strategic and political paralysis. But our shame and our guilt do not make southeast Asia go away.

They do not halt the political activity, local and international, that is unfolding in the region as of now. Neither does our shrinking away from a horrible experience obviate the potential consequences of developments now occurring in southeast Asia for the rest of the Pacific Basin.

Let us first briefly examine what has happened in Vietnam, Laos and Cambodia since the U.S. defeat. Poor little Laos! It is now a Vietnamese colony. Vietnamese Communist Party commissars, Vietnamese military officers and Vietnamese officials at all levels openly call the shots in terms of the Laotian economy, in terms of Laotian agriculture, transportation (such as it is), Laotian education, including the infamous reeducation camps, and in all political and military affairs. But the Vietnamese are no ordinary imperialists. They are much worse than that. They are surrogate imperialists. Basically, they do the job for the Russians.

One estimate claims there are 15,000 Russian "advisers" in Laos. A large Russian electronic installation can be seen from the air when one flies along the Thai side of the Mekong River. Presumably, this installation is to monitor the southern flank of China. The installation and others like it are expanding rapidly. Each night, refugees from Laos attempt to swim the Mekong River seeking refuge in Thailand.

By day, communist airplanes, American built and captured from us, can be seen strafing and napalming areas on the Laotian side of the river where refugees covertly assemble. Those refugees who make it are given refuge in Thailand and the Thai government has done a fine job with limited resources and under severe communist pressures.

Recently, a friend of mine visited one of these refugee camps. He talked with the Lao leader. "How many Lao would come across?", my friend asked. The elderly Lao looked surprised, even amused. "Why, the whole kingdom", he responded. In Laos, the domino did fall and not merely to the Vietnamese, but so it seems to the Soviet Union. But the fate of Laos is not the most important legacy of our defeat.

It is in Vietnam proper where the most interesting events are occurring. First, Vietnam's economy is in shambles. This potentially rich nation last year imported some 1.4 million tons of rice just to keep its people above starvation. The economy last year spent a billion dollars more than it took in in overseas exchange—an immense amount for such a tiny economy. Half of this shortfall was made good by the Soviets and about a quarter by the Peoples' Republic.

For reasons which I will recount shortly, the contribution from the Peoples' Republic has now been withdrawn. The situation promises to worsen. The deficit will be greater this forthcoming year and perhaps for many years to come because, in 1979, Hanoi plans to collectivize agriculture in the south. One can predict with some assurance what will happen as this occurs. First, there will be significant and chronic peasant unrest and perhaps revolt, as occurred in 1956 in the north, when collectivization was imposed. Second, production will fall. We can assume, therefore, the Soviets will be in a position to make Vietnam even more dependent and the Soviets have good reason to do this as we shall see shortly.

But events of even greater significance are unfolding in Vietnam. At the end of the war, it was confidently expected by nearly everybody, and especially by American liberals, that the north had a message for the south—that the north was uncorrupted and uncorruptible and that the north would bring righteous ways to those decadent southerners, depraved not only by their own rulers but by the example of American conspicuous consumption and other American vulgarities. Once again, the liberals are wrong. Nowadays, are they ever right?

It is the northern soldiers and officials who are being seduced by the southerners' better living standards and especially by the strong legacy and current penchant for freedom. Hanoi quickly saw that it had a serious problem on its hands. About three months ago, Hanoi began to act. They began a program of uprooting small business people, even in the north where a few still existed. They took away boats from small fishermen, transport from carriers, shops from merchants. They eliminated brokerage and middlemen. They took rice mills from rice millers.

They closed down cottage industries and attacked the black market, a cadre that had virtually, by itself, been keeping the economy going. These small business people and their families were usually shipped off to "new economic zones" which is a euphemism for a form of slavery in which, by hand power, humans develop jungle or mountain grasslands for agriculture.

The significant fact of this program, however, was not merely its economic upset. The significant fact was that the people most affected were, in the main, Chinese. As throughout all of southeast Asia, Chinese are the small businessmen and the entrepreneurs. In Vietnam, there are more than two million Chinese in the south alone and systematically, they are being uprooted and persecuted. Thus, over these past months, we have seen an exodus of Chinese from Vietnam. As usual, the media did not grasp what was happening.

They blamed the exodus on ancient Chinese and Vietnamese racial hostilities. These exist but they had nothing whatsoever to do with the present situation. The real reason was communist ideology reacting to a threat to that ideology: that is, the threat of freedom of persons to act in terms of a free economic system. The Soviets react in the same way in Russia. The communist ideology knows that it cannot survive where freedom exists. In all these ventures, we have circumstantial evidence that the Russians in Viet-

nam encouraged the oppression of the small business folk, who as I said were mainly Chinese. This in turn made the Vietnamese even more dependent on the Russians.

Before we put the various elements together, we must look at an even more interesting situation, that which currently exists in Cambodia. Once again, as regards Cambodia, I have to make a note in passing of the American liberals' incredible ability to practice selective moral indignation. Proportionately, we have witnessed in Cambodia genocide on a scale that surpassed Hitler, surpassed Stalin, and even Mao Tse Tung. Perhaps fifteen to twenty percent of the entire population of Cambodia has either been slaughtered or has died from disease and starvation induced by the new regime. Proportionately, that means the killing by their government of about forty million American citizens.

In the first twenty-four hours of the existence of the new communist regime in Cambodia, they killed more of their own people than the U.S.A. lost in the entire Vietnam war; and it still goes on. It is chilling, but no more so than the silence of the American liberals—those who marched, wrote and rhetoricized against America's actions in the Vietnam war. Admittedly, one of my Senate colleagues has come out against the Cambodian bloodbath and in a most hawkish way. But I should remind him that it was his past dovishness (and that of others like him), that condemned the Cambodian people to their present condition.

In terms of the future of the Pacific Basin, however, Cambodia is playing a particular and important role. It has a de facto alliance with the Peoples' Republic of China. Remember, it is the Soviet Union—the peoples' Republic enemy—that sets the pace in neighboring Vietnam. The Chinese are in Cambodia in strength and have been a key factor in the internecine war Cambodia is fighting with Vietnam. Thus, Vietnam and Cambodia have become surrogates for the Russo-Chinese conflict.

To amplify the paradox, it is virtually certain that former South Vietnamese troops and former Vietcong have joined hands, and in turn, are fighting alongside the Cambodians in the latter's conflict with the new Vietnam. And it is the People's Republic of China that is providing the aid, the weapons and the advisers to the Cambodian forces, because the Chinese are worried. When they view the Soviet intrusion in Vietnam, they have good reason to be worried. I wish we were.

There is evidence that the Soviets are pressuring the Vietnamese for the long term use of Camrahn Bay—that late great U.S. naval and logistics base. There is evidence that the Soviet Union is eyeing other Vietnamese ports and is 'ooking for missile sites in Vietnam, presu ably to deploy missiles aimed at China. Thus, if the U.S. persists in its various follies in Asia, we shall not have the Soviets in Taiwan but in Camrahn Bay and in other parts of Vietnam as well. The People's Republic of China will, of course, be noticeably disturbed by both the extension of Soviet naval power into Vietnam and particularly as regards the possibility of Soviet missiles in Vietnam. And beyond Vietnam, all that is needed is for the Soviet Union to obtain a base in Singapore. This would give the Soviets complete domination of the entire eastern littoral of Asia.

What the British Empire took more than a century to do, the USSR will have accomplished in a few years, and it will have been handed to them for nothing. It will have been handed to them simply as a result of this Administration's incompetence, perversity, and ignorance of the area and, above all, by this Administration's lack of will in foreign policy. And in passing, we should remember that the USSR hardly possesses the benignity of the late British Empire.

I believe there is little we can do about Camrahn Bay. The Vietnamese are certainly not going to give it back to the U.S., no matter how kind we may be to them, diplomatically or economically. The rot, however, that I foresee in southeast Asia will really begin with the abandonment of Taiwan. With the abandonment of Taiwan by the United States, we virtually invite Soviet expansion down the entire littoral of east Asia. A strong independent Republic of China allied to the United States, can, however, be the checkmate. Not only that but, as I said in my previous speech, in the end, the Peoples' Republic of China itself will be the greatest loser should this not occur. Again, let me repeat that it need not happen. It is the U.S.A. that has the leverage as long as we maintain our alliance with the Republic of China.

We must realize and always remember we do not have to abandon Taiwan. Rather, we must tell the people on the mainland that we will stay in Taiwan and that it is in their interests that we do so stay. It is in South Korea's interests, also. It is in Japan's interests, in Thailand's interests, and in the interests of the Philippines. It is in the interests of the stability of the entire Pacific Basin that the United States maintain its position on the east coast of Asia. But Taiwan is the key—the linchpin in our whole east Asia strategy. The Peoples' Republic is not stupid: they will listen and they will adjust to our posture of maintaining the alliance.

May I repeat—there is not much we can do about Vietnam. We cannot stop them from destroying their small business base and still less, their agriculture in the south in their pursuit of an ideology. I seriously doubt if we can counter the position of the Soviets in Vietnam, even in small degree. I said in the past that the defeat in Vietnam would bring a terrible consequence. That consequence is now beginning to unfold. If we persist in our folly, five or ten years from now I can see the U.S. as a beleaguered Pacific nation defending on its west coast.

Our real role, the role for which we are intended, is quite different. Our real role is to be a forward Pacific power, actively engaged with all other Pacific powers, in expanding trade and commerce and in the pursuit of peace in the region, a peace based upon American strength. Instead, we are charting another course. We are switching to the Peoples' Republic of China and seem to be willing to pay their price, that is the abandonment of Taiwan. There are people in this Administration who really believe that the Peoples' Republic of China is a substitute for all of our present Pacific Basin alliances and that the Peoples' Republic of China is a counter to the Soviet threat and will remain so.

The Peoples' Republic, however, is not a counter to the Soviet threat. It simply does not have the strength. More importantly, under communist ideology, the necessity to switch alliances, as self-interest demands, is paramount. The Peoples' Republic of China is rather playing the U.S. off against the Soviets in the traditional Chinese manner. They will do this while we retain some global strategic power. As this wanes, as it will if we abandon our position in east Asia, they will turn and rend us, to say nothing of our smaller ex-allies.

Thus, it is with this issue in mind that I suggest to you that in the present equation, Taiwan is not only the strategic linchpin but is also a symbol—a symbol of what America's position in the Pacific will be ten, twenty years from now. But we have a strange Administration. I do not understand the ebb and flow of its foreign policy. I even ask, "Does this Administration have a foreign policy?"

The Administration is hard to talk to because they know so little of foreign policy, least of all in Asia. As might be expected, they have all the stubbornness of insecure and ignorant persons. Before it is too late, I beg them to pause and reflect on the future of their country in the Pacific Basin. As of now, the portent for that future is a massive destabilization of that region as a result of the policies being formulated. As this results, the region will be fought over by China and Russia with the U.S. as either a beleaguered witness or dragged into a war we cannot control. Such an outcome endangers U.S. vital interests, if not survival.

The Administration will, I promise, if it asks for it, get the full cooperation of all Americans of all parties in doing whatever has to be done to prevent the scenario I have outlined from happening. We simply have to remain engaged in Asia—all of Asia.

The American continent is a world island with Europe on one side and Asia on the other. Neither side, Europe nor Asia, should command more attention, one as opposed to the other. We cannot afford to fix our gaze only one way. I demand that the Administration reassess its entire position in the world and, above all, develop a Pacific Basin policy which offers American power and American political example and American human rights examples to all who resist tyranny in the region. We should be a witness to all those who are not ideologically bound that American trade and commerce is for everyone's good, theirs and ours, and that America, with its power used properly, can maintain stability and peace in the Pacific Basin. Again, I assert, the Republic of China on the island of Taiwan, in alliance with the U.S.A., is the key factor in developing a policy such as I have outlined. Rhetoric to the contrary, the mainland in their hearts will also agree.

Thus, again, I urge all Americans to look to our country's future and demand retention of our alliance with our trusty, brave, dependable and progressive ally, the Republic of China.

"And, in particular, I ask the Administration not to take any action affecting the Defense Treaty with the Republic of China during the interval between the November elections and the convening of the new Congress. As I have attempted to show, the consequences of such a major policy change are so grave that this is a decision which the President should make only after the fullest consultation with and approval of Congress, and should not take on his own.

INTERNATIONAL SPORT AVIATION AND POLITICS DO NOT MIX

Mr. GOLDWATER. Mr. President, as everyone interested in aviation is aware, the United States for years has been sending teams of pilots qualified in different types of aircraft and different types of maneuvers to international competition all over the world. These teams and trips have not cost the American taxpayer $1. Once again, now, we see President Carter injecting his hand in what he considers to be the bettering of understanding between countries by removing three members of the helicopter team that was to compete this past month in Vitebsk, Russia. This is something that is beyond my ability to understand because the fact that three of the team members, the three who were not allowed to compete were military men, could not have carried any message to the Russians except that we have better military pilots than they have. When is our President and his administration going to learn that there are ways of capturing the hearts and minds of people around this world other than the constant prattling of human

rights which we do not even observe a hundred percent ourselves?

I ask unanimous consent that a statement made on this unfortunate incident by Vic Powell, executive director of the National Aeronautic Association, be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

INTERNATIONAL SPORT AVIATION AND POLITICS DON'T MIX

(By Vic Powell)

The National Aeronautic Association sponsored and sanctioned the United States Team in the III World Helicopter Championships, held in Vitebsk, USSR, July 31 to August 4, 1978. Team members were selected earlier this year and underwent extensive training at the Bell Helicopter manufacturing plant in Fort Worth, Texas. The team was constituted of six male and four female members

It is important to point out that the United States government bore no expense in preparing for U.S. participation in the event, nor in transporting the team or its attendance at the championships. It was entirely supported by U.S. citizens and the team members themselves. The National Aeronautic Association takes pride in the fact that members of all official U.S. sport aviation teams are unpaid volunteers. They compete against teams of foreign nations whose members are heavily subsidized by their governments. This fact often makes the competition tough for teams from the United States, but U.S. teams perform very well in international competition. The United States is the one to beat.

The amount of volunteer time by persons across this country in support of the teams is heartening. People from all walks of life come together to offer their help and do what they can to ensure the team has the necessary equipment and funds to attend. This is often accomplished at considerable personal sacrifice for the team members, sponsors, and supporters. They believe, however, that it is necessary and worthwhile. The effort is enormous. The results satisfying.

All of this is done totally outside the U.S. government. No tax dollars are expended in behalf of U.S. teams, no government personnel assigned to the effort. The members of the National Aeronautic Association believe this is the way it should be. It can provide a considerable psychological boost to our team members. They know they are backed by the people of this nation, not some government agency.

Winning an official international aviation championship has both a direct and indirect impact on U.S. industry. Equipment used by those who capture winning positions in competition will usually become a demanded item, and the manufacturer can enjoy a worldwide market for the product. But the international psychological impact of the winning team can also be profound. A win can help create a mind-set regarding how the winning nation's aviation industry as a whole is perceived. In this regard a win by a team not directly associated with a particularly aviation industry can have an impact on how that industry's products are regarded abroad. In this sense sport aviation can be very helpful to the entire aviation industry.

One would think therefore that the government would be cognizant of this situation and provide any help possible. Indeed, this is the basis of the substantial support many foreign sport aviation teams receive.

We were especially disappointed and disheartened recently when the Carter administration injected politics into the NAA sanctioned United States team attending the III World Helicopter Championships. Three of the eleven-member team were military pilots. The three had proven themselves to be leading pilots on the team. Their experience, ability and expertise were a decided asset, and we looked forward to providing stiff competition to the country that we regarded as a tough competitor, the Soviet Union.

The U.S. Team was equipped with the most up to date helicopter for the competition, a Bell Jet Ranger. It trained extensively at the Bell plant in Fort Worth flying the competition course. Under the leadership of coach Henry Gilliland, team manager Frank Cantwell, senior delegate Joseph Mashman, and support personnel, the team developed great spirit with a positive attitude and a desire to win.

The Carter administration reportedly desired to send a message to the Soviet Union regarding administration displeasure with a variety of developments with the USSR. It canceled some export sales to the Russians, eliminated funding for travel to conferences held in the USSR, made oil equipment sales subject to the U.S. Export Control Act, expressed itself in the media regarding its views toward the Soviet Union, and even went so far as to keep three individual military members of the U.S. Helicopter Team from attending a sport aviation championship, removing them from the team. The military members obeyed orders and did not attend. They received word that they were not to attend while the U.S. team was undergoing last minute training in West Germany.

The Carter administration knew who the team members were because the NAA had chosen to advise the State Department of the team members and the date and location of the world championships, as we attempt to do with all the U.S. teams. This is the first U.S. government interference with an American team in recent memory. We do not dispute the government's right to control its employees, but we regard it as heavy handed action by the Federal government against a private organization attempting to meet the lawful purposes to which it subscribes, and from which the country benefits.

The first goal of the Federation Aeronautique Internationale, the world body for sport aviation and which the NAA serves as the United States' exclusive representative, is "making evident the essentially international spirit of aeronautics as a powerful instrument for bringing all people closer, regardless of any political or racial consideration."

This is a goal to which the Carter administration, with its emphasis on human rights and morality, ought to find agreement. Regretably they chose to insert politics in an activity and organization that is working to keep political interference out. Politics and international championship aviation do not mix. It was true in 1905 when the FAI was formed, it is just as true today. The United States was one of five nations that originally joined to form the FAI. For the Carter administration to have taken its action against the U.S. Helicopter Team is an international embarrassment of this nation.

As individuals the members of NAA are sympathetic to the cause of human rights throughout the world, but I wonder if the message, as interpreted by the Russians, was the one the administration sought. The administration's action has led to providing the Soviet Union with an international propaganda tool that will undoubtedly be used all over the world.

The U.S. team members worked hard and invested their own and donated money to field the finest helicopter team the U.S. has ever had. The evidence of the excellence of the team is shown by the relative closeness of the score. If the entire U.S. team had been allowed to participate the U.S. would have been considerably stronger.

The eyes of the world will not know that the Carter administration prevented our most promising pilots from participating, they will only see that the Soviet * * * lowered U.S. prospects of winning the World Championship by forcing the withdrawal of the team's most effective competitors.

The Soviet Union's pilots captured top individual pilot awards and won first place in team, ahead of the United States by 313 points out of a total of 3,298—only 10%.

NAA, speaking for our members, those who donated to the team and the citizens who support the team extends thanks to the dedicated team members and the entire U.S. delegation who attended the championships and fought hard to win this event. They faced formidable odds attempting to abide by the Goals of the FAI, competing against the Soviet and other national teams, and their own government's interference.

NAA is proud to stand by our team, they battled well. And we are very proud of all those people who made it possible for the U.S. team to attend the World Championships.

OSHA VEXES BUSINESS

Mr. THURMOND. Mr. President, the Federal Government has experienced tremendous growth in recent years. Unfortunately, this growth of Government has not resulted in better service to American taxpayers. On the contrary, it has resulted in an increase in harassment of American citizens and American business.

The principal offender in governmental harassment has to be the Occupational Safety and Health Administration—OSHA. This agency, although only in existence for 6 years, has managed to issue thousands of regulations that have become an almost intolerable burden to American business.

Members of this body, as well as the House, have spoken out repeatedly about the bureaucratic domination of OSHA. Efforts have been made in the Senate to relieve small businesses from OSHA regulation. On August 2, 1978, the Senate adopted an amendment offered by Senator BARTLETT of Oklahoma to exempt businesses with 10 or less employees from OSHA regulation. Although this was a major step forward in trying to get OSHA off the backs of American businessmen, it does not appear to be adequate to ease this regulatory burden.

Mr. President, in the September 13, 1978, edition of the Greenville News there appeared an article by Mr. John Chamberlain pointing out the efforts of OSHA to carry out its regulatory enforcement policies against not only small business, but large industries as well.

OSHA agents, stung by the Supreme Court's decision in Marshall against Barlow—1978—have apparently stepped up efforts to assert their enforcement powers against large American corporations. Mr. Chamberlain's article points out just one example of this abuse of regulatory authority. He also notes that although the Supreme Court has stepped in to protect small businesses, it will be up to the Congress to prevent further OSHA abuses against American industry. I urge my colleagues to take heed of his warning.

Mr. President, I ask unanimous consent that the article referred to in my remarks be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

OSHA VEXES BUSINESS

(By John Chamberlain)

NEW YORK.—The Occupational Safety and Health Administration (OSHA), which has not notably changed the safety statistics in its six years of existence as the scourge of American business, has had more than 4,000 regulations on its books. It has been a particular annoyance to small businessmen, who have lacked the resources to comply with its often niggling and absurd demands. Fortunately the "little man" got a break from the Supreme Court in the case of Marshall vs. Barlow. The case had been fought to the highest tribunal by Bill Barlow, a Pocatello, Idaho electrical and plumbing contractor who had refused entry to OSHA inspectors who had come unannounced to the door of his shop without a search warrant. When the Court decided that employers could stand on their Fourth Amendment right against "unreasonable" searches. OSHA, trying to repair its image, rescinded more than a thousand so-called Mickey Mouse regulations that had only the remotest connection with health and safety.

Respite from OSHA's bureaucratic tyrannies, however, seems to have been limited to the nation's smaller business establishments. Companies big enough to make the list of the Fortune 500 have tried to "go along" with OSHA just to protect their public images as good guys. But what do they have to show for their pains?

The experience of the United States Steel Corporation with OSHA inspectors is hardly reassuring. Questioned by an Iron Age reporter, Edgar Speer, the U.S. Steel chairman, told a sad tale of what, to his way of thinking, amounted to bully-ragging persecution. It was just a year ago that an OSHA team turned up at U.S. Steel's South Chicago works. The OSHA agents had come, they said, to look into three small complaints. Once inside the tent, however, the OSHA camel went berserk. It took three months for the OSHA team to complete its investigation.

The U.S. Steel plant management asked on a daily basis to be informed of violations so they could be corrected. But the OSHA inspectors waited for six months to file their bill of complaints, imposing a fine of $200,000. According to Speer, the agency was less interested in the safety of Big Steel's employees than it was in slapping a punitive fine on the company.

According to R. K. Scott, the editor of a fortnightly review called America's Future, the persecution of Big Steel has not been limited to the South Chicago area. U.S. Steel spends more than a billion dollars a year to comply with clean air standards. Its pollution control adds $265 million a year to operating costs. The company's captive coal mines are among the safest in the country. Yet these coal mines undergo some 5,000 government safety inspections a year. The effort to accommodate the inspectors in their frequently redundant interruptions has decreased the productivity of the coal mines by 22 percent over a 4-year stretch.

Instead of cutting down on the Mickey Mouse stuff when it comes to the bigger corporations, OSHA, along with other federal compliance agencies, is planning many additional regulations. The cost of the additions to the businessman and the consumer could come to a few more billions.

What the White House may intend to do about calling OSHA to account for adding billions to the general inflation is a question. Secretary of Labor Ray Marshall has pledged a "common sense" approach to protecting workers. And Charles Schultze, chairman of Jimmy Carter's Council of Economic Advisers, has said that OSHA has failed to touch the most important cause of industrial accidents, which come from employee turnover and inexperience. Workers' carelessness is the prime culprit when it comes to accidents—and OSHA's 1,400 compliance officers can have little effect in changing that.

In the Barlow decision the Supreme Court has done what it can to help the small manufacturer protect himself against OSHA. But it will take Congress to do something to curb OSHA's vindictiveness against the biggies.

TESTIMONY OF JOHN M. CAREY, NATIONAL COMMANDER, THE AMERICAN LEGION

Mr. THURMOND. Mr. President, on September 12, 1978, the national commander of the American Legion, Mr. John Carey, appeared before the Senate Committee on Veterans' Affairs and presented the Legion's legislative goals and initiatives for the 96th Congress.

The American Legion is the largest veterans' organization in the United States. There are 2.7 million legionnaires and nearly 1 million members of the American Legion Auxiliary. These men and women are the backbone of our society and reflect the views of a vast number of Americans. The policies, programs, and goals of the American Legion promote a better understanding of the principles of democracy and inculcate among all people an appreciation of the benefits of American citizenship.

Mr. President, attending this committee meeting were legionnaires from throughout the United States. South Carolina was well represented by Bill Weatherly, State commander; Jim Hamilton, State adjutant, his wife Dorothy; Jim Haynes, membership chairman; Bill Plowden, veterans' employment representative for South Carolina; and Abe Fennell, who is known as "Mr. Veteran of South Carolina" to thousands of my constituents.

Mr. President, I ask unanimous consent that the testimony of Commander Carey be printed in the RECORD for the benefit of my colleagues. I also urge my colleagues to consider carefully these recommendations for action during the 96th Congress.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

STATEMENT OF JOHN M. CAREY

Mr. Chairman and Members of the Committee: It is an honor and a great personal pleasure for me to have this opportunity to appear before this distinguished Committee of the Congress on what is virtually my first official appearance as National Commander of The American Legion.

Before I discuss with the Committee the legislative program of my organization in the field of veterans affairs, I consider it most important that I express to you Mr. Chairman, and to the Members of the Committee, the appreciation of 2,700,000 Legionnaires, and the nearly 1 million members of the American Legion Auxiliary for the consideration that is consistently given by the Committee to the problems of our nation's 26.5 million war veterans and their dependents and survivors.

Historically, it is to Congress that veterans have looked, for support, and for the concern that has expressed itself in beneficial legislation. We of The American Legion know that it is because of the Congress of the United States that our country today has the most comprehensive program of veterans benefits of any nation in the world.

Four times in the Twentieth Century, the American Government had led the nation into war. Four times the youth of the nation has responded. And following each of those conflicts, Congress has taken the lead in providing readjustment programs for the returning servicemen and women, and supportive programs for the service disabled, and for the survivors of those who have made the supreme sacrifice. The American Legion knows what Congress has done in these matters, and we are grateful.

In addition to these words of gratitude to the Committee, I believe it is appropriate and necessary for me to express a special word of thanks to the Chairman of this distinguished Committee. In all of the matters of serious import, relating to veterans affairs, that have required action this year, Senator Cranston has been stalwart in defending the best interests of the nation's veterans, with their dependents and survivors. I will be frank in saying that I do not like to think of what might have happened to the veterans benefits programs this year had it not been for the active role Senator Cranston has played in speaking out for veterans in the high councils of the government. For this support and assistance, I want everyone to know that The American Legion is grateful.

May I now proceed to present the views of The American Legion on certain matters affecting veterans legislation in this Congress, and looking ahead to the first session of the 96th Congress.

By reason of the work of this Committee, the Senate has adopted a number of significant measures affecting veterans. Many of these continue to await final action by both Houses before they can be sent to the President. We consider all the measures the Committee has reported to be important. We are most anxious that the bill to provide a needed increase in compensation and DIC rates be signed into law, to become effective with the beginning of the new Fiscal Year. Of all the entitlements of veterans, none has priority over the obligation of the nation to those who were disabled by reason of their service, and to the survivors of those who died by reason of service to their country. We know the Committee shares our concern in this regard, and we look forward to final action, leading to enactment of this important legislation.

PENSION REFORM

I would now like to discuss the matter of pension reform. As I appear here today, Congress has not taken final action on the pension reform legislation that has been under consideration throughout the current session.

The American Legion has long been committed to the need for reform of the death and disability pension program for veterans. The inadequacies of the present program are so well known that it is not necessary for me to repeat them in this statement.

Representatives of the Legion have worked closely with the Committee and its staff in developing remedial legislation. The present status of that legislation is that it awaits action by a Conference Committee of the House and Senate. We have prepared a document that will be presented to the members of the Conference Committee, detailing our appraisal of the matters that have to be resolved, and offering our recommendations.

We are most anxious that the legislation that is finally sent to the President shall resolve the major problems that have beset the pension program, and that the rates established will be sufficiently generous that they are meaningful in the degree of financial assistance they provide to the intended beneficiaries.

We know the Committee shares this desire with us, and we hope it will guide the action of the Conference Committee, and of the full Senate when the final bill is presented for approval.

We are aware that the pension reform legislation, in whatever form it is finally approved, will add a substantial amount to the Administration's Budget for Fiscal Year 1979. We do not believe the added cost is prohibitive, given the goal that will be achieved—long term alleviation of the serious economic problems that are affecting the increasingly large number of the aging veteran population.

We are aware that there are those who are increasingly vocal in begrudging this added measure of security for older veterans and their widows. Those to whom I refer are more openly expressing the opinion that veterans should be lumped in with other segments of society who have need for public support.

Those of us who represent the veteran constituency do not fail to recognize that these open attacks on veterans benefits always begin to manifest themselves in a time of peace. These outcries for economy in veterans programs are never heard in time of war. They are indeed a phenomenon of peacetime. We hope the Committee agrees with us that they are without merit.

With reference to final disposition of the legislation, I will say that we are most anxious that it become law, and we will appreciate the support of all those who share our concern for the problems of older veterans and their widows.

VETERANS ADMINISTRATION BUDGET

Thoughout this session of the Congress, those of us who are on the side of veterans have been engaged in the Battle of the Budget. It was immediately apparent, last January, that the Administration's proposed budget for veterans programs was substantially short of what is needed to fully fund those programs. Shortfalls in amounts provided for the medical care program were most notable, and engaged the immediate attention of The American Legion. With the support of the Chairman, and Members of this Committee, Congress has increased allocations, especially for medical care, and it is now our expectation that funding will be essentially adequate, to at least maintain what we now have.

I must say to this Committee, however, that in our judgment, the battle is not over. We have every expectation that the Administration's proposed budget for the Veterans Administration for Fiscal Year 1980 will be a tight one. And everything that spokesmen for the Administration are saying leads us to believe that the shortfalls in the FY 1979 Budget will be repeated in Fiscal Year 1980.

The President is talking economy. He has publicly stated that economy will be achieved in a variety of categories of government spending, including, and he used these words, in the field of veterans programs.

May I say that all of the members of The American Legion are taxpayers, and we are as anxious for economy in government as is the President, or anyone else. Our concern, however is that economy must not be achieved at the expense of the nation's veterans.

In our judgment, the President has his priorities wrong. The 26.5 million men and women who comprise the war veteran population responded to the call to arms when the nation went to war. This includes the 8.5 million who saw service during the Vietnam Era. And 2.8 million of those actually served in Southeast Asia.

While the wars of the Twentieth Century were being conducted, there was absolutely no call for economy at the expense of veterans programs. It's the same old story. When the guns begin to shoot, nothing is too good for the soldier. It is when peace returns that the cries for economy begin to rise.

We note, for example, that despite repeated protestations of concern for the needs and problems of Vietnam Era veterans, the President proposed absolutely nothing in his FY 1979 Budget in the way of increases in education and training allowances.

With all this in mind, the American Legion is not going to be silent when cutbacks are proposed in veterans programs, in the name of economy. In our judgment, there are plenty of places in the Federal Budget where economy can be practiced, before an effort is made to cut back on veterans programs.

We very much appreciate the support the Members of this Committee gave in seeking adequate funding for benefits and services to veterans during Fiscal Year 1979.

When the Administrative Budget for FY 1980 is released, we intend to do a careful analysis, and we shall then approach our friends in Congress with our evaluation and suggestions.

Our objective at all times is adequate funding for veterans programs. We hope for your continued support in that direction.

VETERANS ADMINISTRATION MEDICAL CARE PROGRAM

Discussion of the VA Budget inevitably leads me to remarks relating to the VA medical care program. There is no question in our minds that the VA Department of Medicine and Surgery is the heart and soul of the operations of the Veterans Administration. Remove the medical care program from the VA, and you really have no further need of the VA as a single agency for the administration of veterans programs. The development through the years of the VA system as the largest and finest medical system in the world today, is the cherished achievement of The American Legion, because we have made a significant contribution to that accomplishment. We prize the VA medical care program for veterans, and we are determined to defend it.

I use these terms because we know that the VA system is presently under attack from a variety of sources. It is not my purpose here to identify those sources, nor to present a detailed defense of the system. I believe this Committee joins with us in support of the VA program of medical care for veterans.

But I do want to make clear that we of the Legion believe that a successful defense of the VA system is absolutely essential to a successful defense of all other veterans benefit programs.

And we are apprehensive that we do not have an ally on this matter in the Administration. To justify that statement, I need only point to the serious shortfalls in the recommended Budget for VA medical programs in the Administration's FY 1979 Budget.

I refer to the proposed reduction of 3,200 beds, with a resulting loss of 1,500 staff personnel; the curtailing of VA research programs, at a time when the achievements of that program have been recognized by all the world; elimination of the only new hospital planned for the system, at Camden, New Jersey; and a variety of economy measures having the effect of slowing the pace of renovation and renewal that is constantly necessary in a system as large as the VA system is. All of these actions, which are included or not included, in the Administration's proposed Budget for FY 1979, do not engender a feeling of confidence in the Administration's commitment to the VA medical care program.

The American Legion, through the work of a special committee established for that purpose, continues to monitor the progress of the national debate on national health insurance. When legislation to provide some form of national health insurance takes shape, the Legion will come forward with recommendations for protective clauses to insure the continuation of the VA system as one maintained exclusively for the nation's veterans.

We must say, however, that we perceive a visible danger to health care for veterans, in the concept of national health insurance. Which is why the possible lack of commitment by the Administration to the VA program is a matter of concern to us. And, in the face of this concern, we turn, as we always have, to Congress, for the assistance needed to assure the maintenance of the VA system, not only as a viable one, but in such a condition that it will continue to be in the forefront of health care delivery in this nation.

EDUCATION AND TRAINING PROGRAMS FOR VIETNAM VETERANS

The proposed Budget for Fiscal Year 1979, included nothing in the way of increases in the education and training allowances for those Vietnam Era veterans who are still completing their readjustment. We believe this younger generation of veterans is well justified in asking of the Administration, where is the commitment of dollars to back up the protestations of concern?

It is our earnest request that an early priority of this Committee next year shall be the development of legislation to provide needed increases in the education and training allowances for all programs, generally referred to as GI Bill programs.

GI Bill allowances were last adjusted by Public Law 95-202, and were effective on October 1, 1977. Of course, inflationary pressures have continued unabated since that time, and are continuing today. It is not fair to the young men and women who are in training under these programs, to cause them to try to continue their education and training with the use of 1977 dollars.

The American Legion will strongly support legislation to improve the education and training allowances, at the earliest possible date in the 96th Congress.

We would further suggest, for early consideration in the forthcoming session, a needed revision to improve Vocational Rehabilitation programs under chapter 31 of title 38. It has been observed by many that these programs are much in need of updating, to insure their responsiveness to the problems of the service disabled. We will support legislation that may be developed in this direction.

PENSION PROGRAM FOR VETERANS OF WORLD WAR I

I shall now address a subject on which a National Commander of The American Legion has not previously spoken to this Committee. I refer to a special pension program for the surviving veterans of World War I.

At our recently concluded National Convention in New Orleans, the Delegates expressed overwhelming support for a pension program especially for these older veterans. This support took its form in Resolution No. 220 (Ohio), a copy of which is apepnded to this statement.

Presently, there are 685,000 veterans of World War I, surviving from the 4,750,000 who served during that conflict. They are at an average age of 83, and their mortality rate is high.

This generation of veterans not only served gallantly in the first World War; they also founded The American Legion; they survived the Great Depression; they lent their strength and support to the three wars of this century that followed theirs; it was they who developed the concept of readjustment programs for returning servicemen—a concept entirely new in the field of veterans benefits. The men and women of the first World War have not had an easy life. They

have come into their later years, in many cases without the level of economic security that most of the rest of us can expect to have when we retire from active work.

Many of these veterans are presently living in strictly reduced circumstances; and many of them feel they do not have either the attention or concern of the American people. For these reasons, The American Legion, speaking through the Delegates to its National Convention, believes it is time for a measure of special recognition for these veterans.

We will submit draft legislation in January, to implement Resolution No. 220. It is our earnest hope and request that this Committee will consider that legislation. The program we propose will be modest. We believe it will be within the bounds of fiscal possibility. The main point is, however, that we believe this strong and affluent nation can afford this modest gesture in the direction of these, our oldest veterans, to assure all of them a measure of economic security.

VETERANS PREFERENCE

There is a matter that is not directly within the jurisdiction of this Committee, but which calls for mention in this, my first appearance before a Congressional body. I refer to the proposals to modify veterans preference in Civil Service employment.

It is not my purpose or intent in this statement to recite again all the reasons The American Legion continues to defend veterans preference as it is presently codified in law. The views of The American Legion on this matter are well known. We believe our position has withstood the test of debate, and nothing that has been said by those who advocate change in this veterans benefit has persuaded us to change our views.

We consider ourselves to be reasonable people. If what our opposition is saying could be proved to be true, we would indeed consider a change in position. If the modifications proposed would, in fact, enhance the employment situation of the Vietnam generation of veterans—that would weigh heavily with us. But we are convinced the arguments advanced to this effect are faulty. The Vietnam veterans will receive the best chance to establish careers within the Civil Service by application of the law as it is now written, if the Executive Branch will just abide by it in spirit as well as in lip service.

We believe the application of veterans preference through the years since it was established in law by Congress in 1944, has worked to the great advantage both of veterns, and of the public service. Veterans make good government employees. And veterans include minorities and women. Their military service merely adds to their desire and to their ability to serve the government in a civilian capacity.

We appreciate the support veterans preference has received in Congress during the current debate, from the distinguished Chairman of this Committee and from many Members.

VETERANS EMPLOYMENT

It is an obvious fact that no veteran is readjusted or rehabilitated until he is economically self-sufficient. This means he must have stable employment in a job that pays a living wage. Veterans employment has always been a high priority among the programs of The American Legion. We have worked very hard, in seeking legislation that would strengthen veterans employment programs, and through the activities of the 16,000 American Legion posts in helping individual veterans with job placement in the community.

Statistics indicate the situation in veterans employment has improved with the strengthening of the nation's economy. However, there remains a substantial core of unemployed veterans, mostly young, under-educated and under-skilled, and many of them from minority groups. The plight of these veterans poses a challenge to both the Congress and the Executive Branch, and we of The American Legion accept is as a challenge as well.

There are, as a result of Congressional action, a number of employment programs for veterans, mostly administered by the Department of Labor and codified in title 38 of the United States Code. We applaud the attention of Congress to this problem as represented by these programs.

Our complaint is directed at the Department of Labor, and I include mention of it in this statement so that it will be a matter of record.

There is, in our judgment, a singular lack of sensitivity by the Department of Labor to veterans employment programs. A number of things that have occurred this year illustrate this point. Among them are the appointment, confirmation and resignation of the first Deputy Assistant Secretary of Labor for Veterans Employment and the abolition by the Department of Labor of the position of Director, Veterans Employment Service.

To remedy these errors, and to attempt to instill into the Department of Labor an appropriate sensitivity to the problems of unemployed veterans, The American Legion continues to advocate the establishment of the position of an Assistant Secretary of Labor for Veterans Employment, with the Veterans Employment Service as a separate agency. We do not believe the Department of Labor will proceed to fulfill its responsibilities in the area of veterans employment until and unless these things are done. Legislation to this end has been introduced in the Senate Committee on Veterans Affairs, and we are grateful to Senator Strom Thurmond and his colleagues for this bill. In view of the action of the Department of Labor in abolishing the position of Director, Veterans Employment Service, in spite of assurances to the contrary made to Congress, we are asking for legislation to require this position by statute.

The Department of Labor has also been lax in enforcing, in the case of Federal contractors, the requirement that they, as well as the Federal Government, must take affirmative action to hire and promote eligible disabled and Vietnam Era veterans. To broaden eligibility under this program, we are supporting legislation to delete the 30 percent disability requirement and to require only a 10 percent service-connected disability or more, and to delete a stipulation that Vietnam Era veterans must have been discharged within 48 months preceding application.

A recent reorganization of the Department of Labor's machinery for monitoring and enforcing compliance of Federal contractors will further weaken these provisions for affirmative action for veterans. An Office of Federal Contract Compliance, headed by an Assistant Secretary is needed to bring Federal contractors into full compliance with the law.

Mr. Chairman, and Members of the Committee, I have tried in this statement to provide the Committee with an appraisal of the condition of veterans affairs as we of The American Legion see them, as the 95th Congress completes its work, and all of us look forward to the 96th Congress which will convene in January.

In this Congress we have found, as we always have in the past that there resides here a concern for and interest in the problems of America's veterans that is not found anywhere else. We are grateful for that concern and interest.

And we are confident that as long as we have friends in this place, the nation, as it enters into a era of peace, will not forget those who served it in time of war.

Before I conclude, I wish to extend again, an invitation to all Members to join us at our Reception, at 5:30 this evening in Rooms B-338-339 & 340 of the Rayburn Bldg. There you will be able to greet Legionnaires from your own areas, who look forward to the opportunity to be with you, however briefly, on a social basis.

Thank you very much for your time and attention.

SENATE RESOLUTION 562—SUBMISSION OF A RESOLUTION TO INSTRUCT THE CONFEREE ON THE PART OF THE SENATE ON HOUSE CONCURRENT RESOLUTION 683

Mr. MUSKIE submitted the following resolution, which was placed on the calendar:

S. Res. 562

Whereas, H. Con. Res. 683, as adopted by the House of Representatives, contains funding of $2 billion for new public works spending in Function 450, and

Whereas, the Senate amendment to H. Con. Res. 683, as adopted by the Senate, contains no funds for this two billion dollars in new spending,

Resolved, that the conferees on the part of the Senate on H. Con. Res. 683 are instructed to insist on the Senate position.

Mr. MUSKIE. Mr. President, I send a resolution to the desk and ask unanimous consent that it go to the calendar.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I rise only to say that this matter and this procedure accords with the desires of the ranking member of the Budget Committee, and we have no objection to that.

Mr. MUSKIE. Mr. President, I further ask unanimous consent that if and when the resolution is called up, it be subject to a time agreement in the usual form of 3 hours, to be equally divided between myself and Senator BELLMON.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I wonder if I can add this unanimous-consent request. Let me ask the Chair, would any motion to proceed to the consideration of this resolution be debatable?

The PRESIDING OFFICER. The answer is, it would be.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, under the circumstances, that the majority leader, after consultation with the chairman of the Budget Committee, Mr. BELLMON and Mr. BAKER, be authorized to call that resolution up without debate. The time agreement is on the resolution itself already.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Majority Leader calls up S. Res. 562, a resolution instructing the Senate conferees on H. Con. Res. 683, which can be done by the Majority Leader without debate, debate on the resolution shall be limited to three hours to be equally divided and controlled by the Majority and Minority leaders or their designees; that time on the resolution may be yielded for the consideration of any amendment; and that no amendment not germane to the provisions of the resolution be in order.

● Mr. MUSKIE. Mr. President, I have good news and bad news from the conference now meeting on the second budget resolution for 1979.

The good news is that House and Senate conferees have resolved most differences in the conference.

The bad news is that one major policy difference—whether to agree to a new $2 billion-per-year public works program—has deadlocked the conference.

The House budget resolution would provide $2 billion in new spending next year alone for so-called "local public works."

A part of this massive new spending would be to pay for a pale shadow of the administration's "soft public works" program, which is intended to employ disadvantaged workers.

In fact, versions of this new spending program in both Houses could finance projects with money devoted to hiring the long-term unemployed. The bulk would go to regular construction workers at a time when construction employment has already reached record levels. The House position would finance public works programs costing nearly as much during the next 2 years as has been spent for antirecessionary public works since the depth of the recession 3 years ago.

The Senate resolution contains $1.9 billion in outlays for the existing public works program. But it contains no funding for this massive new program.

Mr. President, the budget resolution, reported by the Senate Budget Committee, contained no funding for this program because we considered it inappropriate in the current economic recovery, too expensive, and inflationary.

No amendment was offered to provide funding for such a program when our budget resolution was debated on the Senate floor.

The House conferees continue to insist that such a program must be financed in this budget resolution and the Senate conferees continue to resist that additional spending.

Agreement in the conference—which is so near on so many other issues—is frustrated by this single question of whether to have a massive new public works program.

I am making this statement to the Senate today to alert all Senators to the likelihood of a vote on instructions to the conferees in the next day or so. Your Senate conferees will be communicating with you further as to our detailed objections to the House version.●

● Mr. BELLMON. Mr. President, as our distinguished chairman, Mr. MUSKIE, has indicated, the conferees on the second budget resolution for fiscal year 1979 are unable to reach agreement with respect to the issue of public works funding. The House-passed budget resolution provides in function 450, community and regional development, $1 billion in budget authority and $100 million in outlays for a third round of local public works projects and $1 billion in budget authority and $100 million in outlays for the "soft" or "labor intensive" public works program proposed by the President as part of his urban initiatives. The second budget resolution passed by this body less than a week ago contains no funds for either of these programs. The House is, therefore, $2 billion in budget authority and $200 million in outlays above the Senate.

What is at issue between the two Houses is additional public works spending in an inflationary environment. With regard to a third round of local public works projects, the question before the Senate is whether to continue to spend money for a program we initiated on a temporary basis in 1976. It is the position of the majority of Senate conferees that countercyclical measures such as this program should be terminated as the economy improves. If this is not done, countercyclical programs become procylical in nature and inflationary in effect.

We will already be spending in fiscal year 1979 roughly $2 billion from prior year authority under this program, and we feel a new round of funding would be inflationary. The construction materials industry is operating at capacity. Employment in the construction industry is at an alltime high.

A new round of funding would only put upward pressure on prices in this industry, and these price hikes would ripple throughout other sectors of the economy.

With respect to the "soft" public works program, Mr. President, we consider this to be an extremely high-cost option for providing jobs for structurally unemployed. As now proposed by the administration, only 25 percent of the total 25,000 person-years of employment created under the program in the first year would go to the long-term unemployed. This would create jobs at an annual cost of $160,000 for each long-term unemployed worker affected by the program.

The Senate has shown its sensitivity to the problems of the structurally unemployed. The budget resolution assumes a $5 billion-a-year program to serve the structurally unemployed. When we passed the CETA reauthorization bill 3 weeks ago, we indicated that this group was to be one of our high-priority concerns. Clearly, we have the CETA mechanism available to assist these disadvantaged workers; the program under consideration for funding here would only add a duplicative, less effective, and less efficient program to the books.

The decision before the Senate today affects not only fiscal year 1979 but also the years which follow. In the report accompanying the second budget resolution, the Senate Budget Committee indicates a cumulative budget margin of $54 billion in the next 5 years for tax reductions or spending increases. Is the Senate willing at this time to commit $4 billion of these limited future resources to programs such as these? Or, alternatively, does the Senate wish to adopt a more cautious attitude with respect to mortgaging its future resources in funding today's programs whose economic impacts and consequences will first be felt in an economic environment which is unknown at this time. It appears to me, Mr. President, that countercyclical programs of this type are better held in reserve and brought forth when they are necessary.●

CROSS-FLORIDA BARGE CANAL PROJECT TERMINATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order 1090.

Mr. BAKER. Mr. President, reserving the right to object, I will not object. Once again, I reserve only for the purpose of advising the majority leader that this item is cleared on our Calendar. We have no objection to proceeding to its consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3337) to terminate, in the year 1979, further construction of the Cross-Florida Barge Canal project, to adjust the boundary of the Ocala National Forest, Florida, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works and the Committee on Agriculture, Nutrition, and Forestry, jointly, with an amendment on page 2, beginning with line 7, strike through and including page 3, line 15, and insert in lieu thereof the following:

SEC. 2. (a) The boundary of the Ocala National Forest, Florida, is hereby extended to include the lands north and west of the Oklawaha River as shown on the map dated July 1978, on file with the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia, and available to the public in the office of the appropriate regional forester, forest supervisor, and forest ranger.

(b) Within the boundary of the Ocala National Forest as extended by subsection (a) of this section, lands or interests in lands and improvements owned by the United States and administered by the Corps of Engineers, Department of the Army, shall be transferred to the Secretary of Agriculture to be administered and made a part of the Ocala National Forest, Florida, when the Secretary of the Army deems such action to be appropriate, but not later than the end of the fiscal year ending September 30, 1980: *Provided*, That the Secretary of the Army, acting through the Chief of Engineers, may operate and maintain the existing facilities of the Cross-Florida Barge Canal project within the extended boundaries of the Ocala National Forest pending further disposition.

(c)(1) The Secretary of Agriculture shall acquire lands and interests in lands held on the date of enactment of this Act by the Canal Authority of the State of Florida within the boundary of the Ocala National Forest, as extended, with donated or appropriated funds, by purchase, gift, or exchange. For acquisition of lands or interests in lands held by the Canal Authority of the State of Florida, the Secretary of Agriculture shall pay not less than the purchase price paid by the Canal Authority plus interest compounded annually at the average rate at which the Authority borrowed funds for project acquisition purposes over the total period of financial commitment by the Authority.

(2) There are authorized to be appropriated beginning with the fiscal year ending September 30, 1980, such sums as may be

necessary to carry out the provisions of this subsection.

So as to make the bill read:

S. 3337

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a), effective July 1, 1979, authority for further construction of a high-level lock barge canal from the Saint Johns River across Florida to the Gulf of Mexico in accordance with Public Law 675, Seventy-seventh Congress (56 Stat. 703), is terminated.

(b) The Secretary of the Army, acting through the Chief of Engineers, is authorized to operate and maintain the existing facilities and their appurtenant lands of the Cross-Florida Barge Canal project as he determines to be necessary, pending further disposition by law of the project and its facilities and lands.

SEC. 2. (a) The boundary of the Ocala National Forest, Florida, is hereby extended to include the lands north and west of the Oklawaha River as shown on the map dated July 1978, on file with the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia, and available to the public in the office of the appropriate regional forester, forest supervisor, and forest ranger.

(b) Within the boundary of the Ocala National Forest as extended by subsection (a) of this section, lands or interests in lands and improvements owned by the United States and administered by the Corps of Engineers, Department of the Army, shall be transferred to the Secretary of Agriculture to be administered and made a part of the Ocala National Forest, Florida, when the Secretary of the Army deems such action to be appropriate, but not later than the end of the fiscal year ending September 30, 1980: Provided, That the Secretary of the Army, acting through the Chief of Engineers, may operate and maintain the existing facilities of the Cross-Florida Barge Canal project within the extended boundaries of the Ocala Forest pending further disposition.

(c)(1) The Secretary of Agriculture shall acquire lands and interests in lands held on the date of enactment of this Act by the Canal Authority of the State of Florida within the boundary of the Ocala National Forest, as extended, with donated or appropriated funds, by purchase, gift, or exchange. For acquisition of lands or interests in lands held by the Canal Authority of the State of Florida, the Secretary of Agriculture shall pay not less than the purchase price paid by the Canal Authority plus interest compounded annually at the average rate at which the Authority borrowed funds for project acquisition purposes over the total period of financial commitment by the Authority.

(2) There are authorized to be appropriated beginning with the fiscal year ending September 30, 1980, such sums as may be necessary to carry out the provisions of this subsection.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1167), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SHORT EXPLANATION

S. 3337—which was referred jointly to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Environment and Public Works—would (1) terminate, effective July 1, 1979, authority for further construction of a high-level lock barge canal from the Saint Johns River across Florida to the Gulf of Mexico, and (2) extend the boundaries of the Ocala National Forest in Florida.

BACKGROUND AND NEED

VIEWS OF THE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

I.

Construction of the Cross-Florida Barge Canal began in 1964 and was halted by President Nixon in 1971 for environmental reasons. A restudy in 1977 by the Army Corps of Engineers concluded that further investment in the project was not warranted, pending review of the restudy results by Congress. Subsequently, President Carter, in his May 1977 environmental message to Congress, directed the Secretaries of Agriculture and the Army to make recommendations on alternatives for disposal of canal lands and structures and restoration of the Oklawaha River portion of the project. In February 1978, the Secretaries sent their report of alternatives to the President and recommended what was identified as the intermediate-level of restoration. The State of Florida was a participant in the studies and took part in formulating the recommendations that were made to the President.

The aspects of the intermediate level of restoration of major importance to the Department of Agriculture are: the extension of the Ocala National Forest boundary; the authority to acquire project related lands; and the study of the Oklawaha River as a potential wild and scenic river.

Currently, the western and northern boundaries of the Ocala National Forest follow the Oklawaha River. Extension of this boundary along these sides, along readily identified manmade or natural features, would encompass project lands or interests in lands acquired for canal purposes by the canal authority of the State of Florida and the Corps of Engineers. Some 29,000 acres of the total 32,800 acres recommended for acquisition are within the extended boundary. The remaining land is within the existing national forest boundary.

II.

The acquisition of the canal authority and Corps of Engineer lands on both sides of the Oklawaha River for national forest purposes is in the public interest for the following reasons:

It would place lands that are essential to the protection of the Oklawaha River area under single agency management and administration.

An essential part of the restoration of the Oklawaha River portion of the canal project is retention of the related lands in public ownership. Inclusion of these lands in the Ocala National Forest would avoid possible conflicts in management goals and policies and the duplication of organizations, if multiagency management prevailed.

The major objective in halting construction of the project is the protection and restoration to a near natural condition of the Oklawaha River area. If Federal acquisition of the river related lands is not undertaken, the lands would likely revert to private ownership and possibly to uses incompatible with the natural environment.

Acquisition of the lands by the Federal Government also would provide funds to the State of Florida for distribution on a prorata basis to the counties whose tax revenues financed the original acquisition of the canal authority lands.

VIEWS OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

The Cross-Florida Barge Canal was authorized by Congress in 1942 in order to promote the efficient flow of materials for military purposes between the Atlantic Intercoastal Waterway and the coast of Mexico. Implementation of the project, however, was not immediate. In 1958, the Army Corps of Engineers reevaluated the project and found it still economically feasible. Initial appropriations were made in 1963 and construction started in 1964. By 1971, nearly one-third of the project was completed and over $70 million was spent.

In January of that year President Nixon, by Executive order, halted further construction of the project. Congress, following this action, directed the Chief of Engineers to restudy the environmental, economic, and engineering factors associated with the construction of the barge canal.

A report by the Chief was submitted in February of 1977. The report concluded that while construction was feasible, the economic justification was marginal and adverse environmental problems would be severe. The report also recommended a study to determine how best to dispose of the lands associated with the project if in fact the project was deauthorized by Congress.

The Committee on Environment and Public Works, following introduction of S. 1592 by the Senators from Florida, held hearings on the proposed deauthorization in July of 1978. Following those hearings and the introduction of S. 3337, the committee by voice vote recommended the termination of all future construction on the Cross-Florida Barge Canal. This recommendation was made on the basis of the overwhelming evidence of the severe, adverse environmental problems associated with future construction. The committee also questioned the economic need for the project at this time with the cost-benefit ratio for the project equal to unity. The committee concurs with the recommendation of the Committee on Agriculture, Nutrition, and Forestry on the disposition of the lands associated with the project.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2556.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2556) entitled "An Act to change the name of the District of Columbia Bail Agency", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

That (a) the text of section 23–1301 of title 23, District of Columbia Code, is amended by striking out "District of Columbia Bail Agency" and inserting in lieu thereof "District of Columbia Pretrial Services Agency".

(b) The heading of such section is amended to read as follows:

"§ 23–1301. District of Columbia Pretrial Services Agency".

SEC. 2. (a) The heading of subchapter I of chapter 13 of title 23, District of Columbia Code, is amended to read as follows:

"SUBCHAPTER I.—DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY"

(b) The item relating to subchapter I in the table of sections at the beginning of such chapter is amended to read as follows:

"Subchapter I—District of Columbia Pretrial Services Agency".

(d) The heading of such chapter is in such table is amended to read as follows: "23–1301. District of Columbia Pretrial Services Agency.".

(d) The heading of such chapter is amended to read as follows:

"CHAPTER 13.—PRETRIAL SERVICES AGENCY AND PRETRIAL DETENTION".

(e) The item relating to chapter 13 in the table of chapters at the beginning of such title is amended to read as follows:

"13. Pretrial Services Agency and Pretrial Detention---------- 23–1301".

SEC. 3. Any reference in any law, rule, regulation, document, or record of the United States or the District of Columbia to the District of Columbia Bail Agency shall be deemed to be a reference to the District of Columbia Pretrial Services Agency.

Amend the title so as to read: "An Act to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate agree to the House amendments en bloc.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISTRICT OF COLUMBIA RECIPROCAL TAX COLLECTION ACT

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1103.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1103) entitled "An Act to permit States the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due the State", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

That this Act may be cited as the "District of Columbia Reciprocal Tax Collection Act".

SEC. 2. (a) Any State, acting through its lawfully authorized officials, shall have the right to sue in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it in any case in which such reciprocal right is accorded to the District of Columbia by such State, whether such right is granted by statutory authority or as a matter of comity.

(b) The certificate of the secretary of state, or of any other authorized official, of such State, or any subdivision thereof, to the effect that the official instituting a suit authorized under subsection (a) for collection of taxes in the Superior Court of the District of Columbia has the authority to institute such suit and collect such taxes shall be conclusive proof of such authority.

SEC. 3. (a) In any State, or any subdivision thereof, in which the District of Columbia is authorized under the laws of such State to bring suit for the purpose of recovering taxes lawfully due and owing the District of Columbia, the Corporation Council is authorized to bring such suit in the name of the District of Columbia in the courts of such State, or any subdivision thereof.

(b) In connection with any such suit, the Mayor of the District of Columbia is authorized to secure professional and other services at such rates as may be usual and customary for such services in the jurisdiction involved.

SEC. 4. For purposes of this Act:

(1) The term "taxes" means—

(A) any tax assessment lawfully made, whether based upon a return or any other disclosure of the taxpayer or upon the information and belief of the taxing authority involved;

(B) any penalty lawfully imposed pursuant to any law, ordinance, or regulation which imposes a tax; or

(C) any interest charge lawfully added to the tax liability which constitutes the subject of any suit brought under section 2 or 3.

(2) The term "State" means any of the several States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Amend the title so as to read: "An Act to permit any State the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due such State.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent the Senate agree to the House amendments en bloc.

The PRESIDING OFFICER (Mr. NUNN). Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO EXTEND ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended for not to exceed 1 hour, and that Senators may speak up to 30 minutes therein, if they wish.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. I am most appreciative, Mr. President.

The PRESIDING OFFICER. The Senator from New York.

U.N. COMMITTEE ON DECOLONIZATION CONDEMNS UNITED STATES-PUERTO RICO RELATIONS

Mr. MOYNIHAN. Mr. President, I rise to report to the Senate the somber and disagreeable news that the Committee on Decolonization, as it is known, of the General Assembly of the United Nations voted last evening 10 votes to 0, with 12 abstentions and 2 absentees voted—to condemn, in effect, the relationships between the United States and the Commonwealth of Puerto Rico. The committee, in effect, called for the immediate transfer of power, as it is put in the third article of the resolution, to the people of the territory by the Government of the United States; that is, it called for the separation of our two peoples.

This is a blow to the American feeling that our relations with the totalitarian world, and what is commonly known as the Third World, have somehow changed and been bettered in the course of recent years, in consequence of the very serious efforts of the President, the Secretary of State, and Permanent Representatives of the United Nations to bring about such a betterment.

It scarcely could be questioned that the United States has made such a good faith effort, and at times has gone to embarrassing lengths to do so. We now have been summarily informed of this decision. What little success we have had in changing any attitudes, save to worsen them, save to make our enemies more arrogant and those in between more concerned and perplexed. Our adversaries have no fear of insulting the fact of our democracy, of misrepresenting the most open and public of truths about our relations with the peoples of Puerto Rico, and to do so in the face of the solemn statement by the President of the United States that what the United Nations Committee has now said is not so.

The most recent event of this kind came when the Soviet Union chose to prosecute and to condemn and to imprison as a U.S. spy—as a spy of a foreign nation—a Soviet citizen whom the President of the United States specifically had said was not a spy. It was an act calculated with great effort. This most recent act was not less calculated. Only, I am sorry to say, it was not as well reported.

Mr. President, I am obliged by the traditions of the Senate to declare what is, in a sense, my own interest in this matter. I was the U.S. Permanent Representative to the United Nations in 1975, at a time the totalitarian Government of Cuba proceeded to attack the democratic Government of the United States for maintaining a colonial relationship with the peoples of Puerto Rico.

The Cuban resolution was brought up by its Stalinist ambassador between bouts of denying that there were any political prisoners in Cuba and releasing them for the delectation of visiting congressional delegations. (Why are there never any political prisoners in Cuba until a U.S. congressional delegation shows up to have some released? This is an amazing phenomenon to me.)

At that time, at my request, the Secretary of State sent a diplomatic note to the ambassador of the Decolonization Committee, as it is called, saying that we would consider it an unfriendly act to vote for the Cuban resolution. An unfriendly act in the language of diplomatic exchange is a very serious term. It is only to be exceeded by a hostile act.

In the aftermath of that note, the resolution was defeated by a vote of 11 noes, 9 yeas, and 2 abstentions.

The Government of Tanzania made a great stir about it in subsequent years; it published our note in its press, and expressed indignation that we could presume to ask it not to interfere in our internal affairs. One can imagine how the Government of Tanzania would feel if we suddenly revived an interest in the independence of Zanzibar—but we leave that aside.

The fact is that the United States said, "This is an internal matter, and we will not have an internal matter of our democracy kicked about by the dictatorships which dominate this committee, at the behest of one of the most brutal of all those dictatorships, the so-called Republic of Cuba."

Well, a number of years have passed; and this time, after long debate, the committee has acted once again. Last night, Mr. President, the Cuban dictator achieved his objective. The United States has been condemned by the Committee on Decolonization of the United Nations. And who chose to stand with us? What nation in the world chose to stand with us? Remember, just 3 years ago, 11 stood up and said, "No." What nation chose to stand with us? Not one. Not one nation chose to associate itself with the United States and thus to incur the displeasure of Cuba.

Listen to the names of the nations that voted to condemn us: Afghanistan, Bulgaria, China, Cuba, Czechoslovakia, Ethiopia, Iraq, Syria, Tanzania, and the Soviet Union.

In the Freedom House listing on the condition of freedom of the world, of those 10 countries, not one is listed as free; 9 are listed as absolutely not free; and only Syria, by some curious arrangement, is listed as partly free.

Nine dictatorships have condemned the free and democratic relationship of the United States with Puerto Rico. And where was Tanzania, whose President, Mr. Nyerere—that smiling dictator—came to this country last year, and who was feted at the White House and was told what a gentleman he is? It is said that the prisoners whom Mr. Nyerere keeps for Swapo are in perhaps more agreeable prisons than those in which they might otherwise find themselves.

But what have we now to confirm Mr. Nyerere's professions of friendship for us, and understanding? He sides with the dictatorship, as indeed he might; such is the political condition of his own country.

And what of those who abstained? Afghanistan evidently is now openly in the Soviet camp. China, which is forever telling us of the alarm we should feel about the aggressive intentions of the Soviet Union, sides with the Soviet Union.

Where are the countries that will not even stand up and tell them, "No"? Australia? It is heartbreaking. Three years ago, the Australians led the fight on our behalf in this committee, and a brilliant Australian representative carried the day.

India? How disappointing that our fellow democracy should not see this in the terms in which we present it and not make any effort to speak for us.

Yugoslavia? Let them come crawling for military aid, economic help, and God knows what to save their skins, the next time the Soviets start leering at them.

I recall very distinctly, one day in 1975—after the vote was taken and Yugoslavia had abstained—saying to the Yugoslavian Ambassador, on a social occasion, a luncheon, "We regard this as an internal matter. The Puerto Ricans are American citizens, just as New Yorkers and Vermonters and Hawaiians and Californians are."

I said to him, "How would you feel if we were suddenly to introduce in the United Nations a resolution about the right to separate and immediate independence for the people of Croatia?"

Well, he would not like it one bit. He turned several shades of purple. The next day, the U.S. Ambassador in Belgrade was called in and was asked what the U.S. Permanent Representative had meant by this statement. It was not a formal statement at all, just an informal statement at a social occasion.

Mr. HAYAKAWA. Mr. President, will the Senator yield for a question?

Mr. MOYNIHAN. I yield.

Mr. HAYAKAWA. I am very grateful to my learned friend, the distinguished Senator from New York, for informing us of this action of the Decolonization Committee of the United Nations. It is a piece of news that I had not heard. It distresses me enormously to learn of it.

However, since the Senator from New York has been Ambassador to the United Nations, I wonder if he would be kind enough to explain to me what an abstention means. I understand that there were 10 votes for the liberation of Puerto Rico.

Mr. MOYNIHAN. Exactly.

Mr. HAYAKAWA. And 12 abstentions. Why do not these 12 countries have the nerve to say "No," instead of abstaining? I have wondered about this in United Nations votes. There are abstentions, a refusal to take a position, which becomes, in effect, an invitation to totalitarian nations to drop over all the rest of us. I would like that explained.

Mr. MOYNIHAN. May I respond?

Mr. HAYAKAWA. Please. I wish that explained.

Mr. MOYNIHAN. I shall tell the Senator what abstention means in a moment.

A representative of a Communist dictatorship stands up before a committee and says that the people of Puerto Rico have been conquered and are ruled by the imperialist power of the United States, and then the Governor of Puerto Rico, the Honorable Carlos Romero Barcelo, comes before that Committee and says the following:

> The Puerto Rico of today is still not especially wealthy We are not mighty. Our people do not live in total internal harmony. Nevertheless, ladies and gentlemen, we do enjoy individually and collectively the basic human rights which define a free society. And believe me, the people of Puerto Rico appreciate with every fiber of their being how rare and how precious a blessing freedom is.
>
> Moreover, we know why we are free. We know we are free precisely because we are natural born citizens of the freest and most open and most culturally diverse nation in the history of mankind, the United States of America.

We are free because we are part of the freest and most culturally diverse Nation in the history of mankind, the United States of America.

And to the dictators of Russia, China, Yugoslavia, and Cuba who say this is not so, and to the freely elected Governor of Puerto Rico who says it is, to abstain means not to decide one way or the other, not to have the courage to face the clear fact of the democratic condition in Puerto Rico and the Orwellian lies of the totalitarians. It recalls that great speech of John L. Lewis about President Roosevelt:

> It ill behooves one who has supped at labor's table and slept in labor's house to damn with fine impartiality both labor and its adversaries when they are locked in mortal embrace.

It is heartbreaking. It means that Sweden, faced with a Communist ambassador, says one thing about our democracy, and a Governor from our democracy says quite another. And the others say, "I will not choose."

Mr. HAYAKAWA. I thank the Senator from New York.

The Senator from California is still puzzled as to why they should put this much power in the hands of Communist dictatorships. Those nations which do abstain are not themselves Communist dictatorships, are they?

Mr. MOYNIHAN. I will tell the Senator the answer. If you cross the Soviet Union on something like this, you might have trouble and if you cross the United States you will not.

I hope that the American Ambassadors in all 22 of these nations would report to their Foreign Offices tomorrow morning to say, "We are offended. You can say what you want about our foreign policy, you can say all you want about our culture. You can be supportive or dismissive of our intellectual contributions and the attractions of our landscape, but you must not assault the honor of the American democracy and expect to do so with impunity."

They must understand there are things which we care deeply about.

"And you disparage at your peril."

They must be made to understand that there is a cost in saying certain irresponsible things about us—to say we lie when we say we have tried to maintain a democracy. It is not a perfect democracy. Our relationship with Puerto Rico was not ideal as it was settled. I know. The Puerto Ricans themselves are torn between statehood and the commonwealth status. The President of the United States has said they can have either. Puerto Rico arose from imperial times—that brief fling we had in the 1890's. Now it is past. We are not perfect. But we try to be democratic.

Mr. HAYAKAWA. I hate to see, Mr. President, these attacks by Communist dictatorships on the United States being supported, in effect, by the abstentions of many nations which are not Communist dictatorships. They give aid and comfort to those extremists of the right in my own State of California who have such a slogan as "U.S. of the U.N.," and since we do contribute heavily to the expense of that U.N., if the slogan were ever to carry weight because that slogan is so well justified by the actions of those very Communist dictatorships and the abstaining nations, the world itself would be in trouble, would it not?

Mr. MOYNIHAN. Exactly. Let me read the Senator another paragraph.

Mr. HAYAKAWA. Why do we stay in the U.N.?

Mr. MOYNIHAN. We have a responsibility to be there. But that responsibility

is fulfilled only when we take it seriously enough to respond properly.

There are people in the Department of State whose whole approach to this subject is what is called damage limitation, whose understanding of the modern age and the symbols of progress is so weak as to suppose these things do not matter. I do not know what cure there is for that. There are people who come into the administration who feel that we have not been understanding enough of the other dictatorships, who feel that if we showed ourselves to be more friendly to them, they would be more friendly to us.

What have they to show for this? We beat the Cubans 3 years ago. Last night we were beaten by them. We beat them 3 years ago when we said, "This matters to us," and we held. We had our way.

This time we did not.

Listen to this passage; listen to Romero Barcello. He said:

> Should the day come when the people of Puerto Rico were to find themselves oppressed by the United States it would not be necessary for a totalitarian adversary of the United States to bring the matter to the attention of this committee. I can assure you that the freedom-loving people of Puerto Rico would virtually lay siege to this building in their clamor for redress of grievances. I should emphatically add that I myself would not hesitate to stand at the forefront of such a movement.

That is an honest voice. It admits the possibility of such an eventuality, and there is truth in that language. There is nothing but lies in the accusations against us. In the face of those lies, Iran—which God in Heaven knows will be after us in a hurry if they have another 5 days of riots—India, Sweden, and—God what a shame—Australia, say they are impartial. This in the face of lies about us, about democracy, about freedom in the world and its possibilities.

Mr. President, I do not wish to detain the Senate any further except to say I believe it might be useful for the Senate to adopt a resolution on this matter. I would hope, without in any way wishing to harass the Secretary of State, who has many things on his mind, to ask him if it is not the fact that a decent, manly concern for the good opinion of the rest of the world does not require that we protest this action, and in the absence of some acceptable response, that we respond in an appropriate way?

Mr. HAYAKAWA. Mr. President, I would be glad to support the Senator from New York in such a resolution whenever it is appropriate to be brought up.

Mr. MOYNIHAN. I thank my good friend, because he knows how much it matters to me. I thank the Chair and I appreciate the courtesy of the Chamber.

The PRESIDING OFFICER. Is there further morning business?

Mr. HAYAKAWA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MOYNIHAN. It is my understanding that the Senator from Montana may wish the floor and, if that is the case, I am happy to yield to the Senator from Montana.

The PRESIDING OFFICER. Will the Senator from California withhold his request?

Mr. HAYAKAWA. By all means.

The PRESIDING OFFICER. Does the Senator from Montana desire to be recognized?

Mr. MELCHER. I do, Mr. President.

The PRESIDING OFFICER. The Senator from Montana.

EFFECTS OF ALASKAN NORTH SLOPE CRUDE OIL AND PRODUCTION AT ELK HILLS NAVAL PETROLEUM RESERVE

Mr. MELCHER. Mr. President, I will be very brief.

The General Accounting Office has finally released the report "Effects of Alaskan North Slope Crude Oil and Production at Elk Hills Naval Petroleum Reserve." The environmental requirements on the west coast as well as refinery configuration requires the importation of the sweet Indonesian crude oil or use of Elk Hills Stevens Zone oil in California refineries. Because of this, North Slope crude oil—which is sour and heavy gravity—will continue to be in surplus supply on the west coast.

The General Accounting Office has reaffirmed their position on the need to move this North Slope crude oil into the northern tier States through a west-east pipeline system. They said:

> We continue to support the position taken in our recent report ("Potential For Deepwater Port Development in the United States," EMD–78–9, April 5, 1978) that assuming the surplus will be long term, the west-east pipeline system is the preferred transportation alternative for surplus North Slope crude oil. In that report, we recommended that the Congress enact legislation to expedite the issuance of required Federal approvals of transportation systems to move surplus crude oil to Northern Tier and other inland states.

The report referred to in that GAO document said last April:

> It is highly unlikely that any of the proposed deepwater port and pipeline systems could be constructed by 1978 and used to move surplus Alaskan crude oil from the West Coast to domestic markets. Assuming the surplus will be long term, the construction of a west-to-east deepwater port and pipeline system would serve the national interest for distributing oil to midwestern and eastern markets.

Northern Tier Pipeline Co. has proposed just such construction from the State of Washington across the Northern Tier States to Minnesota. Their applications for Federal and State permits have been pending for 18 months. Expediting the necessary Federal permits for this 40-inch pipeline is required by one of the energy bills still in conference. Prompt action and passage is necessary on this provision to start to unravel this paradox of too much crude oil on the west coast and the shortage of crude supplies in the northern inland States. Construction of the Northern Tier pipeline will correct the situation by providing movement of up to 900,000 barrels per day of crude oil.

There are, of course, other methods of dealing with this crude surplus situation. We can shut in the production. This would increase our balance-of-payments problem by causing additional imports to replace the shut-in production. We could move the surplus to the east coast by tanker through the canal, or we could exchange the North Slope crude with foreign countries on a barrel-for-barrel basis. The GAO spoke to these alternatives and said:

> Although some believe it is desirable for refiners to install additional desulfurization equipment or to retrofit present equipment, other constraints exist that discourage refiners from making these transitions, i.e., (1) high capital cost and (2) the lack of a market for residual fuel oil on the West Coast.
>
> Short of shutting-in some production, there are alternatives for disposing of North Slope crude oil which is surplus to West Coast refinery requirements. The alternatives include (1) movement by overland pipeline to refineries in the midwest and southwest, (2) movement by tanker through the Panama Canal to refineries in the Gulf and East Coasts, and (3) exchange with foreign countries on a barrel-for-barrel basis. Because the overland pipelines have not been constructed, only options 2 and 3 can be exercised at this time. The administration decided against exchange with foreign countries, and North Slope crude oil surplus to West Coast needs is presently being shipped through the Panama Canal.
>
> Although an exchange with Japan would result in transportation cost savings to the North Slope crude oil owners, these transportation savings may have to be shared with Japanese refiners to induce them into an exchange. DOE estimates the net gain from an exchange, considering transportation costs, crude oil quality adjustments, and import charges, would range from $0.54 to $1.34 per barrel. (See table in app. I on p. 9.)
>
> According to DOE, in July 1977 the administration rejected the option to exchange surplus North Slope crude oil with Japan, despite the estimated transportation savings, for the following reasons:
>
> It was not certain that refiners would pass to consumers much of the transportation cost savings from an exchange.
>
> Temporary approval of exchanges might tend to lessen the incentives of oil companies and various State permitting authorities to proceed expeditiously with the approval and construction of needed west-to-east pipelines.
>
> The belief that allowing exchanges would undermine the administration's efforts to make the public aware of the Nation's domestic energy supply shortage, and the need for conservation of those resources.
>
> We believe that another important consideration is the effect an exchange agreement would have on our security of crude oil supplies. The United States would be giving up domestic supplies for an equalizing share of Japan's imported crude oil supplies. Although it is uncertain which country, or mix of countries, would provide the equalizing share, it is likely that the crude oil would come from either Saudi Arabia or Iran. These countries have contributed over 50 percent of Japan's crude oil imports each year over the last 4 years.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

BENJAMIN SONNENBERG

Mr. MOYNIHAN. Mr. President, if ever there was a life well lived and that might only be regarded as having been fully concluded by a warm, affectionate, and lengthy obituary in the New York Times it was the life of Benjamin Sonnenberg, that rare and incomparable citizen of the city of New York and, by

extension, the world, which he made his own so uniquely and individually.

The New York Times being in recess, I take the liberty, as I know he would wish me to have done, to find some sufficiently ingenious device of getting it into print.

I ask unanimous consent that the fine obituary of that incomparable man, an obituary by John L. Hess of the New York Times, be printed in the RECORD.

There being no objection, the obituary was ordered to be printed in the RECORD, as follows:

BENJAMIN SONNENBERG

(By John L. Hess)

NEW YORK.—Benjamin Sonnenberg, a Russian immigrant who became a legendary press agent and a friend of the rich and famous, died of a heart attack here Wednesday. He was 77 years old.

Following the lead of Ivy Lee, Sonnenberg was one of the great American press agents who imposed their own personalities on the public mind along with those of their clients.

He liked to call himself "a cabinetmaker who fashioned large pedestals for small statues." He was a small figure, round and bald, who made himself conspicuous in any company by his walrus mustache. His dark four-button tailored suits and a rich conversational stream reinforced by the names of famous people and by efigrams he had collected on well-thumbed index cards.

His pedestal has a mansion that Brendan Gill, the drama critic of the New Yorker and the chairman of the Municipal Art Society, has called "surely the greatest private house in New York." The five-story Georgian town house, at 19 Gramercy Park South, and a six-story house adjoining it, are filled with antique silver, brass and furniture, the walls lined with master drawings and paintings, nearly all of museum quality.

Here, several times a week for decades, Sonnenberg entertained a careful mix of industrialists, celebrities and useful media contacts. An elegant dinner would usually be followed by the showing of a new motion picture in the screening room on the top floor.

The decor and the entertainment were central to his public relations, and public relations was his life. He observed that articles about him stressing his way of life did not adequately treat the poverty of his beginnings.

Born in Brest-Litoven, Russia, on July 12, 1901, he immigrated with his family to New York in 1910. He grew up on the lower East Side, where his father sold cheap clothing from a stand in Grant Street. He graduated from DeWitt Clinton High School, worked and for a time lived at the Henry Street Settlement, spent a year at Columbia College on a scholarship, peddled door to door in the Middle West and worked briefly as a reporter on The Flint (Mich.) Daily Journal.

After returning to New York in 1921, Sonnenberg got a job at the Joint Distribution Committee, which led to an assignment with an American relief mission in Turkey and the Ukraine. Paradoxically, the contrast of his own relatively affluent situation there with the mass poverty around him appears to have determined his course from then on.

He came home in 1923 with little money but an elegant Continental wardrobe. He dabbled in writing and in acting, then drifted into freelance press agentry for nightclubs and theaters. In 1924, he married a Henry Street Settlement worker, Hilda Caplan. Their honeymoon, he said, was a 50-cent Chinese lunch, after which both returned to work.

Sonnenberg entered the big time with an engagement to publicize the new Fifth Avenue Hotel in 1926. He and his clients, who soon included other major hotels, found that the key to prominent play in the press was to promote the presence of newsworthy guests, paying or otherwise.

A great early coup was his mounting of a sort of parade up Broadway for Trader Horn, a peddler in Africa whose ghost-written memoirs became a best seller.

Ely Culbertson was another early client. Sonnenberg asserted that he had "sold" contract bridge as newsworthy to an editor of the New York Times, who first objected that "he play poker here" but who finally arranged for a telegraph line to the Waldorf-Astoria Hotel to report on a Culbertson match.

Adding the Hotel George V in Paris to his string, Sonnenberg became a friend and promoter of Prince Georges Matchabelli, the perfume seller, and through him Bergdorf Goodman and the Grand Duchess Marie of Russia, who came to work for the store.

In 1950, a New Yorker profile of Sonnenberg by his friend Geoffrey T. Hellman recounted that he soon found that he could make far more money representing a few big corporations and their chiefs than by promoting many smaller clients. He winnowed out his clientele accordingly.

Among the companies he enlisted were Lever Brothers, Lipton Tea, Squibb, Pan American World Airways, Sperry, Beech-Nut, CBS, Federated Department Stores and Philip Morris. Among the tycoons were Robert Lehman, Wild Bill Donovan, Samuel Goldwyn, David O. Selznick, Thomas Corcoran, William S. Paley and Albert Lasher.

A former employee of Sonnenberg's described his technique with admiration.

"Ben was capable of leading people to the mountaintop," he said, "Like getting an advance copy of a cover story in Time magazine that he hadn't had anything to do with. He'd send copies around with those big cards of his and a note, 'I thought you might be interested in this.' He wouldn't claim credit for it.

"A client of ours was the late John I. Snider of United States Industries. I remember arranging a dinner at Ben's for a few top editors. The point was to introduce John Snider. He did a hell of a job for him. He made him the principal spokesman for industrial responsibility toward workers displaced by automation. He was invited to address the AFL–CIO.

"I got up some great ads for United States Industries, but Ben just dropped them on the floor. He thought up the ad about 'the billion-dollar boards' listing the clout of the directors. It flattered the ego of every member of the board. That's the lesson I learned from Ben: The biggest factor is corporate ego."

Sonnenberg himself liked to recall that Samuel Goldwyn came to him with the reputation of "Mr. Malaprop," the butt of many a joke about Hollywood illiteracy. "I spent half a dozen years with Sam Goldwyn," Sonnenberg said. "When I got through, he lectured at Oxford."

A client who became a long and close friend was Robert Lerman. Together, they collected art, the banker buying works of great price, the press agent acquiring fine, fine master drawings and prints and antiques. Sonnenberg was fascinated by personalities of talent or high birth, and most of the pictures he collected are portraits of them. A brilliant selection was shown in 1971 at the Pierpont Morgan Library. Sonnenberg was an active benefactor of that institution, the New York Public Library and the Institute of Fine Arts.

His closest friends were writers and art collectors. Often, they urged him to write his memoirs. "I don't know how to write," he replied. "There's a differing between a gag and an essay."

Sonnenberg saw himself as the last of an old school of press agents. "It's a skill that has now been vulgarized and standardized," he said. "It's now done by machine. There's not a literate man in the business." One of his former assistants agreed. "We're all the poorer for it," he said. Mrs. Sonnenberg, who helped her husband in a self-effacing manner for more than half a century, survives, with their daughter, Helen, their son, Benjamin 2d, and six grandchildren.

COSMOPOLITANS FROM INDIA

Mr. MOYNIHAN. Mr. President, in the past decade, significant numbers of people from India have come to the United States. They have become an increasingly important element in our national life, for our country continues to benefit from their contributions to the arts, the sciences, business, and other professions. This is a significant development in American history, and not merely because immigrants from India are repeating a pattern of earlier settlers here. In fact, each national group brings to America its own heritage, its own particular ways of thinking and feeling, such that its encounter with American life produces new and interesting consequences.

This presents a challenge to sociologists, political scientists, and historians. It is a subject worthy of scholarly investigation. Accordingly, I wish to call attention to an article by Parmatma Saran, a promising assistant professor of sociology at Baruch College of the City University of New York. Professor Saran's examination of the Indian community of the Greater New York area is especially insightful. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE NEW IMMIGRANT WAVE: COSMOPOLITANS FROM INDIA

(By Parmatma Saran)

Some of the most moving documents in American history are those based upon immigrants' descriptions of their experiences after arriving in the United States. These documents were derived from an earlier wave of migration, primarily from Europe.

However, migration is not an historical process no longer relevant to the United States. With recent changes in the immigration laws and political and economic difficulties in many parts of the world, the flow of migrants to the United States, and in particular to the New York metropolitan area, has reemerged as a major social process. To allow this process to go unnoticed is to disregard a major event in contemporary American society.

There is an established body of theoretical and substantive writing about older immigrant groups (Italians, Jews, Irish, and so on), but there is also a concomitant lack of ethnographic data available about newer immigrants—especially East Indians. While some work is done on Indian immigrants in Great Britain, the West Indies, and Africa, there is none so far in the United States.

EMERGING NEW COMMUNITY

New York City has always had a small population of Indians (graduate students at various universities, people working for the Indian consulate and other official agencies, Air India, the United Nations, and similar organizations). However, this population has been transitory. Now, for the first time, there is evidence suggesting that a permanent In-

dian residential community is developing in the city.

As indicated above, the small Indian population in the city was transitory, scattered, and did not constitute a community in the functional sense. Starting in 1969 or 1970, because of the change in the immigration laws, scores of Indians came with their families to live and earn a living in this country. A large number of these immigrants live in and around New York City. They generally live in certain localities; this proximity allows close contact and constant interaction. The largest number of Indians are concentrated in Queens. Many of these newer immigrants live in Queens and the Bronx. It is estimated that close to 30,000 Indians are living in the tristate area.

In the last two years a clear trend has been evidenced among Indian immigrants. A good proportion of these immigrants are buying houses and moving to different places generally within fifty miles of New York City. The largest portion of them have moved to New Jersey, some to Westchester, and some to Long Island. However, the majority of this population still remains in Queens.

The Literary Guild of India (a local cultural and literary organization) recently published *India Guide* which gives a good deal of information about Indians and their varied activities in the city of New York. All these enterprises flourish because of the large Indian community—which is still growing. Another important indication of the growing Indian community is a directory of Indian immigrants published in 1975 in New York. Even though this directory includes Indians from all over the United States and Canada, it shows clearly that the heaviest concentration of Indians is in the New York metropolitan area. The directory also includes lists of Indian stores and businesses and generally gives the same figures as those of *India Guide*.

OCCUPATIONAL STRUCTURE AND ASSIMILATION

The East Indians who have come to the United States as immigrants starting in 1968–69 tend to be between the ages of 30 and 40. Those who come as students and then change their status to permanent residents are in most cases below 30 years of age. The majority of them come from middle-class backgrounds and lived in urban sectors. At least 90 percent of them have college degrees or professional diplomas. Wives, however, do not have the same educational background. In most cases they have some college education.

It must be pointed out that because of the immigration laws, Indians who come here are professionals or at least skilled people. The largest number of these immigrants are engineers and physicians; among other professionals are professors, accountants, and businessmen. In many cases wives and adult children also work. Some Indians are in skilled or semiskilled jobs. By these occupational indices the Indian community can be distinguished from many other ethnic groups in New York City. The average family income is above $15,000 per annum.

The profile of Indian immigrants provides an interesting phenomenon in the context of their structural assimilation. Perhaps because of their educational background, it is much easier for them to fit into the structural part of American society. For example, their earnings are high and they own property and live well. Gradually, through their organizational strength, they are also trying to exert themselves politically.

Their cultural assimilation, however, is minimal. A look at the Indian community clearly suggests that there is a strong desire to maintain its cultural heritage. The notion of ethnicity remains strong and is perceived as desirable.

Patterns of Indians' adaptations to their new environment encompass two arenas, social and psychobiological. The former includes family, religion, economics, education, and politics; the latter includes mental health, health-related issues, child-rearing practices, and food habits. We can look at each of these points in turn.

SOCIAL ADAPTATION: FAMILY

A large number of the Indians who migrate to the United States do not belong to joint-families. Even those who belong to a joint-family in most cases lived independently in India. Therefore, coming to the United States and living in a nuclear family does not pose any serious problems for Indians. However, a lack of primary group relationship and community support does create a sense of alienation for them. In order to examine patterns of adaptation of Indians in the context of the family, we should focus on patterns of relationship between spouses and patterns of relationship between children and parents.

In a traditional society like India—where family structure is essentially patriarchal, marriages are arranged, and the husband is the breadwinner—the supremacy of husbands generally prevailed. The wife remained contented with supervising household activities, maintaining close ties with the husband's family and relatives as well as her own relatives, and also found herself busy with neighbors and friends within the community. This in most cases contributed to a loving and stable relationship between husbands and wives.

After coming to the United States, both husbands and wives, especially wives, find themselves in a different environment. Many things which had kept wives busy and contented in India are simply not present in the new environment. This leads to a search for jobs on the part of wives, most of whom find some sort of employment. As a result of change in the status of wives, their roles also change. They simply are not able to keep up with the household work and care for husbands as they had done in India.

Husbands on their part find that their jobs are more taxing and demanding, coupled with long hours of commuting. At the same time, there is no community and social support for them. Their wives' economic independence also poses some concern and threat. These are some factors responsible for creating strain in the relationship pattern of husbands and wives. However, their early socialization, very strong commitment to marriage and the family, and greater tolerance helps them deal with the new realities of life. With some exceptions (almost negligible) the relationship between husbands and wives remains amicable, and they are reasonably successful in maintaining stable relationships.

As we look into the patterns of relationships between children and parents, we find that these are not so smooth and often create serious confrontations. This is more apparent in those families where children have attained the age of 14 or 15. Parents want to maintain the traditional authority structure in their families and often ignore the fact that the child's socialization is highly influenced by the environment outside the family. Children also fail to understand why they should act as their parents want them to rather than as their peers do. In this case peer group influence is more dominant than the family influence.

Children also face a major identity crisis and find it very difficult to preserve their Indianness. As a result, the relationship between parents and children deteriorates. Because of the excessive love and affection for their children and perhaps better understanding on the part of mothers, and also the fact that in most of the families children are much younger (that is, below 10), the situation remains under control. However, there are some incidents which result in a complete breakdown of relationships and remain explosive.

RELIGION

One of the questions raised in the study of Indian immigrants is what happens to Hinduism and the religiosity of Hindus as they migrate to this country. There are many ways of looking at this phenomenon; one is to focus on both the formal and informal religious behavior of Hindu migrants.

There are at least five or six temples in the Queens, New York area alone. One of them, Hindu Temple, has a large membership and has been able to raise over $1 million for the construction of a new temple. People go to these temples in large numbers on weekends (especially Sundays) to join in services and offer their prayers.

Many social and cultural organizations are very particular about observing religious festivals, and see this as a good strategy to attract more people and increase their membership. There is a committee based in New York which draws more than 10,000 people to celebrate Durga-puja (the festival of the goddess Durga). The Sikh Gurudwara also draws large numbers of people during their annual feast.

On an individual level Indians also remain religious. Their religiosity does not decline in any way because of Western influences. To the contrary: there are more religious activities in many families than in India. In certain communities organizing private services at homes by inviting a priest and friends to participate is more frequent than in India. Priests are at a premium. It seems that religion and religious activity are perceived as very important aspects of life for Indian immigrants, and it is likely that they will grow even stronger.

ECONOMICS

We have already seen that the majority of Indians are professionals, or at least skilled. Consequently, they are able to find reasonably good jobs in their respective professions and have good incomes.

In terms of their economic behavior, they retain their traditional values and greatly emphasize saving. Their patterns of leisure activities center around family and friends; their standard of living is good but relatively low (compared to their American counterparts), which helps them a great deal in accumulating money over a short period of time. They are also property oriented, which has resulted in the purchase of property.

It is very clear that economically the Indian immigrants are successful. However, because of their value system, in many ways they are in an advantageous position which places them in a unique economic status. This population in terms of economic behavior and its economic strength is comparable to Jewish immigrants.

EDUCATION

In the sphere of education, too, Indians find themselves in an advantageous position. Even though the majority of them come with college degrees or professional qualifications, as soon as they settle down they go to American schools to enhance their qualifications. Since they have no language problem they do not face any serious handicap in the educational system here. They do face some difficulties, though because of their British educational background and their cultural values—which are quite distinct from those of the American system.

Children of these immigrants are also doing well in schools. Some of them have received New York Regents awards and various other scholarships. However, in some quarters there is doubt about their continued success because of the influence of

external factors. As they assimilate in the new society, they become more independent and act more in terms of their own values rather than the family tradition which is very strong in India. However, there are not sufficient data to give a clear picture at this time.

POLITICS

Considering the total Indian population in the United States, the number of Indian organizations is overwhelming. In the New York City area itself there are more than one hundred organizations. The majority are regional organizations, but a few represent the larger community—that is, they are based neither on language, region, or religion. All of them claim to be nonpolitical. However, a close look at these organizations indicates that there is a clear recognition on the part of the leadership that these organizations are vital in order to have some influence in politics in this country.

The Association of Indians in America, which is considered to be broad based and professionally oriented, is trying to obtain a reclassification of Indians as "Asian-Indians" for the 1980 census. Presently Indians are classified as "Caucasians." The implication of this reclassification is that Indians will be eligible for "minority status" and also qualify for equal opportunity employment.

While many Indians privately concede that they would feel somewhat uncomfortable with the new "minority status," they also agree that the practical advantages outweigh this disadvantage. It is clear then that Indians are quite aware of the politics of a pluralistic society, are quite eager to exert strength as a pressure group, and increasingly are proving it by their deeds. However, it should be noted that only about 10 or 15 percent of Indian immigrants have become American citizens. In many informal interviews respondents have revealed that they are faced with the dilemma of changing citizenship. However, since barely 50 percent of them qualify to become citizens, it would be premature to make any judgment on this issue at this time.

PSYCHOBIOLOGICAL ADAPTATIONS: MENTAL HEALTH

Various studies have shown that there is some relationship between migration and mental disorder. Compared to the previous immigrant groups studied—such as Norwegians in Minnesota, Puerto Ricans in New York, West Indians in the United Kingdom, and various other European groups—the case of the East Indians is very different because of their distinct sociocultural background, coupled with their educational and economic status. However, it is clear that Indians too feel the strain of a highly competitive and impersonal way of life, even though they have close contacts within the Indian community. There are a few cases of divorce, mental illness, suicide, and similar pathologies.

Even though the Indian community is recent and small, it is very well organized and has developed organizations, institutional mechanisms, and a social network which provides tremendous social support and helps its members meet the crises that they confront in a new cultural setting. However, it should be pointed out that the level of tolerance is also very high, and the Indian community attaches a strong stigma to those who have psychological problems. As a result, the incidence of psychological problems reported by Indians is very small or nonexistent. The time factor involved, however, is short and does not really provide substantial data at this stage to suggest any future trends.

HEALTH-RELATED ISSUES

In an earlier study A.V.N. Sarma and I investigated the change of ecology and social environment and its effect on a small population of Indian students and physicians working in the New York City area. One of the most significant findings from an ecological point of view was an increase in the number of episodes of upper respiratory tract diseases associated with urban as well as congested neighborhoods.

A large number of Indian immigrants today are satisfied with the medical care they receive in the United States. However, they are divided insofar as preference for a doctor is concerned. Some feel that they have cultural and communication problems with American doctors; even more consult Indian medical friends before seeking professional help in case of illness. An overwhelming majority are more health conscious here than they were in India. They also go for periodic medical checkups.

CHILD-REARING PRACTICES

As we look at the profile of Indian immigrants, we find that there is some variation in terms of their patterns of adaptation and assimilation into American society.

Observation of Indian families reveals that to a great extent parents translated their own values in raising their children. The most prevalent assumption among Indian immigrants is that the first six or seven years of a human being's life are the most important in the making of the personality. Therefore, if the child-rearing practices center around traditional Indian values, the child is more likely to identify with those elements and maintain his Indian identity. However, while early experience does have a great impact on the child's personality and self-image, environmental factors outside the family have an equally important influence.

I have already indicated that children are often faced with this dilemma and sometimes respect those values which are transmitted by their parents. This area warrants closer observation to test certain hypotheses in the area of child-rearing practices of Indian immigrants. One thing, however, is clear: it is not easy for the parents to find a middle ground which is satisfactory to them and acceptable or desirable from the point of view of their children.

FOOD HABITS

Like their American counterparts, Indians also basically eat three meals a day. However, they do not eat as much for breakfast and lunch, but generally eat an elaborate, large dinner. A good number of the immigrants still have their evening tea with snacks, and therefore eat dinner usually after 8:00 P.M.

The majority of these Indians are nonvegetarians, but some—especially among the women—do not eat beef. Even those who are not vegetarians do not eat large portions of meat, and in some cases do not eat meat on a daily basis. For the most part they eat little for breakfast, and lunch is generally eaten out. Dinner is the most important meal of all and includes rice, bread, vegetables, meat, and salad. There is some variation because of regional backgrounds, but the main difference is that those who are vegetarians have additional items such as some yogurt preparation, tensils, and so on. Tea remains the most popular beverage, but some prefer coffee. Most of the Indians drink alcohol socially, but their consumption of alcoholic beverages, even on social occasions, is very small.

On the whole, the food habits of Indian immigrants have not changed much. Those who have come since 1969 have not found any difficulty in buying Indian groceries, spices, and the like, and they have therefore maintained their eating patterns. Children, however, are more exposed to American food and often prefer it.

LEISURE-TIME ACTIVITIES

Patterns of leisure-time activities for the Indian community center around friends and family. The pattern of visiting friends on weekends, without prior engagement, was common during the earlier phase of immigration (1969–72); however, it no longer is. People now generally make plans for the weekend and invite friends specifically for dinner or lunch. Meeting friends along with family for dinner or lunch remains the most important leisure activity.

Shopping on weekends also takes a good portion of leisure time. Even if they do not have much necessary shopping to do, wives often look for bargains. In recent times going to Indian movies on weekends is perhaps the most popular thing to do. Many Indian singers, dancers, and comedians are frequently visiting cities in the United States, and this seems to be catching the fancy of the Indian immigrants.

Eating out and going to Broadway plays or concerts is prevalent only among a very small proportion of the Indian immigrants. Participation in the activities of various organizations seems to be growing and is prevalent among most Indians irrespective of level of assimilation in American society.

INDIAN SUBCOMMUNITIES

It is interesting to note that religious, regional, linguistic, and caste factors still play an important role in the lives of the Indians living here. Indeed, subcommunities are built along these very lines.

As the community grows in size and complexity, Indians associate more and more with people of their own region, caste, and language. Thus the larger social network, also to a great extent, evolves along these lines. The emergence of regional associations strongly suggests that the regional associations serve the purpose of maintaining a separate Indian identity, plus providing a setting for meeting people coming from the same region who also speak the same language.

SOCIAL NETWORK AND IDENTITY MAINTENANCE

In most cases studies of ethnic groups clearly involve the study of networks. This approach is particularly applicable in the case of Indian immigrants living in New York City. The emergence of a large number of organizations, grocery stores, restaurants, movie showings, centers of cultural activities, temples, and similar activities and its relationship and meaning to the Indian community provide an interesting example of how these networks operate and serve as a means of identity maintenance.

Members of a given organization very often become personal friends and develop social contacts with one another. As a result, they establish a pattern of relationships with each other and develop a network system. Upon examination of many activities, both formal and informal, within the Indian community, we find that there exists a social network. Not all members would necessarily be part of a network, but most of them are. In regional associations especially networks are stronger and more prevalent.

These networks also develop informally. The owner of a grocery store or a travel agent or an insurance agent has direct contact with many members of the community and often serves as a link between those who themselves lack direct contact, and hence can support and maintain their identities through such networks.

FORMAL ORGANIZATION, INFORMAL ACTIVITIES

Beyond the problem of finding jobs and settling down, members of any immigrant group face a psychological crisis as a consequence of migrating, and that is the identity crisis. On the surface, it appears that various organizations within the Indian community have come into being for the purpose of organizing social, cultural, and religious functions. In fact, this is quite true. However, it goes beyond this and results in the maintenance of boundaries and identities.

There is a large number of organizations within the Indian community. When members of these organizations meet formally they are, of course, very conscious of their heritage and take a sense of pride in being part of these groups, which perhaps gives them great psychological satisfaction. Even when they meet informally, conversations very often center around these organizations. They have become very important in the lives of their members.

Many young Indians now attending college, whose parents emigrated much earlier than the new immigrants, have always identified with blacks and Spanish groups; that has been their identity. Since there were no Indian organizations when they were growing up, they never participated in any. As a result, they do not necessarily identify with Indians.

POLICYMAKING GUIDELINES

An examination of the Indian community in New York City gives many insights and provides a new direction in the study of ethnics, their patterns of adaptation, and processes of assimilation. Unlike older immigrant groups, structural assimilation for Indians is relatively smooth. Their behavior patterns and attitudes also suggest a strong sense of ethnicity and its desirability, and a growing support for cultural pluralism. A comparative study of the new immigrants—that is, East Indians, West Indians, Pakistanis, Filipinos, Vietnamese—is warranted to help scholars and administrators understand the implications of the new immigration and provide guidelines for policymaking.

SPECIAL ORDERS FOR TOMORROW

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are two special orders for 15 minutes each for Senator KENNEDY and Senator CHURCH.

ORDER FOR RECESS TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 tomorrow morning.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER TO RESUME CONSIDERATION OF THE CONFERENCE REPORT ON NATURAL GAS PRICING ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the orders for the recognition of Senators tomorrow morning, the Senate resume its consideration of the conference report on natural gas pricing.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. MOYNIHAN. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9:30 o'clock tomorrow morning.

The motion was agreed to; and at 6:35 p.m., the Senate recessed until tomorrow, Thursday, September 14, 1978, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 13, 1978:

CIVIL AERONAUTICS BOARD

Gloria Schaffer, of Connecticut, to be a member of the Civil Aeronautics Board for the remainder of the term expiring December 31, 1978.

Gloria Schaffer, of Connecticut, to be a member of the Civil Aeronautics Board for the term of 6 years expiring December 31, 1984.

AMBASSADOR

Edith Huntington Jones Dobelle, of Massachusetts, for the rank of Ambassador during her tenure of service as Chief of Protocol for the White House.

DEPARTMENT OF STATE

William H. Luers, of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Venezuela.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Wednesday, September 13, 1978*

The House met at 10 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

In him who strengthens me I am able for anything.—Philippians 4: 13 (Moffatt).

Eternal Father, as we enter a new day and face the tasks ahead of us we come to Thee seeking the assurance of Thy presence and the guidance of Thy Spirit. We humbly acknowledge that we are concerned about the work that needs to be done. We are tempted to feel that we are not strong enough for the difficulties that trouble us, the differences that concern us, and the disagreements that worry us.

Grant unto us a faith great enough to lift the heavy burden of anxiety from our hearts, great enough to make us adequate for our tasks, and great enough to be truehearted and wholehearted, faithful and loyal in all our endeavors. With Thee may we walk worthily with firm faith and steady spirit, unashamed and unafraid. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 13087. An act to authorize the issuance of substitute Treasury checks without undertakings of indemnity, except as the Secretary of the Treasury may require.

The message also announced that the Senate disagrees to the amendments of the House to a bill of the Senate of the following title:

S. 1566. An act to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 7010. An act to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 7010) entitled "An act to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. BAYH, Mr. BIDEN, Mr. METZENBAUM, Mrs. HUMPHREY, Mr. THURMOND, Mr. HATCH, and Mr. WALLOP to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 2376. An act to authorize withholding from salaries disbursed by the Secretary of the Senate and certain employees under the jurisdiction of the Architect of the Capitol for contribution to certain charitable organizations; and

S. 3002. An act to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes.

The message also announced that Mr. Clement J. Sobotka, Jr., was appointed to the Board of Trustees of the American Folklife Center, effective January 3, 1979, for the remainder of the term which expires March 1982.

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, to reform the civil service laws.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 328, nays 5, not voting 99, as follows:

YEAS—328

Abdnor	Crane	Hanley
Addabbo	Cunningham	Hannaford
Akaka	D'Amours	Hansen
Alexander	Daniel, Dan	Harkin
Anderson, Calif.	Daniel, R. W.	Harris
Andrews, N.C.	Danielson	Harsha
Andrews, N. Dak.	Davis	Heckler
Annunzio	de la Garza	Hefner
Applegate	Delaney	Hightower
Archer	Dent	Hillis
Ashbrook	Derwinski	Holland
Aspin	Devine	Holt
AuCoin	Dicks	Holtzman
Badham	Dodd	Horton
Bafalis	Downey	Howard
Baldus	Drinan	Hubbard
Barnard	Duncan, Oreg.	Hughes
Baucus	Duncan, Tenn.	Hyde
Bauman	Early	Ichord
Beard, Tenn.	Edgar	Ireland
Bedell	Edwards, Ala.	Jeffords
Benjamin	Edwards, Calif.	Jenkins
Bennett	Edwards, Okla.	Jenrette
Bevill	Eilberg	Johnson, Calif.
Biaggi	Emery	Jones, N.C.
Bingham	English	Jones, Okla.
Blanchard	Erlenborn	Jones, Tenn.
Boggs	Ertel	Jordan
Boland	Evans, Colo.	Kastenmeier
Bonior	Evans, Del.	Kazen
Bonker	Evans, Ga.	Kelly
Bowen	Evans, Ind.	Kemp
Brademas	Fenwick	Kildee
Breckinridge	Findley	Kindness
Brinkley	Fish	Kostmayer
Brooks	Fisher	Krebs
Brown, Mich.	Fithian	Lagomarsino
Brown, Ohio	Flippo	Latta
Broyhill	Florio	Le Fante
Burgener	Flynt	Leach
Burke, Mass.	Foley	Lederer
Burleson, Tex.	Ford, Mich.	Livingston
Burlison, Mo.	Ford, Tenn.	Lloyd, Tenn.
Burton, John	Forsythe	Long, La.
Burton, Phillip	Fountain	Long, Md.
Butler	Fowler	Lott
Carney	Gammage	Lujan
Carr	Gaydos	Luken
Carter	Gephardt	Lundine
Cederberg	Gilman	McClory
Chappell	Ginn	McCormack
Clausen, Don H.	Glickman	McDade
Clay	Goldwater	McEwen
Cleveland	Gonzalez	McFall
Cohen	Goodling	McHugh
Coleman	Gore	McKay
Collins, Tex.	Gradison	Madigan
Conte	Grassley	Maguire
Corcoran	Green	Mahon
Corman	Gudger	Mann
Cornell	Guyer	Markey
Cornwell	Hagedorn	Marks
Cotter	Hall	Marlenee
Coughlin	Hamilton	Marriott
	Hammer-schmidt	Martin
		Mazzoli
		Metcalfe
Meyner	Quillen	Stanton
Michel	Rahall	Stark
Mikva	Railsback	Steed
Miller, Ohio	Rangel	Steers
Mineta	Regula	Steiger
Minish	Reuss	Stockman
Mitchell, N.Y.	Rhodes	Stokes
Moakley	Rinaldo	Stratton
Moffett	Roberts	Studds
Mollohan	Robinson	Symms
Montgomery	Rodino	Taylor
Moore	Rogers	Thone
Moorhead, Calif.	Rooney	Thornton
Moorhead, Pa.	Rosenthal	Traxler
Motti	Rostenkowski	Treen
Murphy, Ill.	Rousselot	Trible
Murphy, Pa.	Roybal	Tucker
Murtha	Rudd	Udall
Myers, John	Runnels	Vanik
Myers, Michael	Russo	Vento
Natcher	Ryan	Volkmer
Neal	Santini	Walgren
Nedzi	Satterfield	Walker
Nichols	Sawyer	Walsh
Nix	Scheuer	Wampler
Nowak	Schroeder	Watkins
Oakar	Schulze	Weaver
Oberstar	Sebelius	Weiss
Obey	Seiberling	White
Ottinger	Sharp	Whitehurst
Panetta	Shipley	Whitley
Patten	Shuster	Wilson, Tex.
Patterson	Sikes	Winn
Pattison	Simon	Wirth
Pease	Sisk	Wolff
Perkins	Skelton	Wright
Pettis	Skubitz	Wydler
Pickle	Smith, Iowa	Wylie
Pike	Smith, Nebr.	Yates
Poage	Snyder	Yatron
Price	Solarz	Young, Fla.
Pritchard	Spence	Young, Mo.
Pursell	Staggers	Zablocki
	Stangeland	Zeferetti

NAYS—5

Lloyd, Calif.	Quayle	Wilson, C. H.
Myers, Gary	Wilson, Bob	

NOT VOTING—99

Ambro	Fascell	Mitchell, Md.
Ammerman	Flowers	Moss
Anderson, Ill.	Fraser	Murphy, N.Y.
Armstrong	Frenzel	Nolan
Ashley	Frey	O'Brien
Beard, R.I.	Fuqua	Pepper
Bellenson	Garcia	Pressler
Blouin	Giaimo	Preyer
Bolling	Gibbons	Quie
Breaux	Harrington	Richmond
Brodhead	Hawkins	Risenhoover
Broomfield	Heftel	Roe
Brown, Calif.	Hollenbeck	Roncalio
Buchanan	Huckaby	Rose
Burke, Calif.	Jacobs	Ruppe
Burke, Fla.	Johnson, Colo.	Sarasin
Byron	Kasten	Slack
Caputo	Keys	Spellman
Cavanaugh	Krueger	St Germain
Chisholm	LaFalce	Stump
Clawson, Del	Leggett	Teague
Cochran	Lehman	Thompson
Collins, Ill.	Lent	Tsongas
Conable	Levitas	Ullman
Conyers	McCloskey	Van Deerlin
Dellums	McDonald	Vander Jagt
Derrick	McKinney	Waggonner
Dickinson	Mathis	Waxman
Diggs	Mattox	Whalen
Dingell	Meeds	Whitten
Dornan	Mikulski	Wiggins
Eckhardt	Milford	Young, Alaska
Fary	Miller, Calif.	Young, Tex.

Mr. BONIOR changed his vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, September 11, 1978, the Clerk had read through line 12 on page 348.

Pursuant to the motion agreed to on Monday, September 11, 1978, all debate on title VII and all amendments thereto is limited to 2 hours.

Are there any further amendments to title VII?

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: Strike out title VII (beginning on line 12 of page 288, and ending on line 12 of page 348) and insert in lieu thereof the following new title:

TITLE VII—LABOR-MANAGEMENT RELATIONS

LABOR-MANAGEMENT RELATIONS

SEC. 701. (a) Subpart F of part III of title 5, United States Code, is amended by adding after chapter 71 the following new chapter:

"CHAPTER 72—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"7201. Findings and purpose.
"7202. Definitions; application.
"7203. Federal Labor Relations Authority; General Counsel.
"7204. Powers and duties of the Authority and of the General Counsel.

"SUBCHAPTER II—RIGHTS AND DUTIES OF EMPLOYEES, AGENCIES AND LABOR ORGANIZATIONS

"7211. Employees rights.
"7212. Recognition of labor organizations.
"7213. National consultation rights.
"7214. Exclusive recognition.
"7215. Representation rights and duties.
"7216. Unfair labor practices.
"7217. Standards of conduct for labor organizations.
"7218. Basic provisions of agreements.
"7219. Approval of agreements.

"SUBCHAPTER III—GRIEVANCES AND IMPASSES

"7221. Grievance procedures.
"7222. Federal Service Impasses Panel; negotiation impasses.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"7231. Allotments to representatives.
"7232. Use of official time.
"7233. Remedial action.
"7234. Subpenas.
"7235. Regulations.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7201. Findings and purpose

"(a) The Congress finds that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

"(b) The Congress also finds that, while significant differences exist between Federal and private employment, experience under Executive Order Numbered 11491 indicates that the statutory protection of the right of employees to organize, to bargain collectively within prescribed limits, and to participate through labor organizations of their own choosing in decisions which affect them—

"(1) may be accomplished with full regard for the public interest,

"(2) contributes to the effective conduct of public business, and

"(3) facilitates and encourages the amicable settlement between employees and their

employers of disputes involving personnel policies and practices and matters affecting working conditions.

"(c) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal government subject to the paramount interest of the public and to establish procedures which are designed to meet the special requirements and needs of the Federal government in matters relating to labor-management relations.

"§ 7202. Definitions; application

"(a) For purposes of this chapter—

"(1) 'agency' means an Executive agency other than the General Accounting Office;

"(2) 'employee' means an individual who—

"(A) is employed in an agency;

"(B) is employed in a nonappropriated fund instrumentality described in section 2105(c) of this title;

"(C) is employed in the Veterans' Canteen Service, Veterans' Administration, and who is described in section 5102(c)(14) of this title; or

"(D) is an employee (within the meaning of subparagraph (A), (B), or (C)) who was separated from the service as a consequence of, or in connection with, an unfair labor practice described in section 7216 of this title;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services (within the meaning of section 2101(3) of this title);

"(iii) for purposes of exclusive recognition or national consultation rights unless authorized under the provisions of this chapter, a supervisor, a management official, or a confidential employee;

"(3) 'labor organization' means any lawful organization of employees which was established for the purpose, in whole or in part, of dealing with agencies in matters relating to grievances and personnel policies and practices or in other matters affecting the working conditions of the employees, but does not include an organization which—

"(A) except as authorized under this chapter, consists of, or includes, management officials, confidential employees, or supervisors;

"(B) assists, or participates, in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

"(C) advocates the overthrow of the constitutional form of government of the United States; or

"(D) discriminates with regard to the terms or conditions of membership because of race, color, religion, national origin, sex, age, or handicapping condition;

"(4) 'agency management' means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this chapter;

"(5) 'Authority' means the Federal Labor Relations Authority established under section 7203 of this title;

"(6) 'General Counsel' means the General Counsel of the Federal Labor Relations Authority;

"(7) 'Panel' means the Federal Service Impasses Panel established under section 7222 of this title;

"(8) 'Assistant Secretary' means the Assistant Secretary of Labor for Labor-Management Relations;

"(9) 'confidential employee' means an employee who assists, and acts in a confidential capacity to, individuals who formulate and carry out management policies in the field of labor relations;

"(10) 'management official' means an employee having authority to make, or to influence effectively the making of, policy with respect to personnel procedures or programs which is necessary to an agency or an activity;

"(11) 'supervisor' means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

"(12) 'professional employee' means—

"(A) any employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or in a hospital, as distinguished from work requiring knowledge acquired from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical process;

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character and not routine mental, manual, mechanical or physical work; and

"(iv) which is of such a character that the measurement of the output produced, or of the result accomplished, cannot be standardized by relating it to a given period of time; or

"(B) any employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) and who is performing related work under the direction or guidance of a professional employee to qualify the employee to become a professional employee.

"(13) 'agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(14) 'collective bargaining', 'bargaining', or 'negotiating' means the performance of the mutual obligation of the representatives of the agency and the exclusive representative as provided in section 7215 of this title;

"(15) 'exclusive representative' includes any labor organization which has been—

"(A) selected pursuant to the provisions of section 7214 of this title as the representative of the employees in an appropriate collective bargaining unit; or

"(B) certified or recognized prior to the effective date of this chapter as the exclusive representative of the employees in an appropriate collective bargaining unit;

"(16) 'person' means an individual, labor organization, or agency covered by this chapter; and

"(17) 'grievance' means any complaint by any person concerning any matter which falls within the coverage of a grievance procedure.

"(b) Except as provided in subsections (c), (d), and (e) of this section, this chapter applies to all employees of an agency.

"(c) This chapter shall not apply to—

"(1) the Federal Bureau of Investigation;

"(2) the Central Intelligence Agency;

"(3) the National Security Agency;

"(4) any agency not described in paragraph (1), (2), or (3), or any unit within any agency, which has as a primary function intelligence, investigative, or national security work, if the head of the agency determines, in the agency head's sole judgment, that this chapter cannot be applied in a manner consistent with national security requirements and consideration;

"(5) any unit of an agency which has as a primary function investigation or audit of the conduct or work of officers or employees of the agency for the purpose of insuring honesty and integrity in the discharge of official duties, if the head of the agency determines, in the agency head's sole judgment, that this chapter cannot be applied in a manner consistent with the internal security of the agency;

"(6) the United States Postal Service;

"(7) the Foreign Service of the United States;

"(8) the Tennessee Valley Authority; or

"(9) officers and employees of the Federal Labor Relations Authority, including the Office of General Counsel and the Federal Service Impasses Panel.

"(d) The head of an agency may, in the agency head's sole judgment and subject to such conditions as he may prescribe, suspend any provision of this chapter with respect to any agency, installation, or activity located outside the United States if the agency head determines that such suspension is necessary for the national interest.

"(e) Employees engaged in administering a labor-management relations law who are otherwise authorized by this chapter to be represented by a labor organization shall not be represented by a labor organization which also represents other employees covered by such law or which is affiliated directly or indirectly with an organization which represents such employees.

"§ 7203. Federal Labor Relations Authority; Office of General Counsel

"(a) There is established, as an independent establishment of the executive branch of the Government, the Federal Labor Relations Authority.

"(b) The Authority shall consist of three members, not more than two of whom may be adherents of the same political party and none of whom may hold another office or position in the Government of the United States except as provided by law or by the President.

"(c) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, and shall be eligible for reappointment. The President shall designate one member to serve as Chairman of the Authority. Any member of the Authority may be removed by the President.

"(d) The term of office of each member of the Authority is 5 years, except that a member may continue to serve beyond the expiration of the term to which appointed until the earlier of—

"(1) the date on which the member's successor has been appointed and has qualified, or

"(2) the last day of the session of the Congress beginning after the date the member's term of office would (but for this sentence) expire.

"(e) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member such individual replaces.

"(f) The Authority shall make an annual report to the President for transmittal to the Congress and shall include in such report information as to the cases it has heard and the decisions it has rendered under this chapter.

"(g) There is established within the Authority an Office of General Counsel. The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be appointed for a term of 5 years and may be reappointed to any succeeding term. The General Counsel may be removed by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law or by the President.

"§ 7204. Powers and duties of the Authority and of the General Counsel

"(a) The Authority shall administer and interpret the provisions of this chapter, decide major policy issues, prescribe regulations, and disseminate information appropriate to the needs of agencies, labor organizations, and the public.

"(b) The Authority shall, in accordance with regulations prescribed by it—

"(1) decide questions submitted to it with respect to the appropriate unit for the purpose of exclusive recognition and with respect to any related issue;

"(2) supervise elections to determine whether a labor organization has been selected by a majority of the employees in an appropriate unit who cast valid ballots in the election;

"(3) decide questions with respect to the eligibility of labor organizations for national consultation rights; and

"(4) decide unfair labor practice complaints.

"(c) The Authority may consider, in accordance with regulations prsecribed by it, any—

"(1) appeal from any decision on the negotiability of any issue as provided in subsection (e) of section 7215 of this title;

"(2) exception to any arbitration award as provided in section 7221 of this title;

"(3) appeal from any decision of the Assistant Secretary issued pursuant to section 7217 of this title;

"(4) exception to any final decision and order of the Panel issued pursuant to section 7222 of this title; and

"(5) other matters it deems appropriate in order to assure it carries out the purposes of this chapter.

"(d) The Authority shall adopt an official seal which shall be judicially noticed.

"(e) The Authority shall maintain its principal office in or about the District of Columbia but it may meet and exercise any or all of its powers at any time or place. Subject to subsection (g) of this section, the Authority may, by one or more of its members or by such agents as it may designate, make any inquiry necessary to carry out its duties wherever persons subject to this chapter are located. A member who participates in such inquiry shall not be disqualified from later participating in a decision of the Authority in the same case.

"(f) The Authority shall appoint an Executive Director, such attorneys, regional directors, administrative law judges, and other officers and employees as it may from time to time find necessary for the proper performance of its duties and may delegate to such officers and employees authority to perform such duties and make such expenditures as may be necessary.

"(g) All of the expenses of the Authority, including all necessary traveling and subsistence expenses outside the District of Columbia, incurred by members, employees, or agents of the Authority under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Authority or by an individual it designates for that purpose and in accordance with applicable law.

"(h)(1) The Authority is expressly empowered and directed to prevent any person from engaging in conduct found violative of this chapter. In order to carry out its functions under this chapter, the Authority is authorized to hold hearings, subpena witnesses, administer oaths, and take the testimony or deposition of any person under oath, and in connection therewith, to issue subpenas requiring the production and examination of evidence as provided in section 7234 of this title relating to any matter pending before it and to take such other action as may be necessary. In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of regulations or other policy directives promulgated by the Office of Personnel Management in connection with a matter before the Authority for adjudication.

"(2) If a regulation or other policy directive issued by the Office of Personnel Management is at issue in an appeal before the Authority, the Authority shall timely notify the Director, and the Director shall have standing to intervene in the proceeding and shall have all the rights of a party to the proceeding.

"(3) The Director may request that the Authority reopen an appeal and reconsider its decision on the ground that the decision was based on an erroneous interpretation of law or of a controlling regulation or other policy directive issued by the Office of Personnel Management.

"(i) In any matter arising under subsection (b) of this section, the Authority may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take such remedial action as it considers appropriate to carry out the policies of this chapter.

"(j)(1) The Authority shall maintain a record of its proceedings and make public any decision made by it or any action taken by the Panel under section 7222 of this title.

"(2) The provisions of section 552 of this title shall apply with respect to any record maintained under paragraph (1).

"(k) The General Counsel is authorized to—

"(1) investigate complaints of violations of section 7216 of this title;

"(2) make final decisions as to whether to issue notices of hearing on unfair labor practice complaints and to prosecute such complaints before the Authority;

"(3) direct and supervise all field employees of the General Counsel in the field offices of the Authority; and

"(4) perform such other functions as the Authority prescribes.

"(l) Notwithstanding any other provision of law, including chapter 7 of this title, the decision of the Authority on any matter within its jurisdiction shall be final and conclusive, and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus on appeal of that decision or by any other means except that nothing in this section shall limit the right of persons to judicial review of questions arising under the Constitution of the United States.

"SUBCHAPTER II—RIGHTS AND DUTIES OF EMPLOYEES, AGENCIES AND LABOR ORGANIZATIONS

"§ 7211. Employees' rights

"(a) Each employee shall have the right freely and without fear of penalty or reprisal to form, join, or assist any labor organization, or to refrain from such activity, and each employee shall be protected in exercising such rights. Except as otherwise provided under this chapter, such rights include the right to—

"(1) participate in the management of a labor organization,

"(2) act for the organization in the capacity of a representative,

"(3) present, in such representative capacity, the views of the organization to agency heads and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

"(4) bargain collectively, subject to the title, through representatives of their own choosing.

"(b) This chapter does not authorize—

"(1) a management official, a confidential employee, or a supervisor to participate in the management of a labor organization or to act as a representative of such an organization, unless such participation or activity is specifically authorized by this chapter, or

"(2) any employee to so participate or act if such participation or activity would result in any conflict of interest, or appearance thereof, or would otherwise be inconsistent with any law or the official duties of the employee.

"§ 7212. Recognition of labor organizations

"(a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for such recognition or consultation rights under this chapter.

"(b) Recognition of a labor organization, once accorded, shall continue as long as the organization meets the requirements of this chapter for recognition.

"(c) Recognition of a labor organization shall not—

"(1) preclude an employee, regardless of whether the employee is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation or from choosing the employee's own representative in a grievance or appellate action, except when the grievance or appeal is covered by and pursued under a negotiated procedure as provided in section 7221 of this title;

"(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees in connection with veterans preference; or

"(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional, or other lawful association not qualified as a labor organization with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under paragraph (3) shall not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interest of other employees.

"§ 7213. National consultation rights

"(a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit if a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights shall not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights if the labor organization ceases to qualify under the established criteria.

"(b) If a labor organization has been accorded national consultation rights, the agency shall notify representatives of such organization of proposed substantive changes in personnel policies that affect employees such organization represents and provide an opportunity for such organization to comment on the proposed changes. Such organization may suggest changes in the agency's personnel policies and have its views carefully considered. Representatives of such organization may consult, at reasonable times, with appropriate officials on personnel policy matters and may, at all times, present in writing the organization's views on such matters. An agency is not required to consult

with any such organization on any matter on which it would not be required to negotiate if the organization were entitled to exclusive recognition.

"(c) Any question with respect to the eligibility of a labor organization for national consultation rights may be referred to the Authority for decision.

"§ 7214. Exclusive recognition

"(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

"(b) A unit may be established on an agency, plant, installation, craft, functional, or other basis which will assure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency in the agency's operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

"(1) except as provided in section 701(b)(1) of the Civil Service Reform Act of 1978, any management official, confidential employee, or supervisor;

"(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

"(3) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Any question with respect to the appropriate unit may be referred to the Authority for decision.

"(c) All elections shall be conducted under the supervision of the Authority or persons designated by the Authority and shall be by secret ballot. Employees eligible to vote shall be provided the opportunity to choose the labor organization they wish to represent them from among those on the ballot and, except in the case of an election described in paragraph (4), the opportunity to choose not to be represented by a labor organization. Elections may be held to determine whether a labor organization should—

"(1) be recognized as the exclusive representative of employees in a unit;

"(2) replace another labor organization as the exclusive representative;

"(3) cease to be the exclusive representative;

"(4) be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

An election not be held to determine whether an organization should become, or continue to be recognized as, the exclusive representative of the employees in any unit, or subdivision thereof, during the 12-month period after a valid election has been held under this chapter with respect to such unit.

"§ 7215. Representation rights and duties

"(a) If a labor organization has been accorded exclusive recognition, such organization shall be—

"(1) the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit;

"(2) responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership; and

"(3) given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

"(b) An agency and an exclusive representative shall have a duty to negotiate in good faith and in exercising such duty shall—

"(1) approach the negotiations with a sincere resolve to reach an agreement;

"(2) be represented at the negotiations by appropriate representatives prepared to discuss and negotiate on all negotiable matters;

"(3) meet at such reasonable times and places as may be necessary; and

"(4) execute upon request of the agency or the organization a written document embodying the terms of, and take such steps as are necessary to implement, any agreement which is reached.

"(c) An agency and an exclusive representative shall, through appropriate representatives, negotiate in good faith as prescribed under subsection (b) of this section with respect to personnel policies and practices and matters affecting working conditions but only to the extent appropriate under laws and regulations, including policies which—

"(1) are set forth in the Federal Personnel Manual,

"(2) consist of published agency policies and regulations for which a compelling need exists (as determined under criteria established by the Authority) and which are issued at the agency headquarters level or at the level of a primary national subdivision, or

"(3) are set forth in a national or other controlling agreement entered into by a higher unit of the agency.

"In addition, such organization and the agency may determine appropriate techniques consistent with section 7222 of this title, to assist in any negotiation.

"(d) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall give due regard to the obligation to negotiate imposed by this section, except that such obligation does not include an obligation to negotiate with respect to matters concerning the number of employees in an agency, the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty, or the technology of performing the agency's work. The preceding sentence shall not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

"(e)(1) If, in connection with negotiations, an issue develops as to whether a proposal is negotiable under this chapter or any other applicable law, regulation, or controlling agreement, it shall be resolved as follows:

"(A) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under regulations prescribed by the agency.

"(B) An issue not described in paragraph (1) which arises at a local level may be referred by either party to the head of the agency for determination.

"(2) An agency head's determination under paragraph (1) concerning the interpretation of the agency's regulations with respect to a proposal shall be final.

"(3) A labor organization may appeal to the Authority from a decision under paragraph (1) if it—

"(A) disagrees with an agency head's determination that a proposal is not negotiable under this chapter or any other applicable law or regulation of appropriate authority outside the agency, or

"(B) believes that an agency's regulations, as interpreted by the agency head, are in violation of this chapter or any other applicable law or regulation of appropriate authority outside the agency, or are not otherwise applicable to bar negotiations under subsection (c) of this section.

"§ 7216. Unfair labor practices

"(a) It shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, unless such assistance consists of furnishing customary and routine services and facilities—

"(A) in a manner consistent with the best interest of the agency, its employees, and the organization, and

"(B) on an impartial basis to organizations (if any) having equivalent status;

"(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, petition, or given any information or testimony, under the provisions of this chapter;

"(5) to refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

"(6) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter.

"(b) It shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce an employee in connection with the exercise of the rights assured by this chapter;

"(2) to cause or attempt to cause an agency to coerce an employee in the exercise of rights under this chapter;

"(3) to coerce or attempt to coerce an employee, or to discipline, fine or take other economic sanction against a member of the labor organization, as punishment or reprisal or for the purpose of hindering or impeding work performance, productivity, or the discharge of duties of such employee;

"(4) to—

"(A) call, or participate in, a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes or reasonably threatens to interfere with an agency's operations, or

"(B) condone any activity described in subparagraph (A) by failing to take action to prevent or stop it;

"(5) to discriminate against an employee with regard to the terms or conditions of membership in the organization because of race, color, religion, national origin, sex, age, or handicapping condition; or

"(6) to refuse to consult or negotiate in good faith with an agency as required by this chapter.

"(c) It shall be an unfair labor practice for a labor organization which is accorded exclusive recognition to deny membership to an employee in an appropriate unit unless such denial is for failure to meet reasonable occupational standards uniformly required for admission or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This subsection shall not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws which conform to the requirements of this chapter.

"(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under sections 7221 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or as an unfair labor practice under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this chapter nor as a precedent for such decisions. All complaints

of unfair labor practices prohibited under this section that cannot be resolved by the parties shall be filed with the Authority.

"(e) Any question with respect to whether an issue can properly be raised under an appeals procedure shall be referred for resolution to the agency responsible for final decisions relating to those issues.

"§ 7217. Standards of conduct for labor organizations.

"(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

"(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

"(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

"(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

"(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

"(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

"(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

"(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

"(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary, provide for bonding of officials and with trusteeship and election standards

"(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such action as he considers appropriate to carry out the policies of this section.

"§ 7218. Basic provisions of agreements

"(a) Each agreement between an agency and a labor organization shall provide the following:

"(1) In the administration of all matters covered by the agreement, officials and employees shall be governed by—

"(A) existing or future laws and the regulations of appropriate authorities, including policies which are set forth in the Federal Personnel Manual,

"(B) published agency policies and regulations in existence at the time the agreement was approved, and

"(C) subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

"(2) Management officials of the agency shall retain the right to determine the mission, budget, organization, and internal security practices of the agency, and the right, in accordance with applicable laws and regulations, to—

"(A) direct employees of the agency;

"(B) hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

"(C) relieve employees from duties because of lack of work or for other legitimate reasons;

"(D) maintain the efficiency of the Government operations entrusted to such officials;

"(E) determine the methods, means, and personnel by which such operations are to be conducted; and

"(F) take such actions as may be necessary to carry out the mission of the agency in situations of emergency.

"(b) Nothing in subsection (a) of this section shall preclude the parties from negotiating—

"(1) procedures which management will observe in exercising its authority to decide or act in matters reserved under such subsection; or

"(2) appropriate arrangements for employees adversely affected by the impact of management's exercising its authority to decide or act in matters reserved under such subsection,

except that such negotiations shall not unreasonably delay the exercise by management of its authority to decide or act, and such procedures and arrangements shall be consistent with the provisions of any law or regulation described in 7215(c) of this title, and shall not have the effect of negating the authority reserved under subsection (a).

"(c) Nothing in the agreement shall require an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

"(d) The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

"§ 7219. Approval of agreements

"An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or his designee. An agreement shall be approved within 45 days from the date of its execution if it conforms to this chapter and other applicable laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation), and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within 45 days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of this chapter, other applicable laws, and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under agency regulations.

"SUBCHAPTER III—GRIEVANCES AND IMPASSES

"§ 7221. Grievance procedures

"(a) An agreement between an agency and a labor organization which has been accorded exclusive recognition shall provide a procedure, applicable only to the unit, for the consideration of grievances. Subject to the provisions of subsection (d) of this section and to the extent not contrary to any law, the coverage and scope of the procedure shall be negotiated by the parties to the agreement. Except as otherwise provided in this section, such procedure shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage.

"(b) Any employee or group of employees in the unit may present grievances falling within the coverage of the negotiated grievance procedure to the agency and have them adjusted without the intervention of the exclusive representative if the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given an opportunity to be present at the adjustment.

"(c) A negotiated grievance procedure shall provide for arbitration as the final step of the procedure. Arbitration may be invoked only by the agency or the exclusive representative. Except as provided in subsection (g) of this section, the procedure must also provide that the arbitrator is empowered to resolve questions as to whether or not any grievance is on a matter subject to arbitration under the agreement.

"(d) A negotiated grievance procedure may cover any matter within the authority of an agency if not inconsistent with the provisions of this chapter, except that it may not include matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security, or the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

"(e) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

"(f) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed

to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties, negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to subsections (h) and (i) of section 7701 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

"(g) An question that cannot be resolved by the parties as to whether or not a grievance is on a matter excepted by subsection (d) of this section shall be referred for resolution to the agency responsible for final decisions relating to those matters.

"(h) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with the provisions of subsection (e) of this section, an arbitrator shall be governed by the provisions of section 4303 (f) or 7701(d) of this title, as applicable.

"(i) Allocation of the costs of the arbitration shall be governed by the collective-bargaining agreement. An arbitrator shall have no authority to award attorney or other representative fees, except that in matters where an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination prohibited by any law referred to in section 7701(h) of this title attorney fees may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–5(k)).

"(j) Either party may file exceptions to any arbitrator's award with the Authority, except that no exceptions may be filed to awards concerning matters covered under subsection (e) of this section. The Authority shall sustain a challenge to an arbitrator's award only on grounds that the award violates applicable law, appropriate regulation, or other grounds similar to those applied by Federal courts in private sector labor-management relations. Decisions of the Authority on exceptions to arbitration awards shall be final, except for the right of an aggrieved employee under subsection (f) of this section.

"(k) In matters covered under sections 4303 and 7512 of this title which have been raised under the provisions of the negotiated grievance procedure in accordance with the provisions of subsection (e) of this section, the provisions of section 7702 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Merit Systems Protection Board. In matters similar to those covered under sections 4303 and 7512 which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

"§ 7222. Federal Service Impasse Panel; negotiation impasses

"(a)(1) There is established within the Authority, as a distinct organizational entity, the Federal Service Impasses Panel. The Panel is composed of the Chairman, and an even number of other members, appointed by the President solely on the basis of fitness to perform the duties and functions of the Office, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. No employee (as defined under section 2105 of this title) shall be appointed to serve as a member of the Panel.

"(2) At the time the members of the Panel (other than the Chairman) are first appointed, half shall be appointed for a term of 1 year and half for a term of 3 years. An individual appointed to serve as the Chairman shall serve for a term of 5 years. A successor of any member shall be appointed for terms of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member whom such individual replaces. Any member of the Panel may be removed by the President.

"(3) The Panel may appoint an executive secretary and such other employees as it may from time to time find necessary for the proper performance of its duties. Each member of the Panel is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule for each day the member is engaged in the performance of official business on the work of the Panel, including traveltime, and is entitled to travel expenses and a per diem allowance under section 5703 of this title.

"(b) Upon request, the Federal Mediation and Conciliation Service shall provide services and assistance to agencies and labor organizations in the resolution of negotiation impasses.

"(c) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Panel to consider the matter.

"(d) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (c) of this section. The Panel shall consider the matter and shall either recommend procedures to the parties for the resolution of the impasse or assist the parties in arriving at a settlement through such methods and procedures, including fact finding and recommendations, as it may find appropriate to accomplish the purposes of this section. Arbitration, or third-party fact finding with recommendations to assist in the resolution of an impasse, may be used by the parties only when authorized or directed by the Panel. If the parties do not arrive at a settlement, the Panel may hold hearings, compel under section 7234 of this title the attendance of witnesses and the production of documents, and take whatever action is necessary and not inconsistent with the provisions of this chapter to resolve the impasse. Notice of any final action of the Panel shall be promptly served upon the parties and such action shall be binding upon them during the term of the agreement unless the parties mutually agree otherwise.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7231. Allotments to representatives

"(a) If, pursuant to an agreement negotiated in accordance with the provisions of this chapter, an agency has received from an employee in a unit of exclusive recognition a written assignment which authorizes the agency to deduct from the wages of such employee amounts for the payment of regular and periodic dues of the exclusive representative for such unit, such assignment shall be honored. Except as required under subsection (b) of this section, any such assignment shall be revocable at stated intervals of not more than 6 months.

"(b) An allotment for the deduction of labor organization dues terminates when—

"(1) the dues withholding agreement between the agency and the exclusive representative is terminated or ceases to be applicable to the employee; or

"(2) the employee has been suspended or expelled from the labor organization which is the exclusive representative.

"§ 7232. Use of official time

"Solicitation of membership or dues and other internal business of a labor organization shall be conducted during the nonduty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except that the negotiating parties may agree to arrangements which provide that the agency will authorize a reasonable number of such employees (not normally in excess of the number of management representatives) to negotiate on official time for up to 40 hours, or up to one-half the time spent in negotiations during regular working hours.

"§ 7233. Remedial actions

"If it is determined by appropriate authority, including an arbitrator, that certain action will carry out the policies of this chapter, such action may be directed by the appropriate authority if consistent with law, including section 5596 of this title.

"§ 7234. Subpenas

"(a) Any member of the Authority, including the General Counsel, any member of the Panel, and any employee of the Authority designated by the Authority may—

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, except that no subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1), the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witness (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"§ 7235. Regulations

"The Authority, including the General Counsel and the Panel, and the Federal Mediation and Conciliation Service shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to them. Unless otherwise specifically provided in this chapter, the provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.".

(b)(1) The amendments made by subsection (a) shall not preclude—

(A) the renewal or continuation of an exclusive recognition, certification of a representative, or a lawful agreement between an agency and a representative of its employees entered into before the effective date of this section; or

(B) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this section.

(2) Policies, regulations, and procedures established, and decisions issued, under Executive Order Numbered 11491, or under the provision of any related Executive order in effect on the effective date of this section, shall remain in full force and effect until revised or revoked by Executive order or statute, or unless superseded by appropriate decision or regulation of the Federal Labor Relations Authority.

(c) Any term of office of any member of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority serving on the effective date of this section shall continue in effect until such time as such term would expire under Reorganization Plan Numbered 2 of 1978, and upon expiration of such term, appointments to such office shall be made under section 7203 of title 5, United States Code. Any term of office of any member of the Federal Service Impasses Panel serving on the effective date of this section shall continue in effect until such time as members of the Panel are appointed pursuant to section 7222 of title 5, United States Code.

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out the functions and purposes of this section.

(e) The table of chapters for subpart F of part III of title 5, United States Code, is amended by adding after the item relating to chapter 71 the following new item:

"72. Federal Service Labor-Management Relations---------- 7201".

(f) Section 5314 of title 5, United States Code, is amended by adding at the end thereof:

"(69) Chairman, Federal Labor Relations Authority.".

(g) Section 5315 of title 5, United States Code, is amended by adding at the end thereof:

"(124) Members (2), Federal Labor Relations Authority.".

(h) Section 5316 of title 5, United States Code, is amended by adding at the end thereof:

"(145) General Counsel, Federal Labor Relations Authority.".

REMEDIAL AUTHORITY

SEC. 702. Section 5596 of title 5, United States Code, is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority to have suffered a withdrawal, reduction, or denial of all or part of the employee's pay, allowances, differentials, or other monetary or employment benefits, or a denial of an increase in such pay, allowances, differentials, or other monetary or employment benefits, which would not have occurred but for unjustified or unwarranted action taken by the agency—

"(1) is entitled, on correction of the action—

"(A) to be made whole for all losses suffered less, in applicable circumstances, interim earnings, and

"(B) if appropriate, to reinstatement or restoration to the same or a substantially similar position, or promotion to a higher level position; and

"(2) for all purposes is deemed to have performed service for the agency during the period of the unjustified or unwarranted action, except that—

"(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office of Personnel Management shall be included in the lumpsum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

"(c) For the purposes of this section—

"(1) 'unjustified or unwarranted action' includes—

"(A) any act of commission, either substantive or procedural, which violates or improperly applies a provision of law, Executive order, regulation, or collective bargaining agreement; and

"(B) any act of omission, or failure to take an action, or confer a benefit, which must be taken or conferred under a nondiscretionary provision of law, Executive order, regulation, or collective-bargaining agreement;

"(2) 'administrative determination' includes, but is not limited to, a decision, award, or order issued by—

"(A) a court having jurisdiction over the matter involved;

"(B) the Office of Personnel Management;

"(C) the Merit Systems Protection Board;

"(D) the Federal Labor Relations Authority;

"(E) the Comptroller General of the United States;

"(F) the head of the employing agency or an agency official to whom corrective action authority is delegated; or

"(G) an arbitrator under a negotiated binding arbitration agreement between a labor organization and agency management;

"(3) 'appropriate authority' includes, but is not limited to—

"(A) a court having jurisdiction;

"(B) the Office of Personnel Management;

"(C) the Merit Systems Protection Board;

"(D) the Federal Labor Relations Authority;

"(E) the Comptroller General of the United States;

"(F) the head of the employing agency or agency official to whom corrective action authority is delegated; or

"(G) an arbitrator under a negotiated binding arbitration agreement between a labor organization and agency management.

"(d) The provisions of this section shall not apply to reclassification actions nor shall they authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

"(e) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees.".

Page 143, beginning on line 19, strike out "Section 7203 of title 5, United States Code (as redesignated in section 703(1) of this Act)" and insert in lieu thereof "Section 7153 of title 5, United States Code,".

Page 264, beginning on line 14, strike out "supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively)" and insert in lieu thereof "management official or supervisor (as defined in paragraphs (10) and (11) of section 7203 of this title, respectively)".

Page 376, beginning on line 1, strike out "before '7203' (as added in section 703(d)(2) of this Act)" and insert in lieu thereof "before '7153'".

Page 386, beginning on line 1, strike out "7203, and 7204 (as redesignated in section 703(a)(1) of this Act)," and insert in lieu thereof "7153, and 7154,".

Conform the table of contents accordingly.

Mr. COLLINS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that my amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. COLLINS of Texas. Mr. Chairman, I am rising to offer an amendment for the committee's version of title VII, dealing with labor-management relations in the Federal civil service.

Under the provisions of the committee's bill, our longstanding policy toward labor relations between Federal employees and their government employer would be drastically altered. Knowing this, and afraid of the outcome when the committee's bill was brought to the floor, the Carter administration has been attempting to negotiate with various members of the committee in the hope of reaching some sort of compromise between what the administration wants and what the committee wants to give them.

Although I have not been a participant in these 11th-hour negotiations, I have a solution to the problem now facing the administration.

My amendment is virtually identical to the bill reported by the Senate Committee on Governmental Affairs before the Senate acted on S. 2640, and it reflects what I understand to be the administration's position on codifying our present Executive order program of labor-management relations.

The amendment establishes a Federal Labor Relations Authority and creates a legislated program for our labor-management relations, following the basic charter or our existing Executive order program.

My offering of what is the administration's requested language for this title of the bill, and what has already been agreed to by the Senate committee should go a long way in avoiding complications as we finish out this session and could well insure final passage of the Civil Service Reform Act itself.

I want to point out that my amendment does not give Federal employees the right to strike, does not allow for an agency shop arrangement, and does not require employees in a bargaining unit who choose not to belong to a union to pay any fees for union representation.

The new Authority, which will come intc being between now and next January 1 by virtue of passage of Reorganization Plan No. 2 of 1978, will carry out the functions formerly performed by the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

The amendment permits labor unions to bargain collectively over those personnel policies, practices and matters affecting working conditions that are within the authority of agency managers to agree to. It specifies those areas of decisionmaking which are reserved to man-

agement and may not be subject to the collective bargaining process.

The amendment also provides statutory permission allowing labor unions to bargain on the creation of arbitration mechanisms for resolving adverse actions—such as demotions and discharges—and other appealable matters—such as grievances.

There are several major areas where the amendment is different from the bill as reported by the House committee, because my amendment incorporates the administration's proposals:

SCOPE OF BARGAINING

The amendment permits bargaining only on those personnel policies, practices and matters affecting working conditions that are not limited by laws and excludes Government-wide regulations, as well as agency regulations for which "compelling need" exists.

The amendment sets up two categories of "management rights":

Bargaining would be permitted but not required on number of employees in agency; on the numbers, types, and grades assigned to a unit, project, or tour of duty; or on the technology of performing work.

Bargaining would be prohibited on mission, budget, organization, and internal security of agency; as well as one management's retained right in accordance with applicable laws and regulations to direct employees to hire, promote, transfer, assign, and retain employees; to suspend, demote, discharge, or take other disciplinary action against employees; relieve employees from duty because of lack of work; to maintain efficiency of operations; to determine methods, means and personnel for accomplishing work; and on ability to take necessary actions in emergencies.

The House committee bill, on the other hand, broadly defines scope of bargaining by saying that "conditions of employment" excludes only matter relating to discrimination, political activities, and those few specifically prescribed by law—for example, pay and benefits.

Under the committee's bill, all agency regulations and Government-wide regulations would be subject to bargaining, unless a compelling need is demonstrated for keeping them off the bargaining table.

The committee's bill sets up only one category of management rights:

Bargaining would be prohibited only on management's retained right to determine the mission, budget, organization and number of employees in an agency, and on the internal security of an agency. Management would only be able to direct employees, to assign work—including contracting out—and to determine personnel for conducting agency operations, and to take necessary actions in emergencies.

GRIEVANCE ARBITRATION

The amendment permits grievance arbitration to cover any matter within the authority of an agency to decide but such arbitration may not include matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security or the Fair Labor Standards Act.

The committee bill defines the scope of grievance arbitration in a fashion similar to its definition of "condition of employment" and includes discrimination and classification as matters for grievance arbitration. The only items excluded from an arbitration process would be political activities, retirement, life and health insurance, and suspension or removal for national security reasons.

USE OF GRIEVANCE ARBITRATION

The amendment provides that any negotiated procedure will be the exclusive forum for use by employees in a bargaining unit on matters covered, except in adverse action and discrimination cases where employees may choose the negotiated arbitration procedure or the statutory appeal procedure, but not both.

The committee's bill provides no similar exclusivity. An employee may choose between the negotiated or statutory procedure on any matter covered.

JUDICIAL REVIEW OF FEDERAL LABOR RELATIONS AUTHORITY

My amendment provides that decisions and orders issued by the Federal Labor Relations Authority are final and enforceable by the Authority and are not subject to judicial review or enforcement—except that judicial review may be obtained on constitutional questions. Access to judicial review for adverse action and discrimination matters would continue under the substitute.

The committee's bill seriously weakens the Federal Labor Relations Authority by providing that all of its decisions and orders are subject to judicial review in any U.S. District court, which introduces the possibility of intolerable delays and unpredictable final decision by judges.

EXCLUSIVE RECOGNITION WITH AN ELECTION

The amendment continues our current procedures in requiring that an election must be held before exclusive recognition status can be granted by an agency to a union.

The committee's bill, however, departs substantially from our current practice by permitting the Federal Labor Relations Authority to grant exclusive recognition without an election simply on the basis of a showing by a labor organization that it represents a majority of employees in the unit. This could be accomplished on the basis of a "card check," or by a petition.

UNFAIR LABOR PRACTICES—PICKETING

The amendment includes a prohibition against picketing which interferes or threatens to interfere with agency operations, which is a continuation of our current Executive order prohibition.

The committee bill, on the other hand, is unclear on the subject of picketing. Its provisions on unfair labor practices, the committee bill does not include picketing as an unfair labor practice. I am uncertain if the exclusion would permit pickets in all circumstances, and if so, what recourse would an agency have if such picketing was not unfair labor practice?

DUES WITHHOLDING AND OFFICIAL TIME

The amendment allows unions to enter into dues withholding agreements with agencies, and the service charge for the work would be subject to bargaining. Under the voluntary dues withholding system, allotments are revocable at 6-month intervals. Both of these provisions are identical to our current program.

The committee bill, on the other hand, departs from our current program by requiring an agency to deduct dues at the request of an exclusion union. Allotments would be irrevocable for 1 year, and would be made free of charge to both the union and the employee.

The committee bill also allows for dues withholding arrangements for unions with 10 percent or more membership in bargaining units where there is no exclusive union.

AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. UDALL. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Strike out title VII (beginning on line 12 of page 288 and ending on line 12 of page 348) and insert in lieu thereof the following:

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F—Labor-Management and Employee Relations

"Chapter 71—LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"7101. Findings and purpose.
"7102. Employees' rights.
"7103. Definitions; application.
"7104. Federal Labor Relations Authority.
"7105. Powers and duties of the Authority.
"7106. Management rights.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS.

"Sec.
"7111. Exclusive recognition of labor organizations.
"7112. Determination of appropriate units for labor organization representation.
"7113. National consultation rights.
"7114. Representation rights and duties.
"7115. Allotments to representatives.
"7116. Unfair labor practices.
"7117. Duty to bargain in good faith; compelling need; duty to consult.
"7118. Prevention of unfair labor practices.
"7119. Negotiation impasses; Federal Service Impasses Panel.
"7120. Standards of conduct for labor organizations.

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

"Sec.
"7121. Grievance procedures.
"7122. Exceptions to arbitral awards.
"7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.
"7131. Reporting requirements for standards of conduct.
"7132. Official time.
"7133. Subpenas.

"7134. Compilation and publication of data.
"7135. Regulations.
"7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in such capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities,

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter, and

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official; or

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Office;
"(B) the Federal Bureau of Investigation;
"(C) the Central Intelligence Agency;
"(D) the National Security Agency;
"(E) the Tennessee Valley Authority;
"(F) the Federal Labor Relations Authority; or
"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

"(B) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition; or

"(C) an organization sponsored by an agency;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervior' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to confer, consult, and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or affectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission;

"(B) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(C) relating to the classification of any position; or

"(D) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subpargraph (A)(i) of this paragraph and is perfroming related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election, or

"(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

"(1) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or security work, and

"(2) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more

than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with, the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed by the President.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter.

"(C) intervene before the Authority in proceedings brought under section 7118 of this title, and

"(D) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions.

"(e)(1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(g) In order to carry out its functions under this chapter, the Authority may—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7233 of this title.

"(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7118(a)(6)(C) or 5596(b)(1)(B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

"(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

"§ 7106. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws—

"(A) to hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

"(C) with respect to filling positions, to make selections for appointments from—

"(i) among properly ranked and certified candidates for promotion; or

"(ii) any other appropriate source; and

"(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

"(b)(1) If a petition is filed with the Authority—

"(A) by any person alleging—

"(i) in the case of an appropriate unit for which there is no exclusive representative that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(ii) in the case of an appropriate unit for which there is an exclusive representative that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(B) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. Except as provided under subsection (e) of this section, if the Authority finds on the record of the hearing that a question of representation exists, the Authority shall, subject to paragraph (2) of this subsection, conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit of in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(2)(A) If, after the 60-day period beginning on the date on which the petition is filed pursuant to paragraph (1) of this subsection, unresolved issues exist concerning—

"(i) the appropriateness of the unit in accordance with section 7112 of this title;

"(ii) the eligibility of one or more employees to vote in the proposed election; or

"(iii) other matters determined by the Authority to be relevant to the election;

the Authority shall direct an election by secret ballot in the unit specified in the petition and announce the results thereof.

"(B) After conducting an election under subparagraph (A) of this paragraph, the Authority shall expedite the resolution of any disputed issues described in subparagraph (A) of this paragraph. If the Authority determines that matters raised by the disputed issues did not affect the outcome of the election, the Authority shall certify the results of the election. If the Authority determines that the matters affected the outcome of the election, it shall conduct a new election by secret ballot in accordance with such requirements as are appropriate on the basis of its determination, and shall certify the results thereof.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) The Authority may, on the petition of a labor organization, certify the labor organization as an exclusive representative—

"(1) if, after investigation, the Authority determines that the conditions for a free and untrammeled election under this section cannot be established because the agency involved has engaged in or is engaging in an unfair labor practice described in section 7116(a) of this title; or

"(2) if, after investigation, the Authority determines that—

"(A) the labor organization represents a majority of employees in an appropriate unit;

"(B) the majority status was achieved without the benefit of any unfair labor practice described in section 7116 of this title;

"(C) no other person has filed a petition for recognition under subsection (b) of this section or a request for intervention under subsection (c) of this section; and

"(D) no other question of representation exists in the appropriate unit.

"(f) Any labor organization described in section 7103(a)(16)(B)(ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(g) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(h) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

"(A) the collective bargaining agreement has been in effect for more than 3 years, or

"(B) the petition for exclusive recognition is filed not more than 120 days and not less than 60 days before the expiration date of has been in effect for more than 3 years, or

"(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

"(i) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

"§ 7112. Determination of appropriate units for labor organization representation

"(a)(1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

"(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

"(1) except as provided under section 7136(a)(2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"(e) In the case of the reorganization of one or more units for which, before the reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

"§ 7113. National consultation rights

"(a)(1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee shall be informed of that employee's right under paragraph (3)

(B) of this subsection to be represented by an exclusive representative.

"(3) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or

"(B) any investigatory interview of an employee in the unit by a representative of the agency if—

"(i) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

"(ii) the employee requests such representation.

Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any conditions of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

"§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult, confer, or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law; or

"(2) any grievance procedure negotiated pursuant to section 7121 of this title;

may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

"7117. Duty to bargain in good faith; compelling need; duty to consult

"(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of this subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 15th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d)(1) a labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"7118. Prevention of unfair labor practices

"(a)(1) If an agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

"(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(C) requiring an award of reasonable attorney fees;

"(D) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(E) including any combination of the actions described in subparagraphs (A) through (D) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(7) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

"§ 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

"(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among

individuals who are familiar with Government operations and knowledgeable in labor-management relations.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5)(A) The Panel or its designee shall promptly investigate any impasses presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings,

"(2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and

"(3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to its members.

"(b) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official or a supervisor, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited po'itical activities);

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) any examination, certification, or appointment; or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration. If upon review the Authority finds that the award is deficient because—

"(1) it is contrary to any law, rule, or regulation;

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that here were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason by additional evidence so taken and filed. The Authority shall file its modified or new findings, which,

with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

"§ 7132. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section—

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

"§ 7133. Subpenas

"(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"§ 7134. Compilation and publication of data

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

"§ 7135. Regulations

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

"§ 7136. Continuation of existing laws, recognitions, agreements, and procedures

"(a) Nothing contained in this chapter shall preclude—

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exculsive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.".

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code, is amended to read as follows:

"(b) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

"(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

"(A) an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee normally would have earned or received during the period if the personnel action had not occurred, plus 5 percent, less any amounts earned by the employee through other employment during that period; and

"(B) reasonable attorney fees and reasonable costs and expenses of litigation related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7105(h) of this title; and

"(2) for all purposes, is deemed to have performed service for the agency during that period, except that—

"(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(B) annual leave credit under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

For the purpose of this subsection, 'grievance' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practice' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

"Chapter 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

"Sec.
"7201. Antidiscrimination policy; minority recruitment program.
"7202. Marital status.
"7203. Handicapping condition.
"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"7211. Employees' right to petition Congress.";

and

(3) by adding at the end thereof the following new subchapter:

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"§ 7211. Employees' right to petition Congress

"The right of employees, individual or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.".

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies---------- 7101".

and inserting in lieu thereof

"Subpart F—Labor-Management and Employee Relations

"71. Labor-Management Relations--- 7101

"72. Antidiscrimination; Right to Petition Congress---------- 7201".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "and 7154" and inserting in lieu thereof "and 7204."

(c)(1) Section 2105(c)(1) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 39, United States Code, is amended by striking out "chapters 71 (employee policies)" and inserting in lieu thereof the following: "chapters 72 (antidiscrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority.".

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

"(145) Members, Federal Labor Relations Authority (2), and its General Counsel.".

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(b) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d)(1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment offered as a substitute for the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, we are about to reach what I think is the final major controversy in this bill and one of the major points that occupied our time in the Committee on Post Office and Civil Service.

We decided on Monday night in a vote on the Erlenborn amendment that we were going to have a title VII. The question I hope we can resolve this morning is what kind of a title VII we will have. We have basically two alternatives now before us: The Collins amendment, which is a complete rewrite of this title, and the substitute amendment which I have just offered.

I appeal to my colleagues, as we debate and consider and resolve this issue, that we not let this be turned into some kind of a bitter replay of the debate that we have had in this House on labor-management bills earlier in this session. I hope this will not dissolve into a bitter labor-management fight because there is not any basis for it.

This is not the old right-to-work controversy, for example; it is not the old 14(b) controversy. There is a right-to-work provision on page 290 of the bill that is in my amendment and which would gladden the heart of the gentleman from Ohio, JOHN ASHBROOK, if he were here, and other Members who have engaged in this debate over the years. This is not situs picketing or it is not the Labor Reform Act of 1977, although some of these things are involved in our discussion.

There is nothing before us today in the substitute about the right of public employees to strike. As the gentleman from Michigan (Mr. FORD) said the other day, no one is seriously talking about that this year. That is outside the scope of this legislation entirely.

There is not really any argument in this bill or in this title about Federal collective bargaining for wages and fringe benefits and retirement—the kinds of things that are giving us difficulty in the Postal Service today. All these major regulations about wages and hours and retirement and benefits will continue to be established by law through congressional action. Major management rights to hire and fire and determine staffing are preserved in my amendment.

What we really do is to codify the 1962 action of President Kennedy in setting up a basic framework of collective bargaining for Federal employees. This was good enough and acceptable enough to all segments of our society that it was left unchanged during the 8 years of the Nixon and Ford administrations. Either one of those Presidents with a stroke of a pen could have eliminated this and chose not to have it.

So we are now going to put into the United States Code instead of the Federal Register this basic plan of President Kennedy's that has worked so well in the last 15 years. No one seems to be arguing much about that anymore.

The Federal employee unions do not get much out of this amendment process that is not already in the Executive order. They do gain in my substitute some guarantees about procedures that management must follow. They get to arbitrate some things that now go through a torturous appeal process—things involving various labor grievances.

It would be a mistake to view this title VII or my substitute as some kind of a labor bill that is attached to an unrelated bill dealing with management prerogatives in the Federal service. This is how I view what we are trying to do here: It moves to meet some of the legitimate concerns of the Federal employee unions as an integral part of what is basically a bill to give management the power to manage and the flexibility that it needs.

But I say this in two respects. One, it gives some balance. We are saying to the Federal employees that we are going to give management some broad new rights here in this legislation, we are going to enable them to move. And employee organizations are saying, in turn, that they are entitled to have a more independent, secure position from which to deal with management as it operates under this new freedom in the bill.

Second, the arbitration provision I view as much of a gain for management as for labor. The Federal managers now, instead of having to go through difficult, complex appeal procedures, will be able to submit them to arbitration, and this is a gain for management.

As I have said, Mr. Chairman, the President's program basically deals with strengthening management, Senior Executive Service, merit pay for supervisors and management, separating the operating functions of the Civil Service Commission from the judicial functions.

None of these basic management tools are affected by my amendment.

The CHAIRMAN. The time of the gentleman from Arizona (Mr. UDALL) has expired.

(By unanimous consent, Mr. UDALL was allowed to proceed for 1 additional minute.)

Mr. UDALL. Mr. Chairman, in conclusion, let me say that perhaps the best guide to what we come down to with the Udall substitute is that it is barely acceptable to people such as the gentleman from Michigan (Mr. FORD) and my friend, the gentleman from Missouri (Mr. CLAY), who have been outstanding spokesmen for the rights of the Federal employee groups. It is acceptable barely to the Business Roundtable, which represents 190 of our largest corporations. It does not really please the administration. But it is the balance point. It is the middle ground, and I think we can go forward and pass a good Senate bill if we would take this one final step here in title VII in adopting my substitute.

SECTIONAL ANALYSIS OF TITLE VII SUBSTITUTE

The substitute makes numerous changes in Title VII as reported by the Committee. These changes are designed to guarantee essential management prerogatives and flexibility, while safeguarding the fundamental rights of employees and their representatives. The bill section numbers and the code section numbers and headings are, with one small exception (the words "duty to consult" are added to the heading of Code section 7117), identical to those of the Committee's Title VII. Where no change is made in the provisions of a section as reported by the Committee, this is so stated. Any changes in the substance of a section are noted and explained. Minor changes in wording or punctuation which do not change the meaning of a section are not noted.

SECTION 7101

Section 7101. Findings and purpose: No change.

Section 7102. Employees' rights: No change.

Section 7103. Definitions; applications: Two changes are made. First, the definition of "conditions of employment" (subsection (a)(14)) is amended. Paragraph (A) is clarified to provide for the exclusion of policies, practices, and matters relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, "within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission." The reported paragraph (C) is redesignated as paragraph (D). The new paragraph (C) excludes from conditions of employment" any policy, practice, or matter relating to the "classification of any position." The effect of this new exclusion would be to remove the classification of positions from collective bargaining. This change is designed to help ensure the continuation of classification uniformity throughout the Federal Government. The term "classification of any position" encompasses all positions and jobs, including white-collar and blue-collar.

The second change is to subsection (b), concerning the exclusion of agencies and agency subdivisions, for national security reasons, from coverage by the labor-management relations provisions to be created by Title VII. The reported bill requires an agency seeking such an exclusion to apply to the Federal Labor Relations Authority, which would review and investigate the matter, and then issue a decision either granting or denying the exclusion. The substitute's subsection (b) would give to the President the power to exclude agencies and agency subdivisions from coverage for national security reasons. The President could do this, in his or her sole discretion, by order.

Section 7104. Federal Labor Relations Authority: No change.

Section 7105. Powers and duties of the Authority: Two subsections are added. A new subsection (h) directs and empowers the Authority to establish, by regulation, standards to be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with the provisions being established by Title VII of this bill.

A new subsection (i) would allow the Federal Labor Relations Authority to represent itself (except in litigation before the U.S. Supreme Court) in any civil action brought in connection with any function carried out by the Authority pursuant to title 5 of the United States Code or as otherwise authorized by law. Under this subsection, the Authority would not have to seek Justice Department approval or representation in carrying out its litigation-related responsibilities (except in the U.S. Supreme Court). This provision is designed to help ensure the independence which will be essential to the proper functioning of the Authority. It also will permit the Justice Department to represent agencies without the potential conflicts of interest that could arise if it also represented the Authority in the same case.

Section 7106. Management rights: Four changes increase the number of rights reserved to management. This substitute strengthens the "Management rights" section reported by the Committee, but it is still to be treated narrowly as an exception to the general obligation to bargain over conditions of employment.

Subsection (a)(2)(A) is expanded to reserve to management, the authority, in accordance with applicable law, to "hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees." The reported subsection (a)(2)(A) reserves only the right to "direct employees". The new language preserves management's right to make the final decisions in these additional areas, in accordance with applicable laws, including other provisions of chapter 71 of title 5. For example, management has the reserved right to make the final decision to "remove" an employee, but that decision must be made in accordance with applicable laws and procedures, and the provisions of any applicable collective bargaining agreement. The reserved management right to "remove" would in no way affect the employee's right to appeal the decision through statutory procedures or, if applicable, through the procedures set forth in a collective bargaining agreement.

Subsection (a)(2)(C) of the substitute adds a new provisions, guaranteeing management's right, with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source. The intent of this provision is to preserve as bargainable (to the extent permitted by applicable laws and regulations) the standards, criteria, and procedures for establishing promotion certificates, while ensuring management's right to make the actual selection from the certificate, or to make the appointment from any other appropriate source.

The reported Title VII's subsection (a)(2)(C) is redesignated in the substitute as subsection (a)(2)(D), with one substantive change. Management is guaranteed the right to take whatever actions may be necessary to carry out the agency missing during emergencies. The reported bill reserves this right only in the case of national emergencies.

The reported subsections (b)(1) and (b)(2) are redesignated, with changes, as subsections (b)(2) and (b)(3). A new subsection (b)(1) is added to provide that nothing in the "Management rights" section shall preclude any agency and any labor organization from negotiating, at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

The amendment's subsections (b)(2) and (b)(3) provide that nothing in the section shall preclude negotiating the procedures which management officials of the agency will observe in exercising any authority under this section, or negotiating appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

The reported subsections (b)(1) and (b)(2) provide that nothing in the "Management rights" section shall preclude negotiating procedures management officials will observe in exercising their authority to determine the mission, budget, organization, number of employees, and internal security of the agency (the rights reserved in subsection (a)(1)), or appropriate arrangements for employees adversely affected by the exercise of management authority described in subsection (a).

Section 7111. Exclusive recognition of labor organizations: The substitute modifies the reported subsection (b)(2) by expanding the maximum time period during which secret ballot representation elections must be held from 45 days to 60 days.

The substitute also modifies the reported subsection (h)(3)(B) by changing the time period for filing a petition for exclusive recognition, where there is in effect a lawful written collective bargaining agreement, from "the 4-month period beginning on the 180th day before the expiration date" of the existing agreement, to "not more than 120 days and not less than 60 days before the expiration date" of the agreement.

Subsection (h)(4) of the substitute bars the according of exclusive representation to a labor organization where, within the previous 12 calendar months, the Authority has conducted a secret ballot election for the unit described in the petition, and in the election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative. The effect is to lend stability to the collective bargaining relationship by preventing challenges to incumbents by other unions for at least 12 months, while at the same time permitting elections in larger units during the 12-month period if no exclusive representative has been certified. The reported subsection (h)(4) bars the according of exclusive representation whenever an election involving any of the employees in the petitioned-for unit has been held during the previous 12 months.

Section 7112. Determination of appropriate units for labor organization representation: Subsection (c) of the substitute provides that any employee who is engaged in administernig any provision of law relating to labor-management relations may not be represented by a labor organization which represents other individuals to whom such provision applies, or which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies. This provision, which is not found in the reported Title VII, is intended to help prevent conflicts of interest and appearances of conflicts of interest. For example, an employee of the National Labor Relations Board could not, under this provision, be represented by a labor organization which is subject to the National Labor Relations Act, or which is affiliated with an organization which is subject to the National Labor Relations Act.

Subsection (c) of the reported Title VII is redesignated as subsection (d) in the substitute, with two changes in substance. The new subsection (d) provides that two or more bargaining units in an agency for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority would then certify the labor organization as the exclusive representative of the new, larger unit. The analogous portion of the reported section 7112, subsection (c), requires that the labor organization be the exclusive representative of the existing, smaller units "by reason of election". It is also not specific as to the triggering of the consolidation process by petition, and the discretion of the Authority to direct or not to direct an election. The substitute's provisions should bet-

ter facilitate the consolidation of small units.

Subsection (d) of the reported section 7112 is redesignated, substance unchanged, as subsection (e) in the substitute.

Section 7113. National consultation rights: Subsection (b)(1)(A) of the substitute requires that any labor organization having national consultation rights in connection with any agency be informed of "any substantive change" in conditions of employment proposed by the agency. The reported subsection (b)(1)(A) required that the labor organization be informed of "any change".

Section 7114. Representation rights and duties: Two important provisions in the reported bill's section 7114 are modified by the substitute.

The right of an employee to request representation by the exclusive representative and the right of an exclusive representative to be present at certain types of management-employee meetings are set forth in subsections (a)(2) and (a)(3) of the substitute. Subsection (a)(2) provides that before any representative of an agency commences any investigatory interview of an employee in a bargaining unit, where the interview concerns misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee must be informed of his or her right to be represented by the exclusive representative. Subsection (a)(3) provides that an exclusive representative has the right to be given the opportunity to be represented at: (1) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or personnel policy or practice or other general condition of employment; and (2), any investigatory interview of an employee in the unit by a representative of an agency if the employee reasonably believes that such interview may result in disciplinary action against the employee, and the employee requests such representation.

The reported section 7114 provides the right of representation for any discussion between one or more representatives of the agency and one or more unit employees or their representatives concerning any grievance, personnel policy or practice, or other conditions of employment. By inserting the word "general" before "conditions of employment", the substitute limits the right of representation to those formal discussions (other than grievance discussions) which concern conditions of employment affecting employees in the unit generally.

The reported sections also differs from the substitute in providing the right of representation for "any discussion between an employee in the unit and a representative of the agency if the employee reasonably believes that the employee may be the subject of disciplinary action." The substitute provides the right for investigatory interviews, and stipulates that the employee must request representation before the right attaches. The substitute also provides that the employee must be informed of the right of representation before the commencement of any investigatory interview concerning misconduct which would reasonably lead to suspension, or reduction in grade or pay, or removal.

The substitute's provisions concerning investigatory interviews reflect the U.S. Supreme Court's holding in *National Labor Relations Board* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975). In *Weingarten*, the Court upheld the Board's determination that the National Labor Relations Act provides a statutory "right of union representation at investigatory interviews which the employee reasonably believes may result in disciplinary action against him." 420 U.S. 251, at 267.

The Court also sustained the Board's shaping of "the contours and limits of the statutory right." 420 U.S. 251, at 256. First, the right inheres in the Act's "guarantee of the right of employees to act in concert for mutual aid and protection." Second, "the right arises only in situations where the employee requests representation." Third, "the employee's right to request representation as a condition of participation in an interview is limited to situations where the employee reasonably believes the investigation will result in disciplinary actions." Fourth, "exercise of the right may not interfere with legitimate employer prerogatives." And fifth, "the employer has no duty to bargain with any union representative who may be permitted to attend the investigatory interview." 420 U.S. 251, at 258, 257, 258, 259.

The *Weingarten* right, of course, is tied to the National Labor Relations Act's "guarantee of the right of employees to act in concert for mutual aid and protection." Other than this difference in derivation, the substitute's provisions differ from *Weingarten* only in providing that the employee must be informed of the right of representation prior to the commencement of any investigatory interview concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal.

The second area of change made by the substitute's section 7114 is in subsection (b)(4), concerning the obligation of an agency to provide data necessary for negotiations to the exclusive representative. The substitute qualifies this obligation by providing, in subsection (b)(4)(C), that data which constitutes "guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining" need not be furnished to the exclusive representative.

Section 7115. Allotments to representatives: No change.

Section 7116. Unfair labor practices: The one change made adds a new labor organization unfair labor practice by expanding subsection (b)(7) to proscribe "picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations." A positive statement is added, however, after subsection (b)(8) to provide that nothing in subsection (b)(7) "shall result in any information picketing which does not interfere with an agency's operations being considered as an unfair labor practice."

Section 7117. Duty to bargain in good faith; compelling need; duty to consult: The substitute's section 7117 contains major changes effecting a significant alteration of the reported bill's scope of bargaining.

Under the reported bill, agency-wide rules or regulations are never a bar to negotiations, and any Government-wide rule or regulation may be removed as a bar to negotiations if there is no "compelling need" for the rule or regulation, as determined by the Federal Labor Relations Authority under the reported section 7117.

The substitute's section 7117 makes Government-wide rules or regulations an absolute bar to negotiations (subsection (a)(1)).

Subsection (a)(2) of the substitute provides that agency rules or regulations are a bar to negotiations, subject to subsection (a)(3), unless a finding of "no compelling need" for the rule or regulation is made by the Authority (as determined under regulations prescribed by the Authority).

Subsection (a)(3) states that the provisions of subsection (a)(2) apply to any rule or regulation issued by any agency, or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit which includes a majority of the employees in the issuing agency or primary national subdivision to whom the rule or regulation is applicable.

The net effect of the substitute's subsection (a)(3) is to make rules or regulations of agencies, or of primary national subdivisions of agencies, bars to negotiation, subject to the "compelling need" test, except in cases in which an exclusive representative represents a bargaining unit which includes a majority of the employees in the issuing agency or primary national subdivision to whom the rule or regulation is applicable. In those latter cases, the agency or primary national subdivision rule or regulation is not, for purposes of that unit, a bar to negotiations on the subject matter of the rule or regulation.

If, for example, the Department of the Treasury issues a regulation which applies to employees of the Department, and an exclusive representative represents a unit which includes a majority of the employees to whom the regulation applies, the regulation will not be a bar to negotiations for purposes of that unit. Similarly, if the Department issues a regulation which applies to employees of the Internal Revenue Service (a primary national subdivision of the Department) and an exclusive representative represents a unit which includes a majority of IRS employees to whom the regulation applies, the regulation will not be a bar to negotiations for purposes of that unit in IRS.

Subsection (b) of the substitute sets forth a procedure for "compelling need" determinations for agency or primary national subdivision rules or regulations. When an exclusive representative alleges that no compelling need exists for a rule or regulation which an agency or primary national subdivision has invoked as a bar to negotiations, the Federal Labor Relations Authority takes jurisdiction and determines whether a compelling need exists. The Authority will prescribe regulations governing compelling need determinations. A finding of "no compelling need" may be made only if the issuing agency or primary national subdivision informs the Authority in writing that no compelling need exists, or if the Authority determines after a hearing that there is no compelling need. The Authority's General Counsel shall not be a party to a "compelling need" hearing, but the issuing agency or primary national subdivision shall be.

Subsection (c) of the substitute provides an expedited appeals system for resolving negotiability disputes other than those involving "compelling need" determinations. The reported Title VII provides that such disputes be resolved through the unfair labor practice mechanism. The substitute provides that an exclusive representative may appeal an agency's allegation of non-negotiability to the Authority. The appeal may be filed, on or before the 15th day after the date on which the agency first makes its allegation, by filing a petition with the Authority and furnishing a copy to the head of the agency. On or before the 15th day after the agency head receives the copy of the petition, the agency must file a statement with the Authority either withdrawing the allegation or setting forth in full its reasons supporting the allegation. A copy is to be furnished to the exclusive representative, which then has 15 days to file a response with the Authority. The Authority shall expedite proceedings to the extent practicable and shall issue a written decision and supporting reasons at the earliest practicable date.

Subsection (d) of the substitute provides for consultation rights concerning Government-wide rules or regulations. A labor organization which is the exclusive representative of a substantial number of employees (as determined in accordance with criteria prescribed by the Authority) shall be granted consultation rights by any agency issuing a Government-wide rule or regulation effecting any substantive change in any condition of employment. Consultation rights shall ter-

minate when the labor organization no longer meets the Authority's prescribed criteria. The Authority shall resolve issues relating to a labor organization's eligibility for, or continuation of, consultation rights.

A labor organization having consultation rights must be informed of any substantive change in conditions of employment proposed by the agency and must be permitted reasonable time to present its views and recommendations regarding the proposed changes. The agency must consider any views or recommendations so presented before taking final action on any matter with respect to which the views or recommendations are presented, and must provide the labor organization a written statement of the reasons for taking the final action.

Section 7118. Prevention of unfair labor practices: The one change from the provisions of the reported bill's section 7118 is in subsection (a)(6)(D). Instead of empowerpowers the Authority to require reinstatement of an employee "with backpay, together with interest thereon," the substitute empowers the Authority to require reinstatement of an employee with "backpay in accordance with section 5596 of this title." The applicable provision of section 5596, as amended by section 702 of this substitute, provides for backpay plus 5 percent, rather than "interest".

Section 7119. Negotiation impasses; Federal Service Impasses Panel: One change is made in the provisions of the reported bill's section 7119. In subsection (b)(2) of the reported section, the parties may agree to adopt a procedure for binding arbitration of a negotiation impasse. The substitute requires that the procedure agreed to by the parties is subject to approval by the Federal Service Impasses Panel.

Section 7120. Standards of conduct for labor organizations: No change.

Section 7121. Grievance procedures: In subsection (d), the substitute excludes additional matters from the scope of negotiated grievance procedures. Not grievable under negotiated procedures (in addition to those exclusions already in the reported section 7121) would be matters concerning examination, certification, or appointment, or the classification of any position which does not result in the reduction in grade or pay of any employee. The term "classification of any position" encompasses all positions and jobs, including white-collar and blue-collar.

Section 7122. Exceptions to arbitral awards: No change.

Section 7123. Judicial review; enforcement: No change.

Section 7131. Reporting requirements for standards of conduct: No change.

Section 7132. Official time: No change.

Section 7133. Subpenas: The substitute simplifies the reported section's subpena provision, and removes the immunity and criminal penalty provisions found in subsections (d) and (e) of the reported section 7133.

Subsection (a) of the substitute section provides that any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of title 5 of the United States Code, and any employee of the Authority designated by the Authority may: (1) issue subpenas requiring the attendance of and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and (2), administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

Subsection (b) provides that in the case of contumacy or failure to obey a subpena issued under subsection (a), the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify and to produce documentary or other evidence. The court may punish as contempt any failure to obey an order.

Subsection (c) provides that all witnesses be paid the same fee and mileage allowance which are paid subpenaed witnesses in Federal courts.

Section 7134. Compilation and publication of data: No change.

Subsection 7135. Regulations: No change.

Section 7136. Continuation of existing laws, recognitions, agreements and procedures: No change.

SECTION 702

Section 5596. Backpay in case of unfair labor practices and grievances: The substitute retains the modifications to the Backpay Act which would be made by the reported Title VII, with two changes.

First, the reported bill's modification of section 5596(b)(1)(A) is changed to provide for backpay "plus 5 percent, less any amount earned through other employment." The reported bill provides for backpay, less any amounts earned through other employment, plus "interest".

The substitute's section 5596(b)(1)(B) provides for reasonable attorney fees and reasonable costs and expenses related to the personnel action. With respect to any decision relating to an unfair labor practice or to a grievance processed under a procedure negotiated in accordance with chapter 71 of title 5 of the United States Code (Federal Service Labor Management Relations), attorney fees and reasonable costs and expenses of litigation shall be awarded in accordance with standards established by the Federal Labor Relations Authority under section 7105(h) of title 5.

SECTION 703

No change.

SECTION 704

Subsection (c) of the reported section is redesignated as subsection (d) and a new subsection (c) is added, requiring that the regulation required under section 7105(h) of title 5 (standards for the awarding of attorney fees and reasonable costs and expenses of litigation in unfair labor practice and negotiated grievance procedure cases) be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of the Civil Service Reform Act.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Kansas.

Mr. GLICKMAN. I thank the gentleman for yielding.

Mr. Chairman, I wonder if the gentleman might tell me the difference between his substitute and the Collins amendment with respect to the issue of the agency shop or the closed or union shop, and how that relates to the existing Executive order.

Mr. UDALL. There is no difference here. The unions have long wanted an agency shop. We do not give them that in the Udall substitute. They do not get the agency shop, they do not get the union shop in either one of the provisions.

Mr. Chairman, I will yield to my friend, the gentleman from Michigan, who can clarify this point.

Mr. FORD of Michigan. Mr. Chairman, this is one of the unfortunate things that can happen in the discussion of this matter. The agency shop issue has no place in this discussion. It has not been in this bill at any point, it is not in this bill directly, indirectly, back door, front door or side door, and the discussion of the agency shop is totally irrelevant.

Mr. UDALL. No one advocates it here in this debate. It is not in the bill.

Mr. ERLENBORN. Mr. Chairman, I rise in support of the Collins amendment and in opposition to the Udall substitute.

Mr. Chairman, let me say, however, that I am pleased to see the Udall substitute, which is moving in the direction of the Senate language and away from the House-reported language in title VII. The Collins amendment contains, I think, with little or no change, the language adopted by the Senate, and the Senate language is substantially the Executive order relative to labor and management relations. So obviously I am in favor of the Senate language embodied in the Collins amendment. But given the choice, if it should come to that, between the Udall substitute or the House-reported language, I certainly would prefer the Udall substitute. The Udall substitute moves in the right direction, in some respects, by narrowing the scope of bargaining, by expanding management's rights, and these are in relationship to the House-reported language, the committee-reported language. Moreover, some of the provisions of the Udall substitute recognize the uniqueness of the National Labor Relations Board. But it really goes much farther than title VII, as reported by the committee, in some respects. It permits informational picketing, except if the Federal labor relations authority determines that the picketing interferes with the agency's operations. It allows the Federal labor relations authority to consolidate units, even if neither of the unions has by free elections been certified as the major bargaining agent. It still, as does the committee-reported language, permits certification of a union without election.

It allows a dues checkoff form of union security. As a matter of fact, it requires negotiation by an agency with the union for the purpose of achieving an agreement relative to checkoff, with a union that has as little as 10-percent support among the employees of the unit. It delegates the Federal labor relations authority to the administrative labor law judges, something the so-called labor reform bill tried to do in the context of the National Labor Relations Act.

The Udall substitute allows the President to remove the general counsel at will, without cause. It permits an election after 60 days rather than 45 days when basic issues remain unresolved.

It does not recognize the conflict of interest to which the Federal Election Commission employees are subject and exposed. I will be offering an amendment in most of these areas. The first one I will offer will be on this area of the Federal Election Commission. The Commissioners asked this administration to give them some protection in this area

because it is altogether possible that the employees of the Commission could be members of the very same union that they are investigating and controlling under the Federal Election Act.

Lastly, the Udall substitute treats a strike as an unfair labor practice only. I think we should require a decertification of the union or a loss of union rights, but the substitute only treats this, as far as the union is concerned, as an unfair labor practice. Then, we have to look to other portions of the law to find the sanctions for the individuals who engage in a strike or support a strike. There are sanctions in the current law which, in our colloquy the day before yesterday, our experts from the Education and Labor Committee, Mr. FORD and Mr. THOMPSON, said remained undisturbed by this bill. I am pleased because, there are some severe sanctions, including a $1,000 fine for individuals who support a strike against a Government agency.

For these reasons, I think the Udall substitute is better than the House committee bill, but the Collins amendment is much more preferable. It would also make the job of the conferees a good deal easier, because we would adopt the Senate language. There would not be much to confer on.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. ROUSSELOT and by unanimous consent, Mr. ERLENBORN was allowed to proceed for 3 additional minutes.)

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague yielding, and I appreciate his description of how the Collins substitute is superior to the Udall substitute.

I am interested in this new term "informational picketing." What is that?

Mr. ERLENBORN. Well, in answer to the gentleman, I believe informational picketing is a fairly well-known term. Informational picketing is one where the pickets are in place; they carry signs; they indicate their displeasure over some condition, but no labor dispute exists.

I will tell the gentleman, it is something he may have noticed here in the District of Columbia. It is where several restaurant unions have thrown up picket lines around restaurants and bars where none of the employees of those restaurants or bars are interested in joining the union, but the union thinks that they should be interested, and so they throw up a picket line around the restaurant or the bar for informational purposes. Of course, it goes a little bit beyond information, because once the information is given, then many people will decline to patronize the bar or restaurant because the pickets are there.

But, in the law they have no right to picket because of a labor dispute, because there is no labor dispute in that place of business.

Mr. ROUSSELOT. So it can be for anything. It could really just be a demonstration.

Mr. ERLENBORN. Usually the informational picketing is based upon the failure to observe so-called area standards which usually means union standards.

They will say that this employer does not live up to area union standards and is therefore unfair.

Mr. ROUSSELOT. Who makes the final determination under the Udall substitute as to whether or not informational picketing is legitimate?

Mr. ERLENBORN. My understanding is under the Udall bill it is the Federal labor relations authority rather than the unit of Government that is being picketed.

Mr. ROUSSELOT. So a unit of Government could really have no say as to whether this is a legitimate informational picketing operation?

Mr. ERLENBORN. They would certainly have no final say. They could complain to the Federal labor relations authority and that authority would have the final say.

Mr. ROUSSELOT. Let me make sure this point is clear: An agency could be subjected to "informational picketing" even though the picketing has nothing to do with employee grievances or other legitimate complaints of that particular agency.

Mr. ERLENBORN. It could be that there are none of the employees in that unit that are even interested in the union but the union pickets could picket that unit because of the area standards or some other reason.

Mr. ROUSSELOT. I appreciate the gentleman's information.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Udall substitute.

Mr. Chairman, some in this body would have us believe that the Udall substitute was written by the headquarters of the AFL–CIO, but just the reverse is true, I believe. Not impugning the integrity of the gentleman from Arizona (Mr. UDALL) who offered the substitute, but it seems most of the substitute was written long ago by the Business Roundtable.

I do not view this as a fight between labor and business. I view this as a fight between what is right and what is wrong, between what is just and what is unjust. I think what the gentleman from Arizona (Mr. UDALL) is primarily attempting to do in his substitute is to get some balance between the now expanded rights of management and the lessened rights of the employees. It is in a sense a compromise.

It is still management oriented—too much, in my opinion. It still allows the administration flexibility—a little too much, in my opinion. It still permits the easy discharges of Federal employees—too much, in my opinion.

But, Mr. Chairman, the Udall substitute, even though it does not begin to reach the provisions that I and others on the subcommittee and committee approved of in title VII, does however represent the best that reasonable persons can expect under the present political circumstances.

Therefore I urge my colleagues to support the Udall substitute.

Mr. Chairman, at the time when the Committee of the Whole rose, on August 11, I expressed my disappointment that the administration—with whom I disagreed on several major ingredients of the Federal labor-management relations program, had not engaged in serious give-and-take with the committee in an effort to iron out these major differences. I indicated that, in view of the intransigence of the administration, it would be necessary for me to utilize every parliamentary device at my command to bring the intransigence of the administration to the attention of my colleagues.

Since that time, I am pleased that the administration sat down with representatives of the committee in what appears to have been a sincere effort to resolve our differences. The Udall substitute is the result of these extended negotiations.

I am not totally delighted with this final product because it does not begin to afford the rights to employees which, in my judgement are essential ingredients of any labor relations program. But the Udall substitute does represent a substantial improvement over what the administration originally proposed to the Congress. The Udall substitute does enjoy the support of the administration. Finally, the sad political reality is that given the antipublic employee mood of the Congress, I do not believe that the Nation is ready to accept much more than the provisions of the Udall substitute.

The Udall substitute provides for:

A statutory Federal labor-management program which cannot be universally altered by any President;

A truly independent Federal labor relations authority with judicial review and enforcement of Federal labor relations authority decisions and actions;

Binding arbitration for most statutory appeals and grievances;

Negotiation of agency-wide regulations under some circumstances;

Mandatory consultation on Government-wide regulations;

Attorneys' fees, litigation costs for employees;

Automatic dues withholding at no cost to unions; and

Mandatory official time for the negotiation of collective bargaining agreements.

Because the Udall substitute for title VII contains several departures from the version in the committee print, I would like to set out for the record the considerations that lay behind this compromise approach to labor-management relations in the Federal Government. The Udall substitute is the culmination of extension discussions between Mr. UDALL, the administration, Mr. FORD and others especially concerned with title VII, and myself. As the chairman of the Subcommittee on Civil Service, the sponsor of H.R. 13, and the cosponsor of H.R. 9094, I would like to state the rationale behind certain sections of the bill that has led me and others to work out and support the Udall substitute.

Title VII obviously represents congressional dissatisfaction with the state of labor-management relations in the Federal service under the various oversight bodies now established. The public and the taxpayer deserve the more effective and efficient Federal Government that is a predictable result of a meaningful labor-management program for Federal agencies. Unfortunately, the provisions of the order and, especially, the straitjacket interpretation of them by the Federal Labor Relations Council, have barred the development of such a program.

In enacting title VII, Congress will free both agency management and employee representatives from the strictures of the past and thereby encourage both management and labor to engage in the kind of relationship that, in the private sector, has fostered the single most productive economy in the world. An essential component of the new labor-management program mandated by title VII is the interplay between the obligation to bargain in good faith over conditions of employment and the reserved management rights set forth in section 7106. Since the Udall substitute contains several changes from the committee print's management rights clause, I would like to describe the background that led us to work out the Udall compromise and the current understanding that now prompts our agreement to the Udall substitute.

At no time either during the committee's deliberations or afterwards was it suggested that Federal employee labor organizations should be allowed to bargain over every conceivable topic. Initially, disagreement arose over whether the ultimate exercise of genuine management responsibility could best be protected, while also insuring meaningful negotiations on other topics, by inclusion of a management rights clause in title VII, as under the Executive order, or by a case-by-case development as under the National Labor Relations Act.

Many of us believed that a management rights clause was unnecessary. The National Labor Relations Board and the Federal courts have protected private sector management from union demands that "management rights" be bargained away. See, e.g., *Fibreboard Paper Products Corp.* v. *NLRB*, 379 U.S. 203, 235 (1964) (bargaining obligation does not extend to the method of investing capital, the goods to be produced, or the basic scope of the enterprise); *General Motors Corp.*, 191 NLRB 951, 952 (1971), aff'd 470 F.2d 422 (D.C. Cir. 1972) (the issue of whether a company should sell a dealership facility); and *Summit Tooling Co.*, 195 NLRB 479, 480 (1972) (partial closure of a company). Since this protection has been afforded private sector management without a management rights clause in the National Labor Relations Act, as amended, we believed that inclusion of such a clause in title VII was unnecessary and would invite the interpretative abuse reflected in the Council's decisions on the order.

We were persuaded, however, that a new independent agency, replacing the part-time management-oriented Council, would itself provide some insulation against the kind of decisional abuse that has hamstrung both agency managers and employee representatives in the past. Moreover, we have included in section 7136(a)(1) express recognition of our expectation that the new Federal Labor Relations Authority will issue decisions superseding those of the Council. (In the interest of continuity we also provide that Council decisions will continue in force until superseded.) We fully expect that the Authority will not repeat the mistakes of the Council, especially since the Authority is acting under a new statutory charter mandating a new approach to Federal labor-management relations.

In drafting the committee print version of title VII, the committee intended that the scope of collective bargaining under the act would be greater than that under the order as interpreted by the Council. (See House Rept. No. 95–1403 at pages 43–44.) The Udall substitute and its accompanying sectional analysis also embodies this approach. Title VII is remedial legislation designed to cure the problems caused primarily by the Council's misinterpretation of the Executive order. The approach in title VII constitutes a clear rejection of the Council's interpretative techniques, and we support the Udall substitute with the clear understanding that the Authority is in no way bound to the Council's past decisions, even where language in title VII is identical to that in the Executive order.

As the sectional analysis makes clear, the management rights clause is to be construed as a narrow exception to the general obligation to bargain in good faith. Although reviewing bodies under existing labor-management programs have sometimes adopted this approach, the Council has in large measure departed from this canon of construction in its haste to restrict the scope of bargaining. For examples of the approach mandated by title VII, see *Federal Employees Metal Trades Council of Charleston and U.S. Naval Supply Center*, Charleston, S.C. 1 FLRC 235, 244 (FLRC No. 71A–52) (1972); *Local Union No. 2219, International Brotherhood of Electrical Workers AFL–CIO and Department of the Army, Corps of Engineers, Little Rock District, Little Rock, Ark.*, 1 FLRC 219, 235 (FLRC No. 71A–46) (1972); *American Federation of Government Employees, National Joint Council of Food Inspection Locals and Officer of the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture*, 1 FLRC 616, 620–21 (FLRC No. 73A–36) (1973), aff'd on remand 3 FLRC 324, 345–46 (1975); *AFGE Local 2595 and Immigration and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona)*, 1 FLRC 71, 73–74 (FLRC No. 70A–10) (1971); *Library of Congress and American Federation of State, County and Municipal Employees, Local Nos. 2477 and 2910*, 56–7 (Decision of the Labor-Management Umpire) (May 17, 1978) (slip opinion); and *AFSCME, Local 2910 and Library of Congress*, 2–4, 6–7 (Decision of the Labor-Management Umpire) (Sept. 5, 1978) (slip opinion).

The Udall substitute contains a management rights clause substantially enlarged beyond that in the committee print. An important element in our agreeing to entrust such an expanded management rights clause to the hands of the new Authority is the example of the protection afforded the collective bargaining process by conscientious scrutiny of management claims of infringements on management rights, especially as found in the two 1978 decisions above. If the new Authority is faithful to these interpretative guidelines, the ultimate exercise of the specified managerial responsibility, the only subject exempted from the bargaining obligation, will be protected and the general obligation to bargain over conditions of employment will be unimpaired. However, it is essential that only those proposals that directly and integrally go to the specified management rights be barred from the negotiations. (See the May 17, 1978 decision above at pages 5–7.)

Although more management rights have been added, the section has been revised to make clear that the exercise of any management rights in the section does not preclude negotiations over procedures or adverse effects involved in those rights.

In section 7117, the Udall substitute removes many Government-wide regulations from collective bargaining. We have agreed to this change with the understanding that the consultation rights accorded exclusive representatives are to be rigidly enforced. It should be clear from the contents of the agency statement required in subsection 7117(d)(3)(B) that the agency has in fact considered the views and recommendations of the labor organizations exercising consultation rights. A clear record is also necessary for later judicial review of the adequacy of the agency's proceedings that led to promulgation of the regulation.

Section 7103(a)(14)(D), removing from subjects of bargaining those matters specifically provided for by Federal statute, was adopted by the committee and retained in the Udall substitute with the clear undersanding that only matters "specifically" provided for by statute would be excluded under this subsection. Thus, where a statute merely vests authority over a particular subject with an agency official with the official given discretion in exercising that authority, the particular subject is not excluded by this subsection from the duty to bargain over conditions of employment.

Section 7114(a)(1) requires that a labor organization that has been accorded exclusive recognition shall be the exclusive representative for employees in its bargaining unit. Section 7114(a)(3)(A) specifically gives the exclusive representative the opportunity to appear at "formal discussions" between agency representatives and employees. In the Udall substitute the word "formal" was inserted before "discussions" in order to make clear the intention that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions—unless covered by

subsection 7114(a)(3)(B). Nothing in this section prohibits an agency from negotiating greater rights for exclusive representatives. Nor does this section authorize an agency to bypass the rights of the exclusive representative and engage in direct communications with unit employees. Section 7116(a)(8) makes it an unfair labor practice for an agency to violate any provision of title VII, including obviously the section requiring that a labor organization with exclusive recognition shall be the exclusive representative.

Section 7116(b)(7) of the compromise version adds "picketing in a labor-management dispute if such picketing interferes with an agency's operations" as an unfair labor practice by a labor organization. In *National Treasury Employees Union* v. *Fraser*, 428 F. Supp. 295 (D. D.C. 1976), the U.S. district court held that the Executive order's absolute ban on picketing was overbroad and violated the first amendment. The court specifically authorized nondisruptive informational picketing. We had recourse to the Federal Labor Relations Council policy statement in this area and, in view of the constitutional principles involved, adopted the language in this subsection.

Section 7132(b) of the Udall compromise bars the use of official time for conducting the internal business of a labor organization. The section also lists three such activities reflecting our intention that "internal business" be strictly construed to apply only to those activities regarding the structure and institution of the labor organization. Activities that involve labor-management contacts are not included in this section. Nor is preparation for such activities, such as grievances, bargaining, unfair labor practice proceedings, included within this section. Title VII imposes heavy responsibilities on labor organizations and on agency management. These organizations should be allowed official time to carry out their statutory representational activities just as management uses official time to carry out its responsibilities.

The purpose of title VII is to foster a successful labor-management program in the Federal service. Under the current system, many agencies have elected to ignore litigation before the Council and simply conclude agreements with employee representatives that benefit both agency management and employees. Since the Council's decisions have been too rigid even for agency management, there is a growing body of Federal contracts existing outside the realm of the Council's formal negotiability rulings. (See, e.g., "Assignment and Scheduling of Work in Federal Labor Agreements," USCSC/OLMR 76/14 (August 1976) and particularly clauses numbered 8, 13, 16, 29, 30, 31, 42, 43, 51, 52, 68, 103, and 113 therein.)

Section 7136(a)(1) provides that nothing in title VII will preclude the renewal or continuation of such agreements. In this way, we have sought to insure that our goal of bringing successful labor relations programs to other agencies will not impair the ongoing development of such programs in agencies where they already exist. This goal also requires great hesitancy in applying Council decisions, even where those decisions interpret language in the order identical to that found in title VII.

The whole structure and approach of title VII is in large part a repudiation of past Council practice. If we could not have been assured that identical language for management rights would be handled differently under the narrow construction mandated by title VII, the Udall compromise would never have been possible. That compromise is an important step in gaining House action on title VII and the bill in general. Many of us believe that the list of management rights is needlessly long, but we also believe that interpreted in accord with the clear principles enunciated in the legislative history the list of management rights will not impair a genuine collective bargaining relationship over meaningful issues. This last understanding is an essential element in all that we do in adopting the Udall compromise.

Section 7103(a)(14)(A) defines the term "conditions of employment" and the exceptions to the term. The general obligation of both management and labor to bargain in good faith is an obligation to bargain over "conditions of employment." Section 7103(a)(14)(A) was amended to clarify the intent that collective bargaining will not extend to matters of discrimination in agencies subject to the jurisdiction of the Equal Employment Opportunity Commission. Under section 11 of the Equal Employment Opportunity Act of 1972, Public Law 92-261, 86 Stat. 111, codified at 42 U.S.C. 2000e-16, the Civil Rights Act of 1964 was amended to include the prohibition of employment discrimination in the Federal Government. Under the act, the Civil Service Commission (CSC) was given oversight responsibility for equal employment and affirmative action programs in the Federal Government. A desire for more expert handling of such issues, and to some extent a dissatisfaction with the performance of CSC in this area, led to the transfer of CSC functions in the area of employment discrimination and affirmative action to the Equal Employment Opportunity Commission (EEOC). See Reorganization Plan No. 1 of 1978, effective May 6, 1978. The committee has added language to this subsection to make clear its intent that agencies and labor organizations do not engage in bargaining over matters subject to the EEOC's jurisdiction. Like the Civil Service Commission before it, the Equal Employment Opportunity Commission now has jurisdiction over all Federal employees covered by the 1972 act, except for those in the Library of Congress for whom the 1972 act precludes outside review of discrimination matters by another administrative agency.

I urge my colleagues to support this amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the amendment is simply the administration's proposal for a flexible but orderly codification of the Executive orders which have successfully governed Federal labor-management relations since 1962. Four Presidents, two of each party, have managed to work with the guidelines embodied in this substitute, and now their successor has offered to codify the system into statutes which cannot, like Executive orders, be revoked by the White House at will.

The substance of this amendment closely resembles the original program established by President Kennedy.

First. Union membership and dues remain voluntary. Work slowdowns, stoppages or picket lines continue to be unfair labor practices.

Second. The President retains his right, within the law, to appoint and remove members of a bipartisan Federal Labor Relations Authority, whose General Counsel would investigate and prosecute unfair labor practies, as does the General Counsel of the National Labor Relations Board.

Third. The amendment would permit negotiated grievance arbitration on most matters, and the FLRA would have subpena powers to enforce final decisions, which would be subject to judicial review on constitutional questions.

Fourth. Under this substitute, an agency's mission, budget, organization and internal security practices would remain beyond the scope of collective bargaining, as would the wages, fringe benefits, and number of employees in an agency; the numbers, types and grades of positions or employees assigned to an organizational unit, work project or tour of duty; or the technology of performing the work of such projects.

The other provisions of this substitute are substantially identical to Executive Order 11491, as amended.

Fifth. The uniformed services, Foreign Service, Tennessee Valley Authority, national and internal security agencies, and non-executive agencies are excluded from coverage.

Sixth. National consultation rights at an agency-wide level are available to unions which represent a substantial number of agency employees, but are not recognized as the exclusive bargaining agent. Exclusive representation rights would be won by a union's receiving a majority of votes in elections by secret ballot.

Seventh. Agencies would be required to show a "compelling need" why an otherwise negotiable regulation should be kept off the bargaining table.

The Assistant Secretary of Labor for Labor-Management Relations would continue to issue standards of conduct for all labor organization in both the private and public sectors.

Mr. Chairman, I support the amendment.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to point out the four major places where my amendment

differs from the Udall substitute. One is on exclusive recognition with a union election. My amendment continues our current procedure in requiring an election must be held before exclusive recognition status can be granted to a union. The committee bill and the Udall substitute, however, depart substantially from our current standard and permits the Federal Labor Relations Authority to grant exclusive recognition without an election simply on the basis of a showing by a labor organization that it represents a majority of the employees in the agency. This could be shown either on the basis of a card check or a petition. We differ on that point.

On picketing, my amendment includes a provision against picketing which interferes or threatens to interfere with an agency's operation, which is presently in the current Executive order prohibition. The committee bill, on the other hand, is unclear on the subject of picketing. It is also unclear in the Udall substitute. In its provisions on unfair labor practices, the committee bill does not include picketing as an unfair labor practice. I am uncertain if the exclusion would permit pickets in all circumstances and, if so, what recourse would an agency have if such picketing was not an unfair labor practice?

Another section on which we have a difference is that of dues withholding and official time.

My amendment allows unions to enter into dues withholding agreements with agencies, and the service charge for the work would be subject to bargaining. Under the voluntary dues withholding system, allotments are revokable at 6 month intervals. Both of these provisions are identical to our current program.

The committee bill and the Udall substitute, on the other hand, depart from our current program by requiring an agency to deduct dues at the request of an exclusive union. Allotments would be irrevocable for 1 year, and would be made free of charge to both the union and the employee.

The committee bill also allows for dues withholding arrangements for unions with 10 percent or more membership in bargaining units where there is no exclusive union.

The fourth point on which we do not agree, and which is of major concern is that of judicial review of Federal Labor Relations Authority.

My amendment, and I differ from the Udall substitute, provides that decisions and orders issued by the Federal Labor Relations Authority are final and enforceable by the Federal Labor Relations Authority and are not subject to judicial review for enforcement—except that judicial review may be obtained on constitutional questions. Access to judicial review for adverse action and discrimination matters would continue under my amendment.

The committee bill seriously weakens the Federal Labor Relations Authority by providing that all of its decisions and orders are subject to judicial review in any U.S. District Court.

What would happen under this judicial review is that one individual could go to court instead of bringing it before the Federal Labor Relations Authority, this when our courts are so overcrowded. Although we want everyone to have full recourse to judicial review, this would mean that it would go to the court system if one individual wished, and this would mean unending litigation and would make the paperwork on this unbearable.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I thank the gentleman for yielding. I want to congratulate him for this amendment.

Mr. Chairman, it just seems incomprehensible that at a time when we are talking about more democratic procedures, we are talking about the rights of the rank and file, we are talking about individuals becoming more active throughout the country that we would have a bill which would limit the right of an employee to make an expression of whether or not he wants to belong to a union.

The provision in title VII, as reported in the Udall substitute, is absolutely an invitation to blanket in union membership without a vote.

Mr. Chairman, one of the most fundamental American principles is that we should have votes and, indeed, secret ballots on very substantive issues. Whether one is going to be required to belong to a union or not is a very substantive issue, and to try to blanket such an issue with an overall designation that we can have the FLRA blanket members into a union without a vote runs against the tide of everything that we have been doing.

The CHAIRMAN. The time of the gentleman from Texas (Mr. COLLINS) has expired.

(By unanimous consent, Mr. COLLINS of Texas was allowed to proceed for 3 additional minutes.)

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield further?

Mr. COLLINS of Texas. I yield to the gentleman from Ohio.

Mr. ASHBROOK. To continue. Mr. Chairman, it runs against the tide of everything that we have been doing, and against all of the great liberal talk on the other side.

Mr. Chairman, if we look at this from the civil rights standpoint, this is as important a civil right as anyone could have in America. I am amazed to see the great civil rights advocates look the other way when it comes to forcing members into a union without a vote. If they want a vote and there is a majority, that is fine. We all agree with that. However, it certainly runs against the tide of civil rights to say that we are going to make a person belong to a union without a secret ballot, without an expression of the majority.

Mr. Chairman, the one thing which the gentleman from Illinois (Mr. ERLENBORN) and I have pointed out so frequently during the debate on the so-called Labor Reform Act is that often rank-and-file members of a union are denied the same democratic rights that others enjoy. Everyone would be astounded at the abuse of those rights if that happened anywhere else.

Mr. Chairman, I could cite examples of union members who have been fired for merely speaking out against the international officers. We had examples of unions fining members for having the audacity to run against an international president. They fine members for the exercise of constitutional rights that would be guaranteed to everyone else.

Somehow or other, on the other side they tend to look the other way. The great civil rights advocates of our time tend to look the other way when it comes to the basic constitutional rights of either union members or of workers who are about to be placed in the union, whether it is with their vote or without their vote. Our liberal friends just don't care. Their concern about civil rights has a water's edge and that is when unions are involved.

Mr. Chairman, I think the Collins amendment helps further some of the basic democratic rights which all of us in our speeches at home enunciate, except for those who look the other way when it comes to this vital area of recognition and whether or not a rank-and-file member should have a right to vote.

Mr. Chairman, I think it is basic that there should be a vote and there should be a secret vote. Any effort to force union membership on any employee, particularly a Federal employee, without a vote certainly runs against the tide of good public opinion and proper constitutional practice.

Again, Mr. Chairman, I certainly support the Collins amendment.

I think for all the reasons the gentleman pointed out, we could go through every section in order to have a much more balanced approach. I think we have to decide whether we want a balanced approach or whether we want the Federal unions to literally run the Federal service.

Mr. COLLINS of Texas. Mr. Chairman, the gentleman from Ohio (Mr. ASHBROOK) sums the matter up well in saying that every worker in America is entitled to freedom of choice and they should have the right to vote on whether they want to belong to a union; and based on their vote, they would be so governed.

This is a very serious flaw in the Udall substitute because it almost brings on mandatory unionism instead of giving all of the workers an opportunity to decide for themselves.

AMENDMENT OFFERED BY MR. RUDD TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. RUDD. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. RUDD to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Immediately after section 7103(a)(2)(iv), insert the following new paragraph:

"(V) any person who participates in a strike in violation of 5 U.S.C. 7311;".

Mr. RUDD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. RUDD. Mr. Chairman, this slight but important addition to the exclusions from the definition of "employee," in the Udall substitute to Collins, amendment and, restates in clear and unequivocal language that strikes against the Federal Government are illegal and punishable.

By adding this exclusion, we will remove any doubt about the intent of this Congress and this legislation with regard to strikes by Federal employees.

The effect of this amendment is straightforward.

An employee who strikes is no longer eligible to work for the Federal Government.

Such a person would no longer enjoy the protections and benefits of this legislation.

This provision is consistent with the penalties already contained in title 5 of the United States Code.

It is, in fact, more lenient than the provisions of title 18, which allows fines and imprisonment for strikers.

These penalties are consistent with the provisions of Executive Order 11491.

But more importantly, this amendment is consistent with the original and overall intent of this legislation—to facilitate the removal of those employees who are inadequate in the performance of their jobs.

For there can be no more inadequate performance than total abandonment of job responsibilities in order to strike.

It has long been recognized that public employment is quite different than private sector employment.

These differences are most acute when it comes to labor relations in general, and strikes in particular.

Strikes deprive the public of services for which there is no alternative source of supply.

Some of these services, including many provided by the Federal Government, are so critical that their disruption threatens the public well-being.

Many other strikes by Federal employees would cause extreme hardship to individuals and businesses across this country.

Just this summer, we have seen too many American cities thrown into chaos by striking police, firefighters, garbagemen, and others seeking to force these cities to capitulate to their demands.

Such actions are nothing short of blackmail—the actions of a narrow-interest group holding public welfare hostage in order to achieve their own selfish ends.

There can be no question that we need to ban public sector strikes.

The threat to the public is unthinkable.

The tactic is intolerable.

Title VII of this bill must very clearly restate the intent of Congress that strikes against the Federal Government are illegal and punishable.

This amendment accomplishes that purpose.

I urge its adoption.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, in a burst of good fellowship between Arizonans, if the gentleman wants to save time for other Members who have more contentious amendments, we are prepared to accept this one. It is already in the law.

Mr. RUDD. Mr. Chairman, I thank the gentleman very much. This amendment nails it down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. RUDD) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7112 of subpart F of part III of title V, United States Code, is amended by inserting after subsection (c), a new subsection (d) (and redesignating the subsequent subsections accordingly) which reads as follows:

"(d) Any employee who is engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated, or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal Office.".

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, this amendment addresses what I consider to be a very serious problem, and that is the possible conflict that Federal Election Commission employees will face if they belong to and are represented by a labor union that is subject to supervision under the Federal Election Act. I do not stand alone, nor was I the one first to observe the problem, and I do not stand alone in looking for a solution.

I have here a letter dated July 20 of this year from the Federal Election Commission and signed by all of its members. The Commission itself and the members of the Commission are deeply concerned about this conflict. I will read it in part. The letter is addressed to the President and it says:

DEAR MR. PRESIDENT: The undersigned members of the Federal Election Commission, by this letter, urge that appropriate steps be taken to exempt the Federal Election Commission and its staff from collective bargaining with, and representation of employees by, labor unions which maintain political action committees or which endorse or support Federal candidates.

The letter goes on to ask that under the Executive order or through an amendment to the bill before us the Commission be exempt from having to recognize the union that they are supervising under the act. I think that is a reasonable request. I am surprised that the committee, knowing of the concerns of the Commission, did not respond and adopt in committee an amendment such as the amendment offered here.

The sole effect of my amendment is to say that unions that maintain political action committees or who endorse candidates for Federal office may not represent the employees of the Election Commission. The two conditions are conditions that would subject a union to supervision by the very people we are talking about here. I do not see any way we can reach any other conclusion than that there is a clear conflict of interest, if we have a member of the union investigating the very union that he belongs to.

I would hope that the committee would see fit to agree to this amendment.

Mr. FORD of Michigan. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, with all due respect to my colleague, the gentleman from Illinois (Mr. ERLENBORN), the purpose that his amendment purports to carry out is a laudable one and one on which we are in total agreement. But, unfortunately, to reach his end he is driving a tractor across the front lawn, and it really is not necessary; a lawnmower would do the job.

I am sure that the gentleman has no way of knowing about the background of this. First of all, consider that what we are talking about is a bargaining unit of 150 employees which last week held an election to determine whether or not they wanted to belong to a union, and in fact selected the union to which they would belong. Seventy-five percent of all the employees in the unit participated in the secret election, as the gentleman has indicated he would like the practice to be, and 80 percent of those who participated in the election voted to select the National Treasury Employees Union as their collective bargaining agent. So, in fact, we are now at the point today where the FEC is required under the existing Executive order, not under this bill but under the existing Executive order, to begin

bargaining with a union that has been selected by its employees to represent its employees. Furthermore, it should be noted that the FEC is coming to us, that group of people who I am sure all of us think so fondly of as having done a wonderful job with the attempts we have made in reforming the election law, with a unanimously passed resolution saying that their highly laudable purpose is simply to avoid a conflict of interest. Baloney! Their highly laudable purpose is that they have a work force that is sufficiently concerned about representation to have an 80-percent vote to select a union to represent them.

What union did they select? Not a union that represents blue collar workers, not a union that represents a wide spectrum of the Federal work force; in fact, not even a union affiliated with the AFL-CIO, but an independent union which has grown out of representing Internal Revenue agents.

What is amazing is that a union made up entirely of professionals, that includes every office of the Internal Revenue Service in the United States, cannot be trusted to conduct audits if they belong to a union, if they are working for the FEC; yet those employees that belong to that union audit you and I as citizens. They audit every union in this country. They audit every nonprofit organization in this country and they audit every corporation from General Motors on down.

Now, the FEC came to us and talked to us about this. We said, "Look, this can be solved," and we conferred with Chairman THOMPSON of the House Committee on Administration. The solution of the problem is in the Federal election law to provide that if a union representing the employees of the Federal Election Commission has a PAC and it comes within the purview of the law that that pact is to be audited, then the FEC would be required to go outside and get an independent auditor.

Now, how many times a year are they going to audit their own union PAC. Every month, every 2 months or every 10 years? Or only when they think there is some reason to audit them, or when they come up by the luck of the draw?

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, if this was the first attempt to prevent them, to save themselves from sitting down and bargaining in good faith with their employees, it would not be all that bad. What they first did was that the Federal Election Commission, 150 employees, was not under the existing Executive order as an appropriate bargaining unit and they tried to prevent their employees from joining a union by indicating they would not recognize that their employees constituted within the purview of the present Executive order a bargaining unit. That was appealed to the assistant secretary, who determined that, indeed, the employees of the Federal Election Commission were an appropriate bargaining unit under the Executive order that has been in effect since 1962. They then appealed to the administration and asked the White House to change the Executive order. In other words, after having determined that the rules provided that they could not prevent the employees from joining the union and bargaining with them, they then went around the process and attempted to change the rules by saying, "Take us out of the Executive order." They were refused.

Now, after those efforts to prevent the employees from joining a union and to save themselves from bargaining with their employees, the same as every other Federal agency, they now come to us under the guise of trying to protect the purity of their audits, to try to accomplish by indirection that which they could not accomplish directly.

I will pledge the gentleman from Illinois my full support before the House Committee on Administration and on this floor for clear language in the Federal election law amendments when they come to us that specifically lawfully requires that the Federal Election Commission seek outside independent audits on any occasion when the activity of a union representing its employees are involved. I think that is the proper way to do it. We should not leave here being accused of having literally ex post facto legislated out of existence a bargaining unit.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. ERLENBORN, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I appreciate what the gentleman from Michigan (Mr. FORD) has said, and I hope that that clear expression is forthcoming in the Federal election law or the report accompanying it.

But the gentleman is referring, I think, only to audits. There is the other question raised by this amendment, and that is as to employees belonging to a union that has endorsed a candidate for Federal office. Now, that means that we will have employees of the commission who may be investigating that very candidate or the committee supporting the candidate that they have endorsed or who may be investigating the opponent of the candidate they have endorsed. That goes beyond the question of audits.

How would the gentleman suggest that, without the adoption of an amendment such as this, we ward off that kind of conflict of interest?

Mr. FORD of Michigan. Mr. Chairman, I will say to the gentleman from Illinois (Mr. ERLENBORN) that I do not really think that we do that. What the latter part of the gentleman's amendment suggests is this—and I frankly did not allude to it—in addition to the other conditions, any "labor organization which expressly advocates the election or defeat of any candidate for Federal office."

Now, is it not rather interesting that of all the unions in this country representing employees in the private sector, in and out of right-to-work States, it has never occurred to anyone to change the National Labor Relations Act to affect the ability of the members of a group to belong to a union if in fact that union takes a position in elections?

This would make the FEC distinct and different from every other collective bargaining unit in the U.S. Government.

I am frankly ashamed of the fact that the Members of my party voted on FEC to ask for this kind of an amendment. I think it is the most undemocratic—with a small "d"—proposal I have ever heard. I think it is an absolute outrage, and it is an insult to every Member in this House who worked for election reform and for the purity of the electoral process.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has again expired.

(On request of Mr. ERLENBORN, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, let me point out that there are two portions of my amendment. One is as it applies to the political action committees and proscribes belonging to a union or a group that is affiliated with a union that maintains a political action committee.

Mr. FORD of Michigan. Mr. Chairman, if I might put the gentleman's mind to rest, I suspect there is a little jealousy in there someplace. The fact is that this is an independent union which got there "fustest with the mostest" and beat the AFL–CIO to the punch and got the bargaining unit. That might have something to do with some attitudes in this House about whether or not we want to protect what they have done.

They are not affiliated with any other union. They are an independent union, representing Treasury agents, IRS agents, and similar types of Federal employees.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I was going to point out that in the second part of my amendment the language is addressing the prohibition against belonging to a labor organization that expressly advocates the election or defeat of a candidate for Federal office, and we left out that portion about being "affiliated with."

So we could have in this instance a union local that is affiliated with the AFL–CIO, and the AFL–CIO could advocate the election or defeat of a candidate and not violate this particular amendment.

What we are saying is that the union local representing the FEC employees should not advocate the election or defeat of a candidate for office. I think it is quite apparent that they ought not

do that. We ought not have the regulators under our Federal election laws advocating the election or defeat of the very people who are running for office and subject to their jurisdiction.

Mr. SOLARZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. ERLENBORN), the author of the amendment, a few questions.

I gather it is the purpose of this amendment to in effect deal exclusively with the FEC, and with no other Federal agency.

Mr. ERLENBORN. If the gentleman will yield, that is correct.

Mr. SOLARZ. If that is in fact the case, I wonder if the gentleman could explain what seems to me to be a potentially significant ambiguity in this amendment. As I read the amendment, it says that any employee who is engaged in the administration, interpretation, and enforcement of the Federal Election Campaign Act of 1971 shall not be represented by any labor organization which maintains a political action committee, and then it goes on. Now, it seems to me that this might very easily be interpreted to apply, for example, to employees in the Justice Department who have the responsibility for the enforcement of the criminal penalties in the FEC law, and that, in this sense, the gentleman's amendment might not only prohibit the employees of the FEC from being represented by a labor union, but might also prohibit, unintentionally and unwittingly, but nevertheless inescapably, employees of the Justice Department, who are engaged in the administration and enforcement of this law, from being represented by unions as well.

Mr. ERLENBORN. If the gentleman will yield, as the gentleman now calls my attention to it, that might very well be the interpretation. The language, by the way, of this amendment is not language that I drafted but, rather, is an amendment drafted by the Federal Election Commission and suggested by them.

Let me point out to the gentleman that the Udall substitute to which this amendment is being offered has language relative to the exclusion of a similar nature for those units of Government administering Federal labor-management relation laws. And let me quote. It excludes from any bargaining unit employees engaged in "administering any provision of law relating to labor-management relations."

I think, likewise, there you might have the Solicitor's office, or possibly even the Justice Department, administering in some fashion the criminal law, the criminal sections in the National Labor Relations Act. So the same sort of language is used by the committee and by the gentleman from Arizona (Mr. UDALL).

Mr. SOLARZ. This is the gentleman's amendment, and I do not think that it would be appropriate for us to pass an amendment of this nature unless we had a very specific idea of what it meant and what it did not mean.

Is it the gentleman's intention that this amendment apply solely to the FEC?

Mr. ERLENBORN. That is my intention.

Mr. SOLARZ. I thank the gentleman for that clarification. I think it makes the amendment less unfortunate than it otherwise would have been, but I do at this point, having received that clarification, nevertheless want to indicate that I support the observations made by the gentleman from Michigan. I urge my colleagues, this clarification notwithstanding, to vote against the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ERLENBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 166, noes 217, not voting 49, as follows:

[Roll No. 763]

AYES—166

Abdnor	Goodling	Myers, John
Andrews, N.C.	Gradison	Neal
Andrews, N. Dak.	Grassley	O'Brien
Archer	Gudger	Pease
Ashbrook	Guyer	Pettis
AuCoin	Hagedorn	Poage
Badham	Hall	Pressler
Bafalis	Hammer-schmidt	Preyer
Barnard	Hansen	Pursell
Baucus	Hefner	Quayle
Bauman	Hightower	Quillen
Beard, Tenn.	Hillis	Railsback
Biouin	Holt	Regula
Bowen	Horton	Rhodes
Breckinridge	Hughes	Rinaldo
Brown, Mich.	Hyde	Robinson
Brown, Ohio	Ichord	Rogers
Broyhill	Ireland	Rose
Buchanan	Jeffords	Rousselot
Burgener	Jenkins	Rudd
Butler	Jones, N.C.	Runnels
Carter	Jones, Okla.	Ryan
Cavanaugh	Kazen	Santini
Cederberg	Kelly	Satterfield
Clausen, Don H.	Kemp	Sawyer
Cleveland	Kindness	Schulze
Cohen	Kostmayer	Sebelius
Coleman	Lagomarsino	Sharp
Collins, Tex.	Latta	Shuster
Corcoran	Leach	Skubitz
Coughlin	Lent	Smith, Nebr.
Crane	Livingston	Spence
Cunningham	Lott	Stangeland
D'Amours	Lujan	Steiger
Daniel, R. W.	Lundine	Stockman
de la Garza	McClory	Symms
Derwinski	McCloskey	Taylor
Devine	McDade	Thone
Dickinson	McDonald	Treen
Dornan	McEwen	Trible
Duncan, Oreg.	McKay	Waggonner
Duncan, Tenn.	Madigan	Walgren
Edwards, Ala.	Mahon	Walker
Edwards, Okla.	Mann	Walsh
Emery	Marks	Watkins
English	Marriott	White
Erlenborn	Martin	Whitehurst
Ertel	Mazzoli	Whitley
Evans, Del.	Michel	Wilson, Bob
Findley	Milford	Winn
Forsythe	Miller, Ohio	Wydler
Fountain	Mitchell, N.Y.	Wylie
Frey	Montgomery	Young, Fla.
Gephardt	Moore	Young, Tex.
Glickman	Moorhead, Calif.	
Goldwater	Myers, Gary	

NOES—217

Addabbo	Foley	Nix
Akaka	Ford, Mich.	Nowak
Alexander	Ford, Tenn.	Oakar
Anderson, Calif.	Fowler	Oberstar
Annunzio	Fuqua	Obey
Applegate	Gammage	Ottinger
Ashley	Gaydos	Panetta
Aspin	Giaimo	Patten
Baldus	Gilman	Patterson
Bedell	Ginn	Pattison
Bellenson	Gonzalez	Pepper
Benjamin	Gore	Perkins
Bennett	Green	Pickle
Bevill	Hamilton	Pike
Biaggi	Hanley	Price
Bingham	Hannaford	Pritchard
Blanchard	Harkin	Rahall
Boggs	Harrington	Rangel
Boland	Harris	Reuss
Bolling	Harsha	Roberts
Bonior	Heckler	Rodino
Bonker	Heftel	Roncalio
Brademas	Holland	Rooney
Brinkley	Holtzman	Rosenthal
Brodhead	Howard	Rostenkowski
Brooks	Hubbard	Roybal
Brown, Calif.	Jacobs	Russo
Burke, Mass.	Jenrette	Scheuer
Burlison, Mo.	Johnson, Calif.	Schroeder
Burton, John	Jones, Tenn.	Seiberling
Burton, Phillip	Jordan	Shipley
Carney	Kastenmeier	Sikes
Carr	Keys	Simon
Chappell	Kildee	Sisk
Chisholm	Krebs	Skelton
Clay	Le Fante	Smith, Iowa
Collins, Ill.	Lederer	Snyder
Conte	Leggett	Solarz
Corman	Levitas	Spellman
Cornell	Lloyd, Calif.	Staggers
Cornwell	Lloyd, Tenn.	Stanton
Cotter	Long, La.	Stark
Daniel, Dan	Long, Md.	Steed
Danielson	Luken	Steers
Davis	McCormack	Stokes
Delaney	McFall	Stratton
Dellums	McHugh	Studds
Dent	Maguire	Thompson
Derrick	Markey	Thornton
Dicks	Mathis	Traxler
Diggs	Mattox	Tucker
Dingell	Meeds	Udall
Dodd	Metcalfe	Ullman
Downey	Meyner	Van Deerlin
Drinan	Mikulski	Vanik
Early	Mikva	Vento
Eckhardt	Mineta	Volkmer
Edgar	Minish	Wampler
Edwards, Calif.	Mitchell, Md.	Waxman
Eilberg	Moakley	Weaver
Evans, Colo.	Moffett	Weiss
Evans, Ga.	Mollohan	Whitten
Evans, Ind.	Moorhead, Pa.	Wilson, C. H.
Fascell	Moss	Wilson, Tex.
Fenwick	Mottl	Wirth
Fish	Murphy, Ill.	Wolff
Fisher	Murphy, N.Y.	Wright
Fithian	Murphy, Pa.	Yates
Flippo	Murtha	Yatron
Flood	Myers, Michael	Young, Mo.
Florio	Natcher	Zablocki
Flynt	Nedzi	Zeferetti
	Nichols	

NOT VOTING—49

Ambro	Flowers	Quie
Ammerman	Fraser	Richmond
Anderson, Ill.	Frenzel	Risenhoover
Armstrong	Garcia	Roe
Beard, R.I.	Gibbons	Ruppe
Breaux	Hawkins	Sarasin
Broomfield	Hollenbeck	Slack
Burke, Calif.	Huckaby	St Germain
Burke, Fla.	Johnson, Colo.	Stump
Burleson, Tex.	Kasten	Teague
Byron	Krueger	Tsongas
Caputo	LaFalce	Vander Jagt
Clawson, Del	Lehman	Whalen
Cochran	McKinney	Wiggins
Conable	Marlenee	Young, Alaska
Conyers	Miller, Calif.	
Fary	Nolan	

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Fary against.

Mr. Teague for, with Mr. Richmond against.

Mr. Broomfield for, with Mr. Hawkins against.

Mr. Burke of Florida for, with Mr. Krueger against.

Mr. Del Clawson for, with Mr. Ammerman against.

Mr. Frenzel for, with Mr. Garcia against.

Mr. Ruppe for, with Mr. St Germain against.

Mr. Vander Jagt for, with Mr. Beard of Rhode Island against.

Mr. Wiggins for, with Mr. Miller of California against.

Mr. Burleson of Texas for, with Mrs. Burke of California against.

Mr. Risenhoover for, with Mr. Conyers against.

Mr. EDGAR changed his vote from "aye" to "no."

Messrs. HIGHTOWER, WHITE, SHARP, D'AMOURS, BLOUIN, and GLICKMAN changed their vote from "no" to "aye."

So the amendment to the amendment offered as a substitute for the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments?

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7104(f)(1) of subpart F of part III of title V, United States Code, is amended by inserting before the final period the words "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office".

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, this amendment will add a requirement to the exercise of the authority by the President to remove the General Counsel for the Federal Labor Relations Authority. Under the National Labor Relations Act the Board has a General Counsel very similar to the General Counsel created by this act. In the instance of the General Counsel for the NLRB, he may be removed only upon notice and hearing and good cause. The members of the Federal Labor Relations Authority themselves are subject to removal for cause only. This amendment will merely add the language that is already in the act relative to the members of the Authority and apply it to the General Counsel so that the General Counsel could be removed only for cause.

I would hope that the amendment would be adopted.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield to me?

Mr. ERLENBORN. I will be happy to yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

I must say to the gentleman that I believe that I offered a similar amendment in the committee, and it was defeated. I am honor bound by the agreement to support the compromise that has been worked out to vote against the gentleman's amendment, but I obviously have no quarrel with it in principle and wish that I had won in the committee.

Mr. ERLENBORN. If I understand the gentleman correctly, then he would be very pleased if the amendment were adopted. I hope the amendment will be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. Are there other amendments?

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7111(b) of Subchapter II of subpart F of part III of title V, United States Code is amended by striking "(b)(1)" and substituting therefore "(b)"; and is further amended by striking from presently designated 7111(b)(1)(B) the words "Except as provided under subsection (e) of this section, if" and substituting therefore "If", and by striking the words "subject to paragraph (2) of this subsection"; and by striking all of paragraph (2), including (2)(A) and (2)(B).

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, the Udall substitute before us has a provision that would mandate the conduct of an election for recognition purposes even though there may be unresolved outstanding issues such as who is eligible to vote, what the proper unit is for conducting the election, and so forth.

The thrust of my amendment is to remove the requirement for the election under these circumstances so that the election would be held only when these unresolved issues have been resolved, and it would also be my understanding that there would be an expedited resolution of the outstanding issues so that we would not have a delay in the conduct of the election. It is not my purpose to add to any delay in conducting a recognition election, but rather to see that when the election is held we know what the proper unit is for conducting the election and who within that unit is eligible to vote, because should these questions be resolved in some way contrary to the way the election was conducted, it would throw the election out and merely delay matters and force the holding of another election anyhow. So this would have us resolve these questions in an expedited election and then hold the election in the best interests of all the parties.

I would hope that the amendment would be agreed to.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I will be happy to yield to the gentleman from Missouri.

Mr. CLAY. I thank the gentleman for yielding.

It is not the gentleman's intention to oppose expedited elections; is it?

Mr. ERLENBORN. In response to the gentleman, certainly not. I want these elections to be held within a reasonable period of time, but I want to see that the questions as to eligibility, and so forth, are resolved before the election is held.

Mr. CLAY. Mr. Chairman, if the gentleman will yield further, it would also be the gentleman's intention that the FLRA should do all within their power to expedite elections?

Mr. ERLENBORN. Yes, absolutely. I want the authority to expedite the resolution of these questions, so that the election may be held at an early day.

Mr. CLAY. Mr. Chairman, I have no objection to the amendment.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, would I be properly stating the intent of the gentleman's amendment to be predicated on the fact that under existing law and the law as it would remain with the passage of this bill, unlike the private sector, management, in this case the Federal Government, must remain neutral, completely neutral, and not participate in any way in encouraging or discouraging the acceptance or selection of a union by its employees and, therefore, the sense of concern that was in the Labor Reform Act does not exist here.

The gentleman intends that they should expedite the elections as early as possible, but the protection for the employer to have time to campaign is not necessary here, so that a specific time as we had set up in the bill really is unnecessary.

Mr. ERLENBORN. Mr. Chairman, I think the gentleman is correct. I would agree with that.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman

from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7111(b)(1)(B) of subchapter II of subpart F of part III of title V, United States Code is amended by striking the words "Except as provided under subsection (e) of this Section, if", and substituting therefor "If"; and section 7111 is further amended by striking all of subsection (e) and redesignating the subsequent subsections accordingly.

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, this amendment strikes sections of the Udall substitute which allow certification of a labor organization without an election of the employees of the unit, where in the terms of the amendment a free election cannot be held because of unfair labor practices by an agency.

Now, first of all, it is very unlikely that you would find a Federal agency engaging in unfair labor practices prior to the holding of a certification election.

The amendment goes on to say in the second condition where the authority determines without an election, that the union has a majority. I think it is impossible for the authority to be able to find that a majority of the employees wish to belong to a union without the holding of an election.

The Udall substitute would allow the certification of a union under these circumstances without the holding of an election.

Mr. Chairman, so that I not be misunderstood, I am not addressing myself to a bargaining order. As far as I understand, the authority would still be able to order the agency to engage in bargaining with the union, even though an election had not been held, if they find these conditions exist; so that what we want to get to here is the certification, not a bargaining order. The certification, of course, carries with it certain rights to certain further recognition of the union. For instance, I understand if they are certified, that closes the question as to exclusive representation for a year. If there is a bargaining order, those same conditions do not prevail.

Mr. Chairman, I would be happy to yield to the gentleman from Michigan, if the gentleman has any comment or question.

Mr. FORD of Michigan. Mr. Chairman, as I understand the intent of the gentleman's amendment is not to reverse entirely what is here coming from the Supreme Court decision in NLRB against Gissell, but really to eliminate the card check provision in lieu of an election for the initial recognition; but that the gentleman does agree that in the event a Federal agency interfered in some fashion or did not cooperate in the holding of the election and going forward, that the labor authority would continue to have the authority to step in and tell them to start playing fair and issue bargaining orders and require the agency to begin bargaining with the union.

Mr. ERLENBORN. Yes. I would agree that the authority would have the right to find if there were an unfair labor practice by the agency, and as I understand it, they may even be able to order bargaining with the unit. But this gets only to the question of certification, and it does conflict with the Gissel decision.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman. With that understanding, I have no objection to the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ELLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Amend newly designated section 7103 of subpart F of part III of title V, United States Code by striking the "or" after subparagraph 7103(a)(4)(B); by inserting an "or" after subparagraph 7103(a)(4)(C); and by inserting the following new subparagraph 7103(a)(4)(D):

"(D) an organization which participates in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;".

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. FORD of Michigan. Mr. Chairman, reserving the right to object, I have a printed copy of the gentleman's amendment. I understand that the staff has worked out some change in its original typed copy. My copy does not show any changes.

Am I correct in my understanding?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, my understanding is not that there was any change in the wording of the amendment, but I think in the interpretation of the amendment it gets to the question as to whether decertification is automatic or not.

Mr. FORD of Michigan. Mr. Chairman, continuing under my reservation, counsel over here indicates that the words, "or" and "assists" were deleted.

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield further, let me amend my statement. I understand there is an agreement to remove the words, "assists, or". So the amendment will read: "an organization which participates in the conduct of a strike * * *"

I understand the amendment that was submitted at the desk has been so changed.

Mr. FORD of Michigan. Yes. Mr. Chairman, I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CLAY. Mr. Chairman, reserving the right to object, so I may clarify the understanding, the agreement was to remove the words, "assist, or," is that correct?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, that is correct. The amendment at the desk has been so changed.

Mr. CLAY. Mr. Chairman, we have no objection to the amendment, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to ask the gentleman this question: It is the understanding of the gentleman from Illinois (Mr. ERLENBORN) that it would still be up to the labor authority to determine whether or not this provision applies?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, yes, that is correct. This would leave the discretion in the FLRA as to whether or not the decertification should be applied. It will not happen automatically.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman for his answer. We have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Strike newly designated section 7113 of subpart F of part III of title V, United States Code, and redesignate the subsequent sections accordingly; and amend newly designated section 7117 by striking all of subsection (d).

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illnois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, let me initially say that I thank the gentleman from Michigan (Mr. FORD) for his cooperation, and I am certain that the Members of the House thank him for his cooperation in expediting the consideration of title VII. I am very pleased that I have been able to cooperate with the gentleman and that our staffs have worked together so well.

For the information of the House, this is the last amendment I am going to offer to title VII.

We have no agreement relative to this amendment, but I would like to have some colloquy so that we could understand what the bill and the Udall substitute mean in the section entitled, "National Consultation Rights."

Now, as I read this, a union representing a minority of the members may gain national consultation rights. Certain rights and privileges then attach to that union. One is that they must be informed before changes in pay and other working conditions are put into effect by the agency involved. My reading of this section of the Udall amendment and the bill would lead me to believe that this could happen: It may not be contemplated by the authors, but we could have national consultation rights attached to a minority union and then another union would be successful in a certification election and be certified as the exclusive bargaining agent, and thereafter the bargaining would take place. But before the agreement that was reached by the majority union and the agency could be put in place, the agency would have to go back to the minority union which is not certified as a bargaining agent and advise them and let them comment on the results of the negotiations.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, first, I would like to say, in response to the gentleman's very last statement, if there is an exclusive right to bargain, the consultation provision really is not applicable.

There are two ways in which the consultation works, and I should say to the gentleman that it is in the Udall substitute. I assume it is in the Collins substitute because it is in the existing executive order. This is in fact the law as it has been since 1962.

Mr. ERLENBORN. Could I ask the gentleman, is that what is commonly referred to as meet and confer?

Mr. FORD of Michigan. Meet and confer. It works in two ways. If, in a large agency, the agency promulgates an agencywide regulation, but a particular union, while it represents a majority of the people in a bargaining unit, does not represent the majority of the people in the total agency, the agency has no obligation to negotiate in any way with the union, but before promulgating an agencywide regulation that would affect the rights of that bargaining unit, they would meet and confer with the representatives of those employees. They could ignore what they say, but at least they would have to get their input and discuss it with them. They are not compelled to bargain over the issue, nor are they in any way bound by the results of that conference.

The second way in which it works is the situation where we have 26 or more unions representing Federal employees, plus a number of associations and organizations that stand in the place of unions and function in the same fashion, and they may represent individual agencies, and then it is proposed to promulgate a Government-wide regulation that would affect all employees. In that instance the individual unions will be called into consultation to hear what they have to say about the proposed regulation. Again, there is no requirement on the Government to negotiate the matter, simply advise them they are about to do it and hear what their reaction to it is. It really is nothing but meet and confer.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for the clarification of the committee's intent. I found this section difficult to understand, and I think this clarification will help in the interpretation.

Mr. Chairman, pursuant to our agreement, I ask unanimous consent to withdraw this amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to have the attention of the gentleman from Michigan (Mr. FORD) and/or the gentleman from Arizona (Mr. UDALL).

Mr. Chairman, I am directing my inquiry to section 7106 of the Udall substitute. I would like to refer, first, Mr. Chairman, to the Executive order from which this section was taken and modified, and I will read in part from the Executive order.

However, the obligation to meet and confer does not include matters with respect to the mission of an agency, its budget, its organization, the number of employees and the numbers, types and grades or positions of employees assigned to an organizational unit, work project, or tour of duty, the technology of performing its work, or its internal security practices.

Now, as I read the Udall substitute, that portion of the Executive order has been, in effect, split up into two parts. The Udall substitute says, under "management rights," section 7106:

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

Then it drops down in subsection (b) and says:

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

My first question, then, to the gentleman from Michigan is, why was that particular part of the Executive order split into two parts, if the gentleman can give me an answer to that.

Mr. FORD of Michigan. I should say that the splitting of the two parts has no substantive effect on the status quo. In fact, we are picking up the language of the management rights clause, as it is referred to in the Executive order, by tailoring it to fit the structure of this bill so that it does not diminish the relative rights of either the employee organizations or the Government agency with respect to any of the contents of both sections the gentleman referred to.

Mr. EDWARDS of Alabama. The Executive order says that there shall be no obligation to meet and confer on "numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty," and so forth; in other words, down at the base level in the case of a defense facility, for example. Yet, in the Udall substitute it says they are not "precluded" from meeting and conferring which suggests that under the heat of bargaining they in fact could negotiate and bargain at that level. Is the Defense Department or any other Federal agency, for that matter, required to bargain on those particular subjects?

Mr. FORD of Michigan. Will the gentleman yield?

Mr. EDWARDS of Alabama. I yield.

Mr. FORD of Michigan. It is permissible, and it is in exactly the same status as the existing law. I might say that not only are they under no obligation to bargain, but in fact they can start bargaining and change their minds and decide they do not want to talk about it any more, and pull it off the table. It is completely within the control of the agency to begin discussing the matter or terminate the discussion at any point they wish without a conclusion, and there is no appeal or reaction possible from the parties on the other side of the table.

It is completely, if you will, at the pleasure and the will of the agency. Where an agency wants to resolve a particular problem with an organization and come to some agreement, it can choose to do so. There are circumstances

where that has been done, but very rarely.

Mr. EDWARDS of Alabama. Is it an issue that could go forward to the Impasse Board?

Mr. FORD of Michigan. No, it cannot.

Mr. EDWARDS of Alabama. So that, if I understand the gentleman correctly—and I will use the Defense Department again as an example—if the Defense Department chooses not to negotiate on the subject of "numbers, types and grades of positions or employees assigned to an organizational unit, work project, or tour of duty," and so forth, as provided in that subsection (b)(1), then there is no way that they can be forced to negotiate on those subjects?

Mr. FORD of Michigan. That is correct.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(At the request of Mr. FORD of Michigan and by unanimous consent, Mr. EDWARDS of Alabama was allowed to proceed for 2 additional minutes.)

Mr. EDWARDS of Alabama. And if they in fact start negotiating on those subjects and conclude at some point that they should not negotiate further, there is no way to force them to negotiate further?

Mr. FORD of Michigan. That is correct. It is completely within the discretion of one side of the table, and there is no appeal from their decision.

Mr. EDWARDS of Alabama. It is the gentleman's opinion, if I understand the gentleman correctly, that the intention of the drafters of this particular section of the Udall substitute is that, in practical effect, they have intended to carry out the original language of the Executive order, but have just rearranged it in a different way.

Mr. FORD of Michigan. I believe that those of my colleagues who have worked on the bill could concur with me that it was not our intention to substantively affect the status quo with respect to specific items contained in either of the sections involving items that are permissably negotiable.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I concur with the interpretations of the gentleman from Michigan and I would say regarding the management rights it may be argued that we should be moving more favorably toward the management rights than away from them.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. LOTT. Mr. Chairman, I move to strike the last word, and I rise in support of the Collins amendment.

Mr. Chairman, I rise in support of this title VII amendment, which would continue the successful labor management program established by Executive order in 1962.

The language of the amendment is, with minor changes, identical to that of the Executive order and to the title VII approved by the Governmental Affairs Committee of the other body.

Title VII as reported to the House contains some extremely controversial material and cannot properly be called a mere codification of the Executive order. Title VII as reported would allow the FLRA, under certain conditions, to extend exclusive recognition to a union without an election by the employees concerned; it would allow a union with as little as 10 percent representation to negotiate with an agency for a voluntary dues checkoff; it would nullify the Executive order's decertification provisions against unions which condone or participate in strikes; and it would even allow the so-called "informational" picketing of an agency.

Mr. Chairman, these are not provisions which we can make consistent with the general principles of civil service reform. We should repeal them by passing this amendment. It has already been pointed out how much further title VII as reported goes beyond the Executive order, the President's initial request, and concessions granted by the other body in its bill. I just have some general remarks on the substance of title VII as reported and the need for replacing it with the Collins amendment.

I think most of us agree that Federal employee unionism cannot fairly be compared to collective bargaining in the private sector. The Federal Government is not a private corporation responsible to a few stockholders, but a sovereign entity responsible to all taxpayers, unionized or nonunionized. Picketing a private company whose products the public may buy or not buy is very different from picketing a Government agency which the law compels us to support with our tax dollars. The public has a right to uninterrupted, unimpeded enforcement of the people's laws, and the picketing of any agency should continue to be considered the unfair labor practice that it is.

This is done by the Collins amendment and I strongly urge its enactment.

Mr. TAYLOR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as most of the Members know, this title of the bill was one of the reasons most of us in the minority voted against reporting the bill to the floor from the committee.

I rise in support of the amendment offered by my colleague on the committee from Texas (Mr. COLLINS), and I would caution the Members to be wary of our distinguished committee vice chairman's substitute.

This is at least the second time that I know that he has taken on the role of "compromiser," offering language that supposedly strikes a "middle ground" between opposing points of view of the Carter administration and the various labor unions that operate in the Federal Government.

If the Members will refer to the individual and minority views in the committee report, they will see that the Committee's bill greatly increases the role of Federal employee unions and goes far beyond what the Carter administration originally proposed in the way of a legislated program for Federal labor-management relations.

We are being asked today to rewrite the bill; yet, the Udall substitute still contains provisions that will widen the scope of bargaining and will lead to increased unionization of Federal employees at the expense of the taxpayers.

I want to make it clear that I am not personally opposed to unions in the Federal Government. I support their efforts to improve collective bargaining, and I do believe that statutory protection of Federal employees' right to organize and bargain collectively through labor organizations is in the public interest.

But I do not believe it is in the public interest to have the taxpayer shoulder the burden of some of the incidental costs associated with maintaining a union.

The committee bill requires the deduction of union dues, and at no cost to the union or the employee. The Collins amendments continue our present arrangement of allowing—but not requiring—bargaining on this issue, and it is generally felt that agency management would negotiate a service charge of some sort for this service. The Udall substitute makes no change in the committee bill in this respect, and asks the taxpayer to help pay for unions of Federal employees.

In another area, the committee bill allows the new Federal Labor Relations Authority to certify a union as the exclusive representative without an election. The Collins amendments would require a secret ballot election in all cases where a union seeks exclusive recognition status for the first time, which I think is the fair way to go about it. The Udall substitute, on the other hand, makes no change in the committee bill and would be another area where union power would be increased.

I urge my colleagues to support the Collins amendment.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and members of the committee, I sense that we are very close to the time for a vote on the substitutes and the bill itself and title VII.

I would like, as briefly as I can, to repeat some of the things I said the other night about how we got to where we are.

Along with our colleagues, the gentleman from Missouri (Mr. CLAY), the gentleman from New York (Mr. SOLARZ), and other members of the committee, I have worked with the gentleman from Arizona (Mr. UDALL) and representatives of the administration throughout consideration of this legislation from the time it was introduced by the President.

I should say that I have tried to be supportive of the efforts of the administration because I think that the purposes stated by the President, when he sent the legislation to us, are purposes we can all agree with. But, as I stated before, in attempting to give the executive

branch greater flexibility and greater power in terms of their ability to manage the Federal work force we have in fact, if we did nothing more than that, changed the balance that has established itself over a period of time between the employees' individual rights and their collective rights, vis-a-vis the powers and prerogatives of management.

For this reason, while considering the increased powers for management, we always had in mind that we would put together a totality here, a total package that we hoped—and obviously we had great disagreement during the months that we have considered this, on just what the final product should look like—that we hoped would represent a fair package of balanced authority for management, balanced with a fair protection for at least the existing rights the employees have.

I do not think that at this point, after all the hard work that has gone into this legislation, that we want to jeopardize the opportunity for this historic breakthrough in the reform of the American Government's backbone, its administrative work force, by letting it fall apart here in title VII.

For that reason, and not with great alacrity, I am going to support the Udall substitute even with the amendments that have been added by the gentleman from Illinois (Mr. ERLENBORN) which have been considerable.

I want you to know that my staff and I know how far we have moved from our original position to come to this position.

But I have to tell you, in all honesty, that I could not, in good conscience support moving any further because there really is not much left that we can represent to the Federal employees as a retention of fair play for them.

I think it is absolutely essential at this point that we reject the Collins of Texas amendment and adopt the Udall substitute, as amended by the Erlenborn amendments, so that at least it can be shown that we did the best that was possible here to compromise conflicting views between those who feel, for whatever their reasons, that Federal employees do not need the same kind of protection that other citizens in this country have.

There are those of us who believe that ultimately, some day, we will see the time when Federal employees are no longer second-class citizens.

Mr. Chairman, let me call the Members' attention to this further fact: When we were talking about the Senior Executive Service and the power of the administration to hire career and noncareer people and to shift them around and to change their careers in very dramatic ways, and when we were talking about merit pay to be given or withheld from employees in the mid-level positions as an incentive for more effective and efficient performance on their part, we were not talking about the people who were affected by title VII. That is why the bill has to be considered in its totality.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. To continue, Mr. Chairman, the bill has to be considered as a totality because we are here talking about literally the workers themselves. These are not policymaking people. I might say that they are not bureaucrats. The complaint all across the land is against the Federal bureaucracy. They are not complaining about the people who maintain the plumbing and the electrical systems of our airbases and our military installations. These are the kinds of people we are talking about in title VII. We are talking about everybody from the janitor to the technician who keeps the airplanes operating, the people who are, in fact, keeping our Defense Establishment going day by day, who are ordinary working technicians, who do a job. They do not make decisions which affect the American public directly. They are not people within an "In" box full and an "Out" box empty on a desk occupied by a large bureaucrat. They are the people who actually do the work everyday, the work which keeps this Government operating. They are not the glamor jobs. They are just the people who take orders from almost everybody, all the way up to the President, and carry those orders out as best they can.

Mr. Chairman, what we are trying to say with title VII is that they should be reassured that their ability to function and that whatever rights the Congress from time to time gives them are protected and that they can protect themselves in their relationship with the several levels of management and that those protections are not in any way diminished and are, in fact, to a slight degree enhanced because we will be saying for the first time—and I think this is important and we ought to be very proud of it—that it is Congress that sets policy in this area. Of course, in 1962 John Kennedy took a great step forward when he issued an Executive order which said finally that Federal employees down at the level which we are describing could join a union and engage in collective bargaining with their employer in a fashion similar to, but far short of, of course, the fashion of their brothers and sisters in the private sector.

Mr. Chairman, from time to time that Executive order has been changed. We have had succeeding administrations from both parties who have found it possible to live with and operate under the conditions of the Executive order dealing with collective bargaining.

We are not here conferring for the first time on Federal employees a new right to collective bargaining; but what we are doing for the first time as a Congress is recognizing by statute that this is the same kind of right, although different in form and substance, as exists in the private sector.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. UDALL and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I think we are going to do something historic and far-reaching and important for the country today if this bill is written into the law books, as I hope it will be.

Mr. Chairman, I just want to say as strongly as I can that the gentleman from Michigan (Mr. FORD) has made it possible. Perhaps more than anyone else in this House, he has played a key, critical role. The gentleman has one of the finest minds in this House. He is articulate, and I always like to be on his side when I can. However, he has been caught in a difficult position between his strong feelings about the rights of the common ordinary Federal worker to whom he has referred and his desire to see some changes made in the nature and the direction of efficiency.

Mr. Chairman, I want to tell him how proud I am of his work and how proud the House is and the country ought to be for the role he played in bringing us to the position in which we are today.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman from Arizona (Mr. UDALL) for his remarks. Now, I am sure, the Members see why I am supporting the Udall substitute, even though I do not think it goes far enough.

It has been with great reluctance that I lent my support to the Udall substitute for title VII of H.R. 11280. As I said when we first had general debate on this bill, I felt that the bill as it was reported by the committee was a modest step forward in labor-management relations in the Federal sector. The Udall substitute is the product of long negotiations between the gentleman from Arizona, the administration, other Members with special interest in title VII and myself. This substitute represents an important step in getting the title and the bill passed, because it reconciles the differences between the administration's proposal and H.R. 9094, a bill with much support in this House.

While this substitute is a further compromise away from provisions that I believed to be reasonable and appropriate, there are some advances forward made in the bill over the present Executive order. It was only in light of these benefits over and beyond the Executive order that I have agreed to this amendment. In order to clarify my intentions in supporting this substitute, I would like to discuss, as a sponsor of H.R. 9094 and a major participant in the fashioning of this substitute of title VII, some specific sections of the title.

The revised management rights clause is an important element of the compromise approach by the Committee on Post Office and Civil Service and by Mr. CLAY and myself in working out and supporting the Udall compromise on title VII of H.R. 11280.

Experience under the Executive order and the interpretations of its management rights clauses by the Federal Labor

Relations Council has not been particularly successful for either agency management or employee.

Originally, the order was designed to achieve a balance. On the one hand, agencies were given broad authority—and required—to negotiate over working conditions and personnel policies and practices. On the other hand existed management prerogatives that were not to be bargained away by agency administrators.

Unfortunately, this balance was never struck. Instead, the Federal Labor Relations Council interpreted the order's management rights provisions in such a way as to eliminate many subjects of bargaining sought by both agency management and employees. In the hands of the Council, many of the management rights were interpreted so broadly that their existence in the order precluded flexibility and responsiveness needed by agency administrators.

Too often the Council interpreted the management rights clauses so broadly as to stifle an attempt by both management and employees to address commonly recognized problems. The original intention merely to insure that essential aspects of managing the agency were not subject to negotiations has been thwarted. Many agency administrators, however, found that this broad interpretation of the order prevented agency managers from addressing problems and concerns that they, as agency heads, believed required supervisory attention.

A developing trend involves sidestepping litigation before the Council in order to avoid its decisions which may be too rigid for management flexibility. Instead, agency administrators and employees representatives have simply reached agreement on contracts with provisions that were beneficial to both parties but unlikely to withstand rigid scrutiny by the Council.

Thus, agency administrators have proposed and agreed on contract terms such as flexible working schedules for employees, procedures preventing arbitrary assignment of work, standards for promotion that require performance at the next higher level for advancement. Agency administrators have determined that negotiating these non-monetary employee benefits have increased the effectiveness and the efficiency of the Government operations entrusted to them even though they implicate "management rights" as construed by the Council.

In drafting a revision of H.R. 9094 as title VII of this bill, Mr. CLAY and I attempted to alleviate these problems with the Executive order in three ways. First, some of the management rights listed in the order were omitted from title VII. Typically, these rights are those that have served to preclude agency flexibility in addressing problems recognized by both agency administrators and employees. Second, we expressly provided in the language of title VII itself that negotiations may occur over the adverse impact caused by exercise of any of the management rights in title VII and that procedures may be negotiated for the exercise of those rights. Third, we attempted to make clear that the purpose of the management rights clause is to preserve the ultimate exercise of the management functions listed. As such, the management rights clause operates as an exception to the general obligation to bargain in good faith over conditions of employment.

Adoption of this basic approach is an essential element in our working out the Udall compromise. The debate in drafting title VII focused on whether the pure exercise of an essential management function would better be protected by a case-by-case determination without statutory guidance, as under the National Labor Relations Act, or by inclusion of a management rights clause. We and the committee decided to include such a clause, but to make clear its intention that the scope of bargaining would be substantially broadened from that permitted agency management under the order. (See House Rept. No. 95–1403 at pp. 43–44.)

This approach specifically rejects the experience of the Federal Labor Relations Council and its broad interpretations of such clauses, interpretations that have tied the hands of agency management in effectively addressing agency concerns. While we very reluctantly support the Udall compromise, we do so with the clear understanding that the Authority will interpret the management rights clause within present and future labor-management realities and in no way is bound to the Council's past decisions.

A principal goal in revising the management rights clause is to change the current situation and, wherever possible, encourage both parties to work out their differences in negotiations. (See House Rept. No. 95–1403 at p. 44.) In retaining a management rights clause in our original draft of title VII, Mr. CLAY and I, as well as the committee intended however, that this section be read very narrowly. In agreeing to the Udall compromise of adding several more portions to this section, we fully intend that the committee's original position go unchanged and that this section be narrowly construed.

In adopting this course, in the Udall compromise, we implement the rationale of several decisions of relevant oversight agencies for Federal sector labor relations. The Federal Labor Relations Council, for example, has ruled that a proposal must directly relate to the "numbers, types, and grades of positions or employees" before that proposal can be ruled nonnegotiable because it infringes on the management right under the Executive order to determine those matters. Thus, the Council has stated:

> (I)t does not appear that the basic workweek for employees here proposed is integrally related in any manner to the numbers and types of employees involved. Absent this integral relationship to staffing pattern, the proposal does not conflict with section 11(b) . . . *Federal Employees Metal Trades Council of Charleston and U.S. Naval Supply Center, Charleston, South Carolina*, 1 FLRC 235, 244 (FLRC No. 71A–52) (1972).

Section 12(b)(4) of the Executive order makes nonnegotiable the management right "to maintain the efficiency of the Government operations entrusted to them." In interpreting this section of the order, the Federal Labor Relations Council has taken care to insure that this management right does not "swallow" the bulk of the bargaining obligation. Since some case can be made that virtually any change will reduce in some way the "efficiency of Government operations", the Council has required that management pass a balancing test in order to declare a proposal non-negotiable under this section. Thus, the Council has stated:

> In general, agency determinations as the negotiability made in relation to the concept of efficiency and economy in section 12(b)(4) of the Order and similar language in the statutes require consideration and balancing of all the factors involved, including the well-being of employees, rather than an arbitrary determination based only on the anticipation of increased costs. Other factors such as the potential for improved performance, increased productivity, responsiveness to direction, reduced turnover, fewer grievances, contribution of money-saving ideas, improved health and safety, and the like, are valid considerations. We believe that where otherwise negotiable proposals are involved the management right in section 12(b)(4) may not properly be invoked to deny negotiations unless there is a substantial demonstration by the agency that increased costs or reduced effectiveness in operations are inescapable and significant and are not offset by compensating benefits.

Local Union No. 2219, International Brotherhood of Electrical Workers AFL–CIO and Department of the Army, Corps of Engineers, Little Rock District, Little Rock Ark., 1 FLRC 219,225 (FLRC No. 71A–46) (1972). Accord, American Federation of Government Employes, National Joint Council of Food Inspection Locals and Office of the Administrator, Animal and Plant Health Inspection Service, U.S. Dept. of Agriculture, 1 FLRC 616, 620–21 (1973), *aff'd on remand* 3 FLRC 325, 345–46 (1975) (FLRC No. 73A–36). See also *AFGE Local 2595 and Immigration and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona)*, 1 FLRC 71, 73–74 (FLRC No. 7–A–10) (1971).

As the sectional analysis makes clear, the Udall substitute is drafted so as to embody in the statute the approach of these and similar decisions, decisions from which the Council has unfortunately departed in the main.

The management rights section if, loosely construed, as it has too often been under the order, could tie the agency's hands in dealing with any issue. The committee equally intended then that the listed management rights were to be narrowly construed exceptions to the general obligation to bargain in good faith over conditions of employment and that section 7106 "be read to favor collective bargaining whenever there is doubt as to the negotiability of a subject or proposal." Id. at 44. Title VII itself is remedial legislation and those supporting the Udall change in the management rights clause continue to fully intend title VII to be broadly construed to achieve these remedial objectives. These goals are also consistent with few decisions of the relevant oversight bodies for labor-management relations in the

Federal sector, as demonstrated by a recent decision of the Labor Relations Umpire in the Library of Congress.

The Library, of course, is not covered by Executive Order 11491. In 1975, the Library established by an internal regulation its own program patterned after the order and containing identical management rights clauses. However, the Library lacked statutory authority to vest final decisions in an agency outside the Library. The Library's regulation makes appropriate decisions of the Federal Labor Relations Council precedents in the Library's labor relations program.

In a recent decision, the Library's Labor-Management Relations umpire articulated, in the labor relations context of the Library, the general principles that we embodied in the substitute's management rights clause.

(I)t is certainly appropriate to apply the (management rights) concept narrowly to effectuate its apparent purpose. This same approach is dictated by accepted principles of statutory construction. Plainly, Regulation 2026 is remedial in character, designed to grant rights to employees and to unions, in an effort to improve labor relations which became exacerbated under the Library's unilateral control. The coverage or scope of such a regulation should therefore be broadly construed. See, e.g., *McComb* v. *Super-A Fertilizer*, 165 F. 2d 824, 826 (ast Cir. 1948), and cases there cited. Conversely, any exception to the scope of the bargaining obligation created by Regulation 2026 must be narrowly and strictly construed, and be granted only to matters unmistakably within the terms and spirit of the exception. See *A. H. Phillips Co.* v. *Walling*, 324 U.S. 490, 493.

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In approaching issues of negotiability therefore, the Umpire starts with the premise that the Library bears a heavy burden of establishing that a matter relevant to terms and conditions of employment is nevertheless removed from the scope of bargaining. Of course, proposals which directly and explicitly go to the number of employees assigned to an organizational unit, for example, will be held non-negotiable. Where the "non-negotiability" argument is strained, or where it is presented as a conceivable secondary or tertiary result of a union proposal, however, it will be rejected. Also, the tactic of negotiating over a subject and then belatedly discovering that it is "non-negotiable" is not calculated to inspire either confidence in the labor organizations as to the good faith of the past negotiations, or confidence in reviewing authorities that the claim of non-negotiability is anything more than an expression that the proposal is unacceptable on its merits. In a program initially flawed, at least in theory, by the retention of all final reviewing authority in the hands of top management, any abuse of the doctrine of "non-negotiability" would result in turning the Library's labor relations program into what Justice Jackson colorfully described as "only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards* v. *California*, 314 U.S. 160 at 186, concurring opinion.

Library of Congress and American Federation of State, County & Municipal Employees, Locals Nos. 2477 and 2910, 5, 6–7 (decision of the labor-management relations umpire, May 17, 1978) (slip option). The structure of the substitute's management rights clause dictates that the new authority will closely scrutinize agency claims of "management rights" at least to the degree the claims were analyzed in the above decision and in AFSCME, Local 2910 and Library of Congress, 2–4, 6–7 (decision of the labor-management relations umpire, September 5, 1978) (slip option).

It is our expectation and that of others supporting the substitute's management rights clause that such a clause will adequately protect genuine managerial prerogatives but that, construed strictly, such a clause will also allow the flexibility that is the hallmark of a successful labor-management program. Thus, although management has the right to direct the work force, proposals aimed at lessening the adverse impact on employees of an exercise, perhaps arbitrary, of that right are fully negotiable. Moreover, agency administrators are fully authorized to negotiate procedures for adequate supervision without avoiding the act. This eliminates the need for agency management to shunt the authority as it has sometimes shunned the Council and conclude an agreement without reference to the order because management cannot live with the straitjacket that many Council decisions impose on management bargaining.

Finally, it is hoped that the Federal Labor Relations Authority will oversee a flexible Federal labor-management program responsive to changing and particularized circumstances. The concept of negotiability is and must be a dynamic and growing one. If not, Federal sector labor relations must fail because the energies of management and labor will be diverted from consideration of important labor relations problems to the litigation of the scope of the exceptions to the general bargaining obligation. Years of public and private sector collective bargaining indicate this should not happen.

The compromise position in section 7117 was accepted with the understanding that the provision in subsection (a)(3) will be broadly construed such that the compelling need test will be permitted to be raised in only a limited number of cases. If an exclusive representative represents a unit including at least a majority of the employees affected by the issuance of a regulation, the compelling need test could not be raised. This would permit, for instance, overseas schoolteachers to negotiate all agency regulations (that at least specifically apply only to them), without the possibility of having the compelling need test raised by management.

By also permitting negotiation of matters that are the subject of agency regulations that are not Government-wide rules or regulations, problems such as those that have occurred with overseas schoolteachers should be eliminated. While these teachers are employees of the Defense Department, the Department of State has been given the authority, in some instances, to issue regulations regarding these teachers. The Defense Department has indicated that they could not negotiate on these matters, since they did not issue the regulations. The State Department will not negotiate on the matters, since the employees organizations representing these teachers do not have exclusive recognition with State. Title VII prevents management from continuing this practice or from extending this type of maneuver to other agencies in order to avoid the duty to bargain by making "matters" that are the subject of non-Government-wide regulations (as opposed to regulations themselves) negotiable. It is intended that the Authority shall not permit such a maneuver to derogate the obligation of management to bargain in good faith on these matters.

Again, an essential element in performance of the authority's responsibilities is an extremely close scrutiny of agency claims that proposals are barred by the management rights clause. The two decisions of the labor-management umpire contain the level of scrutiny we expect from the Authority as a minimum.

Section 7117 sets forth the duty to bargain in good faith, especially with respect to regulations. Under the compromise version, Government-wide rules and regulations are no longer subject to bargaining as they were under the committee print of title VII (except for those supported by a compelling need). In this fashion, Government-wide rules and regulations are thus a major exception to the duty to bargain. In making this change, however, the committee at no time expanded the definition of "Government-wide" as contained in the committee's report.

Section 7103(a)(14)(D) removes from the definition of "conditions of employment" those policies, practices and matters to the extent such matters are specifically provided for by Federal statute. The committee print of title VII contained the word "specifically," also found in the compromise version, in order to clarify the intention of the committee on the scope of this exception to conditions of employment. Where a Federal statute specifically establishes procedures and standards for a condition of employment, section 7103(a)(14)(D) bars negotiations in contravention of those procedures and standards. On the other hand, where a statute merely provides particular authority for an agency official (with that authority to be exercised at the official's discretion and in such manner as the official deems appropriate), that authority and its exercise are not included within the definition in section 7103(a)(14)(D) because it is not "specifically provided for by Federal statute."

Section 7113(b)(2) requires that an agency consider the views or recommendations of any labor organization with national consultation rights before taking final action on any matter for which the views or recommendations were presented. The action resulting in the compromise version of title VII with respect to negotiations over Government-wide and agency regulations reduces the scope of bargaining with respect to such regulations from that in the committee print of title VII. This action was agreed to in part because we believed that section 7113(b)(2) insured genuine consideration by agency officials of views and recommendations presented by la-

bor organizations. It is our intention that it ought to be obvious from the contents of the written statement required under subsection (b)(2)(B) that the agency has in fact considered the views and recommendations of the labor organizations. This aspect of the written statement is also necessary for the agency to establish an adequate record for later judicial review of the lawfulness of its promulgation of the regulation.

Section 7116(b)(7) contains language adopted in lieu of the Federal Labor Relations Council policy statement in this area.

Section 7114(a)(3)(A) specifically provides that an exclusive representative shall be given the opportunity to appear at formal discussion between agency representatives and employees. This subsection must be read in conjunction with subsection 7114(1)(1), requiring that a labor organization which has been accorded exclusive recognition is the exclusive representative for employees in its bargaining unit, and with subsection 7116(a)(8) which makes it an unfair labor practice for an agency to fail to comply with any provision of title VII, including the exclusivity rights of labor organizations with exclusive recognition. The compromise inserts the word "formal" before discussions merely in order to make clear that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions regarding performance. Of course, nothing in this section bars an agency and an exclusive representative from negotiating an agreement providing for a greater role for the representative than that minimally mandated by title VII. Moreover, nothing in this section authorizes agency management to bypass the rights of the exclusive representative and engage in direct communications with unit members.

Section 7132(b) of the compromise precludes the use of official time by employees for conducting the internal business of a labor organization. This subsection specifically provides that employees shall not solicit membership, engage in electioneering, or collect dues on official time. The inclusion of these three categories reflects the general intention that "the internal business of a labor organization" encompasses those activities directed to the institutional structure of such organizations. This section does not, therefore, apply to activities of labor organizations that involve an "interface" with agency management, such as negotiations, grievances, negotiability disputes, and unfair labor practices. Nor does this section apply to preparation for such "interface" activities. Management, of course, engages in all these activities, including preparation, on official time, and subsection 7132(d)(2) makes the use of official time by employees for these activities a subject of negotiated agreement between the agency and the exclusive representative.

Section 7136(1)(1) of the compromise version provides that nothing in title VII will preclude the renewal or continuation of an exclusive recognition or a lawful agreement. This subsection reflects the intention that successful ongoing labor-management relationships shall not be disputed by enactment of title VII. Since the purpose of this title is principally to encourage the development of successful labor-management programs, it would have been inappropriate for this new legislation, designed to encourage collective bargaining, to operate in such a way as to thwart successful collective bargaining programs already in existence. The intention is to encourage development of these already successful programs while at the same time encourage the development of such relationships between other agencies and labor organizations. Certainly, it is important in this regard to consider the past bargaining relationship in deciding how the new legislation impacts on labor-management relations within such an existing relationship.

Section 7136(b) provides that procedures and decisions issued under the enumerated Executive orders shall continue in effect until revised or revoked by the President or unless superseded by specific provisions of title VII or by regulations or decisions issued by the new Federal Labor Relations Authority.

A primary reason for this legislation in general is dissatisfaction with the state of labor-management relations in the Federal Government under the Executive order and its enforcement bodies. There was great concern that the new authority would simply "rubber-stamp" the decisions and procedures of the Federal Labor Relations Council that it replaces. The "superseded" language is intentionally included to make clear that the new authority, acting under its own statutory charter, is not to repeat past mistakes in the area of labor-management relations. Title VII as a whole, and the management rights clause in particular, mandates a new approach to labor relations in the Federal Government, an approach that will be more successful for both agency management and labor organizations.

This subsection is included as drafted because of the concern that the development by the new authority of the contours of the new labor-management program will necessarily take time. During that time, questions about the legal efficacy of existing regulations and decisions could prove quite disruptive. Consequently, this subsection provides that such regulations and decisions will continue in force until superseded by regulations and decisions issued under title VII.

Mr. ROUSSELOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Collins substitute for title VII, the so-called Labor-Management Relations title of the Civil Service Reform Act of 1978, and in opposition to the Udall substitute. Evidence has not been presented which would convince me that the current labor-management relations program in the Federal Service is in need of change.

As my colleagues know from reading the incisive, informative views of many of the minority members of the Post Office and Civil Service Committee, we were assured by the President, in personal meetings and through his surrogates, that the labor title of the Civil Service Reform Act would not go beyond the principles embodied in Executive Order 11491 and the current practice of labor-management relations in the civil service. While I realize that the President does not exercise complete control over House Members of his own party, we should follow through on his original request and codify the original Kennedy Executive order.

The substitute offered by my colleague from Texas (Mr. COLLINS), is a reasonable compromise between those seeking the continuation of present Federal labor-management relations (as provided by the Executive order) and those labor loyalists on the committee who sought expanded union rights and authority and a diminished management role. It is a compromise adopted by the Senate Governmental Affairs Committee and only slightly modified by the full Senate. It is a compromise acceptable to those who believe that the unions already have sufficient power to protect and promote the rights of their Federal members. The Collins substitute will further the cause of civil service reform. A vote for the committee version of title VII or the Udall substitute would be a vote for "nonreform".

The gentleman from Texas has carefully described the provisions of his substitute and its effect on the scope of bargaining; changes in grievance arbitration; judicial review of decisions of the Federal Labor Relations Authority; the exclusive recognition of unions; the definition of unfair labor practices and the prohibition against picketing; and the terms for dues withholding and use of appeal time for union activities. In many cases, this substitute merely codified the present program and grants some expansion of union rights. Hopefully, these changes will not seriously endanger the stability of the civil service or jeopardize the delivery of Government services to the public.

Supporters of title VII claim that the Congress must act to achieve equity between public and nonpublic employees. Federal employee unions have been pushing legislation which would supposedly "equalize" public sector and private sector labor relations. The basic problem with this argument is that the Government is not a business, and attempting to apply the labor practices of a competitive business just will not work.

The competitive marketplace of the private sector is absent in Government employment. Funds from which wages, salaries and money-related benefits are paid or extended to Federal employees come primarily from taxes. Through the budgetary process, the President and elected legislators are responsible for the allocation of such funds. Adding the right to bargain over wages, salaries and other money-related benefits to the free access public employees and their unions already have to Congress, would give Federal workers excess power which would inequitably subordinate the budgetmaking process to the worker's interests and against the interests of the American taxpayers.

The primary reason for Government services is to supply the public with certain essentials of life which cannot reasonably be supplied by the average citizen himself, or to him by private enterprise. Fundamentally, these essentials are usually police and fire protection, education, water, sewage, highways and the like (primarily reserved for State and local governments) and the public defense (reserved, constitutionally, for the Federal Government). Because these services are essential to the health, welfare and safety of the public, the expenditure of public funds for their provision becomes justifiable. Equally because they are so essential, it becomes intolerable that they be interrupted. Precisely because these services are not available from competing sources, as products or services in the private sector are, Federal labor-management relations are not comparable to private sector labor-management relations.

Public employees occupy a status entirely different from their counterparts in the private sector. Public employees are the agents of government, and in reality, exercise a part of the sovereignty entrusted to government. While serving a mission different from the private employee, the public employee enjoys benefits not necessarily available to the private employee. Governments do not go out of business. The public employee has, therefore, enjoyed a security of employment not assured to those in the private sector. In addition, by legislative enactment, the public employee has been guaranteed such things as employment and promotion on a merit basis, grievance procedures through which his complaints can be resolved, classification and pay plans assuring equal pay for equal work, liberal holiday and vacation schedules, sick leave programs rarely matched by private employers, and retirement systems more liberal than those commonly found in the private sector. And unlike the private sector, all of these benefits are protected by law in the public sector. It is my guess that many private employees would be willing to trade benefits with the average Federal employee and would not be overly concerned by the differences between public and private sector labor relations.

In October 1975, the Sacramento Bee printed an editorial admitting that the paper's earlier support for collective bargaining for public employees was wrong. I urge my colleagues to review with me the main points of this editorial and support efforts to maintain Federal labor-management relations on a level that will protect the responsible, dedicated employee and the taxpaying public which provides and pays for the jobs.

[From the Sacramento Bee, Oct. 19, 1975]

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES IS WRONG

The recent collapse of law and order in San Francisco, brought on by an illegal policemen's strike, and numerous other strikes and threats of strikes by various municipal employes' unions require a major re-evaluation of the relationship between public employees and the public they are presumed to serve.

It is pertinent to mention that federal and state employees are performing their jobs without destructive and illegal upheavals. Why, then, have illegal municipal and school strikes spread like the bubonic plague throughout much of the nation, wreaking havoc on innocent school children, ordinary citizens and the very fabric of government?

The answer is pretty clear. There has been a growing acceptance that unions representing public employees should have the right to bargain collectively with government. And with this development has come the weakening of the civil service system and the placing of union leaders in positions where they can dictate to elected officials. When this happens decisions are made not on the basis of what is good for the public but rather what will satisfy the labor leaders and their followers. New York City's present financial debacle is the end result of leaders of municipal labor unions imposing their will on elected officials.

Recently The Bee supported a bill giving public employes the right to join together and bargain collectively. We also endorsed a bill specifically giving teachers the right to bargain collectively. It now seems clear our position in both instances was wrong.

The Meyers-Milias-Brown Act now requires municipal governments to "meet and confer" with employe groups. To a large degree, this has become the equivalent of a collective bargaining requirement. This law should be revised to halt the trend towards forced collective bargaining by municipalities.

The granting of collective bargaining to public employes is not necessary and dangerously weakens the public's ability to protect its most essential services, services that should not be poker chips traded back and forth between public officials and union leaders.

When an individual goes to work for a governmental unit, he is entering into a relationship that is entirely different from one getting a job in private enterprise. Civil service gives the government employe far greater job protection. His retirement pay and other fringe benefits generally are higher than in private enterprise.

Most important, the government worker has gone to work for the people. In accepting a job as a public servant, he has accepted a public trust. The idea of firemen, teachers, public health employes, policemen or city garbage collectors going on strike is an affront to that public trust. If an individual does not feel he is willing to trade the special benefits of government employment for a commitment to obey that public trust, then he should seek other employment.

No one can deny public employes the right to organize and lobby in behalf of their members. The California State Employes Association has done this ably and effectively for years. But the next step, giving an employes' group the right to bargain with government, is fraught with peril and should be avoided.

This is the primary lesson to be learned from the recent illegal strike of policemen in San Francisco. Mayor Joseph Alioto, after personally bargaining with the policemen's association and other labor leaders, caved in to their demands.

The dynamics of the bargaining situation, by its very nature, creates pressures on public officials they find difficult to withstand. Alioto's surrender probably was inevitable.

A recent statement by Legislative Analyst A. Alan Post strongly opposes collective bargaining for public employes. He said the state's present policy of "attempting to maintain parity with the results of collective bargaining in the more relevant private sector has been extraordinarly effective."

Possibly there must be refinements developed to ensure pay and working conditions are truly comparable to similar jobs in the private sector but only ill will come from putting the fate of critical public services in the hands of union negotiators.

Government is not in a position to successfully bargain collectively. If a private business enterprise is faced with wage demands so unreasonable that it will be forced out of business, the private business can say so, even if it means a strike. But government is different. Often unreasonable demands cannot be turned down by government because the public cannot tolerate the loss of essential public services.

The man negotiating for the public is not like the representative of a private company. He is a public servant, subject to political pressures. There is nothing to prevent him from caving in to threats. And when he does, he does not pay the bill. The bill simply will be handed on to the taxpayer who had no effective voice in the negotiations.

Generally, public employes have earned the respect of the public they serve. This is true whether you are talking about the city garbage collector, the state highway patrolman or a forest service ranger.

It would be tragic if the inevitably destructive consequences of collective bargaining are permitted to jeopardize the best interests of public employes and the public they serve.

The time is late but the issue is critical. The Bee believes the public, elected officials and public employes should pause before they turn their fate over to collective bargaining and labor leaders who sometimes care too much about power and too little about the general welfare.

Mr. Chairman, the Udall substitute differs from the Collins substitute and the Executive order in three major areas: Provisions allowing so-called informational picketing by Federal union members—which could be almost anything; the exclusive recognition of a union without an election; and provisions requiring an agency to deduct dues of members without cost to the exclusive union.

The Udall substitute provides that—

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

So for the first time we are going to allow the Treasury to pay for union activity. This is certainly not the case in the private sector. But under the Udall substitute, we would allow these organizing and membership efforts to be financed out of the Federal Treasury. My colleagues who support the Udall substitute claim that this will provide equity between Federal union members and private sector union members. That is not true. We are giving more than equity—we are allowing Federal employee unions to dip into the Federal Treasury to provide for this dues checkoff.

Additionally, as I have mentioned, the Udall substitute allows, for the first time, informational picketing. As described in the substitute, this can mean almost anything.

My colleagues, the gentleman from Michigan (Mr. FORD) and the gentleman from Arizona (Mr. UDALL), claim

that there are no great differences between the Udall substitute and the Executive order. There are substantial differences, and I urge my colleagues to seriously consider the differences.

I know my colleague from Arizona, a supporter of this legislation, has had a difficult time negotiating compromises of the various differences among the Members. But his title VII substitute does plow new ground with regard to Federal labor-management relations, and it is not completely clear how his changes will affect the current practice of Federal labor-management relations.

So, I urge my colleagues to support the Collins substitute because it does exactly what my colleague from Michigan (Mr. FORD) is talking about—it provides for the basic concepts and codifies the Executive order originally issued by President John F. Kennedy and supported by all Presidents since, including the present incumbent, Mr. Carter. That is what President Carter asked for, and I think we should give him that by passing the Collins substitute.

I urge support of the Collins substitute.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the Members will recall that on Monday we had a very long session, but by and large it was a session marked by statesmanship and fine, high-level debate. But I must observe that with the return of the gentleman from California (Mr. ROUSSELOT) the debate today has risen to even greater heights of statesmanship, and his wisdom and his powers of observation are doing much to help expedite this bill.

I suggest, Mr. Chairman, that we have done a very fine job in amending the Udall substitute. I would point out, as the gentleman from California (Mr. ROUSSELOT) properly did, that the present Executive order is in fact what the gentleman from Texas (Mr. COLLINS) is proposing. So what we have really are two very fine amendments. Either way we are going to a great civil service reform.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we have come a long way today and the gentleman from Illinois (Mr. ERLENBORN) has completed the amendments that are most important. Many of those were accepted, which made the substitute amendment of the gentleman from Arizona (Mr. UDALL) much stronger and much better legislation.

We still have three major differences that exist. I am impressed with how far we have gone with what the committee brought to the floor for us to consider. We still, of course, if civil service reform passes, have a conference; but I want to bring out three major differences that exist. One is on the matter of dues checkoff. It is proposed that this be a negotiable item. Under the substitute amendment of the gentleman from Arizona (Mr. UDALL), the gentleman states that the Government must pay for them. In other words, dues checkoff must be paid by the Government, that it is not a negotiable item. Normally this should be a negotiable item, in that dues checkoff will be made at no cost to the union or the employee. That is a tremendous concession and the gentleman asks that we go further which handicaps the civil service or any agency that is involved.

The second one that comes up; it seems to me in any type of voting for a union that the secret ballot election is absolutely essential. Under the substitute amendment of the gentleman from Arizona (Mr. UDALL), in one particular situation they can be declared a union. If an agency has created an unfair labor practice, they can declare a union, regardless. That is a tremendous move, to allow that a union be declared without a secret election.

The third issue, which still stands in the substitute amendment of the gentleman from Arizona (Mr. UDALL) is on this matter of picketing. The gentleman from Arizona provides that you can have informational picketing. Knowing how the courts are so broad in their interpretation, anything could be considered as informational picketing. We must remember that the people involved here in Civil Service are employees. They are dedicated professionals. These are the civil servants of the United States Government. There is a complete difference between working for the U.S. Government and being an employee working for a shirt factory or working in an automobile plant. These civil servants are working for the U.S. Government. To have them out picketing, whether they call it informational picketing or whatever it is, is completely contrary to the principles of the Constitution. In our country, the Government is supreme. The Government is the law of the land.

So I want to commend the gentleman from Arizona for the gentleman's broad-mindedness and openmindedness. I know how far the gentleman has gone to try to provide a workable solution. I would hope that in the conference, we could take up these three very serious issues that still stand in the gentleman's substitute amendment.

● Mr. BIAGGI. Mr. Chairman, I would like to emphasize, at this point, that the "Definition of Agency" provision of title VII, the "Labor-Management Relations" title of H.R. 11280, as written into the bill and reported by the House Committee on Post Office and Civil Service, represents a fair and equitable approach to labor-management relations for Federal employees. It therefore should remain in the final version of the bill. I strongly urge my colleagues to support this particular provision as it is currently written so that when this legislation becomes law, it will apply to all those Federal employees we in the House intended to include in its coverage.

Several Members have expressed their concern regarding the informational picketing provision in the Udall substitute. I would simply like to point out to them the case of NTEU against Fasser, 428 F. Supp. 295 (1976) in which the court found that "the absolute ban upon all picketing during any labor controversy contained in the decision and (executive) order is overly broad and violates the first amendment * * *" The court pointed out that "Picketing that is strictly informational, and limited in place and focus, does not in all situations create the probability of interference with Government functions sufficient to justify the limitation on free speech involved here." It did find, however, that even informational picketing "under certain conditions could easily be disruptive and so injure the Government that a ban could be lawfully imposed." The Udall substitute generally applies this standard and does not, as some Members have indicated, make a significant departure from the present state of the law. The Udall substitute only permits informational picketing, and then only when it does not disrupt agency operations.●

The CHAIRMAN. All time has expired.

The question is on the amendment, as amended, offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment, as amended, offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. COLLINS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 381, noes 0, answered "present" 1, not voting 50, as follows:

[Roll No. 764]

AYES—381

Abdnor	Brooks	Delaney
Addabbo	Brown, Calif.	Dellums
Akaka	Brown, Mich.	Dent
Alexander	Broyhill	Derrick
Ambro	Buchanan	Derwinski
Anderson, Calif.	Burgener	Devine
Anderson, Ill.	Burke, Mass.	Dickinson
Andrews, N.C.	Burleson, Tex.	Dicks
Andrews, N. Dak.	Burlison, Mo.	Diggs
Annunzio	Burton, John	Dingell
Applegate	Burton, Phillip	Dodd
Archer	Butler	Dornan
Ashbrook	Byron	Downey
Ashley	Carney	Drinan
Aspin	Carr	Duncan, Oreg.
AuCoin	Carter	Duncan, Tenn.
Badham	Cavanaugh	Early
Bafalis	Cederberg	Eckhardt
Baldus	Chappell	Edgar
Barnard	Chisholm	Edwards, Ala.
Baucus	Clausen, Don H.	Edwards, Calif.
Bauman	Clay	Eilberg
Beard, R.I.	Cleveland	Emery
Bedell	Cohen	English
Beilenson	Coleman	Erlenborn
Benjamin	Collins, Ill.	Ertel
Bennett	Collins, Tex.	Evans, Colo.
Bevill	Conte	Evans, Del.
Biaggi	Conyers	Evans, Ga.
Bingham	Corcoran	Evans, Ind.
Blanchard	Corman	Fascell
Blouin	Cornell	Fenwick
Boggs	Cornwell	Findley
Boland	Cotter	Fish
Bolling	Coughlin	Fisher
Bonior	Cunningham	Fithian
Bonker	D'Amours	Flippo
Bowen	Daniel, Dan	Flood
Brademas	Daniel, R. W.	Florio
Brinkley	Danielson	Flynt
Brodhead	Davis	Foley
	de la Garza	Ford, Mich.
		Ford, Tenn.

Forsythe	McCormack	Roe
Fountain	McDade	Rogers
Fowler	McDonald	Roncalio
Frey	McFall	Rooney
Fuqua	McHugh	Rose
Gammage	Madigan	Rosenthal
Garcia	Maguire	Rostenkowski
Gaydos	Mahon	Rousselot
Gephardt	Mann	Roybal
Giaimo	Markey	Rudd
Gilman	Marks	Runnels
Ginn	Marlenee	Ruppe
Glickman	Marriott	Russo
Goldwater	Martin	Ryan
Gonzalez	Mathis	Satterfield
Goodling	Mattox	Scheuer
Gore	Mazzoli	Schroeder
Gradison	Meeds	Schulze
Grassley	Metcalfe	Sebelius
Green	Meyner	Seiberling
Guyer	Michel	Sharp
Hagedorn	Mikulski	Shuster
Hall	Mikva	Sikes
Hamilton	Milford	Simon
Hammer-schmidt	Miller, Ohio	Sisk
	Mineta	Skelton
Hanley	Minish	Skubitz
Hannaford	Mitchell, Md.	Smith, Iowa
Hansen	Mitchell, N.Y.	Smith, Nebr.
Harkin	Moakley	Snyder
Harrington	Moffett	Solarz
Harris	Mollohan	Spellman
Harsha	Montgomery	Spence
Hawkins	Moore	St Germain
Heckler	Moorhead, Calif.	Staggers
Hefner		Stangeland
Heftel	Moorhead, Pa.	Stanton
Hightower	Moss	Stark
Hillis	Mottl	Steed
Holland	Murphy, Ill.	Steers
Hollenbeck	Murphy, N.Y.	Steiger
Holt	Murphy, Pa.	Stockman
Holtzman	Murtha	Stokes
Horton	Myers, Gary	Stratton
Howard	Myers, John	Studds
Hubbard	Myers, Michael	Symms
Hughes	Natcher	Taylor
Hyde	Neal	Thompson
Ichord	Nedzi	Thone
Ireland	Nichols	Thornton
Jacobs	Nix	Traxler
Jeffords	Nolan	Trible
Jenkins	Nowak	Tucker
Jenrette	O'Brien	Udall
Johnson, Calif.	Oakar	Ullman
Jones, N.C.	Oberstar	Van Deerlin
Jones, Okla.	Obey	Vanik
Jones, Tenn.	Ottinger	Vento
Jordan	Panetta	Waggonner
Kastenmeier	Patten	Walgren
Kazen	Patterson	Walker
Kelly	Pattison	Walsh
Kemp	Pease	Wampler
Keys	Pepper	Watkins
Kildee	Perkins	Waxman
Kindness	Pettis	Weaver
Kostmayer	Pickle	Weiss
Krebs	Pike	White
Lagomarsino	Poage	Whitehurst
Latta	Pressler	Whitley
Le Fante	Preyer	Wilson, Bob
Leach	Price	Wilson, C. H.
Lederer	Pritchard	Wilson, Tex.
Lent	Pursell	Winn
Levitas	Quayle	Wirth
Livingston	Quillen	Wolff
Lloyd, Calif.	Rahall	Wright
Lloyd, Tenn.	Railsback	Wydler
Long, La.	Rangel	Wylie
Long, Md.	Regula	Yates
Lott	Reuss	Yatron
Lujan	Rhodes	Young, Fla.
Luken	Rinaldo	Young, Mo.
Lundine	Roberts	Zablocki
McClory	Robinson	Zeferetti
McCloskey	Rodino	

NOES—0

ANSWERED "PRESENT"—1

Edwards, Okla.

NOT VOTING—50

Ammerman	Clawson, Del	Huckaby
Armstrong	Cochran	Johnson, Colo.
Beard, Tenn.	Conable	Kasten
Breaux	Crane	Krueger
Breckinridge	Fary	LaFalce
Broomfield	Flowers	Leggett
Brown, Ohio	Fraser	Lehman
Burke, Calif.	Frenzel	McEwen
Burke, Fla.	Gibbons	McKay
Caputo	Gudger	McKinney
Miller, Calif.	Shipley	Volkmer
Quie	Slack	Whalen
Richmond	Stump	Whitten
Risenhoover	Teague	Wiggins
Santini	Treen	Young, Alaska
Sarasin	Tsongas	Young, Tex.
Sawyer	Vander Jagt	

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read title VIII.

The Clerk read as follows:

TITLE VIII—GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

SEC. 801. (a)(1) Chapter 53 of title 5, United States Code, relating to pay rates and systems, is amended by inserting after subchapter V thereof the following new subchapter:

"SUBCHAPTER VI—GRADE AND PAY RETENTION

"§ 5361. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

"(2) 'agency' has the meaning given it by section 5102 of this title;

"(3) 'retained grade' means the grade used for determining benefits to which an employee to whom section 5362 or 5363 of this title applies is entitled;

"(4) 'rate of basic pay' means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

"(5) 'covered pay schedule' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

"(6) 'position subject to this subchapter' means any position under a covered pay schedule; and

"(7) 'reduction-in-force procedures' means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

"§ 5362. Grade retention following a change of positions

"(a) Any employee—

"(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

shall be entitled, to the extent provided in subsection (b) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

"(b) For the 2-year period referred to in subsection (a) of this section, the retained grade of an employee under such subsection (a) shall be treated as the grade of his position for all purposes (including pay and pay administration under this chapter and, chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

"(1) for purposes of subsection (a) of this section,

"(2) for purposes of applying any reduction-in-force procedures, or

"(3) for such other purposes as the Office of Personnel Management may provide by regulation.

"(c) The provisions of subsection (a) of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is demoted (determined without regard to this section) for personal cause;

"(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

"(4) elects in writing to have the benefits of this section terminate.

"§ 5363. Grade retention following position reclassification

"(a) An employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled to have the grade of such position before reduction be treated for all purposes (other than the application of reduction-in-force procedures) as the retained grade of such employee so long as such employee continues in such position.

"(b) The provision of subsection (a) of this section shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) declines a reasonable offer of a position the grade of which is equal to or higher than the retained grade; or

"(3) elects in writing to have the benefits of this section terminate.

"§ 5364. Pay retention

"(a) Any employee—

"(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

"(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

"(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

"(b) For the purpose of subsection (a) of this section, 'allowable former rate of basic pay' means the lower of—

"(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

"(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher

than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

"(3) is demoted for personal cause.

"§ 5365. Remedial actions

"Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

"(1) to report to the Office information with respect to vacancies (including impending vacancies);

"(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362, 5363, or 5364 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

"(3) to establish a program under which employees receiving benefits under section 5362, 5363, or 5364 of this title are given priority in the consideration for or placement in positions which are equal to or greater than their retained grade or pay; and

"(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

"§ 5366. Regulations

"(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

"(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

"(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

"(2) to individuals to whom such provisions do not otherwise apply; and

"(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

"§ 5367. Appeals

"(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

"(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

"(A) under section 5112(b) or 5346(c) of this title or otherwise, any reclassification of a position; or

"(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

"(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section)—

"(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

"(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures.".

(2) Sections 5334(d), 5337, and 5345 of title 5, United States Code, are hereby repealed.

(3)(A) Chapter 53 of title 5, United States Code, is amended—

(i) by redesignating subchapter VI as subchapter VII, and

(ii) by redesignating sections 5361 through 5365 as sections 5371 through 5375, respectively.

(B)(i) The analysis of chapter 53 of title 5, United States Code, is amended by striking out the items relating to subchapter VI thereof and inserting in lieu thereof the following:

"SUBCHAPTER VI—GRADE AND PAY RETENTION

"5361. Definitions.
"5362. Grade retention following a change of positions.
"5363. Grade retention following position reclassification.
"5364. Pay retention.
"5365. Remedial actions.
"5366. Regulations.
"5367. Appeals.

"SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

"5371. Scientific and professional positions.
"5372. Administrative law judges.
"5373. Limitation on pay fixed by administrative action.
"5374. Miscellaneous positions in the executive branch.
"5375. Police force of National Zoological Park.".

(ii) The analysis of such chapter is further amended by striking out the items relating to sections 5337 and 5345, respectively.

(iii) Section 559 of title 5, United States Code, are each amended by striking out "5362." each place it appears and inserting "5372," in lieu thereof.

(C) Section 3104(b) of title 5, United States Code, as redesignated by this Act, is amended by striking out "section 5361" and inserting "section 5371" in lieu thereof.

(D) Section 5102(c)(5) of title 5, United States Code, is amended by striking out "section 5365" and inserting "section 5375" in lieu thereof.

(E) Sections 5107 and 8704(d)(1) of title 5, United States Code, are each amended by striking out "section 5337" and inserting in lieu thereof "subchapter VI of chapter 53".

(F) Section 5334(b) of title 5, United States Code, is amended by striking out "section 5337 of this title" each place it appears and inserting in lieu thereof "subchapter VI of this chapter".

(G) Section 5334 of title 5, United States Code, is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(H) Section 5349(a) of title 5, United States Code, is amended—

(i) by striking out "section 5345, relating to retention of pay," and inserting in lieu thereof "subchapter VI of this chapter, relating to grade and pay retention,";

(ii) by striking out "section 5345 of this title" and inserting in lieu thereof "subchapter VI of this chapter"; and

(iii) by striking out "paragraph (2) of section 5345(a)" and inserting in lieu thereof "section 5361(1)".

(I) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by inserting after "of title 5" the following: "and subchapter VI of chapter 53 of such title 5".

(J) Section 1416(a) of the Act of August 1, 1968 (Public Law 90–448; 15 U.S.C. 1715(a)), and section 808(e) of the Act of April 11, 1968 (Public Law 90–284; 42 U.S.C. 3608(b)), are each amended by striking out "5362," and inserting in lieu thereof "5372,".

(4)(A) The amendments made by this subsection shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act.

(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 or 5363 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).

(b)(1) Under regulations prescribed by the Office of Personnel Management, any employee—

(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section under circumstances which would have entitled the employee to coverage under the provisions of section 5362 or 5363 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled—

(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

(ii) to have the amendments made by subsection (a) of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

(2) Under such regulations, any employee who—

(A) during the period beginning on January 1, 1977, and ending on the effective date of the amendments made by subsection (a) of this section was holding any position under a covered pay schedule when such position was reduced in grade; and

(B) after the date of such reduction in grade and before such effective date, changed to any other position under such a schedule (other than by reason of a demotion for personal cause) and is holding such position on such effective date;

is entitled to the benefits of section 5363 of title 5, United States Code (as amended by subsection (a) of this section) as if such employee had not changed positions.

(3) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

(4)(A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

(ii) who died.

(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

(5) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5366 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of title VIII be dispensed with, and that it be printed in the

RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. For the information of the committee, titles IX and X were stricken.

There being no amendments to title VIII, the Clerk will read title XI.

The Clerk read as follows:

STUDY ON DECENTRALIZATION OF GOVERNMENTAL FUNCTIONS

SEC. 1101. (a) As soon as practicable after the effective date of this Act, the Director of the Office of Personnel Management shall conduct a detailed study concerning the decentralization of Federal governmental functions.

(b) The study to be conducted under subsection (a) of this section shall include—

(1) a review of the existing geographical distribution of Federal governmental functions throughout the United States, including the extent to which such functions are concentrated in the District of Columbia; and

(2) a review of the possibilities of distributing some of the functions of the various Federal agencies currently concentrated in the District of Columbia to field offices located at points throughout the United States.

Interested parties, including heads of agencies, other Federal employees, and Federal employee organizations, shall be allowed to submit views, arguments, and data in connection with such study.

(c) On the completion of the study under subsection (a) of this section, and in any event not later than one year after the effective date of this Act, the Director of the Office of Personnel Management shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any such recommendation which involves the amending of existing statutes shall include draft legislation.

SAVINGS PROVISIONS

SEC. 1102. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1103. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

SEC. 1104. Except as otherwise expressly provided in this Act, no provision of this Act shall be construed to—

"(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act; or

"(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 1105. (a) Title 5, United States Code, is amended—

(1) in sections 5347, 8713, and 8911, by striking out "Chairman of the Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management";

(2) in section 3304 by striking out "a Civil Service Commission board of examiners" and inserting in lieu thereof "the Office of Personnel Management";

(3) in sections 1301, 1302, 1304, 1308, 2105, 2951, 3110, 3304a, 3308, 3312, 3318, 3324, 3325, 3344, 3351, 3363, 3373, 3502, 3504, 4102, 4106, 4113–4118, 5102, 5103, 5105, 5107, 5110–5115, 5303, 5304, 5333, 5334, 5336, 5338, 5343, 5346, 5347, 5351, 5352, 5371, and 5372 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5374 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5504, 5533, 5545, 5548, 5723, 6101, 6304–6306, 6308, 6311, 6322, 6326, 7203, and 7204 (as redesignated in section 703(a)(1) of this Act), 7312, 8151, 8331, 8332, 8334, 8337, 8339–8343, 8345–8348, 8501, 8701–8712, 8714, 8714a, 8716, 8901–8903, 8905, 8907–8910, and 8913, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(4) in sections 1505–1508 and 3383 by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof "Merit Systems Protection Board" and "Board", respectively;

(5) in section 1504 by striking out "Civil Service Commission. On receipt" and all that follows down through the end thereof and inserting in lieu thereof "Special Counsel of the Merit Systems Protection Board.";

"(6) in section 5335(c)—

"(A) by striking out "Commission" the first place it appears and inserting in lieu thereof "Office of Personnel Management";

"(B) by striking out "Commission" the second place it appears and inserting in lieu thereof "Merit Systems Protection Board";

"(C) by striking out "Commission" the third place it appears and inserting in lieu thereof "Office"; and

"(D) by striking out "Commission" the fourth place it appears and inserting in lieu thereof "Board";

(7) in section 8347(d), by striking out "Commission" the first time it appears and inserting in lieu thereof "Merit Systems Protection Board" and by striking out "Commission" the second time it appears and inserting in lieu thereof "Board";

(8) in section 552(a)(4)(F)—

(A) by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof, "Special Counsel"; and

(B) by striking out "its" and inserting in lieu thereof "his";

(9) in section 1303—

(A) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management Merit Systems Protection Board, and Special Counsel"; and

(B) by striking out "Commission" in paragraph (1) and inserting in lieu thereof "Office of Personnel Management";

(10) in section 1305, by striking out "For the purpose of sections 3105, 3344, 4301(2)(E), 5362, and 7521 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges the Civil Service Commission may" and inserting in lieu thereof "For the purpose of section 3105, 3444, 4301(2)(D) and 5372 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may";

(11) in section 1306, to read as follows: "The Director of the Office of Personnel Management and authorized representatives of the Director, may administer oaths to witnesses in matters pending before the Office.";

(12) in sections 1302, 1304, 1308, 2951, 3304a, 3308, 3312, 3317b, 3318, 3324, 3351, 3363, 3504, 4106, 4113–4115, 4117, 4118, 5105, 5107, 5110–5112, 5114, 5333, 5343, 5346, 5545, 5548, 5723, 6304, 6405, 7312, 8331, 8332, 8337, 8339–8343, 8345–8348, 8702, 8704–8707, 8709–8712, 8714a, 8716, 8901–8903, 8505, 8907, 8909, 8910, and 8913 (as such sections are amended in paragraph (3) of this subsection), by striking out "Commission" each place it appears and inserting in lieu thereof "Office";

(13) in sections 1303, 8713, and 8911 (as such sections are amended in paragraph (1) of this subsection), by striking out "Commission" and inserting in lieu thereof "Office";

(14) in section 8344(a), by striking out "Commission" and inserting in lieu thereof "Office of Personnel Management";

(15) in section 8906, by striking out "Commission" each place it appears and inserting in lieu thereof "Office of Personnel Management" the first time it appears and "Office" the other times it appears;

(16) in the section heading for section 2951 and in the item relating to section 2951 in the analysis for chapter 29, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management"; and

(17) in the section heading for section 5112 and in the item relating to section 5112 in the analysis for chapter 51, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management".

(b) Section 1307 of title 5, United States Code, is hereby repealed.

(c)(1) Section 5109(b) of title 5, United States Code, is hereby repealed.

(2) Section 5109 of such title is further amended by redesignating subsection (c) as subsection (b).

(d) The President or his designee shall, as soon as practicable, but in any event not later than 30 days after the date of the enactment of this Act, submit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a draft of any additional technical and conforming amendments to the provisions of title 5, United States Code, and any other provisions of law which have not been made by the provisions of this Act and which are necessary to reflect throughout such provisions the amendments to the substantive provisions of law made by this Act and by Reorganization Plan Numbered 2 of 1978.

EFFECTIVE DATE

SEC. 1106. Except as otherwise expressly provided in this Act, the provisions of this Act shall take effect 90 days after the date of the enactment of this Act.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that this last title of the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SCHROEDER: Page 383, after line 14, insert the following:

GENDER-BASED REFERENCES

SEC. 1102. (a)(1) Section 2108(3)(F) and (G) of title 5, United States Code, are each amended—

(A) by striking out "the mother" and inserting in lieu thereof "the parent",

(B) by striking out "her husband" and inserting in lieu thereof "such parent's spouse",

(C) by striking out "she" each place such term appears and inserting in lieu thereof "such parent",

(D) by striking out "from the father" and inserting in lieu thereof "from such individual's other parent", and

(E) by striking out "from her husband".

(2) Section 5561(3)(A) of title 5, United States Code, is amended by striking out "a wife" and inserting in lieu thereof "a spouse".

(3) Section 8332(j) of title 5, United States Code, is amended by striking out "widow" each place such term appears and inserting in lieu thereof "surviving spouse".

(b)(1) The heading for section 502 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members in the Reserves and National Guard".

(2) Section 2105(b) of title 5, United States Code, is amended by striking out "the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber shops, and the midshipmen's store" and inserting in lieu thereof "the laundry, tailor shop, cobbler and barber shops, and store for individuals enrolled at the Academy".

(3) Section 2108(3) of title 5, United States Code, is amended—

(A) in subparagraph (D), by striking out "widow or widower" and inserting in lieu thereof "surviving spouse"; and

(B) in subparagraph (E), by striking out "wife or husband" and inserting in lieu thereof "spouse".

(4) Section 3110(a)(3) of title 5, United States Code, is amended by striking out "father" and all that follows down through "half sister" and inserting in lieu thereof the following: "parent, child, brother, sister, uncle, aunt, first cousin, nephew, niece, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister.".

(5) The heading for section 3551 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members of the Reserves and National Guard".

(6) Section 5343(d)(2)(B) of title 5, United States Code, is amended by striking out "manpower" and inserting in lieu thereof "supply of personnel available and fitted for service".

(7) The hearing for section 5543 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members of the Reserves and National Guard".

(8) Section 5561(3(B) of title 5, United States Code, is amended by striking out "mother or father" and inserting in lieu thereof "parent".

(9) Section 5582(b) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(10) Section 5583(a) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(11) Section 5701(4) of title 5, United States Code, is amended by inserting "or stewardesses" after "stewards".

(12) Section 5723 of title 5, United States Code, is amended—

(A) in the heading, by striking out "manpower" and inserting in lieu thereof "personnel"; and

(B) in subsections (a)(1) and (d), by striking out "manpower shortage" each place the term appears and inserting in lieu thereof "shortage in personnel available and fitted for service".

(13) The hearing for section 6323 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members of the Reserves and National Guard".

(14) The heading for section 6324 of title 5, United States Code, is amended by striking out "firemen" and inserting in lieu thereof "firefighters".

(15)(A)(i) Section 8101(6) of title 5, United States Code, is amended to read as follows:

"(6) 'surviving spouse' means the spouse living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion.".

(ii) Section 8101(11) of title 5, United States Code, is hereby repealed.

(B) Section 8109(a)(D) (i), (ii) and (iii) of title 5, United States Code, are each amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(C) Section 8133 of title 5, United States Code, is amended—

(i) by striking out "widow or widower" each place it appears and inserting in lieu thereof "surviving spouse";

(ii) in subsection (a)(4), by striking out "widow, widower," each place it appears and inserting in lieu thereof "surviving spouse";

(iii) in subsection (a)(5), by striking out "widow, widower," and inserting in lieu thereof "surviving spouse,"; and

(iv) in subsection (b)(1), by striking out "widow, or widower" and inserting in lieu thereof "surviving spouse".

(D) Section 8135 of ttile 5, United States Code, is amended by striking out "widow or widower" each place it appears and inserting in lieu thereof "surviving spouse".

(16) Section 8110 of title 5, United States Code, is amended—

(A) by striking out paragraph (1);

(B) in paragraph (2)—

(i) by redesignating such paragraph as paragraph (1); and

(ii) by striking out "husband" and inserting in lieu thereof "spouse"; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(17) Sections 8116(c), 8137(a)(1), and 8173 of title 5, United States Code, are each amended by striking out "workmen's" and inserting in lieu thereof "workers'".

(18) Section 8342(c) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(19)(A) The heading for subchapter II of chapter 85 of title 5, United States Code, is amended by striking out "EXSERVICEMEN" and inserting in lieu thereof "FORMER MEMBERS OF THE ARMED FORCES".

(B) Section 8521(a)(2) of title 5, United States Code, is amended by striking "servicemen" and inserting in lieu thereof "members of the armed forces".

(C) The item in the chapter analysis of chapter 85 of title 5, United States Code, which relates to subchapter II is amended by striking out "EX-SERVICEMEN" and inserting in lieu thereof "FORMER MEMBERS OF THE ARMED FORCES".

(20) Section 8705(a) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

Page 383, line 16, strike out "Sec. 1102." and insert in lieu thereof "Sec. 1103.".

Page 384, line 15, strike out "Sec. 1103." and insert in lieu thereof "Sec. 1104.".

Page 384, line 21, strike out "Sec. 1104." and insert in lieu thereof "Sec. 1105.".

Page 385, line 7, strike out "Sec. 1105." and insert in lieu thereof "Sec. 1106.".

Page 390, line 16, strike out "Sec. 1106." and insert in lieu thereof "Sec. 1107.".

Revise the table of contents accordingly.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendments I am offering will remove the bias contained in certain sections of the Civil Service laws in title 5, United States Code.

The amendments make only changes which are necessary, because the rules for construction of the United States Code contained in title 1, section 1, of the Code do not cover them. That section is as follows:

SECTION 1. Words importing singular number, masculine gender, etc.; extended application. In determining the meaning of any Act or resolution of Congress, words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to remales; the words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person; the word "person" may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an "oath" shall be deemed complied with by making affirmation in judicial form. (R. S. § 1.)

Thus, my amendments make changes, such as replacing the words "husband" or "wife" with "spouse," and "mother" or "father" with "parent," and "widow" or "widower" with "surviving spouse," and "National Guardsman" with "member of the National Guard," which reflect the fact that citizens of both sexes are to be treated equally. I believe that many of these changes either reflect the law as interpreted by the courts, or would reflect the law if an appropriate case were brought. In addition, many of the changes are as beneficial to men as to women.

These modifications were suggested in a report of the U.S. Commission on Civil Rights which came out in April 1977 entitled "Sex Bias in the U.S. Code."

Mr. Chairman, I urge my colleagues' support of ths reform.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman.

Mr. JOHN L. BURTON. Mr. Chairman, how does the gentlewoman handle "grandparents"?

Mrs. SCHROEDER. "Grandparents" is already neutered.

Mr. JOHN L. BURTON. Neutered?

Mrs. SCHROEDER. "Grandparents"? I am totally unaware of any sexual implication by the word "grandparents."

Mr. JOHN L. BURTON. But "grandmother" or "grandfather" would be changed to "grandparents"?

Mrs. SCHROEDER. That is right.

Mr. JOHN L. BURTON. And the same for "great grandparents"?

Mrs. SCHROEDER. That is right.

Mr. JOHN L. BURTON. I thank the gentleperson.

Mr. UDALL. Mr. Chairman, will the gentleperson yield?

Mrs. SCHROEDER. I would be delighted to yield to the gentleperson from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I hate to break up a happy party, but I want to raise a serious question about this amendment. It really does two things, one is we get away from gender based references, and, in that respect, I support what the gentleperson is trying to do, and I think she is right on target, I think it is a good move. But, there have been no hearings held on this amendment and no study has been made of it. I am told by the staff that this could mean making a lot of substantive changes in the law, different laws relating to civil service. I am concerned about that and I want to raise that question.

For example, we now have a law which gives the mother of a disabled veteran a 5-point preference with respect to Federal employment. The father does not now have that preference. If we pass this amendment I am told by the staff we would make a change in that law, and there may be dozens of other Federal laws relating to benefits where major changes in policy would be affected. I would probably stand with the gentlewoman on those changes, but I am not sure that this is the right way, the right time, to be moving in that drastic a manner.

Mrs. SCHROEDER. Mr. Chairman, I do not think what we are doing here is drastic, because I think the consensus of the Civil Rights Commission, who did hold extensive hearings on this, and did make these recommendations, was that if any of this language was tested in the courts under the current laws that we have on the books, "mother" would be "parent." For example, the section you are talking about is where a mother who has a husband who is totally or permanently disabled, but what we are saying is that the parent of someone who was injured in the war, who is married to someone who is permanently disabled, so that neither parent could help themselves, so they would get that benefit.

The Civil Rights Commission seems to feel that in a court you could not sustain that anyway, that would be considered sex bias by U.S. law.

Mr. UDALL. If the gentleperson will yield further, I understand there are a lot of arguments made to the cases involving the civil service system, and that there might be a tremendous budget impact. I do not know how many millions of dollars are involved if we put fathers of disabled servicemen in the same status as we put mothers.

I would just suggest that maybe we go a little bit slower for the moment in passing such drastic changes as the amendment here well might.

But, so far as the gender references, I would have no problem with that, but I think that there may be major changes in national policy involved and I am concerned about that.

Mrs. SCHROEDER. I think you will find that in changing the gender references we are in accord with the law as interpreted by the Civil Rights Commission. So I do not think you will find we are really changing the laws, we are just conforming this in compliance with the law.

Mr. SEIBERLING. Mr. Chairman, will the gentleperson yield?

Mrs. SCHROEDER. I yield to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Could you incorporate a reverse grandparent clause so that it would not affect anybody or change their status at all?

The CHAIRMAN. The time of the gentlewoman has expired.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have taken this time in order to ask the gentlewoman from Colorado (Mrs. SCHROEDER) a question. I am informed there is some indication that there may be a problem of jurisdiction involved here in what we are doing so far as the Committee on Education and Labor is concerned, possibly affecting legislation within that committee and possibly having a substantive effect on the legislation.

Has this amendment been cleared on the jurisdictional question with that committee?

Mrs. SCHROEDER. I am not sure it has been cleared, but it clearly is title V of the bill and the Committee on Civil Service has full jurisdiction over title V. We are strictly dealing with the sex bias portion of the United States Code in title V dealing with people who are in civil service.

Mr. FORD of Michigan. I am not at all certain that that is what we are dealing with, although for the purpose of administering this law and a number of other laws, as a matter of fact, with respect to Federal employees, title V of this bill is operative since it deals with the classified service.

The fact is that in exercising their jurisdiction here to administer the law, they are administering laws under the jurisdiction of the Committee on Education and Labor, substantive laws; and we have no way of knowing whether the gender changes in the amendment, when read in the context of those existing statutes, to be administered with respect to Federal employees, constitute a substantive change in rights or not.

For example, we still—perhaps archaically, from the gentlewoman's point of view—refer to "widows" in legislation; and that is not a term that is without gender.

Mrs. SCHROEDER. If the gentleman will yield further, there are no substantive changes, I can assure the gentleman. In section 81 what we are talking about is surviving spouses rather than widows, but there are no substantive changes, per se. It is strictly within the confines of title V.

Mr. FORD of Michigan. Mr. Chairman, let me, at the risk of having somewhat cleansed my soul by voting for the extension of ERA and sounding like a sexist and a conservative at the same time—both labels I would not like to carry for very long—say that I would have to reluctantly oppose the gentlewoman's amendment, because we just cannot understand it well enough to be secure in adopting it at this time. I really think that as laudable as her objectives may be, it is not worth taking the risk.

For that reason, Mr. Chairman, I would urge a "no" vote on the gentlewoman's amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been looking at the RECORD since the gentleperson from Colorado had filed her amendment in the RECORD. There is a little more to it than just substituting "parent" for "wife" or "husband" and so forth.

I support the point made by the gentleman from Michigan (Mr. FORD) and the gentleman from Arizona (Mr. UDALL), that this amendment really could be a much more far-reaching amendment than we think. Therefore, I think it would be much wiser if we took a good, hard look at this amendment. Certainly there is no real opposition to the principle, but I think there should be some questions raised as to the real applications of the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentlewoman from Colorado (Mrs. SCHROEDER).

The amendments were rejected.

PARLIAMENTARY INQUIRY

Mr. HARRIS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HARRIS. Mr. Chairman, I have an amendment to the bill which would amend the bill so as to establish a new title in the bill. If I understand the current parliamentary situation, we are still under title XI, and such an amendment would be in order after we had completed action on title XI. Am I correct in that interpretation, and are my rights reserved in offering an amendment for this title if I do not make that motion until after we finish title XI?

The CHAIRMAN. The gentleman's observation is correct. The committee is presently considering title XI; and if and when there are no further amendments

to title XI, it will be proper to offer an amendment, adding a new title.

Mr. HARRIS. I thank the Chair.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: Page 384, line 18: strike out "Act." and insert in lieu thereof the following: "Act, except that no part of any appropriation contained in this Act may be obligated or expended in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order which includes any ratio, quota, or other numerical requirement related to race, creed, color, national origin or sex, and which requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity.".

Mr. COLLINS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. COLLINS of Texas. Mr. Chairman, my amendment would deny funds for the purpose of initiating or continuing appointment or promotion programs based on criteria other than merit, as defined in the merit system principles of title I of this bill. The language of this amendment is virtually identical to that which the House accepted last June to H.R. 12929, the Labor-HEW appropriations bill, by a vote of 232 to 177. We have already spoken on this issue, and I believe we should make it clear, by adopting this amendment, that we are not altering our position in any way.

Specifically, this amendment would cut off funds for the so-called Sugarman plan to ignore merit principles and appoint Federal employees on what can only be called a quota basis. This amendment is necessary to preserve the essence of merit principles; namely, that Federal positions should be filled by the best qualified applicant, regardless of sex, or racial or ethnic background.

This bill states, in title I on page 133 and 134, that:

* * * recruitment should be from qualified vancement should be determined solely on endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills.

My amendment would emphasize the crucial word "solely." In approving this amendment we would not be forbidding the search for qualified personnel from every segment of society, but we would deny funds to any initiative which implies that each of these segments should be represented, without regard to merit, on the Federal civilian payroll.

Because the Federal work force is responsible to all the people, and not merely to those of a particular racial or ethnic background, job appointments should go to the best qualified applicant and to no one else. We must choose between a quota system which would parcel out Government jobs to special groups in accordance with the latest census and a Federal civil service which administers all the people's laws and embodies the best available talent for each job.

My amendment would not affect the veterans preference laws and regulations established over the years and embodied in title III of this bill. Veterans' preference status is not a prejudicial exemption from merit principles, because the preference itself is based on meritorious service rendered to the Nation by persons of all backgrounds.

Mr. Chairman, I urge my colleagues to affirm the ideals which prompted them to deny taxpayer funds to quota systems within the HEW-Labor appropriations. I urge the House to accept this amendment.

SUGARMAN PLAN

One of the great strengths of our Civil Service System in the Federal Government is the removal of Government workers from partisan political influence.

The 19th century gave us numerous examples of the abuses when employment by the Federal Government was used as a political reward. Political connections, not qualifications, became the main factor in determining whether one individual or another secured a job or whether a person remained in a Government job or lost a Government job. The latter part of the 19th century brought us reform through the Pendleton Act, a measure which replaced the old spoils system with merit considerations for Federal employment. Stemming from political pressures on Federal employees in the 1930's, the Hatch Act was enacted. This measure prohibited Federal employees from participating in partisan political activities and served as a "bill of rights" to protect Federal employees from political pressures. The debate and discussion last year over changing the Hatch Act raised the issue of maintaining Federal employment free from political influence and political pressure.

Another grave threat to merit Federal employment surfaced last December when Washington, D.C., newspapers carried stories of a Civil Service Commission proposal to create a special emphasis program (SEP) or the so-called Sugarman plan which would apply to Federal civil service employees. The special emphasis program, in order to carry out the Federal Government's affirmative action program under title VII of the Civil Rights Act, would remove civil service coverage from a sizable number of middle and upper level Federal jobs. These jobs, specifically set aside for women, black Americans, Hispanic Americans, and other minorities, could be secured by the applicants without the necessity of these individuals taking competitive examinations with other Federal job applicants. This special class could be hired for these positions without regard to the regular civil service job registers and, once hired, could secure regular civil service status after 2 years.

The Civil Service Commission would have the power to determine the types of positions throughout the Federal Government which would be included in the program. The initial determination of the number of jobs set aside would come from a determination of the percentage of women and minority group members in the national work force as compared to the Federal Government in each job category. Women and minority group members graduating college and ready to enter the Federal work force would have these jobs set aside for them without having to take civil service exams. It could be possible that agencies could fill up to 20 percent of these jobs on a noncompetitive basis. The Civil Service Commission approved this approach in principle on December 21, 1977. A U.S. Civil Service Commission Bulletin of March 6, 1978, noted that the special emphasis program or Sugarman plan is testing "a 5-year experimental program the kinds of innovations and flexibilities that are essential to the further success of meaningful programs of affirmative action in the Federal Government." It noted that the results would be thoroughly evaluated "to determine whether it produces employees of equivalent competence to those hired through existing methods while at the same time lessening the adverse impact on women and minorities."

During the few months when this program first came to public attention, careful observers have taken a closer look at the implications of such a plan which would tamper with the very essence of our present civil service system—merit selection for Government jobs. Proponents insist merit considerations would be protected but the very procedure leaves this very much in doubt. Racial, sexual, and/or economic and social background will become the predominant consideration for filling these civil service positions and thus relegating merit to a secondary, or even an insignificant role. Civil Service Commission Chairman Alan K. Campbell and the plan's author, Civil Service Commission Vice Chairman Jule Sugarman, support the measure. It is being promoted as the Government's plan to promote "affirmative action" in Federal employment.

We should look at some of the obvious problems with the Sugarman plan and consider carefully if we wish to allow the Civil Service Commission to take this monumental change affecting Federal employment.

The removal of a large number of civil service jobs from competitive examinations would open up the possibility that jobs removed from merit competition could become political patronage positions. Jobs could be distributed to women and minority members for political favors performed, rather than as part of a procedure to eliminate discrimination. Thus, we would be granting governmen-

tal officials a wide discretionary power to appoint individuals to civil service positions without any merit test. An unscrupulous administration or a politically motivated administration could easily manipulate the system to fill governmental positions on a strictly partisan basis. Merit would be put aside under the guise of carrying out an "affirmative action" program. We need to avoid the opening of loopholes which once again could "politicize" governmental service.

Since those individuals under a Sugarman plan would be brought into Government at middle and upper levels for jobs, it would have a demoralizing job reaction since avenues of promotion would be restricted or closed off for those employees who are already in governmental service under the merit system. This limited access to promotion for merit civil service employees would hurt the very people designed to be aided by the Sugarman plan—women and members of minority groups.

Suspicion would become prevalent in the Federal employment system that certain individuals made their way to the top through merit while others made their way to the top through preferential treatment. We would have the establishment of two separate classes in governmental service. Two different standards would prevail with women and minority members being on the defensive to "prove" their merit. This plan would increase "racial consciousness" or "sexual consciousness" rather that diminish it.

There is also the very real problem of constitutionality which a Sugarman plan would raise. The Antidefamation Leauge, for example, has already served notice that it would challenge the plan in court charging that it would "inevitably lead to a constitutional confrontation on the issues of due process and equal protection." The Sugarman plan is doing exactly what it proposes to eliminate—authorizing discrimination on the basis of sex and race for Federal employment. The Civil Service Commission's Sugarman plan would not eliminate discrimination; it would promote, perpetuate, and encourage discrimination as part of the Civil Service system.

Although we are in agreement seeking to provide equal opportunity for all, this program would not accomplish the objectives its proponents seek.

We do not need nor do we want a Sugarman plan for the Federal Government service.

It would perpetuate discrimination.

It would upset the merit system in the Federal Government.

It would hurt, not help, women and members of minority groups.

Presently, the Civil Service Commission has postponed implementation until further hearings and further comment from the public. The proposed Sugarman Plan is alive and well and only has been postponed from its original June 1, 1978 implementation date.

I wish to point out to my colleagues the very perceptive comments on the special emphasis program or Sugarman Plan which is contained in the Department of Defense appropriation bill (1979) report (House Report 95–1398, page 84). It noted that while competitive programs needed to be reviewed on a continuous basis to insure freedom from bias, it added that aspects of the Sugarman Plan as presented "appear to violate not only longstanding traditions of selection based solely upon merit, but would open the Federal employment process to the very types of discriminatory abuses that the special emphasis program purports to eliminate." I quote directly from the report which discusses the problem that the Sugarman Plan would create in the Department of Defense:

> The Committee is concerned that if this "experiment" is tested in the Department of Defense, up to 200,000 jobs would be unprotected by the merit system, and could conceivably be filled on the basis of discrimination because of race, sex, national origin, religion, age, marital status, or handicapped condition. This plan also states that the granting of schedule A authority is permissive and would not require the agency to use the authority nor to select any specific number or type of individuals under the authority. In other words, a suspension of merit procedures could take place even if specific discriminatory practices did not exist, and even if discrimination were occurring, the expanded authority could be used to continue or even broaden the discrimination outside of established merit practices. Consequently, it is the expressed intent of this Committee that the Special Emphasis Program or any other new program of a similar nature without adequate non-discrimination and merit safeguards not be implemented or tested within the Department of Defense.

It is clear that the Sugarman Plan would not only create problems for merit service in the Department of Defense but all other Government agencies which would adopt this dubious "affirmative action" proposal. It is essential that we in the Congress protect the integrity of the merit aspects of the Civil Service System.

As a remedy for this threat to Federal merit employment, I am introducing a concurrent resolution which states clearly that in seeking to implement title VII of the Civil Rights Act of 1964 or any other law promoting equal employment it is the sense of Congress that the objective of equal employment does not require excepting positions from the competitive service in the Federal civil service and that compliance with such provisions should be accomplished by means which do not require adjusting the standards for examination, certification, and appointment in the Federal civil service.

It is time that we in Congress make our stand clear and resist some of the absurd and inane activities which go on under the name "affirmative action." While we support nondiscrimination and merit employment, we should not provide special privileges under an "affirmative action" program—special privileges which would undermine our Federal merit system and seriously erode the rights of all Federal employees.

I urge my colleagues to take speedy action in adopting this concurrent resolution which opposes a weakening of our Federal merit system for Government employment. The adoption of this resolution would reaffirm our commitment to merit employment for all regardless of race, color, creed, or sex.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I would like to say to the gentleman from Texas at the outset that I am as strongly opposed to what I know about the alleged Sugarman plan as I think the gentleman is and probably for the same reasons. As a member of the committee, I will stand with the gentleman to consider anything that becomes necessary should they attempt to do anything as silly as I believe the proposal, from the limited knowledge I have, is. I think it would turn the Federal work force inside and out and destroy morale completely.

On the other hand, I am constrained to oppose the amendment, because I am afraid it goes much further than dealing specifically with that kind of a scheme.

We cannot really understand what the last two numbered sentences in the amendment mean; for example, denying the use of money for "the hiring or promotion policies or practices of such individual entity, or the admissions policies or practices of such individual entity."

That sounds like you might not be able to even engage in a recruitment plan to try to recruit minorities or try to recruit more women into a particular field or something of that kind, certainly something none of us would disagree with, and certainly not in the same ball park as the Sugarman plan.

On the other hand, it indicates a Federal official could not even make a recommendation with regard to Executive action.

As the gentleman from Arizona has indicated, we have imposed on the citizens of this country in an attempt to assure fair play for all citizens, regardless of race, creed, color or sex, Federal statutes that have been necessary by the fact that not everybody in our society always plays fair one with another. I do not think we want to go on record her as saying that we tell private enterpris to play by one set of rules with respect to their treatment of minorities, whether by race, creed, color or sex, and we are going to have a different set of rules for the Federal Government. If anything, we should be willing to go a step further than we ask private enterprise to go.

The EEOC law, for example, is made applicable to Federal employees. I read the gentleman's amendment to say that in spite of the fact that Federal managers have an obligation under the law that we pass on one day to enforce equal employment opportunity under that law, that they, nevertheless, would be prevented from doing their duty under that law by this provision.

Clearly, if we adopt this amendment, it would end up in court rather quickly. Perhaps if the House is ready to surrender its legislative judgment to the all-omnipotent Supreme Court across the way, we ought to vote for the amendment.

For myself, I think we ought to make

these decisions ourselves. For that reason, I oppose the gentleman's amendment and reassure the gentleman that I will be standing at his side should Mr. Sugarman try to get his plan through here.

I would like to point out to the gentleman from Texas an amendment that I offered during committee markup and which was passed. This amendment requires the office of personnel management to collect on a monthly basis job opening announcements from Federal Government agencies and to make this information available to the U.S. Employment Service. One of the greatest problems for all Americans seeking jobs with the Federal Government, but in particular for minorities, women and other underrepresented groups in the Federal workforce, is simply identifying job openings for which they might wish to apply.

In this age of computers and technology the dissemination of such material should have been provided long ago. We require the private employer to register job openings with the employment service and now under my amendment we will apply the same standard to the Federal Government. This small, but potentially significant change, will do more, I believe, in opening up competition for Federal jobs to all Americans. And this change will be viewed by all Americans as being a fair and logical way of dealing with our problems, as opposed to the so-called Sugarman Plan.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, would the chairman and the gentleman from Arizona assure us they will take the Sugarman plan and handle it as a separate piece of legislation? I realize it is too late this session, but do they believe we could face this issue early next year?

Mr. FORD of Michigan. The best information I have is that wiser counsel has prevailed and that is not a viable probability at this time, anyhow.

Mr. COLLINS of Texas. Mr. Chairman, if the gentleman will yield further, it will not come up this year.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, my views are consistent with those of the gentleman from Michigan with regard to the merits of the Sugarman plan. I will stand with the gentleman to head that plan off or anything that has the same effect it has; but I am generally in accord with the analyses and the principle of the gentleman from Michigan.

Mr. COLLINS of Texas. Mr. Chairman, based on that assurance, I ask unanimous consent to withdraw this amendment so that it can be handled as a separate issue at a later time.

I put that in the form of a unanimous-consent request at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas (Mr. COLLINS) to withdraw the amendment?

There was no objection.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 385, after line 5, insert the following new section:

RETENTION OF SECURITY INVESTIGATION REPORTS

SEC. 1105. Except as may be provided under any law enacted after the date of the enactment of this Act—

(1) the reports of the investigations conducted under section 1304 of title 5, United States Code, by the Office of Personnel Management (or previously conducted under such section by the Civil Service Commission), and

(2) the security-investigations index required to be established under Executive order numbered 10450, and the reports and files of all investigations covered by the index and which were prepared by the Office or the Commission, including the Security Research Analysis Section Organizational Files,

shall be maintained in accordance with the provisions of such Executive order.

Mr. ASHBROOK. Mr. Chairman, throughout this debate my colleague and friend, the able gentleman from Arizona (Mr. UDALL), who is heading this bill to passage through this body, has continually stated that amendments should not be adopted without careful study. I tend to agree with that.

The purpose of this amendment is to prevent the Civil Service Commission from doing something without further study or until the action of this Congress. So I think the amendment is in the spirit of what the gentleman from Arizona (Mr. UDALL) has repeated time and time again.

I call the attention of the Members, although they probably are aware of it—at least those who are on the oversight Subcommittee on Civil Service—to hearings in the U.S. Senate on February 9, 1978. In those hearings they received the testimony of Mr. Campbell and of Robert J. Drummond, who is the head of the Bureau of Personnel Investigations in the Civil Service Commission. They clearly indicate the Civil Service Commission is proceeding with destroying all previous security files without the express authorization of Congress. That is precisely what I am trying to prevent. All I am saying is that we should retain all security investigation reports until the Congress decides on their disposition.

The purpose of this amendment, therefore, is simply to protect until further congressional review of the security files used by the Civil Service Commission in establishing the suitability of applicants for Federal service or for continued Federal employment.

The present Federal employee security program was established in 1953 by Executive Order 10450, which may soon be superseded by another Executive order now before the OMB. That may, of course, take care of this situation. Regardless of the provisions of another Executive order, all reports, files, and other materials maintained under EO–10450 should not be disposed of until Congress by statute makes provision for such materials.

There is a compelling justification for this amendment. In February of this year the Senate Subcommittee on Criminal Laws and Procedures had as a witness the Chairman of the Civil Service Commission, who informed the subcommittee—and I am sure the Members have read it—that the Commission intended to destroy organizational security files used in the Federal security program. Although the proposed action was subsequently postponed, the subcommittee chairman and the ranking minority member charged that—and I quote:

Over the past five years or so, without the knowledge of Congress and contrary to statutory requirement and the Commission's own regulations, there has been a progressive dismantling of the Federal Employee Security Program—until today, for all practical purposes, we do not have a Federal Employee Security Program worthy of the name.

Again let me state that was the statement of the chairman and the ranking minority member.

Recent cases of terrorism and espionage point up the increasing dangers to free world governments from without and from within. My amendment, while not getting into the whole security issue and not suggesting there should be more security checks, simply says those records on file should not be destroyed until the Congress determines in its own wisdom what should be done with them.

As the Members might recall, we dismantled the Internal Security Committee, and the Congress directed that the files be turned over to the Archives, to be sealed for, I believe, something like 50 years.

Mr. Chairman, my amendment would prevent any further destruction of employees' security records until Congress can take another look. I urge the support of the Members of my amendment.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I would be glad to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, there is concern on our side about the actual effect of this amendment.

On the one hand, I can see the argument the gentleman makes that the files ought to be retained until an orderly decision can be made under the Executive order as to their disposition. Certainly I would have no quarrel with that purpose.

On the other hand, it is believed on this side that perhaps the gentleman would inadvertently or maybe advertently amend the Privacy Act produced by the Government Operations Committee in a way that would deny individuals access to certain charges and information in their files, information that is now available to them under the Privacy Act as it was passed.

Does the gentleman intend just the preservation of the record, or is the gentleman trying to dispose of the access?

Mr. ASHBROOK. In response to my colleague's question: frankly, in looking at the amendment, I do not see how that would happen. That certainly is not my intention. The last part of the amendment says "* * * shall be maintained in accordance with the provisions of such Executive order."

I am only talking about preventing the destruction of files. As to the section the gentleman is talking about, I believe is section (E)(7) of the Privacy Act, I do not in any way intend to impinge in any way on the Privacy Act. My amendment

is merely to make sure they are not destroyed.

Mr. UDALL. If the gentleman will yield further, the interpretation comes from the use of the word "maintain," which means you maintain and make them accessible, and so on, in accordance with the law. Well, if you do that, you would tend to overrule the Privacy Act.

Would the gentleman use the words "disposed of" instead of "maintained"?

Mr. ASHBROOK. Shall not be destroyed, that is the intention. With that explanation, I would accept the gentleman's suggestion.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that in the second line from the bottom of the gentleman's amendment the word "maintained" be changed to "disposed of."

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, with that change, I would accept the amendment.

Mr. ASHBROOK. I thank my colleague.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK), as modified.

The amendment, as modified, was agreed to.

AMENDMENT OFFERED BY MR. TRIBLE

Mr. TRIBLE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRIBLE: Page 390, insert after line 18 the following:

PREVAILING RATE EMPLOYEES; NIGHT DIFFERENTIAL

SEC. 1107. (a) Section 5334 of title 5, United States Code, is amended by adding at the end thereof the following:

"(g) A prevailing rate employee, as defined in section 5342(a)(2) of this title, who together with his position is brought within the purview of this subchapter and chapter 51 of this title at any time on or after January 1, 1966, and who within one year before, but not at the time of, such personnel action was receiving night differential on a regular night shift tour worked on a rotational basis or at regularly scheduled intervals or on an irregular basis shall be entitled to inclusion at the time of such personnel action of such night differential as a part of his basic pay, as a result of conversion to the General Schedule, to the same extent as if he was receiving such night differential on a regularly scheduled night shift at the time of such conversion.".

(b) The amendment made by this section shall apply with respect to pay periods beginning before, on, or after the effective date of this section. Any sums to which an individual is entitled under this section for pay periods ending before the effective date of this section and which have not been paid to such individual shall be paid to such individual in a lump sum.

Revise the table of contents accordingly.

Mr. TRIBLE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. TRIBLE. Mr. Chairman, I rise to offer an amendment to correct a gross injustice affecting 47 employees of the Langley National Aeronautics and Space Administration (NASA) at Hampton, Va. These hard-working individuals were the victims of an oversight in the laws governing the conversion of Wage Board to GS or General Schedule.

During the late 1960's and early 1970's, NASA converted the pay of many technicians at the Langley Research Center from Wage Board Schedule to General Schedule. Unfortunately, the method by which the General Schedule salaries were calculated left 47 of these employees earning less than their similarly situated coworkers.

These NASA workers rotate between three standard shifts—day, evening, and graveyard. A typical schedule would find employees working 1 week from 8 a.m. to 4 p.m., the next week from 4 p.m. to midnight, and the third week from midnight to 8 a.m. At the same time, other employees would rotate according to other schedules among the three shifts.

For working the day shift, employees would be paid the standard base pay for their positions. When employees worked the evening or second shift, they got the same base pay as the day crew plus an additional 7½ percent. When these employees worked the last shift, they received the base pay plus 10 percent. Thus, over a period of several weeks, the pay of one of these technicians could vary in a day to day comparison by as much as 10 percent, depending on which particular shift the employee was working on the days in question.

Unfortunately, when NASA decided to convert these employees from wage board to GS pay, the regulations for conversion did not allow for the unique rotating schedules which these technicians worked. Instead of averaging the pay of these employees over a true earning period, NASA converted their pay based on their earnings for a randomly selected day. As a consequence, the new salaries for many of these technicians significantly understated their true previous earnings. The inequity was most acute for those employees working the first shift on the day selected as the base date for converting the wages. These unfortunate workers received no credit for working a shift with a night differential of 7½ percent or 10 percent.

When the local employee representatives questioned the fairness of this practice, they were given sympathy but no additional pay for the affected employees.

I am here today seeking that back pay and an adjustment in the wages of these employees to assure they are paid properly in the future.

I am assured that the situation at the NASA Langley facility is unique—no other Federal employees have been similarly mistreated. Therefore, this one time only payment of back wages and adjustment in present salaries would cost no more than $300,000.

I realize some of my colleagues may support the purpose of this amendment but question the appropriateness of adding it to this bill. I can understand these reservations. However, I am also concerned that a "good time" for this amendment may never come.

This problem has existed for some of these employees since 1966. A number of the employees have retired and others have died waiting for more equitable treatment from their Government. In 1975, my predecessor, Congressman Thomas Downing, introduced a bill almost identical to the amendment under consideration, but no action was taken on it. Likewise, I introduced the same bill in this Congress and the press of other subcommittee business has prevented any action on it.

Mr. Chairman, I believe 12 years is long enough for these people to wait for a proper recalculation of their wages. I urge the adoption of this amendment.

Mr. LEACH. Mr. Chairman, will the gentleman yield?

Mr. TRIBLE. I yield to the gentleman from Iowa.

Mr. LEACH. I thank the gentleman for yielding.

Mr. Chairman, I have carefully looked over the amendment offered by the gentleman from Virginia (Mr. TRIBLE), and in the event it is deemed inappropriate for consideration at this time, I would be hopeful that the Subcommittee on Compensation and Employee Benefits of the Committee on Post Office and Civil Service will hold early hearings on the subject. Clearly this inequity should be corrected.

Mr. TRIBLE. Mr. Chairman, I thank the gentleman from Iowa for his comments.

Mrs. SPELLMAN. Mr. Chairman, will the gentleman yield?

Mr. TRIBLE. I yield to the gentlewoman from Maryland.

Mrs. SPELLMAN. I thank the gentleman for yielding.

Mr. Chairman, let me commend the gentleman for attempting to address what may very well be an instance of discrimination. I would pledge to the gentleman that at a very, early date we will take up this question. I do not believe that it belongs here in this bill, but I do want to commend the gentleman for addressing the matter. You can be sure we will attempt to assist in looking into the problem—in fact, you have my pledge to do so.

Mr. TRIBLE. I thank the gentlewoman for those words of commitment.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. TRIBLE. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I commend the gentleman for his concern about the possible injustice to these employees, and certainly, if it has merit, after study I would join him in trying to redress this inequity.

Mr. Chairman, I have been fighting here these past few days to keep from loading up the bill. I have been trying to unload Christmas tree ornaments.

Mr. TRIBLE. Mr. Chairman, if I might reclaim my time, based on the commitment of the gentlewoman from Maryland (Mrs. SPELLMAN), I would ask unanimous consent to withdraw this amendment.

Mr. UDALL. Mr. Chairman, I thank the gentleman for doing that.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The CHAIRMAN. Are there further amendments to title XI?

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: On page 390 after line 14, insert a new section 1106 and renumber accordingly:

"SEC. 1106. All employees covered by this act who are compensated at a pay grade in the General Schedule of Grade 13 or above shall be limited in outside earned income to not more than fifteen percent of their salary."

Mr. ASHBROOK. Mr. Chairman, members of the committee, a few moments ago I indicated that our friend and colleague from Arizona had indicated time and time again in opposing amendments that matters had not come before the committee, that they were new and not thought over. Yet, as legislators there are certain matters before the legislative body that are almost generic. We know what we are talking about when we have sunset laws. We know what we are talking about when we have earnings limitations. These are general matters that we apply broadly so I think we can debate those matters in the context of how we apply these same standards, these same provisions, to other bills, to other legislation before this body.

I do not believe I need to take 5 minutes to tell the Members what I am doing. I am simply saying, as a part of this reform movement, as a part of this new era, everybody says that Congressmen and high executives should have full-time jobs and limitations on outside income. All I am saying is that I think most Members would agree that if one is in the general schedule of grade 13 and above—I pick grade 13, because that is roughly $26,000 per year—one should be a full-time employee and one's outside earned income—I put the word "earned" in just as we have it applied to us—should be limited to 15 percent of the salary.

I think it is a matter of equity and fairness. The facts of life are that we all know that some of the lower-grade employees probably do moonlight. It is probably necessary. That is why I picked grade 13. I do not think we should apply the 15-percent standard to an employee coming on the job at $8,000, $9,000, or $10,000 a year with family obligations, if he wants to work and can work and can maintain the job. But at grade 13, or about $26,000 a year, I think it is proper at that point to have a limitation on outside earned income and that is precisely what this amendment would do.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague yielding to me. All the gentleman wants to do is apply the same standard that is applied to Members of Congress to people in grade 13 and above in the executive branch?

Mr. ASHBROOK. Precisely. That is the purport of this amendment.

Mr. ROUSSELOT. I think that sounds like an excellent idea. I do not think we have any reservations on this side.

Mr. ASHBROOK. I hope I get the same signal from the other side.

Mr. ROUSSELOT. They are all for reform.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

I share the frustration of some of my colleagues on the subject of limitation on outside earned income, where rather heavy restrictions are imposed on Members of Congress and not on others in other branches of Government. We have been trying to avoid loading this bill up with pet grievances different Members have had. We have had considerable success.

May I point out three things to the gentleman from Ohio. One is that we had not a word of hearing on this in our deliberations in committee. There was no attempt to get the views of the Civil Service Commission, who would have to find some way to police and manage and control this situation. The second thing is, I would like to point out that this week the Ethics in Government Act is up, and it is before us for consideration. It would be a much more appropriate time and place to consider this matter in an orderly kind of way. The third thing I wanted to point out is that there is an Executive order on this question which, among other things, prohibits Federal employees from engaging in outside employment which is incompatible with the full and proper discharge of their duties and responsibilities, and it goes on to list some of the restrictions and constraints. That goes clear back to the Johnson administration.

So, I hope the gentleman would not ask us to legislate hastily at this time on this important side issue.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Ohio.

Mr. ASHBROOK. As to the matter of the ethics bill, I fully intend to offer this amendment to the ethics bill. It does seem, in the context of reform of the civil service, that it is an appropriate time at this point. I would only repeat my statement, that there are some things that are almost generic by nature.

And outside income is one. But I think every Member knows whether he wants to apply it specifically or generally, or use a shotgun or a rifleshot. So I do not think I am throwing in a ringer. I would hope my colleague would support it. I can understand why he might not, but I hope my colleagues will support it.

Mr. UDALL. I think under other circumstances I would be prepared to support an amendment of this kind but not on this bill at this time.

Mr. BAUMAN. Mr. Chairman, if the gentleman will yield, at the risk of cracking the conservative monolith on this side of the aisle, I would have to agree with the gentleman from Arizona that this amendment is inappropriate. For one thing it obviously should be amended to permit income from books civil servants might write or income from stock dividends or inheritances or various other incomes such as Members of Congress enjoy under House rules. We would not want to just apply an income limit to the income of working stiffs, but also to insurance income and dividends from stocks and bonds. Such outside income should have an exemption as is granted to our wealthy House colleagues.

I hope when the so-called Quillen amendment is offered to the ethics bill that the gentleman from Alabama and I would also agree that outside income should not be limited.

Mr. UDALL. Mr. Chairman, the gentleman from Maryland and I would stand stalwartly together on that.

Mr. ASHBROOK. Mr. Chairman, my friend, the gentleman from Maryland, went astray on this. I said in this the outside earned income, and the stock dividends, and other income to which the gentleman referred would be eliminated. It would be as for congressmen. It will say "earned income." It would apply to earned income.

Mr. BAUMAN. Let us reason together in private. I think we can work this out.

Mr. FORD of Michigan. Mr. Chairman. I move to strike the last word.

Mr. UDALL. Mr. Chairman, this is the greatest shock to the Nation's political system since Reagan picked SCHWEIKER to be his running mate.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The question was taken; and the chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ASHBROOK. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Mr. UDALL. Mr. Chairman, if the gentleman will withdraw his point of order, I will join him in requesting a recorded vote.

Mr. ASHBROOK. Mr. Chairman, I withdraw my point of order.

The CHAIRMAN. The point of order has been withdrawn.

The gentleman from Ohio (Mr. ASHBROOK) demands a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 134, noes 254, not voting 44, as follows:

[Roll No. 765]

AYES—134

Abdnor	Byron	Duncan, Tenn.
Ambro	Carr	Edgar
Andrews, N.C.	Cavanaugh	Edwards, Okla.
Andrews, N. Dak.	Cederberg	Emery
	Clausen, Don H.	Evans, Ga.
Applegate		Evans, Ind.
Archer	Cohen	Fascell
Ashbrook	Corcoran	Fenwick
Aspin	Cornell	Fithian
AuCoin	Cornwell	Flippo
Bafalis	Cotter	Flynt
Baldus	Crane	Fountain
Barnard	D'Amours	Fowler
Bedell	de la Garza	Frey
Blouin	Delaney	Gammage
Bonior	Derrick	Gephardt
Brinkley	Devine	Ginn
Burleson, Tex.	Dickinson	Green

Gudger	Miller, Ohio	Schulze
Hagedorn	Minish	Sharp
Hall	Moffett	Smith, Nebr.
Hamilton	Moore	Spence
Harkin	Mottl	Stangeland
Hefner	Murphy, Pa.	Stratton
Hillis	Myers, Gary	Studds
Hollenbeck	Neal	Thone
Ichord	Nolan	Traxler
Ireland	Oberstar	Tucker
Jacobs	Obey	Vanik
Jenkins	Panetta	Vento
Johnson, Calif.	Pepper	Volkmer
Jones, N.C.	Pickle	Walker
Jones, Okla.	Poage	Watkins
Kelly	Pressler	Weaver
Kildee	Regula	Weiss
Kostmayer	Reuss	Whitley
Latta	Rhodes	Wilson, Bob
Leach	Roberts	Wilson, C. H.
Levitas	Robinson	Wolff
Lundine	Rogers	Wylie
McHugh	Rose	Yatron
Maguire	Rousselot	Young, Fla.
Mahon	Rudd	Young, Mo.
Marlenee	Santini	Zablocki
Marriott	Sawyer	
Martin	Schroeder	

NOES—254

Addabbo	Erlenborn	McDade
Akaka	Ertel	McDonald
Alexander	Evans, Colo.	McEwen
Anderson, Calif.	Evans, Del.	McFall
	Findley	McKay
Anderson, Ill.	Fish	Madigan
Annunzio	Fisher	Mann
Ashley	Flood	Markey
Badham	Florio	Marks
Baucus	Foley	Mathis
Bauman	Ford, Mich.	Mattox
Beard, R.I.	Ford, Tenn.	Mazzoli
Bellenson	Forsythe	Meeds
Benjamin	Fuqua	Meyner
Bennett	Garcia	Michel
Bevill	Gaydos	Mikulski
Biaggi	Gialmo	Mikva
Bingham	Gilman	Milford
Blanchard	Glickman	Mineta
Boggs	Goldwater	Mitchell, Md.
Boland	Gonzalez	Mitchell, N.Y.
Bolling	Goodling	Moakley
Bonker	Gore	Mollohan
Bowen	Gradison	Montgomery
Brademas	Grassley	Moorhead, Calif.
Breckinridge	Guyer	
Brodhead	Hammer-schmidt	Moorhead, Pa.
Brooks		Moss
Brown, Calif.	Hanley	Murphy, Ill.
Brown, Mich.	Hannaford	Murphy, N.Y.
Broyhill	Hansen	Murtha
Buchanan	Harrington	Myers, John
Burgener	Harris	Myers, Michael
Burke, Mass.	Harsha	Natcher
Burlison, Mo.	Heckler	Nedzi
Burton, John	Heftel	Nichols
Burton, Phillip	Hightower	Nix
Butler	Holland	Nowak
Carney	Holt	O'Brien
Carter	Holtzman	Oakar
Chappell	Horton	Ottinger
Chisholm	Howard	Patten
Clay	Hubbard	Patterson
Cleveland	Hughes	Pattison
Coleman	Hyde	Pease
Collins, Tex.	Jeffords	Perkins
Conable	Jenrette	Pettis
Conte	Jones, Tenn.	Pike
Conyers	Jordan	Preyer
Corman	Kastenmeier	Price
Coughlin	Kazen	Pritchard
Cunningham	Kemp	Quayle
Daniel, Dan	Keys	Quillen
Daniel, R. W.	Kindness	Rahall
Danielson	Krebs	Railsback
Davis	LaFalce	Rinaldo
Dellums	Lagomarsino	Rodino
Dent	Le Fante	Roe
Derwinski	Lederer	Roncalio
Dicks	Leggett	Rooney
Diggs	Lent	Rosenthal
Dingell	Livingston	Rostenkowski
Dodd	Lloyd, Calif.	Roybal
Dornan	Lloyd, Tenn.	Runnels
Downey	Long, La.	Ruppe
Drinan	Long, Md.	Russo
Duncan, Oreg.	Lott	Ryan
Early	Lujan	Satterfield
Eckhardt	Luken	Scheuer
Edwards, Ala.	McClory	Sebelius
Edwards, Calif.	McCloskey	Seiberling
Eilberg	McCormack	Shipley
Shuster	Steed	Walgren
Sikes	Steers	Walsh
Simon	Steiger	Wampler
Skelton	Stockman	Waxman
Skubitz	Stokes	Whalen
Slack	Symms	White
Smith, Iowa	Taylor	Whitehurst
Snyder	Thompson	Wilson, Tex.
Solarz	Thornton	Winn
Spellman	Trible	Wright
St Germain	Udall	Wydler
Staggers	Ullman	Yates
Stanton	Van Deerlin	Zeferetti
Stark	Waggonner	

NOT VOTING—44

Ammerman	Fraser	Richmond
Armstrong	Frenzel	Risenhoover
Beard, Tenn.	Gibbons	Sarasin
Breaux	Hawkins	Sisk
Broomfield	Huckaby	Stump
Brown, Ohio	Johnson, Colo.	Teague
Burke, Calif.	Kasten	Treen
Burke, Fla.	Krueger	Tsongas
Caputo	Lehman	Vander Jagt
Clawson, Del	McKinney	Whitten
Cochran	Metcalfe	Wiggins
Collins, Ill.	Miller, Calif.	Wirth
English	Pursell	Young, Alaska
Fary	Quie	Young, Tex.
Flowers	Rangel	

Mr. FLORIO and Mr. SKUBITZ changed their vote from "aye" to "no."

Messrs. ROBERTS, EDGAR, CRANE, GAMMAGE, VENTO, and CORNWELL changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments to title XI?

If not, are there other amendments to the bill?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 390, after line 18, insert the following new title.

BASIC WORKWEEK OF FIREFIGHTERS

SEC. 1201. (a) Chapter 61 of title 5, United States Code, relating to hours of work, is amended by inserting after section 6101 the following new section:

"§ 6102. Basic workweek of firefighters

"(a) The regularly scheduled administrative workweek of each firefighter shall be an average of 56 hours per week, computed on the basis of a period of 21 consecutive days. The duration and frequency of work-shifts occurring within such period shall be determined under regulations prescribed by the Office of Personnel Management.

"(b) For the purpose of this section 'firefighter' means an employee in an Executive agency, the duties of whose position are primarily to perform or to supervise work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Such term does not include any employee who has a regularly scheduled administrative workweek of 40 hours which is established under section 6101(a)(2)(A) of this title."

(b)(1) Section 5545 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) Each firefighter with a regularly scheduled administrative workweek established under section 6102(a) of this title shall be entitled, in lieu of premium pay provided by other provisions of this subchapter (other than premium pay provided in paragraph (2) of this subsection), to premium pay equal to 25 percent of so much of his annual rate of basic pay as does not exceed the minimum rate of basic pay for GS-10.

"(2) Hours of work officially ordered or approved in excess of the regularly scheduled administrative workweek established under section 6102(a) of this title are overtime work and shall be paid for in accordance with the rates specified in section 5542 of this title.

"(3) For the purpose of this subsection, 'firefighter' has the meaning set forth in section 6102(b) of this title.".

(2) Section 5545(c)(1) of title 5, United States Code, is amended by inserting ", unless subject to subsection (e) of this section," after "shall receive".

(3) Section 5547 of title 5, United States Code, is amended by striking out "sections 5542, 5545(a)-(c), and 5546(a), (b)" and inserting in lieu thereof "sections 5542, 5545(a)-(c) and (e), and 5546 (a) and (b)".

(4) Sections 5595(c), 8114(e), 8331(3)(C), and 8704(c) of title 5, United States Code, are each amended by striking out "section 5545(c)(1)" and inserting in lieu thereof "section 5545(c)(1) and (e)(1)".

(c) The analysis of chapter 61 of title 5, United States Code, is amended by inserting after the item relating to section 6101 the following new item:

"6102. Basic workweek of firefighters.".

(d) The amendments made by this section shall take effect at the beginning of the first applicable pay period which begins at least 60 days after the date of the enactment of this Act.

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, I am offering this amendment which creates a new title to the bill. The amendment is identical to the former title X of the bill which was eliminated by a point of order against both titles IX and XI.

My amendment simply reduces the scheduled working hours of the Nation's 11,500 Federal firefighters from 72 hours to 56 hours. The amendment is identical to H.R. 3161 which the House passed on April 12 on a bipartisan vote of 241 to 129. The Senate passed the bill on a voice vote on June 5. The President vetoed the bill on June 19, 1978.

It has been argued that firefighters' premium pay should be reduced if their hours are reduced. It must be understood that premium pay is designed to compensate for irregular working hours. Under this amendment, firefighters would still be required to work Sundays and holidays, and the concept of premium pay is still valid. Additionally, the computations of our committee show that firefighters will actually lose income. The following comparison shows what the average Federal firefighter, a GS-5, step 4 ($10,955 per year) earns under current policies and would earn under this amendment:

I. 72-hour weekly tour of duty (present schedule):	
Base pay for 40 hours	$210.80
25 percent premium pay	52.70
FLSA overtime for 18 hours	32.94
Total	296.44

II. 56-hour weekly tour under H.R. 3161:	
Base pay for 40 hours	210.80
25 percent premium pay	52.70
FLSA overtime for 2 hours	4.72
Total	268.22
Loss in FLSA overtime pay	28.22

Administration has said that this legislation would require the Department of Defense to hire 4,600 additional employees, at an annual cost of $46.7 million. The Congressional Budget Office's report to our committee says that for 1979, governmentwide, adding new firefighters would cost $24.3 million. I do not understand the higher figures.

Finally, it has been said that the legislation would impair the ability of agency heads to manage the work force. Many efforts have been made in recent years to get the agencies to modify hours—with no success. Additionally, no one has ever argued that the standard 40-hour week impairs the ability to manage the work force. Firefighters, under any workweek, would have to be "on call" and the bill would not change this. Finally, since most municipal firefighters work 56 and 54 hours a week, it is imperative that working conditions for Federal firefighters be competitive.

The result of the current schedule has unfortunately been frequent turnover. Last year, about 23 percent of Federal firefighters left their jobs. This means, in essence, that the Federal Government is a training ground for municipal firefighters and we are losing talented individuals to protect our VA hospitals, military and other Federal installations.

This amendment has three basic provisions: First. It provides that the regularly scheduled workweek shall average 56 hours per week over a 21-day period. This would mean that overtime work in excess of 56 hours could not be regularly scheduled. Second. It provides—as does current law— that each firefighter is entitled to 25 percent premium pay in lieu of all other premium pay under title 5 for the 56-hour week. Third. It clarifies the overtime pay provision and provides that each firefighter is entitled to overtime pay under title 5 for all official hours of work over the 56-hour per-week standards.

It has been argued that this bill is somehow a salary windfall for Federal firefighters. Our committee's research has shown that not only do municipal firefighters work shorter hours, they also earn at least $500 more per year. Or stated another way, Federal fireghters now work 33 percent more hours each week than municipals but receive only 12.5 percent to 23 percent more. There is one further point I would like to make. The Civil Service Commission's pay comparisons are with cities with over 10,000 in population. True comparability would compare firefighter salaries with the actual locality, like our Federal blue-collar local prevailing rate system. In other words, in areas like Washington, D.C.—large metropolitan areas—municipal salaries are much higher than in a community of 10,000. It is not fair to lump all municipal salaries together in this fashion.

There are currently 12,500 Federal firefighters in all but a dozen or so States. The Department of Defense is the largest employer of firefighters, with approximately 10,500. The Department of Transportation, the Nuclear Regulatory Commission, the Veterans Administration and other agencies employ the remainder. These firefighters provide important protection for many Federal installations, standing guard at defense bases, veterans hospitals, some civilian airports and other Federal establishments.

While some would like to portray the firefighter as one who "stands idle" much of the time, firefighters actually have a variety of duties, including fire prevention and other fire-related services. A Federal firefighter must maintain a proficiency in a variety of subjects, ranging from the combustibilty of materials to general air traffic control techniques. Firefighters are subject to hazard and are often required to work on Sundays and holidays. Our pay, benefits, and working hours policies should reflect the fact that firefighters must be compensated for their knowledge, ability and the considerable risk they incur in protecting lives and property.

It has also been argued that this bill would set up a special class of Federal employees, that other employees, like nurses and medical technicians have to work off-hours or nonstandard hours. To this I answer these other groups of Federal employees are not engaged in potentially hazardous work, like firefighters. And if we should take a look at all hours and pay policies for these various groups, I invite the Civil Service Commission to submit legislation to the Congress. Speaking as one member of the Post Office and Civil Service Committee, I am sure our committee would welcome a proposal.

This legislation has been the subject of complete hearings in the committees and in both Houses of Congress. I hope today we can end this debate, look at the facts and approve the amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, legislation reducing the basic workweek of Federal firefighters is an irrelevant appendage to the civil service reform bill. The hours firefighters work and the compensation they receive have nothing to do with revamping and reinvigorating the Federal bureaucracy.

Legislation to reduce the workweek of the firefighters was vetoed by the President on June 19. In his veto message, the President said:

> In extending unwarranted advantages to them (firefighters) H.R. 3161 offends the ideals of fairness that should guide this administration. I am not prepared to accept its preferential approach.

There has been no attempt to override the President's decision which, when measured against the weight of evidence, was a sound and responsible action. Instead, the legislation was added to the reform bill as title X.

Researchers at the Library of Congress have been unable to find a similar instance in modern times where a congressional committee majority amended major legislation of its own administration by adding language already vetoed by the President.

President Carter's approach to civil service reform struck the proper balance between equity and effectiveness in attempting to make the Federal bureaucracy more manageable. The inclusion of this title in the bill is a disruptive influence. It should be severed from H.R. 11280 without further delay.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Virginia.

Mr. HARRIS. I thank the gentleman for yielding.

Mr. Chairman, did my colleague describe this as an anti-Carter vote? Is that the way my colleague feels that it should be interpreted?

Mr. DERWINSKI. No. I just describe this amendment as one that would be expected of the gentleman representing the district across the river. I understand it in that respect.

Mr. HARRIS. Mr. Chairman, I want to disabuse my colleague across the aisle that this is an anti-Carter vote. I am sure a number of people might interpret it that way. It is not that at all. Of course, it is overturning the President's veto. But it is not an anti-Carter vote. It is a way of expressing to him that Congress sometimes may be in disagreement with him. We love our President, but we do disagree with him on this one issue.

Mr. DERWINSKI. If the gentleman will allow me to point out, if the membership of the House, the individual Members, have read the President's veto, as I am sure that all 435 of us have. we naturally would support the President and not the gentleman from Virginia.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will be very brief, and I hope our colleagues will stay around for just a few minutes more. We are now down, I think, to this amendment, and our friend, HERB HARRIS, wants to get us all on record in connection with his 5½-percent pay cap, which is his last contribution to this bill today. He is an extremely valuable friend of mine, and I wish him well in everything he does. But it has been very clear from the beginning that he does not want a bill. He has tried to sink this bill two or three times. We ruled out the Hatch Act early on, which was part of the Christmas tree ornaments. Having taken firefighters pay bill off of the Christmas tree, he wants to get them back on. He wants to get us on record on this, and we will determine in a minute whether we will have a record vote. Most of us voted for the firefighters' bill. I voted for it. I think the firefighters are entitled to relief. But you are not helping this bill if you put this on; you are going to sink the bill.

My friend from Virginia is not going to be for it if we put this amendment on it, and his next amendment, and his next five amendments on it. He is still not going to be for the bill. We have got a good bill now. We took the Christmas tree ornaments off in the beginning. Let us not start loading it back up again.

This amendment is a gratuitous slap at the President. When the veto came back there were not enough votes to override to have a vote. It was sent back to the committee. Now, the suggestion is that we take up the cudgels on this bill and have another vote.

We are going to find ways to help the firefighters in later legislation, but this is not the place to do it. We are not going to help them on a pretty good civil service bill.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from California.

Mr. ROUSSELOT. I appreciate the gentleman yielding to me.

Is the gentleman telling us, then, that if this amendment passes—which, by the way, I also supported in committee—the bill will be vetoed?

Mr. UDALL. No, I do not think it will be vetoed, but we will have great difficulty down the road.

Mr. ROUSSELOT. So those who do support the concept of reducing the firefighter's workweek and who also support the Civil Service Reform Act do not endanger the bill by voting for the Harris amendment.

Mr. UDALL. I do not know what will happen from this point on. A lot of Members on the gentleman's side were very anxious not to bring this bill to the floor with the Hatch Act, so we devised a strategy which took the Hatch Act off the Christmas tree and took the firefighters off. Having disposed of the Hatch Act, they are telling us now, "Let's put the firefighters back on." I think we ought to treat both of them separately.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I am not quite sure exactly where we go from here, because as I recall, I sat on the stage in Denver, Colo., at the firefighters convention where Mr. MONDALE assured us that it was the administration's position that they would do everything for the firefighters' bill. Based on that, that group had endorsed them.

I was in the subcommittee chair when we moved it through, and was most upset to read the veto message, because they had really paid no attention to our hearings, but apparently used hearings from some prior administration.

So, my concern is that maybe they somehow missed this. Did the administration really want to veto this? Perhaps they got it in the out box instead of the in box.

Mr. UDALL. Mr. Chairman, I have not been annointed as spokesman for the administration. I do think that in this case they are really not saying that. It is a limited issue. This has no place in this bill. If we can find some way to hold Mr. MONDALE to his promise other than doing it today, I would join that effort.

Mrs. SCHROEDER. I think we tried to hold him to his promise to us before in the act, and we thought maybe they had made a mistake by vetoing it. We thought this was a nice way to help them keep their word, so I guess it is a difference of opinion.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what we have here before us is a question we should answer here and now. It is not a White House decision until we have acted affirmatively and we should not be fervently looking to the White House for guidance. We either believe that 72 hours is a ridiculous work week for firefighters or we do not. The question was before us previously and we spoke to it.

We said, "Seventy-two hours constitutes undue hardship and we ought to lessen the burden." We had the courage at the time to do just that. Now, here we are again, considering the same question. Let's come to the same conclusion. There is no reason why this provision should not be in this bill. We in this House speak cryptically at times. The word "ornament" is used to designate any provision we don't approve. That same "ornament" is a vital part of the legislation to those who favor it. This measure, I feel, is a matter of justice and, therefore, does belong in the bill.

So, let us make the decision based on the merits. Let us not worry about what the reaction is going to be at the White House. Our Constitution spells out very clearly what our function is and what the President's function is. Our function today is to consider this question, and I would ask that we make the determination that 72 hours is a ridiculous number. Let us move right now to change that.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. HARRIS. Mr. Chairman, on that I demand a recorded vote, and pending that I make the point of order a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred twenty-one Members are present, a quorum.

The pending business is the demand of the gentleman from Virginia (Mr. HARRIS) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 390, after line 18, insert the following new title:

TITLE XII—PAY COMPARABILITY

PAY COMPARABILITY

SEC. 1201. Section 5305(c)(1) of title 5, United States Code, is amended by striking out "or economic conditions" affecting the general welfare.

Revise the table of contents accordingly.

Mr. HARRIS. Mr. Chairman, this is a very modest perfection, I think, of a law that has in fact given Congress a great deal of problems in the past. It is the pay comparability law. It was passed by many of my good colleagues before I came to the Congress.

I remember my chairman's great support of the notion of having a comparability law to take the pay raises out of politics and put them on an objective basis so that we were not constantly in a position of trying to determine what the pay raise should be. This was the notion of the comparability law. If the Members would read the debate on the comparability law they would see this. I could read a number of quotations from my chairman, the Honorable Mr. UDALL from Arizona, about how important it is that this law should work:

> The comparability law is a good law setting up a scientific method to compute what salaries and wage rates are in the private sector and to make adjustments in the public sector that would be comparable.

The problem is not what the House and what the Senate did on the law. In the last few minutes of the conference, a section was put into the law or actually 10 words were inserted that said "economic conditions affecting the national welfare." This amendment still gives the President discretion if there is a national emergency. All it does is remove the part that says: "or if there are economic conditions affecting the general welfare."

Obviously it has been these words that have been the mischiefmakers in the whole operation of the law.

I want the law to work like the Congress intended it to, like my colleague intended it to. I want it to work so it does come up with an objective method of computing Federal salaries except where there is a legitimate reason for not putting them into effect.

The amendment makes the law operative unless there is a national emergency, in order to make sure the law is implemented and that it no longer puts Congress in a position year after year after year to try to determine by congressional action whether a Presidential action is in accordance with the law or not.

This would correct the problem with it. It would set up the procedure. I urge my colleagues to support it.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is the last amendment to the whole bill of which I am aware except for a unanimous-consent request I will have when we dispose of this. I do not think we need a great deal of discussion on it.

The comparability system has worked fairly well but it has worked fairly well because we had a little bit of flexibility in the President. The pay system works on the comparability figures determined and then before it takes effect the President of the United States has the opportunity to adjust the figures up and down in the light of all the economic conditions.

What this amendment does is strike out of the comparability law the flexibility the President now has. This year, I submit, if the amendment had been in the law there would be an additional billion and a half dollars added to the Federal payroll by the comparability adjustment.

So it is an unwise amendment. It has had no consideration, no hearings. The administration strongly opposes it. It was voted down in committee by a vote of 5 to 19.

I hope my colleagues will not want to go on record on this one again today. We will have an opportunity soon enough to vote on the 5.5 percent pay cap of the President without having an extra, unnecessary vote on this basic change in the law.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, I wish to associate myself with the comments of the gentleman from Arizona (Mr. UDALL). I think he has very properly analyzed this amendment. I would join him in recommending rejection of the amendment.

Mr. JOHN L. BURTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and members of the committee, as we approach this vote on the most important domestic issue facing this nation of ours, more important than national health insurance, more important than full employment and that is the moral equivalent of the energy program, I think that we should all take a moment of silence to consider the ramifications of this important vote.

Thank you.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer five amendments.

The Clerk read as follows:

Amendments offered by Mr. UDALL:

Page 212, line 21, strike out "and".

Page 212, line 23, strike out "executives." and insert in lieu thereof "executives;".

Page 212, insert after line 23 the following:

"(12) ensure career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices;

"(13) provide for a professional management system which is guided by the public interest and free from improper political interference; and

"(14) ensure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by noncareer appointees, political appointments to such positions are minimized to the maximum extent possible.".

Page 227, line 3, insert "(1)" after "(a)".

Page 227, line 4, strike out "(1)" and insert in lieu thereof "(A)" and insert ", subject to paragraph (2) of this subsection," after "may".

Page 227, line 7, strike out "(2)" and insert in lieu thereof "(B)".

Page 227, after line 10, insert the following:

"(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment—

"(A) at least 15 days in advance of such reassignment; and

"(B) containing a statement of the critical reasons for the reassignment.

Any career appointee who is reassigned in violation of subparagraph (A) of this paragraph may appeal the violation to the Merit Systems Protection Board."

Page 228, strike out lines 10 through 12 and insert in lieu thereof the following:

"(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to reassign the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any reassignment under section 4314(b)(3) of this title; or

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before the appointment".

Page 232, line 12, strike out "A career appointee" and insert in lieu thereof "Except as provided in subsection (b) of this section, a career appointee".

Page 232, after line 19, insert the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314(b)(3) or this title or;

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment".

Page 232, line 20, strike out "(b)" and insert in lieu thereof "(c)".

Page 228, insert after the line 12 the following:

"(f) A career appointee may be transferred only if—

"(1) he consents to the transfer; and

"(2) the transfer is part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection not to consent to a transfer. Any career appointee against whom an adverse personnel action is taken in violation of this subsection may appeal the personnel action to the Merit Systems Protection Board.

Page 245, after line 15, insert the following:

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction—

"(1) at least 15 days in advance of the reduction; and

"(2) containing a statement of the critical reasons for the reduction.

Any career appointee whose rate of basic pay is reduced in violation of paragraph (1) of this subsection may appeal the violation to the Merit Systems Protection Board.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with, that they be printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, I have worked these amendments out with the gentleman from Illinois (Mr. DERWINSKI) and they take care of a problem we had the other night in connection with some of the Gilman amendments.

I would hope they would be adopted.

● Mr. GILMAN. Mr. Chairman, I thank the gentleman from Arizona for his unanimous-consent request to move to adopt my five amendments to title IV.

I know that the House, having had an opportunity to study my amendments and review my statement in explanation of them which appeared in the RECORD of September 11, will recognize their merit and the protection they provide in insuring against further politicization of the Senior Executive Service.

To further clarify the purpose of my amendments, I offer at this point in the RECORD a brief explanation of each of my five amendments to title IV:

My first amendment adds three important principles to guide the administration of the Senior Executive Service and to insure against further politicization of the Senior Executive Service. The first principle would insure that both career appointees and noncareer appointees enjoy protection from prohibited personnel practices. The second principle represents a policy statement advocating maximum utilization of career appointees. My final principle states a goal for the Senior Executive Service:

Goals for personnel management system and the necessity to assure career members protection from prohibited personnel practices.

My second amendment provides that a career appointee may not be involuntarily reassigned or removed from the Senior Executive Service within 120 days after either an appointment of the head of his or her agency or of a Presidential appointment to whom the career appointee reports, whichever is later in time.

My third and fourth amendments preclude arbitrary action by a Presidential appointee against a career appointee in the Senior Executive Service involving a change in either the career appointee's reassignment or reduction in pay.

My final amendment limits the right of the Director of the Office of Personnel Management or an executive department or agency to involuntarily transfer a career appointee without his or her consent.

Mr. Chairman, I urge the adoption of my amendments.●

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona (Mr. UDALL).

The amendments were agreed to.

Mr. VOLKMER. Mr. Chairman, I move to strike the last word.

PERSONAL EXPLANATION

Mr. Chairman, I was absent on rollcall vote No. 764. I missed the vote while participating in the Forum on Regulation's telethon in the Longworth Building.

This telethon is a grassroots investigation of the Federal regulatory process. People throughout the country called in on toll free lines to express their views on the Federal Government and on regulations. This is a helpful means for Members of Congress and others in Washing-

ton to get a better idea of people's sentiment on the issues of regulatory reform.

Had I been present on rollcall vote No. 764, I would have voted "aye."

Mr. MICHEL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as we conclude debate on this civil service reform legislation I want to first go on record commending the President for his initiative in pressing for this reform.

Second, I want the record to clearly show that not withstanding the overwhelming Democrat majority in this House, this legislation would have been dead and buried had it not been for the support we Republicans have given to the effort.

Our good friend and colleague ED DERWINSKI and his band of followers have done a superlative job in helping the genial gentleman from Arizona (Mr. UDALL) fashion this legislation.

Mr. DERWINSKI can be as caustically partisan as any one in this House if he wants to be, but as he is given to saying about himself, he is always willing to accept a proposition from the opposition if it is a good one.

We Republicans have felt the need for this legislation for a long time, but when we had the Presidency during the Eisenhower, Nixon, Ford years, we never controlled the Congress nor were we in the position of putting the act together.

When we did win the White House it was most frustrating to know that in all the vastness of the Federal bureaucracy, we could only change at most some 2,700 positions at the top.

That's just not enough for any administration to make any significant change in the direction and/or administration of any department of Government.

Let us face it Cabinet members, deputy secretaries, assistant secretaries and bureau chiefs have to spend so much of their time testifying before congressional committees, and in public appearances, they have little time to actually run their departments or agencies.

Without authority for a more broad sweeping change, we have the same bureaucrary running the show in every agency regardless of the mandate for change.

From a Republican partisan point of view, passage of this legislation may prove to work to our temporary disadvantage, but in the long run it is a good move for the country. As I said any partisan disadvantage for us is only temporary for within 26 months the advantage will be ours and the American people will then also applaud.

The Federal bureaucracy has become incestuous, stultified, and loath to change. It has to be shaken up from time to time. Good conscientious managers have got to be given incentives to do even better and we have to have the mechanism for firing the incompetent and establishing a truly bonafide merit system.

I am glad to give my wholehearted support to this bill and applaud all those on both sides of the aisle who have helped to put it all together. It will have to go down as a truly historical bipartisan victory for the people.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I commend the gentleman from Illinois (Mr. MICHEL) for his statesmanship and for the nobility of his statement.

Mr. Chairman, in my view, the gentleman's position on this bill is so outstanding that it certainly warrants his being in charge of the majority in this House at some point in his service.

Mr. MICHEL. Mr. Chairman, I thank the gentleman.

● Mr. HANLEY. Mr. Chairman, during markup of the civil service reform legislation, the Committee on Post Office and Civil Service adopted an amendment I offered to assure that the complaints of Federal employees who discover wrongdoing are given serious attention. Under the administration's proposal, as strengthened by the amendment of the gentlewoman from Colorado (Mrs. SCHROEDER), Federal employees are protected from reprisal if they publically disclose evidence of violation of law, rule, or regulation, mismanagement, waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. I strongly support this protection.

My amendment complements this protection by providing a mechanism through which those who discover wrongdoing can prompt a meaningful investigation and correction of the situation. Under its terms, an employee can disclose evidence of impropriety to the Special Counsel; the ability of the employee to go to a responsible official outside of his or her agency and separate from his or her chain of command is crucial to make this mechanism work. If the evidence warrants an investigation, the Special Counsel can order the agency which the information concerns to investigate itself.

To assure that the agency investigation is not biased, incomplete, or a whitewash, the report of the agency investigation is sent to the Special Counsel and to the General Accounting Office. The Special Counsel's review of the agency investigation is limited to scrutiny of the quality of the probe; the Special Counsel is not expected to conduct his or her own substantive inquiry. Without the Special Counsel and GAO oversight of agency investigations, employee allegations of illegality or wrongdoing could be ignored or covered up by an agency intent on continuing its improper conduct.

Hence, my amendment adds an internal, in-house dissent channel to allow Federal employees who discover wrongdoing to seek correction without having to go public. Although nothing prevents an employee from giving the information to a newspaper, my amendment encourages honest, dedicated employees to seek internal resolution. I believe that if most agencies are given an opportunity to clean their own houses, without the glare of publicity, they will do a good job. It is this goal which my amendment seeks.

Mr. Chairman, Federal employees can serve as a first line of defense against official wrongdoing. Ernest Fitzgerald alerted us to a huge cost overrun in the C–5A transport plane program. Dr. J. Anthony Morris spoke out against the swine flu vaccine program, warning of serious health dangers—dangers which proved all too real. Robert Tucker, Robert Sullivan, William Buckenhorst, and Arthur Palman all revealed widespread illegalities in the General Services Administration. Without these vigilant officials, illegality would not be stopped and Federal dollars would continue being wasted.

In passing H.R. 11280, the House is supporting a meaningful and workable mechanism to rid the Federal Government of waste, corruption and abuse.●

Mr. RUDD. Mr. Chairman, I will vote in favor of H.R. 11280, as amended in the Committee on the Whole.

In balance, I believe that this is a good bill. Congress desperately needs to reform the bureaucratic inefficiency and abuses that are rampant in the civil service system. We need to cut through the inaction and delays that make it virtually impossible to get rid of incompetent workers, to reward quality work, and to expedite personnel actions.

This bill is certainly not the answer to every problem with the Federal civil service. But it accomplishes a great deal of good. Creation of a personnel management office and Merit Protection Board, a senior executive service, an incentive system for pay increases based on performance rather than mere tenure, and a speedier disciplinary system are all urgently needed reforms.

The House has taken other action on this bill which I support, and which have led to my "yes" vote for this legislation. The proposed repeal of Hatch Act prohibitions against political activities of Federal employees has been removed from the bill, and properly so. Proposed changes in the veterans preference law have been dropped, and current veterans preference provisions will remain intact.

My amendment adding a firm antistrike provision that will deny any protection or benefits under this bill for any striking Federal worker has been adopted. A similar provision governing labor unions exists in this and the Senate version of the bill.

Furthermore, the bill now includes an important provision requiring a cut of 112,000 employees from the over-bloated Federal workforce, so that total Federal Government civilian employment returns to the January, 1977, level.

Mr. Speaker, these are the good aspects of this bill. As I have said, in balance, the good far outweighs the bad, and that is why I am voting in favor of the bill. I am voting "yes," despite my strong disapproval of the legislation's statutory protection of unionization and collective bargaining for Federal employees.

Such protection does not belong in the statutes, and should not be Federal Gov-

ernment policy. But this is a battle that will have to be fought next year.

Unionization and collective bargaining for Federal Government workers are unnecessary, and create an undesirable adversary labor-management situation that has no place in Government, where service to the people is the first and only priority.

Federal workers are paid more, and receive more benefits, than just about any other employees, in or out of Government. They have no reason for collective bargaining, other than to protect the continued employment of less capable performers and to reap more benefits for themselves at the expense of the taxpayers.

Labor-management disputes resulting in lower quality or disrupted service to the people are inevitable when Government employee unionization and collective bargaining are allowed. Government service is unique, for which there is no alternative supply. Some of these services are so critical that their disruption threatens the public well-being and causes extreme hardship to our people and the economy.

Labor unions want unionization and collective bargaining for Federal employees, because this increases their own power and serves as a convenient vehicle for their own domination of Government and the legislative process.

This is dangerous to our democratic processes and instituions, and to our free society itself.

I am sorry that this bill gives statutory protection to Federal employee unions and collective bargaining. I am voting for the bill in spite of this provision, because of the need for the many good features of this legislation.

But I intend to work hard to reverse this policy in the future.

● Mr. FISHER. Mr. Chairman, civil service legislation is grounded in the belief that the public should be served by a professionally and impartially operated Government. Except for the top leadership which should be chosen freely by the President and subject to change at every election, the Government workers should be chosen for their ability alone and should serve as long as they perform well.

The Carter administration has proposed the first major overhaul of basic civil service legislation in nearly 100 years. The legislation attempts to recognize and encourage competent employees and to improve the system for assisting employees whose performance should be better and for removing employees who do not respond to help. In making these changes the administration hopes to enhance the ability of Government managers to manage.

The issues to be decided by Congress in debating and refining the original proposal include: First, whether the bill achieves its purpose of improving management and second, whether the proposal endangers the basic principle of neutrality and professionalism in Government service. The second issue overshadows the first because without confidence of the employees and the public in the impartiality of Government administration, the best management system in the world will not be good enough.

The bill, as amended by the Post Office and Civil Service Committee, does contain features which help to uphold the integrity of the civil service and protect employee rights. The bill will establish in law for the first time the principles on which the merit system should be operated and the personnel practices which are prohibited, including political coercion and discriminatory, unfair, and arbitrary actions in hiring and promotion.

The bill also will give whistleblowers—those who expose mismanagement and inefficiency and who disclose violations of Federal law by other employees—more protection against retaliation. The committee has improved the provisions dealing with employee rights to appeal adverse or disciplinary actions. However, the bill could still be stronger in protecting against the injection of political considerations into the civil service.

The section of the committee bill with the greatest potential for politicizing the civil service was the revision of the Hatch Act to permit partisan political activity by Federal employees. Fortunately, this section has now been deleted from the bill. I have opposed such revisions of the Hatch Act because I believe that it would expose employees to the possibility of undue, frequently subtle, political pressures. The danger would be increased when combined with the increased flexibility that the bill gives to supervisors—in hiring, assigning, disciplining, and so on. The Hatch Act revision would have made the civil service reform bill unworkable and I am pleased that it is no longer in the bill.

During consideration of the bill, I offered several amendments with the objective of providing a careful review of new programs, such as merit pay, and of the actions of political appointees, and also of keeping politics out of the career civil service. The merit pay system proposal in the bill will substitute merit pay increases and cash awards for superior performance to managers in grades GS 13–15 for the current automatic step increases. These managers will continue to receive annual comparability increases. This system would be an important change with the laudable purpose of providing an incentive for improved management. It is, however, untried and fraught with the possibility for favoritism and political abuse. To check on the feasibility of merit pay, I offered an amendment to test the concept for a 2-year period in three agencies. After evaluating reports by the Office of Personnel Management, Congress could either allow the merit pay system to go into effect governmentwide or could veto it through a concurrent resolution. Unfortunately, this amendment was not accepted by the House.

Another amendment which I offered, and which was accepted, dealt with rules and regulations put forward by the Office of Personnel Management. Under my amendment, the Merit Systems Protection Board will have the authority to review rules and regulations after they have been issued by the OPM. The MSPB itself, the special counsel, or an interested party can request the review. A finding of violation of merit principles or of prohibited personnel practices would be the grounds for invalidating a rule or regulation. This type of review would not interfere with the prerogatives of the OPM, but would make sure that it did not overstep legal bounds.

This legislation breaks new ground in personnel management. I believe that an objective review of these innovations should be conducted on a regular basis. The General Accounting Office should be required to monitor these new functions and report annually to Congress on their performance. I offered an amendment, which passed, to require this review. The specific requirement is necessary so that reviews are not delayed until a problem develops, but can in fact uncover problems before they get out of hand.

An additional amendment of mine, now included in the bill, makes clear that a nonpartisan board composed of career civil servants and outside experts will be reviewing the qualifications of candidates for the SES and certifying them as qualified. I think it is crucial that these top level managers be chosen objectively and without regard to partisan considerations. Without my amendment this critical function of certifying persons to serve in the SES could be done by boards with no members drawn from the ranks of career civil servants, or with outside experts chosen primarily for their partisan connections.

In addition to my amendment, the bill contains other protections against undue political influence in the SES. Only 10 percent of the positions in the SES will be filled by political appointees. No agency may have more than 25 percent of its SES positions filled by political appointees. In addition at least 70 percent of the SES employees must have at least 5 years experience in the Federal Government. I believe that taken together the SES provisions will allow a more challenging career to the upper level executives and offer the promise of better, more flexible management to the public.

Another major feature of the civil service reform bill is the labor-management relations section. A labor relations program already exists in the Federal Government, operating under a Presidential Executive order. As passed by the House by a unanimous vote, the new labor program codifies the existing program and adds a few new features. Through some carefully developed compromises, the Members who wanted to expand the role of employee unions and those who opposed this were able to resolve their differences. The bill that the House approved does not contain such controversial features as the right to strike or bargain for pay and benefits, both of which I oppose. It does contain safeguards such as secret ballot elections for union representation.

The veterans' preference in appointment and retention in Federal employment is left essentially as it is in existing law. The committee had proposed altering veterans' preference to limit its use for hiring to the first 15 years after discharge from the Armed Forces and

for retention to the first 8 years of civilian service. In effect the House voted against this approach when it rejected an amendment to strengthen the preference for Vietnam veterans only. Then the House went on to vote for retaining the present preference provisions.

The House added a provision placing a ceiling on Federal civilian employment which is over 112,000 below the current number of employees. The ceiling would have to be met by 1 year after the bill becomes law. I opposed this amendment and will be working to see that it is dropped in the House-Senate conference which will be resolving differences between the two bills. This limit on Federal employees was chosen arbitrarily and is a simplistic approach to the concern about "big" Government. Rather than leading to more efficiency, this limit could lead to less efficient Government by taking workers away from much needed tasks to satisfy an artificial ceiling. I hope and have been led to expect that this provision will be deleted from the final bill.

While this is not in all respects the bill I would have written to improve the civil service system, it is on balance a bill that I can support. After the new system goes into effect I hope that the Congress will keep a close watch on it and make the necessary additional improvements.●

● Mr. STOKES. Mr. Chairman, I rise in support of H.R. 11280, the Civil Service Reform Act of 1978, which will reorganize the Federal personnel system.

The Federal Civil Service System has existed for nearly 100 years and has served this country well. But the number of civil servants has grown during that period of time. In order to accommodate and properly manage such large numbers, there must be some changes in the existing structure.

The bill will cause the Government to function more effectively by improving the management and efficiency of the Federal work force and make it more responsive to the executive branch. This will be done by setting forth merit system principles, abolishing the Civil Service Commission and replacing it with a merit system protection board to handle employee appeals and an office of personnel management for administration. Additionally, a senior executive service would be created for top-level managers. Also the bill modifies veterans' preference standards to enhance the implementation of affirmative action programs.

It is on this last point, veterans' preference, that I would like to direct the thrust of my remarks. The Civil Service Reform Act of 1978 modifies veterans' preference to strengthen employment opportunities for disabled and Vietnam-era veterans, but to reduce it for others. As reported the bill would: First, limit veterans' preference to one successful use for 15 years from the date of separation for nondisabled veterans; second, protect the veterans from reductions in force for 8 years following appointment; third, eliminate preference for field grade and above retirees; fourth, limit below field grade retirees to 3 years of veterans' preference; and fifth, expand the number of disabled veterans eligible for noncompetitive appointment from 494,000 to 996,000.

It has been argued that the veteran preference limitation is unfair to the many veterans who have served this country during times of conflict on war. I disagree with this premise and I would like to explain why.

The Veterans' Preference Act of 1944 was created to aid those in the armed services who on their return to civilian life found themselves at a great disadvantage economically and sometimes physically. The conditions which precipitated this act still exist today—that the transition from life in the armed services to civilian life is a difficult one and that assistance should be given to those who serve our country in order to facilitate their readjustment to civilian life. The major privilege under veterans' preference concerns employment in the civil service and provides a 5-point preference to veterans with an honorable discharge and a 10-point preference to service related disabled veterans.

Though the intentions of the present system of lifetime preference for all veterans in Federal employment were good, it has unfortunately, worked to the detriment of blacks, minorities, and women who seek employment in the Federal sector. Such a negative impact is unacceptable in a federal government where minorities occupy less than 5 percent of the supergrade jobs and women less than 4 percent. And, as ironic as it sounds, the present system in some ways works against the 8 million-plus veterans of the Vietnam war.

The system makes preference points still available to the millions of World War II and Korean war veterans. Many of these veterans have made the adjustment back to civilian life. Additionally, the Civil Service Commission says one-third of those using their preference use it more than once—to switch jobs or to leave Government work and then return to it.

I believe that the limitation under H.R. 11280, is fair. The changes are not radical or unreasonable. A preference still exists * * * but it may only be used one time. The bill concentrates job preference on those who need it most; the disabled veteran and the 7 million Vietnam-era veterans.

Vietnam era veterans are facing insurmountable odds in finding employment. They must today compete on an equal footing with older veterans who have more extensive civilian or related job experience. As a result, over 50 percent of veteran job hires go to pre-Vietnam or to military retirees. Additionally, Vietnam-era veterans are placed at an unfair disadvantage today in having to compete for jobs with those earlier nondisabled veterans who continue to reuse their preference points. The current bill would give Vietnam-era veterans a more equitable chance to compete in the Government sector.

Additionally, the proposal continues to allow disabled veterans to have 10 points added to their passing scores and would allow disabled veterans to rise to the top of the employment registers on which they qualify.

Mr. Chairman, I particularly wanted to address the veteran preference issue because of my concern with the unemployment levels of post-Vietnam veterans, particularly minority veterans. Every person who served in the military sacrificed to be there and should be helped to overcome job barriers upon their return. This bill maintains that assistance, and yet makes the federal system more equitable to others.

Mr. Chairman, I urge my colleagues to join me in supporting the Civil Service Reform Act of 1978. The bill attains a balance between creating new management flexibilities and protecting the legitimate rights of Federal employees.●

The CHAIRMAN. Are there any other amendments to the bill?

If not, the question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 11280) to reform the civil service laws, pursuant to House Resolution 1307, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. EMERY. Mr. Speaker, I demand a separate vote on the so-called Hanley amendments.

The SPEAKER. Is a separate vote demanded on any other amendment?

If not, the Clerk will report the amendments on which a separate vote has been demanded.

The Clerk read as follows:

Amendments: Page 190, line 8, strike out "Section 2108" and insert in lieu thereof "Effective beginning October 1, 1980, section 2108".

Page 192, strike out line 3 and all that follows down through page 195, line 9.

Page 195, after line 9, inserting the following section heading:

"Appointments".

Page 195, line 10, strike out "(g)" and insert "Sec. 304." in lieu thereof.

Page 196, strike out line 11 and all that follows down through line 5 on page 199.

Page 199, line 7, strike out "306" and insert in lieu thereof "305".

Page 200, line 10, strike out "307" and insert in lieu thereof "306".

Page 200, line 13, strike out "308" and insert in lieu thereof "307".

Page 200, line 23, strike out "309" and insert in lieu thereof "308".

Page 201, line 19, strike out "310" and insert "309" in lieu thereof.

Page 203, line 3, strike out "311" and insert "310" in lieu thereof.

Page 206, line 5, strike out "312" and insert "311" in lieu thereof.

Page 209, strike out line 13 and all that follows down through line 20.

Conform the table of contents accordingly.

Mr. EMERY (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the amendments be dispensed with, and that they be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Maine?

There was no objection.

The SPEAKER. The question is on the amendments.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. EMERY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 327, nays 70, not voting 35, as follows:

[Roll No. 766]

YEAS—327

Abdnor	Cornell	Gore
Addabbo	Cornwell	Gradison
Akaka	Cotter	Grassley
Alexander	Coughlin	Gudger
Ambro	Crane	Guyer
Anderson, Calif.	Cunningham	Hagedorn
	D'Amours	Hall
Andrews, N.C.	Daniel, Dan	Hamilton
Andrews, N. Dak.	Daniel, R. W.	Hammerschmidt
	Danielson	
Annunzio	Davis	Hanley
Applegate	de la Garza	Hannaford
Archer	Delaney	Hansen
Ashbrook	Dent	Harris
AuCoin	Derrick	Harsha
Badham	Derwinski	Heckler
Bafalis	Devine	Hefner
Baldus	Dickinson	Heftel
Barnard	Dicks	Hightower
Baucus	Diggs	Hillis
Bauman	Dingell	Holland
Beard, R.I.	Dodd	Hollenbeck
Benjamin	Dornan	Holt
Bennett	Duncan, Oreg.	Horton
Bevill	Duncan, Tenn.	Howard
Biaggi	Early	Hubbard
Blanchard	Eckhardt	Hughes
Boggs	Edwards, Ala.	Hyde
Boland	Edwards, Okla.	Ichord
Bonker	Eilberg	Ireland
Bowen	Emery	Jeffords
Brademas	English	Jenkins
Breckinridge	Ertel	Jenrette
Brinkley	Evans, Del.	Johnson, Calif.
Brodhead	Evans, Ga.	Jones, N.C.
Brooks	Evans, Ind.	Jones, Okla.
Brown, Calif.	Findley	Jones, Tenn.
Brown, Mich.	Fish	Kazen
Brown, Ohio	Fisher	Kelly
Broyhill	Fithian	Kemp
Buchanan	Flippo	Kildee
Burgener	Flood	Kindness
Burke, Mass.	Florio	Kostmayer
Burleson, Tex.	Flynt	Krebs
Burlison, Mo.	Foley	LaFalce
Burton, John	Ford, Mich.	Lagomarsino
Butler	Ford, Tenn.	Latta
Byron	Forsythe	Le Fante
Carney	Fountain	Lederer
Carter	Fowler	Lent
Cavanaugh	Frey	Levitas
Cederberg	Fuqua	Livingston
Chappell	Gammage	Lloyd, Calif.
Clausen, Don H.	Gaydos	Lloyd, Tenn.
	Gephardt	Long, La.
Cleveland	Giaimo	Long, Md.
Cohen	Gilman	Lott
Coleman	Ginn	Lujan
Collins, Ill.	Glickman	Luken
Collins, Tex.	Goldwater	Lundine
Conable	Gonzalez	McClory
Conte	Goodling	McCloskey
McCormack	Pease	Spence
McDade	Pepper	St Germain
McDonald	Perkins	Staggers
McEwen	Pettis	Stangeland
McFall	Pickle	Stanton
McKay	Pressler	Steed
Madigan	Preyer	Steiger
Mahon	Price	Stockman
Mann	Pursell	Stratton
Marks	Quayle	Symms
Marlenee	Quillen	Taylor
Marriott	Rahall	Thompson
Martin	Railsback	Thone
Mathis	Regula	Thornton
Mattox	Rhodes	Traxler
Meyner	Rinaldo	Trible
Michel	Roberts	Tucker
Milford	Robinson	Udall
Miller, Ohio	Rodino	Ullman
Minish	Roe	Van Deerlin
Mitchell, N.Y.	Rogers	Vanik
Moakley	Rooney	Vento
Mollohan	Rose	Volkmer
Montgomery	Rosenthal	Waggonner
Moore	Rostenkowski	Walgren
Moorhead, Calif.	Rousselot	Walker
	Roybal	Walsh
Moorhead, Pa.	Rudd	Wampler
Moss	Runnels	Watkins
Mottl	Ruppe	Weaver
Murphy, Ill.	Russo	White
Murphy, N.Y.	Ryan	Whitehurst
Murphy, Pa.	Santini	Whitley
Murtha	Satterfield	Whitten
Myers, Gary	Sawyer	Wilson, Bob
Myers, John	Schulze	Wilson, C. H.
Myers, Michael	Sebelius	Wilson, Tex.
Natcher	Sharp	Winn
Neal	Shipley	Wirth
Nedzi	Shuster	Wolff
Nichols	Sikes	Wright
Nix	Sisk	Wydler
Nowak	Skelton	Wylie
O'Brien	Skubitz	Yatron
Oberstar	Slack	Young, Fla.
Obey	Smith, Nebr.	Young, Mo.
Panetta	Snyder	Zablocki
Patten	Solarz	Zeferetti
Patterson	Spellman	

NAYS—70

Anderson, Ill.	Fenwick	Oakar
Ashley	Garcia	Ottinger
Aspin	Green	Pattison
Bedell	Harkin	Pike
Bellenson	Harrington	Poage
Bingham	Hawkins	Pritchard
Blouin	Holtzman	Rangel
Bolling	Jacobs	Reuss
Bonior	Jordan	Roncalio
Burton, Phillip	Kastenmeier	Scheuer
Carr	Keys	Schroeder
Chisholm	Leach	Seiberling
Clay	Leggett	Simon
Conyers	McHugh	Smith, Iowa
Corcoran	Maguire	Stark
Corman	Markey	Steers
Dellums	Mazzoli	Stokes
Downey	Meeds	Studds
Drinan	Mikulski	Waxman
Edgar	Mikva	Weiss
Edwards, Calif.	Mineta	Whalen
Erlenborn	Mitchell, Md.	Yates
Evans, Colo.	Moffett	
Fascell	Nolan	

NOT VOTING—35

Ammerman	Fraser	Richmond
Armstrong	Frenzel	Risenhoover
Beard, Tenn.	Gibbons	Sarasin
Breaux	Huckaby	Stump
Broomfield	Johnson, Colo.	Teague
Burke, Calif.	Kasten	Treen
Burke, Fla.	Krueger	Tsongas
Caputo	Lehman	Vander Jagt
Clawson, Del	McKinney	Wiggins
Cochran	Metcalfe	Young, Alaska
Fary	Miller, Calif.	Young, Tex.
Flowers	Quie	

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Richmond against.

Mr. Ammerman for, with Mr. Miller of California against.

Mr. Teague for, with Mrs. Burke of California against.

Until further notice:

Mr. Risenhoover with Mr. Beard of Tennessee.

Mr. Huckaby with Mr. Frenzel.

Mr. Krueger with Mr. Sarasin.

Mr. Metcalfe with Mr. Wiggins.

Mr. Tsongas with Mr. Young of Alaska.

Mr. Gibbons with Mr. McKinney.

Mr. Flowers with Mr. Kasten.

Mr. Breaux with Mr. Burke of Florida.

Mr. Lehman with Mr. Del Clawson.

Mr. Stump with Mr. Broomfield.

Mr. Fraser with Mr. Caputo.

Mr. Treen with Mr. Quie.

Mr. Vander Jagt with Mr. Cochran of Mississippi.

Ms. MIKULSKI and Mr. EDWARDS of California changed their vote from "yea" to "nay."

Mr. LAFALCE changed his vote from "nay" to "yea."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ASHBROOK. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ASHBROOK moves to recommit the bill, H.R. 11280, to the Committee on Post Office and Civil Service.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. UDALL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 385, nays 10, not voting 37, as follows:

[Roll No. 767]

YEAS—385

Abdnor	Bauman	Brown, Calif.
Addabbo	Beard, R.I.	Brown, Mich.
Akaka	Bedell	Brown, Ohio
Alexander	Bellenson	Broyhill
Ambro	Benjamin	Buchanan
Anderson, Calif.	Bennett	Burgener
	Bevill	Burke, Mass.
Anderson, Ill.	Biaggi	Burleson, Tex.
Andrews, N.C.	Bingham	Burlison, Mo.
Andrews, N. Dak.	Blanchard	Burton, John
	Blouin	Burton, Phillip
Annunzio	Boggs	Butler
Applegate	Boland	Byron
Archer	Bolling	Carney
Ashley	Bonior	Carr
Aspin	Bonker	Carter
AuCoin	Bowen	Cavanaugh
Badham	Brademas	Cederberg
Bafalis	Breckinridge	Chappell
Baldus	Brinkley	Chisholm
Barnard	Brodhead	Clausen, Don H.
Baucus	Brooks	

Clay	Hightower	Ottinger
Cleveland	Hillis	Panetta
Cohen	Holland	Patten
Coleman	Hollenbeck	Patterson
Collins, Ill.	Holtzman	Pattison
Collins, Tex.	Horton	Pease
Conable	Howard	Pepper
Conte	Hubbard	Perkins
Conyers	Hughes	Pettis
Corcoran	Hyde	Pickle
Corman	Ichord	Pike
Cornell	Ireland	Poage
Cornwell	Jacobs	Pressler
Cotter	Jeffords	Preyer
Coughlin	Jenkins	Price
Crane	Jenrette	Pritchard
Cunningham	Johnson, Calif.	Pursell
D'Amours	Jones, N.C.	Quayle
Daniel, Dan	Jones, Okla.	Quillen
Daniel, R. W.	Jones, Tenn.	Rahall
Danielson	Jordan	Railsback
de la Garza	Kastenmeier	Rangel
Delaney	Kazen	Regula
Dellums	Kelly	Reuss
Dent	Kemp	Rhodes
Derrick	Keys	Rinaldo
Derwinski	Kildee	Roberts
Devine	Kindness	Robinson
Dickinson	Kostmayer	Rodino
Dicks	Krebs	Roe
Diggs	LaFalce	Rogers
Dingell	Lagomarsino	Roncalio
Dodd	Latta	Rooney
Dornan	Le Fante	Rose
Downey	Leach	Rosenthal
Drinan	Lederer	Rostenkowski
Duncan, Oreg.	Leggett	Rousselot
Duncan, Tenn.	Lent	Roybal
Early	Levitas	Rudd
Eckhardt	Livingston	Runnels
Edgar	Lloyd, Calif.	Ruppe
Edwards, Ala.	Lloyd, Tenn.	Russo
Edwards, Calif.	Long, La.	Ryan
Edwards, Okla.	Lott	Santini
Eilberg	Lujan	Satterfield
Emery	Luken	Sawyer
English	Lundine	Scheuer
Erlenborn	McClory	Schroeder
Ertel	McCormack	Schulze
Evans, Colo.	McDade	Sebelius
Evans, Del.	McDonald	Seiberling
Evans, Ga.	McEwen	Sharp
Evans, Ind.	McFall	Shipley
Fascell	McHugh	Shuster
Fenwick	McKay	Sikes
Findley	Madigan	Simon
Fish	Maguire	Sisk
Fisher	Mahon	Skelton
Fithian	Mann	Skubitz
Flippo	Markey	Slack
Flood	Marks	Smith, Iowa
Florio	Marlenee	Smith, Nebr.
Flynt	Marriott	Snyder
Foley	Martin	Solarz
Ford, Mich.	Mathis	Spence
Ford, Tenn.	Mattox	St Germain
Forsythe	Mazzoli	Staggers
Fountain	Meeds	Stangeland
Fowler	Meyner	Stanton
Frey	Michel	Stark
Fuqua	Mikulski	Steed
Gammage	Mikva	Steiger
Garcia	Milford	Stockman
Gaydos	Miller, Ohio	Stokes
Gephardt	Mineta	Stratton
Giaimo	Minish	Studds
Gilman	Mitchell, N.Y.	Symms
Ginn	Moakley	Taylor
Glickman	Moffett	Thompson
Goldwater	Mollohan	Thone
Gonzalez	Montgomery	Thornton
Goodling	Moore	Traxler
Gore	Moorhead, Calif.	Trible
Gradison	Moorhead, Pa.	Tucker
Grassley	Mottl	Udall
Green	Murphy, Ill.	Ullman
Gudger	Murphy, N.Y.	Van Deerlin
Guyer	Murphy, Pa.	Vanik
Hagedorn	Murtha	Vento
Hall	Myers, John	Volkmer
Hamilton	Myers, Michael	Waggonner
Hammer-schmidt	Natcher	Walgren
Hanley	Neal	Walker
Hannaford	Nedzi	Walsh
Hansen	Nichols	Wampler
Harkin	Nix	Watkins
Harrington	Nolan	Waxman
Harsha	Nowak	Weaver
Hawkins	O'Brien	Weiss
Heckler	Oakar	Whalen
Hefner	Oberstar	White
Heftel	Obey	Whitehurst
Whitten	Wolff	Whitley
Wilson, Bob	Wright	Yatron
Wilson, Tex.	Wydler	Young, Fla.
Winn	Wylie	Young, Mo.
Wirth	Yates	Zablocki
		Zeferetti

NAYS—10

Ashbrook	Mitchell, Md.	Steers
Davis	Moss	Wilson, C. H.
Harris	Myers, Gary	
Holt	Spellman	

NOT VOTING—37

Ammerman	Frenzel	Richmond
Armstrong	Gibbons	Risenhoover
Beard, Tenn.	Huckaby	Sarasin
Breaux	Johnson, Colo.	Stump
Broomfield	Kasten	Teague
Burke, Calif.	Krueger	Treen
Burke, Fla.	Lehman	Tsongas
Caputo	Long, Md.	Vander Jagt
Clawson, Del	McCloskey	Wiggins
Cochran	McKinney	Young, Alaska
Fary	Metcalfe	Young, Tex.
Flowers	Miller, Calif.	
Fraser	Quie	

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Richmond.
Mr. Lehman with Mr. Metcalfe.
Mr. Krueger with Mr. Beard of Tennessee.
Mrs. Burke of California with Mr. Caputo.
Mr. Breaux with Mr. Vander Jagt.
Mr. Fary with Mr. Broomfield.
Mr. Flowers with Mr. Sarasin.
Mr. Teague with Mr. Del Clawson.
Mr. Risenhoover with Mr. Treen.
Mr. Huckaby with Mr. Burke of Florida.
Mr. Tsongas with Mr. Young of Alaska.
Mr. Gibbons with Mr. Wiggins.
Mr. Long of Maryland with Mr. Kasten.
Mr. Fraser with Mr. McCloskey.
Mr. Stump with Mr. Cochran of Mississippi.
Mr. Frenzel with Mr. McKinney.
Mr. Miller of California with Mr. Quie.

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to reform the civil service laws, and for other purposes."

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

● Mr. SOLARZ. Mr. Speaker, during the separate vote in the full House on the Hanley veterans preference amendment, I mistakenly voted for that amendment. As was indicated by my vote against the same amendment during the Committee of the Whole's consideration of it, I am strongly in favor of modifying the existing law on veterans preference. I believe that the veterans preference should be used to help veterans readjust to civilian life and to compensate disabled veterans for the sacrifices they made.

The current veterans preference, however, serves as a real deterrent to the recruitment of qualified women to the civil service. The bill reported by the committee would have eliminated the negative aspects of the current veterans preference while maintaining the legitimate and necessary benefits for veterans who are in need of readjustment aid or who are disabled. I, therefore, would have preferred that the committee provision on this issue remain intact and unchanged. As a result, I should have been recorded "no" on the Hanley amendment.●

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 11280

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Clerk, in the engrossment of the bill H.R. 11280, be authorized and directed to make such changes in section numbers, cross references, and other technical and conforming corrections as may be required.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on the bill just passed, H.R. 11280.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2640) to reform the civil service laws, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves to strike all after the enacting clause of S. 2640 and insert in lieu thereof the provisions of H.R. 11280 as passed, as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

SEC. 2. The table of contents is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

Sec. 201. Office of Personnel Management.
Sec. 202. Merit Systems Protection Board and Special Counsel.
Sec. 203. Performance appraisals.
Sec. 204. Adverse actions.
Sec. 205. Appeals.

TITLE III—STAFFING

Sec. 301. Volunteer services.
Sec. 302. Exceptions from the competitive service.
Sec. 303. Definitions relating to preference eligibles.

Sec. 304. Noncompetitive appointment of certain disabled veterans.
Sec. 305. Appointments.
Sec. 306. Training.
Sec. 307. Travel, transportation, and subsistence.
Sec. 308. Retirement.
Sec. 309. Extension of veterans readjustment appointment authority.
Sec. 310. Notification of vacancies in the civil service.
Sec. 311. Dual pay for members of the uniformed services.
Sec. 312. Minority recruitment program.
Sec. 313. Compensatory time off for religious observances.
Sec. 314. Temporary employment limitation.
Sec. 315. Interpreting assistants for deaf employees.

TITLE IV—SENIOR EXECUTIVE SERVICE

Sec. 401. General provisions.
Sec. 402. Authority for employment.
Sec. 403. Examination, certification, and appointment.
Sec. 404. Retention preference.
Sec. 405. Performance rating.
Sec. 406. Awarding of ranks.
Sec. 407. Pay rates and systems.
Sec. 408. Pay administration.
Sec. 409. Travel, transportation, and subsistence.
Sec. 410. Leave.
Sec. 411. Disciplinary actions.
Sec. 412. Retirement.
Sec. 413. Conversion to the Senior Executive Service.
Sec. 414. Limitations on executive positions.
Sec. 415. Effective date; experimental application.

TITLE V—MERIT PAY

Sec. 501. Pay for performance.
Sec. 502. Incentive awards amendments.
Sec. 503. Technical and conforming amendments.
Sec. 504. Effective date.

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

SUBTITLE A—RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Sec. 601. Research programs and demonstration projects.

SUBTITLE B—INTERGOVERNMENTAL PERSONNEL

Sec. 611. Intergovernmental Personnel Act. amendments.

SUBTITLE C—MOBILITY PROGRAM

Sec. 621. Amendments to the mobility program.

SUBTITLE D—FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES

Sec. 631. Congressional findings.
Sec. 632. Definitions.
Sec. 633. Experimental program.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS

Sec. 641. Definitions.
Sec. 642. Flexible scheduling experiments.
Sec. 643. Computation of premium pay.

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Sec. 701. Federal service labor-management relations.
Sec. 702. Backpay in case of unfair labor practices and grievances.
Sec. 703. Technical and conforming amendments.
Sec. 704. Miscellaneous provisions.

TITLE VIII—GRADE AND PAY RETENTION

Sec. 801. Grade and pay retention.

TITLE IX—MISCELLANEOUS

Sec. 901. Study on decentralization of governmental functions.
Sec. 902. Savings provisions.
Sec. 903. Authorization of appropriations.
Sec. 904. Powers of President unaffected except by express provisions.
Sec. 905. Retention of security investigation reports.
Sec. 906. Technical and conforming amendments.
Sec. 907. Effective date.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(3) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate prohibited personnel practices and reprisals against Government employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

(4) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(5) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified managers needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(6) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

(7) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional review, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public; and

(8) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess.

TITLE I—MERIT SYSTEM PRINCIPLES

MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 21 the following new chapter:

"Chapter 23—MERIT SYSTEM PRINCIPLES

"Sec.
"2301. Merit system principles.
"2302. Prohibited personnel practices.
"2303. Responsibility of the General Account-Office.
"2304. Coordination with certain other provisions of law.

"§ 2301. Merit system principles

"(a) This section shall apply to—

"(1) an Executive agency;

"(2) the Administrative Office of the United States Courts; and

"(3) the Government Printing Office.

"(b) It is the policy of the Congress that in order to provide the people of the United States with a highly competent, honest, and productive Federal workforce reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with the merit system principles.

"(c) The merit system principles are as follows:

"(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

"(2) All employees and applicants should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

"(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

"(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

"(5) The Federal work force should be used efficiently and effectively.

"(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

"(7) Employees should be provided effective education and training in cases in which education and training would result in better organizational and individual performance.

"(8) Employees should be—

"(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

"(B) prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for election.

"(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

"(A) a violation of law, rule, or regulation,

"(B) mismanagement, a waste of funds, or an abuse of authority, or

"(C) a substantial and specific danger to public health or safety.

"(d) The President shall take actions, including the issuance of rules, regulations, or directives, as the President determines are necessary to carry out the policy set forth in subsection (b) of this section.

"§ 2302. Prohibited personnel practices

"(a)(1) For the purpose of this title, 'prohibited personnel practice' means any action described in subsection (b) of this section.

"(2) For the purpose of this section—

"(A) 'personnel action' means—

"(i) an appointment;

"(ii) a promotion;

"(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

"(iv) a detail, transfer, or reassignment;
"(v) a reinstatement;
"(vi) a restoration;
"(vii) a reemployment;
"(viii) a performance evaluation under chapter 43 of this title;
"(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and
"(x) a substantial change in duties or responsibilities which may reasonably be expected to result in a reduction in pay or grade;
with respect to an employee in, or applicant for, a position in the competitive service in an agency or a position in the excepted service in an agency (other than a position which is excepted from the competitive service because of its confidential, policy—determining, or policy advocating character), or to a career appointee in the Senior Executive Service in an agency.

"(B) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—
"(i) a Government corporation;
"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or
"(iii) the General Accounting Office.

"(3) If the President does not designate the Federal Bureau of Investigation, in its entirety, under paragraph (2)(B)(ii) of this subsection, functions of the Special Counsel relating to the enforcement of this section with respect to the Bureau, or any unit thereof, shall be carried out by the President (or his designee) notwithstanding any provision of law to the contrary.

"(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority—
"(1) discriminate for or against any employee or applicant for employment—
"(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);
"(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
"(C) on the basis of sex, as prohibited by the Equal Pay Act of 1963, 29 U.S.C. 206(d);
"(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);
"(E) on the basis of marital status or political affiliation, as prohibited under this title; or
"(F) on any basis prohibited under the provisions of any other law, rule, or regulation;
"(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
"(A) an evaluation of the work performance, ability, aptitude, or general qualifications of the individual; or
"(B) an evaluation of the character, loyality, or suitability of the individual;
"(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
"(4) deceive or obstruct any person with respect to the person's right to compete for Federal employment;
"(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
"(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any person for Federal employment;
"(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position, any individual who is a relative (as defined in section 3110(a)(3) of this title) of an employee if the position is in the agency in which the employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which the employee exercises jurisdiction or control as a public official (as defined in section 3110(a)(2) of this title);
"(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—
"(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
"(i) a violation of any law, rule, or regulation, or
"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law or if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
"(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences —
"(i) a violation of any law, rule, or regulation, or
"(ii) mismanagement, a waste of funds, or an abuse of authority, or a substantial and specific danger to public health or safety;
"(9) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for the exercise of any right of appeal granted by law, rule, or regulation;
"(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime of violence or moral turpitude under the laws of any State, of the District of Columbia, or of the United States; or
"(11) take or fail to take any personnel action on the basis of personal favoritism.

"(c)(1) The head of each agency shall be responsible for the prevention of prohibited personnel practices, the compliance with and enforcement of applicable civil service laws, rules, and regulations and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

"(2) In the case of employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b)(8)(A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

"(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—
"(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
"(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of sex;
"(3) under the Equal Pay Act of 1963 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sexy;
"(4) section 501 of the Rehabilitation Act of 1973 (9 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition;
"(5) the provisions of this title, and rules and regulations thereunder, prohibiting discrimination on the basis of marital status or political affiliation; or
"(6) the provisions of any other law, rule, or regulation prohibiting discrimination on any such basis.

"§ 2303. Responsibility of the General Accounting Office

"(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

"(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. Such report shall include a description of—
"(1) significant actions taken by the Board to carry out its functions under this title; and
"(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

"§ 2304. Coordination with certain other provisions of law.

"No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), Public Law 86–36 (73 Stat. 63; 50 U.S.C. 402 note), and Public Law 88–290) 78 Stat. 168; 50 U.S.C. 831–835)."

(b)(1) The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 21 the following new item:

"23. Merit system principles..... 2301."

(2) Section 7203 of title 5, United States Code (as redesignated in section 703(a)(1) of this Act) is amended—

(A) by striking out "Physical handicap" in the section heading and inserting in lieu thereof "Handicapping condition"; and

(B) by striking out "physical handicap" each place it appears in the text and inserting in lieu thereof "handicapping condition".

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

OFFICE OF PERSONNEL MANAGEMENT

SEC. 201. (a) Chapter 11 of title 5, United States Code, is amended to read as follows:

"Chapter 11—OFFICE OF PERSONNEL MANAGEMENT

"Sec.
"1101. Office of Personnel Management.
"1102. Director; Deputy Director; Associate Directors.
"1103. Functions of the Director.
"1104. Delegation of authority for personnel management.
"1105. Reports to the Congress.
"1106. Administrative procedure.

"§ 1101. Office of Personnel Management

"The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal which shall be judicially noticed and shall have as its principal office in the District of Columbia, and may have field offices in other appropriate locations.

"§ 1102. Director; Deputy Director; Associate Directors

"(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate.

"(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the Office of the Director is vacant.

"(c) No person shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or by the President.

"(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

"§ 1103. Functions of the Director

"(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104(a) of this title, by such employees of the Office as the Director designates:

"(1) securing accuracy, uniformity, and justice in the functions of the Office;

"(2) appointing individuals to be employed by the Office;

"(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

"(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

"(5) executing, administering, and enforcing—

"(A) the civil service rules and regulations of the President and the Office and the statutes governing the civil service; and

"(B) the other activities of the Office including retirement and classification activities;

"(6) reviewing the operations under chapter 87 of this title; and

"(7) the functions prescribed in part I of Reorganization Plan Numbered 2 of 1978.

"(b)(1) The Director shall publish in the Federal Register general notice of any proposed rule or regulation which affects any agency or its employees. Any such notice shall be in accordance with the notice requirements of section 553(b) of this title. Upon receipt of such notice of any proposed rule or regulation, the agency shall, under regulations which shall be prescribed by the Office of Personnel Management, post such proposed rule or regulation in such locations of such offices of the agency as the agency finds reasonably necessary to ensure notice to the maximum number of employees affected. The issuance of any such rule or regulation shall be in accordance with the rule making requirements of section 553(c) of this title. Any such rule or regulation shall be published in the Federal Register at least 60 days before its effective date.

"(2) Paragraph (1) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency need.

"§ 1104. Delegation of authority for personnel management

"(a) (1) Subject to subsection (b)(3) of this section and notwithstanding any other provision of this title—

"(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

"(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service; except that the Director may not delegate open competitive examination authority with respect to positions whose requirements are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

"(b)(1) The Office of Personnel Management shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

"(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

"(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to ensure compliance with the civil service laws and regulations.

"(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.".

"§ 1105. Reports to the Congress

"Notwithstanding any other provision of law or any rule, regulation, or directive, the Director, or any employee of the Office of Personnel Management designated by the Director, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

"§ 1106. Administrative procedure

"In the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.".

(b)(1) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(24) Director of the Office of Personnel Management.".

(2) Section 5314 of such title is amended by inserting at the end thereof the following new paragraph:

"(68) Deputy Director of the Office of Personnel Management.".

(3) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Associate Directors of the Office of Personnel Management (5).".

(c)(1) The heading of part II of title 5, United States Code, is amended by striking out "THE UNITED STATES CIVIL SERVICE COMMISSION" and inserting in lieu thereof "CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES".

(2) The item relating to chapter 11 in the table of chapters for part II of such title is amended by striking out "Organization" and inserting in lieu thereof "Office of Personnel Management".

MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

SEC. 202. (a) Title 5, United States Code, is amended by inserting after chapter 11 the following new chapter:

"Chapter 12—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

"Sec.
"1201. Appointment of members of the Merit Systems Protection Board.
"1202. Term of office; filing vacancies; removal; quorum.
"1203. Chairman; Vice Chairman.
"1204. Special Counsel; appointment and removal.
"1205. Powers and functions of the Merit Systems Protection Board and Special Counsel.
"1206. Authority and responsibilities of the Special Counsel.
"1207. Hearings and decisions on complaints filed by the Special Counsel.
"1208. Reports to Congress.

"§ 1201. Appointment of members of the Systems Protection Board

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. No member of the Board may hold another office or position in the Government of the United States. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

"§ 1202. Term of office; filing vacancies; removal; quorum

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term.

"(d) Members may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(e) Except as otherwise provided in this title, the Board shall act upon majority vote of those members present, and any 2 members present shall constitute a quorum for the transaction of business of the Board.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time designate one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Merit Systems Protection Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1204. Special Counsel; appointment and removal

"The Special Counsel of the Merit Systems Protection Board shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 7 years. The Special Counsel may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"§ 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

"(a)(1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, and received evidence.

"(2) Any member of the Merit Systems Protection Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of the title may—

"(A) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, and

"(B) take or order the taking of depositions and order responses to written interrogatories.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"(d)(1) At any time after the effective date of any rule or regulation issued by the Office of Personnel Management in carrying out its functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face—

"(i) require any employee to violate section 2302(b) of this title; or

"(ii) is contrary to any merit system principle; or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision—

"(i) has required any employee to violate section 2302(b) of this title; or

"(ii) has been contrary to any merit system principle.

"(3)(A) The Director of the Office of Personnel Management, and any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(B) Any review conducted by the Board pursuant to this paragraph shall be limited to determining—

"(i) the validity on its face of the provision under review; and

"(ii) whether the provision under review has been validly implemented.

"(C) The Board shall require any agency—

"(i) to cease compliance with any provision of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been so invalidly implemented by the agency.

"(e) In addition to functions otherwise provided in this title, the Board shall have the functions prescribed in part II of Reorganization Plan Numbered 2 of 1978.

"(f) The Board shall conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interests in a civil service free of prohibited personnel practices is being adequately protected.

"(g) The Merit Systems Protection Board shall submit its request for annual appropriations to the Office of Management and Budget and to the Congress.

"§ 1206. Authority and responsibility of the Special Counsel

"(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred.

"(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

"(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred.

"(b)(1) If the Special Counsel determines that there are reasonable grounds to believe—

"(A) that a personnel action was taken, or is to be taken, as a result of a prohibited personnel practice; and

"(B) except with regard to a prohibited personnel practice described in section 2302(b)(8) of this title, that the personnel action would have a substantial and adverse impact on the employee involved;

the Special Counsel may order a stay of the personnel action for 30 calendar days or any longer period the Board may prescribe under paragraph (2) of this subsection.

"(2) If the Board—

"(A) has received a petition of the Special Counsel for an extension of a stay ordered under paragraph (1) of this subsection, and

"(B) concurs in the determination of the Special Counsel under paragraph (1), after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved,

the Board may extend the period of such stay for any period it considers appropriate. If the aggregate period of the stay, as proposed to be extended, will not exceed 60 days, the function of the Board under this paragraph may be performed by any one member of the Board.

"(c)(1) In any case involving—

"(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation; or

"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information, other than foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation; or

"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (2) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necesary in order to effectively carry out the investigation.

"(2) Within 15 days after receiving any information under paragraph (1)(B) of this subsection, the Special Counsel shall determine whether the information warrants an investigation. If an investigation is determined to be warranted, the Special Counsel shall—

"(A) transmit the information to the head of the agency involved;

"(B) require the head of the agency to—

"(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

"(ii) submit a written report to the Special Counsel and to the General Accounting Office setting forth the findings of the head of the agency within 60 days after the date

on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel; and

"(C) transmit a copy of the report to the employee or applicant for employment who disclosed the information.

"(3) Any report required under paragraph (2) of this subsection shall be reviewed and signed by the head of the agency and shall include—

"(A) a summary of the information with respect to which the investigation was initiated;

"(B) a detailed description of the conduct of the investigation;

"(C) a summary of any evidence obtained from the investigation;

"(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(E) a description of any corrective action taken or planned as a result of the investigation, such as—

"(i) changes in agency rules, regulations, or practices;

"(ii) the restoration of any aggrieved employee;

"(iii) disciplinary action against any employee; and

"(iv) referral to the Attorney General of any evidence of a criminal violation.

"(4) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (2) of this subsection is referred to the Attorney General, the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(5) Upon receipt of any report of the head of any agency required under paragraph (2)(B)(ii) of this subsection, the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency are reasonable;

"(B) the agency's investigation was complete and unbiased; and

"(C) the corrective action taken or planned is sufficient in light of any violations found to have occurred.

"(6) Upon receipt of any report of the head of any agency required under paragraph (2)(B)(ii) of this subsection, the General Accounting Office shall review the report and determine whether the agency investigation involved was adequate and whether the corrective action, if any, taken or planned by the agency is adequate. The General Accounting Office shall report the results of its review to the Congress if it determines that the agency's investigation or any corrective action taken or planned by the agency is inadequate.

"(7) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by the Congress, any agency, or any person which is—

"(A) specifically prohibited from disclosure by any other provision of law; or

"(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(8) The Special Counsel may, with the consent of the employee or applicant for employment involved, participate in any proceeding before the Merit Systems Protection Board under section 7701 of this title, to the extent the Special Counsel determines appropriate, if the Special Counsel believes the personnel action which is the subject of the proceeding involves a reprisal for a disclosure of information described in paragraph (1)(A) or (B) of this section.

"(9) In any case under subsection (c)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, or in any case in which the Special Counsel, in consultation with the head of an agency under subsection (d)(3) of this section, determines that information involved is prohibited from disclosure by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(d)(1) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Merit Systems Protection Board, the agency involved, and to the Office of Personnel Management, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken, but the final decision on the corrective action to be taken shall be made by the Merit Systems Protection Board after opportunity for comment by the agency concerned and the Office of Personnel Management.

"(2) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

"(A) that the head of the agency has personally reviewed the report; and

"(B) what action has been, or is to be, taken, and when the action will be completed.

The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies and their certifications under this paragraph, except that prior to including any information in a public list, the Special Counsel shall consult with the head of the agency involved to determine if any of the information to be contained therein is prohibited from disclosure by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, in which case the information shall not be included in such a public list.

"(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

"(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

"(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

"(C) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counter-intelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to politcal intrusion in personnel decisionmaking; and

"(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(f) During any investigation initiated under subsection (a), (c), or (e) of this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"(g)(1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee—

"(A) after any investigation under this section, or

"(B) on the bais of any knowing and willful refusal or failure by an employee to comply with an order or requirement of the Special Counsel under subsection (b), (c), or (d)(3) of this section or an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint, and statement to the employee and the Merit Systems Protection Board is accordance with section 1207 of this title.

"(2) In the case of an individual appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

"(h) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(i) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

"(j) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

"(k) The Special Counsel shall prepare and submit an annual report to the President and to the Congress on—

"(1) the investigation and disposition of each case considered by the Special Counsel during the annual period covered by the report; and

"(2) actions by the Special Counsel on each case referred by the Special Counsel to the President during the annual period covered by the report.

"§ 1207. Hearings and decisions on complaints filed by the Special Counsel

"(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206 (g) of this title shall be entitled to—

"(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(2) be represented by an attorney or other representative;

"(3) a hearing before the Board, an administrative law judge appointed under section 3105 of this title and designated by the Board, or any other employee of the Board designated by the Board to conduct the hearing;

"(4) have a transcript kept of any hearing under paragraph (3); and

"(5) a written decision and reasons therefor at the earliest practicable date including a copy of any final order imposing disciplinary action.

"(b) A final order of the Board may impose disciplinary action—

"(1) in the case of political activity prohibited under subchapter III of chapter 73 of this title, as provided in section 7327 of this title; or

"(2) in any other case, consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(c) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States district court for the judicial district in which the employee resides.

"(d) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

"§1208. Reports to the Congress

"Notwithstanding any other provision of law or any rule, regulation or directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.".

(b) Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section).

(c)(1) Section 5314(17) of title 5, United States Code, is amended by striking out "Chairman of the United States Civil Service Commission" and inserting in lieu thereof "Chairman of the Merit Systems Protection Board".

(2) Section 5315(66) of such title is amended by striking out "Members, United States Civil Service Commission" and inserting in lieu thereof "Members, Merit Systems Protection Board".

(3) Section 5315 of such title is further amended by adding at the end thereof the following new paragraph:

"(123) Special Counsel of the Merit Systems Protection Board.".

(4) Paragraph (99) of section 5316 of such title is hereby repealed.

(d) The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 11 the following new item:

"12. Merit Systems Protection Board and Special Counsel ---------- 1201".

PERFORMANCE APPRAISAL

SEC. 203. (a) Chapter 43 of title 5, United States Code, is amended to read as follows:

"Chapter 43.—PERFORMANCE APPRAISAL

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"4301. Definitions.
"4302. Establishment of performance appraisal systems.
"4303. Actions based on unacceptable performance.
"4304. Responsibilities of Office of Personnel Management.
"4305. Regulations.

"§ 4301. Definitions

"For the purpose of this subchapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) the Administrative Office of the United States Courts; and

"(C) the Government Printing Office;

but does not include—

"(i) a Government corporation;

"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office;

"(2) 'employee' means an individual employed in or under an agency, but does not include—

"(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

"(B) an individual in the Foreign Service of the United States;

"(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;

"(D) an administrative law judge appointed under section 3105 of this title;

"(E) an individual in the Senior Executive Service; or

"(F) an individual appointed by the President; and

"(3) 'unacceptable performance' means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position, which shall include, but not be limited to conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.

"§ 4302. Establishment of performance appraisal systems

"(a) Each agency shall develop one or more performance appraisal systems which—

"(1) provide for periodic appraisals of job performance of employees;

"(2) encourage employee participation in establishing performance standards;

"(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

"(4) shall be the basis, notwithstanding any other provision of law, for promotions of one or more grades during any 12-month period in individual cases of exceptionally meritorious performance.

"(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

"(1) establishing performance standards which will permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee under such system;

"(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

"(3) evaluating each employee during the appraisal period on such standards;

"(4) recognizing and rewarding employees whose performance so warrants;

"(5) assisting employees in improving unacceptable performance;

"(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance; and

"(7) promoting employees one or more grades during any 12-month period, notwithstanding any other provision of law, in individual cases of exceptionally meritorious performance, subject to limitations prescribed by the Office of Personnel Management on the number or proportions of such promotions.

"§ 4303. Actions based on unacceptable performance

"(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

"(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

"(A) 30 days' advance written notice of the proposed action which identifies—

"(i) each instance of unacceptable performance by the employee on which the proposed action is based; and

"(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

"(B) be represented by an attorney or other representative;

"(C) a reasonable time to answer orally and in writing;

"(D) an opportunity during the notice period to demonstrate acceptable performance; and

"(E) a written decision which—

"(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

"(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

"(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

"(c) The decision to retain, reduce in grade, or remove an employee—

"(1) shall be made within 30 days after the date of the expiration of the notice period, and

"(2) in the case of a reduction in grade or removal, may be based only upon those instances of unacceptable performance by the employee—

"(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

"(B) for which the notice and other requirements of this section are complied with.

"(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

"(e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.

"(f) This section does not apply to—

"(1) the reduction to the grade previously held of a supervisor who has not completed the probationary period under section 3321(a)(2) of this title,

"(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

"(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

"§ 4304. Responsibilities of the Office of Personnel Management

"(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

"(b) If the Office of Personnel Management determines that a performance appraisal system does not meet the requirements of this subchapter (including regulations prescribed under section 4305 of this title), the Office of Personnel Management shall direct the agency to implement an appropriate system or to correct operations under the system, and the agency shall take any action so directed.

"§ 4305. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.".

(b) The item relating to chapter 43 in the table of chapters for part III of title 5, United States Code, is amended by striking out "Performance Rating" and inserting in lieu thereof "Performance Appraisal".

ADVERSE ACTIONS

SEC. 204. (a) Chapter 75 of title 5, United States Code, is amended by striking out subchapters I, II, and III and inserting in lieu thereof the following:

"SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

"§ 7501. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

"(2) 'suspension' means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

"§ 7502. Actions covered

"This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

"§ 7503. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service, including conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.

"(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

"(1) an advance written notice stating the specific reasons for the proposed action;

"(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

"§ 7504. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"§ 7511. Definitions; application

"(a) For the purpose of this subchapter—

"(1) 'employee' means—

'(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee—

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, or policy-advocating character by—

"(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

"(B) the head of an agency for a position which is excepted from the competitive service by statute.

"(c) The Office of Personnel Management may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office of Personnel Management.

"§ 7512. Actions covered

"This subchapter applies to—

"(1) a removal;

"(2) a suspension for more than 14 days;

"(3) a reduction in grade;

"(4) a reduction in pay; and

"(5) a furlough of 30 days or less;

but does not apply to—

"(A) a suspension or removal under section 7532 of this title,

"(B) a reduction in force action under section 3502 of this title,

"(C) the reduction in grade of a supervisor who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor,

"(D) a reduction in grade or removal under section 4303 of this title, or

"(E) an action initiated under section 1206 or 7521 of this title.

"§ 7513. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee for such cause as will promote the efficiency of the service, including for conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.

"(b) An employee against whom an action is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

"§ 7514. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"§ 7521. Actions against administrative law judges

"(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and

determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

"(b) The actions covered by this section are—

"(1) a removal;

"(2) a suspension;

"(3) a reduction in grade;

"(4) a reduction in pay;

"(5) a furlough of 30 days or less; and

"(6) a written reprimand or admonition based on the performance or nonperformance of adjudicatory duties;

but do not include—

"(A) a suspension or removal under section 7532 of this title;

"(B) a reduction in force action under section 3502 of this title; or

"(C) any action initiated under section 1206 of this title.".

(b) So much of the analysis for chapter 75 of title 5, United States Code, precedes the items relating to subchapter IV is amended to read as follows:

"Chapter 75.—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

"Sec.
"7501. Definitions.
"7502. Actions covered.
"7503. Cause and procedure.
"7504. Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application.
"7512. Actions covered.
"7513. Cause and procedure.
"7514. Regulations.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"7521. Actions against administrative law judges.".

APPEALS

SEC. 205. Chapter 77 of title 5, United States Code, is amended to read as follows:

"Chapter 77.—APPEALS

"Sec.
"7701. Appellate procedures.
"7702. Judicial review of decisions of the Merit Systems Protection Board.

"§ 7701. Appellate procedures

"(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

"(1) to a hearing for which a transcript will be kept; and

"(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

"(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

"(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision is supported by a preponderance of evidence.

"(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

"(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

"(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

"(C) shows that the decision was not in accordance with law.

"(d)(1) Except as provided in subsection (e) of this section, any decision under subsection (b) of this section shall be final unless—

"(A) a party to the appeal or the Director of the Office of Personnel Management petitions the Board for a review within 30 days after the receipt of the decision; or

"(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.

"(2) The Director of the Office of Personnel Management may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on civil service laws, rules, or regulations under the jurisdiction of the Office of Personnel Management.

"(e) The Equal Employment Opportunity Commission may delegate to the Merit Systems Protection Board the authority to provide an employee or applicant with a preliminary determination on the issue of discrimination whenever, as part of a complaint or appeal before the Merit Systems Protection Board on other grounds, the employee or applicant involved alleges a violation of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the Equal Pay Act of 1963 (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). Nothing in the subsection shall be construed to authorize the Equal Employment Opportunity Commission to delegate the function of making a final determination concerning the issue of discrimination.

"(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

"(1) consolidate appeals filed by two or more appellants, or

"(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

"(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted.

"(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

"(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

"(i) The Merit Systems Protection Board may prescribe regulations to carry out the purpose of this section.

"§ 7702. Judicial review of decisions of the Merit Systems Protection Board

"(a) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

"(b) A petition to review a final order or decision of the Board shall be filed in the Court of Claims or a United States district court as provided in chapters 91 and 85, respectively, or title 28 except that cases of discrimination shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c)) under section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216 and 217), as applicable. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

"(c) The court shall review the record for the purpose of determining whether the findings are in accordance with law, and whether the procedures required by statute and regulations were followed, except that in a case of discrimination brought under 42 U.S.C. 2000e–16(c), 29 U.S.C. 633a(c), or 29 U.S.C. 216 and 217, the proceeding shall be de novo. The findings of the Board are conclusive if supported by the evidence in the record. If the court determines that further evidence is necessary, it shall remand the case to the Board. The Board, after such further proceedings as may be required, may modify its findings, and shall file with the court the record of such proceedings. The findings of the Board are conclusive if supported by the evidence in the record as supplemented.

"(d) If the Director of the Office of Personnel Management determines, in his sole discretion, that the Board erred in interpreting a civil service law, rule, regulation, or policy directive affecting personnel management and that the Board's final decision or order will have a substantial impact on any civil service law, rule, or regulation, the Director may file a petition for judicial review of the order or decision in the United States District Court for the District of Columbia. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court. The granting of the petition for judicial review shall be at the discretion of the court.".

TITLE III—STAFFING

VOLUNTEER SERVICES

SEC. 301. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

§ 3111. Acceptance of volunteer service

"(a) For the purpose of this section, 'student' means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if

the interim is not more than 5 months and if the individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the head of an agency may accept, subject to regulations issued by the Office of Personnel Management, voluntary service for the United States if the service—

"(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for students;

"(2) is to be uncompensated; and

"(3) would not, under the facts and circumstances involved, be performed by an employee in the absence of voluntary service under this section.

"(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).".

(b) The analysis for chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"3111. Acceptance of volunteer service.".

EXCEPTIONS FROM THE COMPETITIVE SERVICE

SEC. 302. (a) Section 2103 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) The President may, by Executive order, except any position from the competitive service if the President determines that—

"(A) the duties of such position—

"(i) require significant involvement in the advocacy of Presidential administration programs and support of their controversial aspects,

"(ii) require significant participation in the determination of major policies of such administration, or

"(iii) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such a personal assistant or advisor; or

"(B) it would be impracticable to apply competitive examination procedures in the filing of such position because of—

"(i) national security,

"(ii) statutory or other significant requirements establishing special employment conditions,

"(iii) the unusual nature of the duties of such position,

"(iv) duration and frequency of service,

"(v) work location, or

"(vi) inadequate number of applicants.

"(2) Periodically (but not less than 2 years), the President shall review exceptions from the competitive service under Presidential authority, and shall revoke an exception if the President determines that, because of changed circumstances, the exception is no longer appropriate under the provisions of paragraph (1) of this subsection.

"(3) The President shall periodically review exceptions from the competitive service in the Executive agencies made by or under statute, and shall prepare and transmit a report on each such review to each House of the Congress containing such legislative and administrative changes as the President considers appropriate.".

(b) Section 3302(1) of title 5, United States Code, is amended by inserting ", to the extent authorized under section 2103(c) of this title," after "necessary exceptions".

DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

SEC. 303. Effective beginning October 1, 1980, section 2108 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by inserting in paragraph (3) after "means" the following: ", except as provided in paragraph (4) of this section";

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(4) except for the purposes of chapters 43 and 75 of this title, 'preference eligible' does not include a retired member of the armed forces unless—

"(A) the individual is a disabled veteran; or

"(B) the individual retired below the rank of major is its equivalent; and

"(5) 'retired member of the armed forces' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.".

NONCOMPETITIVE APPOINTMENT OF CERTAIN DISABLED VETERANS

SEC. 304. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3112. Preference eligibles; disabled; noncompetitive appointment

"Under regulations prescribed by the Office of Personnel Management, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who—

"(1) has a compensable service-connected disability of 30 percent or more, or

"(2) is enrolled in or has successfully completed a course of job related training prescribed by the Administrator of Veterans' Affairs under chapter 31 of title 38.".

(b) The analysis for chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"3112. Preference eligibles; disabled; noncompetitive appointment.".

APPOINTMENTS

SEC. 305. Section 3321 of title 5, United States Code, is amended to read as follows:

"§ 3321. Competitive service; probations; period of

"(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant, for a period of probation—

"(1) before an appointment in the competitive service becomes final; and

"(2) before an initial appointment as a supervisor or manager becomes final.

"(b) An individual—

"(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

"(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position occupied by the individual immediately before the transfer, assignment, or promotion of the individual to the supervisory or managerial position. Nothing in this section prohibits the taking of an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.".

TRAINING

SEC. 306. Section 4103 of title 5, United States Code, is amended by inserting "(a)" before "In order to increase" and by adding at the end thereof the following new susbsection:

"(b)(1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

"(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

"(3) In selecting an employee for training under this subsection, the head of the agency shall consider—

"(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

"(B) the employee's capability to learn new skills and acquire knowledge and abilities needed in the new position; and

"(C) the benefits to the Government which would result from retaining the employee in the Federal service.".

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 307. Section 5723(d) of title 5, United States Code, is amended by striking out "not".

RETIREMENT

SEC. 308. Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;".

EXTENSION OF VETERANS READJUSTMENT APPOINTMENT AUTHORITY

SEC. 309. Section 2014(b) of title 38, United States Code, is amended to read as follows:

"(b) To further this policy, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe for veterans readjustment appointments and subsequent career-conditional appointments, under the terms and conditions of Executive Order Numbered 11521 (March 26, 1970), except that these appointments may be made up to and including GS-7 of the General Schedule described in section 5104 of title 5, or its equivalent, and, for disabled veterans, the fourteen years of education limit shall not apply. Notwithstanding any limitations with respect to the period of eligibility as prescribed in Executive Order Numbered 11521, a veteran of the Vietnam era who was eligible for appointment under such Executive order on April 9, 1970, or a veteran of the Vietnam era who was separated on or after such date, may be appointed at any time. No veterans readjustment appointment may be made under the authority of this subsection after September 30, 1980.".

NOTIFICATION OF VACANCIES IN THE CIVIL SERVICE

SEC. 310. Chapter 33 of title 5, United States Code, is amended by inserting at the end thereof the following new section:

"§ 3327. Notification of vacancies in the civil service

"(a) For the purpose of this section—

"(1) 'agency' has the meaning set forth in section 5102 of this title; and

"(2) 'vacant position' means a position in an agency which is considered by the agency to be available for employment.

"(b) Each agency shall promptly notify the Office of Personnel Management of—

"(1) each vacant position in the agency together with the address to which requests for information concerning the position may be sent; and

"(2) each position of which the Office was notified under paragraph (1) of this subsection and which has since been filed or is otherwise no longer considered by the agency to be available for employment.

"(c) The Office shall transmit to the United States Employment Service, and make available to each employment office established by the Service, a comprehensive listing of all vacant positions and addresses of which the Office has been notified under subsection (b)(1) of this section. The Office shall revise the listing each month in accordance with the notifications of filled or otherwise unavailable positions received by the Office under subsection (b)(2) of this section and shall promptly transmit to the Service each revision.".

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3326 the following new item:

"3327. Notification of vacancies in the civil service.".

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 311. Section 5532 of title 5, United States Code, relating to retired officers of the uniformed services, is amended by striking out so much of such section as precedes subsection (c) and by inserting in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay, exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under subsection (b) of this section. The amounts or the reductions shall be deposited to the general fund of the Treasury of the United States.

"(b) The amount of each reduction under subsection (a) of this section allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period, except that the amount of the reduction may not result in the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule.".

(b) Section 5531 of title 5, United States Code relating to definitions, is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'member' has the meaning given such term by section 101(23) of title 37;";

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) 'retired or retainer pay' means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10.".

(c) Section 5532(c) of title 5, United States Code, is amended—

(1) by striking out "subsection (b) of";

(2) by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer";

(3) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member of a uniformed service who is receiving retired or retainer pay"; and

(4) in paragraph (1), by striking out "whose retirement was" and inserting in lieu thereof "whose retired or retainer pay is computed, in whole or in part,".

(d) Section 5532(d) of title 5, United States Code, is amended by inserting in lieu thereof the following:

"(d) The Office of Personnel Management may authorize exceptions to the restrictions in subsections (a) and (b) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met.".

(e) The item relating to section 5532 in the analysis for chapter 55 of title 5, United States Code, is amended to read as follows: "5532. Employment of retired members of the uniformed services; reduction in pay."

(f)(1) The amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

(2) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed service who is receiving retired pay on or before such date in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

MINORITY RECRUITMENT PROGRAM

SEC. 312. Section 7151 of title 5, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 7151. Antidiscrimination policy; minority recruitment program";

(2) by inserting after such section heading the following new subsection:

"(a) For the purpose of this section—

"(1) 'underrepresentation' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

"(2) 'category of civil service employment' means—

"(A) each grade of the General Schedule described in section 5104 of this title;

"(B) each position subject to subchapter IV of chapter 53 of this title;

"(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.";

(3) by inserting "(b)" before "It is the policy"; and

(4) by adding at the end thereof the following new subsection:

"(c) Not later than 180 days after the date of enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

"(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

"(2) that the Office conduct a continuing program of—

"(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

"(B) evaluation and oversight of such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

"(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

"(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

"(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

"(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

"(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.".

COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

SEC. 313. (a) Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"5550a. Compensatory time off for religious observances

"(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

"(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.

"(c) Regulations under this section may provide for such exceptions as may be nec-

essary to efficiently carry out the mission of the agency or agencies involved.".

(b) The analysis for chapter 55 of title 5, United States Code, is amended by adding after the item relating to section 5550 the following:

"5550a. Compensatory time off for religious observances.".

TEMPORARY EMPLOYMENT LIMITATIONS

SEC. 314. Effective one year after the date of the enactment of this Act the number of individuals employed in or under an Executive agency shall not exceed the number of individuals so employed on January 1, 1977.

(b) The President shall prescribe regulations to carry out the purpose of this section, including regulations to ensure that no increase in the procurement of personal services by contract occurs by reason of the enactment of this section.

(c) In administering this section an individual employed on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such individual's regularly scheduled workweek.

(d) For the purpose of this section, "Executive agency" has the meaning set forth in section 105 of title 5, United States Code.

(e) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

(f) The provisions of this section shall terminate at noon on January 20, 1981.

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

SEC. 315. (a) Section 3102 of title 5, United States Code, is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out "and" at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

"(4) 'deaf employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned under regulations of the head of that agency that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and";

(2) in subsection (b), by inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and amending the last sentence to read as follows:

"A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18."

(3) in subsection (c), by inserting "or deaf" after "blind"; and

(4) by inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter VIII of chapter 53 of this title governing classification and pay, such reading assistance for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.".

(b)(1) The analysis of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.".

(2) The caption for section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees".

(c) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "open meetings)" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),".

TITLE IV—SENIOR EXECUTIVE SERVICE

GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101a. The Senior Executive Service

"The 'Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).".

(b) Section 2102(a)(1) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

"(C) positions in the Senior Executive Service;".

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or the Senior Executive Service".

(d) Section 2108(3) of title 5, United States Code (as amended in section 302 of this Act), is further amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"but does not include applicants for, or members of the Senior Executive Service.".

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"2101a. The Senior Executive Service.".

AUTHORITY FOR EMPLOYMENT

SEC. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112 (as added by section 303(a) of this Act), the following new subchapter:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"§ 3131. The Senior Executive Service

"(a) It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

"(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

"(2) ensure that compensation, retention, and tenure are contingent on managerial success which is measured on the basis of individual and organizational performance (including such factors as improvements in quality of work or service, cost efficiency, and timeliness of performance);

"(3) recognize exceptional accomplishment;

"(4) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

"(5) provide for severance pay, retirement benefits, and placement assistance for senior executives who are removed from the Senior Executive Service for non-disciplinary reasons;

"(6) protect senior executives from arbitrary or capricious actions;

"(7) provide for program continuity and policy advocacy in the management of public programs;

"(8) maintain a merit personnel system free of improper political interference;

"(9) ensure accountability for honest, economical, and efficient Government;

"(10) ensure compliance with all applicable civil service laws, rules, and regulations including those relating to equal employment opportunity, political activity, and conflicts of interest;

"(11) provide for the initial and continuing systematic development of highly competent senior executives;

"(12) ensure career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices;

"(13) provide for a professional management system which is guided by the public interest and free from improper political interference; and

"(14) ensure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by noncareer appointees, political appointments to such positions are minimized to the maximum extent possible.

§ 3132. Definitions and exclusions.

"(a) For the purpose of this subchapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office;

"(2) 'Senior Executive Service position' means any position (other than a position in the Foreign Service of the United States or an administrative law judge position under section 3105 of this title) in an agency which is in GS–16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

"(A) directs the work of an organizational unit;

"(B) is held accountable for the success of one or more specific programs or projects; or

"(C) supervises the work of employees other than personal assistants;

"(3) 'senior executive' means a member of the Senior Executive Service;

"(4) 'career appointee' means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on—

"(A) approval by the Office of Personnel Management of the managerial qualifications of such individual; and

"(B) selection through a merit staffing process consistent with Office of Personnel Management regulations;

"(5) 'limited term appointee' means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

"(6) 'limited emergency appointee' means an individual appointed under a nonrenewable appointment, not to exceed 18 months,

to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

"(7) 'non career appointee' means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

"(8) 'career reserved position' means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

"(9) 'general position' means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

"(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office of Personnel Management shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

"(2) A position for which a designation is in effect under this subsection may be held only by a career appointee.

"(3) The Office of Personnel Management shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

"(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

"(c) An agency may file an application with the Office of Personnel Management, setting forth reasons why it, or a unit thereof, should be excluded from any provision or requirement of this subchapter. The Office of Personnel Management shall—

"(1) review the application and stated reasons,

"(2) undertake an investigation to determine whether the agency or unit should be excluded from any provision or requirement of this subchapter, and

"(3) upon completion of its review and investigation, recommend to the President whether the agency or unit should be excluded from any provision or requirement of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from any provision or requirement of this subchapter, the President may, on written determination, make the exclusion to the extent and for the period determined by the President to be appropriate.

"(d) The Office of Personnel Management may at any time recommend to the President that any exclusion previously granted to an agency or unit under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

"(e) If—

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (d) of this section,

the Office of Personnel Management shall, within 30 days after the action, transmit to the Congress a report concerning the exclusion or revocation.

"§ 3133. Authorization of positions; authority for appointment

"(a) During each odd-numbered calendar year, each agency shall—

"(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

"(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

"(b) Each agency request submitted under subsection (a) of this section shall be based on—

"(1) the anticipated type and extent of program activities of the agency for each of the 2 fiscal years involved; and

"(2) such other factors as may be prescribed from time to time by the Office of Personnel Management.

"(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (b) of this section, a specific number of Senior Executive Service positions for each agency.

"(d)(1) The Office may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office of Personnel Management shall prescribe.

"(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

"(e) Appointments to the Senior Executive Service may be made by appropriate appointing authorities of agencies subject to the requirements and limitations of this title.

"§ 3134. Limitations on noncareer appointments

"(a) During each calendar year, each agency shall—

"(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

"(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

"(b) The number of noncareer appointees in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

"(c) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

"(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

"(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

"(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

"(B) appointments to level IV or V of the Executive Schedule which were not required to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

"§ 3135. Biennial report

"(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each even-numbered calendar year, a report on the Senior Executive Service. The report shall include—

"(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

"(2) a description of each exclusion in effect during the preceding calendar year under section 132(c) of this title;

"(3) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for such fiscal year;

"(4) the number of limited term appointees, in the aggregate and by agency, employed during the preceding calendar year;

"(5) the titles of career reserved positions designated for such fiscal year;

"(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding calendar year;

"(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding calendar year; and

"(8) such other information regarding the Senior Executive Service as the Office of Personnel Management considers appropriate.

"(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each odd-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

"§ 3136. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section.".

(c) The analysis for chapter 31 of title 5, United States Code, is amended—

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

"Chapter 31—AUTHORITY FOR EMPLOYMENT

"SUBCHAPTER I—EMPLOYMENT AUTHORITIES"; and

(2) by inserting at the end thereof the following:

"Subchapter II—The Senior Executive Service

"Sec.
"3131. The Senior Executive Service.
"3132. Definitions and exclusions.
"3133. Authorization of positions; authority for appointment.
"3134. Limitations on noncareer appointments.
"3135. Biennial report.
"3136. Regulations.".

EXAMINATION, CERTIFICATION, AND APPOINTMENT

SEC. 403. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"§ 3391. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position',

'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3392. General appointment provisions

"(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency and shall be in accordance with requirements established by the Office of Personnel Management.

"(b)(1) An individual may be appointed to a Senior Executive Service position only if the appointing authority has determined in writing that the individual meets the qualification requirements of the position.

"(2) Not more than 30 percent of the individuals serving at any time in Senior Executive Service positions may have served less than an aggregate of 5 years in the civil service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government.

"(c) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office of Personnel Management may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

"(1) to the extent provided under regulations prescribed by the Office, and

"(2) so long as the appointee continues to serve under such Presidential appointment.".

"§ 3393. Career appointments

"(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

"(1) all groups of qualified individual applicants within the civil service; or

"(2) all groups of qualified individual applicants whether or not within the civil service.

"(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office of Personnel Management—

"(1) review the qualifications of candidates for appointment as career appointees; and

"(2) make written recommendations concerning candidates to the appropriate appointing authorities.

"(c)(1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the managerial qualifications of candidates for entry as career appointees into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management. Of the members of each board—

"(A) At least one-half shall be appointed from among career appointees; and

"(B) Up to one-half may be appointed from outside the civil service.

Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and other appropriate occupational fields of the intended appointee.

"(2) The Office of Personnel Management shall, in consultation with the various qualification review boards, prescribe criteria for establishing managerial qualifications for appointment to the Senior Executive Service. The criteria shall provide for—

"(A) consideration of demonstrated managerial experience;

"(B) consideration of successful participation in a career executive development program which is approved by the Office of Personnel Management; and

"(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of managerial success and who would not otherwise be eligible for appointment.

"(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

"§ 3394. Noncareer and limited appointments

"(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined by the appointing authority.

"(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

"§ 3395. Reassignment and transfer within the Senior 5xecutive Service

"(a)(1) A career appointee in an agency—

"(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

"(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

"(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment—

"(A) at least 15 days in advance of such reassignment; and

"(B) containing a statement of the critical reasons for the reassignment.

Any career appointee who is reassigned in violation of subparagraph (A) of this paragraph may appeal the violation to the Merit Systems Protection Board.

"(b)(1) A limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointments in excess of 18 months.

"(2) A limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

"(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

"(d) A noncareer appointee in an agency—

"(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

"(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

"(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to reassign the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any reassignment under section 4314(b)(3) of this title, or

"(B) in the case of any appointment referred to in paragraph (1)(A) or (B) of this subsection, any disciplinary action initiated before the appointment.

"(f) A career appointee may be transferred only if—

"(1) he consents to the transfer; and

"(2) the transfer is part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection not to consent to a transfer. Any career appointee against whom an adverse personnel action is taken in violation of this subsection may appeal the personnel action to the Merit Systems Protection Board.

"§ 3396. Development for and within the Senior Executive Service

"(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office of Personnel Management.

"(b) The Office of Personnel Management shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office of Personnel Management finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

"(c)(1) The head of an agency may grant a sabbatical leave to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical leave shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel and per diem costs as the head of the agency may determine to be essential for the study or experience.

"(2) A sabbatical leave under this subsection may not be granted to any career appointee—

"(A) more than once in any 10-year period;

"(B) unless the appointee has completed 7 years of service—

"(i) in one or more positions in the Senior Executive Service;

"(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

"(iii) in any combination of such positions; except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

"(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

"(3)(A) Any career appointee in an agency may be granted a sabbatical leave under this subsection only if the appointee agrees, as a condition of accepting the sabbatical leave, to serve with the agency upon the completion of the leave, for a period of 2 consecutive years.

"(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency involved) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical leave. The amount shall be treated as a debt due the United States.

"§ 3397. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPT5R VIII—APPOINTMENT REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"3391. Definitions.
"3392. General appointment provisions.
"3393. Career appointments.
"3394. Noncareer and limited appointments.
"3395. Reassignment and transfer within the Senior Executive Service.
"3396. Development for and within the Senior Executive Service.
"3397. Regulations.

RETENTION PREFERENCE

SEC. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or to a member of the Senior Executive Service.".

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter V—Removal, Reinstatement, and Guaranteed Placement Provisions in the Senior Executive Service

"§ 3591. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3592. Removal from the Senior Executive Service

"(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the 1-year period of probation under section 3393(d) of this title; or

"(2) at any time for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"(b)(1) Except as provided in paragraph (2) or this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314(b)(3) of this title or;

"(B) in the case of any appointment referred to in paragraph (1)(A) or (B) of this subsection, any disciplinary action initiated before such appointment.

"(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

"§ 3593. Reinstatement in the Senior Executive Service

"(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

"(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. Guaranteed placement in other personnel systems

"(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(b) A career appointee—

"(1) who has completed the probationary period under section 3393(d) of this title; and

"(2) who is removed from the Senior Executive Service for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(c)(1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career appointee is placed under such subsections shall be a continuing, full-time position at GS–15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

"(B) any career appointee placed under subsection (a) or (b) shall be entitled to receive basic pay at the higher of—

"(i) the rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b); and

"(C) the placement of any career appointee under subsection (a) or (b) may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B) (ii) or (iii) of this subsection is entitled to have the basic pay rate increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) until the rate is equal to the rate in effect under paragraph (1)(B)(i) for the position in which the employee is placed.

"§ 3595. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

(b) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"Sec.
"3591. Definitions.
"3592. Removal from the Senior Executive Service.
"3593. Reinstatement in the Senior Executive Service.
"3594. Guaranteed placement in other personnel systems.
"3595. Regulations.".

PERFORMANCE RATING

SEC. 405. Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"§ 4311. Definitions

"For the purpose of this subchapter, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title.

"§ 4312. Senior Executive Service performance appraisal systems

"(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

"(1) provide for systematic appraisals of performance of senior executives;

"(2) encourage excellence in performance by senior executives; and

"(3) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

"(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

"(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the executive and communicated to the executive;

"(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

"(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing to the appraisal and rating and have the appraisal and rating reviewed by an employee in a higher managerial level in the agency before the appraisal and rating become final.

"(c) If the Office of Personnel Management determines that an agency performance appraisal system does not comply with the requirements of this subchapter or regulations under this subchapter, the Office of Personnel Management shall order the agency to take any corrective action necessary to bring such system into compliance.

"§ 4313. Criteria for performance appraisals

"Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

"(1) improvements in quality of work or service, including any significant reduction in paperwork;

"(2) cost efficiency;

"(3) timeliness of performance; and

"(4) meeting affirmative action goals and achievement of equal employment opportunity requirements.

"§ 4314. Ratings for performance appraisals

"(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

"(1) one or more fully successful levels,

"(2) a minimally satisfactory level, and

"(3) an unsatisfactory level.

"(b) Each performance appraisal system shall provide that—

"(1) any appraisal and any rating under such system—

"(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

"(B) are conducted at least annually, subject to the limitation of paragraph (3) of this subsection;

"(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

"(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

"(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award as prescribed in section 5384 of this title;

"(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service, and

"(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

"(c) Each agency shall establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency. The members of each board shall be appointed by the head of the agency from among employees of the agency other than senior executives with respect to which recommendations are being made the board. In making the recommendation with respect to a career appointee, each board shall include at least 1 career appointee.

"§ 4315. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purposes of this subchapter.".

(b) The analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end thereof the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

'Sec.
"4311. Definitions.
"4312. Senior Executive Service performance appraisal systems.
"4313. Criteria for performance appraisals.
"4314. Ratings for performance appraisals.
"4315. Regulations.".

AWARDING OF RANKS

SEC. 406. (a) Chapter 45 of title 5, United States Code is amended by adding at the end thereof the following new section:

"§ 4057. Awarding of ranks in the Senior Executive Service

"(a) For the purpose of this section, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title.

"(b) Each agency shall forward annually to the Office of Personnel Management recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual's performance over a period of years. The Office of Personnel Management shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

"(c) During any fiscal year, the President may, subject to subsection (d), award to any career appointee recommended by the Office of Personnel Management the rank of—

"(1) Meritorious Executive, for sustained accomplishment, or

"(2) Distinguished Executive, for sustained extraordinary accomplishment.

"(d) During any fiscal year—

"(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

"(2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

"(e)(1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of $2,500, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

"(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of $5,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.".

(b) The analysis for chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"4507. Awarding of Ranks in the Senior Executive Service.".

PAY RATES AND SYSTEMS

SEC. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"§ 5381. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', and 'senior executive' have the meanings set forth in section 3132(a) of this title.

"§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service; comparability

"(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

"(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS–16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5308 or 5363 of this title.

"(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such rate of basic pay which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305 (a)(3) or (c)(1) of this title.

"(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

"§ 5383. Settling individual senior executive pay

"(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

"(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed 95 percent of the annual rate payable for positions at level II of the Executive Schedule in effect at the end of such fiscal year.

"(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction—

"(1) at least 15 days in advance of the reduction; and

"(2) containing a statement of the critical reasons for the reduction.

Any career appointee whose rate of basic pay is reduced in violation of paragraph (1) of this subsection may appeal the violation to the Merit Systems Protection Board.

"§ 5384. Performance awards in the Senior Executive Service

"(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

"(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

"(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

"(2) The amount of a performance award under this section shall be determined by the

agency head but may not exceed 20 percent of the career appointee's rate of basic pay.

"(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

"(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

"§ 5385. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter, and may provide guidance to agencies concerning the proportion of funds available for Senior Executive Service salary expenses which may be used for performance awards.".

(c) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"Sec.
"5381. Definitions.
"5382. Establishment and adjustment of rates of pay for the Senior Executive Service; comparability.
"5383. Setting individual senior executive pay.
"5384. Performance awards in the Senior Executive Service.
"5385. Regulations.".

PAY ADMINISTRATION

SEC. 408. Chapter 55 of title 5, United States Code, is amended—

(1) by inserting "other than an employee or individual excluded by section 5541(2)(xvi) of this section" immediately before the period at the end of section 5504(a)(B);

(2) by amending section 5541(2) by striking out "or" after paragraph (xiv), by striking out the period after paragraph (xv) and inserting "; or" in lieu thereof, and by adding the following paragraph at the end thereof:

"(xvi) member of the Senior Executive Service.";

and

(3) by inserting "other than a member of the Senior Executive Service" after "employee" in section 5595(a)(2)(1).

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 409. (a) Section 5723(a)(1) of title 5, United States Code, is amended by striking out "; and" and inserting in lieu thereof "or of a new appointee to the Senior Executive Service; and".

(b) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5752. Travel expenses of Senior Executive Service candidates.

"Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency.".

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item:

"§ 5752. Travel expenses of Senior Executive Service candidates.".

LEAVE

SEC. 410. Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a), by striking out "and (e)" and inserting in lieu thereof "(e), and (f)"; and

(2) by adding at the end thereof the following new section:

"(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

DISCIPLINARY ACTIONS

SEC. 411. Chapter 75 of title 5, United States Code, is amended—

(1) by inserting the following in the chapter analysis after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"Sec.
"7541. Definitions.
"7542. Actions covered.
"7543. Cause and procedure.";

and

(2) by adding the following after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' has the meaning set forth in section 7501(2) of this title.

"§7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 7532 of this title, or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

RETIREMENT

SEC. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

"(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful managerial performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.".

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336 (d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

SEC. 413. (a) For the purpose of this section, "agency", "Senior Executive Service position", "career appointee", "career reserved position", "limited term appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title), and "Senior Executive Service" has the meaning set forth in section 2101a of such title 5 (as added by this title).

(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

(B) submit to the Office of Personnel Management a written request for—

(i) a specific number of Senior Executive Service positions; and

(ii) authority to employ a specific number of noncareer appointees.

(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act).

(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section. The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under—

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service position, as determined by the Office of Personnel Management;

shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393 (c) and (d) of title 5, United States Code (as added by this title).

(e) Each employee who has elected conversion to a Senior Executive Service position

under subsection (c)(1)(B) of this section and is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed to an appropriate general position in the Senior Executive Service or shall be separated.

(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office of Personnel Management, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

(j) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Merit Systems Protection Board orders in its decision on an appeal under this subsection.

LIMITATIONS ON EXECUTIVE POSITIONS

SEC. 414. (a)(1)(A) Subsections (b) through (g) of section 5108 of title 5, United States Code, relating to special authority to place positions at GS–16, 17, and 18 of the General Schedule, are hereby repealed.

(B) Notwithstanding any other provision of law (other than section 5108 of such title 5), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) under any such provision to place one or more positions in GS–16, 17, or 18 of the General Schedule, is hereby terminated.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows: "The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of positions (not to exceed an aggregate of 10,920) which may at any one time be placed in—

"(i) GS–16, 17, and 18; and

"(ii) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS–16, 17, or 18, only by action of the Director of the Office of Personnel Management.".

(2)(A) Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to any agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a)(1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 525) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director of the Office of Personnel Management.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).".

(C) Subsection (c) of such section 3104 is amended—

(i) by striking out "(c)" and inserting in lieu thereof "(b)"; and

(ii) by striking out "to establish and fix the pay of positions under this section and section 5361 of this title" and inserting in lieu thereof "to fix under section 5361 of this title the pay for positions established under this section".

(3)(A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The Director of the Office of Personnel Management—

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS–16, 17, and 18 of the General Schedule, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting "(a)" before "The Executive Schedule," and by adding at the end thereof the following new subsection:

"(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position' means—

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title.".

(2) The President shall transmit to Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions.

EFFECTIVE DATE; EXPERIMENTAL APPLICATION

SEC. 415. (a)(1) Except as provided in subsection (b) of this section, the provisions of this title, other than section 414(a), shall take effect on the date of the enactment of this Act.

(2) The provisions of section 414(a) of this title shall take effect 180 days after the date of the enactment of this Act.

(b)(1) Not later than 60 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall prescribe regulations providing for an initial experimental application of the amendments made by sections 401 through 412 of this title and the provisions of section 413 of this title. Such regulations shall provide that Senior Executive Service positions will be designated, authorized, and filled only in 3 Executive departments designated by the Director.

(2) Within 30 days after the end of each of the first two full fiscal years to which such amendments apply, the Director shall prepare and transmit to each House of the Congress a report on the Senior Executive Service, including an evaluation of its effectiveness and the manner in which such Service is administered. The second such report shall include proposed regulations which would provide for conversions and other adjustments which would be appropriate in the event the Senior Executive Service does not continue by reason of paragraph (3).

(3) The provisions of the regulations under paragraph (1) providing for an initial, limited experimental application shall cease to have effect and the amendments made by sections 401 through 412 of this title and the provisions of section 413 of this title shall have full effect (without regard to the limitations under paragraph (1)) beginning on the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to Congress under paragraph (2) of this section, unless the Congress before such day adopts a concurrent resolution which states that the Congress does not favor the continuance of the Senior Executive Service. If such a resolution is adopted before such date, then the provisions of such regulations, and such amendments (and the provisions of section 413), shall cease to have effect on such 90th day (or if later, 30 days after the date of the adoption of such resolution).

(4) For purposes of paragraph (3), the continuity of a session of Congress shall be considered to be broken only by an adjournment of the Congress sine die, and the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period under such paragraph.

TITLE V—MERIT PAY

PAY FOR PERFORMANCE

SEC. 501. Part III of title 5, United States Code, is amended by inserting after chapter 53 the following new chapter:

"Chapter 54.—MERIT PAY AND CASH AWARDS

"Sec.
"5401. Purpose.
"5402. Merit pay system.
"5403. Cash award program.
"5405. Reports.
"5405. Regulations.

"§ 5401. Purpose

"It is the purpose of this chapter to provide for—

"(1) a merit pay system which shall—

"(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

"(B) use performance appraisals as the basis for determining merit pay adjustments; and

"(C) regulate the costs of merit pay by establishing appropriate control techniques; and

"(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

"§ 5402. Merit pay system

"(a) In accordance with the purpose set forth in section 5401(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS–13, 14, or 15 of the General Schedule described in section 5104 of this title.

"(b) The merit pay system established under subsection (a) of this section shall provide for a range of basic pay for each grade to which it applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each such grade under chapter 53 of this title.

"(c)(1) Under regulations prescribed by the Office of Personnel Management, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

"(2) Determinations to provide pay increases under this subsection—

"(A) may take into account individual performance and organizational accomplishment, and

"(B) shall be based on factors such as—

'(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(ii) cost efficiency; and

(iii) timeliness of performance;

(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

(D) shall be made in accordance with regulations issued by the Office of Personnel Management which relate to the distribution of increases authorized under this subsection.

(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of each such fiscal year by the Office of Personnel Management, after consultation with the Office of Management and Budget. The funds available to any agency shall be determined by the Office of Personnel Management on the basis of the amount estimated by the Office to be necessary to reflect within-grade step increases and quality step increases, which would have been paid under subchapter III of chapter 53 of this title during such fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered.

(d)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the percentage of the annual rate of pay which corresponds to the percentage generally applicable to positions in the same grade as the position.

(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

"(e) Under regulations prescribed by the Office of Personnel Management, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

"(f) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

"§ 5403. Cash award program

"(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, his heirs, or assigns.

"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to an agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

"(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed $10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

"§ 5404. Reports

"The Office of Personnel Management shall submit to the appropriate committees of each House of the Congress on or before January 1, 1982, a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

"(1) a statement, together with supporting facts, as to whether the purpose of this chapter has been met during the period covered by the report, including, to the extent practicable, quantitative measures of costs and accomplishments of the merit pay system and the cash award program; and

"(2) any recommendations for legislation to amend the provisions of this chapter relating to the merit pay system or the cash award program considered necessary by the Office.

"§ 5405. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.".

INCENTIVE AWARDS AMENDMENTS

SEC. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork."

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 503. (a) Section 4501(2)(A) of title 5, United States Code, is amended by striking out "title; and" and inserting in lieu thereof "title, but does not include an employee covered by the merit pay system established under section 5402 of this title; and".

(b) Section 4502(a) of title 5, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(c) Section 4502(b) of title 5, United States Code, is amended—

(1) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) by striking out "$5,000" and inserting in lieu thereof "$10,000"; and

(3) by striking out "the Commission" and inserting in lieu thereof "the Office".

(d) Section 4506 of title 5, United States Code, is amended by striking out "Civil Serv-

ice Commission may" and inserting in lieu thereof "Office of Personnel Management shall".

(e) the second sentence of section 5332(a) of title 5, United States Code, is amended by inserting after "applies" the following: ", except an employee covered by the merit pay system established under section 5402 of this title,".

(f) Section 5334 of title 5, United States Code (as amended in section 801(a)(3)(G) of this Act), is amended—

(1) in paragraph (2) of subsection (c), by inserting ", or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount," after "step"; and

(2) by adding at the end thereof the following new subsection:

"(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent.".

(g) Section 5335(e) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,".

(h) Section 5336(c) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,".

(i) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following new chapter:

"54. Merit Pay and Cash Awards..... 5401".

EFFECTIVE DATE

SEC. 504. The provisons of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management.

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

Subtitle A—Research Programs and Demonstration Projects

RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

SEC. 601. (a) Part III of title 5, United States Code, is amended by adding at the end of subpart C thereof the following new chapter:

"Chapter 47.—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

"Sec.
"4701. Definitions.
"4702. Research programs.
"4703. Demonstration projects.
"4704. Allocation of funds.
"4705. Reports.
"4706. Regulations.

"§ 4701. Definitions

"For the purpose of this chapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office.

"(2) 'employee' means an individual employed in or under an agency;

"(3) 'eligible' means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

"(4) 'demonstration project' means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

"(5) 'research program' means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among interested persons and entities; and

"§ 4702. Research programs

"The Office of Personnel Management shall—

"(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

"(2) evaluate the research programs established under paragraph (1) of this section;

"(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

"(4) carry out the preceding functions directly or through agreement or contract.

"§ 4703. Demonstration projects

"(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority to take the action contemplated, or by any provision of law then in effect which is inconsistent with the action, including any law or regulation relating to—

"(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

"(2) the methods of classifying positions and compensating employees;

"(3) the methods of assigning, reassigning, or promoting employees;

"(4) the methods of disciplining employees;

"(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

"(6) hours of work per day or per week;

"(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

"(8) the methods of reducing overall agency staff and grade levels.

"(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office of Personnel Management shall—

"(1) develop a plan for such project which identifies—

"(A) the purposes of the project;

"(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

"(C) the number of employees or eligibles to be included, in the aggregate and by category;

"(D) the methodology;

"(E) the duration;

"(F) the training to be provided;

"(G) the anticipated costs;

"(H) the methodology and criteria for evaluation;

"(I) a specific description of any lack of specific authority for any aspect of the project; and

"(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project as proposed;

"(2) publish the plan in the Federal Register;

"(3) submit the plan so published to public hearing; and

"(4) transmit a copy of the plan, taking into account any revision resulting from the hearing, to each House of the Congress.

"(c)(1) Any demonstration project under this section may not be undertaken, or any agreement or contract with respect to such project may not be entered into, unless—

"(A) the plan under subsection (b) of this section for the project is approved by each agency involved;

"(B) a copy of the plan, as so approved, is transmitted to each House of the Congress; and

"(C) the plan is not disapproved by either House of the Congress during the first period of 60 calendar days of continuous session of the Congress after the date on which the plan is transmitted to such House.

"(2) For the purpose of paragraph (1)(C) of this subsection—

"(A) the continuity of a session is broken only by an adjournment of the Congress sine die; and

"(B) the days on which either House of the Congress is not in session because of an adjournment of more than 3 calendar days to a day certain are excluded in the computation of the 60-day period.

"(d) No demonstration project under this section may provide for a waiver of—

"(1) any provision of chapter 63 (relating to leave) or subpart G (relating to insurance and annuities) of this title;

"(2) any provision of law—

"(A) referred to in section 2302(b)(1) of this title;

"(B) providing for equal employment opportunity through affirmative action under any such provision of law;

"(C) providing any right or remedy available to any employee or applicant for employment in the civil service under any such provision of law;

"(3) any provision of chapter 15 or subchapter III of chapter 73 of this title (relating to political activity); or

"(4) any rule or regulation issued under the provisions of law referred to in paragraph (1), (2), or (3) of this subsection.

"(e)(1) Each demonstration project shall—

"(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

"(B) terminate before the end of the 5-year period beginning on the date of the transmittal to each House of the Congress by the Office of Personnel Management of a copy of the plan for the project under subsection (b)(4) of this section, except that research may continue beyond the date to the extent necessary to validate the results of the project.

"(2) Not more than 10 demonstration projects may be contracted for or conducted at any time.

"(f) Subject to the terms of any written agreement or contract between the Office of Personnel Management and an agency, a demonstration project involving the agency may be terminated by the Office of Personnel Management, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

"(g) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under section 7111 of this title shall not be included within any project under subsection (b) of this section—

"(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

"(2) if the project is not covered by such a collective bargaining agreement, until there

has been consultation or negotiation, as appropriate, by the agency with the labor organization.

"(h) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under section 7111 of this title shall not be included within any project under subsection (b) of this section unless there has been agency consultation regarding the project with the employees in the unit.

"(i) The Office of Personnel Management shall evaluate the results of each demonstration project and its impact on improving public management.

"(j) Upon the request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (i) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

"§ 4704. Allocation of funds

"Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office of Personnel Management to any agency conducting demonstration projects or assisting the Office of Personnel Management in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

"§ 4705. Reports

"The Office of Personnel Management shall include in the annual report required by section 1308 of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

"§ 4706. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.".

(b) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 45 the following new item:

"47. Personnel Research Programs and Demonstration Projects—4701".

Subtitle B—Intergovernmental Personnel

INTERGOVERNMETNAL PERSONNEL ACT AMENDMENTS

SEC. 611. (a) Section 208 of the Intergovernmental Personnel Act of 1979 (42 U.S.C. 4728) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"TRANSFER OF FUNCTIONS AND ADMINISTRATION OF MERIT POLICIES";

(2) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c), (d), (e), (f), (g), and (i), respectively, and by inserting after subsection (a) the following new subsection:

"(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office of Personnel Management for positions engaged in carrying out such programs. The standards shall include the merit principles in section 2 of this Act."; and

(3) by inserting after subsection (g), as redesignated by this section, the following new subsection:

"(h) Effective one year after the date of the enactment of this subsection, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

"(1) those requirements listed in subsection (a) of this section;

"(2) those that generally prohibit discrimination in employment or require equal employment opportunity;

"(3) the Davis-Bacon Act (40 U.S.C. 276 et seq.); and

"(4) chapter 15 of title 5, United States Code, relating to political activities of certain State and local employees.".

(b) Section 401 of such Act (84 Stat. 1920) is amended by striking out "governments and institutions of higher education" and inserting in lieu thereof "governments, institutions of higher education, and other organizations".

(c) Section 403 of such Act (84 Stat. 1925) is amended by striking out "(less applicability to commissioner officers of the Public Health Service)".

(d) Section 502 of such Act (42 U.S.C. 4762) is amended in paragraph (3) by inserting "the Trust Territory of the Pacific Islands," before "and a territory or possession of the United States,".

(e) Section 506 of such Act (42 U.S.C. 4766) is amended—

(1) in subsection (b)(2), by striking out "District of Columbia" and inserting in lieu thereof "District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands"; and

(2) in subsection (b)(5), by striking out "and the District of Columbia" and inserting in lieu thereof ", the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands".

Subtitle C—Mobility Program

AMENDMENTS TO THE MOBILITY PROGRAM

SEC. 621. (a) Section 3371 of title 5, United States Code, is amended—

(1) by inserting "the Trust Territory of the Pacific Islands," after "Puerto Rico," in paragraph (1)(A); and

(2) by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following:

"(3) 'Federal agency' means an Executive agency, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other appropriate agencies of the legislative and judicial branches as determined by the Office of Personnel Management; and

"(4) 'other organization' means—

"(A) a national, regional, State-wide, or metropolitan organization representing member State or local governments;

"(B) an association of State or local public officials; or

"(C) a nonprofit organization, one of whose principal functions is to offer professional advisory, research, or development services, or related services, to governments or universities concerned with public management.".

(b) Sections 3372 through 3375 of title 5, United States Code, are amended by striking out "executive agency" and "an executive agency" each place they appear and inserting in lieu thereof "Federal agency" and "a Federal agency", respectively.

(c) Section 3372 of title 5, United States Code, is further amended—

(1) in subsection (a)(1), by inserting after "agency" the following: ", other than a noncareer appointee, limited term appointee, or limited emergency appointee, (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy determining, or policy-advocating character,";

(2) in subsection (b)(1), by striking out "and";

(3) in subsection (b)(2), by striking out the period after "agency" and inserting in lieu thereof a semicolon;

(4) by adding at the end of subsection (b) the following:

"(3) an employee of a Federal agency to any other organization; and

"(4) an employee of another organization to a Federal agency."; and

(5) by adding at the end thereof (as amended in paragraph (4) of this subsection) the following new subsection:

"(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve with the agency upon the completion of the assignment for a period equal to the length of the assignment.

"(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the Federal agency involved) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.".

(d) Section 3374 of title 5, United States Code, is further amended—

(1) by adding the following new sentence at the end of subsection (b):
"The above exceptions sall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.";

(2) in subsection (c)(1), by striking out the semicolon at the end thereof and by inserting in lieu thereof the following: ", except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;"; and

(3) by striking out the period at the end of subsection (c) and adding the following: ", or for the contribution of the State or local government, or a part thereof, to employee benefit systems.".

(e) Section 3375(a) of title 5, United States Code, is further amended by striking out "and" at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) thereof the following:

"(5) section 5724(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and".

Subtitle D—Federal Employees Flexible and Compressed Work Schedules

CONGRESSIONAL FINDINGS

SEC. 631. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by

Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

DEFINITIONS

SEC. 632. For the purpose of this subtitle—

(1) the term "agency" means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

(2) the term "employee" has the meaning set forth in section 2105 of title 5, United States Code;

(3) the term "Office" means the Office of Personnel Mangement; and

(4) the term "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

EXPERIMENTAL PROGRAM

SEC. 633. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 662 of this subtitle and the terms of any written agreement referred to in section 662(a) of this subtitle, the Office shall establish a program which provides for the conducting of experiments by the Office under parts 1 and 2 of this subtitle. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, to provide an adequate basis on which to evalutae the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

(2) Each agency may conduct one or more experiments under parts 1 and 2 of this subtitle. Such experiments shall be subject to such regulations as the Office may prescribe under section 665 of this subtitle.

(b) The Office shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Office will study and evaluate experiments conducted under parts 1 and 2 of this subtitle. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

(1) the efficiency of Government operations;

(2) mass transit facilities and traffic;

(3) levels of energy consumption;

(4) service to the public;

(5) increased opportunities for full-time and part-time employment; and

(6) individuals and families generally.

(c) The Office shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this subtitle.

(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) of this section would substantially disrupt the agency in carrying out its functions, such agency head shall request the Office to exempt such agency from the requirements of any experiment conducted by the Office under subsection (a) of this section. Such request shall be accompanied by a report detailing the reasons for such determination. The Office shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Office shall exclude the agency from the experiment until the Office has made its determination or until 180 days after the date the request is filed, whichever first occurs.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS

DEFINITIONS

SEC. 641. For the purpose of this part—

(1) the term "credit hours" means any hours, within a flexible schedule established under this part, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

(2) the term "overtime hours" means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

FLEXIBLE SCHEDULING EXPERIMENTS

SEC. 642. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) of this subsection shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle—

(1) any experiment under subsection (a) of this section may be terminated by the Office if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) of this section is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(A) restrict the employees' choice of arrival and departure time,

(B) restrict the use of credit hours, or

(C) exclude from such experiment any employee or group of employees.

(c) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 643. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 642 of this subtitle—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 646 of this subtitle or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork shall not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work, which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of title 5, United States Code, and section 4107(e)(2) of title 38, United States Code, night differential shall not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this part—

(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

HOLIDAYS

SEC. 644. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this part is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office).

TIME-RECORDING DEVICES

SEC. 645. Notwithstanding section 6106 of title 5, United States Code, the Office or any agency may use recording clocks as part of its experiments under this part.

CREDIT HOURS; ACCUMULATION AND COMPENSATION

SEC. 646. (a) Subject to any limitation prescribed by the Office or the agency, a full-time employee on a flexible schedule may accumulate not more than 10 credit hours, and a part-time employee may accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule experiment under this part and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

DEFINITIONS

SEC. 651. For the purpose of this part—

(1) the term "compressed schedule" means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 12 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

(2) the term "overtime hours" means any hours in excess of those specified hours which constitute the compressed schedule.

COMPRESSED SCHEDULE EXPERIMENTS

SEC. 652. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) of this section unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) of this section would impose a personal hardship on such employee, shall—

(A) except such employee from such experiment; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination.

(ii) which is not included within such experiment,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle, any experiment under subsection (a) of this section may be terminated by the Office, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

(d) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 653. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) of this section are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), whichever provisions are more beneficial to the employee.

PART 3—ADMINISTRATIVE PROVISIONS

ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

SEC. 661. For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under part 1 or 2 of this subtitle, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

SEC. 662. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under part 1 or 2 of this subtitle except to the extent expressly provided under a written agreement between the agency and such organization.

(b) The Office or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 643 or 653 of this subtitle, as applicable.

PROHIBITION OF COERCION

SEC. 663. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under part 1 of this subtitle to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 652(b)(1) of this subtitle to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 652(b)(2) of this subtitle.

For the purpose of the preceding sentence, the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(b) Any employee who violates the provisions of subsection (a) of this section shall, upon a final order of the Merit Systems Protection Board, be—

(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Board may prescribe;

(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

(3) disciplined in such other manner as the Board shall deem appropriate.

The Board shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

REPORTS

SEC. 664. Not later than 2½ years after the effective date of parts 1 and 2 of this subtitle, the Office shall—

(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this subtitle, and

(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Office shall prepare a final report with regard to experiments conducted under this subtitle and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

REGULATIONS

SEC. 665. The Office shall prescribe regulations necessary for the administration of the foregoing provisions of this subtitle.

EFFECTIVE DATE

SEC. 666. The provisions of section 633 of this subtitle and parts 1 and 2 of this subtitle shall take effect on the 180th day after the date of the enactment of this Act.

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F—Labor-Management and Employee Relations

"Chapter 71—LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"7101. Findings and purpose.
"7102. Employees' rights.
"7103. Definitions; application.
"7104. Federal Labor Relations Authority.
"7105. Powers and duties of the Authority.
"7106. Management rights.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"Sec.
"7111. Exclusive recognition of labor organizations.

"7112. Determination of appropriate units for labor organization representation.
"7113. National consultation rights.
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"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in such capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities,

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter, and

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 7103. Definitions; application.

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official;

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency of International Development, or the International Communication Agency;

"(v) any person who participates in a strike in violation of 5 U.S.C. 7311;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Officer;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority; or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

"(B) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; or

"(C) an organization sponsored by an agency; or

"(D) an organization which participates in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104 (a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to confer, consult, and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either part to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectutes management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission;

"(B) relating to political activities prohibited under subchapter III of chapter 73 of this title; or

"(C) relating to the clarification of any position; or

"(D) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election, or

"(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter.

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

"(1) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or security work, and

"(2) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter,

"(C) intervene before the Authority in proceedings brought under section 7118 of this title, and

"(D) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions.

"(e)(1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(g) In order to carry out its functions under this chapter, the Authority may—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title.

"(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7118(a)(6)(C) or 5596(b)(1)(B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

"(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

"§ 7106. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws—

"(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

"(C) with respect to filling positions, to make selections for appointments from—

"(i) among properly ranked and certified candidates for promotion; or

"(ii) any other appropriate source; and

"(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

"(b) If a petition is filed with the Authority—

"(1) by any person alleging—

"(A) in the case of an appropriate unit for which there is an exclusive representative that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(B) in the case of an appropriate unit for which there is an exclusive representative that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;
the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall, conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;
may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.
In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) Any labor organization described in section 7103 (a) (16) (B) (ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(f) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(g) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b) (1) (A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

"(A) the collective bargaining agreement has been in effect for more than 3 years, or

"(B) the petition for exclusive recognition is filed not more than 120 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

"(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

"(h) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

"§ 7112. Determination of appropriate units for labor organization representation

"(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to insure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will insure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency, involved.

"(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

"(1) except as provided under section 7136(a) (2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counter intelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to insure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"(e) In the case of the reorganization of one or more units for which, before the reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

"§ 7113. National consultation rights

"(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

"§ 7114. Representation rights and duties

"(a) (1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee shall be informed of that employee's right under paragraph (3) (B) of this subsection to be represented by an exclusive representative.

"(3) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or

"(B) any investigatory interview of an employee in the unit by a representative of the agency if—

"(i) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

"(ii) the employee requests such representation.
Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the pur-

pose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any conditions of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

"§ 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult, confer, or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law; or

"(2) any grievance procedures negotiated pursuant to section 7121 of this title;

may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

"§ 7117. Duty to bargain in good faith; compelling need; duty to consult

"(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject to any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of this subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of tihs section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c)(1) Except in any case to which subsection (b) of this section applies, if any agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 15th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d)(1) a labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"§ 7118. Prevention of unfair labor practices

"(a)(1) If an agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bounded by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

"(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(C) requiring an award of reasonable attorney fees;

"(D) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(E) including any combination of the actions described in subparagraphs (A) through (D) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(7) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

"§ 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

"(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of

basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7133 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings;

"(2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and

"(3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to its members.

"(b) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official or a supervisor, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) any examination, certification, or appointment; or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration. If upon review the Authority finds that the award is deficient because

"(1) it is contrary to any law, rule, or regulation;

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have

occurred or in which such person resides or transacts business for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

"§ 7132. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section—

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

"§ 7133. Subpenas

"(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"§ 7134. Compilation and publication of data

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

"§ 7135. Regulations

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The provisions of subchapter II of chapter 5 of this tile shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

"§ 7136. Continuation of existing laws, recognitions, agreements, and procedures

"(a) Nothing contained in this chapter shall preclude—

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.".

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code, is amended to read as follows:

"(b) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

"(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

"(A) an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee normally would have earned or received during the period if the personnel action had not occurred, plus 5 percent, less any amounts earned by the employee through other employment during that period; and

"(B) reasonable attorney fees and reasonable costs and expenses of litigation related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7105(h) of this title; and

"(2) for all purposes, is deemed to have performed service for the agency during that period, except that—

"(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

For the purpose of this subsection, 'grievance' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practice' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

"Chapter 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

"SUBCHAPTER I—ANTID'SCRIMINATION IN EMPLOYMENT

"Sec.

"7201. Antidiscrimination policy; minority recruitment program.

"7202. Marital status.

"7203. Handicapping condition.

"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"7211. Employees' right to petition Congress.";

and

(3) by adding at the end thereof the following new subchapter:

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"§ 7211. Employees' right to petition Congress

"The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or member thereof, may not be interfered with or denied.".

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies ..... 7101"

and inserting in lieu thereof

"Subpart F—Labor-Management and Employee Relations

"71. Labor-Management Relations--- 7101
"72. Antidiscrimination; Right to Petition Congress---------- 7201".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "and 7154" and inserting in lieu thereof "and 7204".

(c)(1) Section 2105(c)(1) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(3) Section 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 39, United States Code, is amended by striking out "chapters 71, employee policies)" and inserting in lieu thereof the following: "chapters 72 (antidiscrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority.".

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

"(145) Members, Federal Labor Relations Authority (2), and its General Counsel.".

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(c) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d)(1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

TITLE VIII—GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

SEC. 801. (a)(1) Chapter 53 of title 5, United States Code, relating to pay rates and systems, is amended by inserting after subchapter V thereof the following new subchapter:

"SUBCHAPTER VI—GRADE AND PAY RETENTION

"§ 5361. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

"(2) 'agency' has the meaning given it by section 5102 of this title;

"(3) 'retained grade' means the grade used for determining benefits to which an employee to whom section 5362 or 5363 of this title applies is entitled;

"(4) 'rate of basic pay' means, in the case of a prevailing rate employeee, the scheduled rate of pay determined under section 5343 of this title;

"(5) 'covered pay schedule' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

"(6) 'position subject to this subchapter' means any position under a covered pay schedule; and

"(7) 'reduction-in-force procedures' means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

"§ 5362. Grade retention following a change of positions

"(a) Any employee—

"(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

shall be entitled, to the extent provided in subsection (b) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

"(b) For the 2-year period referred to in subsection (a) of this section, the retained grade of an employee under such subsection (a) shall be treated as the grade of his position for all purposes (including pay and pay administration under this chapter and, chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

"(1) for purposes of subsection (a) of this section,

"(2) for purposes of applying any reduction-in-force procedures, or

"(3) for such other purposes as the Office of Personnel Management may provide by regulation.

"(c) The provisions of subsection (a) of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is demoted (determined without regard to this section) for personal cause;

"(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

"(4) elects in writing to have the benefits of this section terminate.

"§ 5363. Grade retention following position reclassification

"(a) An employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled to have the grade of such position before reduction be treated for all purposes (other than the application of reduction-in-force procedures) as the retained grade of such employee so long as such employee continues in such position.

"(b) The provisions of subsection (a) of this section shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for continuous period of at least one year immediately before such reduction.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) declines a reasonable offer of a position the grade of which is equal to or higher than the retained grade; or

"(3) elects in writing to have the benefits of this section terminate.

"§ 5364. Pay retention

"(a) Any employee—

"(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

"(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

"(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

"(b) For the purpose of subsection (a) of this section, 'allowable former rate of basic pay' means the lower of—

"(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

"(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

"(3) is demoted for personal cause.

"§ 5365. Remedial actions

"Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

"(1) to report to the Office information with respect to vacancies (including impending vacancies);

"(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362, 5363, or 5364 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

"(3) to establish a program under which employees receiving benefits under section 5362, 5363, or 5364 of this title are given priority in the consideration for or placement in positions which are equal to or greater than their retained grade or pay; and

"(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

"§ 5366. Regulations

"(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

"(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

"(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

"(2) to individuals to whom such provisions do not otherwise apply; and

"(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

"§ 5367. Appeals

"(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

"(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

"(A) under section 5112(b) or 5346(c) of this title or otherwise, any reclassification of a position; or

"(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

"(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section)—

"(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

"(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures.".

(2) Section 5334(d), 5337, and 5345 of title 5, United States Code, are hereby repealed.

(3)(A) Chapter 53 of title 5, United States Code, is amended—

(i) by redesignating subchapter VI as subchapter VII, and

(ii) by redesignating sections 5361 through 5365 as sections 5371 through 5375, respectively.

(B)(i) The analysis of chapter 53 of title 5, United States Code, is amended by striking out the items relating to subchapter VI thereof and inserting in lieu thereof the following:

"SUBCHAPTER VI—GRADE AND PAY RETENTION

"5361. Definitions.
"5362. Grade retention following a change of positions.
"5363. Grade retention following position reclassification.
"5364. Pay retention.
"5365. Remedial actions.
"5366. Regulations.
"5367. Appeals.

"SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

"5371. Scientific and professional positions.
"5372. Administrative law judges.
"5373. Limitation on pay fixed by administrative action.
"5374. Miscellaneous positions in the executive branch.
"5375. Police force of National Zoological Park.".

(ii) The analysis of such chapter is further amended by striking out the items relating to sections 5337 and 5345, respectively.

(iii) Section 559 of title 5, United States Code, are each amended by striking out "5362," each place it appears and inserting "5372," in lieu thereof.

(C) Section 3104(b) of title 5, United States Code, as redesignated by this Act, is amended by striking out "section 5361" and inserting "section 5371" in lieu thereof.

(D) Section 5102(c)(5) of title 5, United States Code, is amended by striking out "section 5365" and inserting "section 5375" in lieu thereof.

(E) Sections 5107 and 8704(d)(1) of title 5, United States Code, are each amended by striking out "section 5337" and inserting in liue thereof "subchapter VI of chapter 53".

(F) Section 5334(b) of title 5, United States Code, is amended by striking out "section 5337 of this title" each place it appears and inserting in lieu thereof "subchapter VI of this chapter".

(G) Section 5334 of title 5, United States Code, is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(H) Section 5349(a) of title 5, United States Code, is amended—

(i) by striking out "section 5345, relating to retention of pay," and inserting in lieu thereof "subchapter VI of this chapter, relating to grade and pay retention,";

(ii) by striking out "section 5345 of this title" and inserting in lieu thereof "subchapter VI of this chapter"; and

(iii) by striking out "paragraph (2) of section 5345(a)" and inserting in lieu thereof "section 5361(1)".

(I) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by inserting after "of title 5" the following: "and subchapter VI of chapter 53 of such title 5".

(J) Section 1416(a) of the Act of August 1, 1968 (Public Law 90–448; 15 U.S.C. 1715(a)), and section 808(c) of the Act of April 11, 1968 (Public Law 90–284; 42 U.S.C. 3608(b)), are each amended by striking out "5362," and inserting in lieu thereof "5372,".

(4)(A) The amendments made by this subsection shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act.

(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 or 5363 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).

(b)(1) Under regulations prescribed by the Office of Personnel Management, any employee—

(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section under circumstances which would have entitled the employee to coverage under the provisions of section 5362 or 5363 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled—

(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

(ii) to have the amendments made by subsection (a) of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

(2) Under such regulations, any employee who—

(A) during the period beginning on January 1, 1977, and ending on the effective date of the amendments made by subsection (a) of this section was holding any position under a covered pay schedule when such position was reduced in grade; and

(B) after the date of such reduction in grade and before such effective date, changed to any other position under such a schedule (other than by reason of a demotion for personal cause) and is holding such position on such effective date;

is entitled to the benefits of section 5363 of title 5, United States Code (as amended by subsection (a) of this section) as if such employee had not changed positions.

(3) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

(4)(A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

(ii) who died.

(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

(5) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5366 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.

TITLE IX—MISCELLANEOUS

STUDY ON DECENTRALIZATION OF GOVERNMENTAL FUNCTIONS

SEC. 901. (a) As soon as practicable after the effective date of this Act, the Director of the Office of Personnel Management shall conduct a detailed study concerning the decentralization of Federal governmental functions.

(b) The study to be conducted under subsection (a) of this section shall include—

(1) a review of the existing geographical distribution of Federal governmental functions throughout the United States, including the extent to which such functions are concentrated in the District of Columbia; and

(2) a review of the possibilities of distributing some of the functions of the various Federal agencies currently concentrated in the District of Columbia to field offices located at points throughout the United States.

Interested parties, including heads of agencies, other Federal employees, and Federal employee organizations, shall be allowed to submit views, arguments, and data in connection with such study.

(c) On the completion of the study under subsection (a) of this section, and in any

event not later than one year after the effective date of this Act, the Director of the Office of Personnel Management shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any such recommendation which involves the amending of existing statutes shall include draft legislation.

SAVINGS PROVISIONS

SEC. 902. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

AUTHORIZATION OF APPROPRIATIONS

SEC. 903. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

SEC. 904. Except as otherwise expressly provided in this Act, no provision of this Act shall be construed to—

(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act; or

(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.

RETENTION OF SECURITY INVESTIGATION REPORTS

SEC. 905. Except as may be provided under any law enacted after the date of the enactment of this Act—

(1) the reports of the investigations conducted under section 1304 of tile 5, United States Code, by the Office of Personnel Management (or previously conducted under such section by the Civil Service Commission), and

(2) the security-investigations index required to be established under Executive order numbered 10450, and the reports and files of all investigations covered by the index and which were prepared by the Office or the Commission, including the Security Research Analysis Section Organizational Files,

shall be disposed of in accordance with the provisions of such Executive Order.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 906. (a) Title 5, United States Code, is amended—

(1) in sections 5347, 8713, and 8911, by striking out "Chairman of the Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management":

(2) in section 3304 by striking out "a Civil Service Commission board of examiners" and inserting in lieu thereof "the Office of Personnel Management";

(3) in sections 1301, 1302, 1304, 1308, 2105, 2951, 3110, 3304a, 3308, 3312, 3318, 3324, 3325, 3344, 3351, 3363, 3373, 3502, 3504, 4102, 4106, 4113–4118, 5102, 5103, 5105, 5107, 5110–5115, 5303, 5304, 5333, 5334, 5336, 5338, 5343, 5346, 5347, 5351, 5352, 5371, and 5372 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5374 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5504, 5533, 5545, 5548, 5723, 6101, 6304–6306, 6308, 6311, 6322, 6326, 7203, and 7204 (as redesignated in section 703(a)(1) of this Act), 7312, 8151, 8331, 8332, 8334, 8337, 8339–8343, 8345–8348, 8501, 8701–8712, 8714, 8714a, 8716, 8901–8903, 8905, 8907–8910, and 8913, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(4) in sections 1505–1508 and 3383 by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof "Merit Systems Protection Board" and "Board", respectively;

(5) in section 1504 by striking out "Civil Service Commission. On receipt" and all that follows down through the end thereof and inserting in lieu thereof "Special Counsel of the Merit Systems Protection Board.";

"(6) in section 5335(c)—

"(A) by striking out "Commission" the first place it appears and inserting in lieu thereof "Office of Personnel Management";

"(B) by striking out "Commission" the second place it appears and inserting in lieu thereof "Merit Systems Protection Board";

"(C) by striking out "Commission" the fourth place it appears and inserting in lieu thereof "Office"; and

"(D) by striking out "Commission" the fourth place it appears and inserting in lieu thereof "Board";

(7) in section 8347(d), by striking out "Commission" the first time it appears and inserting in lieu thereof "Merit Systems Protection Board" and by striking out "Commission" the second time it appears and inserting in lieu thereof "Board";

(8) in section 552(a)(4)(F)—

(A) by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof, "Special Counsel"; and

(B) by striking out "its" and inserting in lieu thereof "his";

(9) in section 1303—

(A) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management, Merit Systems Protection Board, and Special Counsel"; and

(B) by striking out "Commission" in paragraph (1) and inserting in lieu thereof "Office of Personnel Management";

(10) in section 1305, by striking out "For the purpose of sections 3105, 3344, 4301(2)(E), 5362, and 7521 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges the Civil Service Commission may" and inserting in lieu thereof "For the purpose of section 3105, 3344, 4301(2)(D) and 5372 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may";

(11) in section 1306, to read as follows: "The Director of the Office of Personnel Management and authorized representatives of the Director, may administer oaths to witnesses in matters pending before the Office.";

(12) in sections 1302, 1304, 1308, 2951, 3304a, 3308, 3312, 3317b, 3318, 3324, 3351, 3363, 3504, 4106, 4113–4115, 4117, 4118, 5105, 5107, 5110–5112, 5114, 5333, 5343, 5346, 5545, 5548, 5723, 6304, 6405, 7312, 8331, 8332, 8337, 8339–8343, 8345–8348, 8702, 8704–8707, 8709–8712, 8714a, 8716, 8901–8903, 8905, 8907, 8909, 8910, and 8913 (as such sections are amended in paragraph (3) of this subsection), by striking out "Commission" each place it appears and inserting in lieu thereof "Office";

(13) in sections 1303, 8713, and 8911 (as such sections are amended in paragraph (1) of this subsection), by striking out "Commission" and inserting in lieu thereof "Office";

(14) in section 8344(a), by striking out "Commission" and inserting in lieu thereof "Office of Personnel Management";

(15) in section 8906, by striking out "Commission" each place it appears and inserting in lieu thereof "Office of Personnel Management" the first time it appears and "Office" the other times it appears;

(16) in the section heading for section 2951 and in the item relating to section 2951 in the analysis for chapter 29, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management"; and

(17) in the section heading for section 5112 and in the item relating to section 5112 in the analysis for chapter 51, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management".

(b) Section 1307 of title 5, United States Code, is hereby repealed.

(c)(1) Section 5109(b) of title 5, United States Code, is hereby repealed.

(2) Section 5109 of such title is further amended by redesignating subsection (c) as subsection (b).

(d) The President or his designee shall, as soon as practicable, but in any event not later than 30 days after the date of the enactment of this Act, submit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a draft of any additional technical and conforming amendments to the provisions of title 5, United States Code, and any other provisions of law which have not been made by the provisions of this Act and which are necessary to reflect throughout such provisions the amendments to the substantive provisions of law made by this Act and by Reorganization Plan Numbered 2 of 1978.

EFFECTIVE DATE

SEC. 906. Except as otherwise expressly provided in this Act, the provisions of this Act shall take effect 90 days after the date of the enactment of this Act.

Amend the title so as to read: "An Act to reform the civil service laws, and for other purposes.".

The motion was agreed to.

The Senate bill was ordered to be read a third time, and was read the third time and passed.

The title was amended so as to read:

"A bill to reform the civil service laws, and for other purposes."

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 2640) to reform the civil service laws, and for other purposes, and request a conference with the Senate theron.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

Mr. LEACH. Mr. Speaker, reserving the right to object, one of the amendments that overwhelmingly passed the House involved a cap on Federal employment. I consider this extremely important because it represents the only reflection in this bill of an attempt to deal with the size and scope of Govern-

ment. Unfortunately there is no provision relating to this issue in the Senate bill nor any great sympathy for this amendment on behalf of the administration.

Accordingly, I have a motion to instruct the conferees on this issue, but would prefer not to go forth with this motion if the gentleman from Arizona can assure me that he will do his best to insist that the House position on this issue is upheld in conference.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding. I will be happy to give the gentleman those assurances. I said in the debate that I believe we ought to have a cap on Federal employment. My objection to the gentleman's amendment was that we had not had adequate study, that the administration had not had an opportunity to tell us what an appropriate number might be. So speaking for myself I will go to the conference without any intention of simply capitulating to the Senate, but with the purpose of seeing if we cannot find some modification of the gentleman's language that would carry out the purpose that he was striving to achieve in offering his amendment.

Mr. LEACH. With those assurances, and with deep respect for the leadership of the gentleman from Arizona, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Arizona? The Chair hears none, and appoints the following conferees: Messrs. NIX, UDALL, HANLEY, FORD of Michigan, and CLAY, Mrs. SCHROEDER, Mrs. SPELLMAN, and Messrs. DERWINSKI, ROUSSELOT, and TAYLOR.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 12936, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS BILL, 1979

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporation, and office for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 6853, CHANGING EXCISE TAX REQUIREMENTS ON FISHING RODS, CREELS, ET CETERA

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1566) on the resolution (H. Res. 1345) providing for consideration of the bill (H.R. 6853) to amend the Internal Revenue Code to change the period for the payment of certain taxes, which was referred to the House calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 13488, FOREIGN EARNED INCOME ACT OF 1978

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1567) on the resolution (H. Res. 1346) providing for consideration of the bill (H.R. 13488) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of earned income of U.S. citizens and resident aliens from sources outside the United States, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 8729, AIRCRAFT NOISE REDUCTION ACT

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1293 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1293

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8729) to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes. After general debate, which shall be confined to the bill and to the amendments made in order by this resolution and which shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. Immediately after title III of said substitute is read, it shall be in order to consider without the intervention of any point of order the text of the bill H.R. 11986 as reported from the Committee on Ways and Means on April 24, 1978, if offered as a motion to strike out sections 301 through 304 of said substitute and to insert the provisions of H.R. 11986 as amended by the Committee on Ways and Means, said amendment shall not be subject to amendment except amendments offered by direction of the Committee on Ways and Means, and an amendment printed in the Congressional Record of July 18 by Representative Pepper, but may be debated by the offering of pro forma amendments, and if said amendment is adopted no further amendments to H.R. 8729 modifying said amendment shall be in order, and an amendment to redesignate sections 305 and 306 of said substitute as title IV, and title IV as title V, shall then be in order. At the conclusion of the consideration of H.R. 8729 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Illinois (Mr. ANDERSON), pending which I yield myself such time as I may consume.

Mr. Speaker, this rule is a complicated rule and a controversial rule. It is complicated in that two committees are involved, the Committee on Public Works and Transportation and the Committee on Ways and Means.

The rule provides for 2 hours of general debate; 1 hour to be divided between the chairman and ranking minority member of the Committee on Public Works and Transportation, the other hour to be divided between the same designees from the Committee on Ways and Means.

The rule is open as to the first two titles, closed as far as title III is concerned, except for the exceptions which are included in the rule which provide for the consideration of the text of the bill, H.R. 11986, as reported from the Committee on Ways and Means for certain sections of that title. That, in effect, is the Committee on Ways and Means substitute.

There is also provided consideration for one other amendment to the taxing section. That is an amendment by the gentleman from Florida (Mr. PEPPER) which makes it possible for intrastate carriers to get the same benefits as will interstate carriers.

The controversy arises over the question of the soundness of the approach suggested by the Committee on Ways and Means to make it possible for the carriers and particularly the financially weak carriers to comply with the noise standards we have mandated.

Mr. Speaker, I do not propose to debate that part of it at this time. I personally am strongly in favor of the rule and strongly in favor of the bill.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. BOLLING. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, as I understand it, the source of controversy is not so much the soundness of the approach as the sounding of the takeoff.

Mr. BOLLING. Mr. Speaker, the gentleman from Ohio (Mr. SEIBERLING) may be a pilot; I am not. I have always discovered that both were equally important.

Mr. SEIBERLING. Mr. Speaker, I thank the gentleman.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, House Resolution 1293 is a modified, open rule, making in order House consideration of H.R. 8729, the Airport and Aircraft Noise Reduction Act. The rule calls for 2 hours of general debate to be divided equally between the Public Works and the Ways and Means Committees. Following general debate the substitute recommended by the Public Works Committee shall be read for amendment as an original bill, by titles, instead of by sections; and the rule waives clause 7 of rule 16, germaneness, and clause 5 of rule 21, appropriations on an authorization, against the substitute.

As I mentioned earlier, this is a modified open rule because title III of the bill is virtually closed to amendment except for the bill recommended by the Ways and Means Committee, H.R. 11986, which can be offered as a substitute for sections 301 through 304 of the public works bill. The only other exception is an amendment to be offered by the gentleman from Florida (Mr. PEPPER) to extend the provisions of the Ways and Means bill to intrastate as well as interstate carriers.

The closed nature of the tax portion of the bill is obviously the most controversial aspect of the bill as well as of this rule. We did receive testimony in the Rules Committee from Mr. VANIK, Mr. GEPHARDT, and others asking us to make in order an amendment to simply reduce the existing excise taxes by two percent. I subsequently offered a completely open rule on the bill, and that was defeated on a 9-to-6 show of hands.

Mr. Speaker, I urge my colleagues to vote down the previous question and vote for an open rule that will permit a full discussion and consideration of alternatives to the tax scheme recommended by the Ways and Means Committee. I think we should put to rest this old bugaboo about how an open rule is somehow going to throw open the entire Tax Code to amendments. That is just not the case here where we're only dealing with airline taxes. My staff has consulted the Parliamentarian's Office on this, and we have been informed that under an open rule, the only amendment which would be germane to the ways and means portion of the bill would be amendments dealing with the airlines tax. So let us not be hoodwinked into thinking that we are somehow going to bring the whole IRS house of cards down by opening this rule. We will not be.

Mr. Speaker, I think there is a solid case to be made against diverting 2 percent of the present Federal tax to the trust fund for subsidizing airlines in complying with noise standards. I do not want to get into all those arguments during debate on this rule, but it seems to me that the precedent alone which we would be setting by adopting this regulation compliance tax should give us all pause.

I read in the paper the other day an account of the new air quality standards that are shortly going to be promulgated by the Federal Government through the EPA. Those standards over a period of time will affect, if my memory is correct, something like 200 fossil-fuel-fired plants that are under construction or will be built in this country, and the cost of installing scrubbers, as apparently these regulations that will be issued by EPA will require, was about $10 billion. Now, under the precedent that we establish through the adoption of this legislation, it seems to me that to be fair to the utility industry of this country we would have to say, "You go ahead and you impose a surcharge on your consumers or we will do it for you by levying a compliance tax, a pollution control compliance tax, on the utility customers so that you can make the enormous capital expenditure that will be required to install the scrubbers that will take the FCD and particulate matter out of the effluent that otherwise comes from the stacks of the utilities." That is just one example, as Government has gotten further and further into this regulatory field. Of course it costs money, and somebody will have to pay the costs. But that is a cost that will have to be folded into the cost of the product. I do not think it should be paid for by the imposition of a tax on the consumer, or, in this case, the passenger.

While it is tempting to just vote down this entire rule, I do not think we should throw the baby out with the bathwater. There are features of this bill other than the tax subsidy which are meritorious, including grants to airport operators for planning and implementing noise compatibility programs. So I would urge my colleagues to vote down the previous question so I can offer an open rule that will permit a fuller and fairer discussion of the issues and alternatives.

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Speaker, I want to commend the gentleman who just preceded me in the well, the distinguished gentleman from Illinois (Mr. ANDERSON), the ranking minority member of the Committee on Rules. I think he stated the issue fully and clearly. What we need is a rejection of the closed rule, and I hope that when we vote on the previous question that the previous question will be voted down so that he can offer an open rule which will let this House work its will.

I oppose the rule that is offered because it also does some other things. It suspends the Rules of the House, it waives points of order. I think that also contributes to the legislative calamity that we have in this situation.

I have serious doubts about the constitutionality of the legislation as it is drawn. Can the Federal Government establish itself as a collective agent of funds for a private purpose? The Constitution says that all spending must be done through the appropriation process. The Rules of the House say that these funds, when given to anybody or for any activity, should be appropriated. This legislation, in the present form, constitutes back-door spending in its most sinister form. There is no appropriation review, no general accounting audit of what is done with the money that is paid out of the Federal treasury. This is an ingenious systematic movement of tax revenues collected by the Government and then transferred to the pockets of the airlines.

The constitutional question is for the courts, but back-door spending is perhaps the most serious objection to this bill.

Mr. MAHON. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I am happy to yield to the distinguished chairman of the Appropriations Committee.

Mr. MAHON. Mr. Speaker, I share the concern of the gentleman in regard to the backdoor spending aspect of this matter; that is, collecting a surtax, and then without going through the regular authorization and appropriations process, channeling the funds into private hands.

I do not know whether we have had this sort of operation before—maybe we have, but I do not know of any instance of it. It seems to me to be bad in that regard, and I do not believe we ought to violate our time-honored processes of continued congressional oversight and control through the regular authorization and appropriation process. For the Congress to vote to bypass itself in this respect is, in my opinion, not proper. I am not suggesting that we fail to provide legitimate and needed assistance to the airlines, but that whatever we do be done through the regular authorization and appropriations procedures of the Congress.

Mr. VANIK. I want to thank the distinguished chairman of the Appropriations Committee for his very fine contribution. This is the important point, that Congress loses control over what is done with this money. Mind you, we simply collect the tax and then we write checks on it. Under this bill, United Airlines is going to get a check for $600 million for buying the Boeing plane. Eastern Airlines is going to get about $200 or $300 million for buying the Airbus, and so on. There is just going to be a check written by the Treasury and transfer of funds, and no other review.

Members may think that the Ways and Means Committee was watching out for us on this thing, but I was there. I want the Members to look at the transcript of the proceedings before my committee. There was no economic case made for determining that 40 percent of a new airplane should be paid for by the people of America, by the taxpayers of America, in order to comply with the noise standards. There was no such evidence before us.

As a matter of fact, the CAB says that all they need to comply with the noise standards is $950 million. This bill provides for $3 to $4 billion. I want to tell the Members that the amount available to the airlines will increase with increased passenger travel, the tax collections have increased, so we are now talking about $4 billion.

We give the airlines a gift, and on top of that they will get an investment credit

of 10 or 11 percent, on the gift. So, we not only give the airlines—for example, United, $600 million—but we give them $61 million or $60 million in an investment credit.

The SPEAKER. The time of the gentleman from Ohio has expired.

Mr. BOLLING. Mr. Speaker, I yield one additional minute to the gentleman from Ohio.

Mr. VANIK. I offered an amendment in the Ways and Means Committee to take that out. The committee rejected that amendment. I offered an amendment to have the General Accounting Office audit the expenditures. The committee rejected that amendment. In my judgment, this is the worst bill to be reported out of the Ways and Means Committee in the 24 years that I have been in this Congress. I urge the Members of this House to turn down this rule so that we can have an open rule so that the House can work its will. In the words of the distinguished gentleman from Illinois (Mr. ANDERSON) I hope that we can work out a bill which the Members of the House—all of them, every Member—can have an equal opportunity to decide what course this Congress should take.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from New York.

Mr. CONABLE. Mr. Speaker, I rise only for a very modest correction of the gentleman's terminology. He has made a very articulate and earnest effort on behalf of his position.

It is to be included by them in gross income, and that was the change made by the Ways and Means Committee at the Treasury's request.

I would like also to point out that regardless of who pays for the airlines, ultimately those who are flying the lines will be doing the paying.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 4 minutes to the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, I rise in strong opposition to adoption of the closed portion of House Resolution 1293, the rule on H.R. 8729, the Airport and Aircraft Noise Reduction Act and in support of the effort to defeat the previous question. H.R. 8729 is bad legislation. It ought to be defeated. And, my colleagues, you can strike a blow for responsible Government right now by defeating the previous question on the rule on this incredible bill. I give you fair warning: If you support this legislation—and your constituents hear about it—woe be unto you. It is the most blatant piece of special interest legislation I have seen since I came to Congress in 1963.

Now, Mr. Speaker, House Resolution 1293 specifies that the most controversial part of the bill will not be open for amendment. I refer to title III under which our taxpayers would help the air carriers to retrofit, reengine, or replace their noisy aircraft. The Ways and Means Committee has rewritten the title III in H.R. 8729 so as to amend the Internal Revenue Code. The plan, as stipulated in the rule, is for their language—now appearing in the bill they reported, H.R. 11986—to be substituted for most of title III in H.R. 8729. As is their custom, Ways and Means sought—and obtained—a closed rule on the language of H.R. 11986.

So, here we are. The Members of this House will not have an opportunity to consider alternatives to the "sweetheart deal" for the air carriers—both foreign and domestic—which is provided in these bills. We are being asked to "rip off" air passengers to the tune of over $3 billion to meet the costs of complying with Federal environmental requirements—

Despite record business and profits;

Despite record purchases of new aircraft within existing resources;

Despite the fact that 25 percent of noncomplying four-engine aircraft have been disposed of since 1974 through normal attrition;

Despite the fact that banks and other financial institutions would benefit under this legislation due to their ownership of 27 percent of the air carrier fleet;

Despite the fact that only aircraft built before 1974 and type certificated before 1969 are not in compliance with FAR 36—many, if not all, of which will be fully depreciated and out of service by the 1985 compliance date; and

Despite the fact that this bill would establish a precedent which surely will induce other industries with environmental burdens to seek similar benefits.

Mr. Speaker, the carriers are insulated by the closed rule from amendments which could reduce or eliminate the largess the bill provides. For instance, we will not have an opportunity to consider an amendment the gentleman from Ohio (Mr. VANIK) had planned to offer which would reduce the existing ticket tax from 8 to 6 percent—with no accompanying noise compliance financing mechanism for the carriers. Now this is an idea whose time has surely come—and we should have the chance to vote on it. It would be adopted, I have no doubt. Under the closed rule, we are asked to take the entire package on faith. We are told that a delicate fiscal balance is involved which should not be disturbed. Hogwash. This entire program should be derailed here and now. We have a chance to perform a distinct public service by voting down the previous question on the rule on this legislation.

Mr. Speaker, I do not always agree with the editorial policies of some of our leading newspapers and other publications—such as the New York Times and the Washington Post—but I do acknowledge that they are sources which I normally consider responsible whether or not I happen to agree with their views on a given issue. I would be remiss if I did not take note in my remarks today that these publications and others, as well as numerous columnists, expressed strong opposition in their editorial columns during recent weeks to enactment of this aircraft noise legislation we are being asked to consider today. Each displayed a remarkable degree of responsibility and clarity of thought—which I welcome this opportunity to applaud. Such other diverse groups as Ralph Nader's aviation consumer action project—ACAP—and the Lawyer-Pilots Bar Association and Business Week have voiced similar concerns with respect to these proposals.

In conclusion, Mr. Speaker, I again urge my colleagues to vote against the previous question on House Resolution 1293.

Thank you, Mr. Speaker.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I did not have a chance in my presentation to point out that I would like to offer an amendment to this section which would eliminate the eligibility for the investment credit, and I would also like to offer another amendment which would simply reduce the airline tax to the consumers of America by 2 percent. In this way we can help fight inflation and let the consumers. the air travelers of America enjoy paying a smaller tax, and reduce the tax by 2 percent, instead of giving this money away in a reckless manner to the airlines. At least let the House work its will on whether or not they want instead a reduction of the airline tax.

Mr. SNYDER. Precisely. That is what the House should have the opportunity to do. This is not one of those delicately balanced situations.

Mr. BOLLING. Mr. Speaker, I yield 4 minutes to the gentleman from Washington (Mr. MEEDS).

Mr. MEEDS. Mr. Speaker, I thank the gentleman for yielding me this time and I would like to address just two points very quickly.

First, it is said this is a unique rule. It is not a unique rule. It is a rule fashioned to fit the circumstances of legislation which has been referred to two committees, both of which have jurisdiction over segments of that legislation. It is the kind of rule that has been coming forth for the last 2 years since we have had dual referrals and it is a rule that provides for the orderly debate of the issues raised.

It provides a method for inserting the work product of the Committee on Ways and Means, the second committee having jurisdiction over this matter, at the appropriate point, and then does what we often do in the House, provides that that work product shall not be amended except by the committee itself.

The gentleman from Ohio (Mr. VANIK) who protests this closed rule has participated in a hundred such rules and debates under those rules in the past as a member of the Committee on Ways and Means. This is nothing new. It is something we do quite often.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. MEEDS. I will when I finish my statement.

This is something, as a matter of fact, which we did just today, we granted two rules in the Committee on Rules to the Committee on Ways and Means, one on

excise taxes on fishing poles and one on income earned overseas, in which both rules were closed to the extent no amendments could be offered except amendments offered by the committee.

So this is not a unique rule.

Let me suggest that if it is a unique situation, and I do not want to get too much into the merits, because we really should not be arguing about that, and I would not except for the fact that the gentleman from Ohio and the gentleman from Illinois have raised the points—but if this is a unique bill, it is unique because this is a unique situation.

This situation is likened to what has happened to automobile air pollution standards. We are told we did not help the auto industry, and so on. But we did not go to the auto industry and say you have 1,600 airplanes which have been certified as being under the standards, the noise control standards, and then said to them you must change these. But that is what we have done with the airlines of this country. We have said you have got 1,600 airplanes which were certified and now they do not meet the present standards and you have got to change them.

We are talking about retrofitting here, we are talking about going back and putting in a change which meets present standards. And that is the uniqueness of the situation.

What we are saying is that we will take 2 percent of the tax which is presently levied, and we will assess that and allow it to be used for this retrofitting and for new aircraft, 90 percent of which, incidentally, are built in the United States of America. We will apply that to retrofitting and to building new aircraft, new engines, so that we can bring these 1,600 existing planes and all planes in the future up to the standards which our citizens deserve, particularly those people who are living near airports.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. MEEDS. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I want to point out to my colleague, the gentleman from Washington (Mr. MEEDS), that, first of all, the Committee on Ways and Means in recent years has been giving the House of Representatives some alternatives.

Mr. MEEDS. As they did today.

The SPEAKER. The time of the gentleman from Washington (Mr. MEEDS) has expired.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. GRADISON).

Mr. Speaker, will the gentleman yield?

Mr. GRADISON. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. Mr. Speaker, I take the time merely to comment on the very excellent argument just made by my friend and colleague on the committee, the gentleman from Washington (Mr. MEEDS), that in imposing the requirement of meeting certain air noise standards or noise standards on the airlines with respect to 1,600 planes which are already certificated, we are, in effect, imposing on them an undue and unusual burden, in a sense retroactively.

It occurs to me that in my own district in Illinois, in northwest Illinois, this year we opened up an automobile plant. The cost of retrofitting and retooling that automobile plant, as my memory serves me, was more than $40 million in order to produce a new line of cars which would meet the mileage standards that had been ordained by the Federal Government in the EPCA Act in 1975.

Therefore, I do not think that this is the first instance in which, in order to promote a better environment, whether it be noise or air pollution or something else, the Federal Government has imposed, in essence, retrofitting and retooling requirements on the industry of this country.

I need not remind the gentleman that in the case which I have just referred to, the automobile company had to stand the expense, and the product which they manufacture will have to bear the ultimate cost of that retrofitting and retooling effort.

Mr. Speaker, I thank the gentleman for yielding.

Mr. GRADISON. Mr. Speaker, I thank the gentleman from Illinois (Mr. ANDERSON) for his comments.

Certainly, there is nothing very unique about this situation except one thing, and that is we have an 8-percent tax on the books. Therefore, it is very tempting to say, "Let us take a portion of that tax which was put on the books for entirely different purposes and earmark it for this purpose."

Mr. Speaker, it seems to me that the fatal defect of the rule is that it fails to take into account one entirely clear alternative, which is simply to roll the tax back from 8 to 6 percent and let the companies which must retrofit or purchase new equipment seek these funds in the marketplace from their passengers. There is no question that the money ultimately is going to be paid out by the passengers. The question is whether in the process of meeting the standards, we want to use the tax system and set a precedent which could easily lead to industries as enormous as the auto industry coming in and pleading for help in the billions of dollars through what could be the earmarking of an excise tax on auto and truck parts or something else.

Mr. Speaker, that is the part which really disturbs me about the situation we have here with this rule. It is the reason I sincerely hope that the previous question is rejected.

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the gentleman from Missouri (Mr. GEPHARDT).

Mr. GEPHARDT. Mr. Speaker, I rise to oppose this rule and to ask my colleagues to defeat it for many of the reasons that have already been given. But let me go into this with a little bit different tack. There is no question in my mind that the airlines need noise abatement help. I think it has been justified. The evidence has been heavy. I think we can make a case that they need help to comply with the noise pollution regulations that have been thrust upon them. I think there is no question that the users of the system should pay. I think that clearly is equitable. I do not think there is any question about that.

The question here is what kind of a mechanism should we construct for the users of airlines to pay for that noise pollution abatement? I would submit to the Members that the mechanism we have before us is not the right one and that the right one is the one that the gentleman from Ohio (Mr. VANIK) has suggested, that is, rolling the tax back 2 cents and letting those airlines that need capital to handle their noise pollution problems apply to raise their fares by that amount.

One can say that there are other cases where we have given people tax subsidies in order to meet pollution requirements, and that is true. We have an investment tax credit that allows electric companies and other kinds of companies to reduce their taxes so that they can pay for pollution equipment. We also have a 5-year amortization for companies to pay for their pollution abatement equipment. But there is a difference between that and the subsidy mechanism presented here. In that case the Government has not taken the money in. In that case we have left the money with the taxpayer to take care of the problem. In the subsidy mechanism before us the Government raises the money and turns it over to the private sector for expenditure.

There is a second difference. In that case the subsidy is about 10 percent. It is 10 percent of the cost of the equipment. In this case it is 40 percent. It is a much higher subsidy, but the main issue is that in this case the Government is taking the money into a fund, but the Government is giving the power away to spend that money, and it is the first time in American history, in the history of our tax code, that we have done that, and I think it is a very, very important point to consider.

Do we want to give that power away? I do not think we do. Let me tell the Members what kind of problems it causes. We cannot then have control over who gets the money and how much they get. For instance, some airlines are going to replace their planes by 1985 anyway because they need to, because the airplanes are going to wear out. The mechanism we constructed here pays no attention to that. There is no sensitivity to that. Secondly, and most importantly, some airlines need the money more than others. TWA and Eastern have great need for the money because their whole fleet needs to be turned over. Other airlines have just a few airplanes they need to turn over. But we do not hand out the money on the basis of the need to abate noise; we hand it out on the basis of how popular they are, how many tickets they sell. So we really are not accomplishing our goal, because we are not allocating our money according to the need to abate noise. Why are we not? Because we have lost control of the money, and that is the greatest issue here. If we

retain control of the money, we could give it to the airlines that really need it.

So the major issue here is who spends money that the Government raises? The Vanik approach is a sensible approach. It simply rolls the tax back by 2 cents. If your airline needs money, you raise your fare by 2 cents. The answer comes back from the industry, that would be fine, but we have got competition problems, and weak airlines that do not have capital would have to raise their fares in a marketplace that is very competitive.

I would submit to the Members that we are in the midst of talking about deregulation. We are going to have a bill here, I understand, in a few days to deregulate the airlines. We have seen in the past few months the effects of deregulation. Airlines are making money, even those who had economic troubles. If that is the direction we are moving in, let us deregulate. Let us put this bill off, and then let us see how we should handle this problem. Perhaps true competition will make it unnecessary to give airlines financial help to solve noise problems. If we are moving into a new era of competition, we can simply roll the tax back by 2 cents and let the airlines compete and let them take care of their noise pollution problems in a competitive atmosphere.

I urge my colleagues for these two good reasons, because it sets a bad precedent, because it is the first time we are going to give up control of money that we have raised, because there is a much better way to do this, to defeat this rule so that the Vanik amendment can rightfully be brought up for debate on this floor.

Mr. Speaker, I yield back the remainder of my time.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 3 minutes to the distinguished chairman of the Committee on Rules, the gentleman from New York (Mr. DELANEY).

Mr. DELANEY. Mr. Speaker, I have just had called to my attention a copy of the magazine, Air Transport World for the month of July 1978. We have been hearing now in the debate about how short the airlines are of money. I just want to make a short comparison here to find out how short they really are and what salaries they are allocating to themselves. I think it would amaze everyone to know the percentage rates. Recently the Congress had a percentage raise after 6, 7, or 8 years. I think it was $12,000 or $15,000 or something like that and you could hear the objections throughout the world.

I want to read one or two of the principal ones here and the percentage of increase they received in 1 year.

For example, Mr. Casey of American Airlines. These are presidents, board chairmen, chief executives, and general managers. His salary went from $220,000 in 1976 to $370,000 in 1977, an increase of 68 percent.

I look down the line hurriedly and I see Mr. W. T. Seawell from Pan American, whose salary was $195,000 during the year 1976. They were so short of money that in 1977 he awarded himself a salary of $325,000, an increase of 66 percent.

Then I take Mr. Hulse, who is one of the executives of the Southern Line. This is what they do with the short money they have. He was receiving the salary of $211,000 in 1976 and in 1977 the salary was increased to $308,000, an increase of 45 percent.

In the year 1976, Mr. Smart of TWA was getting $139,000, but this was increased to $235,000 for the year 1977. This is an increase of 68.7 percent, and so on.

Other officials of Pan American, Mr. Wiser, Jr., goes from $175,000 to $235,000, an increase of 34 percent, and all the way down the line.

At Northwest Airlines which was on strike and not making any money, just a few dollars, for the record, Mr. Lopensky was getting a salary of $117,000 in 1976 and then for the year 1977 awarded himself $169,000, an increase of 44 percent.

The SPEAKER. The time of the gentleman from New York has expired.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 1 additional minute to the gentleman from New York.

Mr. DELANEY. Mr. Speaker, I have just one or two more. Mr. Gross in 1976, of Southern Airlines, was getting a salary of $69,000 and his salary went up to $141,000 in 1977, an increase of 104 percent.

Mr. Hall of Southern Airlines goes from $75,000 in 1976 to $156,000 in 1977, an increase of 109.1 percent.

Ms. HOLTZMAN. Mr. Speaker, will the gentleman yield?

Mr. DELANEY. I am happy to yield to the gentlewoman.

Ms. HOLTZMAN. Mr. Speaker, I just want to tell my colleague that he has made an excellent point; but does not the gentleman think that, if these executives can bamboozle Congress into giving them additional money in this bill on top of what they already have, perhaps they are worth these raises?

Mr. DELANEY. Mr. Speaker, that question has been asked of the Congress: Are they worth the increase they received in salary? I think a great majority of the people disagree with the idea that they are worth what they are paid.

Here are increases of more than 100 percent that they had the right to award to themselves, because they happened to be on the executive committee. This is taken; it is a toll. It is taken and set aside until 1985, then to go into a fund to pay for 40 percent of new machinery.

Can we imagine, if this passes, what will happen? We will have everyone else in the country asking that we set aside a certain additional amount of money on each purchase so that they cannot only increase their salaries but pay for their future investments up to 40 percent.

Mr. Speaker, I think this rule should be voted down, and I suggest that every Member vote "no" on it. Let us get a bill that deals with noise alone and not with this money hidden in it.

Mr. BOLLING. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Speaker, Chairman DELANEY's speech almost makes me wish I were an airline president instead of a Congressman.

The Committee on Public Works worked very hard on this bill for a long, long time. They brought this tax proposal to us. It is rational and reasonable and fair.

We must abate the noise of airplanes. If we are going to continue to fly and if we are going to continue to land in densely populated metropolitan areas, we owe it to the people who live in those areas to abate the noise.

Everyone concedes that airline users are going to have to pay for the cost of noise abatement.

This is a unique kind of industry. People will say that we are setting a precedent and maybe we will want to give similar treatment to automobile manufacturers. The consumer of the automobile is the purchaser of the automobile, and he pays for whatever pollution devices there are in the purchase price; there is no competitive disadvantage among producers.

In this instance there is an uneven need for noise abatement among airlines, and that is the reason we ought to finance it out of a uniform user tax instead of out of rate increases for some airlines over others. It is fair both among users and among airlines. Most importantly, it keeps our commitment to all the people to abate aircraft noise.

When one goes down to the airport to get on an airplane, he does not care whether it is noisy or quiet; he wants service, he wants to get where he needs to go as quickly as he can. The fact that he is going to have to pay into a fund, whether he is on a noisy aircraft or on an aircraft that is not noisy, should not make any difference. He ought to have to pay, and a portion of what he pays is going to have to be spent to reduce the noise around airports.

The gentleman from Missouri (Mr. GEPHARDT) said we would lose control of how the money is spent. That is not correct. It is controlled very specifically in the part of the bill that we have from the Committee on Public Works and Transportation.

Mr. Speaker, I urge adoption of the rule and adoption of the bill.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. PRITCHARD).

Mr. PRITCHARD. Mr. Speaker, I rise to urge passage of this rule.

Let us remember that none of this tax money is going to go for salaries; it is going to go for retrofitting and new planes.

I think we have forgotten some Americans, those are the people who are suffering from excessive noise. I do not know whether the Members watched the finals of the national tennis matches, but that was a good example.

People can be out in northwest Washington, D.C., or people can be around any

of the cities in America today, and a large number of those citizens have to suffer from oppressive noise.

What is going to happen if we kill this rule right now, today? We are going to have to go back in, and next year we are going to come up with a solution. I can tell the Members that I do not believe we will meet the 1983 noise standards if we do not pass this bill today.

If we wait until next year to fashion a new type of bookkeeping and another system whereby the people who fly on the airlines are going to pay for the retrofitting, we will not meet the noise standards. And that is what we are talking about; no one is arguing about who is going to pay. The people who fly on the airlines are going to pay; it appears that they are going to pay about 2 percent, and this is one means of doing it.

I have talked with the manufacturers, and I am convinced we just are not going to have the time.

So, Mr. Speaker, are we going to be faced with the responsibility of telling the people across America who are living under these terribly noisy planes that they are just going to have to wait?

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. PRITCHARD. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I was rather intrigued. The gentleman talked, I am sure, to the manufacturers. They are right in the gentleman's community.

Mr. PRITCHARD. That is right.

Mr. VANIK. Regardless of this bill, you are going to employ thousands of new people to build the new planes.

The SPEAKER. The time of the gentleman from Washington (Mr. PRITCHARD) has expired.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 1 additional minute to the gentleman from Washington.

Mr. PRITCHARD. Does it make any difference? Our community, it is true. There are jobs. Manufacturers are very busy.

Mr. VANIK. I thought I heard you say that you really do not need this bill. That is all I want to know.

Mr. PRITCHARD. The people in your community. They are under this noise. They need this bill. And you will have to stand the responsibility of having to push the 1983 standards down 1 more year. That is the responsibility you will have to take. There are a lot of people in America who want action now on this noise and they do not want to wait a year.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. PRITCHARD. I yield to the gentleman from New York.

Mr. CONABLE. I thank the gentleman for yielding.

Mr. Speaker, there is one very important point the gentleman made, that the people who ride and travel on these airlines are going to have to pay the retrofitting one way or another. This bill offers a mechanism for paying for it. It may not be a perfect mechanism. But one way or another we will have to get that done. You could eliminate the tax, to the extent of its diversion in this case, and presumably, the airlines could raise their ticket costs. But that money, from increased ticket prices, might go to any purpose, not just to reducing noise. If we want to serve that desirable national purpose, we had better support some mechanism such as the one offered in this bill, earmarking the money.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. Speaker, it is obviously easy to stand and demagog this particular piece of legislation and label it as being something of special interest. And I would suggest that, yes, it is legislation directed at special interests, a unique, very special interest called transportation, aviation transportation.

Obviously, I would not deny that the solution to the problem is a controversial one. Certainly it is not one which meets with all my desires and my philosophy. But for the past many years I have watched many of the Members, who have stood up and urged the defeat of this rule, condemn aviation transportation because it is noisy, because somehow it appeals to and provides a service to only the elite, that somehow Jet airplanes are the white elephant of the airways. Oftentimes I have heard Members of Congress, as well as the public, condemn aviation transportation and ask the question: What are you doing about noise? What are you doing about cleaning up the airways and getting aviation compatible with the new environmental ethic of clean water, clean air, of less noise.

Members of the Subcommittee on Aviation, under the leadership of the gentleman from California, Mr. GLENN ANDERSON, and members of the full Committee on Public Works, under the leadership of the gentleman from California (Mr. JOHNSON), struggled with this question for months and months and months, trying to come up with an equitable solution, recognizing that it was the desire of the public, that we expedite the time for the purchase and use of the new more quiet aircraft. If, in fact, the airlines had sustained profits over the past 7 or 8 or 10 years, yes, the new technology aircraft would evolve naturally. But it is your decision made here in this body, dictated by the FAA, that somehow we expedite the time frame, when we will have a less noisy aircraft.

The SPEAKER pro tempore (Mr. CORTER). The time of the gentleman from California has expired.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 2 additional minutes to the gentleman from California.

Mr. GOLDWATER. So we made a decision to do this. We struggled for the solution, and this is what we came up with; obviously less than perfect, but the point we have to make is that these are moneys being paid by the users, as they are for the highways, as they are for other forms of transportation as well as other types of implementation to clean up our air and clean up our water. The user is paying 8 percent tax now. And after this legislation becomes law, they will still be paying 8 percent. Nothing less, nothing more.

Now, it has been said that this is a gift to the industry, but in fact the industry has not been making a profit. It has only been just the recent past year or so that they began generating sufficient income that would warrant the financial community, the banks, to finance the some $60 billion that are going to be required by the year 1985 to replace the existing fleet. It is sustained profits over a long period of time that will allow and attract the financial capital that will be needed to replace the fleet. That will not be coming under today's current earnings, nor in the past.

Ladies and gentlemen, you decided that we should clean up the airways, that we should make aircraft less noisy. You are condemning this bill, but I do not hear an alternative. I do not hear an alternative solution to this very complex problem. Less than perfect as this legislation is, it represents the cumulative effort of many members of the Ways and Means Committee, as well as the Committee on Public Works and Transportation, allowing sufficient time, with many months of hearings and input from all of the members as well as the industry. So, I would suggest that we support this rule, that we support this bill, and I would suggest that under it we can meet the needs and the demands of our constituents for quiet aircraft. If we defeat this rule, if we defeat this bill, then we are back to ground zero, and I do not think any of us nor our constituents can live with that.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, my colleagues, first of all, in response to my colleague from California, there have been several responsible alternatives suggested here.

But, let us take an analogy in another area that bothers, I think, more people in my district than airplane noise. That is, noise from motorcycles.

What if I were to come in with a bill and say, "We want these motorcycles to live up to the standards that have been established. Let us take one-third of the gasoline taxes that they contributed so that they can fix up their motorcycles, and if they want to buy new motorcycles, they can take this tax money to buy new motorcycles."

There would be strong opposition to that legislation, and yet fundamentally that is precisely what we are doing with the airline industry.

If I were to come in here with a bill to appropriate x million dollars to TWA or Eastern or any of the airlines, it would be rightly opposed. We had a bill to lend money to Lockheed that caused a great deal of controversy, and here we are asked to appropriate money directly to airlines. I think it is not wise.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield myself the remaining time.

I do so merely to alert the Members of the House, as I did earlier, that at the appropriate time I shall seek a vote on the previous question, and I hope the Members will join me in voting down the previous question, in which case I will offer a rule that will open up the provisions of title III, which under the rule now before us would be closed.

If the rule is opened up, we do not have the intent or purpose of killing this bill. As I said, there are some meritorious features in this bill which I can and do support, but I do think the Members of the House ought to be entitled to consider some of the alternatives that could be offered and I feel will be offered on title III under an open rule. We should consider this very important path-breaking legislation in that format under that kind of rule, and therefore I hope Members will join me in voting down the previous question so we can proceed to a consideration of the bill under what I think is a proper rule.

Mr. BOLLING. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. MINETA).

Mr. MINETA. Mr. Speaker, there has been a great deal said this afternoon about this bill and whether or not it is a ripoff or a gift of any kind. I have heard every cliche and buzz word used that might attract opposition to the bill.

What we must recognize is that under the previous administration the Secretary of Transportation issued a ruling which is supported by the current administration saying that there was to be a compliance with the fleet noise rule and that compliance would have to be achieved by 1985.

This fleet noise rule applied these noise standards retroactively. The FAA had said these airplanes were all right to be flying our skies and certified them under the original noise standards. Then, in 1976, the Secretary of the Department of Transportation said that all those airplanes that were flying up there now have to comply with a new rule, thus requiring retroactive compliance.

The only way we can deal with this noise compliance issue now is to reduce the existing ticket tax by 2 percent, allocate that 2 percent to the airlines and have the users themselves contribute to the abatement of the noise. Frankly the only way we are going to be able to deal with the noise problem is to direct our efforts at the source of the noise and that is the airplane itself.

If we do not provide this user revenue to the airlines and simply leave it up to them to finance compliance, they will not comply with the noise rules. They will not raise their fares in order to comply with the noise rules. They will raise their fares and spend that money to make the airplane look nicer or more appealing from a customer viewpoint, but the airlines will not make the planes any less noisy to comply with the noise limitation rule. Then they will be coming back to us in 1981 or 1982 pleading for extensions of the compliance deadlines.

After 3 years consideration, the subcommittee under the gentleman from California, GLENN ANDERSON, and the gentleman from California, Mr. BIZZ JOHNSON, has developed a mechanism to resolve this problem. We ought to vote "yes" on the previous rule.

Mr. BOLLING. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana (Mr. WAGGONNER).

Mr. WAGGONNER. Mr. Speaker, I want to make two brief points. First of all, there are a number of Members of the House here today opposing this legislation and this rule who should be supporting it because on February 29, 1972, this House of Representatives passed a Noise Control Act and passed it by the big margin of 356 to 32. Now, 32 of us opposed that act in 1972. I happen to be one who opposed it. I saw what was coming, but some opposing it here today did not.

But nevertheless, the agency downtown has taken the authority granted them in that act and by the use of that act they have mandated the control of aircraft noise pollution between 1983 and 1985.

The SPEAKER pro tempore (Mr. COTTER). The time of the gentleman has expired.

Mr. BOLLING. Mr. Speaker, I yield 1 additional minute to the gentleman from Louisiana (Mr. WAGGONNER).

Mr. WAGGONNER. Mr. Speaker, we gave them authority to mandate this retrofit and we ought to back that up.

Of course it was wrong to do it. It was an arbitrary act on the part of Congress. We did not have the knowledge or technology then that we needed. They did not have the resources then nor do they have them to finance this retrofit. But, nevertheless, we provided this authority, and if we want to meet that schedule we are going to find some way to finance it. Who ought to do it? Simply those people who use the airlines, you and me in this House of Representatives. We use the airlines as much as anybody does. The people who use the airlines ought to pay the tab, not the people who do not use them. So this added cost to them can be justified.

Now you come out here and you cry about pollution, you cry about noise, you cry about clean air and you cry about safety. It is time, then, to put money where your mouth is.

● Mr. OTTINGER. Mr. Speaker, I have decided to oppose the financing mechanism for funding the airport noise control legislation before us today. I am convinced that this financing mechanism has nothing to do with noise control but is merely a means of providing Federal subsidy to the airlines to finance their purchase of new fleets of planes.

I am firmly committed to the EPA's actions in requiring planes to conform to the noise standards it has issued. This action is long overdue and I have led in advocating this action for at least the past 10 years. I am convinced that the airlines can and should finance these improvements themselves, if necessary, by raising fares. I am impressed by the testimony of the Chairman of the Civil Aeronautics Board, my good friend, Alfred Kahn, that the airlines have the financial capability to perform the required changes without Federal intervention. Before the Senate Commerce Committee he stated:

> I believe you have not had a compelling showing that the (airline) industry as a whole actually needs Federal assistance.

Indeed, most of the carriers will replace their fleets within the prescribed time period at any rate, and it will not be an undue financial burden for them to incorporate the new noise standards in their new aircraft.

It is of endless amazement to me that the bastions of free enterprise are always so ready to abandon their principles when it comes to seeking subsidies for their own industries. Thus, the auto manufacturers must have their highway trust fund, the oil companies want depletion allowances and other tax subsidies, the sugar industry demands and gets sizable Federal contributions, and so forth ad infinitum, all the time decrying Federal intrusions into the private sector, at least as it involved everybody else's business.

Now come the airlines, fresh from a fight to try to prevent price and market deregulation, steps which, so far as they have been implemented to date by the CAB, have resulted in a great revival of their business. As fares have come down through competition, the ruinous effects predicted by the industry have not only been proved false—quite the opposite, their planes are flying at near capacity and the industry is experiencing record profits.

In the wake of this revival, the airlines come to us seeking subsidies to finance the purchase of new aircraft. They hinge their pleading on EPA noise regulations that were recently promulgated and that will require either retrofitting existing engines or purchase of new aircraft which meet the standards by 1981. I believe that the noise standards are the excuse, but not the reason for this legislation—that it is just a ruse to get Federal subsidies for the purchase of the new aircraft that they will have to purchase at any rate and is part of their free enterprise burden. I do not believe the airline industry would support such subsidization of other industries.

The airlines situation is by no means unique. If the Food and Drug Administration finds a substance to be carcinogenic, for example, the investments which the drug industry or food industry has made in affected product lines causes them substantial financial distress and they have to finance new products or new ways of doing business. Presently we are considering coal conversion legislation that will require many companies to shift from other fuels to coal. Air pollution requirements are going to mandate the use of expensive coal scrubbers. The Government has an obligation to require that basic health and safety standards be met for protection of the public, and the private sector must conform to those standards through the marketplace, by making adjustments in its product lines or methods of production. An endless series

of subsidy requests would be triggered by this legislation were it to pass, sparking further burgeoning of Federal bureaucracy and regulation, the very ills we are trying to minimize, particularly in the airline industry.

The one factor in this situation that gives me cause for concern is the competitive disadvantage in which this legislation might place our carriers versus foreign carriers that do not have to comply. The answer, it seems to me, is to make sure that the regulations do apply to all foreign carriers that serve our airports—important from the standpoint of noise control as well as equity—and I trust that the Government will take the appropriate steps to enforce such a requirement. This would cover the bulk of foreign carriers and all of those that compete with our own. Action will also be required to assure that international carriers can raise their rates if necessary.

If we are serious about wanting to keep the Federal Government out of the business marketplace, of wanting to minimize Federal bureaucracy and maximize free market operations, then it seems to me we must oppose this financing mechanism.

I strongly support titles I and II to the bill which make much stronger and effective provision for airport planning and noise regulation. I will also do everything in my power to assure that the airlines are required to meet the new noise regulations fully and on schedule, despite the absence of this license to use Federal taxing power to do what the industry can and should do for themselves.●

Mr. BOLLING. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise to speak in support of the rule, and in support of the previous question. As has been mentioned, three committees of the House have been looking closely at this bill. The Committee on Public Works and Transportation held 27 days of hearings here in Washington and in the field and amassed over 2,000 pages of transcript.

The bill is comprehensive in nature. Each title is a necessary component. Without any one of the titles, such as we are talking about here today, the bill would lack the necessary comprehensiveness and thereby defeat its purpose of providing meaningful relief to millions of Americans who are being bombarded by aircraft noise.

A moment ago one of our colleagues said the airlines need help, and that the users should pay. They said the way to do it is to reduce the tax by 2 percent and let each airline raise the ticket price by 2 percent and pay for the retrofitting that way.

That method could become a real ripoff because it so happens the airlines that are the poorer ones also happen to be the ones that have the most airplanes which do not comply. Could we expect a poor airline with many noncomplying aircraft to raise their prices to pay for the retrofitting while their opposition which did not have many planes to retrofit would be able to offer its services at a reduced price? Realistically, this just is not in the books. So we would find that they either would not be able to retrofit or the poorer carriers would be run further and further into the ground and the larger ones would be getting richer.

One concern that has been raised is that this bill establishes a bad precedent. Nothing could be further from the truth.

The airlines' situation is unique, easily distinguishable from other private industry and utilities.

Airlines are being required to modify or replace equipment previously certificated by the U.S. Government. No other industry, regulated or unregulated, has been similarly required.

No other transport mode, railroad, bus, or truck, has been required to modify in-service equipment in order to incorporate pollution reduction improvements whether it be noise, water, or air.

In no other industry, regulated or unregulated, is the cost of required modifications as large in relation to the total cost of the plant as in the airline industry. For example, the cost of smokestack scrubbers in relation to the cost of a steel plant or electrical generating plant is relatively insignificant. However, the cost to retrofit a four-engine aircraft (estimated to be $1.5 million) is as much or more than the book value of the aircraft, and approaches 20 percent of the original cost of the aircraft. In addition, retrofitting reduces an airplane's productivity and increases its operating cost.

The Internal Revenue Code does not recognize noise pollution as warranting the fast amortization and favorable tax treatment as is afforded water and air pollution control facilities.

The airlines are faced with a significant capital shortage and are being required by the Government to take action between now and 1985 on some 1,588 aircraft currently in the fleet, or about two-thirds of the operating aircraft of the U.S. fleet.

Mr. BOLLING. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, there are two extraordinarily good reasons the previous question should be ordered and this rule should be passed. This is, No. 1, the only way in which it will be possible to get compliance on noise control in a timely fashion. Otherwise we will be faced in this Congress in the next year or the year after with lowering the standards.

Second, it is fair. When a utility is required to modify its plant to reduce pollution, it goes and gets a rate increase, and the rate increase provides the additional money, to begin with.

We changed the rules on the airlines in the middle of the game, and the only way they can comply with the requirements put upon them after they purchase their aircraft is through passage of this bill.

Mr. Speaker, I urge a vote for the previous question, a vote for the rule, and a vote for the bill.

Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore (Mr. COTTER). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ANDERSON of Illinois. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 199, nays 193, not voting 40, as follows:

[Roll No. 768]

YEAS—199

Abdnor	Fraser	Murphy, N.Y.
Addabbo	Frey	Murphy, Pa.
Akaka	Fuqua	Murtha
Alexander	Gammage	Myers, Gary
Ambro	Gaydos	Myers, Michael
Anderson, Calif.	Ginn	Nichols
	Glickman	Nix
Andrews, N. Dak.	Goldwater	Nowak
	Grassley	O'Brien
Annunzio	Green	Patten
Archer	Hagedorn	Patterson
Ashley	Hall	Pepper
Aspin	Hammer-schmidt	Pettis
AuCoin		Price
Badham	Hanley	Pritchard
Bafalis	Hannaford	Pursell
Beard, R.I.	Harsha	Quillen
Bevill	Hawkins	Rahall
Boggs	Heckler	Rinaldo
Bolling	Heftel	Risenhoover
Bonker	Hightower	Roberts
Bowen	Hillis	Rodino
Brademas	Holland	Roe
Brinkley	Hollenbeck	Rogers
Brown, Mich.	Holt	Roncalio
Buchanan	Horton	Rooney
Burgener	Howard	Rostenkowski
Burke, Mass.	Hyde	Rousselot
Burleson, Tex.	Ireland	Roybal
Burlison, Mo.	Jenkins	Scheuer
Carney	Jenrette	Schroeder
Cederberg	Johnson, Calif.	Sebelius
Clausen, Don H.	Jones, Okla.	Shipley
	Jones, Tenn.	Shuster
Clay	Keys	Sikes
Coleman	Krebs	Sisk
Collins, Ill.	Lagomarsino	Skelton
Conable	Le Fante	Skubitz
Conte	Lederer	Spence
Corcoran	Leggett	St Germain
Corman	Lent	Staggers
Cornwell	Levitas	Stangeland
Crane	Livingston	Stanton
Cunningham	Lloyd, Calif.	Stratton
Danielson	Lloyd, Tenn.	Taylor
Davis	Long, La.	Thompson
Dent	Lott	Thornton
Derwinski	Luken	Udall
Dickinson	Lundine	Ullman
Dicks	McClory	Van Deerlin
Dingell	McEwen	Vander Jagt
Dodd	McFall	Waggonner
Duncan, Oreg.	McKay	Walgren
Duncan, Tenn.	Madigan	Walker
Edwards, Ala.	Markey	Walsh
Edwards, Calif.	Marks	Wampler
Eilberg	Marriott	White
Erlenborn	Mathis	Wilson, Bob
Ertel	Meeds	Wilson, C. H.
Evans, Del.	Mikulski	Wilson, Tex.
Evans, Ga.	Milford	Winn
Evans, Ind.	Mineta	Wirth
Fascell	Moakley	Wolff
Fisher	Montgomery	Wright
Fithian	Moorhead, Calif.	Wydler
Florio		Yatron
Flynt	Moorhead, Pa.	Young, Mo.
Ford, Mich.	Murphy, Ill.	Zeferetti

NAYS—193

Anderson, Ill.	Bedell	Blouin
Andrews, N.C.	Bellenson	Boland
Ashbrook	Benjamin	Bonior
Baldus	Bennett	Breckinridge
Barnard	Biaggi	Brodhead
Baucus	Bingham	Brooks
Bauman	Blanchard	Brown, Ohio

Broyhill	Harris	Poage
Burton, John	Hefner	Preyer
Burton, Phillip	Holtzman	Quayle
Butler	Hubbard	Railsback
Byron	Hughes	Rangel
Carr	Ichord	Regula
Carter	Jacobs	Reuss
Cavanaugh	Jeffords	Rhodes
Chappell	Jones, N.C.	Robinson
Chisholm	Jordan	Rose
Cleveland	Kastenmeier	Rosenthal
Cohen	Kazen	Rudd
Collins, Tex.	Kelly	Runnels
Conyers	Kemp	Ruppe
Cornell	Kildee	Russo
Cotter	Kindness	Ryan
Coughlin	Kostmayer	Santini
D'Amours	LaFalce	Satterfield
Daniel, Dan	Latta	Sawyer
Daniel, R. W.	Leach	Schulze
de la Garza	Long, Md.	Seiberling
Delaney	Lujan	Sharp
Dellums	McCloskey	Simon
Derrick	McDade	Slack
Devine	McDonald	Smith, Iowa
Dornan	Maguire	Smith, Nebr.
Downey	Mahon	Snyder
Drinan	Mann	Solarz
Early	Marlenee	Spellman
Eckhardt	Martin	Stark
Edgar	Mattox	Steed
Edwards, Okla.	Mazzoli	Steers
Emery	Meyner	Stockman
English	Michel	Stokes
Evans, Colo.	Miller, Ohio	Studds
Fenwick	Minish	Stump
Findley	Mitchell, Md.	Symms
Fish	Mitchell, N.Y.	Thone
Flippo	Moffett	Traxler
Flood	Mollohan	Trible
Ford, Tenn.	Moore	Tucker
Forsythe	Moss	Vanik
Fountain	Mottl	Vento
Fowler	Myers, John	Volkmer
Garcia	Natcher	Watkins
Gephardt	Neal	Waxman
Giaimo	Nedzi	Weaver
Gilman	Nolan	Weiss
Gonzalez	Oakar	Whalen
Goodling	Oberstar	Whitehurst
Gore	Obey	Whitley
Gradison	Ottinger	Whitten
Gudger	Panetta	Wylie
Guyer	Pattison	Yates
Hamilton	Pease	Young, Fla.
Hansen	Perkins	Zablocki
Harkin	Pickle	
Harrington	Pike	

NOT VOTING—40

Ammerman	Flowers	Miller, Calif.
Applegate	Foley	Pressler
Armstrong	Frenzel	Quie
Beard, Tenn.	Gibbons	Richmond
Breaux	Huckaby	Sarasin
Broomfield	Johnson, Colo.	Steiger
Brown, Calif.	Kasten	Teague
Burke, Calif.	Krueger	Treen
Burke, Fla.	Lehman	Tsongas
Caputo	McCormack	Wiggins
Clawson, Del	McHugh	Young, Alaska
Cochran	McKinney	Young, Tex.
Diggs	Metcalfe	
Fary	Mikva	

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Richmond against.

Mr. Ammerman for, with Mr. Steiger against.

Until further notice:

Mr. McCormack with Mr. Broomfield.

Mr. Foley with Mr. Frenzel.

Mr. Breaux with Mr. Caputo.

Mrs. Burke of California with Mr. Kasten.

Mr. McHugh with Mr. McKinney.

Mr. Metcalfe with Mr. Cochran of Mississippi.

Mr. Teague with Mr. Burke of Florida.

Mr. Krueger with Mr. Del Clawson.

Mr. Mikva with Mr. Beard of Tennessee.

Mr. Brown of California with Mr. Flowers.

Mr. Applegate with Mr. Gibbons.

Mr. Diggs with Mr. Treen.

Mr. Huckaby with Mr. Young of Alaska.

Mr. Lehman with Mr. Quie.

Mr. Miller of California with Mr. Pressler.

Mr. Tsongas with Mr. Sarasin.

Mr. Johnson of California with Mr. Wiggins.

Messrs. EVANS of Colorado, GILMAN, and RAILSBACK changed their vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as recorded.

The SPEAKER pro tempore. The question is on the resolution.

Mr. SNYDER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 236, nays 155, not voting 41, as follows:

[Roll No. 769]

YEAS—236

Abdnor	Fowler	Myers, Michael
Addabbo	Fraser	Nix
Akaka	Frey	Nowak
Alexander	Fuqua	Oberstar
Anderson, Calif.	Gammage	Patten
Andrews, N.C.	Gaydos	Patterson
Andrews, N. Dak.	Giaimo	Pattison
Annunzio	Gilman	Pepper
Applegate	Ginn	Pettis
Archer	Glickman	Pressler
Ashley	Goldwater	Price
Aspin	Green	Pritchard
AuCoin	Hagedorn	Quillen
Badham	Hall	Rahall
Bafalis	Hammer-schmidt	Railsback
Barnard	Hannaford	Reuss
Baucus	Harris	Rhodes
Beard, R.I.	Harsha	Rinaldo
Bevill	Hawkins	Risenhoover
Boland	Heftel	Roberts
Bolling	Hightower	Rodino
Bonker	Hillis	Roe
Bowen	Holland	Rogers
Brademas	Hollenbeck	Roncalio
Brinkley	Holt	Rooney
Brooks	Horton	Rose
Brown, Mich.	Howard	Rostenkowski
Brown, Ohio	Hyde	Rousselot
Buchanan	Ireland	Roybal
Burgener	Jenkins	Ruppe
Burke, Mass.	Jenrette	Sawyer
Burleson, Tex.	Johnson, Calif.	Scheuer
Burlison, Mo.	Jones, Okla.	Schroeder
Burton, Phillip	Jones, Tenn.	Sebelius
Butler	Krebs	Shipley
Carney	LaFalce	Shuster
Carter	Lagomarsino	Sikes
Cederberg	Le Fante	Sisk
Chappell	Lederer	Skelton
Chisholm	Leggett	Skubitz
Clausen, Don H.	Lent	Slack
Clay	Levitas	Smith, Iowa
Coleman	Livingston	Smith, Nebr.
Collins, Ill.	Lloyd, Calif.	Spence
Conable	Lloyd, Tenn.	St Germain
Conte	Long, La.	Staggers
Corcoran	Lott	Stangeland
Corman	Luken	Stanton
Cornwell	Lundine	Stratton
Crane	McClory	Taylor
Danielson	McCloskey	Thompson
Davis	McDade	Thone
Dent	McEwen	Thornton
Derwinski	McFall	Tucker
Dicks	McKay	Udall
Diggs	Madigan	Ullman
Dingell	Mahon	Van Deerlin
Dodd	Mann	Vander Jagt
Dornan	Markey	Waggonner
Duncan, Tenn.	Marks	Walgren
Eckhardt	Marlenee	Walker
Edwards, Ala.	Marriott	Walsh
Edwards, Calif.	Mathis	Wampler
Eilberg	Mattox	Watkins
Erlenborn	Meeds	White
Ertel	Michel	Whitten
Evans, Del.	Mikulski	Wilson, Bob
Evans, Ga.	Milford	Wilson, C. H.
Evans, Ind.	Mineta	Wilson, Tex.
Fascell	Mitchell, N.Y.	Winn
Findley	Moakley	Wirth
Fisher	Montgomery	Wolff
Fithian	Moorhead, Calif.	Wright
Flood	Moorhead, Pa.	Wydler
Florio	Murphy, Ill.	Yatron
Flynt	Murphy, N.Y.	Young, Fla.
Foley	Murphy, Pa.	Young, Mo.
Ford, Mich.	Murtha	Zablocki
	Myers, Gary	Zeferetti

NAYS—155

Anderson, Ill.	Gephardt	Nolan
Ashbrook	Gonzalez	Oakar
Baldus	Goodling	Obey
Barman	Gore	Ottinger
Bedell	Gradison	Panetta
Bellenson	Grassley	Pease
Benjamin	Gudger	Perkins
Bennett	Guyer	Pickle
Biaggi	Hamilton	Pike
Bingham	Hanley	Poage
Blanchard	Hansen	Preyer
Blouin	Harkin	Pursell
Bonior	Harrington	Quayle
Breckinridge	Heckler	Rangel
Brodhead	Hefner	Regula
Broyhill	Holtzman	Robinson
Burton, John	Hubbard	Rosenthal
Byron	Hughes	Rudd
Carr	Ichord	Runnels
Cavanaugh	Jacobs	Russo
Cleveland	Jeffords	Ryan
Cohen	Jones, N.C.	Santini
Collins, Tex.	Jordan	Satterfield
Conyers	Kastenmeier	Schulze
Cornell	Kazen	Seiberling
Cotter	Kelly	Sharp
Coughlin	Kemp	Simon
Cunningham	Kildee	Snyder
D'Amours	Kindness	Solarz
Daniel, Dan	Kostmayer	Spellman
Daniel, R. W.	Latta	Stark
de la Garza	Leach	Steed
Delaney	Long, Md.	Steers
Dellums	Lujan	Stockman
Derrick	McDonald	Stokes
Devine	Maguire	Studds
Dickinson	Martin	Stump
Downey	Mazzoli	Symms
Drinan	Meyner	Traxler
Early	Miller, Ohio	Trible
Edgar	Minish	Vanik
Edwards, Okla.	Mitchell, Md.	Vento
Emery	Moffett	Volkmer
English	Mollohan	Waxman
Evans, Colo.	Moore	Weaver
Fenwick	Moss	Weiss
Fish	Mottl	Whalen
Flippo	Myers, John	Whitehurst
Ford, Tenn.	Natcher	Whitley
Forsythe	Neal	Wylie
Fountain	Nedzi	Yates
Garcia	Nichols	

NOT VOTING—41

Ambro	Fary	Mikva
Ammerman	Flowers	Miller, Calif.
Armstrong	Frenzel	O'Brien
Beard, Tenn.	Gibbons	Quie
Boggs	Huckaby	Richmond
Breaux	Johnson, Colo.	Sarasin
Broomfield	Kasten	Steiger
Brown, Calif.	Keys	Teague
Burke, Calif.	Krueger	Treen
Burke, Fla.	Lehman	Tsongas
Caputo	McCormack	Wiggins
Clawson, Del	McHugh	Young, Alaska
Cochran	McKinney	Young, Tex.
Duncan, Oreg.	Metcalfe	

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Richmond against.

Mr. McCormack for, with Mr. Steiger against.

Until further notice:

Mr. Ambro with Mr. Frenzel.

Mrs. Boggs with Mr. Kasten.

Mr. Breaux with Mr. Young of Alaska.

Mr. Ammerman with Mr. Beard of Tennessee.

Mrs. Burke of California with Mr. Caputo.

Mr. Huckaby with Mr. McKinney.

Mr. Krueger with Mr. Cochran of Mississippi.

Ms. Keys with Mr. Broomfield.

Mr. McHugh with Mr. Wiggins.

Mr. Metcalfe with Mr. Treen.

Mr. Teague with Mr. Del Clawson.

Mr. Tsongas with Mr. Burke of Florida.

Mr. Miller of California with Mr. Sarasin.

Mr. Mikva with Mr. O'Brien.

Mr. Flowers with Mr. Quie.

Mr. Lehman with Mr. Duncan of Oregon.

Mr. Brown of California with Mr. Gibbons.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON S. 3025, FEDERAL ELECTION COMMISSION APPROPRIATIONS, FISCAL YEAR 1979

Mr. THOMPSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3025) to authorize appropriations for the Federal Election Commission for fiscal year 1979, with a House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey? The Chair hears none, and, without objection, appoints the following conferees: Messrs. THOMPSON, NEDZI, GAYDOS, DAVIS, JOHN L. BURTON, DICKINSON, and FRENZEL.

There was no objection.

AIRPORT AND AIRCRAFT NOISE REDUCTION ACT

Mr. ANDERSON of California. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8729) to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ANDERSON).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 8729, with Mr. STUDDS in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from California (Mr. ANDERSON) will be recognized for 30 minutes; the gentleman from Ohio (Mr. HARSHA) will be recognized for 30 minutes; the gentleman from Oregon (Mr. ULLMAN) will be recognized for 30 minutes; and the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, nearly 7 million Americans and nearly a million acres of valuable land are impacted by aircraft noise levels deemed normally unacceptable for new residential construction loan guarantees by the Department of Housing and Urban Development.

Last year the President's Council on Wage and Price Stability estimated that aircraft noise was costing property owners near airports some $3.25 billion annually in decreased property value. This certainly has an erosive effect on local tax bases around the country.

Our Nation's airports are spending millions of dollars to acquire noise impacted land. According to a November 1977 survey of its membership, the Airport Operators Council International reports that some $229 million has been spent on land acquisition over the last 7 years by U.S. airports. In addition, airports currently have pending against them lawsuits with potential liability which can be measured in the hundreds of millions of dollars. Citizen opposition to aircraft noise has delayed and in many cases prevented needed airport development and expansion and the installation of facilities to improve safety, airport capacity, and efficient utilization of airspace.

During our lengthy hearing process on this bill, it became abundantly clear that comprehensive legislation is required to deal with the noise problem—and it is needed now.

New housing developments and other land uses incompatible with normal airport operations are springing up near our airports as we debate today. Furthermore, the clock is running on compliance with FAA noise standards under which nearly three-fourths of the entire air carrier fleet will have to be replaced or modified with a schedule beginning in 1981 and ending January 1, 1985.

The Federal effort to date has focused on reduction of noise at the source—the aircraft. Based on legislation passed in 1968 and 1972 FAA has, in my view, gone a long way toward carrying out the expressed congressional mandate to quiet noise at the source. However, source control, we are finding, has technological limits, and no amount of quieting existing aircraft will totally solve the problem.

Although making aircraft quieter will shrink the areas of greatest impact signifiicantly, whether through retrofitting or replacing noisy aircraft or a combination of both, incentives must be provided to airport operators and surrounding communities to get on with the long-neglected need to make land surrounding airports more compatible with airport operations. To continue placing sole emphasis on source noise control, to continue talking just about making aircraft quieter, without making significant progress on the land use side will have the effect, in my opinion, of unwisely raising the public's expectations for noise relief. Although we must continue efforts at source noise control unabated, let us face it—normal airport operations involve noise because aircraft do and will continue to make noise—we must start with the assumption that some unacceptable noise will continue in areas immediately adjacent to airports and work from there.

The efforts of the House Public Works and Transportation and Ways and Means Committees have resulted in the preparation of comprehensive legislation which will expedite the introduction of quieter aircraft into the fleet and will provide incentives to airport operators and the communities they serve to get on with the much too long delayed need to make the land surrounding our airports more compatible with airport operations.

Under the voluntary provisions of title I, planning grants will be available to airports for developing noise impact maps showing present and projected cumulative noise impacts in areas surrounding the airport as well as present and projected land uses within the impacted areas.

Another part of the planning process will be the development of noise compatibility programs which will consist of those actions which the airport propietor and surrounding communities will voluntarily take, for example, zoning, land purchase, soundproofing, and airport operations, to lessen the adverse effects of aircraft noise and to prohibit the introduction of noncompatible land uses in the impacted areas.

Programs developed from this planning process are submitted to the Secretary of Transportation for approval if the proprietor wants to receive funding to implement the program. The Secretary may approve a program if the measures set forth in the program provide for safe flight, do not create an undue burden on interstate or foreign commerce, and are consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible uses.

Title I, in my opinion, is an essential ingredient of the House effort. As I stated earlier, source noise control alone is insufficient to solve the noise problem. Title I provides an incentive from the Federal Government for local communities to solve essentially local problems, but these incentives do not in any way take from local government the traditional role of making land use decisions.

A unique feature of title I is that money is made available to carry out the programs which have been approved by the Secretary of Transportation. These 80 percent Federal share grants will be available not only to airport operators but to communities surrounding airports which have been identified as being in the noise impact zone. Money is made available for these grants in title I, including $165 million for fiscal year 1979 and $250 million for fiscal year 1980.

Title II increases the current authorized funding level for airport development grants for fiscal year 1979 by $260 million; for fiscal year 1980 the current authorized level is raised by $310 million. Significant indicators of national airport system need have identified problem areas requiring review of the funding adequacy of the ADAP program in advance of the anticipated congressional consideration in 1980 of the future of the airport and airway trust fund. For example, the revised national airport system plan calls for some $10.6 billion in development over the next decade, with three-fourths of that forecast to be needed in the next 5 years. Also a number of sponsors of smaller airports have communicated their view that current funding levels do not provide sufficient funds

distributed at the discretion of the Secretary. Most, if not all, of the new money contained in title II will go into the Secretary's discretionary fund.

Title III, which is a financing mechanism to assist air carriers to meet congressionally mandated noise rules adopted by FAA, is based on several assumptions, including the following:

First. We can no longer delay providing meaningful relief on the noise issue.

Second. We cannot count on the regulatory process to provide sufficient returns so that air carriers can meet these deadlines on their own.

Third. A Federal program is required to assure that existing aircraft noise standards are met by 1985.

Fourth. The industry and the users of the air transportation system, and not the general taxpayer, should bear the cost of meeting the noise standards.

Fifth. Incentives should be sufficient to make it attractive for carriers to replace noisy aircraft with new technology aircraft which are less noisy and more energy-efficient but not to encourage the purchase of excess capacity.

Sixth. Industry should be able to meet the noise standards in an efficient and economical manner with Government involvement in management decisions kept to a minimum.

The bill reported by the Ways and Means Committee, H.R. 11986, which will be offered as an amendment in the form of a substitute for sections 301–304 of H.R. 8729, is consistent with these principles. I am sure Chairman ULLMAN will give a more detailed explanation of these provisions.

Mr. Chairman, in summary, this is very important legislation, and it is essential that this comprehensive noise bill be passed by the Congress now. This legislation is important to the Nation from the standpoint of the environment, energy conservation, community tax bases, balance of payments, and jobs. We can accomplish a great deal without raising the cost of transportation, without increasing the burden on the taxpayer, without jeopardizing the airport and airway development program, and without adversely affecting the safety of our airways.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON of California. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I support H R. 8729, the Airport and Aircraft Noise Reduction Act, because it is an effective legislative response to the horrendous problem of airport noise that plagues so many people in my district.

The Sixth District of Illinois contains most of O'Hare Airport, the busiest in the world, and hence the noisiest. On a summer evening, with the windows open, all conversations must cease and the dishes start to rattle while the jumbo jets pass overhead either to land or take off from O'Hare.

We in the Chicago metropolitan area need a second major airport, but regretfully this is many years away. Meanwhile Congress has literally twiddled its thumbs as aircraft noise keeps building its deafening crescendo.

The Federal Government has mandated certain noise levels be reached by the aircraft before 1985. This has the effect of ruling out approximately 1,600 aircraft—two-thirds of the airline fleet.

It has been the conclusion of the several committees of the House which have jurisdiction, that a special financing mechanism is needed for the airlines to comply.

Of course, there are conflicting views on this, but from my own perspective I am willing to accept the consensus of these committees and especially so if we can provide incentive and impetus to the airlines to purchase new-generation aircraft. These new technology planes are both quieter and more fuel-efficient.

This legislation is fair to the general taxpayer because it is the airline user that ultimately bears these costs, not everyone else. I think it is important to note that the estimated tax credit receipts from this bill will be $2.4 billion over the 5-year term whereas the added cost to retrofit, reengine and replace aircraft to comply with the noise regulations is estimated to be about $8 billion.

There are some sections which trouble me. I understand amendments will be offered to retain for individuals the right to seek redress in the courts. To do otherwise seems to me a blatant denial of due process of law. In addition, I look forward to supporting an amendment to substitute the Administrator of the Environmental Protection Agency for the Secretary of Transportation in determining what levels of noise are "normally compatible" with varying land uses as required by section 102.

I am convinced, however, that this legislation will bring significant noise relief to the people of my district as well as to millions of other Americans similarly situated. I also feel this bill has an inflation-fighting potential by encouraging the prompt purchase of productive, economical and fuel-efficient aircraft. The saving of millions of gallons of jet fuel as well as the creation of thousands of aircraft-manufacturing jobs throughout the United States are also important benefits.

The technological leadership the United States maintains in the aircraft industry must not be lost as it has been in television, electronics and other areas. I believe this bill will be helpful in this regard. I hope the airlines will purchase the new generation aircraft rather than spending money on costly and ineffectual acoustical retrofitting which adds weight to the aircraft and increases fuel consumption without any perceptible advantage.

I know some object to this legislation as creating a dangerous precedent. I do not believe this is true because the airline industry is unique in that they have had a retroactive noise reduction mandate they must comply with by 1985. No other industry has a comparable situation. This unique problem calls for a unique solution which I think this bill presents.

Two-thirds of the estimated $8 billion cost for complying with the governmental mandate will be at airline expense with the other one-third being paid by a noise pollution tax on passengers and shippers. The general taxpayer will pay nothing.

For these and other reasons, Mr. Chairman, I will support this legislation and hope a majority of my colleagues will likewise.

Mr. ANDERSON of California. Mr. Chairman, I thank the gentleman for his contribution.

Mr. HARSHA. Mr. Chairman, I yield myself such time as I may consume.

cost to retrofit, reengine and replace

Mr. Chairman, I am very pleased to join the gentleman from California (Mr. ANDERSON) in urging our colleagues to support H.R. 8729, the Airport and Aircraft Noise Reduction Act. He has ably expressed the views of most members of the Committee on Public Works and Transportation regarding this legislation—and I fully associate myself with his remarks. Inasmuch as Chairman ANDERSON has recounted the major provisions of the bill, I see no need to repeat them at this time. However, I do wish to note that he and I have worked together for 2 years to perfect this package—and I hope my colleagues will agree that we have succeeded in formulating effective, reasonable proposals to meet a most vexing national problem.

As Chairman ANDERSON has stated, we approach the aircraft noise problem along two tracks. First, in title I, we seek to encourage voluntary action by airport operators and local communities to control noncompatible land uses in areas surrounding airports—including authorization of grants from the airport and airway trust fund to assist with the implementation of local noise control programs. Second, in title III, we seek to assist air carriers in meeting the costs of complying with federally mandated noise standards—a burden which the carriers had no reason to anticipate when they purchased their aircraft.

Mr. Chairman, H.R. 8729 was reported by our committee with the bipartisan support of an overwhelming majority of our members. I would state that most of the concerns expressed by our minority members with respect to major provisions of earlier versions of this legislation were resolved to our satisfaction during the Aviation Subcommittee and full committee markups. In this regard, we sought successfully to eliminate the mandatory land-use provisions which appeared initially in title I. Participation by airport operators and local communities in the title I program to reduce noncompatible land uses in areas surrounding airports now is entirely voluntary—as it should be. In addition, we succeeded in including provisions first, to preclude the use of noise impact maps and lists of compatible land uses as evidence in litigation, and second, to preclude lawsuits for recovery of damages resulting from airport noise unless such noise increases

significantly after acquisition of the property where injury is alleged to have occurred. Both of these provisions are essential if we are to avoid a proliferation of frivolous airport noise litigation.

The Committee on Ways and Means has revised certain sections of our title III in the companion bill they reported, H.R. 11986, by placing the financing mechanism in a tax context rather than by imposing a surcharge, as in our bill. Conceptually, the Ways and Means version retains the essential elements of the financing mechanism contained in our version—that the carriers may obtain assistance for specified percentages of the cost of the three compliance options available to them: retrofit, reengine, or replacement. Chairman JOHNSON has stated that the Public Works Committee favors substitution of the language of H.R. 11986 for most of our title III, and I fully support him in this regard. However, we do wish to retain our section 305 foreign aircraft compliance provision, as well as our section 306 compliance waiver authority provision—neither of which were included in H.R. 11986. The issues addressed in these sections are clearly within the jurisdiction of the Public Works and Transportation Committee, and our committee wishes to retain these provisions in the final bill. Therefore, as specified in the rule, H.R. 11986 will be considered as a substitute only for sections 301–304 of H.R. 8729. Sections 305 and 306 will remain in H.R. 8729—to be redesignated as new title IV of this bill.

Mr. Chairman, I can and do express my belief that H.R. 8729 is good legislation which is carefully tailored to remedy a serious national problem. It is worthy of prompt and favorable consideration by this House—and I urge my colleagues to accord it their overwhelming approval.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. HARSHA. I will be glad to yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, under title II of the bill as it has been presented to us, provides $80 million for general aviation airports and 25 percent of that is to be used by the Secretary at his discretion.

Mr. HARSHA. Mr. Chairman, is the gentleman addressing title II?

Mr. SKUBITZ. I am speaking of title II. The report indicates that for general aviation the present level is $80 million.

If I understand the legislation, three-fourths of that amount will go to the States and one-fourth is for the Secretary to be used at his own discretion.

Mr. HARSHA. Mr. Chairman, before I proceed, I would like to inquire of the Chair, how much time have I consumed.

The CHAIRMAN. The gentleman from Ohio (Mr. HARSHA) has consumed 7 minutes.

Mr. HARSHA. Mr. Chairman, I will ask the gentleman from Kansas (Mr. SKUBITZ) to cooperate with me. I have many requests for time, and I am sure we will use all our time on general debate. If the gentleman from Kansas (Mr. SKUBITZ) will address me during the 5-minute rule, I will be glad to answer, but I do not want to deprive the other Members of their opportunity to speak during general debate.

Mr. SKUBITZ. Mr. Chairman, I will be very happy to do that, but I would like to say one thing——

Mr. HARSHA. Mr. Chairman, I will not yield any further. If the gentleman does not wish to cooperate, I will not yield any further.

The CHAIRMAN. The gentleman from Ohio (Mr. HARSHA) has consumed 7½ minutes.

Mr. ANDERSON of California. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. JOHNSON), the chairman of the full committee.

Mr. RYAN. Mr. Chairman, will the gentleman yield?

Mr. JOHNSON of California. I yield to the gentleman from California.

● Mr. RYAN. Mr. Chairman, frankly, I do not know how to vote on this piece of legislation. I make this confession not out of ignorance but out of frustration because I have been studying this bill, especially title III, and the impact it will have on the Nation for many months. I have listened to irate homeowners in my district who are impacted by the noise pollution at San Francisco International which also happens to be in my district. I have listened to presidents of a number of the airlines whose companies will benefit from this legislation. I have talked with airport operators, airline machinists, and on and on. The more I have dug into this issue the less certain I am of what action will best serve the interests of the Nation as a whole.

Citizens in this country have demanded quieter airspace and rightly so. While the resident in a metropolitan area with an airport nearby may not have the luxury of waking up to chirping birds, he or she does have the right to be awakened by the mild hum of an alarm clock and not the trembling roar of an airplane overhead. In response, the FAA promulgated regulations establishing noise reduction standards (FAR 36).

On the other side of the coin, the airlines have criticized the retroactivity of the "fleet noise rule" promulgated in 1976 which requires all aircraft to meet FAR 36 standards. As an American industry the airlines are in a unique position. Because they are regulated, they cannot raise their rates to cover the costs of meeting Federal standards like the auto industry, for instance. Thus, we invented the Airport and Aircraft Noise Reduction Act.

At first blush, the bill seems fair enough. But on further study, I became concerned about establishing a precedent to which other industries will point to in seeking Federal funds to meet Federal standards in future Congresses.

Opponents have labeled the bill a subsidy to the airlines paid for by the American people. The industry has countered that the payor is the airline user, not the taxpayer.

I can go on but I will not. I do want to address one issue in the bill which concerns me gravely. We are perpetrating a mighty fraud on the American people by permitting retrofitting as a corrective measure under this bill which the airlines may avail themselves of and which the Government will pay 90 percent of the cost. By every recognized authority, retrofitting the DC-9's and 707's will provide a negligible reduction in noise—2 to 3 decibels. One airline informed me that it would cost about $15 million to retrofit their fleet—at a cost to the Government under this bill, of $13 million, the airline picking up the other $2 million. Why should the airline user-taxpayer pay $13 million for nothing. I have found no one who has disagreed with me. I have been told that it was placed in the legislation for political reasons. The public demanded it. Well—I disagree. The public does not want to pay a billion dollars, the estimated amount of money that would be expended for retrofitting, and receive absolutely nothing in return.●

Mr. MURPHY of New York. Mr. Chairman, will the distinguished committee chairman yield?

Mr. JOHNSON of California. Yes, I yield to the gentleman from New York (Mr. MURPHY).

Mr. MURPHY of New York. Mr. Chairman, I would like to commend the chairman of the full committee and the chairman of the subcommittee for bringing out a piece of legislation that will resolve one of the enormous competitive disadvantages that the American carriers face.

Mr. Chairman, I rise in support of H.R. 8720 H.R. 11986.

There is concern that if we pass this legislation with the financial provision for assistance to the airlines that they will be getting special treatment. Allow me to put such an assertion in perspective. Public utilities which have been required to spend money for environmental requirements are monopolies and public utility commissions have very promptly adjusted their charges upward to cover the environmental expense. The commissions in many cases have actually assessed—an environmental surcharge—against customers. The present airline situation is not comparable.

Airlines are not monopolies, yet their rates are regulated—domestic carriers by the Civil Aeronautics Board and international carriers by the CAB and by foreign countries to which they fly. Being regulated there is absolutely no assurance that the carriers could, in fact, adjust their prices to pay the expenses of noise reduction. If one major carrier determined not to seek a fare increase to cover the cost of complying with the regulation, perhaps because that carrier had few planes to be replaced or retrofitted, its competitors could not increase fares. If they did, they would face an enormous competitive disadvantage.

In order to remain price competitive with foreign airlines our U.S. international carriers would need the approval

of dozens of foreign governments to obtain a fare increase. A single major foreign government could decide not to implement a fare increase for its carrier, thus forcing our carriers not to raise fares if they wished to stay competitive. A general fare increase obviously made little sense to the committees which have reviewed this legislation. They wanted to be sure that carriers comply by 1985, so do I, and this legislation is the only equitable way for the airline user to pay a portion of the costs and the carriers the remainder.

Mr. JOHNSON of California. Mr. Chairman, as chairman of the Committee on Public Works and Transportation, I take this time to commend the chairman of our subcommittee and the ranking minority member of our subcommittee, as well as the gentleman from Ohio (Mr. HARSHA), who has worked hard and long on this piece of legislation.

Mr. Chairman, I rise in support of H.R. 8729, the Airport and Aircraft Noise Reduction Act.

This comprehensive measure is designed to provide relief to the 7 to 8 million persons who are daily bombarded by excessive aircraft noise. It does this by addressing both facets of the problem—the source of the noise and the receiver—and by involving all levels of government in a coordinated effort.

First, Mr. Chairman, there is no question that aircraft noise is today a serious problem that can only get worse, unless we take affirmative action. Some 7 to 8 million persons reside in areas which are heavily impacted to the extent that neither the Federal Housing and Urban Development Department nor the Veterans' Administration will guarantee home loans. Also, the President's Council on Wage and Price Stability estimates that property values decrease approximately $3.25 billion annually because of aircraft noise.

This problem cannot be solved solely by Federal action. It must be a coordinated effort of Federal, State, and local governments, all working in concert. It must entail a program to encourage better use of the areas surrounding our Nation's airports; it must involve better planning, and it must encourage the replacement of the noisy aircraft with a new generation of quiet aircraft. The bill before us today, H.R. 8729, does this, and is a first step toward providing relief to the millions of persons who receive, not the benefits of air travel, but the side effects—noise.

Title I of this proposal would require the Federal Government to develop a noise standard which would be used by the State and local governments to develop better plans—so that they can identify areas which should be used for purposes compatible with aircraft noise, and so that they—the State and local governments—can discourage further development of housing, schools, and hospitals in areas which are or will be bombarded with aircraft noise.

Then, using this standard, local and State governments may develop plans which are designed to reduce the number of persons who reside in heavily impacted areas, and prevent the introduction of even more people into these areas. This may be accomplished in a number of ways: the purchase of land, the introduction of acoustical buffers, an alteration of the flight path—these are only a few.

Once a local plan, fitted to that particular situation, has been approved by the local authorities, it could be submitted to the Administrator of the FAA who, in turn, would approve it unless it: First, involved unsafe practices, second, burdened interstate commerce, or third, did not actually accomplish the goal of reducing the number of persons in the area heavily impacted by noise.

If the plan met this criteria, and were approved, the local agency would then be eligible for Federal moneys to implement the plan.

This Federal, State, and local effort is designed to address the people on the ground—the receiver of the noise. But this is only part of the problem. The other part of the problem, and thus, part of the solution, involves the source of the noise—the aircraft.

Title III—the Ullman substitute—would encourage the replacement of the noisy aircraft with a new generation of quiet aircraft, by taxing the user.

Under this proposal, the user's funds would be used to reduce the noise either through retrofit, reengine, or replacement of the noisy aircraft. No general taxpayer moneys would be involved.

Retrofit is the least expensive option, and if all the carriers elect to retrofit the noisy planes, then less than $1 billion would be used over a 5-year period for this purpose. But retrofit is like applying a band-aid where a tourniquet is needed. Retrofit reduces the noise only slightly, but it adds weight to the aircraft and thus causes the use of more fuel. Retrofit is therefore the least attractive alternative from an energy standpoint and from a noise-reduction standpoint.

Thus, if we are serious about solving the noise problem, we would encourage the replacement of the noisy aircraft with quiet, fuel-efficient aircraft—exactly as proposed under the Ullman substitute.

The Ullman substitute is a sensible solution to a very complicated problem. It has been indorsed by the Carter administration. It was originally suggested by the Ford administration. It has been approved by the Ways and Means Committee.

Mr. Chairman, H.R. 8729, the Airport and Aircraft Noise Reduction Act, is a responsible answer to the very complicated aircraft noise problem. This is comprehensive legislation which is necessary to provide relief to the million of persons who are heavily impacted by aircraft noise. It deserves the support of this body.

Mr. HARSHA. Mr. Chairman, I yield 1 minute to the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

Mr. HAMMERSCHMIDT. Mr. Chairman, I join my colleagues who support the pending bill in urging its enactment as the most effective available means of coming to grips with the serious aircraft noise problem. As a measure of the severity of this problem, FAA estimates that upward of 6 to 8 million of our citizens are subjected to significant aircraft noise with more than 600,000 severely impacted.

I wonder how many of us realize what it means to be "severly impacted" by aircraft noise? Well, it can mean aircraft at little more than treetop height every 30 seconds. This kind of din can be accurately described as "hell on Earth." There is no way a human being can function normally under such conditions. It is evident that some concerted action at the Federal level—such as the provisions contained in the legislation now before us—is required.

Mr. Chairman, H.R. 8729 approaches the problem of aircraft noise in two ways. In title I, the bill attempts to induce airport operators and officials of adjacent communities to eliminate noncompatible land uses in areas surrounding airports. It does not mandate action at the local level; rather, it is a voluntary program. It seeks to encourage meaningful remedies by providing grants from the airport and airways trust fund to assist in the implementation of approved noise compatibility programs. This procedure will not solve the aircraft noise problem overnight, but it is a start. It gives promise of providing significant results in due course.

In title III of the bill, a funding mechanism is provided to assist the air carriers in meeting the costs of complying with FAA-mandated noise standards. It should be emphasized that these standards and mandatory compliance dates were established after the carriers purchased their aircraft. They had no reason to anticipate the imposition of such requirements at the time of purchase. But now they are faced with the task of bringing their aircraft into compliance by dates certain. Because it was the Federal Government which placed this burden on the carriers, it seems only fair and equitable that the Federal Government take appropriate action to assist the carriers in these circumstances. Title III of the bill, as perfected by the Committee on Ways and Means, seeks to discharge this obligation by providing tax credit or refund assistance to the carriers up to the total amount of the 2-percent excise tax which each collects over a 5-year period. Reasonable percentages for each option available to them—whether retrofit, reengine, or replacement—are set forth, and it is these percentages which determine carrier entitlements under the program. It seems evident to me that substantial alleviation of aircraft source noise will result from enactment of title III—and it has the added prospective benefit of accelerating the development of new aircraft types employing the latest technology, notably in the areas of acoustics and fuel efficiency.

Mr. Chairman, it should be emphasized that the stakes involved in this legislation go far beyond the discomfort experienced by those who reside in areas surrounding airports. Not only is the growth of air

transportation threatened because of noise restriction placed on the use of airports, as well as airport development, but the economic health of our aircraft manufacturing industry is involved. The new technology aircraft now being produced abroad represents the first significant challenge to our dominance in the field—and we must act promptly to strengthen our domestic industry. Title III of H.R. 8729 provides an important stimulus to our U.S. aircraft manufacturing firms by facilitating accelerated purchase of U.S. produced new-technology aircraft. We need not elaborate on what all this can mean in terms of jobs, international balance of payments; in a word, our economic well-being.

Mr. Chairman, it is for these reasons that I support the enactment of H.R 8729. It is good legislation which responds to an urgent public need. This subject has occupied the attention of the Aviation Subcommittee, of which I am a member, for the better part of 2 years. We considered each provision of the bill in great depth—and I can attest to the fact that all of the arguments against it were weighed with unusual care and deliberation.

Mr. Chairman, I urge my colleagues to join in supporting this important legislation.

Mr. HARSHA. Mr. Chairman, I yield 15 seconds to the gentleman from South Dakota (Mr. ABDNOR).

Mr. ABDNOR. Mr. Chairman, I rise in support of H.R. 8729, the Airport and Aircraft Noise Reduction Act.

The Aviation Subcommittee of the Public Works and Transportation Committee, of which I am a member, has deliberated this issue for more than 2 years. It has produced legislation worthy of the support of the entire Congress.

Under this act, airports will be able to establish noise compatibility planning programs designed to address noise-impacted areas surrounding major airports. Also, H.R. 8729 increases the airport development assistance program (ADAP) authorization levels by $260 million for fiscal year 1979 and $310 million for fiscal year 1980. Much of this money will be funneled into general aviation airports servicing the small, rural areas throughout the country.

Title III of this legislation will be replaced by H.R. 11986 as approved by the Ways and Means Committee. Retroactive environmental noise regulations imposed by the Federal Aviation Administration on 1,600 certificated aircraft will be complied with in a productive, energy-conserving manner.

Airline fares today are less than last year's fares despite double-digit inflation. Congress has an opportunity to keep the cost of air travel at bargain rates.

This legislation has received widespread support among the administration, the Department of Transportation, and members of the Committees on Public Works and Transportation and Ways and Means. It deserves your support, and I urge its adoption.

Mr. HARSHA. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. DON H. CLAUSEN).

Mr. DON H. CLAUSEN. Mr. Chairman, I rise in strong support of the legislation before us.

Aircraft noise is a very serious national problem which threatens the viability and future growth of our airports and our entire air transportation system. But, the most compelling issue involved is whether or not we will ultimately have an environmentally acceptable airport system throughout the country.

I want to commend our very able chairman, the gentleman from California, "BIZ" JOHNSON, the gentleman from Califorinia, GLENN ANDERSON, the gentleman from Ohio, BILL HARSHA, the gentleman from Kentucky, GENE SNYDER, and all of the members of the committees that have been principally involved in advancing the legislation up to this point. They have been successful in focusing attention on the problems that are very real as relates to those problems of the people living near the Nation's airports and to those communities where property values and planning activities are being affected.

The bill is not the final answer to this problem but it is a move in the right direction, and for this reason I intend to vote for it.

This legislation is of particular importance to my State of California, the No. 1 aviation State in the Nation with the largest number of airports and a substantial aerospace industry. As one who has worked in the field of aviation for most of my life and as a charter member of the California Association of Airport Executives, I have seen firsthand the need for quieter and cleaner aircraft. In my opinion, we have an obligation to the people of this country to provide the most environmentally acceptable aircraft as well as an airport system that is technically feasible. This legislation provides the incentives needed to advance this type of new engine technology.

Throughout the hearing and markup sessions, one recurring problem was the difficulty in comparing levels of aircraft noise due to the absence of any single measurement for noise. I am pleased to note that the bill requires the Secretary of Transportation to establish such a system.

The bill also addresses the need for programs to assist airports and surrounding communities in developing and carrying out programs to reduce existing noncompatible land uses and to prevent future noncompatible land uses. This is particularly critical in the side and approach zone areas, as well as the climb corridor area following takeoff in and around the airports of the country.

Mr. HARSHA alluded to the fact that it places on a voluntary basis, and is in fact under the control of the State and local governments, as it applies to the ultimate power and authority under condemnation.

The primary purpose of title I is to establish a grant-in-aid program to allow our communities to exercise this power. I want to emphasize that this bill does not in any way give the Department of Transportation additional regulatory powers beyond those found in the Federal Aviation Act and the Noise Control Act of 1972. This is vital to me, and I know it to be a very important principle to many of my colleagues.

With respect to the grant program, I support the retention of the 90-percent Federal share for development projects. This provision is particularly important to our smaller community airports which would be unable to proceed with improvements for lack of necessary funding.

The bill also authorizes increased funding levels for airport development for fiscal years 1979 and 1980. This new funding is necessary in light of the current backlog of projects and will also greatly assist our smaller airports by giving them greater access to available discretionary funds.

There has been a good deal of criticism over the system of surcharges established in the bill. It has been called a windfall to aircraft owners. But, I for one, believe that the contribution this approach will make to our overall economy, in terms of improving our balance of payments and preserving jobs in the aircraft industry, in addition to the enhanced environmental considerations, far outweighs any negative factors.

This legislation represents a comprehensive program to enable us to meet these objectives that I have outlined. I have consistently advocated a national airport system plan and believe that the only way we can achieve a satisfactory air transportation system is to have an environmentally acceptable system of airports, along with the most advanced technology to provide these quieter and cleaner engines.

This legislation will not increase the cost of air transportation to the consumer, or increase the burden on the taxpayer. I want to commend the Ways and Means Committee for the special effort that they made to see that this was accomplished. It will permit us to maintain the highest level of safety possible, while conserving energy, protecting our community tax bases, our balance of payments as well as American jobs.

Mr. Chairman, I urge my colleagues to support this legislation.

Mr. ANDERSON of California. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. MILFORD).

Mr. MILFORD. Mr. Chairman, the noise bill now before us promotes progress through new technology advances.

This Nation's air transportation system has achieved its world preeminence through the application of new technology to improve the safety, efficiency, and reliability of air travel.

Radar technology, used to locate targets for World War II bombing missions, was applied by the airlines to detect and avoid thunderstorms in flight. The technology that detected and identified enemy aircraft during the Battle of Britain, now forms the basis for our Nation's air traffic control system—a system that identifies and provides safe

separation for the airlines, the military and general aviation.

Each new aircraft type that is introduced into the airline fleet becomes an opportunity for bringing new technological advances into the air transportation system. The most outstanding recent example is the introduction of the jet airliner in 1958, bringing new dimensions of speed, efficiency, reliability and economy that have made airlines the largest rapid transit system of all.

In 1970, the introduction of large wide-body aircraft saw new advances in noise reduction, fuel efficiency, productivity and passenger comfort—largely as the result of major advances in jet engine technology. These advances were achieved over a period of years, but it took the wide-body jet to put them at the services of the airlines and the traveling public.

We face a similar situation today: The jet engine technology that was responsible for the success of the large wide-bodies can now be used to power aircraft that will replace the older, smaller aircraft that are based on technology more than 20 years old. Refinements in aerodynamic design will bring improved performance, contributing to greater efficiency and economy of operation.

Mr. Chairman, this legislation makes it possible to speed the introduction of quieter, more fuel-efficient aircraft into the airline fleet. It will encourage the use of the latest advances in airframe and engine technology to continue giving the traveling public safe, reliable and economical transportation by air. A vote to support this legislation is a vote to use this Nation's technological resources to retain our leadership in commercial aviation.

The CHAIRMAN. The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Chairman. I yield myself 5 minutes.

Mr. Chairman, let us be sure we fully understand the parliamentary procedure here. The Ways and Means Committee is working with the Public Works Committee in developing this bill, as we usually do in trust fund-related projects. The Public Works Committee asked the Ways and Means Committee to produce an amendment that would provide the revenue to accommodate the program that they had laid out and recommended. They of course did not have the authority to repeal the excise tax, and so the excise taxes supporting the trust fund would be fully in place and there is an uncommitted surplus of about $2 billion in that fund now.

Mr. Chairman, the Rules Committee has made in order as an amendment to title III of H.R. 8729 the substance of H.R. 11986, which was reported by the Committee on Ways and Means. H.R. 11986 makes changes to the excise taxes on air transportation and provides refunds or credits on certain of these taxes for expenditures by airlines to modify or replace existing noisy aircraft.

Under present law, an 8-percent excise tax is generally imposed upon the fares of airline passengers on domestic flights and flights to or from nearby points in Canada and Mexico. Air passengers departing the United States, whose fares are not entirely taxable under the 8-percent tax, are subject to a $3 per person international departure tax. In addition, a 5-percent tax is imposed upon domestic air freight transportation charges. The proceeds of these taxes are presently deposited in the airport and airway trust fund from which appropriations are made for certain aviation-related purposes. These taxes are scheduled to decline or terminate on July 1, 1980.

The Ways and Means Committee amendment will reduce the present 8-percent passenger and 5-percent freight taxes by 2 percentage points, and also suspend the present $3 international departure tax, for a 5-year period from October 1, 1978, through September 30, 1983.

In place of these reduced or suspended taxes, there will be 2 percent passenger and freight taxes which use the same tax base as under present law. As a result, the total tax for domestic passenger and freight shippers will remain unchanged. In addition, there will be imposed international passenger departure taxes of $2 where the air fare is less than $100 and $10 where the fare is $100 or more. There will also be a 5-percent tax on charges for international air freight which departs the United States. The new taxes will be imposed upon the commercial air carriers and will be in effect for a 5-year period until October 1, 1983. At the end of this period the present level of excise taxes would be restored, if they remain generally in effect on that date and the proceeds are being deposited in the trust fund pursuant to congressional review in 1980 of the airport and airway program, as the trust fund expires in 1980 under current law.

Those domestic air carriers who operate large subsonic jet aircraft which do not comply with the FAA's 1976 noise regulations may obtain refunds or credits for the new excise taxes they have paid. They will be entitled to refunds or credits for certain percentages of costs they have incurred, including progress payments, after January 24, 1977, and before January 1, 1985, to bring their noncomplying noisy aircraft into compliance with FAA noise regulations by one of three methods: First, retrofitting, which is adding sound absorbing materials to the engines; second, replacing the engines; or third, replacing the noncomplying aircraft. These percentages are 50 or 90 percent for retrofitting—depending on the number of an aircraft's engines—75 percent for replacement engines, and either 40 percent or 25 percent for a replacement aircraft—depending upon the noise level of the replacement aircraft. The Secretary of Transportation is required to certify that the costs have been incurred for qualified property before a refund or credit will be allowed.

These refunds or credits will be treated as taxable income when received by the air carriers. Rules are also provided to generally prevent the claiming of multiple credits for the same noncomplying aircraft and to require recapture of credits or refunds where a replacement aircraft is sold or leased within 5 years of being placed in service.

Foreign air carriers will be entitled to obtain lump-sum refunds of their payments of these taxes for the entire costs incurred to bring into compliance their aircraft which operate in the United States. These carriers must first certify that their U.S. operating fleet does, and will in the future, comply with the 1976 noise standards.

Excess tax collections over the amounts of refunds or credits will be deposited into the airport and airway trust fund. In addition, the provision amends the trust fund statute to permit expenditures for noise compatibility programs and planning grants from the trust fund—as included in other titles of H.R. 8729.

The provision also requires the FAA to issue an annual report of unsafe airport and airway operating conditions before any expenditures can be made from the trust fund for the following fiscal year.

The Treasury Department supports this bill. Mr. Chairman, I urge the adoption of this amendment to H.R. 8729.

Mr. CONABLE. Mr. Chairman, I yield myself 5 minutes.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I rise in strong support of the bill.

Mr. Chairman, I rise in strong support of H.R. 8729 and H.R. 11986. The modest assistance proposed in these measures is legitimate and completely warranted.

In 1976, the FAA told the U.S. aviation industry that two out of three of the aircraft in service—which had previously been certified by the Federal Government as airworthy—would have to be modified or replaced at sizable expense. This is a unique situation. Never before has the Federal Government required part of our transportation sector to comply retroactively with new requirements. It only makes sense to address this unique problem with some sort of assistance to buffer what could otherwise be an excessive shock to an industry which has just come out of a prolonged slump.

This legislation serves that purpose, and it does so in a reasonable manner. The shifted tax revenues will defray partially the costs which those retroactive regulations will involve, but the individual airlines will still have to pick up a considerable share of the tab. And the tax that will be used to cover the costs will fall not on the population in general but on the people who use our aviation network. And even their tax burden will not be increased; it will merely be reallocated to serve another important goal.

The legislation before us will not be inflationary. In fact, if you give some careful thought to the nature of our aviation industry, I think you will agree that this package will benefit our economy. One of the major economic problems is our sizable balance of trade deficit which hit another new high when the latest Commerce Department figures were released. That deficit has seriously eroded the standing of the dollar and fueled inflation.

Our aviation industry can, and, in fact, has consistently helped boost the positive side of our balance of trade. Last year, the industry generated a $7 billion trade surplus. And that was not an exception. Since 1960, aviation has consistently provided net surpluses to the economy—even in the years when the industry was suffering at home. The Commerce Department is predicting even more for this year, an $8.5 billion contribution to the balance of trade.

Aviation exports are high technology and high value. Traditionally we have had a technological advantage over other nations, and we should be using that advantage to address a variety of problems, including our trade deficit. And it only makes sense to promote exports where returns are considerable and can, therefore, make a significant contribution to alleviating our deficit. In short, it is only prudent to do what we can and should to keep this industry on track.

It was not long ago that our domestic aviation industry was in a real slump. Admittedly, things have shaped up and our airlines have begun to be profitable again. But we need to be careful to provide a reasonable environment for this industry, and that is particularly important to keep in mind in that major airline deregulation legislation—which I intend to support—is on our schedule later this week. The equitable relief provided in this legislation should preserve the kind of environment needed to keep this industry on track in spite of the changes in that environment.

These measures are reasonable and economically sound. I urge each of my colleagues to lend them your support.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I rise in strong support of this legislation and commend the committees for presenting this legislation.

Mr. Chairman, the goal of this legislation to require noise reduction devices on existing aircraft is consistent with a broad public interest. The noise pollution standards which are imposed appear to be appropriate and the airlines are willing to meet these standards even on their existing aircraft which will require essential retrofitting with noise abatement equipment or materials.

The allocation of a 2-percent reduction in the airline ticket tax—to the aircraft companies for the purpose of aircraft noise abatement is an equitable and practical means of giving effect to the goals set by this legislation.

I commend the committee on bringing to the House this fair and equitable legislation. I am pleased to support the bill.

Mr. RISENHOOVER. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Oklahoma.

Mr. RISENHOOVER. Mr. Chairman, I commend the Committee on Ways and Means and the Committee on Public Works and Transportation for this good legislation which will save fuel as well as cut down on noise.

Mr. Chairman, the legislation now before us, H.R. 8729, was designed primarily to reduce jet noise at the nation's airports. But it is also crucially important that enactment of this noise reduction legislation will help save millions of gallons of precious petroleum based jet fuel.

The airlines deserve good marks for fuel conservation with existing fleets. They have been flying more people and using less fuel doing it. The airlines used 400 million fewer gallons of fuel last year than in 1973, when the fuel crunch began. And they carried 38 million more passengers last year than 4 years earlier and also more cargo. That is a fuel conservation record few other industries can match.

But will it be possible to keep up this good record? The answer is "yes" because the new technology airplanes are big fuel savers. At the same time they quiet their noise, they also quench their thirst.

The airplane and engine manufacturers and the airlines say that these new aircraft will be 25 percent more fuel efficient than the older jet airplanes. We need to start saving this fuel as soon as we can.

The biggest savings will come from replacing the DC–8's and the 707's, the older four-engine jets. These airplanes are the most thirsty ones, and they also make the most noise. The amount of fuel you can save by getting rid of them and buying the new jet airplanes is measured in hundreds of millions of gallons a year.

The main purpose of the legislation we are considering today is to encourage the replacement of these older airplanes. It does this by a constructive approach where both the airlines and the people who use the airlines pay the cost. I commend the Public Works and Transportation Committee and the Ways and Means Committee in producing the thoughtful legislation they have brought before us.

I am happy to join in supporting this legislation, because while I want to cut back on aircraft noise, I also want to save fuel, and this legislation will do both.

Mr. HEFTEL. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Hawaii.

Mr. HEFTEL. Mr. Chairman, I rise in very strong support of the legislation

Mr. CONABLE. Mr. Chairman, I rise with modest enthusiasm to support this legislation. My enthusiasm is modest, quite frankly, because I do not like the precedent. I think it is regrettable that we put ourselves in a position where we have to do something of this sort to achieve our noise quality goals, but I have come to the reluctant conclusion that we are not likely to meet our goals with respect to noisy aircraft unless we provide this type of financing.

The chairman has already described the basic provisions of the bill, and I do not want to repeat them in great detail. Suffice to say that very generally, the present 8-percent excise tax on the fares of airline passengers on domestic flights would be reduced, as would the 5-percent freight tax. Other taxes would be similarly modified. In place of these reduced or suspended taxes there would be a 2-percent passenger and freight tax.

Mr. Chairman, domestic air carriers who operate large subsonic jet aircraft which fail to comply with the 1976 FAA noise regulations may obtain refunds or credits for the excise taxes they have paid. They will be entitled to refunds or credits for a certain percentage of the costs they have incurred to bring their noncomplying aircraft into compliance with the FAA noise regulations. This is, I think, the best way to deal with a situation which should, perhaps, have been handled differently at the outset.

Perhaps, for instance, the costly noise standards should be prospective only and should not apply to existing aircraft. That was not the decision of the Congress. At this point this type of financing appears to be a preferable course, given the decisions already made.

Mr. VANIK. Mr. Chairman, will the gentleman yield on that point?

Mr. CONABLE. Yes, I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, one of the problems with the bill, as it was reported out by the Committee on Ways and Means, and which is now locked in by a closed rule, is the fact that the bill was retroactive. Also, it includes a rebate. Now we are going to rebate money to airlines which last year bought aircraft without any regard to the noise question. They went ahead and bought the planes because they wanted to save fuel. Now we are going to take Treasury revenues and pay them back.

How can the gentleman justify that?

Mr. CONABLE. We are going to have the same problem when we face up to the insulation credit. Anybody who had the good sense to insulate right in the first place is not going to get that credit unless we make it retroactive to some degree. It is a difficulty which is inherent in this type of legislation.

Mr. VANIK. If the gentleman will yield further, Mr. Chairman, with respect to the insulation credit, when we talked about it, we said we would put it in effect. However, when some of the airlines spent these tremendous sums of money to buy aircraft last year, they had no idea that this year there would be a big Christmas tree gift out of the Air Safety Trust

Fund, out of which they would get a rebate.

I might point out that Delta Airlines, for example, spent a tremendous amount of money last year in buying airplanes without even thinking or without even believing that this would be a refundable item. Now they are going to get money for a decision they made without any thought of a refund.

Mr. CONABLE. Mr. Chairman, the gentleman is eloquent. He is a great performer in expressing outrage. However, let me say to him, nonetheless, that the effect of his argument is that we should be giving a tough time to those airlines which went ahead and tried to do what they were supposed to do on their own, but that we should give the full benefit to those laggards who have not moved ahead.

Is that the kind of incentive we want to build into our legislative enactments?

The CHAIRMAN. The time of the gentleman has expired.

Mr. CONABLE. I yield myself 7 additional minutes.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Ohio.

Mr. VANIK. I thank the gentleman for yielding.

Let me ask this question. The gentleman makes a very valid point about that. Most of the aircraft we are talking about here—400 or 500 planes—are 18 years old. They were depreciated in 10 years. The airline got all their money back through taxes. Why should not we now go back to 1975 or even 1972? Is there any opportunity under the closed rule to take care of someone else that may have bought a less noisy aircraft sometime before the retroactive date set in this bill?

Mr. CONABLE. I would urge the gentleman to move to reconsider the rule, if that is what he wants.

Mr. VANIK. We cannot do that.

Mr. CONABLE. So why are we talking about it?

Mr. DON H. CLAUSEN. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from California.

Mr. DON H. CLAUSEN. I thank the gentleman for yielding.

Just to put this in perspective. there is precedent in law advanced by the Committee on Public Works and Transportation having to do with the "clean water" program. We have a reimbursement provision for those States who have accelerated and/or advanced their water quality programs. This is already on the books and apparently is working and satisfies our clean water pollution abatement objectives.

Mr. CONABLE. I thank the gentleman for his contribution.

Through numerous regulatory and administrative actions the Congress and the FAA have imposed noise reduction standards which essentially require various airlines to expand great sums of money to bring their equipment into compliance. The difficulties associated with these provisions were brought to their present level in 1977 when the FAA amended its regulations essentially decreasing the permissible noise standards for new aircraft designs and also prescribing more stringent noise limits than applied under the 1969 regulations. Many airlines need financial relief for these costly noise regulations.

During our committee's consideration of this legislation the Secretary of Transportation testified that aircraft noise is a serious problem at many of the major airports throughout the United States and it is a significant annoyance to millions of people currently residing near these airports.

I have an airport in my district. I wholeheartedly agree, and so do many of the people who live in that vicinity. This was demonstrated to all who watched the U.S. Open Tennis Tournament over the weekend; noisy aircraft were quite obvious to all who attended or watched on television.

This bill represents an attempt both to reduce noise and to finance Government regulation by a tax on users of the service involved.

When this bill was originally before the Ways and Means Committee it contained a troubling concept. The Ways and Means Committee was concerned about the tax policy implications of the original proposal. That is one of the reasons why we had the bill because there were tax policy implications in it. We decided to change it. We have rectified the problem and under the bill the surcharges would be considered gross income, and so are not a gift to the airlines but are subject to taxation.

One way or another, Mr. Chairman, the people who use airlines are going to have to pay for this retrofitting imposed by the regulators and the Congress. They can do it in different ways. We could reduce the tax and then permit them to raise their fares in order to offset it, but the manner in which we have decided to move instead insures that any additional money coming in through such device will have to be used for retrofitting so that it will be applied, not to the higher salaries that the Chairman of the Committee on Rules deplores, but to retrofitting those aircraft. I do not know how else we can be sure additional airline revenue is committed to our national noise standard goals.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Kentucky.

Mr. SNYDER. I thank the gentleman for yielding.

The gentleman said "are not a gift to the airlines." The gentleman has made reference to the 1969 certification date, but any aircraft certified since 1969 already meets the 1985 requirement. Any aircraft that has been built since December 1973, already meets the FAR 36 requirements. The compliance date for FAR 36 is January 1, 1985. They are depreciating the aircraft in 9½ years. It will be 11 years since the last one was built that does not comply when the new regulation goes into effect, so if they have already written off the entire plane for tax purposes, then it strikes me it is not irresponsible to call it a gift for something already written off.

Mr. CONABLE. The gentleman makes a good point. There are a lot of things about this bill that are troubling. The question is, Are we going to move ahead to try to do something to get the aircraft standards met? And that is the issue.

Mr. SCHEUER. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from New York.

Mr. SCHEUER. I thank the gentleman for yielding.

The fact that an air carrier has now depreciated a plane that they bought a decade or more ago has absolutely no relationship to the cost of replacing that plane at today's current prices, which are two to five times as high.

Mr. CONABLE. Of course, the plane may still be eminently usable.

Mr. SCHEUER. Mr. Chairman, if the gentleman will yield further, the plane undoubtedly has many more years of useful life, but from the point of view of the air carrier, it is in effect being confiscated without compensation. This is what its all about.

Mr. CONABLE. Mr. Chairman, let me finish my statement, I say to my dear friends, and then we will have at it again.

Mr. Chairman, during our hearings, the Treasury Department maintained that payments by a customer to a seller which do not give the buyer a claim to more than present or future services are gross income to the seller when received are entered as taxable income after the costs of doing business have been deducted. The committee bill adopts that position.

I think it was a considerable improvement from the tax point of view and that is why I have come to the reluctant conclusion that this bill is more good than bad.

Mr. Chairman, in light of the situation in which we find ourselves, we should adopt this bill. It will go a long way to deal with both the noise-related and the governmentally created problems facing our airline system.

The airline industry is not comparable to the auto industry, and I do not see the parallel or the precedent to apply there, or in the area of industrial safety.

I would like, however, in closing my own remarks to say that I think this is a classic example of what a mistake it is to build up a great big trust fund for such things as airport safety and not to adjust the tax if a surplus is being created. That surplus becomes a wonderful target for wonderful ideas to spend it in some other area. This is one of those conditions.

The CHAIRMAN. The time of the gentleman from New York (Mr. CONABLE) has again expired.

Mr. CONABLE. Mr. Chairman, I yield myself 1 additional minute.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I would say to my distinguished colleague from New York, whom I admire so much, what a wonderful opportunity the gentleman has to take the leadership to cut the tax by 2 percent to help fight inflation and simply let the benefits flow to the consumer.

Mr. CONABLE. The benefits will not flow to the consumer, if it is going to cost roughly this much to retrofit the airlines generally. One way or another it will have to be paid for by the consumer.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I want to point out to both the gentlemen from New York that any aircraft that will have its useful life run out before January, 1985, will be eligible for replacement cost under this bill. The testimony was that the useful life is 20 years. If the 20 years useful life expire prior to January 1, 1985, they are still eligible for a 40 percent replacement subsidy.

Mr. CONABLE. That does not mean the airplane is not used or usable for a long time. I point out that our B–52's were made in the 1950's and we are still using them. I regret that, but they are still being used.

Mr. ULLMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Connecticut (Mr. COTTER).

Mr. COTTER Mr. Chairman, I would like to state my opposition to title III of the Airport and Aircraft Noise Reduction Act (H.R. 8729). It sets a dangerous precedent for the utilization of tax revenues. And in a year when the airlines have shown record profits, it is an unnecessary giveaway.

I was 1 of the 11 dissenting voices when the bill was voted on in the House Ways and Means Committee.

Perhaps some of my colleagues were surprised by my opposition since Pratt & Whitney Aircraft, one of the largest manufacturers of commercial airplanes, is located in my district.

But I am confident that my position on this legislation is in the best interest of all Connecticut taxpayers, including those employed by Pratt & Whitney.

My objection to this bill is based on both philosophical and practical grounds. I share with many others a concern over the precedent it would undoubtedly set. This is the first instance where the Federal Government would levy a tax on consumers to pay for the cost of meeting environmental regulations for private industries.

It is easy to imagine who would be next in line for this approach. The auto manufacturers, for example, might easily argue for a similar application of the highway trust fund to comply with the Clean Air Act. The water companies, attempting to meet clean water regulations, and the steel businesses, trying to control industrial wastes, no doubt would follow suit.

If the Government wants to go the route of collecting taxes to fund the cost of compliance with regulatory standards, then the Government should have a direct role in the allocation of these moneys through a grant and/or loan program. The bill we are discussing, has no such provision. Instead, it gives the airlines free reign in the distribution of $3.3 billion within their industry. And that is a dangerous precedent, indeed.

Moreover, this legislation could actually work against the best interests of the U.S. aircraft industries, which employ so many American men and women. The sudden availability of this gargantuan fund might act as an incentive for U.S. airlines to buy foreign products. I am referring to the French-built A–300 airbuses, which were recently purchased by Eastern, and the Lockheed L–1011's—built with Rolls Royce engines—which were bought by Pan Am.

Already, there are reports that the French made aircraft is competing unfairly with American made products. The Congress has not told the airlines to buy American. But when an industry asks Congress to collect a tax, so it can purchase less noisy aircraft or aircraft engines, it seems to me we should at least assure taxpayers that these funds will be used to buy equipment in free and open competition.

Contrary to the hue and cry we heard from the airline spokesmen in the past, deregulation of that industry has significantly increased air travel and, of course, company profits. It is my belief that a further reduction in ticket prices, through a $3.3 billion tax cut, would continue to stimulate sales as the special fares have done.

The airlines could then rightfully turn to their own coffers to finance the cost of much needed noise control equipment—at no cost to the consumer, the taxpayer or the Government.

Mr. ULLMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. HANNAFORD).

Mr. HANNAFORD. Mr. Chairman, I rise in strong support for this legislation.

I commend the committee and the chairman, the distinguished gentleman from California, Mr. BIZZ JOHNSON, and my distinguished friend from California, Mr. GLENN ANDERSON, for their splendid work. I think it is a fine solution to a difficult problem.

It has been argued that the airlines do not deserve the benefits of any financing program because the airplanes which were condemned would by 1985 be obsolete anyway and would have to be disposed of.

The airplanes will be obsolete alright because the Government has made them so when it decided that they could not be operated in U.S airspace after January 1, 1985. But they would not have been obsolete otherwise. Out of a total fleet of 2,150 large jet aircraft, about 1,600 did not comply with the noise standards at the time the noise rule was issued. Of these 1,600, 950 would still be in service after 1985 in the absence of the noise rule. These are the conclusions of the Federal Aviation Administration in a study made to determine whether condemnation of the noisy airplanes was necessary. If the FAA had found that the airplanes would be obsolete in 1985, it would not have been necessary for the Department of Transportation to issue an order of condemnation effective on that date.

Of that total of 950, 346 are the older four-engine transports. In the absence of the condemnation order these would remain in service in 1985 and thereafter for a number of years.

Mr. ULLMAN. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. VANIK).

The Government concluded, as have the two committees of the House that have studied this matter that it is essential to eliminate these noisy aircraft from the fleet. If we are to act retroactively and destroy this investment in the interest of noise reduction, we must make some provision for the replacement of the aircraft so condemned.

It can also be pointed out that the large four-engine transports are now being disposed of in large numbers. This should not be surprising since the Government has in effect told the airlines that the airplanes must go and the sooner the better.

Mr. Chairman, this is must legislation if we are to meet the requirements of noise abatement law and protect our cities from environmental degradation. I urge a yes vote.

Mr. VANIK. Mr. Chairman, I would like to take this time to ask a few questions of my colleagues.

In the Committee on Ways and Means I have gone through the entire transcript of the testimony, and I do not recall any supporting evidence whatsoever that would justify that we ought to pay 40 percent of the cost of a new aircraft in order to get the noise problem taken care of. As a matter of fact, the CAB said all the industry needed was $950 million. That is less than $1 billion.

I want to point this out to my colleagues: What we are talking about today is not $3 billion. With the increased use of the airlines, the revenues are going up, and we are now talking about giving away $4 billion.

What a struggle we had just a few days ago when we doubled the tax bill and we talked about a revenue loss of $1 billion to do something about capital gains. Now here is $4 billion going to one industry. This ought to be a private bill. It should be returned to its authors under the rules of the House, and it would have been if the closed rule that was adopted a few minutes ago had been defeated.

I would like to ask my colleagues on either side of the aisle who are on the Committee on Ways and Means what

they can recall as to what justification there should be for fixing 40 percent as the right figure to use as the Government's or as the people's contribution—to the industry to retrofit and cut back on the noise.

Mr. MIKVA. Mr. Chairman, will the gentleman yield?

Mr. VANIK. Mr. Chairman, I want to say something else before I yield to my colleague, the gentleman from Illinois. I will yield to him, but I want to say this first: That 400 or 500 of these planes are 18 years old. The airlines have gotten all their money back in 10 years depreciation and they are going to sell these airplanes to airlines in other countries where transportation is more important than noise. They are probably going to sell these used planes for about what they paid for them in the first place.

Now, tell me, what makes it 40 percent? Why not 30 or 70 percent? Or why not buy the airplanes entirely out of the Federal Treasury?

Mr. MIKVA. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Illinois.

Mr. MIKVA. Mr. Chairman, the gentleman from Ohio (Mr. VANIK) is making a very compelling argument for the passengers as against the airlines, but they are the ones who pay this tax.

Why does the gentleman not talk to us about the people on the ground who are now paying for it? That is what the argument is about. The gentleman has set up a juxtaposition between the airlines and the passengers, and he favors the passengers.

I would agree with the gentleman, but as between the people who are flying and the people on the ground, I favor the people on the ground, and so should the gentleman. What has the gentleman done for them?

Why does the gentleman not recognize that they are the ones who are paying for all our fancy flying, even if we fly coach?

Mr. VANIK. Mr. Chairman, I want to say to my colleagues that with respect to the people who choose to live near airports, I think we ought to take care of them. I think we ought to take care of them anyway.

As we retire these 18-year-old planes, every new replacement plane that is bought today and that has been bought since 1972, as indicated by my distinguished colleague, the gentleman from Kentucky, complies with the pollution standards.

If they are flying those old wrecks into our airports, we had better do something about it because they are a hazard. They are 18 years old, they are dangerous, and they should not be flying near our airports.

Mr. STEIGER. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Wisconsin.

Mr. STEIGER. Mr. Chairman, I appreciate very much the distinguished gentleman from Ohio's yielding.

First, may I say that I concur in the gentleman's remarks and with the analysis he has made of this bill. I regret exceedingly that the gentleman from Illinois and I missed the vote which was relatively close on the previous question, although it was not quite as close on the rule.

There is one other factor besides that issue that the gentleman from Ohio (Mr. VANIK) raises which concerns me about this bill, and that is the precedent we are setting, because, when we go the route of tacking on this legislation, then clearly we ought to recognize we will have others following, whether they are railroads or potentially automobiles or whoever else may come in and say, "This is our chance to test these governmentally mandated standards."

Mr. Chairman, that is not a good idea, and I commend the gentleman from Ohio (Mr. VANIK) for his statement.

Mr. VANIK. Mr. Chairman, I thank the gentleman.

Mr. Chairman, I did not get an answer to my question, but I would also like to ask my colleagues how they can justify giving an investment credit on the gift. We are going to give United Airlines $600 million. There is no audit, no nothing, just a flow of money from the Treasury, and they are going to get an investment credit of 10 or 11 percent, $60 to $61 million dollars.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. VANIK) has expired.

Mr. VANIK. Mr. Chairman, I will ask for an additional 5 minutes.

Mr. ULLMAN. Mr. Chairman, I can only yield 2 additional minutes to the gentleman.

Mr. VANIK. Mr. Chairman, I have some important questions I would like to raise.

Mr. ULLMAN. Mr. Chairman, the gentleman from Ohio (Mr. VANIK) will have to come back and get time in the second part of the debate.

The CHAIRMAN. The gentleman from Ohio (Mr. VANIK) is recognized for 2 additional minutes.

Mr. VANIK. Mr. Chairman, how can we justify giving an investment credit? We considered a motion in the Committee on Ways and Means, and the committee voted to give the airlines an investment credit. They are going to get a gift, and then on top of that they are going to get a 10-percent credit.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I will be happy to yield to the gentleman from New York.

Mr. CONABLE. The gentleman does acknowledge that this is not a gift, in the legal sense of the word, that they have to include it in income?

Mr. VANIK. Let me address the gentleman's question. I have not read a corporate report in the last 5 years where more than two or three have paid income taxes. They are like the banks. They are exempt.

Mr. CONABLE. If this bill fails, the banks will own all of the airlines?

Mr. VANIK. They now acquire most airline tax writeoffs. They work out their system so that they are tax exempt. Airlines fly substantially tax free. They are the most coddled industry on the American scene, and I think it ought to stop. They are mature, they are strong now, their traffic is up, their profits are up, their stocks have doubled in value. This is not the time to be rescuing this industry. We may need it for someone else down the line.

One other thing. Will my colleagues tell me how much of the $4 billion will go abroad and affect our balance of payments? Under this bill, British Overseas Airlines participates, Swiss Airlines participates, Scandinavian Airlines, even Lot the Polish airlines, and the Russian airlines, all get some of this money. One billion dollars is going to be going abroad. What is that going to do our balance of payments? What kind of things have they done that is comparable to this kind of American taxpayer giveaway?

Mr. CONSTABLE. The gentleman does acknowledge that these airlines have to pay our ticket tax?

Mr. VANIK. The passengers pay the tax.

Mr. CONABLE. And this is coming out of the ticket tax, in effect.

Mr. VANIK. What do they give us for the lines we fly over foreign areas? They do not give us anything. We are giving them almost $1 billion which is going to effect our balance of payments. It is a terrible bill. I hope that section will be stricken.

Mr. CONABLE. Mr. Chairman, I reserve the balance of my time at this point.

Mr. SNYDER. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. Chairman, no one denies that this is controversial legislation. When we first got involved in noise legislation in the Public Works and Transportation Committee, I was less than supportive. Title I of our bill was totally unacceptable to me at that time, because I felt it mandated Federal land use planning. I did not care for aircraft retrofitting, because I felt then, and I feel now, that retrofit technology is a Band-Aid approach to noise control. And last, I did not care for the funding formula.

But I feel differently today. Because of people like my colleague, GLENN ANDERSON, who listen to all sides and who will work hard to fashion a reasonable compromise, our committee came up with a good bill that deserves your support.

One of my dearest friends calls this the "Bank Relief Act." Other colleagues have sent around "Dear Colleague" letters describing the legislation as a "handout" and a "welfare plan." But nowhere do I see anyone coming up with a constructive—I repeat, "constructive," alternative. What are we to do, shut down the Nation's airlines? Right now, we have about 1,600 jet aircraft which apparently fail to meet Federal noise standards.

I happen to think that both the manufacturers and the airlines have been trying to do something about noise con-

trol long before the Government stepped in and established arbitrary noise standards. The introduction of the big fan engines 8 or 9 years ago has utilized technology for noise suppression. The modern jet engine such as the JT9D is much quieter than earlier jet engines, and new engine technology continues in this direction. In addition, flight operating procedures undertaken by some airlines, notably Northwest and Delta, have significantly reduced noise.

But now the airlines are faced with an arbitrary noise standard. They have got to comply unless we direct the Secretary of Transportation to change the 1981–85 conformity dates, and I doubt seriously if this will be done.

As far as the argument that the airlines are making plenty of money and can pay for the Government standard is concerned, I say nonsense. Profits are up right now, but that means nothing in the airline business. See what another round of OPEC oil increases will do, or heaven forbid, the current CAB deregulation process falls apart. Where does this leave the airlines?

And where is the equity here? The aircraft we are talking about were certified by the Government to meet all Federal requirements when they were built. Now, ex post facto, we tell them, "Lookit, we've got this noise standard, and it's retroactive, so cough up the dough and get in compliance." As far as I am concerned this is a denial of due process.

I would not list the benefits of this legislation—I did this in a Dear Colleague like a lot of people in this Chamber. I just want us to ask ourselves, are we being fair and equitable by imposing a $8 billion noise scheme on the airlines without trying to assist them in achieving a mechanism to pay for it?

Mr. Chairman, there are basically three ways that we can address ourselves to the noise problem.

First, we can take care of land and land use in and around airports.

Second of all, we can address ourselves to the operating procedures of the airlines.

Third, we can address ourselves to the source of the noise, the airplanes themselves.

We are in this legislation addressing ourselves to two factors which are controllable—land use and the source.

Many of us had problems with the land use section of the bill when we orginally began consideration. But I would point out that, after a great deal of deliberation and discussion, the provisions in the bill on land use became voluntary and not mandatory. And there is seed money to be authorized and utilized by local governments in doing the proper kind of planning that is needed for compatible land use around airports.

I think most of us find this section of the bill acceptable, and it certainly does address itself to one ingredient in controlling noise; that is, the proper use of land in and around airports.

In addition, the bill, through title III, does address itself to the source, the airplanes themselves.

Obviously, this is the most controversial aspect of the bill, and it was after great deliberation and discussion that we finally came up with the wording in the title diverting a portion of the user tax toward the noise problem.

This bill has been criticized because it appears to be a departure from the norm. Perhaps it does set a precedent. But I would suggest, we should have thought about this when we were passing the Clean Air Act, clean water and other types of environmental bills, when we authorized agencies of the Government to establish and promulgate very strict rules.

Currently now we have some 1,600 aircraft which fail to meet the noise standards and there are, in fact, over 6 million people and some 900,000 acres of land which are impacted by noise. The President's Council on Wage and Price Stability estimated that it is costing taxpayers right now some $4 billion per year, and in fact many of our major hub cities around the Nation are faced with billions of dollars in lawsuits. Here in Congress we have had numerous letters in our offices and complaints, one after another; in fact, I have listened to numerous complaints from Members of Congress about what we should be doing to clean up our aircraft and make aviation compatible with the new environmental ethic.

I suggest that we do have a solution, and it is before us today. I would also suggest that manufacturers have been trying to do something about this noise long before the Government ever decided to get into it. But, in order to do something to meet this so-called arbitrary noise standard, the aviation community is going to have to attract major amounts of capital to meet the accelerated time frame imposed by the 1981–85 noise standards.

In order to pay for these new aircraft, re-engine, or retrofit, the airline industry is going to have to attract capital. In order to attract capital, they are going to have to have profits, but I would point out to the Members that the 10-year average corporate rate of return for the airline industry is only about 5.8 percent, even when income from all sources is included. This is far below the 12-percent standard for airline operations established by the CAB. If we look at the performance of the airline industry over the past 5 years, from 1973 to 1977, in comparison to all U.S industry, we find a far from adequate performance. The air transport industry rate of equity was only about 8 percent, compared to 13 percent for industry as a whole.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. SNYDER. Mr. Chairman, on behalf of the gentleman from Pennsylvania (Mr. SHUSTER) I yield 1 additional minute to the gentleman from California.

Mr. GOLDWATER. The return on capital was only 4.3 percent, compared to 9.7 percent for industry as a whole, and the profit margin was only 2 percent compared to 4 percent for U.S. industry as a whole.

I suggest that we do ourselves all a benefit by voting for this legislation so that aviation and the airline business can be a good neighbor and an asset to communities throughout the Nation.

Mr. ANDERSON of California. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. MINETA).

Mr. MINETA. Mr. Chairman, I rise in support of the Airport and Aircraft Noise Reduction Act and urge that my colleagues give thoughtful attention to the need for this legislation and urge that they vote to support it.

It has been 10 years since Congress first addressed the problem of aviation noise by passing legislation granting noise abatement authority to the Federal Aviation Administration. During that 10-year period, we have witnessed a considerable magnification of aviation noise—not a reduction. Through this legislation we are acknowledging the crippling effect which aviation noise has had on the continued development of the commercial aviation network. This legislation is a recognition that aviation noise has limited construction and expansion of airports, severely affected the aviation system of this Nation, and has seriously reduced the quality of life of millions of Americans.

The Federal Aviation Administration developed noise standards for airplanes which will reduce source noise. In December 1976 FAA issued the fleet-noise rule stating that by 1985 all U.S. registered civil jet aircraft that do not meet the federally mandated standards must be retired from the fleet or modified to meet those levels.

The legislation before us today will finally allow Congress to make good on a 10-year-old promise of relief from aviation noise—we will enable a reduction of noise at its source and provide considerable and meaningful relief to the millions of Americans who must suffer day in and day out from the effects of this noise pollution on the ground.

Although most of the attention to this bill has focused on title III, the user-tax assistance provided to the airlines, I would hope that my colleagues do not lose sight of the very considerable benefits which it will provide to assist airports and surrounding communities to reduce existing noncompatible land uses and prevent future noncompatible land uses around airports. Although the 1976 amendment to the Airport and Airway Development Act authorized aid to airport sponsors to purchase land to create noise buffer zones, to purchase noise suppressing equipment, construction of physical barriers and landscaping to reduce the effect of aircraft noise, the Department has been too slow in implementing the project eligibility changes. Through this legislation we are finally providing meaningful assistance to airports and surrounding communities to make our airports better neighbors, and thus to guarantee to continuing and proper development of our aviation system.

I urge that my colleagues recognize the necessity and importance of this legislation and vote for its passage.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, being here in a virtually empty Chamber with my colleagues on the committee, I sort of feel like an illegitimate child at a family reunion, but I have got to make my pitch and I ask Members to bear with me.

As the Members know, I oppose the bill.

Mr. Chairman, I do not propose to speak at any great length on this legislation—but I do think that those of us who question its merits have an obligation to explain our position. Two of our major standing House committees have considered these proposals—the Public Works and Transportation Committee and the Ways and Means Committee—and if I may coin a phrase, neither committee "got it right." This is bad legislation. It is a ripoff. It ought to be defeated.

Mr. Chairman, I do not claim to have all the answers—and I certainly respect the views of those of my colleagues with whom I differ—but I think I am able to distinguish between legislative proposals of undoubted merit and those which are contrary to the public interest. I place the bills which are before us in the latter category, and I ask the indulgence of my colleagues for a few moments while I explain.

My objections to these bills are several in number. In large measure, they go to the very philosophical basis of the legislation: How should we—at the Federal level—approach the question of aircraft noise?

As the hearing record—and my remarks during our full committee markup of H.R. 8729—will confirm, I have opposed the approach embodied in this legislation from its inception early in 1977. The version then proposed—H.R. 4539—contained some extremely controversial provisions—notably in the title I portion relating to land-use planning, and also in title III under which air carriers would receive financial assistance by means of a surcharge levied on passengers for retrofitting, reengining, or replacing those of aircraft which do not meet FAR part 36 noise standards—including those which will be taken out of service prior to the mandated compliance date in the normal course of events whether or not this legislation is enacted.

As reported by the full Public Works and Transportation Committee, I do acknowledge that H.R. 8729 has been improved in some important respects—especially the title I land use provisions and recognition in title III that depreciation of existing aircraft should be a factor in determining air carrier entitlements for utilizing surcharge proceeds for replacement. The subsequent rewrite of title III by the Ways and Means Committee in H.R. 11986 meets my objection to the tax treatment aspect of our version, but the tax credit scheme it authorizes remains an unjustified benefit for a single industry which could easily become a precedent for other industries confronted with costs arising from the imposition of Federal environmental requirements. More on this later.

TITLE I—LAND-USE PROVISIONS

In regard to title I of H.R. 8729, inasmuch as participation by airport operators (submission of noise maps and noise campatibility programs) now is entirely voluntary, the provisions therein are less objectionable than in earlier versions of this legislation when participation was mandatory for most airports of any size. Still, I question the need to address any aspect of land-use planning in this legislation. This is, after all, a power intended under our system to be exercised at the local level—geared to local perceptions of highest and best use. I also object to the use of $400 million from the airport and airway trust fund—as authorized in title I—to provide grant assistance to airport operators and local communities in implementing noise compatibility programs—including land acquisition.

It has been suggested that a program such as that proposed in title I is necessary as a means of fending off damage suits against airport operators. The truth is I believe these maps will encourage litigation on this point, I prefer another approach—such as that suggested in the substitute bill which I offered during our full committee markup: Prohibit such suits if the owner or lessor or real property where injury is alleged to have occurred acquired interest in said property after the airport came into exisitence. I am pleased that our committee agreed to go part way in this direction by adopting an amendment offered by the gentleman from Georgia (Mr. LEVITAS) which prohibits the recovery of damages from airport operators unless airport noise increases significantly after acquisition of the property where injury is alleged to have occurred.

TITLE III—AIR CARRIER FINANCING PROVISIONS

Title III gives me the most serious problems—both the version in our bill, H.R. 8729 and the ways and means version, H.R. 11986, which is proposed to be substituted for our title III. I have three major areas of disagreement—applying to both versions—as follows:

First. One of the arguments in favor of this legislation is that the Federal Government is imposing certain costly requirements on the air transportation industry—which most of the carriers are not in a financial condition to meet. But this argument cannot be made in favor of the approximately 27 percent of the fleet which is owned by banks and financial institutions and on lease to the carriers. As H.R. 8729 and H.R. 11986 are drafted, the carriers (as operators) presumably will act as agents for the owners of the noncomplying aircraft they have under lease. The carriers will retrofit, reengine, or replace the noncomplying aircraft they lease in accordance with the wishes of the owners—although it is unclear in both versions of title III whether a lease aircraft can be replaced under the program unless the carrier becomes at least a part owner of the new replacement aircraft.

It is evident that this aspect of the program was not adequately considered by either committee—but it is abundantly clear that the retrofit and reengine options surely will accrue to the benefit of the owners because they thereby will have taxpayer assistance in bringing their noncomplying aircraft to an airworthy condition—which then will make such aircraft a marketable commodity when sold. I do not believe that banks and other financial institutions should be the beneficiaries of such assistance. Why should our taxpayers participate in enhancing the value of their aircraft? Perhaps we should call this legislation the bank and finance company relief act of 1978.

Second. FAR part 36 is to be complied with by January 1, 1985. There is no sane justification for giving the owners or operators of aircraft direct financial assistance or tax credits for replacing their equipment which will be totally depreciated and/or out of use prior to January 1, 1985. But this bill will do that.

Third. In regard to replacement, the percentage of life left in the old aircraft on January 1, 1985, if any, should be the percentage of the cost of a new replacement aircraft on which the 40-percent subsidy (or tax credit) is computed. We should bear in mind that only three new domestic aircraft types have been certificated since 1969 (747, L–1011, DC–10—all of which meet FAR part 36) and that all air carrier aircraft of all types manufactured since January 1974 comply with FAR part 36 noise standards. So, we are talking only about aircraft manufactured before January 1974—and type certificated before 1969.

Many were manufactured well before 1974—back through the sixties and late fifties. With a 20-year average useful life for most air carrier aircraft and less—9½ years—for tax depreciation purposes, one can see that the portion of the fleet which is not in compliance is fast approaching both the end of its useful life, and fully depreciated status and all will be fully depreciated by 1985. More than 150 of the 600 noisy 707's and DC–8's which were in service in 1974 have been disposed of by the carriers, some 25 percent. How can we justify including the remainder in this program—and especially those which will have been in service for 20 or more years on January 1, 1985? It is this group of aircraft which is the primary focus of this legislation—and new aircraft acquisitions already underway will accelerate the replacement trend which commenced in 1974—without the program envisioned in this legislation.

Mr. Chairman, the substitute bill I offered in full committee markup provided that aircraft acquired before January 1, 1974, could be operated for the remainder of their useful lives—thereby, in effect, repealing the January 24, 1977, FAA regulation which requires two- and three-engine aircraft to be in compliance with FAR part 36 noise standards by January 1, 1983, and four-engine aircraft by January 1, 1985. Frankly, I see no

valid reason for the imposition of ex post facto requirements of this kind on the airline industry. Even EPA did not follow this procedure in the case of the automobile. We can only imagine the uproar which would have erupted throughout this land had they done so.

But even assuming the regulation remains in effect, the question immediately arises: Why should we treat air carriers any differently from firms in other industries when it comes to the matter of meeting the costs of complying with Federal environmental requirements? The airlines and their lessors will pick up over $3 billion from this title.

Other industries comply by increasing prices. They do not have access to a gimmicky Federal financing program. In the case of most regulated industries, such costs are included in their rate bases and recouped through rate adjustments. There is no reason why the same process should not occur with the air transportation industry—and I am sure it would in the normal course of events if this legislation is not enacted. We also should take note of the fact that the carriers are enjoying record business this year—and their profits are soaring. I have figures here on first half earnings of the trunk and local service carriers. For the trunks, first half profits almost tripled over last year: $405 million for this year against $137 million for last year. Second quarter earnings almost doubled over last year: $351 million against $180 million. Profit figures for individual trunk carriers are as follows:

[In millions of dollars]

	2nd Quarter	6 Months
Carrier:	1978	1978
American	$43.9	$36.9
Braniff	11.2	20.0
Continental	9.2	13.2
Delta	43.1	70.5
Eastern	24.2	43.7
National	6.3	12.8
Northwest	20.5	37.1
Pan American	46.2	22.1
TWA	48.2	9.5
United	91.8	105.3
Western	5.9	33.2

As for the eight small local service carriers, Mr. Chairman, they showed a combined profit of $54.3 million for the month of June alone.

And, Mr. Chairman, aircraft sales are booming. The recent $1.6 billion purchase of Boeing aircraft by United Airlines is just one of several major acquisitions either already announced or in the offing. Do the carriers really need the assistance provided in this legislation—or have they merely succeeded in persuading some that they are paupers? I, for one, am convinced that the industry can handle this job through normal channels, without taxpayer participation and without diversion of airport and airway trust fund moneys, without this kind of Federal intervention.

Mr. Chairman, I know that many members of the Ways and Means Committee—the committee which has jurisdiction over the trust fund—as well as many others in and out of Congress deplore this title III program because it does divert funds intended to be used for aviation safety and related purposes. This was the reason the trust fund was established in the first place. This was the basis for the taxes which were imposed—the justification conveyed to the public for these levies—notably the 8-percent airline ticket tax and the 7-cent-per-gallon general aviation fuel tax. I can only say that I fully share these concerns. While safety needs remain unmet, it strikes me that any diversion of trust fund moneys is highly inappropriate and grossly irresponsible. Passage of this legislation would place this House and its Members squarely on record as supporting this unsound, unwise public policy. In the name of reason, how could we justify such action to those we represent? The cook may roast and disinfect it as much as she will, but the scent of the skunk will cling to it still.

Mr. ANDERSON of California. Mr. Chairman, I yield five minutes to the gentleman from New York (Mr. SCHEUER).

Mr. SCHEUER. Mr. Chairman, I would like to address myself to some of the remarks made by the gentleman who just preceded me in the well.

He talked about two major questions. First: Is it not unfair to give the benefits provided by the bill to aircraft carriers that have fully depreciated airplanes, and where the useful life of the plane is only about a decade, has already been reached. The fact is that the depreciation account of an aircraft based on its original purchase price, pre-1969, would be painfully irrelevant to any air carrier treasurer today who is looking at what the replacement cost of that plane would be, certainly three to five times the original cost of that plane, more than a decade and a half ago. So that the depreciation amount, in reality, would not begin to pay for the cost of replacing that plane.

Second of all, I think that half or more of the planes that will be banned retroactively from the air will not have anywhere nearly finished their useful life. Many Members of this Congress who were World War II pilots as many of us were, can remember during the thirties we were flying DC–3's over the Hump in the China-Burma-India theater.

Now, 40 years later, DC–3's are being used economically all over the world, proving that an aircraft has a virtually indefinite useful life if it is properly maintained, and if it remains economical to operate.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield gladly to the gentleman from California.

Mr. ANDERSON of California. Mr. Chairman, I want to compliment the gentleman from New York (Mr. SCHEUER) on his point, and I want to read the following from the Public Works Committee report:

The FAA estimates that nearly all of these noncomplying aircraft would remain in the fleet throughout the 1970s and nearly 950 of the present 1,600 noncomplying aircraft would still be in service by 1990 in the absence of the noise rule.

That is, about 60 percent of the noncomplying aircraft will still be used by the airlines by 1990 unless we pass the bill we are talking about tonight.

Mr. SCHEUER. Mr. Chairman, I appreciate the correction.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from New York.

Mr. WOLFF. Mr. Chairman, there was talk about this creating a precedent.

Was not the precedent for this type of situation created at the time of passage of the bill providing better air travel security.

Mr. SCHEUER. That is absolutely right. If the airlines had had to undertake that expenditure, it would have produced no useful product or service which would have developed additional income for the airlines. It produced no product or services which they could sell or merchandise at all.

This investment does not, in fact, produce more attractive or desirable airline travel at all. It will produce more attractive living around airports—that is very important—but that is all.

The gentleman from New York (Mr. WOLFF) and I live within a stone's throw of Kennedy Airport, and he will vouch for the fact that those people have been literally driven out of their minds by aircraft noise.

Some reference has been made to people who chose to live next to airports. Yes, but they did not choose in 1978 to live next to Kennedy Airport and listen to the absolutely mind-boggling noise of a Concorde or even the almost as mind-boggling noise of the DC–8's and 707's. Many of these folks moved next to Kennedy Airport or LaGuardia Airport or any of our great airports 10, 15, or 20 years ago, before the age of jet travel, when the sound of subsonics was infinitesimal compared to the agonizing noise pollution caused by these aircraft today.

Mr. Chairman, Mr. LEO J. RYAN, a member of the Committee on Government Operations and the chairman of its Subcommittee on Environment held hearings in New York City on airport noise in a school near Kennedy Airport, and 50 percent of the time we could not hear a word that was said because of the aircraft noise.

Aircraft noise prevents children from learning in school. It prevents children from talking to their parents at the dinner table. It actually inhibits normal relationships between husband and wife. People cannot think. The dishes rattle on the table. The pictures rattle on the wall, and life becomes a veritable nightmare.

Mr. Chairman, one last statement the gentleman made was that we are setting a terrible precedent. We are not setting a precedent for anything. This is a unique situation. We are retroactively requiring an industry which has already paid for its certificated aircraft to make substantial additional expenditures in nonrevenue producing

services. They do not have access to assured rate structure increases as do utilities. And the automobile industry is irrelevant because we only govern production in futuro and where the consumer has the future right to buy or not to buy a product with safety and pollution protective devices made mandatory. There is no logical comparison whatever with the current situation of the airlines.

Mr. HARSHA. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. DORNAN).

Mr DORNAN Mr. Chairman, I rise in support of the bill.

Mr. HARSHA. Mr. Chairman, I yield 3 minutes to the gentleman from Kansas (Mr. SKUBITZ).

Mr. SKUBITZ. Mr. Chairman, I want to thank my colleague for yielding 3 minutes.

My colleagues, I have an amendment which I expect to offer to title II, which will increase the amount of money available for general aviation development by $25 million in 1979 and 1980.

What I am trying to do is to allocate each State, regardless of its size, $500,000 in 1979 and $500,000 in 1980 in order to take care of some of the problems which exist in this field; and believe me, they are very serious.

When I talked to the committee about my amendment, the committee opposed it, I was told that under this bill they are increasing the level of spending from $80 million in 1979 to $115 million, and that in 1980 they are increasing it from an $85 million level of spending to $127,000,000 a $43 million increase. The fact is that they are really increasing the amounts available to the States by $3 million because the $35 million that they have added is to be used by the Secretary at his discretion. The $43 million in 1980 is at the discretion of the Secretary. When the administration is opposed to all increases, you can bet your bottom dollar nothing is going to be given to general aviation for the development of our public airports.

Mr. Chairman, in general debate I will go into this a little further, and I am hopeful that I can have the Members' attention and that I can get their support to try to get all of the States $500,000 each year to help the local areas develop their local airports.

Mr. ANDERSON of California. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Mr. Chairman, I rise to speak in support of this legislation which I believe has a very real promise of allowing our Nation to achieve its aircraft noise reduction goals. This legislation takes into account the legitimate interests of consumers, and the inhabitants of areas which surround airports and are significantly affected by aircraft noise.

Many of my constituents are continually affected by aircraft noise resulting from the operations of Kennedy and LaGuardia Airports, which are among the busiest in the world. They have for many years been the victims of levels of noise which are both unnerving and unhealthy. It is for this reason that I was one of the first Members of Congress to introduce legislation many years ago which would have provided a mechanism for enabling the airline operators to finance the upgrading of their fleets in order that they may meet the stricter aircraft noise standards which the public welfare demanded.

I am pleased to see that the House is now about to act to implement legislation along the lines which I suggested. We have all been to airports many times over the years. I imagine that many of my colleagues have been engaged in a conversation while at the airport and have been interrupted by the take-off of a jet. It presents a momentary annoyance. But can you imagine how great the annnoyance is when it is not for a moment as the people who live under the airport landing and take-off pattern, but for the forseeable future? No individuals should be asked to endure that discomfort indefinitely. I believe that the legislation which we are considering today will provide the residents of areas which are impacted by aircraft noise with the very real hope that the time for significant relief has finally been set, and the mechanism for achieving that relief in a practical fashion has been established. There is still work to be done. But the goal is at last within sight. The objective is at last within reach.

I would like, however, to make some observations and legislative history with respect to title I of this legislation which deals with the establishment of noise monitoring procedures. On first reading it appears that section 102(1) is ambiguous in its authorization of the Secretary of Transportation to establish by regulation a noise monitoring system "at airports and the areas surrounding such airports."

It would seem possible for the Secretary to meet this statutory requirement but in a very restrictive fashion which would not place the monitoring system in all the communities which are significantly impacted by aircraft noise. I believe that the monitoring system should be placed in all such communities if this legislation is to allow for the establishment of a monitoring system which will provide an accurate picture of the aircraft noise conditions with which people must contend. What I seek now to elicit from the gentleman from California, manager of the bill, is whether this legislation is in fact intended to provide for a comprehensive monitoring system which will include all communities which are significantly impacted by aircraft noise, regardless of these communities' geographical distance from the airports covered by this legislation?

Mr. ANDERSON of California. The answer, I believe, would be yes, and I appreciate the concern of the gentleman from New York concerning noise monitoring. I would assure the gentleman that after 27 days of hearings on the topic that I believe the purpose of this bill, to bring much needed relief to millions of Americans bombarded by unwanted aircraft noise, will be accomplished by passage of the bill in its present form. The bill provides incentives to airport operators to act as the spur toward better local land-use planning and development. Before airport proprietors are eligible for the new noise planning and program implementation grants, they must—they must—consult with all units of Government and planning agencies within the noise impact zone. Further, communities impacted by noise will be eligible for the first time for grant assistance to carry out programs approved by the Secretary of Transportation under this bill.

Mr. WOLFF. The important element here that I am concerned about is that the noise-monitoring equipment is not placed just adjoining the airports but in the areas that are impacted significantly by the aircraft noise.

Mr. ANDERSON of California. We do not direct them to do this. Again, noise monitoring would be something under the direction of the FAA, but I might point out that this noise-monitoring equipment will be an eligible grant item under this bill. In other words, this decision will be made by the FAA together with the local airport operator and the local jurisdictions.

Mr. WOLFF. Will the community be consulted? That is important.

Mr. ANDERSON of California. Yes. The local airport operator has to consult with all of the communities and all of the planning agencies within the noise-impact zone, and that zone could extend several miles in each direction from the airport.

Mr. WOLFF. More than that, because, after all, in the landing pattern of an airport, a much wider area is impacted.

Finally, I would also like to bring to the attention of my colleagues section 106 of this legislation which has the potential for limiting the effectiveness of this legislation by limiting the use which can be made in law suits of the noise impact maps developed under this legislation. These maps could provide a useful resource in the court's deliberations with respect to suits involving issues of aircraft noise. These legislative restrictions on the use of noise maps should be reviewed in the future. Section 107 which limits damage suits relating to land acquired after the enactment of this act also may be overly strict in its approach and should be reconsidered, if property is damaged and people suffer loss as the result of aircraft noise, then some degree of relief should be available to compensate in some part for the loss. Section 107 indicates that the time of acquisition of the property interest is determinative. I believe that the Committee on Public Works and Transportation should develop a more flexible standard in the future.

In conclusion, Mr. Chairman, I believe that the financing provisions of this legislation will allow our Nation to take significant steps forward in meeting the problem of aircraft noise. Furthermore, I believe that title I of this legislation should be reviewed in detail during the forthcoming Congress with the goal of improving the protections which this legislation has the potential of offering to individuals who are subjected to aircraft noise.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HARSHA. Mr. Chairman, I yield myself such time as I may consume. I would like to ask the gentleman from California Mr. ANDERSON, and Mr. ULLMAN a questiion concerning the Ways and Means portion of the bill. Some argument has referred to this bill as a Banker's Relief Act in that some of the aircraft to be retrofitted or replaced are leased to air carriers by banks and other institutional lenders. I know this bill in no way provides funds to bankers and that argument to the contrary is spurious, but could you set the record straight?

Mr. ANDERSON of California. Mr. Chairman, I would be glad to clear the air on this questiion. You are quite correct that the reference to a "Banker's Relief Act" is spurious and totally without basis in fact. Indeed, if anything, this bill can be said to discriminate against aircraft owned by financial institutions.

The benefits under the bill flow to aircraft operators only. No financial institution is an aircraft operator. At no point would the lessor-financial institutions be involved in receiving, using, or disbursing funds or tax subsidies provided airline operators.

Nor will banks as lessors be likely to receive any indirect benefits under the bill. Because the benefits flow to the operators—airlines, this bill will reduce the market value of leased aircraft since the lessee airline will return a noncomplying aircraft to the bank at lease expiry. By turning back the obsolete aircraft the airline can then use a tax credit of up to 40 percent of the cost of a replacement aircraft. The bank is left with an obsolete aircraft. Is that your understanding, Chairman ULLMAN?

Mr. ULLMAN. Mr. Chairman, yes, the gentleman from California is correct in stating that lessor-financial institutions may not receive refunds or credits under the bill.

Mr. HARSHA. Mr. Chairman, in addition, some have argued that airlines will be forced to retrofit a plane—and thereby use its credits—before it is turned back to the lessor-bank because the typical lease requires aircraft to be returned in an airworthy condition. I am under the impression that the retroactive noise rules were not incorporated in the airworthiness requirements of an aircraft and therefore an air carrier will be perfectly free to turn over an unretrofitted aircraft to the lessor-bank. Am I correct, Mr. ANDERSON?

Mr. ANDERSON of California. Mr. Chairman, yes, the gentleman from Ohio is right on target. And this is the clear understanding of lessor-banks and lessee-air carriers. We have confirmed this also with FAA.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. HARSHA. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I want to say, to the chairman of the subcommittee and to the ranking minority Member, that is diametrically and directly opposite to testimony we received.

Mr. HARSHA. Mr. Chairman, I would say that testimony pertains to noise legislation far different from what the provisions of the bill contain. The provisions of the bill direct the tax credits can only go to aircraft operators and therefore banks cannot make any undue profit on this operation.

Mr. ANDERSON of California. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. PATTERSON).

Mr. PATTERSON of California. Mr. Chairman, America's scheduled airline system is the safest in the world and this legislation will help keep it that way. If this were not so, you may be certain that the airlines and their pilots would not be supporting the bill. Safety is and must always be the paramount concern of all those interested in our Nation's air transportation system.

Passage of this legislation will leave ample aviation trust fund resources to meet all safety needs. If the legislation is passed in its present form, the surplus in the aviation trust fund will reach $2.7 billion by fiscal year 1985, and there will be more than enough to meet safety requirements.

Travel by scheduled airliner in this country is 10 times as safe as traveling by personal automobile. The airlines in 1978 are producing more than 80 percent of the total intercity revenue passenger miles. In their worldwide operations last year, this Nation's airlines made nearly 5 million flights and 99.99996 percent of these were completed without a fatal accident.

This impressive record reflects the dedication of thousands of men and women of the airlines in the daily operation of the Nation's far-flung air transport network. It also reflects the fact that the introduction of a new airplane into the airline fleet provides the opportunity for incorporating new and improved safety features into that airplane.

The aircraft that this bill will help bring into the fleet will be quieter and more fuel-efficient: They will also be safer. Besides featuring improvements in aircraft and engine performance, they will come equipped with the latest advances in electronic equipment for navigation and communication—advances that were not even available 20 years ago when the aircraft they are replacing first came into the airline fleet.

Mr. Chairman, a vote for this bill is not only a vote for noise reduction; but it is also a vote for conservation of our precious fuel resources and to improve air safety through advanced technology aircraft.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Chairman, I yield back the balance of my time.

Mr. ULLMAN. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Chairman, I rise in support of H.R. 11986 offered as a substitute to title III of H.R. 8729, the Airport and Aircraft Noise Reduction Act. The substitute, drafted by the Ways and Means Committee, would impose an excise tax on air transportation users to offset the cost of insuring that all aircraft using airports in the United States will comply with Federal noise reduction standards by 1985.

I believe the most important aspect of this legislation is the fact that only those who make use of the airlines, passengers and shippers, will bear the cost of quieter planes. According to a 1977 Gallup poll, 37 percent of adults in this country have never flown on a commercial airline. Only 25 percent of adult Americans had flown in the last year, over half of whom have annual incomes of $25,000 or more. Mr. Chairman, I think it is only fair that airline users should finance the expenditures necessary to reduce the dangerous noise levels suffered by persons residing near our nation's airports. This is definitely not an expense that should be borne by the general taxpayer, many of whom seldom or never fly.

In addition, I think it is important to note this is not a new tax on airline passengers. It is really a diversion of one quarter of the present 8 percent ticket tax from the Airport and Airway Trust Fund. Airlines could receive refunds or credits from the Treasury for the amount of tax they collect and use the funds for retrofitting or replacement of engines or aircraft to comply with noise reduction standards. Approval of expenditures by the Department of Transportation will insure such funds are used for noise abatement only.

Another very important effect of this legislation is that noise standards could be met without endangering the competitive posture of any airline. Pending legislation to reduce airline regulation will create a more competitive industry. This should provide decided advantages for the consumer in the form of lower fares and increased services, but it would be unfortunate if an airline's ability to compete were jeopardized by the need for heavier noise compliance expenses than those of its competitors.

Mr. Chairman, the airlines are now faced with expenses mandated by the Federal Government. Most people agree that without Federal assistance, it is possible that noise standards will not be met by 1985. The system of excise taxes and credits found in this legislation is fair in that only the airline consumer bears the cost; there is protection for the consumer in that funds must be used for noise abatement; and there are benefits for the consumer in that no air-

line will be disadvantaged competitively for complying with environmental standards. I strongly urge support for the Ways and Means substitute to title III.

Mr. MIKVA. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Illinois.

Mr. MIKVA. Mr. Chairman, I rise in support of the bill.

Mr. Chairman, I think that, as I suggested earlier, there is a belief that there is somehow a fight between the airline passengers and the airlines, and as between them I would well come down on the side of the airline passengers. But in the meantime there are millions of people whose health is being affected by the noise problem that has not been solved or even helped in any of the years since we established those standards. This bill is the first attempt to do so.

Mr. Chairman, I think it is a reasonable attempt to solve the problem, and I support the bill.

Mr. ULLMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri (Mr. GEPHARDT).

Mr. GEPHARDT. Mr. Chairman, I would like for just a moment to have the Members, if they will, pay attention to exactly how this bill works and why, as I stated previously in the debate on the rule, I think it is a bad bill.

We should understand that what we are doing here is taking the 2-cent tax that each airline collects and then putting it into an account that the airlines can draw upon to pay for retrofit and replacement and the purchase of new aircraft.

The problem with that is that if we are collecting a tax, I think the Government should spend the tax money. If we did that, we would spend the tax money on the airlines that really need to replace aircraft. But that is not going to happen in this case because each airline is going to have an account that is going to reflect what they have collected from the tickets they have sold.

For instance, TWA is going to collect $258 million, but they are going to be entitled under the formula in the bill to spend $712 million. So TWA is not going to take care of its noise problems.

But Northwest Airlines is going to collect $127 million, and they are entitled to $142 million, so they are about going to take care of their problems.

Hawaiian Airlines is going to collect $8 million, but it only needs $1 million to take care of its problem, so the $7 million it is going to collect is going to go back to the safety fund.

My point is this: The formula we have, which was worked out between the airlines and not by the Government, is a formula that will not take care of the noise problem, and the reason it will not is because we have given up the power in this bill to spend the money to take care of the noise problem.

Mr. Chairman, if the Members are interested in taking care of the noise problem, as I am, they should defeat this bill and let us work out a mechanism whereby we can take care of the noise problem.

Mr. ULLMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. ROSTENKOWSKI).

● Mr. ROSTENKOWSKI. Mr. Chairman, I rise in support of the provisions of H.R. 11986 to be offered as an amendment to title III of H.R. 8729.

The Ways and Means Committee amendment would provide a tax reduction for a 5-year period of the air passenger and air freight taxes by 2 percentage points, and would impose excise taxes of an equivalent amount on the air carriers. The air carriers would be allowed a credit or refund of the tax for a percentage of the costs of retrofitting, reengining or replacing aircraft to meet the FAA noise standards.

This tax mechanism will assist the airlines in the financing of their compliance with the FAA noise standards in a timely and orderly manner. This financing mechanism is essential if the governmentally mandated noise standards are to be achieved by the airlines, thus benefiting the public interest.

The Ways and Means Committee provision also amends the Airport and Airway Trust Fund language to permit expenditures from the trust fund for noise compatibility programs as included in the Public Works Committee titles of H.R. 8729.

Mr. Chairman, I urge adoption of the Ways and Means Committee amendment to title III of H.R. 8729.●

Mr. ULLMAN. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. FLYNT).

Mr. FLYNT. Mr. Chairman, I rise in strong support of H.R. 8729, the Airport and Aircraft Noise Reduction Act, because it sets forth a much-needed affirmative national program to reduce the impact of aircraft noise which is currently plaguing nearly 7 million Americans who live in close proximity to major U.S. airports. As the representative of a district which completely surrounds the Hartsfield International Airport in Atlanta, Ga., I have witnessed firsthand the damage to both property and persons resulting from aircraft noise. An environmental assessment study recently completed by the Environmental Protection Agency—region IV—in communities adjacent to the Hartsfield International Airport revealed that thousands of my constituents experience daily noise levels far in excess of the maximum tolerable level for humans. In the opinion of EPA region IV, a clear potential danger to the physical well-being of the persons living near the Atlanta airport can be established.

Fortunately, we have been successful in our efforts to secure some ADAP discretionary funds to acquire property and provide relocation assistance to residents of one of our airport communities, Mountain View, where the noise impact is so severe that retention of this area as a residential community would pose a serious health threat to the affected residents. Other communities near the Atlanta airport need this same kind of program, but our failure to obtain Federal funds or commitments from the FAA has prevented us from providing any relief for these residents, However, our experience has shown that airport operators do not now have the necessary Federal guidance or funding to effectuate comprehensive land-use compatibility plans and programs to afford meaningful relief to neighboring airport communities. Noise problems at Hartsfield International Airport are not unlike those in existence at other major U.S. airports constructed prior to the advent of jet aircraft. The surrounding communities have experienced a drastic increase in daily noise levels during the past 10 years as airports grew to meet the expansion of air traffic operations. Programs designed to provide relief for affected residents will not be undertaken by local airport operators unless the Congress and the FAA incorporate airport and aircraft noise control into the existing ADAP airport development and safety programs. Unless we act now to create a national program to enable airport operators to reduce and eliminate noncompatible land, future growth of aircraft operations will make land around many major airports virtually uninhabitable. We simply cannot continue to ignore the plight of those 7 million citizens unable to fully enjoy their own property.

In my view, titles I and II of H.R. 8729 will enable airport operators to formulate specific land-use compatibility plans and programs needed to insure that land in airport environs is utilized only in a manner consistent with operations of a high-density airport.

The provisions contained in this legislation to permit airport operators to implement noise abatement programs are in direct response to the findings by the Aviation Subcommittee during their hearings in Atlanta and other U.S. cities. Mr. Chairman, I commend the leadership of the House Aviation Subcommittee and the Public Works and Transportation Committee for recognizing the critical nature of aircraft noise problems and proposing legislation designed to afford relief to citizens residing in airport communities.

While title I of H.R. 8729 provides an affirmative policy and program to assist airport operators in reducing and eliminating noncompatible residential land surrounding airports, our fight to combat the problems associated with aircraft noise would be inadequate unless we reduce noise levels emanating from the source.

The Federal Aviation Administration aircraft noise standards contained in part 36 of the Federal Aviation Regulations imposes on aircraft operators rigorous environmental requirements to insure that aircraft noise levels are reduced to minimize the impact on airport communities.

There has been considerable discussion on the merits of the financing proposed in H.R. 11986 to assist aircraft operators in complying with the Federal

Aviation Regulations part 36. However, it is extremely important that this body recognize that these noise standards were amended in 1976 and that because of this change in Federal Aviation Regulations part 36, the airline industry now faces the prospect of having to retrofit, reengine or replace aircraft which were previously certified by the FAA when Federal Aviation Regulations part 36 was originally implemented in 1963.

We should be very mindful of the fact that this retroactive feature of the Federal noise standard imposes on aircraft operators environmental requirements not presently mandated for any other major U.S. transportation industry. If we enact laws and promulgate regulations to require aircraft operators to meet this standard by 1985, then we must allow air carriers to utilize a portion of the airline ticket user-tax to meet the financial burden of purchasing new equipment to replace nearly 1,600 aircraft now operating which do not comply with Federal Aviation Regulations part 36.

Reliable sources estimate that the cost for aircraft operators to comply with FAR part 36 will be $6 to $8 billion for purchases of or modifications to aircraft. Even if we adopt the Ways and Means Committee bill, H.R. 11986, as a substitute to title III of H.R. 8729 and permit aircraft operators to use 2 percent of the current 8 percent airline ticket user-tax, the airline industry will still have to generate sufficient capital and revenues to make aircraft purchases totaling nearly $4 to $5 billion over the next 5 years to comply with the federal noise standard.

I do not think that the Federal Government should impose environmental standards on private industry and then fail to realize that somebody is going to have to bear the burden of these additional costs. The Ways and Means substitute to title III adjusts the current excise tax rate on airline tickets and freight so that one-third of this cost is shared by the users of the airline service. It is important to remember that the financial assistance provided for in H.R. 11986 will not result in any additional tax liability for the general taxpayer and that the current user-tax will be maintained at the existing 8 percent so that the consumer does not have to face an increased cost in air fares.

Many opponents of H.R. 11986 have argued that this so-called "subsidy" for the airline industry is inappropriate at a time when airlines are recording record profits. However, if one carefully examines the performance of the U.S. air carriers over the past 5 years, it becomes quite clear that recent improvements in air carrier financial performance do not justify denial of Federal assistance provided for in H.R. 11986. Over the past 5 years aircraft operators have experienced substantially lower returns on capital and equity when compared with all U.S. industry. In addition, the 1973–77 profit margins for the airline industry were nearly 2.5 percent below the average for U.S. industry. Therefore, it is very evident from examining key economic indicators that Federal assistance must be provided to insure that the aircraft operators are able to comply with the noise standard imposed by Congress and the FAA.

At a time when the airline industry is faced with an uncertain future due to greater competition in both domestic and international markets, it would be unconscionable for us to jeopardize the financial viability of U.S. air carriers by imposing retroactive Federal environmental standards without enabling them to utilize 2 percent of the existing airline ticket user-tax to finance purchases of quieter aircraft.

By adopting the Ways and Means substitute, we can make certain that our objective of aircraft noise reduction is obtained without unnecesarily damaging the tenuous financial position of our major U.S. air carriers.

Mr. Chairman, I strongly urge my colleagues to support H.R. 8729 and the Ways and Means Committee substitute to title III, H.R. 11986.

Mr. ULLMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey (Mr. HOLLENBECK).

Mr. HOLLENBECK. Mr. Chairman, I rise in strong support of the bill and to try to answer some of the arguments advanced against it by those opposed to it.

First, the allegation has been made that the bill is a raid on the treasury. This is not a treasury raid. The financing proposal permits the airlines to pass through to their customers a portion of cost of replacing the condemned capacity in the same way that all industries do when required to make expenditures for environmental expenditures. So it is clear that the converse is true and it is the treasury which benefits since, in fact, all funds collected by the carriers which exceed their entitlements remain forever in the treasury.

Second, it is claimed that the bill gives the airline industry different treatment from other industries. But is it not true for example that public utilities required to spend money for environmental requirements are monopolies and the public utility commission very promptly adjusts their charges upward in order to cover the expense. The commissions in many cases actually assess an "environmental surcharge." The airlines are not monopolies and yet their rates are regulated.

There could be no assurance that the airlines could adjust their prices to pay the expenses of noise reduction. The bill makes certain that the objectives of this legislation will be achieved on time. Therefore, it allows a passthrough of the cost to the airline user.

It is then alleged that the airlines will pay no interest on Government moneys taken from the fund. In fact, Government moneys are involved. In the interest of noise reduction, the bill provides a measure of assistance to the airlines in replacing condemned planes. If these funds carried a 10-percent interest charge, the airlines could not effectively be helped.

The financing program will be based on excise taxes on airline customers similar to price increases which support environmental costs in other industries.

Another fallacy is the allegation that the bill is inflationary. This simply is not so since the 2-percent noise charge is accompanied by a reduction in the existing 8-percent ticket tax to 6 percent so that the fare to the public for domestic air transportation is not affected. This was possible because the trust fund was developing a huge surplus.

It is further alleged that no special financing is needed since the airlines are now prospering. It is true that the airlines are doing well this year and did well in 1976 and 1977, but their record of earnings is made to look particularly good because of their poor earnings in previous years. For the past 5 years, airline profits have been 4.3 percent on invested capital. U.S. industry as a whole made 9.7 percent, more than double the airline return. For the same period, U.S. industry has had a profit margin of 4.5 percent while the airlines have had 2. The airlines must compete with U.S. industry as a whole for capital funds which, according to current reports, are becoming scarcer and scarcer. It is possible that if title III were not passed the airlines would, over some period of time, finance the replacement of the condemned capacity but we should not gamble on this. We must get the noisy airplanes out of the fleet in the time allowed.

In conclusion, Mr. Chairman, the bill serves to have Government correct a situation in part brought about by that Government itself in the first place. I urge my colleagues' support of the bill.

● Mr. GEPHARDT. Mr. Chairman, the Noisy Aircraft Revenue and Credit Act of 1978 will divert more than $3 billion over 5 years from the Airport and Airway Trust Fund to private airlines to assist them in meeting Government imposed noise regulations.

The bill is a bad precedent and constitutes bad tax policy. This would be the first instance where the Federal Government would levy a tax on an industry without retaining any control beyond the broad guidelines set forth in the bill on how the money would be spent.

By diverting 2 percent of the 8 percent tax imposed on airline tickets to aid the airlines, Federal assistance would be allocated according to the number of airline tickets purchased and not on need.

This becomes even more unfortunate when one considers that the oldest and noisiest planes are owned by American, TWA, and United. Together, their planes constitute 40 percent of the U.S. fleet, but account for 68 percent of the noisy aircraft that this bill seeks to refit or replace.

I do not oppose the noise abatement standards or the need for the airlines to make their equipment meet these standards. I object to the manner that this bill addresses this problem.

A far more equitable method would be to allow the airlines to reduce the Airport and Airways Trust Fund tax by 2 percent for 5 years so that the airlines that need to buy new equipment or refit existing equipment can apply to the CAB for appropriate fare increases.

Such an alternative would have the sole disadvantage of allowing different fare structures between airlines, depending on their need to comply with the noise standards. For this reason, it would be prudent for the noisy aircraft bill to be postponed until the House has the opportunity to debate fully the prospects of differing fare structures when airline deregulation is considered.

Finally, if one is not disturbed that another industry, for instance, the auto industry, might argue that part of the Highway Trust Fund tax revenue should be used to aid in meeting auto emission standards, consider the current status of the industry. Record airline passenger revenues are commonplace today in large part due to the increased flexibility allowed by the CAB. Deregulation will likely have an additional positive effect on passenger revenues.

Airline industry sources have indicated that better than $2.5 billion of the money provided would be used to replace aging 707's and DC–8's which are already on average, more than 11 years old and will be 18 years old by the time the 1985 regulations are effective. It is hard to believe that an airline would not now be planning to replace 18-year-old equipment without the substantial aid that this bill would grant.

Aircraft noise is a serious problem. The noise regulations are needed. Airports do need assistance to help them create a quieter environment for the people who live and work around them. But all of these purposes can be achieved without creating a harmful tax precedent, which the Government will be asked to repeat for other industries, for the purpose of producing new capital which the Federal Government says is not needed in the first place.

The Airline Passengers Association ("APA"), is an organization of over 40,000 frequent airline travelers, which strongly opposes title III of H.R. 8729—Airport and Aircraft Noise Reduction Act. APA's basic positions are as follows:

First. APA opposes the transfer from safety purposes of 2 percent of the 8 percent Passenger Ticket Tax to fund retrofit/replacement of noisy jet aircraft owned by private airline companies;

Second. APA supports greatly increased safety expenditures, thereby reducing the excessive surplus in the Airport and Airway Trust Fund, which at May 31, 1978 totaled $3,633,327,794.26.

Third. APA opposes the precedent that would be set by the Federal Government providing funds through a dedicated tax to a private industry to pay for Federally-mandated environmental changes. If this legislation passes, any industry required to make changes as a result of a Federal requirement will have a strong precedent to demand that the Federal Government pay for such changes.

Fourth. APA opposes the noise financing program because of its inflationary impact and the failure to reduce the overall Passenger Ticket Tax which is strongly warranted by the steadily mounting surplus in the Trust Fund.

Fifth APA supports an immediate reduction of the 8 percent airline ticket tax to at least 6 percent.●

● Mr. DUNCAN of Oregon. Mr. Chairman, I reluctantly oppose this bill. It seems to me that we have not really reached the basic issue in the debate, and it seems to me that by avoiding it we are likewise avoiding the kind of legislative action that, in my judgment, has stimulated the taxpayers revolt.

We are not arguing here over whether those huge sums should be spent. We are arguing about how the expenditures should be paid for.

I fully appreciate that a noise problem associated with aviation does exist. I appricate the difficulties attendant to the operation and expansion of airports, and the problems posed to those living in proximity thereto. I do not, however, consider the rules issued by the FAA to be the most reasonable way to solve the problem, in view of the huge cost attendant thereon and the crying need of this country for the accumulation of capital for productive purposes. I cannot help but believe that a more gradual and less precipitous approach to this problem—staging over a longer period of time the attainment of the desirable noise levels—is a much more rational approach. This would permit the airlines to meet the noise requirements by the acquisition of new aircraft as they phased out their noisy vehicles by the process of attrition.

This would result in a year-by-year reduction of the noise problem, with no additional expense to the taxpayer. At the very least, the airlines should be required to absorb the cost of new aircraft in proportion to the amortization of their original cost—for which they have already received tax credits from the Government.●

● Mr. WEISS. Mr. Chairman, as a Representative of a city served by three major airports, I am well aware of the damage that aircraft noise car do, not only to the peace of mind of anyone within earshot, but to property values in neighborhoods near airports as well. Nevertheless, I must oppose title III of the Airport and Aircraft Noise Reduction Act (H.R. 8729) and its proposed substitute, the Noisy Aircraft Revenue and Credit Act (H.R. 11986). The passage of either of these bills would jeopardize the safety of airline passengers, and place the Government in the unusual and untenable position of subsidizing a private industry's compliance with a Government regulation—at a time when that industry's profits are increasing dramatically.

While admirable in their purpose—the reduction of noise pollution—these bills would allow airlines to transfer the cost of meeting the Federal Aviation Agency's noise standards to the consumer in the form of a 2-percent surcharge on all domestic tickets. In order to maintain current ticket prices and therefore minimize public opposition, the legislation would also allow airlines to reduce by 2 percent the 8-percent tax which goes into a trust fund for airport safety improvements. As a result, passengers would still be taxed at the same rate—8 percent—but instead of all this money going toward improving safety conditions, 2 percent would be used for meeting FAA noise standards.

Passage of this bill, then, would mean nothing less than a huge handout to an industry fully able to pay its own way. The airlines have grossly exaggerated the amount of money they need to comply with these standards. Their present claim is $7 to $8 billion, the cost of substantially replacing their fleet, but a simple retrofitting of their present fleet's engines would insure compliance and, according to their own estimates, would cost less than $1 billion.

The airlines are perfectly capable of meeting this expense. According to Business Week magazine, during the first half of 1978, airline profits increased 174 percent over the previous year's. Furthermore, the Government has granted airlines such extensive tax breaks that in 1976 three airlines paid no taxes at all, and three more paid less than 12 percent of their income.

The airlines' outstanding growth performance during the past year can be traced to the climate of deregulation created by the Civil Aeronautics Board's regulatory policies. The House can continue to foster this growth by passing legislation to permanently deregulate the airline industry.

But the airlines should not expect the Government to subsidize their compliance with FAA regulations as well. To do so would be to pay for such compliance twice: Once through deregulation and once through the creation of this surcharge which would grant them over $2 billion in additional revenue.

I am also opposed to the closed rule on this measure. These bills are hardly noncontroversial. As I stated earlier, the safety of passengers and the question of who ultimately pays for compliance with Government regulations are at issue here. The gravity of these questions, as well as the rather complex parliamentary responses to them, demand an open rule.

For these reasons, I support the gentleman from Ohio's (Mr. VANIK) motion to vote down the previous question. If, however, the closed rule is not defeated, I will vote against the motion to substitute H.R. 11986 for title III of H.R. 8729, and for the motion to strike sections 301–304 of H.R. 8729. In this way, title I and title II, which address the problem of aircraft noise pollution, can be preserved without levying an additional charge on passengers or raiding the 8-percent safety tax. If all of these efforts fail, I will support the gentleman from Kentucky's (Mr. SNYDER) motion to recommit the bill. I urge all Members concerned with the safety of our airlines and their treatment of consumers to join me in voting his way.●

Mr. ULLMAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the Clerk will now read by titles the substitute committee amendment recommended by the Committee on Public Works and Transportation now printed in the reported

bill as an original bill for the purpose of amendment.

Immediately after title III of said substitute is read, it shall be in order to consider the text of H.R. 11986, as reported, if offered as a motion to strike out sections 301 through 304 of said substitute and to insert the provisions of H.R. 11986 as reported, said amendment shall not be subject to amendment except amendments offered by direction of the Committee on Ways and Means, and an amendment printed in the CONGRESSIONAL RECORD of July 18 by Representative PEPPER, but may be debated by the offering of pro forma amendments, and if said amendment is adopted no further amendments to H.R. 8729 modifying said amendment shall be in order, and an amendment to redesignate sections 305 and 306 of said substitute as title IV, and title IV as title V, shall then be in order.

The Clerk read as follows:

H.R. 8729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Airport and Aircraft Noise Reduction Act".

TITLE I

SEC. 101. For purposes of this title—

(1) the term "airport" means any air carrier airport whose projects for airport development are eligible for terminal development costs under section 20(b) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1720);

(2) the term "airport operator" means any person holding a valid certificate issued pursuant to section 612 of the Federal Aviation Act of 1958 to operate an airport;

(3) the term "Secretary" means the Secretary of Transportation.

SEC. 102. Not later than the last day of the twelfth month which begins after the date of enactment of this Act, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and such other Federal, State, and interstate agencies as he deems appropriate, shall by regulation—

(1) establish a single system of measuring noise to be uniformly applied in measuring the noise at airports and the areas surrounding such airports;

(2) establish a single system for determining the impact of noise upon individuals which results from the operations of an airport and which includes, but is not limited to, noise intensity, duration, frequency, and time of occurrence;

(3) identify land uses which are normally compatible with various impacts of noise on individuals.

SEC. 103. (a)(1) After the effective date of the regulations promulgated in accordance with section 102 of this title, any airport operator of an airport may submit to the Secretary a noise impact map which sets forth, in accordance with the regulations promulgated pursuant to section 102, the noncompatible uses in each area of the map, as of the date of submission of such map, a description of the projected aircraft operations at such airport during 1985, and the ways, if any, in which such operations will affect such map.

(2) If, after the submission to the Secretary of a noise impact map under paragraph (1), any change in the operation of an airport would create any new noncompatible use in any area surrounding such airport, the operator of such airport shall submit a revised noise impact map showing such new noncompatible use.

(b)(1) Section 11 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1711) is amended by renumbering paragraphs (6) through (21), and all references thereto, as paragraphs (7) through (22), respectively, and by adding immediately after paragraph (5) the following new paragraph:

"(6) 'Airport noise compatibility planning' means the development for planning purposes of information necessary to prepare and submit (A) the noise impact map and related information permitted by section 103 of the Airport and Aircraft Noise Reduction Act, including any cost associated with obtaining such information, and (B) a noise compatibility program for approval by the Secretary pursuant to section 104 of such Act.".

(2)(A) Section 13(a) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1713) is amended by—

(i) inserting "(1)" immediately before the first sentence thereof; and

(ii) adding at the end thereof the following new paragraph:

"(2) In order to promote the development of an effective noise compatibility program, the Secretary may make grants of funds to sponsors of air carrier airports whose projects for airport development are eligible for terminal development costs under section 20(b) of this title for noise compability planning.".

(B) Section 13(b) of such Act is amended to read as follows:

"(b) AMOUNT AND LIMITATION OF GRANTS.—(1) The award of grants under subsection (a)(1) of this section is subject to the following limitations:

"(A) The total funds obligated for grants under subsection (a)(1) of this section may not exceed $150,000,000, and the amount obligated in any one fiscal year may not exceed $15,000,000.

"(B) The United States share of any airport master planning grant or airport noise compatibility planning grant under this section shall be that per centum for which a project for airport development at that airport would be eligible under section 17 of this Act. In the case of any airport system planning grant under this section, the United States share shall be 75 per centum.

"(C) No more than 10 per centum of the funds made available under this paragraph in any fiscal year may be allocated for projects within a single State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam. Grants for projects encompassing an area located in two or more States shall be charged to each State in the proportion which the number of square miles the project encompasses in each State bears to the square miles encompassed by the entire project.

"(2) For the purpose of carrying out subsection (a)(2) of this section, there is authorized to be appropriated, for fiscal years ending on or after September 30, 1979, out of the Airport and Airway Trust Fund, not to exceed $15,000,000.".

SEC. 104. (a) Any airport operator who has submitted a noise impact map and the related information permitted by section 103(a)(1) may, after consultation with the officials of any unit of local government in the area surrounding such airport, the Federal officials having local responsibility for such airport, any air carrier using such airport, and any regional planning authority, submit a noise compatibility program to the Secretary for his approval. Such program shall set forth the measures which such operator proposes for the reduction of existing noncompatible uses and the prevention of the introduction of additional noncompatible uses within the area covered by the noise impact map submitted by such operator. Such measures may include, but are not limited to—

(1) the implementation of any preferential runway system;

(2) the implementation of any restriction on the use of such airport by any type or class of aircraft;

(3) the construction of barriers and acoustical shielding, including the soundproofing of public buildings;

(4) the use of flight procedures to control the operation of aircraft to reduce the impact of noise in the area surrounding the airport;

(5) acquisition of land and interests therein.

(b) The Secretary shall approve or disapprove any program submitted to him pursuant to subsection (a) within one hundred and eighty days after it is received by him. The Secretary shall approve such program (1) if the measures to be undertaken in carrying out such program (A) provide for the continuation of safe flight operation, (B) do not create an undue burden on interstate or foreign commerce, and (C) are reasonably consistent with obtaining the goal of reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses, and (2) if the program provides for its revision made necessary by any revised noise impact map submitted under section 103(a)(2) of this title. Failure of the Secretary to approve or disapprove such program within such time period shall be deemed to be an approval of such program, except any part of such program which relates to flight procedures referred to in subsection (a)(4) of this section.

(c) The Secretary is authorized to make grants under this Act for any project to carry out a noise compatibility program approved under subsection (b) of this section. Grants under this Act may be made to operators of airports submitting noise compatibility programs and to units of local government in the area surrounding such airports if the Secretary determines such units have the capability to carry out projects for which grant applications are made in accordance with such noise compatibility programs. The Federal share of any project for which a grant is made under this subsection shall be 80 per centum of the cost of the project. All of the provisions of the Airport and Airway Development Act of 1970 applicable to grants made under that Act (except section 17 and those provisions relating to apportionment) shall be applicable to any grant made under this Act, unless the Secretary determines that any provision of such Act of 1970 is inconsistent with, or unnecessary to carry out, the purposes of this Act.

(d) There is authorized to be appropriated, out of the Airport and Airway Trust Fund, not to exceed $150,000,000 for the fiscal year ending September 30, 1979, and not to exceed $250,000,000 for the fiscal year ending September 30, 1980, to be expended, at the discretion of the Secretary, for making grants under subsection (c) of this section.

SEC. 105. The Secretary, acting through the Administrator of the Federal Aviation Administration, after consultation with the officials of any unit of local government in the area surrounding such airport, shall prepare and publish a noise impact map and a noise compatibility program for the airport established by the Act of June 29, 1940 (54 Stat. 686), and the airport the construction of which was authorized by the Act of September 7, 1950 (64 Stat. 770). Such map and program shall be prepared and published in accordance with the requirements of this Act no later than one year after the effective date of the regulations promulgated in accordance with section 102 of this Act.

SEC. 106. Any noise impact map submitted to, or prepared by, the Secretary under this title and the list of land uses identified by the Secretary under this title as those which are normally compatible with various impacts of noise on individuals shall not be received in evidence in any trial, hearing, or other proceeding in or before any court in the United States.

SEC. 107. No person who acquires property or an interest therein after the date of enactment of this Act in an area surrounding an airport shall be entitled to recover damages with respect to the noise attributable to such airport unless, in addition to any other elements for recovery of damages, such person can show—

(1) a significant change in the type or frequency of aircraft operations at the airport; or

(2) a significant change in the airport layout; or

(3) a significant change in flight patterns; or

(4) a significant increase in nighttime operations,

occurred after the date of the acquisition of such property or interest therein.

SEC. 108. The Secretary shall study (1) airport noise compatibility planning carried out with grants made under section 13 of the Airport and Airway Development Act of 1970, and (2) airport noise compatibility programs carried out with grants made under this title, to determine to what extent such planning and programs are achieving the goals of reducing existing noncompatible uses of land around airports and preventing the introduction of new noncompatible uses around airports. Not later than January 1, 1981, the Secretary shall submit to Congress a report setting forth the determinations made pursuant to such study together with legislative recommendations, if any, which the Secretary determines necessary.

Mr. ANDERSON of California (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer amendments.

The Clerk read as follows:

AMENDMENTS OFFERED BY MR. FLORIO:

Page 25, line 16, strike out "and".

Page 25, line 17, after "authority" insert "and any metropolitan planning authority".

Page 26, line 10, after "shall" insert ", after consultation with the Administrator of the Environmental Protection Agency.".

Page 29, line 12, after "Secretary" strike out "shall" and substitute "and the Administrator of the Environmental Protection Agency shall each".

Page 29, lines 21 and 22, strike out "shall submit to Congress a report" and insert in lieu thereof "and the Administrator of the Environmental Protection Agency shall each submit reports to Congress".

Page 29, line 23, strike out "study" and insert in lieu thereof "studies".

Page 29, line 24, after "Secretary" insert "or the Administrator, as the case may be,".

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FLORIO. Mr. Chairman, these amendments which I understand the committee does not oppose would include the Environmental Protection Agency in the noise control program in an advisory capacity. It would require that the EPA Administrator be consulted by the Secretary of Transportation during the review of airport noise control plans and programs. The provision would not require any approval of the plans by EPA, nor would it extend the time period for plan review.

The bill as it was reported requires the Secretary of Transportation to consult with the Administrator of EPA in order to formulate the regulations under section 102. (For the purposes of establishing a system of noise measurement, impact determination, and land use determination) my amendment extends this cooperative process to the section 104 procedures for reviewing maps and plans for noise compatibility that will be submitted by airports in order to qualify for airport noise reduction funds.

EPA has expertise in the area of noise measurement and planning that can be shared with the FAA. Additionally, the perspective of the EPA as an environmental and public health organization would be valuable in assessing the noise plans submitted by the local airports and regional and metropolitan planners.

Additionally, my amendments would require EPA to report to the Congress on the success of this program. This would contribute an additional perspective to the report that will be submitted by the Secretary of Transportation, and will allow the Congress to see the progress and problems of the program more clearly.

I hope that the House will support these amendments in order to strengthen and improve an already admirable piece of legislation.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from California.

Mr. ANDERSON of California. I thank the gentleman for yielding.

Mr. Chairman, after seeing the gentleman's amendment, we have no objection to this amendment and we will accept it on this side of the aisle.

All this amendment does is to insert "and any metropolitan planning authority" and "after consultation with the Administrator of the Environmental Protection Agency."

Mr. FLORIO. That is correct.

Mr. HARSHA. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Ohio.

Mr. HARSHA. I am trying to review the gentleman's amendment. This is the one, I presume, where the EPA is given an advisory capacity in the noise control program?

Mr. FLORIO. That is correct.

Mr. HARSHA. Do they have any veto or control over the action that the FAA takes after they have acted in an advisory capacity?

Mr. FLORIO. No, sir. It is strictly advisory.

Mr. HARSHA. EPA is given a role of strictly advise and consultation, and no other authority?

Mr. FLORIO. That is correct.

Mr. HARSHA. And they have no veto, or they have no ability under the amendment to obviate any of the action of the FAA?

Mr. FLORIO. That is correct.

Mr. HARSHA. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey (Mr. FLORIO).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FLORIO: Page 25, immediately after line 10, insert the following:

(c) Part II of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 31. LIMITATION ON PROJECT ELIGIBILITY.

"(a) REQUIREMENTS APPLICABLE TO CERTAIN AIRPORTS.—If the aircraft noise associated with any airport affects (as determined by the Secretary) individuals in any State other than the State in which such airport is located, the airport owner or operator shall, before September 30, 1981, submit to the Secretary a noise impact map for such airport which conforms with section 103 of the Airport and Aircraft Noise Reduction Act and a noise compatability program for such airport which conforms with section 104 of such Act.

"(b)(1) ENFORCEMENT BY CIVIL ACTION.—Except as provided in paragraph (2), any person (including the Secretary) may commence a civil action on his own behalf against any airport operator for alleged failure to comply with subsection (a). Such action may be brought only in the judicial district in which such airport is located. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the requirements of subsection (a).

"(2) No action may be commenced under this subsection by any person other than the Secretary if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with subsection (a).

"(3) In any action under this subsection brought by any person other than the Secretary, the Secretary may intervene as a matter of right.".

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. HARSHA. Mr. Chairman, reserving the right to object, I am not sure I have the proper amendment. Is this the amendment on page 25, "immediately after line 10, insert the following:"?

Mr. FLORIO. That is correct.

Mr. HARSHA. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FLORIO. Mr. Chairman, I would not go so far as some other Members in describing this bill as a "raid on the Treasury," but in all candor, it is rather generous to the aviation industry for the legitimate purpose of dealing with the real problem of aviation noise. The taxpayers are entitled, however, to assurances that the expenditures will result in real improvements in airport and aircraft noise problems. I would have preferred that all major airports be required to have noise abatement plans; I am willing, however, to accept the committee's rationale that where such plans are most needed, the combination of money available under the act, and community and political pressure will induce the adoption of plans.

This amendment deals with those few areas around the country where that rationale breaks down and where the noise impact of airport operations lie in another State, thereby precluding the opportunity for community and political concerns to have an impact on the out of State airport operator's decision on whether to plan for noise abatement or not.

My amendment would require airports which in the opinion of the Secretary of Transportation affect populations in neighboring States, to engage in noise control programs as outlined in the bill as reported. No extraordinary planning demands will be placed upon these airports, and no existing funding programs will be jeopardized. The few airports will simply be required to do what the bill encourages all airports to do through financial incentives.

Should an airport that the Secretary determines does affect the citizens of another State, fail to engage in a noise planning program, any citizen living within the area impacted by aircraft noise from that airport would be authorized to initiate legal action to compel the airport to comply with the provisions of this bill.

I ask that the Members of the House support the provisions of my amendment so that the benefits of this legislation will be extended to all of our citizens living around major airports, regardless of which State happens to be their State of residence.

Mr. GOLDWATER. Mr. Chairman, will the gentleman yield for a question?

Mr. FLORIO. Certainly.

Mr. GOLDWATER. Is it my understanding that the gentleman's amendment would allow a civil suit to be brought against the operator to require him to comply with the provisions of the bill? I assume the gentleman is talking about title I and title II, which is basically a voluntary program.

Mr. FLORIO. I am talking about the provisions for the adoption of noise abatement studies and programs, and noise abatement implementation.

Mr. GOLDWATER. That is a voluntary program under the bill.

Mr. FLORIO. That is correct. What I am doing is carving out an exception because of the uniqueness of a small number of airports. The rationale as presented to me by the committee was that there was no need to require airports to do this because the financial incentives, as well as the community pressures, would induce airports to do the appropriate thing where it is needed.

What I am suggesting is the community pressures—and I am making reference to the situation with regard to the Philadelphia International Airport—where the noise impact lies in another State, certainly cannot be brought to bear in the State where the airport is located. I am saying in those few small instances where the noise impact, as determined by the FAA and the Department of Transportation, lies in a separate State, other than where the airport is located, those few airports should be required to go forth with the airport planning.

Mr. GOLDWATER. That may be the case in the gentleman's amendment, but in the bill this is strictly a voluntary effort on the part of the airport operators.

Mr. FLORIO. That is correct. What this amendment is saying is that insofar as it will have an impact on another State—and my understanding from the FAA is that it has an impact on seven airports in the country.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. FLORIO) has expired.

(On request of Mr. GOLDWATER, and by unanimous consent, Mr. FLORIO was allowed to proceed for 2 additional minutes.)

Mr. GOLDWATER. Mr. Chairman, if the gentleman will yield further, just so I may understand better, what this amendment really says is anyone could bring civil suit and force that operator to do what is now voluntary in the bill.

Mr. FLORIO. No, I think it would be more accurate to say what this amendment does is to say those will not be voluntary for those seven airports in this country whose flight patterns are such that they do impact on the citizens in another State, that they cannot just voluntarily decide whether to take advantage of the provisions in this act. They would be required to go forth using the moneys in the bill to come up with noise abatement programs.

Mr. GOLDWATER. Where does it in this amendment call for the seven areas?

Mr. FLORIO. The amendment states that the Secretary of Transportation will determine what airports have a substantial noise impact in States other than the State in which the airports are located.

Mr. ANDERSON of Illinois. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from New Jersey. The amendment would require several airports to file a comprehensive noise program by January 1, 1981.

The Public Works Committee held 27 days of hearings on current and proposed Federal policy on aircraft noise. The bill provides for a voluntary approach to the problem because in our view land use decisions should be kept in the hands of local and State governments with the Federal Government's role being to control noise at the source and to aid, assist, and encourage proper land use decisions. The amendment would intrude into the traditional local role and is discriminatory in that it only applies to a handful of airports. I urge defeat of the amendment.

Mr. HARSHA. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, as the chairman of the subcommittee has pointed out, this involves an area of local land use planning. We had great difficulty with this bill when we finally worked out the provisions in title I that would assure that noise impact mass and lists of noncompatible land uses would not be used in courts of law because we could see a proliferation of suits that would involve not only local communities and airport operators but the Federal Government as well. We even have a provision that will prohibit local citizens from filing suits for damages in areas adjacent to airports unless the noise impact occurred subsequent to their move into the area, in substance.

But this question of land use planning and noise compatability programs is so involved and so delicate and so susceptible to the wrong interpretation that we went to great lengths in this legislation to make it voluntary and voluntary only.

Now the gentleman proceeds to offer an amendment that requires the filing of a noise impact map for an airport which happens to have noise that impacts areas outside the State where the particular airport is located.

But the amendment makes it mandatory that the operator of such an airport shall file, before September 30, 1981, with the Secretary, a noise impact map for such airport. But then it goes on and permits any citizen involved to file a civil action. However, that citizen is precluded from filing any civil action if the Secretary of Transportation is prosecuting a civil action.

Here we have the Federal Government thrown into the position where it must file a civil action against the operator of the airport. You would have "big brother" involved again. You are making it mandatory that the airport operator file a noise impact map and you are making it mandatory that the Secretary of Transportation involve himself in a lawsuit to force the airport operator to submit a noise compatability map, and we would be getting right back into the same old ball game of "big brother" forcing action by local officials.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. HARSHA. I will be glad to yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I thank the gentleman from Ohio (Mr. HARSHA) for yielding to me and I first wish to say that I concur with the remarks of the gentleman from Ohio. We do have a noise problem, but I disagree with the title III approach.

One of the main problems we found is the large number of lawsuits which have

been filed against the airport operator. This is one of the real reasons we need to do something. I do not have any disagreement with the fact that we need to do something, although I have my own ideas about what needs to be done. But what you are doing when you force people to file noise impact maps is that you are setting up a real heyday for the local lawyers to file lawsuits, subject to some restrictions.

Certainly, if they are going to sue the airport operator, at least they should prove there has been some damage, or that they have been impacted in some way.

Mr. HARSHA. I agree with the gentleman from Kentucky (Mr. SNYDER). Really what you are doing is stifling air transportation expansion and growth. We are having problems right now; that is why we have to have this freedom of action to deal with the noise problem. There are problems now in expanding airports where they need expansion because of the noise problem. If you get into this area of making it mandatory that you file a noise impact map and where you are making it mandatory for the Secretary of Transportation to become involved, and where you are instituting these things so as to make some of these adjustments, then we are getting very close to that very treacherous area where the Federal Government is telling local officials how they should zone their land and how they should determine the uses of that land. We should avoid doing that if at all possible.

So, I urge defeat of the amendment.

Mr. FLORIO. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The Chair will state that the gentleman from New Jersey (Mr. FLORIO) has already spoken and he would have to obtain unanimous consent to proceed further.

Mr. FLORIO. Mr. Chairman, I so do, I ask unanimous consent that I may proceed further, for 5 minutes, by being permitted to strike the last word.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. FLORIO).

The question was taken; and on a division (demanded by Mr. FLORIO) there were—ayes 3, noes 10.

Mr. FLORIO. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 770]

Ambro	Fary	Metcalfe
Ammerman	Fish	Mikulski
Anderson, Ill.	Flowers	Mikva
Andrews, N.C.	Ford, Mich.	Miller, Calif.
Archer	Forsythe	Moakley
Armstrong	Frenzel	Moffett
Beard, R.I.	Gaydos	Moss
Beard, Tenn.	Giaimo	Nowak
Bellenson	Gibbons	Pepper
Breaux	Gilman	Pike
Brooks	Gonzalez	Quie
Broomfield	Guyer	Rhodes
Brown, Mich.	Harrington	Richmond
Burke, Calif.	Hawkins	Risenhoover
Burke, Fla.	Heckler	Roe
Burton, John	Holland	Rogers
Burton, Phillip	Hollenbeck	Roncalio
Byron	Huckaby	Runnels
Caputo	Ireland	Ryan
Cavanaugh	Jacobs	Santini
Cederberg	Johnson, Colo.	Sarasin
Chisholm	Kasten	Shuster
Clawson, Del	Kemp	Sikes
Clay	Keys	Sisk
Cochran	Kindness	Smith, Nebr.
Cohen	Krueger	Steed
Collins, Ill.	Le Fante	Teague
Conyers	Leach	Treen
Coughlin	Lederer	Trible
Davis	Leggett	Tsongas
Delaney	Lehman	Tucker
Dent	Lujan	Udall
Derwinski	Lundine	Walsh
Diggs	McCloskey	Waxman
Dingell	McCormack	Wiggins
Drinan	McDonald	Wilson, C. H.
Duncan, Tenn.	McEwen	Wilson, Tex.
Early	McKinney	Wirth
Eckhardt	Mathis	Young, Alaska
Evans, Colo.	Mazzoli	Young, Tex.
Evans, Ga.	Meeds	

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BRADEMAS), having assumed the chair, Mr. STUDDS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 8729, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 310 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand by the gentleman from New Jersey (Mr. FLORIO) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 127 noes 246, not voting 59, as follows:

[Rollcall Vote No. 771]

AYES—127

Addabbo	Bonior	Conte
Alexander	Bonker	Conyers
Ambro	Brinkley	Cornell
Anderson, Ill.	Brodhead	Coughlin
Annunzio	Burke, Mass.	Delaney
Ashley	Burton, John	Dellums
Baldus	Burton, Phillip	Dodd
Bedell	Byron	Downey
Benjamin	Carr	Drinan
Biaggi	Chisholm	Early
Bingham	Clay	Eckhardt
Blanchard	Collins, Ill.	Edgar
Eilberg	Markey	Rosenthal
Evans, Del.	Marlenee	Russo
Fenwick	Mattox	Scheuer
Fish	Meyner	Seiberling
Fisher	Mikulski	Shipley
Florio	Mikva	Simon
Forsythe	Minish	Skubitz
Fraser	Mitchell, Md.	Solarz
Garcia	Moakley	Staggers
Gilman	Moffett	Stark
Gradison	Moorhead, Pa.	Steed
Green	Mottl	Steers
Harkin	Murphy, Ill.	Stokes
Harris	Murphy, Pa.	Studds
Holt	Myers, Gary	Thompson
Holtzman	Myers, Michael	Traxler
Howard	Nedzi	Tucker
Hughes	Oakar	Vento
Hyde	Obey	Walgren
Jeffords	Ottinger	Waxman
Kildee	Patten	Weiss
Kostmayer	Patterson	Winn
Krebs	Pattison	Wirth
LaFalce	Pease	Wolff
Le Fante	Pike	Wydler
Lederer	Rangel	Yates
Lent	Reuss	Young, Fla.
Luken	Rinaldo	Zablocki
McCloskey	Rodino	Zeferetti
McHugh	Roe	
Maguire	Rooney	

NOES—246

Abdnor	Edwards, Okla.	Lundine
Akaka	Emery	McDade
Anderson, Calif.	English	McDonald
	Erlenborn	McEwen
Andrews, N.C.	Ertel	McFall
Andrews, N. Dak.	Evans, Ga.	McKay
	Fascell	Madigan
Applegate	Findley	Mahon
Archer	Fithian	Mann
Ashbrook	Flippo	Marks
Aspin	Flood	Marriott
AuCoin	Flynt	Martin
Badham	Foley	Mathis
Bafalis	Ford, Tenn.	Mazzoli
Barnard	Fountain	Meeds
Baucus	Fowler	Michel
Bauman	Frey	Milford
Beard, R.I.	Fuqua	Miller, Ohio
Bellenson	Gammage	Mineta
Bennett	Gaydos	Mitchell, N.Y.
Bevill	Gephardt	Mollohan
Blouin	Giaimo	Montgomery
Boggs	Ginn	Moore
Boland	Glickman	Moorhead, Calif.
Bolling	Goldwater	
Bowen	Gonzalez	Murphy, N.Y.
Brademas	Goodling	Murtha
Breckinridge	Gore	Myers, John
Brown, Calif.	Grassley	Natcher
Brown, Mich.	Gudger	Neal
Brown, Ohio	Guyer	Nichols
Broyhill	Hagedorn	Nowak
Buchanan	Hall	O'Brien
Burgener	Hamilton	Oberstar
Burleson, Tex.	Hammer-schmidt	Panetta
Burlison, Mo.		Pepper
Butler	Hanley	Perkins
Carney	Hannaford	Pettis
Carter	Hansen	Pickle
Cavanaugh	Harsha	Poage
Cederberg	Hawkins	Pressler
Chappell	Heftel	Preyer
Clausen, Don H.	Hightower	Price
	Hillis	Pritchard
Cleveland	Horton	Pursell
Coleman	Hubbard	Quayle
Collins, Tex.	Ichord	Quillen
Conable	Jacobs	Rahall
Corcoran	Jenkins	Railsback
Corman	Jenrette	Regula
Cornwell	Johnson, Calif.	Rhodes
Cotter	Jones, N.C.	Roberts
Crane	Jones, Okla.	Robinson
Cunningham	Jones, Tenn.	Rogers
D'Amours	Jordan	Roncalio
Daniel, Dan	Kastenmeier	Rose
Daniel, R. W.	Kazen	Rostenkowski
Danielson	Kelly	Rousselot
Davis	Kemp	Roybal
de la Garza	Keys	Rudd
Derrick	Kindness	Ruppe
Derwinski	Lagomarsino	Santini
Devine	Latta	Satterfield
Dickinson	Levitas	Sawyer
Dicks	Livingston	Schroeder
Dingell	Lloyd, Calif.	Schulze
Dornan	Lloyd, Tenn.	Sebelius
Duncan, Oreg.	Long, La.	Sharp
Duncan, Tenn.	Long, Md.	Shuster
Edwards, Ala.	Lott	Sikes
Edwards, Calif.	Lujan	Skelton

Slack	Taylor	Watkins
Smith, Iowa	Thone	Weaver
Snyder	Thornton	Whalen
Spellman	Trible	White
Spence	Ullman	Whitehurst
St Germain	Van Deerlin	Whitley
Stangeland	Vander Jagt	Whitten
Stanton	Vanik	Wilson, Bob
Steiger	Volkmer	Wright
Stockman	Waggonner	Wylie
Stratton	Walker	Yatron
Stump	Walsh	Young, Mo.
Symms	Wampler	

NOT VOTING—59

Ammerman	Gibbons	Nix
Armstrong	Harrington	Nolan
Beard, Tenn.	Heckler	Quie
Breaux	Hefner	Richmond
Brooks	Holland	Risenhoover
Broomfield	Hollenbeck	Runnels
Burke, Calif.	Huckaby	Ryan
Burke, Fla.	Ireland	Sarasin
Caputo	Johnson, Colo.	Sisk
Clawson, Del	Kasten	Smith, Nebr.
Cochran	Krueger	Teague
Cohen	Leach	Treen
Dent	Leggett	Tsongas
Diggs	Lehman	Udall
Evans, Colo.	McClory	Wiggins
Evans, Ind.	McCormack	Wilson, C. H.
Fary	McKinney	Wilson, Tex.
Flowers	Metcalfe	Young, Alaska
Ford, Mich.	Miller, Calif.	Young, Tex.
Frenzel	Moss	

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Breaux against.

Mr. Richmond for, with Mr. Teague against.

Mr. Ford of Michigan for, with Mr. Dent against.

Mr. Nix for, with Mr. McCormack against.

Mr. Metcalfe for, with Mrs. Burke of California against.

Mr. PEPPER changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there additional amendments to title I?

Mr. WYDLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to engage in colloquy with the chairman of the subcommittee on the meaning of some of the sections in title I. My purpose is to try to clarify the legislative history of these sections.

I noted that in section 102 there is a series of requirements established to require the Secretary of Transportation to establish, a single system for measuring noise to be uniformly applied and so on. All of these requirements are, to my knowledge, duplicated in earlier legislation for similar purposes. I want to make it clear in my own mind and perhaps in those of others who will hereafter have to interpret this language.

First, I would inquire whether requiremets one, two, and three in section 102 of title I on page 22, refer specifically to activities that may be undertaken under section 103.

Are these standards established by the Secretary to be limited in applicability to those actions which are provided for under section 103?

Mr. ANDERSON of California. Will the gentleman yield?

Mr. WYDLER. I yield to the gentleman.

Mr. ANDERSON of California. I thank the gentleman for yielding.

During the hearings on the bill it was very well established that there are too many different systems of measuring noise. There is the NEF, the CNEL, and several others, and each one is different. There must be 10 or more different measuring systems. So we direct the Secretary to establish a single system for determining the impact of aircraft noise, and that would be the one that we would then all go by, so that California would not use one and Texas use another and the Federal Government use a third.

Mr. WYDLER. I understand, however, that is not my question. The gentleman is trying to clarify the situation regarding provisions that are set up in section 103. What I am trying to clarify here is whether these other noise measurement systems that have been developed and are being applied by the Federal Government and State governments will not each have to come within the provisions of section 102. In other words, do the provisions of section 102 apply just to the requirements of section 103 or to all noise measurement criteria?

Mr. ANDERSON of California. It only applies to this act, not other acts.

Mr. WYDLER. All right. I thank the gentleman for his reply. Now, I would like to ask him another question, if I might. Also in this legislation, there are certain restrictions placed on the bringing of citizens' lawsuits. For example, this bill would limit who can be a litigant, and what evidence can be offered in trials for damages arising from jet noise. As I understand it, this legislation would limit the ability of anyone who bought a home in the noise impact area of an airport after the date of enactment from pursuing a lawsuit against the airport, the airlines, or other responsible party, for damages arising from the loss of the value of the property or for its use due to jet noise. Is that the intention of the committee with regard to this section?

Mr. ANDERSON of California. He would only have to show one of the four itemized changed conditions we have in section 107:

A significant change in the type or frequency of aircraft operations at the airport; or

a significant change in the airport layout; or

a significant change in flight patterns; or

a significant increase in nighttime operations.

Mr. WYDLER. Thank you. Let us return to section 106. Let us refer specifically to what would prevent the receipt in evidence in any trial of noise impact maps showing land uses identified by the Secretary as those which are "normally compatible" with various impacts of noise on individuals, and so forth.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. WYDLER was allowed to proceed for 5 additional minutes.)

Mr. WYDLER. Does that mean that in the course of a trial no evidence could be offered by a litigant in a case where such a noise impact a map had been filed by an airport operator?

Mr. ANDERSON of California. No. It says "any noise impact map," submitted to, or prepared by, the Secretary. Just that individual map. It is my understanding that in such a suit, the attorneys could even go out and get the map maker and get him to bring the information that they used to make the map, but that this specific noise impact map as submitted to the Secretary under this section cannot be used as evidence in any trial.

Mr. WYDLER. Very well. Now, in going to section 107—and this is the last section upon which I have questions, as I understand the provisions of section 107—I must say that I do not agree with any of these provisions—I think it is very important for all who are going to have to live with high airport noise levels, that at least they should know what the conditions will be like and what the limitations of these sections might be if they should become law—under section 107, I understand that any person who would purchase a home in the noise impact area of an airport would thereafter be foreclosed from bringing any lawsuit to recover damages for jet noise which is causing a loss to his property and to his environment. Is this what the committee is trying to do?

Mr. ANDERSON of California. If they purchase property after enactment of this act, again they would have to show those same points I mentioned earlier. It does prohibit persons buying property after enactment from recovering, unless they would meet one of those four points that I mentioned:

(1) a significant change in the type or frequency of aircraft operations at the airport; or

(2) a significant change in the airport layout; or

(3) a significant change in flight patterns; or

(4) a significant increase in nighttime operations,

occurred after the date of the acquisition of such property or interest therein.

If any one of those changed conditions could be proved, then they would surely be able to go to court and use this as evidence.

Mr. WYDLER. I understand the limitations. I would like to point out to the chairman, for example, that many people who buy homes do not decide to purchase them when aircraft noise is in evidence as when they inspected the property. I am sure the chairman realizes this. The gentleman comes from this kind of area himself.

In my district around the Kennedy Airport they may be using the runways at the other side of the airport and one may not hear aircraft noise; however, the next day when they are using the runway on the other end, it is unbearable. So, a person could very innocently buy a home and not be aware that there is a high jet noise in the area.

However, on the assumption, apparently, that the committee is making, that everybody who buys in a jet noise area must know this, may not be a fact at all.

Mr. ANDERSON of California. I think the gentleman from Ohio (Mr. HARSHA) was seeking recognition on this.

Mr. WYDLER. Mr. Chairman, I yield to the gentleman from Ohio.

Mr. HARSHA. Mr. Chairman, it would be inconceivable to me that you would buy a home and only visit it one time before you bought it. Certainly if you are buying near an airport, I do not see how you would fail to have knowledge of airplanes flying in the vicinity of your home.

This provision is included to prevent a lot of frivolous suits that have been filed by people that knowingly have bought land in the vicinity of an airport, knowing that airport is operating there, and come in and file a suit to get damages. Now, if you do that, you certainly should not be granted damages.

How you would visit a home on a particular occasion and miss the flying in that particular area is beyond my comprehension. I would think you would look at that two or three times before you made an investment to buy a home there.

Mr. WYDLER. Mr. Chairman, the gentleman's theory may be correct. However, it could very well happen—in a large metropolitan area where planes are landing and departing from two or three different directions—according to the law of averages or to planning that planes would not be flying over the house on the day it was visited. It could happen, and it certainly has.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent, Mr. WYDLER was allowed to proceed for 2 additional minutes.)

Mr. WYDLER. Mr. Chairman, really this could happen. I think that what the gentleman meant to do, and what I can also understand is that when people have actual knowledge of buying a home in a jet noise impacted area, the plan is that they cannot sue thereafter and recover damages for that loss, because in fact they do not have a loss. They knew about the diminished value of their property at the time they bought it. That is logical. However, what is not logical is that we infer such knowledge to everyone who buys in noise impact areas which we are trying to define.

I would like to urge the chairman and the ranking minority member to agree, if they will, to offer some amending language which I shall offer in conference which will be of help in carrying out the intentions of the chairman and the ranking minority member without penalizing innocent people who really do have a legitimate claim in order not to exclude them from any claim for damages which is just and proper.

Mr. ANDERSON of California. Mr. Chairman, I thank the gentleman for making this suggestion.

Mr. Chairman, I am certainly in sympathy with anybody who buys property, not knowing that an airport is nearby. If the gentleman can come up with some language that we can accept, I certainly would consider it. Perhaps the gentleman from Ohio (Mr. HARSHA) can help us.

Mr. HARSHA. Mr. Chairman, will the gentleman yield?

Mr. WYDLER. I yield to the gentleman from Ohio.

Mr. HARSHA. Mr. Chairman, I would just like to point out that we are not endeavoring here to jeopardize or encumber innocent people who inadvertently get into a situation of this kind, but that is going to be the very minimum of any such occurrence, in my judgment, from the experience we have had with this program.

However, there is a multiplicity of frivolous suits filed by people who wish to take advantage of the situation, knowing full well or at least having had notice that the airport was there and operating there. Yet they have gone ahead and taken advantage of the privilege of filing a lawsuit in order to at least recover nuisance value in the form of damages. That is the kind of thing we are trying to get at and prevent.

The CHAIRMAN. Are there additional amendments to title I?

If not, the Clerk will read.

The Clerk read as follows:

TITLE II

SEC. 201. (a) Paragraph (3) of subsection (a) of section 14 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1714) is amended by striking out "$495,000,000 for fiscal year 1979, and $525,000,000 for fiscal year 1980." and inserting in lieu thereof "$720,000,000 for fiscal year 1979, and $793,000,000 for fiscal year 1980.".

(b) Paragraph (4) of subsection (a) of section 14 of the Airport and Airway Development Act of 1970 is amended by striking out "$80,000,000 for fiscal year 1979, and $85,000,000 for fiscal year 1980." and inserting in lieu thereof "$115,000,000 for fiscal year 1979, and $127,00,000 for fiscal year 1980.".

SEC. 202. Paragraph (2)(A) of subsection (a) of section 17 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1711 et seq.) is amended by striking out "1977 and 1978, and shall be 80 per centum of the allowable project costs in the case of grants from funds for fiscal years 1979 and 1980," and inserting in lieu thereof "1977 through 1980".

SEC. 203. Part II of the Airport and Airway Development Act of 1970 (49 U.S.C. 1711 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 31. Notwithstanding any other provision of this title, no airport development project involving the construction or extension of any runway may be approved by the Secretary at any general aviation airport located astride a line separating two counties within a single State if, before the submission of such project to the Secretary, such project has not been approved by the governing body of any village incorporated under the laws of that State which is located entirely within five miles of the nearest boundary of such airport.".

Mr. ANDERSON of California (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT OFFERED BY MR. PICKLE

Mr. PICKLE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PICKLE: Page 30 ,after line 13, insert the following new subsection:

(c) Subsection (e) of section 14 of the Airport and Airway Development Act of 1970 is amended by adding at the end thereof the following new sentence: "If in fiscal year 1979, or in any subsequent fiscal year, the total amount obligated under subsection (c) of this section in such fiscal year is less than the amount made available for obligation under such subsection for such fiscal year, the amount available for obligation or expenditure as determined under the preceding sentence of this subsection shall be reduced by an amount equal to the difference between the amount made available under such subsection (c) for such fiscal year and the total amount obligated under such subsection (c) for such fiscal year.".

Mr. PICKLE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. PICKLE. Mr. Chairman, the purpose of this amendment is to persuade the Department of Transportation to spend the full amount that Congress appropriates from the airport and airways trust fund for the purpose of facilities and equipment.

Last spring when the Ways and Means Oversight Subcommittee held hearings to investigate the airport and airways trust fund, we were very disturbed to find that the trust fund has accumulated enormous unobligated surpluses at a time when there is a critical need for installation of safety equipment at airports throughout the Nation.

With the assistance of the National Transportation Safety Board, we estimated that the minimal needs to make carrier airports safe would require expenditures of about $157 million for instrument landing systems, visual approach indicators, frangible light fixtures, and runway grooving.

This would not seem like an unusually large amount of money in light of the fact that when Congress established the trust fund we stipulated that the facilities and equipment fund should receive an annual authorization of at least $250 million. But the problem is that this minimum figure has been consistently ignored.

In the past, the administration has often requested less than the minimum of $250 million for facilities and equipment and then they have not even spent the amount that is appropriated.

It is frustrating when we have such important safety needs at our larger airports, we cannot get the FAA to spend even the minimum amount for equipment that is required by law. I do not think we should spend surplus money just for the sake of spending and I am not advocating that. I simply feel that it is irresponsible to allow this money to go unobligated year after year when there are clearly documented safety needs at our airports.

My amendment states that if the Secretary of Transportation fails to obligate the minimum authorized for facilities and equipment in any fiscal year, then tion in the amount authorized for maintence of the airway system. This is exactly the same approach that was used in the 1976 ADAP amendments to insure that DOT obligates the full amount authorized for airport development. It has worked so far for airport development grants, because of OMB's keen interest in using trust fund money for maintenance of the airway system.

This amendment is the proper and most effective means to insure that DOT fulfills its duty to make our airports as safe as possible. I urge the adoption of this amendment and hope the committee can accept it.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from California.

Mr. ANDERSON of California. Mr. Chairman, on this side we are happy to accept the amendment offered by the gentleman from Texas (Mr. PICKLE), and I rise in support of the amendment.

The Department of Transportation, thanks I believe to OMB, has apparently embarked upon a course of short shrifting aviation safety items such as navigational aids.

Both the Public Works and Transportation, and the Ways and Means Committees, held hearings on the problem, and this amendment is probably the only way to, in effect, force the obligation of the full amount Congress has indicated is needed in this area; namely, "not less than $250 million." This is a prosafety amendment, and I urge its adoption.

Mr. PICKLE. Mr. Chairman, I thank the gentleman from California (Mr. ANDERSON) very much for accepting the amendment, and I ask for a favorable vote on the amendment.

Mr. HARSHA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the majority has already accepted the gentleman's amendment.

Mr. Chairman, I will say at this point that maybe I should not offer this confession, but it was through my insistance several years ago, I believe, that we adopted this maintenance provision in this fund during a previous administration, however, it was fully my intent that it would not detract from the other provisions of the program in order to help fund the maintenance program.

I wholeheartedly concur with what the gentleman from Texas (Mr. PICKLE) has said, that in order to see that we get adequate F. & E. and safety measures around airports, we ought to have a proposal such as the gentleman has offered.

Mr. Chairman, I would like to have the record show, too, referring to the previous colloquy with the gentleman from New York (Mr. WYDLER), on noise impact maps, as it relates to the operation of airports. There may be a requirement in the noise compatibility program that requires notice of the airport noise impacts to prospective purchasers of real estate near airports such as a requirement to show the noise impact map to all prospective purchasers.

So we hope, and it is the intention of the Committee, that that will occur, so that there will be no circumstances the gentleman alluded to of an innocent purchaser not being aware of the noise situation and then being jeopardized and having the value of his property depreciated.

Mr. Chairman, the minority accepts the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. PICKLE).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SKUBITZ

Mr. SKUBITZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SKUBITZ: Page 30, after line 13, insert the following new subsection:

(c)(1) Subsection (a) of section 14 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1714(a)) is amended by adding at the end thereof the following new paragraph:

"(5) For the purpose of developing general aviation airports in the several States (other than the District of Columbia), in addition to the amounts set forth in paragraph (4) of this subsection, $25,000,000 for fiscal year 1979 and $25,000,000 for fiscal year 1980.".

(2) The first sentence of paragraph (2) of subsection (b) of section 14 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1714(b)(2)) is amended by striking out "(3) and (4)" and inserting in lieu thereof "(3), (4), and (5)".

(3) Subsection (a) of section 15 of the Airport and Airway Development Act of 1970 (15 U.S.C. 1715(a)) is amended—

(A) by renumbering paragraph (6), and any reference thereto, as paragraph (7); and

(B) by inserting immediately after paragraph (5), the following new paragraph:

"(6) On the first day of each fiscal year which begins on or after October 1, 1978, for which any amount is authorized to be obligated for the purposes of paragraph (5) of section 14(a) of this part, the amount made available shall be apportioned equally among the several States (other than the District of Columbia). Each amount apportioned to a State under this paragraph (A) shall be available only for approved airport development projects located in that State or sponsored by that State or some public agency thereof but located in an adjoining State, and (B) shall remain available to such State until expended.".

Mr. SKUBITZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. SKUBITZ. Mr. Chairman, 10 years ago you could not give general aviation airport money away in Kansas—the Secretary reallocated the money to the large States.

Now—Kansas was no different than 30 or more other States—who found themselves in like or similar circumstances.

But times have changed and so has Kansas. So have the other 30 or more States in the Union.

With small industries employing 20, 50, 150 workers, establishing plants in cities of 5,000, 10,000, 15,000 people—small business owners find themselves hampered, because of the lack of fast, efficient transportation systems—to reach their prospective clients.

To them while major airlines are not available—passenger trains—buses—yes, even the automobile do not meet their travel requirements. Hence, they are turning to small aviation aircraft. If industry is to grow—if small communities are to grow—they must have safer airport facilities.

Today over $135 million in combined Federal and local funds are being sought by Kansas towns. FAA planners have recommended additional airport funds for 88 Kansas communities—between 1978 and 1982.

That compares with $15 million for the 5-year period ending September 30, 1977. We will be lucky to get one, maybe two, airports in Kansas if this bill in its present form is passed.

Now the story of Kansas is the story of every State in the Union.

My colleagues, there would not have been an automobile industry today if men of vision had not seen and worked for a nationwide, integrated highway system.

The general aviation industry will never reach its peak unless we provide an adequate airport system.

Industry in small cities not served by air will always be handicapped, unless business managers can travel fast and expeditiously.

I am not a member of the Public Works Committee—but I am familiar with the historical development of this program since I was a member of the Interstate Commerce Committee which handled the Aviation Facilities Extension and Improvement Act of 1969. It was in this act that we increased the gasoline tax on general aviation from 2 to 7 cents a gallon.

It was in that act we raised the tax on passenger tickets from 5 to 8 percent and provided that all revenues go into the newly created airport and airway trust fund.

If we had not done that in 1969, the general taxpayer would be required today to foot the total bill out of general tax revenues if it were not for the surplus funds in this fund. That makes possible the discussion of this bill today. I say this because I doubt the Public Works Committee would ask the taxpayer to fork up $28 for noise control.

It was in that act of 1969 that we placed an additional $75 million to be used for "relief airports" only—these airports to be used for general aviation—which included business aircraft and those funds to be distributed three-fourths on an area population basis and one-fourth at the discretion of the Secretary of Transportation.

If my amendment is not adopted, it means that in my district alone where the national airport system plan identifies 16 general aviation airports on which Federal funds may be spent, these 16 airports will be competing for $813,000

apportioned to the State of Kansas for fiscal year 1979. Eleven of these airport communities are requesting more aid than is apportioned to the entire State of Kansas.

Worse still is the fact that these 16 will be competing with 58 others in the State of Kansas.

Quite frankly, my people cannot understand Congress reluctance to authorize further airport development when the need exists for these revenues and there is a $2 billion surplus in the trust fund coffer.

The situation in my district, and Kansas, is no different than that found in 60 percent of the States in the Union.

Call the roll Alabama, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming—all receive less than $813,000 for general aviation airport development.

And 11 others are receiving less than $1 million: Arizona, Colorado, Georgia, Indiana, New Jersey, New Mexico, North Carolina, Oregon, Virginia, Washington, and Wisconsin.

The amendment which I have introduced simply authorizes $25 million in fiscal year 1979 and adds another $25 million for fiscal year 1980 for general aviation development.

This money would be evenly divided among the 50 States—each State receiving $500,000 for general aviation development during fiscal years 1979 and 1980.

It would in no way affect the money recommended by the committee for use on a population and area basis.

When I spoke to the members of the committee regarding my amendment to increase the amount available to the States for general aviation development by $25 million each year—1979 and 1978 and dividing this equally among the 50 States—each State to receive $500,000—I was told that the committee had already increased the amount authorized for general aviation by $35 million in 1979 and $43 million in 1980.

I was told that the administration opposes the increases recommended by the committee—that the added amount was inflationary.

Why, the fact is the committee has done little or nothing for the States to develop their airport facilities.

What the committee has done is to increase the amount of funds available to the Secretary of Transportation by $35 million in 1979, and $43 million in 1980. In addition to the 25 percent he receives under existing law which he can spend wherever he wants to or refuse to spend a dime. Since the administration opposes any increase, you can bet your bottom dollar—nothing will be spent by this administration.

The fact is—that under existing law the only funds available to the State is three-fourths of level of spending of $80 million in 1979 or $60 million, three-fourths of $85 million in 1980 or $63 million.

I hope the committee will accept my amendment.

Mr. DON H. CLAUSEN. Mr. Chairman, will the gentleman yield?

Mr. SKUBITZ. Mr. Chairman, I yield to the gentleman from California.

The CHAIRMAN. The time of the gentleman from Kansas (Mr. SKUBITZ) has expired.

(On request of Mr. DON H. CLAUSEN, and by unanimous consent, Mr. SKUBITZ, was allowed to proceed for 2 additional minutes.)

Mr. DON H. CLAUSEN. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Kansas.

Quite frankly, I hope the leadership of the committee would accept the gentleman's amendment. The moneys are in the trust fund. The people that are making payments into the trust fund are anticipating it is going to be used for airport and airway development purposes. There is much in the way of need. As the gentleman has pointed out, the current funding increases in the legislation before us are purely discretionary.

What we need is to develop as part of our airport development assistance plan the general assistance to aviation throughout the country. So I hope the leadership could accept this amendment and then we could deal with it when we go to conference and at least have a basis to evaluate it on the basis of what I consider sound recommendations.

I hope the leadership will accept this.

Mr. SKUBITZ. I thank the gentleman from California.

Mr. MILFORD. Mr. Chairman, will the gentleman yield?

Mr. SKUBITZ. I yield to the gentleman from Texas (Mr. MILFORD).

Mr. MILFORD. Mr. Chairman, I am very much in sympathy with what the gentleman is trying to do. I, too, would like to see us expand our efforts in this case of general aviation airports. I would, however, be forced to vote against the gentleman's amendment for this reason.

This formula for distribution leaves something to be desired. To divide it equally between 50 States in a stated amount totally disregards the distances involved, and the airplane attracts itself to those States where we have vast distances. For instance, California has the highest number of airplanes.

Mr. SKUBITZ. Mr. Chairman, let me recoup my time.

The money provided in this bill by the committee is still to be allocated under the formula that was adopted by the committee, but I am asking only that we put in $25 million to help all the States with their problems.

Mr. ANDERSON of California. Mr. Chairman, I rise in opposition to the amendment. First, the amendment would add $25 million a year to an amount already considered to be too high by the administration. The Senate bill is quite a bit lower than this bill, and the administration seems to be more in favor of the Senate version. To add an additional $25 million a year in my opinion is unnecessary and could put us in a more difficult conference situation. This bill already increases the general aviation fund by $30 million for fiscal year 1979 and by $37 million for fiscal year 1980. In addition, the bill extends for two more years the 90 percent Federal share of ADAP grants to general aviation airports. Without this provision the Federal share will revert to 80 percent.

The other reason I oppose this amendment is that it will tinker with the current distribution formula for general aviation airports. I believe we need to take a look at this issue next year when the Public Works Committee will be considering renewal of the ADAP program beyond fiscal year 1980. For these reasons I urge a "no" vote on this amendment.

Mr. DON H. CLAUSEN. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON of California. I yield to the gentleman from California (Mr. DON H. CLAUSEN).

Mr. DON H. CLAUSEN. Mr. Chairman, the chairman says we will consider it next year. As a practical matter, there will be leadtime requirements if the amendment were to be adopted. I cannot believe the FAA, who knows the needs of general aviation airports in this country is speaking for the administration in this instance.

This is one of the problems we have with this unified budget. The OMB is the one who determines whether or not we will have airport assistance going forward.

Each year, if we extend the construction time frame for development of these airports, the escalation of costs is going to cause the costs to go out of sight.

I plead with my colleagues to support this amendment and then we will be able to discuss it with the conferees.

Mr. GOLDWATER. Mr. Chairman, I move to strike the last word and I rise in support of the amendment.

Mr. Chairman, I would urge support of this amendment.

I think the gentleman from Kansas (Mr. SKUBITZ) points up one of the problems we have in this distribution of the ADAP funds, and that is the disproportionate amount that tends to go to the major hub centers of this country directly and primarily interested in general aviation. There is currently about $1 billion in applications for these moneys in the fund, applications that have so far not been met.

In addition to the amount of applications, or of that $1 billion, a little over $100 million represents applications for general aviation.

Prior to 1975 on the commercial side we were authorizing about $200 million a year. In 1980 it is projected to be $525 million on an annual basis.

You compare that to general aviation prior to 1975 and we were only spending about $35 million. Now with the current additions contained in the bill we are taking into consideration, we are looking at $127 million for general aviation, although the addition is primarily discretionary funds.

What this amendment will do will, in fact, give an amount to every State of about one-half million dollars. I think that kind of assistance is one that can be relied upon and depended upon by the States in formulating their own plans and, in essence, giving general aviation some additional funds which the committee so far has seen fit not to provide.

So although I recognize the argument made by our chairman, the gentleman from California (Mr. ANDERSON) that perhaps it would be wiser that we should discuss this next year, this discussion has been going on for many years, and those of us who support additional funding for general aviation have been frustrated in our attempts to increase these amounts to the level we feel is adequate. So that recognizing perhaps the need for more debate and discussion, we do have an opportunity at this point in time to adopt this amendment and to give additional help and support to general aviation development.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas (Mr. SKUBITZ).

The question was taken; and on a division (demanded by Mr. SKUBITZ) there were—ayes 14, noes 19.

Mr. SKUBITZ. Mr. Chairman, I demand a recorded vote and, pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand by the gentleman from Kansas (Mr. SKUBITZ) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 147, not voting 72, as follows:

[Rollcall Vote No. 772]

AYES—213

Abdnor	Fish	Moore
Addabbo	Fithian	Moorhead, Calif.
Akaka	Florio	
Andrews, N.C.	Foley	Murphy, Pa.
Andrews, N. Dak.	Ford, Tenn.	Myers, John
Archer	Fountain	Natcher
Ashbrook	Fraser	Nichols
Badham	Frey	Nolan
Bafalis	Fuqua	O'Brien
Baldus	Gammage	Ottinger
Baucus	Garcia	Panetta
Bauman	Gephardt	Patten
Bedell	Gilman	Pattison
Benjamin	Glickman	Pease
Bevill	Goldwater	Pettis
Biaggi	Goodling	Pressler
Blouin	Gore	Pritchard
Bonior	Grassley	Pursell
Bowen	Gudger	Quayle
Breckinridge	Guyer	Quillen
Brinkley	Hagedorn	Railsback
Brown, Calif.	Hamilton	Regula
Brown, Mich.	Hammer-schmidt	Robinson
Brown, Ohio	Hansen	Roe
Broyhill	Harkin	Rogers
Buchanan	Harris	Rooney
Burgener	Heckler	Rose
Burton, John	Heftel	Rousselot
Burton, Phillip	Hillis	Rudd
Butler	Holt	Ruppe
Byron	Horton	Ryan
Carney	Hubbard	Satterfield
Carr	Hughes	Schulze
Carter	Hyde	Sebelius
Cavanaugh	Ichord	Shuster
Cederberg	Jacobs	Sikes
Chappell	Jeffords	Simon
Clausen, Don H.	Jones, N.C.	Skelton
Cleveland	Kastenmeier	Skubitz
Coleman	Kazen	Snyder
Conable	Kemp	Spellman
Conte	Keys	Spence
Conyers	Kildee	Stangeland
Corcoran	Kindness	Stark
Cornell	LaFalce	Steiger
Cornwell	Lagomarsino	Stokes
Coughlin	Latta	Stump
Crane	Le Fante	Symms
Cunningham	Lederer	Taylor
D'Amours	Lent	Thone
Daniel, Dan	Livingston	Thornton
Daniel, R. W.	Lloyd, Calif.	Trible
Davis	Lloyd, Tenn.	Tucker
de la Garza	Lott	Udall
Delaney	Lujan	Vander Jagt
Dellums	Lundine	Volkmer
Devine	McCloskey	Wampler
Dickinson	McDade	Watkins
Dicks	McDonald	Whalen
Dingell	McFall	White
Dornan	McHugh	Whitehurst
Downey	Madigan	Whitley
Duncan, Tenn.	Maguire	Whitten
Edwards, Ala.	Marks	Wilson, Bob
Edwards, Okla.	Marlenee	Wilson, Tex.
Emery	Marriott	Wolff
English	Martin	Wydler
Ertel	Mathis	Wylie
Evans, Del.	Michel	Young, Fla.
Evans, Ga.	Miller, Ohio	Young, Mo.
Findley	Mitchell, N.Y.	Zablocki
	Montgomery	

NOES—147

Ambro	Collins, Tex.	Ginn
Anderson, Calif.	Corman	Gonzalez
Anderson, Ill.	Cotter	Gradison
Annunzio	Danielson	Green
Applegate	Derrick	Hall
Ashley	Derwinski	Hanley
Aspin	Dodd	Hannaford
AuCoin	Drinan	Harsha
Barnard	Duncan, Oreg.	Hawkins
Beard, R.I.	Early	Hightower
Bellenson	Eckhardt	Holtzman
Bennett	Edgar	Howard
Bingham	Edwards, Calif.	Ireland
Blanchard	Eilberg	Jenkins
Boggs	Erlenborn	Johnson, Calif.
Boland	Fascell	Jones, Okla.
Bolling	Fenwick	Jordan
Brademas	Fisher	Kelly
Brodhead	Flippo	Kostmayer
Burke, Mass.	Flood	Krebs
Burleson, Tex.	Flynt	Levitas
Burlison, Mo.	Forsythe	Long, La.
Clay	Gaydos	Long, Md.
	Giaimo	Luken
McClory	Oakar	Solarz
McKay	Oberstar	St Germain
Mahon	Obey	Staggers
Markey	Patterson	Steed
Mattox	Pepper	Steers
Mazzoli	Perkins	Stockman
Meeds	Pickle	Stratton
Meyner	Pike	Studds
Mikulski	Poage	Thompson
Mikva	Price	Traxler
Milford	Rahall	Ullman
Mineta	Rangel	Van Deerlin
Minish	Reuss	Vanik
Mitchell, Md.	Rhodes	Vento
Moakley	Rinaldo	Waggonner
Moffett	Roberts	Walgren
Mollohan	Rodino	Waxman
Moorhead, Pa.	Rosenthal	Weaver
Motti	Rostenkowski	Weiss
Murphy, Ill.	Roybal	Wirth
Murphy, N.Y.	Russo	Wright
Murtha	Scheuer	Yates
Myers, Gary	Schroeder	Yatron
Myers, Michael	Seiberling	Zeferetti
Nedzi	Sharp	
Nowak	Smith, Iowa	

NOT VOTING—72

Alexander	Frenzel	Preyer
Ammerman	Gibbons	Quie
Armstrong	Harrington	Richmond
Beard, Tenn.	Hefner	Risenhoover
Bonker	Holland	Roncalio
Breaux	Hollenbeck	Runnels
Brooks	Huckaby	Santini
Broomfield	Jenrette	Sarasin
Burke, Calif.	Johnson, Colo.	Sawyer
Burke, Fla.	Jones, Tenn.	Shipley
Caputo	Kasten	Sisk
Chisholm	Krueger	Slack
Clawson, Del	Leach	Smith, Nebr.
Cochran	Leggett	Stanton
Cohen	Lehman	Teague
Collins, Ill.	McCormack	Treen
Dent	McEwen	Tsongas
Diggs	McKinney	Walker
Evans, Colo.	Mann	Walsh
Evans, Ind.	Metcalfe	Wiggins
Fary	Miller, Calif.	Wilson, C. H.
Flowers	Moss	Winn
Ford, Mich.	Neal	Young, Alaska
Fowler	Nix	Young, Tex.

Mrs. LLOYD of Tennessee and Messrs. PRITCHARD, WHITE, HYDE, SHUSTER, McHUGH, HEFTEL, MURPHY of Pennsylvania, and AKAKA changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there additional amendments to title II? If not, the Clerk will read title III.

The Clerk read as follows:

TITLE III

SEC. 301. For purposes of this title—

(1) the term "noncomplying aircraft" means any civil subsonic turbojet powered aircraft (A) which (i) has a maximum certificated takeoff weight of seventy-five thousand pounds or move, (ii) is registered in the United States, (iii) has a standard airworthiness certificate issue pursuant to section 603 (c) of the Federal Aviation Act of 1958 (49 U.S.C. 1423), and (iv) as determined by the Civil Aeronautics Board, is in service on January 24, 1977, and (B) which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977;

(2) the term "retrofit" means the alteration of the engine or the engine nacelles of an aircraft with sound absorbent materials for the purpose of noise reduction; and

(3) the term "Secretary" means the Secretary of Transportation.

SEC. 302. (a) Not later than sixty days after the date of enactment of this title, the Secretary shall publish a list in the Federal

Register setting forth the name of each operator of each noncomplying aircraft as of January 24, 1977, and the registration number of such aircraft.

(b)(1) Except as provided in paragraph (2) of this subsection, not later than thirty days after the date the Secretary publishes the list required by subsection (a) of this section, each operator named in such list shall submit to the Secretary in writing a statement which sets forth, with respect to each noncomplying aircraft operated by such operator which appears on such list—

(A) that such aircraft will comply with (i) the noise standards set forth for new subsonic aircraft in regulations prescribed by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 26) as such regulations were in effect on January 1, 1977, and (ii) any additional requirements relating to noise, set forth in regulations issued by the Secretary; and

(B) the means by which such operator will comply with such regulations which shall be by—

(i) retrofitting such noncomplying aircraft (including retrofitting spare engines where necessary);

(ii) replacing the engines in such noncomplying aircraft; or

(iii) replacing such noncomplying aircraft with another aircraft.

(2) Paragraph (1) of this subsection shall not apply to any operator of a noncomplying aircraft set forth in the list published pursuant to subsection (a) of this section if such aircraft is not used for the carriage of persons or property for compensation or hire.

SEC. 303. (a) Notwithstanding any other provision of law, not later than the thirtieth day after the last day of the thirty-day period described in section 302(b)(1) of this title—

(1) any operator named in the list published under section 302(a) of this title who is the operator of an aircraft which is used for the carriage of persons for compensation or hire shall, in the case of the transportation of any person subject to the tax imposed by section 4261(a) of the Internal Revenue Code of 1954, impose a surcharge on any lawful rate, fare, or charge for the carriage of such persons equal to 2 per centum of such rate, fare, or charge (excluding all Federal and States taxes);

(2) any operator of an aircraft which is used for the carriage of persons for compensation or hire shall, in the case of the transportation of any person subject to the tax imposed by section 4261(c) of the Internal Revenue Code of 1954, impose a surcharge on any lawful rate, fare, or charge (A) which is less than $100 for the carriage of such person of $2 in addition to such rate, fare, or charge, and (B) which is $100 or more for the carriage of such person of $10 in addition to such rate, fare, or charge;

(3) any operator named in the list published under section 302(a) of this title who is the operator of an aircraft which is used for the carriage of property for compensation or hire shall, in the case of the transportation of property subject to the tax imposed by section 4271(a) of the Internal Revenue Code of 1954, impose a surcharge on any lawful rate, fare, or charge for the carriage of such property equal to 2 per centum of such rate, fare, or charge (excluding all Federal and State taxes; and

(4) any operator of an aircraft which is used for the carriage of property for compensation or hire shall, in the case of the transportation of property by air which transportation begins in the United States and is not subject to the tax imposed by section 4271(a) of the Internal Revenue Code of 1954, impose a surcharge on any lawful rate, fare, or charge for the carriage of such property equal to 5 per centum of such rate, fare, or charge (excluding all Federal and State taxes).

(b)(1) Except as provided in paragraph (8), any operator collecting a surcharge pursuant to subsection (a) of this section shall deposit all such surcharges in a separate account which shall be established by such operator. Except as provided in paragraph (5) of this subsection, amounts deposited in such account shall be expended only to pay the retrofit or replacement cost, in accordance with paragraph (2) of this subsection, for each noncomplying aircraft which is on the list published in the Federal Register in accordance with section 302(a) of this title.

(2) In any case where the method for compliance with noise standards for a noncomplying aircraft is—

(A) retrofitting, the amount of the cost to be paid from the account authorized in paragraph (1) shall be 50 per centum of the cost of such retrofitting, unless such aircraft has less than four engines in which case the cost to be paid shall be 90 per centum of the cost of such retrofitting;

(B) replacing the engines, the amount of the cost to be paid from the account authorized in paragraph (1) shall be 75 per centum of the cost of such replacement, but such amount shall not exceed an amount equal to 40 per centum of the cost of replacing that aircraft with a comparable aircraft which meets the noise standards referred to in subparagraph (C)(i) of this paragraph;

(C) replacing the aircraft—

(i) except as provided in paragraph (7) of this subsection, if the replacement aircraft meets, at a minimum, the noise standards for new type certificated aircraft set forth in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration, on March 3, 1977 (F.R., vol. 42, No. 24, p. 12360 et seq.), the amount of the cost to be paid from the account authorized in paragraph (1) shall be 40 per centum of the cost of the replacement aircraft; and

(ii) except as provided in paragraph (7) of this subsection, if the replacement aircraft does not meet the noise standards described in clause (i) of this subparagraph, but does meet those noise standards set forth in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as in effect on January 1, 1977, the amount of the cost to be paid shall be 25 percentum of the cost of such replacement aircraft.

(3) For the purpose of subparagraph (C) of paragraph (2) of this subsection, the cost of a replacement aircraft shall be the actual cost reduced by the excess (if any) of—

(A) the aggregate amount allowed under the Internal Revenue Code of 1954 for depreciation or amortization with respect to the aircraft being replaced, for periods before the date of acquisition of the replacement aircraft; over

(B) the amount which is treated as ordinary income on any disposition of the aircraft being replaced under section 1245(a) of such Code without regard to whether such disposition occurred before, on, or after the date of the acquisition of such replacement aircraft.

(4) Surcharges shall be deposited in an account established under paragraph (1) of this subsection until it contains an amount sufficient to pay, with respect to each noncomplying aircraft operated by such operator, the allowable retrofit or replacement cost authorized to be paid for such aircraft under this subsection.

(5) Except as provided in paragraph (8), funds collected by an operator having no noncomplying aircraft and funds collected by an operator pursuant to subsection (a) of this section in excess of the maximum amount to be deposited in a separate account pursuant to paragraph (4) of this subsection shall be paid, in accordance with regulations prescribed by the Secretary of the Treasury, not less often than quarterly to the Secretary of the Treasury, who shall deposit such funds in the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970.

(6) The Secretary, acting through the Administrator of the Federal Aviation Administration, shall determine those costs of retrofitting, replacing the engines, and replacing the aircraft which are allowable for the purpose of determining the amount to be paid from the accounts authorized in paragraph (1) of this subsection.

(7) In any case where an operator ceases to operate a noncomplying aircraft having less than four engines and possession of such aircraft is acquired by another operator issued a certificate under section 401 of the Federal Aviation Act of 1958, the new operator shall be entitled to pay from the account established by such new operator pursuant to paragraph (1) 90 per centum of the cost of so retrofitting such aircraft and the former operator shall have the amount to be paid from the account established by such former operator pursuant to paragraph (1) for replacing such aircraft reduced by an amount equal to 90 per centum of the cost to the new operator of retrofitting the aircraft.

(8) Any foreign air carrier having in force a permit issued under section 402 of the Federal Aviation Act of 1958 collecting a surcharge pursuant to subsection (a) of this section shall, not less often than quarterly, pay such surcharges to the Secretary who shall deposit such funds in an account to the credit of such foreign air carrier. If the chief operating officer of such foreign air carrier certifies to the Secretary (A) that each aircraft of such carrier engaged in operations within the United States (as such term is defined in section 101(38) of the Federal Aviation Act of 1958) complies with the noise standards which would apply to such type of aircraft if it were registered in the United States which are set forth in either the regulations of the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977, or the regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration, on March 3, 1977 (F.R., Vol. 42, No. 24, p. 12360 et seq.), and (B) the total amount expended by such foreign air carrier after January 24, 1977, to comply with such noise standards, then the Secretary shall refund to such foreign air carrier from the funds in the account credited to such foreign air carrier an amount equal to the amount so certified. Funds in such account in excess of the amount required to be refunded under this paragraph shall be paid to the Secretary of the Treasury who shall deposit such funds in the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970.

(c)(1) The total number of passenger seats on all replacement aircraft for which payment is made under subsection (b) of this section by any operator shall not exceed by more than 7 per centum the total number of passenger seats on all noncomplying aircraft of such operator which are replaced by such replacement aircraft.

(2) The total cargo capacity for property of all replacement aircraft for which payment is made under subsection (b) of this section by any operator shall not exceed by more than 7 per centum the total cargo capacity of all noncomplying aircraft of such operator which are replaced by such replacement aircraft.

(d)(1) Subsection (a) of this section shall cease to be in effect on and after the last day of the tenth year which begins after the date of enactment of this Act.

(2) Any operator imposing any surcharge under paragraph (1) or (3) of subsection

(a) of this section shall not impose such surcharge after the last day of the fifth year which begins after the date of enactment of this Act unless such operator has notified the Secretary not later than thirty days before the last day of such fifth year that such operator will continue to impose such surcharge for such additional period as he sets forth in such notice, but in no case shall such additional period extend beyond the last day of the tenth year which begins after the date of enactment of this Act.

(e) None of the funds collected by any operator pursuant to subsection (a) of this section shall be included in the gross income of such operator for purposes of the Internal Revenue Code of 1954.

SEC. 304. (a) Any operator who purchases any replacement aircraft any part of the cost of which is paid from the account established by such operator under subsection (b)(1) of section 303 shall not sell such aircraft during the five-year period which begins on the date of the acquisition of such aircraft unless at the time of such sale such operator repays to the Secretary of the Treasury a percentage of the cost paid from such account determined by dividing the number of years remaining in the five-year period at the time of sale of such aircraft by five years.

(b) Any operator who purchases any replacement aircraft any part of the cost of which is paid from the account established by such operator under subsection (b)(1) of section 303 shall only lease such aircraft to an air carrier (as such term is defined in section 101(3) of the Federal Aviation Act of 1958) during the five-year period which begins on the date of the acquisition of such aircraft.

(c) Sums repaid to the Secretary of the Treasury under this section shall be deposited in the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970.

SEC. 305. After January 1, 1985, no operator of a civil subsonic turbojet powered aircraft (1) which (A) has a maximum certificated takeoff weight of seventy-five thousand pounds or more, and (B) is registered in a foreign country, and (2) which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977, shall operate such aircraft in the United States.

SEC. 306. Notwithstanding any other provision of law, the Secretary is authorized to allow any noncomplying aircraft to be operated beyond the date by which such aircraft is to be in compliance with noise standards applicable to it in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977, by waiving the application of such regulations of such aircraft for such period beyond such date of compliance as he determines reasonable to permit compliance. No such waiver shall be granted except upon application of the operator of the noncomplying aircraft and a finding by the Secretary that such operator has made a good faith effort to comply with such regulations and that there is good cause for failure of such operator to comply with such regulations as applicable to such noncomplying aircraft. For the purpose of this section, the term "good cause" shall include the following:

(1) Any case where the supplier is unable to furnish or make available to such operator in a timely manner the necessary engine retrofit kits, replacement engines, or replacement aircraft.

(2) Any case where the operator is unable to obtain financing at reasonable rates to retrofit, reengine, or replace the noncomplying aircraft.

(3) Any case where the operator's inability to operate such noncomplying aircraft will result in the end of scheduled service to the public.

(4) Any other circumstances the Secretary deems appropriate.

Mr. ANDERSON of California (during the reading). Mr. Chairman, I ask unanimous consent that title III be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ANDERSON of California. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STUDDS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8729) to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. OTTINGER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks during consideration of the rule, House Resolution 1293, and on the bill H.R. 8729 just considered.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

CIVIL SERVICE REFORM BILL—SUPPORT OF VETERANS PREFERENCE

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ASHBROOK. Mr. Speaker, I wholeheartedly supported the Hanley amendment. This important amendment would preserve the present system of veterans preference in Federal employment.

The bill approved by the Post Office and Civil Service Committee would undermine the job preference traditionally granted to our veterans. It would limit veterans using their preference rights to one time within 15 years of discharge and the retention preference to the first 8 years after appointment to a competitive service position. The Washington Post, an advocate of such change, candidly states:

Strict limits would be put on the lifetime preferences awarded to able-bodied veterans . . . The result would be to reduce the "pool" of non-disabled veterans eligible for job preference from 27 million to 7 million—all of them from the Vietnam era—by 1980.

It would be a mistake to tamper with veterans preference. We would be pulling back from our long-standing commitment to veterans who have served in the defense of our country.

This commitment extends back to 1865, when Congress enacted legislation giving Civil War veterans an employment preference. More recently, in 1944 Congress adopted the Veterans' Preference Act which has provided the basic framework of veterans preference rights for the past 34 years.

As President Roosevelt said in justifying the 1944 act:

I believe that the Federal Government functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces, that when they return, special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without having any special consideration shown them.

These remarks are still true today.

I see no reason to now pull the rug out from under our veterans. We should keep veterans preference as is. I am pleased that the majority has voted to reject this unwise recommendation of the Carter administration.

COSTLY GIVEAWAY OF TAXPAYERS' MONEY

The SPEAKER. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

(Mr. VANIK asked and was given permission to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, I take this time to advise my colleagues in the House that tomorrow we will be considering title III of the noisy aircraft, $3 or $4 billion giveaway bill.

I would very much appreciate it if my colleagues would study the provisions of the bill that were drafted by the Committee on Ways and Means and are now completely safe from amendment under the proceedings of the closed rule.

I further want to advise my colleagues in the House that under the provisions of this bill almost $1 billion of the moneys that are collected in the air tax will be paid to foreign airlines, including Air India, Olympic Airlines, Aeroflot Airlines, Lott Airlines, Japan Airlines, and Lufthansa. They can use these resources to retrofit their planes out of this country. They can use these proceeds to buy airplanes that are completely made abroad.

It is the only example that I know of in the whole spectrum of our statutory law that permits a giveaway of the taxpayer's money of the United States directly for the special purposes of these operators in foreign countries, most of which are foreign governments.

I want my colleagues to be aware of this. I would appreciate it, if they have any doubt about it, to check with the staff of the Committee on Ways and Means

overnight, or check with the staff of the Joint Committee on Taxation because I think this is something that was not brought out during the debate. I do not think that the American taxpayers would particularly appreciate this type of foreign aid program in which American tax money is used to retrofit the fleets of foreign nationals.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I will be happy to yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, I thank the gentleman for yielding, and I would like to say that I am completely astounded. I am one of those who is halfway between voting for this bill and opposing it. This would certainly make a difference to me. Is the gentleman serious about this?

Mr. VANIK. That is the provision of the Committee on Ways and Means bill which we will have before us tomorrow under a closed rule, with no amendments and practically no discussion.

As a matter of fact, that bill went through our committee so fast I do not believe that very many members of the committee are aware of its full impact. But that is what happens when you legislate under a closed rule. You have given to your colleagues on the Committee on Ways and Means the full authority to write whatever they desire in the bill. It would be all right if the committee wrote the bill but the bill was written for the committee by those who were so expert at it that they were able to design all of the language to meet all of these specifications because, as I pointed out in my original debate, I have constitutional questions as to whether or not it is constitutional to have the United States collect tax money and then simply transfer the proceeds over to private corporations or individuals.

Mr. ASHBROOK. Mr. Speaker, if the gentleman will yield still further, I certainly appreciate the fact that the gentleman from Ohio (Mr. VANIK) is bringing this to the attention of the House. It is too bad there are not more Members here but perhaps they will pursue the RECORD tomorrow and will be able to understand these extraordinary facts that you have brought out.

Mr. VANIK. The important point is it will contribute $1 billion as a part of our balance-of-payments deficit.

As the chairman of the Trade Subcommittee I have tried to figure out what we can do to restore some sanity to our balance of payments, and I am shocked that so many Members of the Congress are willing to let $1 billion flow out of this country without any real reason.

If we were to insist, for example, that the retrofit work were to be done in the United States, there would be some advantage. If we were to insist that these proceeds would be available for the purchase of airplanes or engines made in the United States, it would make some sense; but they can use these proceeds to pay for foreign retrofitting and to pay for foreign manufacture.

Mr. Speaker, it will add to our balance-of-payments deficit, and I will say that I think the noisy aircraft will continue to fly all over the world because our airlines will sell them. They will probably sell these planes which have depreciated for 10 years. They will get all their money back, and they will probably sell them for as much as they paid for theim originally and the the foreign airlines will continue to fly to our airports.

The SPEAKER. The time of the gentleman from Ohio (Mr. VANIK) has expired.

SHERIFF BENO KEITER, POPULAR AND HIGHLY RESPECTED IN THE DAYTON AREA, DIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. WHALEN) is recognized for 10 minutes.

● Mr. WHALEN. Mr. Speaker, one of the most popular individuals ever to hold public office in the Dayton, Ohio, area, Bernard L. Keiter, died of cancer on August 30.

Beno, as he was known to his many friends and to the public, had held the office of Sheriff of Montgomery County for 25 years. He was 59 when he died.

I am particularly saddened at his passing because we were personal friends, having been classmates at the University of Dayton. We were engaged in a number of undertakings over the years, including his first campaign for sheriff. I was pleased and honored to have been his campaign manager in that successful effort.

Beno was a fine man, rightly esteemed by the good work he did in modernizing the Montgomery County, Ohio, sheriff's department over the years. He leaves a record that will be difficult to equal and which will remain in the memory of those he served for many, many years.

The Dayton newspapers published comprehensive accounts of Beno's career, Mr. Speaker and I would like to insert selected articles at this point in the Record.

The newspaper accounts follow:

[From the Dayton Daily News Aug. 30, 1978]

SHERIFF KEITER DIES; HAD POST 25 YEARS

(By Dave Allbaugh and Ace Elliott)

Montgomery County Sheriff Bernard L. Keiter, hospitalized since July 29 with recurring cancer, died at 9:35 a.m. today at Miami Valley Hospital in Dayton.

Keiter, 59, who had been listed in satisfactory condition ever since his admission, took a turn for the worse during the night, according to hospital spokesman Ann Doll. At 5 a.m., Mrs. Doll said, his condition began to deteriorate quickly. However, Keiter was still conscious and able to speak this morning, she said.

The sheriff's wife, Bette, and a sister, Delores Roach, were called to the hospital early this morning and were at his bedside when he died, Mrs. Doll said.

The cause of death was listed as "malignancy of the bowel and complications."

Keiter had undergone surgery last Friday for removal of a small bowel obstruction, Mrs. Doll reported.

Keiter, the senior sheriff in the state in terms of years in office, had undergone two previous operations for cancer of the colon—last September and again in May.

Funeral arrangements were pending at the Tobias Funeral Home at 3970 Dayton-Xenia Rd., Beavercreek Twp.

Keiter, who lived at 4820 Chambersburg Rd. in Wayne Twp., had expected to retire at the end of his term in 1980.

Keiter was born in East Dayton and was graduated from the former Stivers High School and University of Dayton.

Keiter also is survived by two daughters Karen Marshall, of Shelbyville, Ind., and Kathleen Eavenson, of Gulf Stream, Fla.; his mother, Mildred, of Otterbein Home, in Warren County; two other sisters, Lyllian Josupeit, of Dayton, and Ella Louise Smith, of Brownsburg, Ind., and two grandchildren.

Word of Keiter's death reached the sheriff's office within minutes but was not circulated immediately at the family's request, according to Deputy Inspector Harlan D. Andrew, chief of the detective section.

The sheriff's five division heads met just before 10 a.m. with Keiter's brother-in-law, John Roach. The commanders then announced the sheriff's death to their personnel.

At 9:55 a.m., the dispatcher told the 12 officers on the road in cruisers, "Sheriff Keiter passed away this morning at Miami Valley Hospital. His wife and sister were at his side." The brief message was repeated several times through the morning.

Andrew said a message about the death was put on national and state teletypes and brought a flood of phone calls and telegrams to the office from around the country.

The five division chiefs met with a representative of the county prosecutor's office and talked about the succession process, Andrew said.

The department's second in command, Chief Deputy Tom Wilson, who had been vacationing, was called and was returning to town, Andrew said. Until Wilson arrived, Andrew reported, he and the others decided Warden Melvin Casey, who has been in the department throughout Keiter's service, would be in charge.

Keiter's 25 years as sheriff saw the creation of a modern professional department, national recognition for Keiter, and his emergence as a community leader.

[From the Journal Herald, Aug. 31, 1978]

"I REALIZED WHAT A GREAT LOSS IT WAS"

(By Fred Lawson)

"I cried, and others cried, too."

Inspector Andrew J. Papanek described the scene yesterday morning as the section commanders in the Montgomery County Sheriff's Department were told of the death of Sheriff Bernard L. Keiter.

"I realized what a great loss it was for us and for the county," Papanek said. "He was a very fine gentleman and person."

A few minutes later, the commanders gathered their personnel and told them the news. A short time later it was broadcast on the sheriff's radio for patrol officers.

The mood was somber but everyone agreed to keep working "because the sheriff would have wanted it that way."

Keiter, 57, Montgomery County sheriff for almost 26 years and one of the county's most popular politicians, died at 9:35 a.m. at Miami Valley Hospital following an 11-month battle with cancer.

The cause of death was listed as "malignancy of the bowel and complications from it," according to hospital spokeswoman Anne Doll.

Keiter had surgery in September. He returned to the hospital in May for exploratory surgery and was released in June, but returned to the hospital July 30 and had been there since.

He underwent surgery Friday to relieve an obstruction of the small bowel and had been

reported in satisfactory condition. But his condition worsened Tuesday night.

His family was notified of his deteriorating condition and his wife, Bette, and sister, Delores Roach, were with him when he died.

Keiter—known as "Beno"—lived at 4820 Chambersburg Road in Wayne Twp. He had planned to retire at the end of his term in 1980. He has considered being a congressional candidate this year, but illness forced him out of the race.

He served as president of the National Sheriff's Association in 1974–75 and was president of the Buckeye State Sheriff's Association in 1966.

He was a star athlete at Stivers High School and the University of Dayton and is a charter member of the UD Athletic Hall of Fame.

Keiter was a county probation officer when he ran for sheriff in 1952. He defeated Sheriff Ben Smith by 1,700 votes, becoming the county's first Republican sheriff in 20 years.

When he assumed office in January 1953, he was 32 and the youngest sheriff in the county's history. He had been re-elected every four years since, running unopposed in the last three elections.

He was popular with Democrats as Republicans, both in politics and private life.

"I don't care what you were, a Democrat or a Republican, he was always ready to help somebody," said Frederick J. "Fritz" Krumholtz, a long-time Democratic Party leader. "Beno was one of the finest friends I ever had. The community is going to be missing one hell of a guy, because he was a beautiful person."

Frederick N. Young, Montgomery County Republican Party chairman, said.

"I think he was one of the outstanding public officers we have had in this community and a great friend to a lot of people."

Joe Shump, county Democratic chairman, said:

"A man of his stature and credibility in the law enforcement field should serve as a challenge to any person who enters that field as a career to live up to as an example. His contributions in the community will long be remembered."

County Commission President Paula MacIlwaine, a Democrat, commented that the sheriff "always seemed to be . . . a picture of health and vitality. I think he had the respect of everybody in both political parties."

Members of his department had similar thoughts.

"He provided the kind of leadership that was beneficial to everyone in the community," said Deputy Inspector Harlan A. Andrew, head of the detective section. "He was a fine person, a fine administrator and deserves the appreciation of everyone."

Det. R. W. Goertemiller called Keiter's death "a loss. There will never be another like him. I never knew him to have an argument with anybody."

The department's Fraternal Order of Police chapter had challenged some of Keiter's operating procedures, but Deputy Edward H. Stoner, FOP president, said the challenges "were not personal and the sheriff's death is a loss to the department and county."

"I always had a lot of respect for the sheriff and he did me a lot of favors over the last 10 years. He was a fair man and if you had a problem you could go to him and usually it was straightened out right away."

Maxine Jordan, receptionist and secretary for Keiter since 1966, remembers the sheriff "as a big man, yet humble. He took everyone into his office and treated them all alike, no matter what their office or position."

"He was an outstanding person. I don't think he can be replaced," said Melvin L. Casey, jail warden and one of two deputies Keiter kept from the staff of the man he defeated in 1952.

In 1953, Keiter took over a sheriff's department of 40 members, who drove their own automobiles on duty. The department now has 170 full-time employees and is housed on West Second Street.

L. Thomas Wilson, Keiter's chief deputy, was out of town and could not be reached for comment. He is scheduled to return today.

Earlier, Wilson said Keiter "is outstanding, there will never be another one like him." Wilson joined the department in March 1959, after serving as a sergeant.

Keiter was sailing through his seventh term as sheriff and being considered as a congressional candidate when he entered the hospital in September.

Because of the operation and continuing chemotherapy treatments, Keiter decided not to seek the 3rd district congressional nomination to succeed retiring GOP Rep. Charles W. Whalen Jr.

He had been considered the leading Republican candidate.

Keiter, born Sept. 19, 1920, attended the University of Dayton and graduated with Whalen in 1942. Whalen was Keiter's campaign manager for his first term as sheriff.

[From the Journal Herald, Aug. 31, 1978]

SHERIFF BERNARD L. KEITER

Bernard L. (Beno) Keiter was a great deal more than Montgomery County's sheriff for 25 years. He was part of the family, a genuine friend who was liked and respected as a man and as a professional law enforcement officer by all who knew him.

Keiter's death Wednesday after a prolonged and courageous battle with cancer was not unexpected. Persons close to him knew the seriousness of his illness. But his death is still a shock.

A native Daytonian, Keiter was graduated from Stivers High School and the University of Dayton. Those who did not know him as a youth, an outstanding athlete at UD or war veteran came to know and respect him as sheriff. A Republican, he had been re-elected without opposition since 1964 in a Democratic county, and deservedly so.

Keiter brought professionalism to the Montgomery County sheriff's office. He instituted training for deputies, putting them into uniforms and patrol cars for the first time. He took cronyism and politics out of the department, earning the gratitude of his employees and the respect of his professional colleagues. And through it all, he modestly kept in the background, shunning a uniform or headlines.

The death of a good person, a respected citizen, is always an occasion for sorrow. When he was also an outstanding public servant who enjoyed the confidence and affection of all people, his loss is doubly painful.

TRUCK RENTING AND LEASING INDUSTRY SUPPORTS HIGHWAY TRUST FUND LEGISLATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, while the House votes daily on major issues which directly impact our economy, I am not sure that we are always cognizant of the indirect effects of our actions. An example of this is the impact which the Surface Transportation Assistance Act, soon to be voted upon by the House, will have upon various segments of the transportation industry.

I was recently contacted by representatives of one segment of the transportation industry, the Truck Renting and Leasing Association (TRALA). TRALA is the national trade association comprised of businesses engaged in the renting and leasing of trucks throughout the United States. Their membership ranges in size from small companies with fewer than 10 vehicles to the large, nationally known firms. It is clear that an industry such as this depends upon a firm national commitment to preservation of the integrity of our roads and highways. The highway trust fund, one portion of the Surface Transportation Assistance Act, was intended to provide such a commitment.

Now that much of the Interstate Highway System has been completed, there are some Members of Congress who would abandon the trust fund concept. This would have the effect of endangering completion of our Interstate Highway System and threatening funding for highway maintenance and system expansion. Diluting the trust fund would be detrimental not only to the truck renting and leasing industry and to commerce in general, but also to the millions of American motorists who depend on the use of our Nation's highways.

The Truck Renting and Leasing Association suports passage of H.R. 11733 for two reasons: To allow the Federal Government to complete the Interstate Highway System as planned and to insure a source of funds for the maintenance and improvement of our national highway system. TRALA's members do not believe that the initial intent of establishing the highway trust fund should be abandoned.

The Surface Transportation Assistance Act of 1978 represents the type of commitment to our Nation's transportation system which related businesses need. The truck renting and leasing industry may be but one segment of those depending on a viable highway system, but, while considering the merits of the Surface Transportation Act, I urge Members to consider the extent to which our national economy depends on a viable interstate transportation network.●

HOUSING AND COMMUNITY DEVELOPMENT FUNDS TO BE USED FOR COUNSELING CONSUMERS FACING SERIOUS DEBT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, the Housing and Community Development Act of 1977 is working for Chicago consumers. Beginning October 1, funds from the act will be used to finance a counseling program for Chicago residents facing serious debt and bankruptcy. The counseling service will also be available to persons who just want some help in drawing up a monthly budget in order to avoid falling into serious debt.

Mayor Michael A. Bilandic has earmarked $400,000 in Federal funds to finance the counseling program. Specialists in economics and counseling will set up offices throughout the city. Persons

seeking money management advice, such as how to draw up a monthly budget, might be provided a hour long session with counselors. For those facing serious debt and bankruptcy, a series of counseling sessions will be provided until the consumer has solved his money management problems.

Mr. Speaker, borrowing money has become an American way of life. In June of this year, the amount of consumer credit outstanding reached $233 billion—or more than $1,000 for every man, woman, and child in this country. The total private debt—which includes borrowing for autos, homes, appliances, and personal loans—is $1,162 billion, and climbing.

I commend Mayor Bilandic for setting up this worthwhile program. But, I must also praise my colleagues in the House, for without passage of the Housing and Community Development Act of 1977, it is very likely this program would not be in the works.

Prior to the 1977 act, Chicago's share of Federal aid was shrinking yearly as more and more city residents made the move to the suburbs. The formula for determining aid prior to the 1977 act greatly favored cities of the western and southern regions that had growing populations. The formula was based on population, housing overcrowding and poverty levels. Although Chicago's poverty level was high, the migration of residents to the suburbs greatly reduced the Federal aid available to the city.

The Housing and Community Act corrected this disparity by initiating a new formula based on the age of housing, poverty and a new criteria—growth lag. Cities were allowed to use either the existing or new formula for determining aid, which ever was most favorable to the city.

The new funding formula enabled Chicago to receive $115 million in urban improvement grants, a $60 million increase from last year's grants totaling $61.4 million.

In addition to the counseling program, funds will be used for a wide variety of urban improvement projects—neighborhood redevelopments, creation of new parks and recreational facilities, expansion of day care centers and senior citizen services, and development of new public works projects.

Mr. Speaker, I am proud of my role as a member of the Committee on Housing, Finance and Urban Affairs, in developing this new formula for funding improvement grants. I am also proud of the good use the money is being put to in my hometown of Chicago.●

TAX JUSTICE FOR FISHERMEN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. PANETTA) is recognized for 5 minutes.

● Mr. PANETTA. Mr. Speaker, a situation recently has been brought to my attention which is of considerable concern to the commercial fishermen in the central coast region of California. Because of a provision in the 1976 Tax Reform Act, fishermen working on a boat with fewer than 10 members in the crew are considered to be self-employed for Federal tax purposes, if they are paid by receiving a share of the boat's catch of fish or other forms of aquatic animal life.

I have been informed that this provision was originally designed for the benefit of a small number of shrimp fishermen located in the Gulf of Mexico, who apparently favored such a revision of the previous law. However, this provision has proven to be very unfavorable to the commercial fishermen in my area and throughout the State of California for several reasons.

Under the 1976 act, only those fishermen who work on boats with crews of 10 or fewer men must pay self-employment taxes on a quarterly basis and large income taxes at the end of the year, since no taxes are withheld from their checks. This arrangement is not only unfair to this small group of fishermen, but it actually works as an incentive for a boat-owner to lower the number of crew members he employs in order to avoid contributing to social security and processing withholding taxes. In addition, this situation often results in treating the same fishermen in two different ways, depending on whether he works on a boat with fewer or more than 10 members.

It appears obvious to me that the withholding provision in the 1976 Tax Reform Act has led to increased confusion and inconsistency in the tax treatment of fishermen. It is for this reason that I am introducing a bill which will strike this language from the statutes and restore the more equitable policy of treating all fishermen as employees.

Mr. Speaker, I wish to include the text of my bill at this point in the RECORD:

H.R. 14071

A bill to amend the Internal Revenue Code of 1954 to treat certain fishermen as employees for purposes of the income tax and social security taxes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN FISHERMEN TREATED AS EMPLOYEES.

(a) IN GENERAL.—

(1) FICA TAX.—Subsection (b) of section 3121 of the Internal Revenue Code of 1954 (relating to definitions) is amended by striking out paragraph (20), by striking out "; or" at the end of paragraph (19) and inserting in lieu thereof a period, and by inserting "or" at the end of paragraph (18).

(2) TAX ON SELF-EMPLOYMENT INCOME.—Paragraph (2) of section 1402(c) of such Code (defining trade or business) is amended by striking out subparagraph (F), by striking out ", and" at the end of subparagraph (E) and inserting in lieu thereof a semicolon, and by inserting "and" at the end of subparagraph (D).

(3) WITHHOLDING FOR INCOME TAX PURPOSES.—Subsection (a) of section 3401 of such Code (defining wages for purposes of withholding) is amended by striking out paragraph (17), and by striking out "; or" at the end of paragraph (16) and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—

(1) SOCIAL SECURITY ACT.—

(A) Subsection (a) of section 210 of the Social Security Act (defining employment) is amended by striking out paragraph (20), by striking out "; or," at the end of paragraph (19) and inserting in lieu thereof a period, and by inserting "or" at the end of paragraph (18).

(B) Paragraph (2) of section 211(c) of the Social Security Act (defining trade or business) is amended by striking out subparagraph (F), by striking out ", and" at the end of subparagraph (E) and inserting in lieu thereof a semicolon, and by inserting "and" at the end of subparagraph (D).

(2) REPORTING REQUIREMENTS.—

(A) Section 6050A of the Internal Revenue Code of 1954 (relating to reporting requirements of certain fishing boat operators) is hereby repealed.

(B) Subsection (b) of section 6652 of such Code (relating to failure to file certain information returns) is amended—

(i) by striking out "in the case of each failure to make a return required by section 6050A(a) (relating to reporting requirements of certain fishing boat operators),", and

(ii) by striking out ", or section 6050A(b) (relating to statements furnished by certain fishing boat operators),".

(C) The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by striking out the item relating to section 6050A.

SEC. 2. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by the first section of this Act shall apply to services performed after December 31, 1978.

(b) REPEAL OF REPORTING REQUIREMENTS.—The repeal and amendments made by paragraph (2) of subsection (b) of the first section of this Act shall apply to calendar years after 1978.●

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 5 minutes.

● Mr. NEAL. Mr. Speaker, I call to the attention of my colleagues a communication from the Export-Import Bank which has been referred to me as chairman of the Banking Subcommittee on International Trade, Investment and Monetary Policy. The communication notifies the Congress of a proposed Eximbank transaction to assist in the purchase of U.S. aircraft by the United Kingdom.

Section 2(b)(3) of the Export-Import Bank Act of 1945 requires the Bank to notify the Congress of any proposed loan, guarantee, or combination thereof in an amount of $60 million or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress dictates otherwise.

The Bank proposes to lend $151,200,000 to government-owned British Airways to facilitate the purchase of 19 Boeing 737–200 jet aircraft and related goods and services valued at $216 million. The Bank's participation comprises 70 percent of the total. British Airways will make a cash payment of the remaining 30 percent, or $64,800,000.

Repayment will be made in two schedules of 20 semiannual installments each, beginning October 5, 1980, and April 5, 1981. The Eximbank credit will bear interest at the rate of 8.5 percent per an-

num payable seminannually. A commitment fee of one-half of 1 percent per annum will be charged on the undisbursed portion of the credit. The Government of the United Kingdom will unconditionally guarantee payment of principle and interest.

I am inserting at this point in the RECORD the letter from the Eximbank pertaining to this transaction together with the accompanying materials and I welcome any comments any of my colleagues may wish to offer concerning this proposed loan.

WASHINGTON, D.C.,
September 8, 1978.

Hon. STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

JOHN L. MOORE, JR.

WASHINGTON, D.C.,
September 8, 1978.

Hon. THOMAS P. O'NEILL,
The Speaker of the House of Representatives, The Speaker's Room, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to the United Kingdom:

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to extend a direct credit of $151,200,000 to British Airways. The purpose of the Eximbank financing is to facilitate the purchase in the United States by British Airways of nineteen new Boeing 737-200 jet aircraft and related goods and services (including Pratt & Whitney engines) with a total U.S. export value of $216,000,000.

2. Identity of the parties

(a) British Airways

British Airways is the largest commercial air carrier in the United Kingdom and is wholly owned by the Government of the United Kingdom. British Airways was incorporated under the Civil Aviation Act of 1971 to assume the activities of British Overseas Airways Corporation (BOAC) and British European Airways (BEA). British Airways operates under the terms of the British Airways Board Act of 1977 and under this Act has the power to operate every type of air transport service.

(b) Government of the United Kingdom

The Government of the United Kingdom will unconditionally guarantee payment of principal and interest by British Airways to Eximbank under the direct credit.

3. Nature and use of goods and services

The principal goods to be exported from the United States are commercial jet aircraft to be used by British Airways on its short and medium-term routes, principally in Western Europe and the United Kingdom. The airframes will be manufactured by The Boeing Company (Boeing) of Seattle, Washington and the JT8D engines will be manufactured by the Pratt & Whitney Aircraft Group of United Technologies in Hartford, Connecticut. In addition, other U.S. firms will furnish related spare parts and services.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank credit of $151,200,000 will facilitate the export of $216,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40% of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80% of the world market.

Boeing estimates that the export of these aircraft will provide 6.4 million man/hours of work for Boeing and its sub-suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts, ground support and other related equipment.

Since 1966, British Airways has purchased 45 commercial jet aircraft from the United States with Eximbank support. British Airways estimates that in the near future it will have to replace a substantial number of obsolescent aircraft in its fleet of approximately 180 aircraft. The airline has indicated its desire to rely on Eximbank support so that it may continue to purchase new aircraft in the U.S. British Airways has been under growing pressure to select aircraft manufactured in the United Kingdom or by Airbus Industrie. Eximbank support facilitates the selection of aircraft from the U.S. and, in this case, facilitated the choice by British Airways of the U.S.-made 737 over the British made BAC-111.

2. The financing plan

The financing plan for the total U.S. goods and services of $216,000,000 is as follows:

	Percent of U.S. Costs	Totals
Cash payment	30	$64,800,000
Eximbank credit	70	151,200,000
Total	100	216,000,000

(a) Eximbank Charges

The Eximbank credit will bear interest at the rate of 8½% per annum, payable semiannually. A commitment fee of ½ of 1% per annum will also be charged on the undisbursed portion of the Eximbank credit.

(b) Repayment Terms

The Eximbank credit will be repaid by British Airways in two schedules of 20 semiannual installments each, beginning October 5, 1980 and April 5, 1981.

Sincerely,

JOHN L. MOORE, Jr.,
President and Chairman.●

SAKHAROV ANALYSIS OF RECENT SOVIET DISSIDENT TRIALS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. FASCELL) is recognized for 20 minutes.

● Mr. FASCELL. Mr. Speaker, the Soviet authorities have decided to mark this year with 16 convictions of members of the citizen Helsinki Monitoring Groups set up in Moscow, Kiev, Vilnius, Tbilisi, and Yerevan. Last year, four members of these groups were sent away to long terms of imprisonment. Each new sentence adds another human tragedy to the blotted Soviet record of compliance with the Helsinki Final Act. Early this month, for example, Viktor Rtkhiladze was given a term of 2 years of internal exile for his membership in the Georgian Helsinki Group. The only ray of light in this dismal picture is that people keep joining the groups, and that the groups keep publishing documents, as the soon to be published volume III of translations of the documents of the Soviet Helsinki Groups will demonstrate.

Now I would like to draw the attention of my colleagues to an important new analysis of the trials of Aleksandr Ginzburg, Viktoras Petkus, and Anatoly Shcharansky, members of the Soviet Helsinki Watch recently sentenced to long terms of imprisonment. The author of this document is Prof. Andrei Sakharov, and a complete text of his analysis follows below:

[Translation from Russian]

APPEAL

To: The Secretary General of the United Nations; Amnesty International; all international organizations and people who defend human rights and prisoners of conscience.

On July 13 and 14, 1978, the trials in Moscow, Kaluga and Vilnius ended. Aleksandr Ginzburg, Anatoly Shcharansky and Viktoras Petkus—all of whom are members of the Group to Promote Observance of the Helsinki Accords in the USSR—were sentenced to long terms of imprisonment. They are people of extraordinary human qualities: brave, honest, broad-minded and acute, responsible and kind. All of them made great contributions in the human rights struggle and for the aid of the persecuted. They face hard labor camps under inhumane conditions of torture by hunger, cold, back-breaking work, and arbitrary provocations. In addition, Shcharansky faces one and a half years in the even more terrible Vladimir Prison. Ginzburg, Petkus, and Shcharansky are my friends. I know the families of Aleksandr Ginzburg and Anatoly Shcharansky who are fated to such horrible experience. As I appeal to you today, the defense of Ginzburg, Petkus, and Shcharansky symbolizes the struggle for human rights throughout the world.

In all three trials, the court conspicuously failed to undertake a systematic judicial analysis of the formal charges, nor did it ever attempt to prove the falsity of the documents labelled "slanderous"; at Shcharansky's trial, the court merely alleged the espionage nature of his activities. Thus, Ginzburg was incriminated for circulating Solzhenitsyn's book, *Arkhipelag Gulag*, and Conquest's *Great Terror*, describing past crimes, and for possessing *The Chronicle of Current Events*, which equally accurately and truthfully describe present human rights violations. The court, in examining these materials—without analyzing their contents—declared these works to be anti-Soviet slander. In doing so, the court demonstrated its solidarity with the crimes and violations described in the confiscated works.

During Shcharansky's trial, the court produced as proof of his espionage activity a published article by the American correspondent Toth, although no secret information had been used even in researching the article. In any case, Shcharansky could not have access to such information since he conducted his dissident activities completely in the open and had not worked in any secret institution.

The trials were marked by calculated tortures of the family and friends of the men

on trial. Not only their friends but even Ginzburg's wife and Shcharansky's mother were barred from the courtroom during the proceedings and sentencing. They were tortured by many days of waiting on the street face to face with those who were trampling their right to attend an open trial. (KGB personnel surrounded the courtrooms during the trials—ed.)

The trials and cruel sentences of Ginzburg, Petkus, and Shcharansky (also the recent trial of Orlov and other members of the Helsinki Groups) represent a culmination of human rights violations in recent years. The trials are aimed at intimidating and defeating human rights activists, those who struggle for freedom of expression and religion, for the free exchange of ideas, and for the essential right to unrestricted foreign travel.

Shcharansky's trial is especially noteworthy. Anatoly Shcharansky was sentenced to 13 years of imprisonment for non-existent espionage activity. The false charge was reported in a distorted manner on radio, TV, and in the newspapers. In this way, the authorities attempted to strike at the essential right of emigration, they tried to destroy the Jewish emigration movement, to intimidate Jews, and to stir up anti-Semitic sentiments in the country. It is hardly coincidental that shortly before the latest trials, the words, "Death to the Jews", were seen on a Moscow Street. Nor is it coincidental that anti-Semitic slogans were shouted after Ginzburg was sentenced. I think that there is a profound analogy between the Shcharansky case and that of Dreyfus which shook the world on the threshold of our century.

In the case of Ginzburg, the selfless administrator of the Public Fund for the Aid of Political Prisoners and their Families founded by Aleksandr Solzhenitsyn, revealed the authorities' desire to suppress any possibility of unrestricted aid. Such aid is of vital significance for those deprived of the means to earn a livelihood and for those who are harassed and persecuted. In this case, the authorities also took revenge for Ginzburg's ties to Solzhenitsyn whom they detest for his uncompromising disclosures. Ginzburg was sentenced to eight years of imprisonment in a special regimen, that is, hard labor camp. He is seriously ill and has already served a seven year term. This new sentence is a direct threat to his life.

Viktoras Petkus has already spent 16 years in detention. Now he faces a new ten year sentence: three years in prison and seven years in special regimen camp, plus five years of internal exile. His case illustrates the same cynical scorn of truth, the same spirit of revenge and intolerance, the same dishonesty and false testimony. The trial of Petkus is directed particularly against those who defend freedom of religion and the national rights of the Baltic peoples. A similar aim—to suppress those who defend Ukrainian national rights—can be seen in the cruel sentences handed down against the members of the Ukrainian Helsinki Group in 1977 and the upcoming trial of Levko Lukyanenko who has already served a fifteen year sentence.

The trials of members of the Helsinki Groups is a challenge to world public opinion and to the governments which signed the Helsinki Accords. These trials are a challenge to all those who maintain contacts with our country. The reaction to these trials throughout the world shows that this time the Soviet authorities have encountered firm universal condemnation which it will find very difficult to ignore. I think that this is very important in that it offers hope—provided that these efforts continue—that sooner or later the authorities will be forced to retreat, if only in a limited way.

The recent trials with their flagrant illegality and cruelty—insulting relatives, etc.—emphasized the cynical actions of the authorities. Possibly, other far-reaching domestic and foreign policy aims were being pursued through these trials. One can suppose that these trials are meant to injure present efforts at detente and to cause difficulties for disarmament negotiations. In the long run, these trials are meant to compromise the human rights struggle since it supposedly damages disarmament, weakens detente and the human rights struggle abroad, and the position of supporters of detente in Soviet ruling circles.

I repeat, these thoughts are only my own suppositions, however, it seems to me that they merit some attention. Therefore, I want to stress again my position on certain moral issues. I emphasize the priority of the disarmament issue within the overall complex of detente aims. I emphasize the practical necessity for an independent decision of current problems in the disarmament area and international security, and of the defense of human rights. In conjunction with this, I am convinced that secure and significant achievements in the area of international trust and security are unattainable without a more open society with freedom of movement for people and ideas, and without respect for human rights.

Today, I call upon you to make the strongest possible defense of Anatoly Shcharansky, Aleksandr Ginzburg, and Viktoras Petkus, for Yuri Orlov and the other sentenced and arrested members of the Helsinki Groups, and for the defense of all prisoners of conscience.

ANDREI SAKHAROV,
Nobel Peace Prize Laureate.

JULY 15, 1978.●

AMENDMENTS TO H.R. 12611

(Mr. RONCALIO asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. RONCALIO. Mr. Speaker, a 27-month labor dispute between Wein Air Alaska and its pilots represented by the Airline Pilots Association has disrupted virtually every segment of Alaskan society and now threatens to affect air travel in Washington State.

I am inserting in the RECORD, today, an amendment to be offered to the Air Service Improvement Act of 1978, H.R. 12611. The amendment, also to be offered by my colleague, DON YOUNG, requires the President to create a factfinding commission to investigate and report within 30 days after its creation, its findings to the President. This will, hopefully, open the door to successful negotiations.

As a result of the present strike, the level of service and the level of safety have seriously declined. Available records indicate that present air service to rural Alaska consists of small piston twin aircraft or single engine aircraft—aircraft not always certificated for instrumental flight rules and flown by a single pilot. Records also indicate that in the last 27 months, 23 people have been killed and 21 people injured in accidents involving Wien subcontractors.

It is time to bring about favorable negotiations to restore safe and adequate air service to the State of Alaska.●

INFLATION'S ROOTS ARE IN THE MILITARY BUDGET

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, on Saturday, September 9, the Washington Post carried an article by the distinguished journalist Clayton Fritchey pointing out that the single most inflationary factor in our society is "the huge, wasteful, nonproductive, U.S. military colossus, along with the staggering deficits that have accompanied it."

Mr. Fritchey goes on to say that it is "a pipe dream" to keep on talking about licking inflation and balancing the budget as long as military spending continues unbridled. He further notes that one reason the inflation rate in Japan and West Germany is so well in hand is that they spend so much less of their GNP on defense than does the United States.

Mr. Speaker, as one who has frequently endeavored to point out the connection between inflation and our Government's enormous military budget, I am delighted to see such a cogent and eloquent statement as Mr. Fritchey's.

One other aspect that he does not mention is the impact of military expenditures on the Nation's economic productivity. The sources of our national productivity increases in the past have been the continued expenditures of large amounts of money on research and development by both Government and the private sector. In recent years, however, an increasingly large percent of our expenditures on research and development have been for military and military-related research and development. Meanwhile, other countries' research and development expenditures have been primarily for the civilian sector. Today more than half of our research and development expenditures are for the military and for military-related purposes.

We are now paying the price for this imbalance. As long as annual wage increases exceed the annual productivity increases in our economy, inflation is all but inevitable. Yet the annual increase in our national productivity rate has fallen below 2 percent. It will continue to remain low until the military ceases to absorb the largest percentage of the Nation's outlays for research and development.

What is the answer? As Mr. Fritchey points out:

> Really significant savings will not be realized until the momentum of the arms race has been arrested. That means, first, the restoration of detente, then new agreements with Russia that substantially cut back strategic arms and, finally, serious attention to general disarmament, which some experienced statesmen believe is not as impractical as it may sound.

So for economic reasons as well as the future survival of mankind, we must hope and strive for a successful conclusion of the current negotiations on strategic arms limitation.

Mr. Speaker, the full text of Mr. Fritchey's article follows these remarks:

INFLATION'S ROOTS ARE IN THE MILITARY BUDGET

(By Clayton Fritchey)

Everybody agrees that inflation is now Public Enemy No. 1, but unfortunately there is little agreement on what causes it.

It's blamed on countless things. The White House has one list, Congress another, and

the Federal Reserve Board still another. The business community also has a list of its own. Yet, in a negative way, they are all alike in that they uniformly shrink from putting the finger on the single most inflationary factor in our society: the huge, wasteful, nonproductive, U.S. military colossus, along with the staggering deficits that have accompanied it.

It is a pipe dream to keep on talking about licking inflation and balancing the budget as long as military spending continues unbridled. Wage and price controls might help, but it's doubtful that even they could keep inflation effectively in check if defense expenditures go on as projected.

When Carter was campaigning for the presidency, he rightly said, "When you spend money for defense you don't spend it on education, on health, or other services or goods. And I think the shift away from weapons toward peaceful goods and services in the long run is favorable for world peace, and also you get more jobs per dollar spent."

He promised to cut the defense budget (then running around $100 billion a year) by 5 percent, but now it is 1978 and the budget calls for $126 billion. Carter has turned thumbs down on the B1 bomber and a new nuclear carrier, but he has added new weapons of his own. In the next fiscal year the Pentagon budget is expected to be in the $133 billion to $139 billion range. By 1983 it will probably be $173 billion or more. The authoritative Center for Defense Information (CDI) foresees a figure of $180 billion by then.

Instead of raising additional revenues to pay for those soaring expenditures, Congress and the president have cut taxes, ensuring further deficits exceeding the peak ones of World War II. Nobody understood better than then-President Eisenhower the inflationary costs of such a policy. "The military establishment," he said, "not productive of itself, necessarily must feed on the energy, productivity and brain power of the country, and if it takes too much, our total strength declines."

The Center for Defense Information notes that, over the years, the United States has been spending a smaller portion of the military budget on the defense of America. About 70 percent of that budget, the CDI reports, "now goes to defend our allies and project our power overseas." Actually, there are currently 27,000 more U.S. servicemen and women abroad than a year ago.

One reason the inflation rate in Japan and West Germany is so well in hand is that they spend so much less on defense than the United States. In relation to gross national product, the Japanese military expenditure is about one-fifth of America's.

The ever-rising U.S. defense budget today reflects not so much congressional fear of Russia as fear of unemployment and the closing of costly but needless military installations in their states and districts. Most economists, however, see military spending as a poor job-creator, compared with equal expenditures on civilian needs.

The growth of U.S. inflation is easy to trace. It began with the Vietnam War. Prior to that, in the earlier Kennedy-Johnson years, the range of inflation was merely 1 to 3 percent. It started climbing when Lyndon Johnson, fearing public hostility to higher taxes to pay for his unpopular war, quietly turned to deficit financing on a large scale.

President Nixon did the same, only on a more grandiose scale. Even after U.S. withdrawal from Vietnam, the military budget kept rising, generating an unprecedented deficit of $175 billion in the last years of the Nixon-Ford era. Meanwhile, the inflation rate went steadily up, finally reaching double-digit proportions and a record rate of 12 percent. The ensuing recession reduced it some, but today it is still hovering near the dangerous double-digit level.

Can the fat in the military budget be cut without impairing the muscle? Only a few days ago the Brookings Institution found that the Pentagon could save over $900 million a year by eliminating overpayment of its blue-collar workers. A presidential commission recently called for an overhaul of the military pension system, saying $10 billion per year could be saved that way.

Pentagon officials themselves admit that Navy finances are in a shambles, with cost overruns on new ships totaling more than $6 billion. Another recent study by two former high Pentagon officials found that $40 billion could be saved over the next few years by selective reduction of forces and cancellation of certain new weapons systems.

The really significant savings, however, will not be realized until the "momentum of the arms race" has been arrested. That means, first, the restoration of detente, then new agreements with Russia that substantially cut back strategic arms and, finally, serious attention to general disarmament, which some experienced statesmen believe is not as impractical as it may sound.●

CONFERENCE REPORT ON H.R. 12936

Mr. BOLAND submitted the following conference report and statement on the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 95–1596)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendments numbered 4, 10, 23, 26, 35, and 49.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 5, 12, 13, 19, 21, 22, 24, 25, 36, 41, 43, 44, and 46 and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$1,322,297,000"; and the Senate agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$24,395,848,000"; and the Senate agree to the same.

Amendment numbered 7: That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$727,000,000"; and the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$53,000,000"; and the Senate agree to the same.

Amendment numbered 14: That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$9,000,000"; and the Senate agree to the same.

Amendment numbered 15: That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$57,500,000"; and the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$3,000"; and the Senate agree to the same.

Amendment numbered 17: That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$524,065,000"; and the Senate agree to the same.

Amendment numbered 18: That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$3,000"; and the Senate agree to the same.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$692,915,000"; and the Senate agree to the same.

Amendment numbered 27: That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$147,500,000"; and the Senate agree to the same.

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$910,500,000"; and the Senate agree to the same.

Amendment numbered 29: That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$750,000"; and the Senate agree to the same.

Amendment numbered 30: That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$827,000,000"; and the Senate agree to the same.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows:

"That not more than $55,500,000 shall be available for Applied Science and Research Applications, of which not more than $1,000,000 shall be for Problem Analysis, not more than $5,000,000 for Integrated Basic Research, not more than $17,400,000 for Earthquake Hazards Mitigation, and not more than $2,400,000 for Community Water Management: *Provided further,*".

And the Senate agree to the same.

Amendment numbered 33: That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amend-

ment insert "$80,000,000"; and the Senate agree to the same.

Amendment numbered 34: That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$4,000,000"; and the Senate agree to the same.

Amendment numbered 37: That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$5,334,374,000"; and the Senate agree to the same.

Amendment numbered 38: That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$122,847,000"; and the Senate agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$3,000"; and the Senate agree to the same.

Amendment numbered 40: That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$615,964,000"; and the Senate agree to the same.

Amendment numbered 45: That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert: "$10,000,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 6, 8, 9, 32, 42, 47, and 48.

EDWARD P. BOLAND,
BOB TRAXLER,
MAX BAUCUS,
LOUIS STOKES,
TOM BEVILL,
LINDY BOGGS,
BILL D. BURLISON,
BILL ALEXANDER,
GEORGE MAHON,
LARRY COUGHLIN,
JOSEPH M. MCDADE,
C. W. BILL YOUNG,
ELFORD CEDERBERG,
Managers on the Part of the House.

WILLIAM PROXMIRE,
JOHN C. STENNIS,
BIRCH BAYH,
WALTER D. HUDDLESTON,
PATRICK J. LEAHY,
JIM SASSER,
WARREN G. MAGNUSON,
CHARLES MCC. MATHIAS, JR.,
CLIFFORD P. CASE,
EDWARD W. BROOKE,
HENRY BELLMON,
MILTON R. YOUNG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying report:

TITLE I—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Amendment No. 1: Appropriates $1,322,297,000 in annual contract authority for annual contributions for assisted housing, instead of $1,334,950,000 as proposed by the House and $1,310,424,000 as proposed by the Senate. The conferees direct that none of the reduction in annual contract authority be taken from the $25,200,000 proposed for Indian Housing in the 1979 budget submission.

Amendment No. 2: Earmarks not more than $50,000,000 for modernization of public housing projects as proposed by the Senate, instead of $37,500,000 as proposed by the House.

Amendment No. 3: Appropriates $24,395,848,000 for annual contributions for assisted housing, instead of $24,650,950,000 as proposed by the House and $24,140,745,000 as proposed by the Senate.

Amendment No. 4: Deletes language proposed by the Senate that unutilized balances of setasides for housing projects to be owned by public housing agencies, other than section 8, shall remain in effect during fiscal year 1979.

Amendment No. 5: Appropriates $4,460,000,000 for housing payments as proposed by the Senate, instead of $4,463,000,000 as proposed by the House.

Amendment No. 6: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $10,000,000 for the congregate services program, instead of $20,000,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Committee of Conference intends that the Department of Housing and Urban Development use the funds made available to undertake a limited pilot program of providing congregate housing services. The Department is directed to coordinate its efforts with other agencies and organizations providing similar services. The funds are intended for services currently not available rather than to continue programs presently funded from other sources.

Amendment No. 7: Appropriates $727,000,000 for payments for operation of low-income housing projects, instead of $723,000,000 as proposed by the House and $729,000,000 as proposed by the Senate.

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate making technical changes in the wording of the troubled projects operating subsidy appropriation and adding language including excess rental charges collected after September 30, 1977, instead of language as proposed by the House.

Amendment No. 9: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

EMERGENCY MORTGAGE PURCHASE ASSISTANCE

The aggregate amount of purchases and commitments authorized to be made pursuant to section 313 of the National Housing Act, as amended (12 U.S.C. 1723e), out of recaptured Emergency Mortgage Purchase Assistance authority, is increased by $1,000,000,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees recommend that the authorizing committees give serious consideration to a change in the subsidized interest rate for the emergency mortgage purchase assistance program based on the borrowing rate paid by the Federal government plus an additional amount for administrative costs of the program. The conferees direct that the funds not be made available in the absence of a recession in the housing industry.

Amendment No. 10: Appropriates $400,000,000 for urban development action grants as proposed by the House, instead of $380,000,000 as proposed by the Senate.

Amendment No. 11: Appropriates $53,000,000 for comprehensive planning grants, instead of $50,000,000 as proposed by the House and $57,000,000 as proposed by the Senate.

Amendment No. 12: Appropriates $230,000,000 for the rehabilitation loan fund as proposed by the Senate, instead of $245,000,000 as proposed by the House.

Amendment No. 13: Appropriates $85,000,000 for flood insurance activities as proposed by the Senate, instead of $90,000,000 as proposed by the House.

Amendment No. 14: Appropriates $9,000,000 for housing counseling assistance, instead of $10,000,000 as proposed by the House and $8,000,000 as proposed by the Senate. The conferees agree that within the amount provided $1,000,000 is available only for prepurchase counseling.

Amendment No. 15: Appropriates $57,500,000 for research and technology, instead of $56,000,000 as proposed by the House and $59,000,000 as proposed by the Senate.

Amendment No. 16: Earmarks not to exceed $3,000 for official reception and representation expenses of the Department of Housing and Urban Development, instead of $3,500 as proposed by the House and $2,500 as proposed by the Senate.

Amendment No. 17: Appropriates $524,065,000 for salaries and expenses of the Department, instead of $521,808,000 as proposed by the House and $526,106,000 as proposed by the Senate.

The Committee of Conference is in agreement with the reductions enumerated in the report of the Senate with the exception of the increase proposed for positions. The following requested positions are denied:

Community Planning and Development	−115
Neighborhoods, Voluntary Associations, and Consumer Protection (Office of Interstate Land Sales)	−20
Departmental Management	−5
Field Administration	−10
Total	−150

TITLE II—INDEPENDENT AGENCIES

ENVIRONMENTAL PROTECTION AGENCY

Amendment No. 18: Earmarks not to exceed $3,000 for official reception and representation expenses of the Environmental Protection Agency, instead of $3,500 as proposed by the House and $2,500 as proposed by the Senate.

Amendment No. 19: Appropriate $328,528,000 for research and development as proposed by the Senate, instead of $328,028,000 as proposed by the House. The Committee of Conference is in agreement with the recommendations contained in the report of the House except for the following changes:

+$2,000,000 for anticipatory research;
−$200,000 for mosquito control;
−$200,000 for aquatic weed control;
−$1,100,000 for groundwater research;
−$2,400,000 for health and ecological effects; and
+$2,400,000 for Chesapeake Bay research.

The conferees agree that within the total allocated for anticipatory research, $1,100,000 shall be used for groundwater research on the Garber-Wellington aquifer to be conducted at the Robert S. Kerr Environmental Research Laboratory in Ada, Oklahoma. The conferees further agree that the $1,000,000 above the budget request provided for health and ecological effects shall be for microwave radiation research. The conferees are also in agreement that $8,000,000 provided for wastewater reuse shall be available for potable and/or agricultural research and demonstrations.

The conferees concur with the language contained in the report of the Senate concerning Environmental Protection Agency matching funds for water quality monitoring on the Ohio River.

Amendment No. 20: Appropriates $692,915,000 for abatement and control, instead of $664,115,000 as proposed by the House and $710,940,000 as proposed by the Senate. The Committee of Conference is in agreement with the recommendations contained in the report of the House except for the following changes:

+$7,000,000 for areawide waste treatment management planning grants (section 208);

+$8,000,000 for solid waste and transportation or air quality maintenance planning (section 175) grants;

+$2,300,000 for dredge and fill activities (section 404);

+$2,500,000 for marine secondary waiver activities (section 301(h));

+$1,500,000 for academic training;

+$2,500,000 for Chesapeake Bay activities; and

+$5,000,000 for State air grants.

The conferees direct that up to $4,000,000 of the additional $8,000,000 for solid waste and air quality planning grants agreed to by the conferees shall be available, to be matched on a 50–50 basis by State and local funds, for the abatement of chemical contamination in the Love Canal area of Niagara Falls, New York.

Amendment No. 21: Appropriates $94,755,000 for enforcement as proposed by the Senate, instead of $94,555,000 as proposed by the House.

Amendment No. 22: Deletes language proposed by the House prohibiting the use of construction grants funds to implement the minimum State allotment provision, section 205(e), of the Federal Water Pollution Control Act, as amended.

Amendment No. 23: Appropriates $4,200,000,000 for construction grants as proposed by the House, instead of $4,250,000,000 as proposed by the Senate. The Committee of Conference agrees that grant funds may be used for construction of new facilities providing treatment greater than secondary, as defined by the Environmental Protection Agency in 40 CFR 133, dated August 17, 1973 (38 FR 22298), amended July 26, 1976 (41 FR 30786) and October 7, 1977 (42 FR 54664), only if the incremental cost of the advanced treatment is $1,000,000 or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

Amendment No. 24: Appropriates $3,026,000 for the Council on Environmental Quality and Office of Environmental Quality as proposed by the Senate, instead of $2,926,000 as proposed by the House.

CONSUMER INFORMATION CENTER

Amendment No. 25: Appropriates $1,146,000 for the Consumer Information Center as proposed by the Senate, instead of $1,166,000 as proposed by the House.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Amendment No. 26: Appropriates $3,292,200,000 for research and development as proposed by the House, instead of $3,290,700,000 as proposed by the Senate. The Committee of Conference agrees that of the $20,500,000 included in the bill for the Teleoperator Retrieval System, the National Aeronautics and Space Administration shall not obligate more than $10,000,000 for continued development of such system without approval of the House and Senate Appropriations Committees. The balance of $10,500,000 is available *only* for shuttle funding requirements in the absence of Committee approval.

The National Aeronautics and Space Administrtaion is directed not to reprogram any fiscal year 1979 funds from shuttle production *unless* a supplemental request to restore such funds has been transmitted to the Congress. The Committee of Conference assures the Agency that prompt consideration will be given any supplemental request to restore funds transferred to shuttle development from shuttle production.

The conferees further agree to the project recommendations contained in the report of the Senate with the following changes:

+$500,000 for Stereosat;

+$2,000,000 for a solar-satellite power generating system;

—$2,500,000 for expendable launch vehicles;

+$1,000,000 for lunar sample analysis; and

+$500,000 for a general reduction.

The National Aeronautics and Space Administration is not to apply any of the $4,500,000 general reduction to Congressional increases provided in the bill.

Amendment No. 27: Appropriates $147,500,000 for construction of facilities, instead of $134,690,000 as proposed by the House and $148,500,000 as proposed by the Senate.

Amendment No. 28: Appropriates $910,500,000 for research and program management, instead of $907,000,000 as proposed by the House and $914,000,000 as proposed by the Senate.

NATIONAL INSTITUTE OF BUILDING SCIENCES

Amendment No. 29: Appropirates $750,000 for salaries and expenses, instead of $1,000,000 as proposed by the House and $500,000 as proposed by the Senate.

NATIONAL SCIENCE FOUNDATION

Amendment No. 30: Appropirates $827,000,000 for research and related activities, instead of $806,400,000 as proposed by the House and $836,400,000 as proposed by the Senate.

Amendment No. 31: Restores language proposed by the House and stricken by the Senate, amended to earmark not more than $55,500,000 for applied science and research applications, of which not more than $1,000,000 shall be for problem analysis, not more than $5,000,000 for integrated basic research, not more than $17,400,000 for earthquake hazards mitigation and not more than $2,400,000 for community water management.

Amendment No. 32: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Provided further, That none of the funds provided by this Act shall be used to pay an investigator, through a grant, at more than the maximum rate paid for GS–18, unless expressly approved by the Director of the National Science Foundation

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agree that the Director of the National Science Foundation shall inform the House and Senate Appropriations Committees whenever he exercises his authority to waive the GS–18 ceiling for investigator pay.

Amendment No. 33: Appropriates $80,000,000 for science education activities, instead of $82,600,000 as proposed by the House and $77,600,000 as proposed by the Senate.

The Committee of Conference agrees that the additional $2,400,000 should be applied on a priority basis to the following three programs only.

—undergraduate research participation;

—student originated studies; and

—instructional scientific equipment.

Amendment No. 34: Appropriates $4,000,000 for scientific activities overseas, instead of $4,900,000 as proposed by the House and $3,000,000 as proposed by the Senate.

SELECTIVE SERVICE SYSTEM

Amendment No. 35: Appropriates $7,045,000 for salaries and expenses as proposed by the House, instead of $9,500,000 as proposed by the Senate.

VETERANS ADMINISTRATION

Amendment No. 36: Appropriates $2,144,000,000 for readjustment benefits as proposed by the Senate, instead of $2,193,300,000 as proposed by the House.

Amendment No. 37: Appropriates $5,334,374,000 for medical care, instead of $5,362,618,000 as proposed by the House and $5,299,699,000 as proposed by the Senate. The Committee of Conference is in agreement with the following additions to the budget request:

+$32,300,000 for 1,500 additional staff years to keep open existing hospital beds;

+$18,000,000 for 700 additional staff years to meet anticipated increases in outpatient caseload above those projected in the 1979 budget; and

+$4,375,000 for staffing new medical facilities.

The Committee of Conference is also in agreement with the reports of both the House and the Senate concerning use of available resources to lease appropriate facility space for outpatient clinics in Daytona Beach, Broward County, and northwest Florida.

The conferees also agree that the Veterans Administration should continue to place increasing emphasis on outpatient care.

Amendment No. 38: Appropriates $122,847,000 for medical and prosthetic research, instead of $127,607,000 as proposed by the House and $120,212,000 as proposed by the Senate.

Amendment No. 39: Earmarks not to exceed $3,000 for official reception and representation expenses of the Veterans Administration, instead of $3,500 as proposed by the House and $2,500 as proposed by the Senate.

Amendment No. 40: Appropriates $615,964,000 for general operating expenses, instead of $616,258,000 as proposed by the House and $615,670,000 as proposed by the Senate.

Amendment No. 41: Limits major construction projects to those estimated to cost $1,000,000 or more as proposed by the Senate, instead of $2,000,000 or more as proposed by the House.

Amendment No. 42: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $365,560,000 for construction, major projects, instead of $348,890,000 as proposed by the House and $330,701,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Committee of Conference believes that the evidence appears to support the construction of the replacement hospital at the Emmanuel site in Portland, Oregon. However, if the Veterans Administration chooses to disregard the Committee's site recommendation, no additional funds above the $130,241,000 provided in this bill will be approved. The amount is adequate to construct a 670-bed hospital at the Emmanuel site and a 180-bed unit to be used primarily for nursing care at the Barnes Hospital site in Vancouver, Washington.

The Committee of Conference is in agreement with the project recommendations contained in the report of the Senate except for the following changes:

+$9,402,000 for construction of a 208 bed domiciliary at Bath, New York;

+$6,351,000 for construction of a 120 bed nursing home care facility at Livermore, California;

+$5,230,000 for construction of a 120 bed nursing home care facility at Wilkes-Barre, Pennsylvania;

+$2,746,000 for expansion of a clinical laboratory, radiology suite and dental clinic at Cincinnati, Ohio;

+$4,586,000 for construction of a 120 bed nursing home care facility at Temple, Texas; and

+$6,544,000 for construction of an ambulatory care addition and space renovation at Dallas, Texas.

Amendment No. 43: Limits minor construction projects to those estimated to cost less than $1,000,000 as proposed by the Senate, instead of less than $2,000,000 as proposed by the House.

Amendment No. 44: Appropriates $85,401,000 for construction, minor projects as proposed by the Senate, instead of $119,297,000 as proposed by the House.

Amendment No. 45: Appropriates $10,000,000 for grants for construction of State extended care facilities, instead of $15,000,000 as proposed by the House and $5,000,000 as proposed by the Senate.

TITLE III—CORPORATIONS

FEDERAL HOME LOAN BANK BOARD

Amendment No. 46: Authorizes $29,895,000 as the limitation on nonadministrative expenses of the Federal Home Loan Bank Board as proposed by the Senate, instead of $30,290,000 as proposed by the House.

TITLE IV—GENERAL PROVISIONS

Amendment No. 47: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate generally prohibiting the use of funds for unsolicited research projects unless recipients share in the cost of the research.

Amendment No. 48: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate prohibiting the use of funds to pay the salary of a consultant, either directly or through a grant, in excess of the daily equivalent rate paid for GS–18 employees.

The conferees are in agreement with the report of the Senate which notes that this type of provision should not put a lid on payments to firms and individuals who have overhead expenses in addition to direct salary costs.

Amendment No. 49: Deletes language proposed by the Senate relating to Federal assistance for the Love Canal area in the city of Niagara Falls, New York.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1979 recommended by the Committee of Conference, with comparisons to the fiscal year 1978 amount, the 1979 budget estimates, and the House and Senate bills for 1979 follow:

New budget (obligational) authority, fiscal year 1978	$75,144,715,000
Budget estimates of new (obligational) authority, fiscal year 1979	69,517,534,000
House bill, fiscal year 1979	68,208,848,000
Senate bill, fiscal year 1979	67,656,624,000
Conference agreement	67,911,419,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1978	−7,233,296,000
Budget estimates of new (obligational) authority, fiscal year 1979	−1,606,115,000
House bill, fiscal year 1979	−297,429,000
Senate bill, fiscal year 1979	+254,795,000

EDWARD P. BOLAND,
BOB TRAXLER,
MAX BAUCUS,
LOUIS STOKES,
TOM BEVILL,
LINDY BOGGS,
BILL D. BURLISON,
BILL ALEXANDER,
GEORGE MAHON,
LARRY COUGHLIN,
JOSEPH M. MCDADE,
C. W. BILL YOUNG,
ELFORD CEDERBERG,
Managers on the Part of the House.

WILLIAM PROXMIRE,
JOHN C. STENNIS,
BIRCH BAYH,
WALTER D. HUDDLESTON,
PATRICK J. LEAHY,
JIM SASSER,
WARREN G. MAGNUSON,
CHARLES MCC. MATHIAS, JR.,
CLIFFORD P. CASE,
EDWARD W. BROOKE,
HENRY BELLMON,
MILTON R. YOUNG,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. AMMERMAN (at the request of Mr. WRIGHT), for from September 6 through 15, on account of hospitalization.

Mr. MCKINNEY (at the request of Mr. RHODES), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. VANIK, for 5 minutes, today; and to revise and extend his remarks and include extraneous matter.

(The following Members (at the request of Mr. EDWARDS of Oklahoma) to revise and extend their remarks and include extraneous material:)

Mr. WHALEN, for 10 minutes, today.

Mr. GOLDWATER, for 5 minutes, today.

(The following Members (at the request of Mr. RAHALL) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. PEPPER, for 5 minutes, today.

Mr. EDWARDS of California, for 5 minutes, today.

Mr. BINGHAM, for 5 minutes, today.

Mr. PANETTA, for 5 minutes, today.

Mr. NEAL, for 5 minutes, today.

Mr. FASCELL, for 20 minutes, today.

Mr. LUKEN, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Ms. HOLTZMAN, to revise and extend her remarks on House Resolution 1293.

Mr. BIAGGI, to revise and extend his remarks at the close of the debate on title VII of H.R. 11280 in the Committee of the Whole today.

Mr. GILMAN, to revise and extend his remarks immediately prior to the adoption of the five amendments of the gentleman from Arizona (Mr. UDALL) in the Committee of the Whole today during consideration of H.R. 11280.

Mr. RUDD, to extend his remarks in the body of the RECORD prior to the vote on H.R. 11280. Civil Service Reform Act.

(The following Members (at the request of Mr. EDWARDS of Oklahoma) and to include extraneous matter:)

Mr. CUNNINGHAM.

Mr. EMERY.

Mr. LENT.

Mr. VANDER JAGT.

Mr. WHITEHURST.

Mr. LEACH in two instances.

Mr. BOB WILSON.

Mr. WYDLER.

Mr. DORNAN in two instances.

Mr. JEFFORDS.

(The following Members (at the request of Mr. RAHALL) and to include extraneous matter:)

Mr. ROGERS in five instances.

Mr. GONZALEZ in three instances.

Mr. ANDERSON of California in three instances.

Mr. DENT.

Ms. KEYS.

Mr. MCDONALD in three instances.

Mr. DOWNEY.

Mr. EDGAR.

Mr. HAMILTON in two instances.

Mr. WAXMAN in two instances.

Mr. CARR.

Mr. MINETA in two instances.

Mr. FISHER.

Mr. ROSENTHAL.

Mr. MITCHELL of Maryland.

Mr. GEPHARDT.

Mr. JACOBS.

Mr. LUKEN.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 2376. An act to authorize withholding from salaries disbursed by the Secretary of the Senate and certain employees under the jurisdiction of the Architect of the Capitol for contribution to certain charitable organizations; to the Committee on House Administration.

ENROLLED BILL SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 13087. An act to authorize the issuance of substitute Treasury checks without undertakings of indemnity, except as the Secretary of the Treasury may require.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 3075. An act to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize international security assistance programs for fiscal year 1979, and for other purposes;

S. 3119. An act to transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency;

S. 3120. An act to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia; and

S. 3454. An act to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes.

ADJOURNMENT

Mr. RAHALL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 56 minutes p.m.), the House adjourned until tomorrow, Thursday, September 14, 1978, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4967. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of various construction projects proposed to be undertaken by the Army Reserve, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

4968. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of a construction project proposed to be undertaken by the Naval and Marine Corps Reserve, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

4969. A letter from the president and chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with Societe Nationale pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures (SONATRACH), pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

4970. A letter from the president and chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with SONATRACH, pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

4971. A letter from the U.S. Commissioner of Education and the Secretary of Labor, transmitting a report on the status of bilingual vocational education, pursuant to section 182 of the Vocational Education Act of 1963, as amended; to the Committee on Education and Labor.

4972. A letter from the Comptroller General of the United States, transmitting a report on Government support of foreign language and area studies in institutions of higher education (ID-78-46, September 13, 1978); jointly, to the Committees on Government Operations, and Education and Labor.

4973. A letter from the Comptroller General of the United States, transmitting a report on licensing of floating nuclear powerplants (EMD-78-36, September 13, 1978); jointly, to the Committees on Government Operations, Interior and Insular Affairs, and Interstate and Foreign Commerce.

4974. A letter from the Comptroller General of the United States, transmitting a report on the progress achieved and problems encountered by the Department of Health, Education, and Welfare in implementing the Professional Standards Review Organization program required by the October 1972 amendments to the Social Security Act (HRD-78-92, September 12, 1978); jointly, to the Committees on Government Operations, Interstate and Foreign Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ZABLOCKI: Committee on International Relations. H.R. 13835. A bill to authorize the establishment of an international emergency wheat reserve, and for other related purposes; with amendment (Report No. 95-1564, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. PEPPER: Committee on Rules. House Resolution 1345. Resolution providing for the consideration of H.R. 6853. A bill to amend the Internal Revenue Code to change the period for the payment of certain taxes (Rept. No. 95-1566). Referred to the House Calendar.

Mr. LONG of Louisiana: Committee on Rules. House Resolution 1346. Resolution providing for the consideration of H.R. 13488. A bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of earned income of U.S. citizens and resident aliens from sources outside the United States, and for other purposes (Rept. No. 95-1567). Referred to the House Calendar.

Mr. THOMPSON: Committee on House Administration. S. 703. An act to improve the administration and operation of the Overseas Citizens Voting Rights Act of 1975, and for other purposes; with amendment (Rept. No. 95-1568). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLAND: Committee of conference. Conference report on H.R. 12936 (Rept. No. 95-1569). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BROOKS:

H.R. 14067. A bill to establish a Department of Education, and for other purposes; to the Committee on Government Operations.

By Mr. LOTT:

H.R. 14068. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act; to the Committee on Education and Labor.

By Mr. McDONALD:

H.R. 14069. A bill to amend the Internal Revenue Code of 1954 to provide an inflation adjustment for the amount exempted from gift tax; to the Committee on Ways and Means.

By Mr. MOAKLEY (for himself, Mr. STOKES, and Mr. NOLAN):

H.R. 14070. A bill to require that the Secretary of Energy notify any State of any investigation of any site in such State for the construction of any radioactive waste storage facility and allow such State to prevent the construction of such facility on such site by an action of the State legislature or a statewide referendum; jointly, to the Committees on Interior and Insular Affairs, and Interstate and Foreign Commerce.

By Mr. PANETTA:

H.R. 14071. A bill to amend the Internal Revenue Code of 1954 to treat certain fishermen as employees for purposes of the income tax and social security taxes; to the Committee on Ways and Means.

By Mr. REUSS (for himself, Mr. MITCHELL of Maryland, Mr. MOORHEAD of Pennsylvania, Mr. GONZALEZ, Mr. ANNUNZIO, Mr. FAUNTROY, Mr. BLANCHARD, Mr. LAFALCE, Mrs. SPELLMAN, Mr. LUNDINE, Mr. PATTISON of New York, Ms. OAKAR, Mr. VENTO, Mr. GARCIA, Mr. WYLIE, Mrs. FENWICK, Mr. GREEN, and Mr. DERRICK):

H.R. 14072. A bill to facilitate the implementation of monetary policy and to promote competitive equality among commercial banks; to the Committee on Banking, Finance and Urban Affairs.

By Mr. WIRTH:

H.R. 14073. A bill to amend the Budget and Accounting Act, 1921, and the Congressional Budget Act of 1974, to require that the President's annual budget include an estimate of the gross national product for the ensuing fiscal year, to provide (through the congressional budget process) for a balanced budget with expenditures limited to a specified percentage of the gross national product, and to make other improvements in the congressional budget process; jointly, to the Committees on Government Operations and Rules.

By Mr. STOCKMAN:

H.R. 14074. A bill to implement the International Sugar Agreement, 1977, between the United States and foreign countries, to protect the welfare of consumers of sugar and of those engaged in the domestic sugar industry, and for other purposes; jointly, to the Committees on Agriculture, and Ways and Means.

By Mr. McDONALD:

H. Con. Res. 711. Concurrent resolution expressing the sense of Congress with respect to the Internal Revenue Service's proposed revenue procedure on private tax exempt schools; to the Committee on Ways and Means.

By Mr. HARRIS (for himself, Mr. STEERS, and Mr. NOLAN):

H. Res. 1347. Resolution disapproving the alternative plan for pay adjustments for Federal employees recommended and submitted by the President to the Congress on August 31, 1978, under section 5305(c) of title 5, United States Code; to the Committee on Post Office and Civil Service.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

471. By the SPEAKER: Memorial of the Legislature of the State of California, relative to Outer Continental Shelf Lease Sale No. 53; to the Committee on Interior and Insular Affairs.

482. Also, memorial of the Legislature of the State of California, relative to the Reclamation Law of 1902; to the Committee on Interior and Insular Affairs.

483. Also, memorial of the Legislature of the State of California, relative to diplomatic relations with the Republic of China; to the Committee on International Relations.

474. Also, memorial of the Legislature of the State of California, relative to deferred compensation; to the Committee on Ways and Means.

475. Also, memorial of the Legislature of the State of California, relative to the avocado industry; to the Committee on Ways and Means.

476. Also, memorial of the Legislature of the State of California, relative to hydroelectric projects; jointly, to the Committees on Interior and Insular Affairs, and Interstate and Foreign Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. HEFTEL:

H.R. 14075. A bill for the relief of Kimiko Tengan Watanabe and Richard Kiyoshi Uyehara; to the Committee on the Judiciary.

By Mr. WRIGHT:

H.R. 14076. A bill for the relief of Ilan Silberstein; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

536. The SPEAKER presented a petition of the board of supervisors, Contra Costa County, Calif., relative to consideration of the Health Planning and Resources Development Amendments of 1978, which was referred to the Committee on Rules.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. ECKHARDT:

(Amendment to the amendment offered by Mr. Danielson.)

—Page 48, immediately after line 17 insert the following new subsection:

"(g) The prohibitions contained in subsection (c) of this section shall not apply with respect to any formal or informal appearance before or communication to a department or agency by a person who is a member in good standing before, and is licensed or certified to practice in a profession by, any Federal or State licensing or certifying authority for such profession, if the following conditions are met:

"(1) Such person is subject to discipline, including suspension or revocation of such person's license or certification to practice, by the licensing or certifying authority on account of—

"(A) a failure to possess the requisite qualifications to represent others,

"(B) a lack of character or integrity, or

"(C) engaging in unethical or improper professional conduct.

"(2) Such department or agency has in effect standards of ethical conduct—

"(A) for its officers and employees which, at a minimum, proscribe and subject such officers and employees to disciplinary action, including suspension or dismissal, for—

"(i) using public office for private gain,

"(ii) giving preferential treatment to any person,

"(iii) impeding Government efficiency or economy,

"(iv) compromising independence or impartiality,

"(v) making a Government decision outside official channels, or

"(vi) affecting adversely the confidence of the public in the integrity of government; and

"(B) for its former officers and employees which, at a minimum, provide for disciplinary action, including the suspension or revocation of the privilege of appearing or practicing before it, upon a finding (after notice and an opportunity for hearing) of—

"(i) failure to possess the requisite qualification for representing others,

"(ii) lack of character or integrity; or

"(iii) engaging in unethical or improper professional conduct.

"(3) Such appearance before, or communication to such department or agency is of a category exempted from the prohibitions contained in subsection (c), for purposes of this subsection, by general rule or regulation promulgated by the department or agency, in consultation with the Director of the Office of Government Ethics, and published in the Federal Register.

"(4) (A) A file containing—

"(i) any such written communication (and responses thereto),

"(ii) memoranda stating the substance of any such oral communication (and responses thereto), and

"(iii) all written communications (and responses thereto) and memoranda stating the substance of all oral communications (and responses thereto) in connection with any such appearance,

is made available for public inspection and copying immediately upon request, notwithstanding any provision of section 552(a)(6) of title 5, United States Code.

"(5) Such appearance is not before, or communication is not with, any person under the direct supervision and control of such former officer or employee, while employed with such department or agency.

"(6) Such former officer or employee files a written declaration with the department or agency that he or she is currently qualified to appear in a representative capacity before the department or agency, and that the appearance or communication is not intended to have, and cannot reasonably be expected to have, any effect described in paragraph (2)(A)(i) through (vi) of this subsection.

For purposes of this subsection, the term "State" includes the District of Columbia and any territory or possession of the United States.

Page 48, line 18, strike out "(g)" and insert in lieu thereof "(h)".

Page 49, line 14, strike out "(h)" and insert in lieu thereof "(i)".

H.R. 1

By Mr. FRENZEL:

(To the Amendment Offered by Mr. DANIELSON.)

—On page 2, lines 8 and 9, strike out ", and any individual who becomes a candidate in any election for the office of Member".

On page 2, lines 17 and 18, strike out "(1) Except as provided in paragraph (2), each" and insert "Each".

On page 2, lines 19 and 20, strike out ", other than an individual who becomes a candidate in any election for the office of Member,".

On page 3, strike out lines 6 through 9, and on line 10 strike out "(B)" and insert "(2)".

On page 3, strike out line 15 and all that follows thereafter through page 4, line 2.

On page 4, line 3, strike out "(c)" and insert "(b)".

On page 4, lines 3 and 4, strike out "or an individual who is a candidate for the office of Member".

On page 12, line 4, after the word "destroyed" strike out the comma, insert a period, and strike out all that follows through and including line 8.

On page 15, strike out lines 12 through 22, and redesignate the succeeding paragraphs accordingly.

—On page 3, lines 16 and 17, strike out "October 1, 1978," and insert "January 1, 1979,".

—On page 7, line 10, immediately before the period insert "or any deposit in a personal savings account which bears interest".

—On page 8, immediately after line 5, insert the following:

(7) The identity of all positions held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution, except that this paragraph shall not require the reporting of positions held in any religious, social, fraternal, charitable, or political entity.

—On page 8, immediately, after line 5, insert the following:

(8) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employee.

—On page 8, strike out lines 17 through 19, and insert:

(1) not more than $2,500,

(2) greater than $2,500, but not more than $5,000,

(3) greater than $5,000, but not more than $10,000,

(4) greater than $10,000, but not more than $25,000,

(5) greater than $25,000.

—On page 10, line 25, after "holdings" insert "at the time his interest in the trust was originally placed in such trust, if available,".

—On page 11, strike out lines 14 through 25, and insert:

(c) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

—On page 12, strike out lines 1 through 8 and insert the following:

(d)(1) Any report filed under this title shall be available for public inspection for a period of five years, so long as the reporting individual remains in a position designated in section 101, after which the report shall be destroyed.

(2) If the individual who filed the report is no longer within any position designated in section 101 and so notifies the Clerk or Secretary, the report shall, one year after such notification, no longer be available for public inspection. Such report shall be retained by the Clerk or Secretary for the remainder of the five-year period after which it shall be destroyed.

(3) If an individual specified in paragraph (2) returns to any position designated in section 101 during such five-year period, his report shall again be made available for public inspection for the remainder of that five-year period.

—On page 12, strike out lines 17 through 19 and insert the following:

(D) for use, directly or indirectly, in the solicitation of money for any purpose, other than for a political purpose.

—Page 20, strike out lines 8 through 19.

Page 20, line 6, strike out "(f)" and insert in lieu thereof "(d)".

Page 20, line 20, strike out "(d)" and insert in lieu thereof "(b)".

Page 20, line 21, strike out "(f)" and insert in lieu thereof "(d)".

Page 21, line 1, strike out "(e)" and insert in lieu thereof "(c)".

Page 21, lines 2, 6, and 7, strike out "(f)" and insert in lieu thereof "(d)".

Page 21, line 8, strike out "(d), and (e)" and insert in lieu thereof "(b), and (c)".

Page 22, line 20, strike out "(g)" and insert in lieu thereof "(e)".

Page 23, lines 2 and 3, strike out "(d) and (e)" and insert in lieu thereof "(b) and (c)".

Page 26, lines 5 and 6, strike out "subsections (a), (b), and (c)" and insert in lieu thereof "subsection (a)".

Page 26, line 15, strike out "(e)" and insert in lieu thereof "(c)".

Page 29, lines 22 and 23, strike out "candidates for the office of President or Vice President,".

Page 30, strike out lines 10 through 12.

Page 30, line 13, strike out "(f)" and insert in lieu thereof "(e)".

Page 34, line 6, strike out the comma and all that follows through line 13 and insert in lieu thereof a period.

Page 35, line 22, strike out "(d)" and insert in lieu thereof "(b)".

—Page 21, strike out lines 1 through 6.

Page 20, line 6, strike out "(f)" and insert in lieu thereof "(e)".

Page 20, line 21, strike out "(f)" and insert in lieu thereof "(e)".

Page 21, line 7, strike out "(f)" and insert in lieu thereof "(e)".

Page 21 line 8, strike out "(d), and (e)" and insert in lieu thereof "(d)".

Page 22, line 20, strike out "(g)" and insert in lieu thereof "(f)".

Page 23, lines 2 and 3, strike out "subsections (d) and (e)" and insert in lieu thereof "subsection (d)".

Page 26, strike out lines 14 through 18.

Page 26, line 19, strike out "(d)" and insert in lieu thereof "(c)".

Page 27, line 2 strike out "(e)" and insert in lieu thereof "(d)".

Page 28, line 14, strike out "(f)" and insert in lieu thereof "(e)".

Page 29, line 8, strike out "(g)" and insert in lieu thereof "(f)".

—Page 24, line 15, insert immediately before the period the following: "or any deposit in a personal savings account which bears interest".

—Page 26, strike out line 22 and all that follows through page 27, line 1, and insert in lieu thereof the following:

(1) up to $2,500;
(2) from $2,500 to $5,000;
(3) from $5,000 to $10,000;
(4) from $10,000 to $25,000;
(5) greater than $25,000.

—Page 27, line 2, after "report" insert "referred to in section 202(a)".

Page 27, line 4, after "individual" insert "and each report referred to in section 202 (b) shall also contain information listed in paragraphs (1), (3), (4), and (5) of subsection (a) respecting the spouse of the reporting individual,".

Page 27, line 7, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

Page 27, line 11, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

—Page 29, line 6, strike out the comma and all that follows through line 7 and insert in lieu thereof a period.

—Page 29, strike out lines 8 through 10 and insert in lieu thereof the following:

(g) Political campaign funds, including campaign receipts and expenditures, shall not be included in any report filed pursuant to this part.

—Page 30, line 21, strike out "101" and insert in lieu thereof "201".

—Page 32, line 7, strike out "shall" and insert in lieu thereof "may".

—Page 32, strike out line 7 and all that follows through page 33, line 7.

Page 33, line 8, strike out "(c)" and insert in lieu thereof "(b)".

Page 33, line 24, strike out "(d)" and insert in lieu thereof "(c)".

—Page 33, line 2, insert immediately before the period the following: ", except that a copy of such report may be furnished without charge, or at a reduced fee, if it is determined by the agency that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public".

—Page 33, strike out lines 3 through 7.

—Page 33, lines 17 and 18, strike out "political, charitable, or other purpose" and insert in lieu thereof "purpose other than for a political purpose".

—Page 33, line 24, insert "(1)" after "(d)".

Page 34, after line 13, insert the following new paragraph:

(2) With respect to any individual who files a report pursuant to section 201(e), such report, and any other report filed by such individual pursuant to section 201(a) or 201(d), shall, on or after the date which is one year after the date on which the report is filed pursuant to section 201(e), no longer be available for public inspection. Any such report shall be retained by the agency with which the report was filed, or by the Director of the Office of Government Ethics, as the case may be, for the remainder of the five-year period referred to in paragraph (1), after which it shall be destroyed. If such individual returns to any position designated in section 201(f) during such five-year period, any such report shall again be made available for public inspection for the remainder of such five-year period.

—Page 35, strike out lines 1 through 18.

Page 35, line 20, strike out "208" and insert in lieu thereof "207".

Page 36, line 2, strike out "209" and insert in lieu thereof "208".

—Page 37, line 9, insert immediately before the semicolon "or State or local governments or political subdivisions thereof".

—Page 44, line 18, strike out "or judicial".

—Page 44, line 24, strike out ", or," and all that follows through "to" on page 45, line 2.

—Page 45, line 19, strike out "(i)".

Page 45, line 20, strike out "knowingly" and all that follows through page 46, line 6, and insert in lieu thereof the following: "appears personally as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before ".

—Page 47, line 18, strike out ", or," and all that follows through "to" on line 21.

—Page 48, line 8, strike out "or" and all that follows through "both" on line 9.

—Page 52, strike out line 1 and all that follows through page 66, line 10.

—Page 52, strike out lines 7 through 10.

Page 52, line 11, strike out "(c)" and insert in lieu thereof "(b)".

Page 52, line 16, strike out "(d)" and insert in lieu thereof "(c)".

Page 52, line 22, strike out "(e)" and insert in lieu thereof "(d)".

Page 53, line 15, strike out "(f)" and insert in lieu thereof "(e)".

Page 53, lines 21 and 22, strike out "(c) and (d)" and insert in lieu thereof "(b) and (c)".

Page 56, line 25, strike out "subsections (a) and (b)" and insert in lieu thereof "subsection (a)".

Page 57, line 11, strike out "(d)" and insert in lieu thereof "(c)"

Page 64, line 7, strike out the comma and all that follows through line 11 and insert in lieu thereof a period.

—Page 52, strike out lines 16 through 21.

Page 52, line 22, strike out "(e)" and insert in lieu thereof "(d)".

Page 53, line 15, strike out "(f)" and insert in lieu thereof "(e)".

Page 53, lines 21 and 22, strike out subsections (c) and (d)" and insert in lieu thereof "subsection (c)".

Page 57, strike out lines 10 through 13.

Page 57, line 14, strike out "(d)" and insert in lieu thereof "(c)".

Page 57, line 22, strike out "(e)" and insert in lieu thereof "(d)".

Page 59, line 11, strike out "(f)" and insert in lieu thereof "(e)".

Page 60, line 9, strike out "(g)" and insert in lieu thereof "(f)".

—Page 55, line 8, insert immediately before the period the following: ", or any deposit in a personal account which bears interest".

—Page 57, strike out lines 17 through 21 and insert in lieu thereof the following:

(1) up to $2,500;
(2) from $2,500 to $5,000;
(3) from $5,000 to $10,000;
(4) from $10,000 to $25,000;
(5) greater than $25,000.

—Page 57, line 22, after "report" insert "referred to in section 302(a)".

Page 57, line 24, after "individual" insert ", and each report referred to in section 302 (b) shall also contain information listed in paragraphs (1), (3), (4), and (5) of subsection (a) respecting the spouse of the reporting individual,".

Page 58, line 3, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

Page 58, line 7, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

—Page 60, line 6, strike out the comma and all that follows through line 8 and insert in lieu thereof a period.

—Page 60, strike out lines 9 through 11 and insert in lieu thereof the following:

(g) Political campaign funds, including campaign receipts and expenditures, shall not be included in any report filed pursuant to this title.

—Page 62, line 14, strike out "shall" and insert in lieu thereof "may".

—Page 62, strike out line 14 and all that follows through page 63, line 13.

Page 63, line 14, strike out "(c)" and insert in lieu thereof "(b)".

Page 64, line 4, strike out "(d)" and insert in lieu thereof "(c)".

—Page 63, line 8, insert immediately before the period the following: ", except that a copy of such report may be furnished without charge, or at a reduced fee, if it is determined by the Committee that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public".

—Page 63, strike out lines 9 through 13.

—Page 63, line 23, strike out "political, charitable, or other purpose" and insert in lieu thereof "purpose other than for a political purpose".

—Page 64, line 4, insert "(1)" after "(d)".

Page 64, after line 11, insert the following new paragraph:

(2) With respect to any individual who files a report pursuant to section 301(d), such report, and any other report filed by such individual pursuant to section 301(a) or 301(c), shall, on or after the date which is one year after the date on which the report is filed pursuant to section 301(e), no longer be available for public inspection. Any such report shall be retained by the Committee for the remainder of the five-year period referred to in paragraph (1), after which it shall be destroyed. If such individual as-

sumes a position as a judicial officer or employee again during such five-year period, any such report shall again be made available for public inspection for the remainder of such five-year period.

—Page 65, strike out lines 3 through 24.

Page 66, line 2, strike out "308" and insert in lieu thereof "307".

Page 66, line 6, strike out "309" and insert in lieu thereof "308".

(Amendment in the nature of a substitute to the committee amendment.)

—On page 65, strike lines 9–16 and insert:

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for puposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

H.R. 1

By Mr. HARRIS:

(Amendments to the amendment in the nature of a substitute.)

—Page 21, strike out line 11 and all that follows down through "fixed for GS–16;" where it appears on line 19 and insert in lieu thereof the following:

(3) each individual holding a civil service position in the executive branch whose rate of basic pay is fixed by the Executive Schedule of subchapter II of chapter 53 of this title, by reference to such Executive Schedule (determined without regard to section 5308 of this title, or any comparable pay ceiling), or by the Postal Executive Schedule and such individual is at grade 33 or higher of such schedule;

—Page 21, line 14, before "whose position is" insert "with respect to whom a designation is in effect under subsection (h) of this section and".

Page 21, line 23, after "classification" insert "and, in the case of any civilian position, with respect to which there is in effect a designation under subsection (h) of this section".

Page 22, line 16, before "whose basic pay is" insert "with respect to whom a designation is in effect under subsection (h) of this section and".

Page 22, after line 24, insert the following new subsection:

(h) The Director of the Office of Government Ethics shall designate, by regulation, any civilian position in the executive branch that—

(1) the duties and responsibilities of which require an individual in such position—

(A) in the normal course of carrying out such duties and responsibilities, to make decisions with regard to who shall be the subject of any action which is to be taken in connection with the enforcement of any civil or criminal law (including any inspection or audit under any such law) or to carry out any such action;

(B) in the normal course of carrying out such duties and responsibilities—

(i) to make binding decisions on who shall be awarded contracts which are for the procurement of goods or services for the Government and which have substantial monetary value, or who shall be awarded licenses, grants, subsidies, or other benefits which involve funds or other interests having a substantial monetary value; or

(ii) to supervise individuals engaged in the awarding, administering, or monitoring of such contracts, licenses, grants, subsidies, or benefits; or

(C) to function as an expert or consultant or as a member of a board, committee, or similar group which provides advice or recommendations to the President or one or more agencies or officers of the Government, unless such individual serves without pay or at a nominal rate of pay; and

(2) the coverage under this part of such an individual in such position is justified in order to ensure the integrity of the Government or the public's confidence in the integrity of the Government.

Page 31, line 20, after "availability of" insert "(1)".

Page 32, line 2, after "States" insert "or (2) the report of any individual in the civil service of the executive branch who is covered by this title by reason of his position being designated under section 201(h)".

H.R. 1

By Mr. HYDE:

(Amendment to the amendment in the nature of a substitute.)

—On page 44, insert the following after line 9:

PART C—SPECIAL PROSECUTOR

SPECIAL PROSECUTOR

SEC. 226. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapter:

"Chapter 39—SPECIAL PROSECUTOR

"Sec.
"591. Appointment.
"592. Prosecutorial jurisdiction; authority.
"593. Removal or termination.
"594. Final report; congressional oversight.
"595. Presentations by Attorney General and Solicitor General.
"596. Special panel of the court.
"597. Termination of effect of chapter.

"§ 591. Appointment

"(a) Upon receiving any specific information that any of the persons described in subsection (c) of this section has—

"(1) knowingly authorized or engaged in any Federal criminal act or omission involving the abuse of Federal office;

"(2) knowingly authorized or engaged in any act or omission constituting a violation of any Federal criminal law regulating the financing or conduct of elections or election campaigns; or

"(3) violated any Federal criminal law relating to the obstruction of justice or perjury, or conspired to violate any such Federal criminal law or to defraud the United States;

the Attorney General shall conduct, for a period not to exceed sixty days, such preliminary investigation as the Attorney General deems appropriate to ascertain whether the matter under investigation is so unsubstantiated that no further investigation or prosecution is warranted.

"(b) Upon receiving any specific information that any of the persons described in subsection (c) of this section has committed a violation of the Ethics in Government Act of 1977, as set forth in section 204 of such Act, the Attorney General shall apply to the special panel of the court for the appointment of a special prosecutor.

"(c) The persons referred to in subsections (a) and (b) of this section are as follows:

"(1) The President or Vice President.

"(2) Any individual serving in a position compensated at level I of the Executive Schedule under section 5312 of title 5 of the United States Code.

"(3) Any individual working in the Executive Office of the President and compensated at a rate not less than the rate provided for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code.

"(4) The Director of the Federal Bureau of Investigation or the Director of Central Intelligence.

"(5) Any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President.

"(6) A national campaign manager or chairman of any national campaign committee seeking the election or reelection of the President.

"(7) A Member of Congress (including a Delegate to the House of Representatives or Resident Commissioner in the House of Representatives).

"(d) If the Attorney General finds the matter subject to preliminary investigation in accordance with subsection (a) of this section is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall file a memorandum with the special panel of the court. Such memorandum shall contain a summary of the information received and the results of any preliminary investigation.

"(e) If, after the filing of a memorandum under subsection (d) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related, which information, in the judgment of the Attorney General, warrants further investigation or prosecution, the Attorney General shall, not later than thirty days after receiving such additional information, apply to the special panel of the court for the appointment of a special prosecutor.

"(f) If the Attorney General finds the matter subject to preliminary investigation in accordance with subsection (a) of this section warrants further investigation or prosecution, or if sixty days elapse from the receipt of the information and the Attorney General has not yet determined that the matter is so unsubstantiated that the matter does not warrant further investigation, then the Attorney General shall apply to the special panel of the court for the appointment of a special prosecutor.

"(g) If, in the course of any Federal criminal investigation, the Attorney General determines that the continuation of the investigation or of a resulting prosecution or the outcome of such investigation or prosecution may so directly and substantially affect the political interests of the President, of the President's political party, or of the Attorney General as to make it inappropriate in the interest of the administration of justice for the Department of Justice to conduct such investigation, then the Attorney General shall apply to the special panel of the court for the appointment of a special prosecutor.

"(h) Any memorandum or application filed under this section with the special panel of the court shall not be revealed to any third party without leave of the court. In the case of any such application, the application shall contain sufficient information to assist the special panel of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(i) Upon the receipt of an application under this section, the special panel of the court shall appoint an appropriate special prosecutor and shall inform the Attorney General and the Congress of, and make public, the name of such special prosecutor.

"(j) The Attorney General may request that the court assign new matters to an

existing special prosecutor or that the prosecutorial jurisdiction of such a special prosecutor be expanded, and the special panel of the court may make appropriate orders for such assignment or expansion. A special prosecutor may accept a referral of a matter by the Attorney General, if the matter relates to a matter within the prosecutorial jurisdiction established by the special panel of the court.

"(k) The Committee on the Judiciary of either House of the Congress may request that the Attorney General apply for the appointment of a special prosecutor under this section. Not later than thirty days after the receipt of such a request, the Attorney General shall notify the committee making the request in writing of any action the Attorney General has taken under this section, and, if no application has been made to the special panel of the court under this section, why such application was not made. Such written notification shall not be revealed to any third party except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

"(l) Upon application of a majority of majority party members or a majority of all nonmajority-party members of the Committee on the Judiciary of either House of the Congress, the United States District Court for the District of Columbia may issue any appropriate order (including an order in the nature of a writ of mandamus) commanding the Attorney General to comply with any provision of this chapter.

"§ 592. Prosecutorial jurisdiction; authority

"(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, all the investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice.

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code. For the purposes of carrying out the duties of the office of special prosecutor, such special prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

"(c) A special prosecutor appointed under this chapter may make public from time to time and shall send to the Congress at least annually such statements or reports as such special prosecutor deems appropriate.

"(d) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors in the carrying out of this chapter.

"§ 593. Removal or termination

"(a) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the special panel of the court and only for extraordinary impropriety, or such incapacitation or other condition as substantially impairs the performance of such special prosecutor's duties.

"(b) The office of a special prosecutor shall terminate upon the submission by such special prosecutor of notification to the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such matters. No such submission shall be effective to terminate such office until after the completion and filing of the report required under section 594 of this title.

"(c) The special panel of the court may, either on such panel's own motion or upon suggestion of the Attorney General, terminate the office of special prosecutor at any time, on the grounds that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such matters.

"§ 594. Final report; congressional oversight

"(a)(1) In addition to any reports made under section 592 of this title, a special prosecutor appointed under this chapter shall, at the conclusion of such special prosecutor's duties, submit to the special panel of the court a report under this section.

"(2) A report under this section shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted. The report shall be in sufficient detail to allow determination of whether the special prosecutor's investigation was thoroughly and fairly completed.

"(3) The special panel of the court may release to the Congress, the public, or to any appropriate person, such portion of a report made under this section as the special panel deems appropriate. The special panel of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and prevent undue interference with any pending prosecution. The special panel of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the special panel any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such special panel be included as an appendix to such report.

"(4) A special prosecutor, where appropriate, shall promptly advise the chairman and ranking minority member of the House committee having jurisdiction over impeachments of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(b) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

"§ 595. Presentations by Attorney General and Solicitor General

"Nothing in this chapter shall prevent the making by the Attorney General or the Solicitor General of a presentation to any court as to issues of law raised by any case or appeal.

"§ 596. Special panel of the court.

"The special panel of the court to which functions are given by this chapter is the division established under section 49 of this title.

"§ 597. Termination of effect of chapter

"This chapter shall cease to have effect five years after the date on which it takes effect, except as to the completion of then-pending matters, which in the judgment of the special panel of the court require its continuance in effect, with respect to which matters it shall continue in effect until such special panel determines that such matters have been completed."

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"§ 30. Special prosecutor."

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

SEC. 227. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following new section:

"§ 49. Assignment of judges to division to appoint special prosecutors

"(a) Beginning with the two-year period commencing on the date this section takes effect, the chief judge of the United States Court of Appeals for the District of Columbia shall assign three persons who are judges or justices for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the special panel of the court for the purposes of chapter 39 of this title.

"(b) Except as provided under subsection (f) of this section, assignment to the division established in subsection (a) of this section shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on the division established in subsection (a) of this section, priority shall be given to senior retired circuit judges and senior retired justices.

"(d) The chief judge of the United States Court of Appeals for the District of Columbia may make a request to the Chief Justice of the United States, without presenting a certificate of necessity, to designate and assign, in accordance with section 294 of this title, retired circuit court judges of another circuit or retired justices to the division established under subsection (a) of this section.

"(e) Any vacancy in the division established under subsection (a) of this section shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to the division were made.

"(f) No judge or justice who as a member of the division established in subsection (a) of this section participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eigible to participate in any judicial proceeding involving a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office."

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors."

DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE

SEC. 228. (a) Chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"§ 528. Disqualification of officers and employees of the Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office."

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"528. Disqualification of officers and employees of the Department of Justice."

Page 44, line 10, strike out "C" and insert in lieu thereof "D".

H.R. 1

By Mr. LEACH:

(Amendments to the amendment in the nature of a substitute)

—Page 30, after line 14, insert the following new section:

SPECIAL REPORTS TO CONGRESS

SEC. 204. (a) Concurrently with the transmittal of any nomination of any Presidential nominee subject to this title under section 201(b), the Director shall transmit a report containing the information required under subsection (b) of this section to the Committee on Post Office and Civil Service of the House of Representatives, the Committees on Armed Services of the House of Representatives and the Senate, the Committee on Governmental Affairs of the Senate, and such other committees of the Congress as may have appropriate jurisdiction.

(b) The following shall be included in any report required to be submitted by subsection (a) of this section:

(1) A copy of the report required by such nominee under section 201(b), together with a certification by the director as to whether or not, in the opinion of the Director, the nominee is in compliance with applicable laws and regulations.

(2) Certification by the Director, by the reporting individual, and by the head of any agency with respect to which, during the 5-year period preceding the transmittal of the nomination involved, the reporting individual (or any relative of the reporting individual or any entity with which the reporting individual is affiliated)—

(A) had, or sought to obtain, contractual or other business or financial relations with such agency, or

(B) conducted operations or activities which are regulated by such agency,

as to whether or not, to their knowledge, the reporting individual, any relative of the reporting individual, or any other financial entity with which the reporting individual is affiliated was a party to any criminal, civil, or administrative proceeding which would relate to the matters for which the nominee would be responsible in the position to which nominated (as determined by the Director by regulation).

(3) If the existence of any criminal, civil, or administrative proceeding is certified under paragraph (1), a description of the nature of such proceeding and its outcome and the factors on which such outcome was based.

(c) Notwithstanding any other provision of this chapter to the contrary, the report required to be filed under section 201(b) upon the transmittal of a Presidential nomination shall cover the 5-year period preceding the transmittal of such nomination.

(d) For purposes of this section:

(1) "civil, criminal, or administrative proceeding" means—

(A) any civil or criminal proceeding to which the United States or any State is a party;

(B) any administrative proceeding by the United States or any State denying any benefit on the basis of any act or omission by the person who is the subject of such proceeding or which restricts, by consent, the activities of the person who is the subject of such action; and

(C) any investigation of a type which normally precedes any action described in subparagraph (A) or (B) of this paragraph; and

(2) an individual shall be considered to be affiliated with any entity if such individual, or any relative of such individual, has a substantial interest in such entity or held any position in such entity which is required to be reported under this title.

Page 30, line 16, strike out "204" and insert "205" in lieu thereof.

Page 31, line 12, strike out "205" and insert "206" in lieu thereof.

Page 32, line 3, strike out "204(a)" and insert "205(a)" in lieu thereof.

Page 34, line 15, strike out "206" and insert "207" in lieu thereof.

Page 35, line 2, strike out "207" and insert "208" in lieu thereof.

Page 35, line 20, strike out "208" and insert "209" in lieu thereof.

Page 36, line 2, strike out "209" and insert "210" in lieu thereof.

—Page 61, after line 19, insert the following new section:

SPECIAL REPORTS TO CONGRESS

SEC. 304. (a) Concurrently with the transmittal of any nomination of any Presidential nominee subject to this title under section 301(b), the Committee shall transmit a report containing the information required under subsection (b) of this section to the Committees on the Judiciary of the House of Representatives and of the Senate, and such other committees of the Congress as may have appropriate jurisdiction.

(b) The following shall be included in any report required to be submitted by subsection (a) of this section:

(1) A copy of the report required by such nominee under section 301(b), together with a certification by the Committee as to whether or not, in the opinion of the Committee, the nominee is in compliance with applicable laws and regulations.

(2) Certification by the Committee, by the reporting individual, and by the head of any agency with respect to which, during the 5-year period preceding the transmittal of the nomination involved, the reporting individual (or any relative of the reporting individual or any entity with which the reporting individual is affiliated)—

(A) had, or sought to obtan, contractual or other business or financial relations with such agency, or

(B) conducted operations or activties which are regulated by such agency,

as to whether or not, to their knowledge, the reporting individual, any relative of the reporting individual, or any other financial entity with which the reporting individual is affiliated was a party to any criminal, civil, or administrative proceeding which would relate to the matters for which the nominee would be responsible in the position to which nominated (as determined by the Committee by regulation).

(3) If the existence of any criminal, civil, or administrative proceeding is certified under paragraph (1), a description of the nature of such proceeding and its outcome and the factors on which such outcome was based.

(c) Notwithstanding any other provision of this chapter to the contrary, the report required to be filed under section 301(b) upon the transmittal of a Presidential nomination shall cover the 5-year period preceding the transmittal of such nomination.

(d) For purposes of this section:

(1) "civil, criminal, or administrative proceeding" means—

(A) any civil or criminal proceeding to which the United States or any State is a party;

(B) any administrative proceeding by the United States or any State denying any benefit on the basis of any act or omission by the person who is the subject of such proceeding or which restricts, by consent, the activities of the person who is the subject of such action: and

(C) any investigation of a type which normally precedes any action described in subparagraph (A) or

(B) of this paragraph; and

(2) an individual shall be considered to be affiliated with any entity if such individual, or any relative of such individual, has a substantial interest in such entity or held any position in such entity which is required to be reported under this title.

Page 61, line 21, strike out "304" and insert "305" in lieu thereof.

Page 62, line 11, strike out "305" and insert "306" in lieu thereof.

Page 64, line 13, strike out "306" and insert "307" in lieu thereof.

Page 65, line 4, strike out "307" and insert "308" in lieu thereof.

Page 66, line 2, strike out "308" and insert "309" in lieu thereof.

Page 66, line 6, strike out "309" and insert "310" in lieu thereof.

H.R. 1

By Mr. PREYER:

(Amendment to the amendment in the nature of a substitute.)

—Page 3, lines 16 and 17 strike "October" and insert "November".

H.R. 8729

By Mr. FLORIO:

—Page 25, immediately after line 10, insert the following:

(c) Part II of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 31. LIMITATION ON PROJECT ELIGIBILITY.

"(a) REQUIREMENTS APPLICABLE TO CERTAIN AIRPORTS.—If the aircraft noise associated with any airport affects (as determined by the Secretary) individuals in any State other than the State in which such airport is located, the airport owner or operator shall, before September 30, 1981, submit to the Secretary a noise impact map for such airport which conforms with section 103 of the Airport and Aircraft Noise Reduction Act and a noise compatability program for such airport which conforms with section 104 of such Act.

"(b)(1) ENFORCEMENT BY CIVIL ACTION.—Except as provided in paragraph (2), any person (including the Secretary) may commence a civil action on his own behalf against any airport operator for alleged failure to comply with subsection (a). Such action may be brought only in the judicial district in which such airport is located. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the requirements of subsection (a).

"(2) No action may be commenced under this subsection by any person other than the Secretary if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with subsection (a).

"(3) In any action under this subsection brought by any person other than the Secretary, the Secretary may intervene as a matter of right.".

H.R. 11733

By Mr. BENJAMIN:

—Page 179, after line 11, add the following new subsection:

(e) Section 5(e) of such Act of 1964 is amended—

(A) by inserting "(1)" immediately after "(e)";

(B) by inserting out "The" in the second sentence and inserting in lieu thereof "Except as provided in paragraph (2) of this subsection, the"; and

(C) by adding at the end thereof the following new paragraph:

"(2) From the amount appropriated for each of the fiscal years ending September 30, 1979, and September 30, 1980, the Secretary may make grants to each Governor and to each designated recipient of an urbanized area for one project for the payment of subsidies for operating expenses which shall not exceed 80 per centum of the cost of such project, or $1,000,000, whichever is less. The remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. Subsection (f) of this section shall not apply to any grant made under this paragraph.".

H.R. 11733

By Mr. KOSTMAYER:

—On page 106 strike out line 2 through line 11.

—On page 106 strike out line 12 through line 24.

—On pages 107 and 108, strike out section 117 in its entirety.

H.R. 11733

By GARY A. MYERS:

—Page 110, line 14, strike out the period and insert in lieu thereof a comma and the following: "except that the Secretary, in approving any project under this section during fiscal year 1979 or 1980, may increase the Federal share of the cost of such project to 100 per centum if the Secretary determines that (1) the State seeking approval of such project is unable to provide all or any part of the non-Federal share of the cost of such project due to the authorization levels contained in this section, and (2) such increased Federal share is consistent with the purposes of this section."

—On page 150, delete line 23 and all that follows through line 10 on page 151.

Page 151, line 1, delete "shall" and insert in lieu thereof "may".

Page 151, line 7, delete "and".

Page 151, line 10, delete the period and insert in lieu thereof a comma and the following: "or any other qualified Federal-aid highway."

H.R. 11733

By Mr. WEAVER:

—Add a new subsection 116(d):

"Section 131 of title 23, United States Code, is amended by relettering existing subsections (p) and (q) as (q) and (r), respectively, including any references to such subsections, and by inserting immediately following subsection (o) the following new subsection (p):

"(p) The Secretary may approve the request of any State to permit signs at intersections along the primary system providing directions to any business located in an area of population less than 100 per square mile other than an incorporated municipality if (1) without such sign(s) such business would suffer a substantial economic hardship, (2) such sign(s) do not exceed 10 square feet in surface area, (3) such sign is not more than 4 feet above the highway surface level measured from the point of the sign nearest the ground, and (4) such sign is not more than 20 miles from the business."

H.R. 11733

By Mr. WEISS:

—Page 108, after line 3, insert the following:

SEC. 118. The first three sentences of section 138 of title 23, United States Code, are amended to read as follows: "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, historic sites, and the navigable waters of the United States. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, the Administrator of the Environmental Protection Agency, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed and to maintain the navigable waters of the United States. After the effective date of the Federal-Aid Highway Act of 1968 in the case of land, and after the date of enactment of this sentence in the case of the navigable waters of the United States, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, State, or local significance as so determined by such officials, or any navigable waters of the United States, unless (1) there is no feasible and prudent alternative to the use of such land or such navigable waters, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, historic site, or such navigable waters resulting from such use. After the date of enactment of this sentence, the Secretary shall not enter into any obligation on behalf of the Federal Government to pay any sum with respect to any such program or project (including any such program or project approved before such date of enactment) until the Secretary submits to Congress a written certification that such program or project will be carried out in a manner which is consistent with the provisions of this section together with a written document describing the procedures used by the Secretary in determining that such program or project is so consistent.

Renumber the succeeding sections of title I accordingly.

—Page 204, after line 6, insert the following new section:

"SEC. 329. No financial assistance shall be provided by the Secretary to an eligible recipient of such assistance under programs or projects administered by the Urban Mass Transportation Administration, unless the local transit body designated to govern the use of such assistance by the recipient (1) consists of a majority of persons who reside in the area served by the mass transportation facilities under the local transit body's governance, and (2) each such person uses the mass transportation facilities under the local transit body's governance as a principal means of transportation."

H.R. 12452

By Mrs. COLLINS of Illinois:

(Amendments to the amendment in the nature of a substitute offered by Mr. Jeffords.)

—Insert at the end of section 106 of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered by the Gentleman from Vermont the following new subsection:

"(j) In order to insure compliance with the provisions of this Act and regulations thereunder and to insure conduct of programs in a manner consistent with the purposes and objectives of this Act, the Secretary may require prime sponsors to participate in unified audit programs established by the Secretary to provide for the audit of both prime sponsors and their respective subgrantees and subcontractors. In any such case the Secretary may require the prime sponsor to pay, from funds under this Act available to it for administrative expenses, that portion of the unified audit expenses allocable to the audit of such subgrantees and subcontractors.

—Insert at the end of section 152 of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered by the Gentleman from Vermont the following new subsection:

"(e) In carrying out the duties and responsibilities provided by this Act, the Director shall take such steps as may be necessary to insure that—

"(1) audits of each prime sponsor (A) are conducted at least once every two years, and (B) are conducted in a reasonably timely manner; and

"(2) that action taken on the basis of any such audit, including review and collection of unallowable expenditures, is completed in a timely manner after the completion of any such audit.

—Insert at the end of section 155 of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered by the Gentleman from Vermont the following new subsection:

'(d) In addition to the sums otherwise authorized to be appropriated by this Act, there are authorized to be appropriated such sums as may be necessary to carry out the functions vested in the Office of the Director.

In section 154(a)(1) of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered by the gentleman from Vermont, strikeout the semicolon at the end thereof and insert in lieu thereof the following: ", including—

"(A) the proportion of prime sponsor expenditures subjected to further review on the basis of regular audit activities during such period;

"(B) the proportion of such expenditures which are disallowed on the basis of such further review during such period; and

"(C) the proportion of disallowed expenditures which have been recovered by the Department during such period;

H.R. 12452

By Mr. JEFFORDS:

(Amendment in the Nature of a Substitute)

—Page 2, line 8, through page 225, line 2, strike out all of section 2 and insert in lieu thereof the following:

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT REAUTHORIZATION

SEC. 2. The Comprehensive Employment and Training Act of 1973 is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act, with the following table of contents, may be cited as the 'Comprehensive Employment and Training Act'.

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"Sec. 1. Short title.
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"TITLE I—ADMINISTRATIVE PROVISIONS
"PART A—ORGANIZATIONAL PROVISIONS
"Sec. 101. Prime sponsors.
"Sec. 102. Authority of Secretary to provide services.
"Sec. 103. Comprehensive employment and training plan.
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"Sec. 105. Governor's coordination and special services plan.
"Sec. 106. Complaints and sanctions.
"Sec. 107. Judicial review.
"Sec. 108. Reallocation.
"Sec. 109. Prime sponsor's planning council.
"Sec. 110. State employment and training council.
"Sec. 111. Consultation.
"Sec. 112. Authorization of appropriations.
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"PART B—GENERAL PROVISIONS
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"Sec. 122. Special provisions.
"Sec. 123. Wages and allowances.
"Sec. 124. Labor standards.
"Sec. 125. Definitions.
"Sec. 126. Secretary's authority.
"Sec. 127. Reports.
"Sec. 128. Services and property.
"Sec. 129. Utilization of services and facilities.
"Sec. 130. Interstate agreements.
"Sec. 131. Prohibition against political activities.
"Sec. 132. Nondiscrimination.
"Sec. 133. Records, audits, and investigations.
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"Sec. 152. Appointment of officers.
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"Sec. 155. Authority; administration provisions.
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"PART B—RESEARCH, TRAINING, AND EVALUATION
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"Sec. 313. Evaluation.
"Sec. 314. Training and technical assistance.
"Sec. 315. National Occupational Information Coordinating Committee.
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"Sec. 401. General provisions.
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"STATEMENT OF PURPOSE

"SEC. 2. It is the purpose of this Act to provide job training and employment opportunities for economically disadvantaged persons, unemployed or underemployed persons which will result in an increase in their earned income, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible, coordinated and decentralized system of Federal, State, and local programs. It is further the purpose of this Act to provide for the maximum feasible coordination of plans, programs, and activities under this Act with economic development, community development and related activities such as vocational education, vocational rehabilitation, self-employment training programs, and social service programs.

"PART A—ORGANIZATIONAL PROVISIONS

"PRIME SPONSORS

"SEC. 101. (a) The Secretary may make financial assistance available to a prime sponsor to enable it to carry out all or a substantial part of a comprehensive employment and training plan. A prime sponsor shall be—

"(1) a State;

"(2) a unit of general local government which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available to the Secretary;

"(3) any consortium of units of general local government which includes any unit of general local government qualifying under paragraph (2) of this subsection;

"(4) any unit of general local government or any consortium of such units, without regard to population, which, in exceptional circumstances, and after consultation with appropriate State and local officials, is determined by the Secretary—

"(A) (i) to serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

"(B) to have demonstrated (i) that it has the capability for adequately carrying out programs under this Act, (ii) that there is a special need for services within the area to be served, and (iii) that it will carry out such programs and services in such area as effectively as any larger unit or general local government in which it is located or as the State;

"(5) a limited number of existing concentrated employment program grantees serving rural areas having a high level of unemployment which the Secretary determines have special capabilities for carrying out programs in such areas and are designated by the Secretary for that purpose; or

"(6) any unit of general local government previously designated as a prime sponsor under the provisions of this Act (as in effect prior to the effective date of the Comprehensive Employment and Training Amendments of 1978) which has demonstrated its effectiveness to serve the purposes of this Act, regardless of any subsequent population decline below one hundred thousand persons.

"(b)(1) A State shall not qualify as a prime sponsor for any geographical area within the jurisdiction of any prime sponsor described in paragraph (2), (3), (4), (5), or (6) of subsection (a) unless such prime sponsor has not submitted an approvable comprehensive employment and training plan for such area.

"(2) A larger unit of general local government shall not qualify as a prime sponsor with respect to the jurisdiction within its area of any smaller eligible unit of general local government unless such smaller unit has not submitted an approvable comprehensive employment and training plan for such area.

"(c) An applicant must submit to the Secretary a notice of intent to be a prime sponsor for a fiscal year by such date as the Secretary shall prescribe. The Secretary shall designate as prime sponsors any applicant submitting such a notice unless the Secretary determines that such applicant does not qualify under this section.

"(d) State prime sponsors shall make appropriate arrangements for appropriate area planning bodies to serve subareas within the State prime sponsor's area for the purpose of assisting in the effective planning and delivery of comprehensive employment and training programs in such subareas, in accordance with such regulations as the Secretary may prescribe.

"AUTHORITY OF SECRETARY TO PROVIDE SERVICES

SEC. 102. In any area for which no prime sponsor has been designated under section 101(c), or where the Secretary has taken an action under section 104 or section 106 which results in employment and training services not being provided in such area, the Secretary shall use funds allocated to such prime sponsor to make payments directly to public agencies or private nonprofit organizations as if the Secretary were the prime sponsor for that area.

"COMPREHENSIVE EMPLOYMENT AND TRAINING PLAN

"SEC. 103. (a) In order to receive financial assistance under this Act, a prime sponsor designated under section 101(c) shall submit to the Secretary a comprehensive employment and training plan. Such plan shall consist of a master plan and an annual plan. The master plan shall serve as the long-term charter under which the programs of such prime sponsor shall be operated. Such plan shall be sufficiently detailed to provide the Secretary and the prime sponsor with a thorough understanding of the economic conditions of the area and of the prime sponsor's long-term programmatic and administrative arrangements to ensure that each annual program is designed and implemented in a manner best suited to such conditions and in a manner consistent with the requirements of this Act. The formulation of such plan by the prime sponsor shall involve the active participation of the prime sponsor planning council, and such plan shall—

"(1) include (A) a detailed analysis of the area to be served, including geographic and demographic characteristics of significant segments of the population to be served (with data indicating the number of potential eligible participants and their income and employment status), and (B) a comprehensive labor market analysis and assessment of the economic conditions in the area, identifying the availability of employment and training in various public and private labor market sectors in such area and the potential for job growth in such sectors;

"(2) include a statement of the long-term goals of the prime sponsor for the improvement of such labor market and economic conditions;

"(3) include a description of the methods and institutional arrangements which will be used to involve community-based organizations in the development and implementation of the programs assisted under this Act;

"(4) include a description of the methods and arrangements which will be used to ensure the fullest possible utilization, consistent with the education and training needs identified in the plan, of public vocational education facilities and programs, and of other facilities of local education agencies in the provision of instruction in basic cognitive skills and in the development and implementation of programs assisted under this Act;

"(5) provide evidence that in the development of such plan there has been a continuing process of consultation with interested groups in the area not directly represented on the prime sponsor's planning council, including local advisory councils established under section 105(a) of the Vocational Education Act of 1963 and the private industry council established under section 703 of this Act, representatives of local education agencies, and representatives of postsecondary educational agencies;

"(6) include a detailed description of—

"(A) the prime sponsor's administrative arrangements and the procedures and criteria to be used (i) to select and supervise deliverers of service (including criteria for determining that a program has 'demonstrated effectiveness'), (ii) to evaluate and audit the operation of such programs, and (iii) to process complaints and grievances with respect to such programs;

"(B) the methods to be used to identify and place participants in such programs and the arrangements made with respect to providing such participants with job search assistance, counseling, and other services; and

"(C) the procedures for the selection of and the arrangements made with respect to consultation with the prime sponsor planning counsel;

"(7) include a description of arrangements to ensure that employment and training services, including the development of job opportunities, will be provided to those most in need of them, including low-income persons, handicapped persons, and persons of limited English-speaking ability, and that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons;

(8) (A) provide a description of appropriate arrangements with community-based organizations serving the poverty community which are not represented on the prime sponsor planning council, and other special target groups, for their participation in the planning of programs included in the plan; (B) provide a description of the extent to which those services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State, and local agencies are utilized by the prime sponsor, based upon a written evaluation of the local effectiveness of such existing services and facilities, including, but not limited to, the State employment service, State vocational education and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions, and organizations (such as private businesses, labor organizations, private employment agencies, and private educational and vocational institutions) which can, at comparable cost, provide substantially equivalent training or services or otherwise aid in reducing more quickly unemployment or current prospective labor shortages; (C) provide a description of arrangements for (i) the use of skills centers established under the authority of section 231 of the Manpower Development and Training Act of 1962, and (ii) the use of other public vocational education facilities in such area; (D) provide a description of arrangements to coordinate services for which financial assistance is provided under programs administered by the Secretary relating to employment and training and related services; and (E) provide a description of arrangements to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available under section 1787 of title 38, United States Code;

"(9) provide for and include a description of arrangements made to insure the participation of and consultation with local educational agencies, vocational education agencies, community-based organizations, Federal and State agencies, organized labor, business, and other institutions and organizations in the conduct of programs under this Act;

"(10) include a description of the methods for coordination between the prime sponsor and the local State employment security agencies and delineate the specific responsibilities of each in the delivery of employment and training services for participants funded under this Act and under the Wagner-Peyser Act, with the goal of maximizing the level of coordination between the prime sponsor and the local employment security agency and minimizing duplication;

"(11) include a description of the procedures concerning academic credit developed

in conjunction with the appropriate local education agency or institution of higher education and approved by the appropriate State educational agency (including State agencies responsible for postsecondary education), or, where a prime sponsor's area includes more than one local education agency, developed in conjunction with, and approved by, the appropriate State educational agency;

"(12) include a description of procedures for the consideration of any changes in the plan required by this subsection or in the plan required under subsection (b), including review of such changes by the prime sponsor planning council;

"(13) include a description of recommendations of members of the prime sponsor's planning council which were not included in the plan, together with the reasons for rejecting them;

"(14) include a description of actions to ensure compliance with personnel procedures and collective bargaining agreements;

"(15) include a description of efforts to remove artificial barriers to employment;

"(16) include a description of procedures which will lead to skill development and job opportunities for participants in occupations traditionally limited to individuals of the opposite sex;

"(17) include a description of plans and activities to coordinate, strengthen, and expand employment and training activities under this Act with economic development activities in the private sector; and

"(18) include adequate assurances of compliance with this Act, regulations issued thereunder, and the comprehensive employment and training plan.

"(b) To receive funds for any fiscal year a prime sponsor shall submit an annual plan which shall include—

"(1) any significant changes from the information provided in the master plan;

"(2)(A) a description of the eligible population, including geographic and demographic characteristics of significant segments of such population;

"(B) a description of plans made to provide for the needs of persons who face particular disadvantages as identified in title III of this Act; and

"(C) a description of the procedures which will be used to promote the objectives of section 121(a)(4), including the hiring, licensing, and contracting activities of the political units, subgrantees, and contractors of such prime sponsor;

"(3) the prime sponsor's program and performance standards and goals for the program year, any changes in such program and performance standards and goals from those established for the preceding year and a summary of the results achieved with respect to such program standards and goals for prior years, and a description of any problems encountered in meeting the program and performance standards and goals for such preceding years;

"(4) the method for determining priorities for service under title II based on objective locally established criteria to assist the prime sponsor in assuring service to those most in need; such priorities shall be based on locally determined factors such as employment status, household status, level of employability development, handicap, veteran status, age, race, sex, or other criteria deemed viable by the prime sponsor;

"(5) the proposed budget for the program year, including a detailed summary of the expenditures made during the preceding year, results achieved, and changes made in the annual plan for the program year;

"(6) a list of the specific contracts from the previous year with those institutions providing training programs, including information on the rate of job placement for those who have completed such programs;

"(7) a summary of any evaluation conducted of the prime sponsor's programs during preceding program years and a description of any use made of such evaluation in the modification or alteration of the prime sponsor's program;

"(8) a description of an affirmative action program for outreach to and training, placement, and advancement of handicapped individuals in employment and training programs under this Act, including—

"(A) a description of the extent to which and the methods whereby the special needs of the handicapped are to be met; and

"(B) a description of the number of handicapped individuals who were served each of the preceding two years, the types of training or employment in which they were placed, and the number of such individuals who were moved into unsubsidized employment;

"(9) a description of the prime sponsor's intention to apply for and utilize funds provided under this Act which are not allocated by formula;

"(10) the wages or salaries to be paid persons employed in public service jobs under this Act and a comparison with the wages paid for similar public occupations by the same employer; and

"(11) a copy of all agreements made pursuant to section 203(a) of this Act.

"(c) The Secretary shall establish procedures for submittal, approval, and implementation of changes in the comprehensive employment and training plan, together with any reports required under this Act, not more than once each fiscal quarter.

"REVIEW OF PLANS AND PERFORMANCE STANDARDS AND GOALS

"SEC. 104. (a) The Secretary shall approve any comprehensive or annual employment and training plan only if it (1) meets the requirements of section 103; (2) has been submitted for comment (at least 45 days before it was submitted to the Secretary) to the Governor, the State employment and training council, the prime sponsor planning council, appropriate local units of general local government, and labor organizations in the area representing employees engaged in work similar to that proposed to be funded; and (3) has been made available to the chairperson of the appropriate committee in each House of the State legislature with primary responsibility for vocational training and job development programs and to the public (including appropriate community-based organizations). The Secretary shall not approve or disapprove any such plan solely on the basis of the proposed allocation of funds to be devoted to a particular program or activity, unless such allocation is required by this Act. The Secretary shall, prior to approval of any plan, require the inclusion in such plan of specific management and accounting procedures to assure adequate supervision and monitoring of the programs to be conducted pursuant to such plan, and shall require the adoption of specific procedures (such as accrual accounting procedures) where necessary for such purpose. Prior to approval of any plan, the Secretary shall review the success of any training program which is to be refunded and be satisfied that such program has achieved sufficient results in job placement to merit continuation. The Secretary can require modification of such funding where necessary. The Secretary shall, prior to approval of any plan, insure that the prime sponsor has demonstrated a recognizable and proven method of verifying eligibility of all recipients. The Secretary can require modification or the adoption of specific procedures where necessary for such purposes. The Secretary shall also develop recognizable penalties and inform the prime sponsors of such penalties to be applied upon a finding of the ineligibility of any recipient. In reviewing such plans, the Secretary shall insure that the plans adequately describe, and the prime sponsor demonstrates a thorough understanding of, labor market and economic conditions in the area served, that the plan is reasonably designed to respond to such conditions, that the administrative arrangements and procedures are adequate for the performance of the program and will insure that professional standards of management will be attained, and that the plans provide for adequate relationships with existing community efforts and maximize the use of existing resources.

"(b) The Secretary shall assess the adequacy of each prime sponsor's proposed performance standards and goals in accordance with criteria recognizing that performance will vary with local conditions. Review standards shall provide appropriate recognition of differences associated with the degree of disadvantage or handicap of the eligible population, as well as such factors as—

"(1) the local labor market conditions, including, but not limited to, the levels of employment and unemployment, and the current and projected labor market needs;

"(2) the economic base of the community, including, but not limited to, the growth or decline of industry within the community;

"(3) the distribution of available employment opportunities, by industry division, for persons residing within the prime sponsor's area; and

"(4) the differing needs of the eligible population which will vary the costs for services and which will require setting different performance standards depending on the disadvantage of the eligible population.

"(c)(1) The Secretary shall, not later than March 31 of the fiscal year preceding the fiscal year for which an annual plan is to take effect, establish a date for the submission of such annual plan. The Secretary shall make available to each prime sponsor a complete and final set of all applicable regulations and necessary application materials no later than May 15 of the fiscal year preceding the fiscal year for which such plan is to take effect. With respect to funds allocated under this Act on the basis of a formula, the Secretary shall also provide prime sponsors with a preliminary planning estimate based on the amounts available in the budget of the President or in the most recent concurrent budget resolution under the Congressional Budget Act applicable to such year. If for any reason the Secretary cannot provide a complete and final set of all applicable regulations and necessary application materials by such May 15 prior to the date established under the first sentence of this subsection, the Secretary shall extend the date for submittal of such plan to allow the prime sponsor to review such regulations and to complete such materials prior to submittal.

"(2) During the period of time between May 15 and the date for submittal of the plan, the Secretary shall not issue any regulations or guidelines or interpretations thereof that require any change in the prime sponsor's plan, which is a condition for the Secretary's approval or disapproval of the plan. If the Secretary deems that a plan change is required during this period, the Secretary shall allow at least one fiscal quarter for the prime sponsor to submit such change, except that the sponsor may at its own discretion submit the required change as part of its plan submittal under paragraph (1).

"(d) Any prime sponsor aggrieved by any determination made under subsection (a) shall submit notice to the Secretary of the grounds for its objection, and the Secretary shall, within 30 days after receipt of such notice, reverse, amend, or affirm such determination and provide notice thereof and an opportunity for a hearing to such prime sponsor.

"(e) To the extent necessary to provide for the orderly transition to the provisions of section 103 and this section the Secretary may waive any provisions of such sections which are inconsistent with the comparable provisions of this Act prior to the enactment of the Comprehensive Employment and Training Amendments of 1978 and allow prime sponsors to submit plans and applications for assistance consistent with such comparable provisions during the period beginning on the effective date of such Amendments and ending December 31, 1978.

"GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN

"SEC. 105. (a) Any State seeking financial assistance under this Act shall submit a Governor's coordination and special services plan to the Secretary.

"(b) Governor's coordination and special services activities shall consist of, but need not be limited to, the following:

"(1) coordinating all employment and training and related services provided by the State, by prime sponsors, and by other providers of such services within the State;

"(2) coordinating programs financed under the Wagner-Peyser Act and this Act, including assisting the negotiation of any agreements (including partnership arrangements described in section 308) between prime sponsors and State employment security agencies;

"(3) assuring that comprehensive employment and training plans do not unnecessarily result in the duplication of services;

"(4) assisting the Secretary in enforcing the requirements for Federal contractors and subcontractors to list all suitable employment openings with local offices of the State employment services agencies and to take affirmative action, as required in section 2012 (a) of title 38, United States Code.

"(5) assuring the promotion of prime sponsor planning that takes into account conditions prevailing in labor market areas covering more than one prime sponsor area, as well as related activities such as community development, economic development, vocational education, voctional rehabilitation, and social services;

"(6) exchanging information between States and prime sponsors with respect to State, interstate, and regional planning for economic development, human resource development, education, and other subjects relevant to employment and training planning;

"(7) developing and providing to prime sponsors information, on a State and local area basis, regarding economic, industrial, and labor market conditions;

"(8) making available to prime sponsors, with or without reimbursement and upon request, appropriate information and technical assistance to assist them in developing and implementing their programs;

"(9) carrying out special model training and employment programs and related services, which may include programs for offenders similar to programs described in section 301(c); and

"(10) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas.

"(c) A Governor's coordination and special services plan shall be approved by the Secretary only if the Secretary determines that the plan satisfactorily implements subsection (b) of this section, and has been reviewed by the State employment and training council.

"COMPLAINTS AND SANCTIONS

"SEC. 106. (a) Each prime sponsor receiving financial assistance under the Act shall establish and maintain a grievance procedure, including provisions for hearings within 30 days after filing of a grievance, for handling complaints about the program arising from its participants subgrantees, and contractors, and other interested persons. Hearings shall be conducted expeditiously and decisions shall be made not later than 60 days after the filing of the grievance involved. With the exception of grievances involved. or any criminal activity, filing of a grievance must be made within one year of the alleged occurrence.

"(b) Whenever the Secretary receives a complaint from any interested person or organization (which has exhausted the prime sponsor's grievance system established pursuant to subsection (a)) which alleges, or whenever the Secretary has reason to believe (because of an audit, report, on-site review, or otherwise) that a recipient of financial assistance under this Act is failing to comply with the requirements of this Act, the regulations under this Act, or the terms of the comprehensive employment and training plan, the Secretary shall investigate the matter. The Secretary shall conduct such investigation, and make the final determination required by the following sentence regarding the truth of the allegation or belief involved, not later than 120 days after receiving the complaint. If, after such investigation, the Secretary determines that there is substantial evidence to support such allegation or belief that such a recipient is failing to comply with such requirements, the Secretary shall, after due notice and opportunity for a hearing to such recipient, determine whether such allegation or belief is true.

"(c)(1) The Secretary may revoke all or any part of a prime sponsor's comprehensive employment and training plan and terminate in whole or in part financial assistance thereunder, provided that prior notice and opportunity for a hearing are given, if the Secretary concludes that the prime sponsor is—

"(A) maintaining a pattern or practice of discrimination in violation of section 121(a)(1) or 132, or otherwise failing to make opportunities available equitably among the significant segments of the population in the area it serves;

"(B) incurring unreasonable administrative costs in the conduct of activities and programs, as determined pursuant to the Secretary's regulations;

"(C) failing to give due consideration to continued funding of programs of demonstrated effectiveness; or

"(D) otherwise materially failing to carry out the purposes and provisions of this Act or the regulations promulgated under it, or materially failing to expend funds provided under this Act in accordance with this Act.

"(2) If the Secretary finds that a public service employment program is being conducted in violation of section 121 (e)(2), (e)(3), or (g)(1), the Secretary shall, after notice and opportunity for a hearing. revoke all or any part of that portion of the affected prime sponsor's comprehensive employment and training plan pertaining to such program and terminate financial assistance with respect to such portion.

"(d) In emergency situations, as determined by the Secretary, when it is necessary to protect the integrity of the funds or ensure the proper operation of the program, the Secretary may immediately terminate or suspend financial assistance in whole or in part, provided that prompt notice and opportunity for a subsequent hearing are given to the recipient. The Secretary shall not delegate any of the functions or authority specified in this subsection other than to an officer whose appointment was required to be made by and with the advice and consent of the Senate.

"(e) If the Secretary concludes that any recipient of funds under this Act is failing to comply with any provision of this Act or any regulations under this Act, the Secretary may terminate or suspend financial assistance in whole or in part or order such sanctions or corrective actions as are appropriate including, but not limited to, the repayment of misspent funds from funds other than funds under this Act, and the withholding of future funding, provided prior notice and an opportunity for a hearing are given to the recipient. Whenever the Secretary orders termination or suspension of a subgrantee or subcontractor, the Secretary may take whatever action is necessary, including direct legal action against the subgrantee or subcontractor (including operators under a non-financial agreement) or an order to the primary recipient that it take legal action to reclaim misspent funds or to otherwise protect the integrity of the funds or ensure the proper operation of the program.

"(f) If the Secretary concludes that any recipient under this Act (1) has discharged or in any other manner discriminated against a participant, or against any person in connection with the administration of the program, or against any person because such person has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding or investigation, or (2) has otherwise unlawfully denied to any person a benefit to which that person is entitled under the provisions of this Act or the Secretary's regulations, the Secretary may take such appropriate corrective action under this section as is necessary with respect to both the recipient and the person aggrieved.

"(g) The Secretary may withhold funds otherwise payable under this Act in order to recover any amounts expended in any fiscal year in violation of any provision of this Act, any regulation, or any term or condition of assistance under this Act.

"(h) Nothing in this section shall be deemed to reduce the responsibility and full liability of the prime sponsors and other recipients which receive funds directly from the Secretary.

"(i)(1) Except as otherwise provided in subsection (d), the Secretary shall not revoke a prime sponsor's plan, in whole or in part, nor institute corrective action or sanctions against a prime sponsor under this section or any other section under this Act, without first providing the prime sponsor with notice by the Secretary of his intended actions and the reasons upon which those intended actions are based, and also providing the prime sponsor—

"(A) with an opportunity to informally resolve those matters contained in the Secretary's notice; and

"(B) in the event that the prime sponsor and the Secretary cannot informally resolve any matter pursuant to clause (A), with a notice that (i) efforts to informally resolve matters contained in the Secretary's original notice have been unsuccessful; (ii) lists those matters upon which the parties continue to disagree; and (iii) informs the prime sponsor of any sanctions, corrective action, or any other alteration or modification of the prime sponsor's plan or program intended by the Secretary.

"(2) Within ten days of receipt of the Secretary's notice under paragraph (1)(B), the prime sponsor may request a hearing, but in no event shall the Secretary proceed under this Act without first fulfilling all the requirements under this subsection.

"JUDICIAL REVIEW

"SEC. 107. (a) If any prime sponsor is dissatisfied with the Secretary's final action with respect to the disapproval of its comprehensive employment and training plan under section 104 or if any recipient is dissatisfied with the Secretary's final action with respect to a sanction under section 106, such prime sponsor or recipient may, within

sixty days after notice of such action, file with the United States court of appeals for the circuit in which the prime sponsor or recipient is located a petition for review of that action.

"(b) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may, in whole or in part, set aside the findings of the Secretary or remand the case to the Secretary in whole or in part to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the previous action, and shall certify to the court the record of the further proceedings.

"RELOCATION

"SEC. 108. (a) The Secretary is authorized to reallocate any amount of any allocation under this Act to the extent that the Secretary determines that the recipient will not be able to use such amount within a reasonable period of time.

"(b)(1) Any allocations to a prime sponsor designated under section 101(c) may be reallocated only if the Secretary has provided thirty days advance notice to the prime sponsor, to the Governor, and to the general public. During such period comments may be submitted to the Secretary.

"(2) After considering any comments submitted during such period, the Secretary shall notify the Governor and the affected prime sponsor of any decision to reallocate funds, and shall publish such decision in the Federal Register.

"(3) In reallocating any such funds, the Secretary shall give priority first to other prime sponsor areas within the same State and then to prime sponsor areas within other States.

"PRIME SPONSOR'S PLANNING COUNCIL

"SEC. 109. (a) Each prime sponsor designated under section 101(c) shall establish a planning council.

"(b) Such council shall consist of members who are representative of the eligible population (including significant segments thereof), organized labor, employees who are not represented by organized labor, community-based organizations, the State employment service, veterans organizations, organizations of the elderly, vocational education agencies, other education and training agencies and institutions, business, and, where appropriate, agricultural employers and workers.

"(c) The prime sponsor shall appoint the members of the council and designate a nongovernmental member as chairperson.

"(d) The planning council shall meet no less than four times per year. The meetings shall be publicly announced, and, to the extent appropriate, open to and accessible to the general public.

"(e) The council shall participate in the development of, and submit recommendations regarding, the prime sponsors' comprehensive employment and training plan and the basic goals, policies, and procedures of the prime sponsor's programs and other employment and training programs in the prime sponsor's area; monitor, and provide for objective evaluations of, employment and training programs conducted in such area; and provide for continuing analyses of the need for employment, training, and related services in such area, including efforts to reduce and eliminate artificial barriers to employment. Any final decision with respect to such recommendations shall be made by the prime sponsor.

"STATE EMPLOYMENT AND TRAINING COUNCIL

"SEC. 110. (a)(1) Any State which desires to receive financial assistance under this Act shall establish a State employment and training council. Funding for the council shall be provided pursuant to section 202(c).

"(2) The council shall be appointed by the Governor, who may be chairperson of the council or may designate one nongovernmental member thereof to be chairperson.

"(3) The council shall be composed as follows:

"(A) one-third of the voting members of such council shall consist of—

"(i) representatives of units of general local government in the State, including such units or consortia thereof who are designated as prime sponsors, which representatives shall be nominated by the chief executive officers of units of general local government within the State;

"(ii) one representative of the State board of vocational education;

"(iii) one representative of the State advisory council on vocational education established pursuant to section 105 of the Vocational Education Act of 1963;

"(iv) one representative of the State employment security agency;

"(B) one-third of the voting members of such council shall consist of representatives of organized labor, business, agricultural employers and workers, community-based organizations, veterans organizations, and organizations of the elderly;

"(C) one-third of the voting members of such council shall consist of representatives of the eligible population (including significant segments thereof) and of the general public; and

"(D) such additional nonvoting ex officio members of such council as the Governor may designate to represent State agencies having a direct interest in overall employment and training and human resource utilization within the State.

"(4) The council shall meet at such times (but at least four times each year) and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(b) The council shall—

"(1) review continuously the operation of programs conducted by each prime sponsor, and the availability, responsiveness, and adequacy of State services, and make recommendations to the prime sponsors, to agencies providing employment and training services, to the Governor, and to the general public with respect to ways to improve the effectiveness of such programs or services;

"(2) make an annual report to the Governor which shall be a public document, and issue such other studies, reports, or documents as it deems advisable to assist prime sponsors or to otherwise help carry out the purposes of this Act;

"(3)(A) identify, in coordination with the State advisory council on vocational education, the employment and training and vocational education needs of the State and assess the extent to which employment, training, vocational education, vocational rehabilitation, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs: and (B) comment at least once annually on the reports of the State advisory council on vocational education, which comments shall be included in the annual report submitted by that council pursuant to section 105 of the Vocational Education Act of 1963;

"(4) review the comprehensive employment and training plans of prime sponsors pursuant to section 104, especially with respect to nonutilization or duplication of existing services; and

"(5) review plans of all State agencies providing employment, training, and related services, and provide comments and recommendations to the Governor, the State agencies, and the appropriate Federal agency on the relevancy and effectiveness of employment and training and related service delivery systems in the State.

"CONSULTATION

"SEC. 111. (a) The Secretary of Labor shall consult with the Secretary of Health, Education, and Welfare with respect to arrangements for services of a health, education, or welfare character under this Act, and the Secretary of Health, Education, and Welfare shall solicit the advice and comments of appropriate State agencies with respect to such health, education, and welfare services. Such services include, but are not limited to, basic or general education, educational programs conducted for offenders; institutional training; health care, child care, and other supportive services; and new careers and job restructuring in the health, education, and welfare professions.

"(b) The Secretary of Labor, in carrying out or supporting programs under this Act, shall consult, as appropriate, with the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Director of the ACTION Agency, the Director of the Community Services Administration, the Administrator of Veterans Affairs, and such other officials as appropriate.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 112. (a)(1) Except as provided in paragraphs (3) through (6), there are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the three succeeding fiscal years for carrying out the provisions of this Act, other than part A of title IV and title VII.

"(2) Except as provided in paragraphs (3) through (6), there are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1979, and for the succeeding fiscal year for carrying out the provisions of part A of title IV and title VII.

"(3) For the fiscal year ending September 30, 1979, there are authorized to be appropriated for carrying out the provisions of this Act an amount not to exceed—

"(A) $4,000,000,000 for carrying out the provisions of title II;

"(B) $2,250,000,000 for carrying out the provisions of title IV;

"(C) the amount determined pursuant to section 602 for carrying out the provisions of title VI;

"(D) $500,000,000 for carrying out the provisions of title VII; and

"(E) $267,000,000 for carrying out the provisions of title VIII.

"(4) For the fiscal year ending September 30, 1980, there are authorized to be appropriated for carrying out the provisions of this Act an amount not to exceed—

"(A) $4,290,000,000 for carrying out the provisions of title II;

"(B) $2,400,000,000 for carrying out the provisions of title IV;

"(C) the amount determined pursuant to section 602 for carrying out the provisions of title VI;

"(D) $525,000,000 for carrying out the provisions of title VII; and

"(E) $290,000,000 for carrying out the provisions of title VIII.

"(5) For the fiscal year ending September 30, 1981, there are authorized to be appropriated for carrying out the provisions of this Act an amount not to exceed—

"(A) $4,583,000,000 for carrying out the provisions of title II; and

"(B) the amount determined pursuant to section 602 for carrying out the provisions of title VI;

"(6) For the fiscal year ending September 30, 1982, there are authorized to be appropriated for carrying out the provisions of this Act an amount not to exceed—

"(A) $4,876,000,000 for carrying out the provisions of title II; and

"(B) the amount determined pursuant to section 602 for carrying out the provisions of title VI.

"(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds appropriated to carry out this Act, which are not obligated prior to the end of the fiscal year for which funds were appropriated, shall remain available for obligation during the succeeding fiscal year, and any funds obligated in any fiscal year may be expended during a period of two years from the date of obligation.

"(c)(1) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are first available for obligation.

"(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

"(d) Of the amount appropriated to carry out this Act for any fiscal year, the amount available for carrying out title III shall not exceed 20 per centum of the amount available for carrying out title II. From any amount made available for title III activities, the Secretary shall transfer an amount equal to not less than $3,000,000 nor more than $5,000,000 for any fiscal year to the National Occupational Information Coordinating Committee established pursuant to section 161(b) of the Vocational Education Act of 1963, for purposes described in section 315 of this Act.

EVALUATION STUDIES

SEC. 113. (a) From the amounts appropriated pursuant to section 112 for carrying out titles II and VI for each of the fiscal years ending on September 30, 1979, 1980, 1981, and 1982, the Secretary shall reserve not to exceed $5,000,000 for purposes of this section.

(b) From the amounts available pursuant to subsection (a) the Secretary shall establish a program for the continuous and comprehensive study and evaluation, under contract, of recurrent and developing problems in achieving the purposes and goals of such programs. Such study shall be conducted on the basis of statistical and operational evaluation (and collection and organization) of data concerning programs under this Act. Such study and evaluation shall include—

(1) a detailed analysis of the characteristics of participants in each of such programs;

(2) development and use of definitions, standards, and tests (A) for revealing the extent and use of substitution (as prohibited by section 121(e)(2), (e)(3), and (g)(1)), (B) for analyzing the characteristics of the sponsors and participants likely to be involved, and (C) for analyzing trends or patterns of variation in the extent or type of substitution by type of program, duration of program operation, or other factors;

(3) development and use of definitions, standards, and tests (A) for revealing the extent of transition to unsubsidized employment, (B) for analyzing the characteristics of the sponsors and participants likely to achieve such transition, and (C) for analyzing trends or patterns of variation by type of unsubsidized employment, posttransition income and duration of employment, and degree to which posttransition employment job skills and functions differ from those required in the position funded under this Act.

(c) The study and evaluation program conducted under this section shall also include—

(1) use of appropriate control groups of individuals eligible for, but not enrolled in, programs under this Act;

(2) preenrollment studies of program participants; and

(3) random sampling techniques, and organization of data by demographic characteristics.

(d) The Secretary shall transmit to Congress annual reports on the study evaluation activities conducted under this section on October 1 of 1979 and 1980, shall transmit a final report thereon on October 1, 1981, and shall transmit a supplemental report on October 1, 1982. Each such report, in addition to presenting detailed findings and conclusions pursuant to subsections (b) and (c), shall analyze the data basis for such findings and conclusions in terms of net impact, statistical significance, and other measures of the reliability of such data. Reports required under this subsection shall, notwithstanding any other provision of law, be submitted without further clearance or approval from any other official.

(e) The Secretary shall submit to the Congress, within ninety days after the date of enactment of this section, a plan for the study and evaluation program to be conducted under this section. Such plan shall be delivered to both Houses on the same day and to each House while it is in session. The Secretary shall not commence such program until the first day after the close of the first period of thirty calendar days of continuous session of Congress after the date of the delivery of such plan to the Congress. For purposes of this subsection—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the thirty-day period.

"PART B—GENERAL PROVISIONS

"CONDITIONS APPLICABLE TO ALL PROGRAMS

"SEC. 121. Except as otherwise provided, the following conditions are applicable to all programs under this Act:

"(a)(1) No person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief.

"(2) Participants shall not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

"(3) Every participant, prior to entering upon employment or training, shall be informed of that individual's rights and benefits in connection with such employment or training; acceptance of family planning services shall be voluntary on the part of the individual, and shall not be a prerequisite to eligibility for, or receipt of, any benefit under the program.

"(4)(A) Programs shall contribute, to the maximum extent feasible, to the elimination of artificial barriers to employment and occupational advancement.

"(B) Prime sponsors and their subgrantees and contractors shall analyze and reevaluate job descriptions to remove artificial barriers to the public service employment of participants, and, where necessary, revise, or assist in the revision of, qualification requirements, including civil service and licensing requirements and practices relating thereto.

"(5) Prime sponsors shall make efforts to remove architectural barriers to employment of the handicapped.

"(b)(1)(A) Only persons residing within the area qualifying for assistance shall be employed, and the public services provided by such jobs, to the extent feasible, shall be designed to benefit the residents of such area.

"(B) Employment and training opportunities for participants shall be made available by prime sponsors on an equitable basis in accordance with the purposes of this Act among significant segments of the eligible population giving consideration to the relative numbers of eligible persons in each such segment.

"(C) In the administration of programs under this Act, members of the eligible population to be served shall be provided maximum employment opportunities, including opportunities for further occupational training and career advancement. Prime sponsors shall make special efforts to recruit and hire qualified persons reflecting the significant demographic segments of the population residing in the area.

"(D) Special consideration in filling public service jobs shall be given to eligible persons who are the most severely disadvantaged in terms of their length of unemployment and their prospects for finding employment.

"(2)(A) Special consideration shall be given to unemployed persons who served in the Armed Forces in Indochina or Korea on or after August 5, 1964, in accordance with procedures established by the Secretary, and special emphasis shall be given to the development of jobs which will utilize, to the maximum extent feasible, the skills which such veterans acquired in connection with their military training and service.

"(B) Special efforts shall be made to acquaint such veterans with the employment and training available under this Act, and to coordinate efforts in behalf of such veterans with those activities authorized by chapter 41 of title 38, United States Code (relating to job counseling and employment services for veterans), and other similar activities carried out by other public agencies or organizations.

"(C) Prime sponsors shall provide such arrangements as may be appropriate to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available under section 1787 of title 38, United States Code.

"(c)(1)(A)(i) No wages shall be paid from funds under this Act to any participant for any week of public service employment under this Act in excess of seventy-eight weeks in any five-year period. For purposes of this division, no more than twenty-six weeks of public service employment financed in whole or in part under this Act prior to October 1, 1978, shall be considered as part of the seventy-eight weeks.

"(ii) The Secretary may waive the provisions of division (i) or of paragraph (2)(B) to provide a temporary extension of time for a limited number of persons who were originally hired in a public service employment program prior to April 1, 1978, and who continue to be so employed on September 30, 1979, in the case of a prime sponsor which the Secretary determines has faced unusually severe hardships in its efforts to transition public service employees into regular public or private employment not supported under this Act.

"(B)(i) Except as provided in division (ii), funds under this Act shall not be used to pay wages to any person employed in a public service job in any fiscal year under this Act at a rate in excess of $10,000 per year.

"(ii) Notwithstanding division (i) of this subparagraph, the Secretary may, with respect to any State—

"(I) in which the average wage (during the calendar year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of wages subject to contribution under such law) exceeds the national average wage in such employment by more than 50 per centum, and

"(II) in which employees of the Government receive allowances pursuant to section 5941 of title 5, United States Code,

waive the maximum which would otherwise apply to wages paid to persons employed in public service positions in such State and establish in lieu thereof, limitations consistent with the purposes of this Act and with the requirements of programs under this Act in such State.

"(C) In order to provide the number of public service job opportunities for which funds are made available under this Act, the Secretary shall issue appropriate standards to be maintained with respect to average federally supported wage rates for public service jobs on an area basis, on the basis of an index to be published annually by the Secretary, taking into account average wagse in regular employment not supported under this Act in various areas, for the purpose of maintaining nationwide annual average federally supported wage rates in the fiscal year ending September 30, 1979, equivalent to $7,000 per public service jobholder (consistent with the maximum annual federally supported wage rate under subparagraph (B)) of this paragraph. Average wage rates established under such standards for public service jobs for each area shall be adjusted annually by the Secretary by a percentage equal to the change in average wages in regular employment not supported under this Act in such area.

"(D) Notwithstanding any eligibility limitation on public service employment in this Act, a person who on September 30, 1978, held a public service employment position under this Act may continue in such position subject to subparagraph (A) of this paragraph.

"(E)(i) Except as otherwise provided in section 608, no public service employment participant may be provided wages for any public service employment job from sources other than this Act.

"(ii) Notwithstanding division (i), any person in public service employment on September 30, 1978, receiving wages from sources other than this Act may continue to receive such wages.

"(2)(A) All persons participating in work experience under this Act shall receive wages, and all persons participating in training shall receive allowances, pursuant to section 123; except that, subject to section 212(b), no wages or allowances shall be paid from funds under this Act to any participant for any week of institutional or classroom training, or for any week of work experience, in excess of one hundred and four weeks in any three-year period.

"(B) Subject to section 212(b), no individual shall participate in programs receiving financial assistance under this Act for longer than a total of thirty months in any five-year period. For purposes of this subparagraph, no period of participation prior to October 1, 1978, shall be included in the computation of such thirty months.

"(3)(A) Appropriate workers' compensation or equivalent protection shall be provided to all participants.

"(B) All persons employed in public service jobs under this title will be assured of workmen's compensation, health insurance, unemployment insurance, and other benefits at the same levels and to the same extent as other employees of the employer and to working conditions and promotional opportunities neither more nor less favorable than such other employees enjoy. Nothing in this subparagraph or in paragraph (4) shall be deemed to require the enrollment of persons employed in public service jobs in retirement systems or plans for the purpose of providing retirement benefits based on age or service, or both.

"(4) Funds available for employment benefits under this Act may be used for contributions on behalf of participants enrolled in retirement systems or plans prior to January 1, 1979. With respect to participants other than those described in the preceding sentence, funds under this Act may, notwithstanding paragraph (3)(B), be used for contributions to retirement systems or plans (other than pursuant to the Social Security Act) only to the extent such contributions are used to provide benefits such as health and death and disability and are not used for retirement benefits based on age or service, or both.

"(d)(1) Conditions of employment and training shall be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant.

"(2) Appropriate health, safety and other standards for work and training shall be established and maintained.

"(3) Household support obligations shall be taken into account, and special consideration shall be given alternative working arrangements such as flexible hours of work, work-sharing arrangements, and part-time jobs, particularly for parents of young children and for other persons.

"(e)(1) The program shall result in an increase in employment and training opportunities over those opportunities which would otherwise be available.

"(2) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

"(3) No person shall be employed or job opening filled (A) when any other person not supported under this Act is on layoff from the same or any substantially equivalent job, or (B) when the employer has terminated the employment of any regular employee not supported under this Act or otherwise reduced its work force with the intention of filling the vacancy so created by employing a public service employee.

"(4) No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of persons currently employed in jobs not subsidized under this Act.

"(5) No public service jobs shall be substituted for existing federally assisted jobs.

"(6) No program shall impair existing contracts for services.

"(7) No funds shall be used to assist in relocating establishments, or parts thereof, from one area to another or locating new branches, subsidiaries, or affiliates unless the Secretary determines that such relocation or location will not result in an increase in unemployment in the area of original location or in any other area.

"(f)(1) All programs, to the maximum extent feasible, shall contribute to occupational development, upward mobility, development of new careers, and overcoming sex-stereotyping (including procedures which will lead to skill development and job opportunities for participants in occupations traditionally limited to the opposite sex).

"(2) No person shall be trained for an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation.

"(3) All programs shall be designed, to the maximum extent practicable consistent with every individual's fullest capabilities, to lead to employment opportunities enabling participants to increase their earned income and to become economically self-sufficient.

"(4) No person shall be referred for training unless there is a reasonable expectation of employment in the occupation for which such person is being trained. To the extent feasible, public service jobs shall be provided in occupational fields which are most likely to expand within the public or private sector.

"(5) Programs of institutional training shall be designed for occupations in which skill shortages exist.

"(6) The Secretary, through State employment security agencies, shall inform unemployment compensation recipients, and other applicants for assistance from the employment security agency, of any available public service jobs for which they may be eligible.

"(g)(1)(A) No program shall substitute funds under this Act for other funds in connection with work that would otherwise be performed.

"(B) No funds for public service employment programs under this Act may be used to provide public services, through a private organization or institution, which are customarily provided by a State, a political subdivision, or a local educational agency in the area served by the program.

"(C) Jobs shall be created that are in addition to those that would be funded in the absence of assistance under this Act.

"(D) Funds shall be used to supplement, and not to supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs.

"(2) Programs shall use services and facilities available (with or without reimbursement) from Federal, State, and local agencies to the extent they are deemed effective by the prime sponsor.

"(3) Financial records relating to public service employment programs, and records of the names, addresses, positions, and salaries of all persons employed in public service jobs, shall be maintained and made available to the public.

"(h)(1) No nongovernmental individual, institution, or organization shall be paid funds provided under this Act to evaluate any program under this Act if such individual, institution, or organization is associated with that program as a consultant or technical advisor, or in any similar capacity.

"(2) No member of any council under this Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member (or any organization which that member directly represents).

"(i) Small and minority-owned businesses shall be provided maximum reasonable opportunity to compete for contracts for supplies and services including, where appropriate, the use of set-asides.

"(j) Payments to employers organized for profit shall not exceed the difference between (1) the costs of recruiting, training, and supportive services, and the costs of low productivity (as defined by regulations of the Secretary) for participants and (2) the comparable costs incurred for those regularly employed.

"(k) Prime sponsors shall provide, where employment opportunities already exist or where there is a reasonable expectation of near-term expansion of such employment potential, employment and training opportunities in the development and use of solar, geothermal, hydroelectric, and other alternative energy technologies, and conservation, especially those clean, safe, renewable resources which may assist communities in resolving energy demand problems, thereby reducing their reliance on conventional nonrenewable fuels. For purposes of this section,

solar energy sources has the meaning set forth in section 3 of the Solar Energy Research, Development and Demonstration Act of 1974.

"(i) No funds under this Act shall be used to aid the efforts of any labor organization to organize, to engage in collective bargaining, or to engage in any political activity. Without limiting the powers otherwise granted to the Secretary, funds found by the Secretary or by a court of law shall be refunded promptly to the United States Treasury.

"SPECIAL PROVISIONS

"SEC. 122. (a) No authority conferred by this Act shall be used to enter into arrangements for, or otherwise establish, any employment and training programs in the lower wage industries in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high.

"(b) The Secretary shall provide for the sharing of the comprehensive employment and training plan and other plans and proposals between the prime sponsors and other recipients of financial assistance in the prime sponsor's area under this Act in order to assure maximum feasible coordination of activities and programs within the area and to minimize duplication.

"(c)(1) Notwithstanding any other provisions of law, employment and training furnished under this Act in connection with weatherization projects may include work on projects for the near poor, including families having incomes which do not exceed 125 per centum of the poverty level as determined in accordance with the criteria established by the Director of the Office of Management and Budget, and projects approved by the Community Service Administration pursuant to section 222(a)(12) of the Economic Opportunity Act or the Department of Energy pursuant to title IV of the Energy Conservation and Production Act of 1976.

"(2) Projects permitted under this subsection shall be subject to the direction of an adequate number of supervisory personnel, who shall be adequately trained in skills needed to carry out the project and to instruct participants in skills needed to carry out a project.

"(d) All allocations under this Act shall be based on the latest available data and estimates satisfactory to the Secretary.

"(e) Where the Secretary determines that a Native American entity otherwise qualified under section 302(c)(1) is unable to apply for or use any financial assistance for which it may be eligible under this Act, the Secretary may assist such entity in applying for or using such financial assistance.

"(f) For purposes of eligibility for participation in a program under this Act, no person shall be considered as unemployed unless such person has been unemployed for at least seven consecutive days.

"(g)(1) All funds received under any title of this Act, which are allowed to be used for administrative costs under the provisions of the title under which they were received, may be pooled by the recipient so that they may be used to administer all programs under this Act, and may be used to plan for the administration of title VI programs without regard to present funding for such programs.

"(2) Nothing in section 121 or this section shall be deemed to authorize the Secretary to pre-approve the selection of legal counsel by a prime sponsor, but the Secretary shall assure that no funds available for administrative costs under any title of this Act are used by a prime sponsor for making payments on contracts for legal or other associated services unless substantively comparable services are not available from the Department of Labor (provided use of such services would not cause a conflict of interest within the Department of Labor) and the prime sponsor certifies that—

"(A) the payments are not unreasonable in relation to the fees charged by other contractors providing similar services, and in any event, do not exceed the rate of pay of GS-18; and

"(B) the services could not be competently provided through employees of the prime sponsor or other available State or local governmental employees.

"(3) Where a prime sponsor has incurred legal costs in litigation with the Department of Labor, and such costs are questioned in a Department audit, the allowability shall be determined in the office of the Assistant Secretary of Labor for Employment and Training.

"(h) The Secretary, by regulation, shall establish such standards and procedures for recipients of funds under this Act as are necessary to assure against program abuses including, but not limited to, nepotism; conflicts-of-interest; the charging of fees in connection with participation in the program; the improper commingling of funds under the Act with funds received from other sources; the failure to keep and maintain sufficient, auditable, or otherwise adequate records; kickbacks; political patronage; violations of applicable child labor laws; the use of funds for political, religious, antireligious, unionization, or antiunionization activities; the use of funds for lobbying local, State, or Federal legislators; and the use of funds for activities which are not directly related to the proper operation of the program.

"(i) Pursuant to regulations of the Secretary, income generated under any program may be retained by the recipient to continue to carry out the program, notwithstanding the expiration of financial assistance for that program.

"(j) Pursuant to regulations which the Secretary shall prescribe, each recipient of financial assistance under this Act shall make satisfactory provisions for determining and verifying whether individuals are eligible for participation in programs supported under this Act.

"(k) Every recipient which receives funds directly from the Secretary shall be responsible for the allocation of such funds and the eligibility of those enrolled in the program and shall have responsibility to take action against its subcontractors, subgrantees, and other recipients to eliminate abuse in their programs and to prevent any misuse of funds by such subcontractors, subgrantees, and other recipients. Prime sponsors may delegate the responsibility for determination of eligibility under reasonable safeguards, including provisions for reimbursement of cost incurred because of erroneous determinations made with insufficient care, provided that the Secretary has approved such an arrangement pursuant to the provisions of section 104(a).

"WAGES AND ALLOWANCES

"SEC. 123. Except as otherwise provided in this Act, the following allowances and wages shall apply to all activities financed under this Act:

"(a)(1) The Secretary shall establish a basic hourly allowance for an individual receiving training for which no wages are payable at a rate which, when added to the amounts of unemployment compensation, if any, received by the trainee, shall be no less than the hourly minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, or, if higher, under the applicable State or local minimum wage law.

"(2) Pursuant to regulations of the Secretary, the prime sponsor may increase, decrease, prorate, or waive the basic allowance.

"(3) A trainee receiving public assistance, or whose needs or income is taken into account in determining such public assistance payments to others, shall receive an incentive allowance for each hour spent in training at the rate of $30 per week. Such allowance shall be disregarded in determining the amount of public assistance payments under Federal or federally assisted public assistance programs.

"(4) A trainee shall receive no allowances for hours during which the trainee fails to participate without good cause.

"(b) A person in public service employment or similar employment shall be paid wages which shall not be less than the highest of (1) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, (2) the minimum wage under the applicable State or local minimum wage law, or (3) the prevailing rates of pay for persons employed in similar occupations by the same employer.

"(c) Persons in on-the-job training shall be compensated by the employer at such rates, including periodic increases, as may be deemed reasonable under regulations prescribed by the Secretary, considering such factors as industry, geographical region, skill requirements, and individual proficiency, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

"(d) Persons in work experience shall be paid wages not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

"LABOR STANDARDS

"SEC. 124. All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5). The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934 (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

"DEFINITIONS

"SEC. 125. As used in this Act—

"(1) The term 'academic credit' means education, training, or work experience applicable toward a secondary school diploma, a postsecondary degree, or an accredited certificate of completion, consistent with applicable State law, regulation, and policy and the requirements of an accredited educational agency or institution in a State.

"(2) The term 'area of substantial unemployment' means any area of sufficient size and scope to sustain a public service employment program and which has an average rate of unemployment of at least 6.5 per centum (A) for any three consecutive months within the preceding year for purposes of title II, or (B) for the most recent four quarters for purposes of title VI. Determinations of areas of substantial unemployment shall be made once each fiscal year by the Secretary.

"(3) The term 'artificial barriers to employment' refers to limitations in the hiring, firing, promotion, licensing, and other terms and conditions of employment which are not directly related to the individual's fitness or ability to perform the duties required by the employment position.

"(4) The term 'community-based organizations' means private nonprofit organizations which are representative of communities or significant segments of communities and which provide employment and training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto

Rican Forum, neighborhood organizations, community action agencies, community development corporations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), union-related organizations, and employer-related nonprofit organizations).

"(5) The term 'Consumer Price Index' means the 'All Urban Consumer Index' as determined by the Secretary of Labor.

"(6) The term 'disabled veteran' means those veterans described in section 2011(1) of title 38, United States Code.

"(7) The term 'economically disadvantaged' means a person who (A) receives, or is a member of a family which (i) receives cash welfare payments under a Federal, State, or local welfare program, or (ii) had a family income during the six-month period prior to application for the program which would have qualified such family for such cash welfare payments, subject to regulations of the Secretary; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program (exclusive of unemployment compensation and welfare payments) which, in relation to family size, was not in excess of the higher of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget or 70 per centum of the lower living standard income level; (C) is a foster child on behalf of whom State or local government payments are made; or (D) in cases permitted by regulations of the Secretary, is a handicapped individual living at home or is an individual who is institutionalized or receiving services in, or is a client of, a sheltered workshop, prison, hospital, or similar institution or in community care. Except for persons who would be eligible for assistance under title IX of the Older Americans Act, any person claimed as a dependent on another person's Federal income tax return under section 151(e) of the Internal Revenue Code of 1954 for the previous year shall be considered part of the person's family for the current year.

"(8) The term 'entry level' means the lowest position in any promotional line, as defined locally by collective-bargaining agreements, past practice, or applicable personnel rules.

"(9) The term 'Governor' means the chief executive of any State.

"(10) The term 'handicapped individual' means any individual who (A) has a physical or mental functional limitation or impairment which constitutes or results in an inability to perform any substantial gainful employment, and (B) can be reasonably expected to benefit, in terms of employability, from services provided pursuant to this Act.

"(11) The term 'Hawaiian native' means any individual any of whose ancestors were natives, prior to 1778, of the area which now consists of the Hawaiian Islands.

"(12) The term 'health care' includes, but is not limited to, preventive and clinical medical treatment, family planning services, nutrition services, and appropriate psychiatric, psychological, and prosthetic services, to the extent any such treatment or services are necessary to enable the recipient of employment and training services to obtain or retain employment.

"(13) The term 'institutions of higher education' and 'post-secondary institutions' means those institutions defined as institutions of higher education in section 1201(a) of the Higher Education Act of 1965.

"(14) The term 'local educational agencies' means those agencies so defined in section 195(10) of the Vocational Education Act of 1963.

"(15) The term 'low-income level' means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

"(16) The term 'lower living standard income level' means that income level (adjusted for regional and metropolitan and urban and rural differences and family size) determined annually by the Secretary based upon the most recent 'lower living family budget' issued by the Secretary.

"(17) The term 'offender' means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom employment and training services may be beneficial or who requires assistance in overcoming artificial barriers to employment stemming from a record of arrest or conviction.

"(18) The term 'project applicants' includes States and agencies thereof, units of general local government and agencies thereof or combinations or associations of such governmental units when the primary purpose of such combinations or associations is to assist such governmental units to provide public services, special purpose political subdivisions having the power to levy taxes and spend funds or serving such special purpose within an area served by one or more units of general local government, local educational agencies, institutions of higher education, community-based organizations, community development corporations, nonprofit groups and organizations serving Native Americans, and other private nonprofit organizations or institutions engaged in public service.

"(19) The term 'public assistance' means Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

"(20) The term 'public service' includes, but is not limited to, work, including part-time work, in such fields as environmental quality, health care, education, child care, public safety, crime prevention and control, prisoner rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans outreach, and other fields of human betterment and community improvement.

"(21) The term 'recipient' means any person, organization, unit of government, corporation, or other entity receiving financial assistance under this Act whether directly from the Secretary, or through another recipient by subgrant, contract, subcontract, agreement, or otherwise.

"(22) The term 'Secretary' means the Secretary of Labor.

"(23) The term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas, American Samoa, and the Trust Territory of the Pacific Islands.

"(24) The term 'underemployed persons' means—

"(A) persons who are working part time but seeking full-time work;

"(B) persons who are working full time but receiving wages below the higher of either (i) the poverty level determined in accordance with criteria as established by the Director of the Office of Management and Budget or (ii) 70 per centum of the lower living standard income level;

"(C) in cases permitted by regulations of the Secretary, persons who are institutionalized or receiving services in a sheltered workshop, prison, hospital, or similar institution, or in community care; or

"(D) adults who, or whose families receive, supplemental security income or money payments pursuant to a State plan approved under title I, IV, X, or XVI of the Social Security Act or would, as defined in regulations to be issued by the Secretary, be eligible for such payments but for the fact that both parents are present in the home (i) who are determined by the Secretary of Labor, in consultation with the Secretary of Health, Education, and Welfare, to be available for work and (ii) who are either persons without jobs, or persons working in jobs providing insufficient income to support their families without welfare assistance.

"(25) The term 'unemployed persons' means persons who are without jobs and who want and are available for work, and shall, for purposes other than allocation formulas, include persons who are institutionalized or receiving services in a sheltered workshop, prison, hospital, or similar institution, or in community care. The determination of whether persons are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining persons as unemployed, but such criteria shall not be applied differently on account of a person's previous employment.

"(26) The term 'unit of general local government' means any city, municipality, county, town, township, parish, village, or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

"(27) The term 'veterans outreach' means the veterans outreach services program carried out under subchapter IV of chapter 3 of title 38, United States Code, with full utilization of veterans receiving educational assistance or vocational rehabilitation under chapter 31 or 34 of such tile 38, and the services described in section 305 of this Act.

"SECRETARY'S AUTHORITY

"SEC. 126. (a) The Secretary may, in accordance with chapter 5 of title 5, United States Code, prescribe such rules, regulations, guidelines, and other published interpretations under this Act as he deems necessary. Rules, regulations, guidelines, and other published interpretations or orders may include adjustments authorized by section 204 of the Intergovernmental Cooperation Act of 1968. For purposes of chapter 5 of such title any condition or guideline for receipt of financial assistance shall be deemed a rule to which section 553 applies. All such rules, regulations, guidelines, and other published interpretations or orders under this Act shall be published in the Federal Register at least thirty days prior to their effective date. Copies of all such rules, regulations, guidelines, and other published interpretations or orders shall be transmitted to the appropriate committees of the Congress at the same time and shall contain with respect to each material provision of such rules, regulations, guidelines, and other published interpretations or orders, citations to the particular substantive section of law which is the basis therefor.

"(b) The Secretary may make such grants, contracts, or agreements, establish such procedures and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this Act, as deemed necessary to carry out the provisions of this Act, including (without regard to the provisions of section 4774(d) of title 10, United States Code) expenditures for construction, repairs, and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments.

"(c) Notwithstanding any other provision of this Act, no authority to enter into contracts under this Act shall be effective except to such an extent or in such an amount as are provided in advance in appropriations Acts.

"REPORTS

"SEC. 127. (a) The Secretary shall make such reports and recomendations to the President as the Secretary deems appropriate pertaining to employment and occupational

requirements, resources, use, and training, and the President shall transmit to the Congress a report on the same topics not later than April 1 of each year. The first such report submited after the effective date of the Comprehensive Employment and Training Amendments of 1978 shall include recommendations with respect to necessary legislative or administrative changes required to simplify on-the-job training contracting procedures under title II.

"(b) The Secretary and the Secretary of Health, Education, and Welfare shall report to the Congress on the extent to which social services, community colleges, area vocational and technical schools and other vocational education agencies and institutions, and vocational rehabilitation agencies are being utilized to carry out training programs supported in whole or in part under this and related Acts; the extent to which administrative steps have been taken or are being taken to encourage the use of such facilities and institutions and agencies in the carrying out of the provisions of this Act; and any further legislation that may be required to assure effective coordination and utilization of such facilities and agencies to the end that all federally supported employment and training, vocational education, and vocational rehabilitation programs can more effectively accomplish the objective of providing employment and training opportunities to all persons needing such employment and training.

"(c) The Secretary shall transmit to the Congress, as a part of the report required by subsection (a), a detailed report setting forth the public service employment activities conducted under this Act and information on the extent to which (1) participants in such activities subsequently secure and retain public or private employment or participate in training or employability development programs, and (2) segments of the population of unemployed persons are provided public service opportunities. No later than March 1, 1980, the Secretary shall report to Congress proposals for the integration and consolidation of the programs established by part A of title IV and title VII with the program established by title II.

"(d) The Secretary shall transmit to the Congress, as a part of the report required by subsection (a), a detailed report on the evaluations and pilot and demonstration projects conducted with funds made available under this Act, including employment service/prime sponsor demonstration projects.

"(e) The Secretary shall, in consultation with the Director of the Office of Management and Budget, submit a report once each quarter to the Congress on efforts being taken to reduce paperwork and reporting and to comply with the requirements of the Federal Reports Act and management directives of the Office of Management and Budget.

"(f) The Secretary may require each prime sponsor to prepare, and make available to the public, periodic reports on its activities under the Act. Such reports shall contain such information as the Secretary may require.

"SERVICES AND PROPERTY

"SEC. 128. The Secretary is authorized, in carrying out functions and responsibilities under this Act, to accept, purchase, or lease in the name of the Department, and employ or dispose of in furtherance of the purposes of this Act, or any title thereof, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and to accept voluntary and uncompensated services, nowithstanding the provisions of section 3679(b) of the Revised Statutes of the United States.

"UTILIZATION OF SERVICES AND FACILITIES

"SEC. 129. (a) In addition to such other authority as the Secretary may have, the Secretary is authorized, in the performance of functions under this Act, and to the extent permitted by law, to utilize the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized to accept and utilize the services and facilities of the agencies of any State or political subdivision of a State, with its consent.

"(b) The Secretary shall carry out responsibilities under this Act through the utilization, to the extent appropriate, of all resources for skill development available in industry, labor, public and private educational and training institutions, vocational rehabilitation agencies, and other State, Federal, and local agencies and other appropriate public and private organizations and facilities, with their consent.

"INTERSTATE AGREEMENTS

"SEC. 130. In the event that compliance with provisions of this Act would be enhanced by cooperative agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

"PROHIBITION AGAINST POLITICAL ACTIVITIES

"SEC. 131. (a) The Secretary shall not provide financial assistance for any program under this Act which involves political activities.

"(b) Neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent engaged in the conduct of political activities in contravention of chapter 15 of title 5, United States Code.

"NONDISCRIMINATION

"SEC. 132. (a) No person in the United States shall on the ground of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Act.

"(b) Whenever the Secretary determines that a recipient of financial assistance has failed to comply with subsection (a) or an applicable regulation, the Secretary, in addition to exercising the powers and functions provided in section 106, is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law. In any case in which the Secretary receives a complaint from any interested person or organization under section 106 with respect to an alleged violation of subsection (a) of this section, the Secretary shall make the determination referred to in the preceding sentence no later than 120 days after receiving such complaint.

"(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

"(d) In addition to other remedies, the Secretary is authorized to enforce the provisions of subsection (a) dealing with discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief, in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Secretary to enforce such provisions of such subsection. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program or activity receiving assistance under this Act.

"(e) No participant under this Act shall be discriminated against by reason of citizenship. Participation shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, and lawfully admitted refugees and parolees.

"(f)(1) The Secretary shall provide a focus for the employment and training of handicapped individuals under this Act, and shall review, on a periodic basis, the adequacy of outreach, training, placement, and advancement practices with respect to handicapped individuals by each prime sponsor pursuant to section 103(b)(7) and shall insure that the special needs of such individuals are being met.

"(2) The Secretary shall include in each annual report pursuant to section 127(a) a complete evaluation of the conduct of and achievements in outreach, training, placement, and advancement practices with respect to handicapped individuals by prime sponsors pursuant to section 103(b)(7), including a comparison of such practices and achievements with those of the two preceding years.

"RECORDS, AUDITS, AND INVESTIGATIONS

"SEC. 133. In order to assure that funds provided under this Act are used in accordance with its provisions—

"(a) Every recipient of funds under this Act shall make, keep, and preserve such records as the Secretary shall require with regard to each employee and each participant. Such records, including periodic reports, audits, and examinations, shall be preserved for such time as the Secretary establishes and shall be made available to the Secretary at such time and in such form, including periodic reports, audits, and examinations, as the Secretary may require by regulation or order.

"(b) The Secretary may investigate such facts, conditions, practices, or other matters the Secretary deems necessary to determine whether any recipient of funds or any official of such recipient has vio'ated any provision of this Act or of the regulations. Such investigations may include, but need not be limited to, inspecting all records of the recipient (including making certified copies thereof), questioning employees, and entering any premises or onto any site in which any part of the recipient's program is conducted.

"(c) For the purpose of any hearing or investigation authorized under this Act, the provisions of section 9 of the Federal Trade Commission Act (15 U.S.C. 49, relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the Secretary of Labor.

"CRIMINAL PROVISIONS

"SEC. 134. (a) Chapter 31 of title 18, United States Code, is amended by striking out section 665 and inserting in lieu thereof the following:

"'THEFT OR EMBEZZLEMENT FROM EMPLOYMENT AND TRAINING FUNDS: IMPROPER INDUCEMENT

"'SEC. 665. (a) Whoever, being an officer, director, agent, or employee of, or connected in any capacity with any agency receiving financial assistance under the Comprehensive Employment and Training Act of 1973 embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than

$10,000 or imprisoned for not more than two years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000, or imprisoned not more than one year, or both.

"'(b) Whoever, by threat of procuring dismissal of any person from employment or of refusal to employ or refusal to renew a contract of employment in connection with a grant or contract of assistance under the Comprehensive Employment and Training Act of 1973, induces any person to give up any money or thing of any value to any person (including such grantee agency) shall be fined not more than $1,000, or imprisoned not more than one year, or both.

"'FRAUD AND OBSTRUCTION IN EMPLOYMENT AND TRAINING PROGRAMS

"'SEC. 665a. (a) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpena or lawful requirement of the Secretary of Labor, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

"'(b) Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under the Comprehensive Employment and Training Act of 1973, or who shall willfully make or cause to be made, any false entry in any account, record, or memorandum kept by any recipient of funds under such Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memorandums of all facts and transactions appertaining to the business of such recipients, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such recipient, or who shall willfully refuse to submit to the Secretary of Labor or to any of such Secretary's authorized agents, for the purpose of inspection and making copies, any documentary evidence of such recipient in such person's possession or within such person's control or who shall deny access to such Secretary or any of such Secretary's authorized agents who wish to examine, audit, inspect, or otherwise view the records, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000 or to imprisonment for not more than one year, or by both such fine and imprisonment.'

"(b) The analysis of chapter 31 is amended by adding at the end thereof the following new item:

"'665a. Fraud and obstruction in employment and training programs.'

"BONDING

"SEC. 135. Every officer, director, agent, or employee of a recipient of funds under this Act who handles funds or other property thereof shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on such person's part directly or through connivance with others. The Secretary shall establish the amount and other bonding requirements by regulation.

"PART C—AUDITS, INVESTIGATIONS, AND COMPLIANCE

"PURPOSE; ESTABLISHMENT

"SEC. 151. In order to create an independent and objective unit—

"(1) to conduct and supervise audits and investigations relating to programs and operations under this Act;

"(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy and efficiency in the administration of and (B) to prevent and detect fraud and abuse in, such programs and operations; and

"(3) to provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is hereby established in the Office of the Secretary an Office of Audits, Investigations, and Compliance.

"APPOINTMENT OF OFFICERS

"SEC. 152. (a) There shall be at the head of the Office a Director who shall be appointed by the Secretary without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Director shall report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the officer next in rank below the Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

"(b) There shall also be in the Office, a Deputy Director appointed by the Secretary, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Deputy shall assist the Director in the administration of the Office and shall, during the absence or temporary incapacity of the Director, or during a vacancy in that office, act as Director.

"(c) For the purposes of section 7324 of title 5, United States Code, no Director or Deputy Director shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

"(d) The Director shall, in accordance with applicable laws and regulations governing the civil service—

"(1) appoint an Assistant Director for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations under this Act; and

"(2) appoint an Assistant Director for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

"DUTIES AND RESPONSIBILITIES

"SEC. 153. (a) It shall be the duty and responsibility of the Director, with respect to the programs and operations under this Act—

"(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to such programs and operations;

"(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed under this Act for the purposes of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, such programs and operations.

"(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, such programs and operations, or (B) the identification and prosecution of participants in such fraud or abuse; and

"(4) to keep the Secretary and the Congress informed, by means of the reports required by section 154 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of such programs and operations, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

"(b) In carrying out the responsibilities specified in subsecton (a)(1), the Director shall have authority to establish standards for the use of outside auditors and to take other appropriate steps to insure the competence and independence of such auditors.

"(c) In carrying out the duties and responsibilities provided by this Act, the Director shall give particular regard to the activities of the Comptroller General of the United States with a view to avoiding duplication and insuring effective coordination and cooperation.

"(d) In carrying out the duties and responsibilities provided by this Act, the Director shall report expeditiously to the Secretary whenever the Director has reasonable grounds to believe there has been a violation of Federal criminal law.

"REPORTS

"SEC. 154. (a) The Director shall, not later than April 30 and October 31 of each year, prepare and submit to the Congress semiannual reports summarizing the activities of the Office during the immediately preceding 6-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

"(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations under this Act disclosed by such activities during the reporting period;

"(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

"(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

"(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

"(5) a summary of each report made to the Secretary under subsection (c) during the reporting period;

"(6) a summary of each report made to the Secretary under section 155(b)(2) during the reporting period; and

"(7) a listing of each audit and investigative report completed by the Office during the reporting period.

"(b) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and the Congress, or committees or subcommittees thereof, by the Director without further clearance or approval. The Director shall, insofar as feasible, provide copies of the reports required under subsection (a) to the Secretary thirty days in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

"(c) The Director shall report immediately to the Secretary whenever the Director becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations under this Act. The Deputy and Assistant Directors shall have particular responsibility for informing the Director of such problems, abuses, and deficiencies.

"AUTHORITY; ADMINISTRATION PROVISIONS

"SEC. 155. (a) In addition to the authority otherwise provided by this Act, the Director, in carrying out the provisions of this part, is authorized—

"(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to programs and operations under this Act;

"(2) to make such investigations and reports relating to the administration of such programs and operations as are, in the judgment of the Director, necessary or desirable;

"(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this part from any Federal, State, or local governmental agency or unit thereof;

"(4) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this part, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided*, That procedures other than subpenas shall be used by the Director to obtain documents and information from Federal agencies;

"(5) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this part;

"(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

"(7) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code;

"(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this part.

"(b)(1) Upon request of the Director for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to the Director or to an authorized designee, such information or assistance.

"(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of the Director unreasonably refused or not provided, the Director shall report the circumstances to the Secretary without delay.

"(3) In the event any record or other information requested by the Director under subsection (a)(1) or (a)(3) is not considered to be available under the provisions of section 552a(b)(1), (3), or (7) of title 5, United States Code, such record or information shall be available to the Director in the same manner and to the same extent it would be available to the Comptroller General.

"(c) The Secretary shall provide the Office with appropriate and adequate office space at central and field office locations of Department together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

"TRANSFER OF FUNCTIONS

"SEC. 156. (a) At such time as there is established within the Department of Labor an Office of Inspector General, the functions of the Office of Audits, Investigations, and Compliance, shall be transferred to and vested in the Inspector General.

"(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the Office shall be transferred to the Office of Inspector General at the time of any transfer under subsection (a).

"(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

"(d) Upon completion of the transfer pursuant to this section, the Office shall lapse. Any person who, on the effective date of this Act, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in the Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

"DEFINITIONS

"SEC. 157. As used in this part—

"(1) the term 'Director' means the Director of the Office;

"(2) the term 'Deputy' means the Deputy Director of the Office;

"(3) the term 'Office' means the Office of Audits, Investigations, and Compliance; and

"(4) the term 'Federal agency' means an agency as defined in section 552(e) of title 5, United States Code, but shall not be construed to include the General Accounting Office.

"OFFICE OF MANAGEMENT ASSISTANCE

"SEC. 158. The Secretary shall establish, in the office of the Secretary, an Office of Management Assistance and shall assign to such office such especially qualified accountants, management specialists, and other professionals as may be necessary and available to provide management assistance to any prime sponsor—

"(1) seeking the service of such office on its own initiative to assist it in overcoming problems in the management, operation, or supervision of any program or project under this Act;

"(2) identified, pursuant to a complaint investigation, internal audit, or audit or investigation conducted by the Office of Audits, Investigations, and Compliance, or by any entity to which are transferred the functions of such office, as not being in compliance with any important requirement of this Act, of regulations issued thereunder, or of the comprehensive employment and training plan.

Services provided under this section shall be on a reimburseable or nonreimbursable basis, as determined by the Secretary, and shall be allocated in a manner to assure equitable but effective distribution thereof. The Secretary shall periodically publish any proposals for corrective action made by the office which may be useful to other prime sponsors.

"TITLE II—COMPREHENSIVE EMPLOYMENT AND TRAINING SERVICES

"PART A—FINANCIAL ASSISTANCE PROVISIONS

"PURPOSE OF PROGRAM

"SEC. 201. It is the purpose of this title to establish programs to provide comprehensive employment and training services throughout the Nation. Such programs shall include the development and creation of training, upgrading, retraining, education, and other services needed to enable individuals to secure and retain employment at their maximum capacities so as to increase their earned incomes.

"ALLOCATION OF FUNDS

"SEC. 202. (a)(1) From the amount available for purposes of this title—

"(A) 60 percentum of such amount shall be allocated in accordance with the provisions of paragraph (2); and

"(B) 30 per centum of such amount shall be allocated in accordance with the provisions of paragraph (3).

"(2)(A) Subject to the provisions of subparagraph (B)—

"(i) 50 per centum of the amount allocated under this paragraph shall be allocated on the basis of the amount allocated to the prime sponsor under this paragraph (or under the comparable provision of this Act prior to the effective date of the Comprehensive Employment and Training Amendments of 1978) in the fiscal year prior to the year for which the determination is made compared to the amount so allocated to all prime sponsors in that year;

"(ii) 37½ per centum of the amount allocated under this paragraph shall be allocated on the basis of the relative number of unemployed persons within jurisdiction of the prime sponsor as compared to such numbers in all such jurisdictions;

"(iii) 12½ per centum of the amount allocated under this paragraph shall be allocated on the basis of the relative number of adults in families with an annual income below the low-income level within the jurisdiction of the prime sponsor compared to such total numbers in all such jurisdictions; and

"(iv) not less than $2,000,000 shall be allocated among Guam the Virgin Islands, the Northern Merianas, American Samoa, and the Trust Territory of the Pacific Islands, in accordance with their respective needs.

"(B) No prime sponsor shall be allocated an amount which is in excess of 150 per centum of the amount received by the area served by that prime sponsor in the fiscal year immediately preceding the fiscal year for which the determination is made, except that, if the amount so allocated is less than 50 per centum of the amount to which such prime sponsor is entitled under subparagraph (A) in the fiscal year for which a determination was made, then such allocation shall be increased to 50 per centum of the amount of such entitlement.

"(3) The amount allocated under this paragraph shall be allocated among prime sponsors in accordance with the number of unemployed persons residing in areas of substantial unemployment within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all such areas.

"(b) Three per centum of the funds available for this title shall be used only for supplemental vocational education assistance under section 204.

"(c) One-half of 1 per centum of the amount allocated under this title shall be available to the Secretary to be allocated in the same manner as provided under subsection (a) to States for the costs of the State employment and training council incurred in carrying out the provisions of section 110, except that no State shall receive an allocation of less than $50,000. If any State does not need the amount allocated under this subsection for any fiscal year, that amount shall be available for the Governor's coordination and special services under section 105.

"(d) Two per centum of the amounts available for this title shall be available to each Governor in the same proportion as that State's allocation under subsection (a) for the Governor's coordination and special serv-

ices under section 105, and, where deemed necessary by the Governor, for additional support of State employment and training councils.

"(e)(1) Eighty-five per centum of the remainder of the funds shall be available in the Secretary's discretion to be distributed among prime sponsors (or where a prime sponsor's comprehensive employment and training plan has not been approved, an area served by the Secretary under the authority in section 102). The Secretary shall first utilize such funds to assure that each prime sponsor is provided with (A) an amount for any fiscal year beginning on or after October 1, 1979, equal to 90 percent of the funds allocated to the prime sponsor under subsection (a)(2) of this section for the preceding fiscal year, or (B) an amount for the fiscal year ending September 30, 1979, equal to 90 per centum of the sum of the funds available for expenditure during the fiscal year ending September 30, 1978, by such prime sponsor under sections 103 (a)(2), (f), and (g), and 202(a) (as in effect prior to the effective date of the Comprehensive Employment and Training Amendments of 1978). In utilizing such funds, the Secretary shall provide continued support for concentrated employment program grantees serving rural areas having high levels of unemployment, shall take into account the need for continued funding of programs of demonstrated effectiveness, and shall use such funds to encourage, after consultation with and receiving recommendations from the Governor of the appropriate State, voluntary consortia (formed under section 101(a)(3)) where the Secretary determines, pursuant to regulations, that such consortia demonstrate advantages in delivering employment and training services to substantial portions of functioning labor market areas.

"(2) Not more than 15 per centum of the remainder shall be allocated among the prime sponsors within the jurisdiction of those standard metropolitan statistical areas and central cities for which current population surveys were used to determine annual average rates of unemployment prior to, but not after, January 1, 1978, in proportion to the extent to which such prime sponsors allocations under subsection (a) are reduced as a result of termination of the use of such surveys. This provision shall be in effect until such time as the National Commission on Employment and Unemployment Statistics makes its report to Congress.

"(f) As soon as practicable after funds are appropriated to carry out this Act for any fiscal year, the Secretary shall publish in the Federal Register the allocations made pursuant to this section.

"(g) Prime sponsors are authorized to use funds allocated under this title to support prime sponsor planning councils established pursuant to section 109.

"CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE

"SEC. 203. (a) The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless the prime sponsor submits a satisfactory comprehensive employment and training plan pursuant to section 103.

"(b) Not more than 4 per centum of each prime sponsor's allocation under section 202 (a) may be used for programs and activities under part C of this title.

"(c)(1) The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless the prime sponsor provides assurances that (consistent with needs identified in the prime sponsor's plan submitted under section 103(a)) it shall make agreements with State or local educational agencies or postsecondary educational institutions for the conduct of employment and training programs, which programs may consist of—

"(A) vocational training designed to prepare individuals for employment;

"(B) instruction in basic cognitive skills necessary to obtain employment or pursue further education or training designed to prepare individuals for employment;

"(C) employment of persons in schools controlled by such agencies or in postsecondary institutions; and

"(D) such other employment and training activities as may be consistent with the purposes and provisions of this title.

"(2) Each such agreement entered into under this subsection shall describe in detail the employment opportunities and appropriate educational, training, or other services to be provided, and shall contain provisions to assure that funds utilized pursuant to the agreement will not supplant State or local funds expended for the same purpose.

"(3) In the event a prime sponsor is unable to reach agreements with the appropriate educational agencies or institutions, or in the event such agencies or institutions are dissatisfied with the utilization of their facilities proposed by the prime sponsor, either may request the Secretary to review such arrangements and the Secretary, after affording an opportunity for a hearing and taking into consideration such factors as he considers relevant, may take such action as he deems appropriate within 90 days after receiving such a request.

"SUPPLEMENTAL VOCATIONAL EDUCATION ASSISTANCE

"SEC. 204. (a) From the funds available to him for this section, the Secretary shall make grants to Governors to provide financial assistance, through State vocational education boards, to provide needed vocational education services in areas served by prime sponsors.

"(B) All of the sums available to carry out this section shall be allocated among the States in the manner provided for allocating funds under section 202(a).

"(c)(1) Funds available under this section shall be used only for providing vocational education and services to participants in programs under this title in accordance with an agreement between the State vocational education board and the prime sponsor.

"(2) The State vocational education board, prior to making any agreement with a prime sponsor as provided in paragraph (1), shall consult with and obtain the advice and comment of the designated representatives of the State agencies and councils which are required to be involved in the formulation of the five-year State plan for vocational education pursuant to section 107(a)(1) of the Vocational Education Act of 1963.

"PART B—SERVICES FOR THE ECONOMICALLY DISADVANTAGED

"DESCRIPTION OF PROGRAM

"SEC. 211. Comprehensive employment and training services may include, but need not be limited to, the following:

"(1) job search assistance, including orientation, counseling, and referral to appropriate employment training or other opportunities;

"(2) outreach to make persons aware of the availability of, and to encourage them to use, employment and training services;

"(3) assessment of the individual's needs, interests, and potential in the labor market;

"(4) education and institutional skill training to prepare persons to enter the labor market, or to qualify for more productive job opportunities and increased earnings;

"(5) on-the-job training, including small business self-employment training;

"(6) transitional entry-level public service employment opportunities or work experience;

"(7) payments or other inducements to public or private employers to expand job opportunities.

"(8) services to individuals to enable them to retain employment;

"(9) payment of allowances to persons in training for which they receive no remuneration, and payment of such allowances for transportation, subsistence, or other expenses incurred in training or employment;

"(10) supportive services, including necessary health care, child care, residential support, or assistance in securing bonds, needed to enable individuals to participate in employment and training;

"(11) development of labor market information;

"(12) job development and related activities such as job restructuring designed to make employment opportunities more responsive to the needs of economically disadvantaged persons;

"(13) displaced homemaker employment assistance programs as described in section 307;

"(14) training, employment opportunities, and related services conducted by community based organizations; and

"(15) any programs or activities authorized by part A of title III, title IV, and title VII of this Act.

"LIMITATIONS ON USE OF FUNDS

"SEC. 212. (a)(1) Except as provided in paragraph (2), no prime sponsor shall use more than—

"(A) 50 per centum of the funds allocated to it under such section for the fiscal year ending September 30, 1979, to pay wages for public service employment;

"(B) 50 per centum of the funds allocated to it under such section for the fiscal year ending September 30, 1981, t pay wages and benefits for such employment;

"(C) 45 per centum of the funds allocated to it under such section for the fiscal year ending September 30, 1981, to pay wages and benefits for such employment; and

"(D) 40 per centum of the funds allocated to it under such section for the fiscal year ending September 30, 1982, to pay wages and benefits for such employment.

"(2) Notwithstanding paragraph (1), the Secretary may, for any fiscal year referred to in paragraph (1)(B), (1)(C), or (1)(D), authorize a prime sponsor to expend for the purpose of providing additional public service jobs for residents of areas of substantial unemployment, an amount not to exceed the product of the percentage which unemployed residents of such areas constitute of all unemployed in the prime sponsor area multiplied by the difference between—

"(A) an amount determined by applying the limitation contained in paragraph (1)(A) to the funds allocated to such prime sponsor for such fiscal year; and

"(B) the amount determined by applying the applicable limitation under paragraph (1)(B), (1)(C), or (1)(D) to such funds.

"(b)(1) Public service employment under this part—

"(A) shall be designed to lead to unsubsidized employment;

"(B) shall be entry level;

"(C) shall be combined with training and supportive services if such training and services are reasonably available in the area; and

"(D) shall be available only to eligible participants who have not been employed for more than two hundred hours during the preceding ten weeks unless such employment is in connection with a program supported under this Act.

"(2) Work experience programs conducted under this part, except for in-school youth, shall—

"(A) be designed to lead to unsubsidized employment, and

"(B) be subject to the limitations on duration specified in section 121(c)(2), unless the prime sponsor's plan as approved by the Secretary states that the lack of alter-

native job opportunities in the area makes such progress and duration impractical.

"ELIGIBILITY FOR PARTICIPATION

"SEC. 213. A person shall be eligible to participate in a program receiving financial assistance under this part only if such person is economically disadvantaged and either unemployed, underemployed, or in school.

"PART C—UPGRADING AND RETRAINING

"PROGRAM AUTHORIZED

"SEC. 221. (a) Pursuant to regulations of the Secretary, prime sponsors may conduct occupational upgrading programs, including supportive services, through agreements with public and private employers for employees of such employers. Individuals eligible for such programs shall be those operating at less than their full skill potential, primarily those in entry level positions or positions with little normal advancement opportunities. In any program receiving financial assistance under this section—

"(1) the positions for which employees are being upgraded shall be positions not regularly available to entry level employees, and for which adequately trained persons are not available;

"(2) the selection of employees for upgrading shall be based upon potential and the lack of availability for advancement in a normal promotional line;

"(3) the education and skill training content of the upgrading program shall provide employees with a reasonable progression resulting in qualification for a recognized position of greater skill, responsibility, remuneration, or career advancement in the service of that employer;

"(4) the training period for upgrading shall be reasonable and consistent with periods customarily required for comparable training;

"(5) adequate personnel, attendance and progress records shall be maintained;

"(6) the program shall be designed, to the extent feasible, so that additional vacancies are created for new entry level employees;

"(7) the employees shall receive such wages, including periodic increases, as the Secretary deems reasonable, considering such factors as industry practice and individual proficiency, but at not less than the rate received before upgrading; and

"(8) successful completion shall be expected to result in employment with the employer in the occupation for which he or she has been upgraded and at not less than prevailing wages.

"(b)(1) Pursuant to regulations of the Secretary, prime sponsors may conduct retraining programs, including supporting services, directly or through agreements with public and private employers or other organizations or agencies.

"(2) Entry into retraining programs shall be only for individuals who have previously received a bona fide notice of impending layoff, and who are determined, pursuant to regulations of the Secretary, to have little opportunity to be reemployed in the same or equivalent occupation or skill level within the labor market area.

"(3) Retraining programs shall meet such standards as the Secretary shall establish by regulation.

"(c) If upgrading or retraining is for or from jobs covered by collective bargaining agreements, agreements with employers to carry out such programs shall have the concurrence of labor organizations representing employees in those jobs.

"TITLE III—SPECIAL FEDERAL RESPONSIBILITIES

"PART A—SPECIAL NATIONAL PROGRAMS AND ACTIVITIES

"SPECIAL PROGRAMS AND ACTIVITIES

"SEC. 301. (a) The Secretary shall use funds available under this title to provide additional employment and training services as authoriztd under title II to segments of the population that are in particular need of such services, including youth, offenders, handicapped individuals, single parents, persons of limited English-speaking ability, older workers, and other persons who the Secretary determines have particular disadvantages in the labor market. The Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

"(b) With respect to programs for persons of limited English-speaking ability under this Act, the Secretary shall establish appropriate procedures to ensure that participants are provided with employment and training and related assistance and supportive services (where feasible, at times designed to meet the needs of individuals unable to attend during normal working hours) designed to increase the employment and training opportunities for unemployed and underemployed persons of limited English-speaking ability, including (1) the teaching of occupational skills in the primary language of such persons for occupations which do not require a high proficiency in English, and (2) developing new employment opportunities for limited English-speaking persons and opportunities for promotion within existing employment situations for such persons, including programs for the dissemination of appropriate information, and job placement, and counseling assistance, and the conduct of training and employment programs, in the primary language of such persons, as well as programs designed to increase the English-speaking ability of such persons.

"(c) The Secretary shall make financial assistance available to conduct a program for offenders to provide employment, training, and related assistance and supportive services (including basic education, drug addiction or dependency rehabilitation, health care, and other services) which will enable them to secure and obtain meaningful employment. Emphasis shall be placed upon serving offenders in contact with the criminal justice system or recently released from criminal justice custody or supervision, providing services that will be comprehensive, and ensuring that recipients of funds will coordinate their activities with other providers of employment and training assistance. Grants may also be provided to the States or prime sponsors for the establishment of units for planning and evaluation of correctional employment and training assistance to offenders. To ensure the objectives of this subsection, the Secretary may, wherever feasible, provide for appropriate arrangements with employers and labor organizations, appropriate parole, probationary and judicial authorities, and for the utilization of training equipment comparable to that currently used for the job in which training is furnished. To support such programs the Secretary shall develop information concerning the special needs of offenders for such services, including special studies regarding the incidence of unemployment among offenders and the means of increasing employment opportunity for offenders. As part of the reporting requirements under section 127(a), the Secretary shall also conduct an annual survey of prime sponsors and States receiving assistance under this Act for the purpose of assessing the scope and implementation of offender programs.

"(d) The Secretary shall carry out fully and effectively his responsibilities for the assignment of assistant veterans employment representatives under section 2003 of title 38, United States Code, and the Secretary's other responsibilities under chapter 41 of such title and for the listing of all suitable employment openings with local offices of the State employment services by Federal contractors and subcontractors and providing for the affirmative action as required by section 2012(a) of such title.

"(e) The Secretary is also authorized to provide employment and training programs that—

"(1) are most appropriately administered from the national level, such as programs sponsored by public agencies or private organizations that conduct federally assisted activities in more than one State;

"(2) foster new or improved linkages between Federal, State, and local employment and training agencies and components of the private sector, such as the business community, organized labor, and community-based organizations;

"(3) provide continued support for programs of demonstrated effectiveness;

"(4) eliminate or reduce critical skill shortages in the Nation's labor force; or

"(5) serve those who become unemployed as a result of a large-scale loss of jobs in a locality, caused by such things as the closing of a facility, mass layoffs, or natural disasters.

"(f) Notwithstanding any other provisions of this Act, eligibility requirements for programs for workers age fifty-five and older, which were established under title X of the Public Works and Economic Development Act, and which thereafter have been funded under section 304 of this Act prior to the enactment of the Comprehensive Employment and Training Amendments of 1978, shall be those which applied when the programs were established under title X.

"(g) The Secretary shall establish a special program for the funding of local workshops for the training of youths and other individuals who wish to pursue careers as self-employed owners and managers of small businesses. Such workshops should provide instruction in management techniques, business communication skills, motivational training, special problems in business operation, advice concerning Federal and State regulations, preparation of financial statements and loan applications, recordkeeping, development of marketing techniques, and information on beneficial resources available within the community.

"(h) To the extent appropriate, programs financed under this part shall be coordinated with programs conducted by prime sponsors under this Act, and the Secretary shall notify such prime sponsors of the funding of an employment and training program under this part.

"NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

"SEC. 302. (a) The Congress finds that (1) serious unemployment and economic disadvantage exist among members of Indian, Alaskan Native, and Hawaiian Native communities; (2) there is a compelling need for the establishment of comprehensive employment and training programs for members of those communities; (3) such programs are essential to the reduction of economic disadvantage among individual members of such communities and to the advancement of economic and social development in such communities consistent with their goals and life styles.

"(b) The Congress therefore declares that, because of the special relationship between the Federal Government and most of those to be served by the provisions of this section, (1) such programs can best be administered at the national level; (2) such programs shall be available to federally recognized Indian tribes, bands, and individuals, and to other groups and individuals of Native American descent such as, but not limited to, the Lummis in Washington, the Menominees in Wisconsin, the Klamaths in Oregon, the Oklahoma Indians, the Passamaquoddys and Penobscots in Maine, and Eskimos and Aleuts in Alaska, and Hawaiian Natives; and (3) such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development

as determined by representatives of the communities and groups served by this section.

"(c)(1) In carrying out responsibilities under this section, the Secretary shall, wherever possible, utilize Indian tribes, bands, or groups (including Alaska Native villages or groups as defined in the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688)) having a governing body and such public and private nonprofit agencies as the Secretary determines will best serve Hawaiian Natives, for the provision of employment and training services under this section. To the extent the Secretary determines that such tribe, band, or group has demonstrated the capability to effectively administer a comprehensive employment and training program, he shall require such tribe, band, or group to submit to him a comprehensive plan meeting the requirements of section 103.

"(2) In carrying out his responsibilities under this section the Secretary shall make arrangements with prime sponsors and organizations (meeting requirements prescribed by the Secretary) serving nonreservation Indians for programs and projects designed to meet the needs of such Indians for employment and training and related services.

"(d) Whenever the Secretary determines not to utilize Indian tribes, bands, or groups for the provision of employment and training services under this section, the Secretary shall, to the maximum extent feasible, enter into arrangements for the provision of such services with public or private nonprofit agencies which meet with the approval of the tribes, bands, or groups to be served.

"(e) The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the administration of Indian employment and training programs authorized under this Act.

"(f) Funds available for this section shall be expended for programs and activities consistent with the purposes of this part, including but not limited to such programs and activities carried out by eligible prime sponsors under other provisions of this Act.

"(g) For the purpose of carrying out this section, the Secretary shall reserve from funds available for this title an amount equal to not less than 3 percent of the amount allocated pursuant to section 202(a).

"(h) No provision of this section shall abrogate in any way the trust responsibilities of the Federal Government to Indian bands or tribes.

"MIGRANT AND SEASONAL FARMWORKER EMPLOYMENT AND TRAINING PROGRAMS

"SEC. 303. (a) The Congress finds and declares that—

"(1) chronic seasonal unemployment and underemployment in the agricultural industry, substantially affected by recent advances in technology and mechanization, constitute a substantial portion of the Nation's rural employment and training problem and substantially affect the entire national economy; and

"(2) because of the special nature of certain farmworker employment and training problems such programs can best be administered at the national level.

"(b)(1) Funds available for this section shall be expended for programs and activities consistent with the purposes of this section, including but not limited to programs and activities carried out under other provisions of this Act.

"(2) In carrying out programs and activities under this section, the Secretary shall continue in operation any program which is in existence on the effective date of this paragraph and—

"(A) which is—

"(i) operated through the use of the facilities of any institution of higher education and

"(ii) designed to assist migrant and seasonal farmworkers who are beyond the age of compulsory school attendance in the State in which the institution is located, through tutoring, counseling, and other similar assistance, in the completion of courses necessary to receive a high school diploma or its equivalent; or

"(B) which serves migrant and seasonal farmworkers who are enrolled in a full-time basis in the first academic year of an undergraduate program at any institution of higher education, and the dependents of migrant and seasonal farmworkers if such dependents are so enrolled, by—

"(i) aiding such individuals in carrying out the transition from secondary school to postsecondary school programs;

"(ii) generating motivation necessary for success in education beyond secondary school; and

"(iii) providing counseling, tutorial, and similar educational services designed to assist such individuals during their first academic year at such institution.

The Secretary shall continue the operation of any such program for so long as such program is consistent with the purposes of this section, as determined by the Secretary.

"(3) For the purpose of carrying out this section, the Secretary shall reserve from funds available for this title an amount equal to not less than 2.6 percent of the amount allocated pursuant to section 202(a). Of the funds reserved under this paragraph, such sums as may be necessary shall be used for the operation of the programs specified in subparagraph (A) and subparagraph (B) of paragraph (2).

"PROGRAMS FOR THE HANDICAPPED

"SEC. 304. (a)(1) The Congress finds and declares that due to the rapid implementation of programs to assist handicapped individuals mandated under the Education for All Handicapped Children Act and section 504 of the Rehabilitation Act of 1973, there is a need for people to provide the special supportive services and removed of architectural barriers required by these Acts.

"(2) The Congress further declares that the individuals to be served under this section represent a large percentage of the unemployed, and that these services will provide meaningful improvement of the lives of the handicapped individuals served.

"(b) The Secretary shall establish programs throughout the Nation which shall train personnel to work with and assist handicapped individuals. These programs may be in any areas of training or education which provide individuals with skills necessary to train or provide assistance to handicapped persons, including, but not limited to, interpreters for the deaf and aides in classrooms to assist in the education of the handicapped.

"(c) The Secretary shall take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the administration of programs authorized under this section.

"RELOCATION ASSISTANCE

"SEC. 305. (a) The Secretary is authorized to provide special relocation assistance for unemployed persons who desire such assistance through agreements with States, prime sponsors, or public or private agencies under this section.

"(b)(1) Relocation assistance may be provided in the form of loans or grants, or both, subject to such standards as the Secretary establishes.

"(2) Relocation assistance shall be available only to involuntarily unemployed individuals who cannot reasonably be expected to secure full-time employment in the community in which they reside, and have bona fide offers of employment (other than temporary or seasonal employment).

"VETERANS INFORMATION AND OUTREACH

"SEC. 306. The Secretary, in consultation and cooperation with the Administrator of Veterans Affairs and the Secretary of Health, Education, and Welfare, shall provide for an outreach and public information program utilizing, to the maximum extent, the facilities of the Departments of Labor and Health, Education, and Welfare and the Veterans' Administration to exercise maximum efforts to develop jobs and job training opportunities for disabled and Vietnam-era veterans, and inform all such veterans about employment, job training, on-the-job training and educational opportunities under this Act, under title 38, United States Code, and other provisions of law; and inform prime sponsors, Federal contractors and subcontractors, Federal agencies, educational institutions, labor unions, and employers of their statutory responsibilities toward such veterans, and provide them with technical assistance in meeting those responsibilities.

"DISPLACED HOMEMAKER EMPLOYMENT ASSISTANCE PROGRAM

"SEC. 307. (a) The Secretary shall make available financial assistance to enable private nonprofit organizations and public agencies, including prime sponsors designated under section 101(c), to provide employment opportunities and appropriate training and supportive services to displaced homemakers. Such training and supportive services shall include, but need not be limited to—

"(1) job training, job readiness services, job counseling, job search, and job placement services;

"(2) outreach and information services, including information on available educational opportunities; and

"(3) referrals (through cooperative arrangements, to the maximum extent feasible) to health, financial management, legal, public assistance, and other appropriate supportive services in the community being served.

"(b) To the maximum extent feasible, activities supported under this section shall be coordinated with and supplement, but not supplant, activities supported under other titles of this Act and shall emphasize training and other employment related services for participants that are designed to enhance their employability and earnings. Programs shall concentrate on creating new jobs in the private sector for displaced homemakers in order to meet identified needs within the community.

"(c) To the maximum extent feasible, supervisory, technical, and administrative positions with the program shall be filled by displaced homemakers.

"(d) No funds available under this section shall be used for the purchase, construction, or major rehabilitation of facilities.

"(e) For the purposes of this section, the term 'displaced homemaker' means an individual who—

"(1) has been providing as a predominant activity unpaid services for family members for a substantial number of years;

"(2)(A) has been dependent on the income of another family member but is no longer supported by that income, (B) is receiving public assistance on account of dependent children in the home, or (C) is receiving spousal support; and

"(3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

"(f) For the purposes of carrying out this section, the Secretary shall reserve not more than 2 per centum of the funds made available to carry out this title.

"PARTNERSHIP PROGRAMS

"SEC. 308. (a) From funds available under this title the Secretary is authorized to

promote the development of partnership arrangements between prime sponsors and employment security agencies. Such partnerships shall constitute a segment of an integrated and comprehensive intake, service and placement system and shall be designed to achieve an employability plan and comprehensive program of job preparation and job search assistance for all participants under this Act. Such partnerships may also include other related public and private nonprofit agencies and organizations, including community-based organizations.

"(b) Such partnerships may result in—

"(1) the creation of a joint-planning, administrative, and operational entity;

"(2) combining and colocation of staff; and

"(3) a joint data base and information system.

"(c) The Secretary is authorized to reimburse prime sponsors for costs associated with the implementation of a partnership and to provide incentives to ensure that employment security agencies may participate on an equitable basis.

"PART B—RESEARCH, TRAINING AND EVALUATION RESEARCH

"SEC. 311. (a) To assist the Nation in expanding work opportunities and assuring access to those opportunities for all who desire it, the Secretary shall establish a comprehensive program of employment and training research utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the Nation's employment and training problems. This program may include, but need not be limited to, studies, the findings of which may contribute to the formulation of employment and training programs; increased knowledge about labor market processes; reduction of unemployment and its relationships to price stability; promotion of more effective worker development, training, and utilization; improved national, regional and local means of measuring future labor demand and supply; enhancement of job opportunities; skill training to qualify employees for positions of greater skill, responsibility, and remuneration; meeting of worker shortages; easing of the transition from school to work, from income transfer payment dependency to employment, from one job to another, and from work to retirement; testing the usefulness of sheltered employment for the difficult to employ; opportunities and services for older persons who desire to enter or reenter the labor force; and for improvement of opportunities for employment and advancement through the reduction of discrimination and disadvantage arising from poverty, ignorance, or prejudice.

"(b) The Secretary shall establish a program of experimental, developmental, demonstration, and pilot projects, through grants to or contracts with public agencies or private organizations, for the purpose of improving techniques and demonstrating the effectiveness of specialized methods in meeting the employment and training problems; however, nothing in this subsection shall authorize the Secretary to carry out employment programs experimenting with subsidized wages in the private sector or wages less than those established by the Fair Labor Standards Act of 1938, for employment subject to that Act. In carrying out this subsection, the Secretary shall consult with such other agencies as may be appropriate. Where programs under this section require institutional training, appropriate arrangements for such training shall be agreed to by the Secretary of Labor and the Secretary of Health, Education, and Welfare.

"(c) The Secretary is authorized to conduct supportive employment and training projects of an experimental and demonstration nature as part of, or coordinated with, experimental or demonstration programs of a similar nature that the Secretary has been conducting for unemployed persons with serious problems in the labor market, such as juvenile delinquents, mentally and emotionally handicapped individuals, alcoholics, ex-addicts, ex-offenders, and recipients of aid to families with dependent children, to enable them, through temporary, highly structured and supervised work experience, to make the transition to employment or self-employment. Such programs shall provide for skill training as required to effect such transition.

"(d) The Secretary is authorized to carry out a special program to demonstrate the efficacy of providing vouchers to economically disadvantaged persons who are unemployed or underemployed. Such vouchers shall entitle private employers who provide employment or training to such individuals to payment in amounts equal to the value of the voucher during periods when, and to the extent that, such persons are not fully productive, pursuant to regulations of the Secretary.

"(e) The Secretary is authorized to undertake research programs to (1) investigate the applicability of job-sharing, work-sharing and other flexible hours arrangements in various settings, and of the incentives and technical assistance required by employers to implement such alternative working arrangements; (2) investigate the extent to which job and wage classification systems undervalue certain skills and responsibilities on the basis of the sex of persons who usually hold the positions.

"(f) The Secretary shall conduct a variety of demonstration and experimental projects to test the best methods of assisting persons, who might otherwise rely on public assistance or other income assistance, to find nonfederally assisted employment in the private and public sectors, and to provide federally assisted work and training opportunities for any such persons who are unable to find nonfederally assisted work or training opportunities.

"(g) The Secretary is authorized to conduct demonstration programs and projects, which provide expanded guidance and counseling services to participants under this Act through community vocational resource centers established in economically distressed communities or areas pursuant to section 132(a)(7) of the Vocational Educational Amendments of 1976. Such programs shall provide State boards of vocational education, which establish such community vocational resource centers, with funding for up to 50 per centum of the cost of such projects. The Secretary may make such funds available to a State board of vocational education when such board reaches agreement with the prime sponsor to assist out-of-school individuals in reentering school at the secondary or postsecondary level, to take advantage of vocational skill training opportunities including cooperative education and work-study programs, and to be offered referral to other training programs, apprenticeship programs, and on-the-job training for which academic credit may be available. Projects shall include provisions for outreach to inform the economically disadvantaged of the assistance available through the community resource centers and to provide assurance that programs will be coordinated with other guidance and counseling activities of the prime sponsor, includinng activities under section 445(c), other in-school guidance and counseling programs in the area, State employment service offices, and the activities of the private industry councils established pursuant to title VII of this Act.

"(h) The Secretary shall conduct educational and assistance programs designed to eliminate artificial barriers to employment based upon race, sex, national origin, age, records of arrest or conviction, handicaps, marital status, or other criteria. To support such programs, information shall be developed identifying all such artificial barriers, the numbers of persons affected, the manner in which such barriers operate and how such barriers can best be eliminated. In complying with the requirements of this subsection, the Secretary shall consult with the Department of Health, Education, and Welfare, the United States Civil Rights Commission, and the Equal Employment Opportunity Commission.

"LABOR MARKET INFORMATION AND JOB BANK PROGRAM

"SEC. 312. (a) The Secretary shall develop a comprehensive system of labor market information on a national, State, local, or other appropriate basis, which shall be made publicly available in a timely fashion.

"(b) In addition to the monthly national unemployment statistics, the Secretary shall develop reliable methods, including the use of selected sample surveys, to produce more statistically accurate data on unemployment by State and local areas, and shall investigate alternative methods to produce more accurate data on underemployment and labor demand by State and local areas.

"(c) The Secretary shall develop data for an annual statistical measure of labor market related economic hardship in the Nation. Among the factors to be considered in developing such a measure are unemployment, labor force participation, involuntary part-time employment, and full-time employment at wages less than the poverty level.

"(d) The Secretary shall develop methods to establish and maintain more comprehensive household budget data at different levels of living, including a level of adequacy, to reflect the differences of household living costs in regions and localities, both urban and rural. The Secretary, in cooperation with the Secretary of Energy and the Secretary of Housing and Urban Development, shall develop methods to ascertain, and shall ascertain, annual energy development and conservation jobs impact data by type and scale of energy technologies used.

"(e) The Secretary shall set aside, out of sums available to the Department for any fiscal year including sums available for this title, an amount which the Secretary determines is necessary and appropriate to carry out the provisions of this section, and shall, no later than sixty days after such sums are appropriated and made available, notify the appropriate committees of the Congress of the amount so set aside and the basis for the determination of need and appropriateness.

"(f) The Secretary shall establish and carry out a nationwide computerized job bank and matching program (including the listing of all suitable employment openings with local offices of the State employment service agencies by Federal contractors and subcontractors and providing for the affirmative action (as required by section 2012(a) of title 38, United States Code) on a regional, State, and local basis, using electronic data processing and telecommunications systems to the maximum extent possible for the purpose of identifying sources of available persons and job vacancies, providing an expeditious means of matching the qualifications of unemployed, underemployed, and economically disadvantaged persons with employer requirements and job opportunities, and referring and placing such persons in jobs.

"EVALUATION

"SEC. 313. (a) The Secretary shall provide for the continuing evaluation of all programs and activities conducted pursuant to this Act, including their cost-effectiveness in achieving the purposes of this Act, their impact on communities and participants, their implication for related programs, the extent to which they meet the needs of persons by

age, sex, race, and national origin, and the adequacy of the mechanism for the delivery of services. In conducting evaluations the Secretary shall compare the effectiveness of programs conducted by prime sponsors of the same class and of different classes, and shall compare the effectiveness of programs conducted by prime sponsors with similar programs carried out by the Secretary under the Act. The Secretary shall also arrange for obtaining the opinions of participants about the strengths and weaknesses of the programs.

"(b) The Secretary shall evaluate the effectiveness of programs authorized under this Act and part C of title IV of the Social Security Act with respect to the statutory goals and objectives, including increases in employment and earnings for participants, duration in training and employment situations, information on the post-enrollment labor market experience of program participants for at least a year following their termination from such programs, and comparable information on other employees or trainees of participating employers.

"(c) (1) The Secretary shall—

"(A) develop standard definitions of 'enrollments', 'completions', 'job placements', and 'training-related job placements' for classroom and on-the-job training programs funded under this Act;

"(B) establish procedures for the uniform reporting by prime sponsors of information on enrollments, completions, job placements, and training related placements by detailed occupational or training code for classroom and on-the-job training programs funded under this Act; and

"(C) make a report to the Congress not later than September 30, 1979, and annually thereafter, containing a summary of the information described in subparagraph (B) together with such analysis and recommendations as the Secretary deems advisable.

"(2) For the purposes of this subsection, the term 'detailed occupational or training code' shall mean any occupational or training code equivalent in detail to the Dictionary of Occupational Titles at the six-digit level.

"TRAINING AND TECHNICAL ASSISTANCE

"SEC. 314. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, or other appropriate officials, shall provide directly or through grants, contracts, or other arrangements, appropriate preservice and inservice training for specialized, supportive, supervisory, or other personnel, and appropriate technical assistance with respect to programs under this Act.

"NATIONAL OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

"SEC. 315. (a) In carrying out its responsibilities under this Act and under section 161 of the Vocational Education Act, the National Occupational Information Coordinating Committee shall give special attention to the problems of unemployed youths. The Committee shall also carry out other activities consistent with the purposes of this title, including but not limited to the following:

"(1) assisting and encouraging local areas to adopt methods of translating national aggregate occupational outlook data into local terms;

"(2) assisting and encouraging the development of State occupational information systems, to be used in the maintenance of local job banks and job vacancy reports, accessible to local schools, and including pilot programs in the use of computers to facilitate such access;

"(3) in cooperation with State and local correctional agencies, encouraging programs of counseling and employment services for youth in correctional institutions;

"(4) providing technical assistance for programs of computer on-line terminals and other facilities to utilize and implement occupational and career outlook information and projections supplied by State employment service officers and to improve the match of youth career desires with available and anticipated labor demand;

"(5) in cooperation with State and local educational agencies, and other appropriate persons and organizations, encouraging programs to make available employment and career counseling to presecondary youths; and

"(6) providing technical assistance for programs designed to encourage public and private employers to list all available job opportunities for youths with the appropriate eligible applicant conducting occupational information and career counseling programs, local public employment services offices and to encourage cooperation and contact among such eligible applicants, employers, and offices.

"(b) All funds available to the National Occupational Information Coordinating Committee under this Act and under section 161 of the Vocational Education Act may be used by the Committee to carry out any of its functions and responsibilities authorized by law.

"TITLE IV—YOUTH PROGRAMS

"INTENT

"SEC. 400. It is the intent of this title to provide a broad range of coordinated employment and training programs for eligible youth in order to provide effectively for comprehensive employment and training services to improve their future employability and to explore and experiment with alternative methods for accomplishing such purposes.

"GENERAL PROVISIONS

"SEC. 401. (a) For purposes of parts B and C, the term 'eligible youth' means an economically disadvantaged youth who is (1) either unemployed, underemployed, or in school, and (2) either age 16 to 21 inclusive, or if authorized under regulations of the Secretary, age 14 to 15 inclusive. Nothing in this section shall be construed to prohibit the provision of day care for the children of eligible youths.

"(b) For the purposes of subpart 1 of part A, the term 'eligible youth' means a youth between the ages of 16 and 19 inclusive, the income of whose family is at or below the poverty level determined in accordance with criteria as established by the Director of the Office of Management and Budget.

"(c) Earnings and allowances received by any eligible youth under this title shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program.

"PART A—YOUTH EMPLOYMENT DEMONSTRATION PROGRAMS

"STATEMENT OF PURPOSE

"SEC. 410. It is the purpose of this part to establish a variety of employment, training and demonstrtaion programs to explore methods of dealing with the structural unemployment problems of the Nation's youth. The basic purpose of the demonstration programs shall be to test the relative efficiency of different ways of dealing with these problems in different local contexts, but this basic purpose shall not preclude the funding of programs dealing with the immediate difficulties faced by youths who are in need of, and unable to find, jobs. It is explicitly not the purpose of this part to provide makework opportuntiies for unemployed youth; instead, it is the purpose to provide youth, and particularly economically disadvantaged youth, with opportunities to learn and earn that will lead to meaningful employment opportunities after they have completed the program.

"Subpart 1—Youth Incentive Entitlement Pilot Projects

"ENTITLEMENT PILOT PROJECTS AUTHORIZED

"SEC. 411. (a) The Secretary shall enter into arrangements with prime sponsors selected in accordance with the provisions of this subpart for the purpose of demonstrating the efficacy of guaranteeing otherwise unavailable part-time employment, or combination of part-time employment and training, for economically disadvantaged youth between the ages of sixteen and nineteen, inclusive, during the school year who resume or maintain attendance in secondary school for the purpose of acquiring a high school diploma or in a program which leads to a certificate of high school equivalency and full-time employment or part-time employment and training during the summer months to each such youth.

"(b) Each prime sponsor who applies for and is selected by the Secretary to carry out a pilot project under this subpart shall guarantee such employment to each such unemployed youth who resides within the area or a designated part thereof served by the prime sponsor and who applies to that prime sponsor for employment. The Secretary shall provide to each prime sponsor, from funds appropriated for carrying out this subpart, in combination with any funds made available by such prime sponsor according to an agreement made pursuant to section 413(a)(4)(F), the amount to which that prime sponsor is entitled under subsection (c).

"(c) Each prime sponsor shall be entitled to receive, for each youth who is provided employment by that prime sponsor, the costs associated with providing such employment. Such costs shall take into account funds made available by such prime sponsor under section 413(a)(4)(F).

"EMPLOYMENT GUARANTEES

"SEC. 412. Employment opportunities guaranteed under this subpart shall take the form of any one of the following or any combination thereof:

"(1) Part-time employment or training or combination thereof during the school year, not to exceed an average of twenty hours per week for each youth employed, and not to last less than six months nor more than nine, on projects operated by community-based organizations of demonstrated effectiveness which have a knowledge of the needs of disadvantaged youth; local educational agencies (as defined in section 801(f) of the Elementary and Secondary Education Act of 1965); institutions of higher education (as defined in section 1201(a) of the Higher Education Act of 1965); nonprofit private organizations or institutions engaged in public service; nonprofit voluntary youth organizations; nonprofit private associations, such as labor organizations, educational associations, business, cultural, or other private associations; units of general local government; or special purpose political subdivisions either having the power to levy taxes and spend funds or serving such special purpose in two or more units of general local government.

"(2) Part-time employment on an individual basis in any of the institutions and under the same conditions provided for in clause (1).

"(3) Part-time employment on either a project or individual basis in any of the institutions and under the same conditions as provided in clause (1) which includes as part of the employment on-the-job or apprenticeship training.

"(4) Full-time employment during the summer months, not to exceed forty hours per week for each youth employed, and not to last less than eight weeks in any of the institutions described in clause (1) of this section.

"SELECTING PRIME SPONSORS

"SEC. 413. (a) In selecting prime sponsors to operate youth incentive entitlement projects, the Secretary shall—

"(1) select prime sponsors from areas with differing socioeconomic and regional circumstances such as differing unemployment rates, school dropout rates, urban and rural variations, size, and other such factors designed to test the efficacy of a youth job entitlement in a variety of differing locations and circumstances;

"(2) take into consideration the extent to which the prime sponsors devote funds made available under title II for the purpose of carrying out a youth incentive entitlement project or for supportive services;

"(3) take into consideration the extent to which new and different classifications, occupations, or restructured jobs are created for youth;

"(4) select only prime sponsors which submit proposals which include—

"(A) a description of the procedure to be utilized by the prime sponsor to publicize, consider, approve, audit, and monitor youth incentive projects or jobs funded by the prime sponsor under this part, including copies of proposed application materials, as well as examples of audit and client characteristics reports;

"(B) a statement of the estimated number of economically disadvantaged youth to be served by the prime sponsor, and assurances that only such disadvantaged youth will be served;

"(C) assurances that the provisions of sections 442 and 443 are met relating to wage provisions and special conditions;

"(D) assurances that the prime sponsor has consulted with public and private nonprofit educational agencies including vocational and postsecondary education institutions and other agencies which offer high school equivalency programs; public employers, including law enforcement and judicial agencies; labor organizations; voluntary youth groups; community-based organizations; organizations of demonstrated effectiveness with a special knowledge of the needs of such disadvantage youth; and with the private sector in the development of the plan, and assurances that arrangements are made with appropriate groups to assist the prime sponsor in carrying out the purposes of this subpart;

"(E) assurances that arrangements are made with the State employment security agencies to carry out the purposes of this subpart;

"(F) an agreement that title II funds planned for economically disadvantaged youth employment programs and funds available for the summer youth program under part C of this title for youth eligible under subsection (a) will be used in support of the project authorized under this subpart;

"(G) assurances that the employment of eligible youth meets the requirements of eligible activities under section 414;

"(H) assurances that participating youth shall not be employed more than an average of twenty hours per week during the school year and not more than forty hours per week during the summer;

"(I) assurances that a participating youth is not a relative of any person with responsibility for hiring a person to fill that job;

"(J) assurances that whenever employment involves additional on-the-job, institutional, or apprenticeship training provided by the employer, and if such training is not paid for in full or in part by the prime sponsor under any other program authorized under this Act, wages may be paid in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act of 1938, and with the balance being applied to the cost of training;

"(K) assurances that arrangements have been made with the appropriate local education agency or with the institution offering a certified high school equivalency program that such youth is enrolled and meeting the minimum academic and attendance requirements of that school or education program and with employers that such youth meet the minimum work and attendance requirements of such employment and that any employment guarantee is conditioned on such enrollment; and

"(L) assurances that the prime sponsor will make available the data necessary for the Secretary to prepare the reports required by section 415.

"(b) In approving a prime sponsor to operate a youth incentive entitlement pilot project under this subpart the Secretary may also test the efficacy of any such project involving—

"(1) the use of a variety of subsidies to private for-profit employers, notwithstanding the provisions of sections 412 and 414(a), to encourage such employers to provide employment and training opportunities under this subpart, but no such subsidy shall exceed the net cost to the employer of the wages paid and training provided;

"(2) arrangements with unions to enable youth to enter into apprenticeship training as part of the employment provided under this subpart;

"(3) a variety of administrative mechanisms to facilitate the employment of youths under an entitlement arrangement;

"(4) the inclusion of economically disadvantaged youths between the ages of nineteen and twenty-five who have not received their high school diploma;

"(5) the inclusion of occupational and career counseling, outreach, career, exploration, and on-the-job training and apprenticeship as part of the employment entitlement; and

"(6) the inclusion of youth under the jurisdiction of the juvenile or criminal justice system with the approval of the appropriate authorities.

"SPECIAL PROVISIONS

"SEC. 414. (a) Employment and training under this subpart shall develop the participant's role as a meaningful member of the community, and may include, but is not limited to, employment and training in such fields as environmental quality, health care, education, self-employment, social services, public safety, crime prevention and control, transportation, recreation, neighborhood improvement, rural development, conservation, beautification, and community improvement projects.

"(b) No funds for employment under this subpart shall be used to provide public services through a nonprofit organization, association, or institution, or a nonprofit private institution of higher education, or any other applicant, which were previously provided by a political subdivision or local educational agency in the area served by the project of where the employment and training takes place, and no funds will be used under this subpart to provide such services through such an organization or institution which are customarily provided only by a political subdivision or local educational agency in the area served by such project or where the employment and training takes place.

"REPORTS

"SEC. 415. The Secretary shall report to the Congress not later than March 15, 1979, on his interim findings on the efficacy of a youth incentive entitlement. The Secretary shall submit another report not later than December 31, 1979, concerning the youth incentive entitlement projects authorized under this subpart. Included in such reports shall be findings with respect to—

"(1) the number of youths enrolled at the time of the report;

"(2) the cost of providing employment opportunities to such youths;

"(3) the degree to which such employment opportunities have caused out-of-school youths to return to school or others to remain in school;

"(4) the number of youths provided employment in relation to the total which might have been eligible;

"(5) the kinds of jobs provided such youths and a description of the employers—public and private—providing such employment;

"(6) the degree to which on-the-job or apprenticeship training has been offered as part of the employment;

"(7) the estimated cost of such a program if it were to be extended to all areas;

"(8) the effect such employment opportunities have had on reducing youth unemployment in the areas of the prime sponsors operating a project; and

"(9) the impact of job opportunities provided under the project on other job opportunities for youths in the area.

"Subpart 2—Youth Community Conservation and Improvement Projects

"STATEMENT OF PURPOSE

"SEC. 421. It is the purpose of this subpart to establish a program of community conservation and improvement projects to provide employment, work experience, skill training, and opportunities for community service to eligible youths, for a period not to exceed twelve months, supplementary to but not replacing opportunities available under title II of this Act.

"DEFINITIONS

"SEC. 422. As used in this subpart, the term—

"(1) 'eligible applicant' means any prime sponsor qualified under section 101 of this Act, sponsors of Native American programs qualified under section 302(c)(1) of this Act, and sponsors of migrant and seasonal farmworkers programs qualified under section 303 of this Act;

"(2) 'project applicant' shall have the same meaning as in section 125(18) of this Act;

"(3) 'eligible youths' means individuals who are unemployed and, at the time of entering employment under this subpart, are ages sixteen to nineteen, inclusive; and

"(4) 'community improvement projects' means projects providing work which would not otherwise be carried out, including, but not limited to, the rehabilitation or improvement of public facilities; neighborhood improvements; weatherization and basic repairs to low-income housing; energy conservation including solar energy techniques, especially those utilizing materials, and supplies available without cost; and conservation, maintenance, or restoration of natural resources on publicly held lands other than Federal lands.

"ALLOCATION OF FUNDS

"SEC. 423. (a) Funds available to carry out this subpart for any fiscal year shall be allocated in such a manner that not less than 75 per centum of such funds shall be allocated among the States on the basis of the relative number of unemployed persons within each State as compared to all States, except that not less than one-half of 1 per centum of such funds shall be allocated for projects under this subpart within any State and not less than one-half of 1 per centum of such funds shall be allocated in the aggregate for projects in Guam, the Virgin Islands, American Samoa, the Northern Marianas, and the Trust Territory of the Pacific Islands.

"(b) Of the funds available for this subpart 2 per centum shall be available for projects for Native American eligible youths, and 2 per centum shall be available for projects for eligible youths in migrant and seasonal farmworker families.

"(c) The remainder of the funds available for this subpart shall be allocated as the Secretary deems appropriate.

"COMMUNITY CONSERVATION AND IMPROVEMENT YOUTH EMPLOYMENT PROJECTS

"SEC. 424. The Secretary is authorized, in accordance with the provisions of this subpart, to enter into agreements with eligible applicants to pay the costs of community conservation and improvement youth employment projects to be carried out by project applicants employing eligible youths and appropriate supervisory personnel.

"PROJECT APPLICATIONS

"SEC. 425. (a) Project applicants shall submit applications for funding of projects under this subpart to the appropirate eligible applicant.

"(b) In accordance with regulations prescribed by the Secretary, each project application shall—

"(1) provide a description of the work to be accomplished by the project, the jobs to be filled, and the approximate duration for which eligible youths would be assigned to such jobs;

"(2) describe the wages or salaries to be paid individuals employed in jobs assisted under this subpart;

"(3) set forth assurances that there will be an adequate number of supervisory personnel on the project and that the supervisory personnel are adequately trained in skills needed to carry out the project and can instruct participating eligible youths in skills needed to carry out a project;

"(4) set forth assurances that any income generated by the project will be applied toward the cost of the project;

"(5) set forth assurances for acquiring such space, supplies, materials, and equipment as necessary, including reasonable payment for the purchase or rental thereof;

"(6) set forth assurances that, to the maximum extent feasible, projects carried out under this subpart shall be labor intensive; and

"(7) set forth such other assurance, arrangements, and conditions as the Secretary deems appropriate to carry out the purposes of this subpart.

"PROPOSED AGREEMENTS

"SEC. 426. (a)(1) Each eligible applicant desiring funds under this subpart shall submit a proposed agreement to the Secretary together with all project applications approved by the eligible applicant and all project applications approved by any program agent within the area served by the eligible applicant. With its transmittal of the proposed agreement, the eligible applicant shall provide descriptions of the project applications approved by the eligible applicant and by any program agent within the area served by the eligible applicant, accompanied by the recommendations of the eligible applicant concerning the relative priority attached to each project.

"(2) The functions of a program agent shall be as set forth in section 606(b)(2) of this Act.

"(b) The proposed agreement submitted by any eligible applicant shall—

"(1) describe the method of recruiting eligible youths, including a description of how such recruitment will be coordinated with plans under other provisions of this Act, including arrangements required by section 105 of this Act, and also including a description of arrangements with school systems, the public employment service (including school cooperative programs), and the courts of jurisdiction for status and youthful offenders;

"(2) provide a description of job training and skill development opportunities that will be made available to participating eligible youths, as well as a description of plans to coordinate the training and work experience with school-related programs, including the awarding of academic credit; and

"(3) set forth such other assurances as the Secretary may require to carry out the purposes of this subpart.

"(c)(1) In order for a project application submitted by a project applicant to be submitted to the Secretary by any eligible applicant, copies of such application shall have been submitted at the time of such application to the prime sponsor's planning council established under section 109 of this Act (or an appropriate planning organization in the case of sponsors of Native American programs under section 302 of this Act or migrant and seasonal farmworker programs under section 303 of this Act) for the purpose of affordwing such council and the youth council established under section 436 an opportunity to submit comments and recommendations with respect to that application to the eligible applicant. No member of any council (or organization) shall cast a vote on any matter in connection with a project in which that member, or any organization with which that member is associated, has a direct interest.

"(2) Consistent with procedures established by the eligible applicant in accordance with regulations which the Secretary shall prescribe, the eligible applicant shall not disapprove a project application submitted by a project applicant unless it has first considered any comments and recommendations made by the appropriate council (or organization) and unless it has provided such applicant and council (or organization) with a written statement of its reasons for such disapproval.

"APPROVAL OF AGREEMENTS

"SEC. 427. (a) The Secretary may approve or deny on an individual basis any of the project applications submitted with any proposed agreement.

"(b) No funds shall be made available to any eligible applicant except pursuant to an agreement entered into between the Secretary and the eligible applicant which provides assurances satisfactory to the Secretary that—

"(1) the standards set forth in subpart 4 of this part will be satisfied;

"(2) projects will be conducted in such manner as to permit eligible youths employed in the project who are in school to coordinate their jobs with classroom instruction and, to the extent feasible, to permit such eligible youths to receive credit from the appropriate educational agency, postsecondary institution, or particular school involved; and

"(3) meet such other assurances, arrangements, and conditions as the Secretary deems appropriate to carry out the purposes of this subpart.

"WORK LIMITATION

"SEC. 428. No eligible youth shall be employed for more than twelve months in work financed under this subpart, except as prescribed by the Secretary.

"Subpart 3—Youth Employment and Training Programs

"STATEMENT OF PURPOSE

"SEC. 431. It is the purpose of this subpart to establish programs designed to make a significant long-term impact on the structural unemployment problems of youth, supplementary to but not replacing programs and activities available under title II of this Act, to enhance the job prospects and career opportunities of young persons, including employment, community service opportunities, and such training and supportive services as are necessary to enable participants to secure suitable and appropriate unsubsidized employment in the public and private sectors of the economy. To the maximum extent feasible, training and employment opportunities afforded under this subpart will be interrelated and mutually reinforcing so as to achieve the goal of enhancing the job prospects and career opportunities of youths served under this subpart.

"PROGRAMS AUTHORIZED

"SEC. 432. (a) The Secretary is authorized to provide financial assistance to enable eligible applicants to provide employment opportunities and appropriate training and supportive services for eligible participants including but not limited to—

"(1) useful work experience opportunities in a wide range of community betterment activities such as rehabilitation of public properties, assistance in the weatherization of homes occupied by low-income families, demonstrations of energy-conserving measures including solar energy techniques (especially those utilizing materials and supplies available without cost), park establishment and upgrading, neighborhood revitalization, conservation and improvements, and related activities;

"(2) productive employment and work experience in fields such as education, health care, neighborhood transportation services, crime prevention and control, environmental quality control (including integrated pest management activities), preservation of historic sites, and maintenance of visitor facilities;

"(3) appropriate training and services to support the purpose of this subpart, including but not limited to—

"(A) outreach, assessment, and orientation;

"(B) counseling, including occupational information and career counseling;

"(C) activities promoting education to work transition;

"(D) development of information concerning the labor market, and provision of occupational, educational, and training information;

"(E) services to youth to help them obtain and retain employment;

"(F) literacy training and bilingual training;

"(G) attainment of certificates of high school equivalency;

"(H) job sampling, including vocational exploration in the public and private sector;

"(I) institutional and on-the-job training, including development of basic skills and job skills;

"(J) transportation assistance;

"(K) child care and other necessary supportive services;

"(L) job restructuring to make jobs more responsive to the objectives of this subpart, including assistance to employers in developing job ladders or new job opportunities for youths, in order to improve work relationships between employers and youths;

"(M) community-based central intake and information services for youth;

"(N) job development, direct placement, and placement assistance to secure unsubsidized employment opportunities for youth to the maximum extent feasible, and referral to employability development programs;

"(O) programs to overcome sex-sterotyping in job development and placement; and

"(P) programs and outreach mechanisms to increase the labor force participation rate among minorities and women.

"(b) In order to carry out this subpart, a Governor or a prime sponsor may enter into contracts with project applicants (as defined in section 125(18)) or employers organized for profit, but payments to such employers shall not exceed the amounts permitted under section 121(j), or may operate programs directly if, after consultation with com-

munity-based organizations and nonprofit groups, a Governor or prime sponsor determines that such direct operation will promote the purposes of this subpart.

"ALLOCATION OF FUNDS

"SEC. 433. (a) From the sums available for this subpart—

"(1) an amount equal to 75 per centum of such funds shall be made available to prime sponsors for programs authorized under section 432 of this Act;

"(2) an amount equal to 5 per centum of the amount available for this subpart shall be made available to Governors for special statewide youth services under subsection (c) of this section;

"(3) an amount equal to not less than 2 per centum of the amount available for this subpart shall be made available for employment and training programs for Native American eligible youths (deducting such amounts as are made available for such purposes under section 423(b) of this Act);

"(4) an amount equal to not less than 2 per centum of the amount available for this subpart shall be made available for employment and training programs for eligible youths in migrant and seasonal farmworker families (deducting such amounts as are made available for such purposes under section 423(b) of this Act); and

"(5) the remainder of the funds available for this subpart shall be available for the Secretary's discretionary projects authorized under section 438.

"(b)(1) Amounts available for each of the purposes set forth in paragraphs (1) and (2) of subsection (a) shall be allocated among the States in such a manner that—

"(A) 37.5 per centum thereof shall be allocated in accordance with the relative number of unemployed persons within each State as compared to the total number of such unemployed persons in all States;

"(B) 37.5 per centum thereof shall be allocated in accordance with the relative number of unemployed persons residing in areas of substantial unemployment (as defined in section 125(2)(A) of this Act) within each State as compared to the total number of unemployed persons residing in all such areas in all States; and

"(C) 25 per centum thereof shall be allocated in accordance with the relative number of persons in families with an annual income below the low-income level (as defined in section 125(15) of this Act) within each State as compared to the total number of such persons in all States.

"(2) In determining allocations under this subsection the Secretary shall use what the Secretary determines to be the best available data.

"(3) Amounts available to prime sponsors under paragraph (1) of subsection (a) of this section shall, out of the total amounts allocated to each State under such paragraph, be allocated by the Secretary among prime sponsors within each State, in accordance with the factors set forth in paragraph (1) of this subsection.

"(c) The amount available to the Governor of each State under paragraph (2) of subsection (a) of this section shall be used in accordance with a special statewide youth services plan, approved by the Secretary, for such purposes as—

"(1) providing financial assistance for employment and training opportunities for eligible youths who are under the supervision of the State;

"(2) providing labor market and occupational information to prime sponsors and local educational agencies, without reimbursement;

"(3) providing for the establishment of cooperative efforts between State and local institutions, including occupational and career guidance and counseling and placement services for in-school and out-of-school youth;

"(4) providing financial assistance for expanded and experimental programs in apprenticeship trades, or development of new apprenticeship arrangements, in concert with appropriate businesses and labor unions or State apprenticeship councils;

"(5) carrying out special model employment and training programs and related services between appropriate State agencies and prime sponsors in the State, or any combination of such prime sponsors, including subcontractors selected by prime sponsors, with particular emphasis on experimental job training within the private sector.

"(d)(1) Not less than 22 per centum of the amount allocated to each prime sponsor under paragraph (1) of subsection (a) of this section shall be used for programs under this subsection.

"(2) The amount available to each prime sponsor under paragraph (1) of this subsection shall be used for programs for in-school youth carried out pursuant to agreements between prime sponsors and local educational agencies. Each such agreement shall describe in detail the employment opportunities and appropriate training and supportive services which shall be provided to eligible participants who are enrolled or who agree to enroll in a fulltime program leading to a secondary school diploma, a junior or community college degree, or a technical or trade school certificate of completion. Each such agreement shall contain provisions to assure that funds received pursuant to the agreement will not supplant State and local funds expended for the same purpose.

"(e) Programs receiving assistance under paragraph (1) of subsection (a) of this section shall give special consideration in carrying out programs authorized under section 432 of this Act, to community-based organizations which have demonstrated effectiveness in the delivery of employment and training services, such as the Opportunities Industrialization Centers, the National Urban League, SER–Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, neighborhood organizations, community action agencies, union-related organizations, employer-related nonprofit organizations, and other similar organizations.

"ELIGIBLE APPLICANTS

"SEC. 434. Eligible applicants for purposes of this subpart, except section 438, are prime sponsors qualified under section 101 of this Act, sponsors of Native American programs qualified under section 302(c)(1) of this Act, and sponsors of migrant and seasonal farmworker programs qualified under section 303 of this Act.

"ELIGIBLE PARTICIPANTS

"SEC. 435. (a) Eligible participants for programs authorized under this subpart shall be persons who—

"(1)(A) are unemployed or are underemployed or are in school and are ages sixteen to twenty-one, inclusive; or (B) if authorized under such regulations as the Secretary may prescribe, are in school and are ages fourteen to fifteen, inclusive; and

"(2) are not members of households which have current gross family income, adjusted to an annualized basis (exclusive of unemployment compensation and all Federal, State, and local income-tested or needs-tested public payments) at a rate exceeding 85 per centum of the lower living standard income level, except that, pursuant to regulations which the Secretary shall prescribe, persons who do not meet the requirements of this subparagraph but who are otherwise eligible under this subpart may participate in appropriate activities of the type authorized under paragraph (3) of section 432(a). Notwithstanding the provisions of this subsection, 10 per centum of the funds available for this subpart may be used for programs which include youths of all economic backgrounds to test the desirability of including youths of all economic backgrounds.

"(b) For purposes of this section, the term 'lower living standards income level' means that income level (adjusted for regional and metropolitan and urban and rural differences and family size) determined annually by the Secretary based upon the most recent 'lower living standard budget' issued by the Bureau of Labor Statistics of the Department of Labor.

"CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE

"SEC. 436. (a) The Secretary shall not provide financial assistance to an eligible applicant for programs authorized under section 432 unless such eligible applicant provides assurances that the standards set forth in subpart 4 of this part will be met and unless such eligible applicant submits an application in such detail as the Secretary may prescribe. Each such application shall—

"(1) describe the program, projects or activities to be carried out with such assistance, together with a description of the relationship and coordination of services provided to eligible participants under this subpart for similar services offered by local educational agencies, postsecondary institutions, the public employment service, other youth programs, community-based organizations, businesses and labor organizations consistent with the requirements of sections 121 and 203 of this Act, and assurances that, to the maximum extent feasible, use will be made of any services that are available without reimbursement by the State employment service that will contribute to the achievement of the purposes of this subpart;

"(2) include assurances that the application will be coordinated to the maximum extent feasible, with the plans submitted under title II, but services to youth under that title shall not be reduced because of the availability of financial assistance under this subpart;

"(3) provide assurances, satisfactory to the Secretary, that in the implementation of programs under this subpart, there will be coordination, to the extent appropriate, with local educational agencies, postsecondary institutions, community-based organizations, businesses, labor organizations, job training programs, other youth programs, the apprenticeship system, and (with respect to the referral of prospective youth participants to the program) the public employment service system;

"(4) provide assurances satisfactory to the Secretary that allowances will be paid in accordance with the provisions of section 123 of this Act and such regulations as the Secretary may prescribe for this subpart;

"(5) provide assurances that the application will be reviewed by the appropriate prime sponsor planning council in accordance with the provisions of section 109;

"(6) provide assurances that a youth council will be established under the planning council of such eligible applicant (established under section 109 of this Act) in accordance with subsection (b) of this section;

"(7) provide assurances satisfactory to the Secretary that effective means will be provided through which youths participating in the projects, programs, and activities may acquire appropriate job skills and be given necessary basic education and training and that suitable arrangements will be established to document the competencies, including skills, education and training, derived by each participant from programs established under this subpart;

"(8) provide assurances that the eligible applicant will take appropriate steps to develop new job classifications, new occupations, and restructured jobs;

"(9) provide that the funds available under section 433(d) shall be used for programs authorized under section 432 for in-school youth who are eligible participants through arrangements to be carried out by a local educational agency or agencies or post-secondary educational institution or institutions; and

"(10) provide such other information and assurance as the Secretary may deem appropriate to carry out the purposes of this subpart.

"(b) Each youth council established by an eligible applicant shall be responsible for making recommendations to the planning council established under section 109 of this Act with respect to planning and review of activities conducted under this subpart and subpart 2. Each such youth council's membership shall include representation from the local educational agency, local vocational education advisory council, postsecondary educational institutions, business, unions, the public employment service, local government and nongovernment agencies and organizations which are involved in meeting the special needs of youths, the community served by such applicant, the prime sponsor, and youths themselves.

"(c) No program of work experience for in-school youth supported under this subpart shall be entered into unless an agreement has been made between the prime sponsor and a local educational agency or agencies, after review by the youth council established under subsection (b) of this section. Each such agreement shall—

"(1) set forth assurances that participating youths will be provided meaningful work experience, which will improve their ability to make career decisions and which will provide them with basic work skills needed for regular employment or self-employment not subsidized under this in-school program;

"(2) be administered, under agreements with the prime sponsor, by a local educational agency or agencies or a postsecondary educational institution or institutions within the area served by the prime sponsor, and set forth assurances that such contracts have been reviewed by the youth council established under subsection (b) of this section;

"(3) set forth assurances that job information, counseling, guidance, and placement services will be made available to participating youths and that funds provided under this program will be available to, and utilized by, the local educational agency or agencies to the extent necessary to pay the cost of school-based counselors to carry out the provisions of this in-school program;

"(4) set forth assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the participating youths;

"(5) set forth assurances that the eligible applicant will advise participating youths of the availability of other employment and training resources provided under this Act, and other resources available in the local community to assist such youths in obtaining employment or self-employment;

"(6) set forth assurances that youth participants will be chosen from among youths who are eligible participants who need work to remain in school, and shall be selected by the appropriate educational agency or institution, based on the certification for each participating youth by the school-based guidance counselor that the work experience provided is an appropriate component of the overall educational program of each youth.

"REVIEW OF PLANS BY SECRETARY

"SEC. 437. The provisions of sections 102, 104, and 107 of this Act shall apply to all programs and activities authorized under 432.

"SECRETARY'S DISCRETIONARY PROJECTS

"SEC. 438. (a)(1) The Secretary of Labor is authorized, either directly or by way of contract or other arrangement, with prime sponsors, public agencies and private organizations to carry out innovative and experimental programs to test new approaches for dealing with the unemployment problems of youth and to enable eligible participants to prepare for, enhance their prospects for, or secure employment in occupations through which they may reasonably be expected to advance to productive working lives. Such programs shall include, where appropriate, cooperative arrangements with educational agencies to provide special programs and services for eligible participants enrolled in secondary schools, postsecondary educational institutions and technical and trade schools, including job experience, counseling and guidance prior to the completion of secondary or postsecondary education and making available occupational, educational, and training information through statewide career information systems. When funds are provided for the development or implementation of statewide career information systems, the occupational data contained within such systems shall be subject to the approval of the appropriate State occupational information coordinating committee established pursuant to section 161(b)(2) of the Vocational Education Act of 1963.

"(2) In carrying out or supporting such programs, the Secretary of Labor shall consult, as appropriate, with the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Director of the ACTION Agency, and the Director of the Community Services Administration.

"(3) Funds available under this section may be transferred to other Federal departments and agencies to carry out functions delegated to them pursuant to agreements with the Secretary.

"(b) The Secretary and prime sponsors, as the case may be, shall give special consideration in carrying out innovative and experimental programs assisted under this section to community-based organizations which have demonstrated effectiveness in the delivery of employment and training services, such as the Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, neighborhood organizations, community action agencies, union-related organizations, employer-related nonprofit organizations, and other similar organizations.

"Subpart 4—General Provisions

"DISTRIBUTION OF FUNDS

"SEC. 441. Of the sums available for carrying out the provisions of this part—

"(1) 15 per centum shall be available for subpart 1;

"(2) 15 per centum shall be available for subpart 2; and

"(3) 70 per centum shall be available for subpart 3.

"WAGE PROVISIONS

"SEC. 442. Rates of pay under this part shall be no less than the higher of—

"(1) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, but in the case of an individual who is fourteen or fifteen years old, the wage provided in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act of 1938;

"(2) the State or local minimum wage for the most nearly comparable employment, but in the case of an individual who is fourteen or fifteen years old the wage provided in accordance with the applicable provisions of the applicable State or local minimum wage law; or

"(3) the prevailing rates of pay, if any, for occupations and job classifications of individuals employed by the same employer, except that—

"(A) whenever the prime sponsor has entered into an agreement with the employer and the labor organization representing employees engaged in similar work in the same area to pay less than the rates provided in this paragraph, youths may be paid the rates specified in such agreement;

"(B) whenever an existing job is reclassified or restructured, youths employed in such jobs shall be paid at rates not less than are provided under paragraph (1) or (2) of this section, but if a labor organization represents employees engaged in similar work in the same area, such youths shall be paid at rates specified in an agreement entered into by the appropriate prime sponsor, the employer, and the labor organization with respect to such reclassified or restructured jobs, and if no agreement is reached within thirty days after the initiation of the agreement procedure referred to in this subparagraph, the labor organization, prime sponsor, or employer may petition the Secretary of Labor who shall establish appropriate wages for the reclassified or restructured positions, taking into account wages paid by the same employer to persons engaged in similar work;

"(C) whenever a new or different job classification or occupation is established and there is no dispute with respect to such new or different job classification or occupation, youths to be employed in such jobs shall be paid at rates not less than are provided in paragraph (1) or (2) of this section, but if there is a dispute with respect to such new or different job classification or occupation, the Secretary of Labor shall, within thirty days after receipt of the notice of protest by the labor organization representing employees engaged in similar work in the same area, make a determination whether such job is a new or different job classification or occupation; and

"(D) in the case of projects to which the provision of the Davis-Bacon Act (or any Federal law containing labor standards in accordance with the Davis-Bacon Act) otherwise apply, the Secretary is authorized, for projects financed under subparts 2 and 3 of this part under $5,000, to prescribe rates of pay for youth participants which are not less than the applicable minimum wage but not more than the wage rate of the entering apprentice in the most nearly comparable apprenticeable trade, and to prescribe the appropriate ratio of journeymen to such participating youths.

"SPECIAL CONDITIONS

"SEC. 443. (a) The Secretary shall provide financial assistance under this part only if he determines that the activities to be assisted meet the requirements of this section.

"(b) The Secretary shall determine that the activities assisted under this part—

"(1) will result in an increase in employment opportunities over those opportunities which would otherwise be available;

"(2) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employment benefits);

"(3) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed;

"(4) will not substitute jobs assisted under this part for existing federally assisted jobs;

"(5) will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area; and

"(6) will not be used to employ any person to fill a job opening created by the act of an employer in laying off or terminating employment of any regular employee, or otherwise reducing the regular work force not supported under this part, in anticipation of filling the vacancy so created by hiring a youth to be supported under this part.

"(c) The jobs in each promotional line will in no way infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public services not subsidized under this Act and no job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective-bargaining agreements have been complied with.

"(d) Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under the program for which an application is being developed for submission under this part, such organization shall be notified and shall be afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary.

"(e) Activities funded under this part shall meet such other standards as the Secretary may deem appropriate to carry out the purposes of this Act.

"(f) Funds under this part shall not be used to provide full-time employment opportunities (1) for any person who has not attained the age with respect to which the requirement of compulsory education ceases to apply under the laws of the State in which such individual resides, except (A) during periods when school is not in session, and (B) where employment is undertaken in cooperation with school-related programs awarding academic credit for the work experience, or (2) for any person who has not attained a high school degree or its equivalent if it is determined, in accordance with procedures established by the Secretary of Labor, that there is substantial evidence that such person left school in order to participate in any program under this part.

"SPECIAL PROVISIONS FOR SUBPARTS 2 AND 3

"SEC. 444. (a) Appropriate efforts shall be made to insure that youths participating in programs, projects, and activities under subparts 2 and 3 of this part shall be youths who are experiencing severe handicaps in obtaining employment, including but not limited to those who lack credentials (such as a high school diploma), those who require substantial basic and remedial skill development, those who are women and minorities, those who are veterans of military service, those who are offenders, those who are handicapped, those with dependents, or those who have otherwise demonstrated special need, as determined by the Secretary.

"(b) The Secretary is authorized to make such reallocation as the Secretary deems appropriate of any amount of any allocation under subparts 2 and 3 of this part to the extent that the Secretary determines that an eligible applicant will not be able to use such amount within a reasonable period of time. Any such amount may be reallocated only if the Secretary has provided thirty days' advance notice of the propcsed reallocation to the eligible applicant and to the Governor of the State of the proposed reallocation, during which period of time the eligible applicant and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Government and affected eligible applicants of any decision to reallocate funds, and shall publish any such decision in the Federal Register. Priority shall be given in reallocating such funds to other areas within the same State.

"(c) The provisions of section 121(g)(1)(D) of this Act shall apply to subparts 2 and 3 of this part.

"ACADEMIC CREDIT, EDUCATION CREDIT, COUNSELING AND PLACEMENT SERVICES, AND BASIC SKILLS DEVELOPMENT

"SEC. 445. (a) In carrying out this part, appropriate efforts shall be made to encourage the granting by the educational agency or school involved of academic credit to eligible participants who are in school.

"(b) The Secretary, in carrying out the purposes of this part, shall work with the Department of Health, Education, and Welfare to make suitable arrangements with appropriate State and local education officials whereby academic credit may be awarded, consistent with applicable State law, by educational institutions and agencies for competencies derived from work experience obtained through programs established under this title.

"(c) All activities assisted under this part, pursuant to such regulations as the Secretary shall prescribe, shall provide appropriate counseling and placement services designed to facilitate the transition of youth from participation in the project to (1) permanent jobs in the public or private sector, or (2) education or training programs.

"DISREGARDING EARNINGS

"SEC. 446. Earnings received by any youth under this part shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted programs.

"RELATION TO OTHER PROVISIONS

"SEC. 447. The provisions of title I of this Act shall apply to this part, except to the extent that any such provision may be inconsisent with the provisions of this part.

"PART B—JOB CORPS

"STATEMENT OF PURPOSE

"SEC. 450. This part establishes a Job Corps for economically disadvantaged young men and women, sets forth standards and procedures for selecting individuals as enrollees in the Job Corps, authorizes the establishment of residential and nonresidential centers in which enrollees will participate in intensive programs of education, vocational training, work experience, counseling and other activities, and prescribes various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps. The purpose of this part is to assist young persons who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsible, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of National, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies.

"ESTABLISHMENT OF THE JOB CORPS

"SEC. 451. There is established within the Department of Labor a 'Job Corps'.

"INDIVIDUALS ELIGIBLE FOR THE JOB CORPS

"SEC. 452. To become an enrollee in the Job Corps, a young man or women must be an eligible youth who—

"(1) requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular school work, qualify for other suitable training programs, or satisfy Armed Forces requirements;

"(2) is currently living in an environment so characterized by cultural deprivation, a disruptive homelife, or other disorienting conditions as to substantially impair prospects for successful participation in other programs providing needed training, education, or assistance;

"(3) is determined, after careful screening as provided for in sections 453 and 454 to have the present capabilities and aspirations needed to complete and secure the full benefit of the Job Corps and to be free of medical and behavioral problems so serious that the individual could not adjust to the standards of conduct, discipline, work, and training which the Job Corps involves; and

"(4) meets such other standards for enrollment as the Secretary may prescribe and agrees to comply with all applicable Job Corps rules and regulations.

"SCREENING AND SELECTION OF APPLICANTS—GENERAL PROVISIONS

"SEC. 453. (a) The Secretary shall prescribe specific standards and procedures for the screening and selection of applicants for the Job Corps. To the extent practicable, these rules shall be implemented through arrangements with agencies and organizations such as community action agencies, public employment offices, professional groups, labor organizations, and agencies and individuals having contact with youths over substantial periods of time and able to offer reliable information as to their needs and problems; and shall provide for necessary consultation with other individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers. The rules shall also provide for the interviewing of each applicant for the purpose of—

"(1) determining whether the applicant's educational and vocational needs can best be met through the Job Corps or an alternative program in the applicant's home community;

"(2) obtaining from the applicant pertinent data relating to background, needs, and interests for determining eligibility and potential assignment; and

"(3) giving the applicant a full understanding of the Job Corps and what will be expected of an enrollee in the event of acceptance.

"(b) The Secretary shall make no payments to any individual or organization solely as compensation for referring the names of candidates for Job Corps.

"(c) The Secretary shall assure that Job Corps enrollees include an appropriate number of candidates selected from rural areas taking into account the proportions of eligible youth who reside in rural areas and the need to provide residential facilities for such youth.

"SCREENING AND SELECTION—SPECIAL LIMITATIONS

"SEC. 454. (a) No individual shall be selected as an enrollee unless there is reasonable expectation that the individual can participate successfully in group situations and activities, is not likely to engage in behavior that would prevent other enrollees from receiving the benefit of the program or be incompatible with the maintenance of sound discipline and satisfactory relationships between the center to which the individual might be assigned and surrounding communities, and unless the individual manifests a basic understanding of both the rules to which the individual will be subject and of the consequences of failure to observe those rules.

"(b) No individual shall be denied a position in the Job Corps solely on the basis of that individual's contact with the criminal justice system.

"ENROLLMENT AND ASSIGNMENT

"SEC. 455. (a) No individual may be enrolled in the Job Corps for more than two years, except as the Secretary may authorize in special cases.

"(b) Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

"(c) After the Secretary has determined whether an enrollee is to be assigned to a Job Corps Center or a Job Corps Civilian Conservation Center, the enrollee shall be assigned to the center of the appropriate type which is closest to the enrollee's home, ex-

cept that the Secretary may waive this requirement for good cause, including to insure an equitable opportunity for youth from various sections of the country to participate in the program, to prevent undue delays in assignment, to adequately meet the educational or other needs of an enrollee, and for efficiency and economy in the operating of the program.

"JOB CORPS CENTERS

"SEC. 456. (a) The Secretary may make agreements with Federal, State, or local agencies, including a State board or agency designated pursuant to section 104(a)(1) of the Vocational Education Act of 1963 which operates or wishes to develop area vocational education school facilities or residential vocational schools (or both) as authorized by such Act, or private organizations for the establishment and operation of Job Corps centers. Job Corps centers may be residential or nonresidential in character, or both, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with education, vocational training, work experience (either in direct program activities or through arrangements with employers), counseling, and other services appropriate to their needs. The centers shall include Civilian Conservation Centers, located primarily in rural areas, which shall provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest. The centers shall also include training centers located in either urban or rural areas which shall provide activities including training and other services for specific types of skilled or semi-skilled employment.

"(b) To the extent feasible, Job Corps centers shall offer education and vocational training opportunities, together with supportive services, on a nonresidential basis to participants in other programs under this Act. Such opportunities may be offered on a reimbursable basis or through such other arrangements as the Secretary may specify.

"PROGRAM ACTIVITIES

"SEC. 457. (a) Each Job Corps center shall provide enrollees with an intensive, well-organized and fully supervised program of education, vocational training, work experience, planned vocational and recreational activities, physical rehabilitation and development, and counseling. To the fullest extent feasible, the required program shall include activities to assist enrollees in choosing realistic career goals, coping with problems they may encounter in home communities, or in adjusting to new communities, and planning and managing daily affairs in a manner that will best contribute to long-term upward mobility. Center programs shall include required participation in center maintenance work to assist enrollees in increasing their sense of contribution, responsibility and discipline.

"(b) The Secretary may arrange for enrollee education and vocational training through local public or private educational agencies, vocational educational institutions, or technical institutes, whenever such institutions provide training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

"(c) To the extent feasible, arrangements for education both on and off center shall provide opportunities for qualified enrollees to obtain the equivalent of a certificate of graduation from high school. The Secretary, with the concurrence of the Secretary of Health, Education, and Welfare, shall develop certificates to be issued to each enrollee who satisfactorily completes his or her service in the Job Corps and which will reflect the enrollee's level of educational attainment.

"ALLOWANCES AND SUPPORT

"SEC. 458. (a) The Secretary may provide enrollees with such personal, travel, and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as he may deem necessary or appropriate to their needs. Personal allowances shall be established at a rate not to exceed $60 per month during the first six months of an enrollee's participation in the program and not to exceed $100 per month thereafter, except that allowances in excess of $60 per month, but not exceeding $100 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than six months' duration and the Secretary is authorized to pay personal allowances in excess of the rates specified herein in unusual circumstances as determined by him. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

"(b) The Secretary shall prescribe specific rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least six-months' service in the Job Corps.

"(c) The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed $100 for each month of satisfactory participation in the Job Corps. No enrollee shall be entitled to a readjustment allowance, however, unless he has remained in the program at least ninety days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, advance to or on behalf of an enrollee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee; and he may also, pursuant to rules or regulations, reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

"(d) Under such circumstances as the Secretary may determine, a portion of the readjustment allowance of an enrollee not exceeding $50 for each month of satisfactory service may be paid during the period of service of the enrollee directly to a spouse or child of an enrollee or to any other relative who draws substantial support from the enrollee, and any sum so paid shall be supplemented by the payment of an equal amount by the Secretary.

"STANDARDS OF CONDUCT

"SEC. 459. (a) Within Job Corps centers standards of conduct shall be provided and stringently enforced. If violations are committed by enrollees, dismissal from the Corps or transfers to other locations shall be made if it is determined that retention in the Corps, or in the particular center, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees.

"(b) To promote the proper moral and disciplinary conditions in the Job Corps, the directors of Job Corps centers shall take appropriate disciplinary measures against enrollees including, but not limited to, dismissal from the Job Corps, subject to expeditious appeal to the Secretary.

"COMMUNITY PARTICIPATION

"SEC. 460. The Secretary shall encourage and cooperate in activities to establish a mutually beneficial relationship between Job Corps centers and nearby communities. These activities shall include the establishment of community advisory councils to provide a mechanism for joint discussion of common problems and for planning programs of mutual interest. Youth participation in advisory council affairs shall be encouraged and separate youth councils may be established composed of enrollees and young people from the communities. The Secretary shall assure that each center is operated with a view to achieving, so far as possible, objectives which shall include—

"(1) giving community officials appropriate advance notice of changes in center rules, procedures, or activities that may affect or be of interest to the community;

"(2) affording the community a meaningful voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to enrollees;

"(3) providing center officials with full and rapid access to relevant community groups and agencies, including law enforcement agencies and agencies which work with young people in the community;

"(4) encouraging the fullest practicable participation of enrollees in programs for community improvement or betterment, with appropriate advance consultation with business, labor, professional, and other interested community groups;

"(5) arranging recreational, athletic, or similar events in which enrollees and local residents may participate together;

"(6) providing community residents with opportunities to work with enrollees directly as part-time instructors, tutors, or advisers, either in the center or in the community;

"(7) developing, where feasible, job or career opportunities for enrollees in the community; and

"(8) promoting interchanges of information and techniques among, and cooperative projects involving, the center and community schools, educational institutions, agencies serving young people and recipients of funds under this Act.

"COUNSELING AND JOB PLACEMENT

"SEC. 461. (a) The Secretary shall counsel and test each enrollee at regular intervals to measure progress in educational and vocational programs.

"(b) The Secretary shall counsel and test enrollees prior to their scheduled terminations to determine their capabilities and shall make every effort to place them in jobs in the vocation for which they are trained or to assist them in attaining further training or education. In placing enrollees in jobs, the Secretary shall utilize the public employment service system to the fullest extent possible.

"(c) The Secretary shall determine the status and progress of terminees and make every effort to assure that their needs for further education, training, and counseling are met.

"(d) The Secretary shall arrange for the readjustment allowance to be paid to former enrollees (who have not already found employment) at the State employment service office nearest the home of any such former enrollee who is returning home, or at the nearest such office where the former enrollee has indicated an intent to reside. If the Secretary uses any other public agency or private organization in lieu of the public employment service system, the Secretary shall arrange for that organization or agency to pay the readjustment allowance.

"EXPERIMENTAL AND DEVELOPMENTAL PROJECTS

"SEC. 462. (a) The Secretary may undertake experimental, research, or demonstration projects to develop or test ways of better using facilities, encouraging a more rapid adjustment of enrollees to community life that will permit a reduction in their period of enrollment, reducing transportation and support costs, or otherwise promoting greater efficiency and effectiveness in the program. These projects shall include one or more projects providing youths with education, training, and other supportive services on a combined residential and nonresidential basis. The Secretary may undertake one or more pilot projects designed to involve youth who have a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other behavorial aberrations. Projects under this subsection shall be developed after appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with the prime sponsors in the communities where the projects will be carried out. They may be undertaken jointly with other Federal or federally assisted programs, and funds otherwise available for activities under those programs shall, with the consent of the head of any agency concerned, be available for projects under this section to the extent they include the same or substantially similar activities. The Secretary may waive any provision of this part which the Secretary finds would prevent the carrying out of elements of projects under this subsection essential to a determination of their feasibility and usefulness. The Secretary shall, in the annual report of the Secretary, report to the Congress concerning the actions taken under this section, including a full description of progress made in connection with combined residential and nonresidential projects.

"(b) In order to determine whether upgraded vocational education schools could eliminate or substantially reduce the school dropout problem, and to demonstrate how communities could make maximum use of existing educational and training facilities, the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may enter into one or more agreements with State educational agencies to pay the cost of establishing and operating model community vocational education schools and skill centers.

"ADVISORY BOARDS AND COMMITTEES

"SEC. 463. The Secretary may make use of advisory committees in connection with the operation of the Job Corps, and the operation of Job Corps centers, whenever the Secretary determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities.

"PARTICIPATION OF THE STATES

"SEC. 464. (a) The Secretary shall take action to facilitate the effective participation of States in the Job Corps programs, including, but not limited to, consultation with appropriate State agencies on matters pertaining to the enforcement of applicable State laws, standards of enrollee conduct and discipline, the development of meaningful work experience and other activities for enrollees, and coordination with State-operated programs.

"(b) The Secretary may enter into agreements with States to assist in the operation or administration of State-operated programs which carry out the purpose of this part. The Secretary may, pursuant to regulations, pay part or all of the costs of such programs.

"(c) No Job Corps center or other similar facility designed to carry out the purpose of this part shall be established within a State unless a notice setting forth such proposed establishment has been submitted to the Governor, and the establishment has not been disapproved by the Governor within thirty days of such submission.

"(d) All property which would otherwise be under exclusive Federal legislative jurisdiction shall be under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement as long as a Job Corps center is operated on such property.

"APPLICATION OF PROVISIONS OF FEDERAL LAW

"SEC. 465. (a) Except as otherwise provided in this subsection and in section 8143(a) of title 5, United States Code, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

"(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

"(2) For purposes of subchapter I of chapter 81 of title 5 of the United States Code (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except as follows:

"(A) the term 'performance of duty' shall not include any act of an enrollee while absent from his or her assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post or duty) authorized by or under the direction and supervision of the Job Corps;

"(B) in computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS–2 employee, and sections 8113 (a) and (b) of title 5, United States Code, shall apply to enrollee; and

"(C) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

"(3) For purposes of the Federal tort claims provisions in title 28, United States Code, enrollees shall be considered employees of the Government.

"(b) Whenever the Secretary finds a claim for damages to persons or property resulting from the operation of the Job Corps to be a proper charge against the United States, and it is not cognizable under section 2672 of title 28, United States Code, the Secretary may adjust and settle it in an amount not exceeding $1,500.

"(c) Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade therein.

"SPECIAL PROVISIONS

"SEC. 466. (a) The Secretary shall immediately take steps to achieve an enrollment of 50 per centum women in the Job Corps consistent with (1) efficiency and economy in the operation of the program, (2) sound administrative practice, and (3) the socioeconomic, educational, and training needs of the population to be served.

"(b) The Secretary shall assure that all studies, evaluations, proposals, and data produced or developed with Federal funds in the course of the Job Corps program shall become the property of the United States.

"(c) Transactions conducted by private for-profit contractors for Job Corps centers which they are operating on behalf of the Secretary shall not be considered as generating gross receipts.

"GENERAL PROVISIONS

"SEC. 467. The Secretary is authorized to—

"(1) disseminate, with regard to the provisions of section 4154 of title 39, United States Code, data and information in such forms as the Secretary shall deem appropriate, to public agencies, private organizations, and the general public;

"(2) collect or compromise all obligations to or held by the Secretary and all legal or equitable rights accruing to the Secretary in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection; and

"(3) expend funds made available for purposes of this part—

"(A) for printing and binding, in accordance with applicable law and regulation; and

"(B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by the Secretary; but the Secretary shall not utilize the authority contained in this subparagraph—

"(i) except when necessary to obtain an item, service, or facility, which is required in the proper administration of this part, and which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form or under the conditions in which it is needed; and

"(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of the Secretary's intention to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority.

"UTILIZATION OF FUNDS

"SEC. 468. Notwithstanding the limitations of title II and part C of this title, financial assistance under title II and part C of this title which is used for the Job Corps program, may be used in accordance with the provisions of this part.

"PART C—SUMMER YOUTH PROGRAM

"ESTABLISHMENT OF PROGRAM

"SEC. 480. (a) The Secretary shall provide financial assistance to prime sponsors to conduct programs for eligible youth during the summer months.

"(b) Programs shall provide eligible youth with useful work and sufficient basic education and institutional or on-the-job training to assist these youths to develop their maximum occupational potential and to obtain employment not subsidized under this Act.

"PRIME SPONSORS

"SEC. 481. Prime sponsors eligible for assistance under this part shall be prime sponsors designated under section 101(c) and Native American entities described in section 302(c)(1).

"FINANCIAL ASSISTANCE

"SEC. 482. (a) In order to receive financial assistance under this part, a prime sponsor shall submit to the Secretary an annual plan pursuant to section 103.

"(b) The funds appropriated for this part in any fiscal year shall be allocated according to the procedures set forth in subsection (c) except that the Secretary may reserve up to 5 percent of the appropriated funds to be used in the Secretary's discretion.

"(c)(1) In allocating funds under this part, the Secretary shall add to the new appropriation the total amount of summer funds unspent in the previous year's summer program.

"(2) Funds for prime sponsors designated under section 101(c) shall be allocated as follows:

"(A)(i) 50 percent of such funds shall be allocated on the basis of each prime sponsor's proportion of the funds allocated for the previous year's summer programs;

"(ii) 37½ per centum of the funds shall be allocated based on the ratio of the annual average number of unemployed persons in the prime sponsor's area to the total annual average number of unemployed persons in the United States;

"(iii) 12½ per centum of the funds shall be allocated based on the ratio of the number of adults in low-income families in the prime sponsor's area to the total number of adults in low income families in the United States; except that—

"(B) each prime sponsor shall receive an allocation which, when added to its unexpended allocation for the previous fiscal year, shall be at least equal to the amount available to it for its summer program in the previous fiscal year.

"(3) Funds for Native American entities described in section 302(c)(1) shall be allocated based on the ratio of the number of Native American youths 14 through 21 years of age inclusive in the eligible prime sponsor's area to the total number of Native American youth 14 through 21 years of age inclusive in all Native American entity areas, except that each Native American entity shall receive an amount of funds equal to the amount allocated to it in the previous fiscal year.

"(4) The total allocation to Guam, the Virgin Islands, American Samoa, Northern Marianas, and the Trust Territory of the Pacific Islands shall be equal to the same percentage of the funds allocated to Guam, the Virgin Islands, American Samoa, Northern Marianas, and the Trust Territory of the Pacific Islands under the previous year's summer program.

"SECRETARIAL AUTHORITY

"SEC. 483. Programs under this part shall meet such regulations, standards, and guidelines as the Secretary shall establish.

"TITLE V—NATIONAL COMMISSION FOR EMPLOYMENT AND TRAINING POLICY

"STATEMENT OF PURPOSE

"SEC. 501. The purpose of this title is to establish a National Commission for Employment and Training Policy which will have the responsibility for examining broad issues of development, coordination and administration of employment and training programs, and for advising the Secretary on national employment and training issues.

"COMMISSION ESTABLISHED

"SEC. 502. (a) There is established a National Commission for Employment and Training Policy (formerly known as the National Commission for Manpower Policy and hereinafter referred to as the 'Commission') which shall consist of twenty-seven members selected as follows—

"(1) The Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Defense, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Energy, the Secretary of Transportation, the Secretary of Housing and Urban Development, the Administrator of Veterans Affairs, the Chairman of the Equal Employment Opportunity Commission, and the Director of the Community Services Administration; and

"(2) A representative of the National Advisory Council on Vocational Education created pursuant to section 162 of the Vocational Education Act of 1963; and

"(3) Fourteen members broadly representative of labor, industry, commerce, education (including vocational and technical education), veterans, State and local elected officials (including two Governors, two county officals, and two city officials who are currently serving in a prime sponsor area), community-based organizations, persons served by employment and training programs and of the general public appointed by the President for terms of two years beginning at the start of a fiscal year, except that (A) appointments to fill the unexpired portion of any term shall be for such portion only and (B) the terms, for which the first members are appointed, shall begin October 1, 1978, of which seven terms shall be for one year, and seven for two years.

"(b) The Commission shall meet not fewer than three times a year at the call of the Chairperson who shall be selected by the President and who shall be one of the 14 appointed public members.

"(c) The Chairperson (with the concurrence of the Commission) shall appoint a Director, who shall be chief executive officer of the Commission and shall perform such duties as are prescribed by the Chairperson. The Director may appoint, with the concurrence of the Chairperson and the Secretary of Labor, such clerical staff as are necessary. The Commission may utilize such staff from the Department of Labor, the Department of Health, Education, and Welfare, and such other Federal agencies as may be available to assist the Commission in carrying out its responsibilities.

"(d) The Commission may accept in the name of the Department of Labor and employ or dispose of gifts or bequests, to carry out its responsibilities under this title.

"(e) Members of the Commission who are not officers or employees of the Federal Government shall be paid compensation at a rate of up to the per diem equivalent to the rate for GS–18 when engaged in the work of the Commission, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

"FUNCTIONS OF THE COMMISSION

"SEC. 503. The Commission shall—

"(1) identify the employment and training goals and needs of the Nation and assess the extent to which employment and training, vocational education, institutional training, vocational rehabilitation, economic opportunity, and other programs under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

"(2) conduct such studies, hearings, research, or other activities as it deems necessary to enable it to formulate appropriate recommendations;

"(3) examine and evaluate the effectiveness of any federally assisted employment and training programs (including those assisted under this Act), with particular reference to the contributions of such programs to the achievement of objectives sought by the recommendations under clause (2) of this section;

"(4) examine and evaluate major Federal programs which are intended to (or potentially could) contribute to achieving major objectives of existing employment and training and related legislation or those set forth in the recommendations of the Commission and particularly the programs which are designed (or could be designed) to develop information and knowledge about employment and training problems through research and demonstration projects or to train personnel in fields (such as occupational counseling, guidance, and placement) which are vital to the success of employment and training programs;

"(5)(A) identify, after consultation with the National Advisory Council on Vocational Education, the employment and training and vocational education needs of the Nation and assess the extent to which employment training, vocational education, vocational rehabilitation, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (B) comment, at least once annually, on the reports of the National Advisory Council on Vocational Education which comments shall be included in one of the reports submitted by the National Commission pursuant to this title and in one of the reports submitted by the National Advisory Council on Vocational Education pursuant to section 162 of the Vocational Education Act of 1963; and

"(6) evaluate and continue to study and make recommendations to the Congress on the impact of energy shortages and new energy developments upon employment and training needs and include these findings and recommendations with respect thereto in the reports required by section 504.

"REPORTS

"SEC. 504. The Commission shall make at least annually a support of its findings and recommendations to the President and the Congress. The Commission may make such interim reports or recommendations to the Congress, the President, Secretary of Labor, or to the heads of other Federal departments and agencies, and in such form, as it may deem desirable.

"TITLE VI—PUBLIC SERVICE EMPLOYMENT PROGRAM

"STATEMENT OF PURPOSE

"SEC. 601. It is the purpose of this title to provide for temporary employment in public service employment during periods of high unemployment. It is the intent of Congress that such employment be provided during periods when the national rate of unemployment is in excess of 4 per centum and that the number of jobs funded shall be sufficient to provide jobs for 20 per centum of the unemployed in excess of 4 per centum of the labor force.

"REPORT ON APPROPRIATIONS

"SEC. 602. (a) On or before March 1 of each year, the President shall report to the Congress the amount that would need to be appropriated for the following fiscal year in order to achieve the level of public service employment specified in section 601. Such report shall contain the President's estimate of the unemployment rate for the following fiscal year, the number of unemployed that he estimates in excess of 4 per centum of the labor force, and the average man-year cost of each public service employment opportunity.

"(b) The President shall submit supplemental reports every three months thereafter containing any necessary revisions in the report required under subsection (a) due to changes in his estimates of unemploy-

ment or the cost of providing public service jobs under this title.

"(c) The Secretary shall, as soon as practicable after submission of the report required under subsection (a), inform each prime sponsor of its estimated allocation on the basis of the appropriation proposed in such report. Each prime sponsor's annual plan for using funds provided under this title shall contain provisions for an orderly transition from the number of jobs funded for the current year to the number of jobs which would be funded under such proposed appropriation.

"FINANCIAL ASSISTANCE

"SEC. 603. (a) In order to be eligible to receive financial assistance under this title for any fiscal year, a prime sponsor shall submit to the Secretary an annual plan pursuant to section 103.

"(b) Not more than 15 per centum of the funds allocated in accordance with the provisions of this title may be used for administrative and other allowable costs (such as supplies, materials, and equipment) incurred by the prime sponsor, program agents, project applicants or subgrants or contractors, in accordance with such regulations as the Secretary may prescribe.

"(c) In filling teaching positions in elementary and secondary schools with financial assistance under this title, each prime sponsor shall give special consideration to unemployed persons with previous teaching experience who are certified by the State in which that prime sponsor is located and who are otherwise eligible under the provisions of this title.

"ALLOCATION OF FUNDS

"SEC. 604. (a)(1) The Secretary shall reserve an amount equal to not less than 2 per centum of the amounts made available pursuant to section 602 for any fiscal year to enable Native American entities which are eligible entities under section 606 (a)(2) to carry out public service employment programs. Such funds shall be allocated by the Secretary in accordance with paragraph (3).

"(2) Not less than 90 per centum of the amounts made available pursuant to section 602 for any fiscal year shall be allocated among eligible prime sponsors by the Secretary in accordance with the provisions of paragraph (3).

"(3)(A) Fifty per centum of the amount allocated under this subsection shall be allocated among eligible prime sponsors in proportion to the relative number of unemployed persons who reside within the jurisdiction of each such prime sponsor as compared to the number of unemployed persons who reside in all the States.

"(B) Twenty-five per centum of the amount allocated under this subsection shall be allocated among eligible prime sponsors in accordance with the number of unemployed persons residing in areas of substantial unemployment within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all areas of substantial unemployment.

"(C) Twenty-five per centum of the amount allocated under this subsection shall be allocated among eligible prime sponsors on the basis of the relative excess number of unemployed persons who reside within the jurisdiction of the eligible prime sponsor as compared to the total excess number of unemployed persons who reside within the jurisdiction of all eligible prime sponsors. For purposes of this subparagraph, the term 'excess number' means (i) the number of unemployed persons, residing in the jurisdiction of the eligible prime sponsor, in excess of 4½ per centum of the labor force residing in such jurisdiction or (ii) in the case of an eligible prime sponsor which is a State, the greater of the number determined under clause (i) or the number of unemployed persons in excess of 4½ per centum of the labor force in areas of substantial unemployment located in the jurisdiction of such eligible prime sponsor.

"(b)(1) Eighty-five per centum of the remainder of the amount made available pursuant to section 602 shall be available to the Secretary for financial assistance to prime sponsors as the Secretary deems appropriate, taking into account changes in rates of unemployment.

"(2) Whenever the Secretary allocates such funds through a formula, the Secretary shall, not later than thirty days prior to such allocation, publish the formula in the Federal Register for comment along with the rationale for the formula, and the proposed amount to be distributed to each prime sponsor. After consideration of comments received under the preceding sentence, the Secretary shall publish final allocations.

"(c) Not more than 15 per centum of the remainder shall be allocated among the prime sponsors within the jurisdiction of those standard metropolitan statistical areas and central cities for which current population surveys were used to determine annual average rates for unemployment prior to, but not after, January 1, 1978, in proportion to the extent to which such prime sponsors allocations under subsection (a) are reduced as a result of termination of the use of such surveys. This provision shall be in effect until such time as the National Commission on Employment and Unemployment Statistics makes its report to Congress.

"EXPENDITURE OF FUNDS

"SEC. 605. (a) Fifty per centum of the funds available to any prime sponsor under this title may be used only for employment in projects (carried out by project applicants) of a limited duration, not exceeding two years, established by the prime sponsor for each project. Employment that is not in such projects must be at entry level.

"(b) Each project applicant shall submit a project application to the appropriate program agent or prime sponsor. Such application shall contain such information as required by the Secretary's regulations.

"PRIME SPONSORS AND PROGRAM AGENTS

"SEC. 606. (a) The Secretary shall provide financial assistance under this title only to—

"(1) prime sponsors designated under section 101(c), and

"(2) Native American entities described in section 302(c)(1).

"(b)(1) Whenever a unit of general local government or combination of such units having a population of fifty thousand or more (but less than that necessary to qualify as a prime sponsor under section 101) is within a prime sponsor's area, the prime sponsor shall if such unit or units so desire, subgrant to such unit or units of general local government the functions of program agent with respect to the funds allocated to such prime sponsor on account of the area served by the program agent.

"(2) For purposes of this subsection, the functions of program agent include the administrative responsibility for developing, funding, overseeing, and monitoring programs within the area, but such functions shall be consistent with the annual plan, which shall be developed by the prime sponsor in cooperation with the program agent.

"(3) Whenever two or more units of general local government qualify as program agents with respect to the same area qualifying for assistance, the provisions of section 101(b)(2) shall be applicable.

"ELIGIBILITY

"SEC. 124. All laborers and mechanics employed in a position supported under this title shall be a person who has been unemployed for at least eight weeks and who is not a member of a household which has a current gross family income, adjusted to an annualized basis (exclusive of unemployment compensation and all Federal, State, and local income-tested or needs-tested public payments) at a rate exceeding 100 per centum of the lower living standard income level. For purposes of this section, family income shall be determined on the basis of the income over the three-month period prior to application for participation.

"WAGE SUPPLEMENTATION

"SEC. 608. The wages of public service employees under this title may be supplemented by a prime sponsor from sources other than this Act subject to the following conditions:

"(1) the total amount of funds which may be used to provide such supplemented wages may not exceed a sum equal to 10 per centum of such prime sponsor's allocation under this title;

"(2) the number of such employees whose wages are supplemented shall not exceed—

"(A) 25 per centum to the total number of employees under this title in the fiscal year ending September 30, 1979;

"(B) 20 per centum of such total in the fiscal year ending September 30, 1980;

"(C) 15 per centum of such total in the fiscal years ending September 30, 1981 and September 30, 1982; and

"(3) no employee whose wage is supplemented under the authority of this section shall be paid at a rate in excess of the permissible maximum under section 121(c)(1)(B), except that such rate shall be adjusted upward, not to exceed 20 per centum, by the ratio that the annual average wages within the area served by the prime sponsor exceed the average of the total of such wages nationally in accordance with a wage adjustment index to be published annually by the Secretary.

"UTILIZATION OF FUNDS

"SEC. 609. Funds available under this title to a prime sponsor may be used, with respect to individuals qualifying for assistance under this title, for programs authorized under title II (other than public service employment), part A of title III, title IV, and title VII.

"TITLE VII—PRIVATE SECTOR OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

"STATEMENT OF PURPOSE

"SEC. 701. It is the purpose of this title to demonstrate the effectiveness of a variety of approaches to increase the involvement of the business community, including small business and minority business enterprises, in employment and training activities under this Act, and to increase private sector employment opportunities for economically disadvantaged persons.

"FINANCIAL ASSISTANCE

"SEC. 702. (a) The Secretary shall provide financial assistance to each prime sponsor designated under section 101(c) which includes satisfactory provisions in its annual plan for title II activities for carrying out the purposes of this title. Funds made available for carrying out this title shall be allocated by the Secretary on an equitable basis among such prime sponsors, taking into account the factors used in allocating funds under title II.

"(b) The Secretary shall establish appropriate procedures to assure that the Department of Labor will review at the national level any proposal to make payments to private for-profit employers for any activities which are not covered by regulations under this Act.

"PRIVATE INDUSTRY COUNCILS

"SEC. 703. (a) Any prime sponsor receiving financial assistance under this title shall establish a private industry council. Such council shall consist of representatives from

industry and the business community (including small business and minority business enterprises), organized labor, and educational institutions and may include representation from community-based organizations which have demonstrated their effectiveness in working with the private sector. In no event shall representatives of industry and business have less than a majority on the council, at least half of such industry and business representatives shall be representatives of small business. Such council may consist of an existing or a newly formed organization and may be established to cover two or more prime sponsor areas pursuant to arrangements between the prime sponsors for such areas and the council. For purposes of this subsection, the term 'small business' means any private, for profit enterprise employing five hundred or fewer employees.

"(b) Such council shall participate with the prime sponsor in the development and implementation of programs under this title. In carrying out its responsibilities, such council shall utilize, to the extent appropriate, community-based organizations, labor organizations, educational agencies and institutions, and economic development programs.

"(c) The Secretary shall not, by regulation or otherwise, require that any prime sponsor, in establishing such council, give a presumptive role to any particular organization.

"PRIVATE SECTOR PROGRAM

"SEC. 704. Each prime sponsor desiring to receive financial assistance under this title, as part of its plan for title II activities, shall describe its proposed private sector initiatives under this title and the integration of such initiatives with other training and placement activities under this Act. The description shall include an analysis of private sector job opportunities, including estimates by occupation, industry, and location utilizing information provided by the private industry council.

"PROGRAM ACTIVITIES

"SEC. 705. Prime sponsors receiving financial assistance under this title shall, consistent with section 702(b), carry out private sector initiatives to demonstrate the purposes of his title. Such activities shall augment private sector-related activities under title II, including arrangements for on-the-job training with private employers, and may include—

"(1) coordinating programs of jobs and training and education enabling individuals to work for a private employer while attending an education or training program;

"(2) developing a small business intern program to provide a practical training enabling youths and other individuals to work in small business firms to acquire first-hand knowledge and management experience about small business;

"(3) developing relationships between employment and training programs, educational institutions, and the private sector;

"(4) developing useful methods for collecting infromation about Federal Government procurement contracts with private employers, new and planned publicly supported projects such as public works, economic development and community development programs, transportation revitalization, alternative energy technology development, demonstration, and utilization projects, energy conservation projects, and rehabilitation of low-income housing as part of a community revitalization or stabilization effort, which provide work through private sector contractors;

"(5) developing and marketing model contracts designated to reduce the administrative burden on the employer and model contracts to meet the needs of specific occupations and industries;

"(6) coordinating programs under this title with other job development, placement, and employment and training activities carried out by public and private agencies;

"(7) providing on-the-job training subsidies on a declining ratio to wages over the period of training;

"(8) providing followup services with employees placed in private employment and employers who hire recipients of services under this Act;

"(9) encouraging employers to develop job skill requirement forecasts and to coordinate such forecasts with prime sponsors;

"(10) using direct contracts for training and employment programs with private for profit and private nonprofit organizations;

"(11) developing apprenticeship or comparable high-skill training programs for workers regardless of age in occupations where such programs do not exist presently in the area;

"(12) increasing opportunities for upgrading from entry level jobs by providing counseling and other services to employees and employers beyond initial training periods;

"(13) providing technical assistance to private employers to reduce the administrative burden of employment and training programs; and

"(14) disseminating information to private employers so that they may more fully utilize programs under this Act.

"REPORT

"SEC. 706. (a) The Secretary shall provide to the Congress by March 1, 1980, an evaluation of the activities conducted under this title accompanied by recommendations for legislation.

"(b) The Secretary shall disseminate among prime sponsors information concerning successful programs under this title.

"TITLE VIII—YOUNG ADULT CONSERVATION CORPS

"STATEMENT OF PURPOSE

"SEC. 801. It is the purpose of this title to establish a Young Adult Conservation Corps to provide employment and other benefits to youths who would not otherwise be currently productively employed, through a period of service during which they engage in useful conservation work and assist in completing other projects of a public nature on Federal and non-Federal public lands and waters.

"ESTABLISHMENT OF YOUNG ADULT CONSERVATION CORPS

"SEC. 802. To carry out the purposes of this title, there is hereby established a Young Adult Conservation Corps to carry out projects on Federal or non-Federal public lands or waters. The Secretary of Labor shall administer this title through interagency agreements with the Secretaries of the Interior and Agriculture. Pursuant to such interagency agreements, the Secretaries of the Interior and Agriculture shall have responsibility for the management of each Corps center, including determination of Corps members' work assignments, selection, training, discipline, and termination, and shall be responsible for an effective program at each center.

"SELECTION OF ENROLLEES

"SEC. 803. (a) Enrollees of the Corps shall be selected by the Secretaries of the Interior and Agriculture only from candidates referred by the Secretary of Labor.

"(b)(1) Membership in the Corps shall be limited to individuals who, at the time of enrollment—

"(A) are unemployed;

"(B) are between the ages 16 to 23 inclusive;

"(C) are citizens or lawfully permanent residents of the United States or lawfully admitted refugees or parolees; and

"(D) are capable, as determined by the Secretary of Labor, of carrying out the work of the Corps for the estimated duration of each such individual's enrollment.

"(2) Individuals who, at the time of enrollment, have attained age 16 but not attained age 19 and who have left school shall not be admitted to membership in the Corps unless they give adequate assurance, under criteria established by the Secretary of Labor, that they did not leave school for the purpose of enrolling in the Corps and obtaining employment under this title.

"(c) The Secretary of Labor shall make arrangements for obtaining referral of candidates for the Corps from the public employment service, prime sponsors designated under section 101 of this Act, sponsors of Native American programs designated under section 302 of this Act, sponsors of migrant and seasonal farmworkers programs under section 303 of this Act, the Secretaries of the Interior and Agriculture, and such other agencies and organizations as the Secretary may deem appropriate. The Secretary of Labor shall undertake to assure that an equitable proportion of candidates shall be referred from each State.

"(d) In referring candidates from each State in accordance with subsection (c), preference shall be given to youths residing in rural and urban areas within each such State having substantial unemployment including areas of substantial unemployment determined by the Secretary of Labor under section 125(2)(A) of this Act to have rates of unemployment equal to or in excess of 6.5 per centum.

"(e)(1) No individual may be enrolled in the Corps for a total period of more than twelve months, with such maximum period consisting of either one continuous twelve month period, or three or less periods which total twelve months, except that an individual who attains the maximum permissible enrollment age may continue in the Corps up to the twelve-month limit provided in this subsection only as long as the individual's enrollment is continuous after having attained the maximum age.

"(2) No individual shall be enrolled in the Corps if solely for purposes of membership for the normal period between school terms.

"ACTIVITIES OF THE CORPS

"SEC. 804. (a) Consistent with each interagency agreement, the Secretary of the Interior or Agriculture, as appropriate, in consultation with the Secretary of Labor shall determine the location of each residential and nonresidential Corps center. The Corps shall perform work projects in such fields as—

"(1) tree nursery operations, planting, pruning, thinning, and other silviculture measures;

"(2) wildlife habitat improvements and preservation;

"(3) range management improvements;

"(4) recreation development, rehabilitation, and maintenance;

"(5) fish habitat and culture measures;

"(6) forest insect and disease prevention and control;

"(7) road and trail maintenance and improvements;

"(8) general sanitation, cleanup, and maintenance;

"(9) erosion control and flood damage;

"(10) drought damage measures;

"(11) other natural disaster damage measures; and

"(12) integrated pest management, including activities to provide the producers of agricultural commodities with information about the appropriate amount of chemical pesticides which, when used in conjunction with nonchemical methods of pest control (A) will provide protection against a wide variety of pests, (B) will preserve to the greatest extent possible the quality of the environment, and (C) will be cost effective.

"(b)(1) The Secretary of the Interior and the Secretary of Agriculture shall undertake to assure that projects on which work is performed under this title are consistent with the Forest and Rangeland Renewal Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and such other standards relating to such projects as each Secretary shall prescribe consistent with other provisions of Federal law.

"(2) The Secretary of the Interior and the Secretary of Agriculture shall place individuals employed as Corps members into jobs which will diminish the backlog of relatively labor intensive projects which would otherwise be carried out if adequate funding were made available.

"(c) To the maximum extent practicable, projects shall—

"(1) be labor intensive;

"(2) be projects for which work plans could be readily developed;

"(3) be able to be initiated promptly;

"(4) be productive;

"(5) be likely to have a lasting impact both as to the work performed and the benefit to the youths participating;

"(6) provide work experience to participants in skill areas required for the projects;

"(7) if a residential program, be located, to the maximum extent consistent with the objectives of this title in areas where existing residential facilities for the Corps members are available; and

"(8) be similar to activities of persons employed in seasonal and part-time employment in agencies such as the National Park Service, United States Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Bureau of Outdoor Recreation, and Soil Conservation Service.

"(d)(1) The Secretary of the Interior and the Secretary of Agriculture, pursuant to agreements with the Secretary of Labor, may provide for such transportation, lodging, subsistence, medical treatment, and other services, suplies, equipment, and facilities as they may deem appropriate to carry out the purposes of this title. To minimize transportation costs. Corps members shall be assigned to projects as near to their homes as practicable.

"(2) Whenever economically feasible, existing but unoccupied or underutilized Federal, State, and local government facilities and equipment of all types shall, where appropriate, be utilized for the purposes of the Corps centers with the approval of the Federal agency, State, or local government involved.

"(e) The Secretary of Labor, in carrying out the purpose of this title shall work with the Department of Health, Education, and Welfare to make suitable arrangements whereby academic credit may be awarded by educational institutions and agencies for competencies derived from work experience obtained through programs established under this title.

"CONDITION APPLICABLE TO CORPS ENROLLEES

"SEC. 805. (a) Except as otherwise specifically provided in this subsection, Corps members shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

"(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), Corps members shall be deemed employees of the United States and any service performed by a person as a Corps member shall be deemed to be performed in the employ of the United States.

"(2) For purposes of subchapter 1 of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and provisions of that subchapter shall apply, except that the term 'performance of duty' shall not include any act of a Corps member while absent from the member's assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction and supervision of the Secretary.

"(3) For purposes of chapter 171 of title 18 of the United States Code, relating to tort claims procedure, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee of the Government' as defined in section 2671 of title 28, United States Code, and provisions of that chapter shall apply.

"(4) For purposes of section 5911 of title 5 of the United States Code, relating to allowances for quarters, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in that section, and provisions of that section shall apply.

"(b) The Secretary of Labor shall, in consultation with the Secretaries of the Interior and Agriculture, establish standards for—

"(1) rates of pay which shall be at least at the wage required by section 6(a)(1) of the Fair Labor Standards Act of 1938;

"(2) reasonable hours and conditions of employment; and

"(3) safe and healthful working and living conditions.

"STATE AND LOCAL PROGRAMS

"SEC. 806. (a) Consistent with interagency agreements with the Secretary of Labor, the Secretaries of the Interior and Agriculture may make grants or enter into other agreements—

"(1) after consultation with the Governor, with any State agency or institution;

"(2) after consultation with appropriate State and local officials, with (A) any unit of general local government, or (B)(i) any public agency or organization, specifically including the Federal Extension Service and the cooperative extension service of any State with respect to pro'ects described in section 804(a)(12), or (ii) any private nonprofit agency or organization which has been in existence for at least two years;

for the conduct under this title of any State or local component of the Corps or of any pro'ect on non-Federal lands or waters or any project involving work on both non-Federal and Federal lands and waters.

"(b) No grant or other agreement may be entered into under this section unless an application is submitted to the Secretary of the Interior or the Secretary of Agriculture, as the case may be, at such times as each such Secretary may prescribe. Each grant application shall contain assurances that individuals employed under the project for which the application is submitted—

"(1) meet the qualifications set forth in section 803(b);

"(2) shall be employed in accordance with section 805(b); and

"(3) shall be employed in activities that—

"(A) will result in an increase in employment opportunities over those opportunities which would otherwise be available,

"(B) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employment benefits),

"(C) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed,

"(D) will not substitute jobs assisted under this title for existing federally assisted jobs, and

"(E) will not result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

"(c) Thirty percent of the sums appropriated to carry out this title for any fiscal year shall be made available for grants under this section for such fiscal year and snall be made on the basis of total youth population within each State.

"SECRETARIAL REPORTS

"SEC. 807. The Secretary of Labor, the Secretary of the Interior, and the Secretary of Agriculture shall jointly prepare and submit to the President and to the Congress a report detailing the activities carried out under this title for each fiscal year. Such report shall be submitted not later than February 1 of each year following the date of enactment of this Act. The Secretaries shall include in such report such recommendations as they deem appropriate.

"ANTIDISCRIMINATION

"SEC. 808. The Corps shall be open to youth from all parts of the country of both sexes and youth of all social, economic, and racial classifications.

"TRANSFER OF FUNDS

"SEC. 809. Funds necessary to carry out their responsibilities under this title shall be made available to the Secretaries of the Interior and Agriculture in accord with interagency agreements between the Secretary of Labor and the Secretaries of the Interior and Agriculture.".

H.R. 12611

By Mr. RONCALIO:

—Page 138, after line 18, insert the following new section:

LABOR DISPUTES

SEC. 33. Within 10 days after the date of enactment of this section, the President, pursuant to section 10 of the Railway Labor Act, shall create a board to investigate and report on the dispute between Wein Air Alaska, Incorporated, and the Air Line Pilots Association. Such board shall report its findings to the President within thirty days from the date of its creation. After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

EXTENSIONS OF REMARKS

A TRIBUTE TO DR. FREDERICK SHORE, EDUCATOR, ADMINISTRATOR

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. LENT. Mr. Speaker, on September 20, 1978, friends and associates of Dr. Frederick Shore will be paying a well-deserved tribute to the accomplishments of this pioneering educator. Dr. Shore is retiring from the position he has held for the past 9 years as superintendent of the Baldwin public schools, located in my Fourth Congressional District.

I wish to offer my heartiest congratulations to Dr. Shore and to commend him, not only for his outstanding record as an educator and administrator, and as an expert on the financing of education in New York State, but also for the devotion and patient understanding he has given to educating the children for whom he has been responsible. His contributions to the Baldwin community, to our State, and, indeed, to our Nation, deserve the highest accolades.

During his 13-year career in the Baldwin public schools, Dr. Shore has worked tirelessly for better education and improved educational opportunities. He has been in the forefront of those who have sought to bring the handicapped child into the mainstream of the community. Guided by his conviction that handicapped children should be taught at the level of their abilities and performance, rather than according to some arbitrary medical classification, Dr. Shore pioneered an excellent special education program for the handicapped in the Baldwin schools.

Another example of Dr. Shore's innovative leadership is demonstrated in his determined effort to develop and implement a school district policy on child abuse. Baldwin became the first school district in New York State to adopt such a policy, and it has been used as a model elsewhere in our Nation.

Dr. Shore has done much to encourage the arts and sciences in the Baldwin schools. He was responsible for initiating the fine and performing arts program in Baldwin, and was instrumental in strengthening the science program, with a resulting increase in the number of Baldwin students winning signifcant achievements in science competitions.

Throughout his career in education, Dr. Shore has worked closely with local community groups, particularly the Baldwin Parent Teachers Association units and the Baldwin Educational Assembly toward the common goal of better education for the children of the community.

Dr. Shore's abilities as an educator and administrator have been applied to a broad range of professional activities. He is a life member of the New York State Congress of PTA's, and is currently chairman of the New York State PTA Committee on School Governance and Finance, and a member of the State Board of Managers.

Dr. Shore is a member of the New York State Educational Conference Board, and has served as the New York representative to the Organization of Federally Impacted School Districts in the United States, of Washington, D.C.

Dr. Shore has served as legislation chairman of the New York State Association of School Business Officials, and as a member of the Special Committee of the New York State Commissioner of Education on Federal Aid to Education. For 2 years he was the chief school administrator on the advisory council for the New York Council of Administrators of Music Education.

Dr. Shore's accomplishments have been recognized by the New York State Association of School Business Officials which presented him with its Meritorious Service Award for 1969, and by the Nassau Music Educators' Association which named him "Administrator of the Year" in 1974.

Such have been the landmarks in the outstanding career of Dr. Frederick Shore. Little wonder that his friends and associates have joined to pay him tribute on September 20. I most certainly want to join them in acclaiming Dr. Shore's accomplishment-filled career. With those friends and associates, I also want to join in the wish that Dr. Shore's retirement years will be blessed with good health; the enjoyment of the richness of friendships; the warmth of memories; the deep satisfaction of knowing his has been an outstanding career; and the stimulation of new challenges which may lie in the future.●

TOCKS ISLAND DAM PROJECT

HON. ROBERT W. EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. EDGAR. Mr. Speaker, I recently received a letter from Carmen F. Guarino, water commissioner for the city of Philadelphia, expressing his concern over remarks I made on the House floor on July 10 regarding his position on the Tocks Island Dam project. In fairness to Commissioner Guarino, I am inserting below the text of his letter, as well as the complete testimony he presented earlier this year at a public hearing in Port Jervis, N.Y., on the question of granting the middle section of the Delaware River wilderness status.

The letter follows:

WATER DEPARTMENT,
Philadelphia, Pa., August 11, 1978.

Congressman ROBERT EDGAR,
Washington, D.C.

DEAR CONGRESSMAN EDGAR: I regret that need to write a letter of this type. However, considering my appointed obligation to protect the water rights and interests of the City of Philadelphia and her citizens and your recent statements on House Bill HR 12536 National Parks Omnibus Bill, which was documented in the July 10, 1978 Congressional Record of the House on Page H6344 . . . "Mr. Chairman, I would like to associate myself with the remarks of the gentleman in the well, and I would like to compliment the gentleman for very adequately answering several of the points that were made, in terms of salinity, flood control, and water supply".

"I would like to just share with the gentleman a comment that I discovered was made by Carmen F. Guarino, who is the water commissioner for the city of Philadelphia. Back in 1973, in July, he made the following comment:"

"It can readily be shown that no federally funded reservoirs are necessary on the Delaware River to insure adequacy of supply to the City of Philadelphia because the annual average natural stream flow of the Delaware at Trenton, New Jersey, with no reservoirs, Federal or otherwise . . ."

"And I think that this kind of comment from the water commissioner of the city of Philadelphia demonstrates it is not a question of water supply, it is not a question of flood control, it is not even a question of flat water recreation. It is a question of how best to utilize the water, the land, the area."

I would have appreciated if you had conferred with me about my comment, and in particular learned about my interpretation of what I meant by this comment. To begin, this comment was contained in the record at the public hearing of the Delaware River Basin Commission conducted February 28, 1973 (not July) on "Proposed Regulations Relating to Water Supply Charges". At this hearing, I had testified that the City of Philadelphia has legally binding contracts with the Commonwealth of Penna. for the withdrawal of 423 MGD from the Delaware River issued under permit dated December 14, 1955 by the Water and Power Resources Board of the Department of Forests and Waters. I further pointed out that this permit was issued prior to the Delaware River Basin Compact and that the City in good faith expended considerable resources in accordance with the conditions of this permit and had satisfied all conditions of such permit, to wit, the permit remains in force today.

The intent of the statement was that our allocation of 423 MGD on the Delaware River was always available at the head of tide at Trenton, N.J., even during conditions of extreme drought as had been experienced in the 1960's and without the systems of dams that had been constructed on the Delaware by New York City and others. The minimum low flow month at Trenton has been calculated by the USGS to be 720 MGD (9/65). So you see as far as water charges were concerned, the City of Philadelphia could avail itself of its total allocation without any systems of dams.

The hearing was not on the need for Tocks Island Reservoir and the pros and cons surrounding this matter. It was simply a hearing on water supply charges. My hearing statement did not reflect the need for a reservoir and low flow augmentation for protection of water quality because the hearing subject related to the pricing of water to meet quantity needs. Therefore, my statement should in no way be interpreted to mean that I see no need for a reservoir and flow regulation for the protection of water quality.

However, my statement taken out of context, could be misconstrued by those persons ignorant of my position on Tocks Island,

that I believe there is no need for Tocks Island. I would have been pleased if you had the time to follow up your information source and obtain the truth from me. There is ample documentation and testimony before Congress and the Delaware River Basin Commission that the City of Philadelphia has been for Tocks Island for a long period of time since its inception and adoption by Congress in 1962.

Your inadvertent misconstruing of my statement does harm to the water rights of Pennsylvania, including Delaware County and the City of Philadelphia, as well as Southwestern New Jersey.

I am forwarding herewith my statement which very definitely shows my posture since my appointment as Water Commissioner during January, 1972. The City of Philadelphia's position on Tocks Island has been upheld continuously by my predecessor, Water Commissioner Samuel S. Baxter, since 1962. I would like to point out for your consideration that in contemplation of Tocks Island Reservoir, the City of Philadelphia made the following actions and expenditures.

(1) In contemplation of this reservoir, we abandoned our plan for upstream impoundment and diversion of main stream waters to metropolitan Philadelphia. In doing so, the Water Department spent some 41 million dollars in rebuilding and upgrading its Torresdale Water Treatment Plant which intakes on the Delaware River.

(2) Since mandated water pollution allocations have been promulgated on a legally minimum assured sustained flow of 3,000 cfs at Trenton which could only be provided by Tocks Island or its equivalent, the City of Philadelphia has committed 621 million dollars to meet these wasteload allocations, so that mandated stream water quality standards can be achieved. Our mathematical model studies have indicated absent Tocks Island the achievement of stream water quality standards to be an impossibility without an inflow of 3,000 cfs at Trenton. Consequently, industry and municipal wastewater treatment plants throughout the entire estuary, including Delaware County, would be liable for additional pollution abatement expense.

(3) Absent Tocks Island, the City was forced to purchase laboratory boats equipped with instruments at a cost of about $160,000 and has spent over four million dollars to date for a monitoring program on the Delaware River.

(4) I presume that you are aware of water pollution abatement efforts within Delaware County. You must therefore know that the City of Philadelphia has committed itself to the acceptance of sewage from the areas served by DELCORA. As such the maintenance of 3,000 cfs flow at Trenton should be of real interest to you and your constituents.

(5) Absent Tocks Island, the City of Philadelphia must pay more for its municipal energy supply as well as all of the residents of Delaware County. One thing the dam would provide is environmentally clean electricity without the destructive use of nonreplenishable natural resources.

You mention fiat recreation and I would like to give you my viewpoint which is that Tocks Island would be the Lake Tahoe of the East and with it being under control by the Federal Government, we would have water based recreation at affordable prices. I think that this is particularly important in view that the seashore resorts are being converted primarily to gambling establishments with subsequent undesirable elements not conducive to a healthy family atmosphere.

Since you have been around for some time, I believe you should be aware that the water supplies of both Philadelphia and Camden can be imperiled by a salt water incursion which would occur during a drought similar to that of the 1960's. Tocks Island is needed for this purpose, to protect the health of the citizens of Philadelphia and those other people that we supply. I am sure that you are aware that the Chester Water Authority is now finding that it is short in supply for its service area and future demands to be placed on it. This Authority has about reached its limit to import water from other basins.

In view of this situation, the Philadelphia Water Department had been approached by the now deceased Mr. Victor A. Appleyard, Director of the Chester Water Authority, as to the possibility of the City of Philadelphia to supply his service area with water from our plants. This is still a viable possibility which the Water Department is willing to enter into for the benefit of Chester and Delaware County. But again, the protection of this supply is based upon Tocks Island or its equivalent.

I am surprised that those providing you with my comment during the hearing on Water Charges did not also provide you with the voluminous testimony and other statements that I had made regarding the need for Tocks Island. In closing, I am forwarding herewith the latest testimony that I have presented on Tocks Island, which is the testimony of Carmen F. Guarino at the public hearing conducted on July 13, 1978 at Port Jervis, New York by the Delaware River Basin Commission.

I believe with all of this you should be assured of what the City of Philadelphia's position is in regards to Tocks Island and we would not like to have our position misrepresented or misconstrued in any fashion. I know you to be a responsible and honest person and therefore respectfully would like to see that the record be corrected for the statements that you made on July 10th in regards to my comment.

In your service,

CARMEN F. GUARINO,
Water Commissioner.

TESTIMONY OF CARMEN F. GUARINO—CITY OF PHILADELPHIA, PA.

My name is Carmen F. Guarino and as Commissioner and Chief Engineer of the Water Department of the City of Philadelphia, I am authorized by the City to make the following statements concerning the subject matter of the public hearing which would include comments on the Upper Delaware River and Middle Delaware River.

The City is interested in seeing that part of our national heritage is preserved in its pristine form for posterity and this is as it should be. In particular, the City would support legislation that would preserve the Upper Delaware River between Hancock and Port Jervis as a "wild and scenic" river. Two Senate Bills have this as their primary objective, Bills S–2653 and S–2611. We would favor Bill S–2611 over S–2653 because we feel that S–2611 more properly addresses this subject and has been more critically examined by the public and other interested parties. The City would also support Section 705 of House Bill HR–12536 National Parks Omnibus Bill.

The City is categorically against any legislation or action which would as a consequence of its adoption foreclose forever or impede the development of the Tocks Island Reservoir Project (TIRP). Therefore, we are vehemently against any bill concerning the Middle Delaware River which would have as its purpose to convert the stretch into a "wild and scenic" river. In this regard, the City is definitely against Senate Bill S–2270 and Sections 316 and 706 of House Bill HR–12536 National Parks Omnibus Bill. The Middle Delaware River should be preserved for an impoundment which would assure water supply to the states of Pennsylvania, New Jersey and New York.

Those that have made a study of the water resources of the Delaware River and the service area know that we are critically short of water during times of drought. Today this shortage of water is being emphasized in the reports emanating from the Commonwealth of Pennsylvania in the form of its Draft Report on State Water Supply and the Draft 208 Water Quantity Reports being produced by the Delaware Valley Regional Planning Commission. The situation for water during drought periods has not changed, but has, in effect, been aggravated. The reports show on the Pennsylvania side of the Basin, the ground water supplies are over-pumped to the extent that they are not replenished during an average precipitation year.

During the Q7–10 drought which occurs in the frequency of 7 to 10 years, considerably larger areas are over-pumped. The prognosis is that 99 out of 109 water suppliers will be short water from local supplies such as wells and streams by the year 2000.

The situation on the New Jersey side of the Basin shows that Burlington, Gloucester and Camden Counties are in a precarious position. The Magothy-Raritan Aquifer from which they draw their supplies has been drawn down in some places 80 to 100 feet below sea level. The 208 Water Quantity Reports bluntly state that this Aquifer may be depleted in the future.

As far as Philadelphia is concerned, we know that without an impoundment such as TIRP or its equivalent, a proposed legislation such as the scenic river would jeopardize the water rights of Philadelphia. It would further jeopardize protection of our water supply and the health of over two million customers during times of drought. Without such an impoundment, the ability of our 621 million dollar wastewater treatment facilities now under construction would be jeopardized in their intent to achieve mandated streamwater quality standards and thus preserve the environment and ecology of the Delaware River.

I must emphasize one final point—that industry in the Delaware Valley is to the large extent water oriented. Industry pays o er 40 percent of the water bill of Philadelphia. Anything which would not guarantee an assured supply of water vital to the industry would jeopardize the labor it supports and as well, the economy and standard of living of not only Philadelphians, but the entire Delaware River Valley.●

TERRI BLAKE

HON. HENRY A. WAXMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. WAXMAN. Mr. Speaker, on July 28 of this year, the Congress passed Public Law 95–325, establishing September 10 as National Grandparents Day. We owe a debt of thanks to Mrs. O. R. Blalack, whose professional name is Terri Blake, for her indefatigable efforts over a period of many years to achieve legislation. Ms. Blake has crossed the country several times, using her time and resources generously to interest legislators in her project. A grandmother herself, Terri determined that our country should take official note of the affection and respect which we all owe to our grandparents, and that determination

will enrich the lives of many of our senior citizens the country over, every September 10. The date was chosen to coincide with Terri's birthday, thereby serving as a reminder of the thanks we owe to the founder.

Terri has led a most active life, beginning a new career in the movies in her 50th year. She has played in a number of films and appeared on many television programs. She gives her time freely to producing shows for senior citizens groups, the USO and veterans' hospitals in the Los Angeles area. Ms. Blake has also been very active in the movement to remove mandatory retirement due to age. At 75, Terri Blake is a vital, active, productive citizen, whose contributions to her community and her country should be set as an example of what can be accomplished by one motivated person.

I ask the Members to join me in acknowledging her contribution and in saying "Thank you" to Terri Blake.●

SUBSIDIZED FOREIGN COMPETITION

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. McDONALD. Mr. Speaker, we no longer live in a world of either fair or free trade. Thus, in international trade negotiations, many people, including our own negotiators, overlook the fact that tariffs are no longer the major issue in such negotiations. Other nations provide subsidies and benefits to their exporting industries, while raising nontariff barriers in order to keep U.S. products out of their markets. This problem has been compounded by our foreign and post-World War II aid to our former enemies—Japan and Germany—as well as the ineptness of such governmental bodies as the American International Trade Commission. On top of this, international aid bodies have built up our competition with our own tax dollars. It would appear that we are cutting off our nose to spite our face. Anthony Harrigan wrote a very fine editorial on this issue, which appeared in the United States Industrial Council Bulletin for September 1, 1978. I feel it is worthwhile reading for my colleagues and indeed all Americans. The editorial follows:

SUBSIDIZED FOREIGN COMPETITION

(By Anthony H. Harrigan)

As negotiations continue for a new international trade agreement, the United States is still far from taking a tough line against unfair foreign competition. Unfortunately, much of the American business community is still unaware of the full dimensions of the threat, though business is beginning to wake up.

It is encouraging to note a more realistic approach in Business Week, a journal that usually talks down any effort at protection of U.S. industries.

In an editorial Aug. 7, Business Week made a couple of points that bear repetition, namely that "the Europeans and Japanese . . . have used a variety of subsidies and special supports for exports" and that the U.S. has a "market-oriented economy" while "much of the rest of the world" has "semi-socialized systems." Americans would think more clearly about unfair trade competition if they kept those points in mind.

One of the best statements on the threat to U.S. industries is a recent speech by Dennis J. Carney, chairman of the Wheeling-Pittsburgh Steel Co., delivered at Steubenville, Ohio.

"In addition to raising the costs of steel production while suppressing prices," he said, "our government has been helping to modernize steel industries abroad." He pointed out that U.S. loans, aid and financing, "through American-supported international financial institutions, have already contributed $5 billion directly to the expansion of our foreign competition."

Mr. Carney cited the recent action of the U.S. Export-Import Bank in approving "a loan of $74 million for construction of a steel mill in Trinidad and Tobago expressly designed to export steel products to the United States." He noted that the administration favors contributions of more than $3 billion next year to several international financial institutions for additional foreign aid programs that will increase competition for American companies and cost American jobs.

The American people need to understand that unfair competition means that unaided U.S. companies have to compete against companies that are government-subsidized, guided or directed.

As Mr. Carney put it, "Our steel producers are competing for business in free markets here at home and against entire foreign governments abroad."

The West German and Belgian governments recently announced hundreds of millions of dollars in grants for their steel industries. The Japanese regularly dump steel and other products in this country. At the same time, Mr. Carney says, "most of these countries have closed their borders to our own steel in one way or another."

There's another burden that Americans bear—a burden that is part of the problem. "Indirectly", Mr. Carney said in his talk, "we have contributed, and are continuing to contribute, many billions of dollars through such assistance as providing a defense umbrella for Western Europe and Japan, enabling them to invest more of their money in their industry."

Mr Carney's realistic words should be heeded in every industry and in Congress and the press. Executive Branch trade negotiators apparently won't take a tough, nationalist stand on trade matters, therefore, socialist and semi-socialized competitor nations have an easy ride at American expense.

Under these circumstances, it's imperative that Congress enact more stringent antidumping laws, cut off funds to international agencies that would create new industrial competition, and deny special advantages to foreign competitors that are subsidized or aided by their governments.

In the future, the United States must learn to discriminate intelligently between authentic free trade and trade invasions by companies that are virtual arms of their governments.●

PERSONAL EXPLANATION

HON. MARTHA KEYS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Ms. KEYS. Mr. Speaker, on Tuesday, September 12, 1978, I was unavoidably absent from the House for rollcall No. 756, the Indian Peaks Wilderness and Arapahoe National Recreation Area Act. Had I been present, I would have voted "yea".●

CETA, A LOCAL PERSPECTIVE: PART TWO

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. DOWNEY. Mr. Speaker, when the CETA reauthorization and reform bill was initially considered by the House several weeks ago, I shared with my colleagues several reports that I had received about the operation of the CETA program in my home county.

It was clear from those reports that there is widespread suspicion and unease with the implementation of CETA on the local level. Particular concern was expressed about the "substitution" of CETA workers for career public service employees.

The 1978 CETA bill addresses this problem by limiting the duration of all public service employment under CETA to 18 months in any 3 year period. However, the Secretary of Labor is given the discretion to waive this limitation in certain instances. The committee report on the CETA bill describes the waiver mechanism in this way:

. . . the Secretary may waive the 78-week limit for those on board before April 1, 1978, who remain on through September 30, 1979, if the Secretary determines that the prime sponsor is experiencing extreme hardship in placing PSE enrollees in unsubsidized jobs.

The limitation on duration of enrollment is intended to serve three functions: (1) to encourage participants to seek unsubsidized employment and to encourage the prime sponsor to place participants in unsubsidized employment; (2) to assure turnover in public service positions thereby preventing the prime sponsor from using CETA workers as permanent employees in its work force; and (3) to assure that the greatest possible number of the eligible population will be served. The committee does not intend that the waiver of the 18 month limitation should be broadly applied. The Secretary, in granting waivers, should take into account such factors as substantial loss of private sector jobs, severely limited private sector opportunities such as may exist in some rural areas, or other indices of extreme hardship in placing participants into unsubsidized employment.

The report makes it clear that the discretion to waive this limitation is to be used sparingly and is to be viewed as a "last resort" solution. Yet, this waiver clause is of great concern to many who have seen CETA provisions implemented in ways contrary to their original intent. For example, Robert A. Maletta, chairman of the CETA Committee of the Suffolk County, N.Y., Chapter of the Civil Service Employees Association, see the time limitation as "positive legislation" but feels that the discretionary power of the Secretary could "negate" its effect. I think he expresses a most legitimate concern. It is a concern based on experience with other CETA "loopholes" that have warped program intent at the local level.

The flexibility provided by this waiver provision will probably be useful in some

instances, and it is highly likely that it will be retained in the final version of the bill. We must, however, rigorously monitor its use. If its use is not severely restricted—along the lines explicitly mentioned by the committee—we will have failed to satisfactorily address the "substitution" problem. We also will have failed to provide meaningful CETA reform.●

DEMANDS FOR BRITISH WITHDRAWAL FROM IRELAND INCREASE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. BIAGGI. Mr. Speaker, on August 14 a significant event occurred which could have great bearing on the future of the Irish question. On that date, the second largest daily newspaper in Great Britain, the Daily Mirror called for complete British withdrawal from Ireland in 5 years.

This newspaper which has over 4 million readers based its position on its fear that democracy has stopped in Northern Ireland under the direct rule of Great Britain. As the editorial states "It is not only people who are dying in Northern Ireland. Democracy is nearly dead too."

As chairman of the 114 Member Ad Hoc Congressional Committee for Irish Affairs, I firmly endorse this position. The fact is I have sponsored legislation in this and previous Congresses advocating a British withdrawal from Ireland without specifying a time period. I consider this to be a basic prerequisite to any meaningful progress toward peace.

At the same time that this dramatic position was being taken by the Daily Mirror, Great Britain announced that it was increasing its troop strength in the North to 1,400. This contradicts not only the sentiments of the Daily Mirror but also of a rapidly growing segment of the British population which want Britain to remove itself from Northern Ireland.

I hope the position taken by the Daily Mirror will serve as a catalyst for positive actions by Great Britain to withdraw from the North. Obviously an immediate pull out of troops would present more hazards than benefits but a declaration of intent to withdraw should be taken as soon as possible. It will be viewed as a positive development and will greatly improve the climate for peace.

For the benefit of my colleagues I insert a number of press clips related to the Daily Mirror editorial:

[From the Christian Science Monitor, Aug. 17, 1978]

GET BRITAIN OUT OF ULSTER

No major party in Britain has any policy for Northern Ireland other than to carry on without one. This paper believes there is a policy—and only one—which can be carried through to success. And that is for Britain to announce its unshakable intention to withdraw altogether from Northern Ireland; to give the people of the province the freedom to decide what their future is to be . . .

The next British Government should declare that on a date five years from now Northern Ireland will be given its independence and that British forces, finance and administration will depart.

"MIRROR" ASKS FOR BRITISH WITHDRAWAL—SHARP REACTION TO LONDON EDITORIAL

BELFAST.—An editorial call in the Daily Mirror for a British withdrawal from Northern Ireland last week brought forth a deluge of comment from political sources in the North. Almost a score of statements—either enthusiastically welcoming or vehemently denouncing—were issued.

A page two editorial in the Mirror, which is Britain's second largest daily newspaper, called for a Government statement that Northern Ireland would be given its independence in five years' time with a withdrawal of British troops, finance and administration.

It suggested that withdrawal would be a courageous act and one that would allow the Irish people to rule themselves—"to decide whether to learn to live together or continue to die together. We should leave it up to them."

FREEDOM TO DECIDE

No major British party had any policy for Northern Ireland, other than to carry on without one. It continued: "The Mirror believes that there is a policy—and only one—which can be carried through to success. And that is for Britain to anounce its unshakeable intention to withdraw altogether from Northern Ireland. To give the people of the Province the freedom to decide what their future is to be.

"Both Labor and Conservative Governments—under Wilson, Heath and Callaghan—tried honestly and honorably to solve the Ulster problem. They found it impossible, as every British Government has done for the past 300 years."

The editorial added: "It is not only people who are dying in Northern Ireland. Democracy is nearly dead too. The Province of Ulster has less to say in its own affairs than any English parish council has over its village. The gunmen rule now, not the politicians."

The paper's comments took Northern politicians very much by surprise. Its interest was apparently sparked off by the fact that yesterday was the 9th anniversary of the use of British soldiers to deal with civil unrest here.

Talk of British withdrawal was quite common during Merlyn Rees' term of office as Secretary of State, but one of the central features of the early speeches of his successor, Roy Mason, was a series of categorical assurances that there was no question of such moves.

Mr. Mason's line has been widely accepted by the various political—and paramilitary—factions, so much so that in recent months he has no longer felt the need to repeat it. He and his advisers will be annoyed, therefore, at the resurrection of the idea by the Mirror.

This is especially so because of suspicions among the many conspiracy theorists here that the Mirror's call for withdrawal might have been inspired by some sections of the British Labor Party left wing.

The Daily Mirror's editor, Mike Molloy, said on BBC Radio Ulster that he did not think he was reflecting opinion of the left-wing of the Labor Party. He had not been under political pressure of any kind, and had had no discussions or consultations about the editorial. He had not spoken to an Irish politician for about two years, he said.

Asked about the Unionist belief that they were British subjects he said: "If somebody's lived for 400 years in Ireland, they're Irish. They may wish to claim that they're British citizens and they may have a good claim for that. I don't wish to go into that."

The Irish Republican Publicity Bureau claimed the editorial represented a major shift in policy for a section of the British ruling class—"from a position of moralistic imperialism to nationalist chauvinism." It added: "It shows they have lost the will to continue with their abortive policy of murder, torture and repression against the courageous nationalist community."

The statement went on to say that the Provisional IRA rejected and would oppose a "negotiated independent Six Counties." It was a recipe for disaster, it said.

Official Unionist leader, Harry West, suggested that the Mirror was reflecting left-wing British Labor Party opinion, and was capitulating to terrorism. Party colleague, Mr. Thomas Passmore, said it was "little short of treason."

For the Social Democratic and Labor Party, party leader Gerry Fitt said the message of the editorial was completely anti-integrationist, a plea for consensus government and a warning to Unionists that the British Army would not indefinitely bolster up their position.

The SDLP chairman, Denis Haughey, said the Irish problem had been created by 300 years of British colonial policy, and the Daily Mirror was now recommending that they "should simply wash their hands of the business and walk away." The British Government were the only people with the power and resources to "make the recalcitrant Loyalist leadership see sense and face up to their responsibilities. When they have done that, we in the SDLP would not detain them a moment longer".

John Cushnahan, of the Alliance Party, described the editorial as irresponsible. Mrs. Anne Dickson, of the UPNI, said further encouragement had been given to the Provisional IRA and its propaganda machine.

The Rev. Ian Paisley's DUP said the editorial was significant in that the Mirror often said what British Labor politicians were thinking privately. It said the people or Northern Ireland had already made their choice about their future—they wanted majority rule in Northern Ireland within the United Kingdom.

The statement was further welcomed by Mr. Glenn Barr, formerly of Vanguard and an advocate of independence, the Irish Republican Socialist Party, Seamus Mallon of the SDLP and Belfast Provisional Sinn Fein. It was further attacked by Jean Coulter.

ENGLAND: GET OUT!

Why did Britain's "Daily Mirror" (circulation: 4,000,000 readers) on August 14, write: "Ulster: Bring home the troops"? Why has this paper written: "The time has come for a new start. One that would allow the Irish people to rule themselves"?

The "Daily Mirror" did not explain. But the reason is both economic and political. The paper's constant concern is to remain popular, to continue to sell to 4,000,000 readers and, if possible, to sell to 5,000,000.

The easiest way of continuing and even increased popularity is to go along with public opinion. And public opinion is demanding that the British government withdraw its troops from Ireland.

This is now an important economic (as far as the press is concerned) and political issue, with the Gallup Poll's latest figure in England making it bluntly clear that 53 per cent of those polled want Britain to end its Irish adventure.

Experts in the field reckon that, by this year's end, more than 60 per cent oi the people of England, Scotland and Wales will be demanding an end to the English connection.

POLITICAL STAND

The longer the British imperial election is delayed the stronger, the louder, the British demand for a withdrawal of troops from Ireland.

The 53 per cent figure makes it possible and realistic for candidates to stand for election to Westminster on the ticket of doing their

utmost to end British interference in Ireland, be they members of existing parties or independents.

How long can the three main political parties in Britain continue to ignore the results of the Gallup poll on the basis of politics alone? It is clear now, that if one of the major British political parties comes out in favour of an end to British interference in Ireland a considerable number of extra votes is probable in the general election next month.

Amazingly, the 53 per cent figure revealed from the Gallup Poll was kept out of all British papers except "The Irish Times." Accordingly to the "Daily Mirror," there is only one policy, regarding enemy withdrawal, which can lead to success. That policy is for "British to announce its unshakeable intention to withdraw altogether from Northern Ireland."

The newspaper does not believe that Britain should quit Ireland at once: "The next British government should declare that, on a date five years from now, Ulster will be given its independence and that British forces, finance and administration will depart."

The Republican Movement has made it clear that all such talk about independence for Ulster or any part of Ulster is unrealistic and that Ireland must be the unit in question. All Ireland is unfree at present, part of the land being governed by a quisling administration.

The newspaper adds that "many people fear that a decision to quit Ulster would lead to a bloodbath" and asks: "But what is 1,850 dead and 20,000 injured if not a bloodbath?"

The paper's editorial comment gives the following statistics for the past nine years: 1,854 dead, including 365 soldiers; 115 RUC members; and of the 19,917 injured, soldiers numbered 2,721; RUC, 3,295; personal injury awards totalling £38,000,000; compensation payments for damage to property, £246,000,000.

The "Daily Mirror" does not attempt to estimate the damage to the British economy of the past 10 years of British occupation in Ireland—how much the extra troops cost; how much the propaganda war; how much the loss in industry and commerce.

Little by little, in the months ahead, these devastating figures will be revealed in Britain as the demand of the ordinary people for Crown disengagement in Ireland becomes louder and more insistent until there is no alternative but to obey it.

The reaction of most party politicians in the Six Counties to the Mirror's demand for British withdrawal is very revealing. All shades of unionism, from official true-blue through orange to the bile green of the SDLP, feared and objected to British withdrawal, thus emphasizing the colonial connection.

In the 26 Counties the voice of unionism (Fianna Fail, Fine Gael and Labour) officially was silent. Unofficially, there was extreme nervousness.

The obvious answer is that the Crown must enter into negotiations with the liberation forces AT ONCE to arrange for a mutually agreed programme of orderly withdrawal as well as amnesty and release for all the prisoners of war in these islands.

The sooner the Crown's ministers begin the negotiations, the sooner peace can be made to return to Ireland. It is as simple as that.●

NEW DOLLAR STIRS ROW

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. WHITEHURST. Mr. Speaker, the following article, by Gary L. Palmer of the Copley News Service, appeared in the Hobbies section of the Boston Herald American on Sunday, August 27, 1978. It raises some interesting points regarding the proposed dollar coin, and I am pleased to take this opportunity to share it with my colleagues:

NEW DOLLAR STIRS ROW

(By Gary L. Palmer)

The ghost of Susan B. Anthony is stirring up as much commotion in Congress these days as she did 100 years ago with her campaign to win voting rights for women.

Now Congress is feeling the pressure of women's liberation groups to place Ms. Anthony's likeness on the new mini-dollar coin, almost certain to become a reality.

And the odds seem to be growing with each passing week that Anthony will grace the new coin rather than Miss Liberty and her long, flowing locks.

Coin World, one of the nation's leading numismatic newspapers, gave readers a chance to voice their opinion in recent weeks and select their first, second and third choices for a design. Ms. Anthony was well down the list, faring no better than seventh in total votes and only fourth in the first place vote tally.

What is somewhat ironic about this is that the nation's coin enthusiasts have been clamoring for new designs on U.S. coinage ever since commemorative coinage came to a halt almost 25 years ago.

Now these same enthusiasts of new designs are rejecting a new face on a coin and showing overwhelming support for an old one—the Liberty Head design.

It garnered 315 first place votes and a total of 371 compared with 24 first place votes and a total of only 41 for Ms. Anthony.

What's more, there were plenty of rather acerbic comments made by Coin World readers regarding a coin bearing the suffragist's portrait.

In my mind there is no comparison between the two designs. The Liberty Head design, in most of the varieties which graced U.S. coinage in the 19th century, remains one of the nation's most beautiful ever to adorn a coin.

The prim Ms. Anthony design appears cold and even the talents of gifted Frank Gasparro, chief engraver of the Mint, have not been able to add warmth to the design—at least not in the sketches shown thus far.●

LIBERIAN SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENT

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. YATRON. Mr. Speaker, earlier today I received a briefing by B. K. Wesley Copeland, president of the International Science and Technology Institute, Inc. (ISTI). The Institute is involved in an AID sponsored project to assist the Government of Liberia with preparations of their national report for the United Nations Conference on Science and Technology for Development.

As part of the briefing, Mr. Copeland presented me the following transcript of the news program heard on Liberian radio following the presentation of the American flag by ISTI/USA to the Liberian Cabinet.

"An American flag flown over the U.S. Capitol on May 10, 1978, in honor of Liberia was presented to the Minister of State for Presidential Affairs and chairman of the cabinet, E. Reginald Townsend. The presentation was made at the executive mansion during a cabinet meeting by Roy L. Lovvorn, who led a three-man delegation from the International Science and Technology Institute, a Washington-based consulting firm funded by the U.S. Agency for International Development. Mr. Lovvorn noted that the flag was presented to the Government and people of Liberia by Pennsylvania Congressman GUS YATRON, who was delighted with the opportunity of expressing friendship and good will between Liberia and the United States. Receiving the flag, Minister Townsend expressed thanks and appreciation on behalf of President William R. Tolbert, Jr., for the spirit of mutual understanding expressed by Congressman YATRON. On behalf of the President, Government, and people of Liberia and the Government and people of the United States.

The Vice President noted that the presentation was a clear indication and a continuous manifestation of the good relations between the countries in the quest for human rights and freedom for mankind. In fact the delegation then asked to convey to Congressman YATRON the appreciation of President Tolbert, the Government and people of Liberia.

Minister E. Reginald Townsend later introduced the Vice President to Justice James A. A. Piers (1), Secretary General of the party, McKinley A. DeShield, Sr., and members of the cabinet to the U.S. delegation."

The Institute was established in May 1977 to foster the transfer of science and technology to developing countries and to assist local organizations who believe that science and technology have a vital role to play in social and economic development. Although ISTI is concerned with the entire development process, this organization will direct its major effort toward implementing projects defined by developing countries and assistance organizations.

ISTI's underlying principle is that only through the process of partnership can this transfer of science and technology yield genuine long-term benefits. In support of this principle the Institute is assisting in the establishment of private in-country partner organizations, headed by nationals who can better analyze their country's needs and insure that implementation programs will be compatible with their society and culture.●

CUTTING THE FEDERAL BUDGET

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for September 13, 1978, into the CONGRESSIONAL RECORD:

CUTTING THE FEDERAL BUDGET

In a recent newsletter I stated that government expenditures should be restrained. The ink on the newsletter was scarcely dry when several Ninth District residents asked me a fair question: where do you make the cuts?

It is my feeling that virtually every government program could be cut back without harm. None of the appropriations made by Congress should be immune from reduction. Although claims for the federal dollar have become more widespread, the time for fiscal restraint has arrived. Putting the government's fiscal house in order is now a dominant priority of national policy. It is probably the single most important thing Congress can do to restore people's confidence in the ability of the government to manage its affairs. I do not share the view that much (some say 75%) of federal spending is uncontrollable. Every dollar the government lays out is approved by the President and Congress at some point and is within their control. The challenge is to translate the national consensus on fiscal restraint into an effective program to trim federal spending. Cutting the budget does not mean unravelling every program, but it does require a sober reappraisal of what government can and should accomplish.

The following are some of the cuts I would recommend:

Regulation: Forty-one regulatory agencies, which cost about $3.2 billion to operate and demand over $100 billion of businesses and consumers each year, must be cut back. Regulation has simply gotten out of hand.

Health: Government health costs can be reduced without lowering the quality of medical care. A recent study found that federal health care employees processed 2,500 claims per year while private sector employees processed 3,900 or more. It has been estimated that $4 billion was spent on unnecessary medical services last year.

Welfare: Welfare expenditures can be reduced by tighter controls. The Department of Health, Education, and Welfare (HEW) has acknowledged misspending about $7 billion last year. Even allowing for some mistakes in its huge operation, that amount of waste in the HEW budget of $148 billion is totally unacceptable.

Congress: Congress itself is too expensive. Federal spending for Congress has grown from $170 million in 1970 to $485 million in 1978. The number of employees on Capitol Hill and the amount of spending on congressional support services must be reduced. The bloated bureaucracy is not just the President's problem.

Jobs: The cost of creating jobs has soared. With $12 billion per year now being spent on employment and training programs alone, too much is paid for the results achieved. The cost of manpower programs will always be high, but there is mounting evidence that control of waste and fraud could keep the cost down.

Defense: The military should certainly not be exempt from budget cutting. I am convinced that costs can be minimized without impairing our national security. We have 20% more bases than we need, so some installations can be closed. Manpower can be used more efficiently and pay scales and retirement programs can be simplified and revised. Also, procurement practices can be improved by more competition and accountability.

Special interests: A variety of government benefits to special interests must be reviewed to see whether they are still in the national interest. Some of these benefits may be called for, but such things as maritime subsidies, impact aid to education and water projects must be scrutinized. Even social security, which has become the largest single program in the budget, should be checked. Nobody wants to reduce current benefits, but future growth in benefits can be contained.

State and local aid: Federal grants to state and local governments will have doubled from $43 billion in 1973 to $86 billion by 1979, while 44 states are posting surpluses that total $10 billion. Surely some reductions can be made here.

Bureaucracy: Although the size of the federal bureaucracy has not increased much in the past 20 years, federal pay scales have risen faster than those in the private sector. The federal payroll is now at $62 billion per year, up from $47 billion in 1975. Federal compensation and vacation, sick leave, pension and job security benefits must be reined in. Perquisites such as limousines, personal chefs and servants must be eliminated. Federal executives should be given what is required to do a good job, but not so much as to make them privileged far beyond the people they serve.

This list of areas where costs can be cut could easily be expanded, but it does provide a good starting point. This Congressman, at least, is committed to voting for reductions in these and other areas where spending is unnecessary or where services are delivered in an inefficient manner.●

GREATER CINCINNATI LEAGUE 50TH ANNIVERSARY

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. LUKEN. Mr. Speaker, on Sunday, September 17, 1978, representatives from faculties and administrations of six Cincinnati area high schools, along with religious and community leaders, students, and various friends, will gather to celebrate the 50th anniversary of the Greater Cincinnati League. This league, made up of six Catholic boys' high schools, has provided our community with 50 years of sports entertainment, has developed the athletic and mental abilities of many youth, and has contributed a remarkable number of athletes to professional sports.

Notable examples include Roger Staubach, Purcell High School, and Jim Bunning, St. Xavier High School. Current professional sports rosters include GCL stars like LaSalle High School's Don Hasselbeck, New England Patriots; Roger Bacon's Moe Burtachy, Philadelphia A's; and Elder High School's Ralph Brickner, Red Sox; Gordon Mass, Chicago Cubs; Ron Moeller, Baltimore Orioles; Tommy Flanigan, White Sox; Steve Junker, Detroit Lions; and Bob Fry and Danny James, Pittsburgh Steelers.

When the Greater Cincinnati League was formed in 1928, it consisted of St. Xavier, Elder, Roger Bacon, and Purcell. LaSalle and Moeller High Schools joined later. Throughout the years, the GCL teams have been led by such talented coaches as Ed Kluska, John Wicthe, Fr. Ed Rudemiller, Paul Frey, Walter "Babe" Bartlett, Jim McCarthy, Bron Bacevich, and Gerry Faust. Under their stewardships, Greater Cincinnati League teams have won State titles in 9 of the 10 sports in which there is State championship competition. In addition, throughout it all, GCL schools have maintained a standard of academic excellence to match their performance on the athletic field.

It is my pleasure, therefore, to share this record of accomplishment with my colleagues. The Greater Cincinnati League's 50 years-long story of success can stand as an example of achievement to us all.●

THIRTY MINUTES TO DESTRUCTION

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. McDONALD. Mr. Speaker, Gov. Meldrim Thomson of New Hampshire gave an excellent talk to the Veterans of Foreign Wars National Convention on August 22, 1978 in Dallas, Tex. His major theme was that our defenses are becoming so weak that we might not win a future war with the Soviet Union and this we cannot afford. His speech called for action now to rebuild our defenses by going ahead with, not canceling major weapons systems and reinstituting some form of compulsory military service. As he pointed out, the hour is late and the effort will not be easy, but freedom once lost to tyrants is not easily restored. I commend his speech to the attention of my colleagues as I heartily agree with what he had to say. The speech follows:

THIRTY MINUTES TO DESTRUCTION

(By Gov. Meldrim Thomson, Jr.)*

Soldiers of the past, patriots of today: It is with great sense of appreciation for your loyal service and sacrifice of former years and your dedication to the basic American principles of our founding fathers that I salute you today.

My high esteem for the veterans of our nation's wars has prompted me to take many supportive actions on your behalf.

For example, the first official act of my administration in 1973 was to issue an executive order returning Memorial Day and Veterans Day to their original dates of observance.

When liberal critics said I did not have the power to do this, I urged our legislative to take similar action which they promptly did.

Thus, New Hampshire became one of the first states to rectify the politicians tampering with these two dates.

When President Ford offered provisional amnesty to draft dodgers and President Carter went even further in this despicable action, I declared by Proclamation that the days on which such actions were taken were days of infamy.

I suggested that it was "far from appropriate for a grateful nation to recognize, honor and offer eternal tribute to those who served her colors rather than to extend amnesty to those who rejected by flight and desertion the call to honor and duty."

Thus, I caused the National and State flags to be flown at half mast on all state buildings as a means of mourning those who had sacrificed their lives and limbs in Viet-

*Talk given before the Veterans of Foreign Wars National Convention, August 22, 1978, Dallas, Texas.

nam and upon other battlegrounds of the world.

When Ambassador Andrew Young persisted in running his mouth off against patriots of this nation while singing the praises of communists from one end of the world to the other, I called for his removal in my United Nations Proclamation last year. And for good measure I suggested that the United States should get out of the communist tainted United Nations and then kick the United Nations out of America.

Those of you who served our nation in World Wars I and II tasted the sweet savor of victory. You returned to the land of the free believing that you had made the world safe for democracy and that freedom had been assured for all mankind.

In time, however, you came to realize that the victories won on worldwide battlefields had been frittered away by inept and cowardly public officials.

Those of you who served in the wars of national humiliation—the Korean War and the Vietnam War—now know that there was no peace with honor to be found in either of these because our public officials would not let you fight to win.

You know also the disgusting hypocrisy of an American Secretary of State who never raised a finger to retrieve more than a thousand Americans missing in action in Vietnam while he unctuously accepted the Nobel Peace Prize for surrendering our forces to the communists of North Vietnam.

America emerged from World War II as the most powerful nation in the world.

We alone had the atom bomb. We had served the nations of the free world, and some not quite so free, as the arsenal of democracy. We made the transition from a wartime economy to peaceful productivity with a rush and so successfully that we had billions to share with less fortunate allies—and even with our former enemies.

Thirty-seven years ago our nation was protected by time and the seas. Not since the days of our revolution had foreign soldiers marched across our homeland to bring war to our doorstep. And so it was with a sense of security that Franklin Roosevelt boasted on December 29, 1940 that America would serve as the arsenal of Democracy to our allies.

Almost overnight our great industrial giant, the American free enterprise system, sprang into action. During the ensuing four years of war a flood of ships, planes, and war armament of every description poured from our factories.

We not only produced the sinews of war, but we also delivered vast quantities of supplies and armaments around the world, from the Murmansk run to the ports of Australia.

We built more than 13,000 large combatant ships—battleships, cruisers, submarines, destroyers, aircraft carriers and a host of others.

We built 110,000 small craft such as patrol ships and landing craft.

We produced for ourselves and our allies 2,700 liberty ships.

We filled the skies with almost 300,000 military aircraft for the allied cause.

In addition, we built highways, airfields, ports, shops and factories in every nook and cranny of the free world.

In all the history of the world mankind had never before witnessed such an outpouring of war materials.

Never had there been such a mighty effort made to produce a successful war machine.

But never again will it be possible for any nation, in time of a global war, to fashion the swords and spears of war.

Any nation that is not instantly prepared to retaliate in kind to a nuclear attack, and then survive to fight again, will be annihilated or lose its independence, or more likely suffer both tragedies.

Should the Soviets trigger their intercontinental ballistic missiles, we would have just thirty minutes before they could come showering down on America with holocaustic affect.

How does a nation prepare for a nuclear war with only thirty minutes to spare and no effective means of defense except to launch its own missiles?

Obviously it dosn't. It must stand ready for the worst for as long as it exists. There is an uneasy and growing certainty that America is not ready for the worst.

In the 1950's we held quantitative and qualitative superiority to the Soviets and all other nations of the world in nuclear strike ability.

Since then, with the help if not the connivance, of a long line of public officials in the State Department and the Congress, we have seen an aggressive Soviet Union build a formidable strike force that just this week was described by retired Major General John Singlaub as possessing quantitative superiority.

We are doomed to lose a war with the Soviet Union said this courageous general if our present military policies remain unchanged.

Consider the record of relative growth of the Soviet Union in recent years.

Unfortunately, today no one holding a public office of influence is inclined to change our surrender-bound military policies.

The amount of our national budget marked for national defense has declined since 1963 from 50 percent to 22 percent. The Soviet budget has grown by 3 percent a year in the last 10 years.

Our military budget for FY 1977 is estimated at $126 billion. The expenditures of the Soviets for their military is considered by experts to be one-third higher than ours.

While the Soviets have raced ahead of us in the developemnt of a mighty military machine, we have concentrated on expanding social services.

While the portion of our national budget earmarked for national defense plummeted from 38 to 22 percent from 1975 to 1979, our welfare services (excluding social security) increased from 11 to 17 percent in the same 4 years.

The heavy emphasis of the Soviet Union on its military preparations has, in the minds of many of our military authorities, placed the United States in a position of inferiority to the Soviets.

While it would be impossible in our short time together to draw a comparison of the relative strength of the military machines of the Soviets and the United States, several important facts should be noted.

1. The armed forces of the Soviets with reserves amounts to 11 million persons compared to our active and reserve force of 3.6 million.

2. The Soviets are known to have 1,400 plus missiles compared to our total of 1,054 missiles.

3. The Soviet air force is quantitatively twice that of ours. But of greater significance, the Soviets are building 2½ of their deadly Backfire bombers a month while we are building no major new bombers. In addition, they are manufacturing 1,000 fighter planes a year.

4. In naval ships the balance has turned against us significantly. In no area is the difference more pronounced than in submarines.

We have 41 ballistic missile subs to their 91 and only 82 attack subs to their 260.

Every major city of America is vulnerable to obliteration by Soviet missile subs lurking off our coast, and in the case of their Delta subs, from as far off as 4,000 miles.

Our naval experts are deeply concerned that the Soviets, with their 260 subs—a force that is still growing rapidly, could deny to us the use of the major sea lanes of the world.

Veterans, to put it mildly, we are in the biggest snafu of our national life and still losing ground to an enemy whose officials are pledged to bury our nation.

While the Soviets are building 2½ Backfire bombers a month, our President junked our equivalent to the Backfire, namely the B–1 Bomber.

While the Soviets are expanding their naval throwpower in every major segment of their naval force—Kiev-type aircraft carriers, nuclear cruisers and submarines, our President objects to having a missile cruiser added to our new military budget.

While the Soviets are building movable missile bases that can be hidden from detection, we are considering construction of such deceptive moveable bases some six or eight years from now, that is, if Congress will authorize the money.

One means of building a movable launching site for missiles would be to construct a huge ditch twenty miles long. Today, SAC is concerned that even this new means of protecting our missile launching bases may be aborted by the environmentalists who have indicated that SAC should first produce an impact study.

How apt, even today, that old verse that for want of a nail a kingdom was lost.

I am confident that if the Environmental Protection Agency had been in existence during World War II, we never would have built the big inch pipeline that fueled much of wartime effort.

May I also suggest that a diplomatic policy that deliberately seeks to abandon old and true friends such as the Republic of China, now temporarily on the Island of Taiwan, or sets out maliciously to destroy allies like Rhodesia and South Africa, only hastens the day when the Soviets will be able to demand our unconditional surrender.

The Republic of China is an indispensable link in the Far East defense chain fashioned by our military strategists following the surrender of Japan. We can abandon Nationalist China to Red China only at the risk of driving Korea and Japan into the arms of Communism.

Already we have exposed the Suez Canal, one of the major waterways of the world, to Soviet take over by our fuzzy-thinking, stupid insistence that the canal be given to Egypt.

More recently, cowardly senators abandoning national interests to Presidential pressure, gave away our own Panama Canal to a two-bit communist puppet.

Thus, two of the four major sea lanes of the world have come under the sway and influence of the Soviets.

What happens if South Africa, our friend and ally in two World Wars, should fall to the Soviets who are relentlessly pressing their advantage on the Continent of Africa?

Around the Cape of Good Hope passes 80 percent of the oil used by the West and 40 percent of the foodstuff.

South Africa is vital to the survival of the Free World.

Over one-half of the strategic minerals and about 70 percent of the strategic metals consumed by the Free World come from Rhodesia and South Africa.

Yet through three presidential administrations we have done everything possible to set up a communist take over of this area of the world still friendly to the West.

Any reasonable, sensible observer of present-day America must wonder if our nation is bent on suicide; as some writers suggest.

Never has America been so much in need of a king size dose of ol' fashion courage and fortitude.

We should be galvanized into immediate action to make this nation second in defense to none.

Veterans, I suggest that all your courageous efforts on the battlefields of the past will mean nothing unless we recognize the great truth of that verse in the Book of Proverbs that where there is no vision, the people perish.

Let us recapture the vision of an America strong, free and dedicated to our own self-preservation.

The freedom that we were nurtured on, fought for and cherished hangs today in the balance of the scale of destiny.

What sacrifices are you and I prepared to pay to preserve our liberty.

Patrick Henry put liberty above life.

The signers of the Declaration of Independence pledged their lives, fortunes and sacred honor. Many lost their lives and fortunes but not one his sacred honor.

The hour is late. In today's nuclear age we never again will be protected by sea and time while we build a new arsenal to counter the thrust of a major adversary.

If ever the fateful hour of all out global war comes we will have but thirty minutes from trigger time in any part of the world.

In peace let us prepare for war to prevent it. And in war let us fight to win, knowing there is no substitute for victory.

I suggest that for once in this generation we go all out for America. If we are too busy to care about our freedom no one else will preserve it for us.

First, let us return to compulsory military training at once if we mean to have a well trained, competent fighting force.

Second, we must make whatever sacrifices necessary to rebuild our Navy, expand our missile arsenal and vastly improve our Air Force.

Third, we must at once build a national energy policy that works, and tell the demonstrators, bureaucrats and environmentalists to get the hell out of the way.

Fourth, let us quit bleeding ourselves with no-win wars and with inflationary spending that only adds to the oppressive tax burden of every hard-working citizen.

Fifth, let us drive from the seats of political power every United States Senator who voted to give away the Panama Canal or voted against the B–1 Bomber.

Sixth, make no mistake about it, we are at war with communism. Either we shall win and eventually help to restore true freedom throughout the world or communism will ultimately enslave all mankind.

In recognition of this basic truth, we should stop succoring the communist world with food, technological know-how and strategic goods of invaluable military worth.

We should throw the hypocritical, dangerous and American tax-sucking United Nations out of the country and restore to Congress its former American security committees.

Seventh, we must realize that there will never be compatibility between the Hammer and Sickle and the Stars and Stripes. One is the rule of the ruthless tyrant and the other the way of freedom.

Consequently, we must guard against any further aid to or buildup of communism anywhere in the world, and especially in Panama, Cuba and Jamaica.

Finally, as God-fearing people let us put our faith in the Lord and our trust in country that freedom might reign forever in America.

Remember, we could be only thirty minutes from destruction at any future moment. Let us arm ourselves so well that no enemy will ever dare to test the trigger of fate.

America can survive and grow great again only if you and I, who love it, will work harder to preserve it, than the enemy within and without who would destroy it.●

SEATTLE POLICE: EFFECTIVE LAW ENFORCEMENT AT A REASONABLE COST

Hon. John E. (Jack) Cunningham

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. CUNNINGHAM. Mr. Speaker, practically every city in the United States is facing the necessity of deciding between needed public services which the public is willing to buy and other services that the public would prefer to forgo.

I represent the city of Seattle in Congress. In many areas, Seattle has been a pioneering place for innovative programs that increase the effectiveness of local public servants, while at the same time stretching the tax dollar of the taxpayer.

I commend the Seattle Police Department and would recommend to my colleagues an article in the September 1978 edition of FBI Law Enforcement Bulletin on the special activities section of the Seattle police:

HOW TO PROVIDE MAXIMUM POLICE SERVICE AT MINIMUM COST

(By Leon O. Libby)

Police departments across the country are faced with increased budgetary restrictions that not only prohibit them from increasing the size of their departments, but stretch existing manpower and resources to the breaking point. In metropolitan areas, this situation is resulting in the increased use of one-man patrol cars to compensate for the lack of personnel. When this problem is combined with an inadequate number of police officers in a given city, then unique solutions must be found.

The Seattle Police Department's Special Activities Section (SAS) must often provide in excess of 250 police officers to make up a security force for everything from rock concerts to professional sporting events. The department consists of approximately 1,000 sworn officers. Six hundred and fifty of them are assigned to the uniformed Patrol Bureau and Traffic Division to cover the entire 84-square miles of Seattle for a 24-hour period. There are not 250 officers to spare for such security forces.

The SAS is headquartered at Senate Center, a complex of cultural, entertainment, and convention facilities covering 74 acres—1 mile by monorail from the heart of the central business district. The complex consists of many facilities but of foremost importance is the metropolitan stadium and 3 auditorium-type facilities which can accommodate from 3,000 to 15,000 patrons. It is in these facilities that the biggest events are held which require the heaviest police coverage.

The Center is the reason for the unit's existence, having been originally built on the site of the 1962 World's Fair. Realizing the potential benefit of maintaining such a complex in the downtown area, city government decided to retain it as a permanent site.

While the Center was being converted to a permanent fixture, it was policed by the occasional patrolling of units assigned to the adjacent area. But patronage of the completed facility would depend, to a large extent, on a feeling of security by people who used the complex or attended events presented there. Periodic patrol and policing on a "call-for-service" basis would be inadequate.

The first regular assignment of police personnel to the Center was made in 1965. One result was that more promoters and sponsors became interested in holding events there, with the subsequent attraction of large numbers of people. This large concentration of people in such a relatively small area made it obvious that the detachment at the Center should be made permanent. The end result, after 13 years of changing needs and manpower requirements, is the present SAS consisting of 13 sworn officers (15 in the summer), 2 sergeants, and a lieutenant. These officers operate on 2 shifts; one from 1000 to 1800 hours and the other from 1800 to 0200 hours.

SAS's responsibilities are many and varied but one of their most important functions, from a police point of view, is providing security at the Center's events. Obviously, 13 officers cannot provide this security at an event with an attendance of 15,000, particularly if that event is an extremely popular rock group whose patrons bring with them the inherent problem of liquor and drugs in addition to the sheer weight of numbers.

How then does such a small unit perform the job that is expected of it? The unit commander maintains an accurate, up-to-date list of all officers interested in off-duty employment and provides the necessary security with those men. It sometimes requires a great deal of manipulation to provide enough officers.

Whenever a promoter has a show scheduled, he contacts SAS with the particular requirements for security and crowd control for the event. Together they discuss the particular characteristics of the event and determine how many officers will be needed. From the off-duty roster the SAS lieutenant assigns the necessary manpower, computes the cost, and bills the promoter. The promoter makes direct payment for services to a private C.P.A. firm, including an additional fee the firm charges for its service. The C.P.A. firm, in turn, makes payment of wages to the officers. In this way the police department avoids the questionable practice of becoming involved in handling monies paid to off-duty officers working for someone other than the police department.

The important point is that most events require a police presence, a fact acknowledged by everyone from the police to promoters; but no matter how police coverage is provided the event will probably be staged. By using this method just described, more than one objective is accomplished. The event proceeds smoothly because police are present to maintain order; the promoter is favorably impressed and uses the facility again, thereby contributing to the Center's financial stability; but, most important, a necessary function has been fulfilled by official police department authorities at relatively low cost to the city. When one considers that SAS repeats this procedure 35 to 40 times a year for rock concerts alone, the impact on the police budget would be tremendous if the city had to pay overtime to these extra officers.

The savings to the department created by SAS does not stop here, for the unit has complete administrative responsibility for re-

cruitment, training, appointment, and assignment of the members of the Seattle Police Reserve Unit and the Seattle Police Explorer Post.

The reserve unit is a volunteer, nonpaid service organization whose officers, when on duty, work under the direct supervision of a regular sworn officer. Reserve officers are chosen carefully and must attend the Seattle Police Academy for 120 hours of classroom training covering most areas of police work. Once they receive their full police commissions, the same as sworn officers, they are required to work a minimum of two 8-hour shifts every month. This 70-member force provides an invaluable service to the department in general and SAS specifically. The only cost incurred by the department is the issuance of uniforms and equipment.

These reserve officers facilitate an orderly ingress and egress to and from the immediate Seattle Center area. Their acquaintance with this duty and familiarity with the many events and attendant problems enables them to perform this function efficiently, thus relieving the department's Traffic Division of this burdensome task.

They fulfill the SAS's responsibility for moving traffic through the main Seattle Center parking garage, and after years of practice can usually accomplish this task in a little over 30 minutes. During rock concerts and other major events, they patrol the garage continually and normally write 15 to 20 citations for minor infractions of the law. This constant surveillance prevents minor thefts and acts of vandalism and ensures the place does not become, essentially, the site of a large party. Furthermore, the officers use the citation in lieu of arrest, whenever possible, because of the great number of juveniles and minors involved in this activity.

Reserve officers' duties are not limited solely to traffic control at the Center. SAS schedules these officers to augment the regular patrol force, driving the paddy wagon, filling in for vocational officers to create two-man cars, etc. They act in these capacities as sworn officers, again at no cost to the city.

The Explorer Scouts, consisting of young men and women between the ages of 15 and 20, also attend the police academy for 8 hours every Saturday for 13 weeks. They are assigned by SAS to deal with crowd control at various Center events, most parades, and at the annual July Seafair celebration. They also perform these services without pay.

During the school year thousands of students from schools throughout the greater Seattle area are brought to the Center to attend such events as the symphony and opera as part of cultural enrichment programs. This often results in the arrival of as many as 60 loaded school buses in as little as an hour. The buses have to be accommodated and directed to parking and the students safely directed across adjacent streets. Daytime activities of this nature occur approximately 400 times a year. In addition, evening events are held, ranging from opera to professional sports, which are attended by thousands. With this impact of pedestrian and vehicular traffic compressed into short time spans, the presence of SAS officers is absolutely necessary to eliminate potential chaos.

The SAS also performs all other regularly accepted police functions in the immediate area of the Center. With large numbers of people so greatly concentrated, it would be foolish to presume that problems at the relatively crime-free Center are nonexistent. Recently there was a serious car-prowl problem on the streets and in the parking lots adjacent to the Center grounds. By utilizing additional reserve officers and employing stake-out tactics, it wasn't long before the problem had been reduced by 50 percent. The unit maintains its own crime analysis function, using pin maps to target potential trouble spots.

Juvenile strong-arm artists are always a matter of concern for SAS officers, who must also contend with counterfeit tickets presented at events, ticket scalpers, panhandlers, liquor violators, marihuana peddlers, lost property, runaways, and lost children. These are problems for which these officers are particularly suited because of their intimate and daily acquaintance with the buildings, the people, and the 74 acres comprising the Seattle Center.

For the past 2 years the Special Activities Section has also been responsible for security at the 65,000-seat Kingdome stadium and this has posed additional staffing problems. The covered, multi-use facility is home to three professional sports franchises and hosts every type of event from recreational vehicle shows to indoor motocross.

The different kinds of events and the size of the crowds at this facility pose problems that SAS does not encounter at the Center grounds, but the unit's experience over the years with the latter has contributed to successful handling of this new challenge.

A baseball game with an attendance nearing 35,000, for example, requires about 20 officers, 3 sergeants, and a lieutenant. A soccer match requires 23 officers and 4 supervisors, while a professional football game with an attendance in excess of 50,000 requires over 50 officers and more than a half-dozen sergeants. An extremely popular rock group, however, presents problems that require 250 or more officers and a dozen supervisors.

In addition to having to schedule this many men, the SAS lieutenant is faced with another problem. The Kingdome is a county-operated facility located within the city limits of Seattle, and to avoid the potential conflict in this situation and any accusations of favoritism, the lieutenant schedules a force of one-half county police department personnel and one-half city police department personnel for all events requiring security. This method has worked out well during the Dome's relatively brief history. The spinoff effect of this use of officers from the city and county has been the fostering of good will between the two departments whose officers seldom had the opportunity before to meet in an official capacity.

In 1977, the Kingdome hosted a nationally known rock group in a sold-out concert. Customers camped out at the facility beginning 2 days in advance. SAS scheduled personnel to provide 48-hour security for the event and utilized over 260 officers and supervisors during that period. Although both sworn and reserved officers are used at the Center, only sworn officers are used at the Kingdome. When it became obvious that sufficient off-duty city and county personnel were not available, other agencies within the county were contacted and officers were successfully recruited to augment available personnel.

This past summer, SAS was confronted with the challenge of providing security for the priceless Treasures of Tutankhamen exhibit currently touring the United States. In order to safely house the exhibit, the Flag Plaza Pavilion on the Center grounds underwent extensive renovations. SAS had primary and complete responsibility for security which was provided on a 24-hour basis, primarily through the use of off-duty personnel.

During the 14- to 16-hours a day that the exhibit was open to the public, the treasures were guarded by a crew of 12 officers and a sergeant assigned by SAS. The security measures taken in Chicago and New Orleans to protect the exhibit were examined to assure adequate public exposure to the treasures and to insure protection at the same time. The length of the display, from July 15th through November 15th made it in effect a small rock concert 7 days a week for 4 months in terms of manpower needs.

The normal budget of the unit, though inflated in 1978 by the addition of the Tutankhamen exhibit, is usually about $275,000 per year, with about $265,000 of that in personnel services. After examining what the unit accomplishes in terms of crowd control, traffic control, and security at events ranging in size from 3,000 to 60,000 people, with a permanent contingent of only 13 officers, it is obvious that the overall cost to the department budget would be far higher if SAS had to address the problem differently.

Use of on-duty personnel, paid overtime, would be an awesome financial burden on the budget, plus there would be a diversion of manpower and resources. By relying almost exclusively on off-duty personnel whose services are paid for by private firms, these problems are avoided. By using the services of dedicated volunteers to perform routine police functions at the Seattle Center grounds, the same cost factor is overcome in an area of such heavy use that police presence is a necessity. An example, however, might serve to indicate the magnitude of the savings. Assume that a rock concert requires 20 officers, paid at the rate of a first-grade officer's salary at $9.00 per hour for approximately 3 hours. This situation, magnified by 40 concerts a year, comes to almost $22,000 alone. Imagine the cost when the event requires more than 250 officers!

One additional factor in the success the SAS enjoys is the close cooperation of the Crimes Specific Section (See *FBI Law Enforcement Bulletin*, Vol. 47, No. 2, February 1978) and the neighboring patrol units. They provide the backup which is vitally important to the effectiveness of the unit.

The Crimes Specific officers come and go freely at the Center, working the crowds for scalpers, purse snatchers, car prowlers, liquor violators, and drug offenders. They work in plain clothes as opposed to SAS officers who are basically a uniform force unless necessity dictates otherwise. They also augment SAS personnel inside at some of the potential trouble spots, such as rock concerts, hockey games, boxing and wrestling matches, etc.

The neighboring patrol units assist by making frequent transportation runs so that SAS officers need not leave the grounds when making arrests. This is in addition to overlapping patrol of the immediate area.

One measure of the unit's success is the continued use of the Center by local residents, tourists, and promoters. According to the unit's leader, "The Center is a place to which a person can feel comfortable about sending his children and their grandmother. That feeling exists because people can take advantage of the wide range of activities in an area of relatively low crime occurrence with the presence of trained police officers always read to assist."

The general manager of the Seattle Center has nothing but praise for the Special Activities Section and the service it provides at the Center:

"This detachment of officers, in my opinion, provides the greatest service and assistance to the Center of any department in the city. Their assistance in crowd control for the hundreds of events held at the Center from festivals to rock concerts is second to none in the Nation. Their model has been used by many of my manager counterparts to establish new or revamp existing programs.

"The attitude of the officers is reflected in the public's feeling of safety while enjoying the Center, and this has been translated into part of our ongoing healthy financial picture. The officers have become an integral part of our total community. They have a special appreciation for the Center while never neglecting their primary responsibility—the police department."●

A FEW KIND WORDS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. BIAGGI. Mr. Speaker, I rise to call to the attention of this body a few kind and revealing words written recently about a respected colleague and a good friend, CHARLIE RANGEL, who ably represents the 19th District in Manhattan. Most of you know him as the Congressman from Harlem, a description often used by the media, and one of which he is justly proud. However few of you may know that the 19th is, perhaps, one of the most cosmopolitan districts in the country, with four large, distinct communities and constituents of every conceivable ethnic, racial, religious, economic, and social strata. It extends down Manhattan's West Side, across Harlem and the Upper East Side, and even takes in the Roosevelt Island community, located in the middle of the East River.

This article entitled "Westsider Charles Rangel," appeared in the August 26 edition of the magazine, the West Side TV Shopper. The writer, Max Millard, captures the complexity of the diverse district, and the skill and creativity with which this able New Yorker serves his constituents. I am proud to work with him and to call him my friend.

The article follows:

WESTSIDER CHARLES RANGEL—CONGRESSMAN OF THE 19TH DISTRICT

(By Max Millard)

The dividing line of New York's 19th Congressional District twists and loops through Upper Manhattan like a traveller who has lost his way. From the corner of 62nd Street and Central Park West, the boundary turns sharply at Amsterdam Avenue and extends northward to 164th Street, then follows the East River shoreline south to Roosevelt Island, taking in all of Harlem and a large chunk of the East Side.

This is the area which United States Congressman Charles Rangel has represented ever since he was sent to Washington in 1971, after defeating the colorful and controversial Adam Clayton Powell in the Democratic primary. Today, as firmly in control of the seat as Powell was during his height of popularity, Congressman Rangel stands virtually unopposed in his quest for a fifth term.

"I have received the Democratic endorsement, the Republican endorsement, and the Liberal endorsement," explains Rangel one Friday afternoon at the towering State Office Building on 125th Street. "I am assuming that the Socialist Workers Party and the Communist Party will be filing. They normally do. In the last election I got 96.4 percent of the vote."

Whereas the late Adam Clayton Powell had wide appeal only among the city's blacks, Rangel gained the support of many of Harlem's residents and also a large majority of liberal whites on the upper West Side. It was they who provided him with a 150 vote margin of victory over Powell in 1970. In the present 95th Congress, Rangel has had the most liberal voting record of any Congressman from New York State. And while he continued to give a great deal of attention to Harlem's problems of health care, unemployment, and drugs, Rangel has recently had more demands placed on his time as a member of the powerful House Ways and Means Committee. The first black ever to serve on the committee, he is currently 11th in seniority and will be 7th in the next Congress.

In his New York office, where he generally spends two days per week, Rangel appears surprisingly fresh and relaxed at the end of a working day. As we settle into the interview, the elegantly-dressed Congressman with the graying moustache and the rasping voice proves himself very much the politician. He uses each question as a springboard to launch into his favorite topics—for example, his access to President Carter.

Because of his various committee assignments and his strong support of most of Carter's policies, says Rangel, "I am forced to meet with the President more than probably any other members of Congress. I often stop by the White House on my way to the office." Rangel also likes to talk about Chip Carter, the President's son, who is involved in a project known as City in Schools, designed to upgrade the neighborhoods in the area of certain schools. Chip has taken a special interest in Harlem, and one school in particular near Morningside Park. "I am confident that with Chip Carter's help, and with my help, Morningside Park will soon show some improvements. I hope that Columbia University will assist us too."

When asked about the unusual shape of the 19th Congressional District, Rangel says, "The reason for it is that as we find populations expanding, we don't find the size or the numbers of the members of Congress expanding. We used to have half a dozen members of Congress representing different parts of Manhattan. Now we're down to three—me, Green, and Weiss. If you break it down, you can see that Adam Clayton Powell's district used to be just Harlem."

As a member of the House Select Committee on Narcotics and Drugs, says Rangel, "I am holding a conference in the last weekend in September. I have gone to Moscow, to try to encourage them to do more in the area of controlling opium. I have been to Thailand for the same reason . . . That's one area in which I have great disappointment in this Administration. I find efforts of Nixon's to be greater than Carter's. The Office of Drug Abuse was disbanded by Carter."

Another field in which he finds Carter at fault is health care. "I support Kennedy's proposal," says the Congressman. "There's no question that, for anti-inflation reasons, the President has put his national health program on the back burner. But to think that any program could be directly controlled by economic needs rather than by the medical needs of the people is something I cannot accept."

The ultra-liberal Rangel, one of the most vociferous supporters of U.N. Ambassador Andrew Young, still lives in the same building where he was born 48 years ago, whenever he is not in Washington. He dropped out of high school to enlist in the army, and spent four years compiling a distinguished service record, including a Presidential citation and three battle stars. Once he returned to New York, Rangel completed high school, went to college, and entered law school on a full scholarship. He was admitted to the bar in 1960; in 1966 he was elected to the first of two terms in the New York State Assembly.

Married and with two children, Congressman Rangel believes that his future lies primarily in the Ways and Means Committee, which handles such giant concerns as taxes, trade, health insurance, social security, and welfare. In order to maintain his present popularity throughout the 19th Congressional District, he will have to continue to support those programs that benefit his constituents in both Harlem and the Upper West Side. How can this be done? "If we're going to use the tax system to make incentives for the business community to help the economy," he replies, "we need to bring the disadvantaged into the mainstream." ●

THE BEST REGULATION IS NO REGULATION AT ALL, BUT THE NEXT BEST IS EFFECTIVE SELF-REGULATION

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. VANDER JAGT. Mr. Speaker, increased regulation of American business is of growing concern to all of us who admire and recognize the absolute necessity for a truly free American free enterprise system. We know that economic freedom is of equal importance to our individual freedoms if our country is to grow stronger and to better provide opportunities for each of us. Yet, it now is estimated that it presently costs American business more than $65 billion annually to comply with Federal regulations and paperwork. I am concerned, as many Members are, that these regulations are in reality strangling the goose that laid the golden egg—our free enterprise system.

Certainly, California's proposition 13 and those of other States are indications of the concern of the American people for better, more efficient Government and not increased Government intervention in our lives.

The growth of our Government was well described recently by Congressman TOM RAILSBACK. He recently explained that Federal spending has grown by more than 550 percent—skyrocketing from about $75 billion 25 years ago to more than half a trillion dollars for 1979. Over that same period, the national debt has exploded from $265 billion to $750 billion. It has doubled in just the last 8 years.

Regulations have contributed to this growth and this tremendous cost. In this regard, Eldon E. Fox, vice president of AMF Inc., recently gave a talk on this important subject in Detroit, Mich. His address was entitled "G Strings"—for the strings that the Federal Government holds on our economic system. I believe Mr. Fox's comments are well made and his address follows:

ADDRESS BY ELDON E. FOX

Your schedule of events is exceedingly full. When it is completed, I am certain you will have extended your respective professional scopes through the constructive interchange of ideas.

As the keynote speaker, I feel a special responsibility to launch this session in that specific direction.

In analyzing your program subjects it became clear to me that my role was not to discuss motivation, creativity, marketing communications, or effective promotional planning and the "How to . . .". There is a sparkling group of experts lined up to do that very thing.

Rather, I see my mission differently. I want to warn you that "the G-Strings will get you if you don't watch out!" If that is too much to ponder on a Friday morning, so be

it. On the other hand, in marketing, being forewarned is being forearmed.

G-Strings have never been featured on TV or radio commercials. G-Strings are not advertised in consumer or trade publications. Furthermore, I am not aware of any publicized G-String recall programs. I doubt, however, if there is a man or woman in this room who doesn't know what a G-String is.

At a recent meeting in Washington, D.C., a congressman from Michigan said, "The government is in the marketplace—the government is going to stay in the marketplace—what is still to be decided is the government's role in the marketplace."

As marketing communications executives, if you thought that the strings of government were someone else's business, you are innocently and blissfully wrong. The federal government is entangled, one way or another, in almost every aspect of our marketing efforts. It is surrounding us with strings that bind, pull, redirect and tangle programs, resulting in higher costs and lower profit margins.

Unless you really begin to do something about it, in a very short time the only question remaining will be how severe or how strong, or how pervasive the government's role will be.

During his commentary on ABC's TV News recently, Howard K. Smith commented that the Federal Register—that burgeoning bible which carries all of the many new federal regulations—has grown from 14,000 pages in 1960 to a mind boggling 61,000 pages last year.

If you started to read it tomorrow, you would have to read over 167 pages a day, seven days a week, for one solid year to get through it just once.

According to The American Enterprise Institute, there are 10 major "economic" regulatory agencies in the federal government, a 25 percent increase in the past seven years. The Federal Trade Commission, the Securities and Exchange Commission and the Federal Energy Administration are examples of "economic" regulatory agencies.

There are 17 major "social" regulatory agencies, a 42 percent increase in the past seven years. The Employment Standards Administration, Environmental Protection Agency, and Food and Drug Administration exemplify "social" regulatory agencies.

This plethora of agencies has in essence created a fourth branch of government—the regulators themselves. In too many cases, these regulators have little experience in the area they are trying to regulate. They seem to have little awareness or concern for the costs (hidden or direct) imposed on business and the consumer by their regulations. They are not accountable to the consumer for the consequences of their regulations, but we in business are. And, some regulators have developed an elitist attitude of "We know what's good for you—better than you do."

This situation has created some classic horror stories of over-regulation:

The Consumer Product Safety Commission bought 80,000 bright yellow buttons for its campaign to encourage toy safety. But the buttons themselves were found to be hazardous, with sharp edges, and with lead paint, which—if scratched off by children—could be harmful.

The American Hospital Association estimates that in complying with just eight federal regulations dealing with health care, its member institutions were forced to spend $800 million dollars last year—adding $22 to the average hospital bill.

The National Highway Traffic Safety Administration's new safety standard, requiring a complex antilock braking system in all commercial vehicles that use air brakes, has caused some real headaches. According to truckers, vehicles with antilock brakes have had four times as many jackknife accidents as those without. One large fleet owner disconnected the system in each of his 900 newly purchased trucks because it was so dangerous.

When Eli Lilly and Company asked the Federal Drug Administration recently to approve a new arthritis drug, the application ran to 120,000 pages and supporting documentation weighed more than a ton!

"So what," you say! "We have always had government regulations."

True, but this escalating flow of regulations increasingly affects the conditions under which goods and services are produced and marketed, as well as the physical characteristics of products that are manufactured. As a result of the former, conditions under which goods are produced, the Environmental Protection Agency, for instance, sets constraints on the amount of pollution a manufacturer may emit in the course of its operations. As an example of the latter, product physical characteristics, the Consumer Product Safety Commission specifies minimum standards for products that, in its judgment, are potentially unsafe. However, the CPSC does not stop here, but mandates—often in great detail—certain characteristics that the products must have.

Nowhere has government regulation, or the controls of government, been more pervasive than here in Detroit. Many of you will remember that it was just about twenty years ago that the federal government required every automobile to have a dealer's invoice clearly posted on the car's window. This was a simple little G-String. It told the potential purchaser what the car could cost him, but almost never has. This single string has now become a web—perhaps web is inaccurate because that implies effective design. The strings really look more like spaghetti.

A couple of prime examples are the interlocking seat belt fiasco when consumer opposition caused the regulation to be rescinded, and the current listing of estimated gas mileage on new car stickers. I haven't met anyone yet who actually gets as many miles a gallon as the tests indicate.

What has happened with government regulation of the auto industry, of course, is that the consumer ends up paying the bill—a pattern repeated in many other industries. It is estimated that regulatory costs have added nearly $500 dollars to the price of each new car today, compared with prices of comparable cars 10 years ago. If you think Detroit and the automobile industry are an exception, think again. I seriously doubt if any significant industry has escaped the G-Strings. The strings are growing everywhere.

The tobacco industry, of course, is a major example. Last year, Americans smoked more cigarettes than ever, despite the facts that each pack of cigarettes carried, at government insistence and industry's expense, the Surgeon General's warning, and that the TV advertising of cigarettes is prohibited. The irony of this is interesting, because the government is subsidizing tobacco crops and providing funds to emerging nations where the governments use cigarettes as a major revenue source.

The food industry is feeling its share of G-Strings. We are going way beyond the customary requirements of packaging and labeling. We are now concerned with prepackaged sugar on children's cereal.

I suspect that most of you as kids had sugar on your cereal, whether it was placed there by you, or your mother, or your father. We have survived what is now perceived as a danger, and the government feels, apparently, we should not have. Can it be that instead of growing up in spite of themselves, future generations will be challenged to grow up in spite of the government?

In the current marketing of cereal to children, there is a great government concern about advertising these products on television. Children eight years old and younger, or twelve years and younger—depending on who you talk to in the federal bureaucracy—are the targets of what Senator Weicker calls "national nannyism."

In this regard, a Deputy Assistant for Advertising at the Bureau of Consumer Protection of the Federal Trade Commission said recently that parents of children under twelve are tired of saying no to their kids. So, the government must do it for them by banning the TV advertising of these questionable, precoated sugar cereal products to children. By this deft governmental assistance, parents will be able to walk through the supermarkets without a parent-child conflict at the cereal shelves.

The airline industry is experiencing G-Strings in an entirely different fashion. Here, the strings are being removed. The airlines are being told that they can set their own fares—down to a predetermined point. You are all aware of the market scramble that is taking place. If you abide by the fine print, you can now travel at less cost to many areas because somebody pulled the G-String—and that has given the marketing executives of that industry a whole new ball game. It's great for business right now, but may bring a competitive fallout for some airlines down the road.

The soft drink bottlers are feeling the effects of government regulatory action. The FTC has proposed to issue a ruling to the effect that the two leading cola companies cease imposing territorial restrictions on their bottlers. Try communicating that to your franchisees.

The drug industry is, of course, a natural. How could we not have plenty of G-Strings here? You know about the Listerine case. The FTC says they must run advertising to offset the lingering effects of false advertising. How much advertising do they have to run? Ten million dollars worth is being discussed; but how do you really measure "lingering effects?" As a marketing communicator, have you the expertise to straddle "lingering effect" product stories?

The Federal Drug Administration is trying to develop a comprehensive food labeling policy. The saccharin case illustrates what this could mean to food marketers. It's impossible to estimate the cost and to measure the marketing impact from re-labeling all of the hundreds of products containing this artificial sweetener, just to add a "dangerous to your health" warning for a product used routinely for years, but now accused of causing cancer in laboratory rats. What is the reaction of the public to all this? Well, during the heat of the saccharin debate last year, they sent an average of 15,000 letters a day to the FDA disagreeing with its ruling.

The FCC blithely overlooked the fact that the industry already was loaded with 23 channel sets it couldn't sell. Effective timing is not built into a G-String!

For those of you engaged in television commercial production, a man at the FCC said recently that "rules are rules." What did he mean? He meant that if your commercial didn't have the signal strength to provide a full 525 lines and fill the screen, the TV station must reject the commercial. This is now happening in Washington, D.C. and Chicago.

Are you involved in marketing and promoting sporting events? If you are, have you really considered the sales impact of the nondeductibility of sporting event tickets as a business expense? The House Ways and Means Committee is looking at this, along with the House's three martini waltz.

Most of you know that AMF makes Harley-Davidson motorcycles. Like the automotive engineers here in Detroit, we have been reducing emissions and noise. Our motorcycles are now quieter than ever before, and meet the current government regulations. Yet, we are being asked to produce less noise by 1985 than the garbage disposal which many people have in their kitchens today. As proposed,

these regulations not only would be very expensive to meet, but also would cause us serious marketing problems from having to change the basic apearance of our motorcycles. We have been stressing to the EPA that the consumer would have to pay up to $400 more per motorcycle if the proposed standards take effect. We see this as a classic case of over-regulation that is not cost-effective because motorcycle noise levels are simply not a significant factor in the overall noise on our highways.

For those of you primarily concerned with advertising, you should be aware that a Senate subcommittee has launched a hunting expedition aimed against advertising which gives corporate views on controversial isssues. This also includes advertising campaigns designed to improve corporate image, which, of course can be a major help to your marketing efforts.

The tire industry is locked in a monumental struggle with the National Highway Traffic Safety Administration over the issue of uniform quality grading standards for auto tires. Nearly 13 years have elapsed since Congress first took up this subject, and countless manhours and an estimated $30 million already have been spent by the tire industry and the government, with very little to show for it. The pending legislation calls for manufacturers to grade treadwear, traction and heat resistance of tires with a combination of letters, numbers and symbols which offer 1,500 combinations.

Can you believe that's supposed to make it easier for us to buy the right tire? The industry says there is no evidence that the grading standards would help consumers because the proposed system is based on inadequate knowledge of the type of tire information a consumer needs. Therefore, the information a tire buyer would get clearly isn't worth the $150 to $200 million the system would cost.

An independent agency set up by Congress to monitor the effects of government regulation claims this case "illustrates how the regulatory system can break down." And the impasse continues. Meanwhile, the really important matter of setting adequate tire safety standards has long since been handled cooperatively by the industry and government.

The last few years have witnessed an explosion in the scope and pervasiveness of federal regulation. A growing number of highly questionable regulations are appearing.

What does this all mean to us? Very simply, to be effective in marketing today, we have to get fully involved in the governmental rule making process. This requires not only the gathering and evaluation of pertinent information, but also the launching of effective action programs that will influence the details and enforcement of regulations.

On the information side, get to know and understand the government regulations having the most direct effect on your products or services. Your company's Washington office, or consultants, can be of major assistance on this.

Before even considering the design and materials in a new product, you should take the appropriate government regulations, and/or possible future regulation, into account.

That goes without saying but, in addition, you must factor those regulations into the planning and implementing of your marketing, advertising and sales promotion activities. Doing anything less will leave you and your company open to time-consuming, costly confrontations with government regulators and consumer activists, as well as the embarrassing publicity that often results. All of these problems could profoundly restrict your marketing effectiveness.

And, you've got to do a lot more. You have to get involved in activities that will help to forestall, or at least favorably influence, proposed regulations that are inequitable or unnecessary. There are a number of ways to do this. One is to give more effective support to the efforts of your industry and allied industries to achieve improved self-regulation. This can be done through your trade association or a broader group, such as the National Association of Manufacturers. However, you should be ready to offer your own recommendations for industry self-regulation if you and your company don't feel comfortable with what now exists.

You also can commission or conduct a careful study of the costs and effects of regulation on your company and your industry. This will give you ammunition to communicate to political leaders, regulators, employees, stockholders and the media, focusing attention on regulatory cost ineffectiveness and helping gain support and relief.

There is an interesting new development in this area. Since 1974, when Congress approved the establishment of political action committees, more than 500 companies have done so. However, most of them have concentrated only on providing a system for employees to contribute to political campaigns by payroll deduction. Now, Atlantic Richfield and other companies have launched a different type of political action program, designed to inform current and retired employees, stockholders, customers, suppliers and other potential allies about political issues and proposed legislation that will affect them. They are presented with the pros and cons on the issues, urged to make up their own minds and then to communicate their views to their legislators. ARCO is doing this effectively by establishing civic action committees at the local plant and office level.

Another important step you and your company can take is to support proposed "sunset" legislation which would require federal regulatory programs to be rejustified totally every five years. The results could be dramatic.

G-Strings are with us everywhere. They aren't about to disappear. By being alert to them and doing something about them, you can help protect your markets, your products, your communications—and even your job.

Remember, these ever-increasing strings are going to get you if you don't watch out.

Thank you.●

VOTES ON AMENDMENTS TO H.R. 11280, CIVIL SERVICE REFORM

HON. DAVID F. EMERY

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. EMERY. Mr. Speaker, longstanding commitments in my district yesterday prevented me from remaining on the House floor to cast my vote on seven amendments to H.R. 11280, the Civil Service Reform Act. For the record, I would like to state my position on these rollcall votes:

Rollcall No. 745, "no." An amendment offered by Mr. HARRIS that sought to require that each agency should establish a personnel officer who is a career civil service person.

Rollcall No. 746, "no." An amendment offered by Mr. BONIOR modifying an amendment that sought to extend veterans preference for Vietnam-era veterans for 15 years from the date of separation or until December 31, 1985, for Vietnam-era veterans who served in the Vietnam theater.

Rollcall No. 747. "aye." An Amendment offered by Mr. HANLEY to retain existing veterans preference standards.

Rollcall No. 749, "aye." An amendment offered by Mr. LEACH setting a statutory ceiling on the total number of Federal employees in the executive branch.

Rollcall No. 750, "aye." An amendment offered by Mr. COLLINS that sought to permit the FBI to place 140 positions in GS 16–18 without respect to provisions placing limitations on executive level positions.

Rollcall No. 751, "aye." An amendment offered by Mr. ERLENBORN that sought to strike the labor-management and employee relations language from the bill.

Rollcall No. 752, "no." A motion offered by Mr. WILSON of California that the Committee of the Whole rise and report the bill back to the House with a recommendation that the enacting clause be stricken.●

USPHS CELEBRATES 180TH ANNIVERSARY

HON. PAUL G. ROGERS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. ROGERS. Mr. Speaker, today, we face tough choices in setting national priorities for allocation of money, manpower, technology, and other resources.

On the health front, particularly, we are confronted by great challenges.

True: We have made advancements in health over the years:

In combating (and in some cases, eliminating) such diseases as polio, cholera, yellow fever, smallpox, and other diseases;

In improving the quality and accessibility of health care (although much still remains to be done);

And generally, in improving and prolonging human life.

Despite such progress, however, we are still threatened by deadly dangers:

Cancer kills about 375,000 annually, and will strike one out of four of us; and

Heart disease wipes out more than 750,000 each year.

Projected over the next 10 years, this means that 10 million of our citizens—our friends and our families—will die of these dread diseases, and millions more of other silent killers stalking among us.

As Members of Congress, we are stewards not only of the resources of the Nation—but to a significant degree—of the lives of our people.

Wisely, our forefathers envisioned such a stewardship.

With the enactment of legislation "for the relief and sick and disabled seamen" in 1798, an early Congress established the forerunner of the U.S. Public Health Service.

Since its early days, the USPHS—responding to legislative initiatives enacted

by successive Congresses—has expanded tremendously. Now it operates health programs that stretch across the Nation and around the world, and combats the whole range of illnesses and diseases that threaten mankind.

Recently, the service celebrated its 180th anniversary.

During a ceremony at the National Institutes of Health, the Surgeon General of the Public Health Service and Assistant Secretary of Health of the Department of Health, Education, and Welfare, Dr. Julius B. Richmond, presented the following address which I feel deserves the attention of my colleagues:

HIGHLIGHTS OF THE 180 YEARS

(By Julius B. Richmond, M.D.)

There are many ways in which I could try to highlight the 180-year history of the Public Health Service. But nothing I might say in the next few minutes could begin to do justice to the history of this organization or to the men and women who have made it the most outstanding public health agency in the world.

When I learned much to my pleasure that every living former Surgeon General of the Public Health Service would be with us today to join in this celebration, I thought—how can I presume to review a history that these men literally helped to write. But then it occurred to me that they too walked in the footsteps of giants—such illustrious Surgeons General as John Maynard Woodworth, Walter Wyman, Rupert Blue, and Thomas Parran, and a roster of brilliant Public Health Service officers—physicians, dentists, scientists, nurses, and engineers—whose contributions to American and world health have been nothing short of miraculous.

The history of the Public Health Service officially begins with President John Adams' approval of an Act "for the relief of sick and disabled seamen." The date was July 16, 1798.

But, of course, that legislation did not emerge suddenly out of a vacuum. The notion that health care and disease prevention were community and even national responsibilities was widely recognized, as was the idea that medical care for merchant seamen could be financed by government through a collection of a small tax on the wages of the seamen themselves.

HMOs and national health insurance are not such novel ideas after all.

It was in this tavern—the Bunch of Grapes—members of the Marine Society of Boston conceived the idea that the Congress might impose a tax on seamen to provide for the construction of a marine hospital in Boston Harbor. Their proposal was submitted to the U.S. Congress in 1791, and this hospital was constructed and ready for occupancy in 1803. It was the first permanent hospital of the Marine Hospital Service, predecessor of the Public Health Service.

It is interesting in the light of recent developments to note that the tax on merchant seamen to cover the cost of building hospitals, providing staff, and delivering medical care was twenty cents per month. Of course, there was such a thing as inflation in the cost of health care even then. A few decades later, the levy was raised to forty cents a month, and even at that impressive rate the Marine Hospital Service was chronically operating in the red. In Fiscal Year 1861, when the Marine Hospital Service operated some 27 hospitals at ports and inland waterways, the Marine Hospital Fund collected $10,391.24. But its expenses were a whopping $41,030.32, and the Secretary of the Treasury, Solomon P. Chase, promptly set about to reduce this staggering drain on the Federal coffers. I'm not sure how successful Secretary Chase was, but by 1864 the number of Marine Hospitals had been reduced to eight.

For the first 70 years of its existence, the Marine Hospital Service functioned as a loosely knit collection of hospitals extending from the Eastern Seaboard to Hawaii. But on June 29, 1870, President Grant signed into law a piece of legislation that transformed the Marine Hospital Service into a truly national health agency with the capacity to evolve into the modern Public Health Service. It authorized the post of Supervising Surgeon and paved the way for the appointment of Dr. John Maynard Woodworth, the first individual to have responsibility for a national marine hospital and public health agency for the United States.

Dr. Woodworth's efforts, as well as new regulations governing the appointment and promotion of physicians in the Marine Hospital Service, led to the establishment in 1889 of the Commissioned Corps. In 1930 the Corps was first permitted to hire engineers and dentists, and in 1944 this authority was expanded to include research scientists, nurses, and many other health professionals.

The history of the Service—especially within the last hundred years—reflects the great changes brought about by the rapid growth in scientific and biomedical knowledge. Even in its earliest years, the Marine Hospital Service was a pioneer in the application of vaccination for the control of small pox. And the Congress enacted many short-term laws authorizing Marine Hospital Service officers to aid communities stricken with chlorea and yellow fever.

But the summer of 1878 witnessed the most severe and widespread epidemic of yellow fever in the Nation's history. And the response to that disaster prompted a fundamental change in national attitudes toward the role of government in protecting the public health and in the direction the Service would take in response to that attitude. Somewhere between 20,000 and 100,000 people died when yellow fever was carried from New Orleans to Pittsburgh by the crewmen of a Mississippi River towboat. The Nation's quarantine laws were still the exclusive province of State and local governments. But in the year of the yellow fever epidemic, Congress moved to give the Marine Hospital Service a measure of responsibility on a uniform, national scale.

The first National Quarantine Act authorized the Service to develop quarantine laws for ports that lacked effective control measures. But the response to the great epidemics of the late 1800's also demonstrated the value of a national health organization that could speed assistance to localities that needed it. When plague was reported in San Francisco in the early part of this century, the Public Health and Marine Hospital Service—its new and cumbersome name a reflection of its increased responsibility—was able to dispatch personnel and supplies to the area.

With Surgeon General Walter Wyman guiding a Federal agency having substantially augmented capabilities, this PHS physician, Dr. Ruper Blue earned lasting fame as the conqueror of the worst plague outbreak in our history. He succeeded Wyman as Surgeon General and is the only person—so far at least—ever to serve as both Surgeon General of the Public Health Service and President of the American Medical Association.

I can't resist making one observation about Surgeon General Wyman. It was during his tenure as Surgeon General—1891 to 1911—that the child health movement in this country was founded. There was considerable interest in establishing a maternal and child health program within the Public Health Service. But that was not to be. Dr. Wyman, you see, was a bachelor. It's intriguing to speculate about how actively the Service might have engaged in N and CH activities had Dr. Wyman been a family man.

But there is no need to speculate about other directions in which the PHS developed his leadership. Perhaps not important, it actively entered the burgeoning field of biomedical research. In 1887, a PHS officer and student of the great German bacteriologist Robert Koch established a one-room hygiene laboratory at the Marine Hospital on Staten Island. Dr. Joseph James Kinyoun thus established what has today grown into the world's leading institution for the conduct and support of health research—the National Institutes of Health.

During this period, the roster of PHS officers and their contributions to scientific knowledge and improved health is a virtual Who's Who in health. Among them—

Dr. Henry Rose Carter who formulated the concept of an extrinsic host for the yellow fever pathogen and then paved the way for Walter Reeds successful identification of the mosquito vector for the disease.

Dr. Joseph Goldberger a pioneer epidemiologist who demonstrated that pellagra was not a contageon, but a nutritional disease.

Dr. Wade Hampton Frost an early investigator of poliomyelitis and the man who established the Public Health Service as a national leader in research on water pollution.

At the risk of glossing too lightly over our more recent history, the Service, as you know, has emerged in the twentieth century as a potent force for improved health knowledge and status. Look, by way of illustration, at the dramatic change that has occurred in the last 75 years in the impact of four major causes of death:

In 1900, tuberculosis claimed nearly 200 lives for every 100,000 population. In 1976 the TB death rate was 1.5 per 100,000. In the same period, the death rate for influenza and pneumonia fell from 202 to fewer than 29 per 100,000.

But on the other side of the ledger, the death rate from cancer which stood at 64 per 100,000 in 1950 was 175, and the death rate for cardiovascular disease had climbed from 137 per 100,000 in 1900 to 337 in 1976. Clearly the Public Health Service had helped score tremendous gains against the major diseases associated with contageon, poor sanitation, and lack of decent living conditions. But these victories brought in their wake a rise in the chronic diseases on an aging and more affluent population—diseases associated with lifestyle and environmental factors, the health problems against which so much of our energies and resources are directed today.

With the role of the Service in research, disease control, support of State and local health programs, and direct care of statutory beneficiaries well established, Surgeon General Thomas Parran was able to outline a broad, national public health mission for the Service. Dr. Parran, who had skillfully directed the PHS throughout the Depression years and World War II, when the Service spearheaded efforts to control TB, malaria, and venereal diseases, envisioned a six-point health program for the Nation:

A sanitary environment for everyone;

A hospital system adequate for the provision of complete medical services for all;

Expanded public health services in every part of the country;

Augmented research in health and medical sciences;

Training of health and medical personnel in adequate numbers; and

A national medical care program.

Dr. Parran offered this proposal nearly 35 years ago. With only slight modification it could stand as our present charter and our mission for the future.

In a sense, it might be said that the role of the Public Health Service has come full circle. One hundred eighty years ago, this organization was founded on the idea that a system of health insurance for merchant

seamen would be in the public interest, that it would help serve the needs of a nation that recognized the economic, as well as the humanitarian, importance of health.

We are building today for a vastly more comprehensive and more universal form of national health insurance along lines envisioned by Surgeon General Parran and many others.

But the guiding concept is fundamentally the same.

I can do no better than to underscore what Dr. Parran wrote in his annual report for 1944, the report that included his six-point program:

"The United States possess the potential resources with which to insure to every citizen the maximum benefit from all that the life-saving sciences have to offer. Public Health means the sum total of individual health. Only by considering the needs of the individual, the local community, and the State can we arrive at a program adequate in scope and content for the Nation as a whole."●

SUPPORT FOR PRESIDENTIAL COMMISSION ON PENSION POLICY

HON. JOHN H. DENT

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. DENT. Mr. Speaker, I rise in support of House Concurrent Resolution 710. As a cosponsor of this resolution, I would like to join the distinguished chairman of the Subcommittee on Retirement Income and Employment, FRED B. ROONEY, in expressing congressional support for the work on the Presidential Commission on Pension Policy.

The creation of this Commission is a timely act on the part of the President. The issues the Commission will be addressing are of paramount importance to the welfare of the Nation. As an increasing percent of the population becomes over 65 years of age, the need for a coherent, unified national pension policy becomes greater. By the year 2035, 21.7 percent of our population will fall into this category.

A retirement commission of an earlier time leads us to place high hopes on the work of this new commission. The findings of that commission, established by President Kennedy, led to the enactment of the Employee Retirement Income Security Act on Labor Day in 1974. Under this act, millions of American workers and their families enjoy the security of Government guarantee of pension benefits and full disclosure of their rights and obligations under the plans in which they participate.

As great as the accomplishments embodied in ERISA are, it remains that much more needs to be done. As chairman of the Pension Task Force, there are several issues that I particularly would like to see addressed by the Commission:

ERISA itself continues to suffer under a burden of split jurisdiction that threatens to discredit the reforms accomplished by the act. No redefinition or reorganization of responsibilities under the act is going to eliminate all of the unnecessary redtape and confusion that presently frustrates existing plans and discourages the formation of new ones. It is a disgrace that administrative agencies are tripping over each other's feet while the interests of participants and beneficiaries are neglected. This situation must not be allowed to continue.

The President's Commission should examine the administration of ERISA and the benefits that a consolidated single agency would bring to fulfilling the promises of ERISA.

A second area in need of study is the lack of a single national policy relating to Government plans. These plans were exempted from ERISA because not enough was known about them. Yet, by some estimates over $500 billion of unfunded liabilities have been accrued in the form of promised pension benefits. In light of this staggering sum, the need for reform is obvious.

The Pension Task Force report on public employee retirement systems provides the information that is needed to go ahead in this vital area. The President's Commission should closely examine the Task Force report, any legislation based on it, and all other available information on these plans, and submit recommendations on coverage for public employee retirement systems.

It cannot be stated too strongly that participants in public plans need many of the protections afforded participants in private plans under ERISA. Reporting and disclosure requirements and fiduciary standards for public plans should both be important items on the Commission's agenda.

Mr. Speaker, if the Commission achieves the objectives outlined by President Carter on July 12, 1978, a framework for the establishment of a comprehensive, coordinated national pension policy will have been created. Such a policy would represent a tremendous advance, not only in providing retirement security for all Americans, but in promoting fiscal responsibility over pension costs.

Both of these goals are growing in importance each day. I urge my colleagues to join me in supporting this resolution as a first step in creating a national pension policy.●

AVIATION REGULATORY REFORM GAINS SUPPORT

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. ANDERSON of California. Mr. Speaker, H.R. 12611, the aviation regulatory reform bill, will soon be considered by the House. This bill reforms the regulatory system governing airlines to insure that the airlines continue to compete as they have in recent months. The low fares which have resulted from this competition have led to record levels of travel.

As I indicated in my remarks of August 9, H.R. 12611 is supported by a widespread coalition. Today I am placing several additional letters in the RECORD, as a further demonstration of this support.

The organizations signing the letters included in today's remarks are: The American Retail Federation, an umbrella organization of retail organizations in every State; the National Retail Merchants Association, whose 3,500 members operate some 35,000 general merchandise retail stores across the country; the Western Traffic Conference, Inc., whose members operate in excess of 4,200 stores in the Pacific-intermountain territory; the American Farm Bureau; the Airport Operators Council International, representing the governmental units which own and operate airports served by scheduled airlines, and the United Airlines.

The letters follow:

AMERICAN RETAIL FEDERATION,
Washington, D.C., August 9, 1978.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The American Retail Federation would like to take this opportunity to urge the earliest possible floor consideration of H.R. 12611, the Air Service Improvement Act. The Federation has closely followed the progress of this legislation and has great interest in seeing liberalized entry provisions become part of the law.

The American Retail Federation is an umbrella organization consisting of 32 national retail associations, 50 state retail associations and the District of Columbia, and corporate members.

Flexible entry is a matter of concern to all our members.

Sincerely,

LLOYD HACKLER.

NATIONAL RETAIL MERCHANTS ASSOCIATION,
Washington, D.C., August 8, 1978.

Hon. GLENN M. ANDERSON,
Chairman, House Aviation Subcommittee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I a writing on behalf of the National Retail Merchants Association to reiterate our support for H.R 12611, the Airline Regulatory Reform Act.

As a member of the Ad Hoc Committee on Airline Regulatory Reform, NRMA is on record in support of increased competition in the airline industry. We believe that H.R. 12611 is an essential step toward that goal. As an industry whose livelihood is based on competition, we urge speedy and favorable consideration of this vital legislation by the full House of Representatives.

By way of background, NRMA is a national, nonprofit trade association whose 3,500 members operate some 35,000 general merchandise retail stores across the country. Our members' annual sales exceed $95 billion and they employ more than 2 million workers.

Thank you for your consideration of our comments.

Sincerely,

VERRICK Q. FRENCH,
Vice President, Governmental Affairs.

WESTERN TRAFFIC CONFERENCE, INC.,
Seattle, Wash., August 3, 1978.

Hon. GLENN ANDERSON,
Rayburn House Office Building, Washington, D.C.

DEAR MR. ANDERSON: Western Traffic Conference, Inc. wishes to again go on record of being in support of HR 12611.

We have previously written and wired your office of our support of deregulation of the

domestic airline industry, especially as it pertains to entry of new carriers, and wish to let you know of our continued support of your efforts in this matter.

Very truly yours,

ROBERT G. GLEASON,
Secretary-Treasurer.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., August 8, 1978.

Re: H.R. 12611, Airline Regulatory Reform

Hon. GLENN M. ANDERSON,
United States House of Representatives, Washington, D.C.

DEAR CONGRESSMAN ANDERSON: With the limited number of days left for this session of the Congress, we are concerned that H.R. 12611 has not moved forward to the floor for action during this session.

As you know, Farm Bureau has been a strong supporter of legislation to bring about meaningful regulatory reform of the airline industry. We believe H.R. 12611 is a meaningful reform measure, and we would hope that you would use your influence to move this bill forward without further delay.

Sincerely,

JOHN C. DATT,
Director, Washington Office.

AIRPORT OPERATORS COUNCIL INTERNATIONAL,
August 8, 1978.

Re H.R. 12611, Air Transportation Regulatory Reform Act of 1978.

Hon. GLENN M. ANDERSON,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This week, H.R. 12611, Air Transportation Regulatory Reform Act of 1978, will come before the House Rules Committee. The Airport Operators Council International (AOCI), representing the governmental units wnich own and operate airports served by the scheduled airlines, urges early House floor approval of this historic legislation.

AOCI has monitored very closely the Public Works Committee's markup on this bill to reform Civil Aeronautics Board (CAB) regulation of the airlines and we support the comprehensive but cautious approach finally developed in H.R. 12611. Our airport members believe this legislation provides a balanced range of moderate reforms designed to facilitate new and improved community air service, to speed up CAB decisions and to establish necessary safeguards for a smooth transition to a more competitive environment.

This legislation has been greatly modified since its original introduction. In its present form, the Committee bill can not be construed as "deregulation," a concept which could have threatened the stability of airport facilities and their capital financing. It now has evolved into a progressive legislative mechanism for modernization of the process by which communities receive air service, "regulatory reform" of the Civil Aeronautics Board, which—viewed from the perspective of the local governmental airport sponsor—is long overdue.

UNITED AIRLINES,
September 6, 1978.

Hon. GLENN M. ANDERSON,
House of Representatives, House Office Building, Washington, D.C.

DEAR MR. ANDERSON: The Air Service Improvement Act of 1978 (H.R. 12611) reported out by the Committee on Public Works and Transportation is expected to be considered on the floor of the House at an early date.

I strongly urge your support of this change to the Federal Aviation Act to reduce the degree of government regulation of the U.S. passenger airline industry. I feel the best means for assuring the American public of a continuing supply of high quality and reasonably priced air transportation is to place greater reliance on the forces of the marketplace. The marketplace, not a government agency, can best provide the influences on airline management that will bring economical and efficient service to the public while fostering growth and prosperity of the carriers.

H.R. 12611 is good legislation. It will strengthen the nation's air-transportation system, increase competition and keep fares reasonable for the traveling public.

I appreciate whatever support you can give in the passage of this most important piece of legislation.

Sincerely,

J. H. BRANNEN,
Special Assistant to the President.●

RETHINKING OUR NATIONAL PRIORITIES

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. BOB WILSON. Mr. Speaker, over the past several years I have given much thought to the directions taken by our Government at the Federal, State, and local levels. It appears to me that this country is in real danger of regulating itself out of business, out of energy, out of jobs, and out of a promising future.

As a result of overregulation, we may well be the cleanest and safest country ever to go to the poorhouse—and, unfortunately, the poorhouse will be poorly heated and badly lighted. If present trends continue, however, we can depend on a highly regulated social order overseen by a disorganized bureaucracy.

Mr. Speaker, Dr. George E. Mueller, chairman and president of System Development Corp., recently addressed the Commonwealth Club of San Francisco. His analysis of the effects of rampant and self-defeating overregulation at all levels of government should be required reading for every person in government. Dr. Mueller's speech is as follows:

RETHINKING OUR NATIONAL PRIORITIES

In the 1970s, Americans have made a radical change in national goals. Just 10 years ago, we were expanding building for the future, and the space program was an important fulcrum.

In 1968, we could say—and I did say, "What we are buying with our investment in technology are the new products, new processes, new companies, and, in fact, new industries which will provide the jobs that must be created if we are to solve the long term needs of our society. We must press forward."

Incredibly, we did not press forward. Though the vast opportunities of a continued investment in technology were there for all to see, we abruptly changed our national priorities. We sharply curtailed federal investment in needed research and development, and embarked upon a mammoth program of social control legislation that effectively curtailed private industry's investment.

Even as we were landing on the moon, we abruptly turned our backs on the enormous vistas of space. We had detected sin here on earth. We had known for some time that our society had problems, but suddenly these problems no longer were subject to rational analysis and balanced solutions. We had a moral imperative to eradicate that sin, whatever the cost.

With puritanical fervor, Congress and the state legislatures embarked upon a program of social control. In less than five years, they succeeded in regulating virtually every aspect of American life. In the process, we have mortgaged our future, and the payments are becoming increasingly difficult to meet.

I am sure we can afford the $5 billion annual payroll of regulatory agencies. I even think our economy is strong enough to withstand the hundreds of billions of dollars businesses are paying out in an attempt to meet social control regulations. What really concerns me is the disastrous impact the social control regulations are having on this nation's highest priority programs—energy, inflation control, employment—and, most important of all, our willingness and ability to invest in the future.

These are problems which have reached crisis proportions. Even so, our government rigorously enforces social control regulations that threaten to turn these crises into national disasters.

Consider energy. The Arab embargo made it clear that we must develop alternate sources of energy—and we must do it quickly. Much attention was focussed upon three promising sources—nuclear energy, solar energy, and shale oil.

Five years later, though we are not significantly farther along in developing these alternate sources. And the primary culprit has been the bewildering maze of regulations tenaciously enforced by agencies at the federal, state, and local levels.

This year, the California Public Utilities Commission finally disapproved the Sun Desert nuclear project, despite the fact that it was to be located in the desert, far from any city, and despite the fact the San Diego Gas & Electric had spent millions to insure the plant would be fail-safe.

Hence, there will be no new nuclear power in California, after current projects are completed, until at least 1990. To meet the urgent power needs of the San Diego area in the 1980s, the PUC offered only one alternative: Buy 800 megawatts of power from Mexico. In the face of our national goal of energy independence then, the PUC proposes to rely on the goodwill of Mexican authorities for San Diego's power needs.

Solar energy development has been similarly hamstrung. Even as the Department of Energy is spending millions to stimulate the industry, regulatory agencies are taking actions to depress it. One solar panel manufacturer described the situation well when he announced he was going out of the business.

"Multiple and conflicting product performance criteria and warranty requirements are either being imposed or recommended by just about every local, state, and federal government agency. This makes it virtually impossible for a manufacturer to forcast the ground rules and eventual economic outcome of its solar program."

Shale oil production is an even sadder story, because of the billions of barrels of oil that lie untapped. We have adequate technology to tap these reserves, but the shale oil industry has been stopped cold by continual changes in policy.

One oil shale company has been enmired in the shifting sands of the regulatory environment for 8 years now—at the cost to the company of some $70 million. First, there was the National Environmental Policy Act and its requirements for environmental impact assessments. Incredibly, 20 volumes of detailed reports and analyses were required, costing the company $2.5 million and years of delay, during which time construction costs doubled.

Then, there was the Clean Air Act of 1970. Although the law's standards were designed for urban areas, the EPA applied them to determine the appropriate air quality for protection of health and welfare in the mountains of Colorado. Unfortunately, the wilderness of Colorado already was in violation of Federal emission standards. Hydrocarbon limits are exceeded by the sagebrush; ozone limits are exceeded by the sunshine; and particulate levels are exceeded by desert sand blown in the wind. Under the terms of the Act, no facility, however non-polluting, can be built in an area that already violates national standards. Even if the regulators wanted to exempt this area, no one was sure the exemption would withstand a court challenge.

Then, Colorado issued a set of standards even more restrictive than the EPA standards. The state standards were later relieved, but it is clear that a state may at any time enact regulations that can effectively halt a billion-dollar project.

Today, 8 years later, the company still has not started construction. It may well be 1980 before the EPA and the State agencies issue or deny the necessary permits. Meanwhile, the price of foreign oil rises inexorably, worsening our sorry trade deficit and leading us back to double-digit inflation. We can't blame all of our inflation on the Arabs, of course. Other factors are involved, not the least of which is over-regulation.

When costs are ignored, and the focus of public policy is solely on the benefits, it is almost inevitable that regulation will feed the inflationary spiral for no useful purpose. The Center for the Study of American Business estimated recently that the cost imposed on American business by federal regulations in 1976 totalled at least $65.5 billion. That's almost double the cost of the entire manned space program.

Although some of those expenditures were useful, a large portion of this inflationary spending was completely non-productive. For example, it now appears that the $3 billion spent each year to meet OSHA requirements has not reduced accident levels at all. Applying the cost-benefit test to the EPA yields even more questionable results. The Council on Wage and Price Stability has pointed out that meeting the 1977 water-discharge standards will have resulted in a 97.3 percent reduction of water pollutants. Meeting the 1983 standards will result in only a 1.7 percent additional reduction, yet the cost to industry will double.

The only way for industry to cover these costs is to pass them on to consumers. This often hurts our competitive position in the world marketplace; it always feeds inflation. The Council on Environmental Quality estimated that private outlays for pollution control in 1976 were $6.5 billion higher than would have been the case in the absence of EPA requirements. Since the EPA concedes that its regulations add at least 0.3 percent to the rate of inflation, the total $65.5 billion cost of all regulation may well result in a built-in inflation of at least 3 percent.

Much of our inflation is caused by our commitment to full employment, of course, and the Administration is striving to reduce unemployment. Again, however, the regulators don't seem to have gotten the message. Their regulations are closing plants and throwing thousands out of work. For example, the Kaiser Steel plant in the Los Angeles basin has spent some $20 million to control emissions from its 35-year-old coke ovens. As a result, emissions from the plant now represent only about 0.02 percent of the daily emission of particulates in the area.

Although further reduction would appear to have negligible effect on ambient air quality, local regulators are rigidly enforcing a rule forbidding emissions from the oven doors into which coal is loaded and coke is extracted. Although the courts held that the rules were too vague to be enforceable, I am sure the ruling will be appealed. The agency seems intent on forcing the closure of that plant, even though this would cost some 25,000 jobs in an already high unemployment area.

Other regulators are effectively blocking new plants, as they did when Dow Chemical proposed to build a plant in Sacramento, CA. There is no petrochemical industry on the West Coast, and that almost completely non-polluting plant would have created a large number of jobs. Even so, all the delays and costs imposed by various regulatory agencies finally forced Dow to abandon the project.

Not only are regulatory agencies wiping out jobs by closing plants, then, they are preventing these jobs from being replaced by new plants. Moreover, only 50 percent of our capital investment is going for expansion. The other 50 percent must be spent for non-productive equipment mandated by these same agencies.

Capital expansion will not take place without the possibility of reasonable return, and capital expansion is essential to the free enterprise system that has built this nation. Ironically, the depressant effect that social control legislation has on productive investment threatens the very social goals its architects were pursuing. It does so because it threatens our economic stability and, hence, our entire way of life.

It has been clear for some time now that this country has conflicting goals that cannot all be met. We must choose, and we must set real national priorities. I happen to think that investing in the future is as important today as it was in 1968. We have lost a decade, though, and we must move quickly and decisively. The time is short.●

LEGAL QUALIFICATIONS MET FOR SOVEREIGNTY OF TRANSKEI

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. WYDLER. Mr. Speaker, the so-called African policy of the Carter administration is one that is making a shambles of our position on the African continent.

Apparently, at the insistence of United Nations Ambassador Young, our policy consists of trying to work with certain black leaders of African nations and, in effect, following their leadership. This policy, of course, presupposes that what is good for these black African countries is good for the United States of America. The results have been bad to date, and getting worse with each passing day as we realize that Africa is being subverted by armed force, and we are, of course, mere spectators to this steady takeover.

One facet of this policy has been, of course, the U.S. Goverment's attitude toward the Republic of Transkei. This nation is now a sovereign state whether we wish to recognize it or not. The fact of the matter is that it has been declared independent and is an independent country. Regardless of the motives of the South African Government, it seems foolish to refuse to recognize a country run and controlled by black Africans on the ground that such recognition would not only help the black Africans, but help the white African interests as well.

I have recently come into possession of an article printed in the New York Law Journal, by Bernard Katzen, now a representative of the Government of Transkei in our country, and a distinguished attorney in New York City, which sets forth some background material I think is essential to understand the paths of foolishness in which we are presently proceeding in our relations with the countries of Africa.

[From the New York Law Journal, July 14, 1978]

LEGAL QUALIFICATIONS MET FOR SOVEREIGNTY OF TRANSKEI

(By Bernard Katzen)

On Oct. 26, 1976, a new nation, the Republic of Transkei, was born and as a sovereign state declared its independence from South Africa. On that day the United Nations Assembly voted 138 to 0 (U.S. abstaining) to deny it recognition, although Transkei had not yet applied for membership.

The U.N.'s action was not as precipitous as might have appeared. The anti-Transkei cauldron had been boiling for some time. It had brewed with a mix of anti-South African ingredients: apartheidism, discrimination, racial inequality, but also included some myopic societal perceptions, politics and economics.

QUESTIONS OF RIGHTS

Out of the distillation of this concoction and the U.N.'s resultant disposition, some troublesome questions remained unanswered. What of the rights of 3 million Transkeians who for many years had sought independence from British colonialism, and the discriminatory practices of its successors, the Union of South Africa and the Republic of South Africa? What of the hopes and aspirations of a new unified nation ideologically anti-Leninist-Marxist constituted, a nation western oriented and committed to the democratic ethic expressed in the preamble to its constitution?

"A Republic wherein its citizens and all others who dwell lawfully within its borders are assured of social, political and economic justice, freedom of speech, assembly and worship, and unimpeded access to and equality before the law."

What a nation dedicated to providing for its people a newly found opportunity to achieve intellectual, cultural and economic fulfillment, the true indicia of a democratic society?

STRUGGLE FOR INDEPENDENCE

In the bitter controversy surrounding South Africa's apartheid homelands policy, one should consider the historic struggle of the people of Transkei for independence. Long before an apartheid policy was conceived, long before the Boers and British invaded Transkei territory, the Xhosas, Thembus, Pondos, Fingos and affiliated tribes and sub-tribes of the Nguni and South Sotho had migrated to the Southeast coast of Africa away from internecine tribal wars.

They had settled in the lush, fertile fields of Transkei territory, presently an area of about 17,000 square miles, larger than Belgium, Switzerland or twenty other UN nations, and unlike some which are landlocked, with a coastline of 170 miles on the Indian Ocean. Continually repulsing Boer invasion, they opted for the protection of British colonialism but never ceased to strive for liberation and independence.

By virtue of a series of parliamentary enactments. Transkei was annexed by the Union of South Africa and subsequently incorporated into the Republic of South Africa, over Transkei's strenuous protests. By relentless pressure and without the tactics of

guerrilla bloodshed, Transkei achieved a semi-autonomous status, with its own legislative assembly and control of various departments of government: finance, education, interior, agriculture and health.

When at last independence was total, Transkei met all of the legal qualifications for sovereignty:

1. A specific territory with defined borders; 2. A stable population with adequate controls; 3. The freedom and capacity to engage in relations with other foreign governments. Prime Minister of Transkei, Dr. K. D. Matanzima, summed up the nature of Transkei's independence with crystal clarity when he declared "The independence of Transkei is a manifestation and culmination of the struggle by the indigenous people of the Transkeian territory for liberation and independence."

PUPPET STATE?

Opponents of recognition argue that Transkei is a puppet state created solely in pursuance of South Africa's apartheid policy—deprives Transkeians living outside its borders in South Africa of their rights—fragments the totality of efforts in the fight against apartheidism—is not economically viable.

If fact could dispel myth, if logic could overcome emotion, the clouds of misconception in this reasoning would readily evaporate. As a sovereign nation, by policy, publicly proclaimed Transkei has denounced apartheidism and discrimination in South Africa and has asserted adversary contract and land claims, not possible before independence.

In a dramatic development on April 10 last, the South Africa Parliamentary action in transferring jurisdiction of East Griqualand from the Cape Province to Natal was sharply denounced by Prime Minister Matanzima. This was the land to which Transkei had asserted claims. As a consequence, Transkei severed diplomatic relations with the Republic of South Africa, recalled its Ambassador and Consuls and advised the Ambassador of the Republic of South Africa and his staff to leave Transkei on or before April 30, 1978.

To hold 3 million people now living in freedom hostage until the day that discrimination is eliminated and a nonracial society prevails throughout South Africa, is irrational, even indefensible. Far from fragmenting efforts to achieve those goals, Transkei is a most articulate and significant protagonist in this engagement.

As to economic viability, Transkei is witnessing a growing industrial and agricultural development and given recognition and aid, often extended to developing countries, has a potential for achieving a level of economic self-sufficiency far above some if not most of the sub-Sahara nations of Africa.

Paraphrasing words describing a distinguished American lady, the U.N. should have "lighted the candle of recognition, not cursed the darkness of rejection."

Inevitably, the Republic of Transkei will assume its rightful place in the family of nations.●

THE CHEMICAL WARFARE PROBLEM

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. McDONALD. Mr. Speaker, although there is increased attention being given to the problem of chemical warfare by the Department of the Army, we still have a long way to go to be able to defend ourselves against known Soviet capabilities in that field. Soviet equipment, personnel, production, and research are just greater than all our efforts by several times. Although many of our personnel have some responsibility for chemical warfare, there are still only four colonels with sole chemical warfare duties in the Army. We also have one brigadier general with 50 percent of his duties relating to chemical warfare. The Soviet forces start with Col. Gen. Vladimir Karpovich Pikalov, as Chief of Chemical Troops, in Moscow. His Deputy Chief is Lt. Gen. P. Krasota. In the field, a Maj. Gen. N. Moiseyev is Chief of Chemical Troops for Soviet Forces in Germany. At a typical unit level in Germany, a Major Baklushin is Chief of the Chemical Service. Further, the Soviet Chemical Defense Battalion assigned to each Soviet division is almost as large as the total U.S. Army establishment, which amounts to three teams. Therefore, I was pleased to read the August Washington Report of the American Security Council highlighting this grave problem. The report, in part, follows:

THE CHEMICAL WARFARE PROBLEM

(By Amoretta M. Hoeber and Joseph D. Douglass, Jr.)

(NOTE.—Amoretta Hoeber and Joseph Douglass are members of the technical staff of System Planning Corporation, a defense think tank in the suburbs of Washington, D.C.

(The article below deals with a subject which has been largely ignored, by both policymakers and the general public. It deserves attention. To the average American the very thought of chemical warfare is repugnant. But the reality which must be faced is that U.S. and NATO forces are unprepared to deal with a sophisticated chemical warfare threat from the Warsaw Pact. And that is an intolerable situation.

(You will find the analysis of this sensitive subject by Hoeber and Douglass enlightening but not comforting.—Editor.)

Over the past decade the Soviets have continued to increase steadily their capability to conduct war at all levels. Soviet increases in the strategic arena are well-documented and have received the most attention. Their increases in military manpower and tactical aircraft have likewise not gone unnoticed. However, one area has received almost no attention, and that is the recent dramatic increase in their ability to wage chemical warfare (CW).

This development has so far generated no improvements in CW equipment or training for U.S. and NATO forces, with the result that Western forces are today less able than they were a few years ago to survive and operate in the special environment which can be created by Soviet and Warsaw Pact chemical warfare weapons.

Triggered at least in part by the Dugway sheep incident of 1968, the U.S. chemical warfare capability underwent a rapid and sharp decline in the past decade. The incident involved the malfunction of the nozzle on an aerial spray tank carrying the toxic chemical VX during an open-air test at the Dugway Proving Ground, an Army chemical warfare test site in Utah. Within the next several days, approximately 6,000 sheep grazing some 27 miles away were found dead. While the cause-effect link was never established conclusively, minute quantities of VX were said to have been found in the skin tissues of the sheep and the connection of the death to the chemical test is usually presumed.

By the mid-Seventies, the Army Chemical Corps was almost disbanded, and the ability of U.S. forces to conduct operations in a chemical environment decreased to the point where the Chairman of the Joint Chiefs of Staff, General George Brown, said in January 1978 that United States forces were "not prepared" to fight in a chemical warfare environment.

Coincident with the decline in U.S. interest and capability, the Soviets moved in the opposite direction, not only improving their weapons, but significantly upgrading the relative importance of CW in their overall posture as well.

These trends have reached a point where now, among all comparisons of U.S.-Soviet capabilities, one of the most lopsided is in chemical warfare. In this area, the Soviets' superiority over the United States is assessed not by mere fatcors of two or three, but, more often than not, by two or three orders of magnitude. This is believed to apply almost uniformly to munitions stockpiles, testing facilities, training activities, equipment, qualified personnel, and force structures. While the U.S. attitude about this facet of preparedness is characterized by widespread apathy and repugnance, the Soviet attitude is one of serious attention to a warfighting capability and readiness.

It may be debated whether the expansion of the Soviet CW program resulted from such developments as "more tolerable" protective clothing and equipment and an antidote that enables ground troops to better exploit their chemical weapons, or merely reflects their seizing upon the opportunity to capitalize on the U.S. decline in CW activities. What is clear, however, is that the Soviets have a vastly superior chemical warfare capability, and that the main and significant advantage of chemical warfare emerges in such a condition of asymmetry.

While this state of affairs is now recognized by some people at the highest levels in the Armed Services, and while some actions have been initiated to improve our preparedness, the U.S. chemical warfare program is still grossly inadequate and will probably remain so unless it is nurtured and guided by urgent high-level support. The prospects for improvement, however, are marred by a severe sense of paranoia about chemical weapons in certain circles, by a lack of coordination and direction within the Department of Defense, and by a widely held belief that the only politically acceptable "solution" is an arms control agreement aimed at erasing the problem. The dangers inherent in such an approach and the potential for error in the underlying assumptions are, the authors believe, of such a magnitude as to warrant a critical review of the subject.

This article [a shortened version of an analysis prepared for an Arms Control Seminar, sponsored by the Institute for War and Peace Studies of Columbia University] will summarize the state of Soviet chemical warfare capabilities, both offensive and defensive; rationales from the Soviet point of view on the utility of chemical weapons in both nuclear and nonnuclear conflict; the state of the U.S. posture to cope with such a threat; and the basic problems associated with resolving chemical warfare issues within the U.S. defense establishment. A candid assessment of these factors, the authors believe, will lead to the conclusion that U.S./NATO forces should expect to have a toxic environment forced on them, and if they are "not prepared" to operate in such an environment and to pose a comparable CW threat to the Warsaw Pact forces, the CW disparity between the Warsaw Pact and NATO could clearly have disastrous—and potentially decisive—consequences for NATO. And the U.S./NATO chemical warfare deficiency may well invite the Soviets to use their chemical warfare superiority.

THE CURRENT SOVIET CW POSTURE AND RATIONALE FOR USE

Chemical warfare clearly is a major contingency for which the Soviet Union has made plans. Capabilities for chemical warfare are integrated throughout ground, air, and naval forces. The attention which the Soviets place on chemical warfare can be seen in the number and types of CW specialists in all military units, in the equipment provided to all units, in the extent of training and testing programs, and in the agents and munitions that have been developed. The current Soviet capability to conduct chemical warfare can properly be termed "awesome," and the Soviets are continuing to improve that capability.

Chemical defense units are organic to every Soviet command down to the regiment level. Smaller units usually include CW specialists. Analysis has shown that there are "scores of Soviet generals and some 70,000–100,000 full-time chemical warfare officers and men." In contrast, the United States has at most 2,000 officers and men engaged full time in some form of chemical chores; and, of these, probably no more than a handful could be regarded as equivalent to their Soviet counterparts.

Chemical warfare preparedness is also integrated into the design of Soviet fighting equipment. For example, all modern tanks and armored personnel carriers are designed to offer protection from both nuclear and chemical contamination. In contrast, while chemical warfare preparedness receives lip service in the planning for U.S. equipment, there are almost *no* weapons designed to provide CW protection. This factor is usually dropped in the design considerations when the first effort is made to reduce costs.

The Soviets also have considerable individual protective equipment and machinery for decontamination. The soldiers all have personal masks, protective clothing, chemical detectors and "effective" atropine-based compound syringe antidotes. Each Soviet division has decontamination companies to facilitate the return to combat of both men and equipment. The specialized chemical decontamination equipment includes a unique type of vehicle called TMS–65, which is a truck-mounted turbojet spraying apparatus for rapid decontamination of large vehicles.

These capabilities cannot be assumed to be merely defensive. They appear designed and deployed for use as part of the Soviet offensive capability, i.e., to enable Soviet troops to exploit their chemical weapons.

Training in the use of the equipment is standard and emphasized at all force levels, and includes training in "live" CW environments.

Reliable evidence is scarce regarding the exact magnitude and variety of Soviet offensive CW capability. Knowledgeable persons, however, including Professor John Erickson of the University of Edinburgh, have stated that Soviet chemical warfare agents include both World War I types as well as modern ones, such as:

Mustard gases;

Phosgene;

Hydrogen cyanide;

Soman and other nerve gases; and

An agent that "the Soviets label VR–55."

According to Erickson, there are chemical rounds for the 122-mm and 152-mm artillery, the FROG surface-to-surface short-range rocket, the longer-range SCUD surface-to-surface missile, and the BM–21 multiple rocket launcher. Chemical artillery, mortars, mines, air-delivered bombs and spray tanks were in the Soviet inventory in World War II. There is no evidence that those munitions have been destroyed. A reasonable assumption is that they have been upgraded with more modern agents.

A relatively recent system, the multiple rocket launcher, would be ideal for the delivery of a nonpersistent agent, such as hydrogen cyanide, against enemy forces immediately in front of forward-moving troops. It has been reported that the BM–21 provides a multiple container for this agent. It insures effective and rapid distribution of the agent over a target area; and the round can release the agent in active form. A battalion volley can impact 720 rounds on a target. Occupation of or assault on facilities attacked with such an agent could be carried out in a very short time after the attack with minimal danger to the assault troops.

How could the Soviets use their CW weapons? They could use them as a minor escalation above conventional weapons. Or they could use them as part of a larger escalation to the nuclear level. In either case, there could be advantages to the Soviets in hitting some targets without physically destroying them. There is little reason, however, to assume that the introduction by the Soviets of chemical weapons into a conventional conflict would result in the escalation of that conflict to a nuclear level.

It is generally believed that if the Soviets decided to begin a theater war, they would favor keeping it conventional, at least for some time, if they felt they could accomplish their objectives at that level of conflict. Their objectives, relative to NATO, would be: first, to improve the position of the Soviet Union in anticipation of a nuclear exchange by reducing or eliminating the NATO nuclear capability; and, second, to quickly overrun NATO defense positions and seize critical territory. The primary problem in achieving the first objective would be destroying NATO nuclear air capabilities, and such ground equipment as surface-to-surface missiles, nuclear artillery, and associated command/control centers. The primary problems in achieving the second objective would be overrunning NATO anti-tank defenses, disabling NATO tactical air bases, and inhibiting NATO force movements.

An important question is whether chemical warfare agents would be employed by the Soviets in such a nonnuclear assault in Europe. The perception—both official and unofficial—for many years has been, and, for the most part, still is, that given the Soviet definition of chemical weapons as "weapons of mass destruction," chemical warfare would occur only as part of a nuclear attack, whether nuclear weapons were used to initiate the conflict or were introduced at some later point. The authors disagree. While it is clear that the Soviets do consider chemical and nuclear weapons as much alike, too much emphasis on that fact by itself leads to a gross oversimplification of the problem. Most assuredly, the common classification of these weapons does not by itself mean that CW weapons would only be used in all-out war.

Against the major Soviet targets in Western Europe, such as NATO antitank defense, nuclear storage facilities, command and control centers, equipment depots, and tactical air bases, chemical weapons offer important advantages that complement rather than duplicate the effects of both conventional and nuclear weapons, and recommend their use in both contexts. Without a good protective posture for NATO against Warsaw Pact chemical weapons, NATO antitank defense would be paralyzed by fast-acting and nonpersistent chemical agents, but these agents would not inhibit armored operations by protected Pact forces. Chemical weapons could likewise be very important in disabling NATO nuclear capabilities. Again, without a considerably improved protective posture on the NATO side, Soviet chemical weapons could put such bases out of action for extended periods of time with only a few repeated strikes with persistent chemical munitions. Many command/control targets, such as radars, ground control stations and navigation transmitters are neither large enough to warrant a nuclear strike nor vulnerable enough to insure destruction with one sortie of conventional munitions. For such targets, generally unprotected against chemical agents, chemical weapons are the most efficient means of putting them out of action.

Further, in both conventional and nuclear scenarios, it would be preferable from the Soviet point of view to seize rather than destroy many targets, including airbases, fuel dumps, transportation centers, harbors, and commercial airports. The Soviet objective would not be to destroy these targets but merely to prevent their use by U.S./NATO forces until the Soviets could seize them and put them to their own use—perhaps immediately, perhaps within a week or so. With the selection of the proper agents, such targets could be rendered unfit for U.S./NATO use but could be available for Soviet occupation at the planned time.

Finally, the movement of NATO reserves, which is already a severe problem, could be seriously impeded by the application of the more persistent chemical weapons to important transportation centers.

The effectiveness of CW weapons can be especially high in these mission areas because the desired results—disabling of the particular forces and contamination of particular areas—would not depend upon lethal doses of chemicals being delivered over the entire target. Sublethal doses could impose physically disabling effects on personnel who are not protected. These effects, in particular optical pain and miosis caused by small doses of nerve agent, will prevent or seriously degrade the performance of military personnel in such functions as aiming and sighting guns or artillery pieces, instrument reading, and flying.

All in all, chemical weapons offer very significant advantages to the Soviets in either nuclear or conventional war. Considering their advantages, many of which exist for the Soviets because of "marginal" U.S./NATO preparedness, it is inconceivable to the authors that the Soviets would not capitalize on their CW capabilities in *any* major conflict in Europe. The benefits to be derived in terms of increasing the probability of a successful short war are far greater than any additional risk associated with CW employment.

The authors find it gratifying that parts of this perception are gradually gaining acceptance. The current *Army Manual 100–5*, the basic Army document on tactics, published in 1976, notes that the Soviets clearly have a *capability* to use chemicals at any level of conflict:

"Soviet or Soviet-equipped and trained forces *could* initiate and sustain large-scale CW operations in either a conventional or conventional-nuclear conflict. Their doctrine emphasizes the employment of chemical weapons in close coordination with conventional and nuclear weapons to capitalize on the attributes of each." (Emphasis added.)

And this year's Department of Defense *Annual Report* by the Secretary of Defense goes a bit further:

"It is *likely* that the Soviets would *consider* using a combination of chemical and conventional weapons, as well as a combination of chemical, nuclear and conventional weapons—and *they have the capability to do either*—if they believed a significant tactical advantage could be gained." (Emphasis added.)

The authors feel that the truth was probably expressed in the *Penkovsky Papers:* ". . . let there be no doubt: if *hostilities* should erupt, the Soviet Army *would use* chemical weapons against its opponents." (Emphasis added.) In support of this position, the *Papers* state that "the USSR has already given political release for chemical weapons."

John Erickson has declared more explicitly that "Soviet division commanders have chemical weapons planning, release, and em-

ployment authority." It is the conclusion of the authors of this paper that if such a delegation of authority is assumed, the use of chemical weapons should be considered a certainty in any conflict. Further, even if such authority has not devolved, the possibility of Soviet use of chemical warfare during a conflict limited otherwise to conventional weapons, *should not be discounted.* In an article, "Speaking on . . . Evaluation of Soviet's Overall Threat: Analysis of Potential Factors," (published in the *Army Research and Development News Magazine,* March-April 1977) Edward A. Miller and Lt. Gen. Howard H. Gooksey declare:

"The Soviets are so immersed in chemical weaponry, tactics, doctrine, equipment and personnel, and so much of their training centers around the use of lethal agents, that it would be odd, from a military standpoint, if they did not employ them."

RECOMMENDED ACTIONS

Decisions on improvements in the U.S. chemical warfare posture—that is, what budgetary and other priorities should be assigned to the solution of this problem, recognizing that improving the current U.S. position is not a "big money" questioin—versus reliance on arms control measures will have to be made in the near future. It will be important for our decisionmakers not to confuse a national policy of no-first-use with a national goal of effective arms control. We can and should accept a no-first-use policy, but we should also develop appropriate CW capability as a hedge against the possibility that arms control measures will not succeed. At present the absence of an appropriate U.S. capability tends to invite exactly that which should be avoided, that is, an opportunity for the Soviet exploitation of its chemical warfare superiority.

However, redressing the imbalance, or even understanding its implications, is not a short-term proposition. The first step, the improvement of our CW protective posture, cannot be accomplished by the mere infusion of funds to buy more masks and protective garments. What is required is a major change in attitude.

Unusual attention and direction, beginning with the Office of the Secretary of Defense and continuing down through the leadership in the individual Services, are now required. There are currently almost no focal points at significant levels in the Services for force development, training, coordination, direction, or plans for CW, and *none* in the Office of the Secretary of Defense. CW responsibilities are usually secondary, and therefore individuals at different levels respond as they see fit. Although the recent Army action to reestablish a CW focal point is a significant step, it should be recognized that this was done by adding the CW responsibility to the office already having nuclear responsibility.

Until the CW problem is addressed in more depth and positive policies and programs are developed, the U.S. should, above all else, not curtail its current meager CW improvement activities as a contribution to improving the "spirit of the negotiations." And in those negotiations the U.S should not constrain its national security choices.●

USE OF FUNDS IN THE MIDDLE EAST SPECIAL REQUIREMENTS FUND

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. HAMILTON. Mr. Speaker, I would like to bring to the attention of my colleagues some correspondence the Senate Foreign Relations Committee and my subcommittee have had with the Department of State and the General Accounting Office regarding the use of aid funds authorized and appropriated for the Middle East Special Requirements Fund (MESRF).

These economic support fund moneys have been authorized and appropriated since 1974 for special contingencies in the Middle East related to the Middle East peace process. The intention of the Congress from the beginning were that these funds would be used for essentially economic purposes, not military aid or contingencies. Both in 1975 and again now, funds from the account have been made available to the Department of Defense to repay the Department for services it provided to help install peacekeeping forces in the region, first in the Sinai (UNEF) and now in Lebanon (UNIFIL).

While such peacekeeping efforts should be supported, many of us believe that the few million dollars in the MESRF account should be used for economic purposes and not for military purposes for which there must be other funds available given the vast resources of the Defense Department and the available authorities for support of peacekeeping ventures. Although until now such use of the MESRF was not illegal, it is hoped that the International Security Assistance Act of 1978 which creates a separate peacekeeping account will clarify the issue and the few million dollars in the MESRF account can remain available for economic uses. If the Defense Department uses the entire $10 million made available for UNIFIL expenses from the MESRF account, there will only be roughly $10 million remaining in the MESRF account.

I hope that my colleagues agree that these limited economic support funds should be used solely for economic purposes in the future.

The correspondence with GAO and the State Department follows:

JULY 24, 1978.

Hon. CYRUS R. VANCE,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: I understand that funds in the Middle East Special Requirements Fund (MESRF) have been committed to finance the reimbursement of costs up to $10 million, incurred by the Department of Defense for equipment and services provided to the United Nations peace-keeping force in Southern Lebanon (UNIFIL). In 1975, a similar amount was committed and expended to reimburse the Department of Defense for equipment it provided to the U.N. Emergency Force (UNEF) in the Sinai.

It has been the hope of many Members of the Subcommittee on Europe and the Middle East that MESRF monies be used to promote development in the Middle East and thereby facilitate the peace process. Other accounts exist to help finance peace-keeping forces and Congress always supports peacekeeping ventures. I believe that military operations should not be financed from the limited funds of MESRF made available for regional development, selected economic projects and other small programs which can directly stimulate the peace process.

I appreciate your consideration of my concerns over how you intend to use MESRF monies. I hope other vehicles will be sought to finance the costs associated with UNIFIL.

With best regards.

Sincerely yours,

LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East.

DEPARTMENT OF STATE,
Washington, D.C., August 29, 1978.

Hon. LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East, Committee on International Relations, House of Representatives

DEAR MR. CHAIRMAN: I am responding to your letter of July 24 to Secretary Vance, in which you refer to the use of the Middle East Special Requirements Fund (MESRF) for reimbursement of costs incurred by the Department of Defense for equipment and services provided to the U.N. Peacekeeping Force in Southern Lebanon (UNIFIL). In that letter you indicate that many members of the Subcommittee on Europe and the Middle East believe that MESRF monies should most appropriately be used to promote development in the Middle East through selected economic projects and other small programs which can directly stimulate the peace process.

The MESRF is being used to reimburse the Department of Defense only for initial transport services necessary to establish UNIFIL. Other UNIFIL costs will be apportioned among U.N. members; and the U.S. assessment will be paid from State Department appropriations for assessed contributions. However, as that fund is limited to payment of U.N. assessments, it was not avalable for the airlift.

As you are aware, the United Nation's decision to commit peacekeeping forces in Lebanon followed a series of terrorist attacks on Israel and Israel's decision to send troops into Lebanon. The State Department strongly supported the decision to create UNIFIL, and we were convinced that its prompt placement in Lebanon was essential. As has become customary in the establishment of U.N. peacekeeping forces, the Secretary-General solicited voluntary assistance of various types from a number of members. When the Secretary-General requested that the United States provide initial transport services for UNIFIL, we had to respond quickly.

Preliminary discussions with the Department of Defense made clear that DOD felt strongly that it would require reimbursement from some source in order to provide these transport services. We concluded that MESRF was the only source of appropriated funds currently available to reimburse the Department of Defense. The Comptroller General has recently concurred in our judgment that MESRF was available for this purpose. A copy of his decision is enclosed.

Of course, we were concerned that this use of MESRF would divert funds from otherwise desirable projects. Nevertheless, we decided in this case that it was most important that the United States be in a position to assist the United Nations with the prompt transport of the peacekeeping force to the Middle East.

We are currently involved in discussions with the Department of Defense and the Office of Management and Budget in order to examine potential alternative sources of funding for voluntary (non-reimbursed) support to U.N. peacekeeping activities in the future. In these discussions, we will have very much in mind the concerns expressed in your letter. We hope that we will be able to devise procedures that will enable us to avoid future diversions of funds from development needs if at all possible.

Thank you for expressing your concern on this matter.

Sincerely,

J. BRIAN ATWOOD,
Acting Assistant Secretary for Congressional Relations.

JULY 13, 1978.

Hon. ELMER B. STAATS,
Comptroller General of the United States, Washington, D.C.

DEAR MR. STAATS: On May 8 we received notification from the Secretary of State of the intent of the Executive Branch to obligate not to exceed $10 million in funds appropriated under section 903 of the Foreign Assistance Act of 1961 for a grant of airlift services for the United Nations interim force in Lebanon.

The purpose of this letter is to seek your opinion as to whether the authority contained in section 903 of such Act is legally available for that purpose.

In addition to the letter from Secretary Vance, which contains a confidential attachment, I am enclosing a letter from a Deputy Legal Adviser of the Department of State which sets forth the legal analysis underlying the Secretary's conclusion. As you will note, the Department in that letter asks that we request an expedited decision from you on this matter. Accordingly, I ask that, for the reasons presented in the Deputy Legal Adviser's letter, you transmit your opinion as soon as possible.

Thank you for your assistance.

Sincerely,

JOHN SPARKMAN,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 15, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request that this Office determine whether funds appropriated for the Middle East Special Requirements Fund under the authority of section 903 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2443 (1976), are legally available to provide airlift services for the United Nations Interim Force in Lebanon.

With your inquiry you enclosed a letter dated May 8, 1978, from Secretary of State Vance notifying you of the intent of the Executive Branch to obligate not to exceed $10,000,000 from the Middle East Special Requirements Fund for the airlift, and a letter from the Deputy Legal Advisor of the Department of State setting forth the legal justification for the Secretary's action.

On March 19, 1978, the United National Security Counsel adopted Resolution 425, which established the United Nations Interim Force in Lebanon (Interim Force) for the purpose of confirming the withdrawal of Israeli forces from Southern Lebanon, restoring international peace and security, and assisting the government of Lebanon in ensuring the return of its effective authority in the area. The Secretary General of the United Nations asked several member states, including the United States, to assist the Interim Force by providing airlift of United Nations troops and equipment.

The Secretary of State, under authority delegated to him by the President, determined that it was in the national interest of the United States to provide airlift services to the Interim Force and to fund this activity from the Middle East Special Requirements Fund. On May 8, 1978, citing the notification requirements of sections 671 and 903(b) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. §§ 2429b, 2443(b), and of the Foreign Assistance and Related Programs Appropriation Act, 1978, Pub. L. No. 95–148, 91 Stat. 1230, the Secretary of State notified you of his intent to obligate funds from the Special Requirements Fund for airlift purposes.

Monies for the Middle East Special Requirements Fund for fiscal year 1978 were appropriated by the Foreign Assistance and Related Programs Appropriation Act, 1978, Pub. L. No. 95–148, 91 Stat. 1230. That Act provides in pertinent part:

"Middle East special requirements fund: For necessary expenses to carry out the provisions of Section 903 of the Foreign Assistance Act of 1961, as amended, $8,000,000; * * *." 91 Stat. 1232.

The 1978 Act also provides that (with one exception) unobligated funds previously appropriated under the authority of the Foreign Assistance Act of 1961 shall continue to be available for fiscal year 1978. 91 Stat. 1231. Fiscal year 1977 funds for the Special Requirements Fund were appropriated by the Foreign Assistance and Related Programs Appropriation Act, 1977, Pub. L. No. 94–441, 90 Stat. 1465, 1467, as follows:

"Middle East special requirements fund: For necessary expenses to carry out the provisions of section 901 and section 903 of the Foreign Assistance Act of 1961, as amended, $23,000,000: * * *."

Funds for the airlift would come from both these appropriations.

The fiscal year 1977 and fiscal year 1978 appropriations are each lump sums for necessary expenses to carry out the provisions of 22 U.S.C. § 2443, the Middle East Special Requirements Fund. Neither appropriation contains any relevant statutory limitation on spending.

However, the 1977 and 1978 appropriation acts each contain the following provision:

"None of the funds made available under this Act for * * * 'Middle East special requirements fund,' * * * shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Appropriations Committees for obligation under any of these specific headings * * * unless the Appropriations Committees of both Houses of the Congress are previously notified fifteen days in advance." 91 Stat. 1232, 90 Stat. 1467.

An additional provision in section 903 limits obligation or expenditure of funds available for purposes of that section unless the Congress has been notified 30 days in advance and does not disapprove by concurrent resolution.

Secretary of State Vance's notification of May 8, 1978, addressed to the Congress, satisfies both requirements. Therefore, if providing airlift services to the Interim Force can be considered a necessary expense of the Middle East Special Requirements Fund, funds appropriated in the fiscal year 1977 and fiscal year 1978 appropiration acts are legally available for that purpose.

The Middle East Special Requirements Fund was established by section 903 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2443 (1976). This section was added to the Act by section 42 of the Foreign Assistance Act of 1974, Pub. L. No. 93–559, 88 Stat. 1812. Section 903 authorizes the appropriation of funds to the President "to furnish assistance under part I of this Act to meet special requirements arising from time to time in carrying out the purposes of this part, in addition to funds otherwise available for such purposes."

(The reference to "this part" is to what has been codified as 22 U.S.C. §§ 2441–43.)

The purposes referred to in section 903 are set forth in section 901 of the Act (22 U.S.C. § 2441), and include "assisting the nations in the area [the Middle East] in their efforts to achieve economic progress and political stability * * *," and furnishing assistance "to promote mutual respect and security among the nations in the area and to foster a climate conducive to increased economic development * * *."

The purpose of the limitation of the fund to "assistance under Part I" of the Act is apparent from the legislative history. As proposed by the President, there was no such limitation on the use of the Special Requirements Fund. *See* Message from the President of the United States, H.R. Doc. No. 93–293, p. 7 (1974). The Administration bill authorized appropriations "to meet special requirements arising from time to time in carrying out purposes of this part * * *." S. 3394, 93d Cong. (April 29, 1974). The Senate Committee on Foreign Relations amended the bill to authorize the appropriation of funds "to meet special requirements arising from time to time in the Middle East for the purpose of providing any type of assistance authorized by Part I of this Act * * *." S. 3394, 93d Cong., Report No. 93–1299 (November 27, 1974). The purpose of the amendment was to insure that the Special Requirements Fund would be used for economic assistance and not for military assistance under Part II of the Act. *See* S. Rep. No. 93–1299, p. 61 (1974). It was in this latter form that the bill passed the Senate.

The House version of the bill, H.R. 17234, 93d Cong., contained the language which eventually appeared in the Act. There is no indication in the Conference Report that, in agreeing to the House language, the Senate conferees were accepting a change in the meaning of the limitation. *See* H.R. Rep. No. 93–1610, p. 47 (1974). We therefore conclude that the limitation, "assistance under Part I" of the Act, means that the Special Requirements Fund can be used to provide any type of assistance authorized by Part I of the Foreign Assistance Act of 1961, and consistent with the purposes of section 901 of the Act, but it cannot be used to provide military assistance.

When it created the Middle East Special Requirements Fund, Congress was not sure of the specific purposes for which it would be used. The Senate Committee on Foreign Relations, in reporting S. 3394, stated that the fund "was to be used to meet needs for *economic* assistance to nations in the Middle East which cannot be foreseen at this time." S. Rep. No. 93–1299, p. 61, *supra* (emphasis in original). The Committee described the Special Requirements Fund as "a contingency fund for economic aid to the Middle East." *Id.* The House Committee on Foreign Affairs also recognized that the precise uses for the fund could not be foreseen. *See* H.R. Rep. No. 93–1471, p. 25 (1974). Both committees expected that some of the fund could be used for direct economic aid to Syria, and some funds be used for development of the West Bank of the Jordan and the Gaza Strip.

Monies for the Middle East Special Requirements Fund have been appropriated in four fiscal years, and the fund has been reauthorized twice. During this period, both the Congress and the Executive have gained experience in the uses to which the fund could be put. An examination of the legislative history of some of these appropriation and authorization Acts is of assistance in determining the intent of Congress as to how the Special Requirements Fund is to be used.

The first year's funding for the Special Requirements Fund was provided in the Foreign Assistance and Related Programs Appropriation Act, 1975, Pub. L. No. 94–11, 89 Stat. 17. In reporting the bill that was the derivative source of this Act, the House Committee on Appropriations stated,

"It is not possible at this time to specify with any degree of precision how these funds will be used. Some may be utilized to resettle refugees, *some to assist additional U.N. truce supervision and peacekeeping missions,* and some for development projects * * *. Both the Arabs and Israelis are looking for us for constructive initiatives. The U.S. must have the economic resources immediately available to respond to these expectations and to assist in creating a peace that will advance our own national interests as well as those of the parties to the dispute." H.R. Rep. No. 94–53, p. 32 (1975) (emphasis added).

In 1976, the Congress was aware of the uses to which the fund would be put before it

enacted the Foreign Assistance and Related Programs Appropriation Act, 1976, Pub. L. No. 94-330, 90 Stat. 771. The report of the Senate Committee on Appropriations reveals that the Administration had notified the Congress in advance of the appropriation that a total of $25,000,000 from the Fund would be used to cover the costs of establishing and operating the United States Sinai surveillance mission for 1 year, and $10,000,000 would be a voluntary contribution to the United Nations Emergency Force, both associated with peacekeeping efforts in the Middle East. (Some of these funds had apparently been obligated under authority of the Continuing Resolution then in effect for foreign assistance). In describing this contribution, the Committee noted:

"These funds will help cover the costs of enlarging and redeploying the UNEF [United Nations Emergency Force] to carry out the expanded responsibilities required by the disengagement agreement [between Israel and Egypt], including responsibility for the security of the enlarged buffer zone where the American Sinai technicians will be stationed" S. Rep. No. 94-704, p. 97 (1976).

The House Appropriations Committee cited the proposed uses of the contribution to the U.N. Emergency Force:

"The special contribution will finance common use items and related transportation costs, such as prefabricated housing, jeeps, trucks, electronic equipment, and other required items. These funds will not be used to finance military hardware." H.R. Rep. No. 94-857, p. 37 (1976).

The Special Requirements Fund was reauthorized for fiscal year 1978 by section 13 of the International Security Assistance Act of 1977, Pub. L. No. 95-92, 91 Stat. 614, 621. In reporting the bill that was the derivative source of this Act, the Senate Committee on Foreign Relations stated,

"The remaining $22,000,000 would be placed in a contingency fund for use in the Middle East. In previous years, the fund has been used to: finance aid programs in Syria and Jordan; undertake development projects in the West Bank and Gaza; assist the U.N. Relief and Works Agency; establish and operate the U.S. early warning station in the Sinai; assist the Egyptians to build a Sinai early-warning station; and assist the U.N. Emergency Force in the Sinai.

"The Committee believes that because of the current situation in the Middle East, the President should have the flexibility provided by this authorization." S. Rep. No. 95-195, p. 32 (1977).

This recitation indicates that one of the purposes for which Congress anticipated that the Special Requirements Fund would be used, and for which purpose it has been used, is to assist United Nations and other peacekeeping operations. In reauthorizing the fund for fiscal year 1978, the Congress recognized that the "flexibility" needed by the President could include the possible use of the fund for future peacekeeping missions.

As we stated above, in carrying out the purposes expressed in section 109 of the Foreign Assistance Act of 1961, 22 U.S.C. § 2441, the Special Requirements Fund can be used to provide any type of assistance authorized by Part I of the Act. One such program in Part I is Security Supporting Assistance, authorized by section 531, 22 U.S.C. § 2346. (Although section 531 is located in Part II of the Act, the legislation which created it states that Security Supporting Assistance is deemed to be within Part I. *See* Foreign Assistance Act of 1971, section 202(b), Pub. L. No. 92-226, 86 Stat. 27). Section 531 provides,

"The President is authorized to furnish assistance to friendly countries, organizations, and bodies * * * in order to support or promote economic or political stability."

In recent years Security Supporting Assistance funds have been used for other peacekeeping operations, including the United Nations Force in Cyprus and the United States Sinai Support Mission.

The question remains whether the airlift provided by the United States was in the nature of nonmilitary support of United Nations peace-keeping operations or was military assistance, which cannot be funded from the Special Requirements Fund. The airlift of troops and materiel, presumably by United States military aircraft flown by United States military personnel, is of a different nature from the monetary contributions and civilian personnel which the United States has made available for peacekeeping purposes from the Special Requirements Fund and as Security Supporting Assistance in the past. We can conceive of circumstances in which the airlift of armed troops and military equipment could be classified as a defense service, the provision of which is considered military assistance under section 201 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2311.

However, we believe that the purposes for which aid is intended must be given considerable weight in determining whether that aid is military or nonmilitary. Among the purposes of the U.N. Interim Force, as defined in Security Counsel Resolution 425, was the restoration of peace and security to the Middle East. This is clearly an aim which is consistent with the purposes of the Special Requirements Fund. The Secretary of State has determined that providing airlift services to the Interim Force was the type of assistance which was authorized under section 903 of the Foreign Assistance Act. We do not believe that such services were so clearly of a military nature as to cause us to question the Secretary's determination.

We conclude that the provision of airlift services to the United Nations Interim Force in Lebanon was assistance authorized by section 903 of the Foreign Assistance Act of 1961. Funds appropriated under Pub. L. No. 95-148 and Pub. L. No. 94-441 to carry out the purposes of section 903 were legally available for the airlift.

Sincerely yours,

ELMER B. STAATS,
Comptroller General
of the United States.●

STEVEN BIKO

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 12, 1978

● Mr. EDWARDS of California. Mr. Speaker, today commemorates the first anniversary of the death of Steven Biko. This courageous and inspirational black leader died at the hands of South African security police. He had been harassed, persecuted, and imprisoned countless times by the South African authorities for his persistent efforts to obtain justice for South Africa's black majority.

The world was justly outraged by Steven Biko's untimely death. The Congress of the United States condemned the South African Government for its role in his death and passed a resolution urging effective measures against the South African Government to register the deep concern of Americans over that country's continued human rights violations.

What effect has this outcry of the United States and the world had in South Africa? What progress has been made in that country in easing repression? Members of the House will be addressing these questions in our special order today.

We will hear Members of this body speaking about the community of Crossroads. Our good colleague, ANDY MAGUIRE, who has done so much to bring the facts of the deplorable situation in South Africa to our attention, will speak to you about his recent visit to Crossroads. I call upon my colleagues to listen carefully to what the gentleman from New Jersey has to say.

Crossroads represents the effort of some 20,000 Africans to bring a measure of dignity and self-respect to their lives. What began strictly as a squatters camp in 1975 has evolved into a true community where families can be together. The community has set up schools, medical clinics, social groups, and sanitation facilities. The residents of Crossroads contribute to the prosperity of the Capetown area through their employment. In short, the residents are involved in productive activity and the community is thriving.

Despite these facts, the South African government has announced its intention to destroy Crossroads and to force its residents to split up their families. Women and children would be returned to the "homelands" were their husbands and fathers would see them only rarely. There does not seem to be any rationale behind the government's decision. It is just one more incident in an all too familiar litany of governmental actions that completely disregard the human rights and needs of the black majority and deny these people a life of dignity. The plight of Crossroads is evidence that in the year since Steven Biko's tragic death, there has not been any significant progress in moving toward an end to repression and a recognition of racial equality.

Our special order today is terribly important so that the Congress can register its continued concern over the racist policies of South Africa. We must continue to do all we can to focus world attention on continued oppression in that country and to call for a government which grants equal rights and full participation to all South Africans.●

INFLATION AND MORALITY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. DORNAN. Mr. Speaker, inflation has been aptly described as the "mother of tyranny." In an older and wiser era, economics was subsumed under the subcategory of ethics (as indeed was politics). Economics was considered a moral science governing relations among men in matters of finance and trade. The sine qua non, Mr. Speaker, of economic relationships was the bond of trust, a firm conviction among those engaged in financial transactions that something was worth its true value and could be exchanged for something of comparable value. Simply put, the element of trust

based on the virtue of honesty, served as the moral glue of economic society, providing the framework for order and stability. Unfortunately, Mr. Speaker, the twentieth century is concluding an intellectual and moral odyssey in which such matters are viewed altogether differently.

When the Federal Government engages in deficit spending; when it substantially increases the money supply thereby reducing the purchasing power of each individual monetary unit, is it not contributing to the destruction of the moral bond of trust of society? When the citizens of this Republic put their hard-earned savings into banks only to have inflation corrode, like a silent lancer, their true value, is it not contributing to the destruction of the moral bond of trust of society? When Government and private enterprise enter into contracts which, subject to the spiraling effects of inflation, result in astronomical cost overruns; when the effect of wage increases is to catapult taxpayers into a higher tax bracket; when politicians make promises which assume the bankrupt philosophy of deficit spending, is it not contributing to the destruction of the moral bond of trust in our society?

Simply put, Mr. Speaker, inflation "acts like the opium of the people," throwing a veil of illusion and deceit over every economic process. It confuses and deceives, raises expectations and hopes which are soon dashed, and ultimately sets the stage for economic anarchy, that which the English political theorist, Thomas Hobbes, aptly described as the "war of every man against every man." And in order to restore some semblance of order, lo and behold, comes some modern economic Napoleon riding on a white horse. And that, Mr. Speaker, is the end of a free society.

I insert at this point the trenchant remarks of Washington Star writer Sylvia Porter in one of her recent columns.

INFLATION ERODES OUR MORAL VALUES

(By Silvia Porter)

Our proud nation is fast becoming a land in which deceit dominates the way we conduct our economic affairs with each other—as individuals, in business, at all levels of government.

The relentless, devastating inflation of these past decades is eroding our moral values, undermining our honesty, to a point where now "nothing that is stated about dollars and cents any longer means what it says," observes Dr. Henry Wallich, one of the most astute governors of the Federal Reserve Board, and a lifelong analyst of inflation, its evils, and possible solutions.

"Everybody makes contracts knowing perfectly well that they will not be kept in terms of constant values," he recently told graduates of New York's Fordham Business School. "We do not know whether the most valuable part of the contract may not turn out to be the paper it is written on....

"Inflation is like a country where nobody speaks the truth."

The documentation is widespread and horrifying:

Nine million Americans hold part-time jobs or otherwise earn money which they don't report on their income tax forms, Peter Gutmann, professor of economics and finance at Baruch College in New York, estimates.

Taxes and dividends are paid from profits that may not exist or, if they can be shown to exist by appropriate accounting adjustments, are not backed up by cash flows, Wallich adds. "In addition to misleading the stockholder and the public, these conditions push business into becoming more speculative."

Candy bars are smaller, paper towels contain fewer sheets of paper, and seats on some jumbo jets are narrower and packed closer together, my Washington associate, Brooke Shearer, reports.

The phenomenon of "down-sizing" or "packaging to price" is just a subtle form of inflation. The price of the item remains unchanged or rises only slightly, but you, the consumer, get less for your money than you did before.

Women's tennis dresses once came with matching panties but no longer. Warranties on cars and TV sets cover much less than 10 years ago. Solid walnut or oak furniture has been replaced by plywood or particle board covered with a hardwood veneer.

The pages of books are seldom stitched together with thread but are bound with glue, and newspapers as well as magazines have cut printing, paper and postage costs by reducing the size of their pages.

At the same time, our politicians follow policies that, if not openly dishonest, are not honest, either. A politician who makes promises that he knows cannot be met in real terms is surely dishonest. The politician is making the promises in full recognition that, as the government at all levels overspends in futile attempts to keep the promises, the value of the benefits it is supposed to deliver automatically shrinks.

Yet, despite this shocking evidence of the extent to which inflation is pushing us toward "deception" as a way of life, how can any long-term commitment in absolute dollar terms be reached between buyer and seller, employer and employee, lender and borrower, in a prolonged phase of a wage-price spiral?

It is only human to try to protect yourself in any transaction against the awesome risks of ever-climbing prices and dwindling buying power of the U.S. dollar by constantly demanding a bit more or offering a bit less than you otherwise might demand or offer.

Much as you mistrust our federal, state and local politicians, and ironic though your attitude may be, it is only logical of you (both as individuals and business owners) to turn to government in search of a security you cannot provide for yourself in an economy so cursed by inflation.●

CAMPBELL-MORELAND PONY LEAGUE CHAMPIONS

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. MINETA. Mr. Speaker, I rise today to honor 15 fine young men who compromise the Campbell-Moreland pony league team, new champions of the pony league world series.

On Sunday, August 26, these 15 young athletes won the pony league world series championship in National City, Calif., after competing with teams from all over the Nation.

Team members include Mike Walsh, Harold Sutherland, Richard Alvarez, Eddie Rodriguez, Dominic Constantino, Steve Clinton, Bob Straight, Paul Sargis, Rich Vanengas, Bill Roberts, Bret Blackwell, Eric Crawford, Scott Freear, Glen Davis, and John Murphy. The Campbell-Moreland team represents the best 13 and 14 year-old baseball players in the Campbell-San Jose area of California. Their competitive spirit and determination were important factors in the repeated successes which culminated in their final victory at National City.

Their coaches and manager are also to be commended for the time and energy they donated to insure the success of the team. The team coach is Chuck Calhoun, the manager is Bud Stallings, and the team's business manager is Ray Sargis. George Ryan is the president of the Campbell-Moreland Pony League, and Joe Gagliardi is the northern California director for boys baseball, which made the world series possible.

I ask you and my colleagues here in the House of Representatives to join with me in congratulating these young men and all of those who helped them achieve such great success.●

REPORTS OF MIA SIGHTINGS—III

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. DORNAN. Mr. Speaker, I am once again inserting communications received by Mrs. Le Thi Ahn, an interpreter and a leader of the Vietnamese community here in the United States, pertaining to "live" Americans reportedly held prisoner in Southeast Asia after the U.S. departure of April 1975. I have sanitized the letters and transmitted them to the Defense Intelligence Agency for their analysis. Letters six and seven are inserted for your edification. I ask that you give them proper consideration:

LETTER 6

TRANSLATION OF TRANS-PACIFIC TELEPHONE CONVERSATION ON MARCH 23, 1978 (WITH (DELETED)) IN VICTORIA, AUSTRALIA:

My name is (deleted). I am living now in Australia.

I am telling now about the occasion that I have met these Americans. I have seen two American men at about 8 a.m. on April 30, 1975 at Xeo Ro. Since I was standing very far from them, I could not hear what they were talking about and also I could not see their name-tags. I only could distinguish that one is white and he looked very skinny and the other is black and he looked a little fatter.

There were seven persons on this sampan: two Americans and five communist soldiers. The Americans were standing in the middle part of the motorized sampan. Three communist soldiers stood at the prow and the remaining two at the stern. The black American was wearing a uniform and he looked like an officer. The sampan stayed at the bank of the river for 5 to 10 minutes, then left for the direction of the U-Minh Jungle. I had no idea where they were headed.

LETTER 7

MAY 5, 1978.

DEAR MRS. LE THI ANH: I just read in Trang-Den No. 102 that you want information about MIAs in Vietnam. I have not seen them myself; but I shall tell you what I heard about them. I do not know if this information serves "our cause."

I have a cousin-in-law, he's the husband of my first degree cousin. A little over two

months after the fall of Saigon my cousin came to visit us. He told us that he had a brother who was a Northern official and now his brother has come South for a visit. After the visit with my cousin, the cadreman brother took my cousin to his workplace in Phuong-Lam for two days.

There in Phuong Lam, my cousin saw that a large number of Americans were being detained. His cadreman brother told my cousin he was the leader of the group and that he took them down from the North to the South. Along the trail, he said, they were sometimes short of food and the POWs had to eat leaves. My cousin asked his cadreman brother why does the government keep them and not give them enough to eat, what a pity to let them die from hunger like that, why not release them? Then his brother told him that "we can't release them because if we did, the Americans would drop bombs on us."

I asked how many Americans did you see? and he said: "Quite a lot of them." He said his brother told him that there were about 500 of them. When I was about to go to France, my cousin told me that the POWs have been transferred to another camp and his brother now had another job. I asked what his brother's field was, and he said that he was a Security officer. When I heard that I felt so sorry for those men.

You well know, Mrs. Anh, that the Communists were already very harsh with us whom they called "compatriots," they punish us until death unsues, you can imagine how big must be the sufferings of those Americans whom the Communists call 'enemies'.

I fail to understand how the Americans can abandon their own people like that. (How can they have the heart to abandon their own fighting men in this manner.)

I was allowed to go to France to join my son.

Have a daughter in the U.S. and may come to see her.

Signed,

(DELETED).●

CROSSROADS—A THREAT TO SOUTH AFRICA

HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 12, 1978

● Mr. STEERS. Mr. Speaker, today marks the first anniversary of the death of South African black consciousness leader Steve Biko at the hands of South African police. The year that has followed his death has marked an increased awareness in the United States as to what the South African policy of apartheid really means in human terms.

In the last year, we have seen that Steve Biko has not been the only black to die as a result of South African police brutality; racial oppression is widespread. I am extremely concerned at the present time about another act of oppression that might be perpetrated against the black South African community. I am referring to the proposed destruction of the community of Crossroads, outside of Capetown.

The South African Government views the existence of Crossroads as a threat to their homeland policy which requires all blacks to be citizens of their respective homeland—to be determined by the South African Government. Men are allowed to work in urban areas in South Africa, but women must live in rural areas. Since the homelands are too poor to provide jobs, the men are forced to leave their families and work outside the homeland. Men can visit their wives only 2 or 3 weeks a year, rendering it impossible to have any kind of family life. In Crossroads, women have come to live with their husbands, and this is why the South African Government wants it destroyed.

The courageous women of Crossroads have braved violence and prison to exist with their husbands as a normal, healthy family unit. The residents of Crossroads have worked hard to make their squatter community a town. Yet, all of the legal avenues to block the destruction of Crossroads have been pursued, and the Government bulldozers could come at any time.

I hope that the awareness that has been aroused in the House by the death last year of Steve Biko will motivate my colleagues to look closely at the situation in Crossroads, and to act accordingly.

I would also like to insert into the RECORD at this point an article that appeared in the Washington Post on September 10, 1978 that details another aspect of life in South Africa that is affected by South African racist statutes.

FROM BIRTH TO GRAVE, SOUTH AFRICANS LIVE WITH RACE LABELS

(By Caryle Murphy)

CAPE TOWN, South Africa.—Diana Bassick and Raymond do Proft lived together as man and wife for 24 years, raising five children into what the neighbors thought was a happy white family.

But South Africa's race classification laws have ended those good times.

The pair's 20-year-old son, Graham, committed suicide because he could not marry his pregnant girl friend, in the investigation of his death, police found that Diana and Raymond had been faking their marriage all those years. Now they want to make it legal, but cannot.

The problem: Diana, whose mother was white, but who never knew her father and was raised by a colored family, is classified colored, or racially mixed. Raymond, son of a Belgian father and British mother, is classified white.

Since the children were born out of wedlock, they were registered under Diana's name and also classified colored. Graham's girl friend, Sonya, was the daughter of Afrikaners—and therefore classified white and out of reach.

After a fight with his mother over what to do about it, Graham stormed out of the house four years ago and walked in front of a commuter train. A government inquest ruled it was suicide, caused by despair over Sonya.

"He would not have killed himself if it wasn't for these laws," said Diana in an interview at her working-class home in Cape Town. "It's four years ago, but I still expect to see him come through the front door."

In South Africa such a cross-racial marriage is forbidden by law, even though her wavy black hair and lightly tanned complexion give Diana the appearance of someone who might have come from a southern Mediterranean country like Greece.

For Graham, as for everyone born in South Africa, the crucial information on his birth certificate was the entry after "race." That word—colored—was the key to what jobs he could hold, how much he was paid, what school he could go to, where he could live, with whom he could have sexual intercourse, whom he could marry, how large his old age pension would be, in what hospital he could be admitted and even the cemetery in which he could be buried.

The Population Registration Act, which requires every citizen to be classified into a racial group, belongs to a package of legislation that the ruling National Party enacted in the early 1950s to help carry out its policy of apartheid, or racial separation.

The package also includes the Immorality Act, which bars interracial sex; the Mixed Marriages Act, which forbids interracial marriage, and the Group Areas Act, which outlaws integrated neighborhoods.

When the government started classifying, many disputed their racial label and hired lawyers to wade through the paperwork and argue their cases before a court that handled appeals. Lawyers say thousands of appeals used to be heard every year. Now, only a few cases remain.

Requests for reclassification first go to the Department of the Interior, which never informs the person seeking a new category of the reasons for its decision. Last year, government figures show, 115 applicants won reclassification out of a total the government refuses to reveal. Change in classification can mean a whole new life style. Whites and colored carry "books of life" as identification. Blacks carry "reference" books, known as "pass" books because inside must be a valid pass giving the holder permission to live or work in a specific city.

"Getting reclassified is like murder," said one colored woman. "You live in a certain neighborhood, have certain friends and a family. And when you change, you go to a new neighborhood, you don't see your old friends and many people, for their children's sake, stop coming to visit their families."

Roma Sabatini, a white-classified store cashier in Johannesburg, is trying to switch to colored because, at 22 after growing up with her colored mother in a colored neighborhood, she wants to marry her colored boy friend.

"This business of being white is hanging over me like a cloud," said Roma, who resembles many colored people. I sent a letter to the Classification Bureau three years ago, saying I want to be reclassified colored. It's not the way they want to classify me; it's the way I feel. I go to colored places, I go out with colored men. My heart is feeling colored and my mind is saying colored. I don't want to leave the country to get married."

The Department of the Interior agreed to reclassify Diana Bassick's remaining four children white following Graham's suicide and turned a blind eye to her cohabitation with De Proft. With her secret now known however, Diana also applied for reclassification so she could marry Raymond legally.

Her request was denied. As usual no reason was given. But Diana's lawyer was told that the fact she was still of childbearing age had been a factor in the refusal. So after a hysterectomy in 1975, Diana applied again.

The answer was in a note from the Interior Department secretary to her lawyer this spring: "I do not see my way clear to amend her classification."

"It's so late in my life," said Diana, now 51. "The only thing I look forward to in my life is to belong to someone. I know we are already happy, but one does want to make it legal. I want to marry the father of my five children."

In the original classifications, racial appearance and general acceptance by others were the prime factors. In dispute, besides his appearance, a dissatisfied South African could present affidavits from neighbors saying they always thought the person was colored, or white, or black, and was accepted as such by the community.

Decisions used to be arbitrary and often reflected the attitudes of those who made them. Some recall stories of borderline cases

being decided by the "pencil test"—if a pencil stuck in someone's hair, he was black, not colored.

But a 1966 amendment to the Population Registration Act made descent the chief criterion instead of appearance and acceptance. Today, these factors come into play only if family descent is unclear.

This affected colored families most, since many were borderline cases under the old criteria. Whole families among the country's 2.4 million coloreds have been split down the middle by fair-complected members who moved into the white category.●

DIFFERENT PERSPECTIVES ON HIGH BLOOD PRESSURE

HON. PARREN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. MITCHELL of Maryland. Mr. Speaker, the National Medical Association Journal recently carried an article by John T. Chissell, M.D., of Baltimore, Md., which offered different perspectives on the problem of high blood pressure, which affects so many black Americans.

I am inserting into the RECORD the article written by Dr. John Chissell and I urge my colleagues and members of congressional staffs to read this article.

HIGH BLOOD PRESSURE MONTH—DIFFERENT PERSPECTIVES

By the time this issue of the Journal of the National Medical Association reaches you there will have been intensive media campaigns exhorting the nation's citizens, particularly black Americans, to be checked out for hypertension, and if found to have high blood pressure, to take one or more pills daily for the rest of their lives. Well-known and respected entertainers will sing the message "do it for them (family or friends) and for yourself—take your medicine for the rest of your life."

The popular messages with regard to hypertension detection and control certainly all have a basis in some facts and some truths, but the members of the National Medical Association and the people who look to the members of the NMA for management of their health problems need to look at some other basic facts and truths about hypertension.

There is increasing evidence that lifestyle changes may normalize hypertension. My own experience and research indicates that lifestyle changes which result in better nutrition, adequate amounts of aerobic exercise, and inner balancing techniques such as meditation and biofeedback have the greatest potential for controlling high blood pressure, while at the same time moving the individual in the direction of optimal health and wellness. In fact, the time hypertension is first diagnosed is an ideal time to initiate an awareness of the patient's lifestyle habits which may be producing the hypertension, and to begin substitute habits which may reverse the movement toward disease, disability, and death in an individual or target population to a direction toward optimal health and wellness.

We need not condemn people to a daily ritual of taking pills and their cumulative side effects if we are willing to educate ourselves and our patients to the fact that daily health habits may be just as effective (if not more so) as chemicals in controlling high blood pressure.

The amount of medication patients may need to control their hypertension can be minimized with a concomitant emphasis on eliminating negative health habits and initiating positive health habits.

There is ample evidence that black people suffer more from hypertension, both from onset at younger ages and from more severe consequences, than their white counterparts. Many quantitatively oriented western cardiovascular specialists and researchers have looked for the answers to this increased susceptibility in blacks by making a genetically oriented search for some inherent defect in blacks. Members of the National Medical Association have an obligation to insist that at least an equal amount of research money and effort be spent in examining the effects of psychosocial stress on the etiology, morbidity, and mortality of black hypertensives. Emotional stress of any variety, because of its resistance to precise measurement, or because of resistance in fitting into Kochs Postulates, has been shamefully neglected by quantitatively oriented cardiovascular researchers. Racism as a psychosocial factor has been almost totally ignored.

There is increasing international agreement that hypertension is one of the diseases of civilization. The United States, in spite of its technological superiority in the health field among civilized countries, does not reflect that superiority when it comes to the prevention of hypertension as evidenced by the increasing amount of high blood pressure in US citizens. The figures have been widely publicized this month; this is a time to examine alternative methods of prevention and treatment of hypertension to the multibillion dollar pill-pushing philosophy that involves all of us today. This is also a time to examine our own lifestyles and the kind of health these habits have produced in us. The time is now, seize the time!!—John T. Chissel, MD.●

ESTHER L. LINN

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. WAXMAN. Mr. Speaker, Esther L. Linn will receive the Jerusalem Award at a Shaare Zedek Hospital Dinner on Sunday, September 24. A most deserving recipient, Mrs. Linn and her late husband Milton were among the pioneers who in 1958 established a Shaare Zedek support group in Los Angeles which developed into the western region. In the past 4 years this region has become one of the major contributors among the worldwide groups supporting the 105-year old hospital. With a friend, Esther Linn helped to found the Women for Shaare Zedek, and now serves as its president. She will be joining 100 Californians in a tour to Israel especially arranged to participate in the dedication of the new Shaare Zedek Medical Center. The Milton N. Linn Pediatric Day Hospital, which Esther Linn endowed in the memory of her husband, will also be dedicated at that time.

Philanthropic programs emphasizing health, education, and Jewish activities in the United States and Israel have long characterized the work of both Esther and Milton Linn. Esther is vice president of the Jewish National Fund Council. For a number of years she was president of the Bertha Sieroty group of Badassah and served with distinction on the sisterhoods of Congregation Beth Jacob and Sinai Temple. Her activities have embraced Friends of the Hebrew University, Technion, Mizrachi Women, Ponovez Yeshiva, Rambam Torah Institute, Yeshiva of Elchonon West Coast Talmudic Seminary, National Conference of Synagogue Youth and Ezra Torch Free Loan Fund. With her husband, Esther Linn launched the Hillel Endowment Fund with a most generous gift which has provided many scholarships to students at Hillel Hebrew Academy. It is difficult to imagine that Esther and Milton Linn could have crowded so many community and philanthropic activities into their time.

Esther Linn, both in the Upper Peninsula of Michigan, is the seventh daughter of a seventh child. She claims the distinction of having been held and kissed by Theodore Roosevelt during his campaign for the Presidency. Brought to Los Angeles when she was 12, Esther graduated from Los Angeles High School, and then studied theatre arts at UCLA. She founded, and was the dean of the Westwood School of Business from 1951 to 1958, and developed many special techniques in the teaching of business skills. Esther also gave after-school classes in the public school system.

Esther rejoices in her children and grandchildren. Her son, Gerald L. Fishbein and his wife Millicent, have two children. Her daughter, Joan, is the wife of Prof. Jan Pierre Deuens. Milton Linn's children are Mrs. Dorothy Cohn of Los Angeles, who has contributed two grandchildren to the family, and Mrs. Myra Winston of New York who has three. If the descendants of Esther and Milton Linn follow the glowing example set by their parents, their good works and contributions to their communities will enrich the lives of those around them. It gives me special pleasure to honor Esther Linn, and I know that my colleagues will wish to join me in noting the occasion.●

REDUCING THE FEDERAL DEFICIT

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. FISHER. Mr. Speaker, the House has approved a second budget resolution for the fiscal year 1979 that contains a deficit of $40 billion. The President's budget request as submitted in January indicated a $60 billion deficit and the preliminary first congressional resolution agreed to in May put forth a figure slightly above $50 billion. The deficit for the current fiscal year that ends in September will be in the $50 billion range. I voted to support the second resolution principally because of the progress it represents in moving toward a balanced budget.

Efforts to reduce the deficit reflect an increasing recognition that at this point in the economic cycle—the 4th year of the recovery from a severe recession—

Government expenditures must be brought more into line with its revenue collections. Most of the deficit reduction projected for fiscal year 1979, however, has been achieved through reductions in the size of the tax cut and through re-estimates of what will actually be spent from forthcoming appropriations. Tax cuts of sufficient size are neded to offset the effects of inflation and to provide meaningful tax relief to a wide range of taxpayers. To make real progress in cutting the deficit—this year and in the future—the growth in Government spending has to be curbed.

During the debates this year on the budget resolutions for fiscal year 1979, I sought to reduce the level of spending in a practical way. In May, in the first budget resolution, in addition to supporting a number of specific program reductions, I proposed that spending be cut across-the-board by 2 percent from what the Budget Committee had recommended. While my amendment was not agreed to, subsequent reestimates and other developments led to a Budget Committee recommendation for the second resolution that was essentially in line with my earlier proposal—a reduction of $10 billion in the spending target.

Because I believed that by then another $5 billion could be squeezed out of the spending totals with little or no loss in program effectiveness, I proposed an amendment to this effect during the House debate on the second resolution, but it, too, was defeated.

There are many uncertainties ahead as we approach the new fiscal year, including the final size of the tax cut, further re-estimates of how fast appropriated funds can be spent, and changing inflation rates which can have large impacts on both expenditures and revenue collections.

In dealing with these uncertainties throughout the year, I would urge the administration and the Congress to keep their pencils sharp and seek out additional spending cuts. The $490 billion spending limit in the second resolution is just that—a ceiling—and reductions in spending below this level can and should be achieved. Spending in most Federal programs can be reduced by small amounts without serious disruption of important Federal functions. During the next year, spending cuts would not only reduce the deficit but would also cut down on the risk of additional inflation.●

THE SAN JOSE JOB CORPS CENTER

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. MINETA. Mr. Speaker, I would like to bring to the attention of my colleagues the outstanding accomplishments of the San Jose Job Corps Center in providing counseling, training, and placement for young adults seeking employment.

The San Jose Job Corps Center is a federally funded program, operated by the Singer Co., which provides student volunteers from age 16 to 21 with academic preparation, vocational training, counseling, medicaly and dental care, room and board, and other services.

During 1977, 85 percent of those young men and women who entered San Jose Job Corps Center training completed the program, and of those, 99 percent were placed in jobs. In the same period, 176 of its students earned the equivalent of a high school diploma. This extraordinary record is a tribute to the sensitivity and dedication of the Job Corps center staff in working with young people.

Helping young people become productive members of society benefits our communities in many ways. For example, San Jose Job Corps Center enrollees placed in jobs and in the military earned over $2.4 million in wages and an estimated $600,000 in fringe benefits during 1977, their first year of employment. It is estimated that about $1.4 million of those wages will be spent in Santa Clara County, where they were earned.

Since its opening in 1972, the San Jose center has grown into one of the most widely respected youth training programs in the Nation, and it has acted as a regular host for foreign visitors on behalf of the U.S. State Department.

Much of the success of the Job Corps center can be attributed to the strong guidance of its director, Mr. Kenneth C. Dugan, whose service to the organization and to the community has been exemplary.

Mr. Speaker, I believe that the Congress must be more vigilant in rooting out ineffective Government programs that waste taxpayers' money. It is gratifying, however, to learn that one program, the Job Corps program, has the potential to help solve the serious problem of unemployment and underemployment of our Nation's youth. The San Jose Job Corps Center demonstrate that potential, and I ask my colleagues to join with me in commending the San Jose Job Corps Center and its staff for its meritorious record of service to the people of San Jose.●

RECORD AIRLINE PROFITS

HON. BENJAMIN S. ROSENTHAL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. ROSENTHAL. Mr. Speaker, the airline industry is experiencing record profits this year and all indications are that these earnings will be sustained in coming months. Yet the air carriers argue that their huge profits are only of a temporary, fleeting nature; they urge us to ignore this year's corporate earnings figures and to vote for H.R. 11986, which would provide carriers with an estimated $2.5 billion to help them meet new FAA noise regulations.

H.R. 11986, the Noisy Aircraft Revenue and Credit Act of 1978, will be offered as an amendment for title III of H.R. 8729, the Airport and Aircraft Noise Reduction Act.

Presented below is a table I have prepared of net earnings figures for 12 domestic trunk carriers, large and small.

AIRLINE INDUSTRY NET EARNINGS—12 DOMESTIC AIR CARRIERS

[In millions]

Airlines	1st half			2d quarter		
	1977	1978	Percent increase	1977	1978	Percent increase
Allegheny	$3.5	$13.2	274	$6.3	$20.2	222
American	29.9	36.9	24	31.5	43.9	39
Braniff	16.4	20.1	23	9.3	11.2	21
Continental	8.0	32.6	307	7.2	9.3	29
Delta	56.0	70.6	26	33.8	43.2	28
Eastern	18.5	43.7	137	1.6	24.2	1,386
Ozark	2.3	3.2	38	2.0	3.0	50
Pan Am	−11.8	20.0	-------	15.8	46.2	192
Southern	.6	−.5	-------	1.0	1.1	6
TWA	−22.5	9.6	-------	28.2	48.3	71
United	48.2	105.4	118	20.9	91.9	340
Western	3.6	17.1	378	1.5	5.9	287
Total	152.8	371.9	143	159.1	348.4	119

In particular, I call my colleagues' attention to the fact that profits for the first half of 1978 represent an increase of nearly 150 percent over last year. TWA, the troubled giant of the industry, turned a $22 million deficit for the first half of 1977 into a $10 million profit during the first 6 months of this year. Eastern's 1400 percent second quarter increase over last year is phenomenal.

Based on these and other data, I remain unconvinced that the airlines cannot bear the cost of retrofitting and reengining their aircraft to bring them in line with the 1985 regulations. Let us see if the doomsayers of the airline industry are accurate in their predictions of a future decline; if they are, we will have plenty of time to assist needy airlines in coming years.

Mr. Speaker, although the airlines are currently the fastest growing American industry, they and their friends argue that the airline boom is but a passing phenomenon. To this end, they have disseminated on Capitol Hill and information sheet entitled "Financial Analysts' Views of Airline Industry Financial Performance in 1978 and 1979." Four predictions are presented there; unfortunately, they are outdated and misleading.

Following are the analysts' predictions as they appeared on the Air Transport information sheet plus updated airline industry predictions from the same sources:

ANALYSTS' PREDICTIONS

AL NORLIN OF KIDDER, PEABODY & CO., INC.

Our 1978 traffic, revenue, and earnings forecasts have been increased but the shape of our projected industry profit pattern remains unchanged. Strong year to year comparisons should prevail throughout the spring and early summer, but margin pressures are likely to appear in late summer, and a sharp earnings decline is indicated for the fourth quarter and for 1979.—June 16, 1978 (presented by ATA).

Traffic gains in the airline industry are continuing to be very strong in the third quarter. Because of this, margin pressures will be pushed back to later in the year. In addition, I'm being a lot more open-minded about the fourth quarter because of sustained traffic growth; if travel earnings continue, there very well may be no decline at all. My estimated earnings figure for the 11

major airlines is now up to about $950 million for 1978, compared with $600 million for last year.

For next year, I'm projecting two different ways. While earnings will decline even without a recession, airline profits will be substantial. If there is a recession, there will be a significant earnings decline. Yet, the airlines will be in a more stable position than in any previous recession.—August 15, 1978.

THEODORE P. SHEN OF DONALDSON, LUFKIN & JENRETTE SECURITIES CORP.

Expect earnings to decline fairly significantly in 1979 after having reached a cyclical peak during the third quarter of 1978. Specifically, we estimate earnings for the full year 1978 to be down slightly from the 1977 record level of $610 million, and then to decline perhaps to $200 to $300 million in 1979, assuming a moderate recession.—April 24, 1978 (presented by ATA)

We have updated our 1978 estimates. For this year, we predict airline earnings to be $875 million, up 43% from last year. For 1979, given the assumption that we'll be in recession, airline profits should decline to about $450 million. We do point out to investors that in all past recessions, the airlines were unable to avoid red ink; however, there is no chance that carriers will actually lose money in the projected coming recession.—August 15, 1978

BARRY J. GORDON, NATIONAL AVIATION AND TECHNOLOGY CORP.

I believe that airline earnings in 1978 will be little changed from the 1977 levels. If I had to state a number right now I would say slightly better, in the $600 or $650 million area. In 1979 I feel that earnings will be lower than in 1978 because of a weaker economy.—April 24, 1978 (presented by ATA)

I expect airline earnings this year to be higher than we originally anticipated, as there has been a large increase in air traffic . . . Thus, I would revise my figures upward, estimating airline earnings in 1978 to be in the $800 to $850 million area. I still feel that earnings will be lower in 1979 than in 1978 because of a weaker economy.—August 9, 1978

BERT FINGERHUT OF OPPENHEIMER & COMPANY, INC.

In summary, we now project that industversus a prior projection of $715 million. in 1978 versus $611 million in 1977 and versu' a prior projection of $715 million. Based in part on reasonable economic growth late this year and in 1979, we project industry net income will total a little less than $900 million in 1979. . . . In developing these projections, we are assuming modest economic growth in late 1978 and 1979.—June 28, 1978 (presented by ATA.).

I stand by my statement of June 28.—August 15, 1978.

Mr. Speaker, I would like to point out three facts based on the above predictions. First, all analysts now predict a record year for airline profits. Second, analyst opinions are split over the future of airline industry profitability. Third, there has been a wide variance in the analysts' predictions in just a 2- to 4-month period; their estimates of industry performance are dismayingly inaccurate.

In light of these three facts, I urge my colleagues to oppose H.R. 11986, the Noisy Aircraft Revenue and Credit Act of 1978, which will be offered as an amendment for title III of H.R. 8729, the Airport and Aircraft Noise Reduction Act.

If the airlines continue to profit from the present climate of deregulation, a $2.5 billion bonus would be wasteful. If the airlines flounder in the future, Congress should be ready at that time to consider some kind of assistance.●

SALT II AND MAPS

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. CARR. Mr. Speaker, on September 11 Senator BENTSEN opened the session of the Senate with an articulate and thoughtful discussion of SALT, particularly as it relates to multiple-point ICBM basing, or MAP. I recommend that everyone interested in arms control read it and, for whatever they may be worth, I offer the following unsolicited comments:

First. We cannot assume that MAP would assure the survival of a significant proportion of our ICBM force. MAP is strategically attractive only if it is clear that we can proliferate aim points more cheaply and more quickly than the Soviets can proliferate hard-target reentry vehicles. Neither of these points has been demonstrated in a satisfactory manner.

Second. Assuming the verification problem can be solved, MAP is a great deal more viable in a SALT context than in a no-SALT context. Under the reported SALT II terms permitting the Soviets about 300 modern heavy ICBM's with 8 or 10 warheads each and about 500 modern medium MIRV ICBM's which could have 6 warheads each, and with an ICBM fractionation limit at these levels, the Soviets could ultimately have about 5,500 available hard-target ICBM MIRV warheads. While it would be stunningly expensive, we could if we wish build a countering MAP system with reasonable confidence that it would be successful.

In contrast, a SALT-free environment leaves MAP floundering in a bottomless pit in which orderly force planning is impossible. For every aim point we build, the Soviets could deploy another RV or two. Assuming they are willing to bear the cost of their RV's, we could well find the cost of our aim points eventually running so high that, had we known where the cycle would lead when we began it, we would have chosen another route to strategic security.

Third. Senator BENTSEN's point that, in effect, survivability is a legitimate goal whereas first strike is not, is right on target.

Fourth. The assertion that we do not have first-strike capabilities while the Soviets do is difficult to support. Minuteman III was explicitly designed as a counterforce system, as were the subsequent accuracy upgrades which make it the most effective silo-killing force in the world today. M–X is explicitly advertised as a super silo-killing weapon, and there is no other rationale for its configuration. We can say, of course, that we are only interested in countersilo second strike, not in first strike. But the Soviets can say the same thing, since the hardware required is identical.

Fifth. The latter part of Senator BENTSEN's statement seems more ideological than pragmatic, and is oddly inconsistent with the hard analysis of the first part. I have particular difficulty understanding his view that if a SALT agreement does not provide gap-free protection for the United States it is "not good at all." One might with equal validity argue that a new weapon which does not provide complete protection is no good, and since no single weapon can do this we should buy no weapons. It has always seemed to me that any agreement or any weapon which advances our total security to any measurable degree is good and should be accepted.

Senator BENTSEN's remarks follows:

SALT II

(By Senator Bentsen)

Mr. President, on June 28, I addressed the Senate on some of my concerns regarding the SALT II negotiations. I suggested at the time that, like it or not, diplomatic "linkage" would be a major factor in Senate consideration of SALT II for the simple reason that there can be no such thing as a sound agreement with an aggressive partner seeking to exploit every advantage and widen every loophole.

The record of past Soviet performance on SALT I and current Soviet adventurism make it apparent that adequate verification procedures are absolutely essential to any acceptable SALT II treaty. If we cannot trust the Soviets, clearly we must be able to tell when they are cheating, particularly on an issue as important as strategic arms limitations.

Furthermore, we cannot permit a SALT II agreement, no matter how sound or verifiable, to serve as a maginot line in our strategic posture. The Soviets clearly have the will, and may well have the capacity, to outflank any such agreement by aggressively exploiting opportunities for confrontation throughout the world, using conventional means.

Obviously Mr. President, no Member of this body is in a position to pass final judgment on a SALT II agreement that does not yet exist. I believe, however, that there is some merit in raising and discussing fundamental issues pertaining to SALT; issues that will inevitably bear on the question of Senate ratification regardless of the final form the treaty may take.

There are two aspects of SALT that currently cause me some disquiet. The first is the necessity of preserving MAPS in the forthcoming SALT II treaty—MAPS is the concept that we can confound a Soviet first strike against our Minuteman sites by digging more silos than we have missiles. The second issue is our general perception of arms limitations agreements over the years and the aura of inevitability that has developed around SALT II.

The faddishness and jargon of the arms control dialog would be amusing if the topic were not so important. Clearly, the latest vogue in the ongoing debate about SALT II is the multiple aim point system, or MAPS. The same concept is also referred to with the acronym of ALPS—alternate launch point system. MAPS or ALPS, the notion is identical and disarmingly simple. It is almost as if a talented layman were introduced into the arms control debate.

I am neither qualified nor inclined to deliver a long address on the pros and cons of MAPS. Certain elements of the problem and the proposed remedy are, however, beyond dispute.

We currently have a substantial number of ICBM's, mostly Minuteman III, targeted at the Soviet Union in hardened positions. This land-based missile force constitutes one

element of our triad. There is substantial agreement within the brotherhood of strategic analysts that the Soviet Union will, by the early to mid-1980's, have the capability of destroying the majority of our Minuteman force without substantially depleting their own missile inventory. This situation will exist whether or not the SALT II treaty is signed in its current form, and it is not a comforting thought.

With these factors in mind, two questions immediately occur. What options are available to us, within and beyond the constraints of SALT II, to protect our land-based missile system? What purpose is this system intended to serve?

In regard to the first question, we could program, fund, and build a mobile missile system, the much-heralded, hotly debated and highly expensive MX. That is one option, and SALT II would not be an impediment. It has been deliberately delayed by the administration, and is scheduled to be operational in 1986, after the treaty expires.

The MAPS/ALPS multiple silo approach provides a second, theoretically less costly option for enhanced survivability, because it utilizes the existing Minuteman III. Our missiles are vulnerable because they exist in finite numbers; the Soviets know where they are; they can land a warhead close enough to take them out; and they will have sufficient warheads to do the job.

Let me just add parenthetically that I have always been a little puzzled by the notion that our ICBMs could be eliminated in their silos because I had always assumed that, even in the case of a Soviet first strike, we would have sufficient warning time to get our missiles up and off. But let us assume for the sake of argument that this launch-on-warning option is rejected.

Under the MAPS/ALPS approach, we simply diffuse about 250 of our missiles over a much greater number of holes, or launch points. They become safer because the Soviets do not know at any given instant which of up to 5,000 new holes has the missile and because they lack the means to attack all the launch points. Multiple silos should theoretically curb the Soviet appetite for a first strike and virtually assure the survival of at least a significant part of our minuteman force in any contingency.

At the very least, Mr. President, this is a clever idea. I would be hard-pressed to demonstrate why it would not work.

True, the multiple silo concept raises some very significant and difficult questions. It complicates verifiability, which is a critical aspect of SALT II. We would, in effect, set out to make it impossible for the Soviet Union to determine where our missiles are. We would make each silo look as if it contained a missile, a conscious effort at deception. We would make it more difficult for the Soviets to determine if we were cheating on the upper limit of missiles, assuming that they lack the capacity to detect new missile production in this country.

Resort to the multiple silo approach would also invite the Soviets to follow suit, creating new verification problems for us and raising similar concerns about total numbers of missiles.

Considerations of this nature are important. They deserve to be addressed. But the option is also important. It deserves to be preserved. We gave up the B–1 bomber and got nothing in return. We are treading water on the neutron bomb, again with no reciprocal concession in sight. We have terminated minuteman III production and delayed MX and have production delays with Trident. I do not think we can gratuitously afford to scrap the multiple silo concept, and I am pleased to see Secretary Brown and ACDA Director Warnke agree with this position. They are insisting that the option to deploy a MAPS be preserved in a SALT II treaty.

One of the most intriguing aspects of the MAPS debate is the fact that it drives the Soviets up the wall. Pravda is indignant. They do not like it one bit.

Perhaps we should pause for a moment and attempt to determine why the Soviet Union is so clearly and strongly opposed to multiple silos, particularly when we do not deny their rights to deploy the same system.

It takes no great strategic genius to divine the reasons for this protest. The reason is simple. The Soviets are acknowledging that they do not want to sacrifice their perceived ability to destroy our land-based missiles in a first strike.

I do not want the Soviet Union, even in a worse case hypothesis, to have that capability. I do not think we should permit it to exist. One way to circumvent it is to deploy a MAPS.

There may be some other, more arcane, or more legitimate reason for strong Soviet objections to multiple silos. If it exists, I would like to know what it is. In the absence of any such information, I must assume that the Soviets object for the reason stated.

I alluded earlier to a second question on MAPS/ALPS: What is the purpose of our land-based missile system? It should by now be apparent to even a neophyte in the field of arms limitations that we lack the capacity to take out the Soviet land-based missile force in a first strike with our Minuteman force. That is not the goal nor the purpose of Minuteman. Our land-based missiles serve only to deter a Soviet first strike; they are an element of our potential response to any such initiative. They do not, however, represent a significant first strike threat to the Soviet ICBM's.

Where, I ask, is the symmetry in an agreement that acknowledges the Soviet potential to wipe out our land-based missiles while denying us a reciprocal ability to provide for our own ICBM survivability? Clearly, this Nation must demand the creative latitude to take passive measures to protect this essential element of the triad.

If the Soviets want to dig more silos, more power to them. They are welcome to do so. We have no illusions about our ability to target and destroy their missile force now or in the future. If they want to double their invulnerability, that is their option. We simply seek to preserve ours in the face of a very real and legitimate threat.

I am not prepared at this stage to stand before the Senate and argue that an ability to deploy a multiple silo system is essential to our national security. I do not suggest that MAPS/ALPS is the only, or necessarily the best way to safeguard our land-based missile system.

I do, however, submit that our Minuteman force must be protected and must remain invincible to a Soviet first strike. If it can be demonstrated that the MAPS approach is the most efficient, least expensive means to make that system survivable, then I for one would be extremely skeptical of any SALT II agreement that infringed on our right to exercise this option.

What I am saying, Mr. President, is let us not discard this option until we determine whether it can serve our national interests. Let us not give it away for nothing. Let us weigh the multiple silos proposal on its merits, indepndent of SALT, independent of Soviet objections. Multiple silos are not a menace to the Soviet Union; they merely deny the Soviets the ability to destroy our land-based missile force in a first strike.

I am somewhat reluctant to make the point, but we must understand that there comes a point at which no SALT II agreement is preferable to an ambiguous, weak, or dangerous agreement. There is a limit to the concessions we can make on the altar of strategic arms limitation, and we are fast approaching that limit.

We have been engaged in the business of trying to break our arms race with the Soviets for the past 15 years. During this time there have been a number of "successes." Agreements that have imparted momentum to the process and gradually created a sense of euphoria in the American public.

Now any reasonable person, Mr. President, would support the notion of arms limitation and reduction provided it does not pose a threat to our national security.

What concerns me, however, is that the American public has come to accept the notion that we are winding down our Union. Disarmament, it seems, is just around the corner.

We believe this for two reasons: Because we want to believe it, and because our fondest hopes have been reinforced by a series of pacts successfully marketed as significant steps on the road to an end of the arms race and—eventually—to a relaxation of the balance of terror that rules the world.

During the past 15 years we have become so committed to the concept of arms control limitation that I shudder to think how we might react if the process does not continue. What happens if we cannot negotiate a successful SALT II agreement with the Soviet Union? Are we prepared to accept an unsafe, inadequate agreement on the basis that it is better than no agreement at all; the best that the situation will permit? Are we prepared, as a nation, to accept the consequences of failure to agree with our traditional adversary on the issue of arms control? Do we, really and honestly, have any option but to conclude a SALT II agreement with the Soviet Union?

Fifteen years ago we set out on the path of arms limitation with the Soviet Union with conclusion of the limited test ban treaty, the first, tentative step back from the cold war policy of confrontation. At that time, so soon after the Cuban missile crisis, we were clearly and unequivocally superior to the Soviet Union in nuclear weaponry; we held a clear strategic advantage.

Today that is obviously no longer the case. We seek to preserve a position of "parity" and avoid a situation of outright inferiority.

I do not suggest that our slide from superiority to precarious parity is entirely a function of the era of arms control. Obviously, it is not. The United States has exercised unilateral restraint in deploying new ICBM and SLBM launchers since 1967, and our strategic budget has declined since 1963.

But I suggest that, having accepted and embraced the notion of arms control/limitation, we were better able to look with equanimity on the notion of parity. A security posture "second to none" became good enough. We accepted the inevitability of a Soviet Union as powerful and as advanced as the United States.

What bothers me, Mr. President, is the lingering suspicion that the Soviet Union might just see things a little differently. One does not have to be an expert in trend lines and force analysis to conclude that, during the past 15 years, the Soviets have been winning the race for strategic superiority. They have the momentum going their way.

The whole purpose of SALT II, of course, is to stabilize this process at rough equilibrium. To establish limits that insure essential parity. But the spirit of SALT II is as important as the letter of agreement. It is important to understand that there is no fat, no margin for error or miscalculation, in a U.S. position of parity.

The United States has available a number of options that could restore to this Na-

tion a position of strategic superiority. They include the cruise missile, the B–1 bomber, and the multiple silo approach of MX missile. Most are expensive options, both in terms of cost and in terms of what they would do to the cherished notion of arms control/limitation. I think it is safe to assume that we can no longer have arms control and a position of strategic superiority. The Soviets will not permit it, and their attitude is probably understandable.

If we forsake superiority and opt for parity together with a welcome element of control, I must be convinced that our partners in the negotiations are not leading us down the garden path. Otherwise we might be deceived into accepting inferiority.

With every arms limitation agreement—the LTBT, the SALT I ABM Treaty, SALT I interim agreement, the Vladivostok aide memoire—the Soviets have continued to gain on us. What assurance do we have that SALT II will put an end to this historical progression and stabilize the balance of forces? What sign, what indication, do we have from the Soviets that they will be satisfied with parity? How do we know that they are not using arms limitations talks as a smokescreen to mask a drive toward superiority?

The answer, Mr. President, is that we have no such assurance. We just do not know. We are asked instead to credit the Soviets with honorable intentions, and that is no mean task on an issue this important. Their record of questionable compliance with the SALT I agreements alone should warn us that they may have more sinister intentions.

Perhaps the time has come to disabuse ourselves of the notion that a SALT II agreement is inevitable and inherently desirable. In a recent SALT paper circulated by the State Department the point is made that—

The choice the United States now faces is between a good agreement protecting and enhancing our national security, and no agreement at all. It is against this standard that what has been achieved at SALT should be measured—not against some ideal agreement that as a practical matter, given the relationship between the two countries, cannot be concluded at this time.

I am bothered by this distinction between a good and an ideal agreement. It would seem to me that an agreement that truly protects and enhances our national security would be ideal. If it pretty much protects our national security, if it protects as well as it is possible to protect in the context of SALT, if there are gaps in this protection, then the agreement is not good at all. We should not accept negotiated risks to our national survival as inevitable. If it is simply the best we can do, then I am not prepared to accept that standard when it comes to national security; I do not think the Senate is prepared to accept it, and I do not think the American people will accept it.

The United States of America has clearly demonstrated its abiding commitment to arms control by unilaterally allowing itself to move from a position of superiority to a position of parity. The Soviets have yet to demonstrate a reciprocal commitment. It is now the turn of the Soviets to display good faith, to cease exploiting every loophole in existing arms control agreements, to cut back on their awesome increase in strategic capability, to accept the notion that we have the right to insure the survival of our land-based missiles—in short, Mr. President, to demonstrate that they are prepared to stop at parity and reach a truly equitable SALT II treaty.

In the absence of positive indications of good will from the Soviet Union, in the absence of positive indications of a commitment to parity and mutual deterence, it is going to be difficult indeed for the U.S. Senate to approve any SALT II agreement.

GREAT GOOD FOR AMERICA

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. JACOBS. Mr. Speaker, an entire economics course could be summed up in the following concise remarks made by our colleague DON BONKER. When the people of Washington sent DON BONKER to Washington, they did a great good for America.

Remarks by DON BONKER follow:

REMARKS OF CONGRESSMAN DON BONKER BEFORE THE ANNUAL CONVENTION OF THE WASHINGTON SAVINGS LEAGUE

As a homeowner, I welcome the opportunity to address a group of mortgage lenders, for I can still recall the sense of awe and obligation at signing a mortgage that might outlive me and for a sum of money which looked like the national debt.

As Congressman, I see things a bit differently, but I can now appreciate the complexity and uncertainty involved in your business and hopefully can discuss the secondary mortgage market from both perspectives—homeowner and law-maker.

The easy out for me is to simply speak in that wonderful shorthand of terms and acronyms which surrounds the lending business—S&L's, FHLBB, tandem money, "Ginnie Maes," "Fredie Mac," "Fannie Mae," RAM, VRM, GPN, FHA, VA—and even something called "Canadian rollover."

It is not only your vast importance in providing housing that makes us ordinary citizens stand in awe—it is your foreign language.

Of course, I do realize that a good portion of that strange language is written by the Federal government—perhaps even too much of it!

If it sounds like I am taking some time to convince you that I am not an expert in housing and finance, that is accurate. Moreover, I do not think you can expect very many members of Congress to be as conversant as they should be.

When I spoke at the Governor's housing conference some months back, I made reference to a matrix prepared by the Congressional Budget Office. It showed the 22 basic Federal programs which intersect or affect the traditional housing problems—level and stability of construction activity, availability of mortgage credit, excessive costs, substandard shelter, and declining neighborhoods. There were 63 points at which programs intersected with those traditional problem areas.

The point I made at the housing conference is that no one should be under the illusion that Congress puts together a housing policy with a keen eye on how those pieces fit together and how changing one thing changes other things. Nor do individual Congressmen have a firm grasp on how housing programs and financial institution legislation all intersect, overlap and affect each other.

Before getting into issues presently before Congress, it is useful to take a quick overview of the evolution of national policy toward housing and mortgage credit.

The most obvious point is that the U.S., since the depression, has evolved a patchwork policy of seeking to stimulate housing in investment primarily through insuring credit availability. Despite a growing direct involvement through HUD in direct production, our main policy tool has been to selectively control the credit markets to funnel credit into housing.

We have done this through legally maintaining diversity among financial institutions with one class of institutions dedicated to providing mortgage credit. We have helped maintain that class—you—through tax policies and explicit requirements for investing in housing, and through giving you an edge in competing for time deposits.

We have also developed an expanding secondary mortgage market and a central lending facility to insure sources of mortgage funds during periods of tight credit.

This overall structure was a logical and sensible development from the conditions of the depression and through the stable monetary period of the 1950's. Indeed, savings and loans can look back fondly on the Fifties when short-term interest rates were low and long-term rates were high—conditions tailor-made for the savings and loan industry.

But experience and inflation raise a challenge—a challenge exemplified by the current debate in Congress over allowing federally chartered S&L's to use variable rate mortgage instruments.

First, a number of studies have thrown into question the degree to which a policy geared toward credit availability has in fact produced a higher level of housing investment. One economist, after surveying the data came to the following conclusion: "Making credit available for housing by regulating interest rates, selling bonds to finance advances to thrift institutions or by purchasing mortgages does not appear to have much effect on housing." Part of that conclusion is that credit policies have simply displaced one form of credit for another, with the result that loan-to-value ratios for housing loans have increased with the increased credit diverted to other uses.

However, in the context of present policies and politics, that conclusion may be nearly irrelevant since we are not prepared to test it by making drastic changes in housing policies or the structure of financial institutions. At least for the time being.

I add that last note because the threat of continuing inflation and sharp business cycles presents a true challenge.

The first sign of a continuing challenge to S&L's was probably signaled when President Kennedy engaged in a deliberate attempt to boost short-term interest rates while keeping long-term rates low in order to stem an outflow of short-term money to Europe. For all intents and purposes, the era of low short term rates had ended.

S&L's have found themselves squeezed by increasing cost and more competition for deposits on one side, and interest rate ceilings, long-term, "frozen assets, and more attractive alternative investment possibilities on the other side.

Yet we find ourselves unwilling to make drastic changes in interest rate ceilings on either side of the equation, thus, we turn to seeking to increase the source of mortgage funds through expanded activities of federal agencies. By one estimate, in 1974, federal agencies supplied two-thirds of all mortgage funds either directly or indirectly. But there is substantial evidence that these funds have not had a one-to-one effect on housing investment because they displace private investment and also involve increased government borrowing in the credit markets.

The next temptation is to increase Federal involvment through selective credit controls such as requiring other institutions to invest in mortgages, changing tax policies to divert funds back into housing. As we have seen, there is a reluctance to travel this road because of uncertainty over the effects on the competitive position of institutions subject to the controls and ultimately on housing investment.

Which brings us to the variable rate mortgage. The House presently has before it a

bill which will be on the floor in the next two weeks and which contains a provision allowing federally charted S&L's to use alternative mortgage instruments, including the variable rate mortgage, in those states which allow them for state chartered thrifts.

I wish I could give you an accurate forecast of whether the provision will survive, but I would be foolhardy if I did. There definitely will be an attempt to strike the provision from the bill.

In 1975, the last time Congress considered the issue, the variable rate instrument was soundly defeated, primarily as a result of strong opposition from labor and consumer groups.

The proposal this year will likely fare better because the experience in those states which have used VRM's has belied most of the consumer fears, and because there are some consumer safeguards built in:

Among other things, no VRM could be offered without the consumer being given a choice between the standard, fixed-rate mortgage and the VRM.

Increases in the rates would be limited, and pre-payment penalties forbidden.

Any institution offering the VRM must make them available for at least a 4 year period.

For my part, it seems to make sense to let lender and borrower come together under these conditions on the best instrument for that individual. Moreover, while sensitive to the concerns of consumer groups, I have seen no evidence that consumers have suffered (and there are those safeguards in the bill).

I believe I am correct that VRM's in the state of Washington do sell for ¼ to ½ percent less than standard instruments. Is that true?

And despite the attention given to the VRM, my guess is that alternative instruments—the graduated payment mortgage, the roll-over, and the reverse annuity mortgage—will gain in popularity as much as the variable rate instrument. This will occur as particular classes of borrowers learn that specific instruments are best tailored for their individual circumstances.

While I have concluded that the VRM is an acceptable step to take, I should add that I believe it has been sold on the wrong grounds, and that it may not provide much of an answer to the dilemma facing S&L's in an inflationary economy.

One argument advanced for use of the VRM is that it will expand the availability of mortgage credit by increasing the liquidity of S&L assets during periods of inflation.

My summary conclusion is that the effect of VRM will not be all that great overall.

The one ground on which S&L's can best defend the VRM, it seems to me, is that it will allow a measure of diversification in portfolios, which is a growing necessity as we face continued high interest rates for both short and long terms.

The paradox here is that this need to instill more liquidity in portfolios also calls into question our resistance to modify the structure of financial institutions.

At one time, the structure of interest rates seemed to sustain diversity of institutions, with banks willing to lend short based upon demand deposits and thrifts willing to lend long based upon time deposits. Now we seem to be in a position of banks wanting to compete for deposits and S&L's wanting to avoid the disadvantages of lending long term.

At the same time, each institution wants to maintain its competitive advantage or position.

It is conceivable that S&L's may get the variable rate mortgage and almost certainly will get extension of regulation Q with its rate ceilings and rate differentials. Banks, it appears, will get authority to make automatic account transfers. Credit unions are expanding their residential lending activities, although slowly.

Step by step, we blur the distinctions among institutions while seeking to cope with a changing financial and monetary environment. As you all recall, several years ago we crept up to the edge of the water of major change in the structure of financial institutions, but rapidly backed away—largely for fear of what would happen to the financing of housing.

Nonetheless, each category of institution continues to press for changes which will allow it to cope without having to confront new competition. I am not saying that is bad, only that we should be conscious of what we are doing and at least confront whether we are really adapting to the future or simply trying to preserve the past in the face of the changing environment.

I wonder whether we may look back on the variable rate mortgage as one more attempt to solve part of a problem without confronting the fact that acceptance of inflation as a fact of life changes everything. All of the devices we have devised to insure mortgage credit availability seem to come up somewhat short. The new variable rate certificates of deposit seem to have attracted more internal transfers of funds than new deposits.

They have helped, obviously, but perhaps at some long-range cost in further undermining Regulation Q and the settled structure of financing housing investment.

S&L's must have the tools to live with inflation. But perhaps it is also time to recognize that providing those tools is not the answer to increasing housing investment.

Up until now we have looked too much to the supply of credit as the answer to housing supply. We must recognize that land costs and restrictions, cost escalation in the traditional methods of construction, the general level of interest rates and other factors are more important in housing supply.

As an officer of a large California S&L recently observed, new mortgage instruments do not necessarily increase the supply of housing. He stated "Until recently, almost all of the attention has been placed on innovative financial schemes, such as graduated payment mortgages, which exacerbate rather than alleviate the problem by throwing more money into the inflationary fires."

I do not pretend to have an answer to either the business cycle or inflation. All I know is that what we seem to be about in coping with today's economy surely destroys the old adage that the more things change, the more they remain the same.

I hope you will forgive me for this very broad-brush talk and any damage I may have done to the way things really work in financing housing. It just seems to me, to invent an adage, that occasionally the more we try to make things work, the less they work right.

As one last footnote, I want to call to yur attention a provision in the regional energy bill presently before both the House and the Senate. That bill calls for a massive energy conservation program which rests on spending a great deal of money to make homes more energy efficient. No one has any estimate of how much money we are talking about, but the bill is clear that money will be spent on conservation up to the point that it is more expensive to continue spending on conservation than it is to build new generating facilities.

The interesting section of the bill reads as follows:

"To the extent conservation or acquisition of resources under this Act require direct arrangements with the ultimate consumers of electric power, the Bonneville Power Administrator shall make maximum practicable use of existing institutions able to supply credit to such customers."

I call this to your attention only because it portends a very large volume of lending activity to homeowners for insulation, and more efficient heating and hot water systems, yet the bill is vague on exactly how such lending will take place. I suggest you may want to work closely with the Bonneville Power Administration in exploring just what is ahead.●

EXPLANATION OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO CETA

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mr. JEFFORDS. Mr. Speaker, this is the text of a "Dear Colleague" which explains the new provisions in the CETA substitute which I will offer when the CETA bill comes to the floor:

EXPLANATION OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO CETA

DEAR COLLEAGUE: When the CETA bill was on the House Floor on August 9, amendments were offered to reduce the wages paid to some CETA participants to more reasonable levels, to shift the emphasis from public service employment to youth and training programs, and therefore, to reduce total program costs. Now, in order to attract the broadest support possible in conference committee negotiations, we will offer a substitute bill, which was developed in consultation with the Committee and Subcommittee chairmen and ranking minority members. The substitute retains the basic thrust of the Obey and Jeffords amendments, includes all the other amendments which passed on the Floor, and contains some additional improvements.

(1) As the Obey amendment, the national average wages of $7,000 will be retained, but will be adjusted annually based on changes in the average wage in the prime sponsor's area.

(2) As to the Jeffords amendment, the reduction in the number of public service jobs under Title VI will be preserved, as will the shift in emphasis to youth programs and private sector initiative programs, but this reduction will be achieved by reducing the trigger for the number of authorized jobs from 25 percent to 20 percent of the unemployed over 4 percent.

(3) In order to further increase the emphasis on training and away from PSE, the maximum percentage of funds allowable for PSE in Title II will be reduced from 50 percent for wages in FY 1979 to 40 percent for wages and benefits in FY 1982. This will increase the funds available for training the structurally unemployed. (In 1977, four times as many participants in training programs found unsubsidized employment as did those in PSE programs.) However, because of the present lack of a sufficient number of training programs in many areas of high unemployment, a waiver may be granted to allow up to 50 percent PSE in these areas.

(4) In order to allow more eligible people to have an opportunity to participate in PSE programs, and to prevent abuses, the duration for public service employment would be limited to 18 months out of 5 years rather than 3 years in the Committee bill. This is the same as the provision in the Senate bill.

(5) Projects under Title VI PSE would be limited to a maximum of 2 years instead of the open-ended provision in the Committee bill.

We believe that the substitute bill offers a balanced proposal which better addresses

the problems of youth, the structurally unemployed, and the need to provide meaningful work opportunities and training for unsubsidized employment. It contains wage provisions which do not disrupt private sector wage rates in local areas. In addition, the total program costs are significantly reduced, and yet more people will be served.

We urge you to support this substitute.

JAMES M. JEFFORDS,
RONALD A. SARASIN,
DAVID R. OBEY,
PAUL SIMON,
Members of Congress.●

SENATE COMMITTEE MEETINGS

Title IV of the Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 14, 1978, may be found in Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 15

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To continue hearings to examine the Federal Government's role in food safety and quality with emphasis on the nitrite situation.
322 Russell Building

10:00 a.m.
Conferees
On H.R. 13125, making appropriations for the Department of Agriculture and related agencies for FY 79.
H–140, Capitol

Foreign Relations
To meet in closed session to receive a briefing from Administration officials on the current situation in Iran.
S–116, Capitol

1:00 p.m.
Governmental Affairs
To hold hearings on S. 3494, proposed Presidential Records Act.
3302 Dirksen Building

SEPTEMBER 18

10:00 a.m.
Finance
To resume markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

To resume hearings to examine alleged abuses in the GSA's contracting and procurement divisions.
1114 Dirksen Building

SEPTEMBER 19

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
6226 Dirksen Building

9:30 a.m.
Human Resources
Labor Committee
To hold hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To mark up S. 3485, to provide for the maintenance of reserves for certain financial institutions, to require the imposition of charges for certain services by Federal Reserve banks, and to authorize the payment of interest on reserves held in Federal Reserve banks.
5302 Dirksen Building

Energy and Natural Resources
Energy Research and Development Subcommittee
To hold hearings on S. 3392, to accelerate the use of solar energy as a source of electricity.
3110 Dirksen Building

1:30 p.m.
Conferees
On H.R. 11445, authorizing funds for programs administered by the Small Business Administration.
Room to be announced

SEPTEMBER 20

9:00 a.m.
Judiciary
Administrative Practice and Procedures Subcommittee
To resume hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

9:30 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Human Resources
Labor Subcommittee
To continue hearings on S. 3060, proposed National Workers Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue markup of S. 3485, to provide for the maintenance of reserves for certain financial institutions, to require the imposition of charges for certain services by Federal Reserve banks, and to authorize the payment of interest on reserves held in Federal Reserve banks.
5302 Dirksen Building

2:00 p.m.
Commerce, Science, and Transportation
To hold hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 21

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

Commerce, Science, and Transportation
Business meeting on pending calendar business.
235 Russell Building

Judiciary
Administrative Practice and Procedure Subcommittee
To hold hearings on S. 2862, proposed Regulatory Control Act.
2228 Dirksen Building

*Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

SEPTEMBER 22

9:30 a.m.
Human Resources
Labor Subcommittee
To resume hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

SEPTEMBER 25

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To resume hearings to examine the Federal Government's role in food safety and quality, with emphasis on the nitrite situation.
322 Russell Building

SEPTEMBER 26

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on problems of small business defense contractors.
5302 Dirksen Building

Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to receive testimony on nuclear reactor safety systems from NRC Chairman Hendrie.
4200 Dirksen Building

Finance
Public Assistance Subcommittee
To hold hearings on H.R. 10848 and H.R. 12972, to modify the disability aspects of the Supplemental Security Income program.
2221 Dirksen Building

2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 27

9:00 a.m.
Governmental Affairs
Civil Service and General Services Subcommittee
To hold hearings on S. 1390, to authorize certain National Guard employment to be credited for civil service retirement, and S. 1821, to provide paid leave for Federal employees participating in athletic activities as an official representative of the U.S.
3302 Dirksen Building

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on financing of future energy needs.
5302 Dirksen Building

SEPTEMBER 28

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on financing of future energy needs.
5302 Dirksen Building
Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building
2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

OCTOBER 3

9:30 a.m.
Human Resources
Labor Subcommittee
To hold oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 4

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the Administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 5

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the Administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To hold oversight hearings on International housing programs.
5302 Dirksen Building

OCTOBER 6

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To continue oversight hearings on international housing programs.
5302 Dirksen Building

SENATE—*Thursday, September 14, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. EDWARD M. KENNEDY, a Senator from the State of Massachusetts.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Our Father-God, consecrate with Thy presence the way our feet must go that the work of the humblest and the highest may be radiant with Thy spirit. Across the toiling hours keep our hearts and minds with Thee that we may see clearly what to do with the vexing national and international problems. Reinforce our every weakness, calm our anxieties, strengthen our wills, increase our faith. Bestow upon the President and all our leaders a strength and wisdom beyond themselves. Grant us grace to follow the wounded footprints of Him who, with so few hours in which to labor, was able to say of the most divine task, "It is finished."

We pray in His blessed name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 14, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. KENNEDY thereupon assumed the chair as Acting President pro tempore.

(Mr. CHURCH assumed the chair as Presiding Officer.)

Mr. BAKER. Mr. President, the Senator from Tennessee would note that the tenure of the chair by the distinguished Acting President pro tempore today may have been the shortest on record.

THE JOURNAL

Mr. BAKER. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF LEADERSHIP

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I have no requirement for my time under the standing order. I am happy to yield it to the distinguished Senator from Massachusetts, who, as I understand, has a special order for this morning.

Mr. KENNEDY. I have a special order for 15 minutes, but if the Senator from Tennessee wants 3 or 4 minutes, I am glad to yield it to him.

Mr. BAKER. Mr. President, I was offering the Senator from Massachusetts my time under the standing order, which will be 10 additional minutes, if he likes.

Mr. KENNEDY. I thank the Senator from Tennessee very much.

Mr. BAKER. Mr. President, I yield my time under the standing order to the Senator from Massachusetts.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts (Mr. KENNEDY) is recognized for not to exceed 25 minutes.

S. 3498—WELFARE REFORM AND FISCAL RELIEF ACT OF 1978

Mr. KENNEDY. Mr. President, I rise to introduce the Welfare Reform and Fiscal Relief Act of 1978.

For many years, we in Congress and the rest of our fellow Americans have had the opportunity and the responsibility to examine the welfare system. During the past year and a half, after the administration brought the current state of affairs acutely to our attention, we have had a renewed, hard look.

We have seen the degradation into which the needy have been forced.

We have seen the enormous burdens under which the States and cities have toiled.

We have seen administrative inefficiency and large error rates.

We have seen arbitrary Federal and State decisions on coverage and eligibility that treat similarly situated families differently and dissuade people from working.

And we have seen instance after instance of people who would rather work in dignity but were not able to secure that work.

The Rube Goldberg welfare machine that we have put together simply will not carry its load.

But, analyses, hearings, and reports offer convincing evidence that the current contraption can be replaced. We can have a system which is at once decent to those who need our aid, can have a system that lifts the weight from the States, and can do so in a manner which is efficient and economical. I believe that the bill which I introduce today meets these goals.

Mr. President, the nearly 25 million people in this country with incomes be-

low the poverty line are a diverse and aspiring group of men, women, and children.

The great majority of two-parent families among them have a worker. The 11.4 million among them who are on AFDC are the children, they are the single parents, they are the physically incapacitated.

Seven out of ten are children, almost 3 out of 10 are mothers. Sometime during the year, half of the mothers work, and another quarter are in training, looking for work, or are disabled. Fathers comprise fewer than 3 percent of the AFDC recipients—and of these half are incapacitated.

This is the population which we are seeking to aid in welfare legislation. It is a population which works when it can; it is a population in which the vast majority of welfare benefits go to those who cannot.

Mr. President, if it is clear that this is a group of people which needs our assistance, it has also become clear over the last few months what we must do to make that assistance more effective.

A decent welfare reform proposal must contain the following:

We need a national minimum benefit level; women and children cannot be deprived of this morning's milk and tomorrow's rent because of the inability or the disinclination of a State to make provision.

We need coverage and eligibility rules which do not tear families apart. Such rules are abhorrent to Americans. We need rules which do not dissuade people from work—for work is the way out of poverty. These rules must treat equally all of those who are in the same economic situation.

We need procedures which insure speedy determinations and the ability of an applicant or recipient to state his case.

We need substantial fiscal relief for the States and for those local governments which contribute to welfare expenditures. Poverty is a national problem, determined as much by national economic policy and the ease of travel between our States as by State policies. If it is a national problem it deserves a national solution.

We need to insure our system against inefficiency and abuse. Thus, we need administrative reform and a set of sanctions for errors. If welfare is to be compassionate it must be effective. To be effective it cannot treat eligibles and ineligibles alike.

We need a strong commitment to public service jobs and training. We must provide work to those who can do it; we must provide training to those who have the heart and mind but do not yet have the skills.

We need to expand the earned income tax credit to aid those who work for low wages.

Mr. President, I would like to give a summary of the major provisions of this legislation, and I ask unanimous consent that the bill be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. KENNEDY. I have given an estimate of the cost of the major provisions to the Federal Government. These estimates have been provided by the staff of the Department of Health, Education, and Welfare. They are not official estimates, but they indicate the cost range for various changes.

I. NATIONAL MINIMUM BENEFITS

A national minimum is crucial to the fight against poverty. Currently, AFDC benefit levels show wide variations—from $60 per month in Mississippi to $514 in Hawaii. Even after adding food stamps—which many eligible people do not get—Hawaii and New York beneficiaries get 2½ times that given to those in Mississippi.

In fact, there are now 10 States, containing close to half of the poor people in this country, which pay less than 65 percent of the poverty line to families on assistance. While some may have it that all the welfare recipients are in New York, and Massachusetts, California, and Michigan, this is simply not the case. The poor—the biggest proportion of the poor—live in those States which pay the least. It is here that humanity and decency demand the first reform.

This bill therefore provides that a family will get a minimum benefit of cash plus food stamps equal to 65 percent of the poverty line. Benefits should be raised for those who are in the worst straits. The national floor I propose would still only provide about $80 a week to a family of four. Try providing for your family on that amount.

The measure also mandates that the Secretary of HEW study ways in which he can raise this level. The 65 percent may be a good starting point. It provides more humane conditions to those who need the help the most and we can provide assistance at this level for a relatively small cost. But surely it cannot be the Federal policy for very far into the future that people must live on less than two-thirds of their minimum requirements. The Federal cost of this change, taking into account the payment and the Federal match detailed below, will be $280 million in fiscal year 1980.

II. COVERAGE AND ELIGIBILITY

Today, 26 States and the District of Columbia provide assistance to two parent families where the father works less than 100 hours in a month.

But 24 States do not, regardless of the economic condition in which those families find themselves. The pressure on those families is both simple and sordid. The parents can get relief and provide for their children only if the father leaves the household.

The fathers who are in this situation have not spurned work. They have been unable to get it. We cannot assume their problems away. We must be concerned when neither parent is working. But the concern must be to provide the jobs and the training for them. We cannot simply assign their families to a barren island, with no bridges to the rest of society, with no sustenance and with no hope of coming ashore.

In order to alleviate this situation, I propose that all intact families with very low incomes, where the parents cannot find a job, be eligible for assistance; every family should be able to keep its father. The Federal cost of this change, will be $140 million in fiscal year 1980.

Other eligibility provisions defeat the purposes that we have for a welfare system. They must be eliminated if we are to help people to find jobs and to work out of the welfare system. First, there are different income tests to become eligible for assistance and to continue on assistance. In determining eligibility, only work expenses are taken from income; in determining continued assistance work expenses, the first $30 of income and a third of income above that are deducted.

This means that most people who work cannot get assistance even if they have incomes which would otherwise merit assistance. The current option is simple but sinister. In order to qualify, in order to get greater benefits, people must leave work. They have got to become so poor that they qualify. No system should make poor people give up their chance to work themselves into a decent life in order to provide the bare minimum for their family today.

The bill I propose goes a good way toward eliminating this discrepancy by allowing applicants to deduct work expenses and an additional $60. This insures that the poorest of those who do not now qualify will be able to get on the rolls without having to give up the job which is their hope. The Federal cost of this change will also be about $70 million.

Eventually, the same income rules should apply to those who are first applying and those who are already on assistance and need to continue. Nobody should have to give up a job in order to qualify for the assistance which is available to others in the same financial situation. I have not incorporated complete comparability in this bill simply because it is very difficult to derive a solid cost estimate for complete comparability. But if comparability is not vastly costly—and there are good indications that it can be achieved at reasonable cost—then it should be instituted.

Another rule which dissuades people from working is that which limits AFDC eligibility to those who do not have a parent working 100 hours a month or more. Thus, people whose incomes are exactly the same are again treated differently. This is the wrong incentive. It, too, tells people that they must stop working if their families are to be put in the best present condition. In my bill I have eliminated the 100-hour rule. Those who are poor will receive aid; we will not limit our aid to those who are poor and do not work. The Federal cost of this change is $280 million.

III. RIGHTS AND RESPONSIBILITIES

Those in our welfare system who need assistance but have not been able to get it must fear for their very sustenance.

Wrong data may lead to a false finding of ineligibility. A person may not be able to fill out the application. The check which has been mailed may have been stolen and there is no sure mechanism to replace it.

We should demand of our welfare system what the rest of us demand of our Government—that the procedures by which determinations are made are fair, understandable and as speedy as possible; and that a process exists by which a party can inform the Government of his view of the circumstances and can have his Government react.

For this reason, I have incorporated a provision detailing new rights and responsibilities for applicants and recipients. This provision is very similar to that in the welfare legislation passed by the House last year, under the expert direction of Congressman CORMAN.

It expands the requests for assistance which may reasonably be interpreted as applications; it provides that the Secretary shall devise a standard application form, asking only for information necessary to determine eligibility, and making the form available in languages other than English where the applicant population needs it. He should state, in plain terms, the sanctions for failure to comply with welfare requirements and the procedural rights of the applicant.

This provision allows an applicant when applying, or an assisted person or applicant at a later hearing, to be accompanied by an adult to help represent him. It speeds the determination of eligibility, speeds payment and gives notice if payments will terminate. It provides, to those who request it, a full hearing to a denied applicant or someone about to be terminated.

So, too, privacy regulations which pertain to Federal agencies and the Internal Revenue Service should guide disclosure of information about a recipient in a State's possession.

These changes should make for a fairer, more responsive, system. They will add negligible costs to the welfare system.

IV. FISCAL RELIEF

Any welfare reform bill has to recognize that the problems which create the need for a welfare program are primarily Federal in origin. The Federal Government bears the principal responsibility for meeting them.

When the need for welfare payments depends primarily upon economic conditions determined by national policies; when the costs in any State depend upon constitutional restraints on requirements for eligibility; when the particular costs of the program depend upon Federal decisions on eligibility and the extent of coverage, then the Federal Government bears the responsibility to provide the resources for AFDC as well.

The States and the cities cannot continue to bear the burden of providing for welfare. The non-Federal AFDC contribution now comes to over 40 percent of the total costs. Both proportionately and absolutely the burden is greatest in those States which are making the greatest effort to alleviate the plight of the poor.

No State or city should be penalized for attempting to provide a decent level of payments for AFDC recipients. Yet, under current law this is the case—the State which pays the least pays only 22 percent of the cost of AFDC. The States which pay the most pay half the cost of AFDC.

I therefore propose that the Federal Government provide the same assistance to every State to help that State meet the payments that are mandated elsewhere in this legislation. The Federal Government should reimburse the States for 85 percent of the base costs which are mandated—this is a higher percentage than the Federal Government now pays to any State. The Federal Government should also pay 70 percent of the cost of any State supplements up to the poverty level.

Almost all States will be granted substantial fiscal relief by this provision, to insure that no State pays more because of increased coverage than it gets from the increased Federal match, the legislation also contains a "hold harmless" provision. No State will have to pay more for welfare than it paid in September 1978.

The legislation also allows the States which do not now cover two-parent families to make their own decision about extending medicaid to them. They are not required to do so merely as a consequence of the fact that States must cover two-parent families under this legislation.

The Federal cost of the fiscal relief in this legislation would be $2.6 billion in fiscal year 1980.

V. BETTER MANAGEMENT

One of the greatest needs of the welfare program is for better management. The error rate—overpayments and underpayments, people wrongly entered on the rolls, or those wrongly denied relief—seriously diffuse our welfare effort.

In the AFDC program alone, $1 billion is wrongly targeted and $100 million is wrongly withheld. We do not know how many people who should be getting assistance have been wrongly denied altogether.

We must add to this the costs to recipients of slow processing and the cost to taxpayers of antiquated administration.

In order to counter the problems of erroneous payments and in order to counter the administrative problems, the bill I propose has two provisions. One gives Federal aid to States if they make a concerted effort to improve administration. Another begins to assess penalties against those States which do not move to reduce their error rate to a reasonable level.

The provision for administrative assistance has been adopted in large part from H.R. 7200. It provides a 90-percent Federal match for the States to computerize their operations, a 75-percent match for operating these systems and a 50-percent match for other costs of administration.

Perhaps as importantly, it directs the Secretary of HEW to study other ways in which error rates can be brought down and processing can be speeded up. Many of the problems with the welfare system can be corrected inexpensively at the human level. For instance, those States which give a couple of weeks of training to welfare processors usually have a much lower error rate than those other States which entrust people's lives and taxpayers money to welfare workers after barely a pep talk. With the approval of Congress another set of procedures can be written into law which makes administration easier and more efficient. These administrative reforms will also be matched at 75 percent.

If we are to seriously cut back on welfare error then we must also give the States a financial incentive to do so. Therefore, this bill directs the Secretary of HEW to develop a methodology for determining a reasonable error rate. After devising the methodology, the Secretary should develop that rate. It should include errors from overpayment, errors from underpayment, errors from wrongful inclusion on the rolls and errors from wrongful exclusion from the rolls. It should also factor in those variables which might affect the error in any particular State—such as size of the AFDC population and the complexity of the program.

States must then make significant progress in attaining that lower rate. After 3 years they must reach that rate. States which do not make significant progress and States which have not reached that rate by the end of 3 years will forfeit half of the funds paid in error or withheld in error over the target rate.

Mr. President, I believe that the States must also have some incentive to reduce errors still further; while we cannot make unreasonable demands of them we must insure that they seize every opportunity to avoid wrong decisions. Thus, I also propose that a State be given an additional quarter of the Federal AFDC contribution to that State for each percentage point that they reduce error rates beyond the target rate.

VI. PUBLIC SERVICE JOBS

Any commitment to bring people out of poverty must entail a commitment to give them training and jobs. We should provide work and we must provide work for those who can work and who want to work.

The bill I propose today does not include a jobs component.

I expect, however, that this program can be easily married to the CETA program which has just been reauthorized by the Senate. That legislation provides for a significant training and public service jobs program.

In its reauthorization, the links between the program and the welfare population have been tightened—the salaries are those which are attractive primarily to those who do not now have jobs; the eligibility criteria can be met mostly by people who have been without jobs for long periods; the emphasis on training and work which can lead to full time nonsupported work has been strengthened.

There may be a variety of ways in which the links to the CETA system should be made stronger; there may be other work programs which should be integrated into a cohesive welfare program. But, if there is a felt need for welfare reform in this Congress, it is in the area of cash assistance—where much less has been done than in the jobs area.

For this reason, I do not include a jobs program in the bill which I submit today.

VII. EARNED INCOME TAX CREDIT

An important source of aid to low income workers is the earned income tax credit. The Federal Government pays an increment of 10 percent to a worker's income up to $4,000; it phases out the payments at a 10-percent rate, starting at $4,000.

I have already proposed, in connection with the pending tax reduction legislation now before the Senate Finance Committee, that eligibility for the earned income credit should be broadened to include single persons and couples without dependents.

But, if we are to create adequate incentives for the very poorest to work, and if we are to give necessary assistance to them, we must do much more. First, the payments should not phase down starting at $4,000. The poverty line for a family of four is now around $6,300. It is expected to be over $6,800 next year. We should raise the level to which the Federal Government will give these credits to an amount which falls in this range.

In addition, the rate of payment should be changed. Those who are working and making less than the poverty line should have their incomes raised more substantially. I, therefore, propose that the payment rate be set at 15 percent of earnings rather than 10 percent. But, if we are going to raise the level to which payments increase, and if we are going to raise the level to which payments increase, and if we are going to raise the rate at which they increase, we need to reduce the payments at a faster rate. I propose a 20-cent reduction for each dollar in gross income. This greatly reduces the cost of the program—a 20-percent reduction rate saves $900 million a year over a 15-percent reduction rate, and even more over a 10-percent reduction rate. A higher reduction rate should not seriously interfere with the desire to work particularly because the EITC is not paid out on a continuing basis. If we find that the implicit tax rate actually dissuades people from working we can explore ways in which to reduce that rate.

The cost of expanding the EITC in the way detailed in this legislation would be $3.2 billion in 1980.

VII. THE NEED FOR WELFARE REFORM

Mr. President, as I introduce this bill, I realize that the time for consideration of welfare reform in this session is short. Many important legislative matters remain to be decided on the Senate floor, yet we are getting closer and closer to the date of adjournment.

It may be that my colleagues will decide that the debate on welfare reform should wait until the opening of the next Congress.

I believe that, should the Senate decide to wait until next session, we can then enact a welfare reform bill which meets the objectives set forth here, that we can do so promptly and that we can do so while eliciting broad support from Members here and in the House.

Concern for welfare reform has come from the administration, from many in Congress, and from a broad range of interested groups.

The Carter administration undertook a great and important task last year when it made the wretched condition of the welfare system a priority for remedial legislation. It presented us with a comprehensive bill. Perhaps because the bill was devised on a scale consonent with the magnitude of the problem, it has not been enacted this year. But, Mr. President, I know that welfare reform remains a key priority of the administration. In a letter to me, which I ask be printed in the RECORD following my remarks, Stuart Eizenstat, indicates the administration's desire to work with me and others to draft another bill for enactment next session.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. So, too, concern for welfare reform has come from both Houses and from both sides of the aisle. A welfare reform proposal was voted out of the Corman special subcommittee last year. Another proposal was introduced by Representative ULLMAN, chairman of the House Ways and Means Committee. Earlier this year, Senators BAKER, BELLMON, RIBICOFF, and DANFORTH introduced a proposal. Many of the elements in each of these proposals were similar to the proposal which I am now making.

So, too, groups which are intimately involved with the welfare issue have worked long and hard to devise better solutions to our welfare problems. The reforms suggested by the new coalition—the group consisting of the National Governors Association, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, and the National Conference of State Legislatures—have been particularly well thought out, I have found many of their ideas to be very helpful to me. Governor Dukakis of my own Commonwealth has been an especially tireless and inventive worker for welfare reform, in his capacity as chairman of the National Governors Association Human Resources Committee. So, too, have the AFL–CIO and other organizations indicated both their concern for welfare reform and their commitment to changing the welfare system.

If the Congress defers action on welfare reform until next session, I plan to work with the administration, other interested Members of Congress, and these groups in creating a welfare reform proposal which should meet the problems—which face the people and the States involved with the current system.

However, if the Senate decides that we must have welfare reform this year, I believe that the bill which I am proposing today offers a better set of provisions than does the other bill still under consideration at this point, the State and Local Welfare Reform and Relief Act of 1978, sponsored by Senators MOYNIHAN, LONG and CRANSTON. I plan to insure that the Senate has a chance to vote on these proposals if it decides to take up the welfare issue.

The proposal which the Senators from New York, Louisiana, and California have authored meets one of the objectives of welfare reform. It contributes substantial fiscal relief to those States which have been making the greatest efforts to give decent benefits to welfare recipients. It, too, recognizes the terrible penalty that these States now pay for their humanitarian instincts.

But the proposal represents a radical shift away from the way in which the Federal Government deals with the welfare situation. And in doing so it fails to meet the range of other concerns we must have.

It changes Federal expenditures to a "block grant" to the State based on current expenditures. The bill was introduced on August 25, less than 2 months before the close of the session. It has been the subject of one afternoon of hearings. I do not believe that we should undertake this departure on the basis of the information now before us.

That bill has some very serious problems. It would encourage the maintenance of current low payment levels in many States because it eliminates Federal matches for real benefit increases needed to provide decent relief. It would discourage the extension of the AFDC program to intact families since States which do not currently cover them would have to pick up all of the costs if they now decide to do so. It eliminates the ability of the Federal Government to promote lower error rates and better administration. In fact, it penalizes the States which have done the most already to reduce errors by basing the block grant on September 1978 payments. By putting a limit on Federal expenditures it makes payments insensitive to caseload increases of benefit increases which may be necessary but which are not covered by increases in Federal payments because of rises in the consumer price index.

Mr. President, the welfare system in this country needs to be reformed. I hope that the legislation which I introduce today can serve as a basis for any bill that the Senate might consider this year. I hope that it will be a helpful contribution to the effort next session should we not adopt a bill this year.

I look forward to working with my colleagues in the Senate who have spent a great deal of time and effort in thinking through these problems, as we come to grips with one of the serious national domestic problems.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

EXHIBIT 1

THE WHITE HOUSE,
Washington, September 14, 1978.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: On behalf of the Administration, I welcome your decision to join the effort to find and enact constructive solutions to the grave problems of the welfare system.

Let me also welcome your stated intention to work with us over the coming months to craft a substantial welfare reform package that will attract the broad public and Congressional support necessary to achieve enactment next session. The bill you are introducing today, together with the New

Coalition's proposal, and approaches proposed by other members of Congress, is an important contribution to this effort—and I believe we will succeed.

I also deeply appreciate your leadership in the effort to ensure that the Senate avoids any action this session that might jeopardize substantial reform next year.

We look forward to working closely with you, and stand ready to provide any needed technical assistance.

Sincerely,

STUART E. EIZENSTAT,
Assistant to the President for Domestic Affairs and Policy.

EXHIBIT 2

S. 3498

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Welfare Reform and Fiscal Relief Act of 1978".

MINIMUM AFDC BENEFIT AMOUNT

SEC. 2. (a) Section 402 (a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (28);

(2) by striking out the period at the end of paragraph (29) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(30) provide that aid provider under the plan shall be equal to or greater than the minimum benefit amount specified in section 412.".

(b) Part A of title IV of such Act is amended by adding at the end thereof the following new section:

"MINIMUM BENEFIT AMOUNT

"SEC. 412. The minimum monthly benefit amount for aid furnished under a plan approved under this part to any assistance unit shall be an amount equal to—

"(1) 65 percent of the official nonfarm poverty line (established by the Office of Management and Budget and adjusted for family size and to a monthly basis) for a family of the same size as such unit within the State, minus

"(2) the sum of (A) the unit's income for such month (subject to the provisions of section 402(a)(8)), and (B) the average value (within such state) of the food stamps for which an assistance unit of the same size as such unit would have been eligible during the last preceding January if the total income of such assisted unit for such January considered solely of pay made under the state plan.

FEDERAL MATCHING FOR AFDC

SEC. 3. (a) Section 403 (a) of the Social Security Act is amended by striking out all that precedes paragraph (3) and inserting in lieu thereof the following:

"SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1979—

"(1) an amount equal to 85 percent of the total amount expended by such State during such quarter as aid to families with dependent children under the State plan in order to meet the minimum benefit requirements of section 402(a)(30);

"(2) an amount equal to 65 percent of the total amount expended by such State during such quarter as aid to families with dependent children under the State plan in excess of the amounts matchable under paragraph (1), but subject to the limitation on Federal matching under section 413;".

(b) Part A of title IV of such Act as amended by adding after section 412 (as added by section 2 of this Act) the following new section:

"MAXIMUM STATE PAYMENTS SUBJECT TO FEDERAL MATCHING

"SEC. 413. The maximum monthly benefit amount for aid furnished under a State plan approved under this part which shall be subject to Federal matching under section 403, for any assistance unit, shall be an amount equal to—

"(1) 100 percent of the official nonfarm poverty line (established by the Office of Management and Budget and adjusted for family size and to a monthly basis) for a family of the same size as such unit within the State, minus

"(2) the sum of (A) the unit's income for such month (subject to the provisions of section 402(a)(8)), and (B) the average value (within such State) of the food stamps for which an assisted unit of the same size as such unit would have been eligible during the last preceding January if the total income of such assisted unit for such January consisted solely of payments made under the State plan.

ASSISTANCE UNIT AND INCOME DEFINED; INCOME DISREGARDS; RESOURCES TEST

SEC. 4. (a) Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'assistance unit' means a dependent child (or children), and the relative (or relatives) described in section 406 (a) with whom such child is living, who are claiming aid, and any other individual living in the same home as such child and relative whose needs the State determines should be considered in determining the need of such child or relative, but does not include any individual receiving supplemental security income benefits under title XVI.".

(b) Section 402(a)(7) of such Act is amended to read as follows:

"(7) except as otherwise provided in paragraph (8), provide that the State agency shall, in determining need for any child or relative claiming aid to families with dependent children, take into consideration the needs, income and resources (as defined in or determined under section 414) of any member of the assistance unit (as defined in section 406(g)) of which such child or relative is a member;".

(c)(1) Section 402(a)(8)(A) of such Act is amended to read as follows:

"(A) shall, with respect to any month and with respect to the assistance unit, disregard (i) the first $30 of earned income, (ii) an amount equal to the expenses reasonably attributable to the earning of income and (iii) one-third of the remainder of the earned income, except that the provisions of this subparagraph shall not apply to earned income derived from participation on a project maintained under the programs established by paragraphs (2) and (3) of section 432(b); and".

(2) Subparagraph (B) of section 402(a)(8) of such Act is amended by striking out "shall not disregard any earned income (other than income referred to in subparagraph (B)) of".

(3) Subparagraph (C) of section 402(a)(8) of such Act is amended by striking out "any one of the persons specified in clause (ii) of subparagraph (A) if such person" and inserting in lieu thereof "shall not disregard any earned income (other than income referred to in subparagraph (B)) under the provisions of subparagraph (A) of any member of the assistance unit if such member".

(4) Subparagraph (D) of section 402(a)(8) of such Act is amended to read as follows:

"(D) shall, in lieu of the amount resulting from application of clause (iii) of subparagraph (A) disregard $30 of earned income of the assistance unit if, with respect to such month, the income of the assistance unit was in excess of its need as determined by the State agency pursuant to paragraph (7) (without regard to this paragraph), unless, for any one of the four months preceding such month, the needs of such unit were met by the furnishing of aid under the plan;".

(d) Part A of title IV of such Act is amended by adding after section 413 (as added by section 3 of this Act) the following new section:

"INCOME AND RESOURCES OF AFDC RECIPIENTS

"SEC. 414. (a) For purposes of this part and any State plan approved under this part, the term 'income' in the case of any member of an assistance unit with respect to any month shall include all income from whatever source which is available to meet the needs of such members except—

"(1) any gain or benefit which is not in the form of money payable directly to a member of such assistance unit;

"(2) any income which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter;

"(3) all educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' education benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of higher education or school for the handicapped;

"(4) all loans other than educational loans on which repayment is deferred;

"(5) reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to a member of such assistance unit;

"(6) moneys received and used for the care and maintenance of a third-party beneficiary who is not a member of such assistance unit;

"(7) income earned by a dependent child or any other child who is a member of the assistance unit, who is a full time student or part time student who is not a full time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment;

"(8) moneys received in the form of nonrecurring lump-sum payments, including, but not limited to, income tax refunds. rebates, or credits, retroactive lump-sum insurance settlements (but such payments shall be counted as resources, unless specifically excluded by other Federal laws);

"(9) the cost of producing self-employed income; and

"(10) any income that any other Federal law specifically excludes from consideration as income for the purpose of determining eligibility for aid to families with dependent children.

"(b) The Secretary shall prescribe the types and allowable amounts of financial resources (liquid and nonliquid assets) which an assistance unit otherwise eligible to receive aid to families with dependent children may own, and shall, in so doing, assure that no member of such unit will be eligible to receive such aid if the resources of such unit exceed $1,750, or, in the case of a unit consisting of two or more persons one of whom is age 60 or over. if its resources exceed $3,000. In valuing resources the Secretary shall count only the value of the unit's interest in the item of property or other asset. The Secretary, in prescribing inclusions in, and exclusions from, financial resources, shall include in financial resources any boats, snowmobiles, and airplanes used for recreational purposes, any vacation homes, any mobile homes used primarily for vacation purposes, and any licensed vehicle (other than one used to produce earned income) used for unit transportation or used to obtain or continue employment or to transport disabled unit members to the extent that the fair market value of any such vehicle exceeds $4,500.

"(c) The Secretary shall issue regulations, after consultation with the Secretary of Agriculture, for the purpose of assuring that

the administration of this section is carried out, to the maximum extent practicable, in the same manner as the administration of subsections (d) and (g) of section 5 of the Food Stamp Act of 1977.".

DEPENDENT CHILDREN OF UNEMPLOYED OR LOW INCOME PARENTS

SEC. 5. (a) Section 402(a) of the Social Security Act (as amended by section 2 of this Act) is further amended—

(1) by striking out "and" at the end of paragraph (29);

(2) by striking out the period at the end of paragraph (30) and inserting in lieu thereof "; and "; and

(3) by adding at the end thereof the following new paragraph:

"(31) provide for aid to dependent children of unemployed or low income parents in accordance with the provisions of section 407.".

(b)(1) The section heading of section 407 of such Act is amended by striking out "UNEMPLOYED FATHERS" and inserting in lieu thereof "UNEMPLOYED OR LOW INCOME PARENTS".

(2) Section 407(a) is amended by striking out "(as determined in accordance with standards prescribed by the secretary) of his father" and inserting in lieu thereof "or low income (as determined under subsection (f)) of his parent".

(3) Section 407(b) is amended by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

"(b) With respect to aid to families with dependent children which is paid with respect to an assistance unit which would not qualify for such aid except for the provisions of subsection (a), the State plan must—".

(4) Section 407(b)(1) of such Act is amended—

(A) by striking out "requires" and inserting in lieu thereof "require";

(B) by striking out "has not been employed (as determined in accordance with the standards prescribed by the Secretary)" in subparagraph (A) and inserting in lieu thereof "has been unemployed or has had low income (as determined under subsection (f))"; and

(C) by striking out "father" each place it appears and inserting in lieu thereof in each instance "parent".

(5) Section 407(b)(2) of such Act is amended—

(A) by striking out "provides" and inserting in lieu thereof "provide";

(B) by striking out "fathers" in subparagraph (A) and inserting in lieu thereof "parents"; and

(C) by striking out "father" each place it appears in subparagraphs (C) and (D) and inserting in lieu thereof in each instance "parent".

(6) Section 407(c) of such Act is amended by striking out "father" and inserting in lieu thereof "parent".

(7) Section 407(e) of such Act is amended by striking out "fathers" and inserting in lieu thereof "parents".

(8) Section 407 of such Act is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this section an individual shall be considered to be unemployed or to have low income during any month in which the total income of the assistance unit of which such individual is a member was such that the unit would be eligible for aid to families with dependent children if the dependent children (or children) in such unit was a dependent child by reason of the provisions of section 406(a).".

MAINTENANCE OF BENEFIT LEVELS

SEC. 6. Section 402(a) of the Social Security Act (as amended by sections 2 and 5 of this Act) is further amended—

(1) by striking out "and" at the end of paragraph (30);

(2) by striking out the period at the end of paragraph (31) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(32) provide that the level of benefits paid under the plan for an assistance unit of any size and any income level shall not be decreased below the level of such benefits paid to a unit of such size and income level for the month of September 1978.".

MEDICAID COVERAGE FOR DEPENDENT CHILDREN OF UNEMPLOYED PARENTS

SEC. 7. Section 1902 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h) Notwithstanding any other provision of this title, a State that did not provide aid to dependent children of unemployed fathers under section 407 during the month of September 1978 may, for purposes of this title, choose not to include as individuals receiving aid or assistance under the State plan approved under part A of title IV, those individuals receiving such aid or assistance who would not be receiving such aid or assistance except for the provisions of section 407.".

LIMITATION ON STATE FISCAL LIABILITY

SEC. 8. Section 403 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(k)(1)(A) If in any fiscal year the sum of (i) non-Federal expenditures with respect to any State for aid to families with dependent children and (ii), in the case of any State which, prior to October 1, 1979, had monthly benefit amounts for aid furnished under a plan approved under this part which were less than the minimum benefit amounts specified in section 412 of this Act, the product of—

(I) the ratio of (a) the average daily caseload of recipients of aid under the plan approved under this part to (b) the average daily caseload of all persons deemed eligible under a State's plan under Section 1902 of this Act during fiscal year 1978, and—

(II) the total expenditures in such fiscal year under the plan approved under Section 1902 of this Act, reduced by the amount of Federal payments determined with respect to such expenditures—exceed its fiscal liability base (as defined in subparagraph (C)), adjusted for use in the fiscal year involved (as defined in paragraph (2)(B)), the Secretary shall pay to the State an amount equal to that excess.

"(B) As a condition of any State receiving a payment under subparagraph (A), the State must agree to pay to any political subdivision thereof which participates in the non-Federal expenditures for aid to families with dependent children a portion of such payment which bears the same ratio to such payment as such political subdivision's financial contribution to such expenditures bears to the total amount of such non-Federal expenditures.

"(C) As used in this subsection, the term 'fiscal liability base', in the case of a State, means the sum of—

(i) the amount, with respect to that State, of the total expenditures in fiscal year 1978 under the plan approved under this part, reduced by the amounts of Federal payments determined (without regard to subsection (i)) under subsection (a), section 1118, and section 9 of the Act of April 19, 1950, with respect to such expenditures, plus—

(ii) in the case of any State which, prior to October 1, 1979, had monthly benefit amounts for aid furnished under a plan approved under this part which were less than the minimum benefit amounts specified in section 412 of this Act, the amount, with respect to that State, representing the product of—

(I) the ratio of (a) the average daily caseload of recipients of aid under the plan approved under this part to (b) the average daily caseload of all persons deemed eligible under a State's plan under Section 1902 of this Act during Fiscal year 1978, and—

(II) the total expenditures in fiscal year 1978 under the plan approved under Section 1902 of this Act, reduced by the amount of Federal payments determined with respect to such expenditures.

"(2) As used in this subsection—

"(A) the term 'aid to families with dependent children' does not include any expenditure for such aid with respect to a monthly benefit level which exceeds the level required to be adopted pursuant to section 402(a)(30) or the applicable preexisting benefit level prior to October 1, 1979, whichever is greater, and, in any event, includes expenditures for such aid to families described in section 407 with respect to a monthly benefit level in excess of the level required to be adopted pursuant to section 402(a)(30) only if, prior to October 1978, the State plan approved under this part included provision for paying aid with respect to children deprived of parental support or care by reason of the unemployment of their father under section 407; and

"(B) the term 'adjusted for use' (in any fiscal year) with respect to a specified amount means that amount multiplied by the ratio of (i) the arithmetical mean of the Consumer Price Index for All Urban Consumers for months in the fiscal year for which the amount is to be used or applied, to (ii) the arithmetical mean of that index for months in fiscal year 1978.".

RIGHTS AND RESPONSIBILITIES OF APPLICANTS AND RECIPIENTS

SEC. 9. (a) Section 402(a) of the Social Security Act (as amended by sections 2, 5, and 6 of this Act) is further amended—

(1) by striking out "and" at the end of paragraph (31);

(2) by striking out the period at the end of paragraph (32) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(33) provide that the procedural regulations promulgated by the Secretary under section 415 are properly implemented.".

(b) Part A of title IV of such Act is amended by adding after section 414 (as added by section 4 of this Act) the following new section:

"RIGHTS AND RESPONSIBILITIES OF APPLICANTS AND RECIPIENTS

"SEC. 415. (a) The Secretary shall issue regulations for the purpose of assuring that each State, in the administration of its State plan under this part, provides that—

"(1) each individual or assistance unit that either makes in person (at any location designated to receive application for payments under the State plan) or sends in written form (received at such location) what may reasonably be interpreted as a request for payment under such plan shall be deemed to have filed an application on the same day such request is made or received;

"(2) the application form shall (A) be prescribed by the Secretary, (B) require only such information as the Secretary determines to be essential to the administration of this title and the State plan, (C) be available in an appropriate language other than English in those portions of political subdivisions of States in which 10 percent or more of the members of eligible and potentially eligible assistance units speak a language other than English, (D) contain a description in understandable terms and in prominent and boldface lettering of the applicable civil and criminal sanctions for failure to comply with the provisions of this title and the State plan by members of eligible or participating assistance units, (E) specify or furnish as attachments a clear description of the rights of applicants and

participating assistance units under the State plan, (F) be made available for public distribution, accompanied by instructions for the filling out of such application and detailed information about the eligibility requirements, scope, and benefits of the program under the State plan, and (G) include those provisions necessary for each adult member of the assistance unit to make the assignment and enter into the agreement required by section 402 (a) (26); and verification of the information provided on the application and of other information essential to determining eligibility shall be made in the least intrusive manner possible, with the unit being advised of all types of contacts that might be made so that it might be determined whether the necessary information can be provided to make such contacts unnecessary or whether it would prefer to withdraw its application;

"(3) each applicant assistance unit may be represented or assisted in any part of the application or the hearing process pursuant to paragraphs (9) through (11) either by any adult claiming to be a member of the unit, or by any adult other than a member of the unit (including a lawyer) so long as that adult has been clearly designated as the representative of that unit for that purpose by an adult member of that unit or a nonmember adult for a unit that contains no adult member able to file; and each applicant assistance unit shall be offered by the agency in completing the application and obtaining all necessary documents and other evidence,

"(4) each applicant assistance unit may receive and return application forms by mail or delivery;

"(5) appropriate means and procedures are esablished for determinations of eligibility in those cases in which no adult member of the unit is able to appear in person because of age or physical or mental handicap, or because of the location or hours of operation of the office designated to receive application for payments under the State plan in the political subdivision in which such unit resides;

"(6)(A) the eligibility of each applicant assistance unit and the amount of payment to which such unit is entitled shall be promptly determined so as to allow no more than 30 days to elapse from the date on which its application is filed as described in paragraph (1) or a notification of change in circumstances is filed, to the date on which the notice of the determination is mailed to the unit, and no more than an additional 5 days to elapse before the date on which any payment resulting therefrom (for all months for which payment would already have been made if the payment so resulting were not the assistance unit's first payment) is made or notification of denial of payment or change of payment under the State plan is mailed to the unit, except that the time limit shall not apply where the State can demonstrate that failure or delay on the part of the unit to provide information essential to the determination of eligibility and the amount of payment caused the delay;

"(B) this time limitation period shall not be used as a waiting period before making payment under the State plan or as a basis for denying payment;

"(C) by the end of the applicable time limit, payment shall be made even in the absence of all the information essential to the determination of eligibility and the amount of payment so long as that absence is not directly attributable to action or inaction on the part of the unit and there is no documented reason to believe that the unit is ineligible or should not receive the highest amount to which it would be entitled by virtue of its composition, size, and income;

"(D) any error subsequently determined with respect to such presumptive payment shall not be counted in ascertaining quality control error rates under this title and all such payments that represent overpayment shall be subject to recovery or adjustment;

"(7) the notice under paragraph (6) shall state the action taken on the application and the reasons therefor and shall explain the unit's right to and the manner in which it can request a hearing pursuant to paragraph (11) if it is dissatisfied with the action; and shall be provided in the appropriate language other than English where the application was submitted in a language other than English;

"(8) in case determination is made to terminate, suspend, adjust (for overpayment), withhold, or reduce payment to a recipient assistance unit, such unit shall be mailed a written notice that such action is to occur at least 10 days before the date such action is to become effective, which notice shall include a statement of the action to be taken, the reasons for and specific legal basis (including citation of applicable law and regulation) for such action, the unit's right to and the manner in which it can request a hearing pursuant to paragraph (11), and the circumstances under which payment will be continued if a hearing is requested:

"(9) a hearing pursuant to paragraph (11) shall be granted to any unit that requests a hearing by way of a clear expression in writing, or orally (confirmed in writing), by a member of that unit or its representative pursuant to paragraph (3) to the effect that the unit wants the opportunity to contest a determination affecting its claim or assistance, if that expression occurs within 90 days after notice of the determination is mailed to the unit or after failure to mail such determination within the time required by paragraph (6), or after a determination affecting the manner of payment under the State plan, unless that request for hearing is withdrawn in writing by the unit or its representative or the hearing is abandoned because, without good cause, the unit fails to appear by a member or its representative at the time scheduled for such hearing or the action is required by State or Federal law and it is not being challenged as resulting from an incorrect application such law in the individual case, State or Federal law (or change therein) requiring automatic action for classes of recipient assistance units;

"(10) if the unit requests a hearing at any time before the action referred to in paragraph (8) becomes effective, payment shall be continued in full and no such action shall be taken on the basis of the contested determination until the decision is issued, or, if the unit requests a hearing within 10 days following the date such action becomes effective, payment in full shall be reinstated and the action revoked (both until the hearing decision is issued and subject to recovery or adjustment of any overpayment if such action is sustained thereafter in the hearing process) unless, at the hearing, there is a determination that the action required by State or Federal law and it is not being challenged as resulting from an incorrect application of such law in the individual case.

"(11) the hearing shall (A) be conducted by the state at a reasonable time, date, and place with adequate preliminary written notice to the requesting unit, and the State may consolidate individual requests for hearing into a single group hearing if the sole issue for hearing involved in those requests is one of State or Federal law (or change therein); (B) involve opportunity for the requesting unit or its representative, including legal counsel, to (i) examine and copy, at a reasonable time before the date of the hearing as well as during the hearing, all documents, records, and other material (including material in the unit's case file) to be relied upon at the hearing in support of the action, (ii) present its views, evidence (including witnesses), and arguments on all pertinent facts and circumstances in the matter, without undue interference, to the State or an impartial individual designated by the State, (iii) compel the attendance at such hearing of any witness employed by the State upon a showing that such witness may possess factual information relevant to the issues involved, (iv) confront and cross-examine adverse witnesses upon whose evidence the action taken is based in whole or in part, and (v) question or refute any testimony or evidence; (C) result in issuance and mailing to the unit of a revised determination reaffirming or modifying the initial action, which revised determination shall be based exclusively on evidence and other material introduced at the hearing (which shall constitute the hearing record and shall be available to the unit or its representative at a reasonable time in an accessible place), shall be accompanied by explanation of the reasons for that revised determination, including a summary of the facts and identification of the supporting evidence, law, and regulation, and shall be accessible to the public; and (D) lead to prompt, definitive, and final administrative action to implement the revised determination by making or not making payment within 60 days from the date of the request for a hearing pursuant to paragraph (9);

"(12) replacement of lost or stolen payment checks will occur as swiftly as possible when requested at least 3 days and not more than 30 days after the regular due date of the check involved, but in no event in more than 5 days from the date of the request for such replacement;

"(13) no information collected pursuant to the State plan with respect to any member of any applicant or recipient assistance unit or any such unit identified by name or address will be maintained in records in any form beyond a reasonable period of time after such member ceases to be a member of such a unit or after such unit ceases to be a recipient assistance unit under the program under the State plan; and

"(14) in every respect not otherwise specified by the provisions of this section, there will be full compliance with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) (with the State being deemed for this purpose to be a Federal agency within the purview of that Act) and section 6103 of the Internal Revenue Code of 1954.

"(b) The Secretary shall, in carrying out subsection (a), consult with the Secretary of Agriculture for the purpose of assuring that this section is administered, to the maximum extent practicable, in the same manner as are similar provisions of the Food Stamp Act of 1977 which deal with the rights and responsibilities of applicants and recipients under such Act.".

VARIATIONS IN NEED STANDARDS WITHIN STATE

SEC. 10. Section 402 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(d)(1) A State plan for aid and services to needy families with children may establish not more than three need standards within the State for assistance units of the same size, which standards may vary in accordance with variations in the cost of living within such State.

"(2) The provisions of this subsection shall not affect the minimum benefit requirement of subsection (a)(30) or the provisions of section 413 relating to the maximum benefit amount subject to Federal matching.".

ADDITIONAL FEDERAL FUNDING FOR CERTAIN MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS

SEC. 11. (a) Section 403(a)(3) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) thereof as subparagraph (D); and

(3) by adding after subparagraph (A) the following new subparagraphs:

"(B) 90 percent of so much of the sums expended during such quarter (commencing with the quarter which begins October 1, 1979) as are attributable to the planning, design, development, or installation of such statewide mechanized claims processing and information retrieval systems as (i) meet the conditions of section 402(a)(34), and (ii) the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX, and State programs with respect to which there is Federal financial participation under title XX and programs operated under the Food Stamp Act of 1977,

"(C) 75 percent of so much of the sums expended during such quarter (commencing with the quarter which begins October 1, 1979) as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under contract with the State) of the type described in subparagraph (E) (whether or not designed, developed, or installed with assistance under such subparagraph) and which meet the conditions of section 402(a)(34), and".

(b)(1) Section 402 (a) of the Social Security Act (as amended by sections 2, 5, 6, and 9 of this Act) is further amended—

(A) by striking out "and" at the end of subparagraph (32);

(B) by striking out the period at the end of subparagraph (33) and inserting in lieu thereof "; and"; and

(C) by adding after subparagraph (33) the following new subparagraph:

"(34) at the option of the State, provide, effective October 1, 1978, (or at the beginning of such subsequent calendar quarter as the State shall elect), for the establishment and operation, in accordance with an advance automatic data processing planning document approved under subsection (e), of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, and home addresses of all applicants and recipients of such aid and the relative with whom any child who is such applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility pursuant to requirements imposed by other provisions of this Act), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and receipts of such aid, (B) to notify the appropriate officials of child support, food stamp, and medical assistance programs approved under title XIX whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system.".

(2) Section 402 of such Act is further amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall not approve the advance automatic data processing planning document, referred to in subsection (a)(34), unless he finds that such document, when implemented, will generally carry out the objectives of the statewide management system referred to in such subsection, and such document—

"(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

"(B) contains a description of the proposed statewide management system referred to in subsection (a)(34), including a description of information flows, input data, and output reports and uses,

"(C) sets forth the security and interface requirements to be employed in such statewide management system.

"(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

"(E) includes cost-benefit analyses of each alternative management system, data processing services and equipment, and a cost allocation plan containing the basis for rates, both direct and indirect, to be in effect under such statewide management system,

"(F) contains an implementation plan with charts of development events, testing description, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of contingencies, and

"(G) contains a summary of proposed improvement of such statewide management system in terms of qualitative and quantitative benefits.

"(2)(A) The Secretary shall, on no less than an annual basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems referred to in section 403(a)(3)(B), with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under such section and the conditions specified under subsection (a)(34) of this section.

"(B) If the Secretary finds with respect to any statewide management information system referred to in section 403(a)(3)(B) that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.".

(c) Part A of title IV of the Social Security Act is amended by inserting after section 415 (as added by section 9 of this Act) the following new section:

"TECHNICAL ASSISTANCE FOR DEVELOPING MANAGEMENT INFORMATION SYSTEMS

"SEC. 416. The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 403 (a) (3) (E) of this Act.".

PENALTIES AND PAYMENTS WITH RESPECT TO ERROR RATES

SEC. 12. (a) Section 403 (j) of the Social Security Act is amended to read as follows:

STUDY BY SECRETARY OF FEDERAL PARTICIPATION IN ADMINISTRATIVE

"(j)(1) If the dollar error rate of aid furnished by a State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is greater than the target dollar error rate of aid for such period, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be reduced by an amount equal to 50 percent of the Federal share of the difference between (A) the amount of such State's actual erroneous payments (as established by samples and evaluations thereof), and (B) the amount of the erroneous payments which such State would have had if it had a dollar error rate of aid equal to the target dollar error rate of aid; *Provided*, That the Secretary may waive the provisions of this paragraph with respect to any payments made during the first three years following the date on which penalties under such paragraph may first be put into effect with respect to any State which the Secretary determines to be making acceptable progress in reducing its dollar error rate of aid.

"(2) If the dollar error rate of aid furnished by a State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is less than the target dollar error rate of aid for such period, the amount of Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be increased by an amount equal to 25 percent of the Federal share of the difference between (A) the amount of the erroneous payments which such State would have had if it had a dollar error rate of aid equal to the target dollar error rate of aid, and (B) the amount of such State's actual erroneous payments.

"(3) For purposes of this subsection—

"(A) the term 'dollar error rate of aid' means the total of the dollar error rates of aid for (i) payments to ineligible families receiving assistance; (ii) overpayments to eligible families receiving assistance; (iii) underpayments to eligible families receiving assistance; and (iv) nonpayments to eligible families not receiving assistance due to erroneous termination or denials;

"(B) the term 'target dollar error rate of aid' means the dollar error rate of aid established by the Secretary under paragraph (4); and

"(C) the term 'erroneous payments' means the total dollar amount of (i) payments to ineligible families receiving assistance; (ii) overpayments to eligible families receiving assistance; (iii) underpayments to eligible families receiving assistance; and (iv) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials.

"(4)(A) Within six months after the date of the enactment of this subsection, the Secretary shall develop a methodology for determining a target dollar error rate of aid for each State, for each of two six-month periods of perpetually recurring twelve-month periods the first month of which shall be established by the Secretary, taking into account the complexity of the aid to families with dependent children programs in the States, the number of persons receiving such aid in the State, the number of persons receiving such aid as a percentage of the State's population, and the proportion of the persons receiving such aid who live in sparsely or densely settled areas where case management is especially difficult.

"(B) In the process of developing the methodology for determining a target dollar error rate of aid for each State as required by subsection (j)(4)(A), the Secretary shall consult with Governors, state legislators, and state and local administrators of state plans approved undeer this part.

"(C)(i) Within six months after the methodology required by subsection (j)(4)(A) has been developed, the Secretary shall establish the target dollar error rate of aid for each State.

"(5) The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan and implement procedures designed to enable achievement of the target dollar error rates established under paragraph (4) of this subsection."

(b)(1) The provisions of paragraph (4) of section 403(j) of the Social Security Act (as added by this section) shall become effective on the date of the enactment of this Act. The remaining provisions of such section 403(j) (as amended by this Act) shall become effective at such time as the Secretary of Health, Education, and Welfare has established a target dollar error rate of aid for each State, under the provisions of such paragraph (4).

(2) Prior to the time that the provisions of such section 403(j) (as amended by this Act), other than paragraph (4), become effective, section 403(j) of the Social Security Act as in effect on the day preceding the date of the enactment of this Act, shall remain in effect.

COSTS OF AFDC

SEC. 13. (a) The Secretary of Health, Education, and Welfare shall conduct a study to determine those types of administrative costs which contribute significantly to the improved administration of State plans under part A of title IV of the Social Security Act, the efficiency of the AFDC program, quality control, and responsiveness of the program to the needs of recipients.

(b) Based upon such study, the Secretary shall make recommendations to the Congress with respect to those elements of such administrative costs which should be matched by the Federal Government at a higher or lower percentage than the current matching formula. Such recommendations shall include recommendations with respect to the nature and timing of reporting requirements for recipients, and the types of training programs for employees which are most beneficial to the proper administration of the plan.

(c) The Secretary shall submit to the Congress, not later than one year after the date of the enactment of this Act, a report on the results of such study, including recommendations for legislative changes.

EARNED INCOME TAX CREDIT

SEC. 14. Section 43 of the Internal Revenue Code of 1954 (relating to earned income) is amended to read as follows:

"SEC. 43. Earned Income.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 15 percent of so much of the earned income for the taxable year as does not exceed $6,500.

"(b) PHASEOUT OF CREDIT ABOVE $6,500.—The amount of the credit allowable to a taxpayer under subsection (a) shall be reduced (but not below zero) by an amount equal to 20 percent of the excess of the greater of—

"(1) the adjusted gross income of the taxpayer for the taxable year, or

"(2) the earned income of the taxpayer for the taxable year,

over $6,500.

"(c) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible individual' means an individual who, for the taxable year—

"(A) maintains a household (within the meaning of section 44A(f)(1)) in the United States which is the principal place of abode of such individual and a qualified child; and

"(B) is not entitled to exclude any amount from gross income under section 911 (relating to earned income from sources without the United States) or section 931 (relating to income from sources within the possession of the United States).

"(2) Treatment of certain welfare payments.—for purposes of paragraph (1) and subsection (d)(2)(C), any amount for maintaining the household which is furnished by the taxpayer under a State plan approved under part A of title IV of the Social Security Act shall be treated as made out of the taxpayer's income.

"(d) Qualified Child Defined.—For purposes of this section—

"(1) In general.—The term 'qualified child' means an individual's child who—

"(A) has not attained the age of 19 at the close of the calendar year,

"(B) is a student (within the meaning of section 151(c)(4)), or

"(C) is disabled and with respect to whom the taxpayer is entitled to claim a deduction under section 151 for the taxable year.

For purposes of subparagraph (C), the determination of disability shall be made under section 72(m)(7) as of the close of the calendar year.

"(2) Child of individual.—For purposes of paragraph (1), a child of an individual is—

"(A) a son, stepson, daughter, or stepdaughter of the individual,

"(B) a legally adopted child of an individual (or a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or

"(C) a foster child of such individual over half of the support for whom for the calendar year is received from such individual.

"(3) Calendar year.—For purposes of this subsection, the term 'calendar year' means the calendar year in which the taxable year of the taxpayer begins.

"(c) Earned Income Defined.—

"(1) In general.—For purposes of this section, the term 'earned income' means—

"(A) wages, salaries, tips, and other employee compensation, plus

"(B) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)).

"(2) Special rules.—For purposes of paragraph (1)—

"(A) except as provided in subparagraph (B), an amount shall be taken into account only if such amount is includible in the gross income of the taxpayer for the taxable year,

"(B) the earned income of an individual shall be determined without regard to any community property laws.

"(C) the earned income of an individual shall not include any remuneration for services performed in a public service job if such remuneration is paid in whole or in part out of funds provided under the Comprehensive Employment and Training Act of 1973 or under a program established pursuant to section 432(b)(3) of the Social Security Act.

"(D) no amount received as a pension or annuity shall be taken into account, and

"(E) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

"(f) Special Rules.—

"(1) Married individuals.—In the case of an individual who is married (within the meaning of section 143), this section shall apply only if a joint return is filed for the taxable year under section 6013.

"(2) Taxable year must be full taxable year.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.".

SEC. 15. Part A of Title IV of such Act is amended by adding after section 416 (as added by section 10 of this Act) the following new section:

"STUDY OF BENEFITS AMOUNTS

"SEC. 417. (a) The Congress finds that to achieve the purposes of this title and to assure that eligible assistance units will receive benefits which are consistent with their needs, that the minimum AFDC benefit amount shall gradually be increased to the official non-farm poverty line.

"(b) The Secretary is directed to conduct a study to determine the way and stages by which such goal may be achieved. The Secretary shall submit to Congress, not later than two years after the date of enactment of this Act the results of such study and shall make recommendations for legislative changes to achieve such goal within the shortest possible time."

EFFECTIVE DATES

SEC. 16. (a) (1) Except as provided in paragraph (2), the amendments made by this Act, other than the amendment made by section 14, shall apply to aid provided under a State plan approved under part A of title IV of the Social Security Act on and after October 1, 1979.

(2) In the case of a State plan under part A of title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(b) The amendment made by section 14 of this Act shall be effective with respect to taxable years beginning on or after January 1, 1980.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF LEADERSHIP

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at this time, I may utilize my own time under the standing order.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE NATIONAL EMERGENCIES ACT

Mr. CHURCH. Mr. President, today marks the second anniversary of the signing into law of the National Emergencies Act. Public Law 94-412 provides that, as of today, all powers and authorities possessed by the Executive, as a result of a declaration of national emergency, are to be terminated. This is an historic occasion, Mr. President, for it puts an end to emergency government. I am pleased to join with my colleague (Mr. MATHIAS) in commemorating the passage of the 2-year period which puts an end, at long last, to existing emergency powers.

This legislation, as my colleagues will recall, grew out of an investigation conducted by a partisan Special Committee on Emergency Powers chaired by Senator MATHIAS and myself. Established in 1972, this committee was unique in that it was the only one in Congress on which a Republican shared with a Democrat the role of chairmanship. During the course of our investigation, the commit-

tee uncovered over 470 special statutes that could be invoked by the President at any time during a declared national emergency.

We also discovered that, for more than four decades, this Nation has been governed, at least in part, by emergency law. The President has had at his disposal virtually dictatorial power, ready for use as he might desire. Up until today the President had the power under the authority delegated to him by hundreds of emergency statutes to: Seize property; organize and control the means of production; seize commodities; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a host of other ways, control the lives of American citizens. The President could exercise all these extraordinary powers, without so much as asking leave of the Congress.

These powers could have been invoked by the President as long as the country was in a declared state of national emergency. Up until today, there were four such national emergencies in existence:

The national emergency declared by Franklin Roosevelt on March 9, 1933, to cope with the banking crisis;

The national emergency declared by Harry Truman on December 16, 1950, respond to the Korean conflict;

The national emergency declared by Richard Nixon on March 23, 1970, to deal with the Post Office strike;

The national emergency declared by Richard Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade.

This meant that a majority of the American people have lived all their lives under emergency rule. For 45 years, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by Executive orders that derived from presidentially proclaimed states of national emergency.

Today marks the culmination of the long and arduous process begun in 1972 to seek out, investigate and reform the complex collection of emergency powers. The Congress has reasserted its authority and national emergencies declared by the President in the future will be subject to congressional control.

The historic redemption of jurisdiction by the Congress which has gone on in this decade—in the form of the War Powers Act, the congressional intervention to circumscribe and finally end the war in Vietnam, the new budget authority, and the regaining of some control over foreign policy—is long overdue and urgently needed. The Congress must not again trade away its responsibilities in the name of national emergency. Let that be one of the lessons learned from the investigation completed, the passage of the National Emergencies Act and the termination today of emergency powers.

Mr. President, in connection with this occasion, I ask unanimous consent that a previous statement of mine on this subject which appeared in the RECORD for August 27, 1976, the day on which the National Emergencies Act was approved by the Senate, be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE NATIONAL EMERGENCIES ACT

Mr. CHURCH. Mr. President, it is with pleasure that I urge the passage today of the National Emergencies Act by the Senate. The legislation is, at the moment, little noticed and free of controversy, thanks to careful work by the Congress over 3 years time, cooperation with the administration of two Presidents, and a bipartisanship which all too seldom marks our deliberations.

First of all, I would like to extend my appreciation to Senator MATHIAS, who acted with me as cochairman of the Special Committee on National Emergencies and Delegated Emergency Powers, along with the other members of that committee, and our highly competent staff for the investigation and groundwork that made this bill possible. I also owe special thanks to Senator RIBICOFF and the members of his Committee on Government Operations for their excellent cooperation in bringing this bill to the floor.

From the beginning, we have also enjoyed the support of the leadership on both sides of the aisle. Senator MANSFIELD and Senator SCOTT lent their assistance whenever it was needed, for which I am very grateful.

Special mention is also due the executive branch of the Government, the cooperation of the Justice Department, the Department of Defense, and many other agencies was indispensable to the accomplishment of our mission. On one occasion, Senator MATHIAS and I met with President Ford and reached agreement with him on the principles underlying the bill now before us. The President is to be highly commended for his willingness to work with the Congress in developing a legislative formula for ending emergency rule and restoring normal constitutional practices. I also wish to express my gratitude to the members of the Judiciary Committee of the House of Representatives. From the outset, that committee worked in close concert with the Senate in furthering our common objective annd fully shares the credit for this legislation. In particular, I want to express my thanks to Chairman RODINO and Representative FLOWERS.

Mr. President, the obscurity and unanimity which surrounds this bill should not disguise its importance. For more than four decades, this Nation has been governed, in part, by emergency law. The President has had at his disposal virtually dictatorial power, ready for use as he desires. Even now, the President has power under the authority delegated to him by emergency statutes to: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a host of other ways, regulate the lives of all American citizens. And the President can exercise all these extraordinary powers, without so much as asking leave of the Congress.

These powers can be invoked by the President as long as the country remains in a declared state of national emergency. Presently, there are four such national emergencies still in existence:

The national emergency declared by Franklin Roosevelt on March 9, 1933, to cope with the banking crisis;

The National emergency declared by Harry Truman on December 16, 1950, to respond to the Korean conflict;

The national emergency declared by Richard Nixon on March 23, 1970, to deal with the Post Office strike;

The national emergency declared by Richard Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade.

This means that a majority of the American people have lived all their lives under emergency rule. For 43 years, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by Executive orders that derive from presidentially proclaimed states of national emergency.

The purpose of H.R. 3884 is to terminate, as of 2 years from the date of enactment, powers and authorities, possessed by the Executive as a result of existing states of national emergency, and to establish authority for the declaration of future emergencies in a manner which will clearly define the powers of the President and provide for regular congressional review.

In order to carry out this purpose, the National Emergency Act would:

First. Terminate, as of 2 years from the date of enactment, powers and authorities available to the Executive, pursuant to approximately 470 statutes, as a result of the states of national emergency now in force;

Second. Provide for congressional review of future Presidential declarations of national emergencies no less frequently than every 6 months and congressional termination of states of emergency at any time by concurrent resolution:

Third. Provide for congressional oversight of and accountability for actions taken by the Executive in the exercise of delegated emergency powers;

Fourth. Repeal specific obsolete emergency powers statutes, while retaining in force certain other deemed necessary for ongoing operations of the government.

Emergency rule has always raised troublesome problems both in political theory and in constitutional practice. Since the failure of the Roman Republic, historians and philosophers have analyzed the problem posed to a legislature when it confers extraordinary power upon the Executive. Machiavelli, in his Discourses on Livy, acknoweldged that great power may, on occasion, have to be given to the Executive if the state is to survive, but warned of the grave dangers in doing so. He cautioned:

Yet is is not good that in a republic anything should ever happen that has to be dealt with extralegally. The extralegal action may turn out well at the moment yet the example has a bad effect, because it establishes a custom of breaking laws for good purposes; later with this example, they are broken for bad purposes.

Rousseau discussed the question of delegated emergency powers in his Social Contract. He wrote:

Moreover, in whatever way this important commission may be conferred, it is important to fix its duration at a very short term which can never be prolonged. In the crises which cause it to be established, the State is soon destroyed or saved; and the urgent need having passed away, the dictatorship becomes tyrannical or useless.

Turning to the American context, I would like to stress that the word "emergency" is not found in the Constitution. As scholar Clinton Rossiter has observed:

It never seems to have been seriously considered in the Convention of 1787, the *Federalist*, or the debates in the state ratifying conventions that the men who were to govern in future years would ever have to go outside the words of the Constitution to find the means to meet any crisis.

As a result, the authority to respond to a crisis must be derived from the powers that are expressly provided for in the Constitution.

The Supreme Court has indicated that there are clear restraints upon Executive action in times of emergency. In Ex parte Milligan Justice Davis, speaking for the majority of the Supreme Court, wrote:

The Constitution of the United States is a law for rulers and people, equally in war

and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false; for the government, without the Constitution, has all the powers granted to it, which are necessary to preserve its existence . . .

. . . It could well be said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation.

Similarly, in 1934, Chief Justice Hughes held for a majority of the Supreme Court:

Emergency does not create power. Emergency does not increase granted power or remove or diminish restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency.

Nonetheless, the emergency powers made available to the President have steadily expanded. Foreign war and domestic crisis during the past 40 years, in addition to the inexorable growth of the executive bureaucracy under the leadership of aggressive Presidents, and the diminished role of the Congress in the making of policy—these factors have all contributed to the erosion of normal constitutional government.

Little review by the judicial branch was exercised until 24 years ago when the Supreme Court turned back an attempt by President Truman to take over the striking steel industry by means of an assertion of "inherent" emergency power. Speaking for the majority, Justice Black issued the Youngstown Steel opinion which still stands as the definitive statement in this area. Justice Black held that "the President's power, if any, to issue the order must stem from an act of Congress or from the Constitution itself." He characterized President Truman's action as an unconstitutional arrogation of "lawmaking power" by the Executive.

Justice Jackson's widely quoted and praised concurring opinion stressed that our system of government is a "balanced power structure" and pointed out that Executive power to act is a variable depending upon the collective will of Congress for its authority. Justice Jackson listed three situations which determine the extent of the President's power:

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate . . .

2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers . . .

3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.

In setting forth these tests, authorities feel that Justice Jackson set up a workable analysis which provided a sound conclusion:

The seizure of the steel mills by President Truman in face of a contrary congressional policy fell into the third of these categories and left presidential power "most vulnerable to attack and in the least favorable of possible constitutional postures." The court could sustain the President's action "only by holding that seizure of such strike-bound industries is within his domain and beyond control of Congress."

Justice Jackson's analysis is as important today as it was when written 24 years ago. As an example of its continuing importance, let me cite the counsel given to the special committee by the late Chief Justice of the Supreme Court, Earl Warren, just prior to his death:

Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature had the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the laws passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitely, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.

In writing the National Emergencies Act, we have accepted Justice Jackson's opinion as a basic guideline. It is our belief that the National Emergencies Act will provide long overdue statutory guidelines for the handling of national emergenices in the future. It is our belief, supported I would suggest, by Justice Jackson's opinion and the weight of constitutional scholarship, that our legislation will constitute the exclusive authority for the exercise of Presidential powers in an emergency. The Congress having acted, the President's power will be, in Justice Jackson's words, "at its lowest ebb." In the future, every type and class of presidentially declared emergency will be subject to congressional control.

It should be emphasized that nothing in this bill would interfere with the President's right to declare a national emergency in the future or deprive him of the necessary power to cope with such an emergency. The statutes conferring emergency powers remain on the shelf, to be pulled off and used as may be required in order to deal with some future crisis. But the procedures governing the use of emergency powers in the future will always be subject to congressional review and any declaration of an emergency may be terminated by a concurrent resolution of the Congress. Thus the legislative branch will be in a position to assert its ultimate authority.

To those who argue that the duration of a given emergency should be left exclusively to the President to determine. I would cite the precedent established by the British Parliament which, throughout the Second World War, delegated emergency powers to the Prime Minister for no longer than 30 days at a time.

The point is simply this: The Congress should be forewarned that it is inherent in the nature of government that the Executive will seek to enlarge its power. We already have a Presidency the powers of which are unrivaled in our history. The historic redemption of jurisdiction by the Congress which has gone on in this decade—in the form of the War Powers Act, the congressional intervention to circumscribe and finally end the war in Vietnam, the new budget authority and the regaining of some control over foreign policy—is long overdue and urgently needed. The Congress must not again trade away its responsibilities in the name of national emergency. Let that be one of the lessons learned from the investigation now completed and the passage today of the National Emergencies Act.

Mr. CHURCH. Mr. President, I note the distinguished Senator from Maryland, who served so ably as co chairman of the committee, is present on the floor. I welcome him and I yield the floor to him for such remarks as he may care to make at this time.

Mr. MATHIAS. I thank the distinguished Senator for yielding the floor to me, as I thank him for a great deal else.

As he said, we served as cochairmen of the special committee. That was an unusual task. It was an unusual position for me to occupy. I believe I was the only member of the Republican Party to serve during that year as the chairman of a committee in the Senate, and that would not have been possible if it had not been for the personal cooperation and the friendship of the distinguished Senator.

I am very grateful for the way in which he extended the hand of friendship and help, and made it possible for that committee to work in the unusual way that it did.

I have had every member of the committee come to me in the intervening years and say that it was one of the most satisfying experiences of their entire service in the Senate.

I think one of the reasons it was a satisfying experience is that we did something. We did something important, something which comes to fruition today when this country returns to the rule of law. An unusual experience.

Mr. President, we sit in an institution which we call the Senate. We live in a form of government which we call a Republic. Both of those terms, the Senate and the Republic, are words we inherited from ancient Rome. We tried to embody many of the ideals of ancient Rome in our society, in our politics. But one of the important ideals of Rome was that all power should not be concentrated in a single official for a day longer than was necessary.

When there was mortal danger threatening the Roman Republic, the Romans would allow unusual emergency powers to be placed in the hands of an official whom they called a dictator.

But if that danger lasted only a week, the dictator lasted only a week. If it lasted a month, then he lasted a month. But the day the danger was over, that was the day that the powers returned to the constitutional institutions of the Roman Republic.

We forgot that part of the Roman story and for more than 40 years we allowed arbitrary powers to accumulate in the Office of the President, little by little. until as Senator CHURCH knows, almost 500 emergency laws were in force, giving the President extraordinary powers over the American economy, the American Government, our military forces, our communications system, so that the Office of the President really had at its command the ability to take over important aspects of American life. This is just not an empty kind of speculation, this is not some political scholar's nightmare, because this is exactly what Hitler did by using emergency powers in the twilight days of the Weimar Republic.

We have other unhappy examples of the democratic systems which were subverted by using the legal apparatus available to emergency laws.

What Senator CHURCH and members of the committee have done is to put back into proper perspective these emergency laws.

But I would like to just say a word about the extraordinary people who have contributed to this.

Sometimes we do not see the forest for the trees, but this all began back during the Vietnam era when we were contemplating the necessity for a repeal of the Gulf of Tonkin amendment, which in retrospect appeared to many of us in the Congress to be a far too broad a grant of power by the Congress to the Executive. Then when we thought about the Gulf of Tonkin, we thought, what about the China Straits resolutions, what about the Lebanon resolution, what about the Berlin resolution, all of them making grants of power to the Executive and none of them having any terminal date, just open ended.

Then, of course, that led to the speculation that these were not by any means the only emergency laws enacted by Congress, the only emergency powers granted by Congress, that there was a whole body of emergency laws.

It is at this point that I think we have to pay a debt of gratitude to the extraordinary staff of assistants. William Miller, who acted as staff director for our special committee, played a creative and positive role in developing this legislation.

In the first resolution on this subject that I introduced in the Senate, I have a special debt to George Gilder, who was a talented member of my staff at that time, and who showed great insight into this problem.

Other staff members played a very signal role.

Mr. CHURCH. I might mention in that connection, if the Senator will permit me, Jerry Brady and Tom Dine.

While I am on my feet, I might say that staff asked us to get together a few weeks ago in order to present to Senator MATHIAS and to me a split gavel, I believe it is the only split gavel I have ever seen, to symbolize that we served as cochairmen of this committee.

I do not know of another case in the history of the Senate when a committee was actually bipartisan to the point that the chairmanship itself was shared.

I simply say it was an association that I enjoyed immensely. I want to tell the Senator from Maryland that without the kind of support that he gave in wielding his half of the gavel, we could not have succeeded, because the bill we finally passed in the Congress was signed by a Republican President, Gerald Ford.

Senator MATHIAS will recall that the two of us were there for the private signing of that bill. I think the Senator's services were indispensable in persuading President Ford that the time had come to return the United States to constitutional government. I commend him for everything he did in making this legislation possible.

Mr. MATHIAS. I know the Senator recalls some of our apprehensions early on during the consideration of this measure, whether we could ever find a President who would sign this bill, because this was a bill in which a President who approved it would be performing the unusual act of giving up power.

We hear a lot of speeches, especially during election years, about how public officials are going to return power to the people, but when we get down to the last line, not many of them do it. A lot of them talk about it, but not many of them do it.

I would like to say just a word of tribute to President Ford in this regard because I am convinced that, up until the very moment when Senator CHURCH and I walked into the Oval Office to watch him sign that bill, he was under very heavy pressure not to sign it.

There are people within the Government, within the executive branch, who for perhaps the highest and most conscientious reasons did not want to see the Office of the Presidency stripped of the powers that it had accumulated in more than 40 years of a state of legal emergency. But President Ford went ahead and approved the bill and signed the legislation.

It is a result of all of the effort by Senator CHURCH, by other members of the committee, by our extraordinary staff, and finally, by President Ford's determination to return this country to the rule of law, that today, September 14, 1978, this country is in a state of peace, is in a constitutional posture, is under the rule of law for the first time in nearly half a century.

It is a day to celebrate. It is a day to commemorate. Most of all, it is a day to dedicate ourselves to the fact that we are going to maintain the rule of law in this country, and we are going to do it despite the increasing demands of national security.

I think it is remarkable that the American system of Government remains a government of laws. We continue to believe that power should not be entrusted to individuals except under the restraints and limitations set forth in the Constitution and statutes. Our Constitution has withstood the challenges of the years, and has proven to be soundly conceived and able to provide reasonable governance for a free people. It remains flexible enough to meet new circumstances, and its provisions which provide for the sharing of burdens of power among three great governmental institutions: The legislative, the executive and the judicial branches have proven to be wise.

Yet, over the past 60 years through a series of crises, including great and small wars, a permanent national security system gradually has been created. The national security system has challenged the adequacy and supremacy of constitutional government. Step by step, over a long period of time, the claims and imperatives of national security set aside normal constitutional processes. In times of war, some guarantees of the Constitution were abridged. In times of national emergency broad powers were assigned to the executive.

In order to contend with the growing power of other potentially hostile nations, the United States has created a vast permanent national security system which operates largely in secrecy. This national security system involves millions of people and costs the Nation well over $100 billion a year to maintain. Until recently its decisionmaking processes and the information upon which its decisions were made and, indeed its records, were not available to anyone outside of the executive branch.

Until very recently the National Security Council's action and records and decisions were not subject to congressional scrutiny. Until very recently the activities of the intelligence agencies of the United States were not subject to effective congressional oversight. And until today, the President of the United States through the authorities conferred by four proclamations of a state of emergency, had the potential power to rule the United States outside of the usual constitutional processes.

Those of us who have been involved in the examination of national emergencies, such as my cochairman, Senator CHURCH, and other members of the Special Committee on National Emergencies, have come to understand how the Congress, through a series of nearly 500 laws has delegated to the executive branch the means to rule without the checks and balances intended in the Constitution.

It takes only a moment's reflection to understand how in the history of this century that there are virtually no moments that have been "normal." Two world wars, Korea, Vietnam, the cold war between the great super-powers of the West, and the Soviet and Chinese blocs; economic depression; internal unrest—all have placed this country in extraordinary circumstances. Since the beginning of the twentieth century, there has been a consistent pattern of seeking extraordinary means to deal with emergencies. The National Emergencies Act, which was passed on August 31, 1976 and which takes full effect today, is an important milestone in a continuing effort to place national security concerns within the constitutional framework. The National Emergencies Act provides a fully constitutional procedure to deal with emergencies yet allows the flexibility needed by the executive, as well as oversight and accountability to the legislature.

The framework of the National Emergencies Act is premised on the belief that no actions of government should be taken that do not provide for the full participation of the three branches in their appropriate ways. The authors of the bill took seriously the views of the Supreme Court in the Youngstown Steel case of 1952.

Justice Jackson's opinion made clear that claims of inherent power by the executive, particularly in matters affecting the security of the State, could be limited to statutory guidelines. In the absence of statutory guidelines, the Executive could have far more discretion. Recognition that balancing the factors of flexibility and reasonable accountability is the essence of the institutional process of American Government. We believe that we have struck a workable balance in the National Emergencies Act, and I might add that we are striving to achieve a similar kind of balance between executive flexibility and constitutional accountability in the intelligence

charters now under consideration by the executive and legislative branches.

I want to take this occasion to commend the foresight of the former majority leader, Senator Mike Mansfield, for his personal support for the National Emergencies Powers Act. It was his belief, and indeed it is the belief of the present leadership of the Senate, that the fundamental questions posed by national security require a careful bipartisan, indeed nonpartisan consideration.

The experience of the Senate in developing and passing the National Emergencies Act I believe is exemplary. The leadership of the Senate saw fit to create a special committee with equal numbers from both parties. To emphasize the bipartisan spirit, the posts of co-chairmen were created. It was my pleasure as I have said to work with Senator FRANK CHURCH as co-chairman and with Senators PHILIP HART, PELL, STEVENSON, CASE, PEARSON, and HANSEN, first to study the magnitude of the problem and jointly to arrive at a solution. We were able to work with three administrations on a collegial basis with full access to information, open discussion and joint staff work in order to arrive at a mutually agreeable solution to the problem of how to cope with national emergencies. The Judiciary Committee of the House under its Chairman, Representative RODINO worked very closely with the Senate and the executive branch in a similar spirit of cooperation.

I am happy to say that this same process within the Senate, and I believe in the House and in the present executive branch, is underway with regard to the intelligence charters. We have shown in the process of writing and passing the National Emergencies Act that the Constitution provides for means of working problems out jointly as well as for protecting, through the separation of powers, the rights and prerogatives of the separate branches. It is my view that we have come up with a workable long-term solution for national emergencies. The War Powers Act is an effective means of dealing with the use of military forces in whatever circumstances may be required. The intelligence charters will provide a framework for the necessary secret activities of the United States under constitutional guidance and accountability.

There are some areas of Presidential action which remain to be addressed, such as the proper extent of Executive privilege. But without question the threats to constitutional government that a permanent national security system has posed in this century have been understood and confronted. We can all take heart from the ability of our institutions to meet the test of wars, national emergencies, Watergate, and rapid social and economic change.

The Constitution has proven to be a vital and stable framework for free government. The United States, with its population of 220 million people, its vast economic power and military might continues despite its size and power to have a government whose purpose is to serve its citizens and protect their freedoms.

As long as we meet future crises by constitutional means, as long as we believe the validity of the fundamental premises contained in the Constitution and insist that we adhere to our chosen processes of government, we will keep our freedom.

SENATOR KENNEDY AND THE KREMLIN

Mr. ROBERT C. BYRD. Mr. President, the Soviet Union is expected to grant exit visas to a noted Jewish scientist, his wife, and 17 other families seeking to leave that nation.

The critical eyes of the free world, including President Carter's condemnation of Soviet oppression of its dissidents, have brought the pressure of public opinion on the Soviet Union. This announcement appears to represent a more flexible attitude by the Soviets and may be a favorable sign for the future.

I wish to commend today my distinguished colleague (Mr. KENNEDY) for being the catalyst in the Soviets' decision to allow scientist Benjamin Levich and nearly 50 other persons the right to live in a country suited to their beliefs and ideas.

Senator KENNEDY was in the Soviet Union last week, and while there, discussed the Levich case with Soviet leader Leonid Brezhnev. The Soviets' favorable response to Senator KENNEDY's request that Levich be allowed to leave the country was, as characterized in the media, extraordinary.

In addition to the Levich family, one of the families involved includes 11-month-old Jessica Katz, who is suffering from a rare disease. American Jewish groups have been sending her special formula for months via tourists, while pressing Soviet authorities to allow her to go abroad for treatment. Thanks to Senator KENNEDY, she will be able to receive treatment not readily available in the Soviet Union.

Mr. President, I again commend Senator KENNEDY for his intervention on behalf of these families, for his statesmanship, and for his persistence on behalf of human rights for all people.

In yesterday's edition of the Washington Post, there was an editorial entitled, "Senator Kennedy and the Kremlin." I ask unanimous consent that this editorial in praise of Senator KENNEDY's accomplishments be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD as follows:

SENATOR KENNEDY AND THE KREMLIN

Its hard to exaggerate the extent to which relations between the Soviet Union and the United States rise and fall on readings and misreadings of the other country's domestic political scene. In the last 18 months, for instance, President Carter overloaded the Soviet political circuit, which consists of about a dozen people, with excessive public demands for major internal changes and "deep" cuts in strategic arms. Meanwhile, the Soviet leadership sent waves of distaste and alarm through the American political community by its human-rights violations, African adventures and arms-building programs. More recently, both countries have seemed aware that if they did not act more carefully toward each other, all prospect of substantive improvement in their relations would have to be put off for an indefinite time. Yet a narrowing of the gap sufficient to allow them to work effectively on their most important piece of common business, a strategic arms limitation treaty, has seemed to lie beyond their grasp.

Precisely here lies the potential importance of Sen. Edward Kennedy's visit to Moscow. He went (ostensibly to a health conference) at a moment when the Kremlin was surely grateful to find a prominent American politician, one closely identified with a moderate viewpoint, ready to breach the no-visits line imposed by the administration after the Kremlin's recent human-rights trials. Presumably, the Kremlin also has heard that Mr. Kennedy may some day run for the presidency.

The senator played his part expertly. With a discretion contrasting sharply with the up-front moralistic tones of Jimmy Carter, he asked Leonid Brezhnev about Soviet Jews denied permission to emigrate. As a result, not only the families he asked about, but also a number of families he had not asked about, were assured of release. The Soviet authorities obviously were ready to show that, if their pride and sense of the proprieties are respected, they can behave more flexibly on human rights. Mr. Kennedy's tactful approach let them show it.

On strategic arms the senator seems to have taken the most responsible course a "liberal" in such circumstances could take. Rather than merely profess his desire for détente, he tried to convey a sense of the political difficulties that have been created in Washington for both the negotiation and ratification of SALT by the Soviet Union's own policies. That let Mr. Brezhnev express his concern over the United States' new high-technology weapons programs. He also expressed his belief, shared by his guest, that a failure to consummate a mutually acceptable SALT agreement soon would have harmful results extending considerably beyond strategic arms.

The Carter-Kennedy relationship is the stuff of endless popular fascination. In this instance, the senator, by acting in his own way, was in an excellent position to make the administration's point that progress in SALT hinges in large measure on the Kremlin's readiness to "disarm" the American right by conducting a reasonable policy. That does not mean that the strategic equation itself is of no consequence. It means that the political equation is of great consequence. That is what 'linkage" is all about. The evidence of the Kennedy visit is that Moscow is getting the message.

Mr. CHURCH. Will the Senator yield for a brief comment?

Mr. ROBERT C. BYRD. Yes.

Mr. CHURCH. I want to associate myself with his remarks and the commendation he has given, one that is so well deserved, to the senior Senator from Massachusetts. I have said to Senator KENNEDY, who is now presiding, that if, in the future, he tires of service in this body and should decide against running for the Presidency, he consider becoming the American Ambassador to the Soviet Union——

Mr. ROBERT C. BYRD. Yes.

The ACTING PRESIDENT pro tempore. The Senate will be in order.

Mr. CHURCH. On the basis of his accomplishments on this trip. I join in congratulating him.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. MATHIAS. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. MATHIAS. The senior Senator from Massachusetts is under some disadvantage, since he occupies the chair and we can take the opportunity to embarrass him at will.

Mr. ROBERT C. BYRD. Yes.

Mr. MATHIAS. I want to join the distinguished majority leader in taking note of the accomplishments for which he just gave the Senator from Massachusetts credit which he deeply deserves. I think it is a fine example of a way in which a forceful yet quiet diplomacy can have a human effect and have a good effect on others. It is a good example; I think we should take note of it. We should thank him for what he has done, for the example he has set. I am sure that people whose lives have been affected will never, ever forget his effort in this regard.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Maryland for his comments and I also thank the distinguished Senator from Idaho for his comments.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. MORGAN). Under the previous order, the Senate will now resume consideration of the pending business, the conference report on H.R. 5289, which the clerk will state by title.

The second assistant legislative clerk read as follows:

Conference report on H.R. 5289, an act for the relief of Joe Cortina of Tampa, Fla.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I note that the time is 10:22 a.m. on this day of Thursday, September 14, 1978, and no one is in the Chamber except the able Senator from North Carolina (Mr. MORGAN), who is presiding, the Senator from Kentucky (Mr. FORD), and the junior Senator from West Virginia, who is now speaking.

I hope that those who oppose the conference report will come to the Chamber and talk about it. Otherwise, of course, under the Rules, the Chair, as everyone knows, is required to put the question. If no one seeks recognition, the Chair, under the Rules, has no alternative but to put the question unless he, as a Senator from the State of North Carolina, wishes himself to put in a quorum, which he has a right to do.

But I call to the attention of the opponents, through the cloakrooms and through the inter-office communications system, that the proponents are protecting—as well as doing a little protesting—but protecting the rights of the opponents at this moment. By just sitting down, I could yield the floor and if no other Senator sought recognition, the Presiding Officer, the Senator from North Carolina (Mr. MORGAN), if he did not choose as a Senator to suggest the absence of a quorum, under the Rules would be required to put the question, and I think I know what the answer would be with only Senator FORD and myself here to vote.

We are both proponents of the conference report. The votes would be "aye."

Mr. FORD. And send it on.

Mr. ROBERT C. BYRD. And the motion to reconsider would be made and tabled, and the conference report would be on its way over to the other body.

Mr. FORD. Right. I think we should do that, too.

Mr. ROBERT C. BYRD. I think it is rather magnanimous on the part of the proponents not to take advantage of this golden opportunity which may not come again to pass the conference report, get on to other business, enhance our opportunities to adjourn sine die by the middle of October, and not have to come back after the election. I am almost constrained to persuade myself at this point to sit down and let the Chair put the question:

The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven
Upon the place beneath.

Mr. FORD. I think I will leave.

Mr. ROBERT C. BYRD. Mr. President, enough of Shakespeare right at this point.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BARTLETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, we stand at a critical juncture in the lengthy congressional debate on natural gas pricing policy. We have before us a conference report purported to be in the producers' interest, the consumers' interest, and the national interest. I submit that it is in no one's interest, and I would like to tell you why I believe that.

This natural gas compromise will extend the tentacles of Federal price regulation to the intrastate natural gas market. The intrastate gas market is the one segment of the natural gas industry which has been able to respond to market forces and increase supplies of natural gas for consumers in this country.

Rising prices in the intrastate market have spurred drilling activity and brought about substantial new gas reserves. These new reserves have been greatly utilized by distressed interstate pipelines in the North and East in meeting demands of their customers.

Based upon figures published by the Department of Energy's Energy Information Administration in their report entitled "An Evaluation of Natural Gas Pricing Proposals" completed in June of this year, the pricing policy prescribed in this bill will result in 1985 with less than 40 percent of the Nation's natural gas being unregulated with respect to price. That is worse than the present situation. The unregulated intrastate gas supplies about 42 percent of the gas we consume today. The Energy Information Administration actually pegs it at 48 percent.

So while this is being touted as a deregulation bill and some advocates have called it a phased deregulation bill, in truth it provides for 7 years of total regulation, with no unregulated gas, and then once the magical date of deregulation arrives we will still be worse than we are today, with only 37 percent unregulated gas at that point.

This bill will keep under Federal controls forever the following categories of natural gas: all flowing interstate gas; all offshore gas produced from present leases, including the new discoveries; all intrastate gas under contract at a price below $1 per thousand cubic feet; and stripper well natural gas.

How anyone can call this a deregulation bill and keep a straight face is beyond me.

This conference report will create a regulatory maze with at least 17 different basic categories of natural gas production, many with subcategories. Of these 17, only 6 may become deregulated with respect to price at some time in the future, given the right circumstances. With the Federal Energy Regulatory Commission presently choking on a backlog of thousands of cases, this bill will, at best, exacerbate the situation. At worst it will be simply impossible to administer. In a letter to FERC chairman Charles B. Curtis, Sheila Hollis, head of FERC's Office of Enforcement, took the latter view; that is, that the bill could not be administered.

Later, Mr. Curtis and others said it might be administered, but that it would require considerable additional personnel and expense, and that it would also undoubtedly lead to many lawsuits that would obviously delay the implementation and administration of these regulations.

One of the principal motives of those who support this legislation is to move gas from the intrastate market to the interstate. By granting an initially higher price, the provisions of the compromise will likely increase sales of natural gas in the interstate market at first. However, the negative incentives of low price escalation and the regulatory burden will, in my opinion, reduce the overall amount of natural gas available to consumers in this country.

Passage of this bill will in all probability increase our imports of OPEC oil. Incremental pricing provisions will force many industrial users of natural gas off that fuel and onto fuel oil. As we are all painfully aware, the marginal supply of that fuel lies overseas.

The administration has in some instances arguments on the merits of this conference report on natural gas pricing policy. They have resorted to flagwaving, jawboning, and armtwisting. They claim that passage of this bill is necessary to enhance the image of the United States in the eyes of the world. They claim that passage of this bill will magically reverse the precipitous decline in the value of the dollar abroad. This is

grandstanding in the highest form and such claims have no basis in fact.

Passage of this bill will not enhance the image of the United States. World leaders are not so naive as to believe that this scheme will increase natural gas supplies or reduce oil imports. Moreover, enactment of this conference report will not halt the decline in the value of the dollar. As the noted economist, Dr. Milton Friedman, says:

> The dollar has not been weak because of the energy problem, and no amount of tinkering with energy legislation will have any significant or lasting effect on the dollar. The dollar is weak because of bad domestic economic policy, policy which is destroying the unrivaled capacity for growth of American Free Enterprise by hampering it at every turn with taxes, controls, regulations, policy which is producing inflation through excessive government spending and excessive creation of money.

In summary, Mr. President, this is bad legislation and, taken as a whole, it is worse than no legislation at all. If it comes to an up-or-down vote, the conference report should be resoundingly defeated. However, a workable and commonsense alternative has been proposed.

A number of colleagues and I have proposed that the conference report be recommitted to the conference committee, with instructions that the committee report back a portion of the conference agreement. That portion would grant the President authority, during an emergency, to allocate natural gas and permit sales of gas by intrastate pipelines to interstate pipelines. In addition, there would be general authorization for FERC to allow sales of natural gas by intrastate to interstate pipelines under specific price guidelines, protecting both the consumer in the consuming State and the consumer in the producing State.

Mr. President, our proposal meets the objective of moving natural gas to the beleaguered interstate market from the gas-rich intrastate markets. At the same time, it removes the onerous wellhead price regulation and controversial incremental pricing provisions in the conference report before us. It is a solution, albeit a short-term one. It is a bill for which the President seems so desperate. Combined with promulgation of the long-overdue biennial price revision by FERC, our alternative constitutes a reasonable and workable interim solution to the natural gas dilemma.

I would point out that the present regulations of interstate gas that were administered by the Federal Power Commission and now are administered by the Federal Energy Regulatory Commission, because of recent pricing practices which have set higher prices—first, I think, a price of 52 cents or so, then a price of $1.42, going up to the present price of $1.50—have elicited additional interstate gas reserve dedications. The dedications reached, in 1977, some 8.6 trillion cubic feet, equivalent to about 80 percent of the interstate demand last year.

This shows that a much simpler system of Federal pricing controls can work, at least partially, if the prices are such as to bring about additional supplies, if they are such as to provide an incentive for drilling. This would mean that offshore or Outer Continental Shelf gas, which is by law dedicated to the interstate market, would be more greatly developed if the price were sufficient to interest those with leases to develop it, and the result would be more gas for the interstate market. The same would be true onshore, perhaps to a lesser extent, but at least it would result in considerably greater dedications than took place for a number of years in the early 1970's when interstate dedications were 20 percent or less, relative to total dedications, including intrastate.

For the long run, the Congress as a whole should do what the Senate has twice done—pass a simple and fundamental new gas deregulation bill. The Pearson-Bentsen substitute, passed by the Senate a year ago, provided for immediate new gas deregulation with an interim price ceiling for 2 years onshore and 5 years offshore. Just as important, it left the free and vital intrastate natural gas market intact. The only workable way to alleviate our long-term gas supply problems is to eliminate regulation, not expand it; to build upon the freedom of the intrastate market and provide for simple, general deregulation of new natural gas in a reasonable period of time.

Mr. President, a friend of mine recently talked with a business leader in one of the foreign countries that is greatly interested in our economy. The businessman from the foreign country asked my friend what kind of natural gas policy he thought the United States should have.

My friend said, "Well, I would like to just turn that around and ask you the same question, because arguments are made about what the interest of foreign businessmen and foreign leaders is concerning our policy on natural gas and energy."

He was very quick in his response, namely to say that he hoped the United States would do what other producing countries have done, pay the world price for their own production as well as production imported into the country. He felt that in this way we would maximize our effort, not only in oil and gas, but also in the alternate fuels that are so important to bring on as quickly as we possibly can.

This would, in my opinion, also conserve energy by having a price that is a fair replacement price for the varicus products that would be produced and sold to meet energy needs in the United States.

I hope that we can have a good interim solution, one that will take care of the needs of the consumer in the consuming States; a program by which we can be assured that under the proper conditions the unused and uncommitted gas of the producing States can be shipped to consumers elsewhere.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. STONE). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, yesterday I asked unanimous consent that a motion that was intended to be proposed in connection with the conference report on H.R. 5289 be printed although not formally offered.

Mr. President, that has now been done, except somewhere the printing of it became confused. Although the RECORD correctly reflects the language that we intended to use, the actual printed motion does not.

Therefore, Mr. President, I ask unanimous consent that it be reprinted and that the word "depleted" on the fourth line of that intended motion be changed to "deleted" instead of "depleted." It does make a substantial difference.

Mr. FORD. Will the Senator from Ohio yield for a question?

The PRESIDING OFFICER. Does the Senator yield?

Mr. METZENBAUM. No.

The PRESIDING OFFICER. Is there objection?

Mr. FORD. I might observe, Mr. President, that the RECORD is correct.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. I thank the Senator from Kentucky.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

What is the will of the Senate?

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are five measures on the calendar which have been cleared for action by unanimous consent. I ask unanimous consent that the Senate proceed to the consideration of the following calendar order numbers: Nos. 1106 through 1110.

The PRESIDING OFFICER. Without objection, it is so ordered.

RELIEF OF LIABILITY FOR THE REPAYMENT OF CERTAIN ERRONEOUSLY MADE CONTRIBUTIONS BY THE UNITED STATES

The Senate proceeded to consider the bill (S. 1147) to relieve the liability for the repayment of certain erroneously made contributions by the United States, which had been reported from the Committee on the Judiciary with amendments as follows:

On page 2, line 1, after "Pennsylvania" insert a comma and "in the amount of $4,136";

On page 2, line 3, after "Pennsylvania"

insert a comma and "in the amount of $21,869";

On page 2, line 6, after "Pennsylvania" insert a comma and "in the amount of $12,827";

On page 2, line 9, after "Pennsylvania" insert a comma and "in the amount of $26,772";

On page 2, line 12, after "Pennsylvania" insert a comma and "in the amount of $457,318";

On page 2, line 14, after "Pennsylvania" insert a comma and "in the amount of $9,984";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, notwithstanding the provisions of section 252 (a) of the Disaster Relief Act of 1970, any unit of local government or any of the following privately owned libraries is relieved from any liability for the repayment of contributions erroneously made by the United States for disaster relief activities for the benefit of the following private facilities which were damaged or destroyed by Hurricane Agnes:

(1) the William D. Himmelreich Memorial Library in Lewisburg, Pennsylvania, in the amount of $4,136;

(2) the Milton Library in Milton, Pennsylvania, in the amount of $21,869;

(3) the Shippensburg Public Library in Shippensburg, Pennsylvania, in the amount of $12,827;

(4) the West Shore Public Library in Camp Hill, Pennsylvania, in the amount of $26,772;

(5) the Osterhout Library in Wilkes-Barre, Pennsylvania, in the amount of $457,318; and

(6) the West Pittston Library in West Pittston, Pennsylvania, in the amount of $9,984.

● Mr. SCHWEIKER. Mr. President, S. 1147 is designed to exempt six Pennsylvania libraries from repaying the Federal Disaster Assistance Administration $561,066.09 which they received as disaster recovery payments after Hurricane Agnes in 1972. As the result of this pending FDAA claim, these six libraries have been placed in precarious financial positions.

Pennsylvania, more than any other State, suffered extensive damage from Hurricane Agnes in June 1972. Damage nationwide was so great that Congress wisely adopted, for all States hit by Agnes, a special relief package to help individuals and businesses repair or replace their losses. In addition, section 252(a) of Public Law 91–606, which was law at the time of the Agnes disaster, provided Federal assistance to State and local governments to restore public facilities belonging to such State or local governments which were damaged or destroyed by a major disaster.

Subsequent to the President declaring Pennsylvania a major disaster area, making State and local government facilities eligible for Public Law 91–606 assistance, the Federal Disaster Assistance Administration approved project applications for Federal assistance from a large number of local governments in Pennsylvania. Included among them were applications for damages to these six privately owned community library facilities covered by this bill.

Mr. President, I see no evidence of attempted fraud on the part of these libraries. They suffered damages at the hands of Hurricane Agnes, were informed they were eligible for disaster relief and their applications for relief were approved by the Government. For example, it was pointed out in 1972 to State and Federal officials that although the Shippensburg Public Library received funds from the Borough of Shippensburg and the school district, it was privately owned. But disaster relief aid was still granted.

I cannot dispute the Federal Disaster Assistance Administration when it now claims these six Pennsylvania libraries in fact should not have received funds under Public Law 91–606. The law is clear. Privately owned facilities are not eligible to receive grants. But I am not here today demanding to know who is at fault for this payment error or requesting a significant change in Federal law. I am asking Congress to recognize the tenuous financial position in which these libraries will be placed if they are forced to repay FDAA and am encouraging it to adopt this special relief measure.

I have been informed by FDAA that this is a unique situation. These are the only privately owned libraries nationwide which erroneously received disaster relief payments under section 252(a) of Public Law 91–606.

The roots of the community library system go back to our pre-revolutionary period when most libraries were privately owned and looked to community generosity for support. Since then, community libraries, both privately and publicly supported, have made valuable contributions in the United States. They frequently double as community centers and make a variety of educational programs available to the general public which frequently cannot be obtained by the average person because of cost or rarity. I would be greatly distressed if we are to turn our backs on these six libraries and force them to raise over one-half million dollars to pay for damages received from the worst disaster in Pennsylvania's history.

Mr. President, I strongly recommend this bill to my colleagues and respectfully urge their approval at this time.

I submit for the RECORD a fiscal summary:

FISCAL SUMMARY—INELIGIBLE LIBRARIES AFFECTED BY TROPICAL STORM AGNES

Project application No.: Library	Cost of restoration	Refund due Federal Government
OEP 340-DR-		
60-1: Himmelreich	$4,136.68	$4,136.68
49-1: Milton	21,869.89	21,869.89
21-7: Shippensburg	12,827.45	12,827.45
21-9: West Shore	26,772.12	26,772.12
40-57: Osterhout, City of Wilkes-Barre	[1] 565,423.42	[1] 446,474.00
40-20: West Pittston	[2] 48,985.95	[2] 9,984.40
Total	680,015.51	561,066.09

[1] $565,423.42 is the approved audited claim for the Osterhout Library. Final payment has not been made, so that only the advance of $446,474 is due the Federal Government.

[2] A claim of $48,985.95 for the West Pittston Library has been received but not audited. The remainder of the West Pittston Borough project application claim has been audited and approved for $23,362.60. The refund due the Federal Government of $9,984.40 reflects the difference between an advance of $33,347 for the library and the final amount of the West Pittston Borough claim.

Note: Funds have been used for general flood restoration work, including debris clearance, structural repair, and the replacement of contents of the libraries.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1183), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the bill is to release six privately owned libraries in Pennsylvania from liability for the repayment of contributions erroneously made by the United States for disaster relief following Hurricane Agnes.

The purpose of the amendments is to state the exact amount of relief to be granted for each library.

STATEMENT

The facts are set out in the favorable report of the General Counsel of the Department of Housing and Urban Development. The report is attached to and made a part of this report, as follows:

"This is in response to your request for our views on S. 1147, a bill 'To relieve the liability for the repayment of certain erroneously made contributions by the United States.'

"The bill would release six privately owned libraries in Pennsylvania from liability for the repayment of contributions erroneously made by the United States for disaster relief in connection with Hurricane Agnes.

"In June 1972, a number of States, including Pennsylvania, suffered extensive damage from tropical storm Agnes. Section 252(a) of the Disaster Relief Act of 1970 (Public Law 91–606) authorized Federal payments to State and local governments for the repairs, restoration, or replacement of public facilities. Accordingly, the Federal Government[1] made payments to local governments for repairs to destroyed or damaged public facilities including the six privately owned libraries stipulated in the bill. However, it was later determined that although these libraries were nonprofit entities and did receive some public support, they were, as privately rather than publicly owned facilities, improper recipients of the disaster relief funds.

"The payments were made in an emergency situation when speedy determination of eligibility and dispensing of assistance was absolutely essential. There was at the time some indicia of the public nature of the libraries to support a determination of public ownership—all received public funds from local tax revenues and provided services free of charge to the public, and five of the six library facilities were in structures owned by a library board or association and had corporate names implying public ownership.

"It was not until the spring of 1976, when the FDAA's Central Office reviewed a request for a time extension for completion of repairs to one of the libraries involved, that the

[1] Authority for making these payments was at this time vested in the Office of Emergency Preparedness in the Executive Office of the President. Authority for disaster relief assistance of this nature was subsequently (1973) vested in this Department's Federal Disaster Assistance Administration (FDAA).

question arose as to the eligibility of the libraries for assistance as publicly owned facilities. In June 1976, this Department's Office of General Counsel issued a legal opinion concluding that the Federal Government had not been authorized to make contributions to repair damages to the six libraries in question since, despite the fact that they were nonprofit institutions supported in part by public funds, they did not belong to a State or local government as required by the Disaster Relief Act of 1970. The opinion as to the private ownership of the libraries was subsequently confirmed by the Deputy Attorney General of Pennsylvania. In the meantime, the libraries had expended the Federal funds received under the act in reliance upon the Federal Government's determination as to their eligibility.

"The libraries, although technically privately owned, served the public without charge. Given the speed with which a large volume of disaster assistance applications had to be processed after tropical storm Agnes, and the public nature of these facilities, the mistake that occurred is understandable. To require the libraries to reimbuse the Government for these grants at this time would only serve to penalize the beneficiaries of their services—the public. In our opinion, this is a case of limited applicability where, because of the unique circumstances involved, the remedy provided by the bill will not establish an undesirable precedent."

COST

The enactment of this legislation involves no direct additional expenditure to the Government.

Accordingly, the committee recommends favorable consideration of S. 1147.

MARIE GRANT

The bill (H.R. 1427) for the relief of Marie Grant, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1184), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to qualify Marie Grant for a survivor's annuity by act of Congress, so as to entitle her to retroactive benefits in the aggregate and prospective statutory allotments on a monthly basis.

FACTUAL SUMMARY

The facts as stated in H.R. 95–197 are as follows:

On April 22, 1945, Nathaniel H. Grant and Marie Calloway [hereinafter, "decedent" and "claimant," respectively] were married in Chicago, Ill. On an affidavit for a marriage license executed at the office of the county clerk, Cook County, both parties affirmed that they were free to remarry; decedent affirmed that he was divorced in Superior Court on July 1, 1933, and claimant affirmed that she was divorced on December 1, 1943, in Memphis, Tenn.

Decedent was employed by the U.S. Postal Service and retired on December 31, 1957. At that time, under the provisions of the act of July 31, 1956 [ch 804, § 401, 70 Stat. 744, as amended [1]], he elected a reduced annuity and designated claimant as beneficiary, stating that he and claimant had been married since April 22, 1945. Decedent's election and designation of claimant as beneficiary were not challenged.

Several years later, the Grants discovered that their 1945 marriage was not legal. Decedent, who until that time had believed his former spouse had successfully divorced him, obtained a proper divorce in 1960. Claimant, whose former spouse had deserted her on January 1, 1930 and who erroneously presumed him dead, properly divorced her first husband on February 27, 1959. The Grants were legally married on February 2, 1961.

On August 25, 1969, decedent died. After investigation, the Civil Service Commission discovered that the Grants' 1945 marriage was not legal; since the statutes governing survivor annuities in effect at the time of her husband's death did not then provide for payments to a "second spouse," claimant was advised that her claim for such benefits was denied.

On January 8, 1971, the law governing survivor eligibility for annuities was amended to include persons in claimant's situation [Public Law 91–658, § 3, 84 Stat. 1981]; since her husband had died prior to the date of enactment, the favorable change was of no avail in claimant's case.

HISTORY OF THE CLAIM

On June 26, 1975, a bill for claimant's relief was introduced which was identical to H.R. 1427 [H.R. 8364 (94th Cong., 1st sess.)]. By letter dated July 21, 1975, the Subcommittee on Administrative Law and Governmental Relations notified the sponsor that it would require additional evidence of circumstances justifying such relief.

STATEMENT

Despite the opposition of the Civil Service Commission, the committee favors enactment of H.R. 1427 for the following reasons: (1) the circumstances presented by claimant's case are, consistent with prior decisions of this committee, sufficiently unique so as to be "exceptional" and thereby warrant relief; (2) the committee has been aware of additional evidence of good faith on the Grants' part that they were free to remarry: and (3) relief in this case will be consistent with policy of the basic statute.

Both this committee and the Civil Service Commission have agreed that, where "exceptional circumstances" or "a patent inequity" exist, strict application of the policy opposing private legislation which would afford an individual relief would result in obvious injustice. In two instances, the Chairman of the Commission has not objected to relief legislation on virtually identical facts. That relief was granted prior to the change in the laws governing survivor eligibility, a change which has not been made and indicates a change in policy which supports legislative relief here. [See H. Rept. Nos. 86–1378, 89–1028, *supra.*]

In its consideration of claimant's case, the subcommittee had the opportunity to examine a certified copy of the affidavit for marriage license executed by claimant and her late husband in 1945 and the subsequent marriage license itself. Because both parties were required to certify under oath that they were free to remarry, the committee is satisfied that they entered into their marriage believing in good faith that it was legal and that their prior marriages had been dissolved legally. This is one of the facts which persuaded the committee that an exception to the general policy was warranted in the other cases mentioned above. Here, as in the earlier cases, the parties were unaware of the legal bar to marriage and that the retiring spouse had elected and taken a reduced annuity for a substantial period, fully believing that in so doing he was assuring benefits to his survivor.

Finally, relief in this case will not frustrate the purpose of the law because of the 1971 change in the law to permit "second spouses", like claimant, to take survivor's benefits. The Commission concedes that "the circumstances in this case are unusual," and the likelihood that relief here "would set the precedent for an unending stream of private legislation" is remote. Likewise, it cannot be said that a "special benefit" would be conferred here in the sense contemplated by the rule—since all persons in claimant's situation now are fully eligible by statute for the same benefits for which she was forced to seek congressional relief. The committee is advised that, if this legislation is enacted, claimant would be entitled to a lump sum of $7,145.83 (through April 30, 1977), and a monthly allotment of $116 thereafter. For these reasons, on April 5, 1977, the Committee on the Judiciary ordered favorably reported to the House the bill H.R. 1427, as amended.

[1] See 5 U.S.C. § § 8339(i), 8341 (1970), as amended, *id.*, Supp. V. (1975). 89–007

WILLIAM J. ELDER AND THE ESTATE OF STEPHEN M. OWENS

The bill (H.R. 3460) for the relief of William J. Elder and the estate of Stephen M. Owens, deceased, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1185), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to relieve William J. Elder and the estate of Stephen M. Owens, now deceased, from liability for repayment to the United States of overpayments of travel, transportation and other related expenses made to them as a result of administrative error, while engaged as civilian employees of the Department of the Navy during 1974 and 1975. The liability incurred by Mr. Elder was $1,143.37; by Mr. Owens, $231.25.

On November 10, 1976, pursuant to the Meritorious Claims Act [April 10, 1928, 45 Stat. 413, 31 U.S.C. sec. 236 (1970)], the Comptroller General sent a letter to the Speaker of the House designated as Executive Communication No. 311, recommending relief from liability on the claims of William J. Elder and Stephen M. Owens, now deceased, who were both participants in the Civilian Logistics Intern Program of the Navy Fleet Material Support Office, Logistics Intern Development Center, Mechanicsburg, Pa.

Both Mr. Elder and Mr. Owens were paid certain relocation expenses subsequently determined not to be authorized by statute. Both individuals were transferred primarily for purposes of training. Under the authority of 5 U.S.C. section 4109(a)(2) 1970), relocation benefits for such transfers are limited. The cognizant agency officials authorized and approved payment of the full range of relocation benefits, believing that all were payable.

Later, the error in allowing payment of all relocation benefits was discovered, and col-

lection action against Mr. Elder and Mr. Owens was initiated. Mr. Elder was held to be indebted to the United States in the amount of $1,143.37 and Mr. Owens in the amount of $231.25.

In its report to the Congress on this matter, the GAO stated that it concluded that while the relocation benefits statute is clear and unambiguous, in its decision it also found that the provisions of the Joint Travel Regulations implementing the statute are not entirely clear. in that decision, the GAO had occasion to consider paragraph C3052 and C4102 of volume 2 of the Joint Travel Regulations. These same paragraphs governed the transfers of Mr. Elder and Mr. Owens. In a separate letter, they recommended to the Per Diem, Travel and Transportation Committee of the Department of Defense that these paragraphs be revised to eliminate the apparent ambiguities and confusion that led to the improper payments made to Mr. Elder and Mr. Owens.

Based upon its interpretation of applicable statutes and study of Decision B–185281, the GAO concluded that there is no basis within their authority to grant the relief sought initially by Elder and Owens. The committee agrees with Comptroller General's conclusion that these claims contain such equity as to be deserving of the consideration of the Congress and meritorious claims. The Committee recommends the form of relief recommended by the GAO.

Executive Communication No. 311, Decision B–185281 and related rulings are attached to, and made a part of, this report.

DARYL C. JOHNSON

The bill (H.R. 5097) for the relief of Dr. Daryl C. Johnson, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1186), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to authorize the Comptroller General of the United States to settle and adjust the claim of Dr. Daryl C. Johnson of Atlanta, Ga., for amounts he would be entitled under applicable law and regulations for expenses which he incurred in 1972 and 1973 for storage of household goods incident to his detail with the Newcastle Task Force of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, San Gabriel, Calif., for the convenience of the Government, without regard to section 6.2c of the Office of Management and Budget Circular A–56, revised August 17, 1971, and paragraph 2–8.2c of the Federal Travel Regulations (FPMR 101–7) May 1, 1973.

STATEMENT

The Department of Agriculture in a report to the House Judiciary Committee recommended enactment of the bill.

The claim with which the bill H.R. 5097 is concerned amounts to $847 and is based upon expenses incurred in 1972 and 1973 for storage of household goods during Dr. Daryl C. Johnson's service with the Newcastle Task Force of the Animal and Plant Health Inspection Service of the Department of Agriculture. On March 14, 1972, the Department of Agriculture declared a national animal disease emergency to exist because of the presence of exotic Newcastle disease in southern California.

Over 3,000 personnel were detailed at various times to a task force operation headquartered in Riverside, Calif., to eradicate this foreign virus disease. Dr. Johnson, because of his expertise in the poultry field, and his laboratory competency, was detailed to the task force laboratory at San Gabriel, Calif., from March 16, 1972, until June 16, 1973. At the time of his detail, Dr. Johnson was in the process of being transferred from Maine to the State of Florida. For the convenience of the Government he was requested to remain in California until the disease was brought under control. In the meantime, Dr. Johnson disposed of his home and placed all of his household goods in storage. Under current Federal travel regulations, Dr. Johnson may be reimbursed for only 60 days' storage costs. Therefore, he has not been completely reimbursed for costs which he incurred for the convenience of the Government.

The Department of Agriculture in its report to the committee stated that it recognized the unique circumstances of this particular case. The Department also stated that Dr. Johnson made a major contribution toward the successful eradication of exotic Newcastle disease which ultimately saved the poultry industry an estimated $230 million annually. Under these circumstances, the Department concluded that Dr. Johnson should be compensated for the storage of his household goods during the period he was required to serve in California.

As has been noted in the statement of purpose, this bill would waive the limitations in the cited regulations in order to permit the payment of the amount which Dr. Johnson would be entitled to under applicable law. The committee has concluded that this would be a fair way to adjust the matter and therefore recommends that the bill be considered favorably.

CHARLES M. METOTT

The bill (H.R. 6760) for the relief of Charles M. Metott was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1187), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to authorize the Comptroller General, notwithstanding the provisions of section 71a (1) of title 31, United States Code, to pay $1,227.17 to Charles M. Metott, of Williamstown, N.Y., in full and final settlement of all of his claims against the United States for death gratuity benefits and back pay and allowances as a result of the death of his brother, Gerald P. Metott, while serving in the U.S. Marine Corps in Vietnam on November 6, 1965.

STATEMENT

As has been outlined above, this bill concerns a claim in behalf of a minor for death gratuity and back pay of his brother who was killed in action while serving in the Marines.

The brother, Gerald P. Metott, entered on active duty with the Marine Corps on June 29, 1964, when he was 17 years old. On September 15, 1965, he executed an emergency data form in which, pursuant to 10 U.S.C. 1477 and 2771, he designated his 6-year-old brother, Charles M. Metott, to receive his death gratuity and backpay in the event of his death. Gerald P. Metott was killed in action in Vietnam on November 6, 1965.

Marine Corps authorities subsequently notified the mother of the Metott brothers that Gerald had designated Charles as his beneficiary.

Charles M. Metott was entitled to receive a death gratuity payment in the amount of $1,151.40, and also $75.77 in backpay and allowances due his brother at the time of his death. Defense Department regulations then required that there be a court-appointed guardian for a minor beneficiary in any case a death gratuity claim exceeded $1,000. Charles' mother was advised of the guardianship requirement. She did not obtain the required court order, and the General Accounting Office has advised the committee that this was apparently because she lacked the funds to pay the legal fees involved.

In April 1975, Marine Corps authorities notified Charles' mother that the 10-year limitation on claims then in effect would soon expire, and urged her to take action in the matter. On June 3, 1975, the mother obtained a court order which formally appointed her as Charles' guardian. She then filed a claim on his behalf with the Marine Corps. In July 1976, Marine Corps authorities forwarded the matter as involving a doubtful claim to the GAO Claims Division for consideration. The claim was first received in the General Accounting Office on July 21, 1976.

Subsection 71a(1) of title 31, United States Code (1970), prior to amendment in 1975, provided in pertinent part that:

(1) Every claim or demand * * * cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim * * * shall be received in said office within ten full years after the date such claim first accrued * * *.

The Act of January 2, 1975, Public Law 93–604, 88 Stat. 1959, reduced the limitation period from 10 years to 6, effective July 2, 1975. A claim received in the General Accounting Office after July 2, 1975, is therefore barred from consideration if it accrued more than 6 years prior to the date of receipt.

The committee feels that this time sequence points up the unfairness of denial of payment of the amounts to the minor child as directed by his brother. Here the boy's mother took timely action within the 10-year period fixed in the statute at the time that the minor became entitled to payment. This 10-year limitation had been enacted into law in 1940 and was the basis for claims consideration for a 35-year period. As is admitted in the Marine Corps letter appended to this report which was received by the attorney for the minor, Walter W. Smith, the delay was further compounded by an erroneous reference of the claim to a records center for filing along with material relating to inactivated personnel. This delay was particularly harmful, for the Congress cut the limitation period to 6 years effective on July 2, 1975. That was 1 day short of 1 month from the time the court appointed the mother as the guardian to receive the payment in behalf of the minor. However, due to the confusion in handling by the Marine Corps, the claim was not received by the General Accounting Office until July 21, 1976, or more than 1 year later.

On the face of all this, the General Ac-

counting Office report merely cites the statute as a basis for questioning payment as provided in the bill.

The committee feels that this is a proper subject for private relief. Clearly, the circumstances provide a basis for recognizing the moral obligation by the United States to pay the amount provided for in the bill. It is recommended that the bill be considered favorably.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. ROBERT C. BYRD. Mr. President, I am eager to hear the debate go forward. I hope that Senators who have statements pertaining to the natural gas conference report will come to the Chamber and make them on this Thursday, September 14, at 9:59 a.m.

This is the fourth day that the Senate has been presumably debating. There has been some good, substantive debate on both sides of the aisle, from both the proponents and opponents. I merely express the hope that we can get on with the Senate business, and that those who have speeches will make them.

The Chair, under the Rules, if no Senator seeks recognition, is required to put the question on the adoption of the conference report. As one of the supporters of that conference report, I do not want to see that happen. I will do everything I can, within reason, to protect those who oppose the conference report. I would not idly stand by and see that happen at this point.

I do think, however, that the time has come for Senators to make their speeches and hopefully offer whatever motions they have to the conference report, recommital or otherwise, so that the Senate can act as soon as possible.

(Mrs. HUMPHREY assumed the chair.)

Mr. ROBERT C. BYRD. There is much other work facing the Senate; a heavy schedule of necessary measures must be taken up. The sooner we dispose of the conference report on natural gas, one way or the other, the Senate can vote it up or down, then the sooner we can get on with this other business.

Having delivered myself of that matter, Mr. President, I yield the floor.

Mr. METZENBAUM. Mr. President, as the leader knows, early this morning, I called him and advised him that I would get to the floor. We have had a pretty good relationship during the entire handling of this measure, both opponents and proponents. On a number of occasions, the floor has been unprotected, but by gentlemen's agreement, neither of the parties has seen fit to take advantage of those circumstances. I, myself, have protected the floor on several occasions when the proponents of the conference report were not present and it would have been possible to make a motion to lay the matter on the table and then move to reconsider.

Mr. ROBERT C. BYRD. Mr. President, if the Senator finds that occasion again, I hope he will send word to me quickly, because I am always very close to the floor. I have not noticed a time when the proponents have not had someone on the floor. Sometimes, I have been the individual or a Senator has been in the chair who represents the proponents. But perhaps the Senator has noticed a time.

Mr. METZENBAUM. Senator JACKSON did, on occasion, leave the floor and ask me to protect it. I say to the majority leader that I never thought that was a manner in which we want to pass or defeat legislation and I would always protect the opposition, and I know that the majority leader would do so as well. As a matter of fact, at 11 o'clock, there is a meeting, which I had to leave, for the purpose of discussing the question relative to trying to work out an agreement on this subject. I should not want to have to remain on the floor. I think it has some value, as far as we are concerned, for which to leave the floor.

I think the leader is aware of the fact that many of us have indicated a willingness to bring this matter to a conclusion and to a vote and respect the rights of any single Member of the Senate who is not prepared to come to that agreement. I think it is in the interest of all of us to try to work it out and if we have to protect the floor, one for the other, under those circumstances, I think it is worthwhile doing.

I might also say that if the leader has legislation to bring up on the double track at the moment, I am sure none of us would have any objection to doing that during this period.

Mr. ROBERT C. BYRD. I appreciate what the Senator has said. He has been most considerate and very cooperative and always courteous. All of these attributes are characteristic of the Senator. I merely said what I did about the requirement that the Chair put the question. That is the requirement placed on the Chair.

Of course, we are going to try to protect each other. Nobody is seeking to take unfair advantage of anybody else. I have seen it happen I remember very distinctly one occasion some years ago when Senator Lausche was in the chair and there was a very controversial matter before the Senate and no Senator sought recognition, no Senator raised the point of no quorum. The Senator presiding in the chair had the duty to put the question. He did. Another Senator moved to reconsider and I moved to lay on the table.

There was a considerable flap about it, a few sparks went upward. But it was all done right out in the open and Senators who were opposed to whatever the matter was at that time were on the flood. The Chair, I believe, put the question twice and nobody sought recognition. The Chair then said, "the question is on" whatever it was and "those in favor, say, 'aye;' those opposed, say, 'nay,' the ayes have it."

And there was a certain Senator who was on the floor who had been delegated to watch the floor for that side's position and, for some reason or other, he just was not alert to the situation.

You know, that could happen again. I would not want it to happen. I just want to remind my colleagues of a little bit of history which I—using the personal pronoun—I eyewitnessed, which I e-y-e-witnessed at that time.

Mr. METZENBAUM. Will the leader yield for a question?

Mr. ROBERT C. BYRD. Yes.

Mr. METZENBAUM. Would the leader be agreeable to a recess at this point, since I see four Members on the floor, all of whom support the conference report? I should like to attend the meeting to discuss this subject. I do not want to leave the floor unprotected, but I think we need a recess, I say to the leader, so my position may be protected.

Mr. ROBERT C. BYRD. The Senator's position will be protected, because, as I say, we who are supporting this conference report are hopeful that the Senator from Ohio can use his very persuasive talents and his very convincing arts to bring this matter to a close. He has been helpful, most cooperative, in that regard.

We virtually had an agreement yesterday and the Senator from Ohio had sat in on the discussions. He was willing to agree. The Senator from South Dakota (Mr. ABOUREZK) was willing to agree to that proposal.

What I say is, while we say it in a kind of spirit of levity here, I say with the utmost sincerity that they were willing to agree and did what they could to help bring about that agreement, which failed—not because of their failings.

If the Senator wants to attend a meeting in an attempt to get an agreement, of course, he will be protected. I see Senators here who support the conference report. If they want to speak, fine; if not, I shall temporarily recess.

I say to my dear friend, as I said earlier, nothing is certain, but—

The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice blest;
It blesseth him that gives, and him that takes;
'Tis mightiest in the mightiest: it becomes
The throned monarch better than his crown; . . .
It is an attribute to God himself;
And earthly power doth then show likest God's
When mercy seasons justice.

I want the Senator to know that the proponents are not only just, they are also merciful.

In accordance with that statement from Shakespeare, then, I yield the floor and let my senior colleague from West Virginia speak.

Mr. RANDOLPH. I should like to follow with a few words of verse, just as our leader has done.

Mr. ROBERT C. BYRD. I should like to hear that.

Mr. RANDOLPH. Mr. President, I remember, when I was first running for the House of Representatives, that I was speaking in an area of West Virginia which was heavily weighted for the opposition. I recognized our problem, but I did not realize the depth of the problem. When I had reached, in my remarks, what I felt was an important point I was attempting to make, I say to our able, knowledgeable majority leader (Mr. BYRD), instead of anticipated applause, that the lights went out. I stood there in darkness. I was remembering in that mo-

ment a favorite hymn which I had learned at an early age. The hymn, "Brightly Beams Our Father's Mercy," went like this:

"Let the lower lights be burning!
Send a gleam across the wave!
Some poor fainting, struggling seaman
You may rescue, you may save."

So I paraphrased, as my West Virginia colleague has done, in these words, "Let the lower lights be burning, send a gleam across the wave, some poor fainting, struggling Republican I must rescue, I must save."

And the lights went up.

These tense situations bother us from the standpoint of the opponents of the conference report.

As our leader does so often and as other Members in this body read the 23d Psalm, we must remember we can paraphrase that beautiful Psalm. I do it with these words:

"In 'pastures green'? Not always;
Sometimes he Who knoweth best,
In kindness leadeth me in weary ways,
Where heavy shadows be.
And by 'still waters'? No, not always so;
Oft-times the heavy tempests round me blow,
And o'er my soul the waves and billows go."

That poem continues.

But there is a turbulence in this body. It surfaces from time to time. Good humor and good purpose are often combined.

I think what the Senator has said about the Senator from Ohio (Mr. METZENBAUM) was proper. It is not just a pleasantry, back and forth, or a colloquy that covers a few minutes of time in this Chamber.

I believe that opponents of the conference report are well meaning, but I think they are misguided.

Their reasoning is wrong now for the country as a whole and the people of America and our relationship, yes, our stature, with the nations and the peoples of the world.

Differences of opinion I respect. I feel that there is a commitment which we should make, regardless of the sides that we are on. We should bring this matter to a very prompt conclusion, because out there there is an America and citizens are expecting us to say "Yes" or "No" on this important energy matter.

During the recess, as Members know, especially those of us who are "endangered species" with the November election coming up, have been going active in our States—making speeches, and of course, shaking hands.

When we met a constituent, a citizen, man or woman, young or old, and talked a few moments, what was the question that 7 out of 10 were asking me? "Senator or Jennings"—"when are you going to pass the energy bill?"

This is the sentiment across America. We must face up to a decision.

I am not certain, but I think we have had over 350 rollcalls in this 2d session of the 95th Congress? In the 1st session of the 95th Congress, there were over 600 rollcalls.

These were times of decision. Perhaps there is no vote now that has greater impact on America, our people, and the peoples of the world, at least in a very high degree, than this vote.

I am very grateful that the Senator's words gave me the opportunity to speak in this vein. But down deep within me, there is a belief that the time is now for action.

Mr. ROBERT C. BYRD. Mr. President, I thank my senior colleague. His words are very worthwhile.

I especially feel that this reference to the old hymn, "Let the Lower Lights Be Burning," is a good one and one we should not be unmindful of from time to time.

I am sure that his reference to the political speech he made upon one occasion was enjoyed by all Senators present.

This matter before the Senate is not a partisan matter and it is supported and opposed by Senators on both sides of the aisle.

As for the number of rollcalls, there have been 376 to date, and there could very well be rollcalls today.

I thank my senior colleague.

RECESS UNTIL 12:25 P.M.

Mr. ROBERT C. BYRD. Mr. President, if no other Senator seeks recognition at this point, in order that those Senators who are opposed to the conference report and who are seeking to work out some kind of proposal may be uninterrupted in their labors, I ask unanimous consent that the Senate stand in recess until 12:25 p.m. today.

There being no objection, the Senate, at 11:16 a.m., recessed until 12:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. DECONCINI).

Mr. RIEGLE. Mr. President, I rise at this time to speak on the natural gas issue.

Mr. President, like every other Senator, I have been giving very long and careful thought to the conference report on natural gas policy and I have reached several conclusions which I want to share with my colleagues at this time.

Mr. President, the natural gas deregulation bill now before the Senate is an economic and administrative monstrosity that will severely damage my State of Michigan and the country.

The gas price increases alone will cost citizens across America an estimated $41 billion between now and 1985, probably the biggest single dose of new inflation ever created by deliberate Government policy.

With the State of Michigan using some 5 percent of the national consumption of natural gas, it means that this bill will cost the people and businesses of Michigan an additional $2 billion over the next 7 years. It would mean that every homeowner and every renter who heats their residence with gas—or cooks with gas—would be paying a higher price. The average Michigan resident who paid $400 to heat their home last year can expect, if this gas deregulation bill is passed, to be paying at least $800 a year or more in 1985.

What will happen to our senior citizens and retirees living on fixed incomes who cannot afford these higher costs? Many cannot heat their homes adequately now. If these prices are driven up further, many people will be forced to sell their homes. Just the thought of that prospect is outrageous and shows how disconnected our Government—and some editorial writers—have become from understanding how artificial energy price increases actually hurt our people and our country.

With all the other inflation we are experiencing, I think it is wrong to deliberately drive up the utility bills of Michigan consumers. It is wrong, and it makes no sense.

President Carter, himself, short months ago, opposed legislation of this sort because it was a consumer ripoff—it was then; it is now—which would not begin to solve our energy problem. Today, having painted itself into a corner, the administration is willing to abandon those early principles in order to appease the administration's international critics.

There is no need to deregulate the price of natural gas and allow it to soar upward. There is a clear need to reestablish the President's authority to allocate natural gas supplies in the event of an energy emergency, a step I strongly support and which our recommittal motion will accomplish. Further, there is a need for Congress to face the fact that it is time to take strong legislative initiative and bring intrastate gas under the same regulatory framework as current interstate gas, a step that is fully constitutional and clearly supported by the body of case law that has developed concerning the definition of items properly falling within interstate commerce.

For many months now, 60 percent of the national energy program has been held hostage—not by Congress—but by the administration in a misguided attempt to force up the prices of natural gas. Three of the five components of energy legislation—conservation, coal conversion, utility rate reform—are complete and ready for final action. Our recommittal motion will allow completion of those essential energy program items—as well as provide the President with the power he needs to allocate natural gas during an energy emergency.

Despite the near hysteria of those who argue that the gas price increase bill has to be passed to shore up the administration's prestige and to please our foreign critics, the clear fact is that America will be stronger if we defeat this bill.

The increase in natural gas supply to be produced by this deregulation bill is such a tiny fraction, somewhere between 3½ percent and 5 percent by 1985, that any meaningful reference to increasing the gas supply by means of higher prices is absurd on its very face. In fact, the full cost of the price increase applied against this tiny increase in supply would mean that the incremental gas would actually cost us as much as $60 per MCF versus today's price of $1.50 per MCF.

If we are to take another $41 billion from America's consumers, we would be far wiser to invest it in the accelerated development of alternative energy sources—particularly solar power.

In fact, if the $41 billion were spent

over the next 7 years to retrofit residences now using gas with existing solar heating technology, we could save an amount of natural gas larger than the small increase in gas supply generated by gas price deregulation. That is a far wiser course that will give us solid future energy savings—and at a lower cost to consumers.

Another major problem with the conference bill is the almost unfathomable degree of new Government regulation, rules and definitions—where, for example, 17 to 23 new classifications of gas are established which will require an army of new Federal bureaucrats to define and administer. If this bill is adopted, it will create a massive new bureaucracy with a maze of regulation that will make it virtually a separate government unto itself. The Department of Energy itself, in a rare burst of candor, termed it an "administrative nightmare." This bill, if it is passed, from the administrative point of view, will create work for every lawyer in America and tie up our court system for years to come with suits challenging the blizzard of bureaucratic rulings that we can anticipate. In the end, all these added costs will also be heaped upon the poor residential user struggling to heat his or her home at prices they can no longer afford.

A major argument used by proponents of the bill is that international observers are insisting that we raise the prices of domestically produced oil and gas to the inflated world prices set by the OPEC monopoly. Some have argued that by raising the price for our domestic energy we will somehow strengthen the value of the dollar abroad.

The fact is that the gas deregulation bill will greatly increase the U.S. inflation rate which is the principal cause of the weakness of the dollar abroad. By deliberately increasing our domestic inflation with artificially higher prices for natural gas we can only weaken the value of the dollar abroad. We need to conserve domestic energy resources wisely and avoid artificial price increases that would increase inflation and hurt consumers.

Another argument used by the proponents of the bill is that higher gas prices are needed to stimulate new drilling and discoveries. They conveniently overlook the fact that this has already been accomplished by previous price increases. The average price of interstate natural gas at the wellhead was 17 cents per MCF in 1970, was increased 168 percent to 44.5 cents in 1975, and another 71 percent to 77.9 cents in 1977, and is currently 90 cents per MCF. These are enormous increases, costing the consumers of America billions of dollars. These recent price increases have increased the number of supply wells from 900 in 1973 to some 2,300 last year. At the same time, total gas demand has been shrinking from 22 TCF in 1973 to some 19 TCF last year.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question?

Mr. RIEGLE. I yield.

Mr. METZENBAUM. I just heard the Senator from Michigan use the figure of 90 cents as a more recent price, and I am certain he was using, correctly, the average price. I know that the Senator unquestionably intends to address himself to the point that the price for new gas in the interstate market is running about $1.50 to $1.52, which I think is about 800 percent higher than the original price to which the Senator was addressing himself.

Mr. RIEGLE. I thank the Senator for that point, because he is absolutely right.

The current price for new gas is running at about $1.50. What I have done here is that I have stated the most conservative numbers, which are the price increases we have seen for the average price of gas.

As the Senator points out, these increases over the last several years have been absolutely astronomical. I do not know of another area of the entire economy where we have seen more price increase in the last 7 years than we already have seen with natural gas. Despite that, the proponents of this bill are back again asking for price increases even greater than the ones we already have seen. It is absolutely astonishing.

I appreciate that observation.

Mr. METZENBAUM. I am enjoying the Senator's remarks; they are very edifying. The fact that the present price is $1.50 and under this bill immediately would go to $1.93, I am certain, is as disturbing to the Senator from Michigan as it is to me.

I will not speak further, but I just wanted to be certain that this $1.50 price was not overlooked, as well as the $1.93 price which will be forthcoming immediately under the new bill.

The Senator is correct in saying that in no other area have there been such astronomical increases as those which have occurred in the gas area. Yet, the industry wants more and more and more.

Of course, it is disturbing that the administration, which started off fighting against deregulation, is here doing the most massive lobbying job that probably this body has seen in a great many years, in an effort to help the industry get to the $1.93 figure.

Mr. RIEGLE. I say to the Senator that I agree with him wholeheartedly about the pressure being applied. It is interesting. All Senators, I am sure, are going through the same experience the last several days.

I have been getting phone calls from friends of mine in industry and in other positions of influence who have been approached and importuned by the administration to contact me and to suggest that perhaps I could find a way to support this terrible piece of legislation.

What happens—without naming names—is that as I get into a conversation with various friends who are calling at the behest of the administration, we really get into the merits of the bill—what the bill would do, how it would affect the country, how it would make the dollar weaker abroad rather than stronger, because of the inflationary impact.

What I am finding is that the folks who are calling me are saying, "You know, Don, I feel pretty lukewarm about this, too. I really called because the administration asked me to call."

In any event, we end on a very nice note.

The fact is that that high pressure activity is going on—and there is nothing improper about it. That is fine and dandy. But we should not misunderstand what it means. The merits of the case are so weak and this compromise is so deficient and is so harmful in terms of its economic effect and its effect on our long-term energy approach, that they cannot argue the bill on its merits, because they cannot win that argument. So they are not trying to argue the bill on its merits.

The only argument that I have heard used in place of an argument on the merits is the notion that somehow some of the international critics need to see some sign that this administration can get something done in the energy area. They say that time is running out, and that even though this is a bad bill we should take it because it will have that effect.

Nothing could be more shortsighted. That is exactly the way that this country gets itself into great difficulty.

I have talked with a number of foreign leaders as well, and the problem that I hear them speak about more than any other is the inflation that is hurting this country, and is reducing the value of the dollar.

The problem is that this bill before us is a perfect prescription for inflation. This is, pure and simple, Government administered inflation.

When we jack up the price of something artificially and there is no increase in the supply, that is pure inflation. That reduces buying power in this country.

I talked to one of the people from my home State yesterday in the automobile business, and I said:

> If we allow this bill to pass, to pull another $2 billion out of the Michigan economy, from Michigan consumers over the next 7 years, that is money that people could use to buy cars, or buy hamburgers, or to buy clothes, or to do other things that they need to do.

So that kind of inflation is exactly what has caused the problem in terms of the value of our currency abroad.

I hope our international friends will not be taken for a ride in watching what is happening here in the way of energy policy, because this country is making enormous progress.

Just listen to this.

These price increases that we have been discussing that have taken place already over the last several years, that have just rocketed up the price of gas——

Mr. METZENBAUM. Mr. President, a point of order. May we have order in the Senate, please, because the Senator from Michigan is making some very valid points and I think he is entitled to full attention of the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Mr. RIEGLE. Recent price increases that have already taken place have had

the effect of increasing the number of supply wells from a figure of 900 in 1973 to some 2,300 last year. At the same time we are conserving energy and total gas demand has been shrinking. In 1973 it was 22 trillion cubic feet, but last year in 1977 that figure had dropped to 19 trillion cubic feet. So that was a reduction of 3 trillion cubic feet which is a substantial change in behavior and a good faith effort on the part of the country to conserve gas, this particular form of energy.

At the residential level we have achieved a 13-percent reduction in per unit residential use of gas between 1973 and 1976, which is the last year for which figures are available.

But no one talks about this today. The administration is deliberately, in my judgment, not emphasizing the enormous progress that we have made in this country through a change in method, through the fact that consumers are dialing down their thermostats, insulating their homes, insulating their water heaters, turning down the temperature of the hot water in their water heaters, and so forth, to save gas and to save costs.

Mr. STEVENS. Mr. President, will the Senator yield right there?

Mr. RIEGLE. I yield.

Mr. STEVENS. Is the Senator using supply figures or demand figures? The Senator is certainly not going to take credit for the fact that the demand has been reduced because there were curtailments reaching from Delaware up to New England, and from the Ohio Valley up into the Senator's State of Michigan. Is the Senator saying because demand could not be met that that constitutes a saving?

Mr. RIEGLE. No. We are talking here about people who had hookups and the reduction in usage by those people who had hookups, the fact that there has been a measurable savings occur because people are conservation minded.

Mr. STEVENS. I am sure the Senator is familiar with the fact that there were curtailments in particularly the calendar year 1976. It reached the level of almost 15 percent.

Mr. RIEGLE. That is not what I am talking about. I am talking about the fact that people who have been using gas through a variety of conservation measures are finding ways to use less gas, and I think they should be congratulated for it. I think that should be acknowledged. Any notion that we are not making progress on our energy problems is just not true.

Let me tell the Senator what is happening in the industrial sector.

Mr. STEVENS. Will the Senator answer my question? Are those use figures or demand figures?

Mr. RIEGLE. Those are use figures. Those are use figures by people who have had hookups over that period of time.

Mr. STEVENS. It would be my impression that the use figure and a reduction in use would indicate a reduction in supply rather than a reduction in demand. In this area, one can find new subdivisions that are being told they cannot hook up to gas. The reason they cannot hook up to gas is that it is not available.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. RIEGLE. That is not exactly true. I yield.

Mr. METZENBAUM. Mr. President, I point out to my good friend from Alaska that that was the case in 1976 when the gas companies of this country were withholding their product from the marketplace in an effort to force up price. But that picture has now changed. Now the price is up and now they are able to find ways to get around and get a better dollar for their product. What has happened is now they are bringing it forth and the market is glutted, and the two companies that serve the State of Ohio, one of which is the largest natural gas company in the entire United States, the Columbia Gas System, and the Consolidated Natural Gas System, have now switched signals and now they are saying to residential users, "We have enough gas, and we are glad to make new connections for residential users."

That is an indication to me that if the gas companies get their profits, their dollars, which are more than adequate at the moment and which have been soaring, they will find the gas. But what they have done, and 15 Government reports indicated this, they held back their production in the fields in Louisiana and in Texas and they said, "No, we have no gas." Let the price go up and then suddenly the gas becomes available and the American people wind up paying the price. And that is the way it has been and that is the way it is going to continue to be.

Mr. RIEGLE. Mr. President, if I may, I shall try to conclude my statement. I will be happy to yield to the Senator when I finish. I know the Senator from Maine is due in at I believe 1 p.m. to raise a legislative matter. I wish to complete my statement, and then I will be happy to engage in a discussion on these points.

Mr. STEVENS. If the Senator will permit me to make one comment regarding the comments of the Senator from Ohio, I shall not interrupt him further.

Mr. METZENBAUM. I will say I think we should continue.

Mr. RIEGLE. Of course, I am going to say yes. I will be hesitant not to give my friend from Ohio the last word because he is on my side of the argument. I am not sure when this will end.

Mr. STEVENS. I am not sure which side of the argument I am on yet, however, I think I know.

Curtailments exist when people have been told they cannot have gas though they have the facilities to use gas.

Curtailments have now reached 3 trillion cubic feet in this country today.

Mr. RIEGLE. The point I say to the Senator is that this bill that is before us does next to nothing to solve that problem. That is a different problem, the fact that there may be people out there who wish to make gas hookups in certain areas and cannot. I do not accept the argument that this bill is going to produce any magical increase in supply. It is going to carry with it an enormous increase in price and total cost, but not in supply, and if the Senator is suggesting that this bill is going to allow all those people who want hookups to have hookups I really think we should not give them that impression.

To continue, look at the industrial sector, the progress that we have been making in terms of energy saving. Total energy consumption dropped in the U.S. industrial sector by 13 percent between 1973 and 1976 while production remained about steady. And, by the way, that drop, that improvement, that energy saving, was the largest of any major Western industrial nation. I hope that some of the other international friends of ours who are urging on us steps that are unwise will take a look at some of the things that, in fact, we have been doing.

So we are making progress in dealing with our national energy problem, and the deregulation bill now before us is both unnecessary and counterproductive.

I might say that one of the great mysteries of this conference bill concerns the damage done under the pricing formulas to residential users of gas for the benefit of industrial users. Both the Senate and House bills kept the 1985 MCF price roughly equivalent for residential and industrial users. The House bill provided $2.89 for residential and $2.70 for industrial, whereas the Senate bill provided $2.92 for residential and $2.87 for industrial. Yet, by some bizarre twist, the conference bill has lifted the residential price to $3.28, while lowering the industrial price to $2.44—a pricing scheme that will gouge residential users at the same time it encourages greater consumption at the industrial level by maintaining a lower price.

That makes absolutely no sense at all. How this can be so much at odds with either the House or Senate version is a mystery I have not heard anyone offer an answer to.

Another serious defect in this gas deregulation proposal concerns the year-by-year increases in the price and the direct incentive this provides to suppliers to withhold discoveries of gas as long as possible in order to sell it later at a higher price. This gets to a point we were discussing just a moment ago.

If, for example, a major oil and gas company finds a promising gas field area, the pricing provisions of this bill would encourage the company to delay the discovery as long as possible in order to "find" it and sell it at a higher price later.

It is conceivable that the companies in the strongest financial condition might even delay their discoveries and production until 1985, when all price regulation would end. It seems to me that this is exactly the wrong incentive for us to establish if our goal is to expedite the discovery and the production of new gas. But it is one more very important substantive reason for us to defeat this measure.

In addition, having examined those provisions of the bill which set forth the definition of "commercially producible quantities," which is the definition of gas

availability to determine if supplies are being deliberately withheld, and understanding the difficulties of gaining the technical and engineering documentation at a specific point in time which would be needed to meet a legal challenge in court, one can only conclude that this area of the bill is an open invitation to abuse and endless litigation. It is just one more area in this bill that is going to create work for all the lawyers in the United States, and all this by the way, in addition to the fact that that pricing schedule, the price increase schedule, over time, is a direct disincentive to rapid exploration and discovery.

In summary then, we find ourselves dealing with a natural gas price increase bill that is a $41 billion mistake over the next 7 years. It is inflationary, hurting all residential users of gas, with the greatest damage done to our senior citizens and retirees.

It fails to measurably increase the supply of new gas and, in fact, causes us to forego now alternative energy supplies and their development and savings that that $41 billion could otherwise produce over the next 7 years.

The bill before us will create a new large Federal bureaucracy armed with a new law that is virtually unadministerable.

If this bill is passed it will be my prediction that we will see the biggest bureaucratic mess in our Nation's history, which is exactly what we do not need.

As for our foreign critics, they have got to understand that this bill is highly inflationary and, thus, weakens the value of the dollar aboard, and that new government-administered inflation will also reduce real buying power in the American economy. That loss of buying power threatens serious economic repercussions for the United States and for our trading partners.

In my 12 years in Congress, this is the first bill I have seen come to a vote that achieves the dubious distinction of being bad for everyone. It is bad for consumers, bad for producers, bad for the country, and it is bad energy strategy, all at the same time.

In fact, the bill is so bad that the Chamber of Commerce has joined with the United Auto Workers and the AFL–CIO to oppose it. That does not happen very often. The independent oil and gas producers have joined with the environmental groups to oppose the bill, and that does not happen very often. Consumer groups, the Farmers' Union, the Americans for Democratic Action, the Amercan Conservative Union, General Motors, and others that we could list for a very long time here, have all joined to oppose this bill because it is a bad bill.

The people who come in here to defend this conference report—and they do it apologetically because there is not one who does not know it is a bad bill, and they are frank in most cases about admitting it privately, although they defend it on the basis of saying, "It is the best we can get and we have to do something, and even if it is bad, it is better than nothing," which is a ridiculous argument—but the point of the matter is that the number of people who are out advocating this thing and speaking for it are really a very tiny group, where the people who paid attention to it and have come forward in opposition are an enormous coalition of forces that cover the spectrum, and I think that says something about the substantive merits of the arguments here.

We have a better answer available. To those who say, "Well, if you don't like this what do you propose to do?" There is a direct answer to that question, and let us not be misunderstood about it. First of all, as far as natural gas is concerned, in the recommittal bill we deal with the issue of allocation, restoring to the President the power to make gas allocations in the event of an energy emergency. Obviously, that is needed. It is in our proposal and it will happen if we are successful in offering it.

But, in addition, I think Congress has to take another step, and I would be very interested in hearing if any of the proponents of this bill will state that it is time to find a scheme to bring intrastate gas and interstate gas together under the same regulatory umbrella, which I support. I wonder if any of them would be prepared to do it now and to get that done in one fell swoop legislatively, as we can without going through this approach of phased price increases over the next 7 years which are going to cost this country $41 billion and have basically no beneficial effects that one can identify, short of the tiny fractional increase in supply.

We can do that. If one studies the Constitution and one looks at the body of case law in the last several decades in this country it is clear, in my judgment. if this Congress were to legislate in a fashion to capture and bring intrastate gas under Federal regulation and under Federal price control we are absolutely free to do that.

The only thing that holds us back is the inertia, and if the administration wants to make a bold proposal, if they want to take a good step that makes sense, and do it at once, something that is going to impress the international observers and have some practical economic effect, and hold down inflation in this country, that is the way to do it. It is to blend these two markets into one and take that step. It is a bold step. It is probably too bold for a lot of folks around here, and that is too bad, but that is a much wiser step and a much stronger and sounder step than the one that is being proposed here. I would say, in addition, it is a step that is long overdue.

As for the other energy strategy initiatives. I hope people who report on this debate and the people who report on these issues will make it clear that 60 percent of the energy package, three of the five items, are ready to go and have been ready to go for a long time. The conservation measures, the coal conversion measures, the utility reform, these things are ready to be enacted.

What is holding them up? The fact that they have been held hostage to the natural gas bill, which is a bad strategy. It was bad originally and it is bad today. Our recommittal motion would deal with that. We would get these three of the five items broken loose, get them passed, and get that part of the job done.

Now, that in total is a sound, constructive, rational, and effective alternative strategy for dealing with these issues. It is one that will help the country and it is one that will help the people of the country. It will help the consumers of the country.

For these reasons I strongly oppose this gas price increase bill, which is what it ought to be called. It is called gas price deregulation, but that is part of the hocus-pocus of word management to try to disguise what it really is. It is a gas price increase bill, and that is what it ought to be in every headline that captions a story on this subject.

I oppose this bill, Mr. President and I support the motion to recommit with instructions. I hope that enough Members will decide to take this course of action that we can spare ourselves the unnecessary damage that I have outlined in my remarks today.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to commend the Senator from Michigan. I have not known the Senator for a great many years. I came to know him here in the U.S. Senate when I came here and he also came to this body; but I have grown to respect his judgment, his sincerity of purpose. his concern for his constituency, and the fact that he comes from a business background, having been educated at the Harvard Business School, which gives him an ability to analyze matters of this kind that is very helpful. I have learned to trust his judgment.

I know that the Senator is unerring in his concern for his constituency, and his remarks today indicate the tremendous amount of time and effort he has expended in the investigation he has made on this subject. Therefore, it is with a great deal of gratitude, pleasure, and respect that I stand here to commend him for an absolutely superb statement on this measure. He has covered the international aspects of the matter, he has covered the lack of support the bill has, he has covered the question of more or less gas, he has covered the question of costs, he has covered the great array of opposition that this bill has engendered, and I stand here to say that I am very pleased that a Senator of his standing and stature, with 12 years' experience here in Congress, has seen fit to attack this bill for the nothing that it is.

I just wanted to tell him how pleased I am for the privilege of serving with him in this body, and for the pleasure I have had in hearing him address these issues today.

Mr. RIEGLE. I thank the Senator for his kind words; I appreciate them very much. They bring a blush to my cheek.

The Senator is very kind. I am pleased that we are able to be on the same side of this issue.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. Is there any designated time that we are going into recess?

The PRESIDING OFFICER. There has been no set time.

Mr. GOLDWATER. Mr. President, relative to the natural gas compromise which we have before us, I will vote against this measure because I do not think it does anything at all to solve the energy problem which we are not faced with today but which I see coming before us in about 8 or possibly 10 years.

There is nothing in this bill which will produce more gas; nothing in this bill that will produce more gasoline or diesel fuel, or fuel for the home. What we have needed in energy legislation, in my estimation, Mr. President, has been legislation that would encourage the private investor or the corporate investor to invest money in new wells, in new gas, and invest money in distilleries to turn the over abundance of crude oil that we now have on the west coast into gasoline and fuel that can drive the engines of our industry. But this is not contained in this bill. Nothing in it will give the American people more fuel; nothing in it will give the American people any hope for energy in the forthcoming years.

I think it is a tremendous hoax that we are playing on the American people. I for one am not going to be part of this dishonest effort to try and create in the minds of the American people that the Congress and the President, and other powers that be back here, are doing something to eliminate the real serious energy threat that I see on the horizon possibly in 8 or 10 years.

The whole proposal that we have before us fills one with grave misgivings. The compromise that we are asked to consider calls for major extension of the regulatory powers of the Department of Energy. The Department of Energy has already grown from nothing to become one of the major agencies of this Government in less than 5 years. The Department of Energy has a budget for fiscal 1979 of $12.6 billion. This growth represents a classic case of bureaucracy run rampant. The bill that we are now debating would represent yet another transfer of power to this agency.

Under present law, the intrastate market for gas is not regulated. As a direct result the free market has operated in the classic manner. Drilling and exploration for gas has proven profitable, and companies have made major efforts to produce gas. The resulting ready availability of gas in the intrastate market comes as no surprise to those of us who believe in the power of the free market to insure efficient allocation of resources, but should embarrass those who are calling for even more regulations. The price incentives for intrastate gas are now called into question by this bill. Rather than looking at the ready availability of gas in the unregulated intrastate market and the general lack of gas in the over-regulated interstate market, and drawing the obvious conclusion that regulation has failed, the proponents of this bill now wish to extend the web of regulation still further and bring the intrastate market under governmental control. What an incredible failure of logic. Should we not rather come to the obvious conclusion that regulation is not effective and should be reduced rather than increased?

The American public is becoming increasingly concerned about the power of the bureaucracy and the ever-increasing volume of rules and regulations. The success of proposition 13 in California should be a warning to us that the public is interested in reducing government expenses rather than in increasing them. If that be the case, then increasing the regulatory powers of the Department of Energy is certainly the wrong way to go. In the case of petroleum products for example, the DOE budget for petroleum activities in 1979 represents a cost of over 2 cents for every gallon of petroleum forecast to be run in 1979. This added cost represents only the cost for DOE activities—and does not reflect the added compliance costs that the petroleum industry incurs—which are inevitably passed on to the customer. If this is the case with petroleum products, why should we expect that the record will be any different with gas?

The whole issue of regulatory costs should be of concern to us. The Center for the Study of American Business recently estimated that the sum of the administrative costs of Federal regulation (paid by the taxpayer) and the cost of compliance with those regulations (generally passed on to the consumer in the form of higher prices) may top $100 billion in 1979. This incredible figure of $100 billion represents nearly 4½ percent of our gross national product, and the figure is still rising. These administrative costs have more than doubled since 1974. In 1977 and 1978 Federal regulatory outlays rose at a rate of 22 percent—far exceeding population growth and inflation. The administrative costs for regulating energy and the environment have risen by 222 percent over the period 1974–79.

I ask unanimous consent that a table entitled "Administrative Costs of Forty-One Federal Regulatory Agencies" be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE 1.—ADMINISTRATIVE COSTS OF 41 FEDERAL REGULATORY AGENCIES

[Fiscal years; dollars in millions]

Year	Consumer safety and health	Job safety and other working conditions	Energy and Environment	Industry, specific	Financial, reporting, etc.	Total
1974	1,302	310	347	245	36	2,240
1975	1,463	379	527	269	45	2,683
1976	1,613	446	682	270	53	3,064
1977	1,985	492	870	309	58	3,714
1978 (revised)	2,582	562	989	340	70	4,543
1979 (proposed)	2,671	626	1,116	341	69	4,823
Increase, 1974–79 (percent)	105	102	222	39	92	115

Source: Compiled from details in the "Budget of the United States Government, Fiscal Year 1979" (Washington, D.C.; U.S. Government Printing Office, 1978), and earlier budget documents.

Mr. GOLDWATER. These costs have a double impact. Although they are borne by the public in their role as taxpayers—the costs of compliance are also passed on to the public in their role as consumers. My honorable colleague LLOYD BENTSEN transmitted the study entitled "The Costs of Government Regulation of Business" by Mr. Murray L. Weidenbaum to the Honorable RICHARD BOLLING for the use of the Joint Economic Committee. In his letter of transmittal, Senator BENTSEN comments on Mr. Weidenbaum's finding that the burdens borne by taxpayers, consumers, homeowners, investors and entrepeneurs due to Federal regulation are "significantly larger than heretofore projected. In 1976, for example, the aggregate impact on the private sector of Government rules and regulations was some 20 times larger than Federal expenditures for such activities that year."

This multiplier effect of regulatory costs should make us increasingly wary of permitting further regulatory expansion. If we permit an increase in regulation, as is suggested by the natural gas legislation that we are now considering, we must realize that for every dollar that the Government spends on regulation, the consumer will end up paying a further 20. The consumer will not willingly pay such costs—especially if he gains nothing by them. In the case of this legislation the additional regulation will not merely increase the regulatory costs, but will have a high probability of reducing future gas supplies.

The taxpayers will inevitably end up paying more for less—just as he does in the case of gasoline. In that case the DOE itself proposes decontrol because market forces are restraining the price of gasoline to below allowable controlled levels. The extra costs of DOE regulation and compliance represent an added burden over and above the free market pricing.

The particular price of legislation that is offered for consideration today is one

of the most pernicious examples of regulation that I have yet seen. This bill creates an administrative nightmare for any unfortunate producer of gas who may be compelled to comply with it. The complexity of this legislation is such that there is even disagreement among analysts as to how many categories of natural gas it creates. The consensus is that there will be at least 17 different categories for natural gas, and that there may well be as many as 24. This incredible complexity—and the labyrinthine regulations that will undoubtedly be developed from it—will present an outstanding opportunity for bureaucratic empire building. This regulatory load will of course bear most heavily on the small producers, who are least able to cope with the strangling effect of the redtape. Mr. Jack Allen, the president of the Independent Petroleum Association of America—a group of small independent producers—has already been quoted as saying that this bill "would intensify regulation to such a degree that many small producers could not cope." The small independent producers, according to Mr. Allen—

> Feel that they could be tangled in a regulatory jungle . . . that they do not have and could not employ the personnel to keep themselves in compliance with this unbelievably complex expansion of regulation."

In their recent meeting in San Francisco the Independent Petroleum Association of America said:

> At best, the present proposal offers fleeting, temporary price and supply relief. In the longer term, it is a blueprint for disaster leading to less gas, not more.

The association called on Congress to reject the compromise and return to work on the legislation similar to measures passed by the Senate which would:

Decontrol new natural gas on an early, specific date.

Provide a reasonable, clear definition of new natural gas.

Prohibit Federal intervention in the intrastate market.

Independents opposed the compromise because of its extension of Federal control to the free intrastate market, its "complicated and unreasonable" new-gas definition, and its perpetuation of price controls.

In addition, IPAA said, the compromise contains provisions for "objectionable end-use controls" of natural gas. And it lacks sufficient incentives to attract the required capital for exploration and development.

These feelings are not confined to the small independent producers, the larger oil companies are also concerned at the complexity of the legislation and the potential regulatory problems. Mr. John E. Swearingen, chairman of the Standard Oil Co. of Indiana refers to the bill as an "administrative nightmare" as do Continental Oil Co. and Sun Oil Co.

The gentlemen I quote are obviously concerned about regulation, and with good reason. How many of us have ever checked on the regulations that are promulgated in the name of the U.S. Government and really looked at the mess that a bureaucrat can make out of a simple concept. Let me give you an example. I quote now from a recent Agriculture Department Procedure for determining the amount of red in tomato puree.

> The amount of red is determined by comparing the color of the product, diluted, if necessary, with water to between 8 percent and 8.6 percent, inclusive, of natural tomato soluble solids with that produced by spinning a combination of (four) Munsell color discs. . . . Such comparison is made under a diffused light source of approximately 250-foot candle (candela) intensity and having a spectral quality approximating that of daylight under a moderately overcast sky, and a color temperature of 7,500 degrees Kelvin plus or minus 200 degrees. With the light source directly over the disc and product, observation is made at an angle of 45 degrees and at a distance of 12 or more inches from the product.

Now gentlemen—if our regulators can come up with something that complex on a question of how to tell whether a tomato is red—what do you think they can do with a bill as complex as the one we are considering? It boggles the mind.

Let me review some of the various categories of natural gas proposed by this bill. There is:

First. Natural gas other than gas legally required to be sold in interstate commerce on April 20, 1977.

Produced from wells deeper than 5,000 feet.

Produced from wells 5,000 feet or less.

Can you just see the Department of Energy demanding an official certified depth check of every gas well in the country? Then there is:

Second. Natural gas legally required to be sold in interstate commerce on April 20, 1977.

Third. Natural gas subject to an existing intrastate contract on the date of enactment: Where the contract price is greater than $1/MMBtu on December 31, 1984; where the contract price is less than $1/MMBtu on December 31, 1984.

Then we have:

Natural gas from a newly discovered reservoir on Outer Continental Shelf tracts leased on or before April 20, 1977—of course gentlemen, this presupposes that the gas industry does not just give up in disgust and stop bothering with exploration when so much of their incentive is being taken away from them. Frankly I can only suppose that they will keep going out of habit since they will be in such a state of shock when they have waded through the regulatory morass.

Then we come to high cost gas—this is the type of gas which is very difficult to develop, but which may be available in such quantities that it could solve our gas problems for many years. This gas—which is most in need of expert development research—is to be deregulated. At last—do we come to a category when the regulators will be unable to interfere? Not so—the deregulation takes place on the effective date of the first incremental pricing rule and who generates that rule and controls that date? None other than our regulatory friends at FERC. Once again the persuasive influence of the regulators is in the ascendancy. Now the concern expressed by the gas producers makes more sense. The categories of gas that I quoted above are just the broad general categories. The potential for regulatory nitpicking with this bill is literally immeasurable. We will have the same mentality that takes a page of instructions and a laboratory full of apparatus to tell if a tomato is red or not in charge of determining what category of gas a given well's output falls into. I pity the people who have to live by these rules if we are foolish enough to pass this bill.

In any event—what does all this regulation and control gain us? Consider the intrastate market, where gas has been unregulated. In the intrastate market there is plenty of gas available—at higher prices to be sure, but certainly at lower prices than it will cost us to import OPEC gas once we have used regulation to reduce our gas drilling and exploration.

Consider the gasoline market. We have built a bureaucratic empire with the express intent of holding down gasoline prices. These legions of clerks have labored diligently to review every cost and to nitpick every contract. What is the end result? The Department of Energy itself admits that its calculated allowable maximum prices for gasoline are higher than is actually charged in the marketplace. I ask you—does that make sense? If a product costs a dollar—do we need a price regulating agency to come back to us and tell us that the fair price should be a dollar and a quarter? Let us not forget that the budget for the Department that is doing all these wonderful things for us also represents a hidden price equivalent to 2 cents per gallon of oil—and that does not include the added costs for the companies who have to respond to all of the paper work generated by the Department of Energy. In reality—the only end result of the regulation in the gasoline market has been to increase costs—not to reduce them. As a side effect it has increased our dependence on foreign oil and has harmed our balance of payments.

In the light of this dismal record, gentlemen, does it make sense to hand over a new area to the Department of Energy's tender care? If we do, I can predict higher costs for gas in the coming term and shortages in the immediate future which will require costly imports. We will become still more dependent on the OPEC nations—since they control most of the exportable gas as well as most of the oil. Meanwhile the bureaucrats will build their empires and produce more and more redtape to strangle our energy industry.

One point that we have not yet touched on raises a considerable philosophical question. One of the main points of this bill that we are reviewing is that it will expressly extend the jurisdiction of the Federal Government over intrastate contracts and intrastate commerce. Now as I read the Constitution of the United States I see that in section 8 it is specifically stated that:

> The Congress shall have power • • • to regulate commerce with foreign nations, and among the several States and with the Indian tribes.

Then in the Bill of Rights—the 10th

amendment to the Constitution clearly sets forth that:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Now although I am not the Supreme Court, it seems pretty clear to me that the right to regulate commerce within a single State is a constitutional right reserved to the State or to the people. If an intrastate contract is written, for gas or for any other commodity, how can the Federal Government possibly intervene without violating the Constitution? I can appreciate that the flourishing situation in the intrastate market is an embarrassment to the Department of Energy, and I can understand that they think that they can regulate the people for their own good, but how does that justify the violation of the U.S. Constitution and the principle of States' Rights?

I contend that if State, in its sovereign wisdom, consciously chooses to refrain from regulating commerce within its borders—then it is not for the Federal Government to step in and impose its fiats upon that State. I feel that this could potentially be a very divisive force for our Nation. I am told that there are already bumper stickers in Texas which state "Drive faster—freeze a Yankee." and "Let the Yankees freeze in the dark." I believe that demonstration of popular sentiment like that should be taken as early symptoms of a regional divisiveness which has great potential for harm. We should avoid stirring up such divisiveness without compelling reason, and I see no such compelling reason in the situation that now confronts us.

In sum then, this piece of legislation that we are now considering represents a continuing intrusion of Government upon private business. It represents an intrusion upon the rights of the sovereign States which may very possibly be unconstitutional. It represents a golden opportunity for the bureaucracy to proliferate at the expense of the public. It represents a quantum leap backward in our handling of the energy problem faced by our Nation. All these disadvantages are manifest and certain. If we decide to approve this bill, we have no guarantee of any significant benefit. We do, however, have a stone cold certainty that the Government regulation "industry" will take a guaranteed jump forward in its power.

I would also suggest that any one amongst us who really believes that the regulatory efforts that are mandated by this bill will disappear in 1985 is just deluding himself. How often does a bureaucratic entity voluntarily go out of business? There is always rationalization for continuing to regulate—there are always problems that require governmental meddling. Make no mistake about it. If we vote in favor of this bill, the U.S. Government will regulate the natural gas business until the business expires or goes bankrupt.

I urge Senators to vote with me against this bill. It is a pernicious piece of legislation that offers nothing to the American public. It violates the U.S. Constitution and it expands the power of Government unnecessarily. I believe that all of us who have the interests of the Nation at heart should join together to send this bill down to defeat.

Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Will the Senator withold his suggestion?

Mr. GOLDWATER. I will.

SENATE RESOLUTION 562—TO INSTRUCT THE CONFEREES ON THE PART OF THE SENATE ON HOUSE CONCURRENT RESOLUTION 683

Mr. ROBERT C. BYRD. Mr. President, I have consulted with Mr. MUSKIE and through him, with Mr. BELLMON, and I have consulted with the minority leader.

Under the order entered yesterday, Mr. President, at 2 o'clock I will ask that the Chair lay before the Senate, Senate Resolution 562, which is a resolution to instruct the conferees on the part of the Senate on House Concurrent Resolution 683, which is the second concurrent budget resolution, and there is a time agreement on that resolution. At 2 o'clock the Senate will begin its debate on that resolution. The debate, by the agreement, will not extend beyond 3 hours and, according to Mr. MUSKIE, it should consume considerably less. It is possible that there will be a rollcall vote or votes in connection with that resolution.

I might add that upon the disposition of that resolution the Senate would automatically go back to the consideration of the conference report on natural gas pricing.

I will ask the Chair if I am correct thus far.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS UNTIL 2 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, inasmuch as no Senator seeks recognition at this point to discuss the natural gas conference report, that the Senate stand in recess until the hour of 2 p.m.

Mr. DOMENICI. Reserving the right to object. might I inquire?

Mr. ROBERT C. BYRD. Yes.

Mr. DOMENICI. As soon as we finish Senate Resolution 562, is it my understanding that we will return to the natural gas bill?

Mr. ROBERT C. BYRD. That is correct.

There being no objection, the Senate, at 1:18 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ANDERSON).

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INSTRUCTION OF SENATE CONFEREES ON HOUSE CONCURRENT RESOLUTION 683

Mr. ROBERT C. BYRD. Mr. President, under the order entered on yesterday I ask the Chair to lay before the Senate S. Res. 562.

The PRESIDING OFFICER. The Clerk will state the resolution by title.

The legislative clerk read as follows:

Calendar No. 1114, S. Res. 562, to instruct the conferees on the part of the Senate on H. Con. Res. 683.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I ask unanimous consent that the following members of the Budget Committee staff be allowed to remain on the floor during the consideration of and all votes on Senate Resolution 562:

John McEvoy, Sid Brown, Karen Williams, Van Ooms, Dan Twomey, George Merrill, Rodger Schlickeisen, Ira Tannenbaum, Liz Tankersley, Jill Scheu, Bob Sneed, Charles Flickner, Tony Carnevale, Rob Fersh, Gale Picker, Brenda Tremper, Tom Hogarty, Charles Reimenschneider, Don Campbell, Porter Wheeler, Barbara Levering, Anne Lockwood, Lewis Shuster, and Mike Shorr

Mr. MUSKIE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, the Senate-House conference on the second budget resolution is near agreement on almost all differences between the budget resolution passed by the two Houses, but the conference has deadlocked over House insistence that the budget be increased to make room for a huge new spending program.

This new House spending program would cost up to $9 billion annually.

No money is contained in the Senate-passed version of the budget resolution and the Senate conferees have refused to agree to this new addition to the deficit.

To help resolve this deadlock in the conference with the House, we are asking the Senate today to vote to instruct its conferees on the budget resolution to stand firm on the budget we passed last week and reject this multibillion dollar, multiyear addition to the deficit.

The program in question is the so-called soft public works spending program. But as this soft public works bill has been amended in the House and Senate, it has become unacceptably expensive, inflationary, and duplicative of existing programs.

The Senate should instruct its conferees not to increase the budget ceilings for this purpose.

I want to share with you my reasons for opposing this spending.

This "soft public works" program was originally proposed by the President as a way to provide private sector jobs for disadvantaged workers. The growing num-

ber of long-term unemployed young people in our cities is a serious problem. And for awhile it looked like this "soft public works" might offer some promise of relief. That is why I was for it. That is why I supported it when the budget committee considered the first budget resolution. I had expected to support authorizations and appropriations for a program that would really address the problem of structural unemployment.

However, in the past few months, the heart of the proposal has been compromised away, and it now is certain that if any bill is approved, it will bear little resemblance to the President's original proposal and provide precious little help to the unemployed.

House amendments to the President's proposal would reserve for disadvantaged workers only one-sixth of the jobs the program might create. Senate amendments to the legislation would reserve only one-fourth of the total jobs for the disadvantaged, and would finance projects in which no employment was provided for disadvantaged workers.

Whatever jobs would be created for the long-term unemployed would be produced at staggering costs.

Under one version of this legislation, Federal taxpayers would have to spend $71,000 per year for every new job going to a disadvantaged worker.

And that is the version with the lowest cost. Senate amendments would cost $175,000 a year for every disadvantaged worker, and the House amendments would cost even more.

By contrast, the CETA employment program involves costs of only $9,200 per year for every disadvantaged worker.

Mr. President, this new multibillion dollar program would largely duplicate the existing CETA program.

Under all versions of the soft public works legislation, many of the jobs for disadvantaged workers would be created in the public sector.

The administration estimates that about 25 percent of all "soft public works" jobs will be "force account" or public payroll work. So most of the jobs for disadvantaged workers may be provided in the public sector directly duplicating and competing with the existing CETA program.

The administration's original proposal would have limited the inflationary impact of new spending by focusing spending on those who would otherwise be excluded from the work force. The compromised, so-called soft public works proposals under consideration in the Congress would weaken that targeting on the disadvantaged and thus would be much more inflationary than the original proposal.

The House-passed budget resolution provides $2 billion per year for new local public works construction at a time when existing demand has already created intense inflationary pressures in the construction sector.

Mr. President, I believe that all relevant economic measures indicate that economic stimulus public works is simply not justified now. Back in 1976, when the Nation was in a severe recession, heavy public works spending did seem justified.

Municipal bond markets had been thrown into disarray by the threat of a New York City default and by uncertainty about municipal finances generally.

Unemployment in the construction industry was unusually high.

In response, the Budget Committee supported and Congress enacted appropriations of $6 billion for economic stimulus local public works at that time. I want to emphasize that nearly $2 billion of that appropriation is expected to spend out in fiscal year 1979.

The second budget resolution adopted by the Senate accommodates this spending, and thus already allows for a significant amount of stimulus in the public works area.

Mr. President, there is simply no justification for additional economic stimulus public works spending this year. Municipal borrowing is near record levels. The recovery is in its fourth year. Unemployment is down generally.

And unemployment in the construction industry is as low as any time since the 1973 construction boom.

Mr. President, I am a strong supporter of countercyclical programs. But if fiscal policy is to be responsible, these programs must not only turn on when they are needed, they must also turn off when the need passes.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. MUSKIE. Yes, I am glad to yield.

Mr. CURTIS. I thank my distinguished friend. I concur with the distinguished chairman of the Budget Committee in his objection to this particular program, and my question is more or less procedural. I do not think this program should be enacted. I commend the position of opposing it.

I am not sure what size of tax reduction is the right figure. My question is this: Is the issue before us today, to be decided in the pending matter which we will vote on, narrowed to the issue of this spending program to which we object, or does it have any direct application to the tax legislation?

Mr. MUSKIE. This relates only to the spending program.

May I add for the information of the Senator that we are at or near agreement on virtually every other item in conference, including the revenue numbers, and my prediction is that the revenue number will protect the full-year tax cut that is in the Senate resolution.

Mr. CURTIS. In other words, the issue of what figure is to be followed in tax legislation is not involved in our opposition or support of this proposed House program to which the Senator objects?

Mr. MUSKIE. The Senator is correct.

Mr. CURTIS. I thank the Senator.

The PRESIDING OFFICER (Mr. ANDERSON). The Senator's 10 minutes have expired.

Mr. MUSKIE. Two more minutes, Mr. President.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. The plain fact is that these comprised "soft public works" proposals would convert the temporary local public works program enacted to deal with the recession into a permanent multibillion dollar a year fixture in the Federal budget.

I recognize that there are strong pressures to continue emergency aid even after the emergency is over.

No one likes to see a Federal money spigot turned off once it is on.

But Congress must resist those pressures and learn to turn the spigot off as well as on.

Otherwise we can never balance the budget or control inflation.

Last week, the Senate, in a series of votes, affirmed the spending totals contained in the second budget resolution.

Those totals are designed to limit Federal spending so that we can balance the budget by 1983.

Enactment of this new compromised "soft public works" program would torpedo the careful spending plan that the budget resolution contains. It will deepen the deficit by up to $2 billion a year.

I ask that Senators reaffirm their support for the Senate budget resolution and the achievement of its plan for a balanced budget at the earliest possible date.

I ask that Senators vote in favor of our resolution to instruct the Senate conferees to stand firm against this massive addition to the deficit.

Mr. President, I reserve the remainder of my time and yield the floor to my good friend the Senator from Oklahoma for such time as he may require.

Mr. BELLMON. Mr. President, I ask unanimous consent that the following members of the Budget Committee staff be allowed to remain on the floor during the consideration and votes on Senate Resolution 562: Robert Boyd, Charles McQuillen, William Stringer, Paul Carttar, Becky Davies, Carol Cox, Robert Fulton, Barry Kinsey, and Gail Shelp.

I make the same request in behalf of the following staff members of the Committee on Environment and Public Works: John Yago, Richard Harris, Richard Greer, Jackie Schafer, Phil Cummings, Bailey Guard, Hal Brayman, Rick Herod, and Jim Range.

I request the same privilege for Karyn Mandan of Senator CRANSTON's staff and Rick Brandon of Senator CHILE's staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BELLMON. Mr. President, as our distinguished chairman, the Senator from Maine (Mr. MUSKIE), has just indicated, the Senate and House conferees on the fiscal year 1979 second budget resolution have made substantial progress. We have already reached agreement on 13 of the 19 budget functions. Unfortunately, we are now deadlocked over the issue of public works funding. The House provides, in its fiscal year 1979 budget resolution, a total of $2 billion in budget authority and $200 million in outlays for both a third round of local public works projects and for the President's proposed "soft" or "labor intensive" public works program. The Senate

budget resolution, approved by this body just over a week ago, does not include funding for either of these programs.

Congressional action to date with respect to these programs is incomplete. A House subcommittee has approved a $6 billion measure, providing $3 billion annually for 2 years. Of that total $3 billion, $1 billion would be earmarked for labor intensive projects. Our Senate Public Works Subcommittee has not yet approved funds for either measure. The Senate subcommittee does, however, plan to continue markup on the President's "soft" public works proposal sometime next week.

It is the view of the majority of the Senate conferees that the position reflected in the Senate's version of the budget in function 450 should be maintained. We ask today that the full Senate reaffirm its position. We believe, for a number of reasons, that the Senate stands on solid ground in upholding its view.

First, there is simply no economic justification for the enactment of either of these programs at this time. The construction industry is experiencing sharp increases in activity. Private housing starts are at peak levels and business construction has increased 20 percent over last year. Public construction is 22 percent higher than last year. Additional stimulus, in this sector of the economy, is both unnecessary and unwise, since inflation is threatening.

The current pace of construction activity has already had an adverse effect on the level of inflation. The construction component of the wholesale price index rose at a 10.7 percent rate during the past year, second only to food price increases. With the construction materials industry operating at capacity, additional funding of new construction activity through a new round of local public works projects would only put upward pressure on the industry, with the price increases spreading to other sectors of the economy.

We have been fortunate, to date, that the rapid rise in materials prices has not been accompanied by wage-based inflation in the construction industry. Construction wages have risen more slowly than wages in the economy as a whole. However, to the extent that targeting of the "soft" public works program has been shifted away from the long-term unemployed, it will absorb labor in what is already a tight labor market. Higher wages and added inflationary pressures are then sure to follow.

The original targeting concept of the "soft" public works program has been significantly altered by the House. The administration originally proposed that 50 percent of the jobs created be targeted on the long-term unemployed. An administration compromise measure, however, now provides that only 25 percent of the jobs be targeted on the structurally unemployed in the first year. Not only has the administration relaxed its standards for targeting the program on the long-term unemployed, it has also relaxed the original labor intensity requirement. As first proposed, labor costs were required to be 50 to 80 percent of total project costs. Now, the total labor intensity of all projects, on average, is required to be only 40 percent. Given this watered-down version of the bill, the administration's proposal now more closely resembles classical countercyclical public works. Current economic conditions do not call for, and the Senate should not endorse, such additional spending stimulus.

There is one other point I would like to clarify. Many proponents speak of this program as a jobs program for our cities. In fact, the administration insists that the dual objectives of this program are to provide job opportunities for the long-term unemployed and to improve the physical infrastructure of localities. As I have just indicated, targeting of the program on the long-term unemployed has been substantially relaxed and I can find no provision in the bill which assures that funding is targeted on urban areas suffering from physical and economic deterioration.

Another major point, Mr. President, is that we view the "soft" or "labor intensive" public works program proposed by the President to be, at best, a high-cost option for providing the long-term or structurally unemployed with jobs. Estimates as to the cost per year of employment for each long-term unemployed worker under the "soft" public works program range from $70,000 to $175,000. This compares with an average cost of $10,000 under the CETA program.

The Senate has shown itself to be sensitive to meeting the needs of the structurally unemployed through CETA. On August 24, the Senate approved S. 2570 extending the Comprehensive Employment and Training Act (CETA) for 5 years. In that bill, the Senate authorized a substantial increase in funding for programs to combat structural unemployment—emphasizing this to be one of the Senate's high priority concerns. The Senate-passed budget resolution assumes a $5 billion a year program to serve the structurally unemployed.

For those who do not know what we are talking about when we say structurally unemployed, we mean primarily the urban youth, in which group the unemployment is running at levels above 25 percent and a group which seems to benefit least when unemployment generally goes down. We feel, I think quite properly here in the Senate, that we need the structure programs aimed directly at these unemployed persons to get them prepared to take lasting jobs in the private sector or in such Government programs as are open to them.

In addition to this $5 billion, the resolution contemplates $1.5 billion for youth program (an increase of $500 million over fiscal year 1978 appropriations), and a new $400 million per year private sector employment initiative. Thus, Mr. President, $7 billion is provided for structural employment programs in CETA alone.

Do we really want to add an additional $1 billion in our fiscal year 1979 budget to fund an additional and overlapping program? I think not. Improving the targeting of CETA programs, as we have done, is a far better way than a new or expanded public works program to help the long-term unemployed, welfare recipients, and others who have no jobs for structural reasons. Using CETA, rather than an "untested" program of "soft" public works, as our primary weapon in the attack on structural unemployment is a more effective and far less expensive way of accomplishing the goal we all desire: To help people who cannot get jobs to become employable. In addition, this strategy avoids the problem of creating yet another redundant Federal program which will absorb scarce resources for activities which overlap those of CETA.

This debate with the House highlights the whole issue of federallly sponsored employment. Do we want to provide permanent, publicly funded employment (income maintenance with an employment requirement), or do we want to provide the unemployed with the skills necessary to become employed in the private sector? If we want to provide a means for the difficult-to-employ to enter the active labor force, "labor intensive" public works—in fact, construction jobs in general, including local or "hard" public works—are not the answer.

In addition, the construction industry historically is plagued by a chronic oversupply of labor. Why add additional participants to the construction trades, training them for construction jobs, and simply exchanging one category of employment for another?

During the past 3 years, the private sector has exhibited an unprecedented capacity for job creation. We have added 3.6 million new jobs in the past year; 3.2 million have been in the private sector.

Mr. President, let me repeat that. We have added 3.6 million new jobs in the past year; 3.2 million have been in the private sector. Is it not preferable to rely primarily on the private sector to employ our labor force, while relying on the CETA mechanism we have established to prepare the structually unemployed—those with chronic unemployment problems—for permanent employment in the private sector.

Lastly, Mr. President, our efforts to limit Federal spending so as to achieve a balanced budget in the near future are relevant here. When OMB Director James McIntyre testified before the Senate Budget Committee at the end of July, he called on Congress to cut $5 billion from its final fiscal year 1979 spending target. This call from the administration however, came without direction as to specific areas for possible reduction. In the second budget resolution passed by the Senate, we have cut total budget authority $11.15 billion and total outlays $9.3 billion below the first budget resolution. $5.2 billion of this spending reduction can be attributed to spending reestimates, while $4.1 billion can be attributed to actual programmatic changes from the first budget resolution.

To include money in this resolution for the startup of a new program which is duplicative of existing Federal efforts, less effective, and less efficient—to include money for a "soft" public works program—would be inconsistent with

the administration's call for a spending reduction. It would be equally inconsistent to provide a new round of funding for the local public works program—a program under which we will spend roughly $2 billion from prior year authority in fiscal year 1979, and a program initiated in 1976 to provide periodic support in a time of general economic downturn. Programs of a temporary or countercyclical nature such as this were intended to and should terminate as the economy improves.

The decision we make on these programs today will have impact on spending in future years. Even including a minimal amount for the "soft" public works program is dangerous, for then we establish a new Federal program which will generate its own constituency and momentum and ultimately become a new and potent competitor for our limited future resources.

As I indicated in my statement when the resolution was introduced last night, the Senate Budget Committee estimates the cumulative budget margin in the next 5 years for tax reductions or spending increases to be $54 billion. Are we willing to commit billions of these limited future resources to programs such as these whose economic impacts and consequences will first be felt in an economic environment not known at this time? Or, do we wish to be more prudent, keeping these programs in reserve for such time when they are needed? I hope we will make the latter choice, the one reflected in the second budget resolution we passed last week.

I strongly urge that the Senate approve the resolution now before it.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. Will the Senator yield?

Mr. MUSKIE. I understand that Senator CHILES also wants to speak. We have had two speakers on the side of the resolution. I assume the Senator from New York takes a different position. I am happy to yield time to the Senator. How much time would be like?

Mr. MOYNIHAN. If the Senator will yield 10 minutes, that will be sufficient.

Mr. MUSKIE. I would be delighted to.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I thank the Chair and I thank the chairman of the committee.

Mr. President, I rise, as the Senator from Maine has suggested, to oppose the resolution and to make, in brief compass, a few relevant statements.

The matter before us must be considered a vote of confidence on the President's urban program. It is the first we shall have in the Senate, and it comes at a moment when the President's program is clearly in great difficulty.

Mr. MUSKIE. Will the Senator yield for just a moment?

Mr. MOYNIHAN. Surely.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Thomas Dougherty of Senator GLENN's staff may have the privilege of the floor during consideration and vote on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, when the administration first came to office, it announced that it hoped to develop a comprehensive national urban policy. A committee was established in the executive branch which worked for the better part of a year and which came forward last March with an extraordinarily detailed and comprehensive program.

It would, for example, establish long-term institutions that might change the fiscal realities of city government and the economic development prospects for urban areas—the URBANK is certainly one such measure, but it would change them slowly, as is perhaps necessary for changes in the institutional arrangements of the Federal Government in this area.

The President did propose two specific and immediate measures to channel funds into urban areas in order to provide resources to city governments. The first of these was the countercyclical revenue-sharing program; it was much needed and it was clearly the first priority. Several months ago, we learned, to our great concern, that by a very narrow vote—7 to 6—this bill had been defeated in a subcommittee of the House. If there is to be any hope for this program, it must now be revived in the Senate. The Finance Committee is at work with just that purpose in mind.

In the meantime, the President's proposal to continue the CETA program, the Comprehensive Employment Training Act, has been received favorably in both houses. And the House went forward with the third of his major programs, the labor-intensive public works program, and now indicates its strong intention to support this measure. It is now for the Senate to decide whether it will join in supporting the President and the House of Representatives.

The Committee on Environment and Public Works is considering the matter in the context of a $1 billion provision made in the First Concurrent Budget Resolution. While the committee is not fully of one view on the matter, I think it is clear that if this second resolution were to provide that $1 billion, we would in fact bring the bill to the floor, adopt it and it would become law; then, at least two of the three Presidential proposals will have been adopted. This last one, however, is critical.

I should like to note that the Senator from Oklahoma, in his characteristically open, detailed and responsible way, has suggested that the CETA program is an alternative. It is not. If it were, the President would have proposed it as such. It is one of the three essential measures we must act upon in this Congress.

The third measure responds to a new development in the condition of American cities. It has come about slowly, but commences now to be very conspicuous. I speak of the physical deterioration of our cities, of what city managers refer to as the plant—the streets, the sewers, the public utilities, the amenities and the necessities of the physical city. This is in some respects an altogether new, altogether alarming trend. The cities, which have had good times and difficult times over almost all of the past century, have nonetheless always been characterized by very high levels of maintenance and construction, by attractive levels of appearance, by the provision of the infrastructure of economic activity, by the general amenities that make for successful urban living. This has begun to change. In the North and East, especially, there are more and more cities which appear to be in physical decline; it is decline of an order not known since the late 19th century, when efforts were finally begun to construct cities with an overall sense of their amenities and their economic purpose in mind. The "City Beautiful" was the term used for that movement, and, by and large, it produced its intended consequences—in Manhattan, in Chicago, in Philadelphia, and in Boston. Great urban areas emerged from it.

Now they crumble before us in the most extraordinary, unexplained, but unmistakable manner. It is the purpose of this legislation to respond to that deterioration and to do so in a manner which will provide employment in the private sector, and which will produce tangible, physical results—things you can touch, see, use. With the greatest respect to the CETA program, how many of its results are so visible after the money has been spent? This is a program to repair and restore infrastructure in cities that desperately need that kind of construction. It is a response to a new condition in American cities—a condition about which we know little except that we can readily see its extent. We have authorized by law a study of the matter and the Department of Commerce has begun an investigation into the levels of investment in the infrastructure and the public facilities of American cities.

It is probably the case that we are disinvesting in our urban areas. It is probably the case that the value, if you will, of our public facilities and structures declines, year by year. If we do not respond, we shall end up with an urban America that more resembles a disaster area than it does the great, gleaming American cities which were so much the dream of planners a century ago.

I shall not detain the Senate except to make one further point.

We are informed by the House Budget Committee that the chairman of that committee will recede from the hope of securing a much larger program. They will accept the $1 billion proposal that the Senate Committee on Environment and Public Works envisages, and which the first Senate budget resolution provided for. The House of Representatives is willing to go more than halfway with us.

I would hope that we might do the same with them.

I close by saying once again that this vote must be considered a vote of confidence on the President's program. I, for one, will certainly support it.

Mr. JAVITS. Will the Senator yield to me after yielding to Senator MUSKIE?

Mr. MOYNIHAN. I am happy to.

I believe Senator MUSKIE controls the

time. Why do I not simply yield and then Senator MUSKIE can yield to the Senator.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MUSKIE. I will cover the points the Senator has raised after other Senators have spoken.

I will yield 2 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I just want to join my colleague from New York in expressing the dilemma in which this places us. It is very real and very honest.

We are so broke in terms of money, as everybody knows, otherwise the Congress would not have helped us in New York, that we need them all. We need the soft public works, and many of them are quite uneconomical, I have to admit.

We need CETA like life itself, and we need the other programs to which Senator MOYNIHAN referred. It places us in a very grave dilemma.

The only thing I would like to point out is that as far as the cities are concerned, take CETA, for example, which is half structurally unemployed, it is true, unemployment is abating, but we still have 3 million structurally unemployed, and that is us, because it is the blacks, the poor, the new entrants, the unskilled, and so on.

So whatever happens to this motion—as to what will happen, I have little doubt—I hope very much the committee will bare those problems we have. and give very serious consideration to the case, as we try to state our case.

Mr. BELLMON. Will the Senator yield 1 minute to respond?

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BELLMON. The Senator from New York was not in the Chamber earlier when I gave figures about how much the Senate budget resolution anticipates doing in these structurally unemployed areas.

I support the Senator from New York's concern for this element of our population. But the Senate has authorized already substantial increases in funding for programs to combat structural unemployment.

The Senate-passed budget resolution assumes $5 billion a year to serve the structurally unemployed. In addition to that $5 billion, we are contemplating $1.5 billion for a youth program, and a new $400 million per year private sector employment training initiative for a total of about $7 billion targeted at the structurally unemployed.

Our concern is that this program as it is now contemplated does not really hit the structurally unemployed, and most of that goes for other purposes.

Mr. JAVITS. Honestly, the mayor of New York's analysis is that it does help us, but not as much as CETA, for the CETA allowance is fully made. But it does help us. So we are in a position where we are is such condition we have to accept, or try for, every rescue item which is thrown open as far as we are concerned.

Mr. BELLMON. I simply say, with the limited resources the Budget Committee has at its disposal, we feel those resources can be targeted more in other ways.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield myself 30 seconds, then I will yield to my good friend from Florida. Senators are making points which deserve replies. The Senator from Oklahoma has given response to one and I will cover certain points. But first, I would like to yield to other Senators who have asked for an opportunity to speak.

I yield to my good friend from Florida who has been a strong supporter in conference, then I shall yield to Senator PROXMIRE, then to Senator HOLLINGS.

How much time would the Senator from Florida like?

Mr. CHILES. Five or 7 minutes.

Mr. MUSKIE. I will yield within those time constraints to the Senator from Florida, but first, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHILES. Mr. President, I believe strongly that the Senate should pass this resolution instructing the conferees on the budget resolution to insist on not adding any additional spending authority to function 450. The Federal budget is already too large and the increases sought by the House of Representatives could cost $6 billion over the next 3 years. This would make it even more difficult to balance the budget by 1981 or 1982.

What is being proposed here is a classic example of how the Federal budget has gotten out of control by agencies being authorized to start new programs without a clear public understanding of the future costs. Last January, the President proposed spending $1 billion for so-called "soft public works" as part of his urban package. I opposed including money for this in the first budget resolution, because I believe it is a poorly designed program that duplicates existing programs run by other agencies. Events since last spring have made that spending even less attractive.

Most importantly, employment has improved more rapidly than economists were predicting and inflation has gotten worse. The President proposed that we cut $5 billion from the budget, but did not say where to do it. This new program had not generated much enthusiasm in the Senate, so the Senate Budget Committee agreed to cut out the entire $1 billion and the Senate passed the resolution as reported. There are two reasons why I think the Senate Budget Committee has made a wise decision to not provide funds for this new program.

The first is the simple economics of adding as much as $6 billion to the budget over the next 3 years. With construction booming and inflation on the rise, we do not need a program where 50 percent to 75 percent will go to currently employed persons. I believe the American people want to see us cut down on Federal spending, not increase it. Reducing inflation is the top public priority and that means cutting back on Federal spending.

The House Public Works Committee took the President's $1 billion proposal and added on a third round of the local public works funding which we provided at the depth of the recession. Their total package would be two-thirds regular public works and only one-third of the new "soft" or labor-intensive public works. We all saw the pressure before to have the Federal Government pick up the tab for local public works spending. There will not be any credibility for temporary deficit spending programs to aid employment in the future if we do not let the local public works program turn off on schedule as we see the economy improving.

There will still be about $2 billion in 1979 outlays occurring from the budget authority appropriated in 1977. If Congress drags the process on by putting out more budget authority for hard public works, it will come back to us as increased outlays of $2 or $3 billion a year by 1981 and 1982. It is just those years where we could reach a balanced budget if we exert a reasonable level of restraint on existing programs. The Senate has already gone on record for achieving a balanced budget by 1981. I am committed to balancing the budget at the earliest time it becomes economically feasible. Adding on $6 billion of new public works funding would seriously jeopardize our ability to reach that balance.

The second reason I oppose adding money to the budget for this program is that it would give the Department of Commerce money to do things we already authorize the Department of Labor to do in CETA. This would generate a whole new bureaucracy and a new constituency for continued Federal spending.

I said before that this is a classic example of how Federal spending has gotten out of control. When the urban package was put together, it was recognized that there were two particular areas where the current CETA porgram is deficient. First, there are limits on how much money can be spent for materials and equipment. Second, it has been difficult to involve private companies.

Rather than just suggesting minor modifications to CETA to meet these missions, the Department of Commerce decided it would like to get into the urban aid game, and have its own program to go along with the departments of HUD, Labor, and HEW.

The Senate has already taken care of most of the needed modifications to CETA by creating new methods of private sector involvement, and the Senate budget resolution includes money for that purpose. The tax cut bill will probably include a "targeted employment tax credit" which will provide almost $2 billion of subsidies for private companies to hire disadvantaged individuals. I think that is a more efficient way of achieving the objective of getting jobs for disadvantaged persons than a new grant program to local governments.

Mr. President, I think this is just the kind of situation that the congressional budget process was designed to prevent. In the past, we had new program authorizations brought to us one by one. Each one sounded pretty good by itself, and we had no way to see whether they duplicated existing programs or what

they added up to. The intent of the budget act is to line up programs serving similar missions and decide which ones are most effective and how much we can afford. There is a tendency to avoid the unpleasant reality that voting for new programs increases the Federal budget. Many Senators vote for an authorization and say "the appropriations committee will cut it down to size." You do not have to worry. This is just an authorizing bill."

The Appropriations Committee is then told that Congress passed the authorization and the budget resolution endorsed it, so they have to fund it. Only the budget resolution provides an opportunity to step in early in the process and say, "We cannot afford a new program."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CHILES. May I have 4 additional minutes?

Mr. MUSKIE. I yield 4 additional minutes to the Senator.

Mr. CHILES. Mr. President, I agree that providing jobs for economically disadvantaged persons is a top national priority, but I want to see it done most effectively. We are already providing over $11 billion in CETA, and I have been playing an active role in seeing that in future years most of this money gets targeted to the persons and areas who need it the most. CETA has an awful lot of problems, but we ought to either improve it or scrap it, but not start another similar program side by side in another department.

Another argument that has been made for this funding is that financially distressed cities need this money to renovate and maintain their public buildings. There are several reasons why I must reject that argument.

First, the action taken to date in the Public Works Committees on both Houses indicates that they are watering down the formulas to spread the goodies to as many cities as possible, rather than keep it targeted on the few places that are really hurting. Second, this seems like a clear case of the Federal Government stepping into what should be strictly local decisions on spending priorities. Maintenance of public buildings is a regular activity that most local governments do: Some need to do more, some do not. We have several major aid programs that would allow local governments to do this kind of activity without getting tied up in the redtape of Federal project grants. The budget resolution allows $5 billion for community development block grants, $6.9 billion for general revenue sharing, and $500 million to make a permanent replacement for the antirecessionary fiscal assistance for these same distressed cities. That is exactly a general aid program to the same cities which would receive these categorical grants.

Mr. President, another perspective the congressional budget process gives us is an opportunity to add up the level of Federal aid to State and local Governments each year. The numbers are absolutely astounding. This budget resolution will provide over $82 billion of outlays in aid to State and local governments in 1979. That represents an increase of almost $6 billion, or 7.7 percent, over 1978. It is an increase of $14 billion, or 21 percent, since 1977. What is astounding is that while we pumped up this assistance in response to the recession, we have continued to increase it without phasing down more than a tiny piece of our temporary expenditures. The result is a total increase of $33 billion, or 66 percent, since the 1975 prerecession level of $50 billion. Federal aid now accounts for 25 percent of State and local expenditures. While the people are demanding reduced budgets and smaller bureaucracy, Congress is raising taxes and pushing out more money to make up for people's unwillingness to pay more local taxes. Since inflation drives people up into higher Federal income tax brackets, Congress can achieve this by simply failing to cut taxes enough to offset inflation. That is just what the House budget conferees are proposing to do.

In conclusion, I urge my colleagues to vote for this resolution. It is not just a matter of dividing up numbers on a page between the House and Senate. It is a question of whether Congress can hold the line and resist the temptation to plunge ahead with another new spending program.

The PRESIDING OFFICER (Mr. BENTSEN). Who yields time?

Mr. MUSKIE. Mr. President, I yield 3 minutes to the Senator from Idaho, who was also a member of the conference.

Mr. McCLURE. I thank the Senator for yielding this time.

Mr. President, I wish to express my strong support for the position expressed by Senator MUSKIE and Senator BELLMON that the Senate insist upon its position and instruct its conferees to reject any additional budget authority at this time for a new program of local public works or labor intensive public works. The minority members of the Committee on Environment and Public Works, which has jurisdiction over these programs, believe unanimously that such a program should not be permitted under the budget resolution.

There are two basic reasons why such a program is not wise even at a level of $1 billion. First, the program would be clearly inflationary, and therefore not in the public interest.

Second, and as important, over $3 billion of past local public works appropriations have not yet been spent. Approximately $2 billion of this authority is scheduled to be spent in fiscal 1979.

Additional funding, sought by the House, is not in the public interest. I hope the Senate will strongly support its previous position rejecting at this time further commitment of large sums on this type of so-called jobs program.

It should be noted, Mr. President, that economic conditions are far different today from what they were when the local public works program was initiated in 1976:

Public construction is up about 15 percent in the past year.

Nonresidential construction is rising sharply.

Employment in contract construction work has risen close to 15 percent.

The economic recovery is now in its 13th quarter.

The municipal bond market is very strong with borrowing at record levels.

State and local governments, in the aggregate, have an operating surplus of $10 billion.

Construction unemployment has declined sharply in the last 2 years.

Mr. President, I believe these facts, taken in the context of the inflationary impact of additional Federal spending on local public works programs, indicate clearly the need for the Senate to support the resolution.

As a senior member of the Senate Committee on Environment and Public Works which has jurisdiction in this area, and as a member of the budget conference, I believe I understand the issues presented by the LIPW proposal and the arguments made for it. I commend Senator MUSKIE and Senator BELLMON for their active and forceful leadership on this very important and symbolic issue, and urge my colleagues to join in supporting that position.

I yield back to the Senator from Maine the remainder of my time.

Mr. MUSKIE. Mr. President, I yield 1 minute to the Senator from Florida.

Mr. STONE. I thank the distinguished floor manager.

Mr. President, I support the Muskie resolution. As a member of the save-our-bucks task force, I have joined in an effort to bring about a gradual reduction in Federal expenditures. Eliminating a duplicative program is an excellent opportunity to achieve a much needed reduction in the Federal deficit, or at least we would not add to an already excessive deficit.

The Senate has sound reasons for opposing a new $2 billion program of mainly construction projects that may provide a few jobs for disadvantaged workers. Economic conditions in the nonresidential construction industry are such that increased activity in this area is likely to be inflationary.

As for employment assistance for the disadvantaged worker, we have recently approved a multibillion-dollar CETA program that is ample in its scope, and need not be duplicated.

Fiscal responsibility demands the response embodied in this resolution.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter to me from the Governor of Florida supporting, in effect, the Muskie resolution.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF FLORIDA,
OFFICE OF GOVERNOR,
July 24, 1978.

Hon. RICHARD B. STONE,
U.S. Senator,
Washington, D.C.

DEAR DICK: After reviewing House Resolution 12993, the Labor Intensive Public Works Act (LIPWA) which Congress is considering this session, I have concluded that I cannot support the bill. I am taking this opportunity to inform you of my objections to the Act and to suggest alternatives.

Rather than create a new and cumbersome tool such as LIPWA, employment among unskilled, unemployed persons could better be stimulated by authorizing a third round of the Emergency Public Works Act of 1977 (EPWA). By giving preference to renovation projects over new construction, this existing program could be made more labor intensive. It is my understanding that the Economic Development Subcommittee of the House Public Works and Transportation Committee is seriously considering such an option, which draws on our experience with the public works program.

I realize there could be problems in this approach. Additional construction pressure might create added inflation in Florida due to rising interest rates, a spurt in construction and the stabilizing of our unemployment rate. Therefore, Round III of EPWA should begin only when a certain level of unemployment has been reached at the state and national levels.

If Congress does support LIPWA, there are a number of amendments which I believe would improve its effectiveness. A primary flaw of the bill in its present form is its lack of coordination with the Comprehensive Employment and Training Act (CETA) administered by the Department of Labor. As you know, CETA is already recruiting, training and placing persons who would also qualify for assistance under LIPWA. While CETA provides public rather than private employment and has limited impact on construction, administration and planning for the employment of essentially the same group of people should be coordinated. The following recommendations would help to integrate the efforts of both LIPWA and CETA:

Require all projects to be planned through the Prime Sponsor Advisory Council established by CETA at the state and local levels;

Require all long-term unemployed participants in the public works projects to be certified and referred by either the local prime sponsor or the state employment service, thus providing one certification point;

Require public works grantees to use the training, education and other employment services available through the CETA prime sponsor to fulfill the training requirements of their projects;

Define long-term, low-income unemployed in the same way in LIPWA as in the reauthorized CETA, thus simplifying recruitment and reducing the frustration of applicants; and

Require the Departments of Labor and Commerce to develop common planning cycles and reporting requirements for LIPWA and the public service employment sections of CETA.

I have two further recommendations for amending the present bill. In order to maximize the employment impact of the funds to be granted under the Act, a cap of ten percent for administrative costs should be included in the bill. The proposed approval process could also be streamlined by requiring the Secretary of Commerce to approve only the action plan and not each project.

One provision of the present bill which I would like to see retained is that which allows portions of a jurisdiction with over ten thousand people meeting the unemployment test to qualify for public works dollars. This will permit the improvement of areas which typically lag behind in public investment and where the target employment group would probably reside.

My staff has prepared more detailed comments on the Labor Intensive Public Works proposal and an assessment of our experience with the Emergency Public Works Act for your consideration. These will be sent to you under separate cover.

Please do not hesitate to contact me if you wish to discuss this matter further. Your careful consideration of House Resolution 12993 will certainly be appreciated.

With kind regards,

Sincerely,

REUBIN O'D. ASKEW,
Governor.

Mr. MUSKIE. Mr. President, I yield 10 minutes to the distinguished Senator from South Carolina.

Mr. HOLLINGS. I hope I can limit it to 10 minutes.

Mr. President, I go right to the Governor's letter. I obviously have not seen the Governor's letter, or the mayor's letter, but I know why.

If you are a mayor of a town, you can take CETA funds—we have found this in our Budget Committee hearings and otherwise—and employ additional firemen or additional policemen. A Governor can carry some additional personnel in his office—and there are other things—under administrative costs.

I have just come back from my home State. When Senator THURMOND was Governor, he had nine people in the Governor's office, and when I was Governor I had nine. Now there at at least 400 in the Governor's office. So we know about that kind of growth and what is being nurtured.

However, herein we have an entirely different problem, and there is no better way to describe it than as the "New York problem." I did not vote for the financial restructuring or loan guarantees for the city of New York. There is no use going into the particular facets of it. Suffice it to say that what really occurred was that I just could not see that that was a winning proposition and that New York could work itself out.

I was put to the task of seeing how you take, say, a Federal disaster area—that is what the city of New York is—and get assistance to it that will work.

I believe that the soft public works program that is advocated here by the distinguished Senator from New York (Mr. MOYNIHAN) is the answer.

I did not realize it at the time, but the truth is that I berated our friend Robert Hall, the Director of the Economic Development Administration, in our hearings before the Appropriations Committee.

I said:

Mr. Hall, that is the kind of program that you really need for the inner city. You can see the deterioration spreading like the plague through a particular area. Can't you go to the modular or peripheral areas before they, too, become slums?

We viewed President Carter looking at the city of New York last year.

I said, can you not move in there and refurbish and rebuild and stop that deterioration before it is too late?

I happened to believe that soft public works, as I view it—maybe I have the wrong concept, and I am willing to be corrected—was in essence what I saw in my own hometown.

There, earlier this year, the Economic Development Administration awarded a general grant, including five to seven projects, and I went with Mr. Hall to each one of them to see the labor-intensified nature of it and the rebuilding that was merged in. It was not hard public works where you come in and just clear the lot, get out bids on a high- or low-bid basis to some contractor and, bam, he builds another new building. It is not the mayor or the Governor approach to sending x dollars to the particular chief executive and letting him say, "I have 1,000 or 2,000 unemployed, and let me try to get them on some kind of a payroll, because I am eligible for this kind of money, either CETA or countercyclical or otherwise."

But it is a sort of merging, a productive merging, of the best elements of both.

We went to an old garage site where the garbage collectors, had no facilities whatever to use for eating in the inclement weather. It was cold at that particular time. When it rains they just stand out there in the rain.

Part of the program, was, then to clear this off and move to a better facility, releasing this particular area for public housing and bringing housing and jobs and, incidentally, that was almost totally black or minority employees there.

I went to another particular site which is an old theater in the inner city. They did not want to tear it down. But no one had the money to clean it up, and repaint it, and fix it, and make it useful. Well, we did just that. The contract was let under the provisions of EDA, and incidentally, a black contractor received it. And they did the job, and that theater was used by the Spoleto Festival of Charleston. It is getting constant use now from the community. But no one single agency could come in and take over and do the whole thing.

I went to the incinerator in the "little Mexico" section of my city. We have a landfill type burning of the garbage. That big old brick building was just an eyesore and all the windows had been broken out. It was crime and drug infested. Just like the highway patrolman has to inspect two cars per day, the incinerator is regularly raided. And any time they wanted to say "I am doing my job." They could go into that dump and pick up two or three marihuana users or some other kind of drug user. We are cleaning that up for a community building now and therein the people of the community voted for this particular renovation and rebuilding.

I could continue to go right down that list.

It was 44 percent minority-impacted upon employment—to relieve unemployment—I say to the Senator I saw it being rebuilt with my own eyes, and it is one of the best programs.

The mayors and others want to try to extend this one because it works. It is just what the mayors need. "We will not be charged with the debauchery of CETA, or with being spendthrift, or with padding public payrolls and everything else. This one is tailored," is what they are saying.

As a result, Mr. President, I supported this in the first concurrent resolution.

I think that the Senate should have emphasized this. Each Senator will never understand it because Senators are busy off somewhere else. But what we are coming back for are instructions to revoke,

if you please, what the Senate has already agreed to and what is now the first concurrent resolution, the $1 billion figure. We were trying to negotiate in conference a $500 million figure. The House of Representatives would not accept it. But it appears to me that what we really are asking then and coming back for are these instructions, and I regret the procedure to bolster and say now we have been instructed. If I were on the other side I would say, "You were instructed under the first concurrent resolution to come to at least $1 billion. Why do you not carry out that instruction?"

That crowd is busy. They are all trying, as I am now, to mark up an appropriations bill and get ready for another Interior appropriations markup, and everything else.

They just say, "Go back for some more instructions."

Why should we come as if an emergency exists and there is a new program and all of a sudden we busted the entire national budget? I think that is highly misleading.

I look back at countercyclical, for example. That was put in without any authorization. That was a good idea of my distinguished chairman. We never argued about authorization. We never bothered about how far it was going to go and grow and how large it was going to become and whether it was going to bust the budget—because our distinguished chairman understood, appreciated, and sponsored the countercyclical approach.

As strongly as he felt about that so strongly do I feel now about soft public works, particularly for the inner cities—New York, Los Angeles, Detroit. That is the way I think we can stop the blight, rebuild. and employ—all three in one.

One final word about countercyclical. The danger they tell us is that this one is going to grow and grow and never end. The contrary was true. We could have said that about countercyclical. But I have just gotten the figures. We spent $3 billion in the last 2 years, with $1.699 billion, almost $1.7 billion, last fiscal year, followed by $1.329 billion this fiscal year. And here we come out now at a level at $500 million for this program.

Senators do not have to necessarily agree in their minds as politicians and public servants that all we are wrestling with is unemployment, urban blight, and minority employment, and try to bring up everything and say it can or cannot work. I do not think we are all right or we are all wrong. We are trying to do the best we can.

Our Public Works Committee is waiting the Budget Committee signal on this one. We had it in the first concurrent resolution I saw no reason and the other Senators there saw no reason why we could not go to the $1 billion figure.

Let me be absolutely fair to our distinguished chairman. No one worked harder and has done a more magnificent job to save our national budget. It is a thankless task. He is in there day in and day out and he is working hard around the clock night in and night out. So I respect him, and I suggested to Senator MUSKIE, "Mr. Chairman, vote me down. I have been in the minority before. But let us take a vote and move on."

But I think to come back to what we need instructions on is not to bust the budget. We have that instruction from proposition 13, from every taxpayer, and what have you.

I feel it. I have realized it. I did not wait for it. I happened to bring about a balanced budget as Governor of my State for the first time in its history, and I yield to no man in trying to cut unnecessary costs.

This particular second concurrent resolution represents a 2-percent cut. We took President Carter's budget, I say to the Senator from Wisconsin, and cut $10 billion off of that $60 billion deficit down to $50.1 billion. We are cutting now another $7.7 billion, almost $8 billion out of it. That represents a 2-percent cut. We are trying to cut, but what we see here is a group within the Budget Committee.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HOLLINGS. Mr. President, will the Senator yield me an additional minute and then I will conclude in just a minute.

Mr. MUSKIE. Mr. President, I yield to the Senator 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. HOLLINGS. All right. What we see here are good Senators, leading Senators within that Budget Committee who felt that the best way to strengthen their hand on their very genuine belief that this was a budget buster was to get instructions from the Senate, and I resisted. I think it is wrong. I think the program actually is what the doctor ordered for the inner city. I could not vote for loan guarantees, but I would support to the hilt a program that I have seen working with my own eyes, that I know can really take care of that urban blight in the inner cities. You cannot go down into downtown New York and start clearing off blocks. You cannot just herd up people and give them a payroll. You have to get the two together and give something meaningful to the taxpayer and to that worker for his dignity and his credibility and his belief in himself.

I think this does it, and it should not be painted now as a budget buster.

I thank the distinguished Senator from Maine.

Mr. MUSKIE. Mr. President, I yield myself 2 minutes just for a brief response to the distinguished Senator from South Carolina.

First, our latest mandate from the Senate is not the first concurrent resolution but the second. The second concurrent resolution provided nothing for this purpose, and that was a very deliberate action taken in the Senate Budget Committee. Those who support this public works program considered making a floor amendment to increase the Senate resolution ceilings to accommodate the program. They considered such an amendment and backed off after sounding out opinion in the Senate. So our mandate in the second budget resolution is to provide no money for this proposal.

Second, no one is arguing that this so-called soft public work program will bust the budget this year. We are now about the task of trying to fashion a budget. Our task is to form a budget that responds to the economic conditions, that responds to the country's needs and that the Nation can live with. We are trying to make decisions while looking ahead to the future impact of what we do.

The outlays from this kind of a program will not impact this fiscal year very much, as the Senator knows. What we are learning in the Budget Committee is we have to be concerned about budget authority, which adds to deficits in future years. So new programs have to be considered in light of their future impacts.

The original "soft public works" proposal of the President was intended to be a new kind of program that would have limited inflationary impact. However, it is being converted in the House and Senate committees from this new program to just an extension of the old hard local public works program which was enacted to stimulate the construction industry during a very deep recession. And it is being proposed in a highly inflated construction environment.

I have been for the soft public works approach—but what the House Public Works Committee is putting together is not that, and it is clearly not that. If we were talking about the President's real urban initiative, as originally proposed, you know my comments and my position would be entirely different.

This House program is defended in the name of the President's proposal. He proposed $1 billion. The House is proposing $2 billion a year. He proposed a distinctively soft public works program. The House is coming up with another round of hard public works. So, what the House is asking us to endorse and what the House is insisting upon is twice what the President asked for, a program that is less than half as well-targeted on the central cities and on the disadvantaged, low-skilled unemployed. The House would budget for a program that is targeted instead on that sector of the economy—construction industry—which is experiencing record high levels of employment, very low levels of unemployment, material shortages, and escalating prices for materials. This is where the House wants to focus this money. That is a different proposition from what the President advanced to us.

I argued for the President's program in the first concurrent resolution and managed to persuade a bare majority of the Senate Budget Committee to support me. We came to the Senate floor with it and we got it, and I argued for it in the conference on the first concurrent resolution and it was supported.

Third, with respect to what has been offered in the conference. In the current conference, there has been no offer by either side in this field because we were so far apart we thought before we froze conferees on either side into a fixed position we would explore on an informal basis for a possible agreement.

I was able to persuade the Senate conferees—very reluctant Senate conferees, I may add—that if the House would ac-

cept the number that we offered the House, in the revenue function, and middle-income tuition assistance, together with other concessions in other functions that the Senate conferees could suggest as a possible basis for agreement an offer on either side as much as $500 million.

But the House rejected that and came back instead and insisted on the full amount that the President originally asked for, without yielding a penny on that. Then Senators who had been persuaded to consider my proposal backed off and said they were sorry that they had agreed to offer the $500 million.

So I was back at zero at that point with the Senate conferees, back at zero without any support for anything. That is why I finally decided that what divided the House and Senate conferees was not a question of dollars which, as the Senator knows, you can often just split down the middle, but what really separated us was a differing view as to the wisdom of embarking upon this new expansion of public works programs at this time, given the condition of the economy, given the problem of inflation, which is of particular concern in the construction industry. A clear majority of the Senate conferees believed deeply that the budget totals should not be increased for this activity, while the House conferees believed just as honestly, just as deeply, in their position. So I decided the way to handle the issue was to come back, let the Senate debate it, and then we would know what the Senate, as a whole, feels about this specific issue and see where that takes us.

That is all that is behind the strategy. Senator BELLMON and I and Senator MCCLURE, and I know the Senator from South Carolina, will accept the will of the Senate, whatever it may prove to be.

I had promised to yield to my good friend from Wisconsin who has been patiently waiting. Could we engage in whatever dialog the Senator from New York is interested in at a later time?

Mr. MOYNIHAN. Mr. President, I saw the Senator from Wisconsin rise, and I would be glad to yield to him.

Mr. PROXMIRE. This probably pursues the speech of the Senator from South Carolina.

The PRESIDING OFFICER. The Senator's time has expired. I take it he is speaking on his own time.

Mr. MUSKIE. I will be glad to yield 3 minutes to the distinguished Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise, first, to thank the Senator from South Carolina for his eloquent and important statement in support of this proposal. He speaks with experience and with a shared concern that is beyond any regionalism or parochialism that might animate us.

I would like to say in public what I have said to my friends, the managers, in private—that if these are measures that are only appropriate in times of economic downturn, we are not far from needing such measures now, as we enter the 13th quarter of economic expansion as the dollar collapses further.

Finally, Mr. President, I ask unanimous consent to have printed in the RECORD a very carefully stated letter from our distinguished and much admired Secretary of Commerce, Dr. Juanita Kreps, explaining the President's proposal and asking that the measure of the Senator from Maine and the Senator from Oklahoma not be supported today.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF COMMERCE,
Washington, D.C., September 14, 1978.

DEAR SENATOR: The President's Labor Intensive Public Works (LIPW) legislation is a major part of the Administration's Urban Policy package. Cities and towns throughout the country continue to face serious problems in the deterioration of their public infrastructure. The demands for operating expenses on the municipal budgets have depleted resources necessary for the repair and renovation of public facilities. In addition, the problem of structural unemployment particularly among our youth and minorities in the country remains at unacceptably high levels despite the overall decline in the national unemployment rate.

The President's LIPW bill is directly targeted to provide private sector jobs to the long-term unemployed and will assist local governments to improve their deteriorating capital stock. The Administration supports $1 billion per year for two years. Enclosed is a fact sheet further explaining the provisions of this important legislation.

As you know, the House and Senate Budget conferees have been unable to reach an agreement on new spending for the President's Labor Intensive Public Works Program. The House Second Budget Resolution provides a total $2 billion for public works spending, of which $1 billion is earmarked for the President's LIPW. The Senate Resolution contains no funding for the President's LIPW Program, although the First Resolution contained the $1 billion requested by the President.

This afternoon, the Chairman of the Senate Budget Committee will offer a Resolution requesting the Senate to instruct the Senate conferees on new spending for the President's Labor Intensive Public Works Program. We urge you not to support S. Res. 562, which would insist on the Senate Budget Committee position opposing any funding for the LIPW Program. We believe it is appropriate for the House and Senate conferees to reach a compromise agreement to fund the President's LIPW Program and suggest the $1 billion authority for FY 1979.

Sincerely,

JUANITA M. KREPS.

EXPLANATION OF THE PROPOSED LABOR INTENSIVE PUBLIC WORKS PROGRAM

PURPOSE

The establishment of a labor intensive public works program is being proposed in order to meet two pressing needs faced by communities throughout the country. (1) Many cities and towns throughout the country have insufficient resources to repair their deteriorating public infrastructure. Such repairs are postponed to meet more immediate operating demands and further deterioration of the public facilities occurs. (2) The problem of structural unemployment persists even though the overall national unemployment rate is declining. The unemployment rate among the long-term disadvantaged, unemployed, including many youths and minorities, remains high.

Public works programs have been successfully used to promote long-term economic development activities and to stimulate the economy in a recessionary period. A labor intensive program is being proposed to demonstrate that public works activities can be structured to provide private sector jobs for the long-term, disadvantaged unemployed as well as to assist communities in renovating their public facilities.

PROGRAM DESIGN

It is proposed that $1 billion be authorized for each of the two years. The program funds would be allocated first to States and then to those economically distressed areas within each State based on their relative unemployment problems. Funds will be available to finance projects of the State governments, counties, local governments, and school districts.

Public works projects will be funded, with 100 percent Federal financing, in each eligible area up to that area's allocation. The grant can be used to provide and rehabilitate a variety of public facilities including those which will conserve energy, increase accessibility to the physically handcapped, preserve historic structures, and enhance public services.

To assure that the long-term unemployed are assisted by the program, certain requirements will apply to the projects carried out by each area. The requirement for the first year of the program will be less stringent than those for the second to allow for an increase in the program's targeting capacity. Further, the requirements for rural areas will be less stringent than those for urban areas since the latter will have more existing systems available to meet the requirements. The major goals are (a) that there be a minimum average labor-intensity for an area's projects to ensure that a significant number of jobs are created; (b) that a minimum average percentage of the jobs be filled by the long-term unemployed; and (c) that an appropriate portion of each area's funds be expended through minority business enterprises to foster minority-owned businesses.

Mr. MOYNIHAN. Once again, Mr. President, I thank the Senator from Maine for his courtesy and also the Senator from Oklahoma.

Mr. PROXMIRE. Mr. President, will the Senator from Oklahoma yield me some time, yield me 20 minutes?

Mr. BELLMON. I yield 20 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for how long?

Mr. BELLMON. Twenty minutes.

Mr. PROXMIRE. Mr. President, just 40 minutes ago the Appropriations Committee acted favorably on the New York City fiscal guarantee, the $1.6 billion guarantee that had passed the House and Senate a few weeks ago. Twenty minutes ago I took it to the desk, and I understand the leader will be able to motion it up when he can next week as soon as time is available for it.

I think we should recognize this was an extraordinary action, unprecedented, the only time the Federal Government has ever done this for any city under any circumstances anywhere except, of course, when we helped New York in 1975.

I think we should take that into consideration in this context. Mr. President, I want to come back to that a little later in my statement.

First, I want to say how strongly I support the position of the Senator from Maine and the Senator from Oklahoma in the resolution they have introduced to instruct the conference to stand firm

against adding $2 billion in public works and in new construction in the resolution.

In my view that stand does not go far enough. At this time public works should be cut far, far more. Mr. President, this country faces rising, galloping, endemic inflation. It is a period in which we should be cutting budgets, not adding to them.

WE SHOULD CUT DEEPER

The answer to 7 to 8 percent inflation, to huge budget deficits, and to rising interest rates is to add fuel to the fires by pouring out more money for questionable projects in an untimely fashion. We should be cutting even deeper.

To add $2 billion now for public works of any kind—soft, hard, or intermediate—is wrong. It would show we have learned nothing about economics, the budget process, or inflation if we did so.

In the 1930's we were at the bottom of a depression. Tens of millions of people were unemployed. Prices were dropping, not rising. In such a period additional public works projects can be supported and should be supported if they are labor intensive and are built where the unemployed live. Further, there is no danger in such a period the economy can be harmed by fueling inflation.

UPSIDE-DOWN POLICY

But to propose at this time that we add public works projects to the budget, is an upside-down, wrong-headed if not idiotic policy. Here is why.

First, we should be cutting the budget, not adding to it. Cutting the budget is virtually the only antiinflation weapon we have left. What else is there? No one wants wage and price controls. Tax incentives to business and labor to keep wages and prices in line are extremely complicated and would take too long to get passed. Monetary policy is limited in what it can do.

What we should be doing is cutting the Federal budget, not by a mere $2 billion but by 5 to 10 percent. Adding to it is the height of folly.

We just had before the committee the new appointee to the Federal Reserve Board, Nancy Teeters, a superb economist, who testified yesterday that the Federal Reserve Board is now severely limited in what it can do to fight inflation. Generally, their function is confined to limiting credit by increasing interest rates, but she testified that if the interest rates go up another half percent, the result on the national economy could be devastating.

But the worst of all worlds is to add public works projects at a time like this, and especially projects which have a phenomenal cost per job, $71,000 to $175,000 a year as the Senators from Maine and Oklahoma point out.

Finally, we should be cutting out many of the public works projects we have already approved in the Senate.

BENEFIT-COST RATIO EXAGGERATED

There is something called the benefit-cost ratio. The Army Engineers tell us what the costs of a project are and what the benefits are, and if they are at least 1 to 1, it is said to be a favorable cost-benefit ratio.

But that is not really true. Historically, the costs of most projects double from the time they are authorized until they are built.

Further, historically, the benefits are inflated. Everything but the kitchen sink is thrown in as an alleged benefit.

So while costs are underestimated, the benefits are exaggerated. In the view of many economists, for a project to break even the cost-benefit ratio must be at least 2 to 1 and 3 to 1 is really more like it.

DISCOUNT RATE TOO LOW

Further, historically, the Government has always used a discount rate which is far too low. The discount rate is nothing more than applying to the money taken from the private sector and used in the public sector. The rate of return it should get to equal the disadvantages of taking it out of the private sector and using it in the public sector.

Obviously, when money can earn 12 percent—and now the average return is about 15 percent before taxes, and that is a fair comparison—or if money can earn at least 8 percent if loaned out privately, the Government is acting in a wholly uneconomic way if it takes money from the private sector which could earn 8 to 15 percent and spends it in the public sector where its real return is only a fraction of that.

That is a misapplication of resources, Mr. President, and an obvious misuse of the taxpayers' money, as any responsible economist will tell you.

But that is what we do in the public works sector. The present discount rate is only 6 and three-eighths. And when that is applied to only half the funds, because project costs usually double, one can see how inefficient public works projects can be.

Therefore, because the cost-benefit ratio of most public works projects is greatly exaggerated and because the discount rate applied to public works projects is far too low, spending taxpayers money on public works projects is one of the stupidest and most uneconomic and wasteful things that can be done.

Yet the public works bills, year by year, are weighed down with wasteful projects.

Their benefit-cost ratios are too low. They are built in the wrong places. They are not labor intensive. Leaving the money with the taxpayers in the private sector would provide more jobs, more economic stimulus, and more economic sense than spending it for public works.

For all these reasons we should be cutting back on public works spending not adding to it.

I not only support the Senators from Maine and Oklahoma, but I say dig in, hold firm, fight them in the trenches, and never say die.

And my further word is that after you win this battle come back to the Senate and cut several billions more from the public works projects, because they are wasteful, uneconomic, and unjustified.

A TEST OF GOVERNMENT

The test of Government is whether it can act in intelligent and constructive ways. Here is one area of economics where the facts are clear, the situation is fraught with danger, prices are rising, and the path we should follow is in no doubt.

We should cut spending and cut it hard.

In the face of the obvious, there is only one answer. We should support the Senate Budget Committee. After we do that, we should then cut much harder.

EXAMPLES

In support of my general statement I want to site a couple of specific examples of recent projects which we in the Senate have approved, to show why this is such a complete disaster.

Take the Savery-Pot Hook Bureau of Reclamation project in Colorado. This consists of two dams and conveyance systems to supply irrigation water on the Little Snake River. The remaining costs and benefits at the current rate of 6⅜ percent would be four-tenths—in other words, it is less than half of the unity average. I consider this much too low a discount factor; the costs exceed the benefits by better than 2 to 1. The estimated total Federal cost is $75.8 million, and the amount allocated to date is $4.1 million, so it is one we could walk away from and be much better off.

The project as planned will benefit only 106 existing farms, at an average irrigation cost per farm of almost $700,000.

High dissolved salt concentrations in project return flows would increase existing water quality problems downstream in the Colorado River.

Proect lands are at 6,500 feet altitude, and thus have a short growing season. As they say, it is like growing bananas on Pike's Peak; sure, you can do it if you provide all the necessary facilities at a phenomental cost, but it is totally unjustified.

Approximately 20,100 acres of wildlife habitat would be modified or eliminated, affecting deer, elk, antelope, and sage grouse. While these losses are substantially mitigated by development of additional habitat, significant losses in sage grouse and antelope population would occur.

Then this one further project, Mr. President, by way of example: The Fruitland Mesa, a Bureau of Reclamation project in Colorado.

This is the Soap Park Dam and conveyance system to provide irrigation to 11,940 acres of dry-farmed land and supplemental irrigation to 6,310 acres.

The remaining costs and benefits at the current rate, three-tenths. What that means is that even using the discount factor of 6⅜ percent, the costs will exceed the benefits by more than 3 to 1.

The estimated Federal cost is about $88 million. Allocated to date is only $5 million. Today we can walk away from it without losing anything like what we would lose by not walking away from it.

The irrigation investment per acre is very high. We are spending $4,600 per acre. I do not think you could find any place in the country where you would spend $4,600 per acre for agricultural land. In my State, prime agricultural land is selling for less than half that. It is a backward investment; to spend this

additional amount is absolutely wrong. The project area is farmed or ranched by only 69 landowners. This amounts to an irrigation investment per landowner of $1.2 million. By definition, these landowners are millionaires, or on an average they are millionares, and for us to subsidize them under the circumstances would be ridiculous. The project would convert 12,000 acres of rangeland to irrigated cropland, inundate 584 acres of land, and destroy 4½ miles of good fishing streams; and there are other objections to it.

DAMS, JOBS, AND UNEMPLOYMENT

Studies at the University of Illinois Center for Advanced Computation show that spending money on Army Corps of Engineers water projects actually creates fewer jobs per dollar than almost any other Federal program. If more money were shifted from dam building to mass transit, waste treatment plan construction, national health insurance, or social security programs, to name a few, many more jobs would be created.

Spending on water project construction results in a decrease in jobs nationwide in the sense that more jobs would be created by not taxing people for these projects and just letting them spend the money as they desire.

What this means is that money spent on water projects aggravates the unemployment situation across the country. And I say it aggravates it in New York City, to return to my initial point. New York City is in dire straits. They do have massive unemployment, and while they would get $125 million, clearly, from this bill, and additional sums, I am sure, even with the most optimistic assumptions I think it is doubtful that they would get $200 million.

I say frankly to the Senator that if I were in his shoes, representing New York City, I would be fighting hard against this bill on the ground that my State would be better off if the Budget Committee were sustained and the $2 billion were not spent. We will be taking more money out of New York than would go back into New York.

We have just acted on the New York City loan guarantee, and will soon act on a fiscal relief bill. To take this kind of action in the face of that, at the cost of all taxpayers of the country, I think is absolutely inexcusable.

Mr. MOYNIHAN. Mr. President, will the Senator from Maine yield me 2 minutes to respond to my good friend the Senator from Wisconsin?

Mr. MUSKIE. I yield the Senator 2 minutes.

Mr. MOYNIHAN. I understand that the vote in the appropriations subcommittee on the New York City loan guarantee was 8 to 6.

It does somewhat remind me of the get well card that was approved by the Board of Directors by an 8-to-6 vote. I would think that comes out. "I like New York," more than otherwise. I remind the Senator that the guarantee was necessary, but that it does not provide a nickel to the city of New York—not one nickel. It is true that we use that money, but we must also provide money to the Treasury, in return, as well as the extra moneys the interest rate requires.

I grant that the rather unimpressive programs which the Senator described have cost-benefit ratios which are appalling, but I remind him that none of them are in New York City, or, for that matter, within 2,000 miles of New York City.

Mr. PROXMIRE. But they are public works.

Mr. MOYNIHAN. Yes. But year after year those public works appropriations have come to the floor and we have voted for them—$4,000 an acre, $1 million a ranch. Now our time has come and we ask for such appropriations and it turn out to be too late.

Mr. PROXMIRE. If the Senator will permit me to respond——

Mr. MOYNIHAN. Explain that 8-to-6 vote.

Mr. PROXMIRE. Well, the 8-to-6 vote was just a matter of not having all members there. As the Senator will recall, the vote in the Senate itself was something like 2 to 1 in favor of New York. I am sure if all members had been present it would have been about the same in the Appropriations Committee.

The point is that the Senator from New York, both Senators from New York, worked so hard to get that fiscal relief bill. They wanted it, they needed it, we gave it to them. They said this is what they needed. They said:

> Give us this and we will not be back. This is all we need at the time. Give us this and we will not be back to ask you for more.

We want to take New York up on that.

In this particular public works bill, we feel, as I tried to document, that the Senator is worse off by going into the $2 billion than he would be if he supported Senator MUSKIE.

Mr. MOYNIHAN. The Senator from New York would very much like to confirm that it is his view that New York, for example, and any State, for that matter, must ask, "What do we contribute in taxes as compared to what we receive in return? What is the effect on the local economy?" I agree with the Senator and I hope to pursue that topic.

I would like to make the further point that this is not a measure such for New York City or for any one city, but instead it is an essential feature of the President's overall urban program. I rose to defend it and to say that ours is a vote of confidence on the President's program. I happen to come from New York, but I am aware of the national purpose embodied in the President's program. I am not overly hopeful about the outcome, but it would have been irresponsible if we had failed to make our point as persuasively as we could. I understand the depth, the conviction, of the opposing viewpoints, and I certainly do not want to disassociate myself from anything the Senator from Wisconsin has said about the benefit-cost ratios in these matters. Not to attend to them is to fritter away our responsibility and our reputation.

Mr. MUSKIE. Mr. President, I would like to comment on this and then I will yield to my good friend, the chairman of the Environment and Public Works Committee. I want to comment about this vote being a vote of confidence on the President's program.

The $2 billion in the House budget resolution bears almost no resemblance to the President's urban message. In the first place, we should remember that the President first rejected public works as part of his urban initiative. He restored it at $1 billion only after he was assured that the public works would be targeted on the unskilled, long-term unemployed.

What we have in the House budget resolution, which is intended to reflect the work of the House Public Works Committee, is a $2 billion-a-year program. It would be spending at the same level that we funded public works during the recent severe recession. It is hard public works. It is not targeted toward the unskilled long-term unemployed, and it would admit projects with labor intensity of at little as 10 percent. So it is not the President's program although it is being marketed in his name and, I understand, being lobbied in his name in the corridors today. That is all right. Presidents, I guess, as practical politicians, have to accept even pale shadows of what they ask for in the name of what they originally requested.

From my point of view, I know that what is in the House budget resolution is only a pale shadow of what the President requested, and it is a shadow that comes at twice the price.

Mr. PERCY. Will the Senator yield for a brief question?

Mr. MUSKIE. I yield.

Mr. PERCY. I fully support both the chairman of the Budget Committee and the ranking Republican member. Does the Senator know how soon we will vote?

Mr. MUSKIE. I have an idea we may vote before 4 o'clock unless there is a sudden eruption of oratory.

Mr. PERCY. The Senator from Illinois would have to leave the floor soon to catch a plane.

Mr. MUSKIE. Does the Senator from West Virginia wish to make a brief 2-minute statement?

Mr. RANDOLPH. It will take a little longer.

Mr. MOYNIHAN. Will the Senator yield 30 seconds?

Mr. MUSKIE. I yield.

Mr. MOYNIHAN. I would like to say it is quite true, as the Senator has stated, that the President's program has been modified. But it remains the President's program. I have been in communication with the President's aide in the White House and in the Cabinet on this matter. I would like it to be clear that the administration has fought for this program and has not abandoned it, even though we may not succeed in obtaining it at this time.

Mr. MUSKIE. I just would remind the Senator that I continually read stories about the administration's new veto policy to eliminate excessive congressional spending. At the President's request we have been trying to cut $5 billion more than he did in his midsession review budget. This is part of it. The President cannot have it both ways. That is my whole point.

I am happy to yield to the distinguished chairman of the Environment and Public Works Committee such time as he may wish.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. RANDOLPH. I thank the Senator for yielding.

Mr. President, the Senate is being asked to instruct conferees from the Budget Committee on an item for which authorization is pending in the Committee on Environment and Public Works. I understand the desire of the conferees to obtain an expression by the Senate on this issue. The question of funding for the proposed labor intensive public works program is a major impediment to the completion of the conference.

I commend the Senator from Maine (Mr. MUSKIE), chairman of the Senate Budget Committee, for his desire to keep Federal spending within reasonable limits. Under his leadership, the Budget Committee has not approached its task with a single minded, meat-ax approach of indiscriminately cutting program levels. The committee has attempted to assign priorities so that adequate support is given to worthwhile programs while funding is reduced for activities for lesser importance.

I was joined with Senator MUSKIE and the Budget Committee last week, in voting for a budget resolution that would substantially reduce the Federal deficit during the next fiscal year.

On the matter before us, however, I shall vote not to instruct the conferees to retain the Senate position of no funding for the labor intensive public works program. I will do so for several reasons.

To become adamant on this position would increase the difficulty of the task faced by the conferees. I believe that members of the conference committee must have the latitude to reach an agreement. This is particularly important at this late period in the congressional session. I do not advocate that the Senate should accept the level of $2 billion proposed by the House. A realistic compromise is possible.

Nor do I intend to indicate that I believe the authorization legislation now pending in both the House and Senate is properly drawn. I have serious reservations, in fact, about the thrust of the proposals before us. I have long believed that strong Federal presence in public works activities is essential to the continued growth and development of our country.

I think the Senator from Wisconsin (Mr. PROXMIRE) is absolutely wrong on public works. He votes against public works programs and projects of whatever size and kind. Yet, he is always interested—and I would say this if he were here—in having certain public works projects in Wisconsin.

I remember when the Appalachian Regional Development Act was before us in 1965. My dear friend, Senator Willis Robertson of Virginia, was voting and speaking against it. I went to him and said: "You are a native of Virginia, and you know Virginia and West Virginia are in the Appalachian region of 13 States. It is a position you should not take."

He said he felt very keenly about it.

The legislation passed and was signed into law. I had a telephone call from Senator Willis Robertson, and he said, "Jennings, I have just the project in Virginia that fits into the Appalachian program."

I said, "Willis, you spoke against it."

He said, "Yes, but it is now the law."

I hope the Senator from Wisconsin would not get upset, if he were on the floor, as I would speak on that as a corollary.

Public works programs have a demonstrated record of value in stimulating recovery from periods of economic stagnation—depression, recession, what not. In the past 2 years, Congress twice enacted the local public works program. This effort channeled $6 billion into the economy, money which is creating thousands of jobs and helping to provide needed public facilities.

The chairman of the Budget Committee (Mr. MUSKIE) and the ranking minority member (Mr. BELLMON) have circulated to Members of the Senate a letter which contained interesting information on the labor intensive public works proposals. I studied them with great care. Their assertions provide us with further reasons for carefully considering the authorization legislation in the Committee on Environment and Public Works, of which Senator MUSKIE is the ranking Democratic member. I believe that that forum is the place where a program must be devised that is truly responsive to current national needs. Further, we must be careful not to establish a new program that is similar or duplicative of ongoing activities. The Comprehensive Employment Training Act (CETA) or activities of the Economic Development Administration could be the proper vehicles for carrying out some of the purposes of the proposed labor intensive public works program. We cannot make these decisions nor can we address similar public works needs if there is no budget authority for the fiscal year.

I repeat that these decisions must be made in the authorizing committee not through the process proposed here today.

Mr. President, our Subcommittee on Regional and Community Development chaired by the able Senator (Mr. BURDICK), is scheduled to meet September 19 on the labor intensive public works program.

The articulate Senator from New York (Mr. MOYNIHAN) has participated in earlier discussions of this program as a member of our committee, and he has been very helpful. I hope that the Senate will permit the conferees on the budget resolution to return to their work and reach a compromise with the House on a funding level for this activity. The authorizing committees must have the ability to determine if there will be a labor intensive public works program and, if so, what form it should take. Adoption of the pending resolution would tie our hands now and complicate our task even if we decide to postpone action until the next session of Congress.

Mr. President, for these reasons I have stated, I will vote against the resolution to instruct the conferees to insist on the Senate position.

Mr. MOYNIHAN. Well said, sir.

Mr. RANDOLPH. I thank the Chair.

Mr. BURDICK. Mr. President, will the Senator yield?

Mr. MUSKIE. How much time does the Senator want?

Mr. BURDICK. Three minutes.

Mr. MUSKIE. I yield 3 minutes to the Senator from North Dakota.

Mr. BURDICK. Mr. President, I rise in support of the President on this vote. He has proposed the so-called "soft" public works bill now before the Environment and Public Works Committee.

I do not believe it duplicates other programs. I do not believe it is inflationary, since its unique thrust is to put idle hands to work.

The bill is targeted to a very specific group, the longterm unemployed, whether in cities or rural areas.

It is said that the Senate Environment and Public Works Committee is turning the labor intensive proposal into a modified version of the LPW programs of 1976 and 1977.

As chairman of the Subcommittee on Regional and Community Development of the Committee on Environment and Public Works, I want to report that we have not yet marked up the bill. Until the subcommittee and the full committee acts, no one can say that we have altered the administration's bill.

There are pending proposals before the subcommittee that do relax the labor intensity requirements the first year, primarily in the rural areas of the Nation.

But the subcommittee has not acted on these proposals. I think it is therefore, premature to say what the authorizing committee will recommend.

I would say, Mr. President, that this debate should be instructive to us on the authorizing committee, should we decide to move ahead with S. 3186, the labor intensive public works bill proposed by the President as part of his urban program.

I believe the second budget resolution shoud contain $1 billion for this program. We can then report the bill. If the Senate does not like the bill it can either amend it or vote it down.

I, therefore, suggest to my colleagues that a vote against this resolution gives the Senate future options. I shall vote "no".

Mr. MUSKIE. Mr. President, lest the Senate entertain the illusion that this is the only jobs-creating provision in the two budget resolutions, I should like to read off a list of amounts that are available in the budget resolution which have job-creating implications. It is a rather long list:

CETA at $10 billion; countercyclical revenue sharing at $500 million; a subtotal of $10.5 billion. Then there is direct State and local aid, which, by and large, results in employment: Revenue sharing, $7 billion; community development block grants, $4 billion, for a subtotal of $11 billion.

EPA construction grants, $4.5 billion; Corps of Engineers and Bureau of Recla-

mation public works programs, $2.5 billion; highway construction, $9 billion; mass transit construction, $1.8 billion; military construction $2 billion.

That is a total, Mr. President, of $40.3 billion—$40.3 billion which distributes job-creating potential across this country from coast to coast, border to border, and in every State. That is an enormous infusion of Federal dollars to create and support the construction industry and other kinds of public jobs.

The distinguished Senator from South Carolina earlier made the point that this particular program is focused on soft public works and that that is needed by cities. He cited, as an example of a similar program that was helpful in this respect, countercyclical. But countercyclical, Mr. President, turns on at the depth of a recession and turns off as we pull out of it. These public works programs, as a practical matter, do not.

The House proposes $6 billion in 3 years, which is as much as the $6 billion we provided in the 4 years of the depth of the depression. In other words, the proponents of public works seem intent on making this level of public works spending a permanent feature of our Federal budget. It is to that which Senator BELLMON and I have objected.

Mr. President, unless there are other requests for speeches, I am prepared to yield back the remainder of my time and go to a vote.

Mr. BELLMON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SPARKMAN (after having voted in the affirmative). On this vote I have a live pair with the Senator from New Jersey (Mr. WILLIAMS). If he were present he would vote "no." I have already voted "aye." I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Iowa (Mr. CLARK), the Senator from Iowa (Mr. CULVER), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from South Dakota (Mr. MCGOVERN) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Michigan (Mr. GRIFFIN), the Senator from North Carolina (Mr. HELMS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also annouce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

I further announce that, if present and voting, the Senator from Vermont (Mr. STAFFORD) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 63, nays 21, as follows:

[Rollcall Vote No. 377 Leg.]

YEAS—63

Anderson	Garn	Muskie
Bartlett	Glenn	Nelson
Bayh	Goldwater	Nunn
Bellmon	Hansen	Packwood
Biden	Hart	Pearson
Bumpers	Hatch	Pell
Byrd, Harry F., Jr.	Hatfield, Mark O.	Percy
Byrd, Robert C.	Hatfield, Paul G.	Proxmire
Cannon	Hayakawa	Riegle
Chafee	Huddleston	Roth
Chiles	Inouye	Sasser
Church	Laxalt	Schmitt
Curtis	Leahy	Schweiker
Danforth	Long	Scott
DeConcini	Lugar	Stennis
Dole	Matsunaga	Stevens
Domenici	McClure	Stone
Durkin	McIntyre	Tower
Eagleton	Melcher	Wallop
Eastland	Morgan	Weicker
Ford		Young
		Zorinsky

NAYS—21

Abourezk	Hodges	Metzenbaum
Bentsen	Hollings	Moynihan
Burdick	Jackson	Randolph
Case	Javits	Ribicoff
Cranston	Kennedy	Sarbanes
Gravel	Magnuson	Stevenson
Heinz	Mathias	Talmadge

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Sparkman, for.

NOT VOTING—15

Allen	Griffin	Johnston
Baker	Haskell	McGovern
Brooke	Hathaway	Stafford
Clark	Helms	Thurmond
Culver	Humphrey	Williams

So the resolution (S. Res. 562) was agreed to.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, the preamble is agreed to.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BELLMON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. Will the Members please clear the well and clear the aisles and take their seats?

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senator continued with the consideration of the conference report.

Mr. ROBERT C. BYRD. Mr. President, will the Chair protect me in yielding long enough for the clerk to state what is before the Senate?

The PRESIDING OFFICER. The pending business is the conference report on H.R. 5289, which the clerk will report.

The legislative clerk read as follows:

Conference report on H.R. 5289, an act for the relief of Joe Cortina, of Tampa, Florida.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, today is the fourth day that the conference report on natural gas pricing has been before the Senate. During these 4 days there has been some debate on the conference report. It has been good debate. It has been substantive debate. And both the proponents and the opponents have, I think, made good contributions to that debate.

Today is September 14. I hope that it would be possible for the Senate to complete action on—Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is absolutely correct. The Senate is not in order.

Will Members please take their seats? Will staff please take their seats or leave the Chamber?

The Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the Chair for the Chair's very meticulous upholding of the rules of the Senate.

Mr. President, I will begin again.

The conference report on natural gas pricing has been before the Senate now for 4 days. There has been good, substantive debate, by both the proponents and opponents during those 4 days. There has been a considerable amount of time in which the Senate has stood in recess or during which long quorum calls have occurred in the effort to secure speakers on one side or the other. There have been recesses for the purpose of allowing Senators to discuss possible time agreements with respect to the conference report.

I want, first of all, to thank all Senators who have participated in my office in an effort to secure a time agreement, and at the risk of inadvertently overlooking someone at the moment let me say that I thank in this regard the distinguished minority leader, Mr. BAKER; the equally distinguished manager of the conference report, Mr. JACKSON; the equally able Senator from Wyoming, who is a conferee, Mr. HANSEN; the able Senator from Oklahoma, Mr. BARTLETT; the able Senator from Ohio, Mr. METZENBAUM; the able Senator from South Dakota, Mr. ABOUREZK; the able Senator from New Mexico, Mr. DOMENICI; the able Senator from Idaho, Mr. MCCLURE; the able minority whip, Mr. STEVENS; the able majority whip, Mr. CRANSTON; the able and very distinguished chairman of the Finance Committee, Mr. LONG.

I think I have named everyone. If I have not, I would like someone quickly to so indicate.

Mr. BARTLETT. Senator FORD.

Mr. ROBERT C. BYRD. And the very distinguished Senator from Kentucky, Mr. FORD, who was a conferee on the natural gas conference report.

Mr. METZENBAUM. Senator CHAFEE.

Mr. ROBERT C. BYRD. And the very distinguished Senator from Rhode Island, Mr. CHAFEE.

Mr. President, on yesterday I attempted to secure a time agreement which had been tentatively agreed to in that conference on yesterday, but I hasten to say that Mr. BARTLETT was not present at that conference. But I sought to get a time agreement which would provide for a vote on the motion to recommit by Mr. METZENBAUM next Tuesday at the hour

of 2:15 p.m., and that would be an up-or-down vote on the motion by Mr. METZENBAUM, and no tabling motion would be in order, and that to be followed by a vote on the conference report, up or down, at the hour of 5:15 p.m. next Tuesday.

This would have allowed all Senators who are in town and those out of town ample notice of the date and the hour on which those two showdown votes would occur.

There was no objection to that proposal. The objection was made by Mr. BARTLETT. I respect Mr. BARTLETT. He objected very appropriately from his point of view under the rules, and he indicated that he would like to offer a motion in the event that the motion by Mr. METZENBAUM to recommit the conference report was rejected. He, Mr. BARTLETT, would like to have an opportunity at that time then to offer a different motion to recommit with instructions.

Overnight and today we thought about the matter. We met again today at 3 p.m. in my office with the same Senators present. We discussed the possibility of a time agreement.

Mr. President, the position that I as majority leader am put in is this: I happen to be a supporter of the conference report. If I were an opponent of the conference report my position would be precisely what it is at this time.

The date being September 14, it being my hope that Congress can complete its work by October 14, which is exactly 1 month away and on a Saturday, and not have to come back after the election, it is my desire that the Senate do its best to complete its work and adjourn sine die on October 14, or before.

Mr. President, the remaining workload before the Senate is a heavy one. We have, for example, another defense authorization bill that needs to be taken up. We have a defense appropriations bill, the foreign assistance appropriation bill, the HEW appropriations bill, various expiring authorizations, and we also have the energy conference report, for example, the one that is before the Senate at the present time, the energy conference report on utility rate reform, the energy conference report on energy conservation, and hopefully an energy tax conference report. We have, in addition to these measures, various other measures which may or may not be called up.

But in any event that is the time situation according to the calendar which provides for 12 months out of the year, 52 weeks, and 365 days, as the usual thing, broken once every 4 years by a different number of days.

Mr. President, a long time ago the leadership stated that the top priority of this Congress was energy legislation, a No. 1 priority, and we have stuck to that. The conferees have worked hard. They have devoted hours and months of their time to trying to hammer out a conference report that can be brought back to the Senate and disposed of. Those conferees worked at times on a conference report when the rest of us were home during last year's sine die adjournment. They worked on weekends when the rest of us did not have to work. They did the best they could.

This is a compromise that pleases no one 100 percent—no one. The only way that a Senator could have a conference report here that would please him 100 percent would be if he were to write that conference report himself. So any compromise represents a give and take on the part of producers and consumers, liberals and conservatives, Republicans and Democrats, and fortunately this is not a partisan matter, so I eliminate the partisan reference.

So it is a compromise, the best that they could get after all of those months of trial and travail and labor and sweat and perseverance and tenacity and frustration. It is the best that they could bring back, and a compromise, of course, is not going to please anybody 100 percent because somebody has to give, somebody has to take, and that is the way compromises go.

What we have before the Senate is a compromise. I feel it is the duty of the Senate to act on that compromise one way or the other. I hope the compromise conference report will be adopted, but I am realistic. There is not a majority of votes for the conference report at this time; there is not a majority of votes against it at this time, but I feel it is the duty of the Senate—and I am not one who has a monopoly on recognizing what the duty of the Senate is, because every Senator here is entitled to his viewpoint as to what the duty of the Senate may be at a given time—I happen to believe that it is our duty, having said energy is the top priority, to vote up or down on the conference report. I am willing, as one who likes the old tune called The Roving Gambler, to lay that gold watch and chain on the desk and say, "Gentlemen, we will play for keeps. We will vote up or down, and let the stakes go where they may." If I lose, I lose. If the conference report is rejected, so be it. If the conference report is adopted, so be it.

Mr. President, I have, I think, been as lenient as a majority leader can be under the circumstances. I originally stated I would wait 2 days before offering a cloture motion. I do not want to offer a cloture motion. I still think we can get an agreement.

So it brings me down to the point where I propose the following agreement: I ask unanimous consent that on next Tuesday at the hour of 2:15 p.m. the Senate vote up or down on the motion by Mr. METZENBAUM and other Senators to recommit the conference report with instructions, thus waiving any motion to table; provided further, that at the hour of 5:15, if the motion to recommit does not prevail, the Senate vote on a motion by Mr. BARTLETT and other Senators to recommit the conference report with instructions. I do not know what those instructions will be. So far as I am concerned it is a pig in a poke, but again there is the gold watch and chain.

Mr. President, I propose further that if that motion to recommit does not prevail that at the hour of or 2 hours after that motion is disposed of—let us say 3 hours after that motion is disposed of, which would be roughly 8:30 in the evening—the Senate proceed to vote up or down on the conference report.

My proposal would waive any motion to table the motion by Mr. METZENBAUM, would waive any motion to table the motion by Mr. BARTLETT. It would waive any motion to table the conference report.

There is the agreement. Provided, finally, that the time would be equally divided between Mr. JACKSON and Mr. HANSEN on the conference report, and that the time on the motion by Mr. METZENBAUM would be equally divided between Mr. JACKSON and Mr. METZENBAUM; that the time on the motion by Mr. BARTLETT would be equally divided between Mr. JACKSON and Mr. BARTLETT.

Mr. President, I believe that in propounding a unanimous-consent request the propounder does not lose the right to the floor. I have made the request. Senators may reserve the right to object and may object.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Senator from West Virginia?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator reserves the right to object.

Mr. METZENBAUM. I think the Senate should understand the posture we are in. About a week ago I advised the leader of the Senate that I was prepared to move forward that week. I think that was—time flies—I guess it was on a Thursday with respect to the motion to recommit.

Since that time there have been a number of discussions and, as of this moment, it is fair to say that those of us who have to consider themselves consumer advocates have indicated they have no intent to filibuster. As a matter of fact, we have indicated a willingness to bring the matter to a head and to vote on both the motion to recommit or any other motions that may be made thereafter, and we were also prepared to vote on final disposition of the measure.

It is a fact that within the last several days we had indicated to the leader a willingness to vote at 2:15 on Tuesday, and subsequently at a later hour in the day in connection with the final passage.

A strong argument has now been made by some who really have to be producer advocates that if the motion to recommit fails perhaps there is some middle ground to make this a better bill than it is at the moment and that there ought to be an adequate time between the time the motion to recommit fails, if it does fail, and the next motion to recommit, if there be one, in order to negotiate and discuss the subject.

The argument is made, "Why don't you do that now? Next Tuesday is a long ways away." Well, the answer to that is very simple, because if the motion to recommit is to prevail that would be totally satisfactory to those of us who con-

sider ourselves on the consumer side. But if the motion to recommit fails then there may be some middle ground between the producers and ourselves which would be better than that which is in the conference committee report, and we might be able to strike an agreement.

Certainly at this point, as long as there is any possibility of the motion to recommit prevailing—and that possibility does still exist—it does not make sense for us to meet with the producers and say, "Well, we would agree to some middle ground." It would be illogical, it would be unreasonable, and it would be violative of our own responsibilities.

It is unreasonable to assume that sometime between the hour of 2:15 or 2:30 on Tuesday and 5:00 that day that we could sit down and discuss a complicated measure such as this and come to some agreement. I do believe that this matter should be brought to a conclusion. I believe that the House ought to be given adequate time to dispose of this measure.

But I believe there is merit to the argument that the Senate have an opportunity to see if it can strike a compromise, if the compromise or the alternative proposal which those of us who are filing the motion to recommit fails.

Therefore, I rise to indicate to the leader that I believe if the motion were to be amended to make it possible to have the first vote at 2:15 on Tuesday, September 19, and the final vote with respect to disposition of this measure on the 26th or if the leader prefers on the 25th or if the leader prefers on the 23d or if the leader prefers on the 22d, and none of those would be a problem as far as I am concerned, but there must be an adequate time to give the Senate an opportunity to reasonably discuss a possible fallback position in the event we are unsuccessful on the original motion to recommit.

Now, let me point out that if you take any of those days, and if the Senate sees fit to dispose of the matter by a motion—not to dispose of it, but to recommit—we still would have left more than 3 weeks, or slightly less than 3 weeks, for the House to decide whether they were going to accept it or not.

I believe that is a reasonable approach. I do not believe we should be crowded into a cloture motion. I urge upon the majority leader that he not file a cloture motion; and I, for one, am prepared to say that if the unanimous-consent request is changed to either the 26th or the 25th—we do not meet on Sunday, which is the 24th—or the 23d, which is a Saturday, or the 22d, which is a Friday then I would not find it objectionable, and I would hope other Members of the Senate would not find it objectionable.

Several Senators addressed the Chair.

Mr. HANSEN. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Wyoming reserves the right to object.

Mr. HANSEN. Mr. President, I think there is a lot of merit in what has been said by the distinguished Senator from Ohio. First, most Senators know that his concerns with these bills do not parallel the concerns of the Senator from Wyoming. I represent a producer State. I think I know something about the understanding and the reaction of drillers and oil and gas producers in my State of Wyoming, and, as a consequence, something of the feeling of those members of the Independent Petroleum Association of America, which represents those people who have made about 80 percent of the wildcat discoveries in the last several years. I think I know something about how some people in industry regard this bill.

It has been contended, and this does disturb me, that if the Senate refuses to go along with this natural gas compromise, the whole ballgame is over. The compromise was worked out without the participation—may we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

Mr. HANSEN. The so-called compromise was worked out without the participation of a very sizable number of the conferees from the Senate and from the House as well. I think I can honestly say that I doubt that there are five Members in this body who have taken the time to read that full measure, along with the report of the conferees. I doubt that there are five Senators who have read it.

I think it is not fair nor accurate to say that this is the only thing that can fly. I happened to be talking just today with representatives of Southern California Edison, and I happened to be talking with a representative of San Diego Power & Light, as well as a representative of Florida Power & Light.

The Southern California Edison man told me that his company has just learned that under this bill, despite the disclaimer that it would not affect public utilities, it is the considered judgment of their attorneys that this bill will cost the consumers of electricity sold by Southern California Edison between $400,000 and $500,000 per day. They did not know it before. And I think it is fair to say that the people who get their electricity from Southern California Edison do not know it, either.

That leads me to this point: There are all kinds of things in this bill that are not understood. Chairman Charles Curtis of the Federal Energy Regulatory Commission has indicated that his agency will need an additional 325 personnel, with a proportionate number of supporting staff, to handle the burden that will be placed upon his commission as a consequence of the passage of this legislation. It is a fact that when FERC took over the responsibilities of the Federal Power Commission, at that time there were pending unresolved before the Federal Power Commission some 12,000 cases. Today that number of cases exceeds 20,000.

Sheila Hollis, the enforcement officer for the Federal Energy Commission, has said that this bill will place—I am paraphrasing what she said—enormous burdens upon her agency to try to resolve the problems that she anticipates.

I think that what we need is——

The PRESIDING OFFICER. Will the Senator suspend for a moment? The Chair requests that the Senate be in order. An important matter is at issue. The Chair particularly requests the staff of the Senate to be in order; I think staff members are contributing to the disorder in the Chamber at the moment.

The Senator from Wyoming may proceed.

Mr. HANSEN. I think what is needed is time for all of us to see if we can work out a better compromise. I am not trying to kill the bill. I am not suggesting by any means that we do not come to a final vote. But I do say in all sincerity, Mr. President, that I do not think that the average Member of this body understands very clearly—perhaps no better than does the Senator from Wyoming—what is contained in it. I think we can come up with a better compromise than is now offered before us by the conferees.

I am disturbed because my good friend from Washington, the chairman of the Energy Committee, has persuaded a great number of Senators in this body that it is this or nothing. I fully respect his judgment, but I want to say this: If the Senate of the United States were, by its vote, to offer to the House a different bill than the one which is now before us, and if the conferees from the Senate would go to the conferees from the House and say, "That is our new proposal," I do not agree with him that this energy bill for 1978 is automatically dead. I think if we went over there trying, as we so far have failed to do, to follow what should have been the instructions of the Senate when we passed Pearson-Bentsen, I think if we were to go back to the House and say, "We have changed some things which meet the concerns of the representatives of consumer States, we have changed some things which meet the concerns of the producer States, we think we have a better bill, and we offer it to you," my guess is that the burden and the responsibility, then, for saying whether we shall have an energy bill in 1978 or whether we shall not have a bill would rest squarely on the shoulders of the House conferees, and I would like to give them that opportunity.

I think inherent in what I am suggesting must go the full commitment of Members of the Senate, and specifically those who are conferees on this bill, to go in good faith, with determination, to tell the House Members what the Senate wants, and if that sort of conviction and dedication can accompany our efforts, I think, within the limitations as they have been spelled out by the Senator from Ohio, it will make sense and they will give this Congress an opportunity to work its will on a package that I think can provide a better answer for America than the one we have before us.

I do not intend to object, I say to my good friend the distinguished majority leader, if we can work out a time that is reasonable, and I think the Senator from Ohio has suggested a reasonable compromise. If we could have a vote this coming Tuesday on the Metzenbaum proposal and on as many other proposals as might be submitted between this coming Tuesday and a week later, or whatever time later—I would hope that it might be a

little longer than a week, but if it is a week, so be it—I would not object, and I think we would be in a position of saying, first of all, "We do not know what is in this bill; let us look at it and try to understand it better," as I am sure the people in California and in Florida are going to come to understand it better when they find out what effect it will have on their utility rates.

I would hope that we could enter into an agreement that would give us this opportunity, within the constraints of the projected adjournment date, to try to work our will.

Mr. ROBERT C. BYRD. Mr. President, may I modify my request?

The PRESIDING OFFICER. The Senator may modify his request.

Mr. ABOUREZK. Will the Senator yield first?

Mr. ROBERT C. BYRD. I yield.

Mr. ABOUREZK. Mr. President, reserving the right to object, I want to say when Senator METZENBAUM and I discussed during this past week the notion of agreeing to a time to vote on recommital with instructions to, in effect, substitute the bill, and if that should fail to have a vote on a final passage, we did so with the idea that we would take our best shot. We thought we had an excellent chance to win one or the other of the two votes. We still believe that.

By agreeing to a time certain to vote on final passage, we would then forego any right we might have to a filibuster or an extended debate, whatever we might call it. We are still amenable to that because we still think we have an excellent shot at defeating this so-called natural gas conference report.

I might say, Mr. President, we all get into the habit of calling it a compromise, when, in fact, it is not a compromise. What it is is an agreement between parties who agreed in the first place. We ought to call it the Jackson-Dingell gas bill, or the Natural Gas Price Increase Act, because they agreed from the outset what it ought to be.

A compromise is an agreement or a moving toward the center of two sides who did not agree in the first place.

I do not think we ought to call this a compromise although it has been called that so much that I find myself falling into the same trap.

I would also say, Mr. President, that during discussions from December onward approximately half of the conferees of both the House and Senate sides were excluded from the conference committee meetings. We had no opportunity to debate, no chance to discuss, or to have input from consumer groups into that conference report whatsoever.

I take it from the remarks delivered by Senator HANSEN and Senator BARTLETT there were some producer interests that were not represented as well, although I find it hard to imagine which of those that might be, after looking at the final result.

I do not think it is unreasonable for Members of the Senate to ask for additional time for discussion for those of us who really did have genuine disagreement to come to some kind of compromise on this bill.

The agreement that came out of the conference committee is not the only compromise that is available to the Senate and to the House of Representatives.

What I would say, Mr. President, is that while I am still willing to come to a time agreement, as is Senator METZENBAUM, I would hope that the majority leader would not offer the cloture petition which would automatically stigmatize what this effort is, as a filibuster, which it is not—at least, not yet. If the cloture petition is filed, I will have to say, while I am willing to come to an agreement, that I would have to shift my position somewhat vigorously and oppose the cloture petition and the natural gas conference report with whatever means are available under the rules. I would hope the majority leader would accede to this additional time, which I do not think is unreasonable.

Mr. BARTLETT. Mr. President, reserving the right to object, I would like to say to the majority leader that I think his proposal does not allow sufficient time for me or perhaps others to develop alternate proposals, perhaps on recommitment motions with different instructions.

It is obvious that the conferees who agreed to the natural gas conference report took many months to reconcile their differences of opinion. I think the majority leader recognizes that the differences of opinion which exist between the consumers and producers, who are in agreement on a motion to recommit with instructions, have great differences that would need to be reconciled, and that this would take some time.

We could have had a vote today if it had been agreed to or was the desire of the majority leader, because as far as I know there was no objection to that. The target date was shifted to Tuesday.

I am willing to have a vote at any time on the Metzenbaum motion to recommit with instructions, and I am certainly willing to have a two track or three track system as long as those of us who desire to make motions to recommit, or to perhaps make other motions on this proposal, have that right.

I find some merit in what was proposed by the Senator from Ohio and what was proposed in our meeting in the majority leader's office by the Senator from Wyoming.

Mr. President, I would like to have order in the Senate.

The PRESIDING OFFICER. The Senator is entitled to order. The Chair will request the Members to take their seats.

The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, my remarks were mainly directed to the majority leader, though I do not think he heard them. I will just repeat this much: I think his request is unfair in that it certainly would not give time to develop another agreement among the diverse interests on our side which disagree with the conference report.

I do not think that we who are in opposition to the conference report should be blamed in any way or penalized in any way for the long delay that has taken place in the negotiations by the conferees to reach agreement on the conference report.

I think we should at least have a little time to offer some approaches other than just the Metzenbaum motion to recommit with instructions and the conference report itself.

If the majority leader would persist in his request that he has propounded, I will object. I hope he will not persist. I hope he will consider some of the suggestions which have been made, both in the conference in his office and on the floor. I would think that perhaps if we had a chance to discuss some of the things in his office, and for him to hear some of our thoughts as well as for us to hear his, we could reach an agreement and we could have some votes on this. We could also take up other matters which the majority leader says are so important to take up, and which I know to be important.

We are certainly not going to get anywhere by having this kind of unanimous consent request propounded, other than to have it lead to either a cloture motion or further delay.

I hope that we can reach some kind of agreement. I certainly want to have votes on other matters, as well as on this. I certainly want to have the House have an opportunity to consider it, whatever we agree to. I am not wanting to have a filibuster, just to prevent voting on this important matter. I do think the rights of those who disagree with the compromise should be respected.

Mr. FORD. Mr. President, reserving the right to object, the first majority leader of the United States must have been Job, because a majority leader must have the patience of Job in order to try to accommodate 99 colleagues.

I hear the voices on this floor say to the Senator from West Virginia, a man whom I think everyone respects and respects highly, "If you will listen to what we are saying and you delay the consideration of the conference report on the natural gas bill, we will give you, or we will not object to a time certain. But if you do lay down a cloture motion today, then I shall change my position and we will go to filibuster and we will do those things." So a threat becomes the veil over the Senate Chamber.

Then we hear, "Let us go back to the closed-door sessions that we have heard so much about that have been going on to get to where we are today, let us go back behind closed doors and see if we cannot work out something."

Then I also hear, "Let us give us all the time we can; we are going to get a piece of candy and if it does not draw enough, we are going to get a larger piece of candy. And if that does not draw enough, we are going to get a larger piece of candy over the next 10 years. And if we get a large piece of candy that draws enough votes, then we are going back to conference with instructons."

I can bet you that those two sides are trying to get together now on a recommittal motion and will not be together when we get back to conference.

So what are we trying to do? Mr. President, I shall not object to what the majority leader is trying to do, but I want to say one thing: I believe that, somewhere along the way, we ought to be able

to say, this is enough; we ought to stop, this is the best we can do. Some of us are going to be back next year, the Lord willing, and if we have made mistakes, let us say we have made mistakes. I think we can correct them then.

But I would like to see us get on to a vote, and I would like to see that those who are from producing States that did not get enough for producers, those who are for consumers and felt like they did not get enough for consumers—somewhere we come down. I would like for us to shorten the period as much as possible without putting us through any more than possible and see if we cannot get on with the vote.

Mr. President, I want to support the motion of the majority leader and I hope other Senators will do the same.

Mr. ABOUREZK. Mr. President, I reserve the right to object.

I really fail to understand why the Senator from Kentucky would insist on immediate action on this thing if there are Senators who feel there is more time needed. The majority leader can get his time for a final vote, foreclose the possibility of a filibuster, or he can file his cloture motion today if somebody should object to this and just have one hell of a fight from now until it is all over.

Those are the two alternatives, as I see it. He has wanted all along a time for a final vote, which I think he can get. I listened to Senator BARTLETT. It sounds to me if he gets the time he wants to do certain things he needs to do, he will agree to it. Senator METZENBAUM feels the same. I do not see why the rhetoric now that we have to vote on this right away.

We all make mistakes, of course. I have never heard anybody who signed onto that bill who says it is a good bill. They all say it is a bad bill. It is the most incredible thing I ever heard in my whole life. Nobody likes it, but they all want to vote for it.

I want to say that I held a hearing this morning, Mr. President. Talk about making mistakes. The head of the Federal Energy Regulatory Commission, Charles Curtis, testified that he would have to have 300 additional professionals, that he would have to take 500 authorized positions, already authorized, and turn most of them to enforcing the Natural Gas Policy Act if it is passed. That is 800 people. And he would have to hire some $10 million worth of contract help, because he would not be able to hire them as full-time Government employees, to try to administer the new Natural Gas Policy Act, if it passes. Now, that is a minimum, conservative suggestion and an estimate by the Federal Energy Regulatory Commission staff.

Let me tell you, if they say that is going to be the minimum, you know and I know that it is going to be much more than that. He estimated some $30 million in additional bureaucracy to try to enforce the act. That was his statement this morning in the hearings which I chaired.

He talked about coming back, perhaps, if the courts did not agree with what he had to say about the natural gas policy act; if they misread his interpretation, he said, "We'll just have to come back and change the law once again." I think we ought to make the law right the first time and I think everybody agrees, even those who are for it right now, that it is not right this time. Why do they want to continue to press it?

Mr. FORD. Mr. President, I reserve the right to object so I might answer the distinguished Senator from South Dakota.

Does the Senator have a transcript of the hearing this morning at his disposal there?

Mr. ABOUREZK. No.

Mr. FORD. Was not the statement this morning at the Abourezk hearing that they only needed 298 people, including backup personnel, and they would need more people under the present law to reduce the backlog?

Mr. ABOUREZK. No.

Mr. FORD. I think the Senator had better go back to look at his transcript.

Mr. ABOUREZK. I do not need to. I was there this morning and I did not see the Senator in the room.

Mr. FORD. There were a lot of decent people there and they got to read the transcript.

Mr. ABOUREZK. That is fine. I am going to put the transcript in the RECORD tomorrow morning, as soon as it is finished.

Mr. FORD. Mr. President, that is the figure I got, 298 backup.

Mr. ABOUREZK. That is not true. The testimony was 800 additional people, most of whom will go to enforce the act if it is passed, plus $10 million in contract help. Does the Senator have figures to contravene those?

Mr. FORD. I do not have the money figure but I have the employee figure. I think my figures are about as close as his.

Mr. ABOUREZK. What are we arguing about then?

Mr. FORD. I have the 298 backup, and the Senator said 300.

Mr. ABOUREZK. No, no, the Senator missed the 500 authorized Mr. CURTIS was talking about.

Mr. FORD. The figure I have is 298.

Mr. ABOUREZK. If the Senator had been in the room, he would have been able to speak with more authority.

Mr. FORD. I can be as loose with figures as anybody else.

Mr. ABOUREZK. Help yourself.

Mr. FORD. Mr. President, I have the 298 figure, plus the statement that they would need more people under the present law to reduce the backlog.

The PRESIDING OFFICER. Pending is the unanimous-consent request by the Senator from West Virginia. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object. Do I understand correctly that the majority leader was about to indicate some amendment of his original request? Am I incorrect about that?

Mr. ROBERT C. BYRD. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The regular order has been requested. The unanimous-consent request has been propounded. Is there objection to the unanimous-consent request?

Mr. BARTLETT. I object.

The PRESIDING OFFICER. The Senator from Oklahoma objects. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Ohio (Mr. METZENBAUM)——

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. ROBERT C. BYRD. The Senator has made what I think is a reasonable proposal. In view of the fact that my previous request was objected to, I shall try again.

Mr. President, I ask unanimous consent that the vote up or down on the motion by Mr. METZENBAUM and other Senators occur next Tuesday at 2:15 p.m.; that a vote on final adoption of the conference report, up or down, occur on Friday, September 22, which was the last date that he proposed—Friday the 22d—at 1 o'clock p.m.; and that the time in between and throughout be divided and controlled in accordance with the proposal that I made previously.

Mr. ABOUREZK. Mr. President, reserving the right to object, can we have a short quorum to talk about this a minute?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I be recognized after such quorum.

Mr. NUNN. Mr. President, before the quorum call, may I be recognized for just a very brief announcement?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I be able to retain the floor for the purpose of yielding to Mr. NUNN and then for the purpose of a quorum call.

The PRESIDING OFFICER. To be recognized after the quorum call?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

VISIT TO THE SENATE BY A DELEGATION FROM FRANCE—THE DEFENSE COMMITTEE OF THE FRENCH CHAMBER OF DEPUTIES

Mr. NUNN. Mr. President, we are privileged to have on the floor of the Senate now a delegation from France that composes the Defense Committee of the French Chamber of Deputies. I know Senators would like to speak to the individuals.

We have General Bigeard, Mr. Bouvard, Mr. Darinot, and Mr. Visse. They are here; we are honored to have them. Senator GOLDWATER and other members of the Armed Services Committee and myself have met with them today and had a dialog. I would like Senators to be given an opportunity to speak to them during a quorum call.

Mr. ROBERT C. BYRD. Mr. President, I will not suggest the absence of a quorum. I understand one is not needed now. We have had a little discussion.

Mr. McCLURE. Will the Senator yield before that?

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. Mr. President, I just wondered if the Senator from Ohio could indicate to the Senator from Idaho whether or not he is prepared to offer a motion to recommit with the instruc-

tions at this time that could be voted on today, or tomorrow, or on Monday?

Mr. METZENBAUM addressed the Chair.

Mr. METZENBAUM. Mr. President, may we have order? I recognize that we have distinguished visitors here, but I think——

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. NUNN at this time be allowed to introduce to the Senate our visitors, that after he has done that the Senate recess for 3 minutes to allow Senators to personally greet our visitors, after which I be recognized.

Mr. NUNN. Mr. President, the visitors have been introduced.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate, at 5:02 p.m., recessed until 5:05 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SARBANES).

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate continued the consideration of the conference report.

Mr. McCLURE. Mr. President, will the Senator from West Virginia yield to the Senator from Idaho just briefly?

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. Mr. President, I propounded a question to the Senator from Ohio in regard to the possibility of a motion to recommit with instructions. I understand the Senator from Ohio has been consulting with others all week on that matter. Is there any possibility we could have such a motion made either today or tomorrow and voted on today, tomorrow, or Monday, rather than waiting until Tuesday to make and vote upon such a motion?

Mr. METZENBAUM. Let me say to the Senator from Idaho that originally I was prepared to move in that direction.

However, understandably, a number of Members of the Senate have inquired of me as to whether or not there would be a vote today on the matter; and by reason of the discussions that were taking place, I assured them that there would not. Some of them would have come from long distances to be here and then would have to turn around and return, without a vote.

Therefore, although I am perfectly willing to vote on the motion at the earliest possible moment, I think it would be totally unfair, on a matter as controversial and as important as this, to bring it up for a vote prior to giving all Members of the Senate a chance to know exactly when it will be.

Mr. McCLURE. Mr. President, will the Senator from West Virginia yield further?

Mr. ROBERT C. BYRD. I yield.

Mr. McCLURE. If that be the case—and I understand some of the reasons why that might be true—is the Senator from Ohio prepared to offer such a motion to recommit with instructions, either at this time or tomorrow, so that those of us who have not been involved in the secret sessions which have been held will have an opportunity to see what is in the motion?

Mr. METZENBAUM. I know that the Senator from Idaho is particularly concerned about that. The language of such a motion has not been filed officially at the desk.

I point out that today I arranged, by unanimous consent, to have the language changed, because somehow the printer made the word "depleted" instead of "deleted" in the fourth line of the motion. It does read correctly in the RECORD, but it does not read correctly in the printed amendment. I just tell the Senator that for the purpose of clarification.

Mr. McCLURE. If I understand the Senator correctly, then, with that correction, the printed motion is the motion that the Senator from Ohio intends to offer and have voted upon first, whenever that might be arrived at.

Mr. METZENBAUM. The Senator from Idaho is correct, although I point out that in colloquy with the majority leader—I think it was yesterday—I made it clear that it is possible that some phraseology could be changed in connection with that.

It also is fair to point out that that motion would be subject to amendment by other Members of the Senate, and it has been indicated by several Members of the Senate that they intend to attach language to the motion, having to do with the Alaska pipeline.

Mr. McCLURE. I thank the Senator.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. ROBERT C. BYRD. Mr. President, if the Chair would indulge me momentarily, I yield to the Senator from Connecticut in the meantime to have some conferees appointed, and I will talk with the manager of the conference report.

The PRESIDING OFFICER. The Senator from Connecticut.

CIVIL SERVICE REFORM ACT OF 1978

Mr. RIBICOFF. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2640.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing that the House has passed the bill (S. 2640) to reform the civil service laws, with amendments in which it requests the concurrence of the Senate; that the House insists upon its amendments to the bill and requests a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. RIBICOFF. I move that the Senate agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. RIBICOFF,, Mr. EAGLETON, Mr. CHILES, Mr. SASSER, Mrs. HUMPHREY, Mr. PERCY, Mr. JAVITS, Mr. STEVENS, and Mr. MATHIAS conferees on the part of the Senate.

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

Mr. RIBICOFF. Mr. President, I ask the Chair to lay befor the Senate a message from the House of Representatives on H.R. 6536.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. RIBICOFF. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. RIBICOFF, Mr. EAGLETON, Mr. SASSER, and Mr. MATHIAS conferees on the part of the Senate.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. ROBERT C. BYRD. Mr. President, I hope we will soon reach an agreement.

By the way, let me say good-naturedly to my friend from South Dakota, JIM ABOUREZK, who used the words "hell of a fight," that I do not want any fight. I like to avoid any fight. I have been in a few of them over the years. I do not want any fight with anybody. I am a peace-loving man.

I have been in a fight or two that I thought was "a hell of a fight" and got whipped. But I have never run from one yet, and I am not going to start running at this late date.

I say that in good nature, because the Senator used those words, and I want to avoid a fight. I want to avoid a hell of a fight, and I want to avoid any fight at all.

Mr. HANSEN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator makes a reasonable request. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, I make the following proposition:

I ask unanimous consent that the vote on the motion to recommit with instructions, by Mr. METZENBAUM and other Senators, occur on next Tuesday at 2:15 p.m., up or down, but that in the meantime he call up his motion.

Of course, if this agreement is concurred in by the Senate, no tabling motion would be in order. I hope we would call it up immediately after the agreement, so that we could see what we have before us.

I ask unanimous consent, further, that in the event the motion to recommit fails, there be a vote, up or down, on the conference report at 1 p.m. I am going to go

as far as the Senator from Ohio has suggested, perhaps even further. I do not remember whether he said the 26th or the 27th.

Mr. METZENBAUM. The 26th.

Mr. ROBERT C. BYRD. I am going beyond that

That the vote occur on the conference report, up or down, at 1 p.m. on Wednesday, the 27th of September.

Provided, further, that when that hour is reached, the vote occur, up or down, and that no further motions at that hour be in order; that when the hour of 1 p.m. arrives, no further motions to refer or commit or recommit be in order, unless there is a motion to recommit pending at that point. So there would be a vote on that pending motion to recommit, and immediately the Senate would vote on the conference report, up or down.

Before the Chair responds, I would include the proviso that, in the meantime, the time on the conference report be divided equally between Mr. JACKSON and Mr. HANSEN; that the time on all motions to recommit be divided between and controlled by Mr. JACKSON and the mover of the motion to recommit or refer or whatever; that it be understood that, in the meantime, the Senate could operate on a double-track system and take up other measures, which would indicate progress on other matters.

Mr. President, let me add this proviso, that no motion to table any motion to recommit be in order.

Mr. JACKSON. On the conference report.

Mr. ROBERT C. BYRD. That is automatic. If we are going to vote up and down on the conference report at 1 p.m. on a certain date the motion to table that conference report, is automatically waived. Am I not correct? How can we vote up or down on a conference report if there is a motion to table?

The PRESIDING OFFICER. The Senator is correct, that the time agreement on a final vote up or down on the conference report, if the first motion to recommit fails, would preclude a motion to table on the conference report.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. McCLURE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. However, the Chair would note that no provision has been made on the nature of the vote that might occur on any intervening motion to recommit subsequent to the first motion to recommit.

Mr. ROBERT C. BYRD. Yes. I thank the Chair.

I add the proviso that no intervening motion to recommit, be subject to a tabling motion.

Mr. METZENBAUM and Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. It is the Chair's understanding that the request of the Senator from West Virginia encompasses the proposition that if the first motion to recommit fails, subsequent motions to recommit would be in order, and that votes on such motions would not be subject to a tabling motion. It would be up or down. And if such motions fail, then a vote up or down on the conference report would occur at 1 p.m. on Wednesday, the 27th of September.

Mr. ROBERT C. BYRD. The Chair is correct. The Chair correctly interprets my request.

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it, if the Senator from West Virginia yields for that purpose.

Mr. ROBERT C. BYRD. I yield.

Mr. METZENBAUM. Mr. President, I have been asked by a member of the Senate not present that regardless of the timing it be clear that any amendments to the motions to recommit are permitted under the unanimous-consent request.

The PRESIDING OFFICER. Amendments in two degrees would be in order, the Chair will inform the Senator.

Mr. METZENBAUM. I thank the Chair.

Mr. BARTLETT. Mr. President, reserving the right to object.

The PRESIDING OFFICER. A reservation to the unanimous-consent request is heard from the Senator from Oklahoma.

Mr. BARTLETT. Mr. President, it is my understanding that if any one of the motions to recommit, either the Metzenbaum motion or any of the intervening ones prior to the date set for the motion to vote on the conference report, is agreed to, then there would be no vote on the conference report. Is that correct?

Mr. ROBERT C. BYRD. That is correct.

Mr. BARTLETT. Second, I favor very strongly the request the Senator made for a two-track system. However, it is my understanding that priority would be given to those wanting to make a motion to recommit, and that if they had such a motion to make then the other track would be set aside and priority would be given to that Senator. Is that correct?

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I am sure the leadership would not want to shut out any Senator who wishes to make a motion to recommit by going to another matter.

Mr. BARTLETT. The priority would be with the Senator wanting to make the motion to recommit.

Mr. ROBERT C. BYRD. The priority is the energy conference report before the Senate.

Mr. BARTLETT. I could not hear the Senator. I am sorry.

Mr. ROBERT C. BYRD. The priority is the conference report before the Senate.

Mr. BARTLETT. So it would be the Senator wanting to make the motion to recommit.

Mr. ROBERT C. BYRD. Which automatically would include the Senator's concern.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. BARTLETT. I yield.

Mr. STEVENS. Just to make certain, I might ask my good friend from West Virginia. It is this Senator's understanding that the conference report would remain the pending business and it would take unanimous consent to set that aside for the second track business. Is that correct?

Mr. ROBERT C. BYRD. It would be done on a motion. The majority leader does not intend to do that. The majority leader intends only to bring up another matter if it is agreeable to Senators. If they want to debate the conference report, that is No. 1.

Mr. STEVENS. I just make that point to assure the Senator from Oklahoma that this would be the pending business, that it would take an agreement or a motion adopted by the Senate to substitute something else on the second track, so that the proponents of the motions to recommit would have the priority under this agreement as it is understood.

Mr. BARTLETT. Mr. President, it is not my understanding that the motion will be made to bring something else up. But I think the priority must be with the Senator wanting to debate the conference report, or to make or debate a motion to recommit, and I do not think the majority vote should squeeze out someone desiring to deal with this natural gas problem. That is what I think the majority leader said.

Mr. ROBERT C. BYRD. Precisely.

Mr. President, let me restate the request so that everyone will clearly understand.

Mr. BURDICK. Mr. President, reserving the right to object, is it possible to change that 2:15 p.m. on Tuesday on the vote on the motion to recommit to 3 p.m.?

Mr. ROBERT C. BYRD. Yes, as far as I am concerned.

Mr. BENTSEN. Mr. President, I say to the majority leader I understand we will be getting back to natural gas tonight. Is that correct?

Mr. ROBERT C. BYRD. We will. Yes, indeed.

Here it is:

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that at 3 p.m. on next Tuesday, the Senate proceed to vote up or down on the motion to recommit with instructions by Mr. METZENBAUM and other Senators, thus waiving any Senators right to move to table that recommittal motion, provided further that Mr. METZENBAUM—we have an understanding—but provided further that he call up his motion within the next——

Mr. METZENBAUM. Twenty-four hours.

Mr. ROBERT C. BYRD. Twenty-four hours—provided further that on the 27th of September, Wednesday, at 1 p.m., the Senate vote up or down on the adoption of the conference report on natural gas pricing, thus waiving any Senator's right in the meantime to move to table that conference report; provided further that no tabling motion be in order against any motion to recommit the conference report or to refer that conference report; provided further that at the hour of 1 p.m. on Wednesday, the 27th, no further motions to recommit be in order, other than a then-pending motion to recommit, in which case the motion be voted on, up or down, immediately at the hour of 1 p.m., after which the Senate would proceed to vote immediately,

without any intervening motions, without any intervening debate, without any intervening quorum, up or down, on the conference report; provided further, that the time for debate on the conference report be equally divided between Mr. JACKSON and Mr. HANSEN; that the time on any motion to recommit, any debatable motion, be equally divided between Mr. JACKSON and the mover of such motion; and provided, lastly, that if it is agreeable to the leadership on both sides, concurred in by Senators on both sides of the aisle, the Senate proceed to another track to deal with other matters the majority leader thus may proceed with, which amply protects the Senator from Oklahoma.

I assure him, and I include in the request, that if a Senator wishes to move to recommit during this interval that I have laid out, he will not be precluded from doing so by any effort to move to another matter.

Mr. BARTLETT. Mr. President, if the Senator will yield for a question, it is my understanding there could be any number of motions to recommit if different Senators or the same Senator all saw fit to offer the motions during the period between the first motion to recommit by the Senator from Ohio (Mr. METZENBAUM) and the final vote at 1 o'clock on Wednesday. That is, unless some intervening motion to recommit is pending; is that correct?

Mr. ROBERT C. BYRD. May I grammatically correct my own request to say with respect to the vote on final, and any intervening recommittal motion, that the request, of course, obtains only in the event that such recommittal motion failed. Naturally, if the recommittal motion succeeds the vote on the conference report is out. o-u-t.

The PRESIDING OFFICER. The Chair would note that was the premise obviously of having the final vote on the conference report, that none of the intervening motions to recommit would prevail.

Mr. BARTLETT. Mr. President, reserving the right to object, would the distinguished majority leader include in his request that I be recognized at a time in that interval for the purpose of offering a recommittal motion or motions?

Mr. ROBERT C. BYRD. Mr. President, I include in the request that after the disposition of the recommittal motion by Mr. METZENBAUM, in the event that motion is rejected, that Mr. BARTLETT may be recognized at any time that another Senator does not have the floor, that he be recognized to make his motion to recommit with instructions.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from West Virginia?

Mr. METZENBAUM. Mr. President, reserving the right to object—and I will not object—as a matter of fact, I commend the majority leader for his cooperation in moving in this direction because I think we have resolved or are about to resolve a rather sticky problem, but there is one possibility that I would like to raise with the majority leader and upon his assurances that it will not occur otherwise, perhaps, it needs to be provided before in the unanimous-consent request.

A situation could develop after our motion to recommit is disposed of, assuming that it will be defeated—and I am not prepared to make that assumption or to accept it as a fact, but assuming that it were—it concerns me that others might be unable to obtain the floor for the purpose of offering motions to recommit by reason of a filibuster or control of the floor.

Is the majority leader prepared to assure those who might offer subsequent motions to recommit that that will not occur? If so, then that would be adequate for me, and if not, it should be covered in the unanimous-consent request.

Mr. ROBERT C. BYRD. Mr. President, the difficulty with that is—may I have the attention of the Senate—the practical difficulty with that is that what the Senator is saying means that there must be a limitation of time on any motion to recommit, and I do not think Senators want to do that, because if, let us say, Senator BARTLETT, wants to make a motion to recommit, and if Senator X wishes to make a motion to recommit, and Senator Y wants to make a motion to recommit, Senator Z wants to make a motion to recommit, to assure them of that we would have to put a time limitation on Mr. BARTLETT's motion.

Mr. METZENBAUM. I am more concerned about other matters which may be double-tracked at the moment, and someone gained control of the floor and of our not being able to have it released.

Mr. ROBERT C. BYRD. The Senator sees ghosts——

Mr. METZENBAUM. I only want the Senator's personal assurance.

Mr. ROBERT C. BYRD (continuing). Under every bed. There have been no tricks in this bag. I have to bend over backward to try to accommodate everybody.

Mr. HANSEN. Mr. President, will the Senator yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. HANSEN. I am very comfortable with the unanimous-consent request propounded by the distinguished majority leader. I know from personal observation he is a man of his word. He has assured us earlier that there will be no effort made at all to go into a double-track system so as to preclude someone from offering a recommittal motion. I am perfectly satisfied and happy with the unanimous-consent request, and I want to commend him for having done a masterful job of bringing about a resolution of an issue which could be disruptive of our efforts to adjourn, and I salute the majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. BARTLETT. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BARTLETT. In your earlier unanimous-consent request you mentioned the priority——

Mr. ROBERT C. BYRD. I am having difficulty hearing the Senator, Mr. President. The Senator from Oklahoma is entitled to be heard.

Mr. BARTLETT. In your previous unanimous-consent request you mentioned that you would give priority to those who were interested in debating the bill or recommitting it.

Mr. ROBERT C. BYRD. Yes.

Mr. BARTLETT. Could that protection be handled in this way, which I think would provide the assurance that the Senator from Ohio is asking: Could the time be equally divided during the debate on a double-track matter so that it could come back, certainly within a prescribed time, to the main question, the conference report?

Mr. ROBERT C. BYRD. Mr. President, let me put it this way: I will not go on any double track except with the proviso that at any time during the discussion on that double-track matter, unless it is a matter of absolute critical emergency, I will have the proviso that at any time, regardless of whether there is a time agreement on that matter, during that discussion if a Senator wishes to debate the natural gas conference report or if he wishes to make a motion to recommit, it being understood that there will not be at that point a pending motion, because we can only have one pending motion before the Senate at one time, that such Senator be allowed to do that, and the double track is washed away, and we are back on the first track.

Mr. President, I do not know what else I can do by way of speaking or writing that would protect Senators' rights to offer motions to recommit.

As I say, however, unless Senators want to have time agreements on a motion to recommit there is no way of assuring every Senator that we can have an endless number of motions to recommit before the final vote on the conference report.

Mr. METZENBAUM. I say to the majority leader that I am comfortable with the situation. I have no objection and I appreciate his cooperation and I think we are moving in the right direction.

Mr. BARTLETT. I certainly thank the majority for his consideration, and I have no objection.

Mr. DOMENICI. Mr. President, will the Senator yield to the Senator from New Mexico?

Mr. ROBERT C. BYRD. The Senator can reserve the right to object.

Mr. DOMENICI. I can reserve the right to object, and I certainly do not object.

I first want to say to my good friend from Oklahoma (Mr. BARTLETT) that I apologize to him. About a half-hour ago, when he was addressing the majority leader, it was my fault that he was not paying attention, because I went over to talk to him to suggest that we do just what we are doing now, and have agreed to do, and that is to agree on an ultimate time, and I apologize for having interrupted.

Having said that, I think everyone this afternoon has done the Senate and the people of this country a great service. I am glad we are not going to have to file a cloture motion, that there is not going to be a filibuster, and I think, with all sides having such firm positions on this bill, we have done the right thing this afternoon, and I congratulate the majority leader.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The text of the unanimous-consent agreement is as follows:

Ordered, That at 3:00 p.m. on Tuesday, September 19, 1978, the vote occur on a motion to recommit with instructions to be made by the Senator from Ohio (Mr. METZENBAUM).

Ordered further, That if that motion fails, further motions to recommit be in order, that they not be subject to a motion to table and with the Senator from Oklahoma (Mr. BARTLETT) to be recognized at some point to make a motion to recommit with instructions.

Ordered further, That if no motion to recommit with or without instructions carries, the vote occur on agreeing to the conference report at 1:00 p.m. on Wednesday, September 27, 1978, without further debate, quorums, or motions, except that if a motion to recommit is pending at that time, it be immediately voted upon.

Ordered further, That time utilized on the conference report be equally divided between and controlled by the Senator from Washington (Mr. JACKSON) and the Senator from Wyoming (Mr. HANSEN) and that the time utilized on any motion to recommit be equally divided between and controlled by the mover of the motion and the Senator from Washington (Mr. JACKSON).

Mr. ROBERT C. BYRD. Mr. President, the Senator from New Mexico is characteristically courtly, courteous, considerate, and fair. I thank all Senators for their cooperation, their patience, and their forbearance.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. Because Senators are here, I am sure they would like to know, and on behalf of the minority leader I would like to know, since we do have an agreement to come in tomorrow, could the majority leader determine what subjects he might seek to bring up on a two-track system tomorrow, in the event there is no debate on this conference report?

Mr. ROBERT C. BYRD. Mr. President, that is a good question, and I am glad the distinguished acting Republican leader raised that at this time.

May I inquire whether or not it is the desire of Senators to discuss, on tomorrow—I would hope the distinguished Senator from Ohio would call up his motion. We agreed it would be within 24 hours. That would make it until something like 5:30 tomorrow. I wonder if he would mind calling it up earlier in the day.

Mr. METZENBAUM. I have no objection to doing that, but I do not wish to misrepresent and suggest that when I call it up I expect to speak for 2 hours, because I have spoken rather extensively today, and there is not that much more I am going to say about the motion itself. So we should not anticipate extended debate on the basis of that particular motion; and if there is other business to be attended to. fine. If not, I do not think it warrants being in session just for that purpose, because the language I have already had printed, at this moment, at least, subject to further discussion, is the language that I expect to be final, and I think Senators can assume it will be; so, Mr. President, Senators need not concern themselves about it.

Mr. ROBERT C. BYRD. Would the Senator be willing to call up his motion tomorrow, say, by noon?

Mr. METZENBAUM. I have no objection.

Mr. ROBERT C. BYRD. Back to the question of the distinguished acting Republican leader, would it be agreeable to all sides that we proceed tomorrow with the consideration of the Nuclear Regulatory Commission legislation? I see nods in the negative.

Mr. DOMENICI. I would have to object to that.

Mr. ROBERT C. BYRD. Let me put it this way: Do Senators want to continue debate on the conference report tomorrow, or may the joint leadership—I will consult with the minority leader—proceed with a second track on tomorrow, with the understanding that at any moment any Senator who wishes to debate the conference report on natural gas may do so?

Mr. HANSEN. Mr. President, if I may respond to the distinguished majority leader, insofar as I know, I think there is no intention on this Senator's part to participate in the debate tomorrow, and I think there is assurance, which I think is eminently fair, that if such an occasion or situation should arise, as quickly as is expeditiously possible we would move to it anyway. I would think it perfectly agreeable that we deal with other matters tomorrow.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. My understanding would be, under the unanimous-consent agreement, that the first order of business on consideration of the natural gas bill would be the filing of the motion to recommit with instructions to be offered by the Senator from Ohio.

It would be my further understanding that following that, any Senator who desired to file a motion to amend that motion would have, under the reservation requested by the Senator from Oklahoma, the right to offer such an amendment; and if there were other pending business on which a vote had not been taken, it would be laid aside to accommodate a request to amend or discuss the motion of the Senator from Ohio, until next Tuesday, when a vote occurs on that motion. Is that correct?

Mr. ROBERT C. BYRD. Yes. All I am trying to do is get some feel as to whether, if Senators do not want to debate the conference report or the motion to recommit by Mr. METZENBAUM tomorrow, the Senate could go to other matters; and this would put the Senate on notice that tomorrow the Senate would not be out of session, would not be out of school, and there could be rollcall votes on other matters. The leadership has that understanding, and will, of course, cooperate with every Senator in trying to find some legislation for tomorrow.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. JACKSON. Mr. President, I yield to the Senator from New Mexico to propound an inquiry.

The PRESIDING OFFICER. Will the Senator suspend for just a moment, until the Senate is in order? The Senate will be in order.

The Senator from Washington has been recognized and has the floor, and has yielded to the Senator from New Mexico.

Mr. JACKSON. To propound some questions.

The PRESIDING OFFICER. To propound some questions.

Mr. DOMENICI. On page 6 of the committee print describing the natural gas pricing agreement adopted by the conferees on H.R. 5289, the term "proration unit" is defined for the purpose of determining when a new well is eligible for pricing as a new onshore production well. In the conference report on H.R. 5289, section 103 and definition No. 8 on page 3 of the report provide the legislative language to carry out the agreement of the conferees relative to wells qualifying as onshore production units. Unfortunately, the legislative language is not as straightforward or as easily understood as the language used in the agreement. This is because the legislative language had to follow a format that was consistent with the format used throughout the conference report. The statement of managers, on page 81, in the third full paragraph from the bottom, gives a good explanation of the effect of the definition of "proration unit" in determining when a new well is an onshore production well and that explanation is very helpful.

My question is this: In order to remove any question about the definition of proration unit, I ask the distinguished chairman of the Energy Committee if the following description is correct: any new well which does not qualify for new gas price treatment will qualify as a new onshore production well if it is outside the area designated by the appropriate Federal or State agency which will be effectively and efficiently drained by an existing well as defined in section 103(c)(3). In other words, the critical element in the application of the term "proration unit" to the determination of onshore production classification, is that the appropriate Federal or State agency have made a determination that the existing well would not effectively or efficiently drain the area to be drained by the new well.

Mr. JACKSON. The Senator from New Mexico is correct. I would only add that the agency determination or area drained by one well must be made before the new well is drilled.

Mr. DOMENICI. I thank the Senator. I have one additional question, and I will say to the Senator from Washington that I will not go into the grandfather clause now; we will go into that next week. Incremental pricing is the subject of my next question.

The agreement of the conferees very clearly specified that incremental pricing would be required under this bill only on interstate systems and that the decision for incrementally pricing intrastate pipelines would be left to the States.

The question I ask is this: I just want to make certain that this strict limitation to interstate systems is clearly understood. Even in those cases where an intrastate pipeline obtains part of its gas supply from an interstate pipeline, incremental pricing is not required on the intrastate pipeline. Am I correct?

Mr. JACKSON. The Senator from New Mexico is correct. Incremental pricing under this law is to be limited to interstate pipelines and to local distribution companies, as defined, which are served by interstate pipelines.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

Mr. JACKSON. I yield to the Senator from Texas.

Mr. BENTSEN. Mr. President, it is with some reluctance that I rise to oppose the natural gas compromise drafted by the conferees. Let me state at the outset that I had genuinely hoped to be able to support this agreement because I honestly believe that a rational redefinition of our natural gas policy is an essential component of any comprehensive national energy plan. Like many of my colleagues, I have worked hard, and in good faith, to help develop a natural gas policy that makes sense for America, a policy that would put an end to the shopworn, discredited policy of market regulation.

Mr. President, this compromise agreement does not do the job. It is not a satisfactory resolution of the problem, and I, therefore, will support the motion to recommit with instructions.

Natural gas policy is controversial in almost every respect; there have been few issues that have been as thoroughly and emotionally debated in this body. On one point, however, there is little room for dispute, and that is the will of the Senate on the question of natural gas deregulation.

Twice in the past 3 years, in October 1975, and again in September 1977, the Senate—after exhaustive debate—passed legislation sponsored by Senator PEARSON and myself designed to deregulate the price of new natural gas and increase domestic production of this premium fuel in an era of shortage and rising imports.

I do not pretend, Mr. President, that the Pearson-Bentsen bill was universally acclaimed. It had, however, certain important advantages clearly lacking in this compromise measure currently before the Senate. I would like to discuss for a moment some of the more important distinctions between these two differing approaches to the issue of natural gas policy:

The Pearson-Bentsen bill permanently deregulated new onshore natural gas within 2 years, compared to anywhere between 7 and 10 years under the compromise bill. In the interim period before price deregulation becomes effective, Pearson-Bentsen sensibly tied the temporary ceiling price to the price of alternative fuels—No. 2 heating oil landed in New York. The compromise bill establishes a complicated and artificial formula for the monthly computation of natural gas ceiling prices.

The Pearson-Bentsen bill deregulated new off-shore natural gas within 5 years, again compared to 7 to 10 years under the compromise. Furthermore, under the compromise gas produced from certain categories on new offshore wells will never be deregulated.

The Pearson-Bentsen bill deregulated gas from wells which extend the known dimensions of producing reservoirs. Under the compromise bill, there is not adequate incentive to drill extension wells, and therefore many reservoirs will never be developed to their full producing capacity.

Under the Pearson-Bentsen bill, producers knew exactly what price they would receive for their gas, and they would receive that price immediately and without question. Under the compromise bill, producers are not certain of price until they have received approval from the appropriate State and Federal agencies and courts. Until then, their earnings in excess of $1.45 per million Btu's must be placed in a "refundable escrow account." This will tie up investment funds which would otherwise be available for additional gas exploration and development.

Most importantly, the Pearson-Bentsen bill kept the intrastate market free from Federal regulation. During the lengthy years of FPC control over natural gas pricing, it has been the free intrastate market which has stimulated most of the natural gas exploration and discoveries. In recent years, the intrastate market has provided more than 80 percent of the new natural gas reserves. Instead of bringing an end to this period of Federal control over the natural gas industry, the compromise bill would for the first time extend Federal price and nonprice controls to the intrastate market.

Taken together, these differences spell a dramatic departure in the conference agreement from the Senate-passed bill. In fact, the most remarkable feature of the so-called compromise is that it actually deregulates less gas in 1985 than would be deregulated under current law. Projections made by the Energy Information Administration, an independent branch of the Department of Energy, show that in 1985 the compromise bill will deregulate 37 percent of all flowing natural gas, but that under the status quo, 55 percent would be deregulated. Under the Pearson-Bentsen bill the EIA data shows that 73 percent of all gas would be freed from Federal control.

Mr. President, the Pearson-Bentsen bill was a relatively simple measure designed to lift the mantle of Federal control from the natural gas market. The compromise agreement takes us exactly the opposite direction, extending controls indefinitely and greatly expanding their scope and complexity. It would establish an administrative and regulatory labyrinth of unprecedented dimensions.

The sheer regulatory complexity and costs of compliance will force many small, independent producers out of the natural gas business. When it comes to regulation, we have seen, Mr. President, that the big companies can cope. They can hire a new battery of lawyers and accountants to decipher and comply with new regulations—and they can eventually pass the cost on to the consumer. It is the smaller enterprise, traditionally the motor force in our economic system, that suffers most.

This compromise gives with one hand and takes away with the other. It provides additional price incentives for gas exploration and production, incentives that are clearly needed. But then it saddles the independent operators—who drill 89 percent of the wildcat gas wells and account for 77 percent of the new gas finds—with a new, substantial, and potentially disasterous regulatory burden. It creates a real possibility that the smaller producers will be systematically squeezed out of business by the giant energy firms. The result, of course, would be less gas despite higher prices.

An analysis prepared by the Director of Enforcement for FERC described the conference bill as being "so complex, ambiguous, and contradictory that it would be virtually impossible to enforce it in a conscientious and equitable manner." Now, it is true that there have been some technical changes made since that analysis was written, but it is also true that those changes did not revise or reduce the 17 different pricing categories that formed the primary basis of concern. Furthermore, according to a more recent FERC memorandum, "some of the changes made from the July 31, 1978 draft have created additional uncertainties."

Mr. President, within the past year the FERC backlog of unprocessed cases has increased from 13,000 to 20,000. Given the inability of FERC to simply keep up the paperwork generated under the current 25-year-old regulations, how can we expect them to adequately cope with the complex administrative burdens that would be imposed by the compromise bill. The agency would literally cave in under the weight of all that new redtape. I understand that the Department of Energy has asked OMB for an increase in its regulatory budget from $127 million to $214 million in anticipation of the passage of this legislation. Even if this substantial increase is approved, the effects of the bill will be to shackle natural gas producers with a maze of administrative delays and complexities.

Mr. President, Government regulation—much of it unnecessary, contradictory and arbitrary—already stifles the creative potential of our economy. Over the past decade, we have witnessed an explosion of unnecessary Federal rules and regulations. In 1955, some 10,000 pages were published each year in the Federal Register. By 1970, 15 years later, that number has doubled to 20,000. Within the past 7 years, however, the size of the Federal Register has mushroomed to more than 70,000 pages per year. Federal regulation has become America's No. 1 growth industry.

The cost for American business and consumers to comply with these regulations has reached $100 billion a year. It now takes 143 million man-hours of executive and clerical effort each year just to keep up with the 4,400 forms required by the 97 Federal agencies which regulate American businesses.

Although the proponents of this con-

ference report claim that it is needed to help reverse our balance-of-trade deficit, I believe they should question the impact of all this deadweight regulatory costs on the competitiveness of American industries in foreign markets. I am convinced that the costs of excessive regulations have severely damaged the competitive strength of American business abroad, and therefore have significantly contributed to our growing balance-of-trade deficit.

Mr. President, much has been made of the symbolic importance of this compromise. It has been stressed, over and over again, that we must pass this cut and paste effort in order to demonstrate our determination to come to grips with our energy problems. Our partners in international trade and finance are theoretically watching our efforts with bated breath, waiting to see if we are serious on energy imports.

I have great difficulty crediting this line of reasoning. I am deeply, profoundly concerned about our balance-of-trade picture and the faltering strength of the dollar. I recognize that energy imports remain an important, although diminishing, factor in our trade picture.

The fact of the matter, however, is that passage of this compromise will have virtually no impact on our balance of trade, and I cannot believe the leaders of nations like Japan and West Germany believe that it will.

These leaders know that last year we imported about half our petroleum needs, while the Japanese imported virtually all their oil. Yet Japan had a trade surplus while we had a whopping trade deficit of $26 billion last year.

Although we imported no oil from Japan, we had a trade deficit last year of about $9 billion with the Japanese. This year, that deficit is expected to reach $13 billion. To stop the slide of the dollar against the yen, or the mark for that matter, we must reduce our trade deficit with the Japanese or the West Germans. This legislation would do nothing to help the dollar on these fronts.

Mr. President, the root cause of our economic problems are inflation, a huge Federal deficit which adds to the $600 billion already held in foreign hands, too much Government regulation, a tax structure that discourages investment, and a growth rate that exceeds that of our trading partners. These factors, when combined with policies that discriminate against American exports, are primarily responsible for our balance-of-trade problems. Passage of this legislation will be taken as a symbol by some, but its effects will be little more than symbolic and short lived. If this legislation is adopted, within a week they will be looking for another scapegoat to explain the weakening of the dollar.

Mr. President, the Pearson-Bentsen bill approved by the Senate was a relatively simple bill intended to eliminate an oppressive and counterproductive regulatory policy. The compromise before us is a regulator's delight. The Pearson-Bentsen bill had strong and demonstrable support among producers and industrial gas users. The compromise bill is opposed by producers because of the excessive regulatory burden it imposes; it is opposed by industrial gas users because it will not provide the certainty of supply required to make investment decisions, and it is opposed by consumer and labor groups because it will result in less gas at higher prices.

For these reasons, Mr. President, I, too, must oppose this conference agreement.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MELCHER). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 30 minutes, with statements therein limited to up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of M. Athalie Range, of Florida, to be a member of the Board of Directors of the National Railroad Passenger Corporation, which was referred to the Committee on Commerce, Science, and Transportation.

REPORT ON AERONAUTICS AND SPACE—MESSAGE FROM THE PRESIDENT—PM 215

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

I am pleased to transmit this report on United States progress in aeronautics and space during 1977. The report is provided in accordance with Section 206 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2476).

JIMMY CARTER.

THE WHITE HOUSE, *September 14, 1978.*

MESSAGES FROM THE HOUSE

At 2:05 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 3025) to authorize appropriations for the Federal Election Commission for fiscal year 1979, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. THOMPSON, Mr. NEDZI, Mr. GAYDOS, Mr. DAVIS, Mr. JOHN L. BURTON, Mr. DICKINSON, and Mr. FRENZEL were appointed managers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to H.R. 1337, an act to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, with amendments in which it requests the concurrence of the Senate; and agrees to the amendment of the Senate to the title of the bill.

The message further announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 12026. An act to create the Indian Peaks Wilderness Area and the Arapaho National Recreation Area, to authorize the Secretary of the Interior to study the feasibility of revising the boundaries of the Rocky Mountain National Park, and to add certain lands to the Oregon Islands Wilderness;

H.R. 12578. An act to amend the Internal Revenue Code of 1954 to make certain technical changes; and

H.R. 12860. An act to settle Indian land claims within the State of Rhode Island and Providence Plantation, and for other purposes.

At 3:38 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the bill (S. 682) to amend the Ports and Waterways Safety Act of 1972, and for other purposes, with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 12232, an act to amend the Unemployment Compensation Amendments of 1976 with respect to the National Commission on Unemployment Compensation, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. CORMAN, Mr. RANGEL, Mr. STARK, Mr. JACOBS, Mr. CONABLE, and Mr. VANDER JAGT were appointed managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to H.R. 12380, an act to amend the Federal-State Extended Unemployment Compensation Act of 1970 with respect to an individual's eligibility period for benefits under such Act; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. CORMAN, Mr. RANGEL, Mr. STARK, Mr. JACOBS, Mr. CONABLE, and Mr. VANDER JAGT were appointed managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 2640) to reform the civil service laws, with amendments in which it requests the concurrence of the Senate; that the House in-

sists upon its amendments to the bill and requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. NIX, Mr. UDALL, Mr. HANLEY, Mr. FORD of Michigan, Mr. CLAY, Mrs. SCHROEDER, Mrs. SPELLMAN, Mr. DERWINSKI, Mr. ROUSSELOT, and Mr. TAYLOR were appointed managers of the conference on the part of the House.

At 6:10 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to H.R. 12928, an act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1979, and for other purposes; that the House recedes from its disagreement to the amendments of the Senate numbered 11 and 12 to the bill and concurs therein; and that the House recedes from its disagreement to the amendments of the Senate numbered 2 and 24 to the bill and concurs therein each with an amendment in which the concurrence of the Senate is requested.

The message also announced that the House disagrees to the amendment of the Senate to H.R. 9214, an act to amend the Bretton Woods Agreements Act to authorize the United States to participate in the supplementary financing facility of the International Monetary Fund; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. REUSS, Mr. NEAL, Mr. PATTISON of New York, Mr. HANNAFORD, Mr. STANTON, and Mr. HYDE were appointed managers of the conference on the part of the House.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 1103. An act to permit any State the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due each State; and

S. 2556. An act to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

HOUSE BILL HELD AT THE DESK

The following bill was read by title and held at the desk, pursuant to the order of September 12, 1978:

H.R. 12026. An act to create the Indian Peaks Wilderness Area and the Arapaho National Recreation Area, to authorize the Secretary of the Interior to study the feasibility of revising the boundaries of the Rocky Mountain National Park, and to add certain lands to the Oregon Islands Wilderness.

HOUSE BILL REFERRED

The following bill was read twice by title and referred as indicated:

H.R. 12578. An act to amend the Internal Revenue Code of 1954 to make certain technical changes; to the Committee on Finance.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 14, 1978, he presented to the President of the United States the following enrolled bills:

S. 3075. An act to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize international security assistance programs for fiscal year 1979, and for other purposes;

S. 3119. An act to transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency;

S. 3120. An act to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia; and

S. 3454. An act to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-4310. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4311. A confidential communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4312. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Canada for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4313. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on 9 construction projects to be undertaken by the U.S. Army Reserve; to the Committee on Armed Services.

EC-4314. A communication from the President of the United States, reporting the determination that the extension for one year of the authorities currenly exercised under section 5(b) of the Trading with the Enemy Act, 50 U.S.C. App. 5(b), with respect to certain countries is in the national interest; to the Committee on Banking, Housing, and Urban Affairs.

EC-4315. A communication from the President and Chairman, Export-Import Bank of the United States, reporting, pursuant to law, with respect to a transaction involving U.S. exports to Algeria; to the Committee on Banking, Housing, and Urban Affairs.

EC-4316. A communication from the President and Chairman, Export-Import Bank of the United States, reporting, pursuant to law, with respect to a transaction involving U.S. exports to the United Kingdom; to the Committee on Banking, Housing, and Urban Affairs.

EC-4317. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Before Licensing Floating Nuclear Powerplants, Many Answers Are Needed," September 13, 1978; to the Committee on Environment and Public Works.

EC-4318. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Study of Foreign Languages and Related Areas: Federal Support, Administration, and Need," September 13, 1978; to the Committee on Governmental Affairs.

EC-4319. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Congressional Guidance Needed on the Environmental Protection Agency's Responsibilities for Preparing Environmental Impact Statements," September 13, 1978; to the Committee on Governmental Affairs.

EC-4320. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "HEW Progress and Problems in Establishing Professional Standards Review Organizations," September 12, 1978; to the Committee on Governmental Affairs.

EC-4321. A communication from the Secretary of Labor, transmitting, pursuant to law, a report pertaining to the employment of switchboard operators exempt under Section 13(a)(10) of the Fair Labor Standards Act; to the Committee on Human Resources.

EC-4322. A communication from the U.S. Commissioner of Education, Department of Health, Education, and Welfare, and the Secretary of Labor, transmitting, pursuant to law, a report on "The Status of Bilingual Vocational Training," fiscal year 1977; to the Committee on Human Resources.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-787. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry:

"ASSEMBLY JOINT RESOLUTION No. 88

"Whereas, California's avocado industry consists of over 7,500 growers who produce 80 percent of the avocados consumed in the United States; and

"Whereas, Avocados are the fasting growing tree fruit crop in California, gaining an additional 8,000 acres during 1977; and

"Whereas, California's avacado growers, working in cooperation with state government have established stringent standards to insure that high quality produce is available to the consumers of this nation; and

"Whereas, This important agricultural industry will be jeopardized if foreign imports of avocados are allowed without absolute assurance that the product is of a quality consistent with California standards; and

"Whereas, The Plant Protection and Quarantine Division of the United States Department of Agriculture is reviewing a proposal that would allow the importation of Mexican avocados to designated areas of the United States; and

"Whereas, Many areas of Mexico are heavily infested with pests such as the avocado seed weevil, avocado seed moth, Mexican fruit fly, and conotrachelus weevil which are extremely harmful to avocado production; and

"Whereas, The importation of Mexican avocados without sufficient safeguards to avoid infestation of the United States crop presents a serious risk that avocado growers of California and the nation will be subjected to extreme economic hardship; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President, the Congress of the United States, and the Secretary of Agriculture to protect the interests of domestic avocado producers against harm from foreign imports which pose a threat to both producers and consumers alike; and be it further

"Resolved, That no imports of Mexican avocados be allowed until there is demonstrated convincing evidence that pests harmful to California's avocado industry have been eradicated from all avocado producing states in Mexico; and be it further

"Resolved, That any proposal affecting the importation of avocados from Mexico shall include a public hearing with adequate notice and opportunity to be heard; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Agriculture, and to each Senator and Representative from California in the Congress of the United States."

POM–788. A joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources:

"ASSEMBLY JOINT RESOLUTION No. 62

"Whereas, The purpose of the federal Reclamation Law of 1902 was to develop the water resources of the West and to provide for family farming; and

"Whereas, California has greatly benefited from reclamation projects; and

"Whereas, Agriculture is California's number one industry with one out of every three jobs being agriculture related; and

"Whereas, California farmers and ranchers marketed 9.3 billion dollars in crop and livestock products in 1977 with an estimated impact on the state's economy amounting to 28 billion dollars; and

"Whereas, As the result of a federal district court ruling, the Secretary of the Interior was ordered to establish rules and regulations implementing reclamation law within the 17 western states; and

"Whereas, As a result of a federal district court ruling, the Department of the Interior is required to prepare an environmental impact statement prior to the adoption of rules and regulations affecting the Reclamation Law of 1902; and

"Whereas, The Secretary is presently preparing such a statement; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully requests that the Secretary of the Interior develop and include the following information on the rules and regulations in the environmental impact statement:

"(1) An analysis of the economic ability of family farming to provide adequate income in each agricultural area affected by the reclamation law which would include short and long term considerations of economies of scale, crop patterns, crop diversification, varying climates and growing seasons, soil types, topography and other factors affecting the production of agricultural commodities.

"(2) An analysis of the impact upon the availability of farm financing.

"(3) An analysis of secondary costs related to community services, such as roads, schools, fire and police protection, welfare and unemployment.

"(4) An analysis of social benefits and detriments.

"(5) An analysis of the efficiency of water use.

"(6) An analysis of the impact upon farm and nonfarm employment and other aspects of the economy.

"(7) An analysis of the availability of qualified family farmers;

"(8) An analysis of the available energy sources and their costs; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM–789. A joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources:

"ASSEMBLY JOINT RESOLUTION No. 97

"Whereas, The United States Department of the Interior is proposing offshore oil and gas development in the outer continental shelf of central and northern California through Lease Sale No. 53 covering an estimated 10,742,183 acres; and

"Whereas, The Assembly and Senate of the State of California recognize that unfounded and unreasonable regional objections should not override the national need to develop domestic energy resources; and

"Whereas, The Assembly and Senate of the State of California recognize that there is also a national and a regional need to minimize the unavoidable air pollution, damage from oilspills, and damage to marine and coastal habitats that would result from oil- and gas-related activities offshore of central and northern California; and

"Whereas, Geological hazards, adverse ocean and weather conditions, and conflicts with proposed ship routing systems pose real and serious risks to outer continental shelf activities offshore of central and northern California; and

"Whereas, Existing federal oilspill laws are deficient in the matter of adequately protecting the resources, environmental quality, and economy of the state thereby placing greater reliance upon prevention of such occurrences; and

"Whereas, The offshore oil and gas resource potential is an unknown quantity in the central and northern California outer continental shelf and is recognized by the United States Geological Survey to be of "moderate to low potential"; and

"Whereas, It is essential that environmental studies to determine the vulnerability and sensitivity of the marine and coastal environments of central and northern California to offshore oil and gas development be completed according to the guidelines established in the National Environmental Studies Program before outer continental shelf tracts are offered for lease sale; and

"Whereas, it is not the intent of the Assembly and Senate of the State of California that the lease sale date be delayed, but that consideration of the resource potential and the environmental studies program be conducted concurrently and expeditiously with the conduct of the lease sale; and

"Whereas, Federal and state policies and laws require avoiding or mitigating significant environmental effects whenever feasible to do so and such effects should be known and become a condition to any lease; and

"Whereas, The exploration for and extraction of oil and gas are prohibited by state law on state lands known as "sanctuary" lands adjacent to Lease Sale No. 53 and the environmental and mineral resources of such state "sanctuary" lands and other marine and environmental resources may be significantly affected by activities on outer continental shelf lands; and

"Whereas, State and local governments have consistently opposed Lease Sale No. 53 since its inception because of a general lack of relevant information upon which to judge the value it would bring or the threat it would pose to the state and its coastal communities; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the President and the Congress of the United States and the Secretary of the Interior to take all necessary actions to accurately identify the resource potential of the outer continental shelf area of central and northern California covered by Outer Continental Shelf Lease Sale No. 53 and conduct and fully evaluate an environmental studies program for the area, including geological hazards analyses, concurrently and expeditiously with the conduct of Lease Sale No. 53; and be it further

"Resolved, That all tracts in Lease Sale No. 53 which are located adjacent to state "sanctuary" lands and federal and state parks, recreation areas, refuges, and other sanctuaries be excluded from leasing; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of the Interior, and to the Governor of the State of California."

POM–790. A joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources:

"SENATE JOINT RESOLUTION No. 23

"Whereas, Federal Energy Regulatory Commission licenses for 15 hydroelectric projects in California, originally issued between 1920 and 1928, expired between 1970 and 1978; and

"Whereas, Such licenses when issued provided essentially no protection for fish and wildlife, particularly for maintenance of adequate streamflows below diversion structures; and

"Whereas, The laws of the United States and the State of California provide for the protection and development of fish and wildlife affected by water and power projects; and

"Whereas, The licensees of such projects have applied for new licenses, and the Federal Energy Regulatory Commission has authority to include terms and conditions in the new licenses that would restore or improve fish, wildlife, and recreational opportunities associated with such projects; and

"Whereas, Notwithstanding the fact that the Federal Energy Regulatory Commission was aware of the exact expiration date of each such license 50 years in advance of such date, it has not taken timely action to relicense such projects with such appropriate terms and conditions; and

"Whereas, While such relicensing is delayed, the projects continue to be operated under the original terms and conditions pursuant to annual licenses; and

"Whereas, Timely action for renewal of such licenses would allow an improvement of fish, wildlife, and recreational resources; and

"Whereas, The failure of the Federal Energy Regulatory Commission to take timely action has continued even when the licensee and the Department of Fish and Game have reached agreement with respect to terms and conditions for restoring or improving fish, wildlife, and recreational opportunities, including the following scheduled instances:

"Federal Energy Regulatory Commission number, expiration date, and project name:

"67, March, 1971, Big Creek 2A and 8.

"175, July, 1972, Balch.

"344, April, 1973, San Gorgonio Nos. 1 and 2.

"176, June, 1974, Rincon.
"137, November, 1975, Mokelumne.
"Now, therefore, be it
"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California hereby expresses its strong opposition to continued delays by the Federal Energy Regulatory Commission in relicensing hydroelectric projects in California; and be it further
"Resolved, That the Legislature urges that appropriate terms and conditions for restoring or improving fish, wildlife, and recreational opportunities be included in any annual licenses that may be issued by the Federal Energy Regulatory Commission on hydroelectric projects in California; and be it further
"Resolved, That the Legislature strongly urges the Federal Energy Regulatory Commission to hold hearings or take such other actions as are necessary or appropriate to expedite all relicensing of hydroelectric projects in California whose licenses have expired, and to include therein terms and conditions for restoring or improving fish, wildlife, and recreational opportunities; and be it further
"Resolved, That the Legislature strongly urges the Congress of the United States to hold hearings or take such other actions as are necessary or appropriate to require the Federal Energy Regulatory Commission to implement a relicensing procedure that will preclude the future repetition of this situation; and be it further
"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Chairman of the Federal Energy Regulatory Commission, and to each Senator and Representative from California in the Congress of the United States."

POM–791. A jomt resolution adopted by the Legislature of the State of California; to the Committee on Finance.

"SENATE JOINT RESOLUTION No. 38

"Whereas, With the approval of the Internal Revenue Service, the State of California in 1974 established a deferred compensation program to encourage and permit state employees to plan for and provide for their retirement; and
"Whereas, Such programs have been established in 30 other states and consideration is being given by additional states and other public jurisdictions to establish such programs; and
"Whereas, Programs of this type meet socially desirable objectives and enable public employers with a minimum of expense to assist their employees in planning for the future; and
"Whereas, These deferred compensation plans for public employees would be rendered ineffective under the proposed Internal Revenue Service rules published in the Federal Register of February 2, 1978; and
"Whereas, The recent introduction of legislation to require the Internal Revenue Service to maintain its current practice with respect to deferred compensation programs indicates the widespread concern of public employees and public employers over the proposed reversal in Internal Revenue policy; now, therefore, be it
"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation which will require the Internal Revenue Service to issue regulations consistent with long standing Internal Revenue Service actions which will enable states and local governments to continue deferred compensation plans for their employees which have been established and to permit public agencies to establish new plans; and be it further
"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Treasury, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

POM–792. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations:

"SENATE JOINT RESOLUTION No. 40

"Whereas, The great free nation of the Republic of China has been a continuous and faithful ally of the United States for many years, supplying both moral and economic support to the benefit of both nations; and
"Whereas, The Republic of China has made every effort to develop a free enterprise-based democratic form of government; and
"Whereas, The cultural interchange between the Republic of China and the United States has benefited both nations; and
"Whereas, The Republic of China, during the many years since its founding, has pledged its human and economic resources to the defense of free people everywhere; and
"Whereas, The Republic of China remains steadfast in its friendship toward the United States; now, therefore, be it
"Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California urges the President and Congress of the United States to make every effort to develop better social and economic relations with the Republic of China and to not in any way detract from our relations with the Republic of China, and that the government of the United States endeavor to do nothing which would compromise the freedom or security of Taiwan or its people; and be it further
"Resolved, That the United States reaffirm its commitment to the Republic of China as stipulated in the Mutual Defense Treaty of 1954; and be it further
"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM–793. A joint resolution adopted by the legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 94

"Whereas, Crime is on the increase nationally with one violent crime being committed every thirty-two seconds since 1976; and
"Whereas, Violent crime victims have long been the forgotten victims in the history of our society; and
"Whereas, The Legislature of the State of California has attempted to redress this wrong by offering assistance to those persons who have been victimized by perpetrators of violent crimes; and
"Whereas, To allow victims to shoulder the costs of their injuries imparts an undue, unjust and undeserved burden on such persons; and
"Whereas, Society has recognized its moral and philosophical obligation to assist victims of crime; and
"Whereas, To this end, 24 states have enacted victim compensation programs, with similar legislation pending in five other states; and
"Whereas, Congress is considering two pieces of legislation regarding compensation for victims; and
"Whereas, Many victims incur more than twenty-five thousand dollars ($25,000) in expenses resulting from violent crimes; and
"Whereas, The State of California and other states are considering setting maximum awards in excess of the twenty-five thousand dollar ($25,000) limit; and
"Whereas, The costs of maintaining compensation programs are so prohibitive as to prevent many states from establishing such programs; and
"Whereas, Federal funding will allow state programs currently in existence to continue and provide the impetus for other states to enact similar programs; now, therefore, be it
"Resolved, by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes Congress to adopt legislation which would provide a 50 percent reimbursement to the states for their costs and allow victims to receive a maximum award of fifty thousand dollars ($50,000); and be it further
"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Nancy Hays Teeters, of Indiana, to be a Member of the Board of Governors of the Federal Reserve System.

(The above nomination from the Committee on Banking, Housing, and Urban Affairs, was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. WILLIAMS, from the Committee on Human Resources:

Howard Jenkins, Jr., of Maryland, to be a Member of the National Labor Relations Board.

(The above nomination from the Committee on Human Resources was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of Sen. Sam Sims Walker, (age 52), U.S. Army, to be placed on the retired list; and Rear Adm. David F. Emerson, U.S. Navy, to be vice admiral; and Brig. Gen. Edward C. Binder, Army National Guard, to be major general. Also, Col. Andre J. Ognibene, U.S. Army, to be brigadier general; and Col. Herbert R. Temple, Jr., Army National Guard, to be brigadier general as Deputy Director Army National Guard. I ask that these nominations be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. In addition, there are 46 in the Air Force and Air Force Re-

serve to be colonel and below (list beginning with Robert L. England); and there are 382 in the Reserve of the Army and the Army of the U.S., for appointment to the grade of colonel and below (list beginning with Jack Abram); and there are 15 in the Navy and Naval Reserve to be permanent and temporary commanders and below (list beginning with Michael W. DaBose). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of August 14, 1978, at the end of the Senate proceedings.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Appropriations, without amendment.

H.J. Res. 1088. A joint resolution providing financial assistance for the city of New York (Rept. No. 95-1192).

By Mr. ABOUREZK, from the Select Committee on Indian Affairs, with an amendment and an amendment to the title:

H.R. 10581. An act to provide for the distribution of certain judgment funds awarded by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation (Rept. No. 95-1193).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. KENNEDY:

S. 3498. A bill to amend the Social Security Act and the Internal Revenue Code of 1954 to improve the aid to families with dependent children program, thereby providing fiscal relief to States and localities, and to increase the earned income tax credit; to the Committee on Finance.

By Mr. McINTYRE (for himself and Mr. BROOKE):

S. 3499. A bill to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions and to provide that there shall be no differential with respect to transaction accounts; to the Committee on Banking, Housing, and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY:

S. 3498. A bill to amend the Social Security Act and the Internal Revenue Code of 1954 to improve the aid to families with dependent children program, thereby providing fiscal relief to States and localities, and to increase the earned income tax credit; to the Committee on Finance.

(The remarks of Mr. KENNEDY when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. McINTYRE (for himself and Mr. BROOKE):

S. 3499. A bill to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions and to provide that there shall be no differential with respect to transaction accounts; to the Committee on Banking, Housing, and Urban Affairs.

REGULATION Q AND PRE-AUTHORIZED TRANSFERS

● Mr. McINTYRE. Mr. President, Senator BROOKE and I are today introducing legislation providing for a 2-year extension of Regulation Q and providing further that no interest rate differential be permitted on those accounts from which preauthorized transfers from savings to checking may be made pursuant to regulations of the Federal Reserve Board and FDIC effective November 1. The present Regulation Q authority expires December 15.

This legislation is similar to S. 3461, introduced by Senator BROOKE on August 24. I associate myself with the remarks of Senator BROOKE at the time he introduced S. 3461. While I am fundamentally opposed to deposit rate controls, I believe that a 2-year extension of Regulation Q is warranted under present circumstances.

However, Mr. President, this bill contains a revision to the language of S. 3461 and comparable bills currently pending in the House of Representatives to make clear that the interest rate differential is being eliminated only on preauthorized transfer accounts newly authorized as of November 1 and not as to any types of transfers currently permitted by law and regulation.

To facilitate prompt consideration by the Senate, Senator BROOKE and I have today sent a letter to the chairman of the Banking Committee, Senator PROXMIRE, requesting that this bill be placed on the agenda of the meeting of the Committee scheduled for Tuesday, September 19.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3499

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 7 of the Act of September 21, 1966 (Public Law 89-597), is amended by striking out "December 15, 1978" and inserting in lieu thereof "December 15, 1980".

SEC. 2. Section 102 of Public Law 94-200 (12 U.S.C. 461 note) is amended by inserting at the end thereof the following new subsection:

"(c) In any State where any provision of State or Federal law authorizes any savings and loan, building and loan, or homestead association (including any cooperative bank) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), to offer any third-party payment account, there shall be no interest rate differential between (1) banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or mutual savings banks, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C 1813(f)), with respect to savings deposits or accounts from which transfers to the institution itself or to a demand or other deposit account of the same depositor or accountholder at such institution may be made automatically or as a normal practice, pursuant to an authorization by the depositor or accountholder to make such transfers to cover checks, drafts, or similar instruments drawn by the depositor or accountholder on such institution. Notwithstanding any of the provisions of subsection (b) of this section, the maximum rate of interest payable on a savings deposit or account described in the preceding sentence shall be the rate which banks (other than mutual savings banks) insured by the Federal Deposit Insurance Corporation may pay on such accounts.".●

ADDITIONAL COSPONSORS

S. 1393

At the request of Mr. BAYH, the Senator from Oregon (Mr. MARK O. HATFIELD) was added as a cosponsor of S. 1393, Rights of the Institutionalized.

S. 3044

At the request of Mr. DURKIN, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 3044, a bill to amend title IV of the Higher Education Act of 1965 to establish a system of student tuition advances to be repaid as an income tax imposed by the Internal Revenue Code of 1954, and for other purposes.

S. 3296

At the request of Mr. TOWER, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 3296, a bill to amend the Federal Trade Commission Act to provide for congressional review of each rule proposed by the Federal Trade Commission.

S. 3360

At the request of Mr. HAYAKAWA, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 3360, a bill to amend the Urban Mass Transportation Act of 1964 to increase minority employment opportunities.

S. 3388

At the request of Mr. WALLOP, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 3388, a bill to amend the Internal Revenue Code of 1954 to exclude from gross income payments made under certain cost-sharing programs.

S. 3414

At the request of Mr. WALLOP, the Senator from California (Mr. HAYAKAWA), the Senator from Florida (Mr. CHILES), the Senator from Colorado (Mr. HASKELL), the Senator from Arizona (Mr. DECONCINI), and the Senator from Idaho (Mr. CHURCH) were added as cosponsors of S. 3414, a bill to amend the Internal Revenue Code to provide that nonresident aliens are taxable on gain from the sale or exchange of farming property and undeveloped real property at capital gains rates.

S. 3496

At the request of Mr. BAYH, the Senator from South Dakota (Mr. McGOVERN) was added as a cosponsor of S. 3496,

the Small Business Nonprofit Organization Patent Procedure Act.

SENATE JOINT RESOLUTION 151

At the request of Mr. HEINZ, the Senator from Maryland (Mr. MATHIAS) and the Senator from Montana (Mr. MELCHER) were added as cosponsors of Senate Joint Resolution 151, authorizing and requesting the President to designate November 11 through 17, 1978, as "Vietnam Veterans Week."

SENATE JOINT RESOLUTION 153

At the request of Mr. ANDERSON, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of Senate Joint Resolution 153, authorizing the President to proclaim the third week in June 1978, as "National Veterans Hospital Week."

SENATE RESOLUTION 519

At the request of Mr. ANDERSON, the Senator from Massachusetts (Mr. BROOKE) and the Senator from Colorado (Mr. HASKELL) were added as cosponsors of Senate Resolution 519, expressing the sense of the Senate that the 1980 Summer Olympics should be held at a site outside the Soviet Union.

SENATE RESOLUTION 557

At the request of Mr. ROTH, the Senator from Tennessee (Mr. BAKER) and the Senator from Pennsylvania (Mr. HEINZ) were added as cosponsors of Senate Resolution 557, requesting the President of the United States to appoint a special prosecutor in connection with the General Services Administration.

AMENDMENT NO. 2176

At the request of Mr. DURKIN, the Senator from Maine (Mr. HATHAWAY) was added as a cosponsor of amendment No. 2176 intended to be proposed to S. 1500, a bill to designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

AMENDMENT NO. 3581

At the request of Mr. SCHWEIKER, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of amendment No. 3581 intended to be proposed to H.R. 5285, tariff treatment of film, strips, sheets, and plates of certain plastics or rubber.

AMENDMENT NO. 3588

At the request of Mr. STEVENS, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of amendment No. 3588 intended to be proposed to S. 991, a bill to establish a Department of Education, and for other purposes.

SENATE RESOLUTION 563—SUBMISSION OF A RESOLUTION RELATING TO UNITED NATIONS ACTION ON PUERTO RICO

Mr. MOYNIHAN submitted the following resolution, which was referred to the Committee on Foreign Relations:

S. RES. 563

Whereas, the present association between the people of Puerto Rico and the other citizens of the United States reflects the preferences of the Puerto Rican people as expressed in free and fair elections and,

Whereas, the President of the United States declared on July 25, 1978 "That the United States remains fully committed to the principle of self determination for the people of Puerto Rico," and,

Whereas, on September 12, 1978 the United Nations General Assembly's Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted a resolution that, in effect, condemned the existing relationship between Puerto Rico and the United States and,

Whereas, that resolution wholly distorts and misrepresents the nature of that relationship and,

Whereas, the ten governments who voted in favor of the resolution are, without exception, non-democratic in character,

Now, therefore, be it resolved that it is the sense of the Senate that:

SECTION 1.—

(1) The Senate deplores and rejects this unwarranted and ill-informed action by the aforementioned Committee of the General Assembly.

(2) The Senate expresses its conviction that the political and civil rights of the people of Puerto Rico are, and will continue to be, insured by the constitutional and legal system of the United States.

(3) The Senate calls on the Secretary of State to review the matter of colonial dependency and denial of the right of self determination, especially as it relates to those same non-democratic states which supported the Committee's action, with a view toward raising these violations of United Nations principles at an appropriate United Nations forum.

(4) The Senate calls on the President of the United States to inform those governments which voted in support of the Committee's action that the United States continues to regard such advocacy as an unfriendly act.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President of the United States and to the Secretary of State of the United States.

NOTICE OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. CHILES. Mr. President, on September 13, I announced that the Subcommittee on Federal Spending Practices and Open Government would continue hearings on the General Services Administration contract fraud investigation. I wish to make notice that the hearing room has been changed. Our hearing will be held on Monday, September 18, at 10 a.m., in room 1202 of the Dirksen Senate Office Building.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, these requests have all been cleared on the other side of the aisle. I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, September 19, to consider executive nominations and other committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate today to consider Navy ship claim settlements and the fiscal year 1979 military procurement authorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to hold a hearing on S. 1699, the Diesel Fuel and Gasoline Conservation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

A VIEW FROM CAMPOBELLO ISLAND

● Mr. MUSKIE. Mr. President, Dalton Camp of the Toronto Star visited the Roosevelt Campobello Island International Park this summer. In the newspaper's July 28 issue, he offered one man's view of the special beauty, unique nature and historical significance of this international memorial to Franklin Delano Roosevelt. As chairman of the park commission on a rotating basis, it has been my responsibility for more than a decade to help guide the development of our only international park. It has also been my delight to observe the special feeling which almost every visitor takes away from the Roosevelt cottage and surrounding landscape.

The park is a small and fragile place. A decade ago it was nearly lost. Now a proposal to develop an oil refinery in nearby Eastport, Maine, has cast new doubt on whether the unique character of the park can survive.

Dalton Camp understood the potential harm from an inadequately designed refinery. To share his insight with my colleagues, I ask that his column be printed in the RECORD.

The column follows:

WILL SUN STILL RISE OVER LOVELY CAMPOBELLO?

Without the kind permission of the Canadian government Office of Tourism, whose fiat it is that the sun must always shine in Canada during the tourist high season, I must report to you that over the weekend here (a) it rained, (b) thunder was heard, (c) lightning was noted and (d) there was also a good deal of fog, particularly in the mornings.

None of this, however, detracts a whit from the charms of this small New Brunswick island which rises out of the Bay of Fundy, little more than a stone's throw from the coast of Maine. Indeed, the frequent damp of Campobello has created a paradise for botanists, naturalists, and other admirers of flora. What Campobello has that you won't find along the Rideau Canal are bogs, trees that rain fog, a spectacular number and variety of wild flowers and ambiance.

It is, nonetheless, only one of the Fundy islands and all of them have much in common. Campobello however was the vacation home of Franklin Delano Roosevelt, the scene of his childhood summers, and where he was struck down by polio at the age of 39. The summer residence of Roosevelt's "beloved island" could only be described as a cottage by one whose first home was a mansion at Hyde Park. Still, it stands today as an

authentic period piece, overlooking Friar's Bay, full of Roosevelt memorabilia, and evocative of the man and the presidency many of us are old enough to remember.

NO-MAN'S LAND

It was, in fact, something of a shared experience. Come to think of it, all of us in the group visiting Campobello could remember just where we were when we first heard of Roosevelt's death, yet all but one of us were Canadians. This may not be so remarkable as the corollary: That no one could remember where they were when the news came of the passing of Mackenzie King, or, for that matter, of any other Canadian public figure. (Perhaps it is only fair to say that Roosevelt—unlike King—died in office so that the impact is greater.)

The acres that make up the Roosevelt Campobello International Park are only a part of the island but they are, by treaty, a unique sort of no-man's land. The part is administered by a joint Canadian-American commission whose present chairman is the Lieutenant-Governor of New Brunswick, Hedard Robichaud, while the vice-chairman is Maines' Senator Ed Muskie. Even the commission's budget of $650,000 comes from both federal governments and is spent, with Solomon-like fairness, evenly among American and Canadian employees and suppliers. Within the park, the territorial imperative belongs to Roosevelt's memory.

NO TAKERS

Even so, the cottage and grounds were up for sale little more than a decade ago. Fortunately, there were no takers. The government of New Brunswick, couldn't afford the upkeep. The Canadian government, which could afford it, nonetheless couldn't find the handle on a rationale for buying the place—besides, it had already erected a granite cairn to America's "statesman and humanitarian."

Finally, the owners of the property—a New York family—gave the place away, donating it to the governments of Canada and the United States. What followed this dreary and near-fatal example of international indifference was an exemplary illustration of international co-operation and between prime minister Lester B. Pearson and presidents Kennedy and Lyndon B. Johnson, the park and the governing commission came into being.

So the sun shines bright—some of the time—on FDR's old Campobello home. But, of course, not necessarily for long. A few miles away, on the mainland, lies Eastport, Maine. Some of Eastport's burghers are hot to have an oil refinery and some say they are likely to get it.

If Eastport gets it refinery, there will be more in the air than the Fundy fogs and occasional showers. Pollution will rain on Campobello, souring the sphagnum in the bogs, poisoning the flora, repelling the birdlife and—all too likely—destroying the marine life along the shores.

It would be ironical, to say the least, if Roosevelt's beloved outer island finally was destroyed by the corrosive greed of men such as those he opposed throughout his political career—all for the incapacities of politicians who followed him and were unworthy of his inheritance.●

THE DECLINE AND FALL OF THE AMERICAN DOLLAR

Mr. HATCH. Mr. President, on September 6 during debate on the Proxmire-Hatch amendment to reduce the budget deficit contained in the second budget resolution fiscal year 1979, I pointed out that our domestic deficits in the Government's budget were a direct source of pressure on the exchange value of the dollar and were connected to the deficit in our balance of payments. I pointed out that we could not continue to legislate domestic deficits with no regard for their international consequences. Too many Senators are influenced by the mistaken belief that Federal budget deficits are beneficial to our economy. Nothing could be less true. Federal budget deficits are a primary cause of the decline of the dollar and the capital shortage now plaguing American industry.

An article by Mark Hulbert in the September issue of Dollars and Sense published by the National Taxpayers Union points out how through Federal budget deficits we have reduced the American dollar to a pale green shadow of its former self. I ask that the article be printed in the RECORD.

The article is as follows:

THE DECLINE AND FALL OF THE AMERICAN DOLLAR

(By Mark Hulbert)

For twenty-five years after World War Two, the dollar was "as good as gold." Today, that is no longer true. The dollar has fallen to levels which would have seemed impossible only a few years ago. The dollar, as Stanley Karnow has put it, is only a pale green shadow of its former self.

The collapse of the dollar means that you must pay higher prices for imported goods. If you buy a 1978 Datsun or Toyota today, you will pay $500 more for it than when the '78 models were first introduced. Tourists are also painfully aware of the dollar's reduced purchasing power. In Tokyo, a cup of coffee costs $3.

THE DOLLAR AND "CONVENTIONAL WISDOM"

The dollar's plunge is the result, we are constantly told, of conditions beyond control. If it weren't for OPEC, so the story goes, the dollar would be strong. The massive U.S. balance of payments deficit is blamed on high-priced oil.

It takes only a few moments of reflection to recognize the emptiness of that explanation. Japan and West Germany, both of whom must import all of their oil, have large trade surpluses. The United States, on the other hand, has to import only 47% of its oil. Indeed, in spite of a 13% decline in U.S. oil imports over the past year, the dollar has nevertheless fallen more than 40% against the Japanese yen alone.

SUPPLY, DEMAND AND THE DOLLAR

The depreciating dollar is a simple matter of supply and demand: there just are too many dollars in the world economy. A declining dollar tell us in no uncertain terms that those holding dollars abroad want to hold them no more.

Can the increased world supply of dollars be attributed to a United States' balance of trade deficit? No.

The balance of trade, which measures exports and imports of goods and services, has been in surplus for most of the last decade. Those so ready to blame oil prices should look at the years 1973–1976, were in spite of the quadrupled oil prices, the United States still managed to export more goods and services than it imported.

The balance of payments, however, is the statistic to look at, for it measures, in addition to goods and services, the shifts of capital into and out of the United States. It has been consistently in deficit. In fact, the United States has had a balance of payments deficit for virtually every year since the 1950s.

For many years this deficit was justified due to the "dollar shortage" abroad. During this era, foreign governments and importers were eager to buy any dollars the U.S. produced. But by the end of 1976, the foreign market in dollars had reached its saturation point. Nevertheless, the U.S. increased the world's dollar supply in 1977 by an additional $35 billion. The foreign owners of dollars rebelled, forcing the dollar down. This year the U.S. will flood the world markets with yet another $30 billion. No wonder the dollar is falling.

WHO'S TO BLAME FOR THE DOLLAR'S DECLINE

Can the dollar's decline be blamed on Congress' failure to pass energy legislation? No. The passage of Carter's energy legislation could at best have only a psychological effect on the exchange value of the dollar. This is because a reduction in our expenditures for oil would similarly reduce OPEC's deposits of Petrodollars in this country. Our balance of trade would be reduced, yet our balance of payments would probably stay about the same size. The long term effect on the dollar's value could be minimal.

OPEC is being used as a scapegoat with which to blame the dollar's decline. The fact that the administration and the media focus upon oil imports serves to disguise the true causes of the dollar's depreciation.

As reported last year, in Dollars & Sense, there is reason to believe that the energy crisis is in fact a disguised financial crisis. Now, ironically, the energy crisis is being blamed for causing that financial crisis itself!

When the conventional explanations for the dollar's decline are so palpably false, it behooves us to examine that decline more carefully. As we see it, the correct explanation must focus on two sets of interests, one political and one financial. Together, they support an increasing supply of dollars in the world.

U.S. balance of trade and balance of payments, 1971–1977

[In billions of dollars]

Year	Balance of trade	Balance of payments
1971	−1.410	−30.456
1972	−5.989	−11.084
1973	6.892	−5.356
1974	1.168	−8.821
1975	17.738	−4.658
1976	4.708	−10.468
1977	−13.892	−35.314

SOURCE: International Monetary Fund, *International Financial Statistics*, July, 1978, pp. 380–1.

POLITICS AND THE DOLLAR

The relationship between government budget deficits and the supply of dollars is very direct. A budget deficit can be financed in only two ways: through net savings in the economy (an excess of savings over investment) or through a balance of payments deficit. Because the excess of savings over investment is relatively fixed from year to year, an increase in the government's budget deficit, as a rule, translates dollar for dollar into an increased supply of dollars in the world.

A comparison of the budget and balance of payments deficits is revealing.

During periods of relative economic prosperity (e.g. 1971–4, 1977) investment takes up most of the savings, and the sizes of the two deficits correspond closely. During periods of slower economic activity, as during the recession of 1974–5, there is an excess of savings. It is only when there is a large excess of savings that a government deficit does not translate directly into a balance of payments deficit. That is why the $70.2 billion government deficit in 1975 did not translate into an equally large balance of payments deficit. Yet as the U.S. economy emerged from the recession, and investment picked up, the budget deficit remained al-

most as large, and consequently had to be financed through a larger balance of payments deficit. The result was a skyrocketing deficit in 1977. Congress is projecting a government deficit for 1978 in excess of $40 billion. Barring another recession, we will be increasing the world's supply of dollars by an almost equal amount.

Congress and the President have, by running the government increasingly beyond its means, created incredibly powerful constituencies for that spending. Even after the recession ended, and the conventional economic rationales for such large deficits no longer existed, our government did not have the political backbone to cut spending.

Congress and the President have, by running the government increasingly beyond its means, created incredibly powerful constituencies for that spending. Even after the recession ended, and the conventional economic rationales for such large deficits no longer existed, our government did not have the political backbone to cut spending.

Congress and the President have, in the process, placed the United States economy in an increasingly vulnerable position. Contrary to the old political slogan, we do not "owe the national debt to ourselves." Foreign central banks have bought up Treasury securities and now own more than $120 billion worth.

A small but dramatic example of our resulting vulnerability came this past April. Foreign banks, which the Treasury expected to continue buying its bonds with the dollars they held, instead decided to sell $3 billion of the Treasury bonds they held and invest that money in the stock market. The Federal Reserve Bank was left with the no-win choice between buying up those securities, and thus fueling inflation, or letting their price drop, and thus letting interest rates rise. As Martin Mayer wrote in the August issue of Atlantic, foreign banks "can virtually dictate the price the American government—and thus American businesses and homeowners and consumers—must pay to borrow."

Congress and the Administration could cut our balance of payments deficits significantly by cutting our government's budget deficits. But to do so they would have to make tough political choices. Rather than do that, they have taken the easy way out—by settling for a cheaper dollar abroad and inflation here at home—while shifting the blame for their failures to oil prices and OPEC.

U.S. Government deficits and balance of payments, 1971–1977

[In billions of dollars]

Year	Government deficit	Balance of payments
1971	−22.0	−30.456
1972	−17.3	−11.084
1973	−6.7	−5.356
1974	−10.7	−8.821
1975	−70.2	−4.658
1976	−54.0	−10.468
1977	−49.5	−35.314

SOURCE: *Ibid.*

BANKS AND THE DOLLAR

The supply of dollars in foreign hands is now estimated to be about $600 billion. Besides the $120 billion in Treasury bonds, there are about $480 billion in what has become known as the Eurodollar market. The size of this Eurodollar market cannot be completely blamed on Congress and the President. They can be blamed for creating the conditions which made it possible.

We must turn to an examination of international banking to understand the phenomenal growth of the Eurodollar market. For a variety of reasons, the banks can realize much higher rates of return in international lending than in domestic lending. The Federal Reserve Board places interest rate ceilings and reserve requirements on the banks' domestic operations. Neither of these limitations exists on their international operations. As a result, the banks can not only create larger amounts of credit abroad with a given amount of actual dollars, but they can also realize much greater profit on what credit they do create.

THE DOLLAR AS A RESERVE CURRENCY

The Eurodollar market's growth was affected for many years by another international monetary role played by the dollar. The historical dominance of the U.S. economy in the world means that the dollar serves as the world's major reserve currency. Other countries use dollars as the store of wealth to back up their own currencies, and international trade is by and large conducted in dollars, not in the local currencies of the countries involved. OPEC oil, for example, is priced and sold in dollars, regardless of who is buying it.

As long as there was a "dollar shortage" in the world, every available dollar produced by the United States was grabbed by foreign countries either to be used as reserve against their currencies or to purchase exports from the United States. In other words, so long as there was a "shortage," the banks had fierce competitors abroad for a relatively small supply of dollars.

In the late 1960s and early 1970s that "dollar shortage" came to an end. It was marked by the collapse of the Bretton Woods monetary agreement of 1944. Under that agreement the value of the dollar was guaranteed by the U.S. government: dollars could be redeemed for gold at the U.S. Treasury. But as the dollar shortage turned into a dollar glut, more and more foreigners began to convert their dollars into gold. In 1971, Richard Nixon renounced the gold standard and the dollar's convertibility. The dollar since then has been tied to nothing. And because it is tied to nothing, there is no limit to the growth of the supply of dollars. Unlike gold, dollars can be created by the twirl of a printing press.

THE EURODOLLAR EXPLOSION

The renunciation of the gold standard had the effect of allowing unheard of increases in the world's dollar supply. As such, it was a completely irrational response to a crisis that was itself created by too many dollars. Why was the gold standard renounced?

It was renounced because the multinational financial corporations recognized the huge profits that awaited them in international lending. To have maintained the gold standard would have required a drastic dampening of the U.S. production of dollars and, consequently, would have nipped in the bud this banking potential overseas.

The Eurodollar market in 1965 was only $16.3 billion. By 1970, as the dollar shortage came to an end but before the gold standard was renounced, the market had grown only to $83 billion. Since 1971, with all limits on the growth of the dollar supply gone, the Eurodollar market has literally exploded to an estimated $480 to $500 million!

The reserves that back up this huge amount were of course created by U.S. balance of payments deficits. And for that Congress and the President have a share of the blame. But once a threshold amount was reached, and the gold standard renounced, credit creation took over. According to James H. Hugon, economist for the Comptroller of the Currency, the actual dollar reserves backing up the Eurodollar market may be as small as $10 billion. That's a ratio of about 1:50, or 2%. In other words, the banks have created about 50 times more credit than they have in dollars. And Business Week reports that "it may really be that the Eurodollar markets can grow to any size needed to satisfy demand." Banks in the United States, on the other hand, with reserve requirements as high as 16%, can create much less credit with the dollars they have. No wonder the banks went multinational and created the Eurodollar market.

THE EURODOLLAR MARKET AN THE DOLLAR

Given an almost infinite possible expansion of credit in the Eurodollar market, it is fatuous to blame oil prices and the lack of a U.S. energy bill for the dollar's decline. Credit creation has been largely responsible for the increased supply of dollars which has led to the dollar's decline.

As Geoffrey L. Bell, senior adviser to J. Henry Schroder Wagg & Co., put it, "there is no way in which the recent changes in currency values can be accounted for by trade flows or inflation differentials."

Given this huge supply of dollars floating around the Euro-currency market, foreign governments are helpless to stop the decline of the dollar against their currencies if the banks decide to sell dollars. Last year, for example, European and Japanese governments spent some $35 billion of their currencies trying to stop the decline of the dollar, and yet the dollar still depreciated by some 30 to 40 percent. In just the last week of July, 1978, Japan spent 200 billion yen trying to curb the fall of the dollar, and it nevertheless fell by 8 percent!

PROFITS ABROAD VS. PROFITS AT HOME

This incredible expansion of international banking activity has been crucial for the banks' growth. Foreign lending by the top 12 U.S.-based multinational banks has increased at a 30.4 percent rate per year since 1970, compared to only a 8.8 percent annual increase in domestic lending. Indeed, over 95 percent of the increase in earnings for the top 12 U.S. banks from 1970-1975 resulted from their international operations.

Not only has foreign lending grown faster than domestic lending, the banks have realized a much greater profit on their international operations. The top 12 U.S. banks in 1975 had loaned only 32 percent of their assets abroad yet foreign loans accounted for 63 percent of their earnings. The top two banks. Bank of America and First National City Bank, in fact took losses on their domestic operations in 1975, receiving their entire profits from foreign operations. David Rockefeller's Chase Manhattan Bank received 78 percent of its earnings from international lending.

If foreign investment in the U.S. were at a higher level, there would be a greater demand for the dollars produced each year. If the U.S. provided the opportunities for profitable investment competitive with international lending, the consequences of the U.S. increasing the dollar supply would not nearly be so pernicious. But the very creation of surplus dollars directly leads to a declining economic potential here at home. And as that potential declines, there is that much more incentive for the banks to shift capital abroad. The United States' economy is caught in a Catch–22 situation. In order to preserve profitability, much more investment is needed. But in order to compete for that additional investment, it must promise a high rate of return on investment.

To break out of that Catch–22, our government must make a concerted effort to increase the relative attractiveness of investment in the U.S. Current government programs, however, far from promoting such efforts, in fact hinder them. As George Gilder has written in the Sept., 1978 issue of Harper's:

"Economic policy focuses on stimulating aggregate demand for existing products rather than on promoting the supply of new ones. Investment credits and rapid depreciation allowances favor the recreation of current capital stock rather than the creation of new forms of capital and modes of produc-

tion. Antitrust activity is directed chiefly against successful competitors (IBM) rather than against industries that refuse to compete (the steel industry). . . . Our taxation and subsidy systems artfully cushion failure, reward the creativity and resourcefulness chiefly of corporate lawyers and accountants, and wait hungrily in ambush for all unexpected and thus unsheltered business success."

Until the government reverses this trend, the economic potential of the U.S. will continue to be less than abroad, and our economy will continue to be starved for capital.

LOAN DEMAND ABROAD: THE CASE OF LDC'S

The irony of this situation should be obvious. At a time when the U.S. economy is being starved for capital, the U.S. banks are awash with liquidity. New York City, for example, had to struggle to borrow from its banks, yet those same banks were at the same time extending large numbers of incredibly risky loans to the Third World countries.

It is revealing to look at the patterns of bank lending in the less-developed countries (LDCs). Banking involvement in the LDCs tells us much about the shape of the emerging new world economic order.

Because of quadrupled oil prices, OPEC enjoys a massive trade surplus, on the order of $40 to $50 billion per year. Consequently, the oil-consuming nations have an equally large deficit to the OPEC countries. And most of that deficit is focussed in the LDCs.

Having received massive deposits of Petrodollars, the banks recycled large amounts to the LDCs so that they in turn could finance their balance of payments deficits. The borrowed money is spent by the LDCs for OPEC oil, then deposited by OPEC in the commercial banks, and is relent by the banks to the LDCs. In this process, the banks have become the middlemen, the insurer of all parties. The U.S. banks now have as much as $70 billion loaned to the LDCs, over a third of the total amount they have loaned abroad.

The nature of these loans is unique. Loans to corporations, for example, are usually self-liquidating, which means that the loans are invested in ventures which automatically create the means to repay the interest and principal. The LDCs, however, have used the loans to pay for their trade deficits, i.e., finance current consumption. The loans have not been used, as a rule, to finance long-term development. Indeed, 79 percent of the loans to the LDCs by private banks mature in five years or less! As a result, the countries will be in no position to service the debt at the termination of the loans. The LDCs simply have to take out further loans to service the debt previously incurred.

American Express has estimated that in 1977 one out of every four dollars borrowed by the LDCs was used to service already-existing debt. They estimate that by 1980, one out of every two dollars borrowed will be used to service debt. As the LDCs increasingly place themselves in debt to the banks, they commit themselves to greater debts in the future.

This is ideal for the banks, since it guarantees a continuing opportunity for high profits. And it is not unique to the LDCs. Italy and the United Kingdom and (to a lesser degree) most of the Southern European nations, have all borrowed heavily from the Eurodollar markets in the last five years. They are expected to continue borrowing large amounts. Interest charges alone on Italy's outstanding debt currently amounts to $1 billion a year.

The catch in all this is that as the banks expose themselves more and more in lending to governments, they have a greater stake in maintaining the economic vitality of the countries involved. What threats are there to that vitality?

DANGER SIGNS?

The biggest threat to the soundness of the multi-billion dollar debt pyramid is a reduction in prices. Not only would a reduction in prices place large strains on the debtor countries in servicing their existing debt, it also would reduce the potential for the banks to loan more and more capital to them in the future. In order to prevent that eventuality, the banks want to increase the money supply still further.

Among the major industrialized nations, the U.S. has pursued one of the most rapid monetary growth policies since 1974. In the wake of the quadrupling of oil prices that year, Western Europe and Japan imposed more austere monetary policies than did the U.S. The result was that their expenditures for imports fell dramatically, resulting in large trade surpluses. The LDCs' balance of payments deficit grew to $29.5 billion in 1974, due largely to the increased oil prices. By 1975, the LDCs' balance of payments deficit had grown to $41 billion—a problem the banks blame on the slowdown in the growth of the world's money supply caused by Japan and Western Europe's policies.

There is thus a strong financial interest in forcing these surplus countries to pursue more rapid monetary growth. A declining dollar does just that. It induces Western Europe and Japan to increase their money supplies in order to prevent their exports from becoming more expensive. This in turn increases their expenditures for imports.

Conventional trade theory would point out that a falling dollar also adversely affects other nations' economies besides surplus countries, thus making their exports more expensive in the U.S. and American exports relatively cheaper in their countries. If so, then a falling dollar does little to preserve the economic vitality of the countries indebted to the banks. Yet an examination of what has actually occurred reveals another story. The dollar has significantly declined only against the Japanese yen, German mark, and Swiss franc—the currencies of those countries that were supposedly placing a damper on world trade. The other countries' currencies have either depreciated just as fast as the dollar or even faster. Indeed, 44 of the world's currencies are pegged to the dollar, so that a decline of the dollar does nothering to harm their export earnings. Of the currencies which are freely floating against the dollar, most have declined even faster.

INFLATION VS. ECONOMIC GROWTH

But does the increase in the world's monetary supply translate into real economic growth—i.e. into genuine growth in world trade? It appears on the face of it that the banks have confused inflation with economic growth. How can that be?

This confusion becomes comprehensible when we realize that the banks are not so much concerned with the present real value of their loans, but instead with their nominal value. The banks don't care if the increased "volume" of world trade derives from inflation or real increases in demand. As long as the price tag on that volume increases, a country's ability to service debt is increased and the banks' potential for further loans is maintained—even if the real value of those loans is less.

The Overseas Development Council has concluded that "worldwide inflation has substantially reduced the present real value of the LDCs' debt burden. Due mainly to inflation, the ratio of debt outstanding to exports of nonoil exporting LDCs rose only 8 percent in 1972–6." The banks appear to be successful if their loans are good on the books, i.e. are all regularly serviced. From that perspective, inflation is relatively benign to the banks. We are suffering inflation while the banks maintain their opportunities for profit in international lending.

HOW THE BANKS DEAL WITH DEVALUATION

Conventional economic theory tells us that banks, because they are net monetary creditors, are in fact hurt by the devaluation of a currency. But though the banks are net creditors as a whole, they need not be creditors in each of the various currencies. And, as it turns out, the banks are not net creditors in dollars. They braced themselves for the dollar's decline by spreading their assets among a number of currencies.

This is to be expected. As speculators in the international currency exchanges, they would be poor bankers indeed if they let themselves lose massive amounts due to the devaluation of the dollar. Thus, the banks are not being hurt by the decline of the dollar: their dollar liabilities are dwindling just as fast or faster than their dollar assets.

THE DOLLAR, SDRS, AND THE IMF

In the long-run, the dollar is dead. With a currency market allowing for a theoretically infinite expansion of credit, a growing need for an increased nominal value of world trade, and a Congress unwilling to cut back its government deficits, the supply of dollars in the world can only grow and grow. And there appears to be no way that demand for dollars could ever catch up. The price of the dollar, no matter what the short-term fluctuations, will in the long-run keep going down.

As it keeps declining, the need for dollars as a reserve currency will fall as well. Something else will have to step in and take its place. No other single country's currency is in large enough a supply to fill such a role. This void creates a huge financial power vacuum into which the banks stand ready to enter. What the multinational financial leaders would like to replace the dollar with as the world's reserve currency is the Special Drawing Rights (SDRs) of the International Monetary Fund (IMF). The SDRs would serve the same role as did gold under the Bretton Woods agreement, except you can't print gold. As a paper gold, SDRs, like the dollar at present, could be printed at the whims of whomever controls it.

HYPER-INFLATION IN THE U.S.?

The most dangerous of the risks inherent in the present situation is a banking collapse. A 2% reserve against loans is a small margin indeed against any loss of confidence in the financial system. Significant default could send investors clamoring for their deposits only to find that there are no reserves to back them up. And it is sobering to be reminded that international banks can and do collapse. Both the Franklin National Bank, the 20th largest bank in the U.S. at the time, and the Herstatt Bank of West Germany, went bankrupt in 1974.

When confronted with a run on their banks, what recourse would the bankers have? They would have to turn to their central banks in their home countries. In the Basle Agreement of 1974, the central banks of the ten largest industrial nations agreed that they would be the "lenders of last resort" in case of liquidity crises of the foreign branches of their countries' banks. This means that in the event of any run on the banks, the central banks will just print more money. By now the pattern begins to emerge; cries that are caused by madly printing dollars are "resolved" by madly printing more dollars!!

With this "safety net" strung out beneath them, the banks are now free to create even more credit through new loans. This will reduce their margin of reserves even further. As a result, the banking system and the debt pyramid it has created will become increasingly vulnerable to both depositor and bor-

rower loss of confidence. Increasingly trivival events will be capable of sending shockwaves throughout the system and possibly sending that debt pyramid crumbling to the ground.●

AN ICEBREAKER FOR THE GREAT LAKES

● Mrs. HUMPHREY. Mr. President, I would like to commend, once again, the members of the Appropriations Committee for their efforts to facilitate the construction of an icebreaker specifically designed to meet the needs of the Great Lakes. I wish to extend my sincere thanks and gratitude to my friend, Senator BAYH, chairman of the Transportation Subcommittee, for leading the fight to realize an objective, the importance of which he shared with Senator Hubert Humphrey.

This icebreaker, and the contribution it will make toward our goal of insuring year-round shipping on the lakes, represents a major step toward the continued economic growth of this area. I know that I speak for all of my friends in Minnesota and the Great Lakes region, in expressing thanks to the Congress.

The appropriation of $20 million to enable the awarding of a construction contract by December 31, 1980, marks the beginning of an eventual solution to a problem that has plagued Great Lakes shippers for many years. The need for an adequate icebreaking capability on the lakes, to help to insure winter navigation, was viewed as a high priority by my husband. I share his deep concern and that of all citizens of the Great Lakes States that this project should go forward.

It is my sincere hope that we have now put an end to the longstanding disagreement between the Congress and the U.S. Coast Guard over the specific design requirements of the icebreaker. I recognize and understand the objective of the Coast Guard to build a deep-draft icebreaker for multiple use on polar and Great Lakes waters. The problems experienced by the *Westwind* in recent years have, however, proven the deep-draft class concept impractical. With the exception of one vessel, the *Mackinaw*, all icebreakers currently serving the Great Lakes are of the deep-draft polar class. The *Mackinaw* was built in 1942 and does not embody the technological improvements and sophistication now required to provide the steady, reliable service necessary for year-round shipping.

A second area of disagreement has been over whether American shipbuilders have the capability to design and construct an icebreaker meeting the specific needs of the Great Lakes. It has been argued that it would be necessary to purchase such a vessel from abroad. I understand, however, that a number of U.S. shipbuilders have indicated their intent to bid on the contract and their capability for complying with the time requirements. The contract will be advertised to all who wish to bid. In accordance with normal procurement practices followed by the Department of Transportation and the Coast Guard, the contract will be awarded to the lowest bidder who can comply with the contract requirements.

I am very happy that the dreams and efforts of Hubert Humphrey, Great Lakes shippers, and all dependent on Great Lakes navigation for their livelihood and economic well-being, are on the threshold of fulfillment. A Great Lakes icebreaker, of the class discussed, will result in higher profits, more jobs, and renewed incentives to economic development for our Great Lakes cities and ports. The U.S. Department of Commerce has estimated that year-round shipping on the Great Lakes would add some $400 million annually in wages and salaries alone in the 1980's.

While I am disappointed that the full $60 million authorized for this year was not appropriated, I believe the intent of Congress to complete this project is clear. I also am optimistic that a single purpose icebreaker will still provide the ultimate result. I am pleased that the conferees have directed the Coast Guard to report on the progress being made every 3 months, thereby providing an opportunity to evaluate the situation as they proceed. A further $60 million has been authorized for the next fiscal year, and I am very hopeful that appropriations will be approved at this level, toward providing a Great Lakes icebreaker by early 1983.

Mr. President, I urge my colleagues in the Senate to continue their support of this project and to enable the completion of this vitally needed economic stimulant to the Great Lakes.●

HISPANIC HERITAGE WEEK

● Mr. SCHMITT. Mr. President, the week of September 10 through 15 has been proclaimed as National Hispanic Heritage Week. As a Senator from the State of New Mexico, I am proud to say that my constituency is made up of a large percentage of individuals of Spanish descent. A Hispanic society has existed in what is now northern New Mexico around Santa Fe and Taos since 1610, and through the centuries this community has made up nearly half of the State's population.

New Mexico was admitted to the Union in 1912, and although these proud descendants of the Spanish Conquistadores and Pueblo Indians have encountered various difficulties moving into the mainstream of American society, they have maintained what remains one of the richest heritages of culture in America.

From the savory food—the chili picante—to the gritos of the mariachis at a local fiesta, to the melodic sounds of the Spanish language, the Hispanic population has truly helped to make New Mexico the land of enchantment.

Mr. President, as we join in celebrations throughout the country to honor Hispanic Americans, a group which may be the largest minority in the United States by the year 1980, let us not forget the painstaking steps they have taken to overcome the language barrier and succeed in education and in the labor market. Although much progress has been made in these areas, we must continue to provide increased opportunities for these Americans.●

SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM HELPS ELDERLY BOISEANS

● Mr. CHURCH. Mr. President, the Senate Committee on Aging has had a longstanding interest in promoting community service employment opportunities for older workers.

Hearings conducted by the committee in the late 1960's and early 1970's helped pave the way for enactment of the older American community service employment program in 1973.

The purpose of the legislation was to build upon earlier successful pilot projects—such as green thumb, senior aides, and senior community service aides—and convert them into permanent, ongoing programs.

The National Senior Service Corps has proved to be enormously effective, not only for the older workers but also the communities served.

The experience to date has made it clear that there are many older Americans who are ready, willing, and able to serve in their communities.

In recent years the Committee on Aging has taken the lead in expanding the senior community service employment program. The number of participants has almost tripled during the past 2 years, from 12,400 to 47,400.

Additionally, the committee has taken steps to assure that persons employed under the older worker job opportunities program of the Public Works and Economic Development Act would not lose their jobs if they could not be transferred to the senior community service employment program.

In my home State of Idaho, I have had an opportunity to view firsthand senior aides at work in their communities. One good example is the National Retired Teachers Association and the American Association of Retired Persons senior community service employment program in Boise. It provides jobs for older workers in a wide range of fulfilling service activities for the Red Cross, YMCA, YWCA, boys clubs, model cities programs, and others.

Linda Funaiole, of the Idaho Statesman, recently wrote an excellent article about these senior community service aides.

Mr. President, I ask that this account—entitled "Program Offers Boiseans Training for New Jobs"—be printed in the RECORD.

The article follows:

PROGRAM OFFERS BOISEANS TRAINING FOR NEW JOBS

(By Linda Funaiole)

A new program in Boise designed to retrain disadvantaged older persons so they can hold new jobs has been well-received by non-profit and public service agencies that might serve as host employers, the program's project director says.

"We've really had a nice reception coming into it," said Barbara Moore, project director for the Senior Community Service Em-

ployment Program that started in Boise 1½ weeks ago.

Sponsored by the National Retired Teachers Association and the American Association of Retired Persons, the federally funded program is designed to help economically disadvantaged individuals 55 and older.

Eligible enrollees are placed in job training positions with non-profit and public services agencies, such as the American Red Cross, YMCAs and YWCAs, Boys Clubs, Model Cities programs and area agencies on aging, the project director said.

"We've had a lot of good response to it," Moore said, referring to local agencies. "It's got a lot of potential."

During the training period, enrollees may work up to 25 hours a week and receive a salary not less than the federal minimum wage. The NRTA-AARP operates the program with grants from the Department of Labor and the Administration on Aging. Moore said, so host agencies are not responsible for salaries.

"It is a nice feature, because it allows that agency (host) to reach that many more people, and also gives the older person on-the-job training and a boost in morale," she said.

Work experience comes through a variety of positions, Moore said, adding, "It needs to be meaningful employment" for the individual. She said salaries are not restricted to the minimum wage. "We are very flexible about that," she said. "We go by the going rate."

If a person has been out of a job market for a long time, the program will help him obtain training in necessary skills. For example, an individual might take a 6-week typing course paid by the organization (NRTA-AARP), the Colorado State University graduate said.

During the training period, individuals are covered under Workman's Compensation and receive sick days and a paid vacation, Moore said.

No time limit is set for remaining on the training program, she said. "When we place an individual, the host does not have to pick them up after six months," she said. "We do hope to have the person picked up whenever they (the host) can."

She said the program's goal is to find permanent, unsubsidized employment for participants. Part-time or full-time jobs as employment counselors, cooks, telephone operators, drivers, nutrition aides, receptionist-typists, security guards and teachers aides, among others, are sought for program participants.

To qualify for the program, persons 55 and older must meet Department of Labor guidelines for disadvantaged persons. Under the guidelines, Moore said, an individual may not exceed $3,140 in yearly income and two persons may not exceed $4,140.

In addition, all applicants for the program must take a medical examination to determine physical limitations, if any. "One nice feature is that we do pay for a pre-employment physical exam," the director said, adding that this has saved some lives in programs elsewhere by providing medical attention a person might not have received otherwise.

Moore, who has a master's degree in gerontology, said she will try to place 35 eligible persons in Boise agencies for training and 10 in Twin Falls agencies. She said she hopes the program will expand to Pocatello and other areas in the future.

More information can be obtained at 345-5114, or at the project office, 1519 Hays St. The office is open from 8 a.m. until 4 p.m. Monday through Friday.

Before coming to Boise to direct the employment program, Moore worked for the Area Agency on Aging for nine months in Colorado. In addition, she said she has thousands of hours of volunteer service dealing with the elderly.●

WELFARE REFORM OR GOVERNMENT EXPANSION?

● Mr. HATCH. Mr. President, everyone is aware of the fact that President Carter's welfare program is dead for this session of Congress. However, I am not sure that everyone is aware that his program was a program for expanding the size of Government, not for reforming welfare. I think it is important to understand that Government programs are usually used to expand the size of Government, not to solve problems.

Professor David Meiselman, a well-known and respected economist at Virginia Polytechnic Institute, has prepared a scholarly study of President Carter's welfare program. His study was published by the Law and Economics Center of the University of Miami.

Applying a careful analysis of labor markets, unemployment, and public service employment, Dr. Meiselman shows that President Carter's proposal, devised by the welfare bureaucrats, would provide little or no work incentive for those unemployed or now on welfare. Rather, the administration's proposal aggravates the destabilizing influence of present welfare programs on work incentives, good working habits, and family stability.

Dr. Meiselman shows how unemployment statistics, which are used to justify the administration's proposal, are themselves inflated by the Government's own policies. Real unemployment, Dr. Meiselman states, is largely a product of present Government welfare programs and Government intervention in the labor markets.

Our knowledge of past and present public service employment programs is sufficient to show that these programs expand not employment, but Government. These programs generate demands for workers and resources now in the private sector. State and local governments substitute public service employment funds for budgeted expenditures, thus producing no new jobs, especially for the unemployed. Even worse, the private sector must bear the cost of public service employment in the forms of higher taxes or greater rates of inflation. This added burden on the private sector impairs its ability to create new jobs. The result is more unemployment and additional economic distress. In effect, the public sector "crowds out" the private sector, thus producing a "need" for more Government programs. This is the way the process works. Government programs function by creating a need for the expansion of Government programs. All the while the public sector grows relative to the private sector, and the power of Washington, D.C., multiples. The Government does very well by itself.

Dr. Meiselman predicts that the type of "welfare reform" that is now on the back burner will produce a new welfare class among middle class America. While current welfare recipients would refrain from working under the administration's plan, many workers now employed in the private sector would take public service employment jobs. In addition to the indirect costs of the administration's proposal, Dr. Meiselman estimates that such a plan would have immediate direct costs that are three to four times the administration's estimates.

Mr. President, so much of what we do serves the interest of the Government at the expense of the independence and living standards of the people we represent. The road to serfdom is paved with allegedly "well-intentioned" Government programs like the administration's welfare reform proposals.●

REPORT TO THE SENATE ON PROPOSAL TO RENOVATE OLD UNION RAILROAD STATION, NASHVILLE, TENN.

● Mr. RANDOLPH. Mr. President, the Committee on Environment and Public Works has approved a proposal by the General Services Administration to authorize the acquisition, by donation, of the Nashville, Tenn., Union Station, and its rehabilitation of Federal office space. The cost of the project is $7,152,000, which GSA has estimated is nearly $2 million cheaper than construction of a replacement building.

The Nashville Union Station is one of the few remaining older buildings in the downtown area of the Tennessee capital city. It is located in proximity to the existing post office, Federal building, and courthouse, and Federal Building annex. It also stands within a few blocks of the State capitol building. The station was opened in 1900, and is considered a fine example of the Richardson Romanesque style of architecture. After serving for many years as the city's main passenger rail terminal, the building has been unused for the past 8 years.

GSA has found that the building is structurally sound and can be readily rehabilitated into Federal offices. The recommendation is based on the proposed donation of the main passenger station and its adjacent concourse to the Government by the Louisville and Nashville Railroad. The subsequent renovation work, approved by this prospectus, includes roof replacement, new doors and windows, new stairways, wall and ceiling restoration, new flooring, new elevators, as well as fire safety equipment, and aids for the physically handicapped. The existing heating and plumbing systems date from 1900 and will be replaced. The building will also be air-conditioned for the first time.

When renovated, the building will provide 34,140 square feet of usable office space for Federal agencies, 25,000 square feet of space for rental, with more than 13,000 square feet to be held in reserve for subsequent use by GSA. Agencies scheduled to use the Nashville building include the Social Security Administration, the Department of Labor, the Navy, and the Department of the Treasury.

The leasing of space for commercial, cultural, recreational, and education activities will be undertaken under the authority of the Public Buildings Cooperative Use Act of 1976 (Public Law

94-541). The committee expects GSA to promote actively such leases, as the agency is expected to do in other cities, where mixed commercial-Federal use of public buildings will enhance the urban environment.

The Committee on Environment and Public Works has often expressed its support for aggressive implementation of all requirements of the Cooperative Use Act. This Nashville proposal marks the first significant step taken by the General Services Administration under the authority of that act. The Cooperative Use Act requires that GSA and the Advisory Council on Historic Preservation study renovation alternatives whenever GSA is considering the development of any new building proposal, and it then permits GSA to acquire and rehabilitate buildings of historic, architectural, or cultural value. The committee recognizes that projects, such as this Nashville proposal, offer innovative, cost-effective means to improve and preserve the urban environment.

Until this Nashville proposal was sent forward, the Committee on Environment and Public Works had not had an opportunity to review any prospectus for the acquisition of historic buildings under the Cooperative Use Act, and it is one of the first prospectuses involving major rehabilitation under the act. The committee urges GSA to demonstrate the strongest possible interest in this approach, whenever feasible, in the future.

Under the new procedures of the Committee on Environment and Public Works, the General Services Administrator will be expected to present the detailed plans on the project to the committee at least 30 days before a contract on the work is entered into.●

THE ILLEGALITY OF THE NEUTRON BOMB

● Mr. MARK O. HATFIELD. Mr. President, the Senate will soon be considering the Department of Energy's national security and military application of nuclear energy authorization bill for fiscal year 1979. As my colleagues are aware, funds will be included for the production of enhanced radiation weapons—the "neutron bomb"—in the coming year.

My opposition to a similar effort during consideration of last year's authorization bill is well known. I continue to maintain that the production and possible deployment of enhanced radiation weapons represents a serious threat to our efforts to control the nuclear arms race, and forestall the outbreak of nuclear war in Europe.

Recently, I received a statement from the Lawyers Committee on the Illegality of the Neutron Bomb in which several international law authorities concluded that the production and deployment of the neutron bomb pose serious legal questions under international treaties to which our Government is a signatory. As this aspect of the very complex issues surrounding the enhanced radiation warhead has hardly been considered in Senate deliberation on the matter, I am submitting to the RECORD a summary statement by the Lawyers Committee which touches on the key points involved in the legal issue. I understand that a comprehensive memorandum on this issue will be forthcoming in the near future.

I trust that my colleagues will take the time to acquaint themselves with this fine summary, outlining our legal responsibility to the world as it relates to the neutron bomb. Mr. President, I ask unanimous consent that the statement be printed in the RECORD.

The statement follows:

STATEMENT OF LAWYERS COMMITTEE ON THE ILLEGALITY OF THE NEUTRON BOMB

We are alarmed at the continuing preparation for the production and deployment of th Neutron bomb, an enhanced-radiation warhead.*

This weapon—specifically designed to accomplish the maximum destruction of people through the release of fast neutrons and to minimize the destruction of property because of its limited blast and thermal effects—is heralded by its proponents as a credible tactical nuclear weapon for use in a European ground war. Their claim is that the weapon will halt advancing tanks by killing the soldiers in them while leaving intact the civilians in heavily urbanized western Europe.

Most authorities dispute the utility of the neutron bomb as a defensive weapon on friendly soil. They note that to halt advancing tanks would require the explosion of a huge amount of warheads, thus exposing Allied troops and a vast number of people in Western Europe to the deadly neutrons.

Nevertheless the lobbyists pursue the weapon as a viable option in a NATO policy of "flexible response". Some political analysts have observed that the neutron bomb is designed for advantageous use against an opponent that does not possess nuclear weapons, and some have suggested its utility in such regions as Korea, the Middle East, or Africa, where its people-killing property-saving qualities may be considered essential.

The introduction of this weapon may provide the spark for a nuclear conflagration. At present a clear threshold divides conventional and nuclear weapons. If this threshold is crossed by any nuclear weapon, tactical or otherwise, the road is open to the use of all nuclear weapons. If the distinction is blurred considerable ambiguity would result, leading to mutual suspicion, tension, and possibly to pre-emptive strategic nuclear strikes.

The neutron bomb threatens to cross the threshold because it contemplates the first use of a nuclear weapon in a conventional war. The production and deployment of the neutron warhead would thus mark a qualitative increase in the danger of escalation into full-fledged nuclear war and threaten the peace, security, and existence of the world.

These and other characteristics make the production and deployment of this weapon illegal under existing treaties and principles of international law. Any step which increases the probability of nuclear war, such as the threat to use or the provocative deployment of such weaponry, is itself a violation of international law and of the spirit and letter of treaties to which the United States is a party.

These include, among others, the United Nations Charter, the main purpose of which is to maintain international security as well as peace; other treaties in which the use or threat of force in international relations are renounced; Article VI of the Treaty of Non-Proliferation of Nuclear Weapons which expressly calls for good faith negotiations to achieve effective measures for the cessation of the nuclear arms race; and the 1971 bilateral agreement with the U.S.S.R. on "Measures to Reduce the Risk of Outbreak of Nuclear War".

The neutron bomb is unique in the arsenal of publicly known nuclear and other weapons of mass destruction in that it relies primarily on radioactive effects for the destruction of people, its sole target. The production and deployment of the neutron bomb would, for the first time, create an impression of the *legitimacy* of such weapons designed specifically for mass annihilation and the pollution and destruction of all living things.

The biological effect of high-velocity neutrons is about ten times that of equivalent amounts of gamma or X-rays per unit of mass. The characteristic effect of neutron radiation is comparable to thousands of millions of injections of a highly potent acid. The impact of the radiation on the nervous system is instantaneous, provoking convulsions, temporary paralysis, and loss of muscular coordination. Death may occur within a matter of hours or after several days.

The horrifying consequences of these effects are not limited to agonizing and slow death and other effects of radioactive neutrons which can extend for decades after exposure. Enhanced-radiation weapons are no more—indeed they are less—"humane" than chemical weapons, whose first use has long been outlawed by international treaty. Neutron radiation would cause leukemia, cancers, eye cataracts, and irreparable genetic damage for generations to come.

The notion that neutron bombs are benign to people on "our side" is fallacious. Like all nuclear weapons, the neutron bomb does not distinguish between combatants and civilians, between friendly and enemy soil.

Because of these characteristics the use of the neutron bomb would be illegal under existing treaties and well-established principles of international law and would also constitute crimes against humanity. These principles and treaties include, among others, the Declaration of St. Petersburg in 1868 of the principle of the laws of humanity which condemn and prohibit the "employment of arms which uselessly aggravate sufferings of disabled men or render their death inevitable"; Hague Regulation IV of 1907, Article 23, wherein "it is especially forbidden . . . (e) To employ arms, projectiles or materials calculated to cause unnecessary suffering", and the Geneva Protocol on Poison Gas and Bacteriological Warfare of 1925 which prohibits not only the use of "poisonous or other gases" but also the use of "analogous liquids, materials and devices."

Other principles as expressed in treaties, United Nations resolutions and international diplomatic conferences condemn the use of weapons which do not discriminate between combatants and civilians and which are unlimited in time or space. These include the Hague Conventions of 1897 and 1907; the Geneva Conventions of 1949, and the Protocols to these conventions adopted on June 8, 1977, by the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict, and many General Assembly resolutions, including Resolution 2444 (XXIII) adopted unanimously December 19, 1968.

We recognize, of course, the horror and opprobrium with which world opinion regards any nuclear weapons. The St. Petersburg Declaration that "employment of arms which uselessly aggravate sufferings of disabled men or render their deaths inevitable" has been restated on innumerable occasions including in the United Nations General As-

* The term "neutron bomb" is correct in the sense that the enhanced radiation warhead releases many more neutrons than other weapons of equivalent yield; it is misleading, however, in that the detonation of the warhead also releases great energy in forms other than neutrons.

sembly Resolution 1653 (XVI) 1961, and recently in the 1977 Geneva Protocols, Protocol I, Article 35. We therefore strongly condemn as illegal and as violative of international law all weapons of mass destruction, both nuclear and non-nuclear.

But we now focus on the neutron bomb for three reasons:

(1) President Carter's postponement of the final decision as to whether to produce this bomb has created the hope that this new escalation may be prevented.

(2) The United States created, introduced, and has been the only country to employ nuclear weaponry. It therefore has a special responsibility—and opportunity—not to escalate the nuclear arms race further by being the first to produce the neutron bomb.

(3) The threat of production of the neutron bomb has created worldwide anxiety and protest. As lawyers, we have the professional duty to draw the attention of our government and our people to the relevance which this world opinion has to the illegality of this weapon. It is well established that "the laws of humanity and the dictates of public conscience" determine whether a dubious weapon is permissible. We therefore intend to appeal to the moral sense and legal duty of the United States to conform to this overriding rule of the law of nations as laid down in the preamble to the Hague Convention IV of 1907 and reaffirmed in the Geneva Conventions of 1949, and the 1977 Geneva Protocol, Article 1, par. 2.

We propose to do this by informing our government and the American people of the various treaties and principles of international law which have led us to the conclusion that the production or deployment of the neutron bomb would be illegal. We believe that this will be a significant contribution to world peace.

We invite our colleagues who share this view of join our Committee for this purpose.●

NORRIS COTTON'S BOOK IS, INDEED, "A GEM"

● Mr. McINTYRE. Mr. President, I would like to call attention to a book review by Henry Fairlee in the August 26-September 2 edition of the New Republic.

The book reviewed is one written by my dear friend and former Senate colleague, Norris Cotton; the title is: "In the Senate: Amidst the Conflict and the Turmoil."

Let me quote a few lines from Mr. Fairlee's review to indicate the favorable impact Norris Cotton's book made upon this sagacious observer of the American political scene.

Mr. Fairlee wrote of the book:

It is a "gem"; it is invaluable. It actually tells us what the Senate is like, and therefore what the life of politics is like. There is no subject which he touches—the rules of the Senate, the growth of the congressional staffs, lobbying, the financing of elections, the direct election of senators, filibusters, the busybodying of the judiciary, the meaning of seniority—which he does not illuminate. This is a man who knows the difference between disillusion and lack of illusion, and such a man is no less needed as a guide to politics than as a legislator. This is the New England politician at his best, and it is also the conservative at his best . . . It is as delightful to read as it seems to have been a delight for him to write. One wonders when one puts it down, whether they make them like him any more, and one must be content with what would be his own answer, that they still do and always will.

Mr. President, Henry Fairlee's enthusiastic response to Senator Cotton's book is welcomed by those of us who know and love the retired Senator from New Hampshire. But it comes as no surprise.

We have long known that Norris could write and write very well, indeed, and that he is superb raconteur. His newsletters, when he was in office, were not the creatures of his staff. He wrote them. And they were an impressive, delightful mix of wisdom and humor.

The same mix is apparent throughout Norris' new book. Fairlee writes:

"His perfectly arranged description of how the Senate works is full of anecdotes which are worth the telling and the repeating. One must do here. When the bell rings once or twice for a quorum call, it is not for a "live" quorum call which the Senator must answer. Only when it rings three times must he go to the floor. When an elderly and powerful Senator was receiving a visitor in his office one day, the bell rang twice, and she looked anxiously at him as if he should leap to his feet. At last she said: "I thought I heard a quorum call." "No doubt you did," the Senator answered brusquely, "this is their mating season."

Fairlee concluded:

If that does not make you laugh, and tell you something about the Senate that is worth knowing, don't bother getting this book.

Mr. President, I concur with Mr. Fairlee's appraisal. I, too, think Norris Cotton has written "a gem" of a book, and I, too, predict, as Fairlee does, that "it will have a long life."

More than that, it deserves to have a long life. In these times of political rancor and bitterness, Norris Cotton's book restates a firm belief in the soundness of the American political system and reflects, at the same time, his deep love for the institution of the Senate. Beyond that it is an eloquent affirmation of the importance of civility in developing consensus and assuring continued progress.

As Henry Fairlee put it:

There is not one sour note in the book.

Mr. President, I congratulate my friend and former colleague on a job superbly done, and I ask that Henry Fairlee's review of Senator Cotton's book be printed in the RECORD.

The article from the August 26–September 2, 1978, edition of the New Republic follows:

IN THE SENATE: AMIDST THE CONFLICT AND THE TURMOIL

(By Norris Cotton)

This book by the former senator from New Hampshire will probably have a small sale, but I predict that it will have a long life. It is a gem; it is invaluable. It actually tells us what the Senate is like, and therefore what the life of politics is like. There is no subject which he touches—the rules of the Senate, the growth of the congressional staffs, lobbying, the financing of elections, the direct election of senators, filibusters, the busybodying of the judiciary, the meaning of seniority—which he does not illuminate. This is a man who knows the difference between disillusion and lack of illusion, and such a man is no less needed as a guide to politics than as a legislator. This is the New England politician at his best, and it is also the conservative at his best. There is not one sour note in the book. It is as delightful to read as it seems to have been a delight for him to write. One wonders when one puts it down, whether they make them like him anymore, and one must be content with what would be his own answer, that they still do and always will. His perfectly arranged description of how the Senate works is full of anecdotes which are worth the telling and the repeating. One must do here. When the bell rings once or twice for a quorum call, it is not for a "live" quorum call which the senator must answer. Only when it rings three times must he go to the floor. When an elderly and powerful senator was receiving a visitor in his office one day, the bell rang twice, and she looked anxiously at him as if he should leap to his feet. At last she said: "I thought I heard a quorum call." "No doubt you did," the senator answered brusquely, "this is their mating season." If that does not make you laugh, and tell you something about the Senate that is worth knowing, don't bother getting this book.●

SENATOR STAFFORD ELECTED TO IPU EXECUTIVE COMMITTEE

● Mr. BAKER. Mr. President, I am pleased to announce that our distinguished colleague from Vermont (Mr. STAFFORD) has been elected to the executive committee of the Interparliamentary Union.

Senator STAFFORD has been a very active and constructive member of the IPU since 1973, and has served as vice president of the U.S. delegation for the past 2 years.

While the elevation of an American to the executive committee is not unprecedented, it is somewhat rare, and it is a tribute to Senator STAFFORD's stature in international affairs and his personal integrity that this honor has been bestowed upon him.

The IPU, as my colleagues know, is a kind of United Nations of parliaments, with 75 member countries. While it has no binding authority, it has served as a useful forum for the interchange of ideas among legislators throughout the world.

I know my colleagues join me in congratulating our friend from Vermont and in wishing him well as he represents the Congress and the Nation in this important new post.●

GAO REPORTS ON WAMI

● Mr. CHURCH. Mr. President, the General Accounting Office has just issued a report entitled "Progress and Problems in Improving the Availability of Primary Care Providers in Underserved Areas." The report includes a section on the Washington, Alaska, Montana, and Idaho decentralized medical education program (WAMI), and I ask that it be printed at the conclusion of my remarks.

GAO's report confirms the successful approach which WAMI has taken toward solving the shortage of physicians in the rural Northwest. It strongly indicates that the factors WAMI has employed are just as pertinent to other parts of the country which are medically underserved. My own long-standing interest in this problem has made me an enthusiastic advocate of the WAMI program, and I urge all who are concerned with it to heed the lessons of its productive efforts.

GAO found, for example, that personal and professional considerations were far more important than financial benefits in causing physicians to decide whether or not to locate in rural areas. One of WAMI's objectives is to increase the number of medical students admitted from the WAMI States. WAMI has found that students from underserved areas are most likely to return to them to establish their medical practices, and GAO strongly indicates that this factor has national application.

In addition, GAO found that Federal repayment of student loans does not operate as an incentive for locating in underserved areas, despite the immediate and substantial financial rewards involved. Significant questions were also raised over the workings of scholarship programs with contractual obligations for service in rural areas. It is apparent that life-style is paramount in physicians' deciding to live and work in rural or inner-city areas, and GAO has made the striking recommendation that Congress consider discontinuing the loan repayment program.

With respect to professional considerations, GAO discovered that ready contact with other physicians and medical institutions was just as important an element in locating for medical practice as personal living preferences. Another objective of the WAMI program is to bring the resources of its medical center, the University of Washington School of Medicine, to the communities of the WAMI States. The Community Clinical Units established under WAMI also fit exactly with the professional association determinant of physician location.

GAO reported further that special training of medical students for the practice of family medicine produces more physicians who will settle in underserved areas. Again, this finding reflects an objective of WAMI.

It is important to note, Mr. President, that the University of Washington School of Medicine is the only medical school in the four WAMI States. The University's decision to reach out into underserved areas, even across State lines, is deserving of the highest commendation, and other schools have done well to emulate it.

Mr. President, GAO passes lightly over some important characteristics of the WAMI undertaking. The first is to accomplish all of WAMI's objectives without capital construction programs: no new buildings, just more doctors in the right places. That objective has been achieved, and the government should take note of this monument without a monument.

The second characteristic is the fact that WAMI has not taken any money from the Federal Government since June 30, 1976. Its governmental source for funds has come entirely through its participating States since that time. WAMI began with a foundation grant, rather than Federal funds, which is significant in itself. Thereafter, WAMI did receive some Federal money, but it is no longer at the Federal trough.

WAMI, Mr. President, is a success story, not only for the achievement of its important objectives, but as a model of cooperation to solve a complex national problem without overdependence on the Federal Government. As GAO has reported, there is much to learn from WAMI's experience.

The report follows:

WAMI

In 1969, the University of Washington School of Medicine (UWSM) staff developed a plan for a decentralized medical education program which would use facilities and faculties of other universities to teach basic sciences to first-year medical students and thereby allow more students from the WAMI States to enter medical schools. UWSM is the only medical school in the four WAMI States.

In 1971, the Commonwealth Fund of New York awarded UWSM a $1 million 3-year grant to test the regional medical education concept in the WAMI States. HEW awarded the University of Washington a $1.5 million contract for the WAMI program for the period June 1, 1972, to June 30, 1973. Subsequent modifications increased the contract amount to $6.1 million. HEW funding of WAMI ended June 30, 1976, and the program has been authorized continuation funds from the participating States.

PROGRAM OBJECTIVES AND GOALS

The WAMI program was initiated in 1971 to address these goals:

1. Increase the number of students admitted from the WAMI States.

2. Increase the number of primary care physicians being trained.

3. Bring the resources of the medical center to communities in the WAMI territory.

4. Accomplish the above goals without capital construction programs.

5. Place physicians in areas of need—redress the geographic maldistribution that exists in the WAMI States.

The WAMI program consists of two phases—a university phase and a community phase.

During the university phase, WAMI medical students from the participating States receive their first-year instruction in basic sciences at the participating university in their State (University of Alaska, Washington State University, Montana State University, and University of Idaho). Their courses are essentially the same as those taught to first-year medical students at UWSM in Seattle. Students then complete their training at UWSM. Since WAMI began in 1971, 196 students have participated or are participating in the university phase at the 4 schools.

The community phase consists of Community Clinical Units (CCUs) generally located in outlying rural areas of the participating States. Medical students and residents obtain clinical training and experience during 6-week clerkships at CCUs. CCUs were established to encourage more students and resident physicians to practice in rural areas after completion of their medical education and training. Each CCU is basically a teaching site where a group of physicians teach advanced medical students and medical residents. As of December 31, 1975, 13 CCUs were participating in the WAMI program, as follows:

Type of practice: Location	Population (1970 census)	Participating physicians
Family medicine:		
Anacortes, Wash	7,701	6
Grandview, Wash	3,605	7
Kalispell, Mont	10,526	6
Kodiak, Alaska [1]	3,798	4
Omak, Wash	4,164	6
Oak Harbor, Wash	9,167	10
Internal medicine:		
Billings, Mont	61,581	20
Missoula, Mont	29,497	17
Wenatchee, Wash	16,912	13
Pediatrics:		
Great Falls, Mont	60,091	5
Pocatello, Idaho	40,036	5
Spokane, Wash	170,516	10
Obstetrics/gynecology: Boise, Idaho	74,990	20
Psychiatry: Anchorage, Alaska	48,029	9

[1] Not in operation as of Dec. 31, 1975.

As of September 30, 1975, 308-student clerkships and 60 resident rotations had been completed in 14 CCUs throughout the 4-State area. Fifty-eight percent of these were in family medicine.

A program summary prepared for accreditation of the WAMI program by AMA indicated that some impact was being made on the geographic distribution of physicians. Of 35 residents who participated in the WAMI program CCUs and were no longer in residency, program data showed that 16 were in rural practices, as shown on the following page:

Type of practice	Department: Family medicine	Internal medicine	Pediatrics	Psychiatry	Total	Percent
Rural	12	2	1	1	16	46
Semirural			6		6	17
Urban	2		1		3	9
Military commitment	3				3	9
Student/continuing education			2		3	9
Other	1		1		4	11
Total	18	5	11	1	35	[1] 100

[1] Does not total due to rounding.

However, we did not determine the extent to which these physicians actually located their practices in HEW-designated health manpower shortage areas.

Features of the WAMI program which may encourage participants to practice in underserved areas after completion of residency training are:

Recruitment and selection of medical students from areas having a physician shortage or maldistribution problem.

Establishment of training sites in small communities to expose medical students and residents to small-community practice.

Program officials said that it is too early to evaluate the impact of selecting students from the WAMI States because none of the WAMI students who entered the university phase have completed residency training. However, a program evaluation showed increasing percentages of students interested in practicing in small towns or medium-sized communities. Many of these were interested in group practices and primary care. Preliminary data indicates that the community phase of the program may be an effective means of encouraging students who

have completed residency to practice in nonurban areas.

An October 1975 WAMI program summary report stated that (1) four of the five program goals were being achieved and (2) some impact was being made on the fifth goal—improving geographic distribution—in that a large percentage of residents who participated in the WAMI community phase and completed residency have set up practices in rural locations. Moreover, the WAMI program has trained an increased number of primary care physicians, as evidenced by the number of students selecting family medicine. About 54 percent of the WAMI students chose family medicine. ●

ALASKA NATIONAL INTEREST CONSERVATION LANDS

● Mr. ANDERSON. Mr. President, the Alaska National Interest Lands Conservation Act was recently examined in an article by Luther J. Carter in the August 11 issue of Science magazine. The article entitled, "Andrus in Alaska: A Tour of the Wild Estate," describes the Secretary of Interior Cecil D. Andrus' support of the Alaska lands legislation now pending in Congress and his justifications in leading the Carter administration's efforts to pass the Alaska National Interest Lands Conservation Act this year.

The Metcalf-Durkin bill, S. 1500, would enable us to institute a plan to protect our Nation's last great wilderness frontier. The Alaska lands are an exceptional part of the American patrimony and thus the importance of this legislation cannot be overemphasized.

Mr. President, the 95th Congress must act in the national interest in its decision on Alaska public lands. As we draw near the final weeks of this legislative session, it is imperative that we fulfill our responsibilities to all our constituencies and vote to preserve the scenic splendor of the Alaskan wilderness.

Mr. President, I ask unanimous consent that the full text of Luther J. Carter's article be printed in the RECORD.

The paper follows:

ANDRUS IN ALASKA: A TOUR OF THE WILD ESTATE

ANCHORAGE, ALASKA.—The scenery and wildlife spectacles afforded by Alaska, the "Great Land," are impressive and varied enough to evoke a strong response from many who come here. Indeed, Representative John Seiberling of Ohio, a key supporter of the Alaska lands legislation now pending in Congress, has returned from each of his several trips to Alaska enthralled. "Alaska," Seiberling has said, "is Yosemite, the Grand Tetons, Yellowstone, the Grand Canyon, Glacier National Park, and the Serengeti Plains all rolled into one."

This state recently received another important Washington visitor who is also enormously impressed by Alaska. It was Secretary of the Interior Cecil D. Andrus, who is leading the Carter Administration's efforts to have Congress complete action this year on the Alaska lands bill and thereby have nearly 40 percent of Alaska's vast land area of 375 million acres assured special protected status as part of the "four systems"—that is, the four national systems of parks, wildlife refuges, forests, and wild and scenic rivers.

The bill was approved by the House of Representatives in May by the overwhelming margin of 277 to 31. Now, however, the measure faces substantial opposition in the Senate. The hard-rock mining and oil and gas industries object to the fact that substantial resources would indisputably be put off limits to exploration and development (Science, 4 November 1977). In the industry view, the nation can ill afford to "lock up" resources which, it is argued, will surely be needed in the future to stave off critical shortages.

Moreover, most nonnative Alaskans and their elected officials are opposing the bill as it is now written. Alaskans typically are holding the flag of state's rights high and demanding that much the greater part of the public lands be open to a variety of uses and largely unrestricted access. More specifically, the two Alaska senators, Mike Gravel and Ted Stevens, Democrat and Republican, respectively, want the acreages that would go into the conservation systems to be much smaller than what the Administration has proposed; they also want provision to be liberally made for well-defined transportation and utility corridors. In addition, the senators hope to see a program of joint federal-state land management established for regions where there is a mix of federal and state land, and, in many instances, native and other private land, too.

In early July, Andrus was in Alaska leading a dozen news reporters on a week-long tour of the state. His party crisscrossed the state in a fleet of four airplanes, visiting places such as Mount McKinley National Park, the Kobuk River Valley and the Brooks Range (where major new refuges and parks are proposed), and the National Arctic Wildlife Refuge. The secretary's obvious aim was to drum up maximum public support for the Alaska lands bill which may now be nearing a critical test in the Senate, where Gravel has promised to filibuster.

Andrus is an outdoorsman from the Northwest who grew up hunting and fishing. He was in his element as the fatbellied Grumman Goose amphibian ferried him and his party into Selby Lake, a pristine glacial lake nestled in a spectacular mountain setting on the south side of the Brooks Range. It was the weekend, and Andrus, a lanky 6-foot-2, had his mind set on fishing. Dressed in a blue-cotton plaid shirt, dungarees, and a duck hunter's cap, he looked as much like one of Alaska's professional bush pilots or guides as he did a Secretary of the Interior and former governor of Idaho. Accompanied by a fishing enthusiast from his official entourage, Andrus, fly rod at ready, promptly took off down the lake in an outboard-powered rubber boat in quest of Arctic grayling and lake trout.

From this and other experiences during the trip, Andrus was to say, and say repeatedly and ardently, "I'm more convinced than ever that these places must be protected." In what has come to be a favorite catch-phrase, he says the Alaska lands bill represents "the last chance for us to do it right the first time."

As passed by the House, the bill—known as H.R. 39—would add some 101 million acres to the four national conservation systems, with much the greater part of the acreage going into parks and wildlife refuges.

Some of these units would be large enough to embrace entire river drainages and regional ecosystems, and this is what Andrus means by "doing it right the first time." Experience in the lower 48 states has shown that refuges and parks can eventually fall into jeopardy unless made large enough to include essential watersheds, habitats, or buffer zones. The secretary cites the troubles that have befallen the Everglades, Indiana Dunes, and Redwoods parks as cases in point.

Enactment of the pending legislation would complete the process of land allocation that began with the Alaska Statehood Act of 1958. That act gave the new state the right to select and take ownership of 104 million acres from the public domain lands, an entitlement which in toto will represent an area a bit larger than California.

The process was carried further with the Alaska Native Claims Settlement Act of 1971. It provided for the establishment of Eskimo, Indian, and Aleut native regional and village corporations and gave them a total land entitlement of 44 million acres.

The state and native land selections have not been completed and cannot be until Congress decides what land is to go into the four systems. The pending measure would in fact provide for expeditious conveyance of land to the state and natives. Accordingly, all Alaskans have a stake in seeing the Alaska lands controversy settled; nonetheless, many would prefer to have the matter carried over to the next Congress, which they hope will be less in sympathy than the present one with preserving huge areas of wilderness.

As it happens, the part of the Brooks Range which Secretary Andrus and his party visited is the subject of what has the look of a classic conflict between wilderness preservation and mineral resource development.

Selby Lake, where the Andrus party made camp for 2 days, is part of what would become, under H.R. 39, the Gates of the Arctic Wilderness National Park. This park, covering an area half again the size of Massachusetts, would have within it some of the most arresting features of the central Brooks Range, including its remarkable combination of gentle valleys and sharp granite spires.

But the geologic treasures to be found in and around the proposed park are not confined to the scenic. For cutting across the lower part of this park and areas contiguous to it is one of Alaska's most highly mineralized zones. Several rich deposits of copper, lead, zinc, and silver already have been found and other valuable deposits are suspected to be present.

The Gates of the Arctic Park would be managed strictly as wilderness, with no mining allowed and with even recreational use deliberately kept low through a reservation and permit system. There would be no roads into the park and no established campgrounds; access would be by aircraft flying in to designated water or gravel bar landing sites. And, although the Brooks Range is noted as prime habitat for such game species as Dall sheep, barren ground grizzly bear, caribou, and wolves, sports hunting would be prohibited, just as it is in parks in the lower 48 states. Only such hunting as has been traditionally carried on in the region by Eskimos or others to meet subsistence needs would be allowed.

For all his concern to see much of the Alaskan wilderness preserved, Secretary Andrus insists that the boundaries set forth in the Administration's proposal for the Gates of the Arctic park and other proposed park and refuge units reflect a conscientious effort at striking a reasonable balance between preservation and development. It turned out that, at Selby Lake, Andrus was to have encounters with two men who neatly epitomized the conflicting pressures and points of view with which he has had to cope.

One of them was Ray Bane, a National Park Service anthropologist with a deep commitment to keeping the best of the Brooks Range and arctic Alaska pristine and undefiled. The other was Dave Heatwole, regional senior geologist in Alaska for the Anaconda Company.

The encounter between Andrus and Bane came during a helicopter excursion into the Brooks Range. Bane is an intense, wry little man who has lived, fished, and hunted with the Eskimos of the villages along the Kobuk River, which rises in the Brooks Range to the east of Selby Lake. On this occasion, he had about him an air of excitement that befitted an interpreter of a region that such noted explorers of Alaska as the late Robert Marshall and Olaus Murie have extolled for its wildness and beauty.

At Bane's direction, the helicopter made a low pass through part of the valley of the Alatna River, a gentle, meandering stream flanked by some of the most rugged country in the Brooks Range. Then, taking a sharp turn to the southeast, the copter followed Arrigetch Creek, a tributary of the Alatna, up to its source near the foot of the jagged, cold-gray granite monolith that forms the Arrigetch Peaks.

The helicopter alighted in a spongy meadow beneath the peaks, and Andrus, Bane, and a few reporters accompanying them got out. "This country is fantastic," said Bane. "In some places, no human—not even the Eskimo—has ever set foot. We're not in the business of just saving some scenery. We're trying to save a wilderness. Bob Marshall wanted to save everything north of the Yukon."

LATE-NIGHT SESSIONS

Andrus, who was listening sympathetically, then observed with a touch of hyperbole: "The original Park Service proposal [for the Gates of the Arctic] would have come close to doing just that. We stayed late at night in my office deciding what to keep in, what to take out. Some of the Park Service people finally went home early, before the rest of us, saying they didn't want to be witness to what was being done."

Bane smiled. "It's like asking, 'Do you want to lose your big toe, or your little finger?' " he said.

One area painfully cut from the Gates of the Arctic boundaries was a pocket in the mineralized zone which is dotted with valid mining claims and several known deposits containing exceptionally rich ores estimated to be worth upwards of $6 billion. Potential mining activity in this pocket was the subject of the encounter between Andrus and Dave Heatwole, the geologist for Anaconda.

It came the morning after Andrus' flight with Bane up to the Arrigetch Peaks. Andrus and Heatwole stood on a high knoll looking across a ravine to the down slope of the next mountain. "This is the Sun Deposit," Heatwole said. "There is more than a billion dollars worth of minerals in place in that mountain. The ore is ten times richer than what we are mining in Arizona."

Heatwole said that the Sun Deposit represented only one of about 200 mining claims scattered across the 80-mile-wide pocket or "niche" which is bordered by the proposed Gates of the Arctic Park to the east and north, and by the proposed Kobuk Valley National Park to the west. One of the claims is at the Kennecott Company's fabulous Arctic Deposit, where $4 billion worth of minerals is estimated to lie beneath less than a quarter square mile of land. Moreover, according to Heatwole, the mineralized zone, with rocks of high potential, is not confined to the pocket but extends beyond it into the proposed parklands to the east and west.

Implicit in what Heatwole was saying was that, from the point of view of Anaconda and the other companies that have been carrying on mineral exploration in the Brooks Range, the park proposals posed serious conflicts. For one thing, the companies would like to be free to explore for additional deposits throughout the mineralized zone. For another, the mining companies do not want the routing of the haul roads serving their operations to be severely constrained by park boundaries. Anaconda, in particular, wants to be able to build (or have the state build) a haul road that would proceed eastward from its Sun Deposit across what is coming to be known as the "boot" of the Gates of the Arctic Park.

According to Heatwole, this routing would take advantage of a "natural corridor" through the Brooks Range foothills and allow the road—to cost about $1 million a mile—to tie in with the Trans-Alaska Pipeline haul road, some 125 miles (as the crow flies) to the east of the Sun Deposit. If, instead, the road must go around the boot of the park, the routing will not only be longer but more difficult, as it would cross the marshy and extensive Pah River flats.

Secretary Andrus was visiting the Anaconda mining claims and exploratory core drilling operations at the company's suggestion. What he found was that, through the use of the helicopters instead of ground vehicles to move the drilling rigs from place to place, scarcely any scars were left on the landscape, unlike what Kennecott had done about a decade earlier in carrying on core drilling at the Arctic Deposit. But, once the construction of haul roads and actual mining operations began, scarring would of course be inevitable (although the Sun Deposit would be deep-mined, the Arctic Deposit lies at the surface and would have to be exploited by open pit mining).

The secretary made it clear that he could not go along with what Anaconda wanted. No question about it, mining and haul roads should be kept out of the park, for otherwise the park's wilderness character could not, in his view, be preserved. But, as Andrus knew, the question as to how liberally or conservatively park and refuge boundaries would be drawn, and whether transportation corridors through them would be allowed, was going to depend on how much political muscle the Alaska senators and lobbyists for the mining and the oil and gas industries exert in Congress.

After the stop at Selby Lake, the Andrus party's tour moved on to the existing National Arctic Wildlife Refuge, an area where the conflict is between wilderness and potential oil and gas development. If H.R. 39 should become law as now written, the refuge would be enlarged to take in an area in northeast Alaska substantially larger than the entire state of West Virgina, and most of it would be classified as wilderness, with no oil and gas development permitted. Yet nearly everyone agrees that there is a significant potential for discoveries of oil and gas in that part of the existing refuge which is in the Arctic coastal plain.

Last year, when the Administration was putting together its Alaska lands proposal, Secretary Andrus bested the Department of Energy in an interagency battle by persuading President Carter that oil and gas development should be kept out of the refuge. The refuge is unique, partly because it serves as the calving grounds for the Porcupine caribou herd, which, with its some 120,000 animals, is now the largest herd in North America.

Andrus has been well aware that the question of whether the nation should place wilderness and caribou ahead of oil and gas could, in the final analysis, depend on the estimates as to how much oil and gas the refuge contains. Accordingly, last May he eagerly seized upon a new U.S. Geological Survey report which speculates that, while the refuge offers good potential for discovery of oil and gas deposits of medium to large size, discovery of another "supergiant" field comparable to the one at Prudhoe Bay is unlikely.

The secretary has taken the attitude that the value of the refuge and its caribou far outweigh the value of speculative and possibly unexceptional oil and gas resources which, even when developed, would be "finite and rapidly expended."

Enroute to the refuge, Andrus and members of his party stopped briefly at Prudhoe Bay where Angus Gavin, the Atlantic Richfield Company's ecologist in residence, told them, in effect, that oil fields and caribou are quite compatible. The study, conducted by Gavin in the Prudhoe Bay field and in a large undisturbed area adjacent to it, had shown, he said, that the presence of the big pipeline, the gathering lines, and other facilities had not bothered the caribou.

"Actually, we have the only stable herd in the Brooks Range," said Gavin, referring to the small central arctic herd variously estimated to have from 5000 to 7000 animals. Gavin observed that the caribou even seemed to prefer to crawl under the elevated pipeline rather than use the grade level crossings provided for them.

But Andrus and the U.S. Fish and Wildlife staff people with him took Gavin's assertions with a grain of salt. A study of the behavior of the central arctic herd sponsored by the Department of the Interior, the state of Alaska, and the Alyeska Pipeline Company had indicated that caribou, and especially cows and calves, were tending to avoid the pipeline and its associated haul road. According to the study, the herd seemed to be separating "into eastern and western components, each with largely independent north-south movements."

As luck would have it, the Andrus party found and flew over a sizable part of the Porcupine herd, which was assembling prior to making its annual trek from its summer habitat on the North Slope across the Brooks Range and into Canada, where it winters in the boreal forests of the upper basin of the Porcupine River. It was early afternoon, the sun high in a cloudless sky, and the caribou, some 20,000 to 30,000 of them, were moving slowly through the foothills above the arctic plain. The tundra, a subtle beige and light green, offered not the slightest sign of ever having been visited by humans—there was not a road, not a seismic line, not a mark of blemish of any kind as far as one could see, from the Arctic Ocean to the Brooks Range.

"The Eskimos say, 'No one knows the way of the wind and the caribou,' " Andrus has said. "[But] we do know that if the herd is dispersed or broken up by [oil and gas] exploration activity, it may never regroup again. This is a chance we decided not to take."

Throughout his Alaska tour, the secretary found the friendliest political terrain in the native villages, such as Kaktovik, a village of 132 people on Barter Island, on the edge of the Arctic Wildlife Refuge and the Beaufort Sea. At Kaktovik, the villagers depend on caribou meat to help carry them through the winter, and last year they took about 100 of these animals.

Their mayor, Marx Sims, the postmaster and a white (nonnative), told Andrus that the villagers were totally opposed to oil and gas development in the refuge. Such development, they believed, would interfere with calving and bring about a disastrous decline in the herd. The Eskimos of villages to the south of the Brooks Range had adopted resolutions expressing the same apprehensions.

On this as on previous trips to Alaska, Secretary Andrus heard many nonnatives voice the protest, implicity or explicity, that H.R. 39 represents a callous attempt to put many of Alaska's most choice areas off limits, not just to development, but also to sports hunting and even to convenient access for fishing or other outdoor pursuits. Yet, as Andrus sees it, his philosophy of achieving "balance" in use of resources applies as much to the classification of land for various kinds of recreational activity as it does to classifying land for development or wilderness preservation.

For example, in the Andrus view, the Gates of the Arctic Park and the Arctic Wildlife Refuge are best regarded as special places which one perhaps will visit rarely, if at all, but which will always be there, pristine and inviolate. Yet, at the same time, a number of other parks and refuges will serve large numbers of visitors, as in the case of those along the coast of Alaska and in parts of the interior which are easily accessible by excursion boat, railroad, or highway.

The first and last days of the Andrus tour featured visits to such places. One was by excursion boat from the town of Seward to the sea lion rookery on Chiswell Island, near the proposed Kenai Fjord National Park on the south central coast of Alaska, about 100 air miles below Anchorage. The other was by tour bus through part of McKinley National Park (see box), now accessible by the main highway that connects Anchorage and Fairbanks as well as by the Alaskan Railroad.

After seeing the McKinley Park Station Hotel thronged with tour groups of elderly visitors, including even a woman in a wheel chair, Andrus observed: "This is the rebuttal to those who say Alaska is only for the young and the rich."

Underlying all of the secretary's thinking about Alaska is a conviction that Alaska, given its enormous size and extraordinary resources, is an exceptional part of the American patrimony and should be treated as such. The 104-million-acre land grant made to the state of Alaska under the Statehood Act was, he says, vastly larger than any land grant ever made to any other state. Similarly, the settlement of native land claims was, he feels, not ungenerous. Now, Andrus says, it is time to set aside for the nation as a whole "the crown jewels of the Alaskan wilds."●

TRADE BARRIERS STIFLE U.S. AGRICULTURAL EXPORTS

● Mrs. HUMPHREY. Mr. President, there is no doubt that agricultural exports are essential to U.S. agriculture and are extremely important to the U.S. balance of payments. Almost one acre in three that are harvested is devoted to production for export. And, in 1977, the United States nonagricultural trade deficit of $40.1 billion was reduced to $29.9 billion through the sale of agricultural exports.

It is quite clear that agricultural exports offer a viable means of strengthening the value of the dollar and our economic position in the world. Yet, while we continue to search for new export markets and to fight for free trade, our efforts to increase our agricultural exports are being stifled by an increasing number of trade barriers. Farmers and traders alike are complaining that we are losing sales and losing our market share in export markets.

A recent Christian Science Monitor article, entitled "Japanese Quotas Work Against U.S. Food Import," illustrates the types of problems we are encountering as we attempt to expand our agricultural exports. Quotas in some foreign countries help to drive the price of U.S. farm exports up 4 to 5 times over what the same products sell for in the United States. Where quotas are not used, other measures are developed to limit the sale of U.S. farm exports.

The domestic impact of these foreign trade barriers is serious because they affect not just our agricultural economy but the nonfarm economy as well. A 1974 Department of Agriculture study indicated that 650,000 non-farm jobs are in some way related to assembling, processing, and distributing agricultural products for export. That same study indicated that each dollar of agricultural export stimulates nearly another dollar's worth of business activity—a multiplier effect of almost two.

Reducing trade barriers has to be one of this country's top economic priorities. Month by month our trade deficit continues to grow and the value of the dollar continues to decline. The result is spiraling inflation here at home and havoc in the international money markets. Only a concerted effort on our part to increase export trade will turn the situation around. The reduction of trade barriers is fundamental to our success.

Last week the Senate took an important step toward expanding our agricultural export markets by passing S. 3447, the Agricultural Export Trade Expansion Act of 1978. This legislation was in part modeled after S. 2385, which Senator Hubert Humphrey introduced in 1977. His bill would have established a 3-to-10 year intermediate credit program under the Commodity Credit Corporation and the bill passed by the Senate contains a similar provision. And, it represents a recognition by the Senate that financing facilities have become an established and recognized part of international trade on farm commodities.

The Senate's action on this bill represents a significant decision to make this Nation fully competitive in international markets. Mr. President, I ask that the article from the Christian Science Monitor follow my remarks in the RECORD.

The article follows:

JAPANESE QUOTAS WORK AGAINST U.S. FOOD IMPORT

(By Norman Sklarewitz)

TOKYO.—These days, American tourists in Japan find current food prices as fascinating as the country's ancient cultural heritage. The decline in the value of the U.S. dollar has pushed grocery price tags to record heights.

Checking the cost of fruits, vegetables, and other items of daily household use and then comparing them with the same products back home is a particular source of astonishment to visitors and painful dismay to residents.

For example, shoppers going to neighborhood supermarkets find these prices: five peaches, 950 yen, or at the 192 yen to $1 U.S. exchange rate $4.95; one American honeydew melon, 1,630 yen ($8.48); a can of American fruit juice, 285 yen ($1.48); a 10-ounce jar of instant coffee, 1,390 yen ($7.23); or a can of vegetable soup, 230 yen ($1.19).

Those prices are important to people other than foreigners living in Japan; they play a role in U.S. export deficits. Japan has traditionally been one of the leading markets for U.S. agricultural products. This year, the value of American foodstuffs sold to Japan is expected to hit $4 billion for the first time.

FOOD SALES ENCOURAGED

Last year, the value of American farm exports to Japan was $3.8 billion. That volume represented some 16 percent of total U.S. agricultural exports worldwide. So it is important to American farmers and ranchers that the Japanese continue to buy their commodities. If, however, food prices continue to rise, the market could be threatened or at least kept from expanding as the population warrants.

American trade negotiators are currently trying to increase the volume and variety of American food products permitted into Japan. That effort comes as part of a general effort by the U.S. and Japan to correct the current trade imbalance between the two countries. At midyear, Japan had sold some $10 billion more worth of its goods than it imported from the U.S.

If Japan eased some on its long-standing restrictions against agricultural imports, experts argue, at least some of that trade surplus would be reduced. In addition, increased availability of goods on the marketplace would logically help drive down retail prices.

What concerns American exporters are official Japanese quotas and semi-official practices which work to limit U.S. agricultural sales. For example, Japan rigidly limits imports of fresh oranges. For years, the quota of 15,000 metric tons was imposed on the argument that Tokyo had to protect the interest of its own farmers who grow mikan—mandarin oranges.

Under heavy U.S. pressures this past January, however, Japan finally increased the quota three times. While this seems large enough a spokesman for Sunkist Growers, Inc., in Los Angeles, figures out the new volume works out to about 2½ more oranges per person per year here.

"There's so little fruit going into Japan that even with the increase, only a small number of oranges is involved," says Bob Harz, a Sunkist marketing expert.

It is not just foreigners who have to pay those steep prices of course. The Japanese housewife on a budget is being asked to pay the yen equivalent of 75 cents for one orange. And if a tourist should decide to order a glass of fresh-squeezed orange juice in a hotel restaurant for breakfast, he will get a check for $4.50.

The high prices are not all going to support American exporters. A 40-pound carton of top-quality oranges is landed in Yokohama for around $14. But the Japanese have a complicated distribution system that involves layer upon layer of middlemen. As a result, the price of that same carton can easily rise to the equivalent of $66, or some 400 percent, by the time it is sold at retail.

OTHER APPLICATIONS

The same situation prevails with other U.S. products such as wheat. Sales here, too, are limited by stiff marketing markups and controls set by the Japanese Government. These tie the market price of imported wheat to the country's rice subsidy program. In other words, U.S. wheat that may be landed in Japan at $3.25 a bushel is immediately marked up by the Japanese to $8 a bushel; the difference supports subsidies to rice farmers. Not surprising, then, a small loaf of white sandwich bread in Tokyo sells for around $1.34.

Beef is another example of how Japanese import restrictions and a single distribution system combine to limit supplies and guarantee high profit margins. A surcharge on about 95 percent of all imported beef permits domestic beef producers who have high unit costs to be sure that imported beef, which may come in cheap, does not compete with them at retail. First, there is a 25 percent duty on all imported beef and then a surcharge of nearly $6.40 per pound. As a result: hamburger patties are around $3.25 a pound; a T-bone steak is around $11.40 a pound and tenderloin or striploin steaks are higher. Prices like those effectively limit sales to a comparatively small market of very affluent Japanese.

"If we had complete import liberalization of the 19 agricultural items now under some sort of Japanese controls, we could sell some $500 million more worth of American agricultural products to Japan in from three to five years," says one U.S. Embassy source here.●

REPORT TO THE SENATE ON VARIOUS BUILDING PROPOSALS FOR THE GENERAL SERVICES ADMINISTRATION: LOS ANGELES FBI PARKING GARAGE

● Mr. RANDOLPH. Mr. President, the parking garage approved in this proposal provides replacement space for an open parking facility which is being transferred to the city of Los Angeles in

a land exchange with the General Services Administration. The new facility will provide space for parking and repairing of Government-owned cars and Government property. It is not to be used to provide space for employee or public parking.

The scope of this proposal has been reduced substantially since it was originally sent to the Congress in December 1974. At that time, it projected a facility costing $9,262,000, with parking for some 600 FBI vehicles, plus auto and radio repair space that together covered more area than that required for a football field, plus nearly that much storage space. Because the number of parking spaces far exceeded the number of official cars that would be needed to serve the Los Angeles FBI field office, using the FBI's new growth projections, and because of excessive space for repairs and storage, the committee asked GSA to reevaluate its proposal.

In February 1977, GSA submitted a revised proposal. This 1977 proposal reduced the number of parking spaces to 480—approximately equal to the number of FBI agents stationed at the Los Angeles field office and thus, the maximum number of cars needed to be garaged. It is also reduced somewhat the space for repairs. Subsequent reductions by GSA and the FBI, following on-site studies by FBI officials, led to a further reduction in the repair area to its present size, which GSA outlined in a letter to the committee on August 2, 1978. It is this August 2, 1978 level which the committee has approved. GSA in the August 2, 1978, letter stated:

> The revised project size, estimated at a total project cost of $5,744,000, is 180,850 square feet including parking for 480 vehicles, 16,500 square feet for auto repair, 8,800 square feet for vehicular radio repair and maintenance, and 12,600 square feet for storage. We believe that these requirements . . . accurately reflect the current needs of the FBI.

It is noted that the committee has been informed that the new repair area has space for 13 work bays to be utilized by six or seven mechanics who work for the FBI in Los Angeles. From material provided to the committee by GSA, it is noted that this facility will have more space per repair bay, plus space for part storage, than a large, modern auto dealership.

	1974 prospectus	1977 prospectus	Present GSA proposal [1]
Cost	$9,262,000	$7,487,000	$5,744,000
Total area (square feet)	295,000	196,400	180,850
Number of parking spaces (cars)	600	480	480
Auto repair area (square feet)	25,000	16,000	16,500
Radio repair area (square feet)	25,000	15,000	8,800
Storage and miscellaneous area (square feet)	35,000	25,000	15,150

[1] Approved by committee.

By its action, the committee has approved a project with space for 480 cars, plus 25,300 square feet of total repair space, and 15,150 square feet of storage and miscellaneous space. If the design and bids demonstrate that the $5,744,000 authorized by this prospectus is available to obtain more space, then the space listed above, not the total dollars, shall become the limiting factor on the project.●

OVERSEAS MARKETS FOR MINORITY ENTREPRENEURS

● Mr. GLENN. Mr. President, I recently authored a provision in the State Department authorization bill which required the Department to coordinate with the President's interagency Council on Minority Business to improve the export performance of minority businesses overseas. Smaller American business firms have difficulty competing in overseas markets because of inadequate preparation, uncertain knowledge of markets, ineffective and uneven cooperation by governmental institutions designed to aid firms doing international business. I know Senator NELSON'S Select Committee on Small Business has been exploring this area and commend them for that effort.

A recent journal article highlights the experiences of black American enterprises in seeking markets in Africa. Some $3.4 billion in exports went to African states, excluding the Republic of South Africa. Yet, this represented a decline of $0.5 billion from 1976. More significantly, minority firms are not especially active in even these arrangements. Because I have found this article informative I wish to share it with my colleagues and therefore request that the analysis be printed in the RECORD.

The analysis follows:

U.S. BLACK ENTERPRISES AND BUSINESS IN AFRICA

U.S. exports to Black Africa during 1977 were estimated at 3.4 billion dollars. However, a breakdown of this trade clearly shows that despite the mutual desire to establish trade links between African-American enterprises and Black Africa, trade between the two remains negligible. What are the bottlenecks? Chika Onyeani reports.

In 1976, total US exports to Africa amounted to $5.2 billion, of which $1.3 billion were exports to racist South Africa, leaving a balance to the rest of Africa of $3.9 billion. The 1977 projected exports to Sub-Saharan Africa—which excludes South Africa—amounted to $3.4 billion. A breakdown of this huge trade with Africa would clearly show that none of the Black companies in the country played a significant role in its accomplishment.

Black entrepreneurs, unlike their political counterparts, have taken a back seat in the economic development of Black Africa. Present Black political leaders such as Ambassador Andrew Young and Representative Charles Diggs Jr. have certainly contributed significantly to the changing pattern of US policy towards Africa. And even John Vorster, the racist Prime Minister of South Africa, has acknowledged the pressure that Black support for President Carter has created for the changing relationship between the US and South Africa.

The question, then, is why have Black entrepreneurs not followed in the footsteps of their political colleagues in establishing lines with the huge and yet largely untapped African market? The British, French, West Germans and the Japanese are all engaged in exploiting this market; they are doing it successfully and reaping substantial profits. As was stated earlier, the U.S. exported over $5.2 billion worth of goods and services in 1976 to African countries. The question is where did these exports come from?

A brief survey of the so-called 'Top 100' Black-owned or controlled businesses in the United States reveals that, with the exception of the Johnson products company in Chicago, practically none of the other companies have seriously and aggressively explored the possibility of expanding into Africa. Of course, it has to be noted that the 'Top 100' Black businesses consist of 38 companies engaged in the sale and service of automobiles, the export of which poses multiple problems.

It would be misleading, however, to say that Black entrepreneurs have not tried to enter the African market. They have been rebuffed by their own mistakes and certain attitudes engendered by negative propaganda about Black businesses in the U.S. But the high rate of failure could be attributed here to the fact that Black entrepreneurs have gone to Africa without much preparation, adequate capital or power-based partnerships, expecting miracles merely because they are Blacks.

Given the turmoil in Africa—political unrest, wars, assassinations, port disruptions, corruption and poverty—the dilemma which confronts the Black entrepreneur is whether the potential benefits in terms of profits are worth the effort, time, frustration and possibly the total loss of his investment, although none of these problems have deterred the British, French, the Japanese and West Germans from entrenching themselves in Africa.

A number of reasons explain the failure of Black entrepreneurs to aggressively exploit the African market:

Lack of information on investment opportunities.

Lack of specific programmes by the government to assist Black businessmen to export.

Non-involvement of Black financial institutions in the export business.

Non-coordination of efforts by Black entrepreneurs.●

VIOLENCE IN LATIN AMERICA

● Mr. CHURCH. Mr. President, the conditions that are conducive to revolution are homegrown, as these articles illustrate. We must learn to live with the fact that there is likely to be continued violence in Latin America in the years to come. I ask that two attached articles entitled "From Here to Eternity," and "Rocking Nicaragua—The Rebels' Own Story," be printed in the RECORD.

The articles follow:

[From the Washington Post, Sept. 10, 1978]

FROM HERE TO ETERNITY

(By Georgie Anne Geyer)

On Feb. 14, 1977, a scene as strange as any from the 12th century was acted out in the cathedral of San Salvador in Central America.

The cathedral, a vast and empty barn of a place with none of the gilt and marble of the Old World, was jammed with nearly 10,000 crying, singing, chanting, stricken people. The building, thrusting eight empty but vigorous stories toward heaven, had been left deliberately unfinished to symbolize the church's dedication not to its own glory but to the suffering of the people.

The seething masses seemed to sense that. Intently and passionately, they clung from balconies, from stairways and from rafters.

In the minds of many were the killings—the murders of two priests, the killing of so many peasants in the countryside. And in many minds, there were thoughts of all those who had been exiled.

As he was about to award a great honor to Salvador's unimposing Archbishop Oscar

Romero, Georgetown University's President Timothy Healy that day had other thoughts.

"The wonder of it is that the arhcbishop survives," Father Healy remembered thinking afterwards. "Against him is arrayed every force in Salvador. There is literally nothing that prevents the blow of the fool who would strike him down."

That was why Healy, a glib, robust priest with an amiable, cultured face, had come to El Salvador's capital city to give the little dark-skinned archbishop an honorary degree from Georgetown. He was trying to prevent the "blow of the fool." He was trying to focus the center of power in the world, Washington, D.C. and the power of one of the greatest Jesuit universities of the world, to help a simple parish priest who, to be honest about it, had attracted no attention at all before being named archbishop of the Latin nation's 4.2 million people.

The ceremony was as simple as it was imposing. In his praise of the middle-aged man who is a hero to many Salvadoreans and as likely a candidate for martyrdom as Thomas Becket in the 12th century, Father Healy began, "It is seldom easy for us to understand what God 'needs,' what he asks of those men and women on whose shoulders he lays the weight of His church. He gives us hints, and probably the prinicpal hints are the time and place where He puts us.

"In North America," Healy went on, "the nation precedes the church in time and in our people's consciousness. For us, the greater risk is that civil religion blocks out revelation. But in both our nations, balance is everything. Ideally, the claims of politics and faith are complementary. In the practical world of limited men, with limited vision and resources, faith and politics can frequently collide."

The audience was noiseless in face of the honor being bestowed upon all of them as Healy ended with a quote from Thomas More: "God made plants for their simplicity, animals for their innocence, but he made him man to serve him wittily in the tangle of his mind."

The archbishop then spoke of "the cause of Christian humanism" which had been developing in the church, and the important new emphasis of "beginning with the realities of this world" where we must implant His kingdom now. He spoke of how the honorary degree showed solidarity with the sufferings of Salavadorean peasants. Then he pleased everyone by taking off his cope and putting on his honorary robe.

As they walked out of the cathedral, the American and Salvadorean priests were alternately stopped by the passionate mob of humans and carried along by it. The Rev. Robert Mitchell of Georgetown University recalled later with an irony touched by awe that "the scene . . . had little resemblance to more traditional ceremonies for honorary degrees."

But Father Healy, a robust Irish Catholic whose hearty, puckish face contains the wisdom and freshness of all the vales of Ireland, had the last word. "We are 1978," he mused later, sitting in his elegant university office, "and we're right back to 1170. And we wonder how we got there."

At precisely 5 p.m. last Jan. 10, the Rev. Robert Drinan, Democratic congressman from Massachusetts, called upon another important but unrelated Romero—one President-General Carlos Humberto-Romero. They met in Romero's office at the presidential mansion in San Salvador. The meeting was not friendly, despite the beauty of the old colonial building and its vast courtyard.

At one point the president arose in a rage and stalked across the large office to his desk. From a top drawer he withdrew a picture of the murdered Father Rutilio Grande. The peasants who loved Father Grande had, in a reproduction of the picture, put a crown around his head, as though he were already officially sanctified. But the words underneath read, "Our Government Has Done This to Us."

"How can they do this to me?" President Romero demanded, livid with anger.

And, he must have wondered, how could yet another Washington priest be "interfering"? Father Drinan, already an alumnus of an Amnesty International investigation in Argentina and a tall, dark man with the piercing eyes of a Shakespearean devil, had gone to Salvador at the request of the archbishop to investigate.

The drama between the two men takes form:

Drinan: I have talked with dozens of people in the countryside, and they tell me a grim tale of intimidation and harassment by forces responsible to the government. As a matter of fact, it is intimidation against the Catholic Church. The National Guard and the ORDEN [a right-wing group] tell people not to attend mass or go near the priests because they are Communists.

Romero: If you have gone . . . and heard these things, I think you should go to other places and other churches where the people or ORDEN themselves have suffered and where FECCAS and UTC [church-related peasant groups] commit degradations and intimidate the people. Some people have even been killed.

Drinan: I recognize that there has been violence by the other side, but I am speaking of something different. The government of El Salvador . . . is making it difficult or impossible for masses of the people to participate in religious services. This is the denial of a basic human right. The government is trying to divide the church. That is what you are trying to do right now. You are harassing the archbishop.

Romero: [with growing impatience] I have tried to seek an understanding with the clergy. I have talked to Father Jerez of the Jesuit Order and others. I provided security when they were threatened. I have gone and talked with priests . . . I have invited the archbishop. He came here, and we talked. He asked for the return of all the exiled priests. I said I could not do this because my colleagues and associates listen to the priests' broadcasts over radio stations and would put pressure on me not to allow them to return. I invited the archbishop to fill any vacancies with priests from abroad. I said to give me a list of the vacancies and of the candidates to fill them. We would investigate and decide who can come.

Drinan: [angrily] That is interference in the Church. It is not for a president to say who is a good priest and who is a bad priest.

Romero: [slowly, with impatience] Yes it is, if they interfere in the business of the government!

It is a typically busy day at the big, white, tropical-style American embassy in Salvador. Surrounded by lush gardens and a high fence, watched over by armed guards, the embassy foyer nevertheless is filled with Salvadoreans passively waiting for visas to leave their population and violence-doomed country.

Inside, an officer is upset. The ambassador, Frank Devine, must wear a bulletproof vest this day because a veiled bit of intelligence has come that "someone" might attack him that day. Who?

He shakes his head.

It could be so many people. Almost like a child's chant, he says it could be the right, it could be the left, it could be the government, it could be the guerrillas, it could be the "ins," it could be the "outs," it could be the Marxists, it could be the Catholics.

Perhaps the strangest part of the violence in this country is that it is all so frighteningly anonymous. In sprawling hot San Salvador, with its dialectic of shanty slums and elegant, walled houses, nobody really knows who the murderous, rightist White Warriors or the leftist guerrillas or the BPR (Popular Revolutionary Block) or the others really are. Unlike many revolutionary or prerevolutionary situations, the Salvadorean groups rarely take credit for their terrorism or attempt to explain their actions.

All American embassy officers in San Salvador finds it puzzling. "It is singularly disorganized," he said. "The country is in the process of breakdown, and it has about run its course. The mysteriousness is a function of breakdown. Nobody knows what's going on. I've never seen a country harder to know."

The problems of El Salvador in 1978 began in 1931. That year, the only free elections in the entire history of this little mestizo country were held and the liberal reformer Arturo Araujo came to power, frightening the "14 families" who had always ruled.

The military "solved" that problem by immediately taking over for the wealthy, only to be met by a massive peasant uprising in the coffee-growing region in the west. The upper-class Salvadorean "memory," therefore, is haunted by machete-wielding peasants arising like fearful shadows out of the land.

Hundreds died before the revolt was over. And that revolt was the first in the Western Hemisphere in which Communists played a significant role.

In the years following the revolt, the rest of Latin America went through change after change. Salvador stagnated and abnormal extremes of wealth and poverty became the status quo. Even today, the average per capita income is estimated at $440 a year, and 2 percent of the population owns 60 percent of the land. And there is another problem: Salvador, the smallest nation in Latin America, is also the most densely populated, with 550 persons per square mile.

The Catholic Church, not blind to such social conditions in Latin America, held an extraordinary conference in Medellin, Colombia, in 1968. Historically one of the three pillars of the Establishment in Latin America, along with the military and the aristocracy, the church suddenly aligned itself with the poor and even with revolution. A "theology of liberation" and even a "theology of violence," hung from the church's tattered edges, catching even the most perfervid radicals within its web.

With an unusually high number of foreign—especially European—priests, Salvador became a testing ground for the Medellin documents. And so, through the church, groups such as FEC-CAS (the peasant organization) and the umbrella group BPR and others were formed. All were illegal, because Salvadorean law prohibits such organizing.

The government, fearing all attempts at change equally, hated them quite as much and perhaps even more than the true Marxist groups—the Soviet-line ERP (Revolutionary Army of the People) and the Maoist-Castroite FPL (Farabundo Marti Brigade). By 1977, the country was in flames.

Marxist groups assassinated Foreign Minister Mauricio Borgonovo Pohl, a former president and the rector of the National University. The government's paramilitary groups—the White Warriors and ORDEN, a group numbering in the 60,000s—retaliated. Activist priests Rutilio Grande and Alfonso Navarro were murdered last year. Several score more priests were exiled.

Throughout the violence was the errie specter of anonymity. The rector was assassinated in front of 200 eyewitnesses. When the investigation came, there were no witnesses.

Then, in July last year, the mysterious White Warriors told the Jesuits, who comprise the largest order in Salvador, that 33

Jesuits would be systematically murdered unless they left the country immediately. At that point the archbishop and the American priests, along with many American Protestant clergymen, decided to act.

The passion with which they acted suggests a spiritual and a psychological dimension that is even more fascinating than the actual situation. Why should these two Irish-American priests, settled so comfortably in the lap of world power, become so obsessed with primitive, unimportant Salvador?

For Drinan, tall and dark and gaunt, the motivations seem to be two: a concern for human rights and the camaraderie he felt for his old Jesuit colleagues. Born in Boston, he had always been concerned with human rights and his Amnesty trip to Argentina two years ago had filled him with compassion for the people of Latin America and anger at injustices there. In addition, there were his Jesuit missions in Brazil, Jamaica and Honduras where some of his former classmates are among the approximately 850 clergy and nuns who have been harassed, tortured or murdered in the last 15 years.

For Healy, who sits atop the bluff in Georgetown in one of the most beautiful offices in Washington—a French Gothic room circa 1890 with cherry wood paneling and exquisite stained glass windows—the motivations are more complicated. The son of an Australian father and a Texan mother (with a lot of Irish blood mixed all through), he went to Woodstock College before getting his doctor of philosophy degree at Oxford.

He is also a Renaissance man of sorts. He trap-shoots. He loves good jazz and is known to tipple a few. He teaches poetry to medical students to bring body and spirit together.

When you talk to him about Salvador, he talks with a passion about the "underground church," or the "original church" or the "church of the catacombs." One has the feeling Father Healy has found in Salvador and the archbishop a deeper dimension to his faith.

Then there is, as one of Healy's top aides put it, "the Jesuit in him coming out." The Jesuits have been, after all, in the forefront of action and change within the church. They founded schools, missions and churches and moved on to leave the dull, day-to-day administration of their structured flocks to others less involved in adventure.

Last spring, in response to the threats of Jesuits being murdered, Healy, along with Protestant churchmen, urgently requested a meeting with Secretary of State Cyrus Vance to ask that the U.S. make the strongest possible protest to the Salvadorean government.

Vance responded immediately. The plea was precisely in line with the new human rights policy and passion of the Carter administration.

Personal meetings between State Department officials and Salvadorean officials here and in El Salvador led to the threats being called off. The U.S. responded to apparent improvement by finally granting a held-back $90 million loan. But the violence in the countryside and in the city continued.

By February 1978 with spurious elections in the offing, the opposition political coalition had called a rally for their candidate, Col. Ernesto Claramount. Into the massive throng on Feb. 28 went security forces and ORDEN thugs. Five deaths were officially reported, but eyewitness observers say that more than 100 were slaughtered.

An American journalist who was there said, "I was kept out of the plaza, so I could only hear the screaming and the shooting. Then, when it was over, I got in and found it literally covered with blood, although the bodies had been removed. But perhaps the most horrible thing was when I returned again an hour after that to find they had hosed down the plaza and there was a chill as though nothing had happened at all."

The massacres continued. Villages were attacked. Individual peasants simply "disappeared," never to return. The State Department's human rights division named El Salvador one of the worst human rights violators in the hemisphere, if not the world.

The struggle in El Salvador is not simply one of violence and human rights. The conflict has overtones of some of the most complicated ideological and theological problems of our time.

A leading Jesuit in San Salvador, for instance, tried to explain the difficult path facing an activist church in the midst of Marxist politics and revolution.

"Our Christian faith has in part the concern for justice of the old prophets," he said. "It is the same as Jesus Christ in front of the social problems of his times. This goes back to the sources of the Bible. It is not only the pragmatism of the faith but justice. And the cost is very high.

"I distinguish politics in terms of parties, and that is not particularly Christian. But a Christian who works at the front of social problems is another thing. Here, we enter the area of justice, and that is really biblical."

Could a system be "sinful," as many of the Jesuits who lean toward a Marxist interpretation of history say? The priest paused. "In our work it is very important to distinguish a personal sin from a structural sin. The system is of such a type that it can form a person in sin. Sure, there is a little of Marxism in this, but we believe that this idea of sin is what Christ meant when he talked about the world as sin.

"Here, the idea of a system and the structure as sinful means . . . that the system can make one sinful, too."

Such thoughts bring up the question of whether a Christian can also be a Marxist. Or whether some of the Salvadorean priests are already Marxists.

Father Mitchell, a theologian, does not find those questions altogether relevant. The archbishop, he said, works "from clear facts and clear injustices. Although there is a liberal theology in the background, he is not working explicitly out of it. He is aware of the Marxist and the liberal analysis, but he is not using it. The injustices and discrepancies are so obvious. The theology he's in is quite faithful to [the pope], Vatican II and Medellin."

Then he added thoughtfully, "If you take the whole idea that there can be 'sinful' structures, then that opens up the possibilities of there also being 'graced' structures. Perhaps it is not sin in the same sense in which we know it, but you can see where selfishness, greed and pride can become encased in cultures and in laws and in economic systems so the thing is positively unjust. It is original sin extended to society. Therefore, the whole idea of grace and redemption is extended to it. Structures can share in grace and redemption. Structures which help people to live a just life have grace."

And Father Healy said, "Didn't the early attitudes toward the Roman Empire treat the system as evil?"

Heady stuff for a primitive country that never distinguished itself in the world for its intellectual, cultural or moral excellence. But then, the priests would add mystically that God always chose the poorest in whom to make his messages known.

Napoleon Duarte, the enormously popular former Christian Democratic mayor of San Salvador who was elected president in 1977 and immediately deposed by the military, said there are three political "fronts" that have emerged: 1.) the priests and Marxists who work together, 2.) the Christians who believe violence is the only solution but are not Marxists, and 3.) those looking for a solution somewhere "between humiliation and violence."

"They'll all go to meetings and provoke the police," Duarte said. "People are ready to kill, and they want people to be killed. At the moment the Marxist ideology is not important to them. What is important is how to get the rich scared. The leaders, however, are the products of the Marxist mind, and the priests have much the same concerns. I would say they're all frustrated and confused but feel there is no other means to solve the people's condition."

Which might cause one to wonder if the priests and the Protestant clergy raising their voices in Washington have done any good.

They have.

With the help of the State Department and others, they have certainly stopped the killing of the priests, although there still are bitter complaints that American officials haven't put enough pressure on the Salvadorean government about the continued "disappearances" of poor peasants. The priests also believe that American Embassy officials in San Salvador haven't done enough. Embassy staff, on the other hand, think they have gone very far, such as holding up that $90 million loan until the government reined in the rightist terrorists.

So the tension between the churchmen and the U.S. government continues, though both want the same thing. The differences are a matter of degree and tactics.

Meanwhile, however, the government and church positions have made Western democracy and Christianity respectable among the Salvadoreans.

As to outside forces, Cuban policy there seems to be, as in neighboring Nicaragua, to support guerrilla morale and to provide advice, but not to give money or military help. The Cubans seem to want guerrillas in Central America to support moderate, coalition candidates to decrease the likelihood of "Yanqui" intervention.

The Vatican, meanwhile is another question. The priests say the apostolic nuncio in Salvador is against the archbishop. He purposely did not attend the honorary ceremony for the archbishop and has spoken out against the Jesuits in ways that many feel is historically untenable. The Vatican itself, however, has not acted—the Jesuits in Salvador feel they have fed enough of their own information back to Rome to balance the nuncio's negative reports.

American priests, in addition to sincere concern for their brethren, have found inspiration, perhaps even salvation, in the situation.

It is in Latin America these days that it is a tremendously exciting thing to be a priest," Healy said, sitting in the so-different splendor of his Georgetown office overlooking the meandering Potomac. "It is not in North America. It is still true that those of us of intellectual words do not know the front line. Those pastors, like Romero, remind us that the church is the people of God first. Here is the reality, and it is a good reminder to me. I've been hearing these footsteps all my life."

Drinan had a similar reminder. The usually dry and outspoken churchman speaks with awe about going out one night to the countryside where Father Grande had been killed. The peasant families had chosen an isolated plot to hold the eucharist, a place where the police could not find them in a vast sugar plantation.

"Like the early Christians in the catacombs and the Catholics in the Reformation period in England, we celebrated the eucharist, he said. "Simple peasants came up to embrace me, while others watched on the lookout. They told me, "My husband disappeared, by brother disappeared . . .' It is a torment, but it is so beautiful."

The tragedy Healy sees in El Salvador is one that should speak with particular poignancy to U.S. Catholics reared on the memories of suffering Ireland. In a speech last St. Patrick's Day, he said, "The echoes of Ireland are too numerous to deny. We are talking of an agricultural people [in El Salvador] who starve to death on rich land while they farm it. We are talking of distant and absentee landlords who suck the land dry, return nothing to it or the people, and live a safe and protected distance from their oppressed peasants. The only ally they lack is famine—since you can't blight cotton. We are talking of a government tied totally to the power structure and quite content to let the peasants starve if it keeps the rich happy.

"Finally, we see what we have seen so often in Ireland and among the Irish outside of Ireland. When the government looks the other way and the police and the army and the rich and the powerful are all against the little people, the only voice left is that of the church. It has made martyrs before. It may, God help us, make more in El Salvador. If it does, the church and her crown of thorns will be recognizable to every Irishman any place on the face of the earth."

[From the Washington Post, Sept. 3, 1978]

ROCKING NICARAGUA—THE REBELS' OWN STORY

(By Tad Szulc)

PANAMA CITY, PANAMA.—"When we saw Jimmy Carter's letter to Somoza, praising him, we decided that the hour to strike had arrived," Eden Pastora Gomez said quietly, leaning back in the corner of the couch where he sat with his fellow guerrilla leaders.

Pastora, better known as "Commander Zero," was the chief of the leftist revolutionary Nicaraguan guerrilla commandos—24 men and one woman—who on Aug. 22 captured the National Palace in Managua, the capital of Nicaragua, in an extraordinarily daring raid. For 68 hours, the commando unit held the palace, with over 2,000 persons inside, until its demands were met by the government of President Anastasio Somoza Debayle.

Had the demands been refused, "Commander Zero" told me, the guerrillas were determined to execute, one by one, at half-hour intervals, the 65 hostages considered members of the Somoza establishment who were in the throng trapped in the palace, the seat of the Nicaraguan congress. The first execution, in fact, was three hours away when the Somoza dictatorship agreed to the conditions of the revolutionaries.

The attack, in the judgment of some experts on Nicaraguan affairs, has triggered what may be the approaching collapse of the regime. At the same time, it has underlined the importance of the highly organized and ideologically motivated revolutionary movement in terms of future developments in that central American Republic. If the Nicaraguan army should disintegrate, the guerrillas would be the only armed force on the scene.

While the movement's leaders indicated that they would be prepared to cooperate with "democratic" groups in Nicaragua in a post-Somoza transition period they envision, their ultimate ambition is to assume power alone.

If they come to power, they said, they would establish a revolutionary state—"Commander Zero" exclaimed at one point that "there are only two solutions in Nicaragua: the revolutionary way and the counter-revolutionary way"—that would expropriate all Somoza property, nationalize natural resources, and implant social justice along with the establishment of a "popular and Democratic army."

The guerrillas left no doubt about their admiration for the Cuban revolution, whose influence is powerful within the movement, and their bitterness toward the United States for its long-standing backing of Gen. Somoza, whose father was installed in the 1920s with instrumental American support. The Nicaraguan revolutionaries, consequently, pose a major political problem for the Carter administration in terms of the stability of Central America—where rebel movements also exist in El Salvador, Guatemala and Honduras—unless a formula can be devised to encourage the Nicaraguan guerrillas to go along with a centrist compromise, a doubtful proposition.

Last Wednesday, "Commander Zero, his two principal commando associates and Tomas Borge Martinez, who has emerged as the political and ideological leader of the Nicaraguan rebel movement that calls itself the "Sandinist Front of National Liberation" (FSLN), agreed to a lengthy interview to describe their goals and, for the first time, to narrate in detail how the Managua raid was planned and carried out.

The four-hour interview took place in a large room at the barracks of the elite unit of the National Guard of Panama, just outside Panama City, where the guerrillas and the 62 prisoners of the Somoza regime brought out by them—including Tomas Borge—have been staying incommunicado since arriving in this country on Aug. 25 ("Commander Zero" flew to San Jose, Costa Rica, last Thursday, vanishing from sight).

The two associates of "Zero" participating in the interview were "Number One," a 31-year-old law student whose name is Hugo Torres, and "Number Two," a 22-year-old medical student called Dora Maria Tellez Arguello, the "political adviser" of the commando unit.

WAITING FOR "OPTIMAL CONDITIONS"

As told by the group, sometimes in lengthy reconstruction of the events and sometimes in flashes of recollection, the attack on the palace was a carefully planned operation set in motion last May and designed as the culmination of the guerrilla war against the Somona government that the FSLN had been carrying on in various ways since its secret birth in 1961.

The front, which is named after Gen. Augusto Cesar Sandino, who was killed in 1934 after fighting for six years against Nicaragua's occupation by U.S. Marines, had reached the conclusion that the capture of the palace would achieve the twin objectives of forcing the release of its fellow revolutionaries in Somoza prisons and striking a demolishing blow against the regime and its credibility.

What was needed, however, as "Zero" put it, were "optimal conditions" in which the spectacular coup would be executed. These conditions, he said, were provided by U.S. actions at a time when the current phase of anti-Somoza warfare was reaching its high point both in Nicaraguan cities and in mountainous rural areas.

When the front struck in December, 1974, occupying a Managua millionaire's mansion and taking officials and diplomats as hostages, the political reason at the time was Somoza's reelection to the presidency in rigged balloting.

This year, "Zero" explained, the operation, called "death to Somoza," was delayed until a new set of "objective condition" had developed, "Zero" said:

"We decided to strike when we saw the determination of the United States to keep Somoza in power until 1981, the manipulations by foreign capitalists, Jimmy Carter's vacillations, the right-wing support for Somoza in the U.S. Congress, and Somoza's own trip to the United States earlier this year when he returned home being more threatening than ever against the opposition."

"Zero," a powerfully built, squat man who at 42 is the oldest in the commando group, went on:

"We were terribly surprised by Carter's letter to Somoza, considering his declarations about human rights. How could he praise Somoza while our people were being massacred by the dictatorship? It was clear it meant support for Somoza, and we were determined to show Carter that Nicaraguans are ready to fight Somoza, the cancer of our country. We decided, therefore, to launch the people's struggle."

The rebels were referring to a letter Carter had sent Somoza on Aug. 1, praising him for allowing the human rights commission of the Organization of American States to visit Nicaragua for the first time to study human rights violations.

The presidential letter was sent over State Department objections; foreign service professionals considered—correctly, as it turned out—that any gesture toward Somoza would backfire against the United States because of the intensity of the anti-Somoza campaign not only by the front, but by virtually every civic organization in Nicaragua, including businessmen and the Roman Catholic Church. My own impression traveling through Latin America during August was that the Carter letter and an earlier administration decision to release aid funds to Nicaragua despite the Somoza repression has already hurt the American image in liberal circles, to say nothing of the effect in leftist groups in the region.

Recounting the preparations for the attack, "Zero" said that the national directorate of the front—Tomas Borge is one of its four known members—had decided that the National Palace would be the target because the hand-picked congress was Somoza's "las vestigate of legality" and because it would have "repercussions on a world scale."

It was last May when "Zero" was ordered to return from Costa Rica, where he had lived in exile for years and where he was in charge of logistics for the guerrillas across the border while running a prosperous shrimp business in a small town on the Atlantic coast. He entered Nicaragua clandestinely over the border and presented himself to the national directorate installed in hideouts in Managua. The planning began.

TIGHT SECURITY

At first, only the three members of the directorate in Nicaragua (Borge had been imprisoned for three years, including a three-month period of being hooded all the time) and "Zero" knew the plan—such was the secrecy surrounding it. In the meantime, the leaders started recruiting members of the commando team. Torres—"Number One"—was chosen because he had participated in the 1974 raid on the Managua mansion and because he was ideologically "advanced" and reliable, Dora Maria Tellez—"Number Two"—was picked because of her outstanding ideological commitment and her guerrilla experience. Some time during the summer, "Number One" and "Number Two" were apprised of the plan.

The 22 other members of the team were picked from various guerrilla units in the mountains—the leadership insisted on regional representation in what was to be the front's supreme effort—but they learned the nature of the operation only hours before it was launched.

On Aug. 5, the three rebel leaders moved into a house "of regular size" somewhere in Managua. During the next seven days, the remaining members of the commando team were brought to the "safehouse" at the rate of three or four men at a time. Again, security was so tight that the group was divided into two squads—squad "A" under "Zero" and squad "B" under "Number One"—and kept totally separated from each other in two sections of the house. Only the three

leaders (Dora Maria Tellez was attached to squad "B") had access to both groups.

By Aug. 12, the full team had been assembled, and arms—chiefly German G-3 submachine guns of .762-mm. caliber—and food were surreptitiously brought from the outside. Communications with the front's political leadership were conducted through couriers who came and left once or twice a day. On Aug. 13, a Sunday, the guerrillas watched Somoza assuring the country in a television speech that the army was solidly behind him. "Number One" snickered and said, "We shall see."

Meanwhile, the commandos spent their time in what "Zero" described as "psychological preparation"—political lectures simulated combat situations inside a building, assuming firing positions.

The decision to strike on Tuesday, Aug. 22, was made the previous day. The front had learned that the Nicaraguan congress would be in session that day to approve a new loan from the United States and that it would then go into indefinite recess. Since it had already been decided to hit the National Palace as soon as possible after the text of the Carter letter was published, the guerrillas had no alternative but to designate Aug. 22 as the "D-Day."

Still, caution prevailed. On the morning of that day, couriers were sent out to make sure that the congress was indeed going to meet. At 9 a.m., "Zero" told his two deputies, "This is it." The leaders assembled their teams, had them don the Nicaraguan army uniforms that were used in the operation, and the guns were loaded. At 10:30 a.m., "Zero" briefed his squad and "Number One" briefed his unit an hour later. "Zero" recalled: "They were all drunk with happiness about the mission."

Two olive-green pickup trucks drew up at the door of the safehouse. Lookouts provided by the front covered the squads as they jumped into the trucks and pulled down the tarps. Looking back at the operation, "Zero" said that the only time of danger he had anticipated was during the trip from the safehouse to the palace.

But the guerrillas aroused no suspicions and, at 12:25 P.M., precisely the time set in the plan, one truck pulled up at the side door on the east of the palace and the other at the side door on the west side. The men jumped out of the trucks and hurried toward the entrances. Wearing uniforms of the army's training battalion, they went unchallenged past the guards at the doors, although at the last moment a soldier suddenly became suspicious and turned his rifle on the squad led by "Zero." He was shot dead at once.

Once inside the palace, the two squads rushed upstairs to the Hall of Congress. When soldiers posted downstairs at the main entrance to the building fired at them, the guerrillas responded with machine gun bursts, killing five.

"Zero" led his squad into the congressional hall, firing submachine gun bursts over the heads of the congressmen, shouting "Hit the ground!" The congressmen threw themselves under their desks, "Zero" recalled: "When I reached the president's desk he said, 'What is this?', and I replied that this was the people's army." At that point, the guerrillas covered their faces with red-and-black kerchiefs, the colors of the Sandino front.

A WAR UNTIL DEATH

"You know what happened afterwards," the commander said. The rebels issued their demands for the release of prisoners in Somoza jails, the broadcast on radio and television of their revolutionary program, and $10 million.

As the negotiations began, "Zero" gave the regime six hours to meet his demands, a period subsequently increased to 13 hours, the most critical period of the occupation.

"If the emissary, the Archbishop of Managua, hadn't come back with an acceptance at the end of the 13 hours, I was ready to start the executions," the commander told me. "And we would start massive executions at once if the Somoza army had attacked us."

"Zero" said that although he thought that the throng in the building constituted a form of protection for the rebels, "I couldn't be sure of Somoza's reactions. So we were ready." In fact, he had drawn up a list of execution victims. It was headed by Luis Manuel Martinez, a Cuban refugee close to the Somoza regime, the acting chairman of the congress, Luis Pallais Debayle, who is Somoza's first cousin, Jose Somoza Abrego, who is Somoza's nephew, interior minister Jose Antonio Mora, and deputy interior minister Adolfo de la Rocha Hidalgo. They were to be followed by 60 members of Somoza's liberal party who were in the hall. "Zero" said that there was never any intention to harm others in the building.

There was a certain sense of unreality as we sat in the Panama National Guard barracks a week later, calmly discussing the operation and the planned execution. At one point I asked "Zero": "Were you really, but really, going to kill 65 men in cold blood?"

He stared at me with a hard glance. "Yes," he said. "No question about it. It would have been an act of justice. It would have avenged our murdered brothers and sisters. But, of course, the principal thing was to liberate our *companeros*, and I hoped that this would happen and that we would not be pushed into the executions. You must understand: We are fighting a war until death."

"Zero" said that the $10 million demand was the least important of his conditions, and that this was why he had agreed to only $500,000 in cash delivered to him at the palace.

The guerrillas would not be drawn into discussing how and where they had obtained funds to mount the operation and acquire arms. But the front has had an ample supply of arms for a long time, and the strike at the congress was not a mission requiring large sums.

"We did it our own way," the commander said. "Now let us think about the future."

ERA: NO TIME LIMIT ON EQUALITY FOR MEN AND WOMEN

● Mr. BAYH. Mr. President, many questions have been raised with regard to the constitutional issues involved in considering an extension to the time period for ratification of the proposed 27th amendment to the Constitution—the equal rights amendment. Of the numerous issues raised during the Senate Judiciary's Subcommittee on the Constitution hearings on August 2, 3, and 4 of this year, four specific constitutional questions were repeatedly addressed as follows:

First. Whether Congress has the power to extend the time period for ratification of the ERA?

Second. Whether a resolution to extend the time period for ratification of the ERA can be approved by a simple majority vote or a two-thirds vote of Congress?

Third. Whether this Congress can constitutionally provide for the States to validly rescind proposed constitutional amendments?

Fourth. Whether an extension of the time period for ratification would invalidate some State ratifications on the theory that those States materially relied upon the initial 7-year limitation?

Mr. President, several legal scholars addressed themselves to these questions during the subcommittee hearings and for the benefit of my colleagues, I ask that the statements of Profs. Lawrence Tribe, Ruth Bader Ginsburg, Thomas I. Emerson, and Ronald D. Rotunda be printed in the RECORD.

The statements follow:

TESTIMONY OF LAURENCE H. TRIBE

My name is Laurence Tribe. I am a professor of law at Harvard University. I am pleased to appear in response to the invitation of the Subcommittee on the Constitution to testify on the constitutional issues raised by S.J. Res. 134. That resolution would extend until March 22, 1986, the period available to the states for ratification of the proposed Equal Rights Amendment (ERA). Whether the date ultimately selected is March 22, 1986, as S.J. Res. 134 would provide, or June 30, 1982, as H.J. Res. 638 as amended would provide, or some alternative date, the issues presented are the same. I will address them in this order:

1. Does Congress have the authority to extend the time for ratification of the proposed amendment?

2. Is a simple majority of each House sufficient to accomplish such an extension?

3. May the extension be accomplished without presentation to the President for his approval or veto?

4. How would an extension of time affect the power of states to rescind prior ratifications?

I.

Does Congress have the authority to extend the time for ratification of the proposed amendment? My answer is a clear yes. Article V of the Constitution provides, in pertinent part, that

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress.

In *Dillon* v. *Gloss*, 256 U.S. 368 (1921), the Supreme Court recognized that, as an incident to its Article V power to propose amendments to the Constitution, Congress has both the power and the duty to assure that an amendment has been ratified "within some reasonable time after the proposal," id. at 375, so that the amendment reflects the reasonably contemporaneous "expression of the approbation of the people" in the required three-fourths of the several states. Id. The Court treated this question of timeliness of ratification as one of the "subsidiary matters of detail," id. at 376, necessarily delegated to Congress by Article V. Thus, for example, the efficacy of a particular state's ratification in light of a previous rejection by that state, and the efficacy of a state ratification occurring thirteen years after an amendment's initial submission to the states, are matters to be determined by Congress. See *Coleman* v. *Miller*, 307 U.S. 433, 447–54 (1939) (opinion of Hughes, C.J., joined by Stone and Reed, J.J.); id. at 459 (concurring opinion of Black, J., joined by Roberts, Frankfurter, and Douglas, J.J.). Nor could it be otherwise in view of the institutional limits of the federal judiciary, which is hardly in a position to second-guess the basic determination of Congress that a particular ratification either is or is not timely and otherwise effective. See *Baker* v. *Carr*, 369 U.S. 186, 210 (1962) (citing *Coleman* with

approval as an instance in which there existed no "satisfactory criteria for a judicial determination").

If Congress wished to do so, it could treat a time period far longer than seven, ten, or even fourteen years as "reasonable." Congress addressed the time question for the first time in 1917, with Senator Ashurst's explanation that "10, 12, 14, 16, 18, or even twenty years" would be reasonable so long as some limit were imposed. 55 Cong. Rec. 5556–57 (1917). Indeed, no one now suggests that Congress could not have submitted the ERA to the states with a 14-year limit on March 22, 1972; the sole question is whether Congress is constitutionally disabled from achieving that result in two steps rather than one—whether the 1972 choice of a 7-year period must govern even if Congress concludes in 1978 that a period of ten or perhaps fourteen years would be more reasonable in light of "public interests and changing conditions," *Dillon v. Gloss*, 256 U.S. 368, 376 (1921), as those "interests" and "conditions" have come to appear in the intervening years.

In this regard, the *Coleman* decision confirmed Congress' authority to resolve the timeliness issue at the most logical moment: when "the time arrives for the promulgation of the adoption of the amendment." 307 U.S. at 454. It is true that the upshot of *Coleman* was simply to recognize Congress' power to accept a 1937 ratification by Kansas of an amendment (the Child Labor Amendment) proposed in 1924 without Congress having then set any time limit. But the underlying theory—that the judgment of timeliness is a necessarily contextual one appropriately made by the Congress when the votes of the states are finally tallied—applies with equal force to a situation in which Congress has previously set a shorter time period.

If the seven-year limit that was initially specified in 1972 had expired before an intervening Congress took action to extend that limit or before the thirty-eighth state took action purportedly ratifying the ERA, it would be arguable that the amendment should be regarded as incapable of such belated resurrection. But even that argument would most properly be addressed to Congress rather than the courts. Senator Cook cautioned in 1970, for example, that not even a seven-year limitation would relieve Congress of its ultimate duty to determine whether the passage of time had placed the ERA beyond reach of effective ratification. 116 Cong. Rec. 35959 (1970). In my view, that duty would call Congress to declare the amendment dead if the seven years had passed with neither the requisite number of ratifications nor a timely decision by Congress to extend that period. Whether such a duty would or should be judicially enforceable represents another and more complex question, one we need not address if Congress acts within the seven years to effectuate the extension at issue.

Of course, if a proposed article of amendment contains a time limitation as one of the terms in the text of the amendment itself (as was the case with the eighteenth, twentieth, twenty-first and twenty-second amendments, but no others), a state's purported ratification after the expiration of the period initially set could not properly be deemed binding on states that had voted within that period; a decision by Congress to extend the period by majority vote would be an invalid attempt retroactively to change the amendment itself. In such a case, although the four concurring Justices in Coleman might well have thought the matter still exclusively for Congress, I would be prepared to argue for judicial intervention.

The critical consideration here, however, is that this is not such a case. For the proposed twenty-seventh amendment, like every other amendment after the twenty-second, contained no time limitation in its own terms but instead was proposed through a joint resolution whose preamble contained the seven-year language. Specifically, Congress, by a vote of 354 to 24 in the House on October 12, 1971, and by a vote of 84 to 8 in the Senate on March 22, 1972, resolved that "the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourth of the several states within seven years from the date of its submission by the Congress." There then followed the word "Article" and the three sections of the proposed amendment. The Article of Amendment as submitted to the states, and as voted upon by them in the intervening period, contained a statement (Sec. 3) that the amendment would "take effect two years after the date of ratification" but contained no reference at all to a time period within which the substantive terms being voted upon (Secs. 1 and 2) would have to be either ratified or regarded as a nullity.

Thus it cannot be said that a congressional vote to extend (or to shorten) the time for the twenty-seventh amendment's ratification beyond March 22, 1979, would retroactively alter the terms of an amendment upon which votes had already been taken. It follows that a decision by Congress to alter the ratification period would prejudice no state that has already voted and would not affect the validity of any prior state vote.

Some may argue that a particular state might not have ratified had its legislators not assumed that the entire process would be concluded by 1979. This is of course theoretically conceivable. But any such argument is inevitably speculative, and it is not more plausible than the opposite speculation—namely, that a particular state's failure to ratify might have been affected by the assumption of some that the 1979 limit could be extended in due course by Congress. Indeed, there is little doubt that energy which might otherwise have been devoted to seeking affirmative votes in several key states during the final two years of the seven-year period has instead been concentrated on the objective of persuading Congress to vote an extension, on the theory that the entire subject needs further deliberation on a nationwide basis.

More fundamentally, quite apart from the inconclusive character of the argument about reliance one way or the other, it seems indisputable that a state has no right to condition its ratification upon an expectation that language not part of the amendment itself will be treated as though it were part of the text. Just as James Madison wrote that "a reservation of a right to withdraw if amendments be not decided on . . . within a certain time" is a "conditional ratification" not contemplated by the Constitution's plan (see his letter of July 20, 1788, to Alexander Hamilton regarding New York's suggested conditional ratification), so I would conclude here that Article V does not contemplate protection for the hypothesized reliance of some states that voted to ratify the ERA but might not have done so had they realized that it might be pending for ten or fourteen years rather than seven.

Nor can it be successfully argued that the inclusion of a seven-year limit in the resolution proposing the ERA reflected a congressional intention to preclude timely extension of the seven-year period if, before the period's expiration, it seemed wise to allow more time for public debate and state legislative consideration. The objective was simply to assure that the proposed text would not "roam around State legislatures for 50 years." 116 Cong. Rec. 28012 (1970) (Rep. Celler); 116 Cong. Rec. 36302 (1970) (Sen. Ervin) (describing unseemliness of proposed amendments "floating around since about 1869"); 117 Cong. Rec. 35815 (1971) (Rep. Griffiths) (suggesting that a proposal "should not be hanging over our heads forever").

By specifying in the amendment's text a provision that the amendment would "take effect two years after the date of ratification," Congress demonstrated its ability to elevate a time limit to constitutional status, immune from subsequent change by Congress acting alone. The burden is thus on those who would attribute to Congress a casual indifference to the distinction between words written into the amendment and submitted to the states for approval, and words written into the resolution sending the amendment to the states—words plainly not submitted for any state action.

Indeed, there is a fatal inconsistency in any argument that would treat Congress as powerless to extend the seven-year period by appropriate action before March 22, 1979. For such an argument attributes to the action of the House in October 1971 and of the Senate in March 1972 an extraordinary force: by the mere inclusion of a procedural directive in the resolution clause preceding the submitted text, the House and Senate are said to have irrevocably bound their successors. Yet if the power of Congress in 1972 was so extensive, how can it be that Congress lacked authority at that time to employ a procedural device midway between that of (1) fixing a time period in the text of the proposed amendment and that of (2) suggesting no time frame at all at the outset of the ratification process—the device of (3) establishing a time schedule subject to extension if and when Congress deems it "necessary and proper" within the meaning of Article I, Section 8?

Under the Necessary and Proper Clause, Congress has at least three constitutional options with respect to the timing of ratification. Congress may submit an amendment to the states with no indication at the outset of any time limit for ratification, as it did with the first seventeen amendments and with the nineteenth. Congress may move to the opposite extreme and fix in the text of a proposed amendment a definite period for ratification, as it did with the eighteenth, twentieth, twenty-first, and twenty-second amendments. Or Congress may pursue a middle path and send a proposed amendment to the states pursuant to a resolution specifying that the amendment is to be valid "only if" ratified within a stated time, as was done with the twenty-third and twenty-fourth amendments, or that it is to be valid "when" ratified within a stated time, as has been done with each amendment after the twenty-fourth. Unless this middle option is somehow ruled out by the Constitution itself, there is no warrant for equating it with the extreme mode Congress chose in the case of the eighteenth, twentieth, twenty-first, and twenty-second amendments. To say that the middle option is constitutionally precluded (1) would serve no purpose, (2) would entail an indefensibly cramped reading of the Necessary and Proper Clause, and (3) would paradoxically attribute to a procedural resolution an irrevocable impact hardly compatible with the limited view of congressional power that such a position would itself presuppose.

I thus conclude that Congress clearly has constitutional authority to extend the time for ratification of the ERA. The matter is committed to Congress as a political question; but, even if it were not, the existence of the authority at issue is clear beyond reasonable doubt.

II.

Is a simple majority of each House sufficient to accomplish the extension? My answer is a clear yes. The power of Congress to extend the time for ratification, under the analysis of section I of my testimony, is simply a facet of its power to establish a "Mode of Ratification" for an amendment proposed under Article V. The vote required to alter the mode of ratification must obviously be the same as that required to propose the mode of ratification in the first instance. For neither step— neither initial

proposal nor subsequent modification—does Article V specify anything beyond a simple majority. In contrast, the article is explicit in singling out the four instances where a supermajority *is* needed. Amendments must be proposed by two-thirds of both Houses; if the usual congressional route is not taken, Congress is to call a Convention for proposing amendments on application of the legislatures of two-thirds of the states; Legislatures in three-fourths of the states must ratify; alternatively, ratification may be accomplished by conventions in three-fourths of the states. Likewise, the Constitution elsewhere employs explicit terms to impose supermajority requirements, as with respect to the required two-thirds vote for the approval of a treaty (Art. II, Sec. 2) or with respect to the required two-thirds vote for a Senate conviction after an impeachment trial (Art. I, Sec. 3). See also Art. I, Sec. 5 (expulsion of member of Congress); Art. I, Sec. 7 (override of veto); Amendment XIV, Sec. 3 (removal of disability of member of Congress); Amendment XXV (Presidential resumption of power after disability).

Throughout the Constitution, then, including Article V, the established pattern is that all decisions are to be resolved by simple majorities unless a higher vote has expressly been required. As Thomas Jefferson put it, "The voice of the majority decides; for the res majoris partis is the law of all councils, elections, & co., where not otherwise expressly provided." (Manual of Parliamentary Practice § XLI, reprinted in H. Doc. No. 416, 93d Cong., 2d Sess., § 508, p. 257 (1975).)

It would be unthinkable to create an exception to this general rule for decisions setting the mode of ratification, decisions addressing questions the Supreme Court has described as "subsidiary matters of detail." *Dillon* v. *Gloss*, 256 U.S. 368, 376 (1921). There was good reason for the Framers to require a two-thirds vote of each House as a precondition to sending a proposed amendment to the states: the Constitution was not to be tampered with lightly. But no similar reason attaches to the mode of ratification, including the matter of timing, selected by Congress. As to the latter, the great caution appropriate in proposing organic changes in our fundamental law would be dramatically misplaced.

This is particularly clear in light of at least one ironic result that would attend the contrary view: were a two-thirds vote required on matters pertaining to the mode of ratification, then a congressional judgment that too much time had elapsed with respect to a given amendment—say, the Child Labor Amendment submitted to the states in 1924—would presumably require a two-thirds majority. Yet that would hardly advance the purpose of avoiding unduly casual changes in the Constitution; on the contrary, it would frustrate that purpose unjustifiably.

Quite apart from the instances in which a two-thirds requirement might make the Constitution too easy to change, there are others in which such a requirement might make the Constitution too difficult to alter. Thus, although the required two-thirds in each House might agree on the substance of a proposed amendment, it might be that no more than a simple majority could be mustered in support of any one procedure of ratification. Fifty-one Senators might, for example, favor sending an amendment to the states for legislative ratification subject to a seven-year limit; forty-nine might be opposed. And two of the original fifty-one might join the forty-nine to make another majority of fifty-one to send the amendment to the states for ratification by the convention route, although subject to a somewhat shorter five-year limit. Under the view requiring two-thirds for any decision establishing the mode of ratification, the amendment would die simply because both Houses found themselves too closely divided—on a matter of no fundamental import. Surely nothing in Article V contemplates such a result.

Past congressional practice is also consistent with the view that a simple majority suffices on matters relevant to mode of ratification. No supermajority was indicated, for example, in the resolution listing rescinding states as ratifiers of the fourteenth amendment, a resolution adopted in the Senate by voice vote. See 15 Stat. 709, 710, (1868); 78 Cong. Globe 4230 (1868). Both logic and history, then, indicate that a mere majority should suffice.

III.

May the extension be accomplished without presentation to the President for his approval or veto? The answer is a clear yes. Again, the text of Article V seems decisive: it delegates no role to the President in the amendment process. As a creature of the constitutional compact, the President is simply not a proper actor in its alteration. The Supreme Court held as much in *Hollingsworth* v. *Virginia*, 3 Dall. 378 (798), a decision cited with approval in such subsequent opinions as *Hawke* v. *Smith*, 253 U.S. 221, 229–30 (1920).

Even if an amendment originally proposed by a two-thirds vote in a resolution which established its own mode of ratification leaves no room for a role by the President, it might be argued that the President must nonetheless play such a role when the mode of ratification is separately established by a mere majority in each House or when the mode of ratification, however initially established, is altered by a mere majority. Article V, however, makes no distinction between the case in which a single vote establishes both the text of a proposed amendment and the mode of its ratification, and the case in which two separate votes are involved. It is true that Article I, Section 7, provides that every "Bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President . . ." But the short answer is that a proposed mode of ratification is not a "Law," changeable only through subsequent legislation duly enacted and approved. A proposed mode of ratification is a unique directive, especially created by Article V, and differing in various respects both from ordinary legislation and from ordinary joint resolutions.

Unlike ordinary legislation, a proposed mode of ratification may be changed by a simple majority vote in each House, without further involvement by the President and without the two-thirds vote that would be required to override a presidential veto. Yet, unlike an ordinary joint resolution, a proposed mode of ratification binds each future Congress the pendency of the proposed amendment unless and until that mode of ratification is altered through a majority vote in each House.

The seeming anomaly that a mere majority in each House, in an action involving no participation by the President, can "bind" a future Congress is fully met by the circumstance that the Congress is "bound" only subject to its own timely action, by the same majority that imposed the initial mode of ratification. That fact that such a device is unusual can hardly suffice to condemn it as incompatible with the Constitution; Article V is not, after all, the article of the "ordinary."

Finally, it seems worth noting that requiring the President's approval of a proposed mode of ratification, or a two-thirds vote to override his veto, would have the anomalous effect of making it far more difficult to change a minor detail in the mode of ratification than to launch a proposed amendment in the first instance. For if the President should happen to disapprove of a change, mustering the two-thirds vote needed to override his veto would obviously be more difficult, given realities of party loyalty, than it would have been to obtain the same two-thirds vote in the first instance.

To be sure, some might deem it prudent to seek the President's approval simply to be safe. Given the apparent willingness of President Carter to accept an extension of the time period in this instance, that course of action would entail little difficulty and would have the appeal of avoiding a question some think troublesome. Yet the desire to avoid an unfortunate precedent could equally lead members of Congress to avoid in this instance a path that could prove exceedingly problematic on other occasions. It thus remains important to decide whether the President's approval can properly be dispensed with, however easy it might be to obtain this time. My own firm conclusion is that such approval is not required by the Constitution.

IV.

How would an extension of time affect the power of states to rescind prior ratifications? This question seems to me the most difficult of the four I have taken up in my testimony. My conclusion is that an extension would not affect the power to rescind. But to explain that judgment, I must begin with a more fundamental matter: may Congress propose a mode of ratification in which rescissions are expressly disallowed?

To this preliminary question, my answer is an unqualified yes. Just as Congress is empowered to decide that a state's previous rejection of a proposed amendment does not preclude that state's subsequent ratification of the same amendment, *Coleman* v. *Miller*, 307 U.S. 433 (1939), so Congress is empowered to decide that a state's ratification will be final within the time period specified for an amendment's consideration. The authority of Congress plainly encompasses any rational means of ascertaining that the people of three-fourths of the states have expressed a sufficiently contemporaneous approval of a proposed amendment. See *Dillon* v. *Gloss*, 256 U.S. 368, 375 (1921). Clearly, the Constitution does not require that there exist some single moment in time at which three-fourths of the states agree with a given amendment. The day after the thirty-eighth state ratifies, for instance, several of the states that previously ratified might no longer concur in an amendment; but it would take a new three-fourths majority to effect a change. If Congress decides in advance that it will be satisfied of the existence of the requisite consensus if a total of thirty-eight state legislatures have voted to ratify at some time or other within a period of, say, seven years, then that decision is entitled to respect until duly changed by Congress itself.

The next matter requiring attention in this regard is whether a proposed mode of ratification that is silent on the question of rescission should be construed in the same manner as one expressly disallowing rescissions. Again, I reach an affirmative conclusion. At least until very recently, it had been almost universally assumed that attempted rescissions were ineffectual. Congress, for example, validated ratifications by Ohio and New Jersey in the case of the Fourteenth Amendment despite rescinding resolutions passed by the legislatures of those states. Most observers have taken for granted the correctness of James Madison's view, quoted earlier, that ratification represents a final and unconditional act. In this situation, Congress' silence on the question can best be

understood as reflecting the general understanding that rescissions are disallowed.*

Any contrary view would entail at least one highly troublesome consequence. Legislators in the three states that have thus far purported to rescind their votes of ratification might well have acted in the belief that their "rescissions" would have no effect beyond that of an informal "message to Washington." Not unlike the decision of a jury that votes in favor of a death penalty it believes will never be inflicted, a decision to rescind might thus reflect not an official act but a symbolic gesture, convenient in dealing with some constituents but not expected to have binding effect on anyone. If votes of rescission were indeed so intended—and there is, of course, no way of determining whether they were or not—then it would be exceedingly unfair to give them binding effect simply on the basis of Congress' silence on the matter in 1972.

The situation as I understand it is therefore this: Congress could have expressly disallowed rescissions in 1972; and its silence on the matter cannot properly be invoked to reach a different result. State rescissions prior to further action by Congress are therefore without effect. The question then arises: does the Constitution empower Congress to permit future rescissions, either expressly in conjunction with a time extension or as a fair implication of any such extension of time? To this question the answer seems to be: the matter is at best unclear. It may be that a court would hold the issue nonjusticiable, treating it as unreviewably committed to the decision of Congress at the time when it is asserted that three-fourths of the states have duly ratified. Or it may be that a court would hold that Article V permits no rescissions, regardless of Congress' views. It seems likely that the issue would be resolved with at least some attention to its context and to the circumstances of the particular case. One thing only is clear: for Congress to enact a mode of ratification that purports to permit rescissions would raise complex questions that could be expected to cloud debate on the proposed amendment throughout the period of any extension, and to spawn litigation after the end of that period.

In these circumstances, it remains for us to consider the argument that fairness requires at least an attempt by Congress to authorize post-extension rescissions. Whether or not such rescissions will ultimately be effectual, the argument proceed, it is unfair to foreclose them. This argument has some appeal, and I came close to endorsing it myself in my testimony on the subject before the House Judiciary Committee on November 1, 1977. On further reflection, however, I am persuaded that fairness requires no such thing.

The fairness argument must rest either on a notion that some state legislators relied, in ratifying the ERA, on a belief that it would vanish if not approved by three-fourths of the states by 1979 (or on a notion that the opponents of the ERA are somehow entitled to rest, or at least to fight for rescissions, if only seven-tenths of the states, rather than the required three-fourths, have ratified by 1979. Neither notion warrants acceptance by Congress.

As far as state legislatures are concerned, it seems decisive that a state may not conditionally ratify a proposed amendment to the Constitution. Whatever authority Congress itself might possess under Article V to authorize rescissions, on state is in a position to assert that its legislators favor a change in the Constitution, but only if certain others agree within a time specified by those legislators. The mode and timing of ratification are entrusted to Congress, not to the states themselves.

As far as opponents of the ERA are concerned, the fairness argument, if properly understood, cuts the other way. For it was surely possible for those who had the gravest doubts about the ERA in 1972 to insist that the seven-year limitation be included in the text of the proposed amendment, as had been done on four prior occasions and as was done with respect to the two-year grace period between ratification and the amendment's effective date. Or those with the most serious doubts could have urged in 1972 that states not be locked in by any initial votes of ratification; given the widespread assumption that rescissions were void, opponents were surely on notice from the beginning that the ratification process might be a one-way ratchet. Particularly since there was discussion as early as 1970 suggesting that ratifications even subsequent to the uninterrupted running of a seven-year limitation might serve to resurrect a "dead" amendment (see remarks of Senator Cook, quoted previously), it can hardly be said that the problem now facing opponents of the ERA was unforeseen, and certainly not that it was unforeseen.

Finally, any suggestion that it is somehow unfair to "change the rules of the game" at the last moment without giving the players a chance to reconsider their prior moves should also be rejected as both self-serving and circular. The very question, after all, is what the "rules of the game" *are*. Are those rules, as historically understood, ones that make time limits impervious to change by Congress even if those limits are not included in the terms of the proposed amendment? Or is it the opponents of ERA who wish to alter the rules to achieve this effect? And are the rules of the game, as historically understood, ones that make state ratifications tentative, rescindable acts? Or is it again the opponents of ERA who wish to alter the rules to achieve this effect? It seems clear to me that, in both instances, the proponents of ERA are in fact playing by the rules that have long been in force while it is the ERA opponents who, having already lost in seventy percent of the state legislatures, now seek to change the rules in order to avoid any chance of losing in the three remaining states that would make the ERA part of the Constitution.

At the most fundamental level, however, talking of human rights as though the debate involved only a game demeans the significance of the issues at stake. If the matter were to be treated in a narrowly legalistic way, the argument would be decided by Congress' clear authority to change a proposed amendment's mode of ratification by the timely action of a majority in each House without thereby transforming prior ratifications into rescindable acts. But if the matter is treated with a broader appreciation of its underlying importance, then all talk of the impropriety of "adding extra innings" would be stilled by a reminder that it is a Constitution, and not a sporting event, that we are amending.

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*That was surely the understanding in 1924, when Senator Wadsworth and Congressman Garrett unsuccessfully sought to amend Article V to permit state rescissions, see 65 Cong. Rec. 4493 (1924); 66 Cong. Rec. at 2159; and in 1971, when bills were unsuccessfully introduced to permit rescissions. See S. Rep. No. 336, 92d Cong. 1st Sess. 14 (1971); S. Rep. No. 293, 93d Cong., 1st Sess. 14 (1973).

STATEMENT BY RUTH BADER GINSBURG

I am pleased to respond to the Subcommittee's invitation to testify on extending the time period for ratification of the proposed Equal Rights Amendment. In my judgment, based upon the relevant constitutional experience and precedent:

1. Congress has the authority to extend the ratification period;

2. In light of political, economic and social conditions in the country since 1972, Congress would not act responsibly if it failed to extend the time for ratification;

3. A simple majority vote in each House is sufficient under Article V to extend the ratification period;

4. Signature of the President to a Joint Resolution extending the ratification period is not required and would be surplusage;

5. Extension of the time period would not, in itself, empower states to rescind a prior ratification.

I. Congress has authority to extend the time for ratification of the proposed Equal Rights Amendment.—

The appropriate starting point is a proposition beyond debate: Congress, as director of the amendment process under our constitutional scheme,[1] is not locked into a seven-year period; ten, fourteen, even twenty years would constitute a rational, constitutional time period for ratification of the proposed Equal Rights Amendment.[2] The sole issue at this juncture, therefore, is whether Congress may accomplish in two steps what it might have accomplished in one.

In 1972, with scant discussion of the matter, Congress placed in the clause that precedes the text of the proposed Equal Rights Amendment a then routine procedural provision:

"The following article . . . shall be valid . . . as part of the Constitution when ratified . . . within seven years from the date of its submission. . . ."

Has Congress, by that casual, procedural measure, so disarmed itself that it is now precluded from assessing whether the proposed Equal Rights Amendment remains a vital political question, a question on which public debate and state legislative consideration should be allowed to continue? The answer, indicated by the Constitution, precedent and the public interest, is no. For the abnegation involved in a conclusion that Congress is powerless to extend the ratification period would not comport with the constitutional design—the large authority and special responsibility Article V invests in Congress.

It bears emphasis that close attention has not yet been devoted by Congress to the time frame appropriate to addition of a sex equality measure to our fundamental instrument of government. Up to now, only two alternatives have been entertained in connection with the Equal Rights Amendment: no expressed time limit at all, or the seven-year period associated with recent amendments of a different tenor.[3] In 1970–1972 debate, when the time issue was mentioned, no specific reference was made to the complex social, political and economic considerations surrounding the Equal Rights Amendment.[4] Nor did Congress weigh the probable impact of death of the proposal at the seven-year mark, despite burning public sentiment concerning the need for a sex equality provision in the catalogue of our Constitution's human rights guarantees. Those considerations and that impact are factors Congress should assess closely and without delay if it is to carry out responsibly its Article V authority.

A. Implicit in Article V is the requirement that ratification of a proposed constitutional amendment occur within some reasonable time; the Constitution entrusts to Congress authority to determine 1) what constitutes a reasonable time, and 2) the mode in which timeliness questions shall be addressed.—

In 1921, ending a debate whether proposed constitutional amendments ever die,[5] the Supreme Court declared, in *Dillon* v. *Gloss*, 256 U.S. 368, 375: "[T]he fair inference or implication from Article V is that ratification must be within some reasonable time."

Dillon also ruled that "Congress is left free

Footnote at end of article.

to define" what constitutes a reasonable time in the case of any particular amendment; the timeliness assessment is a matter "of detail" Congress may settle, "incident [to] its power to designate the mode of ratification," in the manner "the public interests and changing conditions may require." 256 U.S. at 371, 376.

In 1939, the Supreme Court further clarified, in *Coleman* v. *Miller*, 307 U.S. 433, that Congress, not the Court, is the forum entrusted by the Constitution with control of the timeliness question. "Reasonable time" issues in relation to constitutional amendments, the Court said, call for "essentially political" judgments, for they involve "an appraisal of a great variety of relevant conditions, political, social and economic." 307 U.S. at 453–54.[6] An appraisal of that character, *Coleman* held, lies within the province of the House and Senate, and not within the bailiwick of the judiciary.[7]

In *Dillion*, the Court upheld against constitutional challenge the authority of Congress to include a time limitation in the very text of a proposed amendment.[8] In *Coleman*, the Court confirmed the prerogative of Congress to consider and resolve the question of timeliness when "the time arrives for the promulgation of the adoption of the amendment." 307 U.S. at 454.[9] In short, Congress could deal with timeliness as a threshold matter, as *Dillon* held, or as an ultimate question, as *Coleman* declared. There should be little doubt, given the range and breadth of power and responsibility Article V invests in Congress,[10] that a middle course may also be pursued. In lieu of a fixed period set in the text of the proposed amendment, or a total "wait and see" approach with no time frame at all suggested at the onset of the ratification process, Congress could preliminarily establish a time schedule, a schedule subject to extension when necessary and proper, in light of "the public interests" and "relevant conditions." *Dillon* v. *Gloss*, supra, 256 U.S. at 376; *Coleman* v. *Miller*, *supra*, 307 U.S. at 453–54.

Indeed, *Coleman* provides support for the position that despite an attempt by Congress to fix the time in adavnce, the question remains open "for the consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment." 307 U.S. at 454. Elaborating the point, in the course of congressional consideration of the proposed Equal Rights Amendment, Senator Cook alerted Congress to the issue of state ratifications after seven years had elapsed. He cautioned that a seven-year limitation would not relieve Congress of the obligation to make a subsequent determination whether lapse of time had caused the proposal to lose vitality. 116 Cong. Rec. 35959 (1970). He thus maintained that final decision could not be arrived at by prejudgment in 1970, 1971 or 1972, but only "with full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment." *Coleman* v. *Miller*, *supra*, 307 U.S. at 454.

B. The mode in which Congress dealt with timeliness in the proposed Equal Rights Amendment indicates a middle course: Congress did not make the time frame a fixed and integral part of the amendment's text; it did not avoid the time question altogether; it did establish an initial, procedural limitation susceptible to extension.—

The first seventeen amendments to the Constitution were submitted to the states, and thereafter adopted, without any indication by Congress, at any stage in the process, of a time limit for ratification.[11] From that stance, Congress moved to the opposite pole In the Eighteenth, Twentieth, Twenty-First and Twenty-Second Amendments, Congress fixed in the very text of the amendment a definite period for ratification.[12] The time frame was included as an integral part of the proposed addition to the Constitution submitted to the states for ratification.

In contrast to these polar approaches, Congress proceeded to a middle course in the four most recent constitutional amendments. The Twenty-Third and Twenty-Fourth Amendments 'contain' no textual time limitations. Instead, Congress placed in the resolution clause preceding the submitted texts a procedural directive: the proposed amendments were to be valid "only if ratified ... within seven years." 74 Stat. 1057 (1960); 76 Stat. 1259 (1962). A less rigid formula was employed in the introductory clauses of the resolutions proposing the Twenty-Fifth and Twenty-Sixth Amendments to the states. Those proposed amendments were to be valid "when ratified ... with seven years." 79 Stat 1327 (1965); 85 Stat. 825 (1971). The "when ratified" formula was thereafter repeated by Congress in the resolution clause preceding the submitted text of the Equal Rights Amendments. 86 Stat. 1523 (1972).[13]

In sum, the congressional treatment of timeliness first turned 180°, from no time stated at all, to reference of the deadline to the states for their ratification as an integral part of the amendment's text. Thereafter, Congress handled the timeliness issue, more appropriately, as an incidental, procedural facet of the amendment process. Congress plainly did not place the "reasonable time" determination beyond its further control by fixing the ratification period in the text of the amendment, thereby submitting that issue to the states for their approval. Rather, Congress made an initial judgment as to time, but it separated that preliminary judgment from the text of the proposed amendment submitted to the states. Congress thereby retained authority to extend the period, just as it might extend other legislative deadlines, should "the public interests" and "relevant conditions" so warrant.[14]

The procedural cast of the ratification time specification, signalled by its placement in the resolution clause preceding the "Article of Amendment," contrasts with the time provision that is an integral part of the proposed Equal Rights Amendment: "This Amendment shall take effect two years after the date of ratification." The two-year specification, made in section 3 of the proposed "Article of Amendment," has been submitted to the states and their approval sought for it. Congressional alteration of that built-in text provision would encounter solidly-grounded opposition.

But the resolution clause containing the seven-year stipulation surely is not designed for state ratification. In addition to the seven-year reference, the clause encompasses two other declarations manifestly not subject to state approval: 1) recitation of a portion of the text of Article V; 2) specification of the mode of ratification (by legislatures of three-fourths of the states), a matter Article V commits exclusively to Congress.

The ratification time period, in short, is simply the functional equivalent of a statute of limitations associated with a legislative measure. It is the general rule that extensions of statutes of limitation may be directed by the legislature. The question in each case turns on the legislature's intent as to the purpose of the time bar. When the objective is to exclude stale claims, extension of the limitation period for a reasonable time is a well-accepted legislative prerogative which fully comports with constitutional constraints. See, e.g., Davis v. Valley Distributing Co., 522 F. 2d 827, 830 n.7 (oth Cir. 1975), and authorities cited therein.

In view of the intensity of discussion concerning sex equality as a basic human rights tenet, staleness plainly is not a reason for allowing the clock to run out on the proposed Equal Rights Amendment. Rather, the equal dignity of women and men before the law is among the most vibrant issues contemporary society faces. See Karst, Book Review, 89 Harv. L. Rev. 1028, 1936 (1976).

II. The "public interests" and "relevant conditions, political, social and economic," make it necessary and proper for Congress to extend the ratification period for the proposed Equal Rights Amendment.—

Social and economic conditions in the period 1972 to the present demonstrate the vitality of the issue to which the Equal Rights Amendment responds. Equal justice for men and women under the law, far from diminishing in significance to the nation, remains an ideal attracting widespread and constant attention.

Arbitrary gender lines still clutter the lawbooks and regulations of the nation and states,[15] the Supreme Court vacillates insecurely from one decision to the next and is sometimes disarmed from reaching any decision,[16] as it holds back doctrinal development and awaits the signal the Equal Rights Amendment would supply.[17] Women seek equal opportunity in dramatically increasing numbers,[18] but the barriers confronting them remain high.[19] And in the international arena, where the United States is emphasizing with renewed vigor a firm commitment to the fundamental rights and equal dignity of each individual, absence of an Equal Rights Amendment in our own Constitution should be a constant embarrassment. It leaves us open to charges of not fully embracing ourselves what we preach to others.[20]

The debate on the Equal Rights Amendment, far more complex than those attending other recent amendments, surely has not run its course and should be allowed to continue. The proposed amendment remains a matter of urgent public concern. The conditions that prompted congressional passage are at least as compelling now as they were in 1972. Thus, Congress would be acting responsibly in extending its initial "reasonable time" estimate.

III. The vote required to extend the ratification period.—

Extension of the ratification period, a procedural decision incident to congressional responsibility for designating details of the mode of ratification, may be accomplished through a measure approved by a simple majority of each House. Article V, consistent with the style in which our Constitution is drafted, "speaks in general terms." *Dillon* v. *Gloss*, *supra*, 256 U.S. at 376. However, on supermajorities, Article V is specific; it singles out four instances in which a simple majority will not suffice. (1) Amendments must be proposed by two-thirds of both Houses. (2) Alternatively, on application of the legislators of two-thirds of the states, Congress shall call a Convention for proposing amendments. (3) Legislatures in three-fourths of the states must ratify. (4) Alternatively, ratification may be effected by conventions in three-fourths of the states.

Significantly, no congressional supermajority is explicitly commanded by Article V to propose the mode of ratification or details thereof. Thus, for example, should the Convention method be used to propose amendments, a procedure not yet employed, a separate resolution designating the mode of ratification and accoutrements thereto, would be required of Congress. For such a resolution, a simple majority should suffice. Bills specifying procedures for the Convention method of proposing amendments provide for congressional action by concurrent

Footnotes at end of article.

resolution, presumbly passed by simple majority, on a variety of issues, including proposing the mode of ratification and incidental, related details.[21] Nor has more than a simple majority been required to declare that an amendment submitted to the states has been ratified.[22] *A fortiori*, no more than a simple majority is required to state or extend a time period not built into the text of a proposed amendment.[23]

Congress might have pursued a two-step process in proposing the Equal Rights Amendments: 1) a resolution proposing the "Article of Amendment" adopted by two-thirds vote; 2) a separate measure designating the mode of ratification, including an initial "reasonable time" estimate, for which a simple majority would suffice. A more efficient course was followed. Congress combined the two steps in one resolution. But that joinder did not alter the distinct character of the two elements of the resolution To propose the "Article," a two-thirds vote was necessary. To specify the mode of ratification and a time estimate, no more than a simple majority was needed; the additional votes were superfluous. Similarly, to extend an initial "reasonable time" estimate kept outside the text of a proposed amendment, votes above a simple majority would be superfluous.

IV. Congress acting alone controls the mode of ratification of a proposed amendment and procedural accoutrements incident thereto.—

Article V commits to Congress responsibility for the proposal of amendments and for management of the mode of ratification. No role for the President is specified. In extending the time period for the proposed Equal Rights Amendment, Congress would exercise authority necessarily and properly incident to its Article V responsibility for designating and controlling the mode of ratification. Since Article V, not Article I, is the source of congressional power in this instance, approval of an extension measure by the President would be superfluous.

V. Extension of the time period would not furnish authorization for a state's rescission of a prior ratification.—

The argument is persuasive that constitutional history binds us to the proposition that a state legislative ratification of a proposed amendment cannot be effectively rescinded.[24] Absent compelling justification, Congress could not responsibly repudiate the tradition of nearly two centuries upon this point, casting a shadow as such action might on the ratification of the Fourteenth Amendment.

At this stage, congressional assessment of the efficacy of purported rescissions would be inappropriate, speculative and premature. An informed judgment cannot be made by crystal ball, but only by focusing on the precise situation existing when the ratification process is completed. At that time, the issue may well be moot. If it is not, fact, not conjecture, will provide the basis for decision. Moreover, it is extremely doubtful that a Congress sitting today could bind the future Congress sitting when the question of ratificaton is considered.

In sum, the validity *vel non* of purported rescission of a state's ratification is a separate question, not determined by a decision, one way or the other, on extension. Rescission issues are not appropriately addressed at this time, but should be reserved for unfettered consideration by the Congress sitting when the requisite number of states have ratified.

FOOTNOTES

[1] Article V entrusts to Congress sole Federal authority to propose amendments, to determine the mode of ratification, and to decide whether ratification has effectively occurred. *See* Coleman v. Miller, 307 U.S. 433 (1939). Only two express restrictions are placed on this encompassing power: the text of proposed amendments must have the approval of two-thirds of both Houses; no state shall be deprived, without its consent, of equal suffrage in the Senate. Dillon v. Gloss, 256 U.S. 368, 373–74 (1921).

[2] The dominant purpose of a "reasonable time" limitation on constitutional amendments is to insure that the proposal remains "responsive to the conception which inspired it." Coleman v. Miller, *supra*, 307 U.S. at 453. In urging Congress to address the time question, something not done until 1917, Senator Ashurst explained: "10, 12, 14, 16, 18, or even twenty years" might be a reasonable period, but Congress should not hand down to posterity proposals submitted to the states many decades earlier, 55 Cong. Rec. 5556–57 (1917).

With respect to the Equal Rights Amendment, the congressional intent surely was not to impede full, informed appraisal of the proposal. Rather, the objective was to assure that the proposed text would not "roam around State legislatures for 50 years." 116 Cong. Rec. 28012 (1970) (Rept. Celler); 116 Cong. Rec. 36302 (1970) (Sen. Ervin) (unseemliness of proposed amendments "floating around since about 1860"); 117 Cong. Rec. 35815 (1971) (Rep. Griffiths) (proposal "should not be hanging over our heads forever").

[3] The seven-year provision was copied from the resolution proposing the Twenty-Fifth and Twenty-Sixth Amendments. Those Amendments, concerning succession to the Presidency and the franchise for citizens eighteen years of age or older, were not susceptible to the distortion, confusion and misunderstanding that have impeded rational debate on the merits of the proposed Equal Rights Amendment. See Notes and Comment, The New Yorker, May 22, 1978, pp. 25–26.

[4] *Cf.* Coleman v. Miller, *supra*, 307 U.S. at 453 (indicating the necessity of grappling with these considerations to reach an informed judgment on the timeliness of a proposed amendment).

[5] Compare 55 Cong. Rec. 5556–58 (1917) (Sen. Ashurst), *with id.* at 5649 (Sen. Borah). *See* Dillon v. Gloss, *supra*, 256 U.S. at 373 n.1 and accompanying text.

[6] The Court noted particularly that "it would be necessary, in determining whether a reasonable time had elapsed since [an amendment's] submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions were such as to intensify the feeling of need and the appropriateness of the proposed remedial action." 307 U.S. at 453.

[7] "Congress . . . has the final determination of the question whether by lapse of time its proposal . . . ha[s] lost its vitality prior to the required ratifications." 307 U.S. at 456. "The decision by the Congress . . . would not be subject to review by the courts." *Id.* at 454. *Accord*, Baker v. Carr, 396 U.S. 186, 210 (1962) (listing with approval "political question" criteria derived from this portion of Coleman v. Miller).

[8] *Dillon* involved the eighteenth amendment, the first occasion on which Congress expressed a time limitation for a proposed amendment. Seven years was the period selected. No other period has been used by Congress since that time. The eighteenth amendment was in fact ratified some thirteen months after submission.

[9] Plaintiffs in *Coleman* sought to invalidate a state's ratification of the proposed Child Labor Amendment occurring more than twelve years after submission.

[10] *See* note 1 *supra*. Four Justices, concurring in *Coleman*, went even beyond the full Court's acknowledgement of the wide range of congressional power: "Undivided control of [the amendment] process has been given by Article [V] exclusively and completely to Congress." 307 U.S. at 456, 459 (Justice Black, joined by Justice Roberts, Frankfurter and Douglas).

[11] However, Congress did confront at the time of the Fourteenth Amendment, another facet of the ratification process that has generated debate. It validated ratifications by Ohio and New Jersey despite rescinding resolutions passed by the legislatures of those states. *See* Coleman v. Miller, *supra*, 307 U.S. at 448–50 (recounting the episode and relying on "this historic precedent" for the conclusion that Congress, not the judiciary, is final arbiter of the efficacy of ratifications). *See generally* Kanowitz & Klinger, Can a State Rescind Its Equal Rights Amendment Ratification: Who Decides and How, 28 Hastings L. J. 979 (1977); Heckman, Ratification of a Constitutional Amendment: Can a State Change Its Mind?, 6 Conn. L. Rev. 28 (1973); Notes, 49 Ind. L. J. 147 (1973), 49 Notre Dame Lawyer 657 (1974), 41 Tenn. L. Rev. 93 (1973).

[12] The Nineteenth (Woman's Suffrage) Amendment, reflecting the pattern of the first seventeen amendments, was submitted without any qualification as to time. *See* 58 Cong. Rec. 81, 93 (1919) (House rejects inclusion of time limitation). So too was the proposed Child Labor Amendment at issue in Coleman v. Miller, *supra*.

[13] Congress may place a time limitation in the text of an amendment as an exercise of its Article V power to propose amendments. By keeping the time limitation out of the proposed amendment, but inserting it in the introductory clause of the resolution, Congress adopts a means "necessary and proper" to carry into execution its Article V authority to propose amendments and determine the mode of ratification.

[14] Closer consideration of the time society needs to adjust to the social and economic changes that inspired a favorable congressional response to the Equal Rights Amendment might have yielded an enlarged period from the outset. An Equal Rights Amendment was first introduced in 1923. S.J. Res. 21, 68th Cong., 1st Sess., 65 Cong. Rec. 150. It took a near half-century to achieve serious consideration of the proposal in Congress. Before that, a near century was required to obtain the franchise for women. *See* E. Flexner, Century of Struggle (rev. ed. 1975).

[15] *See, e.g.*, Ginsburg & Fasteau, The Legal Status of Women under Federal Law (Columbia Law School Equal Rights Advocacy Project 1974); Knowles, The Legal Status of Women in Alabama: A Crazy Quilt, 29 Ala. L. Rev. 427 (1977). Comprehensive revision has occurred in only a few states, notably those with state Equal Rights Amendments on the books. *See*, Brown, Freedman, Katz & Price, Women's Rights and the Law, The Impact of the ERA on State Laws (1977).

[16] *Compare* Kahn v. Shevin, 416 U.S. 351 (1974), Schlesinger v. Ballard, 419 U.S. 498 (1975), *and* Vorchheimer v. School District of Philadelphia, 532 F.2d 800 (3d Cir. 1976) (2–1 decision), *aff'd by an equa'ly divided Court*, 430 U.S. 703 (1977), *with* Craig v. Boren, 429 U.S. 190 (1976), *and* Califano v. Goldfarb, 430 U.S. 199 (1977).

[17] In his concurring opinion in Frontiero v. Richardson, 411 U.S. 677, 691–92 (1973), Justice Powell (joined by Chief Justice Burger and Justice Blackmun) explained why jurists shy away from doctrinal development:

"The Equal Rights Amendment . . . has been approved by the Congress and submitted for ratification by the States. If this Amendment is duly adopted, it will represent the will of the people accomplished in the manner prescribed by the Constitution. [The Court should not assume] a decisional responsibility at the very time when state legislatures, functioning within the traditional democratic process, are debating the proposed amendment."

Justice Powell concluded that "democratic

institutions are weakened, and confidence in the restraint of the Court is impaired" when "sensitive issues of broad social and political importance" are resolved by the Justices "at the very time they are under consideration within the prescribed constitutional processes."

More recently, in his prevailing opinion in University of California Regents v. Bakke, 46 U.S.L.W. 4896, 4905 (1978), Justice Powell underscored that gender-based classifications continue to attract less than rigorous review: "[T]he Court has never viewed [gender-based] classification as inherently suspect or as comparable to racial or ethnic classifications for the purpose of equal-protection analysis."

[18] Economist Eli Ginzberg has identified the changing roles of women as "the single most outstanding phenomenon of our century." Forbes, November 15, 1977, pp. 177–78.

[19] *See, e.g.*, U.S. Dep't of Labor, 1975 Handbook on Women Workers; National Center for State Courts, Women in the Courts (1978) (describing limited opportunity structure women continue to encounter).

[20] *See* S. 2307 section 6(a), 90th Cong., 1st Sess. (1967); S. 215, 92d Cong., 1st Sess. (1971) (Sen. Ervin proposals).

[21] No supermajority was indicated in the resolution listing rescinding states as ratifiers of the fourteenth amendment. The Senate adopted that resolution by voice vote. *See* 15 Stat. 709, 710 (1868); 78 Cong. Globe 4230 (1868).

[22] When the Farmers intended supermajority vote, they were specific. *See* U.S. Const. Art. I § 3, cl. 6 (impeachment); Art. I § 5, cl. 2 (expulsion of member of Congress); Art. I § 7, cls. 2,3 (overriding presidential veto); Art. 2 § 2, cl. 2 (treaty ratification).

[23] *Cf.* German Federal Republic Constitution (1949), Art. 3, sec. 2: "Men and Women are equal before the law." This post-World War II Constitution was framed with the human rights guarantees of the U.S. Constitution in close view. But mid-twentieth century drafters apparently assumed it was time to perfect Thomas Jefferson's text—to include in a fundamental equal rights declaration all of humanity, not just half that population.

[24] *See* authorities cited *supra* note 11, and Feigen Fasteau, May a State Legislature Rescind Its Ratification of a Pending Constitutional Amendment? 1 Harvard Women's L.J. 27 (1978).

TESTIMONY OF THOMAS I. EMERSON

The Equal Rights Amendment was proposed as the Twenty-seventh Amendment by a vote of 354 to 24 in the House of Representatives on October 12, 1971, and by a vote of 84 to 8 in the Senate on March 22, 1972. The Joint Resolution which embodied the proposed amendment stated:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purpcses as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress."

Up to the present date the Equal Rights Amendment has been ratified by 35 States, out of the 38 necessary. The seven-year period of limitation for action by the States expires on March 22, 1979. The question is whether Congress has power under the Constitution to extend the period for ratification and, if so, whether it may do so by majority vote.

Article V of the United States Constitution, which sets forth the method for amending the Constitution, provides:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of the several States, or by Conventions in three-fourths thereof, as one or the other Mode of Ratification may be proposed by the Congress."

It is my conclusion that Congress has the power under Article V to fix a period during which a Constitutional amendment must be ratified, so long as the period is a reasonable one, and that such power includes the authority to extend a period originally determined. It is also my conclusion that such action by Congress does not require a supermajority of two-thirds but may be done by majority vote.

BACKGROUND

In approaching these issues certain background facts should be taken into account. In the first place it is clear that Article V gives Congress full and extensive powers over the amending process. In *Dillon* v. *Gloss*, 256 U.S. 368 (1921), speaking about this very issue of the power of Congress to fix a time limit for ratification, the Supreme Court said:

"That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. An examination of Article V discloses that it is intended to invest Congress with a wide range of power in proposing amendments." (p. 373)

And in *Coleman* v. *Miller*, 307 U.S. 433 (1939), the Court, again dealing with the same question, declared:

". . . Congress in controlling the promulgation of the adoption of a constitutional amendment has the final determination of the question whether by lapse of time its proposal of the amendment has lost its vitality prior to the required ratification." (p. 456).

Until the proposal of the Eighteenth Amendment in 1917 no time limits were imposed upon ratification by the States. That Amendment for the first time included such a limitation. Although the proponents of the limitation initially talked in terms of ten to twenty years (see 55 Cong. Rec. 5556–9) a limit of seven years was eventually adopted. In 1921, in *Dillon* v. *Gloss* (supra), the authority of Congress to include a time limitation was upheld by the Supreme Court. Thereafter virtually all proposed amendments embodied a seven-year limitation, initially as part of the substantive provisions and, beginning with the Twenty-third Amendment, as part of the resolving clause.

The Equal Rights Amendment, as originally introduced in 1923 and as presented in subsequent years, contained no time limitations. It was not until 1970 that a time limitation was proposed (see 116 Cong. Rec., 36864), and it was included in the resolution as passed by the House in 1971 (117 Cong. Rec. 35815). The seven-year limitation was accepted by proponents of the resolution on the ground that it was "customary" (see 117 Cong. Rec. 35814–5; Sen. Rept. No. 92–689, 92d Cong., 2d Sess. p. 20.). There was no debate or discussion as to whether or not seven years was an appropriate period for this Amendment.

We start with the proposition, then, that Congress has plenary power over the amending process and that it is not hitherto given full consideration to the question whether seven years is a proper time for the ratification process to be completed in this case.

THE POWER OF CONGRESS TO EXTEND THE SEVEN-YEAR PERIOD

Article V contains no express provision dealing with the time in which a proposed Constitutional amendment must be ratified. Nevertheless, as already noted, the Supreme Court held in *Dillon* v. *Gloss* that the power of Congress to impose a limitation would be implied. That case involved a challenge to the Eighteenth Amendment on the ground that the time limitation provided, included for the first time in that Amendment, rendered the Amendment invalid. The Supreme Court, in a unanimous opinion, ruled that Article V must be construed as contemplating that ratification would take place within a "reasonable time", and that Congress had power to fix a limitation period in advance. The Court said:

"Of the power of Congress, keeping within reasonable limits, to fix a period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification." (256 U.S. at 375–6).

Coleman v. *Miller*, also noted above, reaffirmed and extended the *Dillon* decision. The *Coleman* case involved ratification of the Child Labor Amendment. Proposed by Congress in 1924, the Child Labor Amendment did not include any time limitation. It was ratified by the Kansas legislature in 1937. The ratification was challenged by members of the Kansas legislature, who contended that after 13 years a reasonable time had elapsed and the ratification was inoperative. The Supreme Court, in an opinion by Chief Justice Hughes, reiterated that Congress has the power to determine what was a reasonable time for ratification and went on to hold that the question of what constituted a reasonable time was solely a matter for Congress, did not constitute a justiciable issue, and was not subject to review by the courts. The Court declared:

"In short, the question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of evidence receivable in a court of justice. . . . The questions they involve are essentially political and not justiciable." (307 U.S. 453–4).

There can be little doubt that, if Congress has power to determine what is a reasonable time for ratification, either by fixing it in advance or by deciding it at a later date, it also has power to extend a limitation originally fixed by it. The extension of time, like the original determination, involves an ancillary power, incidental to but necessary to its basic power to administer the amending process. It fits squarely into the holding of the *Dillon* case, "a matter of detail that Congress may determine as an incident of its power to designate the mode of ratification."

In this connection two further observations should be made. First, the seven-year limitation is part of the resolving clause, not a substantive part of the proposed Amendment itself. Hence it is plainly a matter of procedure, not substance, and thus even more clearly within the implementing powers implicit in Article V.

Second, there is no problem here of reliance by any State upon the initial seven-year limitation. None of the States have ratified that provision; they have adopted or rejected the substantive portions of the Amendment, not the resolving clause. Nor has any State relied on the time limitation as a reason for adopting or rejecting the Amendment; the timing of ratification could not be a factor in the position taken by any State. Hence there is no issue here of unfairly changing the rules.

The power to adjust the period in which ratification or rejection takes place is an important one in the amending process. Congress not at the outset judge precisely aright the "political, social and economic" conditions that are relevant to the length of time in which consideration of an amendment should take place. In the case of the Equal Rights Amendment the seven-year period was chosen primarily because it was "customary", without any serious attention to whether or not it was appropriate. Congress should, and does, have power to revise its original action in the light of subsequent developments.

There remains only one further issue. The Supreme Court held in *Dillon v. Gloss* that the time period for ratification must be a "reasonable" one. Although *Coleman v. Miller* establishes that the question of "reasonableness" is a matter solely for Congress and not for the courts, nevertheless it is the duty of Congress to assure itself that any extension of time conforms to the Constitutional requirement. Without attempting to elaborate, it seems clear that provision for additional time for ratification of the Equal Rights Amendment, at least up to another seven years, would be reasonable:

(1) History has demonstrated that a long period of time is necessary for the nation to make up its mind with respect to fundamental changes in the status of large groups in the population. Thus the Women's Suffrage Amendment was under consideration for nearly three quarters of a century. The first convention to consider the issue of votes for women took place in Seneca Falls, New York, in 1848; it was not until 1920 that the Nineteenth Amendment was adopted. Even the abolition of slavery, eventually accomplished by the Thirteenth Amendment, was a subject of national debate for decades. The Equal Rights Amendment was originally proposed in 1923. Most supporters of women's rights, however, believe at that time that the objectives could be accomplished through the Fourteenth Amendment. Consequently it was not until 1970 that the merits of the Equal Rights Amendment began to achieve serious national attention. The seven years which have since lapsed constitute a very brief period for discussion of such a major social reform.

(2) The issues raised by the Equal Rights Amendment have proven to be more comprehensive than may have appeared to Congress at first. The extent to which the patterns and practices of sex discrimination pervade our society was not fully recognized by many people. Thus the number of different areas affected and the nature of the adjustments necessary have raised more issues, and the need for more discussion, than was originally contemplated.

(3) More importantly, the meaning and impact of the Equal Rights Amendment have been subject to an unprecedented degree of misunderstanding, misrepresentation, and distortion. This has resulted in wide-spread confusion concerning what the Equal Rights Amendment seeks to accomplish and what its effect would be. The citizens of the country are only now beginning to sort out the truth from the error. More time is needed to complete this process.

(4) As noted above, Congress did not seriously consider whether seven years was an appropriate time for debate within the States over the merits of the Equal Rights Amendment. The time limit was adopted because it was "customary". It is now clear that additional time is needed.

(5) Finally, there can be no doubt that the issues raised by the Equal Rights Amendment are still very much alive and current. I think it is beyond dispute that a large majority of the American people support equal legal rights for women. Some 35 States, representing over 71 percent of the population of the country, have ratified the Equal Rights Amendment. Debate continues in the remaining 15 States, representing less than 29 percent of the population. This is not time to cut off that debate.

IS A SUPER-MAJORITY OR A MAJORITY VOTE NECESSARY ON THE RESOLUTION EXTENDING THE TIME FOR RATIFICATION

In my opinion a resolution extending the time for ratification of the Equal Rights Amendment is not subject to the requirement of a two-thirds vote but may be passed by an ordinary majority. This follows from a number of considerations.

First, Article V expressly sets forth the circumstances under which a two-thirds vote is required. That is when both Houses "deem it necessary" to "propose Amendments". Other parts of the amending process are not subject to the unusual requirements of a two-thirds vote. Thus no such requirement is imposed with respect to the power of Congress, also conferred by Article V, to "propose" the "mode of ratification". The intent seems clear that the final decision on the substantive terms of a proposed amendment needs two-thirds of both Houses, but that preliminary and procedural issues ought to be determined by the usual majority vote. This is fully consistent with the basic structure of the Constitution; those occasions when a super-majority is required are specifically enumerated, as in a vote to expel a member (Art. I, § 5), and all other actions are taken by simple majority.

The time limitation in the resolution proposing the Equal Rights Amendment is a procedural matter, dealing with the "mode of ratification". It is contained in the resolving clause, not in the substantive portion of the Amendment. It has not been voted on, one way or another, by the States considering ratification. It is in no way part of the final substance of the Amendment. Hence revision of that provision is subject only to majority vote.

Second, the foregoing interpretation of Article V has been consistently followed by Congress since the original adoption of the Constitution. Amendments to a proposed constitutional amendment are adopted by majority vote. Statutes establishing the procedural rules for the conduct of the amending process, such as 1 U.S.C. § 106b, are enacted by majority vote. Most important, the determination by Congress that a constitutional amendment has been ratified by three-fourths of the States, the culmination of the amending process, is made by majority vote. Thus the controversial resolution accepting the Fourteenth Amendment as ratified by the requisite number of States was adopted by majority votes (Cong. Globe, 40th Cong., 2d Sess., pp. 4266, 4296). These actions by Congress have established that revision of the time limitation in the Equal Rights Amendment may be accomplished in a similar way, by a majority vote.

Third, confining the requirement of a super-majority vote to the precise action specified in the Constitution, conforms with the intentions of the framers in formulating Article V of the Constitution. The basic objective was to make certain that an amendment had the support of the large proportion of each House before it was submitted to the States for ratification. That objective is secured if the final vote on the substance of the amendment is required to muster two-thirds of the members of each House. It does not demand that every preliminary or procedural detail of the amending process be required to conform to the two-thirds rule.

THE QUESTION OF RESCISSION

It has been argued that, if Congress extends the period for ratification of the Equal Rights Amendment, it should also authorize the States which have ratified to rescind their ratification. In my judgment the matter of rescission is a separate issue, not relevant to an extension of the seven-year limitation, and it is premature for Congress to consider that issue now.

The Supreme Court has held that the question whether a State can rescind a prior ratification is solely a matter for Congress to decide (*Coleman* v. *Miller*). And Congress has consistently accepted the view, in the case of the Fourteenth, Fifteenth and Nineteenth Amendments, that a State may not rescind. I believe this position is the correct one. However, it is not necessary to consider its justification at this point.

In the first place, the question of whether further time to debate and act upon the Equal Rights Amendment is advisable must be decided on the basis of factors entirely independent of the right of a State to rescind. When that discussion is over and Congress comes to determine whether the requisite number of States have ratified, the issue of recission will be presented. The matter will be decided on the basis of the situation as it then exists. That decision need not, indeed cannot, be made at this time.

Secondly, nothing that Congress can do now will resolve the issue. If a State has a constitutional right to rescind Congress cannot deprive it of that right by passing a resolution now. If a State does not have the right of rescission, as I believe, there is no need for Congress to act. On either theory Congressional action at this time is superfluous.

CONCLUSION

For the reasons stated, it is my opinion that Congress has power under Article V of the Constitution to extend the time for ratification of the Equal Rights Amendment, so long as the period designated is a reasonable one; that strong reasons exist for allowing additional time for exposition and discussion of the major social reform embodied in the Equal Rights Amendment; and that action to extend the period for State consideration does not require a two-thirds vote but may be taken by majority vote.

STATEMENT OF PROF. RONALD D. ROTUNDA

Mr. Chairman, distinguished members of the Committee. My name is Ronald D. Rotunda, Associate Professor of Law at the University of Illinois, College of Law. I teach Constitutional Law at the University, have coauthored a Treatise on Constitutional Law published earlier this year* and am former assistant counsel to Sam Dash, Chief Counsel of the Senate Watergate Committee. I am honored to have received the invitation by the Chairman to appear here today.

Before turning to several specific areas of inquiry and my analysis of the case law in question, I should emphasize that my remarks relate to the constitutionality of the proposed extension and related issues. Constitutionality is not synonymous with wisdom nor even, necessarily, with fairness. What is wise legislation is a matter that is a political question, best determined by Congress as the representative institution of the entire nation. This question of wisdom should not be delegated, in a democratic state, to the courts or to academicians. Some people think that our Constitution is a magical pinata which, when hit at the right angle, will issue forth all the policy answers to our pressing social problems. The Supreme Court has never followed that view. Certain issues have been held to be "political questions," the constitutionality of which are not decided by the Court. My analysis of the case law shows that, as best can be determined, the major open questions regarding procedures for amending the Con-

*Nowak, Rotunda, & Young, *Constitutional Law* (West Pub. Co. 1978). A Supplement analyzing the Supreme Court cases decided during the 1977–78 term will be published later this month.

stitution are political questions. Congress is free to do as it will. Of course Congress should exercise its power with wisdom and restraint, but however it exercises it, it alone will be the ultimate arbiter.

I.—THE POLITICAL QUESTION DOCTRINE

The political question doctrine—which holds that certain matters are really political in nature and best resolved by the body politic rather than suitable for judicial review—is a misnomer. It should more properly be called the doctrine of nonjusticiability, that is, a holding that the subject matter is inappropriate for judicial consideration. As Justice Jackson has noted, "all constitutional interpretations have political consequences." R. Jackson, The Supreme Court in the American System 56 (1955). However, not all constitutional questions are justiciable by the Supreme Court. An important consequence of the political question doctrine is that a holding of its applicability to a theory of a cause of action renders it immune from judicial review. Unlike other restrictions on judicial review—doctrines such as case or controversy requirements, standing, ripeness and permaturity, abstractness, mootness, and abstention—all of which may be cured by different factual circumstances, a holding of nonjusticiability is more absolute in its foreclosure of judicial scrutiny.

The earliest leading case developing the political question doctrine was *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849), holding that the guaranty clause (Art. IV, § 4) is nonjusticiable, at least in the absence of a congressional statute authorizing judicial review. *Id.* at 43. The modern leading case dealing with the issue is *Baker v. Carr*, 369 U.S. 186 (1962), which upheld the justiciability of legislative reapportionment issues. To determine if the doctrine should be invoked, the Court fashioned the following test for justiciability:

"Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." 369 U.S. at 217.

The principal case applying the political question doctrine to issues relating to amendments to the Constitution is *Coleman v. Miller*, 307 U.S. 433 (1939). Plaintiffs in that case included members of the Kansas Senate, whose votes against ratification of a constitutional amendment had been overridden. They sued in state court to compel the Secretary of State to erase an endorsement on a resolution ratifying the proposed Child Labor Amendment and indicate instead that it "was not passed." The court was also asked to restrain the officers of the Senate and House from signing the resolution and the Kansas Secretary of State from authenticating it and delivering it to the Governor. The petitioners had three claims: (1) that the Lieutenant Governor could not cast the deciding vote in the Senate because he was not part of the "Legislature" within the meaning of Article V of the U.S. Constitution; (2) that Kansas could not ratify the amendment because it had previously rejected it; and (3) that the amendment could not be ratified because it was no longer viable, not having been ratified within a reasonable time.

Chief Justice Hughes' opinion for the Court held, in a 5 to 4 decision, that the complaining senators had standing, with Justices Frankfurter, Roberts, Black, and Douglas dissenting on this point. The Court was equally divided on the issue of whether the Lieutenant Governor could cast the deciding vote on ratification, with the same four justices arguing that this issue was nonjustifiable.

Petitioners also argued that either a ratification or rejection of a proposed amendment cannot later be changed. The Court held that the "question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment." 307 U.S. at 450 (Opinion by the Court). Congress, the Court said, could have enacted a statute relating to ratification after rejection (and rejection after ratification) but had not done so then. To this day, in fact, it has left this area barren of clear statutory guidance.

Finally the petitioners argued that the proposed amendment had been spent, lost its force, and could not be ratified because of the length of time—thirteen years—between its proposal and the Kansas ratification. Previously the Supreme Court had held that Congress may fix a reasonable time for ratification. *Dillon* v. *Gloss*, 256 U.S. 368 (1921). But Congress had not—and still has not—enacted any general statute or resolution governing temporal viability. In the past, seven years was used, in various proposed amendments, as a reasonable time. At the time of *Coleman*, the average time to ratify an amendment, excluding the first ten, had been three years, six months, 25 days. To the extent that economic, political, and social conditions relate to a proposed amendment, make it nonviable, those factors change. Weighing those factors to determine viability, the Court recognized, was inappropriate for the judiciary. Thus it concluded that the issue of a reasonable time "lies within congressional province." And that question should be "regarded as an open one for the consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment. Th[at] decision by the Congress . . . of the question whether the amendment had been adopted within a reasonable time would not be subject to review by the courts." 307 U.S. at 454 (Opinion of the Court).

Justice Butler dissented and would have held that more than a reasonable time had elapsed. The separate opinion of Justice Black joined by Frankfurter, Roberts, and Douglas, emphasized and joined in the finding of nonjusticiability as to the question of the efficacy of attempted rejections and the question of a reasonable time for adopting an amendment: "Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon that exclusive power by this Court or by the Kansas courts. Neither state nor federal courts can review that power." 307 U.S. at 459. Thus six of the most distinguished jurists ever to have sat on the Supreme Court—Chief Justice Hughes, and Justices Stone, Black, Frankfurter, Roberts, and Douglas, were of the view that it is for Congress and not the courts to decide if a state legislature may reject an amendment after having ratified it, and these same six justices were of the view that it is for Congress and not the courts to decide if a proposed amendment is no longer viable for ratification.

Such a view need not completely exclude the Courts from the amendment process. Thus, the Court has upheld the power of Congress to fix a reasonable time for ratification and it has determined, where statutes required, when an amendment has gone into effect.* But if statutes do not provide for a judicial role and if the power of congress to enact such statutes is not the matter in disputes, it may be the rule that all amendment questions relating to the constitutionality of the amendment procedure should be regarded as political.

II.—THE CONSTITUTIONALITY OF CHANGING THE EQUAL RIGHTS AMENDMENT'S PROCEDURAL RULES IN MIDCOURSE

Everyone agrees that Congress originally could have set a time period of greater or less than seven years. Similarly, everyone agrees that if Congress had made the seven year limitation part of the amendment itself—as it did, for example, in the 18th Amendment, § 3—then Congress could not have changed the time period without beginning the amendment process anew because changing the time period would be changing part of the amendment itself.

Having set a seven year limit in the resolution accompanying the amendment, may Congress now change its mind? Can the 1971–1972 Congress bind a subsequent Congress? It has long been considered settled law that one legislature cannot bind a subsequent one; Congress can always change its mind if in so doing it does not violate the Fifth Amendment's procedural and substantive guarantees. Thus, Congress may repeal a statute as long as the repealing legislation does not deprive any person of life, liberty or property without due process and just compensation or in violation of other specific constitutional guarantees, E.g., *Battaglia* v. *General Motors Corp.*, 169 F.2d 254, 257 (2d Cir.), cert. denied, 335 U.S. 887 (1948); *F.H.A.* v. *The Darlington, Inc.*, 358 U.S. 84, 91 (1958).

To many people it may appear unfair for Congress to extend the time period for ratification, "to change the rules in the middle of the game." Others argue that an extension is not unfair if Congress allows states to rescind their previous ratifications. Personally, I believe that states should be allowed to rescind previous ratifications until the three-fourths majority is reached. Such a rule—if Congress would enact it—would be similar to the vote changes allowed in a presidential convention, or in a state legislature, or on the Senate floor. Moreover, a

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* Dillon v. Gloss, 256 U.S. 368 (1921) (18th Amendment). See also National Prohibition Cases, 253 U.S. 350, 386–388 (1920) (18th Amendment case, holding, inter alia, that the two-thirds vote in each House of Congress required in proposing an amendment is a vote of two-thirds of the members present, assuming a quorum, and not a two-thirds vote of the entire membership, present and absent); Hawke v. Smith, No. 1, 253 U.S. 221 (1920) (18th Amendment case, holding that provision of state constitution requiring submission of ratification to referendum is unconstitutional under Article V of the Constitution); Hawke v. Smith, No. 2, 253 U.S. 231 (1920) (19th Amendment case, holding same as in Hawke v. Smith, No. 1); United States v. Sprague, 282 U.S. 716 (1931) (18th Amendment; Tenth Amendment does not limit power of Congress to choose ratification by legislature instead of convention); Hollingsworth v. Virginia, 3 U.S. (3 Dall.) 378, 381 (1798) (11th Amendment; President has nothing to do with the proposing or adoption of Amendment to the Constitution); Cf. Leser v. Garnett, 258 U.S. 130 (1922) (upholding the constitutionality of the 19th Amendment, in the course of which the Court said: "official notice to the Secretary [of State], duly authenticated, that [a state legislature] had [ratified a proposed amendment] was conclusive upon him, and, being certified to by his proclamation, is conclusive upon the courts." 258 U.S. at 137.)

right of recission is an independent check to insure that when the three-quarter mark is reached, there has been truly a contemporaneous support of the E.R.A. Congress may come to this same conclusion and so decide, as a matter of policy, in exercising its powers to determine what is a reasonable time for the life of the proposed E.R.A. But the question I have been asked to comment on today is not what is my personal preference, my own notion of fairness. The question is, first, whether Congress has the power to extend (or hypothetically, shorten) the time period for ratification previously expressed in the accompanying resolution. What is a reasonable time for the adoption of an amendment? As the *Coleman* opinion also affirms: "Th[at] decision by the Congress . . . of the question whether the amendment had been adopted within a reasonable time would not be subject to review by the courts." 307 U.S. at 454. As the separate opinion by Justice Black, joined by Frankfurter, Roberts and Douglas, emphasized: "Congress possess[es] exclusive power over the amending process. . . . Neither state nor federal courts can review that power." *Id.* at 459. The second question is whether Congress must allow subsequent rejection after previous ratification (or ratification after previous rejection). That question, said the opinion of the Court in *Coleman* v *Miller*, 307 U.S. 433, 450 (1939), is under "the ultimate authority in the Congress. . . ."

Congress, to put it boldly, can be "unfair," or more precisely, need not comport with my notion of fairness. The ultimate guardian of our liberties in this instance is Congress, not the courts. The buck stops here.

One might ask whether Congress' amendment powers are subject to the Fifth Amendment guarantee of procedural due process discussed earlier. But the Fifth Amendment does not give protection to the states. The word "person" in the due process clause does not include the states of the Union, the Supreme Court held in upholding the broad Congressional powers exercised under the Voting Rights Act of 1965. *South Carolina* v. *Katzenback*, 383 U.S. 301, 323 (1966). Nor does a state have standing to invoke these due process provisions on behalf of its citizens. *Id.* at 324. And citizens do not have standing themselves to object to such amendment procedures. *Fairchild* v. *Hughes*, 258 U.S. 126 (1922) (private citizen cannot sue in the federal court to obtain indirect determination of the validity of the Nineteenth Amendment which was about to be adopted). We should not be shocked that the Fifth Amendment does not apply to protect the states. The fifty states are not politically powerless entities; they are well represented in Congress and equally represented in the Senate.

The fact that these important constitutional questions are not justiciable in the courts does not mean of course that anything goes. Rather, it means that Congress has the ultimate responsibility, and therefore that responsibility is rendered more awesome and must be even more carefuly exercised. Again to refer to *Coleman* v. *Miller:*

"Since *Congress has sole and complete control over the amending process, subject to no judicial review,* the views of any court upon this process cannot be binding upon Congress and insofar as *Dillon* v. *Gloss* attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. If Congressional determination that an amendment has been completed and become a part of the Constitution is final and removed from examination by the courts, as the Court's present opinion recognizes, surely *the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.*" 307 U.S. at 459 (Black, J., concurring, joined by Roberts, Frankfurter, and Douglas, JJ.) (emphasis added).

I realize that there are some judicial activists who will be upset at the notion that there are some areas where the Court does not rule the Country. Yet as early as *Marbury* v. *Madison*, 4 U.S. (1 Cranch) 137 (1803), when judicial review was considered to have been born, Chief Justice Marshall also delivered a twin: the doctrine that there are some acts and decisions that are political and there is "No [judicial] power to control that discretion." *Id.* at 166.

III.—PROCEDURES REGARDING A NEW RESOLUTION

When we turn to the procedures we similarly find some, but not enough, guidance in the case law. Must the President's signature be obtained on any resolution extending the time for ratification? Article I, Section 7, clause 3 of the Constitution would seem to require it. That clause says:

"[3] Every Order, Resolution, or Vote, to Which the Concurrence of the Senate and House of Representatives may be necessary (except on question of Adjournment) shall be presented to the President of the United States; and "before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

However that section has never been interpreted or applied strictly by Congress. In 1897 the Senate Judiciary Committee said that the word "necessary" in this clause means "the necessity occasioned by the requirement of other provisions of the Constitution, whereby every exercise of 'legislative powers' involves the concurrence of the two Houses." S. Rept. No. 1335, 54th Cong., 2d Sess, (1897); see also 4 A. Hinds, *Precedents of the House of Representatives* § 3483 (1970). In *Hollingsworth* v. *Virginia*, 3 U.S. (3 Dall.) 378, 381 n. (1798) Justice Chase specifically ruled: "The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." The Article V Amendment process is not legislation and thus is not governed by Section 7, Clause 3.

Professor Charles Black of Yale is one commentator who has argued (in his October 28, 1977 letter to the House Judiciary Subcommittee) that Section 7 should control. Yet he never distinguished Hinds *Precedents* and simply rejected *Hollingsworth* as inadequately reasoned. Before rejecting *Hollingsworth* one should ask whether it was constitutional for World War II legislation to provide that certain presidential powers should end when Congress adopted concurrent resolutions to that effect. E.g., Land Lease Act of March 11, 1941, 55 Stat. at Large 31. Much other legislation is also cast in doubt. E.g., Reorganization Act of June 20, 1949. 63 Stat. at Large 203. Also the constitutionality of congressional veto provisions, which do not provide for presidential signatures, is called into question. While such statutes have not been tested in the Supreme Court, the long congressional practice is supported not only by *Hollingsworth* but, by analogy, by Justice White's separate opinion in *Buckley* v. *Valeo*, 424 U.S. 1, 140 n. 176 (1976) (concurring and dissenting in part). Justice White said he thought the congressional veto is constitutional. The full Court did not reach the issue, but the Court of Claims recently did uphold the congressional veto in spite of the fact that such congressional resolutions are not subject to a requirement of a presidential signature *United States* v. *Atkins*, 556 F. 2d 1028, 1058-71 (Ct. Cl. 1977) (per curiam), cert. denied. —— U.S. —— 98 S. Ct. 718 (1978).

Must the new resolution extending the time for ratification be passed by a simple majority of both Houses or is a two-thirds majority required? There is virtually no case law on this question. We do know that the two-thirds requirement means only two-thirds of the members present (assuming a quorum of course) and not two-thirds of the entire membership. *National Prohibition Cases*, 253 U.S. 350, 386 (1920); (interpreting Art. V); Cf. *Missouri Pacific Railway Co.* v. *Kansas*, 248 U.S. 276 (1919) (interpreting Art. I, § 7, Cl. 2). We also know that the two-thirds requirement is rare and whenever the Constitution requires it, that requirement is clearly spelled out. E.g., Art. I, § 3, Cl. 6; Art. I, § 5, Cl. 2; Art. I, § 7, Cl. 2 & 3; Art. II, § 2, Cl. 2. The two-thirds rule spelled out in Article V seems only to refer to the substantive text of the amendment itself. Other procedural matters—even important procedural matters—have been governed by majority vote. Thus, amendments to the proposed amendment, statutes regulating the amendment process, and the Congressional finding that the amendment has in fact been ratified have all been accomplished by simple majorities in the past. Congress by internal rule may require a larger majority, but that internal rule, if enacted, would not appear to be required by the Constitution.

CONCLUSION

It may be surprising for some to learn that Congress is the ultimate guarantor of many of our liberties—not the President and not the Court, but Congress. But in a democratic society that conclusion should not be disquieting. The exercise of such power is restrained only by the "wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections. . . . They are the restraints on which the people must often rely solely, in all representative governments." *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 197 (1824).

MARGARET FAYÉ: A PIONEER IN AGING

● Mr. CHURCH. Mr. President, I wish to pay tribute today to the late Margaret Fayé, who was an able and effective staff member of the Senate Special Committee on Aging before her retirement earlier this year.

News of her death this week saddened her friends in this Nation and abroad. Over the years, Mrs. Fayé had become widely known as a pioneer in aging, as an administrator, and as a person deeply concerned about the needs of older America.

She championed many causes on behalf of the elderly in Hawaii, where she was the first State Commissioner on Aging. She joined the Senate committee in July 1973, enabling members of that committee to tap her extensive experience with local and State programs for the aging. We also benefited from her wide knowledge of needs and hopes of older persons as well.

We on the committee will miss Peg. We know that our sense of loss is shared by many who were fortunate enough to know her and to work with her and who now treasure her memory.●

TREATABLE BRAIN DISEASE IN THE ELDERLY

● Mr. GLENN. Mr. President, we have all read accounts in recent news articles about misdiagnosed senility and brain disorders among the elderly. The National Institute on Aging of the National

Institutes of Health, in an attempt to better educate the public and the medical profession about such disorders, recently held a conference to discuss treatable brain diseases in the elderly. The conference brought together experts in the field of internal medicine, neurology, psychiatry, epidemiology, radiology, psychology, geriatric medicine, and general medicine in order to define terms and to discuss information which should be available to physicians who treat such malfunctions.

The conferees agreed that the major information which should be made available to the medical profession is descriptive data which aids physicians in distinguishing between those brain disorders which are treatable and those which are not. In addition, the information would contain suggested treatments for those disorders diagnosed as "treatable."

A helpful summary of this conference and a description of the information needed by physicians have been developed by the National Institute on Aging. I ask that the NIA's summary be printed in the RECORD.

The summary follows:

TREATABLE BRAIN DISEASE IN THE ELDERLY: CONFERENCE SUMMARY

Old age is often viewed as a time when mental prowess begins an inevitable and irreversible decline. In the not too distant past, this mistakenly conceived notion of the typical elderly person was shared by many of those physicians responsible for the medical treatment of the elderly population. Now, faced with a growing number of geriatric patients, physicians are becoming more aware of the danger of accepting such stereotypes and more concerned with providing effective treatment for the special problems of the aged.

On July 10 and 11, 1978, the National Institute on Aging (NIA) brought together experts in the fields of internal medicine, neurology, psychiatry, epidemiology, radiology, psychology geriatric medicine, and general medicine for a consensus development conference on treatable brain diseases in the elderly. With this meeting, the NIA continued its work towards the development of a concise, authoritative statement that will help physicians determine the cause of cognitive dysfunction on their elderly patients. Consensus development at the National Institutes of Health brings together authorities in many specialized fields to critically assess current knowledge and to reach agreement on the efficacy and safety of diagnostic and treatment approaches.

Throughout the course of the two-day conference, discussion focused on several basic questions:

(1) What is dementia?

(2) How common are treatable brain diseases which cause cognitive impairment?

(3) What information should physicians have to obtain the most comprehensive and useful history of impaired patients?

(4) What is the best kind of physical examination to carry out on impaired patients?

(5) What is the role and value of the mental status examination in the detection, diagnosis, and evaluation of brain disease?

(6) What is the role and value of the CT scan (computerized axial tomography) in the detection, diagnosis, and evaluation of brain disease?

(7) Given a diagnosis of Alzheimer's disease or multi-infarct dementia, what is the physician's responsibility to both the patient and the family?

Consensus was not reached on the terminology of cognitive impairment in the elderly. The participants cited the vast number of currently used terms, including dementia, brain syndrome, brain failure, and senile psychosis; the multiplicity of qualifying adjectives such as organic, functional, acute, chronic, irreversible and reversible; and the additional confusion presented by such phrases as pseudo-senility and pseudo-dementia. While many of these are subject to criticism, the majority of the participants felt that a new system would not help practitioners. It was suggested that an appropriate terminology could be selected from the existing terms and that these terms should be clear of any negative connotations.

The participants also agreed that, regardless of the terminology employed, the main import of a consensus document is to aid physicians in distinguishing between those disorders which can be successfully treated and reversed and the so-called "irreversible" disorders—most notably Alzheimer's disease and multi-infarct dementia. Dr. Richard Besdine of the Hebrew Rehabilitation Center for Aged, Roslindale, Massachusetts, and Assistant Professor of Medicine, Harvard Medical School, presented a long list of disorders which are detrimental to normal brain functioning in the elderly. This list included adverse drug reactions, depression, infectious diseases, heart diseases, stroke, metabolic disorders such as kidney failure or thyroid disease, anemia, and a number of other physical and emotional problems. Of these, it was generally agreed that depression, drug toxicity, and endocrine-metabolic disorders are the most prevalent reversible causes of mental deterioration in elderly patients.

While the elderly constitute 11 percent of the U.S. population, it is currently estimated that they consume 25 percent of all drugs sold in this country. Because of the frequent occurrence of multiple diseases in old age, it is not uncommon to find one patient simultaneously taking five or six different drugs. In addition, physiological impairment of the heart, blood vessels, kidneys, digestive tract, and nervous system can seriously alter the body's ability to metabolize drugs. It was the opinion of the participants that psychotropic drugs should be administered to elderly patients with extreme caution although judicious use of these drugs can be valuable in treatment of depression. It was also suggested that the physician can solve many problems of elderly patients by establishing what and how much medication those patients are taking.

Depression as a cause of cognitive impairment in the elderly is frequently overlooked by physicians, despite growing evidence that depression is a common response to crises occuring in late life. This may be because physicians do not look for depression in their elderly patients; it may also be because stereotyped images of age-related mental decline effectively mask this curable disorder. According to Dr. Lissy Jarvik of the UCLA Department of Psychiatry, depression may go unnoticed because it presents differently in elderly persons. Dr. Jarvik offered the following rule of thumb to the consensus group: while depression in elderly patients shows itself as loss of appetite, insomnia, withdrawal, anxiety, and other emotional and somatic complaints, typical symptoms of depression such as loss of self-esteem, guilty feelings, and self-pity are frequently absent. She further emphasized that short-term treatment can prove effective for such disorders and that elderly patients are frequently responsive to the benefits of psychotherapy.

One of the underlying themes of the consensus meeting was that a patient with intellectual impairment is as deserving of a comprehensive work-up as a patient with any other complaint. This includes a thorough history to determine the extent and tempo of the decline as well as the effect of stressful life events. It also includes a thorough physical examination.

Several participants suggested that a simple mental status examination is the most useful instrument for taking a patient's history. This led to a somewhat unresolved discussion of the value of psychological testing. Although the group expressed the need to include specific examples of structured mental status exams in their recommendations, the Goldstein-Scheerer tests, the Goldfarb-Kahn scale, and several other frequently used tests were all considered lacking in some respect. It was suggested that these concentrate too heavily on measurement of disorientation—a late sign of cognitive impairment—while excluding a formal means for measurement of impaired judgment. Dr. Leslie S. Libow, Chief of Geriatric Medicine at the Long Island Jewish-Hillside Medical Center and Medical Director of the Jewish Institute for Geriatric Care, briefly explained the strategy currently in use at these institutions which measures social function, reasoning ability, orientation, memory (immediate, recent, and remote), arithmetic and calculation, judgment, and emotional state.

Dr. Monica Blumenthal, Western Psychiatric Institute, Pittsburgh, Pennsylvania, suggested that in taking a patient's history the physician should make every attempt to determine the patient's social and environmental situation. She emphasized the fact that labels of cognitive impairment are frequently attached to older persons in deprived social circumstances and that persons in institutions with diagnoses of brain syndrome are most likely to be poor, isolated, widowed, and suffering from some sensory deprivation. She recommended that the physician recognize the value of home visits, attach labels with extreme caution, and approach diagnosis and treatment in a positive way in order to avoid exacerbating cognitive loss.

There was general agreement that a comprehensive physical examination would include a rectal, pelvic, genital, and neurological examination, as well as a routine laboratory evaluation—CBC, sedimenation rate, stool for occult blood, thyroid functions, electrolytes, BUN, calcium, phosphorus, urinalysis and culture, B–12, liver functions, blood sugar, syphilis serology, chest x-ray, and EKG.

What was expected to be the most heated discussion during the meeting—that on the role of the CT scan (computerized axial tomography)—was relatively tame with the experts agreeing such a technique could be valuable in ruling out certain treatable causes of dementia but could not give a definitive diagnosis of Alzheimer's disease or multi-farct demetia. It was also agreed that when used with elderly patients, the CT scan cannot differentiate between pathological brain atrophy and "normal" brain atrophy. In addition, Dr. Robert Katzman of the Albert Einstein College of Medicine, New York, and Dr. Ernest Gruenberg of Johns Hopkins University, both argued that there is no *direct* correlation between cerebral atrophy and cognitive dysfunction. Dr. Gruenberg noted that autopsied brains of severely demented persons sometimes show little atrophy and vice versa. Dr. Katzman pointed out that the hallmark of senile dementia of the Alzheimer's type is pathological change in the neurons, not atrophy of the brain.

There was considerable discussion about the role of the CT scan in relation to other radiological tests. Dr. Juan Taveras of the Massachusetts General Hospital argued that the CT scan is the most sensitive instrument for detection of cerebrovascular accident, subdural hematomas, epidural hematomas, intracerebral hemorrhage, abcess, subdural empyema, hydrocephalus, and brain tumor, and should be preformed early in the work-up to rule out these disorders before skull

x-rays and brain scans are performed. Some participants favored this idea.

Although the main focus of the NIA consensus meeting was treatable brain disorders, the participants agreed that the so-called irreversible disorders are by no means hopeless and that this point deserves recognition in any communication directed at the physician. Dr. Gruenberg noted that the term irreversible refers to the damage done to the brain rather than to cognitive impairment and that physicians continue to be responsible to their patients and their patients' families when there is a diagnosis of one of these disorders. Much can be done in terms of general care for the patient to lessen discomfort, to slow and sometimes arrest deterioration, and to help the patient make use of residual strengths.

NIA's consensus development conference on treatable brain disease in the elderly concluded with a list of unresolved issues. The following needs were cited by the group as deserving of further exploration:

(1) The need to give careful consideration to terminology;

(2) The need to consider the importance of diagnosis in terms of third-party payment programs;

(3) The need to determine the prevalence of reversible disorders;

(4) The need to develop a geriatric drug formulary;

(5) The need to clarify what—if any—memory loss is "normal" in old age; and

(6) The need to refine an easily administered mental status examination for physicians and to identify or develop a more sensitive and reliable form of psychological testing than those currently available.

In addition, several issues have been raised as a result of the conference that require the attention of the consensus group. For example, in the presence of aphasia—a common impairment of elderly stroke victims—it is difficult to evaluate cognitive impairment. Many persons who have aphasia are not demented, but their ability to communicate is seriously impaired.

Although the experts agree that the prevalence of potentially reversible brain disorders is large enough to warrant the careful attention of the health care practitioners, it may be several months before final consensus is reached on all of the issues discussed during the two-day conference. Once tentative agreement is reached, a draft document will be circulated through a number of professional medical organizations, and finally published and given the widest possible dissemination. It is hoped that this exercise will eventually result in a statement that will help physicians detect, diagnose, and evaluate specific treatable disorders that now result in unnecessary physical, emotional, and economic hardship for many older persons.●

NOTIFICATION OF AUTHORIZATION OF CAMBRIDGE HARBOR PROJECT, MD.

● Mr. RANDOLPH. Mr. President, under authority of section 201 of the 1965 Flood Control Act (Public Law 89-298), as amended, the Committee on Environment and Public Works may approve certain water resources projects by resolution. Such projects must be favorably recommended by the Chief of Engineers, their estimated Federal cost must be less than $15 million, and they must be without significant controversy. Full authorization is contingent upon adoption of resolutions by both the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.

Until this time, no notification to the Senate was made of such project approvals. In May of this year, however, the committee adopted a new procedure which provided for submission of a report to the Senate, on the approval of any Federal building, with subsequent publication as a committee print.

In June the committee extended this reporting procedure to include water resources projects subject to approval by resolution. This would include the "201" projects described above as well as certain watershed work plans constructed by the Soil Conservation Service.

On June 27 the committee approved a resolution authorizing the Cambridge Harbor project, Md., under the section 201 authority. I ask unanimous consent that the following report be printed in the RECORD.

The report follows:

REPORT TO THE SENATE ON A RESOLUTION ADOPTED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS AUTHORIZING THE PROJECT FOR NAVIGATION IMPROVEMENT AT CAMBRIDGE HARBOR, DORCHESTER COUNTY, MD.

On June 27, 1978, the Committee on Environment and Public Works adopted a resolution approving a project providing for improvements in the interest of navigation at Cambridge Harbor, Dorchester County, Maryland.

The existing Federal project for Cambridge Harbor consists of two channels, a turning basin, and two anchorage basins. A deepwater channel and marine terminal was built by local interests in 1963-64 with the assistance of a Federal Area Redevelopment Administration grant.

The harbor is the only deepwater seaport on the Delmarva Peninsula. Commercial traffic using the port consists principally of vessels transporting seafood products.

The locally constructed channel has shoaled to the point that deep-draft vessels are unable to enter fully loaded, and shippers are experiencing additional costs through the routing of their vessels to other ports to lighten their loads. If the shoaling persists, and the material is not removed, the fish-processing industry, dependent on the port, may be forced to relocate, resulting in the loss of about 800 jobs. The Maryland Port Administration is unable to proceed with a planned expansion intended to attract new industry as a way to ease the high unemployment of the area. Local interests are not financially capable of performing the needed maintenance dredging.

The project, as approved by the Committee, provides for Federal assumption of maintenance of the locally-constructed navigation channel and turning basin to their original dimensions. The estimated Federal cost of such improvements is $433,700, and the benefit-cost ratio is 4.7 to 1, calculated on existing users of the port. Project benefits, including prospective benefits for new commerce, will be reevaluated in detail during the advance engineering and design phase of project development.

The project has been approved by the Office of Management and Budget. A favorable report was transmitted to the Congress by the Secretary of the Army on June 14, 1978. The House Committee on Public Works and Transportation approved a similar resolution on June 27, 1978. The project may now be constructed, subject to funding.●

INTERNATIONAL TRADE COMMISSION HEARINGS REGARDING THE METAL FASTENERS INDUSTRY

● Mr. GLENN. Mr. President, I want to thank the U.S. International Trade Commission for its renewed attention to the very serious trade problems confronting the fasteners industry. These problems are of vital concern to the economy of the State of Ohio and to the security of the United States.

Last December, this Commission reported to the President that imports of fasteners were causing serious injury to the U.S. fasteners industry. With 20 other Senators, I introduced a resolution disapproving the President's determination. I took that action, one, to provide needed relief to the American industrial fasteners industry; two, to affirm the intent of Congress with regard to the import relief provisions of the Trade Act of 1974; and three, to address the problems that our Nation's dependence on fasteners imports poses for our national security.

Nine months have elapsed since the International Trade Commission issued its recommendations. During that time imports have continued to inflict injury on our domestic fasteners industry. The serious injury documented by this Commission last year has become worse. In other vital industries affecting our economy and national defense interests, we have had great concerns when imports reached the 15- to 20-percent level. In this industry, imports accounted for 44 percent of our supplies of fasteners in 1977, and now account for 47 percent, according to the Commission's staff. This additional injury exacerbates an already unfortunate cyclical situation. Increasing import penetration injures our domestic fasteners industry, forcing it to close down production facilities and to lay off skilled workers. This lost domestic production is replaced by foreign producers, thereby increasing U.S. dependence on fastener imports.

It is noteworthy that this additional, needless injury has occurred in spite of dramatic appreciation in the value of the yen. In his report to Congress last year, the President stated that—

> The appreciation of the yen during 1977 will alleviate competitive pressures from Japanese fasteners exports to the United States.

This vain hope has not been realized. Despite the appreciation of the yen the quantity of Japanese imports has continued to increase.

At the same time that U.S. producers are confronted with this relentless import pressure, they are also facing escalating costs of production. The trigger price mechanism, established to protect our steel industry against Japanese dumping practices, has had unfortunate secondary effects for the fasteners industry. By shutting off access to cheap raw materials, the trigger price mechanism has raised the costs of production for the U.S. fasteners industry.

In short, criteria established by the reference pricing system may have reduced the flow of raw steel imports, but it has at the same time encouraged foreign manufacturers to concentrate more heavily into processed and manufactured products as a way of using their steel and still selling it in the United States.

Because the fasteners industry is not protected by the trigger price mechanism, it is especially vulnerable to import pressures. This vulnerability is now pain-

fully apparent. According to Commerce Department figures, the most dramatic increases in fasteners imports during the first 5 months of 1978 came from Taiwan and India—where producers have taken advantage of low cost Japanese steel to undersell our American producers in their own market, the largest fasteners market in the world.

The impact of these import pressures on the economy of Ohio has been profound. Since the Commission's previous investigation of injury to the fasteners industry, four Ohio plants have cut back on production or closed plants.

First. Federal Steel and Wire Corp. stopped production of track nuts and bolts in its Cleveland, Ohio, plant.

Second. Stanadyne announced the closing of its bolt and cap screw plant in Elyria, Ohio. Some of the machinery was transferred to another plant; the rest is to be sold or scrapped.

Third. Standard Pressed Steel of Jenkintown, Pa., announced that its Cleveland Scrap Screw Division is terminating production of all standard cap screws. This company was the largest American producer of cap screws until 2 or 3 years ago.

Fourth. The AVC Corp. shut down its nutmaking facility in Cleveland, Ohio.

The economic hardship merits attention but it is not just an economic problem. It is a national security problem as well. As a result of the decline of our fasteners industry, our Nation's mobilization base for fasteners has become more and more dependent on imports—47-percent dependent to be exact. This dependence poses serious national security problems that the Federal Preparedness Agency, acting at the request of the Department of Defense, documented in a recent study of the fasteners industry. That study showed that domestic fastener production capability is inadequate to satisfy U.S. needs in the event of a national emergency. Our reliance on imports to fill the substantial gap between our total requirements and domestic supply in the event of a national emergency jeopardizes our national security. Fasteners are crucial to every sector of our economy. We cannot allow this dangerous reliance on imports to continue. We must act now to enable our domestic manufacturing base for fasteners to be built back as rapidly as possible.●

AGE DISCRIMINATION IN EMPLOYMENT ACT ANNUAL REPORT

● Mr. CHURCH. Mr. President, 1978 marks the 10th anniversary since the Age Discrimination in Employment Act became effective.

It now protects workers 40 to 64 years old from job bias because of age concerning hiring, firing, and other conditions of employment.

Beginning this coming January, the upper age limit will be raised from 65 to 70 for most non-Federal employment under the 1978 Age Discrimination in Employment Act Amendments. In addition, that legislation will eliminate mandatory retirement almost completely in the Federal Government.

The latest report on the antiage discrimination law provides an opportunity to take stock of some of the major developments during the past decade, including:

Greater awareness on the part of employers, employees and applicants concerning their rights and responsibilities.

Expansion of the act's coverage from 50 percent to 70 percent of workers 40 to 64 years old.

Recovery of $37 million for nearly 11,000 employees and applicants who were victims of age discrimination from fiscal year 1969 to fiscal year 1977.

A more than fourfold increase in the number of complaints received by the Department of Labor from 1,000 in fiscal year 1965 to more than 5,000 during fiscal year 1977.

Secretary of Labor Ray Marshall readily admits that job bias because of age has still not been eliminated. However, he is quick to point out, "much progress has recently been made in achieving the act's intent."

Secretary Marshall included with the recent report a brief three-page summary of some of the major actions affecting the Age Discrimination in Employment Act during the past year and the past decade. This concise description, it seems to me, would be useful to Members of the Senate and others with an interest in Federal efforts to abolish job-related age discrimination.

Mr. President, I ask that the "Statement of the Secretary" be printed in the RECORD.

The statement follows:

STATEMENT OF THE SECRETARY

The Age Discrimination in Employment Act of 1967 was designed to prohibit arbitrary age discrimination in employment and to help employers and employees find ways of handling problems which may arise on the job because of age. The Act sought, above all, to promote the employment of persons solely on the basis of ability.

While discrimination against older workers has not been eliminated during the past 10 years, much progress has recently been made in achieving the Act's intent. New initiatives in the Department of Labor have emphasized education and information activities, enforcement, and the development of a body of legal precedents. In addition, government-sponsored research has contributed to eradicating myths about older workers. It has been established, for example, that older workers have better job attendance records and their productivity and learning ability compare favorably with that of younger workers.

Two events took place in early 1978 that deserve mention. First, President Carter's equal employment opportunity reorganization plan (Reorganization Plan No. 1 of 1978), submitted to the Congress on February 23, 1978, will shift responsibility for enforcing the Age Discrimination in Employment Act in non-Federal employment from the Department of Labor to the Equal Employment Opportunity Commission (EEOC) on July 1, 1979. On January 1, 1979, Federal sector enforcement will shift from the Civil Service Commission to the EEOC. This action, together with others submitted in the plan—as President Carter stated—"consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms." Second, the House and Senate Conference Committee considering proposed amendments to the Age Discrimination in Employment Act reached agreement in March on the bill (H.R. 5383). Subsequently, the Congress approved the reconciled bill and on April 6, 1978, President Carter signed the legislation into law—P.L. 95–256. President Carter said this bill "provides fairness and equity in protecting our older citizens from discrimination in employment."

Both the amendments to the ADEA and the transfer of the ADEA enforcement responsibilities to the EEOC will benefit older workers by increasing their employment opportunities, by eliminating mandatory retirement before age 70 in most non-Federal employment and by almost completely eliminating mandatory retirement in the Federal sector, among other things, and by handling enforcement responsibilities in a more efficient manner.

ACHIEVEMENTS DURING 1977

The Department has strengthened its enforcement of the Act through the increased utilization of discrimination compliance specialists and increased overall compliance officer effort devoted to enforcement. As a result, the value of monetary compensation found due to 1,943 individuals in the 40–65 age group covered by the ADEA reached a record $10 million; in addition, the second highest level of income actually restored to 744 older workers and job applicants covered by the Act also was reached—$2.7 million.

As a result of litigation many older individuals benefited from additional job opportunities, reemployment, on-the-job gains such as improved future wages and pension benefits, as well as the receipt of back wages and damages.

Eighty-six suits were filed by the Department in calendar year 1977, and there also were several significant decisions which are described in the section on litigation activities.

ACHIEVEMENTS DURING THE PAST DECADE

Since the Age Discrimination in Employment Act became effective in June 1968, some of its achievements have been:

A much greater awareness on the part of employers, employees, and applicants of their rights and responsibilities under the Act;

Expansion in coverage of the ADEA from 50 percent to 70 percent of the 40-to-65 age segment of the labor force;

A vast reduction in the most obvious types of prohibited practices, particularly illegal advertising;

Evolvement of effective administration and enforcement mechanisms in a new field of antidiscrimination law;

The handling of an increased enforcement workload, for example:

The number of complaints received by the Department of Labor has increased from 1,000 in fiscal year 1969 to over 5,000 during fiscal years 1976 and 1977,

From fiscal year 1969 through fiscal year 1977, enforcement activity disclosed nearly 11,000 employees and applicants for employment who have been discriminated against and who were due over $37 million in damages, and

Income restored to individuals exceeded $11 million;

Precedent-setting interpretations developing from over 400 court actions instituted by the Department of Labor between June 1968 and the end of 1977, of which 274 were concluded with 248 wholly or partially favorably resolved; and

An increase—influenced by the Federal statute, its enforcement, and court actions—in the number of State age discrimination laws from a total of 23 in May 1965 to 44 by the end of 1977, out of a potential of 58 jurisdictions covered by the Federal statute.

RETIREMENT STUDIES

The study of involuntary retirement, requested by Congress in Section 5 of the Act, has been developed from the U.S. Bureau of

Labor Statistics' Survey of Pension Plan Documents, the Social Security Administration's Survey of Newly Entitled Beneficiaries, and an analysis of data from special tabulations of the Parnes' Study (Ohio State University). The relevant findings from these studies have been summarized in previous ADEA reports.

Two surveys still in process—the Social Security Administration's Retirement History Study, and the final report by Dr. Herbert S. Parnes and his associates at Ohio State University, *The Pre-Retirement Years: A longitudinal study of the labor market experience of men*—will be covered in future ADEA reports.

The findings on compulsory retirement from the Employer Policies and Practices Survey conducted for the Employment Standards Administration by the Bureau of Labor Statistics are included in this report.●

PUBLIC DISCLOSURE OF HEALTH CARE INFORMATION

● Mr. ABOUREZK. Mr. President, as chairman of the Senate Judiciary Subcommittee on Administrative Practice and Procedure, I have long been concerned about the availability to the public, under the Freedom of Information Act (FOIA), of information maintained by Federal agencies. (The Judiciary Committee and the subcommittee have subject matter jurisdiction over the FOIA.) Recently, there has been much discussion regarding public disclosure of data about the quality and utilization of health services reimbursed under medicare and medicaid.

The Social Security Act Amendments of 1972 called for the formation of Professional Standards Review Organizations or PSRO's. As my colleagues may know, PSRO's are groups of local physicians designated by the Secretary of HEW in areas across the country to review the quality, medical necessity, and appropriateness of institutional setting of medicare and medicaid services. Federal payment may not be made for such services without PSRO approval. Also, PSRO's perform "medical care evaluation" studies of groups of similar patients to determine whether patterns of care are consistent with predeveloped PSRO criteria.

Hospitals report detailed information to PSRO's, which is used to create profiles showing how the care of doctors and hospitals compares to PSRO criteria. Consumer groups and many health planning and other public agencies believe that consumers would benefit greatly from putting this type of data into the public domain in a manner which does not compromise the confidentialtiy of patients or of the internal PSRO review process.

However, in response to a recent court ruling that PSRO's are Federal agencies subject to the Freedom of Information Act (FOIA), some physicians and PSRO's have sought to exempt PSRO's entirely from the public information requirements of the FOIA. Such an exemption is now embodied in section 25 of S. 1470, the Medicare-Medicaid Administrative and Reimbursement Reform Act, which may be considered on the Senate floor in the near future as an amendment in the nature of a substitute to H.R. 5285, a tariff bill.

Regrettably, this amendment has no legislative record to support it since it was never considered by my subcommittee which has jurisdiction over the FOIA, nor was it considered in any detail by the Senate Finance Committee which reported the amendment.

Therefore, I am deeply concerned that the Senate is acting prematurely in this area before it has had a full opportunity to consider the merits of such disclosure and before the precise applicability of the FOIA to PSRO's has been decided.

In order to identify for my colleagues some of the issues involved, I wish to insert the following article by Lawrence Kirsch, a health economist from Harvard University.

The article appeared in the November 1977 issue of the Quality Review Bulletin and cites the benefits to consumers of public disclosure of PSRO information. The article also notes that disclosure of selected data will help further PSRO's program objectives to contain medical costs and enhance the efficiency and quality of health services under medicare and medicaid.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

THE CONSUMERS' CASE FOR PUBLIC DISCLOSURE OF PSRO DATA

(By Lawrence J. Kirsch)

Since their inception, Professional Standards Review Organizations (PSROs) have stirred controversy. A currently debated issue is the emerging position of the Department of Health, Education, and Welfare (DHEW) on public disclosure of PSRO data. In establishing a policy of public disclosure, the Secretary of DHEW must consider PSRO objectives—quality assurance and cost containment—as well as the needs of patients, practitioners, and provider institutions. Many people view the protracted struggle over disclosure as a reflection of the larger debate concerning overall program goals, strategies, and issues of public accountability.

One of the primary objectives of PSROs is to control health care costs. Putting "patterns of care" data and results of medical care evaluation (MCE) studies in the public domain may help accomplish this goal without detracting from another important PSRO objective: peer review. I base this argument on (1) the nature of inflation in the health care market, (2) special characteristics of consumer and provider behavior, and (3) the potential of PSRO data to improve the economic performance of the health care industry.

HEALTH CARE AND INFLATION

Theoretical and empirical studies of inflation in hospital and physician services offer two contrasting viewpoints: (1) the responsibility for inflationary pressure rests with consumers, or those who demand health care, and (2) the responsibility rests with the providers, or those who supply health care. Proponents of the "demand-pull" inflation theory tend to suggest varying doses of cost sharing as the appropriate remedy. Advocates of the "cost-push" inflation theory ordinarily favor incentives or regulatory controls for providers rather than consumers.

In adopting PSRO legislation, Congress chose a cost control strategy aimed at providers. The legislation has created organizational machinery, funding, and legal authority for a nationwide review system directed at federally reimbursed practitioners and providers of health care in ambulatory, hospital, and extended health care settings. Congress specified that the review process should include an analysis of the appropriateness of the level of care, length of stay, and quality as judged against preestablished, professional norms.

Review of the level of care is a suitable response to inflation caused by the oversupply or unnecessary intensity of services. Studies have demonstrated that excess hospital capacity, redundant services, and the proliferation of technical innovations have been major contributors to the escalation of health care costs. In addition, variations in the pattern of service use are more closely related to the number and characteristics of health care providers than to differences within the consumer sector. Empirical data indicate that key medical practice decisions, such as the need for hospitalization, sometimes reflect the methods of reimbursement to practitioners (i.e., salary versus fee-for-service) or the cost of alternatives.

Although the long-term advantage of length of stay review as a method of cost control is still uncertain, a study of the length of stay of surgical patients admitted over a two-year period to Indiana hospitals shows its potential utility. The statewide study disclosed that surgeons could be characterized by how long they kept patients hospitalized; patterns of practice did not vary with the patient's age, the surgical procedure, or the admitting hospital. Qualitative studies comparing the preferability of long versus short stays were not available; however, no differences in postoperative outcomes were perceptible. Such systematic differences in lengths of stay at least raise the question, How much postoperative hospitalization is necessary?

CONSUMERS AND PROVIDERS IN THE HEALTH SERVICES MARKET

Under perfectly competitive market conditions, consumers are fully informed of the range, characteristics, and prices of available products and services. Individual taste and income determine the variety and quantity of purchases, and producers compete among themselves to attract patronage. This rivalry assures efficient production, high quality, and stable prices.

Because medical care is different from other kinds of services—by the nature of the product, conditions of demand, and relationship between provider and consumer—perfect economic competition may be an inappropriate standard for the health care sector. Arrow's classic analysis of the health care market clearly highlights these differences. He contends that "uncertainty" is a dominant factor in the medical care market. The consumer's need for specific types of medical treatment, in contrast with the need for other services, is often unpredictable: (s)he is generally unable to assess needs accurately and hence cannot knowledgeably "shop around" for health services on a cost or quality basis.

The extent to which the consumer does not assume the accustomed "marketeer" role when seeking medical care distinguishes such care from other goods and services. In lieu of an arm's length relationship between buyer and seller, the fiduciary doctor-patient relationship is created, wherein the patient delegates decision-making authority to his physician in return for a pledge of altruism, professional conduct, and optimal treatment. Given the special characteristics of the health care market and this fiduciary relationship between doctor and patient, one may ask whether anything can be gained by putting peer review data in the public domain. I submit that an analysis of the cost, quality, and technological dynamics of the health care financing and delivery system will lead to an affirmative reply.

One consequence of recent changes in the style of medical care delivery has been substantially increased costs of health care. Jeffers and Siebert found that for several hospitals in Connecticut, the annual rate of price increases to consumers between 1960

and 1969 was approximately 8 percent, with an additional 7.4 percent cost increase to hospitals due to changing case mix and intensity of services. The authors concluded that "... changing product and service specification ... account for almost as much of an increase in costs per case as a rise in factor input prices [i.e., wages, goods, and services]. Aside from changes in case mix, changes in gross services intensity undoubtedly reflect attempts to upgrade quality, introduce new and better technology, and otherwise improve patient care. We have no way of knowing, however, whether ... these innovations have produced benefits commensurate with the associated expense."

Feldstein and Taylor presented a slightly different set of figures. They estimated that approximately 25 percent of the average costs per hospital day between 1955 and 1975 could be attributed to price increases, while the remaining 75 percent was due to increasing labor and nonlabor factors (such as supplies and equipment).

Scitovsky has made another important quantitative contribution on the impact of physician specialization and changing modes of practice on costs. Using records on management of certain common illnesses (e.g., pneumonia, otitis media, appendicitis, duodenal ulcer, breast cancer, and fracture of the forearm), she examined price and input trends from 1951 to 1965. In the early 1950s, roughly 60 percent of patients with forearm fractures were treated by orthopedists; general practitioners and general surgeons treated the other 40 percent. Fifteen years later, nearly 90 percent of patients with fractured forearms were treated by orthopedists. In 1951 and 1952, the fee charged by an orthopedist for a closed reduction of a forearm fracture was approximately 75 percent higher than the fee charged by other physicians performing the same procedure; by 1965, the difference had risen to 100 percent. Scitovsky estimated that the cost of a closed reduction of a forearm fracture rose 110 percent between 1951 and 1965; 56 percent of the increase was attributable to higher prices, and 44 percent was due to the increased number of orthopedic specialists who performed the procedure.

The central question is whether qualitative improvements in health care services have resulted from changing modes of practice and accompanying higher costs. At present, few consumers—or physicians, for that matter—consider the trade-offs between costs and quality. Many people have argued that cost-based reimbursement practices of the government and private insurance companies and the ethos of advanced technology reduce the likelihood that this provocative question will be asked.

Thus, evidence points toward the probability that various institutional incentives militate toward high-cost medical care without producing a convincing demonstration of corollary improvements in quality. Public dissemination of certain PSRO data can have an important impact on this separation of cost and quality.

PSRO DATA AS A COST CONTROL MECHANISM

Economists are fond of arguing that in most situations, the availability of full and accurate product information permits consumers to make wise purchase choices. Given the special character of medical care, is a full disclosure of PSRO and other data apt to be beneficial to the consumer?

Recently, Pauly estimated that a fourth or more of total personal health care expenditures were for services that posed no greater shopping problem for consumers than purchases of many other products. This categoy of services included routine preventive care in a physician's office, management of certain chronic conditions, routine dental care, obstetrical services, and nursing home care. For services in these categories, Pauly argued that information on price and quality would facilitate individual comparison and choice as well as improve the economic performance of the health care sector.

Providing consumer information on routine medical services would help many women choose whether to give birth in a tertiary care center or in a local community hospital. Advocates of the former stress the safety of sophisticated staffing and technology; those who prefer community hospitals emphasize the convenience, good quality, and potential cost savings to the consumer. Data used to support each of these propositions are frequently incomplete or subjective and have been of little use either to women contemplating the alternatives or to public agencies forced to consider the consolidation of redundant maternity units. The availability of consistent, objective PSRO data would serve the needs of both the individual patient and the public agencies.

Another example of the utility of PSRO data is suggested by Stratmann's finding that people have fairly well articulated preferences for alternative ambulatory care clinics. The extent to which such factors as economics, time, convenience, and sociopsychological conditions enter into the individual's choice of a health care setting varies from person to person, often in relation to the patient's health status and source of financing. As PSRO profiles and medical care evaluation studies begin to accumulate and permit comparison of quality and cost, they will enable the consumer to make educated choices about health care.

Compilations of information on hospital lengths of stay, such as Professional Activities Study (PAS) data, reveal the degree of variance between hospitals and practitioners regarding the average hospitalization period for a particular diagnosis and case mix pattern. A well-organized display of length of stay data for major diagnoses, properly adjusted to reflect age differences and other pertinent patient characteristics, would be most helpful to consumers if it were assembled on a physician-specific and hospital-specific basis. A similar data display of extended lengths of stay due to postoperative infections and adverse drug reactions would provide the health care consumer with another useful indicator of interhospital differences in cost and quality.

The secretary of DHEW may, by regulation, put practitioner and provider data generated by concurrent review, profile analysis, and MCE studies into the public domain. I have argued that the secretary should allow public disclosure of PSRO data to further the program's objectives to control cost and ensure efficiency of health care services. Not everyone will take advantage of the availability of these data. But, in another context, Salop has suggested that when enough people become well informed about a subject, standards in general tend to be raised.

The major presumptions and incentives which presently drive the health care industry are that, regardless of cost, provision of more services to consumers, more technology, and higher cost per unit cost lead to better quality of care. The PSRO program may check the inflationary trend in health services through an explicit focus on patterns of cost and quality. Assuming that cost and quality control are legitimate goals, the next logical step is to find suitable ways of putting PSRO data into the public domain so that consumers are furnished with the necessary information to choose alternatives of medical care knowledgeably.●

ENVIRONMENT AND PUBLIC WORKS WATERSHED WORK PLAN REPORT

● Mr. RANDOLPH. Mr. President, the Committee on Environment and Public Works has approved the construction of 21 watershed work plans submitted by the Soil Conservation Service. The approval is by resolutions of the committee in accordance with the Watershed Protection and Flood Prevention Act, Public Law 83–566, as amended. Similar resolutions must be passed by the House Committee on Public Works and Transportation prior to initiation of construction.

This report to the Senate explaining the views of the committee in adopting these watershed work plans is in accordance with a recently adopted procedure by the committee. I ask that the report be printed in the RECORD.

The report follows:

REPORT TO THE SENATE ON SEVERAL PUBLIC LAW 83–566 WATERSHED WORK PLANS AUTHORIZED FOR CONSTRUCTION BY RESOLUTION OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

GENERAL STATEMENT

In its consideration of the most recent group of Soil Conservation Service watershed work plans, the Committee on Environment and Public Works developed a number of concerns about the watershed program. These concerns, as typified by some of the plans considered, are discussed further in this report. Although this group of plans is approved because, on balance, they are needed and in the public interest, the Committee believes that improvements in plan development, evaluation, and reporting procedures should be made.

Jurisdiction. The basic authority for these work plans is Public Law 83–566, the Watershed Protection and Flood Prevention Act of 1954, as amended. Under the provisions of that Act, plans submitted to Congress for approval by Committee resolution are referred to either this Committee or the Committee on Agriculture, Nutrition and Forestry. The criteria for referral is based on size, larger projects being referred to the Committee on Environment and Public Works, and smaller ones to the Agriculture Committee.

During the past decade, about one-half of all plans submitted were referred to this Committee. These plans represented approximately 70 percent of the total Federal costs. Yet all legislation modifying or amending the basic Act has traditionally been referred to the Agriculture Committee only. The Committee believes that future legislation affecting the P.L. 566 program should be jointly referred.

Watershed delineation

Plans developed under the basic P.L. 566 authority are limited to watershed or subwatershed areas not to exceed 250,000 acres. The purpose of this statutory limitation was to confine the watershed program to small, hydrologically and physically self-contained areas, such as the drainage area of a tributary to larger stream. The arbitrary division of a watershed into "Upper" and "Lower" appears to be illogical from hydrologic and physical standpoints. It makes the 250,000 acre limitation meaningless. The Upper and Lower Little Black River project (Missouri and Arkansas), approved in this report, illustrates this concern. The Committee believes they should be constructed concurrently because of the interdependence of the two plans.

The Boulder River, Montana, watershed covers a total area of 489,000 acres. The work plan submitted limits the project to the lower half of the watershed, thus complying with the 250,000 acre limitation.

The Committee intends to examine watershed delineations very closely in the future.

Program purposes

The Committee notes that the original purpose of the P.L. 566 program was to encourage the construction of small-scale agricultural flood and sediment control projects. The program has evolved to include a wide

range of other water resource purposes for both rural and urban areas. Several in this group of projects, such as Goose Creek, Washington; Short Creek, Ohio; and Twenty-five Mile Stream, Maine, have agricultural benefits that are less than one percent of the total. Other projects, such as Boulder River, Montana, and Anderson River, Indiana, are predominately justified by purposes other than flood control. There is concerned that, with the expansion of this program, there is an overlapping of functions with other Federal water resources agencies with dissimilarities in cost-sharing, policies and authorization procedures. The watershed program is not intended to be used for protection of primarily urban areas and that the predominant purposes should be agricultural flood and sediment control.

Work plan deficiencies

The Members of the committee are concerned about the lack of information in the watershed work plan documents which hampers consideration of the projects. Generally, the documents do not contain sufficient information to allow an assessment of the validity of the problems in the watershed and major report conclusions. It is recognized that much supporting data developed as a result of investigations for each work plan are documented in project files. However, enough of this backup information should be included in the work plan document to allow independent judgment regarding the validity of the proposed projects.

Project costs

With escalating costs, the Federal share of watershed projects authorized by this Committee is becoming comparatively large. Of this group of 21 projects, eight have Federal costs of over $5 million and four are over $10 million. The cost of the two watershed plans which the Committee believes should be combined, Upper and Lower Little Black River, exceeds $30 million. By contrast, the authority for approval of Corps of Engineers projects by Committee resolution (as opposed to full Congressional enactment) is limited to projects of $15 million or less, and they must be without significant controversy. The Committee intends to consider recommending legislation to place a monetary limitation on watershed projects that can be authorized solely by Committee resolution.

Consistency

Plan formulation, project evaluation, and cost allocation and apportionment aspects of the watershed plans are inconsistent with those of other water resource agencies. The Committee notes that some of the present group of plans were formulated before full implementation of "Principles and Standards for Planning Water and Related Land Resources." Future adherence to this guidance, which has been made applicable by the Executive order to all Federal water resources planning, should result in projects that are more consistent with those of other agencies. Some of the specific concerns are as follows:

1. Plans have been formulated to include economically infeasible elements and purposes. The practice of "incremental justification" is well established in Federal water resources planning guidance promulgated by both Congress and the Administration. In the present group of work plans, it appears that such incremental analyses have often not been made. As an example, one segment of the Cypress Creek, Alabama and Tennessee watershed plan is not economically justified by primary benefits (see page 10 of "Pending Watershed Work Plans," hearings before the Subcommitte on Water Resources, June 8 and 9, 1977). Additionally, it should be demonstrated that adding project purposes to the plan are incrementally economically feasible. The Committee will expect to see the results of incremental analyses in future watershed work plans.

2. In theory, the cost of land is the capitalized value of the future productivity of that land. Therefore, investments made to improve the productivity should be equal to or exceeded by the increase in the value of the land. The Committee notes that in several cases the prorated structural cost per acre for flood control exceeds the expected increase in market value of the protected land (see table 2, page 16, of above-cited hearing). The Committee believes that the flood control costs, as determined from the cost allocation, should be divided by the number of acres protected and that the market value of lands, with and without the project, should exceed that cost per acre to demonstrate feasibility of the project. The Committee intends to apply this test of feasibility to future watershed work plans giving due consideration to imperfect market conditions.

3. Two categories of primary benefits, employment benefits and so-called indirect benefits, which were included in several of the work plans, have caused some concern. Employment benefits should be evaluated as directed by Principles and Standards. They should be applied only in those areas that have chronic and persistent unemployment as designated by the Department of Commerce pursuant to the 1965 Public Works and Economic Development Act, as amended. Indirect flood damages are certain losses which result from flooding but not necessarily by direct inundation, i.e. the additional costs of transportation caused by the destruction of a bridge or highway. Indirect flood damages have been evaluated as a percentage of primary flood damages based on a general study. Indirect damages should be determined on a case-by-case basis comparable to primary damages.

4. The use-of-facilities method is used by the Soil Conservation Service to allocate costs to various project purposes in a multiple purpose reservoir. The preferable cost allocation method in Principles and Standards, and one used by other Federal water resources agencies is separable-cost, remaining benefits (SCRB). The use-of-facilities method is used by other agencies where one purpose is insignificant, both in storage space occupied and benefits, in comparison to the primary project purpose. The SCRB method should be used by the Soil Conservation Service to allocate multiple purpose reservoir costs. If the use-of-facilities method is used, the results of the use of the SCRB method should also be displayed in the report.

DESCRIPTIONS OF WATERSHED WORK PLANS APPROVED IN THIS REPORT

CYPRESS CREEK WATERSHED, ALABAMA AND TENNESSEE

This 135,400 acre watershed is located in Lauderdale County, Alabama and Wayne County, Tennessee. The watershed plan will provide for watershed protection and flood prevention. Principal measures of the plan include soil conservation practices on farms, 19 floodwater retarding structures with a total capacity of about 37,300 acre feet and 14.4 miles of channel work. The primary benefit-cost ratio is 1.2 to 1. The Federal and total costs are estimated to be $9,450,000 and $11,580,000, respectively.

SOUTH FORK WATERSHED, ARKANSAS

The South Fork watershed has an area of 44,850 acres located in Montgomery County. The proposed watershed plan will provide for watershed protection, flood prevention, and municipal water supply. Soil conservation practices on farms will be required. One multiple purpose reservoir for flood prevention and water supply and two floodwater retarding structures are planned. The total storage capacity of the structures will be about 11,300 acre-feet. The primary benefit-cost ratio is 1.1 to 1. The total cost of the watershed plan is estimated to be $2,600,000 of which $1,910,000 will be Federal.

ANDERSON RIVER WATERSHED, INDIANA

This watershed area of 97,000 acres is located in Perry, Spencer, Dubois and Crawford Counties. The watershed plan was formulated for the purposes of watershed protection, flood prevention, recreation, and municipal and industrial water supply. Principal measures as proposed in the watershed work plan are: soil conservation practices on farms and woodlands; 46 floodwater retarding structures; 3 multiple purpose structures; and 10 miles of channel work. The total storage capacity of the structures is about 38,300 acre-feet. The primary benefit-cost ratio is 1.2 to 1. The total cost of the plan is estimated to be $13,970,000. The Federal portion of the cost is presently estimated to be $5,850,000.

TWENTY-FIVE MILE STREAM WATERSHED, MAINE

The plan for this 93,000 acre watershed located in Waldo, Kennebec, Penobscot and Somerset Counties will provide for watershed protection and flood prevention. Soil conservation practices on farms, two flood control structures and two miles of channel work are planned. The primary benefit-cost ratio is 1.5 to 1. Federal and total costs are estimated to be $1,500,000 and $2,160,000, respectively.

OKATOMA CREEK WATERSHED, MISSISSIPPI

This watershed encompasses an area of 179,200 acres in Covington, Simpson, Jones, Smith and Forrest Counties. Principal measures will provide for watershed protection, flood prevention and recreation. The watershed plan consists of soil conservation practices on farms, 14 floodwater retarding structures, one multiple purpose structure, 53.7 miles of channel work, and a levee system. The storage capacity of the structures totals about 45,800 acre-feet. The primary benefit-cost ratio is 1.4 to 1. The Federal share of the total $13,120,000 cost is estimated to be $8,940,000.

SHUQUALAK CREEK WATERSHED, MISSISSIPPI

The plan for this 21,600 acre watershed will provide watershed protection and flood prevention in Noxubee nad Kemper Counties. Measures planned are: soil conservation practices on farms; two floodwater retarding structures with total storage capacity of 6,200 acre-feet; and 5.2 miles of channel work. The primary benefit-cost ratio is 2.0 to 1. Estimated Federal cost of $880,000 out of a total cost of $1,330,000.

UPPER LITTLE BLACK WATERSHED, MISSOURI

The Upper Little Black has a delineated area of 125,000 acres in Butler, Carter and Ripley Counties. The watershed plan will provide for watershed protection, flood prevention, and recreation. Principal measures are: soil conservation practices on farms and woodlands; 19 floodwater retarding structures; and one multiple purpose structure. The total storage capacity is 59,200 acre-feet. The primary benefit-cost ratio is 1.3 to 1. Federal and total estimated costs are $14,740,000 and $17,060,000, respectively.

LOWER LITTLE BLACK WATERSHED, MISSOURI AND ARKANSAS

The lower portion of the Little Black watershed has an area of 124,390 acres located in Butler and Ripley Counties, Missouri and Clay County, Arkansas. Watershed plan purposes are watershed protection, flood prevention, drainage, and recreation. The plan consists of soil conservation practices on farms and woodlands, 5 floodwater retarding structures, a recreation water control structure, a levee and floodway and 84 miles of drainage and flood control channel. The total storage capacity for all structures is 18,200 acre-feet. The primary benefit-cost ratio is 1.4 to 1. Total cost is estimated to be $21,290,000 of which $15,680,000 will be a Federal responsibility.

SOUTH FORK OF BLACKWATER RIVER, MISSOURI

The previously authorized watershed plan for this 65,600 acre watershed in Johnson County has been revised. This revised plan provides for: deleting 7.5 miles of channel work, one floodwater retarding structure, and four grade stabilization structures; changing two multiple purpose structures to floodwater retarding structures; adding five new floodwater retarding structures; and adding municipal water supply and recreation storage to one of the originally planned structures. The primary benefit-cost ratio is 1.4 to 1. Federal and total costs are estimated at $4,270,000 and $7,480,000, respectively.

BOULDER RIVER WATERSHED, MONTANA

This watershed of 223,500 acres is located in Jefferson County, Montana. The watershed plan will provide for watershed protection, irrigation, recreation, and fish and wildlife. Soil conservation practices on farms and ranches, and one multiple purpose structure with 15,000 acre-feet storage capacity are planned. The primary benefit-cost ratio is 1.3 to 1. The total cost is estimated at $11,640,000 of which $4,940,000 will be Federal.

BLACKWOOD CREEK WATERSHED, NEBRASKA

The Blackwood Creek watershed of 187,700 acres is located in Lincoln, Hayes, Hitchcock and Red Willow Counties. The watershed plan consists of soil conservation practices on farms and 13 floodwater retarding structures to provide for watershed protection and flood prevention. The primary benefit-cost ratio is 1.1 to 1. The Federal cost is estimated at $1,940,000. Total cost is estimated to be $6,060,000.

SHORT CREEK WATERSHED, OHIO

The watershed area of 81,300 acres is located in Harrison and Jefferson Counties. Planned watershed protection and flood prevention measures are soil conservation practices on farms and woodlands, a 6,300 acre-foot floodwater retarding structure and 10 miles of channel work. The primary benefit-cost ratio is 1.2 to 1. Federal and total costs are estimated to be $5,440,000 and $8,970,000, respectively.

UPPER MUDDY BOGGY WATERSHED, OKLAHOMA

This 207,700 acre Oklahoma watershed is located in Pontotoc, Hughes, Coal and Pittsburg Counties. The watershed plan is formulated to provide watershed protection and flood prevention. Soil conservation practices on farms and 36 floodwater retarding structures with 35,500 acre-feet of storage capacity are proposed. The primary benefit-cost ratio is 1 to 1. Estimated costs are $4,340,000 Federal and $6,310,000 total.

M'KINNEY-BUZZARD CREEK WATERSHED OKLAHOMA

Watershed protection, flood prevention and drainage measures are planned for this 15,980 acre watershed in McCurtain County. The purposes will be achieved with soil conservation practices on farms, a 4,700 acre-foot floodwater retarding structure and 9.2 miles of channel work. The primary benefit-cost ratio is 1.2 to 1. Federal cost is estimated to be $560,000 of a total cost of $1,140,000.

ROCK CREEK WATERSHED, OREGON

The Rock Creek watershed has an area of 235,000 acres in Gilliam and Morrow Counties. The watershed plan provides for soil conservation practices on farms and ranches, a 14,400 acre-foot multiple purpose structure and an irrigation distribution system. Watershed protection, flood prevention and irrigation benefits result in a primary benefit-cost ratio of 1.3 to 1. Federal and total estimated costs are $6,700,000 and $11,380,000, respectively.

BUSH RIVER WATERSHED, VIRGINIA

The Bush River watershed of 98,900 acres is located entirely in Prince Edward County. Plan purposes are watershed protection, flood prevention, municipal and industrial water supply and fish and wildlife. Principal measures are: soil conservation practices on farms; 6 floodwater retarding structures; and two multiple purpose reservoirs. Total storage capacity will be about 49,400 acre-feet. The primary benefit-cost ratio is 1.6 to 1. Total costs are estimated to be $8,120,000. Federal costs are estimated at $3,680,000.

CEDAR RUN WATERSHED, VIRGINIA

This Virginia watershed of 65,600 acres is located in Fauquier County. Watershed protection, flood prevention and municipal and industrial water supply measures are planned. These measures consist of soil conservation practices on farms, 4 floodwater retarding structures, and 3 multiple purpose reservoirs. The total storage capacity is 20,900 acre-feet. The primary benefit-cost ratio is 1.7 to 1. Federal and total costs are estimated to be $3,710,000 and $6,540,000, respectively.

GREAT CREEK WATERSHED, VIRGINIA

This 29,800 acre watershed is located in Brunswick and Lunenburg Counties. Plan purposes are watershed protection, flood prevention, and municipal and industrial water supply. Soil conservation practices on farms and woodlands, and an 11,900 acre-foot reservoir are the principal measures. The primary benefit-cost ratio is 1.2 to 1. Federal costs are estimated to be $1,710,000 with total costs of $2,190,000.

NIBBS CREEK WATERSHED, VIRGINIA

The Nibbs Creek watershed of 16,530 acres is located in Amelia County. Soil conservation practices on farms and woodlands and a 6,000 acre-foot multiple purpose reservoir provide for watershed protection, flood prevention and municipal and industrial water supply. The primary benefit-cost ratio is 1.9 to 1. Federal and total costs are estimated to be $540,000 and $1,200,000, respectively.

GOOSE CREEK WATERSHED, WASHINGTON

This 40,800 acre watershed is located in Lincoln County. Plan purposes are watershed protection, flood prevention and recreation. Primary measrues are: soil conservation practices on farms; a 6,800 acre-foot multiple purpose reservoir; floodwater diversion facilities; and channel work. The primary benefit-cost ratio is 1.8 to 1. Total costs are estimated to be $5,280,000 of which $2,740,000 are Federal.

PINE RIVER WATERSHED, WISCONSIN

The Pine River watershed of 159,200 acres is located in Richland and Vernon Counties. Measures for watershed protection, flood prevention, recreation and fish and wildlife are planned. Those measures consist of: soil conservation practices on farms; 7 floodwater retarding structures; two multiple-purpose reservoirs; and 4.5 miles of trout stream improvement. The structures have a total capacity of 29,800 acre-feet. The primary benefit-cost ratio is 1.1 to 1. Federal and total costs are estimated to be $12,180,000 and $20,630,000, respectively.●

MARGARET FAYÉ

● Mr. DOMENICI. Mr. President, this is a sad time for the Senate Special Committee on Aging. Ms. Margaret (Peg) Fayé, professional staff member, died Tuesday, September 12, 1978, after waging a valiant and courageous battle with cancer. The committee members and staff have lost a dear friend and respected colleague. The senior citizens of our country have lost an effective advocate.

Peg was committed to improving the overall health system in the United States. Her goal was the development of a national policy on home health care. She knew that too many older people were being put into institutions prematurely and it was her goal to rectify this problem.

Peg was also a teacher. She was, in fact, a teacher to me. She assisted me as I developed my positions on health legislation, always reminding me of the need to improve the availability and accessibility of health services for elderly Americans. Her lessons I will always remember; her wisdom I will always cherish.

Peg left us with her philosophy and her personal concern. She left us with an appreciation for living and the courage to look death straight in the eye and never be afraid. Peg spoke not of death, but rather of the beauty of life.

Peg's greatness transcended her illness. I am here today not to mourn her death, but to celebrate her life.●

AN AMERICAN DIPLOMATIC OPPORTUNITY

● Mr. HEINZ. Mr. President, three of my colleagues in Members of Congress for Peace Through Law, a bipartisan organization of 175 Senate and House Members, recently issued a report on the status of American diplomacy in Southeast Asia in the context of the new cold war between Vietnam and China.

The report, entitled "Vietnam and China: An American Diplomatic Opportunity," was authored by Representative JONATHAN BINGHAM, Representative PAUL MCCLOSKEY, and Representative ANTHONY BEILENSON. All three of these distinguished House Members have current or former legislative responsibilities with the main subjects of this paper—U.S. foreign policy in Asia, postwar relations with Vietnam, and the trade embargo now imposed by the United States on Vietnam.

I would like to note that this paper is not an official policy statement by MCPL but rather was prepared by the authors for considration by Congress, the Executive, and the public.

I would like to commend to the critical reading of all my Senate colleagues this report on American diplomatic options in Southeast Asia, and ask that it be printed in the RECORD.

The report follows:

VIETNAM AND CHINA: AN AMERICAN DIPLOMATIC OPPORTUNITY

Allowing the "China Card" global strategy to shape American diplomatic relations with Vietnam may cause the United States to miss a crucial opportunity to lessen Soviet influence in Indochina and to strengthen peace and stability in Southeast Asia.

A crossroads in American policy in the Far East has been reached. Since the end of the Indochina War, the situation in the region has changed dramatically. New political alignments have emerged. The primary conflict in the Far East today is no longer between communist and non-communist states as it was during the 1950's and 1960's. The primary conflict is between China and Vietnam, who are fighting Southeast Asia's new cold war. This realignment presents both dangers and opportunities for American diplomacy.

The danger is that the United States will drift into a de facto alignment with China against Vietnam which could, in turn, force

Vietnam into an exclusive alliance with the Soviet Union. This could lead to a long-term Soviet military presence in Southeast Asia and to greater insecurities for the member states of the Association of South East Asian Nations (ASEAN).

The opportunity, on the other hand, arises from the Vietnamese willingness to turn to the United States as the alternative to a dependency relationship with the Soviet Union. Vietnam now seems prepared to work toward closer diplomatic and economic cooperation with the United States as a means of maintaining its independence from both the Soviet Union and China. The question facing Congress and the Administration is whether to provide this alternative to Vietnam.

American-Vietnamese diplomatic relations and a Vietnam equidistant from the superpowers could be the keystone for a more peaceful and stable political order in a Southeast Asia where both Soviet and Chinese influence would be lessened and where the development of each nation could be determined by internal policies rather than external pressures. American influence in the region would increase.

These dramatic changes call for a creative American diplomacy in a region marked by some of the worst American diplomatic blunders in our history. But the Carter Administration has not yet developed a clear-cut policy toward Southeast Asia in general or Vietnam in particular.

Why has this region been moved to the back burner? The absence of a policy may represent a failure to appreciate the full significance of our relations with Vietnam for the future of the entire region. Another explanation may be the domestic political constraints concerning post-war relations. But there are, as well, some disturbing questions which must be raised: Are we letting the Chinese determine or policy for us? Are we recognizing a Chinese "sphere of influence" in the region?

The United States does not now appear to appreciate either the dangers or the opportunities. The issue is not whether the U.S. should normalize relations with Peking. Rather, the issue is whether by rushing into China's arms the U.S. will forfeit its potential for influence on the mainland of Southeast Asia and give its de facto approval to Chinese policies which destabilize the old Indochina area. The unfortunate irony may be that the very Soviet influence which the "China card" global strategy is designed to ward off will be increased in Southaest Asia by a shortsighted play of the card, vis-a-vis our relations with Vietnam.

HISTORICAL BACKGROUND: UNITED STATES-VIETNAM POST-WAR RELATIONS

When the war in Vietnam finally ended in April, 1975, the U.S. adopted a policy of hostility and isolation toward Vietnam. Secretary of State Kissinger indicated that Hanoi should be punished for its use of military force to defeat the Thieu government, and refused either diplomatic recognition or trade. The continuation of the trade embargo with the North and its extension to South Vietnam after the war constituted a clear sanction, even though the Executive Branch explained its action as a "wait and see" policy. He opposed Vietnamese membership in the United Nations. Although Hanoi offered to negotiate with the U.S. on postwar relations, Kissinger refused even that much diplomatic contact. The Carter Administration ended these openly hostile policies, stopped vetoing Vietnamese membership in the UN, and offered to exchange Ambassadors without preconditions, although it maintained the trade embargo intact.

On its side, Hanoi began the postwar period demanding postwar reconstruction aid as a condition for diplomatic relations. But after a series of three meetings with U.S. diplomats in Paris in May, June and December, 1977, the Vietnamese were realistic enough to recognize that such a condition was impossible to fulfill given the political atmosphere in Congress. Congress had been willing to lift the trade embargo to improve prospects for an M.I.A. accounting but post-war aid was out of the question. The Vietnamese are now indicating a desire to negotiate with the U.S. a formula which would advance U.S.-Vietnamese relations without reconstruction aid. The open military conflict with Cambodia and the tensions with China have accelerated Vietnamese interest in normalization of relations with the U.S. Deputy Foreign Minister Phan Hien declared recently in Japan that Vietnam is now ready to begin diplomatic relations with the U.S. without preconditions.

While diplomacy of post-war relations has been entangled in the politics of the war itself, the impact of the China connection on post-war prospects was already visible in Kissinger's attitudes. Kissinger's thinking about post-war relations with Vietnam was very much colored by the whole China link. Understandably, Kissinger saw post-war relations with Vietnam as distinctly secondary to relations with China. But to achieve his China policy, he was willing to foster the growth of China-Vietnam tensions. By withholding an American alternative from Vietnam, he apparently sought to increase China's paranoia about the Soviet's role in Vietnam.

Kissinger had noted as early as 1972, in background press briefings that the Chinese had indicated a desire for the U.S. to keep its bases in Thailand and the Philippines as a counterweight to the Soviets. He assumed that China would be worried about a unified Vietnam without the U.S. counterweight and that, as a result, China would be motivated to pursue "parallel interests" (i.e. oppose Soviet influence in Southeast Asia) with the United States. Less than one week after the Sagion government was defeated, Kissinger said China "now has 40 million Vietnamese on its border who do not exactly suffer from lack of confidence in themselves," and he suggested that Peking, as a result of its appraisal of this new balance of power, would want to continue normalizing relations with the United States. He also hoped that China would normalize relations with Thailand, strengthen ties with the non-communist Southeast Asian countries and become a force for stability in the region.

This brief review of Kissinger's policy indicates that the "China card" was a prominent feature in America's diplomatic hand throughout the post-war diplomacy. What appears to have changed is that it has become the dominant theme of American diplomatic strategy.

RELATIONS BETWEEN CHINA AND VIETNAM

China and Vietnam have had a tradition of national conflicts. But the primary tensions which now divide them can be traced to the schism in the international communist movement. As far back as 1963, the Chinese tried to persuade the Vietnamese to sign their statement creating a new international communist order which would exclude the Soviet Union. The Vietnamese refused, even though they harbored serious policy disagreements with the Soviet Union and shared certain ideological principles with China. (Similarly, Vietnam later withheld support for Soviet-inspired efforts to read China out of the international communist movement.) China's fears must have increased as the Vietnamese drew closer to the Soviet Union in their quest for military and economic aid during the war against the United States.

Throughout the war, the Chinese apparently were concerned about the potential consequences of a Vietnamese military victory. They opposed a Vietnamese diplomatic settlement early in the war out of fear that the Soviet Union would have a strong influence on the settlement. Many diplomatic observers in the 1965–68 period commented correctly that the "Chinese are willing to fight until the last Vietnamese."

A key turning point came in 1969–70. The Chinese leadership adopted a position advocated by Mao since the mid-1960's that the Soviet Union posed a greater danger to China than the United States. The Russian invasion of Czechoslovakia in August 1968, and the Sino-Soviet border clashes in March 1969, had bolstered Mao's line of agrument as did the quiet signals emanating from the new Nixon administration that it was interested in improving ties with China. The Chinese were seeking to counter the Soviet Union by opening ties to the U.S. The U.S. hoped that the new relationship with China would exacerbate Sino-Soviet differences and, at the same time, prevent any direct Soviet action against China. This new strategic equation, Washington hoped, would give the U.S. greater leverage with both the Hanoi's main allies and arms suppliers to obtain their help in pressuring North Vietnam to accept U.S. terms.

The Nixon Administration pressed the Chinese to slow the flow of arms to Vietnam and to help find a settlement short of victory for the revolutionary movements in Indochina. The Chinese apparently were responsive to the Nixon request. China opposed the Vietnamese Spring Offensive in 1972 and advised the Vietnamese to pursue a long-term, low level, low cost guerrilla war. To the Chinese, a Vietnamese military offensive meant greater military reliance on the Soviet Union as well as greater Vietnamese economic and political indebtedness to the Soviets. However, Vietnam apparently did not accept this Chinese advice and continued to conduct the war on its own terms.

During the war, China could not make known its serious differences with Vietnam nor openly attack Soviet influence in Vietnam. But once the war ended, China took a more aggressive stance, insisting that Vietnam drop its relations with the Soviet Union in order to be accepted as a fully friendly nation. An early manifestation of the new attitude was the Chinese reaction to the disputed islands in the South China Sea, the Paracels and the Spratleys. In December, 1975, a Chinese Communist newspaper in Hong Kong reprinted a People's Republic of China newspaper editorial on the Chinese claims to the islands, along with an editorial accusing the Soviet Union of trying to "stir up" Vietnam against China by backing the Vietnamese claims to the islands. Vietnamese offers to negotiate on the disputed islands brought no reply from the Chinese, who regard it as a non-negotiable issue.

The status of ethnic Chinese in Vietnam is another major issue of contention. Recent events appear to have all the earmarks of a major Chinese polemical campaign against Vietnam and the Soviet Union.

In 1955, the Chinese and Vietnamese communist parties signed an agreement which permitted the Hoa (Chinese origin) people in North Vietnam to choose either to become full Vietnamese citizens or to remain as resident foreigners; most became Vietnamese citizens of Chinese origin. However, this agreement did not extend to South Vietnam, which was ruled by the Diem regime. Diem used coercive measures to force Chinese residents to become Vietnamese and even issued an edict stating that all children of Chinese parents born in Vietnam were to be South Vietnamese citizens. After the war, all the citizens of the old regime automatically became citizens of reunified Vietnam.

The Chinese in Saigon historically have constituted an economically powerful group of rich merchants, businessmen, and middle traders. On March 23, Vietnam's government announced the abolition of "capitalist com-

merce" in the south. These and subsequent decrees fell most harshly on the Chinese merchant community and it appears that the manner in which the reforms were implemented at the local level by Vietnamese cadres caused some panic. These reforms seem little different, however, from those enforced by other socialist governments, including China after its revolution.

Normally, a dispute of this type involving ethnic residents would be negotiated by the two countries. But what appears most significant in this case is the element of anti-Soviet propaganda which the Chinese inject into the issue. A pro-Chinese Hong Kong newspaper stated in May, for example, that the USSR had instigated Vietnam to expel large numbers of ethnic Chinese from Vietnam and it claimed that Moscow has "pushed Vietnam into an anti-China road." The head of Peking's office for overseas Chinese affairs told a delegation of Japanese politicians in early June that "the Soviet Union is behind the expulsion of Chinese residents from Vietnam . . . Vietnam listens to the Russians on everything these days." Newsweek correctly analyzed the problem when it stated "the refugee issue was basically a sideshow; the real problem was China's fear that Vietnam and the Soviet Union were in league to dominate Southeast Asia." (July 3, 1978)

It appears that China is using the issue of the Chinese exodus from Vietnam, whatever its origins, as a means of discrediting Vietnam internationally and as a pretext for making clear moves in the direction of an open break. On May 19, the Chinese announced the withdrawal of aid to Vietnam, which amounts to several hundred million dollars over 5 years and involves at least 72 economic development projects. In May the Chinese ordered three Vietnamese consulates in China to close. In June, China withdrew its nearly 1800 technicians from Vietnam. China's ambassador to Vietnam, Chen Chi-fang, was recalled.

There are also reports of military preparations on the Chinese-Vietnamese border, border clashes and increasing possibilities of armed conflict.

The post-war border conflict between Vietnam and Kampuchea (Cambodia) has roots not only in traditional ethnic rivalries but in the Chinese-Soviet rivalry and in the factional disputes within the Cambodian communist party. Apparently there have been two distinct factions within the communist party of Cambodia at least since the early 1960's. One favored cooperation with Vietnam while the other faction strongly opposed it, fearing that such cooperation would deny this faction effective control over the party apparatus and lead to Vietnamese domination of the party. The anti-Vietnam faction, led by Pol Pot, won and now rules Cambodia. Many of the Cambodian officials and intellectuals which the regime has been accused of eliminating were members of the pro-Vietnam faction.

The Pol Pot faction, which had allied itself with China during the 1970–75 war, apparently made a critical decision during the war that Cambodia would not cooperate with Vietnam when the war ended. Henceforth, Cambodia would take a distant and unfriendly stance toward Vietnam and would turn to China for material aid to carry out this policy, which included using unilateral force on territorial issues.

The Cambodian government has publicly admitted that it attacked the islands of Phu Quoc and Tho Chu within days of the end of the war. The Vietnamese retaliated by seizing temporarily islands which had been controlled by Cambodia in the Gulf of Thailand. These problems were then negotiated in 1975 and resolved to the apparent satisfaction of both sides. The Cambodians gave up their claims to the Vietnamese islands and the Vietnamese gave up their claims to the Cambodian islands.

The origins of the Vietnamese-Cambodian fighting along the border are obscure but the diplomatic efforts to resolve the problem are relatively clear. In May, 1976, the two sides met in Hanoi to prepare for higher-level negotiations on the border conflict. Both sides agreed that a 1 to 100,000 scale map, printed by the Geographical Service of Indochina, would serve as a basis for the delimitation of the land border between the two countries. But the Cambodians broke off the preparatory talks and refused to go ahead with any further negotiations on the border. It appears to be well established that at the beginning of 1977, Cambodian forces launched stepped-up attacks on Vietnamese settlements in the border area. In June, 1977, the Vietnamese offered once more to undertake high-level negotiations with Cambodia to resolve the problem, but Cambodia replied that they would discuss it only after "a period of time until the situation returns to normal, without further border conflicts." This was of course a refusal to negotiate at all, since it was precisely because of border clashes that the talks were necessary.

Troops along the entire length of the Vietnamese-Cambodian border in late September. 1977, which apparently led the Vietnamese to begin preparations for a major military move into Cambodia, aimed at forcing the Cambodians to reassess their policy. Instead the Vietnamese military response led to the open airing of the seriousness of the conflict by Cambodia, and the beginning of vituperative propaganda by both sides. Cambodia refused Vietnam's offer in February to pull its forces back five miles from the existing border and begin negotiations if the Cambodians would do the same. At the same time, the Cambodians began to use 130 mm long-range artillery to devastate the capitals in at least three Vietnamese provinces adjoining the Cambodian border.

The Vietnamese apparently have now responded with moves to encourage Cambodian refugee military groups dedicated to overthrowing the Pol Pot government. Unless there is a major initiative from outside, therefore, the conflict appears not only unresolvable but capable of escalating still further, with potentially serious consequences in terms of Chinese and Soviet involvement.

The anti-Vietnam faction of Cambodian party leader Pol Pot could not have attacked Vietnam without active political and material support from China. China is reputed to have 1,000 military advisors in Cambodia and has supplied the Cambodian military with long-range artillery, tanks, recoiless rifles, heavy mortars and antitank weapons, and other military aid since 1975. At the very least, it can be said to a practical certainty that China has done nothing to discourage the Cambodians from assuming a very strong military posture on the border with Vietnam.

Chinese policy of support for Cambodia appears to be a part of its overall anti-Soviet strategy in the Far East: to isolate Vietnam in Southeast Asia while, at the same time, encouraging Cambodia and Thailand to normalize relations; to encourage the U.S. to maintain its bases in Thailand (which the Vietnamese opposed) despite Thai opposition; and to cement ties with ASEAN states. Clearly, polarization between Vietnam and Cambodia serves Chinese interests.

The Chinese view of Vietnam reflects an obsession with the influence of the Soviet Union which is strangely reminiscent of the U.S. Attitude during the 1950's Cold War: "if you're not with us, you're against us." China seems to view the world with a rigid and distorted vision which sees overweaning Soviet influence in any country which has economic or military ties with the Soviet Union or is not explicitly anti-Soviet. The ironic outcome of such a rigid and obsessive Chinese attitude may be to mistake potential friends for enemies and to bring into being the very Soviet influence it wants to avoid.

THE AMERICAN OPPORTUNITY

The conflicts between Vietnam, China and Cambodia have had two major implications for Vietnamese policy. First, Vietnam now perceives China as the main threat to its security. It sees China as a threat because of China's policy to treat it as an adjunct of the Soviet Union. Business Week was not underestimating when it stated: "The escalation of propaganda and implied threats by Peking against the Vietnamese regime have created a crisis for Hanoi." (June 19, 1978)

Second, the Vietnamese have responded by recognizing that it is even more urgent than before to develop a cooperative relationship with the United States as a basic element of their security policy.

The combination of these two responses constitutes the opportunity for American diplomacy in the region.

It seems almost inevitable that Vietnam must react to the increased Chinese pressure in the north and from the Cambodians in the south by securing military, political and economic counterweights. One source is the Soviet Union. Vietnam is almost certainly to appeal to the Soviet Union for greater support in order to neutralize the increased Chinese pressure. Chinese allegations of Soviet missile or naval bases in Vietnam have been dismissed as without foundation by American intelligence officials. However, Vietnamese requests for some tangible symbol of Soviet deterrence against Chinese military pressures would seem a serious possibility if the pressures continue to build.

Economic conditions are equally significant. Vietnam faces drastic economic hardships in the wake of its wartime destruction. The devastation is compounded by rice shortfalls caused by unusually severe droughts in 1976–77. The loss of Chinese aid—as much as $500 million over 1976–80—and the withdrawal of Chinese technicians will compound the problems. The continuing border strife with Cambodia will drain manpower and resources away from the civilian reconstruction effort. The unfortunate consequence of these pressures may be to make economic transformation in southern Vietnam more harsh than would otherwise be the case.

The Vietnamese must find replacements for the lost Chinese aid in the form of both project and commodity assistance. The Soviet Union already is giving approximately $3 billion for the 1976–80 5-year plan out of a total of $4.2 billion from all socialist countries. Western and multilateral aid totals approximately $2.7 billion. In June, Vietnam joined the Council for Mutual Economic Assistance (COMECON), the Eastern bloc's equivalent of the Common Market.

In our view, there is a strong danger that a mechanistic playing of the "China card" will create all types of pressure on Vietnam to strengthen its ties to the Soviet Union which could diminish its own independence and increase big-power tensions in the region. Increased Vietnamese dependence on the Soviet Union would be contrary to both American policy interests and the interest of peace and stability in the region.

There are two major consequences of these pressures for American policymakers to consider. First, we may be entering the formative period for an era of international relations in Southeast Asia comparable to the Cold War in which certain alignments were maintained for two decades (i.e. SEATO 1954–75). It should be an important objective of American policy to use whatever influence we may have to prevent the hardening of the new alignments as we have described them.

Second, it should not be forgotten by U.S. policymakers that the Vietnamese would be entering into this new dependency reluctantly. They don't regard the Soviet interests are not necessarily co-extensive with their own. They remember the failure of the Soviet Union to provide sufficiently strong diplomatic support in the mid-1950's to force the

implementation of the political provisions of the Geneva Accords of 1954. They also remember that the Soviet Union sold them out diplomatically when President Nixon was received in Moscow at detente's summit while the U.S. was bombing northern Vietnam and mining Haiphong harbor.

This distrust of Soviet motives fits well with the Vietnamese preference for an equidistant relationship among the great powers. As noted by *Business Week*, "Maintaining a balance between Moscow and Peking has always been a fundamental tenet of the Vietnamese Communists." (June 19, 1978). It is this balance which is now threatened.

The opportunity for American diplomacy today is to restore this balance. The U.S. could help maintain a long-term system of peace and stability in Southeast Asia based in part on the ability of Vietnam to maintain its independence from all the great powers. American and Vietnamese interests overlap to the extent that we wish to minimize Soviet dominance, stabilize the region, and at the same time avoid Chinese hegemony over the mainland of Southeast Asia. In the present circumstances, the way to achieve these objectives is to present to Vietnam and alternative source of diplomatic and commercial relations against both the Soviet Union and China. Diplomatic and economic relations with the U.S. would give the Vietnamese additional room to maintain an independent stance equidistant from all the great powers.

Our failure to take advantage of this opportunity would be unfortunate for American diplomacy. Thus far, U.S. diplomatic signals provide no grounds for the Vietnamese to believe that America intends to offer a new relationship as an alternative to a closer reliance on the Soviet Union.

The first cluster of signals has been an implicit if not explicit American acquiescence in China's campaign against Vietnam. This cluster involves:

The absence of any effort by the U.S. to restrain China or urge a negotiated settlement;

The endorsement in China by National Security Advisor Brzezinski of the pursuit of "parallel interests" with China in the context of implicit approval of China's position on the Cambodia-Vietnam issue.

National Security Advisor Brzezinski's toast on May 20 at the welcoming banquet in Peking was evidently a signal to the Chinese that the U.S. was symapthetic to its views on the future of Southeast Asia. "Asia needs stability, respect for frontiers, freedom from foreign intervention, for peaceful development," he said. "In many of these areas, we can enhance the cause of peace through consultations and, where appropriate, through parallel pursuit of our similar objectives.

This banquet toast, couched in diplomatic language, certainly encouraged the Chinese to feel that they had U.S.-backing for their policy of arming the Cambodians and thus encouraging a rejection of negotiations for a settlement of the Cambodia-Vietnamese War. The visit to Peking and the toast were signals that the U.S. would support the Chinese interest. According to columnists Evans and Novak, "The U.S. team (to China) was particularly impressed with Chinese recitation of Soviet machinations in unified Vietnam". (June 22, 1978).

It is easy for American officials to plead "no influence" over Chinese policy. Given its passive stance towards Indochina in the past three years, the U.S. has indeed lost much of its political influence. However, we are far from having no influence. In the context of the "parallel interests" which the U.S. proclaims with China, the U.S. has not only the right but the obligation to make known its views where these differ from China's. This is certainly done on the Taiwan and Korean issues; it should also be done on Vietnam. Indeed, the absence of any American intention to dominate the region or to threaten any of the Southeast Asian states should actually lend weight to our views in Chinese eyes.

The second cluster concerns the U.S. response to the direct negotiations between the U.S. and Vietnam in Paris on the normalization of relations. The Vietnamese now have dropped their insistence on a promise of postwar reconstruction aid as a pre-condition for progress toward normalization of relations with the U.S. U.S. diplomatic officials are aware of this clear change of attitude by Vietnam. The Vietnamese now suggest that a lifting of the trade embargo would be a sufficient indication of an end to U.S. hostility, with the possibility of aid to be discussed subsequently in the context of normal bilateral negotiations. This represents a major shift toward the American position of removing post-war normalization from the diplomatic framework of the Paris Agreement on Ending the War.

Above all, this new Vietnamese attitude removes the outstanding domestic political obstacle in the U.S., since a lifting of the trade embargo in the context of normalization of relations is a far less emotional issue in Congress than was the reparations issue. In contrast to Congressional restrictions imposed recently on direct and indirect U.S. financial aid to Vietnam, Congress actually voted to conditionally lift the trade embargo in 1976 only to have it vetoed by President Ford.

Since normalization remains the official goal of American policy, we believe this new Vietnamese position creates enough common ground for our negotiators at the next round of negotiations to respond affirmatively and to make real progress. By responding affirmatively, we would make clear that our desire for normalization has not been cooled by the decision to play the "China card" in big power relations. Prospects for successful negotiations were improved by recent "goodwill gestures" by the Vietnamese, including the successful visit of a delegation of Vietnamese specialists to the MIA identification center in Hawaii and their letter to Senator Kennedy approving the reuniting of Amerıcan citizen children holding U.S. passports with their families in the United States.

A NEW AMERICAN DIPLOMACY

We believe that conditions are ripe for a new American diplomacy in Southeast Asia. We should move now to take advantage of the opportunity open to us—and forestall the dangers that might freeze the region's disturbing new alignments for the next generation. Just as we have responded recently to events in Africa by opening a line of communication with Angola, despite our ideological differences, we should similarly move to establish diplomatic communication with Vietnam.

It may seem ironic that we, who strongly opposed the Vietnam War, are now calling for a renewed American interests in the area. American diplomacy *can* have a constructive impact—but without military intervention or an intent to dominate. We can and should use our influence wisely.

Justification for this new diplomacy begins with the change in the domestic political equation based on the Vietnamese willingness to drop their insistence on post-war aid as a precondition for normalized relations with our country. It now seems politically feasible for an Amerıcan President to defend normalization on this new basis in exchange for the real and immediate gains for our interests in Southeast Asia.

A second major issue is whether a new American policy of relations with Vietnam would obstruct normalization of our relations with China.

In our view, such a policy towards Vietnam is not contradictory to normalizing relations with China. First, it does not violate any of the 5 principles embodied in the Shanghai Communique, which are the basis for further development of normal relations between the United States and China.

Secondly, normalizing relations with Vietnam does not appear to contradict U.S. policy principles, enunciated by Dr. Brzezinski in Peking recently, that the U.S. approaches relations with China on the basis of three fundamental beliefs . . . that friendship between the United States and the People's Republic of China is vital and beneficial to world peace; that a secure and strong China is in America's interest; that a powerful, confident and globally engaged United States is in China's interest.

A new Vietnam policy could even further these objectives. It could help stabilize events and reduce the intensification of existing conflicts in the Southeast Asian area. The present policy contains the seeds of intensified military confrontations. Also, it would be a vivid demonstration of American interest in the area and a symbol of our unwillingness to write off the newly independent states to Soviet domination.

The American role in Southeast Asia is another major issue. While we have no major national interests which should lead us to commit military forces in the areas, we should not underestimate the importance of an American role to help stabilize Southeast Asia. There already has been a degree of normalization between Vietnam and Southeast Asian nations. But the major influence on the attitudes of Southeast Asian countries towards unified Vietnam will be the American attitude.

Normalized relations between the U.S. and Vietnam would promote a further degree of Vietnamese cooperation and accommodation with the ASEAN coutries which would contribute to stability. Similarly, it is important that Vietnam no longer view the United States as a threat to its society. If Vietnam continues to view the U.S. as part of a cabal with China against Vietnam, it may not be possible for accommodation to occur between Vietnam and U.S.-supported states in the region. The main remaining obstacle to close, stable and friendly relations between Vietnam and the ASEAN nations is the lingering fear of American ill-will and bad intentions towards Vietnam. If Vietnam fears the U.S. will use non-communist and anti-communist Southeast Asian states to pressure Vietnam in a hostile manner, then tensions may rise needlessly.

It should be noted that American intelligence analysts agree that Vietnam has rejected the role of supplier or motivator for revolutionary movements in Southeast Asia. The massive stockpiles of U.S. arms captured at the end of the war have not been given or sold to insurgent movements in other states, as had been feared. Vietnam seems to have rejected this policy, in part because the communist parties of Thailand, Malaysia, Indonesia and the Philippines are, as a whole, more sympathetic to China than to the Soviet Union. Vietnam appears to prefer conservative governments which are closer to the U.S. than Chinese-oriented insurgencies, and continues to regard the issue of independence vs. foreign intervention/domination as the central problem in the region rather than the problem of the free market vs. socialism.

As noted by a prominent analyst of Southeast Asian politics, the Vietnamese—

Have adopted a conciliatory posture toward their noncommunist neighbors. Interviews with a cross-section of military and civilian leaders in all five ASEAN countries conducted during October-November 1977 indicate that Hanoi's efforts have eased regional anxieties about Vietnam's intentions. Approximately 65 interviews with senior foreign ministry officials, military leaders, politicians, journalists, businessmen, academic specialists, and foreign diplomats make it

abundantly clear that Vietnam's neighbors do not, at present, feel threatened by Hanoi.

Earlier fears that the victorious Vietnamese would give a major boost to their communist compatriots elsewhere in Southeast Asia have not materialized.

The central point is this: if the United States has an interest in the stability and security of Southeast Asia, then it has an interest in persuading Hanoi that its conciliatory policy of seeking cooperative relationships with non-communist states is viable. The normalization of U.S. relations with Vietnam could well be important, if not decisive, in determining whether Hanoi deems its conciliatory policy a success. (Franklin B. Weinstein, U.S.-Vietnam Relations and the Security of Southeast Asia, Foreign Affairs, July, 1978, pp. 846–853.)

American links with Vietnam should be established now so as to minimize the future danger that changing conditions would place the Vietnamese more at odds with the Southeast Asian countries.

The opportunity we have in Southeast Asia may not remain open for long, and may not come again for a long time. Taking advantage of the opportunity requires us to act—both to dispel the impression of supporting China against Vietnam and to make a positive diplomatic response to the new Vietnamese offer for normalization. We cannot let the rigid application of the "China card" strategic policy vis-a-vis the Soviet Union blind us to an opportunity to reduce Soviet influence, strengthen an independent tendency in a difficult region and enhance prospects for peace and stability in Southeast Asia for the next generation.●

RHODESIA'S DEMOCRATIC FUTURE?

● Mr. GARN. Mr. President, I am increasingly concerned about the deteriorating situation in Rhodesia, or Zimbabwe, as it is to be called after a new majority government takes over. Recent reports of the shooting down of a commercial passenger plane by Popular Front guerrillas, and the subsequent massacres of many of the survivors of the crash, have been profoundly disturbing. The retaliation by the internal government with a crack-down on guerrilla elements within the country, and increasing martial law and the possible postponement of free elections until the situation stabilizes is an unfortunate necessity. The combination of these events does not contribute to an optimistic outlook for the peaceful resolution of the future of the new Zimbabwe.

Already we are hearing criticism of the internal government for its "increased oppression"; I expect we will hear more. Cynics are saying the situation gives further evidence that the Congress is naive in suggesting that sanctions may be lifted as the transitional government moves toward an "all-parties conference" and free elections and they point to the intransigence of the mixed Government of Rhodesia as the reason.

I submit, Mr. President, that if we are to assess blame for the continuation of conflict in this region, we must place a substantial amount of the guilt at the doorstep of American foreign policy in southern Africa. The narrowness and hyprocracy of our policy toward Rhodesia was aptly described last week in an editorial in the Washington Star.

This excellent article observes the claim of the Democratic National Committee that "the Carter administration bases African policy 'on the traditional American values of independence and self-determination.' "

But our policy has been "to insist that a bi-racial internal settlement that suits a substantial majority of both whites and blacks in that country is invalid and must, to meet our standards, embrace the so-called Patriotic Front of Robert Mugabe and Joshua Nkomo."

As the editorial so aptly states it:

If the test is "traditional American values of independence and self-determination," as it should be, our policy fails it.

Yet we have persisted in this folly, Mr. President, and, in so doing, given aid and comfort to the revolutionary and even self-proclaimed Marxist—enemies of the internal settlement. We have raised the violent, bestial acts of terrorists to an undeserved level of legitimacy. Is it any wonder that they feel free to continue their outrages, and expand their power? We have put the weight of the Western world behind them. Couple that with the weapons of the Soviet Union and the help of Cuban advisers, and what more could they want?

Mr. President, I hope those who share our foreign policy soon come to realize the harm they are doing to the goals of democracy, independence, and self-determination and reverse this misguided policy. And in the hope that my colleagues will consider the important message of the Washington Star editorial, I ask that it be printed in the RECORD, and I urge my colleagues to study it carefully and objectively.

The editorial follows:

RHODESIA'S DEMOCRATIC FUTURE?

In a recent fund-raising letter from the Democratic National Committee, controversial for other reasons, we were surprised to read that the Carter administration bases African policy "on the traditional American values of independence and self-determination."

That claim is probably valid in principle; and the administration has conducted a feeble rhetorical offensive against Russian and Cuban intervention in the Horn of Africa.

But those values take a curious form vis-a-vis Rhodesia; for the U.S. continues, with Britain, to insist that a biracial internal settlement that suits a substantial majority of both whites and blacks in that country is invalid and must, to meet our standards, embrace the so-called Patriotic Front of Robert Mugabe and Joshua Nkomo.

If the test is "traditional American values of independence and self-determination," as it should be, our policy fails it.

Consider the background. In negotiation with three black nationalist leaders and their parties, Prime Minister Ian Smith arrived last spring at a plan for free elections (now scheduled for early December); for a new constitution providing a four-to-one black parliamentary majority; for the end of racial discrimination; for a political amnesty and extensive land reform. These features of the internal settlement are now in train. Their object is to make it possible for black and European communities to co-exist harmoniously in a prosperous, democratic Rhodesia.

Despite these major concessions, heralding a definite end to white power, the U.S. and Britain have denounced the internal settlement and sided with the two self-exiled black leaders, Messrs. Mugabe and Nkomo, who with Russian arms and military training are conducting a savage guerrilla war for exclusive power.

The leaders of the Patriotic Front do not conceal their aim. It is total power. They refuse even to talk with the leaders of the internal settlement unless they first agree to disband the Rhodesian army and hand all military power to them. And Mr. Mugabe, for his part, has also made clear his preference for a Marxist one-party state, not a multi-party democracy.

The focus of Anglo-American diplomacy is an "all-party" conference on Rhodesia in which all contenders for political power join. The interim government has agreed to participate; but the Patriotic Front has refused to do so unless its extravagant conditions are met beforehand. At the same time, its two leaders have rebuffed an open invitation from the Salisbury group to participate as equals in the executive council of the interim government. All or nothing is their demand.

If "independence" and "self-determination" are the guiding values, what is "independent" about claimants to power who are dependents of the Soviet Union and Cuba? And what is self-determinative, for Rhodesians who differ from them, about the Nkomo-Mugabe demand that they be given full political and military control over Rhodesia, at the expense of other black leaders, parties and tribal interests? One suspects the real but unstated answer is the belief that power flows from a gun barrel.

But the question is not ours exclusively. It is a question that is being asked insistently by back benchers in the British House of Commons and by U.S. congressmen and senators, who recently called for a lifting of economic sanctions against Rhodesia by year's end on two conditions. One is that the Rhodesian government "negotiate in good faith at an all-parties conference . . . under international auspices," the other that it hold "free elections . . . with observation by impartial observers."

The interim government is puzzled that Congress imposes tests of its good faith but establishes no standard for testing the good faith of external rivals. Nonetheless, it is willing to meet the conditions. It is willing to confer at an all-parties conference without preconditions; and it has invited the U.N. and the Organization for African Unity to observe the December elections.

Even the OAU, it might be noted, is growing impatient with the all-or-nothing obduracy of the Patriotic Front. It is cool to the internal settlement and barred its representatives from its Khartoum meeting last month; but the OAU did resolve that Rhodesians have "the right to choose their own leaders" and rebuffed the Patriotic Front's specious claim to be "sole representative of the people of Zimbabwe." The concession is slight but important. It would appear that even the OAU is more open-minded about Rhodesia's democratic future, and who should decide it, than official American policy.●

TEENAGE DRINKING RATE DROPS IN UTAH

● Mr. HATCH. Mr. President, I would like to bring to the attention of my colleagues the work of one of my constituents, Mrs. Gayle Judd, the first vice-president of the Utah Parent-Teachers Association. She has been instrumental in spearheading a program designed to curb teenage drinking. In the past 4 years Utah's teenage drinking rate has decreased by 7.6 percent. With Mrs. Judd's help, there has been an increasing effort on behalf of professionals and volunteers to stamp out this problem.

Utah is now 49th in the Nation in the

number of alcoholics. Thanks to the efforts of people like Mrs. Judd, and other concerned volunteers, we may someday be 50th. I salute them all and wish them continuing success in controlling this most serious situation.

I ask that an article from the Salt Lake Tribune of Sunday, September 10, be printed in the RECORD.

The article follows:

UTAH'S TEENAGE DRINKING RATE DROPS 7.6 PERCENT IN 4 YEARS

Drinking among Utah teen-agers has decreased 7.6 percent in the last four years, a survey by the State Board of Education and the State Division of Alcoholism and Drugs showed Saturday.

This was particularly welcome news to the Utah Parent-Teacher Association, which has concentrated efforts in recent years against teen-age drinking.

"The results of this survey are encouraging," said Mrs. Gayle Judd, who has spearheaded the PTA program. "With a continued effort of professionals and volunteers in any organizations, there is no reason we can't cut the count even lower."

A natural survey by the American Business Men's Research Foundation showed the state's over all alcoholism rate has dropped significantly since 1974, a period when many anti-drinking campaigns some relying on volunteers, went into effect.

The state is now 49th in the nation in the number of alcoholics, the report showed. Only Wyoming, with an identical alcoholism count—26,000—ranks lower, according to the survey.●

RATIFICATION DEADLINE FOR AN AMENDMENT TO THE CONSTITUTION

● Mr. GARN. Mr. President, the issue of extending the ratification deadline for an amendment to the Constitution—in this case, the equal rights amendment—may come before this body before we adjourn. It is my opinion that an extension raises serious constitutional and policy questions and that those questions arise regardless of whether the substantive amendment pending in the States is the ERA or some other amendment. I believe my position is shared by a number of our colleagues, some of whom favor ERA and some of whom oppose it, but all of whom are seriously concerned about establishing and protecting the procedure of constitutional amendment. As one commentator has recently said, look at the process in light of the amendment you would most like to see ratified, then look at it again in light of the amendment you most oppose. Then ask yourself what process is best for both cases. The strength of those who agree with my position is that we are willing to adopt exactly the same procedure for ERA, whether we favor it or oppose it, as we are for those two imaginary amendments that we most favor and most oppose.

As we consider decisions that will affect the manner in which we deal with constitutional questions for decades to come, I expect that our colleagues will rely upon legal and lay advice that is excellent and objective. Certainly, there is such advice from several experts and one of the most valuable experts is our former colleague, Sam J. Ervin, Jr. I ask that a recent analysis of ERA extension by Senator Ervin be printed in the RECORD.

The analysis follows:

CAN A STATE RESCIND E.R.A.?

(By Senator Sam J. Ervin, Jr.)

1. Several states have voted to rescind or withdraw their previous ratifications of the ERA. Other States are seriously considering doing likewise. To deter the other States from exercising their right to rescind or withdraw their previous ratifications of the Amendment, supporters of the Amendment are now making the bizarre and specious claim that a State which has rejected the Amendment may change its mind and vote to ratify whereas a State which has ratified cannot change its mind and vote to rescind or withdraw its ratification. For reasons hereafter stated, this claim lacks credible support in authority and reason.

Idaho, Nebraska, Tennessee and Kentucky have voted to rescind or withdraw their previous ratifications of ERA. Other States are seriously considering doing likewise.

To deceive state legislators who are contemplating such action into believing that they have no power to do so, and thus deter them from rescinding or withdrawing their previous ratification of the Amendment, supporters of ERA are now vociferously claiming that a state which has rejected the Amendment can change its mind and vote to ratify whereas a state which has ratified cannot change its mind and vote to rescind or withdraw its previous ratification.

Insofar as fairness is concerned, this claim is on a par with the "Heads I win and tails you lose" proposal of the coin-tossing gambler; and insofar as logic is concerned, it is on a par with the proposition that what is sauce for the legislative goose is not sauce for the legislative gander.

In the last analysis, the advocates of ERA base their bizarre and specious claim upon the supposition that it finds support in the decision of the Supreme Court of the United States in *Coleman v. Miller*, (1937) 307 U.S. 433, 83 L.Ed. 1385, 59 S.Ct. 972, 122 A.L.R. 695.

As one who has studied this question, . . . I assert without fear of successful contradiction that the *Coleman Case* decided nothing of the kind, and that in consequence those ERA supporters who make this claim have no foundation for it in authority or reason.

2. The question whether a state which has ratified a proposed amendment to the Federal Constitution can change its mind and vote to rescind or withdraw its ratification was not even involved in the Coleman Case. Moreover, the question whether a state which has rejected a proposed amendment can change its mind and vote to ratify was not decided in the Coleman Case. On the contrary, the Supreme Court of the United States invoked the "political question" doctrine in the Coleman Case and adjudged that this question is a political matter for the determination of Congress and not a judicial matter for the decision of the Court.

The facts in the *Coleman Case* were simple. In 1924 Congress proposed an amendment to the Federal Constitution known as the Child Labor Amendment. The resolution submitting it to the states did not limit the time for its ratification. In 1925, the Kansas Legislature rejected it. In 1937, however, a resolution to ratify the Amendment was introduced in the Kansas State Senate, where 20 Senators voted for the resolution and 20 voted against it. The Lieutenant Governor of Kansas, the presiding officer of the Senate, then cast his vote in favor of the resolution. The resolution was later adopted by the Kansas House of Representatives on the vote of a majority of its members.

The 20 Senators who had voted against the resolution and three Representatives then brought an original action in the Supreme Court of Kansas seeking a mandamus to compel the Secretary of the Kansas Senate to record that the resolution had not passed and to restrain the officials of the Legislature from signing the resolution and the Secretary of State of Kansas from certifying it to the Governor.

These Senators and Representatives assailed the attempted ratification of the Child Labor Amendment on these grounds: (1) that the Amendment had been previously rejected by the Kansas Legislature; (2) that it was no longer open to ratification because an unreasonable time, 13 years, had elapsed since Congress had submitted it to the States; and (3) that the Lieutenant Governor had no right to cast the deciding vote in the Kansas Senate in favor of ratification.

The Supreme Court of Kansas rejected these contentions and upheld the ratification of the Amendment on the ground that a state legislature which has rejected an amendment proposed by Congress may later ratify it. This ruling was in accord with the universally accepted principle that a legislative body cannot tie the hands of its successors.

The Supreme Court of the United States, which granted certiorari, split into three irreconcilable groups, who wrote four opinions.

Upon two preliminary questions somewhat procedural in nature, i.e., whether the Supreme Court of the United States had jurisdiction to review the rulings of the Kansas Court, and whether the 20 Kansas Senators had standing to sue, the Justices split five to four.

Chief Justice Hughes and Justices Stone and Reed, who adhered to Chief Justice Hughes' so-called majority opinion, and the two dissenting Justices, McReynolds and Butler, held that the Supreme Court of the United States had jurisdiction and that the 20 Kansas State Senators had standing to sue.

The other four Justices, Roberts, Black, Frankfurter, and Douglas, who adhered to the two opinions written by Black and Frankfurter, disagreed with them because of their view that Congress possesses exclusive power under Article V of the Constitution over the entire amending process and in consequence "neither state nor federal courts can review [the exercise] of that power." (307 U.S. 433, 459.)

With respect to a more substantive question, i.e., whether the Lieutenant Governor had the power to cast the deciding vote in favor of ratification, Chief Justice Hughes had this to say: "Whether this contention presents a justiciable controversy, or a question which is political in nature, and hence not justiciable, is a question upon which the Court is equally divided, and therefore the Court expresses no opinion upon that point." (307 U.S. 433, 447)

It is regrettable that Chief Justice Hughes did not reveal the mystery of how nine or five Justices could be "equally divided" on a constitutional question. In the absence of any such revelation, one is compelled to conclude that one of the Justices was suffering a species of intellectual schizophrenia which disabled him to ascertain the consensus of his own mind.

The Justices split into three irreconcilable groups upon these two remaining questions: (1) whether a state which had rejected the Child Labor Amendment could subsequently change its mind and vote to ratify it; and (2) whether the Child Labor Amendment was no longer open to ratification because an unreasonable time had elapsed since Congress had submitted it to the states.

When the *Coleman Case* is read in its entirety, it is obvious that the Supreme Court divided on these questions in this fashion:

1. Chief Justice Hughes and Justices Stone and Reed concluded that these questions

were political questions for determination by Congress and not judicial questions for the decision of Courts. (307 U.S. 433, 436–457)

2. Justices McReynolds and Butler concluded that the Supreme Court of the United States had judicial power to adjudge and ought to adjudge that the Kansas Legislature had no power to ratify the Child Labor Amendment because an unreasonable time had elapsed since Congress had submitted it to the States. (308 U.S. 433, 470–474)

3. Justices Roberts, Black, Frankfurter, and Douglas concluded that the Supreme Court of the United States was powerless to make any pronouncement in respect to either question because Article V of the Federal Constitution had committed complete and unreviewable power over the entire amending power to Congress. (307 U.S. 433, 456–470)

These diverse conclusions compelled the affirmance of the ruling of the Kansas Supreme Court. In taking such action, Chief Justice Hughes made it plain that the Supreme Court of the United States was not expressing any opinion as to the validity of the basis of the Kansas Court's decision, i.e., that a state legislature which has rejected an amendment proposed by Congress can change its mind and ratify it. He did this by expressly stating that the Supreme Court was affirming the ruling solely "upon the grounds stated in this opinion." (307 U.S. 433, 456)

The only allusion in the *Coleman Case* to the question whether a state which has ratified a proposed amendment can change its mind and rescind or withdraw its ratification is in the form of dicta, which puts the questions of ratification after rejection and rescission or withdrawal after ratifying in the same category and which appears in this sentence:

"We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in Congress in the exercise of its control over the promulgation of the adoption of the amendment." (307 U.S. 433,450)

As one who loves constitutional government, I must confess that I am abhorred by the proposition that Congress has complete and unreviewable power to control the amending process in all its stages. This proposition would permit a false decision by a partisan or radical Congress to rob the people, the states, and the courts of their power to enforce constitutional government in our land.

3. All credible commentators agree that the Coleman Case does not support the bizarre and specious claim of the supporters of ERA that a state which has rejected the Amendment can change its mind and vote to ratify whereas a state which has ratified cannot change its mind and vote to rescind or withdraw its ratification.

In preparing this statement I read the *Coleman Case* many times. Moreover, I consulted comments on it in these publications: the first and only edition (1969) of *Modern Constitutional Law*, which was written by Chester J. Antieau, Professor of Constitutional Law at Georgetown University; the second and last edition (1968) of *The American Constitution*, which was written by C. Herman Pritchett, Professor of Political Science at the University of Chicago; the numerous editions (1920 through 1974) of *The Constitution And What It Means Today*, which was originally written by Edward S. Corwin, of Princeton University, and which has been revised by others since his death; and the various editions of the *Constitution of the United States, Revised and Annotated*, which was originally compiled and edited by Edward S. Corwin and which has been printed by the authority of Congress.

All of these authorities share my conviction that the Supreme Court of the United States did not decide anything whatever in the *Coleman Case* beyond some procedural questions immaterial to our present concern except the proposition that whether a state legislature has ratified a proposed amendment to the Federal Constitution is a political question for the decision of Congress and not a judicial question for the decision of the courts.

The court did not answer "no" or anything else in the *Coleman Case* to the question whether a state which has ratified a proposed amendment can change its mind and rescind or withdraw its ratification. The court did not and could not answer that question in the *Coleman Case* because it did not arise in that case. In the portion of his opinion quoted by Professor Antieau and set forth above, Chief Justice Hughes alluded to the question by way of dicta when he said, in effect, that the question of the efficacy of an *"attempted withdrawal,"* of a previous ratification as well as the question of efficacy of a subsequent ratification after a "previous rejection" were political questions for Congress and not judicial questions for the courts.

The court did not answer "yes" or anything else in the *Coleman Case* to the question whether a state which has rejected a proposed amendment can change its mind and ratify it. Although the Kansas Supreme Court had based its decision upholding the vote of the Kansas legislature ratifying the Child Labor Amendment after a previous rejection upon the view that "a state legislature which has rejected an amendment proposed by Congress may later ratify," the Supreme Court refused to make any such ruling on the ground that the question of the efficacy of the action of the Kansas legislature was a political question for the determination of Congress and not a judicial question for the decision of the Court. Indeed, the Supreme Court even refused to endorse the basis on which the Kansas Supreme Court made its ruling. As appears by the opinion of Chief Justice Hughes in the *Coleman Case* (307 U.S. 433, 456), the Supreme Court of the United States affirmed the judgment of the Kansas Supreme Court upon the grounds stated by Chief Justice Hughes and not for the reasons given by the Kansas Supreme Court. . . .

In 1868, Congress was dominated by huge majorities of radicals, who had passed the notorious Reconstruction Acts over President Andrew Johnson's vetos, and who were bent above all things in putting the proposed Fourteenth Amendment into effect without delay to better their prospects in the approaching fall election.

All of the Southern States except Tennessee had previously rejected the proposed Fourteenth Amendment. An irritated Congress decreed that these states would have no representation in the United States Congress until they adopted new state constitutions conforming to the Reconstruction Acts and ratified the Fourteenth Amendment. Since the states then numbered 37, ratification of the proposed Fourteenth Amendment by three-fourths of them, i.e., 28, was required by Article V to make the Amendment a part of the Constitution.

As a result of the congressional coercion, the number of ratifying states had risen to 29 by early July, 1868. Two of them, Ohio and New Jersey, however, had voted to rescind or withdraw their ratifications.

An impatient Congress ignored the action of Ohio and New Jersey and adopted its concurrent resolution of July 21, 1868, declaring that 29 states, including Ohio and New Jersey, had ratified the Fourteenth Amendment and made it a part of the Constitution. At least two of the states, North Carolina and South Carolina, which were enumerated by the resolution among the 29 ratifying states, had previously rejected the Amendment.

While an impatient Congress was taking this precipitate action on the day stated, another state, Georgia, ratified the Fourteenth Amendment and thus made the question of the constitutionality of the ignoring of the rescissions or withdrawals of Ohio and New Jersey moot. . . . An impatient Congress merely ignored what had happened. It did not adjudge that Ohio and New Jersey lacked the power to rescind or withdraw their ratifications.

And even if Congress had done so, its action would be destitute of precedential force under the well established constitutional principle that one Congress cannot tie the hands of a succeeding Congress. *Reichelderfer v. Quinn* (1932), 287 U.S. 315, 77, L.Ed. 331, 53 S.Ct. 177, 83 A.L.R. 1429. . . .

4. The only reasonable interpretation of Article V of the Constitution, which governs the amendatory process, is that it authorizes a state which has rejected a proposed amendment to change its mind and vote to ratify the same and permits a state which has ratified a proposed amendment to change its mind and rescind or withdraw its ratification at any time before three-fourths of the states have voted to ratify the proposed amendment and thus made it a part of the Constitution. This view rejects the unfair and illogical claim of the advocates of ERA, and permits the states to continue the search for truth until the amendatory process is consummated. And this is so regardless of whether the resultant questions are political questions for Congress or judicial questions for the courts.

I have called attention in other sections of this statement to the bizarre claim of advocates of ERA that a state legislature which has rejected the Amendment may change its mind and vote to ratify it, but a state legislature which has ratified the Amendment cannot change its mind and vote to rescind or withdraw its ratification. They cannot explain in a rational manner why they think the Constitution of the United States grants freedom to some legislative bodies, and imprisons others in mental jails.

They invoke their bizarre claim because they understandably fear that if state legislatures which ratified ERA in haste and under their pressure are permitted to exercise their intelligence and re-examine and reappraise ERA, they may decide to repent in wisdom of what they did in folly and vote to correct their mistake.

Other Americans, who cannot accept the arbitrary, unfair, illogical, and tyrannical view of advocates of ERA, have advanced two other views in respect to the power state legislatures may exercise in the amendatory process under Article V of the United States Constitution, which authorizes Congress and the states to amend the Constitution and prescribes the process by which they must act to exercise this awesome power.

For ease of statement, I shall call one of these views the Kentucky view, and the other the view shared by multitudes of other Americans and me. The Court of Appeals of Kentucky expressed the Kentucky view in *Wise v. Chandler*, (1937), 270 Ky. 1. 108 S.W.2d 1024, which held that if a state rejects a proposed amendment it cannot later ratify the same, unless it is resubmitted by Congress.

The Kentucky Court justified its ruling in this way: "We think the conclusion is inescapable that a state can act but once, either by convention or through its legislature, upon a proposed amendment; and whether its vote be in the affirmative or the negative, having acted, it has exhausted its power further to consider the question without a resubmission by Congress," *Chester J. Antieau: Modern Constitutional Law*, Vol. 2, Section 12:178.

The other view shared by multitudes of other Americans and me may be stated in this fashion: A state legislature does not forfeit its liberty of thought or action as long as the amendatory process is incomplete by either ratifying or rejecting a proposed amendment to the Constitution of the United States. Hence, a state legislature which has rejected a proposed amendment may change its mind and ratify it, and a state legislature which has ratified a proposed amendment may change its mind and rescind or withdraw its ratification at any time before three-fourths of the states have ratified the amendment and thus made it a part of the Constitution. *Chester J. Antieau: Modern Constitutional Law*, Vol. 2, Section 12:178; *C. Herman Prichett: The American Constitution*, pages 39–40.

On the day of its unprecedented decision in the *Coleman Case*, the Supreme Court of the United States, by a seven to two vote of the Justices, dismissed without decision the writ of certiorari previously granted by it to review the ruling of the Kentucky Court in *Wise* v. *Chandler* on the ground that it no longer presented a justiciable controversy susceptible of judicial determination. *Chandler* v. *Wise*, (1939), 207 U.S. 474, 83 L.Ed 1407.

If we are to appraise aright the role of state legislatures in the amendatory process, we must read Article V of the United States Constitution in the light of the rules devised by experience, reason, and law to enable state legislatures to perform their functions in civil government.

Article V proclaims:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several states, shall call a Convention for proposing Amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several states or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

No intelligent American will gainsay the proposition that voting to amend the Constitution of the United States is the most crucial task a state legislator can perform. This is true because an amendment to the Federal Constitution will control the lives of all generations of Americans as long as time shall last unless it is sooner removed from that instrument by another Amendment.

With the exception of the proviso making secure the right of each state to equal suffrage in the Senate, there is not a syllable in Article V which undertakes to put any limitation whatever upon what state legislatures can do in their amendatory role except the implied limitation that they can not effectively act after a proposed amendment has been ratified by three-fourths of the states and made a part of the Constitution.

On the contrary, except for the proviso stated, every word of Article V is in complete harmony with these conclusions: (1) A state legislature does not forfeit its liberty of thought or action as long as the amendatory process is incomplete by either ratifying or rejecting a proposed amendment to the Constitution of the United States; and (2) hence, a state legislature which has rejected a proposed amendment may change its mind and ratify it, and a state legislature which has ratified a proposed amendment can change its mind and rescind or withdraw its ratification.

These conclusions are inescapable. Moreover, they are inseparable from the spirit and purpose of Article V, which clearly contemplates that state legislators shall act with complete liberty of spirit and complete freedom of mind as long as state legislatures are participating in the amendatory process.

The rules derived by experience, reason, and law to enable state legislatures in America to perform their functions in civil government are well established in all areas of our land. They are two-fold in nature, and may be stated with simplicity as follows:

1. A state legislature may do what the state and federal Constitutions do not forbid it to do, *16 Am. Jur. 2d, Constitutional Law*, Section 228; *72 Am. Jur. 2d, States*, Sections 40, 41; *73 Am. Jur. 2d, Statutes*, Section 33; *Giozza v. Tiernan* (1893), 148 U.S. 657, 37 L.Ed. 599, 13 S.Ct. 721; *Chicago, Burlington and Quincy Railroad v. County of Otoe* (1873), 16 Wall. (U.S.) 667, 21 L.Ed. 375; *Ware v. Hylton* (1796), 3 Dall. (U.S.) 199, 1 L. Ed. 568; *Lassiter v. Northampton County Board of Elections* (1948), 248 U.S. N.C. 102, 102 S.E. 2d 853, affirmed 360 U.S. 45, 3 L.Ed.2d 1072, 79 S.Ct. 985; *Village of North Atlanta v. Cook*, (1963), 219 Ga. 316, 133 S.E.2d 585, 589.

2. A state legislature cannot restrict or limit the right of a succeeding legislature to exercise its constitutional power in its own way. In other words, it cannot tie the hands of its successors, *72 Am. Jur. 2d, States*, Section 40; *73 Am. Jur. 2d, States*, Section 34; *Stone v. Mississippi* (1880), 101 U.S. 814, 25 L. Ed. 1079; *Newton v. Mahoning County* (1880) 100 U.S. 548, 25 L.Ed. 710; *Boston Beer Co. v. Massachusetts* (1878), 97 U.S. 25, 24 L.Ed. 989; *Bank of Columbia v. Okely* (1819), 4 Wheat. (U.S.) 235, 4 L. Ed. 557; *Fletcher v. Peck* (1810), 6 Cranch (U.S.) 87, 3 L. Ed. 162; *State v. Wall* (1967) 271 N.C. 675, 683, 157 S.E. 2d 363; *Kornegay v. City of Goldsboro* (1920), 180 N.C. 441, 105 S.E. 187; *Village of North Atlanta v. Cook* (1963), 219 Ga. 316, 133 S.E. 2d 585, 589.

What has been said makes these things plain:

1. The claim of ERA supporters that a state which has ratified the Amendment cannot rescind or withdraw its ratification is totally repugnant to Article V and the rules devised by experience, reason, and law to enable state legislatures to perform their functions in civil government.

2. Although it is impartial and illogical, the Kentucky view is inconsistent with Article V because it prohibits further activity by ratifying and rejecting states while the amendatory process is still going on.

3. The view shared by multitudes of other Americans and me is in complete harmony with Article V and the rules devised by experience, reason, and law to enable state legislatures to perform their functions in civil government. Hence, this view is the sound one.

5. If the Supreme Court should adhere to its unprecedented ruling in the Coleman Case, Congress will be obligated to judge the question of whether ERA has been ratified by the true meaning of Article V, which is that a state legislature has power to ratify ERA after having previously rejected it and that a state legislature has power to rescind or withdraw its ratification of ERA after having previously ratified it. Since reason, the Constitution and prior Supreme Court decisions compel the conclusion that whether a proposed amendment to the Federal Constitution has been ratified in conformity with Article V is rightly a judicial question, and since subsequent Supreme Court decisions disclose the existing tendency of the Supreme Court to narrow the "political-question doctrine", it seems probable that the Supreme Court will return to its former position and hold that whether ERA has been ratified is a judicial question for its ultimate decision.

The *Coleman Case* is unprecedented. Moreover, it is contrary to six prior decisions of the Supreme Court, which covered the first 150 years of the nation's history, and which recognized and applied the sound constitutional principle that the question whether a proposed amendment to the Constitution of the United States has been ratified in conformity to Article V is a judicial question for the ultimate decision of the Supreme Court itself. I cite these six cases below.

United States v. *Sprague* (1931), 282 U.S. 716, 75 L. Ed. 640, 51 S. Ct. 220, 71 A.L.R. 1381; *Leser* v. *Garnett*, (1922) 258 U.S. 130, 66 L. Ed. 606, 43 S. Ct. 217; *Dillon* v. *Gloss* (1921), 256 U.S. 368, 65 L. Ed. 994, 41 S. Ct. 510; *Hawke* v. *Smith* (1920), 253 U.S. 221, 64 L. Ed. 877, 40 S. Ct. 498; *National Prohibition Cases*, (1920) 253 U.S. 350, 64 L. Ed. 946, 40 S. Ct. 486 (Note: Reported as Rhode Island v. Palmer); *Hollinsworth* v. *Virginia*, (1798) 3 Dall. 378, I. L. Ed. 644.

If the Supreme Court should adhere to its unprecedented ruling in the *Coleman Case* that questions of the validity of votes of state legislatures engaged in the amendatory process under Article V are political rather than judicial questions under the "political-question doctrine", Congress should be required by the oath of its members to support the Constitution to recognize and implement the true meaning of Article V, which is that a state legislature has power to ratify ERA after having previously rejected it and that a state legislature has power to rescind or withdraw its ratification of ERA after having previously ratified it. Any other Congressional conclusion would be faithless to Article V.

Sound reason compels the deliberate conclusion that the holding in the *Coleman Case* constitutes a temporary judicial aberration, and that the Supreme Court will welcome an opportunity to return to its original position, i.e., that questions concerning the ratification of proposed amendments to the Federal Constitution are judicial questions for the ultimate decision of the Supreme Court in accordance with the provisions of Article V.

I set forth below the basis for this observation. Under Section 2 of Article II of the Constitution, the judicial power of the United States extends to all cases arising under the Constitution, and various Acts of Congress grant the District Courts of the United States original jurisdiction to try such cases and the Courts of Appeal and the Supreme Court of the United States appellate jurisdiction to review the trial of such cases.

Undoubtedly, the most important case which can arise under the Constitution is one involving the question whether that instrument has been changed in the only way in which it can be changed, i.e., by an amendment which has been ratified by three-fourths of the states.

The phraseology of Article III and the Acts of Congress implementing such Article undoubtedly suffice to vest in the courts of the United States jurisdiction to hear and determine cases of this nature, and such Courts did in fact exercise such jurisdiction without question and with the complete satisfaction to the nation during the 150 years after the Constitution became effective.

On June 5, 1939, however, the Supreme Court turned its back on the words of Article III and the Acts of Congress implementing them and 150 years of its own history and adjudged that a case of this nature is a political question for Congress and not a judicial question.

These naked facts indicate that the Supreme Court had some difficulty in reaching this strange decision: the case was argued October 10, 1938; it was restored to the docket for re-argument January 30, 1939;

it was reargued April 17 and 18, 1939; and it was finally decided on June 5, 1939 by Justices hopelessly split into three irreconcilable groups, no group constituting a majority.

The Court cited no precedential authority for this unprecedented judicial decision except the historic fact that Congress had declared by a resolution of July 21, 1868, that the Fourteenth Amendment had been ratified by the requisite number of states.

Chief Justice Hughes cited this historic fact in an opinion in which only two other Justices concurred. He added that this decision of the Congress "has been accepted", and suggested that Congress had the unreviewable authority to make it because Congress had power to authorize the Secretary of State to perform the ministerial function of counting the certificates of the states indicating ratification and to promulgate the arithmetic result.

It is certainly not surprising that the congressional decision was "accepted" in 1868. Huge radical majorities in both Houses of Congress had reduced President Andrew Johnson to a state of presidential impotence, and cowed the then Supreme Court itself into complete subservience to their will by threatening to take away the appellate jurisdiction of the Court, and even to abolish the Court itself by constitutional amendment. As a consequence, the Court solemnly adjudged that it did not even have original jurisdiction of "cases * * * in which a state shall be a Party" under clause 2 of section 2 of Article III in April and May, 1867, when Mississippi attempted to secure an injunction to prevent the President from carrying out the reconstruction acts, and Georgia asked the Court to enjoin the military officers from enforcing these acts in that state. (See article on "The United States of America" on page 813 of Volume 22 of the *Encyclopedia Britannica*, Fourteenth Edition.)

Fortunately for the ultimate welfare of our country, the adoption by Congress of the resolution falsely reciting that Ohio and New Jersey had effectually ratified the Fourteenth Amendment was not the only event which occurred in our land on July 21, 1868.

While Congress was proclaiming this untruth, Georgia actually became the twenty eighth state to ratify the Fourteenth Amendment. By so doing, Georgia rendered the Congressional untruth relating to Ohio and New Jersey immaterial, and made ratification of the Fourteenth Amendment an accomplished and acceptable fact.

When all is said, the question of whether a state has ratified or rejected a proposed amendment to the Federal Constitution does not properly come within the scope of the "political-question doctrine" as that doctrine has been enunciated and applied in many Supreme Court cases.

The "political-question doctrine" is based on the separation of governmental powers made by the Constitution itself. Under the doctrine, the Federal judiciary has no power to make any decision in respect to any question if the power to make the decision is expressly or impliedly committed by the Constitution to some other department or agency of government.

The inapplicability of the "political-question doctrine" to the *Coleman Case* is demonstrated by words used by Chief Justice Hughes himself in that case. He said: "In determining whether a question falls within that category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." (307 U.S. 433, 454–455) Both of these considerations were lacking in the *Coleman Case*.

There is not a syllable in Article V or any other provisions of the Constitution which intimates in the slightest way that it is appropriate to attribute to a politically-surcharged Congress, which has already declared by a two-thirds vote that a proposed amendment to the Federal Constitution is "necessary", the unreviewable power to make a final decision in conformity with Article V. On the contrary, Article V and every other provision of the Constitution recoils at the suggestion that the most important question which can arise in our system, i.e., whether our Constitution has been changed by an amendment conforming to Article V, should be left to the final determination of what is essentially a political body which is more concerned with political expediency than with the search for truth. Indeed, Article V and every other provision of the Constitution declare by their words, spirit, and purpose that the decision of this question should be made by the judiciary acting with what Edmund Burke described as "the cold neutrality of the impartial judge."

Moreover, there is no basis whatever for claiming a "lack of satisfactory criteria for a judicial determination" of a question of this nature. As a practical matter, the question is susceptible of judicial determination under most circumstances by a simple inspection of certificates issued by the appropriate state officers attesting the action taken by their respective legislatures.

Since the handing down of the *Coleman Case*, the scope of the "political-question doctrine" has been substantially narrowed by *Baker v. Carr*, (1962) 369 U.S. 186, 7 L.Ed.2d 663, 82 S.Ct. 691, where the Court held in repudiation of former decisions that whether a state had unconstitutionally apportioned voting power in the election of state legislators presented a judicial question and not a political question: *Bond v. Floyd*, (1966) 385 U.S. 116, 17 L.Ed.2d 235, 87 S.Ct. 339, where the Court held in substance that whether a state legislature had unconstitutionally deprived a state representative of his seat because of his expressed views presented a judicial question and not a political question; and *Powell v. McCormack*, (1969) 395 U.S. 486, 23 L.Ed.2d 491, 89 S.Ct. 1944, where the Court held in essence that whether the United States House of Representatives had unconstitutionally deprived a Representative of his seat was a judicial question and not a political question. . . .

In the light of these decisions and this adjudication, it seems obvious that the Supreme Court will hold, if the occasion for its acting in the matter should arise, that whether the Equal Rights Amendment has been ratified is a judicial question for the decision of the federal judiciary, and not a political question for the decision of Congress.

Be this as it may, Article V requires that it be decided in accordance with its true meaning, which is that a state may ratify the Amendment if it has previously rejected it, and that a state may rescind or withdraw its ratification if it has previously ratified it.●

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

● Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Richard T. Mulcrone, of Minnesota, to be a Commissioner of the U.S. Parole Commission for a term of 6 years vice James R. Cooper, term expired.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Wednesday, September 20, 1978, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.●

RECENT EVENTS IN RHODESIA

Mr. GOLDWATER. Mr. President, recent events in Rhodesia, including the inhuman shooting down of a civilian airliner and the calculated murder of 10 survivors, point up the scandalous nature of the Carter administration's foreign policy. By downgrading efforts to reach majority rule through the moderate process initiated by Premier Ian Smith and by continually emphasizing the vulnerability of the existing government, our State Department and the President have encouraged terrorism of the worst kind. Our Government has in effect encouraged the massacre of men, women and children—both black and white—by its preoccupation with the idea that the Communist Black Front leaders must be given power in Rhodesia.

Mr. President, this was no ordinary terrorist maneuver. This was not a hijacking in which demands were made and an opportunity at least existed to save the lives of hostages. This was a calculated scheme of murder aimed at non-combatants flying in a civilian airliner. No opportunity was given for negotiations. The object was to kill. And perhaps the most chilling aspect of the whole thing came when guerrilla leaders Joshua Nkomo claimed credit for shooting down the passenger plane and warned that more passenger planes may be shot down in the future. This is the man whom the State Department and U.N. Ambassador Andrew Young keep describing as a "moderate" and "a reasonable man" who should be drawn into the present transitional government.

The whole affair points up the bankruptcy of our position and our policy. In effect, we have undercut and sabotaged efforts to bring about reasonable majority rule in Rhodesia. We have encouraged the total destruction of human rights. We have made possible a rampant wave of terrorism. We have failed miserably in our role as a world leader dedicated to the right of self-determination and a protector of human dignity.

Mr. President, the plane incident was an ultimate example of violation of human rights. Where then is the Carter administration which is so quick to condemn human rights violations in other parts of the world? Why have we not heard statements from the President or the Secretary of State denouncing this slaughter of innocent human beings? Where is the leadership of the Democrat Party and, yes, the Republican Party, too? Why are these people not telling us what this means to all of the world? But, primarily, I hold our Government responsible. When, I ask, is the seemingly gutless leadership of our country going to show some strength and stand up to those who want to rule by the sword, the arrow, and the bullet? Just think of what would happen in this country if some

sniper at the bottom of the Salt River ambushed a plane full of innocent American civilians. Think what would have happened if this same kind of thing happened at Dulles Airport. Do you think then that our government leaders would maintain a diplomatic silence?

Mr. President, recently, Rhodesian Premier Smith expressed deep resentment against the United States and Britain for what he described as their support for "a gang of Marxist terrorists." He further said the two Western nations bear "the major share of blame" for the escalation of the war in Rhodesia. I thoroughly agree with Mr. Smith. He has a legitimate complaint and I believe it is high time the Carter administration takes a realistic attitude toward governments doing their best to promote democratic processes.

EXPORT-IMPORT BANK

Mr. PROXMIRE. Mr. President, I call to the attention of my colleagues a communication which I have received from the Export-Import Bank pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, notifying the Senate of a proposed direct loan in the amount of $151,200,000 to assist the export from the United States of Boeing 737-200 jet aircraft and related goods and services—including Pratt and Whitney engines—to British Airways, a commercial air carrier wholly owned by the Government of the United Kingdom. Section 2(b)(3)(i) of the act requires the Bank to notify the Congress of proposed loans or financial guarantees in the amount of $60,000,000 or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress adopts legislation to preclude such approval.

In this case, the Bank proposes to extend a direct loan to cover 70 percent of the total cost of U.S. goods and services to be exported. The Exim credit will bear interest at the rate of 8½ percent per annum and be repayable over a 10-year period beginning in 1980.

This is a requirement of the law that the bank notify the Congress, and I am doing that on behalf of the bank now.

Mr. President, I ask unanimous consent that the letter from Eximbank pertaining to this transaction be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C., September 8, 1978.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

JOHN L. MOORE, Jr.

Enclosure.

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C., September 8, 1978.

Hon. WALTER F. MONDALE,
President of the Senate, Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to the United Kingdom:

A. Description of Transaction.

1. Purpose

Eximbank is prepared to extend a direct credit of $151,200,000 to British Airways. The purpose of the Eximbank financing is to facilitate the purchase in the United States by British Airways of nineteen new Boeing 737-200 jet aircraft and related goods and services (including Pratt & Whitney engines) with a total U.S. export value of $216,000,000.

2. Identity of the Parties

(a) British Airways

British Airways is the largest commercial air carrier in the United Kingdom and is wholly owned by the Government of the United Kingdom. British Airways was incorporated under the Civil Aviation Act of 1971 to assume the activities of British Overseas Airways Corporation (BOAC) and British European Airways (BEA). British Airways operates under the terms of the British Airways Board Act of 1977 and under this Act has the power to operate every type of air transport service.

(b) Government of the United Kingdom

The Government of the United Kingdom will unconditionally guarantee payment of principal and interest by British Airways to Eximbank under the direct credit.

3. Nature and Use of Goods and Services

The principal goods to be exported from the United States are commercial jet aircraft to be used by British Airways on its short and medium-term routes, principally in Western Europe and the United Kingdom. The airframes will be manufactured by The Boeing Company (Boeing) of Seattle, Washington and the JT8D engines will be manufactured by the Pratt & Whitney Aircraft Group of United Technologies in Hartford, Connecticut. In addition, other U.S. firms will furnish related spare parts and services.

B. Explanation of Eximbank Financing

1. Reasons

The Eximbank credit of $151,200,000 will facilitate the export of $216,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40% of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80% of the world market.

Boeing estimates that the export of these aircraft will provide 6.4 million man/hours of work for Boeing and its sub-suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts, ground support and other related equipment.

Since 1966, British Airways has purchased 45 commercial jet aircraft from the United States with Eximbank support. British Airways estimates that in the near future it will have to replace a substantial number of obsolescent aircraft in its fleet of approximately 180 aircraft. The airline has indicated its desire to rely on Eximbank support so that it may continue to purchase new aircraft in the U.S. British Airways has been under growing pressure to select aircraft manufactured in the United Kingdom or by Airbus Industrie. Eximbank support facilitates the selection of aircraft from the U.S. and, in this case, facilitated the choice by British Airways of the U.S.-made 737 over the British-made BAC-111.

2. The Financing Plan

The financing plan for the total U.S. goods and services of $216,000,000 is as follows:

	Percent of U.S. costs	Totals
Cash payment	30.0	$64,800,000
Eximbank credit	70.0	151,200,000
Total	100.0	216,000,000

(a) Eximbank Charges

The Eximbank credit will bear interest at the rate of 8½% per annum, payable semi-annually. A commitment fee of ½ of 1% per annum will also be charged on the undisbursed portion of the Eximbank credit.

(b) Repayment Terms

The Eximbank credit will be repaid by British Airways in two schedules of 20 semi-annual installments each, beginning October 5, 1980 and April 5, 1981.

Sincerely,

JOHN L. MOORE, Jr.

FED CHAIRMAN MILLER RATES A D GRADE

Mr. PROXMIRE. Mr. President, when Mr. William Miller was confirmed as Chairman of the Federal Reserve Board, I said that every 3 months we would issue a report card rating his performance, so it would be rated not on the basis of rhetoric or opinion, but based on objective scrutiny of what he has been able to accomplish with respect to interest and inflation, and so forth.

I must say, G. William Miller has earned a D on his report card as Chairman of the Federal Reserve in the second 3 months of his term. The D is not quite a failing grade, but it does mean the student has to repeat the course. The D does represent a very slight improvement over his D-minus for this first 3 months in office. Both inflation and interest rates have continued to rise despite Chairman Miller's announced desire to reduce them.

I said when Miller was appointed that he would be judged every 3 months by the results of his policies. He has now been Federal Reserve Chairman for 6 months, which means that the policies he has backed should begin to show some results. Thus far they have had little positive effect. So the D grade, while not final for his first year as Chairman, continues to be the one he has earned. As I have said before, if Miller can help bring down inflation and reduce interest rates, his final grade will be raised.

During the last 3 months inflation and interest have continued to rise despite indications that the economy has been slowing down following abnormally rapid growth during the second quarter of this year. Because of slower economic growth the quantity of money has moderated in the past 3 months to levels that fall within the ranges specified by the Federal Reserve, yet the Federal Reserve has continued to raise interest rates.

About a month ago, Chairman Miller said that he hoped interest rates had peaked. Since then the Federal Reserve Board has raised them by more than a half percent.

The most recent interest rate increases have resulted from a desire by the Fed-

eral Reserve to support the value of the dollar even though such a policy can only help temporarily, does not affect the underlying fundamental problems the dollar is having, and could result in a weaker domestic economy.

Three months ago the Federal funds rate was at 7½ percent, and many economists were fearful that there could be seriously adverse effects on the economy. Now the Federal funds rate is 8⅜ percent and rising.

Inflation has not shown anv inclination to respond to tighter Federal Reserve policy.

Mr. President, I ask unanimous consent that a table showing the economy's performance in the second quarter of the Miller chairmanship of the Federal Reserve be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUARTERLY ECONOMIC DATA

[Averages at annual rates; growth rates or percent unless noted]

	1st quarter, 1978	2d quarter, 1978
Real GNP	−0.1	8.0
Implicit GNP deflator	7.2	10.7
CPI	7.6	10.5
PPI	11.2	9.6
Unemployment rate	6.2	5.9
Industrial production index	139.6	143.9
Manufacturing capacity utilization	82.1	83.8
Housing starts (millions)	1.73	2.11
3-month Treasury bill rate	6.39	6.48
Federal funds rate	6.76	7.28
Corporate Aaa bond rate (Moody's)	8.45	8.67
Prime rate charged by banks	8.00	8.30
New home mortgage yield (FHLBB)	9.19	9.28
Money stock: M–1	5.6	9.5
Money stock: M–2	6.9	8.3
Velocity: V–1	1.3	8.6
Velocity: V–2	0	9.9

MONTHLY ECONOMIC DATA

	June	July	August
Federal Funds rate [1]	7.78	7.88	8.28
3-month Treasury bill rate [1]	6.93	6.83	7.42
Corporate Aaa bond rate [1]	8.82	8.88	8.66
Bank prime rate [1]	9.0	9.0	9.25
Housing starts	2,124	2,085	(2)
New home mortgage yields	9.46	9.57	(2)
M–1 [3]	9.4	5.8	5.6
M–2 [3]	8.7	8.3	8.9

[1] Last week of the month.
[2] Not available.
[3] Last week of the month, average annual rate of growth during previous 13 weeks.

Mr. PROXMIRE. Mr. President, that table includes the real GNP, a series of different inflation indicators, production indicators, housing starts. It shows with respect to the treasury bill rate, that is up sharp. Federal funds rate, up. Corporate triple A bonds rate, up. Prime rate charged by banks, up. New home mortgage yield, up, and so on.

Of course, all that is bad news for borrowers, bad news for farmers, for home buyers, and for most consumers in the economy. That is one of the principal reasons for the low rating of the chairman.

When Chairman Miller was confirmed, I listed the economic indicators shown on the attached table and promised to use them in making these quarterly report cards. All indicators on interest and inflation rose during the second quarter and have gone higher since then.

One of the problems we have faced with past Chairmen of the Federal Reserve and that we are now facng with Chairman Miller is that they do every job, but the one they are assigned to do.

The Federal Reserve is in charge of monetary policy. That is a great power and a great responsibility. But over the years when Chairmen of the Federal Reserve appeared before Congress and in the public, they talked about everything but monetary policy. They have told the President what to do about the budget and fiscal policy. They have told him what to do about labor negotiations, the minimum wage, and the Davis-Bacon Act. They have told him what to do about taxes and excess profits.

But they seldom say anything specific, decisive, and concrete about monetary policy, the one area they control.

Mr. G. William Miller is following in the footsteps of his predecessors. Editorials not only complain that he talks too much but now he views his role as a proponent of the natural gas bill and as a team player.

So while he may get an A as a lobbyist and as a team player, he gets a D for the job he has done with monetary policy. And the main reason his grade goes up from a D-minus last time to a D this time, even though interest rates have continued to rise, is that he was instrumental in appointing Nancy Teeters to the Federal Reserve Board. She is highly qualified, in fact better qualified than many of the recent appointees, and she will be the first woman in the 65-year history of the Federal Reserve Board to become a member. The latter says more about the Federal Reserve than it does about Nancy Teeters.

"THE HOLOCAUST": A BROADCAST OF GENOCIDE

Mr. PROXMIRE. Mr. President, over the next 2 weeks the Israeli people are reliving a national trauma with the airing of the television program "The Holocaust." This powerful docudrama, as shown in the United States last April, relates the horrors of the Nazi genocide of 6 million European Jews during World War II. The brutal atrocities, as well as the events and conditions in Germany and the world that allowed them to occur, come alive in the living room; 1.5 million Israelis viewed the first segment of this stunning testimony to life and the value of human rights.

Meanwhile, concern for the memories of the 400,000 survivors living there has caused great debate. Israeli psychiatrists are preparing to deal with any traumatic reactions that arise from survivors, their children, and the national psyche as a whole.

Why, Mr. President, would a country traumitize its citizens so? Why?

Because the Israeli people know that we must learn from history, if we are not doomed to repeat it.

Education is the best prevention, Mr. President. "It serves as a warning system," said Shmuel Ron, an Israeli who fought with the Polish resistance movement. Litzhak Livini, director of the Israeli television service, added, it is "an attempt to focus a medium of great power on a subject that defies human understanding."

But what about the United States, Mr. President? Do we lack understanding?

President Truman certainly did not. Neither did his successors. All of them—Eisenhower, Kennedy, Johnson, Nixon, Ford, and now President Carter—all of them understood its importance and have given it their full support.

And the Israelis have surely not forgotten what genocide means—they, along with 82 other nations, have ratified the Genocide Convention.

Yet for nearly 30 years this great Chamber has failed in its duty to ratify that which protects the most basic of rights—the right to live. It was this fundamental right that the holocaust destroyed. It is that destruction that Israelis now view on television. It is also that destruction which we must never allow again.

Mr. President, what can the U.S. Senate do to insure that genocide never happens again?

The United Nations took the first step in 1946 by unanimously declaring genocide a crime under international law. We must take the next step and ratify the Genocide Convention.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNITED STATES RAILWAY ASSOCIATION AUTHORIZATION, 1979

Mr. LONG. Mr. President, I move that the Senate proceed to the consideration of H.R. 10898, which is at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 10898) to amend the Regional Rail Reorganization Act of 1973 to authorize appropriations for the United States Railway Association for fiscal year 1979.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LONG. Mr. President, this bill authorizes appropriations for administrative expenses for the U.S. Railway Association during fiscal year 1979. As passed by the House of Representatives, the bill not only provides $27.2 million for administrative expenses for the U.S. Railway Association, but in addition, contains an amendment, the effect of which is to authorize additional loans to be made by the U.S. Railway Association to the Delaware & Hudson Railroad.

Mr. President, under current law, the U.S. Railway Association is authorized to make loans to various railroads, including railroads in reorganization, for purposes of achieving the goals of the Regional Rail Reorganization Act of 1973. The Regional Rail Reorganization

Act, in section 211, requires that as a prerequisite to the association making these loans, the association shall first make a finding in writing that: First, the loan is necessary to achieve the goals of this act or to prevent insolvency; second, it is satisfied that the business affairs of the applicant will be conducted in a reasonable and prudent manner; and third, the applicant has offered such security as the association deems necessary to reasonably protect the interest of the United States.

Under this statutory language, the U.S. Railway Association has been making loans periodically to the Delaware & Hudson Railroad since March of 1976, at which time a loan agreement in the amount of $30 million was entered into between the railroad and the association. Since that time, the association has loaned $27.3 million to the Delaware & Hudson.

Recently, as a result of deteriorating financial conditions at the Delaware & Hudson Railroad, coupled with decreases in that carrier's traffic volume, the prospect of adequacy of security, as well as the likelihood of repayment under the terms of the statute have made it virtually impossible for the U.S. Railway Association to continue to lend money to the Delaware & Hudson Railroad, in accordance with the necessary findings required by section 211 (e) of the Regional Rail Reorganization Act.

As a practical matter, Mr. President, what that means is that, to make a further loan, it would have to find that that loan is adequately secured and adequately protected. The railroad cannot even meet the interest charges, as it stands now, and it is in arrears on those charges for that reason.

The poor financial performance of the Delaware & Hudson has been compounded by a strike at the Norfolk & Western that has cut further into the Delaware & Hudson's badly needed revenues. That strike continues today. Within this context—namely, the inability of the U.S. Railway Association to continue to make the findings required by law, and the Delaware & Hudson's contention that, unless additional funds were lent to it, it would have to go into bankruptcy—the House of Representatives added this following amendment to H.R. 10898, the purpose of which is to waive the requirements of section 211 (e):

> Provided with respect to a loan under subsection A of this section to a railroad in the region, the Association may approve any modification of such loan, including increasing the principal amount of the loan, upon a finding that such modification would permit the continuation of rail service determined by the Association, in the Final System Plan, or under the goals of the Act, to be desirable.

That is to waive the finding that the interest of the United States is protected.

Now, Mr. President, the Committee on Commerce, Science, and Transportation was anxious to develop the best possible record that it could, consisting of background information on the Delaware and Hudson, as well as estimates from the various Government agencies on which course of action to take, in order to be able to make the soundest recommendations to the Senate. The committee has sought the views of the various Federal agencies and departments that are concerned with rail transportation, and the committee has sought the views of interested shippers and railroads. We have also sought the views of labor organizations. The choice that we were faced with came down to this question: How can we maintain rail service on the Delaware and Hudson on a consistent, normal, uninterrupted basis during the time that the studies are underway in the New England region relating to restructuring of the rail network in that area.

The committee believes that it is very important to point out that all three Government bodies that offered their views on this matter, the U.S. Railway Association, the Department of Transportation, and the Interstate Commerce Commission, are unanimous in their belief that normal rail service should be continued until the completion of the Federal Railroad Administration and the U.S. Railway Association's studies of the New England rail region.

In addition to insuring the continuation of regular service along the Delaware and Hudson's route network, we had to make an evaluation and a determination of whether the best way to do this would be to permit the carrier to go into bankruptcy and fund it through Government loans from the Emergency Rail Services Act of 1970 or to attempt to keep it out of bankruptcy and continue to extend credit to the Delaware and Hudson under the section 211 program of the Regional Rail Reorganization Act, as the House has done. The U.S. Railway Association and the Interstate Commerce Commission took no strong position on whether funding should be provided in or out of bankruptcy, but the Commission did indicate the importance of keeping the Delaware and Hudson in operation while a restructuring plan is being developed. The Commission also informed the committee that if bankruptcy were taken, the Emergency Rail Services Act would offer by far the least costly approach to achieving the goal of normal rail service continuation. The Departments of Transportation and Treasury are both firmly opposed to additional Federal loans simply to forestall the bankruptcy of the D. & H.

And that is the point that I think is crucial here, Mr. President.

The Department of Transportation has consistently opposed the granting of additional loans to the Delaware and Hudson on the grounds that they were neither securable nor repayable. However, the Department of Transportation also recognized that directed service ordered by the Interstate Commerce Commission after bankruptcy would probably be the most expensive approach to this problem. It therefore suggested that provision could be made for some continued Federal financing if necessary in a bankruptcy situation in order to insure that normal rail operations would continue.

This kind of approach seemed to make eminent good sense to this Senator and also to the chairman of the Commerce Committee.

I can state confidently to Members that the Commerce Committee as a whole seems to agree with this.

This approach will allow uninterrupted service to be continued for those shippers who depend on the Delaware and Hudson Railroad while the USRA-FRA studies go forward in the New England region to determine just what an ideal and restructured rail network ought to look like in that region.

What we are proposing therefore in our amendment to section 3 of the House bill is an amendment to section 3(a) of the Emergency Rail Services Act of 1970 that will permit the Secretary of Transportation to make postbankruptcy loans to the D. & H. up to December 31, 1979. The findings that are waived by this amendment are not for the purpose of authorizing loans to avoid bankruptcy, but rather to authorize loans to continue normal service, if they are required for that purpose.

Mr. President, there are several additional minor amendments which we are also proposing to the House bill.

The first makes it clear that the $27.2 million authorization for fiscal year 1979 for USRA's administrative expenses is to remain available until expended, rather than until September 30, 1980.

The second is to clarify a situation that comes about from time to time on the USRA Board. When a Board member's term expires, we should allow that member to continue to participate in the affairs of the association until a successor has been appointed and aproved through Senate confirmation. This is the problem that was discussed only last week at the nomination hearings of five members of the USRA Board, including the Chairman. The Board has been under represented for over a year and without a Chairman for a little over a year. The House provision would provide for the continuity I just spoke of for only a 90-day period. Our provision would not be so limited and would allow indefinitely continued service by the Board member until his successor was approved. I would like to emphasize that both of these amendments were contained in the original Senate authorization bill that passed last spring.

The third amendment relates to section 303(a) of the Railroad Revitalization and Regulatory Reform Act of 1976, which enacted section 17(9)(f) of the Interstate Commerce Act, allowing the Interstate Commerce Commission to extend certain time limits in extraordinary situations. One prerequisite to the exercise of this power is that not less than seven of the Commissioners, by public vote, agree to the extension.

At the present time, the Commission, although authorized to be composed of 11 members, has only 7 members. Recently, Commissioner Rupert L. Murphy submitted his resignation to the President to be effective August 31, 1978. Thus, as of that date, the Commission was composed of only six members. This could render its power to extend certain deadlines a nullity since, as mentioned, the statute requires that seven members vote for the extension. Therefore, our amendment provides that extensions of

time could be granted if a majority of Commissioners by public vote agree to the extension. This would modify the existing requirement that more than a simple majority vote for an extension, but would make the statute more adaptable to situations such as presently exist.

The final proposed amendment concerns a provision for establishing the value of rail properties transferred by ConRail to any State, local, or regional transportation authority. The 900-day period established by section 206(d)(5)(C) of the Regional Rail Reorganization Act of 1973, for purposes of establishing a time period within which such value is to be determined, following conveyance, expires on Sunday, September 17, 1978. Our amendment extends the period to an even 3 years, and is made retroactive to the original effective date of the Regional Rail Reorganization Act.

Mr. President, I ask unanimous consent that a statement by the chairman of the Commerce Committee, Senator CANNON, be printed in the RECORD at this point further elaborating what I have said here.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. CANNON. Mr. President, the course of action the chairman of the Subcommittee on Surface Transportation and I are recommending to this body was determined only after we considered the views of the Delaware and Hudson, shippers served by the railroad, the Department of Transportation, the U.S. Railway Association, the Interstate Commerce Commission, the Treasury Department and various other interested parites. Among all of these parties, Mr. President, it is agreed that something needs to be done to insure the continuation of the essential rail services of the D. & H. Railroad. Senator LONG and I have worked together in developing what we believe to be the most reasonable and prudent approach to maintaining, in the event of the bankruptcy of the Delaware and Hudson Railroad, rail services during the period of time required to complete the studies of the New England rail system.

The Delaware and Hudson Railroad has been in marginal financial condition for the past 2 years. According to the data submitted by the U.S. Railway Association it has advanced to the Delaware and Hudson $27.3 million under the provisions of section 211(a) of the Regional Rail Reorganization Act of 1973 to date. We have been advised by the U.S. Railway Association that the continuing strike against the Delaware and Hudson's primary connecting railroad, the Norfolk and Western, has drastically reduced the traffic flow and cash situation of the D. & H. such that the U.S. Railway Association is presently unable to make the necessary statutory findings required by section 211(e) of the 3R Act to continue advancing funds to the D. & H. The House bill would rescue the D. & H. from imminent bankruptcy, at least during the period of time required to complete a merger or unification study, by removing the necessity for making the statutory findings to which I have just referred.

Mr. President, I believe Congress should be reluctant to set any precedent for relief to railroads if the sole purpose of such relief is avoidance of bankruptcy. In this regard, the laws of the marketplace should pertain to railroads as to any other business until there is demonstrable evidence that termination of services by the railroad is imminent and that such termination will endanger the public welfare.

Under ordinary conditions a railroad that is insolvent or unable to meet its debts as they mature may file for reorganization under section 77 of the Bankruptcy Act. The special features of section 77 are designed to keep the railroad in operation so that it can continue to provide service to the public while its financial problems are corrected. While we do not believe there is justification to disturb this section 77 process, the action being recommended to the Senate will provide further assurance to the shippers and communities served by the D. & H. Railroad that the service now being provided will continue uninterrupted during the development of the New England region rail study in the event a bankruptcy petition is filed by the D. & H. To make clear this purpose the Cannon/Long amendment directs the Secretary of the Department of Transportation to waive certain required findings to ensure that emergency rail service money is available and to preclude the necessity for expensive directed service by the Interstate Commerce Commission.

I would point out here, Mr. President, that the U.S. Railway Association, the organization which has been monitoring the D. & H. financial situation for some time now, and the Department of Transportation have taken a position recommending that Congress specifically act to ensure that rail services are continued in the event bankruptcy occurs. The Department apparently does not believe the bankruptcy of the D. & H. will disrupt the section 401 study or preclude the effective restructuring of the New England rail system.

As a policy matter, Mr. President, Congress should not set a precedent for future Federal intervention to "bail out" ailing business enterprises, even on a temporary basis, although I would emphasize that we are greatly concerned that services to affected shippers and communities are continued in spite of the event of bankruptcy.

In the event the D. & H. should file for bankruptcy, the Department and the U.S. Railway Association suggest that the D. & H. could continue operations for a limited period without assistance. In addition, there is approximately $55 million available under the Emergency Rail Services Act of 1970 which the amendment will enable the Department of Transportation to advance to the D. & H. against trustee certificates as needed to maintain essential transportation services, as an emergency and interim procedure pending completion of the USRA/DOT restructuring plans.●

Mr. MOYNIHAN. Mr. President, I thank Senators CANNON and LONG for this amendment and for acknowledging that the services of the Delaware and Hudson Railway must be preserved for New York and for the entire Northeast. I know they are concerned with the precedent that the Senate may set today for dealing with other railroads in financial trouble. The proper Senate action in the face of such trouble is a source of considerable disagreement. In this case we all agree that a competitive rail system in the Northeast ought to be preserved. D. & H. is a keystone in that system. It has for decades been a bridge carrier linking large cities and ports of the Northeast with the rest of the country. It also provides service to many rural hamlets and villages that would otherwise have none.

The question today is how to preserve the D. & H. Railway. I much prefer the answer to that question arrived at by the House. In my view, the approach taken in the House bill is superior to the amendment now being considered by the Senate. I have strong reservations about this amendment, but because of the immediate need for legislation aiding the Delaware and Hudson, I will not oppose it. But I ask my colleagues to consider the differences.

The amendment offered by the distinguished chairman of the Commerce Committee asks the railway to go into reorganization, to file a petition for bankruptcy, before any more Federal loans may be extended to it. The House bill, on the other hand, allows additional Federal loans to the railway at least until the Department of Transportation completes a thorough study of the D. & H. and the rail system in our region. That study, expected by late 1979, will recommend the restructuring or merger that would put the D. & H. and other railroads back on the track to good health.

Now I ask: Is not the House approach preferable? It allows the D. & H. to operate until the Federal study is complete. It does not bring on the disruptive and complicating factor of reorganization. A petition for bankruptcy would have, what seems to me to be, acute disadvantages:

First. It would retard quick improvement of the D. & H. operation. Any changes that the management thinks necessary would have to be approved by the trustees and the court.

Second. The future of the D. & H. would be uncertain. It is possible that the trustees of the railway, on behalf of the creditors, would not apply for new loans, precipitating a shutdown. Short of that, it will be less attractive to potential buyers or partners.

Third. It would be bad for New York. Jobs in Albany, Binghamton and Oneonta might conceivably be threatened. The State government has $25 million invested in the D. & H. That money would be in jeopardy. State taxes would not be paid in bankruptcy.

Fourth. Rail traffic would surely be diverted. Bankruptcy would carry with it the possibility of impaired service. Shippers might well turn to trucks or other railroads, including Canadian lines.

Fifth. Government expenditures might increase even further. Directed service and its high cost is not ruled out in this approach. Debt payments from D. & H. to ConRail would not be made in the short term.

It can be argued that the Delaware and Hudson is in its present state largely because of Federal action. That a transportation company could operate profitably for 150 years and be on the brink of bankruptcy after 2 years of assistance by the Federal Government is reason for pause. D. & H.'s bad fortunes are inextricably linked with the ConRail experiment. After being saddled in 1976 with 750 miles of additional track, D. & H. has struggled just to keep its head above water. The D. & H. now finds itself with twice as much railroad and a 20 percent drop in traffic.

The Government that has added to D. & H.'s trouble should be willing to help the railroad out of trouble. I believe the House bill does that better than this amendment. I implore my colleagues to go to conference with an open mind. Let the two approaches be carefully compared. I believe the merits of aiding the Delaware and Hudson outside of bankruptcy are by far the greater.

Mr. JAVITS. Mr. President, I suggest that Senator LONG submit his amendment so I can speak to that.

UP AMENDMENT NO. 1831

(Purpose: To waive some required findings for guarantee of certificates, and for other purposes)

Mr. LONG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. MOYNIHAN). The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 1831.

Mr. LONG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, strike lines 10 through 19, and insert in lieu thereof the following:

"Sec. 3. Section 3(a) of the Emergency Rail Services Act of 1970 (45 U.S.C. 662(a)) is amended by adding at the end thereof the following new sentence: "Notwithstanding any provision of this section, the Secretary in guaranteeing certificates under this section is authorized to waive the findings required by paragraphs (1), (5), and (6) of this subsection upon a finding that the guarantee of certificates is necessary in order for a railroad which has filed a petition for bankruptcy under section 77 of the Bankruptcy Act (11 U.S.C. 205) on or after September 1, 1978 to maintain services in the region (as that term is defined in section 102(15) of the Regional Rail Reorganization Act of 1973): *Provided*, That the Secretary may not make such a waiver after December 31, 1979.".

On page 2, line 1, strike all after "until" through line 2, and insert in lieu thereof "expended.".

On page 2, line 8, strike all after "qualified" through "term" on line 9.

On page 3, strike lines 1 through 4, and insert in lieu thereof the following:

"Sec. 4. (a) Section 206(d)(5)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(d)(5)(C)) is amended by striking out "900 days" and inserting in lieu thereof "3 years".

"(b) The amendment made by this Act shall be effective on January 2, 1974."

On page 3, immediately after line 4, insert the following:

"Sec. 5. Section 17(9)(f)(i) of the Interstate Commerce Act (49 U.S.C. 17(9)(f)(i)) is amended to read as follows:

"(i) a majority of the Commissioners, by public vote, agree to such further extension; and"

Mr. JAVITS. Mr. President, I wish to analyze this situation.

I think both Senator LONG and Senator CANNON are intelligent and reasonable men. The House of Representatives took a totally different approach to this, and I wish to lay on the record and for their consideration the reasons for that different approach. I hope that in conference they will listen to the other side of the story and see whether it does not really make sense.

First, I join with Senator MOYNIHAN in the feeling that, although the Senator is making a provision for continued service, it is not the best way. Continued service is important to my State and important to Pennsylvania, New Hampshire, Vermont, and to such extent as it affects them, Maryland, New Jersey, and Virginia as well.

Also Senator LONG is very experienced in business just as I am. Whenever you say you are better off going into bankruptcy, it always kind of rubs my fur the wrong way. I am sure the Senator feels the same way. It is called taking a bath in business. No one generally, in the first instance, thinks that is good business, and in this particular case, which is really a very unique situation, it certainly is not.

The Delaware & Hudson is one of the most honored railroads in the country. It has done business for over 100 years and was until recently always a solvent railroad, a successful railroad, a big interest-payer, a big taxpayer, and was generally very, very highly regarded.

The Government did it in—the U.S. Government. It was only when the U.S. Government began a new experiment in railroad management with the establishment of ConRail that the D. & H. came on very hardtimes.

The D. & H. has been struggling since then to keep its head above water. It was saddled with 750 miles of additional track in the final system plan, and was seriously hurt by a lack of friendly connections to markets in the South and Midwest. So the Government has been heavily responsible for the trouble of the railroad.

It seems to me there is at least some moral obligation for the Government to see that the railroad is not disastrously treated.

Also the D. & H. is unique in that a restructuring study, as Senator LONG has said, is already underway to determine how best to correct the initial Government planning error. Placing the D. & H. in reorganization or bankruptcy, as is contemplated by this amendment, we believe would foreclose certain planning options. I have very serious reservations about whether this is the time to foreclose options which could provide the D. & H. and the U.S. Government with the tools to develop a rational cure for the problems of Northeastern railroads.

Now, what is in prospect if the D. & H. should go into bankruptcy. I would, for the benefit of the record, and so that my colleagues may have them before them as they go into conference. I gather that on the other side in the House, which has adopted a very different approach, to wit, of keeping the D. & H. out of bankruptcy, there is also a very fervent feeling that that is the way to go. So this issue undoubtedly will be in contention.

I will say to Senator LONG that I would not dream of being irresponsible enough to hold up the bill or anything like that. Nor would I find it wise to fight with him or Senator CANNON. The issue will be in conference, and I am hoping you will take a good objective look at it.

First, it is felt there is very grave danger of traffic diversion to trucking, which is quite a feasible alternative in this particular area, or diversion to Canadian railroads, which do not have to go into bankruptcy because they are all owned by the Canadian Government, and possibly diversions to ConRail itself.

The D. & H.'s traffic mix is highly truck-competitive, I am advised, and highly susceptible to diversion, and anything which causes uncertainty or a possibility of impaired service in the mind of shippers that have that option may cause irreparable diversion of borderline traffic. Also, the Canadian railroads are in a unique position respecting competition with the D. & H. for the reason I have stated.

So, I believe that weakening the D. & H. could easily result in diverting traffic to trucks and to Canadian railroads, which means U.S. dollars and employment, and which means further harming basically this railroad which, as I say, has such an honored history in the century of its operation.

There is some effective competition between D. & H. and ConRail. For example, Sealand Service, the Nation's largest ship operator, has recently made arrangements to switch from ConRail to D. & H. to move containers west from New York. If the D. & H. goes into reorganization or bankruptcy, that large shipper might go back to ConRail, even though it is at present dissatisfied with ConRail service.

The second point is the possibility of successful merger or restructuring. I believe from what has been laid before me that the ultimate fate of the D. & H. is likely to be merger or restructuring because of inherent structural problems in the final system plan. If the railroad is in bankruptcy, it will be weaker and less attractive to potential buyers or potential partners. In addition, any transfers would have to be approved by a court and trustees, whose interests are to protect creditors and not necessarily a sound future for this particular road.

Third is the issue of crisis management. The D. & H. management has had to deal with crises day to day rather than focusing totally on developing the rail-

road, and the bankruptcy environment, even if they keep the management, only exacerbates that particular problem and, therefore, again interferes with the long-term future of this railroad.

The fourth point is the adverse effect on competition. As rail traffic generally is interrelated, if the D. & H. goes into bankruptcy and traffic is diverted to trucks or to Canadian carriers, there is bound to be a spillover effect in diversion from other Northeast railroads, none of which can afford any such diversion.

Fifth is that impaired performance, if we do have these diversions, and so forth, would call for even larger Government involvement and would make the D. & H.'s position ever more precarious.

Also there will be a short-term adverse effect on ConRail, as item 6, if the D. & H. goes into bankruptcy. D. & H. pays $800,000 monthly to ConRail for interline payments, and D. & H. owes ConRail $3 million to $4 million. Apparently there is a dispute about the amount.

Question: Will this get repaid or will the monthly payments be made which are now being paid off at $80,000 a month or about $1 million a year if it is up to a judge to decide between creditors. Will he do it or will he not?

Finally, there is the loss of property tax revenues to the local communities, and that is very serious for me and Senator MOYNIHAN, as Senators from New York, and for our colleagues from Pennsylvania, where this road is heavily concentrated.

Obviously some of these disadvantages are inherent in any bankruptcy, but I conclude, as I started, by pointing out the long and honored history of the D. & H. and the fact that it is the U.S. Government that did them in, not the D. & H. management or the D. & H. stockholders. Therefore, some equity seems to me to accrue to an objective consideration of the very opposite position taken by the House. I simply appeal to my colleagues who will be conferees, to take an approach with an open mind so that whatever resolution is arrived at is an honest and fair one and in the best interests of this system, of this particular railroad, and of the situation generally in our area.

Mr. LONG. Mr. President, we thought about the matter the Senator has discussed, and it was our thought that while it is true that conceivably it might work out better to make a loan, under section 211 to try to keep someone out of bankruptcy, than to permit them to go into bankruptcy and then move to continue the service, it was my feeling, and I know it was the feeling of the chairman of the full committee (Mr. CANNON), that we have complete and ample precedent to continue essential rail service, and we expect, in fact, we propose here, what would make it possible to continue this service.

We have plenty of precedent for that, and it does not bother us. We do not like to spend the money, but we realize service is necessary, and we are willing to provide funds. We have done it for others, and we certainly feel that the area, so ably represented by the Senators from New York and the Senators from Pennsylvania, is no less entitled to service than any other part of the country.

We are indebted to those great States for a great deal, including the independence of our country. So some of us who are Johnnie-Come-Latelies to the Independence Act—or some of our forebearers may have been in some of those States at the time some of that was getting going—surely should recognize that these people are entitled to consideration, and we expect to provide it.

The problem that it gives us to follow the procedure recommended by the House is that when we talk about making a loan to a company that represents that, if the loan is not made, they are going to go into bankruptcy, that is admittedly a very bad loan from the point of view of the security that one can expect for the loan he is making.

When you take that approach, I would assume you should anticipate that you are going to have to keep putting money behind the first loan, and in some respects you could be accused of throwing good money after bad money, just trying to forestall the inevitable. That is something we are just going to have to live with, like the eventuality of bankruptcy.

We hope that will not happen. But if it should, certainly that is not the end of all worlds. Sometimes reorganization can be worked out and be very effective. We notice that the Milwaukee Railroad went into bankruptcy last year, and it has had a very minimal traffic diversion, about 4 percent, and even that is not due to the bankruptcy; it is due to the poor service and the equipment, rather than a massive desertion of the shippers.

We hope there will not be this diversion; we hope there will be none at all. But we must recognize there is some possibility of that.

But as I say, Mr. President, when we start a practice of making loans to forestall bankruptcy, we will be asked to make others. You can handle it any way you want to; you can say it is limited, that this is a special situation and all that, but anyone who has a parallel problem will say, "Look, you did this for the Delaware and Hudson Railway, you ought to do it for us."

I think it is a bad precedent for us to say, "All right, we will make you a loan; we know it is a bad precedent from the interest of the lender to get his money back, it is very bad in that respect, but we make it because we want to continue the service."

It seems to us we would be better off to say, "If you are going to have to take bankruptcy, we would rather not, but if you are forced to do it, so be it; we will continue to put money into the service and try to get the railroad reorganized to provide the service on a more lasting basis."

But we would far prefer to pursue the course of action we have previously taken with bankrupt railroads, where someone presents us with a fact that we cannot avoid, and that is that the company is insolvent, they are required to go into bankruptcy, and we will have to pay money to continue the service.

At least that way we are dealing in an area that is thoroughly familiar to those who have handled it before, and if it has to happen, then we think we have a charted course that we can follow.

Of course, we will be glad to discuss this matter in conference with those on the House side who feel that the prebankruptcy loan would be a better approach; and we certainly are susceptible to persuasion that that might be the better approach, but we are not convinced at this point. It seems to us that we would do better if we followed the course we have followed on other occasions, when a railroad took bankruptcy and we provided funds to continue the service until a reorganization could be achieved.

Mr. DURKIN. Mr. President, I know that you (Mr. MOYNIHAN in the chair) and your colleague, Senator JAVITS, are very much interested in the situation of the D and H, but it is not just a problem of your area. It has a very severe impact, if the D and H cannot meet its obligations and carry on its service, on northern New England. It makes it much more difficult for the shippers in New Hampshire and northern New England to get adequate rail transportation. That is one of the reasons why the Northeast is facing economic difficulties, and the prognosis for the future is not good, until we fashion a balanced transportation system which is built around a viable railroad network.

We cannot compare it with other areas of the country. Even though we did get a head start at independence, we have severe economic problems, and with our energy problems and our lack of adequate transportation, it continues to lead to the economic forecast that, except for my own State of New Hampshire, which is doing very well, the long-term economic outlook for the Northeast is not good.

I would have preferred to see the House version, but this does reflect the concern, and does reflect the problem. It may not be the ideal solution, at least from my point of view it is not the ideal solution, but if it is the only solution the conference can vote for, it is the solution we have to go along with.

I am happy to see in the statements of my distinguished colleagues a recognition of the interrelated nature of our transportation problem in the Northeast. The difficulties of the Delaware & Hudson point up the need to view our rail system as a coordinated entity.

The plain fact is that any serious interruption of service on the Delaware & Hudson will have a severe effect throughout the region, further demoralizing and damaging the northeastern transportation infrastructure.

This will be a major setback to our effort to revitalize the northeastern railroads.

It will put a further drain on the other railroads in the area.

It will further complicate efforts to rationalize the northeastern rail system.

It could force the Federal Government into even more costly subsidies under a directed service order, to no one's ultimate benefit.

It will have a particularly devastating

effect on northern New England, our area depends to a large extent on the Boston & Maine Railroad for rail transportation. The Boston & Maine in its turn ships a large part of its outbound traffic over the Delaware & Hudson. Any interruption in this service would be disastrous.

The current strike on the Norfolk & Western, which is the D. & H.'s parent railroad, has worsened the longrange problems of the D. & H. Mr. President, it is not necessary to go into the sorry history of the relationship between these two railroads. Certainly the problems of the D. & H. are at least as much the result of decisions made by the Federal Government as any other factor. We cannot escape partial responsibility for the current situation.

Mr. President, there is a particular need for the Senate to act quickly on legislation that will preserve the service provided by the D. & H. without invoking the directed service authority of the Interstate Commerce Commission. Directed service is an expensive way to continue rail operations.

The amendment being considered today avoids directed service and thus is the lesser of two evils. I will not oppose it. But it is not the best solution. I concur in the remarks of the distinguished junior Senator from New York that the approach of the House bill may provide a successful long-term solution to the current problem, at less cost to the Government.

It is true that the Government does not have an obligation to keep every railroad out of reorganization regardless of circumstances. But the Government does have an obligation to remedy situations it has helped create. Beyond that, the Government does have an obligation to engage in sound transportation planning and not foreclose its options, giving the USRA the flexibility to provide loan funds to the D. & H., as the House bill does, may preserve these options and lead to a healthier railroad industry in the Northeast and throughout the country.

I believe, therefore, that the preferable course in this matter is to encourage the USRA to provide further interim funds to the Delaware & Hudson, at least until such time as the Department of Transportation completes the study of the D. & H. problem that is now underway. This study will give the executive branch, the Congress, and others the facts needed to make a sensible longrange conclusion. Premature bankruptcy proceedings would only make this type of long-range planning more difficult.

Mr. President, I commend the efforts of the chairman of the Surface Transportation Subcommittee. I know he realizes this is a real problem. I know he believes that we cannot hand out Federal money with just a handshake, and I do appreciate all the effort and time he personally has put into trying to resolve this very real problem for a good substantial portion of the Northeast, and I commend the distinguished subcommittee chairman, and yield the floor.

Mr. HEINZ. Mr. President, first I would like to commend the chairman of the Commerce Committee and the chairman of the Surface Transportation Subcommitte for what I think is a very well-intentioned, certainly a laudable, interest in maintaining the health of our Nation's railroads. I think they really do show through this amendment, even though I do not agree entirely with the way the amendment will operate, an understanding of and a sensitivity to the basic problems that the Midwest and the Northeast face as a result of the very difficult troubles the railroads have experienced over the years.

I think they do fully understand that the Delaware & Hudson Railroad, for example, is a victim. It is a victim of the fact that when the Congress created, through the Regional Rail Reorganization Act of 1973, ConRail, there were some bits and pieces left over, and those bits and pieces were given to the Dela ware & Hudson. They really did not have a whole lot of say in the matter. And then, after we gave those bits and pieces to the D. & H., we established, with a lot of Federal assistance, an entity to compete with it—to compete with it with Federal funds, and that entity is ConRail.

I know there is a difference of opinion here between us as to how we may best avoid additional problems and how we may best protect the taxpayer. As I understand the proposal that the Senators have made. it is that additional loans, loan guarantees, or other financial assistance would only be forthcoming after bankruptcy. This proposal would to a certain extent assure the continuation of rail service—service which is absolutely vital to the Northeast.

My problem with that approach is it does not insure that there will be a railroad entity around ultimately that could be a part of the solution to the question of restructuring the railroads of the Northeast, rather than part of the problem. I would hope, since there is a difference of opinion among us—not as to our objectives but as to the way of accomplishing those objectives—that when the Senate goes to conference with the House with the Long-Cannon amendment that the conferees will at least keep an open mind to the House language which does differ and which is similar to the approach I am inclined to favor, as I believe the advocates of this amendment know.

I join my colleagues from New York and New Hampshire in their concerns about the proposed amendment, in their strong preference for the bill as presently written, and offer them my sincere gratitude for their efforts to insure the continued viability of the Delaware and Hudson Railway.

The Delaware and Hudson is vital not only to the economy of New York, New Hampshire, and Pennsylvania, but also to the entire Northeast. We must preserve this crucial railroad in order to avoid the economic strangulation of the areas served by it. It is impossible for us to put ourselves in the position of those manufacturers and cities in the Northeast which absolutely depend on the D. & H. to receive their raw materials and to ship their products. These manufacturers and cities face isolation and economic disaster if we cut off the vital lifeline of rail service. Thus, I urge my colleagues to take steps to insure that the Delaware and Hudson continues to thrive.

It is important that the D. & H. is one of the major and, in fact, few competitors with ConRail in the Northeast. I assert that it is very poor planning to allow a competitor to go into bankruptcy. It is only through competition that service in any industry can be maintained and improved. ConRail is an excellent example of this. Presently it has a virtual monopoly on rail service in the Northeast and this service has been inadequate and at times almost nonexistent. In fact, as we all know, the U.S. Railway Association and the Federal Railroad Administration are both presently undertaking studies concerning the advisability of dividing ConRal into competitive entities in order to encourage the kind of rail service and rail system which is essential to the national economy. We must provide assistance to the D. & H. because it may be the most important starting point for the creation of a rail system which is competitive with ConRail.

Under the plans which will eventually be issued by USRA and the FRA, the ultimate fate of the D. & H. is likely to be merger or restructuring, because of inherent structural problems resulting from the final system plan. If the railroad is in reorganization it will be weaker and less attractive to potential buyers or partners. In addition, any transfers would have to be approved by the court and trustees, whose interests are the protection of creditors and not sound transportation planning for the future.

Bankruptcy will be disastrous to the D. & H., because even if Emergency Rail Service Act money were available to continue service, bankruptcy will result in significant diversion of traffic to trucks, to Canadian railroads, and possibly to ConRail. Compared to other railroads, the D. & H.'s traffic mix is highly truck competitive and susceptible to diversion. Any event which causes uncertainty or a possibility of impaired service in the mind of shippers will be enough to cause irreparable diversion of borderline traffic.

Similarly, the Canadian railroads are in a unique competitive position with the D. & H. Any event weakening the D. & H. will easily divert traffic and consequently U.S. dollars and employment to Canadian railroads.

Finally, I totally agree with my colleague from New York that there will be an adverse short term effect on ConRail if the D. & H. goes into reorganization. As Senator Javits mentioned the D. & H. pays $800,000 to ConRail every month for interline payments. In addition, D. & H. owes ConRail a debt of between $3 and $4 million which might not be repaid if the D. & H. goes into reorganization bankrupt. This debt is now being paid off at $80,000 per month or about a million dollars a year.

Some of these factors are inherent in any reorganization and I am not suggesting that the Government ought to step in to bail out every railroad that is on the verge of bankruptcy.

However, the D. & H. is unique in that many of its problems are a result of the creation of ConRail, as I discussed above, it is also important that a restructuring study is already underway to determine how best to correct the initial Government planning error. Placing the D. & H. in reorganization would foreclose certain planning options. Now is not the time to foreclose options which could provide the D. & H. and the Government with the tools to develop a rational cure to the problems of the D. & H.

The fact that the Senate is considering this amendment shows a recognition of the necessity to preserve the services provided by the D. & H. I am suggesting that because of the unique circumstances of the D. & H. Government money can be more fruitfully used to keep the D. & H. out of reorganization. When the Senate members go to conference on this bill, I urge that they have an open mind and consider carefully the advantages and disadvantages of the various means of furthering the Nation's rail transportation system while at the same time protecting our tax dollars. I firmly believe that providing assistance now to the Delaware and Hudson before it is forced into bankruptcy is in the long run the optimal way of achieving both of these goals.

Mr. LONG. Mr. President, let me just point out that we organized ConRail from seven bankrupt railroads. We are putting a lot of money into it. We have hopes that this is going to provide a major, viable, successful railroad. I, for one, have very high hopes for ConRail, for one thing because ConRail now has an employee stock ownership plan which I think will tend to increase the productivity of workers.

We have demonstrated that we do not want this very important segment of our Nation to be without adequate service. Just as we provided funds to go forward with ConRail, if need be we would expect we would do the same thing in this area. It is certainly a judgment matter whether we should use a procedure we have used on more than one occasion, I might say, or whether we would go to the kind of procedure that is suggested here.

Our thought is that if the Congress is to start saying to anyone, even to a railroad providing an essential service, "We are going to make you a loan because we think if we do not make you a loan you are likely to go into bankruptcy," that will create a great deal of problems that will not be created if we take the other approach, which we have done with regard to ConRail and others.

I would hope, Mr. President, that the Senate would trust us to work out this matter in a way we believe will best continue the service, protect the public interest, and, hopefully, not create any more precedents than we have to to meet this problem.

● Mr. LEAHY. Mr. President, I would first like to say that I support the amendment now before the Senate which allows loans to be extended to the Delaware and Hudson Railroad, at least for a limited period of time.

The fact that the Senate is considering this amendment shows a recognition of the necessity to preserve the services provided by the Delaware and Hudson.

I am also aware that there is an alternative approach being taken in the House.

That approach would also result in the extending of loans to the Delaware and Hudson, but it would not require that the Delaware and Hudson file for reorganization under section 77 of the Bankruptcy Act.

I would like to urge that, when the Senate Members go to conference on this bill, they have an open mind and consider carefully both the advantages and disadvantages of these two alternative approaches.●

The PRESIDING OFFICER. The question is on agreeing to the amendments, en bloc.

The amendments were agreed to, en bloc.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 10898), as amended, was ordered to a third reading, was read the third time, and passed.

Mr. LONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LOCKING UP ALASKA?

Mr. STEVENS. Mr. President, recently the Albuquerque Tribune printed an editorial entitled "Locking up Alaska?" As the article pointed out, H.R. 39 would, at one stroke, double the size of this country's national parks by creating 10 new ones and enlarging 3. Although that might sound like a grand idea, the editorial goes on to point out that there is something quite disturbing about the bill, "it is opposed by Alaska's Governor, two Senators, lone Congressman, all of the State's legislators, and most businessmen and Indian and Eskimo leaders."

Mr. President, I have been talking for some time now about why most Alaskans oppose H.R. 39. They do feel that they are the victims of an environmentalist landgrab orchestrated by Washington. This is a landgrab which threatens the very lifestyle of Alaskans.

We did agree to a review by Congress of "up to 80 million acres" of Alaska's Federal lands for the four park systems. We did not agree to over 100 million acres. We did not agree to a wilderness designation which bypasses the 1964 Wilderness Act that has applied to the rest of the United States. It is my hope that we can come to a reasonable resolution of this dilemma.

I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LOCKING UP ALASKA

By the overwhelming vote of 277 to 31, the House of Representatives passed the bitterly disputed Alaska land bill last week, giving conservationists a great victory.

The bill would designate 102 million acres of federal land in Alaska, the size of the entire state of California, as national parks, wilderness area, wildlife refugees, national forests and scenic rivers.

At one stroke the bill would double the size of this country's national parks by creating 10 new ones and enlarging three. As a conservation measure it ranks in importance with the establishment of the first national park—Yellowstone—in 1872 and the founding of the national forest system under Theodore Roosevelt.

At the same time there is something quite disturbing about the bill: It is opposed by Alaska's governor, two senators, lone congressman, all of the state's legislators and most businessmen and Indian and Eskimo leaders.

In other words, the people who know Alaska best feel they are the victims of an environmentalist "land-grab" orchestrated by Washington.

Most of their fire is against the 66 million acres that would be preserved as wilderness. No structure could be built on this land, no commerce conducted, no roads laid out. Motor vehicles and airplanes would be barred. In practice the lands would be open only to the most rugged backpackers and canoeists.

Moreover, no one knows whether those lands contain oil, natural gas or valuable minerals, and no one would find out because prospecting would be forbidden.

Among the off-limits land is the Arctic Wildlife Range, which is near Prudhoe Bay, site of the vast oilfield that is sending a million barrels of crude a day to the lower 48 states.

The wildlife range is thought to contain more oil than Prudhoe Bay. But again, if the bill passes in the present form, we may never know. That could be a disaster for a nation that now is sending its wealth abroad for imported oil.

Also, much of the wilderness land surrounds or is adjacent to the 44 million acres that Congress gave to Alaska's native peoples. Thus Eskimos and Indians would be prevented from developing their own land and raising their standard of living.

MR. AGRAFIOTIS ILLUMINATES THE CYPRUS SITUATION

Mr. DURKIN. Mr. President, many times I have taken the floor to comment on the Cyprus situation and to express my strong concern over the plight of the Greek Cypriot refugee population. I would now like to share with you the firsthand report of Peter Agrafiotis, a Manchester resident, who traveled to Cyprus at his own expense to study the refugee situation. I believe that Mr. Agrafiotis provides an illuminating report which serves as further evidence of the need for continued U.S. support of the Greek Cypriots.

Mr. President, I ask unanimous consent that the article by Mr. Agrafiotis which was published in the Manchester Union Leader be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TURKS INVADED CYPRUS FOUR YEARS AGO TODAY

(By Peter J. Agrafiotis)

(Peter J. Agrafiotis, former Manchester advertising and public relations executive, assisted in raising money to aid the Greek community on Cyprus and traveled to Cyprus at his own expense to confer with officials responsible for care of the refugees. Ed.)

RYE BEACH.—On July 20, 1974, four years to this day, the peaceful island of Cyprus was invaded by a horde of 40,000 Turkish Army, Navy and air fighting forces with a ferocity unparalleled since the dark ages, and the rape of Cyprus which followed astounded the entire civilized world.

The bloodthirsty invaders expelled 200,000 Greek Cypriots from their properties and homes.

Fifty thousand homes were plundered and destroyed.

Five thousand families lost their breadwinners.

One child in every 125 became an orphan.

The Greek Cypriot population in the invaded areas was exterminated by indiscriminate and savage killing of old men, women, and children, and hundreds of women and girls were raped.

Those who survived the initial onslaught were either forcibly driven out of their homes and the occupied areas, or taken prisoner and thrown in concentration camps to rot and die under inhuman conditions.

One-quarter of the entire Greek-Cypriot population was killed or missing, a percentage unequaled in recent history, and, the homes and properties of the Greek Cypriots, valued at billions of dollars, were confiscated and systematically and thoroughly looted.

REPORTS VERIFIED

The reports which reached the outside world in the days and months following the invasion were substantiated and verified by members of the world media and by hundreds of teams representing scores of countries.

What at first appeared sheer propaganda to obtain world support for their cause turned out to be the utter, unadulterated truth. And the people responded with aid for the 200,000 homeless who were driven from their homes on July 20 with only the clothes on their backs, and some precious belongings in their hands.

Here in New Hampshire, William Loeb, publisher of the Manchester Union Leader and the New Hampshire Sunday News, set into motion a fund-raising drive to aid the Greek Cypriot refugees. With a generosity typical of the publisher and his newspapers, Loeb started off the drive with a contribution of $1,000 on the part of Mrs. Loeb and himself.

The drive, which was announced as one of short duration in order to provide needed help before the advent of the winter, raised some $15,000 in cash and approximately $5,000 worth of medicines.

After determining priorities and needs, the money from the New Hampshire contributors was used to buy more than 1,500 pairs of shoes for children of two refugee camps, and winter coats for 900 elderly men and women.

LASTING NIGHTMARE

What appeared on that fateful day, July 20, 1974, as a temporary invasion which would have an early end because of world pressure upon the Turks, turned out to be a lasting nightmare.

Neither world opinion, nor pressure from the United States, upon which Turkey relies for almost its entire military arms, munitions, planes, and money to maintain its military might, had any effect on Turkey. expect for token withdrawal of some forces, a large percentage of the invading forces is still on the island. In addition, thousands of Turkish families have been moved from the mainland to occupy the homes which became vacant when the Greek Cypriots were driven out.

V-Cyprus, and the world, eagerly awaited the elected of Jimmy Carter, and his promise to right a situation which many leading figures believe, was trigged by then Secretary of State Henry Kissinger. Kissinger, many believe, was fully aware of the contemplated invasion of Cyprus, and could have stopped it on the high seas.

PAYING LIP SERVICE

Carter has been accused of paying only lip service to the tragic human rights problem which exists in Cyprus. For a time, he went along with the Turkish Arms Embargo, about the only weapon this country has over Turkey.

But now President Carter has called it quits. Failing to obtain any concession on the part of the Turks, he is now lobbying to have the theory that a "Strong Turkey is also good for Greece and NATO."

Mary McGrory, Washington feature writer whose column appears in the Boston Globe and scores of other newspapers throughout the country, stated recently that Carter is the "chief lobbyist" for the dubious cause of lifting the arms embargo. Carter apparently feels that Turkey has been "punished enough" for using U.S. arms to invade Cyprus in 1974.

Supporters of lifting the arms embargo feel and Turkey, "a sulking member" of NATO since the arms embargo was imposed, will be easier to live with if she gets all the arms and financial support she needs from the American people.

But the question which neither President Carter, nor all his spokesmen who campaign on behalf of lifting the embargo, has failed to answer is: "What if Turkey uses the arms provided by the United States to again invade Cyprus, or even Greece, for Greece, too is shy of military hardware?"

The President of the United States cannot answer that question with an emphatic negative. After his experiences with the intransigence of Turkey and its representatives, and Turkey's many broken promises, he could not even answer with an "I hope not" statement.

MRS. McDERMOTT ELECTED VFW AUXILIARY NATIONAL PRESIDENT

Mr. DURKIN. Mr. President, on August 25, 1978, Mrs. Arlene McDermott became the 64th national president of the Ladies Auxiliary of the Veterans of Foreign Wars. Because this organization is most highly respected by the U.S. Senate, those of us who are from New Hampshire take exceptional pride in Arlene's election. She is the first "Granite State" woman to be named head of the National VFW Auxiliary.

As president, Arlene McDermott is committing the tremendous efforts, skills, and strength of the auxiliary's 600,000 membership to "Building America Today for Tomorrow." Through patriotic and service program accomplishments, Arlene pledges to restore national confidence and renewed faith in our American ideals.

Mrs. McDermott is a remarkable woman, more than qualified to meet the challenging demands and responsibilities before her. As president of the New Hampshire State organization, from 1960 to 1961, she proved to be a dynamic leader. At national level positions, in the VFW Auxiliary, over the past 5 years, she has been tremendously effective, drawing upon her tireless efforts and dedicated concern, in getting a good job done.

Thirty years ago Mrs. Robert McDermott joined the Concord VFW Auxiliary Post 1631. Now, as the national organization's president, she is receiving great honor while bringing far more to this country, her family, friends, and home State of New Hampshire.

Mr. President, I take this opportunity to allow my Senate colleagues to join me in congratulating and wishing the very best to Arlene McDermott.

ORDER FOR RECESS FROM FRIDAY, SEPTEMBER 15, 1978, TO MONDAY, SEPTEMBER 18, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, it stand in recess until the hour of 12 noon on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER LIMITING LEADERSHIP TIME TO 3 MINUTES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the leadership time in the morning be limited to 3 minutes for each leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL ORDERS FOR TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow morning Mr. PROXMIRE be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unnanimous consent that following Mr. PROXMIRE on tomorrow, Mr. CHAFEE and Mr. DANFORTH be recognized each for not to exceed 15 minutes, with the understanding that the two leaders or their designees would have up to 3 minutes each prior to the consummation of any of the orders for the recognition of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF SMALL BUSINESS LEGISLATION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I believe the Senate should proceed in the morning to take up on a double track H.R. 11318, an act to amend the Small Business Act and the Small Business Investment Act of 1958 and, of course, with the understanding that was entered into today that any time a Senator wishes to be recognized in connection with the natural gas conference report he will be recognized, the double track will immediately evaporate, and we will be back on the conference report. This would waive the leadership time, Mr. President.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of the leaders or their designees under the order just entered, and the special orders for the recognition of Mr. PROXMIRE, Mr. CHAFEE, and Mr. DANFORTH the Senate proceed to the consideration of H.R. 11318, an act to amend the Small Business Act and the Small Business Investment Act of 1958.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROLLCALL VOTES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I would anticipate rollcall votes on tomorrow. It will be the desire of the leadership, where possible, within the constraints of the agreement entered into earlier today with respect to the natural gas conference report, to proceed to other business on tomorrow, which would certainly move the Senate in the direction of the completion of its total workload as early as possible. That being the case, rollcall votes can occur at any time on such matters.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9:30 a.m. tomorrow.

The motion was agreed to; and at 7:09 p.m., the Senate recessed until Friday, September 15, 1978, at 9:30 a.m.

NOMINATION

Executive nomination received by the Senate September 14, 1978:

NATIONAL RAILROAD PASSENGER CORPORATION

Mr. Athalie Range, of Florida, to be a member of the board of directors of the National Railroad Passenger Corporation for a term expiring July 18, 1981, vice Mary J. Head, term expired.

HOUSE OF REPRESENTATIVES—*Thursday, September 14, 1978*

The House met at 10 a.m.

Rabbi Joseph Renov, Kesher Zion Congregation, Reading, Pa., offered the following prayer:

Our G-d and G-d of our fathers: bless our country, the United States of America, because its President and the Members of Congress exercise just and rightful authority, administering all affairs of state justly and equitably. Instruct them in Thy law that peace and security, happiness and prosperity, right and freedom, shall forever abide among us. Unite all our citizenry, whatever their origin or creed, into a bond of true brotherhood, to banish hatred and bigotry, thus safeguarding our ideals and free institutions, this country's crowning glory.

May Camp David under Thy providence, lead to Messiah Ben David, that nation shall not lift up sword against nation, nor men learn war anymore. Then shall all men know and bless Thee, O L-rd. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

Mr. MOTTL. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

The question is on the approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. MOTTL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 336, nays 12, answered "present" 4, not voting 80, as follows:

[Roll No. 773]

YEAS—336

Abdnor	Cunningham	Hanley
Addabbo	D'Amours	Hannaford
Akaka	Daniel, Dan	Hansen
Alexander	Daniel, R. W.	Harkin
Andrews, N.C.	Davis	Harris
Andrews, N. Dak.	de la Garza	Harsha
	Delaney	Hawkins
Annunzio	Dent	Hefner
Applegate	Derrick	Hightower
Archer	Derwinski	Hillis
Ashbrook	Devine	Hollenbeck
Ashley	Dickinson	Holt
Aspin	Dicks	Holtzman
AuCoin	Dodd	Horton
Badham	Dornan	Howard
Bafalis	Drinan	Hubbard
Baldus	Duncan, Oreg.	Hughes
Barnard	Duncan, Tenn.	Hyde
Baucus	Early	Ichord
Bauman	Eckhardt	Ireland
Beard, R.I.	Edgar	Jeffords
Beard, Tenn.	Edwards, Ala.	Jenkins
Bedell	Edwards, Calif.	Jenrette
Benjamin	Edwards, Okla.	Johnson, Calif.
Bevill	Eilberg	Johnson, Colo.
Biaggi	Emery	Jones, N.C.
Bingham	English	Jones, Okla.
Blanchard	Erlenborn	Jones, Tenn.
Blouin	Ertel	Jordan
Boggs	Evans, Colo.	Kastenmeier
Boland	Evans, Del.	Kazen
Bolling	Evans, Ga.	Kelly
Bonior	Evans, Ind.	Kemp
Bonker	Fascell	Keys
Brademas	Fenwick	Kildee
Breckinridge	Findley	Kindness
Brinkley	Fish	Kostmayer
Brodhead	Fisher	Krebs
Brooks	Fithian	LaFalce
Brown, Calif.	Flippo	Lagomarsino
Brown, Ohio	Flood	Latta
Broyhill	Florio	Le Fante
Buchanan	Flynt	Lederer
Burgener	Foley	Lent
Burke, Mass.	Ford, Tenn.	Levitas
Burleson, Tex.	Fowler	Livingston
Burton, John	Fraser	Lloyd, Tenn.
Burton, Phillip	Frey	Long, La.
Butler	Fuqua	Long, Md.
Carney	Gammage	Lott
Carr	Gaydos	Lujan
Carter	Gephardt	Luken
Cavanaugh	Gilman	Lundine
Cederberg	Ginn	McClory
Chappell	Glickman	McFall
Clausen, Don H.	Gonzalez	McHugh
	Goodling	Madigan
Clay	Gore	Maguire
Cleveland	Gradison	Mahon
Cohen	Grassley	Mann
Coleman	Green	Markey
Collins, Ill.	Gudger	Marks
Collins, Tex.	Guyer	Marriott
Conable	Hagedorn	Martin
Conte	Hall	Mathis
Corcoran	Hamilton	Mattox
Corman	Hammer-schmidt	Mazzoli
Cornell		Metcalfe
Meyner	Quillen	Steers
Mikulski	Rahall	Stockman
Mikva	Railsback	Stratton
Miller, Ohio	Rangel	Studds
Mineta	Regula	Stump
Minish	Reuss	Symms
Mitchell, N.Y.	Rhodes	Taylor
Moakley	Richmond	Thompson
Moffett	Rinaldo	Thone
Mollohan	Risenhoover	Thornton
Moore	Roberts	Traxler
Moorhead, Calif.	Robinson	Trible
	Rodino	Tucker
Moorhead, Pa.	Roe	Udall
Mottl	Rooney	Ullman
Murphy, Ill.	Rose	Vander Jagt
Murphy, N.Y.	Rosenthal	Vanik
Murphy, Pa.	Rostenkowski	Vento
Murtha	Rousselot	Volkmer
Myers, Gary	Rudd	Waggonner
Myers, John	Russo	Walgren
Myers, Michael	Ryan	Walsh
Natcher	Santini	Wampler
Neal	Satterfield	Watkins
Nedzi	Sawyer	Weaver
Nichols	Scheuer	Weiss
Nix	Schroeder	Whalen
Nowak	Schulze	White
O'Brien	Sebelius	Whitehurst
Oakar	Seiberling	Whitley
Oberstar	Sharp	Whitten
Obey	Shuster	Wilson, Tex.
Ottinger	Sikes	Winn
Panetta	Simon	Wirth
Patten	Sisk	Wolff
Patterson	Skelton	Wright
Pattison	Slack	Wydler
Pease	Smith, Iowa	Wylie
Pepper	Smith, Nebr.	Yates
Perkins	Snyder	Yatron
Pickle	Spence	Young, Fla.
Poage	St Germain	Young, Mo.
Preyer	Staggers	Zablocki
Price	Stangeland	Zeferetti
Pritchard	Stanton	
Pursell	Steed	

NAYS—12

Brown, Mich.	Lloyd, Calif.	Shipley
Coughlin	Mitchell, Md.	Steiger
Forsythe	Pike	Walker
Jacobs	Quayle	Wilson, Bob

ANSWERED "PRESENT"—4

Bennett	McEwen	Moss
Danielson		

NOT VOTING—80

Ambro	Byron	Fary
Ammerman	Caputo	Flowers
Anderson, Calif.	Chisholm	Ford, Mich.
	Clawson, Del	Fountain
Anderson, Ill.	Cochran	Frenzel
Armstrong	Conyers	Garcia
Beilenson	Cornwell	Giaimo
Bowen	Cotter	Gibbons
Breaux	Crane	Goldwater
Broomfield	Dellums	Harrington
Burke, Calif.	Diggs	Heckler
Burke, Fla.	Dingell	Heftel
Burlison, Mo.	Downey	Holland

Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a "bullet" symbol, i.e., ●

Huckaby	Michel	Skubitz
Kasten	Milford	Solarz
Krueger	Miller, Calif.	Spellman
Leach	Montgomery	Stark
Leggett	Nolan	Stokes
Lehman	Pettis	Teague
McCloskey	Pressler	Treen
McCormack	Quie	Tsongas
McDade	Rogers	Van Deerlin
McDonald	Roncalio	Waxman
McKay	Roybal	Wiggins
McKinney	Runnels	Wilson, C. H.
Marlenee	Ruppe	Young, Alaska
Meeds	Sarasin	Young, Tex.

So the Journal was approved.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirdon, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On August 18, 1978:

H.J. Res. 682. Joint resolution to provide for the designation of a week as "National Lupus Week";

H.J. Res. 946. Joint resolution to designate October 7, 1978, as "National Guard Day"; and

On August 20, 1978:

H.J. Res. 963. Joint resolution designating July 18, 1979, as "National P.O.W.-M.I.A Recognition Day."

H.R. 2777. An act to provide for consumers a further means of minimizing the impact of inflation and economic depression by narrowing the price spread between costs to the producer and the consumer of needed goods, services, facilities, and commodities through the development and funding of specialized credit sources for, and technical assistance to, self-help, not-for-profit cooperatives, and for other purposes; and

H.R. 10787. An act to authorize appropriations for activities and programs carrried out by the Secretary of the Interior through the Bureau of Land Management.

On August 28, 1978:

H.R. 10732. An act to authorize appropriations to carry out the Fishery Conservation and Management Act of 1976 during fiscal year 1979, to provide for the regulation of foreign fish processing vessels in the fishery conservation zone, and for other purposes; and

H.R. 11579. An act to designate the Veterans' Administration center located at 1901 South First Street, Temple, Texas, as the "Olin E. Teague Veterans' Center"; and for other purposes.

On September 8, 1978:

H.R. 3532. An act to amend chapter 639 of title 10, United States Code, to enable the Secretary of the Navy to change the name of a publication of the Naval Observatory providing data for navigators and astronomers;

H.R. 7161. An act to amend title 10, United States Code, to allow nationals, as well as citizens, of the United States to participate in the Junior Reserve Officers' Training Corps program;

H.R. 7162. An act for the relief of Stephanie Johnson;

H.R. 8471. An act to authorize the Governor of the State of Wyoming to exhibit the nameplate, ship's bell, and silver service of the U.S.S. *Wyoming* without restriction as to the place of such exhibition;

H.R. 12602. An act to authorize certain construction at military installations for fiscal year 1979, and for other purposes;

HR. 13235. An act for the relief of James Thomas Lantz, Jr., David D. Bulkley, and Arthur J. Abshire; and

H.R. 13467. An act making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes.

On September 10, 1978:

H.R. 8397. An act to provide that a certain tract of land in Pinal County, Arizona, held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation.

On September 11, 1978:

H.R. 185. An act to amend section 2632 of title 10, United States Code, to provide the Secretary of the department in which the Coast Guard is operating with the authority to transport Coast Guard employees to and from certain places of employment; and

H.R. 12106. An act to amend the Independent Safety Board Act of 1974 to authorize additional appropriations.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 1103. An act to permit States the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due the State; and

S. 2556. An act to change the name of the District of Columbia Bail Agency.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 3259. An act to authorize the permanent establishment of a system of Federal Information Centers.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1445. An act conferring jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Cmdr. Edward White Rawlins, U.S. Navy (retired); and

H.R. 9370. An act to provide for the development of aquaculture in the United States, and for other purposes.

TYPICAL DISPLAY OF POLICE STATE TACTICS IN SOUTH AFRICA

(Mr. MAGUIRE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAGUIRE. Mr. Speaker, in a typical display of police state tactics, the Government of South Africa, on the eve of the first anniversary of the death at the hands of the security police of black leader Steve Biko, arrested and detained without trial or charges Mr. Biko's sister, Mrs. Nobandile Mvovo; the brother-in-law of Mr. Biko, Mr. Mxolisi Mvovo; and the following nine of Mr. Biko's close associates: Ms. Thoko Mpumlwana, Mr. Silumko Sokumta, Ms. Pumla Simanga. Ms. Choleka Mbilini, Fymbathile Mbilini, Mr. Mzwekhe Mbilini, another member of the Mbilini family, Ms. Thenjiwe Mthinkso, and Mr. Farius Mgkong.

On the following day, the very day that Steve Biko died 1 year ago after being fatally assaulted by the police the government arrested Steve Biko's brother, Mr. Khaya Biko, and two of his close associates, Mr. Malusi Mpumlwana and Mrs. Nohle Mohapi. Such cruel, perverse, and insensitive actions by the state are all too customary in South Africa and make a mockery of the rule of law.

Mr. F. J. VanWyck, director of the South African Institute of Race Relations said:

> The action taken against Biko's sister and her associates adds considerably to the burden borne by a family that has already suffered greatly at the hands of the police.

The Rand Daily Mail and our Department of State also criticized the arrests.

In addition, some days ago Nthato Motlana was banned from even addressing a university audience. He is one of South Africa's foremost black leaders.

I call upon the Government of South Africa to state the reasons for this ban and these arrests.

With respect to the arrests of the 14 family members, friends, and associates of Mr. Biko, I call upon the South African authorities to make public: When the persons will be brought to court, the nature of the charges, the state of health, and the place of detention of each person.

THE NOISY AIRCRAFT BILL

(Mr. VANIK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, in a few moments when we get to the noisy aircraft bill, title II, of the Ways and Means Committee will be offered as a substitute. I am going to ask my colleagues in the House to vote against that motion so that we can prevent the giving of $4 billion in this very reckless way without any accountability to the airlines of the United States.

I say that I also want Members to check out the statement that I made last night, that about $1 billion of the funds that are going to be made available under this bill to foreign airlines, all of them that fly into the United States, including Aeroflot, Korean Airlines, and all the others.

If we succeed in that, the next effort will be to strike title III of the public works bill that does the same thing in another way.

I think it is time to deregulate the airlines, but it is also time to uncouple the airlines of the United States from the Federal Treasury.

TECHNOLOGY TRANSFER BAN ACT OF 1978

(Mr. WOLFF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLFF. Mr. Speaker, I rise this morning to speak in support of the Technology Transfer Ban Act of 1978.

This is much needed legislation. It would give to the Congress, at long last, a central role in determining how much and what kind of technology can be

transferred to Communist countries. In recent years many sales of high technology equipment, or even entire industrial plants have been sold to the Soviet Union. The mechanisms in the executive branch which were to see that no equipment with military or intelligence application have not worked satisfactorially. In my judgment, there have been countless examples of technology transfers which have blatant military, police, or intelligence-gathering potential. It is time that the Congress have something to say in this process, that Congress be able to veto those transfers which have such potential.

This legislation would do just that. Patterned after the Arms Export Control Act, this legislation would require the President to notify Congress of any approval of a license for the export of goods or technology to such countries. Congress would have 30 days to veto the license.

The debate on this issue has been intense in recent months with tension created by the dissident trials, and other human rights-related matters. I applauded the President's action to cancel the sale of computer equipment to Tass, but in the present role allowed Congress, all I could do was to urge him to cancel it, and stand on the sidelines and applaud when he did. Had this legislation been in effect when the President approved the sale of drilling bits to the Soviet Union, it is likely that it would not have gone through. It is proper that the people of this Nation should have some say in this matter of vital importance. We cannot rely on the hope that we will always have officials in the Commerce and State Departments, and in the White House, who are concerned with the potential of technology transfer, and human rights. The Congress must have a say in this matter.

INTRODUCTION OF THE TECHNOLOGY TRANSFER BAN ACT OF 1978

(Mr. ICHORD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ICHORD. Mr. Speaker and Members of the House, the chairman of the Committee on Armed Services, the gentleman from Illinois (Mr. PRICE), and I have joined with the gentleman from Ohio (Mr. Miller), the gentleman from New York (Mr. WOLFF), and others in introducing the bill just discussed by the gentleman from New York (Mr. WOLFF) and the gentleman from Ohio (Mr. MILLER) because of the bitter, acrimonious debate which has been going on within the administration about the transfer of technology. This is nothing new to this administration. It occurred in the Ford administration; it also occurred in the Nixon administration.

In any event, Mr. Speaker, the reports have shown that it is high time that we establish a policy for the transfer of technology, particularly to the Soviet Union.

Therefore, Mr. Speaker, I would urge all of the Members of the House to join in the introduction of this legislation.

AIRPORT AND AIRCRAFT NOISE REDUCTION ACT

Mr. ANDERSON of California. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8729) to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. ANDERSON).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 8729, with Mr. STUDDS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Wednesday, September 13, 1978, the Clerk had read through line 23 on page 43.

AMENDMENT OFFERED BY MR. ULLMAN

Mr. ULLMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ULLMAN: Strike sections 301 through 304 and insert in lieu thereof:

TITLE III—CHANGES IN TAXES ON TRANSPORTATION BY AIR; CREDITS OR REFUNDS FOR RETROFITTING AND REPLACING NOISY AIRCRAFT

SEC. 301. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Noisy Aircraft Revenue and Credit Act of 1978".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 302. CHANGES IN TAXES ON TRANSPORTATION OF PERSONS BY AIR.

(a) TAXES RELATED TO RETROFITTING AND REPLACING NOISY AIRCRAFT.—Part I of subchapter C of chapter 33 (relating to transportation of persons by air) is amended by inserting after section 4261 the following new section:

"SEC. 4261A. TAXES RELATED TO RETROFITTING AND REPLACING NOISY AIRCRAFT.

"(a) IN GENERAL.—There is hereby imposed upon the amount paid for taxable transportation (as defined in section 4262) of any person a tax equal to 2 percent of the amount so paid. In the case of amounts paid outside of the United States for taxable transportation, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States.

"(b) SEATS, BERTHS, ETC.—There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation and with respect to which a tax is imposed by subsection (a), a tax equal to 2 percent of the amount so paid.

"(c) USE OF INTERNATIONAL TRAVEL FACILITIES.—

"(1) IMPOSITION OF TAX.—There is hereby imposed a tax upon any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins in the United States. This paragraph shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

"(2) AMOUNT OF TAX.—The amount of tax imposed by paragraph (1) shall be—

"(A) if the amount paid referred to in paragraph (1) is less than $100, $2, or

"(B) if the amount paid referred to in paragraph (1) is $100 or more, $10.

"(d) LIABILITY FOR TAX.—

"(1) TAXES IMPOSED BY SUBSECTIONS (a) AND (b).—The taxes imposed by subsections (a) and (b) shall be paid by the person furnishing transportation by air.

"(2) TAX IMPOSED BY SUBSECTION (c).—The tax imposed by subsection (c) shall be paid by the person furnishing the transportation by which the traveler departs the United States.

"(e) TAXES SHALL BE SEPARATELY STATED.—The amount of any tax imposed by this section—

"(1) shall be passed through to the person paying for the transportation, and

"(2) shall be stated separately from the amount paid for the transportation.

"(f) COORDINATION OF PAYMENT, COLLECTION, ETC.—Except where to do so would be inconsistent with the provisions of this section, the taxes imposed by this section shall be treated for purposes of this title as taxes imposed by section 4261.

"(g) 5-YEAR DURATION.—The taxes imposed by this section shall apply only with respect to transportation beginning on or after October 1, 1978, and before October 1, 1983."

(b) REDUCTION OF EXISTING TAXES ON TRANSPORTATION OF PERSONS FROM 8 PERCENT TO 6 PERCENT.—

(1) IN GENERAL.—Subsection (a) and (b) of section 4261 (relating to transportation of persons by air) are each amended by striking out "8 percent" and inserting in lieu thereof "6 percent".

(2) EFFECTIVE DATE—

(A) IN GENERAL.—The amendments made by paragraph (1) shall apply with respect to transportation beginning on or after October 1, 1978.

(B) RESTORATION OF 8-PERCENT RATE IN 1983.—If any portion of the taxes imposed by section 4261 of the Internal Revenue Code of 1954 with respect to transportation beginning after September 30, 1983, is deposited in the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970, the amendment made by paragraph (1) shall cease to apply with respect to transportation beginning after such date.

(c) SUSPENSION OF $3 TAX ON INTERNATIONAL TRAVEL FACILITIES.—

(1) IN GENERAL.—Subsection (c) of section 4261 of the Internal Revenue Code of 1954 (relating to use of international travel facilities) shall not apply with respect to transportation beginning on or after October 1, 1978.

(2) RESTORATION OF $3 RATE IN 1983.—If any portion of the taxes imposed by section 4261 of the Internal Revenue Code of 1954 with respect to transportation beginning after September 30, 1983, is deposited in the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970, paragraph (1) shall cease to apply with respect to transportation beginning after such date.

(d) TECHNICAL AMENDMENT.—Part II of subchapter C of chapter 33 is amended by adding at the end thereof the following new section:

"SEC. 4283. TAXES ONLY ON AMOUNTS PAID FOR TRANSPORTATION.

"The amount taken into account for purposes of any tax imposed by part I or II shall not include the amount of any tax imposed by such part."

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for part I of subchapter C of chapter 33 is amended by in-

serting after the item relating to section 4261 the following new item:

"Sec. 4261A. Taxes related to retrofitting and replacing noisy aircraft."

(2) The table of sections for part III of subchapter C of chapter 33 is amended by adding at the end thereof the following new item:

"Sec. 4283. Taxes only on amounts paid for transportation."

SEC. 303. CHANGES IN TAXES ON TRANSPORTATION OF PROPERTY.

(a) TAXES RELATED TO RETROFITTING AND REPLACING NOISY AIRCRAFT.—Part II of subchapter C of chapter 33 (relating to transportation of property by air) is amended by inserting after section 4271 the following new section:

SEC. 4271A. TAXES RELATED TO RETROFITTING AND REPLACING NOISY AIRCRAFT.

"(a) IN GENERAL.—There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property a tax equal to 2 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

"(b) FOREIGN TRANSPORTATION OF PROPERTY WHICH BEGINS IN THE UNITED STATES.—There is hereby imposed upon the amount paid within or without the United States for the transportation of property by air which begins in the United States and which is not taxable transportation (as defined in section 4272) a tax equal to 5 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

"(c) LIABILITY FOR TAX.—

"(1) TAX IMPOSED BY SUBSECTION (a).—The tax imposed by subsection (a) shall be paid by the person furnishing the transportation by air.

"(2) TAX IMPOSED BY SUBSECTION (b).—The tax imposed by subsection (b) shall be paid by the person furnishing the transportation by which the property departs the United States.

"(d) DETERMINATION OF AMOUNTS PAID IN THE CASE OF CERTAIN JOINTLY PROVIDED SERVICES.—For purpcses of this section, rules similar to the rules provided by section 4271 (c) shall apply.

"(e) TAXES SHALL BE SEPARATELY STATED.—The amount of any tax imposed by this section—

"(1) shall be passed through to the person paying for the transportation, and

"(2) shall be stated separately from the amount paid for the transportation.

"(f) COORDINATION OF PAYMENT, COLLECTION, ETC.—Except where to do so would be inconsistent with the provisions of this section, the taxes imposed by this section shall be treated for purposes of this title as taxes imposed by section 4271.

"(g) 5-YEAR DURATION.—The taxes imposed by this section shall apply only with respect to transportation beginning on or after October 1, 1978, and before October 1, 1983."

(b) REDUCTION OF EXISTING TAX ON TRANSPORTATION OF PROPERTY FROM 5 PERCENT TO 3 PERCENT.—

(1) IN GENERAL.—Subsection (a) of section 4271 (relating to transportation of property by air) is amended by striking out "5 percent" and inserting in lieu thereof "3 percent".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by paragraph (1) shall apply with respect to transportation beginning on or after October 1, 1978.

(B) RESTORATION OF 5-PERCENT RATE IN 1983.—If any portion of the taxes imposed by section 4271 of the Internal Revenue Code of 1954 with respect to transportation beginning after September 30, 1983, is deposited in the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970, the amendment made by paragraph (1) shall cease to apply with respect to transportation beginning after such date.

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter C of chapter 33 is amended by inserting after the item relating to section 4271 the following new item:

"Sec. 4271A. Taxes related to retrofitting and replacing noisy aircraft."

SEC. 304. CREDIT OR REFUND OF NEW TAXES.

(a) GENERAL RULE.—Chapter 65 (relating to abatements, credits, and refunds) is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Credit or Refund of Certain Taxes for Investments to Retrofit or Replace Noisy Aircraft

"Sec. 6451. Allowance of credit or refund.
"Sec. 6452. Amount of credit or refund.
"Sec. 6453. Determination of credit for noisy aircraft.
"Sec. 6454. Recapture in case of certain dispositions or leases; administrative provisions.

"SEC. 6451. ALLOWANCE OF CREDIT OR REFUND.

"(a) IN GENERAL.—Credit or refund (without interest) of the taxes imposed by section 4261A or 4271A shall be allowed for any month to the operator in the amount determined under this subchapter for such month.

"(b) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter.

"(c) TERMINATION OF CREDIT OR REFUND.—No credit or refund shall be allowed under subsection (a) with respect to any expenditure unless the Secretary receives a certification of such expenditure from the Secretary of Transportation before July 1, 1985.

"SEC. 6452. AMOUNT OF CREDIT OR REFUND.

"(a) GENERAL RULE.—The amount of the credit or refund allowed under section 6451 to any operator for any month shall be the lesser of—

"(1) such operator's net credit for such month, or

"(2) such operator's net aircraft taxes for such month.

"(b) NET CREDIT AND NET AIRCRAFT TAXES DEFINED.—For purposes of this section—

"(1) NET CREDIT.—The term 'net credit' means, with respect to any operator for any month, the excess of—

"(A) such operator's noisy aircraft credit for such month and all preceding months, over

"(B) the aggregate of the credits or refunds allowed or made to such operator under section 6451 for all preceding months.

"(2) NET AIRCRAFT TAXES.—The term 'net aircraft taxes' means, with respect to any operator for any month, the excess of—

"(A) the aggregate of the taxes which were imposed by sections 4261A or 4271A and which were paid by such operator by the close of the month, over

"(B) the aggregate of the credits or refunds allowed or made under section 6451 to such operator for all preceding months. For purposes of subparagraph (A), the taxes paid by the operator by the close of any month include taxes with respect to which credits or refunds for any preceding month under section 6451 have been allowed or made. The net aircraft taxes of any operator for any month shall be based on estimates of the Secretary. Proper adjustments in such estimates shall be made from time to time.

"SEC. 6453. DETERMINATION OF CREDIT FOR NOISY AIRCRAFT.

"(a) GENERAL RULE.—For purposes of this subchapter, the noisy aircraft credit of any operator for any month is the aggregate of—

"(1) the applicable percentage of the cost of each replacement property placed in service during such month, and

"(2) the applicable percentage of each qualified progress expenditure made during the month with respect to replacement property.

The amount taken into account under paragraph (1) for any property shall be reduced, for prior qualified progress expenditures taken into account under paragraph (2) for such property, in a manner similar to that provided by section 46(c)(4).

"(b) APPLICABLE PERCENTAGE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'applicable percentage' means—

"(A) with respect to retrofit property—

"(i) for aircraft with less than 4 engines, 90 percent, or

"(ii) for aircraft with 4 engines or more, 50 percent,

"(B) with respect to any replacement engine, 75 percent, or

"(C) with respect to a replacement aircraft—

"(i) which meets the noise standards of March 3, 1977, 40 percent, or

"(ii) which meets the noise standards in effect on January 1, 1977, but does not meet the noise standards of March 3, 1977, 25 percent.

"(2) LIMITATION ON AMOUNT OF CREDIT FOR REPLACING ENGINES.—The amount of the noisy aircraft credit determined under this section with respect to replacing the engines of any noncomplying aircraft shall not exceed 40 percent of the cost of replacing the aircraft (determined as of the date the Federal Aviation Administration certifies the airworthiness of the aircraft after the engine replacement) with a comparable aircraft which meets the noise standards of March 3, 1977.

"(c) REPLACEMENT PROPERTY.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'replacement property' means—

"(A) retrofit property for a noncomplying aircraft,

"(B) a replacement engine for a noncomplying aircraft, or

"(C) a replacement aircraft.

"(2) RETROFIT PROPERTY.—The term 'retrofit property' means the property used in the alteration of an engine or the engine nacelles of an aircraft with sound absorbent materials for the purpose of noise reduction, but only if the engine as so altered has been certified by the Secretary of Transportation as complying with—

"(A) the noise standards in effect on January 1, 1977, and

"(B) any additional requirements, relating to noise, set forth in regulations issued by the Secretary of Transportation.

(3) REPLACEMENT ENGINE.—The term 'replacement engine' means an engine which has been certified by the Secretary of Transportation as complying with the standards and regulations referred to in paragraph (2).

"(4) REPLACEMENT AIRCRAFT.—The term 'replacement aircraft' means an aircraft which replaces a noncomplying aircraft and which has been certified by the Secretary of Transportation as complying either with the noise standards in effect on January 1, 1977, or the noise standards of March 3, 1977.

"(5) ENGINE.—The term 'engine' includes necessary spare engines held by the operator on January 24, 1977, for use in connection with one or more noncomplying aircraft.

"(d) SPECIAL RULES.—

"(1) ONLY ONE TYPE OF EXPENDITURE TAKEN INTO ACCOUNT WITH RESPECT TO EACH NONCOMPLYING AIRCRAFT.—Where—

"(A) a credit has been allowed under this

subchapter for retrofitting any engine, no credit shall be allowed under this subchapter for a second retrofitting of such engine, for replacement of such engine, or for replacing the aircraft,

"(B) a credit has been allowed under this subchapter for replacing any engine, no credit shall be allowed under this subchapter for replacing such replacement engine or for replacing the aircraft, and

"(C) a credit has been allowed under this subchapter for replacing an aircraft, no credit shall be allowed under this subchapter for replacing such replacement aircraft.

"(2) TRANSFER OF NONCOMPLYING AIRCRAFT TO SECOND OPERATOR.—Where—

"(A) an operator ceases to operate a noncomplying aircraft having less than 4 engines,

"(B) possession of such aircraft is acquired by a second operator issued a certificate under section 401 of the Federal Aviation Act of 1958, and

"(C) such second operator retrofits the engines of such aircraft,

then the second operator shall be treated as the operator on January 24, 1977, of such noncomplying aircraft for purposes of computing the credit of the second operator under subsection (a). In any such case, the amount otherwise allowable as a credit to the first operator for replacing the noncomplying aircraft shall be reduced by an amount equal to the amount of the credit allowed to the second operator under the preceding sentence.

"(e) OVERALL LIMITATION ON CAPACITY OF REPLACEMENT AIRCRAFT.—

"(1) NO PAYMENT FOR PASSENGER SEATS IN EXCESS OF 107 PERCENT OF REPLACED SEATS.—The total number of passenger seats on all replacement aircraft of an operator for which credit is allowed under this subchapter shall not exceed 107 percent of the total number of passenger seats on all noncomplying aircraft of such operator which are replaced by such replacement aircraft.

"(2) NO PAYMENT FOR CARGO CAPACITY IN EXCESS OF 107 PERCENT OF REPLACED CARGO CAPACITY.—The total cargo capacity of all replacement aircraft of any operator for which credit is allowed under this subchapter shall not exceed 107 percent of the total cargo capacity of all noncomplying aircraft of such operator which are replaced by such replacement aircraft.

"(3) MEASUREMENT OF PASSENGER SEATS OR CARGO CAPACITY.—The Secretary of Transportation shall publish regulations prescribing the method for determining the number of passenger seats and the cargo capacity of both noncomplying aircraft and replacement aircraft.

"(4) OPERATOR GETS CREDIT FOR PART OF LAST AIRCRAFT.—Where a particular replacement aircraft causes the operator to exceed the 107 percent limitation of paragraph (1) or (2), the credit allowable by this subchapter shall bear the same ratio to the credit which would (but for such 107 limitation) be allowable as the number of seats (or the cargo capacity) of the replacement aircraft which does not cause the operator to exceed the 107 percent limitation bears to the total number of seats (or total cargo capacity) of the replacement aircraft. For purposes of the preceding sentence, replacement aircraft shall be taken into account in the order in which they are placed in service; except that for such purpose a replacement aircraft with respect to which an election to take qualified progress expenditures is made shall be treated as placed in service on the date of such election.

"(5) INTERCHANGE OF PASSENGER SEATING CAPACITY AND CARGO CAPACITY.—Under regulations prescribed by the Secretary of Transportation, passenger seating capacity may be exchanged for cargo capacity, and vice versa.

"(f) SPECIAL RULE IN CASE OF FOREIGN AIR CARRIERS.—

"(1) IN GENERAL.—The Secretary shall make a lump-sum payment of the amount certified under paragraph (2)(B) to any foreign air carrier having in force a permit issued under section 402 of the Federal Aviation Act of 1958. Such payment shall be in lieu of any credits under this subchapter and shall not exceed the aggregate taxes imposed by section 4216A or 4217A paid by such carrier.

"(2) CERTIFICATION.—Paragraph (1) shall apply only if the chief operating officer of the foreign air carrier certifies to the Secretary of Transportation—

"(A) that each of its aircraft engaged on the date of certification (or at any time thereafter) in operations within the United States (as defined in section 101(39) of the Federal Aviation Act of 1958) complies (or will comply, as the case may be) with the noise standards which would apply to such type of aircraft if it were registered in the United States and which are set forth in either the noise standards in effect on January 1, 1977, or the noise standards of March 3, 1977, and

"(B) the total amount expended by such foreign air carrier after January 24, 1977, and before the date of the certification (or, if earlier, January 1, 1985) to comply with such noise standards.

The Secretary of Transportation shall transmit any certification made under this subsection to the Secretary.

"(g) NONCOMPLYING AIRCRAFT.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'noncomplying aircraft' means any civil subsonic turbojet powered aircraft—

"(A) which—

"(i) has a maximum certificated takeoff weight of 75,000 pounds or more,

"(ii) is registered in the United States,

"(iii) has a standard airworthiness certificate issued pursuant to section 603(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1423), and

"(iv) as determined by the Secretary of Transportation, as of January 24, 1977, was in service and used for the carriage of persons or property for compensation or hire, and

"(B) which does not comply with the noise standards in effect on January 1, 1977.

"(2) SECRETARY OF TRANSPORTATION TO PUBLISH LIST.—Not later than 60 days after the date of the enactment of this subchapter, the Secretary of Transportation shall publish a list in the Federal Register setting forth the name of each operator of each noncomplying aircraft as of January 24, 1977, and the registration number of such aircraft.

"(3) OPERATOR TO SUBMIT STATEMENT OF METHOD OF COMPLYING WITH NOISE REGULATIONS.—Each operator named in the list published pursuant to paragraph (2) shall (not later than 30 days after the date such list is published) submit to the Secretary of Transportation in writing a statement which sets forth, with respect to each noncomplying aircraft of such operator which appears on such list—

"(A) that with respect to such aircraft there will be compliance with the noise standards in effect on January 1, 1977, and with any additional requirements relating to noise set forth in regulations issued by the Secretary of Transportation, and

"(B) the means by which such operator will comply with such regulations, whether by retrofitting the engines of the noncomplying aircraft, replacing such engines, or replacing such noncomplying aircraft with another aircraft.

"(h) COST DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'cost' means—

"(A) except as provided in paragraph (2), the basis of the property (including installation, delivery, and testing costs), or

"(B) in the case of replacement aircraft, the basis of such aircraft (determined under paragraph (1)) reduced by depreciation or amortization on the noncomplying aircraft (or any predecessor aircraft) to the extent such depreciation or amortization has not been recaptured under section 1245.

"(2) ONLY EXPENDITURES AFTER JANUARY 24, 1977, TAKEN INTO ACCOUNT.—For purposes of determining cost, only amounts expended after January 24, 1977, shall be taken into account.

"(3) CERTIFICATION BY DEPARTMENT OF TRANSPORTATION.—Costs and qualified progress expenditures may be taken into account only if the amount thereof properly taken into account for purposes of this subchapter is certified by the Secretary of Transportation to the Secretary.

"(i) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) OPERATOR.—

"(A) IN GENERAL.—The term 'operator' means any person who at any time was liable for the tax imposed by section 4261A or the tax imposed by section 4271A and who is engaged in the transportation of persons or property by air for hire or compensation.

"(B) OPERATOR WITH RESPECT TO NONCOMPLYING AIRCRAFT.—Except as provided in subparagraphs (C) and (D), an operator shall be treated as an operator with respect to a noncomplying aircraft only if such operator operated such aircraft on January 24, 1977.

"(C) EXCEPTION FOR CERTAIN TRANSFERS OF AIRCRAFT HAVING LESS THAN FOUR ENGINES.—Subparagraph (B) shall not apply to a transfer of a noncomplying aircraft described in subsection (d)(2).

"(D) ACQUISITION OF SUBSTANTIALLY ALL OF ASSETS OF OPERATOR.—If an operator acquires substantially all of the assets of another operator, subparagraph (B) shall not apply to the acquiring operator, and the acquiring operator shall succeed to and take into account all items of the operator whose property was so acquired which are relevant to the application of this subchapter.

"(2) NOISE STANDARDS IN EFFECT ON JANUARY 1, 1977.—The term 'noise standards in effect on January 1, 1977' means those noise standards set forth in regulations issued by the Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as in effect on January 1, 1977.

"(3) NOISE STANDARDS OF MARCH 3, 1977.—The term 'noise standards of March 3, 1977' means those noise standards for new type certificated aircraft set forth in regulations issued by the Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, on March 3, 1977 (F.R., vol 42, No. 24, 12360 et seq.).

"(4) QUALIFIED PROGRESS EXPENDITURES.—Qualified progress expenditures shall be determined in a manner similar to that provided by section 46(d) (including the requirement of an election); except that—

"(A) paragraph (7) of section 46(d) shall not apply, and

"(B) only expenditures made after January 24, 1977, shall be taken into account.

"(5) CREDIT INCLUDES REFUND.—A refund made shall be treated as a credit allowed.

"SEC. 6454. RECAPTURE IN CASE OF CERTAIN DISPOSITIONS OR LEASES; ADMINISTRATIVE PROVISIONS

"(a) RECAPTURE IN CASE OF CERTAIN DISPOSITIONS OR LEASES.—

"(1) IN GENERAL.—If during the recapture period any replacement aircraft is—

"(A) disposed of, or

"(B) leased to any person other than an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958),

the operator shall pay the Secretary an amount equal to the recapture percentage of the aggregate decrease in the credits allowed by this subchapter for months ending before such disposition or lease which would

have resulted from not taking such aircraft into account.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) RECAPTURE PERCENTAGE.—

"If the disposition or lease occurs:	The recapture percentage is:
Before the date 1 year after the aircraft is placed in service	100 percent.
At least 1 year but less than 2 years after the aircraft is placed in service	80 percent.
At least 2 years but less than 3 years after the aircraft is placed in service	60 percent.
At least 3 years but less than 4 years after the aircraft is placed in service	40 percent.
At least 4 years but less than 5 years after the aircraft is placed in service	20 percent.

"(B) RECAPTURE PERIOD.—The term 'recapture period' means the period—

"(i) which begins on the date on which the replacement aircraft is placed in service, and

"(ii) which ends on the date 5 years after the replacement aircraft is placed in service.

"(C) SPECIAL RULES FOR PROGRESS EXPENDITURE PROPERTY.—If qualified progress expenditures are taken into account with respect to the replacement aircraft—

"(i) the recapture period shall begin (in lieu of the date specified in subparagraph (B)(i)) on the first day of the first month for which any such expenditures are taken into account; and

"(ii) if the disposition or lease occurs before the aircraft is placed in service, the recapture percentage is 100 percent.

"(3) ADJUSTMENT IN CREDIT ACCOUNT.—In the case of any disposition or lease of an aircraft to which paragraph (1) applies, if—

"(A) the recapture percentage of the aggregate noisy aircraft credit determined with respect to such aircraft, exceed

"(B) the amount required to be paid to the Secretary under paragraph (1),

the amount determined under section 6452(b)(1)(A) for months ending on or after such disposition or lease shall be reduced by the amount of such excess.

"(4) ADMINISTRATIVE PROVISIONS.—Any amount required to be paid to the Secretary under paragraph (1) shall be assessed and collected in the same manner as if it were a tax imposed by section 4261A.

"(5) EXCEPTION FOR INVOLUNTARY CONVERSIONS.—Paragraph (1) shall not apply to any disposition if such disposition is a compulsory or involuntary conversion (within the meaning of section 1033). For purposes of this subsection, any aircraft acquired to replace the aircraft so converted shall be treated in the same manner as if it were the aircraft so converted and as if it had been placed in service on the date on which the aircraft so converted was placed in service.

"(b) COORDINATION WITH CHAPTER 1.—For purposes of chapter 1—

"(1) IN GENERAL.—Except as provided in paragraph (2), if any person is liable for any tax imposed by section 4261A or 4271A, no amount shall be included in the gross income of, and no deduction shall be allowed to, such person by reason of such tax.

"(2) AMOUNT OF CREDIT INCLUDED IN GROSS INCOME.—The amount of any credit allowed under section 6451, and the amount of any refund made under section 6451, shall be included in the gross income of the person to whom allowed or made for the taxable year appropriate under such person's method of accounting.

"(c) REQUIREMENT OF ANNUAL RETURNS.—

"(1) IN GENERAL.—Each operator who claims a credit or refund under this subchapter for any month during any calendar year shall make a return with respect to such calendar year. Such return shall set forth—

"(A) the aggregate of the taxes imposed by section 4261A or 4271A which were paid by such operator by the close of the calendar year,

"(B) the aggregate credits or refunds claimed by such operator for months in the calendar year, and

"(C) such other information and supporting evidence as the Secretary determines to be necessary for the application of this subchapter.

"(2) TIME AND METHOD FOR FILING RETURN.—The return required under paragraph (1) with respect to any calendar year shall be filed with the Secretary not later than March 15 of the succeeding calendar year and shall be made in such form as the Secretary may by regulations prescribe."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 65 is amended by adding at the end thereof the following new item:

"SUBCHAPTER C. Credit or refund of certain taxes for investments to retrofit or replace noisy aircraft."

SEC. 305. AIRPORT AND AIRWAY TRUST FUND AMENDMENTS

(a) AUTHORIZATION OF APPROPRIATIONS TO CARRY OUT AIRPORT AND AIRCRAFT NOISE REDUCTION ACT.—Subparagraph (A) of section 208(f)(1) of the Airport and Airway Revenue Act of 1970 is amended to read as follows:

"(A) incurred under—

"(i) title I of the Airport and Airway Development Act of 1970,

"(ii) the Airport and Airway Development Act Amendments of 1976, and

"(iii) the Airport and Aircraft Noise Reduction Act,

as such Acts were in effect on the date of the enactment of the Airport and Aircraft Noise Reduction Act;".

(b) TRANSFER TO TRUST FUNDS OF TAXES UNDER SECTIONS 4261A AND 4271A NOT NEEDED FOR CREDITS OR REFUNDS.—

(1) IN GENERAL.—The first sentence of subsection (b) of section 208 of the Airport and Airway Revenue Act of 1970 is amended by adding at the end thereof the following new paragraph:

"(4) amounts determined by the Secretary of the Treasury to be that portion of the taxes received in the Treasury under sections 4261A and 4271A of such Code which will not be needed for the allowance of the credits and the making of the refunds provided by section 6451 of the Internal Revenue Code of 1954."

(2) CLERICAL AMENDMENTS.—

(A) The first sentence of such section 208(b) is amended by striking out "and" at the end of paragraph (2) and by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and".

(B) The second sentence of such section 208(b) is amended by striking out "and (3)" each place it appears and inserting in lieu thereof "(3), and (4)".

(c) CERTAIN RECAPTURE AMOUNTS TREATED AS TAXES.—For purposes of section 208(b) of the Airport and Airway Revenue Act of 1970, amounts recaptured under section 6454 of the Internal Revenue Code of 1954 shall be treated as taxes received under section 4261 of the Internal Revenue Code of 1954.

(d) CONSULTATION WITH RESPECT TO UNSAFE AIRPORT AND AIRWAYS OPERATING CONDITIONS.—Subsection (f) of section 208 of the Airport and Airway Revenue Act of 1970 is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of law, no amount may be spent from the Trust Fund for any fiscal year beginning after September 30, 1978, unless the Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration—

"(A) consults, at least 75 days before the beginning of such fiscal year, with officials of the National Transportation Safety Board concerning airport or airways operating conditions which the National Transportation Safety Board considers to be unsafe; and

"(B) publishes in the Federal Register, at least 30 days before the beginning of such fiscal year, a list of the airport or airways operating conditions described in subparagraph (A), together with an explanation of any disagreement between the Secretary of Transportation and the National Transportation Safety Board with respect to—

"(i) the existence or extent of any unsafe airport or airways operating condition, or

(ii) the actions which have been taken, or are proposed, to eliminate any unsafe airport or airways operating condition."

Mr. ULLMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. ULLMAN. Mr. Chairman, the Rules Committee has made in order as an amendment to title III of H.R. 8729 the substance of H.R. 11986, which was reported by the Committee on Ways and Means. H.R. 11986 makes changes to the excise taxes on air transportation and provides refunds or credits on certain of these taxes for expenditures by airlines to modify or replace existing noisy aircraft.

Under present law, an 8-percent excise tax is generally imposed upon the fares of airline passengers on domestic flights and flights to or from nearby points in Canada and Mexico. Air passengers departing the United States, whose fares are not entirely taxable under the 8-percent tax, are subject to a $3 per person international departure tax. In addition, a 5-percent tax is imposed upon domestic air freight transportation charges. The proceeds of these taxes are presently deposited in the airport and airway trust fund from which appropriations are made for certain aviation-related purposes. These taxes are scheduled to decline or terminate on July 1, 1980.

The Ways and Means Committee amendment will reduce the present 8-percent passenger and 5-percent freight taxes by 2 percentage points, and also suspend the present $3 international departure tax, for a 5-year period from October 1, 1978, through September 30, 1983.

In place of these reduced or suspended taxes, there will be 2 percent passenger and freight taxes which use the same tax base as under present law. As a result, the total tax for domestic passenger and freight shippers will remain unchanged. In addition, there will be imposed international passenger departure taxes of $2 where the air fare is less than $100 and $10 where the fare is $100 or more. There will also be a 5-percent tax on charges for international air freight which departs the United States. The new taxes will be imposed upon the commercial air carriers and will be in effect for a 5-year period until October 1, 1983. At the end of this period the present level of excise taxes would be restored, if they remain

generally in effect on that date and the proceeds are being deposited in the trust fund pursuant to congressional review in 1980 of the airport and airway program, as the trust fund expires in 1980 under current law.

Those domestic air carriers who operate large subsonic jet aircraft which do not comply with the FAA's 1976 noise regulations may obtain refunds or credits for the new excise taxes they have paid. They will be entitled to refunds or credits for certain percentages of costs they have incurred, including progress payments, after January 24, 1977, and before January 1, 1985, to bring their noncomplying noisy aircraft into compliance with FAA noise regulations by one of three methods: First, retrofitting, which is adding sound absorbing materials to the engines; second, replacing the engines; or third, replacing the noncomplying aircraft. These percentages are 50 or 90 percent for retrofitting (depending on the number of an aircraft's engines), 75 percent for replacement engines, and either 40 or 25 percent for a replacement aircraft (depending upon the noise level of the replacement aircraft). The Secretary of Transportation is required to certify that the costs have been incurred for qualified property before a refund or credit will be allowed.

These refunds or credits will be treated as taxable income when received by the air carriers. Rules are also provided to generally prevent the claiming of multiple credits for the same noncomplying aircraft and to require recapture of credits or refunds where a replacement aircraft is sold or leased within 5 years of being placed in service.

Foreign air carriers will be entitled to obtain lump-sum refunds of their payments of these taxes for the entire costs incurred to bring into compliance their aircraft which operate in the United States. These carriers must first certify that their U.S. operating fleet does, and will in the future, comply with the 1976 noise standards.

Excess tax collections over the amounts of refunds or credits will be deposited into the airport and airway trust fund. In addition, the provision amends the trust fund statute to permit expenditures for noise compatibility programs and planning grants from the trust fund—as included in other titles of H.R. 8729.

The provision also requires the FAA to issue an annual report of unsafe airport and airway operating conditions before any expenditures can be made from the trust fund for the following fiscal year.

The Treasury Department supports this bill. Mr. Chairman, I urge the adoption of this amendment to H.R. 8729.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. SIMON, and by unanimous consent, Mr. ULLMAN was allowed to proceed for 2 additional minutes.)

Now, Mr. Chairman, this is a departure from ordinary procedure, but we are facing very exceptional circumstances where if some program such as this is not enacted, there will be no possibility in the world of air carriers meeting their noise requirements under laws we have imposed upon them; so the committee has somewhat reluctantly gone along with this procedure. It is a departure from past procedure, because of the emergency situation, because we think it is fair and equitable and we think it is the only way to meet the problem.

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Illinois.

Mr. SIMON. Mr. Chairman, I thank the gentleman for yielding.

I am pleased with the reluctance of the committee. I wish there had been just a little more reluctance.

The gentleman mentioned the airlines have to pay taxes on this money they collect. What about Aeroflot, the Soviet airline, which will get subsidies under this bill? There is no way, obviously, that they are going to pay U.S. taxes on their income.

Mr. ULLMAN. Remember, they are only getting rebates from amounts that they have collected from passengers and on freight that originated in the United States. It is important to us that they meet our noise requirements, too. They only get those rebates from funds that have been collected from their service in this country. They only get rebates if they meet the noise requirements, and only for the aircraft in service in the United States.

Mr. SIMON. Mr. Chairman, if the gentleman will yield further, does the gentleman know of any other country that does this? When you go to other countries, you pay these airport taxes. Does the gentleman know of any other country that pays rebates to American airlines?

The CHAIRMAN. The time of the gentleman from Oregon has again expired.

(By unanimous consent, Mr. ULLMAN was allowed to proceed for 1 additional minute.)

Mr. ULLMAN. But you see, the ordinary taxes that we have imposed are not involved. The only part of the special taxes on international freight and passenger travel that they get as a rebate is part of this special tax that is imposed and collected from people using their airlines and only if these airlines incur costs so that their aircraft will meet the particular noise requirements of our laws.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, I appreciate the position in which the gentleman's committee has been placed, but we are going to set a precedent here that we are going to have to follow through in other fields; for example, EPA has just put out some regulations or requirements for scrubbing of coal. Industry tells us it is going to cost about $10 billion for scrubbing equipment at a time when the national policy will force them to convert to coal.

Now, what will happen if those utility companies come to us and say they need help with this?

The CHAIRMAN. The time of the gentleman from Oregon has again expired.

(At the request of Mr. KAZEN, and by unanimous consent, Mr. ULLMAN was allowed to proceed for 2 additional minutes.)

Mr. KAZEN. Mr. Chairman, if the gentleman will yield further, have we not opened the door here as far as precedents are concerned, for when these utility companies come in and say, "Hey, we are going to need some help. We cannot convert on our own. You have to help us with a tax or rebate or something else in order to meet the requirements that you, the Government, have placed on us."

Mr. ULLMAN. Mr. Chairman, let me say that this is not a precedent for that kind of circumstance. This is a totally different situation. There is a problem involved here. We are going to have to use some ingenuity in facing up to that issue. I do not know how we are going to meet the problem that the gentleman suggests. We have a tremendous investment problem in converting to a different pattern of using our energy resources in this county. We are going to have to use some ingenuity.

This is not a precedent for that kind of situation; but I will say that the gentleman will have to join with the committee in trying to meet that problem in some way that is tailored to that requirement; but this is not a precedent for that.

Mr. KAZEN. Mr. Chairman, if the gentleman will yield further, what I am saying is that the consumer is the one that is going to pay for everything, because it is the action of this Congress that is responsible for that.

Mr. ULLMAN. Ultimately, the consumer pays all taxes, particularly in circumstances like this.

I think this applies only to a particular situation. It is not a precedent for any other action. I think it is the only way we are going to meet the problem.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from New York.

The CHAIRMAN. The time of the gentleman from Oregon (Mr. ULLMAN) has expired.

Mr. ULLMAN. Mr. Chairman, I ask unanimous consent that I may be permitted to proceed for 1 additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

Mr. ASHBROOK. Mr. Chairman, reserving the right to object, I do so for this purpose: We are early in the debate today, and if we are going to limit debate later in the consideration of this bill, I would object now. I wonder if the chairman of the committee could indicate what his intentions are. If he cannot, I will object now, because I believe we should have time for debate expanded later.

Mr. CONABLE. Mr. Chairman, if the gentleman will yield, let me state that I can get my own time.

Mr. ASHBROOK. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. CONABLE. Mr. Chairman, I rise in support of the amendment.

I would like to answer the question addressed by the gentleman from Texas (Mr. KAZEN).

If there are two airlines flying from Boston to Miami and one of them meets the noise standards and the other does not, there is no way the one that does not meet the noise standards is going to be able to raise its prices.

The utility is in quite a different situation, because in all probability it has a geographical monopoly in its area and can very easily pass on the increase in rates. That draws the distinction between the position of the two, I think, and indicates why some mechanism like that in the bill is necessary. If we are going to divert the cost of the airlines to the consumers and ultimately, as the chairman of the committee says, there is no way anyone other than the consumers can pay for this cost, it is important to do it in a way that will permit us to insure the increased money will be spent on retrofitting and noise control, because ultimately the money could be spent in other ways.

I wish it were not necessary to do this sort of thing, but the Congress has decided we are going to have this type of retroactive retrofitting rather than applying this rule just to airplanes purchased hereafter.

Somebody is going to have to pay for it. That is apparently the feeling of the Committee on Public Works and Transportation. It wanted the consumers to pay for it through this type of tax.

The part of our total national budget that is paying the cost of this is the airport trust fund, which is being tapped. We made a basic error in putting more money into that trust fund than we needed. I happen to think this is one of the biggest arguments against trust fund financing. We have put in the airport trust fund, money that goes beyond necessity, and inevitably that money is going to be spent in some way that is contrary to the purpose of the trust fund.

Can anybody deny that there is a social purpose behind trying to control aircraft noise? This has been deemed to be one of our serious national problems. Thus this diversion is deemed to be an appropriate one.

However, I wish to acknowledge that I do not like this way of financing, where we are using a trust fund and then diverting the money later on; but at least the mechanism that is used insures that the purpose of the committee will be met ultimately.

Mr. GEPHARDT. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. Yes, I yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Chairman, I appreciate the gentleman's statement, but would not the gentleman agree with me that this is the first time we have raised a tax and then turned the spending of it over to the private sector?

In the case of the utilities that was brought up earlier, we give investment tax credits and we give fast writeoffs, but in those cases we do not raise a tax and then give it back to the private sector.

Mr. CONABLE. Mr. Chairman, I would like to point out that the gentleman supported the energy bill, which did a very similar thing for industry with respect to the use tax. It diverted that money back. I personally did not support that, because that was going to be an additional cost for the consumers.

This at least is not going to mean an additional cost for the consumers, because we are going to wind up with exactly the same tax we had before, only a portion of it now is going to be diverted into retrofitting and noise control. At least to that extent it is better than what this House voted for in the oil and gas bill.

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Pennsylvania.

Mr. GARY A. MYERS. Mr. Chairman, with respect to the concern about this mechanism being directed only toward corporations, is it not true that in many respects this rebate is very similar to the proposal for rebates to be given primarily to consumers, for instance, for retrofitting in home insulation?

Mr. CONABLE. There is some similarity there, too.

Mr. GARY A. MYERS. In other words, there are similar cases, and the Congress is on record that they will allow credit writeoffs based on an effort to reach a national goal.

Mr. CONABLE. Yes, the gentleman is correct, the goal in that case being energy conservation.

Mr. SHUSTER. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. SHUSTER) is recognized for 5 minutes.

Mr. SHUSTER. Mr. Chairman, if one accepts the idea that aviation noise environment should be cleaned up—and there certainly seems to be broad agreement on that point—then two points deserve great emphasis.

The first is that the consumers of aviation services will pay for this cleanup, either through the mechanism in this bill or through increased ticket fares. It is six of one or a half dozen of the other.

The second point which deserves great emphasis is that the mechanism in this bill will tend to strengthen competition in the industry. It will keep the cost spread over the entire industry. Without it, the stronger airlines, which least need investment in the more modern aircraft, will get stronger; indeed, their profits will increase further. The weaker airlines will become still weaker because they are the very airlines which most need, but do not have, the increased investment necessary to modernize their fleets.

The competitive structure of the airline industry will be weakened in the long run unless we support this committee amendment and provide the mechanism here which will keep the costs of operations spread evenly across the industry. It is largely for this reason, for the need to continue to strengthen the competitive structure of the airline industry, that I vigorously support the approach in the committee amendment.

Mr. EDWARDS of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from Oklahoma.

Mr. EDWARDS of Oklahoma. Mr. Chairman, I thank the gentleman for yielding. As I listened to the debate—and I came into this pretty much undecided—I am increasingly persuaded to support this legislation as the best possible solution to a problem that the Congress has created for itself. But, I would like to refer back to the comments of the gentleman from Texas (Mr. KAZEN), who I respect very much, and agree that the Congress has indeed gotten itself into quite a pickle.

What we are doing here is because this Congress set unreasonable noise standards, with unreasonable times for compliance. The same thing is going to be true with EPA requirements.

We should keep in mind, when we pass legislation setting unreasonable standards, that ultimately we are going to end up on the floor with complex situations like this, trying to bail ourselves out.

Mr. SHUSTER. The gentleman makes an excellent point, and that is indeed where we find ourselves today. Therefore, we should proceed on the basis of the legislation before us.

Mr. VANIK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I urge the members of this committee and the Members of the House to reject the motion to substitute the provision of the Committee on Ways and Means to give $3 or $4 billion to the aircraft industry for the so-called retrofitting of their aircraft.

Let me point out what we have done here: Under the closed rule you have no option at all but to take the bill that was written on the Ways and Means Committee.

If you want some interesting reading, read the transcript of what occurred in our committee. At the time, and in the very short time, that we considered this bill, you could not get into the room because of the crowd of lobbyists from the air transport and aerospace industry. It was almost impossible to speak and develop a rational discussion.

How do we come to the idea that we give 40 percent of the cost of a new aircraft and pay for it out of this taxpayer's fund? That just happens to be what they thought would be raised by 2 percent of the tax. It is as ridiculous as the old depreciation allowance, just a handy figure, it so happens, that would consume 2 percent of the fund.

Now, if the fund is in surplus let us reduce the tax. That is what we should do if we do not need all of the money that is in the trust fund.

It so happens that the $3 or $4 billion given away by this proposal happens to be the same amount of money we are going to look for next year to offset increased Social Security payments. Of course, that is not the same fund but if we are going to do something about social security the credit of the United States is involved, so if you waste $4 billion in this action it is going to very seriously affect the capacity of the U.S. Government and the U.S. Congress to do something about providing essential social security relief next year. These are all related because they deal with the credibility of the United States.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I will yield when I finish my statement.

What are we doing here? We are giving the industry 40 percent of the cost of new aircraft. On top of that you will remember that the Committee on Ways and Means rejected a motion to deny the investment credit for the total cost of new aircraft.

So, on top of the public cost of $3 or $4 billion, you have to add $300 to $400 million more which will come out of the Treasury, to pay for the investment credit which will be given on aircraft purchase. In other words, the U.S. Government, the people, through this fund, are going to pay for one-half of the cost of the airplane, one-half. Now, maybe retrofiting costs 8 percent, or 6 percent, or 10 percent, I do not know, we have no evidence on that, no economic argument was submitted in committee, but we are going to pay for one-half of the airplane.

What is that going to mean? That means the producers of the aircraft will very conveniently raise their prices higher, another fat bonanza. They have a tremendous stake in this bonanza.

The airline industry will say, as the gentleman from New York (Mr. DELANEY) said yesterday, let us fatten our salaries and perhaps next year or a year after that the pilots will say we want $300,000, after all, we helped campaign for this $4 billion bonanza.

You are setting in operation a very dangerous, reckless spiral if you are going to pay one-half of the cost and that certainly will mean that everybody on down the line, will demand more of this bonanza you are putting in motion. We are establishing an inflationary spiral for the most coddled industry on the American scene.

The taxpayer paid for the runways, paid for the airport terminals. The taxpayer who does not fly has his money used to monitor the flights. We have spent millions of dollars to keep the airlines industry going and they operate the planes and handle the baggage and we are giving them $4 billion as a bonus.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. VANIK was allowed to proceed for 3 additional minutes.)

Mr. VANIK. Mr. Chairman, I want to point out that we are at a critical point in this legislation. You have the opportunity to do the right thing and we can do the correct thing, we can amend the tax code to make noise abatement an expensible item for tax purposes. We can provide the same kind of pollution credit we do for water pollution, for air pollution. We should have done it for noise pollution, and I would support that. I might even support doing something for the airlines, but not 40 percent, not paying 50 percent of the cost of the aircraft.

What a dangerous thing to do.

You are inviting a tremendous spiral of inflation. You are withdrawing the credit of this Government when you are going to need it critically next year on social security.

We are attempting to favor one industry over all others in the United States. As has been pointed out by the gentleman from Illinois (Mr. ANDERSON), by the gentleman from Kentucky (Mr. SNYDER), and others who complain that if we do this for the airlines, what about the steel industry, the utility industry? What about everybody else? Are we going to make payments for the farmers because of what they have to do with herbicides? There is no end to this kind of legislation.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, I was puzzled with the gentleman's linkage of this legislation with the social security trust fund problems. Surely, the gentleman is not suggesting that airline passengers should somehow help make whole the deficit in the social security trust fund, is he?

Mr. VANIK. The gentleman either did not understand or was not listening to what I said. I said it affected the credit of the United States. The money we have in that trust fund is black ink. Whatever we do, whether it is in the trust fund, we have a combined budget. Whatever we take from trust funds or direct funds does affect the credit of the United States. The dollar is involved, and the capacity of our Government to borrow is involved.

Mr. SHUSTER. If the gentleman will yield further, I thank him for his courtesy.

I also express further puzzlement over his statement that we are going to pay 50 percent of the cost of the airlines.

Does not the consumer of aviation services pay 100 percent of the cost of the airline? What is different?

Mr. VANIK. I am saying that there will come out of the airport safety trust fund 40 percent of the total cost and a 10-percent investment credit. That totals 50 percent.

Mr. SHUSTER. Does not the money come from the passengers, the consumers of aviation services? It does not come out of the general fund. It comes out of the passenger's pockets, does it not?

Mr. VANIK. It comes from the loss of revenue because of the investment credit; almost $400 million comes out of the Treasury.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. VANIK) has expired.

(On request of Mr. WAGGONNER and by unanimous consent, Mr. VANIK was allowed to proceed for 1 additional minute.)

Mr. WAGGONNER. Mr. Chairman, will the gentleman yield?

Mr. VANIK. I am happy to yield to the gentleman from Louisiana.

Mr. WAGGONNER. Mr. Chairman, I would ask the gentleman if there is any difference in allowing an investment credit, for example, on the purchase of air pollution equipment which the Congress mandates, as against allowing an investment credit on noise pollution equipment?

Mr. VANIK. I would have no objection to providing the investment credit for noise pollution if it were not tied to a $4 billion gift. If that was all that was involved, I could very well support an extension of investment credit for those costs.

I have said this before: I think that in our tax program, we ought to permit the immediate extension of nonproductive investment mandated by law. We ought to help carry the cost to private industry of the extra burdens of complying with Federal standards, both as to the EPA requirements as to air pollution and as to noise pollution. That is my position.

Mr. STEIGER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I find myself in—I was going to say a "pickle," but then, with the gentleman from Ohio (Mr. VANIK) on the other side, I am a little worried about that. I do not want to get into another Pickle-Vanik situation.

Mr. Chairman, what we are dealing with here is one of those classic legislative dilemmas. I do not like this bill. I do not think the bill ought to pass. It is not good policy; and it does, in my judgment, establish a precedent which I think the Congress will find itself regretting in the future because of the pattern which we are putting forth in this legislation.

Mr. Chairman, I intend to vote for the motion to recommit. I intend to vote against the bill; but I must say, in all honesty, that I do not believe we should reject the amendment of the Committee on Ways and Means.

I suppose that if we want to play games, we can, because then we really will be in a situation in which, under the legislative scenario in which we find ourselves here, were we to reject the Committee on Ways and Means, product, we would end up back at the old title III, the product of the Committee on Public Works and Transportation.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Kentucky.

Mr. SNYDER. I thank the gentleman for yielding.

I think what the gentleman says is accurate, but it is also my understanding—

and perhaps the gentleman from Wisconsin would want to propound a parliamentary inquiry to the Chair to verify it—that once we are back under title III of the bill reported by the Committee on Public Works and Transportation, which I admit is worse than what is proposed in the Ways and Means version, we would be under an open rule. A motion to strike or a motion to strike and substitute the Vanik amendment would then be in order. I have such motions prepared and intend to offer them. That is the reason the gentleman from Ohio (Mr. VANIK) and I are opposing the Ways and Means Committee version so we then can have an open rule on title III. That is my understanding, and the gentleman may want to propound the parliamentary inquiry, or if he wants, I will be glad to do so.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Ohio.

Mr. VANIK. I thank the gentleman for yielding.

I thought I made it clear that it would be at least my intention to oppose both titles III. They are both abhorent, and I do not think there is any reason to vote for either one.

PARLIAMENTARY INQUIRY

Mr. STEIGER. Mr. Chairman, could I propound the inquiry as to whether or not, if the Ways and Means Committee amendment is adopted, a motion is in order to strike title III?

Mr. SNYDER. If the gentleman will yield, no: if it is rejected.

Mr. STEIGER. I am asking a specific question. If the amendment from the Committee on Ways and Means is adopted, is a motion to strike title III in order?

The CHAIRMAN. It would not be in order in that event.

Mr. STEIGER. If the amendment from the Ways and Means Committee is rejected, is a motion to strike title III in order?

The CHAIRMAN. The Chair will advise the gentleman that in the event the pending Ways and Means Committee amendment made in order under the rule were to be rejected, then germane amendments to title III would be in order, including a motion to strike.

Mr. STEIGER. I thank the Chair.

I thank my colleague, the gentleman from Kentucky (Mr. SNYDER), and I may have to revise and extend my remarks, but I will not do that. I will have to eat my words.

Then the amendment from the Committee on Ways and Means ought to be rejected.

I must say I find myself in a most difficult position.

Mr. ULLMAN. Mr. Chairman, will the gentleman yield?

Mr. STEIGER. Of course, I yield to my distinguished Chairman.

Mr. ULLMAN. I thank the gentleman for yielding.

The gentleman is assuming that because he rejects the Ways and Means Committee amendment he would automatically reject the other. I do not think that that necessarily follows. I think that the gentleman, being a very reasonable individual, would prefer to approach either the recommittal motion or the vote on the final bill, when the bill will have a responsible title III, than to defeat the Ways and Means substitute, and take a chance that he may or may not defeat the first version of title III. Certainly I think everybody agrees that, if we examine the two versions of titles III, the Ways and Means Committee approach is by far the more responsible approach within our framework of law.

I think the gentleman's original position is right. We ought to keep that provision in the bill, and then if we want to vote the bill down, we will have an opportunity to do that.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. STEIGER was allowed to proceed for 2 additional minutes.)

Mr. STEIGER. Mr. Chairman, may I just say briefly to my chairman, there is no question the Ways and Means Committee version is much more responsible than is that which came from the Public Works Committee. The Public Works Committee version is that which gives an outright grant without counting it as income. It is bad public policy; it is bad tax policy; and under no circumstances should it be supported. But because we are in the situation where we will not have an opportunity, if the Ways and Means Committee amendment is adopted, to strike the title, which is really where I think we ought to go, or to deal with the issue of the airport tax, in which I concur with my colleague, the gentleman from Ohio (Mr. VANIK), that we ought to reduce that tax by 2 percent, I have no choice. I am sorry I started as I did. I regret that exceedingly.

I would urge my colleagues to reject the Ways and Means Committee amendment, and let us meet title III head-on, because I think it is bad policy and ought not to be accepted.

Mr. CORMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, may I say, my distinguished and very articulate and sometimes humorous friend from Ohio from time to time makes some statements that trouble me. The gentleman said, for instance, that some of us were tagged by the airlines. I would like to suggest to the gentleman that I have not been tagged by the airlines. I have not been fastened by the fastener industry, although I had some vigorous discussions with the gentleman one time about fasteners.

The gentleman's alternative is supposed to save the credit of the United States, make secure the Social Security System and fight inflation. I have not heard of a single product that is that broad in its curative effects since the last time I heard a snake oil salesman say that it would cure rheumatism, arthritis and acne.

I suggest that if this is a precedent, it is a good one. It fits the problem. It fits the problem fairly among the airlines and it fits the problem fairly among those who fly.

Now, if you noted, the gentleman from Ohio was outraged that the airlines would get an investment tax credit; but the gentleman from Wisconsin pointed out that the Committee on Ways and Means had improved this bill by requiring that the funds taken from this trust fund would have to be taken as income. That was the recommendation of the Treasury Department and that is why they get the investment tax credit, because they have to take it as income and they have to pay income tax on it.

Mr. VANIK. Mr. Chairman, will the gentleman yield on that point?

Mr. CORMAN. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, what folly it is to tell the House that it is going to be recovered as taxable income. You give them a $400 million extra write-off in the investment credit which washes out tax liability. The airlines have not been substantial taxpayers; they have write-offs, they have depreciation, they have so much that it spreads it over half the banks of America, as the gentleman from Kentucky (Mr. SNYDER) has indicated.

Mr. CORMAN. Mr. Chairman, as the gentleman knows, the banks are frequently the recipients of tax and investment credit funds. They will have to operate through leasing. Be that as it may, it was at the recommendation of the Treasury Department that the Committee on Ways and Means put that provision in the public works bill. This approach was worked out by the Committee on Public Works.

I say again that it is fair to three kinds of people. First, it is fair to those who live in major cities where we have tremendous air traffic. It is going to make it possible to substantially reduce the noise around those facilities.

It is fair among airlines, because regardless of when they purchase the planes and the engines that must be replaced, they will be able to draw from this fund if they ever do that replacing.

Third, it is fair among airline users. We do not pick the airline because it has quiet engines or noisy engines. We pick it because it is going where we have to go. We ought to uniformly pay the cost of reducing the noise of our airplanes.

The gentleman seems disturbed that we build airports and that we make it possible for us to move around in the airlines it serves. We do that. We do not do it out of general funds. We do it from the public tax on the people that use the airlines. That is the only fair way.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, does the gentleman intend to tell this House that the monitoring of airlines is paid for entirely out of users' funds?

Mr. CORMAN. Yes.

Mr. VANIK. I understand it to be principally paid out of general funds.

Mr. CORMAN. No.

Mr. VANIK. Mr. Chairman, if the gentleman will yield further, where does the FAA get its money? It is appropriated out of the general fund.

Mr. CORMAN. No, no, no.

Mr. VANIK. If the gentleman will go back and check the record, he will find that what I say is correct.

Mr. CORMAN. That is why we have that trust fund. Trust fund spending is good when you have a particular need for a particular segment of the community. You ought to pay for it out of trust funds, not out of general revenues.

Mr. WAGGONNER. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Louisiana.

Mr. WAGGONNER. Mr. Chairman, let us try to get something back in perspective here. We are not talking about the expenditure of Treasury dollars.

The CHAIRMAN. The time of the gentleman from California has expired.

(At the request of Mr. WAGGONNER, and by unanimous consent, Mr. CORMAN was allowed to proceed for 2 additional minutes.)

Mr. WAGGONNER. Mr. Chairman, if the gentleman will yield further, the moneys which will be available to these aircraft operators to do this retrofitting will only be those dollars which are placed in deposit in trust collected by those operators as additional taxes on waybills and passenger tickets.

Mr. Chairman, the net effect of that is not that the Treasury is going to be paying for this retrofitting; only the people who use the airlines, the people who fly, will be doing that.

That is the justification, for example, of a sales tax. Let those people who spend pay for it. The theory of this legislation is: Let those who fly pay the tax, because if people were not flying, then those aircraft would not be in the skies and the noise problem would not exist.

I am submitting to the Members that nobody should pay except those who do fly.

This proposal of the Committee on Ways and Means is a much better program than is the case with that of the Committee on Public Works and Transportation. This proposal of the Committee on Ways and Means does nothing except insure that those why fly pay for correcting this noise problem.

In addition, the gentleman from Ohio (Mr. VANIK), emphasizes the fact that foreign aircraft operators are going to benefit. Let me tell the Members that the only way they can benefit is if they collect these additional taxes, and make the necessary investments to comply with FAA noise standards. They must collect these taxes, and they must deposit those funds. They can get nothing except from those deposits and then only after they bring their U.S. operating aircraft in compliance with FAA noise standards. Let us get this issue in perspective.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for yielding.

I would like to follow up on the excellent point made by our colleague, the gentleman from Louisiana (Mr. WAGGONNER).

The CHAIRMAN. The time of the gentleman from California (Mr. CORMAN) has expired.

(On request of Mr. LEVITAS, and by unanimous consent, Mr. CORMAN was allowed to proceed for 2 additional minutes.)

Mr. LEVITAS. Mr. Chairman, will the gentleman yield further?

Mr. CORMAN. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, this is very clear: Regardless of how anybody comes out on this issue, I think it ought to be made clear that we are not talking about the general taxpayers paying any part of this cost at all. It is only the people who are using the airlines for passenger travel or for cargo who will be paying this cost. So it is the users. This has nothing to do with raiding the Treasury or the taxpayers. It is a user payment in fares or a user tax.

Let us take it a step further and see what else that means. Let us assume we do not pass this legislation. Let us assume we do not have this law. What we do know is that the same purchases are going to have to be made by the airlines in order to comply with federally imposed regulations.

Who is going to pay for it then? Not the airlines but the airline passengers, because the airlines are going to have to raise the fares and raise the cost to the consumer in order to obtain the funds. So the same people are going to be paying for it one way or the other, the users and not the general public or the General Treasury.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, I think the point should be emphasized and the RECORD clarified that 28 percent of the funding out of the airport trust fund goes for administrative purposes, and that is to pay for such things as aircraft controllers.

So indeed 28 percent of the money from the aviation trust fund does go for administrative purposes. It does not pay for all of it, but a substantial portion of the money in the fund pays for it.

Mr. CORMAN. Mr. Chairman, the thing that concerns me most about the fact that there is an effort to kill this part of the bill is that there will not then be the ability financially to comply with the law, and what happens then is that we will suspend it and we will continue to have this great amount of noise around our airports for many years to come.

Mr. SNYDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, there seems to be a lot of bantering about how much of FAA's budget comes out of what fund, and I guess we are all entitled to our opinion, but I think I have it right.

The gentleman from Pennsylvania (Mr. SHUSTER) had the numbers right: 28 percent from the trust fund. It is roughly between a quarter-and-a-third, but it is not for aircraft controllers as he indicated. And traffic controller funds comes out of the general fund. Money out of the trust fund is used for such things as ADAP, F. & E. and R. & D.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, does the gentleman not agree that a major portion of the administrative cost does indeed come from the trust fund?

Mr. SNYDER. No, most of the administrative costs come from general funds. ADAP, F. & E., and R. & D. come from trust funds—somewhere between a quarter and a third. I will not argue with the gentleman's figure of 28 percent. That is probably right on the head.

Mr. SHUSTER. Mr. Chairman, I thank the gentleman for that.

Mr. SNYDER. Money does come from the trust fund, and it is for safety items. We are diverting this money from safety for which the trust fund was established in the first place. Safety was the basis of our commitment to the people at the time the trust fund was set up. We said we were pledging it for that purpose.

Let me digress for a moment. Earlier there was a discussion here between the gentleman from Texas (Mr. KAZEN) and the chairman of the Committee on Ways and Means as to whether or not we would be setting a precedent.

I hope we would not be doing so if we adopt this legislation. But let me say that everybody else thinks so.

Mr. Chairman, I want to read from the July 23, 1978 edition of the St. Louis Post Dispatch; an article entitled "When the Airlines Take the Noise Out of Flying."

Automobile manufacturers complain that their cars won't be able to meet Federal pollution standards without a big increase in their price tags. They propose that taxes on gasoline and tires be turned over to them to help meet their costs.

Coal-burning utilities say they can't meet emissions regulations without a Government subsidy. They ask for a cut of the municipal gross receipts tax.

The airlines say that they won't be able to bring many of their engines into compliance with Federal use standards by the deadline of 1985. Some of them plead near-bankruptcy. They ask that $3 billion collected from a Federal excise tax on airline tickets be diverted to them.

Although the first two scenarios are all but a gleam in the carmakers' and utility industry's corporate eye, the third one is being acted out this summer on Capitol Hill. The House of Representatives will soon vote on a bill that would give the airlines up to $3 billion in funds generated by a new two percent tax on airline tickets.

The money would help them buy new engines, or whole new airplanes in order to meet the Federal Aviation Administration's requirement for quieter planes.

Let me quote to the Members something else out of that article:

Although the House Public Works Committee concluded that most airlines would be financially unable to comply with the noise rules without Federal help, CAB Chairman Alfred E. Kahn, an economist, disagrees.

This is a quote from Chairman Kahn's recent testimony before a Senate Subcommittee. I am now quoting from the article, but also quoting from Mr. Kahn:

"There is very little in the record . . . to support that conclusion," Kahn told a Senate subcommittee last month, "beyond bare assertions to that effect by carriers and a few lenders. Moreover, the economic health of the industry has improved markedly since the hearings in the House were concluded over a year ago . . .

"My best judgment is that special financial assistance from the Federal Government is probably not only unnecessary, but undesirable, because it will tend to distort the market process."

Here is an editorial from the Washington Post of August 8, 1978, entitled "This Year's Treasury Air Raid." And is this bill a precedent?

Here is what they say:

It's a clever idea—if you happen to own an airline and need the money to meet federal noise standards or if you happen to be a member of Congress and want to give the airlines a helping hand. But it is, nevertheless, a bad idea. Anyway you analyze the proposal, it is the imposition of a federal tax for the sole purpose of helping an industry to comply with federal law. Once that precedent is set, the possibilities are endless for similar taxes to help other industries meet air-, water- and noise-pollution standards.

The idea works like this: The airlines would continue to collect an 8 percent tax on domestic tickets and a 5 percent tax on domestic air freight. They would also collect an increased departure tax on passengers leaving the country. But unlike other tax money, which goes to the government, this would be different. Each airline could keep up to 25 percent of the ticket tax, 40 per cent of the freight tax and all of the increased departure tax as long as it was spending that much money on new and less noisy equipment.

Can we say it is not a precedent?

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. SNYDER) has expired.

(By unanimous consent, Mr. SNYDER was allowed to proceed for 4 additional minutes.)

Mr. SNYDER. Mr. Chairman, let me read to the Members a portion of an editorial. Some folks say it is just the liberal press and Nader's raiders who are speaking out on these issues, but this editorial is from Business Week. They are hardly liberal or pro-Nader. This is from an editorial entitled "Paying the Cost of Quiet." I am quoting in part:

Hard cases make a bad law, say the lawyers.

Skipping over some of the details of the bill, they then say this:

Today the airlines are flying high, with record earnings and growing traffic. The Civil Aeronautics Board has given them wide latitude in setting fares. So far they have used it mainly to build revenues with promotional fares, but if they needed to cover increased costs, they could apply for higher rates. And yet the Transportation Dept. is still backing federal help in meeting the noise abatement standards.

Revenues from the ticket tax are supposed to finance airport improvements to promote safety. Passing the Anderson bill would limit the funds available for this high-priority purpose. It is true that government spending on the airports has been lagging, but there is no indication that it is not needed.

Moreover, the airlines today have no stronger claim to help than industries that must meet air and water pollution standards. If the carriers are allowed to buck part of the cost back to the government, why should chemical manufacturers or oil refiners pay all the bills themselves?

"Oh," you say, "this bill is not a precedent." Maybe the chairman does not think it is a precedent, but I say to you that the public does. The public across this country is aware that it is. Editorial writers are telling the public it is a precedent, and when we have such pressure, I can assure the Members that it will become a precedent.

Jack Anderson wrote recently in the Washington Post as follows:

Airline Ripoff—The airline industry has convinced top federal officials to stick the taxpayers for a new fleet of modern planes.

The airlines have been fretting about the new noise-reduction standards by the government. They have cooked up a scheme whereby the public will foot the bill for a $4 billion subsidy to buy a new fleet of quieter planes. If the airline honchos have their way, unsuspecting passengers will soon be paying a 2 percent tax on all flights.

Then, Mr. Chairman, here is a publication most Members may not be familiar with. It is called "Legal Eagles News," published by the Lawyer-Pilots Bar Association. Here is what they say:

Noise Bill Raids Trust Fund to Benefit Airlines.

They are interested in safety, my friends; they do not care whether airlines get money or not. They say:

The net result of this plan is that the trust fund money, designed for airport and facilities improvement, would instead be used to pay for airline acquisition of new equipment meeting Part 136 noise standards.

My friends, the cook may wash it and disinfect it as much as she will, but the stench of the skunk still stays, much as she will.

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Pennsylvania.

Mr. GARY A. MYERS. Mr. Chairman, as a matter of clarification, the editorial mentioned has tried to draw a similarity between this provision and using the gas tax, for instance, to give to the auto industry. It somewhat misses the mark because the gas tax, the excise tax, is taxed on another industry's product. It would be more consistent if they would have an analogy that an excise tax was placed on automobiles, and then rebated for social repairs.

It seems to me that if we were here today proposing that an excise tax be placed on fuel for the airlines, and that tax would be rebated, many of us would not go along with that concept, but what we are doing is talking about taxing what the benefactors of this are providing.

Mr. SNYDER. Whether we tax the price of travel, which is the ticket fare, or the price of travel in a car, which is the price of gasoline, I think we are talking about the same thing.

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

(At the request of Mr. VANIK and by unanimous consent, Mr. SNYDER was allowed to proceed for 1 additional minute.)

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I would like to say that I applaud the statement of the gentleman from Kentucky. I want to point out that he was the very first person in the Congress who blew the whistle on this proposal when it was made in the Public Works Committee. He did his Nation a great service, and I thank the gentleman.

Mr. SNYDER. I thank the gentleman.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for yielding. I would like to say publicly that I think the gentleman from Kentucky has certainly been very forthright in his position, and he knows I have the greatest respect for him and had some of the misgivings he has expressed, and we have talked about this previously. But, on the question of safety and depletion of the trust funds, I think it is important for the members of the committee to know, and for the American public to know, that there is already a $2 billion surplus in this trust fund for safety purposes.

Mr. SNYDER. There is a $2 billion surplus on the books. Of course, they are borrowing from it to pay for other programs when they ought to be using it for safety. They have been neglecting safety.

Mr. LEVITAS. I think in many ways the FAA has been——

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

Mr. LEVITAS. Mr. Chairman, I ask unanimous consent that the gentleman may have 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

Mr. ASHBROOK. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. LEVITAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, to continue the point that I was making in connection with the remarks of my good friend from Kentucky, the fact of the matter is that the trust fund today has approximately a $2 billion uncommitted surplus, and that the application of a portion of the user tax that has been proposed is for other aviation purposes, namely, the reduction of aviation noise.

The airlines must and should comply with the noise requirements imposed by the Federal Government. The question then comes: Where do these funds which will pay for the compliance come from? They are going to come exclusively from the users of aviation services; no other place. And the only question is: Does it come from airlines charging higher fares to the traveling public in a chaotic and spasmodic way, or does it come from this system of user taxes which seems to be the most equal and effective way to deal with the problem, and it is a problem which this Congress rightly imposed upon the airline industry to come into compliance with noise reduction standards.

Mr. ULLMAN. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Oregon.

Mr. ULLMAN. The gentleman is absolutely correct. The users are going to have to pay for aircraft noise reduction and it will involve substantial cost. But the articles the gentleman from Kentucky (Mr. SNYDER) read from, and the newspaper reports, do not tell the complete story concerning the amendment. The funds that the aircraft companies use, the taxes refunded or credited are taxable. They are fully included in taxable income. It is not a giveaway. All it is is a mechanism for an even distribution.

You mention setting a precedent. We can go back 25 years to the capital construction funds for merchant ships, where they put moneys they have earned into a fund, and they are totally tax exempt. Then, when they draw from the fund to build new ships, there is no tax imposed upon these funds. If you are going to talk about setting a precedent, there is one that is already on the books. But here the airline companies pay taxes on this revenue; there is no giveaway involved. This is merely a mechanism for an even distribution so that competitive imbalances are not created. That is the only way you can arrive at a reasonable solution for this problem.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, I thank the gentleman for yielding, and I wish to associate myself with the remarks of the gentleman from Georgia (Mr. LEVITAS).

Mr. Chairman, if I might sort of oversimplify this issue, let us say you have a businessman who travels extensively and maybe his average ticket expense to do this in a year comes to $1,000. Now, he pays $80 of that into the trust fund. Under this proposal $20 of that would go to the transition to the new, quieter, cleaner aircraft, which goes to the public's benefit and to his own personal benefit since he is riding on this new type of aircraft.

It is just that simple. It is not a raid on the Treasury, it is a question of the user paying a small portion of it into the trust fund to make the transition.

Mr. LEVITAS. Mr. Chairman, the gentleman from Arkansas (Mr. HAMMERSCHMIDT) makes a very important point. This is not a raid on the Treasury because the person who is paying it is the user, the person who buys the ticket, and he will pay it one way or another. The general public will not pay for this under the provision of the bill.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, when the gentleman from Georgia (Mr. LEVITAS) first started his argument just a minute or so ago, the gentleman was putting emphasis on the large surplus that we have in the trust fund. I would like to tell my colleagues something, and that is that we have this surplus, because it has not been released to the hundreds of airports that are waiting in line to get that money, and if they got that money, then it could be that we would not have that surplus. The Government should give it to the people for whom it was intended.

Mr. LEVITAS. The gentleman from Texas (Mr. KAZEN) is very correct in making the point that the FAA, and also in my opinion, has been remiss in obligating the funds which should be obligated. Our aviation subcommittee and the investigation and review subcommittee have looked into this and I think the FAA needs to be reprimanded for not doing a better job of putting out the trust funds more expeditiously. But if they obligated all of the funds that have been requested for safety projects, which can be justified, they would still have a surplus, and still the trust fund surplus still continues to grow. If this user tax is going to be reduced, then we are going to see the aircraft industry raise its fares to the same users.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. GEPHARDT and by unanimous consent, Mr. LEVITAS was allowed to proceed for 2 additional minutes.)

Mr. GEPHARDT. Mr. Chairman, I thank the gentleman for yielding.

I would like to say that I agree with the gentleman on his point that users are going to pay for the airline noise.

The question is, How is the mechanism going to be affected?

My problem with this bill is that we are imposing the Government between the airlines and the users. I am saying, Let us not do that. Let the users pay the airlines which need to buy new aircraft directly in the form of a higher ticket price and not put the Government in the middle. By putting the Government in the middle we are not getting the money to the airlines which need the money. There is a better way to do this.

Mr. Chairman, I am just suggesting that we allow present title III to remain in the bill and not go along with the Committee on Ways and Means amendment.

Mr. LEVITAS. The gentleman is making a very good point. That is precisely where I was when I first began to look at this legislation.

Frankly, the air carriers which serve the airport in the community I serve would probably benefit by going the route the gentleman suggested because they are sound and financially secure airlines. They would not have to raise their fares because in many instances, they have already bought the aircraft. However, other carriers which serve areas perhaps represented by the gentleman from Missouri (Mr. GEPHARDT) would have to raise their fares and would find themselves at a very competitive disadvantage to the other stronger carriers, so that was the reason for the mechanism.

I must say, Mr. Chairman, that the gentleman has put the debate in perspective. This business about raiding the Treasury has journalistic appeal, but whatever headlines it gets are not the real issue. Those statements are inaccurate and deceive the Members even if reporters and headline writers like them. The airline users are going to pay for the cost of new aircraft to comply with the noise requirements, and we can take our choice as to which mechanism we want to use, either the user tax or higher fares.

Mr. GEPHARDT. If the gentleman will yield further, I would just add that if we are going into an area of deregulation, and if we are letting airlines set their own rates, it seems to me that we are putting the cart before the horse. If we want to deregulate, let us go ahead and see how it works and then worry about the noise problem.

Mr. LEVITAS. Later this week, when the House passes the airline deregulation bill, I think we will be in an even better position to deal with this option.

AMENDMENT OFFERED BY MR. PEPPER TO THE AMENDMENT OFFERED BY MR. ULLMAN

Mr. PEPPER. Mr. Chairman, I offer an amendment to the amendment.

The CHAIRMAN. The Chair will inquire of the gentleman whether his amendment has been made in order under the rule.

Mr. PEPPER. It is in order under the rule, Mr. Chairman.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. PEPPER to the amendment offered by Mr. ULLMAN: Strike lines 9 through 10, beginning with "issued" to "1958," of section 6453, (d), (2), (B) on page 16 of H.R. 11986 as reported.

Mr. PEPPER. Mr. Chairman, this is a very simple amendment.

I would say to my colleagues that I am advised that the committee, through inadvertence, failed to include intrastate carriers as eligible for the benefits conferred by this title which is now before the House, offered by the distinguished chairman of the Committee on Ways and Means. They failed to make eligible for

these benefits intrastate carriers, and I am only asking that the intrastate carriers be entitled to receive the same benefits under this bill which interstate carriers receive.

Mr. ULLMAN. Mr. Chairman, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Chairman, while I was appearing before the Committee on Rules, the distinguished gentleman from Florida (Mr. PEPPER) raised this issue. I must admit that it was an oversight. We consulted with the staff, and I want to say that there is every reason, as a matter of fact, that the intrastate air carriers should come under the bill.

Therefore, Mr. Chairman, we concur in the amendment.

Mr. PEPPER. Mr. Chairman, I thank the gentleman, and I hope the amendment will be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. PEPPER) to the amendment offered by the gentleman from Oregon (Mr. ULLMAN).

The amendment to the amendment was agreed to.

Mr. ASHBROOK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have listened to the entire debate; and I was one of the few on the floor last night when my colleague, the gentleman from Ohio (Mr. VANIK) presented a special order. I would have to admit that I thought that special order struck a chord that would have some response here in the debate.

Mr. Chairman, I have been listening to the debate now for more than an hour; and nobody has even touched on the points raised by the gentleman from Ohio (Mr. VANIK) last night.

I would like to ask my colleague and friend, the gentleman from California (Mr. ANDERSON) and possibly the chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. ULLMAN), whether either could care to comment on the statement of my colleague, the gentleman from Ohio (Mr. VANIK), last night when he indicated that as much as $1 billion from this bill would go to foreign airlines for retrofitting, for the same purposes for which our domestic airlines would use that money. My colleague, the gentleman from California (Mr. ANDERSON), indicated that he wanted to expand on that question here on the floor.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from California.

Mr. ANDERSON of California. I thank the gentleman for yielding.

The answer to the gentleman's inquiry about foreign airlines is, yes, they do receive money if they comply with our noise requirements. I have not been able to get all the figures, but, for example, I find that Air Canada would be getting about $10.3 million over a 5-year period, which would be about $2 million a year. Incidentally, they have an all-U.S. fleet, and many other airlines do. Air India has an all-U.S. fleet; Air Iran has an all-U.S. fleet. Any money the foreign airlines spend comes back into this country. There is no loss of dollars. These foreign airlines first have to comply with our noise requirements.

During the special order last night, the issue of Russian airlines came up, and I pointed out earlier that under our bill Russian airlines really would not get one penny because their planes do not meet U.S. standards. They do not have a retrofit program at all. They are not even thinking about it, and in 1985, if they have not met our requirements, they would not get one penny back. Raising this issue is wrong.

To look at it another way, today the international airline passenger pays a ticket tax of $3. Our bill changes that to $2 for under $100 and raises it to $10 for over $100. So actually the ticket tax on a flight to Russia would be raised to $10. If the Russian airlines do not meet our noise requirements by 1985, as H.R. 8729 requires, then the collected tax will all revert to the trust fund. When someone says this is foreign aid for Russia, it is the reverse. It gives further funding to the airline trust fund.

Mr. ASHBROOK. My colleague has not mentioned the socalled 10 percent. I keep hearing the figures bandied around that 90 percent would remain in the United States because 90 percent of the airlines of the world use American aircraft. I think we all recognize that that is a situation that may be changing. We have heard of Air France, Inc.; we have heard of Germany, Inc. and we have heard of Japan, Inc. We know what that means. They are moving into the airline industry with aircraft production just as in other industrial areas. Can the gentleman assure me that we will keep that 90 percent edge, and how much does that 10 percent in foreign manufacture account for?

Mr. ANDERSON of California. I hope we keep that 90 percent. One of the basic things that this bill will do will be to encourage the airlines to buy some new planes, more than they are doing now, so that hopefully our air industry can come up with a new generation of planes that will compete more with the airbus, and other new equipment. While I cannot give the gentleman any current figures, the last figures I could get on Air France is that they are still using an all-U.S. fleet, but I assume that they will be moving in to the airbus unless the U.S. aviation industry comes up with something that can compete with it.

While our bill's main purpose is to quiet noise, it also stimulates the airframe industry and air engine industry in this country to come up with some new forms of technology.

Mr. ASHBROOK. If I could ask my colleague an additional question, for what reason did the committee not limit the benefits under the bill to American industries only, to American workingmen only, to American retrofitting only?

Mr. ANDERSON of California. I might say when we started on this bill we have had so many hearings and discussions—we have been at it for almost 3 years—and our thinking was "buy American." We have a buy-American clause in the bill.

Industry and labor came to us and said, this is one industry that does not need protection. We are selling 90 percent of the airframe industry in the world. Incidentally, as was pointed out to me, 50 percent of the Airbus is made in this country, because we are out front in this particular area.

Mr. MEEDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think this has been a very good and, I think, constructive debate. I would like to try to capsulize the options that are available to us and to discuss them just briefly.

First of all, under the parliamentary situation, if we accept the amendment of the gentleman from Oregon (Mr. ULLMAN), we can then accept, as we have already, an amendment by the gentleman from Florida (Mr. PEPPER), which everyone agreed to, and any other amendments by the Committee on Ways and Means. If we vote that up, we then have a 2-percent tax continued, which is taxable, which will pay for approximately 20 to 25 percent of the total retrofitting and new equipment which will be required under this bill, somewhere in the area of $2 billion.

If, on the other hand, we reject title III, as suggested by the gentleman from Oregon, we are left then with the title III of the public works bill.

Now, I am going to suggest that those two title III's are very similar in many respects; but in one respect, and I think those of us who want to economize and who do not want to see any more than is necessary go to the airlines, ought to be aware of this—under the public works amendment, during the term that this runs, the collections will come to—these are projections—$3,145,900,000.

Under the Ways and Means title III, on the other hand, the collections will come to $2,273,300,000, and then those will be taxable, making it effectively below $2 billion; so you save over $1 billion in the title III of the Ways and Means Committee bill.

Mr. ULLMAN. Mr. Chairman, will the gentleman yield?

Mr. MEEDS. I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Chairman, in addition, the present tax would continue in effect. Under our provision, you get a reduction in the present tax.

Mr. MEEDS. That is the second scenario.

The third scenario is the one suggested by the gentleman from Kentucky (Mr. SNYDER). The gentleman from Kentucky says if we beat the Ways and Means title III, we will return to the Public Works title III and the gentleman from Kentucky then will move to strike.

Well, assuming the gentleman is successful, which I do not think it is safe

to assume, but assuming the gentleman is successful, does anyone seriously think—does anyone seriously consider that the 1983 standards which have been mandated are really going to be met? There is just no way and I do not think any right-thinking person really believes they are going to be met; so we are going to be faced here 2 years or a year from date with rolling back again, as we did in the auto industry, rolling back and not really carrying out the purpose of this bill. The purpose of this bill is to abate aircraft noise and to protect the citizenry of this country from the noise of aircraft.

This is one of the ways for doing this. There are two other titles in this bill for doing it.

Now, if we really want a bill which carries out the function of abating noise, then we are going to have to have some kind of title III. We are going to have to have some aid to the airlines.

Both the gentleman from Missouri and the gentleman from Georgia made the point, and I think everybody knows, the users are going to pay this tax. We are going to have to have some mechanism to do it. Now, it seems to me of all the mechanisms which are available to us and realistic, the title III of the Committee on Ways and Means is the most viable. It is the least expensive to the users. It is the most effective and will assure the least cost to the users, the abatement of aircraft noise within the prescribed time frame.

Mr. Chairman, I urge my colleagues to support it.

The CHAIRMAN. The time of the gentleman from Washington has expired.

(At the request of Mr. VANIK, and by unanimous consent, Mr. MEEDS was allowed to proceed for 1 additional minute.)

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. MEEDS. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I would like to say in response to my colleague Oregon, we are left then with the title engines for aircraft replacement are obsolete and do not meet Government standards.

Mr. MEEDS. Mr. Chairman, I will reclaim my time. I disagree with the gentleman. Sixteen hundred aircraft which are presently meeting standards which were prescribed by this Government will, in effect, be made obsolete.

I say that because they are retroactively told that they must meet a certain standard. It is not like the auto industry, where we are saying new cars must meet that standard. It is not like the coal-fired plants being told that new coal-fired plants must have scrubbers. This is a retroactive change which is taking place and which the air transport industry of this country is being called upon to bear.

The CHAIRMAN. The time of the gentleman from Washington (Mr. MEEDS) has expired.

(On request of Mr. GOLDWATER, and by unanimous consent, Mr. MEEDS was allowed to proceed for 2 additional minutes.)

Mr. GOLDWATER. Mr. Chairman, will the gentleman yield?

Mr. MEEDS. I yield to the gentleman from California.

Mr. GOLDWATER. Mr. Chairman, is it not a fact that whether this bill passes or not, the flying public will still be paying the 8-percent ticket tax?

Mr. MEEDS. That is, I think, correct. I am not an expert on that tax, but I believe that is correct.

Mr. GOLDWATER. What we are doing is taking 2 percent and diverting it into a pool to meet new regulations on the airlines to reduce airplane noise on an accelerated time frame.

Mr. MEEDS. I think that is the best way, yes.

Mr. GOLDWATER. Mr. Chairman, I would like to address myself to the remarks of the gentleman from Ohio (Mr. VANIK), who was talking about replacing aircraft.

The airplanes we are replacing now cost much less when they were purchased than they do today. I am not sure exactly what the cost was, but let us say the costs were $10 or $11 million. The planes we are buying now cost upwards of $20 and $30 million.

When they go to buy or replace aircraft, they use moneys generated from depreciation as well as moneys taken out of retained earnings. If they do not have the earnings with which to acquire the planes from retained earnings and they do not have the money to pay for it from other internal funds, then they have to go outside. I think the point to underscore here is, that unless they have sustained profits over a period of time, they are not going to have the economic clout to go out into the financial community and get the money to make up the difference between the price of original aircraft and those being bought today. The planes they are buying today are two or three times what the original costs were.

Mr. MEEDS. And, Mr. Chairman, I would say to the gentleman from California (Mr. GOLDWATER) that at least I am told the airline industry of this Nation during the next 10 years is going to have to replace $60 billion worth of capital equipment. That is $60 billion we are talking about, and the gentleman from Ohio (Mr. VANIK) would have us believe that we are subsidizing all that. We are in this bill only talking about $2 billion of that cost.

Mr. GOLDWATER. Mr. Chairman, will the gentleman yield further?

Mr. MEEDS. I yield to the gentleman from California.

Mr. GOLDWATER. Mr. Chairman, I think it would be important to point out also that if we are concerned about the Airbus and other foreign competition, one way to meet that competition is to stimulate domestic production by encouraging replacement through this mechanism.

Mr. MEEDS. Mr. Chairman, I agree with the gentleman.

Mr. SIMON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, there are four fundamental questions, and then there are some budgetary implications that we ought to take a look at.

Those four questions are these:

No. 1. should we use the power to tax to raise private capital? It seems to me the answer generally ought to be that we should not.

No. 2, if we want to reduce taxes, can we best serve the Nation by reducing the taxes of United Airlines, American Airlines, and the other major airlines, or are there other needs in this Nation that are more pressing?

The third question: Should we have more earmarking of funds, or should we have less earmarking of funds? It has been interesting to listen to the debate, because as soon as we talk about earmarked funds, we are not as careful. We say that this is not coming out of the general fund; this is coming out of a trust fund that has a surplus.

No. 4, are there better ways to solve this particular problem? I heard in the debate last night and today at least two suggestions for ways to solve the problem that strike me as being more sound.

Then, on the budgetary implications, there is an inflationary impact whenever we go into a trust fund, because that trust fund cannot buy the obligations of the U.S. Government. When we reduce a trust fund by $1 billion or $2 billion, that means we have to go into the private money market for that additional money. So there is that slight inflationary impact.

Second, I would point out to the Members who have other things they are interested in, other things they would like to get some money for, that this was brought to the Budget Committee and the Budget Committee was asked to increase budget outlays by $425 million and reduce revenues by $360 million to accommodate this measure, and we voted that down 11 to 6.

Then in order to make it possible for this bill to pass, language was agreed to by voice vote. We agreed that we would insert this language into the report, and I quote this to the Members:

> The committee recommendation simply assumes that this legislation, if enacted, will not have substantial impact on the fiscal year 1979 budget because of anticipated delays in enactment and funding.

Now, the delays are not here, and it means, if we pass this, there are going to be some squeezes on your favorite projects, some other things you want. And I would suggest that the Members might keep that in mind.

Mr. WAGGONNER. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Louisiana, one of the most distinguished Members of the House, who we are going to be missing in the years to come.

Mr. WAGGONNER. I thank the gentleman for his kind comments. Of course, we have a mutual admiration and respect

for each other, and we have had since we have both been here.

Mr. Chairman, may I comment briefly on the first of the gentleman's four points wherein he raises the question: Should we utilize the power to tax to aid the raising of private capital?

I do not believe that is exactly the situation. What we are doing is utilizing moneys which are raised by taxes to let those severely and adversely affected by congressional action be compensated for some of the undue financial burden that we have imposed upon them.

If you assume, for example, that the cost of this retrofit program will be $3½ million, you can as well assume that that is $3½ billion extra for which airline operators have been burdened because of a congressional mandate. We, the Congress, have burdened them with that extra expenditure requirement. I think that we are obligated to try to help them some to meet that burden.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. SIMON) has expired.

(By unanimous consent, Mr. SIMON was allowed to proceed for 2 additional minutes.)

Mr. SIMON. Mr. Chairman, my response to the gentleman is that you can use almost any industry and apply the same kind of judgment—the coal mines of southern Illinois, the steel mills of Gary, Ind., or Ohio, the paper mills of Wisconsin. All of them have had impositions by Congress and by the Federal Government saying, "You can't have this kind of water effluent. You can't have this kind of air effluent. And we have provided tax write-offs, and other things, but we have not said we are going to have this little cushion, this little trust fund for you." I think we are wise not to have that cushion and trust fund.

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Pennsylvania.

Mr. GARY A. MYERS. I thank the gentleman for yielding.

Mr. Chairman, the gentleman mentioned the coal industry. Would the gentleman agree that, with respect to the trust fund, the black lung bill, as well as the strip mining bill, essentiallv do the same thing, that is proposed here, it uses the power of the Federal Government to provide some capital to help solve an industry social problem that is a national goal?

Mr. SIMON. With the black lung fund and the strip mining fund we do not turn that money over to the companies.

Mr. GARY A. MYERS. Most of us, when we voted for them, felt, essentially, it was the responsibility of the coal industry. And we have used the leverage of the Federal Government to assist them in receiving the capital to meet those obligations. Certainly it is not the obligation of the airlines to pay for black lung. It certainly is not the obligation of the steel industry to pay for black lung. It is the coal industry's obligation. We have taken two very serious national problems and we have insisted that that industry receive help meeting these social obligations.

Mr. WEISS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been somewhat distressed by the apparent lack of faith in the part of one of our major industries, the aerospace industry, in deed as well as in theory to the free enterprise system. Mr. VANIK, in comments that he has made in the course of this debate, has pointed out that, rather than taking the tax collection by the Federal Government approach and the turning of those taxes over to the airlines, that the perfectly logical way to do it would be to simply reduce the taxes by the same amount and let the airlines determine on the basis of their own needs as to whether they want to raise fares by the equivalent 2 percent or whatever percent they wanted, to pay for their new airplanes or for noise pollution control.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I have proposed a third alternative, two other alternatives. One is that we provide in the tax code for the immediate expensing of the costs of complying with all of these laws—EPA, OSHA. This is so critically important to our industry across the board. We ought to provide amendments to the code to do that.

Mr. WEISS. I think the gentleman has performed a great public service in pointing out that there are other ways than through the way of the tax collector to provide for these needs. My concern beyond the theoretical concern, which I think that all of us ought to be aware of, is that this is going to be the camel's nose under the tent.

Mr. WAGGONNER. Mr. Chairman, will the gentleman from New York yield on the same point?

Mr. WEISS. Very briefly, I will be pleased to yield.

Mr. WAGGONNER. I thank the gentleman. I will be brief.

The reason Mr. VANIK's alternative to allow fare increases is not a viable alternative, stems from the simple fact that the large, more financially stable airlines will completely absorb these smaller, less stable airlines. They will disappear. The big ones will be stronger and the smaller ones will go by the boards.

Mr. WEISS. I appreciate the gentleman saying that, and those are exactly the same arguments that have been used against the concept of deregulation. It seems to me that the airlines have learned in the course of this past year, on the subject of airline deregulation, that the airlines, including the small ones, are doing quite well under it.

I am concerned that if this title is adopted and we turn over tax money for noise control, the consumers of this country will in the future be faced in every area of endeavor, whether it be the environmental or health or safety, with the argument that we did it for the airlines, and therefore we ought to enact a special tax on the consumer in those other areas as well regardless of the need of the particular industry. It seems to me that it is an extremely dangerous precedent to start on.

I am opposed to this approach, and urge a no vote on the Ways and Means substitute.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, the question about having more competition and improving the health of the airlines and having lower fares, I think, is very commendable, and the gentleman will have an opportunity to vote on our excellent airline deregulation bill later this week.

Mr. WEISS. Would the gentleman feel, then, that if we have that deregulation approach pending, we ought to work and adopt that before we start taking this special approach of funding the airlines supposedly for noise control?

Mr. LEVITAS. I am not sure they are necessarily related matters.

The gentleman, if I remember correctly, voted for the strip mining bill earlier in this Congress. If I recall, the strip mine bill did impose a tax on strip mines coal for purposes of reclamation of the land to meet environmental standards, which tax is passed on to the consuming public. That is precisely the same as this bill.

Mr. WEISS. That is for general purposes to be spent under the direction and control of the Government. It was not for the purpose of the coal mining companies themselves.

Mr. ULLMAN. Mr. Chairman, I wonder if we can get an agreement on time? I think that we want to give those who want to speak an opportunity to do so. Could we agree to close all debate on this amendment in 10 minutes?

Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto close in 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The CHAIRMAN. Members who were standing at the time the limitation on time was agreed to will be recognized for approximately 40 seconds each.

(By unanimous consent, Mr. WEISS yielded his time to Mr. VANIK.)

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. TUCKER).

Mr. TUCKER. Mr. Chairman, I have had a great deal of trouble with this bill. I must say it sets a terrible precedent. As my colleague the gentleman from Missouri has said, this constitutes the affirmative use of the Government taxing power as a revenue-raising mechanism for private industry. Clearly the consumer should have to pay the increased costs of this enviromental improvement. But, there are more costs involved here than simple retrofit of aircraft for noise supression. Many of these planes are already obsolete and will have to be replaced for reasons other than noise suppression. Many will have to be replaced

in order to meet new fuel economy necessities for example. So I suggest caution to my colleagues when they vote on the amendment. It is a precedent and, I fear, a very bad one.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. PICKLE).

Mr. PICKLE. Mr. Chairman, I have reservations about this measure, and opposed the rule and the previous question, but I must say to the Members, though, that the option we have before us now is that we are either going to pass legislation that will permit this retrofit approach, or there will be no legislation this year.

The only way, as I see it now, is to pass title III, otherwise we will not be able to go back to the committee, there will not be other amendments and we will not be able to make some kind of correction on the retrofitting problem. I therefore think it is important to pass it even though you might have some reservations because of problems in your areas. The airlines in my section will not be particularly helped, but I think this is a national problem which the Congress imposed on the airlines, and that we should pass this amendment. In committee I voted for some other amendments, which I think could have improved the legislation. Our choice now, however, is to either allow funds for retrofitting, or have no funds available for noise abatement. In the national interest, I think it best to pass title III.

(By unanimous consent, Messrs. GOLDWATER, CONABLE, and SHUSTER yielded their time to Mr. CUNNINGHAM.)

The CHAIRMAN. The Chair recognizes the gentleman from Washington (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Chairman, I thank my colleagues for yielding me their time.

Mr. Chairman, I happen to come from a district that is vitally impacted by this bill. True, we do manufacture planes but, more important, we have a citizenry that is impacted by the noise of the planes produced and it is that item that prompted this Congress several years ago to adopt the regulations that we are now facing the implementation of today.

We all agree that this is a user tax, there is no question there. We all understand that the new engines and the new aircraft will be more efficient and will use less fuel, there is no question there. But there have been some statements made in this debate, like "the horrendous profits of the airlines." As you all know these are regulated carriers, with a return authorized through the utility as a fair return.

Yet, their average earnings are far below what utilities are authorized to receive as a fair return. It is for that reason that no one broker or any pension fund in this country is flocking to buy this stock. It is so low on the average that it will not help provide moneys for the retirement of our citizens and the members of these retirement funds.

Mr. Chairman, I would hope that this committee amendment will be adopted because it is the proper way, because you and I have either purposely inadvertently changed the rules which were originally promulgated for this implementation. In that we chose to do that, I would strongly recommend that we consider not only the airlines, not only the manufacturers, but consider the people who live beneath the flight paths of our airports in all of the cities of this county. They are entitled to the peace and quiet so important to our way of life.

I urge your support of the Ullman amendment.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I want to commend the gentleman from Washington (Mr. CUNNINGHAM) on a very good statement. I think he has hit the central theme on this issue, and I commend him for a good statement.

In this 75th anniversary year of the Wright Brothers historic flight at Kitty Hawk, I want to stress the vital importance of maintaining U.S. technological leadership in aviation and its favorable impact on our balance of payments.

The aerospace industry's performance in international trade has, for the past years, topped the $7 billion level and imports amounted to less than one-tenth the dollar value of exports. The resultant aerospace trade surplus represents a significant contribution to the U.S. economy, particularly in view of the massive international trade deficit experienced by the Nation as a whole.

This Nation's aerospace export products rank second only to agriculture in positive contribution to the U.S. trade balance, and the quality of American-built aerospace products speaks for itself. U.S. airliners have created strong demand abroad and provide consistent and substantial contributions to the U.S. international trade balance. While the Nation as a whole has experienced trade deficits in 3 of the last 4 years, aerospace products recorded trade surpluses ranging from $6.3 to more than $7 billion.

Exports of civil aerospace products have far outstripped military sales abroad. Shipments of civil aircraft, engines, accessories and other equipment amount to more than $5 billion. The largest single component among aerospace exports is, of course, commercial transport aircraft.

Enactment of this legislation is of vital importance in maintaining U.S. technological leadership in aviation and its favorable impact on our balance of payments.

Enactment of H.R. 8729 and H.R. 11986, as reported overwhelmingly by the Public Works and Transportation and Ways and Means Committees after extensive public hearings, will, of course, also help alleviate the annoyance of jet aircraft around airports in every part of the country. That is its main purpose, and an important and vital need by itself.

This legislation also will save millions of gallons of jet fuel a year through procurement of quieter and more efficient aircraft. It will create thousands of jobs throughout the country.

At a time when the strength of the U.S. dollar has been slumping in the world marketplace, we need to reverse the unfavorable and ominous shortfalls in our balance of payments.

H.R. 8729 and H.R. 11986 will lead to sales of additional billions of dollars of aircraft by U.S. manufacturers and their suppliers through the encouragement provided to advanced technologies.

From the time of the Wright Brothers to today, America's progress has depended on technological advance to meet public needs and to compete in world commerce. The legislation before us is in this tradition of technological achievement and economic strength.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana (Mr. WAGGONNER).

Mr. WAGGONNER. Mr. Chairman and my colleagues, we have a national noise-control problem.

The purpose of this legislation is not to benefit the airlines, as the gentleman from Ohio (Mr. VANIK) has said. The purpose of this legislation is to reduce the level of noise created by these airplanes. The airlines are not going to be the beneficiaries; the people of this country are, just as was the case with the strip mining legislation, which was brought to our attention just a few minutes ago.

Who should pay for compliance with the FAA noise standards, Mr. Chairman? The people who use those airlines should. This is the only way that we are going to resolve this problem, and we ought and get on with it.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I take this time to point out to those who may have recently turned on their TV sets in their offices that the parliamentary situation is such that if we reject the substitute of the Committee on Ways and Means, we then will be operating under an open rule on title III of the bill reported by the Committee on Public Works and Transportation, at which time a motion to strike, as has already been indicated to the Chair, would be in order.

I suggest that if we were to move in that direction, we then would save the good parts of the bill, especially title I.

Referring to that title, I read from our committee report the following:

The primary purpose of title I is to establish a new program to assist airports and surrounding communities to develop and carry out programs to reduce existing noncompatible land uses and to prevent future noncompatible land uses around airports.

Mr. Chairman, we also would preserve title II which provides higher authorization levels for the ADAP program from the airport and airway trust fund.

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. GEPHARDT).

Mr. GEPHARDT. Mr. Chairman, I urge my colleagues to reject the substitute of the Committee on Ways and Means so that we can strike title III in order that we can, in effect, open up the rule.

As was explained, the facts have changed since this bill was originally conceived and put together. Today the airlines are making record profits. I would say, contrary to what the gentleman from Texas (Mr. PICKLE) said, that this is not the last chance to deal with this problem. Our last chance will come on the deregulation bill at the end of next week, when we can really take the Government out of the process between the users and the airlines and let the airlines make the kinds of ticket price raises and profits they need to buy the new airplanes which are called for.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Chairman, I just hope that my colleagues will vote against the substitute of the Committee on Ways and Means.

I think the reasons are already in the RECORD. The airlines of this country are going to buy new aircraft regardless of what we do to this bill. Remember, every plane bought since 1972 complies with the law, and they have until 1983 to do it.

Mr. Chairman, they are buying new planes now, first of all, because they have to reduce their fuel consumption and because higher fuel costs require that they become more efficient. Furthermore, they are less noisy at the same time.

The other reason is that they have to buy the planes. Because some of them are over 18 years old. They have already gotten their money back on their investment. They got their investment back within 10 years.

Mr. Chairman, I tell those who live in communities affected by noise that the noise problem is going to be abated by the purchase of these new airplanes.

If this bill is adopted, all we do by this bill is give $4 billion of trust fund moneys which were allocated for airport safety to the airlines. They are just hanging onto the noise abatement alibi in order to raid the Treasury, and that is what it is.

The CHAIRMAN. The time of the gentleman has expired.

The Chair recognizes the gentleman from California (Mr. JOHNSON).

Mr. JOHNSON of California. Mr. Chairman, I rise in support of the Ullman substitute for title III in H.R. 8729. This substitute is very similar to the original title III which was reported by the Public Works Committee.

This proposal would take user taxes and return a portion of them to the air carriers depending on the action of the carriers as to the retrofit, re-engine, or replacement of the noisy aircraft. If they elect to retrofit the noisy aircraft—which reduces the noise only slightly but does incur a waste of fuel—then the carrier would receive a part of the cost of retrofit—estimated to be between a quarter of a million and over a million dollars per aircraft, depending on the type of aircraft. This is the least costly to the user, but it is also the least beneficial to the person on the ground and to the country.

If they elect to replace the noisy aircraft with quiet aircraft, then part of the users tax would go to the cost of the replacement aircraft. This is a more costly option, but it provides the greatest benefit to the person on the ground in the amount of noise reduced. In addition, the newer aircraft are much more fuel efficient.

This program is necessary, Mr. Chairman, if we are serious about the noise problem.

It encourages replacement which has the following benefits. in addition to being much quieter:

Increased fuel efficiency;

Reduced air pollutant emissions;

Strengthen the aerospace industry;

Contribute to the development of aviation technologies for export; and

Provide many more jobs.

As a result, this replacement program, as reflected in the Ullman substitute, has been endorsed by both the Ford administration and the Carter administration.

This is a good program which I fully support and which I feel is extremely important to the effort to provide noise relief to the 7 to 8 million persons who are bombarded on a daily basis by excessive aircraft noise.

The CHAIRMAN. The Chair recognizes the gentleman from Oregon (Mr. ULLMAN) to close debate.

Mr. ULLMAN. Mr. Chairman, I think the crucial issue is whether the users of the airlines are going to pay this bill or the taxpayers of the Nation. If this goes down, the Members will be asked within a year to provide some other form of special tax incentive.

I was shocked that the gentleman from Ohio is urging a full expensing of all of these investments to comply with the noise requirements. That is shifting the burden to the taxpayers of the Nation, and that is wrong. But if we turn this down, that is what we are going to have to do, because that is the only way out of the dilemma. So make a choice. If the Members want the users of the airlines to pay, then vote for this amendment; but if they want, instead to make all of the taxpayers pay for it, then vote against it.

The CHAIRMAN. The time of the gentleman from Oregon (Mr. ULLMAN) has expired. All time has expired.

The question is on the amendment offered by the gentleman from Oregon (Mr. ULLMAN), as amended.

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 30, noes 10.

Mr. SNYDER. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to rule XXIII, clause 2, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Kentucky (Mr. SNYDER) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 266, noes 133, not voting 33, as follows:

[Roll No. 774]

AYES—266

Abdnor	Dornan	Jacobs
Addabbo	Downey	Jenkins
Akaka	Duncan, Tenn.	Johnson, Calif.
Ambro	Edwards, Ala.	Johnson, Colo.
Anderson, Calif.	Edwards, Calif.	Jones, Okla.
	Edwards, Okla.	Jones, Tenn.
Andrews, N. Dak.	Eilberg	Kemp
	Emery	Keys
Annunzio	English	Kindness
Applegate	Erlenborn	Krebs
Archer	Ertel	Lagomarsino
Ashley	Evans, Colo.	Latta
Aspin	Evans, Ga.	Le Fante
AuCoin	Evans, Ind.	Lederer
Badham	Fascell	Leggett
Bafalis	Findley	Lent
Barnard	Fisher	Levitas
Beard, R.I.	Fithian	Livingston
Benjamin	Flippo	Lloyd, Calif.
Bennett	Flood	Lloyd, Tenn.
Bevill	Florio	Long, La.
Biaggi	Flynt	Long, Md.
Boggs	Ford, Mich.	Lott
Boland	Ford, Tenn.	Lujan
Bolling	Forsythe	Luken
Bonker	Fowler	Lundine
Bowen	Fraser	McClory
Brown, Calif.	Frey	McDade
Buchanan	Fuqua	McDonald
Burgener	Gammage	McEwen
Burke, Mass.	Gaydos	McFall
Burleson, Tex.	Giaimo	McHugh
Burlison, Mo.	Gilman	McKay
Butler	Ginn	Madigan
Caputo	Glickman	Mahon
Carney	Goldwater	Mann
Carr	Goodling	Markey
Cederberg	Grassley	Marks
Chappell	Green	Marriott
Chisholm	Guyer	Mathis
Clausen, Don H.	Hagedorn	Meeds
	Hall	Metcalfe
Clay	Hammer-schmidt	Meyner
Coleman		Michel
Collins, Ill.	Hanley	Mikva
Collins, Tex.	Hannaford	Milford
Conable	Hansen	Miller, Ohio
Conte	Harsha	Mineta
Corcoran	Hawkins	Mitchell, Md.
Corman	Heckler	Mitchell, N.Y.
Cornwell	Heftel	Moakley
Coughlin	Hightower	Moffett
Crane	Hillis	Moore
Cunningham	Holland	Moorhead, Calif.
Daniel, Dan	Hollenbeck	
Danielson	Holt	Moorhead, Pa.
Davis	Horton	Murphy, Ill.
Dent	Howard	Murphy, Pa.
Derwinski	Hubbard	Murtha
Dickinson	Hughes	Myers, Gary
Dicks	Hyde	Neal
Dingell	Ireland	Nichols

Nix	Rousselot	Udall
Nowak	Roybal	Ullman
O'Brien	Runnels	Van Deerlin
Oberstar	Russo	Vander Jagt
Panetta	Sawyer	Volkmer
Patten	Scheuer	Waggonner
Patterson	Schroeder	Waigren
Pattison	Schulze	Walker
Pepper	Sebelius	Walsh
Perkins	Shuster	Wampler
Pettis	Sikes	Watkins
Pickle	Sisk	White
Pressler	Skelton	Whitehurst
Price	Skubitz	Wilson, Bob
Pritchard	Slack	Wilson, C. H.
Quillen	Smith, Iowa	Wilson, Tex.
Rahall	Smith, Nebr.	Winn
Railsback	Spence	Wirth
Rhodes	St Germain	Wolff
Rinaldo	Staggers	Wright
Risenhoover	Stangeland	Yatron
Roberts	Stratton	Young, Alaska
Rodino	Symms	Young, Fla.
Roe	Taylor	Young, Mo.
Rogers	Thompson	Young, Tex.
Roncalio	Thone	Zablocki
Rooney	Thornton	Zeferetti
Rose	Treen	
Rostenkwski	Trible	

NOES—133

Alexander	Foley	Pike
Anderson, Ill.	Fountain	Poage
Andrews, N.C.	Frenzel	Preyer
Ashbrook	Garcia	Pursell
Baldus	Gephardt	Quayle
Baucus	Gonzalez	Rangel
Bauman	Gore	Regula
Beard, Tenn.	Gradison	Reuss
Bedell	Gudger	Richmond
Bellenson	Hamilton	Robinson
Bingham	Harkin	Rosenthal
Blanchard	Harrington	Rudd
Blouin	Harris	Ruppe
Bonior	Hefner	Ryan
Brademas	Holtzman	Santini
Breckinridge	Ichord	Satterfield
Brinkley	Jeffords	Seiberling
Brodhead	Jenrette	Sharp
Brooks	Jones, N.C.	Shipley
Brown, Mich.	Jordan	Simon
Broyhill	Kasten	Snyder
Burton, John	Kastenmeier	Stanton
Burton, Phillip	Kazen	Stark
Byron	Kelly	Steed
Carter	Kildee	Steers
Cavanaugh	Kostmayer	Steiger
Cleveland	LaFalce	Stockman
Cohen	McCloskey	Stokes
Conyers	Maguire	Studds
Cornell	Marlenee	Stump
D'Amours	Martin	Traxler
Daniel, R. W.	Mazzoli	Tucker
de la Garza	Mikulski	Vanik
Delaney	Minish	Vento
Dellums	Mollohan	Waxman
Derrick	Moss	Weaver
Devine	Motti	Weiss
Dodd	Myers, John	Whalen
Drinan	Natcher	Whitley
Duncan, Oreg.	Nedzi	Whitten
Early	Nolan	Wydler
Edgar	Oakar	Wylie
Evans, Del.	Obey	Yates
Fenwick	Ottinger	
Fish	Pease	

NOT VOTING—33

Ammerman	Eckhardt	Miller, Calif.
Armstrong	Fary	Montgomery
Breaux	Flowers	Murphy, N.Y.
Broomfield	Gibbons	Myers, Michael
Brown, Ohio	Huckaby	Quie
Burke, Calif.	Krueger	Sarasin
Burke, Fla.	Leach	Solarz
Clawson, Del	Lehman	Spellman
Cochran	McCormack	Teague
Cotter	McKinney	Tsongas
Diggs	Mattox	Wiggins

The Clerk announced the following pairs:

On this vote:

Mr. McCormack for, with Mr. Leach against.

Mr. McKinney for, with Mr. Broomfield against.

Mr. Sarasin for, with Mr. Solarz against.

Mr. WHALEN and Mr. DODD changed their vote from "aye" to "no."

Mr. PANETTA changed his vote from "no" to "aye."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there additional amendments to title III?

AMENDMENT OFFERED BY MR. ANDERSON OF CALIFORNIA

Mr. ANDERSON of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ANDERSON of California: Page 42, strike out line 8, and all that follows through line 23 on page 43, and insert in lieu thereof the following:

TITLE IV

SEC. 401. For purposes of this title—

(1) the term "noncomplying aircraft" means any civil subsonic turbojet powered aircraft (A) which (i) has a maximum certificated takeoff weight of seventy-five thousand pounds or more, (ii) is registered in the United States, (iii) has a standard airworthiness certificate issued pursuant to section 603(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1423), and (iv) as determined by the Civil Aeronautics Board, is in service on January 24, 1977, and (B) which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977;

(2) the term "retrofit" means the alteration of the engine or the engine nacelles of an aircraft with sound absorbent materials for the purpose of noise reduction; and

(3) the term "Secretary" means the Secretary of Transportation.

SEC. 402. After January 1, 1985, no operator of a civil subsonic turbojet powered aircraft (1) which (A) has a maximum certificated takeoff weight of seventy-five thousand pounds or more, and (B) is registered in a foreign country, and (2) which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977, shall operate such aircraft in the United States.

SEC. 403. Notwithstanding any other provision of law, the Secretary is authorized to allow any noncomplying aircraft to be operated beyond the date by which such aircraft is to be in compliance with noise standards applicable to it in regulations issued by the Secretary, acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977, by waiving the application of such regulations to such aircraft for such period beyond such date of compliance as he determines reasonable to permit compliance. No such waiver shall be granted except upon application of the operator of the noncomplying aircraft and a finding by the Secretary that such operator has made a good faith effort to comply with such regulations and that there is good cause for failure of such operator to comply with such regulations as applicable to such noncomplying aircraft. For the purpose of this section, the term "good cause" shall include the following:

(1) Any case where the supplier is unable to furnish or make available to such operator in a timely manner the necessary engine retrofit kits, replacement engines, or replacement aircraft.

(2) Any case where the operator is unable to obtain financing at reasonable rates to retrofit, reengine, or replace the noncomplying aircraft.

(3) Any case where the operator's inability to operate such noncomplying aircraft will result in the end of scheduled service to the public.

(4) Any other circumstances the Secretary deems appropriate.

Renumber the succeeding title and the sections therein accordingly.

Mr. ANDERSON of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. HARSHA. Mr. Chairman, reserving the right to object, I would like to inquire of the distinguished chairman of the subcommittee if this is in the nature of a technical amendment substituting sections 305 and 306 as a new title?

Mr. ANDERSON of California. Mr. Chairman, if the gentleman will yield, he is absolutely right. This amendment is technical in that, under the rule, it merely redesignates sections 305 and 306 of H.R. 8729 as a new title IV. This amendment is necessitated by the adoption of the Ways and Means Committee substitute for sections 301 and 304 of H.R. 8729.

Mr. HARSHA. Mr. Chairman, I withdraw my reservation of objection and support the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. Does the gentleman from California (Mr. ANDERSON) desire to be heard further on his amendment?

Mr. ANDERSON of California. I do not, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ANDERSON).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read the new title V.

The Clerk read as follows:

TITLE V

SEC. 501. Subsection (d) of section 14 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1714) is amended to read as follows:

"(d) RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS.—The Secretary is authorized to carry out under section 312(c) of the Federal Aviation Act of 1958 such demonstration projects as he determines necessary in connection with research and development activities under such section 312(c). For research, development, and demonstration projects and activities under such section 312(c), there is authorized to be appropriated from the Trust Fund the amount of $109,350,000 for the fiscal year 1976, including the interim period beginning July 1, 1976, and ending September 30, 1976, $85,400,000 for the fiscal year 1977, and not less than $50,000,000 for fiscal year 1978, to remain available until expended. The initial $50,000,000 of any sums appropriated to the Trust Fund pursuant to subsection (d) of section 208 of the Airport and Airway Revenue Act of 1970 shall be allocated to such research, development, and demonstration activities.".

Mr. ANDERSON of California (during the reading). Mr. Chairman, I ask unan-

imous consent that title V be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. Are there amendments to title V?

PARLIAMENTARY INQUIRY

Mr. HARSHA. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HARSHA. In the bill as it is presently written, title V would be the last provision. I have an amendment that would make a new title VI to the bill, and I would like to know if that is in order at this particular time.

The CHAIRMAN. The Chair will first inquire if there are amendments to the new title V? Hearing none, are there other amendments to the bill?

AMENDMENT OFFERED BY MR. HARSHA

Mr. HARSHA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARSHA: At the end of the bill, add the following new title:

TITLE VI

SEC. 601. Paragraph (4) of section 28(c) of the Airport and Airway Development Act of 1970 is amended by striking out "September 30, 1978" and inserting in lieu thereof "September 30, 1980".

Mr. SNYDER. Mr. Chairman, I reserve a point of order on the amendment.

PARLIAMENTARY INQUIRY

Mr. ASHBROOK. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ASHBROOK. Do I understand we have pending a new title and also an amendment at the end of the bill?

The CHAIRMAN. The Chair asked if there were amendments to title V. There were none. The gentleman from Ohio (Mr. HARSHA) has offered an amendment constituting a new title VI at the end of the bill.

Mr. ASHBROOK. I have a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ASHBROOK. Did the amendment offered by the gentleman from California (Mr. ANDERSON) pass?

The CHAIRMAN. Yes, it was agreed to.

The Chair recognizes the gentleman from Ohio (Mr. HARSHA).

Mr. HARSHA. Mr. Chairman, this is a rather simple amendment. There have been under previous legislation several demonstration projects authorized, and they expire on September 30 of this year. This program is called the State demonstration program, and it was developed to assess the ability of the States to administer programs for airport development for general aviation airports.

The program was not actually begun until early 1977, because of the necessity to establish procedures necessary to comply with the statute. In addition, many of the initial airport development projects undertaken by the States had already been developed by the FAA and were in various stages of completion when assumed by States participating in this program. The States are now progressing with the projects which will more accurately test the objectives of the program. By extending this program until September 30, 1980, the Department of Transportation will then be able to better assess its merits. The Department asked for this extension. They think it is necessary to provide us with sufficient experience and knowledge from which to make recommendations concerning future legislative initiatives. I have discussed this program with the chairman of the subcommittee, and it is merely an extension so that these programs do not stop right now because the authorization expires on September 30 of this year.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. HARSHA. I yield to the gentleman from California.

Mr. ANDERSON of California. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the amendment. First, let us not be duped. Defeat of this amendment kills this entire bill. I know many of you are not entirely pleased with the Ways and Means tax program. However, the program has received the closest scrutiny by three committees, is supported by the administration, and the Treasury, and the Department of Transportation, and, of course, the debate on the merits of the proposal was heard yesterday during discussion of the rule and general debate. This title is key to the entire bill—unless we can assure compliance with the noise deadlines we will be leaving the Nation's airports and even more importantly some 10 or more millions of Americans out in the cold. Defeat of this amendment, I repeat, will defeat the entire bill and I know many of you who may not have a big noise problem are keenly interested in title II of the bill.

I would like to address a few issues which have been raised. First, it is true that foreign air carriers will be eligible for refunds of money collected by them under this bill. Foreign carriers operate some 400 noisy aircraft into the United States—and most of those are the noisiest, four-engine aircraft. As such, foreign carriers contribute significantly to noise at major airports. Recognizing this, the bill requires foreign aircraft to meet U.S. noise standards by January 1, 1985. The Secretary's noise rule currently exempts foreign carriers.

Further, this bill provides an incentive to foreign carriers to beat the deadline by offering refunds of money collected once a foreign carrier's entire fleet operating into the United States is in compliance with our noise standards. This is not a case of U.S. dollars leaving the U.S. to go to a foreign carrier when one considers that 90 percent of the world's jet fleet is U.S. manufactured. These refunds will in large measure be going to foreign carriers to buy U.S. aircraft.

It has been unfairly and uncandidly said that millions of dollars will be going to the Russian airline. Totally false—the Russian airplanes do not meet U.S. standards and will not be retrofitted to do so. Under our bill any money they collect must be turned over to the Treasury until all of its aircraft operating into the United States meet our noise standards. Without this bill they won't have to meet our standards at all—because current noise rules exempts foreign carriers. After January 1, 1985, the noisy foreign aircraft will not be allowed into the United States. That is why I am certain the Russian carrier will not get any money back from the Treasury—they will not meet our standards.

The Noise Control Act of 1972 (49 U.S.C. 1431) did not distinguish between domestic and international flights. To withhold applicability of reasonable standards to foreign flights would not be consistent with that act's policy to protect the public from aircraft noise. In addition, excluding foreign aircraft would be unfair to U.S. operators of similar aircraft who would be forced to operate in the same markets with an economic burden of noise compliance that is not borne by the foreign operators. The bill, as reported, reflects the policy, consistent with the 1972 act, that equal and nondiscriminatory application of economically reasonable noise standards, to all operators, is appropriate.

As the distinguished gentleman from Louisiana (Mr. WAGGONNER) said yesterday, it is time we put our money where our mouth is. Second, this bill is not, as some have falsely characterized it, a raid on the Treasury. That claim is totally false. There is not one dime of General Treasury money in this legislation—every dollar is paid by the user of the air transportation system, as it should be. And, except for a relatively insignificant increase in international taxes for 5 years, this bill will not raise the cost of air travel. The airport and airway trust fund is currently in a surplus of about $2 billion. The effect of title III of this bill would be to divert about one-fourth of the taxes going into that trust fund for 5 years. The trust fund will remain solvent and the current airport development program will not be jeopardized in any way.

Lastly, this bill is not a tax rip-off for the airlines. The Treasury Department, in a July 31 letter to the Rules Committee, indicated clearly that the bill was consistent with the general tax rules, and provided for normal, adequate accounting and review procedures.

In conclusion, do not be persuaded by the feigned shock of some of the speakers yesterday. They are unwittingly arguing against this entire bill and selling millions of Americans down the river. I urge adoption of the amendment.

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Kentucky (Mr. SNYDER) insist on his point of order?

Mr. SNYDER. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. SNYDER. Mr. Chairman, I just heard about this amendment a few minutes ago. While I support what they want to do in this, it is a different pro-

gram that comes out of different legislation. It is an innovative program that we started last year for demonstration projects for, I believe it was, four States to handle the State money themselves rather than going through FAA with a direct funding to the States. They make all the decisions. They set all the criteria. It is a program that is not dealt with in this bill in any way, shape, or form, and in my opinion is not germane to this bill.

The CHAIRMAN. Does the gentleman from Ohio desire to be heard on the point or order?

Mr. HARSHA. Mr. Chairman, I believe it is germane to the issue. It is a section that is in the Airport and Airway Development Act. We already have other titles in this bill dealing with the Airport and Airway Development Act, the so-called AADA. This deals with that part of the program and I think it is germane to the title of the bill.

Mr. SNYDER. Mr. Chairman, if I may be heard further, the other part is an increase in the general authority and does not deal with the special program, which is a program dealt with for the four States. It is not germane to the bill.

The CHAIRMAN. The Chair is prepared to rule.

The bill before us amends the Airport and Airway Development Act in several respects and with some depth and breadth. It deals not only with noise control, but planning, grants and research, and in other ways.

Therefore, the Chair feels the amendment of the gentleman from Ohio (Mr. HARSHA) is germane to the bill as a whole and the point of order is overruled.

Mr. SNYDER. Mr. Chairman, then I move to strike the requisite number of words.

I do this for the purpose of saying it is a good amendment, but I do not think we ought to be dealing with it in this bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. HARSHA).

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to the bill?

Mr. DELLUMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take the well at this moment to give a little legislative history on the Airport and Airway Development Act. I do so because there is a substantial amount of money, particularly in title II, that is additional moneys to this act.

In 1976 the Congress of the United States passed an amendment to the Airport and Airway Development Act. It was section 30 of Public Law 91–258. That amendment that the Congress of the United States passed 2 years ago in 1976 goes as follows:

> The Secretary shall take affirmative action to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds received from any grant made under this title. The Secretary shall promulgate such rules as he deems necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under Title VI of the Civil Rights Act of 1964.

Mr. Chairman, section 30 of Public Law 91–258 states further:

> The provisions of this section shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964.

Mr. Chairman, it is a straightforward amendment passed by the House of Representatives, enacted into law, signed by the President.

Since 1976 the Department of Transportation has failed to promulgate regulations to implement the intent of Congress.

I have been in contact with the Department of Transportation urging them to implement the law. For the past 2 years, each year they have spent approximately $1 billion—$1 billion in noncompliance and total disregard of the law.

Here are some brief excerpts that I received from the Secretary of Transportation. May 19, 1977, the Secretary of Transportation indicated to me that he was "taking significant steps to insure nondiscrimination in its programs."

On March 21, 1978, the Secretary indicated that—

> The Department is proceeding as expeditiously as possible to issue section 30 implementing regulations.

On August 24, 1978, the Secretary of Transportation stated:

> A great deal of data has been collected and various problems have been analyzed.

He indicated that the Office of Civil Rights, the General Counsel and others are evaluating this matter and recommendations are expected in the near future.

The point is that we are hearing this over and over again, and I believe that the intent of Congress was a clear statement to the Department of Transportation that they should forthwith promulgate regulations to implement an affirmative action program with respect to the fund. Two billion dollars being spent in noncompliance and in total disregard of the law is in my estimation governmental lawlessness.

That is what Watergate was all about. That is what many of our investigations have been about. Congress has the right to enact laws, and the executive branch has the responsibility to promulgate rules and regulations to implement these programs and enforce these policies.

How can we let $2 billion be spent in total definance of Federal law?

It seems to me it should not take 2, 3, 4, or 5 years for the executive branch of Government to implement the intent of Congress.

Mr. Chairman, we as Members have a responsibility far beyond just voting on legislation. The Constitution of the United States says we shall have an oversight responsibility. We keep talking about the bureaucratic side of Government, but if we are not willing to force them to implement the law that we pass on the floor, the law that is passed in the Senate and signed by the President, then we are a "paper tiger." I am simply suggesting affirmative action to allow minorities and women to participate in the expenditure of governmental moneys is a policy we have established. It is the law of the land, and I would ask this House to stand firm in communicating to the Department of Transportation that we want them forthwith to follow the law and implement these regulations.

The CHAIRMAN. The time of the gentleman from California (Mr. DELLUMS) has expired.

(On request of Mr. ANDERSON of California, and by unanimous consent, Mr. DELLUMS was allowed to proceed for 1 additional minute.)

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to my distinguished colleague, the gentleman from California.

Mr. ANDERSON of California. Mr. Chairman, I want to commend the gentleman from California (Mr. DELLUMS) on his remarks, and I want to remind the Members that in the 1976 ADAP bill we did adopt the civil rights amendment the gentleman presented, and our committee accepted it.

Since that time I have worked with the gentleman in trying to get the administration to implement that amendment, and I want to pledge my continued support to the gentleman from California (Mr. DELLUMS).

In addition to that, I am going to ask that the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation go into this further and find out why this part of the legislation has not been carried out.

Mr. DELLUMS. Mr. Chairman, I want to thank my distinguished colleague, the gentleman from California (Mr. ANDERSON), for his support. I know the subcommittee chairman has been very concerned. He and I worked together for several months, but my frustration brings me to the floor of the House in the hope that this may jar some action loose.

Mr. JOHNSON of California. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to the chairman of the committee.

Mr. JOHNSON of California. Mr. Chairman, I want to assure the gentleman from California (Mr. DELLUMS) that the Subcommittee on Investigations and Review will be assigned to take a look at this matter. The members of that subcommittee will go into it very thoroughly with the Secretary of Transportation.

Mr. DELLUMS. Mr. Chairman, I thank the gentleman very much for that assurance.

● Mr. HOWARD. Mr. Chairman, this pending legislation is called a noise reduction bill, and properly so. It will reduce airport noise. It has been discussed in terms of fuel conservation. Again, properly so. It will conserve fuel.

It will also create jobs—some of the best and most productive jobs in the

economy. This is one of the key reasons for its widespread support, particularly from such labor organizations as the AFL–CIO, the International Association of Machinists and the Airline Pilots Association.

The distinguished gentleman from California (Mr. ANDERSON) has spelled out some of the job-creating impact in concrete terms. He has stated:

If the airlines replace only the 707's and the DC–8's with new technology aircraft, that would create some 100,000 employee years from 1978 to 1987. This would result in direct employment consisting of an estimated 23,000 new jobs and at least 22,000 indirect jobs.

That's 45,000 jobs as a starter.

The AFL–CIO executive council, in supporting this legislation, declared:

To the extent that this bill will encourage the airlines to buy new aircraft, it will revitalize the U.S. aerospace industry and create jobs here at home rather than export employment abroad.

The AFL–CIO statement added:

Thousands of jobs will be created as the aerospace manufacturing industry begins producing the next generation of jet airliners stimulated by the program outlined in this bill.

Mr. William Winpisinger, president of the International Association of Machinists and Aerospace Workers, recently listed a wide range of reasons for passing this bill. Then he added:

Finally, and of major importance, this is a jobs creating and public works bill affecting every part of the country and the adoption of this legislation would translate into tens of thousands of badly needed jobs at a time when our country is struggling to regain its economic vitality.

We need to reduce noise and increase jobs.●

● Mr. ANNUNZIO. Mr. Chairman, I rise in support of the legislation we are considering here today, H.R. 8729, the Airport and Aircraft Noise Reduction Act. This bill will help the Nation's air transportation system, the airlines, and the airports to cope with the aircraft noise problem. More importantly, it will help the people who are living near Chicago's O'Hare Airport and in the 11th Congressional District of Illinois, which I am honored to represent, who suffer daily bombardment from aircraft noise, by providing them with real relief after years of paper promises and well-intentioned but ineffective actions.

We should keep in mind that there are over 6 million people living in areas around the Nation's airports severely impacted by aircraft noise. Efforts to control this problem on the Federal level have thus far proved inadequate. The Congress passed the Aircraft Noise Abatement Act of 1968, and the Noise Control Act of 1972, both with my strong support, but the main effect of these laws has been to keep an already bad problem from getting worse. The FAA, under the authority granted by these bills, put into effect its "FAR 36" regulation, specifying allowable noise levels for aircraft built after the regulation went into effect in 1969. This has helped push the aircraft manufacturers into designing quieter jets like the Boeing 747, the Lockheed L–1011, and the Douglas DC–10. However, it did not touch the pre-1969 aircraft—the 707's, the DC–8's, and the 727's, which are the heart of the problem.

With Federal efforts inadequate, local citizens and local airport authorities have tried to take matters into their own hands. The result has been massive confusion—millions of dollars in lawsuits, curfews and other restrictions imposed randomly, and intense opposition almost everywhere to the construction of new airports or the expansion of existing ones. Surely this is not a situation which benefits either the citizens in the airport areas, the airport proprietors or the airlines. All of them need relief.

This relief would be slow in arriving naturally, through attrition of the airline fleet, if we just waited for that attrition to take place as some would have us do. A few statistics will illustrate this point: According to the FAA, as of 1976, there were 583 aircraft in service in the U.S. commercial fleet that complied with FAR 36 and 1,584 that did not. If no governmental action were taken, by 1985 there would be 1,850 aircraft in compliance with the noise regulations—but 1,182 aircraft will not be in compliance. Even by 1990, there would be 2,581 aircraft in compliance, but 949 not in compliance. On a percentage basis, this means that 39 percent of the fleet would still be out of compliance in 1985, and 27 percent by 1990.

After I repeatedly urged the FAA to accelerate the process of quieting the jet fleet, that agency in late 1976 finally issued a new rule, which mandates that all aircraft in the fleet are to be in compliance with FAR 36 by January 1, 1985. Those aircraft not in compliance may either be retired or modified, by retrofitting or re-engining, to meet the standards. However, the airlines, and many independent experts as well, contend that they just could not afford the billions of dollars—perhaps $3 billion or more—needed to retrofit or replace over 1,000 aircraft which would not otherwise be so treated. Therefore, this legislation has been drafted in order to help the airlines to pay for quieting their jet fleets.

The primary purpose of this bill is to provide the funding necessary for meeting the aircraft noise standards by 1985, and to provide that funding from the air transportation industry itself, not from the general public. This is to be accomplished by reducing the taxes on air passengers and freight that would have gone into the airport and airways trust fund by 2 percent, and levying a corresponding 2-percent tax to provide funds for the noise abatement program.

H.R. 8729 is not limited to this single provision. Other sections of this legislation would establish a new airport-vicinity land use program, at the option of the local airport proprietor; increase significantly the funding level for the airport grant program under the Airport and Airway Development Act; and provide for an annual authorization process for the FAA's research and development program. These are all important and useful items. But the heart of this bill is the funding for the quieting of today's excessively noisy jet fleet. This is a program which is long overdue, and very much in need of the assistance which we can give it here today. I strongly urge my colleagues to support this vital legislation.

Mr. Chairman, an editorial from the August 28 edition of the Chicago Sun-Times in support of this bill and H.R. 11986, the Noisy Aircraft Revenue and Credit Act, follows:

MUFFLING AIRPORT NOISE

You needn't tell anyone in the vicinity of O'Hare Airport about jet noise. They've had their sleep disturbed and nerves jarred enough to know all about it. Almost all.

Now a UCLA engineering study has found that jet roars and shrieks may shorten one's life through "the tension, the anxiety and the fear associated with the tremendous noise." The study found death rates in an airport area 19 percent above those in a closely matched area away from such noises.

So ground all air traffic? Or move away? Obviously those aren't the answers. But one solution lies in quieter jetliners, which are coming. In 1976, the government set aviation noise levels to be met in stages by 1985. Planes that can't do so are to be retired.

For noise-numbed Chicago area residents, among others, the new rules are something to cheer—quietly perhaps, but fully.

About 1,600 jets don't meet the new standards. To help muffle the noisy planes, Congress is considering granting $2.3 billion in tax money to the airlines. That's a sound proposal, in more ways than one.

The dollars would come from airline user taxes—not general revenues. Passengers pay an 8 percent ticket tax. The income goes into a fund used for such purposes as building and maintaining airports. A bill in Congress would use 2 percent of that tax for quieter planes, which airlines expect will cost $6 billion to $8 billion through 1984.

Airline profits, though taking off this year, have been skimpy. Both the Ford and Carter administrations have backed the idea.

The plan meets a need—one more urgent, the study indicates, than had been thought.●

● Mr. MIKVA. Mr. Chairman, I rise in support of the Airport and Aircraft Noise Reduction Act, and particularly the substitute to title III of the bill which is being offered by the Ways and Means Committee.

It is beyond dispute that we need to reduce the noise of aircraft and the noise associated with airports. Over 6 million people in the United States suffer from noise levels considered unacceptable by the Department of Housing and Urban Development and considered dangerous to their health by leading health authorities. The President's Council on Wage and Price Stability estimates that the noise around airports costs taxpayers over $3 billion annually in reduced property values. Study after study has documented the high cost of noise.

These aggregate numbers do not really describe the full impact of airport and aircraft noise. The most serious effect of noise bombardment is a personal one. In communities in my district like Niles, Des Plaines, Park Ridge, and Glenview, Ill., all of which surround Chicago's O'Hare International Airport, the airport noise literally destroys people's way of life. There is no place to relax or to enjoy the peace of a warm summer day. The architecture in local buildings, the classroom activity in the schools, and the entire lifestyle are measured by the

incessant drumbeat of airplane noise. When most people are enjoying their backyards and other recreational areas, the people living near airports have to stay inside to carry on a conversation. On many days, teaching stops every 40 seconds in one of the schools in my district in order for the jet noise to abate—until the next jet comes 40 seconds later. And the cumulative psychological effect of each of these gross encounters is enormous both among children and the adults.

Mr. Chairman, this bill is not a perfect nor a complete answer to the problem. In the substantive sections of bill, I would have preferred that the airport operator be required to do more than consult with neighboring communities in the development of compatible land use plans.

Earlier this Congress, I introduced a bill to establish a regional board which would have given the representatives of an airport's neighboring communities the jurisdiction to determine what noise-reducing efforts should be undertaken. I continue to believe that approach is preferable. However, the language in the bill is a step in the right direction.

The heart of the dispute before the House, however, is the equity of title III as proposed to be substituted by the Ways and Means Committee. Some of my colleagues argued that the excise tax, paid by airline passengers, should not be used to finance quieter aircraft. I could not disagree more. The crucial decision that is to be made in this bill is whether the people who fly should pay for the noise engendered by their airplanes or whether that burden should be foisted off on the people on the ground. The answer is as obvious as the question. Whatever the equity between the airlines and airline passengers, it is clear that the people living on the ground have a priority need that must be met. In the context it is altogether fair and proper that the excise tax should be used to help eliminate the noise problem. One way or the other, airline passengers will pay for the higher cost of quieter and newer planes. That is as it should be. The use of a Government excise tax to achieve that end is altogether proper when the health, safety, and domestic tranquility of the people on the ground are involved.

The bill makes clear that the airlines will be required to meet the noise standards and deadlines mandated by the Secretary of Transportation. The bill encourages airport operators to adopt compatible land-use plans by providing grants to those operators whose plans are approved. The bill also allows neighboring communities to obtain grants to implement compatible land-use plans. In short, the bill finally recognizes that airport noise is not some problem for quiet esthetes—it is a problem that must be addressed forthwith and forthrightly by a Congress concerned about its responsibilities.

A vote for this bill is not a vote for the airlines. It is a vote for the victims of noise. It is a vote for each one of the 6 million people in the United States whose emotional, physical, and financial health is being jeopardized by each jet flying overhead. I urge my colleagues to vote for those people by approving this bill.●

The CHAIRMAN. Are there further amendments?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STUDDS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8729) to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes pursuant to House resolution 1293, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SNYDER

Mr. SNYDER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. SNYDER. Unequivocally, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. SNYDER moves to recommit the bill H.R. 8729 to the Committee on Public Works and Transportation with instructions to report the same to the House forthwith with the following amendment:

Strike out title III and insert in lieu thereof the following:

TITLE III—2-PERCENTAGE POINT REDUCTION IN EXCISE TAXES ON TRANSPORTATION BY AIR

SEC. 301. 2-PERCENTAGE POINT REDUCTION IN EXCISE TAXES ON TRANSPORTATION BY AIR.

(a) TRANSPORTATION OF PERSONS.—Subsections (a) and (b) of section 4261 of the Internal Revenue Code of 1954 (relating to transportation of persons by air) are each amended by striking out "8 percent" and inserting in lieu thereof "6 percent".

(b) TRANSPORTATION OF PROPERTY.—Subsection (a) of section 4271 of such Code (relating to transportation of property by air) is amended by striking out "5 percent" and inserting in lieu thereof "3 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transportation beginning on or after October 1, 1978.

The SPEAKER. The gentleman from Kentucky (Mr. SNYDER) is recognized for 5 minutes in support of his motion to recommit.

Mr. SNYDER. Mr. Speaker, I offer this motion because it surely must be evident to my colleagues by this time, after all this debate, that enactment of this legislation with title III intact would be a grave error on our part; in a word, it would provide a ripoff for the airlines.

Mr. Speaker, my motion would require that H.R. 8729 be returned to the Committee on Public Works and Transportation with instructions to report back to the House forthwith with an amendment striking out all of title III and inserting in lieu thereof a 2-percentage point reduction in the existing 8-percent airline passenger ticket tax and a 2-percentage point reduction in the existing 5-percent air cargo tax. By proceeding in this manner, we would benefit airline passengers and shippers directly by reducing the taxes now imposed on the service they receive—25-percent reduction for passengers; 40-percent reduction for shippers—instead of diverting these tax revenues for the direct benefit of the airlines, as envisioned in the present title III. If the airlines find that they need additional funds to meet the noise standards which have been imposed upon them, they would be free to raise their fares up to 10 percent under new Civil Aeronautics Board regulations.

Mr. Speaker, title III of the pending bill would establish the worst sort of precedent by creating a gimmicky Federal financing program—a tax loophole, if you will—for the benefit of a single industry to enable it to meet Federal environmental requirements. For some reason, Mr. Speaker, many of those who deplore tax loopholes the loudest are right in there supporting title III. This bill would mean $3.2 billion in tax credits and refunds for the airlines. And it would be tax money, if you please—to which the airlines would gain access in order to upgrade their aircraft fleets. What a great arrangement for any industry. No wonder they are courting us. And they probably would be back in future years for more.

But I have not been contacted by airline passengers in support of this bill. They are the ones who would pay the freight. What do they think? Well, the Washington Post for Monday, September 11, contained a letter from Mr. Harold T. Salfen, executive director, consumer affairs, of the Airline Passengers Association, in which he expressed the very strong opposition of that organization to enactment of this legislation.

In recent testimony before the Senate Commerce Committee on Aircraft Noise Legislation, Chairman Alfred E. Kahn, of the Civil Aeronautics Board, said in part:

My best judgment is, therefore, that special financial assistance from the Federal Government is probably not only unnecessary but undesirable because it will tend to distort the market process.

This from the head of the Federal agency closest to the economics of the airline industry.

Do not forget, this title III program would give funds to Eastern to purchase the European Airbus. And it would give funds directly to foreign airlines—most of which are government owned or controlled—to enable them to compete more effectively against U.S. airlines—all of which are privately owned.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Speaker, it is a pleasure to join my colleague, the gentleman from Kentucky and from Jefferson County, in support of his motion to recommit with instructions.

It is not always that the gentleman and I can embrace wholeheartedly the same idea. But the gentleman is exactly correct on this, and I support him in this effort.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Ohio.

Mr. VANIK. I thank the gentleman for yielding.

Mr. Speaker, the gentleman's motion to recommit should be supported by every Member of the House. This is going to reduce the cost of travel by 2 percent. It is going to slow down the inflation rate in this country. If the fund is in surplus, as has been alleged, then this is the thing to do, reduce the fund by 2 percent by reducing the tax and giving the benefit to the air travelers, the consumers of the United States.

Mr. Speaker, I urge adoption of the motion to recommit.

Mr. STEIGER. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Wisconsin.

Mr. STEIGER. I appreciate the gentleman's yielding, and I want to join with him, and others, in urging that the motion to recommit, to reduce the tax, be accepted and adopted. It is good policy. It ought to pass.

Mr. Speaker, I want to commend the gentleman from Kentucky (Mr. SNYDER) for his leadership in this matter.

Mr. SNYDER. I thank the gentleman for his remarks.

The SPEAKER. The gentleman from California (Mr. ANDERSON) is recognized for 5 minutes.

Mr. ANDERSON of California. Mr. Speaker, I rise in opposition to the motion. If this motion carries, there will be no noise legislation in this Congress and Congress will have reneged on its promise to combat aircraft noise. And who will be the loser? The millions of Americans who are holding out hope that the Congress will, at long last, bring long-needed relief from the daily bombardment of unwanted and unhealthy aircraft noise.

The House expressed its will in its support of this bill, and I urge rejection of the motion to recommit.

Mr. HARSHA. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of California. I yield to the gentleman from Ohio.

Mr. HARSHA. Mr. Speaker, I too rise in opposition to the motion to recommit. I would like my colleagues to understand that if we adopt this motion to recommit we do nothing meaningful to meet the noise problems that the airports and the people surrounding them are suffering from today.

You have committed yourselves in previous Congresses to deal with this problem of air noise pollution, and the only way you are going to deal with it effectively is to adopt the program that the Ways and Means Committee and the Public Works Committee have before you. If you do nothing, as this motion would do, you put those airlines that are least able to meet the standards, that do not have the financial ability to meet the standards, at the greatest disadvantage. Those airlines also own the greatest number of airplanes that are in violation.

Environmental regulations of FAA conferred a federally mandated retroactive order on the airline industry to do things that we have asked no other part of the transportation industry to do. If you adopt this motion to recommit, then all you do is say to the people who are suffering from the noise pollution that you did not mean what you said back in 1972 when you passed that act. You are saying, "We are not going to help you get out of this noise pollution problem."

You told the airlines on top of that—the Federal Government did—"You can go ahead and use those airplanes. They are allowed to stay. They meet the standards of the Federal Government, and you can go ahead and use them."

Now, you come back several years later and say, "You cannot do it. You cannot do it. You have got to get all new equipment, and the billions of dollars you spent have gone down the drain and we are not going to help you meet this standard."

It is time that the Congress, if it is going to pass these environmental acts, stands up to the fact that somewhere along the line we have got to finance them. No corporation or industry is going to finance them, because no corporation or industry ever paid a tax. All it does is collect taxes and pass them on to the consumers, the people. The people are going to pay for this. In our judgment, they are going to do it in the least painful, most effective program that will encourage the aerospace industry to expand and meet the demand for new planes and meet competition from foreign countries, and is going to save an enormous amount of jet fuel.

Members are worried about the energy crisis, and here is an opportunity to save millions of gallons of jet fuel. Here is a chance to improve the balance-of-payments problem we have. Here is an opportunity to create more jobs, and for the American aerospace industry to continue to hold its lead in the international world of aerospace development.

Mr. Speaker, I urge the Members to vote down the motion to recommit.

Mr. GOLDWATER. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of California. Briefly.

Mr. GOLDWATER. Mr. Speaker, I want to join my colleagues in opposing this motion to recommit.

Yes, this is controversial but not that unusual. We use taxes to raise revenue or obtain some social goal, that is, black lung, social security, investment tax credits, accelerated depreciation, and so forth. Aircraft noise is a national problem costing taxpayers over $4 billion per year and unknown illness, stress and personal disruption.

The two committees work hard and long to formulate a program so that the airlines may meet the arbitrary accelerated time frame mandated by the FAA. If we reject this bill, this solution, then we have no program and we will continue to be plagued by the impact of aircraft noise.

Maybe we should learn from this lesson next time we change a national policy on cleaning up the environment. That is we better think seriously about who and how to pay for it. Today we are facing directly the consequences of our previous actions mandating a reduction in noise—who will pay?

Obviously, the public will pay regardless. This, however, is an orderly organized approach and therefore I urge rejection of this motion to recommit and passage of the bill before us.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. SNYDER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 170, nays 227, not voting 35, as follows:

[Roll No. 775]

YEAS—170

Anderson, Ill.	Beard, Tenn.	Blanchard
Andrews, N.C.	Bedell	Blouin
Ashbrook	Beilenson	Bonior
Aspin	Benjamin	Brademas
Baldus	Bennett	Breckinridge
Baucus	Bevill	Brinkley
Bauman	Biaggi	Brodhead
Beard, R.I.	Bingham	Brooks

Brown, Mich.
Broyhill
Burton, John
Burton, Phillip
Byron
Carr
Carter
Cavanaugh
Cleveland
Cohen
Collins, Tex.
Conte
Conyers
Cornell
D'Amours
Daniel, Dan
Daniel, R. W.
de la Garza
Delaney
Dellums
Dent
Derrick
Devine
Dickinson
Dodd
Drinan
Duncan, Oreg.
Early
Edgar
Emery
Evans, Del.
Fenwick
Findley
Fish
Flippo
Foley
Fountain
Fraser
Frenzel
Gephardt
Gonzalez
Gore
Gradison
Grassley
Gudger
Guyer
Hamilton
Hansen
Harrington
Harris
Hefner
Holtzman
Hubbard
Hughes
Ichord
Jeffords
Jenkins
Jenrette
Johnson, Colo.
Jones, N.C.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kostmayer
LaFalce
Latta
McDonald
Maguire
Mann
Marlenee
Martin
Mazzoli
Mikulski
Miller, Ohio
Minish
Mitchell, Md.
Molloban
Moore
Moss
Mottl
Myers, John
Natcher
Nedzi
Nichols
Nolan
Obey
Ottinger
Pease
Perkins
Pike
Poage
Preyer
Pursell
Quayle
Rangel
Regula
Reuss
Richmond
Robinson
Rosenthal
Roybal
Rudd
Ruppe
Russo
Ryan
Santini
Satterfield
Sawyer
Schulze
Seiberling
Sharp
Simon
Smith, Nebr.
Snyder
St Germain
Stanton
Stark
Steed
Steers
Steiger
Stockman
Stokes
Studds
Stump
Symms
Thone
Traxler
Trible
Tucker
Vander Jagt
Vanik
Vento
Wampler
Watkins
Waxman
Weaver
Weiss
Whalen
Whitehurst
Whitley
Whitten
Yates
Young, Fla.

NAYS—227

Abdnor
Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Applegate
Archer
Ashley
AuCoin
Badham
Bafalis
Barnard
Boggs
Boland
Bolling
Bonker
Bowen
Brown, Calif.
Buchanan
Burgener
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Caputo
Carney
Cederberg
Chappell
Chisholm
Clausen, Don H.
Clay
Coleman
Collins, Ill.
Conable
Corcoran
Corman
Cornwell
Coughlin
Cunningham
Danielson
Davis
Derwinski
Dicks
Diggs
Dingell
Dornan
Downey
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Eilberg
English
Erlenborn
Ertel
Evans, Colo.
Evans, Ga.
Evans, Ind.
Fascell
Fisher
Fithian
Flood
Florio
Flynt
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Fuqua
Gammage
Garcia
Gaydos
Gialmo
Gilman
Ginn
Glickman
Goldwater
Goodling
Green
Hagedorn
Hall
Hammer-schmidt
Hanley
Hannaford
Harkin
Harsha
Hawkins
Heckler
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Howard
Hyde
Ireland
Jacobs
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Jordan
Kasten
Keys
Krebs
Lagomarsino
Le Fante
Lederer
Leggett
Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCloskey
McDade
McEwen
McFall
McHugh
McKay
Madigan
Mahon
Markey
Marks
Marriott
Mathis
Mattox
Meeds
Metcalfe
Meyner
Michel
Mikva
Milford
Mineta
Mitchell, N.Y.
Moakley
Moffett
Moorhead, Calif.
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Gary
Neal
Nowak
O'Brien
Oakar
Oberstar
Panetta
Patten
Patterson
Pattison
Pepper
Pettis
Pickle
Pressler
Price
Pritchard
Quillen
Rahall
Railsback
Rhodes
Rinaldo
Risenhoover
Roberts
Rodino
Roe
Rogers
Roncalio
Rooney
Rose
Rostenkowski
Rousselot
Runnels
Scheuer
Schroeder
Sebelius
Shipley
Shuster
Sikes
Sisk
Skelton
Skubitz
Slack
Smith, Iowa
Spence
Staggers
Stangeland
Stratton
Taylor
Thompson
Thornton
Treen
Van Deerlin
Volkmer
Waggonner
Walgren
Walker
Walsh
White
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Yatron
Young, Alaska
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

NOT VOTING—35

Ammerman
Armstrong
Breaux
Broomfield
Brown, Ohio
Burke, Calif.
Burke, Fla.
Clawson, Del
Cochran
Cotter
Crane
Fary
Flowers
Frey
Gibbons
Huckaby
Krueger
Leach
Lehman
McCormack
McKinney
Miller, Calif.
Montgomery
Myers, Michael
Nix
Quie
Sarasin
Solarz
Spellman
Teague
Tsongas
Udall
Ullman
Wiggins
Wylie

The Clerk announced the following pairs:

On this vote:

Mr. Krueger for, with Mr. McCormack against.

Mr. Cotter for, with Mr. Breaux against.

Mr. Solarz for, with Mr. Fary against.

Mrs. Burke of California for, with Mr. Montgomery against.

Until further notice:

Mr. Ammerman with Mr. Broomfield.

Mr. Miller of California with Mr. Wiggins.

Mr. Lehman with Mr. McKinney.

Mr. Teague with Mr. Burke of Florida.

Mr. Nix with Mr. Leach.

Mr. Huckaby with Mr. Wylie.

Mr. Gibbons with Mr. Frey.

Mr. Udall with Mr. Sarasin.

Mrs. Spellman with Mr. Quie.

Mr. Nix with Mr. Cochran of Mississippi.

Mr. Flowers with Mr. Del Clawson.

Mr. Ullman with Mr. Brown of Ohio.

Mr. Michael O. Myers with Mr. Crane.

Mr. BEARD of Rhode Island and Mr. FRASER changed their vote from "nay" to "yea."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the passage of the bill.

Mr. WYDLER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device; and there were—yeas 272, nays 123, not voting 37, as follows:

[Roll No. 776]

YEAS—272

Abdnor
Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Applegate
Archer
Ashley
Aspin
AuCoin
Badham
Bafalis
Barnard
Baucus
Beard, R.I.
Beard, Tenn.
Benjamin
Biaggi
Boggs
Bolling
Bonker
Bowen
Brademas
Brooks
Brown, Calif.
Brown, Mich.
Buchanan
Burgener
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Byron
Caputo
Carney
Carter
Cederberg
Chappell
Chisholm
Clausen, Don H.
Clay
Coleman
Collins, Ill.
Conable
Conte
Corcoran
Corman
Cornwell
Coughlin
Cunningham
D'Amours
Danielson
Davis
Dent
Derrick
Derwinski
Dicks
Diggs
Dingell
Dodd
Dornan
Downey
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Eilberg
English
Erlenborn
Ertel
Evans, Colo.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fisher
Fithian
Flood
Florio
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Fraser
Fuqua
Gammage
Garcia
Gaydos
Gialmo
Gilman
Ginn
Glickman
Goldwater
Grassley
Green
Hagedorn
Hamilton
Hammer-schmidt
Hanley
Hannaford
Harkin
Harrington
Harris
Harsha
Hawkins
Heckler
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Howard
Hyde
Ireland
Jacobs
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, Okla.
Jones, Tenn.
Kasten
Kemp
Keys
Kindness
Krebs
Lagomarsino
Le Fante
Lederer
Leggett
Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCloskey
McDade
McEwen
McFall
McHugh
McKay
Madigan
Markey
Marks
Marlenee
Marriott
Martin
Mattox
Meeds
Metcalfe
Meyner
Michel
Mikva
Milford
Mineta
Minish
Mitchell, N.Y.
Moffett
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Gary
Neal
Nolan
Nowak
O'Brien
Oakar
Oberstar
Panetta
Patten
Patterson
Pattison
Pepper
Pettis
Pickle
Pressler
Preyer
Price
Pritchard
Quayle
Quillen
Rahall
Railsback
Reuss
Rhodes
Richmond
Rinaldo
Risenhoover
Roberts
Rodino
Roe
Rogers
Rooney
Rose
Rostenkowski
Rousselot
Roybal
Runnels
Ruppe
Russo
Ryan
Santini
Sawyer
Scheuer
Schroeder
Sebelius
Sharp
Shipley
Shuster
Sikes
Sisk
Skelton
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Spence
St Germain
Staggers
Stangeland
Stokes
Stratton
Taylor
Thompson
Thone
Thornton
Treen
Trible
Tucker
Ullman
Van Deerlin
Vander Jagt
Volkmer
Waggonner
Walgren
Walker
Walsh
Watkins
White
Whitehurst
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Yatron
Young, Alaska
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

NAYS—123

Anderson, Ill.
Andrews, N.C.
Ashbrook
Baldus
Bauman
Bedell
Bellenson
Bennett
Bevill
Bingham
Blanchard
Blouin
Boland
Bonior
Breckinridge
Brinkley
Brodhead
Broyhill
Burton, John
Burton, Phillip
Carr
Cavanaugh
Cleveland
Cohen
Collins, Tex.
Cornell
Daniel, Dan
Daniel, R. W.
de la Garza
Delaney
Dellums
Devine
Dickinson
Drinan
Duncan, Oreg.
Early
Edgar
Emery
Evans, Del.

Fenwick	LaFalce	Rudd
Findley	Latta	Satterfield
Flippo	McDonald	Schulze
Fountain	Maguire	Seiberling
Frenzel	Mahon	Simon
Gephardt	Mann	Snyder
Gonzalez	Mathis	Stanton
Goodling	Mazzoli	Stark
Gore	Mikulski	Steed
Gradison	Miller, Ohio	Steers
Gudger	Mitchell, Md.	Steiger
Guyer	Mollohan	Stockman
Hall	Moore	Studds
Hansen	Myers, John	Stump
Hefner	Natcher	Symms
Holtzman	Nedzi	Traxler
Hubbard	Nichols	Vanik
Hughes	Obey	Vento
Ichord	Ottinger	Wampler
Jenkins	Pease	Waxman
Jenrette	Perkins	Weaver
Jones, N.C.	Pike	Weiss
Jordan	Poage	Whalen
Kastenmeier	Pursell	Whitley
Kazen	Rangel	Whitten
Kelly	Regula	Wylie
Kildee	Robinson	Yates
Kostmayer	Rosenthal	Young, Fla.

NOT VOTING—37

Ammerman	Flowers	Myers, Michael
Armstrong	Frey	Nix
Breaux	Gibbons	Quie
Broomfield	Huckaby	Rogers
Brown, Ohio	Krueger	Sarasin
Burke, Calif.	Leach	Solarz
Burke, Fla.	Lehman	Spellman
Clawson, Del	McCormack	Teague
Cochran	McKinney	Tsongas
Conyers	Miller, Calif.	Udall
Cotter	Moakley	Wiggins
Crane	Montgomery	
Fish	Moss	

The Clerk announced the following pairs:

On this vote:

Mr. McCormack for, with Mr. Krueger against.

Mr. Montgomery for, with Mr. Solarz against.

Mr. Breaux for, with Mr. Cotter against.

Until further notice:

Mrs. Spellman with Mr. Broomfield.

Mr. Teague with Mr. McKinney.

Mrs. Burke of California with Mr. Leach.

Mr. Miller of California with Mr. Cochran of Mississippi.

Mr. Lehman with Mr. Fish.

Mr. Huckaby with Mr. Brown of Ohio.

Mr. Moss with Mr. Frey.

Mr. Moakley with Mr. Quie.

Mr. Ammerman with Mr. Sarasin.

Mr. Conyers with Mr. Michael O. Myers.

Mr. Nix with Mr. Wiggins.

Mr. Rogers with Mr. Del Clawson.

Mr. Flowers with Mr. Burke of Florida.

Mr. Udall with Mr. Gibbons.

Mr. Tsongas with Mr. Crane.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANDERSON of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, in the RECORD on the bill just passed.

The SPEAKER pro tempore (Mr. ROSTENKOWSKI). Is there objection to the request of the gentleman from California?

There was no objection.

AIRPORT AND AIRCRAFT NOISE REDUCTION ACT

● Mr. WYDLER. Mr. Speaker, the horrible damage of unabated and unrelenting jet aircraft noise cannot be fully understood by those citizens living outside the "jet alleys" of our nation. To people not oppressed by the harsh and shrill reality of aircraft noise, the problem seems purely academic or a mere annoyance.

For those of us who live within these "jet alleys", however, the development of means of alleviating the impact of jet noise has not kept pace with the development of larger and noisier jet aircraft and jet engines.

From the earliest days of my service in the Congress, I have worked to obtain relief from the impact of aircraft noise for the people of my Congressional District, which is located adjacent to the John F. Kennedy International Airport.

As early as 1963, I was able to get the National Aeronautics and Space Administration (NASA) to begin research efforts into the problem of jet noise. That year, we were able to secure a modest $700,000 for purchase of the necessary equipment.

Our first breakthrough, however, came the following year when I was able to secure almost $2.5 million for NASA to begin actual research into the effects of jet noise and methods of reducing it.

From these modest beginnings, I have continued to lead the fight in the Congress to reduce jet noise. I have held numerous hearings in my District to emphasize the problems we were aware of and so verify some aspects of the problem which previously had only been suspected. I introduced the first legislation in the Congress to allow the Secretary of Transportation to set jet noise levels for aircraft and, year after year, I testified before several Congressional committees in behalf of this legislation.

The fight has not been easy. At times, it seemed that for every two steps we took forward, the bureaucrats in the executive branch would move the program one step backwards.

In 1967, the Congress provided funds for a complete Federal Jet Noise Control Program and I prodded NASA to start a crash program right away. Later that year, the Administrator of NASA indicated the program might be cut back because of a squeeze on budgetary priorities. I responded immediately and, after in-depth discussions with NASA, I was finally able to announce that more than $14 million would be spent on the Jet Noise Control Program during the next fiscal year. That program included all of the principal elements for aircraft noise alleviation research: the basic research phase, the minimization of fan-compressor noise, development of the quiet research engine and studies of direct lift control for application to approach angles of aircraft.

In 1968, I was successful in getting my bill to allow the Federal Aviation Agency to issue regulations limiting jet aircraft noise passed by the Congress and signed into law by the President. This was a significant step against jet noise, but its benefits were delayed by the indifference and apathy of the bureaucrats in the Executive Branch.

It was not until 1969 that the Federal Aviation Administration (FAA) issued Federal Air Regulation (FAR) Part 36, which established the first noise levels for jet aircraft. Unfortunately, this regulation only applied to jet aircraft that had not been built; it did not apply to jet aircraft already in use.

When the FAA issued this regulation, I was already pressing them to establish noise levels for jets already in use and to begin a program to require retrofitting noise suppression devices on jet engines. Concurrent with these efforts, I was able to get the FAA to approve a crash program—using equipment just developed—that would require jet aircraft to alter their angle on approach to landing at Kennedy, thus cutting jet noise in half on landing approaches.

The technology to retrofit jet aircraft to reduce noise levels has existed for more than a decade and a half. Yet, month after month and year after year, my repeated urgings for a comprehensive retrofit program for aircraft noise suppression met one delay after another.

It was in 1970 that the FAA first announced advance notice of the proposed rulemaking, which was scheduled for April of that year. It was the FAA's stated intention then of establishing a final rule by July of 1971. The FAA, of course, failed to meet its own deadline on a retrofit program but, in the summer of 1970, I was able to get a further modification of procedures on runway usage at Kennedy to alleviate jet noise congestion. At the same time, I continued to try to get a comprehensive retrofit program for jet noise suppression.

In 1972, I prevailed upon NASA to award almost $3 million in contracts to develop modifications of the JT-3D and JT-8D engines for reduction of noise and exhaust emissions in these engines in the DC-8, DC-9, 702, 727, and 737 aircraft. This work, of course, was made possible by the earlier NASA research into the jet noise problem.

In the meantime, I was still pressing FAA to promulgate the comprehensive retrofit program for aircraft noise it had originally promised 2 years earlier. I continued to meet with one delay after another.

In the fall of 1974, I was able to get the Environmental Protection Agency to conduct an in-depth review of runway use at Kennedy Airport. This study resulted in further modification of aircraft procedures to reduce jet noise.

I recognized, of course, that these measures were only a temporary palliative. No real relief from the burden of jet noise could be forthcoming until the Federal Government embraced a comprehensive retrofit program for this purpose and I continued to press for such a program.

In July of 1975, I was assured by the Secretary of Transportation that a rule requiring retrofit of older, noisy jet transports would be issued shortly. By April of 1976, the Transportation Secretary had changed our two steps forward to one backward, when he announced that he was again deferring a decision on the retrofit rule.

Following this announcement, I took the matter up with President Gerald Ford in a conversation in the Oval Office. I urged President Ford to become involved personally in approving a retrofit program. We discussed the matter at length, including the problems related to financing of the program, and President Ford gave me his personal assurance that he would give the retrofit program his serious consideration.

One of the happiest days of my life was October 21, 1976. I stood next to President Ford at Kennedy Airport that day when he announced that he was ordering the implementation of the retrofit program to reduce the noise of jet aircraft. President Ford's announcement culminated my 14 years of effort to make the retrofit program the policy of the U.S. Government.

By its action today in passing the Airport and Aircraft Noise Reduction Act (H.R. 8729), the House of Representatives has placed the capstone on my efforts to bring to reality a Federal program for retrofit of jet aircraft. This legislation provides the specialized mechanism which will provide the needed financing for the retrofit program.

As President Ford stated in making his announcement of the retrofit program:

> Solving the airport noise problem is an environmental imperative for the millions of Americans who live in neighborhoods around our major airports.

With the passage of this legislation today, we will bring to reality the dream of quieter skies and an improved quality of life for those Americans who live near our Nation's airports.●

BOB SHORT

Mr. SISK. Mr. Speaker, I ask unanimous consent that the remarks I made on yesterday, during consideration of the bill just passed, when I received unanimous consent to speak out of order be made a part of the body of the RECORD today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. SISK. Mr. Speaker, I wish to alert my colleagues in the Congress who are going to be around here next year, and the year after, that a little situation developed out in Minnesota yesterday that involves a good friend of mine. Because of his reputation for getting things moved here and there, I believe the Members who are going to be around would be well advised to buckle their seatbelts. Many Members will recall that Bob Short did a great moving job on a basketball team some years ago and moved them to Los Angeles. He did another great moving job taking the Washington Senators down to Texas. He may have made a few dollars here and there in the process.

I do have a great deal of respect for Bob Short and consider him to be a friend of mine, but I want to indicate that it is very likely that if he is elected to the Senate it will be suggested that the Capitol should be moved—probably somewhere out West, because in every case he has made his moves West.

Mr. Speaker, having said that, I support this rule. I hope that the House will vote for the previous question, adopt the rule, and then vote for the bill, because it is a bill that indeed is needed in this country.

APPOINTMENT OF CONFEREES ON H.R. 12380, AMENDING FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. 12380, to amend the Federal-State Extended Unemployment Compensation Act of 1970 with respect to an individual's eligibility period for benefits under such act, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon? The Chair hears none, and, without objection, appoints the following conferees: Messrs. ULLMAN, CORMAN, RANGEL, STARK, JACOBS, CONABLE, and VANDER JAGT.

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 12232, UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12232) to amend the Unemployment Compensation Amendments of 1976 with respect to the National Commission on Unemployment Compensation, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon? The Chair hears none, and, without objection, appoints the following conferees: Messrs. ULLMAN, CORMAN, RANGEL, STARK, JACOBS, CONABLE, and VANDER JAGT.

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT, SEPTEMBER 15, 1978, TO FILE CONFERENCE REPORT ON H.R. 13125, DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES APPROPRIATIONS, 1979

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tomorrow night, September 15, 1978, to file a conference report on the bill (H.R. 13125) making appropriations for Agriculture, rural development, and related agencies for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

PROVIDING FOR THE FURTHER EXPENSES OF THE SELECT COMMITTEE ON ASSASSINATIONS

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 1276) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1276

Resolved, That for the further expenses of investigations and studies to be conducted by the Select Committee on Assassinations, acting as a whole or by subcommittee, not to exceed $790,000, including expenditures for employment of investigators, attorneys, and clerical, and other assistants, shall be paid out of the contingent fund of the House on vouchers authorized by such committee, signed by the chairman of such committee, and approved by the Committee on House Administration.

SEC. 2. No part of the funds authorized by this resolution shall be available for expenditure in connection with the study or investigation of any subject which is being investigated for the same purpose by any other committee of the House; and the chairman of the Select Committee on Assassinations shall furnish the Committee on House Administration information with respect to any study or investigation intended to be financed from such funds.

SEC. 3. The authorization granted by the resolution shall expire immediately prior to noon on January 3, 1979.

SEC. 4. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration in accordance with existing law.

Mr. DENT (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. DENT) is recognized for 1 hour.

Mr. DENT. Mr. Speaker, I move the previous question on the resolution.

Mr. BAUMAN. Just a minute Mr. Speaker, is the gentleman from Pennsylvania (Mr. DENT) not going to give us any explanation that came out of the subcommittee by one vote after several days of hearings?

Mr. DENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will be glad to do that. And I will be glad to answer any questions I may be able to answer, if the gentleman has a question.

Mr. BAUMAN. What is the justification for spending another three-quar-

ters of a million taxpayer dollars after the House has already authorized $4½ million for a committee that has essentially done very little to settle the questions which it was charged to investigate? I expect the gentleman to speak for an hour and a half, it will take at least that to justify this money, I expect.

Mr. DENT. I will try not to take up that much time.

This situation comes about because of the fact that 2 years ago, approximately, this House passed a resolution to delve into the situations concerned with the assassinations of President Kennedy and Dr. Martin Luther King. They were ordered to delve into both instances to see whether or not they could prove or disprove the existence of a conspiracy and to prove or disprove the guilt of Mr. Ray and Mr. Oswald.

They have at this point reached that stage where their final hearings are being held. They say that they have to have $790,000 to complete their work by January 3, 1980.

The Committee on House Administration, after much delay, many meetings, hearings in closed session with the Committee on Assassinations discussed, at length an appropriate amount for a supplemental budget for the select committee.

Up until this point they have spent $2,358,000 in the second session. For the second session of the 95th, the select committee projects a total expenditure of $3,290,000 which includes their supplemental request.

It was not an easy matter to convince the Members of the necessity of passing this resolution; but in the end, the full Committee on House Administration voted in favor of passing the resolution as requested by the select committee. The reason for approval is based on the following premise: We have now reached the last 4 months of this study. I believe this House should not put itself into the posture of cutting this request, given that the select committee is now concluding its investigation which will ultimately result in a report to the Congress. If we cut their moneys we will not even have the benefit of such report.

The chairman of the Committee on House Administration felt that the proper thing to do at this time as do I, is to give them the necessary funds, to complete the plans that they have, to finish the entire assassination investigation.

When reading the authorizing resolution for the select committee I found some language in there which could be interpreted as continuing this study into eternity, as it were; but in the record before the Committee on House Administration we were given assurances from the chairman and ranking member of the Select Committee on Assassinations that they will not go beyand January 3 in the investigatory work, that they will have completed their work, and that they require this amount of money to do so.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield for a further question?

Mr. DENT. I yield to the gentleman from Maryland for a question.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman. Can the gentleman tell me whether or not the select committee justified this additional expenditure? After all, they were granted in this second session $2.5 million, and now they are requesting another three-quarters of a million, roughly, for a period which is a little less than 4 months. It seems to me that they could have budgeted their funds in a better manner.

The question which arises is, Could they get along on less in accomplishing their goal? This now has become the most expensive congressional investigation the House has conducted in its history, as far as I can tell, including the impeachment proceedings.

Mr. DENT. I assure the gentleman that we reviewed every aspect of the reports and every aspect of the spending. I assure the gentleman that Mendel Davis went into every aspect of the expenditures with a fine-tooth comb; but we are faced with a fact that this request for additional funds is for an investigation which has already begun and for that matter near completion. The money has either been spent already or has already been advanced for expenditure in the future. As a result, contracts have been let; people have been hired; payrolls must be met. There is nothing we can do about that. We allocated the money to them by a vote of this Congress. The Select Committee on Assassinations spent it as they saw fit.

Mr. BAUMAN. If the gentleman will yield further, has any evidence been offered to the Committee on House Administration that personnel reductions occurring because of staff members no longer being needed since initial phases of the investigation are obviously behind the committee, and they are now in the final hearings?

Mr. DENT. We have been informed by the chairman that they have reduced their staff and that they have pared back on everything except those expenditures which they are committed to for finalizing the study.

Mr. BAUMAN. Would the gentleman yield for a further question of the gentleman from Ohio?

Mr. DENT. I will be glad to yield to the gentleman from Ohio.

Mr. BAUMAN. I thank the gentleman.

The gentleman from Pennsylvania made the statement that the gentleman from Ohio had said that this will be the last request for funds and that in the judgment of his select committee the duties of the committee can be accomplished and a report filed at the end of this year. Is that correct?

Mr. STOKES. If the gentleman will yield, the gentleman is correct. As stated by the chairman of the subcommittee, I am on record as having said to his House Administration Subcommittee that all of the investigatory work will have been completed, and that we will have had all of the public hearings, and that we will do everything to have the final reports into the House by the 31st day of December.

Mr. BAUMAN. I thank the gentleman.

Mr. THOMPSON. Will the Chairman yield for debate?

Mr. DENT. I yield to the distinguished Chairman.

Mr. THOMPSON. I thank the gentleman for yielding.

I might say, addressing myself to the dollar figures, to my friend, the gentleman from Maryland (Mr. BAUMAN), this has involved the expenditure of what can only be characterized as a huge amount of money today. Although as chairman of the full committee I am ex officio, without a vote, a member of each of the subcommittees, as is the ranking member, the gentleman from Alabama (Mr. DICKINSON) I chose not to be present at any but 2 or 3 minutes of the closed or confidential sessions.

In reviewing the entire matter, about which I had an admitted ambivalence, I finally satisfied myself, first, that the gentleman from Ohio (Mr. STOKES) and his colleagues have conducted themselves admirably in terms of security of the information that they have had. You and I and others have not been, and probably would not want to be, privy to all of the investigation or all of the contracts. In a very real sense, literally, I signed off a number of contracts for experts, such as ballistic experts and others, without knowing precisely what type of investigations they were going to undertake. I have watched very carefully the public proceedings and have seen emerge positive evidence that the money has been well spent, whether or not I agree with the conclusions of some of the experts. We have an assurance from the chairman, the gentleman from Ohio (Mr. STOKES) which he just restated, that there will be a wrap-up by the end of this Congress.

In the course of conducting a meeting at which this resolution was reported, I said without equivocation, assuming my return and assuming the same responsibilities on my part, that this would be the very last amount of money which I, for one, would be willing to grant for any continuation of the select committee's work. I think that the matter has gone so far at this point that no matter how one feels about whether he or she should have supported it in the first place, whether they should continue or not, it would be tactically a really terrible thing for the public aspects of this to be shut off at this point.

I have discussed the matter with the distinguished gentleman from Ohio (Mr. DEVINE) who will address himself to it. He agrees, I will say to the gentleman from Ohio (Mr. STOKES) that it can be wrapped up and that it will be wrapped up, and I see no reasonable alternative but to grant this money. I can assure the gentleman from Maryland (Mr. BAUMAN) and others that we have looked with great care at the expenditures, and except for the confidential contracts, none of which are exorbitant but there are a number of them, I am totally satisfied that the expenditures have been prudent, that the bookkeeping is sound, and that the management function is sound, and I am equally sure that everyone would agree, whether they are going

to vote for this or not. I hope that they do vote for it.

The gentleman from Ohio (Mr. STOKES) and all of the members on both sides of that committee have done themselves admirably as far as their very heavy responsibility is concerned. In a sense, the House asked for it. There are lots of unhappy aspects to it, some gruesome and obnoxious to me, as a matter of fact.

I do not like to hear about the exact words of the body of a man who was a beloved friend and another who was a friend—Dr. King was a friend of mine, not a close one, but I was a great admirer of his; but when you examine into two murders or two assassinations, a certain element of the macabre is going to emerge, and it has. I regret it. I want to see it wrapped up. I want to see it ended, but I think in fairness to the efforts that have been expended that no matter what the attitudes have been in the past, it is only reasonable that this amount of money should be appropriated, with the understanding that it is to be the last of it.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. DENT. I am glad to yield to the gentleman from Illinois for purposes of debate only.

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have never supported the funding of this committee. At this time I want to confess that I believe I have been wrong. I think the work of the committee has been of the highest order.

I want to particularly salute the chairman, the gentleman from Ohio (Mr. STOKES). I watched the gentleman cross-examine a very elusive witness and under the most difficult circumstances, because that witness was accompanied by counsel who in my opinion was seeking to eliminate another lawyer by the name of Kuntzler, and not doing a very good job of it.

I think the gentleman from Ohio (Mr. STOKES) demonstrated a remarkable grasp of the facts, a nearly heroic composure under circumstances that I could in no way emulate. I think the gentleman showed a tenacity in pursuing and eliciting the truth from a witness whom I do not think ever habitually uttered the truth.

Mr. Speaker, I think it would be a shame to go as far as we have gone and not complete the work. I think the work has been a credit to the Congress. I think they have been most professional. I think it will illuminate some very dark areas in both these assassinations.

Again, I have been proud to be a Member of the same body that has produced what I think is one of the finest examples of congressional investigations in my memory; so I salute everybody connected with this, particularly the chairman, and I will support it.

Mr. SKUBITZ. Mr. Speaker, will the gentleman yield?

Mr. DENT. Yes, I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, I had fully intended to come over today and vote against this resolution. Like my colleague that preceded me, the gentleman from Illinois (Mr. HYDE) I would have voted against it. I want to associate myself with the remarks of the gentleman from Illinois (Mr. HYDE).

I think the committee, particularly the gentleman from Ohio (Mr. STOKES) has done an excellent job. I, too, watched the gentleman on television.

With the gentleman's statement today that this will be the last appropriation, I intend to support the resolution today.

Mr. DEVINE. Mr. Speaker, will the gentleman yield?

Mr. DENT. Mr. Speaker, I would be happy to yield to the gentleman from Ohio (Mr. DEVINE); but if the gentleman will wait a moment, the gentlewoman from Ohio (Ms. OAKAR) has asked for time.

Mr. Speaker, I yield 1 minute to the gentlewoman from Ohio (Ms. OAKAR).

Ms. OAKAR. Mr. Speaker, I just wanted to say that some months ago I spoke on the floor concerning why this committee should even exist and it was for the same reason I discussed it then as today, that is, that the American people want to know the truth about these assassinations. I think this committee is very, very close to finding the truth. It would be a shame if we did not continue the work of this distinguished committee. It would be a shame if we put a price dollar on knowing the truth about the assassination of a President of the United States and the assassination of Dr. Martin Luther King.

As a Member of Congress, I have to applaud the members of this committee and the members of the subcommittee and in particular my good friend and distinguished colleague, the gentleman from Ohio (Mr. STOKES). The gentleman's calm and cool manner has not only brought distinction for himself and the committee, but for this entire House; so I only hope that we will unanimously agree to this resolution and let them continue the work they have begun and let them at last resolve the matter, so that the American public will no longer have doubts about what the truth really is.

Mr. Speaker, I thank the gentleman from Pennsylvania for yielding me this time.

Mr. DENT. Mr. Speaker, I thank the gentlewoman from Ohio (Ms. OAKAR) very kindly.

At this time, Mr. Speaker, I yield for the purposes of debate to the ranking minority member of the select committee, the gentleman from Ohio (Mr. DEVINE).

Mr. DEVINE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as the Members know, I am the ranking minority member on the Select Committee on Assassinations, as well as being the ranking minority member of the Subcommittee on Accounts that heard the presentation in justification for the additional funding.

The first thing that should be made clear is this: That the Committee on House Administration earlier took away about a half-million dollars from the committee's request. This request, generally speaking, is to restore that amount, coupled with about $250,000 more in order to finish the work.

Many of the Members will recall that I voted against the creation of this committee originally because I thought no useful purpose would be served. We had some pretty tough times in the beginning. But I would like to say, "Amen" to the words of my colleague, the gentleman from Illinois (Mr. HYDE) when he applauds the chairman of our committee, the gentleman from Ohio (Mr. STOKES), for the truly fine professional job that he has done in taking over the reins of this committee and functioning as its chairman.

The gentleman from Ohio (Mr. STOKES) and I do not agree too often philosophically on other votes, but I am in 100 percent support of the way he has handled this committee, the direction in which he has taken it, and the final product that will be produced, primarily through his effort and the efforts of the fine staff that has been assembled.

Mr. Speaker, I urge my colleagues to go ahead and support this final funding resolution. I will not be a party, nor do I feel that the chairman of the committee will be, to coming before the Congress and asking for any more money. I think we can indeed conclude our public hearings and the finalization of our report and wrap up the business of the committee by the end of this year in fulfillment of the mandate of the Congress. I urge our colleagues to support this resolution.

Mr. ANNUNZIO. Mr. Speaker, will the distinguished subcommittee chairman yield on that point?

Mr. DENT. I yield to the gentleman from Illinois.

Mr. ANNUNZIO. Mr. Speaker, I thank the distinguished gentleman for yielding.

Again, Mr. Speaker, I would like to point out to the Members that I sit on the Subcommittee on Accounts, and I am aware of the fact that both the chairman of that subcommittee and the chairman of the Select Committee on Assassinations, the gentleman from Ohio (Mr. STOKES), have done an outstanding job. I sat in the chair when the cut of a half-million dollars was made. I supported the restoration of the half-million dollars.

The gentleman from Ohio (Mr. DEVINE) made a statement that he will not be a party to coming back and asking for any more money. Now, that statement is made in the 95th Congress. I want the RECORD to show that I have warned the Members of this Congress on other occasions that in the 96th Congress, when we assemble that Congress, if the Speaker recommends to the Con-

gress that the work of this committee must continue, then the Committee on House Administration has no choice, it must fund the committee.

I want to urge the Members of this House to vote for the $700,000 or more that they are asking for this time, and I want to urge those who will come back in the 96th Congress to consider this matter carefully if they feel that the committee has finished its job and has gone as far as it can.

Speaking for myself, I am on record now—and I want gentleman from Maryland to know that I am on record—that I will not vote to reconstitute the committee, along with several of the other select committees that we have around here, because we have enough committees of the House already. I do not think that we should approve all these select committees. We just do not have the time to go to all these meetings, we do not have the money to spend, and we do not have the room in which to put these staffs that we hire.

Mr. DENT. Mr. Speaker, I thank the gentleman from Illinois (Mr. ANNUNZIO).

I will be glad, Mr. Speaker, for the purpose of debate, to yield to the gentleman from California (Mr. BADHAM).

Mr. BADHAM. Mr. Speaker, I thank the chairman of my subcommittee for yielding.

Mr. Speaker, I have been around here as a visible and vocal and vehement opponent of this Select Committee on Assassinations for virtually all the months I have been a Member of the Congress.

I was not a party to the creation of this select committee, and I would have voted against it. On several occasions in committee and on the floor of this House I voted against the funding of the committee because I felt that the work that it was about was something other than the House of Representatives ought to be engaged in. On the occasions that the select committee came before the accounts subcommittee and then the full Committee on House Administration, the members of the committee, the majority and ranking minority members, would refuse, literally, to tell us what on earth the committee was doing. The select committee had a specific charge from the House of Representatives, and that was to determine whether or not the assassins were indeed the assassins, whether or not they worked alone or in concert with others, whether or not the law enforcement agencies were doing what they were supposed to do, and whether any additional legislation would be required to see that such circumstances were properly carried out in the future.

The select committee, in its secretive sense, decided not to tell us what they were doing, and it was because of this that I voted against them on several occasions—in fact, every time we had the chance. Then came later this year, and not too many months ago, the gentleman from Ohio (Mr. STOKES), the gentleman from North Carolina (Mr. PREYER) and the gentleman from Ohio (Mr. DEVINE) before the committee, we closed the committee, and we asked the gentlemen, "All right. Now, we have cut this down in funds. You have asked for a restoration of funds. Why don't you tell us what you are doing so that we can have some judgment as to whether or not it should be funded or whether it is some wild goose chase off into the annals of history."

And I will have to say at this point that I was most impressed, I was most favorably disposed toward the comments of the gentleman from Ohio (Mr. STOKES), the gentleman from North Carolina (Mr. PREYER) and the gentleman from Ohio (Mr. DEVINE), and they did level with the House Administration Committee and they convinced me beyond any shadow of a doubt of these things—that they were keeping within the charge given to them by the House of Representatives, that they had spent the money exactly as they said they were going to spend it, and that they were coming to the exact conclusions asked for by the House of Representatives in establishing the committee. So I thought at that time that denying them the money they needed to complete the total examination of what they were charged to do would put the House of Representatives in a political box from which extraction would be extremely difficult, if not impossible, and by that I mean this: If we were to cut off their funds now and deny the $790,000, we would be inviting the House of Representatives, the select committee, and the people of this country to come back and say they have not done what they were supposed to do, they have wasted $2½ million and nothing has happened. By giving them this money, we not only get ourselves out of the box, but we lay to rest all of the things that have been said and allegations about the assassins of Dr. King and President Kennedy.

I personally feel, and I think it will be borne out, that what we are going to discover is that the CIA and the FBI and the Warren Commission all found and the Commission really did publish what actually did happen, and we are not going to make any history of this.

That brings me to my next and final point in asking for strong support for this remaining additional money, to let the committee have this money and go out of business. I think that the House ought to look very carefully at future select committees and what they have to accomplish. I think we have an excellent committee system in the House, but I think the unending creation of select committees has gotten to be something where we are spending a great deal of money. There is no way to stop the spending of money until the committees all run. So we ought to look very closely before we ever create a select committee to reinvent the wheel, as it were.

Mr. Speaker, I commend the gentleman from Ohio (Mr. STOKES), because this committee has come in virtually on budget. I commend the gentleman because they have done exactly what they said they were going to do. But I think the select committee system leaves a great deal to be desired.

Mr. DENT. I thank the gentleman for his comments.

Mr. Speaker, I yield for the purpose of debate only to the gentleman from Illinois (Mr. O'BRIEN).

Mr. O'BRIEN. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this request. I supported the committee from the beginning, and I continue to do so. I have four brief points I would like to make.

No. 1, I think the way the committee has handled the highly volatile leads and information with great discretion deserves commendation.

No. 2, I witnessed only part of the interrogation, but I thought the gentleman from North Carolina (Mr. PREYER), the gentleman from Ohio (Mr. DEVINE), and the gentleman from Michigan (Mr. SAWYER) did a superb job in their difficult task.

I think, No. 3, that Americans felt sort of shutout until this committee went to work. We have all had a chance to see what happened to Dr. King and to our President.

We have all had an opportunity to make our own personal judgment about the character and capacity of the lead witness, and his counsel. Finally, we arranged for a chance to demonstrate what kind of a place this Congress is on its own merits. I think Mr. STOKES' committee did a beautiful job in letting the American people know that this is indeed a great Congress.

I thank the gentleman.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield for one last question?

Mr. DENT. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, each select committee of the House is authorized under the rules to receive a certain amount of money for printing. I am quite sure that when the hearings are concluded on this particular committee's activities, and a report printed, there will be an exceptional demand for the printed documents, both hearings and report.

Has the gentleman's committee heard any testimony from the select committee's membership as to what the estimated cost of eventual printing will be, or are we talking about some additional amount beyond the money here today?

Mr. DENT. No, we have not anticipated any question like that. We have not put the question to the committee, and have no knowledge of what the report may be, the size of it, the necessity for printing in large numbers of copies. We have no idea what the demand will be for it. We will have to wait for that.

Mr. BAUMAN. The gentleman will agree that there is going to be an unnamed amount of money that will have to be paid in addition to do this printing, and it could be hundreds of thousands of dollars.

Mr. DENT. I do not know what it will be. All I know is that the committee, of

which I will no longer be a member on the first of the year, will use its best judgment to recommend, as we always do, an economical program. No one knows how large the volume is going to be. No one knows how much money it will cost just having it printed. We have very reasonable printing costs for the Congress as compared to the printing costs in the United States.

Mr. THOMPSON. Mr. Speaker, will the gentleman yield on that?

Mr. DENT. I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Speaker, in the event there is a request for printing, in the first place a resolution must be introduced. It must go to the Subcommittee on Printing, then to the full committee, and then to the floor. The moneys then come out of the line item under the House contingent fund.

We have no way of anticipating what it will be. I can assure the gentleman that, as with all other printing resolutions, the chairman of that subcommittee, the gentleman from California (Mr. HAWKINS) will look at it with great care. We went through a number of them this morning.

Mr. BAUMAN. Mr. Speaker, I have listened with interest to my colleagues commenting upon the conduct of the committee and the wisdom of voting $790,000 additional at this point for the conclusion of the committee's work. I hope this is the conclusion of the work.

I must confess, however, that even though I do not wish to pass judgment upon the committee's work until it is completed, as an attorney I have had serious questions concerning the investigation's conduct. I am not going to raise those misgivings today. Certainly, the committee's recent history has been a vast improvement over the first difficult days this committee faced.

But, I return to my original objection to the committee. When we are talking about close to $6 million for a select committee that has now collected voluminous testimony, held hearings, and will come out with a report. But all that has been done is already being questioned by many, including some of the same people who raised questions about these assassinations before. That goes to the fundamental reason for my objections since the questions still remain. I do not think the House and its committees are a proper forum to decide these matters. They will remain in question throughout history, and in the meantime a great deal of effort and taxpayers' money has been expended toward no good end.

I still find that objectionable, even though I can concede that, having come this far some amount of money, probably far less than this, is necessary to wind the committee up. I hope the House learns from this expensive lesson.

Mr. DENT. I thank the gentleman very kindly, and thank him for his contribution.

Mr. Speaker, I want to thank all who participated in this particular debate today. This was not an easy matter. There is a sort of feeling among many Members concerning objections to all committees, and I hope they do not allow that particular feeling to prevail in this instance. This committee deserves support.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON U.S. PROGRESS IN AERONAUTICS AND SPACE DURING 1977—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Science and Technology:

To the Congress of the United States:

I am pleased to transmit this report on United States progress in aeronautics and space during 1977. The report is provided in accordance with Section 206 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2476).

JIMMY CARTER.

THE WHITE HOUSE, *September 14, 1978.*

CONFERENCE REPORT ON H.R. 12928, PUBLIC WORKS APPROPRIATIONS, FISCAL YEAR 1979

Mr. BEVILL. Mr. Speaker, I call up the conference report on the bill (H.R. 12928), making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1979, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 14, 1978.)

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The SPEAKER pro tempore. The gentleman from Alabama (Mr. BEVILL) will be recognized for 30 minutes, and the gentleman from Indiana (Mr. JOHN T. MYERS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. BEVILL).

Mr. BEVILL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to recommend for your consideration and the consideration of the House the conference report on the bill (H.R. 12928) making appropriations for public works for water and power development and energy research for fiscal year 1979. The Members will recall that after 2 days of spirited debate on this bill last June 15 and 16, the House passed the bill by a 263 to 59 vote. The conference report before you today is, in all important respects, substantially similar to that bill. It is recommended to you by the conference committee without reservation.

At this time, I want to thank and commend my colleagues on the subcommittee and the subcommittee staff for their participation and support during the hearings, the markup, floor consideration and finally the conference deliberations. I am proud to be associated with them. Also, I want to express my appreciation to the House leadership for their support and accommodation on the various aspects of this bill.

Mr. Speaker, we have had and continue to have warm feelings for our friends in the other body who served with us on this conference.

Mr. Speaker, there has been much talk about a Presidential veto of this bill. Much of the controversy centers around six water projects. Of these six, three are for further study and three are for construction. These projects are extremely important to the areas invloved, meet all the criteria as worthy projects which should proceed, and should be funded in this bill. Yet in total they are only a very small fraction of this vitally important piece of legislation.

Let me explain the important aspects included in the conference agreement.

SUMMARY OF THE CONFERENCE REPORT

Mr. Speaker, the conference agreement would provide $10,160,483,000 in new budget authority for the various departments and agencies in the bill. This amount is $878,965,000 below the President's budget. It is also $279,389,100 below the comparable amounts appropriated for fiscal year 1978.

Mr. Speaker, the Members will recall that the House placed a general provision on the bill which would have required 2 percent of the appropriations to be withheld from obligation and expenditure. The debate on provisions of this type reflected the view that specified reductions applied by the committee of conference would be preferable to an across-the-board cut. Taking cognizance of the will of the House, we have come back with a bill that is $181,150,000 lower than the bill which passed the House in June. As a result, we have, in good conscience, receded to the Senate amendment deleting the 2 percent provision.

The conference agreement will provide $6,085,175,000 to the Department of Energy, including $441,900.000 for solar energy development, $156,200,000 for geothermal energy, $42,400,000 for biomass, $348,900,000 for fusion energy, $307,300,000 for light water reactor technology, $215,588,000 for environmental

research, and $204,000,000 for basic energy sciences. A total of $566,867,000 is recommended for the liquid metal fast breeder reactor program, which includes $172,400,000 to be used exclusively to carry out the breeder reactor demonstration project or project alternative approved by Congress in authorizing legislation. The conference agreement also includes $432,300,000 for general science and research, $2,619,283,000 for defense activities, $323,234,000 for policy, management and support, $145,473,000 for the five power marketing administrations and $51,300,000 for the Federal Energy Regulatory Commission. The conference agreement retains a House-passed amendment, offered by the gentleman from Illinois (Mr. PRICE), prohibiting the use of any funds in title I for the licensing of the waste isolation plant or the storage of nondefense radioactive waste at the plant. It is my understanding that this issue will be more extensively addressed by the authorizing committees. Then we can consider any further appropriation actions that may be required.

For the Army Corps of Engineers, the conference agreement includes a total of $2,636,024,000 which will provide 38 new studies, 27 new planning starts, and 39 new construction starts. The conference agreement will provide $579,915,000 to the Bureau of Reclamation which will provide for 30 new studies, 6 new construction starts, and 8 new loans. As I stated earlier, there was a great deal of debate about the eight so-called hit list projects when the bill was initially considered by the House. The Senate proposed and the conference agreed to delete funding for two of those projects: La Farge Lake in Wisconsin and Meramec Park Lake in Missouri. Of the remaining six, three of the projects have been funded for study purposes only and three projects, after careful deliberation, are recommended for construction.

Mr. Speaker, the bill includes $10,913,900 for water resources planning activities to be carried out under the auspices of the Secretary of the Interior. For the Appalachian regional development programs, the conference agreement includes $368,700,000, including $233,000,000 for the highway program. The conference agreement also includes $322,301,000 for the Nuclear Regulatory Commission and $154,531,000 for the Tennessee Valley Authority.

The Senate proposed and the conference accepted amendments to the bill changing the title and citation from "public works for water and power development and energy research" to "energy and water development." We were of the opinion that this change is appropriate since 60 percent of the appropriations in this bill are for the Department of Energy.

Mr. Speaker, I want to comment on a matter I referred to earlier. Certain officials in the executive branch have stated their intention to recommend that the President veto this bill. I sincerely hope the President will not veto this bill. We have and will continue to give careful study and consideration to the proposals made by the President, as the Founding Fathers intended under article II, section 3 of the Constitution. This year the President's new water policy proposal was submitted too late in the budget process for our subcommittee to call hearings and study it fully in the way we consider the budget proposals submitted in January. I am sure the 96th Congress will want to carefully review and consider these proposals during the deliberations on the fiscal year 1980 budget.

But, Mr. Speaker, the President must remember that our Constitution has vested the legislative power in the Congress. The Founding Fathers believed that the laws and policies of the United States should be formulated and changed by the branch of Government that is and remains closest to the people. This is particularly true in the case of taxation and spending. Madison, in Federalist 58, is both eloquent and clear about the purpose of the origination clause:

> The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of Government. They, in a word, hold the purse. . . . This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

And Hamilton, that zealous defender of a strong executive, lays down in Federalist 73 the two principal reasons for giving the President a qualified negative over legislation.

> The propriety of the [veto] does not turn upon the supposition of superior wisdom or virtue in the executive, but upon the supposition that the legislature will not be infallible;
>
> The primary inducement to conferring the power in question upon the executive is to enable him to defend himself [against encroachment]; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design.

The conference agreement admits to none of these defects. The conference agreement does not encroach upon the rights of the other members of Government nor is it a product of haste, inadvertence or evil design.

Let me continue to read from Federalist 73:

> The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable that culpable views of any kind should infect all the parts of the Government at the same moment and in relation to the same object than that should by turns govern and mislead every one of them.

Mr. Speaker, we have a bicameral legislature where the Senate and the House of Representatives examine and develop legislative issues. And we have, through our committee system, further divided the power over Federal water resource development policy between the authorization and appropriation committees. Both committees in both bodies have examined and studied the recommendations made by the executive branch this year as well as last year. I submit that the funding recommendations in this bill have been made after a deliberate and exhaustive review.

My subcommittee held hearings last year on the proposals to cancel certain water projects. Again this year, we had hearings and heard testimony from administration officials, Members of Congress, Governors and other interested individuals. During House consideration last year, we had a full and spirited debate on amendments drafted by the administration. Similar amendments were offered and debated this year. In both cases, these amendments were soundly rejected by the House.

Mr. Speaker, I submit that the bill represents a responsible and deliberate exercise of legislative power. True faith and allegiance to our Constitution requires that the executive branch respect the role of the legislature in our Federal system.

Mr. Speaker, let me summarize the reasons why the President should accept, not veto this bill:

It is $878,965,000 below the budget submitted by the administration and $279,389,100 below comparable amounts appropriated for 1978. While there are several significant adjustments to the President's request, the committee has been very mindful of the pervasive desire to hold down Federal spending and has worked very hard to reduce spending when possible. But energy and water are essential commodities for the Nation's future, and the committee has no apologies for the increases proposed for specific programs in selected areas.

The bill provides for an accommodation between the President and the Congress on the Clinch River Breeder Reactor in the Department of Energy authorizing legislation, however it may be finally resolved.

With respect to water development, the projects included in the bill were selected in accordance with criteria generally in accord with the criteria recommended by the President in his proposed water policy. The President's proposed policy was received in an incomplete form, without supporting details, and too late for consideration by either House this year.

I repeat, of the eight so-called hit list projects to which the President objected last year, two have been deleted, three projects have been funded for study purposes only, and three projects have been thoroughly considered by both Houses and are recommended for construction. The projects recommended for construction are in accord with the criteria proposed by the President for construction projects.

If after his review of the bill, there are a few specific projects or activities to which the President continues to object, he, of course, always has the option to

propose a rescission or deferral of such specific activity under the Congressional Budget Act. Meanwhile, the vast majority of the initiatives and activities provided in the bill can proceed, and the Congress can further weigh the President's views on these specific items.

Mr. Speaker, I submit that after the thorough consideration of every item in the bill by the subcommittees, committees and full bodies of both Houses, our sense of priorities and program needs is as keen and competent, and our views at least as well informed, as those of the bureaucrats who advise the President. Certainly we are closer to the real needs of our constituents. I thus sincerely hope that the President will accept this bill as the perfected product of our democratic processes.

Mr. Speaker, I urge the adoption of the conference report.

At this point in the RECORD, I want to insert a table outlining the conference action compared to 1978, the budget estimates and the House and Senate bills by appropriation item:

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY

	New budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
TITLE I—DEPARTMENT OF ENERGY									
Energy Science and Defense Activities									
Operating expenses	$4,478,255,000	$4,881,368,000	$4,865,437,000	$4,839,850,000	$4,818,431,000	$+340,176,000	$−62,937,000	−$47,006,000	$−21,419,000
Plant and capital equipment	1,618,849,000	1,438,416,000	1,120,856,000	1,020,971,000	1,067,971,000	−550,878,000	−370,445,000	−52,885,000	+47,000,000
Total, energy science and defense activities	6,097,104,000	6,319,784,000	5,986,293,000	5,860,821,000	5,886,402,000	−210,702,000	−433,382,000	−99,891,000	+25,581,000
Power Marketing Activities									
Operations and construction	120,454,000	143,573,000	143,473,000	145,473,000	145,473,000	+25,019,000	+1,900,000	+2,000,000	----------
Federal Energy Regulatory Commission									
Salaries and expenses	34,133,000	43,670,000	51,300,000	51,300,000	51,300,000	+17,167,000	+7,630,000	----------	----------
Geothermal Resources Development Fund	15,000,000	----------	----------	----------	----------	−15,000,000	----------	----------	----------
Special foreign currency program	1,500,000	2,000,000	2,000,000	2,000,000	2,000,000	+500,000	----------	----------	----------
Total, title I, new budget (obligational) authority, Department of Energy	6,268,191,000	6,509,027,000	6,183,066,000	6,059,594,000	6,085,175,000	−183,016,000	−423,852,000	−97,891,000	+25,581,000
TITLE II—DEPARTMENT OF DEFENSE—CIVIL									
DEPARTMENT OF THE ARMY									
Corps of Engineers—Civil									
General investigations	103,646,000	109,270,000	140,014,000	137,138,000	137,978,000	+34,332,000	+28,708,000	−2,036,000	+840,000
Construction, general	1,523,820,000	1,795,595,000	1,392,515,000	1,342,147,000	1,343,711,000	−180,109,000	−451,884,000	−48,804,000	+1,564,000
Flood control, Mississippi River and tributaries	253,081,000	204,000,000	232,930,000	223,035,000	223,035,000	−30,046,000	+19,035,000	−9,895,000	----------
Alaska hydroelectric power development fund	5,450,000	----------	----------	----------	----------	−5,450,000	----------	----------	----------
Operation and maintenance, general	745,370,000	750,500,000	795,500,000	795,500,000	795,500,000	+50,130,000	+45,000,000	----------	----------
Revolving fund	21,525,000	22,000,000	29,000,000	46,000,000	46,000,000	+24,475,000	+24,000,000	+17,000,000	----------
Flood control and coastal emergencies	18,000,000	20,000,000	20,000,000	20,000,000	20,000,000	+2,000,000	----------	----------	----------
General expenses	56,800,000	66,500,000	66,500,000	66,500,000	66,500,000	+9,700,000	----------	----------	----------
Special recreation use fees	6,000,000	3,300,000	3,300,000	3,300,000	3,300,000	−2,700,000	----------	----------	----------
Total, title II, new budget (obligational) authority, Department of Defense—Civil	2,733,692,000	2,971,165,000	2,679,759,000	2,633,620,000	2,636,024,000	−97,668,000	−335,141,000	−43,735,000	+2,404,000
TITLE III—DEPARTMENT OF THE INTERIOR									
Bureau of Reclamation									
General investigations	25,106,000	22,200,000	29,870,000	30,870,000	30,870,000	+5,764,000	+8,670,000	+1,000,000	----------
Construction and rehabilitation	354,825,000	325,862,000	244,391,000	208,572,000	221,572,000	−133,253,000	−104,290,000	−22,819,000	+13,000,000
Upper Colorado River storage project	67,268,000	70,274,000	87,399,000	87,399,000	87,399,000	+20,131,000	+17,125,000	----------	----------
Colorado River Basin project	78,145,000	73,770,000	74,770,000	74,770,000	74,770,000	−3,375,000	+1,000,000	----------	----------
Colorado River Basin salinity control projects	22,675,000	42,315,000	27,315,000	17,315,000	17,315,000	−5,360,000	−25,000,000	−10,000,000	----------
Operation and maintenance	78,489,000	87,873,000	87,873,000	86,373,000	86,373,000	+7,884,000	−1,500,000	−1,500,000	----------
Loan program	27,753,000	88,226,000	38,745,000	36,366,000	36,366,000	+8,613,000	−51,860,000	−2,379,000	----------
General administrative expenses	23,665,000	25,250,000	25,250,000	25,250,000	25,250,000	+1,585,000	----------	----------	----------
Total, Bureau of Reclamation	677,926,000	735,770,000	615,613,000	566,915,000	579,915,000	−98,011,000	−155,855,000	−35,698,000	+13,000,000
Office of the Secretary									
Water resources planning	----------	----------	9,653,900	----------	10,913,900	+10,913,900	+10,913,900	+1,260,000	+10,913,900
Total, title III, new budget (obligational) authority, Department of the Interior	677,926,000	735,770,000	625,266,900	566,915,000	590,828,900	−87,097,100	−144,941,100	−34,438,000	+23,913,900
TITLE IV—INDEPENDENT OFFICES									
Appalachian Regional Commission: salaries and expenses	2,075,000	2,220,000	2,220,000	2,220,000	2,220,000	+145,000	----------	----------	----------
Appalachian regional development programs (funds appropriated to the President)	323,700,000	343,700,000	374,000,000	368,700,000	368,700,000	+45,000,000	+25,000,000	−5,300,000	----------
Delaware River Basin Commission: Salaries and expenses	87,000	102,000	102,000	102,000	102,000	+15,000	----------	----------	----------
Contribution to Delaware River Basin Commission	232,000	245,000	545,000	245,000	245,000	+13,000	----------	−300,000	----------
Total, Delaware River Basin Commission	319,000	347,000	647,000	347,000	347,000	+28,000	----------	−300,000	----------

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY—Continued

	New budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
Interstate Commission on the Potomac River Basin: Contribution to Interstate Commission on the Potomac River Basin	53,000	53,000	55,000	55,000	55,000	+2,000	+2,000	----------	----------
Nuclear Regulatory Commission: Salaries and expenses	281,423,000	330,670,000	321,487,000	328,287,000	322,301,000	+40,878,000	−8,369,000	+814,000	−5,986,000
Susquehanna River Basin Commission: Salaries and expenses	88,000	102,000	102,000	102,000	102,000	+14,000	----------	----------	----------
Contribution to Susquehanna River Basin Commission	200,000	200,000	500,000	200,000	200,000	----------	----------	−300,000	----------
Total, Susquehanna River Basin Commission	288,000	302,000	602,000	302,000	302,000	+14,000	----------	−300,000	----------
Tennessee Valley Authority: Payment to Tennessee Valley Authority fund	138,510,000	134,635,000	154,531,000	151,531,000	154,531,000	+16,021,000	+19,896,000	----------	+3,000,000
Water Resources Council: Water Resource planning	13,696,000	11,560,000	----------	11,773,900	----------	−13,696,000	−11,560,000	----------	−11,773,900
Total, title IV, new budget (obligational) authority, Independent offices	760,064,000	823,487,000	853,542,000	863,215,900	848,456,000	+88,392,000	+24,969,000	−5,086,000	−14,759,900
RECAPITULATION									
Total, titles II, III and IV (excluding Department of Energy): New budget (obligational) authority	4,171,682,000	4,530,422,000	4,158,567,900	4,063,750,900	4,075,308,900	−96,373,100	−455,113,100	−83,259,000	−11,558,000
Total, titles I, II, III and IV: New budget (obligational) authority	10,439,873,000	11,039,449,000	10,341,633,900	10,123,344,900	10,160,483,900	−279,389,100	−878,965,100	−181,150,000	+37,139,000

Mr. Speaker, there were a few typographical errors in the conference report, H. Rept. 95–1490, as printed in the RECORD for August 14, 1978. A table for the Department of Energy was presented in the wrong place and under a wrong title.

The amounts in the conference report are correct except for 2 numbers on page 52. The amount following the stub entry "unobligated balances applied" should read, "$7,180,000"; and in the budget estimate column "Total" should read "$204,000,000".

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, I thank the gentleman for yielding.

I was one of those who supported the President's objections to the water project program. I imagine that would make me supportive of the so-called "hit list." That is why, when this bill came up before our committee and subsequently, when the conference report came back, I studied it quite carefully. I thought that I would be voting against this bill. I must say that after studying it, however, I am going to vote for the conference report; and I should like to tell the gentleman why I propose to vote for it.

As he pointed out, of the eight projects on the President's original hit list, the two least favorable have been stricken; is that correct?

Mr. BEVILL. That is correct.

Mr. YATES. The projects are LeFarge Lake in Wisconsin, and Meramac Park Lake, Mo.

Mr. BEVILL. That is correct.

Mr. YATES. There is no money in here for these projects.

Mr. BEVILL. This is correct.

Mr. YATES. With respect to the six projects included in this bill, if all were to be constructed, the cost would be over $400 million; is that correct?

Mr. BEVILL. That is correct.

Mr. YATES. But they may not all be constructed; three of them are to be studied. The three that are to be studied are Fruitland Mesa, Colo.; Savery Pothook, Colo., and Wyoming; and Lukfata Lake, Okla.

Mr. BEVILL. This is correct, and the result of the studies will determine and give the committee the information it needs in order to decide whether to recommend construction.

Mr. YATES. The cost for those studies is $75,000 for Fruitland Mesa, $75,000 for Savery Pothook; and $150,000 for Lukfata, and that is all in the bill.

Mr. BEVILL. That is correct.

Mr. YATES. Let us turn to the three projects for which construction is funded. The first of these is the Narrows Unit in Colorado; is that not correct?

Mr. BEVILL. That is correct.

Mr. YATES. For the Narrows in Colorado the sum of $1.5 million is in this bill; is that correct?

Mr. BEVILL. This is correct.

Mr. YATES. The ultimate cost of that project is $145.5 million?

Mr. BEVILL. Yes.

Mr. YATES. But that sum is not in this bill.

Mr. BEVILL. That is correct.

Mr. YATES. The second project is Yatesville Lake in Kentucky, for which the conferees have approved $4 million?

Mr. BEVILL. This is correct.

Mr. YATES. All right, and the total cost of that project is $57.2 million; is that correct?

Mr. BEVILL. That is right.

Mr. YATES. That is the ultimate cost.

Mr. BEVILL. Yes. Before the gentleman leaves that, the testimony on Yatesville has revealed, that if we do not do something to control the floods in that area there is going to be a disaster. One man stated he has moved three times because of floods in that area.

Mr. YATES. I want to return to the Narrows project in Colorado for just a moment. It is my information that the cost-benefit ratio is very good on that one. The environmentalists in Colorado I am told, are generally in agreement with the construction of the revised project. Yatesville Lake in Kentucky has a good cost-benefit ratio. The third item in this bill is one with which I may have some difficulty, and that is the Bayou Bodcau project in Louisiana, $2.2 million is in the bill for the project and the ultimate cost is going to be $15.5 million.

It seems to me including that project in the bill, with which I may or may not disagree, is not sufficient reason in my mind for the President to veto the bill. Under the Budget Act the President can single out any project which he considers to be an unworthy one without vetoing the bill and send up a rescission to the Congress and let the Congress consider at that time whether that particular project or those projects should be funded; is that not correct?

Mr. BEVILL. That is correct. Not only can he do that, but he can also send up a deferral of funds under the Budget Act. He has two options.

Mr. YATES. That is correct. He has both options under the new Budget Act.

Mr. BEVILL. Yes.

Mr. YATES. So there is no need really to exercise a veto for one or two projects.

Mr. BEVILL. None whatsoever.

Mr. YATES. All right. Will the gentleman yield further?

Mr. BEVILL. Yes.

Mr. YATES. As the gentleman pointed out, this bill is under the President's budget.

Mr. BEVILL. Yes, $879 million under the budget.

Mr. YATES. In addition, as I understand it, this bill is almost $280 million

under the appropriation bill for the current fiscal year.

Mr. BEVILL. The gentleman is correct. I should also note that no construction starts were provided last year, and we are going to complete 69 projects in fiscal year 1978 and 1979. So we are not even keeping the number of projects in the construction pipeline at a constant level.

Mr. YATES. Will the gentleman yield further?

Mr. BEVILL. Yes.

Mr. YATES. My friends, with whom I joined in voting in support of the President's so-called hit list, have written a Dear Colleague letter, and I was going to support it until I went into a serious study of this conference report. In their letter—and I see my good friend, the gentleman from Pennsylvania (Mr. EDGAR) on the floor, who is one of the finest Members, and my good friend, the gentleman from Massachusetts (Mr. CONTE) and my dear friend, the gentleman from Illinois (Mr. MIKVA) and the gentleman from South Carolina (Mr. DERRICK) and the gentleman from Wisconsin (Mr. STEIGER). They say that the bill provides over $3 billion for water projects, the great majority of which are necessary and worthwhile.

Well, I agree with that and they agree with that. Then they go on to say this:

> However, we feel that in an economy with an 8 percent rate of inflation and a $40 billion deficit, it is imperative that the Public Works bill contain only necessary and worthwhile projects.

I have been trying to figure out which projects are not necessary and which ones are not worthwhile. Perhaps the gentleman from Pennsylvania (Mr. EDGAR) will let us know which ones are unworthy when time is accorded to the gentleman.

Mr. BEVILL. Mr. Speaker, if I may say so, nobody appears before our subcommittee and told us that anything was wrong with these projects. This subcommittee actually had nearly 1,000 people appear before it in the 10 weeks we held public hearings.

Mr. YATES. Mr. Speaker, will the gentleman yield further?

Mr. BEVILL. I will be pleased to yield.

Mr. YATES. Mr. Speaker, may I return to the figure of $3 billion for water projects? I do not know to what that figure refers. I hope the gentleman from Pennsylvania (Mr. EDGAR) will let us know; but in trying to speculate what the $3 billion represents, I think the gentleman is referring to the total sum made available for both the Corps of Engineers and the Bureau of Reclamation. That is in the neighborhood of $3 billion, but that is for the entire operation of the corps and for the Bureau of Reclamation.

I would think that my good friend, the gentleman from Pennsylvania (Mr. EDGAR), would not want all that eliminated from the bill.

Mr. BEVILL. I am sure the gentleman would not.

Mr. YATES. The letter says that a great majority of these projects are necessary and worthy.

The $3 billion referred to in the letter includes, for example, $92 million for the administrative expenses of the corps and for the Bureau of Reclamation.

There is $46 million for the purchase of capital equipment, such as dredges and things of that sort.

For studies, there is $138 million for the Corps of Engineers.

The $3 billion referred to in the letter also includes a sum that is necessary for operation and maintenance of completed projects for both the Corps of Engineers and the Bureau of Reclamation.

It contains $1,344 million for corps projects that are ongoing, and that if the $3 billion were not available even ongoing projects would have to be stopped.

Now, I dislike having to take issue with my great friend, the gentleman from Pennsylvania (Mr. EDGAR), and with the others on this matter. Ordinarily, I think I would find myself on their side, but I think this subcommittee, under the direction of my good friend, the gentleman from Alabama (Mr. BEVILL), has done not only an outstanding job in the field of public works projects, but also in the field of review and allocation of funding for very necessary energy projects.

For all the reasons that I have outlined, Mr. Speaker, I propose to support the conference report.

Mr. EVANS of Colorado. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. Mr. Speaker, I want to direct my remarks to the distinguished gentleman from Illinois (Mr. YATES), the chairman of the subcommittee on Interior upon which I have the honor of serving, and to thank the gentleman from the bottom of my heart. For one thing, the gentleman and I have had differences of opinions from time to time and quite often they come down on the question of water and water projects.

It is not unusual for Members to have differences of opinion. That is what this Congress is all about, and I understand that. But it has been so frustrating to us in the West so often to not be able to get people who do not have our problems to take the time to look into the bill and the reasons for the various projects in the bill and study them, as the gentleman from Illinois has done.

Mr. Speaker, I want to thank the gentleman for having taken the interest and the time to do so, and, of course, I am perfectly delighted with the conclusions the gentleman has come to.

Mr. YATES. Mr. Speaker, will the gentleman yield so I may defend myself against the remarks of the gentleman from Colorado (Mr. EVANS)?

Mr. BEVILL. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, let me say this: The gentleman from Colorado (Mr. EVANS) and I, as he points out so well, are at issue on one of the matters in our own bill. The gentleman has the votes in our subcommittee, and perhaps he is right, I do not know.

I happen to believe in the necessity of adhering to studies of entire river basins and making the determination as to whether or not there is sufficient water to provide the resources we need. One of those is, of course, the water resources of the Colorado River. In our appropriation bill and in our conference report one of the amendments relates to the question of providing a basin-wide regional environmental impact statement for the Colorado River.

On that issue the gentleman and I are on opposite sides, because I wonder whether or not there is enough water to supply the water projects in which the gentleman is interested.

But I want the gentleman to know that in spite of the opposition I may express, I do respect his ardor, and his zeal, and his devotion to the needs and the cause of providing the people of the State of Colorado and of the area with the water which is a life-giving source for them. While we may differ on this item, I want to tell the gentleman that I, too, have enjoyed our association.

Mr. Speaker, I regret very much that for reasons of his own, the gentleman from Colorado (Mr. EVANS) has seen fit to leave the House. We will miss him next year.

Mr. EVANS of Colorado. Mr. Speaker, the gentleman is most generous, and I thank him for his remarks.

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to my friend, the gentleman from Pennsylvania.

Mr. EDGAR. Mr. Speaker, I would like to try to speak just for a moment about some of the reasons why I feel I must vote against the conference report.

I congratulate the conferees for reconciling what I felt were two terrible bills into what is perhaps a better conference report than one might expect. But I still feel that the conference report has some problems connected with it.

To my colleague, the gentleman from Illinois (Mr. YATES), who thoroughly examined the report, I want to indicate that there are those who have a different point of view who have also thoroughly reviewed the report. It is true that the report is $879 million below the budget request, it is true that the report is $279 million below the appropriation for 1978, and it is true that the report is $181 million below the House-passed bill. All those things are true.

However, I think the real question that has not been discussed here, at least from the study I have done, is that there is $1.2 billion in paper savings.

When the President brought his budget to the House, he indicated that he wanted a concept of full funding. If we eliminate the concept of full funding, we reduce the President's request by at least $687 million. In other words, the report "saves" $687 million solely by rejecting the President's full funding accounting procedure.

Mr. YATES. Mr. Speaker, will the gentleman from Alabama (Mr. BEVILL) yield?

Mr. EDGAR. Mr. Speaker, if the gentleman will yield further, I would like

to finish just two or three more statements, and then I would be glad to respond.

Second, the report "saves" $316.5 million by taking advantage of additional unobligated balances not predicted in the administration's budget request.

Third, the report "saves" $100 million by predicting more uranium enrichment revenues than predicted by the administration budget requested.

Fourth, the report "saves" $68.9 million by predicting more miscellaneous revenues than predicted by the administration's budget request.

And, fifth, the report "saves" $41.3 million by estimating changes in inventory and working capital in excess of the administration's budget estimate.

When these $1.2 billion of paper savings are added up, it is clear that the claim made by the fact sheet that has been distributed and circulated around this floor is a little bit misleading. The fact is that there are several hundred millions of additional dollars of program increases in this bill. Some of these are new starts and new programs, and even though we have reduced from 8 to 6 the number of bad projects, the gentleman himself admitted that if those projects were bad last year and have not been justified this year in the discussions, they are still bad. To have $400 million of the taxpayers' money being spent as these move toward construction simply does not make sense in this particular amendment.

Mr. YATES. Mr. Speaker, will the gentleman yield so that I may engage in a colloquy?

Mr. BEVILL. Yes. But before I yield, may I make a statement on this point? The gentleman, I am sure, did not mean to say that the President's budget contained full funding because it does not. The budget submitted in January, which requested funds for over 200 continuing construction projects, was not a request for full funding. The budget amendment which came up in connection with the President's new water policy proposals did request full funding for 26 new construction starts including 8 loans. But that proposal was submitted after hearings on the budget had been completed, after subcommittee markup, after full committee consideration and just a few days before the bill was scheduled to be considered on the floor of this House. We should not, and we did not, take a White House news release and adopt it as the law of the land.

Now, I am sure that the new Congress will examine and consider in depth these new policy proposals when the 96th Congress convenes next year in an orderly and deliberate fashion. I have stated previously my belief that the recommendations embodied in this conference report are in substantial accord with the standards and criteria proposed by the President. I hope to explore the substance of the President's proposals next year. But as far as this year's budget request is concerned, only a portion of the budget request is for full funding. The remainder is not.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from Illinois.

Mr. YATES. I thank the gentleman for yielding.

Mr. Speaker, may I say to the gentleman that he assumes something that I am not willing to assume. He spoke of three projects for which funds are made available in this bill for study purposes. I think I quote his words exactly when he said they "are moving toward construction."

That is an unwarranted assumption. I am sure the members of the committee are not willing to assume that. There is $300,000 in this bill which does not warrant a veto. There is $300,000 in this bill to examine the projects, to see whether or not they should be approved.

To my mind, it is just as easy for them to be rejected, in the same way as Meramec Park Lake and La Farge were rejected. The committee may very well come to that conclusion.

So I think it is not entirely fair for the gentleman to assume, for purpose of his argument, that the $400 million represented by those projects is going to be spent.

Mr. EDGAR. Mr. Speaker, if the gentleman will yield, the reason the gentleman assumes that the projects will probably move on to construction—and I appreciate the gentleman's clarification of that point—is that I serve on the full Committee on Public Works and Transportation, the authorizing committee, and I have seen time and again, that when we authorize studies, we put our toe in the water. Simply by the act of putting our toe in the water, we move many of those projects on to completion.

I would also like to respond to the gentleman's (Mr. BEVILL) comment that this conference report is in substantial accord with the standards and criteria proposed by the President. I think the veto message of the President on this bill, which is almost certain to be strongly worded, will point out that many projects funded in this bill fail to meet the standards and criteria proposed by the White House relating to cost benefit, environment, safety, or combinations of these three.

Mr. Speaker, I rise in opposition to this conference report to H.R. 12928, the Public Works for Water and Power Development and Energy Research appropriation bill for fiscal year 1979.

By now, we are familiar with provisions of this bill which appropriate funds for 53 new water resource construction projects. 27 more than requested by the administration. The bill also appropriates funds for six of eight water resource projects approved by the House. These six projects—Bayou Bodcau, Narrows Unit, Savory-Pot Hook, Lukfata, Yatesville, and Fruitland Mesa—were approved despite the strong objections of the President.

It is clear that the President intends to veto this bill primarily because these six projects were included.

During debate in the House on this bill, there was much discussion about the agreement between the Congress and the President with respect to these eight "hit list" projects which were not funded last year. Frankly, I do not feel that it is constructive to again dredge up the differing perspectives on what the deal was on these projects. However, I continue to maintain that these projects are among the least justifiable of the hundreds of projects funded in H.R. 12928. The President objected to these projects for environmental, safety, and economic reasons, and nothing has changed to make any of these projects more attractive.

At a time when the Federal deficit is high, the American people deserve to have proposed programs scrutinized carefully to avoid wasteful expenditures. In my view, the House has failed to live up to its responsibility in monitoring wasteful spending in this bill.

For example, the House approved the Meramec Park Lake Dam project in Missouri. When my effort to delete this project failed in both 1976 and 1978, I was not surprised when this project was hailed as absolutely essential to the national interest. But I was also not surprised by the August referendum in Missouri when that State's citizens rejected this project by a 2-to-1 margin. The system of pork barrel politics is entrenched, and it takes courage and statesmanship to stand up against that system.

While I intend to vote against this conference report, I can sympathize with the reluctance of many of my colleagues to join me. On the surface, this conference report is $879 million under the President's budget. It looks like a fiscally conservative bill. What I would like to speak about today is the lack of program cuts in a bill which purports to be almost $1 billion under the administration budget.

A cursory reading of this conference report supports my view that this bill is a budget buster.

How could a bill which is almost $900 million under budget be characterized as a budget buster? Quite simply, there are more than $1.2 billion in paper savings which have virtually nothing to do with actual program cuts.

First of all, the President proposed "full funding" for construction projects, budgeting the full cost of a project. By rejecting this proposal, the conference report is artificially low compared to the President's budget. This simple difference in accounting results in at least a $697 million "paper" saving for H.R. 12928.

Second, revenues estimated from the sale of Federal uranium enrichment services differ by $100 million, also making the conference report budget request artificially low.

Third, unobligated balances carried over for the fiscal year 1979 programs in excess of administration budget estimates total at least $317 million, once again adding "paper" savings to this bill.

And finally, differences in accounting relating to miscellaneous revenues under title I and changes in inventory and working capital also add more than $100 million to the savings in this bill.

I do not want to pretend that the conferees have purposely played games in the accounting of funds in this bill in order to deceive Members about its budget aspects. In my opinion, the evidence suggests that the Department of Energy underestimated anticipated revenues and unobligated balances. The rejection of full funding for construction projects by the conferees is a policy decision which I can understand.

However, I expect the leadership to educate our colleagues that it would be a distortion to claim that this bill is $900 million under the President's budget without concurrently explaining that this is the result of accounting differences, not actual program cuts. On the contrary, H.R. 12928 proposes substantial program increases in every title.

All we need to do is to turn any page of the conference report and we see that program cuts are almost nonexistent in this bill, an interesting phenomenon in a bill which is almost $900 million under budget.

On the contrary, there are many program increases—

Solar energy, $33.7 million more than the budget;

Geothermal energy, $16.5 million more;

Biomass. $5.5 million more;

Magnetic fusion. $8 million more;

Lgiht water reactors, $28 million more;

Liquid metal fast breeders, $180.5 million more;

Environmental R&D, $7 million more; and

General science and research programs, $4 million more.

These are just for energy operating programs. Many energy capital programs show healthy increases taking into account the "full funding" in the President's budget.

Program compared to program, this bill proposes approximately $300 million in program increases compared to the budget, not $900 million in decreases. In addition. this bill commits $1.2 billion more than the President proposes for the construction of 56 new water project starts. As you may remember, the President proposed 23 new starts at a full funded cost of $640 million. This bill will appropriate only $103.6 million for 53 projects.

An argument may be made today by supporters of H.R. 12928 that even if this bill exceeds the President's request, it is under the congressional budget. While I cannot dispute that, there are two points that need to be made.

First, that congressional budget was based on most of the wrong assumptions which went into the President's budget. Just because some "paper" savings have been discovered does not mean that we reserve the right to increase program funds to make up for the savings."

Second, at a time when we cannot balance the Federal budget, we must make every effort to look at each expenditure. We cannot afford to waste money on unjustified porkbarrels which cannot meet simple economic tests solely because the bill appropriating the projects is ostensibly under budget. These six projects from the list of eight singled out by the President are unworthy of Federal funding whether or not the bill is under budget and whether or not we have a budget deficit or a budget surplus.

In conclusion, the real test of this bill will not occur today when this conference report is overwhelmingly approved. The test will occur when this House decides to override or sustain the President's veto of H.R. 12928. I urge my colleagues to study the veto message carefully and then to support the President in his quest for projects that make sense environmentally and economically:

Finally,

How do we respond to the "fact sheet" which is being circulated on the House floor which purports that H.R. 12928 is not inflationary, and is not a "budget-buster"?

The conference report is inflationary, and is a "budget buster."

True, the report is $879 million below the budget request.

True, the report is $279 million below the appropriation for 1978.

True, the report is $181 million below the House-passed bill.

But the more relevant question to ask is—Where are the program cuts?

What proponents of this report fail to point out is that there are more than $1.2 billion in "paper" savings compared to the administration's budget request. These paper savings are not disguised—just read the conference report and find that:

(1) The report "saves" $687 million solely by rejecting the President's "full funding" accounting procedure. (see pages 16, 34–49, and 59–64)

(2) The report "saves" $316.5 million by taking advantage of additional unobligated balances not predicted in the Administration's budget request. (see pages 8, 18, 50, and 64)

(3) The report "saves" $100 million by predicting more uranium enrichment revenues than predicted by the Administration's budget request. (see page 15)

(4) The report "saves" $68.9 million by predicting more miscellaneous revenues than predicted in the Administration's budget request. (see page 8)

(5) The report "saves" $41.3 million by estimating changes in inventory and working capital in excess of the Administration's budget estimate. (see page 7)

When these $1.2 billion in "paper" savings are added up, it's clear that the claim made in the fact sheet which is being circulated on the floor by supporters of this bill is misleading.

Vote down this inflationary budget-buster.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, the gentleman mentioned his experience in the authorizing committee. I have been in Congress for almost 30 years. I think there are projects that the gentleman's committee has authorized, going back to 1948, that still have not been funded. The gentleman's committee authorizes a great many projects that do not get funded. It is a good thing the Appropriations Committee is here to prevent construction of many of those projects, because I think that many of the projects do not warrant funding. But in this case I think it is well to note that the Appropriations Committee has called a halt to construction of the three projects, and is providing funds only to restudy these projects. The President may be right in placing them on his hit list. We want to see them studied and we want the people who advocate them to give us the reasons that they ought to be funded. Then the committee can decide.

Mr. BEVILL. Mr. Speaker, I have very little time left. I urge the Members to approve the conference report.

Mr. KREBS. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I am almost out of time. If the gentleman will be brief I will yield.

Mr. KREBS. Mr. Speaker, I will make it brief. I thank the gentleman in the well for yielding.

Mr. Speaker, I think my review of this conference report would have to reach the conclusion that this committee has been selective, that this committee has been responsive to some of the concerns that have been expressed in and out of the Congress, as well as by the executive branch. I therefore feel that this report is a good report, a report that I think those of us from the West, as well as the East and South and North, should be able to support and still go back to our respective districts and feel that we have supported legislation that is in the best interests of the American people.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I rise to urge my colleagues to vote down this public works appropriations conference report. A vote against this report is a vote for fiscal responsibility and a vote that will demonstrate that this Congress is dead serious about cutting wasteful Federal spending.

This bill contains many necessary and worthwhile water projects, but it is fatally tainted by a number of classic pork-barrel projects—massive multimillion-dollar boondoggles to rip off the American taxpayer and benefit small special interest groups.

Take a quick look at the Fruitland Mesa project in Colorado—this little ripoff will benefit 69 landowners at a cost of $88.2 million.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Illinois.

Mr. YATES. In the course of my discussion with the distinguished chairman of the committee, I pointed out that the Fruitland Mesa, Colo., project has only $75,000 allocated in this bill, and that is for a study of the project. The construction of this project may never take place, and probably will not take place.

Mr. CONTE. This is the place to knock it off, right here, because this project will eventually cost $88.2 million. One does not have to be an Einstein to figure that that will be $1.2 million per landowner, $4,615 per acre. The cost-benefit projection for the project is even more appalling—a maximum of 50 cents in return for every dollar of Federal investment.

Mr. YATES. Mr. Speaker, will the gentleman yield further?

Mr. CONTE. Let me go on for a little while. Let me dig into some others.

You will be getting a few more highlights from this pork-barrel parade from my colleagues but this project is typical of the boondoggles we are fighting—massive expense, benefits for a few wealthy landholders, and a pitiful return for your Federal dollars.

It is obvious, then, that there are a number of grave problems with this bill, but if I could take just a few more minutes of your time, I would like to focus now on one wasteful water project that has been a concern of mine for several years—the Dickey-Lincoln Dam project.

The Dickey-Lincoln School Lakes Dam project is a massive attempt to erect two dams on the St. John River in northern Maine. It was first authorized in fiscal year 1965 and I have constantly and insistently opposed it since its inception. The Congress considered and wisely rejected funding this project for 7 straight years, but New England's critical energy shortage led to a resurrection of this issue in fiscal year 1975—and it is still with us.

We have been waiting for the final environmental impact statement in order to consider this project on its full merits. The draft EIS was issued in October 1977 and the final EIS is expected at the end of this month. The draft EIS only strengthened our arguments against the project.

Somehow, $1.76 million for preconstruction planning on Dickey-Lincoln slipped into this year's Senate bill and this conference report. Though the amount is small, it represents a first step toward actual construction and moves the project beyond the preliminary phase represented by the environmental impact statement.

I think it is time right now to stop pouring more money into this irresponsible waste of taxpayer dollars and of our irreplaceable natural resources.

A brief review of the facts reveals that this project is an environmental outrage, and is not justified economically.

Dickey-Lincoln will irrevocably destroy much of the St. John River, the last major wilderness river in New England, by flooding 287 miles of the main river and its tributaries. The St. John is an excellent recreational canoeing area and one of the best brook trout streams in the United States. Dickey-Lincoln will inundate 88,000 acres of prime timberland to create a lake whose major fluctuations in water level will further mar the environment by leaving a giant and unsightly "bathtub ring" along its shoreline. This manmade lake will interfere with the habitat, food chain, and wildlife community structure of the region.

Nor are the environmental consequences limited to the immediate area—the amount and temperature of the dam's discharge may have an adverse impact on downstream fishing as well.

The economic value of this project is marginal at best, according to the Army Corps of Engineers. It is their project and they have calculated the cost-benefit ratio at 1.2 to 1. That is not a very compelling justification for a project whose total price tag has most recently been pegged at $822 million. That is up from the original 1965 estimate of $227 million and we can reasonably expect the total price tag to break the billion dollar barrier if the project is carried to completion.

The power to be produced would not be worth the expense. It is a "peak power" plant, operates for a maximum of 2 to 3 hours a day, and would produce less than 1 percent of New England's electric capacity. That is not very significant production for what will be the 11th largest dam in the world by volume.

To proceed with construction of this environmentally destructive and economically disastrous project would be all the more tragic, because there is a faster, less expensive, and more environmentally sound alternative.

New England has literally thousands of existing small dam sites which can be retrofitted to produce hydroelectric power.

The Energy Research and Development Administration authorization for fiscal year 1978 established a small-site hydroelectric program within DOE and authorized $10 million for it. The program has been continued in this year's authorization. Most of this money is to be used for actual retrofitting of several small dams to demonstrate the economic and environmental viability of this approach.

Let us compare Dickey-Lincoln and this alternative.

First, the small-site approach has all the advantages of hydropower claimed for Dickey-Lincoln with hardly any of environmental costs. There is no need to inundate a pristine wilderness. The small sites to be retrofitted already exist and require only minor modifications.

Second, the small site approach is vastly less expensive. A recent study suggested that retrofitting 450 average-size sites (out of a New England total of 5,200 sites) could produce 92 percent of Dickey-Lincoln's projected power at one-fifth the cost.

Third, the small-site approach is faster. Dickey-Lincoln was authorized in fiscal year 1965 and is not projected for completion until 1986. Retrofitting is a small-scale project and can be completed in 6 to 9 months at each site and numerous retrofitting can proceed simultaneously.

True, small-site retrofitting is a regional solution, adapted to an area with a significant number of old dams. But, the essence of our response to the issues of energy and conservation should be to mold a solution by working with what we have—and not to destroy our natural resources by imposing on them a wasteful "white elephant" dictated by the policies of the past.

Because there is a sensible and economical alternative to this towering monument to bureaucratic momentum and inflexibility, I believe that our only responsible course is to defer any further funding for Dickey-Lincoln until the final environmental impact statement is issued.

Then, I think we ought to use that statement to review the project on its merits once and for all. I am prepared to lead the fight to kill the whole project then and for all time.

Thank you, Mr. Chairman.

Mr. YATES. Mr. Chairman, will the gentleman from Indiana (Mr. JOHN T. MYERS) yield 1 minute?

Mr. JOHN T. MYERS. Certainly, I will yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, I want to address myself once more to my friend the gentleman from Pennsylvania (Mr. EDGAR) and his question about so-called paper savings.

Sometimes those of us on the Committee on Appropriations, and I am guilty of this, too, because I am a subcommittee chairman, when we look for savings and reductions, we make what can be termed paper savings. However, in this case, I am told that there are real savings which will be achieved if the conference report is enacted. I am told that the bill is approximately $25 to $50 million below the President's budget in real terms.

Mr. EDGAR. If the gentleman will yield, the real question that I hope our chairman will answer is where are the $900 million of alleged savings? Where are they? I think the gentleman will come up with $35 to $50 million, but not $900 million.

The SPEAKER. The time of the gentleman has expired.

Mr. JOHN T. MYERS. I yield 1 additional minute to the gentleman from Illinois (Mr. YATES).

Mr. YATES. Mr. Speaker, as I pointed out to the gentleman, there are such things as paper savings. But the point I want to make is that there are actual savings associated with this bill such that the amount made available in this bill is below the comparable amount requested in the President's budget.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ROBERTS).

Mr. ROBERTS. Mr. Speaker, I rise in support of the conference report on H.R. 12928, the Energy and Water Development Appropriations Act for fiscal year 1979.

I wish to commend the distinguished chairman of the Public Works Subcommittee and the ranking minority member of that subcommittee, as well as the other members, for the excellent job they have done in putting together a

reasonable and sound bill, a bill that recognizes this Nation's energy and water resources needs.

As chairman of the Water Resources Subcommittee of the Committee on Public Works and Transportation, I have a strong interest in and appreciation of the truly enormous water resources development needs of the country. Water resources development has played a crucial role in the country's development. Our navigable waterways carry vast quantities of agricultural goods, chemicals and fertilizers, and oil and coal for energy efficiency and at a low cost. Our people have been protected from the ravages of flooding. And water supply for municipal and industrial purposes has been provided. But our water resources needs are far from met—there is much yet to be done. Most importantly, these are national needs, not just local and regional ones. All of the people of the country benefit from water resources development.

Yet the administration, it appears, would have us forgo these benefits, and gradually phase out the water resources program through the elimination of most new study and construction starts.

Water resources problems are not solved by ignoring them. We cannot wait until problems such as water shortages appear before attempting to solve them. We must begin now to plan for and meet the needs of the future.

The conference report before us today does this. It provides for the construction of badly needed projects as well as for studies of potential projects to solve problems we know will exist in the future. It is a sound bill and deserves our support.

Mr. Speaker, I urge adoption of the conference report.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma (Mr. WATKINS), who has done an outstanding job in working on this bill.

Mr. WATKINS. Mr. Speaker, I thank the gentleman for yielding.

I rise in support of this conference report.

Mr. Speaker, I would like to make a particular point. I know that some people are discussing this bill as a budget buster. I think we all know at this end of Pennsylvania Avenue that this bill is below what the President had requested; and I think if those at the other end of Pennsylvania Avenue read this bill, they will know that it is below what the President requested. Therefore, they cannot go to the people of this country and say that this is a budget buster. They would be misleading the people of the country if they took such a case to the people.

Also, Mr. Speaker, if we are serious at this end of Pennsylvania Avenue about solving the energy problem, and if we are serious at the other end of Pennsylvania Avenue about solving the energy problem, this bill has 60 percent of its money devoted to the future energy research and development programs to solve this tremendous problem facing our American citizens. If we are going to solve these problems, we need this bill.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. LONG).

Mr. LONG of Maryland. Mr. Speaker, I thank the gentleman for yielding.

I listened over the television in our offices to the very eloquent speech of the gentleman from Massachusetts (Mr. CONTE), who was referring to all these boondoggles.

Mr. Speaker, I think the gentleman from Massachusetts (Mr. CONTE) and the administration have a double set of standards; one set of standards for U.S. public works projects which they are very critical of, and another set of standards for foreign public works projects, of which they are very uncritical.

Mr. Speaker, I have here a list of $2 billion worth of foreign aid public works projects, some of which are going to make millionaires and multimillionaires in many undeveloped countries, not to help the poor, but to help the rich. Let me point out that some of these are 50-year loans at zero percent interest. In my opinion, many of these foreign public works projects are far worse boondoggles than anything in the present public works bill.

Mr. Speaker, I support this public works conference report.

Mr. Speaker, at this point in the RECORD I include the following list to which I referred:

PUBLIC WORKS PROJECTS BY THE INTERNATIONAL FINANCIAL INSTITUTIONS—1977

	Millions
Asian Development Bank	$341.1
Inter-American Development Bank	497.5
World Bank	1,000.6
International Development Association	192.0
Total	2,031.2

ASIAN DEVELOPMENT BANK—1977 PUBLIC WORKS PROJECTS

Country and purpose; terms of loan; and amount

Afghanistan: Hydropower; 1%, 40 years to repay; $9 million.

Bangladesh: Irrigation; 1%, 40 years; $24 million.

Indonesia: Irrigation; 8%, 15–25 years; $20.5 million.

Indonesia: Port development; 8%, 15–25 years; $17.5 million.

Korea: Flood control and irrigation; 8%, 15–25 years; $45 million.

Malaysia: Port expansion; 8%, 15–25 years; $10 million.

Nepal: Irrigation; 1%, 40 years; $3.4 million.

Pakistan: Irrigation; 1%, 40 years; $31.5 million.

Pakistan; Hydropower; 8%, 15–25 years; $38 million.

Papua New Guinea: Hydropower; 8%, 15–25 years; $2.7 million.

Philippines: Irrigation; 8%, 15–25 years; $22.0 million.

Philippines: Hydropower; 8%, 15–25 years; $29.0 million.

Sri Lanka: Hydropower; 1%, 40 years; $17.5 million.

Sri Lanka: Irrigation; 1%, 40 years; $24.0 million.

Thailand: Hydropower; 8%, 15–25 years; $47.0 million.

Total: Asian Development Bank public works projects for 1977, $341.1 million.

NOTE:

U.S. share of paid-in and callable capital equals 9.2%.

U.S. share of Asian Development Fund equals 14.0%.

Source: Asian Development Bank Annual Report, 1977.

INTER-AMERICAN DEVELOPMENT BANK—1977 PUBLIC WORKS PROJECTS

Country and purpose; terms of loan; and amount

Brazil: Hydropower; 8%, 20 years to repay; $69.8 million.

Colombia: Hydropower; 8%, 20 years; $70 million.

Ecuador: Irrigation; 1% in 10 year grace period; 2% in 30 year repayment period; $11.8 million.

El Salvador: Hydropower; 1% in 10 year grace period; 2% in 30 year repayment period; $45.4 million; 8%; 25 years; 45 million.

Guyana: Flood control and irrigation; 1%; 10 year grace period; 2%, 30 year repayment period; $49.5 million.

Jamaica: Irrigation; 2%, 36 years; $12.5 million.

Mexico: Irrigation; 8.4%, 20 years; $54 million.

Mexico: Irrigation; 8%, 20 years; $41.5 million.

Panama: Hydropower; 8%, 26 years; $98 million.

Total: Inter-American Development Bank public works projects for 1977, $497.5 million.

NOTE:

U.S. share of paid-in and callable capital equals 36%.

U.S. share of Fund for Special Operations equals 55%.

Total: Inter-American Development Bank annual report, 1977.

WORLD BANK—1977 PUBLIC WORKS PROJECT

Country and purpose; terms of loan; and amount

Egypt: Irrigation and drainage; 8.2%, 20 years; $27 million.

Egypt: Irrigation and drainage; 4.2%, 24 years; $12 million.

Greece: Irrigation and flood control; 8.2%, 15 years; $35 million.

Indonesia: Irrigation; 8.2%, 20 years; $63 million.

Indonesia: Irrigation; 8.2%, 20 years; $35 million.

Kenya: Irrigation; 8.2%, 20 years; $34 million.

Korea: Irrigation; 8.5%, 16 years; $95 million.

Korea: Irrigation; 8.9%, 12 years; $29 million.

Malaysia: Irrigation; 8.2%, 17 years; $39 million.

Morocco: Irrigation; 8.7%, 13 years; $41 million.

Philippines: Irrigation; 8.2%, 20 years; $50 million.

Philippines: Irrigation; 8.5%, 19 years; $15 million.

Romania: Irrigation; 8.5%, 14 years; $60 million.

Thailand: Irrigation; 8.2%, 20 years; $55 million.

Tunisia: Flood control, hydropower; 8.2%, 20 years; $42 million.

Yugoslavia: Irrigation; 8.7%, 15 years; $54 million.

Ghana: Hydropower; 8.5%, 20 years; $39 million.

Guatemala: Hydropower; 8.2%, 17 years; $55 million.

Panama: Hydropower; 8.2%, 17 years; $42 million.
Tanzania: Hydropower; 4.9%, 25 years; $30 million.
Algeria: Port development; 8.2%, 17 years; $80 million.
Cameroon: Port development; 8.9%, 20 years; $15 million.
Honduras: Port development; 4.5%, 24 years; $12 million.
Indonesia: Port development; 8.7%, 20 years; $32 million.
Mauritius: Port development; 4.7%, 25 years; $3.6 million.
Senegal: Port development; 4.2%, 24 years; $6 million.
Total: World Bank public works projects for 1977, $1000.6 million.

NOTE:
U.S. share of paid-in and callable capital equal 25.2%.

Source: World Bank annual report, 1977.

INTERNATIONAL DEVELOPMENT ASSOCIATION—1977 PUBLIC WORKS PROJECTS

Country and purpose; terms of loan; and amount

Bangladesh: Irrigation; 0.75%, 50 years; $21 million.
Bangladesh: Irrigation; 0.75%, 50 years; $16 million.
Chad: Irrigation; 0.75%, 50 years; $12 million.
Chad: Irrigation; 0.75%, 50 years; $8 million.
India: Irrigation; 0.75%, 50 years; $23 million.
Kenya: Irrigation; 0.75%, 50 years; $6 million.
Nepal: Irrigation; 0.75%, 50 years; $9 million.
Pakistan: Flood control and irrigation; 0.75%, 50 years; $40 million.
Sri Lanka: Irrigation; 0.75%, 50 years; $19 million.
Sri Lanka: Irrigation; 0.75%, 50 years; $5 million.
Malawi: Hydropower; 0.75%, 50 years; $8 million.
Burma: Port development; 0.75%, 50 years; $10 million.
Cameroon: Port development; 0.75%, 50 years; $10 million.
Honduras: Port development; 0.75%, 50 years; $5 million.
Total: International Development Association public works projects for 1977, $192 million.

NOTE:
U.S. share of IDA contributions equals 28%.

Source: World Bank annual report, 1977.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. DICKS), an outstanding member of the subcommittee.

Mr. DICKS. Mr. Speaker, I think there has been ample discussion about the civil works projects of the Corps of Engineers and about the Interior Department's Bureau of Reclamation funding.

However, I would like to point out to my colleagues of the House of Representatives that this is the energy development bill as well as the water development bill for this country.

Let me just give the Members some idea of the money we are providing for energy development.

First of all, we are providing a total of $2.6 billion for development programs.

For solar energy, there is $442 million in the bill.

For geothermal, there is $156 million in the bill.

Fuels from biomass, there is $42 million in the bill.

Hydroelectric power development, $28 million.

Fusion energy, $349 million.

Electric energy systems, $40 million.

Energy storage systems, $58 million.

Mr. Speaker, the list goes on and on. For those in the Congress who are concerned about our energy program this is an opportunity, by approving this conference report, to show our support for energy alternatives and for energy development.

Mr. Speaker, I suggest that we may not get, although we hope to get, an energy authorization bill passed this year. If we do not, the Members can still go back to their constituents and tell them about the energy development appropriation bill which really does something about producing alternative energy sources.

Mrs. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. DICKS. I yield to the gentlewoman from Louisiana.

Mrs. BOGGS. Mr. Speaker, I thank the gentleman for yielding.

Is it not true that 50 percent of the funding in this bill is for energy and energy-related problems?

Mr. DICKS. That is right. When we consider the amounts of money which being provided for hydroelectric projects, power marketing and energy development almost half the bill is for energy.

Mrs. BOGGS. Is it not also true that about 60 percent of the funding for the Department of Energy is contained in this bill?

Mr. DICKS. That is correct.

Mrs. BOGGS. I thank the gentleman, Mr. Speaker.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BURGENER), an outstanding member of the committee.

Mr. BURGENER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this conference report and thank the chairman, the gentleman from Alabama (Mr. BEVILL), and the gentleman from Indiana (Mr. JOHN T. MYERS), and the members of the committee for producing an excellent and well-balanced bill. I would also like to associate myself particularly with the remarks of the gentleman from Washington (Mr. DICKS).

This is really the only energy game in town that has to do with the production of energy and new sources. The so-called President's program that has been stalled for some 17 months around this place has to do with shortages, with conservation—which is important—with new taxes, and so on, but this bill has the production of energy in it, some 50 percent of this entire bill. It is very, very important. It may be the only energy we produce during this entire Congress.

Just to comment on the full-funding concept, if it has merit, and I do not think it has much merit because it surrenders the oversight responsibility of Congress. But if we talk about full funding, putting the out-years or future years' money in this bill at this point, we really would be surrendering our congressional oversight function, a most vital function of the Congress.

Furthermore, this would most certainly not be the time to do it when adopting a conference report. There have been no public hearings on it. The idea was brought up when we had finished our labors in the committee. And, indeed, it certainly flies in the face of the zero budgeting concept. Full funding at this time? Absolutely not.

Mr. Speaker, at the risk of repeating, this bill is some $879 million below the President's request, $280 million below last year's bill, $181 million below the House-passed bill that passed overwhelmingly. It is not a budget buster. It is not inflationary. It is well balanced. I hope it has an overwhelming aye vote.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GAMMAGE).

Mr. GAMMAGE. Mr. Speaker, I have two or three questions I would like to address to the gentleman from Alabama (Mr. BEVILL) if I may.

The conference report contains a funding level of $5 million for the construction of an away-from-reactor spent fuel storage facility. Is it the gentleman's interpretation of the bill that the upgrading of the funding commitment from $3 to $5 million is consistent with the intent of section 403 of H.R. 11392 to construct adequate away-from-reactor storage facilities?

Mr. BEVILL. If the gentleman will yield, the answer to the gentleman's question is yes.

Mr. GAMMAGE. Is it also the gentleman's view that DOE will recognize the need to request either reprograming of funds or supplemental funding to assure that this program is kept on schedule?

Mr. BEVILL. Yes, if that is necessary to keep the schedule.

Mr. GAMMAGE. Finally, does this provision of the bill constitute an authorization to begin this project in the absence of an authorization bill for the Department of Energy by October 1 of this year?

Mr. BEVILL. When this bill is signed by the President, it is law. My view is that the Department must proceed with the project in accordance with the intent of Congress, or they must send up a recession or deferral in accordance with the Congressional Budget Act.

Mr. GAMMAGE. I thank the gentleman.

Mr. Speaker, I rise in support of the conference report on the energy and water resources appropriations bill, H.R. 12928, I commend my colleague from Alabama for his excellent work as chairman of the Public Works Subcommittee in bringing to the floor a number of important energy supply programs funded at levels consistent with the intent of the two committees on which

I serve, Science and Technology and Interstate and Foreign Commerce.

The conference report includes a funding level of $5 million for the construction of an away-from-reactor spent fuel storage facility. From the colloquy on the Senate floor on August 10, 1978, it is clear that the sponsors of the amendment and the Senate counterpart of my colleague from Alabama clearly intended to transmit a strong message to the Department of Energy, namely, that it should begin a construction oriented program in fiscal year 1979 to provide initial storage capacity by 1983. This position adopted by the conferees appears to be totally consistent with the House Appropriations Committee position outlined in report 9-1247 that the design of a spent fuel storage facility must begin in fiscal year 1979 to avoid delaying an operating date beyond 1983. The committee also noted that domestic utilities will need assistance to store 900 metric tons of spent fuel by the end of 1982, and an additional 800 metric tons by 1983. This total of 1,700 tons amounts to nearly 40 percent of the capacity of the proposed first increment which must be available in 1983.

I am encouraged that the Department has recognized the strong congressional interest in timely implementation of the President's October 1977 spent fuel storage policy. The Department has recently advanced its proposal for full cost recovery fees to be charged utilities and it has also completed the draft environmental impact statement on domestic spent fuel storage. These actions are entirely consistent with the mandate of this Congress and I hope my colleagues will continue to strongly support expeditious implementation of this program.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. I thank the gentleman.

I would like to address a question to the chairman of the committee, the gentleman from Alabama (Mr. BEVILL).

In the colloquy with the gentleman from Illinois (Mr. YATES) he indicated that there was $50 million or so in savings above the administration's. If there is a $1.2 billion paper savings, as I suggested, and he indicates that the program is $879 million below the budget request, is not there some $300 million or so of program increases in this particular bill?

Mr. BEVILL. If the gentleman will yield, there is no increase. My good friend and colleague is adding apples and oranges. We are taking the same bottom line we took last year in the appropriation bill, the year before, in the total of each of these appropriations, and this comes to over $800 million under the budget.

Mr. JOHN T. MYERS. Mr. Speaker, I yield 1 minute to the gentleman from Mississippi (Mr. WHITTEN), a member of the committee.

Mr. WHITTEN. Mr. Speaker, my colleagues on this committee have done a splendid job in presenting this conference report. I leave only one thought here. There is quite a bit of difference between money and wealth. Some years ago, a President vetoed a public works appropriation bill on the grounds that we had so many obligations to foreign countries, we owed so much money, that we could not afford 67 new starts in our own country.

I spoke yesterday to the Agricultural and Soil Conservation Service in Washington and I made the statement that there is one bank account we cannot afford to overdraw, and that is our own country's bank account. This is a bill that provides for the development and protection of the natural resources of the United States. We can handle our financial situation and our inflation problems because our children and our children's children can set up their own monetary system; but if we let our country's resources go down the drain, we will be like the Chinese and the Indians. We will have nothing on which to build. This is a bill that takes care of our country and provides for future generations.

Mr. JOHN T. MYERS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in strong support of this conference report. We all realize that any time you work on legislation in this body there are areas of conflict and disagreement. I am very pleased to have been a part of this conference. This has not always been true; but the members of this subcommittee, along with the extremely hard-working staff, worked very diligently on the bill. We tried to resolve differences as the testimony had been presented, trying to work out the best bill and one that meets the needs of this country. As so many people have said here, most eloquently by the gentleman from Mississippi that preceded me in the well, we tried to work out the honest differences Members have.

I thought we had a good bill, but after working with the other body in conference, I believe we have a slightly better bill and one that every Member in both chambers can support.

I am concerned when I hear people call this a pork barrel bill. Let us go over some of the pork barrel issues that are in this bill. Who is to tell the people in Rochester, Minn., where we have $300,000 for construction of a flood wall that this is a pork barrel. Earlier this year a flood caused the loss of five lives and $56 million in property damages. Are you going to tell the families of those five people that this is a pork barrel flood control project that could have saved those people's lives?

Just this morning we read in the newspaper of the devastating floods in Arkansas and in Texas where 11 known lives have been lost and hundreds of millions of dollars in property damage loss. You who vote against this bill today, are you going to tell the families of those 11 people that you voted against possible flood protection for them because this was a pork barrel bill?

Sure, there are a few sections in here that we have honest disagreement about, but there is not a Member of this body that does not have some communities that are either out of water today or are running low on municipal and industrial water. Are you going to go back home and tell those people who have to start rationing water 5 or 10 years from now, "Oh, I voted against that extravagant bill because I considered adequate water for you to be a pork barrel issue."

Right now in Bloomington, Md., Bloomington Lake is being built to provide water for Washington, D.C. In a dry period, we can run out of water without any growth in population.

When you vote today, if you vote against this bill, are you going to tell your successors, "Oh, I'm sorry, but you are going to run out of water in the midde of the summer because we voted against a pork barrel bill that might have given you water."

Let us take a look at energy. As has been said, about 50 percent of the funds in this appropriation are for energy development. We are trying to become energy self-sufficient in this country. We do not want to be dependent upon Arab oil. If another Arab embargo is imposed our country is going to be severely hurt.

We are searching for new areas and new ways of producing energy. If we vote no on this conference report, we will be destroying the opportunity of perhaps achieving a breakthrough. We have included $36,700,000, over the President's budget, for solar energy. Who is to say that solar energy may not be the only source of energy we will have for our grandchildren?

And what about geothermal? No one knows exactly what the possibilities are here, but we have increased the appropriations for geothermal research.

We have included funds for biomass. Some communities are right up to here in their own waste that accumulates in the cities and in the communities. Here is an opportunity to use this waste material. There is a good possibility that this may be a source of energy for the future. We have increased the appropriation for biomass.

This list goes on. We have fusion. There was a breakthrough in New Jersey a few weeks ago on fusion, and there is a real possibility that fusion will be a real source of energy sometime in the future. Yes, we went over the President's budget because we believe that we had to increase research for fusion.

The SPEAKER pro tempore (Mr. NEDZI). The time of the gentleman from Indiana (Mr. JOHN T. MYERS) has expired.

Mr. JOHN T. MYERS. Mr. Speaker, I yield myself 4 additional minutes.

Mr. Speaker, if we today vote against this conference report, we are voting for a reduction in fusion research. This is a balanced bill, but it is true that everyone did not get everything they wanted.

Mr. MAHON. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the chairman of the Committee on Appropriations.

Mr. MAHON. Mr. Speaker, in my individual capacity and as chairman of the Committee on Appropriations, I want to say that I have carefully followed the development of the Public Works appropriation bill, and I think the claims in support of it are valid. I support it, and I hope the House will adopt the conference report today by an overwhelming vote.

Mr. COHEN. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentleman from Maine.

Mr. COHEN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to say to the gentleman in the well that I want to commend him as being about the only Member of the House conferees who at least raised a question about the funding of the construction for the Dickey-Lincoln project. The gentleman indicated that everybody did not get everything they wanted, but in this case we got something we did not want, as far as the House is concerned, because the House deleted the money for the construction funds for the Dickey-Lincoln project. This is just going to have the result of getting this Congress into the position, I believe, of funding a $1 billion project which, I think, has limited benefits for the region and for the country.

Mr. Speaker, I commend the gentleman from Indiana (Mr. JOHN T. MYERS), and I want to associate myself with the remarks of the gentleman from Massachusetts (Mr. CONTE), who spoke earlier. I do also want to commend the House for the position it took, and I want to commend the members of the Conference Committee who objected to the funding of the Dickey-Lincoln project.

We are opposed to this project, because here is a project that is not at all like the ones out West which have actually had construction started that the President wanted to interrupt. This is a project on which no construction has yet begun.

Mr. Speaker, here we had an opportunity to help the President balance the budget by 1981. At least he said that was his goal last spring, and this is one case where we could make some substantial savings.

Mr. JOHN T. MYERS. Mr. Speaker, I thank the gentleman from Maine (Mr. COHEN) for his comments.

Mr. Speaker, I want to say this: The House went to conference without Dickey-Lincoln in the bill for the first time since I have been in the Congress, and there was a legitimate attempt not to put it in. The Senators were polled, and they were 100 percent for Dickey-Lincoln.

The conferees were up against a situation where there were Members in our conference who supported Dickey-Lincoln; there were others who were opposed to it. We tried to protect the position of the House, but with the unanimous position of the other body against the position of the House, there was little opportunity for us to compromise.

I want the gentleman from Maine (Mr. COHEN) to understand fully that we tried to protect his interests and the interests of other delegations from New England. The Maine delegation and the Vermont delegation had committed themselves to the proposition that they did not want Dickey-Lincoln, and they were successful in keeping it out of the House bill.

But there is no choice today. The other body wanted Dickey-Lincoln, the President wanted Dickey-Lincoln. I must honestly tell the gentleman there is really no hope today for his position. I wish I could tell him there is, but the fact is that there is no way to keep Dickey-Lincoln out of the bill.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentleman from Massachusetts.

Mr. BOLAND. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the conference report. One thing I am not going to do is associate myself with the remarks of my colleague, the gentleman from Massachusetts (Mr. CONTE) or with the remarks of the gentleman from Maine (Mr. COHEN). Both those gentlemen must recognize the fact that in a conference, of course, it is a give-and-take proposition. This is not the only body that determines what projects should go into a particular public works bill.

I have sat in conference on this committee for some years now. The gentleman from Maine (Mr. COHEN) has consistently supported this project up until this year. I suppose that the Members of the other body, the two Members from the State of Maine, had a right to state their positions. I thought they were very effective.

Let me only say that all of the $1,756,000 in this bill is to complete preconstruction planning on the Dickey-Lincoln project.

The SPEAKER pro tempore. The time of the gentleman from Indiana (Mr. JOHN T. MYERS) has expired.

Mr. JOHN T. MYERS. Mr. Speaker, I yield myself 4 additional minutes.

Mr. BOLAND. Mr. Speaker, if the gentleman will yield further, the total amount for planning of that project runs to about $10 million, and the draft EIS statement has been filed. The final EIS statement will not be filed until a couple of months from now. I must say that it has become a political problem in the State of Maine. The gentleman from Maine, of course, knows it better than I do. I do not criticize him for his particular position. He is entitled to that position. What I do say is that there are members in the other body who have some interest in the State of Maine too. I think their opinions and their judgments ought to be considered.

I might also say—and I am sorry my colleague, the gentleman from Massachusetts (Mr. CONTE) is not here—I do not recall that the gentleman has ever voted for a Public Works appropriation bill in his time in this House. His reference to the fact that this particular item was slipped in by the conferees, of course, is nonsense. The Dickey-Lincoln project was recommended for funding for preconstruction planning by the Appropriations Subcommittee on Public Works of the Senate. It approved, and the Senate approved the amount of $1,756,000 by a voice vote. That is the same amount recommended in the budget by the President and passed in the Senate by a voice vote.

It was obvious in the conference that the Senate conferees would not yield and there was no reason why they should. They were exercising their responsibility to stick to the Senate's action.

Mr. WOLFF. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentleman from New York.

Mr. WOLFF. Mr. Speaker, I rise in support of the conference report as a most important step in providing alternate sources of energy for the Nation. I would like to take this opportunity as well to speak on behalf of an item in the energy and public works appropriations bill which has the promise of one day leading to an improvement in the environmental quality and safety of the district in which I serve.

Currently, section 202 of the Water Resources Development Act of 1976 authorizes the Army Corps of Engineers to develop projects for the collection and removal of drift and debris from publicly maintained commercial boat harbors and from land and water areas immediately adjacent to them. However, for almost 2 years no funds had been appropriated for this new program in order to develop small drift removal projects. I believe that this was unfortunate because this section has the potential for providing meaningful assistance to water quality projects.

I am, therefore, pleased to now thank my colleagues in the Congress for listening to my requests and for making Hempstead Harbor, which is located in the Sixth Congressional District of New York, the first recipient in the Nation of funds under section 202 for a drift removal project.

Hempstead Harbor has for many years suffered the presence of derelict and dilapidated barges and other abandoned structures. These barges have long been a danger to navigation and a source of environmental blight. However, until recently, in spite of the great need for action to restore this harbor, the localities affected have been unable to act due to financial constraints.

With the $50,000 in funding now made available under this appropriations bill, the Corps of Engineers will be able to conduct a comprehensive study of the manner and costs of clearing these barges and other structures from the harbor. In that way the Congress will have an authoritative record upon which to base its funding in the future for the actual removal of the drift and debris.

Furthermore, the Congress will have

a well-considered plan on how to conduct this project which will take into account all the needs and interests of the individuals and communities affected. Armed with this thorough study, I feel confident that the Congress will react favorably when I seek full funding for the actual removal under section 202 of the barges and other structures.

At a time when Government is often thought unresponsive to the calls of the people and unaware of their needs, it is heartening to be able to point to an action by the Congress which shows that the Federal Government has a human face.

Mr. BURKE of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentleman from Massachusetts.

Mr. BURKE of Massachusetts. I thank the gentleman for yielding.

Mr. Speaker, I want to associate myself with the remarks of the gentleman from Massachusetts (Mr. BOLAND). This Dickey-Lincoln project has become a political football. We in the Northeast face the highest electric rates in the Nation, and something has to be done.

Mr. Speaker, I support this conference report because I recognize that throughout the Nation many of these water projects are greatly needed. I want to assure the House that we Members from the Northeast are not opposed to this conference report.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this conference report and commend our distinguished colleague, the chairman of the Public Works Appropriations Subcommittee, the gentleman from Alabama (Mr. BEVILL) and the gentleman from Indiana (Mr. MYERS), the ranking minority member, for the thorough work that they and their subcommittee, as well as our distinguished colleagues in the Senate, have done on this important legislation. The committee's final bill is a sound product and I hope that my colleagues will join in approving this conference report.

Frankly, I find it hard to believe that controversies have arisen regarding this appropriations bill, and will be hard pressed to explain to my constituents of the 26th Congressional District of New York just why such controversies have arisen.

This bill helps to resolve two critical flood problems in my congressional district—the Walkill River and the Passaic River Basin.

The Wallkill River, in Orange County, N.Y., drains some of the most fertile lands in the United States. That area produces 15 percent of the onions consumed nationally east of the Mississippi and other truck vegetables. And yet, each and every year more and more growers are being driven from their farms, because of the chronic flooding problems along the Wallkill River. It is estimated that the average annual damages due to flooding totals over $1.75 million. The following chart, which I request be printed in the RECORD at this point, dramatizes the situation that our farmers are forced to face:

Wallkill River flood damage

Year:	*Estimated damage to growers*
1955	$4,500,000
1968	5,000,000
1970	5,600,000
1972	12,145,000

You will note, Mr. Speaker, that Hurricane Agnes in 1972, alone rendered over $12 million worth of damages in the Wallkill River Valley. Almost as if to dramatize to Congress the dire need for this project, this past spring the black dirt region was flooded once again. Fortunately this latest flood occurred early enough to avoid any crop damage but it did delay the tilling season.

We have struggled for 6 years to rectify this flood problem. Initial studies by the U.S. Army Corps of Engineers—U.S. Army Corps of Engineers, interim survey report for Wallkill, page 17—called for a flood control project to rectify the situation, which they attribute to:

> Insufficient channel capacity due to the flat gradient and meandering character of the streams . . . further, high states on the main stream and tributaries causes extensive back-up and flooding-out of the vest system of drainage ditches in the area.

The project was authorized as part of the Omnibus Public Works Act of 1976. Each year since, we have attempted to get funds into the Federal budget to at least begin the project, and each year there has been a new obstacle. Last year, the funds were approved by the House, but were dropped in the House-Senate conference due to misunderstandings regarding the nature of the project, as the conferees sought to produce a "veto proof" bill.

This year, I testified in support of this appropriation before our Public Works Subcommittee. Testifying with me were several of the growers from the area who impressed upon the subcommittee members the hardships that the delay of this project have caused.

We were impressed and enthused by the interest and the compassion shown by our distinguished colleague, the chairman of the subcommittee, (Mr. BEVILL), by his counterpart in the Senate, the distinguished junior Senator from the State of Mississippi (Mr. STENNIS), and the members of their respective subcommittees.

These Members of Congress, and their respective staffs, took the time to respond to the needs of the growers—took the time to look into the facts of the case—and concluded that the project was worthwhile.

Mr. Speaker, this conference report, by including the initial appropriation for the Wallkill River flood project, represents the climax of a long struggle by the growers of Orange County to make the Federal Government responsive to their needs. The Members of this august body are to be congratulated for responsiveness and compassion.

And yet, like the sword of Damocles, the threat of a "veto" hangs over our heads. I regret that our friends at the other end of Pennsylvania Avenue do not seem to have taken the time to fully explore the facts of this situation as closely as our colleagues have.

Mr. Speaker, I believe that the members of the Public Works Committee have ably fulfilled their responsibility in uncovering all the facts of this, and every other requested project.

Mr. Speaker, I hasten to point out that another flood control project that affects a portion of my district is included in this conference report. The Passaic basin flood control project, earmarked for $2.3 million, has a component that will alleviate the serious flooding which has plagued constituents of mine in the Sloatsburg, Suffern, and town of Ramapo, N.Y., areas. During the massive storm which occurred in November 1977, people were rendered homeless and millions of dollars of property damages occurred. The public officials and residents from this area are of course greatly concerned that this appropriation is approved.

Mr. Speaker, I am hopeful that our colleagues will see fit to pass this legislation with as heavy a majority as possible. Our colleagues have worked long and hard to make this bill as responsive to the needs of our citizenry as possible. It is our obligation to see that this conference report is made "veto proof" by passing it by a majority sufficient to insure an override if the threat of a veto does come to pass.

Mr. Speaker, it is also important to note that despite criticism by the administration, this public works measure is not "inflationary": The conference report is, in fact, $879 million below the budget request, $279 million below the appropriation for 1978, and $181 million below the bill passed by the House.

Moreover, this important legislation contains appropriations for two significant purposes which should be of concern to all of us: Water resources and energy research and development. The energy section of this bill is an aggressive, coherent attempt to help address our Nation's energy needs. Of the eight water projects which proved so objectionable to the President last year, only three are funded for construction starts, and three others for study. The remaining two have been eliminated completely.

Mr. Speaker, I thank our colleagues for their extensive efforts in so fully familiarizing themselves with all of these projects. I hope we can all join together in endorsing their expertise by approving this conference report. Hopefully, the White House will fully recognize the diligence and expertise which has gone into the formulation of this legislation.

Mrs. SMITH of Nebraska. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, it seems to me that the threat by the President of a veto of this

bill is just another example of his strategy to improve his public image.

While the administration claims the bill is too expensive, the fact is that the Congress trimmed the President's budget by almost a billion dollars.

I believe that what has rankled the President as much as anything was the elimination of the Water Resources Council by the Congress. It is ironic that the President campaigned on the theme he wanted less government, yet when we cut some of the bureaucracy, he objected.

Opponents of this measure should take note of the fact that 60 percent of the funds in this bill are for energy research and development and administration of the Department of Energy.

There certainly won't be any energy program if the President vetoes funds for the Department itself. Regardless of what happens to an energy package, we have focused our attention and funding on the development of alternative energy sources such as solar, wind, and gasahol.

Mr. JOHN T. MYERS. Mr. Speaker, in summarizing, I do not believe that anyone can really vote against this conference report today because we have pared all of the unnecessary things out of it. I believe there are some line items that some people might disagree with. But you never ever come to the floor in complete harmony. The laws are written here, the appropriations must always be written here. And again it is clearly the bottom line, the difference between which priority should be placed in the bill.

Mr. MILLER of Ohio. Mr. Speaker, will the gentleman yield?

Mr. JOHN T. MYERS. I yield to the gentleman from Ohio.

● Mr. MILLER of Ohio. Mr. Speaker, I want to compliment the House conferees on this public works appropriations conference for adhering closely to the 2-percent cut adopted by the House, and in retaining the congressional prerogative in designating spending levels and areas.

The committee chairman, the gentleman from Alabama (Mr. BEVILL), and the ranking minority member, the gentleman from Indiana (Mr. MYERS), and the other House members of the conference have shown again how these 2- or 5-percent cuts can be administered here in Congress.

The House bill was passed at a level of $10,341,633,900, minus a 2-percent cut on nonmandated items which amounted to $206 million. Conferees agreed to a level of $10,160,483,900, or a reduction of $181 million. Even with this being somewhat under the $206 voted by the House, it is a substantial savings for the taxpayer.

There has been much discussion here on the floor on how we would retain control of agency spending with the careful language of the reduction amendment, and we have seen again today how this can be accomplished.

For the RECORD, the following is the language of the amendment:

Of the total budget authority provided in this Act, for payments not required by law, two per centum shall be withheld from obligation and expenditure: *Provided*, That of the amount provided in this Act for each appropriation account activity, and project, for payments not required by law, the amount withheld shall not exceed five per centum.●

The SPEAKER pro tempore. The gentleman from Alabama (Mr. BEVILL) has 2 minutes remaining.

Mr. BEVILL. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. Mr. Speaker, I rise in support of this conference report. I shall support this conference report as a reasonably worked-out compromise. However, much has been mentioned about this Dickey-Lincoln project in New England. I think that that is one of the most wasteful projects that this Government has ever undertaken. It is going to be a billion dollar boondoggle by the time it is built. It is wasteful. It is going to be extremely high-priced electricity, and, thank goodness, I doubt very much that it is ever going to be built by the time the courts and everyone else get through with it.

I did not want this time to go by, with several spokesmen from New England voicing great praise on this program, without my opposing it, as I have been since 1966 or 1967. I think the Dickey-Lincoln project is a shameful waste of the taxpayers' money, but notwithstanding, we must compromise on conference reports. I think otherwise that this is a good bill, and I shall support this bill.

Mr. BEVILL. Mr. Speaker, I yield to the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. Mr. Speaker, I thank the chairman for yielding to me. The statements of the distinguished gentleman from Connecticut, the chairman of the Budget Committee, of course are not new. He has been doing this, as he said, since 1965, when this project was first authorized.

I can understand his position, but I do not understand his rhetoric. Constantly, he has indicated to this House and to the committees that this is a great boondoggle. Well, just let me say to the Members of this House that this project has a 2.1 to 1 benefit-to-cost ratio.

Beyond that, what he calls a billion dollar project is in fact, estimated to be $804 million. All but $12 million will be returned to the taxpayers in future reimbursements. This means that $792 million of the $804 million will be returned to the Treasury.

● Mr. JENRETTE. Mr. Speaker, I would like to compliment the chairman of the Public Works Subcommittee, TOM BEVILL, for supporting a continuation of the fiscal year 1978 program at Barnwell through fiscal year 1979. When President Carter indefinitely deferred commercial reprocessing in the United States on April 7, 1977, a decision had to be made whether to "mothball" the existing Barnwell facilities and let the technical staff disperse; or, to orient the staff in a R. & D. mode under contract to the Department of Energy while optional uses for the facility are explored.

I am happy to report that we are getting our value for the dollars spent on R. & D. at Barnwell. The technical staff assembled there has developed one very promising proliferation-resistant fuel cycle as a part of the fiscal year 1978 program that I would like to mention for the benefit of my colleagues.

Most nonproliferation studies now underway have focused on development of methods to complicate the diversion of commercial plutonium from the civilian nuclear power program by adding other materials to the plutonium to make the handling of it more difficult. Because of the fact that the plutonium product from each of the methods explored so far can be chemically purified without significant difficulty, it has become obvious that some process modification is needed whereby the pure plutonium cannot be separated out by any known means. One such process modification has been developed by the staff at Barnwell and submitted for consideration in the International Nuclear Fuel Cycle Evaluation (INFCE), a 2-year, 50 nation study of proliferation-resistant fuel cycles that President Carter initiated in October 1977.

The process proposed by the Barnwell staff involves using plutonium-238 at higher levels than normally occur in spent reactor fuel. The use of plutonium-238 at levels of 5 to 10 percent offers two advantages. First, because of the heat output from the higher levels of plutonium-238, any attempt to fabricate a crude plutonium explosive device could result in the melting of that device before it could be exploded. Second, plutonium-238 cannot be chemically separated from the other plutonium isotopes in spent reactor fuel. Thus, we have what could be considered as a very significant "technical fix" as far as making the civilian nuclear fuel cycle an unattractive target for terrorist groups and others dedicated to seizing materials that can be used for explosive purposes.

I testified before the Public Works Subcommittee in support of a fiscal year 1979 program at Barnwell. The results from the research activities there indicate that continuing support of the Barnwell staff through fiscal year 1979 is in the national interest.●

● Mr. JOHNSON of California. Mr. Speaker, I want to take just a couple of minutes to express my appreciation to Chairman TOM BEVILL and the members of the Public Works Appropriations Subcommittee for their fine efforts this year. Under TOM's leadership, the subcommittee, the full Appropriations Committee, and the conference committee have labored long and diligently to bring us a fair, adequate, and budget-conscious bill.

The legislation brought before us today is well drafted. It is some $878 million below the President's request. During this time of inflation, Chairman BEVILL and his colleagues have highly refined this bill to assure that it is approximately $279 million below last year's bill.

Perhaps most significant about this bill is its attention to energy development. For many years the primary focus of the public works appropriations bill has been water development. This is still

an important and vital portion of the bill. It is significant to note, however, that 60 percent of the bill deals with energy development. Also, the bill provides approximately 60 percent of the budget for the newly established Department of Energy.

TOM BEVILL, JOHN MYERS, GEORGE MAHON, and AL CEDERBERG are all to be commended for their forthright efforts in meeting the challenge of the Nation in the fields of water and energy development. I would also be remiss if I did not recognize the important contributions of the subcommittee staff which prepared much of the background information upon which the decisions could be made.

We in California have a wealth of natural resources which need management and development. I am pleased that this subcommittee has recognized this potential and has assisted us in meeting these needs.

Again, Mr. Speaker, let me express my appreciation to Chairman BEVILL and the members of his committee for their outstanding efforts on this bill.●

● Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to take this opportunity to express my strong sense of gratitude to the chairman of the House Appropriations Committee's Subcommittee on Public Works, TOM BEVILL, for his dedicated efforts which have produced a fiscal year 1979 public works appropriations bill which will go a long way toward meeting the critical needs of our Nation.

My work with the Water Resources Subcommittee of the Public Works Committee has convinced me that if we are to meet our national goals of maintaining adequate water supplies, a sound transportation system, and flood protection for our citizens, we must rank water resource developments as one of our highest national priorities and secure full funding for the studies, plans, and projects which will work toward these important objectives. For this reason I particularly appreciate the strong support that is being demonstrated by the members of the Public Works Appropriations Subcommittee and other Members of the House for the conference report which I hope will pass by a large margin.

Early in the legislative process I discussed with Chairman BEVILL the importance of the Norfork Lake Highway Bridge which was authorized through legislation I introduced in 1973 and which I guided through the Water Resources Subcommittee till it became section 16 of Public Law 93–251. It is gratifying to know that $2 million in construction funding has been included in H.R. 12928 for this project.

In 1943, Norfork Dam and Reservoir were constructed in an effort to prevent the repetition of the catastrophic floods of 1927 and 1937. When hydroelectric power was added to the project in 1941, the U.S. 62 bridge was permanently inundated. Although the corps wanted a relocation of U.S. 62 down river across the new dam, they agreed in a 1942 conference with the U.S. Public Works Administration and State highway department on the construction of new bridge piers near the present bridge. They were to be built within the succeeding 12 months, the superstructure to be completed as soon as the war shortage of materials was over.

In spite of this plan the piers were never built. In addition, the Corps of Engineers notified the Arkansas director of highways in 1943 that it was now too late to begin construction due to the acceleration of the Norfork project. Although the local people and the Highway Commission appealed to the Arkansas congressional delegation for help, they were unable to halt the Corps eminent domain proceedings. During this same period, the war production board, which had eased restrictions on reinforcing steel, denied approval for the bridge piers.

During 1943 and 1944 the United States initiated court action which sufficiently intimidated the State Highway Department that the Department entered into stipulations filed with the court and eventually agreed upon terms which even the Federal judge presiding over the condemnation suit felt to be inadequate compensation. It is further noteworthy that the 1947 decision handed down by the Eighth Circuit Court of Appeals clearly stated that the sum the Engineering Corps paid the highway department did not include the cost of the inundated U.S. 62 bridge. It is a matter of record that after 5 years of legal proceedings, the compensation received by the highway department was completely inadequate in proportion to the loss suffered by the State.

Conditions of transportation across Lake Norfork have steadily worsened over the past three decades. Since public transportation in that area is limited to highway forms, with no publicly available, regularly scheduled alternate means in the area, this condition has created serious problems for residents and has seriously retarded development of the area's greatest available asset, the recreation potential of the lake itself. While the number of tourists visiting the lake has grown substantially, reservoirs of much more recent construction to the west and north have developed into highly productive luxury-resort assets, while Lake Norfork's development continues to stagnate at the fisherman stage.

The need for Norfork Bridge is undisputable. The recreation industry centers in the northwestern part of the State and contributes significantly to the economic condition of the entire State. Future expansion and economic growth require an acceptable transportation which is clearly lacking since inundation of the U.S. 62 and State Highway 101 bridges. An improved highway system is essential if Arkansas is to be permitted the opportunity to expand at a rate comparable to other areas of the central United States.

Senator McClellan and I frequently discussed our commitment to this project. When the administration failed to include funding in its fiscal year 1979 budget I was in touch with President Carter to express my disappointment at the omission and point out both the importance of the bridge to future expansion and economic growth of Arkansas and the injustice of 35 years' standing which demanded rectification. I am proud to see that the importance of this project was recognized by Members in both the House and the Senate, as shown by the fact that the Senate Appropriations Committee also included construction funding for Norfork Bridge in their fiscal year 1979 public works appropriations bill.

It has, of course, been indicated that the President intends to veto this bill when it is sent to him for his signature. I am strongly committed to a balanced budget, and firmly believe that H.R. 12928 represents the very type of reasonable appropriations legislation which will achieve this goal. Funds contained in this conference report are $879 million below the budget request, $279 million below the fiscal year 1978 appropriation, and $181 million below the House-passed version of H.R. 12928. Out of the $10.2 billion total of this bill, only $3.2 billion is for the Corps of Engineers and the Bureau of Reclamation.

We will not achieve a balanced budget by refusing to honor a commitment of such long standing as the Norfork Bridge project. Nor will it be achieved by cutting out important projects which will protect our communities from floods, supply other areas with badly needed water supplies, and serve our national energy needs. Numerous areas throughout the United States know the urgency of these needs, and I am confident that the support of those Members representing such areas will be sufficient to override a veto if it becomes necessary.●

The SPEAKER pro tempore. All time has expired.

Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. EVANS of Colorado. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 319, nays 71, answered "present" 1, not voting 41, as follows:

[Roll No. 777]

YEAS—319

Abdnor	Aspin	Boggs
Addabbo	AuCoin	Boland
Akaka	Badham	Bolling
Alexander	Bafalis	Bonker
Ambro	Baldus	Bowen
Anderson, Calif.	Barnard	Brademas
	Baucus	Brinkley
Anderson, Ill.	Bauman	Brooks
Andrews, N.C.	Beard, R.I.	Brown, Calif.
Andrews, N. Dak.	Beard, Tenn.	Brown, Ohio
	Benjamin	Buchanan
Annunzio	Bennett	Burgener
Applegate	Bevill	Burke, Mass.
Archer	Biaggi	Burleson, Tex.
Ashbrook	Bingham	Burlison, Mo.
Ashley	Blouin	Butler

Byron	Holland	Quillen
Caputo	Hollenbeck	Rahall
Carney	Holt	Railsback
Carter	Horton	Rangel
Cavanaugh	Howard	Regula
Cederberg	Hubbard	Rhodes
Chappell	Hughes	Rinaldo
Chisholm	Hyde	Risenhoover
Clausen, Don H.	Ichord	Roberts
Clay	Jenkins	Robinson
Coleman	Johnson, Calif.	Rodino
Collins, Ill.	Johnson, Colo.	Roe
Conable	Jones, Okla.	Rogers
Corcoran	Jones, Tenn.	Roncalio
Corman	Jordan	Rooney
Cornell	Kastenmeier	Rosenthal
Cornwell	Kazen	Rostenkowski
Coughlin	Kelly	Rousselot
Cunningham	Kemp	Roybal
D'Amours	Keys	Rudd
Daniel, Dan	Kindness	Runnels
Daniel, R. W.	Krebs	Ruppe
Danielson	LaFalce	Russo
Davis	Lagomarsino	Ryan
de la Garza	Le Fante	Santini
Delaney	Lederer	Satterfield
Dent	Leggett	Sawyer
Devine	Levitas	Scheuer
Dickinson	Livingston	Schulze
Dicks	Lloyd, Calif.	Shipley
Diggs	Lloyd, Tenn.	Shuster
Dingell	Long, La.	Sikes
Dornan	Long, Md.	Simon
Drinan	Lott	Sisk
Duncan, Tenn.	Lujan	Skelton
Edwards, Ala.	Lundine	Skubitz
Edwards, Okla.	McClory	Slack
Eilberg	McCloskey	Smith, Iowa
English	McDade	Smith, Nebr.
Erlenborn	McEwen	Snyder
Ertel	McFall	Solarz
Evans, Colo.	McHugh	Spence
Evans, Del.	McKay	St Germain
Evans, Ga.	Madigan	Staggers
Evans, Ind.	Mahon	Stangeland
Fary	Mann	Stanton
Fascell	Marks	Stark
Fenwick	Marlenee	Steed
Findley	Marriott	Steers
Fithian	Mattox	Stokes
Flippo	Mazzoli	Stratton
Flood	Meeds	Stump
Florio	Metcalfe	Symms
Flynt	Meyner	Taylor
Foley	Michel	Thompson
Ford, Mich.	Mikulski	Thornton
Ford, Tenn.	Milford	Traxler
Forsythe	Mineta	Treen
Fountain	Minish	Tribie
Fowler	Mitchell, Md.	Tucker
Frenzel	Mitchell, N.Y.	Udall
Frey	Mollohan	Ullman
Fuqua	Moore	Van Deerlin
Gammage	Moorhead, Calif.	Vander Jagt
Garcia	Murphy, Ill.	Volkmer
Gaydos	Murphy, N.Y.	Waggonner
Giaimo	Murphy, Pa.	Walgren
Gilman	Murtha	Walker
Ginn	Myers, Gary	Walsh
Glickman	Myers, John	Wampler
Goldwater	Natcher	Watkins
Gonzalez	Nichols	Whalen
Goodling	Nowak	White
Gore	O'Brien	Whitehurst
Grassley	Oakar	Whitley
Guyer	Oberstar	Whitten
Hagedorn	Ottinger	Wilson, Bob
Hall	Panetta	Wilson, C. H.
Hamilton	Patten	Wilson, Tex.
Hammer-schmidt	Patterson	Winn
Hanley	Pattison	Wirth
Hannaford	Pepper	Wolff
Hansen	Perkins	Wright
Harris	Pettis	Wydler
Harsha	Pickle	Yates
Hawkins	Poage	Yatron
Hefner	Pressler	Young, Alaska
Heftel	Preyer	Young, Fla.
Hightower	Price	Young, Mo.
Hillis	Pritchard	Young, Tex.
	Pursell	Zablocki
		Zeferetti

NAYS—71

Bedell	Collins, Tex.	Edwards, Calif.
Beilenson	Conte	Emery
Blanchard	Conyers	Fish
Bonior	Crane	Fisher
Brodhead	Derrick	Fraser
Brown, Mich.	Derwinski	Gephardt
Broyhill	Dodd	Gradison
Burton, Phillip	Downey	Green
Cleveland	Early	Gudger
Cohen	Edgar	Harkin
Harrington	Martin	Richmond
Heckler	Mikva	Schroeder
Holtzman	Miller, Ohio	Seiberling
Jacobs	Moakley	Sharp
Jeffords	Moffett	Steiger
Kasten	Motti	Stockman
Kildee	Neal	Studds
Kostmayer	Nedzi	Vanik
Latta	Nolan	Vento
Lent	Obey	Waxman
Luken	Pease	Weaver
McDonald	Pike	Weiss
Maguire	Quayle	Wylie
Markey	Reuss	

ANSWERED "PRESENT"—1

Burton, John

NOT VOTING—41

Ammerman	Flowers	Moorhead, Pa.
Armstrong	Gibbons	Moss
Breaux	Huckaby	Myers, Michael
Breckinridge	Ireland	Nix
Broomfield	Jenrette	Quie
Burke, Calif.	Jones, N.C.	Rose
Burke, Fla.	Krueger	Sarasin
Carr	Leach	Sebelius
Clawson, Del	Lehman	Spellman
Cochran	McCormack	Teague
Cotter	McKinney	Thone
Dellums	Mathis	Tsongas
Duncan, Oreg.	Miller, Calif.	Wiggins
Eckhardt	Montgomery	

The Clerk announced the following pairs:

On this vote:

Mr. John L. Burton for, with Mr. Miller of California against.

Until further notice:

Mr. Ammerman with Mr. Broomfield.
Mr. McCormack with Mr. Leach.
Mr. Teague with McKinney.
Mr. Cotter with Mr. Cochran of Mississipppi.
Mr. Jenrette with Mr. Sarasin.
Mr. Krueger with Mr. Wiggins.
Mr. Rose with Mr. Quie.
Mr. Moorhead of Pennsylvania with Mr. Del Clawson.
Mr. Mathis with Mr. Burke of Florida.
Mr. Breaux with Mr. Breckinridge.
Mr. Montgomery with Mr. Duncan of Oregon.
Mrs. Burke of California with Mr. Eckhardt.
Mr. Ireland with Mr. Thone.
Mrs. Spellman with Mr. Sebelius.
Mr. Nix with Mr. Gibbons.
Mr. Lehman with Mr. Flowers.
Mr. Dellums with Mr. Jones of North Carolina.
Mr. Carr with Mr. Moss.
Mr. Huckaby with Mr. Tsongas.

Mr. LEVITAS and Mr. CLAY changed their vote from "nay" to "yea."

Mr. JOHN L. BURTON. Mr. Speaker, I have a live pair with the gentleman from California (Mr. MILLER). If he were present, he would have voted "nay." I voted "yea." I withdraw my vote and vote "present."

Mr. JOHN L. BURTON changed his vote from "yea" to "present."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

AMENDMENTS IN DISAGREEMENT

The SPEAKER pro tempore. The Clerk will report the first amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 2: Page 2, line 13, strike "$4,865,437,000" and insert: "$4,839,850,000".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 2 and concur therin with an amendment, as follows: In lieu of the sum named in said amendment, insert the following: "$4,818,431,000".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 11: Page 7, line 21, insert: "funds appropriated for the Willow Creek Lake, Oregon project shall be used to construct that project in accordance with the Special Report of the Chief of Engineers dated May 15, 1974".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 12: Page 7, line 24, insert ": *Provided further*, That an amount not to exceed $4,000,000 may be allocated to the Streambank Erosion Demonstration Program authorized in section 32 of the Water Resources Development Act of 1974 for such bank stabilization measures on the North Branch of the Susquehanna River in the vicinity of Forty Fort, Pennsylvania, at approximate river mile 189.4, as the Chief of Engineers deems necessary and subject to the favorable findings and recommendation from the Chief of the Army Corps of Engineers and approval of the Committees on Appropriations of the House of Representatives and the Senate.".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 12 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 24: Page 19, line 21, strike out:

OFFICE OF THE SECRETARY
WATER RESOURCES PLANNING

For expenses necessary to enable the Secretary of the Interior to carry out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), $9,653,900, to remain available until expended.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 24 and concur therein with an amendment, as follows: Restore the

matter stricken by said amendment, amended to read as follows:

"OFFICE OF THE SECRETARY

"WATER RESOURCES PLANNING

"For expenses necessary to enable the Secretary of the Interior to carry out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), $10,913,900, to remain available until expended, of which $600,000 shall be for groundwater studies in the Delaware River Basin and Susquehanna River Basin."

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the conference report and on the several motions was laid on the table.

GENERAL LEAVE

Mr. BEVILL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the bill, H.R. 12928, just agreed to, and on the motions and amendments in disagreement on which action has just been taken, and that I may include extraneous material and tables.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 9214, AUTHORIZATION OF U.S. PARTICIPATION IN THE SUPPLEMENTARY FINANCING FACILITY OF THE INTERNATIONAL MONETARY FUND

Mr. NEAL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 9214) to amend the Bretton Woods Agreements Act to authorize the United States to participate in the Supplementary Financing Facility of the International Monetary Fund, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

MOTION TO INSTRUCT CONFEREES OFFERED BY MR. GRASSLEY

Mr. GRASSLEY. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. GRASSLEY moves that the managers on the part of the House at the conference on the disagreeing vote of the two Houses on the bill H.R. 9214 be instructed to agree with the Senate amendments to Section 4 of the bill which instructs the U.S. Executive Director to oppose any Witteveen Facility or IMF loans to nations providing aid or assistance to terrorists and Section 7 to mandate a balanced budget beginning in fiscal year 1981.

The SPEAKER pro tempore. The gentleman from Iowa (Mr. GRASSLEY) is recognized for 1 hour.

Mr. NEAL. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the gentleman from North Carolina for purposes of debate only.

Mr. NEAL. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, it is my understanding that the gentleman from Iowa (Mr. GRASSLEY) is going to yield 20 minutes to me for the purposes of debate only.

Mr. GRASSLEY. Mr. Speaker, if I am in order, I would at this time like to yield 20 minutes of my 1-hour block of time to the gentleman from North Carolina (Mr. NEAL) for the purposes of debate only.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. NEAL) is recognized for 20 minutes.

Mr. NEAL. Mr. Speaker, I thank the gentleman for yielding me this time, but I would like to use my time later, if I may.

Mr. GRASSLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are now debating the question of going to conference on the International Monetary Fund.

In the process of doing this, I take the opportunity provided me by this motion to instruct the conferees on two amendments included in this bill by the other body to ask the House to go on record in favor of a balanced budget in the year 1981, and to prevent the U.S. delegate to the U.S. Monetary Fund from voting for loans to countries that have a history of harboring terrorists. However, my main interest is the part of my motion having to do with a balanced budget in 1981.

Mr. Speaker, the Members might legitimately ask why, after we have had two budget resolutions and we have heard other Members of this House seek amendments calling for balanced budgets, would this be brought up at this time?

The first reason is because the Senate amendment adopted by the Senate by a vote of 58 to 28 represents the first time in recent years, at least in the 4 years that I have been in the Congress, that the Senate has gone on record in support of a balanced budget by 1981 or any year for that matter.

Another important factor is that the President has continually said that he favors a balanced budget, and his statements on a balanced budget during his campaign for election were focused on about the same time as the Senate seeks to accomplishing one in its amendment to the IMF bill. Therefore, I believe that presently the House ought to be called upon to respond and show its support for that concept at this particular time.

As a practical matter, this is taking advantage of an opportunity to accomplish something that I think is very much needed by this country, and that is for the House of Representatives, as well as the Senate and the President, to go on record in support of a balanced budget in 1981.

It just happens that the Senator from Virginia (Mr. BYRD) chose this bill to do it, and that is why I am offering this motion to instruct. The Senate selected the vehicle; my motion has to be to this vehicle whether or not the question of a balanced budget is related to IMF legislation.

Let me make it very clear that this amendment would mandate a balanced budget for fiscal year 1981, not before. It passed the Senate by a very wide margin, 58 to 28. I am prompted to offer this motion to instruct because the present indications are that our country is now in the grips of double-digit or near double-digit inflation. We will not get the cost of living under control until we get the cost of Government under control. And, of course, you might ask: Why the inflation?

Well, we have had only 2 balanced budgets in the last 20 fiscal years. That is the reason for our high rate of inflation.

Let me say that this motion does not offer the impractical to this House, because it does not ask for a balanced budget in 1979 as a couple other motions on budget resolutions have been put before this body. It does not ask for a balanced budget in 1980, but it asks for a balanced budget in a realistic timespan, in fiscal year 1981. It is a realistic timetable. I think it is one we ought to accept. It would do a great deal for the economy of this country by saying that the Congress, both Houses, is willing to come to grips with this problem.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield for the purpose of debate only to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. I appreciate the gentleman's yielding.

Mr. Speaker, I think the gentleman is correct in bringing this issue to the floor by a motion to instruct conferees to support the Senate amendment.

It was, I think, an important step in the right direction when the other body decided to attach this amendment to this bill, because they thought it was a bill which obviously was going to be approved.

Mr. Speaker, I compliment the gentleman in bringing this matter to the floor. The gentleman from West Virginia has always supported the Rousselot substitute balanced budget resolution and it is important to act in the same manner in which the other body did.

Mr. GRASSLEY. Mr. Speaker, I want to just mention the part of my motion to instruct on the issue of our executive director of IMF not being permitted to vote for loans to countries that have a history of harboring terrorists.

I believe, on the face, that is a clear issue. There may be some misunderstanding, though, if we were to come back to the same debate of saying if the United States were to go on record as saying that no loans could be made to a particular country that we might be violating the IMF charter. That is why the Senate amendment is very clear that we are only instructing our executive director to vote "no." We are not then running into the usual challenges that have been raised on the floor of the House of whether or not we can legally bind or legally condition our money committed to the IMF. Additionally we have already pacts

with other nations against harboring terrorists. So this is a policy, not only of the Senate, in the adoption of this amendment, but the administration, in our activities in foreign affairs, to say in a very strong way that the United States is not in favor of terrorism and that we want no part of it and we are going to do our share to combat it.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Iowa (Mr. GRASSLEY) has consumed 8 minutes.

Does the gentleman from Iowa yield to the gentleman from North Carolina (Mr. NEAL)?

Mr. GRASSLEY. Mr. Speaker, I yield for the purpose of debate to the gentleman from North Carolina (Mr. NEAL).

Mr. NEAL. Mr. Speaker, it is important that we proceed as expeditiously as possible in completing action on the legislation authorizing the United States to participate in the Supplementary Financing Facility of the International Monetary Fund.

This facility was negotiated among the major members of the IMF over a year ago. The bill authorizing the United States to participate has been under legislative scrutiny for about a year. It has passed both the Senate and the House with large majorities. On the basics of the bill, there is widespread agreement. The Senate concurs with the House that the participation of the United States in this temporary lending facility will enable the IMF to play a much stronger role in stabilizing the international monetary system over the next few years.

The areas in which the Senate and House versions of this bill differ are all peripheral to its central purpose. Though some of those points are quite important in their own right, I think we have every indication that they can be easily resolved. Once House conferees are appointed, we can finish our business very rapidly and send a bill to the President that will demonstrate, clearly and forcefully, that the Congress stands behind the administration's efforts to improve the workings of the international monetary system, a necessary prerequisite to any significant recovery in the depressed world economy.

Mr. Speaker, the Senate version of this bill contains an amendment requiring that, beginning in fiscal 1981, total budget outlays of the Federal Government not exceed its receipts.

This amendment has absolutely no relationship to the legislation on U.S. participation in the IMF Supplementary Financing Facility. It is totally nongermane to the issue before us. The House should insist that we have a balanced budget but this is not the best time and way to deal with that question.

The reasons are obvious. Budgetary policy is the major macroeconomic tool in the hands of the Congress. We completely revamped our treatment of the budgetary process to get a better handle on this tool. We established Budget Committees, and provided for the mechanisms whereby the Congress as a whole can determine, each year, the size of the surplus or deficit.

We obviously have no business deciding now, once and for all time, in complete disregard of the Budget Committees and the budget process, in total ignorance of the requirements of the economy in future years, that the budget should be precisely in balance. We may want a surplus. All of those who think, as I do, that we need to reduce our budget deficits, and would welcome a balanced budget in 1981 or before, should insist that we work toward that goal through the channels that promise real success. That is, through the established procedures of the Budget and Appropriations Committees.

I am fully in sympathy with the general purpose of this amendment. But it seems important to me that we bring about a balanced budget in a thoughtful and effective way. I am concerned that we may be sending a misleading message to the American people. If we adopt this amendment, it certainly does not mean that we will in fact have a balanced budget by 1981. I may vote for this amendment because of its symbolism, but I hope the American people understand that there is much more to balancing the budget than simply voting for this amendment today. It is going to require real discipline on the part of the Congress and the American people and we must plan carefully to reach that goal.

Mr. Speaker, I hope the Congress will adopt my constitutional amendment resolution which would require a balanced budget and would limit Federal spending to no more than 20 percent of a gross national product. The proposal before us is simply not enough. We need to balance the budget, but I hope no one will believe that we have accomplished that worthy goal if we adopt this measure today.

Mr. Speaker. the Senate bill also contains an amendment which requires the United States to oppose any IMF assistance to any country harboring terrorists, or failing to take appropriate measures to block terrorist activities.

I do not think the House should accept this amendment. This is not the proper vehicle for achieving its purpose. worthy though that purpose be. The International Monetary Fund is concerned exclusively with economic policies to promote a more stable international monetary system. We have repeatedly resisted introducing extraneous factors into its deliberations. The United States is bound by its articles of agreement to vote on the basis of various economic criteria, against which the application of any member to borrow from the IMF should be judged. For us to act on any other grounds, however high minded, would represent a violation of those articles, in spirit for certain, and probably even in the letter of the law. That would be no way to promote respect for the international obligations we have undertaken, nor to protect the IMF from the political corrosion that will surely set in once we, its most important member, try to make it the instrument of our foreign policy objectives.

Fortunately, this amendment is not necessary, for we are well on the way toward devising stronger, more appropriate antiterrorist measures. I need only remind you of the very far-reaching obligations undertaken by the governments represented at the Bonn summit. That is the proper approach—a multilateral political agreement, to be implemented by policies worked out jointly with our major partners. I understand, moreover, that four Senate committees have already completed work on a separate bill dealing with terrorism. Thus the Congress will surely have the opportunity to work its will on this issue, is legislation directed specifically at the problem. It is unfortunate, I think, that this proposal is part and parcel of the instruction to balance the budget. I believe many Members will vote "aye" today, on balancing the budget, not fully realizing the import of this provision concerning terrorism.

Mr. MAHON. Mr. Speaker, will the gentleman yield?

Mr. NEAL. I would be happy to yield to the gentleman from Texas.

Mr. MAHON. Mr. Speaker, I want to endorse the statements which the gentleman from North Carolina has made with regard to the matter which it is proposed that the conferees be instructed on. I am very hopeful that the recommendation that has just been made will be heeded by the House, and that we would not vote to instruct.

Mr. Speaker, I am in favor of a balanced budget. Through the years, in innumerable instances, I have voted against initiating new programs and expanding ongoing programs when we did not have the money on hand or in sight to pay the bills.

I would vote for the so-called Byrd amendment as a separate resolution if proper guidelines and limitations were established. But I cannot vote to tie it to the pending measure in the form of a motion to instruct the conferees. The problem requires detailed hearings and thorough consideration. To adopt the amendment without proper guidelines in effect would, in my opinion, do violence to the cause of a balanced budget.

A balanced budget in 1981 and earlier, if possible, should be the goal of the administration and the Congress. But to mandate this in this bill without serious analysis and thought is not the way to achieve our objective.

Mr. NEAL. Mr. Speaker, is it not true that the major problem with this, if we adopt this, we are usurping the authority of the Appropriations Committee and the Budget Committee by this action, as worthy, as I say, as the goals may be? Is it not better to deal with this in the orderly way we normally do with legislative matters?

Mr. MAHON. We would be violating the procedures and fiscal policies and the most effective way of running the House if we vote to instruct the conferees at this stage. I applaud the gentleman for his efforts in this matter.

Mr. NEAL. I thank the chairman.

Mr. GRASSLEY. Mr. Speaker, I yield

2 minutes to the gentleman from Ohio (Mr. ASHBROOK) for the purposes of debate only.

Mr. ASHBROOK. Mr. Speaker, I thank my colleague for yielding. I think what we are getting here is a most novel argument that will not fool the American people. We might ask very honestly, if not now, when is the time?

When the budget came up, on the other side, they said that is not the time. When the Humphrey-Hawkins bill came up Members might recall that I offered a balanced budget. It passed one day, but it was, "Now you see it, now you do not." The leadership went to work and said, "Oh, no, we cannot be on the record for a balanced budget. We might promise the American people that at election time, but when the time of accountability comes, vote it down."

It passed 215 to 205. Two days later enough Democratic Members on the other side switched their votes on the balanced budget to defeat it.

What was the Humphrey-Hawkins bill supposed to do? It was supposed to be planned economic strategy for the next several years to bring together unemployment, employment, fiscal, and economic policy by coordinating effectively at the executive level. "Oh, no, do not feed the balanced budget concept into that. Do not feed it in when the budget comes. Do not do it now," we hear.

What they are saying, in effect—and they are not fooling anybody—is that they are never going to vote a balanced budget in the 95th Congress. It is never going to be there. They will vote it down every time they get a chance. The question of the American people to the majority side is, if not now, when? We are supposed to be adjourning in another couple of weeks.

If you are not going to increase the budget, and if you are not going to apply it to Humphrey-Hawkins, and if you have a straight shot at it in the Byrd amendment, and you do not want to do it now, when if ever are you going to do it?

Mrs. HOLT. If the gentleman will yield, was it not true that a majority of the Members of this House voted for the Holt amendment, which was the beginning of trying to arrive at a balanced budget and that sufficient votes were changed in order to defeat that amendment?

Mr. ASHBROOK. Yes. But there is one difference, it took 2 days to change mine, yours was changed right in the well, as I recall it.

Mrs. HOLT. Do you not believe this indicates that the American people, through their representatives, are saying, "We want it. We want it now, now is the time?"

Mr. ASHBROOK. Now is not only the time, it may be the only time for the rest of the session. I think the people and the taxpayers know what is going on.

I thank the gentleman for yielding.

Mr. GRASSLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. HILLIS) for the purpose of debate only.

Mr. HILLIS. Mr. Speaker, I rise in favor of the motion to instruct the conferees to the International Monetary Fund authorization bill to concur with the senior Senator from Virginia's amendment to section 7 of the Senate bill. The House should be given an opportunity to vote on a conference report which includes language to balance the budget by 1981.

The national debt has grown more than $400 billion since fiscal year 1970 to a point where we are spending in interest alone $130 million a day. Since one of the occupational hazards of being a Member of Congress may be the tendency to speak of such figures without a true conception of just how much money this means, perhaps it will help to remember that in 1977 the median income for a family of four was $16,000 for the entire year. In other words, more than 8,000 families could live for a year on what we pay in interest on our national debt in 1 day.

More importantly, however, is the impact this interest payment and the national deficit are having on the inflationary state of our economy. Consumer prices in general rose more than 80 percent in the last decade. The impact of such increases is something about which every American can speak of eloquently. Since the Federal deficit is widely recognized as a major source of inflation, when is this Congress going to do something about it? We have before us today an opportunity to take action and fix the limits of the national debt. This will offer us a chance to send a loud and clear message to the people that the spending ways of the Federal Government are about to change.

We must adopt a policy of making certain we do not spend more than we are willing or capable of paying for. Is this not how the rest of this country must operate? Can a person in business or an individual simply ignore assets and spend as much as he or she wants? The Congress, a body which is supposed to represent the American people cannot continue to flaunt its apparently peculiarly special privilege of deficit spending. We must do something now if we are going to demonstrate that all the campaign promises of reduced spending are more than just promises.

By mandating a balanced budget by 1981 we can reflect positive action. There will always be heard arguments about delaying, but we simply cannot afford to continue to pay an interest of $130 million a day. We must respond now by voting in favor of the motion to instruct the conferees to include language to balance the budget.

Mr. NEAL. Mr. Speaker, I yield 3 minutes to the distinguished chairman of the Committee on the Budget, the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. Mr. Speaker, I rise in opposition to this motion. This motion would do injury to what this legislation is trying to do, and that is to set up the International Monetary Fund supplementary financing facilities, which are designed to help the international currencies, particularly the dollar, and other currencies in the world. It is much needed legislation. The gentleman from North Carolina (Mr. NEAL) has worked long and hard to bring this legislation before this body and he is to be commended.

I do not think that in this legislation we should confuse it with a very serious argument, and that is the status of the budget of the United States of America and when we are going to balance that budget. I hope we can balance that budget by 1981. I feel optimistic that we can get close to a balanced budget by 1981, providing we create the proper economic climate and conditions in this country, the proper economic growth for business, together with being able to reduce unemployment and to get control of inflation. I believe we can do that.

Our budget for fiscal year 1979 will come in when we complete our conference in the next few days, hopefully at under $40 billion, and that will be the lowest budget deficit in 5 years. We are getting our budget deficits down, and we will get them down further in the coming years, and we can be able to be in balance or near balance by fiscal year 1981.

Mr. GRASSLEY. Mr. Speaker, will the gentleman yield?

Mr. GIAIMO. I will yield to the gentleman if the gentleman will get me additional time, when I am through.

We will get the budget deficit down to a balanced status by careful husbandry of our available dollars and through making sure that the moneys that are available are not wasted and to make sure that they are spent for the real needs of the American people.

We have been working on that in the budget committee conference and we here in the House have been working on that and will continue to do so. But you cannot legislate a balanced budget just by legislative fiat, by saying in this bill, or any other bill that we will balance the budget by 1981.

Let me say this: Over 65 percent of our budget is uncontrollable in that they are mandatory programs such as social security, unemployment compensation, the trust funds, veterans programs, and many others.

We cannot mandate reductions in those expenditures unless we change the basic law, and I very much doubt that this body is going to change the Social Security Act or the Veterans Act and take away benefits or anything like that.

Where are we going to make these reductions? Where are we going to force these reductions? We would be forced to do it in the controllable items, the appropriations items, particularly in the areas of defense and some of the other areas. Those are the places where we would find the large chunks of money which we would have to take out in order to comply forthwith with budget balancing amendment such as this one.

The SPEAKER pro tempore. The time of the gentleman from Connecticut (Mr. GIAIMO) has expired.

Mr. NEAL. Mr. Chairman, I yield 2 additional minutes to the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. Mr. Speaker, I submit that the way to balance the budget is to proceed as we are doing, as we address each and every expenditure program in this Congress, and try to get reductions in them and try to get a better rate of economic growth and an absence of inflation, with careful attention to our tax policies, as we are beginning to do—beginning, I stress—but I believe we are beginning to go down that road, I will say to my friend, the gentleman from California. We will get a balanced budget or very close to it by 1981 and certainly in the year thereafter.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. GIAIMO. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's yielding. The gentleman knows that in the Committee on the Budget we have targeted to move for a balanced budget by 1981. We have projections that we can be very close to that, to a balanced budget by that time, although it might not be exactly that amount, but within $2 or $3 billion. Therefore, this is a very reasonable time frame in our projections.

Mr. GIAIMO. Yes, but my point is that we cannot today, by this type of purportive legislative mandate, accomplish that purpose.

If we were to pass this kind of motion today, we would be sending out a wrong signal to the American people. We would be saying to them, "Congress has voted to balance the budget." When in fact it had not taken the necessary steps to balance the budget.

Mr. ROUSSELOT. In 1981.

Mr. GIAIMO. In 1981, and we will have done no such thing by legislating it today. It does not mean a thing.

Mr. ROUSSELOT. Is that a bad aim?

Mr. GIAIMO. The way to do it is to address ourselves to the spending programs and the tax programs which will bring about a deficit or the absence of a deficit, not by writing a sentence and saying, "There shall be no deficit."

I wish we could pay our bills that easily by legislating here today and saying, "There will be no deficit."

We cannot do that. We have to do it as we address ourselves to each and every expenditure item and to each and every taxing item. We are doing that. We are beginning to do that. That is how we arrive at the elimination of a deficit, not through this kind of specious amendment or motion.

Mr. GRASSLEY. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Speaker, I appreciate my colleague's yielding.

I appreciate what my distinguished chairman of the Comittee on the Budget has said. He has agreed that we have projected that we can come very close to a balanced budget in 1981. A majority of the other body also thought we could do that. There was a very good vote over in the other body on that score, including the vote of members of the Committee on the Budget of the other body.

Therefore, Mr. Speaker, I think this is a good target. The gentleman knows full well that we have control over that issue in 1981 if we can somehow make it, so this is an excellent target.

I think Congress performs a real service by voting for this proposition, just as the other body did, to show that we are really serious about achieving that goal in 1981.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, I listened to my colleague, the gentleman from Connecticut (Mr. GIAIMO) with interest.

There is an interesting twist to what he said, if we think about it. He said that we can mandate the uncontrollables and cannot do anything about them. He is saying, in effect, that we can mandate the uncontrollables but cannot mandate controllables.

If we can mandate and control one, Mr. Speaker, we can certainly do that with respect to the other.

Mr. NEAL. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. REUSS), the chairman of the Committee on Banking, Finance and Urban Affairs.

Mr. REUSS. Mr. Speaker, I commend the chairman of the subcommittee, the gentleman from North Carolina (Mr. NEAL), for the very able way he has handled this matter.

I listened to the chairman of the House Committee on Appropriations, the gentleman from Texas (Mr. MAHON), no spendthrift he, and the chairman of the Committee on the Budget, both fiscally responsible Members of this House. They are the people we should listen to.

I appreciate the implied compliment of the authors of this motion to instruct when they said that the 47 members of the Committee on Banking, Finance and Urban Affairs are sublime geniuses, not only on banking and urban affairs—which, of course, we are—but on the budget as well.

However, the truth of the matter is that we do not know beans about the niceties of the budget, and this matter should be left to the proper committees, the Committee on the Budget and the Committee on Appropriations.

Second, and importantly, I would say to the authors of this motion to instruct that they are a bunch of pikers. They say they want a balanced budget in 1981. I want a surplus, and if they will follow me on the road toward full employment without inflation, they are going to get a surplus, and they are going to be prohibited from getting one by following this feckless and reckless resolution.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, with the appointment of and instructions to the conferees for the Supplementary Financing Facility of the International Monetary Fund, we take actions which will affect not only U.S. stature abroad, but our economic well-being throughout the world.

The $10 billion Witteveen Facility, authorized under H.R. 9214 is designed to provide additional sources of revenue for those nations whose economies have been "thrown off kilter" by the increase in oil prices. These debtor nations will then work closely with the IMF to bring economic stability to their economies.

The reasons for U.S. support of the Fund should be obvious. It is a form of economic "life insurance" for the ever-fragile world economy—insurance not only for the developing world, but the industrialized nations as well. It has become almost cliche to use the word "interdependence," but it is nevertheless indicative of the present economic situation. The U.S. economy is dependent upon the Third World for both raw materials and markets for our manufactured goods. And just as economic prosperity in the developing world translates into economic benefits for the United States, economic problems may lead to declining levels of imports and subsequent unemployment in our Nation.

A recent study revealed that a 3-percent growth rate in the GNP of the developing world means a 1-percent growth rate for the industrialized nations. The Third World will be a crucial "engine of growth" for the world economy. The Witteveen Facility is geared to insure that Third World markets continue to operate and, further, that those markets continue to open their doors to U.S. exports. In essence, the fund will play a critical role in our efforts to sustain U.S. growth, improve the trade balance and maintain a strong dollar.

Though I support the Witteveen Facility, I am opposed to the type of amendments which the Senate was "tacked onto" their version of the bill. While the intent is to be praised, in this instance, these amendments are not relevant to the primary and narrow task of IMF and Witteveen, which is to encourage stability in the world economic order through adjustment of Third World economies now in disarray.

The Byrd amendment mandates a balanced budget by the year 1981. While I too recognize the need for fiscal restraint and at least some semblance of balance in the Federal budget, this is neither the time nor the place to pursue such a goal. Some may argue that we should concentrate on balancing our budget before we allocate funds for the same purpose in other nations. Yet the two situations are hardly comparable. Balance-of-payments problems in the Third World is a much more serious affair—insufficient reserves, the result of an imbalance may severely limit both development strategies and the ability to import items necessary to maintain basic living standards. The United States does not face similar dire consequences.

The Helms amendment seeks to oppose any extension of financial or technical assistance to nations which aid or abet international hijackers. It is directed not only toward the supplementary financing facility, but toward all borrowing from the IMF. In the past, I

have consistently fought against this type of amendment which introduces political considerations into those agencies whose laws establish strictly economic and financial criteria for fund allocation. Although Mr. HELMS has been careful to word his amendment so that it is an instruction to the Executive Director and not a condition attached to our funds, it still smacks of politicization.

Further, the House and Senate are working out legislation right now on terrorism which includes among the sanctions for nations which aid and abet terrorism, the deprivation of commercial aircraft services between the United States and such nations. It is this type of solution to the terrorism problem which will yield substantive results without compromising our influence in international financial institutions.

I would like to relay an important observation made to me by the Sudanese Finance Ministers who in a recent meeting discussed the necessity of the Witteveen Facility. In the past, the United States had consistently been the nation to foster development and contribute substantially to the goal of economic progress around the globe. Yet, it is the current opinion of many Third World nations that the United States is too often the nation opposing the necessary tools for such development. The Witteveen Facility is a chance to demonstrate our commitment to the economic development of those nations struggling for fiscal stability. It is also insurance for the U.S. economy, so susceptible to the whims of daily international economic occurrences. I strongly urge that the House conferees defend H.R. 9214 without attaching conditions which may in fact impede its true purpose.

Mr. GRASSLEY. I yield 2 minutes to the gentleman from Ohio (Mr. STANTON) for purposes of debate.

Mr. STANTON. Mr. Speaker, while I am generally reluctant to support "motions to instruct" conferees, the motion of the gentleman from Iowa deserves the support of all of us. His motion really has two parts. No one can have any quarrel with the prohibition of IMF funds to countries which harbor terrorists. Language very similar to this was added to the Export-Import Bank bill in this Chamber a few weeks ago with nearly unanimous support.

The more important part of the motion to instruct asks the conferees to bring back the Senate language calling for a balanced budget in fiscal 1981. While in the House this is technically nongermane to the IMF bill which is the subject of the conference, it is an issue of importance with which we are all familiar.

It is difficult to predict all of the benefits this country might derive from a balanced budget in 1981. In fact, few of us can remember very many surplus budget years—there have only been two since 1958. But, the costs that we sustain because of the failure to live within our means are clear. Interest rates have skyrocketed to new highs—slowing down investment and leading to our worrisome loss in productivity and competitiveness in world markets. Our deficit spending has been one, if not the, single biggest factor in the rising rate of inflation in the United States. Inflation has placed a cruel burden on all working Americans and has hit the poor and those on fixed incomes the hardest. The cost of the debt service burden alone last year exceeded Government expenditures for transportation, education, and environment. More than 25 percent of the money the Government receives in taxes goes right back out in interest on the debt. Can we continue to mortgage our children's future by our profligate spending year after year?

People cannot individually keep going deeper into debt year after year, nor can businesses. "But," we are reassured by the big spenders, "countries are different. In reality we owe the debt to ourselves." That claim, however, does not square with the facts. Foreign holdings of U.S. dollars are on the order of $400 billion or roughly one-half of the national debt. Much of these foreign holdings are the interest-bearing Treasury securities that comprise our debt. It is just not true that we owe the debt to ourselves.

The House is already on record on a very similar measure embodied in the Holt substitute to the second budget resolution, which failed by only three votes. In a way, this balance-the-budget provision is even more appealing, since it does not dictate to the administration the means it must use to make the budget balance. It only requires that the budget be balanced and lets the administration decide in what increments to move in that direction. It gives the President all the flexibility he could want while requiring that the outcome be a balanced budget in 1981.

This motion deserves our support, and I urge its adoption.

Mr. NEAL. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the gentleman from North Carolina.

Mr. NEAL. I thank the gentleman for yielding.

It is essential that we have a balanced budget very soon but I am concerned that by adopting this amendment we might be sending a false message to the American people. One Congress, as I understand it, cannot bind another Congress. We can express our desire to balance the budget by 1981, and certainly I would love to see us balance the budget by 1981. I think that we can and we should. But would the gentleman agree that we might be misleading the American public into thinking, that by adopting this amendment, they can be assured that we will, in fact, have a balanced budget by 1981?

Mr. GRASSLEY. Absolutely not. Remember the people expressed great confidence in candidate Carter when they elected him, and one of the reasons they did that, I am sure, is because he promised a balanced budget by about the time this amendment does.

The Senate in their voting is supportive of that. I think that reaffirms the position of the President. The people by all sorts of polls and guidelines that we go by in this country overwhelmingly are saying that they want it, so absolutely not are we sending a false alarm. What we are doing is reaffirming in the Halls of the Congress, in the official policymaking institutions of our participatory democracy, what the people want, what they believe, and what they understand to be a commonsense approach—that Government cannot live beyond its income any more than the people themselves can. What we are really doing is reestablishing confidence in the economy; that confidence we express by this vote today, ahead of its actual accomplishment in 1981, is going to ring through the economy. This confidence will rebuild the private sector and in so doing is going to make possible a stronger economy; and the rebuilt economy will further guarantee the balancing of the 1981 budget.

Mr. NEAL. Mr. Speaker, if the gentleman will yield further, we are not promising, are we, that we are going to have a balanced budget by 1981 by this resolution? Is it the gentleman's intention to say we hope we are going to have a balanced budget by 1981?

Mr. GRASSLEY. We are saying that we will have a balanced budget by 1981.

Mr. NEAL. Can this Congress bind another Congress?

Mr. GRASSLEY. That is an elementary question. Of course we cannot. But, we will never have a balanced budget by 1981, unless we start now.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield for a question?

Mr. GRASSLEY. I will yield 1 minute to the gentleman from Missouri to ask a question.

Mr. VOLKMER. The only question I have, is not the only way we are going to balance the budget in the future to cut down spending or increase the revenue?

Mr. GRASSLEY. The gentleman is absolutely right. You will not do that if you wait until the year comes about that you decide you are going to do it. You set guidelines ahead of time that each one of us can target in on and only then will we be successful. You cannot wait for that day to come for it to happen.

Mr. VOLKMER. Mr. Speaker, if the gentleman will yield further, I would like to say that in my opinion, I and many Members of this body have expressed the opinion to balance the budget as soon as possible; but I think we all realize when we appropriate, which we just recently did earlier this afternoon, and I voted for that, with the realization that I hope next year maybe it is 10 or 15 percent less, that is the way we are going to balance the budget.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, I will say in response to my colleague, the Budget Committee has projected very close to 1981 a balanced budget, so it is very close in reality. It is not something we offer in never-never land and I think it is a reasonable projection.

Mr. GIAIMO. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield 1 minute to the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. Mr. Speaker, the way to balance the budget, as the gentleman said before, is to get a better hold on expenditures. We are doing that. Each year our budgets have been coming in with a smaller deficit than the year before. This year it is projected at $39 billion. Next year, hopefully, it is going to be substantially below that and in 1981, hopefully it will be at or close to a balanced budget.

My point is, that is the way to get the budget in balance, by addressing ourselves to the budget items each and every day of the year that you take up spending or tax proposals here.

We do not do it by a legislative fiat in the International Monetary Fund bill, by saying there shall be a balanced budget in 1981 and letting people think that today Congress has passed a balance-the-budget amendment when, in fact, we have done no such thing.

Mr. GRASSLEY. Mr. Speaker, I yield myself such time as I may consume.

I want to take just a short period of time to answer the gentleman from Connecticut by saying that the gentleman may think it is wrong, but 58 Senators thought it was right. In any poll you read, the majority of the American people think that this is the right approach and that it is long overdue.

Lastly, I submit if we wait until 1981 to decide that we are going to have a balanced budget, we will not have one. It is very essential that we make that determination for some period ahead of time so we can start zeroing in on it right now to be totally successful.

Mr. Speaker, if the gentleman from North Carolina is ready to yield back his time, I will yield back the balance of my time.

Mr. NEAL. Mr. Speaker, I yield back the balance of my time.

Mr. GRASSLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Iowa (Mr. GRASSLEY).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GRASSLEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 286, nays 91, not voting 55, as follows:

[Roll No. 778]

YEAS—286

Abdnor	Andrews, N.C.	AuCoin
Akaka	Andrews, N. Dak.	Badham
Alexander	Applegate	Bafalis
Ambro	Archer	Baldus
Anderson, Calif.	Ashbrook	Barnard
Bauman	Green	Oakar
Beard, R.I.	Gudger	Oberstar
Beard, Tenn.	Guyer	Ottinger
Bedell	Hagedorn	Panetta
Benjamin	Hall	Patterson
Bennett	Hammer-schmidt	Pattison
Bevill	Hanley	Pease
Biaggi	Hansen	Pepper
Blanchard	Harkin	Perkins
Blouin	Harris	Pettis
Bonior	Harsha	Pickle
Bonker	Heckler	Pike
Bowen	Hefner	Preyer
Brinkley	Heftel	Pursell
Brown, Mich.	Hightower	Quayle
Brown, Ohio	Hillis	Quillen
Broyhill	Holland	Railsback
Buchanan	Hollenbeck	Regula
Burgener	Holt	Reuss
Burleson, Tex.	Horton	Rhodes
Burton, John	Hubbard	Rinaldo
Butler	Hughes	Risenhoover
Byron	Hyde	Roberts
Caputo	Ichord	Robinson
Carter	Ireland	Roe
Cavanaugh	Jacobs	Rogers
Cederberg	Jeffords	Rooney
Chappell	Jenkins	Rousselot
Clausen, Don H.	Johnson, Colo.	Rudd
Cleveland	Jones, Okla.	Runnels
Cohen	Jones, Tenn.	Ruppe
Coleman	Kasten	Russo
Collins, Tex.	Kazen	Santini
Conable	Kelly	Satterfield
Corcoran	Kemp	Sawyer
Cornell	Keys	Scheuer
Cornwell	Kildee	Schroeder
Coughlin	Kindness	Schulze
Crane	Kostmayer	Seiberling
Cunningham	Krebs	Sharp
D'Amours	Lagomarsino	Shuster
Daniel, Dan	Latta	Sikes
Daniel, R. W.	Leggett	Skelton
Davis	Lent	Slack
de la Garza	Levitas	Smith, Iowa
Delaney	Livingston	Smith, Nebr.
Derrick	Lloyd, Calif.	Snyder
Derwinski	Lloyd, Tenn.	Spence
Devine	Long, La.	Staggers
Dickinson	Long, Md.	Stangeland
Dicks	Lott	Stanton
Dornan	Lujan	Steed
Downey	Luken	Stockman
Drinan	McClory	Stratton
Duncan, Tenn.	McCloskey	Stump
Early	McDade	Symms
Edwards, Ala.	McDonald	Taylor
Edwards, Okla.	McEwen	Thornton
Emery	McHugh	Traxler
English	McKay	Treen
Erlenborn	Madigan	Trible
Ertel	Maguire	Tucker
Evans, Del.	Mann	Udall
Evans, Ga.	Marks	Vander Jagt
Evans, Ind.	Marlenee	Vanik
Fenwick	Martin	Volkmer
Fish	Mattox	Waggonner
Fisher	Meyner	Walgren
Fithian	Michel	Walker
Flippo	Mikulski	Walsh
Florio	Mikva	Wampler
Flynt	Milford	Watkins
Foley	Miller, Ohio	Weaver
Ford, Tenn.	Minish	Weiss
Forsythe	Mitchell, N.Y.	White
Fountain	Moffett	Whitehurst
Fowler	Moore	Whitley
Frey	Moorhead, Calif.	Whitten
Fuqua	Mottl	Wilson, Bob
Gammage	Murphy, Ill.	Wilson, Tex.
Gaydos	Murphy, N.Y.	Winn
Gephardt	Murphy, Pa.	Wolff
Gilman	Murtha	Wright
Ginn	Myers, John	Wydler
Glickman	Natcher	Wylie
Goldwater	Neal	Yates
Goodling	Nichols	Yatron
Gore	Nowak	Young, Alaska
Gradison	O'Brien	Young, Fla.
Grassley		Young, Mo.
		Zeferetti

NAYS—91

Annunzio	Burlison, Mo.	Eckhardt
Ashley	Burton, Phillip	Edgar
Aspin	Chisholm	Edwards, Calif.
Bellenson	Clay	Eilberg
Bingham	Collins, Ill.	Evans, Colo.
Boland	Conte	Fary
Bolling	Corman	Findley
Brademas	Danielson	Flood
Breckinridge	Dellums	Ford, Mich.
Brodhead	Diggs	Fraser
Brooks	Dingell	Garcia
Brown, Calif.	Dodd	Giaimo
Burke, Mass.	Duncan, Oreg.	Gonzalez
Hamilton	Mineta	Ryan
Harrington	Mitchell, Md.	Simon
Hawkins	Moakley	Sisk
Holtzman	Mollohan	Solarz
Howard	Moss	St Germain
Johnson, Calif.	Myers, Gary	Steers
Jordan	Nedzi	Steiger
Kastenmeier	Nolan	Studds
LaFalce	Obey	Thompson
Le Fante	Patten	Ullman
Lederer	Price	Van Deerlin
Lundine	Rahall	Vento
McFall	Rangel	Waxman
Mahon	Richmond	Whalen
Markey	Roncalio	Wilson, C. H.
Mazzoli	Rosenthal	Zablocki
Meeds	Rostenkowski	
Metcalfe	Roybal	

NOT VOTING—55

Addabbo	Gibbons	Pritchard
Ammerman	Hannaford	Quie
Anderson, Ill.	Huckaby	Rodino
Armstrong	Jenrette	Rose
Boggs	Jones, N.C.	Sarasin
Breaux	Krueger	Sebelius
Broomfield	Leach	Shipley
Burke, Calif.	Lehman	Skubitz
Burke, Fla.	McCormack	Spellman
Carney	McKinney	Stark
Carr	Marriott	Stokes
Clawson, Del	Mathis	Teague
Cochran	Miller, Calif.	Thone
Conyers	Montgomery	Tsongas
Cotter	Moorhead, Pa.	Wiggins
Dent	Myers, Michael	Wirth
Fascell	Nix	Young, Tex.
Flowers	Poage	
Frenzel	Pressler	

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Broomfield.
Mr. Ammerman with Mr. Leach.
Mr. McCormack with Mr. McKinney.
Mr. Teague with Mr. Cochran of Mississippi.
Mr. Cotter with Mr. Sarasin.
Mr. Fascell with Mr. Wiggins.
Mr. Carney with Mr. Quie
Mr. Jenrette with Mr. Del Clawson.
Mr. Krueger with Mr. Burke of Florida.
Mr. Breaux with Mr. Thone.
Mr. Montgomery with Mr. Sebelius.
Mrs. Burke of California with Mr. Gibbons.
Mrs. Spellman with Mr. Flowers.
Mr. Nix with Mr. Tsongas.
Mr. Huckaby with Mr. Skubitz.
Mr. Miller of California with Mr. Anderson of Illinois.
Mrs. Boggs with Mr. Marriott.
Mr. Stokes with Mr. Michael O. Myers.
Mr. Mathis with Mr. Pressler.
Mr. Moorhead of Pennsylvania with Mr. Pritchard.
Mr. Dent with Mr. Carr.
Mr. Lehman with Mr. Frenzel.
Mr. Hannaford with Mr. Jones of North Carolina.
Mr. Rodino with Mr. Shipley.
Mr. Rose with Mr. Wirth.

Messrs. VANIK, DOWNEY, PATTISON of New York, OTTINGER, MURPHY of Illinois, PATTERSON of California, CAVANAUGH, BONIOR, YATES, McHUGH, OBERSTAR, REUSS, and CHARLES WILSON of Texas, changed their vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

APPOINTMENT OF CONFEREES ON H.R. 9214

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. REUSS, NEAL, PATTISON of New York, HANNAFORD, STANTON, and HYDE.

There was no objection.

REORGANIZATION PLAN NO. 3 OF 1978 (EMERGENCY PREPAREDNESS)

Mr. BROOKS. Mr. Speaker, pursuant to section 912 of Public Law 95–17, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1242) to disapprove Reorganization Plan No. 3 transmitted by the President on June 19, 1978; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate on the resolution may continue not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from New York (Mr. HORTON) and myself.

The SPEAKER pro tempore. Is there objection to the reqeust of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. BROOKS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1242), with Mr. KILDEE in the chair.

The Clerk read the title of the resolution.

By unanimous consent, the first reading of the resolution was dispensed with.

The CHAIRMAN. Pursuant to section 912 of Public Law 95–17 and the unanimous-consent agreement, the gentleman from Texas (Mr. BROOKS) will be recognized for one-half hour and the gentleman from New York (Mr. HORTON) will be recognized for one-half hour.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman. Reorganization Plan No. 3 will establish a Federal Emergency Management Agency into which will be placed a number of civil preparedness and disaster relief functions that are presently scattered in various departments and agencies. The plan itself will transfer into the new agency functions now carried out by the National Fire Prevention and Control Administration in the Department of Commerce, the Federal Insurance Administration in the Department of Housing and Urban Development, and the oversight responsibility for the Federal Emergency Broadcast System now in the Executive Office of the President.

The President has advised that when Congress approves this plan he will, by Executive order, transfer into the agency those functions now carried out by the Defense Civil Preparedness Agency in the Department of Defense, the Federal Disaster Assistance Administration in the Department of Housing and Urban Development, and the Federal Preparedness Agency in the General Services Administration. He also will transfer certain other functions as well.

The reorganization plan, therefore, is part of a broader program to consolidate Federal emergency preparedness functions. Its basic purpose is to create an agency in which these functions will be housed. Because of the national security problems involved, Congress has seen fit to place most emergency preparedness responsibilities in the hands of the President who, over the years, has delegated them to various Government agencies. He has the power to withdraw those delegations without the need for congressional approval and put them in the new agency. Thus, the major portions of the planned consolidation will be delegated by Executive order. Some of us would prefer to have Congress approve these delegations but in view of Congress prior action in granting this power to the President we will not oppose this procedure.

This reorganization will improve Federal emergency management and assistance. By consolidating emergency preparedness mitigation and response activities it will cut duplicative costs and strengthen the Government's ability to deal effectively with emergencies. It has been estimated that the overall reorganization will lead to cost savings of between $10 to $15 million annually and a decrease of from 200 to 300 personnel positions.

The committee has held hearings and made a careful study of this plan. It is our opinion that the plan has merit and should be allowed to go into effect. I, therefore, ask a "no" vote of the resolution.

Mr. HORTON. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, before we vote on Reorganization Plan No. 3 to reorganize the Federal Government's emergency preparedness and disaster programs, I would like each Member to be aware of exactly what he is voting for, and, more important, the implications. I am afraid that there is a lot less to this plan than meets the eye. Let me explain.

If you read a newspaper account of the plan, you would think that we are voting to reorganize the three main emergency preparedness agencies into a new independent agency. These three agencies are: the Federal Disaster Assistance Agency (FDAA), now in HUD; the Federal Preparedness Agency (FPA), now in GSA; and the Defense Civil Preparedness Agency (DCPA), now in the Department of Defense. Most people do feel that these agencies should be combined since there is some overlap. We should take advantage of the so-called dual use capabilities of an agency like DCPA which could also be useful in natural disasters. I support the combining of these three agencies.

Unfortunately, when you look at the specifics of the actual plan we are voting on, these agencies are not included. In fact, not only is there no mention of these agencies in the plan, there is not even a mention of emergency programs in the plan. The plan simply creates a shell agency with only two major programs, the National Fire Prevention and Control Administration now in Commerce, and the Insurance Administration now in HUD.

The procedure to get from the specifics of the actual plan to the concept of the program is interesting. We are told that after the plan is passed by Congress, the main emergency preparedness agencies—FDAA, DCPA, and FPA—will be transferred to the new agency by Executive order.

It is important to understand the implications of that procedure. By passing the plan without the inclusion of the three agencies, this means that in the future, the President, any President, can transfer the programs whenever and wherever he pleases without coming back to Congress for approval. We are told that the President is using this procedure in order to keep his options open. It is true that the President will maintain his option, but we in Congress will be losing ours.

I have no doubt that the President will transfer the agencies by Executive order as he promises; however, by using this procedure, he is also implicitly telling us that sometime in the future he may well transfer the agencies again and we will be left with only a shell agency. Or, if he does not transfer them, a future President could. If you look at the history of emergency preparedness, about every 3 years there has been a change and unless these agencies are listed in the actual plan, we are making them susceptible to more change.

The fact is, this plan is not a reorganization of the existing emergency preparedness agencies. The concept for a good, new emergency preparedness agency is in the President's message, but unfortunately the specifics of the plan are different, and the procedures being used indicate an uncertain future for this new agency.

WHY SUPPORT THE PLAN?

I support Reorganization Plan No. 3 despite the serious procedural problems for one simple reason: I support the President's program of combining all these various agencies into one agency. There are two serious problems now with emergency preparedness and planning. In the opinion of most experts, emergency preparedness has been a sorely neglected area which is both fragmented on the one hand and duplicative on the other. The President's program to create a new agency, the Federal Emergency Management Agency (FEMA), should give emergency preparedness a higher profile while at the same time solving the fragmentation and duplication problems.

It will be, however, incumbent upon us in Congress and especially for the appropriate committees in Congress to insure that the program is followed despite the rather sloppy procedural methods that have been used to establish the new agency.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. BRINKLEY).

Mr. BRINKLEY. Mr. Chairman, I rise to urge a "no" vote on House Resolution 1242, a resolution disapproving Executive Reorganization Plan No. 3 on Federal Emergency Preparedness and Response.

For too long, the absence of a single, coordinating Federal Civil Defense Agency has caused our State and local civil defense officials to suffer needless confusion and delays in disaster man-

agement and control. Through this reorganization plan, mandating a consolidation of the three major Federal Civil Defense Agencies into a single Federal Emergency Management Agency, we now have the opportunity to prevent future jurisdictional disputes, while strengthening coordination of our civil defense network.

In addition to improving administrative efficiency, the reorganization plan contains a basic policy assumption essential to a strong national civil defense program. That essential policy is the dual use allocation of civil defense funds for natural as well as nuclear disasters. This basic assumption is identical in purpose to legislation I have introduced which seeks to establish statutory authority for the dual use role.

The best preparation we can offer our civil defense officials is the training and fine-tuning they can attain through natural disaster preparedness, readying them for the ultimate test which a military disaster would impose.

The President's emergency preparedness and response reorganization plan will insure the dual benefit of both improved administration of our civil defense network and implementation of the dual-use mission for civil defense. Enactment of the plan will assure a broader, better quality civil defense program for the American people, and the price tag will be marked "better value."

Mr. HORTON. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. WALKER).

Mr. WALKER. Mr. Chairman, I rise in hopes that the Members will vote for this disapproval. I do so because this particular reorganization plan is a fraud. More importantly, it is a dangerous fraud, because you have had many of your civil servant people, many of your people from civil defense who have been in touch with you and told you that this is the kind of plan we need in order to assure a strong civil defense in this country. It does nothing of this kind. It takes a couple of the agencies within the Government and makes some minor modifications in them, but it really does not help civil defense, because what this plan does is makes a couple of shuffles here and there, but leaves it up to the President as to what we are going to do about civil defense in the future.

Now, if we leave it up to the President, what he is going to do is take care of this by Executive order. That means there is going to be no legislative mandate.

Now, those of us in this House, and I am one, who believe that this is an extremely important thing do not believe there should be an Executive order behind it. I believe it should be by legislative mandate and not by Executive order. That is exactly what we do if we disapprove this particular plan. I would hope the Members would vote to approve, because we will end up with a stronger civil defense if it is approved.

Several months ago we had quite a debate on this business of reorganization that the President had promised. What we came up with was this plan we are now implementing on this floor; but part of the debate and the thing we decided not to do was to make Congress an equal partner in this whole plan of reorganization.

Now, we stand here today and find the tradegy of that, when we are not an equal partner, because we are presented totally with a fait accompli, where the President has said he will take care of the whole thing for us. We are going to lose our options, as the gentleman from New York said.

I think it is high time we show the President we will not go along with that type of plan. We want a reorganization in which we can participate. We want a reorganization that will make a strong civil defense, with a strong legislative mandate.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I will be glad to yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I agree with what the gentleman from Pennsylvania (Mr. WALKER) is saying.

The one thing that has been consistent about the reorganization plans that have been presented to us and that have come to the floor for consideration has been their failure to do anything about either reducing the expenditures of the Federal Government or reducing the number of people who work for the Federal Government. All they have been noted for, as far as I can find out, is to shuffle positions around and change around some tables of organization. They do not do the very things that the people want done by reorganization in the Government and that is to reduce the manpower that is needed to perform the functions and thus reduce the cost to the Federal Government.

This is a classic example of just another one of those items that are brought to the floor called "Reorganization Plans," and I am sure that conjures up in everybody's mind the idea that that means we are going to do something that is going to streamline our Government, make it more effective, and reduce its cost. There is nothing like that in here at all. All we are doing is bouncing the balls around and changing them around on the ground in a different pattern, but exactly the same people are working and exactly the same functions are being performed.

So, Mr. Chairman, I think the gentleman from Pennsylvania (Mr. WALKER) is right. These plans only serve the purpose of giving the illusion of some action that is helpful to the taxpayers of the country. Actually I think that is more harmful than helpful.

So, Mr. Chairman, I am going to vote with the gentleman from Pennsylvania (Mr. WALKER) in support of the motion to disapprove this, which is a hollow shell, although it is offered as sort of a reorganization plan that has been presented to us on the floor of the House.

Mr. WALKER. Mr. Chairman, I commend the gentleman from New York (Mr. WYDLER) for his statement, and I believe he is accurate.

As the gentleman knows, when we had this matter in the committee, it was admitted that this would result in no significant savings of money in the bill, and it was admitted that there would be no significant reductions in personnel. But the sham is that it is being billed as something more than it is. It is being billed as a savior of our civil defense system, when in fact it is nothing but a sham.

Mr. WYDLER. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. WALKER).

Mr. WALKER. Mr. Chairman, I yield back the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New York (Ms. HOLTZMAN.)

Ms. HOLTZMAN. Mr. Chairman, I thank the distinguished committee chairman for yielding this time to me.

Mr. Chairman, I am concerned about revitalizing our urban areas and about carrying out the President's recently announced urban policies. For this reason I have questions about this reorganization plan which transfers to the new Federal Disaster Agency the riot reinsurance and crime insurance programs.

I am concerned that this disaster agency may not accord appropriate attention to urban insurance problems. I wonder if the chairman of the committee could assure me that this transfer will in no way result in the neglect of the serious problems of urban insurance availability and property insurance redlining? And could the chairman also assure me that the Federal Insurance Administration in its new role will be able to continue its initiatives regarding matters of concern to insurance consumers generally and urban residents specifically?

Mr. BROOKS. Mr. Chairman, will the gentlewoman yield?

Ms. HOLTZMAN. I yield to the chairman of the committee.

Mr. BROOKS. Mr. Chairman, in answer to both questions asked by the gentlewoman from New York (Ms. HOLTZMAN), may I say that OMB has answered them. They have given answers at some length in the hearings on pages 54 and 55 to exactly the same type of questions: That basically—

In the longer run, working with appropriate committees in the Congress, we intend to address the handling of insurance questions on a government-wide basis more comprehensibly and permanently. Maintaining FIA's insurance expertise intact assures that this reorganization does not prejudice possible future improvements.

On the redlining problem, they said—

Another consideration is that large-scale urban riots certainly fall within the scope of "emergencies," which will be the Federal Emergency Management Agency's principal concern," and that "under a Level IV associate director with expanded responsibilities, the insurance programs will be favorably weighted, compared to the other programs transferred to the new agency, and should fare at least as well as they have in HUD.

Ms. HOLTZMAN. Mr. Chairman, I thank the gentleman. I take it from his words that he is assuring me the Federal Insurance Administration will be able to continue its initiatives with respect to insurance problems?

Mr. BROOKS. That is my understanding.

Ms. HOLTZMAN. Mr. Chairman, I thank the gentleman.

● Mr. GOLDWATER. I rise in support of the reorganization plan. This consolidation of emergency preparedness and disaster relief organizations is long overdue. While I agree with my colleagues on the Government Operations Committee who questioned the wisdom of accomplishing this much needed reform by Executive order instead of a legislative mandate, I believe that the time constraints on this Congress dictate that we should go ahead with the reorganization but with the view in mind that the next Congress should correct this and any other deficiencies in the plan.

As many of you know, there were serious floods, property damage and, unfortunately, loss of life in my congressional district as a result of severe rains this last March. Because of a carefully thought-out disaster response program between Federal, State, and local authorities, the recovery from the disaster in the Ventura County portion of my district not only went smoothly, but it was also quick and effective. It is my opinion that one of the reasons for this was due to the unified nature of the effort. Conversely, there was an area in my district which was not so fortunate in dealing with this same disaster, and the primary reason was lack of coordination among the Federal programs and the resultant lack of accessibility by the State and local agencies. In short, I believe the reorganization is an important first step in resolving the problems of accessibility and simplification, and I would urge my colleagues to support the plan.●

● Mr. PEPPER. Mr. Chairman, I rise in opposition to the resolution disapproving Reorganization Plan No. 3, which consolidates emergency preparedness functions into a new Federal Emergency Management Agency. However, I wish to establish a clear understanding of the impact of the plan on older persons.

Five agencies with responsibilities for emergency preparedness, mitigation and response activities from the Departments of Defense, Commerce, HUD, and GSA will be merged into the new Federal Emergency Management Agency, whose Director shall report directly to the President, through Reorganization Plan No. 3 and subsequent Executive order.

On June 19, 1978, President Carter announced that all authorities and functions under the Disaster Relief Acts of 1970 and 1974 now delegated to the Federal Disaster Administration in the Department of Housing and Urban Development would be transferred to the new agency. It is this part of the reorganization plan that I wish to discuss at this time.

The Select Committee on Aging, which I serve as chairman, has conducted hearings on weather disasters and the elderly, in which we reviewed the Federal response to the elderly victims of such weather disasters as the Omaha, Nebr., tornado in 1975, the January 1977 Buffalo, N.Y., snowstorm and the April 1977 Appalachian floods. While personal losses and tragedies incurred during weather disasters have no age barrier, we must certainly respond to the vulnerability of persons, who encounter difficulties in their everyday lives, whether they are health related or economic. Our committee has found that the impact of personal property loss, physical injury, and disrupted transportation are borne most heavily by older persons, especially the frail elderly.

The consolidation of natural disaster relief programs currently administered by FDAA with other Federal disaster agencies, is of special interest to the Committee on Aging, as any downgrading of the disaster response component may eventually place elderly disaster victims in further jeopardy.

For this reason I joined with the ranking minority member of the Committee on Aging, Congressman WILLIAM C. WAMPLER of Virginia, in conducting these hearings and in corresponding with the President on this very issue. I would like to include our correspondence in the RECORD on this issue and call to attention the statement concerning the intent of Reorganization Plan No. 3 with respect to natural disaster assistance:

While final decisions on the internal organization of the proposed Federal Emergency Management Agency will be made by the Director when he or she is appointed, I can assure you there will be no downgrading of the disaster response component.

Mr. Chairman, I feel that the successful implementation of the goals of Plan No. 3 will be dependent upon congressional oversight of reorganization of disaster services, to insure that the personal, catastrophic tragedies of weather disasters will be minimized for every disaster victim, especially those who have the least opportunity for recovery by their own means.

The correspondence follows:

SELECT COMMITTEE ON AGING,
Washington, D.C., August 17, 1978.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We are addressing this letter to you to express our mutual deep concern over one key aspect of Reorganization Plan No. 3, establishing the Federal Emergency Management Agency, which you have submitted to Congress.

Although we favor the proposed reorganization in principle, we are concerned that it contemplates a downgrading of the natural disaster-response functions now carried out by the Federal Disaster Assistance Administration.

We question whether this is your actual intent, for we feel certain you share our conviction that the Federal disaster-response function has been one of the most effective and highly regarded activities of our government.

It is of special interest to us, for the elderly are the least-prepared and hardest-hit of all our citizens during natural disasters. We do not want anything to place them in further jeopardy, which would surely be the case if the natural disaster-response function is downgraded. As you will see in the attached hearing held by the Select Committee on Aging on "Weather Disasters and The Elderly", the elderly need more, not less assistance during natural disasters.

Therefore, we respectfully ask you assurance that the natural disaster-response component of FEMA will be placed in highest priority status or at least upon an equal status with the other components in FEMA. We request your response in such time that it can be made a part of the legislative history of Congress' consideration of Reorganization Plan No. 3.

Sincerely yours,
CLAUDE PEPPER,
Chairman.
WILLIAM C. WAMPLER,
Ranking Minority Member.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., September 11, 1978.

Hon. CLAUDE PEPPER,
Chairman, Select Committee on Aging, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter to the President of August 17, 1978 relating to Reorganization Plan No. 3 of 1978. I appreciate your concerns about the importance of natural disaster relief programs, particularly as they relate to special vulnerabilities of the elderly.

I am confident that the disaster relief program will be enhanced by the reorganization proposal. Responsibility for administering the program will be made more directly accountable to the President rather than channeled through a Departmental layer. Creation of an Emergency Management Committee at the White House level will help assure more concerted and comprehensive employment of all of the Federal Government's resources which may be required in a disaster situation.

While final decisions on the internal organization of the proposed Federal Emergency Management Agency will be made by the Director when he or she is appointed, I can assure you that there will be no downgrading of the disaster response component. The Associate Director for Disaster Response and Recovery will be able to concentrate full time on these responsibilities, and will be appointed at the very least at the same level as the present Administrator of the Federal Disaster Assistance Administration. We expect both the Director and the Deputy Director of FEMA to devote a major proportion of their time to preventing and resolving problems in disaster relief programs, lending them top-level attention much more consistently than is the case today.

While the Reorganization Plan does not contemplate the expansion of natural disaster assistance, the Director of the new agency will be in a much improved position to assess program needs and priorities for both the President and Congress.

Sincerely,
JAMES T. MCINTYRE, Jr.,
Director.●

Mr. BROOKS. Mr. Chairman, I have no further requests for time.

Mr. HORTON. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 1242

Resolved, That the House of Representatives does not favor the Reorganization Plan Numbered 3 transmitted to the Congress by the President on June 19, 1978.

Mr. BROOKS. Mr. Chairman, I move that the Committee do now rise and report the resolution back to the House with the recommendation that the resolution be not agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the Chair, Mr. KILDEE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the resolution (H. Res. 1242) to disapprove Reorganization Plan Numbered 3 transmitted by the President on June 19, 1978, had directed him to report the resolution back to the House, with the recommendation that the resolution be not agreed to.

The Clerk read the resolution.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the resolution.

There was no objection.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. WYDLER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 40, nays 327, not voting 65, as follows:

[Roll No. 779]

YEAS—40

Archer	Hammer-	Pursell
Ashbrook	schmidt	Robinson
Badham	Hansen	Rousselot
Bauman	Hillis	Satterfield
Beard, Tenn.	Holt	Schulze
Cohen	Hyde	Shuster
Collins, Tex.	Kelly	Spence
Crane	Kindness	Symms
Cunningham	Lagomarsino	Taylor
Daniel, Dan	Latta	Walker
Daniel, R. W.	Lent	Whitehurst
Devine	McDonald	Wydler
Dornan	Moorhead,	
Emery	Calif.	
Forsythe	O'Brien	

NAYS—327

Abdnor	Broyhill	Dodd
Akaka	Buchanan	Downey
Alexander	Burgener	Drinan
Ambro	Burke, Mass.	Duncan, Oreg.
Anderson,	Burleson, Tex.	Duncan, Tenn.
Calif.	Burlison, Mo.	Early
Andrews, N.C.	Burton, John	Eckhardt
Andrews,	Burton, Phillip	Edgar
N. Dak.	Butler	Edwards, Ala.
Annunzio	Byron	Edwards, Calif.
Applegate	Caputo	Edwards, Okla.
Ashley	Carney	Ellberg
Aspin	Carter	English
AuCoin	Cavanaugh	Erlenborn
Baldus	Cederberg	Ertel
Barnard	Chappell	Evans, Colo.
Baucus	Chisholm	Evans, Del.
Beard, R.I.	Clausen,	Evans, Ga.
Bedell	Don H.	Evans, Ind.
Beilenson	Clay	Fary
Benjamin	Cleveland	Fenwick
Bennett	Collins, Ill.	Findley
Bevill	Conable	Fish
Biaggi	Conte	Fisher
Bingham	Corcoran	Fithian
Blanchard	Corman	Flippo
Blouin	Cornell	Flood
Boland	Coughlin	Florio
Bolling	D'Amours	Flynt
Bonior	Danielson	Foley
Bonker	Davis	Ford, Mich.
Bowen	de la Garza	Ford, Tenn.
Brademas	Delaney	Fountain
Brinkley	Derrick	Fowler
Brodhead	Derwinski	Fraser
Brooks	Dickinson	Frenzel
Brown, Calif.	Dicks	Frey
Brown, Mich.	Diggs	Fuqua
Brown, Ohio	Dingell	Gammage
Garcia	Madigan	Rostenkowski
Gaydos	Maguire	Roybal
Gephardt	Mahon	Rudd
Giaimo	Mann	Runnels
Gilman	Markey	Ruppe
Ginn	Marks	Russo
Glickman	Marlenee	Ryan
Goldwater	Martin	Santini
Gonzalez	Mattox	Sawyer
Goodling	Mazzoli	Scheuer
Gore	Meeds	Schroeder
Gradison	Metcalfe	Seiberling
Grassley	Meyner	Sharp
Green	Michel	Sikes
Gudger	Mikulski	Simon
Guyer	Mikva	Skelton
Hagedorn	Milford	Slack
Hall	Miller, Ohio	Smith, Iowa
Hamilton	Mineta	Smith, Nebr.
Hanley	Minish	Snyder
Harkin	Mitchell, Md.	Solarz
Harrington	Mitchell, N.Y.	St Germain
Harris	Moakley	Staggers
Harsha	Moffett	Stangeland
Hawkins	Mollohan	Stanton
Heckler	Moore	Steed
Hefner	Moss	Steers
Heftel	Murphy, Ill.	Steiger
Hightower	Murphy, N.Y.	Stockman
Holland	Murphy, Pa.	Stokes
Hollenbeck	Murtha	Stratton
Holtzman	Myers, Gary	Studds
Horton	Myers, John	Stump
Howard	Natcher	Thompson
Hubbard	Neal	Thornton
Hughes	Nedzi	Traxler
Ichord	Nichols	Treen
Jacobs	Nolan	Trible
Jeffords	Nowak	Tucker
Jenkins	Oakar	Udall
Johnson, Calif.	Oberstar	Ullman
Johnson, Colo.	Obey	Van Deerlin
Jones, Okla.	Ottinger	Vander Jagt
Jones, Tenn.	Panetta	Vanik
Jordan	Patten	Vento
Kastenmeier	Patterson	Volkmer
Kazen	Pattison	Waggonner
Kemp	Pease	Walgren
Keys	Perkins	Walsh
Kildee	Pettis	Wampler
Kostmayer	Pickle	Watkins
Krebs	Pike	Waxman
LaFalce	Pressler	Weaver
Le Fante	Preyer	Weiss
Lederer	Price	Whalen
Leggett	Quayle	Whitley
Levitas	Quillen	Whitten
Livingston	Rahall	Wilson, Bob
Lloyd, Calif.	Railsback	Wilson, Tex.
Lloyd, Tenn.	Rangel	Winn
Long, La.	Regula	Wolff
Long, Md.	Reuss	Wright
Lujan	Rhodes	Wylie
Luken	Richmond	Yates
McClory	Rinaldo	Yatron
McCloskey	Risenhoover	Young, Alaska
McDade	Roberts	Young, Fla.
McEwen	Roe	Young, Mo.
McFall	Rogers	Young, Tex.
McHugh	Roncalio	Zablocki
McKay	Rosenthal	Zeferetti

NOT VOTING—65

Addabbo	Gibbons	Pepper
Ammerman	Hannaford	Poage
Anderson, Ill.	Huckaby	Pritchard
Armstrong	Ireland	Quie
Bafalis	Jenrette	Rodino
Boggs	Jones, N.C.	Rooney
Breaux	Kasten	Rose
Breckinridge	Krueger	Sarasin
Broomfield	Leach	Sebelius
Burke, Calif.	Lehman	Shipley
Burke, Fla.	Lott	Sisk
Carr	Lundine	Skubitz
Clawson, Del	McCormack	Spellman
Cochran	McKinney	Stark
Coleman	Marriott	Teague
Conyers	Mathis	Thone
Cornwell	Miller, Calif.	Tsongas
Cotter	Montgomery	White
Dellums	Moorhead, Pa.	Wiggins
Dent	Mottl	Wilson, C. H.
Fascell	Myers, Michael	Wirth
Flowers	Nix	

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Broomfield.
Mr. Ammerman with Mr. Leach.
Mr. McCormack with Mr. McKinney.
Mr. Teague with Mr. Cochran of Mississippi.
Mr. Cotter with Mr. Sarasin.
Mr. Fascell with Mr. Wiggins.
Mr. Jenrette with Mr. Quie.
Mr. Krueger with Mr. Del Clawson.
Mr. Breaux with Mr. Burke of Florida.
Mr. Montgomery with Mr. Thone.
Mrs. Burke of California with Mr. Sebelius.
Mrs. Spellman with Mr. Gibbons.
Mr. Nix with Mr. Flowers.
Mr. Huckaby with Mr. Tsongas.
Mr. Miller of California with Mr. Michael O. Myers.
Mrs. Boggs with Mr. Rooney.
Mr. Lehman with Mr. Wirth.
Mr. Rose with Mr. Hannaford.
Mr. Pepper with Mr. Charles H. Wilson of California.
Mr. Shipley with Mr. Jones of North Carolina.
Mr. Dent with Mr. Mathis.
Mr. Sisk with Mr. Bafalis.
Mr. White with Mr. Moorhead of Pennsylvania.
Mr. Rodino with Mr. Anderson of Illinois.
Mr. Mottl with Mr. Pritchard.
Mr. Conyers with Mr. Coleman.
Mr. Lundine with Mr. Skubitz.
Mr. Carr with Mr. Ireland.
Mr. Stark with Mr. Kasten.
Mr. Dellums with Mr. Lott.
Mr. Cornwell with Mr. Breckinridge.

Mr. MARLENEE and Mr. RAILSBACK changed their vote from "yea" to "nay."

So the resolution was rejected.

The result of the vote was announced as above recorded.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks, and include extraneous matter, on the resolution just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 10909, AMENDING CLINICAL LABORATORY ACT OF 1978

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1571) on the resolution (H. Res. 1348) providing for consideration of the bill (H.R. 10909) to amend the Public Health Service Act to revise and strengthen the program under that act for national standards for and licensing of clinical laboratories, to amend the Social Security Act to require laboratories providing services financed under titles XVIII and XIX of such act to meet the requirements of such program, and for other purposes, which was referred to the House Calendar and ordered to be printed.

AIR SERVICE IMPROVEMENT ACT OF 1978

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1324 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1324

Resolved, That upon the adoption of this resolution it shall be in order to move, sec-

tion 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12611) to amend the Federal Aviation Act of 1958 to improve air service and provide flexibility in air fares. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. It shall be in order to consider an amendment to said substitute printed in the Congressional Record of August 15 by Representative Snyder, and all points of order against said amendment for failure to comply with clause 7, rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 12611, the Committee on Public Works and Transportation shall be discharged from the further consideration of the bill S. 2493 notwithstanding the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344), and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 12611 as passed by the House.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Tennessee (Mr. QUILLEN), pending which I yield myself such time as I may consume.

Mr. Speaker, those who listened will know that this rule is a 1-hour open rule. There is a committee amendment in the nature of a substitute to be considered as an original bill for the purpose of an amendment; an amendment by Representative SNYDER, made in order despite any points of order that might lie against it; at the conclusion, a motion to recommit and then it would go to conference.

Mr. Speaker, I know of absolutely no controversy about the matter, about the rule and, in fact, very little about the bill it brings up.

Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the able gentleman from Missouri (Mr. BOLLING) has explained the rule that makes in order the bill H.R. 12611, to amend the Federal Aviation Act of 1958 to improve air service and provide flexibility in air fares.

Mr. Speaker, this is a reform measure. I know of no opposition to it. I urge adoption of the rule and yield back the balance of my time.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WYDLER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 344, nays 1, not voting 87, as follows:

[Roll No. 780]

YEAS—344

Abdnor	Conable	Goodling
Akaka	Conte	Gore
Alexander	Corcoran	Gradison
Ambro	Corman	Grassley
Anderson, Calif.	Cornell	Green
	Coughlin	Gudger
Andrews, N.C.	Crane	Guyer
Andrews, N. Dak.	Cunningham	Hagedorn
	D'Amours	Hall
Applegate	Daniel, Dan	Hamilton
Archer	Daniel, R. W.	Hammer-schmidt
Ashbrook	Danielson	
Ashley	Davis	Hanley
Aspin	de la Garza	Hansen
AuCoin	Delaney	Harris
Badham	Derrick	Harsha
Bafalis	Derwinski	Hawkins
Baldus	Dickinson	Heckler
Barnard	Diggs	Hefner
Baucus	Dingell	Heftel
Bauman	Dodd	Hightower
Beard, R.I.	Dornan	Hillis
Beard, Tenn.	Drinan	Holland
Bedell	Duncan, Oreg.	Hollenbeck
Beilenson	Duncan, Tenn.	Holt
Benjamin	Early	Holtzman
Bennett	Eckhardt	Horton
Bevill	Edgar	Howard
Biaggi	Edwards, Ala.	Hubbard
Bingham	Edwards, Calif.	Hughes
Blanchard	Edwards, Okla.	Hyde
Blouin	Eilberg	Ichord
Boland	Emery	Jacobs
Bolling	English	Jeffords
Bonior	Erlenborn	Jenkins
Bonker	Ertel	Johnson, Calif.
Bowen	Evans, Del.	Jones, Okla.
Brademas	Evans, Ind.	Jones, Tenn.
Breckinridge	Fary	Jordan
Brinkley	Fenwick	Kastenmeier
Brodhead	Findley	Kazen
Brooks	Fish	Kelly
Brown, Mich.	Fisher	Kemp
Brown, Ohio	Fithian	Keys
Broyhill	Flippo	Kildee
Buchanan	Flood	Kindness
Burgener	Florio	Kostmayer
Burke, Mass.	Flynt	Krebs
Burleson, Tex.	Foley	Lagomarsino
Burlison, Mo.	Ford, Mich.	Latta
Burton, John	Ford, Tenn.	Le Fante
Burton, Phillip	Forsythe	Lederer
Butler	Fountain	Lent
Byron	Fowler	Levitas
Caputo	Fraser	Livingston
Carney	Frenzel	Lloyd, Calif.
Carter	Frey	Lloyd, Tenn.
Cavanaugh	Fuqua	Long, La.
Cederberg	Gammage	Long, Md.
Chappell	Garcia	Lujan
Chisholm	Gaydos	Luken
Clausen, Don H.	Gephardt	McClory
	Gilman	McCloskey
Clay	Ginn	McDonald
Coleman	Glickman	McEwen
Collins, Ill.	Goldwater	McFall
Collins, Tex.	Gonzalez	McHugh
McKay	Price	Steed
Madigan	Pursell	Steers
Mahon	Quayle	Steiger
Mann	Quillen	Stockman
Markey	Rahall	Stokes
Marks	Railsback	Stratton
Marlenee	Rangel	Studds
Martin	Regula	Stump
Mattox	Reuss	Symms
Mazzoli	Rhodes	Taylor
Meeds	Richmond	Thompson
Metcalfe	Rinaldo	Thornton
Michel	Risenhoover	Traxler
Mikulski	Roberts	Treen
Mikva	Robinson	Trible
Miller, Ohio	Roe	Tucker
Mineta	Rogers	Udall
Minish	Roncalio	Ullman
Mitchell, Md.	Rosenthal	Van Deerlin
Mitchell, N.Y.	Rostenkowski	Vander Jagt
Moakley	Rousselot	Vanik
Mollohan	Roybal	Vento
Moore	Rudd	Volkmer
Moorhead, Calif.	Runnels	Waggonner
	Ruppe	Walgren
Murphy, Ill.	Russo	Walker
Murphy, N.Y.	Ryan	Walsh
Murphy, Pa.	Santini	Wampler
Murtha	Satterfield	Watkins
Myers, Gary	Sawyer	Weaver
Myers, John	Scheuer	Weiss
Myers, Michael	Schroeder	Whalen
Natcher	Schulze	Whitehurst
Neal	Seiberling	Whitley
Nedzi	Sharp	Wilson, Bob
Nichols	Shuster	Wilson, C. H.
Nowak	Sikes	Wilson, Tex.
O'Brien	Simon	Winn
Oakar	Sisk	Wolff
Oberstar	Skelton	Wright
Obey	Slack	Wydler
Ottinger	Smith, Iowa	Wylie
Patten	Smith, Nebr.	Yates
Patterson	Snyder	Yatron
Pease	Solarz	Young, Alaska
Perkins	Spence	Young, Fla.
Pettis	St Germain	Young, Mo.
Pickle	Staggers	Zablocki
Pike	Stangeland	
Preyer	Stanton	

NAYS—1

Evans, Ga.

NOT VOTING—87

Addabbo	Hannaford	Mottl
Ammerman	Harkin	Nix
Anderson, Ill.	Harrington	Nolan
Annunzio	Huckaby	Panetta
Armstrong	Ireland	Pattison
Boggs	Jenrette	Pepper
Breaux	Johnson, Colo.	Poage
Broomfield	Jones, N.C.	Pressler
Brown, Calif.	Kasten	Pritchard
Burke, Calif.	Krueger	Quie
Burke, Fla.	LaFalce	Rodino
Carr	Leach	Rooney
Clawson, Del	Leggett	Rose
Cleveland	Lehman	Sarasin
Cochran	Lott	Sebelius
Cohen	Lundine	Shipley
Conyers	McCormack	Skubitz
Cornwell	McDade	Spellman
Cotter	McKinney	Stark
Dellums	Maguire	Teague
Dent	Marriott	Thone
Devine	Mathis	Tsongas
Dicks	Meyner	Waxman
Downey	Milford	White
Evans, Colo.	Miller, Calif.	Whitten
Fascell	Moffett	Wiggins
Flowers	Montgomery	Wirth
Giaimo	Moorhead, Pa.	Young, Tex.
Gibbons	Moss	Zeferetti

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Broomfield.
Mr. Ammerman with Mr. Leach.
Mr. McCormack with Mr. McKinney.
Mr. Teague with Mr. Cochran of Mississippi.
Mr. Cotter with Mr. Sarasin.
Mr. Fascell with Mr. Wiggins.
Mr. Jenrette with Mr. Quie.
Mr. Krueger with Mr. Del Clawson.
Mr. Breaux with Mr. Burke of Florida.
Mr. Montgomery with Mr. Thone.
Mrs. Burke of California with Mr. Sebelius.
Mrs. Spellman with Mr. Gibbons.
Mr. Nix with Mr. Flowers.

Mr. Huckaby with Mr. Tsongas.
Mr. Miller of California with Mr. Whitten.
Mrs. Boggs with Mr. Wirth.
Mr. Lehman with Mr. Stark.
Mr. Rose with Mr. Waxman.
Mr. Annunzio with Mr. Skubitz.
Mr. Carr with Mr. Pressler.
Mr. Dent with Mr. Nolan.
Mr. Giaimo with Mr. White.
Mr. Harkin with Mr. Mottl.
Mr. Jones of North Carolina with Mr. Anderson of Illinois.
Mr. Ireland with Mr. Evans of Colorado.
Mr. Leggett with Mr. Cohen.
Mrs. Meyner with Mr. Kasten.
Mr. Maguire with Mr. Cleveland.
Mr. Pepper with Mr. Johnson of Colorado.
Mr. Shipley with Mr. McDade.
Mr. Moss with Mr. Lott.
Mr. Brown of California with Mr. Marriott.
Mr. Zeferetti with Mr. Pritchard.
Mr. Rodino with Mr. Moorhead of Pennsylvania.
Mr. Downey with Mr. Devine.
Mr. Mathis with Mr. Panetta.
Mr. Rooney with Mr. Pattison of New York.
Mr. Hannaford with Mr. LaFalce.
Mr. Lundine with Mr. Harrington.
Mr. Milford with Mr. Conyers.
Mr. Cornwell with Mr. Moffett.
Mr. Dellums with Mr. Dicks.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. ANDERSON of California. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12611) to amend the Federal Aviation Act of 1958 to improve air service and provide flexibility in air fares.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ANDERSON).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WYDLER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 300, nays 8, not voting 124, as follows:

[Roll No. 781]

YEAS—300

Abdnor	Bevill	Cavanaugh
Akaka	Biaggi	Cederberg
Alexander	Bingham	Chappell
Ambro	Blanchard	Clausen,
Anderson,	Bonker	Don H.
Calif.	Bowen	Coleman
Andrews, N.C.	Brademas	Collins, Ill.
Andrews,	Breckinridge	Collins, Tex.
N. Dak.	Brinkley	Conable
Applegate	Brodhead	Conte
Archer	Brooks	Corcoran
Ashbrook	Brown, Mich.	Corman
Ashley	Brown, Ohio	Cornell
Aspin	Broyhill	Coughlin
AuCoin	Buchanan	Crane
Badham	Burgener	Cunningham
Bafalis	Burke, Mass.	D'Amours
Baldus	Burleson, Tex.	Daniel, Dan
Baucus,	Burlison, Mo.	Daniel, R. W.
Bauman	Burton, John	Danielson
Beard, Tenn.	Burton, Phillip	de la Garza
Bedell	Butler	Derrick
Beilenson	Byron	Derwinski
Benjamin	Carney	Dicks
Bennett	Carter	Diggs
Dodd	Kemp	Roberts
Dornan	Kildee	Robinson
Drinan	Kindness	Roe
Duncan, Tenn.	Kostmayer	Rosenthal
Early	Krebs	Rostenkowski
Eckhardt	Lagomarsino	Rousselot
Edgar	Latta	Roybal
Edwards, Ala.	Le Fante	Rudd
Edwards, Calif.	Lederer	Runnels
Edwards, Okla.	Lent	Ruppe
Eilberg	Levitas	Russo
Emery	Livingston	Ryan
English	Lloyd, Tenn.	Santini
Ertel	Long, La.	Satterfield
Evans, Del.	Long, Md.	Sawyer
Evans, Ga.	Luken	Scheuer
Evans, Ind.	McClory	Schulze
Fary	McCloskey	Seiberling
Findley	McDonald	Sharp
Fish	McHugh	Shuster
Fisher	McKay	Sikes
Fithian	Madigan	Simon
Flippo	Maguire	Sisk
Flood	Mann	Skelton
Foley	Marks	Slack
Ford, Mich.	Marlenee	Smith, Iowa
Ford, Tenn.	Martin	Smith, Nebr.
Fountain	Mattox	Snyder
Fowler	Mazzoli	Solarz
Fraser	Metcalfe	Spence
Frenzel	Meyner	St Germain
Frey	Michel	Staggers
Fuqua	Mikulski	Stangeland
Gammage	Mikva	Stanton
Garcia	Miller, Ohio	Steed
Gaydos	Mineta	Steers
Gephardt	Minish	Stockman
Gilman	Mitchell, N.Y.	Stratton
Ginn	Mollohan	Studds
Glickman	Moore	Stump
Goldwater	Moorhead,	Symms
Gonzalez	Calif.	Taylor
Goodling	Murphy, Ill.	Thompson
Gore	Murphy, N.Y.	Thornton
Gradison	Murphy, Pa.	Traxler
Grassley	Murtha	Treen
Green	Myers, Gary	Trible
Gudger	Myers, John	Tucker
Guyer	Myers, Michael	Udall
Hagedorn	Natcher	Van Deerlin
Hall	Neal	Vander Jagt
Hamilton	Nedzi	Vanik
Hammer-	Nichols	Vento
schmidt	Nolan	Volkmer
Hanley	Nowak	Waggonner
Harkin	O'Brien	Walgren
Harris	Oakar	Walker
Harsha	Oberstar	Walsh
Hefner	Obey	Wampler
Heftel	Ottinger	Watkins
Hightower	Panetta	Weiss
Hillis	Patten	Whalen
Holland	Patterson	Whitley
Hollenbeck	Pease	Wilson, Bob
Holtzman	Perkins	Wilson, C. H.
Howard	Pettis	Wilson, Tex.
Hubbard	Pickle	Winn
Hyde	Pike	Wolff
Ichord	Preyer	Wright
Jacobs	Price	Wylie
Jeffords	Pursell	Yates
Jenkins	Quillen	Yatron
Johnson, Calif.	Railsback	Young, Alaska
Jones, Tenn.	Regula	Young, Fla.
Kastenmeier	Reuss	Young, Mo.
Kazen	Richmond	Zablocki
Kelly	Rinaldo	

NAYS—8

Dickinson	Lujan	Rhodes
Hansen	Mitchell, Md.	Wydler
Lloyd, Calif.	Quayle	

NOT VOTING—124

Addabbo	Chisholm	Fascell
Ammerman	Clawson, Del	Fenwick
Anderson, Ill.	Clay	Florio
Annunzio	Cleveland	Flowers
Armstrong	Cochran	Flynt
Barnard	Cohen	Forsythe
Beard, R.I.	Conyers	Giaimo
Blouin	Cornwell	Gibbons
Boggs	Cotter	Hannaford
Boland	Davis	Harrington
Bolling	Delaney	Hawkins
Bonior	Dellums	Heckler
Breaux	Dent	Holt
Broomfield	Devine	Horton
Brown, Calif.	Dingell	Huckaby
Burke, Calif.	Downey	Hughes
Burke, Fla.	Duncan, Oreg.	Ireland
Caputo	Erlenborn	Jenrette
Carr	Evans, Colo.	Johnson, Colo.
Jones, N.C.	Miller, Calif.	Schroeder
Jones, Okla.	Moakley	Sebelius
Jordan	Moffett	Shipley
Kasten	Montgomery	Skubitz
Keys	Moorhead, Pa.	Spellman
Krueger	Moss	Stark
LaFalce	Mottl	Steiger
Leach	Nix	Stokes
Leggett	Pattison	Teague
Lehman	Pepper	Thone
Lott	Poage	Tsongas
Lundine	Pressler	Ullman
McCormack	Pritchard	Waxman
McDade	Quie	Weaver
McEwen	Rahall	White
McFall	Rangel	Whitehurst
McKinney	Risenhoover	Whitten
Mahon	Rodino	Wiggins
Markey	Rogers	Wirth
Marriott	Roncalio	Young, Tex.
Mathis	Rooney	Zeferetti
Meeds	Rose	
Milford	Sarasin	

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12611, with Mr. ROSENTHAL in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from California (Mr. ANDERSON) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. SNYDER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bill we are now considering, the Air Service Improvement Act of 1978, gives us an opportunity to lessen Government regulation and to increase free enterprise for a major American industry. I am confident that less Government regulation of the airlines will help in the fight against inflation and will benefit both consumers and the industry itself.

In recent months the airline industry, prodded by the Civil Aeronautics Board, has become substantially more competitive and has offered the public new low fares, with reductions of 50 percent or more. The results have been remarkable. Air travel is at record levels and so are industry profits. This is one area of the economy in which the fight against inflation is succeeding.

The Air Service Improvement Act will insure that the industry remains competitive and that the encouraging trends of recent months continue.

The Air Service Improvement Act was developed after extensive consideration of the problem of airline regulation by the Public Works Committee. During the last two Congresses we held 36 days of hearings in Washington and throughout the country. Few of the more than 200 witnesses who appeared were satisfied with the existing regulatory system.

After consideration of this testimony, and after many markup sessions, the Public Works and Transportation Committee developed a moderate regulatory reform bill which introduces more com-

petition and less regulation on a gradual, controlled basis. The bill also seeks to insure that the costs of the transition to a more competitive system will not weigh too heavily on the smaller airlines, on small communities, or on airline employees.

The bill is supported by the administration, and by a broad coalition ranging across the political spectrum from Americans for Democratic Action to the American Conservative Union. Other groups supporting the bill include the American Association of Retired Persons, the American Farm Bureau Federation, the National Association of Manufacturers, the American Retail Federation, and the Airport Operators Council International. A number of airlines support the bill, including the Nation's largest airline, United, and smaller airlines, such as Western, Hughes Airwest, Frontier, Allegheny, and the Commuter Airlines, the smallest companies in the industry.

The Air Service Improvement Act, Mr. Chairman, is a complete overhaul of the regulatory system which was established in 1938 to govern the small, subsidized airline industry which then existed. The 1938 regulatory system requires the airlines to seek Government approval for changes in the cities they serve and the fares they charge. The 1938 act gives CAB flexibility to promote competition, or to discourage it.

Until recently the CAB administered the 1938 act in a protective, anticompetitive manner. For example:

The CAB adopted fare policies which discouraged discount fares and experiments with reduced basic fares. These policies were adopted in the face of evidence from intrastate carriers that fare reductions of 50 percent or more could attract so many additional passengers that airlines could operate profitably despite a reduced yield;

The CAB developed procedures which enabled it to decide only a few cases at a time and these only after time-consuming and burdensome proceedings. For several years in the early 1970's the CAB established a "route moratorium" in which it refused even to grant a hearing to any application for new routes;

The CAB refused to allow any new carriers to enter the trunkline industry and dismissed or denied applications by 79 prospective new trunk carriers;

The CAB was particularly unsympathetic to applications to provide new service at low fares. When World Airways filed an application proposing low fare transcontinental service in 1967, the Board took no action on the application for 7 years and then dismissed it as stale.

As I have stated, today's CAB is doing its best to reverse these policies and to administer the act to favor competition. The bill we have reported will prevent future CAB's from returning to the policies of the past.

H.R. 12611 includes a number of provisions which will insure that the airlines continue to be competitive. The policy statement, which guides the CAB in all its decisions, has been revised to require the Board to stress competition, low fare service, and entry by new carriers. To further encourage competition, the test for granting new routes has been modified. The present law requires that the CAB find that proposed new service is "required by" the public convenience and necessity. Under H.R. 12611, the CAB need only find that proposed new service is "consistent with" the public convenience and necessity.

H.R. 12611 includes two new programs to encourage competition.

The dormant authority program provides for easy entry by carriers who wish to replace other carriers who have authority to serve markets but are not using their authority.

H.R. 12611 also establishes an experimental entry program under which airlines will be free to enter a limited number of markets without the need for CAB approval. Because "automatic entry" has been one of the more controversial proposals for regulatory reform, the bill adopts the conservative approach of a 1-year experiment with automatic entry. Certificated airlines and large intrastate airlines will be allowed to enter one market of their choice. At the same time, each certificated airline is allowed to protect one market against automatic entry.

At the end of the 1-year experiment, the CAB will submit a report to Congress with its recommendations on whether further automatic entry programs should be established. Congress will then decide whether to enact further legislation.

Another important provision of H.R. 12611 is the "sunset" provision which provides that CAB terminates on December 31, 1982. This provision can furnish the basis for complete deregulation of the industry, if the limited deregulation permitted by this bill is successful.

The fare flexibility provisions of H.R. 12611 will encourage the airlines to continue the discount fares which they have recently introduced. The bill allows airlines to reduce their fares without CAB approval by 25 percent in the first year after enactment, and by 50 percent thereafter. Greater reductions are permitted with CAB approval. The bill allows an airline which uses downward flexibility to raise its fares back to the prior level without CAB approval. The bill also establishes upward flexibility of 5 percent a year in competitive markets, to take effect after Congress legislates further automatic entry programs.

Concerns have been expressed over the effects of regulatory reform on service to small communities. In evaluating these concerns it should be remembered that the existing regulatory system has not guaranteed continued service at small communities. Since 1960 CAB has allowed certificated airlines to terminate service at 179 communities. At approximately 60 of these communities, commuter airlines, which the CAB exempts from regulation, are providing replacement service voluntarily.

The Air Service Improvement Act protects small communities against further loss of service. The bill provides that any community now being served by a certificated airline will receive continued air service for 10 years. If a certificated airline is allowed to terminate its service at a small community and no certificated carrier or commuter carrier is willing to provide replacement service without subsidy, CAB must subsidize a commuter airline.

Other provisions in the bill will enhance the attractiveness of commuter replacement service. The bill allows the commuters to operate aircraft of up to 56-seat capacity, compared to the present limit of 30 seats. Commuters are made eligible for subsidy, for joint fares with certificated airlines, and for loan guarantees for the purchase of aircraft.

The employee protection provision of the bill will insure that regulatory reform does not have an undue impact on airline employees. The bill provides that authority granted by the bill may not be exercised until the Secretary of Labor certifies that affected employees are protected by arrangements no less favorable than those in the Amtrak legislation. Employee benefits will be paid from a separate account in the U.S. Treasury.

Mr. Chairman, I believe that the Committee on Public Works and Transportation has reported a good regulatory reform bill which will benefit both consumers and the industry. I urge my colleagues to join me in supporting this needed legislation.

Mr. SNYDER. Mr. Chairman. I yield myself such time as I may consume.

Mr. Chairman, as ranking minority member of the Aviation Subcommittee, Committee on Public Works and Transportation, I welcome this opportunity to join with the gentlemen from California (Mr. JOHNSON and Mr. ANDERSON) in urging House passage of H.R. 12611, the Air Service Improvement Act of 1978. Their explanations of the bill are "right on target," and I would add just a few remarks which are intended to be supportive of their presentations.

H.R. 12611 is designed to reduce regulation of the air transportation industry by the Civil Aeronautics Board (CAB). A major objective of the legislation is to increase competition among air carriers—and the prospective results of its enactment are improved air service and reduced air fares. For too long, this industry has been hobbled by excessive Federal regulation—it is time to take the Federal Government out of the business of making management decisions and allow the forces of the marketplace to do their job.

Now, Mr. Chairman, we do not contemplate or intend in this legislation that the air transportation industry be suddenly deregulated, that all economic regulations be summarily ended. Rather, we proceed on the basis that certain regulatory requirements can be eased or eliminated—and that we should move gradually to a less regulated environment. The bill seeks in a variety of ways to reach this goal—notable among them being the following:

First. Revised policy statement emphasizing competition, new carriers, small community service, prevention of anticompetitive practices.

Second. Reform of CAB procedures in-

cluding deadlines for CAB action, reduced level of tests required of applicants, and optional simplified procedures.

Third. Fare flexibility.

Fourth. Experimental automatic market entry authorizing each carrier to acquire one new route of its choice without CAB approval—while permitting each carrier to protect one of its existing routes from such entry—with requirement for CAB report to Congress on results.

Fifth. Authority for carriers to serve unused routes authorized to be served by other carriers.

Sixth. Substantial upgrading of commuter segment of industry including subsidy program for commuter carriers under specified circumstances.

Seventh. CAB "sunsets" on December 31, 1982, unless Congress enacts legislation to extend life of agency.

Mr. Chairman, the single most controversial issue during our consideration of this legislation was the question of "automatic market entry" under which carriers could select and serve new routes without CAB approval. Proponents take the position that such authority is the only meaningful way to increase competion among carriers while opponents assert that it would disrupt air service to the point that chaos would result. We listened to both sides during three sets of hearings—and we concluded that the most reasonable approach would be to establish an experimental automatic entry program under which each carrier would acquire one new route without CAB approval—while protecting no more than one of its existing routes from such entry. The bill mandates that CAB study the results of the program—and submit to the Congress its recommendations for subsequent automatic market entry legislation. By following this procedure, we believe we will not be risking irrevocable damage to our air transportation system—while at the same time we will be facilitating a move to less regulation of carrier route structures, if determined later on the basis of experience to be feasible.

Mr. Chairman, I also would include a few remarks on the antitrust standard established in H.R. 12611. Section 18 of the bill would amend the Federal Aviation Act of 1958 by making the initial competitive test to be applied by CAB under section 408(b) equal to the traditional antitrust tests applied in nonregulated industries. The use of the phrase "may be substantially to lessen competition, or to tend to create a monopoly or which in any other manner would be in restraint of trade" in section 18(b)(2)(B) of H.R. 12611 is intended to subject such transactions to the same scrutiny as would be applied under the Clayton and Sherman Acts if they occurred in a nonregulated industry.

The only difference between the antitrust standard imposed by section 18 on the air transportation industry and that applied in nonregulated industries is that even where a merger or other similar transaction in the air transportation industry is found to violate traditional antitrust standards, it may still be approved by CAB if it meets a two-part statutory test: First, the anticompetitive effects of a merger must be found to be outweighed in the public interest by the probable effect of the transaction in "meeting significant transportation needs of the community to be served," and, second, CAB must find that "such significant transportation needs may not be satisfied by any reasonably available less anticompetitive alternative." This two-part test, which comes into play only if the transaction has first been found to violate traditional antitrust tests, is similar to that imposed by judicial interpretation of the Bank Merger Act.

Thus, the basic effect of section 18 on air carrier mergers and similar transactions would be to require CAB to first test them under traditional antitrust standards. If found not to violate such standards, a transaction would be approved if otherwise in the public interest. If a transaction does not meet traditional antitrust standards, then it would be approved only if it fulfills significant transportation needs of the community and CAB finds there is no less anticompetitive alternative available to satisfy such needs.

In essence, this provision is consistent with the basic objective of regulatory reform which is to put basic decisionmaking back into the corporate board rooms and remove that process from the cloistered ivory towers of Federal bureaucracies. Since we are significantly freeing up entry and pricing in the air transportation industry to permit CAB to proceed rapidly toward deregulation, we feel it is appropriate to require CAB to apply the more traditional antitrust criteria applicable to unregulated industries in assessing consolidations, mergers, and other transactions involving air carriers.

Mr. Chairman, I close by noting that we considered over 60 amendments during our Aviation Subcommittee and full committee markups of H.R. 12611. The bill which is before us represents the consensus of members of the Committee on Public Works and Transportation—having been reported by a vote of 37 to 5. It is sound legislation, well-considered legislation: it is legislation which should be enacted this session. Inasmuch as the other body already has passed a similar bill (S. 3493), we believe we have an excellent chance of completing congressional action before adjournment.

I urge my colleagues to support this important legislation.

Mr. CRANE. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Illinois (Mr. CRANE), the House's most distinguished candidate for President.

Mr. CRANE. I thank my distinguished colleague and ranking minority Member for yielding.

Mr. Chairman, in the interest of stimulating price competition in the domestic airline industry, broadening the scope and efficiency of the Federal assistance program for air service to small and isolated communities, and in increasing the overall benefits to business, labor, and the consumer alike, I rise in support of H.R. 12611, the Air Service Improvement Act of 1978 and the Ertel amendment reversing the burden of proof in route applications.

In October 1977, I introduced H.R. 9588, the Civil Aviation Regulatory Reform Act of 1977. My bill grew out of a strong personal belief that the entire public stands to benefit from a less restricted airline system. Today, I profess this concept even more strongly. I am pleased that through the vehicle of H.R. 12611 and the Ertel amendment, we, as representatives of the people, have the opportunity to take positive steps to this end.

Mr. Chairman, the amendment that my good colleague Representative ALLEN ERTEL will offer is absolutely necessary to insure increased competition and reduced Government regulation in the industry. Under present CAB procedure, the applicant for service to a new route is saddled with the burden of proof. The cost of the legal and administrative procedures necessary to attain approval of an application is prohibitive to small companies. Representative ERTEL'S amendment responsibly addresses this problem; his amendment reverses the burden of proof. Airlines trying to keep out potential competitors must prove that the new competition would be inconsistent with the public convenience and necessity. Only upon production of such evidence could the CAB reject a route application.

It has become fashionable for elected officials to decry Government interference in and regulation of our lives; yet, when given the opportunity to put actions behind these words, Congress has a tendency to maintain the status quo. Every 2 years, we continue to appropriate moneys to support our "bureaucracy by alphabet": FTC, EPA, OSHA—the list is endless.

H.R. 12611 and the Ertel amendment give each of us the golden opportunity to responsibly remove Government regulation from one of America's most important modes of transportation. In 1938, the cry was issued for Government oversight in the then new and unsteady airline industry. Government moved in and created stability by structuring a regulatory scheme to which all airlines had to adjust. Now, clearly, the situation has changed. The vigor of the current market—super saver fares being a perfect example of new economies of scale available today—underscores the need for Uncle Sam to bow out and allow free enterprise forces to surface as the main regulators of the airline industry. Our job, as Members of Congress, the legislative arm of the Government, is to undo carefully the system we created in 1938 and work to insure a successful conversion to this new system.

H.R. 12611, Mr. Chairman, creates a gradual conversion to a less regulated enterprise. Alfred Kahn, the very able, witty, and articulate Chairman of the Civil Aeronautics Board, supports the bill and the Ertel amendment. Under his leadership, the path to complete regula-

tory reform was paved as the Board's control over the market diminished. In closing, I commend to you Chairman Kahn's own thoughts on this matter:

> The debate over airline regulation has been going on for a number of years; since 1974 it has been intense. There have been eight sets of hearings before five separate Congressional committees, in all covering more than 20,000 pages of testimony. I think there is no longer any doubt about the direction in which we should move. The overwhelming weight of all this evidence is on the side of the conclusion that the regulatory scheme established in 1938 has outlived its usefulness, that it is time to replace the existing protectionist statute with one that would genuinely encourage competition. It is time to return this industry to the free enterprise system.

Enlightened colleagues, I urge you not to miss this chance.

Mr. GOLDWATER. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from California.

Mr. GOLDWATER. Mr. Chairman, I rise to voice my support for H.R. 12611, the Air Service Improvement Act of 1978. This is a good bill. It strikes a golden balance by preserving for both the consumer and the airlines some needed protection through the Civil Aeronautics Board while at the same time letting the free market work its will. This step is sorely overdue. The existing set of regulations can be traced back to 1938 with only minor modifications having been added by the Federal Aviation Act of 1958. Forty years ago these regulations represented needed safeguards for an aviation industry still in its infancy. Today they are bureaucratic chains which restrict the mandates for mature growth. These longstanding regulatory fetters must be released—but this must be accomplished with a sound degree of caution. To eliminate overnight all of the CAB oversight and safeguards which have been in effect for 40 years would be unwise and certainly not in the best interests of the public. Such a sudden break would probably result in severe economic disruptions in these financially shakey times. H.R. 12611 represents a moderate and controlled release from the present restrictions.

Our committee, under the able leadership of Chairman JOHNSON, GLEN ANDERSON, BILL HARSHA, GENE SNYDER, and ELLIOTT LEVITAS, has done a remarkable job of giving the Congress and the American people a bill that is reasonable and well throughout. Two years ago, most of the airlines were opposed to a regulatory reform bill and I must admit that there was much in the original committee bill that I myself found objectionable. In all, during the last two Congresses, the Aviation Subcommittee on which I sit held 36 days of hearings and heard testimony from over 200 witnesses on this issue. We had some tough times—some very strained moments—during a series of committee markup sessions, but the low of reason and the art of compromise prevailed. In my judgment, we can all live with and be proud of this bill.

For the airlines, it guarantees an orderly retreat from strict CAB regulation. This will give them time to readjust. In addition, section 6 simplifies and streamlines route application procedures. Overall, new air carriers and the smaller existing carriers will be encouraged by this bill's provisions.

More importantly, the consumer—the traveling public—will be given a break. Under section 27, upward pricing of airfares will generally be limited to no more than 5 percent per year while prices could be lowered a full 25 percent the first year after passage and a healthy 50 percent per year thereafter. At the same time, safety is given the highest priority and growing urban traffic congestion is addressed by encouraging the use of secondary airports near major urban centers.

In summary, all interests are afforded something by this bill, with the maximum benefit being reaped by the average American air traveler. It will not disrupt our Nation's airline system. It will guarantee a continuation of America's leadership in world aviation.

Mr. ANDERSON of California. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. JOHNSON), the distinguished chairman of our full committee.

Mr. JOHNSON of California. Mr. Chairman, I rise in support of H.R. 12611, the Air Service Improvement Act of 1978. The bill was reported by the Committee on Public Works and Transportation on May 19 by a vote of 37 to 5. Prior to this, the committee held extensive hearings on airline regulation. We also held many markup sessions in which we carefully worked out a moderate, responsible bill which provides for increased competition while protecting the interests of small communities, airline employees, and smaller air carriers. Our bill is more moderate than the bill which the Senate passed last spring.

The present regulatory system for airlines needs substantial revision. The law now governing the airlines was first passed in 1938. At that time the airline industry was a fraction of its present size, and the airlines were heavily dependent on Federal subsidy.

Through most of its history the CAB has administered the 1938 act to protect the airlines and discourage them from competing. These policies may have been desirable in the early days of the act. But in recent years protective regulation has not benefited either consumers, who have had to pay higher-than-necessary fares, or the industry, which frequently has had a poor earnings record.

During the last few years there have been substantial changes in CAB policy. Under the leadership of John Robson and Alfred Kahn, the CAB has encouraged the airlines to be more competitive and the airlines have responded with a wide variety of discount fares. These fares have helped combat inflation and have enabled many persons to travel by air who could not have afforded to pay regular fares. The reduced fares have resulted in record levels of travel, and airline profits have never been higher.

The legislation we are presenting today will insure that in the future the CAB will not be able to reestablish the protective and anticompetitive policies of former years. The bill will also insure that the competitive policies which the CAB developed will not be set aside by the courts.

Perhaps the most important provision of the bill is the new policy statement requiring that in all its decisions CAB emphasize competition, low fares, and entry by new carriers. Other provisions of the bill, such as the dormant authority and experimental entry provisions, will give the airlines increased freedom to enter new markets, without CAB approval. The fare flexibility provision allows airlines to adjust their fares, within a zone of reasonableness, without CAB approval.

The bill has a sunset provision terminating CAB on December 31, 1982. This will permit complete deregulation if Congress finds that course to be appropriate.

The bill also includes provisions to insure that the transition to a more competitive system will be fair and equitable to all persons involved. Protection is extended to small communities now receiving air service, and to airline employees.

Mr. Chairman, it is important that the issue of regulatory reform be resolved in this session of Congress. During the past few years, the airline industry, its employees, and the communities it serves have been in a state of uncertainty as to the basic ground rules which will govern the industry. I believe that this time has been well spent in careful study of the issues; but now that we have had adequate time for study and deliberation, it is only fair that this matter be resolved promptly.

Mr. Chairman, the language in H.R. 12611 which amends section 408 of the act of 1958 is intended to subject mergers, and acquisitions to the same scrutiny as would be applied under the Clayton Act and the Sherman Act as if they occurred in a nonregulated industry.

Thus, the effect of this provision in H.R. 12611 is to permit those mergers which—even if it would violate traditional antitrust standards—meet a two part test: First, the merger's anticompetitive effects must be found to be outweighed in the public interest by the probable effect of the transaction in "meeting significant transportation needs of the community to be served," and second, the Board must find that "such significant transportation needs may not be satisfied by any reasonably available less anticompetitive alternative." This two-part test, which only comes into play if the transaction has been first been found to violate traditional antitrust tests, is similar to that imposed by judicial interpretation of the Bank Merger Act.

Mr. SNYDER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DON H. CLAUSEN).

Mr. DON H. CLAUSEN. Mr. Chairman, H.R. 12611, the Air Service Improvement Act, is a reasonable, well-balanced proposal which will allow for meaningful regulatory reform of the aviation industry. The changes being proposed will benefit the carriers as well as the consumer who will receive better service and reduced fares.

The bill is designed to reduce regulation of our aviation industry by redirecting the efforts of the Civil Aeronautics Board and restructuring their authority with respect to routing and fares. The CAB has been moving in the direction of granting certain fare reductions and permissive entry authority. However, our bill will insure that this trend continues and that competition among air carriers is increased.

This bill, Mr. Chairman, also gives congressional recognition to the growing role commuter airlines are playing in our national transportation system. The commuter airlines have the flexibility of equipment that will permit this important segment of our air transportation system to really make an unprecedented high level of service to people in both urban and rural America.

Our commuter airlines demonstrate clearly the need for and importance of small business in our free enterprise system. It is appropriate now that we move ahead to remove the restrictions that have limited their ability to serve their passengers.

The provisions of the bill have been outlined by our distinguished chairman, the gentlemen from California (Mr. JOHNSON and Mr. ANDERSON), but I think it is important to reiterate that the bill will change from 30 to 56 the number of seats on commuter aircraft to allow them to take advantage of more efficient aircraft. The bill also permits the establishment of joint fare agreements between commuters and certificated carriers—a change which we estimate could save travelers up to $34 million per year and benefit commuter airlines at the same time.

I am excited about this bill. I am excited about the future of aviation.

I have long advocated an intermetropolitan area STOL transportation system.

Over 70 percent of our air travel is between communities of 500 miles or less.

The experimental STOL aircraft are now flying.

The next 10 years will see a commercial STOL configuration serving these communities with super quieter and cleaner aircraft. This serves as a real tribute to the work of this committee.

The bill also removes the prohibition against subsidies for commuters in markets that cannot fully support air service. This, in my judgment, will eventually strengthen the commuter airlines and, through lower costs, save the taxpayers significantly.

Finally, the bill permits commuter airlines to participate in the loan guarantee program which will improve air service to smaller communities and rural areas.

The legislation includes a sunset provision providing that the CAB will terminate on December 31, 1982. This provision will enable us to thoroughly review the performance of the CAB after a reasonable time and will allow for its abolishment or modification if we find it has outlived its usefulness or deviated too far from the course we are setting today with this legislation.

The sunset concept should apply to all Federal agencies. The regulatory powers of these bodies have gotten out of hand. The Congress can reverse this erosion of power by not giving each agency a limitless existence. Periodic review of the agency's reason for being will force them to remain responsive to congressional directives and will prevent the kind of arrogant abuse of power demonstrated recently by a number of agencies and departments.

The general approach of this legislation is regulatory reform with the idea in mind of stimulating competition to the betterment of the industry and the air traveler. This is a healthy approach which will result in many innovations. Excessive regulation such as has existed in the past can only stifle an industry such as aviation which requires such substantial financial investments. This overregulation has caused declines in profits which in term creates a lack of confidence by investors. This legislation will stimulate new profits and greatly strengthen the industry.

I urge my colleagues to support this bill.

Mr. ANDERSON of California. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Chairman, I rise in support of H.R. 12611, the Air Service Improvement Act of 1978. This is a well-balanced, reasonable proposal for providing meaningful regulatory reform in the aviation industry.

The United States has the finest and safest aviation system in the world, and it has generally performed outstanding service for the American traveling and shipping public. Nevertheless, until just recently, the industry has been highly regulated since its inception, and that regulatory system has not always been in the best financial interest of either the carriers or the consumers.

I have long said that much of what needs to be done to improve the regulatory system could be done under inherent powers of the Civil Aeronautics Board in existing law. The recent activities by Chairman Alfred Kahn and the other members of the CAB have proved my views to be correct.

However, CAB Chairmen come and go, and without an aviation deregulation bill, we will have no guarantee that succeeding chairmen would not return to the bad old days in which competition was stifled and sacrificed for protectionism. There are also some recent CAB actions which probably need clear legislative authority to avoid protracted litigation.

Until recently, the primary effect of the CAB's authority to regulate prices and entry has been to transform price competition into service competition; and by offering more and more service to keep up with competitors, a carrier incurs ever higher costs. This makes no economic sense and certainly is not in the interest of the traveling public.

A secondary effect of CAB regulation has been to restrain aggressive competition among existing carriers. Such lessening of essential competition has been exacerbated by CAB's refusal to authorize the entrance of new trunk carriers who might be expected to bring innovative ideas and efficient operations to the industry.

Regulation has generally suppressed basic competition so that in the short run all airlines are in a better position. Inefficient carriers are kept in business when they might otherwise fail; efficient firms obtain higher profits than they otherwise would under price and entry competition. Such a system fails to serve anyone well in the long run.

Consumers, passengers, present and past administrations, economists, and some industry leaders have called for changes in the present CAB system and Chairman Kahn has taken the necessary steps to bring about preliminary deregulation. The success of those steps, both in terms or lowered costs for the traveling public and the profit statements of the airlines, has created a favorable atmosphere in which to legislate permanent deregulation of the aviation industry.

Congress has the opportunity, through passage of this legislation, to make the necessary permanent changes in the existing restrictive, snail-paced regulatory system under which the industry has been operating.

This bill is an orderly, rational reform and a relaxation of the restrictive and economically stifling system which now exists. It does not throw out the baby with the bathwater. I move prudently, not precipitously, to deregulation.

We have, in this bill, included such features as a new, pro-competitive charter for the CAB, a new system of greatly expedited and simplified administrative decisionmaking procedures, substantial flexibility to carriers in setting fares, opportunity to use dormant or unused route authority, a transition period of subsidized service for small communities, encouraging commuter air carriers and an experimental "free entry" program which will give us an opportunity to understand and evaluate just what effect discretionary market entry by carriers will have on the entire system.

Unlike the companion bill passed by the other body, this bill is logical, phased transition without the potential for disruption and chaos.

Most importantly, this bill contains a vital sunset provision which I introduced, which would put the CAB out of existence on December 31, 1982. This is true deregulation, unlike the bill passed by the other body. This bill does not replace one form of regulation for another; this sunset provision will actually dissolve the CAB at the end of 7 years. Between now and 1982, there will be an opportunity for a gradual transition to a less regulated, and then unregulated, environment.

The time has come to move decisionmaking to the managerial boardrooms of the industry and away from the lawyers, economists, and bureaucrats at the CAB. Free enterprise has served our country well, and it is time to move the airline industry into a more competitive arena where it will have an opportunity to grow in a period of healthy and profitable competition.

Mr. Chairman, this is such a good bill that I predict that it is going to pass the House of Representatives next week by a vote of more than 350 Members voting in favor, and only a very few misguided souls voting against.

Mr. SNYDER. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma (Mr. EDWARDS).

Mr. EDWARDS of Oklahoma. Mr. Chairman, I thank the gentleman for yielding. I just want to compliment the people on both sides of the aisle who played a role in bringing this bill to the floor. For a very long time now we have been moving in the direction of increasing regulation of business in this country, with detrimental results. I think this is a very healthy step in the right direction.

I happen to serve as treasurer of the American Conservative Union, which has taken an active role in helping to push this legislation. We are very pleased that it has reached this point, and I hope, along with the gentleman from Georgia, that it will overwhelmingly pass the House.

Mr. ANDERSON of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. ERTEL).

Mr. ERTEL. Mr. Chairman, this legislation arrives with widespread bipartisan support. Two Presidents have aggressively sought its passage. Two successive CAB Chairmen have said that new instructions for the Board are essential. In addition, an array of organizations including the American Conservative Union, the National Association of Counties, the League of Cities, Congress Watch, Common Cause and the National Association of Manufacturers have all announced their support for airline regulatory reform.

For years we have known that the 1938 act governing air transportation was inadequate. It was designed for a fledgling, unsophisticated air transportation system. As commercial air transportation has matured, however, the existing regulatory network has come more and more to retard rather than nurture the development of air service in this country. The 1938 act is now little more than a relic of times past. But it is a relic that leaves consumers with high prices and airline managers and stockholders with little incentive and even less room for creative corporate action.

Regulation under the 1938 act is more strangulation than regulation. Existing route application procedures are costly and time consuming. In one instance alone, the Louisville air board spent over a half million dollars to argue the case for new routes involving Louisville. Dormant authority is also a fact of life under the existing system. Eighty-four percent of all markets involve carriers authorized to serve the market, but not currently providing that service. Yet, there exists no fixed procedure to provide for speedy replacement service in these markets.

H.R. 12611 takes some very important steps to remedy these and other problems. The new law explicitly recognizes the desirability of low cost service. It improves the standard and expedites the procedures under which the Board will consider applications for new route authority. The legislation also includes provisions that will help remedy the problems associated with unused authority. Other sections of the bill guarantee service to small communities and provide much needed focus for the CAB subsidy program.

It is a good bill, but it is a bill that we can improve here today. Many of the members of the Aviation Subcommittee are fond of saying that we have the finest air transportation system in the world. I agree with them. And that is why I think it is important that the Congress shape legislation governing the airlines that matches the quality of our air transportation system.

I will offer a series of amendments. Each is designed to let the traveling public enjoy the benefits of our excellent air service network. And each is designed to allow many of the Members of this body to act in accordance with their articulate statements on behalf of free enterprise and against overly intrusive Federal regulation of business. With the winds of regulatory reform came a procompetitive Civil Aeronautics Board. Chairman Alfred Kahn has led the Board toward less restrictive policies and elimination of redtape and delay. The Board's recent departures have helped provide bright economic times for the airline industry. Net income for the fiscal year ending June of 1978 for both the larger and smaller carriers was twice that of the previous year.

It is time for the Congress to catch up with the CAB. There is no guarantee that future Boards will continue the current Board's policies. Nor is there any assurance that the Board's recent decisions under the 1938 act will be upheld in court. It is our responsibility to shape legislation to insure that competition has a firm and enduring place in our air transportation system.

However, there are in this proposed act, a series of special interest protections. These protections protect some of the most profitable carriers in the United States against competition. Why? I believe we are entitled to those answers and I trust those answers will be insufficient. I hope the committee will adopt my amendments to make this bill the finest bill to protect the finest air transportation system in the world.

The question is now whether we will meet our responsibility by approving them.

Mr. ANDERSON of California. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from California (Mr. MINETA).

Mr. MINETA. Mr. Chairman, it was not so long ago that the proponents of aviation regulatory reform were a lonely minority who were, in the eyes of their opponents, tilting at windmills. As Members gradually became more familiar with this extremely complex matter, and as the CAB began to institute some procompetitive policies, it became clear that we were not wild-eyed radicals trying to create chaos in the aviation industry. When the airlines and their passengers began to reap the profits of increased competition—as we predicted they would—they began to come around to a position in support of reduced regulation and increased competition.

One of the issues that sparked the movement toward regulatory reform and resulted in the bill before us today, was the considerable difference in cost and service we could see between federally regulated air carriers and the intrastate carriers, such as California's own Pacific Southwest Airlines, and Texas' Southwest.

What became readily apparent to us as we studied this matter was the fact that regulation controlled by the CAB was, in effect, strangling the aviation industry. The anticompetitive regulation led to costly, time-consuming procedures. frivolous and discriminatory decisions by CAB; service competition instead of price competition; low load factors; extravagant and excessive service; and unnecessarily high fares.

It was our firm belief that increased competition, higher load factors, and reduced costs of doing business with the CAB would stimulate the industry. What we have witnessed in the past year and one-half is the remarkable result of increasing competition. The turnaround in the aviation industry is a direct result of congressional attention, and recent CAB decisions promoting lower fares and new entry to the extent allowed by current law.

The Civil Aeronautics Board has made great strides within the confines of their current law. We need this new legislation in order to back up those decisions to guarantee that a future Board will not be able to return to the anticompetitive era we have just suffered through, and to insure that airlines and their passengers will continue to reap the benefits of increased competition.

I am sure my colleagues will be discussing the various provisions of the legislation developed by the committee. I urge my colleagues to evaluate this bill in light of the advances we have witnessed recently, and to give this legislation their strong support.

Mr. ANDERSON of California. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. SNYDER. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. ANDERSON of California. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the Chair, Mr. ROSENTHAL, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 12611) to amend the Federal Aviation Act of 1958 to improve air service and provide flexibility in air fares, had come to no resolution thereon.

SECOND WAR WE'RE LOSING? MONETARY QUESTIONS

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Speaker, since 1971, when the dollar fell as the linchpin of the international monetary system, the world has experienced continuous instability. This has affected all people everywhere, and not least people here in the United States—who have been beset by recession, inflation and all the woes that follow in their train.

The startling thing is that almost no one has been asking questions about what we should do now. How do we restore stability—for it was stability that brought forth the world's miraculous growth in the forties, fifties, and sixties.

How do we restore the integrity of the American dollar? For it was the integrity of the dollar that gave impetus to our trade, and made our currency the true basis of much of the world's commerce.

How do we restore confidence in our own country? For much of that confidence in American leadership rested on the strength of our currency.

How do we deal with the emergence of a unified European currency? EMC and EMF for the European Economic Community has agreed in principle to create such a currency, and the United States has at least implicitly agreed to this—but what are the implications for ourselves?

We have in fact seen a vacuum in monetary leadership for the past 9 years. The United States abandoned its role, and nothing replaced it. Now it appears that Europe is ready to act on its own to fill this vacuum. Will this be a blessing or a curse? The question needs at least to be asked.

The declining value of the dollar means more than discomfort to Americans. It has had an impact all over the world. Just what has this impact been on the prospects for developing countries? What has it meant for banks that have great volumes of dollar loans abroad—loans that are depreciating in value?

Most of all, what does the instability of the dollar mean to our position of leadership—political and economic—in the world? Has our credibility declined with our currency? If it has, should we not be concerned?

Questions like these need to be asked. They are not questions that will excite much interest, because they deal with difficult concepts. But it is the difficult concepts that shape the course of history. We cannot afford the luxury of continued inaction and disinterest. There comes a time when benign neglect cannot be tolerated.

Like Vietnam, are we losing this war? Or, is it lost?

ANOTHER BIG BUSINESS LOBBY FOR THE LEFT

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ASHBROOK. Mr. Speaker, while middle income Americans from coast to coast rise up against high taxes and big government, big business liberals continue their fight to create an American welfare state on the British model. The Businessmen's Committee for the Federalization of Welfare insists that the Department of Health, Education, and Welfare, which already spends far more money than does the Defense Department, is too small. The committee demands that all welfare in this country be turned over the HEW, which admits to "losing" at least $6 billion in a single year, because today "the system is inefficient."

We are all aware that HEW's handling of its billions is a national disgrace, from medicare ripoffs to food stamp cheating to ineligible recipients of every kind of aid. It is therefore humorous, if a bit sad, to read this excuse given by the Businessmen's Committee for the Federalization of Welfare for turning all welfare over to HEW:

> Regulations are so complex and cumbersome that the system is inefficient, unfair to many recipients and extremely difficult to keep free of ineligibles.

This group has the authority to state that we are to get rid of these "complex and cumbersome rules" by turning the welfare system over to HEW, the most complex, cumbersome and inept governmental organization in this country today.

Obviously, no literate adult believes that the entire welfare system would be made more efficient by turning it over to HEW. Why, then, do these 131 businessmen demand that this be done? The real reason is indicated by the fact that one of the three organizers of this committee is William M. Ellinghaus of American Telephone & Telegraph. I recognized his name from a telegram he sent me in January as an official of the National Urban Coalition, inviting me to a $150 a plate dinner to support that organization.

The National Urban Coalition is a liberal pressure group which has been fighting for racist job quotas, bigger Federal spending, and a British-type welfare state for almost 10 years. Its founder, John Gardner, has made a career of using big business money and influence to support leftwing causes. He was an official of the Carnegie Foundation from 1955 to 1965. In 1964 he organized a so-called "Republicans for Johnson and Humphrey," which made some of the most vicious and unfounded attacks on Senator GOLDWATER in what has become famous as a classical smear campaign. As a reward, Gardner was appointed Secretary of Health, Education, and Welfare by Johnson in 1965. In that position, Gardner made both busing and racist minority hiring practices an integral part of Federal policy.

As soon as Johnson left office, Gardner mobilized his long list of big business contributors and sponsors to form the National Urban Coalition. His aim then was the same as that of Ellinghaus today: A British welfare state system in the United States. But when it began this campaign, the National Urban Coalition did not bother to make the present rather silly excuse that a national welfare system would cost less. Gardner openly demanded a tax increase to support his scheme, just as it will take a huge tax increase to support a federalized welfare system today.

In spite of my warnings, the National Manufacturers' Association, whose smallbusiness membership usually keeps it pretty conservative, endorsed Gardner's welfare-state proposal, known as the family assistance plan. The NAM withdrew its support after the bill had passed the House, but it was the Senate which wisely defeated the plan. Gardner's long list of big business liberals supported it to the bitter end. As you can see from the list of businesses supporting the Businessmen's Committee for the Federalization of Welfare, which I include below, there are still plenty of business advocates of an American welfare state.

I described the Urban Coalition and Mr. Gardner on the floor of the House on July 16, 1970. This description both of the organization and of the man remain valid today:

> Mr. ASHBROOK. Mr. Speaker, one of the biggest lobbies for massive Federal spending is the so-called urban coalition headed by John W. Gardner. This group has been effectively mounting a crusade for heaping more and more taxes on the back of the already overburdened American taxpayer. Through its spokesman, Mr. Gardner, it has come out against giving any tax break to the average American and has called for massive doses of socialism and spending to cure every conceivable ill.

In that same 1970 speech, I quoted Mr. Gardner's demand for higher taxes to support his welfare state schemes, made on February 3, 1970:

> We must act to increase Federal revenues. As a starter, I would suggest that the remaining 5 percent of the Federal income tax surcharge should not, under any circumstances, be allowed to lapse in June.

This was the man whose federalized welfare scheme the National Manufacturers' Association supported that same year.

Nothing makes more obvious the purely political motivation of the Businessmen's Committee for the Federalization of Welfare than their fake appeal to efficiency. The same National Urban Coalition of which Ellinghaus is an official was demanding an increase in taxes to support this same kind of scheme in 1970. Now, facing the tax revolt, the big business liberals try to sell this boondoggle on the grounds of efficiency.

What these people want now is exactly what they wanted then: A vast new Federal welfare program, modeled on the welfare state system which has wrecked the British economy.

The Gardners and Ellinghauses and their list of big business backers, most of whom I fear do not really know the true nature of the motives of their leaders, perform the same function for liberal domestic policies that Robert McNamara, Cyrus Vance, and other big business-backed liberals of their ilk perform for the left in foreign policy. From the Rockefeller, Ford, and Carnegie Foundations to the long lists of business executives who back the Atlantic Council and groups to promote surrender of the Panama Canal, recognition of Cuba and closer ties with the Chinese and Soviet dictatorship, big business money and influence remain the most potent force in helping liberals and leftists achieve their goals, both in this country and abroad.

Here is the list of cosigners of A.T. & T.'s Ellinghaus' boondoggle:

BUSINESSMEN'S COMMITTEE FOR THE FEDERALIZATION OF WELFARE

Barnes, Wallace, President, Barnes Group, Inc., Bristol, Conn.

Barnhill, Howard E., President & CEO, North American Life & Casualty, Minneapolis, Minn.

Bates, Edward B., President, Connecticut Mutual Life Insurance Co., Hartford, Conn.

Beach, Morrison H., Chairman & CEO, the Travelers Corporation, Hartford, Conn.

Beretta, David, Chairman & President, Uniroyal, Inc., New York, N.Y.

Berlinger, George F., George Berlinger Investments, New York, N.Y.

Block, Joseph L., Honorary Director, Inland Steel Co., Chicago, Ill.

Brennan, Joseph C., Chairman, Emigrant Savings Bank, New York, N.Y.

Brennan, William R., Jr., President, Harlem Savings Bank, New York, N.Y.

Brittain, Alfred, III, Chairman, Bankers Trust Co., New York, N.Y.

Bronfman, Edgar M. Bronfman, Chairman, Joseph E. Seagram & Sons, Inc., New York, N.Y.

Brouphy, Theodore F., Chairman & CEO, General Telephone & Electronics Corp., Stamford, Conn.

Butler, Marshall D., President, AVX Corp., Great Neck, N.Y.

Byrom, Fletcher L., Chairman, Koppers Company, Inc., Pittsburgh, Penna.

Carroll, Thomas S., President, Lever Brothers Company, New York, N.Y.

Clark, Howard L., Chairman, American Express Company, New York, N.Y.

Cohen, Alan N., President & CEO, Madison Square Garden Corp., New York, N.Y.

Cohen, Jerome M., President, Williams Real Estate Co., Inc., New York, N.Y.

Conklin, George T. Jr., President Guardian Life Insurance Co., New York, N.Y.

Conway, E. Virgil, Chairman & President, The Seamen's Bank for Savings, New York, N.Y.

Conzen, W. H., President, Schering-Plough Corp., Kenilworth, N.J.

Craft, Wardell C., President, Wright Mutual Insurance Co., Detroit, Mich.

Crawford, Morris D., Jr., Chairman, The Bowery Savings Bank, New York, N.Y.

Crown, Lester, President, Material Service Corp., Chicago, Ill.

Diebold, John, Chairman, The Diebold Group, Inc., New York, N.Y.

Durst, Seymour B., President, The Durst Organization, Inc., New York, N.Y.

Dyson, Charles H., Chairman, The Dyson-Kissner Corp., New York, N.Y.

Eisner, Richard A., Managing Partner, Richard A. Eisner & Co., New York, N.Y.

Ekblom, Harry E., Chairman & CEO, European-American Banking Corp., New York, N.Y.

Ellinghaus, William M., Vice Chairman, American Telephone & Telegraph, New York, N.Y.

English, James F., Jr., Chairman, CBT, Hartford, Conn.

Farkas, Robin L., Vice President, Alexander's, Inc., New York, N.Y.

Faulkner, E. J., President, Woodmen Accident & Life Co., Lincoln, Nebr.

Feldman, Jacob, Chairman, Commercial Metals Co., Dallas, Texas.

Filer, John H., Chairman, Aetna Life & Casualty, Hartford, Conn.

Frank, Zollie S., President, Z. Frank, Inc., Chicago, Ill.

Gelb, Arthur, President, The Analytic Sciences Corp. (TASC), Reading, Mass.

Gelb, Harold S., Managing Partner, S. D. Leidesodrf & Co., New York, N.Y.

Gerken, Walter B., Chairman, Pacific Mutual Life Insurance Co., Newport Beach, Calif.

Gross, Arthur, President, The Clam Box, Inc., Cos Cob, Conn.

Halas, George S., Chairman, Chicago Bears Football Club, Chicago, Ill.

Hall, Floyd D., Chairman, Eastern Air Lines, Inc., New York, N.Y.

Hawley, Philip M., President, Carter Hawley Hale Stores, Inc., Los Angeles, Calif.

Hazen, W. Richard, Executive Vice President, First Jersey National Bank, Jersey City, N.J.

Heineman, Ben. W., President, Northwest Industries, Inc., Chicago, Ill.

Heiskell, Andrew, Chairman, Time, Inc., New York, N.Y.

Helmsley, Harry B., President, Helmsley-Spear, Inc., New York, N.Y.

Herrmann, Mark J., President, Mark Buick Corp., Yonkers, N.Y.

Holman, M. Carl, President, National Urban Coalition, Washington, D.C.

———, Edward A., Jr., Chairman, United Jersey Bank, Hackensack, N.J.

Kelvin, Zel, President, United National Corp., New York. N.Y.

———, Tom, President & CEO, United States Trust, New York, N.Y.

Klutznick, Philip M., Partner, Klutznick Investments, Chicago, Ill.

Kolin, Oscar, Chairman, Helena Rubinstein, Inc., New York, N.Y.

Koven, Irving, President, Ambassador Construction Co., Inc., New York, N.Y.

Lachman, Lawrence, Chairman, Bloomingdale's, New York, N.Y.

Lefkowitz, Nat, Co-Chairman, William Morris Agency, Inc., New York, N.Y.

LeFrak, Samuel J., Chairman, LeFrak Organization, Inc., Forest Hills, N.Y.

Light, Charles F., President, Buffalo Area Chamber of Commerce, Buffalo, N.Y.

Llewellyn, J. Bruce, President, FEDCO Food Corp., Bronx, N.Y.

Loeb, John L., Senior Partner, Loeb, Rhoades & Co., New York, N.Y.

Luce, Charles F., Chairman, Consolidated Edison Co., of New York, Inc., New York, N.Y.

Luntey, Eugene H., President & CEO, The Brooklyn Union Gas Co., Brooklyn, N.Y.

Mahoney, David J., Chairman & President, Norton Simon, Inc., New York, N.Y.

Mansfield, C. F., Group Exec. Vice President, Marine Midland Bank, New York, N.Y.

Margolis, David I., President, Colt Industries, Inc., New York, N.Y.

Marshall, Alton G., President, Rockefeller Center, Inc., New York, N.Y.

Martin, C. Virgil, Chairman, Finance Committee, Carson Pirie Scott & Co., Chicago, Ill.

Mattbael, Frederick C., Jr., Chairman, Arco Industries Corp., Birmingham, Mich.

May, William F., Chairman, American Can Co., Greenwich, Conn.

Merck, Albert W., Director, Merck & Co., Inc., Rahway, N.J.

Mitchell, Joseph N., President, Beneficial Standard Corp., Los Angeles, Calif.

Morrow, George L., President, The Peoples Gas Light & Coke Co., Chicago, Ill.

Murphy, Austin S., Chairman & President, East River Savings Bank, New York, N.Y.

McAllister, James P., Chairman, McAllister Brothers, Inc., New York, N.Y.

McGrath, John P., Chairman, The East New York Savings Bank, Brooklyn, N.Y.

McSwiney, J. W., Chairman & CEO, The Mead Corp., Dayton, Ohio.

Nathan, Robert R., President, Robert R. Nathan Associates, Inc., Washington, D.C.

Neal, Alfred C., Consultant, CED, New York, N.Y.

Newell, Robert L., Chairman & President, Hartford National Bank and Trust Co., Hartford, Conn.

O'Brasky, David, Publisher, Esquire Magazine, New York, N.Y.

O'Leary, James J., Vice Chairman, United States Trust Co. of New York, New York, N.Y.

Patterson, Ellmore C., Chairman, Morgan Guaranty Trust Co. of New York, New York, N.Y.

Peck, Clair L., Chairman, C. L. Peck Contractor, Los Angeles, Calif.

Pepper, Richard S., Chairman, Pepper Construction Co., Chicago, Ill.

Platten, Donald C., Chairman, Chemical Bank, New York, N.Y.

Powers, Robert A., Chairman & CEO, Smith Barney, Harris Upham, New York, N.Y.

Pratt, E. T., Jr., Chairman, Pfizer, Inc., New York, N.Y.

Rapaport, Robert M., President & CEO, SuCrest Corp., New York, N.Y.

Rees, William M., Chairman, The Chubb Corp., New York, N.Y.

Richards, Bernard, President, Alpha Portland Industries, Inc., Maspeth, N.Y.

Richards, Roger C., President, Metropolitan Savings Association, Farmington Hills, Mich.

Roberts, Melvin J., Retired Chairman, Colorado National Bank, Denver, Colo.

Rockefeller, David, Chairman, The Chase Manhattan Bank, N.A., New York, N.Y.

Rohatyn, Felix G., General Partner, Lazard Freres & Co., New York, N.Y.

Rooney, Francis C., Jr., President, Melville Corp., Harrison, N.Y.

Rose, Daniel, Partner, Rose Associates, New York, N.Y.

Rosin, Alex G., Chairman, Book-of-the-Month Club, Inc., New York, N.Y.

Ross, Steven J., Chairman, Warner Communications, Inc., New York, N.Y.

Rothschild, Charles J., Jr., President, Campus Sweater & Sportswear Co., New York, N.Y.

Rugger, Gerald K., President, Home Life Insurance Co., New York, N.Y.

Salomon, William R., Managing Partner, Salomon Brothers, New York, N.Y.

Schiff, John M., Partner, Kuhn, Loeb & Co., New York, N.Y.

Schmidt, Benno C., Managing Partner, J. H. Whitney & Co., New York, N.Y.

Schulman, S. J., President, The Westchester County Association, Inc., White Plains, N.Y.

Schulman, Samuel, President, First Northwest Industries of America, Inc., Los Angeles, Calif.

Seder, Arthur R., Jr., Chairman & President, American Natural Resources Co., Detroit, Mich.

Segal, Martin E., Chairman, Wertheim Asset Management Services Incorporated, New York, N.Y.

Shinn, Richard R., President & CEO, Metropolitan Life, New York, N.Y.

Siciliano, Rocco C., Chairman & CEO, The TI Corp., Los Angeles, Calif.

Silverstein, Larry A., Partner, Silverstein & Mendik Co., New York, N.Y.

Smiley, Donald B., Chairman, R. H. Macy & Co., Inc., New York, N.Y.

Spoor, T. Richard, Vice Chairman, United States Trust, New York, N.Y.

Staff, George L., President, United Merchants & Manufacturers, Inc., New York, N.Y.

Stanton, Thomas J., Jr., Chairman, First Jersey National Bank, Jersey City, N.J.

Stecker, Robert B., Vice President & General Manager, AT&T Long Lines, New York, N.Y.

Steinberg, Saul P., Chairman and President, Reliance Group, Inc., New York, N.Y.

Terry, Benjamin P., President, Society for Savings, Hartford, Conn.

Tillinghast, Charles C., Jr., Vice Chairman, White, Weld & Co. Incorporated, New York, N.Y.

Tisch, Preston Robert, President, Loews Corporation, New York, N.Y.

Tishman, Robert V., President, Tishman Realty & Construction Co., Inc., New York, N.Y.

Turner, H. S., Chairman, Turner Construction Co., New York, N.Y.

Urstadt, Charles J., Chairman, Battery Park City Authority, New York, N.Y.

Van Fossan, R. V., President & CEO, Mutual Benefit Life Insurance Co., Newark, N.J.

Vogel, John H., President & CEO, National Bank of North America, New York, N.Y.

Wallis, Gordon T., Chairman, Irving Trust Co., New York, N.Y.

Weller, Ralph, Chairman, Otis Elevator Co., New York, N.Y.

Wilde, Frazar B., Retired Chairman, Connecticut General Life Insurance Co., Hartford, Conn.

Willis, Robert H., Chairman and President, Connecticut Natural Gas Corp., Hartford, Conn.

Winkelman, Stanley J., Chairman, Winkelman, Stores, Inc., Detroit, Mich.

Zeller, Robert G., Chairman, F. Eberstadt & Co., Inc., New York, N.Y.

ANOTHER CUBA IN NICARAGUA?

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, it is becoming clearer and clearer every day that the concerted assault against the Nicaraguan Government is designed to pave the way for a Communist takeover in that country—and the emergence of another Cuba in our hemisphere.

This would be a tragedy of major proportions, and I believe that our Government should take every possible step to support the duly elected Government in Nicaragua—as opposed to what would certainly be a Marxist-Communist government. If Nicaragua falls, other Central American governments will be prey for the Communists.

Nicaragua is certainly one of the best friends our country has in Latin America, and the key to maintaining our leadership position there.

Two excellent commentaries on the current serious situation in Nicaragua have appeared over the past 2 days in the Arizona Republic, and I would like to include them at this point in the RECORD:

[From the Arizona Republic, Sept. 10, 1978]

NICARAGUA'S NEIGHBORS FEAR RED TAKEOVER

(By Harold K. Milks)

GUATEMALA CITY, GUATEMALA.—A swing through Central America indicates growing concern and in some areas outright fear that collapse of the Somoza regime in Nicaragua could be a prelude to a pro-Communist takeover of most of this vital region.

Officials in several countries openly stated a belief that there is no middle road for Nicaragua where the church, businessmen, and leftist terrorists have joined forces to oust President Anastasio Somoza, whose family has ruled that country for four decades.

"There are two groups in Nicaragua with power," said a Salvadorian official. "One is Somoza, who depends on his 7,500-man national guard to control the country. The other is the coalition of left-wing terrorists led by the Sandinistas, who have announced that they intend to destroy Somoza and install a Marxist socialist regime similar to that of Cuba. If that happens other areas of Central America will be threatened from the left."

Reaction to the developments in Nicaragua, where terrorists and a 3-week-old general work stoppage threatens the stability of the Somoza regime, is even more acute in Costa Rica, Central America's most prosperous nation but one without a defense force.

For years, Somoza has been bickering with neighboring Costa Rica, charging that anti-Somoza terrorists led by the Sandinista groups maintain training camps there, and infiltrate the national border at will to attack Nicaragua towns and installations.

"We don't deny that some Nicaraguan rebels are using our territory," one Costa Rican official said. "But we do our best with only our national police force available to prevent such actions.

"We don't want the leftists here and should they depose Somoza and then start pressuring us we could only appeal to the United States and the Organization of American States to protect us under our existing defense treaties."

Next to Costa Rica both Guatemala and El Salvador are most vulnerable because of terrorists bands already operating in their countries.

"Central American countries are especially vulnerable to Communist infiltration because of the acute social problems," said a prominent lawyer here in discussing problems likely to arise in the wake of a Communist takeover of Nicaragua.

"It's the old, old story of the poor getting poorer and the rich getting richer, which exists in much of this geographical area. Most of us have not found a solution to development of a middle-class society, in bringing workers, especially agricultural workers, into a situation in which they can do more than achieve a bare living for themselves and their families. And until we do the Communists, who have a persuasive line of propaganda, will find growing support."

Poor markets in cotton, sugar and coffee—the prime crops of Central America—have curbed the ability of even the well intentioned landowners to give the peasants a better deal and ease the pressure of anti-government movements, officials here said. And the individual national governments, most of them controlled by the armed forces or subservient to the oligarchies, have done little to close the gap between the haves and the have-nots in Central America.

Has the Carter government's human rights program being pushed heavily in this area helped ease the activities of terrorist oppositions?

"Probably the idea is good," said a Salvadorean businessman.

"There are millions of people in this region who need help if they are to be kept out of the Communist camp. But they need something more substantial than a slogan from Washington, which means a coordinated program involving both the governments, private business, and assistance from abroad, from the United States. But any such program should have been started 20 years ago, not today."

The foreign ministers of several Central American countries met last week to discuss ways of helping push Somoza out of office.

"They talk about creation of a national government after Somoza is gone," said one observer here. "But guns are what have kept Somoza in power over the years and guns will be the only thing to guarantee a national government when he leaves. If they don't have the guns it will be a walk-in for the left-wing Sandinista rebels, who have the guns and an oblivious willingness to use them."

[From the Arizona Republic, Sept. 12, 1978]

ANOTHER CUBA?

It's no longer neecssary to speculate on what kind of government Nicaragua will have if the Somoza dictatorship collapses.

The Sandanista guerrillas, who startled the world by seizing the National Palace in Manague and holding 1,500 persons there as hostage until their demands were met, make no bones about it:

Their goal is a Communist dictatorship, modeled on Cuba's. And, since they will be the only armed force in Nicaragua if Gen. Anastasio Somoza goes, they will have the power to achieve it.

Tad Szulc, a longtime correspondent in Latin America, recently interviewed the leaders of the Sandanista movement in Panama City, where they were flown after Somoza met their demands, which included the release of 58 imprisoned comrades. Among those he spoke to were Eden Pastora Gomez, better known as "Commander Zero," who led the raid on the palace, and Tomas Borge Martinez, the political and ideological leader of the movement.

In a dispatch to The Washington Post, Szulc reported:

"If they come to power, they said, they would establish a revolutionary state—'Commander Zero' exclaimed at one point that 'there are only two solutions in Nicaragua: the revolutionary way and the counterrevolutionary way'—that would expropriate all Somoza property, nationalize natural resources, and implant social justice along with the establishment of a 'popular and democratic army.'

"The guerrillas left no doubt about their admiration for the Cuban revolution, whose influence is powerful within the movement, and their bitterness toward the United States for its long-standing backing of Gen. Somoza, whose father was installed in the 1920s with instrumental American support."

A Communist Nicaragua would be far more dangerous to U.S. interests than a Communist Cuba because of its geographical position.

It would quickly infect all Central America. Rebel movements with Sandanista ties already exist in El Salvador, Guatemala and Honduras. Costa Rica, the most democratic country in Latin America, has no army, merely a national police force, which would be hard put to cope with a guerrilla force.

If Central America goes Communist, the U.S. can expect trouble in Mexico, where there has long been a good deal of unrest because of mounting unemployment.

It's not a pretty picture.

TOURISM: OUR NATION'S GREATEST ASSET

(Mr. SKUBITZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKUBITZ. Mr. Speaker, I rise today to bring to your attention and to the

attention of all my colleagues a most serious and distressing situation. Through our inaction, through the self-serving, and shortsighted action of self-styled leaders of an industry whose value to the Nation exceeds $100 billion, we are wasting one of the greatest opportunities to reverse the dollar drain and reduce the greatest trade deficit this country has ever known. I refer to the travel and tourism industry.

Over the next several days it is my intent to bring to the attention of this body the sad state of affairs which prevails in this industry, and the incredible shortsightedness of our Department of State and members of this administration who have failed or refuse to recognize the contribution which our fledgling international tourism industry can make to our balance-of-payments deficit. In 1977 alone, foreign visitors contributed over $7 billion to our national economy.

I have divided my presentation into six parts as follows:

First. Background: The players and the crises.

Second. The U.S. Travel Service (USTS): From its creation to this day.

Third. The London office of USTS: Scope of activity, programs, and impact on the community.

Fourth. Impact of closing the USTS office in London: The Embassy position—the trade position.

Fifth. USTS offices worldwide: A recognized need.

Sixth. The Visitors Information Agency: What the United States really needs.

TODAY: THE BACKGROUND

Beginning in 1948, the United States became a nation of world travelers. Backed by universal faith in the strength of our dollar, the American tourist was the most common, if not always the most welcome, sight in virtually every city, town, or village in the world. Few, however, could afford to visit the United States. But now the tables are reversed, the dollar has become one of the cheapest currencies in the free world and we stand on the brink of the greatest travel boom this world has ever seen. The United States offers the best of virtually any activity that the tourist or world traveler is interested in and at the cheapest price available anywhere.

But we are doing nothing to exploit this gold mine. At a time when the travel industry and the administration should be doing everything in their power to exploit and nurture this infant industry, it would seem that everything is being done to destroy the industry and deter the foreign tourist from coming to these shores.

The Department of State with spurious arguments has been attempting to close our tourism offices overseas in the two most enthusiastic source countries for foreign visitors to the United States: England and Japan. Our tourism industry has been fragmented by such self-serving, shortsighted, and partisan organizations as the Discover America Travel Organizations, Inc. (DATO) which have only succeeded in demonstrating their incapacity to represent the industry or develop a coordinated national tourism program. In fact, such organizations as DATO have failed to convey to the Congress and to other elected leaders the urgency and critical importance of a national tourism policy and a national body which is completely unbiased in the trade and dedicated to the promotion of tourism to the United States.

To those who would suggest that we do not need to advertise and promote the United States as a tourism destination, I would point out that there are at least 110 countries from Trinidad to Sri Lanka and Ireland to the Barbados who are competing with budgets far in excess of ours for the same tourist dollar.

Mr. Speaker, my message is clear, and I hope that every Member will convey it to the State Department and to the industry that this is not the time to falter. On the brink of success we must try harder than ever. The following quotation should be engraved over the door of every U.S. travel service office, every travel agent, and over the mantelpiece of every diplomat representing our country overseas:

On the plains of hesitation bleach the bones of countless millions who at the dawn of victory sat down to rest and resting died.

TECHNOLOGY TRANSFER BAN OF 1978

(Mr. MILLER of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of Ohio. Mr. Speaker, the President's recent action canceling the sale of computer equipment to the Soviet News Agency (Tass), ordering that future oil technology sales first be approved by the White House, and then later granting sale of the $144 million plant for making oil drill bits to the U.S.S.R. reveals the intense debate surrounding our trade policy with the Soviet Union and Eastern Europe. It appears there is no coherent, consistent national policy controlling the transfer of technology to these authoritarian governments.

It is long overdue for the Congress to establish an effective mechanism of oversight and control of technology transfer in order to protect the national security and foreign policy interests of the United States. I am happy to announce that several of my colleagues in the House—Mr. ICHORD, Mr. DORNAN, Mr. WOLFF, Mr. PRICE, and Mr. EDWARDS of Alabama—have joined me in introducing a comprehensive piece of legislation to meet this problem.

The bill addresses several major areas. It—

First, bans the transfer to any Communist country—or any other country to which exports are restricted for national security purposes—of goods or technology having any potential military, law enforcement, or intelligence gathering value;

Second, require the President, through his Secretary of Commerce, to notify the Congress of any license or other authority the export control office plans to grant for the export of any good or technology to any Communist country or any other nation designated as a "controlled country";

Third, requires that such a notification must include the name and address of the exporter requesting the license, a description of the goods or technology to be exported, the name of the country and importer wanting the export, and quantity and monetary value of the export;

Fourth, requires the Secretary of Defense to submit directly to the Congress, in conjunction with the congressional notification by the Secretary of Commerce, a military impact statement on those goods or technologies he normally reviews in consultation with the export control office—or, within 21 days of a congressional request, a military impact statement on any license application the Congress deems necessary;

Fifth, requires that such a military impact statement must include a technical analysis of the goods or technology, and an evaluation of its military, law enforcement, or intelligence gathering potential;

Sixth, gives the Congress the authority to veto, within 30 days of continuous session, any license application or other authority for the export of any goods or technology to any Communist country or any other nation designated as a "controlled country";

Seventh, requires that such a congressional veto shall consist of a simple majority disapproval resolution by either House of Congress; and

Eighth, directs the President to take every possible step necessary to initiate and conclude negotiations with our allies to stop the transfer of critical technology to nations designated as "controlled countries."

The need for such legislation is becoming obvious as the free world nations reassess their relationship with the Communist bloc. The original theory behind détente with the U.S.S.R. was to link both sides in trade to reduce tensions and the threat of war.

The hope was that as Moscow became more dependent on the West economically, it would be inclined to reform its totalitarian structure and moderate its military or political objectives in the world. However, continued Soviet actions including the trials of dissidents, repression of human rights, violations of the Helsinki accord, harassing American newsmen, and ventures in Africa should dispel that theory. The Communist war machine keeps growing with no end in sight.

It is obvious the Kremlin does not hold the same view of détente as the United States. The Soviet Bloc leaders are using trade with the West mainly to acquire needed technology to bolster their otherwise deficient economies.

The Soviet Union, in particular, has used this technology to continue its massive buildup of strategic and conventional forces to the point where "rough equivalence" is giving way to Soviet military superiority.

Part of the problem in controlling the transfer of critical technology to the U.S.S.R. is separating what can be converted from peaceful uses to military purposes. The knowledge behind digital

watches can be applied to laser-guided weapons. Machinery that produces circuits in pocket calculators can be used to make guidance components for missiles.

For example, in 1972, the United States sold the Soviet Union equipment and accompanying technology to produce precision miniature ball bearings. The Soviets used this technology to perfect guidance systems used in its multiple nuclear warhead which are now estimated to be able to travel 6,000 miles and hit within 600 feet of a target.

Truck factories designed and constructed by American firms were later modified to produce rocket launchers and military vehicles. Thousands of trucks which took military supplies down the Ho Chi Minh Trail in the Vietnam war were built with Western technology.

The Gorki truck plant—the largest motor vehicle plant in the Soviet Union until 1968—was built in large part by the Ford Motor Co. and the Austin Co. The T–54 tank used in the Vietnam war, as well as against Israel, was built at Gorki.

Approximately 80 American firms have joined a number of West European and Japanese companies in supplying much of the equipment and technology used in construction of the massive, $5 billion Kama River truck plant, located 600 miles east of Moscow. The Kama River plant is the largest truck factory in the world, encompassing 40 square miles complete with auxiliary factories, foundries, and a new city of 500,000. The plant is now scheduled to produce 150,000 3-axle 10-ton trucks annually, as well as 350,000 diesel engines and a large number of trailers and offroad vehicles.

The Kama truck will be far superior to the standard ZIL truck used by the Soviet Army. The Kama River foundry, reputed to be the largest in the world, is located in the same complex and is run by a computer system purchased from IBM. The foundry has the capability to produce both tank engine blocks and tank turrets.

Although the facilities were supposedly built for peaceful purposes, any automobile, truck, or tractor plant can be used to produce tanks, military vehicles, rocket launchers, armored personnel carriers, and troop transports. It can easily be assumed that Moscow will use this new Kama River facility just as it has used the others it has obtained from the West: for military purposes. The Soviet Union is clearly preparing for a "Blitzkrieg" style attack on Western Europe if war ever breaks out against NATO and the Warsaw Pact. To keep their units moving swiftly over long distances, the Soviets need large numbers of heavy trucks to transport munitions, fuel, and other war supplies.

The United States is in its fourth generation of computers and is at least 10 years ahead of the Soviet Union. It is extremely difficult to distinguished between peaceful as opposed to military uses of computer technology. Even first and second generation computers process an incredible amount of information and provide the foundation for modern weapons systems such as ICBM's, ABM's, MIRV's, anti-aircraft systems, radar, satellite-based surveillance, and so on.

Virtually all emerging weapons technologies—including gyros, lasers, avionics, and nucleonics—are in one sense or another dependent on computers. In fact, without computers most modern weapon systems should not be built, integrated, tested, deployed, or operated.

Computer technology in the Soviet Union is almost entirely imported from the West, and literally all significant advances in computer technology have been of Western origin. In the last 4 years U.S. computer and electronic manufacturers have sold the Soviet Union and its satellites over $300 million in computers and equipment.

One of the largest exporters is the Control Data Corp., which has exported to the U.S.S.R. and other Eastern Bloc countries, among other things, its CDC 6200, CDC 6400, CDC Cyber 73, and CDC Cyber 172. In May of 1976 Control Data had pending before the National Security Council a request to sell the Soviet Union its—and this country's—most advanced computer, the Cyber 76. Only a handful of Cyber series computers exist in the world, generally at such military-related agencies as NASA, ERDA, the U.S. Air Force, and the National Security Agency. Though the Soviets proposed to use the computer for "weather analysis" and "earthquake studies," its extensive military applications included nuclear weapons calculations relating to antisubmarine warfare, radar computations capable of intercepting and neutralizing incoming ICBM's, and the production of nuclear warheads.

Thanks to the efforts of Congressmen BOB DORNAN of California and SAM STRATTON of New York and others, the sale was halted only at the last moment, and as a result of congressional pressure.

IBM is also a major exporter to the Eastern Bloc, having sold its 360/50 and 360/65 computers, as well as fourth generation systems such as the IBM 370/145, 370/155, and 370/158. In 1975 the United States sold Aeroflot—the Soviet airline—a $10 million Sperry Univac reservation system comprised of a Univac 1106–II computer with two central processors. While this system will improve the Soviets' ability to process passengers and compete with Western airlines, it will also enhance their ability to transport troops and supplies should Moscow decide to land forces in Eastern Europe or the Middle East. There is really no way to separate the military implications of supposedly peaceful computer technology transfers.

To complicate the problem, the U.S.S.R. is able to obtain sophisticated know-how from American allies. The U.S. heatseeking shoulder-launched "Redeye" antiaircraft missile was sold to Moscow by one of our NATO allies. This technology enabled the Soviets to develop a similar weapon used to destroy numerous aircraft in the Vietnam and Middle East wars.

In 1974 the Soviet Union purchased, with American approval, the RB–211 turbofan jet engine, which powers a number of wide-bodied commercial jets. The engine had been developed by the Lockheed Corp. for their L–1011 with the help of more than $300 million in Government R. & D. funds. It was licensed and built by Rolls Royce in Great Britain. Approval for export was given Rolls Royce by then Secretary of State Henry Kissinger.

Along with the engines themselves, the Soviets purchased the requisite technology for domestic production. While ostensibly for commercial purposes, these engines have obvious military applications.

The Soviets are now extremely anxious to purchase American petroleum technology to speed the development of their Siberian oil and gas fields. While the Soviet Union has relatively few private automobiles, it does need a great quantity of oil to fuel its vast military machine. The Soviet Union, for example, has 50,000 tanks—as opposed to 10,000 in the United States—and 55,000 armored personnel carriers—against America's 22,000. It can be expected that much or most of the fuel produced in Siberia with American equipment will be allocated to military uses.

The jump in Western exports to the Communist countries is staggering. Governments of the Soviet Bloc have set up more than 800 joint manufacturing ventures with the free world in the past decade. By one estimate, the Soviets have purchased nearly 1,000 "turn-key" plants—ready-to-go manufacturing facilities—complete with trained managerial and technical staff.

In 1977, America sold the U.S.S.R. $374 million in machinery while Soviet exports to the United States of equivalent items amounted to barely $3 million. The extent to which Communist governments have been able to secure low-interest, long-term loans from the West for this trade is alarming. The Soviet Union owes the West approximately $20 billion, up from $4 billion in 1973. Total Soviet bloc indebtedness amounts to $60 billion, up from $18 billion 5 years ago.

There is good reason to believe these loans will not be repaid because this enormous debt gives the Kremlin a potential weapon to use to shake the West's financial structure.

The United States continues to hold a technological lead over the U.S.S.R. in most critical areas vital to our national security. But that lead has been diminishing at a rapid rate. In some areas we may already trail.

In 1973, Soviet head Leonid Brezhnev made this startling statement to members of his Politburo and Communist leaders of the Warsaw Pact:

> We Communists have got to string along with the capitalists for a while. We need their credits, their technology, and their agriculture. But we are going to continue a massive military buildup, and by the middle 1980's we will be in a position to return to a much more aggressive foreign policy designed to gain the upper hand in our relationship with the West.

Only if we act now can we prevent this fateful prediction from coming true. It is long overdue to pull the plug and cancel all transfer of critical technology to the Soviet Union. Why should we

feed the bear that wants to destroy our free society?

IOWA STATE UNIVERSITY EVALUATION OF "DIETARY NITRITE IN THE RAT"

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. GRASSLEY) is recognized for 15 minutes.

Mr. GRASSLEY. Mr. Speaker, on August 11, 1978 the U.S. Department of Agriculture and the Food and Drug Administration of the Department of Health, Education, and Welfare issued a statement on nitrites. This statement was issued as a result of the study done for FDA by the Massachusetts Institute of Technology entitled "Dietary Nitrite in the Rat" dated May 18, 1978, with Dr. Paul M. Newberne as the project leader. In my opinion the statement made it obvious that the effects of nitrite are not clear. For example the statement made such qualifying statements as "strongly suggests" and "may increase the incidence." When analyzing the text of the study itself, it is clear why the statement was couched in such qualifying terms. The statement also announced that the study was being placed in the public record for comment.

On August 15, I wrote to Dr. Robert Parks, president of Iowa State University, requesting that he have scientists at the University closely evaluate the nitrite study and provide comment. Dr. Parks and Dr. Lee Kolmer, dean of the college of agriculture, appointed an expert team of scientists representing several disciplines throughout the university. Today I have received a copy of their report which I would like to share with my colleagues. I ask that the report be printed in the RECORD at the conclusion of my remarks.

In recent days we have heard news reports of possible Government actions ranging from an outright ban to a phaseout of the use of nitrites in the processing of meats. Currently the subcommittee in Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry is holding hearings on this issue. Next Tuesday, September 19, 1978, the Subcommittee on Department Investigations, Oversight, and Research of the House Agriculture Committee will also be holding hearing on the nitrite issue. I am a member of this subcommittee and I am looking forward to an opportunity to hear and question the witnesses which will be testifying.

Mr. Speaker, an outright ban or even a phaseout in the use of nitrite as an agent in the processing of meats has broad health, social, and economic implications for livestock producers, meat processors, and the consuming public. In my opinion this is definitely an opportune time for the bureaucrats in Washington to take comments from everyone and consider the overall impact of their action before proceeding in a direction which may not be in the public interest.

DIETARY NITRITE IN THE RAT

Due to the nature of public reaction to the August 11 joint FDA-USDA statement released with the MIT study, a need exists for sound scientific evaluation and comment on the work. Furthermore, since the FDA-USDA is currently assessing "several options" (FDA-USDA joint statement, August 11, 1978) to provide "maximum public protection," it seems appropriate to comment on regulatory action in light of a careful evaluation of the MIT report.

First of all, a review of the joint FDA-USDA statement itself requires comment. On page one, the statement concludes that the mechanism of suggested nitrite-caused tumors is "clearly distinct from that of nitrosamines." No evidence is available to support this statement since the MIT study did not include any nitrosamine analyses of feed components or stomach contents of the experimental rats. It is well known that nitrosamines are most readily formed in acid conditions as would occur in the stomach (Mirvish, S. S. 1975. Formation of N-nitroso compounds. Chemistry, kinetics and *in vivo* occurrence. Toxicol. Appl. Pharmacol. 31:325-351). Nitrosation of food components (secondary amines from protein) in the stomach by nitrite from feed or water could have occurred. The lack of tumors known to be characteristic of some nitrosamines is insufficient evidence to conclude that no nitrosamines were present. Analytical data should have been developed to support or refute this point.

The principal investigator interprets a plateau in the dose-response curve (nitrite-lymphoma) at 1000 ppm as being consistent with a promoting effect (page 13). This plateau was not established statistically yet probably led to the questionable FDA-USDA interpretation of the mechanism being different from that of nitrosamines since the nitrosamines would give a continuous dose-response curve without a plateau.

Neither the author nor the FDA-USDA have pointed out that the data can also be interpreted as consistent with a nitrosamine mechanism. It is plausible that in this test of nitrite "alone," a plateau in the dose-response curve could indicate only that endogenous secondary amines or other similar compounds were more limiting than nitrite in the production of nitroso compounds such as the nitrosamines. A plateau in the dose-response curve for nitrite could be caused by exhaustion of a particular reactant by the 1000 ppm dietary nitrite.

The second point in the FDA-USDA statement that requires comment is also on page one in which 20% of the human dietary nitrite exposure is attributed to cured food. Recent reports (Council for Agricultural Science and Technology Comments—August 1, 1978) show that dietary exposure from cured food is more on the order of 2% of the total. The major source of nitrite is derived from microbiological conversion of various nitrogenous substances to nitrate and nitrite in the intestine. A second source is dietary nitrate (vegetables, etc.) that is converted to nitrite in the saliva. The third source of dietary nitrite is from cured foods and represents much less nitrite than either of the other two.

In addition, the portion of dietary nitrite from cured foods is being reduced (Federal Register 43(143):32136, July 25, 1978—Use of 550 ppm sodium ascorbate required with 120 ppm sodium nitrite for bacon) and other protective mechanisms such as the use of ascorbate supplementation is being implemented. Therefore, human exposure to nitrite from cured food is slight and elimination of this source would remove a very small portion of the total nitrite (nitrate) from the diet.

The initial reaction of the evaluation committee to the MIT study is that the report itself is not written in the format that might be expected of a paper submitted for scientific review. For example, there is no literature review which might have included specific previous work which has suggested no nitrite-related tumor production during chronic feeding of nitrite. Methods of handling animals and animal diets are rather vaguely described and there are some discrepancies between information discussed in the manuscript and that summarized in the tables. This contract report was probably not intended for scientific review by itself. Literature citations, as well as specific descriptions of methodolgy, were probably included in the contract proposal. If this is the case, it would have been very helpful to have included those sections of the contract proposal with the final report for scientific comment.

The specific concerns that arise from review of the report are as follows:

(1) There is some confounding of treatment groups in the handling of animals. In one instance treatment groups are confounded with starting time of the experiment (page 4). Rats were assigned to treatment groups such that any one shipment of rats was utilized for only 4 of the 18 treatment groups. It might have been better to avoid such confounding and assign eight pregnant females from each shipment to each of the 18 treatment groups. In another instance, there is a suggestion of confounding with location. On page 7 and 8, the "illness" experienced by group 13 suggests an isolation from other groups. Likewise, the "infection" of group 1 females (p. 8, section B) is further suggestion of group isolation. If isolation of groups were necessary, it would have been advisable to distribute rats from each of the 18 treatment groups among all locations.

(2) The experimental unit used in this study should be the pregnant female rat. The investigator has treated the individual rat (the offspring) as the experimental unit thus indicating that about 135 experimental units were present for each group (treatment). The report, however, states that each dam was fed the experimental diet during pregnancy, which would make the 34 litters the experimental units for any one treatment. Furthermore, if the offspring were housed and fed in pens (not individually), the pen of rats would be the experimental unit. The proper statistical analysis would be made using the transformed fraction of animals exhibiting tumors in each pen. Identifying the proper experimental unit will not deny the trends that are displayed in the data, but will change the probability level associated with the declared level of significance.

(3) The diets described do not include any indication of when or how often nitrite was added to the formulations. Table 12A documents the well known nitrite instability in both feed and water. The time lapse between formulation and consumption then becomes a concern. There is the possibility, particularly at high nitrite concentrations of detectable nitrosamine formation in the feed before consumption. This was found to be the case in nitrite-spice premixes where nitrite concentrations were relatively high (N. P. Sen, *et al.*, 1974. Effect of additives on the formation of nitrosamines in meat curing mixtures containing spices and nitrite. J. Agr. Food Chem. 22:1125). Consequently, the lack of nitrosamine analyses decreases the scientific value of the data.

(4) Nitrite or nitrate concentrations in the drinking water before any additional amounts were added is another point that is not addressed in the report. Water very often contains some nitrate but there is no indication, in this case, of whether or not the water source was examined for nitrate or nitrite content.

(5) There is a decreased survival of treatment groups on a powered case in diet (groups 13 and 14) both with and without nitrite (page 7). Thus, there is some outside influence affecting these groups that is not clear. The report does not suggest any possible causes for this differential response.

(6) There are some discrepancies between the discussion in the manuscript and the summary data tables. On page 11, the percentage of lymphomas is deciared statistically significant for group 16 when compared to control (group 15). This cannot be duplicated from table 9 using the chi square statistic at $P \leq .05$ Further discrepancies in table 9 includes the total incidence of tumors summed across sites and sexes combined for group 13 where the tabular data indicate a total of 13 and not 12 as reported. Also in table 9, summing over the "control" groups gives a total of 46 (or 45 if the group 13 total is taken as 12) instead of 48 as reported on page 11. Finally, table 4 reports the median age of death for each group which is not in agreement with the 50% survival time reported on page 7.

(7) The term "lymphoma" is used in the report to describe all tumors in table 9. This term is defined by *Dorland's Illustrated Medical Dictionary* as "a general term applied to any neoplastic disorder of lymphoid tissue," and does not distinguish between malignant and benign lymphomas. It is also pointed out in Dorland's dictionary that benign lymphoma is rare, thus, presumably the term "lymphoma" is being used in the report to denote malignant lymphoma. This should be made clear in a report that is released to the public especially since tumors in other organs are discussed as malignant or benign.

(8) The choice of nitrite levels was determined when the objectives of the study were established. However, nitrite levels actually ingested by the human from cured food do not approach the lowest level of supplemental nitrite used in this experiment. Consequently, any estimation of potential risk from cured food, if it does exist, requires extrapolation from high dosage to low dosage and proper interpretation of such an extrapolation. Toxicological studies with food additives commonly utilize high doses which are necessary for statistical evaluation to increase "the power of the test" with relatively small groups of animals. This allows researchers to involve a manageable number of animals (at low doses the required animals might number a million or more) but may produce problems not accounted for in the test (Kraybill, H.R. 1978. Proper perspectives in extrapolation of experimental carcinogenesis data to humans. Food Technology 32(8): 62–64).

Despite the difficulties in evaluation caused by the nature of the report as discussed above, there are trends in the data for increasing lymphoma with increasing dietary nitrite although these trends are not consistent in all groups nor are they consistent with dosage level (dose-response).

It is extremely important in view of the lack of a clear dose-response relationship that this work be very carefully repeated before any precipitous action is taken. This is especially true when one considers the author's own statements which include "While the results do not permit assigning nitrite a proximate carcinogenic role," "Despite the somewhat less than convincing case that nitrite is lymphogenic," "the data are only suggestive" and "the biological significance of nitrite associated lesions of the lymphoreticular system is unclear."

Many considerations must become a part of any final decision on the use of nitrite for curing food. It must be established that nitrite itself is a carcinogen and is not nitrosating some component of the rat diet to form a nitrosamine. This possibility increases with increased nitrite concentrations and could be overcome by low levels of nitrite combined with ascorbate.* Benefits of nitrite usage (anti-botulinal effects and others) must be balanced against whatever risks are determined to be present in the final analysis.

It is imperative that the regulatory agencies base their decisions on unequivocal, sound, repeatable scientific information. Decisions, hastily made, will confound, not resolve, the issue of nitrite as a curing agent.

*Regulations have been established to control nitrosamines in some products. Federal Register 43(143):32136, July 25, 1978.

FORD ROWAN'S TECHNOSPIES—BIG BROTHER INVADING OUR PRIVACY?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, I have had the opportunity to read a new book by Ford Rowan, NBC news correspondent, on the proliferation of sophisticated techniques for invading our privacy. Technospies, which has just been released, discusses how computerized files are kept on the public in both the private and public sector. What is frightening is how this stored information can be used to snoop into our private lives—how we manage our finances, what activities we engage in, who we associate with, and so on. The danger in all this is that whatever facts have been collected on our private lives can be misused to our detriment—job discrimination, for example—much in the same way we have heard of abuses on the part of the IRS, CIA, and FBI.

My interest in this book stems from my drafting of the Privacy Act of 1974, which former Congressman Koch of New York and I brought to the House floor. From such seemingly innocent sources as our bank records, credit files, employment profiles and elsewhere, anyone with the proper access can open our private lives to microscopic scrutiny.

Rowan cites several examples of how dangerous all of this can be. In one case, the son of an elderly Chicago cleaning woman was killed in an automobile accident involving another party. The survivor of the crash, fearing the deceased's mother would sue, obtained a dossier on the mother's driving habits in an effort to use it against her in court. Her record was not only spotless, but she made no attempt to file suit.

Mr. Speaker, the issue raised in Ford Rowan's book can easily affect every man, woman, and child in the United States. Already, the author notes, the underground Mount Weather Station operated by the Federal Preparedness Agency has the potential to assemble data on us from background reports compiled by the Census Bureau, the Social Security Administration, the Armed Forces, and other government agencies.

Mr. Rowan, who has covered the White House and the intelligence-gathering operations of our government for NBC, has emphasized the threat to our privacy from the technological advancements made in the field of computer science.

Technospies is a well-written book; one that I would recommend we, as Members of Congress, should read seriously. The book makes a very good case for further government action to prevent Big Brother, or anyone outside of government for that matter, from having the power to watch our every move.●

SENATOR KENNEDY: "WHY THE NATURAL GAS BILL WON'T WORK"

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. DRINAN) is recognized for 5 minutes.

● Mr. DRINAN. Mr. Speaker, as the Senate prepares to vote on the conference report on the Natural Gas Policy Act of 1978, legislation which may soon be under consideration by the House, it is instructive to carefully and critically weigh the claims made by the bill's proponents.

The choice facing Congress is not between the administration's pricing policy or no policy at all. We should question whether the compromise bill is worth abandoning existing law, which allows the passthrough of production costs and an 18-percent return on equity; whether it is worth the bureaucratic nightmare of creating 23 separate categories of natural gas; whether it is worth the risk of renewed inflation; and whether it is even necessary in view of the 760-percent increase in gas prices over just an 11-year period.

In this regard, I highly commend to my colleagues the following commentary by the senior Senator from Massachusetts (Mr. KENNEDY) which appears in today's Boston Globe:

WHY THE NATURAL GAS BILL WON'T WORK
(By EDWARD M. KENNEDY)

The Senate this week is faced with a most unusual situation. We are being asked to vote for a conference report that even its proponents will not characterize favorably.

No one knows whether this legislation is workable. No one knows what its actual effect will be on the price of natural gas, although it is certain that prices will rise dramatically. And no one knows what its real impact will be on production of gas.

Backers of the legislation argue that the Senate should pass it in order to be on record as doing something—even if that something is enactment of a 100-page, highly ambiguous bill that will have only one sure result: the transfer of billions of dollars from the pocketbooks of consumers into the hands of the oil and gas producers.

Advocates of the bill talk about the symbolism of passage, of the importance of the bill to world confidence in the dollar, about

the need to establish an energy policy regardless of its content. They talk about everything but what is in the bill.

But we owe it to our constituents, who will have to pay the price for this legislation, to look beyond the rhetorical arguments and to examine the fine print of the bill and the most likely results of its enactment.

First let us examine the argument that the bill is needed to shore up confidence in the dollar. The implication of that argument is that speculators in the money markets will believe the legislation will reduce our domestic consumption of energy and thereby our dependence on foreign imports.

But the fact is that increased prices for natural gas will force consumers to switch to alternative fuels. And in many cases that alternative fuel will be oil—imported oil.

The proponents also argue that higher prices are needed to discourage consumption. Yet American consumers have already been subjected to energy price increases as great or greater than the rest of the industrialized world. In New England, for example, energy costs went up 125 percent between 1970 and 1976; New Englanders have been subjected to price increases and have made dramatic energy savings. Further prices increases will not substantially add to the savings, but will fall most heavily on those who have already made the greatest effort to save—the poor, the elderly, small businesses and people on fixed incomes.

Nor is there any reason to believe that this measure would increase the domestic supply of natural gas. Total, immediate deregulation of natural gas would increase domestic supplies by only about five or six percent. Any increased supplies resulting from this bill, which does not require immediate decontrol, would be marginal at best.

Let us now take a look at the bill itself. Even a quick glance indicates why its backers are so reluctant to talk about it. It is a regulatory monstrosity. The bill would create 23 separate categories of prices for various types of natural gas. The cost of the regulatory nightmare that will be created as a result of the need to determine which gas falls into which category will be enormous. It will create the need for a huge new federal bureaucracy and will be a boon only to the lawyers who will have a field day battling the hundreds of court suits that will result.

Industrial consumers will be faced with uncertainty about what price they will pay and consequently have expressed strong opposition to the pricing provisions of this bill.

Moreover, these pricing provisions may well accelerate the movement of industries from the northern industrial states to the producer states of the South and Southwest where the pricing provisions would not be applicable.

In short this bill won't work. It is simply too complicated and leaves open too many questions that will have to be resolved in the courts. Nor is there any evidence to support the argument that the bill would ease the energy crisis, reduce imports by one drop or produce even a single additional cubic foot of natural gas.

The fact is we already have in place a mechanism for increasing prices of natural gas, if there is a need for such an increase. If gas located in inaccessible places, in shale or deep in the ground, can only be recovered at a higher price, the existing rules of the Federal Energy Regulatory Commission allow it to establish a higher price for such gas.

I do not buy the argument that Congress must act only to prove that it can. There are a number of areas where we can move, and already are moving, to ease the energy crisis—by promoting conservation, by encouraging the use of existing alternative energy sources and by developing solar and geothermal power.

If Congress can produce a bill to change the pricing regulations of natural gas in such a manner that it will clearly improve the energy situation without severe economic dislocations, I will support it.

But this bill does not do that. It leads us into a wilderness of uncertainty where the dangers may well be even more ominous than those we face today, and where alleged benefits certainly do not justify the clear risks involved.●

M. LEE JENKINS, WELL-KNOWN COSMETOLOGIST TO BE HONORED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. LEGGETT) is recognized for 5 minutes.

● Mr. LEGGETT. Mr. Speaker, this Saturday night, friends, family, colleagues, and admirers of Mrs. Margaret Lee Jenkins, will gather in Solano County to salute a remarkable career. M. Lee, as she is known to all, will be honored at a testimonial dinner inspired by her students, a rare honor, indeed.

Mrs. Jenkins is a nationally known authority on cosmetology and cosmetology instruction. She is a coauthor of the "Prentice Hall Textbook of Cosmetology," a book accepted throughout the United States as the basic text for both high school and junior college students. Additionally, she collaborated with Rosemary Falkner and wrote an instructor's manual to accompany the text book which is widely regarded as a fundamental reference book for all cosmetology instructors.

M. Lee took her initial cosmetology training in Ohio and subsequently worked in Honolulu and San Francisco. For a while, she worked at the Garfinckel's in the old Statler Hilton here in Washington, D.C.

After teaching at Laney College in Oakland and Contra Costa College, she joined the faculty at the Vallejo Junior College in 1964. In addition to her own contributions as a cosmetologist, she has trained hundreds of expert cosmetologists through the teacher training program she pioneered at Solano Community College. She is known as a strict taskmaster and all students who graduate from her program have the tools to be excellent instructors themselves.

M. Lee has been a regular participant in summer workshops at Lake Arrowhead for selected cosmetology instructors developed under the auspices of the University of Southern California. The workshops have served to improve the teaching skills and knowledge of instructors from throughout the Western United States. M. Lee's contributions have been a central feature of these events.

As the direct result of the increased level of professionalism engendered by M. Lee's efforts, courses are now offered at USC for credit for cosmetology instructors. The University of California has followed suit and now offers courses for credit also.

M. Lee has helped high school students with classes on personal grooming, conducted all day programs for the Nevada Vocational Education Convention, and helped a number of charities with her cosmetology skills.

Fortunately, Saturday's gathering is not a retirement party. M. Lee has many more years to contribute her unique gifts to her students and colleagues in northern California. Her accomplishments are significant thus far in her career and we all join her in wishing her well in the years to come.●

THE OCEAN'S BOTTOM IS STILL MORE IMPORTANT THAN THE MOON'S BEHIND

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 5 minutes.

● Mr. ALEXANDER. Mr. Speaker, the energy crisis has caused many Americans to think about the oceans. Industry has begun to move offshore in its search for oil and gas that is needed to maintain the standard of living to which we Americans have become accustomed. As other Western industrial nations have joined in the search for energy and other commercial minerals on the ocean floor, we have become aware of the need for a comprehensive national ocean policy. Indeed, the economic survival of the Western World is becoming increasingly more dependent upon the ocean for food, as well as for energy.

Recently I read a copy of a speech that was delivered by Don Walsh, director, Institute of Marine and Coastal Studies, University of Southern California, at the sea power forum that convened on March 4, 1978. His text—"America's Sea Power Sickness—Cause and Cure"—stresses the need to establish a national ocean policy.

Dr. Walsh is correct when he observed that our ocean programs are "fractionated and uncoordinated."

He says:

We do not have a national ocean policy. There are no high level advisors to counsel the Chief Executive of the United States, the President.

Further, he observes that—

There is a general lack of public interest and awareness in the stake we have in the oceans.

And I would be the first to agree with his finding that—

. . . the Congressional committee structure to consider the ocean issue is fairly diffuse.

The former skipper of the *Trieste* alludes to the impressive progress that the Soviet Union has made with its ocean policy in only 16 years, through a process of both commitment and continuity and concludes that the establishment of a national ocean policy—

. . . is a long term problem; it requires a long term commitment on the part of leadership. Unfortunately much of our government lives in a short-term world.

I agree with Dr. Walsh when he says that "the ocean's bottom is still more important than the moon's behind," and recommend this text to my colleagues in the Congress, the President, and those members of the President's Cabinet who are responsible for ocean policy:

AMERICA'S SEA POWER SICKNESS—CAUSE AND CURE

(By Don Walsh)

In this program we are talking about how the nation can use the sea. This really defines 'sea power'—that is, national uses of the sea as an instrument of national policy. So far, you have heard about problems faced by the Navy, the Maritime Administration, the shipping industry, and the maritime challenge of the Soviet Union. I would like to follow all this by discussing the process of how we are able to use the sea. Also I want to illustrate other examples of uses of the sea beyond naval and merchant shipping. But ultimately I want to address the question: Why do we suffer from 'sea power sickness?'

The uses of the sea involve a four-level process. The first level is simply scientific knowledge of the sea, oceanography. It is not a very old field of science. The father of oceanography was Lt. Maury of the U.S. Navy who was active in the 1840's. The first formal oceanography expedition began in 1872 with the six-year Challenger Expedition organized by the British. Actually it is not a pure science, it is an interdisciplinary field involving applications of chemical, biological, geological and phyical sciences to the marine environment. But the end point of oceanography is simply one thing: predictive information. Information about the marine environment that can be used for man's uses of the sea. For example, this predictive information can be the location and quality of fish stock; knowledge of subsea floor structure which may lead to gas and oil finds; or marine weather as it affects the safe operation of ships on the surface of the ocean. The objective (despite popular notions about research) is not to rack up credits, distinguished papers for fancy meetings or write erudite books. These things are important in professional communication to expand and diffuse knowledge but they should only lead us to predictive, useful information on the marine environment.

The second process level is ocean engineering—simply the application of most fields of engineering to uses of the sea, to build machines and equipment to do work in the sea. But this does not define useful work in the sea.

The third level is economics and public policy. This is where we really determine if the work we do is useful or not. The economic test, of course, is rather obvious. Can you do something in or on the sea to produce a profit? This is simply the basis for establishing a business.

On the other hand, the public policy test is a little more imprecise. Perhaps the Navy is the best example. Government defines that operating the Navy is an important use of the sea. It fails the economic test, but it is vital for our national security. As another example, in some developing parts of the world, a government may set up a national fishing industry because there is not sufficient private capital to do this. Ultimately it will sell the industry to the people who operate it as they become self-sustaining. So public policy, that is decisions of the central government, also determine whether or not work at sea is useful.

The fourth and final level of progress moves us out of the rather precise scientific and technological determinism of oceanography, ocean engineering and economics. The fourth area is a much more difficult set of problems. I call this "manmade constraints on uses of the sea." Here we get into the question of economics, law of the sea, political processes, cultural and ethnic problems. These are the issues that are very difficult and offer the longer term problems.

There is a great gap today between "doing" and "regulation" in uses of the sea. What I mean by this is simply that in science and technology we can now do more things in and on the sea than we have the capability or sophistication for governing these activities. This gap is perhaps 15 to 20 years between the government process, and the ability of science and technology to exploit the marine environment. Therefore, the constraints on uses of the sea are not really in the areas of scientific or technological knowledge. That is not to say we should not move ahead on development in these areas, but rather if you are thinking about a management matrix, the "critical path" is found in the political and policy areas.

In the U.S. we keep adding new players in the ocean policy area . . . it is like counting baby spiders. As you may know, the "statistical life" of a Presidential appointee in Washington is somewhere around 24 months. This may increase with Mr. Carter's mandate that everybody stay for four years, but some of the national media are already predicting that some of the cabinet officers will be leaving by the end of this year. We are concerned with problems that are perhaps decades in the construction of solutions. The necessary long-range policy formulation does not lend itself to a 24-month cycle of policy makers. Domestically we have a real problem.

In Congress the House turns over every two years and with the increase in more junior congressmen they are really good for only about a year of productive work. They get elected in November, take their chairs in January, and then there is the organization of the new Congress. By the time they really get to work it is spring, and by the next summer, a year later, they have to start running for office again. You get about a productive year out of them, unless they are senior and have a very safe district. Then you may have continuity and productivity. With the Senators it is better, with a six-year term they can really get in and do some solid work before they have to worry about the ballot box.

I oversimplify; this is not a lesson in government. But I oversimplify (and I think rather honestly) to make the point. We are dealing with different sets of short time constraints in the policy making process against a very long-term problem which is the health of sea power in our country. You have to have a basic appreciation of these things if you want to understand the dilemma of why we seem to be going sideways in sea power development.

The Soviet Union, in their development as a great sea power in only 16 years has had both commitment and continuity. For example, Admiral Gorshkov, who is both their chief of naval operations and secretary of the Navy combined, has been in this job nearly two decades. That is continuity. What I mean here is continuity of policy and institutions, not continuity of people. You can get yourself into serious problems in the government process, especially ours, if you begin to develop the personality cult instead of continuity of institutions. In our uses of the sea we have neither continuity of people nor continuity of institutions.

I have talked about the domestic lack of continuity, but this is also reflected in the international scene. There are about 156 nation states in the world today. Of the 156, about 130 are coastal states, and of these coastal states, 86% are developing nations. Thus the vast majority of coastal states are third-world nations. These nations are, in fact, sea powers—any nation that has a coastline qualifies. Sea power can be active or passive as there is potential in many of these places to develop effective uses of the sea. In the United Nations Law of the Sea Conference they are outvoting the developed, seagoing nations—they are exercising their own interests. They represent sea power on a different level, but nevertheless they are exercising international influence based on maritime issues. There is faulty understanding in many cases, but political force is being exercised with respect to ocean issues. When the first round of Law of the Sea Conferences was held in 1958 and 1960, there were about 90 nations in the world. But when the second round began in late 1973 the number had increased to 156 nations. That 86%, which are developing coastal nations, have very different goals from the developed nations. A tremendous stress and strain has been built within the international political process. This is a good example of the problem of accommodating the political process to the technical, scientific, and economic knowledge we have about how to use the sea. It is a very difficult and complex question.

What we have heard so far in this symposium about Navy and merchant marine problems are but some examples of contemporary U.S. problems in the entire marine area. By changing words, we could take out "merchant fleet," "navy," etc. and substitute "fishing," "offshore gas and oil," "Law of the Sea," and so on. All the arguments, problems and shortcomings would sound about the same. So what we have looked at so far in this seminar is just part of the American sea power sickness.

Let us now look at some of the major maritime problems that currently face the United States. I will stay away from the Navy and Merchant Marine areas since other speakers are dealing with these. What I want to illustrate is how all of these problems have been made more difficult by the lack of a coherent national ocean policy-making framework.

The first area, although not the most important in my view, is the Panama Canal. I think giving up the canal is inevitable—I myself support the treaty process because it is the right thing to do. We have to make sure that we have certain guarantees of access and defense. I think we are moving in this direction but the Panama Canal issue certainly has brought forth a lot of passion. The arguments people use to oppose the treaty process are often a bit inconsistent. Most often you hear how giving up the Canal is going to make it difficult for our Navy to operate or that it will restrict the free movement of our merchant fleet. About 8 percent of U.S. Merchant trade and about two U.S. Navy ships a month, none of our carriers can go through it, use the canal. True, 90 percent of the ships in the world can go through the canal, but it is really free market commodity. If the price of passage is raised to an uneconomical level then the shippers will stop using it. Either they will go to 'land-bridge' concept or change their routing. It is a very complex issue and I certainly can not do justification to either side of it here in a brief time. I do want to point out the sort of inconsistency of people who are trying to defend our hanging on to the Canal using as their shield a strong U.S. Navy and a strong U.S. Merchant Marine. Where are they in the other more important arenas when we want to talk about a strong U.S. Navy and a strong U.S. Merchant Marine? They just are not there. I am not entirely sure about the sincerity of their motives.

The current Law of the Sea negotiations represent a far more serious problem with respect to uses of the sea. You have virtually the entire world community involved in the largest international negotiation in the history of civilization working on developing an orderly legal framework for the 71 percent of our planet covered by water. Whether we get a law of the sea treaty or not, the political geography of ocean space will be changed permanently for all time. Involved will be issues of pollution, resources uses, transportation, and freedom of navigation.

Closer to home, the lack of a timely deep water port policy in this country has cost us dearly. The only place we can save anything on the import of petroleum is in the transport itself. We do not have a single port in the United States that can handle the most economic large crude carriers and yet we are the world's major importer of hydrocarbons. Now we are beginning to take care of this but, because in the past we have not been able to plan deep water ports in an organized way, the solution will be much more costly and difficult.

My final example would be this nonsense about cargo preference that we have just recently gone through. When the President's proposal to ship a small fraction of U.S. oil imports in U.S. tankers was presented to Congress it was turned down. There was talk about what a "consumer ripoff" cargo preference would have been had it gotten passed. It was said that foreign tankers could do the job cheaper. This is oversimplifying the problem a whole lot. What actually happens is that we are going to continue to transfer the cost of carriage of *our* crude oil imports to foreign governments via their heavily subsidized merchant fleets. A significant, though not the largest part of our deficit in export/import balance is to pay for carriage of petroleum. And we are paying this to foreign governments rather than carrying it in U.S. ships. Nobody has looked at the numbers, they just say the price per barrel goes up because American ships are more expensive, but they do not consider this other money transfer to foreign governments.

What is the basic flaw behind all this? It begins with the fact that our national ocean programs are fractionated and uncoordinated; we do not have a national ocean policy. There are no high-level advisors to counsel the Chief Executive of the United States, the President. All of his maritime advisors, the Secretary of the Navy, the head of the Maritime Administration, the administrator of the National Oceanic and Atmospheric Administration, Commandant of the Coast Guard, etc. are subcabinet level officers. They are one to two levels removed from the cabinet, thus their cabinet officer for their particular agency is understandably concerned with many other things than just maritime issues involving his department. Therefor, the President does not have any direct counsel on maritime issues that is continuous and fairly high level.

There is also a general lack of public interest and awareness in the stake we have in the oceans. The congressional committee structure to consider ocean issues is fairly diffuse. As you may know about three years ago there was almost a successful move within the House, through the Bolling Committee, to cancel the House Merchant Marine and Fisheries Committee in a reorganization move. While this did not happen, it was one of the few committees recommended for complete elimination. This does not impugn the fine leadership of Representative Murphy, the present chairman. This has been a chronic weak area in the past. It was under his predecessor that the committee almost disappeared.

There are no voters in the oceans: "Fish don't vote!" I have had one Congressman tell me that. That is clearly a cheap shot but most likely those that think this way will never have a "moon project" for the oceans and I cannot see how we could have something like this. We just have no focal project. Space program funding versus ocean program funding gives a useful index of the imbalance. The Federal Ocean Program is spread among about 21 different federal agencies and is budgeted somewhere between one billion and two billion dollars a year, depending on how you count. The national space program is funded at around four billion dollars a year . . . two to four times greater than the national ocean effort. By the way, I am not anti-space . . . just pro-ocean.

Well what is the cure for our national sea power sickness? My suggestions are certainly not a guaranteed cure. We need a national ocean policy, more precisely we need the mechanism which will formulate and execute the national ocean policy. This mechanism will insure coordination of all marine activities of our nation.

I am not talking about a super agency; there is a difference. I do not support the idea of a "wet NASA" sweeping everything together into one agency. I do support reorganization in the executive branch of the government along functional lines. We have a "department of food" (Agriculture), a "department of natural resources" (Interior), a Department of Defense, a "department of money" (Treasury), etc. I see nothing wrong with these various departments having ocean or maritime functions within them. Just because it is wet, is insufficient argument for transfer to a special, "wet agency". Right now many of these departments are engaged in unwarranted competition, fighting with each other, trying to grab maritime missions away from their neighbors. That is wasteful, leading to duplication and waste, with the taxpayer getting poor value for his money. I do believe we ought to go back to fundamentals, through better, more functional organizations in the executive branch.

In addition there needs to be a better congressional pathway in the ocean area. I steered away from the term "reorganization" here because it is a near-impossible task. But congressional handling of ocean issues is very complex and perhaps more confusing than the way they are handled in the executive branch. I should stress, though, that leadership and the major thrust must come from the White House.

Finally, we need to build the public awareness to somehow develop a historic pride in the "yankee mariner" and interest in returning him to the oceans of the world. This will require a serious involvement by the membership of the maritime community. We have to get involved in political process, we just can not leave it to a few people—it will never get done.

Can the yankee mariner make a comeback? I think so. We have the skills; we know how to mobilize capital, technology, management, and manpower. We have done it time and time again. World War II is a good example; in Richmond, California Henry J. Kaiser built a Liberty Ship in four days and eleven hours. From an empty building way to a ship put into the ocean by a man who prior to the war had never built a ship, just dams, tractors, and things of that sort. But, that's the Yankee way.

We have been a great sea power, we can still be a great sea power, but we need the interest of the people and of their government. We need the policy to be allocated by the government as well as allocation of resources. And our leaders must lead. I recall what Patton said about leadership: "You can't do it from the rear, it's like pushing a wet noodle, you've got to get in front and pull."

There is an "advertised" Presidential reorganization of ocean programs in the government under Mr. Carter's Reorganization plan, but I see that has been deferred to this summer. It is the way of Washington that it may be deferred even further as time goes by, as other "higher priority" things keep stepping in front of it. It is a long-term problem; it requires a long-term commitment on the part of leadership. Unfortunately much of our government process lives in a short-term world. Until we can isolate that long-term problem and really work on it, I am not too optimistic.

In closing, I would just like to repeat the old wheeze: "The ocean's bottom is still more important than the moon's behind." ●

DIFFERENT PERSPECTIVE ON SOCIAL SECURITY PROGRAM

● (Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. HANLEY. Mr. Speaker, through this year many observations have been made on our Nation's social security program and, in particular, the social security amendments of this Congress. Though I, like all Members, have read thousands of words on the subject matter, it was only a few days ago I read in my home city newspaper, The Syracuse Herald-American, an article, authored by Mr. Fred Lopez, district manager for the Social Security Administration in Syracuse, which provides a different and rather interesting perspective. I commend Mr. Lopez and urge that all Members read it.

SOCIAL SECURITY FACTS, FICTION

DISTRICT MANAGER EMPHASIZES FUTURE BENEFITS

(By Barry Ernest)

The real value of Social Security is being overlooked by people who are more concerned with how much that service is costing, according to Fred Lopez, district manager of Social Security in Syracuse.

When planning a purchase, Lopez explained in an interview this week, it's generally not a good idea to consider only the cost without taking into account the value.

But many Americans are doing that by judging the recent 1977 amendments to the Social Security Act, particularly the tax increases, by how much they will pay and not what they will get in return, Lopez said.

"As the various news media have emphasized," he explained, "the 1977 amendments increased the Social Security wage base and tax rate beginning next year, thus increasing the amount of taxes workers in covered employment will have to pay. What hasn't been emphasized however, is the value of Social Security benefits current taxpayers will receive in the future."

The district manager said he has had numerous inquiries and comments concerning future Social Security costs. "It is time Central New Yorkers, especially those not yet near retirement age, be given some indication of the value of benefits they may expect," he said.

Some of the misunderstanding over the increase in Social Security taxes may be related to the tendency of workers to think

of these taxes only in relation to the Social Security benefits currently being paid. Such a comparison is misleading, according to Lopez.

Taxes under current laws are not only paying for today's benefits, he added, but paving the way for benefits that will be available in the future. And future payments will be "substantially higher" than they are today because of increases in the standard of living, Lopez stated.

He cited the example of workers, now in their 40s, who will be retiring around the close of the century. Assuming that wages continue to rise, the average worker now in his 40s will receive a Social Security benefit when that worker retires at 65 of about $15,000 a year, Lopez said, with an additional $7,500 payable to a spouse at 65.

Benefits at this level not only will equal the purchasing power of current benefits but will reflect increases in the general standard of living, he said.

"Upper income workers now in their 40s can look forward to higher retirement benefits," Lopez stated. "These workers, currently paying the maximum in Social Security taxes, would receive benefits of $21,000 a year at 65, around the turn of the century, or $31,500 a year for a couple."

Even a low-income worker, now earning slightly less than $5,000 a year, but whose earnings will rise in proportion to increases in average wages, would be entitled to retirement benefits of about $9,500, plus another 50 percent for a spouse, Lopez admitted.

Once they are placed on Social Security rolls, people are assured their benefits will be inflation proof. While on the rolls, their Social Security payments will be tied to the Consumer Price Index, increasing as the cost of living increases.

While a worker's future Social Security benefit will be related to the higher standard of living in effect at the time he receives it, that benefit will replace about the same percent of wages for workers retiring at different times in the future.

"The $15,000-a-year benefit for the average worker I referred to earlier will amount to about 41 percent of the average wage being paid around the year 2000," Lopez explained. "Workers with average incomes who retire later on in the 21st Century also will receive a benefit that replaces about 40 to 45 percent of their wages."

Similarly, the "replacement rate" for the low-income worker always will be 50 to 55 percent, and for the high-income worker, it will be 25 to 28 percent of maximum earnings taxable for Social Security, Lopez said.

"Thus, the law gives workers a better basis for planning their retirement income needs than would have been possible before the 1977 amendments," he said.●

JOHN M. "JACK" CAREY, NATIONAL COMMANDER OF THE AMERICAN LEGION

(Mr. HALL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. HALL. Mr. Speaker, the national Commander of the American Legion, John M. "Jack" Carey, appeared before the Committee on Veterans' Affairs on September 12 to present to the committee the legislative priorities for the coming year for his great organization. Commander Carey made an excellent statement, highlighting the issues which we will be considering next year.

In addition, Mr. Speaker, Commander Carey and the members of the American Legion recognized the outstanding leadership abilities of our very able chairhan, RAY ROBERTS. The commander confirmed the feelings I have had about the gentleman from Texas for many years—that he is an effective leader and a dedicated friend and spokesman for the veteran and his family.

There follows the remarks of Commander Carey presented to the Committee on Veterans' Affairs this morning:

Mr. Chairman and Members of the Committee:

It is an honor and a great personal pleasure for me to have this opportunity to appear before this distinguished Committee of the Congress on what is virtually my first official appearance as National Commander of The American Legion.

Before I discuss with the Committee the legislative program of my organization in the field of veterans affairs, I consider it most important that I express to you Mr. Chairman, and to the Members of the Committee, the appreciation of 2,700,000 Legionnaires, and the nearly 1 million members of the American Legion Auxiliary for the consideration that is consistently given by the Committee to the problems of our nation's 26.5 million war veterans and their dependents and survivors.

Historically, it is to Congress that veterans have looked, for support, and for the concern that has expressed itself in beneficial legislation. We of The American Legion know that it is because of the Congress of the United States that our country today has the most comprehensive program of veterans benefits of any nation in the world.

Four times in the Twentieth Century, the American Government has led the nation into war. Four times the youth of the nation has responded. And following each of those conflicts, Congress has taken the lead in providing readjustment programs for the returning servicemen and women, and supportive programs for the service disabled, and for the survivors of those who have made the supreme sacrifice. The American Legion knows what Congress has done in these matters, and we are grateful.

In addition to these words of gratitude to the Committee, I believe it is appropriate and necessary for me to express a special word of thanks to the Chairman of this distinguished Committee. During 1978, perhaps more than in any prior year, Congressman Ray Roberts of Texas has stood forth in this Congress as the champion of veterans rights and benefits. He has done this in the face of a certain insensitivity that has, in our judgment, been displayed by some of the officers of the Administration. Time and again Congressman Roberts has spoken out forcefully on behalf of veterans programs. And he has made clear to those who are not especially sympathetic to veterans problems that he will work against any efforts to curtail programs that Congress has provided for veterans. Frankly, I do not like to think what might have happened this year to veterans programs if Congressman Roberts had not taken a leadership role, with the support of all the Members of this Committee. For this dedication and service to veterans and their families, we salute the Chairman, and we thank him.

May I now proceed to present the views of The American Legion on certain matters affecting veterans legislation in this Congress, and looking ahead to the first session of the 96th Congress.

By reason of the work of this Committee, the House of Representatives has adopted a number of significant measures affecting veterans. Many of these continue to await final action by both Houses before they can be sent to the President. We consider all the measures the Committee has reported to be important. We are most anxious that the bill to provide a needed increase in compensation and DIC rates be signed into law, to become effective with the beginning of the new Fiscal Year. Of all the entitlements of veterans, none has priority over the obligation of the nation to those who were disabled by reason of their service, and to the survivors of those who died by reason of service to their country. We know the Committee shares our concern in this regard, and we look forward to final action, leading to enactment of this important legislation.

PENSION REFORM

I would now like to discuss the matter of pension reform. As I appear here today, Congress has not taken final action on the pension reform legislation that has been under consideration throughout the current session.

The American Legion has long been committed to the need for reform of the death and disability pension program for veterans. The inadequacies of the present program are so well known that it is not necessary for me to repeat them in this statement.

Representatives of the Legion have worked closely with the Committee and its staff in developing remedial legislation. The present status of that legislation is that it awaits action by a Conference Committee of the House and Senate. We have prepared a document that will be presented to the members of the Conference Committee, detailing our appraisal of the matters that have to be resolved, and offering our recommendations.

I must say to you at this time that our evaluation causes us to favor the legislation that was adopted by the House. We believe the House version is more responsive to the needs of the intended beneficiaries, and that it will provide a more sound pension program, which will more fully accomplish the goals of a revised program.

I will not detail here the specifics of our appraisal, since those will be presented in our letter to the Conference Committee. I will only say now that we like the House version best, and we hope it is the one Congress will agree on.

We are aware that the pension reform legislation, in whatever form it is finally approved, will add a substantial amount to the Administration's Budget for Fiscal Year 1979. We do not believe the added cost is prohibitive, given the goal that will be achieved—long-term alleviation of the serious economic problems that are affecting the increasingly large number of the aging veteran population.

We are aware that there are those who are increasingly vocal in begrudging this added measure of security for older veterans and their widows. Those to whom I refer are more openly expressing the opinion that veterans should be lumped in with other segments of society who have need for public support.

Those of us who represent the veteran constituency do not fail to recognize that these open attacks on veterans benefits always begins to manifest themselves in a time of peace. These outcries for economy in veterans programs are never heard in time of war. They are indeed a phenomenon of peacetime. We hope the Committee agrees with us that they are without merit.

legislation, I will say that we are most anxious that it become law, and we will appreciate the support of all those who share our concern for the problems of older veterans and their widows.

VETERANS' ADMINISTRATION BUDGET

Throughout this session of the Congress, those of us who are on the side of veterans have been engaged in the Battle of the Budget. It was immediately apparent, last January, that the Administration's proposed budget for veterans programs was substantially short of what is needed to fully fund those programs. Shortfalls in amounts provided for the medical care program were most notable, and engaged the immediate attention of The American Legion. With the support of the Chairman, and Members of this Committee, Congress has increased allocations, especially for medical care, and it is now our expectation that funding will be essentially adequate, to at least maintain what we now have.

I must say to this Committee, however, that in our judgment, the battle is not over. We have every expectation that the Administration's proposed budget for the Veterans Administration for Fiscal Year 1980 will be a tight one. And everything that spokesmen for the Administration are saying leads us to believe that the shortfalls in the FY 1979 Budget will be repeated in Fiscal Year 1980.

The President is talking economy. He has publicly stated that economy will be achieved in a variety of categories of government spending, including, and he used these words, "in the field of veterans programs."

May I say that all of the members of The American Legion are taxpayers, and we are as anxious for economy in government as is the President, or anyone else. Our concern, however, is that economy must not be achieved at the expense of the nation's veterans.

In our judgment, the President has his priorities wrong. The 26.5 million men and women who comprise the war veteran population responded to the call to arms when the nation went to war. This includes the 8.5 million who saw service during the Vietnam Era. And 2.8 million of those actually served in Southeast Asia.

While the wars of the Twentieth Century were being conducted, there was absolutely no call for economy at the expense of veterans programs. It's the same old story. When the guns begin to shoot, nothing is too good for the soldier. It is when peace returns that the cries for economy begin to rise.

We note, for example, that despite repeated protestations of concern for the needs and problems of Vietnam Era veterans, the President proposed absolutely nothing in his FY 1979 Budget in the way of increases in education and training allowances.

With all this in mind, The American Legion is not going to be silent when cutbacks are proposed in veterans programs, in the name of economy. In our judgment, there are plenty of places in the Federal Budget where economy can be practiced, before an effort is made to cut back on veterans programs.

We very much appreciate the support the Members of this Committee gave in seeking adequate funding for benefits and services to veterans during Fiscal Year 1979.

When the Administration Budget for FY 1980 is released, we intend to do a careful analysis, and we shall then approach our friends in Congerss with our evaluation and suggestions.

Our objective at all times is adequate funding for veterans programs. We hope for your continued support in that direction.

VETERANS' ADMINISTRATION MEDICAL CARE PROGRAM

Discussion of the VA Budget inevitably leads me to remarks relating to the VA medical care program. There is no question in our minds that the VA Department of Medicine and Surgery is the heart and soul of the operations of the Veterans Administration. Remove the medical care program from the VA, and you really have no further need of the VA as a single agency for the administration of veterans programs. The development through the years of the VA system as the largest and finest medical system in the world today, is the cherished achievement of The American Legion, because we have made a significant contribution to that accomplishment. We prize the VA medical program for veterans, and we are determined to defend it.

I use these terms because we know that the VA system is presently under attack from a variety of sources. It is not my purpose here to identify those sources, nor to present a detailed defense of the system. I believe this Committee joins with us in support of the VA program of medical care for veterans.

But I do want to make clear that we of the Legion believe that a successful defense of the VA system is absolutely essential to a successful defense of all other veterans benefit programs.

And we are apprehensive that we do not have an ally on this matter in the Administration. To justify that statement, I need only point to the serious shortfalls in the recommended Budget for VA medical programs in the Administration's FY 1979 Budget.

I refer to the proposed reduction of 3200 beds, with a resulting loss of 1500 staff personnel; the curtailing of VA research programs, at a time when the achievements of that program have been recognized by all the world; elimination of the only new hospital planned for the system, at Camden, New Jersey; and a variety of economy measures having the effect of slowing the pace of renovation and renewal that is constantly necessary in a system as large as the VA system is. All of these actions, which are included or not included, in the Administration's proposed Budget for FY 1979, do not engender a feeling of confidence in the Administration's commitment to the VA medical care program.

The American Legion, through the work of a special committee established for that purpose, continues to monitor the progress of the national debate on national health insurance. When legislation to provide some form of national health insurance takes shape, the Legion will come forward with recommendations for protective clauses to insure the continuation of the VA system as one maintained exclusively for the nation's veterans.

We must say, however, that we perceive a visible danger to health care for veterans, in the concept of national health insurance. Which is why the possible lack of commitment by the Administration to the VA program is a matter of concern to us. And, in the face of this concern, we turn, as we always have, to Congress, for the assistance needed to assure the maintenance of the VA system, not only as a viable one, but in such a condition that it will continue to be in the forefront of health care delivery in this nation.

EDUCATION AND TRAINING PROGRAMS FOR VIETNAM VETERANS

The proposed Budget for Fiscal year 1979, included nothing in the way of increases in the education and training allowances for those Vietnam Era veterans who are still completing their readjustment. We believe this younger generation of veterans is well justified in asking of the Administration, where is the commitment of dollars to back up the protestations of concern?

It is our earnest request that an early priority of this Committee next year shall be the development of legislation to provide needed increases in the education and training allowances for all programs, generally referred to as GI Bill programs.

GI Bill allowances were last adjusted by Public Law 95-202, and were effective on October 1, 1977. Of course, inflationary pressures have continued unabated since that time, and are continuing today. It is not fair to the young men and women who are in training under these programs, to cause them to try to continue their education and training with the use of 1977 dollars.

The American Legion will strongly support legislation to improve the education and training allowances, at the earliest possible date in the 96th Congress.

We would further suggest, for early consideration in the forthcoming session, a needed revision to improve Vocational Rehabilitation programs under chapter 31 of title 38. It has been observed by many that these programs are much in need of updating, to insure their responsiveness to the problems of the service disabled. We will support legislation that may be developed in this direction.

PENSION PROGRAM FOR VETERANS OF WORLD WAR I

I shall now address a subject on which a National Commander of The American Legion has not previously spoken to this Committee. I refer to a special pension program for the surviving veterans of World War I.

At our recently concluded National Convention in New Orleans, the Delegates expressed overwhelming support for a pension program especially for these older veterans. This support took its form in Resolution No. 220 (Ohio), a copy of which is appended to this statement.

Presently, there are 685,000 veterans of World War I, surviving from the 4,750,000 who served during that conflict. They are at an average age of 83, and their mortality rate is high.

This generation of veterans not only served gallantly in the first World War; they also founded The American Legion; they survived the Great Depression; they lent their strength and support to the three wars of this century that followed theirs; it was they who developed the concept of readjustment programs for returning servicemen—a concept entirely new in the field of veterans benefits. The men and women of the first World War have not had an easy life. They have come into their later years, in many cases without the level of economic security that most of the rest of us can expect to have when we retire from active work.

Many of these veterans are presently living in strictly reduced circumstances; and many of them feel they do not have either the attention or concern of the American people. For these reasons, The American Legion, speaking through the Delegates to its National Convention, believes it is time for a measure of special recognition for these veterans.

We will submit draft legislation in January, to implement Resolution No. 220. It is our earnest hope and request that this Committee will consider that legislation. The program we propose will be modest. We believe it will be within the bounds of fiscal possibility. The main point is, however, that we believe this strong and affluent nation can afford this modest gesture in the direction of these, our oldest veterans, to assure all of them a measure of economic security.

VETERANS PREFERENCE

There is a matter that is not directly within the jurisdiction of this Committee,

but which calls for mention in this, my first appearance before a Congressional body. I refer to the proposals to modify veterans preference in Civil Service employment.

It is not my purpose or intent in this statement to recite again all the reasons The American Legion continues to defend veterans preference as it is presently codified in law. The views of The American Legion on this matter are well known. We believe our position has withstood the test of debate, and nothing that has been said by those who advocate change in this veterans benefits has persuaded us to change our views.

We consider ourselves to be reasonable people. If what our opposition is saying could be proved to be true, we would indeed consider a change in position. If the modifications proposed would, in fact, enhance the employment situation of the Vietnam generation of veterans—that would weigh heavily with us. But we are convinced the arguments advanced to this effect are faulty. The Vietnam veterans will receive the best chance to establish careers within the Civil Service by application of the law as it is now written, if the Executive Branch will just abide by it in spirit as well as in lip service.

We believe the application of veterans preference through the years since it was established in law by Congress in 1944, has worked to the great advantage both of veterans, and of the public service. Veterans make good government employees. And veterans include minorities and women. Their military service merely adds to their desire and to their ability to serve the government in a civilian capacity.

We appreciate the support veterans preference has received in Congress during the current debate, from the distinguished Chairman of this Committee and from many Members.

VETERANS EMPLOYMENT

It is an obvious fact that no veteran is readjusted or rehabilitated until he is economically self-sufficient. This means he must have stable employment in a job that pays a living wage. Veterans employment has always been a high priority among the programs of The American Legion. We have worked very hard, in seeking legislation that would strengthen veterans employment programs, and through the activities of our 16,000 American Legion posts in helping individual veterans with job placement in the community.

Statistics indicate the situation in veterans employment has improved with the strengthening of the nation's economy. However, there remains a substantial core of unemployed veterans, mostly young, undereducated and under-skilled, and many of them from minority groups. The plight of these veterans poses a challenge to both the Congress and the Executive Branch, and we of The American Legion accept it as a challenge as well.

There are, as a result of Congressional action, a number of employment programs for veterans, mostly administered by the Department of Labor and codified in title 38 of the United States Code. We applaud the attention of Congress to this problem as represented by these programs.

Our complaint is directed at the Department of Labor, and I include mention of it in this statement so that it will be a matter of record.

There is, in our judgment, a singular lack of sensitivity by the Department of Labor to veterans employment programs. A number of things that have occurred this year illustrates this point. Among them are the appointment, confirmation and resignation of the first Deputy Assistant Secretary of Labor for Veterans Employment and the abolition by the Department of Labor of the position of Director, Veterans Employment Service.

To remedy these errors, and to attempt to instill into the Department of Labor an appropriate sensitivity to the problems of unemployed veterans, The American Legion continues to advocate the establishment of the position of an Assistant Secretary of Labor for Veterans Employment, with the Veterans Employment Service as a separate agency. We do not believe the Department of Labor will proceed to fulfill its responsibilities in the area of veterans employment until and unless these things are done.

The Department of Labor has also been lax in enforcing, in the case of Federal contractors, the requirement that they, as well as the Federal Government, must take affirmative action to hire and promote eligible disabled and Vietnam Era veterans. To broaden eligibility under this program, we are supporting legislation to delete the 30 percent disability requirement and to require only a 10 percent service-connected disability or more, and to delete a stipulation that Vietnam Era veterans must have been discharged within 48 months preceding application.

A recent reorganization of the Department of Labor's machinery for monitoring and enforcing compliance of Federal contractors will further weaken these provisions for affirmative action for veterans. An Office of Federal Contract Compliance, headed by an Assistant Secretary is needed to bring Federal contractors into full compliance with the law.

Mr. Speaker, I have tried in this statement to provide the committee with an appraisal of the condition of veterans affairs as we of the American Legion see them, as the 95th Congress completes its work, and all of us look forward to the 96th Congress which will convene in January.

In this Congress we have found, as we always have in the past that there resides here a concern for and interest in the problems of America's veterans that is not found anywhere else. We are grateful for that concern and interest.

And we are confident that as long as we have friends in this place, the Nation, as it enters into an era of peace, will not forget those who served it in time of war.

Before I conclude, I wish to extend again, an invitation to all members to join us at our reception, at 5:30 this evening in rooms B–338–339 and 340 of the Rayburn Building. There you will be able to greet legionnaires from your own areas, who look forward to the opportunity to be with you, however briefly, on a social basis.

Thank you very much for your time and attention.●

EXEMPTIONS FROM ENDANGERED SPECIES ACT OF 1973

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. HANLEY. Mr. Speaker, in America today, we face many difficult decisions concerning the fate of our natural environment. Our high level of prosperity and our pursuit of progress give us special cause to take great care with any of our actions that affect nature. Thus, it is that the preservation of species endangered by humankind comes to the forefront of the national interest. The preservation of species is of utmost concern to us all, and especially to the Nation's lawmakers. Unlike many of our responsibilities that concern problems which change year in and year out, our decisions in this area will have lasting effects on generations of Americans to come.

As a Congressman, I do not take my responsibility to the future lightly. This is why I am greatly concerned that Congress may act with haste and without sufficient forethought. This year more than 45 bills have been introduced with regard to endangered species, many of them with the intent of obtaining exemptions from the Endangered Species Act of 1973.

The primary challenge to the current law is a bill which would establish a committee to decide if any exemptions to current law are justified, that is, whether some species may be threatened with extinction. The question is will this become a sort of "Species Court" with the life and death power over the fate of species, in effect a court sitting in judgment which will decide to let progress eradicate an entire, irreplaceable species; or will it be the means where needed projects can go forward once adequate precautions are made. At present, there has not been sufficient examination of the implications this type of approach holds, and a more thorough debate is necessary if the measure's sponsors are to make their case.

It is our human obligation to respect all living things, we must also realize that it can be equally destructive to overprotect species. Man's intervention in the competition of the wilds in favor of one species can create imbalances just as unfortunate and unjust as possible extinction. Some legislation has been proposed in Congress that would provide for regular review of the classification of species as endangered or threatened. So long as this review is performed rigorously and objectively, it can only be an asset to the cause of protecting our wildlife.

There has been much concern about the battle between the snail darter and the Tellico Dam project. What a difficult problem this is for us. A multimillion dollar project threatens a tiny but important link in the ecological chain. Perhaps it is wise that this project has been halted; as an important official of the TVA itself said, it forces us to search for and find cheaper alternatives for irrigation and energy. However, the preliminary reports that the transplantation of the snail darter into new areas may be successful is certainly good news. This would allow a satisfactory compromise solution to end the controversy. Perhaps man's intervention in nature, once it is done carefully and thought-

fully, need not be so damaging as we normally think.

It is clear we cannot allow wanton development to snuff out the life of precious species. However, our attitude toward nature shouldn't allow us to feel we can disrupt it through the overprotection of particular species. In closing, I must reiterate that much care and forethought is required regarding the protection of species, and that hasty decisions can be disastrous. We as legislators must always remember that our decisions will have impact for generations to come. Once a species is destroyed, its likes will never be seen again on this Earth. Our natural heritage must be protected and preserved.●

HALL AND McCHESNEY, INC: PIONEER IN RECORDING AND INDEXING LEGAL DOCUMENTS

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. HANLEY. Mr. Speaker, it is with great pride that I can point to my home community of Syracuse, N.Y., as the home of a company which has become a great institution in our Nation. Anyone who has had any dealings with Government recordkeeping should be familiar with the name of Hall and McChesney, Inc.

The Hall and McChesney firm has been a pioneer in the area of recording and indexing legal documents for municipal and county governments for the past century. In fact, this Saturday, September 16, the firm will celebrate 100 years of unbroken production service, a truly outstanding achievement.

I know my colleagues join me in extending our heartiest congratulations to Hall and McChesney, Inc., which essentially has been a family operation, for its service and for its vision.

This past Monday, in an article written by reporter Ramona Bowden, the Syracuse Post-Standard outlined the 100-year history of this firm. I would like to share this story with my colleagues.

COMPANY PROTECTS RECORDS

(By Ramona Bowden)

If you have occasion to do some research in the County Clerk's Office and use one of those giant record books in the stacks, you will realize, when you lift it, that each weighs 30 pounds.

What you may not know is that those mammoth volumes were made by the Syracuse firm of Hall and McChesney, Inc.

On Saturday the company will celebrate the 100th anniversary of its founding.

The business has been a family-oriented concern since its founding in 1878 when it was started by C. C. Hall and A. E. McChesney.

Hall of Elmira and McChesney of Syracuse saw the need for providing standardized volumes for record-keeping in government archives. They also realized that the books had to be so well made that they could withstand the ravages of time and man. Both men were perfectionists, and any of the "Bob Cratchitts" who have spent their lives recording deeds or mortgages know the volumes are well nigh indestructible.

The business was started in small quarters in the Downer Block on West Fayette Street. Here it remained until 1928 when it was moved to the newly-constructed Oswego Boulevard. The ivy-covered building on the corner of Court Street and Genant Drive is still the quarters for the book division.

This plant site was chosen for its proximity to the German craftsmen living on the North Side. The fine quality of their work carried on the high standards set by A. E. McChesney.

One of these skilled craftsmen, Will Nies, began his work with the company in 1889 when he was 14 years old. Nies became one of the most skilled craftsmen in the United States, and carried on the excellence of his craft in book-binding until he retired in 1953, at the age of 78.

As the business expanded, it entered more aggressively into the field of public record-recording developing a complete line of county record books and index-systems which were sold throughout the U.S.A.

Hall retired in 1902, leaving the business in the hands of A. E. McChesney who was joined by his nephew, F. H. McChesney, who became the sole owner in 1917, and continued the active head until his death in 1927.

F. H. McChesney took such a vital interest in civic affairs, serving both on the City Planning Commission and the Onondaga County Planning Commission, that he was recognized by Mayor Charles Hanna who named McChesney Park on Grant Boulevard in his honor in 1928.

His son, Donald S. McChesney, became president of the company in 1927 and served until his retirement in 1967.

McChesney married Marian Pennock, a Post-Standard Woman of Achievement, thus linking together two of the pioneer families of this area. Marian's father, John D. Pennock, was chief chemist and vice president of the Solvay Process Co. James Cooper, nephew of Mr. Pennock, also joined the McChesney Company and gave 43 years of his engineering skill, managing the company when McChesney served during World War II.

Mary McChesney Ten Eyck, Don and Marian's daughter, is actively engaged in the operational process as personnel manager.

The McChesney son-in-law Hendrix Ten Eyck is now president. It is he who has moved with this cybernetic era to the use of microfilm, microphotographic processes and computer service making this company the only one in the country offering a complete recording and indexing service to municipal and county governments.

The company has lived through three wars and a disastrous depression, never missing a payroll. Employment has grown from 26 employees at the end of World War II to over 300 at present.

In the past year the plant has processed over eight million documents for over 600 recording offices from Maine to Washington state. Five generations of the family have been working in various parts of the plant, including Peter and Rick Ten Eyck who are in production management.

Mary McChesney Ten Eyck in speaking of her father Donald McChesney said, "One of his greatest contributions was his insight into when it was important to take a risk to deliver a better product to his customers located all across the country." ●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. COTTER (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. MCKINNEY (at the request of Mr. RHODES), for today, on account of illness.

Mr. PEPPER (at the request of Mr. WRIGHT), after 5:30 p.m. today, and for September 15, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. EDWARDS of Oklahoma) to revise and extend their remarks and include extraneous material:)

Mr. GRASSLEY, for 15 minutes, today.

Mr. GOLDWATER, for 5 minutes, today.

(The following Members (at the request of Mr. ERTEL) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. PEPPER, for 5 minutes, today.

Mr. BINGHAM, for 5 minutes, today.

Mr. DRINAN, for 5 minutes, today.

Mr. LEGGETT, for 5 minutes, today.

Mr. ALEXANDER, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. WYDLER, to insert his remarks in the RECORD immediately after the vote on H.R. 8729 today.

(The following Members (at the request of Mr. EDWARDS of Oklahoma) and to include extraneous matter:)

Mr. FINDLEY.

Mr. BOB WILSON.

Mr. RUDD.

Mr. ANDERSON of Illinois.

Mr. FRENZEL.

Mr. SHUSTER.

Mr. DERWINSKI in two instances.

Mr. FREY.

Mr. YOUNG of Florida.

Mr. SNYDER.

Mr. CARTER.

Mr. DORNAN.

(The following Members (at the request of Mr. ERTEL) and to include extraneous matter:)

Mr. NOWAK in five instances.

Mr. LUKEN.

Mr. GONZALEZ in three instances.

Mr. ANDERSON of California in three instances.

Mr. BRECKINRIDGE in four instances.

Mr. DE LUGO.

Mr. KILDEE.

Mr. PATTERSON of California in five instances.

Mr. MINETA in two instances.

Mr. VENTO.

Ms. MIKULSKI.

Mr. MCDONALD.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 1103. An act to permit any State the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due such State; and

S. 2556. An act to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

BILL PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval a bill of the House of the following title:

H.R. 13087. To authorize the issuance of substitute Treasury checks without undertakings of indemnity, except as the Secretary of the Treasury may require.

ADJOURNMENT

Mr. ERTEL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 40 minutes p.m.), the House adjourned until tomorrow, Friday, September 15, 1978, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4975. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense articles to Iran (transmittal No. 78-98), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

4976. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain defense articles to Iran (transmittal No. 78-99), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

4977. A letter from the U.S. Commissioner, of Education, Department of Health, Education, and Welfare, transmitting suggested questions for applicants to consider in preparing applications for grants under the Teacher Corps program, pursuant to section 431(d)(1) of the General Education Provisions Act, as amended; to the Committee on Education and Labor.

4978. A letter from the Deputy Assistant Secretary of the Interior, transmitting notice of the Secretary's determinations that certain lands in Colorado, Idaho, Nevada, Oregon, and Wyoming are not suitable for disposal under the provisions of the Unintentional Trespass Act, pursuant to section 214(b) of the Federal Land Policy and Management Act; to the Committee on Interior and Insualr Affairs.

4979. A letter from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), transmitting the annual report and audit of the American National Red Cross for the year ended June 30, 1977, pursuant to section 6 of the act of January 5, 1905 (36 U.S.C. 6); to the Committee on International Relations.

4980. A letter from the Director, Defense Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense articles to Iran (transmittal No. 78-98), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4981. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense articles to Iran (transmittal No. 78-99), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

4982. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth preference classification, pursuant to section 204(d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

4983. A letter from the Secretary of the Army, transmitting a Corps of Engineers report on the Santa Ana River main stem, including Santiago Creek and Oak Street Drain, California, in partial response to a resolution of the House Committee on Public Works adopted May 8, 1964 (H. Doc. No. 95-382); to the Committee on Public Works and Transportation and ordered to be printed.

4984. A letter from the Secretary of Housing and Urban Development, transmitting notice of a delay in preparation of the semiannual report on progress of States and units of general purpose local government in adopting and enforcing energy conservation standards, required by section 311 of Public Law 94-385; jointly, to the Committee on Banking, Finance and Urban Affairs, and Interstate and Foreign Commerce.

4985. A letter from the Comptroller General of the United States, transmitting a report assessing the Navy's undersea surveillance system and planned improvements (PSAD-78-142, September 13, 1978); jointly, to the Committees on Government Operations, and Armed Services.

4986. A letter from the Comptroller General of the United States, transmitting a report on the need for reevaluation of the Environmental Protection Agency's responsibilities for preparing environmental impact statements (CED-78-104, September 13, 1978); jointly, to the Committees on Government Operations, Interstate and Foreign Commerce, Merchant Marine and Fisheries, and Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BINGHAM: Committee on International Relations. H.R. 10584. A bill to strengthen the economy of the United States through increased sales abroad of American farm products; with amendment (Rept. No. 95-1338, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. H.R. 13356. A bill to require foreign persons who acquire, transfer, or hold interests in agricultural land to report such transactions and holdings to the Secretary of Agriculture and to direct the Secretary to analyze information contained in such reports and determine the effects such transactions and holdings have, particularly on family farms and rural communities, and for other purposes; with amendment (Rept. No. 95-1570). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLLING: Committee on Rules. House Resolution 1348. Resolution providing for the consideration of H.R. 10909. A bill to amend the Public Health Service Act to revise and strengthen the program under that act for national standards for and licensing of clinical laboratories, to amend the Social Security Act to require laboratories providing services financed under titles XVIII and XIX of such act to meet the requirements of such program, and for other purposes; (Rept. No. 95-1571). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 or rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WAGGONNER:

H.R. 14077. A bill to amend the Internal Revenue Code of 1954 in regard to the deductibility of expenses incurred in connection with foreign conventions; to the Committee on Ways and Means.

By Mr. ANDERSON of Illinois:

H.R. 14078. A bill to require the President and Congress to establish spending priorities relative to national output, and to otherwise limit the growth of public expenditures, promote a balanced budget, lower the rates of Federal taxation, and increase the growth of employment, production, and real income for all Americans; jointly, to the Committees on Government Operations, and Rules.

By Mr. LENT:

H.R. 14079. A bill to correct inequities in certain sales representatives practices, to provide protection for certain sales representatives terminated from their accounts without justification, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 14080. A bill to amend the Internal Revenue Code of 1954 to allow certain low- and middle-income individuals a refundable tax credit for a certain portion of the property taxes paid by them on their principal residences or of the rent they pay for their principal residences; to the Committee on Ways and Means.

By Mr. MILLER of Ohio (for himself, Mr. ICHORD, Mr. DORNAN, Mr. WOLFF, Mr. PRICE, and Mr. EDWARDS of Alabama):

H.R. 14081. A bill to amend the Export Administration Act of 1969 to prevent the export to certain countries of goods or technology which have any potential application for military, law enforcement or intelligence gathering purposes; to require the President to notify the Congress of any approval of a license for the export of goods or technology to such countries; to provide for congressional disapproval of any such license application; to require the Secretary of Defense to prepare a military impact statement for the Congress with respect to certain export license applications; and for other purposes; to the Committee on International Relations.

By Mr. ROSTENKOWSKI:

H.R. 14082. A bill to amend section 1035(c) of the Tax Reform Act of 1976 relating to tax credit for production sharing contracts; to the Committee on Ways and Means.

By Mr. BOB WILSON:

H.R. 14083. A bill to extend the Indochina Refugee Children Assistance Act of 1976; to the Committee on Education and Labor.

By Mr. BURKE of Massachusetts:

H.R. 14084. A bill to amend title II of the Social Security Act to provide better work incentives and improved accountability in the disability insurance program, and for other purposes; to the Committee on Ways and Means.

By Mr. DORNAN:

H.R. 14085. A bill to amend the Export Administration Act of 1969 to prevent the export to certain countries of goods or technology which have any potential application for military, law enforcement or intelligence gathering purposes; to require the President to notify the Congress of any approval of a license for the export of goods or technology to such countries; to provide for congressional disapproval of any such license application; to require the Secretary of Defense to prepare a military impact statement for the Congress with respect to certain export license applications; and for other purposes; to the Committee on International Relations.

By Mr. EVANS of Indiana:

H.R. 14086. A bill to amend the Internal Revenue Code of 1954 to allow tenants a tax credit on houses or apartments based on a portion of the real estate taxes paid or incurred by their landlords; to the Committee on Ways and Means.

By Mr. LUJAN:

H.R. 14087. A bill to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Ben Abruzzo, Maxie Anderson, and Larry Newman; to the Committee on Banking, Finance and Urban Affairs.

By Mr. RANGEL:

H.R. 14088. A bill relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions; to the Committee on Ways and Means.

By Mr. ROONEY (for himself, Mr. PERKINS, Mr. CHAPPELL, Mr. LENT, Mr. CARTER, Mr. KEMP, and Mr. MURPHY of New York):

H.R. 14089. A bill to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry; to the Committee on Interstate and Foreign Commerce.

By Mr. STAGGERS (by request):

H.R. 14090. A bill to amend the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939; to the Committee on Interstate and Foreign Commerce.

By Mr. TRAXLER (for himself, Mr. BLANCHARD, Mr. CARR, and Mr. KILDEE):

H.R. 14091. A bill to amend the Internal Revenue Code of 1954 to provide for cost-of-living adjustments in the amount of the personal exemption and in the individual tax rates; to the Committee on Ways and Means.

By Mr. ROBERTS:

H.J. Res. 1137. Joint resolution proposing an amendment to the Constitution of the United States which, except in times of war or national emergency, prohibits the Congress from making appropriations for a fiscal year in excess of the amount of estimated revenue during that year and requires that the amount of the debt of the United States not exceed the amount of that debt on the date of the adoption of the amendment; to the Committee on the Judiciary.

By Mr. ROE (for himself and Mr. PEASE):

H. Con. Res. 712. Concurrent resolution to seek the resurrection of the Ukrainian Orthodox Catholic Churches in Ukraine; to the Committee on International Relations.

By Mr. DODD:

H. Res. 1349. Resolution providing for the agreeing to the Senate amendments to the bill (H.R. 112) to amend the Internal Revenue Code of 1954 to reduce the excise tax on the investment income of private foundations from 4 percent to 2 percent; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

477. The SPEAKER presented a memorial of the Legislature of the State of California, relative to Down's Syndrome, to the Committee on Interstate and Foreign Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BONIOR:

H.R. 14092. A bill for the relief of Mary F. Derocher; to the Committee on the Judiciary.

By Mr. DANIELSON:

H.R. 14093. A bill for the relief of Rodney L. Herold and others; to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. DANIELSON:

(Amendment to the amendment in the nature of a substitute.)

—Page 27, line 2: Strike "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 27, after line 23: Insert "Each report referred to in subsection (b) of this section shall, with respect to the spouse of the reporting individual, contain information listed in paragraphs (1), (3), (4), and (5) of subsection (a) only.".

—Page 27, line 24: Strike "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 28, line 7: After "benefit.", insert "Each report referred to in subsection (b) of this section shall, with respect to any dependent child, contain information listed in paragraphs (3) and (4) of subsection (a) only.".

—Page 57, line 22: Strike "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 58, line 19: After "benefit." Insert "Each report referred to in subsection (b) of this section shall, with respect to any dependent child, contain information listed in paragraphs (3) and (4) of subsection (a) only.".

—Page 58, line 20: Strike "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 59, line 4, after "benefit.", insert "Each report referred to in subsection (b) of this section shall, with respect to the spouse of the reporting individual, contain information listed in paragraphs (1), (3), (4), and (5) of subsection (a) only.".

—Page 65, lines 9 through 16, strike:

"(b) The Committee may require the reporting and disclosure of information pertaining to reporting individuals and their spouses and dependent children in addition to that required by this title for the purpose of furthering compliance with laws, regulations, and codes governing the conduct of officers and employees of the judicial branch or insuring the confidence of the public in the integrity of the Government."

Page 65, line 17, strike "(c)" and insert "(b)".

Page 65, line 22, strike "(d)" and insert "(c)".

—Page 66, line 3: Strike "(a)" and insert "(c)".

H.R. 1

By Mr. ECKHARDT:

(Amendment to the amendment offered by Mr. Danielson.)

—Page 49, immediately after line 24 insert the following new subsection:

"(g) The prohibitions contained in subsection (c) of this section shall not apply with respect to any formal or informal appearance before or communication to a department or agency by a person who is a member in good standing before, and is licensed or certified to practice in a profession by, any Federal or State licensing or certifying authority for such profession, if the following conditions are met:

"(1) Such person is subject to discipline, including suspension or revocation of such person's license or certification to practice, by the licensing or certifying authority on account of—

"(A) a failure to possess the requisite qualifications to represent others,

"(B) a lack of character or integrity, or

"(C) engaging in unethical or improper professional conduct.

"(2) Such department or agency has in effect standards of ethical conduct—

"(A) for its officers and employees which, at a minimum, proscribe and subject such officers and employees to disciplinary action, including suspension or dismissal, for—

"(i) using public office for private gain,

"(ii) giving preferential treatment to any person,

"(iii) impeding Government efficiency or economy,

"(iv) compromising independence or impartiality,

"(v) making a Government decision outside official channels, or

"(vi) affecting adversely the confidence of the public in the integrity of government; and

"(B) for its former officers and employees which, at a minimum, provide for disciplinary action, including the suspension or revocation of the privilege of appearing or practicing before it, upon a finding (after notice and an opportunity for hearing) of—

"(i) failure to possess the requisite qualification for representing others,

"(ii) lack of character or integrity; or

"(iii) engaging in unethical or improper professional conduct.

"(3) Such appearance before, or communication to such department or agency is of a category exempted from the prohibitions contained in subsection (c), for purposes of this subsection, by general rule or regulation promulgated by the department or agency, in consultation with the Director of the Office of Government Ethics, and published in the Federal Register.

"(4) (A) A file containing—

"(i) any such written communication (and responses thereto),

"(ii) memoranda stating the substance of any such oral communication (and responses thereto), and

"(iii) all written communication (and responses thereto) and memoranda stating the substance of all oral communications (and responses thereto) in connection with any such appearance,

is made available for public inspection and copying immediately upon request, notwithstanding any provision of section 552(a)(6) of title 5, United States Code.

"(5) Such appearance is not before, or communication is not with, any person under the direct supervision and control of such former officer or employee, while employed with such department or agency.

"(6) Such former officer or employee files a written declaration with the department

or agency that he or she is currently qualified to appear in a representative capacity before the department or agency, and that the appearance or communication is not intended to have, and cannot reasonably be expected to have, any effect described in paragraph (2)(A) (i) through (vi) of this subsection.

For purposes of this subsection, the term "State" includes the District of Columbia and any territory or possession of the United States.

Page 49, line 25, strike out "(g)" and insert in lieu thereof "(h)".

Page 50, line 21, strike out "(h)" and insert in lieu thereof "(i)".

H.R. 1

By Mr. FRENZEL:

(To the amendment offered by Mr. Danielson.)

—On Page 9, lines 17 through 19, strike out "; and from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit." and insert a period.

—On Page 27, lines 21 through 23, strike out ", and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit." and insert a period.

—On Page 58, lines 17 through 19, strike out ", and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit." and insert a period.

H.R. 1

By Mr. GARY A. MYERS:

(Amendment to the amendment in the nature of a substitute.)

—Page 3, line 8, strike out "(2)" and insert in lieu thereof "(1)" (other than the identity of the source of income), (2),".

Page 3, line 12, strike out "(2)" and insert in lieu thereof "(1) (other than the identity of the source of income, (2),".

Page 23, line 11, strike out the period at the end thereof and insert in lieu thereof a comma and the following: "except that this paragraph shall not require the reporting of the amounts of income received while the reporting individual was not holding any office or position described in section 201(f)."

Page 26, line 13, strike out the period at the end thereof and insert in lieu thereof a comma and the following: "except that this paragraph shall not require the reporting of the amounts of income received while the reporting individual was not holding any office or position described in section 201(f)."

H.R. 11733

By Mr. GARY A. MYERS:

—Page 169, after line 17, insert the following new section:

MARIJUANA REPORT

"SEC. 229. The Secretary shall report to Congress not later than December 31, 1979 concerning the progress of efforts to detect and prevent marijuana use by operators of motor vehicles. Such report shall include, but not be limited to, information concerning the frequency of marijuana use by motor vehicle operators, capabilities of law enforcement officials to detect the use of marijuana by motor vehicle operators, and a description of federal and state projects undertaken into methods of detection and prevention. The report shall include the Secretary's recommendations on the need for legislation and specific programs aimed at reducing marijuana use by motor vehicle operators."

Page 169, line 19, renumber Sec. 229; delete "230" and insert in lieu thereof "231".

Page 171, line 16, renumber Sec. 230; delete "230" and insert in lieu thereof "231".

H.R. 11733

By Mr. WALGREN:

—Page 151, after line 10, insert the following new section:

INCREASED FEDERAL SHARE

SEC. 159. (a) Notwithstanding any other provision of law, the Federal share of any project approved by the Secretary of Transportation under section 106(a), and of any project for which the United States becomes obligated to pay under section 117, of title 23, United States Code, during the period beginning on the date of enactment of this section and ending on the last day of the one-year period beginning on such date of enactment (both dates inclusive), shall be such percentage of the construction cost as the State highway department requests, up to and including 100 per centum.

(b) The total amount of such increases in the Federal share as are made pursuant to subsection (a) of this section for any State shall be repaid to the United States by such State before September 30, 1982. Such repayments shall be deposited in the Highway Trust Fund. No project shall be approved under section 106 or section 117 of title 23, United States Code, for any project in any State which has failed to make its repayment in accordance with this section until such repayment has been made.

H.R. 11733

By Mr. WEISS:

—Page 108, after line 3, insert the following:

"SEC. 118. The first three sentences of section 138 of title 23, United States Code, are amended to read as follows: "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, historic sites, and the navigable waters of the United States. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, the Administrator of the Environmental Protection Agency, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed and to maintain the navigable waters of the United States. After the effective date of the Federal-Aid Highway Act of 1968 in the case of land, and after the date of enactment of the Surface Transportation Act of 1978 in the case of the navigable waters of the United States, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, State, or local significance as so determined by such officials, or any navigable waters of the United States, unless (1) there is no feasible and prudent alternative to the use of such land or such navigable waters, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, historic site, or such navigable waters resulting from such use. After the date of enactment of the Surface Transportation Act of 1978, the Secretary shall not enter into any obligation on behalf of the Federal Government to pay any sum with respect to any such program or project (including any such program or project approved before such date of enactment) unless such program or project is consistent with the provisions of this section and will be carried out (during the period with respect to which such sum is paid) in a manner consistent with the provisions of this section; and no such obligation shall be entered into until the Secretary submits to Congress a written certification that the program or project will be carried out in that manner together with a written document describing the procedures used by the Secretary in determining that such program or project is so consistent."

Page 204, after line 6, insert the following new section:

"SEC. 329. No financial assistance shall be provided by the Secretary to a local transit authority eligible to receive such assistance under programs or projects administered by the Urban Mass Transportation Administration, unless the board of directors of such local transit authority consists of persons a majority of whom both (1) reside in the area served by the mass transportation facilities under the supervision and governance of the local transit authority, and (2) use the mass transportation facilities under the local transit authority's supervision and governance as a principal means of transportation."

H.R. 12452

By Mr. MAGUIRE:

(Amendment to the amendment in the nature of a substitute to section 2 offered by Mr. Jeffords.)

—On page 19, line 23, immediately after the period, insert the following new sentence:

"The Secretary may disapprove any portion of a plan if he finds that the use of funds for a particular sub-contract or sub-grant provided within that portion of the plan would be grossly inefficient or fail to carry out the purposes of the Act.

On page 19, line 24, immediately after the word "plan", insert: ", in whole or in relevant part,".

—On page 30, line 16, immediately after the period, add the following new sentence:

"In the event of any such withholding which results from fraud or abuse as determined by the Office of the Secretary, the Secretary may order the prime sponsor to conduct the program as specified in the applicable plan on the basis of funds other than funds under this Act and may enforce such order by appropriate civil action, unless the prime sponsor elects to terminate participation as a grantee under the Act."

—On page 76, immediately after line 7, add the following new subsection:

"(g) The Secretary shall report to Congress, within one year of enactment of this Act, his recommendations for legislative changes designed to increase the representativeness and independence of the prime sponsor's planning councils, with special attention to the process for selecting council memberships.

—On page 90, line 12, change "(c)" to "(d)" and insert the following new subsection immediately after line 11:

"(d)(1) Any objective programmatic performance data collected of prime sponsors by the Director which are used to rank or assess the performance of prime sponsors, a result of which would be to systematically provide an incentive or inducement to prime sponsors to fail to give special consideration, to the maximum extent possible, to eligible persons who are the most severely disadvantaged in terms of the length of unemployment and prospects for finding employment prior to program participation, shall be deemed undesirable performance indicators, except where such data pertains to programs not intended to serve primarily or exclusively the most severely disadvantaged.

"(2) The Director shall replace or eliminate the use of undesirable performance indicators as expeditiously as prompt development of adequate alternative management information techniques which do not suffer the defect of providing an incentive or inducement described under paragraph (1) permits. The Director shall report to Congress periodically on the progress of development and implementation efforts thereof.

EXTENSIONS OF REMARKS

LUCIAN WARREN RETIRING

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. NOWAK. Mr. Speaker, for more than three decades Lucian Warren has been an active—and energetic—member of the Washington press corps, first as the Washington correspondent for the Buffalo Courier-Express and the last 10 years as bureau chief for the Buffalo Evening News, the two independent daily newspapers in my hometown of Buffalo, N.Y.

During this time, I am sure many of my colleagues met Lu Warren, either during his coverage of Capitol Hill or at National Press Club or Gridiron Club functions—two prestigious organizations he has served in many capacities including president.

Those of us who have been associated with Lu Warren—either professionally or socially—have come to know him as both a highly competent member of the fourth estate and an amiable gentleman.

Recently, the Buffalo Evening News announced Lu Warren's impending retirement. In wishing Lu well in his future endeavors and commending him for the important public service function he performed in outstanding fashion for 33 years in Washington, I would like to share with my colleagues the September 5, 1978, article from the News which details his career and accomplishments:

RETIRING DEAN OF NEWS DISTRICT OF COLUMBIA BUREAU "SAW IT ALL" IN 33 YEARS AT CAPITAL

WASHINGTON.—After a newspaper reporting career that began in the 1930s as a high school stringer and included heading three prestigious journalism organizations in Washington, Lucian C. Warren, The Buffalo Evening News Washington Bureau chief, is retiring with no regrets about that career.

He would do it all over again and, in fact, at age 65, still plans to keep his hand in on the Washington scene by free-lancing.

"I'm one of the few newspapermen here who doesn't want to leave Washington after retiring," Mr. Warren said. "I like Washington not just as a news capital but because of its cultural advantages."

Mr. Warren, who will retire officially Sept. 30, knew what he wanted to do back in his student days at Jamestown High School. He wrote stringer items for the Jamestown Evening Journal. That led to his getting a job as a summer reporter.

He was graduated in 1936 from Denison University where he gained Phi Beta Kappa honors. In 1952 he was presented a "distinguished achievement" award by the Society of the Alumni of Denison University.

Mr. Warren was hired as a general assignment reporter by the Buffalo Courier-Express in the late 1930s. In 1945 he became that paper's Washington correspondent and in 1968 became Washington Bureau chief for The News.

In his 33 years in Washington, Mr. Warren has covered it all. There have been more than a dozen trips abroad, including accompanying presidents and going to see for himself. He prefers the latter because too many presidential trips are "ceremonial" and "you're chained to the president." He twice covered the Vietnam War and won an Ernie Pyle journalism award for a series on that war.

In 1972 he visited most of the Eastern European countries for a series of articles, and last year he spent six weeks in Scandinavia writing on the political and economic conditions of the Nordic nations. Back in the 1950s he was on hand for naval maneuvers in the North Sea and in the 1960s visited and wrote about Middle Europe.

Even with retirement, the travel and writing continue. He is now on a world trip with his wife, the former Katherine Smith of Ashland, Va., and will visit Japan, India, Turkey, Egypt, Israel, Lebanon, Syria and Jordan.

Mr. Warren has been at the national political conventions and personally has known all the presidents who served during his three decades here. At the last Gridiron dinner, when President and Mrs. Carter went on the stage to take part in a dance, Mr. Warren was chosen by his colleagues, to be the first lady's partner.

Perhaps the word "achiever" can best describe his activity here. Mr. Warren is one of those people who doesn't just belong to things, but takes part and leads. His career has included presidency of the National Press Club in 1955; chairman in 1967 of the Standing Committee of Correspondents, which oversees news coverage of Congress; and in 1975 the ultimate honor, presidency of the Gridiron Club, a limited-membership organization of top news people.

It is generally agreed that few newspapermen in this city have as wide a range of acquaintances in government. It is not odd for him, on the trail of a story, to bypass normal press channels and call some "old friend" at a department or in Congress to get his information quickly and first hand.

Most of his years with the Courier-Express were concerned with coverage of the "local angle" stories, that he says are still the single most important responsibility of a Washington bureau. But at The News, he expanded his duties, covering the White House on a daily basis, a task made difficult because The News required quick reports to meet dayside deadlines, a challenge he admits he is sure to miss. The News also provided him the opportunity to write a weekly column in which his views based on years of experience were shared with readers.

Reporters are supposed to be cynical, but Mr. Warren has kind things to say about people in government, especially those in the top echelons.

"The people in government by and large are very articulate and for the most part very warm. Sometimes if you get into the lower echelons, right into the bureaucracy, this is not so. But I have been impressed by the high caliber, the warmth, the personality and the comprehension of subjects of the people in government, especially those high in government."

Relationships in the executive branch have varied.

President Eisenhower's press secretary, Jim Haggerty, got the highest marks for working with and helping the press. He was "the best of the lot, the most knowledgeable, and he could talk on his own. He seemed to have carte blanche from Eisenhower."

It's varied greatly from administration to administration. Ron Ziegler under Nixon drew low grades, but Mr. Warren conceded it was not his fault alone; it was more the system and that Mr. Ziegler really wasn't clued in on everything.

Mr. Warren has some favorites. One is former Rep. William E. Miller, who was "very straightforward" in dealing with reporters. There are Republicans who say Mr. Warren played a role in making Rep. Miller the GOP vice presidential nominee in 1964. Mr. Warren wrote a column suggesting the idea, and the GOP National Committee made copies and passed it among delegates.

On the occasion of Mr. Warren's retirement, Murray B. Light, managing editor news, remarked: "Lu Warren has served the News and its readers well in his 10 years as chief or our Washington Bureau. As a reporter, he has maintained the highest professional standards, and he is recognized among his peers and in the high counsels of government for these standards.

"Explaining the goliath that is Washington is no simple chore. Lu has explained and clarified Washington for Western New York readers for three decades. It is a singular service in which he can take great pride.

"The News is happy that Lucian Warren's byline will continue to appear from time to time in our news columns as time permits him to comment on people and issues in Washington and throughout the world."

The Warrens have three daughters, a son and six grandchildren.●

SUPERVISOR SIG SANCHEZ

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. MINETA. Mr. Speaker, I would like today to honor a fine gentleman who for more than 24 years has devoted himself to public service: Santa Clara County Supervisor Sig Sanchez.

During his 9 years in public service, Mr. Sanchez served as a councilman and mayor of the city of Gilroy. In 1962 he was elected to the Santa Clara County board of supervisors.

Over the past 15 years, while on that board, he has been recognized for his prudence in budget preparation and his continuing efforts to maintain low property tax rates.

Mr. Sanchez has also spearheaded the creation and implementation of land use policies in Santa Clara County aimed at orderly growth, efficient use of resources, and the preservation of open space.

Mr. Sanchez has served as president of the County Supervisors Association of California (CSAC). He currently sits on its board of directors and executive committee. He also serves on the National Association of Counties (NACO) board of directors.

As of January 1979, Supervisor Sanchez will retire from his duties as representative of Santa Clara's First Supervisorial District.

Therefore, a dinner honoring him is being held by his friends and colleagues on November 9, 1978.

I ask you, Mr. Speaker, and my colleagues in the House of Representatives to congratulate Supervisor Sanchez for his many great achievements and to wish him success in all his future endeavors.●

MODEL PUBLIC INTEREST LAW CONFERENCE

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. NOWAK. Mr. Speaker, on September 29–30, the State University of New York at Buffalo Law School, in conjunction with the American Bar Association Special Committee on Public Interest Practice and the Erie County, N.Y., Bar Association, will host the first Model Public Interest Law Conference. Funded by the ABA, the program is primarily designed to inform lawyers, bar associations, business, government, and community leaders about the possibilities of public interest law practice in their community.

The conference is intended to serve as a model for subsequent related sessions to be sponsored and funded by the ABA. Certainly, therefore, we in the Buffalo area are very proud of the SUNY at Buffalo Law School's contributions to our community and of its selection to host this unique conference.

In conjunction with this conference, I would like to bring to my colleagues' attention a most interesting and comprehensive article by Marshall Jordan Breger, visiting associate professor of law at the SUNY at Buffalo Law School who was a member of the Board of Directors of the Legal Services Corporation from 1975 to 1978. The article entitled "Legal Services in the United States," which appeared in a British journal this spring, follows:

LEGAL SERVICES IN THE UNITED STATES

Amongst the evidence submitted to the Royal Commission on Legal Services have been suggestions to place the responsibility for the administration of legal aid on an independent Legal Services Commission similar to the Legal Services Corporation in the United States—now two years old. The continuing growth of the neighbourhood law centres in Britain has further focussed attention on legal aid in America, where the salaried attorney scheme is the prevailing legal aid model. This article will sketch the history of legal aid in the United States focussing on those aspects of interest to English lawyers.

Legal services in America were originally a philanthropic effort of the private bar, reminiscent of England's poor man's lawyer movement. In 1965, however, federal funds became available for legal services programmes through the Office of Economic Opportunity. These OEO grants soon changed the face of legal services in America. Programmes spread throughout the country. Funding increased from less than $4 million in 1963 to approximately $70 million in 1970. For the first time talented attorneys focussed exclusively on the legal problems of the poor. Such specialisation, spurred by intense enthusiasm and commitment, had a dramatic impact on both the substantive and the procedural laws which affect poor people.

The OEO legal services programme was spawned as part of a national "war on poverty". It appealed to the "best and brightest" among American law school graduates attracted by the possibilities of using law as a mechanism of social change. As such, the programme created great controversy and was attacked variously by local bar organisations, state governments and conservative legislators. Unsuccessful attempts to restrict legal services programmes were made in both Mississippi and California. Congressional pressure to amend or close down the programme grew, largely fuelled by conservative congressmen unhappy with its alleged (and perhaps real) liberal biases. Throughout the future and the structure of the OEO legal services programme were in continual doubt.

AN INDEPENDENT CORPORATION

From 1970–74 Congress debated various reorganisation proposals. While some consensus emerged that legal services ought to be removed from the direct purview of the executive, notions differed widely as to the structure of that reorganised entity. Some wished to delegate programme control to state governors. Others hoped to turn the programme into a "judicare" scheme along the lines of British legal aid. A number of interests coalesced around the idea of creating an independent non-governmental entity—a legal services corporation. The structure of such a corporation evoked great controversy, focussing mostly on the composition of the proposed organisation's Board of Directors. Legal services legislation passed Congress in 1971 but was vetoed by President Nixon who complained, *inter alia*, that the legislation would not allow him to appoint all of the directors of the proposed public corporation. When the legislation was reintroduced in 1973 the resultant compromises to ensure passage pleased neither liberal nor conservative pressure groups.

After much travail, the Legal Services Corporation Act became law on 25 July 1974. The Act created an independent non-profit corporation which would provide financial support to local programmes offering legal assistance in non-criminal matters to low-income persons. The Corporation is run by a bi-partisan Board of Directors appointed by the President with the advice and consent of the Senate. The 11 directors serve staggered terms to provide continuity. This structure differs radically from the old legal services effort which, since 1967, has been a separate division of the Office of Economic Opportunity (OEO), itself part of the executive branch.

There is an important difference between the stated mission of OEO and that of the new Corporation. Whereas the grand purpose of the former was to end poverty in our time, the more modest (if no less important) function of the Corporation is to ensure "equal access to the system of justice . . . for individuals who seek redress of grievances . . . and who would be otherwise unable to afford legal counsel." Although it is unlikely that this shift in rhetoric has in practice affected the day-to-day activities of legal services programmes (some indeed had never followed the move in the late 1960s away from individual casework to law reform), nonetheless many legal services attorneys decried a perceived shift in the programme's emphasis, which reflects different conceptual approaches to the legal aid enterprise. The demand that a justly organised legal system include state subsidised attorneys committed to social change assumes that transfer of wealth and power in society is a socially desirable goal that governments are or should be pursuing. Whereas the proposition that the government fund attorneys to aid citizens to resolve needs which the rules of social order deem to be "legal" is based on the belief that we cannot equitably urge citizens to rely on the law to resolve social disputes without proffering all citizens the opportunity of effective access to the tools of law. Such access, it is presently assumed, can effectively exist only through recourse to legal aid and advice. In other words, the original objectives set down for legal services seem to be based on the premise that the government ought to institutionalise support of social change agents; the more recent articulation of the aims of legal services focus on process values of equal protection and fair play. These differences reflect an ambiguity in the role definition of many legal aid attorneys. In future years programmes will have to tread delicately between these often complementary, though at times competing, goals.

HOW THE CORPORATION OPERATES

The Corporation's main function is to fund and regulate local legal services programmes. The Act, however, places some restrictions on the ways in which the attorneys in these programmes may ply their trade. The Corporation's brief is limited to civil matters; criminal representation is forbidden, since it is otherwise provided for under the constitution in cases in which the defendant may be given a jail sentence.

The Act largely disallows representation in three controversial matters: school desegregation cases, cases involving non-therapeutic abortion, and selective service (e.g. conscription) cases. Legislative advocacy is limited to occasions when a government body actually invites a lawyer to testify or when testimony will serve the needs of an identified client whom the lawyer is at the time representing. Apart from these instances, lobbying is prohibited, as are picketing and political organisation, variously defined. Local legal services attorneys have challenged the constitutionality of some of these restrictions but they have been upheld by a number of federal courts.

The restrictions were imposed not as a result of a coherent theory of legal aid but rather of the grab-bag nature of the legislative process that led to the Act. The final legislation was hurriedly amended to meet conservative objection and thwart a threatened veto by President Nixon in his final days in office. To garner sufficient votes, the proponents of the Act in desperation were willing to accept numerous restrictions, many of which have been removed by liberalising amendments recently passed by Congress.

The Corporation has developed regulations to govern the conduct of local programmes and attorneys. Perhaps the most interesting are rules requiring that at least one member of the Board of Directors of a local programme be an eligible client and that at least one-third of the members be clients or representatives of client groups. At the same time, 60 percent of the Board must consist of licensed attorneys. The local board must "reasonably reflect the interests and characteristics of the eligible clients in the area served." These rules reflect the Corporation's commitment to the principles of community participation and accountability developed in the anti-poverty movement of the last decade.

EXPANSION

The initial funding of the old OEO programme was based on neither demographic nor geographic considerations. Anxious to make the programme a *fait accompli* and fearful of opposition by local bar associations, legal services administrators made grants to almost any community with interested citizen groups and a sympathetic local bar. As a result, some areas of the country, the South and Southwest particularly, were grossly underfunded. Since only indigents in specified programme catchment areas were eligible for service, large portions of the population did not receive any serv-

ice at all. When the Corporation began, nearly 12 million poor persons lived in areas where there were no legal services programmes at all. Eight million lived within programme boundaries but the programmes in those designated areas were so severely underfunded that access was theoretical only.

During the past two years, with vastly improved federal funding, the Corporation has been able to arrest decay and begin to expand services. The legal services grant from Congress rose from $71.5 million for OEO in 1975 to $205 million for the Corporation in 1978. For fiscal year 1979 the Corporation has requested a grant of $305 million. Some 325 legal services programmes throughout the country exist, involving about 3100 lawyers and 1400 para-legals.

During the final years of the OEO programme, funding constraints reduced the effectiveness of the existing legal services offices. Between 1972 and 1975 more than 300 field attorney positions were made redundant. Nearly one third of the neighbourhood offices were closed for reasons of economy. Maintenance of basic research libraries and office equipment was severely retarded. Caseloads of over 500 were not uncommon. Turnover of attorneys was upwards of 30 percent a year, thus denying the programme the wisdom of experienced able lawyers trained in poverty problems. Salaries, never competitive with the private sector, fell dangerously out of step. Legal services offices became the training ground for the private bar and the local prosecutor's office, spawning attorneys who expend themselves for some years and then depart for greener, or at least less frustrating, pastures.

This sorry situation has now been turned around. Inflationary "catch-up" grants and across-the-board increases have allowed most existing programmes to restore much of their service activity. By the end of next year, almost all existing programmes will be funded at the rate of $7 per poor person. While still inadequate, this is a significant increase over the per capita expenditures of OEO days.

As an intermediate goal, the Corporation intends to expand its programme area to provide the equivalent of two attorneys per 10,000 poor persons throughout the country by the end of fiscal year 1979. (In contrast, recent figures suggest that there are more than 14 attorneys per 10,000 persons in the private sector.) This increase will require the creation of new programmes and expension of the geographical boundaries of existing ones. Both processes are now underway. In 1977, 40 new projects were funded and 57 projects received funds to expand legal services coverage to previously unserved geographic areas. The number of poor persons served depends, of course, on the eligibility standard used. The Corporation does not set a national standard but allows local programmes to set a cut-off point at 125% of the federal government's OMB (Office of Management and Budget) Poverty Standard, one of several poverty guidelines used to govern social services means tests in the United States. Depending on location, single persons with an approximate yearly income of $3,700, or a family of four with an income of $7,300 would be eligible for service.

Even with this planned expansion, nearly 10 million eligible clients will still live in areas without programmes, and over 6 million will live in localities where funding is not sufficient to provide "minimum access". Moreover, in areas where the "minimum access" standard has been reached, need far surpasses capacity to serve. In truth, the Corporation's goal of two lawyers per 10,000 poor persons was an artificial construct designed to secure funds from Congress and was not based on any systematic assessment of the legal needs of the poor.

Further the OMB standard attempts to specify in dollar terms the minimum level for food purchases by various family groups. It bears little relation to the actual ability of persons to pay for legal services. One can be "legally needy" in the sense that one is unable to pay a lawyer's going rate and still be far above the poverty line. Since the Corporation provides services on an "all or nothing" basis, there is no way for needy clients above the poverty line to make partial payment and still receive services.

THE RATIONING PROBLEM

Even with such an unrealistic income limitation, local programmes cannot meet the demands placed on them by eligible clients. Some form of rationing is necessary. In the past, programmes often rationed legal services unconsciously, for instance by setting appointments weeks in advance or taking new cases on the first day of a month only. Rationing occurred by default. In other programmes, attorneys set their own priorities consciously, often on the basis of their conception of community needs. These rationing criteria were often unstated and haphazardly used. The Corporation has required every programme to develop an explicit scale of priorities with the active involvement of the local client community. Thus, while no national priority schedule for cases has been formulated, a process for developing local priorities has been laid down.

EXPERIMENTATION

Most of the existing legal services programmes in the United States are on the salaried staff attorney model, similar to neighbourhood law centres in Britain. However, the Corporation has a statutory duty to study other methods of delivering legal services, and during the past two years it has funded 38 experimental legal delivery projects throughout the country. Each of these projects involves private sector attorneys in the delivery of legal services to the poor.

The alternate delivery systems that the Corporation is investigating include:

1. The "judicare" approach, analogous to the British legal aid scheme, in which eligible clients go to private attorneys of their choice, who are reimbursed by the scheme according to a set fee schedule.

2. The voucher scheme, under which eligible clients receive a chit worth a set amount for legal aid or advice and have the choice of cashing it at a salaried attorney office or with a participating private attorney.

3. Pre-paid legal insurance, in which the Corporation enrolls a group of poor persons in an existing legal insurance plan and pays the premiums.

4. Contracts with private law firms, which may be of two kinds. Either a group of private attorneys agrees with the Corporation to provide general legal services of the kind offered by a staff attorney programme in a comparable area; or such a group agrees to provide a specialized service to clients referred from a salaried attorney office.

5. The legal clinic, which is an office providing high-value, low-fee services in specific areas of law that can be handled in a relatively routine fashion, using a core of lawyers supplemented by para-legals, law students, and law workers. In the Corporation test, a clinic is being run on a probono, no-fee basis.

The Corporation is also exploring ways of increasing the efficiency of legal aid offices and is developing and testing tools for evaluating attorneys' competence and assessing the satisfaction of clients.

LESSONS FOR BRITAIN

As can be seen, the Legal Services Corporation differs in a variety of respects from the British legal services programme. It is run largely through salaried attorneys who work full time as poverty lawyers; the private bar is involved only marginally. Eligibility is an all-or-nothing affair; there is no sliding-scale fee schedule. Priority schedules may well place issues of broad communal concern above the resolution of legal problems important only to the individuals involved.

Most relevant, the legal services movement in America is run neither by the government nor by the American equivalent of the Law Society, but through an independent public corporation. This autonomy provides significant freedom to the legal aid lawyer. At the same time it creates a sense of common purpose within an identifiable legal services community. This approach to the provision of legal assistance to the poor is well worth the attention of the English legal profession.●

CLAUDE L. FERNANDEZ AND ROBERT H. MEDINA

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. MINETA. Mr. Speaker, two of organized labor's finest leaders in Santa Clara County, Calif., Mr. Claude L. Fernandez and Mr. Robert H. Medina, will be honored September 16, 1978, at the Labor Council for Latin American Advancement's first annual dinner. I would like to bring to the attention of my colleagues in the House some of the accomplishments of these two individuals and to add my thanks to those of the labor council for the contributions they have made to the labor movement and to our communities in Santa Clara County.

Mr. Fernandez has been employed by the Retail Clerks Union since January 1942, and currently serves as the secretary-treasurer for local 428, which has over 7,000 members. He is cofounder of the local's credit union, which has assets of over $1.25 million.

Claude currently serves as a delegate to the Central Labor Council of Santa Clara County. He is a member of the Santa Clara County United Fund and of the Community Service Committee of the AFL–CIO.

While chairman of the community service committee, Claude helped to establish the Mexican-American Community Services Agency and to obtain funding for it through the Rosenburg Foundation and later through united fund. In 1964, Claude received the National AFL–CIO United Way award for community service.

Claude has been a member of the Central Labor Council's Speakers Bureau and has lectured on labor management and industrial relations at San Jose Community College, San Jose State University, the University of San Francisco, at the business and law schools of the University of Santa Clara, and at Stanford University.

Presently, he is a member of the California State Transportation Commission and the Advisory Board of the School of Labor Studies within the Department of Industrial Relations for the University of California system.

Mr. Robert H. Medina was initiated as a member of the Cement Workers Union Local 270 in 1946 while employed by the Permanente Cement Co. He was elected in June of 1950 as a member of the exec-

utive board of the Construction and General Laborers Union Local 270. In June 1952, he was elected secretary-treasurer of local 270, a post he has held continuously since then. From 1957 to 1961, he also served as the union's recording secretary and in 1978 the office of recording secretary was combined with the office of secretary-treasurer.

Bob has been very active in the hierarchy of the laborers' union, serving as a trustee of the Northern California District Council of Laborers from 1957 to 1967. From 1967 to 1971, Bob served on the executive board and in September of 1971 became vice president of the council. In February 1977, Bob was elected president for the Northern California District Council of Laborers.

On June 15, 1978, he was elected as the 21st vice president of the State Building and Construction Trade Council.

In addition to his work with the union, Bob served for 1½ years as a member of the 1973 Santa Clara County grand jury.

Mr. Speaker, I ask you and all my colleagues to join in congratulating Claude L. Fernandez and Robert H. Medina on their outstanding careers of service to Santa Clara County and in wishing them every success in the future.●

CONSUMER REGULATIONS FOR ALTERNATIVE MORTGAGE INSTRUMENTS

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. PATTERSON of California. Mr. Speaker, many of my colleagues have expressed an interest in title 18 of H.R. 13471, "The Financial Institutions Regulatory Act of 1978." This bill will come to the floor of the House in the near future.

I would like to take this opportunity to share with all of my colleagues the alternative mortgage regulatory proposal which was issued for comment by the Federal Home Loan Bank Board on July 24, 1978. These regulations are most important because they contain the consumer protection guidelines and plans for implementation of title 18 of H.R. 13471.

I think the Members of this House will find the guidelines more than adequate. It is my hope these guidelines will serve as a model for many of the States where alternative mortgage instruments are now actively in use.

The regulations are attached:

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 545, 555]

[78-428]

PROPOSED ALTERNATIVE MORTGAGE INSTRUMENTS

JULY 24, 1978.

Agency: Federal Home Loan Bank Board.

Action: Proposed regulations.

Summary: These proposed regulations would authorize a number of new type of mortgage instruments for use by Federal savings and loan associations: the variable rate mortgage, rollover mortgage, graduated payment mortgage, and reverse annuity mortgage. The Bank Board believes these instruments are necessary, in addition to the standard fixed-rate, fixed-payment mortgage, in order to meet the needs of homeowners during different phases of their financial life cycles.

Comments must be received by: October 1, 1978.

Address: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

For further information contact: Nancy L. Feldman, Assistant General Counsel, Federal Home Loan Bank Board, 202-377-6443, at the above address.

Supplementary information: Several months ago, the Bank Board published findings from its alternative mortgage instruments research study (AMIRS), a project begun in the spring of 1976 to provide a comprehensive and systematic review and analysis of a number of new mortgage instruments for use by Federal savings and loan associations. The findings indicated a present and growing need for alternative mortgage instruments (AMI's) as homeowners move through different phases of their financial life cycles. Although it is expected that the standard fixed-rate, level-payment mortgage will continue to be both popular and available, many borrowers want and need a choice of home finance arrangements. The Bank Board believes that availability of AMI's will permit homeowners to match their financing needs with appropriate mortgage instruments.

The proposed regulations cover four types of AMI's recommended for authorization in the Bank Board Study: The variable rate mortgage (VRM), graduated payment mortgage (GPM), rollover mortgage (ROM), and reverse annuity mortgage (RAM). All the consumer safeguards described in the Study have been retained. Two important new restrictions are: (1) Not more than half of an association's home-mortgage loans made and purchased in any calendar year could be variable-rate mortgages and rollovers, and (2) These instruments could only be made, purchased or participated in by an association upon a finding by the Bank Board that authority to offer these instruments is required to preserve competitive balance in the association's home State.

The first part of the regulations sets out general restrictions on all AMI's. A prospective borrower must be shown a comparison between the AMI of interest to him and a comparable standard mortgage, described in the proposal as a mortgage with a fixed interest rate, level payments, and full amordition, each borrower must be given the op- and other terms, and examples of payment schedules in a "worst case" situation. In addition, each borrower must be given the option of choosing a standard instrument, rather than an AMI. This does not mean that associations would have to offer a standard 95 percent loan, for example, to a borrower whose income level would not support the monthly payments but would qualify for a 95 percent graduated payment mortgage; such a borrower would receive a comparison of the GPM and a standard mortgage with comparable terms, to which s/he could choose to convert later in the loan term when s/he met the underwriting criteria, and the present alternative option would be a standard mortgage for which s/he currently qualifies. Borrower payments on AMI's could not be changed more frequently than once a year, with annual payment increases limited to 7.5 percent; balloon-payment loans would have to provide for refinancing at then current rates when final payment was due.

The proposal provides for down-payment (loan-to-value ratio) requirements to be the same for AMI's and comparable standard mortgages, since AMI's are not new types of loans, but simply different, creative methods of payment for regular types of home loans. The Bank Board is aware that this may cause a problem in the case of GPM "negative amortization", where equity actually declines in the first years of the loan and invites comment on whether lower-equity requirements and additional safeguards would be appropriate for such loans. It is noted in this regard that the proposal would allow use of certain pledged savings accounts in lieu of down payments for loans in excess of 80 percent of the property's value; this is currently prohibited by Bank Board regulation.

The next regulatory sections cover the individual kinds of AMI's. GPM's have scheduled payments which begin below, and rise higher than, those of a standard mortgage until a predetermined level is reached; the period and rate of increase and interest rate are fixed at loan origination. Limits would be prescribed for maximum periods and annual rates of increase from 7.5 percent for 5 years to 3 percent for 10 years. The borrower would be given a one-time right to convert to a standard mortgage, without penalty if conversion is at the same interest rate and for the same original term as the GPM.

VRM's change according to market interest rates; such rates would have to be tied to independent Bank Board-approved indices. The regulation would authorize Federal savings and loan associations to make, purchase, and participate in VRM's (as well as ROM's, discussed below) only if the Bank Board has determined that Federal associations require such authority to maintain competitive balance with State-chartered institutions located in their home State. Increases would be limited to an annual rate of one-half of 1 percent, and a maximum of 2.5 percent over the life of the loan. Decreased would be mandatory, increases optional with the lender, but increases not taken could be accumulated and taken later but not in excess of the permitted annual or overall increase. Decreases less than the minimum change (0.10 percent) would also be accumulated. Lenders would be required to notify borrowers 45 days in advance of a rate increase, at which time the borrower could (1) Prepay without penalty (unless the rate was then below the original rate), (2) Agree to make higher installment payments, or (3) Make the same payments by extending the loan to a maximum of 40 years from origination. In the event of a decrease, either borrower or lender could require reduction of any prior extension of the loan term to the extent of the required interest rate.

An example of an index the Bank Board would consider approving for use in connection with VRM's and ROM's is one which the Federal Home Loan Mortgage Corporation has used; it is based on a combination of (1) the average market yield of outstanding U.S. Treasury securities with remaining maturities of 3 to 5 years (published by the Federal Reserve Board), and (2) the Federal Reserve Board Seasoned Corporate Bond Yield series (based on Moody's Investment Service series). The Bank Board believes this index has demonstrated flexibility in moving with market rates of interest, and it invites public comment on the index's suitability.

ROM's would have long-term maturities subject to mandatory refinancing at scheduled times with minimum 3-year intervals. Any adjustments of interest rate or other terms of the loan at refinancing would be without administrative fees to the borrower. The VRM interest-rate indexes, maximum percentages of rate increase, geographic and percentage-of-loans limitations would apply to ROM's.

RAM's, although named "reverse annuity"

mortgages, do not require purchase of an insurance annuity, but rather refer generally to any type of instrument involving payments to homeowners based on accumulated equity. Since these plans may vary greatly and present a number of unique questions, the Bank Board's proposal does not attempt to limit their formulation, but rather would require submission and approval on a case-by-case basis.

The proposed regulations are keyed to the Bank Board's present Federal regulations section numbers, although a revision of these regulations has been proposed (43 FR 30730; July 17, 1978); it is contemplated that any final AMI regulations will be renumbered appropriately. The proposed alternative mortgage instrument regulations would be set forth directly following present § 545.6–1 pertaining to home loans, to which such regulations refer; the present text of § 545.6–2, referring to Charter E associations, is obsolete and would be deleted and the AMI regulation text substituted.

Accordingly the Federal Home Loan Bank Board proposes to amend its rules and regulations for the Federal Savings and Loan System, 12 CFR, parts 545 and 555, by adding a new subparagraph (a)(8) to § 545.6–1 thereof deleting the text of § 545.6–2 thereof and adding a new text thereto and revoking § 555.4 thereof, to read as set forth below.

PART 545—OPERATIONS

1. Amend § 545.6–1 by adding a new subparagraph (a)(8), as follows:

§ 545.6–1 Lending powers.

* * * * *

(a) Homes or combinations of homes and business property. * * *

(8) Real estate loans with pledged savings accounts as additional security.

Loans may be made under paragraphs (a)(4) and (5) of this section in excess of the maximum dollar, percentage-of-value, or percentage-of-purchase-price limitations thereof, with such excess secured by savings accounts, subject to the following restrictions:

(i) The loan shall not exceed the lesser of purchase price or value of the real estate;

(ii) The savings account shall consist only of funds belonging to the borrower, members of his family, or his employer;

(iii) The association shall fully disclose to the prospective borrower the difference (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings and a loan secured by real estate alone; and

(iv) The loan shall comply with §545.6–2 as it relates to graduated payment mortgages.

2. Delete the text of § 545.6–2 and add a new text as follows:

§ 545.6–2 Alternative mortgage instruments.

(a) General. Associations making loans pursuant to § 545.6–1(a) of this part may use the alternative mortgage instruments described in this section, which allow certain payment and other provisions different from those required elsewhere in this subchapter, subject to the following general restrictions (and specific restrictions where applicable):

(1) Payment amounts may not be changed more than once a year;

(2) Payments in any year shall be no more than 7.5 percent higher than the payments in the previous year, which amount shall be cumulative for adjustment periods in excess of a year.

(3) Balloon-payment loans (requiring a final payment more than twice as large as any preceding payment) must provide for refinancing at market rates current at the time final payment is due.

(4) Prospective GPM, VRM, and ROM borrowers shall receive:

(i) A side-by-side comparison of rates and other terms of the particular alternative mortgage instrument offered and a comparable standard mortgage instrument (with a fixed interest rate, level payments, and full amortization);

(ii) Examples of payment schedules required by the alternative mortgage instrument and comparable standard mortgage instrument, the former indicating (*a*) every maximum increase at the time it could first occur, and (*b*) the highest possible payment during the loan term; and

(iii) The option to elect a standard instrument; and

(5) Loan-to-value limitations under § 545.6–1(a) of this part shall be complied with throughout the loan term.

(b) *Graduated-payment mortgage.* (1) *Definition.* This instrument's scheduled payments begin at a level lower than that of a comparable standard mortgage instrument, and gradually rise until a predetermined point is reached, after which they remain constant; the graduation period and rate of increase and the interest rate are fixed at loan origination.

(2) *Graduation period and rate.* Graduation periods are limited to 10 years, with maximum rates of increase in mortgage payments as follows:

(i) 7.5 percent annually for a graduation period of 5 or fewer years;

(ii) 6.5 percent annually for 6 years;

(iii) 5.5 percent annually for 7 years;

(iv) 4.5 percent annually for 8 years;

(v) 3.5 percent annually for 9 years; and

(vi) 3 percent annually for 10 years.

(3) *Borrower option to convert.* Borrowers under this plan shall be given at least a one-time right to convert, at a time chosen by the borrower, to a standard mortgage instrument. No assessment of penalties or fees shall be made if the borrower chooses to convert at the interest rate and outstanding maturity of the graduated-payment mortgage.

(4) Interest capitalization resulting from any negative amortization of these instruments does not deny the loan first-lien status under § 541.9 of this subchapter; such debt is considered to be contracted for as future advances at the time of loan origination.

(c) *Variable-rate mortgage.*—(1) *Definition.* The interest rate of this instrument is tied to a reference index which reflects changes in market interest rates; thus, actual future payments are not known at the time of loan origination.

(2) *Geographic limitation.* A Federal association may make, purchase, or participate in variable rate mortgage loans on real estate located in its home State if the Board has determined that Federal associations require authority to invest in such loans to maintain competitive balance with State-chartered institutions located in such State; associations authorized to make these investments in their home States may also make them in other States where the Board has made similar determinations. Federal associations investing in variable rate mortgage loans shall comply with this section and any other applicable provision of this chapter.

(3) *Index.* The Board will publish approved indexes which:

(i) have proven reliability in moving with market interest rates.

(ii) are beyond the influences of the association using it.

(iii) can be clearly explained in simple terms to prospective borrowers with the aid of publicly available information, and

(iv) are substantially free from manipulation by peculiar economic or technical factors.

(4) *Interest-rate changes.*

(i) *Frequency:* Changes (up or down) may take place only on the loan anniversary date.

(ii) *Maximum changes:* The maximum amount of rate change (up or down) shall be one-half of 1 percent (0.5 percent) a year, with a maximum increase of 2.5 percent over the life of the loan. Downward changes must be made, but increases are at the lender's option. Changes in the index rate which are not taken (either at lender's option in the case of increases or because they are too small or too large, i.e. less than 0.10 or over 0.5 percent in a given year) may be accumulated by the lender in the case of increases, and must be accumulated in the case of decreases, and taken at a later time (but never more than 0.5 percent per year), or used to offset other changes.

(*a*) *Variation:* If the instrument provides for rate adjustments at periods exceeding 1 year, the maximum change shall still not exceed a 0.5 percent cumulative annual rate, for example 1 percent every 2 years.

(iii) *Minimum changes.* The smallest change (up or down) shall be one-tenth percent (0.10 percent). Changes beyond that amount may be made in any increment (up to 0.5 percent) where the lender makes available payment tables so borrowers may review the calculations.

(iv) *Actions relating to rate increases.* Lenders shall give borrowers written notice 45 days in advance of a rate increase. Upon such notification, borrowers shall have the following options:

(*a*) Do nothing; payments will be adjusted upward to reflect higher interest rate;

(*b*) Request that payments remain the same and loan maturity be extended to a maximum of 40 years from origination data; or

(*c*) Prepay the loan, either in full or in part, without penalty if the current rate is above the initial loan rate.

(v) Actions relating to rate decreases. Either the lender or borrower may require reduction of the loan term to original maturity in the event of a decrease to the original rate; partial term reductions may be required upon partial rate decreases.

(*d*) Rollover mortgage.—(1) Definition. This instrument is a long-term loan which is refinanced at regularly-scheduled times.

(2) Refinancing requirements. At each scheduled adjustment time, refinancing must be made available for the amount of the outstanding loan for the remaining term. Any adjustments shall be made without administrative charges to the borrower, and any change other than of interest rate shall require comparative disclosure in accordance with paragraph (a)(4) of this section.

(3) Scheduled adjustments shall be spaced at least 3 years apart.

(4) Index. Interest-rate adjustments shall be tied to an index which complies with paragraph (c)(3) of this section.

(5) Interest-rate changes. The maximum amount of rate change shall reflect a cumulative annual rate not over one-half of one percent (0.5 percent), with a maximum increase of 2.5 percent over the long-term life of the loan. Downward changes must be made at scheduled adjustment times, but increases are at the lender's options. Instruments shall be in compliance with paragraphs (c)(4)(iii), (iv), and (v), pertaining to minimum changes and actions relating to rate increases, and decreases.

(6) Geographic limitation. The geographic limitation applicable to VRM's applies also to rollover mortgages.

(*e*) Reverse-annuity mortgage.

(1) Definition. This instrument provides periodic payments to homeowners based on accumulated equity; the payments are made directly by the lender or through purchase of an annuity.

(2) Application. Proposed reverse-annuity-mortgage plans shall be submitted to the Board for approval.

(*f*) Application of restrictions. Where a restriction specific to a particular alternative mortgage instrument is more limiting than a general restriction pertaining to the same subject matter set forth in paragraph (a) of this section, the specific restriction shall prevail.

(g) Cumulative index-rate changes. Wherever this section refers to accumulation of index-rate changes over a multi-year adjustment period, it means that the change made at adjustment time may not exceed the specified maximum annual percent multiplied by the number of years in the preceding multi-year period. The increase or decrease is not limited to the annual amount as a maximum in a given year; for example, a rollover mortgage with a 5-year adjustment period whose index rate remains the same for 4 years and increases 1.5 percent in the fifth year may be increased 1.5 percent at the end of that year (assuming total increases do not exceed the 2.5 percent maximum).

(h) Percentage-of-loans limitation. Not more than 50 percent of an association's home-mortgage loans by dollar amount made or purchased in any calendar year shall be in mortgages under paragraphs (c) and (d) of this section.

PART 555—BOARD RULINGS

§ 555.4 [Deleted]

3. Delete § 555.4.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-21085 Filed 7-28-78; 8:45 am]●

BALANCE(S) OF POWER SERIES BOOK III (G) (i) NORTHEAST ASIA

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, a particularly important area for consideration of the regional balance of forces in this portion of the Balance(s) of Power series is Northeast Asia. There, a combative North Korea stands ready to exploit any opportunity to press its military strengths against South Korea; and Soviet naval developments pose an increasing threat to the vulnerable island nation of Japan.

As the United States has grown more circumspect in its direct military involvement in East Asia, the role of Japanese self-defense forces acquire increasing importance for securing Japan's defense.

The following article by Henry S. Rowen, "Japan and the Future Balance in Asia," analyzes the critical elements in the balance of forces that affect Japan today, and looks ahead to prospects for the future.

This article first appeared in Orbis, summer 1977, part 1, which follows:

JAPAN AND THE FUTURE BALANCE IN ASIA*

(by Henry S. Rowen)

President Carter's decision to withdraw all American ground forces from Korea by 1981 or 1982 has evoked expressions of concern not only from many Koreans but from many Japanese as well. Japanese concern is not so much that the removal of the U.S. Second Division could trigger a North Korean invasion, but rather that this move, together with others, signals a U.S. retreat from East Asia and even from the Western Pacific. They see as the possible end position the virtual disappearance of the American military presence in Asia.

Much evidence is offered in support: the U.S. withdrawal of forces from South Vietnam, followed by its collapse; withdrawal from Thailand; the reduction of U.S. manpower in East Asia and the Western Pacific to one-half the pre-Vietnam intervention level; and American statements that U.S. forces will be oriented toward the defense of Europe.

The American perception of dangers in Asia has changed remarkably in the past decade. Most important has been our recognition that war with China is extremely unlikely—which put an end to planning for a possible major conflict with that country. Today, China is seen as strongly inward-looking; the Sino-Soviet relationship seems to have achieved quasi-stability; the Soviet Union poses no major threat elsewhere in the region; and Southeast Asia is low on our scale of interests. Improvements to the forces of South Korea, the suitability of its terrain for defense, and the more modest levels of economic and military support that the North has been receiving support the proposition that military stability in Korea is attainable without U.S. ground forces.

In contrast, our perception of dangers in other regions has not receded proportionately. The Soviet build-up in Europe, the continuing possibility of another Middle East war, Soviet and Cuban activities in Africa, and across-the-board increases in Soviet nuclear and general-purpose forces have been eroding the American belief that disengagement from Vietnam and detente with the Soviet Union would produce an era of relative international calm and permit wider American disengagement.

Today's sense of stability in East Asia owes a great deal to the nature of Japanese-American ties. The postwar transformation of Japanese political institutions, the enormous growth of the Japanese economy, and the predominantly constructive character of Japanese relations with the rest of the world have contributed substantially to the well-being and security—in a broad sense—of others, including Americans. Americans have provided the secure environment in which Japan flourishes. There is little inclination in Japan today to modify successful behavior. The current generation of leaders, which has experienced both war and intimate collaboration with the United States, is resisting basic changes; their successors might do the same. The autumn 1976 election signals little change in this regard.

Nor is there much inclination in the United States to make changes. Incremental costs for the defense of Japan are small; so are the risks. Neither the Japanese nor the Americans have perceived the need for more than a modest Japanese defense effort. But today, many Japanese view the future with uneasiness, not so much with regard to threats to Japan's territory—for the defense of the Japanese islands against (nonnuclear) sea and air attack appears manageable—but rather with regard to latent instabilities in the region and the possibility of significant shifts in the military balance within the region and outside it. Three potential sources of instability are particularly important:

First. In Korea, a quick thrust by the North, might capture Seoul, which now has a population of more than 6 million. Our knowledge of the workings of the Pyongyang regime is scant. We cannot predict what Kim Il Sung will do; but his major preoccupation is to end partition, and he has not ruled out force.

Alternatively, the North, which has been balancing between the communist giants, might move closer to the Soviet Union or to China; the former move would appear especially threatening to others in the region. Stability in the South is not entirely assured, and disturbance would offer an occasion for northern intervention.

Second. The Sino-Soviet relationship could shift sharply toward rapprochement or toward war. Although neither now seems likely, the consequences would be far-reaching. Rapprochement would free Soviet forces for reallocation against the West and, more important, would reduce Soviet worries about a two-front war. A Sino-Soviet war, on the other hand, could spill over, involve others in a major, perhaps nuclear, conflict, and even result in a drastic upset of the global balance of power.

Third. The Soviet-American military balance has undergone important changes. Soviet activities in the Indian Ocean and East Africa, with further development of naval and air bases, could threaten sea routes from the Persian Gulf. Moreover, U.S. forces might be drawn farther back to cope with crises or conflict in Europe, the Atlantic or the Mediterranean. Across-the-board growth of Soviet military power and an increasing Soivet ability to project that power to remote areas suggests that our more limited forces will be thinly spread out. These trends have not been lost on the Japanese—or on the Chinese, who repeatedly express concern about the Soviet naval growth in the Pacific. And these regional changes are taking place against a background of large increases in the strength of the Soviet Union's long-range nuclear forces.

The United States' forces in East Asia and the Western Pacific have a strategic significance much broader than that of dealing with a direct attack on South Korea; they also symbolize political support for Japan, Korea and other U.S. allies.[1] Moreover, they seem to signal to the Chinese that we are positioned to help deter Soviet moves and perhaps, under circumstances unspecified, to render some direct help. They also confront the Russians with an American capacity to conduct military operations against the Soviet Far East in the event of a Soviet move against Europe.

For some years now, U.S. spokesmen have emphasized psychological, political and global strategic objectives for our military forces in Asia.[2] This is in sharp contrast to the emphasis in the 1960s, when force requirements for specific conflicts dominated. Some critics who favor additional U.S. force cuts in the area accept the importance of the political criterion but conclude, nevertheless, that sizable reductions can be made with only slight risk.[3] President Carter evidently agrees, at least in regard to Korea. (This conclusion is a natural consequence of overconcentration on scenarios—i.e., on specific force-planning.)

Even if we conclude that these latent instabilities are powerful reasons not to make further cuts, Soviet pressures elsewhere may yet cause us to create a partial vacuum, one that we would prefer to see filled by friends and with our cooperation and participation. Among our Asian allies, only Japan has the potential for playing a significantly greater security role.[4]

Remote as a larger Japanese security role might appear, given Japanese politics, it is marginally less remote than it was before the president's announcement that America's ground forces would be withdrawn from Korea. It is important, however, to be clear on what the Japanese defense role is today: otherwise, our understanding of how it might evolve over the next decade will be poor, at best.

DIRECT MILITARY THREATS TO JAPAN

Despite Japanese reluctance to name adversaries, insofar as any is perceived it is the Soviet Union. Soviet forces in the Far East

Footnotes at end of article.

include 43 divisions in eastern Siberia, 55 amphibious ships (plus escorts), around 300 medium bombers, and growing numbers of new tactical fighters (SU–17s, SU–19s, MiG–23s). Other forces that might be used to reinforce those in the Far East include some 70 amphibious ships, 7 airborne divisions, and 1,000 heavy and medium bombers. To counter this threat, Japan has the 144 ships of the Maritime Self-Defense Force (MSDF), the 13 divisions of the Ground Self-Defense Force (GSDF), 4 of which are in Hokkaido, the Japanese island most exposed to attack, and the 350 interceptor aircraft of the Air Self-Defense Force (ASDF). American air units in Japan and the U.S. Seventh Fleet also have to be considered, together with reinforcements that could be sent from the United States.

This Soviet threat has not alarmed Japanese or American planners. Almost all the Soviet divisions are on the Chinese border, and the Soviets' simultaneous amphibious capacity in the region is only about 4,000 men. Soviet tactical-air offensive strength has been sharply limited by short-range aircraft and poor air-to-ground weapons. To invade successfully, the Soviets would have to establish a strong beachhead, gain air superiority, hinder the movement of Japanese troops, damage U.S. forces in the area, and block U.S. reinforcements. The prospects must look unpromising. The odds are high that the Soviets would find themselves in a prolonged and highly dangerous conflict with both Japan and the United States, and Moscow's worries over its differences with Peking make such an attack even more remote.

How might the Soviet threat look by the late 1980s? After all, Soviet amphibious strength is growing, and new technologies, including air-cushion vehicles, might be available for such an attack. If differences with China have lessened, more forces could threaten Japan. Even so, improved surveillance and precision weapons such as Harpoon and the tactical cruise missile will be especially dangerous to concentrated hostile forces that must make close approaches to the defending shores. In short, it does seem within Japan's capacity to throw back an invasion attempt a decade from now.

The vulnerability of Japan's sea lines of communication is potentially more serious. More than 80 per cent of Japan's fuel and most of its annual $56 billion of exports are carried by ship, about 2,000 vessels arriving in Japan's ports each month. Stocks of many raw materials, including oil, appear to be sufficient for 45 to 90 days of consumption, and efforts are being made to increase oil stocks to 180 days. With reductions in nonessential production, the Japanese economy might be able to continue functioning reasonably well for four to six months, even with a sharp reduction in imports; thereafter, output would decline sharply.[5]

The seventy-five attack and cruise-missile submarines in the Soviet Union's Far East fleet, thirty of which are nuclear-powered, together with the Soviets' medium- and long-range aircraft, pose a real threat to Japan's sea lanes. Increases in the number of Soviet nuclear attack submarines and long-range aircraft over the next decade will intensify this threat. (China's submarines, all conventional, present a much smaller danger.) The outcome of a sea interdiction campaign is sensitive to a number of uncertain parameters, and it is not clear how such a campaign would develop. However, the outcome is likely to be favorable to the Japanese if their stocks were built up, if Soviet ports and narrow exits from the Sea of Japan to the Pacific were mined, if ships were rerouted to southern routes in order to maximize the distance and transit time for attacking submarines, and if U.S. as well as Japanese ASW forces were used. Much of Japan's trade, moreover, is carried in foreign bottoms; the Russians would have to challenge many countries. Nonetheless, while the probability that the Soviet Union would undertake such a campaign is low, it is not independent of the probability of success. More important, Japan's sense of vulnerability could influence its behavior in undesirable ways. It is worth making sure that the Soviets cannot succeed.

Soviet naval and air activities around Japan, which have been given uncharacteristic prominence in the latest Japanese defense White Paper, present something of a puzzle. From the Soviet perspective, Japan must appear as an unthreatening country with the capacity of becoming a big problem. The Japanese economy is now perhaps two-thirds the size of the Soviet Union's, and it is likely to overtake the latter economy before the year 2000. Why should Russia want to make the Japanese nervous, increase their dependence on the United States, and perhaps cause them to rearm on a substantial scale? Moscow may be trying to impress the Japanese with its power and to persuade them to shift their more-or-less equidistant stance between China and Russia. Another explanation is that this behavior is business as usual for the powerful Soviet military bureaucracies. Whatever the reason, behavior which heightens the possibility of increased Japanese armament seems imprudent.

Japan, like the United States, has no defense against ballistic missiles; and, at best, only a small portion of attacking aircraft or cruise missiles could be intercepted. Moreover, many of Japan's key air-defense facilities are vulnerable even to nonnuclear attack. (True, there are feasible improvements that would make nonnuclear attacks costly, and Japan has an important defense advantage in that it cannot be reached overland.) Nuclear attack is guarded against by the prospect of retaliation by the United States, but as Soviet long-range nuclear forces have grown, questions have arisen in Japan, as elsewhere, about the efficacy of the U.S. nuclear guarantee. This is not yet a serious issue in Japan; however, in time, concern about America's nuclear strength will affect Japanese views about that guarantee. If accompanied by perceptions of other dangers, Japanese concern will be heightened.

JAPANESE REGIONAL AND EXTRAREGIONAL CONCERNS

President Carter's move toward Korean withdrawal has evoked strong opposition from Japanese legislators.[6] The seriousness with which potential shifts on the Korean Peninsula or in the Sino-Soviet relationship are regarded depends critically on assumptions about America's role. At the least, we are seen as essential to preserving stability in Korea, countering Soviet naval and air power in the Pacific and Indian oceans, and deterring direct threats to Japan, including the nuclear threat.

Among the developments outside the region that are of concern to Japan is the possibility of another oil crisis like that of 1973. Despite political and financial concessions to the Arabs, the Japanese ended up paying as much for their oil as did other importers, and their supplies seem no more assured. Reduction of Japan's dependence on Persian Gulf oil, by obtaining some oil from China and shifting to nuclear power to generate electricity, is progressing slowly. It now appears that in 1985, Japan's nuclear power plants will be producing around 25,000 MW—or about half the target adopted by Tokyo after the 1973 crisis. The Japanese also worry that future Chinese activities might affect their large and growing economic stake in Southeast Asia.

In this set of potential troubles, the nature and scale of future Soviet activities are dominant and not easily predicted. On the one hand, Soviet ground and air forces deployed along the Chinese border were greatly expanded in the late 1960s. The Soviet Pacific Fleet, which constitutes about 30 per cent of the navy, has participated (with a lag) in the Soviets' overall naval modernization effort and has progressively engaged in more distant exercises and deployments, especially in the Indian Ocean. On the other hand, the Soviet Union has had little success in developing ties in Asia, Vietnam and North Korea aside. From a strategic standpoint, the USSR suffers from a severe shortage of bases for its naval and air forces. Even a larger and more modern fleet would remain vulnerable to being bottled up in the Sea of Japan. Therefore, the acquisition of bases in the Pacific and the Indian oceans, especially bases which could support combat operations, would greatly increase Soviet naval effectiveness.[7] The growth in the number of independent states in the Pacific will increase Soviet negotiating opportunities in this regard.

Consider, for example, the implications of a major Soviet naval and air base in Southeast Asia (e.g., at Camranh Bay, unlikely as it now seems, given Vietnam's independent stance and Chinese opposition). The strategic position of the USSR in the region would be greatly changed: the security of the Japanese sea lines of communication—and those of China—would be put in question; so would the naval balance in the Indian Ocean. Consider the further impact if the United States were to lose its air and naval bases in the Philippines, a possibility which cannot now be excluded.[8] Moreover, tankers supplying Japan and Soviet naval vessels ply the same routes, a coincidence of paths not comforting to the Japanese. In short, the assumption that Soviet power in the Pacific and Indian oceans is modest, and that the Soviet presence there will not grow, is a dangerous one.

THE PRESENT JAPANESE DEFENSE POSTURE

According to its 1976 defense White Paper, Japan stands tenth in the world in defense spending (expenditures in 1975 were $4.484 billion), despite the fact that the share of GNP devoted to defense in that year (0.84 percent) put Japan near the bottom among all nations. The apparently rapid growth in defense expenditures under the Fourth Defense Build-up Plan—from $2.7 billion in FY 1972 to $5 billion in FY 1976—is almost entirely a reflection of inflation. The current national defense plan, which is to be funded year by year, shows no significant change in pattern. The FY 1977 budget of $5.6 billion, which allows for real growth less than the expected GNP growth of 6 percent, means a small decrease in the share of GNP allocated to defense.

The Fourth Defense Build-up Plan was designed to maintain the existing size of ground forces and to increase Japanese firepower and mobility; Japanese-made tanks, armored personnel carriers and helicopters were to replace older American equipment. The MSDF was to grow from 140,000 tons to 240,000 tons by adding fifteen destroyers and destroyer escorts and five submarines; improvements were to be made in antisubmarine forces and in fleet air defense. The ASDF was to concentrate on quality by replacing obsolete F–86s with F–4s. However, the unexpected inflation of the past three years has caused this program to fall short. Out of the FY 1976 budget, only around $900 million was spent on procurement, an amount much less in real terms than was originally planned.

Weapons modernization has also been impeded by the government's policy of producing about 80 per cent of all military hardware domestically. Often the cost is much higher than that of imported weapons because of the small volume of production. Some aircraft cost two or three times more to produce than they would in the United States; and Japanese-made improved Hawk missiles may cost eight times as much. But

Footnotes at end of article.

this policy does give Japan greater capacity to expand its production in the event of a crisis.

An important constraint on an independent Japanese defense posture is the low level of research-and-development funded in the defense budget—a remarkably small $50 million a year or about 1 percent of the defense budget. In contrast, the United States devotes about 10 per cent of its (much larger) defense budget to R&D. (The Japanese have, however, been able to carry out a surprising number of projects with these modest resources, including a tank, a transport vehicle, a trainer/support-fighter aircraft, artillery pieces, and air-defense missiles.) A low level of R&D is consistent with the Japanese industrial practice of buying technology and adapting it to Japanese needs. This practice has been criticized on the grounds that Japan has special defense needs, that some equipment (e.g., electronic-countermeasures devices) is secret and difficult to import, that it is difficult to adapt and improve equipment acquired under license, that foreign countries have become reluctant to transfer technology to Japan, and that Japan needs to acquire technical power on an equal level with other countries. Increases in R&D to 2 per cent or more of the defense budget have been advocated by the Japanese Defense Agency.

FOOTNOTES

*Many people, none of whom is responsible for how this paper turned out, provided ideas, comments and criticisms. I am particularly indebted to Morton Abramowitz, Michael Armacost, John Emmerson, Dan Okimoto, Kiichi Saeki, Richard Solomon, Robert Ward and Allen Whiting. This paper will appear, in slightly different form, in Franklin B. Weinstein, ed. *U.S.-Japan Relations and the Security of East Asia: The Next Decade* (Boulder: Westview Press, forthcoming 19).

[1] On withdrawal of the Second Division from Korea, U.S. forces in East Asia will consist of two-thirds of a Marine division (on Okinawa), nine tactical fighter squadrons, two carrier task forces, three maritime patrol squadrons, and amphibious "lift" sufficient for two battalions. We will then have around 115,000 men in the region.

[2] For recent examples, see the FY 1978 Posture Statement by Secretary of Defense Rumsfeld. Secretary Schlesinger's FY 1976 Posture Statement included the U.S.-Asian objective of preventing Soviet forces in Asia from being deployed west of the Urals and discouraging the Russians from opening another front in Northeast Asia.

[3] See Henry Owen and Charles Schultze, *Setting National Priorities; The Next Ten Years* (Washington: Brookings, 1976) and Charles A. Sorrels, *U.S. General Purpose Forces Related to Asia* (Washington: Congressional Budget Office, 1977).

[4] To be sure, as A. Doak Barnett observes, we have a tacit security relationship with the PRC based on a mutuality of interest. But, though we should try to strengthen this relationship, it must still be regarded as fragile. (*China Policy*, Washington: Brookings, 1977.)

[5] For an analysis of how Japan, in cooperation with the United States, might counter a Soviet or Chinese campaign directed against Japanese sea lines of communication, see David Schilling, "A Reassessment of Japan's Naval Defense Needs," *Asian Survey*, March 1976.

[6] The tension within Japanese politics on security issues is illustrated by Japanese statements since January 1977. These have included expressions of deep concern over U.S. withdrawal, opposition to withdrawal, repetition of the position adopted in 1969 that the security of Korea is essential to the security of Japan—but also the assertion that the withdrawal issue is primarily a matter between the United States and South Korea.

[7] The term "base" may refer to a great variety of logistic and combat functions. At one extreme, there may be limited port-visit privileges and minor supply-and-repair facilities; at the other, there may be major resupply, training and even combat capabilities, including airfields from which patrol and bomber aircraft can operate.

[8] At this writing, President Marcos has rejected the U.S. position on continued base rights, although negotiations continue. It certainly cannot be taken for granted that the United States will have access to these bases over the next decade.●

FEDERAL LOAN GUARANTEES—A PROPER CAUSE FOR CONCERN

HON. ELDON RUDD

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. RUDD. Mr. Speaker, I have become increasingly concerned about Federal Government loan guarantees and credit practices.

This is a matter that needs much more congressional attention, and public awareness.

For many years, the Federal Government has made it a practice of assuming the risk of private and public loans, investments and credit by pledging to repay the principal and interest for approved ventures, including those financed by bond sales, in case of default by the borrower.

This has been done ostensibly to encourage and facilitate foreign military credit sales, housing and farm programs, public works projects, and so forth, by reducing or removing the lender's risk for such projects.

According to a recent background paper of the Congressional Budget Office, the Federal Government will soon have total outstanding loan guarantees of more than $300 billion. Total gurantees outstanding will increase more than $23 billion during the next fiscal year alone. The Federal Government will guarantee an estimated $53.4 billion of loans in fiscal year 1979—an increase of almost 20 percent over the current fiscal year.

Only a very small fraction of these outstanding guaranteed loans is available in ready Federal funds to repay defaults that might occur.

This is a massive, high-money gambling operation, which the Federal Government is conducting to increase the scope of its own activities and financial operations outside the normal budget process, and oblivious to limitations on deficit spending or the size of the national debt.

It has been estimated that the contingent liability involved in this loan guarantee operation could boost the U.S. national debt close to $1,000,000,000,000 if everyone defaulted.

This estimate is reported in a recent story on Federal loan guarantees by Ben Cole, Washington bureau chief of the Indianapolis Star and the Arizona Republic, who has written one of the best and most easily understandable summaries of this subject that I have seen anywhere.

Both the Library of Congress and the Congressional Budget Office have provided me with good reports on this subject, and several committees of Congress have issued complex reports that cover the factual material almost exhaustively.

But Mr. Cole's article has cut through the chaff and summarized the factual situation and problems with the Federal loan guarantee situation in a manner that is much more useful and to the point than these burocratic tones, for the general reader who just wants an honest and realistic accounting of what is going on.

Even more amazing is the fact that Mr. Cole dug out this information on his own, without the benefit of all the staff effort that produced the reports since released by the Library of Congress and the Congressional Budget Office.

This is an example of the journalism profession at its best, and I would like to include Mr. Cole's article at this point in the RECORD:

[From the Indianapolis Star, July 23, 1978]

GOVERNMENT SHOWING WORRY OVER NUMBER OF GUARANTEED LOANS

(By Ben Cole)

WASHINGTON.—Over and above the $700 billion national debt, Uncle Sam has guaranteed nearly $300 billion of credit, only part of which is reflected in the debt and the rest is a contingent liability that could boost the total close to $1 trillion if everybody defaulted.

Fortunately, there are very few defaults on government guaranteed loans, even those owed by foreign countries.

But the guaranteed loan phenomenon has grown over the years, virtually unnoticed, until, now, fiscal experts both in the Treasury Department and in Congress are starting to show concern.

A portion of the contingent obligation—the guaranteed loans—is in the form of foreign bonds sold in the United States—some to private lenders—and guaranteed by the full faith and credit of the American government. The greater part are authorized under the foreign military sales program; a very small part is for housing construction, and an even smaller portion for guaranteed payment of American agriculture sales abroad.

Compared to the whole, the sum of foreign guarantees is not huge—approximately $6 billion to 33 countries in the case of the military sales. A part of this, less than half, is held by banks, big pension funds, insurance companies and the like.

The Treasury has watched the growth of the loan guarantee program with some misgivings, chiefly because it leaves the government's debt managers with insufficient control over the public debt and because it is outside the normal accounting procedures of the government.

The loan guarantee program is called "off budget," meaning the outlays represented in the guarantees are not included in the annual budget.

Although defaults have been insignificant so far, the people who manage the debt still feel that guaranteeing a loan is no different when done by the government or an individual. The guarantor accepts an ecumbrance, and the loan becomes a contingent liability against assets.

The guaranteed loans have one distinction from the general public debt: They represent some kind of visible collateral such as housing developments, military hardware, hospitals, etc. A great part of the federal budget deficit, on the other hand, is due to so-called transfer payments which move money out of the hands of some and into the hands of others.

Nearly half the nearly $300 billion in guar-

anteed loans on Uncle Sam's books were made by the Federal Housing Administration. By Sept. 30, it is estimated, the FHA will have $105.96 billion in outstanding guarantees.

One by one the guarantee programs have been enacted into law by Congress, frequently in so routine a manner that members were unaware how big the total was growing.

An example of how the guarantees grow is seen in the present Congress. Under consideration in committee are bills to promote development of solar energy, synthetic high BTU gas, etc.

These bills, if enacted, become public policy. If they carry loan guarantee authorities, then loans may be made and guaranteed by the government.

Federal loan guarantees are, governmentally, an inexpensive way to get a job done. They appear to cost little, they don't show up in the budget and hence don't affect the deficit. Borrowers are happy because guaranteed loans usually cost less in interest; lenders are joyful because their risk is minimal. And the public is confident, knowing what a fearsome collector Uncle Sam can be when debtors fail to pay.

As for the foreign loans: It is easier to convince the congressmen to guarantee the borrowings of friendly nations for purchase of arms than it is to appropriate money for direct loans.

But the proliferation of guaranteed loan programs has caused concern in the Congressional Budget Office and in the subcommittee on economic stabilization of the House Banking Committee.

Rep. William Moorhead (D-Pa.), the subcommittee chairman, and some of his colleagues of both parties, have sought to find out what kind of bridle can be put on loan guarantees.

The Moorhead committee compiled the first and only complete catalogue of federal loan guarantees. In a foreword, the subcommittee observed that all loan guarantees carry a subsidy.

The document also carries this statement: ". . . there is no way of knowing for certain that a given credit assistance program has led to a reallocation of capital resources. This uncertainty is not unique to federal credit assistance programs, but it necessarily complicates any efforts by Congress to ascertain the economic consequences of such programs."

There follow 329 pages listing one by one the loan guarantee programs.

Moorhead and others have begun to study the need to bring all these off-budget activities under federal budget control. This would give Congress, the Treasury and the public a better overview of how they operate and what they represent in dollars and cents. Such a proposal would find a welcome in the Treasury.

In 1973, Congress created the Federal Finance Bank as a part of the Treasury Department to serve as an instrument "to assure that such borrowings are financed in a manner least disruptive of private financial markets and institutions."

As an example of the reason the FFB was created, Treasury authorities cite a $300 million Israeli bond issue that went on the U.S. market two years ago bearing something over 9 percent interest and fully guaranteed under the Military Sales Program.

It was so big that its weight seriously affected the bond market, and underwriters were hard put to find investors enough to take the virtually risk free bonds.

The Treasury, tacitly, would prefer to see the Federal Financing Bank gather up all these guaranteed loans. And it can, to the extent that Congress authorizes such financing and within the limit of the debt ceiling.

The operation of the Federal Financing Bank can be described as "back door" lending—financing that takes place outside the budget process and normal accounting practices of the Treasury.

As an example: A big borrower like Israel gets a $1 billion loan guarantee commitment under the Foreign Military Sales Act. It issues bonds against this commitment, which in turn are taken by the FFB.

The FFB goes to its parent Treasury Department and borrows money to pay Israel for the bonds; and Treasury borrows from the public at Treasury rates.

Israel pays interest one-eighth of one per cent above the Treasury interest; and the Department of Defense, which has deposited 10 per cent of the total loan with Treasury, guarantees repayment. Israel then uses the money to buy planes, tanks and guns in the U.S.

While others in Congress frown on the off-budget nature of this operation, Sen. William Proxmire (D-Wis.), chairman of the Banking Committee, has deplored it because it involves the arming of nations. He, too, has been eyeing this guaranteed loan programs with concern.

Rep. Moorhead and his colleagues have introduced legislation to require Congress to appropriate all the lending power of the Federal Financing Bank, thereby specifying exactly how much it can lend in a single year.

If their measure passes Congress and the Treasury would have a new handle on guaranteed lending programs.

An indication of the size of the guaranteed loan programs is seen in the Special Analyses of the Eudget published by the Office of Management and Budget in the White House.

Here are a few of the programs and the amount of guarantees estimated to be outstanding in the current fiscal year:

Funds appropriated to the President, international security assistance (chiefly military sales), $5,487 million; international development assistance, $914 million; rural electrification, $5.9 billion; Farmers Home Administration, $7.25 billion; medical facilities guarantees, $1.4 billion; student loan fund, $6.5 billion; college facilities, subsidized loans, $1.3 billion; Government National Mortgage Association, $455 billion; Federal Housing Administration, $98.4 billion; veterans housing loans, $79.8 billion; Export Import Bank, $6.8 billion.

These are only a few of the programs, but they show the diversity and size of such programs.

Strangely, Congress is beginning to react against having all the guaranteed loans in the Federal Financing Bank. Some members feel this deprives the private sector of opportunity to participate in guaranteed lending.

The New York City bond guarantee program, now going through Congress, had written into it a specification that the bonds not be sold to the Federal Financing Bank. A Moorhead committee staff member observed the New York bonds earlier proved a good investment for the government and should easily be marketable outside the Treasury.

As it is with so many questions that arise in government, there is no "good" or "bad" to be cited in the overall story of government guaranteed loans.

Questions like these can be applied to them: Did the U.S. government want these things done? Did Congress find them necessary and desirable? Without the guarantee programs, could certain activities—housing, hospitals, schools, etc.—have been carried out? And if the loan guarantees are abolished, will programs of various kinds be feasible?

Congress and the fiscal agencies of the executive branch are pondering these questions with increasing concentration.

Loan Statement Shows Foreign Military Sales

WASHINGTON.—Some idea of the scope of the loan guarantee program respecting foreign military sales can be seen in the Federal Financing Bank's statement as of June 30, this year.

It shows 35 countries owe the bank $3,342,456,326 on guaranteed loans. This is against total commitments of $5,030,300,000 from the FFB, of which $3,570,334,671 has been disbursed to the borrower countries buying arms from American suppliers.

The statement does not reflect the overall total of guaranteed loans under the Foreign Military Sales Act since a part of these has been made by private lenders also under federal guarantee. The Treasury, however, is seeking to keep the FMS lending in the FFB and few if any new borrowings are being made in the public market.

The 1979 foreign assistance authorization bill increases authority for additional FMS borrowings by foreign countries. The administration is asking that $2,067,500,000 of new credit be authorized for 21 countries, with $1 billion earmarked for Israel. The only new country included in the FMS program under the proposal for fiscal 1979 is Sudan. The request asks that Israel be excused from repayment of $500 million of its new credit. The other countries included in the request include Greece, Turkey, Spain, Philippines, Korea and Panama, which together will get 35 percent of the new credit, while the remaining loans will range from $85 million for Jordan to $300,000 apiece for Haiti and Paraguay.

According to the FFB statement, guaranteed loans outstanding to borrowers as of June 30 are as follows:

	Commitment	Disbursed	Outstanding
Argentina	$64,000,000	$51,272,256	$43,542,256
Bolivia	9,000,000	9,000,000	7,615,400
Brazil	76,500,000	74,716,895	64,288,795
China	188,000,000	156,977,600	120,964,216
Chile (non-FMS)	43,528,189	43,528,189	38,946,275
Colombia	45,600,000	13,760,135	10,744,835
Costa Rica	5,000,000	2,591,147	2,591,147
Dominican Republic	2,000,000	998,049	623,049
Ecuador	25,000,000	10,409,752	8,871,352
Gabon	2,000,000	1,800,000	1,800,000
Greece	481,000,000	405,000,000	386,529,313
Guatemala	1,500,000	1,391,279	1,391,279
Guyana (non-FMS)	5,453,699	5,453,699	5,453,699
Haiti	500,000	None	None
Honduras	5,000,000	3,544,698	3,232,198
Indonesia	51,200,000	26,897,337	20,844,337
Israel	2,050,000,000	1,697,567,233	1,674,037,233
Jordan	187,500,000	82,804,975	70,108,975
Kenya	65,000,000	58,300,000	57,800,000
Korea	746,500,000	408,742,454	366,228,544
Lebanon	25,000,000	25,000,000	25,000,000
Liberia	2,200,000	1,732,582	1,562,582
Malaysia	57,700,000	36,349,819	28,582,069
Morocco	74,000,000	58,727,050	50,993,050
Nicaragua	8,000,000	5,023,506	2,961,006
Panama	3,000,000	1,669,588	1,669,588
Paraguay	500,000	399,136	249,316
Peru	50,500,000	36,827,584	33,410,984
Philippines	51,400,000	36,325,456	25,646,056
Spain	120,000,000	41,451,216	41,451,216
Senegal	8,000,000	3,852,490	3,052,490
Thailand	74,700,000	32,280,436	20,596,436
Tunisia	80,000,000	24,634,268	19,766,808
Turkey	460,000,000	203,505,648	134,755,648
Total, FMS only	5,030,300,000	3,570,334,671	3,342,456,326

REPORTERWOMEN ON TELEVISION

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Ms. MIKULSKI. Mr. Speaker, when I started working to organize various groups in Baltimore, I wanted to effectively work with the media. It was during that period that I received some great pointers from Ann Bishop, a television interviewer, on how to express myself in the most effective way possible. Her sound advice has stayed with me through my several campaigns, and I often utilize her suggestions today.

Ann has moved on to a Miami television station where she coanchors the evening news. I wish to submit the following article about Ann, which further details her accomplishments in the media field. Ann is an extraordinarily talented woman who deserves great praise for her numerous contributions to the broadcasting industry.

The article follows:

REPORTERWOMEN ON TELEVISION

She has sparkling brown eyes, blond hair, a strong face. She says: "I'm an ugly girl who talks fast." She is Ann Bishop, coanchor of Channel Ten news in Miami, one of the best of a burgeoning group of women now moving up in local TV news.

From Salem to Seattle, from St. Paul to San Antonio, we see more and more females covering gory murders, wind-whipped fires and drug busts. Until recently, women were content with such excitement as waiting for a plane—and a quote—from a live U.S. senator.

Short of network news, Ann Bishop is at the top of the heap. She does an hour of news in the evening with a handsome dimpled man, Glenn Rinker, and she's back at 11 for another try. Her lower lip trembles words; the upper is concrete.

She was born Harriet Himes in Rochester, N.Y. As a student, she put in a year at Ithaca College and a year at Hobart without any notion of what she was doing. She married a time-study engineer named Ronald Bishop and spent all the bright days playing golf.

After seven years, she said: "I think we ought to call it quits." He was insulted, but said "OK." Her mother said: "Any nice girl who gets a divorce comes home."

She went home. The only money she earned was writing promotion material for WHEC—Rochester.

Mrs. Bishop has an electrifying sense of humor. She laughs like someone who has just made parole. There were no laughs with Ronnie; even fewer with momma, so she flew to Florida to play golf. There are few giggles in three-putting, so she got a job with Sidney Ansin at Channel 7. She wrote copy for cystic fibrosis, tuberculosis and religion for $80 a week.

She asked for a raise and was fired. She had dates, boyfriends, but they were fast nags on a slow track. Rochester waited with folded arms. She returned, and got a job as a news reporter with WOKR. She worked the city with a cameraman at $125 a week. Five months later, Westinghouse moved her to Baltimore and said: "Kill the Harriet. You're Ann."

The first friend she made in the new city was the courtly president of the PTA, Ted Agnew. She was unhappy with herself, and her work. Men run the news, and men know where women reporters belong: school meetings, ladies lunches, town council meetings.

She began to push for "male" assignments. They sent her to film bloated bodies plucked out of the bay; a homosexual murder; two Central American earthquakes; the excitement of police raids.

The distance between Baltimore and Washington is a jog, but the money is monumental. Ann Bishop wanted to go to Washington. The Post-Newsweek group hired her, but sent her to Miami. She became a cops and robbers reporter at $13,500.

She covered shootings, trials, fires in the Everglades. She learned to write "lead-ins" for the anchor man, who would open the story and then say "And now, Ann Bishop, who was there." She wrote her stuff to the precise second while riding in a speeding car.

She learned to edit and cut the film and fit the words. The golf clubs never got out of the bag, but she was happy. On assignment, she jostled the men with microphones and learned to "tell it all" in 90 seconds.

Hundreds of women in America were learning how to get the news and relate it succinctly. Last April hard work and a cast-iron grin moved her up as anchorman with Rinker. She gets $50,000 a year. He earns more.

He doesn't have to get his hair done at 2 p.m. Ann does. She's in the studio at 3, discussing the 6 o'clock news with Steve Wasserman, producer. He gives her about 10 stories. Each is marked with a precise number of seconds.

Mrs. Bishop searches the chattering wire services for the story to go with the film or tape. When pronunciations are weird, she looks them up and writes them phonetically. Her work has become her life.

Feeling rich, she bought a house in Kendall, Fla. She lives there in lineage. His name is Travis.

She thinks little of herself and her fine talent. "I was retarded at 22; I was 30 before the light went on."

Her day begins at 2 p.m., and closes after midnight. This leaves little time for romance.●

THE LIMITS TO GOVERNMENT ACT OF 1978

HON. JOHN B. ANDERSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. ANDERSON of Illinois. Mr. Speaker, I am introducing today the "Limits to Government Act of 1978." The bill, as its title in part suggests, is intended to set limits on the growth of Federal Government and to provide for a strict annual review of Federal expenditures and receipts relative to the Nation's output.

Pursuant to those ends, the bill amends the Budget and Accounting Act of 1921 to require the President in submitting his annual budget message to submit: First, an estimate of the gross national product for the fiscal year for which appropriations are requested; second, budget outlays not exceeding 20 percent of the estimated GNP; third, such other supplemental outlays, itemized separately, that are of a lower priority than those asked for in the principal budget request but which the President determines are necessary for the support of the Government and justified by a compelling need; fourth, a ranking of budgetary priorities in both the regular and supplemental categories; and fifth, a separate report specifying those tax reductions, if any, that would be needed to reduce revenues to less than 20 percent of the estimated GNP.

The bill also amends the Congressional Budget Act of 1974 to require Congress, in acting on the first concurrent budget resolution, to first establish the aggregate targets for outlays, budget authority, revenues, the deficit, and finally amount, if any, by which either outlays or receipts exceed 20 percent of the estimated GNP of the fiscal year.

Any floor amendment increasing or decreasing the aggregates, as reported from the Budget Committee, would automatically increase or decrease the outlays or budget authority for each functional category by the same percentage as the aggregates. Similarly, any subsequent amendment changing the outlays or budget authority for any functional category must achieve mathematical consistency with the aggregates. Thus, any amendment increasing the outlays of a functional category would have to contain an equivalent reduction in some other functional category or categories.

The bill sets forth as a national policy directive that it is the responsibility of the executive and legislative branches of the Federal Government:

First, to reduce Federal expenditures to no more than 20 percent of the gross national product, except in war or other national emergency, and, whenever it would serve the national interest, to reduce Federal outlays to such lower percentage of the gross national product as is appropriate;

Second, to annually review existing tax rates to determine whether Federal tax rates are unduly restricting the aggregate supply of savings, investment, and labor, and to enact such reductions as are needed to promote the optimum employment of the Nation's human and material resources; and

Third, to provide for a balanced budget no later than fiscal year 1982, and thereafter to seek to promote a balanced budget as a matter of national policy, subject only to war or other national emergency.

In support of the above amendments and policy directives, the bill makes several findings:

(1) The financing of the Federal deficit has in recent years sharply reduced the supply of credit otherwise available to the private sector of the economy, resulting in both higher interest rates and lower capital investment.

This problem, generally known as "crowding out," is particularly acute at this stage of the business cycle with the Federal deficit running at a projected $51.1 billion in the fourth year of the recovery.

Over the past 15 years, the deficit has been growing not merely in nominal terms, or even constant dollar terms, but in relation to the Nation's gross national

product as well, as shown by the following table:

TABLE 1.—FEDERAL BUDGET SURPLUS OR DEFICIT

[In billions of dollars]

Fiscal year	Surplus/deficit	Percent of GNP
1963	−$4.8	0.8
1964	−5.9	.9
1965	−1.6	.2
1966	−3.8	.5
1967	−8.7	1.1
1968	−25.2	3.0
1969	+3.2	.3
1970	−2.8	.2
1971	−23.0	2.3
1972	−23.4	2.1
1973	−14.8	1.2
1974	−4.7	.3
1975	−45.1	3.1
1976	−66.4	4.0
1977	−45.0	2.4
1978	[1] −51.1	2.6

[1] Estimate.

Note that between fiscal years 1963 and 1967 the Federal deficit averaged only 0.7 percent of the Nation's output, but that since 1968 the deficit has averaged 1.9 percent of GNP—nearly a threefold increase. This expansion of the Federal deficit, together with agency borrowings, has caused a corresponding increase in the U.S. Government's share of the Nation's credit, as shown in the following table:

TABLE 2.—FUNDS RAISED IN U.S. CREDIT MARKETS

[In billions of dollars]

Calendar year	Total funds raised	U.S. Government securities	United States (percent)
1963	$68.5	$5.6	8.2
1964	77.1	6.7	8.7
1965	84.0	3.9	4.6
1966	81.4	9.2	11.3
1967	85.9	13.2	15.4
1968	115.5	17.4	15.1
1969	128.7	6.2	4.8
1970	116.4	21.7	18.6
1971	168.1	30.7	18.3
1972	206.0	23.7	11.5
1973	254.3	28.3	11.1
1974	231.8	34.5	14.9
1975	225.2	98.0	43.5
1976	296.8	88.1	29.7
1977	405.0	84.3	20.8

Source: Federal Reserve Bulletin.

This Federal encroachment on U.S. credit markets—which rose to a 22-percent rate in the first half of this year—has exerted a strong upward pressure on both short- and long-term interest rates. But on this subject, Treasury Secretary Blumenthal said in a speech last January that the:

. . . deficit for 1979 does not in fact threaten serious upward pressure on wages, prices or interesting rates. We are not after all, running a deficit in an overheated economy. With unemployment at 6.4 percent and capacity utilization at about 83 percent, a deficit is still needed to sustain expansion of the private economy. Similarly, the budget deficits will not result in "crowding out" of private borrowers. This fear was raised several years ago, and has yet to materialize—largely because our financial markets have been capable of meeting both private and public borrowing needs.

But even a cursory look at the behavior of interest rates demonstrates that the heavy Federal borrowing that commenced in 1968 has escalated the cost of private and public borrowing, as reflected in the following table:

TABLE 3.—KEY INTEREST RATES

[In percent]

Year	Corporate bonds (Moody's) Aaa	Prime commercial paper (4 to 6 mo)	Federal funds rate	Discount rate
1963	4.26	3.55	3.18	3.23
1964	4.40	3.97	3.50	3.55
1965	4.49	4.38	4.07	4.04
1966	5.13	5.55	5.11	4.50
1967	5.51	5.10	4.22	4.19
1968	6.18	5.90	5.66	5.17
1969	7.03	7.83	8.21	5.87
1970	8.04	7.72	7.17	5.95
1971	7.39	5.11	4.67	4.88
1972	7.21	4.69	4.44	4.50
1973	7.44	8.15	8.74	6.44
1974	8.57	9.87	10.51	7.83
1975	8.83	6.33	5.82	6.25
1976	8.43	5.35	5.05	5.50
1977	8.02	5.60	5.54	5.46
1978 (July)	8.76	7.63	7.81	7.23

Source: Council of Economic Advisers.

Notwithstanding Mr. Blumenthal's pronouncements, the impact of high interest rates on private investment borrowing has been markedly severe. Capital formation, however defined, has failed to measure up to either cyclical or long-term trends in recent years. A Congressional Budget Office study showed the growth rate of plant and equipment per worker fell from 2.6 percent in 1965–70 to 1.6 percent in 1970–75. Reflecting this decline, the growth rate in worker productivity fell from 2.4 percent in 1965–70 to 1.0 percent in 1970–75. The lag in capital formation is also reflected in the decline of business capital investment relative to national output, as shown in the following table:

TABLE 4.—GROSS PRIVATE DOMESTIC FIXED INVESTMENT—NONRESIDENTIAL—AS A PERCENT OF GNP

Year	Percent	Year	Percent
1965	10.4	1971	9.8
1966	10.8	1972	10.0
1967	10.3	1973	10.4
1968	10.3	1974	10.6
1969	10.6	1975	9.8
1970	10.2	1976	9.4
		1977	9.7

Source: Bureau of Economic Analysis.

Second, in order to relieve the upward pressure on interest rates arising from the Federal deficit, the Federal Reserve, operating through the Federal Open Market Committee, has monetized U.S. Government debt, resulting in an excessive and inflationary expansion of the Nation's money supply. As one might expect, the Federal Reserve's rate of monetization has varied with the size of the deficit.

TABLE 5—FEDERAL DEBT

[In billions of dollars]

Year	Total Federal debt	Debt held by Federal Reserve	Percent held by Federal Reserve
1955	$224.5	$25.0	11.1
1960	237.2	26.5	11.2
1965	261.6	39.1	14.9
1970	284.9	57.7	20.3
1971	304.3	65.6	21.6
1972	323.8	71.4	22.1
1973	343.3	75.2	21.9
1974	346.1	80.6	23.3
1975	396.1	85.0	21.5
1976	480.3	94.7	19.7
1977	551.8	105.0	19.0

The Federal Reserve's purchase of U.S. Government debt has led to an inevitable hike in the money supply by feeding bank reserves and the ability of banks to loan (and thus create money). As a result, the money supply since 1967 has grown at more than double the rate that prevailed during the preceeding low deficit years, as shown in the following table:

TABLE 6.—RATE OF GROWTH OF THE BASIC MONEY (M_1)*

[In percent]

Year	Rate of M_1 growth	Year	Rate of M_1 growth
1957	0.5	1968	7.1
1958	1.2	1969	6.0
1959	3.8	1970	3.9
1960	−.1	1971	6.7
1961	2.1	1972	7.1
1962	2.2	1973	7.5
1963	2.9	1974	5.5
1964	4.0	1975	4.2
1965	4.3	1976	5.2
1966	4.6	1977	7.9
1967	4.0		

*M_1=currency plus demand deposits.
Source: Federal Reserve System.

Third, the expansion of the money supply, the increase in interest rates, and the lowering of capital investment have together generated unacceptably high levels of inflation and unemployment. Since December 1966, the basic money supply has expanded by 100.5 percent. The sharp rise in consumer prices (93.5 percent), producer prices (109.4 percent) and the GNP deflator (90.6 percent) has closely paralleled that increase. As for unemployment, the relentless rise in unemployment rates has been related to the lag in the real source of job creation—capital formation. As a Commerce Department study suggested in 1975, we must devote 12 percent of our G.N.P. to business fixed investment if we are to obtain full employment and reduced dependence of foreign oil. But last year, due to the crowding out of private investment by the Federal Government, business fixed investment accounted for only 9.7 percent of our GNP.

Fourth, high rates of inflation and Government taxation have reduced the real disposable income of American consumers and their aggregate purchasing power. While inflation and taxation have adversely affected all levels of income, the most representative example of their debilitating effect on disposable income and purchasing power is the median income family of four. In 1967, the median income of the family of four was $8,400, with a disposable income—after taxes—of $7,462. Today, the median income for the family of four is $17,000, but the disposable income in 1967 dollars has shrunk to $6,579.

Fifth, inflation by raising the nominal, but not the real, income of American taxpayers has effectively raised both marginal and average Federal income tax rates. The inflationary bias of the present tax code is such that the real tax burden will rise some $13 billion next year without any amendment to the tax laws. As inflation thrusts taxpayers into the higher tax brackets, both marginal and

effective tax rates increase. For the median income family of four, the marginal tax rate has increased since 1967 from 19 percent to 22 percent, while the effective rate has jumped from 11.2 percent to 16.4 percent.

Sixth, high rates of taxation have lowered the aggregate supply of savings and investment, resulting in reduced productivity and economic growth. Gross savings as a percent of GNP has fallen from a 15.4-percent average in the 1960's to 14.5-percent average rate in the 1970's, as shown in the following table:

TABLE 7.—GROSS SAVINGS AS A PERCENT OF THE GNP

Year	Percent	Year	Percent
1960	15.5	1969	15.7
1961	14.4	1970	14.5
1962	14.8	1971	14.6
1963	15.0	1972	15.1
1964	15.7	1973	16.5
1965	16.7	1974	14.4
1966	16.3	1975	12.7
1967	15.1	1976	13.8
1968	15.0	1977	14.4

Source: Bureau of Economic Analysis.

The loss of savings and investment has slowed the growth of productivity. Between 1957 and 1967 productivity grew by 37 percent, but by only 18.9 percent between 1967 and 1977. The reduction in productivity advances is reflected in the growth of real G.N.P. Between 1957 and 1967, real G.N.P. grew by 50.0 percent compared to a 34.5 percent hike in G.N.P. between 1967 and 1977.

Seventh, due to the rising rate of inflation, the Federal tax burden has fallen more on investment and savings, relative to consumption, resulting in an undesirably low level of capital investment. While inflation tends to boost tax rates on all forms of income, investment income has been severely impacted. Interest paid on a savings account, for instance, is taxed as regular income even though the interest payment (being less than the rate of inflation) does not reflect any real gain on the deposited funds. A capital gains tax is assessed on the sale of appreciated property even though the nominal gain does not reflect any appreciation in real dollar terms. Martin Feldstein, professor at Harvard, recently estimated that the $4.6 million in nominal capital gains reported in 1973 actually represented, after adjustment for inflation, a loss of nearly $1 billion. Feldstein also estimated that the understatement of the current dollar value of capital assets last year increased corporate liability by $15 billion, representing a 25 percent increase in corporate levies. Thus, in many instances today the effective rate of taxation on investment income has become confiscatory, with rates at times exceeding 100 percent.

Eighth, inadequate capital formation has generated intolerably high rates of unemployment, particularly amongst women, teenagers, blacks, and other minorities. Over the short run, rising capital investment raises output and employment in the industries that produce capital goods. But more importantly, increased investment in the long run expands plant and output capital, enabling the economy to absorb an ever-growing labor force.

No where is the relationship between job formation and capital formation as close as in new and expanding companies. And yet, that is where capital formation is lagging the most. Even in current dollar terms, capital formation in this area has all but vanished, as shown in the following table:

TABLE 8.—PUBLIC OFFERINGS BY COMPANIES HAVING A NET WORTH OF UNDER $5,000,000

[Dollar amounts in millions]

Year	Offerings	Funds raised
1968	358	$745.3
1969	698	1,366.9
1970	198	375.0
1971	248	550.9
1972	409	896.0
1973	69	159.7
1974	9	16.1
1975	4	16.2
1976	29	144.8
1977	30	118.3

As a result, the unemployment rate in the fourth year of the recovery remains at a predictably high level of 5.9 percent, with the hardest hit groups being women (6.1 percent), teenagers (15.6 percent) and Blacks (11.9 percent).

Ninth, unemployment has imposed an enormous social and economic cost on the unemployed, their families, and society as a whole. Earlier this year, the administration estimated that the American economy was operating last year at $75 billion or 5.3 percent below its full employment capacity. Such an estimate, of course, does not begin to measure the immense "psychic" loss of job security to the millions of unemployed men and women in the economy.

Tenth, unemployment has increased Government transfer payments relating to unemployment compensation, public assistance, and other social services, resulting in still higher Government outlays. The Federal Government alone will spend an estimated $35.2 billion—7.6 percent of total budget outlays—for unemployment compensation and public assistance, compared to $6.9 billion in 1969 (3.7 percent of total outlays for that year). More importantly, expenditures on the State and local levels will exceed those Federal outlays; and

Eleventh, in order to reduce the Nation's high rates of unemployment and inflation, the Federal Government must reduce Federal spending and taxation as a percent of the national output and must set ceilings on the future growth of such spending and taxation. It is in keeping with this last findings that the "Limits to Government Act of 1978" would seek to hold Federal receipts and outlays to no more than 20 percent of the estimated GNP for the fiscal year. Such a target is, in light of past trends, a realistic and practical limitation on Government growth.

At present, Federal spending accounts for approximately 22 percent of GNP. As shown in the table below, Federal expenditures first exceeded the 20 percent level in 1967.

FEDERAL OUTLAYS AS A PERCENT OF GNP (CALENDAR YEARS)

Year	Percent	Year	Percent
1960	18.4	1969	20.1
1961	19.5	1970	20.8
1962	19.6	1971	20.7
1963	19.2	1972	20.9
1964	18.6	1973	20.3
1965	18.0	1974	21.2
1966	19.1	1975	23.4
1967	20.6	1976	22.6
1968	20.8	1977	22.4

The following table shows the degree of fiscal discipline that would have been required in past (calendar) years to observe the 20 percent limit:

SPENDING LIMITATION VERSUS ACTUAL FEDERAL OUTLAYS, 1960–77

[In billions of dollars]

Calendar year	20 percent of GNP	Federal outlays	Required reduction
1960	$101.2	$93.1	
1961	104.7	101.9	
1962	112.8	110.4	
1963	118.9	114.2	
1964	127.1	118.2	
1965	137.1	123.8	
1966	150.6	143.6	
1967	159.3	163.7	$4.4
1968	173.7	180.6	6.9
1969	187.1	188.4	1.3
1970	196.5	204.2	7.7
1971	212.7	220.6	7.9
1972	234.2	244.7	10.5
1973	261.3	265.0	3.7
1974	282.6	299.3	16.7
1975	305.8	357.1	51.3
1976	341.3	386.3	45.0
1977	378.1	432.5	45.4

Committing the Congress and the Nation to this statutory limitation would be in keeping with the philosophy and conviction of our Founding Fathers that there are limits to the power of Government to advance the welfare of its people, that more government is not necessarily better government. It is a recognition of what Thomas Jefferson once observed: "We see the wisdom of Solon's remark that no more good must be attempted than the Nation can bear." ●

PERSONAL EXPLANATION

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, yesterday the House passed H.R. 11280, the so-called civil service reform bill. While the House was in session I was in conflict as a member of the House-Senate conference committee on the small business bill, and of the Armed Services Committee which had various matters before it calling for votes as well as hearing Secretary of Defense Brown in connection with the President's veto of the defense budget. Having misplaced my I.D. card I evidently handed over the wrong tally, as I intended voting no rather than aye on final passage. On the Collins-Udall amendment I would have voted aye had I been present.●

EDISON CO. OFFICIAL GEORGE HANAWALT RETIRES

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. ANDERSON of California. Mr. Speaker, on September 21, 1978, three of the leading civic and business organizations in Long Beach will pay tribute to George Hanawalt, an outstanding citizen respected for his numerous contributions to the development of the city's business community. Proof of his capabilities and leadership qualities lies in the fact that he is past president of each of the host associations—the Chamber of Commerce, the Rotary Club, and the Southland Builders' Exchange. This man, well known for his dedicated participation in community improvement affairs, will be honored as he ends an impressive 32 year career with the Southern California Edison Co., serving as the coastal area manager.

Born in McFarland, Calif., George Hanawalt received his elementary and secondary education in Bakersfield, Calif., where he graduated from high school. He traveled to Pennsylvania where he attended Gettysburg College and earned Phi Beta Kappa honors. His college work was interrupted for 5 years years by his voluntary service with the Army Air Corps in World War II.

The Edison Co. was fortunate to have George join their operations following his return to California. This was an eventful period for Long Beach, one which placed great demands on the providers of electrical power, the Edison team. During this time the city purchased the Queen Mary, a once-great ocean liner which is now docked permanently on the local shoreline. Putting the ship into operation as a tourist attraction, complete with restaurants and novelty shops, required the conversion of the ship's British electrical system to the American standard. The skill and work of George Hanawalt made this very difficult task a success.

Another of George Hanawalt's memorable accomplishments was the furnishing of electrical power to the THUMS facilities off the Long Beach coast. THUMS is a group of oil companies—Texaco, Humble, Union, Mobile, and Standard—which banded together to drill for oil under local public lands. The major technological feat of supplying electricity through underwater cables was produced with the organizing skills of this man.

Most recently, George Hanawalt came to the forefront to help produce the precedent-setting air pollution tradeoff agreement between the Edison Co. and the SOHIO Co. Under this plan, two private business enterprises will, for the first time in this Nation, reduce air pollution at an existing pollution source which will more than makeup for new air pollution generated by a new industrial development project.

In addition to these accomplishments at the Edison Co., this distinguished citizen has found the time to apply his skills to the activities of many worthy community organizations. He has served as an officer with the Metropolitan YMCA; St. Mary's Hospital; the United Crusade; the Boy Scouts of America Area Council; and the Boy's Club of Long Beach.

Mr. Speaker, George has greatly contributed to the good life and business of my home district. I appreciate the opportunity to publicly acclaim his good works and share the pride of his family in his accomplishments and lifetime of dedicated service. My wife, Lee, joins me in saluting this outstanding citizen, George Hanawalt. We would also like to express our best wishes to his lovely wife, Adelaide; and their children, Jane, Hank, Jim, and Suzie.●

BILL TO EXTEND INDOCHINA REFUGEE CHILDREN ASSISTANCE ACT OF 1976

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BOB WILSON. Mr. Speaker, I introduce today a bill to extend the Indochina Refugee Children Assistance Act of 1976 for a period of 5 years, to September 30, 1983.

The act, Public Law 94–405, providing the elementary and secondary education programs for these refugee children will end on September 30 of this year. Title II of the act is the only Federal education program that provides specifically for elementary and secondary educational services to these children. Title II provided grants to State Departments of Education to assist local educational agencies in providing educational services to Indochinese refugee children who are between 5 and 17 years of age.

Since late 1975 after the initial program, Indochinese refugees continued to resettle in our country through special cases and programs. Because of this fact, we now have approximately 170,000 rather than the initial 130,000 refugees residing in the United States. With the expectation that our Government will admit approximately 20,000 refugees annually over the next several years, the number of schoolage children will increase also. At present, it is estimated than 40 percent of the refugees now are schoolage children.

California has the greatest concentration of refugee children in elementary and secondary schools. The grant from title II enabled the school districts to expand services to these children, including instruction in both English and their home language, counseling, assisting parents in understanding their child's school program, and developing instructional materials. These funds have enabled the school districts to help these students with continuing special needs to develop into self-confident, productive individuals in our society.

Mr. Speaker, I believe it is essential that we continue to help these refugee children—both those who still have need and the new children who will be arriving yearly to our shores—to overcome the barriers they face in adjusting to a strange land with unknown language and customs. Additionally, I want to emphasize that the admission of the refugees was a decision by the Federal Government for which we feel it bears a monetary, as well as a moral, responsibility. It is unfair to expect the local taxpayers in areas heavily impacted by the migration of substantial numbers of refugees to bear the full financial burden of their special education needs. At the time that Congress enacted Public Law 94–405, we hoped that the program could be terminated after several years of operation. This projection, however, was made prior to the new entries over the past year and the announcement that substantially more refugee admissions would be forthcoming in the next few years.●

THE NEW YORK AVENUE PRESBYTERIAN CHURCH—A 175TH ANNIVERSARY

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. ALEXANDER. Mr. Speaker, this year the New York Avenue Presbyterian Church in the District of Columbia celebrates its 175th anniversary. The history of this church and our Nation are uniquely interwoven. I believe my colleagues will find the following brief article of interest:

THE NEW YORK AVENUE PRESBYTERIAN CHURCH—A 175TH ANNIVERSARY

A visitor cannot stay long in Washington without becoming aware of the unique contributions made to the Nation's capital by the historic New York Avenue Presbyterian Church.

Sometimes called "Lincoln's church" because of the faithful attendance of the Civil War President but better known to millions of movie-goers of a later generation as the church where Peter Marshall preached, the Church is now celebrating its 175th anniversary.

But, its roots go back to the earliest days of the Republic when in 1979 President Washington urged the recruitment of Scottish artisans to help construct the new Federal city. These immigrant stone masons and carpenters brought their Calvinistic faith and and outlook with their tools and skills to the New World and soon organized regular prayer meetings in a carpenter's shop on the grounds of the Presidential mansion. In 1800, the year the new Executive Mansion was first occupied (by President and Mrs. John Adams), they were jointed by Scottish Covenanters from Pennsylvania who moved to the new city when the U.S. Government was transferred from Philadelphia. Together they held weekly services in the lobby of the new Treasury Building and it was here that a church was formally organized with the call in 1803 of its first pastor, the Rev. James Laurie of Edinburgh.

Dr. Laurie, whose wife Elizabeth was a first cousin of famed novelist-poet Sir Walter Scott, travelled throughout the states during his first years in raising funds for the construction of a church building which was dedicated in 1807 as the F Street Associate Reformed Presbyterian Church. The Greek Revival style building, built on the site now known as the New Willard Hotel, survived the burning of Washington in 1814 but its records were lost at that time. Ten years later,

the F Street Church was the scene of a brilliant gathering presided over by President Monroe at which members of his government, the court and the congress paid tribute to the visiting Marquise de Lafayette.

Among those present was Secretary of State John Quincy Adams, the Unitarian from Massachusetts whose attendance at the newly formed Second Presbyterian Church, located on New York Avenue, was the subject of some political doggerels of the day. Adams, however, was one of several Presidents—Martin Van Buren, William Henry Harrison and Franklin Pierce were others—who attended this church despite membership in other denominations.

Its most famous member, Andrew Jackson, stayed the shortest time. The church—a parent of the present New York Avenue Presbyterian Church—became embroiled in the "Eaton affair" which erupted when the wife of Vice President John Calhoun and other ladies of the Cabinet objected to worshipping in the company of a tavern-keeper's daughter, the handsome and witty Peggy O'Neale, wife of the Secretary of War John Eaton. Historians agree that the dispute cost Calhoun his life's ambition to succeed Jackson and led to the election of the widowed Secretary of State Van Buren, another church member who entertained the Eatons at his home.

Unfortunately the "scandal", as it was then called, split the Jackson Administration and nearly ruined the Second Church when the President and many of the congregation transferred elsewhere.

The first proposal to merge the two neighboring churches was sounded at this time but was not realized for another 30 years when Dr. Phineas Gurley had succeeded the beloved Dr. Laurie as pastor of the F Street Church in 1853. The combined congregation decided to build a new edifice on New York Avenue and in 1859 sold the F Street Church to the Willard Hotel which opened it to the public for the first time in hosting the futile Peace Convention of 1860.

The handsome red brick church on New York Avenue was still new when President-elect Abraham Lincoln arrived in Washington. Shortly after the inauguration his wife sent for its seating plans which were used in selecting a pew near the front of the congregation—where the Lincoln pew is located today. The Church has been fortunate in the quality and accomplishments of its pastors and Dr. Gurleys' own inspired faith did much to encourage the wartime President and gained his deep friendship.

Lincoln, in addition to Sunday attendance, liked to attend an evening service at midweek and often sat alone in the darkened pastors' study in order that his presence not disturb the other worshippers. One Sunday morning when Dr. Gurley announced that the military would soon take over the church for use as a hospital, the President arose in his pew to protest. Lincoln said he had no knowledge of such an order and countermanded it while declaring that "the churches are needed as never before for Divine services."

Pastor Gurley, who was frequently called to the President's mansion for prayer or friendly conversation, was summoned to the bedside of the dying President in Petersen's House on the fateful night in 1865 that Lincoln was shot and remained consoling and praying throughout the night until the President breathed his last. The funeral sermon Dr. Gurley delivered in the East Room of the White House, an address noted for appropriateness, pathos and genuine and rich scriptual sentiments, has few equals in the English language. Subsequently, at Mrs. Lincoln's request, he went in that long and sad procession which bore through the land the remains of President Lincoln to their final resting place in Springfield, Illinois.

The impress of Lincoln on the Church and its congregation was great and the stories told of the martyred president and his family were many. The Gurley family recalled how one time Lincoln helped arrange for the wedding of Fannie Gurley to a young army officer and how, another time, a dying Willie Lincoln had "willed" his toy bank and its contents to the Church Sunday School. The family of Matthew Brady told of the many Sundays when the famed photographer arose for the pastoral prayer in following a tradition set by the 16th President.

While Dr. Gurley outlived his friend the President by only three years, he was honored in 1867 by his election as Moderator of the General Assembly of the Presbyterian Church and a chapel bearing his name was founded upon his death the following year.

Few recall today that Lincoln's predecessor John Buchanan, had attended the Second Presbyterian Church and that Andrew Johnson often attended the New York Avenue Church. But, it is remembered that when the Lincoln pew was removed during a renovation of the church in 1881, several members intervened bodily to save the historic pew from disposal. It was stored for some years in the basement of the church until its relocation in the sanctuary. Dr. Wallace Radcliffe, who was called as pastor in 1895, began the traditional Lincoln Day Observances—held on the Sunday nearest Lincoln's birthday—which have been continued to the present.

On September 29, 1896, a hurricane struck Washington destroying several buildings in the downtown area and toppling the graceful white wooden steeple atop of the New York Avenue Church. Once seen throughout most of the city, the steeple inspired as well as directed the passerby. It was not replaced until 43 years later when a new steel-framed tower and chimes were presented to the Church as a memorial to Abraham Lincoln by the family of his son, Robert Todd Lincoln. Interestingly, the same frame and chimes—cast by a firm whose family origins go back to Nancy Hanks, Lincoln's mother—are in the present edifice.

Dr. Radcliffe was elected Moderator of the General Assembly in 1898 and the following year presided when the New York Avenue Church played host to a meeting at which was founded the General Council of the Reformed Churches of the World. Four years later, the Church celebrated its 100th anniversary with a service of thanksgiving attended by President Theodore Roosevelt, along with members of his Cabinet and the Congress, during which time Roosevelt spoke briefly from the Lincoln pew. Seated next to Secretary of State John Hay—Lincoln's private secretary—Roosevelt remarked on the distinguished congregation present, including his escort, Supreme Court Justice John Marshall Harlan, an Elder of the Church, and General Breckinridge, late Commander of the U.S. Army.

The Church's reputation for great preachers was continued with the selection of Dr. Joseph Sizoo to succeed Dr. Radcliffe. Dr. Sizoo was serving as pulpit supply on the first Sunday of February, 1924, the day President Wilson died. His sermon made such an impression that he was unanimously called to be pastor and was installed in May, 1924. The Dutch-born clergyman ordered the Church doors open all night in late July, 1925, to accommodate the huge crowds of mourners, shocked by the sudden death of William Jennings Bryan, who came to the sanctuary to pay their last respects to the 'great Commoner' who had three times been nominated as the Democratic Presidential candidate. By contrast, Dr. Sizoo was called to Arlington Cemetery one year later to conduct private services for Robert Todd Lincoln who had served as Secretary of War under Presidents Garfield and Arthur. At a happier occasion he presided at the dedication of the new Lincoln Memorial Tower in 1929.

Peter Marshall's years at New York Avenue were brief but impressive. The Scottish-born clergyman, who preached his first sermon as pastor in October 1937, had an earnest eloquence which inspired all who heard him. He served both as Chaplain of the Senate and pastor of the crowded downtown Church until his untimely death in 1948. During the war years he had an unique ministry with military personnel in the Washington area. A canteen was established, home-cooked food was served, games were planned and entertainment programs were presented, and sightseeing tours were arranged for the servicemen. After the war, Dr. Marshall was first stricken with a coronary occlusion in 1946. He recovered from this and in January 1947 he was appointed as Chaplain of the United States Senate, in which capacity he offered opening invocations presenting the needs of that body and its members at the throne of Almighty God.

The inauguration of President Truman and Vice President Barkley on January 20, 1949 brought new honors to Peter Marshall as he delivered the invocation in the Senate Chamber where the Vice President takes the oath of office: "God of our fathers in whom we trust and by whose guidance and grace this nation was born, bless the Senators of the United States at this important time in history and give them all things needful to the faithful discharge of their responsibilities. We pray especially for our President, and also for him who will preside over this chamber. Give to them good health for the physical strains of their office, good judgment for the decisions they must make, wisdom beyond their own, and clear understanding for the problems of this difficult hour. We thank Thee for their humble reliance upon Thee. May they go often to the throne of grace as we commend them both to Thy loving care and Thy guiding hand. Through Jesus Christ our Lord, Amen."

It was a thrilling experience for Dr. Marshall to be the representative of his Lord on that solemn occasion. On the following Sunday he preached his last sermon in the New York Avenue Church. Early on Tuesday morning, January 25th, a recurrence of the heart condition of three years before called him away from scenes of this earth into the presence of his beloved Savior.

A book by his widow, Catherine Marshall, titled "A Man Called Peter", became a best seller and was the basis for the movie version of Dr. Marshall's life.

Plans for the new church building were nearly complete when Dr. George Docherty, another native of Scotland, was installed in 1950. Beginning his administration without a church building, he presided at ceremonies in which President Truman laid the cornerstone of the new church building on April 3, 1951. On December 21st of the same year, Dr. Docherty also presided at the dedication of the new $1.2 million church, a service which was enhanced by the presentation of Lincoln's first handwritten draft of the Emancipation Proclamation by Mr. Barney Balaban, the President of Paramount Pictures. The historic document is among the treasured Lincoln relics at the Church and is on public view in the Lincoln Parlor.

Dr. Docherty, during a quarter-century of service, provided inspiration and leadership during a period of great change and turbulence in the Nation. His voice was heard regularly on radio and television as well as from the pulpit. It was his suggestion during a Lincoln Day sermon in 1954 that inspired a change in the wording of the Pledge of Allegiance to the U.S. flag that led to the insertion of the words "under God". Retiring after a challenging ministry to become Minister Emeritus in 1977, he is succeeded by Dr. Arthur McKay, former President of

McCormick Theological Seminary in Chicago and one of the Nation's foremost theological educators.

Fittingly, Dr. McKay, of Scotch descent himself, received his doctorate in Philosophy from Edinburgh University from which 175 years ago a young clergyman and his bride set out for the new world and their first church.●

VETERANS OF WORLD WAR I

HON. LOUIS FREY, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. FREY. The following is an editorial which appeared in the September 1978 Torch, published by the Veterans of World War I of the USA, Inc. The article outlines the many gains made by the World War I veterans in the 95th Congress; however, it again brings to our attention the need to enact an unrestricted pension system for this group of veterans who did not receive the many other additional benefits enjoyed by veterans of later years. I am very hopeful that the Congress will recognize the needs of these aged veterans and take the necessary steps to enact legislation granting an unrestricted pension system for World War I veterans and their widows.

LEGISLATIVE GAINS

Although Veterans of World War I did not get what they most wanted from the current Congress—an unrestricted general pension—they have registered gains this year.

The Administration proposed a budget of $19 billion for carrying forward veterans work. This was boosted to $21 billion, largely through the efforts of Ray Roberts, Chairman of the House Veterans' Affairs Committee. This means the saving of thousands of hospital beds, and medical and hospital aid to thousands of veterans who under the 19 billion dollar budget would be left out in the cold.

The budget increase means there will be money to meet any increased pensions that come out of HR 10173 when House and Senate conferees come to agreement—probably early in September.

It is almost a certainty that the provision in 10173 eliminating pension cuts with each rise in Social Security payments will be adopted in conference. The year by year erosion of pensions due to Social Security increases has been a bitter experience to thousands of pensioners who in a few years have seen $60 to $75 pensions wiped out. VWWI has argued with Congress for years that these Social Security increases should not be counted in arriving at income limitations.

If Congress did the just thing it would restore these past cuts as well as stopping them in the future.

The two houses have passed a measure increasing compensation 6.5 percent, October 1. This is a minor gain for a large number of War I vets.

In summary, War I veterans with those of later wars have made some gains in this session of Congress.

On the floor of the House, and probably in the Senate, Veterans of World War I have a heavy backing for a general pension to give them partial equity in the vast benefits voted for later veterans. Just how we can persuade controlling members of the veterans' affairs committees to report out a general pension bill is an unresolved question. But logic says fight on. Positions and legislators can change.

The bulk of both Senators and Congressmen are aware that War I veterans have been short changed and are ready to rectify the matter. If a reasonable pension bill comes out of committee, it will promptly pass. We cannot stop now.●

FOREIGN AID QUESTIONNAIRE

HON. C. W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. YOUNG of Florida. Mr. Speaker, more than 36,000 citizens from the Sixth Congressional District of Florida have responded to a recent questionnaire I sent to them prior to the House consideration of the fiscal year 1979 foreign assistance appropriations bill. Due to my position as the ranking minority member of the Appropriations Subcommittee on Foreign Operations, I felt it was important to obtain the views of the citizens I am honored to represent in Congress in order to determine whether the positions I was taking in the subcommittee and would be advocating on the House floor were, in fact, compatible with the views of my own constituents.

Of those responding to the individual questions, my constituents overwhelmingly demonstrated their support for the positions which I have been taking throughout the foreign aid debate. Many of my constituents are retired and have come to Florida from every other State in the Union and from all walks of life. Consequently, I believe their responses reflect the mainstream of thought throughout the United States on the issue of foreign aid. I would encourage my colleagues to review the results of this poll and discuss these findings with their own constituents. I am confident they will find a similar feeling among the citizens they represent.

If our taxpayers knew how some of their hard-earned dollars are being taken away from them by the Federal Government only to have it sent to various international institutions where it ends up in places like Vietnam, Uganda, and Cuba—I would suggest, Mr. Speaker, that the current taxpayers rebellion would give way to a full-fledged taxpayers revolution.

While not everyone answering recorded a decision on every question, the tabulations of those responses to the separate questions are as follows:

Congressman BILL YOUNG wants your opinion on Foreign Aid—

Do you support Foreign Aid?

Yes: 20.69 percent; No: 70.30 percent.

Many of the responses listed certain conditions that should be met before any aid is received.

Would you support either direct or indirect aid to:

Cuba? Yes: 1.12 percent. No: 98.87 percent.

Vietnam? Yes: 1.40 percent. No: 98.59 percent.

Uganda? Yes: 0.93 percent. No: 99.06 percent.

As your Representative in the Congress of the United States, do you want me to continue my efforts to seek reform in our Foreign Aid Programs?

Yes: 94.59 percent. No: 5.40 percent.●

TRIBUTE TO CAPT. CHARLES F. BLAIR

HON. RON DE LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. DE LUGO. Mr. Speaker, one of aviation's pioneers crashed to his death off the island of St. Thomas in the U.S. Virgin Islands on September 2, 1978.

Capt. Charles F. Blair, president of Antilles Air Boats, was at the controls of one of his Grumman aircraft on a commercial flight from St. Croix to St. Thomas when an engine on the World War II vintage amphibious plane exploded, plummeting the plane into the Caribbean Sea. Captain Blair and 3 of 10 passengers aboard were killed.

The 68-year-old Blair, a brigadier general in the U.S. Air Force Reserves and a former pilot for Pan American Airways, gained national prominence in 1951 when he became the first man to make a solo flight over the Arctic and North Pole in a single-engine P–51 World War II fighter. Because of this solo flight, the Air Force's Strategic Air Command (SAC) asked Blair in 1952 to advise it on the possibility of launching nuclear weapons from fighter aircraft. In 1953, then Brigadier General Blair headed a flight of military jet planes across the North Pole.

For such notable feats the man whom historian Lowell Thomas called "one of America's great pilots" received the Distinguished Flying Cross, the Thurlow Award for "outstanding work in the science of navigation" and the Harmon International Trophy from President Harry Truman.

After attaining the rank of captain with Pan Am, Blair settled in the Virgin Islands and founded Antilles Air Boats, the world's largest seaplane airline. He and his wife, former motion picture star, Maureen O'Hara, lived on St. Croix and managed the airline on a day-to-day basis.

Charlie Blair's contributions to the science of navigation are well recognized and genuinely applauded. They are a tribute to the indomitable spirit which motivated him during a lifetime of challenge and success. His pioneering spirit was a source of pride and inspiration to those who knew him. His business enterprise and personal contributions to the Virgin Islands community were likewise well-known and appreciated.

Eulogized by Senator BARRY GOLDWATER during burial services, Captain Blair received the final tribute of a grateful Nation when, by Presidential order, his body was laid to rest in Arlington National Cemetery. The legacy of his intrepid spirit and quest for excellence will be missed by all Americans, but especially by Virgin Islanders.

It is my distinct pleasure to share with my colleagues the pride we feel in Charlie's accomplishments and to insert, in his memory, the editorial from the Sep-

tember 6, 1978, issue of the St. Croix Avis.

The editorial follows:

CHARLES F. BLAIR—1909–1978

"Alone in the cockpit of my high-flying airplane I became as free as a man can ever be, possessed only by the majestic sweep of the polar ice cap, reaching through the purple haze for the top of the world." CFB in his book, "Red Ball in the Sky", as he completed his North Pole solo flight in his single-engine P-51 Excalibur III.

It is not often that we meet in our life time a true visionary—a man who hears a distant drum and feels the pull and tug at his being, of a call that he must answer. This is the stuff of which heroes are made. They are cut from a different cloth than most of us; they have a goal and destiny far beyond our ken.

The man who climbs the impossible mountain must do it "because it is there," he will tell you. The seeker of a distant horizon across uncharted waters sets out on his journey physically alone but within him is a response to any almost mystical challenge which only he can define—and attempt to answer.

Charles Blair was a man who sought just such frontiers beginning in the Thirties when he flew an airborne "Pony Express," carrying the mails cross country over rugged mountainous terrain in a tiny aircraft. A man of many "firsts", throughout his career he repeatedly broke world aircraft speed records and conquered unknown realms in his response to some undefinable challenge.

To those who knew him Charles Blair was truly an "intrepid airman" with a look in his eye which seemed always to be searching the distant horizon for yet another frontier to conquer.

In a way, we might call his desire to bring the Virgin Islands closer together his last frontier. A perpetual optimist, and with many odds against him, Charlie bridged the gap between islands by creating Antilles Air Boats at a time When the Virgin Islands was experiencing a great leap forward in terms of population and expansion.

His little airline became the third largest commuter airline under the U.S. flag, making travel and communication quicker and easier for businessmen, government people, resident families and tourists too who had the opportunity to visit all three islands in a way which had never before been possible.

To know Charles Blair was to know a man who inspired respect and admiration. Always courteous, with a gentle almost shy humor, he was never too busy to greet everyone by name and express close personal interest in the well-being of the people with whom he worked. An Eagle Scout himself when young, he was tremendously interested in the scouting movement and in Boys Clubs, to whom he contributed energy, time and money openheartedly.

Charles F. Blair will not soon be forgotten, and to this pioneer in celestial aerial navigation, as he charts his final course, we give our farewell. As he himself would say, "Well done, old bean, well done." ●

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1978

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. VENTO. Mr. Speaker, on May 19 the House passed the Alaska National Interest Lands Conservation Act of 1978. The overwhelming vote of support for this landmark legislation underlines the importance of the passage of this bill during this session and indicates the balanced approach that the bill takes toward the supposed conflict between developmental pressures and a desire to protect our few remaining wilderness areas for the enjoyment of this and future generations.

The House-passed bill does provide ample opportunity for the State of Alaska to develop much of its rich natural resources while providing the necessary protection for some of the State's more magnificent wilderness areas.

Duringn the 118 days since House passage, the Senate Energy and Natural Resources Committee has been conducting lengthy and careful deliberations on this issue. The committee has considered many of the same questions that my colleagues and I faced on the Interior Committee. As the Senate committee consideration of their draft proposal nears completion, several outstanding issues must be addressed.

Throughout consideration of the Alaska lands issue, one of the principal areas of dispute has been the supposed conflict between development and preservation. No one disputes the fact that Alaska is a veritable storehouse of many resources essential to the economic growth and well-being of our Nation. The House-passed legislation provides the needed mechanism to develop those essential materials. Equally important are the vast wilderness areas of that State. These last remaining vestiges of American wilderness must remain available for the use and enjoyment of future generations. To exploit these areas now would be an injustice to our descendants. Wilderness is not a renewable resource; once developed its unique values will be lost forever.

The Alaskan wilderness is now threatened by unrestrained development. Too often in the past, the argument has been raised that our Nation's supplies of natural resources and wilderness areas are inexhaustible and that development may proceed unchecked. The result of this philosophy has been dwindling supplies of natural resources and the destruction of the unique qualities of our country's wilderness. The Alaskan wild demands the passage of a strong Alaska National Interest Lands Conservation Act. Undue delay can only extend the uncertainty over the final disposition of Federal lands in Alaska. Significant development of Alaskan resources may be frustrated and the integrity of the wilderness will be severely threatened.

I urge our colleagues in the Senate to act with all deliberate speed to pass a strong Alaska national interest lands bill so that we may complete the legislative process this session and resolve this most important issue.

I would like to draw my colleagues' attention to three recent articles dealing with the status of Alaska lands legislation:

[From the Minneapolis Tribune, Sept. 6, 1978]

THE SENATE'S WEAKNESS ON ALASKAN LANDS

The clock is running out on Congress's self-imposed deadline to define the rules of conservation and development for federally owned lands in Alaska. That deadline, set seven years ago, is this December. The roadblock to meeting it is in the Senate. Specifically, it is in the failure of the Senate leadership and the Senate energy committee to resist the local-interest tactics of two senators from Alaska.

Both those legislators—Democrat Mike Gravel and Republican Ted Stevens—want to undo the laboriously compromised and exhaustively debated Alaska lands bill overwhelmingly passed by the House in May. Stevens is trying to gut the bill's conservation features, already marked by generous concessions to commercial development, by pressing for amendments in every session of the energy committee. He is not a committee member, but Chairman Henry Jackson, D-Wash., has largely let him have his way.

Gravel, by contrast, doesn't even want a weakened bill. He fears the power and tenacity of conservationist representatives in a House-Senate conference. Whatever the energy committee approves, he threatens to filibuster. Faced with that threat, and with a crowded calendar, Majority Leader Robert Byrd, D-W. Va., has hinted that he might keep Alaska lands legislation off the floor altogether.

Either outcome would be a retreat from responsibility. A bill denying deserved protection to federal lands would undercut public trusteeship of irreplaceable resources that belong to the whole country. No bill at all would throw the status of those lands into doubt once again and needlessly postpone a long-range policy that needs to be shaped now. Leaders of the Senate should bestir themselves for Alaska lands legislation at least as strong as that already passed by a large majority of the House.

[From the St. Paul Dispatcher/Pionner Press, Sept. 3, 1978]

THE LAST SLIVER OF WILDERNESS

(By George Rice)

A couple or three weeks ago this column was all about fishing for lake trout, and the joys of the Ontario wilderness and such-like. It ended with a few sentences about the worry the Ontario folks have concerning how long their treasure will be safe from the encroachments of the roadbuilders, the miners, the developers.

As it stood, I am satisfied the piece made its point, but there were a couple of polemical paragraphs that got left off the end of the piece simply because there wasn't room. Which is all right, since I can now use them as a starting point for this column.

What I said, or began to say, in those trimmed paragraphs was that if the vastnesses of Ontario, which dwarf the only remotely comparable area in the United States outside Alaska, the Boundary Waters Canoe Area, are being threatened, how mindless it is of us even to argue over what to do with the BWCA.

It should be wilderness, period. Meaning it should have the maximum protection against snowmobilers, motorboat operators—and, yes, canoeists if need be.

I was prompted to expand on the theme in part by reading some of the arguments pro and con about the proposal now before Congress to set aside 90 million-plus acres of Alaska as wilderness, wildlife, wild river and national park areas. This is approximately a quarter of the total area of that state, and of course is immensely more extensive than the BWCA.

There are endless points being made on either side of the controversy, but they can be boiled down in each case to two or three.

The "pros" say, of course, that Alaska is our last frontier and that it constitutes our last chance to show we know what to do with a frontier. We exploited the one we had in the "lower 48" with little or no regard for the future, they say, and unless we act now we will only repeat a national tragedy.

They also say the developers—the oilmen, the timber people, the miners—would be left

with more than enough of Alaska for their purposes. As a recent statement from an organization calling itself "Americans for Alaska" put it: "This approach (setting aside the 90 million-plus acres) would protect important economic activities which depend on resource conservation, including commercial fisheries and tourism, and, although most of Alaska's mineral and petroleum wealth lies outside the proposed conservation areas, . . . would store underground resources for the future . . . if ever needed."

The "cons" say the proposal would "lock up" Alaska's resources, take away Alaska's sovereign state rights, "prostitute the wilderness philosophy" and keep the state economically depressed.

The "cons" deny that most of the underground resources are outside the proposed set-aside. Alaska, they say, is still largely unexplored, in the resource sense, and no one knows what may lie underneath tens of millions of its acres.

An article in a recent issue of Exxon USA, published, you need hardly be told, by the energy conglomerate, makes much of the fact that only about .001 percent of Alaska has been "cleared, settled and altered" by man. (They left out "affected.") Alaska, says Exxon USA is "all but unchanged."

In other words, the "cons" seem to be telling us, why worry? Alaska is limitless, primeval, inexhaustible.

Americans have heard that siren song before. And have heeded it, have swallowed its lyrics hook, line and sinker. Who could ever cut down all the black walnut forests of Pennsylvania and Ohio? The white pine forests of Minnesota and Wisconsin were inexhaustible. The prairies were limitless. The buffalo herds were endless. The redwoods—well, after you've seen one, you've seen 'em all. Our supplies of pure, clean water would last forever.

The results of our dancing to that tune (to change the metaphor) are all around us and no matter how ruefully we now admit our past sins, there's little we can do about them.

One of those results is that the measly million or so acres of the BWCA are about all that we have left to preserve in the "lower 48"—and the chances of preserving even these don't look very good right now.

Canada still has vast tracts of wilderness, but the signs of their erosion are unmistakable. And no one needs to tell us what the boomers and boondogglers could—and very well may—do to Alaska.

And we have the nerve to argue about saving a sliver called the BWCA! We listen to the folks who say, "We live near the place, so it's ours"!

Will we ever learn?

[From the Missoulian, Sept. 5, 1978]

CONGRESS ON THE BRINK OF MASSIVE ALASKA GIVEAWAY

(By John B. Oakes)

Though few Americans outside Alaska seem to be aware of it, a classic struggle to prevent one of the great environmental ripoffs of the 20th century has been taking place this summer in an obscure committee room of the United States Senate—and at this point it looks as though the American people may well turn out to be the losers once again.

The basic issue is whether the last major areas of ecological significance in the United States, whose ultimate disposition is still in the hands of Congress, will be opened to the usual coterie of developers, prospectors, oilmen, loggers and lobbyists—or whether the unique wildlife, water, forest, wilderness and scenic resources of these fragile Alaskan lands will be protected for the permanent enjoyment and benefit of all the American people who own them.

Because of lack of leadership in the Senate Committee on Energy and Natural Resources, the prognosis at this stage of the game is not good.

It is not as though Alaska—by far the largest state (more than twice the size of Texas) and with by far the smallest population (about that of Buffalo)—were being deprived of what rightfully belonged to it, as many of Alaska's hungry politicians led by its two senators, Stevens and Gravel, would have the American people believe.

Congress has already given Alaska and its 400,000 inhabitants—in the most generous endowment ever bestowed on a new state—the right to select more than 100 million of its total 375 million acres (including Prudhoe Bay and most of the other potential oil lands) as a kind of dowry for economic development. In addition, 45 million acres (and nearly a billion dollars) have been assigned to the 65,000 Aleuts and Eskimos in settlement of native claims.

What more then can Alaska's people and politicians want? "They want it all, and they want it now," says Chairman Morris K. Udall of the House Interior Committee, who shepherded his Alaska "national interest" landuse bill (HR. 39) through the House of Representatives in May.

This bill, a compromise proposal that badly needs strengthening in the Senate, would at least reserve, under varying degrees of federal protection for conservation purposes, about 100 million acres of Alaska's irreplaceable natural resources, mainly in the form of national parks, wildlife refuges, scenic rivers and wilderness.

Left open, for all the exploitation Alaska's developers are capable of, would be at least 90 percent of the state's high-potential oil and gas lands, and 60 to 70 percent of its potential hard-rock mineral producing areas.

Yet many of Alaska's development-oriented politicians, including former Gov. Walter J. Hickel, running again for governor, and Sen. Ted Stevens, running for re-election, want not merely to cut down the already curtailed and barely adequate areas earmarked for special federal protection under the House bill. Even more important to them and more devastating to the environment, they want to eviscerate the kinds of protection provided, opening particularly fragile areas to miners, oil prospectors and loggers when so much as yet unexplored, less sensitive land is already available to them.

For example, they would undermine the entire system of federal protection in the very areas most in need of it, through a high-sounding but totally destructive proposal for "cooperative management" of state and federal lands.

They want the state to be able to select some 10 million acres (of the 100 million allotted to it) that are included in proposed national parks and refuges of vital ecological significance, thus creating inholdings and reducing boundaries to the extreme detriment of some of the very areas most in need of protection.

They would open up particularly vulnerable parts of the Arctic National Wildlife Refuge to oil and gas exploration that would be sure to result in decimation of one of the greatest remaining caribou herds on earth, on which many Eskimos rely for their livelihood.

They would shrivel the stupendous Gates of the Arctic National Park to promote mining and other forms of exploration. They would cut into the Yuko Flats for alleged agricultural and probable second-home development, thus further reducing what is still one of the major sources of water fowl for the entire continent.

They would encourage commercial loggers to continue to hack away—largely for export to Japan—the spectacular timber resources of southeast Alaska, destroying scenic, watershed and wildlife values which the United States Forest Service itself has been unable or unwilling to protect in the past.

Republican Stevens and his Democratic colleague Gravel have both threatened to filibuster the Senate bill if it does not meet their approval; and in a pusillanimous attempt to appease them, the Senate Energy and Natural Resources Committee under Sen. Henry Jackson of Washington (whose great conservation record of the past is in danger of being swept away by his weak leadership in the present crisis) has been giving the exploiters practically everything they want.

The bill to be reported from committee soon looks now as if it is going to be virtually dictated by Stevens—who is not even a member of the committee but seems to be controlling it. It is shaping up as a rejection of the view held by most Americans (as the polls clearly show) that it is more to the national interest to preserve Alaska's multifaceted resources intact in the most crucial and sensitive areas than it is to exploit every last acre for immediate and transitory gains.

If the Senate bill as now emerging cannot be revised in conformity at least with the House measure, then no law is likely to be approved before Congress's self-imposed December deadline.

In that case, it is the Alaskans themselves who will suffer first, as the status of virtually all the lands in question will be thrown into doubt once again—and their use for development or any other purpose will be indefinitely stymied.

But the loss would be a national one, too, for Congress, ignoring popular opinion and yielding to localized and concentrated pressure groups, would have proved itself this year powerless to prevent the most blatant giveaway of natural, environmental and ecological values since the days of the Robber Barons a century ago.●

BEN LEITH RETIRES FROM U.S. MARINE CORPS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. KILDEE. Mr. Speaker, it is my privilege to bring to the attention of my colleagues in the Congress the retirement from the U.S. Marine Corps of Ben Leith. Mr. Leith is one of the growing breed of Americans who have combined a life time of service to their country with active local community involvement. I would like to briefly outline some of his many accomplishments.

Since joining the U.S. Marine Corps in 1953, Mr. Leith has served both in Korea and in Vietnam. He has received two Purple Hearts, four Air Medals, and was recommended for three Silver Stars. In addition, the Government of South Vietnam awarded him one of their highest citations in appreciation for his valor. Mr. Leith has been the first sergeant of the Marine Corps Reserve detachment in Flint, Mich., since 1975.

Mr. Leith's involvement with the Flint veterans community has led to his participation in many community projects including the local "Toys for Tots" drive and the "Jerry Lewis Telethon." He has also worked with the Boy Scouts and other youth organizations.

I would like to join his family and friends in saluting his past achievements and in wishing him continued success in future endeavors.●

PANAMA: HAVEN FOR MARXIST TERRORISTS

HON. GENE SNYDER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. SNYDER. Mr. Speaker, highly informed and very reliable authorities on Latin America tell us, "Panama has now openly become the Marxist terrorist sanctuary for Middle America."

Omar Torrijos, whose left-leaning regime has just welcomed Commander Zero and his Nicaraguan guerrillas after their seizure of Nicaragua's National Palace, has for some time been providing sanctuary for Marxist terrorists operating in El Salvador.

We cannot blind ourselves to continuing developments in Panama which show us that Torrijos had dropped his mask since the Senate gave its consent to the new Panama Canal treaties. Almost daily we see new evidence of his working with and aiding those forces which seek the destruction of freedom in the United States.

Virginia Prewett Associates in Hemisphere Hotline have just issued a report for September 1, entitled, "Panama, Haven for Terrorists." Before the demise of the Washington Daily News, Virginia Prewett's behind the scenes reports on Latin America were widely read here. I commend this latest report of hers to my colleagues in this body which has yet to take up implementing legislation regarding the new treaties. The text is as follows:

PANAMA, HAVEN FOR TERRORISTS

WASHINGTON, D.C.—In a world beset by terrorist theatre-of-revolution, most of it horrible and bloody, terrorist "happenings" in Latin America may seem just part of the modern scene.

Indeed they are, but it is not a static scene. It has a story that moves, develops, acquires dimensions. Last week's spectacular terrorist coup in Nicaragua marked a definite milestone. Its impact reaches, and will reach, far beyond Nicaragua.

The new development resulting from the Sandinista terrorist seizure of Nicaragua's capitol building, with over a thousand people inside, concerns both Panama and Venezuela, but chiefly Panama.

"Commander Zero"—identified as one Eden Pastora—who led the force of 25 terrorists, chose to fly with 53 leftists whose release from jail he had effected, and with selected friendly hostages, not to Cuba but to Panama.

Both Venezuela and Panama sent planes, and one was to fly Commander Zero followers and some hostages to Venezuela. But Pastora opted for all to fly to and remain in Panama.

The reason? The terrorist leader made it plain: Panama was chosen because it is close to Nicaragua, because he expects to return to Nicaragua from Panama and take up the guerrilla war there again.

Commander Zero expects no restraint from Panama. Nor, indeed, did any restraint oppose him, on arrival in Panama, in taking the next imperative step in his warfare—and that was to establish a colorful personal image in the world's press.

Commander Zero, permitted to talk freely to the press there, by so doing did establish an image upon which a romantic political legend can be built. When Fidel Castro was in the Sierra Maestra opposing Cuba's Batista regime, he was a shadowy, little-known figure until the New York Times' Herbert Mathews interviewed him. (Whether in the mountains as advertised, or in a Havana hotel room, history does not tell us with exactitude.)

Eden Pastora was met at Panama's military airport at Panama City by the limousine of the Panamanian National Guard's chief of security, Lt. Col. Manuel A. Noriega, long and widely acknowledged to be a Communist who has frequently visited Havana.

And then from a Panamanian safe-haven, Pastora talked freely to the press in the hour of his triumph, telling the world exactly what it serves his purposes for the world to believe.

PANAMA THE NEW TERRORIST SANCTUARY

The outcome of the seizure of Nicaragua's National Palace, in which at least six died, is that Panama has now openly become the Marxist terrorist sanctuary for Middle America.

Virginia Prewett and various official hemisphere intelligence services have known for over a year that Marxist terrorists from El Salvador have gone to Panama both for supplies and "Rotation and Recreation". But this was managed secretly. Commander Zero and his now battle-hardened irregulars, with other guerrilla veterans freed from Nicaraguan jails, can, after their victorious R-and-R in Panama, return to Nicaragua—or Guatemala or El Salvador or Honduras or wherever—at a time of their own choosing. No word or gesture has come out of Panama's government to indicate that they will not be free to do so.

The image that Commander Zero projected is significant. His words said that he did not have Cuban training or Cuban money. He said he came from a strongly Catholic home, and was educated by Jesuits. He and his band are called "Third Worlders"—Marxists in all but Marxism's atheism. Pastora made it plain that his objective is to establish a radically revolutionary society and regime in Nicaragua.

But although Pastora denied direct Cuban connections, in his olive-drab fatigues much like those that are Castro's trademark, he struck poses for the cameras much like Castro's. His voice and declamatory style are said to be modeled on Fidel's. It is recalled that when Castro was in the Sierra Maestra, he wore a crucifix and denied connections with communists.

Time has passed since the Sierra Maestra, and Marxism is being made more and more "respectable" in Nicaragua and Central America. Commander Zero, it should be noted, claimed the kind of Catholic ties that Argentina's Montonero leftist terrorists boasted. He made veiled references to the press that might identify him as a Trotskyite—to other Trotskyites. The latter, as is well known, work with or in parallel with Castroites in Latin America.

WHAT NEXT FOR CENTRAL AMERICA?

The implied blessing that both Panama and Venezuela have given the Sandinistas of Nicaragua cannot fail to affect events in both Nicaragua and El Salvador, now under heavy attack from leftist terrorists supported by Christian radicals.

During the past two years, Virginia Prewett has reported attempts by Strongman Anastasio Somoza's non-Marxist opposition to split away part of his National Guard support, lest the Marxist Sandinistas beat them in the race for power. The seizure of the National Palace has brought into the open just such a split.

While Nicaragua lives its drama in the world spotlight, little El Salvador, wracked by leftist terrorism for several years, is again being shaken to its foundations.

As the Marxist terrorists did in Argentina, they have begun to include the foreign business community as kidnap targets in their campaign of terrorism and destabilization.

As Hemisphere Hotline readers know from many HH reports, such crimes often end with murder. On May 17, a Japanese manufacturer in El Salvador, Fujio Matsumo, was kidnapped for ransom by the extreme-left group called the FARN. Later, it appears, he was shot.

On August 10, yet another Salvadorean coffee-grower was kidnapped. Then on August 15, Kjell Bjork, Salvadorean representative of the Ericcson telephone interests, was kidnapped. Through their consul, the Swedish government is negotiating for his ransom.

Meanwhile, a raid in the small Salvadorean city of San Miguel revealed a terrorist arsenal, records—and a list of business people to be kidnapped. This has set off an exodus of both Salvadorean and foreign business leaders, with consequent repercussions on the little country's economy.

But all Salvadoreans cannot leave their country, nor do they want to. If pressed too far—and the limit may be near—they will fight back. And much blood will flow, with an extremely productive free-market society facing destruction à la Cuba—or Cambodia.●

MOTION TO INSTRUCT

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BINGHAM. Mr. Speaker, I am going to vote against the motion to instruct conferees on this legislation to accept two Senate passed amendments. One of these amendments would require that the Federal budget be balanced beginning in fiscal year 1981. This is a simplistic approach to the problem of inflation, which assumes that Federal deficits are the root of all evil, and it is not appropriate in the context of legislation dealing with the International Monetary Fund.

The motion would also instruct the House conferees to accept an amendment which would require the U.S. executive director to the International Monetary Fund to oppose any assistance to countries which aid or abet hijackers. In substance this amendment by itself would be worthy of support, but in this case it is inappropriate, particularly since several other committees of the Congress are actively working on comprehensive antiterrorism legislation. The Subcommittee on International Security and Scientific Affairs met this morning and reported out H.R. 13387, a bill which would provide a wide range of methods for combating terrorism. It would provide automatic sanctions to be taken against countries which harbor terrorists in a much more direct way than through the amendment before us today. The House will have a chance to work

its will on this legislation in the very near future, and should defeat this tempting but ill-timed and unnecessary motion.●

HISPANIC WEEK AND THE MERGING OF TWO CULTURES

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BROWN of California. Mr. Speaker, I would like to bring to the attention of my colleagues an article that appeared in the Los Angeles Times on September 10, 1978. This article by Carey McWilliams, a noted author on Hispanic issues is significant as we celebrate National Hispanic Heritage Week. It shows both the growth of the "Hispanic factor" in American politics and education and the growth of the Latino influence on our own culture. More importantly, this article shows that this growth is the result, not of an "invasion" of one culture onto another, but rather, a merger of the two cultures through a mutual process of give and take.

Some of the most significant issues facing Hispanics in this country, such as bilingual education, turn on the issue of biculturalism. But, as the article points out bilingual education and the emphasis on biculturalism can only foster a better understanding and mutual acceptance between the two. If the understanding can be cultivated the problem of illegal immigration can be addressed in a much more rational and humane manner.

The article follows:

BLURRING THE DEMARCATION LINE BETWEEN MEXICO AND THE UNITED STATES

(By Carey McWilliams)

Cars and campers and vans stretched for miles in either direction last Sunday. Horns honked, children fussed, vehicles overheated. Uniformed guards waved monotonously. It was a typical weekend at the San Ysidro, California-Tijuana, Baja California border crossing. When statistics on the number of border crossings for this year are compiled, they are sure to top those of 1976, the latest year for which such figures are available. During that 12-month period 8.6 million vehicles and 38.8 million people passed through that check-point.

In fact, the traffic congestion at the major California-Mexico gateway is only one aspect of the continuous movement of people in both directions.

For over a century, people from each country have crossed this international border searching for economic-advantages or a better way of life. Mexican *borrios* have grown larger in all the U.S. border states and North American suburban *barrios* have sprung up in Baja California. "Curbs and sidewalks in and paid for," shout English signs in remote coastal developments. "Retire here."

The two nations' economic interests have become tightly interwoven and interdependent. A recent report by the Comprehensive Planning Organization and the Southwest Border Regional Commission pointed out that Mexican shoppers and businesses spend at least $200 million annually in San Diego County while American tourists spend about $120 million a year in Tijuana.

As a result of the constant interaction between the people of the United States and Mexico, a unique bicultural zone—an area of undetermined depth—flourishes along the border of the two countries. This "borderlands complex" presents both a challenge and a promise to residents of the area.

On the Anglo side of the border, Latino influence on Southwestern culture is more obvious than ever before. For one thing, the size of the Latino population has increased. Latinos are the largest and fastest-growing minority in the Southwest. Census figures—long admitted to be an undercount in March, 1978, estimated the Spanish origin population in California to be 3,179,000. In 1970 the census estimated that more than one million people of Spanish origin resided in Los Angeles and Orange Counties alone. An additional number of undocumented workers swell the ranks.

Latinos constitute 40% of New Mexico's population and 20% of California's and Texas'. Some of this figure can be attributed to both legal and undocumented immigration. Mexico's population of 63 million has doubled since 1950. Even with population planning and increased employment opportunities some government officials believe it will be at least 15 years before pressures in Mexico ease, making it unnecessary for many Mexicans to look for work outside their own country. Before that time, however, North America will contain the fourth-largest Spanish-speaking population in the Western Hemisphere.

Besides sheer numbers, the Latino influence in the Southwest is evident in the newly emerging Chicano middle class. To a great extent, affirmative action in education is responsible. Only a handful of Mexican-Americans graduated from the University of California during the first 100 years of its existence. Since the 1960s the number of Chicanos matriculating both in California and throughout the Southwest has risen dramatically. Today approximately 1,380 hold PhDs.

And education itself has changed in response to Latino impact. The federal government now funds bilingual education. Laws in California and Texas prohibiting the use of foreign languages on public schoolgrounds have been abolished.

Despite the fact that many bilingual programs are inadequately staffed, poorly researched and inefficiently administered, government funding indicates the importance of bilingualism. Indeed, proper bilingual instruction in elementary grades has two advantages:

It would ease both educational and cultural adjustment problems for the Spanish-speaking children in this country by teaching them English in a coherent, structured way:

And it would give Anglo students proficiency in Spanish.

Within the borderlands, fluency in both languages would be a great asset in international trade, law enforcement, and social and political interaction.

Nevertheless, bilingual instruction has been resisted by many educators and often by the public at large because they fear it will lead to the kind of factionalism that now divides Quebec. But are Latinos likely to become an irredentist element like the French in Quebec, agitating for a separate political destiny and cultural identity? Are the Spanish-speaking in the process of reacquiring the vast territories Mexico was forced to cede to the United States under the terms of the 1848 Treaty of Guadalupe Hidalgo? Questions like these have begun to echo in the regional and national press as the public has slowly become aware of the present and future importance of the Spanish-speaking minority.

But the questions, while suggestive, are based on false analogies. The Spanish-speaking constitutes a special case in the history of American immigration—one for which there is no exact parallel. For one thing, only several generations ago, this was their country. And understanding the role of language in a culture is key to comprehending the complexities of the Latino situation.

Language, of course, is an element of nationalism. But bilingualism in and of itself is not a cause for division; on the contrary, it can foster better understanding and encourage a greater degree of mutual acceptance. On the other hand, attempts to suppress a language *stimulates* nationalism. So the move toward improved bilingual programs is a healthy one.

Besides reforms in language programs, educators have made other changes. Ethnic studies at all levels now teach about Latino culture and history. And that information is being passed on to the Anglo community through the arts. Chicano muralists in California, for instance, paint their people's past on *barrio* walls. Luis Valdez dramatizes an incident in Chicano history in "Zoot Suit," a new hit play.

At the same time, Latinos are making substantial progress in political organization and activism. Groups like the United Neighborhood Organization (UNO) and the Santa Ana Neighborhood Organization (SANO) have instigated auto-insurance and civil-rights reforms. In the past, Mexican-Americans have not wielded political clout in proportion to their numbers. Activists hope to eliminate this lag. This month, for example, UNO began a massive voter registration drive.

Anglos, in the meantime, have suddenly recognized the power of the Chicano purse.

A recent study values the national Latino market at $50 billion annually. Ironically, this may stimulate the most vigorous interaction between the two ethnic groups to date. Anglos have never been slow to exploit a bright new market

On the other hand, neither have Mexican entrepreneurs, who tantalize Anglos with visions of exotic vacations and affordable nearby vacation homes. Bajamar, a new development south of Tijuana, promotes its homes in Los Angeles newspapers as places where Anglos can "recapture their California dream."

English lessons, widely advertised and attended, sell prospective students by pointing to the large Anglo market. The Mexican Border Industrial Programs of 1965 spurred new commercial growth. New highway construction spread the commercial potential over a wider area of the Mexican borders.

And business opportunities do not seem likely to decline American companies are expanding their labor-intensive border industries all along the international line, escaping high U.S. wages and union organization.

Borders are no longer the impenetrable barriers we once thought them to be. It may even be to our advantage to redefine them. Immigration patterns to this country are changing. Undocumented workers arrive here from all nations traveling in everything from frail open boats across unsafe seas, like some Haitians and Cubans have done, to inexpensive transoceanic flights.

Old immigration patterns are largely obsolete. But the Mexican case is unique. The historic borderland phenomenon offers great potential for mutually beneficial economic and cultural exchanges between Mexico and this country.

The six Mexican states bordering North America are likely to have a combined population of 14 million by 1980—up 5.5 million since 1960. From Brownsville, Texas, to San Ysidro, California, borderland interdependency has increased. In fact, the expansion

of modern Tijuana with an estimated population of 850,000 and the greater San Diego spread with 800,000 population combine to make one of the largest urban complexes on the West Coast. It is time to blur the rigid demarcation line between Mexico and the United States and begin to treat the borderland complex as the unit it really is.●

BALANCE OF POWER SERIES: BOOK II (I)—NATIONAL MORALE

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, past selections in this strategic balance series have dealt with Soviet national character and political culture, as they differ from the American consciousness. These characteristics provide the institutional and behavioral framework on which national strength must be built.

A related factor is morale, which links that strength to its basis in the population as a whole. Although, like the other two factors, morale is difficult to describe or measure, it has clear bearing on the range and flexibility of options which any country may follow in establishing its strategic position.

The following article focuses on one outstanding difference in morale between the United States and the U.S.S.R.: the orientation of the population toward war and the military.

"The 'Militarization' of Soviet Society" is an article by Col. William E. Odom which describes in detail the steps taken in Russia to maintain a broad and high level of conversancy with military matters. This characteristic, not unique to contemporary Russia, is important not only for military manpower purposes, but in creating a national morale which supports those measures Soviet leadership finds necessary to the achievement of its strategic objectives.

This article first appeared in Problems of Communism, September–October 1976. The first part of Colcnel Odom's article follows:

THE "MILITARIZATION" OF SOVIET SOCIETY

(By William E. Odom)

(Col. Odom is Associate Professor in the Department of Social Sciences at the U.S. Military Academy at West Point (New York) and Senior Research Associate at the Research Institute on International Change at Columbia University (New York). His many writings on the Soviet military include The Soviet Volunteers: Modernization and Bureaucracy in a Public Mass Organization, 1973.)

Almost unnoticed by Western observers, an enormous military-educational complex is emerging in the Soviet Union today. It holds a commanding position in graduate education as well as in undergraduate training; it permeates the civil secondary-school system and ties up more than one-fourth of the population in voluntary work in support of military skill training; and it touches every Soviet citizen by entangling him in a nationwide civil defense structure. Before investigating this phenomenon, it may be useful to reflect on some of the reasons why a development of such significance has not drawn more of our attention.

In his monumental study of the nature of war, the well-known American scholar of international law, Quincy Wright, observed:

"States at war have tended to become socialistic, and socialistic states have tended to be at war. Modern socialism has in fact been the war organization of capitalism, in the same sense that feudalism has been the war organization of agrarianism. The modern socialistic state resembles the feudal state in its spirit and its organization." [1]

To those who have not considered this viewpoint or who have been either too bored or too confused by the din of Soviet propaganda on the war-causing nature of capitalism to think seriously about the relationship between war and socialism, Wright's proposition may occasion surprise. The rhetoric of Marxism, intended to inspire moral indignation over the distribution of income in market economies, has not encouraged us to ponder the military implications of political organization. And while Stalin's formula for Soviet development, "socialism in one country," is familiar to students of Soviet politics, its military corollary, "the militarization of the entire population," is not. Yet this was the policy advanced by the early Bolshevik military leader, M. V. Frunze, when he displaced Leon Trotsky in 1925 as head of the Red Army.[2]

Just as the slogan "socialism in one country" has substantive connotations, so, too, did Frunze's "militarization of the entire population" envisage substantive programs. The next war, Frunze contended, could not be won simply by a regular army led by astute field commanders; a winning force structure would have to be much more. It would have to provide units not only for the front but also for civil defense formations in rear areas, because modern aviation had made every village vulnerable to enemy attack. By the same token, moreover, the labor force of a war economy would have to be treated as part of the force structure.

For Soviet Russia, however, Frunze recognized that cultural and economic backwardness complicated the attainment of a modern military posture. It was impossible to employ such a total approach to *organizing* the society for war without also launching an extensive program to *train* the society for war. In Soviet jargon, this meant achieving mass "military literacy"—which, as the Bolsheviks were quick to discern, was closely related to the mass technical-cultural level. There was, they believed, a commonality here that would allow education policies to serve more than one purpose. In other words, the large overlap in training requirements for socialist industrialization on the one hand and for the society's militarization on the other hand dictated as much civil-military integration as was practicable. It did *not* encourage the differentiation of military organization so characteristic of Western armies; *nor* did it encourage differentiation on the civil side, where such differentiation would provide no immediate advantage from the standpoint of military manpower needs.

In actual practice, the principle of integration proved impossible to apply as completely as the Bolsheviks desired [3]—the ideal being the military and society woven into a single, seamless political garment—but it did produce a Soviet military infrastructure different from the military infrastructures found in Western democracies. The civil war experience, to be sure, forced the Bolsheviks to differentiate the military side from the civilian—that is, to build a regular army of the "barracks type." On the other hand, integration on the civil side—that is, organizing the civil society to support the military—was carried very far indeed, with results that Westerners found it difficult to comprehend. The degree of difficulty could be seen in the prevailing Western assessments of the Red Army on the eve of World War II. It was the exceptional observer who did not allow Stalin's purge of the officer corps to lead him to wrong conclusions about what remained of Soviet military power.[4] This was due in no small part to a mix of ethnocentrism and ignorance of Soviet military institutions.[5]

Ethnocentrism may be an even more important source of misperception of Soviet military policy than confusion about the programmatic implications of Soviet socialism. We in the West hold a unique view of civil-military relations, a view which derives from our particular experience with kings' armies in the development of liberalism in Western Europe and America and which was complicated by our special experiences in World War II. We find it difficult to comprehend the military policies of a society where the imperial monarch's army was for at least two centuries the fundament of domestic political order and where the successor "multinational" state has found its stability even more dependent on its military and police forces.

The Russian Marxist philosopher Nikolay Berdyayev put it perhaps too succinctly for us when he said, "Bolshevism entered into Russian life as a power which was militarized in the highest degree, but the old Russian State also had always been militarized." [6] The clarity of his brevity embarrasses us for our blindness to two sources of the militarization of the Soviet polity: (1) the military implications of Bolshevism; and (2) the military tradition that was always so strong in the Russian autocracy's approach to political, economic, and social organization. Seen in this political perspective, the extraordinary compatibility between Marxism and Russian imperialism occasions much less surprise than it does when viewed in the usual economic perspective of "Marx against the peasant," to borrow David Mitran's felicitous phrase.[7]

If we examine current Soviet military-education policy, it quickly becomes apparent that Frunze's prescriptions of the 1920's are highly descriptive of today's realities. Nonetheless, that policy is little studied, and when it is, its significance is usually missed or misconstrued.[8] If the task undertaken in this discussion is more modest than discovering the full significance of the present Soviet structure of military education, it does not preclude suggestive observations on that score. The author's primary purpose, however, is to offer an elementary exploration of the nature of the Soviet military-educational complex—a sense of its extent, design, and programs. At the same time, in looking for dynamic trends, we can perhaps infer something of the policy rationale behind them.

Let us therefore examine the following specific areas: (1) the growth of the system of officer-educational institutions; (2) the new disposition of the military basic training system in the secondary schools; (3) the altered role of the Voluntary Society for Assistance to the Army, Air Force and Navy (Dobrovol'noye obshchestvo sodeystiya armii, aviatsii i flotu—DOSAAF) in specialist training; and (4) the changing structure of the civil defense system. If the subject matter appears diffuse, that is simply because the "militarization" of a society is a diffuse (as well as herculean) undertaking.

GROWTH OF OFFICER EDUCATION

The Soviet Army has been plagued by a perennial shortage of officers adequately trained to cope with contemporary military technology. The educational effort to create a new class of "Red Commanders," begun in the ashes of the civil war, yielded spotty results at best, and even what it did accomplish in the way of producing better-trained officers was largely sacrificed in the Great Purges of the 1930's. Then World War II brought

Footnotes at end of article.

into the armed forces a new generation of young men who came largely from the peasantry, had no chance to acquire a sound education, and yet were thrust into top command posts. Bemedaled and over-ranked at war's end, they were hardly equipped to preside over military preparations for the nuclear age.

The twofold task in the postwar period, therefore, was to ease out the veterans and to develop a new corps of educated officers. A quick solution was impossible. Only a long-term program to develop a system of military education could provide a source of adequately trained officers. Siphoning them from the civil higher-education sector, which was not a great deal better off, simply was not an option. Nor was purging the veterans an easy matter. Mass retirements raised morale problems, because pensions and benefits were so meager that many Soviet generals faced retirement with horror.[9] Stalin's recall of Marshal Georgiy Zhukov from the obscurity of the Odessa Military District appears to have been related to a policy decision to get on with solving this general personnel problem, but developments of the period remain foggy for Western students.[10] Clear evidence of the direction that Soviet policy was taking in this area only began to appear in the early 1960's.

The number of officer-training schools, according to one Soviet source, commenced to grow not long after the addition of a military pedagogical faculty to the Lenin Military-Political Academy in 1959.[11] This was not, however, the first postwar expansion. New institutions had begun to appear immediately after the war with the creation of the Artillery Radio Technical Academy in 1946 and the Military Institute of Physical Education in 1947, supplemented in 1953 by the Command Signal Academy and the Military Artillery Command Academy.[12] In addition, several new officer schools with a course of three years or more and with authority to confer degrees in higher learning were opened, predominantly in the 1949–52 period.[13] The curricula of these new schools showed a strong engineering-technical profile, foreshadowing a trend that was to emerge more strongly in the 1960's in response to what the Soviet authorities have called the "revolution in military affairs" since World War II.[14]

To gain a rough idea of the base from which the postwar growth started, it is necessary to look at the prewar size of the officer-education system. By 1939, it included 14 academies (for advanced and special training for company- and field-grade officers) and 109 officer-commissioning schools of all types.[15] In other words, the postwar growth has presumably added to these 123 institutions. For purposes of comparison, a tally of all the military schools, academies, and institutes listed in the military press during 1973–75 yields a count of 161. Because this figure includes no officer-commissioning schools for the security police (KGB), not to mention any secret or unlisted institutions, it is a very conservative total. Even so, it shows that there has indeed been significant quantitative growth.

A sense of the hugeness of the military school system may also be gained by comparing the civil and military sectors. In 1972, there were 811 civil institutes of higher education—*VUZy*.[16] If the 125 military higher schools are added to this number, making a total of 936, the military schools amount to more than 13 percent; in other words, about one in every seven or eight college-level institutions in the USSR is an officer-commissioning school roughly analogous to the United States' service academies at West Point, Annapolis, and Colorado Springs.. The 23 Soviet military academies and institutes, which require a higher-education degree for entrance, have no precise civil counterpart, but they may be roughly compared with the 52 Soviet universities constituting more than 30 percent of the combined total of 75.

Officer-educational institutions in the U.S.S.R.

Type	Middle schools [1]	Higher schools [1]	Academies, institutes
Academies	—	—	16
Institutes	—	—	7
Combined-arms schools	1	9	—
Tank schools	—	9	—
Artillery schools	1	15	—
Anti-aircraft artillery schools	—	5	—
PVO (air defense) schools	5	9	—
Airborne schools	—	1	—
Aviation schools	2	23	—
Military engineer schools	—	3	—
Signal schools	—	12	—
Motor transport schools	—	3	—
Chemical defense schools	—	3	—
Rear services, railroad, and construction schools	2	6	—
Civil defense schools	1	—	—
Naval schools	1	10	—
Military-political schools	—	10	—
Military-political schools	—	5	—
Border troops schools	—	2	—
KGB schools [2]	?	?	—
Totals	13	125	23

[1] "School" as used here refers to *uchilishche*. The "higher" *uchilishche* confers a degree roughly comparable to a BS from an American college.

[2] KGB schools are publicly admitted to exist, but none has been openly identified in the last few years.

Sources: This tally is based solely on reports published in the Soviet press since 1973. It should be considered incomplete, accounting only for those institutions which have been mentioned in public print.

It would be misleading, however, to assume that these percentages also reflect the military share of students. Available information suggests that this share is significantly less than the military's share of educational institutions. The average size of the student body in civil schools is 2,850 for fulltime (that is, day) students and 3,640 if night students are included.[17] It is extremely doubtful that military schools have such large student bodies. Although the present average size is not known, figures provided by the late Marshal Grechko for the year 1941 indicate that the average student body in military schools at that time was about 1,100.[18] The difference at the university level may be even greater. One can only guess at the student-body size for military academies, but it would have to be small indeed to offset the strikingly large military share of total university-level institutions. Nor should one forget that the military academies and schools have high priority in material support, student recruitment, and faculty selection. Compared to the provincial institutes of agriculture and pedagogy, which are the most numerous civil schools, the military schools are vastly superior. In any event, the military's quantitative share of the overall educational system remains impressive.

Quantity, however, may be less important than the change in the qualitative characteristics of Soviet military education. In order to appreciate this change we must first understand the general classifications of Soviet military-educational institutions.

The most numerous type of institution is the military uchilishche, or school. There are many subclassifications within this general category (e.g., engineer, technical, command, etc.), but it is more important to underscore that the schools are of two different levels. First, the "middle" uchilishche is actually comparable to a Western secondary technical school. It was the predominant type in the prewar period and usually offers a two-year curriculum. Second, the "higher" uchilishche normally offers a four-year course, although five-year courses have become increasingly common. Graduation from the higher school carries a "higher-education" degree, roughly equivalent to a bachelor of science degree in the United States. It is approved and authorized by the Ministry of Education just like degrees conferred by any Soviet civil educational institution.[19]

The "academies" have even higher status as the crowning institutions of this vast educational complex. Their faculties supervise original research and grant the highest academic degrees: the "candidate of sciences" and the "doctor of sciences." The "institutes" may be considered to stand on the academy level, but they are highly specialized—for example, in finance, languages, and even music. Graduate degrees from the academies are usually in military sciences but may also be in the natural and social sciences. The academies, therefore, can be thought of as military universities with graduate faculties. Officers, if they already have a "higher-education" degree, may apply for admission to an academy for a graduate degree program, normally-three years in length.[20]

A few additional administrative details about officer graduate and postdoctoral training are essential to an appreciation of the vastness of the military-educational system. First, the graduate education program includes study by correspondence. If an officer is accepted for a graduate degree program in correspondence status, he is granted relief from some of his duties in his unit.[21] Normally such a program can be completed in four or five years. Second, military officers may study in civilian institutions for a particular specialty. Although it is not entirely

Footnotes at end of article.

clear how this program works, it does help to train teachers for the military academies and schools,[22] and it probably provides specialists in areas where the military institutions have either no graduate programs or only weak ones. In the case of the Moscow Finance Institute, a military department has been established in this otherwise civilian institution. Third, officers who hold advanced degrees may be employed in civilian institutions for research purposes or activities in which their training is needed. Throughout the prestigious USSR Academy of Sciences, for example, one may find generals, admirals, and officers with advanced degrees working in their particular fields of expertise. Administratively they are usually on "reserve" status, receiving only part of their pay from the military and the remainder from the institution in which they work. Clearly the civil sector is quite porous, permitting the military to move in and out of almost all educational and research activities.

QUALITATIVE CHANGE

Having surveyed the growth of the officer-education system and the different types and levels of educational institutions the system now embraces, let us turn our attention to the change that has taken place in the quality of Soviet military education. One clue to this change is provided by the data in the table presented earlier. Fifteen years ago, the number of schools in the middle column (higher schools) would have been very small, with the largest number falling in the first column (middle schools). As the table shows, this profile is now essentially reversed. One Soviet military commentator noted in 1972 that "only in the last few years the proportion of higher schools and academies in the total number of schools . . . has almost doubled.[23] Furthermore, many of the higher schools now have graduate programs, bringing them closer to the status of the academies. As a consequence, the latter no longer holds a monopoly at the highest educational level, particularly in the scientific disciplines and applied engineering.

The buildup of the system of higher military education has entailed some problems. Merely to staff all the new faculties, the Ministry of Defense has obviously had to push officer graduate education to the system's maximum capacity. The head of the Vilnius Higher Command School of Radio-Electronics—under the Air Defense Forces (Protivo-Vozdushnaya Oborona—PVO)—recently told of the harried experience his school went through in moving up from "middle" to "higher" status. In 1971, only one member of the teaching staff possessed a higher degree; as of early 1976, 14 members had such degrees, and numerous others were completing dissertations.[24]

At the same time, the buildup has made a considerable imprint on the officer corps. In the armed forces as a whole, 45 percent of the officers now are engineers or technicians with higher degrees, with the proportion 75 percent in the rocket forces.[25] All commanders at brigade level and above, and 80 percent of those at regimental and lower levels, have higher degrees, i.e., a BS equivalent or better.[26] Though such figures would hardly be impressive for a Western country, for the Soviet Union they reflect a remarkable transformation of the officer corps.

Thus far we have mentioned only the education of officers within the domain of the Ministry of Defense. It no longer stops there, however, but has been extended into the civil sector through the introduction in 1970 of military departments into every civilian institution of higher education.[27] These departments were not always happily received, but their effect was to create a system not unlike the Reserve Officers' Training Corps in U.S. civilian colleges. A crucial difference, however, is that every able-bodied Soviet male student at a civil "higher" educational institute is obligated to participate in the program and receives a reserve commission upon graduation. This reserve system, of course, provides a great mobilization pool, but it also brings another advantage. Almost anyone with higher education can be coopted for military employment by being called to active duty as a reserve officer. Thus, scientific and technical elites can easily be drawn from the civil sector to meet military research and development demands. Scientists and engineers simply put on uniforms.

If the reserve officer program in some respects militarizes the civilian technical intelligentsia, the military academies and schools proper are creating a distinctive "military intelligentsia." The regime is highly conscious of this social development and fosters a positive image of the educated and sophisticated officer. For example, a 1972 article in the military press stressed the need for developing the intellectual qualities of Soviet officer personnel.

While admitting that the terms "intelligentsia" and "intellectuality" had pejorative connotations for many Soviet officers—especially because they had been applied to "reactionary" elements in the pre-revolutionary intelligentsia—the articles emphasized that such ideas must be abandoned in the contemporary epoch. "The cultured officer," wrote the author, "is a man of moral conviction and deep learning in Marxism, one who has a broad understanding of literature and art. It is possible to converse with him on many subjects, to discuss the latest literature, music, and painting." The article hastened to add that such intellectuality is not ensured by mere possession of a diploma of higher learning.[28]

Is the system of officer education described above—perhaps the most intensive as well as the most extensive the world has yet seen—an aberration in the Russian historical context? Not entirely. It was for military purposes that Peter the Great launched a special system of public schools for the sons of the service nobility. These soon faded, but by the end of the 18th century there were four cadet corps. The 19th century witnessed an exponential expansion of military schools which was not matched in the civil sector until the *zemstva* (organs of local government) much later became actively concerned with public education. Twenty percent of all elementary school children were in military schools by 1830, and 30 percent by 1850. On the secondary level, the number of cadet corps rose to 19 by mid-century. A number of specialized or "technical" military secondary schools also appeared. At the higher-education level, the Military Surgical Academy was founded in 1800, and the General Staff Academy in 1832. Then came the Military Engineering Academy, the Artillery Academy, and the Military Juridical Academy, followed by a proliferation of additional technical institutions in response to what could well have been called a forerunner of the "revolution in military affairs" that Soviet writers speak of today.[29]

Thus, the Russian imperial system of military education, although it has been practically ignored by Western historians, was large indeed. However, it was not until after the military reforms implemented in the 1870's by D. A. Milyutin, then Minister of War, that the Russian Army slowly developed the mass mobilization capacity that allowed it to enter World War I on a grand scale. Nevertheless, as we turn our attention from officer education to the training of troops, we shall see that Russia's late start in mass recruitment has not prevented the Soviet regime from developing an incredibly large troop-training capacity.

FOOTNOTES

[1] *A Study of War*, 2nd ed., Chicago, Ill., University of Chicago Press, 1965, p. 1172.

[2] See M. Frunze, *Izbrannyye proizvedeniya* (Selected Works), Moscow, Voyenizdat, 1934, p. 180. Two essays in this collection, "A Unified Military Doctrine" and "Front and Rear in Future War," elaborate Frunze's assumptions and make clear that he was quite serious about militarizing the state apparatus and the society.

[3] On the failure of A. V. Lunacharskiy, the first People's Commissar of Education, to orient the Soviet education system toward satisfying the Red Army's demands, see Sheila Fitzpatrick, The *Commissariat of Enlightenment*, Cambridge, England, Cambridge University Press, 1970, pp. 284, 289.

[4] See, *e.g.*, J. S. Herdon and J. O. Baylen, "Col. Philip R. Raymonville and the Red Army, 1934–43," *Slavic Review* (Champaign, Ill.), September 1975, pp. 483–505, for an interesting account of some of the Western reporting at the time.

[5] Since writing these lines, the author has seen John Erickson's *On Investigating Military Institutions*, The Waverly Papers (Occasional Papers: Series 3), University of Edinburgh, Scotland, November 1975. Erickson is unique in his early sensitivity to this problem, and his prodigious scholarship is leading the way in breaching the ethnocentric barrier.

[6] *The Origins of Russian Communism*, Ann Arbor, University of Michigan Press, 1960, p. 120.

[7] In his *Marx Against the Peasants: A Study in Social Dogmatism* (London, Weidenfeld and Nicolson, 1951), Mitrany calls attention to the stubborn emphasis that Marxists in Eastern Europe placed on the industrial worker despite the fact that the peasantry constituted the largest social stratum and the stratum of industrial workers was extremely small. Consequently, from the viewpoint of the socioeconomic structure, Marxian socialism seemed dogmatic and inappropriate.

[8] For example, Herbert Goldhamer, in his *The Soviet Soldier*, New York, Crane and Russack, 1975, manages to examine several features of the Soviet military-educational complex without grasping either their military or political implications (though admittedly his chosen task of proving that the Soviet soldier is not ten feet tall did not require that he discover such implications). Also, Jeffrey Record's *Sizing Up the Soviet Army*, Washington, D.C., The Brookings Institution, 1975, pp. 10–11, is at fault in giving an inaccurate view of the institutional arrangements for basic military training. Record goes astray in relying too heavily on Goldhamer and on James A. Barry, Jr.'s "Military Training of Soviet Youth," in *Military Review* (Fort Leavenworth, Kansas), February 1973, pp. 92–103. Although Barry accurately describes the changing preservice military training system, his reasoning about policy motives—notably his contention that the military vigorously opposed the changes—is unsupported by evidence and most likely wrong. On the other hand, Leon Gouré's *Civil Defense in the Soviet Union*, Berkeley, Calif., University of California Press, 1962, is a valuable contribution, though outdated in some respects—a defect he is reportedly remedying in a forthcoming new volume. Similarly, Robert G. Wesson's article, "War and Communism," published in *Survey* (London), Winter 1974, pp. 101–17, shows a real appreciation of the military character of communism, although it unfortunately deals with the subject in general terms rather than in terms of specific programs. John Erickson is perhaps the outstanding exception. His article, "Soviet Military Manpower Policies," in *Armed Forces and Society* (Chicago), November 1974, pp.

29–48, provides solid, up-to-date data relevant to Soviet military-education policy. Some of the same evidence will be treated here in an effort to bring additional perspectives to bear.

[9] For a description of senior officers' sentiments about retirement, see *The Penkovskiy Papers*, Garden City, N.Y., Doubleday, 1965.

[10] See W. J. Spahr, "The Political Socialization of the Soviet High Command, 1957–1967," unpublished PhD. dissertation, George Washington University, Washington, D.C., 1972, for some interesting glimpses through the fog.

[11] *Voyennaya pedagogika* (Military Pedagogy), Moscow, Voyenizdat, 1973, p. 72.

[12] *50 let vooruzhënnykh sil SSSR* (50 Years of the Armed Forces of the USSR), Moscow, Voyenizdat, 1968, p. 489.

[13] *Ibid.*

[14] On the Soviet conception of this revolution, see *Nauchnotekhnickeskiy progress i revolyutsiya v voyennom dele* (Scientific-Technological Progress and the Revolution in Military Affairs), Moscow, Voyenizdat, 1973. See also John Erickson, Ed., *The Military Technical Revolution*, New York, Praeger, 1966, for a Western analysis of the same phenomenon, and W. L. Kintner and H. F. Scott, Eds., *The Nuclear Revolution in Soviet Military Affairs*, Norman, Okla., University of Oklahoma Press, 1968, for translated materials setting forth Soviet views.

[15] A. A. Grechko, *Vooruzhënnyye sily Sovetskogo gosudarstva* (The Armed Forces of the Soviet State), Moscow, Voyenizdat, 1974, p. 207.

[16] *Narodnoye khozyaystvo SSSR, 1922–1972* (The USSR National Economy, 1922–1972), Moscow, "Statistika," 1972, pp. 430–32.

[17] *Ibid.*, pp. 432 ff.

[18] Grechko, *op.* cit., p. 208.

[19] For details on this classification of schools, the curricula, degrees, and entrance requirements, see *Voyennyye Akademii i uchilishcha* (Military Academies and Schools), 2nd ed., Moscow, Voyenizdat, 1974, pp. 100 ff.

[20] *Ibid.*, p. 192.

[21] *Spravochnik ofitsera* (Officer's Reference Book), Moscow, Voyenizdat, 1971, pp. 210–15.

[22] See V. Staritsyn, in *Krasnaya zvezda* (Moscow), March 12, 1975.

[23] B. Sapunov, in *ibid.*, Feb. 3, 1972.

[24] K. Logvinovskiy in *ibid.*, Feb. 1, 1976.

[25] *XXIV s'yezd Kommunisticheskoy partii Sovetskogo Soyuza, stenograficheskiy otchët* (24th Congress of the Communist Party of the Soviet Union, Stenographic Report), Moscow, Politizdat, 1972, p. 349.

[26] Grechko, *op. cit.*, p. 212.

[27] See "In the Military Faculties," *Krasnaya zvezda*, Nov. 29, 1972.

[28] I. Ovcharenko, "Intellectuality," in *ibid.*, March 11, 1972.

[29] On the prerevolutionary development of military education, see L. G. Beskrovnyy, *Russkaya armiya i flot v XIX veke* (The Russian Army and Navy in the 19th Century), Moscow, Nauka, 1973, pp. 103 ff. and 164–250.●

CIVIL SERVICE REFORM

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. FRENZEL. Mr. Speaker, yesterday I was not present, having returned to Minnesota for Tuesday's primary election. Had I been present, I would have, in accordance with my statement previously printed in the RECORD, voted for the bill to reform our civil service, H.R. 11280.●

HONOLULU'S NUN IN BLUE

HON. CECIL (CEC) HEFTEL

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. HEFTEL. Mr. Speaker, the August issue of the FBI Law Enforcement Bulletin contains an article written by "The Blue Nun," Sister Roberta Julie Derby, who is the chaplain of the Honolulu Police Department. The description of her work and the positive impact that a chaplain has in "line" police work is good reading, and I commend this article to my colleagues.

The article follows:

HONOLULU'S NUN IN BLUE

(By Sister Roberta Julie Derby)

Are they the "Blue Knights," noble, fearless, unfailingly courteous, and always right; or are they corrupt, dense, sadistic, philandering hypocrites? Do they work as members of a disciplined professional team, adhering scrupulously to the prescriptions of the law and a demanding agency code of conduct; or do they operate as erratic vigilantes—either loners of two-man buddy combinations whose values are "flexible" enough to substitute venegeance for justice and force for discernment?

Are the police physical and psychological supermen and wonder women who day after day can confront cruelty, violence, fraud, and every other species of evil without experiencing any moral or emotional disturbance; or are they ill-balanced weaklings who turn to alcohol, promiscuity, and reckless driving off duty to blot out the experiences, either professional and personal, with which they cannot cope? Are they, despite quasi-military discipline and numerous agency efforts ranging from athletic tournaments to religious services designed to build esprit de corps, chronic rebels against authority and detractors of their fellow officers; or is the "brotherhood of the badge" such an all pervasive mystique that no one outside the police enclave is trusted, even to the extent that wives and children find that social and recreational activities are almost exclusively police oriented?

There is a popular interest in such questions today. Novels, plays, newspaper editorials, letters to editors, learned journals of the behavioral sciences, movies, TV series, and comic books address themselves to exploring and dissecting the police psyche, the police idealism, and the police morality. To the general public, this interest may range anywhere from faddish titillation to genuine social and moral concern. However, for criminal justice specialists, the answers to these questions are relevant to efficient law enforcement, to the building of community confidence in the police, to keeping the peace.

Like so many either/or questions, these do not admit to simple "yes" and "no" answers. There may be times when police public relations officers may overaccentuate the positive and characterize the average patrolman as Tennyson presented Sir Galahad, "My strength is as the strength of ten because my heart is pure." Meanwhile, members of the Bureau of Internal Affairs, who investigate citizens' complaints against the police, may agree with the myth that only the drinker of dragon blood can slay a dragon.

This writer is not a public relations officer. However, frequently I address professional and community service organizations and offer positive and reassuring interpretations of the police officer as a humane and dedicated professional, but not secure against making mistakes or acting selfishly.

Neither does the writer work out of the Bureau of Internal Affairs, although part of the job is to see and listen to officers who may have been disciplined. My badge is silver, not gold; and I address sergeants as "sir." Law enforcement is not my profession, but the questions raised earlier about the police personality are of as great a concern to me as to any chief of police or idealistic police cadet.

I am Sister Roberta Julie Derby, a member of the Roman Catholic congregation of the Sisters of Notre Dame De Namur. However, for the past several years, I have served as Chaplain Derby, Coordinator of the Honolulu Police Department's Chaplain Corps, and like the other five members of the corps, a sworn reserve officer assigned to the department's personnel division, wearing the blue serge of the Honolulu Police Department and badge No. 501.

When I began working with the department, my presence in patrol cars, at the receiving desk, and in the squad room was looked upon initially with curiosity and even suspicion on the part of some of the personnel, but those attitudes are hardly remembered anymore. Only when some civilian, usually a tourist, takes a startled second look at the short blue veil fluttering out the patrol car window do "Honolulu's finest" reflect that it must seem unusual for a nun, particularly a rather grandmotherly looking nun, to be "riding shotgun." When asked about the nun in blue, officers answer with an almost mischievous nonchalance, "Oh, that's our chaplain," which almost inevitably elicits a second question, "But what does she do?"

A chaplain's pastoral duties include a number that are specifically ceremonial. Over the years, officers can recall many occasions which have commenced with the words, "Let us bow our heads in prayer." Many remember when members of the patrol division stood at smart attention on the occasion of two of their brother officers receiving decorations for valor, while a nun in a dark blue uniform led them in St. Francis' Prayer for Peace. Or when, a few weeks later, the folds of her long white gown moved in the wind almost in time with the poignant bugle call as that last farewell was sounded at Punchbowl's National Cemetery of the Pacific for an officer killed in the line of duty.

Ceremonial duties are the more public portion of the pastoral element of a police chaplain's work; counseling and consoling are the private and personal services for which the chaplain is responsible. The chaplain corps spends many hours each week working with officers or members of their families who are troubled or perplexed and therefore seek assistance from counselors who are objective, sympathetic, trained to listen, and happy to give their time to the needs of the police community.

Among the questions brought to the chaplain's desk are queries related to the stability of marriages. Spouses, parents, children, in-laws, even sometimes a person forming the third side of a triangle, come for guidance, courage, and often, merely a word of understanding. We dislike such terms as "promiscuous" and "philandering" applied indiscriminately to police officers, but recognize some conditions of police work are potential hazards to the stability and harmony of marriages. Shift work which limits the time officers can spend with their families, the need for secrecy and evasiveness in some kinds of undercover assignment, the physiological and psychological tensions that develop from mounting competition as one moves up in the ranks, and the temporary but intense ego-stroking that many officers receive from chance encounters with "interesting" people can strain any marriage, especially those which may have been entered into when the parties were under social constraint because a child had been conceived out of wedlock or when

the parties were immature or unsure about their basic responsibilities. Another problem area is extravagance. When marriage counselors talk shop, they agree that financial instability is the cause of as many marital breakups as sexual boredom or interfering in-laws.

Marital difficulties are not the only problem situations about which members of the department and their dependents seek the police chaplain's counsel. Job-related matters, from personality clashes with supervisors to contemplated transfers to other divisions, or anxieties regarding present job performance may bring an officer to the chaplain's desk. Sometimes a shop steward or business agent of the police collective bargaining organization will recommend that an officer who contemplates filing a grievance first see the chaplain. Coping with department penalties for violating rules and regulations, even when the subject admits the punishment is justified, can be a shattering experience. In this kind of circumstance, the chaplain's role is not so much to advise as to listen and to communicate respect for the person affected.

There are other questions that come the chaplain's way. How does one cope with a spouse's or child's terminal illness? What school is the best choice for one's exceptional child? What is the best way to make amends for an injustice done to a confrere? These are a few of the queries that police personnel seek help in answering.

For the man or woman with questions, it is the chapalin's place to counsel, when this is possible. For those who are suffering, it is the chaplain's work to console. The sudden death of a loved one, a permanently disabling injury carrying separation from the department as a result, unexpected termination where less drastic disciplinary action had been expected, failure when success had seemed assured, and the ignominy of being unjustly accused are all too frequent occurrences in the lives of police officers. One experiencing these kinds of pain needs the warmth of human compassion and the encouragement to seek a help more powerful than any mere human being can give.

The knowledge gained from the pastoral category has developed an admiration for brother and sister officers of this chaplain. So often, they are carrying heavy burdens of emotion before they hit the road. The community is intolerant of a mistake or lack of control on the part of an off-duty police officer, regardless of the burden of pain, sorrow, or guilt he may be carrying. I do not find it surprising that occasionally an officer yields to the pressures within. What is truly astonishing is that by far the most do not.

Ordinarily, the actions of counseling and consoling are thought of as being carried on in a one-to-one setting. However, there are times when pastoral concern dictates that the chaplain address a large number of personnel simultaneously, such as when there has been a line-of-duty death or the sudden death of a member who had apparently been in vigorous health. The grief that comes from such incidents is communal and must be borne together.

A chaplain's educational functions are divided between services to members of the department and those to the general community. Chaplains assist the training division in teaching classes in ethics and in-service classes designed to help officers cope with associates who have problems with alcoholism. We are also assigned to conduct orientation classes for recruits, reserve officers, and their spouses. In cooperation with the community relations division, chaplains are available for presentations to schools, religious groups, and community service organizations.

The police chaplain's ministry is primarily to the personnel of the department and their families. To fulfill that ministry realistically, the chaplain cannot be content with holding an honorary commission or with limiting activities to ceremonial occasions, to the shelter of an upstairs office, or even the austere security of a basement squad room. Service means presence—knowing "what it is like out there." It does not mean simply riding in a squad car under controlled circumstances, but accepting regularly the same rules and the same risks that other members of the department must accept, with the exception of apprehending, arresting, detaining or searching, and of course, carrying a weapon.

When a "DOA" call comes over the radio, this chaplain responds with officers in order to give whatever support is possible to surviving family and close friends, often helping them gain enough composure to answer the investigating officers' questions. With such poignant moments, it is not hard to admire the sensitivity and compassion of the officers with whom I work Police officers must learn to deal with tragedy and horror objectively, but that does not mean coldly or even routinely. Honolulu officers are neither ashamed nor unable to communicate their sympathies.

Sometimes when every available officer must be in action on a scene, I am assigned to maintain radio contact with Central, so "Chaplain No. 3 standing by for 39 (or 88 or 159, etc.)" has become a normal transmission on HPD's radio frequencies. Although not a CB'er, I have acquired a "handle" among the Island's "good buddies" who speak of me as "The Blue Nun."

Beat officers often call for my assistance in attempted suicides and domestic disturbances. To many persons the sight of the blue veil, whether because it sparks curiosity or because it raises long buried memories of a more tranquil existence, brings a quieting of agitation. That surprise attention-getter, the veil, seems particularly effective when responding to a complaint of a loud party. Then there is the story of the occasion when the motor patrolman with whom I was riding was dispatched to investigate a complaint of a barking dog. On completing the assignment, the officer is said to have radioed Central: "Noise abated. I talked to the dog's owner; Sister Roberta talked to the dog."

Often asked, "Aren't you ever afraid?" "Of course," I answer, "wouldn't you be?" Sometimes I am afraid, and often I'm saddened. High speed chases on wet freeways scare me, so does the possibility of walking into a situation where a gun is involved. I really do not like the sight of wounds and blood or the smell of death. I deplore profanity, especially when suspects or bystanders direct it at me, which they sometimes do. I do not enjoy getting drenched by winter rains at an accident scene. I get very sleepy at 0400 hours, knowing that recall won't be made until 0710 hours. I want to cry out at the horror of child abuse and the revolting cruelty of deliberate arson on inhabited dwellings. I'm not the only one wearing a badge who feels this way, but for the sake of the community, some men and women must be willing to cope with these things, frightening and distasteful as they are. My fellow police chaplains everywhere have similar feelings, but we continue to ride beside the law, because we believe the law deserves the "presence of the prophets."

Regardless of why individual men and women may have chosen law enforcement as a career, regardless of their personal concepts of religion, morality, and ethics, they have committed themselves to keeping the peace and that means giving witness to the reality of justice and also accepting man's need for mercy. Whether one believes in a personal God or sees ultimate goodness inherent in man himself, one must recognize that the peace and happiness all men crave can develop only insofar as justice and mercy become universal goals.●

DESTABILIZATION OF NICARAGUA

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. McDONALD. Mr. Speaker, the past year has provided the world with an ominous demonstration in Nicaragua of how the United States of America, formerly the defender of the Free World, has retreated from greatness so far that it is acquiescing, if not aiding in a protracted assault by the Communist totalitarians against a Free World nation long allied with the United States.

This radical change in American foreign policy developed after key posts in the National Security Council and State Department were given to persons who had already demonstrated their hostility to traditional American anticommunism, their contempt for the idea that America should continue to support its long-term, consistent political allies, and a fascination with the non-Soviet styles of Marxist-Leninist regime, such as Cuba under Castro, which are just as repressive as the original Moscow model.

The result has been that the U.S. Government has withdrawn its support of the Government of Nicaragua and its President that coincides with an intense campaign of urban terrorism bordering on civil war by Cuban and Soviet-supported revolutionaries calling themselves the Sandinist National Liberation Front (FSLN).

American policy toward Nicaragua—or lack of policy toward Nicaragua—has exhibited the sort of contradictions that have characterized the present administration's foreign policy efforts: an attack on a Free World ally for allegedly repressing the human rights of a Cuban and Soviet-backed terrorist group followed by an admission by our President that the human rights situation in Nicaragua has improved, but no real public alinement of the United States with the Nicaraguan Government against its attackers.

Predictably, the lack of U.S. support for the lawful government of Nicaragua has prompted certain opportunists in Nicaragua to make a political alliance with the FSLN and the Nicaraguan Communists, particularly through the "Broad Opposition Front" (FAO). The FAO, it should be noted, used the occasion of the FSLN terrorist attack on the Nicaraguan National Palace to call for the general strike that has aided in the disruption of the country during the increased FSLN attacks.

There has been a discernible timetable in the increase of violence in Nicaragua that began in August. First, the World Peace Council (WPC), the principal international Communist front aimed at influencing public opinion in Free World countries along lines favorable to the Communists and an organization controlled by the KBG and the International Department of the Soviet Communist Party Central Committee, opened a conference in San Jose, Costa Rica.

The FSLN territories have been allowed by Costa Rica, which has a long history of disputes with Nicaragua, to use that country as a refuge from which to organize their attacks; and a number of Costa Rican revolutionaries are members of the FSLN.

The WPC's San Jose conference by the so-called "Human Rights Commission" of this Communist front organization, generated anti-Nicaraguan publicity in the Latin American press in advance of the FSLN attack on the National Palace. The WPC conference featured such well-known FSLN spokesmen and members as Fr. Ernesto Cardinal and Liana Benavides, a Costa Rican citizen.

As the WPC meeting drew to a close, in Nicaragua the construction workers union and carpenters union struck in support of hospital workers who were demanding a 55-percent raise.

On August 17, the Cuban radio band for the "Revolutionary Armed Forces and Interior Ministry Combatants Political Information Program" delivered an emotional diatribe against the Nicaraguan Government accompanied by complete endorsement of the terrorist FSLN's leadership of "generalized rebellion" and of the "Group of 12," of opposition political personalities which supports the entry of the FSLN into a proposed coalition government. The Cuban broadcast to "Interior Ministry Combatants" concluded:

> The flame which Augusto Cesar Sandino lighted in that Central American country is burning brightly. Sandino is with the present generation of Nicaraguans. He is with the combatants in the mountains and the cities, and with the peasants, workers and students who are oppressed by the savage tyranny. For the Nicaraguan people, yesterday's motto is the same today: Liberty or Death.

Experienced intelligence analysts regard that Cuban message as the authorization to the FSLN to commence the attack on the National Palace and the generalized armed struggle in the cities and towns including use of elements hastily recruited by the FSLN from the student and other sectors.

The Cuban Communists have not bothered to conceal their support for the FSLN during recent weeks. It should be recalled that in December 1974, FSLN terrorists took hostages to obtain the release of their jailed comrades and were flown, along with the released terrorists, to Havana where they received a warm welcome. This was repeated in the August attack by the FSLN on the National Palace in Managua. The 25 members of the FSLN attack team and 59 released FSLN terrorists were flown first to Panama. Then 22 of the FSLN attack team members continued on to a hero's reception at Havana airport.

The official Cuban support for the FSLN is continuing. On September 9, the front page of Granma, the official organ of the Central Committee of the Communist Party of Cuba, published a statement of solidarity with FSLN which hailed the Marxist terrorist organization as the "vanguard" of the "Nicaraguan people's anti-Somoza struggle."

As far as the Marxist terrorists and their Cuban backers are concerned, it is time for an all-out effort using "all methods of armed struggle," including terrorism to try to overthrow the Nicaraguan Government and its President. Recent indications are that the Nicaraguan National Guard has been able to regain control of areas held briefly by the FSLN in recent days, and that some FSLN units have fled to their Costa Rican refuges. Nevertheless, the situation remains serious because if this armed offensive fails, the Nicaraguan Marxists will shift their tactics to economic and political warfare.

The sort of massive repression that the FSLN would inflict on the people of Nicaragua is plain from their alinement with the Cubans and from the endorsement given to the FSLN by the terrorist Palestine Liberation Organization (PLO) this year in Mexico City. Those who collaborate with the FSLN are writing out death sentences for thousands of their countrymen. It is the duty of all the nations of the Free World to come to the aid of Nicaragua and prevent it from becoming the new Cuba. As one of our American Founding Fathers, Benjamin Franklin, said:

> We must indeed all hang together, or, most assuredly, we shall all hang separately.●

MIA SIGHTINGS IV

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. DORNAN. Mr. Speaker, Mrs. Le. Thi Ahn has transmitted to me another letter on the issue of the missing in action. This piece deals with the graves of American soldiers listed as missing in action. It does not deal with any live sightings. However, I will be receiving and transmitting to this House, continuing in sanitized form, further correspondence pertaining to reports of live sightings of Americans in Vietnam after the Vietnamese war.

I have already sent this correspondence to the Defense Intelligence Agency for analysis. And I ask that Members of this House give every consideration to the possibility that there are, to this very day, Americans living in captivity in Southeast Asia. I insert the following piece into the RECORD for the edification of my colleagues:

> DEAR MADAME: I had the privilege to learn about you on the Trange Den Magazine. I am a Vietnamese refugee who just arrived in Malaysia. During the escape, very dangerous and very exciting, I brought along with me an American child. He has American citizenship and his parents could not take him out of Vietnam in 1975 in the same trip. I have dreamed of the grave of 2 American airforce officer. It was at the sea shore, the American child, his parents already came and took him with them. Now, could you give me more solid information so that I can get in touch with you later.
>
> Signed (deleted.)●

CONFERENCE REPORT ON S. 3075, INTERNATIONAL SECURITY ASSISTANCE AUTHORIZATION FOR FISCAL YEAR 1979

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mrs. COLLINS of Illinois. Mr. Speaker, I wish to advise my colleagues of my reasons for voting, however reluctantly, in favor of the conference report on S. 3075, the International Security Assistance Act of 1978. I did so because of the importance and clear urgency of acting in support of initiatives that are being made to bring peace and stability to both the volatile Middle East and war-torn Southern Africa. It is my opinion that the success of these initiatives depends greatly upon the $1,902 million economic support fund which the conference report provided. At this point in time, nothing is likely to aid peace efforts more than vital economic support which has the effect of easing pressures that always contribute to rashness and hostility. Still, I cannot leave unstated the grave reservations that temper my support for the conference report.

In particular, the conference report tends to ignore the reality of the current Rhodesian situation. In every instance, matters affecting the crisis in Rhodesia have worsened in recent weeks: there is, of course, no majority government and no convincing steps are being taken in that direction; hostilities are as great today as ever; indeed, one side talks of "liquidating" the other, which in turn says that the British-American "All-parties conference" initiative is "dead and buried.

In face of these harsh facts, the Congress cannot be too cautious in lifting the Rhodesian embargo—contingent upon hopes for free elections or the now unlikely possibility of a successful "all-parties" conference.

The embargo was placed against Rhodesia because the white minority regime of that country seized power illegally more than a decade ago and has continuously denied the black majority a meaningful role in their own governance. This is as foul and odious today as it was 10 years ago.

Mr. Speaker, it is not difficult to see that one of the reasons why this situation has already been drawn-out, causing so much pain to so many, is that we, and I am afraid the rest of the world also, have permitted the illegitimate regime in Salisbury to believe that it could somehow remain in power without actually mending its ways. This view and the intransigence it encourages simply cannot be condoned, and I think that it should be made clear that our action in supporting the conference report is not intended to give comfort to those guilty of stalling progress toward change.

I am also concerned about the administration's proposal to lift the Turkish arms embargo. Here, again, we may be placing hopes before reality.

The Foreign Assistance and Military Sales Acts are very clear. They restrict the use of U.S. supplied weapons for purposes related to the defense of the recipient country and U.N. sanctioned collective security arrangements. Turkey's 1974 invasion of Cyprus and its continued occupation of 40 percent of that country's land area was in clear violation of these provisions. Moreover creditable observers have found Turkey guilty of extensive violations of the human rights of the Cypriot people. It is difficult to separate U.S. supplied weapons from Turkish responsibility for these actions. Lifting the embargo, which has only been partial since 1976, could have the effect of placing our Government in even more direct and greater complicity with the illegitimate use to which Turkey has put weapons already provided by us.

Pursuant to these very real problems, all of which are cause for great concern, I would remind my colleagues that in supporting the conference report we assume a continuing responsibility for the attainment of peace with justice in all regions to which we have directed our substantial influence.●

BALANCE OF POWER SERIES: BOOK IV(F)—ARMS CONTROL

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, one of the most significant clues to Soviet strategic intentions and behavior is the method of diplomatic bargaining which they have used in their sessions with American arms controllers in Geneva and elsewhere. The diplomatic style of the Soviet Union has long been a subject of great mystery to most Americans, accustomed as we are to "square dealings," fairness, openness, and the classic Western style of diplomatic practice. Many years ago, when the cold war had just started, the West was startled by the rude and ideological method of Soviet diplomats. The word "nyet" became an American household word conjuring up the notion of Russian intractability. Since then, we have never really become used to the Soviet style of negotiation. We do not understand it and we have often expressed our confusion and—at times—hostility to the way in which our diplomats have been handled by the Soviets.

The following article by Igor Glagolev, who was a Soviet diplomat until his defection in 1976, should clarify many of the ambiguities which the Western mind entertains concerning Soviet diplomatic methods.

Appearing originally in Orbis, winter 1978, "The Soviet Decision-Making Process in Arms Control Negotiations" is an insider's perspective of the trained habits, and carefully calculated intentions, of Soviet officials in their arms control negotiations with the United States. Unless we are able to understand, and learn to appreciate, the ways in which the Soviets use such dealings for the purpose of furthering their own global cause we will never understand our own dilemma. SALT, to the Soviets, is much more than arms control—as Glagolev writes in the following article, SALT is another strategic maneuver in the incessant and protracted war for the Communist objective of a Soviet-dominated world state.

The article follows:

THE SOVIET DECISIONMAKING PROCESS IN ARMS-CONTROL NEGOTIATIONS

(By Igor S. Glagolev)

The problem of how to limit strategic weapons has become the central question in arms control. Indeed, the USSR and the USA—the two most powerful nations in the world—are now participating in negotiations on limiting strategic arms. In these talks the two nations are discussing the levels of the most powerful, swiftly deliverable and accurate of contemporary weapons.

In contrast to negotiations and agreements on such questions as prohibiting the deployment of nuclear weapons in the Antarctic, at the bottom of the sea, and on the moon—where they have never been and where no one has the intention of placing them—the SALT negotiations concern weapon systems actually in being. And the terms of SALT agreements both reflect the real correlation of forces in the international arena and induce changes in that correlation.

The shift from U.S. superiority in the number of thermonuclear delivery vehicles and in the total explosive power of warheads to Soviet superiority in these categories (as well as in other very important military capabilities) has had a profound political and psychological impact throughout the world. Before turning to discussion of these changes and their consequences, however, it will be useful to examine the process of Soviet decision-making with respect to these questions. This is particularly necessary in view of the fact that it was precisely these decisions—along with decisions of a completely different character taken in the United States—which played such a decisive role in the shift in the correlation of forces.

HOW THE USSR MAKES DECISIONS ON STRATEGIC ARMS LIMITATION

Above all, it must be emphasized that what is involved here is not one or two decisions, made by one or two officials at a definite moment. Rather, one is confronted with a continuous decision-making process in which, to one degree or another, several hundred persons participate. The military establishment, design bureaus and military plants are working round the clock. New, more effective weapon systems are periodically tested and deployed.

At the same time—and this is the second important factor—the overwhelming majority of the Soviet population, which on the whole has a negative attitude toward huge military expenditures, is not informed by the government concerning the deployment of new and costly weapon systems. The Soviet people do not participate in the decision-making process. They learn about new Soviet arms from foreign radio broadcasts—or, indirectly, from the impact of military expenditures, as prices of consumer goods are raised or as these goods disappear from the stores.

One should be aware of a third characteristic of Soviet decision-making with respect to arms limitation: viz., that the scale of strategic (and conventional) armament in the USSR is limited by the capacity of the Soviet economy, not by the exhortations of foreign diplomats. The diplomats of the USA and of other democratic counties have ceaselessly appealed to the present Soviet government to reduce, or at least not to increase, the vast weaponry of the USSR. Such requests, however, have been systematically rejected by the Soviet leadership. Overt support by any Soviet citizen for an American proposal to reduce Soviet arms is inevitably interpreted by the party leadership as a sign of political unreliability. In the past, support of U.S. proposals by some Soviet scholars has resulted not only in removal from the decision-making process but also in accusations of pro-Americanism, party penalties, transfers to inferior positions, reductions in salary and prohibition of travel abroad. If members of a given section of a public institute or commission should express a desire to accept U.S. proposals, or even to discuss such proposals seriously, that section, institute or commission may be completely abolished. Articles or books which express approval of American proposals—where these differ from the Soviet position—do not get published. In the actual process of diplomatic negotiation, the proposals of the United States are accepted only in those cases where they do not hamper the military programs of the Soviet Union.

Therefore, those in the USSR who would like to limit Soviet arms usually cite the negative *economic* consequences of military programs (Kosygin himself did so at the twenty-third and twenty-fourth congresses of the CPSU), or they cite limitations and reductions of the U.S. forces. However, one encounters such arguments only infrequently in periodicals or unofficial documents. They are drowned by the endless flood of articles and documents which portray U.S. armaments is *increasing* in recent years. Such analysis is considered to be politically reliable, and the authors can count on generous honorariums and professional promotions.

The fourth special characteristic of Soviet decision-making in the field of armaments is the restriction on the number of participants in discussions of strategic problems and on the number of documents prepared on such questions. Papers for the Central Committee of the CPSU prepared on the initiative of an individual specialist result in penalties, both in the party and in the professional career of the author. Only those papers are encouraged which have been requested by the party leadership—i.e., the Politburo of the Central Committee. Such requests are sometimes signed by Brezhnev himself. Frequently, instructions restrict the paper to factual material forbidding any concrete proposals.

A fifth peculiarity is that problems concerning the limitation of strategic arms are viewed in the USSR essentially as military questions, not as genuine problems of disarmament. In this regard, even in those institutions in which a disarmament section exists (at present, only in the Institute of the USA and Canada), the preparation of documents and articles on questions of strategic arms limitation is usually assigned to those sections studying military matters. The specialists in these sections, by the very nature of their professional background, are included to limit the content of their papers to a description of the growth of U.S. armaments. This, of course, does not contribute to a softening of Soviet negotiating positions.

SOME SPECIALISTS MORE EQUAL THAN OTHERS

With respect to strategic arms problems, specialists participating in the decision-making process come from the apparatus of the CPSU Central Committee, the military section of the Ministry of Foreign Affairs, and the scientific institutes. Their documents and proposals, after careful screening, are transmitted to the Secretariat and Politburo of the Central Committee, where the

final decisions are made. The various participants in this process, however, do not possess equal rights and influence. Thus, specialists in the civilian scientific institutes and the Ministry of Foreign Affairs—precisely those persons who specialize in international agreements on arms limitation and the prevention of wars, in contrast to the personnel of the military-industrial complex who specialize in the expansion of armaments and the conduct of wars—usually are not given access to secret data on existing Soviet arms and weapon programs. They must acquire such data from published foreign sources such as *The Military Balance.* Although the data on Soviet arms in these sources are quite accurate, the civilian specialist nevertheless prefers not to discuss Soviet armaments at all but, instead, to write only about the armaments of the United States. The absence of comparative data on the USSR, of course, greatly diminishes the significance of these materials and, in most cases, prevents the formulation of concrete proposals.

In the civilian institutions, there are many former military officers and others connected with the military-industrial complex who defend the military point of view and who continually advocate arms development and the maintenance of military superiority over the United States. The small arms-limitation section in the Institute of the USA and Canada, for example, is part of the Department of Military Policy of the USA, headed by Major-General (Soviet rank, General-Lieutenant) M. Milshteyn, who represents the interests of the military establishment. The Commission on Scientific Problems of Disarmament, of the Academy of Sciences of the USSR Presidium, is headed by a specialist on the production of nuclear weapons, V. Yemelyanov, who also represents the interests of military industry. Yemelyanov did everything in his power to persuade Khrushchev not to conclude a treaty on the partial prohibition of nuclear weapons tests, and he has not convened his commission even once during the past ten years.

The disarmament section of the Institute of World Economy and International Relations, which pushed for a prohibition on the testing of nuclear weapons and for a limitation on strategic arms, was abolished in 1973. As early as 1968, the Institute of History's section on the history of negotiations on disarmament was dissolved. Also in the late sixties, both the Soviet Peace Committee's Commission on the Economic Problems of Disarmament, which had advocated a reduction in military expenditures, and the Commission on Disarmament of the Institute of Soviet-American Relations were liquidated. By way of contrast, there are already scores of functioning military agencies, institutes and enterprises which work in the field of strategic arms and which strive constantly to expand their activities. In addition, new high-powered institutes are being created. Not all these agencies, institutes and enterprises participate directly in the decision-making process, but the massive results of their activities, material and intellectual, undoubtedly influence the Soviet leadership in the formulation of its negotiating position on strategic arms limitation.

Scholars who desire to limit or reduce the armaments of the USSR are not represented in the Politburo and do not participate in decision-making within this main organ. Nor do they have direct access to the Defense Council. Officially, questions pertaining to the preparation of international agreements on the limitation and reduction of arms are the responsibility of the disarmament group of the Department of International Organizations, Ministry of Foreign Affairs. The department is also represented in the Soviet delegation to the SALT negotiations. Some members of the disarmament group (4 or 5 persons) work in Room 1001 in the main Foreign Ministry building, and the general attitude is that they occupy themselves more with Arabian fairy tales (*The Thousand and One Nights*) than with serious matters. Neither this little group nor its department determines Soviet military programs.

The same can be said of the Foreign Ministry's Directorate of Planning of Foreign Policy Measures, even though the head of the Soviet SALT delegation, Deputy Minister of Foreign Affairs V. S. Semenov, at one time headed the directorate. On the other hand, the General Staff of the Armed Forces of the USSR has permanent representatives with the Soviet delegation. Semenov himself has said that the Ministry of Foreign Affairs does not have a decisive voice in the formulation of the Soviet position on arms limitation. In fact, the ministry's function is limited to selecting for possible agreement those formulations which will not interfere with the realization of Soviet military programs. The Foreign Ministry collaborates with the military establishment.

Draft decisions on the implementation of new military programs and draft agreements on arms limitation—which are drawn up in conformity with those programs—are prepared for the Politburo by officials of the Secretariat of the CPSU Central Committee, with the participation of the general secretry's assistants. Members of the Politburo usually familiarize themselves with these documents in advance, and Brezhnev prefers that decisions of the Politburo be made on the basis of a consensus by its members.

On the whole, one can say that the entire decision-making process with respect to the Soviet position on Salt negotiations is structured in such a fashion as to give preponderant expression to the interests and objectives of the military-industrial complex, which are limited only by the economic and scientific-technological capabilities of the USSR. It must be added that those capabilities are steadily growing. In many branches of heavy industry—in the production of steel, coal, oil, cement and others—the Soviet Union has surpassed the United States, and this makes possible the further growth of Soviet strategic armaments. The vast resources which the USSR expends on these defense-oriented industries are also a major reason for the Soviet Union's inability to compete with the United States in regard to living standards.

It must be emphasized that none of the agreements on arms limitation concluded by the Soviet Union has resulted in a reduction of the overall size of the Soviet arsenal. Indeed, that arsenal has not even been prevented from increasing in size. The choice of one or another type of armament for production is dictated, first and foremost, by its military effectiveness.

SALT 1972: THE SHIFT IN THE CORRELATION OF FORCES

Khrushchev frequently boasted of the superior quality of Soviet strategic weapons, particularly with respect to the operational range and destructive power of strategic missiles, the destructive power of thermonuclear bombs and warheads, and the creation of an antimissile defense system. In the early sixties, however, the USSR lagged far behind the United States in numbers of strategic missiles and bombers as well as in numbers and total destructive power of nuclear bombs and warheads. In the USA, moreover, a powerful antiaircraft system still existed.

During that period, the government of the USSR proposed the liquidation of all nuclear delivery vehicles as part of the first phase of a general and complete disarmament. This unrealistic proposal was made entirely for propaganda purposes and was never discussed seriously in the Soviet Union. Actually, the opposite policy was followed: to increase the number of intercontinental missiles as rapidly as possible.

In the middle-sixties, certain specialists in the Academy of Sciences of the USSR proposed to the General Staff that the production of strategic bombers might be ended—either by mutual initiative or on the basis of an agreement with the United States. These specialists pointed out reductions in the number of U.S. strategic bombers (particularly medium-range) and in the U.S. antiaircraft system. The number of American strategic-aviation squadrons had in fact been reduced from 142 in 1960 to 65 in 1965, and by 1977 there were only 24. The number of regular interceptor squadrons had been reduced from 65 in 1960 to 39 in 1965 to 6 in 1977[1] (The USSR currently has more than 2,600 interceptors.)

Despite the obvious reduction in the U.S. strategic-aviation force, the General Staff refused to stop the production of strategic bombers, alleging that Washington intended to expand production of the FB–111 medium-range bomber. At the time, that bomber did not even exist, and subsequently only a few dozen were actually deployed. This tactic—to lump together the U.S. forces-in-being with with hypothetical forces, and on this basis to demand a further increase in Soviet armaments—is typical of the Soviet military-industrial complex. Today, the Trident submarine, the long-range cruise missile and the M–X missile are being treated by Moscow as already in existence, and once again the military-industrial complex is demanding more powerful strategic arms for the USSR.

For propaganda purposes, then, the Khrushchev government had proposed the liquidation of all bombers. Brezhnev has not even mentioned that proposal. In 1977, the USSR maintained about 800 operational medium-range strategic bombers and began delivering the Backfire to its armed forces at the rate of 25 planes a year. The Soviet Union also has 53 tanker aircraft which, through inflight refueling, make it possible for the Backfire to accomplish bombing missions against the United States and return to bases in the USSR.[2] Moreover, the Backfire can carry out missions against the United States even without in-flight refueling—by landing, for example, in Cuba. (Soviet strategic bombers already use Cuban air bases.)

During the late sixties and early seventies, specialists in the Academy of Sciences of the USSR proposed a bilateral agreement to freeze the number of strategic missiles and long-range bombers in the U.S. and Soviet forces at the levels then existing. At mid-1972, the totals of these weapons were about the same in both countries. At the insistence of the military-industrial complex, however, the Soviet government demanded that the USSR be allowed a considerably larger strategic-missile force than that permitted the United States—and Washington agreed. One of the pretexts for this demand was the fact that U.S. allies—England and France—possessed thermonuclear weapons.

The Soviet government often cites the armaments of third countries as a justification for increasing its own weaponry. This argument is less than compelling. If every country were to try to create an armed force equal to the armed forces of all the countries with which it did not have friendly relations, an absurd situation would arise. The Federal Republic of Germany, for example, would have to increase its troop strength by a factor of ten in order to match the forces of the Warsaw Pact, not to mention nuclear weapons.

In the protocol to the 1972 Interim Agreement on the Limitation of Strategic Offensive Arms, Soviet superiority in the number of submarine-launched ballistic missiles was fixed—950 for the USSR; 710 for the USA. It should be added that the U.S. government acknowledged a still greater Soviet superior-

Footnotes at end of article.

ity (by approximately 50 per cent) in the number of land-based strategic missiles, although the numbers were not given in the agreement.[3] The United States also accepted the large Soviet superiority in total destructive power of thermonuclear warheads. In fact, by agreeing to include within the allowable number missiles which still had not been deployed,[4] Washington conferred on Moscow the right to increase the number of its strategic delivery vehicles at the same time that the United States was reducing its delivery vehicles.

The superiority of the USSR in the number and explosive power of its strategic nuclear missiles, in the overall number of its heavy and medium bombers, and in its conventional armaments and military personnel is well known to all Soviet specialists. As Doctor A. Ye. Yefremov wrote, "It is precisely the [U.S.] renunciation of the gamble on 'strategic superiority' which made possible the achievement of positive results in the negotiations on the limitation of strategic nuclear weapons, and in a series of other negotiations which have taken place between representatives of the two great powers."[5] To the Soviet leadership, "positive results" mean Soviet superiority.

THE "BALANCE OF FORCES": A DANGEROUS DELUSION

Moscow, however, prefers to speak of the "balance of forces." From the propagandist's point of view, it is disadvantageous for Soviet leaders to acknowledge that the USSR is actually the world's most militarized country and that it stimulates the global arms race.

The Soviet military-industrial complex is very interested in citing and exaggerating U.S. armaments, since this provides a basis on which to demand more and more new weapons for the USSR. The Politburo forbids Soviet specialists to make any mention of the protocol to the 1972 interim agreement precisely because the Soviet Union's superiority in SLBMs is acknowledged therein. At present, Soviet censors expunge from the works of Soviet scholars any mention of the general superiority of the USSR in strategic or conventional armaments. This is very important to the Soviet leadership, for discussion of a "balance of forces" reassures both world public opinion and Washington.

The assertion that a balance of forces exists, together with talk of "detente," yields tangible political and military benefits for the Soviets. Gullible American leaders unilaterally reduce U.S. military forces as well as military aid to countries friendly to the United States. This, in turn, has given the Soviet Union and its allies the ability to inflict a series of defeats on the United States and to establish its influence in Indochina, Angola, the Horn of Africa, and elsewhere.

Moscow has been able to place its military-political advisers in those countries from which American and U.S.-allied armed forces have departed. Soviet forces have been able to utilize the airdromes and port facilities which the United States and its allies have left behind. Today, the USSR is militarily the most powerful nation on the globe. The United States has slipped from first to second place, and the American people must understand that fact. If the process continues, the Soviet policy of expansion will continue—and the danger of new wars will increase.

The United States is clearly capable of annually investing 6 percent of its GNP in defense (which would be two or three times less than the share of GNP that the Soviet Union allots to the military) and of completing the Trident, B–1 and M–X programs to replace the aging Polaris, Poseidon, B–52 and Minuteman systems. The purpose of the new programs is clearly defensive: in particular, the vulnerability of the United States retaliatory forces would be reduced. An American effort to prevent the USSR from expanding its already superior military forces (a) should not be interpreted as aggressive and (b) would not provoke an increase in Soviets armaments greater than that which would have taken place anyway. Moreover, the economic capabilities of the Soviet Union are now pressed nearly to their peacetime limits.

It is important that the signing of a new SALT agreement not delude the people of the United States—creating the false impression that the USSR has ceased its worldwide military-political offensive—and that it does not lead to a (perhaps irreversible) decrease in America's defense capability.

FOOTNOTES

[1] Statistical Abstract of the U.S., 1976, p. 335; The Military Balance, 1977–78, p. 5.

[2] The Military Balance, 1977–78, pp. 4, 8, 78.

[3] See *The U.S.-Soviet Military Balance: A Frame of Reference for Congress* (Washington: GPO, 1976).

[4] Robert J. Pranger, *ed., Detente and Defense: A Reader* (Washington: American Enterprise Institute, 1976), p. 122.

[5] A. Ye. Yefremov, *Nuclear Disarmament* (Moscow: 1976), p. 274. (In Russian.)●

IN COMMEMORATION OF THE DEATH OF STEVE BIKO, SOUTH AFRICAN CIVIL RIGHTS LEADER

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 13, 1978

● Mrs. COLLINS of Illinois. Mr. Speaker, on September 12, 1 year ago, the world was shocked by the announcement that South African civil rights leader Steve Biko had died while under detention by South African police. Since that time South African officials themselves have admitted to the existence of conclusive evidence that Steve Biko died—not from self-imposed hunger as was first reported—but from head and kidney injuries. The world cried out but virtually nothing was actually done to restrain the South African Government from further brutal and murderous excesses.

Following the flurry of outcries elicited by Biko's death, there has been a return to business as usual. Our own Government continues its normal diplomatic and economic relations with South Africa, and the South African regime has continued its flagrant abuse of and disregard for the rights and lives of black South Africans. In recent weeks, yet another black under detention by South African police has died in the same Port Elizabeth jail where Steve Biko met his death, bringing to 44 the number of nonwhite persons who, over a 16-month period, have been killed in one manner or another while being detained by South African police.

When the news from South Africa does not bring notices of the death of police detainees, we are invariably informed of greater and more intense measures of repression: bannings, arrests, newspaper closures, and more repressive laws are the rule not the exception in South Africa. Today, the South African police, after already arresting over 400, stand ready to arrest more and oversee the threatened destruction of the African squatter community of Crossroads, a community spontaneously evolved as a direct result of the government's cruel and inhumane policy which attempts to forcibly prevent black families from living together for 49 weeks out of every year. Black men at Crossroads are being charged with "harboring" their wives.

This is both enough and too much.

In recognition of the anniversary of the matyrdom of Steve Biko, who lost his life standing up for the best in humanity, I call on my colleagues in the U.S. Congress to not only condemn the abomination in Pretoria, but to join me in insisting that our Government take some meaningful action to spare the people of South Africa further suffering. In so doing we only express our commitment to what the decency of all humanity requires.●

HEW'S HEALTH CARE FINANCING ADMINISTRATION

HON. TIM LEE CARTER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. CARTER. Mr. Speaker, I am extremely concerned about draft regulations proposed by HEW's Health Care Financing Administration to implement section 227 of the 1972 social security amendments (Public Law 92–603) authorizing special medicare procedures for reimbursing physicians who care for patients in teaching hospitals. As proposed, the regulations go beyond the intent of Congress and would harm many medical schools, clinical faculties, community physicians, and teaching hospitals.

I shall introduce legislation shortly to repeal section 227, and I would welcome the support of my fellow Members.

The following may help explain what the problems are with section 227 and with the proposed regulations:

First. What is section 227 of Public Law 92–603?

Section 227 provides that reimbursement for physicians' services in a teaching hospital shall be on a reasonable cost basis, rather than on a reasonable charge, or fee-for-service basis, unless certain conditions are met.

Second. How are physicians normally compensated for services rendered under present medicare policy?

Physician services generally are reimbursed under present policy on the basis of reasonable and customary charges, not costs. However, the situation with the teaching hospitals is somewhat different from nonteaching hospitals. In most teaching hospitals physicians receive a relatively small salary from the hospital or medical school while the major part of the teachers' income comes from billing private patients for medical services provided by those doctors in the hospital. However, the house staff in teaching hospitals—the interns and residents—do receive their compensation only through a salary paid by the hospital. The hospitals are reimbursed by

medicare for the salaries paid interns and residents on a cost basis.

Third. Why do teaching hospitals use this method to compensate teaching physicians?

By allowing teaching physicians to retain all or part of the income derived through fee-for-service charges to private patients, teaching hospitals are able to attract and retain more highly skilled physicians than the hospitals would otherwise be able to afford. This system benefits the student doctors who are able to get high quality training from many of the best specialists in the country. The system thus assures well-trained doctors for our country as well as high quality care for the patients in the hospital itself, both private patients and those whose treatment is covered by medicare.

Moreover, in many State and publicly-owned teaching hospitals, statutory restraints on budgets make it impossible for the hospitals to pay more than the relatively low direct salaries. This is the case in my own state of Kentucky as well as in several other States.

Fourth. What was the problem section 227 was intended to address?

Section 227 was included in Public Law 92–603 as a result of a GAO study conducted in the late 1960's which reviewed medicare payments to physicians in six major teaching hospitals. The study found that is certain cases medicare was being billed for physican services on behalf of doctors who had not themselves provided services to patients; instead the physicians had only supervised the work of interns and residents. It should be kept in mind that billing medicare on behalf of these "public patients" (patients whose care is provided by the house staff) constitutes double billing for the same service, since medicare already provides reimbursement for the costs of house staff salaries. While the hospitals GAO studied represented all geographic sections of the Nation, five of the six were large, urban municipal hospitals and as such were not a proper sample of the more than 1,200 nonfederal teaching hospitals in this country. Nevertheless, the findings from that limited study were used in drafting section 227 to apply to all 1,200 teaching hospitals.

Fifth. What have been the problems in implementing section 227?

Section 227, when added to the law in 1972 was intended to deal with the problem of double billing. The section was supposed to insure that all payment for physician services for public patients in a teaching hospital would be determined based upon the reasonable cost of providing those services by house staff under the supervision of the teaching physicians. In the legislative committee reports associated with section 227, Congress made clear, however, that fee-for-service payment was to remain available for private patients.

The problem which arose first in implementing these directives was how to determine which patients were public patients, being cared for by the house staff, and which were private patients, receiving the bulk of their care from their personal physicians (in this case, a teaching physician).

It should be kept in mind that house staff may assist in the care of private patients while under the direct personal supervision of a private physician. In other words, the distinction between private patients and public patients is a matter of degree, and distinguishing between the two categories is frequently difficult.

Medicare officials have attempted for 6 years to prepare regulations for carrying out section 227. The delay has been caused largely by the inherent difficulty in distinguishing between public and private patients. In 1973 Congress deferred implementation for 3 years, and a similar deferral bill was passed just last year. Now, 6 years after enactment, HEW is proposing regulations that fail to accomplish what Congress mandated and instead present difficulties for teaching hospitals which ultimately could cripple these institutions.

Sixth. What are the effects of the changes in medicare reimbursement resulting from section 227 and the draft regulations to carry it out?

In general, section 227 requires all physicians in a teaching hospital to be reimbursed on a cost basis through the hospital for professional medical services to medicare patients, unless the hospital meets the private patient test, described below.

In some cases this approach could adequately compensate physicians. However, in determining the reimbursable costs for which medicare will compensate the hospital, the draft regulations provide that only the amount of the direct salary paid to teaching physicians will be considered. As pointed out before, direct salaries paid to teaching physicians often are only a relatively small part of the compensation received by teaching physicians. For this reason, HEW's failure to recognize the fee-for-service income to teaching physicians as a part of the reasonable cost of securing the services of those physicians means that the reimbursement for medical services provided to medicare beneficiaries will severely underrepresent the true cost of those services.

The net effect of such a rule is clear. Either medicare patients will receive substandard services in teaching hospitals no longer able to obtain highly skilled facilities, or they will be turned away from teaching hospitals. Since no restrictions on reimbursement will be imposed on physicians outside the teaching hospital, the proposed rule would likely encourage physicians to practice in non-teaching hospitals. In any case the ultimate loser will be our young physicians whose quality of training depends on the supervision, guidance, and assistance of competent teaching physicians and on the ability to learn and train in a hospital with a patient population which reflects the population at large.

Seventh. Can any teaching hospital physicians be reimbursed on a reasonable charge basis?

Section 227 provides that physicians in a teaching hospital shall be paid for patient care services on a cost basis unless the patient is a "private patient" as defined in the proposed regulations. Because of the difficulty in distinguishing between private and public patients the proposed rules provided that, regardless of the presence in the teaching hospital of patients who are receiving private care from their personal physician, no fee-for-service payments will be allowed unless at least 85 percent of all patients are private patients. In other words, doctors practicing medicine in hospitals which cannot meet this arbitrary test will not be fairly compensated for the services which they provide to private patients. This clearly contradicts the intent of Congress in writing section 227 to continue to allow fee-for-service, or reasonable charge, reimbursement for private patients.

The proposed regulations further discriminate against teaching physicians by arbitrarily limiting the amount those physicians can charge for their services even if the "private patient test" is met. Specifically, under the proposed regulations physicians in non-teaching hospitals would continue to have their charges determined based upon their customary fee; physicians in teaching hospitals would have their allowable charges limited by the amount they actually collected from patients. The result of this additional condition to be met by physicians in teaching hospitals would be that these physicians would be reimbursed a lower amount than their nonteaching colleagues for the same service.

This discriminatory policy would inevitably undermine the ability of teaching hospitals and medical schools to recruit and retain top-quality physicians. Medical institutions, teaching physicians, students, and patients would all be penalized as a result of HEW's draft regulations for section 227.

Eighth. What has been proposed to remedy the situation?

Because of the detrimental effect of section 227 on teaching hospitals and because of the failure of HEW to develop a workable set of regulations, I plan to introduce legislation repealing section 227. I have concluded that the proposed "cure" intended by section 227 is worse than the disease. I submit that it makes no sense to institute arbitrary rules which would damage our vitally needed teaching hospitals. If physicians are billing Medicare for services they did not provide, then the Inspector General of HEW should investigate and prosecute the guilty under existing authority to do so. What we should avoid is using the abusive practices of a few as an excuse to provide less than fair compensation to the dedicated physicians who help train the next generation of doctors.

I would hope that my colleagues would support me in removing from the law this provision which is so detrimental to our teaching hospitals and that members would join me in cosponsoring this legislation to repeal section 227.

A draft of the bill for which I am seeking cosponsors follows:

H.R. —

A bill to amend title XVIII of the Social Security Act with respect to reimbursement of physicians' services in teaching hospitals

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That (a) paragraph (7) of section 1861(b) of the Social Security Act is amended to read as follows:

"(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title."

(b) Section 1861(v)(1)(C) of such Act is amended by inserting "(under the conditions described in subsection (b)(7))" after "such school provides services".

(c) Section 1832(a)(2)(B)(i)(II) so such Act is amended by striking out ", unless either clause (A) or (B) of paragraph (7) of such section is met" and inserting in lieu thereof "and which meets the conditions specified in clauses (A) and (B) of paragraph (7) of such section".

SEC. 2. The amendments made by this Act shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election, under section 1861(b)(7)(A) of the Social Security Act (as administered in accordance with section 15 of Public Law 93-233), as of September 30, 1978, shall constitute such hospital's election under section 1861(b)(7)(A) of such Act (as amended by this Act) on and after October 1, 1978, and until otherwise provided by the hospital.●

PERSONAL EXPLANATION

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BRADEMAS. Mr. Speaker, I insert at this point a statement regarding a recorded vote I missed on Friday, September 8, 1978, and an indication of how I would have voted had I been present.

The vote was on Rollcall No. 743, on final passage of H.R. 11711, the Trade Adjustment Assistance Program Amendments. The bill passed by a vote of 261 to 24. I was paired for this bill and had I been present, would have voted in favor of it.●

HOUSE OF REPRESENTATIVES—*Friday, September 15, 1978*

The House met at 10 a.m.

Rev. James J. O'Sullivan, St. Peter's Church, Marshall, Mo., offered the following prayer:

Father Almighty, You are the source of all power. The providence that guides all things to that last and ultimate frontier: Yourself.

Guide our Representatives to legislate, not just for the good, but for the best interests of this Nation.

Let this House deliberate. Let all voices be heard; but God grant you the courage to conclude, and act, when timely action is imperative.

May God grant you the prudence not to act, until your best solution is found; or, when indeed inaction is the best solution.

Let us be mindful Lord, that Your universe is unfolding according to Your schedule. We are, at best, supporting cast.

"Yet Your work in this world must truly be ours."

Let us do Your work. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

Mr. MOTTL. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

The question is on the approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DAVIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 293, nays 10, answered "present" 3, not voting 126, as follows:

[Roll No. 782]

YEAS—293

Abdnor	de la Garza	Hawkins
Akaka	Delaney	Hefner
Alexander	Derrick	Hightower
Anderson, Calif.	Derwinski	Hillis
Andrews, N.C.	Devine	Hollenbeck
Andrews, N. Dak.	Dickinson	Holt
Annunzio	Dicks	Holtzman
Applegate	Dodd	Horton
Archer	Dornan	Howard
Ashley	Downey	Hubbard
Aspin	Drinan	Hughes
AuCoin	Duncan, Oreg.	Hyde
Bafalis	Duncan, Tenn.	Jenkins
Baldus	Early	Johnson, Calif.
Barnard	Eckhardt	Johnson, Colo.
Baucus	Edgar	Jones, Okla.
Bauman	Edwards, Calif.	Jones, Tenn.
Beard, R.I.	Eilberg	Jordan
Bedell	Emery	Kastenmeier
Beilenson	English	Kazen
Benjamin	Erlenborn	Kelly
Bennett	Ertel	Keys
Bevill	Evans, Colo.	Kildee
Biaggi	Evans, Ind.	Kindness
Bingham	Fary	Kostmayer
Blanchard	Fenwick	Krebs
Blouin	Findley	LaFalce
Boland	Fish	Lagomarsino
Bolling	Fisher	Latta
Bonior	Fithian	Le Fante
Bonker	Flippo	Leach
Bowen	Flood	Lederer
Brademas	Florio	Leggett
Breckinridge	Flynt	Lehman
Brinkley	Foley	Lent
Brodhead	Ford, Mich.	Levitas
Brooks	Ford, Tenn.	Livingston
Brown, Calif.	Fountain	Lloyd, Tenn.
Broyhill	Fowler	Long, La.
Burke, Mass.	Frenzel	Long, Md.
Burleson, Tex.	Fuqua	Lundine
Burlison, Mo.	Gammage	McClory
Burton, Phillip	Gephardt	McDade
Butler	Giaimo	McFall
Carr	Gilman	McHugh
Carter	Ginn	Madigan
Cederberg	Glickman	Maguire
Chappell	Gonzalez	Mahon
Clawson, Del	Goodling	Markey
Coleman	Gore	Marks
Collins, Ill.	Gradison	Martin
Conable	Grassley	Mattox
Conte	Green	Mazzoli
Corcoran	Gudger	Meeds
Cornell	Guyer	Meyner
Cornwell	Hagedorn	Michel
Cunningham	Hall	Mikulski
D'Amours	Hamilton	Mikva
Daniel, Dan	Hammer-schmidt	Miller, Ohio
Daniel, R. W.	Hanley	Mineta
Danielson	Hansen	Minish
Davis	Harkin	Mitchell, N.Y.
	Harris	Moakley
		Moffett
Mollohan	Roe	Taylor
Montgomery	Rogers	Thompson
Moore	Roncalio	Thornton
Moorhead, Calif.	Rose	Traxler
	Rosenthal	Treen
Mottl	Roybal	Trible
Murphy, N.Y.	Rudd	Tucker
Murphy, Pa.	Ruppe	Udall
Murtha	Russo	Ullman
Myers, Michael	Ryan	Van Deerlin
Natcher	Satterfield	Vander Jagt
Nedzi	Sawyer	Vanik
Nichols	Scheuer	Vento
Nowak	Schroeder	Volkmer
Oberstar	Schulze	Waggonner
Obey	Sharp	Walgren
Ottinger	Shuster	Wampler
Panetta	Sikes	Watkins
Patten	Simon	Weaver
Pattison	Skelton	Weiss
Pease	Slack	Whalen
Perkins	Smith, Nebr.	Whitehurst
Pettis	Solarz	Whitley
Price	Spence	Whitten
Pursell	St Germain	Wilson, C. H.
Quillen	Staggers	Winn
Rahall	Stangeland	Wirth
Railsback	Steed	Wolff
Regula	Steers	Wylie
Reuss	Stockman	Yates
Rhodes	Stokes	Yatron
Richmond	Stratton	Young, Fla.
Rinaldo	Studds	Young, Mo.
Roberts	Stump	Zablocki
Robinson	Symms	Zeferetti

NAYS—10

Brown, Mich.	Ichord	Walker
Collins, Tex.	Jacobs	Wilson, Bob
Coughlin	Lloyd, Calif.	
Forsythe	Quayle	

ANSWERED "PRESENT"—3

McEwen	Moss	Stanton

NOT VOTING—126

Addabbo	Clausen, Don H.	Garcia
Ambro	Clay	Gaydos
Ammerman	Cleveland	Gibbons
Anderson, Ill.	Cochran	Goldwater
Armstrong	Cohen	Hannaford
Ashbrook	Conyers	Harrington
Badham	Corman	Harsha
Beard, Tenn.	Cotter	Heckler
Boggs	Crane	Heftel
Breaux	Dellums	Holland
Broomfield	Dent	Huckaby
Brown, Ohio	Diggs	Ireland
Buchanan	Dingell	Jeffords
Burgener	Edwards, Ala.	Jenrette
Burke, Calif.	Edwards, Okla.	Jones, N.C.
Burke, Fla.	Evans, Del.	Kasten
Burton, John	Evans, Ga.	Kemp
Byron	Fascell	Krueger
Caputo	Flowers	Lott
Carney	Fraser	Lujan
Cavanaugh	Frey	Luken
Chisholm		McCloskey

McCormack	Patterson	Sisk
McDonald	Pepper	Skubitz
McKay	Pickle	Smith, Iowa
McKinney	Pike	Snyder
Mann	Poage	Spellman
Marlenee	Pressler	Stark
Marriott	Preyer	Steiger
Mathis	Pritchard	Teague
Metcalfe	Quie	Thone
Milford	Rangel	Tsongas
Miller, Calif.	Risenhoover	Walsh
Mitchell, Md.	Rodino	Waxman
Moorhead, Pa.	Rooney	White
Murphy, Ill.	Rostenkowski	Wiggins
Myers, Gary	Rousselot	Wilson, Tex.
Myers, John	Runnels	Wright
Neal	Santini	Wydler
Nix	Sarasin	Young, Alaska
Nolan	Sebelius	Young, Tex.
O'Brien	Seiberling	
Oakar	Shipley	

So the Journal was approved.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 1427. An act for the relief of Marie Grant;

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 5097. An act for the relief of Doctor Daryl C. Johnson; and

H.R. 6760. An act for the relief of Charles M. Metott.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 6506) entitled "An act to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. RIBICOFF, Mr. EAGLETON, Mr. SASSER, and Mr. MATHIAS to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2640) entitled "An act to reform the civil service laws," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. RIBICOFF, Mr. EAGLETON, Mr. CHILES, Mr. SASSER, Mrs. HUMPHREY, Mr. PERCY, Mr. JAVITS, Mr. STEVENS, and Mr. MATHIAS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 3337. An act to terminate, in the year 1979, further construction of the Cross-Florida Barge Canal project, to adjust the boundary of the Ocala National Forest, Fla., and for other purposes.

FATHER JAMES O'SULLIVAN

(Mr. SKELTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, today I have the distinct privilege of welcoming to the U.S. House of Representatives Father James O'Sullivan, pastor of St. Peter's Catholic Church in Marshall, Mo. Father O'Sullivan has offered today's opening prayer.

Father O'Sullivan was born in Cork City, Ireland. When a child he moved to a farm in that country and attended a rural school. Father O'Sullivan received his higher education in Ireland. He is responsible for introducing into this nation The Presentation Brothers teaching order, an act that is credited with greatly benefiting central Missouri students. Father O'Sullivan has been dean of the Marshall Deanery of the Diocese of Jefferson City, Mo.

He has been a priest since 1960 and a pastor since 1964. Father O'Sullivan served as the associate pastor of Immaculate Conception Church in Jefferson City. He was also the associate pastor of St. Brendan's Church in Mexico, Mo., prior to becoming pastor of St. Patrick's Church in Jonesburg, Mo. St. Patrick's Church in Gravois Mills, Mo., was Father O'Sullivan's next pastorship before accepting his present position in Marshall. He is extremely well regarded in the Marshall area, highly respected by all who know him. It is an honor to have a person of Father James O'Sullivan's stature offering today's opening prayer.

INTRODUCTION OF RESOLUTION CONCERNING NEW PROPOSAL FOR NATIONAL PROPERTY TAX RELIEF

(Mr. BROWN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of California. Mr. Speaker, it is my privilege to bring to the attention of my colleagues, and introduce a resolution concerning, a startling new proposal for national property tax relief.

The plan has come to be known as the McCarthy plan, named for its creator, Mr. Pat McCarthy, a Democratic candidate for the 11th Congressional District of Massachusetts.

Simply put, the McCarthy plan calls for the payment of Federal funds in the amount of 50 percent of the base-year property tax to communities, provided communities allow an equal reduction in the amount of individual property taxes.

As I understand it, Mr. Speaker, this plan would require less Federal revenues expended than those under the Federal tax reduction plan submitted to the Congress by the President.

It is also important to note that the distinguished former Chairman of the President's Council of Economic Advisers and now a senior fellow at the Brookings Institution, Mr. Arthur Okun, has reviewed the McCarthy plan and believes it would have a significant anti-inflationary effect—leading to a one-time reduction of between 1½ and 2 percent in the Consumer Price Index.

CONFERENCE REPORT ON S. 2701, AMENDING THE WATER RESOURCES PLANNING ACT

Mr. MEEDS. Mr. Speaker, I call up the conference report on the Senate bill (S. 2701) to amend the Water Resources Planning Act (79 Stat. 244, as amended), and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 15, 1978.)

Mr. MEEDS (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER. The gentleman from Washington (Mr. MEEDS) will be recognized for 30 minutes, and the gentleman from Idaho (Mr. SYMMS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Washington (Mr. MEEDS).

Mr. MEEDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on S. 2701 provides two significant changes from the bill passed in the House. I will explain the disposition of each of these differences.

First, the Senate bill authorized $3,328,000 for administration of the Water Resources Council and for financing certain other nontitle II activities, while the House-passed bill authorized no appropriations for this activity, abolished the Water Resources Council, and transferred its functions to the Secretary of the Interior. The conference report accepts the Senate language but reduces the amount authorized to be appropriated to the amount of $2,668,000.

Next, the conference provides that funds in the amount of $459,000 be authorized for the Great Lakes water and energy study. The Great Lakes study had been omitted from the House-passed bill. In all other respects the conference report is identical to the bill passed by the House. In summary, the outlays provided in the conference report are $3,127,000 higher than that in the original House-passed bill. Lastly, the amendments are clearly germane.

Mr. SYMMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I concur with the remarks of the distinguished chairman of our Water and Power Subcommittee and will assure the Members on this side of the aisle that the amendments to the original bill are acceptable to the minority members of the commitee.

Our earlier action in abolishing the Water Resources Council was an action well taken. And even though the Coun-

cil is reestablished in this conference report, I am certain that we have made our point to the administration. We have shown them in very understandable terms that the days of administrative foot-dragging on programs mandated by the Congress are over, so far as our committee is concerned.

I am trustful that our message will not go unobserved by not only the Water Resources Council but by other agencies, such as the Office of Water Research and Technology; and that we will begin to see some positive responses from these agencies on programs that have been suffering from bureaucratic roadblocks and delays.

I join with the gentleman from Washington in urging the acceptance of this conference report.

Mr. MEEDS. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I rise in support of the conference report on S. 2701, the Water Resources Planning Act, fiscal year 1979. I would also cite the joint statement of the committee of conference which the gentleman from Washington (Mr. MEEDS) presented when filing the report on August 15, 1978.

One action which I particularly approve is that of retaining the Water Resources Council as an administrative unit. Responsibilities for the management of water resources are scattered among the executive agencies. I believe the Council's role in harmonizing such responsibilities is important, and I believe it is essential that some executive office perform that role. The Council has done this by establishing principles, standards, and procedures for the formulation and evaluation of Federal water resource projects.

The conferees' joint statement notes that their action regarding the Council was predicated on an intensive review by the House and the Senate, within the next year, of the President's proposed water policy, as announced on June 6, 1978. I would note that in his water policy message, the President added a project review function to the Water Resource Council, and added a water conservation component to all water resource planning.

I have recently introduced a bill, H.R. 13946, to promote and assist in the conduct of environmental research and development on ground water. Ground water is a major source of water supply in the United States. I am concerned that in many areas this supply is threatened both with respect to its quality and to its quantity. I recognize that all our water resources are linked in a hydrologic cycle and that planning for one resource may affect others. It is important that we develop and maintain adequate institutional mechanisms for the coordination, assessment, and technological transfer of information about those resources.

If the Water Resource Council's role can be continued and extended, I would expect that new initiatives regarding ground water would be included with such extensions.

The Office of Technology Assessment is considering a study of national water supply and demand. This study should be timely and helpful to a congressional review of water policy. Such considerations as this add to my feelings that the time period embraced by S. 2071 will be one of considerable significance for integrated water resource planning and policies for the whole of our Nation.

I therefore urge my colleagues to support the conference report.

Mr. MEEDS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I thank the distinguished gentleman from Washington for yielding. The House should refresh its memory about this legislation. All of those Members who spoke are obviously in support; I am not.

Our committee, the Committee on the Interior, on two occasions voted by narrow margins to repeal the existence of this Council this year, in one of its rare acts of statesmanship in which a Federal agency was actually abolished. I am still not convinced, despite the water policy argument that is now going on, that we should not stand by that decision and end the duplication this council represents.

For that reason, I must oppose the conference report. But we came very close to doing the impossible, and that is repealing the near eternal existence of a Federal agency. Maybe next year.

Mr. MEEDS. Mr. Speaker, I appreciate the position of the gentleman from Maryland (Mr. BAUMAN).

● Mr. VENTO. Mr. Speaker, I fully support the conference report on S. 2701, the Water Resources Planning Act. The passage of this bill will be an important first step in the development of a comprehensive and effective national water policy.

There is an urgent need for a sensible water policy, one that utilizes this precious resource in a rational manner and helps to preserve a resource that is so valuable to our Nation. The President has already sent his proposals for a national water policy to Congress and I am certain that the consideration of this and other proposals will be a major issue facing the 96th Congress.

Whatever the results of the future deliberations over water and its use, it will be imperative that the policy implementation be carried out by an effective executive body. That is why this bill is so important. S. 2701 authorizes the continuation of the Water Resources Council. The WRC has been responsible for many important aspects of water policy and is the logical executor of any comprehensive water policy. Since its inception, the WRC has dealt with a wide range of functions including: assessing national and regional water supplies; coordinating Federal, State, regional, and river basin water programs; administering a program of grants to States to assist in improving non-Federal water resource planning capability; and administering a grant program to river basin commissions to pay the Federal share of their operating costs.

While the WRC has not met all the expectations that Congress originally intended, it has performed admirably in spite of an inadequate budget, congressional scorn and executive branch jealousies. I believe that given a new commitment by the President and the Congress, the WRC will fulfill its responsibilities and will play a crucial role in the development and implementation of our national water policy.

As a member of the conference committee on S. 2701, I believe that this bill is essential for the development of our water policy and I urge my colleagues to support the conference report on S. 2701.●

Mr. MEEDS. Mr. Speaker, I have no further requests for time and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DAVIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 304, nays 22, not voting 106, as follows:

[Roll No. 783]

YEAS—304

Abdnor	Byron	Fary
Addabbo	Carr	Fascell
Akaka	Carter	Fenwick
Alexander	Cavanaugh	Findley
Anderson, Calif.	Cederberg	Fish
	Chisholm	Fisher
Andrews, N.C.	Coleman	Fithian
Andrews, N. Dak.	Collins, Ill.	Flood
	Conable	Florio
Annunzio	Conte	Flynt
Applegate	Corcoran	Foley
Ashley	Cornell	Ford, Mich.
Aspin	Cornwell	Ford, Tenn.
AuCoin	Coughlin	Forsythe
Bafalis	Cunningham	Fowler
Baldus	D'Amours	Fraser
Barnard	Daniel, R. W.	Frenzel
Baucus	Danielson	Fuqua
Beard, R.I.	Davis	Gammage
Bedell	de la Garza	Garcia
Beilenson	Delaney	Gephardt
Benjamin	Derrick	Giaimo
Bennett	Derwinski	Gilman
Bevill	Dickinson	Ginn
Biaggi	Dingell	Glickman
Bingham	Dodd	Gonzalez
Blanchard	Dornan	Goodling
Blouin	Downey	Gore
Boland	Drinan	Gradison
Bolling	Duncan, Oreg.	Green
Bonior	Duncan, Tenn.	Gudger
Bonker	Early	Guyer
Bowen	Eckhardt	Hagedorn
Brademas	Edgar	Hall
Breckinridge	Edwards, Calif.	Hamilton
Brinkley	Edwards, Okla.	Hammer-schmidt
Brooks	Eilberg	
Brown, Calif.	Emery	Hanley
Broyhill	English	Hansen
Buchanan	Erlenborn	Harkin
Burke, Mass.	Ertel	Harris
Burlison, Mo.	Evans, Colo.	Hawkins
Burton, Phillip	Evans, Ga.	Hefner
Butler	Evans, Ind.	Heftel

Hightower	Mikva	Sharp
Hillis	Miller, Ohio	Shuster
Holland	Mineta	Sikes
Hollenbeck	Minish	Simon
Holtzman	Mitchell, Md.	Skelton
Horton	Mitchell, N.Y.	Slack
Howard	Moakley	Smith, Nebr.
Hubbard	Moffett	Snyder
Hughes	Mollohan	Solarz
Hyde	Moore	Spence
Jacobs	Moorhead, Calif.	St Germain
Jenkins		Staggers
Johnson, Calif.	Moss	Stangeland
Johnson, Colo.	Mottl	Stanton
Jones, Okla.	Murphy, N.Y.	Steed
Jones, Tenn.	Murphy, Pa.	Steers
Jordan	Murtha	Stockman
Kastenmeier	Myers, Michael	Stokes
Kazen	Natcher	Stratton
Kemp	Neal	Studds
Keys	Nedzi	Symms
Kildee	Nichols	Thompson
Kindness	Nowak	Thornton
Kostmayer	O'Brien	Traxler
Krebs	Oberstar	Treen
LaFalce	Obey	Trible
Lagomarsino	Ottinger	Tucker
Latta	Panetta	Udall
Le Fante	Patten	Ullman
Leach	Pattison	Van Deerlin
Lederer	Pease	Vanik
Leggett	Perkins	Vento
Lehman	Pettis	Volkmer
Lent	Preyer	Waggonner
Levitas	Price	Walgren
Livingston	Pursell	Walker
Lloyd, Calif.	Quillen	Wampler
Lloyd, Tenn.	Railsback	Watkins
Long, La.	Rangel	Weaver
Long, Md.	Regula	Weiss
Lundine	Reuss	Whalen
McClory	Rhodes	Whitehurst
McDade	Richmond	Whitley
McEwen	Rinaldo	Whitten
McFall	Robinson	Wiggins
McHugh	Roe	Wilson, Bob
McKay	Rogers	Wilson, C. H.
Madigan	Roncalio	Winn
Maguire	Rose	Wirth
Mahon	Rosenthal	Wolff
Markey	Roybal	Wylie
Marks	Rudd	Yates
Martin	Russo	Yatron
Mattox	Satterfield	Young, Fla.
Mazzoli	Sawyer	Young, Mo.
Meeds	Scheuer	Young, Tex.
Meyner	Schroeder	Zablocki
Michel	Schulze	Zeferetti
Mikulski	Seiberling	

NAYS—22

Archer	Daniel, Dan	Montgomery
Bauman	Devine	Rahall
Brodhead	Dicks	Roberts
Brown, Mich.	Flippo	Ruppe
Burleson, Tex.	Fountain	Stump
Chappell	Grassley	Vander Jagt
Clawson, Del	Holt	
Collins, Tex.	Ichord	

NOT VOTING—106

Ambro	Goldwater	Pickle
Ammerman	Hannaford	Pike
Anderson, Ill.	Harrington	Poage
Armstrong	Harsha	Pressler
Ashbrook	Heckler	Pritchard
Badham	Huckaby	Quayle
Beard, Tenn.	Ireland	Quie
Boggs	Jeffords	Risenhoover
Breaux	Jenrette	Rodino
Broomfield	Jones, N.C.	Rooney
Brown, Ohio	Kasten	Rostenkowski
Burgener	Kelly	Rousselot
Burke, Calif.	Krueger	Runnels
Burke, Fla.	Lott	Ryan
Burton, John	Lujan	Santini
Caputo	Luken	Sarasin
Carney	McCloskey	Sebelius
Clausen, Don H.	McCormack	Shipley
	McDonald	Sisk
Clay	McKinney	Skubitz
Cleveland	Mann	Smith, Iowa
Cochran	Marlenee	Spellman
Cohen	Marriott	Stark
Conyers	Mathis	Steiger
Corman	Metcalfe	Taylor
Cotter	Milford	Teague
Crane	Miller, Calif.	Thone
Dellums	Moorhead, Pa.	Tsongas
Dent	Murphy, Ill.	Walsh
Diggs	Myers, Gary	Waxman
Edwards, Ala.	Myers, John	White
Evans, Del.	Nix	Wilson, Tex.
Flowers	Nolan	Wright
Frey	Oakar	Wydler
Gaydos	Patterson	Young, Alaska
Gibbons	Pepper	

The Clerk announced the following pairs:

On this vote:

Mrs. Boggs for, with Mr. McDonald against.

Until further notice:

Mr. Ambro with Mr. Harsha.
Mr. Rostenkowski with Mr. Pressler.
Mr. Teague with Mr. Anderson of Illinois.
Mr. Wright with Mr. Kasten.
Mr. Pepper with Mr. Lujan.
Mr. Cotter with Mr. Brown of Ohio.
Mr. Carney with Mrs. Heckler.
Mr. John L. Burton with Mr. Quie.
Mr. Mathis with Mr. Sarasin.
Mr. Breaux with Mr. Steiger.
Mr. Hannaford with Mr. Walsh.
Mr. Rodino with Mr. Marriott.
Mr. Rooney with Mr. Badham.
Mr. McCormack with Mr. Broomfield.
Mr. Moorhead of Pennsylvania with Mr. Kelly.
Mr. Murphy of Illinois with Mr. Lott.
Mr. Nix with Mr. Quayle.
Mr. Dellums with Mr. Burgener.
Mr. Dent with Mr. Cleveland.
Mr. Gaydos with Mr. Crane.
Mr. Krueger with Mr. Frey.
Mr. Mann with Mr. Goldwater.
Mrs. Burke of California with Mr. Marlenee.
Mr. Miller of California with Mr. McCloskey.
Mr. Stark with Mr. Skubitz.
Mrs. Spellman with Mr. Rousselot.
Mr. Santini with Mr. Sebelius.
Mr. Shipley with Mr. Taylor.
Mr. Jenrette with Mr. Gary A. Myers.
Mr. Risenhoover with Mr. Edwards of Alabama.
Mr. Sisk with Mr. Cohen.
Mr. Waxman with Mr. Caputo.
Mr. Ireland with Mr. Thone.
Mr. Metcalfe with Mr. Wydler.
Ms. Oakar with Mr. John T. Myers.
Mr. Pickle with Mr. Evans of Delaware.
Mr. Ammerman with Mr. Cochran of Mississippi.
Mr. Clay with Mr. Ashbrook.
Mr. Nolan with Mr. Jeffords.
Mr. Charles Wilson of Texas with Mr. Beard of Tennessee.
Mr. Runnels with Mr. Burke of Florida.
Mr. Pike with Mr. Don H. Clausen.
Mr. Harrington with Mr. Milford.
Mr. Corman with Mr. McKinney.
Mr. Diggs with Mr. Young of Alaska.
Mr. Conyers with Mr. Pritchard.
Mr. Flowers with Mr. Luken.
Mr. Jones of North Carolina with Mr. Gibbons.
Mr. Huckaby with Mr. Tsongas.
Mr. Patterson of California with Mr. Smith of Iowa.
Mr. White with Mr. Ryan.

Messrs. ARCHER, RUPPE, and GRASSLEY changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MEEDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

PROCEEDINGS AGAINST HANCHO C. KIM

Mr. FLYNT. Mr. Speaker, by direction of the Committee on Standards of Official Conduct, I call up a privileged report (Rept. No. 95–1214) and ask for its immediate consideration.

The SPEAKER. The Clerk will read the report.

The Clerk read as follows:

PROCEEDINGS AGAINST HANCHO C. KIM

(May 24, 1978.—Referred to the House Calendar and ordered to be printed)

(Mr. FLYNT, from the Committee on Standards of Official Conduct, submitted the following report:)

INTRODUCTION

On May 15, 1978, Hancho C. Kim ("Kim"), having been summoned as a witness by the authority of the Committee on Standards of Official Conduct (the "Committee") pursuant to a subpena[1] of the said committee, appeared before Hon. Richardson Preyer, a member of the committee, in executive session for a deposition to be conducted pursuant to the authority of House Resolution 252, 95th Congres, first session.[2] At the deposition Kim refused to answer the following question:

Did there come a time when you received some money from Kim Sang Keun?

Mr. Preyer found Kim's refusal to answer contemptuous, and, thereafter, the committee, a quorum being present, authorized its chairman, Hon. John J. Flynt, Jr., ayes, nine, nays, zero, to file this report and to offer a resolution directing the Speaker of the House to certify this report to the U.S. attorney for the District of Columbia to the end that Kim be prosecuted for criminal contempt of Congress, pursuant to the provisions of title 2, U.S. Code, sections 192 and 194.

This report sets forth more fully the facts constituting Kim's contempt.

THE FACTS

House Resolution 252, unanimously adopted by the House on February 9, 1977, provides in part that "information has come to the attention of the House of Representatives alleging that Members of the House of Representatives have been the object of efforts by certain foreign governments or persons and organizations acting on behalf of foreign governments (including the Government of the Republic of Korea) to influence the Member's official conduct by conferring things of value on them or on members of their immediate families or their business or political associates" and directs the committee to conduct a "full and complete inquiry and investigation to determine whether Members of the House of Representatives, their immediate families, or their associates accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof."

Pursuant to that resolution, on October 19 and 20, 1977, the Committee heard testimony in public session from Kim Sang Keun.[3] From October 1970 until November 1976 Kim Sang Keun was a Korean diplomat stationed at the Korean Embassy in Washington, D.C., and an agent of the Korean Central Intelligence Agency. In 1974 and 1975 he delivered a

[1] The subpena is set forth in app. I. It was authorized on July 14, 1977, and served on Kim on Nov. 17, 1977.

[2] H. Res. 252 is set forth in app. II. Section 4(a)(1)(A) authorizes "the taking of a deposition by any member of the committee."

[3] That testimony is set forth in the hearings before the Committee on Standards of Official Conduct Pursuant to H.R. 252, Korean Influence Investigation (pt. I), 95th Cong., 1st sess., pp. 32–75 (1977).

total of $600,000 in cash to Hancho K. Kim. Kim told him that this money was to be used to influence Members of the House of Representatives in the performance of their official duties. Indeed, Kim reported to Kim Sang Keun the identity of five Congressmen, referred to by the code name "Advance Guard," whom he said he had paid off in furtherance of this venture. Hancho Kim boasted that in carrying out the plan to pay off Members of Congress and to influence the executive branch of the U.S. Government, the American media and the American academic community, he had spent over $700,000.

In view of this evidence, the committee served Hancho C. Kim with a subpoena commanding his appearance before the Committee at a deposition.

In the meantime, on September 27, 1977, a Federal grand jury sitting in the District of Columbia indicated Kim and charged him with conspiring:

"To defraud the United States and the Congress of the United States in connection with the performance of their lawful governmental functions: (a) of and concerning the right of the Congress and the Executive Branch of the United States, to have their deliberations and official actions conducted, free from corruption, fraud, improper and undue influence, dishonesty, malfeasance, unlawful impairment and obstruction; and (b) of and concerning the right of the United States to have U.S. Congressmen and other Government officials transact the business of the Congress of the United States and other departments and agencies of the United States free from corruption, fraud, improper and undue contacts and influence, dishonesty, malfeasance, unlawful impairment and obstruction."

The grand jury also charged Kim with committing perjury on September 22, 1976, when he appeared before the grand jury and denied under oath receiving any money from Kim Sang Keun. On the same day, a Federal grand jury sitting in Baltimore charged Kim and his wife with two counts of income tax evasion.

Prior to Kim's deposition, his attorneys raised various objections to his testifying and requested the opportunity to argue these objections to the Chairman and Ranking Minority Member of the Committee. Their request was granted.

On November 16, 1977, Chairman John J. Flynt, Jr., and the Honorable Floyd Spence, the Ranking Minority Member of the Committee, overruled these objections in a four-page order. Chairman Flynt and Ranking Minority Member Spence issued this order only after having received a fifteen-page memorandum from the attorneys for Kim, an answering memorandum from Special Counsel to the Committee conducting the Korean Influence Inquiry and a reply memorandum from Kim's attorneys[4] and only after having heard extensive oral arguments by Kim's attorneys and by Counsel to the Special Staff to the committee conducting the Korean Influence Inquiry. The facts and Kim's arguments are concisely set forth in Chairman Flynt's and Ranking Minority Member Spence's Order of November 16, 1977, which provides as follows:

BEFORE THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT U.S. HOUSE OF REPRESENTATIVES

In re Hancho C Kim, a witness before the committee, and request of witness to be excused from testifying.

ORDER

Statement of facts

The House Committee on Standards of Official Conduct (hereinafter referred to as the HCSOC) on the 13th day of July 1977 authorized the issuance and service of a subpoena on one Hancho C. Kim.

Thereafter, Hancho Kim's attorney advised committee counsel that, if called as a witness, Mr. Kim would decline to testify, giving as his reason therefore his constitutional right against self-incrimination.

Thereafter, by a vote of not less than eight affirmative votes, the HCSOC authorized Special Counsel to seek an order granting immunity to said witness, which application was duly filed and such immunity order granted on the 13th day of October 1977 by William B. Bryant, Chief Judge, U.S. District Court of the District of Columbia.

Thereafter, the witness, through his counsel, requested a hearing before the Chairman and the Ranking Minority Member of the HCSOC, asking for a specific ruling on whether, notwithstanding the order granting immunity to such witness, said witness should be required to testify during the pendency of indictments against him in two U.S. District Courts involving facts upon which he reasonably apprehends that he will be asked to give answers before the HCSOC.

The Chairman and the Ranking Minority Member of the HCSOC, in response to such application, set the date of November 8, 1977, as the date for filing any written request with supporting briefs and other documents, and set the hearing on such application for Monday, November 14, 1977 at 2 p.m. in the U.S. Capitol.

The application, with supporting brief consisting of 15 pages and two exhibits, was filed by counsel for witness, and a brief (memorandum) was also filed by Special Counsel of the HCSOC. Counsel for witness and Special Counsel for the committee appeared and made oral arguments in support of their respective positions. Counsel for witness requested time to file a reply brief to the brief (memorandum) of committee counsel, and counsel for witness was given until 1 p.m., Wednesday, November 16, 1977 within which time to prepare a reply brief and serve it upon committee counsel and with the committee.

The hearing at 2 p.m., November 14, 1977 in room H–140 of the U.S. Capitol, with consent of counsel for witness, was not reported but the undersigned are not aware of any disagreement with the facts as related above.

Counsel for witness stated that he is not seeking to permanently withhold the testimony of such witness from this Committee, but is asking that such compulsory testimony be delayed until after the trial in U.S. District Court for the District of Columbia on the indictment naming Hancho C. Kim and filed in said court on the 27th day of September 1977.

Counsel for witness contends that compelling the testimony of said witness at this time violates his rights in that it would constitute:

I

(A) A violation of the privilege against self-incrimination.

(B) A violation of his VI Amendment rights.

(C) A violation of due process.

II

(A) A violation of marital privilege.

(B) A violation of witness' rights under 18 U.S.C. 2510 et seq. (illegal electronic surveillance).

Special Council for the HDCOC responds to each of the foregoing claims of witness and in response to II(B) denies that any evidence heretofore obtained by the Committee was obtained by any illegal electronic surveillance. Counsel for witness and Special Counsel for Committee have cited numerous cases purporting to sustain their respective positions.

CONCLUSION

The Chairman and the Ranking Minority Member of the HCSOC have read all briefs and memoranda submitted by counsel for witness and Special Counsel to the Committee and have applied all citations to the facts in this case. Having done so, the undersigned are of the individual and joint opinion that the witness, Hancho C. Kim, be directed to appear before a designated member of the Committee on Thursday, November 17, 1977, then and there to answer such questions as shall be propounded to said witness by the Committee member and/or Special Counsel to the Committee.

The undersigned are of the opinion that the prompt testimony of Hancho C. Kim is absolutely necessary to enable the Committee to carry out the inquiry mandated by House Resolution 252 and that to rule otherwise would be to question the ability of the U.S. District Court to properly safe-guard the rights accorded the witness under the order granting immunity to such witness. We must assume that the Court is competent to protect such rights and that it will, in fact, protect such rights.

The undersigned hereby direct that the testimony of the witness, Hancho C. Kim, be taken as if in executive session and that the transcript of such testimony be restricted to an original copy only and that every precaution be taken to safe-guard the confidentiality and secrecy of such testimony until such time as a majority of the Committee may vote to release such testimony.

This 16th day of November 1977 in the City of Washington, District of Columbia.

JOHN J. FLYNT, JR.,
Chairman.

FLOYD SPENCE,
Ranking Miniority Member.

Thereafter, Kim testified before the Committee at depositions on November 17, 1977; November 23, 1977; December 9, 1977; and January 12, 1978. At these depositions, however, Kim was not asked about his dealings with Kim Sang Keun or his relationship to the Korean government. At Kim's appearance on January 12, 1978, the subpoena directed to Kim was adjourned *sine die*. By letter dated May 9, 1978, Chairman Flynt informed Hancho C. Kim's attorneys that the subpoena was returnable on May 15, 1978.[5]

In the meantime, on April 8, 1978, a jury sitting in the United States District Court for the District of Columbia found Hancho Kim guilty of the charges of conspiracy and perjury. A judgment of conviction was entered against Kim on May 19, 1978.

At the deposition on May 15, 1978, Hancho Kim was first sworn. He had previously been granted immunity from any prosecution based upon any testimony he gives.[6] Thereupon, Kim willfully refused to answer the following question:

Did they come a time when you received money from Kim Sang Keun?[7]

In response to this question, Kim, through his attorneys, interposed the same objections which had been previously extensively argued to Chairman Flynt and Ranking Minority Member Spence and which had been overruled. These objections were again overruled by the Honorable Richardson Preyer, who was presiding over the deposition.

Notwithstanding the fact that Chairman Flynt, Mr. Preyer and Mr. Spence had overruled their objections, Kim's attorneys persisted in their objections and directed their client not to answer the question posed to him. Thereupon, Representative Preyer found that Kim had refused to answer the question,

[4] Kim's memorandum, the answering memorandum from Special Counsel and Kim's reply memorandum are set forth in appendices III to V, respectively.

[5] The Chairman's letter is set forth in Appendix VI.

[6] The Order Conferring Immunity Upon and Compelling Testimony and Production of Information from Hancho C. Kim, pursuant to title 18, United States Code, Section 6005, was communicated to Hancho C. Kim on November 17, 1977, and is set forth in Appendix VII.

[7] The official transcript of the deposition of May 15, 1978, is set forth in Appendix VIII.

and found his refusal to be contemptuous. Kim's attorneys asked for an opportunity to appear to argue their case before the full committee, and Mr. Preyer granted their request.

On May 17, 1978, the Committee met in executive session. It heard extensive arguments from Kim's attorneys and from Counsel to the Special Staff Conducting the Korean Influence Inquiry.[8] All counsel were then excused from the meeting and the committee voted, ayes nine, nays zero, to adopt the following resolution.

RESOLUTION WITH RESPECT TO THE CONTEMPT OF HANCHO C. KIM

Resolved, That the Chairman of the Committee on Standards of Official Conduct shall submit to the House of Representatives the Report of the Committee on Standards of Official Conduct In Proceedings Citing Hancho C. Kim for Contempt of Congress and the said Chairman shall offer a resolution directing that the Speaker of the House of Representatives certify the said Report with respect to the refusal of the said Hancho C. Kim to answer a question at a deposition being conducted by the committee pursuant to the authority of H. Res. 252, 95th Congress, First Session, to the United States Attorney for the District of Columbia, pursuant to Title 2, United States Code, Sections 192 and 194, to the end that the said Hancho C. Kim may be proceeded against in the manner and form provided by law.

Such disclosures of any proceedings in executive session with respect to the witness Hancho C. Kim as may be necessary to effectuate this resolution are hereby authorized.

Provided, however, That this resolution shall be of no force or effect if the Special Counsel determines that the said Hancho C. Kim has submitted to a full and complete deposition prior to Friday, May 19, 1978.

Provided further, That if the Special Counsel determines that the said Hancho C. Kim is persisting in his contemptous conduct after Friday, May 19, 1978, the Committee at a subsequent meeting thereof will consider whether to initiate civil contempt proceedings against the said Hancho C. Kim.

Although the committee's resolution gave Kim the opportunity to avoid a contempt proceeding by answering the Committee's question, Kim appeared on May 18, 1978, with his attorneys, at a deposition before the Honorable Millicent Fenwick a Member of the Committee, and persisted in his refusal to answer the question. Mr. Kim also refused to answer related questions.[9]

RECOMMENDATION OF THE COMMITTEE

Pursuant to the resolution set forth above, the Committee recommends the adoption of the following resolution:

Resolved, That the Speaker of the House certify the Report of the Committee on Standards of Official Conduct with respect to the Proceedings against Hancho C. Kim, which report details the refusal of the said Hancho C. Kim, to answer a question in a proceeding being conducted by the said Committee pursuant to the authority of H. Res. 252, 95th Congress, 1st Session, to the U.S. Attorney for the District of Columbia, pursuant to Title 2, United States Code, Sections 192 and 194, to the end that the said Hancho C. Kim may be proceeded against in the manner and form provided by law.

[8] The transcript of this portion of the committee's meeting of May 17, 1978, is set forth in Appendix IX.

[9] See the letter of Leon Jaworski, special counsel to the committee conducting the Korean Influence Inquiry, set forth in appendix X. The transcript of these proceedings is set forth in appendix XI.

APPENDICES: APPENDIX I

[Subpena (Deposition)]

(By authority of the House of Representatives of the Congress of the United States of America).

To Hancho Kim:

You are hereby commanded to be and appear before the Standing Committee on Standards of Official Conduct of the House of Representatives of the United States, of which the Hon. John J. Flynt, Jr. is chairman, in Room H140 of the Capitol Building, in the city of Washington, on November 17, 1977, at the hour of 2:00 p.m., then and there to produce the things identified on the attached schedule and to testify on deposition touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To any employee of the Committee on Standards of Official Conduct or any U.S. Marshal to serve and make return.

WITNESS my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 14th day of July, 1977

FLOYD SPENCE.

Attest:

EDMUND L. HENSHAW, Jr.,
Clerk.

Any questions as to compliance should be referred to David H. Belkin, Deputy Chief Counsel, (202) 225–7984.

APPENDIX II

[H. Res. 252, 95th Cong., 1st sess.]

RESOLUTION

Whereas article I, section 9, clause 8 of the United States Constitution prohibits any person holding Federal office, including Members of Congress, from accepting any present, emolument, office, or title from any foreign government without the consent of Congress; and

Whereas Congress has forbidden the receipt of political contributions from a foreign national, including a foreign government (2 U.S.C. 441e); and

Whereas the Federal Criminal Code prohibits the receipt of anything of value by any Member of Congress to influence his performance of his official duties or to reward or compensate him, other than as provided for by law, for the performance of those duties (18 U.S.C. 201, 203); and

Whereas rule XLIII of the Rules of the House of Representatives sets forth the Code of Official Conduct for Members, officers and employees of the House of Representatives and, among other things, prohibits the acceptance of any gift of substantial value, directly or indirectly, from any person, organization, or corporation having a direct interest in legislation before the Congress; and

Whereas information has come to the attention of the House of Representatives alleging that Members of the House of Representatives have been the object of efforts by certain foreign governments or persons and organizations acting on behalf of foreign governments (including the Government of the Republic of Korea) to influence the Members' official conduct by conferring things of value on them or on members of their immediate families or their business or political associates; and

Whereas clause 4(e)(1) of rule X of the Rules of the House of Representatives entrusts the Committee on Standards of Official Conduct with particular responsibility—

(A) to recommend to the House of Representatives from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House of Representatives;

(B) to investigate any alleged violation, by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, and after notice and hearing, to recommend to the House of Representatives, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances; and

(C) to report to the appropriate Federal or State authorities, with the approval of the House of Representatives, any substantial evidence of a violation, by a Member, officer, or employee of the House of Representatives, of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation: Now, therefore be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to conduct a full and complete inquiry *and investigation* to determine whether Members of the House of Representatives, their immediate families, or their associates accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof. The scope of the inquiry *and investigation* shall be determined by the committee in its discretion and may extend to any matters relevant to discharging its responsibilities pursuant to this resolution.

SEC. 2. The committee shall report to the House of Representatives any findings, conclusions, and recommendations it deems proper with respect to the adequacy of the present Code of Official Conduct or the Federal laws, rules, regulations, and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities (1) to protect the House of Representatives against the exertion of improper influence by or on behalf of foreign governments and (2) to prohibit Members of the House of Representatives from receiving things of value under circumstances that conflict, or appear to conflict, with their obligations to perform their constitutional duties without regard to private gain or benefit.

SEC. 3. The committee, after appropriate notice and hearing, shall report to the House of Representatives its recommendations as to such action, if any, that the committee deems appropriate by the House of Representatives as a result of any alleged violation of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities.

SEC. 4. (a) For the purpose of conducting any inquiry or investigation pursuant to this resolution the committee is authorized to require—

(1) by subpena or otherwise—

(A) the attendance and testimony of any person at a hearing or at the taking of a deposition by any member of the committee; and

(B) the production of such things; and

(2) by interrogatory the furnishing under oath of such information as it deems necessary to such inquiry or investigation.

(b) The authority conferred by subsection (a) of this section may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether

such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole.

(c) Subpenas and interrogatories authorized under this section may be issued over the signature of the chairman, or ranking minority member, or any member designed by either of them. A subpena may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them and may be served, either within or without the United States on any national or resident of the United States or any other person subject to the jurisdiction of the United States.

(d) In connection with any injury or investigation pursuant to this resolution, the committee may request the Secretary of State to transmit a letter rogatory or request to a foreign tribunal, officer, or agency.

(e) Subpenas for the taking of depositions or the production of things may be returnable at specified offices of the committee or at a scheduled hearing, as the committee may direct.

(f) The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness.

(g) For the purposes of this section, "things" includes books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions-recordings, tapes, transcripts, printout, data compilations from, which information can be obtained (translated, if necessary, into reasonably usable form), tangible objects, and other things of any kind.

SEC. 5. For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to sit and act, without regard to clause 2(m) of the rule XI of Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

SEC. 6. The committee is authorized to seek to participate and to participate, by special counsel appointed by the committee, on behalf of the committee and the House of Representatives in any judicial proceeding concerning or relating in any way to the inquiry or investigations conducted pursuant to this resolution.

SEC. 7. The authority conferred by this resolution is in addition to, and not in lieu of the authority conferred upon the committee by the Rules of the House of Representatives. In conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to adopt special rules of procedures as may be appropriate.

SEC. 8. Any funds made available to the committee after the adoption of this resolution may be expended for the purpose of carrying out the inquiry and investigation authorized and directed by this resolution.

APPENDIX III

(Before the Committee on Standards of Official Conduct of the House of Representatives).

In re Hearings Conducted
Pursuant to House Resolution 252.

MEMORANDUM SETTING FORTH THE CONSTITUTIONAL AND PRACTICAL REASONS WHY HANCHO C. KIM SHOULD NOT BE COMPELLED TO TESTIFY

The United States House of Representatives Committee on the Standards of Official Conduct is contemplating calling Mr. Hancho C. Kim as a witness. Toward this end on October 14, 1977, the Committee procured an "Order Conferring Immunity Upon and Compelling Testimony and Production of Information from Hancho C. Kim." Mr. Kim and his counsel appreciate this opportunity to set forth the reasons why Mr. Kim should not be compelled to testify at this time.

INTRODUCTION

On September 27, 1977, a grand jury impaneled by the United States District Court for the District of Columbia returned a two-count indictment against Hancho C. Kim. Count I alleges that Mr. Kim conspired with confederates of the government of the Republic of Korea to defraud the United States and the Congress of the United States of their respective rights to function free from corrupt and improper influence, in violation of Title 18, U.S.C. § 371. Count II charges that Kim violated 18 U.S.C. § 1623 by committing perjury before a grand jury inquiring into lobbying activities of the Korean Government. Specifically, Kim is accused of falsely testifying before the grand jury about $600,000 that he allegedly received from Sang Keun (S.K.) Kim, an agent of the Korean Central Intelligence Agency. ("K.C.I.A.") A copy of the indictment is attached as Exhibit 1.

On September 27, 1977, a grand jury impaneled by the United States District Court for the District of Maryland also returned an indictment charging Mr. Kim and his wife, Soonduk E. Kim with two counts of Income Tax Evasion in violation of Title 26, U.S.C. § 7201. The essence of these charges against the Kims is that they filed false returns because they failed to report income during the years in question. Counsel has been advised by the Government that the alleged source of the unreported income which the Government will urge was received by the Kim's related to activities of Mr. Kim for and on behalf of the South Korean Government. As the Government concedes, this tax case essentially tracks the indictment pending against Hancho Kim in the District of Columbia. Indeed, the funds allegedly received by Hancho Kim from K.C.I.A. operative S. K. Kim, which are at the core of the charges made by the District of Columbia Grand Jury, also constitute the allegedly unreported income which is the basis of the District of Maryland indictment. A copy of the indictment is attached as Exhibit 2.

The trial against Mr. Kim in the District of Columbia is scheduled to commence on January 9, 1978; the tax case against Mr. and Mrs. Kim in Maryland is presently set for trial on December 5, 1977. As such, Mr. Kim is now engaged in preparing his defense to these indictments. Clearly, the indictments allege criminal activity arising out of events which are the very subject matter of this Committee's investigation. Therefore, as more fully explained below, we believe that compelling Mr. Kim to testify before the Committee under these circumstances is not only legally improper because it infringes upon his Fifth and Sixth Amendment Rights and other privileges, but also practically unwise because it forces Mr. Kim to litigate issues before the committee that should properly be addressed in the first instance by the trial courts.

I

Compelling Kim to testify at this time violates his constitutional rights

There is a distinction of great moment between subpoenaing for questioning a witness (even one who might subsequently be indicted) and subpoenaing an *indicted* defendant for questioning on the subject of the crimes for which he is charged. The filing of the indictment marks the commencement of a "criminal prosecution." At that point, the full panoply of protective rights guaranteed to a criminal defendant by the Constitution attaches. The importance of the beginning of a criminal prosecution was emphasized by Justice Stewart in his opinion in *Kirby* v. *Illinois*, 406 U.S. 682, 689 (1972):

"The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole adversary system of criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law."

For this reason, compelling Mr. Kim to testify before the Committee while he is preparing his defense to criminal indictments arising out of events which are the very subject of the Committee's investigation is constitutionally impermissible. To do so, violates Kim's Fifth Amendment privileges against *self-incrimination* and his Sixth Amendment rights; it is also "fundamentally unfair" and thus violates the Due Process Clause of the Fifth Amendment.

A. Violation of the Privilege Against Self-Incrimination

Requiring Mr. Kim to appear before the Committee on the eve of two trials in which he is a criminal defendant violates his Fifth Amendment privileges against self-incrimination. The Committee seeks to compel testimony from Kim about the precise matters for which he has been indicted; his testimony will *preview* for the Government the defenses he will assert at the trials. The Fifth Amendment prohibits such a "dress-rehearsal" for the Government. This violation is not cured by granting Kim use immunity pursuant to 18 U.S.C. § 6001 *et seq.*

As a preliminary point, we question whether Congress intended the application of the use immunity device to compel testimony from an already indicted defendant. Title 18 U.S.C. § 6002, the central provision of the immunity statute, provides that use immunity may be conferred "whenever a *witness* refuses, on the basis of his privilege against self-incrimination, to testify or provide other information . . ." (Emphasis added.) As noted above, once an individual has been indicted he can no longer be classified as a *witness* because the commencement of the criminal prosecution transforms him into a defendant. The traditional purpose of use immunity is to compel testimony from a witness without foreclosing the possibility of a *subsequent* prosecution. The application of the device to compel testimony from an already indicted defendant was never concontemplated by Congress and is therefore unauthorized.

If the immunity statute was intended to apply even after an individual has been indicted, it is unconstitutional as so applied. In *Kastigar* v. *United States*, 406 U.S. 441 (1972) the Supreme Court held that the use immunity statute did not on its face violate the Fifth Amendment. However, *Kastigar* does not foreclose inquiry as to whether an immunity order issued pursuant to the statute fails to provide immunity coextensive with the scope of the Fifth Amendment privilege in a particular instance. *Application of United States Senate Select Committee on Presidential Campaign Activities*, 361 F Supp. 1270, 1279 (D.D.C. 1973).

The grant of use immunity in the present circumstances will not afford Mr. Kim protection coextensive with the Fifth Amendment for at least two reasons.

First, the Courts have held on numerous occasions that once an individual has been indicted he may not be compelled to testify before a grand jury. *United States* v. *Doss*, —— F. 2d —— (6th Cir. September 23, 1977) (*En Banc*) (while a grand jury is free to question a target of an investigation, it may not question an already indicted defendant on the subject about which he has been

charged); *United States* v. *Lawn*, 115 F. Supp. 674 (S.D.N.Y. 1953). Indeed, this doctrine has been acknowledged even when the individual has been granted immunity. *In re Liddy*, 506 F. 2d 1293, 1299 (D.C. Cir 1974).[1] This constitutional principle is fully applicable here. Simply put, once an individual has been indicted the Fifth Amendment privilege against self-incrimination prohibits him from being compelled to testify about the subject of the indictment under any circumstances.[2]

Second, the Courts have recognized that there are practical, if not theoretical, limits to the protection afforded by use immunity. For example, in *Goldberg* v. *United States*, 472 F. 2d 513 (2d Cir. 1973), the Court while upholding a grant of immunity to compel grand jury testimony of an individual arrested for an offense,[3] made clear that use immunity would not adequately protect him if he were indicted by the same grand jury that had heard his immunized testimony. The Court reasoned that no level of precaution could insure that the grand jury had not indicted on the basis of the individual's compelled testimony.

We contend that the same type of practical difficulties render the protection of use immunity inadequate here. While the Committee's sessions will be closed, we respectfully submit that a realistic assessment of the situation makes it impossible to conclude that the Government will not gain, however inadvertently, some advantage, however subtle, from Mr. Kim's compelled testimony on the eve of his criminal trials. Such an advantage gained from testimony compelled from the mouth of the defendant contravenes the cherished protections of the Fifth Amendment privilege against self-incrimination.

B. Violation of Sixth Amendment Rights

The Sixth Amendment affords a criminal defendant a series of protective rights; it guarantees a speedy and public trial, the right to confront and cross-examine the witnesses against him, the right to have compulsory process for obtaining witnesses in his favor and the right to the assistance of counsel. As the Supreme Court held in *Kirby* v. *Illinois*, supra, 406 U.S. at 690, all of these rights attach upon the filing of an indictment. Because the Committee is compelling Mr. Kim to testify about the precise subjects for which he has been indicted, the Sixth Amendment protections are fully applicable. We respectfully submit that the procedures contemplated by the Committee do not respect these rights.

One of the most central rights afforded a criminal defendant is the right to confront and cross-examine his accusers. Yet, the Committee has denied counsel's request to question witnesses appearing before the Committee.[4] Indeed, the Committee has placed a five minute limit on the cross-examination that may be conducted by any individual member of the Committee. These limitations are in direct contravention of Mr. Kim's constitutional right to confront and cross-examine witnesses.[5]

In addition, the Committee's proposed course of action violates the most fundamental tenets of the Sixth Amendment right to counsel. Mr. Kim and his counsel are presently engaged in preparing a defense to two very serious criminal indictments. The Committee is not only interfering with this preparation, but also is compelling Mr. Kim to disclose, on the eve of trial, factual matter that the Constitution intended would be voluntarily disclosed only to defense counsel.

We point out these clear violations of the Sixth Amendment not so much to demand a full-blown trial before the Committee, but rather to demonstrate the inappropriateness of compelling Mr. Kim's testimony at this time.

C. Violation of Due Process

Fundamental fairness, as embodied in the due process clause of the Fifth Amendment, has always been a touchstone of the American criminal justice system. If the Committees seeks to compel Mr. Kim to testify at this time, that time-honored principle will be violated.

Mr. Kim has been indicted for committing perjury before a grand jury investigating the lobbying activities of the Korean Government. He is charged with lying to the grand jury when he testified that the K.C.I.A. operative, S. K. Kim, never left money at his home. By now inquiring into these precise areas, the Committee places Kim in an intolerable position where he is forced to *either repeat the testimony which has already resulted in a perjury indictment or change those answers and thereby confess to a crime for which he has been indicted*. Specifically, if Kim stands by his earlier testimony and denies receipt of any money from S. K. Kim he leaves himself open to a possible second indictment for perjury, since the grant of immunity explicitly excludes from its protection a prosecution for perjury.[6] And if, he changes his testimony and admits receipt of the money he *will have prejudiced his defense to the perjury indictment by having made inconsistent statements while under oath*. See 18 U.S.C. § 1623(c) ("In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury"). Aside from the obvious self-incrimination problems that have already been discussed, placing a criminal defendant in this "Catch-22" dilemma is contrary to the most basic elements of fundamental fairness.

The Supreme Court case of *Hutcheson* v. *United States*, 369 U.S. 598 (1962) is instructive. Hutcheson, a president of a labor union, was summoned to testify before the Senate Select Committee on Improper Activities in the Labor or Management Field. At the time he was summoned he was under a state indictment for the alleged bribery of an Indiana highway official. Hutcheson was convicted of a federal crime for refusing to answer 18 of the Committee's questions pertaining to the use of union funds in connection with efforts to forestall the state bribery indictment. His refusal to answer was not based upon the privilege against self-incrimination,[7] but rather on his right to due process of law; he argued that the Committee's interrogation required that he either prejudice his defense or commit perjury and that it was a "pretrial" of the state charges before the Committee.

A majority of the Court rejected these arguments,[8] finding that many aspects of the Due Process argument were premature and could not be addressed until after a state conviction.

However, Chief Justice Warren, in a dissenting opinion joined by Justice Douglas, asserted that the interrogation was violative of the Due Process Clause. He put the constitutional issue as follows: "Is it a violation of the constitutional guarantee of due process of law for a legislative committee, under the circumstances of this case, to inquire into matters for which the witness is about to be tried under a pending indictment?" *Id.* at 628. Both Warren and Douglas answered the question affirmatively.

The majority opinion responded to the dissent in a way that clearly indicates that it did not disagree with the dissenters' constitutional analysis. Rather, it disagreed with their factual premise.

"It should be noted that although this Congressional inquiry was related to the subject matter of the state indictment, the questions that were asked of the petitioner did not bear directly on his guilt or innocence of the state charges. *Id.* at 615 n. 16."

The clear implication is that if the questions did bear directly on the pending charges the majority would have agreed that there was a due process violation.

In the present case, the questions to be asked will bear directly on Mr. Kim's guilt or innocence on the criminal charges. For this reason, *Hutcheson* supports the proposition that the questioning here will be fundamentally unfair and violative of due process.

The inherent unfairness of the situation is not apparent only to Mr. Kim. In a brief hearing regarding the immunity order, Chief Judge Bryant of the United States District Court for the District of Columbia expressed his discomfort with the proposed course of action.

"The COURT. Well, I guess you gentlemen will have to wait a few minutes. There is an odor to this that I don't quite understand.

"Mr. FORTUIN. I am sorry. I didn't hear you.

"The COURT. There is a little odor to this that I don't quite relish. This has never been done before, has it. Nobody under Federal indictment has ever been called under these circumstances, have they?

"Mr. FORTUIN. I don't know, your Honor. I don't know the answer to that question. transcript, at 16."[9]

Weighed against the inherent unfairness of Mr. Kim's dilemma is the fact that there is no apparent need for the Committee to question him at this time. Therefore, we respectfully submit that there is no justification for the Committee to refuse to delay its questioning of Mr. Kim until after his criminal trials. *See, In re Tuso*, 357 A.2d 1 (N.J. Super. Ct. App. Div. 1976).

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[1] While noting that there was "respected authority" for this proposition, the Court in *In re Liddy* was not directly confronted with the question because Liddy had already been convicted at the time he was called before the grand jury.

[2] *Cf.* 18 U.S.C. § 3481 (defendant is incompetent to testify except at his request).

[3] *Goldberg* is not authority for the compulsion of testimony pursuant to a grant of immunity of an already indicted defendant. At the time he was summoned before the grand jury, Goldberg only had a complaint filed against him. In *In re Liddy*, supra, the Court treated Goldberg as only a potential defendant. Nor is *Application of United States Senate Select Committee on Presidential Campaign Activities*, supra, to the contrary. The witness there also had not been indicted.

[4] Letter of Counsel to committee of Oct. 20, 1977.

[5] The committee has agreed in its letter of Oct. 28, 1977, to subpena witnesses suggested to it by Mr. Kim. However, this is an empty agreement because the most critical witnesses are unavailable.

[6] Indeed, a strong argument can be made that the committee's approach violates the spirit if not the letter of the double jeopardy cause because the Government may be afforded two chances to secure a conviction for what is in reality only one act of perjury.

[7] At the same time, the assertion of the privilege in a Federal proceeding would have been admissible in a State criminal case.

[8] Only six justices participated; the majority consisted of four.

[9] Chief Judge Bryant issued the order, but left open the possibility of challenging its propriety before Judge Flannery who will be presiding over the criminal case.

If Mr. Kim is ordered by the committee to testify, he will decline to do so by asserting the marital privilege and will decline to answer questions based upon illegal surveillance

A. Marital Privilege

Hancho Kim is a defendant in not only the conspiracy and false statement case pending in the District of Columbia but a codefendant as well with his wife in the tax evasion case now pending against them in the United States District Court for the District of Maryland. The United States Attorney has already urged before the Grand Jury in that case that Mrs. Kim's inclusion as a codefendant was appropriate under the evidence then available, and this committee will recall that S. K. Kim testified that she was present and witnessed the delivery of $300,000 of K.C.I.A. funds to her husband in September of 1974. Counsel for Hancho Kim wishes to candidly advise the Committee that should he be ordered to testify, he will assert on behalf of himself and his wife, both of whom are accused of criminal tax evasion in violation of 26 U.S.C. § 7201, a marital privilege not to testify against their spouse. This privilege is, of course, separate and distinct from the right of the accused not to testify against himself as guaranteed by the Fifth Amendment of the United States Constitution. Here the accused, in this case Mrs. Kim, has the spousal privilege prohibiting her husband from testifying against her, in addition to his Fifth Amendment privilege against self-incrimination.

Under Rule 501 of the Federal Rules of Evidence, "the privilege of a witness, person . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." It is an established federal rule of evidence that either spouse may be barred from testifying against the other. *Hawkins* v. *United States*, 358 U.S. 74 (1958); *United States* v. *Fields*, 458 F.2d 1194, 1198–1199 (3d Cir. 1972).

Under Rule 1101(c), "[T]he rule with respect to privileges applies at all stages of all actions, cases and proceedings," and specifically, to contempt proceedings under subparagraph (b). The marital privilege is "not only for the benefit of the husband, wife and children, but for the benefit of the public as well. Such a belief has never been unreasonable and is not now." *Hawkins* v. *United States, supra* at 77. There is no reason why it should not apply with equal vitality to these proceedings.

Counsel for Hancho Kim is mindful that the Committee may seek to circumvent the invocation of the privilege by granting immunity to Mrs. Kim. Such a procedural device, however, will not overcome the privilege since the granting of immunity under 18 U.S.C. § 6002 relates solely to the witnesses' self-incrimination and not to testimony against the spouse. The dependency of the indictment against both Mr. and Mrs. Kim makes all the more viable the marital privilege under the circumstances of these proceedings. If the Committee wishes to prevail upon the Department of Justice to dismiss the indictments now pending against Mr. and Mrs. Kim, counsel would reevaluate the appropriateness of the spousal privilege in these proceedings. But as the matter now stands, the privilege prohibits Hancho Kim from testifying against his wife, and under the circumstances here, the indictment precludes him from testifying at all.

B. Illegal Electronic Surveillance

If called to testify before the Committee, Mr. Kim would request an opportunity to determine whether the questioning was in any way derived from the product of electronic surveillance, and the legality of that surveillance.

Title 18 U.S.C. § 2515 prohibits the use as evidence before this Committee of the fruits of illegal electronic surveillance.

"Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial bearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, *legislative committee*, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter." (Emphasis added.)

In *Gelbard* v. *United States*, 408 U.S. 41 (1972), the Supreme Court held that the refusal to answer questions before a grand jury because they were based on illegal electronic surveillance was a defense to a civil contempt charge. The Court stated:

"The purposes of § 2515 and Title III as a whole would be subverted were the plain command of § 2515 ignored when the victim of an illegal interception is called as a witness before a grand jury and asked questions based upon that interception. Moreover, § 2515 serves not only to protect the privacy of communication, but also to ensure that the courts do not become partners to illegal conduct: the evidentiary prohibition was enacted also "to protect the integrity of court and administrative proceedings." Consequently, to order a grand jury witness, on pain of imprisonment, to disclose evidence that § 2515 bars in unequivocal terms is both to thwart the congressional objective of protecting individual privacy by excluding such evidence and to entangle the courts in the illegal acts of Government agents.

"In sum, Congress simply cannot be understood to have sanctioned orders to produce evidence excluded from grand jury proceedings by § 2515. Contrary to the Government's assertion that the invasion of privacy is over and done with, to compel the testimony of these witnesses compounds the statutorily proscribed invasion of their privacy by adding to the injury of the interception the insult of compelled disclosure. And, of course, Title III makes illegal not only authorized innterceptions, but also the disclosure and use of information obtained through such interceptions. 18 U.S.C. § 2511 (1); *see* 18 U.S.C. § 2520. Hence if the prohibition of § 2515 is not available as a defense to the contempt charge, disclosure through compelled testimony makes the witness the victim, once again, of a federal crime. Finally, recognition of § 2515 as a defense "relieves judges of the anomalous duty of finding a person in civil contempt for failing to cooperate with the prosecutor in a course of conduct which, if pursued unchecked, could subject the prosecutor himself to heavy civil and criminal penalties." *In re Grand Jury Proceedings, Harrisburg, Pennsylvania (Egan)*, 450 F.2d at 220 (Rosenn, J., concurring). "And for a court, on petition of the executive department, to sentence a witness, who is herself the victim of the illegal wiretapping, to jail for refusal to participate in the exploitation of that crime in violation of the explicit command of Section 2515 is to stand our whole system of criminal justice on its head." *In re Evans*, 146 U.S. App. D.C. 310, 323, 452 F.2d 1239, 1252 (1971) (Wright, J., concurring)." *Id.* at 51–52."

The reasoning of Gelbard is fully applicable here. Congress cannot be understood to have sanctioned orders to produce evidence excluded from proceedings before legislative committees by § 2515. There is reason to believe that questioning to be propounded to Mr. Kim may be derived from electronic surveillance. Mr. Kim is justified in refusing to answer all questions based upon illegal electronic surveillance.

CONCLUSION

As Justice Brennan stated in a concurring opinion in *Hutcheson* v. *United States*, supra, 369 U.S. at 624:

"When a congressional inquiry and a criminal prosecution cross paths, Congress must accommodate the public interest in legitimate legislative inquiry with the public interest in securing the witness a fair trial. Whether a proper accommodation has been made must be determined from the vantage point of the time of petitioner's appearance before the Committee."

For the reasons set forth herein, we respectfully submit that the proper accommodation demands that the Committee stay its questioning until such time as the prejudice to Mr. Kim's right to a fair trial is eliminated.

Respectfully submitted.

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EXHIBIT 1 TO APPENDIX III

(In the United States District Court for the District of Columbia. Holding a Criminal Term, Grand Jury Sworn in on June 7, 1978.)

United States of America *v.* Hancho C. Kim

INDICTMENT

The Grand Jury Charges:

COUNT I

1. At all times pertinent to this indictment the Korean Central Intelligence Agency (hereafter the KCIA) was an agency of the Government of the Republic of Korea.

2. At all times material hereto, General Yang Doo Wan, also known as Lee Sang Ho (an unindicted co-conspirator herein) was an assistant to the Director of the KCIA with offices in Seoul, Korea.

3. At all times material hereto, Sang Keun Kim (an unindicted co-conspirator herein) was an employee of the KCIA stationed as a diplomatic officer at the Embassy of the Republic of Korea in Washington, D.C.

4. Beginning on or about August 15, 1974, and continuing thereafter until in or around April 1976 (the exact date being unknown to the Grand Jury), in the District of Columbia, the State of Maryland, the Republic of Korea, and elsewhere, Hancho C. Kim, the defendant herein, did willfully and knowingly, combine, conspire, confederate and agree with Yang Doo Wan, Sang Keun Kim and diverts other persons who are presently known and unknown to the Grand Jury, to defraud the United States and the Congress of the United States in connection with the performance of their lawful governmental functions and rights:

(a) of and concerning the right of the Congress and the Executive Branch of the United States to have their deliberations and official actions conducted honestly and impartially as the same should be conducted, free from corruption, fraud, improper and undue influence, dishonesty, malfeasance, unlawful impairment and obstruction, and

(b) of and concerning the right of the United States to have United States Congressmen and other government officials transact the business of the Congress of the United States and other departments and agencies of the United States free from corruption, fraud, improper and undue contracts and influence, dishonesty, malfeasance, unlawful impairment and obstruction.

5. It was a part of the said conspiracy that Hancho C. Kim would conduct a clandestine operation in the United States called "Operation White Snow" for the purposes of in-

creasing foreign aid to the Republic of Korea and of creating a favorable attitude toward the Government of the Republic of Korea and its officials.

6. It was further a part of the said conspiracy that Hancho C. Kim would receive a substantial amount of money from the KCIA for the purpose of distributing the money to members of the Congress of the United States on behalf of the Government of the Republic of Korea and its officials.

7. It was further a part of the said conspiracy that Hancho C. Kim would endeavor to indoctrinate, convert, induce, persuade, and in other ways influence members of the Congress of the United States and Executive Branch officials with reference for formulating, adopting and changing the foreign polices of the United States for the benefit of the Government of the Republic of Korea.

8. It was further a part of the said conspiracy that Hancho C. Kim would periodically report on his activities to, and receive instructions from, General Yang Doo Wan and other officials of the KCIA.

9. It was further a part of the said conspiracy that Hancho C. Kim would travel to the Republic of Korea to discuss with General Yang Doo Wan and other officials of the KCIA his accomplishments and the means of attaining the future goals of the said agreement.

10. In order to accomplish the objects of the conspiracy the following means, among others, were used by Hancho C. Kim, and his co-conspirators:

(a) Hancho C. Kim utilized his home at 6404 Martins Lane, Lanham, Maryland, where he entertained Congressmen, received and stored KCIA funds, operated a telex machine, and received instructions from, and sent information to, the KCIA;

(b) Hancho C. Kim received a total of $600,000.00 in United States currency from the KCIA to support Operation White Snow, which was delivered to him at his home by Sang Keun Kim;

(c) Hancho C. Kim expended a portion of the KCIA funds to purchase two new automobiles and expensive furnishings for his home, to entertain at home and at expensive restaurants, and to make contributions to an educational institution, all in order to impress Congressmen and others as to his financial condition.

(d) Hancho C. Kim approached and spoke with members of the House of Representatives of the United States about the economic and political conditions in the Republic of Korea for the purpose of influencing the attitude of such members of the United States Congress in favor of the Government of the Republic of Korea;

(e) General Yang Doo Wan wrote letters to Sang Keun Kim instructing Sang Keun Kim to deliver money to, and otherwise assist, Hancho C. Kim on behalf of the KCIA.

(f) Hancho C. Kim frequently met Sang Keun Kim to report on the progress of Operation White Snow, after which Sang Keun Kim did transmit the aforesaid information to General Yang Doo Wan by means of the Korean Embassy diplomatic pouch;

(g) Hancho C. Kim rented telecommunications (telex) equipment from R.C.A. Global Communications, Inc., in order to directly and quickly report upon his activities in the United States to General Yang Doo Wan and other officials of the KCIA, and on numerous occasions transmitted such reports to Seoul, Korea; and

(h) Hancho C. Kim traveled to Seoul, Korea, and reported to General Yang Doo Wan and other officials of the KCIA on past and planned future activities of Operation White Snow.

OVERT ACTS

In furtherance of the conspiracy, the following overt acts were committed:

1. On or about September 3, 1974, in the District of Columbia, Sang Keun Kim received a letter from General Yang Doo Wan in which Sang Keun Kim was instructed to assist Hancho C. Kim in a secret operation.

2. In or around September 1974, Hancho C. Kim advised Sang Keun Kim that they would work together on a secret operation to be financed by the KCIA for the purpose of influencing members of the Congress of the United States and others.

3. On or about September 9, 1974, within the District of Columbia, Sang Keun Kim received from General Yang Doo Wan and other officials and employees of the KCIA a personal check in the amount of $100,000.00 written on the checking account of Tong Sun Park.

4. On or about September 9, 1974, within the District of Columbia, Sang Keun Kim, acting pursuant to written instructions from General Yang Doo Wan, deposited the check referred to in Overt Act Number 3 in his personal checking account at the Riggs National Bank.

5. On or about September 11, 1974, within the District of Columbia, General Yang Doo Wan and other officials and employees of the KCIA caused United States currency in the amount of $256,000.00 to be delivered to Sang Keun Kim.

6. On or about September 11, 1974, within the District of Columbia, Sang Keun Kim received written instructions from General Yang Doo Wan to deliver to Hancho C. Kim the $256,000.00 referred to in Overt Act Number 5 and $44,000.00 from the funds deposited in Sang Keun Kim's personal checking account, referred to in Overt Act Numbers 3 and 4.

7. On or about September 12, 1974, Sang Keun Kim delivered $300,000.00 in United States currency to Hancho C. Kim on behalf of the KCIA for the purpose of financing the clandestine operation referred to in Overt Act Number 2.

8. On or about September 17, 1974, Hancho C. Kim ordered and subsequently paid for a new 1975 Cadillac with funds obtained from the KCIA.

9. On or about September 19, 1974, Hancho C. Kim contributed $10,000.00 to Findlay College, Findlay, Ohio, with funds obtained from the KCIA.

10. On or about October 8, 1974, Hancho C. Kim caused directly and indirectly the insertion of an article in the Congressional Record by a member of Congress which was favorable to the Government of the Republic of Korea and its officials.

11. On or about November 8, 1974, Hancho C. Kim transmitted a letter and attachments reflecting his personal views on economic and political conditions in the Republic of Korea to an official in the Executive Branch of the United States.

12. In or around January 1975, Hancho C. Kim traveled to Seoul, Korea, where he conferred with officials and employees of the KCIA.

13. On or about February 25, 1975, Hancho C. Kim caused directly and indirectly the insertion of an article in the Congressional Record by a member of Congress which was favorable to the Government of the Republic of Korea and its officials.

14. On or about March 3, 1975, Hancho C. Kim transmitted two letters and attachments reflecting his personal views on economic and political conditions in the Republic of Korea to an official in the Executive Branch of the the United States.

15. In or around March 1975, Hancho C. Kim had a telex machine installed in his home in Lanham, Maryland, for the purpose of directly and quickly reporting upon his activities in the United States to officials of the KCIA.

16. From on or about March 1, 1975, through July 1, 1976 one hundred forty one (141) telex messages were sent by Hancho C. Kim and Sang Keun Kim from the telex machine at the home of Hancho C. Kim to a telex machine at KCIA headquarters in Seoul, Korea.

17. On or about April 30, 1975, Hancho C. Kim transmitted a letter and attachments reflecting his personal views on economic and political conditions in the Republic of Korea to an official in the Executive Branch of the United States.

18. On or about May 5, 1975, Hancho C. Kim purchased a second new 1975 Cadillac with funds obtained from the KCIA.

19. In or around May 1975, Hancho C. Kim traveled to Seoul, Korea, where he conferred with officials and employees of the KCIA.

20. In or around June 1975, in the District of Columbia, Sang Keun Kim received a letter from Park Wang-Kyu, an assistant to General Yang Doo Wan, advising Sang Keun Kim that Sang Kuen Kim would receive $300,000.00 for delivery to Hancho C. Kim.

21. In or around June 1975, Sang Keun Kim received $300,000.00 in United States currency through the diplomatic pouch, and Sang Keun Kim delivered the $300,000.00 to Hancho C. Kim as instructed by the KCIA.

22. On or about June 24, 1975, Hancho C. Kim dined with two Congressmen and their families at the Sans Souci Restaurant in Washington, D.C.

23. In or around August 1975, Hancho C. Kim traveled to Seoul, Korea, where he conferred with officials and employees of the KCIA.

24. On or about January 22, 1976, Hancho C. Kim held a catered dinner for two Congressmen and their families at his home.

25. In or around February 1976, Sang Keun Kim traveled to Seoul, Korea, and conferred with officials and employees of the KCIA regarding the clandestine operation involving Hancho C. Kim.

In Violation of 18 U.S.C. § 371.

COUNT II

1. On or about September 22, 1976, within the District of Columbia, Hancho C. Kim, the defendant herein, duly took an oath in a proceeding before a grand jury of the United States, empaneled and sworn in on June 7, 1976, in the United States District Court for the District of Columbia (hereinafter the grand jury), inquiring into matters then and there pending before the grand jury.

2. Hancho C. Kim, having taken the aforesaid oath that he would testify truthfully, did willfully and knowingly and contrary to said oath, make a false material declaration which he did not believe to be true.

3. At the time and place aforesaid the grand jury was conducting an investigation into various allegations of illegal payments made by agents of the Government of the Republic of Korea to members of the Congress of the United States and to officials of the United States Government, in possible violation of the laws of the United States.

4. It was material to the aforesaid investigation to determine whether Hancho C. Kim had received money from officials and employees of the Government of the Republic of Korea for the purpose of making payments to members of the Congress of the United States.

5. On September 22, 1976, within the District of Columbia, Hancho C. Kim appeared as a witness before the grand jury, and then and there being under oath testified falsely with respect to the aforesaid material matter as follows:

Question. [By Paul Michel, Attorney, Department of Justice]: What is the name of the gentleman who sold your wife the movie projector?

Answer. [Hancho Kim]: Sung Gun Kim.

(Grand Jury Transcript p. 86)

* * * * *

Question. You mentioned that on some of the occasions of his visits Mr. Kim brought something.

Answer. He bring the newspapers once in a while Korean newspapers. After he read in his office.

(Grand Jury Transcript p. 91–92)

* * * * *

Question. Did he leave anything at your home, or with you—aside from the movie projector and some copies of this Korean newspaper?

Answer. Absolutely not.

(Grand Jury Transcript p. 92–93)

* * * * *

Question. Fine. Did he ever bring and leave with you, or at your house, any money?

Answer. Absolutely, positively, no sir. I like to make it—very strongly about it.

(Grand Jury Transcript p. 93)

* * * * *

6. The aforesaid testimony of HANCHO C. KIM, as he then and there well knew and believed, was not true in that on or about September 12, 1974, and in or around June 1975, the exact date being unknown to the grand jury, HANCHO C. KIM did in fact receive at his home money in the aggregate of $600,000.00 in United States currency from the person who HANCHO C. KIM referred to as "Sung Gun Kim," but who in fact is Sang Keun Kim, an agent of the Korean Central Intelligence Agency.

(Violation of 18 U.S.C. § 1623.)

BENJAMIN R. CIVILETTI,
Assistant Attorney General, Criminal Division, Attorney for the United States.

EXHIBIT 2 TO APPENDIX III

(In the United States District Court for the District of Maryland.)

United States of America *v.* Hancho C. Kim and Soonduk E. Kim

(Tax Evasion, 26 U.S.C. § 7201)

INDICTMENT

The Grand Jury Charges:

COUNT I

That on or about April 15, 1975, in the District of Maryland, Hancho C. Kim and Soonduk E. Kim, residents of Lanham, Maryland, who during the calendar year 1974 were married, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1974, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the District of Maryland, a false and fraudulent income tax return on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $9,740.79, and that the amount of tax due and owing thereon was the sum of $1,683.60, whereas, as they then and there well knew, their joint taxable income for said calendar year was substantially in excess of $9,740.79, upon which said taxable income there was owing to the United States of America an income tax substantially in excess of $1,683.60.

In violation of Section 7201, Title 26, United States Code.

COUNT II

That on or about April 15, 1976, in the District of Maryland, Hancho C. Kim and Soonduk E. Kim, residents of Lanham, Maryland, who during the calendar year 1975 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1975, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the District of Maryland, a false and fraudulent income tax return on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $15,556.29, and that the amount of tax due and owing thereon was the sum of $2,939.72, whereas, as they then and there well knew, their joint taxable income for said calendar year was substantially in excess of $15,556.29, upon which said taxable income there was due and owing to the United States of America an income tax substantially in excess of $2,939.72.

In violation of Section 7201, Title 26, United States Code.

JERVIS S. FINNEY,
U.S. Attorney.
EDWIN R. PIERCE,
Special Assistant U.S. Attorney.
JEFFREY S. WHITE,
Special Assistant U.S. Attorney.

APPENDIX IV

NOVEMBER 14, 1977.

THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the Matter of Hancho C. Kim, a Witness Before the Committee on Standards of Official Conduct.

MEMORANDUM

The Special Counsel and the Special Staff conducting the Korean influence inquiry pursuant to House Resolution 252 submit this memorandum to advise Members of the Committee on Standards of Official Conduct ("Committee") with respect to the appropriate disposition of the claims set forth in the "Memorandum Setting Forth the Constitutional and Practical Reasons Why Hancho C. Kim should Not Be Compelled to Testify" (the "Memorandum") submitted by Hancho C. Kim ("Kim").

DISCUSSION

The facts

On February 9, 1977, in the wake of press reports of efforts by the Government of the Republic of Korea to influence United States foreign policy by paying off Members of Congress, the House of Representatives unanimously adopted House Resolution 252. That resolution "directs" this Committee *inter alia*, to conduct a "full and complete inquiry to determine whether Members of the House of Representatives accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof."

Pursuant to said resolution, on October 19 and 20, 1977, the Committee heard testimony in public session from Kim Sang Keun, who had been First Secretary and later Counsellor at the Korean Embassy in Washington, D.C., from October 1970 through November, 1976, at which time he defected to the United States (Tr. 101–05).[1] He testified that he had delivered $600,000 in cash to Hancho Kim which, according to Hancho Kim was to be used, and was in fact used in part, to buy off Members of the House of Representatives and influence them in the performance of their duties. (E.g., Tr. 130–31, 146–47, S8, S10–13, S19). Indeed, Hancho Kim, in reports that he made to Kim Sang Keun, indicated the identity of five Congressmen, referred to by the code name "Advance Guard," whom Kim had allegedly paid off in furtherance of this venture. (Tr. S23). Hancho Kim boasted to Kim Sang Keun that in carrying out the plan to pay off Members of Congress and to influence the Executive Branch of the United States Government, American media and the American academic community, he had spent over $700,000. (Tr. S12, S63). Hancho Kim is thus one of three individuals named in the Committee's public hearings who, according to proof adduced at those hearings, personally delivered cash to Members of Congress.

From the foregoing, it is apparent that the Committee must obtain at the earliest possible moment the testimony of Hancho C. Kim to determine to whom, if anyone, he made cash payoffs in amounts aggregating several hundreds of thousands of dollars, as he claimed in statements to Kim Sang Keun. Such testimony is essential to enable the Committee to fulfill its mandate.[2]

Accordingly, in pursuing the inquiry, Members of the Special Staff notified Kim's attorney of the Committee's desire to take his testimony in executive session. Kim's attorney advised that if called as a witness Kim would assert his Fifth Amendment privilege *not* to testify, on the grounds that his testimony might tend to incriminate him. The Committee thereafter voted unanimously to obtain an order of immunity from the United States District Court pursuant to the provisions of Title 18, U.S.C., Sections 6002 and 6005.

Thereafter, Committee Counsel filed with the United States District Court for the District of Columbia an application for an Order Conferring Immunity Upon and Compelling Testimony from Hancho C. Kim. The Department of Justice indicated that it had no objection to this order and that, in its opinion, its case against Kim and his wife could be adequately protected by immediately date stamping and sealing all evidence to be used against Kim in any trials. On October 13, 1977, Chief Judge William B. Bryant of the United States District Court for the District of Columbia signed the order submitted by Committee Counsel. That order provides in part as follows:

"(N)o testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

In the meantime, on September 27, 1977, a Federal grand jury sitting in the District of Columbia indicted Hancho Kim for conspiracy to defraud the United States and for perjury. The perjury count of the indictment charges Kim with lying when he denied before the grand jury having received money from Kim Sang Keun. That same day, Kim and his wife were indicted by a Federal grand jury sitting in Baltimore. Both were charged with income tax evasion for the years 1974 and 1975.

On November 3, 1977, Counsel to the Committee advised Kim's lawyer that the Committee intended to proceed to take testimony from Kim in executive session pursuant to the immunity order it had obtained. The following day, Kim's lawyer told Counsel to the Committee that in spite of the immunity order Kim believed he should still not have to testify and requested an opportunity to raise the reasons upon which Kim relied to justify this belief before the Chairman and Ranking Minority Member of the Committee. Kim's request was

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[1] References in parenthesis are to pages of the official transcript of public hearings held by the committee on October 19–21, 1977. References to pages of the transcript for the second day of hearings are preceded by the letter "S."

[2] The assertion by Hancho Kim that "there is no apparent need for the committee to question" Kim at this time is frivolous on its face. It will take a considerable amount of time following Hancho Kim's testimony to corroborate or refute his testimony and the reasons for resolving allegations against Members of Congress at an early date are compelling.

granted on Friday, November 4, 1977, and these proceedings followed.

I. KIM'S MAJOR CONTENTIONS: COMPELLING HIM TO TESTIFY WOULD VIOLATE HIS CONSTITUTIONAL RIGHTS

Kim's major contentions, which will be addressed individually below, all rest in part on the claim that if Kim testifies before this Committee at this time he will not receive a fair trial in any of his criminal cases. A complete answer to Kim's major contentions is that they are being asserted in the wrong place. The Courts are fully competent to see that Hancho Kim is not convicted except at a fair trial. If Hancho Kim can receive a fair trial, the Courts will see to it that he gets one. If Hancho Kim cannot receive a fair trial—and we firmly believe that he can—the Courts will set him free.[3] In either event, however, the legislative branch is separate from and co-equal to the other branches of government and it is entitled to the testimony of one of the three most significant witnesses in an extremely important Congressional investigation. There is no reason, in the words of Mr. Justice Harlan:

"to thwart the exercise of legitimate Congressional power, on the basis of conjecture that (the courts) may later abuse an individual's reliance upon federally assured rights. . . .

* * * * *

"Surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding. *Sinclair* v. *United States, supra* (279 U.S. at 295), or when crime or wrongdoing is disclosed. *McGrain* v. *Daugherty*, 273 U.S. 135, 179, 180. *Hutcheson* v. *United States*, 369 U.S. 599, 612, 618 (1961)."

Another complete answer to Kim's major contentions is that they are premature. Kim's testimony will be taken in executive session and may not be released to the public or the Justice Department until after Kim's criminal trials.

A. Kim's fifth amendment claims

Kim first argues that, notwithstanding the order of immunity which under the law must guaranty and does guaranty that his testimony will not be used in any way to incriminate him, his testimony will nonetheless be used to incriminate him because "his testimony will preview to the government the defenses he will assert at the trials" (Memorandum at 4), and it is "impossible to conclude that the government will not gain, however inadvertently, some advantage, however subtle" (Memorandum at 6) from Kim's testimony. This same claim was raised and squarely rejected in *Kastigar* v. *United States*, 406 U.S. 441, 459–462 (1971), which held that Courts *must* make sure that no testimony given under immunity by a defendant in a criminal case is used *in any way* in that criminal case and which held that Courts are competent to administer this rule. In *Kastigar* the Supreme Court wrote as follows:

"Petitioners argue that use and derivative-use immunity will not adequately protect a witness from various possible incriminating uses of the compelled testimony . . . It will be difficult and perhaps impossible, the argument goes, to identify, by testimony or cross-examination, the subtle ways in which the compelled testimony may disadvantage a witness, especially in the jurisdiction granting the immunity.

"This argument presupposes that the statute's prohibition will prove impossible to enforce. The statute provides a sweeping proscription of any use, direct or indirect of the compelled testimony and any information derived therefrom. . . .

* * * * *

"This total prohibition on use provides a comprehensive safeguard, barring the use of compelled testimony as an "investigatory lead," and also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures.

"A person accorded this immunity under 18 U.S.C. Sec. 6002, and subsequently prosecuted, is not dependent for the preservation of his rights upon the integrity and good faith of the prosecuting authorities. As stated in *Murphy:*

" 'Once a defendant demonstrates that he has testified, under a . . . grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent legitimate source for the disputed evidence, 378 U.S., at 79 n. 18.'

"This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.

"This is very substantial protection, commensurate with that resulting from invoking the privilege itself.

"The privilege assures that a citizen is not compelled to incriminate himself by his own testimony. It usually operates to allow a citizen to remain silent when asked a question requiring an incriminatory answer. This statute, which operates after a witness has given incriminatory testimony affords the same protection by assuring that the compelled testimony can in no way lead to the infliction of criminal penalties.

"We conclude that the immunity provided by 18 U.S.C. Sec. 6002 leaves the witness and the prosecutorial authorities in substantially the same position as if the witness has claimed the Fifth Amendment privilege. The immunity therefore is coextensive with the privilege and suffices to supplant it (footnotes omitted)."[4]

The reasoning of Kastigar and subsequent court decisions make clear that the fact that Kim has already been indicted is of no consequence. *United States* v. *Frumento*, 552 F.2d 534 (3d Cir. 1977); *In re Liddy*, 506 F.2d 1293 (D.C. Cir. 1974); *In re Buonacoure*, 412 F. Supp. 904 (E.D. Pa. 1976), are all cases in which a witness was compelled to testify under immunity after the witness had been indicted.

B. Kim's sixth amendment claims

Kim next argues that taking his testimony at this time will violate his Sixth Amendment right to counsel because (1) under the Sixth Amendment he is entitled "to be confronted with the witnesses against him" and (2) the burden of preparing for Kim's testimony before the Committee will interfere with his preparations for trial. Both claims are without merit.

1. The Sixth Amendment mandates confrontation of witnesses only by an "accused" in "criminal prosecutions." Here the Committee's proceedings are not criminal, and Hancho Kim is not an "accused." The Sixth Amendment does not apply.

2. Kim has retained one of the largest and most experienced criminal law firms in the country, which has been representing Kim for almost a year. The papers submitted by Kim make it clear that even at the present time a partner in the firm and two associates have responsibility for Kim's case. The suggestion that with these overwhelming resources available to him, Kim cannot prepare for testimony before the Committee and for trial, is frivolous on its face. In any event, if Kim's attorneys are impeded in their preparation of the criminal cases by Kim's testimony before this Committee, adjournments should be requested from the Courts.

C. Kim's due process claims

Additionally, Kim claims that compelling him to testify at this time is fundamentally unfair and, therefore, violates his constitutional right to due process of law. In *Hutcheson* v. *United States*, 369 U.S. 599, 628 (1962), the Supreme Court explicitly held that it is not "a violation of due process of law for a legislative committee . . . to inquire into matters for which the witness is about to be tried under a pending criminal indictment."

In *Hutcheson* the witness had been indicted in a state court and was then compelled to appear before a Senate committee. He refused to testify on due process grounds and was prosecuted for contempt.

The Supreme Court affirmed his conviction. There is nothing to distinguish *Hutcheson* from this case.[5]

Moreover, the instances of alleged unfairness set forth by Kim lend no support to his argument. Kim argues that compelling him to testify at this time somehow puts him on the horns of dilemma:

"Specifically, if Kim stands by his earlier testimony and denies receipt of any money from S. K. Kim he leaves himself open to a possible second indictment for perjury, since the grant of immunity explicitly excludes from its protection a prosecution for perjury. And, if he changes his testimony and admits receipt of the money he will have prejudiced his defense to the perjury indictment by having made inconsistent statements while under oath." (Memorandum at 8) (footnote omitted).

This argument is based on the mistaken view of the law that if Kim gives truthful testimony which is inconsistent with his allegedly perjurious testimony it could be admitted against him in his criminal trial.[6]

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[3] The Department of Justice clearly agrees that Kim can be tried following his testimony before this committee since it has indicated that it has no objection to the taking of Kim's testimony by this committee at this time.

[4] The cases cited by Kim (Memorandum at 5) to the effect that a person who has been indicted may not be compelled to testify before a grand jury have no applicability to this case. In those cases, the grand jury was being used to obtain evidence against the witness and the cases stand only for the proposition that a grand jury's job is over once an indictment has been filed. Such cases plainly do not apply where the witness is granted immunity by and testimony is taken before a committee of Congress.

[5] Kim's feeble attempt to distinguish the Hutcheson case on the grounds that there the committee agreed not to question Hutcheson on matters for which he was under indictment (Memorandum at 9) is of no avail since the Court assumed in deciding the case that the evidence which the committee did seek to elicit could have been used against him as evidence of guilt at his criminal trial. 369 U.S. at 607.

[6] In support of this argument Kim cites title 18, United States Code, sec. 1623(c) which provides that the crime of perjury may be established by proof that the defendant made "irreconcilably contradictory declarations" while under oath. This statute, the argument goes, establishes that if Kim contradicts his prior sworn statement, this contradiction could be used at his criminal trial to prove perjury. *Kastigar*, however, makes clear that the statute not be used in this manner and the Courts have explicitly so held. *United States* v. *Patrick*, 542 F.2d 381, 385 (7th Cir. 1976); see also *United States* v. *Frumento*, above, 552 F.2d at 541 n. 11. Moreover, title 18, United States Code, sec. 1623(c) by its terms applies only to testimony "before or ancillary to any court

Kastigar, above makes it clear, however, that no such use of the immunized testimony could be made. The precise argument made by Kim was raised and rejected in *United States* v. *Frumento*, 552 F.2d 534, 541–544 (3d Cir. 1977) in terms that apply with full force to Kim's argument. In *Frumento* the witness, Pisciotta, suggested the same dilemma suggested by Kim here:

"That dilemma, Pisciotta contends, consists of the following: if his testimony is untruthful (i.e., exculpatory as to him), he will be subject to prosecution for perjury; yet, if the testimony is truthful (i.e., inculpatory), it can be used against him to impeach his testimony at any subsequent prosecution. But Section 6002 imposes no such dilemma, mandates no such choice, and, as a result, permits no such consequences.

"The threat of a perjury prosecution, as it is implicated in half of Pisciotta's supposed dilemma is real enough.

* * * * *

"However, for his 'dilemma' to move this Court to rule that Section 6002 immunity does not provide the full measure of Fifth Amendment protection, he must demonstrate that his truthful immunized statements could be used against him. This he cannot do.

* * * * *

"We reiterate our adherence to this principle: except as the basis for a prosecution for perjury a witness's immunized testimony may not be used against him.

"Pisciotta's dilemma, then, is illusory. His testimony could be used against him only in the event of a prosecution for perjury, but in no other way and for no other reasons. Pisciotta is fully protected by Section 6002 immunity from having any truthful testimony he may give—even though inculpatory—used against him. (Footnotes omitted)."

II. KIM'S MINOR CONTENTIONS: MARITAL PRIVILEGE; ILLEGAL ELECTRONIC SURVEILLANCE

In addition to the claims set forth above, Kim raises two additional arguments which are completely spurious: First he asserts that the marital privilege justifies him in refusing to testify in a Congressional proceeding even though his wife is not a party to the proceeding; and second, he alleges that he is justified in refusing to answer questions because the questions may be based upon illegal electronic surveillance, even though there is no evidence that Kim or his wife have ever been the subject of such surveillance.

A. Marital privilege

The simple and complete answer to Kim's claim that the marital privilege justifies his refusal to testify is the well established rule that "the privilege applies only in favor of a person *against whom, as a party to the cause, the testimony of a wife or husband* is offered." 8 *Wigmore on Evidence*, Section 2234, page 232 (McNaughton rev. 1961) (emphasis in the original). Since Kim's wife is plainly not a party to any proceedings before the Committee and, of course, could not be, the marital privilege has no application in this case.[7] Thus, Kim's wife is in no way prejudiced by her husband's testimony before the Committee and the marital privilege does not apply.

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or grand jury" and, therefore, does not apply to testimony before congressional committees. (Title 18, United States Code, sec. 1621, which does apply to congressional committees, has no similar provision.)

[7] Kim's testimony before this committee could not be offered in any proceeding which does involve Mrs. Kim since it would be mere heresay in that proceeding. 4 *Wigmore on Evidence*, section 1079, p. 180 (Chadbourne ed. 1972).

B. Electronic surveillance

Kim next claims that if called to testify before the Committee he is entitled to an opportunity to determine whether the questioning before the Committee is in any way derived from illegal electronic surveillance. (Memorandum at 13).

Annexed hereto as Exhibits A and B are sworn statements of John W. Nields, Jr., Chief Counsel to the Special Staff to the Commitee on Standards of Official Conduct and Thomas M. Fortuin, Counsel to the Special Staff, who will be responsible for the questioning of Mr. Kim and who have knowledge of the records and evidence obtained by the Special Staff on which questioning of Kim will be based.

These affidavits establish that there is no evidence that Kim has ever been the subject of electronic surveillance and that any questioning of Kim will not be based upon any illegal electronic surveillance. The law is well established that, absent some showing by the witness of illegal electronic surveillance, there is no burden on the government even to "confirm or deny" the existence of wiretapping. *In re Grand Jury (Vigil)*, 524 F. 2d 209, 214 (10th Cir. 1975), cert denied, 425 U.S. 927 (1976). In any event, the law is clear that the statements of Nields and Fortuin are a more than sufficient response to Kim's argument. *In re Archuleta*, Dkt. No. 77–1286, Slip Op. 5321, 5326–5328 (2d Cir. August 19, 1977); *United States* v. *Yanagita*, 552 F. 2d 940 (2d Cir. 1977); *United States* v. *Grusse*, 515 F. 2d 157, 159 (2d Cir. 1975) (Lumbard, J., concurring); *See Gelbard* v. *United States*, 408 U.S. 41, 71 (1972) (White, J. concurring) ("Of course, where the Government officially denies the fact of electronic surveillance of the witness, the matter is at an end and the witness must answer.").

CONCLUSION

Kim has set forth no grounds justifying a refusal to answer when called to testify before the committee.

Respectfully submitted.

LEON JAWORSKI
Special Counsel.
JOHN W. NIELDS, Jr.,
Chief Counsel.
THOMAS M. FORTUIN,
Counsel.

EXHIBIT A

Statement of John W. Nields, Jr.

1. I am Chief Counsel to the Special Staff conducting the Korean Influence Inquiry pursuant to House Resolution 252 on behalf of the Committee on Standards of Official Conduct of the United States House of Representatives.

2. I submit this statement in response to claims made by Hancho C. Kim that the questioning of him by the Committee may be based upon illegal electronic surveillance.

I have responsibility for the questioning of Hancho C. Kim, a witness before the Committee, along with Thomas M. Fortuin, Counsel to the Special Staff. I also have knowledge of all of the files and records of the Special Staff.

4. I am not aware of any electronic surveillance, legal or otherwise, in which the voice of Hancho C. Kim was overheard. In any event, the questioning of Hancho C. Kim will be based exclusively on investigations conducted by the Special Staff, which did not include any electronic surveillance or the obtaining of information gathered therefrom.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of November, 1977.

JOHN W. NIELDS, Jr.

EXHIBIT B

Statement of Thomas M. Fortuin

1. I am Counsel to the Special Staff conducting the Korean Influence Inquiry pursuant to House Resolution 252 on behalf of the Committee on Standards of Official Conduct of the United States House of Representatives.

2. I submit this statement in response to claims made by Hancho C. Kim that the questioning of him by the Committee may be based upon illegal electronic surveillance.

3. I have responsibility for the questioning of Hancho C. Kim, a witness before the Committee, along with John W. Nields, Jr., Chief Conusel to the Special Staff. I also have knowledge of the files and records of the Special Staff upon which such questioning will be based.

4. I am not aware of any electronic surveillance, legal or otherwise, in which the voice of Hancho C. Kim was overheard. In any event, the questioning of Hancho C. Kim will be based exclusively on investigations conducted by the Special Staff, which did not include any electronic surveillance or the obtaining of information gathered therefrom.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of November, 1977.

THOMAS M. FORTUIN.

Certificate of service

I hereby certify that on November 14, 1977, I served a copy of the attached Memorandum and the Exhibits thereto on the attorneys for Hancho Kim by causing a copy thereof to be hand-delivered to:

William & Connolly, 1000 Hill Building, Washington, D.C. 20006. Attention: David Povich, Esq.

THOMAS M. FORTUIN.

APPENDIX V

(Before the Committee on Standards of Official Conduct of the House of Representatives.)

In re Hearings conducted Pursuant to House Resolution 252.

MEMORANDUM IN RESPONSE TO MEMORANDUM OF SPECIAL COUNSEL WITH RESPECT TO CLAIMS OF HANCHO KIM

In a Memorandum dated November 11, 1977, Hancho C. Kim, by his undersigned counsel, set forth the legal and practical reasons why he should not be compelled to testify before the Committee at this time. In an effort to answer that Memorandum, Special Counsel to the Committee has made several arguments in favor of calling Mr. Kim. We appreciate this opportunity to respond briefly to those arguments.

I.

Special Counsel misconceives the nature of the committee's obligation to accommodate its inquiry with Mr. Kim's constitutional rights

Both in its Memorandum of November 14, 1977, and during oral argument before the Chairman and Ranking Minority Member of the Committee, Speical Counsel has suggested that Mr. Kim's constitutional claims are premature and are addressed to the wrong forum. This position erroneously assumes that only the court and not the Committee has the obligation to safeguard Mr. Kim's constitutional rights.

As the Supreme Court stated in *Baranblatt* v. *United States*, 360 U.S. 109, 112 (1959),

"[T]he Congress, in common with all branches of the Government, must exercise its powers subject to the limitation placed by the Constitution on governmental action more particularly in the context of this case the relevant limitations of the Bill of Rights."

We respectfully submit that the Special Counsel has ignored this responsibility and the resultant obligation of the Committee to accommodate its legitimate legislative inquiry with the constitutional rights of an already indicted defendant.

Indeed, rather than being premature, the

claims made by Mr. Kim are timely and properly addressed to the Committee. Justice Brennan's statement in *Hutcheson* v. *United States*, 369 U.S. 599, 624 cited in our earlier Memorandum, warrants repetition:

"When a congressional inquiry and a criminal prosecution cross paths, *Congress* must accommodate the public interest in legitimate legislative inquiry with the public interest in securing the witness a fair trial. Whether a proper accommodation has been made must be determined *from the vantage point of the time of petitioner's appearance before the Committee.*" (Emphasis added.)

Despite Special Counsel's invitation to do so, we therefore respectfully urge the Committee not to abdicate its clear responsibility. The "proper accommodation" may be accomplished by simply delaying the questioning of Mr. Kim until such time as it would not prejudice his criminal trials.

II.

Special Counsel has not adequately answered Mr. Kim's claims

A. Violation of Privilege Against Self-Incrimination

Special Counsel argues that *Kastigar* v. *United States*, 406 U.S. 441 (1972), is dispositive of Mr. Kim's claim that compelling him to testify at this time violates his privilege against self-incrimination. However, *Kastigar* dealt only with a challenge to the immunity statute *on its face;* it did not foreclose inquiry as to whether the statute provided adequate protection as applied in a particular instance. Judge Sirica made this point in *Application of United States Senate Select Committee on Presidential Campaign Activities*, 361 F. Supp. 1270, 1279 (D.D.C. 1973); *accord, In re Baldinger*, 365 F. Supp. 153 (C. D. Cal. 1973). Indeed, as noted in our earlier Memorandum, the Courts have recognized that there are practical limitations to use immunity as a protective device which render it constitutionally inadequate in certain circumstances. *See, e.g., Goldberg* v. *United States*, 472 F. 2d 513 (2d Cir. 1973).

Nothing in Special Counsel's argument refutes the contention that use immunity cannot provide protection coexistence with the Fifth Amendment in the present circumstances. For instance, Special Counsel cannot provide an absolute guarantee that no information will be released—however inadvertently, by the Committee or its staff. Nor can Special Counsel assure that action of the Committee subsequent to Mr. Kim's testimony—such as a contempt citation or the subpoenaing of additional witnesses—will not aid the Government in its prosecution of Mr. Kim.

Special Counsel places great weight on three cases, *In re Liddy*, 506 F. 2d 1293 (D.C. Cir. 1974); *United States* v. *Frumento*, 552 F. 2d 534 (3d Cir. 1977); *In re Buanacoure*, 412 F. Supp. 904 (E.D. Pa. 1976). However, none of these cases involves the grant of immunity to an indicted individual awaiting trail.

In re Liddy, supra, dealt with the propriety of a grant of immunity to an individual already convicted of a crime. The fact of conviction was critical to the Court's decision. After recognizing "that there is respectable authority for the propositions that one who has been formally charged may not be called before the grand jury to testify about his alleged crimes unless he knowingly consents", 506 F. 2d at 1299, the Court stated:

"Liddy is not in the position of one who has been indicted and. *before facing trial*, has been called to testify before the indicting grand jury. Rather, Liddy has been indicted *and convicted* for the crimes about which the grand jury now seeks his testimony. *Id.* at 1300."

Similarly, *United States* v. *Frumento*, *supra*, involved an already convicted individual. In the very first sentence of its opinion, the Court stated:

"This appeal requires us to determine whether a defendant *who has been tried and convicted* but not yet sentenced, and whose post-trial motions were still pending at the time the government sought his testimony at the trial of his codefendants, may be compelled to testify under a grant of immunity. 552 F. 2d at 535. (Emphasis added.)"

Nor is *In re Buonacoure, supra*, authority for the Special Counsel's position. In that case, the individual was indicted only after he refused to testify pursuant to an immunity order. Indeed, the Court explicitly left open the question of whether the indictment would have to be dismissed if the individual expressed a willingness to testify. 412 F. Supp. at 908. Thus the Court did *not* decide the question of whether the Government should be required to dismiss the indictment, thereby expunging Buonacoure's status as an indicted defendant, as a *quid pro quo* for his testimony. This Committee is not in a position to offer such a *quid pro quo*.

In sum, we stand on our earlier assertion that an indicted individual, on the eve of trial, has never been compelled to testify in the circumstances involved here. Special Counsel admitted this fact before Chief Judge Bryant, and his efforts to find examples have failed to turn up an analogous application of use immunity.

B. Violation of Sixth Amendment Rights

Once an individual has been indicted, the full panoply of Sixth Amendment rights attach. These rights follow him wherever he is compelled to appear and testify about the subject matter of the indictment. They are, therefore, fully applicable here.

Special Counsel has failed to respond to the core of Mr. Kim's Sixth Amendment argument; that is, that the right to assistance of counsel guarantees that an individual about to stand trial will not be compelled to disgorge information to anyone other than defense counsel. The Committee's proposed compulsion of testimony is in direct conflict with that right and with the critical right to confront and cross-examine witnesses.

In addition, Special Counsel did not respond to the argument that the preparation of Mr. Kim for testimony before this Committee will constitute a major interference with preparation for trial.

C. Violation of Due Process

Quoting from the *dissent's* statement of the issue, Special Counsel states: "In *Hutcheson* v. *United States*, 369 U.S. 599, 628 (1962), the Supreme Court explicitly held that it is not a 'violation of due process of law for a legislative committee . . . to inquire into matters for which a witness is about to be tried under a pending criminal indictment.' " Memorandum at 9. A careful reading of the case, however, reveals that the majority made no such holding. Indeed, in light of its response to the dissent, it is fair to say that if the majority viewed the issue in those terms, it would have found a violation of due process.

First, it is important to note that the *Hutcheson* Court did not consider the self-incrimination implications that result from compelling an indicted individual to testify about the precise subject for which he had been indicted. Rather than wrestle with that serious question, the Court expressly left it for another day. 360 U.S. at 612.

The Court was concerned only with whether it was there inherently unfair to compel Hutcheson to testify. While the majority found no due process violation, it is clear that central to the result was the fact that the questions being asked *did not* bear directly on the witnesses' guilt or innocence on the State charges. In the present case, the proposed inquiry *does* bear directly on the question of guilt or innocence of the crimes charged. In these circumstances, *Hutcheson* supports the conclusion that the due process clause prohibits this inquiry.

The thrust of Mr. Kim's due process argument is that the Committee is placing him in a constitutionally intolerable position between the Scylla of a perjury charge and the Charybdis of possible self-incrimination. Despite Special Counsel's assertion to the contrary, that dilemma is real rather than illusory. If Mr. Kim is compelled to repeat his earlier testimony, he faces the very real prospect of a *second* perjury indictment. It is no answer to say that the prosecutorial decision will be made by the Department of Justice, for the fundamentally unfair situation of forcing Mr. Kim to repeat his testimony or confess to criminal charges will have been the Committee's creation.

D. Marital Privilege

Special Counsel has responded to the claim of marital privilege by arguing that it has no applicability because Mrs. Kim is not a party to the Committee's proceedings. This narrow view of the privilege is patently unacceptable.

The marital privilege is not an evidentiary rule grounded upon ensuring the admissibility of only reliable evidence; rather, it reflects the far more important and far-reaching policy of safeguarding marital and familiar harmony.

Mr. and Mrs. Kim are co-defendants in a criminal indictment. Under circumstances, the underlying policy of the marital privilege is fully applicable here. To say that Mrs. Kim is not a party to the proceedings advances nothing, because strictly speaking there are *no* parties to the proceedings. The highly technical approach taken by Special Counsel ignores this fact and, more importantly, the sound policies that justify the privilege.

Conclusion

For the reasons set forth both here and in our earlier Memorandum, we respectfully submit that it would be legally improper and practically unwise to compel Hancho Kim to testify at this time. We respectfully request that the questioning of Mr. Kim be postponed until a time when the Committee's important mandate may be accomplished without violating Mr. Kim's constitutional rights.

Respectfully submitted.

WILLIAMS & CONNOLLY,
KENDRA E. HEYMANN,
DAVID POVICH,
LON S. BABBY,
Counsel for Hancho Kim.

APPENDIX VI

[Korean Influence Investigation Pursuant to H. Res. 252]

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, D.C., May 9, 1978.

Re Hancho C. Kim.
DAVID POVICH, Esq.
Williams & Connolly,
Washington, D.C.

DEAR MR. POVICH: This letter is to inform you that the Committee subpoena directed to your client Hancho C. Kim, dated and served on him on November 17, 1977, and adjourned *sine die* on January 12, 1978, is returnable on Monday, May 15, 1978, at 10:00 a.m. in Room 2360 of the Rayburn House Office Building.

Sincerely,

JOHN J. FLYNT, Jr., *Chairman.*

APPENDIX VII

(United States District Court for the District of Columbia.)

Misc. No. 77-0208; filed October 14, 1977

In the Matter of the Application of—

(United States House of Representatives Committee on the Standards of Official Conduct.)

ORDER CONFERRING IMMUNITY UPON AND COMPELLING TESTIMONY AND PRODUCTION OF INFORMATION FROM HANCHO C. KIM

The United States House of Representatives Committee on the Standards of Official Conduct, having made written application pursuant to Title 18, United States Code, Sections 6002 and 6005, for an order conferring immunity upon Hancho C. Kim (the "Witness") and compelling him to testify and provide other information before it in any proceeding held pursuant to the authority of H. Res. 252, 95th Cong., 1st Sess., and the Court finding that all procedures specified by Section 6005 have been duly followed, it is hereby this 13th day of October, 1977,

Ordered that the said Witness in accordance with the provisions of Title 18, United States Code, Sections 6002 and 6005, shall not be excused from testifying or providing other information in any proceeding of the aforesaid Committee held pursuant to the authority of H. Res. 252, 95th Cong., 1st Sess., on the ground that the testimony or other information sought may tend to incriminate him; and

It is further ordered that the said Witness appear in accordance with any duly authorized Committee subpoena and testify and provide such other information that is sought with respect to the matters under inquiry and investigation by said Committee; and

It is further ordered that no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against the Witness in any criminal case, except a prosecution for perjury, giving a false statement, or failing to comply with this Order.

WILLIAM B. BRYANT,
Chief Judge.

APPENDIX VIII

[House of Representatives Hearings Before the Committee on Standards of Official Conduct—Korean Investigation—Deposition of Hancho C. Kim]

KOREAN INVESTIGATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, D.C., May 15, 1978.

The parties to the deposition met at 10:05 a.m., in room 443, Cannon House Office Building.

Present: Representative Richardson Preyer.

Also present: Thomas M. Fortuin, Counsel; Jeffrey Harris, Deputy Chief Counsel; and David Povich and Robert Barnett, Counsel to witness.

Mr. PREYER. Mr. Kim, will you be sworn?

Do you solemnly swear the evidence you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KIM. I do.

Mr. PREYER. Thank you, Mr. Kim.

Mr. FORTUIN. The record should reflect the continued testimony of Hancho C. Kim, pursuant to the order of immunity previously identified for the record.

Mr. Kim, did there come a time when you received some money from Yim Sang Keun?

Mr. KIM. Would you kindly raise that question again, please?

Mr. FORTUIN. Yes.

Did there come a time when you received some money from Kim Sang Keun?

Mr. KIM. I don't understand. Still I don't get it, that money. What money you specifically have in your mind?

Mr. FORTUIN. Any money.

Mr. POVICH. I am going to advise the committee that at the moment there is a criminal tax case pending against the witness and his wife, which is the direct product of the allegations concerning receipt of money by him from Sang Keun Kim, the very subject matter of your inquiry.

As you know, there has already been a trial. Sang Keun Kim has testified that he gave Mr. Kim certain sums in 1974 and 1975, and in connection with that trial also is Mr. Kim's denial that he received any money from Sang Keun Kim in 1974 and 1975, his denial under oath before a grand jury, and Mr. Kim was convicted of perjury with respect to his denial, and conspiracy with respect to his receipt of the money.

In light of that, and because of the pending tax case against him for the receipt of the very money in question, I request him concerning that at this time. The tax case is pending in Baltimore. No trial date has been set, but I am hopeful that the matter can be tried within a reasonable period of time.

We have previously indicated to the committee that we have no objection to answering any questions concerning Mr. Kim's contact with any Member of Congress or any American Government official, but when you get down to the specific question of the receipt of this money, which he has previously denied, and he has denied under oath, and he has been convicted of, I question whether or not it is really a proper inquiry at this time.

We don't wish to obstruct the committee in pursuit of information, but really for all intents and purposes, that matter has been laid to rest.

Mr. FORTUIN. I don't understand how when he got convicted for having denied receiving the money before that lays it to rest. It seems to me it is to the contrary. It hasn't been laid to rest at all. We don't know where the money came from or what happened to it from this witness.

Mr. POVICH. No. You have a witness who has testified to the very specifics with respect to these transactions and this money, and the jury found that the Government had established those matters, I assume beyond a reasonable doubt, and convicted him. If the committee is saying that they are not satisfied with that——

Mr. FORTUIN. No, we are not saying anything. We want to know from this witness what he did with the money, that is all.

Mr. POVICH. This witness has denied receiving the money. He denied under oath. He still denies receiving the money. The conviction doesn't change matters any. If it changed matters, I would be very happy to come in at this stage and say all right, in the normal case, in a criminal case, where a person is convicted you say okay, we have been convicted, I am now willing to tell you everything that happened, but in this case the conviction does not change this witness' testimony. He still denies ever receiving the money.

Mr. FORTUIN. He hasn't denied anything. He is going to have to deny that on the record and under oath.

Mr. POVICH. The problem is that you are inquiring into the very matters of the pending tax case. If you want to ask him the very question that he was asked before the grand jury, did you receive any money, which is essentially what this is, and he says no, and he has now been convicted of it, his answer is the same.

Mr. FORTUIN. Let's get his answer then.

Mr. POVICH. I think that he is in an intolerable situation. He has a pending tax case against him concerning this money. He has just been convicted of answering the very same question that you have already asked. You may want to put it on the record, but it is very detrimental to him at this period of time, and I question how much information.

Mr. FORTUIN. May we have a brief recess?

Mr. PREYER. We will take a short recess. We will be right back.

[Recess.]

Mr. PREYER. We will resume the deposition.

The Chair will direct the witness to answer the question. I would overrule the objections to it.

Mr. BARNETT. Congressman Preyer, can I say something?

Mr. PREYER. Sure.

Mr. BARNETT. It seems to me that Tom is playing games with us, and I think that is unfortunate. We had an understanding up front that Mr. Kim would answer everything possible, but that when the trials were pending, as one of them still is, it would put him in an intolerable position to answer certain questions. We have offered and I think have been as forthcoming as possible in answering any questions about contacts with the U.S. officials or U.S. Congressmen, and in fact, strangely, when Tom restated what he was interested in a moment ago, he said he is interested in what happened to the money, not where the money came from or where it was received.

We also have been willing to answer anything about any payments, and I think have done so.

It puts Mr. Kim in an intolerable position to be asked this question, and it is clear that we were brought up here simply for the purpose of putting him in an intolerable situation, because that was the first question out of the interrogator's mouth. I think that if you would not reconsider your ruling, we would ask for the opportunity to appear before the full committee, and argue to the committee as I understand we have the right to do that at this time that question is both unnecessary and inappropriate, and that is with all due respect to you and the ruling you have made. But I am sure you understand the position we are put in.

Mr. PREYER. Surely.

Mr. FORTUIN. Let me respond to that, because you accused me of playing games with you and in a way I think that is completely unfair. We reached an agreement prior to the first trial which is different from what you state, Mr. Barnett. It was the following, that we would not go into certain areas that the witness claimed to have certain problems if we could be satisfied by the witness' testimony in other areas that we did not have to go into them. In other words, if we were satisfied that the witness was being candid and upfront with us in discussing his dealings with members of Congress, we would not go into that until the trial was concluded.

Mr. BARNETT. The trials were concluded.

Mr. FORTUIN. I don't know whether it is trial or trials.

Mr. BARNETT. I think John Nields will remember.

Mr. FORTUIN. John Nields and I, whatever, we have gone over this testimony. We have had this witness here on, I believe, four occasions and we are not frankly satisfied by his testimony, and Mr. Nields and I and Mr. Harris having discussed it have decided that we could not be satisfied with the witness' testimony, that his testimony is not satisfactory in that area, and it has always been the understanding that we had every right at any time to inquire of the witness in any area if we were not satisfied with the testimony that he gave.

Frankly, we are not satisfied with his testimony. We have always had the right to ask these questions, and at your request, we have foreborne until the critical trial which is the first trial, is over, and we don't believe that we can forebear any longer.

There is testimony before the committee in public that the man received $600,000 in cash with the understanding that he would

distribute it to politicians, principally members of Congress, and I just don't see how we can responsibly leave that testimony on the state of this record without inquiring of this witness if he got that money and if he did get it, what he did with it, and what his understanding was of what he was to do with it when he got it. It seems to me that is very simple.

Mr. POVICH. You have asked him about the payments of money to congressmen, and we have permitted him to answer in those areas, and he has answered fully and you have the benefit of your entire investigation, and there has never been any questions as far I know by the committee or by the U.S. attorney which has equally investigated this matter that he has ever paid any congressman any money.

Mr. FORTUIN. That is what we are trying to find out.

Mr. POVICH. You know you can always say you are trying to find that out. There comes a time when somebody has to be satisfied as the U.S. attorney was in open court when he said we are satisfied he didn't pay any money, he must have put in his pocket.

Now if you have some information at all that any congressman received any money from this man, then I am perfectly happy to say that his denials of that may not be satisfactory to the committee, but I really question whether or not the committee in fact has any information from congressmen or anyone else other than S. K. Kim, and that information is second or thirdhand at most, that this person was supposed to have given or did in fact give any money to any congressman.

Mr. HARRIS. Mr. Povich, one of the other areas that the U.S. attorney is not investigating and that this committee has been specifically mandated to investigate by the Congress is not only the question of whether Mr. Kim gave money to any congressman, but whether any Korean Government official directed him to or conceived or planned to pay Members of Congress, and this committee would be interested to know, for example, the money that was given to an individual, and that individual was supposed to pass it on to Members of Congress. Whether he did or did not is a separate question, but both questions are of interest to the committee, and hence your argument that you just made I think falls short of our complete inquiry.

We are not only interested in what in fact the witness may have done with the money, but what he was directed to do with it if he got it, who directed him, and what his understanding was of the purpose of the transfer to him.

Now whether he carried out that purpose is a separate question.

Mr. POVICH. Are you saying now you are limiting your inquiry as to whether——

Mr. HARRIS. What I am saying, all I am saying is that——

Mr. POVICH. Because those questions have been answered as well.

Mr. HARRIS. What I am saying is that until we get past the question of whether he received the money, the other questions which are of critical importance to us, namely, what was the purpose of the receipt of the money, what was he supposed to do with it, things of that nature, don't arise.

Mr. POVICH. Right. In other words, you are saying that unless there was receipt of the money, then in fact there is no further need to inquire into the rest.

Mr. HARRIS. Well, if he didn't receive the money or if there was no agreement to receive money—what I am saying is that the receipt of the money in one sense is a predicate for the other questions. However, even if he didn't receive it, let's assume there was a plan which was never carried out, that would be of interest to us also.

Mr. POVICH. That there was a plan that was never carried out?

Mr. HARRIS. Let's assume, for example, that the evidence was that some officials of the Korean Government said the money would be sent and it never was. We would be interested to know that also, and that is of importance to us. Basically what I am saying, what I am trying to do is demonstrate to you that our interest is very broad in this matter and that these are matters that are of critical importance to us. We have interests beyond the question of whether he actually ever delivered money to members of Congress. Of course, we are interested in that as well.

Mr. POVICH. But these questions essentially have already been asked and answered, and what you are saying is that you want him to reanswer them again.

Mr. FORTUIN. No, no, we want him to answer them truthfully. He has answered them falsely. Now we want him to answer them truthfully. That is pretty simple it seems to me.

Mr. POVICH. That is not true at all.

Mr. FORTUIN. We would like the truth.

Mr. POVICH. That is not true at all. You are simply saying that you want him in the posture again of being prosecuted again for the very same matters which he has previously testified to. If in fact the earlier testimony is true, it is not going to change. You want to prosecute him again for it. He has already been prosecuted once.

What I tried to do is avoid this statement. What I tried to do was to have you question the witness to matters that he could answer, which related to his contact with congressmen and the Congress of the United States and government officials, which I thought was the very core of the committee's inquiry.

When you get now into other areas which he has previously answered for which he has been the subject of criminal trial for perjury and which he has been convicted essentially you are putting him nothing more than back in the position of restating this very same position, which is his position, and then saying okay, now we will go ahead and prosecute him again for perjury and I think that that is an intolerable position to place this witness in.

Under the circumstances, I have to join with Mr. Barnett and most respectfully ask, Judge Preyer, that the committee consider this.

Mr. PREYER. As you and Mr. Barnett have indicated, you do have the right to appeal this to the full committee. I take it that the witness will decline to answer the question.

For the sake of appealing it to the full committee, I think we should get this declination on the report.

Mr. POVICH. Yes, I think we can state that the witness does not wish to do so until the matter is considered by the full committee.

Mr. FORTUIN. Not until Mr. Povich—the witness must answer the question now or refuse to answer the question. If he refuses to answer the question, that conduct is contemptuous.

Mr. BARNETT. No.

Mr. FORTUIN. Wait a minute, Mr. Barnett, let's get it straight. He cannot then purge that contempt after the committee makes a ruling in the other direction. The ruling here is the ruling.

Mr. BARNETT. He has not refused to answer the question. Let's be clear. We have asked for the right to argue to the full committee our objection to the question, and then he will decide whether to refuse to answer based upon the ruling of the committee. We do not wish to put him in contempt. I think we have tried to avoid doing that.

Mr. POVICH. We have been here four times in an attempt to avoid that.

Mr. BARNETT. Five.

Mr. POVICH. Five.

Mr. FORTUIN. And the witness has been evasive, nonresponsive on each and every occasion.

Mr. POVICH. That remark, I think, is inappropriate. The record will speak for itself.

Mr. HARRIS. Let me just put a procedural matter on the record so we are clear about what is happening here because I think there is some confusion. The procedure here is that the witness will either answer or refuse to answer. What happens before the full committee is an appeal. It is not an argument de novo on the contempt. The contempt is committed here this morning by the refusal. If the committee does not agree with your position when you argue before it, the committee does not agree with your argument, the contempt has already been committed, and at that point you do not have the opportunity to purge, and I think we ought to be very clear about that because I think there may be some confusion.

Mr. BARNETT. Judge Preyer, Mr. Kim does not refuse to answer nor does he decline to answer. We ask that you allow us to argue to the committee as to our basis for his objection to the question.

Mr. PREYER. I think you can argue that point to the committee, but for the purpose of the record here, I think the Chair would have to rule that the witness has declined to answer the question or refused to answer the question, and the matter is referred to the full committee to determine whether or not the witness should be held in contempt of Congress.

Does that put it in the proper parliamentary——

Mr. FORTUIN. I think you should direct the witness to answer the question and we should have his refusal on the record and then you should find that his refusal is contemptuous here and then in essence the committee either decides to back you up and go along with the proceeding or it doesn't, but it seems to me the contempt is committed here and now.

Mr. BARNETT. Judge Preyer, I think it is in no one's interest to force a contempt of Congress. I would ask that we be allowed to appear before the committee and make our argument before we all get ourselves in a situation from which no one can return.

Mr. FORTUIN. The record should be clear that Mr.——

Mr. BARNETT. And I think the chairman would be pleased to allow us that procedure if asked, and I think probably the ranking minority member would agree to that procedure, given what is clearly a misunderstanding about an understanding agreement that has been reached here, in an unfortunate situation in a pretrial context. So I would ask, Judge, that we proceed to the committee without forcing the issue.

Mr. FORTUIN. Judge, the record should be clear that all the objections that were raised here today were previously raised at a hearing before Mr. Flynt and Mr. Spence. Briefs were submitted. We submitted a brief. Mr. Povich and Mr. Barnett submitted a reply brief. We had an oral argument going on for an hour and the very same objections that they are now making were overruled.

Mr. POVICH. Right, but the record should also reflect that in light of all that, this question was not asked. This question was not asked. We have been here four or five times, I don't know, Judge Preyer, but each time we have tried to give you the information without answering the very same question or without being asked and being required to answer the very same question for which this person was just convicted of answering, so the posture is a little different than to say that the matter has been fully argued and heard.

It was fully argued and it was fully heard, and in light of that argument, and in light of those hearings and after consideration by the committee and its chairman and the

ranking minority members, the questions weren't asked, and now they are, and we simply urge most respectfully that before the question is asked and this person be ordered to answer, that the matter be taken before the committee which heard it before.

Mr. BARNETT. Judge, if this man answers the question yes, he is potentially subject to a serious tax liability. He is given the leaks that have come out of the committee about this man before which I am sure you are familiar with also subject to basically removing his right to appeal his previous conviction, because as Justice Frankfurter once said, judges read the newspapers. If he says no, he is subject to perjury, another perjury charge on the same grounds as to which he has already been convicted, and if he says no, I suppose he is also subject to contempt of Congress proceedings, so he is in an intolerable situation, and I think we all understand that, and we ought to find a way to bring it before the committee and let the committee decide how to proceed.

Mr. PREYER. I think it is for the committee to decide how to proceed and to determine if they wish to make any sort of accommodations, but I think the role of the Chair here would not be to make that accommodation or that decision. My role would be limited to directing him to answer the question, and then if he refuses, to send the whole matter to the full committee. Let them resolve the various questions involved. As a matter of procedure, I think that is the role of the Chair here.

Mr. BARNETT. Judge, for the reason that Kim articulated his refusal to answer would put him in an irrevocable situation. That is why I have asked that you refer it to the committee which is your prerogative without directing him to answer and putting an answer on the record. I think the Chair does not want to put himself in the position, allow me to say I don't think you want to put yourself in the position, of in effect deciding this question alone, which is what you would do if you direct him to answer.

We would like to have the opportunity to make our argument to the committee. If we lose, then we will all decide how to proceed, but your directing him to answer will in effect decide the question.

Mr. PREYER. The Chair thinks the way to bring it to the committee procedurally is to direct him to answer, and I have no doubt the committee would have full power to make any sort of accommodations that it sees fit to meet the kind of objections you are raising.

Mr. BARNETT. Could we take a brief adjournment?

Mr. PREYER. Surely.

[Recess.]

Mr. POVICH. We would like to renew our request that the full committee and the chairman and the ranking minority member consider the situation we are in. We don't wish to be in contempt of the committee. We have appeared on four occasions, in an effort not to be in contempt and give the committee the information which it has requested. However, we are in an extremely difficult position which we would like to argue to the committee, and the witness does not decline to answer. He doesn't refuse to answer. He simply at this point, we wish to really stand mute until such time as the committee can consider the situation. If the committee then does consider it, then we will come back and either have to answer or decline or refuse to do so.

Mr. PREYER. Procedurally the Chair feels that it must rule that the witness either answer or refuse to answer, and that if he refuses to answer, that his refusal would be contemptuous and the matter would be referred on appeal to the full committee.

I suggest you formally ask him the question.

Mr. FORTUIN. Mr. Kim, do you recall the question?

Mr. POVICH. I believe the question was, did you receive any money from Sang Keun Kim?

Mr. FORTUIN. That is correct.

Mr. POVICH. Do you recall the question?

Mr. KIM. Yes, I do.

Mr. FORTUIN. What is your answer?

Mr. POVICH. The answer I would make for the witness is the answer which I have just given to Judge Preyer. We don't decline. We don't refuse. In essence, we are mute until such time as we have the advice of the full committee, the chairman and the ranking minority member. We make that request most respectfully in every attempt not to be contemptuous of this committee, to resolve what we think is a very, very difficult problem, one which we have fought with for a long time, and we most respectfully request that the matter be brought to the chairman's attention and that he advise us to what the committee's ruling is.

Mr. BARNETT. And we ask for the opportunity to appear before the committee on behalf of Mr. Kim.

Mr. PREYER. The Chair rules that the witness has refused to answer the question, and that his refusal is contemptuous.

The matter is referred to the full committee on appeal from that ruling, and the witness and counsel are requested to appear before the full committee and permission to argue their position is granted.

The deposition will recess at this time.

Mr. FORTUIN. Judge, before we adjourn——

Mr. BARNETT. I think you shouldn't have a live phone there. Why don't you handle that and then hang it up? It is probably the Washington Post.

Mr. FORTUIN. My understanding is that the committee is meeting at 5:30 on Wednesday, and I would think that the subpoena should be adjourned for further proceedings at that time and that counsel should be directed to make any submissions in a written form that they intend to make prior to that date, and to appear at 5.30 this Wednesday.

Mr. POVICH. It is impossible for me to do that. I will tell you why. I am involved now in trying to prepare by that time, believe it or not, from the end of today to Wednesday, a presentence memorandum for the court in connection with this trial, and I simply have not got time to do another one for the committee, and I most respectfully request that our appearance before the committee be scheduled some other time after the sentencing, which is Friday.

Mr. FORTUIN. Mr. Povich, you have asked for a request to bring something to the committee's attention. I don't know how many lawyers you have over there, but I am sure that you can find some way to do it in that period of time.

Mr. POVICH. I am doing it, Mr. Fortuin. I mean the number of lawyers has nothing to do with it. I am doing it. I am the only one that really knows enough about this case to write it. It would take more time for me to explain it to some associate and have them do it than if I sat down and tried to do it myself. The number of lawyers has nothing to do with it. I am the one that has to write it. I am the one that has to think about it. I am the one that is responsible for it. I can't delegate that to anybody else.

The matter is sufficiently important for me to handle it. I have handled this case for some time. I don't at this point plan on dumping it on someone else.

Mr. PREYER. Ordinarily the Chair would be very sympathetic to that sort of request, but in view of the sentencing that is set for Friday, it would appear to be important to proceed with this matter before then, so the Chair will adjourn the matter until 5:30 Wednesday before the full committee. I will leave it at that.

[Whereupon, at 10:50 a.m., the committee was adjourned.]

APPENDIX IX

EXECUTIVE SESSION—PENDING BUSINESS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT,
Washington, D.C., May 17, 1978.

The committee met in executive session at 6:25 p.m., in room 2360, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Bennett, Hamilton, Preyer, Flowers, Spence, Quillen, Fenwick, and Caputo.

Also present: Jeffrey Harris, Thomas M. Fortuin, John W. Nields, Jr., professional staff members; John M. Swanner, staff director; David Belkin, Barbara Rowan, Martha Talley, committee counsel; Robert Bermingham, investigator; Peter White, deputy special counsel; and Leon Jaworski, special counsel to the committee.

Mr. NIELDS. While Kim Dong Jo is not in the country, Hancho Kim is, who was given $600,000 by the KCIA to pass on to congressmen. Until this point in time he has denied receiving the money. He is convicted of perjury and is to be sentenced on Friday. He appeared before Judge Preyer earlier this week and again refused to answer the question and, as I understand, Judge Preyer directed him and his attorney to appear before this committee today to argue the question of whether he should be held in contempt. I think Judge Preyer already held him in contempt. Rather than argue with the committee, we should refer the thing to the House.

Mr. Fortuin, I believe, was the person who handled it and will handle it from here on.

Mr. FORTUIN. The objections this witness raises were raised when he first appeared before the committee on November 17 of last year. Mr. Spence sat and heard those as did Chairman Flynt, and they had an oral argument lasting an hour. They submitted briefs; we submitted an answering brief, and they submitted a reply brief so the arguments have been extensively argued in the past, so it would seem to me that although they have asked to be heard, I think maybe you should hear them, but I don't think it would be inappropriate to perhaps impose a time limitation on how long you want to hear them and how much argument you have on this matter because it has been extensively briefed and both the Chairman and Mr. Spence have ruled in a written opinion, which we have attached as appendix 3 to the report that we have submitted to you, which is the order of Chairman Flynt and Mr. Spence in which he discusses the various claims that have already been raised. They have had an opportunity to be heard before the committee.

Mr. NIELDS. And they are here now.

Mr. BENNETT. Let's have them in.

Mr. PREYER. I might state I didn't honor that appeal just to give us something more to do. They have the right to appeal here from my ruling. Is that right?

Mr. FORTUIN. I am frankly not completely clear on it. They certainly have the right to make the request and it seems to me we granted the request.

Mr. NIELDS. Nothing can happen without a vote of the committee and the vote of the committee is in a sense an appeal and they want to appear before the committee and argue it should not vote.

Mr. BENNETT. I think there is a value in holding in contempt because they were in contempt. Is there something else to be gained?

Mr. NIELDS. Very much so. He has simply refused to answer our questions.

Mr. FORTUIN. We want to know what he did with the $600,000.

Mr. FLYNT. I introduce you to the committee, Mr. Barnett and Mr. Povich.

STATEMENTS OF ROBERT BARNETT AND DAVID POVICH, COUNSEL FOR HANCHO KIM

Mr. BARNETT. Thank you, Mr. Chairman.

Mr. Chairman, if it is all right, I would like to proceed initially and Mr. Povich will have a few comments too, if that is all right. We will be very brief and to the point.

Mr. FLYNT. You may proceed as you see fit.

Mr. BARNETT. May I say at the outset that I am grateful for the opportunity that the committee and the chairman have given us to be here tonight. I will say that this committee has always been very courteous to my law firm and particularly to me. I have been here before and I am grateful for the opportunity to be here again.

I have great respect for the committee and for its goals and I wish to come before the committee today with a particular problem and as briefly as possible explain to you what it is.

We represent, as the Chairman said, Mr. Hancho Kim, who is an American citizen currently standing convicted, as I am sure you all know, of conspiracy and perjury in the United States District Court. He has been before this committee, members of the committee, members of the staff, on several occasions. He has also been before the Senate Ethics Committee, has testified, and has been released from his obligations there. Although he is convicted of these crimes that I mention, I think it is important to put one fact on the record and it is a fact that has been acknowledged by the U.S. attorney and that is that there is no evidence that we are aware of, that he is aware of, and I venture that you are aware of, that he has bribed, defrauded, threatened or in any way compromised the Congress of the United States or a member of the Congress of the United States. That was admitted in open court by the U.S. attorney.

We come before you today with two problems; one, a time problem, and, second, a substantive problem. We have asked Congressman Preyer to allow us to come here today and we have asked the Chairman to allow us to appear and argue briefly and you have allowed us to do that and that is why we are here.

I am sure you know the background. Mr. Kim was asked a question; he did not answer the question; we asked for the opportunity to come here. Mr. Preyer was presiding at the time.

The time problem is this: Mr. Kim is being sentenced on Friday, sentenced for the convictions I have mentiond, for perjury and for conspiracy. On Friday a judge of the United States will possibly take away his freedom, possibly for an extended period of time. We hope not. We will do everything we can to prevent it, but the reality is that is a possibility on Friday.

There is also an appeal pending. As a technical matter, I guess it isn't pending until sentence is pronounced, but you know we will be appealing and there will be an appeal from this conviction. We think there are valid and important grounds we will raise.

There is also a third time factor. There is still another indictment pending against Mr. Kim, in this case against Mr. Kim and his wife, a tax case involving, as you probably all know—and I apologize if I am telling you things you already know—involving the very money which was the subject of the first conviction and is the reason we are here tonight.

We would like tonight to reassert the argument that Mr. Spence and Mr. Flynt have been kind enough to hear from us once before.

We would ask the members of the committee to please read our written brief before you decide this matter. The committee has it. I am certain we can get it made available to you very quickly if you haven't read it.

I will not argue those points tonight. I will simply argue the substantive problem that we are faced with in the time frame which we come before you.

Committee counsel asks Mr. Kim a question. I can't repeat it verbatim, but the sense of it was, "Did there come a time when you received money from S. K. Kim?"

Mr. Hancho Kim, as I say, did not answer that question.

If he answers the question at this time, he will suffer irreparable injury in the context in which we come before you. If he answers "Yes, I received the money," he obviously will under oath have contradictory sworn testimony. If he answers the question, "Yes," there is a high likelihood it will prejudice the appeal. There is an even higher likelihood which I will get to in a moment, that will prejudice his sentencing on Friday. If he answers the question no, he is certainly arguably guilty of perjury again because that is the very question that he was convicted of perjury for.

It is phrased differently, but it is the same question .

He is in an impossible situation at this time and he is particularly in an impossible situation because—and I feel very badly saying this, but I am going to candidly and honestly say I think some people are trying to influence the judicial process in this way. It is not any of you, but I think it is your staff; it may be some members, but I think unfortunately there is a misguided attempt here to influence the ongoing judicial process.

Let me tell you what I mean. The judge has not asked Hancho Kim, "Did you receive the money from S. K. Kim?" The probation officer has not asked Hancho Kim, "Did you receive the money from S. K. Kim?" But this committee has asked it and I believe, if you will question your staff, it is with the full expectation that they will then go to the judge and say, "The man is now admitting his crime, so go hard on him" or "The man is being uncooperative, so go hard on him."

Don't get me wrong. I am not saying this committee doesn't have the perfect right, if asked by the judge sua sponte on its own to go before the judge and make a representation as to Hancho Kim's cooperativeness or noncooperativeness. I understand you have done that before and you will probably do it again. I just dislike, and I really feel badly about and resent the fact that I think we are here tonight at a quarter to nine, after 6 months of possibility of asking this question, 6 months of possibility of coming before a judgment on this issue, in an attempt to influence that process.

I think we have a great system and I think you all believe in it or you wouldn't be here. It separates the judicial from the legislative from the executive. Traditionally the judicial does its job and the legislative does its job. There is often an overlap of functions and that is the genius of the system of checks and balances.

But I feel this is in an improper way, that this is a very improper way for the congressional branch, the legislative branch, to impose itself on the ongoing judicial process. Let the man be sentenced. If he has done something wrong and has been convicted and the judge wants to dump on him, let him dump on him, but don't help. Hancho Kim has, unfortunately, become the Korean punching bag. He is not a sympathetic figure, I recognize that, and I recognize that nothing was done to Tongsun Park—through no fault of your own, may I say—and nothing was done to S. K. Kim and there again there may have been a very valid, legislative reason but Hancho Kim seems to be the only Korean face left and Hancho Kim seems to be put in this unfortunate position of not only being convicted, not only facing a sentence, not only maybe having his appeal rights undercut, maybe not only having his second trial prejudiced, but he is now here tonight at a quarter to nine after 6 months, and I think is going to get the wrath of the Congress dumped on him. I think it is particularly unfortunate because there is a way out of all this and there is a way to deal with it, and I will mention that and then I will leave because I know you have time problems.

It seems to me we could proceed the way we have been proceeding for the past 6 months. That is, ask Hancho Kim anything you want about whether he influenced congressmen, whether he bribed congressmen, whether he bought gifts for congressmen, whether he threatened congressmen, whether he improperly sought to influence congressmen, but leave the area that is the subject of both his current conviction and his pending trial alone until that is completed. Then everyone can make an intelligent and unpressured decision as to whether to answer that question or not answer the question, with full knowledge that if you don't answer the question, the consequences follow.

I ask you to let us over until next week, and by that I don't mean let us escape. By that I don't mean give us some great deal. By that I don't mean let us go home to Korea—he is an American citizen; he is not going there anyway. By that I don't mean let the man wash out and be set free.

But all I ask is that you not in this context, at this time, cause this problem for this man. Let us have the sentencing on Friday; let the judge decide unimpaired by a recommendation or an influence or report or anything from this committee as to what the consequences are of Hancho Kim's act, and he is prepared to accept those, and what the consequences are of his conviction.

I would say that it is a reasonable request I make. I would say it is a request that will not subject this committee to criticism. I would say it is not a request that would make people be able to say, "This committee has cut a deal," or "Let the man off easy" or "Let the man escape."

I say it is a request that will allow people to say this committee had some compassion for this man, who is a compassionate figure at this time, and still allow this committee to proceed with its very important goals and needs after we get past the crunch period of this sentencing and this second trial.

I say again, I am grateful for your listening to me. I ask you, please, to read the argument we have made on the legal points. I am not going to argue those because I know you are busy, and, please consider whether we might not be allowed to answer any question you want. And what I see as the critical area, the contact with congressmen, and leave the other area until a point where it won't so significantly prejudice the man's criminal proceeding, judicial proceeding.

I will be happy to answer any questions and I thank you for listening to me.

Mr. FLYNT. Are there any questions?

Mr. Povich, have you any statement?

Mr. POVICH. I have nothing.

Mr. FORTUIN. There has been an indication here that we are attempting to affect the judiciary in some way. We very frankly are. We think the judge should know on Friday if this man has been contemptuous to the Congress and has refused to answer a very simple question and that is "did you get any money from operatives of the KCIA and if you did, with what understanding, and what did you do with it?"

It is very clear evidence that the man received $600,000. We want to know if he did, what he did with it. He suggested that he would be prejudiced if he answered that

question before the committee. That is frivolous. He has been granted immunity; the proceedings are in executive session.

I know of nothing to date that has occurred with respect to this man that has leaked, and if anything did leak, the defendant would have an application he could make in the District Court to adequately protect him.

I think we have adequately protected him and the idea that his appeal would be hurt in any way or that his sentencing would be hurt in any way if he truthfully answered the question is frivolous. It would not occur.

The problem the witness faces that Mr. Barnett alludes to simply is no problem. If he truthfully answers the question he has no problem. That cannot be used against him in any fashion in any criminal proceeding; it could not be the cause of contempt; it could not even be used in the sentencing proceeding in my understanding of the law.

His only problem is if he refuses to answer the question and that is what he has done. He has answered a very simple type question or has been asked to. We have to have the answers now. The time is coming as to when the man has to make his decision on cooperating or whether he is going to continue to conceal as what appears to be an agent of the Korean Central Intelligence Agency.

This is a tremendous amount of money he took with the understanding he would influence congressmen. Whether he did or did not is the reason we have the inquiry.

The suggestion there is a time problem we have created I think is again completely unfair. I called defense counsel over two weeks ago and I told him we desired to bring this matter on before the sentencing so the judge could be informed. If the man was uncooperative, that he was uncooperative. I got no response.

Last week I asked you, Mr. Chairman, to direct the witness to appear on Monday of this week because I was unable, after I would say many phone calls, to get the counsel in this case to agree to a time convenient to them and convenient to us. It was only then that you directed they appear and it was only for that reason that we are delayed as far as we are. I think it is absolutely compellingly important that we have the testimony of this man and that we have it immediately on the important issues that are raised. He is more than happy to make denials to us about issues that we cannot controvert, that we know nothing about.

On the important issues relating to the money he refuses to answer any questions. It seems to me that answer is contemptuous and the man should be held accountable.

Mr. FLYNT. Do you want to respond to that?

Mr. BARTLETT. No, I think he has basically admitted the point I was making, that it is an attempt to influence the process. I would say he never called me or I never got any message.

Mr. POVICH. He called me.

Mr. FLYNT. I have one question that I want to direct to Mr. Fortuin.

Is the purpose of this to seek to have the judge impose a more severe sentence than he otherwise would?

Mr. FORTUIN. No; but I would say if the man were to be contemptuous and held in contempt—and my hope is he would not be, frankly. I would hope—and my suggestion to the committee would be, Mr. Chairman, that they hold the witness in contempt, with the understanding—and the committee has done this before—that if he purges his contempt by answering the questions within the next 24 hours that the contempt would be of no force and effect.

My hope is, and I think it is the committee's hope that we would get the truthful testimony of this witness in that fashion. It is our hope there would be no contempt proceeding. It is our hope that no untoward consequences would result to the witness.

Mr. FLYNT. Let me clear up one thing. This committee has no powers to vote contempt proceedings. All we can do is recommend to the House.

Mr. FORTUIN. That is correct.

Mr. FLYNT. There is no way that could come up before Friday. There is no way on earth that it could under the rules of the House.

Mr. FORTUIN. But the committee could adopt a resolution that it would not refer the matter for a contempt proceeding if the witness purged his contempt tomorrow. If he did not do that, the committee would proceed.

Mr. FLYNT. The committee could or could not do a lot of things. I don't think it is a question of what the committee could do, but what the committee would do.

Mr. FORTUIN. In that way, hopefully, a contempt proceeding would be avoided, and the witness would be afforded the opportunity to testify. It would only be if, after the ruling tonight by the committee, the witness continued to refuse to answer the question that was put to him that a contempt proceeding would eventuate: so that we are hoping there would be no such proceeding, but that is up to the witness and his attorneys.

Mr. BARNETT. This is very interesting because Mr. Fortuin has already made a judgment on what is a truthful answer. You notice what was said there. He has already judged that if the man said, "No, I did not—" that is an untruthful answer and that is perjury.

The judgment has already been made, what an investigator's opinion is of what the truth is. I don't think that is his job.

Mr. FLYNT. Is that your interpretation of what you said?

Mr. FORTUIN. No. If he answers the question, whatever his answer is, we are bound by it. His contempt is purged whether I believe it is truthful or false. All he has to do is answer the question in any fashion. If it is false, he later subjects himself to penalties, but the contempt would be at an end and the contempt would be purged if he answers the question in any fashion whether I believe it is true or I believe that it is false.

Mr. BARNETT. If he said, "No, I did not receive the money," they go to the judge and say, "Look, he is unredeemed. He is still giving the same story."

If he answers the question "yes" it is the other result.

Mrs. FENWICK. Why doesn't he just tell the truth?

Mr. BARNETT. I think that is precisely what we are after.

Mr. SPENCE. That was the question I wanted to ask. How would he be harmed if he answered this question either way before Friday?

Mr. BARNETT. Let's take the two examples. He must answer the question either yes or no. If he answers the question "yes, I received the money," he has under oath acknowledged the falsity of his statement and has contradictory testimony on the record. That is number one. Number two, there is a likelihood, although one does not like to say this, but things have leaked, as Mr. Flynt and Mr. Spence well know, because we have been before them on this, about this man from this committee.

No fault of yours, I recognize that. The judges read the newspapers. The appeal is severely prejudiced.

Most importantly, the second case is still pending, the tax case. That tax case concerns precisely this issue. He again has in effect waived his right to remain silent, which is his constitutional right, on the precise issue for which he is being tried.

Mr. CAPUTO. It seems to me the tax case and appeal goes way beyond Friday.

Mr. BARNETT. I am asking you to please let us confront the question, answer it or not answer it, answer it one way or the other way after the sentencing on Friday and after the tax case which will hopefully be disposed of fairly soon, if I am not incorrect. I am not asking you to wait until after the appeal.

Mrs. FENWICK. After the tax case might be any time.

I am not a lawyer, obviously, but common sense just tells me that we have got to find out some things, We are not interested in putting Mr. Hancho Kim in jail. We want to know what is going on with members of Congress. It is important to know whether or not this money came directly from the Korean Government for a specific purpose to Mr. Hancho Kim and whether or not he received that money and handed it out to members of Congress.

Mr. BARNETT. Mrs. Fenwick, I respectfully say I agree with you, with a caveat. It seems to me at this time, given the balancing you must do when we leave this room, that is satisfied by asking him—and I hope you come to the deposition and ask him the very question, who did he give money to, when did he give money, what did he do in Korea, who did he pay, who did he bribe, who did he have over to dinner, who did he give gifts to, who does he know personally, what has he done, has he asked people to put things in the record.

He will answer that, but I hope you will understand he is only—asking you to not inquire in the very narrow area of receipt of money from S. K. Kim. Only because it is the very question that he was asked and convicted of perjury for and it puts him in an incredible Catch 22 situation.

Mrs. FENWICK. If he is already convicted of perjury on that particular question, what difference does it make to him to get another?

Mr. BARNETT. Mrs. Fenwick, it makes a lot of difference to him. It makes a great difference to him.

Mr. BENNETT. Tell us why.

Mr. BARNETT. He is convicted of another crime and maybe goes to jail for another 5 years.

Mrs. FENWICK. It is the same old crime.

Mr. BARNETT. But he can be prosecuted for a second perjury.

Mr. FLYNT. It is the same generic crime but not the same offense.

Mr. BENNETT. Why doesn't he just tell the truth?

Mr. BARNETT. Mr. Quie, you make an important comment. You said, "That is the important question." I would respectfully suggest that that is not the important question.

The important question is whether your colleagues were influenced, ought to be influnced or taken over by him and others and were ready to come in here and tell you what you wanted, and we have tried, I think, on five occasions. Some of you had the unfortunate experience of sitting through some of those.

I would suggest that—I recognize that is an important question, Mr. Quie, but, given the possible harm and given the balancing we are asking you to do, it seems to me it is a question: At this time and under these peculiar circumstnces, that is not as critical.

Mr. BENNETT. How can an Ethics Committee decide not to do something that is before it to do simply to make it easier for a man who is convicted of perjury not to pay the penalty that the law says he shall pay?

I am not trying to do you in. I am just trying to understand what I am being asked to do. It looks like to me an Ethics Committee would have no business in making it easier for a criminal to escape penalty.

Mr. BARNETT. No, sir. Please don't misunderstand me.

Mr. BENNETT. That is my impression.

Mr. BARNETT. That is a result of my inarticulateness.

Mr. BENNETT. You are pretty articulate. You have impressed me with this.

Mr. BARNETT. I don't want to lose because I can explain my point.

As I understand, your question is: Are we asking you to go easy on the man?

Mr. BENNETT. You are asking us to delay action so this man will escape a penalty that would otherwise be put upon him.

Mr. BARNETT. I am not asking that. I am asking, do not influence the process with your predicament, or very valid goal, or very valid concern or punishment. Do not at this time influence that process, which I frankly acknowledge is going to come down on his head. I ask, don't add to what the judge already has; don't influence—I feel in an improper way—the ongoing judicial procedure.

Mr. BENNETT. What is improper?

Mr. FLOWERS. You are asking us to believe him when he says he didn't give any of this money to Members of Congress, because we don't have a receipt of the money.

Mr. BARNETT. I missed the question.

Mr. FLOWERS. You are asking us to believe him when he says he didn't give this money to Members of Congress?

Mr. BARNETT. Not if you have contradictory evidence. You can impeach him up and down the road.

Mr. FLOWERS. You are asking us not to ask the question if he had the money to give to them.

Mr. BARNETT. I am asking you not to ask him the very narrow question of where that money came from. Ask him about all the money in the world.

Mr. FLOWERS. Which is the whole conspiracy theory.

Mr. QUIE. Could I ask a question on this thing? What is the difference now if we didn't do anything until after the two cases, the past case and the sentencing on Friday, and then he perjures himself afterwards?

Mr. BARNETT. No; you can recommend to the U.S. attorney that the man be prosecuted again, and you have a perfect right to do that if you believe that is perjurious. I think Mr. Fortuin does. I hope you don't.

Mr. FLOWERS. What if the answer is true?

Mr. BARNETT. You are making the judgment what the truth is in your opinion.

Mr. QUIE. Whatever is the truth.

Mr. BARNETT. If he answers the truth, certainly they wouldn't prosecute him for perjury, but this is——

Mrs. FENWICK. Why do you say he wouldn't be prosecuted for perjury if he answers the truth?

Mr. BARNETT. Mrs. Fenwick, that is what a perjury prosecution seeks to determine, whether his answer which he, under oath, asserted was the truth, was, in fact, the truth—what you and I believe is the truth——

Mrs. FENWICK. I don't care about that. All I am saying is if he comes before us and tells the truth, why is he in danger of perjury from us?

Mr. BARNETT. He is not.

Mr. CAPUTO. His sentence will be stiffer.

Mr. BARNETT. He is not guilty of perjury.

Mrs. FENWICK. If he comes to us and tells a lie, that is a second crime, and he gets a new sentence. If he comes in front of us and tells the truth, presumably that is admitting guilt and will make the sentence he is going to get——

Mr. FORTUIN. That is not true.

Mrs. FENWICK. That is his argument.

Mr. FORTUIN. He has a grant of immunity and could not be brought to the judge. The testimony here cannot be used in any fashion.

Mr. CAPUTO. He is saying it will leak out.

Mrs. FENWICK. It won't and I resent that, Mr. Barnett, if you will excuse me.

Mr. BARNETT. Again, it was an accusation. I will bring in the newspaper articles and show them to you. It has been in the paper, and I think several people are familiar with what has been in the paper. I will show them to you. I am not accusing you of being sieves. I respect you too much for that. But I could, if you wish, submit for the record the things that have leaked about him and try to show you how they prejudiced him.

Mrs. FENWICK. From this committee?

Mr. BARNETT. Yes.

Mr. FORTUIN. I am not aware of any of that, absolutely none of it.

Mrs. FENWICK. Maybe it leaked from the Justice Department, but I am not aware of anything that leaked from this committee.

Mr. BARNETT. I am not saying it came from a member sitting at this table or staff. I can show you the newspaper articles about occurrences in executive session of this committee when Mr. Hancho Kim was present, no Justice Department employee or anybody else.

Mr. POVICH. Excuse me. I have listened long enough to make a statement and then I will leave you.

Mr. FLYNT. Mr. Povich.

Mr. POVICH. I think all the lawyers should leave the room or talk some commonsense. Let me explain what the problem is.

Hancho Kim, in late 1977, was under investigation for this case. He was in Korea. When we learned that he was about to be indicted, we told him he should return, and he did, and face trial. He was charged with two counts and convicted of both. He did not take the stand at the trial and didn't testify. Neither he nor his wife or any member of his family testified.

Three witnesses were presented, and he was convicted. He was convicted on the question, when asked in a grand jury, "Did you receive any money from S. K. Kim in your home," and his answer to the grand jury was no. The jury found he lied when he answered that question.

We have met with this committee on several occasions. We met under an informal arrangement. The arrangement was we felt we had information indicating that Hancho Kim had not corrupted or defrauded the U.S. Congress or any Member of Congress, and we were perfectly willing and happy to give the information to this committee.

During about four or five sessions, we did so, and he was questioned extensively about the information and contacts with Congressmen, and we felt that was in further answer of legitimate business of this committee, and we felt it was fair to the committee because there were some Members of the Congress who were under attack, and we felt the committee and those Members were entitled to that information.

At that very time, the Justice Department was also conducting its investigation. The Justice Department, I should say to you, offered him immunity from prosecution at the beginning of this investigation. They said, "Come forward and tell us the truth," the truth being, of course, admit that you received the money from S. K. Kim and tell us what you did with it.

At that time, they were expecting, of course that he received the money. He hadn't met the Congressmen. I think the only one he knew was Congressman Guyer. There was extensive investigation of Congressman Guyer, and they wanted to question him about it. He denied receiving the money; he denied corrupting anybody, including Congressman Guyer, and I don't think the evidence showed he made a political contribution of $10 to any Congressman, no one whatever.

The Justice Department, after its investigation, came to the conclusion you are right; we are withdrawing the offer of immunity because you cannot be of help to us. We don't want you to come in and say, yes, you received the money. What we are interested in is Congressmen, and since you did not corrupt any Congressmen and made any contribution to any Congressman, the offer of immunity is withdrawn. Mr. Povich, your client goes to trial.

He did not testify. He denies he ever received the money.

That is the posture we are at now. He has been through a terrible ordeal, as I have been with him, for the past year and a half. The trial was horrendous. It was a net worth tax case, essentially. They put in all the expenditures and said it must have come from S. K. Kim, because he had no other source of income. The jury convicted him of conspiracy and lying to the question, "Did you receive money from S. K. Kim," all of this unexplained expenditures that he had.

I wanted to continue working with the committee under the same basis as long as we could talk in terms of corruption, of fraud, of what you have done vis-a-vis the Congress, the Senate, the executive department, fine. But I was not faced with a conviction I wanted to appeal, I was faced with a tax case concerning the money and I said. "Stay away from the money, and please stay away from the question, did you receive any money from S. K. Kim," because that is what precipitated the whole thing.

Mr. Fortuin called and said they wanted to resume the question after the conviction, and I said all right. We finally got around to it and Judge Preyer was present. I entered into the meeting in good faith; I thought we were going to continue with the type of thing—I knew that Mr. Fortuin wanted to ask more questions.

The first question out of the box was, "Did you receive any money from S. K. Kim? It was the confrontation and the only reason it was a confrontation on that day, 2 or 3 days ago, was because he was about ready to be sentenced.

And the chairman's question really has not been answered. I think. "Did you ask that question so that we might have some influence on the sentencing," and I think the question was asked for that purpose. I don't know how a judge would react to a letter or statement from this committee as to whether he did or did not. I have asked Judge Flannery, "Do you want Mr. Kim to give you an explanation of where he received the money that it was shown that he spent?" The judge said, "The man did not testify; he has a right not to testify; I am not going to ask him that question. If he wants to tell me, fine, but I am not going to hold it against him."

Perhaps the committee would tell the judge what happened here, that he has declined to testify. The judge may or may not take it into consideration. I am trying to give you basically the posture we are in.

To be perfectly honest with you, Mr. Kim has never said anything other than the fact of two prongs, "Did you receive the money?"

"No."

"Did you pay or corrupt any Congressmen?"

"No."

That part has proven to be essentially true. There has never been an indication of it. In fact, the Government, in the closing argument, said, It is clear that he received the money, but as far as we are concerned, I guess he didn't pay any Congressmen; he must have put it in his pocket." That was their answer.

Mr. FLYNT. We will recess to answer the quorum and come right back.

[Brief recess.]

Mr. FLYNT. The committee will come to order.

Mr. Spence, were you in the process of asking a question when we recessed?

Mr. SPENCE. I don't think so. I think I had asked what I had.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Well, I really don't have a question. I do have the same concern I had before. Here we have a committee of Con-

gress and we have a man who is going up through appeal; he has another case and essentially we are being asked to have compassion on him not to ask a precise wording, and as I heard your words, I heard you say that he said that he had not taken the money at his home.

So it looks like a rather technical thing, and I find myself in an awkward position of thinking about judicial processes, adjusting to the calamity that has been brought upon a man of his own violation. In other words, he apparently did something and he is paying a penalty for it. Why should a court adjust to the fact that a man is going to get caught and pay a penalty for what he did.

Now, I must say that I don't understand if somebody is trying to put pressure on the court procedure, and if that is so, for my two bits, I would say it is wrong. I don't think anybody has any business who is working for this committee becoming deeply involved in the outside activities of a man who is up for trial. My own personal reaction is that you ought not to tell the judge about it at all. I mean, not that it is a secret, but I think it is tasteless to get yourself involved in another matter, and we are people who are supposed to be judicial and make a determination on the merits as it may be and leave it up to the people who are employed to be the prosecutors in another trial.

It seems to me, in other words, it is not up to us to rectify all of the sins of humankind.

Mr. BARNETT. That is precisely what I am asking, Mr. Bennett.

Mrs. FENWICK. Will you yield?

Mr. BENNETT. I will yield.

Mr. FLOWERS. Let's don't argue the thing out here.

Mr. BENNETT. I yield back my time.

Mrs. FENWICK. I think that if Mr. Hancho Kim would answer our questions, we would have nothing to say to the judge. There would be no reason. If Mr. Hancho Kim does not answer our questions, I think we should tell the judge. Maybe I am wrong, but I think he should come and talk to us. I think he should tell us what we want to know. That is my judgment.

Mr. SPENCE. Mr. Chairman, I think we should ask any questions we have of the attorneys, and if we don't have any questions to direct at them, we can let them go and make our decision.

Mr. BENNETT. You may have something else to say.

Mr. POVICH. We have answered a lot of questions. The thing that brought us to the stalemate was the problem of that precise question. We are not saying we don't want to answer any questions. We don't wish to be contemptuous. What happened to us was the difficult question was asked 2 days before sentencing. Perhaps, as the chairman inquired, "Was it asked in order to provide a vehicle to go to the court or not"——

Mrs. FENWICK. I foresee all kinds of things. Suppose we say OK, we will be delighted to have Mr. Hancho Kim come here and we won't ask him whether Mr. So-and-So gave him that money; we will only ask him whether he has reason to believe that he ever received any money directly or indirectly through the agency of the Government of Korea. Will he answer that?

Mr. POVICH. I think he would answer all questions. The problem is——

Mrs. FENWICK. Would he answer that question? And then if he said yes, he had received it directly or indirectly, was it for any specific purpose? In other words, I am trying to find out what you really are balking at, because it seems to me that anybody who is an American citizen, who wants to help an investigation of Congress, owes it to that committee to answer the question.

Now if there is one particular peculiar question, I don't think it matters whether he got it in his home or where; we might even consider leaving it off. I am just trying to narrow down as to what your specific objection is.

Mr. POVICH. The specific objection is this: If you ask a precise question——

Mrs. FENWICK. What precise question?

Mr. POVICH. Did you receive any money from Kim Sang Keun.

Mrs. FENWICK. Suppose we didn't use that?

Mr. FLYNT. That is why we are here.

Mrs. FENWICK. Suppose we didn't ask, using that man's name. That is what I am asking you. Did you receive directly or indirectly any money you have reason to believe came from the Government of Korea; would he answer?

Mr. POVICH. Yes; I think he would answer the other question. The problem is if he answered the other question, though, he would——

Mrs. FENWICK. Just answer. If we asked him, did you ever receive any money directly or indirectly that you have reason to believe came from the Government of Korea, would he answer it?

Mr. BARNETT. That is really rephrasing the same question, Mrs. Fenwick.

Mrs. FENWICK. No; it is leaving out the name of the man.

Mr. POVICH. The answer is I would like to think he would, and the problem——

Mrs. FENWICK. Would you advise him to?

Mr. POVICH. I have to advise him, but the decision as to whether he wishes to answer a question or not is his own. But let me say to you the problem is this: If the person who asked the question, then came to the conclusion, and the committee came to the conclusion that answer was wrong, then it would recommend, I assume, a prosecution for perjury.

Mrs. FENWICK. You bet.

Mr. POVICH. Right. But the problem is if the very same question is asked that was asked in this case, which was the subject of the criminal prosecution, and he answered that question, and he answered it in the negative, then the problem is, would that be reported to the judge on the threshold of sentencing, and that is the reason why I am here. I am not concerned about the question being asked after the sentencing.

Mr. FLOWERS. Mr. Chairman?

Mr. BARNETT. You phrased what our concern was, Mr. Bennett. If you can find any way to accommodate that, we would be pleased.

Mrs. FENWICK. Then we will be up against the tax appeal, right?

Mr. BARNETT. No.

May I say one brief thing? I want to thank you for letting us come; I know, if nothing else, we have impressed you that we are serious about this, and that is all we hoped.

Please read our written brief, if you will. I would really appreciate it. And for your courtesy, we are very grateful, as is Mr. Kim, our client.

Thank you all.

Mr. FLYNT. Thank you very much. And will everybody vacate the room except the committee and the staff director and the reporters?

APPENDIX X

[Korean Influence Investigation Pursuant to H. Res. 252]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE OF STANDARDS OF
OFFICIAL CONDUCT,
Washington. D.C.. May 18, 1978.

Re: Contempt of Hancho C. Kim.

Hon. JOHN J. FLYNT, Jr.,
Chairman, Committee on Standards of Official Conduct, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing you this letter to report to you pursuant to paragraph three of the Resolution adopted by the Committee at its meeting on May 17, 1978 with respect to the contempt of Hancho C. Kim. That Resolution provides, in part, as follows:

"This resolution shall be of no force or effect if the Special Counsel determines that the said Hancho C. Kim has submitted to a full and complete deposition prior to Friday, May 19, 1978."

I regret to report to you that on May 18, 1978, Mr. Kim appeared with his attorneys at a deposition before the Honorable Millicent Fenwick and persisted in his refusal to answer the question which provided the basis for the contempt proceeding against him. Mr. Kim also refused to answer related questions.

Sincerely,

LEON JAWORSKI,
Special Counsel.

EXHIBIT XI

[House of Representatives Hearings Before the Committee on Standards of Official Conduct—Korean Investigation—Deposition of Hancho C. Kim]

KOREAN INVESTIGATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, D.C., May 18, 1978.

The parties to the deposition met at 2:00 p.m., in Room 2125, Rayburn House Office Building, Washington, D.C.

Present: Representative Fenwick.

Also present: John W. Nields, Jr., chief counsel; Jeffrey Harris, deputy chief counsel; Thomas Fortuin, counsel; Robert Bucknam, investigator.

Edward Bennett Williams, Esq.; David Povich, Esq., Robert B. Barnett, Esq., on behalf of Mr. Kim.

Mrs. FENWICK. We are ready to begin. Mr. Kim, do you solemnly swear that the testimony you will give before this committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. KIM. I do.

Mrs. FENWICK. Thank you.

Mr. FORTUIN. The record should reflect the continued deposition of Mr. Hancho C. Kim, pursuant to the order of immunity previously identified for the record.

Mr. Kim——

Mr. WILLIAMS. May I say something before we begin.

My name is Edward Bennett Williams. I am here representing Mr. Kim. I would like to say something before we begin on the record.

My associates, Mr. Barnett and Mr. Povich, brought me up to date on the posture of this matter in the last hour. And I have to say to you that except for the fact that they told me this is the case, I would find it incredible, but they told me, and I know it is true.

As you know, Mrs. Fenwick, Mr. Kim has been convicted by a jury in the District of Columbia of perjury and conspiracy. That took place on April 8. He is to be sentenced by the judge tomorrow morning at 10 a.m., I believe.

I am told by my associates that the question was put to Mr. Kim, precisely the question which was the subject matter of the perjury in the indictment on which he now stands convicted. We are here now presumably because that question will be put to him again.

I am further told, Mrs. Fenwick, that my associates were told that what Mr. Kim did here would be reported to the judge.

Mr. FORTUIN. Let's get that straight for the record.

Mr. WILLIAMS. I would like to finish. You just let me finish and will have plenty of time to make what statement you wish for the record.

I am told that also, by my associates, they

were told by Mr. Fortuin, after he had a conversation with Mr. Nields, that if Mr. Kim answered the question in the same way as he had answered it previously, on which he stands convicted of perjury, that that would be reported to the judge.

So I have concluded, Mrs. Fenwick, that this proceeding is an intrusion into the function of the judiciary. I have concluded that it is a breach of Mr. Kim's immunity grant, a breach of the contract between Mr. Kim and the government of the United States. And I have further concluded this; that Mr. Kim stands in an absolutely incredible position before you here.

He has three options. He can answer the question in accordance with his understanding of a truthful answer, which answer has already been adjudicated perjurious, so that he would be susceptible to another perjury conviction if he answers truthfully.

He can refuse to answer, in which instance he has been threatened with an adjudication of contempt under section 192 of Title 2, and also potential contempt of the House via a proceeding conducted in the very Chambers of the House.

Thirdly, his third option, and apparently this is the only other option, is to give an answer which he believes to be false, to commit perjury here, under oath—he has just been sworn to tell the truth—and if I may coin a phrase, that is a "trilemma" on which no American was ever intended to be hoisted.

So I suggest to you, Mrs. Fenwick, that the immunity which he has been granted, and which we contend has been breached, is not as broad, as his constitutional right, his constitutional right to remain silent, for the reason that he has not been immunized from a possible indictment for perjury for his answer here, and if he testifies in the same way as he previously testified in the prior proceeding, out of which arose his perjury indictment, he faces the possibility of incrimination.

So that we have a unique situation here, one I suppose that was never contemplated by the law-makers when they passed the testimonial immunity statute; that he faces incrimination by giving a truthful answer.

Having said that, I want to say this respectfully to you, Mrs. Fenwick. We are going to refuse to answer.

Mrs. FENWICK. I knew it, Mr. Williams. Don't think that these legalities have obfuscated the matter for me. At least I am not a lawyer. But I presume these are your associates, as you said they were, and I heard them last night. I am not a lawyer. But I must tell you in all honesty, as an American citizen, I am not impressed.

Mr. WILLIAMS. We are not here to impress you.

Mrs. FENWICK. I know, I know. You are here to win your case.

Mr. WILLIAMS. I am here to defend Mr. Kim's rights.

Mrs. FENWICK. I am sure Mr. Fortuin has something more intelligent to say than I have had to say.

Mr. FORTUIN. I think some of the things you have said are incorrect.

I think that there is no question that the immunity is as complete as his fifth amendment right. We have indicated that if the witness chose to take a contempt, we would communicate that to the judge, because we believe under the authorities that the judge could take his refusal to answer pursuant to a grant of immunity under consideration. If he were to answer the questions in a truthful fashion, that could under no circumstances pursuant to the grant of immunity under my understanding be communicated to the judge or be used against him in a sentencing proceeding, and we would not communicate it.

In the third situation, if the witness were to answer a question in a manner which has already been determined by a jury to be perjurious beyond a reasonable doubt, I must say to you quite frankly that I don't know whether or not that could properly be communicated to a judge, although my reaction is that it could. It would seem to me that whether or not that could is a matter for the future. If the witness gave that answer under oath then you could certainly argue to us that pursuant to the grant of immunity it should not be considered by the judge, you could argue to the Department of Justice or to the judge. That would come at a future time.

At this time all the committee wants is answers to its questions. And the immunity has been granted. It is complete. The arguments that you have raised have been raised by your partners, both before the chairman and the ranking minority member, before Judge Preyer, before the entire committee. They have been overruled.

Mr. WILLIAMS. Well——

Mrs. FENWICK. Suppose we proceed from the other end. Suppose that one question that you say is so crucial, we wait until the end to ask. Is that possible?

Mr. NIELDS. No, absolutely not.

Mrs. FENWICK. OK. There doesn't seem to be any common sense way out of a dilemma which lawyers seem to construct. You have a grant of immunity which means that whatever he says cannot be used against him provided it is the truth.

Mr. WILLIAMS. You see, the problem is, Mrs. Fenwick, that he has answered this question. He was defended most vigorously in court by my associates. They contended that he did not commit perjury. That is still our contention and will be on appeal. And if he answers the same way that he answered heretofore, it will be the contention of the counsel here that he has committed perjury. They have already said to you that they would take that to the judge. And they also probably would take it to the Department of Justice. So that he would be clearly facing incrimination. And that is why I say the immunity grant is not sufficient. But I don't want to argue the law here. I just want to state our position. I think we can all remain friends. I have the greatest respect for you, Mrs. Fenwick. I am here to represent this man and to protect his rights. And we don't have to have any bad feelings over it.

I have stated our position, and I would respectfully ask to be excused.

Mr. FORTUIN. I think the record should reflect that we sent to your office this morning a copy of the committee's resolution of last evening, which begin, "*Resolved*, That the chairman of the committee——

Mr. WILLIAMS. We have read it. I agree it should be part of the record.

Mrs. FENWICK. Well, I would like to ask you—and maybe we ought to have a recess—but I would like to ask counsel for the committee why it is we cannot proceed starting in the middle instead of in the beginning.

Mr. NIELDS. Why don't we have a recess.

Mrs. FENWICK. OK.

[Whereupon a recess was taken.]

[The following proceedings were had following the recess.]

Mr. FORTUIN. Mr. Kim, Mrs. Fenwick has suggested, and I think it is a good idea, that we ask you some questions that are not precisely the question that you were asked before the grand jury, and which was found to be perjurious. We do believe we will have to come back to the other question ultimately. But we would like to ask those questions first.

Let me ask you first, you do know a man by the name of Kim Sang Keun, is that correct?

Mr. WILLIAMS. My advice to Mr. Kim is going to be the same. I can save you and Mrs. Fenwick some time. On this record I am going to advise Mr. Kim to assert his constitutional rights not to answer, the privilege against self-incrimination.

I also now gravely doubt whether you are in pursuit of a valid legislative purpose.

Mr. FORTUIN. On what do you base your objection?

Mr. WILLIAMS. On the record as it exists so far. This witness' multiple appearances before this committee, in which he has responded to questions, and the Senate committee, and the whole record as it exists at this moment on the eve of his sentence before Judge Flannery tomorrow morning.

Mr. HARRIS. Have you read the record, Mr. Williams?

Mr. WILLIAMS. No. Which record?

Mr. POVICH. He can't read the record. You have not provided us with a transcript.

Mr. HARRIS. Have you asked to review it?

Mr. WILLIAMS. Why would you ask me if I read it, if you have not given it to us?

Mr. HARRIS. Because other witnesses have had the privilege of reading the record when they requested it.

Mrs. FENWICK. It is available.

I would just like to say, for the purpose of the record, this committee was established under resolution of the House, and that is the purpose of this committee, to carry out the obligation imposed upon us by the House of Representatives, and no other.

We are trying to discover actions involving Congressmen, and that is what is of interest to this committee only.

Mr. NIELDS. I would like to supplement the statements of Mrs. Fenwick. Under House Resolution 252 this committee has several mandates, one of which is to ascertain whether and the extent to which there were efforts on the part of the Korean Government or agents or representatives thereof to influence Congressmen by conferring things of value on them.

Mrs. FENWICK. It is on account of the Congressmen, Mr. Williams.

Mr. BARNETT. Let's let Mrs. Fenwick explain the purpose. I would like to hear it.

Mrs. FENWICK. It is all there in the resolution, which I am sure you have had a copy of, haven't you, 252. Have you got a copy of 252? We have to do our duty.

I would like to understand, Mr. Williams, what you were telling us. We were given to understand yesterday that there was only one key question that Mr. Kim was in a peculiar situation, unwilling or unable—or I don't know exactly which word was used—to answer.

He was not unwilling to answer other questions, but I understand from your statement at this minute that that is not—my understanding was incomplete?

Mr. WILLIAMS. No. I think, Mrs. Fenwick, if the committee really wants the information that it purports to want, that it can get it. But it can get it when this man's criminal proceedings are over.

I don't understand the unwillingness of this committee to await that because I wouldn't be here making the kind of argument that I made here a moment ago if he didn't have criminal proceedings staring him in his face.

He has some tomorrow morning at 10 a.m., and so we are not offering you an insoluble problem.

We are offering you a problem that I think is quite easy of resolution. All you have to do is postpone his appearance until his criminal proceedings are over, and he will come back. We will bring him back. I assure you he will come back.

Mrs. FENWICK. Are you referring to the sentencing tomorrow morning?

Mr. WILLIAMS. He has a sentence tomorrow morning, and he has a case pending against him in Baltimore.

Mrs. FENWICK. I wish you would be more clear. So you are asking this committee to

postpone any further action until this case in Baltimore, which might be next autumn——

Mr. WILLIAMS. I don't think that is likely, Mrs. Fenwick. I think I am probably asking you for not much more than a 40-day adjournment.

Mrs. FENWICK. Forty days?

Mr. WILLIAMS. Yes, 40 days.

Mrs. FENWICK. Well, I would want to—I must say I am afraid that that is longer than we can manage. I thought you were referring to the sentencing tomorrow morning.

Mr. WILLIAMS. That is one of the things that deeply concerns me. In the light of what has been said here.

Mrs. FENWICK. Could I ask you, Mr. Williams, what possible effect on his case in Baltimore could his relations with Congressmen have?

Mr. WILLIAMS. My understanding, Mrs. Fenwick—and I am sure your lawyers will correct me if I am in error—is that he has answered the questions involving Congressmen, and he has answered them fully. He has never declined to answer any question that was put to him about a Congressman.

Mr. NIELDS. I think I should make it clear for the record that the problem for this committee is that it is difficult for us to accept as truth statements that he did not pay any money to any Congressmen when your client's posture is that he never received the money to give them in the first place, when that statement has been found by a jury to be perjurious.

We are then left with a situation that he has denied receiving the money and consequently that he paid any Congressmen. It has been established in a court of law that he did receive the money. That makes it impossible for us to accept on that basis your client's previous testimony to us as being something that we can rely on.

That is the reason we have to continue.

Mr. WILLIAMS. Well, that is the reason we have to continue to refuse to answer, because you want to ask him in thinly veiled questions the same things that he has been convicted of.

We cannot let him answer those questions. You have been very forthright and candid in saying you want to ask him certain questions with a view to getting to the ultimate question for which he stands convicted of perjury.

We cannot let him answer those questions. I don't want to be acrimonious or contentious with you. This is our position. If you don't agree with it, you don't agree with it. Reasonable men can disagree on questions of law. But I just ask you to respect that it is our position, and I ask you if you will let us depart respectfully now, Mrs. Fenwick.

Mr. NIELDS. I hope that you are not really meaning to say that you are preventing your client from answering, that you are not letting him answer.

Mr. WILLIAMS. I am advising him, with respect to what position to take, and I believe that he will follow my advice. I have no reason to think he will not follow it. I am not preventing him, nor have I ever prevented anyone else in my professional life from answering questions.

I have given advice. I don't prevent. I am not in the business of prevention.

Mrs. FENWICK. Are you telling us, then, that your client——

Mr. NIELDS. Because he is under direction to answer from this committee.

Mr. WILLIAMS. I understand that.

Mr. NIELDS. I just want to make sure who it is here that is violating the order of the committee.

Mr. WILLIAMS. Well, you are not throwing any terror into my heart.

Mr. NIELDS. I don't want to do that. I just want to make it absolutely clear who is making the decision final not to—I take it only our client can make that decision I simply want that to be very clear.

Mr. WILLIAMS. You have made it clear.

Mr. FORTUIN. Mr. Kim, you understand we lawyers ultimately all go home, and that any action can only be brought against you, do you understand that?

Mr. WILLIAMS. He understands that.

Mr. FORTUIN. And having understood that, and in view of the proceedings here today, I would like to ask the witness, I think we should have an answer, is it your intention to continue to decline to answer?

Mrs. FENWICK. This cooperation from an American citizen is touching, very fine.

We thank you so much. I think we better adjourn.

[Whereupon, at 2:35 p.m., the deposition was concluded.]

Mr. FLYNT (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the report be dispensed with, and that the report be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. FLYNT. Mr. Speaker, I offer a privileged resolution (H. Res. 1350) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1350

Resolved, That the Speaker of the House certify the report of the Committee on Standards of Official Conduct with respect to the proceedings against Hancho C. Kim, which report details the refusal of the said Hancho C. Kim, to answer a question in a proceeding being conducted by the said Committee pursuant to the authority of House Resolution 252, 95th Congress, 1st session, to the U.S. Attorney for the District of Columbia, pursuant to title 2, United States Code, sections 192 and 194, to the end that the said Hancho C. Kim may be proceeded against in the manner and form provided by law.

Mr. FLYNT. Mr. Speaker, I yield 30 minutes to the gentleman from South Carolina (Mr. SPENCE), and pending that, I yield myself such time as I may require.

Mr. Speaker, this is a contempt citation from the Committee on Standards of Official Conduct which, if adopted by the House, as I presume it will be, would refer the matter to the Department of Justice and certify this report, together with appendixes, to the U.S. Attorney for the District of Columbia to the end that one Hancho C. Kim, the witness before the House Committee on Standards of Official Conduct, be prosecuted for criminal contempt of Congress pursuant to the provisions of title 2, United States Code, sections 192 and 194.

This report, which has been ordered printed in the RECORD at this point, consists of approximately 7 pages. In addition to that, Mr. Speaker, there are 67 pages of appendixes and supporting documents to support the report and to support the resolution.

Mr. Speaker, there were some unusual circumstances surrounding the adoption of this report and the authorization and instruction to me as chairman of the committee to call up the privileged report and to offer the privileged resolution which the House is now considering. Hancho C. Kim was a witness before this committee in connection with the Korean investigation which has been conducted pursuant to the provisions of House Resolution 252 of the 95th Congress, first session.

Mr. Kim was being deposed by a member of the committee, the gentleman from North Carolina (Mr. PREYER), and by one or more members of the staff. At the time the deposition was being taken, Hancho C. Kim was under indictment on at least two criminal charges, one of which charges was perjury.

A question at the deposition, as put to Mr. Kim, read as follows:

Did there come a time when you received money from Kim Sang Keun?

Thereupon on advice of counsel, the witness refused to answer the question and gave as his reasons therefor several grounds. Upon fully hearing counsel for the witness, Mr. Kim, the member of the committee who was presiding over the taking of the deposition refused to honor the claim of self-incrimination and found Kim's refusal to answer the question contemptuous. Whereupon, this matter was reported to the committee, and subsequently, a quorum of the committee being present, the committee by a vote of 9–0 authorized me as chairman of the committee to file this report and at the proper time to offer a resolution directing the transmission of this report by the Speaker of the House to the U.S. Attorney for the District of Columbia.

After the report was filed, counsel for Mr. Kim asked the committee if a brief, which they had prepared and submitted to the committee, might be published in the CONGRESSIONAL RECORD.

In an effort to be both reasonable and fair, I had no objection to asking unanimous consent that the brief be printed in the RECORD, and I know of no member of the committee who had any such objection. Unanimous consent was granted.

Accordingly, on August 9, 1978, I asked unanimous consent to advise Members that it was my intention to call this report up during the week of September 11, 1978. I further stated that counsel for the respondent requested the committee to include a brief submitted on behalf of the respondent, Hancho C. Kim, to be published in the CONGRESSIONAL RECORD. I stated further, as I did just now, that, in the interest of fairness, that request appeared to be a reasonable one.

Mr. Speaker, there may be some merit to the contention of Mr. Hancho C. Kim that to have answered the question—whatever his answer would have been—would have placed him in an untenable position.

However, Mr. Speaker, I do not believe that that question is one which properly addresses itself either to the committee which I chair or to the House of Representatives. I think that it more properly addresses itself to a judicial determination if and when this report is adopted.

Under the rules of the House, certainly if a witness under subpena is asked a question, the answer to which the committee believes essential to any investigation, the House of Representatives has

a right to expect that witness to answer. The only exception that I know of would be when such witness pleads the fifth amendment and says he refuses to answer on the grounds that his answer might incriminate him or tend to incriminate him.

The committee had previously gone before the U.S. District Court for the District of Columbia and had obtained an order of use immunity which would have absolved this witness, Mr. Hancho C. Kim, of any prosecution for answering, because of the answer which he gave to this particular question.

Mr. Kim and his attorneys thought otherwise. Since he was presently at that time under indictment on a charge of perjury involving the exact set of facts that this question called for an answer to, he took the position that, if he answered the question one way, he in effect would be pleading guilty to an indictment that was pending against him. If he answered it the other way, he contended that he would be inviting a second indictment for perjury on grounds very similar to those for which he had been indicted previously.

Notwithstanding this contention, which I stated earlier may have some merit, it is not for our committee, nor do I believe it is for the House of Representatives, to answer that question or to judge the case on its merits.

Therefore, Mr. Speaker, I ask that the House vote this citation so that the matter may be properly transmitted by the Speaker of the House of Representatives to the U.S. attorney for disposition in the U.S. District Court for the District of Columbia.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The gentleman from South Carolina (Mr. SPENCE) is recognized for 30 minutes.

Mr. SPENCE. Mr. Speaker, I yield myself such time as I may consume.

The facts as set forth by the chairman are correct. I concur in what he said. I call upon the House to approve this resolution.

● Ms. HOLTZMAN. Mr. Speaker, as my colleagues are aware, I have fought long and hard for a full and complete investigation of the Korean influence buying scandal. In fact, as a member of the House Judiciary Committee, I offered an amendment requiring that a politically independent, court-appointed Special Prosecutor be created to handle the criminal investigation of Members of Congress and others in connection with Koreagate.

Nevertheless, even though I find his refusal to cooperate with the Federal investigation utterly reprehensible, I must reluctantly vote against House Resolution 1350 authorizing a contempt citation for Hancho Kim. I do so because I have serious constitutional reservations about the propriety of the resolution.

This resolution is based on Kim's refusal to answer a single question posed by the House Committee on Standards of Official Conduct: "Did there come a time when you received money from Kim Sang Keun?" According to committee sources whom I questioned at length on the floor, Hancho Kim would be subjected to possible criminal charges whether he answered yes or no.

In view of this, Kim's claim of possible self-incrimination seems to provide a plausible constitutional basis for his silence. Since I was given no assurance that the resolution does not penalize Kim for validity asserting a constitutional privilege, I feel compelled to vote against it.

I would have liked to support the resolution and wish the committee had been able to assure me that we are not placing Mr. Kim in a constitutionally untenable position. Since that was not the case, I will vote "no" on the resolution.●

Mr. FLYNT. Mr. Speaker, we have no further requests for time, and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. FLYNT. Mr. Speaker, on a matter involving a citation of contempt I believe it is the general policy of the House to have a recorded vote.

Accordingly, Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Tht vote was taken by electronic device, and there were—yeas 319, nays 2, answered "present" 3, not voting 108, as follows:

[Roll No. 784]

YEAS—319

Abdnor	Buchanan	Edgar
Addabbo	Burke, Mass.	Edwards, Calif.
Akaka	Burleson, Tex.	Edwards, Okla.
Alexander	Burlison, Mo.	Eilberg
Ambro	Butler	Emery
Anderson, Calif.	Byron	English
	Carr	Erlenborn
Andrews, N.C.	Carter	Ertel
Andrews, N. Dak.	Cavanaugh	Evans, Colo.
	Cederberg	Evans, Del.
Annunzio	Chappell	Evans, Ga.
Applegate	Chisholm	Evans, Ind.
Archer	Clawson, Del	Fary
Ashley	Clay	Fascell
Aspin	Coleman	Fenwick
AuCoin	Collins, Ill.	Findley
Bafalis	Collins, Tex.	Fish
Baldus	Conable	Fisher
Barnard	Conte	Fithian
Baucus	Corcoran	Flippo
Bauman	Cornell	Flood
Bedell	Coughlin	Florio
Beilenson	Cunningham	Flynt
Benjamin	D'Amours	Foley
Bennett	Daniel, Dan	Ford, Mich.
Bevill	Daniel, R. W.	Ford, Tenn.
Biaggi	Danielson	Forsythe
Bingham	Davis	Fountain
Blanchard	de la Garza	Fowler
Blouin	Delaney	Fraser
Boland	Derrick	Frenzel
Bolling	Derwinski	Fuqua
Bonior	Devine	Gammage
Bonker	Dickinson	Garcia
Bowen	Dicks	Gephardt
Brademas	Dingell	Giaimo
Breckinridge	Dodd	Gilman
Brinkley	Dornan	Ginn
Brodhead	Downey	Glickman
Brooks	Drinan	Goodling
Brown, Calif.	Duncan, Oreg.	Gore
Brown, Mich.	Duncan, Tenn.	Gradison
Broyhill	Early	Grassley
Green	Markey	Ruppe
Gudger	Marks	Russo
Hagedorn	Martin	Satterfield
Hall	Mattox	Sawyer
Hamilton	Mazzoli	Scheuer
Hammer-schmidt	Meeds	Schroeder
	Meyner	Schulze
Hanley	Michel	Seiberling
Hansen	Mikulski	Sharp
Harkin	Mikva	Shuster
Harris	Miller, Ohio	Sikes
Hawkins	Mineta	Simon
Hefner	Minish	Skelton
Heftel	Mitchell, Md.	Slack
Hightower	Mitchell, N.Y.	Snyder
Hillis	Moakley	Solarz
Holland	Moffett	Spence
Hollenbeck	Mollohan	St Germain
Holt	Montgomery	Staggers
Horton	Moore	Stangeland
Howard	Moorhead, Calif.	Stanton
Hubbard		Steed
Hughes	Moss	Steers
Hyde	Mottl	Stockman
Ichord	Murphy, N.Y.	Stokes
Ireland	Murphy, Pa.	Stratton
Jacobs	Murtha	Studds
Jenkins	Myers, Michael	Stump
Johnson, Calif.	Natcher	Symms
Johnson, Colo.	Neal	Thompson
Jones, Okla.	Nedzi	Traxler
Jones, Tenn.	Nichols	Treen
Jordan	Nowak	Trible
Kastenmeier	O'Brien	Tucker
Kazen	Oberstar	Udall
Kemp	Obey	Ullman
Keys	Ottinger	Van Deerlin
Kildee	Panetta	Vander Jagt
Kindness	Patten	Vanik
Kostmayer	Patterson	Vento
Krebs	Pattison	Volkmer
LaFalce	Pease	Waggonner
Lagomarsino	Perkins	Walker
Latta	Pettis	Wampler
Le Fante	Preyer	Watkins
Leach	Price	Weaver
Lederer	Pursell	Weiss
Lehman	Quayle	Whalen
Lent	Quillen	Whitehurst
Levitas	Rahall	Whitley
Livingston	Railsback	Whitten
Lloyd, Calif.	Rangel	Wiggins
Lloyd, Tenn.	Regula	Wilson, Bob
Long, La.	Reuss	Winn
Long, Md.	Rhodes	Wirth
Lundine	Richmond	Wolff
McClory	Rinaldo	Wylie
McDade	Roberts	Yates
McDonald	Robinson	Yatron
McEwen	Roe	Young, Fla.
McFall	Rogers	Young, Mo.
McKay	Rose	Young, Tex.
Madigan	Rosenthal	Zablocki
Maguire	Roybal	Zeferetti
Mahon	Rudd	

NAYS—2

Gonzalez	Holtzman

ANSWERED "PRESENT"—3

Burton, Phillip	Guyer	Wilson, C. H.

NOT VOTING—108

Ammerman	Diggs	Marriott
Anderson, Ill.	Eckhardt	Mathis
Armstrong	Edwards, Ala.	Metcalfe
Ashbrook	Flowers	Milford
Badham	Frey	Miller, Calif.
Beard, R.I.	Gaydos	Moorhead, Pa.
Beard, Tenn.	Gibbons	Murphy, Ill.
Boggs	Goldwater	Myers, Gary
Breaux	Hannaford	Myers, John
Broomfield	Harrington	Nix
Brown, Ohio	Harsha	Nolan
Burgener	Heckler	Oakar
Burke, Calif.	Huckaby	Pepper
Burke, Fla.	Jeffords	Pickle
Burton, John	Jenrette	Pike
Caputo	Jones, N.C.	Poage
Carney	Kasten	Pressler
Clausen, Don H.	Kelly	Pritchard
	Krueger	Quie
Cleveland	Leggett	Risenhoover
Cochran	Lott	Rodino
Cohen	Lujan	Roncalio
Conyers	Luken	Rooney
Corman	McCloskey	Rostenkowski
Cornwell	McCormack	Rousselot
Cotter	McHugh	Runnels
Crane	McKinney	Ryan
Dellums	Mann	Santini
Dent	Marlenee	Sarasin

Sebelius	Steiger	Waxman
Shipley	Taylor	White
Sisk	Teague	Wilson, Tex.
Skubitz	Thone	Wright
Smith, Iowa	Thornton	Wydler
Smith, Nebr.	Tsongas	Young, Alaska
Spellman	Walgren	
Stark	Walsh	

Mr. GUYER changed his vote from "yea" to "present."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLYNT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore (Mr. EARLY). Is there objection to the request of the gentleman from Georgia?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. FRENZEL asked and was given permission to address the House for 1 minute.)

Mr. FRENZEL. Mr. Speaker, I have requested this time for the purpose of asking the distinguished acting majority leader about the program for the remainder of the day and for the next week.

Mr. Speaker, I yield to the distinguished acting majority leader, the gentleman from Indiana (Mr. BRADEMAS).

Mr. BRADEMAS. Mr. Speaker, I thank the distinguished acting minority leader for yielding.

Mr. Speaker, the program for the House of Representatives for the week of September 18, 1978, is as follows:

On Monday, September 18, the House meets at noon on the Consent Calendar.

There are 25 bills to be called up under suspension of the rules. I may say, Mr. Speaker, that the list of all 25 of these bills has been available from Tuesday last, both on the floor and as published in the CONGRESSIONAL RECORD.

For that reason, if the gentleman from Minnesota will yield to me to do so, I would like to ask unanimous consent to dispense with the reading and the numbers and the titles of the 25 bills under suspension.

Mr. FRENZEL. Mr. Speaker, I yield to the gentleman for that purpose.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. BRADEMAS. Mr. Speaker, will the gentleman yield further?

Mr. FRENZEL. I yield to the distinguished acting majority leader.

Mr. BRADEMAS. Mr. Speaker, I may say in this respect that the first seven of these suspensions are tariff bills and can probably be disposed of rapidly. The remainder are substantive and are the most significant of the 80 bills for which requests have been made to be placed on the suspension calendar.

Mr. Speaker, on Tuesday, September 19, the House meets at noon on the Private Calendar. There are 6 bills to be called up under suspension of the rules. Votes on suspensions will be postponed until the end of all suspensions. Those bills are:

H.R. 13149, extend report date on food stamp pilot project workfare provisions;

H.R. 1464, Humane Methods of Slaughter Act amendments;

H.R. 9482, Packers and Stockyards Act amendments;

H.R. 12101, Farmer-to-Consumer Direct Marketing Act amendments;

H.R. 13715, National Weather Service Act; and

H.R. 12559, Native Latex Commercialization Act.

Following the suspensions, Mr. Speaker, there are scheduled for consideration on Tuesday the following conference reports:

S. 1678, FIFRA;

H.R. 12936, HUD appropriations, fiscal year 1979;

S. 3040, Amtrak Improvement Act;

H.R. 12598, foreign relations authorizations, fiscal year 1979;

H.R. 12222, international development and food assistance, fiscal year 1978;

H.R. 11401, NASA authorization, fiscal year 1979; and,

H.R. 8149, Customs Procedural Reform Act.

Mr. Speaker, on Wednesday, September 20, the House meets at 10 o'clock a.m. to complete consideration of the bill H.R. 12611, Air Service Improvement Act of 1978;

H.R. 1, Ethics in Government Act, under a modified open rule, with 2 hours of debate; and,

H.R. 12452, CETA amendments, to complete consideration of that bill.

Mr. Speaker, on Thursday and Friday, September 21 and 22, the House will meet at 10 o'clock a.m. to consider the following bills:

H.R. 11733, Surface Transportation Assistant Act of 1978, to complete consideration of that bill;

H.R. 12005, Justice Department authorizations, under an open rule, with 1 hour of debate;

S. 1613, Magistrate Act of 1977, under an open rule, with 1 hour of debate;

H.R. 13059, Water Resources Development Act of 1978, under an open rule, with 1 hour of debate;

H.R. 13750, Sugar Stabilization Act of 1978, under an open rule, with 2 hours of debate; and finally, there will be the Department of Defense authorizations bill, fiscal year 1979, subject to a rule being granted.

Mr. Speaker, the House will adjourn by 7 p.m. on Monday and Tuesday; by 7:30 p.m. on Thursday, and by 3 p.m. on Friday.

Conference reports may be brought up at any time and any further program will be announced later.

Mr. Speaker, I thank my friend, the gentleman from Minnesota, for having yielded.

Mr. FRENZEL. Mr. Speaker, I thank the distinguished acting majority leader.

Mr. Speaker, I would like to further inquire, on Wednesday there is no closing time reported. May we assume that the House will go no later than 9 o'clock p.m. on Wednesday?

Mr. Speaker, I yield to the distinguished acting majority leader.

Mr. BRADEMAS. Mr. Speaker, let me say 9 o'clock, or thereabouts.

I may say, if the gentleman will yield further, that in respect to the remainder of the program for today, we shall be considering the rule on the bill H.R. 11733, Surface Transportation Assistance Act of 1978.

Two hours of debate are scheduled on that, and we will consider the rule and general debate only.

Mr. FRENZEL. Mr. Speaker, I thank the gentleman.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Minnesota.

Mr. LEVITAS. Mr. Speaker, I thank the gentleman from Minnesota for yielding.

I would like to make this inquiry of the acting majority leader: On an earlier tentative schedule for next week, on Tuesday, on which day certain conference reports were scheduled, one of the proposed scheduled conference reports was a conference report on the FTC Act amendments. I notice that has now been taken off the schedule for Tuesday, but there exists in the gentleman's statement the usual language that conference reports may be brought up at any time.

Mr. Speaker, I would like to inquire. Is there any intention of bringing up the FTC conference report next week?

Mr. BRADEMAS. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Indiana.

Mr. BRADEMAS. Mr. Speaker, as I understand it, if I may respond to the gentleman from Georgia (Mr. LEVITAS), the chairman of the committee with jurisdiction over that bill asked that the conference report be withdrawn from the Speaker's calendar in an effort to work out some problems in the conference report. The matter is before the Committee on Rules, and an effort will be made to seek a rule. So there is a possibility that it will be brought up next week.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, might I just suggest to the acting majority leader that the leadership explore the possibility of calling up under unanimous consent some of these bills that are listed under suspension for Monday?

There has been a tendency—and I am sure most Members would consider it unfortunate—to ask for rollcall votes on suspension bills simply because they are considered under suspension of the rules. It might be more difficult for an individual Members to object to a bill called up under unanimous consent and take the onus of defeating that legislation himself since the suspension calendar would still be available.

Mr. Speaker, it seems to me that many of these bills are not controversial, but the sheer magnitude of the number of bills listed might suggest to some Members the demanding of rollcall votes that are unnecessary.

Mr. BRADEMAS. Mr. Speaker, if the gentleman from Minnesota will yield further, I can only state that I want to commend the gentleman from Maryland (Mr. BAUMAN) for what I think is a very constructive suggestion, and the gentleman from Indiana will be glad to relay this suggestion to the appropriate authorities.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed on Wednesday of next week.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

ADJOURNMENT TO MONDAY, SEPTEMBER 18, 1978

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. ANNUNZIO. Mr. Speaker, reserving the right to object, I shall not object, but I would like to ask the distinguished acting majority leader this question:

I know there has been mention made about the completion time next week, but could the gentleman give us a better idea? The gentleman stated the times when we will go into session and as to approximately when we will adjourn or recess on Monday, Tuesday, Wednesday, and Thursday, and that is on our schedule. I ask this question only so that we can make plans.

Mr. BRADEMAS. Yes, Mr. Speaker, if the gentleman will yield, I will be glad to respond.

The House will adjourn by 7 p.m. on Monday and Tuesday, by 7:30 p.m. on Thursday, by 9 p.m. or thereabouts on Wednesday, and by 3 p.m. on Friday.

Mr. ANNUNZIO. Mr. Speaker, I thank the acting majority leader, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

PERMISSION FOR COMMITTEE ON ARMED SERVICES TO FILE REPORT ON H.R. 14042, DEPARTMENT OF DEFENSE AUTHORIZATIONS, 1979

Mr. PRICE. Mr. Speaker, I ask unanimous consent that the Committee on Armed Services may have until midnight tonight, Friday, September 15, 1978, to file a report on the bill (H.R. 14042), authorizing appropriations for the Department of Defense for fiscal year 1979, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1326 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1326

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes. After general debate, which shall be confined to the bill and amendment made in order by this resolution and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI, clause 1(p)(3), rule X and clause 5, rule XXI are hereby waived. No amendment to title V of said substitute, and no amendment to said substitute changing or modifying said title, shall be in order except amendments recommended by the Committee on Ways and Means. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except on motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, this is a 2-hour rule, open on four titles, closed on one, the Ways and Means title. To the best of my knowledge, there is absolutely nothing unusual about the rule, nor is there any controversy about the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1326 is a 2-hour, modified open rule making in order the consideration of H.R. 11733, the Surface Transportation Assistance Act of 1978. The rule waives section 402 (a) of the Budget Act against the consideration of the bill. Since section 402 (a) of the Budget Act prohibits consideration of legislation authorizing new budget authority which is reported after May 15 preceding the fiscal year in which that authority is to take effect, and, since various sections of the bill authorize new budget authority in fiscal 1979, even though the bill was not reported until August 11 of this year, a waiver is necessary in order to bring it up. On August 16, 1978, Chairman GIAIMO of the Budget Committee wrote to the Rules Committee indicating the Budget Committee's support for this waiver on the grounds that the chairman of the Subcommittee on Surface Transportation, Mr. HOWARD, suffered an unfortunate illness, and the work of the committee was delayed.

Under the terms of this rule, the 2 hours of debate time would be divided between the Public Works and the Ways and Means Committees, and the committee amendment in the nature of a substitute recommended by the Public Works Committee is made in order as an original bill for the purpose of amendment. That substitute in turn is protected against points of order for failure to comply with clause 7 of rule XVI, the germaneness rule; clause 1(p)(3) of rule X, which prohibits specific road legislation in general road legislation; and clause 5, rule XXI, which prohibits appropriations in a legislative measure.

Mr. Speaker, as I mentioned earlier, this is a modified open rule. Beginning at line 15 on page 2 of the rule it is stated that no amendment to title V of the substitute shall be in order except amendments recommended by the Committee on Ways and Means. Title V is that portion of the bill reported by the Ways and Means Committee which extends the highway trust fund for 5 years to September 30, 1984, postponing the tax reductions scheduled to take effect with the expiration of the trust fund.

Mr. Speaker, when the Rules Committee heard testimony on this bill on August 16, no objections were expressed to the rule requested by the two committees and that is the rule before us today.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DAVIS. Mr. Speaker, I object to the vote on the ground that a quorum

is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 318, nays 4, not voting 110, as follows:

[Roll No. 785]

YEAS—318

Abdnor	Emery	Levitas
Addabbo	English	Livingston
Akaka	Erlenborn	Lloyd, Calif.
Alexander	Ertel	Lloyd, Tenn.
Ambro	Evans, Colo.	Long, La.
Anderson, Calif.	Evans, Del.	Long, Md.
	Evans, Ga.	Lundine
Andrews, N.C.	Evans, Ind.	McClory
Andrews, N. Dak.	Fary	McDade
	Fascell	McEwen
Annunzio	Fenwick	McFall
Applegate	Findley	McHugh
Archer	Fish	McKay
Ashley	Fisher	Madigan
Aspin	Fithian	Maguire
AuCoin	Flippo	Mahon
Bafalis	Flood	Markey
Baldus	Florio	Marks
Barnard	Flynt	Martin
Baucus	Foley	Mattox
Bedell	Ford, Tenn.	Mazzoli
Beilenson	Forsythe	Meeds
Benjamin	Fountain	Meyner
Bennett	Fowler	Michel
Bevill	Fraser	Mikulski
Biaggi	Frenzel	Mikva
Bingham	Fuqua	Miller, Ohio
Blanchard	Gammage	Mineta
Blouin	Garcia	Minish
Boland	Gephardt	Mitchell, Md.
Bolling	Giaimo	Mitchell, N.Y.
Bonior	Gilman	Moakley
Bowen	Ginn	Moffett
Brademas	Glickman	Mollohan
Breckinridge	Goodling	Montgomery
Brinkley	Gore	Moorhead, Calif.
Brodhead	Gradison	
Brooks	Grassley	Moss
Brown, Calif.	Green	Mottl
Brown, Mich.	Gudger	Murphy, Pa.
Broyhill	Guyer	Murtha
Buchanan	Hagedorn	Myers, Michael
Burleson, Tex.	Hall	Natcher
Burlison, Mo.	Hamilton	Neal
Burton, Phillip	Hammer-schmidt	Nedzi
Butler		Nichols
Byron	Hanley	Nolan
Carr	Hansen	Nowak
Carter	Harkin	O'Brien
Cavanaugh	Harris	Oberstar
Cederberg	Hawkins	Obey
Chappell	Hefner	Ottinger
Chisholm	Heftel	Panetta
Clawson, Del	Hightower	Patten
Clay	Hillis	Patterson
Coleman	Holland	Pattison
Collins, Ill.	Hollenbeck	Pease
Collins, Tex.	Holt	Perkins
Conable	Holtzman	Pettis
Conte	Horton	Preyer
Corcoran	Howard	Price
Cornell	Hubbard	Pursell
Coughlin	Hughes	Quayle
Cunningham	Hyde	Quillen
D'Amours	Ichord	Rahall
Daniel, Dan	Ireland	Railsback
Daniel, R. W.	Jenkins	Rangel
Danielson	Johnson, Calif.	Regula
Davis	Johnson, Colo.	Reuss
de la Garza	Jones, Okla.	Rhodes
Delaney	Jones, Tenn.	Richmond
Derrick	Jordan	Rinaldo
Derwinski	Kastenmeier	Roberts
Devine	Kazen	Robinson
Dickinson	Kemp	Roe
Dicks	Kildee	Rogers
Dingell	Kindness	Roncalio
Dodd	Kostmayer	Rose
Dornan	Krebs	Rosenthal
Downey	LaFalce	Roybal
Drinan	Lagomarsino	Rudd
Duncan, Oreg.	Latta	Ruppe
Duncan, Tenn.	Le Fante	Russo
Early	Leach	Satterfield
Edgar	Lederer	Sawyer
Edwards, Calif.	Leggett	Scheuer
Edwards, Okla.	Lehman	Schroeder
Eilberg	Lent	Schulze
Sharp	Symms	Weiss
Shuster	Thompson	Whalen
Sikes	Thornton	Whitehurst
Simon	Traxler	Whitley
Skelton	Treen	Whitten
Slack	Trible	Wiggins
Snyder	Tucker	Wilson, Bob
Solarz	Udall	Wilson, C. H.
Spence	Ullman	Winn
St Germain	Van Deerlin	Wirth
Staggers	Vander Jagt	Wolff
Stangeland	Vanik	Wylie
Stanton	Vento	Yates
Steed	Volkmer	Yatron
Steers	Waggonner	Young, Fla.
Stockman	Walgren	Young, Mo.
Stokes	Walker	Zablocki
Stratton	Wampler	Zeferetti
Studds	Watkins	
Stump	Weaver	

NAYS—4

Bauman	McDonald	Moore
Gonzalez		

NOT VOTING—110

Ammerman	Gaydos	Pickle
Anderson, Ill.	Gibbons	Pike
Armstrong	Goldwater	Poage
Ashbrook	Hannaford	Pressler
Badham	Harrington	Pritchard
Beard, R.I.	Harsha	Quie
Beard, Tenn.	Heckler	Risenhoover
Boggs	Huckaby	Rodino
Bonker	Jacobs	Rooney
Breaux	Jeffords	Rostenkowski
Broomfield	Jenrette	Rousselot
Brown, Ohio	Jones, N.C.	Runnels
Burgener	Kasten	Ryan
Burke, Calif.	Kelly	Santini
Burke, Fla.	Keys	Sarasin
Burke, Mass.	Krueger	Sebelius
Burton, John	Lott	Seiberling
Caputo	Lujan	Shipley
Carney	Luken	Sisk
Clausen, Don H.	McCloskey	Skubitz
	McCormack	Smith, Iowa
Cleveland	McKinney	Smith, Nebr.
Cochran	Mann	Spellman
Cohen	Marlenee	Stark
Conyers	Marriott	Steiger
Corman	Mathis	Taylor
Cornwell	Metcalfe	Teague
Cotter	Milford	Thone
Crane	Miller, Calif.	Tsongas
Dellums	Moorhead, Pa.	Walsh
Dent	Murphy, Ill.	Waxman
Diggs	Murphy, N.Y.	White
Eckhardt	Myers, Gary	Wilson, Tex.
Edwards, Ala.	Myers, John	Wright
Flowers	Nix	Wydler
Ford, Mich.	Oakar	Young, Alaska
Frey	Pepper	Young, Tex.

The Clerk announced the following pairs:

Mrs. Boggs with Mr. Anderson of Illinois.
Mrs. Spellman with Mr. Goldwater.
Ms. Keys with Mr. Pressler.
Mrs. Burke of California with Mr. Ashbrook.
Mrs. Smith of Nebraska with Mr. Young of Alaska.
Mrs. Heckler with Mr. Lott.
Ms. Oakar with Mr. Badham.
Mr. Cotter with Mr. Marlenee.
Mr. Rodino with Mr. Wydler.
Mr. Rooney with Mr. Beard of Tennessee.
Mr. Rostenkowski with Mr. Pritchard.
Mr. Jenrette with Mr. Harsha.
Mr. Hannaford with Mr. Broomfield.
Mr. Breaux with Mr. Jeffords.
Mr. Ammerman with Mr. Quie.
Mr. Mann with Mr. Walsh.
Mr. John L. Burton with Mr. McKinney.
Mr. Burke of Massachusetts with Mr. Burgener.
Mr. Corman with Mr. Burke of Florida.
Mr. Cornwell with Mr. Kasten.
Mr. Dellums with Mr. Skubitz.
Mr. Dent with Mr. Thone.
Mr. Gaydos with Mr. Lujan.
Mr. Moorhead of Pennsylvania with Mr. Caputo.
Mr. Miller of California with Mr. Don H. Clausen.
Mr. Murphy of New York with Mr. Marriott.
Mr. Teague with Mr. Steiger.
Mr. Waxman with Mr. Taylor.
Mr. White with Mr. Gary A. Myers.
Mr. Ford of Michigan with Mr. Cleveland.
Mr. Huckaby with Mr. McCloskey.
Mr. Pike with Mr. Cochran of Mississippi.
Mr. Santini with Mr. Cohen.
Mr. Shipley with Mr. John T. Myers.
Mr. Smith of Iowa with Mr. Sebelius.
Mr. Stark with Mr. Seiberling.
Mr. Pepper with Mr. Brown of Ohio.
Mr. Pickle with Mr. Conyers.
Mr. Diggs with Mr. Crane.
Mr. Krueger with Mr. Eckhardt.
Mr. Wright with Mr. Edwards of Alabama.
Mr. Metcalfe with Mr. Milford.
Mr. Carney with Mr. Luken.
Mr. Bonker with Mr. Kelly.
Mr. Beard of Rhode Island with Mr. Frey.
Mr. Jacobs with Mr. Nix.
Mr. Jones of North Carolina with Mr. Rousselot.
Mr. Flowers with Mr. Gibbons.
Mr. McCormack with Mr. Runnels.
Mr. Ryan with Mr. Mathis.
Mr. Sisk with Mr. Risenhoover.
Mr. Murphy of Illinois with Mr. Tsongas.
Mr. Charles Wilson of Texas with Mr. Harrington.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. HOWARD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HOWARD).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOTTL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 303, nays 6, not voting 123, as follows:

[Roll No. 786]

YEAS—303

Abdnor	Beilenson	Buchanan
Akaka	Benjamin	Burke, Mass.
Alexander	Bennett	Burleson, Tex.
Ambro	Bevill	Burlison, Mo.
Anderson, Calif.	Biaggi	Burton, Phillip
	Bingham	Butler
Andrews, N.C.	Blanchard	Byron
Andrews, N. Dak.	Blouin	Carr
	Boland	Carter
Annunzio	Bolling	Cavanaugh
Applegate	Bonior	Cederberg
Archer	Bonker	Chappell
Ashley	Bowen	Clawson, Del
Aspin	Brademas	Coleman
AuCoin	Breckinridge	Collins, Ill.
Bafalis	Brinkley	Conte
Baldus	Brodhead	Corcoran
Barnard	Brooks	Cornell
Baucus	Brown, Calif.	Coughlin
Bauman	Brown, Mich.	Cunningham
Bedell	Broyhill	D'Amours

Daniel, Dan	Ireland	Quillen
Daniel, R. W.	Jenkins	Rahall
Danielson	Johnson, Calif.	Railsback
Davis	Johnson, Colo.	Rangel
de la Garza	Jones, Okla.	Regula
Delaney	Jones, Tenn.	Reuss
Derrick	Jordan	Rhodes
Devine	Kastenmeier	Richmond
Dickinson	Kazen	Rinaldo
Dicks	Kemp	Roberts
Dodd	Kildee	Robinson
Dornan	Kindness	Roe
Downey	Kostmayer	Roncalio
Drinan	Krebs	Rose
Duncan, Oreg.	LaFalce	Rosenthal
Duncan, Tenn.	Lagomarsino	Roybal
Early	Latta	Rudd
Eckhardt	Leach	Russo
Edgar	Lederer	Ryan
Edwards, Calif.	Le Fante	Satterfield
Edwards, Okla.	Lehman	Sawyer
Eilberg	Levitas	Scheuer
English	Livingston	Schroeder
Erlenborn	Lloyd, Tenn.	Schulze
Ertel	Long, La.	Seiberling
Evans, Colo.	Long, Md.	Sharp
Evans, Del	Lundine	Shuster
Evans, Ga.	McClory	Sikes
Fary	McDade	Simon
Fascell	McEwen	Skelton
Fenwick	McFall	Slack
Findley	McHugh	Snyder
Fish	McKay	Solarz
Fisher	Madigan	Spence
Fithian	Maguire	St Germain
Flippo	Mahon	Staggers
Flood	Marks	Stangeland
Florio	Martin	Stanton
Flynt	Mattox	Steed
Foley	Mazzoli	Steers
Ford, Tenn.	Meeds	Stockman
Forsythe	Meyner	Stokes
Fountain	Michel	Stratton
Fowler	Mikulski	Studds
Frenzel	Mikva	Stump
Fuqua	Miller, Ohio	Thompson
Gammage	Mineta	Thornton
Garcia	Minish	Traxler
Gephardt	Mitchell, Md.	Treen
Giaimo	Mitchell, N.Y.	Trible
Gilman	Moakley	Tucker
Ginn	Moffett	Udall
Gonzalez	Mollohan	Ullman
Goodling	Montgomery	Vander Jagt
Gore	Moore	Vanik
Gradison	Moorhead, Calif.	Vento
Grassley		Volkmer
Green	Moss	Waggonner
Gudger	Motti	Walgren
Guyer	Murphy, N.Y.	Walker
Hagedorn	Murphy, Pa.	Wampler
Hall	Murtha	Watkins
Hamilton	Natcher	Weaver
Hammer-schmidt	Neal	Weiss
	Nedzi	Whalen
Hanley	Nichols	Whitehurst
Hansen	Nolan	Whitley
Harkin	Nowak	Whitten
Harris	O'Brien	Wiggins
Hefner	Oberstar	Wilson, C. H.
Heftel	Obey	Winn
Hightower	Ottinger	Wirth
Hillis	Panetta	Wolff
Holland	Patten	Wylie
Hollenbeck	Patterson	Yates
Holt	Pattison	Yatron
Holtzman	Pease	Young, Fla.
Howard	Perkins	Young, Mo.
Hubbard	Pettis	Zablocki
Hughes	Preyer	Zeferetti
Hyde	Price	
Ichord	Pursell	

NAYS—6

Collins, Tex.	Lloyd, Calif.	Quayle
Conable	McDonald	Wilson, Bob

NOT VOTING—123

Addabbo	Burton, John	Dellums
Ammerman	Caputo	Dent
Anderson, Ill.	Carney	Derwinski
Armstrong	Chisholm	Diggs
Ashbrook	Clausen, Don H.	Dingell
Badham		Edwards, Ala.
Beard, R.I.	Clay	Emery
Beard, Tenn.	Cleveland	Evans, Ind.
Boggs	Cochran	Flowers
Breaux	Cohen	Ford, Mich.
Broomfield	Conyers	Fraser
Brown, Ohio	Corman	Frey
Burgener	Cornwell	Gaydos
Burke, Calif.	Cotter	Gibbons
Burke, Fla.	Crane	Glickman
Goldwater	Marriott	Santini
Hannaford	Mathis	Sarasin
Harrington	Metcalfe	Sebelius
Harsha	Milford	Shipley
Hawkins	Miller, Calif.	Sisk
Heckler	Moorhead, Pa.	Skubitz
Horton	Murphy, Ill.	Smith, Iowa
Huckaby	Myers, Gary	Smith, Nebr.
Jacobs	Myers, John	Spellman
Jeffords	Myers, Michael	Stark
Jenrette	Nix	Steiger
Jones, N.C.	Oakar	Symms
Kasten	Pepper	Taylor
Kelly	Pickle	Teague
Keys	Pike	Thone
Krueger	Poage	Tsongas
Leggett	Pressler	Van Deerlin
Lent	Pritchard	Walsh
Lott	Quie	Waxman
Lujan	Risenhoover	White
Luken	Rodino	Wilson, Tex.
McCloskey	Rogers	Wright
McCormack	Rooney	Wydler
McKinney	Rostenkowski	Young, Alaska
Mann	Rousselot	Young, Tex.
Markey	Runnels	
Marlenee	Ruppe	

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 11733, with Miss JORDAN in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from New Jersey (Mr. HOWARD) will be recognized for 30 minutes, the gentleman from Pennsylvania (Mr. SHUSTER) will be recognized for 30 minutes, the gentleman from Oregon (Mr. ULLMAN) will be recognized for 30 minutes, the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. HOWARD).

Mr. HOWARD. Madam Chairman, I yield myself such time as I may consume.

Mr. MINETA. Madam Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from California.

Mr. MINETA. Madam Chairman, the Southern Pacific Transportation Co. operates a commuter rail service between San Jose and San Francisco. With 27 stations along the 47 miles between San Jose and San Francisco, over 7,500 commuters are served daily.

Under recent State legislation (AB 1853, Pagan), a "bulk ticket purchase" program was initiated by Santa Clara and San Mateo Counties and the city and county of San Francisco in January 1978. Under this program, the public receives a discount on the tariff fares set by the California Public Utilities Commission. Southern Pacific is reimbursed with public funds so they receive full fare revenues.

Under section 315 of the bill, will the bulk ticket purchase program qualify for Federal funding under a purchase of service or similar arrangement?

Mr. HOWARD. Section 315 provides Federal grants to cover up to 50 percent of the total operating losses of eligible service. It appears that the Southern Pacific service itself is clearly eligible for operating subsidies. The only question I have is how UMTA might determine what the operating losses are under the bulk ticket program.

Mr. MINETA. For the past 4 years, the California Public Utilities Commission has been monitoring Southern Pacific to determine losses on this commuter line. The PUC has legal responsibility, under State law, to establish fares. PUC data, from its monitoring of SP, can be used to determine operating losses.

Mr. HOWARD. Based on that type of documentation of operating losses, UMTA could fund 50 percent under section 315 of this bill.

Mr. MINETA. I thank the gentleman, and I appreciate his yielding to me.

Mr. HOWARD. Madam Chairman, the legislation before the House today encompasses a wholly new approach to the surface transportation needs of all America. For the first time in our history, we are addressing in a single legislative package the destructive congestion of our cities and the equally destructive isolation of small-town, rural America, where millions of people must travel daily over inadequate, dangerous roads and highway bridges to bring their goods to market, their children to school.

I ask my colleagues to consider carefully every aspect of this enormously complex legislation, because it will affect the lives and well-being of all our constituents for many years to come.

H.R. 11733, the Surface Transportation Assistance Act of 1978, is indeed an ambitious measure. It is the largest highway/mass transit program ever presented to the Congress. It calls for the longest spending authorization period ever proposed for a total highway and safety program. But it is a sound program; it has a logical financial framework that meets every budgetary test, and it is well within the capacity of industry and the public sector.

No matter what you may have heard or will hear in the course of this debate, H.R. 11733 is not a budget-busting bill. More than two-thirds of the Federal spending proposed in this legislation will come directly from the assured resources of the user-supported highway trust fund, without adding 1 cent to the present gasoline tax. And the remainder, coming from the general revenue, is well within the limits established in the congressional budget.

Certainly the cost of this legislation demands the most careful consideration by the House. But I ask my colleagues also to weigh that cost against the enormous cost that our deteriorating transportation system imposes on all of us today in terms of wasted lives, wasted energy, wasted productivity.

Title I of this bill calls for spending levels—from the highway trust fund—of slightly more than $8 billion for each of the 4 fiscal years 1979 through 1982. That includes increases in funding for the Interstate System from $3.625 billion to $4 billion a year. We propose this increase to speed completion of the system and an additional $175 million for each of the fiscal years 1980 and 1981, and

$275 million for each of the fiscal years 1982 and 1983 to permit resurfacing, restoration, and rehabilitation of interstate sections that are wearing out after more than 20 years of hard service.

We propose continuing authorizations for noninterstate programs at essentially the present levels, with several important exceptions: primary highway authorizations would be increased by $750 million to $2.1 billion annually, and secondary funding would go up to $250 million to $650 million a year.

In each case, those increased funds must be used for resurfacing, restoration, and rehabilitation of existing roads—the three R's of the highway program.

I call particular attention to this provision because it marks a significant departure in our national highway policy, as a result of which greater emphasis will be placed on upgrading and improving the safety and efficiency of the roads we now have in place rather than on merely building more and more miles of new highways.

A somewhat similar policy applies to funding provided in H.R. 11733 for off-system roads. We have raised the authorization in this category from $200 million to $300 million a year with the stipulation that at least half of each State's spending on these roads go into safety improvements.

We have also liberalized provisions for transferring funds from one program to another in most all noninterstate construction programs and increased the Federal share of costs generally from 70 percent to 80 percent. For safety programs, the Federal share is at 90 percent of cost.

Title II of this legislation greatly expands the Federal role in furthering highway safety and reducing the tragic toll of accidents that has cost us more than 2,100,000 lives since the advent of the automobile.

We have made great progress since Congress first addressed this problem with the enactment of highway safety legislation in 1966. But we still have a long way to go. More than 47,000 of our fellow citizens lost their lives in highway accidents in 1977. In that year, traffic accidents were the sixth leading cause of death in the United States, and the No. 1 killer among persons under 34 years of age.

It was with those casualty lists in mind that we increased the funding authorizations for virtually all our permanent safety programs, including grade crossing, high hazard locations, and roadside obstacles. We also provided funding to help the States enforce the 55-mile-per-hour speed limit, and the Secretary of Transportation will have full authority to reduce any State's share of Federal highway funding for failure to comply with enforcement standards and guidelines.

But far and away the most significant safety measure in this legislation comes under the heading of bridge repair and replacement. In title II of this bill, we propose annual authorizations of $2 billion a year for the 4 fiscal years 1979 through 1982, with 90 percent of project cost to be funded out of the highway trust fund.

We have not lightly proposed this giant step forward. The existing program offers only $180 million and a 75-percent Federal contribution toward the solution of what is perhaps the most critical problem area in our entire highway system. At this very moment, there are some 33,500 bridges on the Federal-aid system alone that are so worn out, so dangerously deficient, that they constitute a hazard to every motorist who dares to cross them. And there are another 72,000 bridges off the Federal system in equally bad condition.

At our current rate of funding, it would take 100 years just to correct the conditions that exist right now on the highway bridges of this country. It would be a shameful dereliction of our duty, Madam Chairman, if we failed to act now on a condition that cries out for immediate action.

Title III of this legislation amends the Urban Mass Transit Assistance Act of 1974 so as to step up the attack on urban congestion and provide assurance of continuing, long-term Federal support for local efforts in this area.

This title authorizes about $4.6 billion for each of the fiscal years 1979 through 1982, extending the UMTA authorizations and greatly expanding the size and scope of Federal assistance to virtually all public transportation services. The Federal share is set at 50–50 for transportation operating costs and 80 percent for capital assistance.

Title III authorizes $1.86 billion a year in discretionary grants for public transportation assistance, but tightens up on the Secretary of Transportation's authority by establishing specific categories with specific dollar amounts to be earmarked each year, including $307 million for bus and bus-related purchases, $223 million for fixed-rail rolling stock, $558 million for rail modernization, $707 million for new starts and extension, and $65 million for planning and technical studies. The specific set-aside in existing law for capital assistance to rural and small urban areas is being replaced with an expanded formula program of $125 million annually for transportation operating costs as well as capital grants.

Title III retains the existing formula grant program for capital and operating assistance at the current levels of $850 million for fiscal 1979 and $900 million for 1980, and provides an additional $900 million a year for 1981 and 1982, retaining the present criteria—half based on population numbers and half on population density.

However, as a result of testimony showing the need for greater help to our most heavily urbanized areas, we established a new "tier II" formula, authorized at $250 million annually for fiscal years 1979 through 1982. Our committee agreed to continue the half-and-half population/population density for these "tier II" grants, with the proviso that 85 percent of the funds would go to the 33 urbanized areas in the United States that have populations of 750,000 and more, and the remaining 15 percent to smaller urban centers.

Title IV of H.R. 11733 provides for domestic preference in the acquisition of products and supplies on projects financed under the act, as well as congressional authority to review rules and regulations issued under the act.

Madam Chairman, I ask the Members of this body to approve H.R. 11733, the Surface Transportation Assistance Act of 1978.

Madam Chairman, at this time I am very happy to yield to our great chairman of the full committee, the gentleman from California (Mr. JOHNSON) who has given us so much leeway when we needed it, and who has given us so much help when we needed it.

Mr. JOHNSON of California. Madam Chairman, I thank the gentleman from New Jersey (Mr. HOWARD) for yielding.

I take this time to commend the chairman of the Subcommittee on Transportation (Mr. HOWARD) and the ranking minority member, the gentleman from Pennsylvania (Mr. SHUSTER), for the wonderful job they have done over the past 3 years in putting this bill together. They held long and complete hearings. There was a detailed and exhaustive markup of the legislation both in the subcommittee and the full committee.

Madam Chairman, I want to say to the chairman of the subcommittee that he is looking very well today. I hope we will take a short period of time on this bill today. Our able colleague, the gentleman from New Jersey (Mr. ROE) did a very fine job in the subcommittee as a backup for the chairman of the subcommittee. We moved this bill along.

Madam Chairman, I hope this body will adopt H.R. 11733 when it comes before it next week under the 5-minute rule. I want to say that I thoroughly support the bill which was put together by the subcommittee and adopted by the full committee by a very large majority vote.

Madam Chairman, the Surface Transportation Assistance Act of 1979 which comes before the House today is the product of more than 3 years of conscientious effort by the Committee on Public Works and Transportation to bring forward a long-range program that lies well within our budgetary capability and serves most effectively the truly critical transportation needs of all our people.

In the course of our prolonged hearings, we have received and considered carefully, testimony from literally hundreds of authoritative witnesses bearing on most every provision contained in this legislation.

You will find, I believe, that the hearing record amply supports the committee judgments we ask the House to support today.

Our sole purpose is to enact into law a program that will provide greater and more flexible Federal assistance to the States, the cities, small towns, and rural areas that are struggling with limited resources to deal with traffic congestion, de-

teriorating highways and highway bridges, inadequate public transportation, the essential needs of the elderly and handicapped, and the endless cycle of highway accidents that have claimed more American lives than all the wars in our history.

H.R. 11733 attacks all of these crisis areas head on. It is a total highway, highway safety, and mass transit bill that can and will do the job that must be done.

The Surface Transportation Assistance Act of 1978 calls for completion of the interstate highway system as fast as is humanly possible to avoid the wasteful cost that inflation imposes on every hour of delay. It calls for a significantly increased investment in the three R's of the highway program—the restoring and rehabilitation of the Federal-aid system that is wearing out today faster than we can rebuild.

H.R. 11733 calls for a long-overdue salvage and rescue job on the huge backlog of dangerous bridges that scar our highways all over America—at a funding level more appropriate to the need than our present inadequate funding.

H.R. 11733 deals forcefully with a major problem that threatens the present and future well-being of all Americans wherever they may live and work—the inadequacy of affordable, convenient, and accessible public transportation in urban and nonurban areas.

The bill before the House today significantly expanded the level of Federal aid for capital and operating purposes for all areas of the country while, at the same time, giving greater recognition to the long-neglected needs of our larger cities.

Madam Chairman, this is the largest program ever established for highways and mass transit, and it calls for the longest authorization period that has ever been proposed, because it recognizes both the enormity of the needs and the continuing nature of those needs.

Finally, Madam Chairman, I should like to pay a special tribute to Congressman JIM HOWARD, the chairman of our Surface Transportation Subcommittee, who has devoted himself unremittingly, too often at the risk of his health, to the completion of this monumental legislation. And I should like the House to know also that he has been most ably supported throughout by the ranking minority member of the subcommittee, Congressman BUD SHUSTER.

To Mr. HOWARD and Mr. SHUSTER, and to all the members of the Public Works and Transportation Committee, on both the majority and minority sides, I express my heartfelt thanks.

Madam Chairman, I ask approval of H.R. 11733.

Mr. HOWARD. Madam Chairman, I would like to say that this legislation did pass out of the subcommittee and out of the full committee by a voice vote.

Madam Chairman, I reserve the balance of my time.

Mr. SHUSTER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in strong support of H.R. 11733, the Surface Transportation Assistance Act of 1978, and urge its enactment by the overwhelming vote it deserves.

The overall case for this bill has been ably stated by the gentleman from New Jersey, the chairman of the Subcommittee on Surface Transportation, whose leadership, hard work, and cooperation have been decisive in bringing a bill of this magnitude to the floor.

Rather than repeat the substance of his comments, with which I associate myself, I want to elaborate on a few key aspects of this bill from my perspective as ranking minority member of the subcommittee and chairman of the National Transportational Policy Commission.

H.R. 11733 is by no means a routine bill, though it does indeed extend and expand a number of existing programs. But beyond that, it substantially redirects and refocuses emphasis on changing needs and priorities for the safe, economical, and efficient movement of people and goods.

It does so on the basis of comprehensive consideration of all the elements of our highway and public transportation programs, viewed as complementary rather than competing or conflicting, and thus represents a balanced and coordinated package. To this extent it speaks well of the congressional reorganization which placed responsibility for these programs under the jurisdiction of a single committee.

Nor is it merely a big money bill, though the dollar figures are the highest yet. Its refinements and new or expanded initiatives are a direct response to the needs documented in more than 3 years of work. Significantly, during the extensive consideration of this bill, there has been virtually unanimous recognition of the genuine needs we face in the area of highways and public transportation. It has been gratifying to note the comparative lack of the old worn-out rhetoric about transit give-aways or paving over the country with highways. I like to think that this reflects the realism of our bill, and perhaps a new public awareness that our prosperity and the best in our way of life depend heavily on mobility.

Finally, the bill is sound financially, with nearly all of the highway authorizations financed by the highway trust fund, which is extended for 5 years. The extension of this time-tested, self-financing, deficit-proof and inflation-proof financing mechanism—preserving the pay-as-you-go principle that has insured its success for more than two decades—alone justifies enactment of H.R. 11733.

I want to call particular attention to the relation between the authorizations, the duration of the trust fund extension and revenues flowing into the fund. The reported bill before you is premised upon a 6-year extension of the fund. Such an extension would have restored the original relationship between the life of the trust fund and the life of the program authorizations which it sustains, established in the 1956 highway and highway revenue acts. However, members of the Committee on Public Works and Transportation and the Committee on Ways and Means have recognized considerable concern among the House membership at large and the public with respect to levels of Federal spending, whatever the source. There also has been concern over future highway program levels beyond the expiration of H.R. 11733.

The result has been action by the Committee on Ways and Means to approve a 5-year extension of the trust fund. For our part on the Committee on Public Works and Transportation, the managers of this bill have pledged to offer an amendment to reduce overall funding in the bill by over $1.3 billion per year—$1 billion in the highway program and a proportionate $375 million in public transportation.

In combination, these provisions will produce a program level and funding source which can be sustained through the life of this legislation—and continued by subsequent legislation—with no deficit in the fund, no need for any increase in highway user taxes, no need for supplementary revenues from any source, and no need to curtail program levels in future legislation.

Madam Chairman, I mentioned a moment ago that the old antihighway, antipublic transit rhetoric has fortunately subsided. I am afraid, though, that it has been replaced by a new mythology to the effect that what this legislation proposed—and what has been going on since 1956—is somehow unsound. It is based on the fact that annual authorizations do not coincide with annual trust fund receipts for the same year. And it stems from a persistent tendency on the part of some to equate authorizations with outlays. If they were, any disparity could indeed be plausible grounds for concern, conjuring up visions of the social security system and all its woes. But it just happens to be indisputable fact that authorizations are not the same as expenditures or outlays, which may occur 4, 5, 6, 7 or 8 years after initial authorization. This has been true year after year over the life of the program since 1956.

A second factor is the balance in the trust fund, which has grown to the $11 billion range, largely as a result of executive impoundment in years past. It is unnecessarily high and should be worked down. The highway trust fund was created, and taxes levied on the highway user, to construct and reconstruct highways. It was never intended that we build up a balance to sit there and provide a dandy source to finance deficit spending in other arms. In sum, through a combination of an inflated balance, interest on that balance, and annual receipts into the trust fund, the funds will be there to pay the bills when they fall due.

The next time anyone tries to tell you that this use of the balance is a radical or unsound departure from past practice, refer him to a report from the Department of Transportation which describes precisely this approach as a thoroughly respectable way of increasing

authorizations without increasing highway taxes, in short, without violating the fiscal integrity of the trust fund.

That brings me to the Byrd amendment, a requirement in existing law that assures that the funds will indeed be there. Whatever the amount authorized, no funds can be made available to the States for commitment to projects unless there is absolute assurance that funds will be available to liquidate the obligations of the United States. I would venture the guess that if the social security fund had that sort of safeguard, it would not have run into the trouble it did.

I have gone into this at some length, Madam Chairman, because I expect there to be some concern on this score among Members who serve on neither the Ways and Means Committee nor the Committee on Public Works and Transportation. We have all been immersed in a debate over this proposal for some time and it has been a reeducation for us all. This was all thrashed out in the Ways and Means Committee, whose members thoroughly considered, and rightly objected, proposals to tie annual authorizations to same year receipts in the trust fund.

Finally, I want to meet head on the issue of inflation. I will do so briefly because we went into the question in our committee report, beginning on page 85. I will take the time to quote only one statement: "Taken alone, H.R. 11733 will not cause inflationary pressure on the economy." And then it goes into the econometric data on which that statement is based. Rather than take your time with that, let me point out that the trust fund is inherently inflation-proof, just as it is deficit-proof. You have a dedicated source of funding, which cannot be used for any other purpose. And you have a program financed solely by that dedicated source, rather than deficit ridden general revenues. What goes out comes in and vice versa. Actual outlays—expenditures—are covered by receipts. To some extent, under our proposal outlays will be covered by receipts and—to a negligible extent from an inflationary standpoint—the balance which is composed of prior receipts. In any event, there is a precise balance over the life of the program rather than the persistent accumulation of deficits in our general fund programs.

I will conclude my remarks with a final observation concerning fiscal responsibility. We are in an inflationary period, no question about that. And I suppose inflation hits the highway program as hard as any area of Government activity you want to name. Prudence, fiscal integrity, wise financial management would therefore dictate that—in the face of a staggering accumulation of undisputed needs—we gear our program to the maximum levels which the trust fund will sustain safely. That is one sound way to get the jump on inflation. Conversely, to hold back the program in the interests of a spurious symmetry—to hold authorizations artifically to same year receipts—is merely to expose the program needlessly to the effects of inflation.

Needless to say, this would result in further accumulation of unmet needs, further deterioration of our highway system, additional costs in terms of congestion, delays, injuries, and fatalities, higher costs in the long-run and greater pressure for tax increases down the road.

I urge adoption of this landmark surface transportation legislation.

Mr. HOWARD. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from New Jersey.

Mr. HOWARD. Madam Chairman, I would like to thank the gentleman from Pennsylvania (Mr. SHUSTER) also for his work.

I think as we went through the work on this legislation, no one could tell who was a member of which party on the entire subcommittee. That is why we are so unanimous and so happy about the way in which this bill has been produced.

I also want to express special thanks to my esteemed colleague from New Jersey, the Honorable ROBERT ROE, not only for his standing in for me while I was ill but also for the outstanding manner of his performance.

Mr. SHUSTER. Madam Chairman, I thank the chairman, and I would certainly echo his remarks that this is clearly a bipartisan effort.

Madam Chairman, rather than repeat the substance of the comments of the gentleman from New Jersey made previously, I want to say that I associate myself with his remarks.

Mr. HAMMERSCHMIDT. Madam Chairman, I want to commend the gentleman from New Jersey (Mr. HOWARD) for the tremendous job he has done in leading his subcommittee during the 3½ years of hearings and dozens of witnesses.

I also want to commend the gentleman from Pennsylvania (Mr. SHUSTER), the ranking minority member, for his leadership.

Madam Chairman, I rise in strong support of H.R. 11733, a measure to step up significantly our efforts to meet the enormous transportation needs of the country.

I want to compliment my colleagues on the Surface Transportation Subcommittee for the excellent job they have done with this bill, which I have been pleased to support on the full committee on public Works and Transportation.

This Nation and my own State of Arkansas will benefit substantially from the general provisions of this comprehensive bill, which are responsive to the needs of rural America as well as the more populous States and urban areas.

This legislation also meets specific needs, and I am grateful for the committee's support for my efforts in connection with individually authorized projects, as well as other special category projects.

Among general provisions key to the bill is the substantial increase in funding for restoration and rehabilitation of primary and secondary highways on the Federal-aid system and expansion of their capacity. This increase, roughly one-third, is in addition to the primary and secondary authorizations available for both new construction and rehabilitation of existing highways. Work in this area will be increasingly important to the State of Arkansas as we approach completion of our portion of the Interstate System.

Also of critical importance is the newly expanded authorization of $2 billion per year for bridge reconstruction. Even if scaled down to $1.5 billion in the interests of reducing the overall spending in the bill, it will go far toward cutting into the backlog of unsafe bridges in this country. I particularly support the provision making a minimum of 25 percent and a maximum of 35 percent of bridge apportionments available for bridge projects not located on any Federal-aid system. This eligibility for off-system bridges for Federal assistance will be of particular benefit to rural communities.

The same may be said of the safer off-system roads program, for which Federal assistance is being increased from $200 to $300 million per year.

The same balanced attempt to meet needs of all the Nation's communities, regardless of size, is found in the public transportation title, which provides both operating and capital assistance for systems in areas and small towns along with larger cities across the country.

As to specific projects, I am pleased that the committee has specifically named Highway 71 from Interstate 40 north to the Missouri line as eligible to share in the $125 million priority primary program.

Also of particular interest to my State is the increase of $85 million in funding for urban high-density traffic routes, to assure full funding of earlier designated projects, including one for Little Rock. A final item of direct benefit to Arkansas is the section raising from 70 to 95 percent the Federal share of the costs of certain rail-highway crossing demonstration projects. This will assure that projects such as one at Pine Bluff, initially approved at the 70-percent level, will enjoy the same level of assistance as other projects receiving a 95-percent Federal share.

Thus, this legislation is responsive to general and specific needs of our States and communities. I strongly urge its enactment.

Mr. HAGEDORN. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from Minnesota.

Mr. HAGEDORN. I thank the gentleman for yielding.

I want to commend the gentleman in the well, the ranking member, and the chairman of the Subcommittee on Surface Transportation, the gentleman from New Jersey (Mr. HOWARD) for the outstanding work that they have done in putting this package together. The long hours, the many days of hearings that this committee conducted, I think have proven to be very worthwhile. I think what the committee is presenting to this Congress today is a balanced package. It deals with new highway construction, restoration, and mass transit. While no bill is perfect, I think this bill comes as close to anything we could bring out and still expect to get broad support from all Members of the House.

Mr. SHUSTER. I thank the gentleman from Minnesota for his comments.

Mr. ABDNOR. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from South Dakota.

Mr. ABDNOR. I thank the gentleman for yielding.

Madam Chairman, I rise in support of H.R. 11733, the Surface Transportation Assistance Act of 1978.

Allow me to commend Subcommittee Chairman Mr. HOWARD and Mr. SHUSTER, ranking minority member, respectively, of the Surface Transportation Subcommittee for their diligent efforts in formulating a comprehensive, farsighted approach to our Nation's surface transportation mode. Also to be recommended are HAROLD T. "BIZZ" JOHNSON and WILLIAM HARSHA, chairman and ranking minority member, respectively, of the Public Works and Transportation Committee, of which I am a member, for their persistence in producing this legislation during the 95th Congress.

H.R. 11733 encompasses for the first time all highway and mass transit programs. It increases substantially the amount of funds authorized for the highway bridge replacement program affecting some 34,000 bridges nationwide and approximately 2,000 bridges in my own State of South Dakota.

H.R. 11733 amends the Highway Beautification Act of 1965. Congress should take note that millions of signs have not been erected and hundreds of thousands of signs have been removed because of the act. The amendment will expedite this program because it will clarify the act and resolve present-day litigation caused by the hard-line stance of the Federal Highway Administration.

The bill provides a set-aside of 2 percent of the Urban Mass Transportation Administration funds for projects in assisting the elderly and handicapped. It prohibits the use of this Federal money for the enforcement of antilock requirements contained in Federal Motor Vehicle Safety Standard 121 affecting trailers, trucks and buses. Also, it extends for 5 years the highway trust fund. This method of highway financing has operated well over the past 22 years of its existence. The Ways and Means Committee's decision to extend this program allows its continued operation on the same basis as its original form in 1956 without causing the trust fund to come anywhere near a deficit position.

For these and many other reasons, H.R. 11733 should be considered favorably on the House floor today.

Mr. SHUSTER. I thank the gentleman from South Dakota for his comments.

Madam Chairman, I reserve the remainder of my time.

Mr. HOWARD. Madam Chairman, I yield such time as he may consume to the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. Madam Chairman, the bill before us today is the culmination of more than 3 years of work by our Public Works and Transportation Committee. All of us gathered today here on the floor of the House owe this bill to the masterful guidance of JIM HOWARD, the chairman of our Surface Transportation Subcommittee, and of course to the overall leadership of our Public Works and Transportation chairman, HAROLD "BIZZ" JOHNSON.

As the ranking member on JIM's subcommittee, I can attest to the many, many hours he has personally devoted to the formulation of this legislation that addresses the proven need for highways, safety, and public transportation.

Recognition for this excellent bill must also be given to Congressman BUD SHUSTER, who, as ranking member for the minority, has been there working side-by-side with Chairman HOWARD to develop a bill worthy of our complete and undivided support.

H.R. 11733 has faced a rocky road over the past several months. There have been those who have criticized the funding levels as excessive. If these same critics had taken the time to listen to witness after witness before our subcommittee, it would be abundantly clear that this bill realistically addresses the need. It is true that this bill provides for the largest program ever established in highway and mass transit history—but such dedication is necessary and must be maintained.

The cooperation and expertise of State, city, county, and private elements have allowed us to bring to the House a bill with a logical framework of financing within the limits of the highway trust fund. Thus, efforts to tie highway expenditures to revenues on a year-by-basis must be turned back. The action by the Ways and Means Committee that appears as title V of H.R. 11733 reflects their usual good work.

Madam Chairman, I will be speaking in strong support of individual sections of this bill at the appropriate time. But I wanted to take this time to state at the outset my intention to support the bill as written by our committee.

Thank you for allowing me this time, and again, congratulations on a job very well done.

Now, Madam Chairman, I would like to ask you a question.

Our colleague, Congressman RON DE LUGO, has brought to my attention a unique situation in his district of the Virgin Islands. His district contains 100,000 persons, but no one island has a population of greater than 50,000. As a result, the Virgin Islands has been excluded from past opportunities for operating assistance for its two bus lines because it cannot meet the necessary criteria for urban assistance.

However, it does meet the necessary rural criteria. Therefore, I rise to ask my good friend if the Virgin Islands would be eligible for aid under the rural assistance program portion of this legislation?

Mr. HOWARD. Madam Chairman, I would like to state, if the gentleman from California will yield, that they would be eligible under the rural portion of this legislation.

I am happy the gentleman did bring this up, so we could clear it up.

Mr. ANDERSON of California. Madam Chairman, I thank the gentleman from New Jersey.

Mr. HOWARD. Madam Chairman, I yield 4 minutes to a fine and hard-working Member, the gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. Madam Chairman, I rise in strong support of H.R. 11733, the Surface Transportation Assistance Act of 1978.

Because I have had differences with the Public Works and Transportation Committee over many public works projects, some of my colleagues may wonder why I so strongly support this bill, which has been dubbed by the Washington Post as the "Pet Projects Protection Act."

I will concede at the start that this bill authorizes too many individual highway projects and other so-called demonstrations. I urge my colleagues to consider these demonstrations in context: there is a lot more to this bill than demonstration projects. Here are some of its major provisions:

First, the bill sets forth a sensible way to expedite completion of the Interstate system.

Second, the bill takes the historic step of recognizing that, with the exception of uncompleted interstate highways, our Nation's highway system is essentially in place. The days of new construction are almost over. The national interest now requires that we maintain the system we have, and this bill provides desperately needed funding to accelerate the restoration of the Federal-aid primary system, the system of U.S. highways which has been neglected during the interstate boom. Our committee has tried to find a balance between our desire to restore existing highways, on the one hand, and maintain the role of States in maintaining highways, on the other hand. We are not permitting these funds to be used for routine maintenance; we will permit them to be used for major restoration, intersection improvements to increase capacity, and safety improvements. There is a fine line between restoration and maintenance. There is a real danger that routine maintenance might be delayed by a State in order to qualify for federally funded restoration and resurfacing. This danger will be avoided only if the Federal Highway Administration starts enforcing the requirement that States maintain roads that were constructed with Federal assistance. I have been very disappointed to find that the Federal Highway Administration does not take this enforcement role seriously. In this bill, we are responding to the need of our existing highways for restoration, safety improvements. and resurfacing. I hope that the States do not abuse this Federal effort.

The third thing this bill does is address the Nation's serious bridge problem. The current bridge program is grossly inadequate to the need for bridge reconstruction. One of the reasons the current bridge program is failing is its restric-

tion to bridge reconstruction, rather than less ambitious rehabilitation activities. Our bill takes care of this problem, and I believe I am stating the sense of the committee—certainly it is my hope—that States will use these funds prudently and devise low-cost solutions to their bridge problems. Unsafe bridges should be restored first. The so-called "functional obsolescence"—where a bridge does not have the width of the main road or the capacity it needs—is a serious problem but less serious, in my view, than safety problems. In any event, we are leaving it to States to decide how to use these funds, because the Federal highway program historically has been a federally-assisted State program. Again I hope the States will live up to the responsibility we have given them.

The fourth thing this bill does is improve enforcement of the national maximum speed limit of 55 miles-per-hour.

The fifth thing this bill does is establish a system granting some degree of "domestic preference" in procurements and projects utilizing Federal highway and mass transit funds. This is not a "Buy America or Buy Nothing at All" section, but rather it is designed to give Federal contracts to domestic suppliers when the cost is reasonable. I assisted in the development of this section after researching the particular problems being faced by American rail car manufacturers. I am extremely disappointed that the administration has shown little sensitivity to the American rail car manufacturing industry, and indeed is actively promoting foreign manufacturers to compete for business in America. This situation demands a swift congressional response.

Finally, this bill sets forth the most important public transportation legislation to come before this body since 1974. The bill, on which I have been working for the past 2 years, does a good job in addressing each of the major problems confronting urban transportation today. Among other things, the bill:

First. Seeks to keep transit fares reasonable by improving the delivery of Federal operating assistance to transit authorities. Our committee has developed a good, compromise distribution formula that most cities seem satisfied with;

Second. Seeks to maintain previous commitments made by the Urban Mass Transportation Administration for new construction projects;

Third. Seeks to accelerate the modernization and rehabilitation of existing public mass transportation systems. The Urban Mass Transportation Administration estimates that $14 billion will be needed over the next decade to bring existing mass transit systems, many built over 50 years ago, up to acceptable present-day standards. We cannot fully fund this need, but we have made a reasonable start in addressing it. No civilized nation should tolerate poorly lighted subway stations that have the stench of urine and the disgrace of graffiti, yet dozens of American subway stations fit this description. It is my hope that the Urban Mass Transportation Administration will start paying less attention to exotic "people mover" systems and the technologies of tomorrow, and start paying more attention to the very real needs of existing public transit systems.

Fourth. The bill seeks also to institute a new program of public transit assistance in rural areas. In order to get this program underway with a minimum of redtape, we have given the Secretary of Transportation wide latitude to waive rules in the Urban Mass Transportation Act that might not apply to the needs of rural public transit;

Fifth. Finally, the bill simplifies the delivery of grants for bus acquisition so that transit operators will be better able to plan around their long-term bus replacement needs.

As you can see from my remarks, this is a serious bill that demands the serious attention of the House of Representatives. The Members of this body should particularly congratulate JIM HOWARD, the chairman of the Surface Transportation Subcommittee, and BUD SHUSTER, whose dedication and attention to this bill has been nothing short of remarkable.

Mr. SHUSTER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I would like to gain the attention of the distinguished chairman of the subcommittee so that we might engage in a colloquy.

Madam Chairman, section 209 of this bill authorizes a new highway safety education and information program, which I authored, designed to vigorously promote the cause of highway safety through the use of mass media, including radio and television. Several limited campaigns have produced encouraging results and the purpose of the new program is to reduce traffic accidents, injuries, and deaths through voluntary emphasis on highway safety.

Subsection (a) of this section authorizes six pilot projects to develop, refine, and evaluate techniques which could then be applied on a national scale. These 1-year projects are critical in that the techniques developed must be capable of producing measurable results in order to evaluate their effectiveness.

Madam Chairman, in drafting this proposal, it became clear that in order for the pilot projects to accomplish these objectives, they must be located in areas that lend themselves to measurement. While not spelled out in the bill, a number of conditions should obviously be present in the pilot project areas:

First, the area must be a well-defined television market area.

Second, it must have a high traffic accident and fatality rate, defined as substantially above the national and State average.

Third, the area must have an accurate system for gathering and reporting statistics on the number and kinds of traffic accidents and fatalities.

In order to confirm this legislative intent, I would like to ask the chairman of the sponsoring subcommittee if he concurs with my assessment.

Mr. HOWARD. Madam Chairman, if the gentleman will yield, I would like to say to the gentleman from Pennsylvania that he is correct in his interpretation of legislative intent, and his description is consistent with discussions we have had in the past.

Mr. SHUSTER. Thank you. Madam Chairman, continuing, it also became clear that in order to insure that the results from the pilot projects could be applied on a national scale, in all types of areas, such as urban, rural, suburban, small town, and so forth, it would be necessary to conduct the pilot projects in a variety of areas. Of the six pilot projects authorized, at least one shall be carried out in an area which is rural; at least one shall be carried out in a major metropolitan area; and at least one shall be carried out in an area which has a small city and some rural areas, within which there is a variety of highways, including those on the Federal-aid primary, priority primary, secondary, urban and Interstate Systems; which also has a significant number of rail highway crossings and which, as a result of recent or imminent change, including but not limited to change in population or traffic flow resulting from the construction of Federal projects, shows a need for such a project.

Does the chairman of the subcommittee concur in this legislative intent?

Mr. HOWARD. The gentleman from Pennsylvania has accurately stated the intention of the chairman in defining the kinds of areas that should be selected for the pilot projects.

Mr. SHUSTER. Would the gentleman agree that the radio market located in the Third Congressional District in New Jersey and the radio-TV market serving in the Ninth District of Pennsylvania would appear to qualify under the conditions described and be prime candidates for selection at an early date?

Mr. HOWARD. If the gentleman will yield, I am not sure about mine, but I am sure about his.

Mr. SHUSTER. Madam Chairman, the Federal-Aid Highway Act of 1973 authorized the creation of a special category of primary roads, below the interstate in importance but above the balance of the primary system, designed to serve as connectors between interstate routes and supplement the Interstate System as major traffic arteries.

The 1973 law authorized each State to designate approximately 5 percent of its eligible mileage as priority primary routes.

Highway 71, stretching from I–44 in the State of Missouri to the Arkansas border, hooks up with Highway 71 in the State of Arkansas. This route is designated priority primary in Arkansas, but has never been so designated in Missouri.

The gentleman from Missouri (Mr. TAYLOR) has asked me if there are any reasons why Highway 71 in Missouri could not be designated priority primary.

I would indicate that Highway 71 would appear to meet all the qualifications for designation as a priority primary route. However, the State must make such selection and submit a request to the Secretary of Transportation for approval.

In view of the special funding considerations associated with priority primary routes, I can think of no reason why this route was not selected for priority

primary status. I will even go beyond that and suggest that given the availability of priority funding, the need for improvement of Highway 71, and the fact that it links up with a priority primary segment in Arkansas, the State of Missouri, if interested, should move expeditiously in pursuing this funding source.

I would ask the distinguished chairman of the subcommittee if he concurs with this assessment.

Mr. HOWARD. Madam Chairman, I do concur.

Mr. SHUSTER. Madam Chairman, H.R. 11733 authorizes $15 million for each of fiscal years 1979–82 to continue the program of construction or reconstruction of access highways to public recreation areas on certain lakes and waterways. This program was first authorized in 1974 and is needed to improve traffic routes in the area of Federal projects where traffic density is increasing but as a result of a lower tax base in the Federal lake area, the local governments do not have the financial capability to make necessary improvements.

It has come to the committee's attention that the Clinton Parkway project in Lawrence, Kans., previously approved for funding under this program, will cost more to complete than has been approved by the Federal Highway Administration. Recent cost estimates place the total cost of the project at $9,730,000 requireing a Federal share of $6,811,000. The FHWA approval based on the initial cost estimates was for only $4,130,000, leaving a shortage of $2,681,000 in Federal funds to complete the project.

May I ask the chairman of the subcommittee at this time if it is his intent and the intent of the committee that all projects previously authorized pursuant to section 155 of title 23 should be fully funded?

Mr. HOWARD. It is the intent of the committee that all such projects should be fully funded. I understand that less than half the amount authorized by this committee for access roads projects has been appropriated, and that all appropriated funds have been allocated. Therefore, less than fully funded projects could receive additional funding from either future appropriations authorized by previous acts, or from the new authorization contained in this act.

Mr. SHUSTER. With respect to the Clinton Parkway project, I would again ask the subcommittee chairman if it is his intention that this project be fully funded in line with recent cost esti mates?

Mr. HOWARD. It is my intention that the Clinton Parkway project receive full funding, and it is my expectation that the additional $2,681,000 will be approved by FHWA from new appropriations authorized by this or previous acts.

Mr. SHUSTER. Thank you very much Madam Chairman.

Mr. HOWARD. Madam Chairman, I yield 1 minute to a distinguished member of the committee who has worked hard on this legislation, the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Madam Chairman, I rise to support H.R. 11733, the Surface Transportation Assistance Act of 1978. This bill would establish a comprehensive road program, to enable our Nation to complete, restore, and replace segments of our Interstate and Defense Systems as well as a replacement and reconstruction program for our faltering bridges. The legislation before the House today is complex and often controversial, but it represents an honest, responsible effort to restore and complete our battered roads. For 3 years the Public Works and Transportation Committee has studied our highway needs for the present and the future, and I firmly believe the committee has adopted a bill that will go a long way toward combating our road needs.

This legislation is not only vital for our Nation but it is vital for the survival of the residents of the Appalachian region of our country. In many instances the most pressing problem facing the residents of my district in southern West Virginia is the replacement, repair, and often times initial construction of roads. The increased secondary system authorization from $400 million in fiscal year 1978 to $650 million for each of the fiscal years 1979–82 and the increasd authorizations for safer off-system roads will substantially help in this area.

Another important feature of this legislation is the bridge replacement program. The West Virginia Department of Highways has informed me that there are 6,100 bridges in the State and that 57 percent of these were constructed before 1934. Of these, 200 have safe load capacities of less than 3 tons, in other words it is not safe for an auto that weighs 3,600 pounds to use 200 West Virginia bridges, and that more than 600 have critical or structural conditions which require replacements or repair. The $1.8 billion will help dramatically in alleviating the dangerous bridge problem that exists throughout the Nation.

If our Nation is to meet our national energy challenges and we are to increase coal production as we all desire, the section of H.R. 11733 dealing with energy impacted public roads is vital. The $50 million authorization a year for fiscal years 1979–82 is necessary in meeting our national energy needs. In addition, the same money levels, for energy impacted railroad crossings are required to help alleviate traffic jams at such junctions in small towns in Appalachia where coal train traffic will be on the increase.

Madam Chairman, I want to take this opportunity to thank Chairman HOWARD who by inspecting the future sight of the East End Huntington Bridge in Huntington, W.Va., gave the residents of the area the hope that Federal assistance is not a thing of the past.

In conclusion, Madam Chairman, I hope that my colleagues will join me in supporting this bill which takes major steps forward toward our goal of a complete, safe highway system for our citizens.

Mr. HOWARD. Madam Chairman, I yield 1 minute to the gentleman from Indiana (Mr. BENJAMIN).

Mr. BENJAMIN. Madam Chairman, I appreciate the opportunity to address the House to urge support of H.R. 11733, the Surface Transportation Assistance Act of 1978.

Chairman JAMES HOWARD has brilliantly fashioned a substantive legislative measure by undertaking a comprehensive analysis of the surface transportation system of the United States, examining its short comings and developing creative solutions to cure current legislative faults as well as meet anticipated demands.

The process has been a consuming one, but JIM HOWARD has handled it with typical talent, aplomb and constant good grace. In a word, Chairman HOWARD has conducted himself as a gentleman and in a manner consistent with the highest standards of this House. He is to be commended.

My support of H.R. 11733 is predicated on its answer to national economic, environmental, and energy needs. However, four provisions of the bill deserve particular, even if somewhat parochial attention. I would also like to focus on an amendment, which I hope the committee will accept to provide additional local flexibility without necessitating any authorization increase.

First, I wish to express my appreciation for section 104(b)(2) which authorizes an additional $85 million from the highway trust fund for the purpose of completing routes designated under the urban high density traffic program. These include routes so designated prior to May 5, 1976, in Little Rock, Fort Worth, and northwest Indiana.

The programs were initiated because of their critical importance to facilitate an improved transportation network in highly concentrated urban areas. It became apparent, through careful analysis, that the current authorization levels were inadequate to complete these vital roadways. Through the work and cooperation of my distinguished colleagues, Messrs. WRIGHT and TUCKER, and representatives of the Indiana State Highway Commission, a determination was made that these projects can be completed with the level of funding provided in section 104(b)(2).

I am also grateful for section 106 which contains three important measures.

First, the railroad grade crossing elimination demonstration project in Hammond, Ind., authorized in title III of Public Law 93–503 and amended by section 140(f) of Public Law 94–280, is now placed with the other enumerated demonstration projects authorized in section 163 of the Federal-Aid Highway Act of 1973, as amended. This change, although technical in nature, transfers the authorized project from the urban mass transportation chapter and places it with similar projects under the chapter dealing with Federal-aid highways.

It also removes the individual funding designation, and in substitution, allows the Hammond project to draw from the funds authorized in section 163(p)—(as relettered by the bill. The amendment made by section 106 of the bill thus consolidates all rail demonstration projects under one program and funding au-

thorization and improves the existing law.

The same section also changes the Federal share in these projects from 70 to 95 percent of the cost of the demonstration work on projects authorized by the 1976 act. As the committee report states:

The increase in the Federal share of these safety related demonstration projects is consistent with the Federal share for demonstration projects approved prior to the passage of the 1976 act.

Finally, section 106 provides for partial funding for these projects. Although full funding is not provided for in this instance, I appreciate the problem faced in controlling the spending limits of H.R. 11733 and therefore support the committee's proposal here as fiscally responsible.

I also commend the Surface Transportation Subcommittee and its chairman for section 135 which provides for a study of the Indiana East-West Toll Road, a vital link in the country's Interstate System.

Indiana statutes permit, but do not require tolls to be removed upon retirement of the bond issue. In 1961, 1962, and 1963, the Commission entered into three agreements with the Secretary of Commerce and the Indiana Highway Commission—tripartite agreements—in connection with the construction of access roads to toll road entrances. Federal funds in the amount of $2,089,244.56 were granted for these three projects. The tripartite agreements, as required by 23 U.S.C. 129, contained a covenant by the Commission that the toll road would be free of tolls when the then outstanding bonds were retired and that no additional bonds would be issued.

The toll road has been in service for in excess of 21 years. This Commission has followed high standards of maintenance and operation of the toll road. In the year, 1977, the Commission expended approximately $4 million for current roadway maintenance and almost $1.1 million for patrolling the toll road. To demonstrate the difference in the level of maintenance, the toll road cost of maintenance is approximately $25,000 per mile as compared with an estimated $10,700 per mile for the Interstate System roads maintained by the Indiana Highway Commission.

In addition, due to the age of the toll road, a major resurfacing and improvement project is underway. The Commission is in the fifth year of an 8-year program having an aggregate cost of $35.5 million, of which $11.5 million has been expended, approximately $8 million will be expended in 1978 and in each of the following 2 years. The aggregate annual cost of current maintenance, operation, and renovation, therefore, is currently at a level of $13.1 million.

If the standards of maintenance and operation now in practice on the toll road are to be continued, including its snow removal program which keeps the road open at all times, the ordinary maintenance and operation costs will not decline. While the concentrated resurfacing program will not continue at the $8 million annual level, the annual improvement program necessarily will be at a substantial level. The standards of original construction, including guard rails and width of bridges and underpasses, do not meet modern standards, particularly those of the Interstate System. The upgrading and major renovation of the toll road requires a continuous program, estimated at $6 million a year or a total estimated maintenance, operation, upgrading, and rehabilitation expense of $11.1 million.

In addition, the toll road has a total of 12 interchanges with Indiana highways in the 157 miles. The improvement standards for the Interstate System indicate a normal interchange incidence of one entrance every 2 miles in urban areas and one entrance every 6 miles in rural areas.

In consideration of the covenants made by the Commission and the needs of the citizens of Indiana and the country who will travel the toll road and benefit from its existence, particularly in relation to access to the road, it is my belief that pertinent factual information concerning future funding needs, toll collection methods, increased access, and maintenance must be obtained well in advance of the anticipated retirement of the Commission bond issues in the mid-1980's. Then, Congress may consider the various alternatives open to it in this matter in an informed, deliberate, and timely manner and decide whether the tripartite agreement may be dissolved, amended, or otherwise disposed of to facilitate travel across northern Indiana.

I worked closely with all of the members of the Indiana delegation on this matter, in particular with Representative CORNWELL to insure the inclusion of this provision and I urge your support for it.

If I may digress for a moment, I would also, at this point, like to express my appreciation to DAVID CORNWELL, Indiana's Eighth District Representative and member of the Public Works and Transportation Committee, for his selfless cooperation, not only with regard to section 135, but also on the other provisions I have discussed. His assistance and counsel have benefited those he immediately represents, and also all citizens in the State of Indiana.

The last provision I wish to discuss is one contained in section 315 of the bill.

As the committee report explains:

This section repeals sections 17 and 18(d) of the Urban Mass Transportation Act and expands the existing section 18 to make all commuter and rail passenger service which is not operated by Amtrak under 45 U.S.C. 563(b) eligible assistance.

Of particular note is that portion of section 18 as amended by this bill which would allow all commuter rail passenger 187 on November 16, 1977, provided:

Section 18 (a) and (b), as originally enacted as section 2 of Public Law 95–187 on November 16, 1977, provided:

SEC. 18(a). The Secretary shall provide financial assistance annually for the purpose of reimbursing States, local public bodies and agencies thereof for the cost of financially supporting or operating rail passenger service provided by railroads designated as class I.

(b) Financial assistance under subsection (a) of this section shall not be available to support (1) intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation under section 403(b)(2) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 562(b); and (2) rail passenger service required by section 304 (e)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744(e)).

Unfortunately, because the phrase "railroads designated as class I" was taken from regulatory language, two problems immediately arose.

First, railroads which provide commuter passenger service, but not designated as "class I" under the Interstate Commerce Commission regulations—such as the Chicago South Shore, and South Bend Railroad—were ineligible for assistance. Thus, certain railroads, that were to be assisted under the act, were inadvertently excluded from its coverage. Second, since the Congress used language taken from that promulgated by a regulatory agency, if the agency changed their definition of the language, the coverage of the act could be changed without congressional action and in possible contravention of congressional intent. Such a redefinition occurred in January.

In order to include all those intended to be assisted and to prevent possible future usurpation of the congressional function by an agency, I proposed the change incorporated in the bill as section 315(d)(2) and recommend it for your approval.

Although I urge the House to adopt the Surface Transportation Assistance Act of 1978, and again commend Chairman HOWARD for his tireless efforts on behalf of an improved transportation system for the United States, I will be offering one amendment for your consideration which has not been accepted by the subcommittee.

My amendment would establish a 2-year program to permit the Governor or designated recipient of section 5 Urban Mass Transportation Assistance Act funds to permit one project per year to be eligible for a 80–20 matching requirement for section 5 operating expense funding. There is a $1,000,000 Federal share ceiling per year per project under my proposal.

I believe this amendment would facilitate greater local utilization of Federal funds made available under section 5 and permit local and State transportation authorities to more easily fund that part of the area's mass transportation system most in need of financial assistance without increasing the levels authorized in H.R. 11733 or increasing the funds received by any political subdivision.

Under section 5(e) of the Urban Mass Transportation Assistance Act:

The Federal grant for any project for the payment of subsidies for operating expenses shall not exceed 50 per centum of the cost of such operating expense project.

As a result of the 50–50 matching requirement for operating expenses, many localities are prohibited from utilizing

the moneys that the Federal Government has made available. The Urban Mass Transportation Administration has advised me that $44,427,027 of the funds allocated in 1976 under section 5 may lapse on September 30, 1978, as a result of State and local transportation authorities inability to meet the 50–50 matching requirement.

The Chicago to Valparaiso ConRail Line—previously the Penn Central Chicago-Valparaiso suburban service—carries approximately 800 commuters daily between Chicago and northwestern Indiana, approximately 44 miles. This line is a vital part of the mass transportation system of Indiana's Lake and Porter Counties and one of the major transit links to downtown Chicago.

The Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210) created the Consolidated Railroad Corporation (ConRail) to operate several bankrupt rail services including the Penn Central. That act specified that any unprofitable freight or commuter service would be discontinued unless the deficit could be subsidized by a responsible party.

For transition, section 808 provided that 90 percent of the first year's loss would be assumed by the Federal Urban Mass Transportation Authority. The other 10 percent was to come from local sources.

Presently the matching requirement for ConRail operating expenses is 80–20. Unfortunately, the local matching requirement will increase to 50 percent on September 30, 1978.

Under the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, continuation of the service is required only if ConRail is offered a subsidy to cover the losses incurred on the service. Because of the increased local share that will be required as of September 30, and the local and State transportation authority's lack of ability to provide the required $450,000 local share of the $900,000 operating deficit, ConRail has posted notices of discontinuance for the Valparaiso to Chicago line as of September 30.

Despite the tremendous efforts that have been put forth by Don Erker and State Representative Esther Wilson in conjunction with my friends and colleagues from Indiana, Messrs. BAYH and FITHIAN, it seems evident that this valuable commuter service will be discontinued on September 30.

Don Erker, chairman of the Chicago-Indiana Railroad Commuters Association (CIRCA) and Esther Wilson worked diligently and tirelessly for several years to guarantee the maintenance of this service on behalf of the 800 passengers of the ConRail Line. Ms. Wilson worked with competence and devotion in the State legislature on behalf of northwestern Indiana commuters. The advice and counsel of Don Erker has been most valuable to the efforts of the public officials working to maintain the service. I am honored to be able to compliment and commend these individuals, for the record, on behalf of the citizens of northwestern Indiana.

As a result of the scheduled discontinuance, the 800 passengers will be forced to find other means of transportation between Chicago and northwestern Indiana. Unfortunately, there is no convenient, cost efficient, safe and environmentally sound alternative available at this time.

I am not alone in my concern for the irreparable damage that this immediate increase in local share of ConRail operating expenses will have on urban mass transportation systems throughout our country. My amendment would permit the localities to temporarily continue funding of these necessary services at an 80–20 matching requirement, hopefully giving the communities adequate time to make arrangements for funding at a 50–50 match or for developing an alternative means of transportation if the service cannot be continued at the new matching requirement.

By requiring that the Federal share for any project for operating expenses not exceed 50 percent, a transportation authority in financial difficulty is unnecessarily prohibited from allocating more moneys to a certain project even if that project is determined to be the hub of the area's mass transportation system. In this situation, the funding decision has been taken out of the hands of the local transportation authority, those closest to the situation, prohibiting them from implementing a comprehensive transportation system. My amendment would restore a great deal of flexibility to the local transportation authority's planning process by permitting them to allocate more moneys to a project that they have determined to be vital to their comprehensive mass transportation system, while making additional local funds available for other important aspects of the system.

I recognize the concern of the Public Works and Transportation Committee and all of my colleagues who support a ceiling of 50 percent of Federal share of operating expenses for urban mass transportation projects. However, I believe that the irreparable damage that will be realized as a result of an immediate increase of local share from 20 to 50 percent as in the case of the Chicago to Valparaiso line, is unnecessary and contrary to our national urban mass transportation policy.

Again permit me to reemphasize that this is a temporary—2 year—program and would not alter the funding formula as set forth in section 5(b) of the UMTA Act and so the authorization level in H.R. 11733 will not be increased and the amount of funds allocated to any political subdivision will not be affected.

For these reasons and on the merits, I strongly urge your support of this amendment. Thank you, Madam Chairman, for this opportunity to speak in support of H.R. 11733 and my amendment to the same.

Mr. SHUSTER. Madam Chairman, I yield 5 minutes to the distinguished gentleman from Ohio (Mr. MILLER).

Mr. MILLER of Ohio. Madam Chairman, I wish to express my sincere thanks to the gentleman from New Jersey (Mr. HOWARD), the chairman of the subcommittee, and the ranking minority member, the gentleman from Pennsylvania (Mr. SHUSTER), for their hard work and dedication on the surface transportation bill.

Madam Chairman, I want to direct the attention of my House colleagues to a special provision of the Surface Transportation Assistance Act of 1978 which affects hundreds of miles of unfinished highway throughout the Appalachian region. Section 125 of the act permits the Federal share for construction of the Appalachian highway system to increase from 70 to 90 percent, thereby lowering the State's share to 10 percent of the project's construction cost.

This particular provision is in direct response to the legislative initiative we undertook more than 2 years ago in introducing a bill to alter the ARC highway funding formula from 70 to 30 percent to 90 to 10 percent and make the completion of the 2,900-mile Appalachian highway network competitive with the vast Interstate Highway System. The bill was also designed to lessen the State matching burden and stretch State dollars further in the actual construction of new miles of Appalachian highway.

We coordinated our efforts carefully with officials of the Appalachian Regional Commission, representatives of Appalachian States, congressional committees and various organizations which are deeply concerned about the future of the 13-State region. In June 1977, I testified before the Subcommittee on Surface Transportation of the House Public Works and Transportation Committee to detail the provisions of my bill and to urge the subcommittee to either approve my bill or incorporate its ARC highway formula change in any forthcoming Federal-aid highway assistance measure.

The bill before the House today responds to our request of the subcommittee last year, and I want to express my gratitude to the subcommittee membership for acting favorably upon our recommendation.

Section 125 will allow the total Federal share of funds for Appalachian highway projects to rise to a maximum of 90 percent when an appropriate amount of regular (non-interstate) Federal-aid highway funds are combined by Appalachian States with ARC highway funds.

Under this provision, use of Federal-aid highway funds to take advantage of the higher Federal ceiling would be optional with the Governors of each of the region's 13 States. Under the option, a State's share of a highway project's cost could range from the current 30 percent level to as low as 10 percent.

The maximum amount of Federal-aid (title 23—highway trust) funds that

could be used would be 45 percent of the project's total cost while the maximum amount of ARC funds would be 60 percent. Any combination of these two Federal funds would be permitted as long as neither exceeds its specified maximum level and the two combined constitute no more than 90 percent of the project's total cost.

Three examples:

If a State decides to pay for 10 percent of a project with its own funds, it could use ARC funds to a maximum of 60 percent and pay for the remaining 30 percent with highway trust funds.

Using the same 10-percent minimum in State funds, a project could be financed with a maximum of 45 percent in highway trust funds, in which case 45 percent would be paid for with ARC highway dollars.

Should a State decide to invest 20 percent of its own funds in a project, the remaining 80 percent could be financed by various combinations of highway trust and ARC funds, as long as the former does not exceed 45 percent and the latter does not exceed 60 percent of the total cost.

Madam Chairman, it is critical that I point out that the funding formula change does not constitute a raid on the highway trust fund. Section 125 of the act has no effect on the apportionments made from the trust fund. Non-Appalachian States will continue to receive their usual allocations and not one cent less as a result of our ARC Highway formula proposal. At the same time, I underscore the fact that the Federal Government will not be called upon to provide even one additional dollar to enact the formula change.

Section 125 language simply changes the manner in which ARC dollars, highway trust funds, and State funds can be mixed and matched to complete the Appalachian highway network. The provision provides—at a time when State funds are scarce—an option for stretching State funds by lowering the State's matching burden to 10 percent. Not only will Appalachian highway work be stimulated but actual construction will also generate jobs and favorably affect the economic health of the entire region.

A frequent cry from the Appalachian States is that they are pinched by a lack of State matching funds. I am sure this is true. But it cannot be said that there has been a lack of Federal funds specifically for ARC corridor construction. A total of $1,977,515,000 in Federal funds for the ARC highway network has been allocated to the 13 States from the beginning of the program through fiscal year 1978 (September 30, 1978). This figure is for actual corridor work, and does not include additional funds for the ARC access road program. The chart clearly shows that there is no shortage of ARC obligated funds to the States:

Total ARC Highway funds allocated through fiscal year 1978

State:	
Alabama	$27,928,000
Georgia	43,939,000
Kentucky	351,666,000
Maryland	80,480,000
Mississippi	25,994,000
New York	197,115,000
North Carolina	114,859,000
Ohio	85,103,000
Pennsylvania	282,373,000
South Carolina	2,750,000
Tennessee	203,009,000
Virginia	96,811,000
West Virginia	465,488,000
Total	1,977,515,000

Let me remind the House of the objective set forth by the Appalachian Regional Development Act of 1965 with respect to highways:

To provide a highway system which will open up an area or areas with a developmental potential where commerce and communication have been inhibited by a lack of access.

The key words are "open up" and "access." Social, cultural, industrial, educational, and economic access start with good roads. The act says so, and every piece of tangible evidence gathered to date showing any semblance of progress throughout the region points to good roads as the reason for that growth. The Comptroller General told the Congress in a detailed November 1976, report on the ARC highway system in West Virginia:

While West Virginia has made progress in completing its portion of the system, lack of progress in adjoining states has limited regional accessibility and, consequently, Appalachian economic development. Continued funding limitations which delay highway program implementation appear inconsistent with the purpose of the Act.

The Comptroller General recommended that the Congress consider "proposals for accelerating completion of the highway system to achieve the overall objective of improving the economic status of Appalachia."

Section 125 of the act before us, gentlemen, does exactly that.

Altogether, 24 highway corridors were originally designated for inclusion into the ARC highway network. The network was designed to tie into the Interstate System and other existing Federal highways.

According to the Appalachian Regional Commission, of the 2,900-mile system, a total of 1,415 miles is actually completed (of which 1,397 miles has been opened to traffic) with an additional 206 miles under construction as of March 31, 1978.

Throughout our efforts to alter the funding formula we have stressed that the ARC highway program needs to be competitive with the Interstate Highway System. All phases of ARC highway work are now done on a 70–30 Federal-State percentage funding basis. The Interstate System is constructed and maintained on a 90–10 basis. Because of these disparate ratios, States tend to invest funds first in the program providing a higher return on the dollar. Consequently, the Appalachia program ends up with leftover and hand-me-down dollars. Boosting the ARC highway funding formula to 90-10 would reject some long-overdue equity into State highway construction plans. Ignoring the ARC network further through inequitable formulas will prove far more costly than ever expected.

Lacking equal footing with the interstate program, the important links in the Appalachia highway chain will most likely remain uncoupled. Highway construction is an economic snowball. Preceding the final purpose of laying a new roadway is the immediate objective of putting people to work. ARC spokesman, John Whisman, commented on this feature of the ARC highway program during a Public Works Subcommittee appearance in March 1975. His words are worth recalling:

While the primary purpose of the Appalachian Development Highway Program is long-range development of the Region, it is important to remember the immediate effects of its construction. The Federal Highway Administration has estimated that nationwide in 1973 each $100 million of federal-aid construction in highways generates an average of 3,500 direct and 3,500 indirect jobs—1,800 in the manufacturing sector; 1,300 in wholesale trades, transportation and service sectors; and 400 in mining and other sectors. On this basis the Appalachian Highway program would be generating approximately 7,000 direct and 7,000 indirect jobs in both 1975 and 1976. In discussing the longer-range development impact of the Appalachian Highway program, it must be remembered that since the Appalachian and Interstate Highway were designed to complement each other, it is difficult to sort out the contribution of either partner alone; and, neither highway system has been completed. However, some early effects of the combined highway programs are already visible. The major economic effects of the highway system are those dealing with changes in employment and industrial growth * * * An earlier ARC study showed that more than three-fifths of all new industrial locations are within 20 minutes of a new highway, and almost one-half were within 10 minutes travel time. This same study identified 1,149 new plants since 1965, representing over 200,000 new jobs * * *

In light of the importance of section 125 and the significant economic impact this formula change will have upon the future growth and development of the Appalachian region, I urge the House to approve the Surface Transportation Assistance Act of 1978.

Mr. ULLMAN. Madam Chairman, I yield myself 5 minutes.

Madam Chairman, let me first state that it has been a pleasure to work with the distinguished gentleman from New Jersey (Mr. HOWARD), the distinguished gentleman from Pennsylvania (Mr. SHUSTER), the distinguished chairman of the full committee, the gentleman from California (Mr. JOHNSON), and the distinguished gentleman from Ohio (Mr. HARSHA), on this matter that has been under way now for a couple of years, and that is finally culminating in this year's revenue act of 1978.

The Committee on Ways and Means is, as has been our custom, cooperating and coordinating with the Committee on Public Works and Transportation in providing revenues through the trust fund to

accommodate the programing of the Committee on Public Works and Transportation. I think, everyone recognizes there has been some controversy with respect to the size of the program. The Committee on Ways and Means has looked at it very carefully, we have made a number of proposals, the committee has worked its will, and we bring to you a bill which we think is sound.

Madam Chairman, most of our highway programs, including the Interstate System, are financed by the proceeds of a series of highway-related excise taxes which are allocated to the highway trust fund. Under present law, this fund is scheduled to expire on October 1, 1979, and at that time many of the taxes which are now allocated to the fund are scheduled to expire or be reduced. The following table shows the existing highway excise taxes, the rates, and the scheduled rates as of October 1, 1979, under present law:

EXCISE TAXES ALLOCATED TO THE HIGHWAY TRUST FUND AND PRESENT LAW TAX RATES

Excise Tax (and section of the Code)	Present tax rate	Tax rates scheduled as of Oct. 1, 1979 [1]
Retailers: Diesel and special motor fuels (sec. 4041).	4 cents per gallon.	1½ cents per gallon.
Manufacturers:		
Gasoline (sec. 4081).	4 cents per gallon.	1½ cents per gallon.
Lubricating oil (sec. 4091).	6 cents per gallon.	6 cents per gallon.
Trucks, buses, trailers (sec. 4061(a)).	10 percent of manufacturers price.	5 percent of manufacturers price.
Truck and bus parts (sec. 4061(b)).	8 percent of manufacturers price.	5 percent of manufacturers price.
Tires for highway use (sec. 4071(a)(1)).[2]	10 cents per pound.	5 cents per pound.
Tubes (sec. 4071(a)(3)).	10 cents per pound.	9 cents per pound.
Tread rubber (sec. 4071(a)(4)).	5 cents per pound.	None.
Other:		
Use tax on highway vehicles in excess of 26,000 pounds gross weight (sec. 4481).	Annual tax of $3 per 1,000 pounds.	None.

[1] At that time, revenues would go into the general fund, absent legislation to extend the trust fund.

[2] Sec. 4071 also imposes a tax of 5 cents per pound for nonhighway tires, except for a tax of 1 cent per pound on "laminated tires" (not used on highway vehicles). Revenues from these two taxes also go into the trust fund but are not scheduled for a change in rate on Oct. 1, 1979.

NOTE.—Under the House and Senate energy tax bills (H.R. 5263 in conference), the excise taxes (except for the use tax on heavy highway vehicles) applicable to buses used in public transportation and school buses would be repealed; that is, the taxes on gasoline, diesel and other motor fuels; the taxes on the purchase of buses and bus parts; the tax on lubricating oil; and the taxes on tires, tubes and tread rubber.

As approved by the Committee on Ways and Means, title V provides for a 5-year extension of the highway trust fund, from September 30, 1979, through September 30, 1984, and postpones the scheduled rate reductions of the taxes allocated to the trust fund for 5 years, from October 1, 1979, to October 1, 1984. Receipts from the taxes allocated to the trust fund are estimated to total $41.2 billion during the 5-year extension period.

The bill makes certain changes in the operation of the trust fund Byrd amendment, which currently provides for reductions in apportionments for the Interstate System when anticipated revenues will be inadequate to cover existing expenditures. The changes made by the bill essentially provide that any reductions will be made on a pro rata basis from all apportioned programs which are financed from the highway trust fund.

The bill also provides an exemption from—or credit or refund of—Federal motor fuel excise taxes for fuel used in taxicabs for qualified taxicab services. This exemption applies only to fuel used for business purposes and where the taxicabs are not prevented from implementing a shared-ride program by either Government regulation or company policy. The exemption does not apply for fuel-inefficient taxicabs of 1978 or later model years purchased after 1978.

The bill also contains a requirement for a highway cost allocation study. The Secretary of Transportation is directed to undertake an investigation of the costs of Federal-aid highways occasioned by the use of different types of vehicles and the proportionate share of such costs attributable to each category of users and vehicles using these highways. A final report is due to the Congress on or before January 15, 1982.

In addition, the bill directs the Secretary of the Treasury to review and analyze each excise tax now dedicated to the highway trust fund with respect to such factors as the ease or difficulty of administration and compliance burdens. This study is to be conducted in conjunction with the cost allocation study. A final report is due on or before April 15, 1982.

Madam Chairman, I urge that title V be adopted.

Mr. CONABLE. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, the distinguished chairman of the Committee on Ways and Means has discussed title V in detail; and I have very little to add to it.

I do want to talk a little from a philosophical viewpoint and a fiscal viewpoint about the condition of the trust fund. I do not pretend to be an expert on highways. That is not the responsibility of the Committee on Ways and Means, and I am grateful for the detailed work which has gone into the highway program through the diligence of the subcommittee, of which the distinguished gentleman from New Jersey (Mr. HOWARD) is the chairman.

I am committed to a sound highway trust fund, and I am anxious to maintain the fiscal integrity of the fund in future years.

Madam Chairman, when this measure came to the Committee on Ways and Means as a result of concurrent jurisdiction, the extremely high level of authorizations provided in the bill when compared to anticipated trust fund revenues would have forced us into uncomfortable options of either a sharp increase in highway excise taxes or sharp cutbacks in program levels or, regretfully, a dip into the general revenues for financing to save the fund. Such a choice would have been upon us when the Nation could ill afford any of these options.

Madam Chairman, it is well known that in cooperation with the gentleman from Florida (Mr. GIBBONS), I sponsored an amendment which would have cut back sharply expenditures of the highway trust fund, and the extension of the fund would have been for a considerably shorter period of time.

My concerns were fiscal. I do not doubt for 1 minute the need for the highway program to continue. As a result of the pressures generated by the Gibbons-Conable amendment, the subcommittee of the Committee on Public Works and Transportation, and the chairman and the ranking minority member made a concession of the committee that $1 billion would be taken out of the expenditure side annually and that the duration of the fund would be for 1 year less. This constituted a major concession in the direction of fiscal soundness.

I appreciate this cooperation and this response to our fiscal concerns. I do think we have to continue to look ahead and see where we are headed with the trust fund if we are going to do our job as responsible legislators.

The rate of growth in the trust fund revenues has slowed considerably in the last few years, primarily as a result of energy conservation efforts. The increased mileage standards have, in fact, slowed the rate of gasoline consumption; and of course, it is on the basis of that

consumption that the excise tax brings funds into the highway trust fund.

At the same time highway and bridge needs have expanded at an astounding rate due to inflation and due to an unanticipated rapid deterioration of the existing highway system. I do not think any Member of the House can rationally believe these conditions will change. As new construction slows down, restoration and rehabilitation will increase. The need for highway dollars will continue to be greater and greater. H.R. 11733 reflects the reality of this conclusion. The annual revenues of the trust fund remain at approximately $8 billion per year as a result of what the excise taxes will bring in. This bill provides for a 60-percent increase in program spending levels, and even though these spending levels will be reduced—and it amounts almost to $1.5 billion per year; I understand an adjustment has been made also in the money that will go into the mass transit funds as well as the highway funds—still there will be an annual gap of over $2 billion being added to the unfunded liabilities outstanding against the trust fund. This remains the result from passage of this bill despite the concessions made by the subcommittee.

The unfunded liabilities of the highway trust fund will equal an estimated $18 billion at a time when we will next have the opportunity to reconsider highway program levels. A situation of this nature is of grave concern to all of us, I believe, and the Members of the House should have that in mind when they consider this measure.

The financing provisions of the bill provide that future years' revenues be used to finance the authorization levels of the highway programs. Any measure wherein we mortgage future years' revenues to pay for current programs runs counter to the current fiscal view of the American people. I will acknowledge that this has been the condition since the inception of the trust fund, but as we mortgage the future to a greater and greater degree, we make it apparent that when we come to the end of the line and have to extend the trust fund again, we will either be forced into a sharp increase in highway taxes or will have then to cut back considerably on highway expenditures, which may then be even greater as a result of inflation and other factors. I want to repeat, then we will have an unfunded liability when we might next reconsider our Nation's highway program, estimated at about $18 billion.

One of the main reasons put forth in support of the increased authorizations in this bill has been the dire need of an increased bridge building program. That portion of the bill providing for bridge building was increased over 400 percent, and despite promises to reduce authorization levels, the hugely increased bridge replacement program is still at a level twice as high as what the States say they can spend in this area during the first or second year of the program. In addition, no cuts were applied to the $18 billion proposed for discretionary and special funding.

I do want to point out that the subcommittee has also adjusted the provisions of the Byrd amendment which would have required any shortfall in funds to come entirely out of the interstate highway system. The shortfall now will be applied pro rata across the board to the total highway program rather than devastating the interstate program, and is a very important and I think useful change in the legislation known as the Byrd amendment.

I want to emphasize once again, Madam Chairman, the hazards to the American economy which exist in this bill with its substantially increased authorization levels. I believe there is a real danger of the highway trust fund becoming insolvent. There are many whose hearts would be gladdened by the demise of the highway trust fund, and I am not among them. I do urge the Members of this House carefully to consider the long-range ramifications of this bill at this time in our history.

It may be that the bill takes us in the direction that we want to go. However, under the unified budget, I want to point out that the surpluses of the past have worked against Government deficits, and the deficits of the future in this trust fund under the unified budget process work to increase the size of our Government deficit. It may be that the Members of the House will want to continue to operate by mortgaging the future of the trust fund.

I hope if we do, that we will do it with the full knowledge that we are committing the Congresses of the future either to a sharp increase in taxes or to some change in the operation of the trust fund, something which I do not think would be necessarily in the interest of the American people. The trust fund has served us well and we must exercise restraint in our fiscal plans if we are not to contribute to its demise.

● Mrs. SMITH of Nebraska. Madam Chairman, I would like to take this opportunity to speak in support of the legislation now before us—the Surface Transportation Assistance Act—(H.R. 11733) and comment specifically on section 123, which concerns energy impacted rail highway crossings.

This provision is very important to many communities in my district. As you know, the bill provides for a total of $200 million over the next 4 fiscal years to help States eliminate unacceptable delays to highway travel at public rail highway grade crossings brought about by increased coal train traffic.

There is no doubt that this is a serious problem in my district. With the recent, rapid increase in the use of coal from Wyoming coal fields, the increase of train traffic through the district to points east has had a tremendous impact on many communities.

For instance, according to Burlington Railroad officials, the frequency of rail traffic from Alliance, Nebr., in my district, to Lincoln, Nebr., will be 33 coal trains per day by 1983. This is an increase from 2 per day 5 years ago and 14 per day this year. These figures include full trains heading east and empty ones returning.

In addition, the Chicago & Northwestern Railroad recently announced it is planning to upgrade its tracks which run through the northern part of my district. Currently, that particular line carries only three trains per week. But railroad officials predict that number would increase to three trains per day by 1981 and could climb to 12-a-day by 1985.

Clearly, then, the approval of this section of the bill is vitally important. Right now, many towns along rail lines in Nebraska are experiencing problems because of the frequency of the coal trains and their length. Will emergency vehicles be unable to get from one side of a town to the other in time to put out a fire or save someone's life? How many deaths or injuries will occur because of the increased risk to automobiles or school buses crossing these rail lines? These are questions that Nebraska towns are asking and about which they are extremely concerned.

I believe that this section will provide some relief to these areas which have problems not of their own making. In this case, because national energy requirements are causing the accelerated use of coal, it is clearly the responsibility of the Federal Government to provide some assistance. This bill will help the situation considerably and it has my wholehearted support.

I will place several news articles in the RECORD which describe in graphic detail the situation in the Third District of Nebraska with regard to the coal train problem.

In addition, I note that the committee report accompanying this bill singles out two areas—Moorhead, Minn., and Allentown, Pa.—which the committee felt were logically eligible for aid under provisions of the legislation. I am sure, of course, that this reference does not preclude from consideration the many worthy communities in my district which certainly are experiencing problems that could be solved by assistance from this provision.

[From the Omaha World-Herald, Aug. 6, 1978]

COAL TRAINS TRIGGER GRUMBLES IN TOWNS—LINES MOVE TO ALLEVIATE LONG WAITS

(By Robert Dorr)

The train sits at a railroad crossing, and it sits, and it sits. You wait in your car to get across the tracks, getting angrier each minute.

Broken Bow, Neb., physician Dr. M. L. "Mike" Chaloupka had that experience while trying to get two youngsters to the hospital. They had swallowed an unknown number of aspirin tablets.

"I had to wait 20 minutes." Even though the delay didn't turn out to be crucial, "I was madder than hell," he said.

With an increasing number of 100-car coal trains rumbling through the Midlands, residents in railroad communities are wondering if Chaloupka's experience will become commonplace. Will one part of a town be cut off much of the time from the part across the tracks? Will it become more dangerous to live in such a town?

NOT ALL ALLIANCES

Railroad spokesmen said they don't agree that the problem is that serious. Further-

more, steps are being taken to minimize disruption of communities, they said.

Broken Bow is like many Midlands railroad communities in experiencing problems, but few benefits, from the coal boom. It isn't an Alliance, Neb., where hundreds of additional workers are adding millions of dollars annually to the town's economy.

Broken Bow is part of the coal boom only because Burlington Northern tracks cut through the center of town.

At least one person has moved because she doesn't want to live across the tracks from the hospital. Cathleen Dolan, a nurse-anesthetist, did that after several times in an emergency having to drive far out of her way to get around a train.

"I know I can get to the hospital in three minutes now," she said.

EMERGENCIES A WORRY

Several town officials interviewed by The World-Herald said they are concerned about the chance of a critical delay in a fire or other emergency, but that hasn't happened yet. When a train has been on the tracks, said ambulance driver Ivan Ferguson, the crew has opened a space so his vehicle could get through.

Mainly, the delays simply caused grumbling.

Police Chief Bob Jatczak, who said he received "numerous complaints" from residents about stopped trains, discussed the matter several times with railroad officials and finally ticketed a train for blocking a crossing more than 15 minutes. The fine was only $18, "but it showed we meant business," he said.

Chaloupka once used his car telephone to call a Burlington dispatcher in Omaha after he sat at a crossing half an hour late at night. "The train moved," he said.

Recently, the stopped-train problem has almost disappeared, and Broken Bow officials are unanimous in complimenting the Burlington.

"The difference is amazing," said Mayor Marvin "Bun" Talbot.

The reason for the change is the construction of another track alongside the existing one on the 8-mile stretch from Broken Bow to Berwyn this year. The second track provides a place for one train to wait while another passes from the opposite direction.

Formerly, that had to be done on a siding in Broken Bow. Because the coal trains are a mile long, one train could tie up all the town's crossings at once.

The second track east of Broken Bow is one of many projects underway on the Burlington's main line east from Wyoming's Powder River Basin coal fields. The railroad, biggest hauler of local through Nebraska, is pulling out all the stops to upgrade a line that hadn't previously carried large numbers of trains.

Wayne Arntzen, vice president of the Burlington's Denver region, estimated $80 million is being spent this year in Nebraska.

Among other things, tracks and roadbeds are being replaced to handle heavier trains. Longer sidings and second tracks, as between Broken Bow and Berwyn, are being laid.

MORE DOUBLE TRACKS

On the 657-mile stretch between Gillette, Wyo., and Pacific Junction, Iowa, 55 miles had double sets of tracks before this year. That will increase to 139 miles by the end of this year and 208 miles by the end of 1979, Arntzen said.

"That will minimize the problem of trains sitting in towns," he said. "The trains will pass each other in rural areas."

To carry out its Nebraska construction program, the railroad has hired an extra 481 workers.

Even though the problem of trains stopping in Broken Bow has diminished, some residents wonder if they will be overwhelmed by sheer numbers of coal trains in future years. Adding fuel is talk in Broken Bow that the Burlington has projected coal traffic through the town of 100 trains a day by the mid-1980s.

Several Broken Bow officials referred to that number, but none knew its origin.

"That's nonsense," said Burlington's Arntzen. "The rumor probably was started by coal slurry interests." Proposals for pipelines as a method of transporting coal are opposed by railroads.

33 TRAINS A DAY

Arntzen said the railroad projects that 33 coal trains a day will travel on the Alliance to Lincoln stretch in 1983, an increase from two a day five years ago and 14 a day this year. That includes full trains heading east and empty ones returning.

Some of the coal trains now going through Broken Bow will travel more-southerly routes when a new line through the Powder River Basin is completed in 1980. The Chicago & North Western may get a federal loan guarantee enabling it to upgrade its line through northern Nebraska to handle coal. That also could lessen the load through Broken Bow.

Whatever the number of trains turns out to be, Broken Bow residents know it will be a large increase.

Fire Chief Frank Klapal said he feels there will be a corresponding increase in the chances of a derailment that would cause gasoline storage tanks near the tracks to blow up.

SAFETY A CONCERN

Some officials wonder about the safety of their crossings, especially ones used by school buses. Only one of Broken Bow's four has crossarms. Two have lights and bells, and one has nothing. The town has applied for federal funds for additional crossarms.

Some communities are planning to build viaducts, which can cost $2 million or more each, but Broken Bow isn't one. "I would favor that if we could find the money," said Mayor Talbot.

The Burlington will help a community engineer a grade-separation crossing and seek money from federal and state sources, but will not provide the funds itself, said Arntzen.

The Union Pacific Railroad also provides expertise to communities, but most construction funds must come from other sources, said public relations director Barry Combs. The railroad has helped pay for a viaduct in some cases, he said.

U.P. "POOL"

Burlington officials cite the U.P.'s main doubletrack line through Nebraska as proof that large numbers of trains can be accommodated without major problems. Sixty trains pass through North Platte, Neb., each day on the U.P. line.

While most of the trains on the Burlington's mainline carry coal, a big majority on the U.P. are non-coal. Eight of the 60 trains through North Platte carry coal or are empties heading west. In five years, that number is expected to increase to 11 or 12 a day.

Because the U.P. mainline has carried a high volume of traffic through Nebraska for years, the percentage of crossings having grade separations is higher than on the Burlington.

[From the Omaha World-Herald, Feb. 12, 1978]

REPORT: MIDLANDS FACES BIG IMPACT FROM COAL TRAINS

(By Mary Kay Quinlan)

WASHINGTON.—A projected increase in the number of unit coal trains moving through Nebraska and other Midlands states could have an intolerable impact on hundreds of communities, according to a Department of Transportation task force.

What's more, existing federal programs to improve railroad-highway grade crossings are inadequate to solve "this major problem," the task force on coal transportation said in a recent report.

But precisely which communities will need help most, how much if will cost and what the government should do about it—if anything—are still under study, said Robert Brown, special assistant to task force chairman Chester Davenport, assistant secretary of transportation.

"We know it's a serious problem," Brown said, "but we're a long way from knowing exactly what we're going to do about it."

WHOSE RESPONSIBILITY?

One policy question to be settled, for example, is whether the railroads should be expected to provide the money to solve the problem or whether it's a government responsibility as part of the national energy program, Brown said.

He said the administration expects to decide by the end of the year what position to take on a bill sponsored by Nebraska Sen. Edward Zorinsky to relieve the impact of increased coal traffic by authorizing $900 million for railroad viaducts and highway overpasses.

The coal transportation task force based many of its findings about the social and environmental impacts of increased rail traffic on information from a field trip to Nebraska last summer.

The task force held hearings and toured Burlington Northern Railroad facilities in Alliance and Lincoln, which it called "the coal chute of America."

The task force cited Burlington Northern estimates that by 1980 it will be hauling 390 percent more coal in unit trains—generally consisting of 100 hopper cars carrying 100 tons each—than it did in 1974.

That spells serious problems for small towns situated along both sides of the railroad tracks, the force said.

SEVER TOWN

"With most rail lines at grade, passing trains will temporarily sever towns, disrupting traffic on local streets and delaying essential hosiptal, fire and police services," the report said.

The trains, which frequently are more than a mile long, take three minutes to pass a particular point traveling at 20 miles an hour and 12 minutes traveling at 5 mph, a maximum speed required by some local ordinances, the report said.

If traffic increases to 35 unit trains a day by 1980, as is projected for the Alliance to Lincoln coal route, the total "passby" time for one day would be 1.8 hours at 20 mph and 7.2 hours at 5 mph, the study said.

Since 1973, Nebraska, Kansas, Colorado, Wyoming, Montana, Nevada and Minnesota have received about $25 million in federal aid for railroad crossing improvements, the task force noted.

But that amount is relatively small and the emphasis has been on "low-cost safety improvements" which the task force called "of little or no help in alleviating the hazards and inconveniences" caused by increased unit train traffic.

[From the Scottsbluff (Nebr.) Star-Herald, Nov. 20, 1977]

RAILROAD TRAFFIC PROBLEMS LOOM

Despite what the officials of the Burlington Northern Railroad (BN) say, the thought of 19.71 coal trains of 90–110 cars passing through one of the Scottsbluff crossings in

90 seconds within the next three years is not comforting. And by 1982 the number of these long trains is projected to grow to 23.53 trains daily.

BN officials claim the trains will travel 45 miles per hour in passing a crossing in 90 seconds, and infer this is a safe and sane speed for these giant trains, yet the ability of the five locomotive trains to stop, let alone slow down, in the event of trouble is not impressive. Even at the slower speed of 20–30 miles an hour, whereby a train will pass a crossing in three to four minutes, the increased train traffic will cause problems.

The BN officials warn against overreaction by the city, and caution against the much talked-about problem of building overpasses and underpasses. Perhaps BN officials have sound reasoning for such caution, but perhaps they don't realize the particular problem trains create for the movement of traffic in Scottsbluff. Another possibility why the railroad is against overpasses and underpasses is because in many communities the cost of such projects is proposed to be shared by the railroads which would like to avoid such expense.

A big, lumbering coal train going 45 mph carries tons of destructive power for anything that gets in its way, and will be going faster through Scottsbluff than motorized vehicles are allowed to travel the city's streets. A youth trying to get across the tracks on a bike, a pedestrian, such as an older person, walking across and even cars and trucks operators will not be geared to watching out for a train coming at them at 45 mph.

The officials say the trains will be designed for quietness, but 19 to 23 trains whistling at each intersection on the average of one per hour will not be exactly quiet. Nor is it comforting to think that the decision on the train's speed will be strictly up to one man, the particular train's engineer, who will be expected to decide as he approaches the community how safe the tracks and weather conditions are.

The Rail Traffic Study Advisory Committee which is probing the situation should listen and consider what the BN officials tell them, but they shouldn't be guided strictly by what they are told. They should consider that if trains have to slow down for towns, they fall behind schedules, and that costs railroads money.

There are other considerations, such as the present traffic routes available to motorists, new routes which should be constructed, the peak times for traffic, and what precautions should be taken at each city rail crossing for the maximum safety of the residents.

The construction of the 21st Street and the Avenue I bridges across the North Platte River takes on additional importance in helping to alleviate traffic jams at present key rail locations, such as Avenue B and Broadway. The funneling of traffic from Gering to Avenue I and the western areas of Scottsbluff—which largely avoids rail crossings—takes on increased importance.

And an overpass or underpass in the downtown area, perhaps at First Avenue and East Overland, should be fully explored.

The committee must remember that while rail traffic through Scottsbluff is now projected to increase dramatically in the next few years, the motorized traffic also will be increasing. The number of cars and trucks will increase under normal conditions, but as the town grows, with an expected new shopping center, the traffic increase will be a greater problem

Committee members need only to view the traffic problems at 5 p.m. weekdays at Broadway and Overland, and at the North Platte River Bridge to get an idea of what they can expect to be compounded in a few years.●

● Mr. ALEXANDER. Madam Chairman, I rise in strong support of H.R. 11733, the Surface Transportation Assistance Act of 1978. The bill, which I think can be improved fiscally with the adoption of the amendments to be offered by Chairman HOWARD, is a well thought out response to our Nation's surface transportation needs and should be adopted.

This bill accelerates completion of the Interstate System; provides substantial, yet warranted, increases in authorizations for the reconstruction and rehabilitation of primary and secondary highways; makes a massive attack on the backlog of unsafe and obsolete bridges in this country; expands the "off-system" rural roads program; and funds urban mass transit programs, expanding the money earmarked under these programs for rural and small urban areas.

In my State of Arkansas, almost 12,000 miles of interstate and federally aided primary and secondary roads would be eligible for assistance under this bill. The bridge replacement program will make some 8,000 structurally deficient or functionally obsolete Arkansas bridges eligible for funding, including 1,500 such bridges in my district alone.

H.R. 11733 extends the highway trust fund for 5 years to accommodate this 4-year program. There are those of our colleagues who would have us believe that the financing scheme of this bill is unsound and will result in a draining of the highway trust fund. I cannot agree with their arguments and will speak to that issue when the Giaimo amendment to require that program authorizations must approximate revenues in the trust fund is debated next week.

Madam Chairman, the levels of funding requested in this bill are based on documented needs, not wish lists. The Public Works and Transportation Subcommittee on Surface Transportation so ably chaired by my colleague from New Jersey (Mr. HOWARD), has worked for 3 years to arrive at this product. It deserves our support.

Throughout my 10 years of service in the Congress I have been working to bring about the development of a national transportation policy in which rural transportation is a full partner and the needs for rural roads are fully recognized.

To put it bluntly, the treatment rural transportation policy receives will mean the differences between a legacy of disaster and chaos and a legacy of survival and progress.

In the past 5 years, I and other Members of Congress whose people rely so heavily on rural roads, have worked to convince our colleagues and the Department of Transportation that while we were providing money to save the New York City subway system we had also better provide more money to rural highways and roads if the people who intended to ride that subway were to have food to eat.

As chairman of the Family Farms and Rural Development Subcommittee in the 93d Congress, I conducted hearings on the impact that Federal transportation policies were having on rural transportation and our ability to get food from the marketplace.

As a result of our findings, Congress, in the Federal Highway Act of 1974, added $150 million to the funding for primary and secondary highways in rural areas and adopted my proposal for the creation of a program to provide money to county jurisdictions for improving local roads. The "off-system" roads program was funded at $200 million.

I am most gratified that the Public Works Committee accepted my proposal in its deliberations on this bill to increase the "off-system" roads authorization from $200 million to $300 million annually.

Madam Chairman, we have come to realize that food is our Nation's most important product. Food is grown where the land is most productive and there is no strong relationship between these areas and the geographic location of the ultimate consumer.

Thus, agriculture is more dependent on transportation than almost any other part of our economy. It does little good to produce a bumper crop of food and fiber if you can not move it out of the countryside to the city grocery shelves or to international markets.

A constituent wrote me not long ago seconding that proposition:

> We have some of the best truck gardeners in this country that you can find in the state. They raise some of the best produce available anywhere. Most of them cannot get to a highway to get their produce out to market without having to tear up their vehicles on rough roads . . . All they need is a way to get their products out to market.

We can no longer afford to accept the short-sighted conclusions that, because most of the people live in congested areas, most of the transportation dollars and technology ought to be geared to solving their problems and let the countryside needs go hang with a conscience salving pittance. I am pleased with the progress we have made in getting the Nation's nonmetropolitan areas their rightful share of the Federal dollar. There remains additional work to be done, however.

Madam Chairman, this bill is not pork barrel. The spending levels are not extravagant when you consider the vast importance of surface transportation to the commerce of this Nation. The solvency of the highway trust fund will not be jeopardized. The financing mechanism is sound and is consistent with the "pay as you go" approach for highway financing that Congress has followed for the past 20 years.

I urge its adoption.●

Mr. ULLMAN. Madam Chairman, I would ask the gentleman from New York if the gentleman has any further requests for time?

Mr. CONABLE. Madam Chairman, I have no further requests for time.

Mr. ULLMAN. Madam Chairman, I have no further requests for time.

The CHAIRMAN. Does the gentleman from New York yield back the balance of his time?

Mr. CONABLE. Madam Chairman, under the circumstances, I have very little choice.

Mr. ULLMAN. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. Does the gentleman from New Jersey yield back the balance of his time?

Mr. HOWARD. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. Is it the assumption of the gentleman from New Jersey that the gentleman from Pennsylvania (Mr. SHUSTER) yields back the balance of his time?

Mr. HOWARD. Madam Chairman, it is the assumption of the gentleman from New Jersey.

The CHAIRMAN. Does the gentleman from New York, to the extent the gentleman can do so, commit the gentleman from Pennsylvania to yield back the balance of his time?

Mr. CONABLE. Madam Chairman, to the extent I am able to do so, I yield back the gentleman's time.

Mr. HOWARD. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Miss JORDAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. HOWARD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PERMISSION FOR COMMITTEE ON AGRICULTURE TO FILE REPORTS ON H.R. 13845 AND H.R. 12559

Mr. ULLMAN. Mr. Speaker, on behalf of the gentleman from Washington (Mr. FOLEY), the distinguished chairman of the Committee on Agriculture, I ask unanimous consent that the Committee on Agriculture may have until midnight, tonight, September 15, 1978, to file a report on the bill, H.R. 13845, to amend the Perishable Agricultural Commodities Act, and also on the bill H.R. 12559, the Native Latex Commercialization Act of 1978.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

INTRODUCTION OF RESOLUTION CALLING FOR MEETINGS BETWEEN MEMBERS OF CONGRESS AND JAPANESE DIET

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. WOLFF) is recognized for 5 minutes.

● Mr. WOLFF. Mr. Speaker, the introduction today of a resolution together with Mr. BURKE of Florida, Mr. GUYER of Ohio, and Mr. MINETA of California, calling for joint and periodic meetings between Members of Congress and Members of the Japanese Diet for the discussion of "common problems" is a positive step on the part of the House of Representatives toward the strengthening of relations between the representatives and in turn the peoples of the United States and Japan.

A similar resolution, Senate Joint Resolution 111, has been introduced by Senator JOHN GLENN and is currently pending on the Senate calendar.

For too long, we as Members of Congress have found ourselves reacting to, rather than anticipating, developments in our bilateral relationship with Japan. I would argue that to the extent that we have failed to anticipate problems we in large part have failed through a lack of awareness and understanding of Japan.

One has only to cite the recent negotiations leading to the Strauss-Ushiba trade agreement of January 13, 1978, and the ongoing negotiations on agricultural issues to illustrate the need for greater mutual understanding.

There are a limited number of nations with whom our relations, by their very nature, are of transcendent importance. Our relationship with Japan is of that character. To illustrate:

Strategically, the United States-Japan Alliance remains the cornerstone of our Asian-Pacific policy, and that relationship is a major factor contributing to regional stability in Northeast Asia.

Commercially, Japan is our largest trading partner: our two-way trade last year exceeded $30 billion. Japan's 1977 GNP of approximately $5.75 million ranked behind only that of the United States and the Soviet Union. Japan today is a pillar of the free world economic order.

Yet, as in any relationship, problems do exist. Ours are related to trade. In 1977 our trade deficit with Japan approached a clearly unacceptable $10 billion. I need not point out that an imbalance of such magnitude ill serves our relationship. And I cannot emphasize too strongly that the need for corrective action is acute, that the time for action is now.

Cultural differences also exist. And, from an historical perspective, all too frequently have they complicated the course of American-Japanese relations. While such differences need not be insurmountable, they do remain. What is required to manage more effectively our relationship is a greater mutual understanding of these very differences.

Given the complex and multifaceted nature of our relationship, it is imperative that parliamentarians of both nations gain through personal contact a greater awareness and a clearer understanding of the political realities which shape legislative activities in our two countries.

Clearly, the institutionalization of contacts between parliamentarians will not in itself prevent problems from arising in our bilateral relationships. But certainly it will assist in their solution.●

SOUTH AFRICAN RIOT POLICE ATTACK CROSSROADS

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. DOWNEY) is recognized for 5 minutes.

● Mr. DOWNEY. Mr. Speaker, reports have reached the United States that the South African police are continuing to move against the black community of Crossroads near Cape Town. This peaceful settlement of 20,000 blacks is the target of a government campaign of fear and intimidation aimed at destroying Crossroads and scattering its inhabitants. I fear, and many of the members of the ad hoc monitoring group fear, that the South African Government is determined to wipe-out Crossroads, not by bulldozers but by mass arrests and tear gas. I ask permission to insert into the RECORD an article in today's Washington Post which reports that three blacks, including an infant, were killed in the latest South African moves. This move is reprehensible and should be the subject of the strongest protests by our Government.

[From the Washington Post, Sept. 15, 1978]

SOUTH AFRICAN RIOT POLICE ATTACK SQUATTERS' CAMP

(By Carlyle Murphy)

JOHANNESBURG, SOUTH AFRICA.—Armed riot police shooting tear gas and swinging clubs raided an illegal Cape Town squatters' camp yesterday and witnesses said three blacks were killed, including an infant trampled to death by fleeing women.

Brig. J. F. Rossouw, the police commander in the area, said his men had to open fire and use the tear gas because some of the Crossroads camp's 20,000 residents attacked with stones, bricks and sticks during what he called a "crime-preventive" raid.

The early-morning clash marked one of the most violent racial incidents in South Africa in recent months. It underlined government concern over the thousands of rural blacks moving into the mainly white cities despite laws barring those without specific permits.

Police confirmed only the death of one man. Witnesses, however, said a second also was shot dead during the raid. The baby, they added, fell from an African-style sling on its mother's back and was trampled underfoot by women scattering to escape tear gas.

Hundreds of squatters were arrested and several were admitted to hospitals, according to reports from Cape Town. Police beat several residents and knocked down doors of some of the 3,000 corrugated iron shacks to find people, said the reports attributed to witnesses.

Among those arrested were a Roman Catholic priest, a Methodist minister and five white women who worked among the squatters.

The raid was aimed at checking passes of the black squatters. Under South Africa's system of migration control, all blacks must carry passes allowing them to live and work in cities. These must be presented on demand by police and those without a valid pass are subject to a fine or jail sentence.

According to social workers involved with Crossroads, the police move was designed to intimidate Crossroads squatters into vacating their shacks and returning to tribal homelands, or black reserves, designated for them by the government. The police action is a prelude to demolition of the camp—by bulldozing if necessary—which the government says will be done sometime in the next six to eight weeks.

Colin Eglin, leader of the opposition Progressive Federal Party, criticized the police action.

"It appears the government is applying a policy of continual harassment in an attempt to destroy the spirit of Crossroads before it sends front-end loaders, to destroy homes. My appeal to the government even at this late stage is to stop before it does irreparable harm to South Africa."

[In Washington, the State Department said the United States has "explicitly expressed our concern to the South African government about its plans to demolish Crossroads.

["We deeply regret the South African government's intention to press ahead with destruction of a functioning community of some 20,000 people, which will lead to massive family separation of blacks living in the Cape Town area," a State Department spokesman said in response to a query.]

Like its predecessors—Unibel, demolished in January, and Modderdam, torn down one year ago—Crossroads is an example of the government's preoccupation with stemming and even reversing the flow of poor rural blacks into urban centers.

Most of the 250,000 squatters in the 47 squatter communities around Cape Town are "coloreds," or persons of mixed race. Since the all-white minority government has designated the western part of Cape Province as a preferential area for the 2.5 million coloreds of South Africa, they are allowed to remain until housing is available for them.

But under South Africa's policy of apartheid, or racial separation, black squatters are a different matter.

Government officials say allowing illegal black workers and their families to remain in the Cape Town area works to the disadvantage of coloreds and other blacks legally in Cape Town because the squatters push down wages and squeeze them out of jobs. More importantly perhaps, allowing black squatter communities would be an implicit relaxation of the migratory controls. Authorities fear this would herald an ever-increasing permanent black population in the western Cape.

Frikkie Botha, chief commissioner of black affairs in the western Cape, charged that clergymen and social workers encouraging squatters to defy the government "want to open the gates of Cape Town to all who wish to come here from the black states."

Do they "have in mind another piece of land for the next 20,000?" he asked.

Under the government policy of separate development, South Africa's 18 million blacks are to have citizenship in nine black homelands, which eventually will become independent black states. Carved up into jigsaw shapes and lacking any major industrial or urban area, these states will likely remain economically dependent on the white-controlled economy of South Africa.

At present, blacks in rural areas who want a job in the city are supposed to enter into a one-year contract at the government labor office to their home town. Then, without their families, they are to live in all-male government hostels in segregated black neighborhoods of the white cities.

For those who come to Cape Town without a contract, or without a valid pass, and for those who do not want to live without their families, squatter communities like Crossroads are the natural outlet.

Crossroads began to sprout three years ago on a sandy V-shaped plot of land at the intersection of two roads. Today it has two schools, two clinics, a community center with a wall-to-wall carpet, two churches and its own primitive form of local government. Eighty percent of the heads of households are employed full time, earning an average of $40 a week.

Although the iron shacks placed along twisting dirt passages are less sturdy than those built by the government in approved areas, residents are so proud of what they have built themselves, they say they would refuse a government house if it were made available.

Urban researchers at local universities and even progovernment groups like the South African Foundation point out that demolition of the squatter communities is not the answer to controlling the black influx to cities.

"The 20,000 or so souls who will be homeless will neither depart for some far-off homeland, nor will they vanish into thin air," the foundation's newsletter commented.

It urged the government to "let them stay in their shanties and demolish the worst of them progressively as permanent housing become available."

The residents of Crossroads are displaying an almost guerrilla-like attitude to staying. "We have got no plan" if the demolition goes ahead, said 43-year-old Nomlingqanisela Ntongana. "We are just going to look for another bush to live under. We will move from bush to bush, we come from the bushes so we're used to them."●

NATO FORCES: UNDEREQUIPPED AND UNPREPARED

The SPEAKER. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 15 minutes.

● Mr. ALEXANDER. Mr. Speaker, there is a great deal of confusion in our Nation today about the preparedness of United States and Allied forces to combat a Soviet threat. After a recent trip to Europe, during which I visited some of the U.S. military installations associated with the NATO forces, I feel compelled to share with my colleagues a recent article published on June 4, 1978, in the Washington Post entitled: "Our Underequipped, Unprepared NATO Forces." The thrust of the article by Arthur T. Hadley points out the surprising Soviet lead in technology and tactics and should be required reading for every Member of Congress. The article follows:

[From the Washington Post, June 4, 1978]

OUR UNDEREQUIPPED, UNPREPARED NATO FORCES—THE SURPRISING SOVIET LEAD IN TECHNOLOGY AND TACTICS

(By Arthur T. Hadley)

The conventional wisdom in Washington is that NATO, outnumbered in tanks and planes by Soviet and Warsaw Pact forces, nonetheless can defend western Europe because of its superiority in electronic warfare, computer-guided weapons and better-trained personnel. "We need not match the enemy tank for tank," says Defense Secretary Harold Brown. "We retain a qualitative edge."

As a society, the West is far ahead of the Soviet Union in computers and electronics. But in the application of technology to warfare it is the Russians, not the Americans, who have the most sophisticated weapons and communications systems now deployed in Europe. Many of our most modern systems either are still on the drawing boards, don't work as advertised or are so complex that the troops can neither use nor maintain them and the generals don't understand them.

There are three main areas in which NATO must have a "qualitative edge" to offset the Warsaw Pact's numerical advantages: electronic warfare, tanks and guided antitank weapons, and control of the air. In all three areas, the Soviet forces are qualitatively as well as quantitatively ahead. We have been forced back into the world of John Foster Dulles, where we must rely on nuclear weapons to check a Soviet advance into western Europe. But the Soviets now also have quantities of nuclear weapons. So western Europe and even the American heartland are placed in jeopardy from nuclear war because our conventional forces are inadequate for the new electronic precision warfare.

The key to an understanding of the present military balance in Europe lies in the 1973 Middle East war, when Soviet and American weapons were last used against each other in combat. I went to Europe this spring for a month of intensive reporting to see how NATO and the U.S. Army and Air Force were absorbing the lessons of that war. I expected to find new precision-guided weapons being used to hit distant targets, new methods of controlling and massing forces, new systems and tactics for surveying the battlefield so that commanders could locate the enemy and select targets accurately. I found none this in fact, I found that the newer weapons and tactics were on the enemy side.

I made few "official visits" to any headquarters. By and large, I traveled along an old-boy network, which has dangers as well as advantages. These were people I had known since they were young majors or captains when I covered the Pentagon during the Korean War, or instructors or cadets at West Point when I lectured there, or officers whom I had met and come to respect in Vietnam. I have taken great care in this article both to protect their identities and to check everything I was told.

OUR VULNERABLE FIST TEAMS

The first area in which NATO has fallen behind is electronic warfare. Electronic warfare (EW for short) includes a variety of weapons and weapons systems. There is radio and radar jamming so that the enemy can't communicate with his units or locate your tanks and planes. There is eavesdropping on enemy radio communications and finding targets by various means. EW also includes our ability to get our own radio messages and other forms of data transmission through so we can control our outnumbered units more efficiently than the Russians control theirs.

In this field of electronic warfare, the experience of the 1973 Yom Kippur war points to a surprising and unpublicized edge for the Russians. Within the first half hour of their attack, the Egyptian forces had stripped the Israelis of virtually all their radar and air-ground communication and most of their long-range ground communication. The Israeli radars and radios either were destroyed by Soviet-made beam-riding missiles or jammed by both ground-based and airborne equipment. After that, the Israeli pilots could not be guided to targets from the ground, or hear the cries of ground commanders for help.

Yet, in spite of the fact that one of the major lessons of the Yom Kippur war is that ground-based radars and ground-to-air com-

munication will not be present, NATO continues to maneuver and plan as if there was no threat from beam-riding missiles or Soviet jammers. Front-line Army and Air Force commanders know this planning is foolish, and it makes them both apprehensive and angry.

The basic unit of U.S. combat communications is the Fire Support Team, or FIST team—six or seven men with special radios deployed at army company level all along the front lines to direct artillery fire, missiles and aircraft at attacking enemy tanks and artillery. Because the radios they use for air-ground communication operate on a unique set of frequencies, the Russians will have an easy time locating them.

"Do you really expect many FIST teams to be alive after the first day?" I ask one officer, walking through his brigade area late at night.

This is a complicated question, he replies. Since our published doctrine calls for the FIST teams to be at the front lines with each infantry and tank company, the Soviets know that by locating our FIST teams they know just where our front is. Indeed, he adds, with our poor communications, the Russians will probably have a better idea of where our front is than we will. (He was not the only commander to say this.) So it is to the Russians' advantage to keep the FIST teams alive and merely jam their radios so they can't communicate. On the other hand, the teams' artillery radios are good enough so that some artillery communications may get through. So it may be to the Russians' advantage to kill FIST teams. He doesn't know which they will do.

At another base in Germany, drinking coffee with a group of Air Force colonels and captains, all of whom have flown over North Vietnam, I ask one, "Colonel, do you expect to be talking to the FIST team after the first half hour?"

"Hadley, I don't expect to be able to talk to my wing man after the first 10 minutes." The other pilots rock back and forth on their chair legs or nod in agreement. They look slightly nervous in talking to a stranger about what they only hash over in secret.

WORDS VS. DATA BURSTS

Because the Defense Department has kept quiet about the Soviet lead in jamming equipment and beam-riding missiles, the public is unaware of other areas of Soviet excellence.

For instance, the United States has maintained that the electronic warfare equipment on the Mig-25 flown to Japan by a defecting Soviet pilot in September 1976 was markedly inferior to our own. In fact, its electronic equipment performed better. While its radar uses tubes, not modern transistors, it puts out more power to penetrate enemy jamming than does the radar carried by our fighters. The "black box" used to separate friend from foe was so sophisticated that it stumped our code-breakers, and only after months of work did the Japanese crack its secrets.

Our fighters are still guided to their targets by words over radios: "Two bogies, at 3 o'clock, speed 400 knots, 12 miles." Even the old Soviet equipment used by the Egyptians in 1973 prevented such transmissions. The "inferior" Mig doesn't rely on words from the ground; its information on where to go and what to attack comes in a data burst, brief enough (less than a second) and powerful enough to burn through jamming. The data is displayed on the pilot's windshield; an arrow for the direction to fly, a symbol for the target and numbers for the target's direction and speed. The pilot's acknowledgement of the message also is data-coded.

I ask two senior defense officials whether what I had learned about the Mig from sources in Europe were true. Both will only talk for background. Both squirm in their chairs, lace and unlace their fingers, look at the ceiling. Finally one asks me to keep quiet in the "national interest." The other insists that voice transmission is an advantage since it provides command flexibility and is the American way—even if the voice won't reach the aircraft.

FINDING THE TARGET

Another area in which NATO, with its access to the West's advanced communications industry, should be decisively ahead of the Russians in electronic target location. In fact, we are decisively behind—by "five years," as two generals, one at NATO headquarters, the other at a forward air base, put it.

The Russians have two mobile radio direction-finding units in each division and are about to go to four. These vital pieces of equipment locate the radios being used by enemy headquarters, artillery batteries, or FIST teams, so that fire can be dumped on them. We have none.

The Russians have several mobile radio and radar jamming units with directional antennas in each division. More primitive models of these tied up the Israelis in 1973. We have none.

The Russians have mobile listening stations and have trained their crews in how to distinguish between targets like tank battalions and intelligence sources like brigade headquarters. Our equipment is mostly static and many of its operators understand Vietnamese, not Russian. "I have no one in this headquarters who can tell a tank battalion headquarters from an artillery battery," says a division intelligence officer.

In a maneuver in Texas last summer, the 1st Cavalry Division was loaned special electronic equipment so that it could fight like a Soviet division. Its opponent, the 2nd Armored Division, relied on its regular electronic warfare equipment. The 2nd Armored was wiped out. The journal Military Intelligence drew these conclusions: "The [American] divisional EW equipment was judged, to a large extent, unsuitable for combat. The antennas and vehicles are the wrong type. the system is manpower-intensive, and there is no tactical DF [direction finding]."

When asked about such problems, even on background, senior officials at NATO headquarters and the Pentagon do what I have come to call the "rain dance." They compare the weapon the Russians now have in use in Europe to some American weapon still in the design stage, and the American weapon always beats the Soviet weapon hollow. The trouble is that the American weapons' actual production date is three to five years away, and by then the Soviets may be fielding something better. And many weapons systems when put in the field don't work as well as claimed.

INFRARED AND COMMUNICATIONS

Even when the tools of electronic warfare are available, they are so new and their operations often so complex and expensive to practice that people from privates to generals rarely understand how to employ them.

A division commander lets me interview the four captains who make up his "All Source Intelligence Center." He is proud of the center, which he and his staff perfected to pull together information from radar, scouts, prisoner interrogation, electronic eavesdropping, secret agent reports from higher headquarters, photographic and sensor intelligence, etc. Yet "All Source" is something of an exaggeration, for the center receives no space satellite information, which is so secret that it is kept from front-line troops.

The captains show me some infrared photos, taken for them by the Air Force on recent maneuvers using a new system called FLIR (for Forward Looking Infra Red) which can pick out parts of a landscape that give out more radiation than others. (A well-known advertisement uses infrared photography to show the difference between a well-insulated house and a poorly insulated one.) The Air Force-Army cooperation is impressive, but it takes 8 hours from the time the request is made until the information comes into the intelligence center. And the information comes in the form of coordinates and data printouts, so that senior commanders, inexperienced with FLIR, cannot judge its reliability.

The day after the data arrive, the pictures themselves come in. That is what the captains have declassified to show me. It all looks something like snow on an old black-and-white TV set. But right in the middle of one photo is this big, luminous square.

"What's that?" asks the colonel, who is monitoring our meeting.

"That's what we've been trying to explain to you, sir. That's your headquarters, hidden inside that farm house. Remember, we told you all those generators in that building would make it stand out."

"No. They must have found some other way, then took the picture."

The captains and I exchange glances. Later one of them shows me all the infrared strips. Sure enough, in one of them there is this little pinpoint of light, crying, "notice me, notice me," to some specialist. When it was blown up that bright dot revealed the barn and the division headquarters.

Later I ask one of the specialists if he can tell the difference between a tank and a truck. "Oh, yes, and between a tank with its hatches open or closed. Sometimes I can spot the commander's tank and tell if the tanks have been recently refueled."

"People ask you for this information much?"

"No."

And how would he transmit this information to where it is needed if he were asked? The transmission of information about where we and the enemy are is meant to be one of our strengths—a "combat multiplier," to use the jargon of the trade. But the multiplier is working in favor of the Soviets, who, unlike us, use jam-proof data bursts and often maneuver in a jammed environment.

NATO has as its number one scientific priority a highly classified project to develop secure voice communication for commanders. All the scientists I talked to regard this project as a waste of time and money. Voice communication is expensive, difficult to make secure, relatively easy to jam and takes up a large portion of the radio spectrum. It also relies on language, and there are many languages in NATO. Data is universal, it is transmitted in short bursts that cut through jamming, is so quick that it can't be located by direction finding, so has no voice signature to tell the enemy who is talking to whom.

Yet the senior U.S. commanders both in NATO and the Joint Chiefs have insisted on voice. They claim they want to get the "feel" of their subordinates.

THE CAMOUFLAGED SENSORS

Our problems in electronic warfare extend to the smallest things. Sensors, for instance. Sensors are small tubes, about 3 inches in diameter and a foot long, that are

inserted in the ground behind enemy lines by hand or from the air to measure movement, vibrations, sounds and changes in the electromagnetic field, and broadcast this information automatically so that intelligence officers can gain insight into troop movements they cannot see.

Owing to a painful bit of recent history, the air-dropped sensors are disguised as small palm shoots. Neither the Army nor the Air Force has found the money to change this camouflage. Yet surely a Soviet lieutenant attacking through the pines and snows of Germany will at least blink when his eye lights on a group of baby palm trees along his route.

Next, the sensors broadcast over the same frequencies as German taxis and other private radios. This means no one gets a chance to practice with them. Yet emplacing sensors correctly and interpreting their data is a complex and demanding process. Do we really believe we can do these things right without constant practice?

THE TANK GAP

In tanks, NATO is outnumbered, 3 to 1. Here again, the Warsaw Pact forces also have a qualitative edge. Here again, the American forces in NATO are not well enough trained to use effectively the weapons they do have.

In no other area is the rain dance—the technique of comparing drawing-board U.S. weapons to actively used Soviet weapons—as prevalent. The entire military and civilian high command of the Defense Department compares the Soviet T72 tank, which is now in the field, to the U.S. XM1 main battle tank, which will not arrive in NATO until 1982 at the earliest, and whose gun will not have the killing power of the Soviet tank's.

Even the tanks we do have are so complicated that today's volunteer Army does not use them very well. On a recent three-day maneuver, the 3rd Armored Division had mechanical failures on 150 major systems on its tanks, almost one-third of its total. The problem, as a German staff officer put it, is that "today's weapons are too complex for today's soldiers."

The tank now costs three times as much in constant dollars as the World War II fighter plane, it has more complex weapons systems and is harder to maintain. Yet that fighter was commanded by a lieutenant with two years of college or the equivalent; today's tank is commanded by a sergeant who may well not be a high school graduate.

Or, to look at the problem another way, a tank and a helicopter cost about the same and are equally complex. Yet the helicopter is flown by two warrant officers and maintained by a crew headed by a senior sergeant. But the tank is still commanded by a sergeant and maintained by privates.

Turnover is another part of the problem. A high school dropout comes into the Army, matures and develops into a leader and a great tank commander. After three years, or maybe five, he gets a high school diploma and says to the Army, "Thank you for what you have done for me. I'm getting out now, going to college, to make something of myself." Although both the Army and Air Force put heavy pressure on junior officers to talk their men out of leaving the service, the incentives for the ablest to use the GI Bill to go to college are greater than the rewards for staying in.

The results are predictable. In a recent NATO tank crew competition, the best American crews finished last in gunnery behind such minor powers as the Dutch and the Belgians. The Germans point out, and honest American commanders admit, that the level of tank-driving skill in the U.S. Army is so low that the tanks don't know how to maneuver individually and can only charge in massed formations. On the tank-firing qualification range—in the battalion I watched, at least half the tanks had major defects—the crew gets a passing score if they identify a pop-up target and shoot at it in 40 seconds. Actually they are allowed about a minute. In the real world you get 10 seconds.

All over NATO, commanders fudge their figures a bit in an effort to make the mating of today's personnel and modern weapons look better than it is. You can't help but recall those Hamlet Evaluation statistics out of Vietnam. For example, a division commander told me proudly, and his battalion commanders confirmed, that his men scored 95 percent hits with the hand-held antiaircraft missile, the infrared-guided Redeye. I found that the reason for the good score was that the target had been slowed down to 60 miles an hour. At speeds closer to that of an attacking aircraft, most soldiers missed the target.

"THAT DRAGON KICKS A BIT"

Another paramount lesson of the Yom Kippur war is the importance of precision-guided infantry antitank weapons, like the Soviet Saggers with which the Egyptian infantry destroyed charging Israeli tanks. The primary U.S. infantry weapon in this field is the wire-guided Dragon. The infantryman has to keep his Dragon sight on the target and the missile will automatically correct its course to make a bull's-eye. I never found a single soldier in NATO who had fired a Dragon, though commanders were always assuring me that most of their men had qualified.

Furthermore, the Dragon has grave problems. It is too heavy to fire standing up, and if it is fired the best way, lying down, its blast burns off the firer's buttocks. Its sight is so delicate that it must be sent to the rear for recalibration every seven days, and there is no device on the weapon to tell the soldier whether the sight needs adjustment.

I watch a test Dragon firing, in which an excellent electronic simulator is used for training. Even with the simulator, everyone has trouble hitting the target. I ask the sergeant training the recruits whether he has ever fired a Dragon. The sergeant, an old-timer, says he hasn't, but he once saw one fired. He was at a special Dragon school and the top man in his class, a Marine captain, got to fire the school's one Dragon. "Did he hit the target?" I ask. "No," says the sergeant in his soft Kentucky twang, the poor fellow didn't. The recruits cluster around listening, leaving their simulator tubes. "He was a big man, sir, real big. But that Dragon kicks a bit. Oh, sir, you should have seen what it done to his neck."

Slightly bigger than the Dragon is the TOW (for tube-launched, optically tracked, wire-guided) antitank missile, which is fired from the M113 infantry carrier or the Cobra helicopter. You can hit a target with a TOW missile, and I found quite a few people who had fired one or even two rounds (supposedly every TOW gunner gets to fire one round every other year.) But the man who fires it is my candidate for the bravest man in the world. He sits *on top* of the M113, behind a tripod that pops up through the roof. He has to hold his breath as he fires, because the mount is so delicate that his breathing throws the missile off target. The Soviets fire their TOWs from *inside* their infantry vehicles.

The TOW fired from the Cobra helicopter is one of the most sophisticated antitank weapons actually deployed in NATO. A gunner in the nose of the helicopter works a small joystick about the size of an index finger to keep the crosshairs in a 14-power telescopic sight lined up on the target, while the pilot in the rear seat maneuvers the helicopter. It is an accurate and easy-to-handle weapon. Whether the TOW-Cobra system can survive under the massed artillery fire the Soviets employ is a question NATO commanders are loath to face. But then, they have so little else that works.

PRACTICE COSTS MONEY

The pilots flying these Cobras average 110 flying hours a year. According to Air Force fighter pilots and some of their commanders, the men flying NATO's complex speed-of-sound fighter planes like the F4s and F15s average only 1155 hours a year. In at least one squadron, cross-wind landings have been forbidden because pilots are not getting enough flying time. The Pentagon's computers insist that the average front-line pilot is flying 170 hours a year, but, as in Vietnam, I would rather trust the evidence from those on the spot.

Even if the figure is 170 hours, consider that both the federal government and the insurance companies believe that I, who fly a far simpler and slower aircraft here in the United States, need at least 200 hours a year in order not to be a danger to myself.

The low flying time for fighter pilots comes about because the fuel is so expensive and the planes so precious. And since the weapons are also expensive, no one gets to fire them often enough to develop confidence. And the little fixes necessary to mate weapons, men and machines don't get made.

For example, one of the vital precision-guided weapons on which the defense of NATO rests is the air-to-ground killer called the Maverick, a fighter-carried missile with a TV camera in its nose. Once the pilot has locked the missile onto the target, the missile follows its own TV picture on down. This is the weapon credited by the Israelis with helping turn the tide of battle once their ground troops had dealt with the Egyptian anticraft defenses. But the Israelis found that the missiles, which cost $30,000 apiece, were being wasted by knocking out the same tanks again and again, because the TV pictures seen by the pilots could not distinguish between dead and live tanks.

Now a passive infrared device has been added to the Maverick's TV camera to identify live tanks. But it took the 1973 war to lead to this vital fix. The missiles were so expensive that the Air Force had not practiced enough with them to discover the problem. Today, our pilots get to fire one every other year on a range in the Iranian desert.

All through NATO, the expense, complexity and lethality of weapons combine to leave weapons unperfected and men untrained in their use. Since intensive jamming would knock out European radios, aircraft radars and TV broadcasts, no one maneuvers in a jammed environment. The Army crews that fire the Chaparral antiaircraft missile get to fire one missile every other year from a base in Crete. And how does a tanker learn to maneuver in a town, when the best maneuver is to blast out part of a building wall and snuggle into the rubble?

The answer to such problems is to make massive use of simulators. That's what U.S. commercial airlines do. And both the British and Germans make more use of simulators than we do. But the Defense Department and Congress have been slow in asking and voting funds for simulators. They tend to ask: "You want weapons or simulators, general?" And the general replies, "Weapons."

WHO WOULD CONTROL THE AIR?

What about the final area of NATO'S presumed "qualitative edge"; control of the air? Even if our pilots lack flying time and can't talk to the ground, are not both they and their planes far superior to the Russians?

Again, the lessons of the Arab-Israeli war paint a dark picture. The Israelis found they couldn't get through the barrage of missiles

and antiaircraft fire protecting the Egyptian and Syrian forces until their tanks and artillery had knocked out the Soviet antiaircraft missiles and gun radars.

The West Germans, who have been much quicker to adopt the lessons of the Yom Kippur war than we have, are particularly concerned about our unquestioned belief that we are superior in this area. "The Soviets are decisively ahead in the air," said one of the highest officials of the German Defense Ministry.

When Soviet armored divisions attack, they advance under something our pilots call "the bubble." That's a protective covering of SAM6 antiaircraft missiles for high-altitude work and ZU23 self-propelled, four-barrelled antiaircraft guns with their own radar, by far the best antiaircraft guns in the world. There are 140 such weapons in a Soviet armored division. The way our aircraft are supposed to penetrate this "bubble" to get at the tanks is to stay below 200 feet, while the Army fires at the radars and jams them to make a corridor through which the aircraft can fly to hit the enemy tanks and then get back out. But in the real world, the Army doesn't have the jamming equipment and the locators to find the enemy radar. The Army and the Air Force have not practiced the split-second timing necessary in this maneuver.

There are special Air Force squadrons called Wild Weasels that have F4 jets with onboard jamming equipment and computers to throw off enemy guns and missiles. But the Wild Weasels lack effective beam-riding missiles to take out the radars. When questioned about this problem, high defense officials do the rain dance again: "HARM takes care of that." But HARM (for High Speed Anti-Radiation Missile) will not be ready until the early 1980s at best.

Another way to keep our planes alive is to have them stay away from the front lines, and lob their weapons in from low altitudes outside the bubble. The weapons would be laser-guided to their targets by the FIST teams. But the planes don't have the beam-riding bombs and the FIST teams don't have the laser designators.

Many NATO fighter pilots also complain that the Air Force is building the wrong type of fighters. They don't believe that one man can operate all the equipment necessary to stay alive at 200 feet while flying 400 knots in a hostile environment. They contend that the F15 has the space and power to have been a two-pilot aircraft, but that the old fighter types at the top of the service kept it a single-pilot plane. This is a serious charge, vigorously denied by most senior Air Force generals, who insist that the F15 is so fully automated that it is easier to fly than a World War II fighter.

TELLING FRIENDS FROM FOE

The final area of air control in which NATO falls apart is called IFF (for Identification Friend or Foe). In modern battle all those planes, ours and the enemy's, are going to be mixed together in the air, attacking targets on the ground, often moving at supersonic speeds or within 200 feet of the surface. Helicopters of both sides will be everywhere. Until now, shooting at your own people didn't matter so much because most shots missed. But modern weapons hit the target. Identification is now the ball game.

But in their last two NATO maneuvers, the German air force discovered that its own troops had shot it out of the air after two days. The British Royal Air Force is so short of funds that it has no hope of putting effective IFF equipment on its planes, as a result, the Germans, Americans and even the French have had to quietly insist that if there is a real war the RAF had better stay out of it lest it be shot out of the skies by its allies. Finally, the U.S. medium-range anti-aircraft missile system, the Chaparral, requires a man with field glasses to stand in front of the launcher, after the radar picks out a target, he tries to find it in his glasses and tell if it's friend or foe. That's the way it was done in 1944.

On IFF the Defense Department does the rain dance again and talks about JTIDS (for Joint Tactical Information Distribution System). The concept is brilliant, simple and workable: a network of some 600 radars is linked by computers that shift their frequencies roughly 10 times a second. Each time a radio comes on it fires off a burst of data that says roughly: "Here I am, I am doing this, I will need that." The data bursts are almost impossible to jam, the codes virtually unbreakable.

But JTIDS is already over three years late. It is so far behind schedule because the Navy is holding out for a more complicated model that also tell where its submarines are, and no one in the Defense Department has the courage to take on the Navy and its friends in Congress.

THE VITAL "TAIL"

Yet suppose all the weapons work. After two days the Russians, East Germans and Czechs have been fought to a virtual standstill in the most deadly conventional warfare in history. What happens on the third day?

The Yom Kippur war proved that in the electronic precision-guided munitions age the losses are horrendous, approaching those of nuclear warfare. NATO war plans call for each American division to fire 5,000 tons of ammunition on the first day, and 3,000 tons a day thereafter. At these rates of fire, artillery gun tubes will last less than a week. But there are not enough trucks or drivers to bring such masses of supplies forward. Nor does NATO have the mechanics to do the repairs. With agony on his face, one officer responsible for this problem tells me he will be 500 rounds short for every gun in his division by the third day.

The fault lies in Washington. No one in the Defense Department will ask Congress for funds or trucks, fork lifts or mechanics. Why? Because those are noncombat troops or "tail." And Congress and President Carter want the military to cut the noncombat "tail" in favor of combat "teeth." But as the teeth get more deadly, you must increase the tail, as both the Israelis and West Germans have done since 1973.

If the lessons of the Yom Kippur war are correct and we lose tanks the way the Israelis did, 300 new tanks are going to have to be brought forward in the first two days for each 360-tank armored division. As a result of the 1973 war, the Germans have vastly increased their forward stocks of new tanks. We have not. Nor do we have the tank carriers and crews to move the new tanks forward. Congress has turned down Defense Department requests for mobile steam cleaners to get the mud off and the charred flesh out of damaged tanks so they can be rebuilt. The Israelis and West Germans now have these. Nor do we have the spray to mask the smell of burned flesh which the Israelis developed so mechanics can work inside damaged tanks.

NATO plans call for M60 tanks, stored in climate-controlled warehouses, to be issued to troops that will be flown in from the States. In recent maneuvers, these tanks worked better than those in daily use. But they are stored on the wrong side of the Rhine, the west bank. Will the bridges they must cross still be intact? And the tanks have no radios; the radios are stored in a warehouse miles away, and they don't fit the tanks without a special bracket that takes two days to make.

Another general tells me about the night sights for his division's machine guns, sights which are so delicate and valuable that they have been kept in those warehouses since their arrival five years ago. He has just checked and found out that the sights don't fit his division's machine guns. He can build several thousand $65 brackets to fit the sights, but he has been told that his division will get new machine guns two years from now. What should he do?

Over and over one finds examples like this. There is a bitter private jest heard throughout NATO that U.S. plans to fight a war in Europe are based on flying imaginary troops in nonexistent planes to airbases that are destroyed at the command of headquarters no longer in action.

The jest has tragic overtones, because neither the qualitative deficiencies nor the wide gaps in training need occur. The West does have the better technological base. The electronic revolution is more advanced in NATO. But we cannot apply the knowledge and power we have to problems we claim do not exist.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. JONES of North Carolina (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HOWARD) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. BINGHAM, for 5 minutes, today.
Mr. WOLFF, for 5 minutes, today.
Mr. DOWNEY, for 5 minutes, today.
Mr. ALEXANDER, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. EDWARDS of Oklahoma), and to include extraneous material:)

Mr. LENT.
Mr. GOODLING.
Mr. CRANE.
Mr. GILMAN.
Mr. MCCLORY in two instances.
Mr. STEERS.
Mr. FINDLEY.
Mr. DORNAN.

(The following Members (at the request of Mr. HOWARD), and to include extraneous material:)

Mr. NOLAN.
Mr. GONZALEZ in three instances.
Mr. ANDERSON of California in three instances.
Mr. DRINAN.
Mr. NOWAK.
Mr. MCDONALD in three instances.
Mr. GINN.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 3337. An act to terminate, in the year 1979, further construction of the Cross-Florida Barge Canal project, to adjust the boundary of the Ocala National Forest, Fla., and for other purposes; to the Committee on Agriculture and the Committee on Public Works and Transportation.

ADJOURNMENT

Mr. HOWARD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 10 minutes p.m.), under its previous order, the House adjourned until Monday, September 18, 1978, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

4987. Under clause 2 of rule XXIV, a letter from the Secretary of Commerce, transmitting the annual report of the National Marine Fisheries Service for calendar year 1977, pursuant to section 9(a) of the Fish and Wildlife Act of 1956, as amended to the Committee on Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FOLEY: Committee on Agriculture. H.R. 12559. A bill to establish a research and development effort resulting in the commercialization of native latex rubber; with amendment (Rept. No. 95–1512, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. PRICE: Committee on Armed Services. S. 3373. An act to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Troops on Foreign Soil meetings, and for other purposes (Rept. No. 95–1572). Referred to the Committee of the Whole House on the State of the Union.

Mr. PRICE: Committee on Armed Services. H.R. 14042. A bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes (Rept. No. 95–1573). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introducd and severally referred as follows:

By Mr. BRODHEAD:

H.R. 14094. A bill to amend title II of the Social Security Act to make the monthly retirement test available in limited circumstances in the case of certain beneficiaries, to amend the technical requirements for entitlement to medicare, and for other purposes; to the Committee on Ways and Means.

By Mr. MICHEL:

H.R. 14095. A bill to reorganize and clarify the responsibilities of Federal agencies, Congress, and the States with respect to management of nuclear waste, and for other purposes; jointly, to the Committees on Armed Services, Interior and Insular Affairs, Interstate and Foreign Commerce, and Science and Technology.

By Mr. WOLFF (for himself, Mr. BURKE of Florida, and Mr. GUYER):

H.J. Res. 1138. Joint resolution to authorize participation by the United States in parliamentary conferences with Japan; to the Committee on International Relations.

By Mr. BROWN of California:

H. Res. 1351. Resolution directing that the Committee on Ways and Means conduct a review of the McCarthy plan for national property tax relief; to the Committee on Ways and Means.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

478. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the Presidio of San Francisco and Letterman Army Hospital; to the Committee on Armed Services.

479. Also, memorial of the Legislature of the State of California, relative to the de Anza Trail; to the Committee on Interior and Insular Affairs.

480. Also, memorial of the Legislature of the State of California, relative to genocide in Cambodia; to the Committee on International Relations.

481. Also, memorial of the Legislature of the State of California, relative to liability and compensation for oil pollution; jointly, to the Committees on Merchant Marine and Fisheries, and Public Works and Transportation.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. VAN DEERLIN introduced a bill (H.R. 14096) for the relief of Vladimir S. Gurevich, which was referred to the Committee on the Judiciary.

SENATE—*Friday, September 15, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Come upon us, O Living Lord, as we open our hearts to Thee, and tarry with us until eventide and our work is done. Be with us in the crowd and in solitude, in our silence and in our speaking, in the freshness of this morning hour, and in the weariness of later hours. Guard us from petty irritations and unwarranted impatience.

Shew me Thy ways, O Lord; teach me Thy paths.

Lead me in Thy truth, and teach me: for Thou art the God of my salvation; on Thee do I wait all the day.—Psalms 25: 4, 5.

Let the words of my mouth, and the meditation of my heart, be acceptable in Thy sight, O Lord, my Strength, and my Redeemer.—Psalms 19: 14.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 15, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. DECONCINI thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have no request for time, so I reserve my time momentarily.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

THE GREAT TREASURE HUNT

Mr. STEVENS. Mr. President, recently an article appeared in International Business entitled "The Great Treasure Hunt." As the article pointed out, Alaska has proven itself to be one of the richest mineral producing areas in the United States. The question is, Will it be permitted to continue in the future? This question will be answered as Congress makes its decision as to the final disposition of Alaska's d–2 lands.

Mr. President, the decisions concerning the d–2 legislation should not be taken lightly. The national need for many of the minerals in Alaska is becoming more and more obvious. The reasonable development of some of the resources could release the United States from dependence on foreign suppliers of oil and gas as well as the imports of raw minerals essential to U.S. industry and national security.

I do not suggest that the resources of Alaska be developed at the cost of the beauty of the State. Because Alaska is 99 percent de facto wilderness, it represents a chance to provide for real planning to accommodate different national interests, particularly recreation. What is needed for the public lands in Alaska is a planning mechanism that will allow flexibility in management—a balance which provides a high level of environmental protection particularly for wildlife and wildlife habitat and still provides enough flexibility to allow for other uses and permits decisions about uses to be made in the future as circumstances require.

I ask unanimous consent that the article, entitled "The Great Treasure Hunt," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE GREAT TREASURE HUNT

(By Charles F. Herbert, minerals manager, B. P. Alaska Exploration Inc.)

The raging controversy between Preservationists who, through intense lobbying efforts, try to preserve half of the State of Alaska as an inviolate wilderness, and the great majority of Alaskans, who together with miners and oil men from everywhere want the earthen treasures of the State to be available for human use, brings focus on our basic questions.

1. Is there a national need for Alaskan fuels and non-fuel minerals and is that need greater or less than the need for wilderness preservation?

2. Does Alaska have fuels and non-fuel minerals in sufficient abundance to be important to the nation?

3. What, if anything, is being done to find Alaskan fuels and non-fuel minerals?

4. If they exist, can they be recovered for use at reasonable cost?

In the case of petroleum the national need for increased domestic supplies is brutally obvious. The nation's huge balance of payments deficit and high costs of fuel oil, gasoline and natural gas are proof of a critical need for increasing U.S. reserves and production until such time as technological miracles and self discipline in conservation may free the United States from dangerous dependence on uncertain, foreign suppliers.

Further adding to the balance of payments deficits are imports of raw mineral commodities essential to U.S. industry. Roughly 40% of our needs for these materials are imported; they include aluminum, nickel, chrome, tungsten, manganese, cobalt, asbestos, platinum, lead, zinc and potash. Although the U.S. can never supply all of its mineral requirements from domestic sources it is dangerous to become heavily dependent on sources beyond our political influence. We need domestic sources of mineral commodities for our own use and for trade to acquire minerals we cannot produce. At present, molybdenum is the only metal for which the U.S. has a net export balance.

Over twenty years ago Major General Lagovskiy noted the growing dependence of the United States on uncertain supplies of strategic minerals and advised his nation to exploit that weakness. Russia is actively following the general's advice in Africa.

The wilderness advocate, who, historically, could lose only a fraction of one percent of Alaska's vast open space to mineral development still insists that there is no need for Alaska's minerals. No wonder that during the preservationists-caused, long delay in authorizing construction of the Alaska oil pipeline bumper stickers all over Alaska read let the b——s freeze in the dark.

DOES ALASKA HAVE MINERAL RESOURCES?

The world now knows that Alaska contains, at Prudhoe Bay on the Arctic Coast, by far the largest oil field ever discovered in North America and very recent discoveries near Prudhoe Bay promise important additions to the already huge reserves of crude oil and natural gas.

Alaska, now rapidly approaching first place among the States in petroleum reserves was long considered to have no oil and gas. The one small oil field at Katalla, discovered early in this century, was not economical and search elsewhere had failed until the Swanson River discovery in 1957. It required another eleven years and millions of dollars to find the giant Prudhoe Bay deposit. Throughout the State there are about a dozen other basins, both off-shore and on-shore, that are inadequately explored or not explored at all.

What has happened to oil and gas in Alaska within the last twenty years is most likely to happen, indeed actually is happening, to non-fuel minerals and coal.

Alaska has a proud mining history. Its capital city of Juneau is named after Joe Juneau, the prospector who, in 1880, found the first important gold mine in Alaska near the site of the present city. The huge Kennecott copper corporation was born in the 1900's in the remote Wrangell Mountains alongside Kennicott Glacier (spelling was often mixed-up in those days). The vast Interior of Alaska was opened by gold miners who founded Fairbanks, Nome and dozens of smaller towns; the Alaska Railroad was built to supply the Interior gold fields and provide access to the Matanuska and Healy coal fields; and the railroad led to the founding of Anchorage, now the State's largest city but once only a railroad town and supply center for the Matanuska coal fields and the Willow Creek gold mines. Goodnews Bay had the only platinum mine in either North or South America (but Montana may develop one, and platinum is a by-product of many mines).

Although the non-fuel minerals of Alaska are largely undeveloped, production records show that such minerals exist; to date, Alaska has produced approximately:

30 million ounces of gold; 21 million ounces of silver; 1.5 billion pounds of copper; 52 million pounds of lead; 4.6 million pounds of tin; 3 million pounds of mercury; 2.5 million pounds of uranium; 140 thousand pounds of tungstic oxide;

Undisclosed, but substantial, quantities of barite;

Undisclosed, but large quantities of platinum, iridium and ruthenium.

In spite of the fact that coal production in Alaska was practically prohibited by preservationists until 1917 (thereby forcing coal importation), and natural gas began to replace coal for power generation in 1967. Alaskan coal production has been about 25 million tons, all for domestic use.

Past production, of course, is only a measure of what has been found and recovered; the famous Kennecott mines, which supplied most of Alaskan copper are exhausted. However, production, even from insignificant mineral deposits, provides geological information from which trends of mineralization can be recognized. The U.S. Geological Survey, the U.S. Bureau of Mines and countless private investigators have made studies of mineral trends, using statistics, geological mapping, airborne magnetometer surveys and trace element analysis of rocks, soils and stream sediments. Using all information available to him in 1973, C. C. Hawley, an Alaskan consulting geologist, prepared a map of mineral trends. Hawley's map, which is the base for the map shown in this article, has been adopted by the U.S. Bureau of Mines and is found to differ only moderately from a similar map of mineral trends prepared by the U.S. Geological Survey. It is worth study and comparison with actual production in the Western States.

It is certain that recognition of mineral trends will be, indeed is, as valuable for delineating lands containing potential mineral deposits as it has been in mineral producing areas throughout the world. Yet, in spite of the impressive success obtained by concentrating prospecting efforts within recognized mineral trends, in September, 1977, Assistant Secretary of the Interior Guy Martin scoffed at those who are "playing the potential game" and predicted the defeat of such "die-hards who will resist the whole nation of setting aside large areas of d–2 lands".

WHAT IS BEING DONE TO FIND ALASKAN MINERALS

Fortunately for the nation's future, there are many die-hards who are actively searching for minerals, who are "playing the potential game" and who are risking many millions of dollars on the sound premise that Secretary Martin is historically unconscious. Although competition among prospectors orders secrecy about their activities, it is possible to recognize at least 161 exploration projects (not including 150 or more small gold mining operations). These projects are financed and directed by:

31 medium to large mining companies;
12 oil companies;
5 large industrial companies;
16 small companies;

and many individual prospectors.

It is usually difficult to determine the minerals sought by prospectors, in fact a great deal of prospecting is not directed towards discovery of any particular mineral, but knowledge of the mineral trends in which the projects are located permits an educated guess.

Thus, it seems probable that the 161 projects include:

41 copper, zinc, silver;
33 uranium;
25 lead, zinc, silver, (barite);
12 molybdenum and molybdenum/copper;
10 gold lodes;
4 iron ore;
4 coal;
2 nickel, copper, cobalt, platinum;
1 asbestos;
28 not identified, but including chromite and antimony.

The more important mining and exploration projects are identified and discussed on the map.

Not shown on the map are the vast coal fields that lie under much of the Arctic plains, across the northern part of Alaska. Estimates of potential reserves run into many billions of tons and include coals ranging from those with coking qualities to sub-bituminous. Presently remote, they are solid assurance of a long term supply of domestic energy.

Phosphate deposits are also extensive in the Alaskan Arctic, but there is no present incentive for developing them. The Alaskan phosphate deposits are unusual in that they contain anomalous amounts of metals such as molybdenum, copper, mercury—even gold.

Developing the mineral potential of Alaska is difficult. Large areas are covered, so outcrops of orebodies are rare. Even the large, rich Arctic deposit had an insignificant surface expression, as did Picnic Creek. Furthermore, the vast wilderness of Alaska is still little known and the snowfree season is short. Although only 45 miles from the long established City of Ketchikan (at one time the largest city in Alaska) the huge, boldly outcropping molybdenum deposit at Quartz Hill was not discovered until 1973; a section with 260 feet of coal, exposed in the banks of the Tonzina River, remained unknown until 1976. The odds are strong that additional mineral deposits will be found and will become valuable national assets.

CAN ALASKAN MINERALS BE RECOVERED AT REASONABLE COST?

If Alaska is mineral-rich, can the deposits be mined cheaply enough and the mine products delivered to market at a cost that will permit their exploitation? Obviously the sixty-odd companies now engaged in Alaskan exploration believe that the national need for minerals will overcome the obstacles of harsh climate, complicated governmental regulations and thoughtless land withdrawals that prevent mineral location or, more frequently, block access to mineral deposits.

Harsh climate and remoteness are not in themselves insuperable obstacles to economic mineral production, as is demonstrated by the many mines that lie well north of 60 degree Latitude in Scandinavia, Russia, Siberia and, for more appropriate comparison, in northern Canada.

In northern Canada, that is, the part of Canada that lies north of 60 degrees North Latitude, present day mine production annually provides to Canadian industry:

26 million pounds of copper;

373 million pounds of lead;

705 million pounds of zinc;

11 million ounces of silver;

305 thousand ounces of gold;

5 million pounds of tungstic oxide;

180 million pounds of asbestos;

The mines that furnish these valuable resources (worth more than half a billion dollars a year) are, or originally were, as remote as any prospective mine site in Alaska; the harsh climate of Alaska is actually milder than the climate that embraces most of the northern Canadian mines. Well beyond 70 degrees North Latitude, on a parallel that lies 100 miles farther north than the northernmost tip of Alaska, Nanisvik Mines produces, annually, 20 million pounds of lead, the same quantity of zinc, and 900 thousand ounces of silver—and earns a profit.

Since the higher cost of machinery in Canada offsets the somewhat lower cost of Canadian labor, Canadian-Alaskan production costs are comparable. Canadian success is proof that viable mining operations can be established in far northern climes.

So why has the 1911 to 1938 success story of Kennecott not been repeated in recent years? There are far better tools and equipment available now than there were in 1911; and few prospective mine sites require access through terrain as difficult as the Copper River Canyon, traversed by the railroad to the Kennecott Mines.

At least part of the answer lies in the stubborn notion that Alaska is a wilderness (which it is) and should always remain a wilderness (which has little to do with the extraction of minerals from the tiny fraction of the great land mass that contains minable orebodies). Alaskans fight this preservationist concept today just as they have since early Territorial days. On December 6, 1911, the Chicago Tribune, noting the plight of Alaskans who were not allowed to use Alaskan coal and timber, supported them with an editorial headed, "Alaska, an Example of Conservation Run Wild."

Today with petroleum, tomorrow with most other minerals, it is the Nation's plight that requires defense against "Conservation Run Wild".

BORNITE

Discovered by a lone prospector in the 1950's, has impressive reserves of rich copper ore. Located on "Seven Year Hill", so named by prospector Rhiney Berg to remind himself of his long, seven year search, Bornite furnished the incentive for prospecting that eventually led to recognition of the Ambler Copper Belt, a name that will certainly become famous in mining history, possibly even as famous as the Rhodesian/Katanga Copper Belt in Africa.

THE WULIK RIVER AREA

In its upper part, contains several attractive zinc-lead-silver-barite prospects. Drilling one of those prospects during 1977 showed that it contains a large, high grade orebody. An expanded drilling program is planned for 1978. Attention to this new mining district was caused by a U.S. Geological Survey discovery of highly anomalous lead and zinc in streams and soils. This was followed by finding an impressive showing of ore grade material on lands that are now withdrawn from location. The newly announced discovery is outside of the withdrawn lands.

LOST RIVER

Has developed reserves of tin and fluorite. Since world tin production no longer meets demand, exploitation may be undertaken in the near future. In the meantime, tin placer deposits near and west of the known tin lodes are producing modest quantities of tin. The tin-fluorite ores also contain tungsten and beryllium.

NOME

The second most productive placer gold mining district in Alaska, is the site of the largest gold dredging operation in Alaska today. Dredging reserves are believed to be large and additional reserves have been developed under the waters of Bering Sea. Recovery of the submerged gold deposits may require specially designed dredges.

FLAT

The third most important placer gold mining camp in Alaska, remains active and is getting serious attention as a possible source of tungsten.

RED DEVIL

Although a small mine, it has accounted for over half of Alaska's mercury production. It lies within a large mercury province that covers much of the southwestern portion of the Kuskokwim Mountains. Parks, White Mountain, DeCoursey and Cinnabar Creek are other mercury producers (or former producers) within the mercury province.

LAKE CLARK

At Kasna Creek. Has an apparently large, partially developed copper deposit within an area proposed for a National Park.

ARCTIC

Is the best known copper-zinc-silver ore deposit along the Ambler Copper Belt. This multi-million ton, high grade orebody was discovered and developed in recent years and quickly drew attention to the high mineral potential of the southern Brooks Range. Intensive prospecting along the trend of favorable rocks led to the discovery of Picnic Creek and at least seven other deposits that are less well developed. The gross value of the metals contained in the Arctic deposit alone, at today's metal prices, is about three billion dollars.

LATOUCHE ISLAND

Is a former copper producer and still contains substantial ore reserves. Exploration continues on Latouche and nearby Knight Island.

PLATINUM

At Goodnews Bay. Has produced platinum, iridium, ruthenium and small amounts of osmium for over 40 years. Important reserves of platinum-bearing gravels remain but are too deep to be mined with the dredge now on the property. The surrounding area is withdrawn from mining.

BELUGA REGION

The Beluga (and Chuit River) coal fields have developed reserves of over a billion tons of sub-bituminous coal suitable for strip mining. Since the coal is accessible from Cook Inlet, plans for a large mining operation have been prepared. Proposed markets are in California, perhaps in Japan.

MATANUSKA

The Matanuska coal field supplied fuel for the Alaska Railroad in its earlier days and, for many years, the City of Anchorage and adjacent military bases. The field is now inactive but substantial reserves of bituminous coal remain.

WILLOW CREEK

Was a long-active, underground gold mining camp until the mines were forced to close during World War II. The mines, which are similar to the Grass Valley gold mines on California's mother lode, remain closed since narrow-vein mining seems to be a lost art. Nevertheless, surface prospecting continues.

PICNIC CREEK

Is the most easterly known copper-zinc-silver deposit along the recently famous "Ambler Copper Belt". The discovery of this multi-million ton, high grade orebody is directly attributable to die-hards who did "play the potential game" after work some forty miles to the west had identified geology favorable to ore deposition within an identifiable mineral trend.

FAIRBANKS

The largest gold placer producer in Alaska, now contains only a few active gold placer mines and one active lode gold mine. Potential for other lode mines is good but placer reserves appear to be limited.

KENNECOTT

As has been noted, contained the rich copper deposits on which the large Kennecott Copper Corporation was foed. Production began in 1911 and continued through 1938, when reserves were exhausted. Later, the railroad that had been built to serve the four Kennecott mines was dismantled. Exploration, including drilling, in the Kennecott area has been revived.

KLUKWAN

Has a huge, developed deposit of iron ore. Although the ore is low grade, mining and concentrating costs would be unusually low. The iron concentrate that may be produced is not suitable for reduction in U.S. smelters but can be treated in Japanese smelters. Consequently the deposit is leased to Japanese interests.

YACOBI ISLAND

Has nickel-copper-cobalt-platinum reserves sufficient to warrant production. It

also lies within lands proposed for wilderness.

BRADY GLACIER

Within the Glacier Bay National Monument, is the largest, developed sulfide nickel deposit in the United States. It also contains copper, cobalt and platinum. After millions had been spent on development of this deposit, including the rare feat of drilling through hundreds of feet of ice within a moving glacier, the Congress enacted legislation that effectively blocks production from this huge deposit—in spite of the fact that no part of the mining operation would be visible from the scenic areas of Glacier Bay.

HEALY

Produces about 700,000 tons of sub-bituminous coal per year and has large reserves. Coal is known to extend for 100 miles to the east and at least 160 miles to the southwest, where thick coal beds were discovered on the Tonzona River in 1976. Although no public announcement has been made, potentially important discoveries of zinc-cooper ores have been made in the northern portion of the Alaska Range east of Healy; prospecting activity is high.

FORTY MILE

On the North Fork of the Fortymile River an asbestos discovery is being drilled. This prospect, which was discovered by the U.S. Geological Survey, belongs to the Dayon Native Corporation. All of Alaska, excepting the National Forests, is closed to location of nonmetaliferous minerals, such as asbestos; consequently prospecting for asbestos can only be conducted by agreements with native organizations.

ORANGE HILL AND BOND CREEK

In the Nabesna District. Have huge reserves of cooper-molybdenum ore that is too low grade to warrant exploitation at this time. Nevertheless prospecting and development continue along a 40 mile trend of mineralization.

JUNEAU

The location of the famous Alaska Juneau and Treadwell gold mines, has no active mines today but exploration along the Juneau gold belt, which extends for about 80 miles, continues.

CASTLE ISLAND

Has produced all of the barite mined in Alaska, and has the distinction of being the only open, underwater barite mine anywhere. Search for additional barite reserves on nearby Krupreanof and Kulu islands continues.

QUARTZ HILL

45 miles easterly from Ketchikan, is a huge molybdenum deposit that will hve major importance to the economy of Southeastern Alaska. Nevertheless, the President's Council on Environmental Quality has protested strongly against a U.S. Forest Service permit for construction of a 14 mile road from tidewater to the mine site.

BOKAN MOUNTAIN

Contains a formerly producing, high grade uranium mine. Prospecting in the vicinity is very active.

HAWK INLET

Long known for gold mining and for a nickel-copper prospect at nearby Funter Bay. is close to a major zinc-lead-copper deposit discovered in recent years. This important deposit, which can be put into production in the near future, lies within lands proposed for "Instant Wilderness".

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Will the distinguished acting minority leader at the moment agree that the Executive Calendar nominations, beginning with New Reports, is all clear? If so, I shall ask unanimous consent that the Senate go into executive session to consider those nominations.

Mr. STEVENS. Yes, we have no objection and will be pleased to proceed in that fashion.

Mr. ROBERT C. BYRD. I so ask.

There being no objection, the Senate proceeded to the consideration of executive business.

The assistant legislative clerk proceeded to read nominations on the Executive Calendar, beginning with new reports.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominees be considered and confirmed en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

NATIONAL LABOR RELATIONS BOARD

Howard Jenkins, Jr., of Maryland, to be a member of the National Labor Relations Board for the term expiring August 27, 1983.

FEDERAL RESERVE SYSTEM

Nancy Hays Teeters, of Indiana, to be a member of the Board of Governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1970.

U.S. ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

Gen. Sam Sims Walker, general.

The following Army National Guard of the United States officer for appointment in the Adjutant General's Corps, Reserve of the Army, under provisions of title 10, United States Code, sections 593(a) and 3392:

Brig. Gen. Edward Clarence Binder, major general.

The following-named Army Medical Department officer for temporary appointment in the Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3442 and 3447:

Col. Andre John Ognibene, brigadier general, Medical Corps.

The following-named Army National Guard of the United States officer for appointment to the grade of brigadier general as a Reserve commissioned officer of the Army and to the grade of brigadier general, Army of the United States, under the provisions of title 10, United States Code, sections 593a, 3385, 3442, and 3447:

Col. Herbert R. Temple, brigadier general.

U.S. NAVY

The following-named officer having been designated for commands and other duties of great importance and responsibility in the grade of vice admiral within the contemplation of title 10, United States Code, section 5231, for appointment while so serving as follows:

Rear Adm. David F. Emerson, U.S. Navy, vice admiral.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, AND NAVY

Air Force nominations beginning Robert L. England, to be lieutenant colonel, and ending Hyman H. Album, to be major, which appeared in the CONGRESSIONAL RECORD on August 14, 1978.

Army nominations beginning Jack B. Abraham, to be colonel, and ending Don A. Gross, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 14, 1978.

Navy nominations beginning Michael W. DaBose, to be ensign, and ending Aaron S. Wolkoff, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 14, 1978.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move to reconsider en bloc the vote by which the nominees were confirmed en bloc.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I make that motion.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the United States be immediately notified of the confirmation of the nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Wisconsin want any of the leadership's time?

Mr. PROXMIRE. No; I have my own time. I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, I yield back whatever time I may have.

Mr. STEVENS. Mr. President, I reserve the remainder of my time until the pending business is laid before the Senate.

Mr. PROXMIRE. Mr. President, I understand that under the order, I have 15 minutes.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. PROXMIRE. I do not know if I shall take that time, but I will take a substantial part of it.

OF MICE AND MEN (AND WOMEN)

Mr. PROXMIRE. Mr. President, I wish to call the attention of the Senate to a problem that faces us all, one of widening dimensions and frightening possibilities. What is this menace that has touched every Senate office with its icy fingers, striking fear into a thousand hearts? What is this plague to good government?

Mr. President, I can sum it up in one word—mice.

Now, I am not just talking about a few mice, a solitary Mickey Mouse or Minnie Mouse. I mean legions of mice that have invaded the Dirksen Office Building and that seem to be moving on the Capitol from many directions.

Mr. President, the great American figure of the last generation did not come out of the golden age of sports. It was not Babe Ruth or Jack Dempsey or Bobby Jones or Bill Tilden or Red Grange. It was not Franklin Roosevelt or Churchill, Hitler or Stalin. It was Mickey Mouse. Sure, Mickey was a creature of the media, but what modern historic figure is not? Mickey was not a joke. He became a way of life. After all, millions of kids were not wearing Red Grange hats or Jack Dempsey or even FDR hats. But they were sure wearing those mouseketeer chapeaus.

Mickey and Minnie Mouse are cultural institutions. They took Hollywood by storm, invaded the White House, captured the Nation, and captivated the world. That was all good and fine. But this phenomenon has to stop somewhere. At the present rate, the progeny of Mickey and Minnie Mouse will soon have more voting power than the U.S. Senate. They will dominate the Banking Committee, eat out the cafeteria, control our law making procedures. How long will it be before the majority leader's job is threatened by a mouse coalition?

The majority leader did not hear that, but he ought to be concerned about it, because it could happen. While he is conferring with the minority leader, the mice undoubtedly are moving on all areas of the Capitol.

I once thought there were many different kinds of Republicans—conservative Republicans and liberal Republicans, Northerners and Westerners, big spending and tightfisted Republicans—but they are nothing compared to these mice. We have brown mice, white mice, soft furry mice, spotted mice, short-tailed mice, long-tailed mice, blunt nosed mice, fat, satisfied, arrogant, omnipresent mice. You do not know mice until you have seen one devour a full bowl of poison and look up for more.

Mr. ROBERT C. BYRD. Mr. President, the Senator did not mention the country mouse and the city mouse. Does he know the old story about that?

Mr. PROXMIRE. No, but I would like to hear it.

Mr. ROBERT C. BYRD. Are they involved here?

Mr. PROXMIRE. No, but we have many types of mice and they could include country mice and city mice.

Mr. ROBERT C. BYRD. They were cousins, you know.

Mr. STEVENS. How about arctic mice?

Mr. PROXMIRE. We have arctic mice, Southern mice, Alaskan mice, Wisconsin mice, West Virginia mice. They are eating us up. I can tell you.

Yes, Mr. President, mice—from the sixth floor to the subbasement, behind every radiator, beneath every bookcase—the Dirksen Senate Office Building has been invaded by a marauding battalion of scurrying, foraging rodents, The parade of mice is as long as a New Yorker article about Senator CULVER. It goes on and on and on endlessly.

Mr. ROBERT C. BYRD. Would the Senator suggest that the Pied Piper might be able to get rid of these mice?

Mr. PROXMIRE. We are looking for him. They have a Pied Piper up there, but the poor fellow cannot do much. The mice are taking over. They are leading him.

Mr. ROBERT C. BYRD. Do you suppose I might take my fiddle and lead them away?

Mr. PROXMIRE. It might help. I think a little fiddling might do the trick. It did not work for Nero, but might for the majority leader.

Mr. ROBERT C. BYRD. It worked for Thomas Jefferson. He was a country fiddler.

Mr. PROXMIRE. But he had to cope with rats. We have to cope with mice. The mice are more numerous and they are there.

It began as a small thing—a mouse here, a mouse there. But the problem has grown to epidemic proportions. We can no longer escape it. The mice are everywhere, and their size and number increase daily in geometric profusion.

Mr. ROBERT C. BYRD. If the mice ever join hands with the roaches, what will happen to us then?

Mr. PROXMIRE. Well, I would bet on the mice. I think the mice can do it. The mice have already invaded Hollywood, invaded the White House. Believe me, they are way ahead of the roaches in our office. We have a lot of bullets, but the mice seem to be way ahead.

These mice are a brazen crew, entirely without fear. No room is inviolate, no conference so weighty as to be spared their squeaky presence. They have no morals, no sense of decency. Their presence is an outrage to the dignity of the Congress, an affront to basic human rights everywhere.

This is the age of the mouse.

We have a mouse-like energy bill before us right now. It is not a vicious steal of a bill, but a furtive, timid, gnawing at the public interest. Any self-respecting rat would sneer at it. And I might add that quite a few are doing just that. There is mousiness everywhere. Not only the Congress, but the executive branch and the Supreme Court are not fearsome and tough. All these institutions seem to be made up of a conglomeration of midgets, individually innocuous as a mouse but, in aggregate, as threatening as this army of mice has become.

Take the press. No longer are we plagued with yellow journalism of the ilk of William Randolph Hearst or Bertie McCormick. There are no lions in the press, no wolves. We have to strain even to call them jackals. There are not even any rats in the press, only hundreds of nibbling, on-the-one-hand-on-the-other-hand mice. Take this speech as an example: It had an embargo for Friday, but the release time was broken by AP. Now that is a mousey move if there ever was one. Embargoes, unlike mice, should be honored.

Even organized crime—the classic home of the dirty rat—lacks the class and clout of Al Capone or Lucky Luciano. These days, even the crooks are mousey.

Except for the defense contractors, shipbuilders who are taking rat-sized bites out of the taxpayers, even the ripoffs are more like a gigantic assemblage of mice-nibbles than the spectacular steals of yesteryear.

Sure there are more dollars of waste—more extravagance, more special interest chiseling but it is a problem of too many little marauding rodents each of them harmless but in aggregate nibbling the body politic as never before.

Mr. President, there is only one man, one heroic man, who stands between the Dirksen Building and this marauding horde. One man alone guards this fortress against the enemy.

In its unfathomable wisdom the Senate has hired an exterminator. Every Tuesday night he returns to make his dreary rounds. From office to office, armed with traps and poison, cheese and odor proof plastic bags, he trudges, struggling to stem the endless tide.

Life is cheap for these mice. When our hero returns next Tuesday, grim and determined, another bloody spectacle will await him, another senseless carnage scattered through Senate offices.

Mr. President, what is the explanation for this vicious cycle of slaughter, this ceaseless attrition? Why must this lone crusader return week after week, to endure the screams of frenzied secretaries, to be greeted by the light, acrid stench of decaying mice? Why, Mr. President, why?

I will tell you why.

Like some enormous sponge, like the U.S. Tax Code, like some gargantuan swiss cheese, the Dirksen Senate Office Building is riddled with holes—gaping 3-inch portals pierced by slender 1-inch pipe yawn in every wall, behind every radiator, giving the rodents access to every floor, every room.

And what is the Senate's response to this gross breach of integrity? How have we acted to stem the blight now afflicting this Congress?

With characteristic myopia, we have treated the symptoms while ignoring the causes. We have merely hired one solitary individual, a courageous man but one hopelessly inadequate to rid us of the pest.

Mr. President, how much longer can we wait to attack this problem at its roots? Think of the time lost by Senate employees afraid to return to their offices, having been displaced by thousands of mus musculi. Consider the trepidation of those who fear to open their desk drawers only to face a quickly departing mouse colony. How many mice have secretely typed out a memorandum by random application of their quadrupedal appendages during the night? Could this account for some of our less worthy legislation?

Oh, the irony of this plague. Even now, with one porous Senate Office Building riddled with vermin, another rises up right next door. This lavish structure, the

newest Senate Office Building, now rising from the ground almost as fast as its price tag, stands next door to the "holey" Dirksen Office Building, and I mean holey.

If we were to take only one ten-thousandth—one ten-thousandth—of the fortune required to build the Hart Senate Office Building, and rather than throw that money down the mouse hole, if we were to take that small sum and plug the holes in the Dirksen Building, I assure you that the results would be startling. We could stuff those holes with dollars and be money ahead. The dollar is not worth much these days. Jamming a few hundred thousand down a mouse hole would be a new and exhilarating change for the Senators from shoveling them down rat holes. No longer would mice scuttle through these formerly respected halls. The wanton horde that now afflicts the Dirksen Building would quickly recede. There would be so much extra room that we would not have spent over $200 million to build a new edifice. It would be the best investment of the dollar by Congress in years.

Mr. President, I had hoped for Republican support in my efforts to rid the Senate of mice. But the Republicans are running scared. Elephants and mice do not mix, as we all know. Perhaps that is why there are so few Republicans in the Senate.

This desperate situation cries out for action. Behind the marbled walls of the Dirksen Building there flourishes a mousy Byzantium. Just as the barbarians descended on Rome, this wave of rodents, this pestilence. this Sodom and Gomorrah of the mouse world, now gnaws at the very foundations of the Senate. Unless we act now, the Dirksen Senate Office Building, like Rome, may fall.

Mr. ROBERT C. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I am encouraged to believe that the epic story of Beowulf, and Oliver, Roland, and King Arthur and all of his knights, Sir Lancelot, Sir Galahad, are about to be relived, as I have listened to this brief and noble speech made by the distinguished Senator from Wisconsin.

He has declared, virtually, a one-man war on mice, and if it were not that I suffered from great trepidations I would seek to join him. But I shall be content with following from afar. I congratulate him.

Just a few days ago I saw a streak. It was not a streaker, it was a streak that went across the floor.

Mr. PROXMIRE. A fully clothed mouse.

Mr. ROBERT C. BYRD. In the Lyndon B. Johnson room. It was one of those mice the Senator was talking about.

So does the Senator know what I did? I got myself a couple of these old-fashioned mousetraps, put a little piece of cheese on it, came in the next morning, the cheese was gone, the trap was sprung—no mouse.

So these mice have developed a technology, I suppose, in this age that has rendered the old-fashioned mousetrap useless.

Mr. PROXMIRE. These mice are smart. We have all kinds and varieties of traps in our office.

Mr. ROBERT C. BYRD. Oh, yes.

Mr. PROXMIRE. We have the old-fashioned traps, we have the new-fashioned traps, we have all kinds of poison. They are not only smart, they are tough. They eat that poison. It makes them stronger and bigger.

Mr. ROBERT C. BYRD. They have a built-in resistance. Their IQ is undoubtedly very high.

Mr. PROXMIRE. It might improve the quality of the Senate as they come on to replace some other kinds.

Mr. ROBERT C. BYRD. May I say in closing, the distinguished Senator from Wisconsin has labored greatly, and what has he brought forth? A mouse.

Mr. PROXMIRE. I thank my good friend, the leader. I thought he was going to ask if I was a man or a mouse. I was going to say that these days I would rather be a mouse. They are winning.

Mr. DANFORTH. Will the Senator yield?

Mr. PROXMIRE. Yes.

Mr. DANFORTH. I would point out, these mice have not only infested the Dirksen Building, they are in the Senate restaurant, as well. The Senator may have wondered what he was eating in the Senate restaurant. Think of what the mice are wondering.

But I wonder, at a time when we can send people to the moon, when the Congress of the United States has such originality and such excellence, why it is beyond our ability and beyond our imagination to be able to build a better mousetrap.

Mr. PROXMIRE. I thank the distinguished Senator from Missouri.

That is the question. As he pointed out so well, he and Senator CHAFEE led the fight on that Hart Office Building. I can understand, that is one of the reasons for it, because they have been driving the mice out of that area into the Dirksen Building.

If we take one ten-thousandth of that money and stuff these holes—the trouble is that Dirksen has a series of holes in every office—and if we stuff them with dollars we would be ahead. The dollar is not worth much. That probably would be the best investment we could make.

I might say, it is good to have Republicans joining in this because I indicated Republican elephants have an aversion to having anything to do with mice.

Mr. HATCH. Will the Senator yield?

Mr. PROXMIRE. Yes.

Mr. HATCH. I am afraid the Republicans, in their characteristic fashion, will bring their elephants in and stamp the mice out, and I think that could have a detrimental effect on our buildings.

I compliment the Senator from Wisconsin for spending so much of the Senate's time on worthwhile merit in comparison to, I would say, 40 percent of the legislation that concerns our time in this Chamber.

I think the Senator will come up with some very extensive, decent, and worthwhile legislation, which we can in a bipartisan effort join to solve this otherwise incredible problem.

The ACTING PRESIDENT pro tempore. The Chair advises Senators that the time for the Mickey Mouse program has expired.

SPECIAL ORDER

Mr. STEVENS. Mr. President, does the Senator from Rhode Island need additional time?

Mr. CHAFEE. Yes.

Mr. STEVENS. Mr. President, I yield the remainder of the leadership's time on this side to the Senator from Rhode Island.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Rhode Island (Mr. CHAFEE) is recognized for not to exceed 15 minutes, and an additional 2 minutes yielded by the distinguished Senator from Alaska.

HELP FOR THE PRESIDENT'S PROGRAMS

Mr. CHAFEE. Mr. President, last week an astonishing article appeared in the Washington Post, which I read with such disbelief that I had to check other sources to see if it was a fact.

The article was a quotation dealing with the First Lady's campaign in Texas. The article stated, referring to Mrs. Carter's tour in Texas:

> At each stop she stressed her main theme of electing Democrats to office to help President Carter get his programs through Congress.

I looked at that with disbelief. Democrats to help President Carter get his programs through Congress? Maybe the President wants Democrats in Congress because he wants more baseball players on his softball team. Perhaps he wants people to go fishing with him. Maybe the Democrats are better fishermen or better baseball players than Republicans. But so far as supporting the President's programs is concerned, to get more Democrats in Congress, that really is the anthesis of what the President is seeking.

I seriously wonder whether there has been a breakdown in communication between Mrs. Carter and President Carter; because, as we well know, in the Senate, in the last 2 years, we have had three really significant votes, three votes of any consequence, in which the President laid his prestige on the line and wanted the result for the benefit of the Nation. Of course, I am referring to the Panama Canal treaties, the lifting of the Turkish arms embargo, and the Mideast planes sale.

As Al Smith, that great Democrat, used to say, "Let's take a look at the record". How did the Democrats do in supporting the President on these important programs, the only three

major votes that have taken place on the Senate floor since the President has been in office? These were the really key ones.

Let us take the Mideast planes sale. Was that an important vote? Well, President Carter thought it was, and I quote from his press conference on May 15:

The arms package is crucial to our efforts to secure a just and lasting peace in the Middle East.

What did Secretary Vance say? He said:

The proposed sales are vitally important to the foreign policy interests of the United States and to the Nation's role in peacekeeping efforts in the Middle East.

Well, how did the vote break down? Let us take a look. How did he do with his Democrats? Forty-six percent of the Democrats voted to support the President's proposed arms sale, and 71 percent of the Republicans voted to support the President's arms sale.

I suppose that one of the great concerns that the majority leader has is that he would hate to have more Democrats in this Chamber. I will bet that he tosses and turns at night wondering whether, in the forthcoming election, we are going to see more Democrats in this Chamber instead of Republicans.

Let us take some of the other important votes—the lifting of the Turkish arms embargo. How did that come out? Was it important? President Carter certainly thought it was. I quote the President:

It is a very important subject, the most important foreign affairs subject that this Congress will consider the rest of this session.

President Carter, according to the New York Times, called the repeal of the embargo on military aid to Turkey his highest foreign policy priority. I quote him again:

The most immediate and urgent foreign policy decision to be made this current legislative session is in the lifting of the arms embargo against Turkey.

Well, how did he make out there? Seventy-three percent of the Republicans voted to support him, and only 48 percent of the Democrats voted to support him. As a matter of fact, when it was all said and done, he got less than half of the Democrats to support him, and it was the Republicans who put the thing over.

So, Mr. President, I view what is happening with respect to this speech of Mrs. Carter with the greatest of concern. Maybe she is not talking to the President. I think that is a mixup. I am sure she is talking to him. I blame it on the speechwriters. Those speechwriters down in the White House have not got their signals straight.

I think the same speech writer who is writing this stuff for Mrs. Carter wrote the President's speech dealing with the economy of Germany. Remember that speech, when he advised the Germans how to straighten out their economy? This is the fellow who must be writing the stuff for Mrs. Carter down there.

Imagine that. Imagine saying that the President wants more Democrats to help get his programs through Congress.

I do not know what is going on. Of course, a little while ago, there was some suggestion that there was some pot-smoking in the White House by the doctor, but that was taken care of. Out the door he went. Is something stronger going on? Certainly, it cannot be liquor. As I understand, the President has barred liquor, except for wine—unless they are consuming it in vast quantities. I do not know what is taking place. It just concerns me that this is taking place.

I looked again at the other very important matter that came before the Senate, a matter in which the distinguished majority leader spoke, the ratification of the Panama Canal treaties. The distinguished majority leader said that their approval will mean strength, fortified with vision and justice.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. CHAFEE. I yield.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator has referred to me in a very kind and gracious way, and I thank him for yielding.

The funny season has come early this year, as we have seen already this morning in the Senate. It has come before the leaves have begun to fall.

I say to the distinguished Senator, seriously, that I thank him and those other Republicans who stood—against tremendous opposition, may I say—for what they saw to have been the best interests of the country, especially on those matters dealing with foreign relations.

I think that Senators like the Senator from Rhode Island (Mr. CHAFEE) have demonstrated an integrity and a nonpartisan attitude that has been very beneficial to the country. I, for one, salute the Senator and those on the other side of the aisle who have not been partisan in these issues, especially those foreign policy issues which have been so vitally important to our country.

I can understand the Senator's viewpoint and what he is saying. I have empathy for his position. But when we get into campaigns, we are very likely to have things to say that perhaps are a little wide of the mark, and always with a little truth and a little fiction in them.

As the Senator says, some of us have other people writing our speeches. But I hope we will not take too seriously the things that are said on the campaign trail.

I say to the Senator that I personally thank him and Senators on both sides of the aisle without whom the President's program in many instances would not have been enacted in this body. So I assure the Senator that I, personally, am grateful. He is demonstrating the kind of leadership that the country needs on the Panama Canal Treaty, as he said, and on the Middle East arms sale. I do not recall how he voted on the lifting of the Turkish arms embargo.

Mr. CHAFEE. All the way.

Mr. ROBERT C. BYRD. There, again, it took courage. What I say is no reflection on the Senators who voted the other way, because they saw it in the country's best interests in another way.

The Senator is also out on the front line right now. He is carrying his spear and his javelin and is spurring his worthy steed on every day, in the interests of the natural gas compromise, and he is working with me on that, and I am working with him. We are working together. I say that I am glad that we have some support on these issues, and I think it shows statesmanship on the part of the Republicans who will stand up and vote for what they consider to be in the country's best interest.

Mr. CHAFEE. Mr. President, is that on my time?

Mr. ROBERT C. BYRD. Yes, it is.

Mr. CHAFEE. I appreciate the very kind comments that the distinguished majority leader has made, but I do not want to use all my time hearing praise of myself. Normally I am delighted to hear it, but this is a very important matter I am dealing with. So I wish to continue if I might.

Mr. President, there is one further point that worried me in what Mrs. Carter said, and that is I wonder, in saying that the President sought the election of Democrats who support his programs, whether there is an inverse twist and a possible harbinger in the future that he would seek to purge those Democrats who did not support his program. That presents very interesting possibilities because we find here that in the Senate on these three crucial votes 40 percent of the Senators voted no on two out of the three issues. So thus, if the President started a purge on those Senators, 27 of them who voted against two out of the three programs, he will really make a sparkling situation around this Chamber and in future campaigns.

Mr. DANFORTH. Mr. President, will the Senator yield?

Mr. CHAFEE. I am glad to yield.

Mr. DANFORTH. I think the Senator from Rhode Island has made an excellent point, and I also think the distinguished majority leader has. He has recognized the First Lady's speech or speeches in Texas for what they are; namely, campaign talks, and he has——

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr. ROBERT C. BYRD. The Senator from West Virginia did not say anything about the First Lady.

Mr. DANFORTH. No.

Mr. ROBERT C. BYRD. Let us not pick on her.

Mr. DANFORTH. That is the subject we are talking about.

Mr. CHAFEE. No. The speech writers. Mr. President, it is the speech writers. What the First Lady said I am not holding that against her.

Mr. ROBERT C. BYRD. The Senator from West Virginia did not say anything against the First Lady.

Mr. CHAFEE. It is the people in the White House writing this stuff. It is a busy day. She gets up and she is in this shopping center where she is given a speech put in front of her and so she reads it and does her part. It is not the First Lady's fault.

Mr. DANFORTH. Mr. President, if the Senator will yield, without referring to the First Lady, certain speeches were made in Texas by a party who will remain unnamed.

Mr. ROBERT C. BYRD. Will the Senator not point his pen at me? Our guests in the galleries may feel he is angry.

Mr. DANFORTH. And she made certain references to perhaps lack of support by Republicans in Congress for the President's program, and the majority leader has pointed out that these remarks, and I think he is quite accurate, were political comments and nothing more and, therefore, they should not be vested with much currency.

Mr. ROBERT C. BYRD. No. The majority leader did not say that at all about the First Lady's remarks. He said that in campaigns we all are sometimes likely to say things that we would not say otherwise and other people sometimes write speeches for us. But please absolve me from having said anything whatsoever that would imply any criticism whatsoever of the First Lady or any implication that she did not write her speech.

Mr. DANFORTH. The majority leader, I do not think, would say that all of us in political campaigns misstate the truth. There are some people who can always be depended on, is that not right? There are some people who tell us that you can depend on what they say?

Mr. ROBERT C. BYRD. Yes. Like BOB BYRD, from West Virginia; JACK DANFORTH, from Missouri; and JOHN CHAFEE, from Rhode Island.

By the way, may I say, Mr. President, I can remember a President who not too long ago vetoed 46 bills in 20 months. His name was Ford.

And he was consistently taking Congress out behind the woodshed and laying the heavy wood on us and forgetting that he once was a Member of the other body, forgetting that when he criticized Congress he was criticizing Republicans as well as Democrats, because we all have the same responsibility here. So when we get to talking about our pretty little First Lady for making her contribution to the national interest in the way that she sees best, let us not forget some of the things that happened all too recently when——

Mr. DANFORTH. Is the Senator asking a question? This is on our time.

Mr. ROBERT C. BYRD. This is a rhetorical question.

Mr. DANFORTH. The Senator's filibuster is going on on our time.

Mr. ROBERT C. BYRD. No question about that.

Mr. CHAFEE. I think it is my time and I appreciate hearing the pearls of wisdom from the distinguished majority leader, but I have been given very little time here, and I suspect not much of it remains. So if the majority leader will be good enough to let me proceed on my time, of course, everyone knows the majority leader can get any time he wants in this Chamber, and it is always a treat to hear him, but at my back I always hear trumpets and chariots drawing near, and time is wasting. How much time do I have remaining, Mr. President?

Mr. ROBERT C. BYRD. Mr. President, before the Chair answers that question, and I did not want the Chair to answer that question, because I am afraid the time has about run out, having gotten in my little reminder about Mr. Ford, who was always laying the heavy wood on Congress—both parties—let me say that I look upon my friend from Rhode Island—he speaks of pearls—I look upon him as a pearl of great price, an emerald in a cup of jewels.

Mr. CHAFEE. Yes, but my time is going, Mr. President. I wish to claim what I have remaining.

Mr. President, I yield to the Senator from Missouri for a statement here and, as a matter of fact, I think we can probably combine our time.

The PRESIDING OFFICER (Mr. RIEGLE). The Senator has 30 seconds remaining.

Mr. DANFORTH. Will the Senator from Rhode Island take the 30 seconds?

Mr. CHAFEE. No. Go ahead, and we can put our time together. The Senator from Missouri has 15 minutes coming up, does he not?

The PRESIDING OFFICER. That is correct.

Mr. DANFORTH. Mr. President, I think that the point is very simple, that on a number of key issues, maybe three or four or five, now the natural gas bill, the tendency of the President is to get himself in a kind of perils-of-Pauline situation where he gets strapped to the railroad tracks not by the doings of people on our side of the aisle. The people with the black boots, the long capes, and the sinister mustaches are over on the other side of the aisle. And he gets strapped to the railroad tracks, and then he comes over to the great white knight on this side of the aisle and says, "Please, come and cut us from the railroad tracks at the 11th hour." And repeatedly, the great white knight, for example, Senator CHAFEE, has responded to this call of anguish from Pauline, who is on the railroad tracks, and has come running. Even now we hear the call, "Help, help us on the natural gas conference report."

Some of us are considering, just considering the possibility of whether our knife shall be unsheathed and, yet again, to help Pauline get untied from the track.

Mr. ROBERT C. BYRD. The Senator is not making a reference to me, is he?

The PRESIDING OFFICER. The Chair advises that the time of the Senator from Rhode Island has expired and we are now on the time of the Senator from Missouri.

Mr. DANFORTH. I think there is a serious point here. As a matter of fact, I think the serious point is that all of us who are in Government, whether we are Republicans or Democrats, presumably are here because we want to make some meaningful contribution. There are those of us who, and I think a clear majority of those of us on the minority side, the Republican side, who do not look at these issues as just purely partisan matter or as an opportunity to do in the President.

I have assured the President on the natural gas bill of two things: One, if I am equally balanced in my own mind on the merits I will vote with him on this bill. I am not sure whether I am equally divided. I have serious problems with it at this point, but that I am not anxious to do him in on a matter that is perceived by him to be so important to his administration.

I made in the Mideast arms sale an anguished decision on my part on how to vote, one which was contrary to my statements during my own campaign with respect to sales to the Arab countries. I think, on reflection, that that vote was best for the country.

But I think that we, on the Republican side, are anxious to try to be of service to our country and to help the President where we can. But I think it is kind of a sorry state where we are the only persons answering the call when the call comes for help.

We have, I think, some constructive input on our own which we would like to offer the Government of the United States on such matters as the economy and how to control inflation and what to do to expand the growth of our economy to help those young people, the minority people, get jobs, to help them get a better future and a better hope for their future, to expand America's ability to trade on the world market which, I think, is especially important, and something which has been almost completely ignored by our policymakers.

The point that Senator CHAFEE is making in a very lighthearted way but, I think, in a very meaningful way, is that we believe we have some contributions to make and that we have some definite inputs to propose, and it is a little bit unsettling, although understandable in the course of a political debate, when you are just written off as simply being a Republican and because your party label happens to begin with the letter R. "That is enough for you, and help us when you need us. Don't call us, we will call you."

Mr. CHAFEE. Mr. President, will the Senator yield on that point there? It is ironic that the First Lady delivered these remarks at a rally, which the newspaper quotes, "on behalf of Representative ROBERT C. KRUEGER who hopes to unseat Senator JOHN TOWER." Senator TOWER has supported the President on two out of these three key issues. And, as the Senator from Missouri pointed out, on one of these issues, the Mideast arms sale, there were not even a majority of the Democrats in this body who supported the President. Forty-six percent voted with the President. Indeed, I do not have to look very far to see some who did not support the President either on that issue or on one of the other issues.

As we look down this list of those—mind you, I challenge anybody to say whether we have voted on more than these three issues, and on these three issues there are some 19 Democrats who voted against the President on two out of three of them.

Mr. DANFORTH. I think the Senator is saying, as I understand, is the First Lady, or whoever the speechwriter was who wrote the Texas speech, was mistaken and, indeed, it would be in the best interests not only of the country, which we would acknowledge, but of the President himself if Senator TOWER were reelected to the Senate as a Senator from Texas.

Mr. CHAFEE. I have no question about that. As a matter of fact, Mr. President, I would go somewhat further and I think it would be in the best interests of the President if there were a majority of Republicans in this Chamber. Then I think we would really see the President's program roll along here.

No one exceeds me in my respect and admiration for the majority leader, but in the event that there should be a majority of Republicans here I am sure somehow we would get a leader, and we would try to duplicate his feat of outstanding leadership and fairness in this body.

Mr. President, those are the points I made. I think they are rather interesting. I hope it does not indicate that these speechwriters are going to continue along this vein in the future. I hope they would get their act straightened out, talk with the President, understand where his support is on these key issues, and that we would get this campaign back on the right track again and save Pauline not at the last minute but before Pauline is tied to the track.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I want to thank the distinguished Senator from Rhode Island for his graciousness in yielding to me so much of his time.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with statements limited therein to 5 minutes each, for a period not to extend beyond 15 minutes, and that the Senator from Rhode Island——

Mr. DANFORTH. Mr. President, may I inquire how much of my time is remaining?

The PRESIDING OFFICER. The Chair would advise the Senator from Missouri that he has 7 minutes remaining.

Mr. ROBERT C. BYRD. I thought the Senator yielded back his time.

THE PRESIDENT'S PROGRAM

Mr. DANFORTH. I just have one final comment. I understand the strategy of the majority leader and if I were in his shoes I would have followed the same strategy.

Senator CHAFEE and I now have taken some 23 minutes, and I think that is more than enough to make a point, which is clear on its face, and it does not need to be belabored any further. Therefore, I yield back the remainder of my time.

Mr. ROBERT C. BYRD. I was going to be just as gracious as was the Senator from Rhode Island, which would really tax me considerably, because to equal his graciousness is something that is meritorious, and I was going to suggest moving into morning business with a 5-minute limitation on speeches, and that the Senator from Rhode Island be recognized first so that he would get 5 minutes of his time back of the time that I consumed.

Mr. CHAFEE. That is very generous of the majority leader, but that will not be necessary. I enjoyed hearing his comments, as I always do. He is one of the premier speakers here and, if I am not here personally to hear him, I always turn on my mike in the office to hear him. But we have made our point. I do hope that whoever is writing that material down at the White House will eliminate these references to the need for more Democrats to support the President. Maybe he needs Democrats for some other reasons, I do not know, fishing companions, baseball companions, but not to support his program because, frankly, as I mentioned, the best thing is to turn this speech into its right form. Maybe they have got the words mixed up. She should have said, "We want more Republicans in the Senate to support the President's program." Maybe the words got twisted around. But it seems to me that would be the right approach. I will suggest that to the speechwriters. Whether it will be accepted or not I do not know.

I thank the Chair.

Mr. ROBERT C. BYRD. I think what the gracious First Lady may be saying is something like this:

'Twas a dangerous cliff, as they freely confessed,
Though to walk near its crest was so pleasant,
But over its terrible edge there had slipped
A Duke and full many a peasant,
So the people said something would have to be done,
But their projects did not at all tally.
Some said: "Put a fence round the edge of the cliff."
Some: "An ambulance down in the valley."

I think what she is saying is "Let us put a fence around it." I thank my friends. What I say is in levity and in good spirit, because I personally appreciate the support that the Senator from Rhode Island, in particular, and other Senators on the Republican side have been giving to the President on some of the great vital issues of the day.

I certainly thank those on my side of the aisle who have equally supported the President, many times putting aside partisanship and looking at what we think is in the best interest of our country.

I tried to do that with Mr. Ford; I tried to support Mr. Nixon where I felt I could; I tried to support Mr. Eisenhower where I thought I could. The same with Democratic Presidents. But I must say that of all those Presidents the least thanks we ever received were from Mr. Ford so far as I am concerned, who consistently utilized every opportunity to get on television in any way to take the Congress out behind the woodshed and lay the heavy wood to it. That was his theme, that was his theme song, day and night, and I say that with respect to Mr. Ford. He was a man of integrity and a very personable individual. We all liked him personally. But at least we do not hear that from Mr. Carter.

He meets us half way. He wants cooperation, but he does appreciate the support that he gets from our friends across on the other side of the aisle.

Again let me personally extend my thanks to those over there who find time to stand with us in our efforts to keep the legislative process moving.

The PRESIDING OFFICER (Mr. RIEGLE). The Chair would advise the Senator from Rhode Island and the Senator from Missouri that the Senator now in the Chair would welcome the chance to engage in a colloquy, but under the rules of the Senate he cannot do so from the Chair. I simply make that point in passing at this time.

Does the majority leader renew his request for a resumption of morning business?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

GENOCIDE CONVENTION DOES NOT VIOLATE FREE SPEECH GUARANTEES

Mr. PROXMIRE. Mr. President, today I will address one of the major erroneous objections made in opposition to the Genocide Convention—the idea that this Convention would somehow violate the Constitution. In particular, it has been argued that article III, subparagraph (c) would infringe on the right of free speech.

The Convention states, "direct and public incitement to commit genocide" is a punishable act. But this is in perfect accord with the Constitution as interpreted by the Supreme Court and legal scholars.

Mr. President, "direct and public incitement to commit" murder is also a punishable act under Federal law. The Supreme Court in Brandenburg against Ohio dealt specifically with this question of incitement versus advocacy and ruled that freedom of speech is not inviolate.

The Brandenburg case concerned a Klu Klux Klan meeting in Ohio. In preparing their decision the Justices carefully clarified the essential point. The Constitution protects advocacy in the abstract as an appropriate expression of free speech. However, ". . . the constitutional guarantees of free speech and free press do not permit a State to forbid or proscibe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is

likely to incite or produce such action." That is what the law states. (395 U.S. 444)

This distinction, Mr. President, is vital. One can legally, quite legally, stand on the steps of the Capitol and call for a violent overthrow of the Government.

If, however, that persons also supplies the means to carry out that illegal act'_n, then the law descends upon him with all its force. For he would have crossed the line from advocacy—rightly protected—to incitement—a clear violation of our law.

Mr. President, article III subparagraph (c) of the Genocide Convention applies only to "incitement" and therefore does not violate the U.S. Constitution.

There is, Mr. President, no constitutional reason not to ratify the Genocide Convention. Mr. President, ratification is long overdue.

I yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so rdered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

SMALL BUSINESS INVESTMENT ACT OF 1978

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 11318, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 11318) to amend the Small Business Act and the Small Business Investment Act of 1958.

The Senate proceeded to consider the bill, which had been reported from the Select Committee on Small Business with an amendment and from the Committee on Governmental Affairs with amendments.

The amendment of the Select Committee on Small Business is to strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—AMENDMENTS TO THE SMALL BUSINESS INVESTMENT ACT OF 1958

CHAPTER 1

SEC. 101. Section 201 of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following: "The Associate Administrator so appointed shall be the Associate Administrator for Investment and shall be responsible to the Administrator solely for the development, execution, and administration of the investment program specified in title III of this Act.".

SEC. 102. Section 303(b) of the Small Business Investment Act of 1958 is amended by striking the period after the words "toward covering other costs of the program as the Administration may determine to be consistent with its purposes" and adding the following: ", or, in the case of a small business investment company operating under authority of section 301(d) of this Act, such debentures shall bear interest at a rate of 3 per centum per annum.".

SEC. 103. Section 303(b) of the Small Business Investment Act of 1958 is amended by inserting before the sentence beginning with the clause "The debentures shall also contain such other terms as the Administration may fix" the following new sentence: "The Administration is directed to apply the interest rate of 3 per centum per annum retroactively to outstanding debentures previously purchased by the Administration from a small business investment company operating under authority of section 301(d) and to apply any interest in excess of 3 per centum per annum previously paid to the Administration by such company prior to the effective date of this section, to interest payable after such effective date, without interest on such interest.".

SEC. 104. Section 303(c) of the Small Business Investment Act of 1958 is amended to read as follows:

"(c) Subject to the following conditions, the Administration is authorized to purchase preferred securities (or other securities having similar characteristics) of small business investment companies operating under authority of section 301(d) of this Act, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by such small business investment companies. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

"(1) The Administration may purchase from any such company shares of nonvoting stock (or other securities having similar characteristics), provided—

"(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

"(ii) on liquidation or redemption, the Administration is entitled to the preferred payment of the par value of such securities and any unpaid dividends to the extent retained earnings shall permit;

"(iii) the purchase price shall be at par value; and

"(iv) the amount of such securities purchased and outstanding at any one time shall not exceed (A) from any such company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such companies, or (B) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of less than $500,000, 100 per centum of such capital and surplus, or (C) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of $500,000 or more 200 per centum of such capital and surplus.

"(2) The Administration may purchase from or guarantee for any such company debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection), provided—

"(i) such debentures are issued for a term of not to exceed fifteen years;

"(ii) the interest rate is determined pursuant to section 303(b); and

"(iii) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph, from (A) any such company having a combined private paid-in capital and paid-in surplus of less than $500,000, shall not exceed 300 per centum of such capital and surplus, less the amount of preferred securities outstanding under paragraph (1) of this subsection, or (B) any such company having a combined private paid-in capital and paid-in surplus of $500,000 or more, shall not exceed 400 per centum of such capital and surplus, less the amount of preferred securities outstanding under paragraph (1) of this subsection.

"(3) Debentures purchased and outstanding pursuant to subsection (b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(iii) of this subsection.

"(4) The Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 per centum of the combined private paid-in capital and paid-in surplus of any such company, that such company maintain a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.".

SEC. 105. Section 317 of the Small Business Investment Act of 1958 is amended to read as follows: "The authority heretofore vested in the Administration to require payment of the difference between the dividends paid and cumulative dividends payable at a rate equal to the interest rate determined pursuant to section 303(b) is hereby rescinded.".

SEC. 106. Section 302(a) of the Small Business Investment Act of 1958 is amended to read as follows: "The combined private paid-in capital and paid-in surplus of any company licensed pursuant to subsections (c) and (d) of section 301 of this Act shall not be less than $150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after September 1, 1979 pursuant to section 301 (c) and (b) of this Act shall be not less than $500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles.".

CHAPTER 2

SEC. 110. Section 410(4) of the Small Business Investment Act of 1958 is amended by—

(a) deleting the word "or" after the phrase "conditions of the contract,"; and

(b) deleting the period after the phrase "fails to make prompt payment" and inserting in lieu thereof ", or (II) is an agent, underwriter, or any other company or individual empowered to act on behalf of such person.".

SEC. 111. Section 411 of the Small Business Investment Act of 1958 is amended to read as follows:

"SEC. 411. (a) The Administration may, upon such terms and conditions at is may prescribe, guarantee and enter into commitments to guarantee any surety (the terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety) against loss, as hereinafter provided, as the result of the breach when a breach is imminent to prevent a breach, of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000, subject to the following conditions:

"(1) the person who would be the principal of the bond is a small business concern.

"(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon; and

"(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section.

"(b) Any guarantee under this section shall obligate the Administration to pay to the surety a sum not to exceed 90 per centum of the loss incurred and paid by the surety to

or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract as the result of the breach or, when a breach is imminent, to prevent a breach, by the principal of the terms of a bid bond, performance bond, payment bond, or bonds ancillary and coterminous therewith.

"(c) The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

"(d) Pursuant to any such guarantee, the Administration shall reimburse the surety, as provided in subsection (b) of this section, except that the Administration shall be relieved of all liability in the following circumstances:

"(1) the surety obtained such guarantee or applied for such reimbursement by fraud or material misrepresentation, or

"(2) the total contract amount at the time of execution of the bond or bonds exceeds $1,000,000.

"(e) The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

"(f) The Administration may at all reasonable times audit in the offices of a participating survey all documents, files, books, records, and other material relevant to the Administration's guarantee or commitments to guarantee any surety pursuant to this section.

"(g) The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

"(h) The provisions of section 402 shall apply in the administration of this section.".

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT

CHAPTER 1

SEC. 201. (a) The Congress finds—

(1) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(2) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

(3) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(4) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance;

(5) that the power to let sole source Federal contracts pursuant to section 8(a) of the Small Business Act can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(6) that the procurement authority under section 8(a) of the Small Business Act shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(b) It is, therefore, the purpose of these amendments to section 7(j) of the Small Business Act to—

(1) foster business ownership by individuals in groups that own and control little productive capital; and

(2) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

SEC. 202. Section 7(j) of the Small Business Act is amended to read as follows:

"(j)(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses owned by low-income individuals, and to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

"(2) Financial assistance under this subsection may be provided for projects, including, but not limited to,

"(A) planning and research, including feasibility studies and market research;

"(B) the identification and development of new business opportunities;

"(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of this Act;

"(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

"(E) the furnishing of business counseling management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing businesses, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

"(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of this Act.

"(A) An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President, shall report annually to the President and to the Congress on the activities of the advisory committee.

"(B) The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purposes of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1980, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.

"(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

"(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

"(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump or intallments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayment or underpayments.

"(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

"(8) The General Accounting Office shall provide for an independent and continuing evaluation of programs under sections 7(i), 7(j), and 8(a) of this Act, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1980, and at any time thereafter at the discretion of the Comptroller General.

"(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

"(10) There is established within the Administration a small business and capital ownership development program (hereinafter called the 'Program'), which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The management of the program shall be vested in a Director of Small Business and Capital Ownership Development (hereinafter called the 'Director') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall also manage all other services authorized under section 7(j) of this Act. The Director shall be compensated at the rate provided for positions at Executive Level IV.

"(A) The Program shall—

"(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals;

"(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (1) loan packaging, (2) financial counseling, (3) accounting and bookkeeping assistance, (4) marketing assistance, and (5) management assistance;

"(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

"(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

"(v) analyze and report the causes of suc-

cess and failure of small business concerns participating in the Program; and

"(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (1) the preparation of application forms required to receive a surety bond, (2) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (3) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

"(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

"(C) No small business concerns shall receive a contract pursuant to section 8(a) of this Act unless the Program is able to provide such small business concern with, including, but not limited to, such management, technical, and financial services as may be necessary to promote the competitive viability of the small business concern within a reasonable period of time.

"(11) The Director shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.".

SEC. 203. Section 7(k) of the Small Business Act is amended by striking the words "7(i) and 7(j)" and inserting in lieu thereof "7(i), 7(j), and 8(a)".

SEC. 204. Section 4(b) of the Small Business Act is amended by striking "One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and shall be responsible to the Administrator for the formulation of policy relating to the Administration's programs which provide assistance to minority small business concerns and in the review of the Administration's execution of such programs in light of such policy.".

SEC. 205. Section 5315 of title 5, United States Code, is amended by adding the following new paragraph:

"(122) Director of Small Business and Capital Ownership Development, Small Business Administration.".

CHAPTER 2

SEC. 211. Section 8(a) of the Small Business Act is amended by inserting before the paragraph beginning with the words "It shall be the duty of the Administration and it is hereby empowered" the following:

"The Congres finds—

"(1) that the development of small business ownership among socially and economically disadvantaged persons has been a very slow process;

"(2) that, among such businesses are many minority small businesses, which, according to the most recent Census Bureau statistics, represent less than 4 per centum of the total number of business in the United States and less than 1 per centum of total business sales;

"(3) that the opportunity for full participation in our free enterprise system by minority small businesses is essential if we are to obtain social and economic equality for minorities and improve the functioning of our national economy;

"(4) that the lack of comprehensive assistance to minority enterprises has led to the failure of many minority small businesses and thus contributed to the minority community's negative perception of competitive business enterprise as a career option and has deprived minorities of the success models that are needed to expedite their general economic development;

"(5) that a sustained commitment to minority small business development and a concomitant commitment of economic resources and leadership will stimulate increased employment opportunities for minorities and contribute toward minority community development;

"(6) that it is in the national interest to expeditiously ameliorate the negative conditions that impact on many minority small businesses and other socially and economically disadvantaged small businesses;

"(7) that the power to let sole source Federal contracts pursuant to this subsection can be an effective procurement assistance tool for the development of minority small businesses and socially and economically disadvantaged small businesses; and

"(8) that the procurement authority under this subsection shall be used only as small businesses and socially and economically disadvantaged small businesses.

"It is, therefore the purpose of this subsection to—

"(1) foster ownership by socially and economically disadvantaged individuals; and

"(2) promote the competitive viability of firms owned by such individuals by providing such available contract, financial, technical, and management assistance as may be necessary.".

SEC. 212. Section 8(a) of the Small Business Act is amended by adding at the end thereof the following:

"(3) No small business concern shall be eligible to receive contracts pursuant to this subsection unless such small business concern is at least 51 per centum owned and operated by a socially and economically disadvantaged person, and such small business concern is able to perform on possible contract awards and has reasonable prospects for success in competing in the private sector. In determining economic disadvantage, the Administration shall consider, but not be limited to, the following: (A) in the case of a new small busines concern, liquid net assets owned by the individual based on the capital generally required to start a business in the industrial area in which such new business will operate; and (B) in the case of an existing small business concern, the position of the business relative to other businesses in the same industry and the liquid net assets owned by the individual based on the capital generally required to maintain and expand the small business concern in the industrial area in which such business operates. In determining social disadvantage, the Administration shall consider, but not be limited to, whether the owner or owner of the applicant has been deprived of the opportunity to develop and maintain a competitive position in the economy due to cultural bias, general economic deprivation or other similar causes.

"(4) Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

"(5) Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation may be denied assistance under the authority of this subsection without first being afforded a hearing on the record in accordance with charter 5 of title 5, United States Code.".

CHAPTER 3

SEC. 221. Section 15 of the Small Business Act is amended by adding at the end of subsection (f) the following new subsections:

"(g) The head of each department or agency of the Federal Government shall, after consultation with the Administration, establish goals for the participation by small business concerns in procurement contracts of that department or agency having values of $10,000 or more. Goals established under this subsection shall be jointly established by the Administration and the head of each department or agency of the Federal Government and shall realistically reflect the potential of small business concerns to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any department or agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination.

"(h) At the conclusion of each fiscal year, the head of each department or agency of the Federal Government shall report to the Small Business Administration on the extent of participation by small business concerns in procurement contracts of that department or agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. The Small Business Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.

"(i) Nothing in this Act or any other provision of law precludes exclusive small business set-asides for procurements of research, development, test and evaluation, and each agency and department of the Federal Government is authorized to develop such set-asides to further the interests of small business in those areas.

"(j) Each contract for the procurement of goods and services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

"(k) There is hereby established in each department and each agency of the Federal Government having procurement powers an office to be known as the 'Office of Small Business Utilization'. The management of each such office shall be vested in an employee of such department or agency who shall—

"(1) be known as the 'Director of Small Business Utilization' for such department or agency,

"(2) be appointed by the head of such department or agency,

"(3) be responsible only to, and report directly to, the head of such department or agency or to such other individual within such department or agency who may be designated by the head of such department or agency and who holds a position as the Under Secretary (or a position of comparable authority) of such department or agency,

"(4) be responsible for the implementation and execution of the functions and duties under sections 8 and 15 of this Act which relate to such department or agency,

"(5) have supervisory authority over personnel of such department or agency to the

extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act,

"(6) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative. Such technical adviser shall be a full-time employee of the procuring activity and shall be well satisfied, technically trained, and familiar with the supplies or services purchased at the activity. The principal duty of the small business technical adviser shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8 and 15 of this Act, and

"(7) cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of ths subsection. This subsection shall not apply to the Administration.".

SEC. 222. Section 8(d) of the Small Business Act is amended to read as follows:

"(d)(1) It is the policy of the Federal Government that small business and small business concerns owned by socially and economically disadvantaged persons as defined in subsection (a) of this section, shall have the maximum practicable opportunity to participate in the performance of contracts let by any department or agency of the Federal Government.

"(2) The clause stated in paragraph (3) of this subsection shall be included in all contracts let by any department or agency of the Federal Government except any contract or subcontract under such contract which—

"(A) does not exceed $10,000;

"(B) will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

"(C) is for services which are personal in nature.

"(3) The clause required by paragraph (2) of this subsection shall be as follows:

"'(A) It is the policy of the Federal Government that small business concerns and small business concerns owned and operated by socially and economically disadvantaged persons shall have the maximum practicable opportunity to participate in the performance of contracts let by any department or agency of the Federal Government.

"'(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to furnish to the United States Small Business Administration at the Administration's request such available or reasonably obtainable information and records concerning its subcontracting on this and any other Federal Government contract it holds and to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding department or agency of the United States Federal Government as may be necessary to determine the extent of compliance by the contractor with this clause.

"'(C) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Buiness Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and operated by socially and economically disadvantaged persons" shall mean a small business concern as defined pursuant to section (a) of the Small Business Act and relevant regulations promulgated pursuant thereto.

"'(D) Contractors acting in good faith may rely on written representations by their subcontractors that such subcontractors are either a small business concern or a small business concern owned and operated by socially and economically disadvantaged persons.'.

"(4)(A) Before the award of any contract let by any department or agency of the Federal Government which: (i) is required to include the clause stated in paragraph (3) of this subsection; (ii) may exceed $500,000; (iii) offers subcontracting possibilities; and (iv) is made pursuant to the negotiated method of procurement, the apparent successful offering business concern shall negotiate a final subcontracting plan with the department or agency. Such subcontracting plan and the prior compliance of the offering business concern with other such subcontracting plans shall be considered by the department or agency in determining the responsibility of such offering business concern for the award of the contract: *Provided,* That notwithstanding any other provision of law, every department or agency of the Federal Government, in order to encourage subcontracting opportunities for small businesses and small businesses owned and operated by socially and economically disadvantaged persons is hereby authorized to provide such incentives as may be appropriate and commensurate with the efficient and economical performance of the contract.

"Upon approval of the department or agency, the subcontracting plans shall be included in and be made a material part of the contract. Such subcontracting plan shall include—

"(i) percentage goals for the utilization of small businesses and small businesses owned and operated by socially and economically disadvantaged persons as subcontractors;

"(ii) the name of an individual within the offering business concern who will administer the subcontracting program and a description of such individual's duties; and

"(iii) a description of how small businesses and small businesses owned and operated by socially and economically disadvantaged persons will be utilized as subcontractors of the offering business concern.

"(B) Before the award of any contract let by any department or agency of the Federal Government which: (i) is required to include the clause stated in paragraph (3) of this subsection; (ii) may exceed $1,000,000 if for the construction of any public facility or $500,000 if for any other purpose; (iii) offers subcontracting possibilities; and (iv) is made pursuant to the formal advertising method of procurement, the apparent successful low bidding business concern shall submit to the department or agency a subcontracting plan. Such subcontracting plan and prior compliance of the business concern with other such subcontracting plans shall be considered by the department or agency in determining the responsibility of such business concern for the award of the contract. Upon approval by the department or agency, the subcontracting plan shall be included in and be made a material part of the contract. Such subcontracting plan shall include:

"(i) percentage goals for the utilization of small businesses and small businesses owned and operated by socially and economically disadvantaged persons as subcontractors;

"(ii) the name of an individual within the apparent successful low bidding business concern who will administer the subcontracting program and a description of such individual's duties; and

"(iii) a description of how small businesses and small businesses owned and operated by socially and economically disadvantaged persons will be utilized as subcontractors.

The provisions of this paragraph shall not apply to apparent successful offering or apparent successful low bidding business concerns which are also small business concerns.

"(5)(A) The Administration is authorized, at its discretion, to review any final subcontracting plan as may be formulated pursuant to the requirements of paragraph (4) and make appropriate recommendations to the department or agency concerning such subcontracting plan.

"(B) At its discretion, the Administration shall have the responsibility for evaluating compliance with subcontracting plans, either on a contract by contract basis, or in the aggregate for those contractors performing on multiple contracts.

"(C) At the conclusion of each fiscal year, the Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any department or agency of the Federal Government that were determined by the Administration not to contain maximum practicable opportunities for small business and small business owned and operated by socially and economically disadvantaged persons to participate in the performance of contracts referred to in this subsection.".

SEC. 223. The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by Public Law 93-400 and subject to the procedures set forth in such Public Law, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all departments and agencies of the Federal Government.

SEC. 224. In carrying out section 223, the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

SEC. 225. (a) For any contract to be let by any department or agency of the Federal Government, such department or agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such department or agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Subsection (a) shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

SEC. 226. For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, United States Code; and

(3) the term "Government procurement contract" means any contract for the procurement of any good or service by any Federal agency.

The amendments of the Committee on Governmental Affairs are as follows:

On page 42, line 23, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 43, line 4, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 43, line 9, strike "department or" and insert "Federal";

On page 43, line 14, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 44, line 2, strike "agency and department of the Federal Government" and insert "Federal agency";

On page 44, line 17, strike "department and each agency of the Federal Government" and insert "Federal agency";

On page 45, line 4, beginning with "department" strike through and including line 9, and insert in lieu thereof "agency or to his deputy,";

On page 45, line 14, strike "department or";

On page 45, line 15, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 46, line 18, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 47, line 9, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 47, line 21, strike "department or agency of the Federal Government" and insert "Federal agency";

On page 48, beginning with line 14, strike through and including page 52, line 2, and insert in lieu thereof the following:

"(4)(A) Each solicitation of an offer for a contract or amendment or modification thereto to be let by a Federal agency which—

"(i) is to be awarded pursuant to the negotiated method of procurement;

"(ii) is required to contain the clause stated in paragraph (3) of this subsection;

"(iii) may exceed $1,000,000, in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, except that the provisions of this division shall not apply to contracts let by the Administration pursuant to subsection (a) of this section; and

"(iv) which offers subcontracting possibilities;

shall contain a clause requiring each offeror to submit a subcontracting plan in accordance with the provisions of subparagraph (B).

"(B) The clause required pursuant to subparagraph (A) shall—

"(i) require each offeror to submit a subcontracting plan simultaneously with the proposal of the offeror for the contract; and

"(ii) require each offeror to incorporate in such subcontracting plan the information required under paragraph (6).

"(C) The proposal of any offeror which does not include a subcontracting plan shall be considered nonresponsive to the terms of the solicitation for the contract. The subcontracting plan shall be considered an important factor in the selection of the offeror to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract. The subcontracting plan of the offeror awarded the contract shall be included in and made a material part of such contract.

"(5)(A) Each solicitation of an offer for a contract to be let by a Federal agency which—

"(i) is to be awarded pursuant to the formal advertising method of procurement;

"(ii) is required to contain the clause stated in paragraph (3) of this subsection;

"(iii) may exceed $1,000,000, in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, except that the provisions of this division shall not apply to contracts let by the Administration pursuant to subsection (a) of this section; and

"(iv) which offers subcontracting possibilities; shall contain a clause requiring each offeror to submit a subcontracting plan in accordance with the provisions of subparagraph (B).

"(B) The clause required pursuant to subparagraph (A) shall—

"(i) require each offeror to submit a subcontracting plan simultaneously with the proposal of the offeror for the contract;

"(ii) contain criteria for such subcontracting plan; and

"(iii) require each offeror to incorporate in such subcontracting plan the information required under paragraph (6).

"(C) The proposal of any offeror which contains a subcontracting plan which does not meet the subcontracting criteria set forth in the solicitation for the contract shall not be considered responsive to the terms of such solicitation. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract. The subcontracting plan of the offeror awarded the contract shall be included in and made a material part of such contract.

"(6) Each subcontracting plan required under paragraphs (4) and (5) shall include—

"(A) percentage goals for the utilization as subcontractors of small businesses and small businesses owned and controlled by the socially and economically disadvantaged;

"(B) the name of an individual within the company of the offeror who will administer the subcontracting program of the company and a description of the duties of such individual;

"(C) a description of the efforts the offeror will take to assure that small businesses and small businesses owned and controlled by the socially and economically disadvantaged will have an equitable opportunity to compete for subcontracts;

"(D) assurances that the offeror will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000, in the case of a contract for the construction of any public facility, or in excess of $500,000, in the case of all other contracts, to adopt a plan similar to the plan required by this paragraph; and

"(E) assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror with the subcontracting plan.

"(7) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors who are small business concerns.

"(8) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

"(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

"(B) participate in the establishment of criteria by Federal agencies for inclusion in solicitations pursuant to paragraph (5); and

"(C) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case contractors having multiple contracts, on an aggregate basis.

"(9) At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small businesses and small businesses owned and operated by socially and economically disadvantaged persons to participate in the performance of contracts described in this subsection.".

On page 57, line 23, strike "Department or agency of the Federal Government, such department or agency" and insert "Federal agency, such agency";

On page 58, line 22, strike "Code; and" and insert "Code, but does not include the United States Postal Service or the General Accounting Office".

Mr. WEICKER. Mr. President, the 1967 report of the Commission on Civil Disorders, commonly referred to as the Kerner Commission, concluded that disadvantaged individuals did not play an integral role in America's free enterprise system because they enjoyed no appreciable ownership of small businesses and did not share in the community redevelopment process. It was therefore recommended that steps be taken to increase the level of business ownership by minorities so that they would have a better opportunity to materially share in the economic system.

Fortunately, our Nation has not experienced in the last 11 years any civil disorders of the magnitude which prompted the creation of the Kerner Commission. Unfortunately, however, we have not taken the steps necessary to fully remedy the underlying causes of orders.

In her testimony before the Senate Select Committee on Small Business, Ernesta Procope, a black businesswoman active in urban affairs, noted that "minorities have come to recognize that government's assurance of some basic level of shelter, nourishment, education and health care does not provide real dignity or the means for social and economic mobility. * * * [T]he key to unlocking a better life must be found in the private sector."

Steps are taken in H.R. 11318 to enable disadvantaged individuals to gain a stake in our free enterprise system. In chapter 1 of title I of the bill, changes are made to ameliorate the present sluggishness of the MESBIC program. MESBIC's are small business investment companies licensed and regulated by the SBA which provide equity capital and long-term debt-small businesses owned and operated by socially and economically disadvantaged individuals. The changes made by this bill will enable MESBIC's to play a greater role in assisting such businesses to grow and compete in our economic system.

Most importantly, in chapters 1 and 2 of title II of this bill the Small Business Committee gives statutory direction to the SBA's 8(a) program to insure that the program develops strong businesses owned by disadvantaged individuals.

Section 8(a) of the Small Business Act presently authorizes the SBA to enter into contracts with Federal procuring agencies or departments for the purchase of articles, equipment, supplies or materials. SBA is empowered to let subcontracts to business concerns to perform such contracts. As a result of the Kerner Commission report, the 8(a) authority has been used since 1968 to channel Federal procurement funds to small businesses owned by "socially or economical-

ly disadvantaged" persons. This program was implemented by administrative regulation and has no statutory basis.

The goal of the 8(a) program has been to slowly develop the business abilities of these small businesses with the support of management and technical assistance from SBA's business development specialists. The firm theoretically is to "graduate" into the free enterprise system and compete for regular, non-8(a) business.

However, the envisioned development of small minority businesses has not occurred. A total of 3,726 firms were awarded $2.2 billion in contracts between fiscal year 1968 and fiscal year 1977. Approximately 1,500 businesses are presently participating in the program. In fiscal year 1977, these firms received $53 million in contracts. Reports prepared by the General Accounting Office and investigations conducted by both the executive and legislative branches have disclosed that the 8(a) program has fallen far short of its goal to develop strong and growing disadvantaged small businesses. Only 33 of the more than 3,700 firms which have participated in the program have both completed the 8(a) program and are known to have a positive net worth.

The committee has taken affirmative steps to correct this deficiency. The 8(a) program is given a statutory basis with the goals of developing businesses owned by socially and economically disadvantaged persons and promoting the viability of businesses run by such persons by providing contract, financial, technical and management assistance.

This legislation recognizes the pattern of social and economic discrimination that continues to deprive racial and ethnic minorities of the opportunity to participate fully in the free enterprise system. However, the committee has rejected the language in the House version of the bill which would have instructed the SBA to "presume that socially and economically disadvantaged group members include, but are not limited to, Black Americans and Hispanic Americans." Under the Senate version, although it is expected that the vast majority of 8(a) program participants will come from racial and ethnic minorities, the program will be open to any business owned by persons who meet the socially and economically disadvantaged test.

Because the 8(a) program as presently implemented has resulted in inequitable determinations of eligibility, objective criteria is provided for SBA to use in considering whether an applicant meets the requirements for program eligibility.

Committee hearings have disclosed that one of the key reasons for the high failure rate of the present 8(a) program is the inadequate level of management and technical assistance provided to participants. To remedy this situation, chapter 1 of title II provides for improved management assistance and other business development services for firms eligible to be awarded 8(a) contracts. A small business and capital ownership development program is established. An important part of the program is a special surety bond assistance program which gives 8(a) firms the assistance needed to procure a surety bond. Thus, this chapter provides a legislative design for the business development services of the 8(a) program to insure that the emphasis is placed on the development of 8(a) participants rather than on the quantity of contracts awarded.

Chapter 2 of title I provides for important changes in the surety bond program by setting specific standards under which SBA can deny liability on a bond. These changes will remove some of the operational problems in the surety bond program to make it more attractive to surety companies and thereby ease the bonding problems encountered by small businesses and especially minority small businesses.

I urge my colleagues to adopt H.R. 11318.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I want to first thank the Senator from Connecticut (Mr. WEICKER) for all the excellent work he has done on this measure.

The majority and minority staffs have worked together very carefully and they have, I think, come up with suggestions and changes in the present procedures of SBA and the 8(a) program that will begin, finally, to carry out the original purposes of this program. The purposes have always been noble, but the practices have been, in many cases, very, very poor and have not accomplished the goal envisioned by all of those who have supported the general concept of 8(a).

Mr. President, I ask unanimous consent that Alan Chvotkin, Larry Yuspeh, Allen Neece, Robert Dotchin, and Stanley Twardy of the Committee on Small Business, and Leigh Snell of my staff, have the privilege of the floor during the consideration and votes on this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I rise to to open the discussion on what I believe to be landmark legislation for our Nation's minority small businesses, H.R. 11318. By focusing on the financial, contracting, and management and technical assistance needs of social and economically disadvantaged small businesses, this measure will provide major legislative improvements in all areas of significance to minority economic development.

The House of Representatives passed its version of this omnibus small business legislation earlier this year, and the Senate Small Business Committee, after 7 days of hearings on the various measures included in the bill, and 2 days of markup, reported its version to the full Senate on August 8.

The bill is divided into two titles. The first title contains amendments to the Small Business Investment Act of 1958, and is divided into two chapters. Chapter I lowers the interest rate which section 301(d) SBIC's pay on debentures purchased by SBA. It also lowers the dividend rate on preferred stock purchased by SBA in section 301(d) SBIC's and increases the amount of preferred stock SBA can purchase in a section 301(d) SBIC. The interest rate on debentures and the dividend rate on preferred stock is set at 3 percent. The purpose of these changes is to spur greater activity by section 301(d) SBIC's. Up to now, the 301(d) SBIC's have been relatively inactive, partially because of the uncertain nature of Federal subsidies. The subsidies are increased in this bill to remove the primary reason for sluggishness in the 301(d) SBIC program.

Chapter 2 makes changes in the surety bond guarantee program. The most important change involves the setting of specific standards under which SBA can deny liability on a bond. These changes would permit SBA to deny liability if there is fraud or material misrepresentation on the part of the surety when applying for a bond or for reimbursement for payments made after a breach. SBA could also deny liability if the bond value exceeds $1 million, the program's statutory bonding limit. SBA would be authorized to set performance standards for and further regulate sureties in the program. The purpose of these changes is to remove some operational problems in the surety bond guarantee program and thus make it more attractive to many surety companies.

It is hoped that these changes will result in easing the bonding problems of small business, which, I must add, are among the most difficult problems that small businesses face, particularly our minority small businesses.

The second title amends the Small Business Act, and is divided into three chapters. Chapter 1 provides for improved management assistance and other business development services for firms eligible to be awarded 8(a) contracts. An important element of this improved assistance is the small business and capital ownership development program. The purpose of this chapter is to provide a legislative design for the business development services of SBA's 8(a) program so as to insure that the emphasis is placed on business development rather than the mere awarding of 8(a) contracts.

Chapter 2 amends section 8(a) to specify that this authority shall be used only for the development of businesses owned by socially and economically disadvantaged persons. Additionally, it recognizes that small businesses owned by racial and ethnic minorities especially need the assistance that the 8(a) program provides and also implies that many 8(a) program participants probably will come from racial and ethnic minority groups. An eligibility standard of "social and economic" disadvantage is established for 8(a). The purpose of this chapter is to clarify which groups and persons may be eligible to receive assistance under 8(a).

Chapter 3 expands subcontracting opportunities for small businesses and businesses owned by socially and economically disadvantaged persons by requiring formal subcontracting plans, which will become part of all final Federal contracts. The purpose of this chapter is to increase the dollar volume of small business subcontracts on Federal contracts and generally to improve the

Federal contracting environment for small businesses.

Mr. President, I believe that the most significant portions of this measure are those that are designed to improve the performance of the Small Business Administration's section 8(a) minority business development program. According to SBA's own data, since fiscal year 1968, $2.2 billion in contracts has been let through the 8(a) program to 3,726 participating firms. Of those 3,726 firms, only 149 have ever "graduated" from the program. A search by SBA has located only 67 companies of the 149. Of the 67, Dun & Bradstreet had financial information on 41; and of the 41 firms, 5 were bankrupt, 2 were in precarious financial position, and only 33 showed a positive net worth.

These figures standing alone clearly indicate that there are fundamental problems with the present 8(A) program. An internal audit by SBA, along with a review conducted by the General Accounting Office, have substantiated this conclusion. Thorough investigations of the program by Congress have also revealed serious abuses in addition to general program failure. After hearings before the committee, 2 days of which I chaired, we found that one of the key reasons for the high failure rate is the inadequate level of management and technical assistance supplied by business development specialists and other SBA programs to 8(A) firms.

SBA itself admits that the 8(A) program historically has been focused too heavily on the simple act of getting as many contracts as possible to small socially and economically disadvantaged firms, regardless of their long range potential viability as stable businesses at the end of the contracting or graduation period. SBA realized to its credit in 1974 that the volume of contract activity was not a valid measure of the 8(A) programs achievement. The SBA's 8(A) Review Board report to SBA Administrators Weaver in January of 1978 noted:

> The true measure of success, the number of firms assisted by the program to achieve a competitive position in the economy, was recognized, to the extent that it was not occurring.

However, the change in emphasis from simple dollar volume of contracts to business development has, by SBA's own admission, been "more theoretical than real." SBA cites inadequate resources both in the number of personnel and in the program budget as the underlying reasons. For example, although the dollar volume of contracts let through the 8(A) program has grown from $321 million in 1975 to $538 million in 1977, the business development staff has grown by only 3 persons, from 166 to 169.

In this same light, the GAO report, "Ways to Increase the Number, Type, and Timeliness of 8(A) Procurement Contracts," issued in February 1978, notes that in San Francisco, the 8(A) program's development specialist (BDS) was responsible for a caseload of 72 firms, and in Los Angeles, the business development specialists had a 77-firm caseload. GAO found:

BDS's do not have the time to contact procuring agencies to obtain 8(A) contracts or to acquaint contracting officers with the capabilities of 8(A) firms enrolled in the program. They also did not have time to visit 8(A) firms to assess their capabilities and needs for management assistance or to follow up on recommendations that might have been made by providers of management assistance.

I firmly believe that any responsible effort to correct this dismal record must focus on the business development function of the 8(A) program. I therefore introduced S. 3179 on June 7 of this year to create a small business and capital ownership development program within SBA, and to make other changes in SBA's existing management assistance programs for disadvantaged small businesses. I am pleased that the Senate Small Business Committee agreed with the need for this emphasis on management and technical assistance, and has included S. 3179 as chapter I of title II of H.R. 11318, as reported to the full Senate. By amending section 7(J) of the Small Business Act, the committee intends to provide, for the first time, a legislative base for business development for the 8(A) program, to overcome abuse, and to create a more efficient and productive program.

The most important change resulting from these amendments to section 7(j) is a new section which would be added to section 7(j), creating a small business and capital ownership development program. This program would provide full-service management and technical assistance exclusively to firms eligible to receive contracts through the 8(a) program, and would be the first such effort to be legislatively based and structured. While there are general management and technical assistance programs presently available for minorities, such as those provided by the Office of Minority Business Enterprise within the Department of Commerce, they are not specifically targeted, nor do they provide the kind of 1-to-1 assistance required in this bill. It is essential to the future success of the 8(a) program that SBA adequately provide its client firms with those development tools necessary to create viable minority enterprises.

The director of the new program is to be appointed by the President and confirmed by the Senate. This is a necessary requirement in order to elevate the importance of this program as well as provide for the highest possible commitment from the executive branch to minority business development.

Basically, the services to be provided through this new program are general management and technical assistance, including the development of business plans, loan packaging, financial assistance, and assistance in obtaining equity and debt fiancing. Through the use of existing "call contracting" authority combined with other development assistance tools such as the SCORE and ACE program, the Small Business Institute and the Small Business Development Center program, 8(a) contractors will begin to receive the intensive, professional management and technical assistance which have been so sorely lacking, and without which the sole-source contracting authority cannot be effective in developing viable small businesses owned by socially and economically disadvantaged persons.

In addition, provisions are made to help insure proper monitoring of the advancement of firms participating in the program. At the present time, SBA is not adequately aware of the business condition of 8(a) participants from the time they enter the program or at any time thereafter.

One important aspect of this legislation that I think we ought to discuss for just a moment is surety bonding.

Surety bonding is another major problem that hinders the development of minority business. At some point, 8(a) firms are supposed to exist without 8(a) contracts. If they have never received a surety bond or have not had to deal with the requirement for doing so, their chances of being able to obtain such bonding, once outside the program, will be very slim. In a sense, they will be like a prospective borrower with no credit rating developed through a history of business dealings.

Mr. President, at this point I stress my very strong objections to the House measure in this area. The House bill would allow the SBA to waive all bonding requirements for firms receiving contracts pursuant to section 8(a). The 8(a) program is supposed to be a program that develops disadvantaged small business to a point where they can compete with any other business in this country without the protective umbrella available through the myriad programs that come under the rubric "8(a)." I cannot understand how any firm will ever reach that point unless it can be bonded by the private sector. Additionally, we can only be unnecessarily delaying a firm's entry into the free enterprise system by not requiring it to meet the same requirements that it will be forced to face once operating outside the sheltered, sole-source environment offered by 8(a).

Our Senate approach takes a very different view of this. We believe that the minority firms very definitely need assistance, but we do not believe the bonding requirements should be waived altogether. In the long run, we believe this will be very detrimental to the very minority firms we are trying to assist.

Mr. President, it is overly simplistic to attempt to reach a solution to a problem by merely exempting any person or group from having to confront, and deal with, that problem. Clearly, removing the requirement of bonding also removes the bonding problem. However, the problem is only removed in this very limited sense, and not only is it not solved generally—it is vastly compounded.

I fully recognize the significant problems that disadvantaged firms face in attempting to qualify for private-sector bonding. I firmly believe, therefore, that any comprehensive assistance for the development of disadvantaged businesses must include a means of helping these firms with the problems of bonding, as well as assistance in procuring bonds

from the private sector. Furthermore, the surety bond industry needs to be made more sensitive to the needs of disadvantaged firms so that they will be more willing to deal with them. In an attempt, therefore, to improve the bonding environment for minority firms, this bill makes two important changes in existing law.

The first involves a significant broadening of SBA's surety bond guarantee program. The surety bond guarantee program was inaugurated in 1971 and since then has enabled small businesses to participate in construction and service contracts in both the public and private sector which otherwise would not have been attainable. As a result of the growth of the surety bond guarantee program, several problems in the relationship between SBA and participating sureties have arisen.

From testimony received in hearings over the past 4 years, the committee has determined the need for legislative clarification of several aspects of the program. There have been over 100 surety companies participating in the program with less than ten of these writing the greatest majority of the bonds. In fact, 2 of the 10 currently write over 70 percent of the bonds.

These data indicate that the surety bond guarantee program is not utilized, for the most part, by our Nation's leading surety companies. The program cannot succeed in providing bonds for our higher-risk small businesses unless it is far more broadly utilized by the entire private sector bonding community.

In order to achieve this broader participation by bonding companies, the committee adopted, in chapter II of title I, key changes in the surety bond guarantee program, all of which have the full support of the Carter administration.

The bill broadens the definition of surety to include agents, underwriters, or any other company or individual that is empowered to act by and on behalf of the surety. Under this definition, the surety will be held responsible for the actions of the attorney in fact or other subsequent entity who is empowered to act on behalf of the surety once the bond is issued. The attorney in fact or entity empowered to act on behalf of the surety is expected to exercise due diligence in relying on the information supplied by the independent agent.

Measures to expedite the handling of the increased volume of bonds being issued under the program have also been included. Where its experience with a particular surety warrants, SBA may enter into a contract with that surety whereby the surety is given blanket coverage for bonds it issues as opposed to having the SBA approve each bond application on a case-by-case basis. The terms of these contracts may vary from surety to surety depending on the SBA's experience with the particular surety.

Under some circumstances it is prudent to expend funds to prevent a principal from breaching the terms of a bond. Under these amendments SBA will be empowered to reimburse a surety for funds expended to prevent a breach when a breach is imminent and it appears to be the reasonable course of action. It is anticipated that payments to prevent an imminent breach would not exceed a certain percentage of the bond amount, for example, 10 to 15 percent.

These amendments empower SBA to establish and review regulations for participating sureties. While the market served by the surety bond program is not the "standard" private sector market, these regulations will be aimed at establishing proper guidelines for activity within the confines of the surety bond guarantee program.

In discussions between SBA and participating sureties, the latter have expressed concern over possible denials of liability by SBA. While there have been very few such denials, there have been a larger number of inquiries that could possibly have led to a denial by SBA. Therefore it was felt necessary to explicitly state the grounds upon which SBA can deny liability. There are two reasons for denial of liability set forth in the legislation: First, if the surety obtained the guarantee or applied for a reimbursement by fraud or material misrepresentation, or second, if the total contract amount at the time of execution of the bond or bonds exceeds $1 million.

Another problem involves delays in SBA reimbursing sureties under the guarantee program. Current practice is for SBA to pay claims within 90 days of submission. This can cause cash flow problems for some surety companies when a large number of claims are outstanding. Part of SBA's problem has been an inadequate claims staff. SBA feels that the addition of 10 staff people will relieve this problem. However, if this extra staffing does not adequately relieve the sureties' cash flow problem, these amendments empower SBA to make advance reimbursement payments to sureties. The payment would be based on historical losses incurred by the surety in the SBA surety bond guarantee program. Also, SBA would adjust total payments to the surety upon finalization of the claim.

Senator BARTLETT has done an enormous amount of work in this area. I know he will have remarks to be submitted for the record if he is not here this morning. He has been very concerned in this area and much of the content of this bill has come from the suggestions of Senator BARTLETT in terms of the surety bond program.

The second major change in existing law is contained in the amendments to section 7(j) of the Small Business Act, to provide complete management services to 8(a) participants. These services include assistance in the preparation of application forms, assistance designed to meet the specific needs of firms applying for bonds, and assistance in preparation of all forms necessary to receive an SBA surety bond guarantee. This approach, once again, will be much more beneficial in the long run to disadvantaged small businesses than would an attempt to create an artificial environment through bond waivers, an approach which ignores the ultimate demands of the private sector in the bonding area.

Furthermore, I am concerned that providing a waiver may subvert the all-important business development thrust of the 8(a) program. That is, if an 8(a) client cannot get a bond with the special assistance that the broad changes in the surety bond guarantee program provided in title I afford, and that the special surety bonding management assistance program of title II creates, then I would argue that the contract for which bonding was sought is beyond the capability of the 8(a) firm. To allow the award of such a contract by means of a waiver of the bonding requirement flys in the face of this committee's firm mandate to use the sole-source contract as a business development tool. Once again, I fear we would be signaling our willingness to continue to measure the success of the 8(a) program, and minority business development in general, not by how many viable businesses are developed, but simply by how many contract dollars are let through it.

Mr. President, the last area of major significance that I want to stress to my colleagues involves the rules governing eligibility for assistance under section 8(a) of the Small Business Act. To some, this eligibility question is more important than any other aspect of the overall bill. Personally, I do not share that view. I have always believed that the first task that we must accomplish is a total reform and restructuring of the 8(a) program. As my distinguished chairman, Senator NELSON, has said, the present 8(a) program is a program for business failure, not success.

This view, I believe, is shared by Senator BARTLETT, Senator CHILES, and others who have examined the program's past operations. In this regard it is not at all clear whether being eligible for the present 8(a) program is something that should be pursued by any individual truly interested in developing a viable private sector business. My sincere hope is that the changes made in this bill we are discussing here today will create a program that is worthy of the people who need the assistance that it should already be offering.

However the House-passed version of H.R. 11318 has as its centerpiece the definition of 8(a) eligibility. I must take strong exception to this House approach.

Section 202 of the House-passed bill amends section 8(a) of the Small Business Act to authorize SBA to enter into procurement contracts with other Federal agencies, and then subcontract the work to small business concerns owned and controlled by "socially and economically disadvantaged" persons. That section further provides that SBA "shall presume that socially and economically disadvantaged groups and group members include, but are not limited to, black Americans and Hispanic Americans." The presumption created by section 202 of the House bill may be rebutted if SBA finds "substantial evidence" that individual blacks and Hispanic entrepreneurs have not experienced impediments to establishing, maintaining, or expanding a small business concern as a result of being a black or Hispanic.

Although this presumption can be rebutted on this rather general ground, it would be most difficult for SBA to do so. Even if a person from one of these groups was financially well off, he or she could apply for inclusion, claiming that even though financially well off, he or she would be that much better off if not for being a member of either presumed group. Under this rule, how can SBA tell even a successful black or Hispanic businessman that he has not suffered any impediment in establishing, maintaining, or expanding his small business due to his ethnic status? Making such a determination to rebut would be most difficult for SBA. And if SBA decided to rebut under this rule, litigation could very well follow.

Our bill has taken a different approach in this regard. I believe that this presumption, therefore, is effective incapable of being rebutted. For this reason, virtually every black and Hispanic who owns a small business, or intends to start, one would be eligible for assistance under the 8(a) program. However, there are no guidelines to assist SBA in determining who among these two large groups of potentially eligible firms could fill the thousand or so available spaces in the 8(a) program. Does the House simply intend it to be on a first-come, first-serve basis? If so, this does not at all agree with my view that the 8(a) program is for business development.

Furthermore, the presumption created by the House bill would allow businesses that are already very strong, and competitive in the private sector, to be eligible to receive 8(a) contracts. This means that wealthy, successful blacks and Hispanics will automatically be entitled to a share of the 8(a) "pie." Mr. President, the 8(a) "pie" is limited. To the extent that those who can compete in the free enterprise system, and can effectively secure management and technical assistance on their own, are drawing off portions of the 8(a) resources, those minorities who need this assistance the most will have their share diluted, and perhaps, in some cases, even deleted. We must not let this happen. We must not allow the 8(a) program to simply be a "rich-get-richer, poor-get-poorer" program.

Finally, I believe philosophically, and the Small Business Committee unanimously agreed, that all Americans regardless of race, sex, creed, or national origin, if deemed to be socially and economically disadvantaged on a case-by-case basis by SBA, should be permitted to receive assistance under this program. H.R. 11318, as reported by the Senate, is also based on this belief. Although it is expected that, as under the present 8(A) program, the majority of qualifying firms will be those owned and operated by racial and ethnic minorities, the program under the Senate version we are presenting today, will be open to any business owned by persons who meet the socially and economically disadvantaged test.

Because the 8(A) program, as presently implemented, has resulted in inequitable determinations of eligibility, the committee provides objective criteria for SBA to use in considering whether an applicant meets the requirements for program eligibility. In determining whether an applicant, who is starting a small business, meets the "economic disadvantage" criterion, the SBA should consider, among other things, the liquid net assets owned by the applicant as compared to the capital generally required to start a business in the industry in question. For existing small business concerns, the SBA should consider, among other things, the position of the business relative to other businesses in the same industry and the liquid net assets owned by the individual based on the capital generally required to maintain and expand the small business in the industry. In its determination of "social disadvantage," the SBA is directed to take into account the question of whether the owner or owners of the applicant firm have been deprived of the opportunity to develop and maintain a competitive position in the economy due to cultural bias, general economic deprivation or other similar causes.

In addition, particularly as it relates to the economic status of the applicant, the SBA shall develop standards, along major industry lines, which recognize the historic past discrimination of minorities as a group in their efforts to participate in the free enterprise system. The standards must not deny admission to the 8(A) program to minority applicants merely because they have managed to accumulate savings, acquire a quality education, or have accumulated other assets (such as homes, cars, et cetera), which they may or may not be able to utilize as collateral to launch or sustain a business operation. Indeed, such assets may be a prerequisite for the development of a viable business. Nor shall past or present employment be used as criteria for denial of a minority applicant's admission to the program. Minority applicants who have managed in this manner to prepare themselves to successfully participate in the free enterprise system should not be denied admission to the 8(A) program for business development for having done so. However, the mere fact that the applicant is a member of a racial or ethnic minority will not, by itself, satisfy the eligibility requirement of economic disadvantage.

Mr. President, I want to stress again, without getting into the details and complexities of this legislation, that, unless a case-by-case determination can be made as to which firms shall be certified for the specialized assistance available under this program, it will be impossible for it to maintain its development focus.

In my opinion, if it does not begin to have a real development focus, this bill and this approach will not be politically sustainable over the long run in providing help to many firms that are socially and economically disadvantaged, including many minority firms.

For this reason, the Senate bill directs the SBA to make a determination that there is a prospect for success in the private sector before a firm can be certified for the 8(a) program. Furthermore, SBA must, in providing 8(a) contracts, satisfy itself that such assistance will promote the competitive viability of the small business participant within a reasonable period of time. It is most important that this program be used as a development tool, with the understanding that, to be effective in broadening capital ownership, the program must have as its ultimate goal the survival and growth of small businesses within the competitive free enterprise system. If a firm can never succeed on its own without 8(a) contracts, it not only would be a cruel hoax on the firm itself, but it would also be a waste of valuable resources which could be applied to other businesses, which eventually could be successful.

Mr. President, as has been shown, H.R. 11318 as reported to the full Senate is a comprehensive legislative restructuring of the overall minority small business assistance programs of the Federal Government. As such, it is sorely needed and long overdue. While I realize that there are significant differences between the Senate and the House versions of this legislation, I believe that these differences can be reconciled in conference, and that the 95th Congress can go on record in strong support of minority economic development.

Our committee was told in testimony by the National Association of Black Manufacturers that—

> Any permanent economic gains made by Black people in this country will come about as a result of . . . sharing in the free enterprise system as business owners.

I could not agree more. I believe that this applies to all socially and economically disadvantaged groups, and I urge my colleagues to adopt this bill.

Mr President, I ask unanimous consent that a statement by Senator HATHAWAY on this bill be printed in the RECORD at this point

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HATHAWAY

I would like to make a brief statement on this important measure, H.R. 11318, an Act to amend the Small Business Act and the Small Business Investment Act of 1958.

I would like to commend the distinguished chairman of the Small Business Committee, Senator Gaylord Nelson, for his customary outstanding leadership on this bill in the committee.

My distinguished colleague, Senator Sam Nunn, has made important contributions to this bill, and is to be commended for his able leadership on the bill today. Among the other members of the committee, Senator Weicker, the ranking minority member, and Senator Bartlett have both made important legislative contributions.

I would like to focus my remarks today on Title II, Chapter 3. This chapter is derived from S. 2259, the Small Business Procurement Expansion and Simplification Act of 1977. Senator Nelson and I introduced this bill on October 28, 1977, and I chaired the two hearings on it, on February 7 and April 18, 1978.

The purpose of that bill is to reemphasize and enhance our national policy that promotes opportunities for small firms to do business with the Federal government. It would help counteract the seeming reluctance of many procuring agencies to do business with smaller firms and to turn around the "bigger is better" syndrome in government procurement. It would allow

smaller firms to come into their own as providers of the goods and services needed to run the Federal government.

At the first hearing, on February 7, 1978, the three witnesses included two small business people from Maine and the leading small business association in New England.

Mr. Walter Lachman, chairman of the board of Fiber Materials, Inc., of Biddeford, Maine, expressed the complaint that many small business people are losing faith in the government as a customer. He urged Congressional action to assist small business in this area, because the present system relies too much on the good faith of the prime contractor. Mr. Lachman stated that—

"The Government, particularly the Department of Defense has delegated this authority and responsibility and does not care to maintain any awareness of this responsibility. Therefore, the prime contractor is going to behave in a fashion that is customary to the free enterprise system, and the Government itself is ignoring monitoring the program for small business within that particular system."

Mr. Paul LaHage, President of Hague International of South Portland, Maine stressed the need for simplification of the procurement process.

Mr. William Anderson, President of the Smaller Business Association of New England, presented the statement of Lola Dickinson, chairman of SBANE's government procurement committee. SBANE highlighted the bill's requirement of goals for small business in the procurement process.

The bill has been considerably changed in the legislative process, primarily by joining it with the House's provisions on a subcontracting program for socially and economically disadvantaged persons, by reducing the SBA's role in relation with the procuring agencies and by making the subcontracting program less rigid.

I am confident, nevertheless, that this measure constitutes a major improvement in the position of small business in government contracts.

Mr. NUNN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent that the amendments of the Committee on Small Business and the amendments of the Committee on Governmental Affairs thereto be considered as original text for the purpose of further amendment, and that they be accepted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent that a statement by Senator HEINZ be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HEINZ

Today I rise in support of H.R. 11318 as reported by both the Senate Select Committee on Small Business and my own committee, the Senate Governmental Affairs Committee. I believe this legislation is a landmark in our efforts to encourage small and minority businesses. The bill, if enacted into law would significantly expand and improve our efforts to insure that small businesses and businesses owned by disadvantaged individuals continue to thrive and prosper.

I would especially like to address the provisions of the bill which the Governmental Affairs Subcommittee on Federal Spending Practices particularly reviewed. Chapter 3 of Title II of H.R. 11318 is based on the federal government's long-standing policy of providing small businesses with its "fair share" of government procurement. The value of small business in fulfilling the procurement needs of the federal government have long been recognized. The Small Business Act states so eloquently that:

The essence of the American economic system of private enterprise is free competition . . . The preservation and expansion of such competition is basic not only to the economic well-being, but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed.

As reported by the Governmental Affairs Committee, H.R. 11318 will go a long way toward realizing that goal.

Chapter 3 of Title II of H.R. 11318 provides some important new mechanisms to ensure that small businesses obtain their "fair share" of government contracts and subcontracts. It requires that federal agencies establish realistic goals for the participation by small business concerns in contracts of more than $10,000 in value. These goals must be established in consultation with the Small Business Administration, however, which is a significant advantage over the present system. Today, agencies can establish goals without the benefit of the government's major advocate for small business.

The bill also establishes Offices of Small Business Utilization in each federal agency. The directors of such offices will be primarily responsible for carrying out the policies of this bill within each agency. These directors and the Procurement Specialists in each agency will serve to focus procurement efforts on small businesses. This is essential if federal agencies are to recognize and fulfill their crucial role in ensuring small business's fair share of procurement.

But the most significant provision in this bill is the one which requires large contractors to provide the maximum practicable opportunity for subcontracts to small businesses and businesses owned by the disadvantaged. The ramifications of this provision are so significant that it could be the single most important law in this area.

Because of its significance and its effect on the procurement system as a whole, I would like to commend Senator Chiles for his efforts. His concerns were what is best for small and minority business; and what is good procurement policy. These two concepts were not easily reconciled. But I believe the amendment to H.R. 11318 reported by the Governmental Affairs Committee could be no better. Within the context of good procurement policy, I am confident the committee amendment will ensure that small and minority contractors obtain the maximum practicable opportunity for subcontracting.

H.R. 11318 is important, is timely and should be passed and enacted into law.

MINORITY BUSINESS CONTRACTING OPPORTUNITIES

● Mr. GLENN. Mr. President, earlier today the Senate passed H.R. 11318 which contains several vitally important provisions that I cosponsored which should significantly improve minority business investment opportunities.

On September 14, the Wall Street Journal printed a particularly informative article on contract opportunities for minorities. As the article indicates, there is still a long way to go to move minorities into the Nation's economic mainstream. Minorities only own 4 percent of the Nation's businesses and account for less than 1 percent of total business receipts. The administration has pledged to triple Federal procurements to minorities by 1979 and I strongly support that objective. I hope that we will see committed and aggressive action by the Federal agencies whose responsibility it is to carry out that pledge.

I ask that the Journal article be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Sept. 14, 1978]

MINORITY-GROUP FIRMS GET MORE SUBCONTRACTS UNDER FEDERAL PROJECTS

(By David Gumpert)

For six years, 53-year-old Manuel Rodriguez struggled to build his Fort Lauderdale, Fla., plastic-parts firm. During the 1974–75 recession, the company nearly failed. Even when business gradually improved, Mr. Rodriguez and his wife routinely slept at the small plant to be able to put in extra-long hours.

This year, though, Mr. Rodriguez got a big break. His firm received a federally funded $2.4 million subcontract over the next 2½ years to make plastic components for concrete railroad ties to be used to upgrade the Northeast rail corridor. The order will increase his volume to more than $1 million annually from about $200,000 last year. Already he has moved to a building with triple his former space and has quadrupled his work force to about 20 employes.

Mr. Rodriguez's break stemmed from an unlikely source—his Cuban ancestry. The Department of Transportation, in dispensing $1.75 billion of rail-revitalization funds, has set a goal that 15% or more of the money be directed to companies owned by blacks, Hispanics and other racial minorities. Thus the Rodriguez subcontract was awarded by a contractor—a joint venture between San-Vel Concrete Corp., Littleton, Mass., and a division of Santa Fe International Corp., Orange, Calif.—that had pledged to find minority subcontractors as a condition of its own contract.

SIGNIFICANT UPTURN

Such goals and pledges are fast increasing the federal money going to minority businesses. Although the idea of expanding minority jobs and strengthening minority communities has been around since the late 1960s, only in the past couple of years have significant federal orders been awarded.

As a result, "market opportunities for minority firms have increased," says John Gloster, president of Opportunity Funding Corp., a Washington, D.C., venture-capital firm that aids minority businesses. In a few cases, he adds, the money has poured in so rapidly that minority firms have run into difficulties from expanding too fast.

The exact amount of federal money involved isn't known, but it appears to be well over $1 billion a year and growing fast. In the fiscal year ended last Sept. 30, about $1.2 billion of a total of approximately $75 billion of federal procurements went to minority businesses. That share is up from $807 million two years earlier, according to the Office of Minority Business Enterprise, a Commerce Department agency that encourages increased spending with minority businesses. (The proportion of additional billions of dollars of federal grants, public-works projects and other federal spending going to minority businesses isn't known, although an official of the Office of Minority Business Enterprise terms the amount "very small.")

BAKKE CASE DISCOUNTED

Moreover, government officials and representatives of minor business groups don't expect the Supreme Court's recent Bakke decision to change the trend. In the Bakke case, the high court expressed disapproval of arbitrary quotas favoring minorities but backed affirmative-action programs in general in ruling that a white applicant to the University of California at Davis Medical School was unjustly denied admission because of a minority-recruitment program. Government and minority-group representatives contend that the federal spending programs aiding minority businesses aren't arbitrary because the programs are based on provable past discrimination. They also argue that the programs aren't rigid but rather allow flexibility based on the availability of minority companies in different geographical areas and among different industries.

Government spending with minority firms has been increased in several ways. A Commerce Department public works program that dispensed $4 billion this fiscal year included a requirement that at least 10%, or $400 million, of contracts go to minority firms. Apparently the minority share actually was closer to $600 million, according to a Commerce Department official.

At least one heavy-spending federal agency, the Department of Transportation, has attempted on its own to increase spending with minority businesses. It adopted the 15% minority-spending goal for the recently started Northeast corridor project. In addition, since last year the agency's Urban Mass Transportation Secretary Brock Adams requires the department's other agencies to set up minority-spending programs even if "this may result in some increased cost."

MORE EFFORTS SLATED

Such efforts are due to proliferate. President Carter has called for a tripling by the end of fiscal 1979 of the $1.2 billion of federal procurements from minority firms last year. Consequently, several agencies are said to be reexamining their procurement practices. The Department of the Interior, for instance, is contemplating a goal that 20% of its spending be with minority firms.

In addition, a proposal currently before Congress would strengthen the government's ability to encourage minority-business subcontracting by requiring winners of contracts exceeding $1 million for construction and $500,000 for other purposes to work out a plan for such subcontracts before the contracts are awarded. Under current law, federal contractors must simply show, after contracts are completed, that the contractors did their best to find minority subcontractors.

Many minority-business leaders and government officials say that as impressive as the government's efforts might sound, minority firms still have a long way to go. According to most government estimates, the country's 17% minority population controls 4% of the nation's businesses, and these firms account for less than 1% of total business receipts.

The increased government funding "is admirable, but we're still excluded from the American economic system," says Berkeley G Burrell, president of the National Business League, a minority-business trade group. "Government has a responsibility to lead the way" in increasing purchases from minority firms, he contends.

Some observers complain that the increase in government money available to minority firms has encouraged whites to create companies with minority officers posing as owners. The incidence of such bogus firms receiving federal contracts isn't known, but Rep. Parren Mitchell of Maryland recently warned the Justice Department that the government's "new initiatives (to aid minority companies) could be blunted by the creation of 'minority-front firms.' " He urged the department to prosecute organizers of such companies.

NOTICEABLE IMPACT

Whatever the shortcomings of the federal spending effort, its effects are becoming apparent. Take the case of Paul James, the black owner of a Boston electrical contracting firm. The federal program has helped him organize what he believes is New England's first minority-owned engineering firm specializing in heavy construction. Last year his new engineering firm received an initial subcontract worth slightly more than $5 million over 2½ years from a large construction concern, Peter Kiewit Sons' Co., to help relocate a Boston subway line.

The Omaha company sought out Mr. James to fulfill the Massachusetts Bay Transportation Authority's requirement that at least 30% of the subcontracting go to minority firms. The MBTA had adopted the provision partly to satisfy the Transportation Department's Urban Mass Transportation Administration and obtain federal funds for the project. (Mr. James's electric contracting firm won a $750,000 subcontract from Kiewit under the same MBTA contract.)

In another case, the black owner of a Durham, N.C., security-guard firm credits the government with helping him expand. Six years ago, his fledgling company received a $150,000 contract from the Environmental Protection Administration through a Small Business Administration program to direct federal contracts to minority firms. That initial contract "really got us started and got our foot in the door" with federal agencies, says Guy Rankin, owner of Rankin Security Service Corp. Today the company does $3 million of business annually, of which about 80% comes from federal agencies.

BENEFITS AND PITFALLS

Of course, any effort to alter spending patterns entails both benefits and pitfalls. Both are obvious in the Santa Fe/San-Vel project. The joint venture won the $38 million, 2½-year rail-tie contract (with an option for $10 million more if Congress allocates the money) by offering the lowest bid and also promising to subcontract 40% of the work to minority firms. Senate Fe/San-Vel set aside more than the Transportation Department's 15% goal because two competing joint ventures had minority firms as principals, C. C. Williams, Santa Fe/San-Vel project director, says.

Subcontracts let by Santa Fe/San-Vel have revived some financially troubled minority firms. For instance, Washburn Wire Products Inc. in New York's Harlem was operating under bankruptcy proceedings and was due to be closed by its white owners when it was purchased a year ago by Harlem Commonwealth Council Inc., a federally funded, black and Hispanic community-developed organization. Earlier this year, Washburn Wire received an $8 million Santa Fe/San-Vel subcontract—a "windfall" that quickly enabled Washburn Wire to reach break-even, a Harlem Commonwealth spokesman says. In addition, Washburn has increased its employes to nearly 200 from 31 a year ago, with about a third of them minority-group members, he says.

Similarly, a minority-owned, Dewey, Okla., foundry that had been operating at a loss the past two years because it wasn't using its capacity fully is expected to become profitable this year, thanks to a $3.9 million subcontract from Santa Fe/San-Vel. The subcontract "is the shot in the arm we needed," says Ray Bryant, a black New York business consultant who bought Blue Stem Foundry from a Mexican-American family at the same time the company obtained the order. Mr. Bryant expects the firm to increase employment about 25% probably to double its previous $1.5 million of annual revenue.

A CASE OF TROUBLE

But winning such high-stakes contracts can cause trouble for small minority firms. A Cambridge, Mass., moving and rigging company owned by a black family for 51 years found that out earlier this year when it appeared to have won a $1.4 million Santa Fe/San-Vel subcontract to ship the rail ties. For the firm, Henry F. Owens Inc., the subcontract represented a huge addition to its previous $600,000 of annual revenue.

To fill the subcontract, the firm ordered new tractors and trailers that would have approximately doubled its fleet. But in June, Santa Fe/San-Vel suddenly decided to ship the ties by rail because of a court order stemming from the opposition of several Boston suburbs that didn't want the ties hauled through them. Santa Fe/San-Vel says it is trying to award a smaller project to the Cambridge firm, but meanwhile the new equipment will have to be returned.

The whole situation has turned into "an unbelievable nightmare and headache," Edward Owens, the trucker's general manager, says. "You hear so much about what the government is doing for minorities," he says. But his experience, he adds, is that "nobody cares. What happens to the little guy is that the big guy walks all over him."

DIFFICULT HUNT

Santa Fe/San-Vel itself says it has had its own problems. Its prime difficulty—one that has troubled other white contractors—has been to find minority contractors with the experience and capacity to do the job. For instance, the venture spent six months searching for a minority-owned foundry before it discovered Blue Stem in Oklahoma.

"It's been very time-consuming to find minority firms and structure subcontracts and provide technical help" to suit each one, Mr. Williams, the project director, says. Dealing with minority firms sometimes untested in making a particular product also poses "enormous" risks, he says, because delays will cost Santa Fe/San-Vel $20,000 a week under a penalty clause.

Mr. Williams concedes that without government pressure to find minority subcontractors, the venture probably would have "taken the easy way out and gone to the large corporations around the corner." But the experience of finding and working with minority firms has "been very gratifying," he says. "The real bottom line is when this job is over and each of the minority firms we've worked with has the residual value of the experience to go on in business," he adds.●

UP AMENDMENT NO. 1832

(Purpose: To amend the subcontracting provisions in the amendment of the Committee on Governmental Affairs)

Mr. NUNN. Mr. President, on behalf of Senator HATHAWAY and myself, I send to the desk amendments and ask unanimous consent they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the amendments.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN), for himself and Senator HATHAWAY, proposes unprinted amendment numbered 1832.

Mr. NUNN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 52, strike lines 22 through 24 and insert in lieu thereof:

"(1) require each offeror who submits a proposal for the contract within the competitive range to submit a subcontracting plan; and"

On page 54, line 1, strike all through the phrase "tion." on line 19, and insert in lieu thereof the following:

"(iv) offers subcontracting possibilities:

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

"(B) If the bidder selected to be awarded the contract fails to submit, within the time limit prescribed in regulations of the Federal agency concerned, the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract.".

On page 56, line 15, strike out all through line 17 and insert in lieu thereof the following:

"(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small businesses and small businesses owned and operated by socially and economically disadvantaged persons to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and".

Mr. NUNN. Mr. President, I want to first of all say that I agree with those who stress the need for increased small business subcontracting on Federal prime contracts. Small businesses are not getting their fair share of the Federal contract dollar. I, therefore, want to commend Senator HATHAWAY for his excellent work in addressing this important need of our small business community.

I also want to congratulate Senator CHILES and Senator HEINZ for the time and effort they have applied to this complex problem, and for their diligent work on chapter 3 of title II of H.R. 11318 that was sequentially referred to the Committee on Governmental Affairs.

I must point out that I believe the approach adopted in the House version of H.R. 11318 to increase small business's Federal subcontracting share is flawed seriously. The subcontracting plans required by the House bill will surely create an unnecessarily large paperwork burden for Federal prime contractors.

More importantly, the House bill could cause substantial and potentially dangerous delays in Federal procurement. Specifically, the House version allows SBA to delay the award of any Federal prime contract pending consideration of its views on subcontracting plans offered by Federal prime contractors. The Defense Department has testified that such powers vested in SBA would tend to tie up its procurement processes substantially. I share the Defense Department's concern.

Often, in zealous pursuit of a positive goal, solutions are developed and implemented that create new problems greater than the ones they ostensibly solved. The House subcontracting measures come very close to falling into the above category.

I believe that the subcontracting measures being considered by the Senate today are more sensible and remove almost all of the problems that the cumbersome House measures would create. Specifically, the SBA will not be allowed to delay or prevent the ward of any Federal contract based on the quality of a subcontracting plan. However, I still have some reservations about the subcontracting measures that the Senate Governmental Affairs Committee has reported. I am, therefore, joining Senator HATHAWAY in offering three amendments to solve problems that still exist in the version we are considering today.

The first amendment would require only offerors for negotiated procurements who submit contract proposals that are found to be in the competitive range to submit subcontracting plans. The reported version would require all offerors to submit plans. In negotiated procurement only a portion of all offerors are selected as being in the competitive range for negotiation. I believe an unnecessary paperwork and regulatory burden would be created if all offerors had to submit subcontracting plans.

The Governmental Affairs version on formally advertised contracts requires each buying activity to set small and minority business subcontracting goals for all prime contracts. All bidding firms would have to submit subcontracting plans that either meet or exceed the goals set by the buying activity.

I have a serious problem with this approach. I do not believe that Federal agencies have the competence or experience to set such subcontracting goals. Also, any goal that the agency arrives at will likely have some bias. A goal that is reasonable for a New York firm may well be unreasonable for a Nebraska business. Also, a business that performs many functions in-house could be penalized because it does not need to subcontract for enough items to meet the Federal goal.

Therefore, this amendment requires that only the low bidder who will be awarded the contract submit a subcontracting plan which reflects his best efforts. This measure not only resolves the problems discussed above, but it also relieves a substantial regulatory and paperwork load for many businesses.

The last amendment allows SBA to review contract solicitations for the purpose of evaluating subcontracting opportunities for small and minority business. This authority is needed to help all Federal buying activities better understand the potential for increasing the Federal small business subcontracting share.

Mr. President, I believe with these amendments that the Senate subcontracting provisions are better than any I have seen. I am not totally convinced that the subcontracting plan approach for increasing Federal subcontracts for small business will have a substantial positive effect, but I am hopeful that my fears will not be borne out.

Mr. President, I ask unanimous consent that statements by Senator HATHAWAY, Senator HEINZ, and Senator CHILES be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HATHAWAY

I am submitting, along with Senator Nunn, four amendments to the Act to amend the Small Business Act and the Small Business Investment Act of 1958, (H.R. 11318) as reported out of the Committee on Governmental Affairs, as amended.

Under an agreement reached by the Senate Small Business Committee, the Governmental Affairs Committee was given an opportunity to look at the impact this bill would have upon the federal contracting system. The Government Affairs Committee limited its considerations of H.R. 11318 to Chapter 3 of Title 2.

That Committee's amendments of the bill as reported out of the Small Business Committee involve the provisions of Chapter 3 of Title 2 of the bill which require large contractors to provide maximum practicable opportunities for small businesses and for small businesses owned and operated by socially and economically disadvantaged persons to participate as subcontractors in Federal contracts. In the bill as reported out of the Senate Small Business Committee, all low bidders and successful offerors on government contracts are required to submit for approval a subcontracting plan to the procuring agency.

Because of its belief that these subcontracting plans should be evaluated before, rather than after, the winning competitor is selected to receive the contract award, the Governmental Affairs Committee amended the Small Business Committee's language to require that *all* bidders and offerors submit with their bids or offers a subcontracting plan.

On negotiated procurements, these plans would be considered an important factor in the selection of the firm for award of the contract. On formally advertised procurements, each bidder would be required to meet minimum subcontracting criteria as placed in the solicitation.

Mr. President, I commend the members of the Governmental Affairs Committee for their thoughtful consideration. I agree that, as to negotiated procurements, which comprise about 90% of all government contracting, the element of competition may greatly improve the quality of plans offered by competing business firms. On the other hand, the concern expressed by the Senate Small Business Committee that the submission of the plans not impose an unnecessarily heavy paperwork burden on government contractors is still valid. Accordingly, my colleague, Mr. Nunn, and I offer an amendment to limit requiring the submission of subcontracting plans to those firms which are determined during the negotiation process to be in the competitive range of negotiations. This restriction would limit the submission of plans to those firms that are seriously being considered for award of a contract.

Insofar as formally advertised procurements are concerned, I am greatly concerned that the placing of minimum subcontracting criteria in solicitations for government contracts could work to the detriment of the small business program. For instance, preliminary results of a current test program of a mandatory subcontracting program being conducted by Federal procuring agencies indicates that often contracting personnel set the goals for small business participation at an easily obtainable level, sometimes at a level lower than that obtained in the past by the contractor.

I appreciate the concerns of the Government/Affairs Committee that all bidders on formally advertised procurements should be in the position of bidding on and meeting standard terms and conditions. However, I believe that we do not yet know enough about establishing minimum standards of subcontracting for all bidders, regardless of their individual circumstances and locations. We should wait for the final results of the test program on mandatory subcontracting, which is being sponsored by the Office of Federal Procurement Policy and monitored by the General Accounting Office.

Accordingly, Mr. President, we offer an amendment to require that the low bidder on a formally advertised procurement sub-

mit a plan reflecting the bidder's best efforts to subcontract with small businesses and with small businesses owned and operated by socially and economically disadvantaged persons. The low bidder would not be deprived of a contract solely because of his plan, but would be required to submit the best possible plan. Since the SBA will be monitoring this small business subcontracting program, we will then have an idea of whether in fact contractors are making their best efforts. If their record shows they are not making their best efforts, we could consider corrective legislation in the future.

The last amendment we offer simply gives SBA authority to review solicitations for contracts and make a determination on what potential exists for small business and small businesses owned and operated by socially and economically disadvantaged persons to perform subcontracts under a resulting contract.

SBA could then offer its findings to the procuring agency, which could use SBA's determination as a standard against which to assess the quality of subcontracting plans. SBA's submission would be advisory only, and the procuring agency would have no authority to hold up the award of a contract to a low bidder submitting a plan unacceptable to SBA.

I understand that these amendments are acceptable to the Governmental Affairs Committee.

STATEMENT BY SENATOR HEINZ

I rise in opposition to the amendment to H.R. 11318 offered by my colleague the Senator from Georgia (Mr. Nunn). I was privileged to work with and support the Senator from Florida (Mr. Chiles) on his amendment to Chapter 3 of Title II of the bill. I believe Senator Chiles was concerned about two things: what is best for small business; and what is good procurement policy. His work produced an amendment which I believe succeeds on both concerns. It is good procurement policy, and I am confident it *will* result in the maximum practicable opportunity for small businesses to obtain subcontracts.

The amendment proposed by my distinguished colleague from Georgia (Mr. Nunn) in no way impinges on procurement policy. In fact, he may argue that it is better procurement policy than the committee amendment. But it certainly weakens our efforts to ensure that subcontracts are afforded small businesses.

The amendment reported by the Governmental Affairs Committee requires that all formally advertised bids of either $500,000 or $1,000,000 shall include a subcontracting plan. This plan provided by the bidder must conform to criteria set forth in the agency solicitation for a bid. This means that an agency will require that each bidder include in his bid a subcontracting plan which meets, at a minimum, goals for small and minority business participation as established by the agency. Any prospective contractor who did not submit a plan which conformed with these goals would be deemed non-responsive and ineligible for award of the contract.

Under the amendment which is being considered, an agency could not establish goals for small business participation in a solicitation for a sealed bid. After the contract is awarded, the contractor would then be required to submit a subcontracting plan which would have to be accepted by the agency and made a part of the contract. The contractor would be under no obligation to come up with a plan which, in fact, provides the maximum opportunity for small business participation. In effect this system is no better than the one we have today which requires contractors to expend their "best efforts" to provide opportunities for small business subcontracts. This is a significant weakening of the effects and purpose of the bill.

More than that, however, the amendment will result in exercises of paperwork with no purpose. The amendment will require that federal contractors submit subcontracting plans. This is paperwork. But why would we require them? The contractor can submit a blank piece of paper and under this provision it would have to be accepted as a subcontracting plan. Because the contractor is not obligated to fulfill the agency's responsibilities to small businesses, the plan could be anything it desires and therefore useless paperwork.

I do not see the point behind the amendment. It is not any better procurement policy than the amendment worked out by Senator Chiles, who is an expert on this subject; nor is it any better for small businesses. Therefore, I oppose this amendment.

STATEMENT BY SENATOR CHILES

The Government Affairs Committee amendments to Chapter 3 of Title 2 of H.R. 11318 are consistent with the operation of an efficient, equitable Federal procurement system. The committee's amendments are designed to eliminate any possibility that the terms of a subcontracting plan can be negotiated with the successful company after competition has ended. A procedure that allows for negotiation of terms after the winning bidder or offer has been selected is inconsistent with the basic principles of Federal procurement law.

Accordingly, the Committee amended H.R. 11318 to require that plans be submitted by all bidders and offers on Federal contracts.

The amendment offered by Mr. Nunn and Mr. Hathaway to limit required submission of these plans to offerors within the competitive range on negotiated procurements fulfils the intent of the committee's objectives, yet eliminates unnecessary paperwork by those firms who are not likely to receive a contract. I concur with this amendment as well as the amendment to authorize the SBA to advise procuring agencies on the potential for subcontracting with small businesss and small business owned and operated by socially and economically disadvantaged persons.

However, I believe that the Government Affairs Committee's amendment to require that subcontracting criteria be placed in solicitations for formally advertised procurements is an improvement over the requirement that low bidders merely submit a subcontracting plan.

"This best efforts" approach does not establish a reasonable standard against which to judge whether a contractor will in fact subcontract with small business to the maximum extent practicable.

Nevertheless, it is not the intention of the Government Affairs Committee to delay this worthwhile legislation. The bill would improve opportunities for small businesses to do business with the Federal Government, a goal which is fully supported by the committee.

Accordingly, the amendments as offered by Mr. Nunn and Mr. Hathaway are acceptable to the Committee on Governmental Affairs.

Mr. WEICKER. Mr. President, I urge that the amendment offered by Senators HATHAWAY and NUNN be accepted. This substitute for Senator CHILES' amendment vitiates the concerns expressed by the Governmental Affairs Committee after its consideration of chapter 3 of title 2 of H.R. 11318.

One concern of that committee was that the determination of whether a contractor's small and minority business subcontracting plan is acceptable should be made earlier in the procurement process than the original section of H.R. 11318 provided for. However, the Select Committee on Small Business did not want each applicant for a Government contract to be burdened with the complications and expenses of providing such a subcontracting plan in each bid. The substitute offered by Senators HATHAWAY and NUNN provides a Solomon-type solution to problems posed by these conflicting interests. Their compromise requires that, for negotiated procurement, only those firms in a competitive range for a Government contract to submit a small and minority business subcontract plan. Because of the procedure followed in formally advertised procurements, all bidders are required to submit such a bid.

The Hathaway-Nunn substitute solves other differences in an equally sagacious manner. Therefore, I fully support this compromise and advocate its adoption.

Mr. NUNN. Mr. President, I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1833

(Purpose: Technical and conforming amendments)

Mr. NUNN. Mr. President, I send to the desk certain technical and conforming amendments and ask for their immediate consideration.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN) proposes an unprinted amendment numbered 1833.

Mr. NUNN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 24, line 22, strike "companies" and insert in lieu thereof "company".

On page 26, line 15, before the phrase "The authority" insert "Sec. 317.".

On page 26, line 21, before the phrase "The Com-" insert "(a)".

On page 26, line 23, strike out "subsections (c) and (d) of section 301" and insert in lieu thereof "sections 301(c) and (d)".

On page 27, line 2, strike out "section" and insert "sections".

On page 27, line 15, strike out "(II)" and insert "(D)".

On page 28, line 1, after the phrase "the result of a breach" insert "or,".

On page 28, line 7, strike the period and insert a semicolon.

On page 29, line 20, strike "part" and insert in lieu thereof "Part".

On page 30, line 24, strike "gram," and insert "gram".

On page 36, line 14, insert a comma after the word "including".

On page 36, line 15, insert a comma after the words "limited to".

On page 37, line 5, strike the word "to".

On page 37, line 20, strike "concerns" and insert "concern".

On page 37, line 23, strike "including,".

On page 38, line 22, strike "(122)" and insert "(123)".

On page 41, line 14, after the phrase "the individual" insert "and such concern".

On page 41, line 20, after the phrase "the individual" insert "and such concern".

On page 41, line 24, strike "owner or owner" and insert "owner or owners".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1834

(Purpose: Additional committee amendments)

Mr. NUNN. Mr. President, I send to the desk further committee amendments and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN) proposes an unprinted amendment numbered 1834.

Mr. NUNN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 30, between lines 2 and 3, insert the following new sections as follows:

"SEC. 112. Section 404(b) of the Small Bus ess Investment Act of 1958 is amended by adding a new paragraph as follows:

"(4) Any such guarantee executed and delivered by the Administration shall not be terminated, canceled or otherwise revoked; shall be conclusive evidence that such guarantee and the proceedings and determinations pursuant to which it was issued comply fully with the provisions of this section; and shall be valid and incontestable in the hands of the person or persons to whom the payment under the qualified contract are due.".

"SEC. 113. Section 502 of the Small Business Investment Act of 1958 is amended by adding at the end of paragraph 4 the following new sentence:

"Community injection funds may be derived, in whole or in part, from:

(a) Federal, State or local governments;

(b) banks or other financial institutions;

(c) foundations or other not-for-profit institutions; or

(d) a small business concern (or its owners, stockholders or affiliates) receiving assistance through bodies authorized under this title.".".

On page 38, after line 24, add a new section as follows:

"SEC. 206. Nothing in this chapter is intended to duplicate or limit any programs or projects administered by the Department of Commerce. In order to avoid the possibility of duplication of services, the Administrator shall only in close cooperation with the Secretary of Commerce and in coordination with the management and technical assistance programs administered by the Department of Commerce establish additional management and technical assistance under this chapter.".

At the end of the bill add a new section as follows:

SEC. . Section 7(a) of the Small Business Act is amended by inserting after the phrase "The Administration is empowered to make loans to enable small-business concerns" the phrase ", or small-business concerns 100 percent owned and controlled by an Indian tribe as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act,"."

Mr. WEICKER. Mr. President, I support the committee amendments to H.R. 11318.

These amendments clarify existing law concerning SBA's guarantee of financings made to small businesses for the planning, design or installation of pollution control facilities. This clarification is necessary to revitalize the SBA's pollution control lending program which is at this time moribund.

A necessary amendment to section 502 of the Small Business Investment Act is also offered. Pursuant to this section, SBA is authorized to make loans to local development companies, or LDG's, to finance plant construction, conversion or expansion, including the acquisition of land. The proceeds of the loans to the LDC are to be used to assist small businesses in an attempt to spur the economic growth of the community. The establishment, modernization and expansion of a small business beneficiary have been determined to aid the community's economic growth by providing employment opportunities, tax base and similar economic benefits. Earlier this year I sent a letter to the mayors of our Nation's 100 largest cities to elicit their comments on how the SBA could be made more effective in encouraging urban economic growth and development. Numerous responses indicated that the local development company program under section 502 had tremendous potential in accomplishing this goal. This amendment will help the local development companies in their attempts to benefit small businesses and foster urban economic development.

The final amendment assures that the program for management and technical assistance to businesses owned by socially and economically disadvantaged individuals authorized by chapter 2 of title II of this bill will not duplicate programs administered by the Department of Commerce. As I indicated earlier, the mere act of providing procurement contracts to such businesses does not insure their success. Thus, this bill calls for an improved management and technical assistance program.

The necessity of the creation of this program attests to the fact that the programs administered through the Department of Commerce's Office of Minority Business Enterprise have not been very effective in aiding minority small businesses. The Senate Appropriation's Subcommittee of State, Justice, Commerce and Related Agencies, of which I am ranking minority member, recently completed action on both the SBA and OMBE budgets for fiscal year 1979. In its report language, the committee stated:

The Committee strongly supports assistance to minority business as witnessed by our recommendation for the Small Business Administration. However, OMBE has never had legislative authority and the testimony at the hearing was weak and by no means persuasive of the role of this organization. The Committee urges the Office of Management and Budget to consider merger of OMBE into SBA's program of assistance to minority businesses so that a unified program will be available for consideration in the 1980 budget review.

There is little doubt that the current situation is confused. Federal assistance to minority businesses lacks direction and purpose. Jurisdictional battles do not solve this problem. This situation must be carefully reviewed in the very near future, and a coherent plan of attack must be developed.

Mr. NUNN. Mr. President, I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1835

(Purpose: to expand the SBA 8(a) criteria)

Mr. NUNN. Mr. President, on behalf of Senator GRIFFIN, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN), for Mr. GRIFFIN, proposes an unprinted amendment numbered 1835.

Mr. NUNN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 42, line 18, strike "Code."." and insert in lieu thereof "Code.".

On page 42, between lines 18 and 19 insert the following:

"(6) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

"(7) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or state where the work is to be performed.

"(8) In awarding subcontracts pursuant to this subsection, the Administration shall consider, along with other factors, the price competitiveness of potential subcontractors as a factor in the awards process: *Provided, however,* That in awarding such subcontracts the Administration shall be concerned with the developmental needs of small business concerns eligible for assistance under this subsection.".

Mr. NUNN. Mr. President, this is an amendment about which Senator GRIFFIN feels strongly. We have talked about it with Senator GRIFFIN. Both the minority and majority staffs have talked about it with Senator GRIFFIN.

Mr. President, while the Small Business Committee accepts Mr. GRIFFIN's amendment, I must clarify one point in relation to the new section 8(a)(8) that this proposal creates. While I have no particular problem with the concept that SBA should consider the price competitiveness of 8(a) firms as one factor in the awards process for 8(a) contracts, I believe such consideration should always be placed in the proper perspective. The 8(a) program is a business development program and, as such, the development needs of the 8(a) participant should always be SBA's primary concern. However, if all factors relating to development are basically the same for two or more 8(a) firms, then it might be useful to evaluate the firms' relative price competitiveness before the 8(a) contract is awarded.

Mr. WEICKER. Mr. President, I urge the adoption of this amendment. Senator GRIFFIN has long been a supporter of the 8(a) program and his amendment will help to tighten up the program.

In directing SBA to develop and implement an outreach program for the recruitment of small business concerns eligible for the 8(a) program, one is insuring that the maximum possible number of firms will participate. The amendment also calls for construction subcontracts awarded by SBA under section 8(a) to be, to the maximum extent practicable, awarded to firms located in the county or State where the work is to be performed. This will help foster a sense of community pride by involvement.

Finally, the amendment calls for SBA to consider, along with other factors, the price competitiveness of potential subcontractors when awarding an 8(a) subcontract. Although this provision might result in savings to the taxpayers, it is imperative that it be noted that the amendment does not alter the basic concept of the 8(a) program. This program is a program designed to develop businesses owned by socially and economically disadvantaged individuals. Thus, the price competitiveness of a firm is a distant second to the consideration of developmental needs of the small business. Indeed, price competitiveness should be determinative only when there are two firms which are identical in all other respects. The amendment offered by Senator GRIFFIN will not in any way alter the direction of the 8(a) program in this regard.

I acknowledge that fine efforts of the senior Senator from Michigan, and urge the acceptance of his amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. NUNN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MELCHER). Without objection, it is so ordered.

Mr. NUNN. Mr. President, I know of no further amendments to this bill.

Would any other Senators like to be heard on the bill? If not, I ask for third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 11318) was read the third time, and passed.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WEICKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the enforcement of Senate amendments to H.R. 11318.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House of Representatives, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. NELSON, Mr. MCINTYRE, Mr. NUNN, Mr. HATHAWAY, Mr. HASKELL, Mr. CULVER, Mr. WEICKER, Mr. BARTLETT, and Mr. PACKWOOD conferees on the part of the Senate.

PRIVILEGE OF THE FLOOR

Mr. METZENBAUM. Mr. President, I ask unanimous consent that during the deliberations today, Jesse Seidner, of my staff, have the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WEICKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that I be permitted to speak out of order and that the Pastore rule be waived for that purpose; that I be permitted to yield 1 minute to the distinguished Senator from South Dakota (Mr. MCGOVERN); and that I may have 15 minutes in addition.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE $1,000 CONCEPT REVISITED

Mr. MCGOVERN. Mr. President, I note that on yesterday, the Senate Finance Committee recommended an increase in the present $750 personal tax exemption to $1,000 beginning next January 1.

As my colleagues in the Senate may recall, that is the figure that I recommended as a Presidential candidate in 1972. Although the formula is different, the conclusion is the same—that each man, woman, and child in the United States be granted a $1,000 consideration.

After being ridiculed for 6 years by critics of my $1,000 proposal, I cannot wait to see how my colleagues in the Senate will react to the $1,000 plan of our esteemed Senate Finance Committee.

Mr. President, I ask unanimous consent that a news story which appeared in this morning's Washington Post about the action of the Senate Finance Committee be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SENATE UNIT PLANS $250 INCREASE IN TAX EXEMPTION

(By Art Pine)

The Senate Finance Committee agreed yesterday to raise the $750 personal exemption now granted taxpayers and their dependents to $1,000, beginning next Jan. 1, and hinted it will increase by as much as $2 billion other individual tax cuts recently approved by the House.

In a second and unprecedented action, the committee agreed to expand by $1.8 billion an existing system of tax relief to the working poor and to make those payments through the withholding system.

In some cases, that would mean a worker's regular take-home pay would actually be greater than his or her gross weekly salary.

These changes came in the earned income tax credit for low-income families. The committee decided to increase the credit to a maximum of $600, up from the current $400, and to extend it to persons earning up to $12,000 a year.

The move would provide extra tax breaks for about 7.6 million "working poor" families, including 3.6 million of the 5.5 million who already qualify for the earned income credit.

The committee made its decisions informally, without recorded votes. Members stressed that all actions were tentative, although panel sources said they believed most of yesterday's decisions would remain intact when the tax bill is sent to the floor.

The actions were the first the panel has taken on the tax bill passed by the House. The committee had been delaying all decisions, pending agreement by House-Senate budget conferees on the size of the tax bill.

Congressional budget makers reached a compromise on Wednesday that in effect would allow the Senate to add $2 billion to the $16.3 billion tax-reduction measure passed by the House.

The extra $2 billion in tax cuts for individuals would effectively offset for low- and middle-income taxpayers the increase in Social Security taxes and the impact of inflation in pushing workers into higher brackets that will have occurred between 1978 and 1979.

Most taxpayers still would be behind, since the tax cuts wouldn't offset the increased burden between 1977 and 1978. However, Sen. Russell B. Long (D-La.), the Finance Committee chairman, said Congress "just doesn't have the money" to do that.

The panel indicated yesterday that the extra $2 billion in cuts would come primarily by increasing the reductions in tax rates for individuals voted by the House. But it agreed to wait until Monday before approving the move, so staff workers could compute the impact on various groups.

The committee's decision to raise the personal exemption to $1,000 for each taxpayer and his or her dependent effectively ratified what the House did earlier. Assuming the Senate goes along, the provision would be certain to be approved by a House-Senate conference committee.

Along with increasing the personal exemption to $1,000, the committee also agreed to repeal the present $35-a-person "general credit" now granted all taxpayers. Taxpayers now may choose between $35 a dependent or 2 percent of the first $9,000 in income, whichever is higher.

The committee's actions yesterday amounted to mixed news for the Carter administration. One of the President's principal objections to the House bill was that it did not provide enough tax relief for the poor. The increases in the earned income credit would offset that somewhat.

At the same time, however, the panel's decision to raise the personal exemption dashed any hopes that the administration might win its fight to replace the $750 exemption with a $240-a-person tax credit, which would have skewed the benefits more toward the poor.

Secretary of the Treasury W. Michael Blumenthal had asked the committee to

include Carter's proposal in the Senate version of the tax bill after the House turned him down. However, the plan had been widely criticized both by conservatives and liberals.

The action involving the earned income credit would make major changes in current law. The law now allows working poor parents to reduce their total taxes by 10 percent of their first $4,000 a year in wages, to a maximum of $400, with smaller breaks for those earning up to $8,000.

What the Finance Committee did yesterday was to agree, first, to enlarge the size of the credit to 10 percent of the first $6,000 in earnings—for a maximum of $600—and then to extend the scaled back tax breaks to families earning up to $12,000 a year.

The changes would add to the number eligible for the earned income credit some 4 million persons earning between $8,000 and $12,000 a year. However, it would not provide extra relief for those earning less than $4,000 a year.

The House merely made the existing $400 credit permanent and voted to allow taxpayers to figure their benefits from tables, rather than having to compute them by themselves. The House measure would not increase the tax relief for workers in this category.

Although the changes in the earned income credit would take effect January 1, the system of distributing the tax break weekly, directly through workers' paychecks, would not begin until next July 1, to give the Internal Revenue Service time to lay down ground rules for it.

The procedure would work like the withholding tax system, except in reverse. Workers would receive the tax credit in installments, through a reduction in withheld taxes. Those who did not earn enough to pay income taxes would receive an extra cash payment as part of their checks.

Employers required to make these adjustments would be "reimbursed" regularly by the government by deducting the earned income credits they provide from the income or Social Security taxes they pay on behalf of their employes.

Mr. McGOVERN. Mr. President, I thank the Senator from Utah for yielding.

PRIVILEGE OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that Mr. Stephen Markman of my staff be accorded the privilege of the floor for the remainder of today.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE GSA AFFAIR

Mr. HATCH. Mr. President, the General Services Administration was established nearly 20 years ago to introduce "efficient, business-like" methods in the procurement procedures of the Federal Government.

Since then, as GSA has been invested with an assortment of new responsibilities—including office administration, real estate brokering, architecture, and construction management—it has proven increasingly incapable of performing its initial, most basic responsibilities.

On the basis of recent disclosures, it would appear that Federal purchasing is riddled with fraud, corruption, political influence, and fiscal irresponsibility. According to special investigator, Vincent Alto, the storm brewing around GSA threatens to result in "the biggest money scandal in the history of the Federal Government."

Among the allegations—and I admit that I may not be up-to-date, not having read this evening's newspaper:

GSA building managers have accepted bribes and kick-backs from contractors in exchange for payments for work not done, or not done properly. One manager is reputed to have "earned" $300,000 annually in this way;

GSA supply managers have accepted bribes and kick-backs from suppliers in exchange for payments for supplies never received, or for supplies not meeting Federal Government specifications;

Political cronyism often determines hiring at GSA, as well as the selection of suppliers and contractors;

GSA surpluses are sold to purchasers in the absence of sealed, competitive bidding procedures at prices well below market value. In the meantime, GSA purchases of office equipment and supplies are often made at prices well above the going rate;

Credit card abuse, estimated as high as $20 million, as well as other forms of "nickel and dime" corruption, are rampant within the administration;

Civil service laws are violated with "whistle-blowers," and others attempting to expose corruption and waste, being abused, demoted, and treated generally as troublemakers;

Theft from GSA warehouses has cost the taxpayer millions of dollars;

GSA supply stores have been abused by GSA employees in purchasing goods and supplies for personal use;

GSA has expended millions of dollars for utility payments, and for building repair and maintenance, all of which were landlord obligations under Federal leases;

GSA has ordered its building managers to spend as much money as quickly as they could in the final weeks of fiscal years in order to insure against future budget reductions. At the same time, they have engaged in "paper deals" with other Federal agencies doing the same thing;

Fiscal mismanagement, such as double payments of bills, excessive inventories, and the payment of nonexistent overtime, is commonplace within GSA.

I am pleased to be cosponsoring legislation with the distinguished Senator from Delaware (Mr. ROTH) designed to get to the bottom of these allegations. Senate Resolution 557 would formally request the President of the United States to appoint an independent special prosecutor to investigate the charges. It is an identical resolution to the one approved by this body in May, 1973 which established the office of the Watergate special prosecutor, except that the immediate resolution provides for confirmation by this body of the President's nominee.

The GSA special prosecutor will operate within the Justice Department as an independent officer. He will function only with the assistance of the Attorney General, and without interference by him.

As the former Watergate special prosecutor, Archibald Cox, has observed, "the servant cannot investigate the master." It is both inappropriate and unreasonable to expect the executive branch, through the Justice Department, to investigate itself. It is not so much a matter of character as one of psychology. However sincere and well-intentioned, the question of divided loyalties is one that must inevitably arise when responsibilities are placed upon individuals to investigate their superiors.

An independent special prosecutor is important not only to insure that justice is actually done in the matter of GSA corruption, but to insure that the appearance of justice is conveyed convincingly to a public that is weary and cynical of Government and its leaders. The perception of bias and conflict of interest must be protected against as readily as genuine bias and conflict of interest. Our system of justice is dependent upon the credence given it by the public.

Nowhere is it more important than in the matter of investigating high-level, official wrong-doing that even the appearance of impropriety be avoided. Only through the appointment of an independent special prosecutor can we, I believe, fully achieve this result.

Further, a special prosecutor is urgently needed to put to rest the petty interagency conflicts that have thus far retarded the GSA probe. The FBI is fighting the GSA and the GSA is fighting the Justice Department, and they are all fighting Congress to assume leadership in the investigation. I can think of no better way to promote the coordination that all sides profess to be seeking than through the appointment of a special prosecutor.

The distinction between simple corruption and negligent wastefulness is sometimes a difficult one to draw. I am sure that this will prove to be the case in some aspects of the GSA situation. What is clear, however, with respect to GSA, is the overwhelming lack of respect within the agency for the public's tax dollars. As one observer has described this attitude,

> The GSA operates on a service concept—if you don't like your wooden desk, they'll get you a marble one. Who cares? Nobody has to pay.

The attitude is captured even more succinctly in a GSA memo to supply store managers encouraging them to increase their inventories.

> Don't be afraid to buy an item just because you've never had a request for it.

Mr. President, this is the arrogance of an agency with access to a seemingly endless flow of taxpayers' dollars; it is the arrogance of an agency that can create instant millionaires through the stroke of a new contract; it is the arrogance of an agency with all the best connections in all the right places.

There have been periodic investigations of GSA corruption in the past, with an occasional uncovering of abuse. I believe, however, that much of what has developed at GSA has become so much a way of doing business, and so thoroughly engrained within the agency, that

it has been lost upon the casual observer. That the corruption at GSA has become a way of life must not serve as a defense to what is transpiring there. It is long past the time that heads should have rolled at this agency—both for criminal behavior and incompetence. We need a special prosecutor, and we need one now. I strongly urge my colleagues to consider Senate Resolution 557 as a first step in that direction.

In addition, Mr. President, I might add that my office and others have been investigating corruption in the Federal judiciary, corruption in the Justice Department, and corruption in a number of other agencies of the Federal Government all of which I believe are very serious.

I believe that an investigation of GSA by a truly independent, impartial, special prosecutor will uncover the biggest mess of corruption that has ever hit this country. I believe that it will lead to the discovery of a number of problems in the Justice Department involving high-level cover-up.

I believe that we will be able to prove, within the next few years, especially if we have a special prosecutor, that some of the highest people in government, from both parties, have let the country down.

An aggressive special prosecutor, and I would suggest that he have an open field to look into other areas of corruption, will, in my opinion uncover corruption of a startling magnitude.

It is time that we quit playing games with stuff like this. We have had so much evidence of rampant abuse that a special prosecutor of renown, of ability, and impartiality; and of dedication, drive, and inquisitiveness, should be appointed so that we can solve some of these problems which are eroding our society and destroying the reputation of Government.

This investigation, coupled with others, will uncover fraud that will make Watergate look trivial and pale in comparison.

I respectfully suggest that my colleagues get behind the Joint Resolution 557 which Senator ROTH and I are proposing, and allow us to get to the bottom of this corruption. Let us start now to clean up our Government.

Thank you, Mr. President.

Mr. METZENBAUM. Will the Senator yield for a unanimous-consent request?

Mr. HATCH. I yield.

Mr. METZENBAUM. I appreciate the courtesy of the distinguished Senator from Utah. Mr. President, I ask unanimous consent that Rick Wilson be granted the privileges of the floor for today.

The PRESIDING OFFICER. Without objection, it is so ordered.

BIRTHDAY OF THE CONSTITUTION OF THE UNITED STATES

Mr. BAYH. Mr. President, all of us still remember the remarkable and exhilarating 200th birthday celebration which our country celebrated all over this Nation on July 4, 1976, which, indeed, was the 200th birthday of the Declaration of Independence.

But what a lot of us may have forgotten is that the Declaration of Independence, as important and dramatic as it was, really did not provide for the initiation of this great Government which we now are fortunate to be a part of.

Indeed, on September 17, which is Sunday, we will celebrate the birthday of one of the most important and durable documents of the history of our Government and our country, the Constitution of the United States.

It was that document and its ratification that put this country on the path which we are presently following here, 191 years later.

I would like to call the attention of my colleagues in the Senate and our colleagues in the House to a group of young Americans who have journeyed to Washington as part of the Convention II program that are gathered here in the Senate Gallery and will be commemorating this birthday of our Constitution.

I rise to call the Senate's attention to this particular moment because I have had had the good fortune over a number of years of being chairman of that subcommittee of the Subcommittee on the Constitution. As my colleagues will remember, we have had the opportunity to do battle, to discuss and to legislate in several areas involving constitutional rights, some of which have been controversial and some of which are still very current and involve the consideration of this body and the country as a whole.

But permit me to just take a moment or two to think out loud about the Constitution and what it means and how it was formulated.

As a legal document, it is not very extensive. It is only four pages in length. Today, we look at the other legal documents the average citizen is involved with and it pales in significance as to length. I think the average insurance contract is several times that length.

But as a statement of principles, we can look at it in that regard and find the Constitution has very few ringing or noticeable phrases. Most school children can recite a few passages from the Declaration of Independence, that great work of Jefferson, or the Gettysburg Address, written on the back of an envelope by President Lincoln, the great emancipator. But there are very few Americans, young or old, who can recall one line of the Constitution.

Nevertheless, in my judgment, it is the document which has preserved our Union and preserved our liberties, for 191 years. It is the Constitution which has made the hallowed but hollow Declaration of Independence a reality for the 20th century of America.

I suppose one could say it was the Declaration of Independence that held out the promise. It was the Constitution that made it possible to deliver on the promise and get the kind of performance that our constitutional government has experienced.

We should recall, however, that the future of America was not very bright at the close of the 18th century. While the Revolutionary War had been won there was confusion and chaos throughout the victorious States. The Articles of Confederation were proving to be an unworkable framework of government. Each State printed its own currency and often imposed tariffs and trade barriers against other States. The central government could impose no direct taxes at all and hence the Navy was completely abolished and the U.S. Army which had recently humiliated the British Empire consisted of 80 privates and a sprinkling of officers and sergeants. There was a real fear that our new independence would be shortlived as the several States fell to fighting and squabbling among themselves.

In fact, as some of us will recall, in the recent debate that transpired in the Senate, relative to whether we should give the District of Columbia full representation in Congress, we debated at length the reason for the distinction that occurred so far as the District was concerned. We recalled that moment in history when our Founding Fathers were meeting at Philadelphia, and a group of veterans descended upon Constitution Hall, demanding that they be paid for their services as they were promised. They created such fear and trepidation in the minds and hearts of our Founding Fathers that they literally fled Philadelphia.

It was to avoid that kind of event in the future, in which the Governor of Pennsylvania and the city authorities in Philadelphia, refused to disperse the mob of veterans, that caused our Founding Fathers, a long time ago, to structure the District of Columbia as it is structured presently.

It was in this rather unpromising atmosphere that a group of men gathered in Philadelphia in May of 1787. They were there to see if they could devise "further provisions" to the Articles of Confederation which would help reverse the deteriorating situation. In fact, they decided to throw out the Articles and draw up a whole new form of government for the country.

The real question was this: Would it be possible to weld together those 13 separate States that had fought the British and had won the war and had been loosely bound together in the Articles of Confederation? Would it be possible to pull together those 13 States into one Union, or would the disintegration continue, so that 13 separate nations would develop along the seaboard of what now is the United States of America?

Those of us who have reread that history are reminded that they met behind closed doors and locked windows through the hot summer of 1787, and they tackled a formidable task. The country had recently fought a long and costly war to escape the yoke of an oppressive centralized government. Yet, they had also learned some bitter lessons from a central government so weak as to be almost nonexistent. Great care and great compromises would be necessary.

How could we preserve the rights of the individual States in a way that would give the central government enough authority to solve the problems that exist in any nation? Most import-

ant, how, in this framework, could we preserve the rights of the most important ingredient of our Government—that is, the rights of individual citizens? No nation before or since has gone to the great care of preserving the rights of each citizen.

Mr. President, the Senate is sometimes referred to as the greatest deliberative body in the world, but it quite likely that this gathering in Philadelphia was the greatest deliberative body in the history of government. Men such as Washington, Adams, Jefferson, Madison, Hamilton, and Jay hammered out a legal document which was able to preserve liberty and the Union at the same time. Through an elaborate series of checks and balances, separation of powers and specifically enumerated responsibilities the framers devised a system of government which was strong enough to serve the people but not strong enough to oppress them. The great William Gladstone, Prime Minister of Great Britain, noted:

> The American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man.

Today, that Constitution endures. The principles agreed to on September 17, 1787, remain viable on September 17, 1978. A document drawn up to serve the needs of a small, agrarian society of some 2½ million people, clustering together for survival on the Atlantic coast, continues to function in a country of 250 million citizens—or approaching that amount—of diverse backgrounds, living across an entire continent and vast stretches of Alaska and the scenic shores of Hawaii.

The Constitution is both the legacy of our past and our hope for the future It has survived the war between the States, economic depression, two world wars, the shock of Presidential assassination, and Presidential resignation. On its 191st anniversary, it is more of a bulwark of freedom than ever.

Mr. President, I ask my colleagues to join me in commemorating this remarkable instrument of government, as well as the framers who drafted it and the men and women throughout our history who have made it the fundamental law of our society.

Mr. President, I am equally encouraged to see that there are many young Americans who are dedicated sufficiently to the principles of the Constitution that they are willing to study it, examine its history, and will be able to dedicate a little of themselves and give of themselves, their time, their talent, their new ideas, and their principles, to make this Constitution continue to function, to function better tomorrow than it has in all its glories of yesterday.

ORDER OF BUSINESS

Mr. BUMPERS. Mr. President, I ask unanimous consent that I be permitted to speak for a few moments regarding a disaster that has occurred in my State, and that the Pastore rule be waived.

The PRESIDING OFFICER. Will the Senator indicate the time he requires?

Mr. BUMPERS. Five minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISASTER IN ARKANSAS

Mr. BUMPERS. Mr. President, it is always very difficult, especially in this lofty Chamber, for any of us to translate what we read in the newspapers and see in the evening news into the real world of human misery that can strike and afflict so many people so unexpectedly and so mercilessly.

The day before yesterday, when I called my Little Rock office, they told me it was raining. They said it was pouring. When I called back a few hours later, they told me that the city of Little Rock was under water.

Sometimes, of course, your aides have a tendency to embellish and perhaps exaggerate in order to get your attention. But, of course, as everybody knows by now, it turned out to be much worse than had even been indicated.

A flash flood occurred in central Arkansas, a rain that hydrologists say could occur only once every 100 years—8 inches in a period of about 7 hours, 6 inches in 5 hours.

Mr. President, I cannot describe the indescribable results of that flood in the central section of my State. Thousands of automobiles were washed away off parking lots and off the highways. Ten people are dead so far and nine missing.

But let me go back just a moment. I have spent the last 2 months trying to get disaster assistance for a big section of my State, the agricultural areas of my State that have been hit by the worst drought in the history of Arkansas.

There are counties in southwest Arkansas, for example, that had had one-half inch of rain from May 1 until September 1. And I am talking about an agricultural area that raises soybeans, rice, and cattle.

There again, that does not sound like much, but I can tell Senators that those people are wiped out.

There are 13 counties in the southwest part of the State suffering similarly. There are many other counties in the State that have suffered unbelievable drought disaster besides those counties that maybe had an inch more rain than that, but farmers will not be able to even run a combine through their fields to harvest the soybeans, because it would not be worth the cost of combining.

We were sort of depending on cotton and rice to bail us out agriculturally this year, and as Senators know, farmers were already fighting low prices, as well as these natural conditions that occur from time to time.

Then, on top of that, there is this unbelievable flood in the central part of the State, which has not only caused tremendous economic damages to the business communities of four or five counties there, but which has literally wiped out the rice and cotton crops.

We had the prospects for one of the best rice crops in our history. It is a good cash crop. We export about 60 percent of it and help the trade deficits of this country as a result. But now the rice is down and the cottonfields are flooded, and we have gone from drought in the agricultural areas to this flood, and I can tell Senators that my State has probably never before and, hopefully, never again will suffer as much misery, as much grief, and as much economic loss in 1 year from such divergent natural causes.

I suppose I could say, Mr. President, that this is a good time for reflection for some of us who have a tendency not to be very empathetic, because as long as we do not have someone who lost a life or a crop that was destroyed or our business that was destroyed, it is very difficult to be very empathetic. I can tell Senators one thing: If they could see what has happened in my State, they would certainly pause and reflect on how frail we as human beings are, and how frail our environment and our land are, always, subject to whatever God chooses to inflict on us in any given moment.

It points out how unable we really are to direct nature. We cannot make it respond to our efforts.

Mr. President, my purpose in coming over here this morning is to tell my colleagues in the Senate and the people who will read the RECORD of this unbelievable plight in which my State finds itself. Thousands of people in my State are homeless, and thousands of businessmen and farmers are wiped out completely. Our public facilities and public services are taxed far beyond their ability to respond. And, finally, the only hope these people have is through the largesse and the assistance of a compassionate Federal Government.

So I know, because I have helped respond to the disasters of the Teton Dam and the Johnstown flood, and all the others, that my colleagues will join me in responding to the cries of help in my State that are coming now and will continue to come. It is the only hope of so many thousands of people.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess——

The PRESIDING OFFICER. If the Senator——

Mr. ROBERT C. BYRD. I withdraw the request.

The PRESIDING OFFICER (Mr. METZENBAUM). I would appreciate it if the Senator would relieve me in the Chair, so that I might introduce the motion to recommit.

Mr. ROBERT C. BYRD. Very well. I thank the Chair.

(Mr. PELL assumed the chair.)

The PRESIDING OFFICER. The Senator from Ohio.

Mr. ROBERT C. BYRD. Mr. President, if the distingiushed Senator from Ohio will yield——

Mr. METZENBAUM. I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. As soon as the Senator finishes his remarks in connection with the introduction of his motion, if at that time no other Senator wishes recognition, will he kindly recess the Senate for, say, 20 minutes?

Mr. METZENBAUM. I am very happy to accommodate the distingiushed majority leader.

Mr. ROBERT C. BYRD. All right.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. METZENBAUM. Mr. President, at this time I send to the desk a motion to recommit on behalf of myself, Mr. ABOUREZK, Mr. KENNEDY, Mr. HANSEN, Mr. BARTLETT, and Mr. TOWER.

In submitting that motion, I wish to point out to the Members of the Senate that it is slightly different——

The PRESIDING OFFICER. The clerk will report the motion.

The second assistant legislative clerk read as follows:

MOTION

I move that the conference report on H.R. 5289, the Natural Gas Policy Act of 1978, be recommitted to the Committee of Conference with instructions, that it be reported back with all references to the pricing of natural gas deleted therefrom, and that it embody the language contained in titles—

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the motion be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion is as follows:

I move that the conference report on H.R. 5289, the Natural Gas Policy Act of 1978, be recommitted to the Committee of Conference with instructions, that it be reported back with all references to the pricing of natural gas deleted therefrom, and that it embody the language contained in titles III, V, and VI of the conference report with such conforming language and/or definitions as may be required. The conferees are specifically instructed to report back with the following sections excluded from the conference report: Section 2, subsections 2–14, 18, 19, 22, 23, 30–32, 36; Sections 101 through 208; section 303(d); sections 401 through 404; sections 502(d), 503, 504(a)(1), 504(b)(3), 505, 506(d), 507, and 508; and sections 601(a)(1)(A), 601(a)(1)(B), 601(a)(1)(E), 601(b)(1)(A), 601(b)(1)(E), 601(c)(1), 601(c)(2)(B), and 602(a).

Mr. METZENBAUM. Mr. President, I do not wish to address myself to the substance of this motion at the present time, but I do want to sound an alert to all Members of the Senate to the effect that yesterday I sent to the desk and by unanimous consent had printed a motion which we intended to offer in connection with this particular measure. This motion is slightly different from that one, not greatly different but slightly different, in that it includes the deletion of some language with respect to the definition that should not be included; and for those who are particularly concerned about the substance of this motion, or particularly concerned about the pending legislation, I take this means of placing them on notice and directing their attention to the fact that this motion is different, not greatly but somewhat different, from the motion that was printed by unanimous consent.

Mr. President, is it necessary that I call the motion up at this time, or by my offering it, is it called up?

The PRESIDING OFFICER. The motion of the Senator from Ohio, as submitted, is presently before the Senate.

Mr. METZENBAUM. Mr. President, I now move that the Senate stand in recess——

Mr. CURTIS. Mr. President——

Mr. METZENBAUM. I withdraw that.

Mr. CURTIS. Mr. President, in behalf of the distinguished Senator from Alaska (Mr. STEVENS), I ask that the Senator from Alaska's instruction on the Senator from Ohio's motion to recommit be printed in like manner as that of the motion to recommit, and I ask unanimous consent that it be printed tonight for availability tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

The language submitted is as follows:

At the end of the motion add the following:

Provided, however, that all provisions of the conference report pertaining to natural gas produced in Alaska be incorporated in the conference report reported back.

Mr. CURTIS. I might say that this request pertains to Alaskan gas.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the motion just submitted be printed overnight, so that it may be available at the earliest possible moment for the information of Senators.

The PRESIDING OFFICER. It will be printed.

RECESS FOR 20 MINUTES

Mr. METZENBAUM. Mr. President, I now move that the Senate stand in recess for a period of 20 minutes.

The motion was agreed to; and at 12:45 p.m. the Senate took a recess for 20 minutes.

The Senate reassembled at 1:05 p.m., when called to order by the Presiding Officer (Mr. PAUL G. HATFIELD).

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Montana, suggests the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on the Metzenbaum motion to recommit.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER, The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON). Without objection, it is so ordered.

TIME-LIMITATION AGREEMENT—S. 2883

Mr. ROBERT C. BYRD. Mr. President, at such time as Calendar Order No. 789, S. 2883, the Corporation for Public Broadcasting bill, is called up and made the pending business before the Senate, I ask unanimous consent that there be a time agreement thereon as follows: Two hours on the bill, to be equally divided between Mr. HOLLINGS and Mr. GRIFFIN; 1 hour on any amendment in the first degree; 30 minutes on any amendment in the second degree; 20 minutes on any debatable motion, appeal, or point of order if such is submitted to the Senate; provided, further, that there be a time limitation of 2 hours on an amendment by Mr. Proxmire; and that the agreement be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Senate proceeds to the consideration of S. 2883 (Order No. 789), a bill to amend the Communications Act of 1934 to extend and improve the provisions of such act relating to long-term financing for the Corporation for Public Broadcasting and relating to certain grant programs for public telecommunications, and for other purposes, debate on any amendment in the first degree (except an amendment to be offered by the Senator from Wisconsin (Mr. Proxmire), on which there shall be 2 hours) shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill; debate on any amendment in the second degree shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: Provided further, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 2 hours, to be equally divided and controlled, respectively, by the Senator from South Carolina (Mr. Hollings) and the Senator from Michigan (Mr. Griffin): Provided, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

EXCHANGE OF CERTAIN LANDS IN STATE OF OREGON

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 12772, which is at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 12772) to facilitate the exchange of certain lands in the State of Oregon, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MARK O. HATFIELD. Mr. President, very briefly, in 1916, the United States conveyed certain lands to the State of Oregon with a reversionary clause. The State has an opportunity to exchange this land with a private landowner for lands which could be better utilized for the purpose of recreation. The purpose of the reversionary clause was to insure use of the land for recreation. By removing the reversionary clause as H.R. 12772 would, the previously Federal lands can be exchanged for the private lands more suitable for recreation and added to each State Park. The bill insures that the original Federal purpose of providing lands to the State for recreational purposes will be served through the exchange.

This bill has passed the House of Representatives. We have asked the bill to be held here at the desk.

There is a companion measure that has been the subject of hearings in the Committee on Energy and Natural Resources.

So I ask that the bill be voted upon and accepted by the Senate in the House version.

I yield to the chairman of the committee.

Mr. JACKSON. Mr. President, as chairman of the committee I am in accord with the statement made by the distinguished senior Senator from Oregon and move the adoption of the House-passed bill.

The bill was ordered to a third reading, read the third time, and passed.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MARK O. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I thank the chairman of the committee, Senator JACKSON, and the staff who helped cooperate in this measure. It is an important addition to a State park in our State, and I am very grateful to the Senate for its acceptance.

TOBACCO RESEARCH

Mr. DOLE. Mr. President, all across the country, the people are expressing discontentment over the growing problem of inflation. Recent election results support the findings of many respected public pollsters that the taxpayer is in revolt against continued excessive Federal spending.

Here in the Senate, we are faced with the problem of approving appropriation bills to support needed services for the people while at the same time, we are obligated to take a careful look at the oversee cost. Oftentimes, we find ourselves torn between voting for legitimate needs contained in such a bill or voting against unnecessary frills so often contained in this sort of legislation. Many of us have been forced to cast such troublesome votes at one time or another.

I saw an article in a North Carolina newspaper a few days ago that addressed itself to this. The writer pointed out that the public is tired of politicians campaigning on a spending platform. The people are more interested in hearing how politicians are going to curb spending in an effort to reduce inflation.

The article dealt with a recent vote by our distinguished colleague from North Carolina, Senator JESSE HELMS. As a member of the Agriculture Committee, I know firsthand just how diligently he worked with committee members, the Appropriations Committee, and here in the Chamber, to have funds for a tobacco research station in his State, reinstated in the farm bill. Because of his tireless efforts, these funds were included in the final bill.

However, the final bill also included $6 billion for funding food stamps, including food stamps for strikers, which the Senator opposed. So, our colleague from North Carolina was placed in the position of casting an unpopular vote. Voting against excessive Federal spending has been a hallmark of Senator HELMS' service in the Senate. He voted against the final bill, hoping to have it returned to committee for further study and some reduction in total cost.

It is interesting to note that the newspaper article supports the Senator in this decision. The paper found, in a rather modest poll, that the people want to reduce the Federal debt and hold down Federal spending.

The point I make is that Senator HELMS was forced to cast a troublesome vote, but he stood up to the challenge and voted his conviction that we simply must curtail Federal spending and bring to a halt the serious menace of inflation.

I am pleased that the people of North Carolina and across the country are recognizing and supporting representatives who are willing to stand in their behalf despite criticism, and do what is necessary to bring fiscal responsibility back to the Federal Government.

I commend my colleague from North Carolina, and I urge other Members of the Senate to stand firm in the battle to bring Federal spending under control.

Mr. President, I ask unanimous consent to print in the RECORD the editorial from the Independent, Fuquay-Varina, N.C., newspaper of August 24, 1978, entitled "The Whole Truth."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE WHOLE TRUTH

The rhetoric coming out of the John Ingram campaign headquarters can best be described as "humorous." We are hearing cliches such as "I'm the people's choice," and "My opponent is trying to buy the election." These cliches came to America on the Mayflower.

We had two interesting pieces of mail this week from both camps. Senator Helms announced he and Senator Huddleston of Kentucky were successful in restoring the $3 million for the tobacco research station in North Carolina and Kentucky, which had been cut from the budget.

In the same day's mail, we received a release from Ingram saying that Senator Helms is "deliberately trying to deceive the tobacco farmers of North Carolina by voting against the bill which would appropriate funds for continuing tobacco research.

When you receive such contrasting statements, many questions come to mind. Obviously someone is either lying or distorting the facts.

We checked the record to see who was doing what to whom.

Ingram wasn't lying, but he wasn't telling the whole truth either. Senator Helms had indeed worked to get the $3 million tobacco research money reinstated, but then voted against it when it came to the floor of the Senate. (The vote was 90–8 in favor.)

What Mr. Ingram neglected to tell the public was that the tobacco research funds had been tacked on to the end of highly inflationary bill allocating $23.365 billion including nearly $6 billion for food stamps; "Food stamps for people who walk off their jobs in strikes, and a 55 percent increase in federal bureaucrats to harass and intimidate farmers of North Carolina and the rest of the nation."

The bill proposed to spend $255 million more than President Carter had asked for—$255 million more than the Administration says it can spend wisely.

Is Mr. Ingram telling the people of North Carolina he would have voted in favor of the bill just to save $3 million for tobacco research? This is what we read into his statement.

If Ingram hopes to defeat an ultra-conservative like Senator Helms in a conservative state like North Carolina, he will have to change his tune.

The public has tired of politicians campaigning on a spending platform. They are more interested in hearing how politicians are going to curb spending in an effort to reduce inflation.

Several weeks ago we polled six citizens of Fuquay-Varina to ask what they thought of the Administration's effort to reduce taxes. Without exception, they said they would rather see spending cuts. The people are becoming very concerned about the national debt and double digit inflation. They feel frustrated by deficit spending and the lack of confidence in the American dollar. The person who wins the Senatorial election will be the one who pledges to reduce spending, not increase it.

In view of Mr. Ingram's failure to tell the whole truth, one wonders if he really thinks he is getting away with something. The people of North Carolina are too well informed to let a politician get away with half truths. If he is going to make political blunders like this in the future, we submit it's a good thing he doesn't have enough confidence in his chances for victory to resign his position as Insurance Commissioner. But, then, it isn't right to accept a salary for doing one job, while he is actually doing another, is it?

Mr. JACKSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. BARTLETT. Mr. President, while I have often been identified, not inaccurately, as an advocate of oil and gas producer interests, it has been because I feel that a policy of free-market pricing for energy is in the best interest of the consumer as well. I rise now to speak again on behalf of consumers, but for a different reason.

There is a provision in this conference report which has the potential of costing Oklahoma consumers $250 million during the first year following enactment. And what benefit would they receive for that $250 million? Absolutely nothing.

Section 105 of the conference report permits the operation, up to the level of the new gas price ceiling, of indefinite price escalator clauses in intrastate natural gas contracts. These include the so-called favored nation or price redetermination clauses.

For those of my colleagues unfamiliar with the nuances of the natural gas industry, a price redetermination clause is a provision in an intrastate gas contract intended to guarantee the producer the prevailing price throughout the life of his contract, in exchange for his entering into a long-term contract at a relatively low price initially. The bulk of intrastate contracts entered into in the past few years—indeed, all major intrastate gas purchase contracts in Oklahoma—contain such provisions.

These clauses operate generally by begging the contract price to the highest price paid to any producer in the area. The effect is that, when a new gas contract is signed at a higher price, most or all intrastate contracts in the area escalate immediately to that price.

The severe potential impact of these redetermination clauses on consumer gas prices in the event of deregulation was recognized long ago. Every serious piece of legislation I am aware of, calling for new gas deregulation, has included a provision to abrogate price redetermination clauses in intrastate contracts. The bill passed by the Senate a year ago contained such a provision. The President himself recognized the danger and included in his MEOW (moral equivalent of war) proposals a provision to render these redetermination clauses unenforceable. It was included in the House's rubber-stamp approval of his national energy plan.

However, for some reason known only to the select group of conferees, the conference report presently before us allows price redetermination clauses to operate, limited only by the new gas price ceiling. Thus, the report abandons the consumer protection included in both bills taken to conference.

The compromise would establish a new gas price ceiling upon enactment of about $1.95 per thousand cubic feet. Purchases of natural gas made at or near that level will trigger redetermination clauses and elevate other contracts to that price level.

For the intrastate markets in Texas and Louisiana, where higher prevailing prices have already triggered redetermination clauses to a level approaching or exceeding $2 per thousand cubic feet, the initial impact of this legislation on those clauses is probably negligible. However, for those intrastate markets in States such as Oklahoma and Wyoming, where prevailing intrastate prices have not been so high, the impact of this bill will be massive.

The prevailing price under major intrastate gas purchase contracts in Oklahoma is approximately $1.65 per thousand cubic feet. Upon enactment, gas purchases at the new ceiling price of $1.95 will quickly trigger redetermination clauses and escalate other contracts to that price.

Oklahoma Natural Gas Co., the major intrastate pipeline and distribution company in my State, estimates the impact of this legislation on gas prices in Oklahoma at $250 million during the first year after enactment.

That is a $250 million increase in the cost for flowing, contracted natural gas; $250 million for no additional gas. No advocate of deregulation in this body has called for an increase in the price of gas under contract. No producer I know of has asked for this bonus. As if by magic, though, it appears in the conference report we are considering today.

Obviously the impact will fall squarely on the consumer in Oklahoma and other States similarly situated. It is unfair, unnecessary, and simply a product of the controversial negotiations that produced the onerous piece of legislation before us.

Mr. President, I have described just one of the countless shortcomings, weaknesses, and discrepancies in the pricing portions of the conference report on natural gas policy. The report as drafted is an unworkable, unsound piece of legislation, not in the interest of the consumer and not in the interest of the Nation. I urge my colleagues to recommit the report to the committee of the conference with instructions that will provide the opportunity for gas dedicated to the intrastate market, either uncommitted or unused, to reach an interstate customer.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, first, I would like to ask floor privileges for Lee Wilson and Chris Palmer of my staff during the current colloquy.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. And also floor privileges during the discussion and votes on the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, I should first like to take note of the fact that I very much appreciate the presence of my colleagues on the floor today. We had anticipated doing this colloquy earlier in the day. But as the Presiding Officer knows, there was a scheduled hearing at 1 o'clock on a bill involving the Presidential papers introduced by Senator NELSON and myself. We had so many witnesses for that hearing that I felt it necessary to go ahead inasmuch as I was the only Senator to chair those hearings. I apologize to my colleagues for the delay. I am pleased to report to the Senate that the hearings on that legislation have now been completed. Senator RIBICOFF, the chairman of the Governmental Affairs Committee, and the ranking minority member, hopes that we can mark up that legislation and still move it forward this year.

Mr. President, a great many questions have been raised in the mind of the Senator from Illinois with respect to the natural gas compromise bill. A great many questions have been raised in the minds of many of my colleagues, and certainly in the minds of various interest groups. Ever since the conference committee report was made available, my colleagues and I have given this critical matter earnest and careful thought.

As the President said months ago, perhaps no more complex problem was ever presented to the Congress. His prophetic words have certainly been borne out.

I would like to express my undying gratitude and I know many other colleagues who feel as the Senator from Illinois does to the members of the conference, both House and Senate, who have labored so long and so hard to reach this compromise. I am particularly grateful to the Senate conferees, who stood their ground and tried so firmly to incorporate in the compromise legislation the principles of the legislation that was adopted on the floor of the Senate after long and arduous discussion.

During the course of the past several days, the Senator from Illinois has engaged in discussions with members of the administration, and has also invited to Washington various members of interest groups, such as the president of the United Mines Workers from Illinois; the chairman of the American Petroleum Institute, and president of the Standard Oil Co. of Indiana, Mr. John Swearingen; the president of the Northeastern Illinois Gas Co., and independent oil producers to hear the same set of facts from the administration that Members of the Senate have heard.

Only after hearing the facts, listening to those arguments on both sides and hearing back from many of those interest groups, have I, as a Senator, felt that I was really prepared to make a judgment in this matter.

The judgment of the Senator from Illinois will be based, to an extent, upon the responses that I have received from a list of questions about the natural gas compromise legislation that I have submitted to the administration. Some of these questions I posed directly to Ambassador Strauss, Secretary Schlesinger,

and Mr. Eisenstat the day before yesterday. From these gentlemen I sought assurances about the way this bill would be enforced if it were enacted.

The floor manager and the chairman of the Energy Committee (Mr. JACKSON) has discussed this matter with me, also.

The Senator from Illinois seeks assurances from the chairman, because of the continuing involvement the Senate Energy Committee will have with this legislation. I think others in the Senate seek these same assurances.

Those who have so adamantly opposed this bill have opposed it from such differing viewpoints. I have never seen such a diverse coalition of Senators and such a diverse coalition of interest groups across the country, and particularly in my State, as the coalition working to oppose the present legislation.

For instance, the AFL-CIO, the UAW, and other labor groups in the State of Illinois, have adamantly opposed the legislation, because they get deregulation too rapidly.

Oil producers oppose it, because they feel it is not a deregulation bill at all. It is the latter group's hope that if the Senate turns this compromise down, the committee will bring forward a better bill which will deregulate faster and move toward market pricing faster. It is the hope of the labor unions and consumer groups that the Senate will turn down this compromise and come up with a bill to continue regulation.

Given the conflicting interests of the opposition, the first question must address the reality of the present situation. If the compromise bill is recommitted, is there any chance that that bill would be improved and returned? Is there a chance that any bill would come back to the Senate to be acted upon this year?

If the bill is killed entirely by a vote of the Senate, what chance is there that the Energy Committee would begin work next year on a new bill? If they did, what chance is there that that bill would be any better from the standpoint of whatever vantage point one is looking at, the consumer's interest or the producer's interest?

I ask my distinguished colleague, the floor manager of the bill and the chairman of the Energy Committee to respond.

(Mr. SPARKMAN assumed the chair.)

Mr. JACKSON. Mr. President, I can only say that at this point in time we are at a point of the last clear chance. As chairman of the Energy Committee, I have given the best of my life for the last more than 12 months on the energy program and 90 percent of that on the gas bill, working into the midnight oil. As chairman of the Energy Committee, if the bill is to be terminated, I can only assure my colleague that I have no intention of scheduling a natural gas bill on our calendar for next year.

There are too many other high-priority items that are pending that would deny that opportunity and the attitude of my colleagues on the committee that talked to me about it is that they are of the same mind.

Second, I point out that I have been informed by—and I repeat what I said earlier—certain Members of the House conferees that are chairmen of subcommittees or committees, ad hoc committees included, that if the bill is recommitted, they do not see anything coming out of that conference. In other words, the final action here would occur, if the motions to recommit are voted down, after September 27. The House intends to get out on October 7. Bearing in mind that we were dealing with this problem for months and months, and if we are going to rewrite a bill in conference, obviously we are not going to do it in a week, they have told me that they just cannot entertain it.

I want to state, as I did in reply to the Senator from Wyoming (Mr. HANSEN) that I, of course, will follow the instructions of the Senate, whatever they are. But that does not mean that a motion to recommit to conference, which is totally different from a motion to recommit to a committee, can be binding on the House. We have two other conference reports remaining in the committee. I do not expect any great problem, but there are some amendments that will have to take place.

I can only say to my good friend from Illinois that that is about the situation that we face. It is a bill or no bill.

Mr. PERCY. There is one other question I should like to ask the chairman of the committee first, then I shall be very happy to have a response from my distinguished colleague from Oregon, who will be, next year, the ranking minority member of the Energy Committee. He can speak from the minority standpoint.

As I interpret the Senator's answer, it is that if the bill is recommitted with instructions, our instructions are not binding on the House conferees and they will not act. In effect, recommitting with instructions kills the bill. Is that correct?

Mr. JACKSON. The Senator is correct.

Mr. METZENBAUM. Will the Senator from Illinois yield?

Mr. PERCY. The Senator would like to finish this colloquy; then, of course, I shall be happy to yield to the Senator from Ohio.

Now suppose this bill is not recommitted, but voted down by the Senate. Am I correct in saying that it is not the intention of the Energy Committee to do anything with this legislation in the year 1979? Even if, say, in 1980, the Energy Committee took up the natural gas issue, does the chairman think that looking back at the experience of the past 12 months, the committee could come up with a much different, much better bill?

Mr. JACKSON. My reply is that, looking back 30 years, this is the first time since the beginning of the legislation, which goes back, I think, to 1933, if we are successful with this conference report, that we will have legislated comprehensively, Mr. President, on natural gas.

I was here with the distinguished Senator who is presiding back when Mr. Truman vetoed the attempt to take away the regulatory authority. I was here when President Eisenhower vetoed the natural gas bill that had been passed by both bodies in 1956.

So my answer to the question of the Senator from Illinois is that I do not intend, unless I am overruled in the committee, and I would doubt that, to take up a natural gas bill, a comprehensive bill, in 1979 or 1980, because we have top-priority legislation pending that has to take precedence. This has taken all of our time. It has preempted other legislation of great urgency and great importance.

Mr. PERCY. Is the other legislation of considerable interest to a majority of the membership of the Energy Committee? Is the chairman likely to find other committee members anxious to move forward with this other legislation that would then take precedence?

Mr. JACKSON. I can best answer that by asking my good friend from Oregon (Mr. MARK O. HATFIELD) to respond from the other side of the aisle.

Mr. MARK O. HATFIELD. I shall be very happy to respond. I should like to say first of all, as one who has reserved his judgment on a final decision on this conference report—that is to say, I have not yet decided whether I shall vote for it or against it, not because of the natural gas bill in and of itself, but because of an apparent coupling of this issue with the breeder reactor issue, which I feel a little more strongly about—I should like to underscore what has been stated by the chairman of the committee. If I am returned to the Senate this particular election year, to the next Congress——

Mr. PERCY. If I may interrupt, when the distinguished Senator from Oregon is reelected and returned with an overwhelming mandate from the people of the State of Oregon.

Mr. MARK O. HATFIELD. I appreciate that confidence of the Senator from Illinois. I only wish he were registered in my State to carry that out in a vote.

I only wish to say I want to underscore what the chairman has said about the unresolved issues pending before the Senate Energy and Natural Resources Committee. First of all, we shall have on the Hill, at the beginning of the next Congress, the RARE–2 study. RARE–2 is a roadless area study which involves 60 million acres of Federal forest lands which are vital to the Nation and most especially to the Northwest. This committee will have to consider that report, will have to make a determination as to the return to multiple use or additional wilderness acreage, or whatever. That is going to take a significant amount of time.

No. 2, we will not, in my opinion, be able to resolve the Alaska land selection program that is now referred to as the d–2 land selection program before our committee this year, for the simple reason that the Senate version will be very drastically different from the House version. If the House goes out on October 7, it is very doubtful, in my opinion, that we shall be able to get together in conference and resolve that particular complex issue. Therefore, the Alaska land

issue will be before the committee in the next Congress.

Third, there is a Northwest power bill that is very important to the Senators from Washington and to the Senators from Idaho, Oregon, and Montana, and that issue is going to have to be resolved, involving the powers of the Bonneville Power Administration.

Those are just a few of the examples of the complex, important issues that, in my opinion, have higher priority than a deregulation issue on natural gas, having experienced the difficulty with the House of Representatives in getting to this point. As to those who want to return the bill to the committee, I understand their strategy and I understand their purpose. But I only say that, in my opinion, that also is going to be very difficult to resolve even if that prevails, as far as the House of Representatives is concerned. We might be able to reach an agreement in the Senate committee on the recommital with instructions; that does not mean we are going to be able to get together with the House of Representatives in a conference and settle this.

All I am suggesting is that, in my judgment, and I have been wrong before—I predicted Thomas Dewey's election in 1948. I only want to say that as far as I can best judge the situation today, I agree with the chairman that there will be no natural gas bill in the next session of the Congress because of the priority of these other issues.

Mr. PERCY. Could I ask one further question of my distinguished colleague?

Taking into account the probable makeup of the Senate in the next Congress, in the judgment of the Senator from Oregon, does he feel that, if natural gas is taken up in the next Congress or the Congress after that, and we spend another 6 months, 8 months, 12 months on it, there is any reason to believe that the Senate or the Energy Committee, would vote out a bill much different from this balance between those who want no regulation of any kind and those who wish to continue regulation into the future?

Mr. MARK O. HATFIELD. I have no way to project into the future with any certainty at all. But I would say, based on the facts as we see them today, I think there is little likelihood we are going to get a much different kind of bill.

Let me go back and remind ourselves of one simple fact: I believe if we could have come to the floor with the original Senate compromise, we would be in a far stronger position than what we are.

I have to say that, in all honesty, this is a bastardized version of what was the original compromise proposal. It would be an administrative nightmare.

But I do believe if it is possible to get a bill of this kind even adopted, it is easier, the climate more conducive to correctings it once on the statute books, than starting from square one.

That is a value assessment I make.

Second, I would only make this additional gratis political assessment. In my opinion, the closer we get to the 1980 Presidential year, the less likelihood we are going to resolve this kind of issue that has evoked so much emotion and intense feeling on all sides.

So that is an additional observation I would offer.

Mr. PERCY. The Senator from Illinois has five additional questions he wishes to put to the floor managers of the bill.

Mr. BARTLETT. Will the Senator yield?

Mr. PERCY. I will yield first to the minority floor manager of the bill, the distinguished Senator from Wyoming, for a brief response on this general question; then to the distinguished Senator from Ohio who asked next; then to my distinguished colleague from Oklahoma for a response also; and, if the Senator from Virginia would like to comment on this particular question, I would be happy to yield to him.

Mr. HANSEN. Let me express first my appreciation to my distinguished and valued colleague from Illinois (Mr. PERCY) for his kindness.

The question seems to be, as we started this colloquy this afternoon, everyone is agreed we need an energy policy. I say, rather, that everyone is agreed we need a good energy policy.

I make the distinction between this bill before us and a good energy policy.

For those who have read the Forbes magazine article recently showing that we actually have increased the amount of natural gas available this year, there have been a number of new wells drilled over and above what we might otherwise have expected, shows clearly that, despite the fact that it is not proof, the present status quo is working.

The Forbes article concludes by saying the problem is not so much the failure of the Congress to pass an energy bill as it is the problem of too much regulation.

The second point I wish to make, Mr. President, is that the distinguished Senator from Washington has said that he would not, on his own volition, schedule any hearings on any action on a natural gas bill next year if we failed to pass one this year.

Let me say, that seems strange, indeed. If this bill, the centerpiece, as the President of the United States puts it, if this gas bill—the centerpiece used to be the crude oil equalization tax, but when the word got down to 1600 Pennsylvania, that went down the drain. There was no way that was going to be passed. Then the President said, "Well, actually, the centerpiece is the natural gas bill."

He spoke about, earlier on, that the energy package was the moral eqivaulent of war. There was nothing as important to the people of the United States as was a resolution of the energy issue.

Now, granting that the President has shifted a little bit, if it is still true this is the most important piece of legislation we have, I would be very interested in knowing what the priorities are in addition to those bills that have been mentioned by the Senator from Washington and the Senator from Oregon that are of greater importance than is the passage of this bill.

I say that because it is my contention that if we come up with a better bill, and I would say in all honesty that will not be hard to do, if we come up with a better bill than that before us now, I cannot believe that the House of Representatives would turn its back on that compromise and I cannot believe that the President of the United States would say, "Well, we have made a fair effort, it has been a long and very wearisome effort."

I cannot believe the President of the United States, the distinguished Senator, the chairman of the Energy and Natural Resources Committee, and my good friend from Oregon, who will be the ranking member next year—and I agree with my good friend from Illinois that, indeed, MARK HATFIELD will be the ranking member on the Energy and Natural Resources Committee next year—I cannot believe that all of a sudden we would say we would not any longer worry about this. If it is as important as we are led to believe now that it is, how in good conscience could the Members of this Congress say, "Well, we've tried, we didn't make it, so we're going on to something else and plow other fields."

Mr. PERCY. Would my distinguished colleague from Wyoming just enlighten the Senator from Illinois on one point?

Mr. HANSEN. I will be happy to, if I can.

Mr. PERCY. We are practical men. We live in the practical world. In fact, the three of us have been here exactly, almost to the moment, the same length of time.

Now, with the clairvoyance and wisdom of 12 years, having heard the chairman of the committee and knowing the force of his personality, having heard the ranking minority member and knowing that he is a man of his word, that he is a man of priorities, determination, and some degree of influence——

Mr. HANSEN. I quite agree.

Mr. PERCY (continuing). Could the distinguished Senator from Wyoming care to make a wager with the Senator from Illinois that if this bill is recommitted to committee, and a better bill or any bill for that matter, comes back to the floor of the Senate next year or early the following year?

Our wager may be illegal, but our immunity may help us in that respect.

Mr. HANSEN addressed the Chair.

Mr. METZENBAUM. I would like to advise the Senator that I am prepared to take half of his bet, if he wishes, with the distinguished Senator from Illinois, because I do, indeed, believe a bill will come back, because I cannot believe the House of Representatives can be that irresponsible, out of a sense of feeling, to say they will not have a national energy plan.

If I may take just a moment and if the Senator from Wyoming will yield to me, because——

Mr. PERCY. If the Senator from Wyoming will answer the question and the Senator will then complete his comments, the Senator from Illinois will be happy to yield to his colleague from Ohio.

Mr. HANSEN. My answer is an unequivocal "Yes," and I will say why.

Mr. PERCY. How much was the amount of the wager?

Mr. HANSEN. A dollar to two ninety-eight.

Senator JACKSON says I need to bet one of the steers if I do not want to risk the full ninety-eight, and the way the prices are, that would be huge, I must say.

My answer is "Yes." I will say why.

The Senator from Illinois spoke about the fact that people from his State oppose it. Different interest groups, the labor groups on one side, the producers on the other.

It is not surprising we would find that kind of opposition, for a very good reason. If there ever was a gerrymandered bill put together, I thought the Panama Canal was the high-water mark, but it is not even in the ball game compared to this bill.

Everything that was necessary, every kind of a concession, every kind of an accommodation that was important in order to get that magic number of 9 Members from the Senate and 13 from the House was incorporated into this bill.

The Chairman of the Federal Energy Regulatory Commission, as well as Sheila Hollis, says that this will involve years of litigation. It is going to require 325 more employees, an additional $10 million, and the supportive personnel——

Mr. ABOUREZK. Mr. President, will the Senator yield briefly on that point?

Mr. HANSEN. No; I cannot. I am answering the Senator from Illinois.

My answer is, "Yes," and I will tell the Senator one additional reason why.

If we go to the House with the same dedication and the same commitment that the conferees earlier had, not to move toward deregulation—and that is a factual statement—then if we go over there with a better bill, and I think we can have a better bill, I believe that the prestige and the influence from the White House will be on the leader, Mr. O'NEILL, and others there to look very carefully at the kind of package we would propose. My prediction, up to 298, is that we will get that bill.

Mr. PERCY. The Senator from Illinois would be happy to wager his house in Georgetown against the ranch in Wyoming of the distinguished Senator from Wyoming that that will never occur.

I yield at this time, for the purpose of answering this first question of a series of six questions, to the distinguished Senator from Ohio. Then I will yield to the distinguished Senator from Oklahoma.

Mr. METZENBAUM. Mr. President, I thank the distinguished Senator from Illinois for giving me the opportunity to respond to his question, because I think it is one of the questions that is concerning a lot of people. It is a question that nobody can answer with certainty.

You can speculate, you can guess, you can give an opinion, but even the wisdom accumulated in the years of service of the Senator from Illinois, the Senator from Wyoming, the Senator from Washington, and the Senator from Oklahoma cannot predict with any accuracy what the House is going to do.

As a matter of fact, as some indication of that, it should be pointed out that the distinguished chairman of the Energy Committee, who is responding as to what the House will or will not do, is in the minority at this moment, so far as the Senate is concerned, with respect to members of the Senate conference committee; because now the vote is 9 to 8 on supporting those who believe that this bill should be recommitted and that this matter should go back to the conference committee. So there is a strong push in that direction.

It is fair to point out that, at the very best, the House had only a one-vote margin in order to stand by its position. So there certainly is a kind of concern in the House.

I believe that the Senator from Illinois, who I consider to be one of the most distinguished Members of this body, one of the ablest Members, who has shown great, good judgment on many occasions in the past, can hardly make a decision that will have such an unbelievably negative impact upon his State as will this bill, based upon somebody's conjecture as to whether we might or might not kill the bill or send it back to the conference committee, because I do not believe that any of us would be responsible if we did that.

This bill will provide an incentive for all the industry in the State of Illinois that uses natural gas to move to the producing States, where they will be able to buy natural gas at substantially lower prices. This bill will provide an increased cost to the consumers of the Senator's State with respect to natural gas as compared to industrial users.

It seems to me that where we have a measure that has such major impact as this on one's own State, one cannot base a decision purely on conjecture.

I point out, further, that when the President originally came forward with this measure and when the distinguished Senator of the Energy Committee was advocating the Natural Gas Pricing Act, it was on the basis that the President would have the right to go into the Southwestern States and move gas into our States—my State and the Senator's State—alike. That is not in the bill any more. In spite of that, the Senator from Washington—and I respect him—has changed his position and has taken a bill that no longer has that provision in it.

So I say to the Senator from Illinois that although we might say today that something is black, we might change our view with respect to it tomorrow.

I know the Senator from Illinois has four or five additional questions, and I would enjoy participating in a colloquy with respect to them, but I cannot do so because I have to catch a plane.

I hope that the Senator from Illinois would not make his decision based upon what he thinks may or may not happen—not next year but this year—because I do not believe that the House is irresponsible. I do not believe that 435 Members of the House want to go back to their home States and say, "We killed the national energy program."

I sincerely believe that if we indicate that we want an affirmative answer—the alternative that we are advocating—the House will act with responsibility. I think my good friend from Wyoming will win his wager with my good friend from Illinois, and I believe that the people will benefit as well as the Senator from Illinois.

Mr. PERCY. I thank my colleague.

The Senator from Illinois wishes to proceed with the colloquy, so as to make legislative history in this matter.

The answers that the Senator from Illinois receives to subsequent questions may well be determining in the decision being made. Obviously, those questions will be directed at the substance of the compromise legislation before us. But we will get on with that just as quickly as we have a response on the first point, as to what the legislative outlook would be if we were to recommit or defeat the compromise.

I turn to my distinguished colleague from Oklahoma for a brief response. He has labored very hard, indeed, to fight for the provisions he believes in, and he believes in deregulation, as does the Senator from Illinois.

Mr. BARTLETT. I thank the distinguished Senator from Illinois, my frequent tennis-playing opponent and fellow supporter of deregulation.

A quick aside as to what Senator ABOUREZK said: Why should the States spend their money to enforce a Federal law? I think there is a big question as to whether the State regulatory bodies will take any action to enforce a Federal law, spending State revenues. So, I think the $30 million figure will be far less than will be required.

Second, I believe the distinguished chairman of our committee said yesterday that the highest priority facing Congress today is the natural gas question, and it certainly is. If his dour predictions would come true and we did not pass a bill, if it were recommitted and the instructions were not followed by the House—they will be followed by the Senate Members, because we do have a 9-to-8 majority—it still would be a high priority and still the highest, I believe.

The Senator asks the question—and it was a very good question—about the committee reporting a comprehensive energy bill or a natural gas bill. The committee, in the time I have been a member, took no initiative on its part to report a bill until the administration introduced a five-point energy bill, four points of which came to the Energy Committee. Then the chairman did make an effort to report the bill. It was reported, without favor or disfavor, so that there would be a bill on the floor.

The distinguished Senator from Illinois supported both Pearson-Bentsen bills, and he knows that there undoubtedly will be an effort made in the next Congress, as there was in this Congress and before, to pass a deregulation bill. We have passed the Pearson-Bentsen bill twice. It did not come from the committee, even though the committee had Senate Reso-

lution 45, I remind the Senator. I am sure he voted for that. That was introduced by the distinguished Senator from West Virginia (Mr. RANDOLPH) some time ago, in the interest of doing something about natural gas.

And yet the Energy Committee failed to do that.

If we have the instructions as outlined in our recommittal motion, and we could have even more or different instructions on subsequent recommittal motions if it fails, we can have the basis of a good interim solution to the energy problem. And then there is no question in my mind, and I think the Senator will agree, that natural gas is going to remain the No. 1 issue for this Senate. It may not be the No. 1 issue for the Committee on Energy and Natural Resources, because it never has been. It has not been in the past, even with the extra staff members that Senate Resolution 45 provided.

The distinguished Senator from West Virginia introduced this resolution in 1971. Senator JACKSON said at that time that the committee would not fail to act on this resolution, but that it would face up to certain things, including natural gas. But it did not.

I do not think the committee will face up again to natural gas or other energy problems because it never has, and I think it has only been because the full Senate has seen fit to deal with the high priority of natural gas that we have had the effective results we have had in passing the Pearson-Bentsen deregulation bill twice. We almost passed the Buckley bill, which I think the Senator supported, before that.

So the answer, when we receive it from the chairman and ranking member, is that they are not going to report out an energy bill. Obviously they are not; they never have before, and I do not think they will in the future.

Mr. PERCY. So the Senator concurs, then, that if this bill is recommitted or defeated, the Nation will not have a different energy policy next year, or perhaps 2 or 3 years.

Mr. BARTLETT. No, I do not concur with that at all. I feel very strongly, and I wish the Senator would listen to this, that if we pass the recommittal motion with instructions, there will be provided the opportunity for the President to declare an emergency in the event of a natural gas shortfall, and to exercise means to resolve that.

In addition to that, with authority from the Federal Energy Regulatory Commission, there can be unused and uncommitted gas from the intrastate market flowing to the customers in the interstate market. There is excess gas in the intrastate market now which has depressed the price in my State.

The Federal Energy Regulatory Commission will be required, if there is no pricing action taken now, to set a price on natural gas in the interstate market. When they do this there will be more gas which will be committed to the interstate market, just as there was in 1977 when the equivalent of 80 percent of the requirements were committed because of the price of $1.45 that prevailed at that time.

So I think the solution that we are providing will be a very good interim solution. Then the Senate and the House of Representatives can deal with the No. 1 priority, which will still be the pricing policy for natural gas and oil.

Mr. MATSUNAGA. Mr. President, will the Senator from Illinois yield?

Mr. PERCY. I am happy to yield to my distinguished colleague from Hawaii who was not here at the introduction of the colloquy. The issue now before the Senate is to try to determine whether or not if we recommit the bill there is any chance for different legislation to come forward this session or if we defeat the bill whether there will be any chance in the foreseeable future for there to be a better piece of legislation.

Mr. MATSUNAGA. I fully understand the question, and I am on my feet to help to answer that question for the Senator from Illinois.

As a member of the conference committee, as a former Member of the House of Representatives, where I served for 14 years until I came to this body only last year, I believe I am in a position perhaps better to understand the personalities involved, especially personalities of the conferees from the House side. I stand here in complete agreement with the chairman of the Energy and Natural Resources Committee, that in the event of a recommital of this bill there will be no bill this year, that there will be no bill, that is, on natural gas next year either, and that, as the Senator from Illinois well knows, will be tragic. As a businessman I think the Senator fully realizes that there are many in the banking industry today who are very much concerned.

If I may have just another less than half minute I wish to call attention of the Senate to one statement which was made last week—I believe a letter was sent to the Senator's office also—by Gordon I. Wallis, chairman of the Irving Trust Co. of New York, and I quote from parts of it.

> The world is anxiously looking to the United States for affirmative action on the energy front. Our failure thus far to take such action has been an important factor in the dollar's decline on international markets.

And of course, recommittal, would mean defeat.

> Defeat of this measure would have a significant further negative impact on the value of the dollar abroad, with serious repercussions for all Americans.
>
> For this reason alone, it should be passed.

And he goes on further to say:

> The definite schedule of increasing ceiling prices and ultimate decontrol will help bring about the rising domestic output necessary to reduce our reliance on imports and to provide a continuing flow of domestic gas for home and industrial use. I hope you will do what you can to bring about passage of this bill.

It is also my understanding that Mr. George W. McKinney, Jr., chief economist and vice president of Irving Trust, signed a similar letter.

And only a few nights ago I met, with one other Senator, with the Minister of the Environmental Protection Agency of Japan, and he expressed the view that has been expressed continuously, not only by leaders of the Japanese nation but by leaders in the European economic community as well.

I was in communication by satellite on a State Department program with the Vice President of the German Bundesrat, for example, and they all expressed concern that unless the Congress of the United States gets an energy program out this year it will signify to them an unwillingness or an inability of the United States to resolve the energy crisis and if the United States fails to meet that crisis it will not only lose its leadership in the world economy but it will also lose its leadership in matters pertaining to the world's security which would, of course, mean the security of our country as well.

And for this reason, and as I understand it the Senator is genuinely uncommitted at this point, I think it befalls upon all of us that we get an energy bill out this year if we are thinking in terms of the welfare of our Nation and the welfare of the world.

I thank the Senator for yielding.

Mr. PERCY. I thank my distinguished colleague.

Before we close this first question, I wish to pose a question to the distinguished majority leader.

In his judgment what will be the outcome of a vote to recommit this bill? What will be the likely events to follow if the Senate defeats the compromise gas bill?

Mr. ROBERT C. BYRD. The Senator asks two questions. What will be the consequences of a recommital of this bill? The second question is, What will be the consequences of a rejection of this conference report?

Mr. PERCY. That is correct.

Mr. ROBERT C. BYRD. The answer that I make is as follows: I will answer the second question first.

(Mr. GLENN assumed the chair.)

Mr. ROBERT C. BYRD. What will be the consequences of the rejection of this conference report? The rejection of this conference report means that the bill is dead. A rejection of the conference report kills the bill. It also means that, for many practical reasons, there will be no bill embracing long-term national energy policy with respect to natural gas pricing at all this year.

Why do I say that? I am simply looking at the calendar, for one thing. This being the 15th day of September, only 3 months and 18 days remain until a new Congress convenes on January 3. In those 3 months and 18 days—during that time—there is an election, a national election. It is the intention of the leadership to either adjourn sine die by October 14 or to adjourn by October 14 subject to coming back into session following the election.

Let us take the latter as the worst case. Let us say that the Senate works up until October 14 and then decides to come back because it has not completed

its work and must come back after that point.

Now, there are several very important engagements that have been scheduled by Senators that have to be met. For example, there are engagements and schedules, and so forth, that deal with international matters involving Senators that would mean that the Senate could not come back, in my judgment, before Thanksgiving.

So at the very best I should think the Senate would not be able to come back into session before the 27th of November, in which case only 3 weeks would remain prior to Christmas week.

If the Senate, however, came back before Thankgiving it is my judgment that it would not work beyond the Thanksgiving week or shortly after the week following Thanksgiving which would still mean the Senate would have about 3 weeks after the election.

Let us count the days beginning with next week and include Saturdays, which is somewhat of a fiction, for the most part. There would be 6 weeks; 2 weeks in September, 2 weeks in October. If it becomes absolutely evident that the Senate will not complete its work by the 14th, it may very well go out earlier, realizing we would have to come back. In November, the best that could be done would be 2 weeks, and the best that could be done would be 2 weeks in December. That is the maximum, 8 weeks, all Saturdays included, which would be 48 days. Every Senator here knows we are not going to be in session eight Saturdays, barring something like a war.

Eliminate these Saturdays, and that is 40 days. We are told that it rained 40 days and 40 nights back in the time of Noah, and the waters covered all the Earth. I would like to say to the Senator from Illinois that in those 40 days of legislative session there will not be 40 nights. There will be 40 days, but let me tell the Senator what will be raining. It will be a flood, and I will tell the Senator what that flood will consist of.

Here is the remaining "must" legislation: Four energy conference reports—natural gas, public utility rates, energy conservation, and, hopefully, the energy tax conference report; a major tax cut; the Labor-HEW appropriation, which is not something that will pass the Senate by unanimous consent. It is not something that is likely to pass in a single day. Recent experience will teach us that, because that bill is a lightning rod for every kind of amendment one can imagine. You name it—abortion, busing, just name it—and it is there.

There is the Department of Defense appropriation, and before we pass that bill we need a new authorization bill because the President has vetoed the bill that we passed; the foreign assistance appropriation—another bill that is not likely to be passed within a 30-minute period. It takes time to pass these bills. So, we have the HEW appropriations, Defense appropriations, foreign assistance appropriations, and tax bill. It takes time. We can spend 2 weeks on the tax bill. I have seen it happen. I have seen the Senate spend a week easily on the HEW appropriation bill. I have seen the Senate spend 6 weeks on a military authorization bill.

Additionally, we must act on the New York City appropriation, mass transit authorization, marine protection authorization countercyclical revenue sharing, and vocational rehabilitation authorization bills; the public health services authorization—we do have a time agreement on that, but even with a time agreement that bill could take 2 days, it could take 3 days, depending on how many amendments are offered; the Nuclear Regulatory Commission bill, which is an important bill. We have a time agreement on it already, but depending on the number of amendments that are offered, that bill can conceivably take a day or two. Then there is the public broadcasting authorization—we have a time agreement on it already, but I do not know how many amendments will be offered to it.

Add to these the Department of Energy authorization, the national security part; Department of Energy authorization, the civilian part—those are two separate bills; Export-Import Bank authorization, rail services assistance authorization, sugar stabilization act authorization, omnibus parks authorization, and Regulation Q extension. Then we have here this talk from the majority leader that we hope to finish our work on October 14. Is this man talking realistically, or is he seeing visions and dreaming dreams?

That is not the end of the list. Those issues I have mentioned are absolutely necessary measures. They involve appropriations, and they involve bills that deal with expiring authorizations.

On October 14, every Senator here is going to want to pack his bags, go home, and stay home after the election. He is not going to want to repack his bags and come back to Washington and attend Senate floor sessions, because when he comes back here after the election he is going to get everything thrown at him but the kitchen sink. Somebody is going to want brought up every controversial bill on the calendar. You name it, somebody will want it brought up.

Mr. PERCY. The Senator from Illinois would like an answer to his question.

Mr. ROBERT C. BYRD. Let me finish. I am trying to answer the Senator's question.

Mr. PERCY. Having heard the distinguished majority leader thus far, the Senator from Illinois, who happens to be running for reelection himself, believes he had better arrange to vote absentee, because it does not look to the Senator from Illinois as though he is even going to get home to vote for his own election, with that kind of schedule.

Mr. ROBERT C. BYRD. Wait until I finish. The Senator might not even have time to fill out his absentee ballot.

Mr. President, here is some other high priority legislation. Listen. Listen, now. Let me have all ears.

The Department of Education bill.

Hospital cost containment. This is one of the pillars on which the President has based his anti-inflation drive. The Senate has passed the airline deregulation bill, but hospital cost containment is still ahead of us, and the people of this country want action taken with regard to inflation. It is the most unfair tax of all that is placed upon the American taxpayers. Hospital cost containment is an important measure.

We have two measures in that category: A measure supported by Mr. KENNEDY, which I think represents the administration's approach, and the measure which is supported by Mr. TALMADGE and Mr. LONG, which will help curtail some of the expenditures of medicare and medicaid, and so on.

Now, listen to this one: ERA extension. Has any Senator heard from any constituent?

Mr. PERCY. The Senator from Illinois has heard enough about that one.

Mr. ROBERT C. BYRD. On ERA extension? I have heard from both sides.

Humphrey-Hawkins. I would like to see it brought up, but it will take some time. The sunset bill. The Senator from Maine (Mr. MUSKIE) has spent a lot of time on that. The Senator from Illinois (Mr. PERCY) has also spent a lot of time in this field.

The antiterrorism bill. Electronic surveillance legislation, and Alaska lands.

I have heard it said that there will be a filibuster on the Alaska land legislation. How many filibusters can we have in 40 days? And 40 nights; when one talks about filibusters, one is talking about nighttime sessions also.

And do not forget our old friend, labor law reform legislation. It is not dead yet.

Then the fair employment practices resolution. I see some discussion on that.

Then there is the interstate gambling bill, with a lot of pressure for the Senate to take some action on that.

So that is the menu, and the legislative esophagus and the parliamentary stomach can only swallow and digest so much.

Now, you tell me——

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

(Mr. ZORINSKY assumed the chair.)

Mr. JACKSON. After listening to all that, I think the Senate ought to come up with some political dyspepsia pills.

[Laughter.]

Mr. ROBERT C. BYRD. Now, I have been privileged that the Senator from Illinois asked me this question, because I think this ought to be laid in the RECORD, so that Senators will see just what we have remaining as a workload.

Energy legislation has long been our top priority. When? When? I have seen blood spilled all over this carpet during the fight on the natural gas bill, from the filibuster last year on this bill. Let me say right here parenthetically, I did what I had to do to save that bill, and I would do it again today. I would do it again tomorrow, to save that bill.

If the action that was taken last year to save the natural gas bill had not been taken, we would not now have this conference report before the Senate, because the bill would have been killed then and there.

Now let us talk about what would happen if the conference report goes back to conference. If the conference report is sent back to conference, keep in mind that those conferees spent—10 months?

Mr. JACKSON. Over 10 months.

Mr. ROBERT C. BYRD. Over 10 months in conference. They spent time in conference when I, who was not a conferee, did not have to go to conference. I had some weekends. I had some recesses. But they had to work in conference.

Do you know how many signatories there were on the House side? Thirteen out of 25. Now, I was a pretty good math student when I was in high school, and my mathematics tell me that if there had been 1 less than 13, there would not have been a conference report. It has to be signed by a majority; 12½ is even, so 13 is a bare majority.

How many signatories were there on the Senate side? Nine out of 17; again, a razor-thin majority.

So we have a conference report brought back here which represents the diligence and the hard work and the frustration of all the conferees, every one of them. It is a compromise—that was all that could be gotten. Now, if that compromise goes back to conference, what happens?

Let us say that the House conferees would agree to the Senate's instructions. And the Senate's instructions have not a bit more to do with those House conferees than those Senate instructions have to do with my grandchildren. And that is zero. As a matter of fact, it is absolute zero, which is about 459 degrees Fahrenheit. It is way below zero on either the Centigrade or Fahrenheit or Celsius scale, whatever one's choice may be.

But let us, just for the sake of argument, say that the House conferees would fold up and say, "Well, we accept."

What happens? A new conference report has to come back here, and that new conference report has to be signed all over again. All over again. Because sending this conference report back to conference really puts the thing right back where it was, and where it was for 10 months. If those conferees change one word, it is a new conference report. It has to be signed all over again. Even if they do not change one word, one semicolon, or one comma, if they just take a look at it and kiss it, and send it back, it has to come back as a new conference report, because the Senate will have rejected the first conference report and sent it back to conference, and the work there is all to do over again. If there were not one iota of change in that conference report, yet it has to come back with a new number on it and a new date on it; it is a completely new conference report, even though every word of it may be exactly the same as the conference report we have before the Senate today.

(Mr. ZORINSKY assumed the chair.)

Mr. ROBERT C. BYRD. It would be a new conference report. It would have to have a new date and a new number on it. And, here is the rub—it would require the signatures of a majority of the House conferees and a majority of the Senate conferees all over again.

Now, you tell me that that is going to be easy and I will kiss your foot, if you turn out to be right. As a matter of fact, I will kiss both feet.

So we have the problem of those conferees having to go back and put their noses to the grindstone again. We have the problem of having to get an agreement on the part of the other body, which is no part of these instructions. And even the Senate conferees, under the precedents, are not bound by the instructions. The instructions are advisory. No point of order can be made against a conference report if the Senate conferees do not act in conformity with the Senate's instructions. I hasten to say, however, that contrary to the honestly held feelings of some, I believe that those Senate conferees would accept the Senate's instructions as binding on them and they would do their best.

But you have the House conferees, and they were tough during these 10 months—t-o-u-g-h. I have been in conferences with the House, and I have always found them tough.

Like old Joe Clark, a rough old man, a mean old man was he, "he knocked me down with his right hand and walked all over me."

That is the way with those House conferees. They are tough. I used to be over there. I found out after getting over here that those fellows really are tough; they know what they are talking about. For some reason or other, I thought at the time that they really had it in for the Senate because they can really be mean.

I think that pretty well answers the Senator's question as to what would happen if we send this report back to conference. We would have to deal with a new conference report, signed by 13 out of 25 of the House conferees, and 9 out of 17 Senate conferees. Time is running out, and the sands in the hour glass are dropping one by one by one. So just forget it. There will not be a bill.

There is one other thing we should not forget. If another conference report is brought back here, who will guarantee me—who will guarantee me—that we can get that conference report up and get any agreement on it whatsoever timewise and not be faced with a filibuster? As the days come and go and the year runs out, who can guarantee me that we would get any kind of time agreement? As the time draws to a close, those who oppose any bill at all—and there are some in the Chamber who just do not want any bill at all, and they make no bones about it. They are honest and I respect them for it. I respect the man who says, "I do not want any bill at all, I will do anything in my power to kill any bill."

But as the days run and the Sun sets on the 95th Congress, the rules play into the hands of those who do not want any bill at all.

Fortunately, we have a time agreement on this conference report, but who will assure me that, if any conference report came back, we would be able to get an agreement on it.

So, Mr. President, in short, in sum, it is take it or leave it. Every Senator must make the choice. Kill the conference report, kill the bill. No bill this session. To send the conference report back to the conference, practically speaking, and realistically will kill the bill.

They have had a tough time in the House of Representatives even with its rules. They have had a tough time over there dealing with this bill. I sometimes wish we had the rules of the House in the Senate. My, what we could not do. Oh, boy. I would love it.

We would do away with Senate Rule XXII completely. Just do away with it. One could go to the Rules Committee and get a rule that would say not one amendment is in order on a bill, not one. Or you could go to the Rules Committee and you could get a rule saying only one amendment can be offered and that amendment is thus and so, and it can only be offered by the chairman of the committee.

There is where the minority stands in the House of Representatives, the minority. But in the Senate the minority is protected. How about those rules of the House? You would really need a fair majority leader here then. If we had the rules of the House here, you would praise the junior Senator from West Virginia every day and you would pray for him every night.

Mr. HEINZ. Mr. President, we still pray for him every night.

Mr. ROBERT C. BYRD. I thank the Senator. I cherish his prayers. The prayers of a righteous man availeth much.

Mr. President, does the Senator have any further question? [Laughter.]

Mr. PERCY. The Senator from Illinois, having asked this question some time ago, never would have believed that during the course of this colloquy the offer might be available for any Senator to have the majority leader kiss his foot. It is a tempting offer, but I think there is no more eloquent answer, if not brief but eloquent, and realistic and practical, than the answer given to that question which every Senator must ask himself: If this action is taken, recommit or defeat, what is the likely consequence? The distinguished majority leader is more practical about that issue than anyone else. Certainly, what he has said has been supported and buttressed by the chairman of the Energy Committee and the ranking member in the next session of Congress. I think every Senator should address himself to that issue.

Mr. ROBERT C. BYRD. The compliments of the Senator from Illinois have buoyed me into the stratosphere.

Does the Senator want to question me with respect to next year? Does he have a question with respect to next year?

Mr. PERCY. That is right.

Mr. ROBERT C. BYRD. Well, next year—well, they say if we do not pass this bill, we will pass a better one in the next Congress. What Senator in here does not know that the next Congress is a Congress which is working in a Presidential election year. There is a Presidential election year before the next Congress runs out. If Senators have seen divisiveness on this bill during Congresses when there have not been Presidential elections, just wait until there is

a Presidential election year and then they will see something.

So all of these bills, all of the authorization bills, all of the appropriation bills, that we have already done in this Congress will have to be done over again next year. And we would be up against a Presidential election. The regional, parochial, and provincial concerns and differences that have emerged over the past 30 years during the time this issue has been around Congress—30 years—30 years—will be compounded during a Presidential election Congress.

There will also be some new faces in both bodies. And this is such a divisive, emotional, long-standing issue. It was vetoed once by President Truman and once by President Eisenhower. It is so divisive. Having gotten this measure up to this point in the long, long road, I think it would be disastrous for the Senate to turn back now and retreat from the battlefield of responsibility on the premise that if we turn this down—kill it either way, kill it outright or kill it by sending it back to conference—that we will get something better. Those who think they will get something better soon had just better forget it. I thank the Senator.

Mr. PERCY. I thank the majority leader for his response to that question. When the majority leader said this was an emotional issue, he has not only stated that but demonstrated it in a very eloquent way. The answer to that question has decisively now been answered and every Senator must take that into account.

The likelihood of any gas deregulation bill, if this is turned down this year, is literally zero.

Mr. ROBERT C. BYRD. Absolute zero.

Mr. PERCY. Absolute zero, and the likelihood of one next year and the next Congress is zero as well. So everyone will have to take that into account.

The Senator from Illinois has five additional questions. I would appreciate it if we could, without interruption, move directly into those questions, which I address to the chairman of the Committee on Energy and the floor manager of the present bill.

The second question of the Senator from Illinois relates to the administration's position on phased deregulation. The Senator's reference is particularly to section 122: Stand-by Price Control Authority, reimposition of price controls. The President, in accordance with section (c)(1), or the Congress in accordance with section (c)(2), may reimpose price controls on natural gas.

There has been considerable skepticism about the intentions of the administration and the Congress with this bill. Though it is a deregulation bill, some fear that future actions could reverse the whole process.

How are consumers and producers guaranteed that at some point in the future, we do not start another regulatory policy and stop the phased deregulation?

The Senator from Illinois put this question to Ambassador Robert Strauss, to Secretary Schlesinger, and to Mr. Stu Eizenstat, chairman of the Domestic Council, at the White House meeting 2 days ago. I received an unequivocal answer: Each of these representatives of the President, speaking on his behalf, said that at no time during the Carter administration would the President attempt to change the deregulatory direction of this bill, except in case of a total, all-out national emergency.

The question I would like the manager of the bill, who has had advance notice and has had an opportunity to consult with the administration, is: How firm is the administration's commitment to the phased deregulation schedule that really is at the heart of this bill? In other words, will the President promise to take no actions to increase the regulation of the gas market, no actions to slow or obstruct the move toward deregulation, and no actions designed to increase the need for reimposition of price controls in 1985?

Would the chairman of the Energy Committee make the same promise from the standpoint that he can exercise vast influence, in the Energy Committee and in the Senate of the United States over natural gas policy. Further, would the chairman make a commitment to oversee the actions of the executive branch and assure the Senators, who depend upon this answer, that he will do everything within his power to see that the administration holds to its promise?

Mr. JACKSON. Mr. President, let me respond by saying that the conference report establishes statutory price ceilings that are not subject to administrative manipulation or discretion. I want to assure the Senator that the Senate Energy and Natural Resources Committee will exercise its oversight jurisdiction to assure that both the Department of Energy and the independent Federal Energy Regulatory Commission carry out the functions and duties assigned to them by legislation.

Mr. PERCY. I thank my distinguished colleague. The Senator from Illinois deeply believes in deregulation. He believes in the free marketplace as the most satisfactory arena in which pricing should be established and settled. We need only look at the airline deregulation work that a number of our colleagues have done, including the Senator from Illinois, for an indication that deregulation provides better service and fore frequent service at a lower cost. If decisions were made by industry and the private sector based on the free market, rather than by bureaucrats based on regulators, natural gas consumers, too would receive adequate supply, adequate service, and, in the long run, lower cost.

The Senator from Illinois interprets the natural gas bill to indicate that we are moving toward deregulation by 1985. The Senator from Illinois is concerned about the speed with which we are moving toward that.

Mr. HANSEN. Will the Senator from Illinois yield for just a 15-second question?

Mr. PERCY. I am happy to yield for that purpose for 15 seconds.

Mr. HANSEN. The Senator from Wyoming is of the mind that the present occupant of the White House cannot occupy that position beyond the end of a possible second term; nor can any present Member of this body say with certainty that he will be on hand 7 years from now. My question is, how do we guarantee that the administration will keep on course?

Mr. PERCY. The guarantee is only, obviously, good until the end of the Carter administration. That is the only assurance the Senator from Illinois was seeking to obtain.

That is the assurance that the Senator from Illinois has received.

Mr. BARTLETT. Will the Senator yield for a 30-second question?

Mr. PERCY. The Senator would like very much to finish the colloquy, because we have now been an hour and a half and we have only covered two questions.

Mr. BARTLETT. If he will give me 30 seconds on this one, I should like to read from a letter by Presidential candidate Carter to Governor Boren of Oklahoma, dated 17 days before the November 5 election, October 19, 1976:

> First, I will work with the Congress, as the Ford administration has been unable to do, to deregulate new natural gas. The decontrol of producers prices for new natural gas would provide an incentive for new exploration and would help our nation's oil and gas operators attract needed capital.

I ask unanimous consent that this letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OCTOBER 19, 1976.

GOV. DAVID BOREN,
State Capital Building,
Oklahoma City, Okla.

DEAR GOVERNOR BOREN: The formulation of a workable national energy policy implemented by a responsive, understandable governmental structure will be of highest priority in a Carter administration. If we are to reach our goals of full employment and a healthy, growing economy, we must reduce our dangerous dependence on foreign oil and we must develop our own domestic energy supplies. These resources must be produced and used in an environmentally acceptable manner at a cost that the consumer can afford to pay.

A sound energy policy must aggressively promote conservation of our scarce oil and gas resources. This is the only way in which we can hope to make ends meet in our energy budget. But, coupled with energy conservation, our policy must encourage additional production of our domestic reserves.

Eight years of Republican administration have failed to produce an energy policy. Demand for new energy supplies has increased by over 4 percent per year since 1969—even though demand was reduced considerably during the recession triggered by the Arab oil embargo. At the same time, domestic production and resources have decreased substantially, and dependence on foreign supplies has increased from 35 percent prior to the embargo to over 40 percent today.

To increase our domestic production, I have proposed three important steps.

First, I will work with the Congress, as the Ford administration has been unable to do, to deregulate new natural gas. The decontrol of producers prices for new natural gas would provide an incentive for new exploration and would help our nation's oil and gas operators attract needed capital.

Deregulation of new gas would encourage sales in the interstate market and help lessen

the prospect of shortages in the nonproducing states which rely on interstate supplies. While encouraging new production, this proposal will protect the consumer against sudden, sharp increases in the average price of natural gas.

Second, I believe we should act to encourage enhanced recovery from wells already in production. As you well know, an average of 60 percent of our oil remains in the ground after standard recovery methods have been exhausted. It is estimated that up to 60 billion barrels of crude could be added to our supply if enhanced recovery techniques are used. Since the environmental costs have already been largely paid on these resources, both consumers and producers alike benefit from development of this resource.

Third, I favor a substantial shift from the use of oil and gas—our highest quality energy sources—to coal, which we have in abundance. We must immediately begin a program to encourage conversion from the use of petroleum and natural gas to coal in those applications for which coal is an acceptable substitute. Our present demand for coal is limited by two important factors. First, we have geared our technological growth of oil and gas for well over 100 years. Second, we have failed to establish a stable regulatory climate in which coal producers are sure of the rules of the game before they make investments in expanded production or new mines. Switching to the use of coal will require strong presidential leadership and proper federal incentives to encourage the conversion process. A Carter Administration will provide this leadership.

I hope that these policy recommendations will help to put my views on the supply aspects of the energy problem into focus. Without a strong commitment to increasing our domestic production, while maintaining basic environmental principals, we cannot hope to reverse the unhealthy trends which the lack of leadership of the current administration has produced.

Sincerely,

JIMMY CARTER.

Mr. PERCY. I thank my distinguished colleague. The Senator from Illinois is familiar with that letter. The Senator from Illinois has done everything humanly possible to insure that we do have a firm assurance from the administration on this point, on this particular question.

The third question the Senator from Illinois will put to the manager of the bill is based on the fact that the enforcement provisions of this bill raise the rather intimidating possibility that a man could go to jail for submitting information about a gas well based on an honest interpretation of his requirements that just happened to be different from FERC's interpretation.

Certainly, this is a grave problem. It has been discussed at some considerable length in the meetings of Illinois constituents at the White House. Some of my constituents were quite eloquent in their discussion of this issue. Members of the administration at high levels have evidenced concern about this particular section.

If there was ever a disincentive to drill, this provision is it.

The possibility of unintentional misinterpretation is huge. No rational man can study and understand every aspect of this present legislation. The Senator from Illinois has read it carefully. It is extraordinarily difficult to understand.

Will the executive branch interpret this provision in such a way to minimize the problem? Will the administration commit itself to supporting amendments next year to correct this situation?

Can the chairman of the Energy Committee and the floor manager speak on behalf of the administration on this point, and will the chairman of the Energy Committee work with the administration to correct this particular situation?

Mr. JACKSON. I want to state categoricaly that a man could not go to jail for submitting information about a gas well based on an honest interpretation of his requirements that just happened to be different from FERC's interpretation.

Section 504(c) of the Natural Gas Policy Act provides criminal penalties only for "any person who knowingly and willfully violates any provision of this act." As it states on page 122 of the Joint Statement of Managers, the criminal enforcement procedures are similar to those in the Natural Gas Act—meaning the existing law. I do not believe there will be a need to amend the legislation in this regard.

Mr. PERCY. In other words, the interpretation the distinguished Senator puts on the language is that it must be absolutely willful, and there must be proof that it is willful violation?

Mr. JACKSON. The Senator is absolutely correct. Willful. I would almost go to the point of saying premeditated.

There would have to be an intentional planned scheme to violate the law.

Obviously, we make no exception in cases like that.

Mr. PERCY. If it apears that, even with this assurance, this particular provision causes considerable concern within the private sector and turns out to be a real disincentive to drilling, would the Energy Committee then work on an amendment in the near future to correct that situation?

Mr. JACKSON. Certainly, if it should come to our attention, it is not our view now, that an injustice would be created by a failure to amend it, then obviously we would give it top priority attention.

It is my understanding, and I emphasize, I want to be emphatic about it, that in order to bring any kind of a criminal action it would involve intentional, willfull violation of the statute.

Mr. PERCY. I would like to pursue a broader principle. The distinguished Senator from Oregon (Mr. MARK O. HATFIELD), who will be the ranking minority member of the Energy Committee next year, judges that consideration of a new gas bill would be absolutely out of the question if this bill fails or is recommitted. But he also stated that if this legislation were accepted, and imperfections subsequently become apparent, he could see the committee undertaking to work on improvements and modifications to refine and strengthen this legislation in the next session of Congress whereas it, I believe, could not consider new legislation.

Would the distinguished chairman of the committee concur in that judgment?

Mr. JACKSON. Certainly, it is a part of our oversight responsibilities, Mr. President, to make certain that we review existing programs. We are always anxious to know whether the law is being administered properly.

It would be in that capacity, especially, that we would not hesitate to consider amendatory legislation to correct that aspect of the program that might cause problems.

Mr. PERCY. I thank my distinguished colleague.

Mr. BARTLETT. Will the Senator yield?

Mr. JACKSON. Could we complete the colloquy first?

Mr. BARTLETT. I wanted to compliment the Senator for his perception.

Mr. PERCY. The Senator from Illinois is happy to yield for that purpose.

Mr. BARTLETT. I really do, because on page 121 of the conference report it points out that "the conferees intend that every person shall be presumed to have constructive knowledge of this act."

I certainly feel that I am fairly familiar with it, but I certainly do not understand it, and I do not know of anybody who claims he does, in its entirety. Yet the conferees intend that every person shall be presumed to have constructive knowledge of this act, and for a violation consisting of an omission the fine is $5,000 per day.

I share the Senator's concern about the criminal violation, although I know the chairman is correct in what he says. But it is certainly bringing out a very important point that I think needs to be looked at very carefully.

Mr. PERCY. I appreciate very much the comment and amplification of the concerns of the Senator from Illinois, the Senator from Oklahoma has indicated some of the grave concerns expressed to the Senator by his own constituents.

The Senator from Illinois notes on page 54 of the conference report, paragraph 2, in the middle of the page:

> Application of title 18: Any untrue statement or omission of material fact to a Federal or State agency upon which the Commission relied shall be deemed to be statement or entry under section 1001 of title 18, United Code.

Could there be some clarification as to whether these untrue statements would have to be willfully acknowledged?

Mr. JACKSON. Yes. That is the boilerplate language of the law which stipulates that a false statement that is given to an officer—that applies if you are interviewed by the FBI and you give a false statement. That is a felony. That is the law. But it has to relate to two basic things, I would assume. One is that it was false and known to be false. In other words, that would have to be a basic element. Second, it would have to relate to a substantial matter, a material matter. It would have to relate in that fashion.

Obviously, if there is an argument about whether it was almost dusk or was not quite dusk, that is not a material matter in most instances.

Mr. PERCY. So it would have to meet those two requirements. It would have to be intentional, willful, and it would

have to be a misrepresentation as to a material matter.

Mr. President, the Senator from Oklahoma, my distinguished colleague, has asked the Senator from Illinois to yield briefly. I am happy to yield.

Mr. BARTLETT. I shall be brief.

Again I compliment the Senator from Illinois for his perception and concern about the omission of material as a violation.

On page 54, which he asked the chairman to comment on, subsection (d)(1), General Rule, the preceding sentence on final determination shall not apply to any final determination "if there was omitted a statement of material fact * * *" That is (B). And under (2) it says:

> Any untrue statement or omission of material fact to a Federal or State agency upon which the Commission relied shall be deemed to be statement or entry under section 1001 of title 18, United States Code.

That is the criminal statute.

So I think the Senator raised an eminently valid point; that would be a criminal violation.

I cannot imagine, in providing the massive amounts of information required, that there would not be some omissions of fact. It would be very difficult to comply with this complex legislation without omitting something.

The Senator makes the valid point that this should be carefully looked into if it is passed, because otherwise small businessmen who are not accustomed to such complicated legislation and regulation are going to be subject to criminal violations.

Mr. PERCY. I thank my distinguished colleague.

The next question deals with regulation. I think we are quite aware the burden of regulation often falls heavier on the small producers than on the majors, who have large staffs of lawyers and Government liaison personnel. Small producers are deeply concerned about the amount of regulation and their ability to conform to it.

What guarantees can the administration make that this bill will not have a disproportionate adverse effect on the small gas producers, who are so important to this country?

What commitment can the chairman of the Energy Committee make, that in his oversight of the FERC, he will see to it that this bill does not strangle the independents?

Mr. JACKSON. Mr. President, I assure the distinguished Senator from Illinois that there is no intention whatsoever to strangle the independent sector of the natural gas producing industry.

As a matter of fact, I am pleased to note that the Independent Gas Producers Committee of Oklahoma City, Okla., concur, that the legislation will provide a boost to their segment of the industry because of the strong incentives it provides for additional exploration.

The administration and I agree that the present natural gas conference report will lead to a significant reduction in the regulatory burdens on all segments of the oil- and gas-producing industry.

The cumbersome and unnecessary regulatory requirements of the Natural Act that are now applied to all sales in interstate commerce will be terminated for all onshore and offshore new gas and for gas from onshore production wells, even from acreage that is now dedicated to interstate commerce. The producer who sells such gas to an interstate pipeline will not be required to obtain a certificate from FERC, to make regulatory rate increase filings, to obtain abandonment authorization from FERC when the contract expires or the well is depleted, or wait for 2 to 3 years to learn what price can be charged for the gas.

These simplifications in the regulatory scheme will certainly accrue to the benefit of the small producer. Furthermore, the administration has assured me that they will administer this with the small producer in mind.

Mr. PERCY. I thank my distinguished colleague.

Mr. BARTLETT. Mr. President, if the Senator will yield, I should like to comment on the statement made by the chairman of our committee. He knows very well that the Independent Gas Producers Committee of Oklahoma City does not represent much more than one man by the name of Bob Hefner, who happens to be financially interested in the provision of the bill which provides for deregulation for gas produced at 15,000 feet or deeper.

I also say to the chairman that it was this Senator who kept that provision in the bill at a crucial point, when I was still meeting with the other conferees.

I think there is going to be a loss of competition, a loss of drilling activity by the small independent producers, if this conference report becomes law.

The Oklahoma Independent Petroleum Association, which represents the great majority of producers in the State, is opposed to this conference committee report, as is the Independent Petroleum Association of America.

So I think that when the chairman talks about independents, he knows very well that when he mentions the Independent Gas Producers Committee of Oklahoma City, he is talking basically about one man's selfish interests.

Mr. PERCY. I thank my distinguished colleague for his comments.

The next question I would like to put to the manager of the bill deals with the following:

Several large industrial users of natural gas insist that the incremental pricing provisions in this bill will drive them to convert to oil or to move to a gas-producing State. The Senate's intention with incremental pricing was to protect the consumer from higher prices. But if these industrialists are correct, consumers will end up paying those higher prices, and they may lose their jobs as well. What is needed, clearly, is flexibility.

What assurances can the administration give, that flexibility can be built into the regulations, to deal with hardship cases and to prevent industrial relocation?

Mr. JACKSON. On page 95 of the Joint Statement of Managers the conferees state specifically that they "recognize that implementation of this (incremental pricing) program will be complex. The conference agreement provides for implementation of incremental pricing by rule, which is intended to give the Commission the requisite discretion to deal with difficulties that may arise."

We certainly intend that flexibility will be built into the regulations to deal with hardship cases and to prevent industrial relocation.

There is one critical element of the incremental pricing provision which deserves highlighting in this regard. The incremental pricing provision operates to increase the price paid by incrementally priced industrial users until it is equal to the Btu equivalent of the cost of alternate fuels.

The mechanism is designed so as to prevent it from being the cause of industrial conversions. As the Joint Statement of Managers notes, the determination of the cost of alternate fuels is to be made on a regional basis. It states on page 100:

> The conferees recognize that it may be necessary or appropriate for the Commission to make this determination in advance of the effective date of the first rule. The conferees urge the Commission to take whatever action it deems appropriate or necessary (including expeditious consideration of these proceedings and consolidation of these cases) to avoid any delays in reducing the substitute fuel level so as to avoid the likelihood of conversions from natural gas by industrial users if those conversions would result in increases in natural gas rates for any residential, small commercial, or other high priority customers. The conferees intend that in determining the likelihood of these conversions occurring, the Commission move rapidly in the administrative hearings so as to avoid the irreparable damage which the conferees believe will occur to high priority users if these other indsutrial users, faced with uncertain natural gas rates, begin taking steps to secure alternate fuel supplies.

The administration is very much aware of the need to implement incremental pricing in an equitable manner in order to assure that the public interest is best served. I would not that this bill does not compel incremental pricing with respect to any industrial use other than in large boilers. Extension of incremental pricing beyond boiler use could be prevented by a majority vote of either House of Congress 2 years from now.

Mr. PERCY. Could the distinguished Senator comment further on what he, as chairman of the Energy Committee, can do to hold the administration to its assurances?

Mr. JACKSON. Basically, we would call upon the appropriate officials within the Department of Energy to appear before the committee and to give an accounting. I think the oversight function of a committee does give it tremendous persuasive authority with the administration of the program by the executive branch of Government.

Mr. PERCY. Critics of the compromise legislation claim that it is just too complex in nature. It would require thousands of lawyers, years in court, millions of dollars, or so I have heard. How can we justify a huge buildup at

the very time we are trying to shrink the bureaucracy?

What is the administration's forecast of the amount of time and money and the number of new employees which will be needed to enforce the provisions of the conference reported bill?

Mr. JACKSON. Mr. President, according to testimony given yesterday by the chairman of the Federal Energy Regulatory Commission before a subcommittee of the Committee on the Judiciary, chaired by Senator ABOUREZK, FERC will require 298 new employees, at a cost of $9 million. I should note that the figure includes the necessary support staff.

FERC will also require contract support services which will cost in the range of $5 to $10 million.

In fact, the FERC Chairman believes that the Commission's caseload will decrease under the Natural Gas Policy Act, not increase.

Mr. PERCY. The Secretary of Energy, Dr. Schlesinger, indicated to the Senator from Illinois that there would be a bulge in the first year of hundreds, but not thousands, of new employees. After the first year though, he said, the number of regulatory and enforcement personnel would decline below the current level.

Mr. President, based on the commitments that are now a part of the legislative history of the natural gas compromise bill, and based on the commitments made by the administration, and the chairman of the Energy Committee, I have decided to vote against a motion to recommit the natural gas compromise bill to conference with instructions. I will vote in favor of the compromise legislation.

I harbor no illusions that this is a great bill. There are many parts of it I would change. But in sum and substance, I think it is in the best interests of this country for Congress to approve it.

In my judgment, recommittal or outright defeat of the compromise mean the exact same thing: There will be no major energy bill this year, next year, and perhaps longer. Five years after the 1973 oil embargo disaster, we will still be directionless. We will have failed to set a course to prevent our Nation from suffering another such disaster. We will have failed to live up to our responsibility to the world as the largest energy consumer and the greatest economic power.

If we adopt the conference report, we will have taken a crucial step in the right direction. We can and will subsequently strengthen those sections of the bill in need of improvement. But it will not be weakened. We have now received absolute assurance that the Carter administration will not take any action to increase regulation of the gas market from now until 1985 or increase the likelihood of further regulation after that. This was a reassurance that we needed, sought, and received.

Some strengthening and improvement will be called for. I have serious doubts about several provisions in this bill. These doubts are reinforced by the passionate arguments of people whose opinions I respect very much and who are opposed to this bill. I cannot remember a bill on which I have been lobbied by more diverse groups or more unlikely coalitions.

But I think many of these groups base their judgment on the hope that new legislation could be approved.

But I think they now have the best assurance the Senator from Illinois can give that there will be no opportunity for new legislation in the near future.

They also have the assurance, however, that modifications, improvements, and amendments can and will be considered if this present bill does not serve the national interest and accomplish its objectives.

Like it or not, we cannot now avoid the fact that this bill has taken on dimensions above and beyond its specific provisions. The world awaits the outcome of this debate. That does not mean we should pass just any bill. But it does mean that if the bill is adequate, and is the best we can accomplish and that would seem to be irrefutably clear now we must pass it and pass it now.

Failure to pass this natural gas compromise will at worst further weaken the dollar. It will in any case further undermine the world's hope that we can control our oil imports and steady the dollar.

Other nations may spend a greater percentage of their GNP's on oil imports than we do, and still maintain a favorable balance of payments and a strong currency. But American oil imports are indisputably a key factor in our trade deficit. Reduction of oil imports is now the single most effective step we can take to strengthen the dollar. And since fluctuations in money markets are based largely on perception, a commitment to reduced oil imports is the second most effective step we could take. The natural gas bill is such a commitment.

Inflation is this country's number one problem. Failure to pass this bill could, by lowering the international value of the dollar and raising the prices of all our imported goods—including oil—negate all the steps this Congress has taken to control inflation.

This is the framework in which we must debate the natural gas bill. It does not mean we should pass a totally inadequate bill. But we must be aware at all time of the high cost of voting this bill down.

Many of my colleagues, and many business and labor leaders from Illinois and across the country have told me, in no uncertain terms, that this is indeed a terrible bill. They have convinced me that there are some very serious problems with the bill. But serious as these problems are, this bill—in my judgment—will be good for my State and, on balance, good for the Nation.

One problem is that some provisions of this complex bill are subject to honest differences of interpretation. This is disturbing—even dangerous—considering that criminal penalties are provided. However, we have now been assured by both the administration and Senator JACKSON that appropriate amendments will be supported next year to correct this situation if they are deemed necessary and the provision will be interpreted strictly to punish only willful violators. Thus, unintended violation will not constitute cause for criminal indictment. Honest differences of opinion in interpretation will not be cause for criminal penalties.

Some contend that the combination of incremental pricing provisions and curtailment priorities may drive large industrial gas users to oil. That would increase the demand for imported oil and increase the residential consumers' cost of gas. Both are very serious problems. But we now have the assurance that enough flexibility will be built into the incremental pricing regulations to eliminate those problems.

In any case, I do not foresee many industries turning away from gas.

Though figures vary widely, most studies agree that industries will pay less for gas in 1985 than they will for other fuels. Further, we must keep in mind that the second incremental pricing rule—the one with wide application—is subject to a one House veto. If we do not like incremental pricing, we can vote it down then. It is not a reason to vote against the whole bill now.

Some contend that the bill will create bureaucratic chaos.

I have asked Secretary Schlesinger for more exact figures with respect to the number of additional personnel who will be required year by year out through the year 1985. I will report to my colleagues just as quickly as I have that information. But the assurance has been given today that the claims of those who have indicated that the bureaucracy will mount horrendously, that it will be a bureaucratic jungle are false. Every effort will be made to hold the enforcement bureaucracy within manageable proportions.

Whether or not chaos will result really does remain to be seen. The more important question is whether the phased deregulation scheme will encourage production or stifle it. I am convinced that this bill will increase supplies of natural gas. Though numbers vary, the administration, conferees on the bill, the Congressional Budget Office and others estimate substantial increases in production by 1985 compared to an extension of current policy.

Illinois stands particularly to gain. This bill makes possible the construction of the Alaska pipeline, which will terminate at Dwight, Ill. Much of the gas transported through the pipeline will be available to Illinois users. Illinois citizens should realize that the pipeline offers the best assurance we have that our future natural gas requirements for homes, offices and factories will be provided for.

Illinois' economy has been built based on the premise that we will have adequate supplies of gas. Killing this bill may jeopardize the pipeline. The longer we delay, the higher the cost of construction will be and the less cost effective the entire project.

Even more important to Illinois than the pipeline is the elimination of the dual gas market. With equal prices, far more

gas will flow into consumer States like Illinois.

At my request, the Department of Energy provided these numerical estimates of the bill's effect: Under continuation of current law, without the increased gas supply and the Alaska gas pipeline, the Midwest's projected gas supply in 1985 would be 2.6 trillion cubic feet. Under this bill, the projection is 3.9 trillion cubic feet.

That is a 50-percent increase and is enough to assure supply to every home in Illinois, every factory, every office building, and every industrial concern dependent upon gas. With that much gas flowing, DOE projects no curtailments of firm natural gas service for 1985, and no future restraints on residential hookups in the Midwest. And there is no other way to get this potential 50-percent increase in supply to the Midwest other than through this compromise bill.

Prices, as well as supply, argue in favor of this compromise. According to the American Gas Association, even with incremental pricing, industrial gas prices will be equal to No. 6 fuel oil and cheaper than all other alternatives in 1985.

Residential gas prices will still be far cheaper than alternatives. According to AGA, with this compromise, the average midwest homeowner in 1985 will pay $560 a year for gas, as compared to $848 for fuel oil, or $1,797 for an all electric house. The Department of Energy reports that 1985 residential gas prices will be lower under this compromise than they would under any realistic projection of current law.

DOE estimated that the 1985 residential natural gas prices under this compromise will be $3.31 per million Btu. Should FERC not increase the real new gas price through 1985, gas would cost $3.22 per million Btu. But that is an unrealistic assumption. Assuming FERC sets a new gas price of $1.85, residents will pay $3.35 in 1985, and that is more than under this compromise. However, $1.85 may even be low. And the higher the FERC new gas price, the better this compromise for the consumers.

Illinois homeowners and industries will be served well by this bill. But Illinois farmers are perhaps served best. Agricultural production will receive an assured supply of natural gas at a non-incremental price that reflects the importance of food to this Nation and the world.

Prior to coming to any conclusion on this bill, I thoroughly researched its effect on farmers. Not only is the Senator from Illinois concerned with the well-being of the 200,000 farmers in the State of Illinois, but there is a deep national interest involved also.

Illinois is the largest exporter for food products in the Nation. The value of the dollar, our ability to pay for raw materials and maintain a decent balance of trade, depend significantly upon the production and exporting of food.

The Senator from Illinois has called upon the Department of Agriculture to establish a goal of doubling our agricultural exports to $50 billion within the next few years. I am certain that the Nation's farmers can grow enough to reach that goal. Doubled food exports will go a long way to help us rectify our inflationary trade imbalance.

So we must be certain that what action we take on gas policy insures that farmers receive adequate supplies of energy. This bill, I am convinced, provides that assurance.

Important national and Illinois interests are opposing this bill. Most opponents believe that a better bill can be enacted. Some define that better bill as containing more rapid deregulation, and others define it as containing no deregulation. It would be absolutely impossible for the coalition of opponents of this compromise to come up with their own compromise.

That, I believe, is why an increasingly impressive list of National and State interests are beginning to line up behind this bill as the only possible compromise, and why some original opponents are having second thoughts here in the Senate.

I have the highest regard for those who have taken a position in opposition to this bill. I have reasoned and have discussed the bill with many of them, and have learned from many of them. But I have chosen to support the bill.

The natural gas compromise bill will increase domestic gas supplies, and that was our main intention. It will increase supplies especially in consumer States like Illinois. I believe that, though complex, it is a workable, enforceable bill. It can be improved, and I now have assurances that it will be improved whenever the need is evident. We now have assurances from the administration that the bill will be enforced in such a way as to protect the independents from death by regulation and to provide flexibility so that incremental pricing provisions do not drive industries to oil or to relocate.

This bill protects residential customers from the shock of suddenly higher prices, but not by overburdening industry. It recognizes the high priority agricultural production should be given. It will assure the world economic community that we are committed to controlling oil imports. It will help strengthen the dollar.

The Congress has struggled for 20 years with the natural gas pricing issue. We need not shirk our responsibility again. I have no illusions that this is a perfect bill, but its strengths far outweigh its flaws. It is this bill or nothing. In fact it is this bill or nothing for several years. The bill is clearly preferable.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. PERCY. I will be happy to yield.

Mr. JACKSON. Mr. President, I commend the distinguished Senator from Illinois for a very fine statement. I especially commend him for his statesmanlike decision in supporting the compromise that we were able to forge after months and months of negotiation. I compliment him for opposing those proposals to recommit the bill with various instructions.

The statement that the Senator from Illinois made at great length indicates the thoroughness with which he has gone into this matter. Certainly it makes it clear that this is not a snap judgment on his part, but a studied judgment, and I thank him for his contribution to the debate and for the questions that he has raised in the course of the debate.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. PERCY. I will be happy to yield.

(Mr. FORD assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I join with the distinguished manager of the bill (Mr. JACKSON). I note that the acting Republican leader is on his feet. I do not know what he is about to say, but I gather he may be going to compliment the Senator also.

In any event, I compliment the Senator from Illinois. He has reached a difficult decision for him—as it is a difficult decision for all of us—and he reached it after much thorough, painstaking, diligent study, careful weighing of the facts, the evidence on both sides, and he came to what I believe is the logical conclusion. I commend him and congratulate him, and I personally thank him on the part of those who support this conference report. I believe he has made the right decision.

Mr. PERCY. I thank my distinguished friend.

I think there is very much value in the comments of our distinguished colleague from Alaska. Because of the importance of the Alaska pipeline on future gas supplies coming into the State of Illinois. I ask him to comment on the relationship between this bill and the construction of the pipeline.

Mr. STEVENS. Mr. President, I seek the floor in my own right, but I will be happy to respond to the Senator from Illinois.

The Alaska situation is unique, because while other gas-producing States are seeking to have the price of their gas deregulated, we are seeking to have the transportation facilities to take our gas from the North Slope to the market built before inflation destroys the economics of the transportation system to take that gas to what we call the South 48 market.

The Senator from Illinois is correct, that the pipeline route that has been selected goes through Canada, and will terminate in Illinois. It will take to the Midwest the great North Slope gas reserves, which at the present time are 10 percent of the Nation's natural gas reserves.

The current estimate is that it will cost four times the wellhead price to transport natural gas from the North Slope to the lower 48 States. In other words, if the wellhead value is a dollar, we estimate it will cost $4 at current costs to transport a million cubic feet of gas to Illinois.

The difficulty we face is that construction costs in this country are accelerating more rapidly than inflation in any other sector of our economy. That means a continued delay in the construction of the gas pipeline could not only destroy the economic feasibility of the pipeline, but eventually would render the wellhead price of our gas zero, or less than zero.

We want to insure that there will be a pipeline constructed. Due to the efforts, primarily, of my good friend from Washington (Mr. JACKSON), the conference committee report contains provisions that would eliminate questions that have been raised about the pricing of Alaska's gas, whether the gas would be rolled in or incrementally priced, and the provisions concerning the costs of the facilities that will treat the gas on the North Slope, where there is no other pool of gas to share the cost of facilities such as a gas-conditioning plant.

I would say to the Senator from Illinois that I have come to the same conclusion about this conference report. The bill that is before the Senate from the conference committee is the best we can do, and we have no question that this bill is preferable to no bill at all.

We do have some problems with the bill, but I am sure everyone has problems with the bill.

I congratulate the Senator from Illinois. As the Senator from West Virginia indicated, by the time I get through congratulating him there will be no uncertainty regarding the position of the Senator from Illinois on the motion to recommit, and the ultimate adoption, I hope, of the conference report.

Mr. PERCY. I thank my distinguished colleague, and I am prepared to yield the floor.

(The following proceedings occurred earlier and are printed at this point by unanimous consent:)

Mr. METZENBAUM. Would the Senator from Illinois mind if the Senator from South Dakota, who does not wish to speak, just put something in the RECORD? Will the Senator yield for that purpose?

Mr. PERCY. I know the distinguished Senator from Oklahoma has been waiting.

Mr. BARTLETT. It is all right.

Mr. PERCY. I yield.

Mr. ABOUREZK. Mr. President, I have a copy of the transcript of the hearing which I chaired yesterday on the enforceability of the Natural Gas Policy Act, if it is passed. I ask unanimous consent that it be printed in the RECORD, so that all Members will be able to read it. I received the transcript overnight.

Mr. PERCY. Would the Senator mind having that go into the RECORD at the conclusion of the colloquy we are having?

Mr. ABOUREZK. That is all right. I also ask unanimous consent that it not interrupt the colloquy.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, I remind the Senator from Wyoming that the figure is not $20 million for enforcement of this conference report. It is a minimum of $30 million, and that com pares to the $6 million that is being spent on natural gas regulation at this poin So it is a fivefold increase in the bureaucracy, at a minimum, and I predict that there will be an awful lot more than that after the first year.

Mr. President, on Thursday, September 14, the Administrative Practice and Procedure Subcommittee held hearings on the feasibility of administering and enforcing the proposed natural gas compromise.

According to Chairman Curtis, of the Federal Energy Regulatory Commission whether the compromise can be effectively administered hinges on Congress appropriating adequate resources to the Commission and the courts accepting his interpretations of the breadth and flexibility of the administration mechanisms which have been woven into the proposed legislation.

Chairman Curtis was therefore called before the subcommittee to explain what the Commission considered to be "adequate" resources, and what would occur if the courts did not sustain his interpretation of the administrative authority granted FERC in administering the compromise.

Chairman Curtis testified that based on a preliminary FERC staff estimate approximately 400 additional positions would be required, 300 of which would be designated for the gas portions of the compromise. It should be noted that of the 300 positions, only 30 were designated for clerical and support staff, which even Chairman Curtis conceded was not realistic.

Upon further questioning, Chairman Curtis indicated that the Commission would rely on the 535 additional positions already authorized for fiscal year 1979, to assist in implementing the compromise. Therefore, "the increment for Natural Gas Policy Act implementation—the 400 positions—is significantly less than one might otherwise expect" according to Curtis.

Chairman Curtis also admitted that contractual help, costing a minimum of $10 million, would be required to supplement the Commission staff, since the Commission did not have an adequate data base to carry out the legislative mandates of the compromise, nor the technical expertise within the staff to develop the data.

The total estimated costs, according to Chairman Curtis, was as follows: For the 535 fiscal year 1979 positions, $9.6 million; for the 400 positions to implement the compromise, $13.5 million; and for the contract help, between $5 to $10 million. Over $30 million. But that is not all.

Chairman Curtis further explained that—

> Over the long term I believe that what will be required for the Commission will be an increment of staff resources, not only in the number of positions, but in the number of financial resources or dollars available to the Commission which this estimate does not show.

No one at this point is obviously able to place an upper limit dollar figure on what is needed to implement the conference report. All we know is that a conservative base estimate for staff is over $30 million.

The second crucial element in implementing the conference report is that if the courts do not interpret section 501 as broadly as does the Commission, then the Commission would be unable to administer the bill.

According to Curtis:

> If [the Court] disarmed the Commission from the administrative powers which it appears that Section 501 was intended to vest in the Commission, then we would have to get additional powers from the Congress in order to carry out the Act.

He went on to say:

> There is going to be extensive litigation under this act. I think that is a fair statement. One must accept that that is going to occur. This is a highly litigious area. We can expect to be litigated in most areas.

Thus even if the courts did sustain the Commission's interpretation, which is questionable, it would take years before the issue was settled.

Mr. President, I believe that the testimony taken by the subcommittee yesterday would be extremely useful for the Senate to consider during this debate. Therefore, I ask unanimous consent that the transcript of the hearing be printed at this point in the RECORD.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

PROPOSED NATURAL GAS LEGISLATION

The subcommittee met, pursuant to notice, at 10:00 a.m., in room 2228, Dirksen Office Building, Hon. James Abourezk (chairman of the subcommittee) presiding.

Present: Senator Abourezk.

Staff present: Irene Emsellem, chief counsel; Bethany Weidner, counsel; and Alfred Regnery, minority counsel.

Senator Abourezk. The hearing will come to order.

As the Senate moves to final consideration of the natural gas compromise, a host of questions remain unanswered. Chief among these are the consumer impact of the bill, how much additional gas will result from higher natural gas prices, and the ability of the Federal Energy Regulatory Commission to administer the many and complicated provisions in the legislation.

Today's hearing by the Administrative Practice and Procedure Subcommittee will examine whether it is possible to successfully implement the natural gas compromise conference report.

It would be the height of folly for Congress to enact a measure that can neither be enforced nor administered. Such an action would immerse the Federal Energy Regulatory Commission in a sea of litigation and totally demoralize a key Federal agency. Neither consumer nor industry would benefit. It is difficult to see, moreover, how the creation of a regulatory quagmire could have a significant positive impact on the value of the dollar, as the administration has claimed. Indeed, the creation of an unworkable natural gas regulatory scheme could only strengthen the belief of those who feel that the United States is not seriously committed to resolving its energy problem—which would be something akin to shooting ourselves in the foot.

As my colleague Senator Long observed recently, there is no logic to the proposition that:

"We must pass a bad bill, even though it be a very bad bill, because it will strengthen the dollar, that somebody abroad will think that America has done something about the energy question and, therefore, they will have more confidence in the dollar."

As he noted, "We might as well pass a blank sheet of paper and just write 'Energy Bill' across the top of the sheet of paper."

A discussion of the feasibility of administration and the enforceability of the natural gas proposal must begin with an August 14 study by FERC's Office of Enforcement, the office that will be responsible for enforcing the compromise should it become law, which concluded that "the proposal is so complex, ambiguous and contradictory that it would be virtually impossible for this commission to enforce it in a conscientious and equitable manner."

Subsequent to the release of this study, the conferees made certain changes in the bill to cover its more egregious omissions, such as the lack of refund or penalty provisions.

Armed with these and other changes, Energy Secretary James Schlesinger publicly announced that the Office of Enforcement study was outdated and that the final agreement provided for—and I quote—but "three or four simple categories of gas." The secretary neglected to mention, however, that the bill, in addition to the three or four simple categories, established an additional 26 complicated pricing categories for natural gas.

After the final changes were effected in the natural gas bill, Congressman John Moss of California requested the Office of Enforcement to update its earlier study. In this latest study the Office of Enforcement, for reasons that FERC Chairman Curtis may want to explain today, refrained from offering an overall conclusion as to the feasibility of administration of the conference report. This was instead supplied by Chairman Curtis in a letter to various Senators and Representatives.

In that letter, Chairman Curtis provided a carefully hedged opinion that the bill could be administered. Specifically, Chairman Curtis—and I quote—concluded that:

"On balance, assuming that the Congress will appropriate adequate resources to the commission and that I am correct in my interpretations of the breadth and flexibility of the administration mechanisms which have been woven into the proposed legislation, it is my view that the commission will be able to effectively administer the NGPA (Natural Gas Policy Act) and give effect to the policy conclusions which it embodies."

Chairman Curtis' conclusion regarding the ability of his agency to administer the natural gas bill is conditioned, therefore, on two basic assumptions:

One, that the FERC will be provided the necessary resources; and

Two, that he is correct in his interpretation of the administrative authority granted FERC in administering the compromise.

In citing the need for adequate resources to administer the natural gas bill, Chairman Curtis did not indicate the additional resources in terms of personnel and money that would be required to administer the natural gas bill. In a conversation with Congressman Moss earlier this week, Mr. Curtis indicated that his agency would require an additional 400 professionals to attempt to administer the bill. Assuming that the Congress would authorize the hiring of these 400 professionals and a few hundred more support staff, it is somewhat unlikely in my view that Mr. Curtis will be able to recruit the skilled personnel that he will require. It is my understanding, for example, that not one single petroleum engineer has applied for a position with FERC for the past three years.

FERC is already faced with a growing backlog of about 15,000 cases which Chairman Curtis has correctly described as "unacceptably large." The compromise proposal will certainly increase this backlog, perhaps by several orders of magnitude.

Chairman Curtis is an outstanding lawyer, but as an assumption concerning the breadth of broad administrative power accorded FERC under the natural gas compromise.

Throughout the 92-page section-by-section analysis of the natural gas bill, as written by Chairmas Curtis, reference is made to Section 501(a) as a basis for administering and enforcing the gas act in those many instances in which the bill does not grant FERC specific statutory authority or in cases where the legislative intent is ambiguous or contradictory.

As the Office of Enforcement noted in its final report, resort to Section 501(a) which grants FERC authority to issue various rules and rules and orders to administer the bill cannot be assumed to permit the commission to remedy the bill's deficiencies. Again as noted by the Office of Enforcement, "It is likely that this issue will not escape litigation."

The Office of Enforcement further noted, moreover, that:

"The possibility of lengthly litigation is significant not only because it may affect the administration of various provisions of the NGPA (Natural Gas Policy Act), but also because even assuming that the United States Supreme Court eventually upholds the commission's broad authority under Section 501(a) to fill all regulatory gaps this would probably occur after several years of litigation and consequent uncertainty."

One of the questions that we will ask Chairman Curtis today involves the probable consequences of a series of adverse court opinions regarding his optimistic assertions regarding FERC's authority under these legally controversial provisions.

I want to welcome Chairman Curtis to the hearings. I am grateful for his appearance here today on such short notice.

Those of us in the Congress and in this committee believe it is important to try to understand what the Chairman of the Federal Energy Regulatory Commission believes by way of how this bill can be enforced and administered, what it will cost the public, and either the difficulty or the simplicity of it.

Chairman Curtis, welcome to the hearings. If you are ready to begin testifying, please proceed.

STATEMENT OF THE HONORABLE CHARLES CURTIS, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION

Chairman CURTIS. Thank you, Senator.

I do not have a prepared statement. I would, with the committee's indulgence, like to make some introductory remarks.

Senator ABOUREZK. Please.

Chairman CURTIS. I am, of course, requested to appear here today to consider the issue whether the proposed natural gas legislation can be administered and enforced. This issue has been of concern to a number of your colleagues.

Chairman JOHN Moss of the House Subcommittee on Oversight and Investigations on August 23 made an official request of me to prepare and submit to him a detailed and complete analysis of the Natural Gas Policy Act. He also requested, as your opening remarks indicated, a further memorandum from the Office of Enforcement, which asked the comment of the Director of the Office of Enforcement on whether the deficiencies noted in the August 14 memorandum, which addressed problems of the July 31 draft, had been taken care of and, if so, how and whether other noted deficiencies are present in the final conference report.

That task was completed. The analysis was distributed to Mr. Moss on September 7. With his permission, I forwarded copies of the analysis to Senator JACKSON, as floor manager on behalf of the conference in the Senate; Chairman DINGELL, as floor manager on behalf of the conference in the House; and Chairman STAGGERS, who is, as you know, Chairman of the Conference Committee. I understand that that analysis has been broadly distributed since that time.

I have brought with me today a number of additional copies, should members of the press or the audience or the committee wish to refer to it.

While the analysis shows that the proposed Natural Gas Policy Act is not problem-free, it is my basic conclusion that the act, if passed, can be effectively administered and enforced. I would resist the temptation to read this 92-page analysis into the record.

Senator ABOUREZK. We will refer to it during your testimony.

Chairman CURTIS. I know you have questions.

Let me, with that brief introduction, conclude and allow for questions of the committee.

Senator ABOUREZK. Thank you, Chairman CURTIS.

I want to get first to the number of additional employees, the size of the bureaucracy that will have to be supplemented or created as a result of the Natural Gas Policy Act. I understand that this is speculative because it is not in effect yet. But I think you must have some idea of how many people will be needed to enforce the provisions of the act, should it be passed.

You told me yesterday on the phone that you estimated some 400 additional professionals for the entire National Energy Act, of which you thought perhaps 300 might be attributed to the natural gas part.

Chairman CURTIS. Yes, sir. As you know, the usual budgetary process contemplates that, following passage of an act which imposes additional administrative responsibilities on an agency, that agency shall submit to the Congress, in the form of a request for supplemental appropriations, its identification of needed resources to carry out the act. That, of course, has not been done. What we have at present is but a preliminary staff estimate of the resource requirements.

Senator ABOUREZK. Would you state what those are?

Chairman CURTIS. I can provide this to the committee. I have tried to break it down by the office. We have some 50 copies.

FEDERAL ENERGY REGULATORY COMMISSION—PRELIMINARY ESTIMATE BY FERC STAFF,* IMPLEMENTATION OF NATIONAL ENERGY ACT (NEA), CURRENT ESTIMATES OF POSITIONS AND FUNDING REQUIREMENTS

Office	NEA gas positions	Amount	Other NAE efforts: Positions	Other NAE efforts: Amount	Total: Positions	Total: Amount
Pipelines and producer regulation	212	$5,825,000			212	$5,825,000
Electric power regulation			70	$2,765,000	70	2,765,000
General counsel	29	880,000	22	670,000	51	1,550,000
Enforcement	24	1,618,000			24	1,618,000
Chief accountant	15	370,000	5	120,000	20	490,000
Regulatory analysis	3	550,000	1	180,000	4	730,000
Opinions and reviews	6	175,000	2	55,000	8	230,000
Secretary	5	110,000	1	20,000	6	130,000
Executive director	4	90,000	1	25,000	5	115,000
Total	298	9,618,000	102	3,835,000	[1] 400	13,453,000

[1] Approximately 90 percent are professional staff and 10 percent support staff.

*The estimates are still under review by the FERC staff and have not been presented to or considered by the members of the Commission. The final requirements will depend upon the final provision of the National Energy Act.

As you indicated, in a telephone conversation yesterday I reported to you that the preliminary staff analysis, which has not been evaluated by the commission, nor has it been substantiated and tested as would be required by the normal budgetary process, that preliminary staff analysis shows 298 positions attributable to the implementation of the gas portions of the National Energy Act. Of this number, some 90 percent would be professional staff positions.

Senator ABOUREZK. Ninety percent?

Chairman CURTIS. Ninety percent of the number: yes, sir.

I would like to reinforce the caveat that this is a preliminary estimate at this time.

I think the provisions of the Natural Gas Policy Act will impose on the commission significant additional responsibilities, as the section-by-section analysis attempts to describe. It will, in the same breath, remove the necessity of the commission to process a number of matters which it, under current law, has the responsibility to perform.

Over the long term, I believe that what will be required for the commission will be an increment of staff resources, not only in the number of positions but in the number of financial resources or dollars available to the commission, which this estimate does not show.

Senator ABOUREZK. What do you mean by that specifically: increment of staff resources and dollars?

Chairman CURTIS. This attempts to show the dollars attributed to staff estimates of additional staff positions required. In my opinion, there will be, in addition to this, a requirement for additional monies appropriated to the commission which monies can be employed for contractual assistance, not only in aid of administration of the Natural Gas Policy Act but also to free up staff now dedicated to other activities of the commission so that we can, through a reallocation of resources, bring more to bear on our responsibilities under the Natural Gas Policy Act.

The first several years of this act's administration call upon the commission to do a number of one-time things in promulgating implementation rules, setting up administrative procedures. That will require a one-time dedication of staff resource. After those tasks are completed, we would be able to be allocating resources back to the other tasks of the commission.

Senator ABOUREZK. Mr. Chairman, if I might interrupt. You have listed, then, some 300 professional positions. Ordinarily, I am told, in government employment it would require four backup people for each professional position. I think during our conversation yesterday you indicated it would not be quite that high in this particular kind of work.

I believe you said, if I am not mistaken, it would probably be two people for every professional hired. Is that an accurate figure?

Chairman CURTIS. Certainly no more than two people. This essentially shows a ratio of one support staff for each nine professional staff.

The reason for that is that many of the tasks under the Natural Gas Policy Act require development of rules and the administration of review procedures, activities conducted by the USGS and state agencies in determining eligibility for natural gas pricing.

This does not require the type of on-line support that would be traditionally associated with the commission's processing papers and ruling on specific cases on its own motion.

Senator ABOUREZK. But what we are talking about then, just as you say, as an initial estimate, it would be some 900 people that you would have to add on your staff to enforce this particular Natural Gas Policy Act. Would that be somewhere near accurate?

Chairman CURTIS. No, sir; I do not think that figure derives from our estimates.

Did you say 900?

Senator ABOUREZK. Yes. If you have 300 professionals and two people to back up each professional, wouldn't that be 900?

Chairman CURTIS. No, What I have tried to show in the footnote to this table is that that 298 figure includes 10 percent support staff.

Senator ABOUREZK. Well, where are they shown in this chart then?

Chairman CURTIS. In other words, 260 of that 298 number would be professional positions. And approximately 30 would be support staff.

Senator ABOUREZK. Only 30 secretaries and file clerks?

Chairman CURTIS. That is correct.

Senator ABOUREZK. For those 260 people?

Chairman CURTIS. That is correct.

Senator ABOUREZK. Is that—

Chairman CURTIS. It is, again, because of the peculiarity of the function.

First of all, I should indicate that these are the staff estimates. I have not derived these estimates. But it is undoubtedly made against the present action by the Congress on our '79 budget.

As you may know, on October 1, the Federal Energy Regulatory Commission, after allocation of staff when the department was consolidated and activated on that day, started out with, roughly, 1,200 people. The President, on behalf of the commission, requested an additional 200 positions. Both the House Appropriations and the Senate Appropriations Committees, in view of the unacceptable backlog and deficiencies in the regulatory systems which we inherited from the Federal Power Commission, has, on its own motion, provided an additional 325 positions.

The point is that, as of fiscal '79, we are to get 500 additional positions. Therefore, the increment for Natural Gas Policy Act implementation is significantly less than one might otherwise expect.

Senator ABOUREZK. Because you are using up additional people that have already been put on the payroll?

Chairman CURTIS. We would be drawing from resources that the Congress is providing to get rid of our backlog.

Senator ABOUREZK. Getting back to what you say is 260 professionals and 30 secretaries and file clerks. You say the staff drew this up. Does that seem to you to be a reasonable figure?

Chairman CURTIS. In first blush, Senator, it may be a reasonable startup figure. I think the pacing device of the growth and the staff needed for effective enforcement and administration of this act will depend largely on the experience gained in the first year of administration. As a basic principle, I think that, one, a shift from a predetermination eligibility for natural gas pricing would contemplate that, by developing a meaningful enforcement presence, that the commission can rely on spot audits and assume, where there are oath filings attesting to eligibility, that those oath filings are made in good faith.

Where spot audits indicate that trust has been abused, the commission would then take vigorous and effective enforcement action.

This is much the principle of enforcement of the tax laws, which has historically been quite effective. If we determine in our first year of experience through spot audits and the need for enforcment action that that trust is abused and that we have widescale noncompliance, then we would come back to the Congress and at that point ask for a significant augmentation of our staff resource.

Senator ABOUREZK. What do you mean by "significant" then? Do you have any kind of estimate?

Chairman CURTIS. I do not think it is possible to tag an estimate to it, Senator, until we gain that experience in the first year of implementation.

If I could make one additional comment.

Senator ABOUREZK. Yes, sir.

Chairman CURTIS. The Federal Power Commission, in its 57 year history, did not have an Office of Enforcement. That was created by the Federal Energy Regulatory Commission to allow it both to give this Congress and the people greater assurance that the laws we are charged to adminster are complied with, but also to allow us to explore innovative regulatory devices which would permit reliance on oath filings backed up by spot audits and enforcement action where abuse is shown.

As you know, the Federal Power Commission's experience has been a sad one in its attempt to manage what is an ever-increasing case load. It has produced totally unacceptable backlogs and unsatisfactory delays in the regulatory system.

Our management studies show that that sad history would be repeated by the Federal Energy Regulatory Commission unless we significantly change our processes.

I have some figures and charts which may be of interest to the committee. Basically it shows that, although the Federal Energy Regulatory Commission has made significant progress——

Senator ABOUREZK. We might forgo this for a brief moment so I can get to some other questions.

I would like to talk a minute about the contractual positions that you discussed a little earlier in your testimony. I believe your statement was to me yesterday that, since you could not expect to find qualified people to fill the initial 300 positions right off the bat, you would have to contract out a great deal of this work. Do you have any idea how many people you would have to contract? What would those jobs be for?

Chairman CURTIS. Senator, what is required throughout the National Energy Act is a number of tasks which do not go to the direct enforcement of the legal requirement—tests such as the preparation of reports, studies leading to the development of both the initial and permanent exemptions for curtailment, for agricultural, for small industrial boiler fuel users, for schools, hospitals, and similar institutions.

We need to develop an adequate data base which we do not today have to carry out those legislative mandates.

We will be able to rely on the Energy Information Administration for a good deal of this work. But the analysis of the data retrieved in that effort, as well as studies of the uses to which gas is made for agricultural processes and the economics of alternative fuels, as well as the technology available to use alternative fuels to natural gas for different industrial processes, are the type of thing that I would contemplate that could be most usefully done through contractual monies.

Senator ABOUREZK. How much money would you anticipate spending then for contractual help?

Chairman CURTIS. We have no estimate to provide the committee at this time.

Senator ABOUREZK. Do you have a ball park figure?

Chairman CURTIS. I cannot even give you a ball park figure, Senator.

Senator ABOUREZK. If somebody said, "Well, you have 9.6 million listed for the full-time staff," would it be another 10 million roughly?

Chairman CURTIS. I would say 5 to 10 million would not be an unreasonable estimate.

Senator ABOUREZK. So, we are talking about roughly $20 million at the outset for additional bureaucracy?

Chairman CURTIS. Assuming we could substantiate it and convince the Congress of its need, yes, sir.

Senator ABOUREZK. Some of the assumptions on which these estimates were made—I think the primary assumption that you yourself have set out—is that, if the courts agree with your interpretation of the Natural Gas Policy Act, and especially its administrative provisions—these estimates are based upon that assumption; isn't that correct?

Chairman CURTIS. The basic conclusion as to the effect of administration and enforcement of the act is based on that assumption.

Senator ABOUREZK. And what happens if the courts do not agree with your interpretation?

Chairman CURTIS. Senator, I think first that the interpretations are soundly made. The basic principle followed by the courts is to give effect to the expression of the act and to fill in its gaps and allow the administrative agency to carry out the requirements that the Congress has imposed upon it.

It is conceivable that the courts—or some courts—may not arrive at a similar conclusion. In that case, you can be assured the commission will come to the Congress and seek a corrective change.

I believe that——

Senator ABOUREZK. Say that again. If the courts do not agree, you will have to come to Congress and get a change in the law?

Chairman CURTIS. That is correct.

I believe that the questions of interpretation, however, can be solved through appropriate floor colloquy. We have in this analysis presented to the managers and in a number of instances asked that clarification be made on the floor. Armed with that floor colloquy, particularly with the managers on behalf of the conference, I think the likelihood of sustaining this interpretation in the courts is very great.

Senator ABOUREZK. I guess what you are saying in effect, without saying it directly, is that the drafting of the conference report is not all that good and it needs additional refinement in colloquy, you think?

Chairman CURTIS. As I tried to say in the introduction of the section-by-section analysis, as Justice Holmes observed, "Words are but the skin of a naked thought." And words alone cannot convey the full meaning and intent of the Congress. We would appreciate a clarification in a number of respects.

There are two important errors in the conference report. Those occur in the interim collection procedure set out in Section 503. I believe those in the usual course would be corrected by a concurrent resolution. I do not believe that they can be corrected by floor colloquy. They are significant ones and must be changed.

Senator ABOUREZK. They would have to be done by concurrent resolution?

Chairman CURTIS. Yes, sir.

Senator ABOUREZK. Well, actually, I think procedurally it would have to be done by another bill instead of concurrent resolution. I do not think you can amend a piece of legislation by concurrent resolution.

Chairman CURTIS. Well, I am just gathering from my seven years of experience that, in a number of instances, a usual and largely unnoticed technical procedure is, following final passage of a conference report, to pass a concurrent resolution of the House and Senate which instructs the enrolling clerk, when he enrolls a bill to be transmitted to the President for signature, to make changes in the legislation. That is the device to which I am referring.

Senator ABOUREZK. That is a new one on me. I have never heard of that before. I know that technical and clerical changes can be made, but not substantive.

Chairman CURTIS. These are technical and clerical changes, in my opinion. Both changes are clearly contradicted in the joint statement of managers' explanation of what they do. They are residual from a previous draft.

Senator ABOUREZK. Those are substantive changes that you are talking about, I think—well, that is beyond the scope of this hearing in any event. But it is interesting to hear that.

In other words, to require all these changes and clarifications that you believe need to be made before this thing can operate even halfway smoothly—if you say that language is just but the naked skin of thought, let me think of another analogy. What you are proposing is kind of like going out to sea in a leaky boat but you want to take some life jackets with you just to make sure. Would that be——

Chairman CURTIS. Well, I hope I am not proposing anything other than requesting some clarification where we have noted the need for it. That is not unusual, to develop a legislative history on the floor of the House and Senate to assist an administrative agency in carrying out the act.

Senator ABOUREZK. May I ask, Mr. Chairman, I think you said you had 500 newly-authorized people under the old authorization. You are going to have to have 300 or so more full-time employees plus contractual people on top of that.

There have been problems in FERC and the FPC of hiring qualified people; isn't that correct? Haven't you had trouble recruiting people?

Chairman CURTIS. Yes, sir; we have.

Senator ABOUREZK. May I ask how you would anticipate finding this many new people who are qualified and could do the job properly?

Chairman CURTIS. I think if we can review just very briefly what some of our problems have been in the past. One of our difficulties in attracting good people to the commission has been routed in the arcane nature of the administrative procedures that the commission has employed in its processes. In short, it is terribly tedious and difficult work.

With the new act there will be at least an opportunity to create innovative regulatory mechanisms. My general experience is that people like to do things that are new rather than do things that have been done for 30 or 40 years. I think it will help us.

I think also some of our problems have been associated with the general lack of morale attributable to a sense of drift in the commission and no focus or commitment. Hopefully, we have turned that around.

When the Federal Energy Regulatory Commission was established, the Federal Power Commission was suffering from a 20 percent attrition rate.

Senator ABOUREZK. A 20 percent attrition rate?

Chairman CURTIS. A 20 percent attrition rate. They could not hire staff as quickly as staff was leaving the commission.

We have changed that. Our attrition rate is now below 10 percent. We have been able to make a positive increase in our staff resource since the commission has been there. I think it is simply because people are responding to the challenge and have a sense of direction in the commission and like the direction in which it is going.

Senator ABOUREZK. May I ask how long do you think it will take to draft and adopt the regulations needed and to come up to full staff strength to enforce the Natural Gas Policy Act, if it were to be passed?

Chairman CURTIS. That is a difficult question to respond to. There are a number of implementing rules that are called for immediately, some which are called for within 90 days and others which the commission has given one year or 18 months to develop.

So, within the contemplation of the Natural Gas Policy Act, this is to be a phased administration and will occur over a period of two years.

Senator ABOUREZK. Do you believe you can finish all of those jobs within two years with the staff that you have and that you are able to hire—assuming that the courts agree with your interpretation?

Chairman CURTIS. I believe we have a reasonable opportunity to do so; yes, sir.

Senator ABOUREZK. Within two years?

Chairman CURTIS. I believe we have a reasonable opportunity to do that which the act requires us to do, both in the near term—those steps which must be taken in the first 90 days, for example—and those steps which must be taken in a longer-phased implementation.

Senator ABOUREZK. Mr. Chairman, when you say you have a reasonable opportunity to do so, does that mean you think you will be able to do it, or you will just have an opportunity to do so?

Chairman CURTIS. I think we will be able to do it; yes, sir.

Senator ABOUREZK. The document prepared by your Office of Enforcement identifies some 30 categories and subcategories of natural gas for pricing purposes. I think it further points out that the bill does not replace the commission's present pricing vintages but is in addition to those pricing vintages. Is that an accurate statement or reflection of what your agency has said?

Chairman CURTIS. Senator, if I can refer you to the section-by-section analysis.

Senator ABOUREZK. Page 34 is the page I am referring to in the Office of Enforcement analysis, not of the one you are referring to.

Chairman CURTIS. If I can refer to my analysis for a moment. I tried to point out—

Senator ABOUREZK. I wonder, Mr. Chairman, if you might just respond to the question first.

Chairman CURTIS. I do not think that is right because I think you have an earlier draft, Senator. The final draft appendix you are referring to to the Office of Enforcement memorandum, I believe, showed that there were 27 producer classifications. One divides those classifications into subclasses and that there were two classifications for sales from intrastate pipelines. So, the 30 figure, I believe, is incorrect.

Senator ABOUREZK. What would be correct—29? Twenty-seven plus two?

Chairman CURTIS. There are 27 producer classifications which fall under approximately 12 different price levels. Of those price levels, four are derived from commission regulation which currently exist. Two are statutory equivalence to commission regulation. So, in essence, there are four additional price levels to the six commission equivalent price levels already established.

Of the 27 producer categories—I just have to add them up—about seven of those have equivalence in existing regulation.

Senator ABOUREZK. In any event, whether

it is 27 or 30, there are certainly more than three or four categories.

Chairman CURTIS. There are certainly more than three or four.

Senator ABOUREZK. As Secretary Schlesinger had stated.

Chairman CURTIS. I am not familiar with the secretary's statement.

Senator ABOUREZK. But there are more than three or four.

Chairman CURTIS. There are certainly more than three or four.

Senator ABOUREZK. Thank you.

What is the current backlog of cases before FERC at this point under the old existing law?

Chairman CURTIS. Senator, if you give me a chance to go back to the charts, I can show those to you.

The first shows what the completions have been and the receipts. That means applications filed with us, what we have disposed of in the form of commission decision. As you can see from that first chart, we have a gap between receipts and completions, which means that we do not catch up to our backlog—although we are cutting into it—until mid-80 to '81.

I would point out that we made sharp progress in completions, but the receipts are going up at a pace before us. These are projections based on our management study. It shows that, between '80 and '81, we will cross the line; at least that is what we believe. At that point we have the opportunity to be in that most welcome of positions of being able to conduct our business responsibly under the act and still reduce our work force, which is apparently what the Congress believes is demanded by the citizens of the country.

Senator ABOUREZK. For the record can you state what the number is of cases?

Chairman CURTIS. The total workload is on the next graph.

Senator ABOUREZK. Would you just say what it is?

Chairman CURTIS. Our current workload is about 30,000 items here.

Senator ABOUREZK. Is that the backlog as well? Your backlog is now 30,000?

Chairman CURTIS. Our backlog is about 9,000 cases.

Senator ABOUREZK. And those will still remain, even if the Natural Gas Policy Act is passed. You will still have to fight those out.

Chairman CURTIS. Some of them will, Senator, and some of them will not.

As I tried to point out in my analysis, this number is very large. As you will observe from the second chart, we expect it to grow before we can turn that slope around.

The very last chart shows that the bulk of this workload, not in terms of the draw of resources but in terms of numbers, is producer rate filings and producer certificate filings. Respectively, by 1980 we show a backlog in this area of 9,807 producer rate filing cases and 3,012 producer certificate cases. That is attributable to the method of regulation currently imposed by the system which we inherited from the Federal Power Commission.

The Natural Gas Policy Act will alter that requirement in significant ways, which will greatly reduce the producer rate filings and producer certificate filings. Those numbers will significantly reduce. But the bulk of our manpower goes into the pipeline certificate area and the all-other category. That is where the manpower is focused, in the producer certificates and producer rate filings.

Most of this is routine activity. For example, the Federal Power Commission requires a rate increase application under section four each time a producer increases his price by the penny increments allowed per quarter for vintage wells of 1975 and after and penny increments per year for categories. Eleven thousand filings a year come in for that reason.

I do not think we are protecting the public, performing any useful function in requiring the review of penny increments which are already allowed under the just and reasonable rates established by the commission. We can eliminate that stuff.

Senator ABOUREZK. If I can go back to the 500 employees authorized for the existing law. You have not filled those positions yet; have you?

Chairman CURTIS. We have filled most of the first 200 increment. That is because we have had positions allocated from Department of Energy resources to allow us to do that in anticipation of this.

Senator ABOUREZK. How much money was that authorization for for the 500 people? Do you recall the figure?

Chairman CURTIS. The total budget would be $51.3 million.

Senator ABOUREZK. For the 500?

Chairman CURTIS. That would be for the total budget of the commission including the increment of 500.

Senator ABOUREZK. Do you have a breakdown of the authorization figure for the 500?

Chairman CURTIS. I think it cost about $9.6 million. There is an accounting problem with that; I hate to complicate this.

Senator ABOUREZK. But the cost would be $9.6 million?

Chairman CURTIS. I believe that is correct—subject to check.

Senator ABOUREZK. Then it would be fair to say that, if you are going to use those people for enforcement under the new Natural Gas Policy Act, you would have to add another, roughly, $10 million. That would be $30 million for enforcement of the new law if it were passed. Would that be accurate?

Chairman CURTIS. Well, what you are doing is attributing resources to our ongoing Natural Gas Act responsibilities, which will continue, for gas which is committed or dedicated to interstate commerce. I do not think——

Senator ABOUREZK. But, according to your testimony, you will not be using all of those people because the number of cases will diminish sharply, you said, under the old act.

Chairman CURTIS. We will still need those people.

Senator ABOUREZK. You will use these people under the old act in spite of anything. Is that correct?

Chairman CURTIS. Yes, that is correct.

Senator ABOUREZK. And these additional 500 will not be used if the Natural Gas Policy Act is passed?

Chairman CURTIS. They will be used to—we can draw upon those resources to help us in the first stages of implementation of this act.

Senator ABOUREZK. What will happen to your case backlog then under the old law?

Chairman CURTIS. The purpose of those 535 additional people, the woefully deficient resources that the Federal Power Commission had been permitted to conduct its functions—which, incidentally, created the backlog—those people were designated to be used to develop alternative methods of regulation to get us out of the processes under which we were drowning and to start cutting into the backlog. Now, to the extent that we draw upon those resources for the Natural Gas Policy Act, we will be largely doing the same functions.

We can create new processes for carrying out our functions under the Natural Gas Policy Act through the use of such people.

Senator ABOUREZK. Do you believe, along with the Office of Enforcement, that Section 501 will be litigated quite extensively under the new act if it is passed?

Chairman CURTIS. I think it will be litigated; yes, sir.

Senator ABOUREZK. Do you believe that your interpretation of 501 might be eventually agreed with by the Supreme Court at some point?

Chairman CURTIS. I do. I am not sure it need get to the Supreme Court. It depends on the strength of the floor colloquy that the Congress attaches to this bill, should it pass it.

Senator ABOUREZK. You do not think it will get to the Supreme Court?

Chairman CURTIS. I say it may not.

Senator ABOUREZK. But most likely it will?

Chairman CURTIS. It may not need to go.

Senator ABOUREZK. I think you would have to assume that it would go all the way, though, on each different section that is litigated. Wouldn't it be safe to assume that?

I think it would be.

Chairman CURTIS. I will not contest that. There have been some eight cases which have interpreted a similar provision under the Natural Gas Act. Only one of those has gotten to the Supreme Court.

Senator ABOUREZK. How long, in your view, do you believe that the litigation would go on and the uncertainty about the interpretation of Section 501? How long do you think that would take before the uncertainty were done away with?

Chairman CURTIS. I have no way of estimating that, Senator. I would point out that the Natural Gas Policy Act limits the jurisdiction of the court to stay the effectiveness of our rules pending the conclusion of judicial review. So, in terms of the commission's administration and enforcement, it would not be impaired by the pendency of judicial review.

Senator ABOUREZK. Taking the provisions which you said in your letter to Senator Jackson, assuming that the courts interpret Section 501 somewhat differently than you do, or less broadly than you do, would I be correct in reading into your letter to Senator Jackson that your agency would be unable to enforce or administer the bill? You do use that as an assumption. Wouldn't it be then pretty much unenforceable?

Chairman CURTIS. It depends on what the court does, Senator.

Senator ABOUREZK. But it could be if they did the wrong thing, in your view. It could be rendered totally unenforceable; could it not?

Chairman CURTIS. If they did absolutely the wrong thing and most narrowly construed that section, then we would need to come back to get corrective legislation in order to effectivey administer the act.

Senator ABOUREZK. That means that this particular conference report would be rendered totally unenforceable if that were to be the case, if the courts disagreed with your interpretation totally.

Chairman CURTIS. If they disarmed the commission from the administrative powers which it appears that Section 501 was intended to vest in the commission, then we would have to get additional powers from the Congress in order to carry out the act.

Senator ABOUREZK. Those powers then would have to go back through the courts once again because certainly they would be litigated as well; wouldn't they?

Chairman CURTIS. Well, it depends, of course, Senator, on the clarity of expression of the Congress. As Cardozo observes, if a statute is consistent with the Constitution, it overrides the law of judges. If the

statute is specifically written and the intent of the Congress is clear, then there is no peril in the courts. The question is fleshing in that congressional intent. We would like to see it done, Senator, to remove this peril.

Senator ABOUREZK. Mr. Chairman, when you flesh in that intent with rules and regulations—which every agency does and which every law allows room for—that itself, because of the high financial stakes involved in natural gas pricing, would quite naturally go back to the courts. Each time new regulations are written they go back through the courts—don't they—in this situation?

Chairman CURTIS. That is certainly correct, Senator. I do not want to appear to fight off the conclusion that there is going to be extensive litigation under this act. I think that is a fair statement. One must accept that that is going to occur. This is a highly litigious area. We can expect to be litigated in most areas.

Senator ABOUREZK. I have pretty much asked all the questions I had prepared, Mr. Chairman.

STATEMENT OF MORTON SIMONS, ATTORNEY, WASHINGTON, D.C.

Mr. SIMONS. Mr. Chairman, I do not have a prepared statement. I was asked to appear yesterday afternoon. Between then and now, I have managed to collect my thoughts, but not much more.

Senator ABOUREZK. The reason we have asked you to appear is that we want you to refer specifically to the possibility of the kind of litigation and the extent of it that will be involved as a result of the conference report. I assume you are familiar with the conference report.

Mr. SIMONS. Yes, I am.

Senator ABOUREZK. May I ask, first of all, if you would state to the committee what your qualifications are of testifying. What is your profession? How long have you served in it? How long have you practiced natural gas law?

Mr. SIMONS. It is exactly 25 years ago this month that I first showed up at an FPC hearing. From that day to this, I have spent, I guess, the vast majority of my professional life either before the FPC—or the FERC now—or before the courts on appeal. For the past 17 years, I have been a partner in the Washington firm of Simons and Simons. About 95 percent of our business is before the power or energy commission and on court-related matters.

I do get into court a lot. One of the things I did since last evening was check to see how many court appeals I have been in in recent years. I find that I have managed to reverse a commission about once a year pretty consistently for the last eight years.

I have appeared on behalf of a variety of different types of clients, but not the regulated companies. I have represented state commissions, gas distribution companies, industrial users, and members of Congress.

Senator ABOUREZK. In fact—let's get it out on the table—you represented me in a lawsuit I brought against the Federal Power Commission.

Mr. SIMONS. Yes. I might say that was one of the ones I did not win, so I think I still owe you something.

[Laughter.]

Mr. SIMONS. Just to get all the ex parte matters out, one of the ones I did win was the Mcdonald case that appears in 505 Fed. 2nd 355. We did reverse the commission on that. That was when I first met Charlie Curtis, who was working for one of Mr. Mcdonald's committees then. He had a keen appreciation of the limitations on the commission's power under the law at that time, and I think he still does.

Senator ABOUREZK. Do you know of anybody, Mr. Simons, who has practiced before the FPC longer than you have?

Mr. SIMONS. I hope there are; I think there are. I do not think there are many lawyers that get to court as often as I do in recent years. I hope there are some that have been around longer than I have, and I am sure there are.

I suspect, though, that, in the past, let's say, 15, 20, or 25 years, I have probably spent as much time in FPC–FERC hearing rooms as probably any lawyer in private practice.

To get to some of the specifics in the 501(a) problem.

Senator ABOUREZK. Explain what 501(a) is for the benefit of the press and the public.

Mr. SIMONS. 501(a) is a provision that says the commission shall have power to make rules and amend its rules and take general action to carry out its purposes. It is such a big bill.

The Natural Gas Act used to be very short. It had 16 sections. We poor lawyers who practice before the commission could find where we were. This new bill is so long and has so many sections, I think I am going to spend a lot of time flipping pages.

Let me read 501(a). It is quite short, about seven or eight lines long:

"Except where expressly provided otherwise, the commission shall administer this act. The commission, or any other Federal office or agency in which any function under this act is vested or delegated, is authorized to perform any and all acts, including any appropriate enforcement activity, and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this act."

This particular section is found in most organic regulatory statutes. It has its antecedent in Section 16 of the Natural Gas Act and Section 309 of the Federal Power Act. This provision has been interpreted by the courts.

Of course, it is very tempting for a government agency, and particularly its appellate lawyers, when they get to court and they are challenged by someone as to where did you get that power, to point to Section 16 or to point what is now 501(a). If you can't find it in any of the specific sections, then it is in the grab bag, the general rule-making provisions, general power to issue orders.

That concept, which was pressed on the courts by the Federal Power Commission—certainly, to my knowledge, quite consistently during the late '50s and '60s in cases that I was in—I think was knocked on the head and indeed killed by the District of Columbia circuit's decision in New England Power Company versus Federal Power Commission, a 1962 decision written by Judge Tamm, which appears at 467 Fed. 2nd 425.

I think it is important because, in reading Chairman Curtis' statement, so much reliance and so many occasions came back to 501(a). I think it may be useful to read what the court said. It is quite short. It appears at pages 430 and 431 of 467 Fed. 2nd. Skipping the first couple of sentences, the court refers then to existing Section 16 and Section 309 of the Federal Power Act, the antecedents of the present 501(a):

"Both sections are of an implementary rather than substantive character. The cases have made abundantly clear that, while these provisions must be read in a broad expansive manner, they can only be implemented consistently with the provisions and purpose of the legislation and that they authorize an agency to use means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the act. These sections merely augment existing powers conferred upon the agency by Congress. They do not confer independent authority to act."

It is true that there are times when this sort of provision can be used. If you have power to set rates and if you have power to have rate hearings, you can issue orders under your general rule-making section that are necessary to have those sorts of hearings.

What the court knocked out in New England Power, however, was something for which they could find no substantive support in the substantive sections of the act—specifically, an FPC attempt to impose fees against the regulated company for the costs of regulation. The commission did it by general rule, as provided in Section 16.

The difficulty was there was no substantive provision that they could go back to and point to that they had relied on. That is the key difference.

I might say, Senator, that I have argued over the years—I hope consistently—that the Natural Gas Act should be given a broad reading, that the commission does have great powers. I frequently urge the commission and the courts on appeal. The commission had more power than it thought it had. At the same time, its powers do have to be tied back to the substantive provisions of the act.

Based on the short review I made, I am not in a position to tell you whether, on each of the points that Chairman Curtis said they would have to rely on 501(a), there is in fact something substantive that it could be tied to that it would be supported by the courts. But I am troubled by the frequency that the 501(a) relief appears in the commission's present approach.

Senator ABOUREZK. Let me refer to what you are talking about. In Chairman Curtis' analysis of the bill itself, he keeps coming back with the reliance upon Section 501 to clarify what he thinks might be ambiguous. Isn't that essentially what you are saying?

Mr. SIMONS. Yes, and to provide——

Senator ABOUREZK. Why do you say that troubles you?

Mr. SIMONS. Well, you really have to find something specific. If, for example, the act says that the commission can order a refund, then I think quite clearly 501(a) gives the commission power to fix what kind of refund. It may very well imply that they can provide interest on refunds because interest normally goes with a dollar-type judgment.

But, if the act does not say anything about refunds, the fact that you could stop somebody from doing something does not necessarily mean that 501(a) will let you order refunds. It is that sort of a difference.

Senator ABOUREZK. I understand that, Mr. Simons. But why do you think he refers to 501 so many times in his analysis?

Mr. SIMONS. I think he refers to 501 because the substantive power is not in the act itself.

Senator ABOUREZK. In other words, he then wants to rely upon a broad interpretation of 501 to put something in which is not there?

Mr. SIMONS. That is correct.

There is a related problem to that that did not occur to me. And I am not sure I was asked to comment on it, really, but I shall anyway with your permission. In reading through the number of times that the chairman says that he hopes this particular problem and that particular problem will be clarified by colloquy on the floor. Again, I can only tell you as an active appellate lawyer, appealing from agency statutes, that you are just begging for appeals.

The chairman noted that this is an area where there is a lot of money involved and it tends to be a litigious area. I think he is certainly quite correct in that assessment.

Senator ABOUREZK. Would you speak, Mr. Simons, to one of the questions I asked the chairman: How long will it take for the rules and regulations and this new act, if it is passed, to be interpreted by the courts, in particular the Supreme Court?

Mr. SIMONS. Anything shorter than three years, I think, would be unduly optimistic.

Senator ABOUREZK. What would be the longest?

Mr. SIMONS. Five, seven, something like that. Maybe by 1985 when we are all through.

Senator ABOUREZK. That is when the law goes out of being.

Mr. SIMONS. Let me tell you; that is not far-fetched.

One of the cases that I was in was called the Rainfield case. I want to address myself, too, to some of this backlog problem. Backlog is a dreadful word; I dislike it. I always am afraid that the real crucial difference between an administrator and a bureaucrat is that a bureaucrat talks about backlog, and an administrator talks about what he is going to get done. A lot of the cases that sit there sit there because the commission wants them to sit there. Deliberate stalling has long been an agency device.

Let me tell you about Rainfield case. That case started in 1957. It has been in litigation ever since. It has gone to the courts three times. One of those times it went to the Supreme Court. The last time it was remanded by the D.C. circuit. I was counsel in that case. The mandate has been outstanding for about three years. The commission has not taken any action on it.

The issue in that case is the price at which gas should flow and what refunds should be made, because gas has been flowing since '59. I think that, by the time it is decided, there will be no gas flowing at all. Yet, the case evolved out of the initial certificate application, which has never been resolved. That is a case that has been pending 21 years.

So, when you say how long will it take to get settled—you know, a lot of times the courts do not totally settle something; they resolve part of it and send it back, and it has to be resolved a second time around.

A pretty good rule of thumb judgment for getting a case decided in the D.C. circuit is, from the time of the commission decision to the time of Court of Appeals decision is a minimum of 18 months. From the time of the Court of Appeals decision to the time of Supreme Court decision is probably a minimum of 18, and it can be stretched out if people apply to the Court of Appeals for rehearing, if they ask the Supreme Court for extensions of time. And I might say that the commission frequently does both.

So, three years is a tight schedule. That is if the commission enters an order that can be appealed and it can get up through the courts.

Senator ABOUREZK. There have been arguments on this legislation that it would resolve uncertainty in natural gas pricing. Would you comment on that?

Mr. SIMONS. Back at the time that the commission adopted Order 455, which was a particular kind of optional pricing that they were going to get into, they said the reason we want to do that—this was about five years ago—was to avoid uncertainty.

The fact of the matter is that the only way that you can eliminate uncertainty is to eliminate judicial review and to eliminate due process and put all your powers in the hands of a dictator, a czar, whatever it is you want to call him—some guy who makes the judgment and there is no review. Now, that is a way to do it. It historically has not been the way that we do it under Anglo-American law.

Anybody who tells you that you can get certainty out of a statute that permits judicial review is kidding you. You are going to have to go through the judicial review. If people do not like uncertainty generated by judicial review, then they should be honest enough to say, "We want to get rid of uncertainty and we want to do away with review. We want to give absolute power to one guy to make a decision and that's it."

Senator ABOUREZK. Mr. Simons, I think we have run out of questions. You have very clearly explained the areas of inquiry that we wanted.

My thanks to you and my thanks again to Chairman Charles Curtis.

The hearings are adjourned.

[Whereupon, at 11:15 a.m., the meeting was adjourned.]

(Conclusion of earlier proceedings.)

The PRESIDING OFFICER (Mr. FORD). The Chair has an inquiry. He understands the time is to be equally divided, but he does not know how much time is to be yielded. Can the Senator from Wyoming, yield himself time?

Mr. STEVENS. I am happy to do so, and I think I can also yield myself time from the time of the Senator from Washington (Mr. JACKSON) and the Senator from Ohio (Mr. METZENBAUM); and I ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, the time will be charged to both sides; the Chair recognizes the Senator from Alaska.

AMENDMENT NO. 3600

Mr. STEVENS. Mr. President, on behalf of the Senator from Minnesota (Mrs. HUMPHREY), I present at this time an amendment to the motion proposed by the Senator from Ohio (Mr. METZENBAUM) and others in connection with the conference report on H.R. 5289, an act for the relief of Joe Cortina of Tampa, Fla. This is the conference report on the natural gas bill.

This amendment to the motion proposed by the Senator from Ohio is offered by Senator HUMPHREY for herself, Mr. BAYH, Mr. ANDERSON, and I join in cosponsoring the amendment. I ask that the amendment be printed and placed on the desk of each Senator, and that it also be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be received and printed, and will lie on the table.

The amendment follows:

AMENDMENT NO. 3600

At the end of the instruction contained therein add the following:

Provided, however, That all provisions of the conference report pertaining to natural gas produced in Alaska be incorporated in the conference report reported back.

Mr. STEVENS. The intention of this amendment to the motion offered by the Senator from Ohio, which has previously been printed, is that should the recommittal motion be adopted, the bill be reported back from the conference will contain the provisions that pertain to natural gas produced in Alaska as they appear in this conference report and the bill which is included in this conference report.

There should be no question that the provisions relating to Alaskan natural gas that are incorporated in the conference report to assure the financeability of the pipeline to bring Alaska's North Slope gas to the South 48 be included in any bill presented to the Senate as a result of the motion of the Senator from Ohio, should that motion be successful.

It is on behalf of my State that I speak, Mr. President, because the gas is to be produced from lands which are owned by the State of Alaska—the State of Alaska is the royalty owner of the gas to be produced from the North Slope—we have a great interest in seeing to it that this gas pipeline is consructed as soon as possible and at the lowest cost possible.

I am sure that, like the Senator from Illinois, the Senators from Minnesota and Indiana seek to assure the early construction of this gas pipeline so that the ravaging effects of inflation on the construction cost of this line will not be such that it will destroy the economic feasibility of this line which will bring this gas into the Midwestern part of the United States.

Mr. President, I will be happy to yield to the Senator from Indiana.

The PRESIDING OFFICER. Before the Senator from Indiana is recognized, against whom do we charge the time?

Mr. STEVENS. He is commenting on the same matter. Time is to be equally divided.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana with the time to be equally charged.

Mr. BAYH. I thank my distinguished colleague from Alaska.

Mr. President, I join with my colleague from Alaska and my colleagues from Minnesota in introducing this amendment to modify the recommittal motion that has been made by Senator METZENBAUM and others. The purpose of this amendment is clear. It is meant to assure that the fate of the Alaska gas pipeline should stand on its own merits and not hang on the outcome of the controversial natural gas conference report.

The Senate has reached agreement to vote on the recommittal motion on the natural gas conference on Tuesday, September 19. If this motion fails, others may be offered. This motion will instruct the conferees to report certain nonpricing sections of the natural gas conference report back to the Senate as a substitute for the conference report now pending. The amendment we are offering to the Metzenbaum recommittal motion will modify the instructions to include the provisions in the conference report dealing with the Alaska gas pipeline.

A positive vote on this amendment, by those on both sides of the natural gas bill, should assure that the Alaska gas

provisions will be included in any subsequent recommittal motion that may be offered should the first motion fail.

The Alaska gas pipeline has widespread support in Congress. The Senate approved it by a vote of 87 to 2. The House approved it by voice vote. The President has made clear his strong belief that construction of the pipeline is in the national interest. The only remaining obstacle is the setting of a price for Alaska gas, which is necessary before gas sales contracts can be signed and financial arrangements for the project completed. The Alaska gas pricing provisions in the conference report will stabilize the price of Alaska gas and permit private financing for its construction. These provisions are in no way logically related to the rest of the bill. The fate of the pipeline should stand on its own merits and not hang on the outcome of the controversial natural gas conference report. Progress on the project has already been unnecessarily delayed for a year, because of congressional debate over deregulation of natural gas prices.

Giving a final green light to this project is the most immediate way of avoiding future natural gas shortages. It will mean the predelivery of 1.04 billion cubic feet of additional Canadian gas from Alberta to the lower 48 States in 1980 due to early construction of the Southern, spurs of the system which will deliver gas both east and west of the Rockies. Alaskan gas will come on line at the rate of 2.0 billion cubic feet per day in early 1984, increasing to 2.4 billion cubic feet per day by 1990. Finally, construction of the pipeline offers the possibility of continued imports of Canadian gas, currently running at 2.7 billion cubic feet per day, if necessary. The reserves at the Prudhoe Bay Field on the north slope of Alaska, estimated at 26 trillion cubic feet, are likely to permit gas flow at this rate for 25 to 30 years. Undiscovered reserves elsewhere in Alaska could run as high as 72 to 185 trillion cubic feet. Construction of this pipeline is a safe, reliable and efficient way of significantly increasing American natural gas supplies to the parts of the country that need supplies most.

No matter what any Senator's position on the pending conference report, I urge all my colleagues to support this amendment, meant to insure construction of the pipeline regardless of the division in the Senate on the conference report. A strong affirmative vote by the Senate for the pipeline should assure that if the first recommittal motion fails, the pipeline provisions will be included in any subsequent recommittal motions that will be offered.

Mr. STEVENS. Mr. President, in considering the merits and demerits of the natural gas conference report, it is important to look past our own national interests. We are a world leader and the actions of other countries often are dependent on our lead. Consequently, the implications of our actions stretch far beyond our borders.

Some of my colleagues would like to see a perfect piece of legislation that would settle all questions and problems once and for all. So would I. Unfortunately everyone has a different idea of what approach is the best solution to the energy dilemma. It has taken 17 long months to arrive at any sort of agreement at all, and what has been agreed to is a compromise which naturally is not going to please everyone. That is the nature of a compromise. Some of my colleagues are now finding fault with those very provisions that it has taken so long to work out and would like to send that compromise back to conference in the hope of getting something better. If I were really convinced that we could send this report back to conference and come up with a perfect piece of legislation that would solve everybody's problems, I would certainly support the recommital to the conference committee. But I am convinced that is not the case—I do not believe we can arrive at anything better than what we have. And the fact of the matter is that we can just not afford to spend any more time wrestling with it.

We are not the only country in the world that cannot arrive at an energy policy that will satisfy everyone. Recently an article appeared in a Canadian publication in which the author, Les Rowland, indicated he was "enlightened" to find out that we were experiencing difficulties in working out our national policy. At the end, he expressed the idea which I believe has great merit. It is Mr. Rowland's humorous yet accurate observation that too much energy is wasted discussing energy policy rather than acting on it. I agree with that. It is crucial that we quit discussing this issue to death and do something about it. As I pointed out, we are a world leader and the actions of other countries are dependent on our lead. While we continue to stall on this issue, we lose our credibility with the rest of the world This is especially so in the case of ou neighboring countries. Canada is de pending on us to establish some sort o policy so the Alaska gas pipeline can be built. Nothing can be done until we pass legislation. Finally how can we even know how good our policy is until it is tested?

As I see it, we have three options. We can send the report back to conference from whence we have no guarantee it would emerge in any more acceptable form if it emerged at all. We can vote it down outright and have no policy at all. Both of these options are tantamount to doing nothing—just stalling. Or we can act now and pass the conference report. We can demonstrate our good faith to the world in attempting to do something. Our efforts may not be perfect or please everyone, but I am not sure anyone expects perfection. Doing something—making our best effort—is far better than doing nothing or holding out for unattainable perfection.

Mr. President, I intend to support the conference report and will oppose the motion to recommit, because I believe that without this conference report the Alaska gas pipeline will not be built in time to bring to the south 48 the vast supplies of gas from the North Slope of Alaska.

Mr. President, I ask unanimous consent that the article I mentioned entitled "All Energy Going to Waste," by Les Rowland, as it appeared in the recent Oil Week magazine, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ALL THAT ENERGY GOING TO WASTE

(By Les Rowland)

It is enlightening to find that energy nonpolicy is not confined to Canada, but is implicit also in the USA energy conservation bill. DOE recently released a summary of the provisions of the first four portions of the National Energy Act on which the house and senate committees have agreed.

Builtin contradictions appear in the USA draft, as in Canada's national energy policy. One item stands out in the general conservation sections, a $5 billion program for federally subsidized energy conservation loans to elderly and moderate income families. The temptation is very strong to wonder how much could have been accomplished by applying a similar amount in loans or tax relief to exploration companies to stimulate the finding of more oil and gas.

Besides, there is ample evidence the hydrocarbon energy used in manufacturing insulating material may fully offset the savings in heating fuel, making a cost transfer, but not conserving energy.

There is a further puzzle. If only elderly and moderate income families are to be subsidized for energy conservation, does this mean that younger and more affluent families are welcome to spend their money on more fuel rather than more insulation? This sounds like some of the Canadian programs for subsidizing research into exotic energy forms which may be feasible 25 years from now, or under different climatic conditions.

Thus solar energy might be feasible for heating in the Mojave desert, where it is not needed, but unlikely in Glace Bay or Prince Rupert, where if you are away for a long weekend you may miss the year's sunshine. As for what is creatively termed biomass, our ranch friends have a more explicit name, but there is nothing new about it either. The early settlers banked it around their log walls to help conserve the radiation from the pot bellied stove.

The coal conversion provisions of the USA bill aim to achieve by prohibition what has happened in Canada by economics in the electric power generation industry. However it is ironic that federal and state environmental regulations, like federal and provincial rules in Canada, are delaying the development of new coal mines to provide the energy source whose use is to be encouraged.

The natural gas bill, designed to look simple, actually provides the most serious cause for dispute and its pricing stipulations are the most illogical. This is important to Canada because it is apparently the most prominent single factor in the delay which has caused concern about the time schedule for the Alaska Highway gas transmission line.

Gas pricing and marketing are the principal items. A "single national market" would remove the distinction between interstate and intrastate sales as to pricing. DOE said the change would bring up to 2 tcf/year or

about 6 bcf/d into the interstate market. All producer regulations would be removed, except the control over prices.

This is the contentious point. Price controls would be extended to Jan. 1, 1985, then removed for six months, and could be reinstated for another 18 months by joint action of the president and congress. The price ceiling on new gas would be $1.75 from April 1977 with inflation escalation plus an increment of 3.7% to 1981 and 4% to 1985.

The most sweeping feature is the provision for shelter to domestic gas consumers by imposing incremental pricing on industrial users up to the "regional cost of substitute fuels," so that domestic users will pay 15% less for gas than for oil. On the face of it, this does not seem logical in relation to the overall objective of saving energy.

A final contradiction is the suggestion that maintaining gas prices at less than the cost of alternate fuels will "create incentives for significantly higher production between now and 1985." Presumably the people on the hill in Washington have based their draft on the assumption that the incre se proposed in the interstate gas price will offset the loss to intrastate producers through the single price.

For Canadian gas producers the dilemma will be best resolved by quick action. The pricing compromise would put most USA gas much closer to the Canadian export price, to which there has never been serious objection, even at the present much wider differential.

A new dilemma, however, could be the current Canadian energy policy, which recognizes the big balance of payments deficit and gas surplus but refuses to correct them by expediting more gas exports while a market is available. This will have to be dealt with at both the federal and the provincial level. Unless the matters at issue are settled quickly in both countries, all the energy expended in discussion may have been wasted.

THE ALASKA GAS PIPELINE PROVISIONS IN THE NATURAL GAS BILL

● Mrs. HUMPHREY. Mr. President, I am pleased to be a sponsor of this amendment to include the Alaska gas provisions as part of the recommittal motion on the natural gas conference report.

The Alaska gas pricing provisions will not deregulate the price of Alaskan gas, but they will stabilize that price and thus help assure private financing for construction of the pipeline. This will insure delivery of gas to the lower 48 States.

The Alaska gas pipeline is of crucial importance to the American people. It is the most immediate way of avoiding future natural gas shortages in Minnesota and the Midwest, and the economic dislocation which would inevitably accompany them. It is anticipated 2.4 billion cubic feet per day of new gas will flow through this pipeline to the 48 contiguous States by 1984. Furthermore, it will make possible the continued delivery of Canadian natural gas now flowing at a rate of 2.1 billion cubic feet a day.

Mr. President, my objective in sponsoring this amendment is to assure that under all circumstances, the Senate votes to complete the Alaskan pipeline. The Alaskan gas pipeline has widespread support in Congress. The Senate approved it by a vote of 87 to 2 and the House approved it by voice vote. Further, the administration has made it clear that it supports the pipeline. I cannot think of any other provision of the conference report which enjoys the widespread support given to the Alaskan gas pipeline. I hope my colleagues will join with me and agree to amend the recommittal motion to include the Alaskan gas pricing provisions which are a part of the conference report.●

Mr. BAYH. I should like to say that there can be no question in the mind of anyone who has studied the energy problem confronting our country that part of the solution is an adequate and equitable utilization of those very treasured resources that exist in the State of Alaska. There has been a great deal of debate and discussion over which route and what procedure to follow. I think that has now been resolved, with the new route having minimized, if not totally eliminated, the environmental questions and most of the native claims questions.

Also, there is a particularly laudatory provision in this measure which permits a cooperative effort with the Canadians by which Canadian natural gas in the Province of Alberta can start flowing long before the completion of the pipeline. Because, instead of starting in Alaska and building to the United States, the pipeline will be started close to the United States, one spur going west and another spur going east. Then, as the pipeline is built on into Alaska, the Alberta Canadian gas will begin to flow, with an agreement to deal with reimbursement at a later date.

The one feature which is mandatory, which we must resolve before completion of this pipeline, is the financing. That financing is provided in a bill in which there has been strong concurrence in this body before. There was little, if any, discussion of the need to consider the Alaska gas pipeline during any of the debate on any of the other parts of the President's energy package.

Why? Because it was generally accepted that there was no controversy about that. When the time came, we would go ahead and go through with it.

As I recall, it was not in either the House or the Senate version of this particular bill, but was added in conference. That is fine; I am glad it is there. But as to what the future might be, I cannot predict. I think it is important for any vehicle which passes this body relating to natural gas to have in it the content of this Alaskan gas provision which has now been injected into the conference report. We have to guarantee that price if we are going to get that gas to flow. The quicker we can get that gas to flow, the better off we are going to be.

As the Senator from Alaska has already pointed out, it is costing us more every day. It costs $1 billion more to deliver that gas to the continental United States today than it did a year ago and it will be another $1 billion next year, and so on, ad infinitum.

Let us see that, whatever we do on natural gas, we start the process to get that Alaskan natural gas moving down here into the rest of the country.

I appreciate the remarks of my friend, the Senator from Alaska, and I shall join with him to see what we can do to see that that Alaskan gas is made available to all of us in this country.

Mr. STEVENS. Mr. President, I thank the Senator from Indiana. It is clear, I believe, that there is need for the provisions that are in the conference report. One of the provisions establishes the ceiling price for Alaskan gas and permits an escalation of that price based upon an economic inflator. That is necessary, because if there were a FERC hearing, it would take time; it would also be subject to challenge in the courts. Also, without the rolled-in pricing provisions that are in the bill this issue could be subject to challenge in the courts.

There are those people in the country who do not believe that the Alaska gas pipeline should be built. Some believe it should not be built through Canada, others believe it should not be built at all. The potential of litigation pertaining to the FERC action would be so great that the fear of litigation, in and of itself, could destroy the financial feasibility of this pipeline.

So, as I stated, following meetings with a substantial portion of the business concerns involved and with members of Wall Street firms, the provisions in the conference report were worked out to eliminate the potential of delay and bring about the assurance of a return to investors to assure the feasibility of this financing. I know we are indebted to the Senators from Minnesota and the Senator from Indiana for their interest in assuring, that without regard to the outcome of the controversy before the Senate, the Alaska provisions of the conference report will survive.

Mr. President, I am constrained to remark to my good friend from Indiana that I wish he were equally concerned about looking to the total amount of natural gas in my State. Perhaps we can discuss that later when the so-called d–2 legislation comes before the Senate, if and when it does. We have 15 sedimentary basins in Alaska; only two are producing natural gas. The other 13 have great potential. We are doing everything we can to assure the Nation that those sedimentary basins will be explored and if they contain gas in commercial quantities, that the gas or oil would be produced for the benefit of the country.

I do believe that it is essential to realize that probably 40 percent of the gas that American citizens will consume between now and the end of the hydrocarbon age will be produced either from Alaska or offshore Alaska. So it is important to get this gas pipeline built and to get it built as quickly as possible, because I am convinced it will convey to the South 48 a great deal more gas than is contained in just the North Slope proven reserves.

Mr. BAYH. Will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr. BAYH I appreciate the comments made about the potential reserves in Alaska. I am prepared to listen to any reasonable argument. I hope that we can resolve that controversy, which is a significant one to him and to others on both sides of this issue. I hope we can maximize the total Alaskan resource potential, not only of natural gas but of natural beauty. That is a lot easier said than done, but having had a chance to be there for only short period of time, I must say the State of Alaska has a magnificent amount of both those commodities. I shall be glad to listen to my good friend, the Senator from Alaska, and see where I finally side on this.

I assume the Senator from Alaska is also convinced that there is a good deal of gas up there that perhaps even Canada could use. We still do not know what the total production capability might be in that particular part of the world.

Mr. STEVENS. I am sure the Senator from Indiana knows that there was a new discovery of oil and gas in the Beaufort Sea by the Canadian exploration group that has been active in the Beaufort Sea on the Canadian side these last 3 years. We are a little fearful of that discovery, because we are not sure yet whether the technology exists to bring that gas and oil safety ashore without great risk to our marine environment. I feel that there is a substantial possibility that Canada will discover more gas. They discover gas almost anywhere they stamp their feet now, out there in Alberta, it seems. They have a great deal more gas now in their projected estimates of reserves than they did 3 and 4 years ago.

I think the Senator has pointed out that this conference report will assure Canadians that they can start exporting that gas for a short period of time through the Alaska gas transportation system without entering into long-range commitments of their reserves.

The difficulty has been that Canadians would not enter into any more long-term contracts for the export of their natural gas, because of their feelings that the time will come when they will need their gas, and they do not want to build an increasing dependence in our Midwest upon their natural gas. If we can get our gas pipeline underway and assure them that we shall have Alaska's natural gas to the Middle West in a reasonable period of time, I believe they will enter into short-term contracts for export of their current surplus natural gas. That will aid them, as the editorial I just put in the RECORD indicates, in their own economic problems that are unique to their economy and, at the same time, give them the assurance that they can look forward to curtailing their exports without causing the crisis which I am sure the Senator remembers.

It is a very unique situation. I am happy to be on the same side of the issue with my good friend and fellow Hoosier for a change.

Mr. BAYH. As I say to my friend, I appreciate his giving his perspective of the great potential of the energy supply that exists in that part of the world.

I am glad to be associated with him.

Mr. STEVENS. I thank the Senator from Indiana.

Mr. President, I want to thank the staff that is currently drafting the language that will be incorporated in the document.

I have not stated the language for the RECORD, but that precise language is being lifted out of the conference report. It needs expert drafting to do so because it does not stand alone in the conference report.

There is Fred Kraft and Danny Boggs of the Energy Committee, Eve Lubalin of Senator BAYH's staff, Tom Cator of Senator HUMPHREY'S staff, and my personal staff, particularly Tim McKeever, who are working on the language to be presented to the Senate.

We hope it will be available Monday afternoon. In any event, it will be available prior to the time the amendment to the motion of the Senator from Ohio is offered by the Senator from Minnesota.

Mr. President, I yield to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

RECOVERY OF SENATOR HELMS

Mr. HARRY F. BYRD, JR. Mr. President, we are pleased to learn that our colleague from North Carolina (Senator HELMS) is recovering nicely from his recent back operation. He is expected to return to the Senate in a week or so. We miss him.

Senator JESSE HELMS has earned the admiration and respect of all of us in the Senate for what nationally syndicated columnist James J. Kilpatrick terms his "sheer unflinching integrity."

One example of such integrity is his willingness to stand by his convictions, frequently casting difficult votes. The recently passed Agricultural appropriations bill is such a case in point.

Senator HELMS represents a State in which agriculture is the single most important industry. Notwithstanding the chance that his vote might be misunderstood—or purposefully misconstrued—he voted against this piece of legislation.

He, and I, opposed this legislation because of its excessive budgetary impact, although the bill did include many worthwhile items.

One was the tobacco research program, a health-oriented program.

An effort was made to eliminate this item, but Senator HUDDLESTON of Kentucky and Senator HELMS made powerful and effective arguments as to the importance of this program. Their views prevailed.

As I mentioned earlier, nationally syndicated columnist James J. Kilpatrick wrote an excellent article about JESSE HELMS that was published across the country. Mr. Kilpatrick captured the true substance of the man we have come to know and respect, and I ask unanimous consent that the text of his column captioned "Hard Principles, Soft Speech," be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HELMS: HARD PRINCIPLES, SOFT SPEECH

(By James J. Kilpatrick)

Like every other exclusive club, the club known as the United States Senate has its body of tradition. One such tradition embraces the courtly Southern parliamentarian whose principles are as hard as his speech is soft. In the past, these legendary figures have all been Democrats. There's a Republican in there now.

He is, of course, Jesse Helms of North Carolina. In his first term in the Senate, he has made a start on a reputation that, given a second term, will move him toward the first rank. This is the band of senators that in other years has included such greats as Tom Connally of Texas, Walter George and Dick Russell of Georgia, Sam Ervin of North Carolina, Harry Byrd and Carter Glass of Virginia, the late Jim Allen and the Bankheads of Alabama.

Helms shares with these predecessors one distinguishing characteristic. Like them, he is above all else a senator. There are other able Southerners in the upper chamber, including such well-regarded Republicans as Tower of Texas, Thurmond of South Carolina and Mathias from bordering Maryland, but none of them has immersed himself as totally as Helms in the life and times of the upper chamber.

This is the judgment of many persons whose own lives revolve around the club. When Helms arrived on the scene in January of 1973, he was preceded by publicity identifying him as a redneck extremist. A little of that ludicrous image still sticks in the public mind.

Over the past five years, Helms has won the respect of his colleagues, on both sides of the aisle, much as John Williams of Delaware gained respect a decade ago—by sheer unflinching integrity. Helms has returned a million dollars in Senate funds he could have spent on staff. He has spurned junkets, fought against congressional pay raises, and done his ultmost to impose some frugal limitations on the Senate's lavish new office building.

Time after time, when he felt matters of principle were at stake. Helms has stood alone or nearly alone in the Senate. I happen to disagree with a couple of his favorite ventures; he wants to add amendments to the Constitution to prohibit abortions and to permit prayer in schools, and I think the Constitution would be better off without them. But I can admire the consistency, the courtesy and the determination with which he has waged his campaign.

Born in Monroe, N.C. in 1921, Helms worked his way through Wake Forest as a manual laborer, waiter and dishwasher. He went first into journalism, as a reporter for the Raleigh Times. After a hitch in the Navy in World War II, he returned to the Times as city editor. Later he would serve 12 years as editorial director of Raleigh's WRAL-TV, giving joy to Tarheel conservatives and giving apoplexy to the liberal *News & Observer*.

Most reporters, editors and pundits shun political temptation. Helms made no secret of his love for public service. He won four terms on the Raleigh City Council. He worked

in Washington for two North Carolina senators. He involved himself deeply in North Carolina politics. By the time he was ready to make his run for the Senate in 1972, he had accumulated an encyclopedic knowledge of the state and its people. He won by 54.1 percent, and unless his supporters get overconfident, he should win his second term against state insurance commissioner John Ingram in November. In a state still predominantly Democratic, Helms knows it won't be easy.

But for all its reputation as a valley of liberalism between two mountains of reaction, North Carolina has strong conservative learnings. For many voters, Helms is the champion of balanced budgets, reduced federal regulation and the enterprise system. He fought the Panama Canal treaties, he is a consistent anti-communist hawk in foreign affairs, he combats the welfare state, and as a father and grandfather himself, he embodies all the old virtues of family, home and fireside.

Besides all that, Helms publicly denounces Welfare Secretary Joe Califano, the anti-tobacco man, in phrases that fall like music on the farmers' ears. Within the gentlemen's club, such old Southern customs are well understood.

TIME AGREEMENT—H.R. 2852, COUNTERCYCLICAL REVENUE SHARING AUTHORIZATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar No. 1102, H.R. 2852, the countercyclical revenue sharing authorization bill, is called up and made the pending business before the Senate—with the understanding that it will not be called up before Wednesday, September 20—there be a time agreement thereon as follows: 2 hours on the bill, 1 hour to be under the control of Mr. HATHAWAY and 1 hour to be under the control of Mr. CURTIS; with 30 minutes on any amendment, 15 minutes on any debatable motion, appeal, or point of order, if such is submitted to the Senate for its consideration, and with the agreement to be in the usual form; with one proviso: that there be an amendment by Mr. DANFORTH with a 1-hour time limitation thereon—all to be in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The agreement is as follows:

Ordered, That not before Wednesday, September 20, 1978, when the Senate proceeds to the consideration of H.R. 2852 (Order No. 1102), an act to amend the Internal Revenue Code of 1954 to provide that refunds of the taxes on gasoline and special fuels shall be made to aerial applicators in certain cases, debate on any amendment (except an amendment to be offered by the Senator from Missouri (Mr. DANFORTH), on which there shall be 1 hour) shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 15 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: Provided further, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 2 hours, to be divided with 1 hour under the control of the Senator from Maine (Mr. HATHAWAY) and 1 hour under the control of the Senator from Nebraska (Mr. CURTIS): Provided, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

H.R. 12860—SETTLEMENT OF INDIAN LAND CLAIMS WITHIN THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 12860, which is at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 12860) to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times, advanced to third reading, passed, and the motion to reconsider laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar orders numbered 1062 and 1065.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES ACT

The Senate proceeded to consider the bill (S. 517) to authorize employees and agencies of the Government of the United States to experiment with flexible and compressed work schedules, which had been reported from the Committee on Governmental Affairs and from the Committee on Human Resources, jointly, with an amendment to strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1978".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also find that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

DEFINITIONS

SEC. 3. For the purposes of this Act (other than title IV)—

(1) the term "agency" means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

(2) the term "employee" has the meaning given it by section 2105 of title 5, United States Code;

(3) the term "Commission" means the United States Civil Service Commission; and

(4) the term "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

EXPERIMENTAL PROGRAM

SEC. 4. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 302 and the terms of any written agreement referred to in section 302(a), the Commission shall establish a program which provides for the conducting of experiments by the Commission under title I and II of this Act. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, as to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

(2) Each agency may conduct one or more experiments under titles I and II of this Act. Such experiments shall be subject to such regulations as the Commission may prescribe under section 305 of this Act.

(b) The Commission shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Commission will study and evaluate experiments conducted under titles I and II of this Act. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

(1) the efficiency of Government operations;

(2) mass transit facilities and traffic;

(3) levels of energy consumption;

(4) service to the public;

(5) increased opportunities for full-time and part-time employment; and

(6) individuals and families generally.

(c) The Commission shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this Act.

(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) would substantially disrupt the agency in carrying out its functions, such agency head shall request the Commission to exempt such agency from the requirements of any experiment conducted by the Commission under subsection (a). Such request shall be accompanied by a report detailing the reasons

for such determination. The Commission shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Commission shall exclude the agency from the experiment until the Commission has made its determination or until 180 days after the date the request is filed, whichever first occurs.

TITLE I—FLEXIBLE SCHEDULING OF WORK HOURS

DEFINITIONS

SEC. 101. For purposes of this title—

(1) the term "credit hours" means any hours, within a flexible schedule established under this title, which are in excess of an "employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

(2) the term "overtime hours" means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

FLEXIBLE SCHEDULING EXPERIMENTS

SEC. 102. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this Act, but subject to the terms of any written agreement under section 302(a)—

(1) any experiment under subsection (a) of this section may be terminated by the Commission if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(A) restrict the employee's choice of arrival and departure time.

(B) restrict the use of credit hours, or

(C) exclude from such experiment any employee or group of employees.

(c) Experiments under subsection (a) shall terminate not later than the end of the 3-year period which begins on the effective date of this title.

COMPUTATION OF PREMIUM PAY

SEC. 103. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 102—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occassional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended, or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in paragraph (1) of subsection (a), an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 106 or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized; except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work; plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of title 5, United States Code, and 4107(e)(2) of title 38, United States Code, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized; except that such differential shall be paid to an employee on a flexible schedule under this title—

(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

HOLIDAYS

SEC. 104. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Commission).

TIME-RECORDING DEVICES

SEC. 105. Notwithstanding section 6106 of title 5, United States Code, the Commission or any agency may use recording clocks as part of its experiments under this title.

CREDIT HOURS; ACCUMULATION AND COMPENSATION

SEC. 106. (a) Subject to any limitation prescribed by the Commission or the agency, a full-time employee on a flexible schedule can accumulate not more than 10 credit hours, and a part-time employee can accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule experiment under this title and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

TITLE II—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

DEFINITIONS

SEC. 201. For purposes of this title—

(1) the term "compressed schedule" means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is schedule for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

(2) the term "overtime hours" means any hours in excess of those specified hours which constitute the compresed schedule.

COMPRESSED SCHEDULE EXPERIMENTS

SEC. 202. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such experiment; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such experiment,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this Act, but subject to the terms of any written agreement under section 302(a), any experiment under subsection (a) may be terminated by the Commission, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

(d) Experiments under subsection (a) shall terminate not later than the end of the

3-year period which begins on the effective date of this title.

COMPUTATION OF PREMIUM PAY

SEC. 203. (a) The provisions of sections 5542 (a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(a)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended, or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended, whichever provisions are more beneficial to the employee.

TITLE III—ADMINISTRATIVE PROVISIONS

ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

SEC. 301. For purposes of administering sections 6303(a), 6307 (a)) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under title I or II, references to a day or workday (or to multiples or parts thereof) contained in such section shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

SEC. 302. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under title I or II of this Act except to the extent expressly provided under a written agreement between the agency and such organization.

(b) The Commission or an agency may not participate in a flexible or compressed shedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 103 or 203 of this Act, as applicable.

PROHIBITION OF COERCION

SEC. 303. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under title I to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 202(b)(1) to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 202 (b)(2).

For the purpose of the preceding sentence, the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(b) Any employee who violates the provisions of subsection (a) shall, upon a final order of the Commission, be—

(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Commission may prescribe;

(2) suspended without pay from such employee's position for such period as the Commission may prescribe; or

(3) disciplined in such other manner as the Commission shall deem appropriate.

The Commission shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

REPORTS

SEC. 304. Not later than 2½ years after the effective date of title I and II of this Act, the Commission shall—

(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this Act, and

(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Commission shall prepare a final report with regard to experiments conducted under this Act and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

REGULATIONS

SEC. 305. The Commission shall prescribe regulations necessary for the administration of the foregoing provisions of this Act.

EFFECTIVE DATE

SEC. 306. The provisions of section 4 and titles I and II of this Act shall take effect on the 180th day after—

(1) the date of the enactment of this Act, or

(2) October 1, 1978,

whichever date is later.

TITLES IV — ADJUSTMENT OF WORK SCHEDULES FOR RELIGIOUS OBSERVANCES

COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

SEC. 401. (a) Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 550a. Compensatory time off for religious observances

"(a) Not later than 30 days after the date of the enactment of this section, the Civil Service Commission shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

"(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Commission) shall prescribe the regulations referred to in subsection (a) of this section.

"(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.".

(b) The analysis for chapter 55 of title 5, United States Code, is amended by adding after the item relating to section 5550 the following:

"5550a. Compensatory time off for religious observances."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, and read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1065, H.R. 7814.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 7814) to authorize Federal agencies to experiment with flexible and compressed employee work schedules, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 1062 (S. 517) be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

PENSION BUILDING RESTORATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1104.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 160) to initiate preliminary studies for the restoration and renovation of the Pension Building in Washington, District of Columbia, to house a Museum of the Building Arts, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1836

Mr. MOYNIHAN. Mr. President, I would like to move at this moment an amendment to strike the date of October 1, 1978, in the pending resolution, which appears on page 2, line 25, and on page 3, lines 5 and 18, and insert in lieu thereof the date of November 1, 1978.

I send the amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 1836.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. STEVENS. Mr. President, with due respect to the Senator from New York, I object. I would like to hear the amendment.

The PRESIDING OFFICER. Objection is heard.

The amendment will be stated.

The assistant legislative clerk read as follows:

To strike the date October 1, 1978 which appears on page 2, line 25 and page 3, lines 5 and 18, and insert in lieu thereof the date November 1, 1978.

Mr. MOYNIHAN. Mr. President, the purpose of this resolution is to declare that the Pension Building, in Washington, D.C., should be restored and properly utilized. The resolution further deals with expert and objective evaluation of the feasibility and desirability of establishing a national museum of the building arts therein.

The creation of such a museum was proposed in S. 2851, introduced by the Senator from Maryland (Mr. MATHIAS), and referred to the Committee on Environment and Public Works.

It is the feeling of the committee that a final decision at this moment would be premature, although the committee has a very strong disposition toward the purpose proposed by Senator MATHIAS.

As chairman of the ad hoc committee dealing with these matters, I would like very much to assert my own disposition in that regard. I will not retain the Senate longer than may be necessary.

The Pension Building is one of the glories of 19th century architecture in our city. It was built following the Civil War, for the purpose that its name suggests, to house the administration of the pension system which was established for Civil War veterans—I hasten to say that such was the division at that time—of the Union cause.

It is a singular building. It is very well placed in the city, now that the subway system has been built. It is known for its extraordinary frieze, reminiscent of the Parthenon, of Union soldiers—cavalry, artillery—the full length of the building.

The interior is one of the great spaces of Washington. There are not many cathedrals in Europe that have such height and length.

The idea has come forward to create a museum to add to the national museum system, unique, without any equivalent in the world, designed to recall the techniques, methods, designs, and arts of building.

This is a proposal which has a great deal of support from the architectural world, and I am particularly happy to say that the building trades department of the AFL–CIO is very much for it. Mr. Robert Georgine, the distinguished head of that department, has spoken with me about the matter. They think this is a good bill.

The bill moves toward the use of a building which is now not used. It has been almost a half century since there was any serious use of the building. It is the nature of the building that its interior space is one great hall. There are not, in fact, many offices. If it were designed to be a museum of the building arts, it could not have been done more effectively.

With that thought, I would like to move the resolution, as amended.

I see the Senator from Alaska is on the floor.

Mr. STEVENS. Mr. President, may I inquire from my good friend from New York what the effect of the amendment that he has offered is? I did not anticipate that amendment.

Mr. MOYNIHAN. I am sorry. I regret that this may not have been fully reported to the Senator from Alaska. The effect of the amendment is to declare the intention of Congress that something useful be done with this great building which lies unused at this moment.

Mr. STEVENS. Does it delay the date for the submission of the report or accelerate it?

Mr. MOYNIHAN. It delays the date ever so slightly, only to the fact that we are somewhat delayed in getting the resolution forward.

Mr. STEVENS. What will be the date now?

Mr. MOYNIHAN. The date now will be November 1, 1978.

Mr. STEVENS. Is that the only amendment that is to be proposed by the Senator from New York?

Mr. MOYNIHAN. I am open to any alternative thoughts.

Mr. STEVENS. No; I just inquire, does the Senator have another amendment?

Mr. MOYNIHAN. I do not contemplate any nor has there been a suggestion of any or any filed.

Mr. STEVENS. Very well. I have no objection.

I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1181), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE RESOLUTION

The purpose of the resolution is to declare that the Pension Building in Washington, D.C., should be restored and properly utilized. The resolution further secures expert and objective evaluation of the feasibility and desirability of establishing a National Museum of the Building Arts therein. The creation of such a museum was proposed in S. 2851 introduced by Senator Mathias and referred to the Committee on Environmental Public Works on April 6, 1978. Final action on the bill at this time is premature. This Senate joint resolution, however, affords the Congress and the President, should he so desire, an early opportunity to express conceptual support for the proposed museum. Furthermore, by initiating preliminary studies and securing responses to the museum proposal, it will encourage the resolution of the financial and organization questions which must precede the establishment of such a National Museum of the Building Arts.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S.J. RES. 160

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds and declares that the Federal Building in the District of Columbia, operated and managed by the General Services Administration and known as the Pension Building, is unique, historic, constitutes an architectural treasure belonging to the people of the United States, and must be restored and properly utilized.

(b) The Congress further declares that the Pension Building would most appropriately be dedicated to the public use as the Nation's Museum of the Building Arts, benefiting this and future generations.

SEC. 102. The Administrator of General Services is authorized and directed to prepare an existing conditions study of the Pension Building, located in the block bounded by Fourth Street, Fifth Street, "F" Street, and "G" Street, Northwest, in the District of Columbia. After consultation with the Secretary of the Smithsonian Institution and the Chairman of the National Endowment for the Arts, he shall prepare drawings, together with preliminary cost estimates, for the restoration and renovation of the Pension Building, in its entirety, to house the Museum of the Building Arts. Such drawings shall be consistent with and provide space for the functions and facilities proposed in the report of the Committee for a National Museum of the Building Arts, Incorporated, dated January 1978, and on file at the National Endowment for the Arts, including alternative treatment of the facilities listed in subsection 104(d) which may require structural modifications of the Pension Building. Such drawings and estimates, together with the existing conditions study, shall be submitted to the Committee on Environment and Public Works of the Senate, and to the Committee on Public Works and Transportation of the House of Representatives, not later than November 1, 1978.

SEC. 103. The Chairman of the National Endowment for the Arts is rquested to report to the Committee on Environment and Public Works of the Senate, and to the Committee on Public Works and Transportation of the House of Representatives, not later than November 1, 1978, his initial observations and opinions with respect to—

(a) the prospects for private funding of museum operations, including an appraisal listing the potential sources of financial support, together with a preliminary estimate of the amount of such support which might reasonably be anticipated; and

(b) such other factors as, in his opinion, may contribute to the feasibility of the proposed museum.

SEC. 104. The Secretary of the Smithsonian Institution is requested to report to the

Committee on Environment and Public Works of the Senate and to the Committee on Public Works and Transportation of the House of Representatives, not later than November 1, 1978, his initial comments and opinions concerning—

(a) the potential for visitation at the proposed museum, compared to visitation at Smithsonian museums in recent years;

(b) the potential for interaction between the proposed museum and existing collections and programs of the Smithsonian;

(c) the proportion of total space (based on the Secretary's experience with such Smithsonian Museums as Air and Space, Arts and Industries, and History and Technology) required for (i) inactive storage, (ii) the study of collections housed in the museum; (iii) staff offices; and (iv) public/exhibition use;

(d) the value and approximate costs of providing facilities to accommodate (i) food service; (ii) a museum shop; (iii) a computer service or center; and (iv) an auditorium, together with recommendations for optimum size and desirable features of such facilities.

SEC. 105. As used in this joint resolution, the term—

(a) "building arts' encompasses all practical and scholarly aspects of architecture; and landscape architecture; engineering; building and construction; urban planning, design, physical development, and renewal; and historic preservation;

(b) "museum" means the Museum of the Building Arts, as generally proposed by the Committee for a National Museum of the Building Arts, the primary purpose of which shall be (i) to create in the Nation's Capital a center to exhibit, demonstrate, and encourage contributions to the building arts and sciences, with an emphasis on American initiatives; (ii) to establish and operate a building arts documents archive, and a building arts reference library for citizens and public and private institutions; and (iii) to foster educational programs, to provide a forum for information exchange among professionals in the building arts, and to enhance understanding and appreciation of all facets of the building arts and sciences;

(c) "Administrator" means the Administrator of General Services;

(d) "Chairman" means the Chairman of the National Endowment for the Arts; and

(e) "Secretary" means the Secretary of the Smithsonian Institution.

SEC. 106. The Administrator shall insure that any occupants of the Pension Building shall be temporary pending establishment and occupancy of the building by the National Museum of the Building Arts; and that such occupants shall in no way confict with, interfere with, or cause to delay efforts toward the restoration and renovation of the building to house the museum.

SEC. 107. (a) For the purposes of section 102 of this joint resolution, the Administrator is authorized and directed to expend not to exceed $60,000 from funds available to him for the alteration and repair of buildings.

(b) For the purposes of section 103 of this joint resolution, the Chairman shall expend not more than $10,000 from funds available to him.

(c) For the purposes of section 104 of this joint resolution, the Secretary shall expend not more than $10,000 from funds available to him.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. I thank the Chair.

Mr. STEVENS. I thank the Senator from New York.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ELECTION POSTERS IN THE DISTRICT OF COLUMBIA

Mr. STEVENS. Mr. President, one of the Nation's Capital's two newspapers reminded Alaskan citizens recently that citizens of the District of Columbia have as much interest in Federal land as the citizens of Alaska do in the Nation's Capital. So, exercising the rights as a citizen of Alaska, I would like to ask that the District of Columbia Government remove the signs that were placed up along all of our Capital streets by the candidates in the recent election.

Mr. President, we have just had a very delightful summer rain, it was a very heavy rain, and I find that Constitution Avenue is littered with cardboard signs that were placed upon stop signs, upon trees, upon all sorts of poles along our Constitution Avenue and other avenues in the Nation's Capital by these candidates, I think contrary to the existing law in the District of Columbia, and they have not been removed.

I believe it is incumbent upon us to exercise our rights and responsibilities and pay a little attention to the District of Columbia and to urge the District of Columbia government to step forward now and require these candidates to pick up this litter that is, I think, making the Nation's Capital look like it is about ready to witness an onslaught of a performance by three competing circuses.

I have never seen so many signs placed in so many public places where people had no right to put them, by so many candidates.

It is not a partisan comment because I note they were candidates from both parties and from all areas.

It seems to me it is a shame to see that the Nation's Capital can be used particularly the public property in the Nation's Capital can be used in this way during a political campaign.

Having seen it done I think it is time now that someone take action to assure that the litter is picked up, and we can once again be proud particularly of our Constitution Avenue. That disturbs me the most.

I thank the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the Senator from Alaska (Mr. STEVENS), my friend.

MESSAGES FROM THE HOUSE

At 2:07 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2701) to amend the Water Resources Planning Act (79 Stat. 244, as amended).

ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. DECONCINI) announced that on today, September 15, 1978, he signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

S. 1103. An act to permit any State the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due such State; and

S. 2556. An act to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 15, 1978, he presented to the President of the United States the following enrolled bills:

S. 1103. An act to permit any State the reciprocal right to sue in the Superior Court of the District of Columbia to recover taxes due such State; and

S. 2556. An act to change the name of the District of Columbia Bail Agency to the District of Columbia Pretrial Services Agency.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Committee on Appropriations, with amendments:

H.R. 12931. An act making appropriations for Foreign Assistance and related programs for the fiscal year ending September 30, 1979, and for other purposes (Rept. No. 95–1194).

By Mr. GLENN, from the Committee on Governmental Affairs, with amendments:

H.R. 7792. An act to amend title 39, United States Code, to establish certain limitations on the use of the frank, and for other purposes (Rept. No. 95–1195).

By Mr. KENNEDY, from the Committee on Human Resources, with an amendment:

S. 3116. A bill to amend the Public Health Service Act to provide assistance through formula and project grants for preventive health programs, and for other purposes (together with additional views) (Rept. No. 95–1196).

By Mr. STENNIS, from the Committee on Armed Services, with amendments:

S. 3486. A bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve Component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes (Rept. No. 95–1197).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. CHAFEE (for himself, Mr. LUGAR, Mr. MATHIAS, and Mr. GARN):

S.J. Res. 161. A joint resolution to authorize the U.S. Navy Memorial Foundation to erect a memorial in the District of Columbia; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFEE (for himself, Mr. LUGAR, Mr. MATHIAS and Mr. GARN):

Senate Joint Resolution 161. A joint resolution to authorize the U.S. Navy Memorial Foundation to erect a memorial in the District of Columbia; to the Committee on Rules and Administration.

A U.S. NAVY MEMORIAL FOR THE NATION'S CAPITAL

● Mr. CHAFEE. Mr. President, of all the monuments, memorials, statues, and parks in our Nation's Capital, not one is dedicated solely to the honor of the men and women who have served their country in the U.S. Navy.

Since many of our colleagues in the Senate are former Navy men, 18 to be exact, I am sure some are aware that a U.S. Navy Memorial Foundation has been established to raise private money for such a memorial. The foundation is registered in all 50 States and has begun collecting the $5 million needed for this purpose.

In conjunction with their efforts, Mr. President, today I am introducing a resolution which authorizes the U.S. Navy Memorial Foundation to erect a memorial on public grounds in the District of Columbia.

While plans are not yet firm, it is hoped that a site can be obtained along Constitution Avenue between the Washington Monument and the Lincoln Memorial. Designs are currently underway for construction of a large shell in the form of a wave which can be used as an outdoor concert stand for the popular Navy Band.

Mr. President, such a memorial would be an especially fitting way to commemorate the men and women who have served in the U.S. Navy, both in times of war and times of peace. I think that if I were visiting Washington, D.C., from Rhode Island or Ohio or Texas or whereever, the sounds of the Navy Band playing from this national memorial would strike me as a real, living tribute to the generations of Americans who have served in the Navy. Such a memorial would be a delightful addition to the cultural life of Washington, as well.

Again, I want to stress to my colleagues that no Federal money will be involved in the design or construction of this memorial. It will be entirely funded from private contributions made to the U.S. Navy Memorial Foundation. The resolution I am introducing simply authorizes that it be erected on public land in Washington, D.C., and that subsequent maintenance of the memorial be the responsibility of National Park Service.

As a former Secretary of the Navy, I take particular pride in introducing this proposal. A similar resolution has already been introduced in the House by Congressman BOB WILSON of California. I would urge the support and cosponsorship of my colleagues here in the Senate so that we can move ahead with it as quickly as possible.

Without objection, Mr. President, I ask that the text of my joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 161

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Navy Memorial Foundation is authorized to erect a memorial on public grounds in the District of Columbia in honor and in commemoration of the men and women of the United States Navy who have served their country in war and peace.

SEC. 2. (a) The Secretary of the Interior is authorized and directed to select, with the approval of the National Commission of Fine Arts and the National Capital Planning Commission, a suitable site on public grounds of the United States in the District of Columbia, upon which may be erected the memorial authorized in the first section of this Resolution.

(b) The design and plans for such memorial shall be subject to the approval of the Secretary of the Interior, the National Commission of Fine Arts and the National Capital Planning Commission.

(c) Other than as to the land authorized for the erection of the Memorial in subsection (a), neither the United States nor the District of Columbia shall be put to any expense in the erection of this memorial.

SEC. 3. The authority conferred pursuant to this Act shall lapse unless (1) the erection of such memorial is commenced within five years from the date of enactment of this Act, and (2) prior to its commencement funds are certified available in an amount sufficient, in the judgment of the Secretary of the Interior, to insure completion of the memorial.

SEC. 4. The maintenance and care of the memorial erected under the provisions of this Act shall be the responsibility of the Secretary of the Interior.●

ADDITIONAL COSPONSORS

SENATE JOINT RESOLUTION 65

At the request of Mr. KENNEDY, the Senator from California (Mr. CRANSTON) was added as a cosponsor of Senate Joint Resolution 65, to amend the Constitution to provide for representation of the District of Columbia in Congress.

AMENDMENT NO 3409

At the request of Mr. PERCY, the Senator from Iowa (Mr. CULVER) the Senator from Kentucky (Mr. FORD), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of amendment No. 3409 intended to be proposed to S. 991, a bill to establish a Department of Education, and for other purposes.

AMENDMENT NO. 3586

At the request of Mr. BUMPERS, the Senator from Michigan (Mr. GRIFFIN) and the Senator from California (Mr. HAYAKAWA) were added as cosponsors of amendment No. 3586 intended to be proposed to H.R. 5285, an act to amend the Tariff Schedules of the United States with respect to the tariff treatment accorded to film, strips, sheets, and plates of certain plastics or rubber.

SENATE RESOLUTION 534

At the request of Mr. HART, the Senator from Minnesota (Mr. ANDERSON), the Senator from Montana (Mr. MELCHER), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of Senate Resolution 534, relating to social security payroll tax deferral.

SENATE CONCURRENT RESOLUTION 68

At the request of Mr. CURTIS, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of Senate Concurrent Resolution 8, relating to the Baltic States.

SENATE RESOLUTION 564—SUBMISSION OF A RESOLUTION TO FORBID CERTAIN MISLEADING USES OF CONGRESSIONAL STATIONERY

Mr. BUMPERS submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 564

Resolved, That the Standing Rules of the Senate are amended by adding at the end thereof the following new rule, which shall be a part of the Senate Code of Official Conduct:

"RULE LI: MISLEADING USE OF CONGRESSIONAL STATIONERY

"(a) No Member shall mail or authorize any person to mail any mass mailing containing any congressional stationery for any purpose other than official congressional business.

"(b) For purposes of this Rule—

"(1) the term 'mass mailing' means the mailing of newsletters, or other mailings including more than five hundred pieces of mail, in which the content of the matter mailed is substantially identical, but such term shall not include any mailings—

"(A) in direct response to inquires or requests from the persons to whom the matter is mailed;

"(B) to one or more Members of the Congress or to one or more Federal, State, or local government officials; or

"(C) of news releases to any communications media;

"(2) the term 'official congressional business' means the conduct of official business, activities, and duties of the Senate regarding all matters which directly or indirectly pertain to—

"(A) the legislative process;

"(B) any congressional representative process;

"(C) the functioning, working, or operating of the Congress; or

"(D) the performance of official duties in connection with any matter referred to in subparagraph (A) through subparagraph (C); and

"(3) the term 'congressional stationery' means any stationery, whether or not such stationery is prepared with Federal funds, with a letterhead or similar printed device which contains the name of a Member and information indicating—

"(A) that such Member is a Member of the Senate;

"(B) the assignment of such Member to any committee of the Senate; or

"(C) the address of any office at which such Member conducts any official congressional business," unless such stationery also contains in conspicuous lettering substantially the following words: "This is not an official communication from the Senate or Congress of the United States, but is only the private opinion of the signer."

AMENDMENTS SUBMITTED FOR PRINTING

REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3589

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

TIME WITHIN WHICH CHARITABLE GIFTS MAY BE REFORMED IN ORDER TO QUALIFY FOR A DEDUCTION

● Mr. BUMPERS. Mr. President, the Tax Reform Act of 1968 imposed new requirements that must be met in order for a charitable deduction to be allowed for income, gift, and estate tax purposes for the transfer of a split interest to charity (that is, part charitable and part noncharitable). In the case of a remainder interest in trust, the interest passing to charity must be in either a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. The statute defines these types of trusts in great detail. In the case of an "income" interest passing to charity (that is, a charitable lead trust), the "income" interest must be either a guaranteed annuity or a fixed percentage of the fair market value of the trust (determined at least annually).

Many persons have executed instruments that do not comply with the new requirements. As a result, Congress provided, as early as 1974, that the governing instruments of trusts could be amended to meet the new rules within certain time limitations.

Mr. President, it is not clear to me why any time limit should be imposed on the privilege of amending governing instruments of trusts so that they meet the requirements of the law. The important thing is that the charitable interest be clearly defined so that the revenue authorities can be certain that it in fact exists and that it has an ascertainable value. So long as all parties with an interest in the property have an opportunity to be heard, and a court orders that the instrument be amended after proper hearing and consideration, amendments ought to be permitted in order to qualify split interests for a deduction. There woud, of course, be an inherent time limit based upon the necessity for closing an estate, or filing a tax return, at some definite time.

It seems, however, that the Congress is committed to the proposition that some cut-off date for these amendments or reformations should be enacted into law, and I do not at the present time ask that this fundamental decision be changed. I do strongly feel, though, that the present time limit of December 31, 1977, should be extended. The privilege of amendment would still be applicable only to those wills executed before December 31, 1977, or those trusts created before December 31, 1977, or those trusts created before that date, but judicial proceedings to accomplish the required amendment could be commenced on or before December 31, 1978.

In addition, my amendment would extend to the income and gift tax the same principles that have previously been applicable for estate-tax purposes. That is, instruments could be amended to qualify for the charitable deduction for income and gift-tax purposes if proceedings to accomplish the amendment are commenced before December 31, 1978. As in the case of the estate-tax provision, only instruments executed before December 31, 1977, would be eligible for this privilege of reformation.

The House of Representatives and the Senate Committee on Finance have already gone much of the way toward approving the changes proposed by my amendment. Section 3(q) of H.R. 6715, the proposed Technical Amendments Act, which has passed the House and is now on the Senate calendar, extends the present privilege of amendment to charitable lead trusts and also makes it applicable for income and gift-tax purposes. My amendment would expand on H.R. 6715 in only two ways: First, the time within which proceedings for amendment must be commenced would be extended to December 31, 1978. Second, not only charitable lead trusts, but also charitable remainder trusts, would enjoy this additional period of grace.

This change is necessary to avoid substantial hardship. The case of Arkansas College in Batesville, Ark., which brought this issue to my attention, is in point. Arkansas College is the sole remainder beneficiary under a trust which became irrevocable at the death of an Arkansan in November 1977. The trust instrument was deficient in a number of technical respects, so that the remainder interest did not qualify for a charitable deduction. As a result, the decedent's estate is liable for about $40,000 in estate taxes, chargeable to corpus, to the detriment of the college. As indicated above, Congress had provided a method of curing the technical deficiencies of the trust instrument, but the method required commencement of the suit for reformation by December 31, 1977, before the college even knew of its beneficiary status. There was, therefore, no real opportunity for the correction to be made within the time limit presently in the statute. My amendment would simply extend the time for curative suits. The trust, of course, would never qualify for the deduction unless the suit, commenced before the end of this year, should be successful. That is, it would be finally up to a chancery or probate court to decide whether the trust instrument should in fact be reformed. Income beneficiaries and others with an interest in the property would be given notice and an opportunity to appear and object.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

At the appropriate place in the bill, add the following new section:

SEC. . AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY.

(a) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF ESTATE TAX.—The first sentence of paragraph (3) of section 2055(e) is amended to read as follows: "In the case of a will executed before December 31, 1977, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1978, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1978 (which are required to amend or conform the governing instrument), become final, so that interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed."

(b) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF INCOME AND GIFT TAXES.—Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1954.●

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS—S. 1393

AMENDMENTS NOS. 3590 THROUGH 3599

(Ordered to be printed and to lie on the table.)

Mr. MORGAN submitted 10 amendments intended to be proposed by him to S. 1393, a bill to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons.

NATURAL GAS PRICING POLICY CONFERENCE REPORT—H.R. 5289

AMENDMENT NO. 3600

(Ordered to be printed and to lie on the table.)

Mr. STEVENS (for Mrs. HUMPHREY (for herself, Mr. BAYH, Mr. ANDERSON, and Mr. STEVENS)) submitted an amendment intended to be proposed by them, jointly, to the instructions of the motion proposed by Mr. METZENBAUM and others in connection with the conference report on H.R. 5289, an act for the relief of Joe Cortina of Tampa, Fla.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

● Mr. JACKSON. Mr. President, for the information of the Senate and the general public, the Senate Energy and Natural Resources Subcommittee on Energy Research and Development has scheduled 1 day of hearings to examine S. 3392, the "Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978." The subcommittee will meet on Tuesday, September 19, 1978, at 9 a.m. in room 3110 of the Dirksen Senate Office Building.

Witnesses scheduled to appear are: Senator GARY HART, Representative MIKE

McCORMACK, Representative BARRY M. GOLDWATER, JR., Dr. Eric H. Willis, Deputy Assistant Secretary, Department of Energy; Mr. William C. Hittinger, executive vice president, research and engineering, RCA Corp.; Mr. Peter Zambas, general manager, Arco Solar, Inc., and Dr. Joseph Lindmayer, president, Solarex Corp.

Anyone wishing additional information with regard to the hearing should contact Dr. Granville J. Smith at (202) 224-4431.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet in executive session during the session of the Senate today.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

THE U.S. INTELLIGENCE COMMUNITY

● Mr. GOLDWATER. Mr. President, our intelligence communities over the past couple of years have taken a terrific beating at the hands of many people who are entirely misinformed about the true nature and purpose of organizations such as the Central Intelligence Agency and the Federal Bureau of Investigation. The purpose of an intelligence community, of course, is to know what is transpiring in the world which may adversely affect the security and the strategic interests of the United States. In other words, it is better to know what is happening around us than to be surprised. We learned this kind of a lesson at Pearl Harbor when most of our fleet was destroyed in an unexpected Japanese attack. The need to know is just as important today as it was back in 1941, but many people lose sight of just where our true interests lie.

Mr. President, Adm. Stansfield Turner, Director of the CIA, dealt with this problem recently in an article published in the Los Angeles Times. I ask that Admiral Turner's article be printed in the RECORD.

The article follows:

[From the Los Angeles Times, Sept. 11, 1978]

FREEDOM DEPENDS ON SNOOPS

(By Stansfield Turner)

A terrorist organization plans to kidnap an American businessman; a Soviet delegation changes its negotiating goals; a ship carrying illegal narcotics enters U.S. coastal waters. Elements of a LeCarre novel? No. Real life? Yes. Worth knowing? That's up to you.

The American intelligence community has been the eyes and ears of the United States overseas for over 30 years. Simple rationale: It is better to know what is happening around us than to be surprised. While originally a reaction to Pearl Harbor, that rationale is even more relevant today. Military parity, economic interdependence and political activism are today's realities. Freedom, sometimes survival, depends on awareness. Governments, no less than individuals, can do a better job if they can anticipate problems and are able to plan ahead. This is neither illegal nor sinister. All nations work hard at being better informed. Unfortunately, in recent years this has become harder for us and easier for our competitors.

The United States is an open society. Foreigners can move freely and unnoticed in our midst. The quantities of published information about everything that we do exceeds any individual's capacity to absorb it. The KGB's job is easy.

The CIA's job—collecting information about other countries as well as international activities—is a little more difficult. Terrorists and drug traffickers do not advertise. Many countries whose actions affect us directly are closed. There is no opportunity to learn about them openly. Travel is prohibited, their press is controlled, their governments function in secret, and foreign initiatives are often taken without explanation. Surprise is a routine strategy.

Although we are at a disadvantage in this quest for information, none of us would trade this openness for the short-term advantages of unnecessary secrecy. Nonetheless, if we are to function successfully in a world where closed societies compete with us economically, politically and militarily, where our well-being is in some measure dependent on their actions and our ability to anticipate them, we too must preserve some secrets lest we lose all leverage.

The intelligence community in particular is out of business unless it can ensure a large degree of confidentiality in what it does. The Russian who passes his delegation's change in negotiating strategy to us, the agent who can become a member of a terrorist organization and thereafter keep us informed of its plans, the allied intelligence agencies that work with us to watch and thwart international drug trafficking—none will take the obvious risks if we cannot guarantee their anonymity. With the organized effort under way today to uncover American intelligence officers and activities—in the real or feigned belief that this will benefit the United States—the ability to protect these intelligence sources and methods is in danger.

Is that threat to America of terrorism and lawlessness real? Is there a danger that the United States could in time lose its position of leadership in the world, and maybe some degree of its free choice? Is it worthwhile to pursue hard-to-get information so that decision-makers can know what other countries actually plan rather than guessing what they might be planning? The decision is really up to the American citizen. But, if your answer to any of those questions is yes, then some individual or group, call it the CIA or call it whatever you will, must go dig out the information.

Anti-intelligence protagonists will claim *ipse dixit*—that, while these examples may seem reasonable, the intelligence community, and the CIA in particular, is involved also in skulduggery of a less savory nature. As proof, a litany of past abuses—some actual, many imagined—is recited.

There is no question that intelligence capabilities were misused in the past, albeit very infrequently. There is also no question that the abuses that did occur were thoroughly investigated by the Church committee, the Rockefeller commission and others, and do not continue to exist. Anyone who is more than superficially informed on intelligence matters, and who is willing to be honest, knows that the CIA is operating more openly and is under tighter controls today than at any time in its history.

And, while secrecy remains indispensable to serious intelligence work, the several new oversight bodies, acting as surogates for the general public, are not denied any information that they need to ensure that what the CIA does is both legal and proper. The executive and legislative branches share this responsibility through the personal involvement of the President and the Vice President, the National Security Council, the new Intelligence Oversight Board and the two new in the past two years, Select Committees on Intelligence in the House and Senate.

Secrecy, while it can be used to hide misdeeds and mistakes, can also enable us to learn more about those who could harm us, deny them the advantage of surprise, and ensure that our decisions are based on fact rather than surmise. In itself, secrecy is neither good nor bad, moral nor immoral. In the new oversight bodies we have a responsive, well-conceived mechanism capable for perhaps the first time of controlling government secrecy and secret activities adequately. I suggest that we give it a chance.●

SALEM CHILDREN'S TRUST

● Mr. McGOVERN. Mr. President, a recent Washington Post review of the Salem Children's Orchestra provided much insight into the philosophy and organization of the Salem Children's Trust, Inc. This group of children, in addition to their musical interest, share the experience of having previously lived in an institution or temporary foster home. Fortunately, these youngsters now live in a homelike atmosphere where they receive the love and guidance of parents, grandparents, and other caregivers. This environment is essential to their intellectual, emotional, social, and physical development.

The person responsible for the three villages where the children live in West Germany, and for introducing the concept in this country, is a man named Gottfried Mueller. This extraordinarily generous man correctly theorized that the key to a successful future for every child is for he or she to be raised in a family.

Mr. President, many of us have been struggling to find alternatives to institutional care. The Salem Children's Trust warrants our study. As we know only too well, many juvenile delinquents and adult criminals were raised in institutions or temporary foster care homes where there was no one to make them feel worthy or wanted, and where the necessary skills to live a productive life were never taught.

For the future of children without families, and for the betterment of our society, it is crucial that we focus our attention on alternatives to institutional care.

I ask that this fine article be printed in the RECORD.

The article follows:

[From the Washington Post, Aug. 28, 1978]

SALEM, FOR THE FORGOTTEN CHILDREN

(By Don Barkin)

Sunday afternoon in the concert hall of the Kennedy Center. The orchestra has completed an energetic, somewhat omm-pah-pahish rendering of Franz von Suppe's "Poet and Peasant." The 33 youngsters rise smartly to receive their applause, and the conductor, red-faced and beaming, strides to their midst to congratulate the two lanky, blond girl saxophonists.

The orchestra sits, and another man, graybearded and intense, comes forward. "I am Gottfried Mueller," he announces. "We come here from Germany to tell you about Salem. I can speak to you about these chil-

dren because they do not understand English. They are all from broken homes."

Mueller is the director of the Salem Children's Trust, which he founded in Germany 15 years ago as an alternative method to foster care for orphaned children. Mueller's way is to take children living in institutions and temporary foster homes, and to give them what he believes they need most—a permanent home.

The members of the Salem Children's Orchestra are residents of one of the three Salem communities in Germany. Their "village" near the Bavarian city of Stadtsteinach is an extended family comprised of 12 households, each with a maximum of eight children, cared for by a married couple or a single "mother," and a set of "grandparents." The children are of all ages—from infants to 17 or 18—and both sexes. They are, in all of the important ways, real families.

Mueller conceived of Salem about 20 years ago. He'd been a paratrooper in the war. During four years in an English POW camp where, he reflects, "At least, I couldn't hurt anyone and no one could hurt me," Mueller "thought about war and peace and said to myself 'I will do something to help the poor and homeless.'

"I became a vegetarian," he says because—pressing his hands to his mouth—"I saw that peace must begin with my lips."

After the war, Mueller approached charitable organizations with his ideas for peaceful, healthy living. But no one wanted his help. Dispirited, he forgot his idealism and pursued a successful career in insurance.

It didn't last. "I thought, 'At the end of my life, when I am down in the ground, what will people say of me—that I was so clever? So rich?' I sold my property and gave my money away. I became poor, empty pockets!"

He organized several homes for his country's "forgotten people," for homeless adults—alcoholics, drug addicts, jobless ex-soldiers—a quarter of a million people.

"With these men, it was always drugs and 'Give me another schnapps.' Their friends, their families were prostitutes and barkeeps. . . . But they would always say to me, 'Listen, Mr. Mueller, I've gone from one home to another. I hated one mother and then the next, and the next, and now I hate everybody. Then I am in prison—naturally. I have no brother, no sister, no one.'

"So I said, 'What you need is a home, a standpoint, a fixed point a—how to say . . .' He turns to a colleague, who offers "roots." "Roots," Mueller saw, begin in childhood, and in 1963, Salem was born.

The children of Salem are special children, handicapped by the destructive journey from broken homes to temporary foster homes and institutions. "They are lost," says Mueller, angrily brushing away imaginary refuse.

His cure for this abuse is a kind of total rehabilitation, including a vegetarian, "natural" food diet, and a lot of exercise. The staff of each Salem village includes physical and psychological therapists, as well as farmers, bakers and other craftesmen, who furnish the communities' material needs and give the children vocational training.

Typical of Mueller's holistic approach is a program of horseback riding. "I remembered when I was young, how when I was riding a horse I felt like a king. With a horse you have a comrade—you must cooperate with him, you can also quarrel with a horse, but you must be polite. You learn courage, and it is physical and spiritual."

Musical training is equally important. Even the most severely handicapped children learn to play an instrument, and learn also the value of cooperation in orchestral playing. But the greatest benefit is to their confidence.

The orchestra has performed in London, Tel Aviv, and, promoting public support for a new Salem village in Huntington, Md., in Boston and New York. They appear calmer, more assured than many professional musicians.

Waiting backstage for the start of their concert yesterday, they sat quietly or engaged in such horseplay as their immaculate blue-vested outfits would allow. They were fit-looking and ruddy-faced—trimmed-down versions of the rollicking youths in a painting by Brueghel—their serious faces give away little, of the experience of international concerting, or of their troubled backgrounds.

Music, says their conducter, will always be availabe to them as a means of support, a fallback if they ever find themselves out of work. A group of boys, 13 and 14 years old, name their future occupations—a carpenter, a painter, a farmer . . . But, as Mueller reminds you, employed or not, these youngsters will never find themselves without a home. They can always come back to Salem—like anyone else, when the going gets tough in the outside world, they can always go home.●

THE DOLLAR DECLINE

● Mr. BUMPERS. Mr. President, two articles that appeared recently in the Wall Street Journal highlight the need for comprehensive energy legislation during the 95th Congress.

One article points out that 1979 oil imports will reach record levels, exceeding last year's record of 8.7 million barrels a day. Americans are using about 3 percent more petroleum than they were last year.

If this situation continues, there will be further erosion of the value of the dollar. Although the U.S. balance-of-trade deficit has narrowed in recent months, the deficit in our balance of payments remains because of continued high energy imports.

There are different ways to measure the impact of the declining dollar, but one estimate is that each 5 percent decline in the dollar adds one-half to three-quarters of a percentage point to the U.S. consumer price index after 1 year. One economist is quoted as saying, "The dollar decline has become an engine of inflation."

I ask that these articles from the Wall Street Journal be printed in the RECORD.

The articles follow:

DECLINE OF THE DOLLAR POSES BROAD THREATS TO AMERICAN ECONOMY

(By Charles N. Stabler)

NEW YORK.—Continuing disarray in the foreign-exchange markets, eased only slightly yesterday by Carter administration efforts to support the dollar, is raising risks in such broader areas as interest rates, inflation and the health of the economy as a whole.

The dollar's foreign-exchange problems are immensely complicating Federal Reserve and White House domestic strategy to keep the economy on a reasonable growth path while reversing the upward price trend. A cheapening dollar means higher prices for imports and for competing domestic goods. But an all-out effort to defend the dollar, which might fail anyhow, would require higher interest rates that, in turn, would slow economic growth.

Near-crisis conditions in the foreign-exchange markets are forcing the Fed and the administration to take actions that could hurt the economy. Market analysts say the dollar's role as the world's dominant reserve currency, or store of wealth, is being eroded, threatening all kinds of financial markets.

In response to the Fed's move to raise interest rates Wednesday and its intervention in the currency markets, the dollar rebounded in nervous trading most of yesterday. But many market participants and economists fear that the Fed's relief will be only temporary and that the dollar will again succumb to the pressure of underlying economic conditions.

GAINS ARE ERODED

At a press conference yesterday afternoon, President Carter reiterated his concern about the dollar and said he had asked for advice from his economic aides and the Federal Reserve, but he didn't offer any new measures to bolster the U.S. currency now.

Even while the press conference was under way, the dollar began losing some of the gains racked up in earlier trading.

"The market was expecting entirely too much from Carter," one disappointed foreign exchange trader said, referring to earlier dollar gains. "It's a crazy market," he said, with a great deal of uncertainty and anxiety among participants.

The administration's policy has been to intervene in the market only to correct "disorderly conditions." It is pinning its hopes for a lasting recovery of the dollar on improvements in the fundamental economic factors driving it down, mainly the rising U.S. inflation rate.

WIDE SWINGS

Market conditions this week have been disorderly indeed. Traders say there have been price swings for some currencies of as much as 1% or 2% in the course of an hour. The Swiss franc has registered price changes of 5% overnight. The spread between the price dealers bid for currencies and what they are willing to sell for has been unusually wide, a sign that dealers are trying to protect themselves against sudden price changes. And market participants have been unwilling to hold dollars for more than brief periods.

"It's a very, very dangerous situation," says James J. O'Leary, vice chairman and chief economist for U.S. Trust Co. "It is intolerable to have the dollar so vulnerable to speculation and in a continuing declining process."

"There has been an eerie aspect to this" in the foreign-exchange markets, says Henry Kaufman, chief economist at the securities firm of Salomon Brothers. "With the dollar going down, you have an international monetary system without a rudder."

Since the Bonn summit meeting just a month ago, the dollar has plunged 8.5% against the Japanese yen, 4% against the German mark, 3% against the French franc and 3.5% against British sterling. The direct effect of such declines is to raise the price of U.S. imports. American producers of competing goods then have an umbrella under which they can raise domestic prices.

ENGINE OF INFLATION

"The dollar decline has become an engine of inflation," says one economist, its impact is difficult to measure, but one estimate is that each 5 percent decline in the dollar adds one-half to three-quarters of a percentage point to the U.S. consumer price index after one year.

But the cheapening dollar could have deeper, possibly more serious, consequences. The reason is that dollars, overwhelmingly used as a transaction currency in world trade, also serve as the world's dominant reserve asset—a store of value for investors, central banks and other official institutions. This role is threatened by growing doubts about the safety of this hoard of wealth.

In foreign-currency terms, the steep decline of the dollar has already slashed the value of all kinds of dollar denominated assets. The worth of billions of dollars foreigners have invested in U.S. Treasury securities, corporate bonds, loans, bank deposits and even common stock is eroding.

Other things being equal, a $1 million holding in Treasury securities worth over 2 million marks to a German investor a month ago now is worth only 1.95 million marks. A similar investment translated into Japanese yen or Swiss francs has lost even more.

The depth of the erosion is difficult to estimate because the dollar's value is only one of many influences affecting prices in the credit and stock markets. But some analysts fear that for a growing number of foreign investors, including central banks, the costs and risks of buying dollar securities already outweigh any anticipated benefits from interest income or capital gains.

There already are signs of a slowdown of foreign investment in the U.S. financial markets, a reduction of dollar inflows which itself puts upward pressure on interest rates. And in the background is the ever-present threat of large-scale liquidation of dollar assets held by foreign central banks and investors. Such a dumping of dollar holdings would send financial values plunging.

Few analysts expect such wholesale selling. For one reason, it would be very costly to the sellers, driving down prices they received for their assets. And converting so much wealth into another currency would be difficult because no other country has the depth of the U.S. financial markets.

As one measure of the size of these foreign investments, the Federal Reserve Bank of New York is holding on behalf of foreign official institutions more than $86.6 billion in U.S. Treasury securities. This is Treasury debt owned mainly by the central banks of major U.S. trading partners and of Saudi Arabia and other members of the Organization of Petroleum Exporting Countries.

"There hasn't been any unloading yet—no OPEC selling," says David M. Jones, an economist at the securities firm of Aubrey G. Lanston & Co. But, he concedes, "You can't rule it out."

Until recently, foreign central bank purchases of Treasury debt securities had been sizable, in effect financing the U.S. budget deficit, dealers say. Central banks' current holdings of marketable securities are more than $26 billion greater than a year ago.

The Federal Reserve reported yesterday an increase in its holdings of such securities during the week ended Wednesday but, over a longer period, such buying has slowed. The reason apparently is that the foreign central banks have decided to limit their intervention in foreign-exchange markets; in these interventions, central banks sell their own currencies and buy dollars that they then invest in Treasury debt.

A LOSING GAME

"They found it was a losing game as long as the U.S. was unwilling to do anything to help itself," says one economist.

Citing the continuing high growth of money supplies in the U.S. economy, Lawrence A. Kudlow, vice president and economist for the securities firm of Paine Webber Inc., says, "Efforts by foreign central banks to support the dollar have no lasting effect in the fact of domestically produced monetary overruns."

The withdrawal of this source of buying demand puts upward pressure on the rates the U.S. Treasury must pay for borrowing.

In addition, buying by foreigners in the U.S. stock market has slowed. Foreign buying is credited by analysts with triggering the April stock-market rally and helping buoy prices in May. Foreigners made record net purchases of $713 million of U.S. stocks in April and a further $427 million in May. But they turned into net sellers in June and probably continued to be in July, according to David Minor, an analyst at the Securities Industry Association.

The stock market registered gains yesterday and Wednesday, following the Fed's moves to tighten credit, largely because traders saw higher interest rates as a possible aid to the dollar and, in turn, renewed foreign interest in U.S. equities. But over a longer period, the prolonged decline of the dollar has tended to drag down this market and the credit markets as well, analysts say. The stock markets in the East were closed before President Carter's news conference yesterday.

Despite Fed stabilization efforts and President Carter's expressed concern for the dollar, few market participants expect a quick change in its fortunes. "They have already tried this, last January, without much effect," one currency trader says.

Last Jan. 4 the U.S. government announced it would intervene "actively" in the foreign-exchange market. The Fed immediately began major buying of dollars and selling of German marks. It tightened its credit reins, pushing up interest rates, and raised its discount rate on loans to member banks to 6½% from 6%. The dollar soared briefly, but by the middle of February it was on the run again.

BASIS FOR DOLLAR'S SLIDE

The blame for the dollar's persistent weakness is placed on fundamental, slow-to-change economic conditions. Although the U.S. balance-of-trade deficit has narrowed in recent months, the gap between what the country buys from abroad and what it exports remains wide, partly because of continued high energy imports. Also, the U.S. economy still is expanding faster than the economies of its major trading partners, sucking in imports and holding down exports.

But a growing number of analysts blame U.S. inflation for the dollar decline. The rate of expansion of dollar supplies continues to run much higher than money growth in most other nations, raising fears that the purchasing power of dollars will continue to decline relative to currencies of Germany, Japan, Switzerland and other nations where monetary expansion is under better control.

"Worsened inflation fears produce a majority of dollar sellers, at the expense of domestic prices, real income, real capital and employment," says Mr. Kudlow of Paine Webber.

The Fed has been trying to restrain monetary growth rates, but only gradually. Before the most recent dollar decline, market analysts had expected Fed policymakers to hold back on further tightening moves, which run the risk of abruptly stalling economic growth.

TIGHTENING OF CREDIT

But the precipitous drop of the dollar in recent weeks has forced faster tightening action in the credit markets, raising interest rates in an effort to pull dollar investments into the country. Another change in the discount rate is expected today by many market participants.

In yesterday's trading, preceding Mr. Carter's news conference, the dollar jumped 3.5% against the Swiss franc in Zurich, to 1.6500 francs. It also rose 2.8% against the West German mark in Zurich, to 1.9915 marks; 2.6% against the French franc in Paris, to 4.3350 francs, and almost 1% against the Japanese yen in Tokyo, to 185.48 yen. In London, the British pound slumped 1.8% to $1.935.

But during Mr. Carter's 4 p.m. EDT news conference, the dollar fell sharply in New York trading. It dropped to 1.6150 Swiss francs, to 1.9703 marks, to 4.2750 French francs and to 186.30 yen. The British pound gained in New York to $1.9638, and the Canadian dollar rose to 87.87 U.S. cents from 87.82 cents.

The dollar's violent swings have been mirrored in the gold markets. Yesterday, the five major London bullion dealers slashed their common quote $5.30 an ounce at their morning meeting and a further $1.45 in the afternoon. That left the price at $209.00 an ounce, down $6.75 from $215.75 the day before.

OIL IMPORTS ARE RISING AFTER FIRST HALF DROP; RECORD 1979 TOTAL LIKELY

(By James Tanner)

On the surface, last month's news seemed favorable: Oil imports, a key villian in the huge U.S. trade deficit and the sinking fortunes of the dollar, were about 13% below last year's record levels. President Carter went to Europe to promise a 2.5 million-barrel-a-day cut in oil imports by the mid-1980s, and a high U.S. Treasury official predicted that imports would be slashed by a million barrels a day by the end of the year.

But beneath the surafce, the facts are a good deal gloomier: That 13% drop for the first half of the year was only temporary and imports are starting to climb again. "We haven't solved the import problem," is the blunt opinion of John H. Lichtblau, executive director of the Petroleum Industry Research Foundation. "This import decline we have seen will start leveling off in the second half and will disappear altogther in 1979."

Even the administration is realizing that its hopes for cutting back on oil imports are fading. Indeed, Energy Department figures suggest the possibility that imports will actually rise this year. The major fear is that this will give the Organization of Petroleum Exporting Countries the evidence of a turnaround in the world oil market that it needs to justify an intended price increase by the end of this year.

HEADING TOWARD 10 MILLION

There is general agreement that 1979 imports will reach record levels, exceeding last year's record of 8.7 million barrels a day. Forecasts vary for beyond 1979, but most oil-industry people believe that imports will continue a slow but gradual rise, eventually passing 10 million barrels a day, no matter what happens in Washington to President Carter's long-debated energy program. Imports will rise, they say, because petroleum demand will continue to outpace domestic oil output.

Why were oil imports down in the first half compared with the first six months of 1977? Oil-industry officials note that in the 1977 first half, imports were unusually high because the oil companies were building up inventories. This was largely because of pricing disagreements among the OPEC producers, which led to a company scramble for cheaper Saudi Arabian oil even while the companies were under pressure from the higher-priced producers to continue taking their oil. OPEC resolved its pricing split in mid-1977.

In this year's first half, imports were unusually low because the oil companies began using up their inventories. But for the rest of this year, the companies are expected to rebuild their U.S. inventories of crude oil and petroleum products, now at the relatively low level of 857 million barrels, down from about 921 million barrels a year ago. The inventories already are being built up with imports.

Another factor is cited for the decrease in the first half's imports: oil from the North Slope of Alaska. The oil began flowing in mid-1977, averaging in the second half of last year about 700,000 barrels a day from the Prudhoe Bay field. In this year's second half, production is close to the pipeline's capacity of 1.2 million barrels.

Despite that increase, the significance of North Slope oil will diminish in the overall U.S. picture. This is because output from the fields in the Lower 48 States will continue to decline and U.S. demand for oil will, continue to rise. Right now Americans are using about 3% more petroleum than they were last year. No one knows what the increase in

demand will be for the year, although forecasts range from jumps of 1% to 5%.

A significant reason for the difficulty in trying to predict the course of oil imports is that a great amount of oil is being imported that isn't included in any official figures.

This is the oil that is being imported to be stockpiled in the strategic petroleum reserve, which was authorized by Conrgess in 1975 but which didn't get underway until the beginning of the second half of last year. The program calls for as many as one billion barrels of oil to be stored, mainly in underground salt domes, by 1985 to prevent disruptions in the event of any future embargo.

The target for the end of 1980 is 500 million barrels, and the oil now is going into the reserve at the rate of 150,000 barrels a day, most of it from Mexico, Saudi Arabia and elsewhere abroad. This is likely to have a considerable effect on the current half's import figures.

AN INCREASE THIS YEAR?

It isn't known what the average daily imports for the strategic reserve will be for the whole year. But the petroleum research group's Mr. Litchblau believes they could add as many as 500,000 barrels a day to the import figures for the second half. This could average out to more than 300,000 barrels a day for the entire year.

The Energy Department bases its estimates for the year's imports (not including the stockpile) on high, medium and low ranges of demand. Its medium-range estimate is that imports will average 8.6 million barrels a day for the year. If a possible 300,000 to 400,000 barrels a day of imports for the strategic reserve were added, this would bring 1978 imports to nearly 9 million barrels a day, compared with the 8.7 million for last year.

Even if imports for the reserve remain at the present 150,000-barrel-a-day rate, the Energy Department figures still suggest a total increase in imports for the year.

With so many predictions flying around, it's hardly surprising that Washington appears confused about what is happening to oil imports. On July 27, for example, Anthony M. Solomon, the U.S. Treasury under secretary, told reporters that the decline in oil imports would continue for the remainder of this year, contributing, he said, to a lower trade deficit and a stronger dollar. Oil imports, he predicted, should be down by one million barrels a day for the year.

But Mr. Solomon's optimism was deflated by figures from the Commerce Department projecting increases in the second half from the year-ago half. Indeed, the Energy Department had been projecting such an increase since June. Even Mr. Solomon's colleague at the Treasury, assistant secretary Fred Bergsten, told a House subcommittee last week that an increase in imports is expected in the second half.

(Asked for comment, a Treasury official explained that Mr. Solomon really meant to say that oil imports were running one million barrels a day lower during the first half.)

The administration does have support, however, in its view that oil imports will show a decline for all of 1978, although not nearly as great as the sharp decline of the first half would suggest.

Mr. Lichtblau's guess is that, not counting the strategic reserve, "this year we will bring in at least 8.1 million barrels a day." The Independent Petroleum Association of America estimates that the 1978 average, including imports for the reserve, will be slightly more than 8.5 million barrels a day.

Both of these estimates are conservative when compared with projections by Exxon Corp., whose figures are typical for the oil industry. Exxon believes that without provision for the reserve, the U.S. will import about 8.5 million barrels a day this year.

Certainly there is wide agreement that oil imports next year will rise to a record, whether or not the strategic reserve is included. Estimates that exclude the reserve: Mr. Lichtblau, 8.8 million barrels a day; Exxon, 9.3 million, and the Energy Department, about 9.1 million (medium range).

The renewal of the climb in imports obscures an important development concerning oil consumption in the U.S., however. Most energy experts agree that Americans are beginning to be less wasteful of petroleum, largely because of the increased cost but also because of improved automobile mileage. Frank G. Zarb, the former head of the Federal Energy Administration, now a general partner at the investment banking concern of Lazard Freres, observes, "The American (free-market) system is working despite the government's silly controls (on petroleum prices). Industry is using less energy per unit of output."

Evidence of this conservation trend is beginning to show up in the oil-demand forecasts. Generally, these forecasts suggest that oil demand will rise proportionately less, on a percentage basis, than the gross national product.

Generally, the estimates of 1978 demand range between 18.7 million and 19.4 million barrels a day, or increases of between 1% and 5% from the 18.4 million barrels a day of 1977.

Domestic petroleum production, including output from the North Slope, is estimated at between 8.7 million and 8.9 million barrels a day for 1978. up from about 8.2 million barrels a day in 1977. Natural-gas liquids and certain other domestic supplies account for the rest of the difference between demand and imports.●

DEFENSE SPENDING

● Mr. GOLDWATER. Mr. President, despite figures to the contrary, an impression still exists in this country that social programs are being deprived of funding, because of heavy defense expenses. The truth of the matter is that over the past 18 years, defense spending has steadily declined in real value while social spending has skyrocketed. In fact, social spending has grown 60 times as fast as defense spending.

Mr. President, this is the "big lie" which pervades much of the discussion these days about adequate budgeting for the Nation's defense. In an attempt to put the record straight, an article in Human Events of September 7 drew the whole problem into its correct perspective. It was written by Warren T. Brookes, a specialist in economic affairs and a columnist for the Boston Herald American. I ask that Mr. Brookes' article be printed in the RECORD.

The article follows:

THE "BIG LIE" ABOUT DEFENSE SPENDING

(By Warren T. Brookes)

Those who specialize in propaganda know that if you repeat a "big lie" often enough, people will eventually come to believe it—no matter how blatant it gets.

While you expect this sort of thing from totalitarian governments of the left and right, you do not expect it from a "free press."

Yet right now, the liberal press in America seems intent upon promoting the "big lie," that social spending in the U.S. is being limited by "record defense spending budgets."

Columnist James Wieghart, of the New York Daily News (normally a sensible man) typifies the latest assault of the national defense establishment with an incredible line from a July 24 column that ran in the Boston Globe:

"There is something wrong, when the richest, most powerful nation in history, votes added billions to record military budgets, but refuses to spend money to insure health care for its citizens, housing for its homeless, or jobs for the unemployed."

It would be hard to invent a statement more egregiously misleading, or downright sinister in its polemical intent. It is the "big lie" carried to a ludicrous extreme.

The fact is: Over the past 18 years, U.S. social spending has been soaring like a skyrocket, while defense spending has steadily been lagging, in real value. Social spending has grown 60 times as fast as defense!

The following table compiled from the U.S. Budget for 1979 tells the story completely:

DEFENSE VERSUS NONDEFENSE SPENDING, 1960–77

[In billions of constant 1960 dollars]

	1960	1977	Percent change
Total Federal outlays	$92.2	$200.3	117
Defense	45.2	47.5	5
Nondefense	47.0	152.7	225
Social spending	26.5	111.9	322
Weapons and research	18.0	13.7	−24

Since 1960 (a non-war year), while the real GNP grew 57 percent, total real Federal spending rose 117 percent—and the entire reason for that double-rate" government growth was a 225 percent rise in nondefense spending! That is 45 times as fast as defense.

During a period when social spending (income security, employment programs, housing, health care and education) rose by a colossal 322 percent (real, that is, not inflated) the total defense budget actually rose only 5 percent in constant dollars.

During this 17-year-period, while the budget for HEW, alone, rose by a colossal 258 percent, the nation's actual spending on weapons and military research (other than personnel and pensions) went down by 24 percent in real dollars!

That's right, in 1977 we actually spent, in constant dollars, some 24 percent less on military hardware and research than we did in 1960.

Yet, in 1977, we spent over four times as much on social programs as we did in 1960, in real dollars, and eight times as much in inflated dollars.

Thus, instead of the "big lie" that defense spending is "robbing social programs," as one black congressional leader recently stated (Parren Mitchell [D.-Md.]), exactly the opposite is taking place, as the defense share in the ballooning federal budget has fallen dramatically, while social spending has soared:

SHARE OF FEDERAL BUDGET (INCLUDING OFF-BUDGET SPENDING)

	1960 (percent)	1977 (percent)	Percent change
Defense	49	23.7	−52
Nondefense	51	76.3	+49.6
Social spending	28.7	55.9	+94.7

The fact is social spending now takes nearly two and a half times as much of the federal budget as defense, and its share has grown almost one hundred percent while defense has dropped by more than half.

Why, then, do so many Americans believe

that defense spending is too high and should be cut, modestly?

The answer is inflation. The amount of $117 billion (the amount proposed for 1979 by the Carter Administration), sounds like a lot more than it really is. From 1960 to 1977 prices in the U.S. have gone up by 105 percent—and by 1979, will have gone up by 135 percent.

This means that in constant 1960 dollars the 1979 budget of $117 billion in defense spending will come to $49.8 billion, or only $4.6 billion more than we spent 19 years ago, an increase of only 10 percent in two decades!

During this same period, our national economy will have grown, in constant dollars, by about 62 percent (through 1979), or about six times as fast as our defense budget! And social spending has grown 60 times as fast!

As a result, the defense share of our nation's economy has steadily dwindled, while the non-defense share has skyrocketed:

FEDERAL SHARE OF THE GNP

	1960 (percent)	1977 (percent)	Percent change
Nondefense	9.5	17.3	+82
Defense	9.0	5.2	−42
Social	5.3	12.5	+135

Federal social spending programs now take nearly three times as much of the GNP as does defense. Indeed, total social spending at all levels of government (including state and local) now take nearly 23 percent of the Gross National Product while national defense takes only 5 percent, a ratio of 4 to 1.

What is worse, because of the volunteer Army (and rapidly rising military pay and pensions), our actual level of defense is far worse than even these figures tell.

DEFENSE BUDGET 1960–79

[In billions of inflated dollars]

	1960	1977	1979	Percent change	Percent change
Personnel and operating expense	$23.5	$67.6	$79.5	238	44
Weapons and research	18.0	28.0	36.1	100.1	−15

Despite the fact that there are now 500,000 fewer military personnel than in 1960, and 200,000 fewer Pentagon civilian personnel, it is now costing 44 percent more (in real dollars) just to pay for salaries, pensions and operating expenses than it did in 1960.

Meanwhile, our actual dollars for weapons and research (the real measure of our strategic strength) have dropped 15 percent even when you include Mr. Carrter's 1979 budget.

What is troubling about all this is that during a time when we have reduced defense spending to 5 percent of GNP, the Russians have raised theirs to 17 percent of their GNP. The trends are all against us.

This is not to say that there is not "fat" in the Pentagon budget. There is. Readers of this column will recall that in 1976 and 1977 we applauded Mr. Carter's desire to squeeze about $5 to $7 billion out of this budget.

And we thought that, economically speaking, the B–1 decision was the right one at the time.

But any serious cutting of the Pentagon budget cannot be accomplished unless the Congress faces up to the fact that this cutting cannot come either in weapons or research—but must come in the spiraling cost of personnel and pensions.

It must not come as a result of "big lies" about "record defense budgets" and their supposed impact on social spending.

It is irresponsible for the liberal press to suggest that defense spending is, in any way, interfering with the massive colossus of non-defense social programs, which have been the primary cause for government growing twice as fast as our national economy for the past 19 years. ●

REFUGEE CRISIS IN SOUTHERN AFRICA

● Mr. KENNEDY. Mr. President, for many months I have followed with growing concern the mounting refugee crisis developing in Southern Africa—especially the plight of some 1.2 million refugees from the escalating conflict and violence in Zimbabwe (Rhodesia).

I have been equally alarmed at the persistent failure of our Government to respond to the growing refugee crisis among Zimbabweans dislocated within their country. For over a year and a half, the administration has wrapped in redtape and bureaucratic indecision an urgent appeal for relief assistance from the International Committee of the Red Cross (ICRC)—one of the world's most respected humanitarian agencies, and the only international agency providing assistance within Zimbabwe.

Officials in the Agency for International Development (AID) have all but ignored for over a year a direct appeal from the ICRC for Zimbabwe. Despite a meeting in September 1977 with a senior official from the International Red Cross—and the outstanding appeal from the ICRC in June 1977, for $4 million in relief assistance—AID officials sat on any action for a full year. And then it was $1 million, none of which could go to refugees within Zimbabwe.

Yet, by every account, the refugee crisis in Zimbabwe was growing daily. Over one-sixth of all black Zimbabweans have been displaced by the war between Rhodesian forces and nationalist guerrillas. Some half million have been herded into what the government calls "protected villages," but which in reality are nothing more than fetid refugee camps. Another 100,000 have filed across the border into neighboring Botswana, Mozambique, and Zambia. Relief needs—especially food, shelter, and medicine—have grown steadily.

After receiving no response from the United States to its first appeal for Zimbabwe on refugees, the Red Cross issued on May 1, 1978, a second appeal for $12 million for Africa, including Zimbabwe, to meet relief needs for 6 months.

But, Mr. President, what has been the response of the United States?

To date, not one penny has been offered to the new appeal. We have pledged $1 million for a $16 million program to date—a shamefully modest response to a crucial humanitarian program in a crucial part of the world.

To date, no international disaster assistance funds have been made available by AID even though at least $3 million remain available until the fiscal year ends in just 2 weeks. Inadequate use has been made, of the special requirements fund for Southern Africa, which has no legal prohibition against assistance to refugees in Zimbabwe provided through international organizations.

When asked what the Department of State and AID are now doing to respond to the latest ICRC appeal for Zimbabwean refugees—the answer is that they are meeting about it.

Mr. President, today, after a year and a half of inaction—of incomprehensible redtape and delay—we do not need more meetings on urgent humanitarian needs. The American people and the Congress rightly expect action. We expect AID to use the funds made available to it by Congress for such programs—either the international disaster assistance fund or the special requirements fund for Southern Africa.

And if new authority or additional funds are needed, then why has not the administration and AID requested them in the pending foreign assistance bill? We must reluctantly conclude that no one in AID considers the appeals of the International Red Cross sufficiently important or urgent to act upon them, or to seek the authority or additional funds needed to respond to them—if, indeed, such new authority is really required.

We also must reluctantly conclude that AID's record in responding to the International Red Cross in Zimbabwe follows its past sorry record in Lebanon in 1975–76, earlier in Cambodia and Vietnam, and in other humanitarian crises where I have consistently observed a failure of action.

Mr. President, it is my firm intention to pursue this issue, and to discuss with the relevant committees whether legislative action should not be taken to transfer out of AID all funding the Congress intends for humanitarian emergencies caused by manmade disasters—such as that today in Zimbabwe, where hundreds of thousands of refugees have yet to see the helping hand of the United States.

Mr. President, I commend to the attention of Senators a compelling article on the refugee crisis in Zimbabwe published yesterday by the Wall Street Journal, and I ask that it be printed in the RECORD.

The article follows:

STRUGGLE IN RHODESIA TURNS COUNTLESS BLACKS INTO HELPLESS REFUGEES

(By Richard R. Leger)

HARARE, RHODESIA—Some 4,000 people are huddled on the ground in the dusty market square of this black township adjoining Salisbury. They are dirty, tattered and hungry. Most of them are children with no place to play, no schools to go to. Their mothers sit surrounded by their remaining possessions—a few charred pots and pans, a suitcase or box or two of clothing, some sticks and plastic or canvas from which to make a tent.

Some enterprising women are trying to raise a few pennies. Esther is one; she has bought 15 pieces of wood for 50 cents and is trying to sell them for 70 cents. "Food is most urgent," she says. "I can warm myself in a sack if I have a full stomach, but when you have an empty stomach, it's bad." (The

temperature dips into the 40s some nights; it's late winter now in Rhodesia.)

For Maggie Muchato, a widow with seven children, the most pressing need is blankets. She was given some blankets and clothes but had them stolen. She is very angry but no one knows who took her blankets.

CROWDING THE CITIES

This refugee camp in Harare is one of at least three growing around Salisbury. There are others in Bulawayo, Rhodesia's other principal city. The camps, unrecognized by the government, shelter Rhodesia's most unfortunate citizens, 20,000 to 30,000 people nobody wants.

Other blacks are crowding into homes with friends and relatives and with servants living in quarters in white homes. They have swollen the population of Salisbury and Bulawayo by a half million.

But Rhodesia's displaced-person total doesn't stop there. Some 100,000 more have fled across borders into Botswana, Mozambique and Zambia, waiting for an end to the fighting Another 500,000 are herded into fenced compounds called "protected villages," where government forces say they try to keep them safe from attacking guerrillas but also restrict their activities with curfews. In all, about 1.1 million of Rhodesia's 6.5 million blacks have been displaced by the war between government forces and nationalist guerrillas based in Zambia and Mozambique. (Whites also have been forced to leave, but most do so in relative comfort and safety; an estimated 230,000 whites, perhaps fewer, remain in Rhodesia.)

CAUGHT IN THE MIDDLE

"The suffering of the people in the tribal trust lands (black rural areas) is terrible," says a missionary who had to close her school last year when it became too dangerous to continue. "They have to feed the guerrillas. They must. But they were subsistence farmers to start with and barely had enough to live on."

She continues: "Then after they feed the guerrillas, the (government) security forces come in and beat them for helping the guerrillas or bomb their villages. This is one reason you have refugees here. Another is that the protected villages are being burned down by the guerrillas. If the people try to return to their old tribal homes or stay in the mountains, they are bombed by the security forces. If they try to go back to the protected villages, they're attacked by the guerrillas. They have no choice but to leave."

Salisbury's director of community services, J. C. B. Taylor, sees another factor in the refugee flight. "We are beginning to reap the whirlwind of the migrant-labor system, which is common all over Africa, under which the men leave home to seek a wage while the women, children and old men eke out a peasant existence," Mr. Taylor says. "Now there is a general degradation of the land, and the war is making it urgent that the families come to town."

But the refugees aren't wanted in Rhodesia's towns and cities. Mr. Taylor says they could double Salisbury's normal population of 510,000 within months, and he fears the influx could be "our downfall. We don't check everybody and don't know how many are here or who they are. There may be many 'ters' (terrorists) among them."

DISCLAIMING RESPONSIBILITY

So unwanted are the refugees that neither the municipal nor the national government will take responsibility for their care. "It's unfair for Salisbury to house what's a national government problem," Mr. Taylor says. "We can't even cope with the 17,000 families officially waiting for housing with legitimate reason to be here. That's why we're disclaiming responsibility."

Basic medical care is given by a mobile clinic from the International Committee of the Red Cross. "There are frequent births," says J. Pelichet, Red Cross delegate here. "How many I don't know." In addition, stomach ailments and skin, liver and venereal diseases are common, and Mr. Pelichet worries about the possibility of an epidemic of malaria or some other disease. "When the rainy season comes (in November) it will be bad. An epidemic couldn't be controlled," he says.

Everyday living problems such as births, however, are taken in stride by the refugees. Valeria Mungati, for example, has strapped to her back a baby wearing a purple and gray wool hat. He's named Rudo, which means love in Shona, a tribal language. The baby, her grandson, was born last Oct. 1. She has eight children of her own.

Mrs. Mungati, however, says she's "desperate" because of constant illness and hunger in her family. She also has just "received a message there was heavy fighting in my home (a village called Mrewa), and I am worried for my relatives. We are waiting for news of names."

No one in her family has been able to find work, Mrs. Mungati says. "If the young men ask for jobs, they're told to join the security forces as fighters. We'd rather starve than fight."

Fending off starvation is a constant struggle because these people don't have land on which to grow their own food. About half, those who have been screened and are known to be legitimate war refugees, get soap, blankets and rations of corn meal, salt, cereal and milk from the Red Cross. Some of the others in the camp are unemployed people with nowhere else to go.

"We are limited to helping only war refugees; help for the others must come from other sources," Mr. Pelichet explains. But refugees who get aid commonly share it with their unfortunate neighbors, bringing supplies for each family closer to the starvation level.

It is easy to locate families with a sick child or a newborn baby when walking through the camp: They are the ones allowed to keep their tents up during the day. All others are required by the municipal authorities to take their shelter down every morning.

"This is to discourage permanency," says Mr. Taylor. "We can be criticized, but the shelters are a symbol of illegality." Requiring the squatters to take down their tents daily "is the best way, and they've gotten it down to a fine art," he says. The tents go back up at night.

As bad as life can be in the refugee camps, it was worse in rural areas for many people. Government statistics show that of the 9,400 deaths from the start of the war in 1972 through the end of July, 3,693 were black civilians. Of these, 1,200 have died this year. By comparison, 207 white civilians had been killed through the end of July, 86 of them since Jan. 1.

The guerrillas order rural blacks not to dip their cattle (against tick-borne diseases) or to pay taxes or school fees to hurry the collapse of the civil administration. As a result, it's estimated that 550,000 animals, mostly cattle, will die this year. Schools also are closing rapidly: 845 black schools run by the government have closed, along with 817 run by missionary groups.

"I was teaching in a school and we closed it last September," says the missionary now in Salisbury. "We closed it because the guerrillas were in the vicinity and so were the security forces. We were afraid of contact with either side or a contact between the sides. The children now have nothing to do. There are many armed groups in the area—some stealing—and if they don't join one, then it's the other."

The violence has spread to black urban areas, where clashes between guerrillas and civilians or guerrillas and government forces are becoming more frequent. "A lot of people are putting up six-foot fences around their houses with two dogs inside," a black professional who lives in Harare says.

Charitable organizations are helping Rhodesia's displaced blacks, but their resources are inadequate. "We're very much aware that what we're trying to do doesn't reach all the people, and there will be a lot of starvation at the end of this year," says Sister Dymphna Van Wesenbeeck, who supervises a program supplying food, blankets, clothing and medical aid to blacks in protected villages. "People aren't able to put in their crops or go to their fields to care for them," she adds. "It really will be very bad. I expect a general chaos at the end of the year."

There are proposals to build small wooden houses for some of the refugees. Mr. Pelichet of the Red Cross says his organization could build such structures for $150 each with volunteer refugee labor, but it lacks funds for such a program.

The Salisbury municipal government also is considering putting up temporary wooden housing, Mr. Taylor says. But he adds that "the Africans (blacks) warn us that if we do, we'll attract thousands more. We'll be inviting further disaster."●

NUCLEAR WEAPONS EFFECTS

● Mr. McGOVERN. Mr. President, as we involve ourselves in discussions of nuclear strategies and scenarios, there is a curious tendency to forget what sort of devastation these weapons bring. Soon we fall into such notions as the hypothetical limited nuclear war in which the Soviets would drop several thousand megatons in a "limited" counterforce attack on our ICBM forces on the assumption that we would not retaliate against populated targets. To anyone who remains mindful of the effects of nuclear weapons, there is inevitably a surreal quality to the debates. To deal with nuclear weapons rationally, we are apparently supposed to set rationality aside and regard a megaton explosion as a mere pinprick.

There is, of course, a further danger to these abstract discussions. They make nuclear war seem more plausible. And if the world ever does suffer the ultimate folly of nuclear war, it will probably happen, because the decisionmakers on one side or the other forgot about the true horror of these weapons.

I, therefore, regard it as an important public service that the October issue of the Progressive magazine contains a chilling description by Erwin Knoll and Theodore A. Postol of what would happen if a single 20-megaton nuclear warhead struck Chicago. I hope all Members of the Senate will read and ponder this piece, and I ask that the article entitled "The Day the Bomb Went Off" be printed in the RECORD.

The article follows:

THE DAY THE BOMB WENT OFF: IMAGINE THAT IT HAPPENED

(By Erwin Knoll and Theodore A. Postol)

It was a sunny summer morning in the Chicago Loop. The usual bumper-to-bumper jam of cars and trucks. On the sidewalks, the usual crowd of shoppers, tourists, messengers, office workers heading out to an early lunch. It was Friday.

At 11:27, a twenty-megaton nuclear bomb exploded a few feet above street level at the corner of LaSalle and Adams. First the incredible flash of light and heat: In less than

one-millionth of a second, the temperature rose to 150 million degrees Fahrenheit—more than four times the temperature at the center of the sun.

The roar followed immediately but there, in the center of the city and for miles around, no one was left to hear it. There was only the heat. And the dust.

Imagine that it happened. We will not speculate here on why it happened—on whose fault it was, on the series of diplomatic bluffs and blunders and miscalculations here and there that made it happen. It happened.

Even in the macro-magnitudes of nuclear weaponry, a twenty-megaton bomb is large—the equivalent of twenty million tons of TNT, though such comparisons have little meaning. The yield of a twenty-megaton bomb is some 1,500 times greater than the yield of the bomb that was dropped on Hiroshima thirty-three years ago.

The United States does not admit to deploying any twenty-megaton bombs in its nuclear arsenal. With its superiority in missile numbers and missile accuracy, the United States prefers weapons of lower yield. But the Soviet Union's 200 SS–9 intercontinental ballistic missiles are believed to carry warheads in the twenty-megaton range, and they—along with lesser bombs—are presumably targeted on the fifty largest cities in the United States.

In the event of nuclear war, a total of some 100 to 200 megatons would be directed at a metropolitan area like Chicago's.

The bomb that exploded in the Loop left a crater 600 feet deep and nearly a mile and a half in diameter. The crater's lip, extending almost to the shore of Lake Michigan on the east, was 200 feet high and would be, after the cloud of radioactive debris and dust had settled or dissipated, the tallest "object" visible in the area of the blast.

For the moment, though, there was just the incandescent fireball, rising and expanding outward at enormous speed, reaching a height and breadth of three or four miles, illuminating the sky, so that 100 miles away, over Milwaukee, the flash blinded the crew of a Chicago-bound airliner.

Around Ground Zero, everything—steel-and-concrete skyscrapers, roads and bridges, thousands of tons of earth, hundreds of thousands of people—was instantly evaporated.

At the edge of the fireball, a thin shell of super-heated, super-compressed gas acquired a momentum of its own and was propelled outward as a blast of immense extent and power, picking up objects from disintegrating buildings, snatching huge boulders and reducing them to vapor that would solidify, eventually, into radioactive dust.

Three seconds had elapsed since the bomb went off.

A high-altitude blast at one to three miles above ground level would have inflicted considerably greater blast damage, but the surface blast has its own "advantage": By maximizing the amount of debris sucked up in the nuclear explosion, it multiplies the long-range radiological effects, threatening the survival of living things hundreds of miles from the target area. And even the blast radius of a surface detonation is powerful enough to ignite fires more than twenty miles from Ground Zero—more than thirty miles if clouds help to reflect the flash.

Within a minute, the familiar shape of the mushroom cloud began to form over Chicago, symmetrical and strikingly beautiful in various shades of red and reddish brown. The color was provided by some eighty tons of nitric and nitrous oxides synthesized in the high temperatures and nuclear radiations. In time, these compounds would be borne aloft to reduce the ozone in the upper atmosphere.

The mushroom cloud expanded for ten or fifteen minutes, reaching a mature height of twenty to twenty-five miles and extending seventy to eighty miles across the sky.

To a distance of five miles from Ground Zero—to affluent Evanston on the north, well past working-class Cicero on the west, beyond the University of Chicago campus on the south, there was—nothing. A few seconds after the bomb went off, the fireball appeared, brighter than 5,000 suns. Those who saw the sudden flash of blinding light experienced instant and painless death from the extreme heat long before the noise and shock wave reached them.

Glass melted. Concrete surfaces disintegrated under thermal stress. Anything combustible exploded into raging flames. Even reinforced, blast-resistant structures collapsed, along with highway spans and bridges.

The blast wave arrived about fifteen seconds later, buffeting the few man-made remnants that had not been pulverized. With the shock came torrid wind, traveling at some 300 miles an hour, carrying dust and embers and fragments, blowing down vents and tunnels to suffocate the few surviving human beings who had been sheltered below ground level.

After about ten seconds, the wind reversed direction, drawn back toward Ground Zero.

The enormously high temperatures from the fireball of a nuclear weapon generate enough light and heat to ignite simultaneous fires over huge areas. In these areas the heated air forms a rising column, resembling on a vast scale the air-flow in a fireplace. Cool air drifts into the fire zone to replace the rising hot air. As the fires gain strength, burning hotter and more violently, the chimney effect intensifies, sucking in more air and causing the fire to burn hotter still.

About twenty minutes after the atomic bomb attack on Hiroshima, a mild wind began to blow from all directions toward the center of the city. Within two or three hours, the wind developed a speed of thirty to forty miles per hour and air temperatures rose steadily toward 2,000 degrees Fahrenheit as fires burned out of control for a distance of 1.2 miles from Ground Zero. The wind was accompanied by light, radioactive rain over the center of the city, and heavier rain around the periphery. It was a firestorm, and it destroyed about 2,800 acres.

A twenty-megaton bomb could, under similar conditions, generate a firestorm that would devastate an area some 500 times larger.

On the freeways radiating from the Loop, automobiles, trucks, and buses were simultaneously evaporated and blown away, their particles sucked up into the fireball to become components of the radioactive cloud.

Along the Stevenson Expressway, some seven or eight miles from Ground Zero, scores of oil storage tanks exploded—ruptured by the shock wave and then ignited from the grass and shrubbery burning around them.

At this range, too, aluminum siding on homes evaporated and some concrete surfaces exploded under thermal stress. The few buildings still standing were in danger of imminent collapse—and all were engulfed by flames. Highway spans caved in. Asphalt blistered and melted.

Clothing caught fire, and people were charred by intense light and heat. Their charcoal limbs would, in some instances, render their shapes recognizably human.

With greater distance from Ground Zero, the effects diminished. About ten miles from the Loop, in the area around the Brookfield Zoo, the fireball was merely brighter than a thousand suns. Glass did not melt, but shattered window fragments flew through the air at about 135 miles per hour. All trees were burning even before the shock wave uprooted most of them.

Railroad bridges collapsed, and railroad cars were blown from their tracks. Automobiles were smashed and twisted into grotesque shapes. One and two-story wood frame homes, already burning, were demolished by the shock wave, which also knocked down cinder-block walls and brick apartment buildings.

Those who had taken shelter underground—or, more probably, just happened to be there—survived for fifteen minutes or a half hour longer than those who were exposed. They suffocated as oxygen was drawn away by the firestorm that soon raged overhead.

At O'Hare Airport, the world's busiest, aircraft engaged in landing or takeoff crashed and burned. Planes on the ground were buffeted into each other and adjacent hangars, their fuselages bent and partially crushed by the shock wave. Some thirty seconds before the shock wave struck, aluminum surfaces facing the fireball had melted and the aircraft interiors had been set afiame.

The enormous temperatures associated with all nuclear weapons, regardless of yield, result from fission—the process in which certain atomic nuclei became unstable and disintegrate. (Even a fusion bomb like the one here described gains about half its energy from fission.) As the nuclei break up and form new atoms, they yield neutrons and immense amounts of energy. The atoms created by fission are so radioactive that if one could collect two ounces of them one minute after their creation, they would match the activity of 30,000 tons of radium and its decay products.

When a twenty-megaton nuclear bomb goes off, it produces more than half a ton of this material. One minute after detonation, it is as radioactive as thirty million tons of radium. Though this radioactivity declines within one day by a factor of 3,000, the material still has the radioactivity of 10,000 tons of radium.

If one could instantly remove the entire fission inventory from the largest commercial nuclear power plant (3,000 megawatts thermal) and simultaneously detonate a twenty-megaton nuclear bomb, thirty minutes after the "experiment," the activity from the bomb would be about 100,000 times greater than the activity contained in the reactor's fission inventory.

The astronomically hot fireball indiscriminately incorporates all those materials into a super-heated gas and mixes them with millions of tons of earth and target debris. The mixture condenses into droplets of liquid and then solidifies into particles ranging in diameter from one-thousandth to one-fiftieth of an inch. The particles incorporate all of the extremely dangerous radiological residues, and are borne aloft to deliver death hundreds of miles from the target. (See Page 20.)

In addition, many neutrons escape the exploding weapon to be absorbed by the earth and air in the immediate blast area. This leads to the production of a wide variety of neutron-activated radioactive isotopes of such elements as sodium, chlorine, manganese, zinc, copper, and silicon, as well as radioactive carbon transmitted from nitrogen in the air.

All of these substances, dangerous to varying extents, remain active in the blast area to jeopardize survivors and would-be rescuers.

In the pleasant western suburb of Hinsdale, some sixteen miles from the Loop, the manicured lawns surrounded by wooden picket fences on tree-shaded Chicago Avenue caught fire first. Leaves on the trees ignited next, and then the picket fences themselves. Paint evaporated off house exteriors. Children on bicycles screamed as they were blinded by the flash of the fireball. An instant later, their skin was charred. Autos collided as their tires and upholstery burst into flame.

The white wooden cupola on the brick village hall blazed, and even the all-stone

Unitarian Church on Maple Street was burning—ignited by the curtains on the windows facing east.

The shock wave arrived some fifty seconds later, tearing the roofs off houses, blowing in side panels, spreading burning debris.

At about the same distance north of the city, Ravinia Park's summer festival was to have featured an all-Mozart program that Friday evening. There would be no Mozart and no Ravinia Park. By 11:30 a.m., that agreeably green place was a burning wasteland.

About twenty-one miles southwest of the Loop, the Argonne National Laboratory sprawls on some 1,700 acres of park land. Its 5,000 employees had engaged in a broad variety of research efforts, many of them centered on the development of nuclear power. Argonne and its predecessor, the Metallurgical Laboratory of the University of Chicago, were instrumental in developing the atomic bomb.

Argonne researchers who happened to be looking out a window on that Friday morning—gazing, perhaps, toward the Sears Tower barely visible on the skyline to the northeast—suddenly saw a flash that filled the sky with the brightness (from their vantage point) of fifty to eighty suns. They were blinded, their clothing was ignited on their bodies, and exposed skin areas suffered extremely severe third-degree burns.

Here, too, leaves and grass and many readily combustible materials caught fire at once. The shock wave, which arrived a minute-and-and-a-half later, caused only minimal damage, except as it spread burning debris. But the fires soon raged out of control, for here, as for many miles around, there was neither power nor water pressure nor emergency equipment nor any human will but the impulse to surrender to the hysteria of total disaster.

And soon after all this happened, the radioactive cloud, carried by the prevailing winds, began drifting toward the east at about twenty miles per hour.

By the time the mushroom cloud has completed its fifteen-minute process of stabilization, it is directly overhead for distances up to forty miles from Ground Zero. Fires are still burning as radioactive particles begin settling on the landscape. The radiation level rises rapidly to exceed 4,000 to 5,000 roentgens per hour, delivering a lethal dose within seven to eight minutes. Individuals driven out of doors by fire are directly exposed.

Within an hour or so, elements of the cloud begin to arrive about forty miles downwind. The density and activity of the particles is such that a belt four to five miles wide quickly develops radiation levels of more than 3,000 roentgens per hour. By this point, activity is diminishing, so that it requires an exposure of ten to twenty minutes to absorb a deadly dose. Within a larger belt, up to ten miles wide, fewer particles are falling, allowing up to a half hour's exposure before a fatal dosage is absorbed.

As the cloud moves downwind, expanding and dropping particles, the fallout level becomes unpredictable, though it remains, in many places, extremely high.

No one knows how many Americans might die from blast and fire and radiation sickness in a nuclear attack. Casualty projections are a matter of heated controversy within the Government and outside it. A reasonable conjecture is that an all-out nuclear attack might claim 160 million lives—about three quarters of the population. In a particularly strategic concentrated metropolitan area subject to a direct strike—Chicago for example—virtually the entire population could be expected to perish.

But American casualties would, of course, not be the only ones. No matter how it happened or whose fault it was, there would be counterstrike, and the indiscriminate murder of one nation's citizens—ours or theirs—would be avenged by the indiscriminate murder of the other's.

Moving slowly to the east, Chicago's radioactive cloud brushed Indiana and was blown into Michigan, dropping silent death along the way, drifting inexorably toward Detroit. But it didn't matter, for at a few seconds before 11:27 that Friday morning, a twenty-megaton bomb had exploded in Detroit, too.●

NATIONAL REFUGEE POLICY NEEDED

● Mr. KENNEDY. Mr. President, over the past several years—but especially this past year—the United States has faced growing problems in meeting the resettlement needs of refugees around the world. And it has now become clear to all involved with this problem that the time is long past due for the United States to finally establish a national refugee policy—a policy which will treat all refugees fairly and assist all refugees equally.

Over the years, I have repeatedly introduced legislation to reform the discriminatory and inadequate provisions of our immigration law as it relates to the admission and treatment of refugees. The provisions of the bill I introduced this year, S. 2751, go a long way. I believe, in helping to establish the basis for a national refugee policy.

Regrettably, the Senate Calendar will not likely permit action on this bill this year, nor on refugee reform legislation generally. However, it is my firm intention early in the next session of Congress to pursue this issue in an orderly and thoughtful way, to determine how our country can better respond to the growing resettlement needs among refugees throughout the world who look to the United States for help.

That our current law and practice in dealing with refugees is inadequate and discriminatory has recently been underscored in a thoughtful essay by Christopher T. Hanson in the current issue—Winter 1978—of New York University's Review of Law and Social Change, entitled "Behind the Paper Curtain: Asylum Policy versus Asylum Practice."

As we in Congress look toward next year, and the urgent need to finally act upon refugee reform legislation, I believe Mr. Hanson's essay will serve as an important reminder that we must end our piecemeal approach to refugee problems, and establish a clear-cut policy toward all refugees—both in their admission to the United States, as well as their resettlement in communities across our land.

Mr. President, I would like to share with my colleagues the excellent essay by Mr. Hanson, and ask that it be printed in the RECORD.

The essay follows:

[From New York University Review of Law and Social Change, Winter 1978]

BEHIND THE PAPER CURTAIN: ASYLUM POLICY VERSUS ASYLUM PRACTICE

INTRODUCTION

President Nixon has reemphasized the U.S. commitment to the provision of asylum for refugees and directed appropriate departments and agencies of the U.S. Government under the coordination of the Department of State, to take steps to bring to every echelon of the U.S. Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.[1]

On November 23, 1970, as the American Coast Guard cutter *Vigilant* moored alongside a Soviet fishing trawler in American waters off Massachusetts, Simas Kudirka, a Lithuanian seaman, leapt from the Russian vessel to the deck of the *Vigilant* and requested political asylum in the United States. Uncertain of proper procedure, the captain of the cutter telephoned Boston headquarters for instructions. Admiral William Ellis replied, "Return the defector," explaining that his decision was "in the interest of not fouling up any of our arrangements as far as the fishing situation is concerned."[2] The Admiral's command was immediately carried out. Five Russians were allowed to board the American vessel, where they beat Kudirka into submission and then returned him to the Soviet trawler in the *Vigilant*'s motor launch, piloted by an American officer.

Not surprisingly, the image of the United States as a haven for the oppressed—and particularly for those fleeing communism—was sullied by the Kudirka affair. The public was outraged,[3] since the Russians were known to impose Draconian penalties against defectors. There was speculation that our callous treatment of Kudirka might be part of the price of détente and that our government was treating refugees as pawns in the game of international politics.[4]

The Administration moved quickly to allay such suspicions, reassuring Congress and the American public that the Kudirka affair was an "aberration," an administrative "snafu" which would never happen again. Deputy Under Secretary of State for Administration William Macomber stressed that "the historic role America has played as a refuge for the oppressed, from the very beginning of our tradition, is still our role."[5] Other Administration officials insisted that the United States did not have, nor had it ever had, a policy of returning refugees to countries where they would be persecuted and that the United States policy on political asylum was one of concern for all victims of political persecution, regardless of American relations with the regimes from which the refugees were fleeing. Human lives, insisted the administration, were not being sacrificed for détente or any other facet of our foreign policy.[6] According to State Department officials, the criteria which successful applicants for asylum must meet are applied evenhandedly to those who seek asylum from any country on the globe: they must be fleeing from a repressive regime and demonstrate a "well-founded fear" that political, religious, or racial persecution would face them upon return.[7]

The State Department's explanation of the Kudirka incident in particular and of American asylum policy in general apparently satisfied most critics, and the subject was soon forgotten.[8] But although the official explanation was accurate enough in some respects, it was quite misleading in others. Spokesmen for the State Department presented a strong case that government policy on granting asylum is uniformly just and humane, but an examination of U.S. asylum practice in cases other than the Kudirka affair raises strong doubts.

The Kudirka incident was indeed an "aberration," not because the seaman was callously returned to a totalitarian regime, but because he was returned to a *communist* regime. In an interview, Louis Wiesner, director of the State Department's Office of Refugee and Migration Affairs (ORM), noted with accuracy: "Historically, we have granted asylum or have failed to return

Footnotes at end of article.

people to any communist regime except Yugoslavia." [9] Humanitarian treatment of refugees from communist countries has continued to the present, and asylum requests are rarely denied. State Department spokesman recently confirmed that the pattern of grants and denials has continued to be present.[10] Refugees from Iran, Chile, Haiti, the Philippines, and other repressive noncommunist governments are not welcomed with open arms in this country. Indeed, gaining asylum in the United States from dictatorships friendly to the United States is much more difficult than gaining asylum from communist countries. This pattern of discrimination demands close scrutiny of the "depth and urgency of our commitment" to humanitarian asylum practice. President Carter's avowed concern for human rights and his appointment of a more liberal Immigration Commissioner, Leonel Castillo, offer some hope for the development of a more evenhanded asylum program than is revealed by our treatment of refugees to date.

CHILEANS, IRANIANS, AND HAITIANS

A. Chilean refugees

The response of the United States government to victims of the Chilean junta provides a striking example of the "depth and urgency of our commitment" to refugees from a noncommunist government in our own hemisphere. Compelling humanitarian arguments for granting asylum to a group of exiled Chileans and "detainees" still in Chile were answered by this country with indifference, timidity, and delay.

Although the Immigration and Nationality Act of 1965 [11] makes no specific provision for admitting refugees from the Western Hemisphere, the Act does empower the Attorney General to "parole" refugees into the United States for "emergent reasons" or if the admission is deemed in the interest of the United States.[12] The parole provision has been employed to bring in refugees following various political upheavals over the past twenty years: Hungarians after the abortive revolt in 1956; Cubans after the Castro revolution; Czechoslovakians after the Soviet invasion of 1968; British Asians expelled from Uganda in 1972; 130,000 South Vietnamese in 1975. In each case, the United States made an immediate and vigorous response to the emergency through the parole authority.

In September, 1973, Chile suffered its own political upheaval, but in the case, the American response was neither immediate nor vigorous. Under the junta, which overthrew the government of Marxist President Salvador Allende Gossens in a bloody coup on September 11, thousands of Allende sympathizers were summarily imprisoned, and many were tortured or executed. When the junta took power, many of the 13,000 foreign nationals who had been enjoying the sanctuary of the Allende regime became political refugees overnight. These foreign nationals were joined over the next two years by 18,000 Chileans who streamed from Chile into Peru, Argentina, and other countries to escape the Chilean dictatorship.

It is now well documented that the United States government sought to "destabilize" the Allende Administration.[13] If American efforts contributed to the ultimate success of the coup—and it is widely believed that they did [14]—it would seem that the United States government had a special responsibility to the Chilean refugees and the political prisoners of the junta. A vigorous effort by the American government to provide sanctuary for the victims of the new regime was in order. This effort never materialized. Charles Gordon, former general counsel to the Immigration and Naturalization Service (INS), characterized the government's behavior toward Chilean refugees as "a terrible things," [15] and Deputy Secretary of State Robert Ingersoll admitted that as of April, 1975, "our performance has been poor." [16] By February, 1976, there had been only minor improvement.

During the coup and in the days that followed, Chile was shaken by mass arrest, street fighting, and executions. Many sought safety in the embassies of foreign nations, and hundreds were taken in at the Swedish, French, and other European and Latin American embassies. On January 3, 1974, a United Nations observation team reported that 1,800 non-Chileans and 500 Chileans still remained in refuge in embassies.[17] According to one observer, very few of these desperate people looked to the American embassy for sanctuary since they did not expect to be taken in there. "It is not our custom to grant 'diplomatic asylum' [asylum in an embassy]," [18] said Frank L. Kellogg, who at the time of the coup was Special Assistant for Refugee and Migration Affairs. Kellogg went on to explain that diplomatic asylum is of dubious status in international law and is generally practiced only by Latin American states.

But in Chile, sanctuary was also provided by European embassies. Furthermore, diplomatic asylum is not without precedent in American practice. The United States granted diplomatic asylum to Cardinal Mindszenty in Hungary [19] and was prepared to provide asylum in its Johannesburg consulate for attorney Joel Carlson, defender of black political prisoners.[20] State Department guidelines on asylum policy explicitly state that "[i]mmediate temporary refuge . . . may be granted in extreme or exceptional circumstances wherein the life or safety of a person is put in danger." [21] Circumstances in Chile at that time were clearly "extreme" and "exceptional," and the lives and safety of those who sought refuge in embassies were certainly "in danger." In the interest of humanitarianism, our embassy in Chile could have offered some people "temporary refuge" if the United States government had chosen to do so.[22]

The Congress of the United States showed no more inclination to become involved in a rescue operation than had the embassy. Within days of the coup, as the dimensions of the Chilean refugee crisis were becoming apparent, Senator Edward Kennedy and Congressman Robert Drinan introduced measures designed to admit Chilean refugees into the United States, but both were unsuccessful.[23] Congress took no initiative to alleviate the refugee problem. There was no strong congressional constituency to work on behalf of refugees from noncommunist regimes, and these particular refugees were regarded with suspicion because many of them had been aligned with the Marxist Allende and some were politically to Allende's left.

As the distress of foreign nations in Chile and of Chilean exiles continued to mount in the months following the coup, the American government remained aloof. When the junta declared that all foreign nationals staying in Chile must be out of the country by February, the United Nations Office of the High Commissioner for Refugees (UNHCR) urgently appealed for help to members of the United Nations. A number of countries respond generous, but the United States was not one of them. While West Germany, France, and Sweden each took in between 800–1100 refugees, the United States accepted only 26 out of about 150 people who had applied for admission to the United States through UNHCR.[24] According to an ORM official, most of the 26 were "not political refugees, but merely people fleeting the general disorder." He explained that the "real" refugees did not even apply for asylum in the United States.[25] They knew it was against U.S. policy to admit anyone who could be legally barred as a communist or "subversive." [26] Thus, ironically, those who were most liable to persecution had they remained in Chile, and who were therefore priority candidates for political asylum, could not even be considered under the U.S. asylum program. Of course, they could have been legally paroled into the country under the Act's parole provision [27] which, according to Charles Gordon, is "designed for the admission of those who are otherwise excludable." [28] But the Immigration and Naturalization Service had consulted with Congress on a proposal to admit foreign nationals from Chile and, on the basis of congressional response and its own predisposition, decided against admitting Marxists and communists.

A year after the coup, in August, 1974, the United Nations High Commissioner for Refugees, Prince Sadruddin Aga Khan, urgently appealed to the United States to grant asylum to a substantial number of the 4,000 Chilean exiles who had been temporarily accepted by Peru and now needed to be resettled.[29] Then, on September 11, 1974, General Augusto Pinochet Ugarte, the Chilean chief of state, announced that virtually all of the political prisoners who had been "detained" in Chile would be released and expelled if foreign governments would offer them asylum.[30] Stirred by Sadruddin's appeal and Pinochet's announcement, officials of the Office of Refugee and Migration Affairs dispatched two "action memos," on September 17 and November 7, urging the State Department to seek speedy admission of Chilean exiles in Peru and detainees still in Chile.[31] But it was not until April 23—over eight months after the U.N. High Commissioner's appeal and seven months after the Pinochet announcement—that the State Department formally proposed a group asylum program to the Attorney General, who had the legal authority to act.[32] Finally, on June 26, two months after the department's proposal was made, Attorney General Edward H. Levi replied with qualified approval of a much more modest program than that originally requested.

The State Department's formal proposal was delayed and modified for two reasons. First, the Immigration and Naturalization Service and General Leonard Chapman, the former Marine commandant who heads the INS, were unalterably opposed to the Department's original suggestion that the Chilean exiles be brought in as a group. In an interview. General Chapman confirmed that the State Department's group-parole proposal was whittled down to one of case-by-case admission. The proposal to admit the refugees as a group, before screening in their present location, said Chapman, would have meant that the United States could not have subsequently expelled an undesirable person without violating the United Nations Protocol Relating to the Status of Refugees.[33] In that case, he said, the only alternative would have been to restrict or jail a refugee who was found undesirable after admission on group parole. Citing instances of restriction in the Vietnam group, Chapman argued that no such problems would arise in case-by-case admission since screening would occur before the refugee arrived in the United States.[34]

Second, the State Department had decided to engage in "preliminary consultation" with the House and Senate immigration subcommittees before sending a formal proposal to the INS. Beginning in November, 1974, these consultations dragged on for a period described by Dale de Haan of the Senate Subcommittee on Refugees and Escapees as "unprecedentedly long." [35] De Haan believes that the delay was a tactic designed to cloak a lack of resolve within the Administration. "There was no clear policy," said de Haan. "Some wanted to give them asylum and some did not. . . . Hence, no action was taken at State—except for consultation—until the end of April." [36]

Although there is truth in de Haan's as-

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sertion, Congress must bear some responsibility for prolonging the consultations. One retired State Department official pointed out that, although Congress has no official veto power over refugee parole proposals, members of Congress "have ways of getting back at us if they don't like what we do, or think we are paying insufficient attention to their views." [37] And General Chapman confirmed that the INS has never, to his knowledge, exercised its authority to admit refugees if preliminary consultation showed congressional opposition. Furthermore, he doubted that the INS would ever do so.[38]

In the Chilean case, a great deal of time was consumed in trying to overcome strong congressional resistance to the State Department proposal. Some subcommittee members took advantage of a congressional recess to forestall formal consideration of the matter for as long as possible. Several members of Congress expressed concern about endangering "national security" by admitting communists, Marxists, or Allende sympathizers.[39] Others argued that the American economy might be unduly burdened in view of the existing unemployment situation and the large number of aliens already in the country.[40]

State Department representatives went to great lengths trying to overcome these objections. They assured the doubters that the immigration act would be complied with and that no communists or "subversives" would be admitted. There would be no "blanket admission" of Chileans. Finally, they argued that the number of admissions contemplated was only about 400 families—hardly enough to have a serious effect on the economy.[41] In the end end, though, congressional attitudes were still mixed:

Chairman Eastland in the Senate . . . and . . . Edward Hutchinson, the ranking Republican on the House Judiciary Committee, appear to be opposed to a parole program for those refugees in Chile and those in Peru. . . .

Chairman Kennedy of the Senate Subcommittee enthusiastically supports a program of parole for both groups. . . .

The House Subcommittee has indicated support for parole of refugees physically in Chile, but [has] declined to indicate support for those in Peru.[42]

This lack of congressional consensus did not offer much guidance to the administration in formulating a policy for dealing with the refugees.

Despite the State Department's own delay, Deputy Secretary Ingersoll's letter of April 23, 1975, formally proposing to Attorney General Levi that he parole a limited number of "refugees/detainees" on a case-by-case basis, sounded a compelling note: "The conditions under which the refugees/detainees are living continues to deteriorate. . . . It is imperative that we act expeditiously to implement this program." [43] Nevertheless, it took the Attorney General two months to reply. The Justice Department undertook its own consultation with Congress and met the same reservations that had been encountered by the State Department. When asked about this duplication of effort, General Chapman replied that the INS, not the Department of State, had the ultimate legal and political responsibility for admitting aliens.[44] Chapman wanted to be doubly sure that Congress did not approve the program under consideration. Further delay was caused by the South Vietnamese refugee crisis in May which absorbed the time of everyone concerned for weeks. Frank Kellogg explained that the Vietnamese crisis was a clear emergency, while the Chilean case was less urgent.[45] Considering reports that detainees in unknown numbers were being quietly executed by the Pinochet regime, his reasoning was far from convincing.

In his June 26th reply to Ingersoll, the Attorney General finally agreed to consider parole of up to 400 Chilean detainees and refugees.[46] Cases soon began arriving at the American consulates in Santiago and Lima, but it was the middle of August before three consular officers and one immigration official were assigned to work exclusively on the cases there. The screening process improved, but countless hours were spent flying up and down the long Chilean coast and into the mountains of Peru to interview applicants and check their backgrounds. Although Vietnamese refugees were generally cleared in two or three weeks, if often took six weeks for American officials in Santiago and Lima to complete security clearances and send their recommendations concerning Chilean refugees to the State Department.[47] Once the recommendations had been forwarded to Washington, securing INS approval and locating a sponsor for each refugee and his or her family took up to an additional two months. Even then, the Chilean government could delay granting an exit decree, making it impossible for the refugees to leave the country. On October 18, 1975, almost four months after the Attorney General had approved the program, the first Chilean refugee finally arrived in the United States. By mid-January, 1976, seven months after the program began, only twenty-five cases (76 people) had been approved and only ten families (27 people) had arrived in the United States.[48]

The delays in initiating the parole program and in processing the applications prolonged the suffering of those requesting asylum; together with the narrow scope of the program, they also reduced the number of applicants. By the time the American program began, many of those who were eligible had gone to other countries. Because of their leftist political views, a number of the refugees preferred settling in other countries if they were able to do so. Looking upon the United States as a right-wing country which had played a large role in the downfall of the Allende government, few of these detainees were eager to seek belated American offers of asylum.[49] The number of applicants was further reduced by the United States' widely-known prohibition against admitting former communists. Moreover, the American parole program in Chile had been closely restricted to applicants who were actually in jail or under strict house arrest. Those who had been released from detention but were still under surveillance and living in fear of future persecution were not eligible.[50] The INS is currently considering relaxing the standards for the parole program; however, if such revisions are not forthcoming, one State Department official has expressed doubts whether the program will even reach the limited target of 400 families.[51] As of January, 1976, only 389 cases had been submitted and there have been very few new applications since that time.[52]

The most that can be said for American policy regarding the Chilean detainees is that a program was adopted, but that it was too little and too late.[53] The numerous delays while the State Department, the INS, and Congress tried to formulate and coordinate their policies caused many detainees to suffer in prison far longer than necessary. Those delays were inexcusable, particularly in contrast to the urgency with which Vietnamese refugees were handled and the swiftness with which the INS extended the visas of the 400 to 600 Chileans who sought asylum in the United States in the months following the election of Allende.[54] Certainly, the Chilean asylum program comes nowhere close to meeting the objectives urged by Deputy Secretary of State Ingersoll. The program neither improves the U.S. national image nor "demonstrate[s] that the United States' concern for refugees extends to all persons in need, irrespective of the nature of the government from which they are fleeing." [55]

There have been few court cases involving Chilean asylum appeals, because most Chilean refugees have been in distress in Chile and their admission into the United States is not legally required under American or international law. Chileans who happened to be in America at the time of the coup have had difficulty gaining asylum. According to a State Department official, many had requested asylum from the Allende regime, which made it even more difficult to establish a well-founded claim of being persecuted by the junta.[56] *Cisternas-Estay* v. *Immigration and Naturalization Service* [57] illustrates this difficulty. A Chilean married couple, having initially sought asylum from the Allende government, continued to seek it after the coup. They called a press conference, denounced oppression under Pinochet, and then reiterated their asylum claim on grounds that they would be subject to loss of citizenship and other persecution in Chile. The junta had recently issued a proclamation "forbidding crimes against the 'essential interests' of Chile by nationals living abroad" [58] and the petitioners claimed that their press conference would be construed as such a crime and would be used against them. They also submitted documentary evidence of widespread oppression in Chile.

An Immigration District Director denied asylum, relying in part on a letter from the State Department which recommended denial of the Cisternas-Estay request and three others. The letter "noted that the Allende government in Chile had been removed from power" and concluded that "there was no basis for granting political asylum." [59] The Board of Immigration Appeals upheld the decision on the ground that the aliens had failed to carry their burden of proof that there was a "clear probability" of their being persecuted under the Pinochet regime.[60] The Court of Appeals for the Third Circuit sustained the decision because grants of asylum are discretionary and reversible only if the alien proves abuse of discretion, *i.e.*, that the Board's decision was "arbitrary, capricious, or illegal." [61] In order to establish such abuse, Cisternas-Estay would have had to prove the animosity of the junta to them.[62] Since they failed to do so, they were ordered deported.

The appeals court added that "[t]here is nothing in the record to undermine the Board's position that the press conference was 'staged' to acquire 243(h) relief." [63] Thus, ascertaining sincerity of motive was judged to be within the discretion of the INS. Interestingly, Immigration and State Department officials often justify granting asylum to communist country refugees whose motives are economic on grounds that overstaying their visas would likely result in criminal prosecution and/or harassment if they were returned home.[64] The prospect of criminal prosecution was not taken seriously in *Cisternas-Estay* and did not lead to a similar result. In the eyes of the courts, discrepancies in outcome such as these do not amount to an arbitrary and capricious abuse of discretion.

B. Iranians

The plight of Iranian student dissidents already in the United States, although less extreme than that of the Chileans, raises disturbing questions about the sincerity of U.S. commitments to refugees from regimes with which our government wishes to maintain close ties. Most of the Iranians applying for political asylum are members of the militantly anti-Shah Iranian Student Association who have overstayed their allotted time and are subject to deportation. They appeal for asylum under § 243(h) of the Immigration and Nationality Act [65] on the grounds that they would be subject to persecution if they were sent back to Iran.

The Iranian government is well known for its repression of political opposition, as

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a good many official American sources will admit—off the record.[66] Just as Russia has its KGB and South Africa its Special Branch, the Shah has SAVAK, considered to be "one of the most pervasive and feared secret police organizations in the world." [67] The SAVAK is reported to employ between 30,000 and 60,000 full-time agents and to have at least three million Iranian informers at its disposal.[68] Charges of brutal treatment of dissenters by the SAVAK have been documented,[69] and it is estimated that there are more than 20,000 political prisoners in Iranian jails.[70] According to reliable sources, many Iranian dissidents have disappeared and have never been heard from again.[71]

Thus, most of the students applying for asylum have good reason to fear their deportation from the United States. Many of them have engaged in repeated protest activities against the Shah's regime. They know that their activities are carefully noted by the Iranian government and will be held against them. In 1971, for example, a group of protesting Iranian students ransacked their government's consulate in San Francisco.[72] They were arrested and fined by the American authorities, but soon afterward, the Iranian government published a list of known participants and declared that upon their return to Iran they would be subject to further punishment. According to Christian Pappas of the Office of Refugee and Migration Affairs, this would probably mean "a long, harsh term of solitary confinement." [73] An Iranian embassy official confirmed that his government has pressed the United States to return Iranians who have violated Iranian law and that such activities as protest marches and demonstrations in front of the Kennedy Center during a visit of the Shah—perfectly legal activities in the United States—constituted "insulting the Shah and the Iranian government"—a punishable violation in Iran. He expressed the opinion that the United States is being "unduly tolerant" toward the activities of those people who are here on student visas "for the purpose of study, not politics," and made it clear that those who had "insulted" their country while abroad would be punished upon return.[74] One American government source pointed out that political dissidents who have returned voluntarily have been arrested and harassed and many have disappeared permanently.[75] There seems little doubt, on the basis of the evidence, that Iranian dissidents do qualify for asylum on the grounds (stipulated in the United Nations Protocol on the Status of Refugees,[76] to which the United States is a signatory) that they have a "well-founded fear of being persecuted" [77] in Iran.

Yet, almost without exception, asylum requests have been denied to Iranians. According to Christian Pappas, about thirty Iranians requested asylum between 1971 and August, 1975, but few if any of the applications were granted.[78] The inevitable question becomes why the Iranians are denied asylum when, as one knowledgeable official has admitted, many applicants from Eastern Europe with far weaker cases are almost automatically granted that status.[79] In journalistic and State Department circles, it is often observed that the wishes of the Shah of Iran carry considerable weight with American policy-makers. Oil talks and America listens. Or as one observer put it, "whatever the Shah wants, the Shah gets." [80] One informed government source explains that granting asylum to dissident students would be official confirmation that the Iranian government persecutes its own people. "The government of Iran objects strenuously to our granting asylum to its citizens," he says. "They would consider it a slap in the face. Thus, our policy is to oppose grants of asylum to the Iranian applicants for the sake of relations with Iran." [81]

The case of the asylum applicants who vandalized the Iranian consulate in 1971 clearly illustrates the general attitude of the Shah's administration and the customary response of the United States. In its objection to any asylum grants, the Iranian government implied that it was its sovereign right to punish the students in Iran. American officials were faced with a dilemma. If they granted asylum to the student dissidents (who had already been punished under American law), they would risk damaging American relations with Iran; if they deported the dissidents to almost certain further prosecution in Iran, they would violate international agreements and contradict America's professed tradition of providing refuge for the oppressed.

What one State Department official termed a "cynical-realist" [82] solution was found in 1971: the Iranians would not be granted asylum, but neither would they be returned to Iran; they would be allowed to stay in the United States under a "voluntary departure" status. Subsequent requests for asylum have generally been dealt with by granting this voluntary-departure status. At first glance, this course of action appears to be a humane compromise, but in actuality, those refugees who are on voluntary-departure status are living in a state of limbo. Unlike conditional-entry status, voluntary-departure status cannot be adjusted to permanent residence. According to David Carliner, an immigration attorney who has represented a number of Iranian asylum applicants, the government never allows Iranians to remain here indefinitely under voluntary-departure status.[83] Deploring the "sleazy" treatment of the Iranians, he argues that the government is actually undermining the law by denying a secure status to those seeking refuge. He maintains that there is little security under a status which "can be revoked at any time." [84] In addition to suffering from this lack of security, the alien in voluntary-departure status may soon find himself without economic security and with little opportunity to better his position. Proposed legislation[85] which would punish an employer for hiring illegal aliens is already having an impact on those in voluntary-departure status as well as those here illegally. Political refugees are viewed as unwelcome competitors for scarce jobs during a period of serious domestic unemployment.[86]

A number of Iranians have appealed their asylum denials in the courts to force an examination of the issues surrounding their requests.[87] The State Department has been very disturbed by these appeals, for, according to one of its Near East specialists, the Iranian government mistakenly believes that the Administration can control the courts.[88] Any court decision which overturned official recommendations and granted asylum to some Iranians would be just as offensive to the Shah as an outright asylum grant by the Administration. As one official put it, "The Shah would become very, very angry. At the very least, he'd reprimand Ambassador Helms or President Ford. The atmosphere would be tense, and this might affect U.S. business prospects, the price or availability of oil, and so on. The Shah could be very, very nasty." [89] Unwilling to incur such royal wrath and its possible economic consequences, the State Department has used every possible subterfuge to prolong the cases and prevent a resolution. When the case of the Iranian students who had vandalized the Iranian consulate went to court, apprehension increased in the State Department. If the Iranian students presented a persuasive case and were granted asylum by the court, it was feared that the precedent would bring on a deluge of new appeals by other Iranians. As a consequence, American relations with the Shah were bound to suffer.

When, at length, the Iranian asylum cases did begin to reach the courts, the Administration fought against having its recommendations overturned. According to immigration attorney David Carliner, the government argued that unless the applicants had engaged in dissent in Iran, they were not bona fide refugees.[90] The courts have agreed. *Matter of Kojoory* [91] is a case in point. The petitioner had never engaged in anti-government activity in Iran, but when he came to the United States he joined the Iranian Student Association and participated in public demonstrations against the Shah. Kojoory argued in his asylum application that his political actions in the U.S. would cause him to be persecuted if returned home. He produced an expert witness to testify that members of the Iranian Student Association who had returned to Iran in the past were, in fact, imprisoned after being convicted on allegedly "trumped up" charges. The Board held, however, that Kojoory had not carried his burden of proof: "[n]o . . . proof has been adduced of these claims other than the statements by respondent and his witness . . . ." [92] The Board believed that the State Department was a more reliable informant. The State Department insisted in a letter that "opposition to the Shah's regime without more does not subject an individual to persecution . . . ." [93] This led the Board to observe that "Respondent's application is weakened . . . by the fact that he participated in absolutely no political activity of any sort prior to coming to the United States." [94]

The federal circuit courts have been less prone than the Board to accept the State Department's pronouncement that Iranians who denounce the Shah are safe to return home; judicial unwillingness to intervene in cases of administrative discretion, however, has inhibited the circuit courts from reversing Board decisions. In *Kasravi v. Immigration and Naturalization Service*,[95] the court observed that "[s]uch letters [concerning asylum cases] from the State Department do not carry the guarantees of reliability which the law demands of admissible evidence. A frank, but official, discussion of the political shortcomings of a friendly nation is not always compatible with the high duty to maintain advantageous diplomatic relations throughout the world. The traditional foundation required of expert testimony is lacking . . ." [96] Nevertheless, the *Kasravi* court refused to rule that the Board's use of State Department recommendations is a reversible abuse of discretion. In support of this conclusion, the panel quoted *Namkung v. Boyd*: [97] "the withholding of deportation in cases where the alien fears persecution rests wholly in the administrative judgment and 'opinion' of the Attorney General or his delegate. The courts may not substitute their judgment for his." [98]

David Carliner observed that, despite its spurious line of reasoning, the Administration had generally been successful in staying the Iranian students' court appeals. He added that the Board of Immigration Appeals tended to accept the State Department argument and even ordered a number of Iranians deported to their native land.[99] Although apparently no such deportation orders were actually carried out,[100] it is ironic that an administration which professed a humanitarian asylum policy went on record as favoring deportation of these people. The United States government used voluntary departure as a measure to avoid taking a stand on principle. Faced with the decision whether or not to acknowledge that some of the Iranian student dissidents in this country were likely to be persecuted if returned to Iran and to treat these students accordingly under the law, our government chose not to do so for the sake of relations with Iran. Foreign policy considerations were

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allowed to intrude unduly on the practice of granting asylum. Apparently, the power of the Shah was sufficient to subvert a long-standing American tradition of concern for human rights.

C. Haitian refugees

Like the Iranians and Chileans, the Haitian asylum applicants have found it exceedingly difficult to gain sanctuary in the United States. In recent years almost two thousand Haitians have escaped their homeland, striking out by boat for Miami.[101] Many have drowned en route. Nearly all those who survived and requested asylum in Florida were given summary hearings and declared by the INS to be ineligible for asylum.[102] Many were jailed to await expulsion and several years ago one of them, in despair over his plight, hanged himself in his cell.[103] The Haitians in Miami were joined in their asylum requests by a number of their countrymen in the United States who had overstayed their visas or had been discovered to be in illegal residence and were ordered deported by the U.S. government. Most of these Haitians appealed under the provision of the Immigration and Nationality Act which provides withholding of deportation to those who would be subject to persecution if returned to their native land.[104]

The Immigration and Naturalization Service and the State Department, however, stated that, with very few exceptions, such claims were spurious, that the motivation of most Haitian applicants was economic, and that they were simply attempting to immigrate via a misuse of the asylum proceedings, thereby undermining the integrity of U.S. immigration laws.[105] This attitude is reflected in the asylum recommendations furnished by the State Department to the INS between January, 1974, and May, 1975: of the 578 Haitian asylum requests made during that period, denial was recommended for 559, and approval for only 19.[106]

Haitians' claims of persecution were given more serious consideration in *Coriolan v. Immigration and Naturalization Service*.[107] Circuit Judge Tuttle concluded that the INS had failed to adequately evaluate the aliens' claims and remanded for further proceedings. In his opinion, he suggested that the applicants might be subject to prosecution—and hence persecution—for illegal departure and that additional relevant evidence (provided by Amnesty International) should be considered in order to determine "whether Haitian political conditions are so specially oppressive that a wider range of claims of persecution must be given credence." [108]

It is difficult to determine whether the Haitian applicants actually qualify for asylum as political refugees. The United Nations Protocol Relating to the Status of Refugees defines refugees as those who harbor a "well-founded fear of being persecuted" if returned to their native land for political or religious reasons or due to membership in a particular social, ethnic, or racial group.[109] The United States and other signatories of the Protocol have pledged never to return refugees to face such persecution.[110] Yet, until recently, Haitian refugees who were intercepted at the border and determined by the INS to be "excludable" rather than "deportable" [111] have been denied a full and impartial hearing of their asylum claims.

There are significant differences between the Haitian cases and those of the Iranians and Chileans. American foreign policy does not appear to have had a major influence on the outcome of the Haitian cases. Moreover, unlike many of the Chileans, Haitian asylum applicants do not bear the stigma of being a "national security threat" because of their political ideology. Few of the Haitian applicants are political at all, and this, in fact, has been the crux of their problem in gaining asylum. Since most of them were not politically active in Haiti, INS and State Department officials discount most of their claims of political persecution.[112]

Yet, almost without exception, the Haitian asylum applicants speak of arbitrary arrests, beatings, confiscations of property, and executions of relatives by the *ton ton macoutes*—agents of the Port-au-Prince regime.[113] State Department and INS authorities consistently reject such asylum requests on the grounds that the applicants are equating private banditry with government persecution in an effort to twist the provisions of the asylum law to meet their immigration needs.[114] Advocates of the Haitian asylum cause reply that the *macoutes* cannot be lightly dismissed as private bandits, since their actions contribute to the general repression on behalf of the government.[115] Regardless of the exact relationship between the *macoutes* and the government, a great many Haitians apparently make no distinction between them. Thus, it can at least be argued that they harbor a legitimate fear of government persecution.

Because of the language barrier and the cursory nature of the initial INS interviews, Ira Gollobin and other immigration lawyers have long contended that these Haitians have not been given any real opportunity to present their legitimate claims for political asylum. Furthermore, they have maintained that State Department concurrence with INS denial rulings has been almost automatic because of a prevailing assumption that Haitian asylum claims are not valid. Under the terms of federal regulations,[116] no appeal was allowed from the discretion of the District Director to approve or deny any application by these people.

Several recent events have relaxed the procedural difficulties facing the Haitians. After observing conditions in Haiti, Immigration Commissioner Leonel Castillo agreed that the Haitian cases should be given serious consideration and promised to allow them work permits. In February, 1977, in *Sannon* v. *United States*,[117] Judge James Lawrence King ruled that, under the Protocol, "excludable" aliens have the same right as "deportable" aliens to have their claims considered by an immigration judge. Judge King's decision has at least opened the way for the Haitians to obtain a proper hearing; but it does not, of course, concern itself with the validity of their claims. Although the procedures for seeking asylum have undergone a decided amelioration, it remains to be seen whether many of the applicants will actually be granted asylum.

THE DOUBLE STANDARD

The ease with which Cubans have gained asylum in the United States [118] stands in marked contrast to the difficulties which the Haitians and other noncommunist country refugees have encountered. In the 1973-74 fiscal year, 11,577 Cubans were paroled into the United States, raising the total number of Cubans in this country to roughly 600,000.[119] Another 6,940 Cubans were paroled the following fiscal year.[120] The Cuban parole program still moves under the impetus of cold war foreign policy decisions made in the early sixties. The assumption continues that virtually everyone who leaves a communist country is a political refugee and that it is in the United States' interest to enhance its image as a haven from communism. So while Hatians and other applicants from rightist governments have had to prove that they are political refugees, this fact has simply been assumed when applicants are from communist countries.[121]

Whatever the eventual outcome of their cases may be, it is apparent that the Haitians have been the victims of a double standard in asylum practice. Discrimination is not confined to Haitians, Chileans, and Iranians; their cases are part of an overall pattern that extends to citizens of all noncommunist countries. None of those persons who requested sanctuary from the Philippine or South Korean dictatorship between January, 1974, and May, 1975, were granted asylum in the United States, although five of the Filipinos were allowed voluntary-departure status.[122] The State Department also recommended that asylum requests be denied to the sixteen Greeks who sought refuge before the fall of the junta on July 23, 1974, and to the eight South Vietnamese who asked asylum from the Thieu regime.[123] Yet, during this same period, scarcely any requests from Eastern European countries were denied. Cuban refugees continued to pour into the country; and after the fall of Thieu, 130,000 South Vietnamese were quickly admitted into Guam and the United States.[124]

There is some evidence that aliens who are returned to Communist China and the more "liberal" East European countries are not persecuted, as they would be in the more repressive communist states such as Bulgaria and the Soviet Union.[125] Ironically, the *uncertainty* of the fate of those who are returned to Communist China, Poland, and Czechoslovakia is the ultimate State Department justification for not returning them. But the fate of Haitians, South Koreans, Filipinos, and citizens of other noncommunist nations who are returned is also uncertain; yet this has not prevented many of them from being returned. As recently as August, 1977, ninety-seven Haitians seeking asylum were flown back to Haiti from Guantanamo naval base in Cuba.[126] Another reason that has been given for the preferred admission of Cuban and Communist Chinese refugees is the authoritarian power of their governments.[127] This rationale would, however, deny the dictatorial nature of countries like Iran, the Philippines, and South Korea in asylum consideration.

The chief argument against admitting Haitians has been that they are economically, not politically, motivated.[128] American officials insisted that the arrival of some Haitians by way of the Bahamas proved their economic motivation in seeking asylum, since they were in no danger of persecution in the Bahamas.[129] Yet thousands of Cubans were admitted to the United States after residing in Spain, and the question of economic motivation was not considered there. No adequate justification has been advanced for treating such similar cases differently.

Frank Kellogg and some East European desk officers suggested "career limitations" in communist states, clearly an economic factor, as a basis for granting asylum.[130] This is particularly true with artists and skilled athletes. For example, the Czechoslovakian tennis star Martina Navratilova openly admitted in 1975 that, in choosing to seek political asylum, "Politics had nothing to do with my decision. It was strictly a tennis matter." [131] She was admitted without question. According to one State Department official, in the case of thousands of East Europeans, political asylum

is used, essentially, for immigration purposes. East European countries are tight with migration, thus our immigration quotas usually can't be met. So we use the asylum mechanism for immigration purposes in an effort to equalize the situation. Most of these people are technically not eligible for asylum, but get it anyway.[132]

Richard Jameson, of the State Department Office of Refugees and Migration Affairs, and other officials cite "standardized stories" as evidence that Haitians and Filipinos have been coached to say the correct things to qualify for asylum.[133] Yet "standardized stories" are so frequent among successful applicants from communist countries that one

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State Department Desk Officer suggested that those applicants may have been coached by experts in immigration law.[134]

Raul Manglapus, former Foreign Secretary of the Republic of the Philippines, said that the State Department generally assumes that Filipinos who enter this country on a visa must be on good terms with their country and their claims for political aslyum are therefore usually deemed fraudulent.[135] Such reasoning overlooks the fact that some may seek a visa to speak out against their government in other countries. Government officials admit that Poles and other visitors with visas from communist countries are often allowed to claim asylum, even when their motives are rather obviously economic.[136] In nearly every instance, Haitians, Filipinos, and South Koreans have had to prove the legitimacy of their requests beyond a shadow of a doubt, although escapes from Cuba and other communist countries have almost always been accepted on faith. The double standard plainly permeates asylum practice.[137]

THE LAW ON ASYLUM AND REFUGEES

The Immigration and Nationality Act replaced the old system under which countries were assigned a quota on immigrants to the United States. The new method calls for allocation of immigrant visas in an order of preference. The seventh preference provides for the conditional entry into the United States of up to 17,400 persons annually who, because of persecution or fear of persecution, have fled communist or communist-dominated countries or the "general area of the Middle East."[138] Included in this preference are also persons uprooted by what the President determines is a "catastrophic natural calamity."[139] The seventh preference discrimination in favor of refugees from communism is consistent with the immigration law's ban on admission of communists and advocates of communism.[140] On the issue of refugees who have fled because of persecution or fear of persecution in noncommunist states or states outside the "general area of the Middle East." however, the law is silent. It is almost as if noncommunist persecution was unknown to drafters of our immigration laws.

The parole provision of the Act is the only one which can be used to admit persons fleeing from other situations.[141] This provision allows the Attorney General to admit any refugee, including a communist, who is fleeing from any form of government in any hemisphere "for emergent reasons or for reasons deemed strictly in the public interest."[142] As Charles Gordon, former Chief Counsel for the Immigration and Naturalization Service explains, "The parole provision has no conditions. It is meant to admit those who are otherwise inadmissible."[143] In theory, the parolee is not admitted permanently but can stay only as long as the emergency exists.[144] Afterward, parolees are considered for immigrant status in the same manner as other applicants.[145] In practice, parolees have more security and, in the case of refugees from South Vietnam, may even have their eligibility for employment noted on their immigration papers. In theory, the parole provision provides the flexibility to redress the discrimination which exists in favor of refugees from communism. In practice, however, parole has been used as one more means of admitting persons fleeing communism. Most of the people who have come into the United States via parole have come from communist countries, such as Hungary, Cuba, Czechoslovakia, and South Vietnam.[146]

The fact that parole has not been broadly used to correct the discrimination against refugees from right-wing dictatorships indicates that this discrimination is based more in policy than in law. Officials with responsibility for administering the parole authority generally consider that "providing sanctuary to those escaping communism is mandated in the law."[147] The parole provision is legally available for humanitarian assistance to any refugee, but standards for its application are not spelled out explicitly. By its very ambiguity, the provision lends itself to political interpretation. There is debate between Congress and the Administration as to whether groups can be paroled into the United States. Congress expects to be consulted before major parole programs are undertaken, and some members of Congress assert that consultation is a requirement. Administration spokesmen deny any legal requirement for consultation but maintain that there is, in essence, a political requirement to do so. "We do this because it is necessary to stay on good terms with the Hill and foster a spirit of cooperation," explained a foreign service officer.[148] These consultations are conducted on an informal basis with ranking members of the House and Senate immigration subcommittees, but it is clear that the views of the members of Congress carry a great deal of weight. Through the consultation procedure, political influences often take precedence over humanitarian considerations. A State Department official, for example, acknowledged that congressional resistance to the parole of Chilean exiles in Peru was based largely on the belief that admitting them would add to the unemployment problem in the United States. "The House committee's position," added the official, "had a lot to do" with the ultimate decision to exclude the exiles:[149]

Congress is not alone in resisting liberal use of the parole authority. The Immigration and Naturalization Service and the Attorney General, by many reports, are also hesitant to authorize large-scale parole programs.[150] One reason government officials have been reluctant to use their parole authority for the benefit of escapees from right-wing dictatorships is a provision in the Act which forbids the admission of any alien who advocates communism or the overthrow of the government, or who is a Communist Party member—unless the communist activity is deemed "involuntary."[151] This provision prohibits extending asylum to many people who seek refuge from such right-wing regimes as the Chilean junta, since the chief reason for their persecution is that they are Marxists or communists.[152] While the parole provision can be used to circumvent this prohibition, it is seldom applied because of political pressure from influential members of Congress, the Justice Department, and anticommunist lobbies.

In this connection, it is important to note an apparent conflict between American asylum law and the spirit, if not the letter, of the United Nations Protocol Relating to the Status of Refugees,[153] acceded to by the United States in 1968 with the disclaimer that U.S. domestic law would take precedence in cases of conflict. The Protocol defines "persecution" more broadly than does U.S. law. Signatories pledge not to return to their native countries those who would face persecution stemming from "race, religion, nationality, membership of a particular social group or political opinion. . . ."[154] Thus, the Protocol extends its coverage for the victims of persecution on a worldwide basis, while the U.S. immigration law confines itself chiefly to communist country refugees.[155] More important, there is "tension," as one ORM official puts it,[156] between the Protocol and the section of the U.S. immigration act that bars communists and "subversives."[157] The Protocol, this official admits, prohibits discrimination against refugees on the basis of their political beliefs. It would appear that when the United States does not use the parole provision for the benefit of de facto refugees who are excludable under the definitions of the U.S. law—even deporting some of them to face possible persecution—the United Nations Protocol may be violated.

Aliens already in the United States who wish to request asylum and are ineligible under the seventh preference generally seek withholding of deportation, which can be granted at the discretion of Justice/Immigration under section 243(h) of the Act.[158] Most asylum court cases involve aliens' claims that, if deported home, they would be subject to "persecution on account of race, religion, or political opinion."[159] Once asylum is denied by the District Director of Immigration, the applicant must appeal first to the Board of Immigration Appeals, and then has recourse to the federal circuit court of that region.[160] Thus, in section 243(h) litigation, the circuit courts have had an opportunity to influence political asylum law and policy.

Nevertheless, displaying traditional reluctance to interfere with the exercise of administrative discretion, federal judges have made little use of this opportunity. A congressional grant of discretion is intended to bestow wide leeway upon the bureaucracy. Out of respect for legislative intent and an unwillingness to become embroiled in policy decisions, judges have imposed severe restrictions on their intervention in asylum cases.[161] The courts have generally held in section 243(h) cases that INS asylum decisions can be reversed only if they were "arbitrary and capricious," or not "reached in accordance with the applicable rules of law" and hence violative of due process.[162]

It is exceedingly difficult for an alien to establish that discretion has been abused under section 243(h). Proving a "clear probability of persecution" in the initial immigration proceeding is difficult enough;[163] it is harder still for the alien to prove in court that immigration officials have abused their discretion. In effect, petitioners must convince the court that the evidence of likely persecution presented to the INS was so persusasive that the failure to withhold deportation was a blatant misuse of authority.[164] To this end, aliens who have engaged in political activities in America directed against their home governments have claimed that: (1) such actions would likely subject them to persecution if deported home, and (2) the failure of immigration officials to acknowledge this danger constitutes an abuse of discretion. By and large, the courts have rejected such arguments.[165] *In Matter of Nghiem*,[166] the Board stated: "For the most part [we have] not considered that joining protest groups and making public statements after entering the United States supports a withholding of deportation under section 243(h). Many aliens have attempted to build up a 243(h) case by this sort of activity."[167] Exceptions to this line of Board decisions appear to have involved only communist country refugees.[168]

Some asylum applicants have also claimed that the INS abuses its discretion by relying on State Department recommendations to deny asylum, and particularly on State Department recommendations based upon secret information. The applicants' argument here is often that State Department recommendations are tainted with bias, for reasons of foreign policy, and that it is impossible to refute secret information. Judicial reaction to these arguments has been mixed but the courts have seldom reversed the Board of Immigration Appeals. Some courts have insisted that the Board must not rely on State Department asylum recommendations, while imposing the burden of proving reliance upon the alien.[169] Other courts have upheld the right of Immigration officials, pursuant to federal regulations, to rely on information which is not disclosed to the alien.[170] In some cases, the circuit courts have stated explicitly that the initial asylum decision must not be interfered with

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for political reasons—*e.g.*, "the . . . question . . . involves a decision as to foreign policy traditionally left to the executive branch of the government." [171]

As a result of the courts' refusal to intervene significantly in the exercise of administrative discretion under section 243(h), gaining asylum under that provision has proven extremely difficult. In 1968, Professor Alona Evans reviewed 100 section 243(h) cases and concluded that "prospects for relief are very limited." [172] Review of subsequent cases suggests that this conclusion remains valid today.[173] It is relatively rare for communist country aliens to be placed in deportation proceedings at all, according to State Department and Immigration officials.[174] It is mainly those who are seeking refuge from noncommunist regimes who are placed in deportation proceedings and must carry the heavy burden of proof which the courts impose under section 243(h).

CONGRESSIONAL REFORM EFFORTS

Since 1966, a handful of legislators, led by Senator Edward M. Kennedy and Congressman Peter W. Rodino, Jr., have introduced measures during each Congress designed to remedy some of the more glaring defects in the 1965 immigration act.[175] Although there were differences between the Kennedy and Rodino bills, they shared three major goals: (1) to substitute the United Nations Protocol definition of refugee for the more restrictive statutory definition presently being used; (2) to make the adjustment of status to "permanent resident alien" with full work privileges easier for parolees and refugees now in voluntary-departure status who must exist in limbo, subject to deportation at a moment's notice; and (3) to extend the refugee "preference" category to the western hemisphere, providing a better mechanism for dealing with the worldwide refugee problem. The more liberal Kennedy bill has never come close to passing despite repeated efforts in successive Congresses since the enactment of the Immigration and Nationality Act of 1965. In the Ninetieth through the Ninety-Fourth Congresses, the Kennedy reform bill died in the immigration subcommittee of the Senate Judiciary Committee. On the House side, Rodino's H.R. 981 was better received. It passed in two successive Congresses, only to be shelved when it reached the Senate subcommittee. After hearings in the Ninety-Fourth Congress, H.R. 981 was stripped of all but its most uncontroversial reform proposal, the extension of the preference system to the western hemisphere. Reported out as a clean bill, H.R. 14535, this measure was enacted as the Immigration and Nationality Act Amendments of 1976.[176] The more extensive reforms contained in the Kennedy proposal, which were deleted from the Rodino bill, have little chance of success in the near future.

To understand why the more liberal bills are repeatedly rejected by the committee, one must consider the make-up of the immigration subcommittee and the attitudes of the public and the Congress toward immigration reform. First, the members of the Senate immigration subcommittee, on the whole, have been much more politically conservative than the Congress at large. "Senator James O. Eastland blocks this legislation," says one staff member, "in part for ideological reasons, but basically because he just doesn't care." [177] This staff member adds that Eastland's attitude has generally been shared by other members of the immigration subcommittee, such as John L. McClellan and Strom Thurmond, who regard the present law, with its parole provision, as adequate.[178] The subcommittee is not the sole cause of Congress' failure to reform the asylum law. Senate Democrats re-elect Eastland to the chairmanship of the Judiciary Committee each year, with full knowledge of the policies he will pursue. The Democrats take little interest in immigration reform or improvement of the political asylum and refugee admission systems; hence, they fail to encourage Senator Eastland and his subcommittee to pass the reform bills out of committee.

This congressional apathy is lamentable but wholly predictable, since there is no significant public constituency pressuring the Congress to reform the political asylum system. Those who would benefit most from broadening and liberalizing the asylum laws—the Chileans, Filipinos, Haitians, and other refugees from noncommunist countries—have little political influence in the United States. They are either in difficulty abroad or they are in the United States under precarious circumstances. They cannot vote, and they do not have an entrenched influential ethnic community to work on their behalf. In this respect, refugees from communist countries have a considerable advantage. Aided by the Displaced Persons Act of 1948,[179] a great many refugees were admitted into the United States, and most quickly achieved a secure immigration status. They established roots and prospered economically, and thus are now in a position to help their fellow countrymen who escape and seek sanctuary in the United States. The Czech-American, Polish-American, Hungarian-American, Russian-American, and other such communities have achieved considerable economic and political power. Familiar with immigration law, members of these communities can recommend attorneys and advise new arrivals on the best methods of acquiring refugee status. More important, through such organizations as the Tolstoy Foundation and the American Fund for Czechoslovak Refugees, they can serve as sponsors and guarantee that new arrivals will not become public charges. The sponsorship system serves to decrease resistance from those who favor the restriction of immigration.

The law on asylum and the entrenched infrastructure which has grown up around the law undoubtedly contribute to the ease with which communist country aliens gain sanctuary here. But these factors must be considered in conjunction with the cold war atmosphere in which they originated. After World War II, granting asylum to communist country refugees became a tool of American cold war foreign policy. John Haynes of the State Department's Bureau of Security and Consular Affairs said during a 1959 congressional hearing:

From a strictly economic point of view, I suppose it might be better if nobody came into this country; but there are other factors that cannot be overlooked and one . . . is the impact on our foreign policy, of the necessity of this country maintaining a role where we are the leader of the anti-Soviet, anti-Communist camp.

We have to make some gestures to these people who are symbols of those who have left communism. We cannot . . . at the same time claim leadership in this field and say when they come out, 'This is entirely a leadership for the other countries of the free world because they have less population or they have less [sic] economic problems then we do.' [180]

In the cold war atmosphere, congressional restrictionists were unable to prevent the enactment of measures for the relief of communist country refugees, but they succeeded in keeping these programs on a temporary basis between 1949 and 1965 and in forestalling proposals to assist refugees from other than communist regimes. Proponents of asylum programs, however humanitarian some of their motives may have been, were forced by political circumstances to phrase their arguments in terms of cold war foreign policy.

Another by-product of the cold war which has a continuing effect on American asylum practice is the policy of maintaining strong, bilateral relationships with anti-communist dictatorships. In cold war parlance, these countries were part of the "free world," and therefore persecution within their borders was officially ignored. Thus, considerations of foreign policy as well as powerful domestic interests have a substantial impact on asylum practice. These political influences are frequently exerted through Congress, which not only has the responsibility for passing asylum and refugee legislation but also the power to effect its implication.[181] Influence is also exerted, however, through the various arms of the political asylum bureaucracy.

THE BUREAUCRACTIC MAZE

Humanitarian goals are too frequently lost sight of in the bureaucratic maze which is entrusted with carrying out political asylum programs. Authority for administering the political asylum system has been divided among agencies which are likely to be diverted from impartial consideration of asylum requests and refugee programs by foreign and domestic political pressures.

The Office of Refugee and Migration Affairs (ORM) within the State Department has been the most consistent advocate of a truly humanitarian asylum program. ORM tries to ensure that policy regarding asylum requests and programs is as apolitical as possible. Unfortunately, however, ORM officials cannot operate in a political vacuum; they must cooperate with other branches of the State Department, which have distinctly different priorities. The State Department desk officer of an alien's native country must be consulted in each asylum case. The desk officer's primary mission is to maintain the best possible bilateral relationship with the country in question; therefore, he is often unwilling to admit that persecution occurs there. Louis Wiesner, Director of ORM, minimizes the significance of this "clientism," [182] but others in the Department state that it has a definite effect. One State Department officer says that clientism has been a clear factor in the denial of asylum to Iranians and that it has probably influenced the consistent denial of asylum to Taiwanese, Filipinos, South Koreans, and, before May, 1975, South Vietnamese.[183] In brief interviews, each of several State Department desk officers for countries governed by right-wing dictatorships de-emphasized the degree of political repression in "his" regime, questioned the motives of those seeking asylum, and stressed how few asylum cases actually came across his desk. For example, one desk officer for an Asian country, expressing relief that few citizens from "his" country request asylum, stated: "There is no question that when we grant asylum to a refugee from a government . . . with which we are friendly, that government feels that its reputation is slighted, its honor impugned. This can only lead to resentment against the United States and both governments lose out." [184] Another commented on the denial of asylum to an applicant who, in the desk officer's words, "may have had problems" if sent home: "We didn't grant him asylum because the United States government doesn't want to pass judgment on the internal conditions of allied countries. That would cause resentment on their part and hurt the bilateral relationship." [185] This officer also explained why the State Department had turned down South Vietnamese students requesting asylum from the Thieu regime before the fall of Saigon in May, 1975. "We were closely linked with Saigon and couldn't very well pass judgment on her internal political practices." [186] The greater the diplo-

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matic importance of any given country, the greater the likelihood the State Department will deny asylum in order to avoid antagonizing that country, even at the expense of humanitarian interests. Therefore, a change of policy regarding Haiti, whose foreign policy importance is minimal,[187] should be less controversial than one directed at Iran or South Korea.

ORM faces another obstacle from supervision by superiors who are often less concerned with the plight of refugees than with other issues, such as Iranian oil and American bases in the Philippines or Spain. One State Department source intimated that Secretary Kissinger, not unlike his predecessors, wanted "to avoid damaging our bilateral relationships through grants of asylum." [188] and hence presented a great obstacle to a more impartial consideration of asylum requests. In this connection, a congressional source suggested that the initial delay of one year in even considering a refugee program for Chilean refugees stemmed, at least in part, from a high-level State Department decision to make sure that the Pinochet junta was "stable" and did not object.[189] Highly placed officials in the State Department who take a positive interest in refugee programs often do so with the intent to use these programs as a tool of foreign policy. Humanitarian purposes may be served in the process, but they are frequently secondary and sometimes they are totally ignored.

Although the recommendations of the State Department carry great weight in the political asylum system, it is the Justice Department—primarily the Immigration and Naturalization Service—which has the last word in most asylum requests and in all grants of asylum by parole. If foreign policy considerations exert an influence on the politcal asylum system through the State Department, domestic political pressures are channeled into the system through the Justice Department and the INS. "Quite frankly," said one State Department observer, "the people at Immigration do not think in humanitarian terms. Their concern is the difficulty in dealing with so many aliens in the United States." [190] The INS is charged with enforcing the immigration statutes which, since the 1920's, have been intended to restrict the flow of immigrants into the United States. Immigration officials must also cope with the illegal entry of hundreds of thousands of aliens into the United States and with the possible abuse of the politcal asylum process by many aliens whose basic motivation may be economic, social, or professional. Moreover, according to one State Department official, the INS is highly responsive to domestic economic pressures. He maintains that, in light of the current high level of American unemployment, the INS is intent on "keeping the number of aliens coming in, both legal and illegal, both refugees and immigrants, to the absolute minimum." [191] President Carter's appointment of Leonel Castillo as the new Commissioner of Immigration suggests an effort to liberalize the INS. In addition to improving the procedures for Haitian asylum applicants, Castillo has advocated amnesty for illegal aliens now in the United States. But restricted immigration is still the law of the land and institutional habits change slowly. The INS remains, therefore, a bastion of restrictionism.

The INS "hard line" on refugee admission is entirely consistent with what appears to be the opinion of a majority of Americans. The growing intensity of public pressure to keep the lid on immigration is indicated in recent opinion polls. In April, 1975, a poll conducted in metropolitan Washington, D.C., showed that 58 percent of the sampling favored a reduction in immigration in contrast to only 44 percent in 1973.[192] The public, however, appears unable to distinguish between immigrants and political refugees. A national Gallup poll of April, 1975, revealed that, primarily for economic reasons, 52 percent of the American public opposed granting sanctuary to South Vietnamese refugees, even though the collapse of Saigon to communist forces appeared imminent.[193] Consequently, the Administration may find it difficult to liberalize its Haitian policy to any great extent without arousing public ire. It seems unlikely that restrictionist forces would accept large numbers of additional permanent resident aliens without a fight.[194]

According to one government source, INS officials initially "raised hell" over the Administration's plan to grant sanctuary to some 130,000 Vietnamese.[195] In a June, 1975, interview, Deputy Commissioner of the INS Edward O'Connor was convinced that the intent of the immigration statutes was being undermined by paroling in so many South Vietnamese refugees.[196] But highly placed State Department officials were firmly committed to a far-reaching refugee program in this instance, and they prevailed over any dissent from the INS. As a rule, however, the restrictionist point of view within the INS has carried considerable weight. Several State Department sources maintain that the closed-door policy at the INS continually blocks a liberal use of the parole authority to aid refugees.[197] One of these sources added that unless the State Department can present a compelling foreign policy reason over and above any humanitarian obligations to admit a group of refugees, the INS is likely to veto or at least water down the proposal.[198] According to some officials, it was resistance within the INS as much as any other factor which delayed first the proposal and then the implementation of a Chilean refugee program. This resistance also played an important part in the decision to restrict admission of the Chilean exiles in Peru.[199]

Deputy Commissioner O'Connor revealed serious reservations about the admission of Chilean refugees. He denied that what the Chairman of the House Subcommittee on Immigration and the Attorney General had agreed to could really even be called a "program," and he expressed particular opposition to taking in any of the exiles in Peru. O'Connor explained that "once they cross the border into Peru, they're no longer subject to persecution and their problem becomes economic." [200] This extraordinary statement is in direct contradiction to both international and American law on asylum. Technically, one becomes a refugee after he has left his native country, and he continues to be a refugee until permanently resettled. O'Connor's statement exemplifies the tendency of immigration officials to define "refugee" as narrowly as possible, thus allowing the exclusion of greater numbers of aliens from the United States.

The response of the INS to the Chilean parole proposal also demonstrates an extreme concern with "internal security" in considering the admission of prospective asylum applicants. Expressing a representative view, O'Connor stated, "We can't let America become the dumping ground for communists or agitators." [201] Thus, although the Attorney General has the authority to parole in any alien he sees fit to admit,[202] the INS, the Attorney General himself, and (to a lesser degree) the State Dpartment, with congressional support, have consistently resisted the use of parole for leftists, as in the case of the Chileans.

Humanitarian aims in the asylum system are often frustrated not only by the political character of the agencies which administer the program but also by the division of authority among the agencies. When there is no focal point of authority, only a massive exodus such as occurred in Hungary, Czechoslovakia, or Vietnam can elicit a coordinated response from the government. Without such an impetus, the wheels turn slowly, it is difficult to pin down responsibility, and the possibilities for "buck-passing" are unlimited. One State Department official admits that, although in many instances the Department is the determining agency in an asylum case, it has the "built-in, bureaucratic cop-out of saying, 'INS is degally responsible.'" [203] The INS, on the other hand, can always say that it depends on the State Department for information on these cases. Both the State Department and the INS often shift the responsibility to Congress which, they maintain, makes the laws, exerts pressure, and delays making decisions. As the Kennedy refugee subcommittee pointed out in its report in 1969: "[L]egitimate human concerns . . . have been placed in heavy subordination to common political interests. The situation has fostered neglect and indecision where action was needed." [204] The subcommittee's statement is as true today as it was in 1969.

TOWARD A MORE HUMANITARIAN ASYLUM SYSTEM

The government of the United States has an explicit humanitarian ideal concerning asylum and has made international commitments to grant asylum with impartiality.[205] But in the face of pragmatic political considerations, our government is not adhering fully to its obligations or to its ideals. Congress contributes to the problem by not specifically mandating a permanent asylum program on a worldwide basis. The bureaucratic mechanism for administering the asylum program, divided between the State Department and the Justice Department, is often diverted by foreign and domestic political pressure from an impartial consideration of asylum requests and refugee programs.

For those seeking sanctuary from other than communist regimes, the impact of these policies can be extremely harsh. Political refugees, after all, are not just statistics in reports; they are men and women who may be subject to torture and long prison terms. Asylum decisions are more than a tug of war between government agencies—they are sometimes a matter of life and death. They may be, said Edward Ennis of the American Civil Liberties Union, "the most important decision[s] in respect of an alien that can be made in his or her lifetime, and indeed, approval of such an application may involve all that makes life worth living for the applicant." [206]

A. Reforming the law

The present law relating to refugees is complex, ambiguous, and exceedingly difficult to administer. One frustrated official said, "The Immigration and Nationality Act is one of the worst laws ever written. It's outdated and has been amended to death until it contradicts itself." [207] Certain reforms could contribute to the establishment of a rational and impartial legal framework for political asylum.

Congress should acknowledge legislatively that the suffering of political refugees is a worldwide phenomenon and that political persecution can occur under any dictatorial form of government, communist or noncommunist. The definition of refugee must be expanded to include all those throughout the world who have a reasonable fear of persecution because of "race, religion, nationality, membership of a particular social group or political opinion" as expressed in the United Nations Protocol.[208] The parole authority can be retained to provide flexibility to the system; but the authority to parole should be clearly stated, and the role of Congress—whether it be simply to advise or to have the right of veto—should be spelled out.

Finally, the exclusion of refugees on the basis of their political beliefs must end. Aliens who have employed terrorism or genocide to further an ideology should probably

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be excluded outright. Others who have actively participated in the suppression of human rights and democratic processes should be ineligible unless they can show that they have voluntarily renounced the use of force for political ends. But a belief alone should not be grounds for denying asylum; the current "ideological test" should be eliminated. All but the last of these proposals have been included in either the Kennedy or Rodino bills,[209] presented repeatedly in recent years, only to be killed in the Eastland committee. They have the support of many people in the bureaucracy who find the present law endlessly frustrating. But in view of the present power structure in Congress, the prospects for enacting any of these reforms remain extremely slim without strong and enthusiastic administrative support.

Admitting refugees without regard to their political beliefs has not been proposed in any reform introduced in Congress. Contrary to the fears of many American officials, representatives of the French, West German, and Swedish governments, which admitted sizable numbers of Marxist refugees following the Chilean coup, report that the refugees posed no national security problems.[210] Frank Kellogg, Special Assistant to the Secretary of State for Refugee and Migration Affairs, and others in the United States government seem to fear that Chilean Marxists and similar refugees (even if screened to keep out terrorists), might use first amendment liberties to undermine American democracy.[211] This implies a lack of faith in the civil liberties upon which our nation is founded.

Immigration attorney Charles Gordon agrees that the anticommunist exclusionary provisions of the Immigration Act should be eliminated. "They're antiquated," he said, "they must go. We should only exclude those who directly threaten United States security—you know, the bomb throwers."[212] The proposal to end exclusion of refugees on ideological grounds is not likely to meet with congressional approval in the near future, but its enactment would bring our asylum law much closer to the spirit of our humanitarian ideals.

Legal reforms could clarify the intent of the asylum program, but in any law there will be room for administrative maneuvering and for political interest to have its influence. It is probably impossible to prevent political influences from having some impact on the asylum program, yet many government officials agree that such influences detract from humanitarian goals.[213]

B. A new bureau of refugee assistance

As long as authority remains divided between the Department of State and the Department of Justice, it is almost inevitable that perceived imperatives of foreign policy and restricted immigration will take precedence over humanitarian considerations. There are several ways in which this authority could be consolidated. One independent agency could be established to administer the asylum and refugee program. This agency could also be given primary responsibility for aiding refugees abroad. Since the State Department and the INS have legitimate concerns about political asylum and refugee admission, both could serve the new agency in an advisory capacity. But the independent bureau would have the administration of a humanitarian asylum program as its chief goal and would be less subject to unwarranted interference. If the head of a Bureau of Refugee Assistance could be made a post of stature, to be filled by presidential appointment and congressional confirmation, and if the parole authority could be transferred to the holder of this post, then the new bureau might have enough power to counter the political forces which now detract from a humanitarian asylum practice.

An alternative for improving the asylum and refugee administration is to transfer all authority for the program from the Immigration and Naturalization Service to the State Department Office of Refugee and Migration Affairs. This transfer would avoid the disadvantage of creating still another bureaucracy. There are numerous people in ORM and elsewhere in the State Department who want the asylum program to be nonpolitical;[214] this reorganization might accomplish this goal. The success of any new program also depends on the recognition and support it receives. The apathy of the public and the Congress toward political asylum can only be overcome by forceful leadership. The press should take a greater responsibility for making people aware of the problems of refugees.

The criticism of American asylum practice expressed in this Note is not intended to single out any individual or any group in the government for blame. Nor is it intended as an indictment of the entire refugee program. Over the years, the United States government has been of great assistance to many people in dire need of help; and within the government service there are many people who are dedicated to carrying out the program in a humanitarian spirit. Nor do these reform proposals call for the United States to take in all the suffering people in the world. That is clearly impossible. Each asylum applicant, however, should be able to have his or her case considered with compassion on its own merits and each refugee group produced by political crises abroad should receive humanitarian consideration, regardless of the regime from which it is fleeing. Our government should live up to its obligations and its ideals; it should apply its program of political asylum impartially to all bona fide refugees on the basis of their needs rather than for the sake of some political advantage.

State Department clientists state that they "cannot pass judgment on the internal affairs of friendly governments by granting asylum to their refugees."[215] Perhaps it would be beneficial, not only for the refugees but also for the country, if the United States did go on record as making precisely such a judgment. Our government would not be telling those nations how to conduct their own affairs but would simply be reasserting a long-standing commitment to the support of human rights and democratic forms of government. That commitment has been weakened by looking the other way too long in our relations with right-wing dictatorships.

FOOTNOTES

[1] 37 Fed. Reg. 3447 (1972).

[2] *Attempted Defection by Lithuanian Seaman, Simas Kudirka: Hearings Before the Subcom. on State Dep't Organization and Foreign Operations of the House Comm. on Foreign Affairs*, 91st Cong., 2d Sess. 216 (1970) [hereinafter cited as *Kudirka Hearings*].

[3] N.Y. Times, Dec. 2, 1970, at 10, col. 1; *see Kudirka Hearings, supra* note 2, at 1, 27.

[4] N.Y. Times, Dec. 2, 1970, at 10, col. 1.

[5] *Kudirka Hearings, supra* note 2, at 17.

[6] *See id.* at 126, 127, 142.

[7] Interview with Christian Pappas, State Dep't Asylum Officer, in Washington, D.C. (Nov. 5, 1974).

[8] There is a happy postscript to the Kudirka affair. On July 18, 1974, the State Department ruled Kudirka an American citizen on the grounds that his mother had been born in the United States. The Soviets released Kudirka shortly thereafter, and he came to the United States in November, 1974.

[9] Interview with Louis Wiesner, Director of the State Dep't Office of Refugee and Migration Affairs, in Washington, D.C. (Nov. 29, 1974).

[10] Letter from Shepard C. Loman, Director of Programs and Asylum Division, Office of the Department of State, to the author (postmarked March 15, 1977). Immigration lawyers who specialize in asylum have stated that, to their knowledge, there has been no change in the pattern of asylum grants and denials. Telephone interviews with attorneys David Carliner and Ira Collobin (Dec. 15, 1977).

[11] 8 U.S.C. §§ 1101–1362 (1970).

[12] 8 U.S.C. § 1182(d)(5) (1970).

[13] Petras & La Porte, Jr., *Can We Do Business With Radical Nationalists? Chile:* No. 7 FOREIGN POL'Y 132 (1972).

[14] N.Y. Times, Sept. 8, 1974, § 1, at 1, col. 6; NEWSWEEK, Oct. 10, 1977, at 31–32.

[15] Interview with Charles Gordon, former General Counsel to the Immigration and Naturalization Service, in Washington, D.C. (June 25, 1975).

[16] Recently declassified letter from Deputy Secretary of State Robert Ingersoll to Attorney General Edward H. Levi (April 23, 1975).

[17] N.Y. Times, Jan. 12, 1974, at 6, col. 1.

[18] Interview with Frank Kellogg, Special Assistant to the Secretary of State for Refugee and Migration Affairs, in Washington, D.C. (June 24, 1975).

[19] 35 U.S. Dep't of State Bull. 800 (1956).

[20] Interview with Donald F. McHenry, former Foreign Service Officer in South Africa and Special Assistant to Secretary of State William Rogers, in Washington, D.C. (Nov. 15, 1974).

[21] *General Policy for Dealing With Requests for Asylum by Foreign Nationals: Hearings Before the Subcomm. on Immergation, Citizenship, and International Law of the House Comm. on the Judiciary*, 93d Cong., 1st Sess. 295 (1973).

[22] The New York Times reported the refusal of the U.S. embassy in the Philippines to grant asylum to former Philippine President Diosdado Macapagal on the grounds that he was not in actual danger of arrest. N.Y. Times, Apr. 2, 1976, at 1, col. 2.

[23] On September 25, 1973, Drinan proposed H.R. 10525, a bill to authorize issue of 50,000 special immigrant visas, but only to Chilean citizens. H.R. 10525, 93d Cong., 1st CONG. REC. 31407 (1973). Drinan urged on the House floor "that the United States give the same treatment to those suffering persecution in Chile as we have given to the Hungarian freedom fighters and the refugees from Fidel Castro's Cuba." 119 CONG. REC. p. 31444 (appendix, Sept. 25, 1973). The bill died in the House Judiciary Committee. Kennedy's measure, S. 2643, suffered a similar fate in the Senate Judiciary Committee. S. 2643, 93d CONG. REC. 35734 (1973).

[24] *Refugee and Humanitarian Problems in Chile, Part III: Hearing Before the Subcomm. to Investigate Problems Connected with Refugees and Escapees of the Senate Comm. on the Judiciary*, 94th CONG., 1st Sess. 32–33 (1975).

[25] Interview with Christian Pappas, *supra* note 7.

[26] *Id.* The legal barrier against admission of communists is contained in Immigration and Nationality Act, 8 U.S.C. § 1182(a)(28 (1970).

[27] 8 U.S.C. § 1182(d)(5) (1970).

[28] Interview with Charles Gordon, *supra* note 15.

[29] State Dep't Fact Sheet on Parole of Chilean Refugees in Peru, n.d.

[30] State Dep't Fact Sheet on Parole of Chilean Detainees/Refugees, n.d.

[31] The State Department has refused to make either memorandum available on the grounds of "national security."

[32] Washington Post, June 8, 1975, at A4, col. 1. Interview with Leonard Chapman, Commissioner of INS, in Washington, D.C. (Oct. 18, 1975). *See* Protocol Relating to the Status of Refugees, *done* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 268 (in force Oct. 10, 1967).

[33] Interview wth Leonard Chapman, *supra* note 32.

[34] *Id.*

[35] Interview with Dale de Haan, Counsel to the Senate Subcommittee on Refugees and Escapees, in Washington, D.C. (Dec. 2, 1974).

[36] *Id.*

[37] Interview with Christian Pappas, *supra* note 7.

[38] Interview with Leonard Chapman, *supra* note 32.

[39] Interview with Christian Pappas, *supra* note 7.

[40] *Id.*

[41] *Id.*

[42] Letter from Deputy Secretary of State Robert Ingersoll to Attorney General Edward H. Levi (Apr. 23, 1975).

[43] *Id.*

[44] Interview with Leonard Chapman, *supra* note 32.

[45] Interview with Frank Kellogg, *supra* note 18.

[46] Interview with Leonard Chapman, *supra* note 32.

[47] *Id.* By January, 1976, 94 cases involving 248 people had been forwarded to Washington, and 27 of these carried a recommendation for denial (15 by the INS representative, 1 by the State Department representatives, and 11 by both agencies). In 6 additional cases, field representatives were asked to reconsider recommendations that were, presumably, positive. *Id.*

[48] *Id.*

[49] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (Jan. 20, 1975). *See also* Washington Post, June 8, 1975, at A4, col. 1.

[50] Interview with Leonard Chapman, *supra* note 32.

[51] Interview with State Dep't Desk Officer, *supra* note 49.

[52] *Id.*

[53] On March 27, 1978, four and one-half years after the coup in Chile, the Carter Administration announced that up to 500 refugees from Chile and Argentina would be paroled into the United States. The announcement raised hopes that a more liberal and even handed refugee policy was forthcoming. N.Y. Times, Mar. 31, 1978, at 1, col. 6.

[54] Interview with Christian Pappas, *supra* note 7.

[55] Letter from Deputy Secretary of State Robert Ingersoll to Attorney General Edward H. Levi (Apr. 23, 1975).

[56] Interview with State Dep't Desk Officer, *supra* note 49.

[57] 531 F. 2d 155 (3d Cir.), *cert. denied*, 429 U.S. 853 (1976).

[58] *Id.* at 158.

[59] *Id.* at 157.

[60] *Id.* at 159.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] Interview with Richard Jameson, State Dep't Office of Refugee & Migration Affairs, in Washington, D.C. (Nov. 29, 1974).

[65] 8 U.S.C. § 1253(h) (1970).

[66] Interview with State Dep't Near East specialist (name withheld by request), in Washington, D.C. (June 11, 1975).

[67] NEWSWEEK, Oct. 14, 1974, at 56–61. SAVAK is the Persian acronym for "National Intelligence and Security Organization."

[68] AMNESTY INTERNATIONAL, ANN. REP. 297–98 (1977).

[70] NEWSWEEK, Oct. 14, 1974, at 61.

[71] Interview with State Dep't Near East specialist, *supra* note 66.

[72] N.Y. Times, Oct. 16, 1971, at 4, col. 4.

[73] Interview with Christian Pappas, State Dep't Asylum Officer, in Washington, D.C. (Aug. 4, 1975).

[74] Interview with Iranian Embassy Official (name withheld by request), in Washington, D.C. (Aug. 12, 1975).

[75] Interview with State Dep't Near East specialist, *supra* note 66.

[76] Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 268 (in force Oct. 10, 1967).

[77] Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6261, T.I.A.S. No. 6577, 189 U.N.T.S. 152.

[78] Interview with Christian Pappas, *supra* note 73.

[79] Interview with State Dept. East European Desk Officer (name withheld by request), in Washington, D.C. (June 11, 1975).

[80] Conversation with Thomas Hughes, former head of State Dep't Intelligence and Research, now Director, Carnegie Endowment for International Peace, in Washington, D.C. (June 5, 1975).

[81] Interview with State Dep't Near East specialist, *supra* note 66.

[82] *Id.*

[83] Interview with David Carliner, Iranian asylum specialist, in Washington, D.C. (June 25, 1975).

[84] *Id.*

[85] H.R. 1663, 95th Cong., 1st Sess., 123 CONG. REC. 325 (1977); H.R. 4646, 95th Cong. 1st Sess., 123 CONG. REC. 1874 (1977); H.R. 6560, 95th Cong., 1st Sess., 123 CONG. REC. 3473 (1977).

[86] N.Y. Times, Feb. 17, 1977, at 14, col. 1.

[87] *See, e.g.*, Kasravi v. INS, 400 F. 2d 675 (9th Cir. 1968).

[88] Interview with State Dep't Near East specialist, *supra* note 66.

[89] *Id.*

[90] Interview with David Carliner, *supra* note 83.

[91] 12 I. & N. Dec. 215 (BIA 1967).

[92] *Id.* at 218.

[93] *Id.*

[94] *Id.* at 219.

[95] 400 F.2d 675 (9th Cir. 1968).

[96] *Id.* at 677 n. 1.

[97] 226 F.2d 385 (9th Cir. 1955).

[98] *Id.* at 388 (quoting Dolenz v. Shaughnessy, 206 F.2d 392, 394 (2d Cir. 1953)), *quoted in* 400 F.2d at 677. *See also* Hosseinmardi v. INS, 405 F.2d 25 (9th Cir. 1968); Asghari v. INS, 396 F.2d 391 (9th Cir. 1968); Ishak v. INS, 432 F. Supp. 624 (N.D. Ill. 1977).

[99] Interview with David Carliner, *supra* note 83.

[100] *Id.*

[101] N.Y. Times, Feb. 17, 1977, at 19, col. 1.

[102] *Id.* In Sannon v. United States, 427 F. Supp. 1270 (S.D. Fla. 1977), the summary deportations ordered by the INS were declared invalid. *See* text accompanying note 117 *infra*.

[103] Christian Century, Feb. 12, 1974, at 219; Miami Herald, Aug. 30, 1976, at 8, col. 1. *See Human Rights in Haiti: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 94th Cong., 1st Sess. 18 (1975) [hereinafter cited as *Human Rights in Haiti*].

[104] 8 U.S.C. § 1253(h) (1970).

[105] *See* N.Y. Times, Oct. 17, 1976, at 56, col. 3.

[106] Data provided by the State Dep't under the Freedom of Information Act.

[107] 559 F.2d 993 (5th Cir. 1977).

[108] *Id.* at 1003.

[109] *Done* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 268 (in force Oct. 10, 1967). The Protocol incorporates by reference the language of the Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6261, T.I.A.S. No. 6577, 189 U.N.T.S. 152.

[110] Although the Protocol speaks in terms of the subjective fears of the alien seeking asylum, at least one court has held that such fear must be grounded in the fact that the alien "actually has been a victim of persecution, or that his fear is more than a matter of his own conjecture." Kashani v. INS, 547 F.2d 376, 379 (7th Cir. 1977).

[111] 8 U.S.C. §§ 1252, 1225(b) (1970). Persons apprehended by authorities at entrance of those paroled under § 1182(d)(5) or allowed entrance under § 1153(a)(7) have been considered to be subject to exclusion proceedings rather than deportation.

[112] *See In re* Pierre, Int. Dec. No. 2433 (BIA, Sept. 16, 1975). *See also* Paul v. INS, 531 F.2d 194 (5th Cir. 1975); Gena v. INS, 424 F.2d 227 (5th Cir. 1970); Hyppolite v. INS, 382 F.2d 98 (7th Cir. 1967).

[113] *Human Rights in Haiti*, *supra* note 103, at 39.

[114] Interview with Richard Jameson, *supra* note 64.

[115] Interview with Ira Gollobin, immigration attorney specializing in Haitian asylum, in New York City (Oct. 30, 1974). Gollobin produced a number of affidavits wherein his clients described persecution suffered in Haiti at the hands of the *ton ton macoutes*.

[116] 8 C.F.R. § 108 (1977).

[117] 427 F.Supp. 1270 (S.D. Fla. 1977).

[118] Cubans are authorized entry into the U.S. under the Act of Nov. 2, 1966, Pub. L. No. 89–732, 80 Stat. 1161.

[119] INS ANN. REP. 4 (1974).

[120] INS ANN. REP. 7 (1975).

[121] Interview with James Greene, Deputy Commissioner of the INS, in Washington, D.C. (July 18, 1975). Commissioner Greene was asked if he had reason to believe that Cubans returned to Havana would actually be persecuted. Greene replied, "It's just agreed upon that if they have fled from a communist government they are refugees." *Id.*

[122] Figures provided by the State Department following a Freedom of Information Act request.

[123] *Id.*

[124] Interview with State Dep't East European Desk Officer (name withheld by request), in Washington, D.C. (June 11, 1975). Interview with Frank Kellogg, *supra* note 18.

[125] Interviews with government officials (names withheld by request), in Washington, D.C. (June 10, 11, 1975).

[126] N.Y. Times, Sept. 7, 1977, § A, at 6, col. 3.

[127] Interview with Frank Kellogg, *supra* note 18.

[128] *See* text accompanying notes 105–06 *supra*.

[129] *Human Rights in Haiti*, *supra* note 103, at 17.

[130] Interview with Frank Kellogg, *supra* note 18; interview with East European Desk Officer, *supra* note 124.

[131] Boston Globe, Sept. 8, 1975, at 2, col. 2.

[132] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 11, 1975).

[133] Interview with Richard Jameson, *supra* note 64.

[134] *Id.*

[135] Interview with Raul Manglapus, in New York City (Oct. 30, 1974).

[136] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 11, 1975).

[137] *Id.* We put the question bluntly to a State Department Desk Officer: "Why is it that communist country applicants have a much easier time gaining asylum or refugee status here, while those from right-wing dictatorships have a much tougher time?" "Pal," he answered, "that's a question with a hell of a lot of implications. I mean, it gets you into political, economic, and bureaucratic issues that I'm not prepared to talk about." *Id.* The official State Department explanation that applicants from right-wing countries simply have far weaker cases than those from communist countries is unpersuasive.

[138] 8 U.S.C. § 1153(a)(8)(A)(i) (1970). The Carter Administration is currently advocating increasing the refugee quota to 40,000 to avoid a constant recourse to parole. N.Y. Times, Mar. 31, 1978, at 1, col. 6.

[139] Interview with Christian Pappas, State Dep't Asylum Officer, in Washington, D.C. (Oct. 19, 1974).

[140] 8 U.S.C. § 1182(a)(28)(C) (1970).

[141] *Id.* § 1182(d)(5).

[142] *Id.*

[143] Interview with Charles Gordon, *supra* note 15.

[144] *See* INS v. Stanisic, 395 U.S. 62, 71 (1969) (citing Leng May Ma v. Barber, 357 U.S. 185 (1958)).

[145] Interview with Dale de Haan, *supra* note 35. He observed that, "The first time the parole was used for a significant number of refugees from noncommunist areas was for the Ugandan Asians." *Id.* Although the Carter Administration appears to be somewhat more liberal than its predecessors in granting parole to escapees from rightist regimes, the vast majority of Carter Administration parolees have been fleeing communism. By one estimate, the Carter Administration will parole in approximately 25,000 Indochinese refugees between April, 1978, and April, 1979, N.Y. Times, Mar. 31, 1978, at 1, col. 6.

[146] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 11, 1975).

[147] Interview with Christian Pappas, *supra* note 139; interview with Louise Wiesner, *supra* note 9; interview with Richard Jameson, *supra* note 64.

[148] Interview with Christian Pappas, Dep't Asylum Officer, in Washington, D.C. (June 11, 19, 1975).

[149] *Id.*

[150] *Id.*; interview with Dale de Haan, *supra* note 35.

[151] 8 U.S.C. § 1182(a)(28)(1970). *See* Berdo v. INS, 432 F.2d 824 (6th Cir. 1970). In *Berdo*, a Hungarian sought political sanctuary but was denied refugee status or parole by the INS on the grounds that he had been a Communist Party member and was therefore inadmissable under 8 U.S.C. § 1182(a)(29)(C)(iv) (1970). Berdo argued that he had been forced to join the Party to avoid economic deprivation, and, unbeknown to the Party, had participated in the 1956 anti-Soviet revolt. The court sided with Berdo and held that unwilling Party membership (membership "devoid of [all] political implications" and "meaningful association"), combined with anti-government activity such that he would be subject to severe penalties if he returned, excepted him from exclusion. This is an important judicial gloss on the Act, but it appears never to have been extended to Communist Party members from noncommunist countries.

[152] Interview with Edward O'Connor, Deputy Commissioner of the INS, in Washington, D.C. (June 26, 1975).

[153] *Done* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 268.

[154] Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6261, T.I.A.S. No. 6577, 189 U.N.T.S. 152.

[155] Seventh preference was confined exclusively to the eastern hemisphere until Oct. 20, 1976, when Congress passed an immigration amendment which applied seventh preference to the Middle East. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94–571, § 3(3), 90 Stat. 2703 (codified at 8 U.S.C.A. § 1152(e) (Supp. 1977)).

[156] Interview with State Dep't official (name withheld by request), in Washington, D.C. (Sept. 26, 1974).

[157] 8 U.S.C. § 1182(a)(28) (1970).

[158] *Id.* § 1253(h). Legal requirements for acquiring refugee status under seventh preference, *id.* § 1153(a)(7), are much less stringent than under § 1253(h). *See In re* Adamaska, 12 I. & N. Dec. 201 (Reg. Comm'r, 1967).

[159] Interview with Ira Gollobin, *supra* note 115.

[160] 8 U.S.C. § 1253(h) (1970).

[161] *See* Sunjka v. Esperdy, 182 F. Supp. 599, 601 (S.D.N.Y.), *cert. denied sub nom.* Roncevich v. Esperdy, 364 U.S. 815 (1960), for an explicit disavowal of interference with foreign policy decision-making.

[162] Paul v. INS, 521 F.2d 194, 197 (5th Cir. 1975) (quoting Jarecha v. INS, 417 F.2d 220, 224 (5th Cir. 1969) (quoting Kam Ng v. Pilloid, 279 F.2d 207, 210 (7th Cir. 1960), *cert. denied*, 365 U.S. 860 (1961))).

[163] Lena v. INS, 379 F. 2d 536, 538 (7th Cir. 1967).

[164] United States *ex rel.* Kordic v. Esperdy, 276 F. Supp. 1, 3 (S.D.N.Y.), *aff'd* 386 F. 2d 232 (2d Cir. 1967).

[165] Hosseinmardi v. INS, 391 F. 2d 914 (9th Cir. 1968); Zamora v. INS, 534 F. 2d 1055 (2d Cir. 1976). For Board decisions on the issue of political activity in the U.S., *see In re* Kojoory, 12 I. & N. Dec. 215 (BIA, 1967).

[166] 11 I. & N. Dec. 541 (BIA, 1966).

[167] *Id.* at 544.

[168] *In re* Janus and Janek, 12 I. & N. Dec. 866 (BIA, 1968). *See also* Berdo v. INS, 432 F. 2d 824 (6th Cir. 1970), in which a federal circuit court actually reversed a discretionary decision by the INS.

[169] Paul v. INS, 521 F. 2d 194 (5th Cir. 1975). In Zamora v. INS, 534 F. 2d 1005 (2d Cir. 1976), Judge Friendly allowed the Board to rely on State Department information but not on its direct recommendation to grant or deny asylum.

[170] 8 C.F.R. § 242.17(c) (1977). *See* Namkung v. Boyd, 226 F. 2d 385 (9th Cir. 1955). *Accord*, Hosseinmardi v. INS, 405 F. 2d 25 (9th Cir. 1968); Asghardi v. INS, 396 F. 2d 391 (9th Cir. 1968); Kasravi v. INS, 400 F. 2d 675 (9th Cir. 1968).

[171] Sunjka v. Esperdy, 182 F. Supp. 599, 601 (S.D.N.Y.), *cert. denied sub nom.* Roncevich v. Esperdy, 364 U.S. 815 (1960).

[172] Evans, *The Political Refugee in United States Immigration Law and Practice*, 3 INT'L LAW. 204, 253 (1969).

[173] *See* Gena v. INS, 424 F. 2d 227 (5th Cir. 1970); Paul v. INS, 521 F. 2d 194 (5th Cir. 1975); Cisternas-Estay v. INS, 531 F. 2d 155 (3d Cir. 1976); Zamora v. INS, 534 F. 2d 1055 (2d Cir. 1976); *In re* Pierre, Int. Dec. No. 2433 (BIA, Sept. 16, 1975).

[174] Interview with Christian Pappas, *supra* note 139; interview with Louis Wiesner, *supra* note 9; interview with Edward O'Connor, *supra* note 152; interview with James Greene, *supra* note 121.

[175] S. 2643, 93d Cong., 1st Sess., 119 CONG. REC. 35734 (1973); S. 3827, 93d Cong., 2d Sess., 120 CONG. REC. 25404 (1974); S. 2405, 94th Cong., 1st Sess., 121 CONG. REC. 29947 (1975); H.R. 981, 93d Cong., 1st Sess., 119 CONG. REC. 61 (1973).

[176] Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94–571, 90 Stat. 2703 (codified at 8 U.S.C.A. § 1101 (Supp. 1977)). See U.S. State Dep't Bull. 839 (Nov. 22, 1976) for President Ford's statement upon signing the bill.

[177] Interview with congressional staff member (name withheld by request) (Dec. 2, 1974).

[178] *Id.*

[179] Pub. L. No. 80–774, 62 Stat. 1009 (1948).

[180] *Admission of Refugees on Parole: Hearings Before Subcomm. No. 1 of the House Comm. on the Judiciary*. 86th Cong., 2d Sess. 17 (1959–1960) (emphasis added).

[181] This power is not spelled out in legislation. According to Christian Pappas of ORM, former Immigration Commissioner Leonard Chapman, and Dale de Haan of the Senate Refugee Subcommittee, Congress insists on being consulted on major asylum policy decisions, and the Administration does consult with members of Congress and take their views into account. Interview with Christian Pappas, *supra* note 139; interview with Leonard Chapman, *supra* note 32; interview with Dale de Haan, *supra* note 35.

[182] Interview with Louis Weisner, *supra* note 9.

[183] Interview with State Dep't official (name withheld by request), in Washington, D.C. (June 11, 1975).

[184] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 9, 1975).

[185] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 17, 1975).

[186] *Id.*

[187] Interview with State Dep't Asylum Officer (name withheld by request), in Washington, D.C. (Oct. 14, 1974).

[188] Interview with State Dep't Near East expert (name withheld by request), in Washington, D.C. (June 11, 1975).

[189] Interview with congressional staff member (name withheld by request), in Washington, D.C. (June 13, 1975).

[190] Interview with Christian Pappas, *supra* note 139.

[191] *Id.*

[192] Washington Post. Aug. 4, 1975 at A6, col. 1.

[193] *Id.*

[194] In Coriolan v. INS, 559 F.2d 993 (5th Cir. 1977), Judge Coleman vehemently dissented from the majority's decision to invalidate a deportation order and remand the case to allow consideration of evidence of political persecution in Haiti. He stated that petitioners "had the burden of demonstrating a 'clear probability' of being persecuted" and observed that the majority opinion did nothing to stem the tide of illegal immigration which was overwhelming the country. *Id.* at 1005.

[195] Interview with Christian Pappas, *supra* note 139.

[196] Interview with Edward O'Connor, *supra* note 152.

[197] Interview with Christian Pappas, *supra* note 139; interview with State Dept's Near East expert (name withheld by request), in Washington, D.C. (June 11, 1975).

[198] Interview with Christian Pappas, *supra* note 139.

[199] *Id.* The debate within the government over the scope of the parole authority continued in 1978 as increasing numbers of Indochinese "boat people" sought refuge in America. Secretary of State Vance, and State Department Asylum Division, backed by lobby groups such as the International Rescue Committee, insisted that the parole authority can be used to admit groups of refugees. They cited past cases of group parole for Hungarians, Cubans, and Indo-Chinese as precedents which support continuation of the practice. On the other hand, Attorney General Bell, INS officials, and House and Senate Immigration Committee Chairmen Eilberg and Eastland maintain that group parole is not mandated in the law. Justice Department officials argue that, because the Constitution gives Congress jurisdiction over immigration, and because Congress has not clearly delegated group parole authority to the Administration, group parole is unconstitutional. *See* N.Y. Times, Mar. 31, 1978, at 1, col 6.

[200] Interview with Edward O'Connor, *supra* note 152.

[201] *Id.*

[202] 8 U.S.C. § 1182(d)(5)(1970).

[203] Interview with Christian Pappas, *supra* note 139.

[204] *U.S. Assistance to Refugees Throughout the World: Findings and Recommendations of the Subcomm. to Investigate Problems Concerned with Refugees and Escapees of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. 57 (1969).

[205] *See* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 268 (in force Oct. 10, 1967).

[206] Letter from Edward Ennis, attorney, American Civil Liberties Union, to the author (Oct. 18, 1974).

[207] Interview with Richard Jameson, State Dep't Office of Refugee & Migration Affairs, in Washington, D.C. (Sept. 26, 1974).

[208] Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6261, T.I.A.S. No. 6577, 189 U.N.T.S. 152.

[209] *See* S. 2405, 94th Cong., 1st Sess., 121 CONG. REC. 29947 (1975); H.R. 981, 93d Cong., 1st Sess., 119 CONG. REC. 61 (1973).

[210] Interviews with government representatives from France (June 3, 1975); from West Germany (July 2, 1975); from Sweden (June 19, 1975), in Washington, D.C. (names of diplomats withheld by request).

[211] Interview with Frank Kellogg, *supra* note 18.

[212] Interview with Charles Gordan, *supra* note 15.

[213] *Id.*; interview with Dale de Haan, supra note 35; interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 9, 1975).

[214] Interview with State Dep't Desk Officer (name withheld by request), in Washington, D.C. (June 9, 1975); interview with State Dep't Near East expert (name withheld by request), in Washington, D.C. (June 11, 1975).

[215] Interviews with State Dep't Desk Officers (names withheld by request), in Washington, D.C. (June 9, 17, 1975).

SOLAR POWER SATELLITES

● Mr. ABOUREZK. Mr. President, the Senate Committee on Energy and Natural Resources recently held a hearing on a bill to promote research, development and demonstration of solar power satellites. At that hearing, I stated my strong opposition to this proposal. Even if solar power satellites prove to be technically feasible, environmentally acceptable, and economically competitive, they would still be undesirable, for they would concentrate our energy supply in the hands of a few large industries and Government regulatory bodies. The money spent on developing the satellites would detract from money that could be spent on smaller scale, more diversified terrestrial solar technologies which, with this investment, could easily provide more power at less cost than the satellites.

At the hearing, Garry DeLoss of the Environmental Policy Center made a very excellent presentation on this subject. Unfortunately, time prohibited him from reading his entire statement. Since it is such as excellent summary of the reasons why we should not proceed with solar power satellites, I want to make it available for my colleagues in the RECORD.

Mr. DeLoss will be debating the subject of solar power satellites with Dr. Gordon Woodcock of the Boeing Co. in room 424 of the Russell Senate Office Building at 10 a.m. on September 25. I hope as many people as possible can attend this debate.

I ask that the text of Mr. DeLoss' statement be printed in the RECORD.

The statement follows:

STATEMENT OF GARRY DELOSS

Mr. Chairperson: Thank you for the opportunity to comment on the "Solar Power Satellite Research, Development and Demonstration Program Act of 1978."

As you know, the solar power satellite (SPS) concept has been promoted for several years by some of the witnesses present today. Previously they have persuaded the Congress to fund a three year, $15.6 million study of the SPS concept by the Department of Energy (DOE) and the National Aeronautics and Space Administration (NASA). Although that study is only half completed, the SPS proponents are now asking for an escalation of the federal commitment to "technical verification" work that they predict will cost $270 million over the next five years, beginning with the $25 million in this bill.

The Environmental Policy Center opposes the SPS concept and this bill's commitment of funds to SPS technology development because we believe that (1) even if the SPS could be shown to be technically feasible, it will never be economically and politically feasible, and, (2) the money which this bill would allocate to SPS technology development instead should be allocated to land-based, decentralized solar energy technologies.

FEASIBILITY QUESTIONS

In appraising the prospects for any new energy source, the first question is whether it is technically feasible, or whether proponents of the proposed technology have failed to discern some insurmountable technical barrier. Even if technical feasibility can be demonstrated, a new energy source must pass a second test, economic feasibility. That is, it must supply energy to consumers at a price which is similar to or lower than the price of alternative sources of energy. In the past, positive answers to the questions of technical and economic feasibility might have been sufficient to assure the development of a new energy source. But today our society is more crowded, competition for the use of finite resources such as minerals, air, water, and land has increased, and the social and environmental impacts of a new technology are major factors in determining whether it will be developed on a large scale. Hence, in a democratic society, a proposed energy producing technology such as the SPS must be acceptable to the public, or politically feasible, as well as technically and economically feasible.

TECHNICAL FEASIBILITY

The SPS concept envisions perhaps 100 or more giant satellites, each with 50 square miles of surface area covered by photovoltaic cells, stationed 22,000 miles from earth in a "geosynchronous" orbit that makes them appear to be stationary over a given spot on the earth's surface. The photovoltaic cells would collect solar energy 24 hours a day and convert it to electrical energy. The electrical energy would then be converted to a beam of microwave energy aimed at a receiving antenna several square miles in area on the earth's surface, where the microwave energy would be converted back to electrical energy and transmitted over high voltage power lines to the population centers where it is used.

For economic reasons, it is impractical to prefabricate an SPS on earth and then launch it into orbit. Instead, densely packed raw materials must be launched into orbit and the SPS constructed in orbit by hundreds of workers. Because existing launch vehicles such as the Saturn rocket and the Space Shuttle are not big enough to propel the raw materials for an SPS into orbit economically, a new "heavy-lift launch vehicle" (HLLV) must be developed. According to SPS proponents, the HLLV would be a single stage, completely reusable vehicle capable of carrying into orbit several times the payload of the Space Shuttle. It would be three to five times more powerful than the Saturn rocket and therefore require construction of a new launching site. Construction of a single SPS would require 50 to 500 flights of the HLLV at the rate of one to five launches per day. If the dozens of SPS's needed to achieve claimed economies of scale are to be built, the launches would continue at this rate for decades. Indeed, eventual replacement of worn out SPS's (a 30 year life is predicted) would require such launches into the indefinite future. The HLLV would transport people, manufacturing equipment, and raw materials into low earth orbit, where highly automated factories operated by several hundred workers would convert raw materials such as sheet metal rolls into an SPS. According to a report by the Jet Propulsion Laboratory (JPL), "Man must develop the capability to be as productive in space as on an automated automobile assembly line in terms of kg of finished products per man-hour worked in order for the SPS costs to be competitive". After an SPS is constructed in low earth orbit, the SPS and maintenance personnel must be transported to geosynchronous orbit with chemical or ion propulsion systems.

SPS proponents are quick to claim that no scientific breakthroughs are required to accomplish the technical wonders described above. Indeed, given unlimited mineral resources, money, and public acceptance, the proposed construction of dozens of solar power satellites might be technically feasible. But the fact is that no energy technology will be given such unlimited commitment of resources merely because it is technically feasible. The SPS must be economically and politically feasible, as well as technically feasible, or it will never be built.

ECONOMIC FEASIBILITY

Several studies have purported to calculate the cost of producing dozens of solar power satellites over a period of many years beginning near the end of this century and then compare that cost with projected costs for other possible sources of electricity. All of these studies of the economic feasibility of the SPS are flawed in major respects.

Suspect subjectivity of Studies of SPS Costs

First, the supposedly objective cost estimates for the SPS are being made by corporations, NASA space flight centers, consulting firms, and academicians who have a vested interest in encouraging a massive government commitment to the SPS. This leads to cost estimates that are mere self-fulfilling prophecies, or what one critic, Dr. John Cummings of the Electric Power Research Institute (EPRI), calls "legislating all the answers."[1] Richard Caputo, who directed a two-year Jet Propulsion Laboratory (JPL) study of the SPS, recognized the same pattern of behavior and characterizes the cost estimates he examined as based on "assumptions of success" rather than a real data base.[2] The SPS proponents appear to begin by calculating the cost goal which the total SPS system must meet to compete with other energy sources and then allocate the cost goal among the various subsystems of the SPS. Hence, they tend to reach similar conclusions about the total cost of the SPS based on widely varying estimates about the costs of the subsystems.

One example of the wishful economic thinking of SPS proponents is that they assume that any advances made in the technology of photovoltaic cells for land-based conversion of solar energy to electricity will be transferable to photovoltaic cells used in the SPS. The fact is that the cells used in the SPS must be thinner and lighter weight than cells used on earth, due to the need to hold down the cost of launching billions of the cells into orbit. Also, the cells for the SPS must be resistant to damage by micrometeorites, charged particles, and ultraviolet rays. Efficiency and cost reduction improvements in cells developed for land-based uses, therefore, will not necessarily be transferable to the specialized cells needed for the SPS.

Footnotes at end of article.

Diseconomies of scale

A second flaw in the studies of the economic feasibility of the SPS is the failure to acknowledge the disadvantages inherent to a technology that is so large in scale and expensive to develop to a state of commercial readiness that projected electricity costs do not fall to acceptable levels under *hundreds of billions* of dollars are invested in the construction of dozens of the satellites. What we have here are several diseconomies of scale masquerading as economies of scale.

One diseconomy of scale is that the SPS will require enormous back-up power to fill the gap in the event that the power supply from one of the satellites is interrupted without notice. According to EPRI's Dr. John Cummings, a utility receiving electricity from an SPS would require a reserve of standby power capacity equal to or greater than the SPS power of five gigawatts (GW). Even the pooling of reserve power among several utilities may be inadequate. The largest power pool in the country today is 50 GW and the loss of one GW in that powerpool, much less five GW, "would cause havoc."[3] Paradoxically, the cost of backup power for the SPS could be reduced by lowering the size of each SPS, but the cost of an SPS goes up as its size is reduced. This problem and others have led Cummings to view the prospects for the SPS very skeptically. In his words, it "is a long, long, long—a very long—way off."[4]

A second diseconomy of scale is the large minimum commitment of 60 billion dollars of government funds required to develop the SPS to a commercial scale so that the question of economic feasibility can be answered definitively.[5] This proposed taxpayer investment in the development of a new energy technology is much greater than the investment required to develop competing energy technologies to a commercial scale. The cost of developing competing energy technologies to a commercial scale. The cost of developing photovoltaic cells for land-based uses to a 10 MW scale commercial demonstration powerplant by 1985, for example, will be from 0.2 to 0.4 billion dollars.[6] In other words, the SPS would require from 150 to 300 times more RD & D dollars just to test its economic feasibility. Even the breeder reactor's proposed development cost of about ten billion dollars is dwarfed by the SPS proposal.

The diseconomy of scale inherent to such a large development cost is that it can be financed only by preempting funds that could have been used to develop other energy technologies. In effect, the extremely large development cost requires a commitment in favor of the SPS technology versus competing energy technologies even before the economic feasibility of the SPS is demonstrated. The economic risk of committing funds to SPS development is intensified by delaying the development of alternatives which would have to fill the gap if the SPS proved to be uneconomical.

A third diseconomy of scale of the SPS is that projected costs depend on maintaining a specified rate of construction of new satellites. In other words, if future electricity demand growth leveled off unexpectedly for a few years, as it did from 1974 to 1976, and consequently the rate of SPS construction was slowed, costs per unit would rise sharply.

A related diseconomy of scale of large powerplants such as the SPS is that it is difficult to match the addition of new powerplant capacity to growth in consumer demand. Unexpected variations in demand growth, such as those of recent years, lead to excess capacity, or idle investment. Either ratepayers or utility company shareholders must bear the burden of supporting the excess capacity. If a utility company already finds it difficult to match new powerplant construction with demand growth in today's circumstances, the problem can only be intensified by investing in the construction of an SPS, which would equal the power generating capacity of several nuclear powerplants. Even a group of utility companies jointly buying an SPS would still risk a mismatch in timing between consumer demand and delivery of power from the SPS, which would be ordered years in advance of predicted need.

A fifth diseconomy of scale of the SPS is that due to the high cost and high risk of relying on the SPS the federal government is likely to be the only entity with the resources and hence ability to absorb risk needed to finance the SPS. Utility companies would be relegated to the role of distributors of SPS power rather than producers. Perhaps the prospect of government ownership of the SPS explains the health skepticism toward the SPS diplayed by the Electric Power Research Institute, which is funded by investor-owned utilities.

A sixth diseconomy of scale of a large, centralized power supply system such as the SPS is its vulnerability to intentional disruption. A hostile government with access to modern technology could destroy a system of SPS's in orbit, certainly with missile warheads and perhaps with earth-based weapons such as a laser beams. Saboteurs could attack the receiving antennae, which would have almost indefensible perimeters of many miles, or the high voltage transmission lines. Widely dispersed, small scale power systems are more easily defended and easier to repair when damaged.

Omission of Lowest Cost Alternatives

The most obvious flaw in the existing studies is their failure to adequately consider the lowest cost alternatives to the SPS, which are, first, efficiency improvements that will reduce our need for new energy supplies, including new electric generating capacity, and second, land-based, decentralized solar energy technologies.

Energy Conservation Alternative

Typically, the studies of SPS economics deal with the role of improvements in our efficiency of energy use by discussing low growth and high growth energy demand projections. The problem is that even their low growth demand projections are too high because they don't reflect the realistic possibility that we will use energy much more efficiently two or three decades from now, especially if resources are committed to energy conservation on the scale proposed for SPS development. No report on SPS economics that the Environmental Policy Center has reviewed includes speculations on how much energy could be saved if the hundreds of billons of dollars proposed for SPS development and deployment were instead spent on improving our energy efficiency. Yet energy that is saved by an efficiency improvement is just as important to society as a unit of energy that is produced from a new energy source. The opportunity for energy conservation investments that effectively "produce" energy is great because we have developed very inefficient ways of using energy. That inefficiency means that we have within our borders a tremendous "reserve" of "conservation energy" waiting to be "produced" through investments in energy conservation. A recent report to the Joint Economic Committee suggests that cost-effective investments could reduce our energy use by 40 percent. We should be "mining" and "drilling" this reserve of conservation energy through investments that improve the efficiency of our homes, office buildings, factories, and transportation systems, just as diligently as we seek new discoveries of oil and gas, or new technological marvels such as the SPS.

One expert on energy conservation improvements in existing buildings testified before this committee two years ago that "cost-effective conservation techniques which are commonly available today" could cut energy use in buildings "equal to the yearly output of about six hundred 1000 megawatt generating plants. In other words, if one 1000 megawatt plant came on line every two weeks starting today, it would take until the year 2000 for the capacity of these new plants to equal the savings which can be achieved in existing buildings using readily available, economically viable conservation techniques."[7]

In short, the cheapest powerplant is the one that is never built. Alternative investments in efficiency improvements would permit existing powerplants to serve more electricity users. By failing to consider such an alternative investment scenario, the SPS cost estimates have purposefully avoided the lowest cost competitor to the SPS. SPS proponents know that even if, for the sake of argument, the very optimistic cost projections for the SPS are accepted without waiting for years of "technology verification," alternative investments in energy conservation still can be shown to effectively produce energy at a lower cost. No new research and development, or "technology verification," is needed to verify the economic feasibility of energy conservation investments and their enormous potential as a source of new energy. The economics of energy conservation are not speculative; they are well understood.

Decentralized Solar Energy Systems Alternative

Another omission from cost comparisons with the SPS has been land-based, decentralized solar energy systems. The SPS proponents prefer to set up the straw man of a centralized solar energy powerplant alternative and then knock it down by claiming high costs for electricity storage, land acquisition, and transmission lines up to 2,000 miles long from solar powerplants concentrated in the Southwestern states. Even the most objective of the SPS studies, the report by JPL, compared the SPS with what the report's director has described as the "worst solar terrestrial options", centralized solar energy powerplants at sites remote from their markets. The JPL study also distorted its results by omitting from its calculations of SPS costs the 60 billion dollars of government investment needed to develop the SPS to a commercial scale. In spite of this rigging of the rules of the game, the JPL study concluded that the SPS would cost more than a land-based, centralized solar energy powerplant using a solar thermal process and fossil fuel backup system and about the same as a centralized photovoltaic solar energy system with a fossil fuel backup system.[8]

If the SPS costs were compared with decentralized solar electric systems using photovoltaic cells, the SPS would look even worse. Decentralized solar energy systems would be lower cost than the centralized solar energy systems used in the JPL study because transmission costs can be eliminated, land acquisition costs can be reduced by using air spaces over rooftops and parking lots, and waste heat can be put to work near the generating site.

Objections by SPS proponents that electricity storage costs are an insurmountable barrier to lowering the cost of land-based solar energy, whether centralized or decentralized systems, have to be taken with a grain of salt. The people who suggest that major reductions in the cost of electricity storage are not likely are the same people who are extremely optimistic that costs for various subsystems of the SPS will fall drastically. Moreover, the presently low level of government spending on research and development of electricity storage may be increased soon. I participated in a two day review of the DOE

Footnotes at end of article.

solar energy budget last week, and one of the recommendations of the budget reviewers was that the R & D budget for electricity storage systems for use with decentralized solar energy systems be increased greatly in fiscal year 1980 and succeeding years.

POLITICAL FEASIBILITY

One diseconomy of scale of the SPS that even its proponents acknowledge is that it requires such a large commitment of resources and entails so many environmental and social impacts that public acceptance, or political feasibility, will be a critical factor in determining whether the SPS is built. They have already begun their public relations campaign to soothe concerns about the possibilities of microwave effects on health, microwave interference with radio frequencies, disruption of the upper atmosphere by launch vehicle exhausts and microwave beams, and other impacts. Indeed, critics of the bill being considered here today are told that the money in this bill is needed to develop technology to test possible environmental impacts.

PUBLIC PREFERENCE FOR DECENTRALIZED SOLAR ENERGY SYSTEMS

The Environmental Policy Center believes that a 270 million dollar, five-year technology development program is not needed to verify two of the biggest barriers to the political feasibility of the SPS. First, the public won't buy it. Public enthusiasm for solar energy is based on an interest in decentralized, or dispersed, solar energy systems, not highly centralized systems such as the SPS, which must be owned by giant utility companies or the federal government. Solar energy enthusiasts are looking forward to development of solar energy systems scaled for use by individuals, neighborhoods, and communities. The majority of the thousands of public witnesses who appeared at DOE's series of 11 public hearings on federal solar energy policy this summer expressed a preference for development of decentralized solar energy systems and many of them specifically objected to the SPS concept. Delegates representing 50 states and the District of Columbia at the National Solar Congress here in Washington on August 4 to 6 expressed similar views in the policy program which they ratified. Thus public support for government promotion of solar energy is, in part, a vote for increased consumer control of the supply of energy and should not be construed by members of this committee to include support for the SPS. Indeed, resistance to the SPS will grow as consumers become aware that the large scale commitment required to make the SPS work would effectively foreclose consumer and public utility commission influence over electricity rates and construction decisions.

SITING PROBLEMS

Another political barrier to the SPS that can be discerned without waiting for the technology development proposed in this bill is the problem of siting the new launch facilities and dozens of receiving antennae required for the SPS. The new launch facility would preempt a large area due to the need to launch and land several very noisy HLLV's per day over a period of many years, perhaps into the indefinite future. An HLLV being launched would be much louder than the less powerful Saturn rocket and an HLLV landing would be much louder than the SST. One report has suggested that the "sonic overpressures produced by space-freighter re-entry indicate that the final 200 km of the path should be over open ocean." [10] Now, this means that the HLLV launch site must be in the coastal zone, presumably where the climate is warm year round. Areas that meet these requirements are attractive for many other uses, both onshore and offshore, and population density in such areas is high and getting higher. I find it difficult to believe that even Cape Canaveral could be used as the HLLV launch site. Orlando, Florida and the Disneyworld amusement park are just a few miles away and the nearby population is growing rapidly.

Siting of the receiving antennae also appears to confront a very high political barrier. The siting of new electric powerplants, whether nuclear or fossil fuel plants, has been a controversial issue for years. Proposed federal legislation to accelerate siting decisions is not progressing rapidly. Even if it is passed, siting controversies can only grow due to the shrinking number of potential powerplant sites and the competing uses of those sites. Siting of high voltage powerlines is emerging as a major new area of political controversy. Politically conservative rural residents of upstate New York and northern Minnesota have resorted to unfamiliar acts of civil disobedience to resist the siting of unwanted powerlines. One of my colleagues is helping form a national coalition of groups which want broader citizen representation in power line siting decisions.

Another example of siting problems is the legislation enacted by several states to prohibit the siting of nuclear waste disposal projects within their borders. Also the Navy has failed repeatedly to sell the public on proposed sites for Project Sanguine, which entails burying a grid of highly charged electric cables for low frequency communication with submerged submarines.

SPS proponents are aware of the siting problem. A NASA study could find only 69 potential land sites and some people have suggested that ocean sites could be used, although I am not aware of any calculations of the cost of such structures. Moreover, offshore sites do not avoid the problem of conflicting uses. Perhaps Boeing or the Arthur D. Little Company should study the current controversy over a proposal to site nuclear powerplants off the coast of New Jersey. Offshore siting is not the solution. Probably, there is no solution to the siting problem. Indeed, it is likely to get worse. If the U.S. standard for microwave exposure is tightened to the East European standard, the area preempted by receiving antennae will triple from 300 km^2 to 900 km^2.[11]

I would like to close on a more positive note by identifying some areas where I agree with the proponents of this legislation. First, I agree that there should be a transition to the use of solar energy in place of the environmentally disruptive and nonrenewable fossil fuels and uranium. Second, I agree that the government should commit billions of dollars to developing solar energy technologies to a commercial stage, including a bigger effort to lower the cost of photovoltaic cells. Finally, I agree that the government should fund studies of the health effects of microwave radiation. However, in spite of these areas of agreement, I don't believe that further government funding of research on the SPS concept can be justified. If the already funded government study of the SPS is adjusted to make its cost comparisons more realistic and to adequately account for political barriers to the SPS, I am confident that it will recommend no further work in the SPS.

Thank you.

FOOTNOTES

1. Telephone conversation, July 28, 1978.
2. Telephone conversation, August 11, 1978.
3. Telephone conversation, July 28, 1978.
4. David Johnston, "Solar Space Power," *Sundancer* magazine, July, 1978, p. 32.
5. An Initial Comparative Assessment of Orbital and Terrestrial Central Power Systems (Final Report), Prepared by the Jet Propulsion Laboratory for the NASA Office of Energy Programs, March, 1977, p. 4–35 (Hereinafter cited as JPL Study).
6. JPL Study, p. 6–6.
7. Statement of Carl Stein, in Hearings on the Energy Conservation Act of 1976, before the Senate Committee on Interior and Insular Affairs, April 26, 1976, pp. 109–10.
8. Telephone conversation, August 11, 1978.
9. JPL Study, pp. 1–1 to 1–6.
10. Gordon R. Woodcock, "Solar Satellites Space Key to Our Power Future," *Astronautics & Aeronautics*, July/August, 1977, p. 30.
11. Study, pp. 6–18 to 6–19.●

EMIL LORIKS—FAMILY FARM TRAILBLAZER

● Mr. McGOVERN. Mr. President, the president emeritus of agricultural thought and action in South Dakota is Emil Loriks of Kingsbury County. During the 20th century, perhaps no voice in the agriculture community has been more sustained than that of Emil Loriks.

After a distinguished military career as one of the Nation's first fighter pilots in World War I, Emil Loriks returned to the land and became first an outstanding farmer and next an unusually effective spokesman for advanced thinking on matters of agricultural policy in both South Dakota and the Nation. Emil Loriks is truly a man of the soil as well as a man of deep intellectual thought and conviction. The depression years were the years of Mr. Loriks' greatest effectiveness. Indeed, he was one of the true architects of the farm reforms in the Roosevelt administration. Later, he distinguished himself as a prime mover in the establishment of the Grain Terminal Association, the first and still the largest cooperative marketing system controlled by farmers.

The South Dakota Farmers Union for September 1978 carried a tribute to Emil Loriks, written by Bette Burg of the Huron (S. Dak.) Daily Plainsman. It is a fine tribute to a distinguished American and I ask that it be printed in the RECORD.

The article follows:

FAMILY FARM TRAILBLAZER

(By Bette Burg)

OLDHAM.—You don't have to reach far into the history books to find amazing tales of the pioneers when you have Emil Loriks of Oldham to talk to.

Loriks in his own right has blazed trails in the agricultural sector of South Dakota by working towards a better farm economy during the country's Dust Bowl years—the 1930s Depression.

His fervor for leading others into action may have come from a "do or die" attitude he developed as a World War I pilot, a rare breed of fighting men who were the first to take to the air in time of war.

His most sought after documents, records and other memorabilia from his years as a WWI pilot and leader in the South Dakota Legislature and farm organizations have found a permanent home in the Heritage House Museum at Oldham. A native of Oldham, Loriks wants to keep his legacy where he has worked his entire life as a farmer.

"My family came 98 years ago to homestead near Oldham and this is where I want to be remembered," Lorik said.

A public-spirited fellow, Lorik generously donated a large three-story home, one of the landmarks of the town, to the Oldham Library and Historical Association for the establishment of a museum.

"I really hadn't planned on buying the Pete Peterson house but it was up for auction when Mrs. Peterson went to the nursing home to live, and I decided it was too nice a house to be torn down," he said.

When the historical association ap-

proached him on its idea of establishing a museum, Loriks agreed on one condition that part of the place would be reserved for his collection.

Work on the museum has been progressing well this summer on the painting and other refurbishing, and they hope to have it ready for visitors at the end of summer.

"I have three rooms upstairs which will hold any files from the Farmers Union, the GTA (Grain Terminal Association) and my years as a Farmers Union senator," he said. His wife, Ruth, will also have a special room in the museum for some of her family heirlooms including an old spinning wheel and copper kettles that are over 100 years old.

Some of Loriks' possessions dating from his service in the Silver Wings of WWI have been donated to the Museum of Ellsworth Air Force base near Rapid City, including his goggles and helmet that are permanently preserved in a glass case there.

"They really treat us old guys like royalty when they have their special events at the base," Loriks said. Loriks is one of two WWI pilots who are living in South Dakota with his counterpart being Glen Levette of Clark.

Loriks said with a smile that he is the only one who can still get into his WWI uniform that he has kept impeccably clean in the past 61 years. The uniform is one of the few complete outfits from that era that has been saved from the hands of age and moths that raise havoc with older material.

The uniform complete with the original wings and gold bars and the leather puttees (leggings) has been worn at several occasions at the air base when high ranking officials are being hosted.

Loriks is one of the charter members of the Order of Daedalian that was organized in 1934. His recounting the pioneer days of the U.S. Air Force brings a very special gleam to his eyes of the pride he feels of being part of those times.

A graduate of the University of Nebraska in agriculture in 1917, Loriks enlisted in the army as a "buck private" and worked feverishly to earn his wings in the new "Air Service."

"We had about 50 men from the state in the Silver Wings and many of us served as pilots for the passenger and mail planes in the states," Loriks said.

Training was a hastened affair considering the brevity of the war, using JN–4 two seater biplanes, Loriks said. All pilots received training in the JN–4 plus the one-seater combat planes that were used in the infamous "dog fights" with the Germans. A replica of the JN–4 is part of his collection at the museum.

"They were crude planes compared to the ones now but somehow you didn't think about the danger," Loriks said. Parachutes were not standard gear at that time making it that more important to guide the small aircraft with steady hands.

When the war ended, Loriks, now a lieutenant, was given the choice of staying in the Air Service or returning to private life, the second choice he pursued. After a few years teaching in Nebraska, he came back to his family farm near Oldham, the place which continues to be his home after 83 years.

When the country plummeted into the Depression, even small towns like Oldham were not saved from the bank closings and its aftermath.

These were truly "hard times," which was also chosen by author Studs Terkel as the name for his book on the Depression. By some unknown happenstance, Terkel decided to interview Loriks and his wife to get the farmer's view of those years.

"We never did know why he chose us to tell how it was for the farmer in the Dust Bowl but we were very honored to be in his book," Loriks said.

After the book was published, Terkel sent the Loriks an autographed copy including this note, "To Emil and Ruth Loriks—the true hero and heroine of the book."

A second autographed copy of "Hard Times" was given to the Oldham Library when one of the library members met Terkel at a book sale in Minneapolis.

The Depression was not only hard times but desperate years for the farmers who lost their lands. Loriks was not the type to let outside forces ruin his way of life and set out to change the tide.

In 1926 Loriks entered the South Dakota Senate as the lone Democratic legislator in Kingsbury County. During his term of office, he instigated various emergency farm legislation and was executive secretary of the Farmers Holiday Association, an emergency group of farm and business leaders who organized massive protests at the railroads and stockyards.

The Farmers Holiday Association included the presidents of the Farm Bureau, Farmers Union, and Grange, W. C. Lusk of Huron, president of the Chamber of Commerce, and D. D. Brisbine of Woonsocket, president of the state bankers association, Loriks said. "We had to make the people aware that these farm foreclosures couldn't keep going on. As it was 30,000 farms were lost in the 1930s in the state."

Although many of their projects such as the closing of stockyards at Sioux City and Sioux Falls were not considered legal, it was the only expedient method to dramatize the farmers' plight so that the nation would be aware of the seriousness of the situation, Loriks said.

The end result of the farmers strike was the beginning of federal legislation to assist them. Working as the Farmers Union president, Loriks spent two winters on Capitol Hill lobbying for the state's farmers.

One of the greatest moments of his life was meeting President Franklin Roosevelt when he visited South Dakota. At a whistle stop in Pierre, Loriks remembers FDR speak of the state's greatest resource being the Missouri River and of its potential for providing hydroelectric power.

FDR's program and the onslaught of World War II seemed to pull the nation out of the Depression and into a more prosperous time. One program which was the forerunner of the Farmers Home Adminsitration was the Farm Security Administration of which Loriks was state director.

Although the time clock had brought Loriks to the years for retirement and setting a more relaxed pace, he did not heed its call. In 1937 Loriks and other farm leaders organized the largest grain marketing system in the United States—namely the Farmers Union Grain Terminal Association.

"Farmers didn't have a marketing system that they could control how it was operated and so GTA was developed out of that need," Loriks said.

Loriks served as president of the board for 28 years, retiring in 1967. GTA continues to be one of the leading marketing systems in the country.

Since retiring, Loriks has remained on the family homestead and rents out most of the land. With his wealth of knowledge from topics ranging from aeronautics to agriculture, he is sought after from various organizations and colleges to discuss his experiences.

At one time had had thought of writing a book about his life and especially of the Dust Bowl years and still hasn't given up the idea.

Many accolades have been destowed on the Oldham farmer including a doctorate degree at Dakota State College in Madison, an REA award from the East River District, and a community service award from Oldham.

His most ambitious project recently has been helping the community with starting the museum. He decided to keep his memoirs in the area where he grew up, although colleges such as the University of South Dakota had courted for that honor.

His life's story won't be forgotten, particularly by the people he loves the most, namely the Oldham community.●

ADDRESS BY SENATOR CRANSTON BEFORE AMERICAN LEGION CHILDREN AND YOUTH COMMITTEE

● Mr. RIEGLE. Mr. President, I would like to call to my colleagues' attention a recent address by the chairman of the Child and Human Development Subcommittee, Senator CRANSTON, to the American Legion Children and Youth Committee. Senator CRANSTON discussed legislative development in the areas of the sudden infant death syndrome, adoption reform, child abuse, and the quality of child care in this country. As always, I am extremely impressed by the depth of the Senator's knowledge and concern, and I hope my colleages will share this view.

As a member of the Child and Human Development Subcommittee, I have been pleased to join with the Senator from California in supporting legislation in these areas. The Nation's families owe the Senator a great debt of gratitude for his continuing legislative efforts, and I am pleased that the American Legion Children and Youth Committee has recognized Senator CRANSTON's impressive work in the Senate.

I ask that the text of Senator CRANSTON's speech be printed in the RECORD.

The speech follows:

SPEECH BY SENATOR ALAN CRANSTON

I am delighted to be here today, and particularly, to be addressing this American Legion Committee which shares my own deep interest in children and youth. As you may or may not know, last year I was privileged to become Chairman of the Subcommittee on Child and Human Development of the Senate Human Resources Committee. This Subcommittee serves as the focal point in the Senate for children's issues. I am honored to be its Chairman because of its importance to our Nation's children, and because of my own long-standing interest in the welfare of children.

On the Subcommittee we have been involved in a variety of children's issues, ranging from child-care programs to the tragic problem of sudden infant death syndrome. Sometimes called "crib death", this tragedy kills between 5,000 and 7,000 infants each year. In June, the Senate passed legislation—which we developed—to continue our research efforts into the cause and prevention of these deaths.

This morning, however, I would like to devote some time to the "Child Abuse Prevention and Treatment and Adoption Reform Act of 1978"—which was signed into law by President Carter on April 24 as Public Law 95–266.

The adoption reform provisions of this law represent, for me, the culmination of seven years of effort to bring about Congressional action in the area of adoption. I introduced legislation in the 93rd, 94th, and 95th Congresses dealing with efforts to break down the barriers that inhibit the adoption of over 100,000 children with special needs who are in need of permanent homes.

My interest in adoption reform was sparked by my desire to promote constructive alternatives to abortion and by the 1971 "Obstacles to Interstate Adoption" report which came out of a research project funded by

H.E.W.'s Children's Bureau. The report examined the varying and often conflicting ways in which the States try to achieve both socially desirable and legally incontestable adoptions.

Let me give you some examples of obstacles to interstate adoption:

There are situations where the adoption of a child in one State is not recognized as valid if the family moves to another State.

You perhaps remember the tragic case some years back involving a New York couple who, for job purposes, moved to another State with their adopted child. The natural mother contested the adoption and, because of conflicting procedural laws, the adoption was declared void in the second State. The adoptive family fled back to New York so they wouldn't lose the child they had come to love as their own. The anguish for all parties involved must have been enormous.

Other obstacles include "Importation and Exportation of Children" laws in some States which, while enacted a century ago to provide safeguards for children by blocking their movement across State lines, now constitute a serious hindrance to inter-State adoptive placements.

An obstacle also exists when transportation funds are not available for a child to cross State lines to visit prospective adoptive parents. In addition, the many different provisions for subsidizing unusual adoption costs present serious problems for interstate adoption. For example, if a family in a State that has adoption assistance arrangements adopts a hard-to-place child from another State, the family will often be ineligible for assistance unless the other State also has some form of adoption assistance.

The 1971 report, which isolated these barriers to interstate adoption, also suggested possible solutions. However, it pointed out the need for leadership in implementing a plan of action.

My adoption reform bill was a response to that call for action.

It was my conviction then, and it is my conviction now, that removing the obstacles to interstate placements will open the adoption door to thousands of "special needs" children waiting in foster homes or institutions who have no hope of ever returning to their natural homes.

The enactment of my bill in April represented the first step toward comprehensive adoption reform measures which are essential in order to bring about adoptive placements of children now locked into the uncertainties of the foster care system. The new law calls for the following:

1. Drafting of model adoption legislation and procedures to facilitate the adoptive placement of children with special needs across State lines.

2. Coordination of all HEW activities affecting adoption and foster care.

3. A national adoption and foster care data gathering and analysis system.

4. An education and training program on adoption, and information and training materials regarding adoption and adoption assistance programs.

5. A national computerized adoption information exchange system to help find adoptive homes for children with special needs

6. A study of the scope and effect of black market adoption which must be submitted to the Congress.

Finally, the new law authorizes appropriations totalling $5 million for fiscal year 1978 and additional funds for fiscal years 1979 through 1981.

But this law does not include some very critical provisions from my original Opportunities for Adoption Act—provisions which would permit federal financial and other health care assistance for special needs children to be carried over from foster care into adoption.

I believe that continuation of this assistance is critical in order to remove some of the barriers to adoption. For example, many insurance carriers will not provide coverage for a handicapped adopted child. The costs of adopting that child without medical coverage are prohibitive.

But if the child's existing medicaid eligibility could continue after adoption, the adoptive parents would not be faced with such a tremendous financial burden and the child would have a far better chance at gaining a loving, permanent home. Ironically, we could do this and still provide savings for the taxpayer, since the related foster care and administrative expenses would be eliminated.

Enactment of these provisions—provisions added to a House-passed bill, H.R. 7200, by the Finance Committee at my request and now pending in the Senate—is vital to comprehensive adoption reform. I don't intend to let up my efforts to see them through Congress before we adjourn later this year.

The second portion of this new 1978 law deals with the devastating problem of child abuse and neglect. It extends for four years the Child Abuse Prevention and Treatment Act originally enacted in 1974. The '74 law provides a national focal point for efforts dealing with child abuse and neglect, and serves as a funding source for basic research into the problems of child abuse. In addition, it provides for demonstration projects to find new ways to prevent and treat this problem.

The current estimate is that one million American children annually are the victims of child abuse and neglect. As many as 100,000 children are severely battered each year and another 2,000 die in circumstances suggesting child abuse.

Child abuse has been characterized as a medical-social disease of epidemic proportions. It exists at all levels and among all segments of our society. Yet, before the Child Abuse Prevention and Treatment Act was enacted in 1974, there was no coordinated federal effort to deal with this problem.

Today, through the National Center on Child Abuse and Neglect, established by the 1974 Act, we are beginning to coordinate and disseminate information on child abuse and neglect and develop programs, both through State agencies and private nonprofit entities, that can provide services and treatment to families affected by child abuse and neglect.

Under the new law, the National Center will continue its important activity as a clearinghouse for current information and activities in the area of child abuse and neglect. It will also provide technical assistance and training programs to public and private agencies and organizations to help them plan, improve and carry out activities relating to the prevention, treatment and identification of child abuse and neglect.

In addition, this law authorizes a new program to deal with the shocking problem of sexual abuse of children. Statistics indicate that between 50,000 and 70,000 children are subjected to sexual abuse each year. The recent epidemic of child pornography in this country represents only a small part of the problem. We know little about how to help victims of sexual abuse or how to prevent it. We now have a federal strategy to seek answers to these problems.

While we have made progress in the past four years, there is still much to be done. The extension of this Act will provide us with the time and the resources to continue our efforts.

In a closely related area, I am pleased to tell you that on August 1st the Senate unanimously passed the "Domestic Violence Prevention and Services Act". I authored this bill which deals with the problem of domestic violence between adults. As many of you know, the battered spouse phenomenon is often closely related to the battered child syndrome. Children are frequently the victims of violence between adults in their own homes. This legislation will provide grants to States to support necessary counselling and other services, such as support of emergency shelters, and is now pending in the House. I am hopeful that it will be enacted before the end of the Congress.

In closing, I would like to touch briefly on some other areas relating to children that I intend to work on in the next several years.

First, the Subcommittee began a series of hearings last year on the need for child-care programs. Based upon information and testimony presented during those hearings, the Subcommittee has been developing new child-care legislation designed to provide assistance to the many low-income working parents who are struggling to support their families and stay in the workforce. Too many of these working parents simply can't find or afford child-care programs. As the number of single parent families and working mothers continues to increase each year, we must address the need for increased support for child-care programs. Right now over 50 percent of the mothers of children under the age of 18 are working. The child-care legislation I will introduce next year will be prudent and incremental in its approach, designed to promote maximum choices and options for parent and child and to keep families together.

A second area which my Subcommittee will be looking at in the near future is the abuse of children in institutions. There are thousands of children in this country living in a variety of institutional situations. Reports on conditions in some of these institutions are alarming. I plan public hearings to call national attention to this problem and to help develop necessary solutions. Investigations of ways to deal with institutional abuse of children is also one of the priority research areas for the National Center for Child Abuse and Neglect.

As you know, 1979 has been designated by the United Nations as the International Year of the Child. In view of the strong interest of the American Legion in this field and in international affairs, I hope you will join with me in urging that 1979 be a year of action, as well as observance, for children. I look forward to continuing to work with your committee in the years to come as we move forward in our efforts to protect our most valuable national resource—our children.

MICHAEL E. LEVINE

● Mr. KENNEDY. Mr. President, as all of us in this Chamber and a good portion of the American public know, air fares have been dropping this summer while airline profits have been going up. The major reason for this is that the Civil Aeronautics Board has begun to regulate with some imagination and creativity to better serve the public. The Board under the dynamic leadership of Chairman Alfred Kahn has injected a good dose of competition into the airline industry and it has turned out to be a healthy prescription for the traveling public and the airlines. Chairman Kahn deserves and receives considerable public credit for his brilliant efforts. But, I want to pay some credit to one of the unsung heroes at the CAB.

One of Chairman Alfred Kahn's most talented and committed staff appointees is Michael E. Levine, now Director of the Bureau of Pricing and Domestic Avia-

tion. As Chairman Alfred Kahn stated in December of last year, Mike Levine can bring to the Board "a unique blend of economic and legal theory combined with a detailed knowledge of current aviation practice." This has certainly been the case. He has brought a keen intellect, considerable knowledge, extraordinary energy, and a commitment to principle to his Government position. Mr. Levine has been instrumental to the Board in developing new policies and procedures to create more competition, reduce regulatory delays, and bring better air service at lower prices to millions of Americans.

These were significant changes, difficult to realize. For years the airline industry has suffered from too much regulation, too high prices, and too little competition. Most airlines have fought the reform efforts every step of the way. To change this entrenched system is tough, but so was the man Chairman Kahn appointed to help take it on. Mr. Levine brings to the CAB a strong academic background. He is on leave from the University of Southern California and California Institute of Technology in order to assume the directorship. In addition to his teaching experience he has been widely published and involved in a variety of research projects relating to regulation. Mr. Levine's academic work, in fact, has helped lay the groundwork for airline reform. But he also knows you cannot change the world on paper.

Mr. Levine is a doer and a fighter for the public interest and he has fought hard and accomplished much. That fight will continue and there is still much to be done. At a time when many Americans are paying less for air travel than they did a year ago we should not forget the role of Mr. Levine.●

THE ROOTS OF INFLATION

● Mr. McGOVERN. Mr. President, inflation bothers the American people more than any other single issue. There is no escape for anyone from this insidious economic thief. It strikes hardest of all at those on fixed incomes—the old and the infirm. But its consequences are no more tolerable for the majority of Americans who are in the work force, and who see hard-fought income gains completely offset and more by rising prices. It steals the expectation of personal progress that is at the heart of our economic structure.

The economists point to multiple reasons for the fact that ruinous inflation seems to have become a permanent feature of our system. It is said, for example, that the shock of the abrupt food and fuel price increase of a few years ago is still coursing through the price structure. Labor is blamed for wage demands; business is blamed for profits; the Government is blamed for spending too much on the poor.

There is one cause, however, that gets far too little attention in my view, and that is the inflationary impact of military spending.

We all subscribe to a strong national defense. But I worry that when we talk about limiting Government spending, this sector seems always to enjoy an exemption, as if it were somehow immune to waste. This year a $126 billion military program literally sailed through the Congress.

We should be aware, however, that military spending is almost pure inflation. Dollars spent in this part of the economy generate demand through the salaries of military personnel and defense workers and the profits of arms suppliers. But they contribute no offsetting supply of goods and services that can be bought and sold on the market. Hence, there is an inevitable upward pressure on prices.

Further, there is the continuing impact of the decision made in the 1960's to conduct a major war in Vietnam without raising the taxes to pay for it.

That particular point is discussed in an excellent column by Clayton Fritchey which appeared on September 9 in the Washington Post and which discussed the several military roots of inflation. Mr. Fritchey noted that:

The growth of U.S. inflation is easy to trace. It began with the Vietnam War. Prior to that, in the earlier Kennedy-Johnson years, the range of inflation was merely 1 to 3 percent. It started climbing when Lyndon Johnson, fearing public hostility to higher taxes to pay for his unpopular war, quietly turned to deficit financing on a large scale.

Mr. President, because it contains important insights on one of the most urgent public questions facing the Congress, I ask that Mr. Fritchey's column be printed in the RECORD.

The column follows:

[From the Washington Post, Sept. 9, 1978]

INFLATION'S ROOTS ARE IN THE MILITARY BUDGET

(By Clayton Fritchey)

Everybody agrees that inflation is now Public Enemy No. 1, but unfortunately there is little agreement on what causes it.

It's blamed on countless things. The White House has one list, Congress another, and the Federal Reserve Board still another. The business community also has a list of its own. Yet, in a negative way, they are all alike in that they uniformly shrink from putting the finger on the single most inflationary factor in our society: the huge, wasteful, non-productive, U.S. military colossus, along with the staggering deficits that have accompanied it.

It is a pipe dream to keep on talking about licking inflation and balancing the budget as long as military spending continues unbridled. Wage and price controls might help, but it's doubtful that even they could keep inflation effectively in check if defense expenditures go on as projected.

When Carter was campaigning for the presidency, he rightly said, "When you spend money for defense you don't spend it on education, on health, or other services or goods. And I think the shift away from weapons toward peaceful goods and services in the long run is favorable for world peace, and also you get more jobs per dollar spent."

He promised to cut the defense budget (then running around $100 billion a year) by 5 percent, but now it is 1978 and he turned thumbs down on the B1 bomber and a new nuclear carrier, but he has added new weapons of his own. In the next fiscal year the Pentagon budget is expected to be in the $133 billion to $139 billion range. By 1983 it will probably be $173 billion or more. The authoritative Center for Defense Information (CDI) foresees a figure of $180 billion by then.

Instead of raising additional revenues to pay for those soaring expenditures, Congress and the president have cut taxes, ensuring further deficits exceeding the peak ones of World War II. Nobody understood better than then-President Eisenhower the inflationary costs of such a policy. "The military establishment," he said, not productive of itself, necessarily must feed on the energy, productivity and brain power of the country, and if it takes too much, our total strength declines."

The Center for Defense Information notes that, over the years, the United States has been spending a smaller portion of the military budget on the defense of America. About 70 percent of that budget, the CDI reports, "now goes to defend our allies and project our power overseas." Actually, there are currently 27,000 more U.S. servicemen and women abroad than a year ago.

One reason the inflation rate in Japan and West Germany is so well in hand is that they spend so much less on defense than the United States. In relation to gross national product, the Japanese military expenditure is about one-fifth of America's.

The ever-rising U.S. defense budget today reflects not so much congressional fear of Russia as fear of unemployment and the closing of costly but needless military installations in their states and districts. Most economists, however, see military spending as a poor job-creator, compared with equal expenditures on civilian needs.

The growth of U.S. inflation is easy to trace. It began with the Vietnam War. Prior to that, in the earlier Kennedy-Johnson years the range of inflation was merely 1 to 3 percent. It started climbing when Lyndon Johnson, fearing public hostility to higher taxts to pay for his unpopular war, quietly turned to deficit financing on a large scale.

President Nixon did the same, only on a more grandiose scale. Even after U.S. withdrawal from Vietnam, the military budget kept rising, generating an unprecedented deficit of $175 billion in the last years of the Nixon-Ford era. Meanwhile, the inflation rate went steadily up, finally reaching double-digit proportions and a record rate of 12 percent. The ensuing recession reduced it some, but today it is still hovering near the dangerous double-digit level.

Can the fat in the military budget be cut without impairing the muscle? Only a few days ago the Brookings Institution found that the Pentagon could save over $900 million a year by eliminating overpayment of its blue-collar workers. A presidential commission recently called for an overhaul of the military pension system, saying $10 billion per year could be saved that way.

Pentagon officials themselves admit that Navy finances are in a shambles, with cost overruns on new ships totaling more than $6 billion. Another recent study by two former high Pentagon officials found that $40 billion could be saved over the next few years by selective reduction of forces and cancellation of certain new weapons systems.

The really significant savings, however, will not be realized until the "momentum of the arms race" has been arrested. That means, first, the restoration of détente, then new agreements with Russia that substantially cut back strategic arms and, finally, serious attention to general disarmament, which some experienced statesmen believe is not as impractical as it may sound.●

ERA: NO TIME LIMIT ON EQUALITY FOR MEN AND WOMEN

● Mr. BAYH. Mr. President, in the near future, the Senate will have before it, House Joint Resolution 638, to extend the deadline for the ratification of the equal rights amendment. I am concerned that

if an extension is granted it be done in a constitutionally sound fashion. The Constitution should not be amended for trivial or transient considerations. Such solemn action should be taken only when a matter of sufficiently broad principle is at stake to warrant the long and complex process that the framers envisioned for alterations in the basic document. Such was the case when the 92d Congress proposed the 27th amendment to the Constitution—the equal rights amendment. The need for a constitutional amendment to reverse the pervasive discrimination against women which is deeply entrenched in the United States, in my judgment is self-evident, when one examines the historical and legal context in which sex discrimination has flourished.

It is important to recognize moreover, that the amendment would not void all legislation that is partial to one or the other sex. In appropriate cases benefits now available only to women would be extended to men. Similarly, benefits formerly available only to men would be extended to women.

Some critics contend that given the complexity and the ramifications of the problem, the ERA will act in unpredictable ways, cause confusion, and foster excessive litigation. Yet by their very nature constitutional provisions should embody "broad general propositions of fundamental permanent law." The U.S. Constitution includes many general statements which have required interpretation by the courts over the decades.

Mr. President, for the benefit of my colleagues, I would like to have the text of article V of the Constitution—the provision which gives Congress the power to propose amendments to the Constitution while also giving the legislatures the power to ratify proposed amendments to the Constitution—printed at this point in the RECORD:

ARTICLE V OF THE UNITED STATES CONSTITUTION

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided (that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and) * that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Mr. President, the Department of Justice in testifying before both the House and Senate on the extension of the deadline of the proposed ERA addressed the question of the power of the legislatures to rescind their prior ratification of proposed consitutional amendments. They testified that:

The power to rescind even during an extension period can only be granted by an amendment to the Constitution itself.

Article V speaks only in positive terms of ratification, and not rescission. Thus, extension of the ERA ratification deadline would not give rise to a right of rescission on the part of the States. No history of acceptance by Congress of attempted rescission of prior ratifications can be found.

Mr. President, the General Services Administration, the agency delegated by Congress to handle the legislatures' documents with respect to amendments to the Constitution which arise under article V of the Constitution, also testified before the Senate Subcommittee on the Constitution. During their testimony a question arose as to how much reliance by the State legislatures was put on the 7-year time limit in the resolve clause when they ratified the ERA. The GSA testified that they had no documents to show that the State legislatures relied on the time limit in ratifying the amendment.

The Department of Justice testified that they had reviewed the State legislatures' documents and could find no evidence that the States had relied on the time period. Further, the Justice Department stated that article V only sets up a process to do one thing; that is, the States to ratify proposed amendments and Congress to propose amendments to the Constitution. They hold that the States cannot bargain with Congress on the subsidiary details of the amending process.

The Department of Justice noted:

States can only ratify the Amendment. They cannot ratify it conditionally and they cannot surround it by including it within their ratifications process if it is not a part of the basic amendment.

Mr. President, for the edification of my colleagues, I ask to have printed in the RECORD a copy of the Department of Justice's testimony, with their attached memorandum on the constitutionality of extending the time period for ratification of the proposed ERA and the testimony of the General Services Administration. Both statements were submitted on August 2, 1978 at hearings before the Subcommittee on the Constitution on the proposal to extend the deadline for ratifying the ERA.

The material follows:

DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear before the Subcommittee to discuss S.J. Res. 134, which would extend the deadline for the ratification of the Equal Rights Amendment, or ERA from March 22, 1979 to March 22, 1986. As I am sure you are aware, the Administration strongly supports this joint resolution. Support for the extension of the ratification deadline only became Administration policy, however, following the preparation by the Office of Legal Counsel at the Department of Justice of a detailed legal opinion which reached the conclusion that such an extension of time is entirely constitutional and within the power of Congress to effectuate by a resolution such as S.J. Res. 134 passed by majority vote of both Houses. As a representative of the Department of Justice, I would like to concentrate primarily this morning on the constitutional and historical analysis which led the Department to reach this conclusion. For your information and use, I have appended to my prepared statement a copy of the Justice Department's formal opinion of October 31, 1977 prepared for the Counsel to the President, concerning legal issues raised by the proposed extension of the ratification deadline of the ERA. I would like to request that this document be included in the record of these hearings.

The main question before this Subcommittee is, of course, whether Congress in fact has the power to extend the ratification period for the ERA. We believe that it does.

At the outset, it is worth noting that Article V of the Constitution, which sets forth the procedures for amending the Constitution, does not on its face contain any requirement that an amendment, once proposed by Congress, be ratified within a specific time period or that Congress must establish a time period in which the states will be empowered to ratify the proposed amendment. In 1921, however, the Supreme Court addressed this issue in *Dillon* v. *Gloss*, 256 U.S. 368, where it was held that Congress, "keeping within reasonable limits," could fix a definite period for the ratification of a proposed amendment. The Court there held that Congress has a general power to deal with "subsidiary matters of detail" as an incident of its power to designate the mode of ratification of amendments and that defining a "reasonable time" for ratification was one such subsidiary matter. Eighteen years later, the Court had occasion to consider again the power of Congress to determine the length of time available for ratification. In *Coleman* v. *Miller*, 307 U.S. 433 (1939), the Court held that in the case of a proposed amendment as to which neither the text nor the congressional proposing resolution contained any time limit, Congress should be exclusive judge of whether ratification by the requisite number of states had taken place within a reasonable time of the amendment's proposal.

Despite the fact that these two cases clearly support the power of Congress to determine what period of time for ratification is reasonable, we nevertheless recognize that arguments are made that, since the Coleman case involved a proposed amendment with no time limit at all, the establishment of an initial time limit by the Congress proposing an amendment forecloses for future Congresses the question of what is a reasonable period and they are not free to alter that limit once the amendment has been submitted to the states. We cannot concur in such a conclusion. It is clear, first of all, that the Congress in session at the time that the last of the required number of states ratifies the proposed amendment is in a far better position to judge whether the "contemporaneous consensus" exists about which the Court in the *Dillon* case spoke as necessary to support an amendment. Under Coleman, that judgment should turn on whether the problems which gave rise to the proposed amendment continue to vex the country, and whether other intervening factors have developed which have a bearing on the question of what would constitute a reasonable time for ratification. The implications of the Coleman case are that the Congress which ultimately decides on whether ratification has taken place has the power and duty to make a decision on the reasonableness of the time period whether or not prior Congresses have specified an initial time limit, unless the time limit was incorporated in the amendment itself. Along the same lines of reasoning, we believe Congresses subsequent to the proposing Congress enjoy the power to determine that an amendment is still viable and should remain so for a reasonable number of years in the future. The prognosis of the initiating Congress, in other words, cannot bind its successors unless it is placed in the text of the amendment itself.

This response takes on added weight when viewed in the context of historical practice in the placing of time limits for ratification in proposed amendments. The first seven-

* Obsolete.

teen amendments to the Constitution contained no time limit whatever. The Eighteenth Amendment, the prohibition amendment, contained a seven year limit in its text, the validity of which was the subject of the *Dillon* case. Some debate on that amendment focused on the need for placement of the limit in the amendment text itself (56 Cong. Rec. 463 (1917); 55 Cong. Rec. 5659, 5650 (1917)). The question of whether the time limit should be included in the preamble, or the actual text of the amendment, apparently first arose during Congress' consideration of the 20th amendment in 1932. It is noteworthy that some members who opposed placing such a limit in the preamble to the resolution argued that such a limit placed elsewhere than in the text of the amendment would be of "no avail." (75 Cong. Rec. 3856–3857).

The 20th, 21st, and 22nd amendments all contained a seven year limit for ratification in the text itself. It was not until 1960, and proposal of the 23rd amendment, that Congress first included the time limit in the proposing clause. At that time, the only discussion of the intent as to the changed placement indicated a desire not to "clutter up the Constitution" with extraneous or obsolete material. The 23rd, 24th, 25th, 26th, and 27th amendments all repeated a seven year limit in the preamble without extended discussion. It should be noted, however, that beginning with the 25th amendment, the wording of the preamble changed from that of saying the amendment shall be valid "only if" ratified within seven years to wording that it would be valid "when" ratified within seven years. When the 27th amendment, ERA, was proposed in 1972, the seven year limit in the resolution was discussed in the terms of "the traditional form of a joint resolution . . . it has been included in every amendment added to the Constitution in the last 50 years". (S. Rep. No. 689, 92nd Cong., 2nd Sess. 20 (1972)). Finally, the House Judiciary Committee proposed an amendment, H.J. Res. 554, recently endorsed by the full House, to give full voting representation in Congress to the District of Columbia. The House Committee specifically moved the time limit in the resolution initially introduced from the proposing clause to the body of the proposed amendment.

We are, then, faced with a cloudy picture, at best, of what legislators intended when they placed the limitation in the preamble as opposed to the text of a proposed amendment. Some clearly realized and drew to their fellow legislators' attention the probable difference in effect; others appeared not to focus on the question or to regard the seven-year period as an operative limit on ratification. We can say, however, that there is no express legislative history contrary to the conclusion that the change from text to preamble would deprive a time limit of its binding effect on future Congresses.

This history, however, coupled with the Supreme Court's clear ruling in *Dillon* that Congress has a wide range of power in prescribing subsidiary details such as a reasonable time and the underscoring in *Coleman* that such a decision must encompass "an appraisal of a great variety of relevant conditions, political, social and economic," impel us to conclude that this Congress does have the power to extend the original seven year period which has been included in the proposing resolution.

The issue has been raised of possible reliance by ratifying states on the seven year limit in the proposing resolution. A careful reading of that resolution and proposed amendment shows that there can be no mistake by states that they were ratifying the text of the amendment and not the preliminary language of the resolution. In fact, the Constitution and almost 200 years of experience under it make that clear, as well. And a review of the certifications of ratification submitted to the General Services Administration by 35 states does not, in our opinion, indicate any such reliance on their face. Nor do we know or have we been cited to any history in the 35 ratifying states to show that the seven year period was a significant factor in the various debates. It is, of course, our basic contention that the states could not constitutionally have relied on the seven year period in the preamble as binding and that we are entitled to presume they knew that and did not do so. This is, by way of contrast, different from the two year period of delay in effective date of the amendment which is incorporated in the main ERA amendment itself and upon which they might well rely.

Once the conclusion is reached that Congress possesses the power to extend the time for ratification originally set in its resolution proposing the amendment, other questions arise. Foremost among these is the question whether any extension of the ratification deadline must be accomplished by a two-thirds majority vote of each house, or whether a simple majority of each house is sufficient. Our analysis concludes that a simple majority is sufficient. First of all, Article V itself prescribes a two-thirds vote only for proposing amendments to the Constitution. It does not explicitly require—nor is there any language in Dillon or Coleman to suggest that it implicitly requires—a supermajority for prescribing the subsidiary details, such as reasonable time or the mode of ratification. It seems clear that Congress could, if it wished, propose the text of an amendment in one resolution requiring a two-thirds vote, and the details of ratification—time and mode—in a second resolution requiring only a majority vote. In those rare instances, when the Constitution intends Congressional action to require a two-thirds vote, i.e., impeachment, expulsion of a member, ratification of a treaty, overriding of a presidential veto or proposal of an amendment, it says so. To impute such extraordinary requirements to other actions would be unprecedented and would impose an unneeded and unwanted interference in Congress operations which must in the nature of the process proceed in all but the rarest instances by majority vote.

Let us hypothesize, for instance, that Congress had proposed an amendment which did not include any time limit, and that the requisite number of states have arguable ratified the amendment some ten years later. If there is a question as to the reasonableness of the time, the Administrator of General Services may submit the question to Congress for resolution. Congress would then, under the reasoning of Coleman, address and resolve whether ratification had in fact taken place within a reasonable time. Any requirement of a super-majority vote might well have the effect of depriving Congress of the ability to resolve the reasonableness question in a close case, since a two-thirds vote would have to be summoned for a resolution either promulgating ratification or declaring it not to have taken place within a reasonable time.

It is highly unlikely, in our opinion, that the Constitution would confer upon Congress the duty to make such an ultimate determination as to whether the ratification had taken place yet impose a super-majority requirement that could prevent it from performing that duty.

Such historical precedents as exist in this area support this view. There does not seem to be any evidence that questions dealing with these "subsidiary matters of detail" have ever been thought by Congress to require a two-thirds vote. Indeed, in deciding whether the Fourteenth Amendment had been ratified Congress was faced with rescissions by two states—a question which I will discuss further in a moment—yet there is no express or implicit indication that it felt itself bound to resolve those questions by a two-thirds vote. Similarly, in 1971 the Senate passed a bill proposed by Senator Ervin to establish procedures to govern the state convention method of amending the Constitution, and there is no indication that a two-thirds vote was considered necessary for certain actions that Congress would be empowered to take under that bill, including the setting of time limits.

Assuming that a majority vote is sufficient, a related question has been raised concerning the necessity of a presidential signature for any extension of the ratification time for the ERA which Congress may pass to become effective. As a matter of constitutional law we believe it is clear that the President has no role to play in the amendment process. The Supreme Court so held in the case of *Hollingsworth* v. *Virginia*, 3 Dall. 378, which was decided in 1798. If, for some non-constitutional reason, the President's signature is desirable on whatever form of resolution is passed by the Congress, we believe that no problem would arise from the President's affixation of his signature, so long as it was clearly recognized that this act on the President's part did not constitute an assertion of any claim of power to veto the proposed resolution.

Let me finally summarize the Department's views on the question of the validity of a state's attempts to rescind a prior ratification. It has been argued that extension of the ERA ratification deadline would give rise to a right of rescission on the part of the states, or that at least, Congress could amend the extension resolution to provide that the states may rescind their prior ratification. We believe that the first of these suggestions is erroneous as a matter of constitutional law, and that the second cannot be accomplished by any means short of proposing a new amendment to the Constitution. As to the basic question of a state's power to rescind after it has certified ratification, we conclude it may not. Article V speaks only in positive terms of ratification, and not rescission. During the debates in the States over adoption of the Constitution, the only relevant indication of the Framers' intent is that expressed by James Madison that a state's ratification must be unconditional "in toto" and irrevocable, "for ever;" "an adoption for a limited time," according to Madison, would be "defective". Throughout our history, states have often rejected proposed amendments, only to ratify them at a later date, and the later ratification has been accepted by Congress as conclusive, but there is no similar history of acceptance by Congress of attempted rescissions of prior ratification. Indeed, in its consideration of whether the Fourteenth Amendment had been ratified, Congress refused to recognize the purported rescissions by two states of their earlier ratifications. The Secretary of State and the House of Representatives seem to have taken a similar position with regard to attempted rescission by New York of its prior ratification of the Fifteenth Amendment. These precedents were indeed cited by the Supreme Court in the Coleman case in commenting upon the decision of the Kansas Supreme Court under review there.

The Kansas court had stated in its opinion that: "It is generally agreed by the lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by Congress may later reconsider its action and give its approval, but that ratification, once given cannot be withdrawn."

Finally, in 1926, some Members of the Senate and House introduced an amendment to the Constitution which would have permitted rescission of state ratifications of amendments, but this proposal failed. During the debate on the proposed amendment, however, both sponsors conceded that its purpose was to change existing law based

upon the then prevailing interpretation of Article V that a state could not rescind after ratification even though it could ratify after a prior rejection. Similarly, legislation proposed in 1971 to govern proposed ratification by convention acknowledged that presently ratifications were considered final.

It has also been argued that whatever may be the case in the initial ratification period set forth in proposed amendments by Congress, during any extension period, rescission must or may be permitted because state legislatures which have already ratified may have relied on the first established deadline. Aside from the question whether such reliance can be factually demonstrated with regard to the ERA—and we have not seen proof that it can—we must conclude that this argument fails because there is simply no constitutional power in a state to withdraw its ratification if three-fourths of the states have ratified within a reasonable time as determined by Congress. The Constitution commits to Congress the power to determine what is a reasonable time for ratification, and the States may not usurp that power by agreeing with the substance of the amendment only on condition that Congress not exercise that continuing constitutional responsibility after the amendment has been submitted. Consequently, we think that the power to rescind even during an extension period can only be granted by amendment to the Constitution itself.

I would like to conclude by noting that the questions presented by the ERA extension are admittedly difficult and on the frontier of the law. It is important, however, to separate the questions of whether the proposed time extension is constitutional and whether the issues it raises are susceptible to resolution by the courts. Congress must consider fully the constitutionality of its actions, regardless of whether judicial review will be available. Some aspects of a congressional decision to extend the ratification period and of the effect of attempted rescission of the prior ratification by the states may indeed constitute "political questions" not susceptible of judicial resolution, as the Coleman court indicated, although more recent decisions of the Supreme Court limit the application of the "political question" doctrine and might lead to some reconsideration of the breadth of that holding in future cases. Nevertheless, we do believe that S.J. Res. 134 is constitutional, that it may be passed by simple majority vote, and that its passage would not give rise to any right of rescission in the states.

I hope that our legal analysis of these matters will be of use to the Subcommittee, and I will do my best to answer any questions that you may have.

MEMORANDUM FOR HONORABLE ROBERT J. LIPSHUTZ, COUNSEL TO THE PRESIDENT

Subject: Constitutionality of Extending the Time Period for Ratification of the Proposed Equal Rights Amendment.

This responds to your request for our opinion regarding the constitutionality of extending the period, presently scheduled to expire on March 22, 1979, for ratification by the States of the proposed Equal Rights Amendment.

In the course of addressing this general question, we have identified a number of discrete questions that we will discuss. Briefly, our views are as follows: (1) no authority suggests persuasively that an extension of seven years would be per se unconstitutional; (2) congressional action to extend the deadline for ratification can take the form of a concurrent resolution subject to majority vote of a quorum of each House; (3) we do not think that an extension would empower the States which have ratified the ERA prior to the extension to rescind that ratificaion during the extension period; (4) we doubt Congress may extend a right to rescind to States during the seven-year extension period; and (5) we believe that at least some of these issues would probably be held to present justiciable controversies in appropriate cases.

Before addressing these questions, we would first make several introductory observations. First, we see as essentially separate matters whether H.J. Res. 638 is constitutional and whether the issues it raises are susceptible to judicial resolution. In our view, it is important in any discussion of these issues to avoid a suggestion that because the 95th Congress or a successor Congress may have the final word on their resolution, the constitutionality of this resolution becomes an easier or an avoidable question. Secondly, we think that the lack of authoritative judicial precedent or guidance from the language of the Constitution itself makes it difficult to conclude with certainty that H.J. Res. 638 is or is not constitutional. Finally, even though we think that the determination whether this resolution is constitutional does not turn on whether an extension would free ratifying States to "rescind" their ratifications, we address that question in some detail because we feel that discussion of this question may be helpful in the general debate over this resolution.

I. BACKGROUND

The two documents most relevant to our inquiry are H.J. Res. 208, 92d Cong., 2d Sess. (1972), which proposed to the several States the adoption of the ERA, and Article V of the Constitution, which sets forth the procedures for amending the Constitution. The text of the resolution is as follows:

House Joint Resolution 208

Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That

The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"Section 3. This amendment shall take effect two years after the date of ratification."[1]

On March 24, 1972, certified copies of the full text of this joint resolution were transmitted to the Governors of the 50 states by the Acting Administrator of the General Services Administration with a request that each Governor submit it "to the legislature of your state for such action as it may take" and requesting also that a "certified copy of such action be sent to the Administrator of [GSA] . . ." *See* 1 U.S.C. § 106b. As of this date, thirty-five states have submitted certifications to GSA of ratification of ERA by their respective legislatures.[2]

Article V, the sole provision of the Constitution dealing with the amendment process, reads as follows:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner effect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article V does not on its face contain any requirement that an amendment, once proposed by Congress, must be ratified within a specific time period or that Congress may establish a time period in which the States will be empowered to ratify a proposed amendment. In *Dillon* v. *Gloss*, 256 U.S. 368 (1921), the Supreme Court addressed both these issues.

In *Dillon*, a defendant convicted of an offense under a statute passed by Congress to enforce the Eighteenth (Prohibition) Amendment, contended, *inter alia*, that Congress had no power to set a time limit for ratification and that, as a consequence, the Amendment itself was void because Congress had placed a seven-year limit on ratification in § 3 of the Amendment.[3] In rejecting this argument, the Court stated:

"Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified." 256 U.S., at 375–76 (footnote omitted).

After *Dillon*, the Supreme Court has had only one occasion to address the question of congressional power under Art. V to establish the time frame for ratification. That case, *Coleman* v. *Miller*, 307 U.S. 433 (1939), involved, *inter alia*, the claim that the "Child Labor Amendment," proposed by Congress in June, 1924 without Congress having set a time limit for ratification, could no longer be ratified by the Kansas legislature in 1937 because some 13 years had elapsed since its submission to the States. In response to the contention that 13 years was an "unreasonable" period of time, the Court stated:

"Our decision that the Congress has the power under Article V to fix a reasonable limit of time for ratification in proposing an amendment proceeds upon the assumption that the question, what is a reasonable time, lies within the congressional province. If it be deemed that such a question is an open one when the limit has not been fixed in advance, we think that it should also be regarded as an open one for the consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment. That decision by the Congress, in its control of the action of the Secretary of State, of the question whether the amendment had been adopted within a reasonable time would not be subject to review by the courts." *Id.*, at 454 (emphasis added).[4]

Because no time limit had been set by Congress in the proposed Child Labor

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Footnotes at end of article.

Amendment involved in *Coleman*, it may be properly inferred from the quotation above that the establishment of a time limit by the Congress proposing an amendment would not leave open the question of what is a reasonable period. Certainly if a time limit had expired before an intervening Congress had taken action to extend that limit, a strong argument could be made that the only constitutional means of reviving a proposed amendment would be to propose the amendment anew by two-thirds vote of each House and thereby begin the ratification process anew.

Additionally, if the proposing Congress had fixed a specific time limit within the text of the proposed amendment itself, a strong argument could be made that any attempt to modify or extend that period would constitute an amendment to the proposed amendment, requiring the ratification process to begin again.[5]

Even assuming arguendo that H.J. Res. 638 would be unconstitutional had the seven-year limit been included within the text of the ERA itself, it can nevertheless be viewed as constitutional if the placing of the limitation within what we shall refer to as the "proposing clause" permits a different result. From an analytical viewpoint, we think that respectable arguments can be made on both sides of this question.

An argument against the constitutionality of H.J. Res. 638 might be based on the following analysis: As suggested by the language of the *Coleman* opinion, the question of a time limit is no longer open once a time limit is imposed by the proposing Congress. Furthermore, Art. V itself can be viewed as envisioning a process whereby Congress proposes an amendment and is divested of any power once the amendment is submitted to the States for ratification,[6] other than possibly the power declared in *Coleman* to judge whether ratification has occurred. Also, it can be argued that no distinction should be made between the placing of a time limit in the text of a proposed amendment and placing it in the proposing clause; to do so is to elevate form over substance. Finally, it is not unreasonable to say that States having ratified a proposed amendment with a set time period have done so in the expectation that a necessary three-fourths of the States would do so within the established limit or else the proposed amendment would fail of adoption.

An argument favoring the constitutionality of H.J. Res. 638 might proceed as follows: *Dillon* and *Coleman* confirm the power of Congress to establish a "reasonable" time in which ratification may occur and, therefore, an extension of a time once established is constitutional if the extended period is reasonable. If, under *Coleman*, a Congress years after an amendment has been proposed has the power to determine the reasonableness of the intervening time period, there is no reason to conclude that a Congress in the position of the 95th may not determine, at a specific point in time, that an amendment is still viable and will be so for a reasonable number of years in the future.

Presented with these arguments without more, we would find it difficult indeed to choose between the two. We take as given from *Dillon* and *Coleman* that whatever power the 95th Congress may have to extend the seven-year limitation must be implied from Article V itself, and we think it fairly clear that such power may be implied unless the action of the 92d Congress must be viewed as binding on all future Congresses, including the 95th and the 96th, the latter being the Congress during whose life the initial seven-year period will actually expire. In our view, the soundest approach to resolving this question is to rely to the greatest extent possible on the historical understanding of the Congresses that have made use of the time limitation device.

Footnotes at end of article.

II. HISTORIC PRACTICE REGARDING TIME-LIMITING CLAUSES

Although the placing of time limits for ratification in proposed amendments was considered in the 65th Congress,[6a] the first occasion for its actual inclusion was in the Eighteenth Amendment. In that amendment, the limitation appears as section 3 and reads as follows:

"This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress."

As pointed out by the Court in *Dillon*, this provision was included in part because of expressed Congressional concern that other amendments proposed much earlier in the history of the Republic might still be subject to ratification. Such a possibility concerned the 65th Congress because it generally agreed, as did the *Dillon* court subsequently, that some reasonable time period for ratification was implicit in Art. V itself. *See Dillon* v. *Gloss*, 256 U.S., at 372–73. Although the question was not focused on generally in House debate, at least one of the participants observed that "the [seven-year] limitation here is in the article that is to be submitted and is not a separate proposition. Hence, when it is voted upon by the States and adopted it is as much a valid article and amendment as [the substance of the amendment itself]."[7]

In the Senate, fuller consideration was given to the question of the power of Congress to place a time limit on ratification. In response to the argument that Congress had no power to impose a limitation on the ratification period, several senators argued that the apparent absence of such a power in Art. V would be overcome and such a power would be recognized as part of the Constitution should three-fourths of the States ratify within the then six-year period. 55 Cong. Rec. 5650 (1917) (remarks of Senator Promerene); *id.*, at 5659 (remarks of Sen. Sheppard). The debate in the Senate also indicated general agreement that the power of Congress to set such a limit would be subjected to judicial review and that failure of ratification by three-fourths of the States within the fixed time period would most probably require the resubmission of the amendment by a future Congress. *Id.*

When the next Congress came to propose the Nineteenth Amendment, congressional fears expressed in section 3 of the proposed Eighteenth Amendment were apparently put aside. The issue apparently never arose until an attempt to include a seven-year limit was made and, without debate, rejected.[8]

When the Congress proposed the Twentieth Amendment by S.J. Res. 14 in 1932, a seven-year limitation was written into the text of the proposed amendment itself, now section 6 of that Amendment, in language virtually identical to that contained in section 3 of the Eighteenth Amendment quoted *supra*.[9]

On the floor of the Senate, section 6 was explained as follows:

"In effect, it [section 6] is the same provision that was in the prohibition [Eighteenth] amendment to the Constitution."[10]

During House consideration of S.J. Res. 14, Congressman Celler of New York proposed that a seven-year limitation, then not in the resolution, be added to what he described as the "preamble," or proposing clause, of the amendment. In doing so, he quoted at length from *Dillon* v. *Gloss*, *supra*.[11]

Celler's proposed amendment to S.J. Res. 14 drew immediate criticism from his colleagues. Congressman Jeffers, apparently not favorably disposed to any limit, refused to debate its wisdom because I think it is very clear that it [Celler's proposal] is out of place where it is being offered; but if the amendment has any virtue . . . I think it should be offered at the end of the resolution as an additional section, and then if it should be adopted it would be a part of the constitutional amendment.

As it is now offered it would only be a part of the proposal clause of the constitutional amendment but would not be in the constitutional amendment.

• • • • •

If the gentleman wants his amendment in the Constitution, it should go in as a new section, or section 6. As he has now offered it, it would be of no avail . . .[12]

Another of Mr. Celler's colleagues, Mr. Ramseyer, intending himself to amend S. J. Res. 14 to include a seven-year limitation for ratification, indicated his agreement with Mr. Jeffers as to the question of where the limit should be placed:

"The eighteenth amendment carried that 7-year provision as section 3, and it was that provision that the Supreme Court [in *Dillon*] held to be valid . . .

"Section 6 goes to the entire article, as to how it shall take effect. It appears in the eighteenth amendment as the last section of the amendment . . . I am confident that is the place for it."[13]

Congressman Celler, after this discussion, withdrew his amendment.[14]

When Congress proposed what became the Twenty-First Amendment, it included as section 3 of that amendment language virtually identical to that in the Eighteenth and Twentieth Amendments.[15] Comments on the floor of the Senate included statements that "the Congress which submits an amendment has the power to fix the terms upon which it may be considered," 76 Cong. Rec. 4152 (1933), and "after Congress adopts the manner of ratification, by legislatures or conventions, it has no more role to play." *Id.*, at 4164. *See also*, 55 Cong. Rec. 5652 (1917).

The Twenty-second Amendment likewise contained a seven-year limitation in section 2 of the amendment patterned after prior limitations. Senator McClellan noted that "a period of 7 years' time is given, under the terms of the joint resolution [for] the amendment to be ratified . . ." 93 Cong. Res. 1800 (1947).

The Twenty-third Amendment, proposed in 1960, for the first time did not include a seven-year limitation within the text of the amendment itself. Instead, the seven-year limitation was contained in the proposing clause, which read as follows:

"That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution *only if* ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress . . ." (emphasis added).

The history of the Twenty-third Amendment is lengthy, as pointed out in hearings conducted by Subcommittee No. 5 of the House Committee on the Judiciary chaired by Congressman Celler. Early proposals to grant the District of Columbia voting power in the Electoral College would have amended Art. IV, § 3 of the Constitution directly.[16] In 1940 and 1941, amendments were reported out of committee containing seven-year limitations in the text of the proposed amendments.[17]

The House report on the amendment issued by Congressman Celler as Chairman of the full Committee on the Judiciary, explained the limitation as follows:

"The resolution . . . consists of two parts. The first part provides by its terms that the resolution [sic] shall be valid as a part of the

Constitution only if ratified by the legislatures of three-fourths of the States within 7 years after it has been submitted to them by the Congress." [8]

Footnote 8 to the report read as follows:

Congress first adopted the 7-year limitation provision in proposing the 18th amendment to the Constitution. It did so because, at that time, several proposed constitutional amendments already submitted to the States for ratification had long laid dormant but were nevertheless subject to being resurrected and acted upon by the several States. (See *Dillon* v. *Gloss*, 256 U.S. 368, 373 (1921).

The first 10 amendments to the Constitution were ratified by the necessary number of States within 10 months, 20 days of their submission by the Congress. According to a statement in *Coleman* v. *Miller*, 307 U.S. 433, 453 (1939), the average time for ratification of amendments 10–21 has been computed to be 1 year, 6 months, 13 days; 3 years, 6 months, 25 days has been the longest time used in ratifying. The 22d amendment was ratified in 3 years, 11 months, 7 days. (See also *Dillon* v. *Gloss*, 256 U.S. 368, 372; Constitution of the United States, S. Doc. 170, 82d Cong., p. 39).

H.R. Rep. No. 1698, 86th Cong., 2d Sess. 4 (1960). During the debate in the House over the resolution, it was said that "the critical hurdle will be to secure the approval of three-fourths of the State legislatures on the proposed amendment within the 7-year period." 106 Cong. Rec. 12570 (1960). *See also id.*, at 12559, 12561–63, 12571.

The Twenty-fourth Amendment included a proposing clause identical to that of the Twenty-third Amendment. The House report on the proposed amendment stated: "This resolution requires, of course, ratification of the legislatures of three-fourths of the several states within 7 years from the date of its submission by the Congress." [18]

When the Twenty-fifth Amendment was proposed in the 89th Congress, the seven-year limitation once again appeared in the proposing clause in language identical to that of the Twenty-sixth Amendment and that in H.J Res. 208 proposing the ERA. This language eliminated the phrase "only if" and simply announced that the amendment would be valid "when ratified . . . within seven years. . . ." The reports issued regarding the Twenty-fifth [19] and Twenty-sixth [20] Amendments add nothing to our consideration of the time limitation.

The Senate Report on the ERA, in its "Sectional Analysis" of H.J. Res. 208, states concerning the "resolution" or proposing clause that:

"This is the traditional form of a joint resolution proposing a constitutional amendment for ratification by the States. The seven year time limitation assures that a ratification reflects the contemporaneous views of the people. It has been included in every amendment added to the Constitution in the last 50 years. It is interesting to note that the longest period of time ever taken to ratify a proposed amendment was less than 4 years. The power and responsibility of Congress to impose a reasonable time limit for ratification of constitutional amendments was made clear in both *Dillon* v. *Gloss* 256 U.S. 368 (1921), and *Coleman* v. *Miller* 307 U.S. 433 (1931)." [21]

In addition to this analysis in the Senate report, comments on the floor of the House and Senate generally assumed that the seven-year period was a limitation on the time in which ratification could occur. Thus, Congresswoman Griffiths, after describing the limit as "customary," went on to say that "I think it is perfectly proper to have the 7-year statute so that it should not be hanging over our head forever." 117 Cong. Rec. 35814–15 (1971). Senator Hartke, a supporter of the resolution, stated his view that "if there is such a delay [beyond seven years], then we must begin the entire process once again." 118 Cong. Rec. 9552 (1972). *See also id.*, at 9576 (remarks of Sen. Cook).

III. THE BINDING NATURE OF THE SEVEN-YEAR LIMIT IN H.J. RES. 208

The history of congressional use of a seven-year limitation demonstrates that Congress moved from inclusion of the limit in the text of proposed amendments to including it within the proposing clauses with and without the "only if" phrase without ever indicating any intent to change the substance of their actions. The one occasion on which Congress actually considered the possible differences between placement of the limit within or without the text of a proposed amendment, the only expressed view was that the limit would be to "no avail" were it placed without the amendment. And as recently as the debate over the ERA, the limit was viewed as a "statute." 117 Cong. Rec. 35814–15 (1971). Thus, when H.J. Res. 208 came before the Congress for consideration, it is not at all surprising that some members indicated their belief that the amendment process would have to begin anew were ratification not achieved within the seven-year limit.

We think there are sound reasons to view any substantive or procedural details placed in a proposing clause for an amendment as subject to modification by a succeeding Congress. First, as demonstrated above, on the only occasion on which Congress itself has directly considered this question, the only views expressed were consistent with this position.

Secondly, as the Court noted in *Dillon* v. *Gloss*, 256 U.S., at 373, "An examination of Article V discloses that it is intended to invest Congress with a wide range of power in proposing amendments." Thus, Congress' power under Art. V consists of more than simply proposing amendments: it includes the power to establish the details of how an amendment, once proposed, is to be acted upon by the several States.

As the *Dillon* Court noted, the substantive Art. V power to propose constitutional amendments is subject only to two limitations, one being the two-thirds vote requirement and the other relating to amendments that would deprive a state of its equal suffrage in the Senate without its consent. *Dillon* v. *Gloss*, 256 U.S. at 373–74. There is nothing in the text of Art. V which would bar subsequent Congresses from taking action with respect to the details of the ratification process as distinguished from the substantive amendment itself while the amendment is being considered by the States.

We conclude that the 95th Congress, under Art. V, can act to extend the seven-year limitation period placed by the 92d Congress in the proposing clause of the ERA. The 92d Congress had the power to make the seven-year limit a part of the substantive amendment by placing the limit within the text of the ERA itself. The fact remains that it did not do so. We think our conclusion that a time limit fixed in a proposing clause should not be viewed as immutable is supported by the nature of the decision made by the 92d Congress and that which would be made by the 95th Congress were H.J. Res. 638 to be adopted.

The nature of that decision is, we think, accurately described by the opinion of the Court in *Coleman*, 307 U.S., at 453, as follows: the question of a reasonable time in many cases would involve * * * an appraisal of a great variety of relevant conditions, political, social and economic * * *

The Court in *Dillon*, discussing the time limit from a somewhat different perspective, concluded that "an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and * * * if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress."

265 U.S., at 375, *quoting Jameson on Constitutional Conventions* § 585 (4th ed.). As a matter of logic, it seems to us that what constitutes a reasonable period of time for ratification of an amendment would normally be best decided not by a proposing Congress but by the Congress in session when the necessary three-fourths of the States have ratified a proposed amendment. This is so because the limit imposed by the proposing Congress is, at best, predictive, whereas a Congress presented with ratifications by three-fourths of the States is better able to base its decision concerning viability of the amendment on concrete evidence. Indeed, as indicated above, the seven-year figure adopted by Congress in proposing the Eighteenth Amendment achieved, partly by virtue of its approval in *Dillion* v. *Gloss*, a talismanic significance that has never been examined in connection with the proposal of any amendments since that have included the same limit. In short, we think it is quite reasonable to accord the seven-year limit in the ERA only the deference that the express language of the limit requires, namely, that the ERA will be viable for at least seven years. We therefore think that the 95th Congress, on the basis of a record presumably more substantial than that built by the 92d Congress, may extend the time limit if such an extension be deemed "reasonable." [22]

We would, however, make two additional points in this regard. First, assuming that Congress may extend the time period for a reasonable length of time, questions arise as to the form such an extension should take and the vote required in each House to pass an extension.

With regard to the question of form, it is our view that H.J. Res. 638 need not be presented to the President for his approval. It has long been established that the President has no role to play in the amendment process.[23] *Hollingsworth* v. *Virginia*, 3 Dall. 378 (1798).[24]

The second, and we would readily acknowledge more difficult, question is whether the resolution to extend the period must be approved by a two-thirds vote in each House or whether a simple majority is constitutionally sufficient. Several considerations dictate the conclusion that a super-majority vote is not required. We begin our analysis with the same two Supreme Court precedents which have guided our consideration of the other questions addressed in this opinion: *Dillon* and *Coleman*. While those decisions may be subject to varying interpretations in some respects, we think that they establish two propositions which are no longer open to question.

The first proposition is that implied within Article V is the condition that a constitutional amendment may only become law if it has been ratified "within some reasonable time after the proposal." *Dillon* v. *Gloss*, 256 U.S., at 375. The Court reasoned that inherent in the amending process is the assumption that any amendment will reflect the reasonably contemporaneous "expression of the approbation of the people" in three-fourths of the states. *Id.*

The second proposition—which is suggested in *Dillon* and unmistakably affirmed in the opinions of both Chief Justice Hughes and Mr. Justice Black in *Coleman*—is that the Constitution commits to Congress the authority and the duty to decide whether that implied condition of reasonable contemporaneousness has been satisfied. *Dillon* v. *Gloss*, 256 U.S., at 375–76; *Coleman* v. *Miller*, 307 U.S., at 454, 456, 458–59.[25] Furthermore, it is clear that Congress may make this determination after the amendment has been proposed and has been submitted to the States.

Footnotes at end of article.

Indeed, as we have suggested earlier, it would be appropriate—and some would contend mandatorily required—for Congress to assess the reasonableness of the time period at the end of the process when ratifications have been submitted by the requisite number of States. *Coleman* v. *Miller*, 307 U.S., at 454, 456. As Chief Justice Hughes reasoned, it is at this time that Congress may most accurately assess whether the conditions which prompted the proposal of an amendment have "so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it," or whether to the contrary those conditions "were such as to intensify the feeling of need and the appropriateness of the proposed remedial action." 307 U.S., at 453.

If these two propositions are correct we think it must follow that Congress must have the ability to make the required determination. We can readily conceive of circumstances, however, in which a requirement of two-thirds approval for any decision made under Article V would deprive Congress of the ability to resolve the reasonableness question. Suppose, for example, that Congress had placed no time limitation in the proposing resolution for some amendment and that the approval of the thirty-eighth State was received many, many years after the matter was first committed to the States.[26] Congress would have, at that time, a duty to decide whether too much time had passed, but if a resolution concluding that an unreasonably long period had elapsed would require a two-thirds vote the amendment might well become law even though a majority of Congress viewed it as inconsistent with the condition implied in Article V.

We think that common sense would dictate a strong presumption against the conclusion that the Constitution has conferred a duty upon the Legislative Branch but at the same time has imposed a super-majority requirement that could prevent it from performing that duty. Indeed, even a cursory review of the other constitutional provisions which impose super-majority requirements demonstrates that in every case the question to be addressed by Congress is clearly specified and the consequence of a failure of Congress to muster the requisite number was clearly foreseen and contemplated. Thus, for example, with respect to the approval of treaties (Art. II, § 2), the Constitution makes plain that the question to be put to the Senate is whether the treaty is to be approved and the consequence of a failure to attain a two-thirds vote is clear. Similarly, with respect to trials after impeachment (Art. I, § 3), the Constitution makes clear both that the Senate must have two-thirds concurring in the conviction and that in the absence of such a vote the impeachment will not stand. The same is true of all other super-majority provisions.[27] What emerges from a review of these provisions, we think, is that the apparent intent of the Drafters of our Constitution (and of its amendments) was that where matters involving the Congress are concerned all decisions are to be governed by the democratic principle of majority rule, save those rare cases in which a greater burden was clearly contemplated, deemed appropriate, and made explicit in unmistakable language. Thomas Jefferson may have said it best: "The voice of the majority decides; for the *res majoris partis* is the law of all councils, elections, & c., where not otherwise expressly provided."[28]

The suggestion that two-thirds of both Houses must concur in order to decide whether a reasonable time has passed, we think, is incompatible with the Constitution's pattern of narrowly and carefully defined super-majority requirements. Whatever one says about the notions underlying Article V, it cannot be concluded that the Framers intended to, and expressed, a desire to impose a two-thirds requirement on such "subsidiary matters of detail." *Dillon* v. *Gloss*, 256 U.S. at 376. We think it especially plain that such a requirement could not have been intended with respect to the timeliness question. The Framers contemplated that it should be difficult to alter the Constitution. In light of that premise it is simply not reasonable to conclude that they could also have intended that State ratifications would be accorded a standing of presumptive timeliness that could only be defeated by a two-thirds vote.[29]

On the face of Article V, unlike each of the other two-thirds approval provisions of the Constitution, it is simply not possible to tell what questions, other than the proposal question itself, Congress is to answer. Nor is it at all clear that the consequences of a negative vote on any subsidiary questions were understood. Finally, then, a majority vote must be accepted for the determination of reasonable timeliness. And, if Congress can determine reasonable timeliness by majority vote as the thirty-eighth ratification comes in, it may also decide by a majority vote to extend the time previously announced.

Our view is bolstered by the few scattered historical precedents which our research and the research of others has unearthed. We have found no evidence that questions dealing with the so-called subsidiary questions have ever been thought by members of Congress to require a two-thirds vote. Thus, when the Fourteenth Amendment ratification questions, which we will discuss more fully in our treatment of the rescission issue, were presented to Congress in 1868 there is no indication that Congress felt itself bound to resolve those questions by a two-thirds vote.[30] Similarly there is no evidence that the resolution introduced to resolve the same question arising out of the adoption of the Fifteenth Amendment was thought to require two-thirds approval.[31] *See* 91 Cong. Globe 3124 (1870). More recently, Congress has taken up consideration of a bill introduced by former Senator Ervin which outlined procedures to govern the State convention method of amending the Constitution. S. 215, 92d Cong., 1st Sess. (1971). The bill, which contained provisions dealing with the time periods in which the States could act under the convention approach, passed the Senate by a wide margin. Again, however, there is no indication that anyone in the Senate considered that the bill would be subject to the two-thirds approval requirement.[32] Where, as here, the answer to important questions of Constitutional law are not readily apparent from the text of the Constitution, such congressional precedents are entitled to weight.

While, for these reasons, we conclude that no more than a majority vote is required for extension, it might be conceded that the issue is not free from doubt. We recognize that this may be the only instance in which Congress is empowered to take action (apart from purely internal "housekeeping" matters) without either the constraint of a two-thirds vote requirement or the safeguard of a Presidential veto. We also acknowledge that it may be contended that this conclusion would allow a majority of one Congress to set aside actions that required the concurrence of two-thirds of some prior Congress.[33] Despite these considerations, however, we think that the controlling Supreme Court precedents, the historical examples, and the basic framework of the Constitution admit ultimately of no other response.

IV. THE REASONABLENESS OF H.J. RES. 638'S SEVEN-YEAR EXTENSION

In discussing whether the seven-year extension in H.J. Res. 638 is reasonable in the constitutional sense, we begin by embracing the position of the *Dillon* Court that the passage of time between proposal and final ratification by the requisite three-fourths of the States could be so great as to generate serious doubts as to whether a proposed amendment should be proclaimed as part of the Constitution. Passing the question whether such doubts could be resolved by the judiciary in an appropriate case, see *Coleman* v. *Miller*, supra, the fact remains that the Court's unanimous opinion in *Dillon* v. *Gloss* is the only extant judicial authority on this issue.

In *Dillon*, the Court unequivocally stated that a seven-year period could not be regarded as unreasonable "considering the periods within which prior amendments were ratified." 256 U.S., at 376. At the time *Dillon* was decided, all 17 amendments previously ratified had been ratified within four years of their proposal. *Id.*, at 372. Since *Dillon* was decided, the eight amendments ratified by the States have likewise been ratified within four years, the longest period being three years and 11 months (Twenty-second Amendment) and the shortest being four months (the Twenty-sixth Amendment).

As our historical review has disclosed, the seven-year limitation "approved" in *Dillon* has been given talismanic significance by the Congress, which has, with one exception, placed that limitation on every subsequent amendment that was eventually ratified. The Court's opinion in *Dillon* obviously abscribes no special significance to the seven-year limitation. The apparent thrust of the opinion is that one factor to be considered is the time period in which other amendments have been ratified. Although the Court does not elaborate on this point, we think it may well have intended to recognize Justice Story's following comment on the ratification process:

"Time is thus allowed and ample time for deliberation, both in proposing and ratifying amendments. They cannot be carried by surprise, or intrigue, or artifice. Indeed, years may elapse before a deliberate judgment may be passed upon them . . ."[34]

The Court in *Coleman* took a somewhat different approach to the question of reasonableness. Instead of drawing a comparison between the time taken to ratify other amendments and the time (13 years) since proposal of the Child Labor Amendment, the Court suggested that the constitutional viability of an amendment might well turn on "an appraisal of a great variety of relevant conditions, political, social and economic. . . ." 307 U.S., at 453.

In our view, both of these factors should be taken into account by Congress in its consideration of the constitutionality of H.J. Res. 638. It should be obvious that achieving a balance between ensuring that any amendment reflects the "felt needs of today," and ensuring that adequate time is available to the States for thorough deliberation of the complex issues raised by the ERA, is finally a matter for the judgment of Congress. Should this Congress determine by majority vote of each House that the conditions which brought about the proposal of the ERA by the 92d Congress continue to exist and that an extension of seven years is not substantially out of line with the historical experience regarding prior ratifications, H.J. Res. 638 may, in our view, constitutionally be adopted assuming that the seven-year limitation placed on ratification by the 92d Congress is not to be viewed as binding. For reasons stated *supra*, we do not think that that seven-year limitation must be viewed as binding.

IV. THE POSSIBLE EFFECT OF H.J. RES. 638 ON THE POWER OF STATES TO RESCIND PRIOR RATIFICATIONS

A separate question raised by H.J. Res. 638 is whether an extension of the time period available for ratification by the States would empower them to rescind prior ratifications during the extension period. This

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question could conceivably arise in one of two situations. First, under the joint resolution as presently drafted, the question would be whether an extension without more would somehow trigger a right of rescission derived from Art. V itself. Second, were H.J. Res. 638 amended specifically to confer a right of rescission on the States, would it be constitutional.

We assume for the purposes of addressing these questions that if a State having ratified an amendment could constitutionally rescind that ratification during the initial seven-year period, that power would continue unabated through any extension period that might be adopted. Thus, the rescission question raised by H.J. Res. 638 might conveniently be cast as whether, assuming States may not rescind during the initial seven-year period, may they nevertheless be constitutionally empowered to do so (1) by virtue of Art. V or (2) congressional action taken pursuant to Art. V?

Because we think that the answer to these questions is dependent to a great extent on the resolution of whether States may rescind during the initial seven-year period, we turn first to that question.

The text of Art. V itself provides no conclusive answer to whether States may rescind their ratification of a proposed amendment prior to its being ratified by three-fourths of the States.[35] It will be noted that Art. V does speak only in positive terms of ratification of a proposed amendment, giving the States the power to ratify a proposed amendment but not the power to reject. Thus, as a textual matter, it is arguable that only affirmative acts taken in the proposal or ratification process have any constitutional significance and that such acts are to be regarded as final. *See* Burdick, *Law of the American Constitution, supra*, at 43.

The sole expression we have been able to find regarding the probable intent of the Framers on this question is that of James Madison. During the ratification debates in the State of New York, it had been suggested that New York ratify the Constitution on the condition that certain amendments proposed by the New York Convention would be adopted.[36] Alexander Hamilton, who objected to such a conditional ratification, sought Madison's views. Madison's reply was made in a letter, quoted in full in the margin,[37] in which he stated that The Constitution requires an adoption *in toto* and *for ever*. It has been so adopted by the other States. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short any *condition* whatever must viciate the ratification.

Although this statement was made with regard to Art. VII of the Constitution, which required ratification by nine of the States to "establish" the Constitution among those States, we see nothing to suggest that Madison's reasoning should not be applied with equal force to proposed constitutional amendments. Perhaps more importantly, an examination of the history of ratification of the Constitution and amendments thereto demonstrates uniform application and general acceptance of this position taken by Madison—ratification must be unconditional and irrevocable.

A. The historical acceptance of Madison's principle

The New York Convention, after rejecting a proposal to ratify the Constitution conditionally, ratified the Constitution, substituting the words "fullest confidence" for the words "on condition." II J. Elliott's Debates 411–13 (1854).[38]

During this early period it was also recognized that a State, after having refused to ratify the Constitution, could thereafter ratify it. Thus, North Carolina's ratification of the Constitution in 1789 was taken as proper even though it had "rejected" the Constitution in 1788. *See* Warren, *The Making of the Constitution* 820 (1928). This principle was shortly thereafter extended to the Art. V amendment process when Pennsylvania ratified a proposed (but never adopted) amendment in 1791 after having refused to ratify it in 1790.[39] The available records of the Second Congress indicate that there was no comment whatsoever regarding Pennsylvania's action when notice of it was transmitted to the Senate by President Washington. *See* 3 Annals of Congress 15 (1791).

Thus, from an early date in our constitutional history it appears to have been accepted that the act of ratification, once taken by a State, was final and that States could ratify amendments after having "rejected" them.

These questions were not raised again until the Civil War Amendments were going through the ratification process. The first of these, the Thirteenth Amendment, had been "rejected" by the Kentucky legislature in 1865 by a resolution then presented to the Governor by the legislature. Although he took the position that the resolution did not require his assent,[40] he commented on the resolution as follows:

"Rejection by the present Legislative Assembly only remits the question to the people and the succeeding legislature. Rejection no more precludes future ratification than refusal to adopt any other measure would preclude the action of your successors. When ratified by the legislatures of three-fourths of the several States, the question will be finally withdrawn, and not before. Until ratified it will remain an open question for the ratification of the legislatures of the several States. When ratified by the legislature of a State, it will be final as to such State; and, when ratified by the legislatures of three-fourths of the several states, will be final as to all. Nothing but ratification forecloses the right of action. When ratified all power is expended. Until ratified the right to ratify remains." [41]

Both the rescission and subsequent ratification questions were presented together in connection with the ratification of the Fourteenth Amendment. By the middle of July, 1868, twenty-nine States had ratified that amendment. At that time there were thirty-seven States, twenty-eight thus constituting the majority of three-quarters required by the Constitution. However, two of those twenty-nine States, North and South Carolina, previously failed to ratify it and then reversed themselves; [42] in two others, Ohio and New Jersey, the legis'atures had passed resolutions withdrawing their prior ratification of the Amendment. On July 8, 1868, the Senate adopted a resolution requesting the Secretary of State to transmit to the Senate a list of the States whose legislatures had adopted the Amendment. 81 Cong. Globe 3857 (1868). On July 15, 1868, the President transmitted to the Senate the report of the Secretary of State in compliance with that resolution. The report drew attention to the resolutions of the legislatures of New Jersey and Ohio purporting to withdraw their ratifications. *Id.*, at 4070. On July 18, 1868, Senator Sherman introduced a Joint Resolution declaring that the Fourteenth Amendment had been ratified. *Id.*, at 4197.

Two days later, July 20, 1868, Secretary of State Seward published a document in which he recited by name the 29 States which had ratified the Amendment, including those which had sought to revoke their ratification and those which originally had rejected it. 15 Stat. 706. With respect to New Jersey and Ohio, he observed:

"And whereas it further appears from official documents on file in this Department that the legislatures of two of the States first above enumerated, to wit, Ohio and New Jersey, have since passed resolutions respectively withdrawing the consent of each of said States to the aforesaid amendment; and whereas it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent of the said two States, or of either of them, to the aforesaid amendment . . ."

He then certified that—

"if the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified in the manner hereinbefore mentioned, and so has become valid, to all intents and purposes, as a part of the Constitution of the United States."

He thus indicated that the effectiveness of the amendment was contingent on the power of the State legislatures to withdraw their consent from the ratification.

The following day, July 21, 1868, Congress adopted the Sherman resolution, *supra*, as a concurrent resolution not presented to the President.[43] 81 Cong. Globe 4266, 4295–96 (1868). That resolution stated that whereas the Fourteenth Amendment had been ratified by the legislatures of 29 States, counting among them North Carolina, South Carolina, New Jersey and Ohio, the Amendment was "hereby declared to be a part of the Constitution of the United States and it shall be duly promulgated as such by the Secretary of State."

On the same day, Georgia, which previously had rejected the Amendment, ratified it. 15 Stat. 708. Rumors, the authenticity of which were questioned, of that ratification reached the House of Representatives during its deliberation on the Sherman resolution. In view of the questionable nature of that information, the House did not amend the resolution so as to include Georgia among the ratifying States. 81 Cong. Globe 4296 (1818).

On July 28, 1868, Secretary Seward, in compliance with the Sherman resolution, unconditionally certified that the Fourteenth Amendment had become valid to all intents and purposes as a part of the Constitution of the United States. 15 Stat. 708. He listed New Jersey, Ohio, Georgia and the two Carolinas among the ratifying States.

As the result of the ratification of the Amendment by Georgia, it had been approved by twenty-eight, *i.e.*, the requisite number of States, even if New Jersey and Ohio were disregarded. This consideration, however, did not render the congressional determination academic. First, the congressional decision must be read in the light of the situation which existed when it was made. At that time, Congress had not received official notice of Georgia's ratification of the amendment. Therefore, the ratifications of New Jersey and Ohio were necessary to carry it. Secondly, it should also be noted that the adoption of the Amendment required not only the inclusion of the States which had adopted the amendment and then sought to repudiate their ratification (New Jersey and Ohio) but also that of the States which first had rejected the Amendment and then ratified it (North and South Carolina, and subsequently Georgia). The Fourteenth Amendment thus could not have been adopted without the ratifications of States which originally had rejected it.

The adoption of the Fifteenth Amendment involved problems analogous to those which arose on the occasion of the adoption of the Fourteenth Amendment. In this case, however, the Amendment was published

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and certified by the Secretary of State without congressional guidance.

By the middle of February 1870, the Fifteenth Amendment had been ratified by 30 States, one more than the required number. Two of them, however, Ohio and Georgia, had originally rejected it. Mathews, *Legislative and Judicial History of the Fifteenth Amendment* 65–67 & n. 45 (1909). Also, New York rescinded its ratification in January 1870. The amendment therefore could be considered adopted only if the States which first had rejected it were counted or if the rescission by New York were considered to be without effect.

Congress was aware of these problems but was unable to take any action on them.[44] Thus, the New York resolutions rescinding the ratification of the Amendment were referred by the Senate to the Committee on the Revision of the Laws on January 11, 1870. 88 Cong. Globe 377 (1870). The Committee reported back on February 22, 1870, with the recommendation that the New York resolutions be indefinitely postponed. A spectacular debate ensued between Senator Conkling of New York and Senator Davis of Kentucky, 89 Cong. Globe 1477–81 (1870), but it does not appear that the Senate took any action on the report. On February 21, 1870, a resolution was introduced in the Senate declaring that the Fifteenth Amendment had become valid. The resolution was referred to a Committee, *id.*, at 1444. The Committee submitted its report on April 18, 90 Cong. Globe 2738 (1870) and the resolution was passed over on the motion of its sponsor, 91 Cong. Globe 3124 (1870). On March 3, 1870, the Senate adopted a resolution requesting the Secretary of State to advise it of the States which had ratified the Amendment, 89 Cong. Globe 1653 (1870). The response from the Secretary is unknown.

Finally, on March 30, 1870, President Grant sent Congress a message advising it of the promulgation of the Fifteenth Amendment by the Secretary of State. 90 Cong. Globe 2298 (1870). The certificate of the Secretary of State, 16 Stat. 1131, listed twenty-nine States, including Ohio and New York but excluding Georgia, as having ratified the Amendment, and continued:

"And, further, that the States whose legislatures have so ratified the said proposed amendment constitute three-fourths of the whole number of States in the United States.

"And further, that it appears from an official document on file in this Department that the legislature of the State of New York has since passed resolutions claiming to withdraw the said ratification of the said amendment which had been made by the legislature of that State, and of which official notice had been filed in this Department.

"And, further, that it appears from an official document on file in this Department that the legislature of Georgia has by resolution ratified the said proposed amendment. . . ."

The statement "that the States whose legislatures have so ratified the said proposed amendment constitute three-fourths of the whole number of States" tends to indicate that the Secretary of State did not recognize the withdrawal of New York to have been effective. The separate enumeration of Georgia seems to have served the same purpose, because the ratification of New York would not have been required if Georgia had been included in the list of ratifying States. The separate listing of Georgia could not have been due to last minute ratification by that State. The proclamation was dated March 30, 1870. Georgia had ratified the Amendment on February 2, 1870, followed by Iowa (February 3, 1870), Nebraska (February 17, 1870), and Texas (February 18, 1870). *See* U.S.C.A. Constitution, Amendment XV, Historical Note. The last three States were included in the first list of ratifying States.

The House of Representatives signified its approval of the promulgation of the Fifteenth (and Fourteenth) Amendment by adopting on July 11, 1870, a resolution to the effect that the amendment had become valid as a part of the Constitution. 93 Cong. Globe 5441 (1870).[45] No similar action was taken in the Senate, except, of course, for its later adoption of legislation implementing the Amendment.

The only pertinent judicial announcement of that period is a dictum in *White* v. *Hart*, 13 Wall. 646, 649 (1871) to the effect that the validity of the adoption of the Fourteenth and Fifteenth Amendments by Georgia was a political question not subject to judicial scrutiny. The Court said:

"Upon the same grounds she might deny the validity of her ratification of the constitutional amendments. The action of Congress upon the subject cannot be inquired into. The case is clearly one in which the judicial is bound to follow the action of the political department of the government, and is concluded by it (citing *Luther* v. *Borden*, 7 Howard, 43, 47, 57; *Rose* v. *Himely*, 4 Cranch 272; *Gelston* v. *Hoyt*, 3 Wheaton, 324 *Id.* 634; *Williams* v. *The Suffolk Ins. Co.*, 13 Peters, 420)."

The issue whether a State can change the position by its legislature with respect to a constitutional amendment also arose in various degrees in connection with the adoption of the Sixteenth, Eighteenth, and Nineteenth Amendments. In none of these instances did the Secretary of State refer the matter to Congress.

Arkansas, which originally had rejected the Sixteenth Amendment, subsequently ratified it. The certificate of the Secretary of State lists Arkansas without comment among the ratifying States. 37 Stat. (Pt. II) 1785. It is, however, not apparent whether the approval of that State was required to obtain the necessary number of ratifications. S. Doc. 314, 76th Cong., 3 Sess. 25 (1940).

The issue whether ratification by the State legislature was final arose indirectly in connection with an attempt in Maine to subject the ratification of the Eighteenth Amendment by the State legislature to the State's initiative and referendum procedures. The Maine Supreme Court held that the amendment could not be subjected to a referendum. *Opinion of the Justices*, 118 Me. 544 (1919). One of the reasons for the decision was the consideration that, under the precedents established in connection with the adoption of the Fouthteenth and Fifteenth Amendments, the legislation ratifying an amendment was final and could not be rescinded. *Id.* at 548–49.[46]

The Nineteeth Amendment was ratified by the State of Tennessee on August 18, 1920. On August 26, 1920, the Secretary of State issued his certificate declaring that the amendment had been adopted by the required number of States, including Tennessee. 41 Stat. (Pt. II) 1823. Five days later, the Tennessee legislature sought to rescind the resolution adopting the amendment on the ground that it had been approved in the absence of a quorum and in violation of constitutional procedural safeguards. The Secretary of State disregarded the resolution of rescission. *See* 65 Cong. Rec. 4491–92 (1924) (Remarks of Sen. Wadsworth); *Clements* v. *Roberts*, 144 Tenn. 129 (1920); *Leser* v. *Board of Registry*, 139 Md. 46, 71–73 (1921), *aff'd sub. nom. Leser* v. *Garnett*, 258 U.S. 130, 137 (1922).

Thereafter, Senator Wadsworth of New York and Congressman Garrett of Tennessee introduced an amendment to Article V of the Constitution. The part of that proposal pertinent here would have provided that

"until three-fourths of the States have ratified or more than one-fourth of the States have rejected or defeated a proposed amendment, any State may change its vote."[47]

The proposal thus would have overturned by constitutional amendment the rule postulated by Madison and established in connection with the Civil War Amendments by enabling a State to rescind its ratification of an amendment until the time when the amendment becomes effective; and by preventing a State which had rejected an amendment from changing its position once more than a quarter of the States had rejected the amendment.

Both sponsors of the proposal conceded that these provisions were contrary to existing law; indeed both conceded that their proposals were designed to remedy what they considered to be a defect in the Constitution. Thus Senator Wadsworth stated, 65 Cong. Rec. 4492 (1924):

"It is apparent that under Article V, as now drawn, no State can change its vote from the affirmative to the negative in the matter of a constitutional amendment. Once ratified by a State, that State can not change, even though it does so before a sufficient number of States have ratified so as to insert the amendment in the Constitution itself. Tennessee tried to change. It cannot be done under Article V.

"Mr. WALSH of Massachusetts. Mr. President, having once rejected, can it change?"

"Mr. WADSWORTH. Yes; the legislature of a State may change from the negative to the affirmative at any time."

In the House of Representatives Congressman Garrett explained this part of the proposed amendment, 66 Cong. Rec. at 2159:

"The third proposition or change is that which gives a State that has ratified a chance to reconsider, provided it be done before its action in conjunction with that of others has become law.

"A State which has said 'no' may now change and say 'yes.' What can be the injustice in permitting a corollary whereby it may, within reasonable time limits, change from 'yes' to 'no'?

* * * * *

"In practice, therefore, it may be said—and I think it is generally regarded to be—the law that a State may reconsider and change a rejection, but may not reconsider and change a ratification.

* * * * *

"I believe and undertake to maintain that there is no more reason in governmental ethics why an affirmative act should not have the right of reconsideration than a negative prior to the time when the affirmative act actually makes law, and hence the third proposed change."

The Wadsworth-Garrett proposal apparently never got to a vote in either House.

The question whether a State can change a position taken with respect to a constitutional amendment arose again in connection with the Child Labor Amendment. That amendment had been submitted to the States in 1924. In the following year it appeared that more than one-fourth of the States had affirmatively rejected it. Congressman Garrett thereupon introduced a resolution which would have required the Secretary of State to report to Congress the action reported to him by the States regarding the amendment. 67 Cong. Rec. 576 (1925). Supporters of the amendment opposed the resolution because they feared that it was designed to lay the foundation for the claim that the amendment had been irretrievably defeated. *Id.*, at 1505–06 (1926). Congressman Garrett stated, *id.*, at 1506, that he had "no doubt that it is within the power of the legislature of any State that has acted on the amendment adversely to reconsider its action and act favorably, if it chooses to do so within the next year or two, for I imagine the Supreme Court would hold that was within a reasonable time."[48]

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The resolution passed, *id.*, at 1507, and the Secretary of State submitted his report on February 9, 1926, which indicated that the amendment had been ratified in 4 States, affirmatively rejected in 13, failed ratification in both Houses in 3, and that some adverse action had been taken in some form by one House in 6 States. *Id.*, at 3801. No action was taken on that report.

The tide turned, however, in the 1930's, when an everincreasing number of States, including many who had previously rejected the amendment, began to ratify it.[49] The question whether a State could ratify the amendment after its legislature had once rejected it was subsequently presented in *Coleman* v. *Miller*, 307 U.S. 433 (1939), and its companion case, *Chandler* v. *Wise*, 307 U.S. 474 (1939).

In 1925, the Kansas Legislature rejected the Child Labor Amendment and sent a certified copy of that action to the United States Secretary of State. In 1937, the Kansas Legislature adopted a resolution ratifying the amendment by a vote of 21–20, with the Lieutenant Governor casting the decisive vote. Several outvoted Kansas legislators thereupon instituted mandamus proceedings against the Secretary of the State Senate designed to prevent the ratification resolution from becoming effective. The complaint was based, *inter alia*, on the arguments (a) that the State of Kansas had once rejected the amendment, and (b) that the amendment, having been rejected by both Houses of the legislatures of 26 States and having been ratified only in five States between 1924 and 1927, had failed of ratification within a reasonable period and thus no longer was viable. *Coleman* v. *Miller*, 307 U.S. at 435–36.[50] The Supreme Court of Kansas denied the writ. *Coleman* v. *Miller*, 146 Kan. 390 (1937). That court, relying on the precedent of the Civil War Amendments, held:

"It is generally agreed by lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by Congress may later reconsider its action and give its approval, but that a ratification once given cannot be withdrawn. (At 400).

* * * * *

"It would seem, then, that a state legislature which has rejected an amendment proposed by congress may later reconsider its action and give its approval. (Willoughby on the Constitution, sec. 329a.).

"In a release from the department of state under date of April 20, 1935, attached as an exhibit to plaintiff's petition in this case, giving the status of the child-labor amendment, it appears that in five states, Indiana, Minnesota, New Hampshire, Pennsylvania and Utah, after the proposed amendment had been rejected, each of the states later adopted a resolution of ratification. When these states rejected the amendment, was their power with reference to the proposed amendment exhausted? If so, the subsequent ratification would be void. Is it to be seriously argued that the secretary of state could not count these five states in making up the total number of states necessary to adopt the amendment?

"Thus it appears to be an historical fact that many states have rejected proposed amendments, and have later ratified them. (At 401).

"From the foregoing and from historical precedents, it is also true that where a state has once ratified an amendment it has no power thereafter to withdraw such ratification. To hold otherwise would make article 5 of the federal constitution read that the amendment should be valid 'when ratified by three fourths of the states, each adhering to its vote until three fourths of all the legislatures shall have voted to ratify.'

"It is clear, then, both on principle and authority, that a proposed amendment once rejected by the legislature of a state may by later action of the same legislature be ratified; and *that when a proposed amendment has once been ratified the power to act on the proposed amendment ceases to exist.*" (At 403) (emphasis added).

The Supreme Court of the United States affirmed the decision of the Supreme Court of Kansas in an unusually complicated ruling. *See* note 4, *supra*.

The opinion of the Court, written by Chief Justice Hughes and on this issue actually joined by Justices Stone and Reed, and presumably joined by Justices Black, Roberts, Frankfurter and Douglas,[51] recited the historic precedent established on the occasion of the adoption of the Fourteenth and Fifteenth Amendments and observed that this "decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted," 307 U.S., at 450.

The question whether a State has the power to change its position with regard to the adoption of a constitutional amendment does not seem to have become a serious issue in connection with any of the later amendments submitted to the States.

The problem, however, did arise indirectly in connection with legislation designed to establish procedures for calling constitutional conventions. In that context the Senate committee reports conceded that under existing law a State could not rescind its ratification of a constitutional amendment but took the position that the law should be "changed."[52] The bills therefore provided in effect that a State could rescind its ratification of a proposed constitutional amendment until it had been validly adopted. Both bills passed the Senate but died in the House of Representatives.[53]

B. The application of Madison's principle

When the Supreme Court held in *Dillon* v. *Gloss*, *supra*, that Congress has implied power under Article V to set a time period for ratification of a proposed amendment, it was writing on what was virtually *tabula rasa*. Likewise, in approaching the question whether Congress may extend a limitation once set, we think that historical understanding, while informative, cannot be thought of as conclusive.

With regard to whether a State might rescind during an "extension" period there is certainly a temptation to assure that the question may be approached in the same manner because, no extension ever having been contemplated, it follows that the question of rescission during such a period could not have been contemplated. Were we to take such an approach, we could perhaps be easily persuaded by the argument that "[t]he extension of time for ratification but not for rescission would be . . . grotesque. . . ."[54]

That argument appears to be that failure to provide for rescission would permit an amendment to be ratified without the "contemporaneous consensus" required by the Constitution (presumably required by Article V as interpreted in *Dillon* v. *Gloss*, *supra*). This lack of a "contemporaneous consensus" would, under this view, perhaps be evidenced by several or many attempted rescissions by States that would give a reasonable man reason to think that no consensus existed.

That analysis confuses two issues that should, we think, be sharply differentiated in the consideration of H.J. Res. 638. First is the issue whether the period of 14 years proposed in H.J. Res. 638 is "reasonable" in view of the interpretation placed on Art. V *Dillon* v. *Gloss* and with which we are in agreement. If 14 years or possibly a lesser period is, in the judgment of Congress, "reasonable," then the question of the power of States to rescind in the last seven years of the 14-year period is irrelevant. The second issue is, of course, whether the States may rescind a prior ratification during the extension period because the will of its people has in fact changed since initial ratification. This argument would appear to reduce to the proposition that a seven-year extension can be viewed as "reasonable" only if no substantial number of States actually attempt to rescind their ratifications during the extension period. Under this view, the power to rescind functions as a sort of escape valve permitting the States themselves to determine what is or what is not a "reasonable" period of time by acts of rescission.

We are unable to agree with that analysis. In our view, the lesson of history, including prior congressional interpretation of Art. V with regard to the Fourteenth Amendment, is that States may not rescind a ratification. And we think *Dillon* v. *Gloss* and *Coleman* v. *Miller* are equally dispositive in rejecting any possibility that States, rather than Congress, are to have the final say concerning whether an amendment has been ratified within a "reasonable" time.

In our view, the most persuasive argument that Art. V permits rescission during an extension period is predicated on a notion that State legislatures may have relied on the seven-year period established in H.J. Res. 208 by assuming that they would be held to their ratification for a seven-year period and no longer. We have examined the certifications of ratification submitted to GSA by the 35 States having ratified the ERA and are unable to conclude that such reliance is indicated, at least on the face of those documents. More importantly, we think that such a concept of "reliance" is essentially no different, in kind, from the proposal before the New York Convention to ratify the Constitution on a *conditional* basis, an act that James Madison viewed as invalid. We say "no different in kind" because, from a purely analytical point of view, the only difference would be that Congress' act of setting a seven-year limit in H.J. Res. 208 or in H.J. Res. 638 would have to be viewed as equivalent to Congress' extending to the States a right to ratify an amendment conditionally. We think that the whole thrust of history is that Art. V, as interpreted, does not permit States to rescind or otherwise place conditions upon their ratifications. If we are correct in this view, we think it follows that such a power can be granted only by an amendment to Art. V itself.

V. THE POLITICAL QUESTION DOCTRINE

Although we think that the constitutional questions raised by H.J. Res. 638 should be addressed on their merits without reference to the likelihood that the courts will finally resolve any or all of them, we recognize that the difficulty of those questions coupled with the uncertainty we (and presumably others) entertain with regard to our resolution of them can give rise to congressional interest in this question.

Prior to the decision in *Coleman* v. *Miller*, the Court consistently entertained and resolved questions arising out of the amendment and ratification process.[55] In Coleman itself, we think that majority[56] of the Court squarely held that the effect of prior rejection on ratification was a political question not justiciable in the courts and that the same majority took the same view of the effect of rescission on final ratification by three-fourths of the States. We see no reason why the Court would change its prior position on the political nature of these questions unless perhaps if this aspect of *Coleman* were premised on the understanding that the answers to these questions had been firmly settled by history and were not subject to reversal by a future Congress.

There was, however, no clear majority in *Coleman*, as pointed out by Justice Black in

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his concurring opinion, for the position that courts could never review the question of reasonableness. Thus, we are not at all certain that the question of the reasonableness of the seven-year extension might not be subjected to judicial review in an appropriate case, particularly where ratification by the requisite three-fourths of the States to be obtained toward the end of the 14-year period.

We think that decisions of the Supreme Court subsequent to *Coleman*,[57] as well as the cases cited in note 55, *supra*, indicate that the questions of the power of Congress to extend a ratification, the vote by which such an extension must be adopted, and perhaps whether Congress might confer on the States a right to rescind[58] are more likely to be viewed as justiciable controversies in appropriate cases. We take this view because these questions do not appear to present situations in which there is either a textually demonstrable commitment their resolution to the Congress or there are no judically discoverable standards by which to resolve the question presented.

FOOTNOTES

[1] This resolution was adopted by Congress on March 22, 1972, when the Senate passed unamended the resolution adopted by the House of Representatives on October 12, 1971.

[2] As of this writing GSA is also in receipt of three documents from Tennessee, Idaho, and Nebraska purporting to withdraw or rescind their ratifications previously certified.

[3] The Eighteenth Amendment had in fact been ratified within about 13 months of the time it was proposed by Congress.

[4] The language quoted above, from the opinion of the Court, was the opinion of Chief Justice Hughes joined by Justices Stone and Reed. Justice Black wrote a concurring opinion joined by Justices Roberts, Frankfurter and Douglas, that would have disavowed the assertion in *Dillon* that the courts would under some circumstances ever be able to inject themselves into the type of dispute presented. Justices Butler and McReynolds dissented on the ground that a reasonable time had elapsed since the amendment was proposed. *See* note 51, *infra*.

[5] Although such an argument has some appeal, a contrary conclusion is supported by the analysis of the Court in *Dillon* v. *Gloss*, *supra*. In that case, the seven-year limit had been included in the text of the proposed amendment and the amendment had been ratified by the requisite number of States in about 13 months. If the Court had viewed the seven-year limit as a substantive part of the amendment, it could have affirmed the limit's validity solely on the basis that it had in any event been ratified as part of the amendment itself and thereby would constitute an amendment to Art. V. Indeed, the brief of the United States in *Dillon* appears to embrace such an argument. *See* Brief for the United States at 5–6. The Court did not, however, decide the case on this proffered ground, suggesting that the Court might not have viewed the seven-year limitation as being a substantive part of the Eighteenth Amendment. *See also* 55 Cong. Rec. 5649 (1917) (remarks of Sen. Stone).

A contrary conclusion is also supported by the Court's decision in the *National Prohibition Cases*, 253 U.S. 350 (1920). In that decision, involving a challenge to the validity of the Eighteenth Amendment, Mr. Justice Van Devanter, in announcing the "conclusions of the Court," *id.*, at 384, purported to set forth the "text" of the Eighteenth Amendment by quoting in full sections 1 and 2 but completely omitting section 3 which contained within it the seven-year limitation imposed for the first time by Congress. *Id.*, at 385. *See id.*, at 393 (McKenna, J. dissenting).

[6] *See, e.g.*, 56 Cong., Rec. 446 (1917) (debate on proposed Eighteenth Amendment):

"Article V expressly provides that once this proposed amendment has gone from the halls of Congress and rests with the States, when ratified by the States it becomes a part of the Constitution."

[6a] *See* remarks of Senator Buckalew, 71 Cong. Globe 2771 (1866); 85 Cong. Globe 912–13, 1040 (1869).

[7] 56 Cong. Rec. 463 (1917).

[8] 58 Cong. Rec. 93 (1919).

[9] The phrase "as provided in the Constitution" was not included in section 6. Otherwise, the sections are identical.

[10] 75 Cong. Rec. 5086 (1932).

[11] "Proposal and ratification . . . are not treated as unrelated acts, but as succeeding steps in a single endeavor. . . ." *Id.*, at 3856, quoting *Dillon* v. *Gloss*, 256 U.S., at 374–75.

[12] *Id.*

[13] *Id.*, at 3856–57.

[14] *Id.*, at 3857.

[15] The notable difference was that ratification was to be by conventions in the several states rather than by state legislatures.

[16] *See Hearings on H.J. Res. 529 before Subcommittee No. 5 of the House Committee on the Judiciary* 82 (1960).

[17] *Id.*, at 106–08.

[18] H. Rep. No. 1821, 87th Cong., 2d Sess. 5 (1962).

[19] *See* S. Rep. No. 66, 89th Cong., 1st Sess. (1965); H.R. Rep. No. 554, 89th Cong., 1st Sess. (1965).

[20] S. Rep. No. 26, 92d Cong., 1st Sess. 2 (1971); H.R. Rep. No. 37, 92d Cong., 1st Sess. (1971).

[21] S. Rep. No. 689. 92d Cong., 2d Sess. 20 (1972).

[22] We would comment briefly on the question whether, assuming the 95th Congress may extend the period established by the 92d Congress, the 96th or a subsequent Congress could shorten a period previously established. (We would observe first that the answer to this question would appear also to resolve the question whether Congress might declare a proposed amendment to no longer be viable in the absence of an explicit time limit in that amendment or its proposing clause.) Given the nature of the Congressional determination of "reasonableness" as described in *Dillon* and *Coleman*, it is certainly arguable that any Congress might, on the basis of adequate findings, determine that a proposed amendment is no longer viable because present ratification would not reflect a contemporaneous expression of the people's will. We think, however, that such an argument would have to take into account the historically accepted understanding that Congress may not withdraw an amendment once it has been proposed. *See* Jameson, *A Treatise on Constitutional Conventions*, § 585, p. 634 (1887); Burdick, *The Law of the American Constitution* 39 (1922); Orfield, *Amending the Federal Constitution* 51–52 (1942). Without resolving this obviously complex question, we would additionally note that a Congressional act constituting withdrawal would perhaps run afoul of the logic if not the expressed views of James Madison, discussed at length *infra*, that States may not conditionally ratify a proposed amendment. The scholars cited above at the least assume, as do we, that a Congress could not "cutback" on time available for ratification of a proposed amendment because the membership no longer viewed the proposed amendment as desirable.

[23] It is true that the Executive Branch, by virtue of 1 U.S.C. § 106b and its predecessors dating back to 1818, has performed a ministerial function within the ratification process. We do think that congressional assignment of this function or similar functions to the Executive Branch might well require the approval of the President under Art. 1, § 7, but we think this is quite different from the resolution extending the time period here.

[24] We note that this holding in *Hollingsworth* has been specifically approved in subsequent opinions of the Court. *See, e.g., Hawkes* v. *Smith*, 253 U.S. 221, 229–30 (1920). Thus, we see no justification for limiting *Hollingsworth* to its facts.

[25] As we explain in our discussion in the final section of this opinion dealing with the political question doctrine, there remains some doubt whether Congress' power to establish a reasonable time is *exclusive*. On the question whether the judiciary may have some role to play, the Court's opinions do leave room for debate; on the question, however, whether the Constitution imposes upon Congress the primary duty to ascertain that amendments have been approved within a reasonable time there is no longer room for doubt. Congress has acknowledged the existence of this "power and responsibility" imposed upon it by Article V. *See* S. Rep. No. 689, 92d Cong., 2d Sess. 20 (1972), quoted in the text at note 21 *supra*.

[26] History has shown us that consideration by the States of proposed amendments long after their introduction is not a far-fetched hypothetical. In at least one case the State of Ohio undertook to consider an amendment some 80 years after it was proposed by Congress. *See Dillon* v. *Gloss*, 256 U.S., at 372. Indeed, it was precisely this type of concern which led the *Dillon* Court to conclude that Congress could impose a time limitation to prevent a State from "resurrecting" a proposed amendment that had "lain dormant for many years." *Id.*, at 373.

[27] *See* Art. 1, § 5, (voting to expel a member of Congress); Art. 1, § 7 (override of veto); 14th Amendment, § 3 (removal of disability of members of Congress); 25th Amendment (Presidential resumption of power after disability).

[28] Jefferson's Manual of Parliamentary Practice § XLI, reprinted in H. Doc. No. 416, 93d Cong., 2d Sess., § 508, p. 257 (1975).

[29] Our view that it is essential that Congress have the ability affirmatively and directly to decide whether the ratifications reflect the "contemporaneous" judgment of the states is made the more critical when considered in light of the other conclusion we think compelled under Article V—that a State once having ratified may not rescind. *See* text beginning at page 28 *infra*. The States, in our view, are prohibited directly from announcing their view that conditions no longer warrant passage of an amendment once approved by them. Therefore, unless Congress retains the power to vote "yea" or "nay" on the reasonable timeliness question, a small minority of late-ratifying States coupled with a minority in either House of Congress might force the approval of an amendment no longer deemed appropriate by the majority. We should also add that if this event did occur we would have serious doubt whether the amendment was constitutional.

[30] *See* text beginning at page 33 *infra*. In response to Secretary of State Seward's inquiry, Congress decided by concurrent (continued) resolution that the Fourteenth Amendment had been duly ratified by the States. The resolution, S. Res. 166 passed by the 40th Congress, expressed the position of Congress that the Fourteenth Amendment had in fact been ratified by the requisite three-fourths of the States even though two States, Ohio and New Jersey, had purported to rescind their prior ratifications before three-fourths had ratified. The resolution did not indicate on its face whether a two-thirds vote was required during debate in either House on the resolution. The vote in the House for passage was 127 in favor to 33 against, a majority of about four-to-one. 78

Cong. Globe 4266 (1868). Although the vote was not recorded in the Senate, we do know that the resolution was voted on by the Senate after a motion to discharge the resolution from committee was adopted without objection and that the voice vote was presumably not so close as to persuade any opponents of the resolution to call for a recorded vote. *Id.*, at 4230.

[31] *See* text beginning at page 36 *infra*. We hesitate to read too much into the historical evidence surrounding the Fourteenth and Fifteenth Amendments. While it is true that resolutions adopted in both cases contained no designation that a two-thirds majority would be required for approval, and while the recordation that the resolutions had been approved contained no indication that they had been embraced by two-thirds of each House, it does appear that the votes were never close. Indeed, by voice vote or otherwise, the vote in each House was in excess of two-thirds. Nevertheless, we think it not unreasonable to conclude that if members of Congress had recognized a two-thirds requirement there would have been some indication of that fact in the historical record.

[32] To our knowledge, the Ervin bill never came to the floor of the House for a vote. The bill also provided for congressional action by majority vote of each House, not subject to the veto power of the President, regarding details concerning the calling of a constitutional convention by the States. *See* §§ 6(a) and 11(b)(1) of S. 215.

[33] As we have suggested earlier, *see* note 22 *supra*, we doubt whether—either by majority or two-thirds—Congress could so shorten the time as effectively to withdraw the question from the States. Additionally, it is our view that the original time limitation need not, as a constitutional matter, have been set by a two-thirds vote. For the same reasons set forth above, we would conclude that the time period is a "subsidiary" detail which Congress could prescribe by majority vote as an incident to proposing an amendment.

We would also state that we gain little guidance from parsing of the words of Article V itself. Grammarians might differ over whether the two-thirds requirement modifies only the first clause, the first and second, or the entire sentence. Given our presumption against reading super-majority requirements broadly, however, we do conclude that the wording of the Article itself does not compel extension of the two-thirds vote to all issues which might conceivably arise under the amending power. Finally, it should be noted that our review of the debates, and other contemporaneous history, surrounding the constitutional convention has not disclosed any substantial evidence of the Framers' thoughts on this question.

[34] II Story, *Commentaries on the Constitution* 600 (5th ed.) as quoted in brief for the United States as *amicus curiae* in *Coleman* v. *Miller*, *supra*, at 27–28.

[35] We do not think anyone could seriously doubt that a State's rescission of its ratification subsequent to adoption of an amendment would be a meaningless act.

[36] V Papers of Alexander Hamilton 147, 177 (Syrett ed. 1961).

[37] The full text of Madison's letter is as follows:

"FROM JAMES MADISON (1)

N.D. York Sunday Evening (July 20, 1788). (2)

"MY DEAR SIR: Yours of yesterday is the instant come to hand & I have but a few minutes to answer it. I am sorry that your situation obliges you to listen to propositions of the nature you describe. My opinion is that a reservation of a right to withdraw if amendments be not decided on under the form of the Constitution within a certain time, is a conditional ratification, that it does not make N. York a member of the New Union and consequently that (3) she could not be received on that plan. Compacts must be reciprocal, this principle would not in such a case be preserved. The Constitution requires an adoption *in toto* and *for ever*. It has been so adopted by the other States. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short any *condition* whatever must viciate the ratification. What the new Congress by virtue of the power to admit new States, may be able disposed to do in such a case, I do not enquire as I suppose that is not the material point at present. I have not a moment to add more. Know my fervent wishes for your success & happiness.

This idea of reserving right to withdraw was started at Richmd & considered as a conditional ratification which was itself considered as worse than a rejection: (1) In JCHW, I, 465, this letter is dated 'Sunday Evening.' After serving in the Virginia Ratifying Convention, Madison had resumed his seat in the Continental Congress. (2) This letter was written on the day after H wrote to Madison, July 19, 1788. (3) In MS, 'that that.'"

[38] The Convention also defeated a motion reserving to the State of New York a right to withdraw from the Union after a certain number of years, unless the amendments proposed previously were submitted to a general convention. II J. Elliot's Debates 412 (1854) It is not apparent whether Madison's letter was brought to the attention of the N.Y. Convention. Madison's letter, *supra*, however, indicates that the mails between New York, where Madison served on the Continental Congress, and Poughkeepsie, the seat of the New York Convention, took only a day. Hence, it is likely that Madison's letter of July 20 was utilized during the crucial debates in the New York Convention on July 23, 1788.

[39] *See* Ames, *Amendments to the Constitution of the United States, reprinted in* H. Doc. 353, 54th Cong., 2d Sess. (pt. 2) 300 n. 4 and 320 (1891).

[40] Jameson, note 22 *supra*, at 630.

[41] *Id.*, quoting Acts General Assembly, Ky., 1865, p. 157.

[42] This figure is based on the recitals of the Proclamation of July 28, 1968, 15 Stat. 708. According to the Brief of the United States as *amicus curiae* in *Coleman* v. *Miller*, *supra* at 14, the Amendment had been rejected prior to ratification by seven States: Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina and South Carolina which, with the exception of Georgia, had ratified it prior to July 20, 1868.

[43] The submission by Congress of a constitutional amendment to the States need not be presented to the President (*Hollingsworth* v. *Virginia*, *supra*). It therefore would appear that a congressional determination as to whether an amendment has been adopted by the requisite number of States can be passed as a concurrnt resolution which is not presented to the President. *See also* note 24 *supra*.

[44] *See* Note, 49 Ind. L. J. 147, 151 (1973).

[45] On April 11, 1870, the House adopted a resolution authorizing the celebration of the adoption of the Amendment in the Hall of the House of Representatives. 90 Cong. Globe 2586–2587 (1870).

[46] In *Hawke* v. *Smith*, 253 U.S. 221 (1920) the Supreme Court reached the same result but for other reasons.

[47] Cong. Rec. 4493 (1942). *See also id.*, at 2152–53.

[48] This statement was based in part on *Dillon* v. *Gloss*, 256 U.S. 368 (1921).

[49] *See Coleman* v. *Miller*, 307 U.S., at 473 (*Chronology of Child Labor Amendment*, footnote to dissenting opinion of Butler, J.), and the *amicus curiae* brief filed by the United States in *Coleman* v. *Miller*, note 34 *supra*, Appendices A and B.

[50] The Child Labor Amendment, as noted *supra*, had no provision requiring its adoption within a specific period of time. This proposed amendment was never actually ratified by three-fourths of the States.

[51] On this particular point, we think that the opinion of Chief Justice Hughes must rightly be thought of as an opinion of the Court as it is described at its outset. We say this because Justice Black and those joining his concurring opinion clearly reached the merits of the issues raised, 307 U.S., at 456 (under "compulsion" of the court's holding on the standing question) and also indicated that his disagreement with Hughes' opinion was limited to aspects of Hughes' opinion not relevant to the present discussion, *id.*, at 458.

[52] "The question of whether a State may rescind an application once made has not been decided by any precedent, nor is there any authority on the question. It is one for Congress to answer, Congress previously has taken the position that having once ratified an amendment, a State may not rescind.

The committee is of the view that the former ratification rule should not control this question and, further, should be changed with respect to ratifications. Since a two-thirds concensus among the States in a given period of time is necessary to call a convention, obviously the fact that a State has changed its mind is pertinent. An application is not a final action. A State is always free, of course, to reject a proposed amendment. Of course, once the constitutional requirement of petitions from two-thirds of the States has been met and the amendment machinery is set in motion, these considerations no longer hold, and rescission is no longer possible. On the basis of the same reasoning, a State should be permitted to retract its ratification, or to ratify a proposed amendment it previously rejected. Of course, once the amendment is a part of the Constitution, this power does not exist." S. Rep. No. 336, 92d Cong. 1st Sess. 14 (1971); S. Rep. No. 293, 93d Cong., 1st Sess. 14 (1973).

[53] The latest congressional recognition of the rule that a state cannot rescind its ratification of a constitutional amendment of which we are aware is Senator Bayh's statement on the floor of the Senate, delivered on March 6, 1974:

"Mr. BAYH. Mr. President, one of the questions which has aroused considerable interest with respect to the proposed 27th amendment to the Constitution has been whether a State once it has ratified the amendment may later change its mind and rescind its ratification. The issue was first raised by the State of Nebraska which has now rescinded its earlier ratification. Several other states, in addition, have similar rescission resolutions pending before their State legislatures.

"I am firmly convinced that, once a State legislature has exercised the powers given it by article V of the Congress, it has exhausted its powers in this regard and may not later go back and change its mind." 120 Cong. Rec. 5574 (1974).

[54] Statement of Charles L. Black, Jr., Sterling Professor of Law, Yale University, on Extension of Time for Action on Amendments for the States, Octobe. 12, 1977.

[55] *See Hollingsworth* v. *Virginia*, *supra; Dillon* v. *Gloss*, *supra*, *Hawke* v. *Smith*, *supra; The National Prohibition Cases*, *supra; Leser* v. *Garnett*, *supra; United States* v. *Sprague*, *supra*.

[56] *See* note 51, *supra*.

[57] *E.g.*, *Baker* v. *Carr*, 369 U.S. 186 (1962); *Powell* v. *McCormack*, 395 U.S. 486 (1969).

[58] Even assuming that the question of the effect of a rescission is non-justiciable under Coleman, as we do, it is possible that the Court would take a different approach were H.J. Res. 638 to be amended to provide explicitly for such a right to rescind. This is so because the power of Congress to grant

such a right to the States by statute would perhaps be placed on a different footing.

STATEMENT ON ROLE OF GENERAL SERVICES ADMINISTRATION IN THE CONSTITUTIONAL AMENDMENT PROCESS

Speaking for Mr. Jay Solomon, the Administrator of General Services, I thank you for the opportunity to review with you the role of the General Services Administration in the Constitutional Amendment process. Accompanying me today is Ms. Allie B. Latimer, our General Counsel.

The Administration of course, strongly supports S.J. Res. 134 and the adoption of the proposed Equal Rights Amendment.

The responsibilities of the General Services Administration in handling the ratification of Constitutional amendments by the States are based on Article V of the United States Constitution, and Title 1, Section 106b of the United States Code. Under Reorganization Plan 20 of 1950, the duties with respect to Constitutional amendments were transferred to the General Services Administration from the Department of State. In carrying out these duties, the General Services Administration has in general followed precedents and customs established by the Department of State. The procedures involved in the General Services Administration's role in Constitutional amendments are as follows:

First, the Congress sends to the Office of the Federal Register in the National Archives and Records Service of GSA the original joint resolution proposing an amendment to the Constitution.

Identical letters are then sent to each Governor by the Administrator of General Services requesting that the proposed amendment be submitted to the State legislature, and that a certified copy of the legislature's action to be sent to the Administrator. Also included with the letter are a certified copy of the proposed amendment as well as extra printed copies.

If action is taken by a State legislature, a certified copy of the action document, which evidences adoption of the amendment by the State, is sent to the Administrator of General Services. These action documents are maintained by the Office of the Federal Register for record and information purposes and are made available for public inspection.

When notices have been received which indicate the amendment "may have been adopted" by three-fourths of the States (currently thirty-eight States), a certificate naming the States which have ratified the amendment is prepared for the Administrator's signature. After signature by the Administrator, the original certificate is received by the Office of the Federal Register for publication in the *Federal Register* and in the *United States Statutes at Large.*

As can be seen from this explanation, the functions vested in the Administrator of General Services in handling these State ratifications involve receiving State ratification documents and making them available for public inspection, and, after thirty-eight States have ratified, publishing the Amendment along with a certificate proclaiming that the Amendment has become valid as part of the Constitution of the United States and specifying the States which have ratified. These documents from States acting on proposed Constitutional amendments are then deposited in the National Archives for permanent preservation. We consider them to be among the most important records of the history of the nation.

With respect to the current status of the Proposed Equal Rights Amendment, the Legislatures of thirty-five States have apparently adopted, and we have the action documents on file at the Office of the Federal Register. The legislatures of four States have taken action purporting to rescind their ratifications. These States are Nebraska, Idaho, Tennsessee, and Kentucky. We also have received documents reflecting these actions. In addition, in June of this year we requested from the governors of all fifty States information on all actions taken with regard to this proposed amendment by either house of the State legislature. This request was made to assure the preservation of the valuable historical record of the amendment process. To date we have received responses from twenty-nine States.

That concludes my statement. Ms. Latimer and I will be glad to answer any questions the Subcommittee may have.●

THE NATURAL GAS BILL

● Mr. McGOVERN. Mr. President, one of the most difficult issues to come before the Congress this year is the natural gas bill. As it now stands before the Senate, it is significantly different from the bill submitted by President Catrer last year. Even those who have studied the bill closely are confused and uncertain as to its impact. Members of the Senate whom I admire are on opposite sides of the issue. It is my conviction, however, that the natural gas proposal now pending before the Senate is not in the national interest, although I continue to keep an open mind on the issues involved.

Two excellent articles have appeared this week in opposition to the bill. One of those articles, written by my colleague, Senator JAMES ABOUREZK, appears in today's Washington Post under the title, "Is the Natural Gas Bill Better Than Nothing?" The second article is authored by Senator EDWARD KENNEDY of Massachusetts and appeared in yesterday's Boston Globe under the title, "Why the Natural Gas Bill Won't Work." I think that all Senators will find these two articles well worth reading. I ask unanimous consent that they be printed in the RECORD.

The articles follow:

[From the Washington Post, Sept. 15, 1978]

IS THE NATURAL GAS BILL BETTER THAN NOTHING?

(James Abourezk)

Not since "Bloody Monday," Sept. 27, 1977, when the Carter administration switched sides and ran a deregulation spear through its own supporters, have I been as disappointed as when I learned that Sen. Ed Muskie (D-Maine) had come out in support of the Natural Gas Conference Report. It is disappointing, because he has been not only a great voice for consumers, but a fighter for the public interest in general. That makes it all the more surprising that he would buy the Carter administration's specious arguments on the natural-gas bill.

In his op-ed article in The Post Sept. 11, Muskie says that "no one really knows what will happen to energy prices and supplies if we pass the bill, or even if we defeat it." Thus, having denied the accuracy of the statistics, he went on to put his faith in the statistical predictions of the Congressional Budget Office, which used warmed-over data supplied by congressional supporters of the conference report and the Department of Energy.

Energy Secretary James Schlesinger has manipulated both the data base and the statistics concerning the conference report to suit his own political arguments. The department's questionable estimates of the effects of this bill were made even more doubtful after he did so. However, as long as we are trading figures, the Department of Energy, before Schlesinger was able to stop it, issued an analysis of the conference report that estimated the cost to the public at some $30 billion by 1985.

But beyond pricing, neither of the major arguments in favor of the conference report advanced by the administration and cited by Muskie has any basis in fact. They are simply designed to frighten timorous senators into voting for a bad bill.

The "confidence factor" measured by the value of the dollar overseas is currently being cited as the principal reason for supporting the compromise. That confidence will come, it is said, from reductions in oil imports possibly only if the bill is passed. Yet, it is hard to have much confidence in this claim itself. Some days Schlesinger says the bill will save 500,000 barrels a day immediately; on other days he predicts a savings of a million barrels a day. It all depends on who is talking to whom.

We also know that in July 1977 the White House accompanied its energy package with a document saying that the increased availability of gas to the residential/commercial sector and incremental pricing of natural gas *would have no effect on oil imports.* As one of my colleagues said recently, we cannot write the words "energy plan" on a piece of paper and expect to fool people who deal in international finance. There's no real dispute that the dollar has fallen. But it has fallen primarily because the United States has printed too many dollars, because of our inflation, not because we refuse to deregulate natural gas. Our substantial oil imports are not the key to the dollar's weakness. Germany and Japan have the world's strongest currencies, yet they import virtually 100 percent of their oil needs. The inflation resulting from the conference-report prices would only weaken the dollar further.

Even if one does not have access to a computer, it is not difficult to understand that the inflationary impact of the conference report will be devastating to the American economy. Aside from direct increases of tens of billions of dollars in fuel costs, the average family's food bill will increase substantially as a result of rising fertilizer and food-processing costs. No one can calculate the price increases of everything else that would result from passage of the conference report.

And we have just learned from the Federal Energy Regulatory Commission that it will have to add a bureaucracy of some 800 or more full-time employees to administer the new gas bill, if it becomes law, in addition to $10 million in contract professionals. The life of the law, before deregulation, is seven years, just the time estimated for the law to work its way through the courts.

The public should always be distrustful of legislation that has been fashioned in secret. Roughly half of the House-Senate conferees were excluded from deliberation on this bill. Later, a bare majority of conferees signed the report and then only because of massive wheeling and dealing by the administration. That was necessary because the conference report was too smelly to sell on its merits. As one congressman said during one of the secret sessions, "My constituents will tar and feather me in 1985 when this bill's effects are felt."

The conference report will bring the country nothing but higher prices and more inflation. It will produce no additional gas. Lest we forget, it will also completely deregulate natural gas prices in 1985.

It has been argued that the Natural Gas Conference Report is better than nothing. Of that I'm not certain, but the alternatives have not been clearly set out. "Nothing" would mean instant and total deregulation, which I oppose, but which is more honest than putting it off for seven years—after

everybody's next election—as the conference report does. But we have in place much more than "nothing." We have the Natural Gas Act, which sets the price of natural gas reflecting the actual cost of its production plus a profit of 15 percent to 18 percent.

Who needs more than that? Certainly not the gas consumers of this country.

[From the Boston Globe Sept. 14, 1978]

WHY THE NATURAL GAS BILL WON'T WORK

(BY EDWARD M. KENNEDY)

The Senate this week is faced with a most unusual situation. We are being asked to vote for a conference report that even its proponents will not characterize favorably.

No one knows whether this legislation is workable. No one knows what its actual effect will be on the price of natural gas, although it is certain that prices will rise dramatically. And no one knows what its real impact will be on production of gas.

Backers of the legislation argue that the Senate should pass it in order to be on record as doing something—even if that something is enactment of a 100-page, highly ambiguous bill that will have only one sure result: the transfer of billions of dollars from the pocketbooks of consumers into the hands of the oil and gas producers.

Avocates of the bill talk about the symbolism of passage, of the importance of the bill to world confidence in the dollar, about the need to establish an energy policy regardless of its content. They talk about everything but what is in the bill.

But we owe it to our constituents, who will have to pay the price for this legislation, to look beyond the rhetorical arguments and to examine the fine print of the bill and the most likely results of its enactment.

First let us examine the argument that the bill is needed to shore up confidence in the dollar. The implication of that argument is that speculators in the money markets will believe the legislation will reduce our domestic consumption of energy and thereby our dependence on foreign imports.

But the fact is that increased prices for natural gas will force consumers to switch to alternative fuels. And in many cases that alternative fuel will be oil—imported oil.

The proponents also argue that higher prices are needed to discourage consumption. Yet American consumers have already been subjected to energy price increases as great or greater than the rest of the industrialized world. In New England, for example, energy costs went up 125 percent between 1970 and 1976; New Englanders have been subjected to price increases and have made dramatic energy savings. Further price increases will not substantially add to the savings, but will fall most heavily on those who have already made the greatest effort to save—the poor, the elderly, small businesses and people on fixed incomes.

Nor is there any reason to believe that this measure would increase the domestic supply of natural gas. Total, immediate deregulation of natural gas would increase domestic supplies by only about five or six percent. Any increased supplies resulting from this bill, which does not require immediate decontrol, would be marginal at best.

Let us now take a look at the bill itself. Even a quick glance indicates why its backers are so reluctant to talk about it. It is a regulatory monstrosity. The bill would create 23 separate categories of prices for various types of natural gas. The cost of the regulatory nightmare that will be created as a result of the need to determine which gas falls into which category will be enormous. It will create the need for a huge new federal bureaucracy and will be a boon only to the lawyers who will have a field day battling the hundreds of court suits that will result.

Industrial consumers will be faced with uncertainty about what price they will pay and consequently have expressed strong opposition to the pricing provisions of this bill.

Moreover, these pricing provisions may well accelerate the movement of industries from the northern industrial states to the producer states of the South and Southwest where the pricing provisions would not be applicable.

In short this bill won't work. It is simply too complicated and leaves open too many questions that will have to be resolved in the courts. Nor is there any evidence to support the argument that the bill would ease the energy crisis, reduce imports by one drop or produce even a single additional cubic foot of natural gas.

The fact is we already have in place a mechanism for increasing prices of natural gas, if there is a need for such an increase. If gas located in inaccessible places, in shale or deep in the ground, can only be recovered at a higher price, the existing rules of the Federal Energy Regulatory Commission allow it to establish a higher price for such gas.

I do not buy the argument that Congress must act only to prove that it can. There are a number of areas where we can move, and already are moving, to ease the energy crisis—by promoting conservation, by encouraging the use of existing alternative energy sources and by developing solar and geothermal power.

If Congress can produce a bill to change the pricing regulations of natural gas in such a manner that it will clearly improve the energy situation without severe economic dislocations, I will support it.

But this bill does not do that. It leads us into a wilderness of uncertainty where the dangers may well be even more ominous than those we face today, and where alleged benefits certainly do not justify the clear risks involved.●

PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the two notifications I have just received.

The notifications follow:

WASHINGTON, D.C.,
September 13, 1978.

In reply refer to: I–4564/78ct.

Hon. JOHN J. SPARKMAN,

Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 78–98, concerning the Department of the Air Force's proposed Letter of Offer to Iran for defense articles and services estimated to cost $350 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director, Defense Security Assistance Agency.

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Iran.

(ii) Total estimated value:

Major defense equipment,* $310.0 million.

Other, 40.0 million.

Total, $350.0 million.

(iii) Description of articles or services offered:

Thirty-one (31) F–4E aircraft, support equipment and spare parts.

(iv) Military department: Air Force.

(v) Sales commission, fee, etc., paid, offered or agreed to be paid: None.

(vi) Date report delivered to Congress: September 13, 1978.

WASHINGTON, D.C., *September 13, 1978.*

In reply refer to: I–6943/78ct.

Hon. JOHN J. SPARKMAN,

Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 78–99, concerning the Department of the Navy's proposed Letter of Offer to Iran for defense articles and services estimated to cost $105.4 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director, Defense Security Assistance Agency

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NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Iran.

(ii) Total Estimated Value:

Major Defense Equipment* $97.0 million.

Other, $8.4 million.

*Total, $105.4 million.

(iii) Description of Articles or Services Offered: One thousand (1,000) AGM–45 SHRIKE missiles.

(iv) Military Department: Navy.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: September 13, 1978.●

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate is to come in at noon on Monday.

Are there any orders for the recognition of Senators?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, after the two leaders are recognized on Monday, the Senate will automatically return to the consideration of the conference report on natural gas pricing.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that in conformity with the agreement that has been entered into on the natural gas conference report and within the outlines of that agreement, the Senate proceed at circa 3:45 to 4 p.m., or thereafter, on Monday, to the consideration of the Nuclear Regulatory Commission bill, S. 2584, Calendar No. 779, pro-

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

vided no Senator or Senators at that time are debating or wish to debate the natural gas conference report or any motion in relation thereto and with the further understanding, which is in accordance with the agreement, that even though the Nuclear Regulatory Commission bill is called up, that at any time if any Senator wishes to ask for the regular order the Nuclear Regulatory Commission bill would be temporarily set aside and the Senate again would be on the conference report on natural gas pricing.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, and I shall not object, I assume the majority leader's request is totally consistent with the dialog and agreement that was entered into in connection with the energy bill. I am sure that in his intent; is that correct?

Mr. ROBERT C. BYRD. Yes, indeed, and I believe under the agreement any Senator can enforce that order simply by asking for the regular order.

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. I do not object, and I thank the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, May I say for the information of Senators the Nuclear Regulatory Commission bill is under a time agreement. That time agreement is printed on pages 2 and 3 of the calendar of business today, Friday, September 15, and Senators may be informed therefrom as to the time agreement.

Rollcall votes will occur on Monday in relation to amendments to the instructions in Mr. METZENBAUM's motion to recommit. They could occur in relation to the Nuclear Regulatory Commission bill, and they could in relation to any other matter that is cleared for action on Monday in accordance with the unanimous-consent agreement covering the natural gas conference report.

So perhaps, I should simply remind all Senators that on Tuesday a rollcall will occur at 3 p.m. on the motion by Mr. METZENBAUM and other Senators to recommit the conference report with instructions. Did I say there will be a rollcall vote? There will be, no question about that.

May I say one further thing: This does not rule out rollcall votes before 3 p.m. on Tuesday. There may be rollcall votes on amendments to instructions as set forth in Mr. METZENBAUM's motion. There may be rollcall votes on other matters if, in accordance with the agreement in the conference report matter, other matters may be called up.

RECESS UNTIL MONDAY SEPTEMBER 18, 1978

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate I move, in accordance with the order previously entered, that the Senate stand in recess until 12 o'clock noon on Monday next.

The motion was agreed to; and, at 5:16 p.m., the Senate recessed until Monday, September 18, 1978, at 12 noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 15, 1978:

NATIONAL LABOR RELATIONS BOARD

Howard Jenkins, Jr., of Maryland, to be a member of the National Labor Relations Board for the term expiring August 27, 1983.

FEDERAL RESERVE SYSTEM

Nancy Hays Teeters, of Indiana, to be a member of the Board of Governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1970.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be general

Gen. Sam Sims Walker, [redacted], (age 52), Army of the United States (major general, U.S. Army).

The following Army National Guard of the United States officer for appointment in the Adjutant General's Corps, Reserve of the Army, under provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. Edward Clarence Binder, [redacted]

The following-named Army Medical Department officer for temporary appointment in the Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, section 3442 and 3447.

To be brigadier general, Medical Corps

Col. Andre John Ognibene, [redacted], Medical Corps, U.S. Army.

The following-named Army National Guard of the United States officer for appointment to the grade of brigadier general as a Reserve commissioned officer of the Army and to the grade of brigadier general, Army of the United States, under the provisions of title 10, United States Code, section 593a, 3385, 3442, and 3447:

To be brigadier general

Col. Herbert R. Temple, Jr., [redacted].

IN THE NAVY

The following-named officer having been designated for commands and other duties of great importance and responsibility in the grade of vice admiral within the contemplation of title 10, United States Code, section 5231, for appointment while so serving as follows:

To be vice admiral

Rear Adm. David F. Emerson, U.S. Navy.

IN THE AIR FORCE

Air Force nominations beginning Robert L. England, to be lieutenant colonel, and ending Hyman H. Album, to be major. (See Executive Journal proceedings of August 14, 1978, for complete list.)

IN THE ARMY

Army nominations beginning Jack B. Abraham, to be colonel, and ending Don A. Gross, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 14, 1978.

IN THE NAVY

Navy nominations beginning Michael W. DaBose, to be ensign, and ending Aaron S. Wolkoff, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 14, 1978.

EXTENSIONS OF REMARKS

CREATING A "STATE"

HON. HARRY F. BYRD, JR.

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, September 15, 1978

● Mr. HARRY F. BYRD, JR. Mr. President, the Congress recently submitted to the States for ratification an amendment to the Constitution providing full voting representation in the House of Representatives and the Senate for the District of Columbia.

I opposed this amendment, believing that the District has none of the crucial characteristics of a State and should not be so treated.

In the September 8 edition of the Richmond Times-Dispatch, there appeared an excellent editorial on this subject, entitled "Creating a 'State,' " which sets forth clearly the major reasons why full voting representation in the Congress for the District is not warranted.

The editor of the editorial page of the Times-Dispatch is Mr. Edward Grimsley.

I ask that the editorial be printed in the Extensions of Remarks.

The editorial follows:

CREATING A "STATE"

The proposed constitutional amendment to give the District of Columbia voting representation in Congress was commented on in a recent editorial on this page. Because adoption of the amendment would so directly affect all Americans, a further look is in order at this proposal to treat the District "as though it were a state."

The very wording of the proposed amendment points up its basic weakness. The District of Columbia is *not* a state, and to treat it as one is at variance with the intent of the framers of the Constitution.

Article I of the Constitution says Congress shall have the power:

"To exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may be, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States. . . ."

It is quite clear that the framers of the Constitution put the seat of government in an entirely different category from the states and that when they said each state should have two representatives in the Senate, they

did not mean to include what later became the District of Columbia.

It is true, of course, that the Constitution can be changed, but changes should be made only when there are sound reasons, and such reasons are lacking in the case of the proposed amendment.

The District of Columbia cannot in fact be made a state by calling it one. Unlike the others, it is all urban, and its one overriding interest is the federal government. If it had voting representation in Congress, the representatives in effect would be representing the federal government. The more the government expanded, the better for the people represented by the District's House and Senate members.

The District of Columbia is a city only slightly larger in area than the city of Richmond. It does have more than three times as many people as Richmond, and more people than several of the states. An argument can be made that the District should have voting representation in the House, which in effect represents people, in contrast to the Senate, in which representation is based on statehood. Virginia Rep. Caldwell Butler suggested that compromise to the House when it was considering the District amendment, but his idea was not accepted. Another alternative would be to allow District residents to vote for, and be represented by, Maryland's congressmen.

In recent years as attempts have been made to give the District voting representation in Congress, proponents have charged that opponents were motivated by racial considerations, since the District's population is largely black. But racial political considerations could be the only explanation as to why some former opponents in the Senate voted for the proposed amendment this time. Massachusetts Sen. Edward Kennedy charged during the debate that some members of the Senate feared that senators elected from the District would be "too black." Pennsylvania Sen. Richard Schweiker called that charge "demagoguery," but it undoubtedly had an effect in influencing some senators to vote for the amendment for fear of being branded racists if they opposed it.

The reasons for opposing treating the District of Columbia as a state are just as sound today as they were when the Constitution was written, and the racial makeup of the District is not one of those reasons. The District of Columbia is, and should remain, a unique bit of territory as far as its status in the federal government is concerned. Nothing has happened in the intervening years to challenge the wisdom of the nation's founders in putting the seat of government in a separate and distinct governmental category.

The best interests of the nation will be served if the proposed amendment fails to receive the endorsement of three-fourths of the states that would be required in order for it to become a part of the Constitution.●

URBAN POLICY

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. GOODLING. Mr. Speaker, as a representative of suburban areas I feel strongly that they are being discriminated against by the current administration's urban policy. I would urge other Members to join me in appealing to the President to protect the interest of suburban residents by changing his basic policy statements for urban areas, specifically Executive Order 12072. This is involving Federal space management directing that Federal buildings be located in urban areas.

A constituent of mine was approached by the Fish and Wildlife Service in order to secure rental space in his building. They had wanted to relocate from an urban area with high rent to a less expensive and more desirable location. The Service does not have a walk-in clientele and the clients are more likely to be located in rural and suburban areas rather than inner city ones.

It seems, however, that the President's policies—as stated in a letter from Mr. Eizenstat—require Federal facilities to be located in central cities.

According to Mr. Robert T. Griffin, then Deputy Administrator of General Services Administration, my constituent's building was not in any way excluded from consideration from leasing by GSA, but they have been directed to retain facilities in urban areas and also to locate new facilities with a city's central business area. Therefore, Mr. GRIFFIN says, they would be in direct conflict with the administration's urban policy if they OK'd such a relocation. If this is not discrimination, I do not know what is.

I am quite sure that this is not an isolated case and that many of my colleagues have been receiving mail about such instances of urban policy adversely affecting the suburbs.

I see no reason for punishing suburban people who have worked hard to maintain standards of living in their communities that may seem very high to the extremely disadvantaged. I think it is in the interests of all to help those of us who are less fortunate than others, and many of these unfortunate people live in suburbs, but I would prefer a method of assistance whereby innocent bystanders are not made victims.●

STUDENTS UPHOLD ENDANGERED SPECIES ACT

HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. STEERS. Mr. Speaker, I wish to call attention today to the fine work done by Katharine Pauley, a high school student from Rockville, Md. She spent many long hours collecting the signatures of over 600 people who oppose any weakening amendments to the Endangered Species Act. All those who signed her petition expressed their opposition to the "Baker-Culver" amendment in particular.

As you know, the Baker-Culver amendment, which passed the Senate, would establish a "cabinet" level committee to grant exemptions under the Endangered Species Act.

I believe that the Congress has a responsibility to maintain a strong Endangered Species Act. I am not convinced that the approach taken in the Baker-Culver amendment is the most desirable. If there are exemptions to be granted, they must be very rare and granted only for truly important reasons.

I feel that Katharine is to be commended for her energy, enthusiasm, and leadership in collecting these signatures. I salute the strength of her convictions in this controversial area.

I want to call the attention of all my colleagues to this effort by Katharine. There are a large number of people in this country who believe in the original purpose of the Endangered Species Act and want to see the strongest possible bill pass the House during the 95th Congress.●

BILINGUAL EDUCATION NEEDS REEXAMINATION

HON. ROBERT McCLORY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. McCLORY. Mr. Speaker, the subject of bilingual education appears to be creating more problems than it solves. Instead of promoting an understanding of the English language, bilingual programs appear in many instances to result in continued instruction in a language other than English—thus delaying development of English language capabilities so essential to economic and social progress in our predominantly English-speaking Nation.

Mr. Speaker, there is evidence also or a lack or interest in bilingual education classes as pointed out in the attached editorial from the Chicago Tribune. From my own experiences, subjecting a young student to instruction in a foreign language can result in the speediest manner of developing a proficiency in that language. This is borne out also by the Tribune editorial of Wednesday, September 13, 1978, which follows:

THE DEMAND FOR BILINGUAL CLASSES

Chicago public school officials geared up for 2,360 high school students in 15 bilingual programs at 9 "magnet" high schools this fall, more than double the 1,039 enrolled in such programs a year ago. But as of Aug. 22 there were only 17 new applications. Some of the scheduled bilingual programs in Assyrian, Cantonese, French, Greek, Italian, Polish, Spanish, and Vietnamese are endangered by student apathy.

In 1976, the Illinois General Assembly mandated "transitional bilingual education programs whenever 20 or more eligible students are assembled in a school" [to quote State Supt. Joseph M. Cronin]. In theory, bilingual education is indeed "transitional," designed to prepare students who do not speak English for classes in which English is the language of instruction. Not surprisingly, in view of the self-interest of persons staffing bilingual classes, there have been allegations that pupils competent in English have been recruited for or retained in the special classes. Certainly the sluggish response to expanded bilingual offerings this fall suggests that the demand for classes conducted in languages other than English has been exaggerated.

Legislators and school administrators alike would do well to reconsider both the popularity and the educational efficacy of bilingual education. This recent addition to the state's mandates to public school districts should be reassessed in the light of both actual experience and the number of fami-

lies who prefer instruction in a language other than English.

A generation or more ago, innumerable children with no command of English entered regular classes and caught on quickly, without benefit of any "transition" instruction in their native languages. It appears that many contemporary families of foreign or Latino origin are perfectly willing for their children to have the same kind of experience. That may well be the quickest and most certain way to acquire a command of the language that every resident of Chicago needs to know.●

A DAY TO REMEMBER

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. LENT. Mr. Speaker, on September 19, I will join with many others worldwide in observing the birthday of Soviet prisoner of conscience, Hillel Butman. Our observance will not resemble a usual birthday celebration, but will be a somber and bitter occasion. For over 8 years, Hillel has been a prisoner in the Soviet Union for the "crime" of requesting permission to emigrate. For over 4 years, I have been writing the Soviets weekly to urge Hillel's release. In my remarks today, I again wish to call the attention of the U.S. Congress to Hillel's plight, which commands our deepest concern, and to his courage, which is an example to us all.

Since his imprisonment in June 1970, Hillel Butnam has been subjected to hardships which would have destroyed men of lesser fiber. My information indicates that the Soviets deny him proper medical care; consequently, he is in frail health. Also, judging from my reports, there is good reason to believe that the Soviets deny him an adequate diet. Furthermore, in addition to overcrowded cells, some of which once held prisoners of the Tsar, Hillel is assailed psychologically. To break his spirit, the Soviets withhold mail. His annual visit from relatives was cancelled with no reason given, and his request to see a lawyer was denied.

Despite adversity, Hillel perseveres, awaiting the day, hopefully, when he will be permitted to emigrate to Israel for reunion with his wife and family who have not seen him since 1973. In fact, his daughter, Yulia, has never seen him.

In an attempt to hasten the day of Hillel's release, I have joined with his many friends the world over in writing the Soviets on a weekly basis to pressure for his release. I deeply believe that the outpouring of mail serves to keep his jailers from consigning Hillel's case to oblivion. I have also written our Secretary of State, Hon. Cyrus Vance, urging him to explore the possibility of including Hillel's case in any discussions regarding a prisoner exchange. The Department of State has indicated to me that my suggestion will be taken into consideration.

Thus, as we near this bitter anniversary of Hillel's birthday, I know I speak for his many friends when I say to the Soviets:

Haven't Hillel Butnam and his long-suffering family endured enough? Isn't it time to live up to the accords signed in Helsinki which committed all signers to the principles of basic human rights? Permit Hillel to rejoin his family in Israel, in the name of compassion justice, and basic human rights.●

NEED TO REVIEW CETA

HON. BO GINN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. GINN. Mr. Speaker, as all Members are aware, the Comprehensive Employment and Training Act has been under heavy attack, because of the abuses which have become prevalent in many parts of the country in implementing the program. As such, the Congress is rightfully reviewing the authorization language in an attempt to eliminate the kinds of situations which generate those abuses, and the enactment of that legislation has been seriously delayed.

In light of that fact, I think it is important that the Members be aware of the instances in which the program has achieved its intended goals and has worked well. One such instance has been brought to my attention, and I would like to share it with my colleagues. For their information, I wish to insert in the RECORD a copy of a letter sent by one of my constituents, Mrs. W. C. Hendrix of St. Simons Island, Ga., to the deputy director of the Georgia Department of Labor. She thought someone would like to know:

AUGUST 2, 1978.

Mr. DON R. BRYANT,
Deputy Director, Georgia Department of Labor, Atlanta, Ga.

DEAR MR. BRYANT: I really don't have time to write this letter, but I felt SOMEONE should speak up in defense of CETA—all I read about is the abuses, and an article in August "Reader's Digest" prompted this letter. Why doesn't someone write about the good things and the NON-abuses?

I won't bore you with what we are—suffice it to say the Glynn Art Association is properly tax-exempt, etc. and qualifies for governmental funds; it operates the Island Art Center, one of the largest community arts centers in the Southeast; we are totally dependent upon contributions and donations to keep open; we have all the internal clerical workings of a business, but are staffed with volunteers only (until last December when we received our first 2 CETA employees). We receive grants for specifics, such as in-school residencies/programs and other such very specific programs, NEVER for personnel, whom we desperately need to continue. I am appointed by the Board, work full time, but without pay. Much of my time is spent in re-training and recruiting volunteers, who continually drop out to take full-time salaried employment due to inflation.

After two years of trying, we finally got a Title VI project 'slot' and we were sent a clerical and a laborer—both of whom were really 'unemployables' as the lady didn't want to work and the laborer was in jail most of the time. We finally replaced the lady and the laborer finally just quit coming in. We received the clerical worker in latter November, 1977, and the laborer the second week in December, which meant that we had already lost several months of our grant allotted time.

Case No. 1: In February we had a new volunteer, Ms. Janet Waters, who came here temporarily as she was unable to find salaried employment; she is an art history major whose goal is museum work; she had to drop out of graduate studies for financial reasons. Our then CETA clerical worker told Ms. Waters she hated the work (any work) and that Ms. Waters should apply for her job and with a lot of effort, we managed to exchange workers. Point: This means that we now give employment and training to a person (Ms. Waters) in the field she expects to make her profession, and we are the ONLY such institution in a very large area which is large enough to give her overall training; anywhere else, such as Jacksonville, Atlanta, or Charlotte, if employed in their arts organization she would be placed in a localized department without an opportunity for overall training. To me, this is good and proper use of the funds.

Case No. 2: One of our services is to work with the public schools in a Community Based Vocational Educational program; we take students, supervise and train them during their "lab" time at the Center. In early 1977 we agreed to accept a young girl whom they could not place; she is from an indigent family; she was so shy she could hardly speak; she was insecure. We worked with her and by the summer of 1977 when we were offered summer CETA workers, I requested her. I try to help her out by employing her to cut my grass at home, etc., and in the Spring of 1978 managed to get her an 8-hour job with CETA to work at the Center on weekends, when we were unable to get volunteers. This summer she was transferred to the summer program. With encouragement and assistance, she has completely "blossomed" and is an entirely different person, even in appearance. She is outgoing; she takes initiative; she meets people well; she now helps supervise and trains other CBVE and CETA part-time workers; and everyone who tried to work with her previously cannot believe this impressive change in her. I happen to believe that she will not continue to improve herself and lift herself out of the economic category in which she currently lives, and this is something VERY important.

In Case No. 1 even though we were started late through no fault of ours, we are now cut off at July 31st, and are currently on a two-month Cluster extension. I can get no hope of any further extension and am so tired of trying that I am seriously considering removing myself from the scene, as I cannot handle it anymore as the only full-time employee, and the Association cannot afford an employee.

Mr. Bryant, I'm not writing to ask you for anything—I just wanted you to know that there ARE places where CETA is being used where it is of the utmost value to a large segment of people; where it is a Godsend; and where others in my same "boat" would never do anything but adhere to the rules because we are so grateful for this assistance; where only one clerical employee can mean the difference in what we can do for the community.

I know you are tired of hearing about CETA, but hope it is of some benefit to hear the GOOD side of it.

Sincerely,

MRS. W. C. HENDRIX,
Associate Director.●

AFTER 38 YEARS, SONNY STILL GETS BUTTERFLIES

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. ALEXANDER. Mr. Speaker, football fever has enveloped our Nation as thousands of professional, collegiate and high school athletes have taken to the gridiron in the renewal of rivalries, some of which have lasted for over a century.

C. R. "Sonny" Gordon of Holly Grove, Ark., in my congressional district, is one of the up and coming high school coaches in our parts. Last Friday Sonny took the Holly Grove Panthers to the football field for a 38th straight year.

Amassing over 300 wins and one of only two Arkansas high school coaches to win the Lowell Manning award, signifying the overall outstanding Coach of the Year, Sonny says he still gets butterflies before every game.

Sonny, 64, has given up the basketball and track coaching duties in recent years to concentrate on football. Recently the Arkansas Gazette carried an article highlighting the career of this fine coach and molder of young men. I commend this article to my colleagues:

AFTER 38 YEARS, SONNY STILL GETS BUTTERFLIES

(By Wadie Moore, Jr.)

HOLLY GROVE.—C. R. (Sonny) Gordon has been a winner most of his life. At the tender age of 64 he's not about to change direction.

Today, his general preparation and strategy remain sound, just like it was in 1940 when Gordon first landed the head coaching job at his home town Holly Grove.

Last Friday marked the 38th year for Gordon to lead the Panthers onto the football field. In his prime he held down three jobs—head football, basketball and track coach.

Years ago Gordon turned over the track job. Last season he stepped down as basketball coach. Slowly Sonny Gordon is headed in the direction of retirement, but that's the farthest thing from his mind right now.

Times have changed but Sonny Gordon remains the same in one area: he's a proven winner and a friend to all associated with him.

"In a way I'm still the same," said Gordon Tuesday afternoon before a light practice session. "My friends keep asking me when am I going to retire. I told 'em when I quit getting butterflies before a ball game I'll retire. Not until. I still take each game like I did when I was a kid.

"Football is a part of my life. Soon I'll have to quit. I can't go on forever. The time is always narrow. At first it's year-to-year, then it becomes day-to-day."

Gordon played on Holly Grove's first football team in 1931. In today's offensive scheme, Gordon would have been listed as a quarterback. But out of the single wing in the early 30s, he filled the position of a tailback, although he did call the plays.

Following college (the University of Arkansas-Monticello) Gordon landed his first coaching job at Imboden (Sloan-Hendrix Academy) in 1936. He spent three years as an assistant coach at Walnut Ridge, then returned home.

There are only two coaches in the state that has won the Lowell Manning Award twice—for the overall outstanding Coach of the Year—Gordon and Fort Smith Northside's Bill Stancil. Gordon was named for the 1964–65 and 1975–76 seasons. He has posted more than 300 wins throughout his career, and during a 10-year span his Panthers lost only five football games.

There's a ton of differences in today's style of football. Gordon believes for the best.

"There're so many I couldn't run all of 'em off," said Gordon. "When I first came here we had a lot of young little kids. Now, you might get 'em in all sizes. Overall, football is a lot better today. The athletes are better prepared and so are the coaches.

"The equipment is nothing compared to what it was in my first year. We had those early head gears. The kind that you could roll up and put in your back pocket."

Sonny Gordon always has game-to-game motivation. He is constantly searching for that little edge that might produce a winner on Friday. His game strategy?

"In coaching you have to change with the times," said Gordon. "I did. I was a single wing man. At first I was slow about accepting the T-formation. You have to change and roll with the punches."

Gordon did hesitate momentarily before naming some of his outstanding football players. After all, a standout in each season would produce 37 names. A few of his football standouts are Richard Coleman, who played at Arkansas; Harry Sylar, Dewey Crow, and Bob Williamson, a 1966 graduate who is presently working as Gordon's assistant.

Gordon organized Holly Grove's first basketball team in 1945. The basketball program started to move in the late 60s and early 70s. The Panthers won five straight district titles, then landed the Class AA state title in 1976.

There's little doubt who was the best Panther basketball player during Gordon's career.

"It was Wally Love (a member of the 1976 team who is now at the University of Central Arkansas)," said Gordon. "He was the most illustrious player to ever graduate from here. He was in a class by himself.

"I wanted to quit coaching basketball even before we won the state title," said Gordon. "After we won it, I felt like I had to stay around just one more year. When you're involved in that many sports you're coaching around the calendar. Now I've got more time to concentrate on football."

Gordon has only 30 athletes out this season, but he hopes to produce a winner out of his diehards.

"We've got a young team and a lot of 'em haven't played," said Gordon. "We're small, but we've got good quickness. We've got a 10th grade quarterback, who in time will be good. I don't think anyone will actually chew us up."

Sonny Gordon's reward for 38 years of coaching at Holly Grove is watching a young athlete develop into a man. His rewards do not come from just winning, but from being associated with such individuals.

"I've always had some good athletes and I've always had good things in mind for 'em," said Gordon as the day finally wound down. "If an athlete will stay in our program he'll be a better man tomorrow. It's here for 'em.

"I guess one hundred of my boys have received high school diplomas, when normally they might have dropped out of school if not for football. This game allows a young man a chance to do something with his life. That means a lot to me."

And for 38 seasons, a lifetime, Sonny Gordon has meant a lot to Holly Grove. He's their No. 1 citizen.●

IRAN AND THE SHAH: OUR ESSENTIAL ALLIES

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. SIKES. Mr. Speaker, the recent upsurge of political unrest in Iran has caused many Americans to question their country's relationship with the Nation's ruler. At this time of reassessment it is important to emphasize and reemphasize, for indeed it cannot be overemphasized, the strategic importance of Iran and its ruler to not only the United States but the entire free world.

Much of what makes Iran such a crucial ally is its geographical position. To the north, only the People's Republic of China shares a longer border with the U.S.S.R. In the 1920's and again between 1941 and 1946, the Soviet Red Army briefly violated Iran's northern frontier. To the east lies Afghanistan, strongly pro-Communist and coming increasingly under Soviet domination. For years, Iran and Afghanistan have had sensitive tribal and water problems. To the west lies Iraq, also heavily dependent upon the Soviet Union. Until recently, this country's radical government had long engaged in border disputes with Iran and Kuwait. And to the south, Iran has the longest coastline on the Persian Gulf, guarding this waterway and the vital Strait of Hormuz through which passes 85 percent of Japan's oil imports, 70 percent of Western Europe's, and 30 percent of the United States.

But of more strategic importance than Iran's borders is what they contain: a population of nearly 40 million and vast energy reserves. Iran has the fourth largest oil reserves in the world (after Saudi Arabia, the U.S.S.R., and the United States), and is the second largest oil exporter. Recent explorations have revealed that Iran possesses the second largest natural gas reserves in the world.

The Shah has developed oil and natural gas to their capacity. Not only are they being developed and exported as fuel, but they are also being processed into petrochemicals, essential elements in aspirin, sulfur, ammonia, fertilizers, and 70,000 other extremely valuable products. Non-oil exports have risen from $115 million in 1960 to $620 million in 1977. At the same time the Shah has taken the lead among leaders of oil-producing nations in developing alternative sources of energy such as solar, nuclear and geothermal power. The $500,000 in technical aid our country granted to Iran in 1950 had been more than reciprocated by 1976 when Iran was in the position to sign a trade protocol with the United States projecting total trade between the two countries at $52 billion over a 5-year period. In that same period of time, Iran's GNP has risen from $1 billion to $50 billion.

But the progress the Shah has made among his people makes his energy development look mild in comparison. In 1925, there were less than a dozen hos-

pitals, clinics and laboratories in all of Iran. Last year there were more than 4,600. In 1925, Iran also had only 2,000 kilometers of roads. Last year, Iran's roads totaled 64,000 kilometers. Not many years ago, telephones were a rarity in Iran. Today, a full integrated national telecommunications system connects most of Iran's cities to an international network. Per capita income has risen from less than $100 in 1953 to over $2,300 in 1976.

Yet perhaps the most drastic and important advances are reflected in education and literacy. In 1950, Iran had 350,000 students, with 800 of those studying abroad, and only one university. Today there are 9 million Iranian students, fully one quarter of the entire population, all of them receiving a free education. Of those, 70,000 are studying abroad, more than half here in the United States. Today, Iran has 21 universities and 142 colleges and other institutions of higher learning with a total enrollment of 189,000.

The Shah's program to eradicate illiteracy is being spearheaded by the Literacy Corps, young men and women of draft age who have helped reduce the rate of illiteracy from 85 percent in 1969 to less than 50 percent today. The Shah expects to wipe out illiteracy completely in the next decade.

In the past 25 years, the Shah has accomplished more for his people than any government of any country with comparable problems and conditions has accomplished for its citizens. The Shah and his father before him have been a distinctly liberal force in Iranian history. Iran is therefore in sharp contrast with other nations experiencing political unrest whose conservative governments tend to oppose change. The Shah has always faced opposition from ultra-conservative Moslems and feudal lords who view, probably correctly, technological and intellectual advancement as a threat to their power and influence.

It is no surprise then that these conservative groups escalated their disruptive activities when the Shah this year focused more of his attention on increasing political freedom. But what is surprising, at first glance, is that the ultra-left underground Marxist movement in Iran has allied itself with the conservative opposition. But in view of reports that this movement has close contacts with the Red Brigades in Italy, Baader-Meinhoff in Germany, and the Popular Front for the Liberation of Palestine (PFLP), one of the most radical Palestinian terrorist organizations, and reports that the movement's key members were schooled in the Soviet Union, this unholy alliance, at a closer look, seems not to appear so strange. It provides another means by which the Soviet Union hopes to destroy an essential strategic ally of the free world. Iranian officials are convinced that there is a KGB connection to the recent rioting.

Our Nation cannot afford to stand by and watch Iran, our strongest and staunchest ally in so vital an area of the world become the newest ribbon on the ever-lengthening tail of the Communist kite. We must provide the Shah with meaningful evidence of support in whatever categories will prove most effective.

In closing, I would like to quote from two editorials, the first from the Wall Street Journal, and the second from the Washington Post, two major newspapers which I have seldom found to agree on political issues but which do agree here:

The outbreak of rioting precisely against political liberalization should help Americans understand that the Shah is doing the best he can with incredibly difficult situations, and that despite everything raised against him he is on balance a force for the kind of world most Americans would like to see. . . . American policy should be guided by something Americans can understand—our own national interest. Economically and strategically, we need a strong and friendly Iran. This means that, in whatever way we can be useful, we need to support the Shah.—"The Persian Problem," The Wall Street Journal, Sept. 13, 1978.

For its oil, for the stability it lends to its exceedingly shaky region, for the bulwark it forms to the spread of Soviet influence, Iran matters greatly to this country. . . . Unquestionably, (the Shah) is more likely to go in the modernizing direction most Americans would like to see Iran go than any of the elements clamoring for his removal. It helps if you think for a minute of the Libyan model of an oil-rich state led by a fanatical Iranian Qaddafi. That is a distinct possibility, and one truly threatening to American interests. Without the shah (sic), it could come to be.—"The Tumult in Iran," The Washington Post, Sept. 12, 1978.

The loss of Iran's stable government would be one of the most serious blows which could befall the free world. There is too much lethargy in the West about Iran and its leadership in the very explosive area of the Middle East. This leadership is now constructive. It promotes peace in the area. If Iran's leadership were lost, the power and prestige of this strategic nation could become a major asset to Soviet aspirations for world domination.●

THE SUSAN B. ANTHONY DOLLAR COIN

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. LaFALCE. Mr. Speaker, the Committee on Banking, Finance and Urban Affairs recently passed the Susan B. Anthony Coin Act of 1978, which mandates placing the portrait of Susan B. Anthony on the new dollar coin. The Senate on August 22, 1978, endorsed a companion bill, and I urge my colleagues in the House to do the same when the bill is presented for a vote.

The administration has proposed that the dollar coin be issued with a contemporary version of the "Miss Liberty" head. At best, this proposal can be construed as a symbolic recognition of all American women. Realistically, the proposal is meaningless tokenism. To treat the very tangible contributions of those dedicated women with the visage of the breezy, ageless, lifeless Miss Liberty is tantamount to making "Have a Nice Day" our national motto.

Susan B. Anthony was a tireless worker for social betterment whose career spanned the 19th century. Susan B. Anthony perhaps more than any other woman changed our lives through her single minded devotion to the principle that all Americans must participate in a democracy. She worked against strong and bitter opposition for the right of women to vote, and in 1848 laid the groundwork for passage of the 19th amendment. Together with her contribution to the suffrage movement, Ms. Anthony was one of the principal organizers of the abolitionist movement and campaigned extensively for black suffrage.

In 1869, Susan B. Anthony and Elizabeth Stanton founded the National Women's Suffrage Association which in 1890 merged with the American Women Suffrage Association to form a unified national organization dedicated to the right of women to vote in local, State and national elections. Although in 1870 women were granted the right to vote in the Wyoming territorial elections and future years brought success in a few States, Susan B. Anthony died 14 years before the ratification of the 19th amendment in 1920.

While she did not live to see her efforts brought to fruition, throughout most of the 86 years of her life, Susan B. Anthony never faltered in her dedication. Her efforts were met with vile attacks by the press and demoralizing abuse by opponents. But she continued writing and speaking for equality. For her courage, Americans owe her a tremendous debt of gratitude.

We have established a tradition in our country of honoring outstanding American men on our coins. Without exception, our currency recognizes individual men who have earned their place in our Nation's history. We do not honor these men with abstract, mythological figures. We are, in fact, one of very few countries in the Western world which has never had a woman portrayed on a circulating coin. The concept is hardly new, since as early as 1835 Spain circulated coinage with the profile of Isabel, Great Britain in 1837 portrayed a woman on its coinage, and in 1892 the Netherlands so honored Wilhelmina.

By selecting Susan B. Anthony to appear on the dollar coin we will be honoring her as an outstanding, real American. We will also be paying long overdue fitting tribute to all that she did to foster human rights for the betterment of every American citizen.●

A THRICE-TOLD TALE

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. McDONALD. Mr. Speaker, everyone feels the effects of inflation and everyone agrees it is the No. 1 issue facing our Nation. However, not everyone can agree on the remedy for inflation, the problem being that each person wants someone else to tighten

their belt or some Federal program that does not benefit them to be reduced in order to hold down spending. The real remedy is drastic, but, the benefits to all sectors of the economy and our society can and would be enormous. Vermont Royster of the Wall Street Journal discussed this topic from a historical perspective in his "Thinking Things Over" column on May 10, 1978. In his column, he reaffirmed the old truth that Government spending deficits fuel inflations while reduced and balanced budgets stabilize the economy and cut inflation. Needless to say, I do not always agree with Mr. Royster's news, but, this particular column is right on the mark and I commend it to the attention of my colleagues. The article follows:

[From the Wall Street Journal, May 10, 1978]

A THRICE-TOLD TALE

(By Vermont Royster)

Since World War II there have been three dramatic examples of countries halting inflation just when it appeared it couldn't be stopped—once in West Germany, once in France and once in our own country.

Taken together their stories make a thrice-told tale. In each case the measures used to end inflation were basically the same. Each time their application required a bold political decision. Each time there was a particular political circumstance that made those measures politically acceptable.

It's instructive right now, I think, to recall how in each case this came to be and what the results were.

The architect of what's now called the "German miracle'" was Ludwig Erhard, then the economics minister. Against the counsel of the American occupation authorities in 1948, Erhard persuaded a somewhat reluctant Chancellor Adenauer to remove all wage and price controls and drastically cut the government's budget, including much social welfare spending.

Within a year inflation was stopped, the German mark had become a "hard" currency and its economy was launched on the prosperous expansion which has not yet ended.

Two factors made the Erhard measures politically possible. One was simply the fact that Germany was a defeated nation with its economy in ruins; things could hardly get worse. The other was the German tribal memory of the disastrous inflation of the 1920s which had destroyed the currency, wrecked the country and opened the way to Hitler. Anything, the people thought, but that again.

In 1958 France was in political turmoil. The Indochina war had been lost, the country was near civil war over Algeria and the economy was racked by inflation. To buy a pair of shoes you counted out francs by the thousands. In desperation the country turned to de Gaulle.

The general was no economist but he did understand that if France was to be restored to "glory" it required restoration of the French franc. In his memoirs he tells how Jacques Rueff persuaded him, against the advice of his political staff (including some in the Bank of France), to accept officially the devaluation of the franc that in fact had already happened, to chop zeros off the old franc and issue new ones, and to match that with sharp reductions in the subsidies to national industries and other budget items.

In the general's words these measures were "audacious and ambitious" and presented "political obstacles." But because the situation was so desperate, and because de Gaulle was de Gaulle, the country accepted the seemingly Draconian measures. In the next three years France saw a sharp drop in both the rate of inflation and unemployment, an end to its balance of payments problems and an increase in both industrial and agricultural production.

The situation in this country in 1953 was nowhere near so dire. Nonetheless, in the four preceding years the dollar had lost some 10 percent of its purchasing power in the official statistics, more if you take into account the black market prices masked by the price controls that were creating shortages in ordinary trade channels. With growing deficits swollen by the Korean war, the rate of inflation was increasing.

It was in this atmosphere that President Eisenhower, less than a month in office, abruptly lifted price and wage controls amid outcries that this would send prices through the roof.

He also set about cutting the budget. President Truman's last budget (how tiny the figures seem now!) called for expenditures of $78.6 billion and a deficit of $9.9 billion. President Eisenhower's first budget cut expenditures to $67.5 billion and the deficit to $3 billion.

At first the inflation did continue. Between January and August 1953 the consumer price index rose from 113.9 to 115.0, or an annual rate of about 4%. But one year later, in August 1954, the CPI stood unchanged at 115.0. Economic activity also dipped at first before resuming its progress at stable prices.

There are two common denominators to make these a thrice-told tale. In each, the measures taken to halt inflation involved shunning artificial economic controls and the application of fiscal and monetary restraint. In each, circumstances made them for the moment politically feasible; in 1953 Eisenhower was a new President of much prestige and people had temporarily "had enough" of controls and inflation.

I wish these tales all had happy endings. Unhappily, even in West Germany the memory of past inflation horrors has faded somewhat and the government is having more political difficulty in restraining it, although by current standards the German inflation rate is a modest 3.5%.

In France it did not take long after the disappearance of de Gaulle for the old political pressures to reassert themselves for bigger government spending and monetary expansion. The European Economic Commission estimates that this year France's inflation rate will top 7%.

Our own story hardly needs laboring. The combined pressures of spending for the Vietnam war and the programs of the Great Society pushed us into double-digit inflation and (to the shock of Keynesians) also to skyrocketing unemployment. After a brief surcease the inflation rate is again creeping up. Just last week Charles Schultze of the Economic Council belatedly conceded it would be 7%; other fearful forecasts run higher.

The moral of these thrice-told tales, if you must have one, is quite simple. Inflation can be halted. It requires no magic. But it does require the political will to do it, both by the political leaders and the people themselves. If President Carter has the will to cut the $60 billion deficit, and if the people support him, it can be done. If not. . . .●

NATIONAL HISPANIC HERITAGE WEEK

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. ROYBAL. Mr. Speaker, I am proud to note that this week has marked the 10th anniversary of National Hispanic Heritage Week. As the Federal Government marked this occasion in different ceremonies throughout our Nation's Capital and as a large segment of our Hispanic population prepares to celebrate September 16, Mexican Independence Day, I take great pride in paying tribute to all of this Nation's Hispanic citizens.

As we celebrate this week, let us be reminded that while we seek to continue to renew cultural and historical ties, as well as respect the ethnic pluralism of our society, we must also collectively reassess the status of Hispanics in this country, our contributions, goals and accomplishments, as well as the obstacles which still confront us.

This is a time of critical importance to all Hispanics. Due to increasing numbers, as well as ever-growing political strength, citizens of Hispanic origin can no longer be ignored. Of all minority groups in the United States, the Hispanic population is currently experiencing the greatest rate of growth. It is anticipated that at the end of the next decade, Hispanics will constitute the largest ethnic minority group in the Nation.

But numbers alone are not significant. Now, to obtain the equality of opportunity previously denied them, Hispanics throughout the Nation are working to transform their numerical strength into true political power.

The current political strength of the Hispanic population can perhaps be best exemplified by results of the last Presidential election, where, in California, some 1.4 million Hispanic voters were registered. Similarly, that same year, 900,000 Hispanics were registered in Texas, 800,000 in New York, and in Arizona, 177,800. Thus, it seems inevitable that Hispanic voters will play a major role in the immediate political future of this Nation.

Nevertheless, despite our increased numbers and political awareness, many obtacles must still be overcome. To this day, many Hispanic people still face the serious burdens of poverty, illiteracy, and discrimination. Such facts can be illustrated by the staggering unemployment rate that Hispanics have that is of one and a half times greater than the general population.

Distressingly, important areas of employment still remain closed to citizens of Hispanic origin. One such obvious area of underrepresentation exists within the Federal Government itself. Here, Hispanics make up only 2.6 percent of the Federal work force, while comprising at least 7 percent of the general population.

Yet, I grow ever more confident in our ability to overcome such difficulties, as the Hispanic people reach goals and make contributions previously thought impossible.

This week is of great significance to all those sharing in the proud heritage of the Hispanic culture. Today, we must all recognize, and seek to strengthen, the common culture and heritage comprising a most important segment of this Nation—the Hispanic community. Together, through a united Hispanic people, bound by our commonality and

pride, we are on the way in attaining the political and economic equality so long denied us.●

POLISH-HUNGARIAN WORLD FEDERATION

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. NOWAK. Mr. Speaker, 14 years ago 50 Polish and Hungarian leaders met in Chicago and formed an organization called the Polish-Hungarian World Federation. In the intervening years, the federation has expanded its membership to more than 1,000 and become a recognized and vocal voice supporting the cause of human rights and freedom of self-determination for the peoples of the captive nations everywhere, including Central and Eastern Europe. The federation has also been a prominent leader in the effort to encourage active cooperation among various ethnic groups as a vital ingredient in achieving this goal of self-respect and dignity for all peoples.

At its general meeting in Chicago this spring, the federation reaffirmed its commitment to this goal. In particular, the meeting of its directors and delegates expressed through a resolution concern about the current plight of the Hungarian minority in Romania.

Dr. Karol Ripa of Chicago, the president of the federation, has requested me to bring that resolution to the attention of my colleagues. The text of the resolution follows:

Whereas the discrimination against the Hungarian, and other minorities, in Romania is continuing and worsening.

Whereas the Romanian government is conducting a campaign against the Hungarians, and, in particular, against their churches, suppressing their language, falsifying the statistical and historical data, and confiscating cultural archives, amounting to a blatant internal oppression.

Whereas there are 2½ million Hungarians living in Transylvania, which they have inhabited for over 1,000 years, whose conditions are worsening from year to year.

Whereas, if the tide of Romanian chauvinism is not turned soon by the intervention of the United States, based on its human rights policy, this tide will develop into cultural genocide.

Therefore, be it resolved that the Polish-Hungarian Federation, as our contribution to the cause of human freedom and dignity is protesting on behalf of the unfortunate peoples of Transylvania.

Be it resolved that proper action be undertaken in defense of the Hungarians in Transylvania for the purpose of achieving equality in cultural, national and civil rights.

Be it further resolved that we appeal to the American Administration and Congress to take the necessary steps to effect fundamental changes of Romanian policies toward the Hungarians to eradicate discrimination, and create an acceptable status in Transylvania, whereby the Romanians and Hungarians can work out their destinies in mutual understanding.●

OLDER AMERICANS AND THE AMERICAN DREAM ACT

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. DRINAN. Mr. Speaker, the Subcommittee on Financial Institutions Supervision of the House Banking Committee has been holding hearings on H.R. 12052, the American Dream Act. This legislation holds out new hope to those older Americans who are struggling to hold on to their homes and need an additional source of income. I would like to share with my colleagues the statement on this legislation which I presented to the subcommittee:

STATEMENT OF CONGRESSMAN ROBERT F. DRINAN ON H.R. 12052, "THE AMERICAN DREAM ACT." THURSDAY, SEPTEMBER 14, 1978. SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE OF THE HOUSE BANKING COMMITTEE

Mr. Chairman: The American writer, Langston Hughes, asked in one of his most celebrated poems "What happens to a dream deferred? Does it dry up like a raisin in the sun? . . . Maybe it just sags like a heavy load. Or does it explode?"

It seems fitting to ponder those words in our consideration of H.R. 12052, dubbed "The American Dream Act." Soaring real estate costs have made it untenable for many younger persons to realize the 'American Dream' of owning a home. For many older persons that dream has become a nightmare as they struggle to keep their homes in the face of assessments which result in high property taxes that can't be met on fixed incomes.

H.R. 12052 holds out new hope for both younger and older Americans. It would allow federally chartered savings and loan associations to offer both graduated payment mortgages and reverse annuity mortgages. Under the former, mortgage payments would be lower in the early years of home ownership and adjusted upward when the borrower is likely to be more settled financially. Under the latter arrangement an older person would be able to convert the equity in their home to a means of immediate income.

As a member of the House Select Committee on Aging, I am especially concerned about the housing crisis facing older citizens and I have for the past few years been intrigued by the concept of a reverse annuity mortgage as a vehicle for addressing part of the problem.

An AFL–CIO survey of their workers housing in 1975 showed that 85 percent of older homeowners owned outright-free and clear of mortgages. It is estimated that the total equity older Americans have built up in their homes is at least $90 billion. The home which is often the single most valuable asset of an older person or couple sits idle and the equity built up over the years is unavailable unless the home is sold.

We are beginning to recognize that many older persons do not want to give up their homes in later years. Besides its economic value, there is a strong emotional bond to both the property and the neighborhood. We are also recognizing that its cost-effective to assist older persons to remain in their homes and to avoid unnecessary and costly institutionalization.

Legislation will soon come before the House which facilitates home health services and which represents a major step in assisting older citizens stay in their homes. This effort must be matched with other steps if we are serious in our conviction that those older persons who want to stay in their homes should be able to do so. Rising property taxes, high fuel and other utility costs, expensive maintenance requirements and overall inflation combine to produce a critical situation. Without a source of additional income, the homes often cannot be maintained or held on to.

Under a reverse annuity mortgage or RAM, the older homeowner could convert all or part of the equity in their homes into a series of monthly payments. The operation of a RAM is similar to other annuity programs with a savings and loan institution making a loan secured by the house for the purchase of an annuity. The annuitant's estate would be responsible for settling the debt in probate.

One common concern about a reverse annuity mortgage is that it would preclude homeowners from bequesting their property to their children. This stems from the misconception that under a RAM the borrower retains no equity in the home. I note in all of the testimony from interested parties representing lending institutions, that lenders will insist on the borrower retaining ownership and a significant equity in the home at a margin which will encourage maintenance of the property and permit bequest at death.

I also note that this concept has broad-based support and there can be little doubt that in theory RAM's have great appeal. I support H.R. 12052 with minor but important reservations. The legislation as presently written would seem to address the major problem, namely what happens when the borrower has used up all the equity in the home. H.R. 12052 protects the mortgager from a loss of the property. However there are a number of other questions which must be addressed.

All of the experts on this topic have noted that RAM's will have to be written to accommodate individual situations. There will be a great deal of variation and flexibility from lender to lender and in plans offered by the same lender. Foremost of my concerns is that this variation will result in a consumer disadvantage. The many different arrangements for RAM's will be understood by lenders but not by borrowers.

The population for which RAM's are designed consists of individuals at a stage in life where financial decisions can be irreversible. Moreover, we are all too familiar with the difficulties our older constituents have in securing information on uniform programs like Social Security and Supplemental Security Income. It gives me pause to consider the possible consternation caused by RAM's.

I would thus recommend that any legislation to authorize reverse annuity mortgages be accompanied by an authorization for competent consumer counseling through a recognized senior citizen or consumer organization. Besides having information on the various types of RAM's, the consumer will need information on technical points such as how the interest is computed and how programs vary from institution to institution, what fees are involved and their effect on the size of the annuity.

The lender cannot be expected to adequately provide all of this information. Other important concerns are out of the purview of the lender but must also be addressed. The consumer should have access to information on tax considerations and the effect this new source of income might have on various state and federal benefit programs to which they are entitled. For example, would this income change eligibility for SSI and Medicaid benefits?

All of these considerations should be addressed before a consumer makes a deci-

sion about a reverse annuity mortgage. The older consumer is in many ways more vulnerable and it is incumbent upon us to provide as much protection as possible in opening up this new avenue of lending and borrowing. The problems are not insurmountable.

I commend this Subcommittee for your attention to this legislation and hope that H.R. 12052 can be enacted by the end of this session. It is a good idea which would benefit older and younger citizens and restore their faith in the "American Dream." ●

TWO STUNNING LETTERS

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

© Mr. DORNAN. Mr. Speaker, I have just received another letter from a Vietnamese refugee to Mrs. Le Thi Anh, a Vietnamese interpreter for the National League of Families, has sent me two stunning letters that reveal live sightings of American POW's in Vietnam. The Defense Intelligence Agency has been in receipt of these letters. I thank them for sending the information to me, after translating it, I asked that my colleagues give this matter their utmost attention. I insert these letters in the hope that this Congress will pursue an intelligent and farsighted policy to bring this matter to a satisfactory conclusion:

MAY 31, 1978.

Respectfully to Mrs. Le Thi Anh:

Having read your ad in the newspaper, I decide finally to write you after a few months of hesitation.

First, to let you know: I escaped by sea, leaving Saigon on the 19 of May 1977. After 6 months in a refugee camp in Asia, I was admitted to enter the U.S. on Dec. 15, 1977. I used to work for the U.S. Information (JUSPAO) in Saigon from 1965 to 1968.

I can furnish you Mrs (?) the precise information as having 100% credibility about 4 Americans held prisoners by the Communists that I met, talked to them (although very briefly) in a rare circumstance. I can pinpoint the location of their detention, on the map along with local name.

However, I ask your permission for me to keep confidential my identity, and this is important for me. Therefore, I anxiously ask myself who are you? Why not any particular U.S. agency, why a Vietnamese woman? Even I know that you are not acting as a status of a Vietnamese. Besides, I ask myself if I will have any complicated obligations with any U.S. government agency? (for example the FBI).

I also want to make it clear: that I can only present all matters with responsible Americans. I sincerely apologize first if truly there is a certain Mrs. Le Thi Anh.

To write you like this, means that I have accepted to meet with you or the responsible Americans for me to present all the facts, but, would you please give me your phone number so we can make acquaintaince before we meet each other. Please pull an ad in the TRANG DEN Newspaper like this: "THU ANH, got your letter, call me at ——." Do not sign as Le Thi Anh else people will know that we get in touch for U.S. POW matters.

———.

DEAR MME: I've just received your letter and here are the answers to your questions:

I am ready to indicate clearly the location where the American POW's are held in the U Minh Forest, if there is a map of this area.

I can meet the Americans truly having good faith in Paris, since I do not have enough money to travel to the U.S. and besides I could not get a few days leave to make a sudden trip. I also fear of meeting those who do not have good faith, those who try to exploit or abuse in order to fill up the columns of the newspaper. If this is the case, please let me in peace.

On the contrary, if they (Americans) do not abandon their countrymen and truly want to reach the objective, then would you please, let them know, that they should help 10 courageous Vietnamese in this land of plenty to go back to Vietnam hell, to execute the works they (Americans) want to do.

Here I like to furnish you the information concerning 30 Americans killed by the Khmer Rouge in the region of Bokor mountain, Kapot Province.

Between mid-74 and spring of 75 there were incidents between the Khmer Rouge and the North Vietnamese Red Devils in Cambodia. Both sides had a meeting to reconciliate themselves and to divide an area for the Northvietnamese to camp. This is the region of Bokor mountain, (Kapot Province) where our secret informant had reported the Northvietnamese as having evacuated 30 American POW's and held them there temporarily to later continue to transfer them to the Vietnamese soil. Around Nov. or Dec. 74, the Khmer Rouge suddenly attacked and killed the U.S. POW's and a number of Northvietnamese cadres guarding the POW's.

I had passed this information to Saigon, but perhaps during those months my superiors must have readied themselves to go to the U.S. and this information was thrown to the waste basket.

Wishing you to remain healthy to help the Vietnamese who have good faith, willing to go back to Vietnam to save our country and liberate our people miserably in the Communist hell.

———.

PARIS, *August 4, 1978.*

THE NATIONAL CONSUMER COOPERATIVE BANK ACT—ONE OF THE MOST SIGNIFICANT ACCOMPLISHMENTS OF THE 95TH CONGRESS

HON. FERNAND J. ST GERMAIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. ST GERMAIN. Mr. Speaker, on August 20, President Carter signed into law Public Law 95–351, providing for the establishment of a National Consumer Cooperative Bank. The successful passage of this legislation is the result of a broad coalition of consumer groups, labor organizations, community and religious groups, rural and urban citizens, and civil rights organizations.

Among the hard workers for this legislation is my own State of Rhode Island's Chief of Consumer Affairs Joseph Marciano. Joe worked hard at the Consumer Assembly here in Washington, wrote letters to the editor on the bill, and was one of the farsighted people who provided the continued momentum needed to get the legislation enacted. Consumers in Rhode Island are grateful for Mr. Marciano's efforts.

Another long-time supporter of the bill is J. F. ter Horst, former press secretary to President Gerald Ford. Now a syndicated columnist, Gerry ter Horst wrote about the bill in a column appearing in the Philadelphia Inquirer on Sunday, August 27. Mr. Speaker, I would like to insert the column in the RECORD at this point:

NEW BANK—CO-OP COME TO THE CITIES

(By J. F. terHorst)

WASHINGTON.—At a time when President Carter and Capitol Hill are being blamed for every government ill known to man, it's nice to note the enactment of H.R. 2777, the Consumer Cooperative Bank Bill. It will stand as one of the most significant accomplishments of the 95th Congress.

For the first time, it now becomes possible for neighborhood residents in America's cities to do what their country cousins have been able to do for the last several generations—borrow low-cost money to start up cooperative ventures to improve the quality of their lives. Glenn M. Anderson, president of the Cooperative League of the USA, was not simply being rhapsodic when he assessed the new law as a "major milestone" in the history of American cooperatives, a movement, incidentally, that began with the landing of the Mayflower.

The new bank, headquartered in Washington, will lend money too nonprofit, consumer-owned enterprises in fields as diverse as housing, health care, auto repair and groceries. It is patterned after the Farm Credit System, which rescued small farmers from bankruptcy in the Depression era of the late 1930s and which flourishes today as a major credit source for farming activities.

A distinctive feature of the Co-Op Bank Act is the congressional intent, written into law, that priority for its loans must go to cooperatives having low-income members or whose ventures will benefit low-income families.

One would be hard put to conceive of a more beneficial tool for reviving rundown neighborhoods in the core of the nation's big cities. Or to provide a badly needed alternative for the rapid conversion of modest apartments into high-priced condominiums that, in city after city, is forcing out elderly residents and young couples who lack the money to buy housing.

The bank's 13-member board initially will be appointed by the President. As the bank repays its federal loan and becomes increasingly self-sufficient, the board itself will become independent. However, one director representing the interests of small business will continue to be appointed by the President. Businessmen still are leery, fearing co-op competition.

The credit for enactment of this landmark legislation belongs in large part to its bipartisan champions—Rep. Fernand St Germain, D-R.I., and Rep. Chalmers P. Wylie, R-Ohio, Sen. Thomas McIntyre, D-N.H., and Sen. Robert Dole, R-Kan. And to the Carter administration's consumer advocates, Assistant Agriculture Secretary Carol Tucker Foreman, Monsignor Baroni and Esther Peterson, the White House Consumer Affairs chief, who persuaded the President to switch from opposition to endorsement.

Interestingly, what was first seen as a liberal boondoggle—the bill cleared the House by only one vote in 1977—became a conservative rallying point in the Senate. Some of the chamber's most anti-spending members rather liked the idea of a government-launched program that would eventually be-

some self-supporting. In that philosophic reawakening, as in the creation of the Consumer Cooperative Bank itself, all of us have been witnesses to history in the making.●

A STRATEGIC STAKE IN AFRICA

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. CRANE. Mr. Speaker, while the West for much of this decade has advocated and pursued a diplomatic policy of pacifism and conciliation, flinching away from any use of its considerable power, the Soviet leadership laughs at our attitude and has embarked on a well-planned and coordinated program to gain superiority in regions that are vital to the economic viability of the free world.

In Africa the Soviet Union has launched a conscious effort to develop the political and military infrastructure necessary for a vastly expanded strategic presence. The Soviet Union's military capability now brackets the African continent and must be taken into serious consideration in any assessment of the region's strategic and political environment.

Soviet possession of naval facilities and basing rights along the African coast enables the Soviet Union to exercise considerable influence on the politics of littoral states, but perhaps more importantly, it enables the Soviets to project their naval power in the South Atlantic-Indian Ocean sea route around Africa's southern tip. This is one of the principal sea lanes of the world. It is imperative that the United States realize that the cape route is now not only the most crowded sea lane, providing passage to 24,000 ships yearly, but also the most vital route for fuel-hungry Europe and the United States. According to the U.S. Strategic Institute, 60 percent of U.S. oil imports will be moved through this route in the 1980's.

It is in this light that we should consider the significance of what is happening in Africa.

The transfer of sophisticated military equipment to Marxist movements in Africa, both directly from the Soviet Union and indirectly through its satellite surrogates, has reached unprecedented levels. Impoverished indeed is the guerrilla group without an ample supply of AK–47 assault rifles and SAM–7's. For example, military aid has continued to flow into Mozambique to strengthen its defense capacity and to support 12,000 guerrillas who have been fighting Rhodesia from Mozambique's territory. As in the cases of Angola and Ethiopia, the Cubans and East Germans have been instrumental in expanding Soviet influence in Mozambique.

The Soviet Union has clearly maneuvered to establish itself as the sole military supplier and political patron of a number of African states, which formerly looked to the West for fundamental support. In the early 1960's, for instance, Moscow began to extend military aid to the repressive and erratic regime of Idi Amin in Uganda. By June 1975 the Soviet Union had provided an estimated 12 Mig fighters and bombers, 60 light tanks, 100 personnel carriers, and 200 anti-aircraft weapons.

Of interest also is the increasing African reliance on Soviet satellite nations, and other nations of the Kremlin orbit, such as Cuba, North Korea, and Vietnam, to provide training and supervision in the use of modern equipment, as well as tactical military guidance to African clients and revolutionary movements. Today there are fifty thousand Cuban soldiers and civilians serving in the 14 African countries. Additionally, there are at least thirty-nine thousand Soviets and their East European surrogates serving in a technical or military advisory capacity on the continent. Gentlemen, these are significant numbers and warrant our closest scrutiny. We must ponder carefully how these developments affect our current foreign policy, and more importantly, how they will impact upon future interests and policy in this strategic region. The Soviet drive for superiority in Africa is far in excess of what would be required to project their military power upon Western lifelines.

The Soviet Union, a nation ruled by a totalitarian dictatorship and motivated by an unconcealed determination to dominate the world, is maneuvering to maximize its leverage and influence in an area of the greatest significance to the free world.

As the world demand for minerals has grown, and Western industrial consumption has depleted many of the traditional reserves, Africa's raw materials have become increasingly important to the survival of Western economic stability and industrial well-being, as well as for defense production.

Southern Africa possesses the single largest concentration of metals necessary for high-technology industry. Alternate sources do not exist in the quality, quantity, or collective concentration currently available, nor is there extraction, transportation, and processing as economically favorable. In short, should we be barred from the Southern African market, we would be in the wholly incongruous position of depending heavily on the Soviet Union's mineral resources to meet our needs for such minerals as chromite, antimony, vanadium, and industrial diamonds.

If this eventuality occurs, the minimum we could expect would be a steep increase in prices—as it happened when, following the embargo on Rhodesian chrome, we were forced to rely on the Russians. The Soviets could exploit dislocations in mineral supplies to their own economic advantage or even for the purpose of political blackmail. This is a position that I find totally untenable for the people of the free world.

What is the policy of the United States to be in the face of this Soviet threat? By now we are all too well acquainted with the dismaying antics of Andrew Young and his well-known political philosophy. Downplaying the Soviets and their proxied adventurism certainly pleases African leaders closest to the Carter administration—those in Nigeria, Tanzania, Mozambique, and Angola. It does not please those traditionally close to the West—the leaders of Zaire, Kenya, Senegal, and others—who continually harp upon expanding Soviet and Cuban presence on their continent. President Houphonuet-Boiget of the Ivory Coast, to give but one example, recently said, "Russia will take advantage of any confusion in Africa to infiltrate the continent. This may go under the guise of aid to so-called liberators, but once inside, the 'benefactors' will be just another occupation force." Nineteen African heads of state met in Dakar last April and voiced similar concerns.

Those African leaders recognize events happening before their very eyes. They know that Moscow characteristically condemns diplomatic efforts for a peaceful solution in Southern Africa. They know that Cuba has bolstered its occupation armies throughout Africa to prop up unpopular regimes. They know that the Soviets are supplying massive amounts of arms across the continent by which Africans are slaying one another. They know that the Kremlin has pledged more than $1 billion of military equipment to Ethiopia, twice as much as the United States supplied in a quarter of a century.

In the higher circles of our Government there is an unwillingness to come to grips with this situation. Our leaders fail to grasp the fact that the resources of the region are an integral part of the West's industrial system, including Japan, and contributes to the overall strength of our culture. They do not appear to accept the reality that the United States is increasingly dependent upon Southern Africa for strategic minerals. It is essential for our country to understand that the Soviet threat to the West's fuel supplies is in the Indian Ocean and the South Atlantic, and must be dealt with in those oceanic regions.

Profound attitudinal changes must be affected in the United States. Basic to such change is an accelerated process of education with respect to the Southern Hemisphere, so that the American people understand they have in a continued Western presence and the uninterrupted movement of oil and strategic materials to the industrialized countries of the Northern Hemisphere.

Surely, if the American people understand that our way of life is involved in the current strategic maneuvering in Southern Africa, the Western Indian Ocean, and the South Atlantic, they will insist that our Government adopt a more realistic and active policy. All too frequently it has been glibly asserted by politicians that the facts cannot be put before the people as they would be unpopular. I venture the belief that the overwhelming majority of the American people, when confronted with the facts, have enough common sense and moral fiber to recognize the tremendous need for a policy that reflects the depth of our interest and involvement in this area of the world.

SUGAR PAYMENTS MUST BE LIMITED

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. FINDLEY. Mr. Speaker, when sugar legislation reaches the House floor I will offer an amendment to limit any Government payments under it to a level not exceeding $50,000 annually.

This would conform to the limitation on payments already established by law for other major commodities—wheat, corn, rice, and cotton.

The limitation at $50,000 would still permit generous U.S. Treasury checks each year to individual plantations, corporations and processors, but it would prevent a resumption of the enormous payments which have been made during 1977–78 to support sugar prices, as shown in the listing below. One firm, you will note, got over $24 million for the 1977 crop year.

The 63 payees listed below will eventually receive about $200 million in all for just one crop year. The payments listed, according to USDA, represent 90 percent of the estimated amount due.

Had payments been limited to $50,000 annually, the U.S. Treasury would have been tapped for only $3,150,000—instead of $200,000,000—a saving to taxpayers of $196,850,000.

SUGAR PRICE SUPPORT PAYMENTS, 1977–78

Processor	Total payments through July	Amount of payment, August	Total payments to date
Alma Plantation	449,285.62	0	449,285.62
Amalgamated Sugar Co	3,062,188.83	0	3,062,188.83
American Crystal Sugar Co	23,988,454.41	542,976.51	24,531,430.92
Atlantic Sugar	509,403.98	0	509,403.98
Billeaud Sugar Factory	664,421.94	0	664,421.94
Breaux Bridge Sugar Coop., Inc	299,184.42	13,101.09	312,285.51
Buckeye Sugars, Inc	125,932.11	0	125,932.11
Cajun Sugar Coop., Inc	709,598.83	31,072.87	740,671.70
Caldwell Sugars Coop., Inc	418,939.36	18,345.07	437,284.43
Cinclare (Harry Laws & Co.)	918,023.70	0	918,023.70
Columbia (Caire & Graugnard)	141,155.40	4,867.58	146,022.98
Columbia Sugar Co	258,684.06	30,250.57	288,934.63
Cora-Texas Manufacturing Co., Inc	782,361.99	0	782,361.99
M. A. Patout & Son, Ltd. (Enterprise Sugar Factory)	1,653,473.12	91,181.48	1,744,654.60
Evan Hall Sugar Coop., Inc	1,109,858.70	0	1,109,858.70
Gay & Robinson	988,705.01	0	988,705.01
Glenwood Cooperative, Inc	832,592.00	0	832,592.00
Great Western Sugar Co	12,789,443.33	281,199.61	13,070,642.94
Gulf & Western (Okeelanta Sugar Division)	1,438,839.73	0	1,438,839.73
Hawaiian Commercial & Sugar Co	10,736,741.75	0	10,736,741.75
Helvetia Sugar Cooperative, Inc	336,937.67	14,754.27	351,691.94
Hilo Coast Processing Co	5,927,149.18	0	5,927,149.18
Holly Sugar Co	7,430,493.59	160,563.67	7,561,057.26
Honokaa Sugar Co	3,886,544.97	0	3,886,544.97
Iberia Sugar Coop., Inc	457,504.47	20,033.82	477,538.29
Jeanerette Sugar Co	935,393.59	0	935,393.59
Ka'u Sugar Co., Ltd	2,843,589.75	0	2,843,589.75
Kekaha Sugar Co., Ltd	2,700,843.09	0	2,700,843.09
Laupahoehoe Sugar Co	4,148,004.13	0	4,148,004.13
Leighton-Lafourche Sugar Co	1,421,048.22	0	1,421,048.22
Lihue Plantation	4,273,065.27	0	4,273,065.27
McBryde Sugar Co., Ltd	3,249,431.43	0	3,249,431.43
Meeker Sugar Corp., Inc	425,840.49	18,647.27	444,487.76
Michigan Sugar Co	1,661,597.13	0	1,661,537.70
Minn-Dak Farmer, Corp	3,998,678.13	105,144.80	4,103,822.93
Monitor Sugar Co	67,959.92	0	673,959.92
Northern Ohio Sugar Co	933,099.95	39,388.66	972,488.61
Oahu Sugar Co., Ltd	5,100,122.64	0	5,100,122.64
Olokele Sugar Co., Ltd	1,755,566.36	0	1,755,566.36
Osceola Farms Co	725,803.64	0	725,803.64
Pioneer Mill Co., Ltd	2,853,531.19	0	2,853,531.19
Puna Sugar Co., Ltd	3,036,179.67	0	3,036,179.67
St. James Sugar Coop., Inc	645,052.93	28,246.46	673,299.39
St. Mary Sugar	744,151.40	46,138.18	790,289.57
St. Martin Sugar Coop	420,563.08	18,416.19	438,979.27
Savoie Industries, Inc	994,393.28	0	994,393.28
Smithfield Sugar Coop., Inc	345,868.50	15,145.36	361,013.86
The South Coast Corp	4,617,573.16	0	4,617,573.16
Southern Sugars, Inc	4,089,130.45	0	4,089,1 0.45
Spreckels Sugar Division (Amstar)	20,288,221.34	0	20,288,221.34
C. S. Steen Syrup Mill, Inc	202,916.93	0	202,916.93
Sterling Sugar	1,031,508.24	154,851.20	1,186,359.44
Sugar Cane Growers Coop	1,547,294.01	0	1,547,294.01
Sugar Corporation of Puerto Rico	5,540,926.34	0	5,540,926.34
Supreme Sugar Co. Inc	662,944.99	0	662,944.99
Talisman Sugar Corp	2,327,205.60	81,450.00	2,408,655.60
U & I, Inc	5,149,739.32	192,354.85	5,342,094.17
U.S. Sugar Corp	6,396,374.39	993,092.97	7,389,467.36
Union Sugar Division (Consolidated Foods Co)	2,746,085.19	0	2,746,085.19
Valentine Sugars, Inc	368,609.15	46,852.68	415,461.83
Waialua Sugar Co., Inc	3,839,138.81	0	3,839,138.81
Wailuku Sugar Co	1,544,366.29	0	1,544,366.29
Westfield Factory (Dugas & LeBlanc, Ltd.)	1,040,320.27	0	1,040,320.27
Total	185,164,057.01	2,948,075.15	188,112,132.16

Note: Above payments represent 90 percent of estimated amount due.

Source: U.S. Department of Agriculture, ASCS, Sept. 15, 1978.

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INNOVATIVE STEP FORWARD IN HOME MORTGAGE FINANCING

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. PATTERSON of California. Mr. Speaker, in a few days the House will have an opportunity to adopt an innovative, flexible home loan program that has worked in a number of States, including my home State of California. I am speaking of title 18 of the Financial Institutions Regulatory Act of 1978 (H.R. 13471).

Title 18 would authorize federally chartered savings and loan institutions to offer alternative mortgage instruments in those States where State-chartered institutions are allowed to offer such instruments by State law or regulation. While title 18 is limited in scope and is intended to address a pressing comparative parity problem which now exists in some States, for example, California, Wisconsin, Connecticut, and Ohio, I think it is an important step forward.

A primary goal of this and past Congresses has been to foster conditions that will result in safe and adequate housing for all Americans. It attempts to reach this goal. We have passed many laws to encourage individuals and businesses to invest in housing. Among these are mortgage interest tax deductions, housing subsidies and community development programs. We have even created a separate type of financial institution which we have limited to housing investment and mortgage lending. And, we have created a special type of mortgage instrument—the standard, fixed-rate, 30-year mortgage.

All of the above factors have played an important role in making the United States one of the best-housed nations in the world. Many Americans have reached that American dream of home ownership through use of the standard mortgage. We have lived happily with the slogan, "A Man's Home Is His Castle."

Recently, inflation and other adverse economic events have made it extremely difficult for Americans to continue to attain the goal of home ownership. This is especially true for those people who are purchasing their first home. Wide swings in interest rates and inflation have caused problems for the standard, fixed-rate mortgage which has served us so well.

The fluctuations in interest rates have restricted funds available for housing. When short-term interest rates rise rapidly, the savings institutions—who do the bulk of the Nation's mortgage lending—dependent upon fixed-yield, long-term mortgages, cannot attract money. If these institutions do not attract money, they cannot make mortgage loans. Further, most people cannot afford the large downpayments and the high monthly payments necessary to take that step of acquiring their first home.

A bold step is needed. The time is right for use and development of a variety of mortgage instruments to supplement the standard, fixed-rate mortgage. While the standard mortgage is still a valuable tool and will meet the needs of many Americans who are purchasing homes, we need to expand the options for those who cannot meet the terms required by this mortgage. The younger person who is buying his or her first home may be better served by a graduated payment mortgage. The older person, who lives on a fixed income, would be able to maintain his or her standard of living by taking a reverse annuity mortgage. The person transferred on the job and forced to resettle at a time of high interest rates will be better served by a variable rate mortgage.

Our society has changed. We are more

mobile and have different economic characteristics than in the past. We need flexible options to meet our changing lifestyles. For the man or woman whose work requires frequent transfers, options such as assumability, lack of prepayment penalties, and other benefits make alternative mortgages such as variable rates attractive. For the person who is building equity in order to "trade up" in quality and cost of housing, a rollover mortgage may be best.

No one is suggesting that we do not need the fixed-rate mortgage. It undoubtedly will continue a be a valuable tool and a favorite of many. It is indisputable that it is the best instrument for the person who purchases a home with the intention of living in it for the next 30 years and paying off the mortgage. These people do not need options. They are, however, only about one-third of the current homeowners. We must look for ways to meet the needs of others too.

I urge my colleagues in this Chamber to accept the challenge and take a step forward by supporting title 18 of the Financial Institutions Regulatory Act.●

CONTRIBUTIONS TO THE UNITED NATIONS FUND FOR DRUG ABUSE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. GILMAN. Mr. Speaker, the United Nations Fund for Drug Abuse Control (UNFDAC), which was created in 1971 to provide technical assistance to governments and international organizations, in their efforts to curb illicit narcotics trafficking and drug abuse, receives its financial support from the voluntary contributions of nations of the international community and from private donations by donors concerned in waging "war" on drug abuse. Since its inception, the United States has been the primary financial underwriter of UNFDAC programs.

With regard to UNFDAC's current financial posture, I recently received information from the U.N. Fund pertaining to contributions that it has received, as of July 31, 1978. According to the UNFDAC report, up to the end of July 1978, 29 nations had pledged or contributed $1,210,027 to the Fund; private donations amounted to $10,919, or as reported, a grand total of public and private cash contributions amounting to $1,220,946.

Excluded from the UNFDAC report is the pledge by three nations: the United States ($3 million), Norway ($2,352,608, not the $55,484 stated in the Fund's report), and Sweden ($511,000), or an additional $5,863,608. Five nations have contributed $100,000 or more to the Fund: Saudi Arabia ($250,000), the Federal Republic of Germany ($247,824), Canada and Japan (each contributing $200,000), and France ($100,000). Twenty-two other nations have pledged a paltry $156,719, or an average of slightly more than $7,000 per contributing nation. To date, 30 nations, or 20 percent of the 149-nation membership in the United Nations, have pledged a meager $6,020,327 to UNFDAC's 1978 budget; private donations remain slightly less than $11,000, bringing the public and private contributions to the Fund to a grand total of $6,031,246 for a worldwide drug effort.

Although some nations have made contributions inkind to UNFDAC, the amount of cash contributions to the Fund's 1978 budget is pathetically small, given the global dimensions of narcotics trafficking and drug abuse. A year ago, as of September 30, 1977, UNFDAC reported pledges amounting to $10,987,933, including the substantial sum from Norway of more than $5.5 million for its Burma program for 1977–81; 1 year ago this month, private donations amounted to $165,110, including the $160,000 contribution from the Japanese Shipbuilding Industry Foundation, which according to UNFDAC records, has yet to renew its hitherto helpful contribution.

Mr. Speaker, it is a sad commentary on the international community's efforts to stamp out narcotics trafficking and drug abuse when 30 nations of the United Nations, less than 20 percent of the entire family of nations, can raise only $6 million, 89 percent of which come from contributions by the United States and Norway.

Between 1971 (when UNFDAC was created) and 1977, four nations committed $29,907,471, or nearly 87 percent of the Fund's $34,476,784 budget: The United States ($22 million), Norway ($5,714,259), Canada ($1,193,222), and Japan ($1 million), of which nearly 64 percent represented this Nation's contribution to the U.N. Fund. Last year (from January 1, 1977, through December 7, 1977), 38 nations contributed $8,051,000, of which the U.S. contribution of $4 million represented nearly one-half of the Fund's budget.

Mr. Speaker, in February of 1977, on behalf of the Select Committee on Narcotics Abuse and Control, I, along with the gentleman from New York (Mr. SCHEUER), participated in the 27th session of the United Nations Commission on Narcotic Drugs (CND) in Geneva, Switzerland, and in my address to the Commission, I stated:

> There is a deeper, stronger feeling in the Congress of the need for a broader, more equitable assumption of the fiscal responsibilities of the world's narcotic problems. There is even the possibility of a reduction by the Congress in considering the authorization for funding the UN Fund if there is too great an imbalance in the U.S. effort.

Although in both 1977 and 1978, this Nation's contribution to the Fund is reduced to slightly less than 50 percent, the disproportionate imbalance by a few nations contributing the bulk of the Fund's financial resources still exists.

Mr. Speaker, given this Nation's multibillion dollar international balance-of-payment deficit, escalating Federal double-digited budget deficits, and taxpayer frustration at the unbearably high Federal, State, and local taxes, is there any wonder why the Congress this year reduced our Nation's contribution to the Fund's 1978 budget by 25 percent (from a $4 million contribution in 1977 to $3 million for this year)? I had warned the delegates to the U.N. Commission on Narcotic Drugs in February of 1977 that this would occur if other nations did not assume "a more equitable assumption of the fiscal responsibilities of the world's narcotic problems."

With regard to 1978 contributions, UNFDAC officials estimate that pledges for this year will amount to $10.3 million for Fund programs and an 80-percent program delivery rate, which I understand would leave the Fund's reserve at the end of 1979 at less than $1 million. At a meeting on June 15, 1978, between UNFDAC representatives and Permanent Missions of Government Members of the U.N. Commission on Narcotic Drugs, it was reported that "drug control has been given below average priority by the United Nations General Assembly," a priority position that I find shocking and unacceptable. The meeting concluded on another distressing note:

> The Fund has to act pursuant to the guidance provided by the Commission on Narcotic Drugs and the General Assembly. Governments take different views with respect to the priority of narcotics control in the General Assembly than they do in the Narcotics Commission. Unless the Fund receives increased financial support, it will have to be satisfied with a smaller program.

At a time when contributions to the Fund appear to be at an all-time low, last year, 1 year ago this month, UNFDAC reported pledges amounting to nearly $11 million. I find the "below average priority" given to drug control by the U.N. General Assembly, the pathetically small cash reserves projected for 1979, and the proposed reduction in the UNFDAC program to run counter to UNFDAC's proposed expensive move of its headquarters from Geneva to Vienna.

Drug abuse prevention and control is not a problem unique to this country or to the few nations that have made a substantial contribution to the U.N. Fund. We cannot wage "war" on drug abuse alone. We cannot single-handedly finance international drug programs, provide the equipment, personnel and expertise to combat the international criminal syndicates whose sophisticated operations reach into every corner of the globe, and eradicate the illicit production of narcotic drugs at its source. It is appalling that those nations that have substantial drug problems are also nations that have made miniscule contributions to the Fund or no contributions at all. Nations that can afford to contribute to the Fund have made token pledges of less than a few thousand dollars or are conspicuously absent by not contributing a single penny to the Fund.

The Soviet Union, the People's Republic of China, India, and the Eastern European bloc of nations are among the leading members of the United Nations that are conspicuously absent by not contributing to the U.N. Fund. Oil-rich nations such as Venezuela, Kuwait, Iran, and Libya, which welcome receiving our advanced technology or seek our sophisticated military hardware have made only token contributions to UNFDAC. Columbia, Bolivia, Ecuador, Peru,

Burma, and Laos, major illicit drug producer nations, have yet to contribute a single penny to the "war" on drug abuse; Argentina, Brazil, Spain, Portugal, and Israel have contributed small amounts to the U.N. Fund, but this is disproportionate to their ability to assist in the "war" on drug abuse. Africa-South-of-the-Sahara is virtually absent in its nonsupport of the U.N. Fund.

The magnitude of trafficking in heroin, cocaine, marihuana, and other dangerous drugs is herculean and the profits reaped from these sordid international business transactions reach into unknown billions of dollars each year. Waging "war" on this elusive enemy is difficult and frustrating for those nations that are jointly sharing their resources in an effort to stamp out this scourge of all mankind. In this regard, the U.N. International Narcotics Control Board (INCB) concluded in its 1977 annual report:

The amount of drugs of all kinds in the illicit traffic has shown no sign of decreasing. . . . World-wide heroin seizures, for instance, reached an unprecedented level in 1976. When one source dries up another may almost immediately assume greater importance so that the apparently rising illicit demand can continue to be met.

Obviously, illicit drug trafficking is big business. It has reached epidemic proportions for both heroin producer nations and heroin user nations, for both developed and less-developed nations. No nation, regardless of its political power, socioeconomic status, or ideology, is immune from the devastating and debilitating effects of drug abuse and the drug merchants who profit from this sordid human misery. From the Golden Triangle of Thailand, Burma, and Laos to Turkey, Iran, Lebanon, Egypt, Colombia, and Mexico and the narcotic distribution centers of Berlin, Amsterdam, the Bahamas, Miami, New York, Chicago, and Vancouver, nations throughout the world are reporting increased usage of heroin, cocaine, marihuana, and other dangerous drugs. Thailand reports a drug addiction population estimated at 300,000 to 600,000; 20,000 individuals are registered for treatment in Burma, which international health officials state is many times higher than this registered figure; Iran reports 400,000 addicts; Mexico 50,000. Egyptian law enforcement authorities estimate that 3 to 6 tons of opium are consumed annually by 500,000 of that nation's citizens.

The impact of the $2 billion marihuana and cocaine industry in Colombia—a narcotics trafficking industry that is larger than the nation's export of coffee, its major source of foreign exchange—finally has been brought home to Colombian law enforcement officials who are now concerned that this illicit drug trafficking business is having an injurious effect on its own citizens. Since the beginning of this year, the total area of marihuana cultivation in Colombia reportedly has grown from 100,000 acres to over 300,000 acres, almost half the size of Rhode Island, and that this acreage is capable of producing an estimated 120,000 tons—or 240 million pounds—of marihuana. Last April, Colombian law enforcement agents, acting on information supplied by our Drug Enforcement Administration (DEA), seized, in a single world record-breaking raid, 574 tons of marihuana, worth an estimated value of $200 million. During the 5-month period from December of 1977 to April of this year, joint law enforcement efforts by our DEA and the U.S. Coast Guard seized 40 marihuana vessels flying flags from Colombia, Mexico, Venezuela, Honduras, Panama, and Liberia that carried 575 tons of marihuana worth an estimated retail value of more than $400 million.

Commenting on the heroin trafficking trends originating from Southeast Asia, the INCB stated in its 1977 annual report:

World seizures of heroin originating from Southeast Asia in 1976 (more than 1,600 kg) at least equaled total world seizures from all sources in 1975. Eighteen Western European countries, Canada, the United States of America and the Union of Soviet Socialist Republics have all reported substantial seizures of heroin of South-East Asian provenances. Reported seizures and Governments' estimates of the size of addict populations in Burma, Thailand, the Territory of Hong Kong, Malaysia and Singapore show that the area is a major consumer of its own illegal opium products. Nevertheless, sufficient opiates are produced to support a world-wide traffic with an increased impact. All indicators thus point to undiminished opium production in South-East Asia.

In 1976, eight Western European nations reported over 600 drug-related deaths, more than half of which occurred in the Federal Republic of Germany, and this figure does not account for the unreported drug-related deaths. West German officials estimate the number of its citizens that are drug addicts at approximately 40,000.

There are reports of heavy narcotics trafficking through East Germany, and according to the INCB's 1977 annual report:

Transit traffic in cannabis and cannabis resin from the Near and Middle East to Western Europe affects mainly Bulgaria, Romania and Yugoslavia. Sizeable seizures are made by vigilant authorities. A Consultative Group on illicit drug traffic in East and Central Europe met under the auspices of the Division of Narcotic Drugs in Geneva in December 1976 and experts from Austria, Bulgaria, France, the Federal Republic of Germany, Greece, Poland, Romania, Turkey and Yugoslavia discussed the further improvement of international communication and co-operation in law enforcement.

Reports from Japan indicate a substantial amphetamine addiction problem among that nation's citizens.

In Canada, heroin trafficking represents the fifth largest industry in British Columbia, grossing, according to Canadian law enforcement officials, at least $255 million a year and requiring over 365 pounds of smuggled heroin to supply Vancouver's addict population; 60 percent of the crime in British Columbia is drug related.

Heroin addiction in Canada and Western Europe has reached epidemic proportions to such an extent that Canadian, British, French, West German, Dutch, Swedish, and American law enforcement agents have joined their colleagues in Thailand in trying to eradicate the illcit opium production and trafficking.

Cultivation of poppy fields in Egypt has reached such a grave proportion that the director of the Egyptian Anti-narcotics Administration, General Sami Assad Farag, recenlty wrote me that—

There is the possibility that Egypt might become an opium illicit producing nation.

During the first quarter of 1978, Egyptian drug law enforcement agents seized 5,364,022 poppy shrubs and 177,313 Indian hemp shrubs, which nearly doubled the entire 1977 seizure of 3 million poppy shrubs and constituted a 61-percent increase in seized Indian hemp shrubs for that year, as compared to nearly 30 times the 180,000 poppy and 7 times the 25,000 Indian hemp shrubs seized for the entire year of 1976.

General Farag has also called upon—

Other states to facilitate international and regional collaboration in an effective manner so that all the combating forces of the world may constitute an invincible front against the international smuggling gangs through a strict organization of rapid means of communication, particularly at the frontier areas.

—a view that I endorse.

The worldwide trafficking of illicit drugs is not limited to heroin, marihuana, and cocaine, but also includes psychotropic substances. The INCB recently reported: "Virtually every narcotic drug and psychotropic substance liable to abuse are available on local illicit markets," and as an example of this problem, last year, Egyptian drug law enforcement agents arrested a gang of Egyptian, Syrian, Lebanese, and Swiss traffickers attempting to smuggle 6 million narcotic tablets.

Mr. Speaker, this is not the complete picture of international narcotics trafficking patterns or the extent of drug abuse among individuals throughout the world, but it does represent the seriousness of the problem. If the "war" on drug abuse is going to be won, then it will require the concerted efforts by the entire international community. It will require contributions of personnel, equipment, expertise, and money to combat the sophisticated operations of the vast international criminal syndicates, to eradicate the illicit production of drugs at their sources, to educate citizens throughout the world regarding the dangers of drug abuse, and to treat and rehabiliate those individuals who have become dependent upon or addicted to drugs. Unless the consciousness of the international community is raised, unless all nations of the international community recognize that it is in their national interest to join with us and other concerned nations in combining resources to fight the insidious business of narcotics trafficking, then the problems of drug abuse prevention and control will remain for both heroin producer nations and heroin user nations, for both developed and less-developed nations. Narcotic producer nations are now finding that their own citizens are becoming dependent upon the very drugs that are smuggled across their borders.

I have repeatedly urged member governments to intensify their efforts to

contribute to UNFDAC or to increase their contributions to the U.N. Fund. These funds are urgently needed if UNFDAC is to underwrite viable programs to combat the trafficking and production of illicit drugs. In this regard, Saudi Arabia recently responded to my plea for increased financial assistance to UNFDAC by contributing an additional $200,000 to its initial pledge of $50,000. Secretary of State Cyrus Vance, in commenting on my efforts to increase contributions to the U.N. Fund, stated:

The Saudi Arabian contribution is an encouraging indication of the increased importance to other governments of the vital work of the U.N. Fund in reducing the spread of drug abuse and illicit drug traffic.

If UNFDAC is to serve mankind against narcotics trafficking and the illicit production and abusive consumption of drugs, then it urgently needs more than the meager $6 million pledged by only 30 nations—a budget that is less than the cost of purchasing one sophisticated Air Force or Navy jet fighter, such as the F–15 or the F–16. The $6 million pledged to UNFDAC for 1978 will however, purchase a couple of H–53 Super Jolly Green helicopters that are used by our Air Force for cargo carrying missions.

Mr. Speaker, in an effort to bring to the attention of my colleagues the extent of recent contributions by other governments to UNFDAC, I am inserting at this point in the RECORD the UNFDAC Report of Contributions, as of July 31, 1978. It is hoped that those governments that have not yet contributed to UNFDAC will assume their responsibility to the U.N. Fund and that governments that have contributed only token amounts will intensify their efforts in combating drug abuse by rendering more substantial support to the fund.

The report follows.

United Nations Fund for Drug Abuse Control—Cash contributions as of July 31, 1978

[In U.S. dollars]

	1971–77	1978
Algeria	$4,995	$3,000
Argentina	23,000	----------
Australia	551,598	48,220
Austria	48,127	13,275
Bahamas	1,000	500
Barbados	750	----------
Belgium	50,000	----------
Brazil	13,000	5,000
Canada	1,193,222	200,000
Chile	2,000	2,000
Cyprus	5,685	597
Denmark	659,081	----------
Egypt	----------	1,000
Finland	23,751	----------
France	605,500	100,000
Germany, Federal Republic of	714,632	247,824
Greece	11,884	2,000
Guyana	487	----------
Holy See	1,000	----------
Hong Kong	60,956	21,607
Iceland	5,500	----------
Indonesia	1,000	----------
Iran	35,000	----------
Iraq	5,066	----------
Ireland	5,000	----------
Israel	4,500	----------
Italy	203,200	----------
Ivory Coast	2,000	----------
Jamaica	4,380	1,100
Japan	1,000,000	200,000
Jordan	2,000	----------
Kenya	3,000	----------
Kuwait	21,000	----------
Libyan Arab Jamahiriya	6,460	----------
Liechtenstein	3,000	1,000
Luxembourg	1,000	----------
Malaysia	2,000	----------
Malta	484	516
Mauritius	1,000	500
Morocco	13,275	----------
New Zealand	117,711	32,130
Nigeria	6,000	8,778
Norway	[1] 5,714,259	55,484
Pakistan	1,010	1,003
Philippines	8,000	----------
Portugal	5,000	1,000
Qatar	22,000	----------
Republic of Korea	2,000	----------
Rwanda	1,066	----------
San Marino	500	1,000
Saudi Arabia	82,000	250,000
Senegal	3,049	3,155
Singapore	1,000	----------
South Africa	14,482	----------
Spain	20,000	----------
Sudan	1,000	----------
Surinam	2,000	----------
Sweden	743,708	----------
Thailand	4,000	5,000
Togo	200	----------
Trinidad and Tobago	1,000	----------
Tunisia	4,853	2,338
Turkey	9,781	----------
United Arab Emirates	9,000	----------
United Kingdom	372,922	----------
United Republic of Cameroon	422	----------
United States of America	22,000,000	----------
Uruguay	1,000	----------
Venezuela	6,000	2,000
Viet Nam	2,000	----------
Yugoslavia	31,288	----------
Total	34,476,784	1,210,027
Private contributions	180,483	10,919
	34,657,267	1,220,946
Interest income (December 12, 1977)		1,154,875
Total contribution and interest		37,033,088

[1] Including US$5,451,127 pledged for the Burma programme 1977–81 of which US $1,448,000 paid in 1977 and US $2,308,000 paid in 1978.

SPECIAL CONTRIBUTION THROUGH UNDP

Netherlands: For addiction treatment and rehabilitation project in Afghanistan, US$500,000.

CONTRIBUTIONS IN KIND

Australia: Transportation of cattle to Burma for crop substitution project in Burma, US$62,422.

India: 15 donkeys for crop substitution project, Burma, US$5,000.

Malaysia: Computer facilities during 1978/79 estimated. US$15,000.

Netherlands: Publication of a Monthly Journal (Drug Dependence) by Excerpta Medica Foundation of Amsterdam (1972–1976), US$209,440.

Poland: Agricultural machinery and implements for crop substitution projects (3.2.75), US$50,000.

Switzerland: Medicaments for addiction treatment project in Afghanistan up to maximum of US$40,000.

GOVERNMENT CONTRIBUTIONS [1] TO UNFDAC-SUPPORTED PROJECTS AND ASSOCIATED DRUG CONTROL PROGRAMMES

Country, duration of project, and contribution in US$

Afghanistan, January 1974 to December 1978, $697,882.

Argentina, December 1976 to November 1980, $200,000.

Bolivia, December 1975 to December 1978, $2,500,000.

Burma, May 1976 to April 1981, $6,985,016.

Egypt, August 1977 to December 1978, $28,571.

Laos, December 1977 to December 1981, $500,000.

Lebanon, June 1973 to December 1976, $260,000.

Pakistan, May 1976 to April 1979, $2,447,774.

Peru, January 1976 to December 1978, $1,547,159.

Thailand, December 1971 to December 1978, $5,803,000.

Turkey, March 1975 to December 1978, $20,000,000.

[1] Estimates made by the governments concerned and included in project agreements. Include operating and other costs (personnel, transport, equipment, buildings, etc.) related to drug abuse control programme in each country. Amounts in local currency have been converted into US dollars at rate of exchange on date of signature of project agreement.●

CARTER ADMINISTRATION SUGAR POLICY UNDERMINES WORLD FOOD SECURITY

HON. RICHARD NOLAN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 15, 1978

● Mr. NOLAN. Mr. Speaker, in September 1977, President Carter announced a new foreign policy initiative emphasizing the importance of meeting basic human needs, particularly, the alleviation of world hunger and malnutrition. Unfortunately, the Carter administration's sugar policy, which allows more imported sugar to enter the United States, runs contrary to the President's world hunger initiative. By encouraging developing nations to continue the policy of cash cropping sugar for export, the administration's sugar policy seriously impairs food security in these countries.

The Carter administration defends its sugar policy by claiming that restrictng the importation of sugar into the United States will create an economic hardship for the sugar-exporting developing nations, and will further impoverish their citizens. The administration's defense, however, is hollow.

Fifty percent of the sugar imported into the United States in 1977 came from the Philippines, the Dominican Republic, and Brazil—countries in which cash cropping of sugar for export is dominated by the state at the expense of food security and economic development. These three countries, incidentally, have had some of the grossest violations of human rights. An examination of the sugar industry in the Philippines, the Dominican

Republic, and Brazil reveals that the Carter administration's policy to sustain the current levels of sugar production in these countries contributes substantially to hunger and malnutrition.

The sugar industry in the Philippines, the Dominican Republic, and Brazil is dominated by the respective governments which heavily subsidize the exportation of sugar. In the Philippines and Brazil the governments control all aspects of sugar production and trade. In the Dominican Republic the government is not directly involved in the sugar trade, but it closely regulates sugar exports. A government agency in the Dominican Republic also controls the production of sugar, determining production levels and allotments. Sixty percent of the Republic's annual sugar production is processed in mills owned by the State Sugar Council while 30 percent of the republic's annual sugar production is processed by a Gulf & Western subsidiary.

During the 1977–78 crop year, these countries exported a sizable percentage of their sugar production. The Philippines exported 69 percent, the Dominican Republic exported 89 percent, and Brazil exported 30 percent. Because of the low world price for sugar, around 8 cents per pound (raw value), these countries have been exporting sugar at a loss, making up the difference out of their treasuries.

Each of the countries charge their consumers more for sugar than the price at which the product is exported. In the Philippines the June 1978 price to retailers was set at 13.6 cents per pound, while the price to consumers was around 14.1 cents per pound. In the Dominican Republic, the June 1978 consumer price for sugar was at 17 cents per pound. The prices which consumers paid for sugar in the Philippines and the Dominican Republic are quite close to the prices paid for sugar by the more affluent U.S. consumers.

Wage rates for sugar fieldworkers and millworkers are exceedingly low. In the Philippines, fieldworkers average less than $1.50 per day (including a value for fringe benefits), while millworkers average slightly more than $2 per day. In the Dominican Republic, unskilled workers in the sugar industry received between $4 and $5 per day while millworkers received somewhat more—depending upon the tasks involved. In Brazil, as of November 1976, fieldworkers averaged around $55 per month in the northeast and around $70 per month in the south. Millworkers received slightly more. Given the cost of living in these countries, the wage rates are at poverty levels. In addition, the working days are long and the conditions harsh. For fieldworkers, the wage is usually determined by the amount of sugar cut per day. And since sugar cane harvesting is seasonal in nature, the sugar labor force does not have year round employment.

The pattern that emerges in the sugar industry in each of these countries is one characterized by government controls, administered consumer prices set at levels above the export prices, subsidization of sugar exports, and extremely poor wage rates for sugar fieldworkers and millworkers who must work under generally harsh conditions. In many of the other Caribbean and Latin American countries which cash crop sugar for export, a similar situation probably prevails.

The cash cropping of sugar and other commodities for the export market has undermined the food security of the Philippines, the Dominican Republic, and Brazil. In all three countries, cash cropping has made rural families more dependent by substituting sugar production for that of vegetables, grains, and other foodstuffs.

The situation in the Philippines illustrates the dimensions of the problem. Philippine land which is planted to cash crops, including sugar, has been exempted from the agrarian reform laws, thus expanding the numbers of underpaid, landless laborers who live in poverty. Cash cropping has diminished domestic food production. In Bago City, the inability of the landless laborers to obtain enough food was brought home graphically on July 30, 1978, when a group of sugar fieldworkers were arrested for secretly planting food instead of sugar in the landowners' fields. The big landowners had delayed planting sugar because of the low world prices, thus eliminating jobs and money for sugar laborers who, as a matter of survival, tried to plant their own crops for food.

Similarly, as sugar production expanded in the Dominican Republic, food production per person declined. Between 1969 and 1977 the price of food doubled. Between 1970 and 1974 real wages fell by one-third. The nutritional well-being of the people of the Dominican Republic was reduced by these economic circumstances—directly related to the expansion of sugar production—and has forced Dominicans to resort increasingly to a carbohydrate diet.

In the rural areas of Brazil, the cash cropping of sugar also has reduced nutrition levels and food security. During 1974, when sugar prices were so high, many landowners no longer allowed their workers to devote land to private gardens, but places as much farmland as possible into sugar production. A great number of reports reveal that cash cropping for export, as is done in Brazil and other developing nations, has jeopardized local food security and has worsened nutritional levels.

Despite the manner in which the cash cropping of sugar for export has diminished the food security of the Philippines, the Dominican Republic and Brazil, President Carter and his advisers continue to advocate a sugar import policy which promotes cash cropping. Administration officials claim that developing nations must be able to maintain their current level of sugar exports to the United States in order for them to obtain the foreign exchange necessary to stimulate trade and development.

Unfortunately, the Carter administration has failed to reveal how the earnings from sugar exports are channeled into the hands of a few. Although controlled by the respective governments, the sugar industry in the Philippines, the Dominican Republic, and Brazil is owned by a few wealthy families which comprise the political elite of each nation.

In the Philippines, associations of sugar planters and millowners—the island's sugar barons—receive the benefits from the exportation of sugar. In the Dominican Republic, a few wealthy families dominate the sugar industry although Gulf & Western, a U.S.-based firm, has for many years taken advantage of the cheap labor and tax advantages available in the Republic. Gulf & Western is tied closely to the wealthy sugar families because Gulf & Western plants its sugar on land owned by these families. In Brazil, the local elites in the sugar-producing region include the large landowners who plant sugar and the sugar mill owners. The large plantation owners group together in cooperatives, thus further increasing their influence in the Brazilian sugar industry. Seventy percent of the agricultural land in the northeast section of Brazil, a major sugar-producing region, is in the hands of large landowners.

As illustrated by the wage rates and working conditions for the laborers in the sugar industry in the Philippines, the Dominican Republic, and Brazil, the benefits from foreign exchange earnings trickle down meagerly, if at all. Rather than devoting the sugar foreign exchange earnings to basic development needs, the export earnings have been diverted toward entrenching the position of the wealthy ruling families.

The Carter administration's sugar policy—and the sugar bill reported by the Ways and Means Committee—will allow the current rate of sugar imports to continue or to increase. Such a policy keeps developing nations locked into sugar production at the expense of economic development as well as food security. In the Philippines, the Dominican Republic, and Brazil, the state maintains the high level of sugar production in order to prevent rural migration to urban areas, thus postponing any serious attempt to build a more equitable economic order.

Administration sugar policy and the House Ways and Means sugar bill allow enough imported sugar into the United States to keep prices down to a 15 cents per pound level. This price level will lead to the ruin of a large share of the domestic sugar industry.

The Carter administration very likely does not comprehend the pernicious ramifications of cash cropping sugar in developing nations. Whether inadvertant or not, however, the President's sugar policy will sacrifice U.S. producers to imported sugar and at the same time will promote hunger and malnutrition in developing nations by encouraging further cash cropping of sugar.

Since the early days of European colonization in the Western Hemisphere, the cash cropping of sugar has enriched ruling elites while leading to the destruction of a diversified agriculture and to the enslavement and impoverishment of

the peoples in sugar exporting countries. The House Agriculture Committee's sugar bill, with its 16 cents price objective to restrict the flow of imported sugar, is the best measure before the House to place a foundation under the domestic sugar industry and to encourage moves toward greater food security—a prerequisite for human rights and economic development in the developing nations now dominated by the vagaries of the sugar trade.

SENATE—*Monday, September 18, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 12 noon on the expiration of the recess and was called to order by Hon. KANEASTER HODGES, JR., a Senator from the State of Arkansas.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Our Father-God, Creator and Ruler of all men, we thank Thee this day for the promise of peace in the Promised Land and for the measures which give hope for justice in the land our fathers called the Holy Land. Guide those who continue to work for justice and labor to fulfill the high hopes engendered at the summit. Guard the lives of all leaders and all workers. Free us from false hopes and unfounded expectations, from fear and from cynicism. Renew our faith in the invincibility of goodness and the final triumph of the law of love.

Guide all the nations of the world as they strive for the coming day when men "shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more."

But they shall sit every man under his vine and under his fig tree; and none shall make them afraid; for the mouth of the Lord of hosts hath spoken it.—Micah 4: 3, 4.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 18, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. HODGES thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

A GENUINE HOPE FOR PEACE IN THE MIDDLE EAST

Mr. ROBERT C. BYRD. Mr. President, last night, President Carter revealed to the citizens of this country and the people of the world the outlines of the agreement reached at Camp David for peace in the Middle East. For three decades, that vital region has been convulsed by violence and open warfare. The effects of this conflict have touched virtually every part of the world, through acts of terrorism, economic sanctions, embargos, and diplomatic maneuvers.

Now, the bold initiative undertaken by President Carter has aroused great hopes for the cause of lasting peace in the Middle East. The Camp David agreement potentially ranks among the most significant achievements in modern diplomatic history. A major breakthrough has been made, and the fundamental issues behind the Middle East conflict have been addressed. Only a few weeks ago, the peace process appeared moribund, and the outlook was bleak. But now we have strong reason to hope that a framework has been established that will provide the basis for peace and security for all the peoples of the Middle East.

Prime Minister Begin and President Sadat deserve the highest praise for the courage, flexibility, and vision they have shown. With sincere commitments to finding solutions to the problems facing their nations, both Mr. Begin and Mr. Sadat have made major concessions. The result has not been a victory for one side or the other, but a triumph for both Israel and Egypt, as well as for all mankind.

The man deserving the greatest credit for the achievements of Camp David, however, is President Carter. Some historians believe that the impact of human personality is the single most significant influence on the course of human events. This would certainly be the case in the instance of the Camp David agreement. Through his personal good will, perseverance, and dedication to peace and justice, President Carter has been a major factor in reaching the Camp David accords. I commend the President on this accomplishment, and I am confident that he has won the gratitude and admiration of the American people for his efforts.

Since the birth of Israel, the United States has supported her in her struggle to insure her own security. Likewise, we understand the aspirations and anxieties of the other nations of the Middle East. The negotiations subsequent to the Camp David summit will probably be trying and frustrating at times, but I believe that, after 30 years of tragic conflict, the foundation for real peace has been laid. Possibly now, swords can be beaten into ploughshares, and spears into pruninghooks.

I urge other Arab nations, particularly Jordan and Saudi Arabia, to join in support of the Camp David accords. Moreover, I hope that all elements within Israel will unite behind these agreements. Let us hope that the momentum provided by this historic summit meeting and last night's announcement at the White House will continue until peace reigns throughout the Middle East.

I yield to the Senator from Connecticut (Mr. RIBICOFF).

Mr. RIBICOFF. Mr. President, I commend the majority leader for his wise words.

It was a thrilling experience to be at the White House last night when President Carter, President Sadat, and Prime Minister Begin made their historic announcement. After 30 war-torn years a giant leap forward was taken for eventual and permanent peace in the Middle East. My congratulations and praise go to the statesmanship of these three world leaders.

In talking last night to Defense Minister Ezer Weizman he commented to me,

I would not like to oppose Jimmy Carter on the battle field. His persistence, tenacity, commitment and singleness of purpose made these agreements possible. He achieved what no one else could have done. He is a great President and everyone should be proud of him.

Security Council Resolution 242 provided a basis for these agreements. But it took a special will to use that framework. History will accord President Sadat and Prime Minister Begin great credit for meeting this opportunity and for being flexible. This momentum must not be lost. Nor should we relax our efforts to bring peace throughout the Middle East. Jordan, Lebanon, Syria, Saudi Arabia, and the Palestinian people all have the responsibility to make peace a reality.

Mr. President, I would like to add a personal note about President Carter. I always had faith in his sincerity and purpose. When I returned from the Middle East in December 1976, I met with the President-elect. I learned that he planned to make peace in the Middle East a priority of his administration, and I warned him that the compromises required would bring both harsh words and the doubts of many. He has served lonely duty and he has suffered severe criticism along the way. With patience he has persevered. Despite the many rocky days he persisted in his role as a great American President to achieve peace and understanding between Israel and Egypt.

These basic documents after long negotiations set out the framework of what will follow. It will still take patience and understanding. I am confident that the people of the United States, Israel, and Egypt will support their leaders in taking all necessary steps to bring peace in the Middle East. We in the United States can be proud of our President. The whole world is indebted to him.

I ask unanimous consent that the statements of President Carter, President Sadat, and Prime Minister Begin be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

"THE LONG DAYS OF CAMP DAVID ARE OVER"

PRESIDENT CARTER

When we first arrived at Camp David, the first thing upon which we agreed was to ask the people of the world to pray that our negotiations would be successful.

Those prayers have been answered, proved beyond any expectations. We're privileged to witness tonight a significant achievement in the cause of peace, and achievement no one thought possible a year ago, or even a month ago, an achievement that reflects the courage and wisdom of these two leaders.

Through 13 long days at Camp David, we have seen them display determination and vision and flexibility which was needed to make this agreement come to pass. All of us owe them our gratitude and respect. They know that they will always have my personnel admiration.

There are still great difficulties that remain, and many hard issues to be settled. The questions that have brought warfare and bitterness to the Middle East in the past 30 years will not be settled overnight. But we should all recognize the substantial achievements that have been made.

One of the agreements that President Sadat and Prime Minister Begin are signing tonight is entitled "A Framework for Peace in the Middle East." This framework concerns the principles and some specifics in the most substantive way, which will govern a comprehensive peace settlement.

It deals specifically with the future of the West Bank and Gaza, and the need to resolve the Palestinian problem, and all its aspects. The framework document proposes a five-year transitional period in the West Bank and Gaza, during which the Israeli military government will be withdrawn and a self-government authority will be elected with full autonomy.

It also provides for Israeli forces to remain in specified locations during this period to protect Israel's security. The Palestinians will have the right to participate in the determination of their own future in negotiations which will resolve the final status of the West Bank and Gaza and then to produce an Israeli-Jordanian peace treaty.

These negotiations will be based on all the provisions and all the principles of the United Nations Security Council Resolution 242, and it provides that Israel may live in peace within secure and recognized borders.

And this great aspiration of Israel has been certified without constraint with the greatest degree of enthusiasm by President Sadat, the leader of one of the greatest nations on earth.

The other document is entitled "Framework for the Conclusion of a Peace Treaty between Egypt and Israel." It provides for the full exercise of Egyptian sovereignty over the Sinai. It calls for the full withdrawal of Israeli forces from the Sinai, and after an interim withdrawal, which will be accomplished very quickly, the establishment of normal, peaceful relations between the two countries, including diplomatic relations.

Together with accompanying letters, which we will make public tomorrow, these two Camp David agreements provide the basis for progress and peace throughout the Middle East.

There is one issue on which agreement has not been reached. Egypt states that the agreement to remove Israeli settlements from Egyptian territory is a prerequisite to a peace treaty. Israeli states that the issue of Israeli settlements should be resolved during the peace negotiations. It's a substantial difference.

Within the next two weeks, the Knesset will decide on the issue of these settlements. Tomorrow night, I will go before the Congress to explain these agreements more fully, and to talk about their implications for the United States and for the world.

For the moment, and in closing, I want to speak more personally about my admiration for all of those who have taken part in this process and my hope that the promise of this moment will be fulfilled.

During the last two weeks, the members of all three delegations have spent endless hours, day and night, talking, negotiating, grappling with problems that have divided their people for 30 years.

For whenever there was a danger that human energy would fail, or patience would be exhausted, or good will would run out—and there were many such moments—these two leaders and the able advisers in all delegations turned on the resources within them to keep the chances for peace alive.

Well, the long days of Camp David are over, but many months of difficult negotiations still lie ahead. I hope that the foresight and the wisdom that have made this session a success will guide these leaders and the leaders of all nations as they continue the progress toward peace.

Thank you very much.

PRIME MINISTER BEGIN

The Camp David conference should be renamed. It was the Jimmy Carter conference.

The President undertook an initiative most imaginative in our time and brought President Sadat and myself and our colleagues, friends and advisers together under one roof. In itself it was a great achievement.

But the President took a great risk for himself and did it with great courage. And it was a famous French field commander who said that it is much more difficult to show civil courage than military courage.

And the President worked. As far as my historic experience is concerned, I think that he worked harder than did our forbears in Egypt building the pyramids.

Yes indeed, he worked day and night. And so did we. Day and night. We used to go to bed anywhere between 3 and 4 o'clock in the morning, arise, as we are used to since our boyhood, between 5 and 6 and continue working.

The President showed interest in every section, every paragraph, every sentence, every word, every letter, of the framework agreement. We had some difficult moments. As usual, there are some crises in the negotiations. As usual, somebody gives a hint, perhaps he would like to pack up and go home.

It's all usual. But ultimately, ladies and gentlemen, the President of the United States won the day. Peace now celebrates the great victory for the nations of Egypt and Israel and for all mankind.

Mr. President, we Israelis thank you from the bottom of our hearts. For all you have done for the sake of peace for which we pray and yearn more than 30 years.

The Jewish people suffered much, too much, and therefore peace to us is a striving, coming in the most from our heart and soul. Now when I came here to the Camp David conference I said perhaps as the result of our work one day people all over in every corner of the world be able to say, "Habemus Pacem" (we have peace).

In the spirit of these days, can we say so tonight? Not yet. We still have to go a way until my friend President Sadat and I sign the peace treaties. We promised each other that we will do so within three months. Mr. President, tonight at this celebration of a great historic event, let us promise each other that we will do it earlier than the three months.

"Mr. President, you enscribed your name forever in the history of two ancient civilized peoples, the people of Egypt and the people of Israel. Thank you, Mr. President.

PRESIDENT SADAT

Dear President Carter, in this historic moment, I would like to express to you my heartfelt congratulations and appreciation. For long days and nights you devoted your time and energy to the pursuit of peace.

You have been most gracious when you took the gigantic steps of convening this meeting. The challenge . . . The challenge was great, and the risks were high, but so was your determination. You made a commitment to be a full partner in the peace talks. I'm happy to say that you have honored your commitment.

The signing of the framework for the comprehensive peace settlement has a significance far beyond the event. It signals the emergence of a new peace initiative with the American nation in the heart of the entire process.

In the weeks ahead important decisions have to be made if we are to proceed on the road to peace. We have reaffirmed the faith of the Palestinian people in the ideal of peace. The continuation of your active role is indispensable. We need your help and the support of the American people. Let me seize this opportunity to thank each and every American for his genuine interest in the cause of pecple in the Middle East.

Dear friend, we came to Camp David with all the good will and faith we possess, and we left Camp David a few minutes ago with a renewed sense of hope and inspiration.

We are looking forward to the days ahead with an added determination to pursue the noble goal of peace. Your able assistants spared no effort to bring out this happy conclusion. We appreciate their spirit and dedication.

Our hosts at Camp David and the state of Maryland were most generous and hospitable. To each one of them and to all those who are watching this great event, I say, thanks. Let us join in a prayer to God Almighty to guide our craft. Let us pledge to make the spirit of Camp David a new chapter in the history of our nation.

Mr. BAKER subsequently said: Mr. President, the summit conference concluded last night at Camp David has yielded remarkable results. President Carter, President Sadat, and Prime Minister Begin have earned the admiration and appreciation of friends of peace

throughout the world for this historic diplomatic achievement.

More importantly, as Mr. Begin said last night, peace now celebrates a great victory. We know it is not the final victory. We know important issues still divide the nations of Egypt and Israel. We know that other nations must agree to crucial elements of the framework for peace constructed at Camp David.

But we know, too, that these considerations cannot diminish the triumph which the cause of peace has won in 13 days of arduous and diligent negotiations.

Now that the framework has been built, the hard task ahead is to build upon it a solid structure of peace that will endure. We will hear more from President Carter this evening on what role the United States will be asked to play in this effort.

While these new agreements may not involve the Senate's constitutional responsibility of advice and consent, it is our political responsibility to insure that whatever role we accept in the resolution of the Middle East conflict is one fully supported by the American people.

So it is essential that we give the Camp David agreements our most thoughtful and careful consideration. But it is equally essential that, as we enter this process, we do so in the same spirit of courage, conciliation, and urgency which has characterized the negotiations at Camp David.

We owe the participants in that conference—and the prospect of peace itself—nothing less than an open mind and, if possible, a helping hand.

The summit conference just concluded offers us new hope that at this crucial moment the history of strife and war in the Middle East may be ending at last and a time of peace begun. For that new hope, President Sadat, Prime Minister Begin, and President Carter deserve the gratitude of their respective nations and of all the world.

I think it entirely appropriate, Mr. President, that the Senate adopt a resolution commending the participants in the Camp David conference for their tireless and earnest pursuit of peace in the Middle East, expressing our commitment to the success of the negotiations that lie ahead, and encouraging the other Arab states to seize with Egypt and Israel this dramatic new chance for peace.

Mr. ROBERT C. BYRD. I yield to the Senator from Wisconsin (Mr. PROXMIRE).

EXPORT-IMPORT BANK PROPOSES LOAN FOR NATIONAL GAS PIPELINE IN ALGERIA

Mr. PROXMIRE. I thank the distinguished majority leader.

Mr. President, I call to the attention of my colleagues a communication I have received from the Export-Import Bank pursuant to section 2(b)(3(i) of the Export-Import Bank Act of 1945, as amended, notifying the Senate of a proposed direct credit to assist the export of U.S. goods and services to be used in the construction of a natural gas pipeline in Algeria. Section 2(b)(3)(i) of the act requires the Bank to notify the Congress of proposed loans and financial guarantees in the amount of $60 million or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress adopts legislation to preclude such approval.

In this case, the Bank proposes to extend a loan in the amount of $68,754,750 to SONATRACH, the state-owned gas and oil monopoly in Algeria, to assist in the purchase of U.S. goods and services to be used in the construction of the GZ–3 pipeline, terminals and related facilities for the project which will supply the liquefaction plant known as LNG–2.

The proposed credit will cover 75 percent of the total cost of U.S. goods and services for the project. The loan will bear interest at the rate of 8.5 percent per annum and be repayable in 20 semiannual installments beginning November 30, 1981.

Mr. President, I ask unanimous consent that the letter from the Export-Import Bank pertaining to this transaction be printed in the RECORD.

There being no objection, the letter and enclosure were ordered to be printed in the RECORD, as follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., September 13, 1978.

Mr. ROBERT RUSSELL,
Subcommittee on International Finance, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR BOB: Eximbank has submitted a statement to the Speaker of the House of Representatives and the President of the Senate in accordance with the provisions of Section 2(b)(3)(i) of the Export-Import Bank Act of 1945. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

NANCY S. PIGMAN,
Congressional Relations Officer.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., September 13, 1978.

Hon. WALTER F. MONDALE,
President of the Senate, U.S. Capital, Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Algeria.

A. DESCRIPTION OF TRANSACTION

1. Purpose:

Eximbank is prepared to extend a direct credit in the amount of $68,754,750 to Societe Nationale pour l Recherch, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures (SONATRACH), a state-owned enterprise of the Democratic and Popular Republic of Algeria, to assist in financing the export from the United States of U.S. goods and services for the construction of a natural gas pipeline from Hassi R'Mel to Arzew, Algeria. Repayment of the Eximbank credit will be guaranteed by Banque Algerienne de Developpement for and on behalf of the Democratic and Popular Republic of Algeria.

The total cost of the pipeline and related facilities is estimated at $140,000,000 with the U.S. costs of $91,673,000 and the balance expected to be Algerian costs. The pipeline will be 42 inches in diameter, will extend 511 kilometers (319 miles) and is designated as the GZ–3 pipeline. The U.S. goods and services to be financed by Eximbank relate to the pipeline, terminals and related facilities but not to the pipe itself or the compressor stations.

The pipeline is part of a system in Algeria consisting of gas liquefication plants at Arzew on the Mediterranean coast, gas field treatment facilities at Hassi R'Mel in the Sahara desert and gas pipelines connecting the two. The liquefaction plants will produce liquefied natural gas (LNG) for export from Algeria to the U.S. and Europe. The GZ–3 pipeline will mainly supply the liquefaction plant known as LNG–2, for which Eximbank recently approved a credit of $240 million.

An earlier liquefaction plant (LNG–1), also supported by Eximbank financing, is in process of completion at Arzew and is part of a system similar and related to the LNG–2 system. The Eximbank financing for LNG–1 supported the export of U.S. goods and services for not only the LNG–1 plant but also the gas field treatment facilities and gas pipeline built in connection with the LNG–1 plant.

The plants for LNG–1 and LNG–2, as well as others which are planned, will draw from the Hassi R'Mel field and later, from other gas fields, and some of the systems will have certain facilities in common. Other countries have also supplied and financed some of the components of the LNG–1 system and are providing a total of about $900 million of officially supported export financing for the LNG–2 system.

2. Identity of the Parties:

SONATRACH is the state-owned monopoly of Algeria under the jurisdiction of the Ministry of Energy and Petrochemical industries charged with the responsibility for the development of Algeria's oil and gas resources.

Banque Algerienne de Developpement is the government-owned development bank which will guarantee repayment of Eximbank's credit for and on behalf of the Democratic and Popular Republic of Algeria.

3. Nature and Use of Goods and Services:

The principal goods and services to be exported from the United States for use in the construction and operation of the GZ–3 gas pipeline include U.S. services for engineering, procurement and construction supervision and U.S. goods consisting of pipeline valves, controls, connecting pipe, pipe coating and wrap, terminal equipment, other materials, and bulk construction materials and equipment. The major U.S. supplier for the project is the Houston Contracting Company, Houston, Texas, a division of Sedco, Inc., Dallas, Texas.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons. The proposed extension of a $68,754,750 credit by Eximbank will facilitate the export of $91,673,000 of U.S. goods and services. In addition to the engineering, design and construction work which will result from this project for the Houston Contracting Company, other U.S. firms will receive contracts to supply equipment and materials. Export sales generated by the project will result in an estimated 420 man-years of direct employment in the United States. None of the goods to be exported is in short supply in the United States, and Eximbank perceives no adverse impact on the U.S. economy from the export of these goods and services.

There has been active foreign competition offering official export credit support for this pipeline project from the Netherlands and the United Kingdom, and very active competition from all major industrial countries

for projects in the oil and gas sector in Algeria. A contract for the related and parallel GZ–4 gas pipeline was awarded to a Dutch firm with official export credit support on similar financing terms, and contracts for another gas pipeline and an oil pipeline were recently awarded to Italian firms, also with official export credit support.

The overall LNG systems are major elements of Algeria's long-range plan to develop its vast reserves of natural gas. They will generate substantial amounts of foreign exchange earnings for Algeria and will help to expand the world supply of energy.

Because of present and past sales of U.S. goods and services with the support of Eximbank financing for Algeria's program for development of its natural resources, American firms will be in a better position to compete for further export sales under Algerian plans for other projects in such development.

2. The Financing Plan. The total cost of U.S. goods and services to be exported from the United States for the GZ–3 gas pipeline is estimated to be $91,673,000, which will be financed as follows:

	Cost	Percent
Cash payment	$13,750,950	15
Eximbank credit	68,754,750	75
Private loans not guaranteed by Eximbank	9,167,300	10
Total	$91,673,000	100

(a) Eximbank Charges. The Eximbank credit will bear interest at the rate of 8.5 percent per annum, payable semiannually. A commitment fee of one-half of 1 percent per annum will be charged on the undisbursed portion of the Eximbank credit.

(b) Repayment Terms. The total financing of $77,922,050 consisting of the Eximbank credit and private loans will be repaid by the Borrower in twenty equal semiannual installments beginning November 30, 1981. The private loans will be repaid out of the first two and part of the third installments, and the Eximbank credit will be repaid from the remainder.

Sincerely,

JOHN L. MOORE, JR.

THE DESTRUCTIVE FOLLY OF RENT CONTROL

Mr. PROXMIRE. Mr. President, the problem of our cities is in no small part a housing problem. The heart of it is that too many Americans live in decaying, constricted, unsanitary, and unsafe housing. Lives are stunted, health impaired. The problem continues in spite of a 30-year-old pledge written into law by the Congress that commits this Government to a safe and sanitary house for every American. This Government has spent tens of billions of dollars and every year we commit ourselves to spending more, but our progress is slow and discouraging.

There are many reasons for this, Mr. President, but a major reason is in two seductive words: rent control. Rent control has the most obvious kind of political appeal. There are more tenants than landlords. Every tenant likes to have his rent held down. No tenant wants to have his rent increased. So the political arithmetic is straightforward and deadly. Fix rents by law. What could be simpler. The only trouble with that solution, as Roger Starr points out, is that it does not work.

Mr. Starr is the author of a new book titled "America's Housing Challenge." He is also a member of the editorial board of the New York Times. Yesterday the Washington Star excerpted parts of that book. Mr. Starr makes some points Senators should know about. He particularly explodes the myth that rent control serves the interests of the poor, the disadvantaged, the class that is generally perceived as the renters in our society.

As Starr writes:

Rent control is never . . . based on the tenant's ability to pay . . . . Protected tenants may be richer than the owners of the buildings in which they rent.

Rent control assumes that tenants are the victims of monopoly pricing. This is false. In every American city there are thousands of individual owners.

Rent control generally is based on protecting the tenant in occupancy. It is politically easier to provide that after a tenant moves out, the rent can be raised. But favoritism toward the tenant in occupancy has two very unfortunate results. First, people who remain in their apartments without moving for the longest period of time are not necessarily those of lowest income and greatest financial need.

Second, rent control results in gross misapplication of housing space. People stay in an apartment long after it has become too large or too small for them, simply because the rent is fixed while they stay there.

Starr concludes that:

Expecting rent control to be a cheap way to provide standard housing for the needy is as absurd as using great white sharks for life guards: They are cheaper than people, but they destroy the drowning.

Here is why:

While rent control keeps down the rents in older buildings that originally met the standards imposed by law, it also slows the flow of capital into these buildings that is needed to keep them well maintained. The lower the original rents, the faster the deterioration.

Mr. President, I ask unanimous consent that the article by Mr. Starr be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DESTRUCTIVE FOLLY OF RENT CONTROL

By Roger Starr

Everybody hates to pay rent. No other expenditure—except perhaps alimony—returns so little satisfaction to the spender.

No matter how absurd inflated prices seem to someone who must buy clothes, food, or any of the other necessities or pleasures of life, he can assuage his pain with the prospect of getting something he never had before: a new suit, shining on the rack; a new piece of meat to chew on; a new trip; a new broom. But every month the rent-payers of the world find themselves forced to pay once again for what they already have. Even the owner of a house, making a mortgage payment on the home he has been living in for years, derives some satisfaction from the knowledge that he has reduced his debt and increased what he calls his "equity" in the house. The rentpayer has none.

Years ago, on behalf of a non-profit group interested in proving that decent housing could be provided in old tenements by an owner content with moderate profits, I supervised the rehabilitation of such a tenement. We raised rents barely enough to pay back the cost of improvements over a 20-year period. A tenant complained about the increase that brought his rent to $60 a month. I pointed to the improvements we had made in his apartment: a bathroom, for the first time; oil heat; a modern kitchen; new window frames—didn't he like all this? Oh, yes, he said, he liked it, but, after all, the apartment didn't belong to him, it belonged to me. Why should he pay for it? I have struggled all these years to find a pithy answer.

If no one likes to pay rent, why shouldn't it be regulated by law so that politicians can take credit for the largesse? One reason only. It doesn't work.

Unfortunately, the apparent immediate benefits of rent control are obvious to a large number of people, while its destructiveness takes longer to notice. As a result, rent control appears to be not only a supremely popular government activity where there are large numbers of tenants, if even, and perhaps more dangerously, offers the satisfaction of high morality to the legislators who support it. They believe they are fighting inflation, and helping poor tenants against rich landlords, although, ironically, rent control is never—to my knowledge—based on the tenant's ability to pay (far too complicated even for the hungriest bureaucracy to administer). Thus, protected tenants may be richer than the owners of the buildings in which they rent.

The immediate peril of the rent control fallacy is that it seems to be spreading. New York, Washington and Boston have it. The interest in rent control in California will surely be stimulated by the passage of Proposition 13. Reduction in real property taxes will inspire a demand that government ensure that the tax savings be passed on to the tenant. Anyone who understands the economics of housing would expect that lower real property taxes will inevitably produce lower rents because of their stimulation of construction and rehabilitation and ensuring competition; but no one ever wants to wait for natural processes when there's a laxative handy for landlords.

Thus, my tenant, who didn't want to pay for improvements to the apartment he merely lived in, did not want to be told that it would take years for the owner to recoup what had been put into rehabilitation, without which the house would soon have crumbled completely. He preferred to assume that the cost of fixing his apartment was somehow "over" when the reconstruction was complete and the last painter had rolled up his dropcloths and gone home.

If I owned the whole world, I could, like the Soviet government, increase the prices of clothing, food, and automobiles to cover my losses on rent. Soviet citizens always boast about their low rents, and refuse to draw the connection between the low price of rent and the high price of all other government-furnished goods and services.

One need not be ruler of the world to establish low rents. A simpler method is to repeal all laws mandating housing safety and health standards. Wealthy tenants would still be able to demand quality housing as a condition of moving in, just as they do now. Poor tenants would get cheap rents, but their housing would probably be miserable, as it was when the first housing laws were

passed more than 100 years ago: no heat, no light, no air, no bathrooms, insufficient space to live decently. Tenants would get the impression that they were paying low rents, but if they wanted to stay warm, dry, and healthy, they would have to supply these qualities for themselves. The cost of supplying them would have to be added to the payments to the landlord to get the true rental cost, which would end up exactly where it is now—too high for many low-income families to afford.

Thus, rent control is meaningless unless it forces owners of buildings to maintain the quality of their apartments. This is much harder even than controlling prices, but the two—price and quality—are integrally connected, as the reformers discovered when they started passing laws raising the minimum standards of housing quality. One of the earliest housing reforms by American city governments was the requirement that every room people lived in (technically called a "living room," but not in the sense in which that term is used today) have a window to the outside air. This made housing more expensive because it cut down the number of living rooms in buildings or the size of the building that could be put on a fixed amount of ground (because the inside of the structure could no longer be used for living rooms). The reformers believed that rents would not necessarily rise because of the rise in costs; they believed that the increased cost would simply reduce the monopolistic profits which landlords got from their tenants.

Rent control today is based, through perhaps not explicitly, on the same two premises. First, that tenants are the victims of a monopoly pricing system which rent control corrects, and second, that without rent control, large numbers of apartments that meet housing standards would be priced out of the reach of moderate- and low-income families.

The hypothesis that rental housing is controlled by a monopoly simply does not square with the facts in American cities. The thousands of individual owners vary in wealth, professional skill, ownership motive, and access to capital. This is true in every American city.

Rental control came to almost all major American cities during World War II when the Office of Price Administration was controlling all prices. War made housing a natural monopoly because the government decreed that no manpower or material resources could be used for any construction not directly related to military needs.

In most cities, except New York, the end of the war marked the end of rent control. Restrictive situations other than war—as when American blacks faced serious discrimination in obtaining housing in white areas—subjected rents to monopolistic manipulation. Like war, they made rent control seem a reasonable effort to protect tenants from exploitation.

But that rarely remains its sole or its major objective; instead, its objective becomes the perpetuation of low rents and unchallengeable tenure for those tenants who happen to be protected by it, usually those tenants who have moved least often, or not at all, and who thus constitute a firm political power base for elected legislators and administrators.

The bias in favor of protecting tenants who have not moved is perfectly natural: It is always easier, politically, to permit rents to rise when an apartment becomes vacant; like the high price of shoes in Russia, the high rent of a vacant apartment makes up for part of the losses on continuously occupied apartments. All rent control systems, therefore, depend on a change of tenancy to provide the owner relief from the squeeze of increased costs against fixed rental income.

Favoritism toward the tenant-in-occupancy (who, as we shall see, is in a weaker position than the prospective tenant looking for an apartment) has two very unfortunate results. First, it does not relate economic need to the benefit conferred by rent control. People who remain in their apartments without moving for the longest period of time are not necessarily those of lowest income and greatest financial need. In an industrial city, the highest turnover rates are usually found among the poorest people who are most likely to have to move in pursuit of work, or because they can't pay rent, or because the building in which they live becomes so unprofitable that its owner abandons it. (Under New York's venerable rent control system, it became clear long ago that the top floor apartments in six-story, walk-up tenements had higher legal rent ceilings than all other apartments in the buildings. This happened because top floor apartments were the worst, occupied by the poorest tenants. Consequently, they turned over most frequently. The better apartments could not legally be rented at market rents, while the worse apartments could not be marketed at the rents to which they were legally eligible, a topsy-turvy consequence of rent control.)

The second defect that follows inevitably from favoring the tenant-in-residence is the gross misallocation of housing space. Few tenants go through life without changing their need for space. In the very same building as a growing family, there may rattle about in too large an apartment a shrinking family, but both stay in place because continued occupancy makes it a bargain. Rent control has encouraged families to occupy space which does not suit them.

A most serious difficulty in setting a price on a rent-controlled apartment. Because of the diversity and imprecision in defining housing quality, there can be no standard rent per room-month. Rent control law usually assumes that the price of an apartment at the time it came into effect is a fair basic price. At their most theoretical, rent regulators claim to modify the base price of each apartment as operating costs vary—raising it as costs rise, lowering it as services are cut in a specific building. In practice, their attempts to modify the legal rent for tenants in continuing possession always fall short of the reality of increased costs, and always result in diminished services in a period of inflation.

But even if rising costs of operation were covered by rent increases, no rent control scheme can provide for the increased value of the land on which an apartment house is built, as some areas of a city inevitably become more atractive while others decline.

Having started with the claim that it is directed against a landlord monopoly, rent control creates instead a tenant monopoly that distorts land value downward or, at best, prevents a municipality from taking advantage of its major economic asset, the value of locations that are in high demand.

Thus, when a section of the city becomes popular, attracting people who would cheerfully pay higher rents to live there, the apartments remain instead in the hands of tenants who are forbidden to pay a market rent, even if they wished to. Inevitably, the city loses the tax revenues it could charge on a more profitable property, unless it permits someone to demolish the building, replacing it with a larger one containing far more expensive accommodations.

Proponents of rent control argue both that their laws shield tenants from monopolistic exploitation and that they are necessary because government standards for housing have destroyed a free market in any case. It is now time to examine this second hypothesis. From the simplest of requirements—like the insistence on a window in every room—government housing standards have been built into an immense structure of law. Its provisions govern the dimensions of buildings and their component parts like hallways, doorways, and fire escapes. They govern maintenance procedures like winter temperature and painting. They govern administrative procedures like the posting of owners' and agents' names in public spaces. They may soon be expanded to include the licensing of owners and agents everywhere.

All of these standards make housing more expensive to build and operate, but the process of raising them still higher is extremely seductive to state and city lawmakers. They believe that the passing of laws like these really helps tenants by making their homes more habitable. But because they make housing more expensive, they succeed in pricing new housing, that fully conforms with all the new standards, out of reach of a continually growing number of tenants. Because the constant rise in cost makes new housing prohibitively expensive for moderate-income tenants, the older housing that provides lower-cost rentals becomes a precious asset. We must, say the rent control advocates, protect the older housing by rent control so that this precious asset will be saved.

The responsibility for doing something to ensure that everyone has access to housing that meets its standards is unquestionably a government responsibility. Properly, if it takes its standards seriously, government should tax everyone to enable those who need financial help to enjoy the same standards as anyone else.

Expecting rent control to be a cheap way to provide standard housing for the needy is as absurd as using great white sharks for lifeguards: They are cheaper than people, but they destroy the drowning. While rent control keeps down the rents in older buildings that originally met the standards imposed by law, it also slows the flow of capital into these buildings that is needed to keep them well maintained. The lower the original rents, the faster the deterioration. Using rent control as a substitute for governmental subsidies is simply a perverse, regressive way of enabling better-off tenants to escape the taxation necessary to pay such subsidies while accelerating the decay of the housing in which all tenants live; and the housing of the poorer tenants, likely not to be fully standard in the first place, deteriorates more quickly than that of the middle-income tenants. To the extent that landlords are unwilling to throw new money into a deteriorating building, the quality standards that rent control allegedly protects are, instead, slowly destroyed.

Rent control does not replace the marketplace which quality standards impair; it merely proffers a false solution to the real question of how much government money should be spent to raise housing standards for those who cannot afford housing without help.

CAMBODIA TODAY: AN URGENT NEED TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the issue of genocide is as important today as it was in 1946 when the United Nations first acted to make it an international crime under the Genocide Convention.

Genocide, Mr. President, is not just history.

News accounts indicate that genocide is actively being committed against the Cambodian people today. In fact, the U.S. Government recently submitted a 300-page report to a United Nations Conference in Geneva on the human rights situation in Cambodia. Included are several interviews with refugees. Their shocking testimony evidences the increasingly gruesome picture of Cambodia.

Mon Sieu, a 30-year-old refugee from Sien Reap Province, succinctly reveals the horror of everyday life:

> There is no such thing as "light punishment" in Cambodia now. You are either warned at a meeting or executed.

The report lists some of the capital crimes in Cambodia today: If you complain about the food, if you are late for work, or if you court when it is not one of the two "mating days" allowed by the government, you are flogged to death with a bamboo pole.

Few nations have paid much attention to these atrocities, presumably on the assumption that a society as closed to the outside world as Cambodia, is unaffected by outside pressure. Perhaps, but as the Milwaukee Journal stated in a recent editorial:

> . . . there's another possibility: The Cambodian regime suspects that the rest of the world doesn't really care much about what happens to Cambodians.

Mr. President, do we care? We must care.

President Carter has helped draw attention to these atrocities by calling Cambodia the greatest violator of human rights today. Our conscience demands that more be done to stop such genocide.

But what, Mr. President, can the U.S. Senate do?

What, Mr. President, can we do to punish the perpetrators of these atrocities?

What, Mr. President, can we do to prevent genocide so that it only exists in history books?

Whatever the ultimate answer may be, our first step is ratification of the International Convention on the Prevention and Punishment of the Crime of Genocide.

We must stand on record against genocide.

Mr. President, I ask unanimous consent that the editorial from the Milwaukee Journal on August 25, 1978, be printed in full in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE BUTCHERS OF CAMBODIA

By all accounts, genocide is being carried out by the Communist government of Cambodia. And the rest of humankind is doing virtually nothing about it.

In the three years since the Khmer Rouge seized power, the world has received numerous reports that hundreds of thousands of civilians were being killed by the Cambodian army. Some estimates place the toll as high as a million, out of a total population of seven or eight million.

It is not possible to compile accurate figures because the country has almost completely cut itself off from the rest of the world. Yet there is sufficient evidence to conclude that Cambodia is engaged in widespread slaughter. The victims are said to be members of the middle and upper classes and anyone else deemed unsympathetic to the regime.

In any case, the tales of atrocity have received scant attention in other countries. Granted, President Carter has denounced Cambodia as the worst violator of human rights in the world today, and the United Nations Human Rights Commission has vainly asked Cambodia to respond to allegations of genocide. But most nations seem to rock along on the assumption that the rulers of Cambodia are almost impervious to outside pressure. Perhaps so, but there's also another possibility: The Cambodia regime suspects that the rest of the world doesn't really care much about what happens to Cambodians.

After all, many persons who on humanitarian grounds justifiably opposed America's involvement in Vietnam have failed to show similar concern for the victims of terrorism in Cambodia. That's why it is very significant when a Vietnam War opponent of Sen. George McGovern's standing decides to speak out. He has called for military intervention by an international peace keeping force, apparently under the auspices of the United Nations.

In principle, McGovern is right. The UN's peace keeping function should not be confined to preventing international conflicts; it also should include the protection of people against extermination by their own government.

However, the UN, with its ideological splits, is unlikely to authorize such a police operation. Even if it did, there would be serious practical obstacles in Cambodia. If the population is as dispersed as reports indicate, there would be little hope of imposing order from central garrisons. Even if UN troops could temporarily stop the slaughter, they could not patrol the country indefinitely.

What, then, are the options? The US, in view of its Vietnam debacle, is not about to intervene unilaterally. But the US, at a minimum, should more vigorously call world attention to the plight of the Cambodians and should search for opportunities, however small, to apply pressure on the offending government. For example, China may have some influence over the Cambodian government. Now that China is seeking American favor, Peking might be willing to help. Certainly it's time to try to stop the carnage, rather than just look the other way.

ORDER FOR RECESS FOR JOINT SESSION OF THE TWO HOUSES—RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate today recess no later than 6:30 p.m., except in the event that a rollcall vote may be occurring at that particular time, in which case the Senate recess immediately after the disposition of that vote to meet again at 7:30 p.m. this evening, at which time the Members of the Senate will gather to proceed in a body to the Hall of the House of Representatives for a joint session to receive a message from the President of the United States; provided further, that the Senate, when the joint session has been completed, stand in recess until the hour of 10 o'clock tomorrow morning.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, in accordance with the order, Senators will gather by 7:40 p.m. in the Chamber here and will proceed to leave the Chamber in a body at 7:45 p.m. this evening to the House of Representatives for the joint session.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the acting minority leader, the Senator from Alaska (Mr. STEVENS) is recognized.

Mr. STEVENS. Mr. President, I yield 30 seconds to the Senator from Maryland.

THE MAGICAL MOUNTAINS OF MARYLAND

Mr. MATHIAS. Mr. President, today the entire Nation, indeed, the entire world, rejoices with President Carter over the outcome of the summit meeting at Camp David.

The President deserves enormous praise and credit for his vision, his patience, and his persistence. Prime Minister Menachem Begin of Israel has responded eloquently and generously. And, of course, President Anwar al-Sadat deserves great praise for having begun the peace initiative with his trip to Jerusalem last November.

There are still unresolved problems and questions, including the reaction of other Middle Eastern nations and the extent of the involvement of the United States. But whatever the questions and whatever the problems, we can all joyfully agree with Prime Minister Begin that "peace is now celebrating a great victory for the nations of Egypt and Israel and for all mankind."

I was especially pleased last night when President Sadat in his statement included a word of praise for the State of Maryland. He said:

> Our hosts at Camp David and the State of Maryland were most generous and hospitable.

It was a thoughtful and gracious gesture.

Throughout the summit meeting, I have cherished the hope that the Catoctin Mountains, which hold special charms for every native of Maryland, would work their unique magic on these talks. In fact, shortly before the Camp David meeting, I wrote Prime Minister Begin and President Sadat identical letters expressing that hope:

> It is an honor and a pleasure for me to welcome you to the State of Maryland, to my own county, Frederick, and to the beautiful vastness of the Catoctin Mountains.
>
> As a boy, I spent many charmed hours exploring those mountains and it is my earnest hope that they will work their very

special magic on your talks and burnish the prospects for peace in the Middle East.

I am sure that, as a citizen of the world, you are familiar with the works of the great 18th Century moralist, Samuel Johnson, who was fond of quoting this Spanish proverb: "He, who would bring home the wealth of the Indies, must carry the wealth of the Indies with him."

I am confident that you will bring with you to Camp David the generous spirit and the wisdom necessary to your great task.

Prime Minister Begin responded by saying:

My colleagues and I thank you for your expressions of welcome to a beautiful corner of America whose sights and scenes, you so charmingly describe, were such an important part of your own boyhood.

We came to Camp David, located in your own Frederick County, dedicated to the single purpose of advancing the cause of peace and security for which we yearn. It is our prayer that the important meeting, initiated by President Carter, will advance this great and blessed goal.

Today we stand closer to that "great and blessed goal" than ever before and we owe a debt of gratitude to President Carter for his perseverance in the cause of peace, and to Prime Minister Begin and President Sadat for carrying "the wealth of the Indies with" them to Camp David. And I will always believe that we owe a very special debt to the magical mountains of Maryland as well.

Mr. STEVENS. Mr. President, I yield 30 seconds to the Senator from New Mexico.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield first to me?

Mr. SCHMITT. I yield.

ORDER DESIGNATING PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the conclusion of the time of the minority leader under the standing order, there be a period for the transaction of routine morning business, not to extend beyond 1 hour, with statements limited therein to 10 minutes each, and that at the conclusion of the period for morning business the Senate resume its consideration of the natural gas conference report.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CAMP DAVID SUMMIT

Mr. SCHMITT. Mr. President, I join with the remarks this morning made in praise of the activities which were just culminated at Camp David. I think I can truthfully say that all Americans feel much the same way. The elation we feel is very great. Hopefully, a major step has been taken.

I would just encourage all other interested parties in the Middle East to take this event in the spirit in which it is intended, and to join with Israel and Egypt and the United States in attempting to take these framework agreements as far as possible toward a true and lasting peace in the Middle East, and also toward a true and lasting era of cooperation on all other matters that will affect the people of that historic and more often than not troubled area.

I think the Senator from Alaska for yielding.

Mr. STEVENS. I thank the Senator from New Mexico.

ALASKA D–2 LANDS

Mr. STEVENS. Mr. President, I would like to use the balance of the acting minority leader's time and such time as may be available to me in the morning hour to comment upon a speech that has been made by the Secretary of Interior, Cecil Andrus. He has made a speech to the Nature Conservancy. It was made on Friday night, I understand. In the course of that speech I feel he has unjustly criticized a number of distinguished Americans.

The Secretary of Interior has indicated that he believes Alaskans are whining—and that is his word—about a settlement of the so-called d–2 issue.

In my opinion, the situation is exactly the opposite. The Secretary indicates that he believes that Alaskans are trying to repudiate the agreement that we made when we accepted section 17(d)(2) of the Alaskan Native Land Claims Settlement Act.

That is not true, and I hope that the Secretary will specifically refer to section 17(d)(2), in which it was stated that we agreed to review up to 80 million acres of Alaska's lands for the purpose of determining whether their addition to the four national systems—the National Park System, the National Forest System, the Wild and Scenic Rivers System, and the National Wildlife Refuge System—would be in the public interest.

Mr. President, the comments that the Secretary made that disturb me the most are those which concern the former Secretary of Interior Walter J. Hickel, our former Alaska Governor, and also the comments that he has made about the entire membership of the Senate Energy and Natural Resources Committee of this body, particularly those which refer indirectly to the chairman, Senator JACKSON, from our neighboring State of Washington, who was kind enough to permit me to sit in on the committee's deliberations.

It seems to me that the Secretary of Interior has taken upon himself to try to give a Senate committee an interim report card.

It would seem to me that we have a right to give him one, under these circumstances.

The section that we are concerned with, section 17(d)(2), dealt with, as I said, up to 80 million acres of Alaska's land.

No reference was made in section 17(d)2 to wilderness and nowhere in the reports on that bill, which became the Alaska Native Land Claims Settlement Act, will you find a reference to designating instant wilderness in conjunction with section 17(d)2. On the contrary, it was assumed that the administration and the Congress would recognize the 1964 Wilderness Act, which provides a procedure for the establishment of wilderness. But the House bill, the bill that the Secretary of the Interior apparently now embraces, covered 123 million acres of Alaska land and included over 65 million acres in instant wilderness. The real repudiation of the d–2 agreement was by the House and by the administration, specifically by Secretary of the Interior Andrus, when they failed to stay within the parameters of the original agreement. That is why Alaskans are worried about what is happening, but they are not whining about what has happened in the Senate Energy Committee.

In the House of Representatives, our sole Congressman, DON YOUNG, worked long and hard trying to educate the Members of the House on the problems related to this issue. Unfortunately, the snowball started rolling so fast that by the time the bill got to the floor, it was impossible to make any sense about that bill.

We have had a constant barrage of misleading statements about this. If you read the Secretary's speech, you would come to the conclusion that we are trying to take lands out of existing national parks. When he refers to the reduction in the acreage of the Gates of the Arctic National Park, that is a proposed park. No one has established it yet. I shall have some further remarks about that. It just seems that the Secretary of the Interior is of the opinion that once he draws a line on a map, that is sacrosanct, that the legislative body of this National Government of ours should have nothing to say about it.

I am greatly disturbed about the attacks made on the individuals involved. Wally Hickel was a distinguished Secretary of the Interior. He was known in the Capitol as a staunch environmentalist. He acted quickly to halt the drilling off Santa Barbara. He ordered a cleanup of the oil spills and the gas problems that were involved there. He took action, I think, which was unprecedented in terms of that activity in the Santa Barbara Channel.

He stopped the construction of the airport in the Everglades National Park. He was known for his swift action in dealing with the cross-Florida canal.

I think that the type of vitriolic attack that was made on former Secretary of the Interior, Wally Hickel, was entirely uncalled for. The Secretary of the Interior, Cecil Andrus, used the word "demogoguery" in relation to statements that had been made by Walter Hickel, and he knows better. The statements he referred to were both in context and very accurate statements. The difficulty I see is to attack our former Governor and the former Secretary of the Interior at a time when a recount is going on in my State on the nomination for the Governor is injecting politics of the most crass type into the problem relating to Alaska's d–2 lands.

I believe that the current Secretary of the Interior owes the former Secretary of the Interior an apology. It is my hope that he will reread his statement and read this one and be man enough to give it to him; because Wally Hickel did not deserve the kick in the pants that he got from Secretary Andrus. Without Wally Hickel, there would have been no Prudhoe Bay. It was Governor Hickel who made application for and secured approval of the selection of the Prudhoe Bay lands so that the State of Alaska could lease them for oil exploration. That has led to the discovery, as we all know, of the greatest proven reserve of oil and gas on the North American continent. The Secretary of the Interior can criticize him for having taken such action in view of the President's announced policy to promote self-sufficiency through domestic production, but I do not know.

Now, the Secretary of the Interior criticizes the Senate Energy Committee for its actions in insisting upon an inventory of the oil and gas potential of the Arctic wildlife range. The Secretary seems very disturbed; as a matter of fact, he says that the committee has opened the range to oil and gas exploration. That is not true. The range has been open. It has not been closed. The order which created the Arctic wildlife range specifically left that range open to oil and gas exploration. The committee seeks to continue that with specific protections for the Arctic wildlife range.

The committee has adopted a provision which will require that no core drilling may take place without specific authorization from Congress. At the same time, it has ordered a study of the wilderness values of the Arctic wildlife range to be made simultaneously with the noncore drilling inventory—that is, by seismic activity—of the oil and gas potential of the Arctic wildlife range. There is every indication that the Arctic wildlife range area is even more valuable to our Nation for oil and gas potential than is Prudhoe Bay. But Secretary Andrus would have us close that area to a complete inventory because, apparently, he is afraid of what might happen if discovery took place.

The Secretary has made a number of misstatements concerning the actions of the Senate Energy Committee. As one who has met with that committee every time—as a matter of fact, Mr. President, even though I am not a member of that committee, I have chaired over half of the hearings that have been held by that committee in this Congress. I am proud of the relationship that that committee has had with my State. Its chairman was the manager of the bill that brought us statehood. Its chairman was the manager of the bill that brought us the settlement of the Alaska Native land claims in 1971. That committee, under the chairmanship of the Senator from Washington, finally evolved the amendments to the Rights of Way Act, which included the Alaska pipeline amendment. I can think of no committee that has had more involvement with Alaska, unless it would be the House Interior and Insular Affairs Committee, on which many Members of this body have served.

But we believe that there is no reason for the misstatements of the Secretary of the Interior, Secretary Andrus.

He has made a statement that the Gates of the Arctic and the Wrangell Park would be open to mining. What he did not say was that these areas he referred to would be national recreation areas and they would be established subject to regulation of the Secretary of the Interior under a permit and lease system, and the decision as to whether mining would take place would be made by a Secretary of the Interior, not open until the Secretary issues a permit.

As a matter of fact, that is exactly what Secretary Andrus himself recommended with regard to the Wrangell areas. Secretary Andrus asked Congress to designate two mineral management zones in the Orange Hills and Chisana regions of the Wrangell Mountains, and that is precisely what the committee has done. But it has come up with a national recreation area provision for that area in the Wrangell Mountains, and the Secretary of the Interior has criticized the committee for it.

The Secretary is, in reference to the Gates of the Arctic, so misleading that it is a wonder he has not read a little history where Secretary of the Interior Stuart Udall originally proposed in 1968 a 3-million acre, 2-unit, national monument to be created in the Gates of the Arctic. The committee now has recommended a national park, which is two units.

Secretary Udall wished to place 3 million acres of the Central Brooks Range in a national monument. The committee has recommended a national park in that area which will be 5 million acres. It would have some 3 million acres of adjacent preserves and national recreation areas to allow recreation and tourist facility development as well as hunting, and in one area, the national recreation area, the Secretary would have the duty of determining whether mining could be permitted.

But the Secretary of the Interior Andrus, apparently, seems to believe, as I said, that the Gates of the Arctic was created by his recommendation.

It was no more created by his recommendation than by the recommendation of Stuart Udall in 1968. If the Gates of the Arctic, as recommended by the Senate Energy Committee, is created, it will be twice as large as the largest national park in the United States, and the comprehensive area that would be established there of over 8 million acres would, I think, be in excess of any national park area in the world.

Mr. President, apparently, Secretary Andrus feels he needs to overstate his position in order to scare Members of Congress and the public concerning the protection that would be available to Alaska's lands under the Senate Energy Committee. I do not feel that his statements concerning that committee and its actions are justified in any way.

The Secretary has stated that only 25 million acres of Alaska's lands would be designated wilderness under the Senate Energy Committee bill. Mr. President, that is true so far, but the wilderness review of the committee has not been completed yet, I think that, again, it is one of those preliminary report cards that could lead the country to a wrong conclusion.

I am not overly happy with the Senate Energy Committee bill. I have stated that it is a livable bill for Alaskans, but it goes much too far already and we know we are not completed yet as far as wilderness is concerned.

In the 14 years that the wilderness system has been in effect in the United States, there have been created only 15 million acres of wilderness in all of the public lands, including Alaska. This bill would create 25 million acres as it now stands. In other words, 165 percent of the total national system would be created in one bill, in one State, and the Secretary criticizes that as not enough.

Now, the Secretary implies that if wilderness is not created, an area would be open for multiple use. That is not true. As the Secretary of the Interior, again, he ought to read his own speech, because an area within a national park that is not made wilderness is still in a single use category as a national park and, similarly, a wilderness refuge does not became public lands solely because of its designation, as such, and not having been designated as wilderness.

Mr. President, the Secretary has been very unfair. I think he has been unfair for a purpose.

The Secretary has demonstrated once again an attitude that he is saying, "Either my bill, or no bill."

I do not think Alaskans deserve the attack they got by the Secretary in order to make that statement before the National Conservancy.

What he is really saying is that he wants an excuse to recommend to the President that the President exercise the existing discretion of the President under the Antiquities Act of 1906.

It was that act that Secretary Udall asked President Johnson to use in 1968. President Johnson wisely stated that the amount of land that was sought to be withdrawn under the Antiquities Act was excessive and refused to sign the orders creating the national monuments proposed by Secretary Udall with one exception. At that time, Secretary Udall suggested 8.6 million acres. After 8 years of study, he wanted 8.6 million acres and President Johnson said that was excessive.

Now, the Senate committee is about ready to adopt a bill, assuming we can get the problems in the Southeast settled, which will deal with about 100 million acres of land—100 million acres as opposed to 8.6 million acres, and the Secretary of the Interior attacks a Senate committee before it has finished its deliberation and indicates that the Senate committee action is not sufficient.

I would hope some Member of Con-

gress might defend the committee. But, certainly, on behalf of the people of Alaska, I have to defend the process through which the committee has gone to reach the position it is now.

The committee has examined in detail every single area and tried to determine what is the use that the people of that region of Alaska would put the lands to and what has been the historic use of lands in that area. As such, it is trying to be fair.

As I said, I do not believe that we are entirely satisfied with what the committee has done, but it has tried to be fair. Certainly, the Senate Energy Committee and its chairman do not deserve the criticism that the Secretary of the Interior has given that committee, and, above all, the former Secretary of the Interior, Wally Hickel, certainly did not deserve the statements that were made by the Secretary of the Interior at the Nature Conservancy.

Mr. President, I hope that other Members of the Senate will read the Secretary's statement. In order that it be made available to them, without any implied endorsement of any of the statements he has made, I ask unanimous consent that it be printed in the Record.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

REMARKS OF THE HONORABLE CECIL D. ANDRUS

Thank you, Tom, for that generous introduction.

One of the pleasures of being Governor of Idaho was having Tom McCall as a neighboring Governor and fellow conspirator against destruction of our environment. He provided inspirational leadership up in our Northwest corner of the country, and although he has temporarily retired from public office, the legend lives on.

We were the first governors who were able to raise questions about the wisdom of helter-skelter development and boomtowns in our states—states which had traditionally been the domain of the boomers—and live to tell about it

But The Nature Conservancy did not invite us here tonight to pat each other on the back.

The tributes tonight go to those award winners who have been recognized during this program. I join in congratulating them for their outstanding contributions to conservation.

I also want to thank The Nature Conservancy on behalf of myself and the American people for all the great work that this organization has done over the years.

It has been my good fortune to work with the Conservancy to protect some key areas in America.

The wonderful thing about the Conservancy is that it tackles problems head-on, and it so often does what government agencies cannot do, or cannot do in time, to save an endangered wild area or to protect an endangered species.

The Conservancy, working with the U.S. Fish and Wildlife Service, has helped acquire more than 358,000 acres of prime habitat.

On numerous occasions, habitat essential for endangered species, migratory waterfowl or unique ecological wildlife areas was available on the market and threatened with destruction. Interior was unable to act expeditiously because of government red tape. In these cases, the Conservancy has stepped in, acquired the land and held them until appropriations were available.

One current example is the Leetown Fish Hatchery in West Virginia where adjacent land is being purchased to protect the hatchery's watershed. In addition, there are the Sea Rim Refuge and the Smith Marsh in Texas, and Grant Meadows Refuge in Massachusetts, to mention only a few others the Conservancy is working on right now.

In the past decade, the Conservancy has acquired 126 parcels of land on 22 refuges which have been conveyed to the Fish and Wildlife Service at a savings to taxpayers of more than six and one-half million dollars.

Far more important than dollars saved are the thousands of acres of habitat which would have been destroyed if the Conservancy had not acted promptly.

In a sense, the Conservancy has become a court of last resort. Often, the Conservancy has stepped in to help save the last remnant of an ecosystem or home for the last population of some animal or plant. You understand both the necessity and the pain of this kind of environmental salvage work. Fortunately for our Nation, you keep at it.

Tonight, though, I want to talk about Alaska—an area we don't need to salvage—yet.

Alaska still has the free flowing rivers.

Alaska still has the free roaming caribou herds.

Alaska still has the masses of nesting birds.

Alaska is still the place the rest of our country once was.

We don't talk about remnants in Alaska. We talk about healthy, thriving natural systems. We don't need to manage Alaska. We just need to protect it.

Since you here tonight so often deal in "lasts" and "onlys" and "one-of-a-handfuls," I am sure that you appreciate both the challenge and the opportunity we have in Alaska.

Our ability to balance development and conservation will make Alaska a source of pride for future generations. It will not merely be the last place we took the opportunity to destroy our natural heritage.

Today we have reached the historic decision point. Alaska has always been too cold, too far, too rugged, too expensive for most development. We have now overcome those technical and financial problems. But as we learned to work—and destroy—in the far north we also learned how and why we should conserve and protect. Today we know how to destroy and we know why we should conserve. Whatever course we take in Alaska will be with our eyes wide open. There can be no more excuses.

It is no accident that the world's most expensive and ambitious privately constructed civil engineering project—the Trans-Alaska Pipeline—is in Alaska. Or that it may soon be followed by an even more ambitious natural gas pipeline. The conditions imposed by the arctic require projects on a mammoth scale if they are to succeed. But, of course, such huge projects are in themselves a mammoth threat to Alaska's still healthy natural systems.

Like development, conservation in the far north must also be mammoth in scale. A barron ground grizzly bear requires one hundred square miles of territory. A caribou migates hundreds of miles. It would be worse than useless to try to protect them with national parks and wildlife refuges scaled to the lower 48 states. It would be fraud.

Fortunately, a farsighted Congress in 1971 gave us the opportunity today to conserve many of Alaska's most important natural areas.

Section 17(d)2 of the Alaska Native Claims Settlement Act directs the Secretary of the Interior to nominate federal land in Alaska for new national parks, wildlife refuges, national forests and wild rivers. At the same time Congress gave itself until December 18 of this year to act.

The Carter Administration met its obligations under the Act last September with a balanced proposal for 92.5 million acres of new conservation areas. Last May the House endorsed similar, but more ambitious, legislation by the overwhelming margin of 277–31. In the Senate today, let's just call the situation less than desirable.

As we developed these proposals we listened to every segment of society with an interest in Alaska.

We listened to the miners—and left more than 70 percent of hard rock minerals outside the boundaries.

We listened to the oil men—and left 90 percent of high potential oil and gas provinces outside the boundaries.

We listened to the hunters—and more than 90 percent of Alaska will be open to sport hunting.

We listened to the Natives—and encouraged the traditional subsistence culture.

We listened to the State—and supported language speeding conveyance of statehood lands.

And we listened to the two thousand Americans who appeared before the House Interior Committee. The majority urged swift action to protect Alaska's wilds—including a majority of those who appeared in Alaska.

When we drew the final boundaries—cut from 120 million acres endorsed by Assistant Secretary Bob Herbst—our major tool was a computerized resource analysis developed by the state. As we made our final decisions, resource consultants from the state government offered advice from an office just down the corridor from my own office.

But despite our best efforts to balance our proposals and accommodate the entire National Interest, these proposals have come under some of the most vitriolic attacks I have witnessed in all my years of public life.

I want to read two statements to you. Here's the first quote from a well known American:

"If I were writing a script for the great American adventure story I could not pick a better location for it than Alaska—a land which is still free, clean and unspoiled. Up until recent times we placed great emphasis on growth—development, industry, new highways and increasing our population. Now a community or state is valued for its open spaces, its unspoiled natural beauty, its clean air and pure water . . ."

Now the second statement from another well-known American:

"Outsiders don't understand Alaska. They only come up here in the summer. They don't realize this is the Arctic. To survive, you need a habitat. Hey, let me tell you. American industry has learned more about the environment in the last 10 years than the environmentalists have learned about the needs of man—ever."

Wait. Both these statements were made by Walter J. Hickel, the first as my predecessor in the office of Secretary of the Interior in 1970, the second a few weeks ago as a candidate for Governor of Alaska.

I don't know how such strong statements for conservation can be replaced by such demagoguery over a period of a few short years. I can't say why.

What I can say though, is that such demagoguery won't work—it didn't even work in Alaska.

Mr. Hickel recently spent $535,000 in his primary election campaign. That's nearly $17 for every one of the thirty-one-thousand-seven-hundred or so votes he got. The boomer philosophy that was represented by that half-million investment was rejected by Alaska's voters. A majority of voters in both parties voted for moderation and responsible consideration.

I am not seeking to criticize Mr. Hickel personally, but I do not criticize the boomer philosophy that he represents. Those espousing that philosophy now seek to work their will on the American people by rewriting history.

The State of Alaska has already received enormous wealth from the United States, but there are those who seek even more—at the expense of our last remaining wildlands—lands that belong to all Americans and at the expense of Alaskans who value their life style.

As you well know, the modern history of legislation for Alaska is the history of development legislation. Let me review that history quickly:

In 1959 a generous nation gave Alaska 103 million acres as a statehood grant. This is 30 percent of Alaska—far more either in absolute or proportional terms than any other state received. When Idaho was admitted in 1890—to pick an example I know intimately—we received seven percent of the land.

In 1971, Alaska's Natives, with the backing of the state and the North Slope oil producers, came to Congress seeking settlement of their long-standing aboriginal claims. Congress was just and generous—awarding the Natives 44 million acres and nearly $1 billion in cash. And, not incidentally, clearing title to the proposed right of way for the Alaska pipeline at the same time.

In 1974 Alaskans and oil companies were back again seeking an exemption from the National Environmental Policy Act so they could begin construction on the pipeline immediately.

The Alaska Native Claims Settlement Act contained Section 17-d-2, though.

Senator TED STEVENS agreed to this section.

Senator MIKE GRAVEL agreed to this section.

The late Congressman Nick Begich agreed to this section.

Both Governors Egan and Hickel agreed to this section

The oil companies agreed to this section.

The mining companies agreed to this section.

Virtually every person, organization, industry with an important interest in the future of Alaska agreed to that section. It was a small price. One paragraph of conservation language to balance an entire bill aimed at development. And the language of the bill and the conference report is clear.

But, now that millions of dollars in Prudhoe Bay oil money is flowing every day into the Alaska treasury—a gift from the people of the United States to the people of Alaska—some Alaskans are whining that Section 17 (d) (2) will throttle their state's development. Such charges are pure baloney.

I say that such a repudiation of this agreement is too mean-spirited for most Alaskans to accept. I say that such an attempt to rewrite history is not worthy of Alaskans' honor.

We have explained *so* carefully and *so* many times what these proposals will and will not accomplish. They balance conservation with development, protecting the finest wildlife and scenic resources while leaving the majority of minerals and hydrocarbons available for development. I can only assume now that many of those who misstate the proposals or who read dire consequences for Alaska into them no longer do so from well meaning ignorance. They know the facts, and they choose to ignore them.

We have no intention—as some have charged—to turn Alaska into some sort of wilderness playground for the rich. And equally, we have no intention of letting Alaska become a private preserve for a handful of rape, ruin and run developers. Alaska's magnificent resources belong to all Americans—for all time.

I say to you tonight that Alaskans have an obligation to support the national interest in conservation today just as vigorously as the nation supported Alaska's interest in development yesterday.

Alaska's beauty and natural richness is no secret. Travelers have been tramping through her mountains, catching her fish and writing memoirs about her spectacular scenery for more than 75 years. In the 1930s Bob Marshall was writing that nearly every acre north of the Yukon River should be set aside for conservation.

There have been a long string of conservation proposals for Alaska since Marshall. Today, nearly half a century after he wrote, we are starting to recapture his vision and his understanding of what is needed in Alaska.

Our 92.5 million acre proposal in the bare minimum necessary to protect Alaska's scenic, living and cultural resources. These areas were chosen because they are—literally—the Crown Jewels of Alaska's wilds. In Alaska we didn't even consider mountain ranges and river valleys that—in the lower 48—would be targeted for national park status. In Alaska they were mundane.

There was nothing accidental about our proposals. They were designed to protect vital and often unique resources. They were based on the principle that to protect resources you have to protect their surroundings as well. So we drew our boundaries—wherever possible—along watershed contours.

The lesson on the Redwoods and Big Cypress-Everglades is that you protect a resource only if you protect its watershed as well. In a sense, size may be meaningless—a vast area whose boundaries are one hundred yards below the ridge crest may be threatened. Add two hundred yards around the perimeter and it will be safe.

In Alaska we are not playing a numbers game—we are protecting resources. That is a simple concept, but so difficult for some to understand.

Last July I tore myself away from Washington—not too difficult that time of year—for 10 days in Alaska looking at some of the arctic areas we hope to include in our national park and refuge systems.

Flying through Anaktuvik Pass in the central Brooks Range I saw the tragic results of the first attempts to ram a winter road through to the North Slope oil fields. The pressure of the "cat trains" driving over the snow killed the thin vegetation below. Without insulation the tundra was bare to the 24-hour arctic summer sun. The permafrost just a few inches below the surface began to melt and erode. Today much of that "road"—known as the Hickel highway after the former governor who ordered its construction—is a morass of stagnant pools of water that widen and deepen a little more every year as the permafrost continues to melt.

In other parts of the state, tailings left from mines closed half a century ago still look fresh and streams gouged by high pressure hydraulic mining are still raw long after the miners have departed.

The machinery available today dwarfs the equipment these oldtimers used and it no longer takes months to move it.

Even without industrial pressure, though, Alaska wildlife and landscape can be threatened by use that seems minimal by lower 48 standards.

Walker Lake in the Brooks Range is the picture of the Alaskan wild, nestled in a valley surrounded by sharp peaks. Walking along the water's edge I saw fresh bear tracks. Within a few minutes of laying a dry fly on the water I was rewarded with a substantial lake trout. The Eskimos call Walker Lake the "Lake of the Big Fish."

But in these chilly waters—frozen over seven months of the year—fish grow slowly. A handful of greedy fisherman could turn some of Alaska's best fishing lakes into barren water holes.

The next day, flying over the arctic coastal plain I spotted a portion of the Porcupine Caribou Herd. There were about 40,000 animals—one third of the herd. Not since Americans saw the buffalo on the great plains has there been a wildlife spectacle comparable to the caribou. But they maintain a delicate balance with their environment—always moving to keep from overgrazing the thin layer of vegetation. Slight changes could upset the balance of thousands of years.

The thousands and thousands of caribou in the Porcupine Herd filled an area three miles wide by fifteen miles long. In the lower 48 this is a big area. In Alaska, not very big at all. Those caribou migrate more than a thousand miles every year. They walk the equivalent of a round trip between Washington and Chicago every year.

The arctic is not a feed lot.

The Eskimos say that "no one knows the way of the wind and the caribou." We certainly don't pretend to. What we do know is that once a caribou herd has disintegrated the most adept biologists may not be able to put it back together again.

So to those who say that "oil is where you find it" I say, caribou are only where you find them too—and unlike the oil, we know exactly where the caribou are.

I want to say a few words about the Alaska lifestyle at this point because I think that it's important to separate myth from reality, and the most enduring Alaska mythology—aside from stories about grizzly bears—is about the traditional Alaska lifestyle.

That tradition—characterized by the independent miner, the homesteader and the roving trapper supported only by rifle and wits—is about as appealing as anything I know.

Unfortunately, though, the Alaska lifestyle survives today mostly in romantic magazine articles. Alaska is one of the most urbanized states in the union. Of 400,000 Alaskans, only about 50,000 can claim to be "bush" residents. The vast majority of Alaska live in Anchorage, Juneau and Fairbanks.

The major industry in Alaska today—aside from government—is oil, a capital intensive business that hires relatively few permanent workers and insulates them from the country in futuristic "camps" when they are outside urban areas.

The only time most Alaskans see the remote back country of their spectacular state, unfortunately, is during brief vacation safaris. The days when you could drive to the outskirts of Anchorage, shoot a winter moose and be home for lunch are long gone. Not too long ago, students at the University in Fairbanks kept rifles in their dorm rooms to be ready to go caribou hunting near the campus on a moment's notice. Today you are lucky to see a caribou anywhere near Fairbanks.

Even in the remote back country, hunting pressure is cutting into the size of Dall Sheep and Brown Bears now being killed. Research is underway to find out whether sheep in the Brooks Range are simply moving away from the gravel bars and lakes that are convenient landing sites or are actually getting smaller.

Those who say that Alaska is too big to destroy or too tough to damage either don't

know what they're talking about or are willing to take chances we won't take.

Well, where does that leave us now? Here is the situation in the Senate.

Markup in the Senate Energy and Natural Resources Committee has not been completed. The Committee's bill thus far contains some major changes from the House passed bill and the Administration's recommendations;

Portions of the proposed Yukon Flats and Arctic Range wildlife refuges have been designated as a national forest, despite the fact that the timber in that area is not commercial quality while the wildlife resources are outstanding.

The Arctic Wildlife Range will be opened up to oil and gas exploration.

Portions of the Gates of the Arctic and Wrangells-St. Elias National Parks will be opened to mining.

Thus far, only about 25 million acres of wilderness have been designated in the parks and refuges; the Committee has not yet made a decision on wilderness in the national forests in Southeast.

As it stands now, it appears unlikely that the House would accept the Senate bill without going to a conference, and time is running out.

Chairmen Udall and Seiberling both still hope that a bill can be passed this year, but they recognize that it may not. They have written urging me to start preparing the necessary proclamations to create new national monuments in Alaska.

I truly hope, though, that Congress will complete action this year to protect these priceless treasures. But if it doesn't, the Administration does have several shields. On my recent float trip with President Carter, we discussed Alaska, and he made it absolutely clear that he stands behind whatever measures we must take to protect those Alaskan wildlands.

What are the shields?

The Antiquities Act of 1906 gives the President authority to establish national monuments by executive order. If we take this route, the traditional subsistence way of life will be protected.

Section 603 of the Federal Land Policy and Management Act directs me to study all roadless areas over 5,000 acres under BLM jurisdiction for inclusion in the national wilderness system. I have 15 years for the study, but right now it looks like most of Alaska would qualify.

I have other withdrawal authorities under the BLM Organic Act.

The stakes in Alaska are too high for hesitation. The loss to the Nation would be too great. If the Congress fails to act this year, the President and I will.

The caribou may not survive if we don't act.

The waterfowl that fly to 46 states from Alaska may not survive if we don't act.

The only unthreatened populations of grizzly bears may not survive if we don't act.

The only major pristine river valley may not survive if we don't act.

The only great virgin forest may not survive if we don't act.

So make no mistake. We will act.

President Carter and I will make sure that the national treasures of Alaskan wilds are protected for as long as necessary to give Congress time to act.

As a Native Alaskan told the House Interior Committee: "If we fail God may forgive us, but our grandchildren won't."

Well, in Alaska our grandchildren aren't going to have to forgive us.

Mr. STEVENS. Mr. President, recently the Denver Post printed an editorial entitled "Protecting Alaska's beauty." The article pointed out that Federal protection of land and coastal areas is usually the best way of protecting important national wildlife, scenic, and recreational resources. In reference to House passed H.R. 39 the Denver Post editorial issues a word of caution; "The environmental lobby, which is pushing the congressional project, may once again have over-reached itself." The Post sites examples of misused environmental power and recognizes that the U.S. Forest Service has set a good precedent in the West for multiple use protection.

The lands in Alaska will not be lost if Congress takes no action this year. They will remain in Federal jurisdiction, mostly under the stewardship of the Secretary of the Interior. I believe that time should be taken to fully assess the variety of uses the lands in my State hold. In the national interest, Congress should not act on d–2 until the real knowledge of Alaskan lands and their multiple values can get to the American people.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PROTECTING ALASKA'S BEAUTY

Federal protection of land and coastal areas is usually the best way of protecting important national wildlife, scenic and recreational resources.

The national parks—as well as the national forests—bear testimony to the effective job federal agencies have done in the Rocky Mountain West to protect and enhance important public resources.

That is an obvious reason why Congress currently is studying legislation to extend the protection being afforded the nation's largest state, Alaska.

Alaska has 375 million acres. That makes it nearly six times the size of Colorado. And of those Alaskan acres the vast majority are in a wild or semi-wild state. Protecting that land from despoliation in 1978 is a timely precaution.

A word of caution is needed, however. The environmental lobby, which is pushing the congressional project, may once again have over-reached itself.

Westerners are particularly aware of the hazard. Only recently environmental groups went to court to try to halt all oil and gas activity in the Overthrust Belt, a promising geological structure in Utah, Wyoming and Idaho.

Careful supervision of such activity is vital—but a total ban is simply unwise. Erecting such barricades is not in the national interest. A balance in resource use is in order. Some wild areas can be pristine, protected as wilderness, but not all.

And Coloradans have seen environmental power misused. Boundary lines of the Eagles Nest Wilderness Area west of Denver were drawn not in accordance with Forest Service guidelines—but for the simple purpose of locking up water resources Denver needs and has proved ownership to in court.

That is bad environmentalism. It loses public credibility.

So as the Congress proceeds with the Alaska land debate it should keep such things in mind. As approved by the House May 19, the area nominated for protection is large. The 100 million acres to be set aside are much larger than all of Colorado.

That may be all right. Alaska is, after all, a huge state.

But the Senate ought to take a close look at what is in H.R. 39 in the way of padlocks on potential resources. A "study" provision for oil and gas reserves is in the bill although Alaskans claim it is a sham tactic aimed merely at getting it passed.

Alaska like most Western states, has stunning scenic and wildlife areas that should be protected at all costs—with the strictest kind of federal authority. But there are doubtless other areas which can have a mix of multiple-purpose assignments.

The U.S. Forest Service sets a good precedent in the West for multiple use protection. Much wild land can be governed by management techniques which allow commercial as well as recreational, scenic and wildlife uses but stop protection short of wilderness status.

That should be the broad aim of the Senate. Along with areas which must remain untouched, Alaska has resources this nation must develop. North Slope oil fields are a prime example. So whatever legislation the Senate agrees to should make provision for some reasonable step-by-step procedure for getting at resources that are singularly essential to the national economy. Hopefully, the environmentalists will allow for some measure of goodwill in reaching such an accommodation.

Mr. STEVENS. Mr. President, I thank the Senator from New Mexico for his courtesy.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico may proceed for 5 mintues.

Mr. SCHMITT. Mr. President, first, I commend the Senator from Alaska for his analysis of the remarks of the Secretary of the Interior.

I support the Senator from Alaska completely in this. I hope the Secretary will rethink his approach to this problem and remember that the decision is going to be made in Congress, not on the basis of his specific remarks condemning the Energy Committee or any other individuals.

ROUTINE MORNING BUSINESS

(The following proceedings occurred during Mr. STEVENS' remarks:)

The ACTING PRESIDENT pro tempore. The time of the Senator has expired for the minority leader. Does the majority leader yield back the remainder of the time on the majority leader's side, so we can enter morning business and the Senator can have additional time?

Mr. MELCHER. I yield back such time as may be left to me.

The ACTING PRESIDENT pro tempore. The time having been yielded back now by the majority leader, under the previous order, there is to be a period of not to exceed 1 hour for the transaction of routine morning business, with statements therein limited to 10 minutes.

The Senator from Alaska is recognized.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, I yield the remainder of my time to the Senator from New Mexico.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico may proceed for 10 minutes.

DECLINE IN TECHNOLOGY AND ECONOMIC LEADERSHIP

Mr. SCHMITT. Mr. President, there are many examples of declining technology and economic leadership on the part of the United States of America. This trend toward retrenchment in technology and economic leadership is one

of the most dangerous long-term trends that the Nation faces, and it creates some of the most serious and most difficult problems that the Congress of the United States faces.

One particularly graphic example has been brought in detail to my attention by an article in the September 8, 1978, issue of Science magazine. This article is entitled "Mission-Oriented Research for Light Machinery" and is authored by Delbert Tesar, of the University of Florida. I quote the summary of that article, which I think will bring the basic problem into focus.

Summary. The time of intelligent machines is upon us. But the United States is not actively pursuing this rich field of technological development. This is evidenced by the U.S. trade deficit of $9 billion in this market in 1977. The synergistic approach of Japan, Germany, Russia, and other countries to research, development, and demonstration among government, academic, and industrial groups is paying big dividends in vital U.S. markets. This article outlines a specific solution in terms of U.S. national research policy for light machinery and robotics.

Mr. President, I ask unanimous consent that the entire text of Mr. Tesar's article be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. SCHMITT. Mr. President, this question of light machinery brings into additional detailed focus one of the greatest deficiencies that faces this Nation in terms of world trade. That deficiency is the lack of any kind of strategic capacity for policy development, both in general and in detail, throughout the Federal Government.

There is no mechanism—operative, at any rate—that coordinates Federal policies related to export markets. We find that the Department of the Treasury, the Export-Import Bank, the White House itself, the Department of Commerce, the Department of State, the Department of Defense, and many other agencies and departments have no clear mechanism by which they can coordinate activities relative to export markets; nor are the administration's research and development proposals coordinated with our short- or long-term needs to develop export markets.

So, Mr. President, I strongly suggest, once again, that Congress and the administration focus in an attempt to find a mechanism for developing a strategic capacity for the treatment of export markets.

Finally, I suggest that those who think we can implement some other nation's mechanisms for a strategic capacity in export planning are very likely wrong. Our culture is very different from that of any other nation on this planet. We cannot do what the Japanese do or the West Germans do or any other nation does in order to coordinate their public and private activities relative to exports.

However, that is not to say that we cannot figure out some mechanism by which this can occur. I strongly recommend that my colleagues on the various committees that have jurisdiction in this critical matter begin to think about just what that mechanism should be. Then, perhaps in the 96th Congress we can make clearcut legislative recommendations, legislative directions, to the administration for the development of such a strategic planning capacity in exports.

EXHIBIT 1

MISSION-ORIENTED RESEARCH FOR LIGHT MACHINERY

(By Delbert Tesar)

Recent reports on our weakening ability to compete in the market for consumer goods, many of which depend on new technology, indicate that the United States has rested on its industrial laurels for too long. In contrast to the $24 billion surplus of agricultural exports in 1977, manufactures produced a surplus of only $5 billion, dramatically down from $20 billion in 1975. Total research and development relative to the gross national product (GNP) is down 30 percent since 1963, while the percentage of industrial expenditure for basic research in the United States has dropped by a factor of 2.5. These are sobering statistics, since it has been documented that 45 percent of our economic growth from 1929 to 1969 has been due to technological innovation.

To be able to use energy resources to make products for world markets implies the use of machines. The purpose of this article is to show that high technology associated with production machinery is a means to the solution of increasingly tenuous economic performance. Research for the development of a machine science has been ongoing for two centuries. It reached a functional level in its industrial application before World War II, but has become less effective relative to other technologies since that time. This article documents this lack of effectiveness of mechanical technology in terms of economic indicators and outlines the need to revitalize an important segment of our industrial manufacturing capacity (1, 2).

A TECHNOLOGICAL OPPORTUNITY

It is well known that massive technological growth has occurred since World War II in electronics, particularly, microelectronics. During the same period, machine-based industries in the United States have made nominal progress, since the government has put insufficient emphasis on machine technology for the production of commercial goods. Qther industrial nations have done the opposite (3). Computers or their smaller counterparts, microprocessors, can make it possible to create production machinery which "thinks," to make machines more versatile and reliable. It will be argued in this article that two major opportunities face the industrial community. These are (i) the development and use of modern research and design tools to establish a resurgence in the fundamental field of machine science, and (ii) the full use of distributed electronic sensors and computers combined with mechanical production devices to create more effective production systems.

Mechanical devices enter into the manufacture of a very large spectrum of commercial products. For example, the manufacture of our sophisticated micro-electronic circuits is increasingly dependent on high-precision mechanical positioning systems. The following is a list of many of the classes of machines that are centrally dependent on mechanical functions.

Textile machinery.

Printing and paper machinery.

Food and packaging machinery.

Office machines, computer peripherals.

Assembly operations, microprocessing.

Machine tools, automatic screw machines, presses.

Toys, models, games, sports equipment.

Agricultural machinery such as harvesters and tractors.

Internal combustion engines.

Building machinery such as shovels, cranes, and earth movers.

Conveyors, feeding, and handling devices.

Vehicles, off-road locomotion, steering, braking.

Railroad vehicles and machinery.

Circuit breakers and switchgear.

Prosthetics, orthotics, hands, man-augmentation.

Robots, manipulators, numerical control machines.

The weakness of U.S. mechanical technology may be partially illustrated by the sale in the United States of the industrial sewing machine Consew (owned by Toyota of Japan), which runs faster, is more reliable, has four times less downtime for bobbin interchange, and costs 25 percent less than a similar U.S. machine. (Note that the trade deficit for sewing machines was $141 million in 1977.) Another example involves a new tobacco manufacturing plant in Georgia that is the third largest in the United States. All of the machines are of Italian, German, or English origin and are maintained by foreign craftsmen. The plant manager confirms that appropriate technology did not exist in the United States in 1976 to fulfill the specifications for competitive machines.

The microelectronics revolution is a most welcome development (4). It is a $41 billion per year industry and has created 100,000 new jobs. Its effectiveness will increase immensely when microelectronics are coupled with versatile mechanical devices to make intelligent machines. Because of the weakness of mechanical technology, this is taking place either rarely or not at all. One step toward this coupling is represented by the commercially available "electronic" household sewing machine (5). It uses complex sewing patterns previously stored in a solid-state memory that can be recalled by the operator simply by pushing a few buttons. Nonetheless, there is no sensor in the system that can send signals to a controller, which would then automatically adjust the machine's operation to fit the present condition of the sewing process. This sensing, adjustment, and task performance has its human analogy in our eyes, brain, and motor capacity.

In the case of the electronic sewing machine, it is important to note that none of the critical high-precision motions are executed by electronic components. Hence, one must conclude that microelectronics have been "added on" or poorly integrated into the total system's function. Another step toward electronic coupling with mechanical function is the General Motors tubocharged V6 ignition timing control. In this example a sensor is used to monitor detonation in the engine. If a trace amount of detonation is exceeded, the electronic control retards the spark in 4-degree steps until detonation is below the specified limit. This system is perhaps electronically more elementary than that of the sewing machine, but it has all three elements necessary for a "thinking" machine: sensor, brain, and adjustable mechanical response.

The sophisticated integration required for intelligent machines may be illustrated in terms of a modern electronically controlled shutter for a camera (5) that recently appeared on the market. The camera contains sensitive electronic sensors that detect levels of light and transmit this information to a digital microprocessor, which then automatically sets the *f*-stop and shutter speed. The user merely points the camera at the subject, while the electronic system senses the range, lighting, and reflectivity and takes the picture on command. All of these functions are taken care of by various sensors, a small electronic controller (or brain), a mechanical shutter, and a mechanical drive train using springs and batteries as power sources.

The precision built into the machine comes from the intricately designed mechanical shutter, which typically moves at a speed of 4 meters per second. This speed must be precisely repeatable over the life of the camera. The electronic controller must release the first shutter or curtain, wait the required time interval, and then release the second or closing curtain. The allowable error in this time interval may be as little as 1/10,000 second.

From the example above, it is clear that the mechanical motion of the shutter curtains is fundamental to the operation of the camera itself. No alternative method is easily adaptable in a commercial still camera. Hence, the commercial realization of a new product resulted from a very sophisticated mechanical design coupled with modern electronic sensors and controllers. (It may be noted that our trade deficit in 1977 for still cameras was $253 million.) The total system effectively builds on good mechanical structure and enhances it. The enhancement is obtained by a fully adjustable system that is capable of responding to a wide range of stimuli without human intervention. This is a proper integration of electronics with mechanical technology.

Many designers have given up on mechanical technology completely. Unfortunately, a very large percentage of commercial products are used directly by humans, and these products tend to be physical (shoes, clothes, food, and so on) and require mechanical processing in their manufacture or handling. Hence, mechanical operations are mandated by human existence. It would be far more appropriate to treat the science of machines as fundamental in its own right and then augment its application with every feasible combination of electronic sensing and control. This is the major opportunity facing light industry today. It is clear that our competing industrial countries are already pursuing this opportunity. If it is energetically pursued by the United States, a new generation of machines and their products could evolve to reestablish the relative vitality of American industry.

MACHINERY AND ITS MANUFACTURES

The classes of machines listed in the previous section may be separated into the categories of light machinery and heavy machinery. It will be shown that because of its substantial research emphasis on heavy military machines and materials, the United States presently enjoys a $5 billion to $9 billion per year surplus in trade of heavy machinery. Perhaps because of minimal funding in the field of sophisticated light machinery design, the United States suffers a loss of $6 billion to $9 billion per year in light machinery and its associated manufactures. In view of our present annual expenditure for petroleum—over $42 billion—we should not tolerate so massive a loss in any class of manufactures.

Trade data for the major U.S. imports and exports are summarized in Table 1 and broken down for nonmanufactured and manufactured commodities in Tables 2 to 4. The principal applications that are associated with heavy machines are listed in Table 3. Systems related to these applications (such as heavy tractors, compressors, and turbines) tend to be robust and are frequently composed of sophisticated materials. They have represented a significant trade surplus ($8 billion to $9 billion) for the U.S. economy. Our long-term emphasis on research in materials, especially by the Department of Defense (DOD) (6), may be part of the reason for the success of these applications. Also, U.S. industry has actively pursued international heavy machinery markets (5) by providing reliable units and responsive service maintenance. The sight of a familiar yellow earth-moving machine of U.S. manufacture is known throughout the world. Our advanced modernization of agriculture supports our supremacy in farm tractors. Our heavy investment in water management projects and a national network of superhighways have produced a progressive construction machinery industry. Similar arguments might be made for the other categories listed in Table 3.

TABLE 1.—DEPARTMENT OF COMMERCE TRADE DOCUMENTATION [1]

Commodity and 1975 standing	Trade (billions of dollars) 1975 exports	1975 imports	1975 balance	1970 balance	1977 balance
Nonmanufactures:					
Positive balance	23.124	2.341	+20.783	+5.846	+19.593
Negative balance	7.170	41.894	−34.724	−8.111	−58.225
Total	30.294	44.235	−13.941	−2.265	−38.632
Manufactures:					
Positive balance	53.887	18.354	+35.533	+14.759	+33.507
Negative balance	9.876	25.034	−15.158	−9.914	−27.944
Total	64.246	43.967	+20.279	+4.562	+5.563
Heavy mechanical machines or manufacturers:					
Positive balance	19.740	6.087	+13.653	+5.156	+11.691
Negative balance	0.889	5.622	−4.733	−2.536	−7.063
Total	20.629	11.709	+8.920	+2.620	+4.628
Light mechanical machines or manufactures:					
Positive balance	5.989	1.994	+3.995	+1.602	+4.426
Negative balance	8.775	18.532	−9.757	−6.660	−12.578
Total	14.764	20.526	−5.762	−5.058	−8.172
Mechanical machines or manufactures:					
Positive balance	31.900	8.600	+23.300	+9.142	+21.378
Negative balance	15.297	32.318	−17.021	−11.838	−25.944
Total	47.197	40.918	+6.279	−2.696	−4.566
Aircraft and spacecraft	6.171	.519	+5.652	+2.384	+5.261
Passenger cars and trucks	5.633	8.164	−2.531	−2.642	−6.283
All commodities	106.156	96.940	+10.216	+2.630	−29.885

[1] A complete tabulation supporting these results is available on request from the author.

TABLE 2.—DEPARTMENT OF COMMERCE TRADE DATA FOR NONMANUFACTURES [1]

Code No.[2] and commodity	Trade (billions of dollars) 1975 exports	1975 imports	1975 balance	1970 balance	1977 balance
04—Cereal grains	11.643	0.180	+11.463	+2.519	+8.604
08—Animal feeds	.987	.076	+.911	+.420	+1.477
22—Oilseeds and soybeans	3.134	.037	+3.097	+1.211	+4.751
263—Cotton	1.010	.018	+.992	+.275	+1.536
32—Coal and coke	3.343	.202	+3.141	+1.027	+2.520
02—Fish	.267	1.354	−1.087	−.700	−1.580
06—Sugar	.155	2.072	−1.917	−.784	−1.145
07—Coffee	.092	2.327	−2.235	−1.571	−5.387
28—Ferrous ores	1.355	1.960	−.605	−.210	−1.034
33—Petroleum	.907	24.766	−23.859	−2.283	−40.213
34—Natural gas	.214	1.435	−1.221	−.231	−2.327
667—Pearls and diamonds	.262	.857	−.595	−.362	−1.275
68—Nonferrous alloys	1.312	2.580	−1.268	−.689	−2.796

[1] All positive trade balances improved and all negative trade balances worsened.

[2] Department of Commerce Code number.

A brief list of the applications of light machinery and its manufactures is given in Table 4. These are the principal generators of our $6 billion to $9 billion per year trade deficit in light machinery, and almost every category shows a continuing worsening of the trade deficit since 1970. One of the common threads in these applications is the use of highly geometric devices of numerous design parameters that require sophisticated or high technology to achieve optimum results. Optimum may imply a product output of sufficient quality, a machine that uses minimum energy, a machine that operates at a very high speed without noise, and so on. For example, an emerging application may be miniaturized mechanical devices that are made by etching, in much the same way as microelectronic circuits. The designers of the first useful machines (James Watt and George Stephenson in 1800) spent their lives perfecting the complex valve control linkages associated with the steam locomotive. In many ways, today's designers frequently develop machines by the same trial and error methods, with a remarkable expenditure of time before a unable machine is obtained. An effective machine science would drastically reduce this design cycle time.

A recently developed $2-million textile carpet printer (7) uses a high-speed miniature valve to precisely control the flow of many color dyes to pattern a blank carpet with any selected digitized scene. It is a modern combination of computer control and mechanical devices. Ignoring several ancillary economic benefits, the system's return on investment is conservatively estimated to require 2 years of normal operation. Another example is a high-speed ammunition loader produced under a $26-million Air Force contract (8). The device loads a fighter aircraft in 6 minutes, a task that previously required 2 hours, thus making the aircraft

significantly more cost-effective. The loader is driven by a motor in the aircraft and must maintain perfect synchronization with the gun mechanism during loading. Such a system must be based on rigid mechanical coupling to maintain a very high level of reliability. Principals in the development of these systems were recent Ph.D.'s in mechanical design. One of the conclusions that may be reached is that innovation in mechanical systems is possible today. The need for this level of expertise is illustrated by the fact that one of our major consumer products companies employing more than 1000 engineers has yet to hire a Ph.D. trained in mechanical design science.

Other attributes of purely mechanical devices (9) are their exceptional load capacity (ability to create large forces on a repetitive basis), precision at high speed, minimal energy consumption (by a factor of 10 compared to hydraulically driven systems), in many applications virtually no noise generation, long life, and high reliability (10). Apparent contradictions to these attributes can be shown to be due to poor design.

For example, the precision of a textile machine depends on using quality bearings, rigid links for the mechanism, and a suitably strong crankshaft-flywheel combination. Unfortunately, the design of such highly nonlinear and multiparameter systems is not only complex (involving several of implicit high-order algebraic equations) but only partially understood (rarely can a direct solution be obtained for a particular set of operating specifications). Subcomponent mechanical devices (cams and linkages) may easily contain 50 independent design parameters, making their optimal design a major unsolved task (10). For example, a basic six-link mechanism contains 1 geometric, 20 mass, 12 spring, and 10 friction damper parameters. Considering each parameter to have only ten distinct values, this would create an overwhelming collection of 10 devices, all having unique properties that are potentially useful in solving a specified machine process.

It has been suggested that heavy industry systems are more dependent on quality application of materials, while light industry is more dependent on optimal parametric design of the system's geometry. Heavy machinery may be represented by large stationary steam turbines, which require very high quality castings, machining, and bearings, but also very sophisticated design of specially cooled turbine blades made of exotic materials. Light machinery may involve the manufacture of a complex multilayered product of paper, plastic, and woven stock. At 300 units per minute, the product is made sequentially assembling the components, shaping them into the final form, collecting the products inso salable quantities, and finally packaging them for shipment. Every product must meet stringent specifications of quality, size, and cleanliness. The processing line may involve ten unique stages, all of which must be precisely coordinated or no product will result. In this case, precision of operation is a dominant consideration to ensure that the product is salable.

ECONOMIC FACTORS

A brief study has been made of Department of Commerce trade figures for principal imports and exports (see Tables 1 to 4). From 1970 to 1976 the balance oscillated in the range of ± $4 billion, with a peak surplus of $11 billion in 1975 and an accumulated loss during this period of $2.6 billion. In that year our trade balance showed a $30 billion loss, and for 1978 it is expected to show a $50 billion loss. The primary cause of this severe deficit is petroleum, for which our trade figure was −$2.3 billion in 1970, −$7.0 billion in 1973, −$24.0 billion in 1975, −$40.5 billion in 1977, and is approaching −$45.0 billion in 1978 (see Fig. 1A). This oil deficit will not be significantly reduced in the next decade.

TABLE 3.—DEPARTMENT OF COMMERCE TRADE DATA FOR HEAVY MACHINERY AND ITS MANUFACTURES[1]

Code No. and commodity	Trade (billions of dollars) 1975 exports	1975 imports	1975 balance	1970 balance	1977 balance
678.2, 679,691—Iron and steel manufactures	1.559	0.529	+1.030	+0.169	+0.596
712.5—Agricultural tractors	1.388	.339	+1.049	+.354	+.797
715—Metalworking machines	.919	.367	+.552	+.232	+.289
719.1—Heating and cooling equipment	1.309	.186	+1.123	+.428	+1.407
719.2—Pumps and compressors	1.505	.344	+1.161	+.476	+1.239
719.3—Cranes and handling equipment	1.845	.226	+1.619	+.508	+1.377
719.9—Metal foundry machinery components	.806	.307	+.499	+.275	+.571
731—Railway vehicles	.461	.090	+.371	+.077	+.223
732.8—Vehicle and tractor parts	4.384	2.507	+1.1877	+1.047	+1.226
951.0—Arms of war	1.180	.038	+1.142	+.648	+1.406

[1] All categories shown exhibited trade balance improvement from 1970 to 1975, but many declined from 1975 to 1977.

TABLE 4.—DEPARTMENT OF COMMERCE TRADE DATA FOR LIGHT MACHINERY AND ITS MANUFACTURES[1]

Code No. and commodity	Trade (billons of dollars) 1975 exports	1975 imports	1975 balance	1970 balance	1977 balance
629.1—Rubber tires	0.291	0.567	−0.276	−0.127	−0.677
694—Nails, tacks, and so on	.146	.388	−.242	−.110	−.427
714.1—Typewriters and check-writing machines	.033	.149	−.116	−.072	−.189
714.2—Calculating and accounting machinery	.096	.339	−.243	−.084	−.263
717.3—Sewing machines	.077	.187	−.110	−.074	−.141
732.9—Motorcycles	.018	.744	−.726	−.323	−.673
82—Furniture	.175	.406	−.231	−.178	−.410
83—Travel goods and handbags	.037	.217	−.180	−.096	−.354
84—Clothing	.402	2.550	−2.148	−1.066	−4.070
85—Footwear	.095	1.301	−1.206	−.620	−1.838
861.4—Cameras, still	.103	.175	−.072	−.035	−.253
864—Watches	.101	.426	−.325	−.164	−.538
891.1—Phonographs and tape recorders	.195	.603	−.408	−.302	−1.026
894.2—Toys and games	.194	.332	−.138	−.180	−.358
894.4—Fishing and guns	.156	.239	−.083	−.007	−.288

[1] All categories, except motorcycles, exhibited a worsening negative trade balance.

On the whole, manufacturers rose from +$4.5 billion in 1970 to a peak of +$20.3 billion in 1975, but fell again to +$5.6 billion in 1977. Heavy machinery went from +$2.6 billion in 1970 to +$8.9 billion in 1975 with a 3:1 ratio of positive over negative categories. It fell to +$4.6 billion in 1977, showing that even the heavy class systems are increasingly vulnerable (see Fig. 1B). Light machinery exhibited a nearly constant deficit of −$5.5 billion from 1970 to 1975 with a 3:1 ratio of negative over positive categories. In 1977 this deficit increased to −$8.2 billion, showing that it is alarmingly sensitive to international trade competition (see Fig. 1C). Heavy manufacturers reflect long-term industrial excellence, proved return on investment, and long-term research support by government (DOD) for materials and alloys. Light manufacturers reflect a long-term slide in research activity while other countries have expanded their efforts.

One special manufacturer that is a mix of the heavy and light classes of mechanical systems is aircraft, which has grown from +$2.4 billion in 1970 and +$5.6 billion in 1975 to +$5.3 billion in 1977. One could argue that DOD involvement was a principal reason for this surplus. Another such category is passenger cars and trucks, which had a stable −$2.5 billion deficit from 1970 through 1975 but fell to −$6.3 billion in 1977. It has been argued that the Detroit auto industry forfeited part of its market by not energetically developing small cars. Once the market is prejudiced, it is very difficult to reverse it.

A remarkable report on our international trade was carried by the New York Times on 5 July 1978 (11). During the first 5 months of 1978, imports of machinery and manufactures were up 37 percent and were double our oil imports, which were 10 percent lower than in the same period in 1977. Our exports rose nominally about 12 percent to match inflation. Our trade deficit increased alarmingly from —$8.2 billion to −$14.8 billion during this same period, a 79 percent rise. A valid assessment of our manufacturing decline is the following conclusion based on a poll of industrial R & D managers: "A grim mood prevails today among industrial research managers. America's vaunted technological superiority of the 1950's and 1960's is vanishing, they fear, the victim of wrong-headed federal policy, neglect, uncertain business conditions, and shortsighted corporate management." It is clear that a technological opportunity exists which, if pursued vigorously, can partially reverse this decline and stabilize the relative economic position of the United States in the world market for machinery and its manufacturers.

BRIEF HISTORICAL REVIEW OF LIGHT MACHINERY DESIGN

During the late 15th century, Leonardo da Vinci developed a remarkable conceptual model of a cable-operated mechanical arm (manipulator) for mechanical intelligence at the input (human muscle power) and mechanical function at the output (the

duplication of the complex motions of a bird's wing). Today, 500 years later, the modern equivalent is capable of receiving all forms of control input intelligence—human, electronic, pneumatic, and so on. In the last quarter of the 18th century, the increasing availability of dependable steam power made possible the duplication of simple human motions (such as weaving motions to make a fabric) on a cyclic basis by mechanism-based machines. The Industrial Revolution, centered in England, was the result. Similar progress occurred in agricultual machinery in the United States during the second half of the 19th century, and was clearly a factor in the rapid opening of the West.

A pivotal book, Theoretische Kinematik (12), published in 1875 by Germany's top scientific officer, F. Reuleaux, established the basis for the science of machines. This work has been ongoing in Germany for 100 years, and Swiss and German textile machines are representative examples of the result. In this country in the first half of this century, companies hired expert designers from central Europe to compensate for our inactivity in machine science. Consequently, there was little pressure on the universities to provide excellence in education or technology in this field. In 1922, the renowned theoretician in analytical mechanics, S. Timoshenko, arrived in this country from Russia. During the next 10 years he published several books dealing with such subjects as elasticity, plasticity, plates and shells, strength of materials, classical dynamics, and vibrations. The machinery community found it difficult to embrace his revolutionary methods, and as a consequence his initiative attracted many from the study of machines into these fascinating fields of theoretical research. Academic research on the study of machines finally got under way during the decade 1955 to 1965, motivated by the early research of F. Freudenstein, the teaching example of A. S. Hall, Jr., and the leadership of F. R. E. Crossley in developing international relationships. However, their effort is only now bearing fruit. With the arrival of Sputnik in 1957 and the consequent enhanced government research programs, the machine community was ill-prepared to obtain sizable research support.

Generally the university community has seen a 20 percent effective reduction in federal funding during the past decade (13). Even during periods of research expansion, the field of machine science has never enjoyed a significant portion of this funding. This contention is supported by the fact that the National Science Foundation (NSF) funding for basic research is 30 times higher per fundable faculty member in physics than in mechanical engineering and mechanics. It is indicative that the word mechanical is rarely used in the titles of major federal research programs. To my knowledge, there is no federal program dealing with the science of mechanical design. The result of this modest activity is increasingly obvious today, as illustrated by the economic data cited in this article.

Our development of mechanical design science has been so neglected that cycles of 5 to 7 years from design to production are commonplace. It took 30 man-years to generate the dynamic model for the space shuttle manipulator (14). Our computers are modern, but the mechanical science to design and manufacture tomorrow's products is outdated. To revitalize the science of design will require a major commitment from several mission-oriented agencies as well as NSF. It is known that significant programs for electronics, materials, and mathematics already exist for enhancement of university research. I suggest that two major areas be added: mechanical design science, which is documented in this article, and the related field of manufacturing processes (15). Both could do a great deal to enhance our productivity in basic manufacture, which is the nation's largest technological endeavor. Since these areas are distinctly mission-oriented, government funding must allow for clase industrial relations to make the results more immediately applicable.

ROBOTICS AS A CATALYST FOR LIGHT MACHINERY DEVELOPMENT

Those who attended the NSF Workshop on Robotics last February concluded that the scientific base now exists for dramatic advances in mechanical design technology and its associated industrial spectrum (16). They deplored the fact that the United States, in its vast research and development program, is not promoting the development of this technology but, by default, is yielding the field and subsequent markets to Japan, Germany, and Russia. They strongly recommended that a directed national policy be established to substantially accelerate the development of advanced technology for robotic systems.

The robotic system is in many ways the technological equivalent of the human system, having components such as sensors (eyes), actuators (muscles), and a computer (brain), which allow the system to perform mechanical functions by reacting to needs in its environment that it perceives and interprets. Such systems are of particular importance for one pressing problem, the remote maintenance of nuclear systems (17).

Two nuclear power plants in Florida have repairs under way with a cost approaching $0.6 billion (18, 19). Human maintenance is either inadequate, too expensive, or limited by radiation regulations. It is legally required of plant operators that all available technology must be used to reduce the radiation exposure to maintenance personnel. Estimates of the operation of fusion reactors indicate that they will require replacement of the plasma shields once every 2 years. There is no available precise documentation of the functional requirements for disassembly and assembly but it appears they will be very difficult to achieve by near-term robotic technology. Remote inspection and maintenance require the highest level of mechanical generality (more geometric parameters for design means a more versatile device) and operational precision. Because of this necessary complexity, the robotic manipulator is not controllable by a human operator; his role must be augmented by digital computation. This, then, will be one of the most demanding engineering problems yet to be fully addressed by any machine research group in the United States.

Offshore oil well drilling faces similar problems. The establishment of the country's offshore economy may eventually hinge on remotely operated surface and sea floor stations, both of which require the use of the manipulator for inspection and maintenance. The only alternative is to use divers, who must operate in a hazardous environment, have endurance limitations, and are very expensive (20). Similar problems exist for coal mine accident missions, as illustrated by the March 1976 methane explosions in the Kentucky Scotia mine. In this case, a search party of 11 people were killed trying to determine the status of a group of trapped miners. Robotic survey systems would have been able to perform the same task without jeopardizing the lives of additional personnel.

Other applications of robotics are for defense-related functions such as deep submergence vehicles and surveillance vehicles in space, microsurgery to enhance the mechanical precision of the surgeon's hands, human augmentation in manufacturing and prostheses for the incapacitated, and industrial automation and assembly. Generally, the use of robotic systems (industrial robotic manipulator arms) as a manufacturing aid in automation is considered to be marginally cost effective today in the United States (21). Hence, most applications involve either human enhancement (to increase endurance in a particular task, as in handling heavy, hot forgings) or human protection (to remove the operator from a dangerous or toxic task, as in painting automobile bodies). In Japan, robotic devices are most likely to become economical because of that country's impending labor shortage (21). Japan has invested $2 billion on government and industrial R & D in robotics (22). This far exceeds U.S. efforts. Each major Japanese company is now pursuing specialized robotic devices for its present or future needs. These companies are actively developing completely automated self-contained factories to be sold to developing countries.

The robotic system requires the technologies of several engineering disciplines (such as machine design, vibrations, strength of materials, automatic control, and computer science). Consequently, a team research effort is essential for meaningful progress. Since this is an emerging technology of great interest, it could become the vehicle for technological development in the whole field of mechanical design science. It is expected that as more electronics are integrated into basic machines and as robotic devices are more widely applied, a general blending of the whole spectrum will occur. Because every mechanical function of the robotic system must be electronically controlled, the robotic device will perhaps represent the ultimate marriage of these two technologies.

One of the major tooling efforts in the United States has been numerical control machines. These systems are computer controlled and are capable of automatically duplicating the function of several distinct machine tools (such as the lathe, mill, and plane). Such devices may be considered as unsophisticated robotic systems. The auto industry is now attempting to pursue advanced technology machines (modern numerical control machines and robotic mechanical arms), but it is finding that our tool industry is inadequately prepared for such a large surge of orders and may have to go to foreign sources (23). It is interesting to note that in 1968, 50 percent of the cost of a numerical control machine was due to electronics. Today, that portion of the cost is down to 15 percent. One may thus argue that the security of return on research investment is much better for the mechanical portion of this system. This highlights the relative stability of return on investment in mechanical technology in general.

FUNCTION OF MAJOR LONG-TERM RESEARCH TEAMS

The present federal funding structure has been criticized on the basis of "fragmented work, no long-term commitment, not enough equipment money, restrictive control, short-term payoffs, critical size projects are rare, younger faculty are not well involved, government research reports sit on the shelf, and industry is not involved in establishment of research priorities" (24). It is clear that the growing technological superiority of foreign light industry is the chief factor to be considered. Within the United States the role of venture capital has all but vanished, so innovation has diminished. In most developed countries, Japan and West Germany in particular, government and industry cooperate on common goals, usually with universities as the research vehicle. There has been a significant decrease in recent years in unrestricted general research in all sectors of the U.S. research community. In fact the presidential science adviser, Dr. Frank Press, claims that industrial research has become defensive—developing new technology to satisfy environmental regulations—rather than innovative. Edward Kennedy, the Senate champion of NSF, has asked for an expanded role for industry at NSF (25), and that agency has indicated its willingness to cooperate (26).

How should the ideal government, university, and industrial research interaction be established? The DOD has had considerable success with its Joint Services Electronics Program (JSEP), which "provides a valuable and continuous flow of research ideas in electronics, decreased loan on researchers because of long-term commitment, minimum restrictions and commitments to administer, and maintain leading edge effort in electronics for national defense long-range capability" (24).

A new Defense Science and Engineering Program (DSEP) has been proposed by DOD. It will have many of the structural features of JSEP, except that it will have no specific technological mission. Because of this flexibility and its interdisciplinary basis, DSEP should be able to address any future technological need.

The means of technology transfer in this case is close cooperation between interested DOD laboratories. Any major research team should have several active outlets for its developing technology. For example, a defense contractor dealing with ammunition handling, an industrial robotics manufacturer, a high-technology R & D company, and a research team dealing with robotics. To be effective, these interactions must be mutually beneficial. The research team would have immediate knowledge of industrial problems, and industry would have an early review of evolving technology. In cases where development and demonstration are the dominant considerations, it might be appropriate to have ten times as much applied research in the industry group as basic research in the scientific group. If new scientific results are the primary goal, this ratio may be suitably changed. Partially supporting some of the industrial members under the grant to pursue prototype development and experimental testing activity should be seriously considered.

CONCLUSION

Light machinery and its manufactures are showing an increasingly negative trade deficit, approaching $9 billion per year with a 3:1 ratio of negative over positive categories. In the past, heavy machinery has had a positive trade balance, although 1977 data show that this is weakening. The importance of this technology has been recognized in recent months by many key national research policy-makers. The article suggests that a primary corrective step to be taken involves universal strengthening of the field of mechanical design science. Integration of the expanding micro-electronics technology with the mechanical system is an essential ingredient. This integration may best be demonstrated in terms of the demanding robotic system.

Recent manpower forecasts (27, 28) indicate that high-technology programs have weakened during the past decade and will have been significantly curtailed by 1985. Corrective steps must be taken now to rectify this expected deficiency. Agencies such as NSF in its Engineering and ASRA (Applied Science and Research Applications) divisions, DOD, NASA, and the Department of Energy all have existing missions related to mechanical design science but have not yet been enabled to fund major research programs. Major long-term academic research has proved to be cost-effective and productive of new technology, and it is now essential for rapid development. At this time, no centers for light machinery research are known to exist in the United States.

It is apparent that in the light machinery field, foreign manufacture has outstripped U.S. technological development. This continuing weakness of our machinery and manufactures is clearly evident from the trade balance which reached a peak of $20 billion in 1975, went down to $5 billion in 1977, reached parity in the middle of 1978" and may continue its downward slide. Correcting this condition should be a national concern. Parity is not a sufficient goal. Accepting parity would imply an eventual reduction of our standard of living. The overwhelming burden of oil imports suggests that no major deficit category in manufactures should be tolerated. A national policy to establish a cohesive program for light machinery research (or intelligent machines) is not only desirable but necessary.

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SENATE RESOLUTION 565—SUBMISSION OF A RESOLUTION RELATING TO PEACE IN THE MIDDLE EAST

Mr. ROTH submitted the following resolution, which was referred to the Committee on Foreign Relations:

S. RES. 565

Whereas, the people of the United States and the peoples of Israel and Egypt deeply desire a just and lasting peace in the Middle East; and

Whereas, the President of the United States invited the leaders of Egypt and Israel to Camp David to negotiate agreements that could lead to a peace settlement; and

Whereas, because of the dedication, statesmanship, and persistence of the leaders of the United States, Israel and Egypt, two agreements were reached at the Camp David summit establishing frameworks for achieving a peace treaty between Israel and Egypt and peace in the Middle East; and

Whereas, these agreements, if implemented, can lead to a new era of growth, prosperity, and productive interchange among the peoples of the Middle East; and

Whereas, the people of the United States are proud of the role that their country and President played in negotiating these frameworks;

Therefore, now be it resolved by the Senate of the United States that—

(a) The Senate commends the President of the United States for his work during the Camp David summit conference, and congratulates him and the leaders of Israel and Egypt for the agreements that they have reached;

(b) The Senate expresses its gratitude to Mr. Sadat and Mr. Begin for their statesmanship, wisdom, and willingness to be flexible;

(c) The Senate fully supports the agreements which have been reached and urges other leaders of the peoples of the Middle East and world to endorse and support these agreements; and

(d) The Senate believes that Jimmy Carter, Anwar Sadat, and Menachem Begin deserve Nobel Peace Prizes for their achievement of these agreements.

Mr. ROTH. Mr. President, I am very pleased that important, constructive steps toward peace were made at the Camp David summit.

The outcome was good news for the American people and for the peoples of the Middle East.

Our euphoria, however, must be tempered by the recognition that a long road and many obstacles lie ahead on the way to a comprehensive Middle East peace settlement.

A separate, bilateral peace agreement between Israel and Egypt now seems within sight. Since the Middle Eastern wars have been primarily conflicts between Egypt and Israel, a separate peace would be a very significant development. If truly implemented, it would end the encirclement of Israel by hostile nations and permit productive interchanges between two of the world's oldest nations for the benefit of both.

It will be a much more difficult task to transform the document outlining a framework for peace in the Middle East into a reality. The framework, it must be remembered, is only a framework and it is endorsed only by the leaders of two Middle Eastern nations. Very difficult issues remain between Syria and Israel. Jordan and Saudi Arabia have not endorsed the framework endorsed by Mr. Sadat and Mr. Begin. The sensitive issues involving the West Bank, the Gaza Strip, and the future of the Palestinian people, including the critical question of sovereignty, remain for further negotiation. The framework does not resolve the bitter civil strife in Lebanon, and it will be violently opposed by radical elements among the Palestinians. It is very possible that those opposed to this agreement will engage in new acts of terrorism against Israel and Egypt in an effort to sabotage it.

For Mr. Begin and Mr. Sadat, therefore, the most difficult obstacles remain ahead. The great statesmanship they have displayed in the past must be matched by as great statesmanship in the future. Each are likely to come under severe pressure to back out of all or

parts of the agreements that have been reached. In each capital, there will be some who will argue that too many concessions have been made and the gains too elusive. Each leader, with our help, must seek to convince other Middle Eastern States and the Palestinian people that this agreement does establish a framework within which a just and lasting peace can be achieved.

Mr. President, President Carter deserves universal credit for the role that he played in calling this summit and for his work in helping to fashion these agreements. He certainly deserves the praise of the Congress and the American people for his efforts. I think he richly deserves a Nobel Peace Prize for devoting his time and energy to a task that is so meaningful to the peoples of the Middle East and so important to the cause of world peace.

I am, therefore, submitting a resolution commending the President and the leaders of Israel and Egypt and throwing the full weight of the Senate behind these important agreements.

JOINT SESSION OF THE TWO HOUSES TO RECEIVE A MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER laid before the Senate, House Concurrent Resolution 713, which was read as follows:

H. Con. Res. 713, providing for a joint session of the Houses on Monday, September 18, 1978, to receive a message from the President of the United States.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the concurrent resolution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 713) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONCLUSION OF MORNING BUSINESS

Mr. SCHMITT. Mr. President, I reserve the remainder of my time. If there is no need for it, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator withhold that for a moment?

Mr. SCHMITT. Yes.

The ACTING PRESIDENT pro tempore. Does anyone else wish to speak on morning business?

Mr. SCHMITT. Mr. President, I withdraw the unanimous-consent request, and I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. There being no further morning business, morning business is closed.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, the conference report on H.R. 5289, which will be stated by title.

The legislative clerk read as follows:

Conference report on H.R. 5289, an act for the relief of Joe Cortina, of Tampa, Florida.

Mr. MELCHER. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HASKELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). Without objection, it is so ordered.

Mr. HASKELL. Mr. President, I have reluctantly decided to oppose the natural gas conference report. My decision to oppose the conference report has not been an easy one, but is based upon a careful review of the merits of the proposal.

Mr. President, as is well known, I have been involved for over a year in the Senate's attempts to resolve the 24-year-old dispute over natural gas pricing. I signed the natural gas conference report, not because I supported all the provisions of the bill, but because I believed that it was essential to bring this measure which my colleagues and I have labored over for so long to a final resolution on the floor of the Senate.

There is no doubt that some action must be taken to end the uncertainty both producers and consumers have faced because of the present natural gas pricing regulations. The result of the deliberations over the past year—the natural gas conference report—dose provide a solution to these questions. However, Mr. President, in my view the bill before us is not the most desirous solution to this problem. Therefore, I have reluctantly decided to oppose the natural gas conference report.

It is my view that this bill incorporates the worst features of both regulation and deregulation. While the bill raises prices significantly for consumers, it will not result in substantial additional production. In addition, the bill would create a regulatory nightmare even worse than the presently cumbersome system for producing, pricing, and distributing natural gas.

Mr. President, as you know, I was a conferee on this bill, and supported some of the compromises included in the bill before us. But, taken as a whole, I believe the bill will do more harm than good. There is a way to resolve the natural gas controversy, but I believe that in our haste to adopt a national energy plan we must make sure the elements of that plan actually will contribute to greater domestic production without unnecessary burdens on consumers.

I remain firm in my conviction that total immediate deregulation would result in an economic burden on the average American family that would be disastrous. In making my decision to oppose this bill, I have attempted to weigh the effect rejection of this legislation would have on the desire by many for total deregulation. It is my view that the substitute proposal is the most advantageous way to proceed.

Mr. President, I would like to outline briefly some of my reasons for opposing this bill.

REGULATORY ISSUES

Mr. President, my most serious reservation about this bill is that the regulatory process it creates would be a nightmare and far worse than the present system. The administration argues that the compromise is a significant improvement over the current cumbersome and unnecessary regulatory requirements of the Natural Gas Act. However, analysis performed by the Office of Enforcement of the Federal Energy Regulatory Commission (FERC) concluded that administration of the bill would be virtually impossible.

While technical changes have modified this situation somewhat, they certainly have not entirely eliminated these problems. The original FERC memo states:

The proposal is so complex, ambiguous, and contradictory that it would be virtually impossible for this commission to enforce it in a conscientious and equitable manner . . . the provisions are so involved that OE (Office of Enforcement) fails to understand how any reasonable accurate assessment of the price and revenue impact could be made.

The hopeless complexity and excess of bureaucratic regulation are exemplified by the many categories of new gas—estimates vary from 17 to 23 categories—which the compromise creates. It is hard to believe that if we cannot even agree on the number of categories of new gas there would be under this bill, that the compromise simplifies the regulatory process.

The problem of identifying which categories of gas a new find qualifies for and the liability associated with an improper determination hardly amount to "* * * the very specific prices that the producers can expect" as stated by the President. Given the fact that there were 11,000 gas well completions in 1977 with an increase expected in 1978, one can only imagine the size of the bureaucratic phalanx that would be required to administer and enforce the provisions of the compromise. Instead of alleviating current regulatory burdens the compromise exacerbates the situation with new requirements on producers as well as both State and Federal enforcement agencies.

COST TO THE CONSUMER

The administration argues that the compromise will cost consumers no more than a continuation of current law. Unfortunately, the administration's figures on the costs of various versions of the compromise have vacillated widely. The

credibility of these figures, or indeed of any figures, is in severe doubt by most who have been actively involved in this issue. The continually changing figures and assumptions that are cranked into the model are responsible for the wide variation.

However, the Energy Information Administration (EIA), which is an independent agency within DOE, is relatively immune to external manipulation. This agency was created in 1976 pursuant to an amendment I sponsored to create an agency which would provide an independent, accurate, and comprehensive national energy data base, severely lacking at the time. The EIA performed an analysis of the compromise which is widely at variance with the administration's figures. While there is some controversy over the EIA's results, I believe they are less susceptible to external pressures than other analyses.

The EIA found that the compromise will cost consumers a massive $29 billion more than a continuation of current law by 1985. While the compromise will cost less than immediate deregulation, the EIA analysis indicates that the new gas ceiling prices established under the compromise are in fact higher than the deregulated or market clearing prices. Under these circumstances I would prefer to take my chances with the possibility of immediate deregulation in the next few years.

SUPPLY RESPONSE

In return for the $29 billion cost to consumers, EIA estimates that there will be an insignificant amount of new gas production—roughly 3 to 4 percent of the total amount of natural gas we consume between now and 1985. The administration and AGA are now estimating more than twice this supply response. The administration's figures are at great variance with past comments on deregulation, which most analysts believe would produce more gas than the compromise. In September 1977, President Carter stated:

> Deregulation of natural gas prices would provide windfall profits without increasing supply. Deregulation would cost consumers an extra $70-billion by 1985, but would increase supplies very little if any.

The fact is that nobody really knows how much gas will be produced under the bill—because of the bill's complexity. However, most independent analyses indicate that the supply response under the compromise will be insignificant if not infinitesimal.

COSTS TO RESIDENTIAL CONSUMERS

Both of the bills originally passed by the House and the Senate contained incremental pricing provisions that allocated the higher new gas prices to industrial users while protecting residential consumers. While the compromise contains incremental pricing provisions, they are constructed in such a fashion as to be virtually ineffective. According to the EIA analysis, the prices for residential users under the compromise will be higher than under current law and under deregulation. As a result industrial users shoulder less of the burden of the new gas price increases under the compromise than with current law or under the Senate deregulation proposal. As a consequence, industrial consumption of natural gas is expected to increase relative to residential consumption under the compromise. All of these results are undesirable, especially in light of the fact that residential uses of natural gas are generally more efficient than industrial uses.

Finally, Mr. President, in my opinion, the agreement with Senator McCLURE, in light of the administration's past position on the breeder reactor, represents the most objectionable arrangement which the administration has entered into in its attempt to win support for the natural gas bill. I do not believe that two such controversial issues, especially one which might involve a significant relaxation of our nuclear non-proliferation goals, should be tied together. The administration admits that we do not need the breeder in this century, yet is willing to lend its support to a multi-billion dollar accelerated program that it had formerly opposed. In the words of the White House on August 30, 1978:

> The breeder will not be needed in this century since current conservative estimates of domestic uranium reserves exceed the lifetime requirements for all nuclear reactors that will be constructed in the United States in this century.

The argument that the United States must pioneer in nuclear technology, or the rest of the world will go ahead with breeders, causing a proliferation of weapons-grade plutonium worldwide has proven fallacious. On the same day that the McClure agreement was announced, the Washington Post ran a story that France had cancelled its breeder contracts with Pakistan and West Germany is significantly slowing down its project with Brazil.

Mr. President, we have an option to this bill. We can recommit the bill with instructions that the President's emergency allocation and temporary sales authority be extended, and that intrastate pipelines be granted authority to sell excess gas to the thirsty interstate pipelines. Since these provisions have already been agreed to by conferees, they and the other three bills constituting the national energy plan can be quickly agreed upon.

Moreover, the principal aim of the bill—to prevent shortages as experienced in 1977 by gaining access to the excess gas in the intrastate market through price parity—can be obtained administratively by FERC. FERC is required to carry out its biennial review of natural gas prices this year. Most observers agree that FERC would be in a position to raise new gas prices to around $2/mcf. This is actually higher than the current intrastate new gas price which averages $1.75/mcf due to the current glut of gas. Therefore, price parity between the dual markets can be obtained through the normal FERC rulemaking authority.

Mr. President, I believe we should adopt a natural gas bill. However, I do not believe that it should be the so-called compromise gas bill. Recommitting the conference report with instructions to report back a modified bill represents a sound middle ground between no bill and the excesisve costs to consumers and excessive regulation of producers which the conference report represents. I believe that we should get beyond the rhetoric of passing this bill because it is supposedly the best we can get when known it is a bad bill. We do have an option that will prevent shortages in the future and move gas into the interstate market where it is needed. I do not believe that we should pass a bad bill just to get something that can be labeled a national energy plan.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, the Senate has currently before it in the form of the Natural Gas Policy Act, one of the most complex pieces of legislation that it will consider this session.

The issue of natural gas legislation has been with the Senate for a good many years.

The first serious effort to deregulate new natural gas occurred in 1973. Senator JAMES L. BUCKLEY offered such legislation which was tabled by the Senate by the close tally of 45 to 43.

In 1975, Senators PEARSON and BENTSEN introduced legislation which would have deregulated new onshore gas immediately, and new offshore gas would have been deregulated 2 years after the enactment of the bill.

The Senate passed the bill in October 1975 by the overwhelming vote of 58 to 32. It died in the House.

Again, in 1977, the Senate considered the issue of natural gas price deregulation. Senators PEARSON and BENTSEN introduced legislation for deregulation of new onshore gas within 2 years of the enactment of this bill.

New offshore gas would have been deregulated within 5 years of the bill's enactment.

The Senate adopted the Pearson-Bentsen deregulation proposal by a vote of 50 to 46.

The issue of deregulation of new natural gas gave me great concern.

I pondered the pros and cons of the subject in great depth for a long time.

As one who represents a consumer State, I was troubled by the estimates of the cost that would be brought to bear upon the Nation's consumer.

On the other side of the coin was the stark fact that the Nation's known and economically recoverable gas supply was being rapidly depleted. Without an assured and an increased gas supply, the Nation's consumers would not be able to maintain their basic living standards,

and America could not continue to grow at a strong economic rate.

Weighty evidence was presented that the only way the Nation's gas supply would be increased was by deregulating new natural gas prices.

It was not until December of 1973, after much deliberation, that I reached the conclusion that while the cost to consumers would be increased, deregulation was necessary to provide the Nation with its needed natural gas supplies.

Reluctantly, I voted for deregulation in 1973 and again in 1975 and in 1977.

For America to continue to maintain its premier position in the world, it must continue to explore for, locate, and develop its natural resources.

Toward this end I have been supportive of legislation which would allow the United States to develop its abundant and varied natural resources to the maximum extent possible with the least amount of Government controls.

The purpose of the Senate-passed legislation would have been to increase the supply of natural gas.

However, the conference bill now before the Congress is substantially changed from the bill I voted for in 1977.

Mr. President, as we consider the merits of this legislation, we are buffeted by arguments being advanced pro and con.

One argument being advanced by the proponents of the bill is that by either voting against this bill or for a motion to recommit the bill, the Senate will be repudiating President Carter and causing him and the United States to lose face in the world's eyes. It is argued that such a vote will prevent the United States from adopting any energy plan to meet its needs.

However, the national energy legislation proposed by President Carter in 1977 is an omnibus package consisting of five bills addressing five different areas of concern, only one of which is the natural gas "deregulation" bill.

The other components of the national energy plan are:

First. Utility rate reform which calls for, among other things, State utility commissions to consider certain procedures in the carrying out of their duties; Federal Energy Regulatory Commission to order at the wholesale level interconnection of utility systems and allows cogenerators of both steam and electricity who are not a utility to sell power to entities and not come under utility regulation;

Second. Conversion of oil and gas burning boilers to boilers fueled with coal;

Third. Energy conservation;

Fourth. Energy taxes, including the crude oil equalization tax; and

Fifth. Natural gas deregulation.

I support three of these provisions—utility rate reform, coal conversion, and conservation.

I am supportive of reasonable tax measures which would provide incentive to energy producers to explore for and develop needed energy resources.

But I am opposed to the crude oil equalization tax which would place a heavy financial burden on the American people without providing for any increase in production.

In summary, the President's energy package is made up of five components, three of which I support, one I oppose, and the fifth is the pending legislation.

Approval of all elements of the President's package is not essential to establish this Nation's willingness to meet the energy challenge, especially if an element is seriously flawed.

In an attempt to reach a conclusion on this bill I have examined the conference report and listened to the arguments put forth by both the proponents and the opponents of this legislation.

It is argued that this bill is a deregulation bill.

Yet, the bill calls for price controls to remain on almost all categories of natural gas through January 1, 1985. At that time price controls would come off for 6 months. On July 1, 1985 the President would have the authority for 2 years to arbitrarily reinstitute price controls, subject to congressional veto. If price controls should be reinstituted, these controls could last for 18 more months.

Thus, the natural gas industry could be subject to price controls or the threat of Presidential reimposition of such controls until at least January 1, 1989.

One can see that the bill calls for at least 7 more years, and possibly 10 years of continued price controls.

What is more, under the provisions of this bill, many categories of natural gas will remain indefinitely under price controls. Several of these categories—stripper gas wells, certain categories of offshore gas and intrastate gas to name three—currently provide a large portion of the U.S. natural gas supply.

After examining an analysis of the natural gas pricing proposals of the bill undertaken by the Energy Information Administration of the Department of Energy, it appears that—under the proposed conference bill—less gas will be deregulated in 1985 than is currently deregulated.

The study shows that 37 percent of our natural gas supply will be deregulated in 1985 versus 48 percent of the supply deregulated now.

Also, the natural gas industry will be subject to increased administrative regulation and burdensome reporting requirements. These administrative regulations will continue for the life of the legislation.

Arguments have been advanced that this bill will substantially increase our natural gas supply, but this assertion is open to serious question.

The conference bill added several new provisions to the Senate-passed bill, some of which have caused me concern.

One addition which I find to be one of the major objections I have with this bill is that it would place under federal regulation for the first time in history the intrastate gas market.

As a matter of policy, I am against increasing or expanding Federal governmental regulation over spheres traditionally reserved for States' control.

The intrastate gas market currently provides the United States with 40 percent of its supply.

The natural gas bill which passed the Senate in 1977, and which I voted for, would have completely deregulated new natural gas prices.

I now find that the conference bill does just the opposite of what the Senate bill set forth, and in fact extends Federal price controls to a segment of the gas industry which has previously been unregulated by the Federal Government.

Historically the intrastate gas market has been populated by small independent producers.

Placing these small entrepreneurs under the control and administrative regulations of the Federal Government as set forth under this bill would discourage their incentive to produce, increase their costs, and, as a result, may force some marginal producers from the market, thus potentially reducing the amount of gas available.

Another issue which has surfaced during the debate on this bill is the question of how much administrative hassle this bill will create.

I have long been of the belief that less administrative regulation will reduce industry's costs and troubles, will lower the end cost of the product produced, and will allow for a more efficient running of the industry, thus benefiting the consumer as well as the producer.

The director of the Department of Energy's Office of Enforcement, Sheila S. Hollis, stated in a memorandum dated August 14:

> The proposal is so complex, ambiguous and contradictory that it would be virtually impossible for this Commission to enforce it in a conscientious and equitable manner.

The Director of Enforcement subsequently modified her memorandum on September 7, but went on to state:

> The legislative framework envisioned by the final Conference Report is exceptionally complex and intricate. Administration and enforcement of this highly technical bill could be undertaken only with substantial adidtional staff and other resources committed to the Commission.

This memorandum caused the Chairman of the Federal Energy Regulatory Commission, Charles B. Curtis, to write Senator JACKSON on September 8 a letter which indicates that he believes the proposed legislation can be effectively administered and enforced.

However, the Chairman, in saying this, went on to write:

> I must responsibly point out, however, that the task of administration and enforcement of the statutory scheme will be most difficult. The legislation will necessitate an augmentation of Commission personnel and financial resources, a sustained and dedicated effort by members of the Commission and its staff and a high degree of cooperation of the various state and federal agencies who are assigned responsibilities under it.

Department of Energy's Director of Enforcement Hollis' September 7 memorandum on this bill calls into question other problem areas in the administration of the bill, and points out that this bill will further intrude into the States' affairs.

Accordingly, Section 503(c)(4) may tend to "Federalize" questions of State law, notwithstanding the contrary indication in the Joint Statement. For example, assume that a State agency determines that certain natural gas qualifies as "new onshore production well" gas under Section 103. The Commission reverses on the ground that the well was within a "proration unit" within the meaning of Section 103(c)(3). While the question of what constitutes a 'proration unit" is one of State law, the only avenue for obtaining judicial review is apparently in Federal court under Sections 503(b)(4) and 503(c)(4). Thus, the State law question is removed to Federal court, contrary to the conferees' intent to allow State courts to review questions of State law.

What is more, the bill sets forth some 23 different pricing systems. This pricing scheme would not allow the producer to know what price he is getting at the time he is drilling.

Not only would the producer have a hard time raising development capital for his drilling as a result of this pricing procedure, but this bill would create a very complex incremental pricing scheme which would be with the country for the rest of the legislation's life.

Although the present pricing procedure is complex the pending legislation does not correct this situation and, in fact, will increase the pricing complexity, unlike the bill which passed the Senate in 1977.

As a result of all of these administrative problems, there would be created a new level of governmental bureaucracy with the resultant unnecessary delay and increased regulatory expense.

FERC's Chairman Curtis, in written testimony Thursday before the Administrative Practice and Procedure Subcommittee of the Senate Judiciary Committee, estimated that his agency will need to hire at least 400 additional employees and receive an additional $13,453,000 of appropriations to administer this piece of legislation.

During oral testimony before the committee Chairman Curtis stated that, in addition to the 400 additional employees that would be hired to administer this bill, he expected to use all of the 500 employees that were authorized to be added to FERC in its fiscal year 1979 budget in administering the natural gas bill. These 500 employees would add another $9.6 million to FERC's budget.

Finally, Chairman Curtis stated that he would have to hire contract services to bridge certain gaps for FERC in its administering of this bill. This would cost FERC an additional $5–$10 million.

Thus, we see that this bill will require that FERC hire an additional 900 employees at an estimated cost of between $27 and $32 million extra.

These figures do not address the increase of other Federal agencies and State agencies staff needed to administer this compromise and complex legislation.

During the 1977 debate on energy policy, it was argued that as a clean-burning, premium fuel, natural gas should be shifted away from boiler fuel uses and toward residential, commercial, agricultural, and essential industrial uses, such as feedstocks. Coal was to be the substitute for natural gas in boilers, especially for the generation of electricity.

I agree with that line of reasoning then, and I agree with it now.

Today, however, we find proponents of the pending conference report arguing for increased gas production and use as a substitute for imported oil. It is difficult for me to see how a premium fuel in limited supply, such as natural gas, can be considered a feasible substitute for any considerable quantity of imported oil over the long term.

To the degree that we substitute coal for natural gas in boilers, we will increase coal consumption and better assure an adequate supply of natural gas for more essential uses. But this does not reduce oil imports.

Of course, oil imports can be lowered by outright substitution of gas for oil, but this seems a dubious policy. Proponents of the conference report point to a current "surplus" of natural gas in the intrastate market, but surely this is not a permanent condition. To pin meaningful long-term reduction in oil imports upon a temporary surplus of natural gas seems to be wholly illogical.

Real deduction in oil imports will be achieved by substituting coal, nuclear power, or other domestic energy sources for present oil uses. I support this effort, but it is not something that will flow from this legislation.

In other words, I doubt that the provisions of the pending conference report will significantly reduce oil imports.

But even if there should be some reduction in imported oil—estimates have been made ranging from 3 to 13 percent reduction—would this, as the proponents maintain, shore up the falling dollars?

Many economists doubt that any such action would be significant or lasting.

Economists with the Federal Reserve Bank of St. Louis note that both the deutsche mark and the Japanese yen have risen sharply in value against the dollar.

This has been occurring, they point out, despite the fact that the United States has imported less oil as a percentage of its gross national product—total national expenditures on goods and services—than either Germany or Japan each year from 1970 through 1977.

Japan and Germany must import almost all of their oil needs.

The noted economist Eliot Janeway does not believe that the dollar would benefit significantly from the passage of the pending legislation. In a telegram to Senator METZENBAUM, Mr. Janeway stated:

It is my considered judgment that passage of the pending gas bill will make no contribution whatever towards restabilizing (sic) the dollar. On the contrary it will advertise the strangulation of our regulatory procedures in red tape and it will accelerate the liquidation of independent gas producing enterprises, thereby weakening the dollar further.

Robert Slighton, vice president of Chase Manhattan Bank, in a letter to the Business Roundtable dated August 23 in addressing the administration's argument that this bill would help to halt the decline of the dollar and strengthen the U.S. balance-of-payments outlook wrote:

. . . In the longer run, the legislation could actually result in some weakening of the dollar as foreign exchange markets come to perceive that the long-run supply of natural gas in the U.S. is as likely to be reduced as increased under the new regulatory regime.

Mr. Slighton went on to write:

. . . The major source of weakness in the dollar at this time is not a weak current or prospective trade balance but rather worsening expectations about U.S. inflation. . . . The current weakness of the dollar springs from the accelerated rate of inflation in the U.S. and the perception that U.S. monetary policy seems designed to accommodate to increased cost-push inflation. No policy action that is not designed to affect inflationary expectations is likely to have a significant and permanent impact on the value of the dollar under current market conditions.

Most will agree that the reason the dollar is in trouble in the international monetary markets is due primarily to inflation.

Passage of this legislation would possibly provide a short-term psychological boost for the dollar in the foreign money markets.

But, this boost would not be long-lasting because this legislation does not get at the root of the U.S. dollar's problem—which is inflation.

Inflation is fueled by many factors, but is principally fueled by accumulated and accelerated deficit spending by the Federal Government.

Enacting this natural gas legislation will not curb governmental spending, and will not reduce our budget deficit.

Thus, I am convinced that the enactment of this legislation will have little value in strengthening the dollar in the international money markets.

After examining the pros and cons I find that because of the changes made in conference, it will not lead to the result which I believe would have flowed from the bill passed by the Senate in 1977—that of substantially increased natural gas supply.

Almost no one says this is a good bill.

Nothing in this bill will solve the Nation's energy problems.

In fact, according to the administration's own estimates the bill will not provide significantly increased gas supplies.

On top of this, the bill will regulate a portion of the gas industry that has until this time remained unregulated, and will result in increased administrative interference with gas production. This will represent a further invasion of the Federal Government into an area of traditional State control.

The remaining alleged benefit of the bill—that it will improve the American dollar in international moneymarkets—would be a short-term psychological benefit at best.

The Senate shortly will consider a recommittal motion with instructions concerning this conference bill.

Because I believe this bill does not meet its stated objectives, I am inclined to favor a recommittal motion, depend-

ing on its content. The bill can and should be improved. Its disadvantages appear to be many.

Mr. HANSEN. Mr. President, I wish to compliment my distinguished friend from Virginia for a very thoughtful and probing analysis of the natural gas question now before the Senate. Typical is the attention and the diligence he has given this question and the considered conclusions that he has reached.

I am, obviously, most pleased with his speech and would like to point out that, despite what is perceived to be the case, the facts in the United States insofar as natural gas goes are at variance with what most people believe they are to be.

As a matter of fact, gas exploration is up sharply, new finds are increasing, and the total production has been holding steady in the United States.

Mr. President, the Senator from Virginia has detailed very well what the facts are. I hope the Senators will take time to read his thoughtfully prepared remarks and will view objectively what the alternatives are.

I think one of the most discouraging things that we who favor a recommittal motion are encountering is a rather widely-held view that we must either take this gas bill or nothing.

Of course, on that basis, I think it is better to take nothing than to impose a presumed solution that would move us back, that would be a very definite and clear step backward insofar as incentive goes. It would very clearly be a definite step backward insofar as simplification goes. It would be a step in insuring greatly expanded litigation in the courts, a tremendous additional burden upon the Federal Energy Regulatory Commission and all those who will be charged with administering this bill.

I thank my good friend from Virginia for the contribution he has made to a better, rational understanding of the legislation before us, and I commend his remarks to the Senate.

Mr. HARRY F. BYRD, JR. I thank the Senator from Wyoming. He is a member of the committee which developed the 1977 legislation which the Senate approved and which the Senator from Virginia supported.

The Senator from Wyoming also was a conferee in developing the present conference report, and he has a far greater detailed knowledge of this conference report and its many ramifications than does the Senator from Virginia. So I am very grateful for the remarks which the Senator from Wyoming has just made.

The Senator from Virginia had considerable difficulty in making up his mind as to just what would be the best thing for him to do and for the Senate to do in regard to this conference report. It is immensely complex for those of us who were not a part of either the Energy Committee or the conference committee.

In many respects, I would like to support the conference report, and I went into the analysis of it with the hope that I could support it. The more I think of it, the more concerned I am that if the Senate does adopt this conference report and subsequently the House adopts it and it becomes law, the Nation will be stuck or very well could be stuck with this legislation for a long period of time; and it may very well work out in a way that the Senator from Wyoming fears and the Senator from Virginia fears. If such is the case, it certainly would be detrimental to the Nation over a period of time.

So I have reached the conclusion, although I must say with considerable reluctance, that I would prefer to see this conference report recommitted with instructions to report back to the Senate.

I do not want my assertion that I plan to support a recommittal motion to be considered a blank check, because I want to know just what the instructions will call for. However, assuming that the instructions are reasonable and assuming that they will eliminate some of the problems that the Senator from Virginia sees with the measure now before the Senate, I would plan to support a recommittal motion.

I again thank my dear friend from Wyoming.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MOYNIHAN). Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, in yesterday morning's Washington Post there was an article which was headlined "Utility Bills Rose $13.4 Billion in 1977." Of the $13.4 billion, 80 percent of that increase in electric and natural gas utility prices was due to the so-called fuel adjustment clause which allows the utility companies to pass along the increased cost of fuel they use in generating electricity. But a third of the $13.4 billion was exclusively an increase in the price of natural gas.

That means, Mr. President, in the year 1977, the American people paid $4.46 billion more for natural gas than they had the preceding year. I have not seen a statistic on how much more they are paying in 1978, but I daresay the figure is probably similar, maybe more.

I spoke here last Tuesday and stated I was going to support the natural gas conference report. One of the primary reasons I was going to support it was because if we do nothing we will be approving continuing increases in people's utility bills exactly as I have set out here. Incidentally, Mr. President, I ask unanimous consent that this article be printed in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BUMPERS. I pointed out in my statement on the floor last week that 42 percent of the natural gas in this country is being consumed or withheld in the intrastate market. When I say it is being withheld in the intrastate market I mean that it is being held in four States essentially, Oklahoma, Louisiana, Texas, and California. In addition to the 42 percent of the natural gas in this country that is being held in those four States, 40 percent of the remainder in the interstate pipelines is going in at a virtually unregulated price because it is being approved under emergency sales contracts which are now legal.

Mr. President, that translates very simply into the fact that 66 percent of the natural gas in this country is to all intents and purposes deregulated right now. The only cap on these interstate emergency contracts is $2.25 an mcf. Natural gas is being sold on an emergency basis for 30, 60, or 90 days at prices sometimes approaching $2.25.

If you want to read another story next year in the Washington Post showing the American consumers have paid another $13 billion or $14 billion as a result of Congress doing nothing, then vote against this bill. I defy anybody in this body to tell me how we are going to save the consumer anything by doing nothing under current law, with the situation I have just outlined.

My very good friend and distinguished colleague from Ohio the other day said, in response to the majority leader's request for a unanimous-consent agreement, something to this effect—"Those of us here who are representing the 'consumers'," and then he went on. Well, I want you to know that I am representing the consumers in my State, who are indeed having a tough time keeping body and soul together because of their grocery bills and their utility bills, but I am not going to go home and hold up this story in yesterday's Washington Post, and say "I allowed your utility bills to go up $13.4 billion last year, and this is my way of representing you."

I am not going to go home and say, "I am going to vote against a bill which will at least give the homeowners some protection against the increases that are certain to come in the future for natural gas." I have said it time and time again, gas prices are going to go up whether the bill passes or not. In my opinion, they are not going to go up as fast if we pass this bill as they are without the bill, but I can tell you one thing: If we do nothing the homeowner has no protection, and under this bill at least the homeowner will absorb less of the increase.

So I am very comfortable with my position. I have said time and time again this is not the type of bill I would have drafted. I was one of the conferees. I compromised and compromised and compromised, and I did not think I could possibly swallow this bill, and I am still here to tell you that it is not an ideal piece of legislation. But I would just like to say when you have the Chamber of Commerce on the right and labor on the left, when you have the consumers on the left and the producers on the right, and they are all opposed to it, there had better be some middle ground somewhere.

We have been waiting for the producers and consumers to move a little closer together. Where are they? They are 180 degrees apart just like they were when the embargo hit 4 years ago.

If you leave it to the oil and gas industry and the Consumer Federation of America to work out a compromise, the time it takes to solve the problems in the Middle East will be nothing because those two groups have not gotten together and are not ever going to get together.

The people in this body who have already announced they are against this bill are equally divided on why they are opposed to it. They are opposed for ideological reasons. They prefer either total deregulation or total regulation. Their reasons for being against the bill are 180 degrees apart. Meanwhile Rome burns, nothing is being done about energy in the country, and the consumer is being ripped off while he is being told simultaneously that this is a bad bill because it is going to raise his gas rate.

I repeat what I said the other day: If you want to play politics with this issue, vote no. But you can say that about any bill that comes through here. If I wanted to stay in Congress the rest of my life, I would vote no on every bill that comes up here. Then, every time anything goes wrong—and it almost certainly always does—I would say, "Don't blame me, because I voted against that bill. I told them on the Senate floor it was going to be a disaster."

And everybody would say, "He is just a tree full of owls; he is just the wisest man I ever saw."

But I tell you one thing: Voting no on everything is not going to save the Republic, either. And voting no on this bill is a message to the American consumers that the loophole in the law on emergency gas contracts will not be closed, and the failure to recapture intrastate gas which is being used to generate electricity down in Texas, Louisiana, and Oklahoma—the most profligate waste of energy anybody can imagine—will not be corrected. Voting no is a message that we are going to continue to waste natural gas.

I tell my good friend from Ohio, who is a sensible man, that Ohio stands to gain more than any other State in the Nation from this bill. Two years ago we heard both Senators from Ohio—and we heard them receptively and compassionately, and we listened to them—plead for more natural gas: "Why, our schools are going to have to close." Their schools did close. The hospitals almost had to shut down. Industry shut down, and it was estimated at one time there were half a million people in the State of Ohio out of work because they could not get natural gas.

And I am not promising you that if we pass this bill it will not happen again this winter in Ohio except to this extent: We put a provision in this bill almost exactly like the one the senior Senator from Ohio (Mr. GLENN) got passed through the Senate 2 years ago, to give the President authority to allocate gas on an emergency basis to take care of situations such as occurred in Ohio 2 years ago.

But more importantly, much more importantly than that, we put a provision in here which more or less equalizes the price of intrastate and interstate gas. There will no longer be any incentive to withhold gas and keep it in intrastate commerce, when they can sell it in interstate commerce, where the demand is greater and better, for almost the same price.

Mr. President, some estimates say this bill is going to cost $9 billion. The $9 billion is the cost to the American people between now and 1985, 7 years hence. And what does the newspaper story say? Why, we spent $13.4 billion more in increased utility bills last year, $4.5 billion of which was for natural gas alone, in 1 year.

In 1 year. What do we want? Do you want to just keep playing the same old game? Do you want to keep trying to delude people into thinking you are doing something when you are not? You know there are three other bills being held hostage to this bill. The Senator from Ohio had a bill that would require minimum mileage standards for automobiles after 1980. A car could not be built that did not get 16 miles a gallon, and this increased each year. What was the increase, Senator?

Mr. METZENBAUM. The increase was 16, 17, 18, 19, 20, and 21.

Mr. BUMPERS. I supported him on it. I do not think the conservation bill is really tough enough. We have not even begun to mandate automobile efficiency standards in this country like we should. I was one of the most ardent supporters of the Senator from Ohio's provision in the conservation bill. But that bill has a lot of things in it. It has a provision that every home in America will have an energy audit. Every homeowner in America will be told how he can cut down on his energy bill by insulating, weatherstripping, Durapaning, and everything. That is what we ought to be doing here in this country. Instead of seeing how many expensive powerplants, we can build, we ought to be deciding how little energy we can get by on without stultifying our growth in the next few years.

It is a great bill, but it is not going to get passed until we get this bill out of the way.

EXHIBIT 1

UTILITY BILLS ROSE $13.4 BILLION IN '77

(By J. P. Smith)

America's electric and natural gas utility bill rose $13.4 billion last year, or more than twice the total rise in such costs between 1948 and the 1973 oil embargo, according to a congressional study.

The total bill in 1977 was $60.2 billion.

The annual Senate Governmental Affairs Committee survey of consumer utility bills also found that nearly 80 percent of the billions in added costs resulted from the so-called "fuel adjustment clauses" that many states permit, allowing utilities to pass through higher energy costs to consumers automatically.

"It is possible" that utility companies would have been unable to recoup the full $11 billion in 1977 that they did under fuel adjustment clauses if gas and electric utilities had been forced to undergo formal rate proceedings before state public utility commissions, the survey concludes.

One-third of the increased utility costs passed on last year resulted from gas company rate boosts, and the remaining two-thirds was due to higher electricity charges. The total increase in utility rates over the last four years amounts to $48 billion.

The Senate Governmental Affairs Committee report found that utility companies received about 50 percent of what they had requested in rate increases during formal hearings last year before state utility commissions.

For some years now, utility executives and organizations such as the Edison Electric Institute, an industry trade association, have argued that fuel adjustment clauses are necessary for the companies to meet rising coal, oil and natural gas prices.

Calling the fuel adjustment clauses "a boon to utilities and the bane of customers," the Senate committee report says that they account for an increasing share of company revenues. Last year the automatic pass-throughs provided more than 80 percent of the total increase compared with 68 percent in 1974.

"Many utility commissions have permitted the use of fuel adjustment clauses as an alternative to the more difficult and time-consuming task of considering rate increase requests in formal hearings, where intervenors and commission staff can challenge, question and counter utility proposals," the report said.

Fuel adjustment clauses have been a continuing target for consumer activists and public advocacy groups in a number of states.

One such group, the Washington-based Environmental Action Foundation, argues that the automatic pass-through to consumers for higher fuel costs "subsidizes inefficient management by utilities. . . . and reduces utility incentives to control fuel costs and bargain with fuel suppliers."

The Senate report, prepared jointly with the Library of Congress, says that there are now 10 state utility commissions which either partially or totally prohibit the use of fuel adjustment clauses.

The power to set electric and natural gas utility rates is retained by the states and, thus far, has not been subject to federal actions.

President Carter's utility rate revision proposals sent to the Congress contained no specific initiatives to continue or prohibit fuel adjustment clauses at the state level.

The Energy Department's Economic Regulatory Administration, however, has the power to intervene in rate hearings at the state level.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BUMPERS. I yield.

Mr. ROBERT C. BYRD. I want to commend one of the most articulate, diligent, dedicated, and able Members of the Senate on the very persuasive support that he is expressing for this natural gas conference report.

The distinguished Senator from Arkansas (Mr. BUMPERS) is a member of the Committee on Energy and Natural Resources, the committee which has jurisdiction over this legislation. He is a conferee who labored through the heat of the day—a long, long day—as a member of the conference committee. His knowledge that he is able to bring to bear this issue is a very illuminating knowledge, borne of great study, toil, perserverance, and, again, dedication.

I thank him for his very, very able defense of this conference report. His statement on the floor a few days ago in support thereof was an outstanding and very cogent statement. I was just listening to him on the intercom in my office a moment ago, and I felt compelled to come to the floor and express to him my appreciation, and to say to the Senate

that the argument that the distinguished Senator from Arkansas is making is an argument that is based on facts, based on painstaking study of the subject, and I hope that on tomorrow the Senate will follow the wisdom of his course.

I have great admiration for the Senator from Arkansas, and also for the Senator from Idaho, who is the ranking Republican member of the conference of which the Senator from Washington (Mr. JACKSON) is manager, for their patient effort and for the tenacity with which they have pursued their work on this conference report in the face of many, many weeks and months of discouraging and frustrating effort.

I thank the Senator from Arkansas; I have taken too much of his time, but he is very gracious.

Mr. BUMPERS. Mr. President, I want the majority leader to know he is welcome to interrupt me at any time he wishes to get up and make statements like that.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. BUMPERS. Yes.

Mr. JACKSON. Mr. President, I commend the distinguished Senator from Arkansas for a very fine statement to the Senate.

One thing that I have learned about the Senator from Arkansas is that he does his homework. He is the kind of person who makes a real analysis of the key issue, and then comes to his own independent judgment. I am sure he would agree with me that this is one of those pieces of legislation of which it has been very difficult, I would say, for any of us to say that we like each and every part of it. I do not like the whole energy problem, because it is so pervasive it touches on everything, and you cannot reconcile all of the problems that have arisen as a result of this crisis.

There are some who would say it is not even a crisis. I think the big problem we have all had to face is, what do we do if we do not do this? I think we have taken the only course that is available to us, and I commend my colleague from Arkansas for his careful, thoughtful, and deliberative approach to this problem in coming, as he always does, to an intellectually honest conclusion.

Mr. McCLURE. Will the Senator yield to me for just a moment?

Mr. BUMPERS. Yes.

Mr. McCLURE. I thank the Senator for yielding, because I, too, was listening with care to the statement he was making, and also listening to the statement of the majority leader, the Senator from West Virginia.

The majority leader used one term I would not have used, in saying "in defense of the legislation," because I think the Senators who are not on the affirmative side of the legislation are the ones who need to defend their position. The Senator from Arkansas was making that point very eloquently, that this may not be the perfect bill, as every one of us is inclined to agree, but it is better than the alternatives which are offered; therefore, those who are in opposition to the bill, it seems to me, must defend their position, rather than those who have labored, as the Senator from Arkansas has and other Senators have, in formulating this compromise agreement. It is that, but it is a very positive and affirmative agreement as well.

Mr. BUMPERS. I thank the Senator very much. I want to express my gratitude to all three Senators for their very warm and overly generous comments. I said about all I had to say on the bill last Tuesday. I just happened to see this article in the Post yesterday morning. I thought it was compelling and persuasive and needed to go into the RECORD. Certainly, it should have been called to the attention of all of our colleagues, as to what has happened to our country as a result of our doing nothing about dealing with natural gas. It is a condition which will continue unabated unless the Senate deals realistically with this bill, admittedly not a choice bill. I have made this point time and again.

The Senator from Washington and I were strongly on the side of regulation, and supported the Senator from Ohio in his filibuster efforts and all of his approaches to this problem last year.

My decision on this bill was not reached lightly or easily, but certainly honestly. I just came over to make those few remarks.

Incidentally, I will be happy to yield to the Senator from Ohio and to sit and listen intently to what he has to say.

Mr. METZENBAUM. Mr. President, I would like to join with those who have spoken relative to the articulating ability of my friend from Arkansas, for his intellect, his ability to examine into a problem and to do it so well. I have a great deal of respect for him.

Unfortunately, in this instance, while I think he has arrived at the wrong conclusion, and I think some of the facts which he uses as the premise for his conclusion are not in accordance with the fact as I know them to be, in all fairness and all honesty I certainly do not mean to suggest that there is any effort on the part of my good friend from Arkansas not to state the facts as he understands them to be.

One of the points he makes so strongly is that this measure is going to protect the homeowner, and that this is going to provide for that kind of shelter for the homeowner that is so much desired.

Well, when the bill left the House, the homeowner was supposed to pay $2.89 per mcf and the industrial user was to pay $2.78, an 11-cent difference. But when the bill left the Senate, the homeowner was to pay $2.92 and the industrial user $2.87, a 5-cent difference.

When the bill came back from the conference committee, a big change had been made. Who got the short end of the deal? The residential users. They did not have any lobbyists in those closed room meetings. They were not present to be heard. The industrial spokesmen had somebody doing their job. What happened was that, when the bill came back, and as it presently provides, the residential user will pay $3.28 and the industrial user will go all the way down to $2.44, a difference of 84 cents. Put another way, the price is 36 cents higher than that which the Senate bill provided for the residential user, and it is 43 cents lower than the Senate bill provided for the industrial user.

Is that truly the great protection that this bill is providing for the residential user? I think not.

My figures, Mr. President, came from the Department of Energy, Energy Information Administration. These were the figures they gave us.

Before my good friend from Arkansas responds, and I am sure he will, I want to say that after that occurred, then the chairman of the House Committee—I am not sure of its exact name but I refer to the gentleman from Michigan—said to the Department of Energy, the same department, "Make these different assumptions, and if you make these different assumptions what conclusions will you reach?"

Lo and behold, the same thing happened that happens every time around these halls since the Department of Energy has been created. That is, the numbers always come out to prove the point they want to make. But that was after the fact. That was not when it was impartial; that was not when it was objective. That is when the dice were loaded. Against whom were they loaded? They were loaded against the residential users and it is they who are going to pay the price for this bill.

My good friend from Arkansas talks about the same newspaper article I read, and I intended to speak to it today, about the $13.4 billion in increased cost in utility bills in 1977. Well, that is true. And that is a lot of money. The people of this country are going to pay a lot more money if we pass this conference committee report.

The able Senator from Arkansas says it is $9 billion more. The fact is that the Congressional Budget Office said that under this bill you will take $20 billion from the consumers of this country and put it into the pockets of the producers. The same Department of Energy's Energy Information Administration said it would take $29 billion, not $9 billion. It happens that $29 billion happens to be the total of what the CBO said and what some of the House staff people said. Now we are up to $29 billion.

Maybe it was the House and Senate staff people. I am not certain.

The fact is it was $29 billion according to the Department of Energy's Energy Information Administration.

But that was not enough for the gas producers of this country. They were hungry, as they always are. They wanted more and more and more. So after the conference committee report had, so-called, been agreed upon, what happened? They said, "No, we do not want to sign that bill that way. We have some changes we would like to make." Again, without any publicity, without the sunlight beaming in on their work, without making it possible for all the members of the conference committee to even know what was going on, not even being in-

vited to the meeting, they went back. Again, what happened? The producers got more and the consumers were required to pay more.

How much more? Something more than $29 billion. The best indications are that it is an additional $12 billion. I am not sure if the $12 billion is right or wrong, but certainly substantially in excess of $29 billion.

The fact is that we ought to pay attention to what is really happening in this bill. If my friend from Arkansas says that somehow the people are going to be saving money when interstate users are going to be required to pay $1.93 per thousand cubic feet and today they are paying $1.50 per thousand cubic feet, then he has the kind of mathematical legerdemain that I am not familiar with. I do not know how you can go up from $1.50 to $1.93 and wind up paying less. Then each year thereafter, it will go up not even 10 percent, because it will go up the inflation factor plus 3½ or 4 percent. So that means it will get up another 11 or 12 percent in 1979, 1980, and 1981. By 1985, it will be $3.50 per Mcf.

Tell the people of American how you are saving them money on a bill that will provide an increase from the present figure of $1.50 and will take it up to $3.50. Tell them what a great saving that is. Tell them how they can go to the bank and put all the money in the bank that they are saving on their utility bills because you are only increasing the price from $1.50 to $3.50 in 7 years. They will be grateful to you.

Or, if you want, tell them about the fact that today, when you have increased gas prices, those increased prices in the main are taking place in the intrastate market. That is where the increases are mainly coming. We saw it on the ABC 20/20 show just recently. It showed how the figures in Austin, Tex., will go up, I think it was seven times in the intrastate uncontrolled market.

That is what we are talking about, the uncontrolled market, now bringing that into the interstate market. Today, the interstate market price is controlled and the intrastate market price is uncontrolled. As a consequence, they are paying more for gas today in the intrastate uncontrolled market in the producing States—Texas, Oklahoma, Louisiana, and New Mexico—and those of us who are in consuming States are paying less because we have the protection of the law. But when we get done with this bill, if the sponsors of it are successful, we shall reverse the table and although my friend said that what we are going to do is equalize the price of intrastate and interstate gas, I have to say to him, "Oh, no. Oh, no, that is not what you are doing. That is what you say you are doing, but that is not what you are doing. What you are doing is making it possible for every industrial concern in this country to move from the States in the Northeast and the Midwest, from the New Yorks and the Arkansas and the Ohios and the Indianas and the West Virginias and the Wisconsins, and you are providing an incentive for those industrial concerns to move to the southwestern part of the United States, where they will be able to buy gas cheaper than they can buy it in the Northeast and the Midwest."

If that is what is called equalizing the price in interstate and intrastate markets, then I do not understand the meaning of the word "equalize." I thought equalizing meant everybody was equal, but it will not be equal, because the people of Arkansas will pay more than the people of Texas and the people of Arkansas will pay more than those industries that operate in the State of Louisiana. That is not equalizing the intrastate market. That is what we talk about doing.

I remember when we even talked about making it possible to go in and get gas out of those producing States and bring it to States like Ohio. If my friend from Arkansas talks about 500,000 people being out of work by reason of a shortage of gas, he is correct. He is correct that the producers were withholding their product from the marketplace so that they could get a higher price. As soon as they got a higher price, which occurred in that last year, then, lo and behold, the product started flowing into Ohio and the gas companies of Ohio said, "We have no shortage. We are prepared to connect residential users, although, in the past, we said we did not have that much gas available."

I would say that the whole objective of the bill in the first instance was to provide for a thing called mandatory allocation. Mandatory allocation meant that the President of the United States would have the right to move gas from the intrastate market into the interstate market. He would be able to go in and take it and bring it back. That is not in the bill any more.

That is not in the bill any more. There is no protection in this bill for the homeowner. There is no protection in this bill for the industrial user in anything but the producing States. There is nothing in this bill that makes it possible for the President to go in and get the gas and bring it to those parts of the country where it is needed.

There is one thing in the bill: there is a whale of a lot of profit in it for the gas producers of this Nation. There is a tremendous amount of complexity. That is the reason a lot of Members of the Senate are opposing the bill. The fact is I oppose the bill because it means that the consumers of this country are going to be participating in a real inflationary bulge, an inflationary bulge that we do not need.

Mr. President, the argument is made that we need a bill, any kind of bill. We have to tell them in Japan and Germany and Switzerland that we have passed the energy bill. Any bill is better than no bill.

The phrase has been used that it is not a good bill, it is a C-minus bill, by the proponents of the bill. The phrase has been used that it is the only bill in town. That is the reason we have to pass it. A lot of other arguments have been made for it: If we do not get this bill, we are going to kill the other three bills.

Who said we are going to kill the other three bills? What kind of responsibility would that be on the part of the House Members if they would sink three other measures or any piece of legislation because they did not get a particular piece of legislation fashioned to their design? They are not irresponsible Members. They have to report to their constituency. They are 435 Members and they want a national energy plan and they do not approve of the fact that some of the Members of the House have seen fit to withhold the utility rate reform bill, the coal conversion bill, and the conservation measure, and hold those three bills hostage, hold them back until they get a natural bill.

The distinguished Senator from Arkansas said something to me about the amendment that I had offered concerning minimum gasoline standards. They did not want that. That was too tough for them. So they said, "No, we won't take that."

Some said, "Well, as long as this hangup occurs between the House and the Senate on the question of the minimum gasoline standards, you can't get the conservation measures through."

They said, "That is the reason it is being held up."

So about 2 months ago, maybe 2½ months ago, I sent a letter saying, "OK, we will drop that; send the conservation measure over."

No, that did not fit their designs, either. The bill continues to be held hostage. The President of the United States, for whom I have tremendous respect, unfortunately has been willing to accept this kind of game playing. They all thought, and the Secretary of Energy led them down this road, that if they held up the three bills, they would somehow get a natural gas bill. Then, if they got a natural gas bill and paid enough in that natural gas bill to the oil and gas producers of this country, the oil and gas producers would be bought off—that is an appropriate term to use—and they would be willing to go along with a bill to enact a wellhead tax and to cause the American economy to be further inflated to add billions of dollars more to consumers costs.

But the game plan did not work. Now we have a new argument being presented to us that we need this bill, somehow, for international relations, not that we need it because it is going to solve the gas problems of this country. It is not. Not because it is a good bill, because it is not. We need it because, somehow, it has some impact internationally and people will think it is a great piece of legislation.

Well, I think the Washington Post story indicating that utility bills went up $13.5 billion last year is a good indication of the reason we ought to sink this bill. I think it is a good indication why we ought to recommit the measure and give the President the emergency authority he needs and give the Federal Energy Regulatory Commission the authority it needs to move surplus gas from the intrastate market into the interstate market.

Yes, there are some in the Senate who feel we need the Alaska pipeline as a part of the bill, and I would not object

if that were added onto the motion to recommit. But beyond that, there is no justification for this legislation, and the Senator from Arkansas' talking about the $14.5 billion in increased utility costs makes the strongest argument I know as to why we ought not to give the oil and gas producers another $29 million to $41 million in this piece of legislation.

I have great respect for the Senator as a Member of this body. I think he is an extremely able Senator. But in this particular instance I think he misunderstands the facts as they are. I would hope he would reconsider his point of view and see fit to join us in our efforts to recommit this bill.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BAYH). Without objection, it is so ordered.

FEDERAL PESTICIDE ACT OF 1978—CONFERENCE REPORT

Mr. LEAHY. Mr. President, I submit a report of the committee of conference on S. 1678 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1678) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 12, 1978.)

Mr. LEAHY. Mr. President, I ask unanimous consent that Liam Murphy of my staff and the following staff members of the Committee on Agriculture, Nutrition, and Forestry be granted the privilege of the floor during consideration of the conference report on S. 1678 and all rollcall votes thereon, although I advise the Chair that I do not intend to ask for a rollcall vote: Henry Casso, Carl Rose, Dale Stansbury, Phil Fraas, Bill Taggart, Stu Hardy, and Bill Bates.

The PRESIDING OFFICER: Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the Federal Pesticide Act of 1978 is vital legislation designed to reform the troubled Federal pesticide regulation and control program—a program whose success or failure will affect the health of all Americans.

In 1972, Congress modernized the basic Federal pesticide legislation—the Federal Insecticide, Fungicide, and Rodenticide Act—by requiring a comprehensive reevaluation of the pesticide chemicals used every day in the production of food, and in our homes and factories. Many of these chemicals had never before been subject to adequate scientific evaluation from the standpoint of human health and the environment.

For several reasons this reevaluation, to be done through the reregistration process, has never gotten off the ground.

The delay has not only served to frustrate the will of Congress in enacting the 1972 legislation, but because registration under FIFRA is a basic element in the pesticide manufacturing and distribution process, the delay has also presented massive problems for the pesticide industry and reduced the availability of pesticides to farmers and others.

The Federal Pesticide Act of 1978 is the culmination of almost 2 years of work by Congress to make the FIFRA legislation a more viable and workable statute.

In the fall of 1976, the chairman of our committee, Senator TALMADGE called on the environmental protection agency to work with the staff of the Committee on Agriculture, Nutrition, and Forestry to develop amendments to FIFRA that would cut the redtape, make the law workable, and insure that the original congressional goal for the 1972 legislation can be achieved. This goal is to provide pesticide users with adequate supplies of needed pesticides while protecting the environment, and human health and safety.

It was with this in mind that my Subcommittee on Agricultural Research and General Legislation held extensive hearings and developed the bill, S. 1678, that was ultimately passed by the Senate on July 29, 1977, a little over 1 year ago.

The House of Representatives subsequently passed S. 1678 with amendments on October 31, 1977.

Because of the emergency farm legislation this past winter, the conference on this bill could not be convened until late April.

Since that time, the conferees have met a number of times to resolve the many differences between the Senate and House versions of this long and extremely technical piece of legislation.

Through hard work and dedication of the conferees and the capable leadership of the conference by its chairman, Representative FOLEY, we have reached what I believe is a constructive and elightened bill that will go far to make the needed improvements in the Federal pesticide program.

ADMINISTRATION OF THE PESTICIDE PROGRAM

Mr. President, the Federal Pesticide Act of 1978 will ease the administrative burden of EPA in managing the pesticide regulation and control program. It will help pesticide users—especially farmers—yet will continue protecting the environment and human life. Also, this bill will break the logjam in the registration process.

Among the provisions designed to speed up reregistration are the provisions for generic registration, conditional registration, and modification of the trade secret provisions of FIFRA. The language of the conference bill with respect to these matters is basically unchanged from that of the Senate-passed bill.

USE INCONSISTENT WITH LABELING

The amendments proposed in the Senate bill to the definition of "use inconsistent with the labeling" have been retained in the conference bill with two additions. The first, in essence, provides the means for the administrator to make pesticides available for minor uses through administrative action.

The second would exclude uses of pesticides in dilutions less than that specified on the labeling from the definition after March 31, 1979, unless the Administrator of the EPA acts specifically to prohibit such uses. This exclusion responds to present pesticide technology and practices that are not recognized in the existing legislation—specifically the technique of ultra-low-volume application by aircraft.

However, EPA will be required to conduct a study of the ultra-low-volume technique prior to March 31, 1979, to make sure there are no major problems with this exemption.

DATA TO SUPPORT REGISTRATION

One of the principal problems that has paralyzed the reregistration process concerns the compensation provisions of existing law for use by a follow-on applicant of data submitted by another applicant to support reregistration or new registration. I believe that we have finally found a way to resolve the conflicting claims of data producers and follow-on applicants.

The conference bill provides a mix of rights to the data producer. Data to support the safety of new active ingredients in new pesticides will be afforded an exclusive use period of 10 years. There will be a 15-year period of compensation during which the data producer has the right to be compensated for the use of the data. These two periods would overlap so that, in essence, an item of data for a new chemical will be given 10 years exclusive use and 5 additional years of compensation.

By limiting exclusive use to data pertaining to pesticide ingredients not previously registered, and only for a 10-year period, the conferees have largely confined exclusive use coverage to chemicals that are patentable and for a term generally shorter than the patent life enjoyed by pesticides. The anticompetitive aspects of exclusive use have therefore been essentially neutralized.

In the case of a pesticide ingredient not previously registered, but also ineligible for patent, exclusive use can be viewed as an appropriate substitute for the patent as a reward for the registrant's innovation in finding a new use for the biological organism, industrial chemical, or other pest control ingredient.

The conference substitute on the data issue is an appropriate compromise between the need to encourage innovation and the need to provide an equitable

and less expensive process for producing pesticide safety data. I believe it recognizes the needs of both large and small firms.

If a registrant discovers a new use for the pesticide, data supporting that use would be afforded 15 years of compensation from the time the data is filed. In the case where the new use is registered during the 10-year period of exclusivity, data supporting the new use would enjoy exclusivity for any time remaining of the 10-year period. For instance, if 5 years after a new chemical was registered a registrant brought in a new use application and it was granted, the data for the new use would have 5 years of exclusive use—the period of exclusivity remaining for the original registration data. Again, the compensable term of 15 years will run concurrently, so the data in this case would be eligible for compensation for 10 years after the exclusivity period expired. If a new use was registered after the exclusivity period, it would still have a full 15 years of compensation.

DEFENSIVE DATA

Defensive data will not be entitled to exclusive use, but the data submitter will have the right to compensation for 15 years from the date the data are submitted to EPA.

Under the terms of the conference agreement, exclusive use protection is to be extended only to data on pesticides containing new active ingredients. Data that pertains to already-registered pesticides—defensive data—will be ineligible for exclusive use protection.

This will be true whether the data are used to support the continued registration of the pesticide or a new registration. As explained in the statement of managers, if the producer changed the formulation of the pesticide in some slight way so that the pesticide might be considered a "different" product, the old data relating to the old pesticide that are used to support this new registration will not be given additional exclusive use protection.

In addition, action by an applicant—in anticipation of a requirement by EPA for submission of defensive data or to protect defensive data produced in response to EPA requirements stemming from the 1972 amendments—to seek registration of a product that contains both a new active ingredient and the "old chemical" will not confer exclusivity on the defensive data for the old chemical, only on the data pertaining to the new ingredient.

REBUTTABLE PRESUMPTION AGAINST REGISTRATION

The conference bill prohibits the Administrator from initiating a public review process—the RPAR process—unless it is based on validated tests or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment. It also calls on the Administrator to consult with the registrant of a pesticide that is a candidate for RPAR prior to issuing the RPAR. This is to afford the registrant opportunity to present evidence to EPA refuting allegations of adverse risk before any unwarranted negative publicity occurs. I wish to stress that this provision is not meant to permit extended private or closed negotiations. We want to protect the rights of producers, but not circumvent established case law in regard to substantial questions of unreasonable adverse effects.

Pesticide regulation is not the private business of the pesticide industry and the EPA. The conference report language affording affected pesticide producers an opportunity to respond to a "private communication" about an impending RPAR is not intended to afford the registrant a protracted and secret discussion of risks and benefits with EPA. If the registrant discovers egregious errors in the studies to be cited by EPA in an RPAR, all parties are served by having this brought to EPA's attention. When, however, the registrant disputes the conclusions EPA may choose to draw from these experimental results, his views are of no greater relevance than those of any other person, and, indeed, because of his vested interest in the regulatory outcome, should be subject, along with the EPA interpretation, to public scrutiny. Therefore, "reasonable" time to respond to a private communication on an impending RPAR must take into account the interest of the public in participating in any risk-benefit evaluations that affect their health, and the need to consider that the public may remain exposed to the hazard the pesticide poses while the RPAR process is underway.

PRIMARY ENFORCEMENT RESPONSIBILITY

The conference bill clarifies and delineates several areas of Federal and State responsibility.

First, the States will be charged with primary enforcement responsibility for pesticide use violations.

This responsibility will automatically go to those States that are already working with EPA under a cooperative enforcement arrangement. The bill also provides for timely extension of this responsibliity to those States that have a section 4 certification training program that EPA determines to be adequate to insure proper enforcement of pesticides use restrictions.

This State enforcement program will reduce duplication of effort and permit EPA to concentrate its resources on higher priority matters. However, we have not taken away EPA's final jurisdiction for enforcement of FIFRA. The bill provides for EPA override of State jurisdiction in emergency circumstances when the State is unwilling or unable to act to meet the emergency, and for recision of the State's pesticide use enforcement responsibility if the State program is inadequate.

FEDERAL COST SHARING

The conference bill provides for cost sharing for State applicator training and certification programs. The Federal Government would pay up to 50 percent of the cost of these programs. However, it is not an entitlement. To assure efficiency and accountability, Federal contributions will only extend to those aspects of the program that are approved by EPA and agreed to in the cooperative agreement.

STATE REGISTRATION OF PESTICIDES

The conference bill also clarifies certain aspects of the State authority to register pesticides for additional uses to meet special local needs. We have retained authority for EPA to suspend the State registration program if EPA finds that the State is not exercising adequate control over pesticides. Further, EPA retains the authority that exists in present law for review of individual registrations by States for local uses.

The conference bill, however, removes the requirement that EPA make a determination that there is a special local need. This question is best handled by local officials since EPA often does not have the information to make such a determination.

The conference bill precludes "veto" by the administrator of State registration of federally registered pesticides if the State registration is for a similar use. In the conference report we give examples of certain uses that are definitely not similar—changes from nonfood to food crops, outdoor to indoor, terrestrial to aquatic, or nondomestic to domestic uses.

Prior to the passage of FIFRA on October 21, 1972, the EPA had authority to register and control only those pesticide products which crossed State lines. The 1972 FIFRA Amendments gave EPA the authority over pesticide products manufactured or reformulated and sold solely within one State as well.

Under the section 24(c) program, States have registered close to 3,000 pesticides for intrastate uses without having to first obtain EPA approval for their registrations. In less than 5 percent of these cases, EPA overturned the State actions.

The Federal oversight responsibility for State registrations has been exercised judiciously, and has operated to protect farmers as well as consumers. However, the conferees felt it was necessary to provide the States the ability to register additional uses to meet special local needs in order to ease the administrative burden and to provide the States with a means of dealing with problems that arise, in part, because of gaps in EPA registrations.

However, this provision is not intended to permit an end run around Federal registration requirements. States must be cognizant of the potential problems in extending pesticides uses and Congress is no less determined today than it was in 1972 to protect U.S. citizens and their environment from unreasonable pesticide hazards regardless of State boundaries.

Thus, while the provision is designed to ease the administrative burden for all involved and facilitate availability of pesticides, it is not intended to limit the Administrator's ultimate authority to enforce FIFRA and protect the environment and human health and safety. We expect each "similar use" question to be carefully assessed by EPA.

THE FEDERAL PESTICIDE ACT OF 1978

Mr. President, our pesticide law has always evoked controversy. There are

not many laws that are more complex than FIFRA, or that stimulate greater passion and emotion.

We want to have the benefits of "economic poisons" for use on crops, in our homes, hospitals, and other places, yet we want safety for the environment and human health.

The length and difficulty of the conference on S. 1678 speak clearly of the complexities involved in FIFRA as well as the collision of interests.

I doubt that the Federal Pesticide Act of 1978 will totally satisfy any of the specific interest groups—in fact, I would worry if it did. However, it does address all the issues that have surfaced in the past 6 years, and provides, I believe reasonable solutions to them.

In sum, I believe that the Federal Pesticide Act of 1978 will finally give us the means to achieve the balanced, but environmentally sound, pesticide regulation and control program that Congress sought in the major amendments that were passed in 1972 to the Federal Insecticide, Fungicide, and Rodenticide Act. I urge the adoption of the conference report.

Mr. President, I ask unanimous consent that a short explanation and summary of the major provisions of the conference bill be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1678—THE FEDERAL PESTICIDE ACT OF 1978

SHORT EXPLANATION

S. 1678, as approved by the Conference Committee, makes a number of amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (the "Act"), which is the legislative authority for the Federal pesticide registration and control program, to improve the operation of the program and facilitate the reregistration of pesticides called for by the Federal Environmental Pesticide Control Act of 1972. It also extends through fiscal year 1979 the authorization for appropriations to carry out the program.

SUMMARY OF MAJOR PROVISIONS

S. 1678 would—

(1) Provide that a pesticide applicator who holds or applies registered pesticides, or use dilutions of registered pesticides consistent with section 2(ee) of the Act, only to provide a service of controlling pests without delivering any unapplied pesticide is not to be considered a "seller" or "distributor" of pesticides under the Act (as under existing law);

(2) Exempt persons who dilute pesticides for their own use and according to label directions from the definition of "producer" in the Act;

(3) Limit the scope of the prohibition in the Act against the use of a registered pesticide in a manner inconsistent with its labeling by providing the following exceptions:

(a) Application at a dosage, concentration, or frequency less than that specified on the labeling;

(b) Application against a target pest not specified on the labeling (unless the labeling specfically prohibits use of the pesticide against pests not listed on the labeling);

(c) Employing any method of application not prohibited by the labeling;

(d) Mixing the pesticide with fertilizer when such mixture is not prohibited; and

(e) Any use in conformance with section 5 [experimental use permits], 18 [emergency exemptions], or 24 [authority of States to register pesticides] of the Act, or any use in a manner the Administrator of the Environmental Protection Agency determines to be consistent with the purposes of the Act.

In addition, after March 31, 1979, use of a pesticide for agricultural or forestry purposes at a dilution less than label dosage would not be considered a use inconsistent with the labeling unless the Administrator issued regulations or advisory opinions specifically requiring the use of definite amounts of dilution;

(4) With respect to applications for the registration of pesticides under the Act, delete the provisions of existing law concerning compensation for use of another applicant's data. The bill provides, instead, that—

(a) In the case of pesticides containing new active ingredients initially registered after the date of enactment of S. 1678, there will be a period of exclusive use (under which data may be used by an applicant only with the written consent of the original data submitter) for data (that pertains to the new active ingredient) submitted in support of the initial registration of the pesticide. The exclusive use period will run for 10 years from the date the product is registered. There will also be a period of exclusive use for data submitted in support of a new use registration for the pesticide equal to any time of exclusivity remaining under the 10 year exclusive use period for the pesticide;

(b) With respect to data to which the exclusive use provision does not apply or for which the exclusive use period has expired, the data (if submited afer December 31, 1969) will be compensable, if used by another applicant, for a period of 15 years from the date the data are submitted; and

(c) If the original data submitter and the follow-on applicant who wishes to rely on the data cannot reach an agreement on data compensation, either party can request binding arbitration to settle the dispute. The decision of the arbitrator will be final and conclusive;

(5) Delete the prohibition in present law against the reliance by an applicant on data submitted to the Administrator by another applicant that contains "trade secret" information ("Trade secret" information would, however, continue to be protected from public disclosure.);

(6) Establish procedures governing the generation of data that may be required for the maintenance of existing registrations of a pesticide, including provision for requiring all registrants of the pesticide to take appropriate steps to secure the necessary additional data, authority for cost-sharing arrangements by which the necessary data can be developed and submitted jointly by the registrants to avoid the waste involved in duplicative testing, and provision for settling disputes over cost-sharing arrangements by binding arbitration;

(7) Require the Administrator, in establishing standards for data requirements for the registration of minor use pesticides, to make these standards commensurate with the anticipated extent and pattern of use of the pesticide, and the level and degree of potential exposure of man and the environment to the pesticide. The Administrator would be required, in developing these standards, to consider the potential national volume of use, extent of distribution, and impact of the cost of meeting the requirements on the incentives for any potential registrant to develop the required data;

(8) Authorize a program of "generic" registration of pesticides, under which a person who purchases a registered pesticide from another producer in order to formulate the pesticide into an end-use product would not be required to submit or cite data pertaining to the safety of the purchased product or pay compensation for the use of such data;

(9) Authorize the Administrator to waive registration requirements pertaining to the submission of data relating to the efficacy of pesticides. Further, if a pesticide was found to be efficacious by a State under a State registration program under the Act, a presumption would be established that the Administrator will waive efficacy data requirements for use of the pesticide in that State;

(10) Authorize the conditional registration (or conditional amendment of the registration) of pesticides during the period in which data needed for complete registration or amendment are being generated, if—

(a) The conditional registration would not significantly increase the risk of, or cause, any unreasonable adverse effect on the environment;

(b) With respect to conditional amendments to permit new uses, the applicant had submitted complete and satisfactory data on the proposed new cause and the amendment did not involve a food or feed crop, or—if such a crop is involved—the pesticide did not meet or exceed risk criteria associated in whole or in part with human dietary exposure; and

(c) With respect to conditional registration of pesticides containing new active ingredients, the applicant did not have the necessary data because sufficient time to generate it had not elapsed since the requirement for the submission of the data was first imposed and use of the pesticide is in the public interest;

(11) Prohibit the Administrator from initiating a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses (a rebuttable presumption against registration, or "RPAR" process) unless such interim administrative process was based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment;

(12) Permit the Administrator to classify pesticides by regulation prior to the completion of the reregistration process required by the 1972 amendments to the Act, in order that States may proceed with programs for the training and certification of applicators;

(13) Authorize the registrants of restricted use pesticides to petition the Administrator to change the classification from restricted use to general use (with the requirement that the petition establish that reclassification would not cause unreasonable adverse effects on the environment);

(14) Require the Administrator to conduct the applicator certification program in States for which a State plan for applicator certification had not been approved. The Administrator's program could not require private applicators to take an examination to establish competency in the use of pesticides;

(15) Require the Administrator to complete review of applications for experimental use permits within 120 days after receipt of the application, and to notify the applicant of the reasons for denial if the application was denied;

(16) Require the Administrator, prior to acting to cancel the registration of a pesticide for cause, to consider restricting the pesticide's use as an alternative to cancellation;

(17) Require the registration under the Act of establishments that produce (a) active ingredients used in producing pesticides or (b) pesticides or active ingredients for the export trade;

(18) Require Environmental Protection Agency inspectors undertaking to inspect books or records under section 8(b) of the

Act to present to the person in control of the premises at which the pesticides or devices are held appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of law is suspected;

(19) Amend the trade secret provisions of the Act to—

(a) Exclude from trade secret protection under the Act data showing test results and information concerning the effects of a pesticide on organisms or the behavior of a pesticide in the environment, except that data relating to manufacturing or quality control processes, the identity or percentage quantity of inert ingredients, or details of methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredients could not be made public unless the Administrator determined that disclosure of such information was necessary to protect against an unreasonable risk of injury to health or to the environment;

(b) Authorize the publication of information concerning production, distribution, sale, or inventories of a pesticide in connection with a public proceeding to determine whether a pesticide, or an ingredient, causes unreasonable adverse effects on health or the environment, if the Administrator believed disclosure was necessary in the public interest;

(c) Establish procedures for the release of the manufacturing and ingredient data described in (a) and (b), including prior notification by certified mail of any proposed release of data and opportunity for the owner of the data to institute action in Federal district court to enjoin or limit the proposed disclosure;

(d) Authorize disclosure of trade secret information (under security precautions prescribed by the Administrator) to contractors with the United States for work in connection with the Act if disclosure is necessary for satisfactory performance of the work under contract;

(e) Establish criminal penalties for disclosure of trade secret information by Federal employees and contractors with the United States (a fine of up to $10,000, a prison term of up to 1 year, or both fine and imprisonment); and

(f) Prohibit the Administrator from knowingly disclosing information submitted to him under the Act to employees or agents of foreign or multinational pesticide producers or distributors (Not included in the prohibition would be disclosure, in connection with public proceedings under law or regulation, of information that relates to the effect of the pesticide on health or the environment.);

(20) Provide an exemption from the prohibition in the Act against making restricted use pesticides available to persons other than in accordance with the Act, under which sale, under regulations issued by the Administrator, of a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator would be permitted;

(21) Provide a maximum civil penalty for first offense violations of the Act by applicators of general use pesticides for hire of $500;

(22) Require the Administrator, in determining the amount of any civil penalty under the Act, to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation; and authorize the Administrator, if he found that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, to issue a warning in lieu of assessing a penalty;

(23) Require, for pesticides not registered under the Act that are intended for export, that their labels include the warning that they are "Not Registered for Use in the United States of America", and that the foreign purchaser sign a statement acknowledging his understanding that the pesticide cannot be sold in the United States (A copy of the statement would be transmitted to the government of the importing nation.);

(24) Require the Administrator to establish procedures for the monitoring of man and animals and their environment for incidental pesticide exposure, including, but not limited to, the quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and identification of the sources of contamination and their relationship to human and environmental effects;

(25) Authorize appropriations to cover half the cost to cooperating States and Indian tribes for the conduct of applicator training and certification programs;

(26) With respect to State registration of pesticides for use within the State to meet special local needs—

(a) Provide that the authority of the Administrator to disapprove a State registration shall not include authority to disapprove registrations (i) on the basis of lack of essentiality, or (ii) if its composition and use patterns are similar to those of the federally-registered pesticide (changed use patterns such as changes from nonfood to food use, outdoor to indoor use, terrestial to aquatic use, and nondomestic to domestic use would be considered as not involving similar uses and, thus, would be subject to disapproval by the Administrator. Other State registrations would be considered as similar in use pattern until the Administrator made findings to the contrary by regulation.); and

(b) Prohibit States from issuing registrations for food or feed uses unless there was a tolerance of exemption under the Federal Food, Drug, and Cosmetic Act that permitted the residues of the pesticide on the food or feed;

(27) Transfer to States that have entered into cooperative agreements with the Administrator for the enforcement of pesticide use violations, or that the Administrator determined have adequate pesticide use laws, regulations, and procedures, primary enforcement responsibility for pesticide use violations. Notwithstanding this transfer of enforcement authority to States, the Administrator could act on any reported violation if the State did not commence appropriate enforcement action within 30 days after receiving the report on the alleged violation. In addition, the Administrator could rescind the State authority if, after opportunity was given the State to correct deficiencies in the program, the State program was found to be inadequate. Also, the Administrator would retain enforcement authority with respect to emergency situations that required immediate action and with respect to which the State authority was unwilling or unable adequately to respond;

(28) Provide that, wherever the Administrator had enforcement responsibility for pesticide use violations, he would have authority to inspect the books and records and establishments of applicators for hire;

(29) Require the Administrator to submit annual reports to Congress (a) indicating the number of applications for conditional registration of pesticides with new active ingredients, and for conditional amendment of registrations to permit additional uses, filed during the preceding fiscal year, and (b) with respect to those applications approved, including the Administrator's findings, the conditions imposed, any modifications of conditions, and the quantities of pesticides produced, in each case;

(30) Extend through fiscal year 1979 the authorization for appropriations to carry out the Act. The bill authorizes the appropriation of such sums as may be necessary—but not to exceed $70 million—for fiscal year 1979;

(31) Require that studies be made of—

(a) The feasibility of charging fees to cover the registration process under the Act;

(b) Methods of pesticide application, including the advisability of ultra-low-volume methods of application; and

(c) The problems of minor uses of pesticides not specifically permitted by labeling; and

(32) Delete (a) the requirements that the 1972 amendments to the Act be fully implemented, and that reregistration and classification of pesticides be completed, by October 20, 1977, and (b) the October 20, 1976, deadline for submission to the Administrator of State applicator certification plans.

Mr. TALMADGE. Mr. President, will the chairman of the subcommittee yield?

Mr. LEAHY. Mr. President, I consider it an honor to yield to our chairman.

Mr. TALMADGE. Mr. President, I urge the adoption by the Senate of the conference report on S. 1678, the Federal Pesticide Act of 1978.

I want to commend Senator LEAHY, the chairman of the Subcommittee on Agricultural Research and General Legislation, and Senator LUGAR, who is the ranking minority member of the subcommittee, for their leadership, dedication, and hard work throughout the hearings, the legislative markup, and subsequently in the conference on S. 1678. Senator DOLE, the ranking minority member of our committee, is also to be commended for his work and leadership on the legislation.

Mr. President, nearly 6 years have passed since the enactment of the Federal Environmental Pesticide Control Act of 1972, an act that significantly changed the direction of pesticide regulation in the United States.

Unfortunately, the implementation and administration of this act have been characterized by confusion, controversy, and lack of action. As a result, the purpose of the law—to provide for the regulation of pesticides in a balanced and commonsense manner that assures the availability of pesticides to our farmers, homemakers, hospitals, and others, while protecting the environment and the health of our people—has not been achieved.

Our committee's primary concern in developing new legislation was to find a way to make FIFRA work effectively.

The Federal Pesticide Act of 1978, the bill that Senators LEAHY and LUGAR first developed in subcommittee, does just that. It is designed to cut the redtape, remove duplication, and resolve the immobilizing controversies in the Federal pesticide regulation program. Just as importantly, it at the same time retains a balance between the interests of pesticide users and the concern of all Americans for the preservation of the environment and protection of human health.

The conference bill deals with all of the major issues that have surfaced since the passage of the 1972 legislation. I believe the conferees reached a fair and just compromise on these issues after thorough review and discussion of all legitimate views and positions.

The question of State and Federal re-

sponsibilities under FIFRA was an important issue considered by the conference committee.

In 1972 all authority to regulate pesticides was transferred to the Federal Government. However, authority was provided for delegation of responsibility by the Federal Government to the States for implementation of the law.

There has been much confusion as to what the State-Federal relationship should be with regard to State registration of pesticides and enforcement of pesticide use restrictions.

The conference bill resolves this issue by more clearly delineating the relationship between the Federal Government and the States.

We have extended to the States the primary enforcement responsibility for pesticide use violations. This will eliminate duplication of Government regulation and result in greater efficiency. However, EPA will retain ultimate jurisdiction.

With respect to State registrations of additional uses of federally registered pesticides for use in the State to meet special local needs, EPA concedes that the people at the local level best understand local needs.

The conference bill therefore removes the requirement that EPA make a decision that there is a local need. EPA will have to determine if the State has adequate controls to register pesticides, but, after that, so long as the pesticide is safe, EPA will not interfere with the State's determination.

At the same time a provision has been added to prohibit States from registering a pesticide for a food or feed use if there is no Federal pesticide residue tolerance or exemption for the pesticide. This protects farmers from the possibility of condemnation of the crop or animal to which the pesticide is applied because of illegal residues.

One of the best ways to assure that pesticides will be applied correctly without harm to human life or the environment is to make the applicators and users of pesticides aware of the best and safest ways to use them. This can be done through training programs such as those being carried out in nearly every State by the cooperative extension services.

However, these programs are costly. To upgrade these programs of training farmers and other users in the proper use or restricted use of pesticides, the conference bill provides for cost-sharing grants to the States to carry out applicator training and certification programs.

Of most concern to farmers is the availability of pesticides. The conference bill provides for simplified and faster registration of useful pesticide materials. It reduces the redtape that both pesticide producers and EPA must endure in bringing safe materials onto the market and into use—without reducing the safeguards against harm to human life or the environment.

In a similar vein, the bill provides for conditional registration of pesticides, which will enable EPA to make available more pesticides that are deemed to be basically safe.

Perhaps the most important provision for farmers is the new definition of "use inconsistent with labeling." Existing law and regulations have proven to be out of date, and not in accord with changing technology and practices. As an example, a strict interpretation of existing law could force farmers to use more pesticides than might actually be necessary. S. 1678 will permit farmers to use pesticides at rates lower than those specified on the labeling.

Second, the new definition will permit farmers to mix pesticides with their fertilizer—a time-tested practice.

Third, the new definition will permit farmers to use pesticides that are already registered for a crop or site for pests not listed on the labeling. It is rather foolish to tell farmers that they can put a pesticide on a crop for one bug, but that they cannot apply it to the same crop for another bug.

Fourth, the new definition provides that a farmer can use any means of application that is not specifically prohibited by the labeling.

In this regard, we have also provided that after March 31, 1979, application of pesticides at dilution rates less than those specified on labeling will not be inconsistent with labeling unless the Administrator prohibits such applications. We provide an interim period before this exemption goes into effect to meet the legitimate concerns of some over certain aspects of ultra-low-volume spraying. During the interim, EPA will have to conduct a study on ultra-low-volume spraying techniques. After the study, EPA will have the opportunity, if necessary, to act to restrict low dilution application methods.

I would expect EPA to move promptly on this matter so that the industry and users will not continue to be hampered by uncertainty about the future of ultra-low-volume spraying.

Mr. President, for 6 years EPA has been struggling with the pesticide legislation. We have seen the implementation of the 1972 amendments frustrated at every turn by unexpected complications, redtape, and litigation. No one has been satisfied with the law.

I believe that the pending amendments will give us a workable law, and I am happy to report that EPA is in agreement.

While I am sure that not everyone is fully satisfied with every aspect of the conference bill. I think almost everyone will admit that this is a sound and workable compromise.

Mr. President, I urge my colleagues to adopt the conference report on FIFRA.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I appreciate this opportunity to thank Senator TALMADGE, the chairman of our committee, for his tribute, and to thank especially my colleague, Senator LEAHY, for his extraordinary leadership as chairman of the Subcommittee on General Legislation and Research.

The Federal Pesticide Act of 1978 that we are debating today is a monument to the thoughtfulness and the ability of legislators to take very complex points of view and to reconcile these in complex legislation.

Clearly, at the outset of the work of the subcommittee, we were confronted with legislation that had worked well, with an estimated 50,000 applications for pesticides and chemical formulations that were stacked up at EPA, with very great disputes and misgivings by American industry in terms of proprietary rights, property rights, and research rights that were involved in our American free enterprise system, certainly with great frustration by farmers and ultimate users of pesticides, insecticides, and rodenticides, as to how these could be made available to them for adequate food supplies and adequate services of the American people.

These points of view were not easily reconciled, and it is a tribute to Chairman LEAHY and to the subcommittee that in the course of hearings, in the course of long debate and thoughtful work on the wording of the legislation itself, the Senate passed a bill, and then in a number of conference situations, I recall at least six or seven, as earlier pointed out, chaired by Representative FOLEY and led on our side by our chairman, HERMAN TALMADGE, and BOB DOLE on the minority side, reconciliation occurred.

I think it is a very important breakthrough, and I take time to make this statement simply because frequently people express the thought that Congress is unable to deal with complex legislation and with conflicting points of view that seem to be almost monumental in their irreconciliability.

We have succeeded on this occasion, and I am grateful to have been a part of it, and I am very appreciative to the chairman of our subcommittee for allowing me this privilege of working with him on this legislation and other complex pieces of legislation this session.

Mr. LEAHY. Mr. President, I appreciate the kind words of Senator LUGAR.

I think we must feel, both Senator LUGAR and myself, that almost from the time we have joined the Senate we have lived with FIFRA. Before I came to the Senate I thought a FIFRA was a multilegged insect from South America—we now realize how complex it is—until one day when Senator TALMADGE drew me aside and suggested when I have a few free moments I might hold some hearings and straighten out FIFRA.

The hearings went on for months and months and months. Had it not been for Senator LUGAR's constant help, attention, work, diligence, and knowledge we never could have finished the hearings and gotten a bill on the floor.

Throughout this we were helped by Senator TALMADGE and given encouragement when it was very well needed.

Senator DOLE was a model of nonpartisan expertness in a very complex fashion, and we were helped by Senator STONE and Senator HAYAKAWA of the subcommittee.

And I wish to make special note, Mr. President, of Senator James Allen, who was present at practically all of the meetings, and helped very, very much in the markup. I can say had it not been

for his efforts in helping us form and bring together some of the conflicting viewpoints we had it would have been impossible to have had this bill. I think the Senate owes a great deal to Senator James Allen in that regard.

Certainly we owe our thanks to our staff, Dale Stansbury, Phil Fraas, and Carl Rose, who put in long, long hours, days, evenings, weekends, and Bill Lesher, Stu Hardy, Laura Rice, and Julia Platt, and Liam Murphy of my staff, who had the unenviable task of explaining daily the various parts we were going through again to point to a likely understanding along with the others.

But I might say, Mr. President, that a bill of this complexity never could have gotten through without the help given and diligence of all Senators who worked on it.

I see Senator DOLE from Kansas, who was certainly one of the most instrumental people in the bill's passage, on the floor, and I yield to him.

Mr. DOLE. Mr. President, the fact that the conferees on S. 1678 (the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1978) negotiated for 4 months before resolving the differences between the House and Senate versions of the bill is evidence that the question of pesticide regulation has become one of the most complex and controversial issues before the Congress.

We are confronted with the difficult task of striking a sensible balance between the need to protect man and the environment from harmful chemicals, and the equally legitimate need to assure an adequate supply of effective pesticides for farm and other uses. The present grasshopper infestation throughout the Great Plains region illustrates the hard choices we confront. Thousands of farmers will lose all or part of their crops this past summer because several of the most effective pesticides have been banned on the grounds that they may be toxic or carcinogenic. There are no easy solutions in situations such as this.

It is clear that we have not yet achieved a satisfactory balance in our regulation of pesticides. To be sure, S. 1678 improves current law by simplfying the product registration process, and by putting more flexibility and responsiveness into the pesticide program. But even the best laws require sound administration. Much still depends on the ability, and the willingness, of the Environmental Protection Agency to enforce the law with discretion and commonsense. The Senator from Kansas, for one, will be watching the EPA's performance with great interest during the coming months.

Today, nearly everyone is dissatisfied with the pesticide program. Critics point out that the registration and reregistration process has come to a virtual standstill. Dozens of new pesticides, which are urgently needed to meet pest control needs, are tied up in redtape and unavailable for use. Since 1972, dozens of pesticides and uses have been banned, while fewer than 10 new products have been registered.

The bill now before us represents a major step toward streamlining the pesticide program and assuring a more equitable balance between the competing claims of a safe environment and the need for effective pest control. Specifically, S. 1678 authorizes a "generic" approach to registration which will permit a shortened registration procedure for new product applications which are identical or similar to previously registered pesticides. Moreover, the bill authorizes the conditional registration of pesticides during the period in which data needed for complete registration is being generated.

In addition, S. 1678 goes a long way toward easing the present prohibitions against the use of a pesticide in a manner inconsistent with its labeling. The bill also deletes many of the requirements relating to the submission of data on the efficacy of pesticides.

States are given the right to exercise primary responsibility for enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act. Moreover, States are given far more discretion to register pesticides for special local needs.

Finally, S. 1678 redefines the rules requiring that an applicant for registration of a pesticide pay compensation if he relies on the test data submitted by another applicant. Similarly, the rules relating to "trade secret" information are also redefined. These provisions are necessary to end the squabbling and litigation that has plagued the pesticide industry in recent years.

Mr. President, the need to assure the availability of pesticides for agricultural production, public health, food safety, and other reasons is recognized by all. These important objectives have been jeopardized by the legal and administrative problems in the pesticide program.

This legislation is not a "cure all" solution. But if it is administered in a sensible fashion, it will certainly make the program more workable.

I, also, commend the distinguished Senators from Vermont and Indiana, and our chairman, Senator TALMADGE, and certainly the staff and others who spent many, many months on this legislation.

As I recall we were in conference off and on for a period of nearly 4 months. This is a very difficult technical piece of legislation and as has been indicated the staff and Senators from Vermont and Indiana were there throughout all the hearings stage and the markup stage, and some of the rest of us became more involved at later dates, so they deserve a great deal of the credit for what I consider to be a good piece of legislation.

It seems to me that we have not yet achieved a satisfactory balance in our regulation of pesticides, but I think S. 1678 goes a long way in that direction.

Today we find nearly everyone is dissatisfied with the pesticides program. There are critics on each side. We have had our own problems in various States on the use of pesticides, but I believe that as S. 1678 addresses the generic approach to registration it gives the States the right to exercise primary responsibility for enforcement, and in my view it is a rather large step in the right direction.

I again appreciate all the efforts made, the cooperation of all those concerned, including EPA officials who were there at the conference and I think were very helpful from time to time.

I urge the adoption of the conference report.

Mr. LEAHY. Mr. President, I am prepared to yield back all of my time and move the adoption of the conference report.

Mr. LUGAR. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATURAL GAS POLICY ACT— CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Washington.

Mr. JACKSON. Mr. President, I yield to the distinguished junior Senator from Pennsylvania to propound certain questions.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I assume we are now back on the conference report on natural gas?

The PRESIDING OFFICER. That is accurate.

Mr. HEINZ. Mr. President, I thank the distinguished Senator from Washington for yielding to me, and I wish to propound to him certain questions regarding the conference report.

First, I wish to know if I am correct in understanding that under title II, section 206(d)(1) the Commission may exempt, in whole or in part, any incrementally priced industrial facility or category therefrom the incremental pricing rule? Such exemptions granted under this section may deal with either who is covered by the rule or what level any particular class of users would bear the surcharge? Specifically, could partial exemptions be structured to lower the substitute fuel level to any category of users to levels below that of the alternative fuel?

Mr. JACKSON. The Senator is correct. As it states on page 102 of the Joint Statement of Managers:

> The Commission may propose exemptions which exempt any other incrementally priced industrial facility or category thereof either partially or completely. To give the Commission flexibility, the Conferees intend that these other exemptions may deal with either who is covered by the rule or at what level any particular class of users covered by the rule will be incrementally priced. Partial exemptions could be structured to lower the substitute fuel level applicable to any category of users to below the levels otherwise provided for in this title. Any proposed exemption is required to be submitted to Congress for review under sec. 508. Either House of Congress can veto a proposed exemption.

Thus, section 206(d)(1) permits the Commission to grant a gas utility or an individual industrial consumer, or a class thereof, a partial or total exemption from the incremental pricing amendments.

Mr. HEINZ. Mr. President, as I understand it then, the historical practice of the natural gas distribution industry of making "load-balancing" sales would not be preempted by title II if industrial facilities, which would otherwise be subject to incremental pricing, are exempted by the Commission under section 206(d).

Such sales in the industrial market are traditionally rendered under rates and conditions approved by the State commissions which allow for discontinuance of service on extremely short notice. These customers have alternative energy facilities in place and use, as their primary fuel in the winter, alternate energy sources, usually imported oil. The utility must retain pricing flexibility during periods in which gas supplies are available to continue to compete with alternate energy sources.

Am I correct that under section 206(d)(1) the bill would allow utilities to obtain exemptions from incremental pricing for load-balancing sales to certain industrial customers so that these customers can continue to help the high priority customer bear the fixed costs of the distribution systems?

Mr. JACKSON. Mr. President, the Senator is correct. As the Joint Statement of Managers discusses on page 102:

> . . . could be structured to lower the substitute fuel level applicable to any category of users to below the levels otherwise provided for in this title.

Thus, the Commission is allowed to permit utilities to reduce below fuel oil Btu-equivalency for load-balancing industrial customers under appropriate circumstances. The conferees have provided the Commission authority under the exemptions procedure to provide relief in these circumstances.

Mr. HEINZ. Mr. President, I sincerely thank the Senator from Washington, the manager of the bill, for his very helpful and very clear colloquy on the subject of quite considerable importance to many of our consumers.

Mr. JACKSON. I thank the Senator from Pennsylvania for raising these questions.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NATURAL GAS COMPROMISE

● Mr. SCHMITT. Mr. President, today we are debating what might be appropriately called the unnatural, natural gas compromise. I sympathize with my colleagues who have put many, many hours and much hard work into this legislation. However, they have not devised a workable solution to either our short- or long-term energy problems nor could they, given the politics of this 95th Congress and the Carter administration. It is to their credit that they tried. Certainly, this and past Congresses have been slow to address the Nation's energy problems but that does not mean we must now pass anything to simply make it look like we are doing our job. Our major failure in the 95th Congress, that for which the American people should hold us most accountable, has been to work for 18 months on energy regulation and taxes rather than on energy policy. Nothing in what we have done addresses real solutions to real problems. Let us look at what is before us.

First, this conference committee bill imposes exponentially more complex Federal regulation of wellhead pricing of natural gas than exists at present time. Within these 170-odd pages, the bill creates up to 23 categories of natural gas, each of which may be priced differently. Each of the 40,000 to 50,000 wells drilled annually will require a complex regulatory decision before any gas can be bought or sold. The bill also slaps Federal price controls, for the first time, on our intrastate market. Additionally, some categories of natural gas will never be deregulated. Through the entitlements provisions, another even more burdensome layer of regulations and confusion will be created.

Second, at a time when many citizens in this country and many Members of Congress are very much concerned about the burden of existing regulations and the costs associated with implementing these regulations, passing this bill will create a massive increase in new regulations and administrative burdens that go along with enforcing these regulations. The responsibilities imposed by the bill exist not just for the Department of Energy as a whole, but also for the Federal Energy Regulatory Commission (FERC), the Department of Agriculture, State legislatures, State regulatory commissions, the courts, industry, and consumers. Let me remind my colleagues that recent estimates of the overall cost of Federal regulations in general is about $800 billion annually; almost $1,000 for every person in the United States.

It has been stated by Chairman Curtis of the FERC (in a report presented January 26, 1978) that the FERC has a backlog of 6,000 cases. The costs associated with this backlog must also be factored in with the cost estimates for regulation. Chairman Curtis has also said that these delay costs "create unacceptable increases in costs of regulated companies and ultimately for consumers and that delays on applications to increase domestic supplies frustrate the accomplishment of our national objective to minimize our dependence on foreign energy sources."

This bill delegates to various State and Federal agencies the responsibility for determining in which category a given well qualifies. It is evident that this will involve a case-by-case analysis of such factors as to whether a well was drilled into a new reservoir, whether commercial production from that well or nearby wells has ever occurred, and the maximum efficient production rate of the specific well. Once this classification is performed by the State or Federal agencies, the FERC is then required to review the evaluations, resulting in extensive duplication of effort. After this classification effort is complete, a major accounting and bookkeeping task would have to be performed for the varied and continual price determinations.

This represents only one-half of the regulatory network, the other half being the burden of the producers and consumers. The independent explorers and producers discover approximately 63 percent of natural gas reserves and drill about 88 percent of the producing gas wells. Many of these 10,000 independents are small companies which do not have the manpower, money, or time to sort their way through the massive amount of regulations and paperwork this bill imposes on them. The uncertainty relating to well classifications open the way for a rapid increase in litigation in our already overloaded courts. The threat of increased litigation, extensive delays, and numerous interpretations of this complex law leave many of the small operators with no alternative but to get out of the industry.

Unfortunately, the Congress is not totally aware or chooses to ignore the regulatory nightmare it continues to create for both industry and consumers. Increasingly, excessive regulation is cited as one of the factors contributing to inflation, probably contributing one-fifth to one-quarter of the present inflation rate of 10 percent. This impact is reflected in higher prices to offset the expense of compliance. Currently Congress and the executive agencies look at just one side of the equation, the "benefits" which regulation is designed to bring. Cost considerations simply are not being adequately addressed. rate of 10 percent. This impact is reform bills in the Senate are just beginning to be heard in committee in this Congress. Examples are S. 2011, S. 600, and S. 2.

It is about time Congress seriously attempted to get a clearer idea of the burdens imposed upon the public as a result of regulatory programs, not randomly creating new ones at the whim of the administration. Final approval of regulations will thus be based on the rational assessment of costs of benefits to the public rather than the current haphazard method which looks at only one side of the equation.

If Congress was to make this effort to reduce regulation rather than increase it, and subsequently affecting inflation, this would appear to be a more positive sign to the international community than passing a bad piece of legislation that perpetuates our current bureaucratic nightmare and our dependency on foreign energy imports.

Mr. President, this is a so-called compromise that few producers or consumers really like. We are told, however, that it is necessary for international reasons, that the international community

is expecting us to pass this bill in order to resolve our international monetary problems, to support the falling dollar and strengthen the free world's international monetary system. This, of course, is rubbish and furthermore is indicative of the fact that all arguments on the merits of this bill have failed, and now the President is trying to wrap a bad bill in the American flag by an appeal to patriotism and bipartisan support of his foreign policy. The dollar problem is caused by tough international analysis which shows that the United States is importing too much, exporting too little, regulating and taxing too much, investing too little, and showing uncertain international leadership. This bill will only aggravate these very accurate perceptions.

It is inconceivable to this Senator that the sophisticated leaders in West Germany, France, Japan and elsewhere will view the passage of this conference report as anything but what it is—an illusion of a national energy policy, a mirage, a hoax. If we want to see the U.S. dollar fall further on the international money market, then by all means let us pass this bill because that will be the final result.

Mr. President, we have all learned a great deal about this issue during this Congress. New lines of political communcations have now been created. Let us put this conference report aside, turn to other pressing business, take some months to think about the real energy problem, and then apply ourselves next year to a true compromise that protects both the consumer and their country.●

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, under the order that has been entered, I ask that the Chair lay before the Senate Calendar Order No. 779.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2584) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works with an amendment to strike all after the enacting clause and insert the following:

SECTION 1. (a) There is authorized to be appropriated to the Nuclear Regulatory Commission (hereafter in this Act referred to as the "Commission") to carry out its functions and authorities under the Atomic Energy Act of 1954 (42 U.S.C. 2017) and the Energy Reorganization Act of 1974 (42 U.S.C. 5875) for fiscal year 1979, to remain available until expended, $335,895,000 to be allocated as follows:

(1) For "Nuclear Reactor Regulation", not more than $46,880,000 of which amount $1,070,000 in addition to the level of activity in fiscal year 1978 shall be available exclusively for the Alternate Fuel Cycle activities described in section 5 of this Act and $2,080,000 shall be available exclusively for Advanced Reactors;

(2) For "Standards Development," not more than $14,945,000, of which amount $650,000 shall be available exclusively for Low Level Radiation activities, including those activities described in section 3 of this Act;

(3) For "Inspection and Enforcement", not more than $38,760,000;

(4) For "Nuclear Materials Safety and Safeguards," not more than $27,240,000, of which amount $8,127,000 shall be available exclusively for Nuclear Waste Disposal and Management activities, and $540,000 in addition to the level of activity in fiscal year 1978 shall be available exclusively for the Alternate Fund Fuel Cycle activities described in section 5 of this Act;

(5) For "Nuclear Regulatory Research," not more than $166,640,000, of which amount $2,500,000 shall be available exclusively for the implementation of the Improved Safety Systems Research plan required by section 205(f) of the Energy Reorganization Act of 1974 as amended, $4,448,000 shall be available exclusively for Nuclear Waste research activities, $330,000 in addition to the level of activity in fiscal year 1978 shall be available exclusively for the Alternate Fuel Cycle activities described in section 5 of this Act, and $18,833,000 shall be available exclusively for Advanced Reactor Research;

(6) For "Program Technical Support," not more than $13,480,000, of which amount $160,000 in addition to the level of activity in fiscal year 1978 shall be available to the Office of International Programs exclusively for the Alternate Fuel Cycle activities described in section 5 of this Act;

(7) For "Program Direction and Administration," not more than $27,950,000, of which amount $225,000 shall be available for equal employment opportunity activities, including support of four positions in the Office of Equal Employment Opportunity;

(b) No funds may be transferred from any major program category listed in subsection (a) to any other major program category listed in such subsection if the total of the funds so transferred from that particular category would exceed $500,000, and no funds may be transferred to any major program category listed in subsection (a) if the total of the funds so transferred to that particular category would exceed $500,000, unless—

(1) a period of thirty calendar days has passed after the Commission has transmitted to the appropriate authorizing committees of the Congress a written report containing a full and complete statement concerning the nature of the transfer involved and the reason therefor; or

(2) each authorizing committee of the Congress referred to in paragraph (1), before the expiration of such period, has transmitted to the Commission written notice to the effect that such Committee has no objection to the proposed action. Such reallocation may be made notwithstanding the limitations of subsection (a), except that no reallocation pursuant to this subsection shall detract from sums specified in subsection (a) for particular activities under the major program categories. In no event, shall the total of sums reallocated pursuant to this subsection exceed $10,000,000 or 15 per centum of the program from which or to which the funds are transferred.

SEC. 2. (a) Subsection (b) of section 209 of the Energy Reorganization Act of 1974, as amended, is amended by adding at the end thereof the following sentence: "Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.".

(b) Section 209 of the Energy Reorganization Act of 1974, as amended, is amended by adding a new subsection (c) to read as follows and redesignating existing subsection (c) accordingly:

"(c) The Executive Director shall report to the Commission at semiannual public meetings on the problems, progress, and status of the Commission's equal employment opportunity effort."

SEC. 3. (a) The Commission and the Environmental Protection Agency are authorized and directed to conduct a preliminary planning study and develop a design for an epidemiological research study of the health effect of low level ionizing radiation. In the conduct of such planning study, the Commission and the Environmental Protection Agency shall consult with appropriate scientific organizations and Federal and State agencies.

(b) Within thirty days after the date of enactment of this section, the Commission and the Environmental Protection Agency shall submit to the Congress a memorandum of understanding delineating their respective responsibilities in the conduct of the planning study authorized by subsection (a) of this section and allocating the same authorized for this purpose by section 1(a)(2) of this Act. On or before April 1, 1979, such agencies shall submit a report to the Congress containing the results of such planning study. The report shall include an identification of the respective functions of the appropriate agencies and organizations to be involved in the implementation of the epidemiological research study as designed.

SEC. 4. The Commission is authorized and directed to undertake a comprehensive review of the existing process for selection and training of members of the Atomic Safety and Licensing Boards, including, but not limited to, the selection criteria, including qualifications, the selection procedures, and the training programs for Board members. The Commission shall report to the Congress on the findings of such review by January 1, 1979, and shall revise such selection and training process as appropriate, based on such findings.

SEC. 5. (a) There is hereby established within the personnel of the Commission a Fuel Cycle Evaluation task force which shall consist of representatives of appropriate Commission program offices and shall report directly to the Executive Director for Operations. Such task force shall monitor and assist the domestic international studies and evaluations of the various nuclear fuel cycle systems currently in progress.

(b) The Commission shall report to the Congress semiannually on the progress of domestic and international evaluations of nuclear fuel cycle systems including, but not limited to, a summary of the information developed by and available to the Commission on the health, safety, and safeguards implications of the leading fuel cycle technologies.

SEC. 6. (a) The Commission is authorized to provide grants to any State for the purpose of conducting an independent State review of any proposal to develop a long-term storage or disposal facility, including a test disposal facility, within such State of high-level radioactive wastes, non-high-level transuranium contaminated radioactive wastes, or irradiated nuclear reactor fuel.

(b) Any person, agency, or other entity proposing to develop a facility of a type described in subsection (a) of this section shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal. At any time

after such notification, such State may apply for a grant under this section.

(c) The Commission shall promulgate regulations to govern the issuance of grants under this section. Such regulations shall include provisions governing the amount of any such grants, taking into consideration the proposed level of State review and the continued development of the proposed facility. Any grant approved pursuant to this section shall not exceed the sum of $500,000, and any sums received by the State in excess of its actual costs shall be reimbursed to the Commission.

(d) Beginning in fiscal year 1979, there are authorized to be appropriated $500,000, to be available until expended, for the purpose of providing the assistance authorized by subsection (a) of this section.

SEC. 7. Title II of the Energy Reorganization Act of 1974, as amended, is amended by adding at the end thereof a new section to read as follows:

"EMPLOYEE PROTECTION

"SEC. 210. (a) No employer, including a Commission licensee, an applicant for a Commission license, or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

"(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;

"(2) testified or is about to testify in any such proceeding; or

"(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

"(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

"(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

"(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(c)(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall reform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

"(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

"(d) Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

"(e)(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

"(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

"(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

"(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this Act or of the Atomic Energy Act of 1954, as amended.".

SEC. 8. The Commission shall report to the Congress on January 1, 1979, and annually thereafter on the use of contractors, consultants, and the National Laboratories by the Commission. Such report shall include, for each contract issued, in progress or completed during fiscal year 1978, information on the bidding procedure, nature of the work, amount and duration of the contract, progress of work, relation to previous contracts, and the relation between the amount of the contract and the amount actually spent.

COOPERATIVE RESEARCH FUNDING

SEC. 9. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.

TRANSFER OF FUNDS

SEC. 10. Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which transferred.

APPROPRIATIONS

SEC. 11. Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

The PRESIDING OFFICER. Time for debate on this bill is limited to 1 hour, to be equally divided and controlled by the Senator from Colorado (Mr. HART) and the Senator from Vermont (Mr. STAFFORD), with 30 minutes on any amendment, except for one to be offered by the Senator from Colorado (Mr. HART) or the Senator from New Mexico (Mr. DOMENICI), on which there will be 1 hour and 15 minutes on any debatable motion, appeal, or point of order.

Mr. HART. Mr. President, I ask unanimous consent that Larry Roth, Phil Cummings, Carole Hackes, Haven Whiteside, and Kevin Cornell, of the committee staff, be granted privileges of the floor during the consideration of the pending measure, and a similar request for Peter Rosenburg.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that Karyn Mandan of Senator CRANSTON's staff may have the privilege of the floor during consideration of the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, as chairman of the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, I am pleased to present for Senate consideration, S. 2584, as amended, authorizing appropriations for the Nuclear Regulatory Commission for fiscal year 1979.

Mr. President. this is the second NRC authorization bill to have been reported out of the Committee on Environment and Public Works. The committee assumed jurisdiction over nuclear regulatory issues 2 years ago, at the beginning of the 95th Congress. During these past 2 years, this committee has been able to examine in increasing detail the activities carried out by the Nuclear Regula-

tory Commission. The NRC authorization bill for fiscal year 1979 represents our efforts to fully carry out our oversight responsibilities over the Commission.

The Nuclear Regulatory Commission sent to Congress a proposed budget of $330.7 million for fiscal year 1979. After close examination of this proposal, the committee has recommended a total budget authority for fiscal year 1979 of $336.4 million. This is an increase of $5.7 million over the Agency's request, and an increase of $38.7 million over the NRC authorization level for fiscal year 1978.

Mr. President, the authorization bill identifies a number of areas which will require concerted effort on the part of NRC, as well as continued congressional oversight during the coming year. Such areas include nuclear waste management, low-level radiation standards, and advanced reactor and alternate fuel cycle research. While the committee recommended increased funds and personnel allotments to certain of these areas, we were particularly concerned that the NRC efforts represented an efficient, cost-effective, and fiscally responsible effort on the part of the Agency. Therefore, for certain new program initiatives, no additional funds have been authorized in the bill. In these areas, reprograming and reallocation of funds and personnel will be required. The committee has identified $14 million of new program initiatives. However, since the bill provides for a recommended budget increase of only $5.7 million, the Commission will be required to reallocate the remaining $8.1 million from existing programs. Locating these funds for reallocation will not be an easy task for the Agency. Nevertheless, the committee's budget analysis suggests that it can and should be done.

The authorization level recommended in this bill is $605,000 less than the committee's original recommendation in the budget report of March 1978. We are pleased to report to the Senate that we believe the NRC can carry out its statutory responsibilities to protect the health and safety of the public in the area of nuclear technology at less cost than the committee estimated earlier this year. I hasten to add, Mr. President, that the committee will continue its efforts in the coming fiscal year to insure that the Agency carries out its mission without unnecessarily increasing the cost to the American public.

Mr. President, over the past several years, the need for decreased dependence on foreign oil supplies has been made clear. As an alternative, light water nuclear reactors are one technology capable of meeting our expanding electrical power needs. There are 70 operating commercial nuclear reactors providing almost 13 percent of our electrical needs. An additional 133 reactors are in various stages of licensing and construction. These reactors could significantly increase our electrical power generation capacity in the years ahead.

In spite of these facts, however, nuclear power does not appear to be the single solution to future energy needs that it did just a decade ago. Between 1972 and 1974, utilities placed orders for over 100 new nuclear plants. Two years later, that trend was dramatically reversed. In 1976, orders for new plants dropped to three. In 1977, there were only four new orders. And, so far this year, no new plants have been ordered.

There are undoubtedly many reasons for this decline in the fortunes of the nuclear industry. The reduced load growth in electrical consumption since 1974 has certainly been one major factor. More important, however, is the fact that a significant sector of the public has serious questions about the health, safety and, environmental implications of the nuclear option. This lack of confidence and questioning coupled with uncertainties in the reactor licensing process, has prompted utility executives to question the high capital costs of nuclear powerplants. The Nuclear Regulatory Commission is the primary Federal agency charged with regulating civilian nuclear activities to insure the protection of the public health and safety, national security, and the quality of the environment. In this regard, the Agency must be committed to addressing and solving many of the serious underlying problems which have plagued the industry during its 20-year history and which continue to threaten the future existence of nuclear power as a viable energy alternative. Nuclear power may offer a real potential for solving some of our energy dilemma. The realization of that potential, however, depends on aggressive action by the NRC to resolve outstanding safety issues, and minimize risks due to environmental and human exposure to ionizing radiation. These problems, among others, have the potential for crippling, if not paralyzing, further nuclear development in this country.

Mr. President, proponents have long claimed that nuclear power would be a clean, safe, and inexpensive energy source of the future. But, can we test those claims when, after two decades, there are still no facilities available for disposing of nuclear reactor waste? Furthermore, while nuclear power may be cleaner than other energy sources from the perspective of effluent pollution, the uranium mill tailings generated at the front end of the fuel cycle are creating a serious health hazard which will persist indefinitely in the environment.

What about the safety of nuclear powerplants? The Nuclear Regulatory Commission has identified 133 generic safety issues which require resolution. Of these, 41 have been judged by the NRC staff to warrant priority attention, because their resolution could provide a significantly beneficial increase in assurance of the health and safety of the public. Yet despite these numerous outstanding safety issues which have yet to be resolved, 70 plants are currently operating and more are licensed to operate each year. This fact points to the high-priority need for safety research.

Consider, too, Mr. President, the costs of nuclear power. How can we possibly make an accurate comparison between the costs of various energy alternatives when no one has fully analyzed the costs of the complete nuclear fuel cycle, from uranium mills to waste disposal and final decommissioning of obsolete facilities? Other factors also tend to cloud the economic picture: Over the past years, the Federal Government has provided uranium fuel enrichment services at less than commercial rates; the Price-Anderson Act continues to limit reactor accident liability and subsidize that element of the industry; and utilities around the country are requesting rate increases, not decreases, when new nuclear powerplants go on the line.

On the other side of that same question, there are varying estimates of the added cost created by unnecessarily lengthy regulatory procedures that escalate the total cost of construction of nuclear powerplants. Furthermore, nuclear power will encounter steep competition from coal, from refined solar energy technology, and other renewable resources, as well as improved applications of fossil fuels.

Mr. President, as I have said before, it appears that nuclear power is on a downhill path which can only be reversed by the best efforts of the industry and the Nuclear Regulatory Commission to resolve those problems which to date have impeded the successful development of nuclear energy. This NRC fiscal year 1979 authorization bill will focus the Commission's efforts on those areas which are most critical to the future of nuclear power.

Mr. President, perhaps the most serious roadblock to future nuclear power development is our inadequate Federal program for radioactive waste disposal. The Council on Environmental Quality has even suggested that production of commercial nuclear waste should cease at a specified future date if no waste disposal facility is then available. Furthermore, individual States are becoming reluctant to allow continued development of nuclear power, absent approved adequate waste disposal methods.

S. 2584 falls short of such stern medicine. Nevertheless, in order to insure expeditious action on the nuclear waste problem, the committee has required the Commission to increase resources for nuclear waste management by 55 percent. Although NRC is not the lead Agency responsible for disposing of nuclear wastes, the Commission does have regulatory responsibility over waste disposal activities carried out both by private industry and by the Department of Energy. NRC must license any commercial waste disposal or storage facility, as well as license the reactors that produce these wastes.

In February 1978, DOE released the report of its task force on nuclear waste management, which concluded that if current waste disposal initiatives and plans were to continue at the fastest possible pace, a permanent waste disposal facility would not be operating until 1988. It is expected that the additional resources which this bill adds to NRC's waste disposal efforts will allow the Agency to keep pace with that program and play its proper role in developing an optimum waste storage strategy.

These additional waste management funds will enable NRC to make necessary

preparations for evaluating future waste facilities and assuring the protection of public health and safety. There are genuine public concerns about nuclear waste disposal which we cannot afford to underestimate. It will be politically unfeasible to construct a waste repository in any State without full public confidence in the safety of the facility. Thus, NRC's nuclear waste effort must be given the highest priority and the technical work must be of the highest quality.

The bill also includes authorization of $500,000 to aid States that are being considered for nuclear waste disposal facilities. The impacted States must be notified early in the planning process about any proposed facility; these funds will then become available to assist them in the preparation of an independent State review of such a proposal.

Another subject of great public concern is the health hazards of exposure to low levels of radiation. Recent reports linking radiation exposure to serious health problems have heightened public awarness of this problem. Studies of military personnel exposed to nuclear radiation in the "Smoky" test in Nevada have linked exposure to increased risk and incidence of cancer. Similar studies of workers at the Hanford, Wash., nuclear facility and the Portsmouth, N.H., Naval Shipyard have also sparked considerable controversy.

In order to examine the facts of this serious issue more thoroughly, Senator DOMENICI and I, in February of this year, jointly sponsored a full day seminar on this topic. After considerable debate and discussion among the experts participating in the seminar, a general consensus was developed on several points: First, there is little doubt that current Federal standards are adequate to protect against acute adverse health effects. It is not clear, however, whether radiation exposure limits are sufficiently stringent to protect workers and general public from long-term chronic effects. Second, there is only minimal coordination among Federal agencies and there are serious deficiencies in Federal programs designed for the study and regulation of sources of ionizing radiation. Thus, even though there is a widely recognized need for additional research, Federal efforts to deal with the issue are inadequate.

NRC and EPA, as regulators of the nuclear power cycle, would be primary users of radiation research. Therefore, S. 2584 requires these agencies to jointly lead a preliminary planning study which will result in the design of a comprehensive Federal epidemiological study of the effects of low-level ionizing radiation. This effort will culminate in a report to Congress by April 1, 1979.

Prior to committee action, I requested comments from NRC about the desirability and feasibility of conducting such study. In its response, the Commission stated that—

> . . . the feasibility of a more general epidemiological study designed to better define the relationship between cancer and radiation exposure for occupationally exposed people appears promising. NRC further concluded that—
>
> There seems to be a growing consensus that some form of major epidemiological study of the cancer producing effects of low-level radiation exposure should be performed. It may or may not be possible to get definitive results from such a study, but the Commission agrees that the performance of such a study should be seriously considered and explored in detail.

Neither the NRC nor EPA has yet undertaken such a study, although each agency has the responsibility for setting standards based on the results of health effects research in this area.

During the NRC fiscal year 1979 authorization hearings, testimony was heard from the Commission and the National Academy of Sciences (NAS) concerning the scope of the low-level radiation issue, and the relative roles of Congress and the Federal Government in solving the problem.

It is not yet clear which agencies and organizations should be involved in carrying out the research itself. However, it is clear that such a major research effort must be preceded by a comprehensive planning study which will develop a design for the research, and identify appropriate roles of participants, especially NRC and EPA, who will be primary users of the research results. Therefore, the committee included this provision in the bill to initiate the first part of a two-step process. The preliminary planning effort should address both management and scientific aspects of the study, and is to be prepared in consultation with appropriate Federal agencies and organizations with responsibilities and capabilities in this area. The preliminary planning effort should also identify the degree to which the planned epidemiological study is likely to provide definitive information on the relationship, if any, of low-level radiation exposure to serious health effects.

Since the committee acted, the House Committee on Interstate and Foreign Commerce has reported the Biomedical Research and Research Training Amendments of 1978 (H.R. 12347). Section 502(b)(2) of that bill calls for the Secretary of the Department of Health, Education, and Welfare to establish a comprehensive program of research into the biological effects of low-level ionizing radiation. The House Committee on Interstate and Foreign Commerce made the following comments in their report on the fiscal year 1979 Nuclear Regulatory Commission authorization bill:

> The Committee recognizes the importance of proceeding with studies of the health effects of low-level radiation and believes the provisions of title V of H.R. 12347 should effectively address this important issue. However, the Committee recognizes the interests of the Nuclear Regulatory Commission, the Department of Energy and the Environmental Protection Agency in low-level radiation, and expects that the Secretary of Health, Education and Welfare will afford these agencies the opportunity to fully participate in the study mandated in title V of H.R. 12347.

Mr. President, I endorse those views. There is an important role to be played by HEW in any solution to this serious public health concern. In fact, on May 9, the administration asked HEW to instigate and coordinate an interagency inquiry into Federal radiation research together with the Departments of Defense and Energy, and with the Veterans' Administration. Since then, both the Environmental Protection Agency and the Nuclear Regulatory Commission have been added to the list of cooperating agencies.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the White House memorandum of May 9 entitled "Radiation Exposure Inquiry."

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

Memorandum for the Secretary of Defense; the Secretary of Health, Education, and Welfare; the Secretary of Energy; and the Administrator of Veterans' Affairs.

From Stuart Eizenstat and Zbigniew Brzezinski.

Subject Radiation Exposure Inquiry.

The President has approved the development of a coordinated response to the growing agency and Congressional concern about the effects of radiation exposure on participants in nuclear tests and workers in nuclear-related projects.

The Secretary of Health, Education, and Welfare should coordinate the formulation of a program including the following:

1. A study or series of studies which would determine the effects of radiation exposure on participants in nuclear tests, including members of the armed forces and civilian personnel, workers at nuclear facilities and projects, and other persons as indicated.

2. A public information program to inform persons who might have been affected and the general public about the steps being taken and the conduct of the studies.

3. A plan for ensuring that persons adversely affected by radiation exposure receive the care and benefits to which they may be or should be entitled.

4. Recommendations on steps which can be taken to reduce the incidence of adverse radiation exposure of this type in the future.

We are aware that the Department of Defense has initiated a study and that the Center for Disease Control has undertaken at least two investigations. Our intent is that these efforts become a coordinated Administration approach to the problem. A proposed plan of action should be prepared for review by June 1, 1978.

The staff of the National Security Council, the Domestic Policy Staff and the Office of Science and Technology Policy within the Executive Office are available to assist the interagency group.

Mr. HART. Mr. President, this Federal initiative has a broader scope than the study outlined in the Senate NRC authorization bill since it covers the whole area of X-rays and other medical exposures which are regulated by the Bureau of Radiological Health. And, unlike the provision in the NRC bill, the administration focus is on the research, rather than the regulatory aspects of the problem. These efforts should prove to be complementary rather than duplicative. Therefore, Mr. President, it is the intent of this section that NRC/EPA preliminary planning study is to be done in close cooperation with HEW, although NRC and EPA will still be the lead agencies.

It would be in keeping with this provision if the President, at the conclusion of the HEW interagency study, were to initiate an independent, outside review of all present and past Federal ionizing radiation research programs. Such a review would provide an assessment of great value to NRC and EPA in the conduct of the planning study authorized in this bill.

In summary, Mr. President, this bill will complement the administration study by providing a way to tie research needs and results into the regulatory framework. It is expected that NRC and EPA will work with HEW to achieve this goal, and in particular, will fully utilize the information generated by the HEW effort. We hope that within a year these efforts will lead to a new more unified, more adequate, and more credible approach to the study of low-level radiation.

S. 2584 also sets new directions for NRC's regulatory research program. In the past, NRC has only conducted research that could be considered confirmatory in scope. However, section 205(f) of the energy reorganization plan of 1974 requires NRC to develop a plan for development of new or improved safety systems for nuclear powerplants. NRC has a positive responsibility to take initiative in this area and to explore fully the opportunities for significant improvements in reactor safety; $2.5 million is provided for improved safety systems research to expedite resolution of the safety issues I mentioned earlier.

Another important aspect of NRC's research program is related to advanced reactors. The present generation of light water reactors may be superceded at some future date by advanced reactor designs which can extend the supply of nuclear fuel. Funds are provided in S. 2584 which will allow the Commission to participate fully in the evaluation of this advanced reactor technology.

The bill also provides for an international effort to examine and evaluate alternate fuel cycles. NRC must keep abreast of these developments both here and abroad. The choice of technology will have great significance internationally, because of differences in nuclear proliferation potential. Therefore, it is important for the United States to have the technical expertise with which to contribute to the international fuel cycle evaluation effort. This bill contains additional funding for the Nuclear Regulatory Commission to conduct research and evaluations of alternate fuel cycles. NRC's contribution will be particularly useful in the formulation of future nuclear energy policy.

The authorization in this bill represents an essential part of this Nation's effort to develop and maintain a safe, clean energy source. I recommend that my colleagues support enactment of this authorization bill. Mr. President, I ask unanimous consent that a summary of the bill prepared by the staff and a summary table of obligations by program be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF NUCLEAR REGULATION COMMISSION—FISCAL YEAR 1979 AUTHORIZATION

Nuclear Reactor Regulation (Section 1(a)(1))—The bill includes an authorization of $46,880,000 which is $870,000 above the budget request. Of the total, $1,070,000 (including 9 staff-years) is for alternate fuel cycle activities above and beyond the fiscal year 1978 level, and $740,000 (including 8 staff-years) above the fiscal year 1979 budgeted level of $1,340,000 is for the additional advanced reactor activities discussed below. To cover them fully, an additional $940,000 is to be reallocated within the program.

Standards Development (Section 1(a)(2))—The bill includes an authorization of $14,945,000 which is $465,000 above the budget request. Of the total, $500,000 above the fiscal year 1979 budgeted level of $150,000 is for the additional low-level radiation effects activities discussed below. To cover that fully, an additional $35,000 is to be reallocated within the program.

Inspection and Enforcement (Section 1(a)(3))—The bill includes an authorization of $38,760,000, as requested by the Administration, an increase of $3,000,000 over Fiscal Year 1978. These funds will be used for Agency activities to assure thorough field inspection and investigation, that nuclear reactors, fuel cycle facilities and materials are used in a safe manner and in full compliance with NRC licenses, rules and regulations. The primary cause of the funding increase over Fiscal Year 1978 is the implementation of a new resident inspector program, which will locate NRC inspectors full-time at selected nuclear sites, as a means of enabling increased oversight of licensee performance.

Nuclear Materials Safety and Safeguards (Section 1(a)(4))—The bill includes an authorization of $27,240,000 which is $1,140,000 above the budget request. Of the total, $1,300,000 (including 10 staff-years) above the FY 1979 budgeted level of $6,827,000 is for the additional Nuclear Waste activities, and $540,000 (including 8 person-years) above and beyond the FY 1978 level is for the additional Alternate Fuel Cycle activities discussed below. To cover them fully, an additional $1,200,000 is to be reallocated within the program. These funds will cover the Agency's efforts in licensing and regulating all commercial nuclear materials and facilities, except reactors, including safeguarding of materials from sabotagee, theft or diversion. New initiatives for FY 1979 are in the areas of nuclear waste including review at proposed waste facilities, and alternate fuel cycle activities.

Nuclear Regulatory Research (Section 1(a)(5))—The bill includes an authorization of $166,640,000 which is $3,170,000 above the budget request. Of the total, $2,500,000 is for the improved safety systems research activities, $3,150,000 (including 5 staff-years) above the fiscal year 1979 budgeted level of $1,298,000 is for the additional nuclear waste research activities, $330,000 (including 1-staff year) above and beyond the fiscal year 1978 level is for the additional alternate fuel cycle activities; and $3,000,000 above the fiscal year 1979 budgeted level of $15,833,000 is for additional advanced reactor research activities discussed below. To cover them fully an additional $5,810,000 is to be reallocated within the program.

Program Technical Support (Section 1(a)(6))—The bill includes an authorization of $13,480,000 which is $80,000 above the budget request. Of the total, $160,000 (including 2 staff-years) above and beyond the fiscal year 1978 level is for the Office of International Programs' additional alternate fuel cycle activities discussed below. To cover them fully an additional $80,000 is to be reallocated within the program.

Program Direction and Administration (Section 1(a)(7))—The bill includes an authorization of $27,950,000—equal to the budget request. Of the total, $75,000 (including 1 staff-year) above the fiscal year 1979 budgeted level of $150,000 is for the equal employment opportunity activities discussed below. To cover them fully, $75,000 is to be reallocated within program direction and administration.

Two-Year Authorization—The Committee dropped the 2-year authorization from the Administration bill and included authorizations only for fiscal year 1979.

Reprograming Authority (Section 1(b))—The bill continues present practice of allowing reprograming between major program offices, up to 15 percent of the sending or receiving office budget and up to a $10 million aggregate limit. Thirty day notice must be given to the authorizing committees of Congress.

Reprograming within major programs is permitted, and will be required to carry out the increased effort in specific activities required by the bill. Reprograming, or lack thereof is not to be used to detract from those specific activities.

Nuclear Waste Disposal (Section 1(a)(4), (5))—The bill provides a significant (55 percent) increase in the resources for the waste management program. The bill adds $4.45 million, including 15 people, to increase NRC's efforts to help solve the critical problems of waste disposal and management as soon as possible.

Advanced Reactor Research and Licensing (Section 1(a)(1) and (5))—The Committee recommends an increase of $3 million in the authorization for the Commission's advanced reactor safety research program to be used for two purposes: (1) safety research work on advanced reactor types which are not in NRC's current program and which have the potential for near-term and mid-term commercial availability in the United States and (2) additional safety research work on specific advanced reactor types, in the event NRC receives firm indications that a lead plant design will be submitted for NRC review in fiscal year 1979. The Committee also recommends an increase of $740,000, including funding for eight additional positions, in the authorization for the advanced reactor program in the Office of Nuclear Reactor Regulation. This increased authorization would allow for preapplication review work on a lead plant design for an advanced reactor in the event NRC receives firm indications that a lead plant design will be submitted for NRC review in fiscal year 1979.

Improved Safety Systems Research (Section 1(a)(5))—The bill authorizes $2.5 million to implement a new program of research into improved safety systems for nuclear power plants. Previously, NRC has conducted only confirmatory research. This provision will allow them to take the initiative on some research projects which appear likely to lead to significant risk reductions, as identified in NRC's report to Congress of April 12, 1978.

Executive Director (Section 2(a))—The bill requires the Directors of Program Offices, if they communicate directly with the Commission, to keep the Executive Director for Operations fully and currently informed of the content of such communications.

Equal Employment Opportunity (Section 1(A)(7) and (2)(b))—The bill requires the Executive Director for Operations to report at the Commission review the problems, progress, and status of the NRC's equal employment opportunity efforts.

The bill also authorizes $225,000 for equal employment opportunity activities.

Low-Level Radiation (Section 1(a)(2) and Section 3)—The bill requires that the NRC and EPA develop, with joint lead responsibilities, a preliminary planning study which will result in the design of a comprehensive Federal epidemiological study of the effects of low-level ionizing radiation. The planning study will be carried out in consultation with appropriate Federal and State agencies, and

scientific organization. This study will culminate in a report to Congress by April 1, 1979. NRC and EPA are further required to submit to Congress, within 30 days of enactment of the legislation, a memorandum of understanding delineating the respective responsibilities and funds allocated for each agency in this effort.

Atomic Safety and Licensing Board (Section 4)—The bill requires the NRC to undertake a comprehensive review of the Agency's procedures for selection and training of Atomic Safety and Licensing Board (ASLB) members. The study, which will include but not be limited to an examination of selection criteria, including qualifications, the selection procedures and the training programs for Board members, shall be presented to Congress by January 1, 1979.

Based on the findings of the study, the Commission is directed to revise the selection and training process, where appropriate.

Alternate Fuel Cycles (Sections 1 and 5)—The bill establishes an internal NRC Fuel Cycle Evaluation Task Force, reporting to the Executive Director for Operations. NRC must report to Congress semi-annually on the progress of domestic and international fuel cycle evaluations, including the health, safety and safeguards implications of the leading nuclear fuel cycle technologies. An additional $2.1 million, above the fiscal year 1978 level of activity of $0.2 million is allocated for this purpose. Approximately 20 staff-years, above the fiscal year 1978 level of activity of 5 staff-years, will also be required.

Aid to Impacted States in Nuclear Waste Licensing (Section 6)—The bill includes an authorization of $500,000, to remain available until expended, for the purpose of providing grants to any State in which a long-term storage or disposal facility for certain specified radioactive wastes is proposed. Such individual grants, in amounts up to $500,000 and in accordance with regulations promulgated by NRC, would be provided to facilitate independent review by the State of a proposal to develop a waste disposal facility within its borders.

Employee Protection (Section 7)—The bill includes a provision to protect employees of NRC licenses, applicants, or subcontractors thereof from discrimination as a result of "whistleblowing" activities.

Contractors and Consultants (Section 8)—The bill requires the NRC to report to Congress on January 1, 1979, and annually thereafter on its use of contractors, consultants and the National Laboratories. The report shall be comprehensive, including information on bidding procedure, nature of the work, duration of the contract. progress of work, relation to previous contracts, and the amounts both authorized and spent, for each contract.

FROM SENATE REPORT 95-848, ACCOMPANYING S. 2584, AS AMENDED—SUMMARY OF OBLIGATIONS BY PROGRAM

[In thousands]

	Actual, fiscal year 1977	Estimate, fiscal year 1978 [1]	Administration request, fiscal year 1979	Committee recommendation, fiscal year 1979	Change
Obligations by activity:					
Direct program:					
Nuclear reactor regulation	$42,140	$42,960	$46,010	$46,880	$870
Standards development	12,136	13,835	14,480	14,945	465
Inspection and enforcement	27,894	35,775	38,760	38,760	----
Nuclear material safety and safeguards	21,122	24,897	26,600	[2] 27,240	640
Nuclear regulatory research	119,432	340,029	163,470	168,640	3,170
Program technical support	10,248	11,355	13,400	13,480	80
Program direction and administarion	20,987	25,737	27,950	27,950	----
Aid to impacted States	----	----	----	500	500
Total obligations, direct program	253,959	294,588	330,670	336,395	5,725
Reimbursable program	196	500	500	500	500
Total obligations	254,155	295,088	331,170	336,895	5,725
Unobligated balance, start of year	−7,620	−2,465	----	----	----
Unobligated balance, end of year	2,465	----	----	----	----
Orders received from other Federal agencies	−220	−500	−500	−500	----
Budget authority	248,780	292,123	330,670	336,395	5,725

[1] Includes $5,350,000 for the proposed fiscal year 1978 pay raise supplemental and $5,350,000 for a proposed fiscal year 1978 supplemental to establish the resident inspector program ($2,650,000 and acceleration of the NRC waste management and uranium fuel cycle licensing programs ($2,700,000).

[2] It should be noted for the record that there is a misprint in the committee report: The committee's recommended authorization of nuclear material safety and safeguards activities for fiscal year 1979 should read $27,240,000. The incorrect figure of $27,740,000 appears in the table on page 7 of the committee report.

Mr. HART. Mr. President, I yield the floor to the Senator from Idaho, the distinguished ranking minority member of our subcommittee, who worked very closely with me on the preparation of this legislation over the past year and who has given a great deal of diligent attention to the matters before the Nuclear Regulatory Commission.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. I thank the Senator from Colorado.

I wish to express my appreciation to him, not only for yielding the floor to me at this time, but also for the constructive cooperation that we have enjoyed in trying to bring this to the floor.

It has been that kind of an effort, which I know I appreciate and I am certain that others also appreciate, in bringing a matter of this complexity and this seriousness to the attention of the Senate in a way that will help resolve some of the issues that plague the atomic industry and the movement forward.

Mr. President, I ask unanimous consent that James Asselstine of the Public Works Committee and Chuck Trabandt of the Energy Committee be granted privilege of the floor during consideration of this legislation.

The PRESIDING OFFICER (Mr. NUNN). Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I rise in support of S. 2584, the Nuclear Regulatory Commission authorization bill for fiscal year 1979. The bill, as reported by the Environment and Public Works Committee, authorizes a total of $336,395,000 for the Commission's activities for fiscal year 1979. This represents an increase of $5,725,000 over the Agency's request.

The Nuclear Regulation Subcommittee received detailed testimony this year on the Commission's programs and its budget request from both Agency representatives and outside witnesses. As a result of these hearings, the committee identified certain programs requiring an increased level of effort by the Agency as well as certain new initiatives which it believes should be undertaken by the Commission. These new initiatives and areas of greater effort include nuclear waste disposal, advanced reactor research and licensing, improved safety systems research, research on the effects of low level radiation, and alternate fuel cycles.

The Commission has the responsibility to protect the public health and safety by licensing and regulating certain nuclear waste disposal facilities. Since delay in NRC's regulatory program could seriously impair the nuclear waste program, the committee believes NRC's current efforts should be increased to insure that regulation and licensing procedures have been properly established by the time they are needed by those Federal agencies and private companies which will design and construct facilities for long-term disposal of nuclear wastes. In one area—the disposal of low-level radioactive wastes from commercial activities—testimony before the committee has indicated a growing shortage of available capacity at existing sites. Accordingly, the committee has recommended additional funding to accelerate the siting and licensing of new low-level waste burial grounds, to address other activities identified by NRC as needing accelerated effort, and to carry out new activities which may be required as a result of future changes in the national nuclear waste management program.

In the area of advanced reactor research and licensing, the committee has recommended increased funding for additional safety research and preapplication review work for specific advanced reactor types in the event NRC receives firm indications that a lead plant design will be submitted for NRC review in fiscal year 1979. Both NRC and the committee have been advised that a utility group intends to submit such a lead plant design in September 1979 for a high-temperature, gas-cooled reactor (HTGR), and NRC has identified the confirmatory research and preapplication review work which would enable NRC to act on the request for a design review. The increased funding recom-

mended by the committee could also be used for safety research work on advanced reactor types which are not in NRC's current program and which have the potential for near-term and mid-term commercial availability in the United States.

In the area of reactor safety research, the committee has recommended that the Commission commence research work on new or improved safety systems for nuclear powerplants. The Commission, in response to last year's authorization act, has identified five research projects which appear likely to lead to even further improvements in nuclear plant safety systems.

Regarding low-level radiation effects, the committee has called for a planning study by NRC and the Environmental Protection Agency on the effects of low-level ionizing radiations. Among other things, this planning study will evaluate the likely contribution of a further comprehensive epidemiological study to determine whether there exists any relationship between low-level radiation exposure and adverse health effects.

I might just add, Mr. President, at this point, that this is a matter of conjecture and concern for many people and that study certainly needs to be conducted so that we know what it is we are dealing with in that area.

In the area of alternate fuel cycles, the committee has recommended an increased effort and the establishment of a task force within NRC to permit the agency to participate, consistent with the Commission's other regulatory responsibilities, in certain ongoing fuel cycle reviews.

Apart from these new initiatives and areas of increased effort, the committee has recommended certain changes in the Agency's operations to strengthen the role of the Executive Director for Operations, to enhance the effectiveness of the Agency's Atomic Safety and Licensing Boards, and to improve the effectiveness of the Commission's equal employment opportunity efforts. Finally, the committee has recommended a provision to protect any worker who is discriminated against by his employer for providing assistance to NRC in the discharge of its regulatory responsibilities.

Mr. President, I believe that the committee's recommendations are useful improvements and I urge their adoption. One point, however, deserves emphasis. The activities assigned to the Agency by the bill should not detract from the Commission's exercise of its existing responsibilities. I believe that the committee and the Senate would endorse the principle that NRC should discharge its important responsibilities to protect the public health and safety, the common defense and security, and the environment in the licensing and regulation of nuclear activities in an efficient and effective manner. The Commission should keep this principle in mind in undertaking the additional responsibilities recommended by the committee.

Mr. President, I want to underscore what I said at the outset of my appreciation for the help, assistance, and cooperation of the Senator from Colorado; also, the effective cooperation and work of both the majority staff and minority staff on this very complex but very important piece of legislation.

I remind the Members that there is one basic reason for a great deal of the expanded research, and that is in the area of uncertainty about what will be done in the nuclear industry and nuclear programs both by the Government and by nongovernmental entities.

There is one area in which we cannot afford to lag, and that is in the NRC activities, both with respect to safety and regulation. In addition to existing work going on, we must have NRC involvement ahead of decisions that might be made in some of the alternative areas that have been indicated as possibilities in the broad spectrum of nuclear energy developments in this country.

I reaffirm what I have said, that I think it is also important for the United States to be involved in safety, analysis, design, and improvement of technology with respect to those technologies which we may not undertake but which are being undertaken by other countries around the world, so that we can maintain the technological lead and the ability to contribute to the safety of mankind with respect to nuclear activities in other countries, even if they be activities in which we will not indulge in this country.

So NRC has that responsibility for our ongoing activities here. They can make a contribution through the technological advancement of those activities which may be undertaken elsewhere.

Mr. President, I ask unanimous consent that Dan Dreyfuss, Will Smith, Lee Wallace, and Mike Harvey, of the Energy Committee staff, have the privilege of the floor at all stages of the proceedings on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. I thank the Senator for yielding, and I reserve the remainder of my time.

Mr. HART. Mr. President I yield to the distinguished Senator from West Virginia, the chairman of the Committee on Environment and Public Works.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I appreciate the consideration of the chairman of our Subcommitte on Nuclear Regulation (Mr. HART), who has just completed his opening statement on this important legislation.

He has assumed a position of leadership on this subject within our committee. I am also gratified by the involvement of the Senator from Idaho (Mr. McCLURE), the ranking minority member of the subcommittee. The Senator from Vermont (Mr. STAFFORD) has again helped us to develop realistic legislation in his role as ranking minority member of the full committee.

Mr. President, as we begin consideration of S. 2584, the proposed Nuclear Regulatory Commission Authorization Act for fiscal 1979, I think it appropriate to briefly review certain unresolved issues concerning the development of nuclear power. I take this opportunity because these issues are of vital concern to every citizen. Their resolution, therefore, must be an important Federal priority.

Our country is in the midst of intense debate on the extent of the use of nuclear energy in the future. Some call for ample availability of nuclear power to give the Nation flexibility in making energy choices. Those opposing nuclear energy continue to claim that further development of this alternative is extremely dangerous.

Even if the risks of nuclear energy are much smaller than its critics allege, they still are not negligible and, indeed, would be sufficient grounds for rejection of this option if there is a workable alternative technology with fewer problems. We should fully explore the potential of coal, enhanced oil and gas recovery, solar, wood, wind, geothermal, and tidal power. Then, if the determination is made that additional energy is still needed, perhaps a program for expanded nuclear power could be considered. We must not, however, advocate extreme dependence on nuclear power without exploring a more sensible middle ground.

The Committee on Environment and Public Works, which I chair, has jurisdiction over the administration's proposed nuclear siting and licensing bill (S. 2775), designed to speed the licensing of nuclear powerplants through such mechanisms as early site approval, standard facility designs, and combined construction and operating permits. Testimony presented to the committee leaves reasonable doubt in my mind as to whether this plan will work as intended. However, passage of an effective nuclear licensing bill of that type would facilitate the use of nuclear power. In fact it would accelerate the deployment of additional nuclear powerplants.

I feel such a result would be premature and unwise. The health and safety of our Nation's citizens must be the Environment and Public Works Committee's most important consideration in determining if we should accelerate nuclear power development. But, despite continuous planning efforts and studies by several Federal agencies I have seen no indication of a proven technology or definitive long-term plan for the disposal of radioactive wastes. Although waste disposal is the last step in the nuclear fuel cycle, it is the primary nuclear issue facing us today.

The waste byproducts of nuclear plants are radioactive and deadly. Each of the 70 nuclear plants licensed for operation produces an average 30 tons of radioactive waste per year. Additionally 88 plants have received construction permits and are in different stages of completion. This means that soon the country will have to deal with 5,000 tons of nuclear waste per year. Some of it, the fission products, becomes harmless in a hundred years or so, but it also contains about 2½ tons of plutonium and other elements which must be isolated for at least 250,000 years.

If nuclear power does become essential to our energy independence we must be able to contain the toxic wastes as we contain those from other human activities. But, at present, no permanent disposal facilities for reactor wastes exist.

The spent fuel is stored under water at the reactor site for a few years. Throughout the United States, the temporary storage pools for radioactive wastes located on the site of nuclear powerplants are filled to capacity, or soon will be. Further, there are persistent reports of problems with the tanks which store high level wastes generated by defense-related activities.

The situation is rapidly becoming intolerable. We cannot expect States and communities to permit the continued construction of nuclear powerplants without provision for the safe disposal of the deadly wastes they generate. Gov. Hugh Carey recently announced that he will seek to bar any new nuclear plants in New York State because of the lack of waste disposal facilities. California and Maine have passed laws to that effect, and others are likely to follow suit.

These and similar problems must be addressed as expeditiously as possible. We are now in the 21st year of commercial nuclear power, and there is no solution to the waste disposal problem in sight. Again, we must not talk about speeding up the licensing of nuclear powerplants until we have proved that the wastes can be safely isolated for the long times necessary.

Nuclear advocates often blame environmental intervention and administrative regulation for delays and plant cancellations in the industry. There were delays or cancellations of 67 nuclear plants in fiscal year 1978, but only 14 of these were attributed to licensing and litigation. On the average, delays for these reasons accounted for only about 5 months of the 12 years required to complete a nuclear plant.

A key factor behind the nuclear slump has been rising costs. Construction costs from 1967 to 1974 increased 300 percent. Cost overruns are exorbitant. The cost of uranium has gone up nearly 600 percent since 1970, increasing much faster than long-term coal contracts.

Another factor has been the reduced load growth experienced by the electric utility industry. In the 1950's and 1960's this growth rate averaged 7 percent per year. But since 1973 electric growth has averaged about 3 percent per year. Consequently, utilities have delayed or canceled many new powerplants, especially the capital-intensive nuclear plants.

Ultimately, a decision to continue with nuclear power must rest upon a determination that the technology at every stage of the fuel cycle is safe and reliable. The Environment and Public Works Committee heard from a succession of manufacturers and utilities stating that their 20 years of experience has brought the country to an era of mature, safe, nuclear power.

Yet, since 1957, and as recently as 1975, the nuclear industry has in unison declared that the Price-Anderson provisions of the Atomic Energy Act of 1954 are essential to the continued viability of commercial nuclear power. These provisions limit the liability arising from a single accident at a nuclear powerplant to $560 million. They also empower the Federal Government to compensate the powerplant licensee, and any other party who may be liable for damages arising from the mishap, for up to $500 million. The industry simply cannot have it both ways. If the technology is reliable enough to justify enactment of legislation to accelerate licensing then the industry must be prepared to give up at least some of the massive Federal subsidy enjoyed during its maturation process.

We are not yet locked into a nuclear future. There are other alternatives. The entire free world supply of uranium in the next two decades would produce, under optimal conditions, only one-sixth to one-fifth of our energy needs. Only by utilization of very low grade ores or dangerous plutonium can the promises of limitless nuclear fuel be achieved. By contrast, the supplies of various conventional and alternate energy sources—coal, oil shale, animal wastes, wood, water, the Sun, the wind, and heat from within the Earth—are adequate for times ranging from generations to forever.

So far the administration has not even produced a proposal for action, much less built a facility for radioactive waste disposal. In fact, the major recommendation of a February 1978, study of this matter by the Department of Energy (the Deutch report) was for a further study.

It is essential that the Federal Government take the lead—and do so immediately—in developing a realistic and workable waste disposal program.

Our Subcommittee on Nuclear Regulation has held initial hearings on the nuclear siting and licensing bill. I also know it would be irresponsible for our committee to report such a bill before the waste issue is fully and adequately addressed. It is my intention, therefore, that this bill not be considered by the Committee on Environment and Public Works until a definitive and adequate nuclear waste management plan is available.

So let us remember, as we debate the pending measure, that we speak in this context. S. 2584, together with the committee amendment to be offered, represents an important first step in the formulation of a coherent Federal policy on the management of radioactive wastes through nuclear fission. In particular, the committee amendment would for the first time extend Commission licensing and regulation to cover the radioactive tailings which are a byproduct of the milling of uranium ore.

I support the committee amendment as a worthwhile extension of Nuclear Regulatory Commission authority over the mill tailings disposal aspect of the fuel cycle. I regret, however, that we deal first with the least troublesome radioactive waste problem, one for which in fact adequate regulatory authority already exists under subtitle C of the Solid Waste Disposal Act.

I am concerned that in mandating the Commission to control mill tailings disposal through its permitting powers, we achieve at least the degree of control which would result under subtitle C of the Solid Waste Disposal Act. Uranium mill tailings certainly are a hazardous waste under that subtitle, which I authored, for both their radioactive and nonradioactive characteristics. While it may be preferable to integrate regulation of such wastes with the permitting of other aspects of the fuel cycle such as the ore processing, the environmental protections of subtitle C must not be lost or reduced.

Therefore, I insisted that the committee amendment contain provisions assuring a continued role for the Administrator of the Environmental Protection Agency establishing generally applicable standards for mill tailings disposal, following the provisions of subtitle C, and requiring that the specific management requirements set by the Nuclear Regulatory Commission are at least as stringent as requirements which apply to similar hazardous wastes under the Solid Waste Disposal Act.

The section-by-section analysis which comprises the legislative history for the committee amendment attempts to further define the relative roles of the Nuclear Regulatory Commission and the Administrator of the Environmental Protection Agency in regulating uranium mill tailings disposal. That analysis notes that the generally applicable standards and criteria for which the Administrator is responsible are to prescribe general standards of performance, not specific management requirements and not site specific.

Such general standards of performance may include standards for the placement and location of disposal sites (including demographic or geological criteria or water flow restrictions); requirements that disposal sites be reclaimed so they do not need continuing maintenance or meet minimum maintenance requirements; general requirements that sites be designed and managed to prevent any contact of the tailings by human or animal life and that use of disposal sites be restricted to avoid disturbing integrity of the tailings stabilization; provisions for ground and surface water monitoring; and general performance standards for stabilization of tailings in various circumstances. Limitations on environmental exposure or emissions or other introduction of radioactive or any other constituents of mill tailings in the air or ground or surface waters, are also within the authority of the Administrator under new section 275. In setting generally applicable standards and criteria the Administrator will take into account the degree to which human health and the environment are already adequately protected by Commission requirements established under new section 84, and require whatever else is necessary for the protection of human health and the environment.

All standards and requirements under the committee amendment will be implemented and enforced by the Commission through its permitting process. Consequently, no Environmental Protection Agency permit could be required under these provisions or the Solid Waste Disposal Act. This does not affect, of course, any permits which may be required under the Federal Water Pollu-

tion Control Act or other environmental laws. While the Environmental Protection Agency is not directly involved in implementation or enforcement for particular disposal sites, the Agency is expected to conduct active oversight to assure the standards and criteria and the law are being followed. Some means by which this may be done are comments on proposed permits or the required environmental impact statements on proposed permits under section 309 of the Clean Air Act.

Mr. President, while some may characterize this a modest achievement, it serves to underline the principle that every stage of the nuclear fuel cycle—from milling of ore to disposal of wastes—must be proven safe and reliable. Our citizens have a right to expect this. Furthermore, our citizens have a right to expect that we move beyond this first step in formulating policy on waste management if nuclear power is to play a significant role in meeting national energy requirements.

I thank the chairman of the subcommittee and appreciate his yielding to me at this time.

Mr. HART. I thank the Senator from West Virginia (Mr. RANDOLPH) for his continuing interest, concern, and leadership in this area and for his remarks today.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. HART. The time will be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT No. 1837

(Purpose: To strengthen the employee protection provisions contained in section 77 of S. 2584)

Mr. HART. Mr. President, I send to the desk a technical amendment on behalf of the committee and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 1837.

Mr. HART. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, line 16, insert the following after "or": "a contractor or"

On page 11, line 17 insert the following after "complaint": "and the Commission"

Mr. HART. Mr. President, the amendment I now offer to section 7 of the Nuclear Regulatory Commission Authorization Act for fiscal year 1979 is designed to strengthen the protection afforded employees by that provision. Section 7 adds a new section 210 to the Energy Reorganization Act of 1974 to protect employees who assist or participate in any proceeding to administer or enforce the requirements of the Energy Reorganization Act or the Atomic Energy Act of 1954. Let me point out that the protection afforded is intended to apply, even if no formal proceeding is actually instituted as a result of the employee's assistance or participation.

The first revision would include contractors of Commission licensees or applicants in the enumeration of employers who are covered by new section 210. In this connection, it is important to note that an employee is protected by section 210 whether his assistance or participation relate to the conduct of his own or some other employer.

The second revision merely provides for notification to the Commission, as well as to the person charged in the complaint, of the filing of the complaint. This information would be most relevant to the Commission.

Finally, while new section 210 of the Energy Reorganization Act of 1978 provides the Department of Labor with new authority to investigate an alleged act of discrimination in this context and to afford a remedy should the allegation prove true, it is not intended to in any way abridge the Commission's current authority to investigate an alleged discrimination and take appropriate action against a licensee-employer, such as a civil penalty, license suspension or license revocation. Further, the pendency of a proceeding before the Department of Labor pursuant to new section 210 need not delay any action by the Commission to carry out the purposes of the Atomic Energy Act of 1954.

Mr. President, I urge adoption of the amendment.

Mr. McCLURE. Mr. President, I concur in the adoption of the amendment. We have no objection to it.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. I yield back the remainder of my time.

Mr. McCLURE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Colorado.

The amendment was agreed to.

Mr. HART. Mr. President, I suggest the absence of a quorum with time to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3437

(Purpose: To establish an Office of Nuclear Energy Public Counsel)

Mr. LEAHY. Mr. President, I call up my amendment No. 3437.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont (Mr. LEAHY) proposes an amendment numbered 3437.

Mr. LEAHY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, after line 23, insert the following:

SEC. 12. (a) The Atomic Energy Act of 1954 is amended by adding at the end thereof the following new chapter:

"CHAPTER 20. OFFICE OF NUCLEAR ENERGY PUBLIC COUNSEL

SEC. 301. ESTABLISHMENT.—(a) There is established a new independent office affiliated with the Commission to be known as the Office of Nuclear Energy Public Counsel (hereinafter in this chapter referred to as the 'Office').

"(b)(1) DIRECTOR; TERM OF OFFICE.—The Office shall be administered by a Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) The Director shall serve for a term of four years and shall be responsible for the discharge of the functions and duties of the office.

"(3) The Director shall be appointed and compensated without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title.

"(c)(1) POWERS AND DUTIES.—The Director is authorized to appoint, fix the compensation, and assign the duties of employees of the Office and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5. United States Code. Each bureau, office, or other entity of the Commission and each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized to provide the Office with such information and data as it requests. The Director is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions and duties of the Office. The Director shall submit a monthly report on the activities of the Office to the Chairman of the Commission, and the Commission, in its annual report to the Congress, shall evaluate and make recommendations with respect to the Office and its activities, accomplishments, and shortcomings.

"(2) In addition to any other duties and responsibilities prescribed by law, the Office—

"(A) shall have standing to become a party to any proceeding, formal or informal, which is pending or initiated before the Commission and which involves civilian applications of nuclear energy;

"(B) may petition the Commission for the initiation of proceedings on any matter within the jurisdiction of the Commission which involves civilian applications of nuclear energy;

"(C) may seek judicial review of any Commission action on any matter involving civilian applications of nuclear energy to the extent such review is authorized by law for any person and on the same basis;

"(D) shall solicit, study, evaluate, and present before the Commission, in any pro-

ceeding, formal or informal, the views of those communities and users affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user might not otherwise be adequately represented before the Commission in the course of such proceedings; and

"(E) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect matters subject to the jurisdiction of the Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical use of nuclear energy.

In the performance of its duties under this paragraph, the Office shall assist the Commission in the development of a public interest record in proceedings before the Commission.

"(3) Nothing in this chapter shall be construed to grant to the office any power, duty, or jurisdiction over or related to matters dealing with national security or military applications of nuclear materials.

"SEC. 302. CONCURRENT SUBMISSION OF BUDGET REQUESTS AND ESTIMATES TO PRESIDENT AND CONGRESS.—The budget requests and budget estimates of the Office shall be submitted concurrently to the Congress and to the President.

"SEC. 303. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office for the purpose of carrying out the provisions of this section not to exceed $500,000 for the fiscal year ending September 30, 1979, and not to exceed $3,000,000 for the fiscal year ending September 30, 1980.".

(b) The amendment made by subsection (a) shall take effect ninety days after the date of enactment of this Act.

Mr. LEAHY. Mr. President, if the RECORD does not show, I ask unanimous consent that Mr. DURKIN be shown as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the amendment I am offering is an amendment which can be supported by those in favor as well as opposed to nuclear power. The amendment will create an Office of Public Counsel, an independent office within the NRC. The Public Counsel will afford valid, interested parties, both pro- and anti-nuclear, who would be directly affected by an NRC decision, with adequate representation before the Commission.

The basic safety of nuclear power generating facilities and the problem of nuclear waste storage are issues that will be debated for decades. People in the United States and throughout the world are concerned for their well-being in light of the potential threat of a nuclear accident. Our dependence on power from nuclear generated facilities presents difficult questions for pragmatic planners, especially as our need for energy intensifies.

The NRC presently decides issues vital to the people living near reactors, the workers who labor in the plants, and the ratepayers who pay the bills for nuclear generated electricity, issues concerning nuclear safety, plant licensing and siting, nuclear fuel processing, transport, and disposal. The average citizen does not have an impact in those decisions. The groups that are heard, before the NRC and in the media, are the public interest groups with their well-organized lobbying efforts and the large, powerful corporations with their legions of lawyers and technical experts. But these groups do not always represent the best interests of the public at large.

The Public Counsel will have party status and legal standing for every proceeding pending before the Commission. These lawyers for the public may also initiate proceedings before the NRC in any matter that involves the civilian use of nuclear energy.

Whether it is representation of property owners protesting the proposed siting or construction workers fighting the shutdown of a project, full public representation is essential in order to assure just and full resolution of such issues.

I have spoken with several of my colleagues and have realized that this is of concern to a number of them.

Mr. HART. Mr. President, I want to thank the Senator from Vermont for his attention to this extremely important issue. The question he has raised is not only a proper but an imperative issue for consideration by our subcommittee, and I certainly welcome his interest and concern, as do all other subcommittee members.

I certainly agree that at a time when the NRC is making extremely momentous decisions, there is very great need to provide citizen access to the Commission, and therefore it is our sincere intention to conduct hearings early next session to fully explore the problem of public citizen access to the Commission. These would include the creation of an Office of Public Counsel as a possible solution to the problem that the Senator from Vermont has described.

Mr. LEAHY. Mr. President, I would like to go forward with this amendment. Adequate public representation is of great concern to me, but I also realize that there have not been adequate hearings on this subject. I am, therefore, willing to withdraw my amendment with the assurance from the chairman of the Nuclear Regulatory Subcommittee, the distinguished Senator from Colorado (Mr. HART), that hearings on the public counsel concept will be held next spring.

I say that because I have the utmost respect for the way the distinguished Senator has conducted that subcommittee. He has certainly gone the extra mile continuously to make sure that amendments are considered, that all sides are heard and given a fair and complete hearing.

So I would ask two things, Mr. President. First, I ask unanimous consent that if his name is not already shown, the name of the Senator from Michigan (Mr. RIEGLE) be added as a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. With that, Mr. President, I withdraw my amendment and yield the floor back to the Senator from Colorado.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. DURKIN. Mr. President, throughout deliberation on the question of reauthorizing the Nuclear Regulatory Commission (NRC), I have been concerned about the extent to which a Government agency which has been recklessly pronuclear in the past can aggressively and actively represent the public interest in exploring all the dimensions in the development of nuclear power. Based on my knowledge of and experience with other regulatory bodies, I am concerned that the NRC's performance of its supervisory role might be dampened by a lack of a sense of urgency about the potential problems associated with nuclear wastes and safety.

It has long been obvious to me, coming from a State where town meetings are still an integral part of community life, that direct citizen involvement is absolutely essential to objective performance of government functions. The answer to the needs for more information and better decisions is not always the creation of further agencies, regulatory bodies, and commissions. I have often found that encouraging participation by people directly involved with a given decision infuses the decisionmaking process with a life and an energy which exceed the efforts of disinterested and overburdend bureaucrats.

Viewing the NRC reauthorization from this perspective, I rise in support of my colleague from Vermont, to urge the adoption of his amendment to provide for an Office of Public Counsel within the NRC. The purpose of this office would be to represent consumer and community groups before the Commission on all matters that come under the Commission's jurisdiction.

I believe that public counsel is vital to aggressive and objective regulation by the NRC. The potential involvement of citizens who are directly involved and knowledgeable can only enhance and stimulate conscientious and thorough performance by the NRC. The Office of Public Counsel can provide an avenue for this sort of citizen involvement and might well be the answer to a sluggish and inefficient bureaucracy. I commend the Senator from Vermont for his insight in proposing this measure today and urge its adoption.

AMENDMENT NO. 3577

(Purpose: To expand the licensing authority of the Nuclear Regulatory Commission to cover uranium mill tailings and to require of the Nuclear Regulatory Commission a study of further expansion of its authority to cover additional radioactive waste, storage and disposal activities)

Mr. HART. Mr. President, I call up amendment No. 3577, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART), for himself, Mr. DOMENICI, Mr. STAFFORD, and Mr. RANDOLPH, proposes an amendment numbered 3577.

Mr. HART. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 12. Section 11 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. The term 'byproduct material' means (1) any radioactive material (except special

nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) any radioactive material resulting from the processing of ores primarily for the extraction of source material.".

SEC. 13. Section 81 of the Atomic Energy Act of 1954, as amended, is amended by adding a new sentence at the end thereof as follows: "No license shall be required by the Commission for the transfer, receipt, acquisition, ownership, or possession of byproduct material as defined by section 11 e. (2) of this Act until three years from the date of enactment of this sentence.".

SEC. 14. Section 161 g. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following:

"The Department of Energy may accept donations of reclaimed land used for the disposal of byproduct material as defined in section 11 e. (2) of this Act. Land donated under this section shall not be subject to the provisions of title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, nor to disposal under the Federal Property and Administrative Services Act of 1949, as amended. The President shall assign custody of such land to any agency authorized by law to manage land title to which is held by the United States.".

SEC. 15. Section 161 of the Atomic Energy Act of 1954, as amended, is further amended by adding at the end thereof a new subsection x. as follows:

"x. establish by rule, regulation, or order, in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure that funds will be made available by a licenseee to permit the timely completion of all requirements established by the Commission for the decommissioning, decontamination, and reclamation and long-term maintenance and monitoring where necessary of sites, structures, and equipment used in connection with the generation or disposal of byproduct material as defined in section 11 e. (2) of this Act.".

SEC. 16. Section 274 b. of the Atomic Energy Act of 1954, as amended, is amended by adding "as defined in section 11 e. (1) of this Act" after the words "byproduct materials" in paragraph (1); by adding a new paragraph (2) to read as follows:

"(2) byproduct materials as defined in section 11 e. (2) of this Act."; and by renumbering existing paragraphs (2) and (3) accordingly.

SEC. 17 Section 274 d. (2) of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(2) the Commission finds that the State program is in accord with subsection o. of this section and is in all other respects compatible with the Commission's program for the regulation of the materials covered by the proposed agreement, and that the State program is adequate to protect the public health and safety with respect to such materials.".

SEC. 18. Section 274 e. of the Atomic Energy Act of 1954, as amended, is amended by adding a new paragraph (3) to read as follows:

"(3) Prior to the expiration of three years from the date of enactment of this paragraph, nothing in this Act shall preclude the exercise of State authority over byproduct material as defined by section 11 e. (2) of this Act. Except as otherwise permitted by Federal law, on or after three years from such date, a State may exercise authority for protection of the public health and safety from radiation hazards associated with such byproduct material only pursuant to an agreement or an amendment thereto entered into with the Commission in accordance with subsection b. of this section. Amendments to existing agreements to provide for the continuation of State authority over such byproduct material shall be subject to paragraphs (1) and (2) of this subsection and to subsection d. of this section.".

SEC. 19. Section 174 j. of the Atomic Energy Act of 1954, as amended, is amended by inserting after the words "with the State" the following: ", or that part of an agreement respecting any of the materials enumerated in subsection b. of this section.".

SEC. 20. Section 274 of the Atomic Energy Act of 1954, a amended, is further amended by adding at the end thereof the following new subsection:

"o. In the licensing and regulation of byproduct material as defined by section 11 e. (2) of this Act pursuant to an agreement entered into in accordance with subsection b. of this section, a State shall adopt and enforce substantive standards for the protection of the public health and safety from radiation hazards which are equivalent to, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements, standards, and criteria promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 84, 85, and 275 of this Act.".

SEC. 21. Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding a new section 83 to read as follows:

"SEC. 83. REMEDIAL ACTION, EXEMPTION, AND ENFORCEMENT.—

"a. Persons otherwise subject to the requirement of a license by section 81 of this Act shall be exempt from such requirement with respect to the ownership and possession of byproduct material as defined in section 11 e. (2) of this Act which is covered by a remedial action program conducted or approved by the Department of Energy.

"b. The Commission may require, by rule, regulation, or order, the Department of Energy or persons exempted by subsection a. of this section or section 81 of this Act from the requirement of a license for the ownership or possession of byproduct material as defined in section 11 e. (2) of this Act to conduct monitoring, perform remedial work or comply with such other measures as the Commission deems necessary or desirable to protect health or minimize danger to life or property in connection with the disposal and storage of such byproduct material.

"c. The Commission may make such studies and conduct such inspections as it may deem necessary or desirable to ensure compliance with rules, regulations, and orders issued pursuant to subsection b. of this section. Persons violating any such rule, regulation, or order, and persons refusing to permit inspections conducted pursuant to this subsection, shall be subject to a civil penalty in an amount equal to that provided by section 234 a. of this Act. Notification and enforcement of such penalty shall be in accordance with sections 234 b. and c. of this Act.".

SEC. 22. (a) Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof a new section 84 to read as follows:

"SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL.— The Commission shall ensure that the management of any byproduct material as defined in section 11 e. (2) of this Act is carried out in such a manner as—

"(1) the Commission deems appropriate to protect the public health, safety, and environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material;

"(2) conforms with the applicable standards and criteria promulgated by the Administrator of the Environmental Protection Agency under section 275 of this Act; and

"(3) conforms to general requirements, established by the Commission, with the concurrence of the Administrator of the Environmental Protection Agency, which are at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material under the Solid Waste Disposal Act, as amended.".

(b) The table of contents for such chapter 8 is amended by inserting the following new item after the item relating to section 83:

"Sec. 84. Authorities of Commission respecting certain byproduct material.".

SEC. 23. (a) Chapter 19 of the Atomic Energy Act of 1954, as amended, is amended by inserting after section 274 the following new section:

"SEC. 275. HEALTH AND ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS.—

"a. As soon as is practicable, but not later than eighteen months after the date of enactment of this section, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall, by rule, promulgate standards and criteria of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of byproduct material, as defined in section 11 e. (2) of this Act at sites where ores are processed primarily for their source material content, or at sites which are used for the disposal of such byproduct material.

"b. Such generally applicable standards and criteria promulgated pursuant to this section for nonradiological hazards shall provide for the protection of human health and the environment as required by subtitle C of the Solid Waste Disposal Act, as amended: *Provided, however,* That no permit issued by the Administrator is required under this Act or the Solid Waster Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11 e. (2) of this Act.

"c. The Administrator may periodically revise any standard or criterion promulgated pursuant to subsection a. of this section. Any such revision shall be applied upon license renewal to persons holding on the date of promulgation of such revision a license for byproduct material as defined in section 11 e. (2) of this Act issued by the Commission or by a State exercising authority pursuant to section 274 b. (2) of this Act: *Provided, however,* That in no event shall such a revision be applied later than five years from the date of promulgation thereof.

"d. Implementation and enforcement of the standards and criteria promulgated pursuant to subsection a. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274 b. (2) of this Act shall implement and enforce such standards and criteria in accordance with subsection o. of such section.

"e. Nothing in this Act applicable to byproduct material as defined in section 11 e. (2) of this Act shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended.".

(b) The table of contents for chapter 19 of the Atomic Energy Act of 1954, as amended, is amended by inserting the following new item after the item relating to section 274:

"Sec. 275. Health and environmental standards for uranium mill tailings.".

SEC. 24. Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding a new section 85 to read as follows:

"SEC. 85. The Commission may require by rule, regulation, or order, in accordance with the requirements of section 181 of this Act, that byproduct material as defined by section 11 e. (2) of this Act be disposed of on land to which title has been transferred to the State or the United States at the time of termination of any license of the generation or possession of such material upon finding that such action is necessary or desirable to protect health or minimize danger to life or property in connection with the disposal of such byproduct material. Any such rule, regulation, or order shall specify standards for the transfer of title to such land to the State or the United States, including: (1) standards to assure the completion, prior to the transfer of title, of all requirements established by the Commission for the decommissioning, decontamination, and reclamation of sites, structures, and equipment on the land which are used in connection with the generation or disposal of byproduct material as defined in section 11 e. (2) of this Act; (2) standards to minimize the need for future remedial work; (3) standards to minimize the cost, including the cost to the State or the United States, for any long-term care: and (4) standards to permit the reservation of rights by the transferor to the future reprocessing of byproduct materials, as defined in section 11 e. (2) of this Act, and to the future use of the surface or subsurface estate, consistent with any standards or requirements promulgated by the Commission which are applicable to the generation, possession of transfer of byproduct material, as defined in section 11 e. (2) of this Act. This section shall not be construed as authorizing or requiring the transfer of title to Indian land.".

SEC. 25. (a) The Commission, in cooperation with the Department of Energy, is authorized and directed to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority.

(b) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission in the conduct of the study. Such cooperation shall include providing any necessary access to existing facilities and sites and providing any information needed to conduct the study which the agency may have or be reasonably able to acquire.

(c) On or before March 1, 1979, the Commission shall submit a report to the Congress containing the results of the study. The report shall include—

(1) a complete listing and inventory of all radioactive waste storage and disposal activities now being conducted or planned by Federal agencies;

(2) an assessment of the benefits of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority;

(3) an evaluation of the relative potential risk to the public health and safety and the environment from such categories of existing and future Federal radioactive waste storage and disposal activities.

(4) an evaluation of the feasibility and cost of extending the Commission's licensing or regulatory authority to include such categories of existing and future Federal radioactive waste storage and disposal activities, including the technical and other data requirements for licensing or regulation and the likely characteristics of the Commission's licensing or regulatory program;

(5) an evaluation of the national security implications of extending the Commission's licensing or regulatory authority to include such categories of existing and future Federal radioactive waste storage and disposal activities; and

(6) the Commission's recommendations concerning the categories of existing and future Federal radioactive waste storage and disposal activities, if any, which should be made subject to the Commission's licensing or regulatory authority and the type of authority which the Commission should be granted.

The PRESIDING OFFICER. Is this the amendment on which there is to be a limit for debate of 1 hour?

Mr. HART. That is correct. Mr. President, I suggest the absence of a quorum, the time to be equally divided between the two sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I offer the pending amendment with cosponsorship by our distinguished colleague from New Mexico (Mr. DOMENICI); and we offer the amendment with the full support of the members of the Committee on the Environment and Public Works.

Mr. President, this amendment would add two new major provisions to the bill now being considered by the Senate. The first provision would expand the Nuclear Regulatory Commission's licensing and regulatory authority over the disposal of uranium mill tailings—an authority which the Commission does not now have. The second provision directs the Nuclear Regulatory Commission to lead a study on the relative costs and benefits of extending Commission licensing and regulatory authority over the storage and disposal of all nuclear wastes.

Both of these provisions address nuclear waste management issues. While this amendment cannot provide this country with the total answer to our nuclear waste dilemma, it does address one immediate and serious problem—that of mill tailings disposal. Furthermore, it provides for the gathering of information Congress needs to answer questions on waste disposal, for legislation pending consideration next year.

Mr. President, over the past several months, the Subcommittee on Nuclear Regulation has been actively studying the nuclear waste problem. The committee has held 5 days of hearings devoted exclusively to the consideration of nuclear waste issues. In addition, the subcommittee has held a total of 8 days of hearings on the NRC's fiscal year 1979 authorization and on nuclear licensing reform where nuclear waste issues were tangentially addressed. In all, Mr. President, the committee has heard from over 20 witnesses who are deeply concerned with the nuclear waste issue.

Mr. President, it is on the basis of this record that Senator DOMENICI and I present to the Senate what we believe is a sound and necessary amendment that deserves the full support of our colleagues. I would like to briefly describe the contents of the amendment and explain the importance of Senate adoption of these provisions.

The first part of this amendment addresses the issue of uranium mill tailings disposal. Under present law, the Nuclear Regulatory Commission has the authority and responsibility to regulate uranium mining and milling operations, and the Commission is currently exercising that authority over 11 active sites. An additional 14 sites are regulated by individual States. Under the authority of the Atomic Energy Act, these States developed approved regulatory programs and assumed regulatory responsibility from the NRC.

Although the NRC may license active uranium mining and milling activities existing law does not permit the Commission to regulate the disposal of mill tailings once milling and mining operations cease and the operating license expires. It is this authority to regulate tailings after milling operations cease, that we propose be given to the NRC.

Mr. President, uranium mill tailings must be carefully regulated. They are just as radioactive as the original uranium ore from which they came. In fact, if tailings are not properly controlled, they can be more dangerous than radioactive wastes generated by powerplants and nuclear weapons programs. Furthermore, although uranium mill tailings wastes are not as radioactive as high-level wastes generated by nuclear powerplants or military weapons programs, these wastes remain radioactive for thousands of years. Thus, the potential long-term danger to the public health and safety is far greater. People need not come into direct contact with tailings to be exposed to this radioactive hazard, because the radiation from tailings escapes and travels in the form of radioactive radon gas—which can cause leukemia and other forms of cancer.

Because there has been no proper authority for controlling this threat to public health, tailings at abandoned mining and milling sites have been left exposed dangerously near several populated areas. In Grand Junction, Colo., and Salt Lake City, Utah, for example, uranium mill tailings have been left unattended near schools, homes, and offices. People living in and around some of these sites are being exposed to radiation levels considerably higher than the levels permitted inside uranium mines.

The Colorado Department of Health has conducted a study of leukemia rates in areas of the State where people are exposed to mill tailings. The results are only preliminary, but the evidence collected to date indicates that the incidence of leukemia in these areas is almost double that in other parts of Colorado. Although the direct connection to radon gas from these tailings has not yet been proved, this high incidence of leukemia is alarming.

Furthermore, the General Accounting Office concluded in a report issued just last month that radiation from the five worst abandoned tailings sites may cause as many as 1,000 cases of cancer in the next century. And, if these tailings are not properly disposed, that trend will continue for hundreds of thousands of years, resulting in millions of cases of cancer.

The legislation we are offering today will not provide funding to clean up the inactive sites where this serious threat to public health already exists. Legislation to provide for such remedial action programs is currently under consideration in the Senate Committee on Energy and Natural Resources. Nevertheless, Mr. President, the amendment being proposed would provide Congress and the American public with assurances that, from now on, uranium mill tailings will be properly managed. If adopted, this amendment will eliminate the need for remedial clean up efforts in the future.

Mr. President, I am not suggesting that uranium mill tailings are not being properly managed at the 25 currently active mining and milling operations around the country. On the contrary, the NRC exercises its authority over uranium milling operations by requiring careful management and disposal of uranium mill tailings. Nevertheless, Mr. President, if an operator of a uranium mill were to abandon the site for financial or other reasons, leaving the tailings unattended and exposed, the Nuclear Regulatory Commission would not have the legal authority to require their disposal.

As I mentioned earlier, Mr. President, this amendment will not correct past mistakes, but it will provide assurance that they will not be repeated in the future. We must act now to fill the existing regulatory gaps which have left the public and the environment exposed to dangerously radioactive nuclear wastes.

The second provision in this amendment directs and authorizes the Nuclear Regulatory Commission to conduct a study of the nuclear waste regulatory issue with the cooperation of the Department of Energy. The NRC would report back to Congress with the results of this effort by March 1 of next year. The amendment further provides that the scope of that study include the following:

First, a listing and inventory of all radioactive waste storage and disposal activities conducted or planned by the Federal Government;

Second, an assessment of the costs and benefits of extending NRC's licensing or regulatory authority over Federal storage and disposal of nuclear wastes; and

Third, recommendations by the NRC as to which categories of existing and future Federal nuclear waste activities should be subject to NRC authority.

Mr. President, the broad issue of nuclear waste disposal has been addressed in several bills introduced this year. Finding solutions to this problem is becoming increasingly crucial as more waste-producing nuclear plants begin operating each year. Unfortunately, waste disposal has received a low priority from both Congress and the Federal agencies in the past. This trend cannot and must not continue. The basic intent of this study provision is to provide the Congress with information which it will need to address the nuclear waste issue early next year. Both the House and the Senate have begun developing records upon which to base future legislative action. It is anticipated that this study will provide significant information which must be assimilated and evaluated in preparation for congressional action in the months ahead.

Mr. President, at this, I ask unanimous consent that a section-by-section analysis of this amendment be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS—COMMITTEE AMENDMENT TO S. 2584

Sec. 12. Section 12 adds a new class of byproduct material to the definition of byproduct material now contained in section 11 e. of the Atomic Energy Act of 1954. As presently defined, byproduct material does not include uranium mill tailings. These tailings are a waste product resulting from uranium milling. Under the expanded definition, mill tailings would become a licensable material because they contain radium, radon and other radioactive isotopes. The revised definition would in effect bring mill tailings within the licensing and regulatory framework of the Atomic Energy Act. The revised definition is not intended, however, to make mine wastes subject to NRC licensing or regulation.

Sec. 13. Section 13 amends section 81 of the Atomic Energy Act of 1954 to defer until three years from enactment the authority of the Nuclear Regulatory Commission to license this new class of byproduct material. During this transition period, standards and regulations would be developed and agreements with states conducting their own regulatory program would be amended to cover the new class of byproduct material.

Sec. 14. Section 14 adds to section 161 g. of the Atomic Energy Act of 1954 a provision to authorize the Department of Energy to accept donations of land used as mill tailings disposal areas. Donations would be without cost to the United States and would not be eligible for subsequent sale by the United States as surplus property. The President is directed to assign custody of donated land to any agency authorized to manage land owned by the United States. This provision does not require a licensee of the Nuclear Regulatory Commission to transfer a tailings disposal area to the United States, but rather empowers the Department of Energy to accept voluntary donations of such areas. Such a direct licensee has the option of retaining ownership under Federal licensing.

Sec. 15. Section 15 adds a new subsection x. to section 161 of the Atomic Energy Act of 1954 to provide the Commission with explicit authority to require licensees to provide financial arrangements to insure the proper decommissioning, decontamination, reclamation and long-term maintenance and monitoring if necessary, of sites, structures, and equipment used in connection with activities or materials licensed under the Atomic Energy Act of 1954. This provision affords a clear legal basis for the dedication of funds prior to the termination of the milling license for any long-term maintenance and monitoring which may be required. Such authority now exists only under the more general language of section 161 b.

Sec. 16. Section 16 gives states entering into new agreements under section 274 b. of the Atomic Energy Act of 1954 the option of assuming, or declining to assume, licensing and regulatory authority over mill tailings.

Sec. 17. Section 17 amends section 274 d. of the Atomic Energy Act of 1954 to condition the acceptability of a new or amended agreement upon a state program that is at least equivalent to the Commission's program for substantive regulation of tailings disposal areas. The standard of compatability remains in effect for all other aspects of an agreement state program.

Sec. 18. Section 18 adds a new paragraph to Section 274 e. of the Atomic Energy Act of 1954 to make clear that existing agreements with states under section 274 must be amended for states to assume licensing and regulatory authority over the new class of byproduct material after three years from enactment. In the interim, states may continue to exercise their police power to regulate mill tailings. If an agreement state fails to amend its agreement on or after three years from enactment the Commission will license and regulate the byproduct material in tailings disposal areas.

Sec. 19. Section 19 amends Section 274 j. of the Atomic Energy Act of 1954, to empower the Commission, after notice and opportunity for hearing, to terminate or suspend the exercise of an agreement state's authority pertaining to any of the materials enumerated in section 274 b. which are eligible for state licensing and regulation, including mill tailings. Present law permits termination or suspension only of the entire agreement. The standard for such action would remain the adequacy of protection of the public health and safety.

Sec. 20. Section 20 adds new subsection o. to section 274 of the Atomic Energy Act of 1954. Subsection o. requires agreement states to incorporate in their licensing and regulation of mill tailings standards which are equivalent to, or more stringent than requirements, standards, and criteria promulgated by the Commission and the Administrator of the Environmental Protection Agency in the degree of protection from radiation hazards afforded the public health and safety.

Sec. 21. Section 21 adds a new section 83 to the Atomic Energy Act of 1954 to provide an exemption from licensing for that portion of a mill tailings disposal site where the Department of Energy has conducted or approved a remedial action. Legislation to permit the Department of Energy to conduct a remedial action program for certain existing mill tailings is now pending before other committees of the Congress. This provision is intended to exempt from Commission licensing any mill tailings covered by a Department of Energy remedial program pursuant to that or similar legislation. The Commission may, however, require persons so exempted, or the Department of Energy, to monitor such sites, perform remedial work, or take other measures to protect health or minimize danger to life or property. The Commission is authorized to inspect, as necessary, and persons found to be in violation of rules or orders may be subject to a civil penalty even though not licensed. These provisions also apply to persons in possession of mill tailings who have been exempted from licensing in the Commission's discretion under section 81 of the Atomic Energy Act.

Sec. 22. Section 22 adds a new section 84 to the Atomic Energy Act of 1954 which directs the Commission to ensure the protection of the public health, safety and the environment from radiological and nonradiological hazards associated with the processing, possession, and transfer of mill tailings by requiring conformity with both the applicable standards and criteria promulgated by the Administrator of the Environmental Protection Agency and the general requirements established by the Commission, with concurrence of the Administrator, which are at least

comparable to requirements for similar hazardous material under the Solid Waste Disposal Act, as amended.

Sec. 23. Section 23 adds new section 275 to the Atomic Energy Act of 1954 to delineate the responsibilities of the Administrator of the Environmental Protection Agency in the regulation of mill tailings. The Administrator is given up to 18 months to promulgate general standards and criteria to protect the public health, safety, and the environment from the radiological and nonradiological hazards associated with the processing, possession, and transfer of mill tailings at sites where ores are processed for their uranium content and at sites for mill tailings disposal. These standards and criteria are intended to prescribe general standards of performance rather than to impose specific management requirements, including particular techniques or technologies for meeting the general standards. These general standards are not intended to be site specific.

For radiological hazards, the section would preserve the authority of the Administrator under the Atomic Energy Act of 1954, as amended, to set generally applicable standards for mill tailings. Generally applicable standards and criteria promulgated for nonradiological hazards must provide for the protection of human health and environment as required by subtitle C of the Solid Waste Disposal Act, as amended. In the promulgation of such standards and criteria for nonradiological hazards, it is expected that the Administrator will take into account the degree to which human health and the environment are already protected by requirements established by the Commission pursuant to section 84 of the Atomic Energy Act. Any revision of the standards and criteria respecting either type of hazard may be applied to current licenses only upon license renewal but in no event later than five years from the promulgation of the revision.

The section expressly precludes any requirement, either under this Act or the Solid Waste Disposal Act, as amended, for a permit issued by the Administrator for the processing, possession, transfer, or disposal, of uranium mill tailings. Licensing responsibilities under this Act or the processing, possession, transfer or disposal of uranium mill tailings are assigned to the Commission, and this provision is intended to eliminate any requirement for a duplicate permit by the Administrator for those activities.

Responsibility for implementation and enforcement of the standards and criteria is vested in the Commission in the conduct of its licensing activities. However, agreement states that have elected to license mill tailings would have to incorporate standards at least equivalent to these standards and criteria. Finally, no provision of the Atomic Energy Act of 1954 relating to the new class of byproduct material is intended to affect the authority of the Administrator of the Environmental Protection Agency under the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

Sec. 24. Section 24 adds a new section 85 to the Atomic Energy Act of 1954 to empower the Commission to require that mill tailings be disposed of on land which is transferred to State or Federal ownership on the termination of the original milling license for possession of source material. Any rule, regulation or order imposing such a requirement must be supported by a finding that it is necessary or desirable to protect health or minimize danger to life or property.

Such a requirement must include: (1) standards to ensure completion prior to the transfer of title of all Commission decommissioning, decontamination, and reclamation requirements; (2) standards to minimize the need for future remedial work; (3) standards to minimize the cost, including the cost to the State or to the United States, for any long term care; and (4) standards to permit the transfer to reserve surface or subsurface rights.

Sec. 25. Section 25 authorizes and directs the Commission, in cooperation with the Department of Energy to conduct a study and report to the Congress by March 1, 1979 on the following elements:

1. Complete listing and inventory of all radioactive waste storage and disposal *activities* now being conducted or now being planned by agencies of the Federal government, including long- and short-term storage disposal activities, research and development activities, and decommissioned facilities, for high-level radioactive wastes, transuranic wastes, low-level wastes, and spent fuel.

2. An assessment of the benefits of extending Commission regulatory authority to such wastes, to the extent that they are not now covered, including an evaluation of the potential risk to the public health and the environment from the various categories of radioactive wastes now or planned to be in the custody of the Federal Government, together with a comparison of those risks.

3. An evaluation of the feasibility and cost of extending NRC licensing or regulatory authority to include such existing and future activities. This evaluation would cover such factors as the information and data needed by the Commission for licensing or regulation, the impact of licensing on project schedules, and the likely characteristics of a Commission licensing or regulatory program for the various categories of Federal waste storage and disposal activities.

4. An evaluation of the national security implications of extending Commission licensing or regulatory authority to cover the various categories of Federal waste storage and disposal activities.

5. Recommendations by the Commission, as to which categories of existing and future Federal nuclear waste storage and disposal activities should be made to subject to NRC authority, and the type of authority (licensing, safety review and concurrence, etc.) which the Commission should be given.

The PRESIDING OFFICER. The Senator from New Mexico.

Who yields time?

Mr. DOMENICI. How much time do we have on the amendment?

Mr. McCLURE. It is a half-hour on each side. Does the Senator desire that I yield him some time?

Mr. DOMENICI. I am cosponsor. I will ask Senator HART if he will yield 5 minutes.

Mr. HART. Yes, I yield 5 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am pleased to join with my good friend and colleage from Colorado, the chairman of the Nuclear Regulation Committee in sponsoring this amendment.

As has been indicated, it has two purposes: First, it grants new licensing and related regulatory authority to the Nuclear Regulatory Commission for the disposal of uranium mill tailings. As Senator HART has explained, and as I will briefly, this is in an area where a vacuum might otherwise exist. And, second, and equally important, it requires the NRC, in cooperation with the Department of Energy, to conduct a study of the costs and benefits of expanding NRC licensing or regulatory authority to include categories of Government nuclear waste management activities which are not presently within its authority.

Mr. President, I would only add a few comments to my colleague's description of the amendment. As Senator HART has already noted, there now exist sizable quantities of uranium mill tailings at several inactive sites which were generated under Government contracts and which, due to improper disposal, create risks of public exposure. Although the relationship between exposure to these abandoned mill tailings and possible adverse health effects is still somewhat unclear, this is a matter of serious concern to the affected States and the public. As has already been mentioned, legislation to address the problem at these inactive sites is now being considered by the Energy and Natural Resources Committee. Nevertheless, the situation involving these abandoned mill tailings has emphasized the need to assure that the mill tailings generated now and in the future will be properly disposed of.

Mr. President, the present disjointed regulatory structure for mill tailings fails to provide that assurance. While we will soon, hopefully, take care of the abandoned mill tailings, there is indeed a disjointed regulatory structure which may fail to provide assurance that, as new ones develop and are completed and finished, the public will be adequately protected. Under present law, the Nuclear Regulatory Commission may exercise regulatory control over mill tailings only while milling operations are being conducted. Although the Commission is prepared to act expeditiously to require the proper disposal of mill tailings, its authority to enforce the necessary requirements would terminate at the point at which the tailings might be abandoned—after the tailings have been generated and milling operations have ceased— Although another Federal agency, the Environmental Protection Agency, has some authority over the disposal of mill tailings, it lacks broad authority over the generation of the tailings. Furthermore, EPA has testified before the Nuclear Regulation Subcommittee that it will not be prepared to issue regulations to govern the disposal of mill tailings for several years, and perhaps not before 1984.

The amendemnt would replace this disjointed regulatory structure with a unified and comprehensive regulatory program. Under the amendment, NRC would have continuous licensing and related regulatory authority over the generation, possession and disposal of mill tailings. A basic principle of the amendment is the creation of a unified regime for mill tailings so that the various distinct materials which make up a single mill tailings pile need not be subject to fragmented, duplicative and potentially conflicting regulatory activities by different Government agencies. In accordance with this principle, NRC would be given the authority to set detailed requirements for the disposal of mill tailings, including specific management requirements, and to license disposal sites. The amendment has also been carefully structured to make available on a timely basis the expertise of EPA, particularly with regard to the nonradiological aspects of mill tailings.

Thus, EPA has the authority to set generally applicable standards and criteria within 18 months. For radiological hazards, this authority would conform to present authority of EPA under the Atomic Energy Act of 1954, as amended, to set generally applicable environmental standards for radioactive materials. For nonradiological hazards, EPA would assure that the human health and environment is protected to the same extent as required for hazardous wastes under the Solid Waste Disposal Act, as amended, taking into account the protection already afforded by NRC requirements. Thus, if NRC requirements already provide sufficient protection for the control of mill tailings, EPA need not duplicate that effort in setting its standards and criteria. This authority replaces EPA's present authority under the Solid Waste Disposal Act, as amended. No permit by EPA for a mill tailings disposal site would be required. Finally, EPA would be given a concurrence right for any NRC general requirements for mill tailings.

Mr. President, one other aspect of the amendment deserves mention, and it is very important to this Senator and, I am sure, to many. That is the relationship between the regulatory program for mill tailings under this amendment and the legislation now pending before the Energy Committee to provide for remedial action on the inactive sites. The two pieces of legislation are intended to be complementary but not duplicative. Thus, this amendment is not intended to authorize NRC to exercise any regulatory control over remedial action work which would be conducted pursuant to the remedial action legislation. Rather, I understand that the remedial action legislation will itself contain provisions to govern the regulation of the remedial action program, that is, that will clean up the existing abandoned, dorment piles, including any necessary standards for cleanup of the inactive sites. This amendment does provide, however, for NRC regulation of the inactive sites once remedial action work has been completed in order to assure that those sites remain stabilized in the future.

I understand there may be some discussion about that part of the amendment and that part of my statement by others who might disagree.

The second portion of the amendment, which I believe is very important, requires a study of the costs and benefits of expanding NRC licensing or regulatory authority over Government waste management activities. A number of complex questions have been raised concerning the further expansion of NRC authority over these activities. This study should provide the necessary information and an important perspective to assist the Congress when it addresses these issues in the future.

Mr. President, I urge the adoption of the amendment.

I yield back any remaining time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, I yield myself such time as I may consume.

I ask unanimous consent that Katheryne Bruner, of Senator HAYAKAWA's staff, and Sally Rogers, of Senator THURMOND's staff, may be accorded the privilege of the floor during the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I think the pending amendment can be adapted to the needs that have been outlined by the Senator from Colorado and the Senator from New Mexico. There is the problem that does exist with the existing uranium mill tailings. That problem has been manifested in very obvious form in both States of Colorado and Utah, where mill tailings were not properly protected, with the apparent dangers to the public health that have not come about as a result of that failure.

There is also the truth that is apparent, particularly in Utah, that conditions do not stay the same, that there is social movement—people move into areas that they were not expected to move into. They establish subdivisions where they are not expected to move, in areas where they are not expected to live. There needs to be some continuing regulation over the potential damage to individual health and to the public health generally.

There is an overlap between the potential for regulation under the Nuclear Regulatory Commission and the mandates of EPA, both under the Clean Air Act and under the Solid Waste Disposal Act. There needs to be some definition of the overlapping authority lest we end up in duplicative regulatory procedures. We do not want to see NRC out there doing exactly what EPA is required to do and is doing. We do, however, want to make certain that NRC has the authority to do what needs to be done. I think that the effort that is underway now in this amendment—to say to NRC, you have the authority to look at the mill tailings, to establish what has to be done, that EPA will set the general standards and NRC will take specific measures and recommend specific measures—can be extended as the Hart-Domenici amendment proposes to do, to follow after that remedial work is done. That is what it addresses itself to.

We are attempting to remove some of the concerns that the Energy Committee has expressed and Senator JACKSON has spoken to me about. the potential conflict between the Nuclear Regulatory Commission and the Department of Energy, where there may be disagreements. It is my hope that we shall be able to arrive at language that resolves those problems to the satisfaction of the Energy Committee as well as the concerns that Senators HART and DOMENICI have expressed, which I share.

I think it should be stated that what we are trying to arrive at is the possibility that the Nuclear Regulatory Commission can continue to look at the mill tailings after the remedial work is done and make recommendations to the Department of Energy, but that any continuing supervision over mill tailings would be a specific legislative mandate. It does not necessarily imply that they have a similar, continuing oversight or monitoring responsibility with respect to all nuclear activities in this country where legislation has not been passed that grants them that authority or issues that mandate to them. I think, Mr. President, that the amendment can be stated in that way with that kind of understanding.

Mr. President, I wonder if I might inquire how much time I have remaining and how much the proponents of the amendment have remaining.

The PRESIDING OFFICER. (Mr. RIEGLE). The Chair advises that the Senator from Idaho has 24 minutes and the proponents have 11 minutes remaining.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum, to be charged to my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time to the Senator?

UP AMENDMENT NO. 1838

Mr. McCLURE. Mr. President, I have an amendment to the amendment at the desk and ask that it be stated.

The PRESIDING OFFICER. The Chair would advise the Senator that with another amendment on which there is still time——

Mr. McCLURE. This is an amendment to that pending amendment, a perfecting amendment.

The PRESIDING OFFICER. The Chair would advise that the time must expire on the first amendment, unless there is unanimous consent.

Mr. McCLURE. Mr. President, I am prepared to yield back the remainder of my time on the original amendment.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. How much time would there be under the agreement on the perfecting amendment?

The PRESIDING OFFICER. The Chair would advise that there would be 30 minutes of time evenly divided on the perfecting amendment.

Mr. HART. Mr. President, I yield back the remainder of my time on the Hart-Domenici amendment.

Mr. McCLURE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the Senator's amendment is now in order.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1838 to amendment No. 3577.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 13, change the period at the end of section 83b to a colon and add the following:

"*Provided, however*, That after completion of a remedial action program for such material conducted or approved by the Department of Energy, any requirement involving significant physical modification of such a program shall be subject to concurrence by the Secretary of Energy: *And provided further*, That should said Secretary fail to concur, he shall provide notification thereof to the President in writing, and if the President determines that compliance with such requirement is necessary to adequately protect health or miminize danger to life or property, such requirement shall take effect.

Mr. McCLURE. Mr. President, this amendment is designed to provide an accommodation between the views of the Committee on Environment and Public Works with respect to the Nuclear Regulatory Commission's authority to deal with continuation of oversight over the mill tailings and the concern of the Energy Committee that the roll of NRC not become too burdensome upon the activities of the Department of Energy.

It provides that after completion of a remedial action program for such material—and there the amendment refers to the milling tailings—conducted or approved by the Department of Energy, any requirement involving signficant physical modification of such a program shall be subject to concurrence by the Secretary of Energy: And "provided further, That should said Secretary fail to concur, he shall provide notification thereof to the President in writing, and if the President determines that compliance with such requirement is necessary to adequately protect health or minimize danger to life or property, such requirement shall take effect."

That is the language of the amendment, Mr. President, and it provides the mechanism by which the action of the independent regulatory agency does not automatically require affirmative action by DOE but does provide that mechanism by which the President can make that determination, if he makes the finding that is required by this amendment.

I think it is a useful resolution of a possible conflict between the independent agency and the executive agency, and I hope the authors of the amendment, Senator HART and Senator DOMENICI, can approve of this change in language.

Mr. HART. Mr. President, I thank the Senator from Idaho for offering this proposal. It does seem to me, on balance, to offer a resolution of a potential conflict. It establishes a mechanism for resolution of differences between two arms of the administrative branch of Government, and I believe it does help clarify what otherwise might be a question in the minds of some about ultimate authority.

For purposes of legislative history, I offer my own strong feelings about the definition of the phrase "significant physical modification," because I think that is the key phrase in the amendment.

If my colleague from Idaho would agree, I think we would suggest for the public record that, by the use of the phrase "significant physical modifications," what we mean is implementation of a new stabilization technique, technology, or engineering method which entails substantial construction or reconstruction activity. This term or phrase would not include changes in management concepts, exclusionary restrictions, onsite boundaries, surveillance requirements, population limitations, or institutional arrangements such as financial surety requirements or site security measures.

That is to say, this amendment really directs itself to the fundamental implementation of a new engineering method of technology which would have substantial construction or reconstruction impact.

With that understanding of the purpose and intent and definition of that phrase, I would be prepared to accept the amendment.

Mr. McCLURE. Mr. President, will the Senator yield on that question?

Mr. HART. I yield.

Mr. McCLURE. Mr. President, I have no real objection to the language or the understanding that the Senator from Colorado has suggested. However, I might have some reservation about what he means by the term "management techniques," because we are not talking now just about the maintenance of a site. We are talking about some other things, such as those the Senator mentioned—boundaries and population controls.

We are talking about what can be done upon the site itself and not necessarily what may be done by someone else around the site or off the site; because the amendment requires Federal ownership of the disposal site itself, and the Federal Government will have management of that site. I think DOE has that authority, and I do not believe the amendment I have offered will affect in any way what will be permitted on the site itself.

I would not want the term "management technique" to be construed so broadly that it might refer to a number of things other than those to which the Senator has otherwise referred.

Mr. HART. The phrase I used was "management concepts," and I think what we are talking about here is the structure of the management organization and approach to solving the problem, not a technology, not an engineering approach, or anything of that sort.

Mr. McCLURE. I am not sure I know that we can anticipate exactly what will happen on these mill tailings sites; but I express concern that we do not build on top of mill tailings sites, nor use mill tailings in the construction of buildings upon other sites.

The queston is whether we are talking about management concepts that say that because this is an area which has some radioactive hazards, we are going to exclude the use of the land for human habitation, for commercial development, that we will exclude people from that area for that reason. But if, on the other hand, it were found to be suitable for vegetative ground cover, if the vegetative ground cover could be manipulated; if, as a matter of fact, it, in itself, contained no radiological hazards, I would assume that "management concept" does not get into the question of whether or not you can have some kind of vegetative ground cover manipulation.

Mr. HART. No; I agree with the Senator. That is the intent.

Mr. McCLURE. I have no disagreement with the Senator. I am in agreement with his statement of the legislative purpose and share with him the hope that the amendment will be adopted.

I note that the Senator from New Mexico is on the floor. I do not know whether he desires to make some comment with respect to the language.

Mr. DOMENICI. I thank the Senator from Idaho.

I have no desire to comment at length, other than to say that I believe the amendment is a constructive one. I understand exactly what the Energy Committee's concerns were, and I compliment the Senator from Idaho for working out the matter.

I think this obviously will make that one section a little more certain as to future jurisdictions, and I support it wholeheartedly.

Mr. McCLURE. I thank the Senator from New Mexico.

Mr. President, for the purpose of legislative history, we should underscore what I said earlier, before this specific amendment was offered: that this amendment deals with the authority of the Nuclear Regulatory Commission to continue with respect to the mill tailings. It should not be read by anyone as implying a monitoring authority or a continuing authority except in the areas where they are specifically delegated authority by statute, as they are specifically being delegated authority in this amendment and in this legislation.

I think the Senator from Colorado earlier indicated general agreement with that statement, and I ask if he concurs in that now.

Mr. HART. The Senator from Idaho is asking the question as to whether the Hart-Domenici amendment applies only to the 22 remedial action sites?

Mr. McCLURE. No, whether it refers only to the monitoring of the mill tailings; and since it has a continuing authority over a site which is not a licensable site, we are not extending NRC authority generally to areas where they do not have licensing and supervisory authority, except as specifically delegated by statute.

Mr. HART. The Senator is correct.

Mr. McCLURE. I thank the Senator for that explanation.

Mr. President, I am prepared to yield back the remainder of my time on the amendment.

Mr. HART. Mr. President, I yield back the remainder of my time.

Mr. McCLURE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Idaho.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado, as amended.

The amendment, as amended, was agreed to.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I ask unanimous consent that a quorum call be in order without the time being charged to either the proponents or opponents of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1839

(Purpose: To reduce by $300,000 the authorization for preliminary planning of a study on low-level radiation)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 1839:

On page 4, line 11, strike the figures $"14,945,000" and "$650,000" and insert in lieu thereof the figures "$14,645,000" and $350,000," respectively.

Mr. BUMPERS. Mr. President, section 3 of S. 2584 directs the NRC and EPA to conduct a "preliminary planning study and develop a design for an epidemiological research study" of the effects of low-level radiation.

Now of the $650,000 authorized under this section, $500,000 is for this planning study.

I agree that low-level radiation effects are not fully understood. I can understand that collection and identification of data on this subject are very complex; but I do not understand why it is going to cost $500,000 to plan the epidemiological study. It is not the study; it is to plan for a study.

By April 1, 1979, EPA and NRC are required to report to Congress the results of this planning. In other words, in less than 6 months this planning will cost half a million dollars. At $50,000 a man-year, this represents 20 people working full time just to decide how they plan to conduct this experimental study.

I cannot understand the high expense of such a study. I do not think there is anybody in the Senate more concerned about low-level radiation than I am. But I cannot understand $500,000 being used not to make a study but to plan on how to make a study.

My amendment would strike $300,000 from the $650,000 authorization. This would have the effect of reducing from $500,000 to $200,000 the money set up in the bill to design a plan to make a study.

Mr. DURKIN. Mr. President, will the Senator yield?

Mr. BUMPERS. I would be glad to yield.

Mr. DURKIN. Earlier in the year the Boston Globe did a study of the Portsmouth Naval Shipyard of the workers who had been exposed to radiation at the Portsmouth Naval Shipyard. Granted that their study was not based on the best data, it was based, however, on the best available data, and the figures were absolutely appalling. It was estimated that 38.4 percent of the shipyard workers at the Portsmouth Naval Shipyard had died of cancer. So this is a problem not just at Portsmouth, it is at eight other States.

There has been work done at Portsmouth since 1959. You have got in addition Norfolk, Va.; Puget Sound, Charleston; Mare Island, Calif.; Pearl Harbor, and private shipyards at Groton, Newport News, and Pascagoula, Miss.

So I am as interested in saving money, as much money as possible, as anyone in this Chamber, but I would urge the Senator from Arkansas, my good friend and colleague on the Energy Committee, to withdraw his amendment. I think it is a very serious problem, and I do not think the money will be wasted.

Mr. BUMPERS. Mr. President, let me say to the Senator from New Hampshire, for whom I have the utmost respect, that I certainly understand the nature of his concern. His State is involved, his people are involved, and I suppose to a lesser extent all the people in the United States are involved. I am not suggesting that you can conduct a study without a plan.

What I am suggesting is that it does not require $500,000 to develop such a plan. It occurs to me that 4 man-years ought to be more than sufficient. Four man-years at $50,000 per man ought to be adequate to develop such a plan.

It just occurs to me that this is one of those cases where the funding is rather exorbitant, and I just saw a chance where, I think, we could save the U.S. Government $300,000 and not diminish the plan; $300,000 is not much around here. If you say it real fast it is nothing.

Mr. HART. Mr. President, the Senator from Arkansas says he does not understand how it could cost so much. Well, I suspect the reason he does not understand is that he did not participate in the hearings or the deliberations of the committee and fully appreciate all the facts that influenced our determination to set the funding at this level. I can understand how my colleague, not being a member of the committee and not having gone into the record, might be confused about that.

I would only call his attention, first of all, to a letter which our committee received from the Nuclear Regulatory Commission. The chairman, Mr. Hendrie, in response to our request for information about what should be done to solve this problem of low-level radiation and what we knew as a data base for making public policy, sent this response.

Mr. President, I ask unanimous consent that a five-page letter from Mr. Hendrie be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Reserving the right to object——

The PRESIDING OFFICER. The Senator has a reservation.

Mr. McCLURE. I wonder if the Senator might include also the attachments to that letter which, I think, are also enormously informational as to the reasons for the complexity of the study.

Mr. HART. Certainly.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. NUCLEAR REGULATORY COMMISSION,

Washington, D.C., April 19, 1978.

Hon. GARY W. HART,

Chairman, Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In your letter of April 4, 1978 you asked for a review of available information on human health effects from exposure to radioactive materials, a summary of current research efforts, and for our recommendations on the feasibility and desirability of performing detailed radio-epidemiological studies. In order to reply to your request, we have reviewed recent data on human radiation effects and have referred to the principal documents that summarize the present understanding of human and animal radiation effects. We have considered the desirability and the methodology whereby a proper epidemiological study could be performed. The purpose of such a study would be to ascertain whether there is a correlation between low-level radiation exposures and cancer, and if there is a correlation, to determine the relationship. Although I assume the latter subject is the primary thrust of your letter, I shall answer your questions in the sequence in which they were asked.

You are correct in your understanding that the risks generally associated with the present standards for radiation protection are based on theoretical extrapolations from high-level human exposures, and on extensive data from animal experiments. Although the standards were set at levels where no immediate detectable biological effects were expected to occur, the NRC adopted the "ALARA" principle to further reduce the risk associated with both the occupational and population exposure to ionizing radiation associated with NRC-licensed facilities and materials. This was based on a policy which assumed no threshold dose for health effects from low-level radiation. Mr. Minogue discussed these matters in greater detail in his testimony before your Subcommittee on April 10 of this year.

A good recent summary of the available worldwide information on adverse health effects from exposure to radioactive materials appears in the UNSCEAR 1977 report,[1] "Sources and Effects of Ionizing Radiation."

Because of its biological effects and exceedingly long half life, great attention is being given to assessing the health consequences of plutonium. Although some accidental exposures have occurred, no human health effects from plutonium exposures have yet been substantiated. Our knowledge of plutonium health effects is based almost entirely on animal studies in the laboratory. A summary of the available evidence on the effects of plutonium exposure in humans and experimental animals is contained in Attachment I. The EPA has recently published in conjunction with a rulemaking on residual plutonium levels in soil, their current findings on the potential biological effects of plutonium (*Federal Register* Vol. 42, N. 230,

[1] *Sources and Effects of Ionizing Radiation*, United Nations Scientific Committee on the Effects of Atomic Radiation, 1977 report to the General Assembly, United Nations, New York 1977.

Nov. 30, 1977). The levels established are based on a risk concept that is specifically related to radiation dose as a result of soil contamination.

At the present time, the majority of the ongoing research on health effects due to exposure to ionizing radiation in the United States is being funded by the Department of Energy. Under contract with EPA, the National Academy of Sciences will prepare later this year an updated review of the evidence concerning health effects from ionizing radiation and their associated risk estimates. This review will most likely include much of the information that has become available since preparation of the 1972 BEIR [2] report. A summary of the low-level radiation health effects research efforts currently funded by the NRC is contained in Attachment II.

In our opinion, an epidemiological study of the increase of cancer in the Rocky Flats area would not yield meaningful results. The report by Davis and Sternglass has been reviewed by the NRC staff and the results previously submitted to your staff. As you point out, the EPA review arrived at a conclusion similar to ours. To reiterate, the lung cancer mortality rate, and the rate of increase in lung cancer mortality are, on the average, lower in the Rocky Flats area than in the rest of the United States in spite of the fact that the natural radiation background is considerably higher. Thus, even if some number of cancers were induced by plutonium releases from the Rocky Flats Plant, even under the most pessimistic assumptions, only a small fractional increase in the number of cancer cases would result. This would be much smaller than the expected variability in incidence from year to year and from area to area. Any potential relationship would therefore be extremely difficult, and probably not possible, to prove or disprove.

On the other hand, the feasibility of a more general epidemiological study designed to better define the relationship between cancer and radiation exposure for occupationally exposed people appears promising. Radiation exposure records are available, suitable control populations can be defined and the number of exposed and monitored people are probably sufficient for a detailed study. However, there are difficulties that must be recognized. The first arises from the fact that incidence rates of health effects that can result from radiation exposures at environmental and occupational levels are extremely low and constitute only a small fraction of the same effects that occur naturally. This is true even if the most pessimistic assumptions regarding the risks of low-level radiation are made. In order to derive meaningful results from these low incidence statistics, it is necessary to use very large populations for the subject and control groups. With such large groups it is difficult to avoid variations in radiation background exposure and medical exposures which obscure the effects under study.

The second problem is that effects being studied—in this case, cancers, may be caused by a number of other agents. Unless the presence of these other agents is known and corrected for, differences between the control and subject groups may be incorrectly attributed to the agent under study.

There seems to be a growing consensus that some form of major epidemiological study of the cancer producing effects of low-level radiation exposure should be performed. It may or may not be possible to get definitive results from such a study, but the Commission agrees that the performance of such a study should be seriously considered and explored in detail. A study of the type and magnitude that would probably be required to provide meaningful results has never before been attempted. It would be a very difficult and costly undertaking, involving the accumulation and sophisticated statistical analysis of vast amounts of data in order to try to distinguish cancers due to low-level radiation doses from the many other causes of cancer. Therefore, careful planning and design of the study, including the statistical techniques to be used, are essential if the results of the study are to be meaningful. To accomplish this we believe that the effort should be conducted in two phases. The first phase would consist of planning and design of the study, and evaluating its cost and potential for success. If these determinations are favorable, the study would be actually conducted in the second phase. We estimate that phase 1 alone would take about two years to complete and cost a few million dollars.

In order to do the best job, and to develop a study that will have the greatest applicability and potential for success, the first phase should provide for participation of all Federal and State agencies and other public and private organizations that could either utilize the results of the study or that could help in designing how the study should be performed. A major part of the work would have to be contracted to one or more specialist organizations.

It would be desirable for the lead agency to be one of the principal users of the results of the study and therefore, it should probably be a regulatory agency. The agency should also have significant inhouse expertise in health physics, radiation dosimetry, probability analysis, statistics, and a good understanding of the overall occurrence of ionizing radiation in our society.

Recognizing that neither the NRC nor the Environmental Protection Agency (EPA) currently have the resources needed to assume responsibility for a study of this magnitude, the Commission believes that either could obtain the resources to function effectively as the lead agency. However, the Commissioners are not in unanimous agreement on the question of which agency should have the lead in this study. Chairman Hendrie and Commissioner Kennedy believe that such an effort would be more in keeping with EPA's broad responsibility for establishing guidelines for radiation exposure limits from all sources of radiation, and that this study should have such a broad context. While NRC has the important responsibility of limiting radiation exposures due to the commercial use of source, SNM, or byproduct material, this responsibility is quite limited when viewed in the context of the larger radiation control problem including, for example, medical X-rays. Secondly, because the NRC's regulatory functions are so closely associated with the nuclear industry, the study and its results may have greater public acceptance if EPA, with its broader responsibilities, had the lead. Commissioners Bradford and Gilinsky, on the other hand, believe that NRC should take the lead in the conduct of such a study. Since NRC's primary goal in its regulation of the civilian nuclear program is to assure the protection of the health and safety of the public and of the environment, they feel that taking a leadership role in the study of health effects for low-level radiation is an integral part of fulfilling that responsibility. If NRC is not to be the lead agency, then it should play an important role in the conduct of such a study.

Should it be decided that NRC take lead responsibility, any authorizing legislation must recognize the limited nature of our current resources and make full provision for the conduct and coordination of large parts of the effort by consultants and outside organizations with the necessary specific expertise. Whether NRC, EPA, or some other organization takes the lead role, we would expect that all agencies would need to work in close cooperation.

Sincerely,

JOSEPH M. HENDRIE.

A SUMMARY OF KNOWN PLUTONIUM EXPOSURES IN HUMANS AND ANIMALS AND HUMAN FOLLOW-UP STUDY

HUMANS

1. To determine the relationship between urinary excretion and plutonium body content, 18 persons of short life expectancy were injected with plutonium between 1945 and 1947. The amounts they received were high in comparison with occupational limits. Eight of those individuals survived at least eight years and some are still alive. None of these individuals exhibited any medical problems that could be attributed to plutonium.

2. Several workers were exposed to plutonium about 30 years ago during the Manhattan Project. It is estimated that they were exposed to levels of plutonium considerably exceeding the present NRC standards. Several of these persons still retain body burdens in excess of the presently permissible level. None of the workers has suffered any illness attributable to the exposures.

3. A number of personnel have been exposed to insoluble particles of plutonium and other transuranic elements in connection with their work at the AEC's national laboratories. The results of medical examinations for these personnel are considered by the NRC staff to be the best possible source of direct information regardingg the adequacy of its standards for the protection of personnel against such particles. These results are being closely followed.

4. To obtain as much information as possible on the effect of transuranium elements on humans, the U.S. Transuranium Registry (USTR) has been established at Hanford Environmental Health Foundation. It serves as a center for the acquisition and recording of the latest and most precise information of the transuranic elements in man and their effects on man. As of October 1977 over 14,000 U.S. transuranium workers have been tabulated. Authority for almost 1,000 autopsies has been obtained thus far; 87 autopsies have been performed. To date no effects attributable to the transuranic elements in humans have been identified.

ANIMALS

Numerous experiments indicate that internally deposited plutonium in relatively large amounts will (like other alpha emitters) cause cancer, primarily of the lung and bone.

While all our questions about plutonium are not yet answered, the available information on plutonium toxicity, carefully derived over the past thirty years, provides an impressive spectrum of important information. We probably know more about the relative toxicity of plutonium than any other agent and its toxicity following incorporation into the body is in no way unique. Plutonium, indeed, seems to follow the following radiobiologic generalizations:

1. The effects of exposure appear to depend upon the distribution of the radionuclide and whether it be an alpha, a beta, and/or gamma emitter and whether the emitted radiation energy is uniformly or nonuniformly distributed amongst the cells at risk. The chemical form in which the radionuclide is present in the body often influences its distribution.

2. The dose rate from radionuclides such as plutonium is generally protracted rather than acute and is continually changing. Thus, the dose-effect relationships from internally deposited plutonium requires con-

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[2] *Biological Effects of Ionizing Radiation*, Report of the Advisory Committee on the Biological Effects of Ionizing Radiation, National Academy of Sciences, National Research Council, Washington, D.C. 1972.

sideration not only of the total absorbed dose but of the dose-rate pattern by which it was acquired.

3. The sites of effects are those cells and tissues which are irradiated, and radiation-induced tumors are usually found in tissues in which cellular injury has been seen.

4. At low and intermediate radiation dosage patterns, the major end point has been tumorigenesis and this appears to account entirely for any life shortening which may be observed. At very high levels of administered radioactivity, life shortening may be quite marked and not solely due to tumorigenesis, while at exceedingly low levels of exposure in which tumorigenesis is rare or absent, no life shortening effect has been observed relative to comparable unirradiated animal populations.

5. No unique hazards from internal emitters such as plutonium and the transuranium elements are apparent when the dosage pattern is comparable to exposure to X- or gamma-radiation administered externally.

LOW LEVEL RADIATION HEALTH EFFECTS RESEARCH

RADIATION HEALTH EFFECTS IN HUMAN BEINGS

1. Health Effects of Industrial Exposure to Thorium (Argonne National Laboratory, Center for Human Radiobiology)

This research project was initiated in 1976 with the objective of locating and studying as many as possible of a population of approximately 5,000 workers who were involved in the chemical processing of thorium. The data of interest includes a detailed clinical examination of those willing to participate in the study, including indirect measurement of the internal deposition of radionuclides in each person using a whole body counter. The cause of death of all of the known deceased members of the population will be compiled and collated from death certificates. A follow-up study of volunteers willing to donate their body tissue specimens for later postmortem examination will provide a basis for verifying the estimated body burden of radioactive materials and pathology studies. The first 100 persons will have been examined by the end of FY 1978.

2. Evaluation of Thorium Content of Human Tissues from Grand Junction, Colorado (New York University Medical Center, Institute of Environmental Medicine).

The objective of this research is to determine if there is a measurable difference in the thorium in tissues of people who lived in an area of known higher thorium concentrations in the soil compared to the tissue of other people. The study is comparing the thorium in tissue specimens collected at autopsy in Grand Junction, Colorado, with the specimens from New York City, New York. The tissue specimens of interest are lung, pulmonary lymph nodes, liver, spleen, kidney and bone. The study is expected to be completed in FY 1980.

3. Follow-Up Study of Persons Who Had 131–I and Other Diagnostic Procedures During Childhood (HEW-Bureau of Radiological Health). This project is being done in concert with both the Bureau of Radiological Health and the National Cancer Institute.

This research project was initiated by the NRC in 1976 to assess the risk of inducing thyroid neoplasms in people exposed to diagnostic levels of 131–I in childhood and to study the dose response relationship.

RADIATION HEALTH EFFECTS RESEARCH (ANIMAL)

4. Relative Hazard of Radioiodine As a Function of (A) Radiation Quality and (B) Age at Exposure (University of California, Davis).

This research was initiated in 1976 to investigate the relative hazard of 131–I, 132–I, and 133–I using X-ray as a standard radiation source. The measurement of potential health effect is the degree of inhibition of goitrogenic response. The experimental animal is the guinea pig, and fetal, neonatal, juvenile and adult animals are being studied to determine the varying sensitivity of individuals with respect to age.

5. Biodosimetric Confirmation of Whole Body Radiation Damage and Use As Early Predictors of Late Effects: Confirmation of Dose Rate Amelioration Factors (University of California, Davis)

This research project was begun in 1976 to determine the applicability of hematopoietic end-points as sensitive biodosimeters to determine whether latent effects of radiation such as leukemia and cancer could be predicted by early changes in blood cells. A relatively long-lived experimental animal, the dog, was chosen for the study. Both total radiation dose and the rate at which the dose is accumulated are being varied in the study. The results will provide information applicable to assessing the risks to people.

6. Radiation Exposure and Risk Estimates for Inhaled Airborne Radioactive Pollutants Including Hot Particles (Lovelace Foundation, Inhalation Toxicology Research Institute).

This research project was begun in 1976 to confirm the applicability of models for predicting radiation health effects based on the research with highly refined pure isotopes of known particle size and spherical shape to the irregularly sized mixtures of particles of varied shape and composition in the occupational exposure situation. The experimental animals to be used will include many previously used species in representative numbers to allow comparison of the results of the present work with what was done before and to eliminate species differences. Rats, dogs, and monkeys are being used.

7. A Study of UF_6/UO_2F_2 in Experimental Animals (University of Rochester Medical Center, New York).

This project was begun in 1977 to determine the time rate and quantitative relationships between body burden and urinary elimination rate of uranium, hexafluoride and UO_2F_2, the hydrolyzed product of UF_6. Both compounds are used in the uranium level cycle with some consequent potential for occupational exposure. Both rats and dogs are being used as experimental animals.

Question B–14.—On page 7 you state that a major epidemiological study on the effects of low-level radiation "could provide a better basis for informed regulatory action."

Roughly, how long would such a study take and how much would it cost?

Would it be useful to first find a one-year project to design the study?

What would that cost?

Would your office be equipped to take a lead role in the design project?

Response.—A study of the type and magnitude that would be required to provide meaningful results has never before been attempted. It would be a very complex and costly undertaking, involving the accumulation and sophisticated statistical analysis of vast amounts of data in order to try to distinguish cancers due to low-level radiation doses from the many other causes of cancer. Therefore, careful planning and design of the study, including the statistical techniques to be used, are essential if the results of the study are to be meaningful. To accomplish this we believe that the effort should be conducted in two phases. The first phase would consist of planning and design of the study and evaluating its cost and potential for success. If these determinations are favorable, the study would be actually conducted in the second phase. We estimate that phase 1 alone would take about two years to complete and cost a few million dollars.

The estimated total cost of phase 2 of the epidemiological study would be very much larger and take many years to complete. It is possible that some results might be available within 2 or 3 years after starting the actual study.

The NRC would be one of the principal users of the ultimate results of the study and therefore would have a major interest in its proper implementation. The NRC has for many years been required to assess and evaluate radiation exposure data. It has a staff with expertise in health physics, radiation dosimetry, probability analysis, statistics and other related areas and a good understanding of the overall occurrence of ionizing radiation in our society. The lead agency or agencies functions would be primarily management and coordination, so that a high level of inhouse expertise in epidemiology would not be essential.

If it is decided that NRC should take the lead role in the development and conduct of such a study, any authorizing legislation must recognize our limited resources and make full provision for the conduct and coordination of large parts of the effort by consultants and outside organizations under our overall direction.

Question 815.—The BEIR Committee is funded by EPA. When their funds run out, the members are required to continue their program on a volunteer basis. Thus, their activities are frequently rushed in order to meet financially-derived deadlines.

In your opinion, what would be the merits of NRC co-support of this effort?

Should any agencies, if not NRC, be involved in financial support of these activities?

Could a continuing Committee of the NAS be established for this purpose, funded perhaps by contract through EPA and NRC?

Please comment on these ideas.

Response.—Although the BEIR Committee is funded by EPA, it is our understanding that the Committee operates in a completely independent manner and receives no technical direction from the EPA staff. The most important aspect of funding the Committee is to assure that the funding is adequate, irrespective of how many agencies provide those funds. If current funding is inadequate, the most straight-forward approach to the problem would be to increase the EPA budget to provide additional support for the Committee. We do not see any significant advantage to involving the NRC or any other agency in co-financing the BEIR Committee with the EPA. It is our view that after this next BEIR Committee report is issued, it will be several years before sufficient new data would be available to justify undertaking another study and report. Therefore, we believe that a continuing committee of the NAS is unnecessary for the purpose, although a continuing NAS committee could provide a valuable overview, advisory function in the design and conduct of radioepidemiological studies.

Question 816(a).—Is it true that utilities frequently allow maximum allowable employee occupational exposure in short periods of time and then remove them from the hazardous environment?

Response.—Workers performing certain maintenance operations at nuclear power plants have received the NRC quarterly limit in a period shorter than one quarter, but this is not, in our opinion, a frequent occurrence. It normally happens only during plant shutdown periods, which occur once per year, and includes only about 2 percent of the workers. When such exposures occur, NRC regulations specify that the workers may not receive additional occupational exposure from activities under the license during that quarter.

(b).—How does the effect of maximum short-term exposure compare with effects of continued long-term minimum exposure? Are they equivalent?

Response.—The risk associated with exposures in the range of the quarterly limits are believed to be essentially equal whether

distributed throughout the quarter or received in a shorter period. This position is supported by a recent report of the International Commission on Radiological Protection (1977) that recommends elimination of quarterly limits, thereby permitting the annual dose limit to be received in a short period.

Question B17.—Dr. Radford suggested convening a meeting of leading scientists and others to define the parameters of scientific studies needed to resolve the questions of low-level radiation and human health—Do you support this idea? If so—Who should convene the meeting—who should be involved?—What questions should they discuss—Following that meeting would it be useful to convene an interagency task force with NRC as lead agency to prepare a specific study plan, and to choose among the management alternatives?

Response.—We support the concept of such a meeting. Such a meeting could be an important early step in the planning and design of the epidemiological study, i.e., phase 1 of the study. In our view, such a meeting should be organized by the agency designated to lead the study with participation from all Federal agencies that would utilize the results of the study. Participants in the meeting should also include the best available expertise in the area of epidemiology and biostatistics. The meeting should focus on the details of how the large scale epidemiological study should be performed and attempt to reach a consensus regarding the best available methodologies to employ in the study. Integral to the discussion of methodologies should be consideration of all important facets of the study, such as the number of persons to be included in the investigation, the specific cancers to be studied, dose ranges to be considered, etc.

Mr. HART. I read from that letter to the Senator from Arkansas:

It may or may not be possible to get definitive results from such a study, but the Commission agrees that the performance of such a study should be seriously considered and explored in detail. A study of the type and magnitude that would probably be required to provide meaningful results has never before been attempted. It would be a very difficult and costly undertaking, involving the accumulation and sophisticated statistical analysis of vast amounts of data in order to try to distinguish cancers due to low-level radiation doses from the many other causes of cancer. Therefore, careful planning and design of the study, including the statistical techniques to be used, are essential if the results of the study are to be meaningful. To accomplish this we believe that the effort should be conducted in two phases. The first phase would consist of planning and design of the study, and evaluating its cost and potential for success. If these determinations are favorable, the study would be actually conducted in the second phase. We estimate that phase I alone would take about two years to complete and cost a few million dollars.

Mr. President, the committee, faced with the request for a few million dollars and a proposal that the first phase would take a couple of years, has given the Commission a fraction of that, namely, $500,000, and asked that the results be in our hands by next spring. The Commission says it is going to take 10 to 20 years to determine all of the ramifications of the low-level radiation problem in this country that we, unfortunately, are facing today. That effort is going to take tens of millions of dollars.

So in his effort to be pennywise here, I am afraid the Senator from Arkansas is suggesting to the Senate that we get ourselves into a situation where we end up being pound foolish. If we are going to spend tens of millions of dollars to determine the facts and solve the problems related to low-level radiation, what can be the objections to $500,000 to make sure that those tens of millions of dollars are spent properly?

If we cut this back, as the Senator from Arkansas suggests, in my considered judgment—and I think that of the full committee—we are risking the waste of tens of millions of dollars in this decade-or-two-long effort merely to save the $300,000 that the Senator from Arkansas proposes that we save.

I think it would be a very, very poor investment, and I hope my colleagues on the minority side will support my efforts to defeat this amendment.

Mr. McCLURE. Mr. President, will the Senator yield on that point?

Mr. BUMPERS. Yes.

Mr. McCLURE. Mr. President, I do indeed join with the Senator from Colorado for all of the reasons he has outlined. I am afraid what we are confronting is the demand to respond to a very real concern of people that there may have been or there may be radioactive hazards to public health, and that if we do not get a very good and substantial study that is technically and scientifically sound we will be asked to legislate on the basis of emotional responses to those problems.

I think there is a great danger that the timeframe we have allowed and the money that was designated in the bill are both insufficient to avoid that pitfall, but certainly what we did in the bill is minimal, and to go below that would be, in my judgment, both unwise and counterproductive, and it would leave Congress and the committee in position to act with inadequate information and, therefore, act only upon an emotional and, therefore, a political basis on what ought to be a very serious scientific study.

I support the effort of the Senator from Colorado in opposing this amendment.

Mr. BUMPERS. Mr. President, I would like to ask the Senator from Colorado where in the letter he just read a moment ago it says that they need $500,000 and how many people to design this plan. I heard a lot about this study, how much money this study is going to cost, and I have no figures to refute that. But where does it say there ought to be at least $500,000 spent in designing a plan for the study?

Mr. HART. Well, first of all, the portion of the letter I quoted to the Senator from Arkansas had to do with stage 1, which is what we are talking about. The letter says:

We estimate that phase 1 alone would take about two years to complete and cost a few million dollars.

That was simplified by deliberations in our own committee and informal contact between our own staff and the staff of the NRC.

Mr. BUMPERS. Mr. President, will the Senator yield?

Mr. HART. I yield.

Mr. BUMPERS. Was there a specific request for a specific amount of money for the design of an epidemiological study or is this just——

Mr. HART. No. As I indicated earlier, the statement contained in this letter is a response to a request that I, as subcommittee chairman, made to the chairman of the Commission asking for his thoughts and his estimate of what it would take to get this effort off the ground. It was not a line item budget request by the administration; it was in response to our request that the commission responded by saying they felt, first, it would be of this magnitude.

I would point out also that we are not just talking about the Nuclear Regulatory Commission; we are asking the Nuclear Regulatory Commission and the Environmental Protection Agency as the lead agencies to incorporate participation of a variety of other Federal agencies in this effort. This is not just NRC. Part of the funds of $500,000 would go to a variety of other Federal agencies which would be participants in deciding this massive undertaking we are talking about. So we are not just talking about pouring half a million dollars into NRC; we are talking about pouring half a million dollars over half a dozen or more Federal agencies, which would be participants. It is a coordinated effort.

Mr. BUMPERS. Mr. President, I am not going to pursue the amendment, and I will withdraw it in a moment. But I would submit that it is a case where a considerable amount of money could be saved. The amount of money involved here is just a small thing that I picked out of this bill as what I considered to be just sort of a place to throw money.

If this is going to be an interagency study, I can think of a good reason for not putting any money in it. That is what interagency studies are for, to call on all agencies of the Government to put their expertise into a plan such as this and see whether a plan is needed.

I am not going to ask for a rollcall vote. If I did, based on normal mentality around here, people would think I needed a saliva test, asking for a rollcall over $300,000. I just wanted to make a point. I withdraw the amendment.

Mr. McCLURE. Mr. President, will the Senator yield before withdrawing the amendment?

Mr. BUMPERS. Yes.

Mr. McCLURE. I wanted to underscore one statement the Senator from Colorado has already made in reading from the letter. That is that a study of the type and magnitude that would probably be required to provide meaningful responses has never before been attempted.

The reason I asked the Senator to include in the RECORD the attachments to that letter is that I think a full reading of the letter and the attachments will begin to outline the very great difficulty of the undertaking, and therefore justify the amount asked, and probably could justify a larger sum of money.

I thank the Senator for withholding so that I might make that comment.

Mr. HART. Mr. President, will the Senator yield?

Mr. BUMPERS. Yes.

Mr. HART. Mr. President, I commend the Senator for withdrawing the amend-

ment, but also for calling the attention of the managers of the bill to the matter. I assure him this was not lightly put in. It was not a frivolous demand of the Commission which we overlooked. It was, as I have indicated, a fraction of the amount which the Commission estimated at our request would be required to carry out this study. We took the matter under very serious advisement, looked at it very hard, and felt certain we were asking the Commission to reprogram internally more than $8 million worth of funds which we required them to finance out of their present operations. This amount of money was almost the minimal amount that could be required for this type of effort. I thank the Senator for calling that to our attention, and for his good judgment in withdrawing the amendment.

Mr. RANDOLPH. Mr. President, will the able Senator further withhold his request for a moment?

Mr. BUMPERS. Yes.

Mr. RANDOLPH. I think you have done a service to those of us who have joined, from the Committee on Environment and Public Works, in bringing this authorization bill to the Senate. As a Senator, and not as the chairman of the committee, I have been very conscious, very wary about expanding nuclear power in this country. The implications of rapid expansion are such that we must not adopt such a policy without first answering some very fundamental questions.

In thinking through the reality of the figure here, I was conscious of my own concern about the wastes that are produced by nuclear power reactors. I discussed this subject earlier. I repeat that nuclear power must prove itself as a supply of energy in competition with other resources. The investments are huge and the risks are great. The commitment to large-scale nuclear dependence must not be made without an exhaustive examination of the alternatives from all perspectives.

Mr. BUMPERS. I thank the Senator. I ask unanimous consent that Ark Monroe of my staff be given the privilege of the floor during the consideration and votes on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is withdrawn.

Mr. DURKIN. Mr. President, will the Senator from Colorado yield?

Mr. HART. Yes; I yield to the Senator from New Hampshire.

Mr. DURKIN. Earlier this year, the Energy and Natural Resources Committee accepted my amendment to the Department of Energy authorization bill (S. 2692) that would establish a blue ribbon panel to review DOE's research efforts in the area of low-level radiation health effects. That bill, of course, has not yet come before the full Senate for consideration, but when it does, I am confident my amendment will be retained with the backing of the full Energy Committee. Such a review I believe is necessary, first, because of the potential for harm from low-level radiation, and, second, because of the need to insure the complete objectivity and credibility of these critically important studies. I note that section 3 of the bill under consideration establishes a planning study to develop a design for an epidemiological research study of the health effects of ionizing low-level radiation.

These studies are critically important. A recent study of worker mortality at the Portsmouth Naval Shipyard by the Boston Globe's Pulitzer prize-winning spotlight team found that shipyard employees exposed to low-level radiation have a cancer death rate more than twice the national average and almost 80 percent higher than the rate for shipyard employees doing no nuclear work. I ask unanimous consent that the Globe article be inserted in the RECORD at the end of my remarks.

An estimated 3,000 to 5,000 workers have been exposed to radiation since nuclear work began at Portsmouth in 1959. And Portsmouth is not alone, for it is just one of nine shipyards where nuclear work is done. In addition to Portsmouth, there are naval nuclear shipyards at Norfolk, Va.; Puget Sound, Wash.; Charleston, S.C.; Mare Island, Calif.; and Pearl Harbor, Hawaii; and private shipyards at Groton, Conn.; Newport News, Va.; and Pascagoula, Miss.

My amendment to the DOE authorization provides that a panel of distinguished experts will be selected by the President from a list supplied by the National Academy of Sciences and would give full authority to review, comment upon, and make recommendations regarding DOE studies into the low-level radiation problem, including the study at the Portsmouth Naval Shipyard. Such a panel is essential. I believe, to insure that DOE's studies in this vital area are as objective, timely, and competent as possible, and that the results will be credible to the public. I ask unanimous consent that the legislative and report language pertaining to this amendment in the Energy Committee report be inserted in the RECORD at the end of my remarks.

I am sure that the manager of the bill is aware of the difficulties with conducting objective, scientific studies in an area as sensitive as the effects of low-level radiation. Yet, we must insure that ongoing and future studies, like the one now underway of Portsmouth and other nuclear facilities are carefully reviewed by an independent review panel to insure their objectivity and public credibility.

I am addressing the manager of this bill at this point to inquire whether it is consistent with his intention that the planning study called for in his bill be a coordinated Federal effort; and that results from the preliminary planning study, and any study which may result, be included among those studies under the review of the blue ribbon panel. This means solely that the panel will review and comment upon the study or studies, and make nonbinding recommendations to the chairman of the Commission and the Administrator of the Environmental Protection Agency regarding the methodology and the significance of the results of the study contained in your bill. This in no way affects the nature of the study, nor does it affect the autonomy of the Commission and the EPA in designing and conducting the study.

Mr. HART. Yes, I believe what the Senator from New Hampshire has in mind is consistent with answering the critical questions about the hazards of low-level radiation, and with the intent of the Committee on Environment and Public Works Committees in including this provision in the bill. While I cannot be certain of the Energy Committee's intent in approving the Senator's earlier amendment, it would be beneficial to encourage adoption of equivalent standard of scientific objectivity in all agencies which are studying the low-level radiation problem. Therefore, it is within the intent of the committee that the NRC/EPA study authorized in the bill be reviewed and commented upon informally by appropriate scientific agencies and organizations. This certainly would include the blue ribbon panel established by the Department of Energy authorization bill, assuming that the panel comes into being in time to perform such a review.

Mr. DURKIN. I thank the Senator for his sensitivity to the need for coordination between agencies engaged in the same activity and for the need for objectivity in studying this crucial problem. I thank the Senator for yielding.

UP AMENDMENT NO. 1840

(Purpose: To delete the authorization for grants to States for reviewing proposals for long-term storage facilities)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 1840:

Strike out from page 9, line 7, through page 10, line 10, inclusive.

Mr. BUMPERS. Mr. President, section 6 of S. 2584 provides one-half million dollars as an aid to impacted States in which a long-term waste repository may be planned. The committee report defines 20 years as a long term. This authorization would remain available until expended. According to the bill, NRC can provide grants to "any State for the purpose of conducting an independent State review of any proposal to develop a long-term storage or disposal facility * * *."

Mr. President, the NRC is a licensing agency and it does not propose or recommend where the disposal facility should be. Let me repeat: NRC is a licensing commission, and it neither proposes nor recommends nor designates any location for a waste disposal facility.

It is the DOE that will select and choose the location. It is the DOE that will apply for the license when a selection has been made. The Department of Energy applies for the license when the selection has been made, and DOE applies to NRC for the license on behalf of itself to put nuclear waste in a particular State.

Everybody here is in favor of Federal support to any State that happens to be

chosen as the location of a disposal facility. The State will provide a great service to all parts of the country, whatever State it is—New Mexico has already been chosen. So I support this whole concept.

The State ought to be allowed, and it ought to be given the funds, to make the kind of independent study, review, and analysis on its own. It ought to be supported by the Federal Government in order to make that review as to whether or not it wants the facility and what the impact is going to be on the State.

My point is that the Nuclear Regulatory Commission is a licensing agency and it is not the one that ought to be providing that support. Department of Energy is the agency that selects the site and applies for the license. And it is the one that ought to be providing the State this support.

As a matter of fact, the Senator from New Mexico (Mr. DOMENICI) who is seated in this body right now, knows that the State of New Mexico has already executed a contract with DOE for this precise kind of support. New Mexico has asked for $2,180,000 to be spent over the next 7 years. I am told that DOE has already signed a contract with the Health and Environmental Department of New Mexico for $100,000, just for the rest of this fiscal year. They have asked for $418,000 for fiscal year 1979, and the Department of Energy has the wherewithal and is fully expected to support that.

If the Senator from New Mexico has any problem with it, I will be glad to join with him and make sure they get every bit of it.

New Mexico is the only State I know of today where a long-term disposal facility is being planned. I know there is exploratory work on other sites in other States, but the site of Carlsbad, N. Mex., is the only facility which has been identified as of now as a project for long-term waste disposal. New Mexico is more than adequately supported by funds already available from the Department of Energy. If they need more, I will help them get it.

So it is not responsible for us to authorize another half million dollars to any State to review any proposal. What we are doing here is acting in a vacuum. The bill does not even specify what proposals qualify and at what stage. For example, if a utility mentions the possibility of storage in my home State of Arkansas, does that mean that Arkansas is immediately eligible for this grant? Does the grant become available the minute somebody mentions my State as a possible repository for nuclear waste?

Mr. President, I think the provision is ambiguous, premature, duplicative, and it is out of place in the NRC authorization. It should be deleted from the bill.

I just want to reiterate, Mr. President—and it may be that the floor manager has a perfectly valid and good explanation for this—that NRC does not recommend a site; it does not choose a site; it cannot grant itself a license—well, I guess it could, but it certainly would be a strange administrative procedure where NRC applies to itself for a license to locate a nuclear waste disposal facility in a particular State—nor does it have any money at its disposal right now to allow States to make their own independent analysis as to whether they want a site in their State selected.

Just look at it. This is not a turf fight. I do not really care who does it. I think it ought to be done, and the money ought to be made available to the States. I will say now, I do not want them to pick Arkansas. If they do, I will ask for a lot of money in my State for an analysis.

All I am saying is DOE has the money; they are the ones who find the sites; they are the ones who do the study of the site; they are the ones who recommend the site; they are the ones who apply to the NRC for a license to put it there, and they are the ones who have the money to give the States to do this kind of analysis. So why in the name of heaven are we putting a half million dollars in this bill?

Mr. HART. Will the Senator yield?

Mr. BUMPERS. I yield the floor.

Mr. HART. First of all, Mr. President, I would point out that there is nothing in the bill which requires that this money be spent. Obviously, if there is no use for the money in any State, it will not be spent. The Senator's concern will have been taken care of.

The Senator is correct about the role of the Department of Energy in these operations, particularly the actual location and operation of the site itself. But what the Senator neglects to point out is that the NRC does, in fact, have a very clear responsibility in the conduct of its licensing authority to involve the public and to seek public participation at every step.

The NRC operates as an independent arbiter of these determinations, and it is extremely important in reaching the decisions about issuing a license to find out what public opinion is and what the impact of locating a waste disposal site in any area would be. Therefore, funds are often necessary to assure those kinds of public hearings and public participation. The DOE has no real responsibility of that sort.

Third, I would only point out, before yielding to the Senator from New Mexico, that at least 30 States are under general consideration as potential locations for long-term waste disposal and storage of those, some 10 States are considered as high priorities. Therefore, we are getting to a point where more than just the State of New Mexico is concerned. When the concern in those other States reaches the level, as I am sure it will fairly shortly, of concern in the State of New Mexico, I think the Senator from Arkansas can be assured that NRC is going to have its hands full in terms of handling public opinion.

Mr. McCLURE. Will the Senator yield briefly?

Mr. HART. I yield.

Mr. McCLURE. I want to reserve as much time as possible to the Senator from New Mexico both because of his personal interest in this amendment and his State having such an immediate concern about it, because they are faced with the first assessment of the disposal site.

I would like to point out that subsection (b) of section 6, which appears on page 9 of the bill, deals with the question of when can they apply for the grant. There is a very specific triggering mechanism contained in the bill. Some of the concerns the Senator expressed about when can they apply for a grant and when would they be eligible for the grant are taken care of under that section, though perhaps not as precisely as he would like. Nevertheless, that issue is addressed.

I would also like to refer to page 28 of the report of the Committee on Environment and Public Works which accompanies this bill. It refers to what long-term radioactive waste storage is.

I expressed some mild disagreement with that language, because there it defines long term as being anything in excess of 20 years, but at the same time disavows commercial nuclear fuel from the kind of thing we are studying here.

I would point out that if we have a wait for reactor storage as we must have starting in 1983, certainly that AFR will be for more than 20 years. The radioactive waste we are concerned about in permanent repositories have half-lives from 20,000 to 25,000 years. So we are dealing with storage requirements for 50,000 years to 250,000 years. It certainly seems to me that the breaking between long term and short term, when we are looking at 250,000 years, is somewhere above 20 years. The useful life of any proposed repository, if it be interim or temporary, would certainly be more than 20 years.

I just wanted to point out that it may have some application to AFR. It certainly has some application to storage which would exist for periods of time in excess of 20 years, but how much in excess I think we may have some concern with.

I agree with the Senator that DOE does have authority.

I agree with the statements of the Senator from Colorado, however, and I hope the amendment will not be adopted. I join with the Senator in opposing it.

Mr. DOMENICI. Will the Senator yield 5 minutes?

Mr. HART. I yield 5 minutes to the Senator from New Mexico.

Mr. DOMENICI. First, may I thank my good friend from Arkansas for his general concern in this area. He was absolutely correct in identifying the present relationships between the Department of Energy and the State of New Mexico and its agencies with reference to studies and evaluations that are ongoing that precede any final decision with reference to WIPP.

On the other hand, I say to my good friend that we did not intend this provision to apply only to New Mexico, nor did we intend this to be the exclusive source of money for a State to be able independently to hire experts to evaluate pending projects. It seemed to us that since, at the time we were putting this bill together, there was evidence, by virtue of a letter, that NRC was going to be used and that a license was going to be applied for, we ought to provide for the eventuality where a State could not get what it needed from other sources; and if that were the case, it could apply

to the Nuclear Regulatory Commission for up to half a million dollars to aid them in independent studies. I think these are cumulative remedies, that they should have cumulative sources of money. I can see a time when, maybe, DOE would not want to fund a certain approach for a study that a State thought necessary in preparation for licensing. I think we ought to leave it in as an option, because of the peculiar nature of the NRC's ultimate role. I think it is good to have the option of their having a chance to look at a State application.

I also say to my good friend that I do not think New Mexico is going to apply for money that they do not need. Therefore, if it is all taken care of by DOE, this might never come into play. On the other hand, there may be a dispute with them sometime down the road when we need the money and this might be a resource for evaluating needs when they have proposals. I think this ought to be left in. It is not a lot of money. I think to provide for States to have resources is just one of a number of things we have to develop here, if we want our States to cooperate and if we want the people within the States to feel comfortable or confident that their experts in their States have a significant right in this area, that they will have something to say and will have resources for their own experts.

(Mr. RANDOLPH assumed the chair.)

Mr. BUMPERS. Mr. President, I am aware of the politics of this situation. I know that I do not want to call for a rollcall vote, because it is a small amount of money. I think that the amendment has great validity. As a matter of fact, I cannot imagine what kind of justification NRC is going to use for spending its money. DOE has that whole waterfront covered. They have the money and it has been authorized for these specific purposes. To put a half million dollars in a program that is already supported by another agency, the DOE. New Mexico is asking for $2 million and I dare say they will ask for more than that. I know one thing, if there were a proposal to put one in Arkansas, I would want to be sure that I was going to get all the money I needed to do an indepth analysis of the potential environmental effects on my State. If, in this coming year, DOE picks any State in the Nation besides New Mexico, which is well on its way with its study, I guarantee that a half-million dollars that NRC has got is peanuts. They do not have the money. A half-million dollars is nothing. I do not know why it was put in there.

The Senator from Colorado said, well, just because it is authorized does not mean they have to spend it, but I promise you, that money will be gone at the end of next year. Being on the Appropriations Committee, I shall take the closest look at it when it comes for appropriations and, frankly, try to head it off there.

As long as everybody is on notice that I intend to try to delete that $500,000 at the earliest possible time, I withdraw the amendment.

The amendment was withdrawn.

Mr. HART. Mr. President, I thank the Senator from Arkansas once again. I do not believe there are further amendments.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HART. Mr. President, I yield back all my time.

Mr. McCLURE. Mr. President, I yield back with just this comment: I hope that the Senator from Arkansas may be persuaded before the Appropriations Committee that if the money is not forthcoming from other sources, the money might be made available from this source. I hope he will not be inflexible or have his mind closed on that issue. Our friend from New Mexico has a real problem that might visit any of the rest of us at any particular time.

I yield back the remainder of my time.

Mr. HART. Before yielding back, I want to thank the very able committee staff, which has served us so well in the past year, on both sides of the aisle. As with other committees, it is obvious that we could not have performed our work without their help and I think that their work should be acknowledged.

I urge the passage of the bill.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill was passed as follows:

S. 2584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) There is authorized to be appropriated to the Nuclear Regulatory Commission (hereafter in this Act referred to as the "Commission") to carry out its functions and authorities under the Atomic Energy Act of 1954 (42 U.S.C. 2017) and the Energy Reorganization Act of 1974 (42 U.S.C. 5875) for fiscal year 1979, to remain available until expended, $335,895,000 to be allocated as follows:

(1) For "Nuclear Reactor Regulation", not more than $46,880,000 of which amount $1,070,000 in addition to the level of activity in fiscal year 1978 shall be available exclusively for the Alternate Fuel Cycle activities described in section 5 of this Act and $2,080,000 shall be available exclusively for Advanced Reactors;

(2) For "Standards Development," not more than $14,945,000, of which amount $650,000 shall be available exclusively for Low Level Radiation activities, including those activities described in section 3 of this Act;

( ) For "Inspection and Enforcement", not more than $38,760,000;

(4) For "Nuclear Materials Safety and Safeguards," not more than $27,240,000, of which amount $8,127,000 shall be available exclusively for Nuclear Waste Disposal and Management activities, and $540,000 in addition to the level of activity in fiscal year 1978 shall be available exclusively for the Alternate Fund Fuel Cycle activities described in section 5 of this Act;

(5) For "Nuclear Regulatory Research," not more than $166,640,000, of which amount $2,500,000 shall be available exclusively for the implementation of the Improved Safety Systems Research plan required by section 205(f) of the Energy Reorganization Act of 1974 as amended, $4,448,000 shall be available exclusively for Nuclear Waste research activities, $330,000 in addition to the level of activity in fiscal year 1978 shall be available exclusively for the Alternate Fuel Cycle activities described in section 5 of this Act, and $18,833,000 shall be available exclusively for Advanced Reactor Research;

(6) For "Program Technical Support," not more than $13,480,000, of which amount $160,000 in addition to the level of activity in fiscal year 1978 shall be available to the Office of International Programs exclusively for the Alternate Fuel Cycle activities described in section 5 of this Act;

(7) For "Program Direction and Administration," not more than $27,950,000, of which amount $225,000 shall be available for equal employment opportunity activities including support of four positions in the Office of Equal Employment Opportunity;

(b) No funds may be transferred from any major program category listed in subsection (a) to any other major program category listed in such subsection if the total of the funds so transferred from that particular category would exceed $500,000, and no funds may be transferred to any major program category listed in subsection (a) if the total of the funds so transferred to that particular category would exceed $500,000, unless—

(1) a period of thirty calendar days has passed after the Commission has transmitted to the appropriate authorizing committees of the Congress a written report containing a full and complete statement concerning the nature of the transfer involved and the reason therefor; or

(2) each authorizing committee of the Congress referred to in paragraph (1), before the expiration of such period, has transmitted to the Commission written notice to the effect that such Committee has no objection to the proposed action. Such reallocation may be made notwithstanding the limitations of subsection (a), except that no reallocation pursuant to this subsection shall detract from sums specified in subsection (a) for particular activities under the major program categories. In no event, shall the total of sums reallocated pursuant to this subsection exceed $10,000,000 or 15 per centum of the program from which or to which the funds are transferred.

SEC. 2. (a) Subsection (b) of section 209 of the Energy Reorganization Act of 1974, as amended, is amended by adding at the end thereof the following sentence: "Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.".

(b) Section 209 of the Energy Reorganization Act of 1974, as amended, is amended by adding a new subsection (c) to read as follows and redesignating existing subsection (c) accordingly:

"(c) The Executive Director shall report to the Commission at semiannual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts."

SEC. 3. (a) The Commission and the Environmental Protection Agency are authorized and directed to conduct a preliminary planning study and develop a design for an epidemiological research study of the health effects of low level ionizing radiation. In the conduct of such planning study, the Commission and the Environmental Protection Agency shall consult with appropriate scientific organizations and Federal and State agencies.

(b) Within thirty days after the date of enactment of this section, the Commission and the Environmental Protection Agency shall submit to the Congress a memorandum of understanding delineating their respective responsibilities in the conduct of the planning study authorized by subsection (a) of this section and allocating the sums authorized for this purpose by section 1(a)(2) of this Act. On or before April 1, 1979, such agencies shall submit a report to the Congress containing the results of such planning study. The report shall include an identification of the respective functions of the appropriate agencies and organizations to be involved in the implementation of the epidemiological research study as designed.

SEC. 4. The Commission is authorized and directed to undertake a comprehensive review of the existing process for selection and training of members of the Atomic Safety and Licensing Boards, including, but not limited to, the selection criteria, including qualifications, the selection procedures, and the training programs for Board members. The Commission shall report to the Congress on the findings of such review by January 1, 1979, and shall revise such selection and training process as appropriate, based on such findings.

SEC. 5. (a) There is hereby established within the personnel of the Commission a Fuel Cycle Evaluation task force which shall consist of representatives of appropriate Commission program offices and shall report directly to the Executive Director for Operations. Such task force shall monitor and assist the domestic international studies and evaluations of the various nuclear fuel cycle systems currently in progress.

(b) The Commission shall report to the Congress semi-annually on the progress of domestic and international evaluations of nuclear fuel cycle systems including, but not limited to, a summary of the information developed by and available to the Commission on the health, safety, and safeguards implications of the leading fuel cycle technologies.

SEC. 6. (a) The Commission is authorized to provide grants to any State for the purpose of conducting an independent State review of any proposal to develop a long-term storage or disposal facility, including a test disposal facility, within such State for high-level radioactive wastes, non-high-level transuranium contaminated radioactive wastes, or irradiated nuclear reactor fuel.

(b) Any person, agency, or other entity proposing to develop a facility of a type described in subsection (a) of this section shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal. At any time after such notification, such State may apply for a grant under this section.

(c) The Commission shall promulgate regulations to govern the issuance of grants under this section. Such regulations shall include provisions governing the amount of any such grants, taking into consideration the proposed level of State review and the continued development of the proposed facility. Any grant approved pursuant to this section shall not exceed the sum of $500,000, and any sums received by the State in excess of its actual costs shall be reimbursed to the Commission.

(d) Beginning in fiscal year 1979, there are authorized to be appropriated $500,000, to be available until expended, for the purpose of providing the assistance authorized by subsection (a) of this section.

SEC. 7. Title II of the Energy Reorganization Act of 1974, as amended, is amended by adding at the end thereof a new section to read as follows:

"EMPLOYEE PROTECTION

SEC. 210. (a) No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

"(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;

"(2) testified or is about to testify in any such proceeding or ;

"(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

"(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint and the Commission.

"(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

"(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(c)(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

"(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

"(d) Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

"(e)(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

"(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court detemines such award is appropriate.

"(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

"(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this Act or of the Atomic Energy Act of 1954, as amended.".

SEC. 8. The Commission shall report to the Congress on January 1, 1979, and annually thereafter on the use of contractors, consultants, and the National Laboratories by the Commission. Such report shall include, for each contract issued, in progress or completed during fiscal year 1978, information on the bidding procedure, nature of the work, amount and duration of the contract, progress of work, relation to previous contracts, and the relation between the amount of the contract and the amount actually spent.

COOPERATIVE RESEARCH FUNDING

SEC. 9. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.

TRANSFER OF FUNDS

SEC. 10. Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which transferred.

APPROPRIATIONS

SEC. 11. Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 12. Section 11 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. The term 'byproduct material' means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) any radioactive material resulting from the processing of ores primarily for the extraction of source material.".

SEC. 13. Section 81 of the Atomic Energy Act of 1954, as amended, is amended by adding a new sentence at the end thereof as follows: "No license shall be required by the Commission for the transfer, receipt, acquisition, ownership, or possession of byproduct material as defined by section 11 e. (2) of this Act until three years from the date of enactment of this sentence.".

SEC. 14. Section 161 g. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following:

"The Department of Energy may accept donations of reclaimed land used for the disposal of byproduct material as defined in section 11 e. (2) of this Act. Land donated under this section shall not be subject to the provisions of title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, nor to disposal under the Federal Property and Administrative Services Act of 1949, as amended. The President shall assign custody to such land to any agency authorized by law to manage land title to which is held by the United States."

SEC. 15. Section 161 of the Atomic Energy Act of 1954, as amended, is further amended by adding at the end thereof a new subsection x. as follows:

"x. establish by rule, regulation, or order, in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure that funds will be made available by a licensee to permit the timely completion of all requirements established by the Commission for the decommissioning, decontamination, and reclamation and long-term maintenance and monitoring where necessary of sites, structures, and equipment used in connection with the generation or disposal of byproduct material as defined in section 11 e. (2) of this Act.".

SEC. 16. Section 274 b. of the Atomic Energy Act of 1954, as amended, is amended by adding "as defined in section 11 e. (1) of this Act" after the words "byproduct materials" in paragraph (1); by adding a new paragraph (2) to read as follows:

"(2) byproduct materials as defined in section 11 e. (2) of this Act.";

and by renumbering existing paragraphs (2) and (3) accordingly.

SEC. 17. Section 274 d. (2) of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(2) the Commission finds that the State program is in accord with subsection o. of this section and is in all other respects compatible with the Commission's program for the regulation of the materials covered by the proposed agreement, and that the State program is adequate to protect the public health and safety with respect to such materials.".

SEC. 18. Section 274 e. of the Atomic Energy Act of 1954, as amended, is amended by adding a new paragraph (3) to read as follows:

"(3) Prior to the expiration of three years from the date of enactment of this paragraph, nothing in this Act shall preclude the exercise of State authority over byproduct materials as defined by section 11 e. (2) of this Act. Except as otherwise permitted by Federal law, on or after three years from such date, a State may exercise authority for protection of the public health and safety from radiation hazards associated with such byproduct material only pursuant to an agreement or an amendment thereto entered into with the Commission in accordance with subsection b. of this section. Amendments to existing agreements to provide for the continuation of State authority over such byproduct material shall be subject to paragraphs (1) and (2) of this subsection and to subsection d. of this section.".

SEC. 19. Section 274 j. of the Atomic Energy Act of 1954, as amended, is amended by inserting after the words "with the State" the following: ", or that part of an agreement respecting any of the materials enumerated in subsection b. of this section,".

SEC. 20. Section 274 of the Atomic Energy Act of 1954, as amended, is further amended by adding at the end thereof the following new subsection:

"o. In the licensing and regulation of byproduct material as defined by section 11 e. (2) of this Act pursuant to an agreement entered into in accordance with subsection b. of this section, a State shall adopt and enforce substantive standards for the protection of the public health and safety from radiation hazards which are equivalent to, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements, standards, and criteria promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 84, 85, and 275 of this Act.".

SEC. 21. Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding a new section 83 to read as follows:

"SEC. 83. REMEDIAL ACTION, EXEMPTION, AND ENFORCEMENT.—

"a. Persons otherwise subject to the requirement of a license by section 81 of this Act shall be exempt from such requirement with respect to the ownership and possession of byproduct material as defined in section 11 e. (2) of this Act which is covered by a remedial action program conducted or approved by the Department of Energy.

"b. The Commission may require, by rule, regulation, or order, the Department of Energy or persons exempted by subsection a. of this section or section 81 of this Act from the requirement of a license for the ownership or possession of byproduct material as defined in section 11 e.(2) of this Act to conduct monitoring, perform remedial work or comply with such other measures as the Commission deems necessary or desirable to protect health or minimize danger to life or property in connection with the disposal and storage of such byproduct material: *Provided, however,* That after completion of a remedial action program for such material conducted or approved by the Department of Energy, any requirement involving significant physical modification of such a program shall be subject to concurrence by the Secretary of Energy: *And provided further,* That should said Secretary fail to concur, he shall provide notification thereof to the President in writing, and if the President determines that compliance with such requirement is necessary to adequately protect health or minimize danger to life or property, such requirement shall take effect.

"c. The Commission may make such studies and conduct such inspections as it may deem necessary or desirable to ensure compliance with rules, regulations, and orders issued pursuant to subsection b. of this section. Persons violating any such rule, regulation, or order, and persons refusing to permit inspections conducted pursuant to this subsection, shall be subject to a civil penalty in an amount equal to that provided by section 234 a. of this Act. Notification and enforcement of such penalty shall be in accordance with sections 234 b. and c. of this Act.

SEC. 22. (a) Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof a new section 84 to read as follows:

"SEC. 84 AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL.—The Commission shall ensure that the management of any byproduct material as defined in section 11 e.(2) of this Act is carried out in such a manner as—

"(1) the Commission deems appropriate to protect the public health, safety, and environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material;

"(2) conforms with the applicable standards and criteria promulgated by the Administrator of the Environmental Protection Agency under section 275 of this Act; and

"(3) conforms to general requirements, established by the Commission, with the concurrence of the Administrator of the Environmental Protection Agency, which are at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material under the Solid Waste Disposal Act, as amended.".

(b) The table of contents for such chapter 8 is amended by inserting the following new item after the item relating to section 83:

"SEC. 84. Authorities of Commission respecting certain byproduct material.".

SEC. 23. (a) Chapter 19 of the Atomic Energy Act of 1954, as amended, is amended by inserting after section 274 the following new section:

"SEC. 275. HEALTH AND ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS.—

"a. As soon as is practicable, but not later than eighteen months after the date of enactment of this section, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall, by rule, promulgate standards and criteria of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of byproduct material, as defined in section 11 e. (2) of this Act at sites where ores are processed primarily for their source material content, or at sites which are used for the disposal of such byproduct material.

"b. Such generally applicable standards and criteria promulgated pursuant to this section for nonradiological hazards shall provide for the protection of human health and the environment as required by subtitle G of the Solid Waste Disposal Act, as amended: *Provided, however,* That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11 e. (2) of this Act.

"c. The Administrator may periodically revise any standard or criterion promulgated pursuant to subsection a. of this section. Any such revision shall be applied upon license renewal to persons holding on the date of promulgation of such revision a license for byproduct material as defined in section 11 e. (2) of this Act issued by the Commission or by a State exercising authority pursuant to section 274 b. (2) of this Act: *Provided, however,* That in no event shall such a revision be applied later than five years from the date of promulgation thereof.

"d. Implementation and enforcement of the standards and criteria promulgated pursuant to subsection a. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. State exercising authority pursuant to section 274 b. (2) of this Act shall implement and enforce such standards and criteria in accordance with subsection o. of such section.

"e. Nothing in this Act applicable to byproduct material as defined in section 11 e. (2) of this Act shall affect the authority of the Administrator under the Clean Air Act

of 1970, as amended, or the Federal Water Pollution Control Act, as amended.".

(b) The table of contents for chapter 19 of the Atomic Energy Act of 1954, as amended, is amended by inserting the following new item after the item relating to section 274:

"Sec. 275. Health and environmental standards for uranium mill tailings.".

SEC. 25. Chapter 8 of the Atomic Energy Act of 1954, as amended, is amended by adding a new section 85 to read as follows:

"SEC. 85. The Commission may require by rule, regulation, or order, in accordance with the requirements of section 181 of this Act, that byproduct material as defined by section 11 e. (2) of this Act be disposed of on land to which title has been transferred to the State or the United States at the time of termination of any license for the generation or possession of such material upon finding that such action is necessary or desirable to protect health or minimize danger to life or property in connection with the disposal of such byproduct material. Any such rule, regulation, or order shall specify standards for the transfer of title to such land to the State or the United States, including: (1) standards to assure the completion, prior to the transfer of title, of all requirements established by the Commission for the decommissioning, decontamination, and reclamation of sites, structures, and equipment on the land which are used in connection with the generation or disposal of byproduct material as defined in section 11 e. (2) of this Act; (2) standards to minimize the need for future remedial work; (3) standards to minimize the cost, including the cost to the State or the United States, for any long-term care; and (4) standards to permit the reservation of rights by the transferor to the future reprocessing of byproduct material, as defined in section 11 e. (2) of this Act, and to the future use of the surface or subsurface estate, consistent with any standards or requirements promulgated by the Commission which are applicable to the generation, possession of transfer of byproduct material, as defined in section 11 e. (2) of this Act. This section shall not be construed as authorizing or requiring the transfer of title to Indian land.".

SEC. 25. (a) The Commission, in cooperation with the Department of Energy, is authorize and directed to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority.

(b) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission in the conduct of the study. Such cooperation shall include providing any necessary access to existing facilities and sites and providing any information needed to conduct the study which the agency may have or be reasonably able to acquire.

(c) On or before March 1, 1979, the Commission shall submit a report to the Congress containing the results of the study. The report shall include—

(1) a complete listing and inventory of all radioactive waste storage and disposal activities now being conducted or planned by Federal agencies;

(2) an assessment of the benefits of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority;

(3) an evaluation of the relative potential risk to the public health and safety and the environment from such categories of existing and future Federal radioactive waste storage and disposal activities;

(4) an evaluation of the feasibility and cost of extending the Commission's licensing or regulatory authority to include such categories of existing and future Federal radioactive waste storage and disposal activities, including the technical and other data requirements for licensing or regulation and the likely characteristics of the Commission's licensing or regulatory program;

(5) an evaluation of the national security implications of extending the Commission's licensing or regulatory authority to include such categories of existing and future Federal radioactive waste storage and disposal activities; and

(6) the Commission's recommendations concerning the categories of existing and future Federal radioactive waste storage and disposal activities, if any, which should be made subject to the Commission's licensing or regulatory authority and the type of authority which the Commission should be granted.

The title was amended so as to read:

A bill to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes.

Mr. McCLURE. I move to reconsider the vote by which the bill was passed.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FRAUD IN GOVERNMENT PROGRAMS

Mr. CHILES. Mr. President, this morning, the Governmental Affairs Subcommittee on Federal Spending Practices and Open Government held hearings on fraud within the General Services Administration. The Deputy Attorney General told us of steps that the Justice Department and GSA are taking to establish a joint strike force to take charge of the criminal investigation. That strike force will give us one person in charge, which I believe is essential to assuring the taxpayers of this country that we are not going to let the thieves continue to cart away money, television sets, and whatever else they want from agencies of the Federal Government.

We also heard testimony this morning from Elmer Staats, the Comptroller General, on his soon-to-be-printed report "Federal Agencies Can, And Should, Do More To Combat Fraud In Government Programs." Mr. Staats reported that Federal programs involving $250 billion a year are being handled by a number of agencies of the Federal Government. He further told us that, while we might think the fraud we discovered in GSA was a selected instance of fraud occurring in one department, that was not true, that the same thing that is going on in GSA is going on in a number of other agencies of the Federal Government that are dispensing goods and services, up to $250 billion of taxpayers' money.

He further told us that the agencies themselves have not perceived their role as being one to try to prevent fraud from happening at the start, trying to discover fraud that is going on, or trying to prosecute fraud after they find that it is going on. He told us in this report that most of the Federal agencies perceive their role as one to carry out just the program for which they are created; in other words, to dispense the money or goods or services that their program has been created to carry out. They have not seen their role as being one of trying to prevent fraud or corruption from occurring.

Without this kind of thrust, Mr. President, I think it will be impossible for us to have the taxpayers' confidence. I really think what this report said is what the people have been saying for a long time: There is too much fraud going on. There is way too much waste and inefficiency and the people have known it. Now this report by the General Accounting Office makes it very clear that it is going on, that it is not just GSA, it is all of the agencies of the Federal Government. I think now the task is going to be to see how we can change the thinking of the managers of our agencies and how we can put in the kind of devices that will be necessary to prevent future scandals such as we see going on in GSA today.

The chairman of the Government Affairs Committee (Mr. RIBICOFF) instructed me and our subcommittee to look into this and to hold hearings on the GAO report. We intend to do that as soon as we can determine what is the best way to try to attack this problem. We will be holding hearings in regard to that.

I think a number of things are going to have to be explored to try to determine what is the best way to see that the agencies develop the mechanisms to set the priorities to be able to try to prevent fraud before it occurs, to look in those areas where money could be ripped off by those people that would take advantage of programs, and to try to put in the kind of controls that would be necessary to prevent that from happening, then to detect fraud once it does occur and to see we speedily and properly prosecute it, if it does occur.

I see that this is a tremendous task, but one in which the clock is running, because if we do not do that, as the people are losing their confidence in our ability to manage these programs, I think we will see more proposition 13's. I think that is where the people are trying to speak out and say, "We know there is waste going on and fraud going on, and we are willing to pay for services to people that deserve those services, but we do not want to pay for people who do not deserve the services and we do not want to pay in areas where we think people are ripping off the Federal Government."

Mr. President, I ask unanimous consent to have printed in the RECORD at this time a synopsis of the GAO report that General Staats gave us today.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEDERAL AGENCIES CAN, AND SHOULD, DO MORE TO COMBAT FRAUD IN GOVERNMENT PROGRAMS

Federal economic assistance programs amounting to about $250 billion annually are susceptible to fraud and related white-collar crimes. No one knows the extent of fraud against the Government, but Department of Justice officials believe it ranges from 1 to 10 percent of the expenditures.

Federal agencies have not been doing enough to identify fraud in their programs, and the Department of Justice has been slow in assisting Federal agencies' antifraud ef-

forts. But Federal agencies have recently recognized that more needs to be done and have said that (1) fraud detection is now a high agency priority and (2) actions are being taken to bolster their current efforts.

This report contains recommendations to help Federal agencies take a more active, systematic approach to identifying fraud in their programs.

DIGEST

The Government's economic assistance programs, amounting to about $250 billion annually, are vulnerable targets of fraud and related white-collar crimes. Identifying the extent, nature, and frequency of these illegal acts, together with strong internal controls and effective audit coverage, are essential first steps to combating and preventing them. Yet the agencies GAO reviewed—the Departments of Agriculture, Labor, Transportation, and Housing and Urban Development; and the Veterans, General Services, and Small Business Administrations—are not doing nearly enough to identify fraud.

Federal programs involving grants, contracts, and loan guarantees are exploited through such means as

false claims for benefits or services,

false statements to induce contracts or secure goods or services,

bribery or corruption of public employees and officials,

false payment of claims for goods and services not delivered, or

collusion involving contractors.

No one knows the magnitude of fraud against the Government. Hidden within apparently legitimate undertakings, it usually is unreported and/or undetected. However, all indications are that fraud is a problem of critical proportion. Department of Justice officials believe that the incidence of fraud in Federal programs ranges anywhere from 1 to 10 percent of the programs' expenditures. A former Secretary of the Department of Health, Education and Welfare estimated that losses under the Medicaid program alone total $750 million annually from fraud and abuse.

The amount of suspected fraud which has surfaced confirms that the problem is severe. In 1976, for example, local jurisdictions reported to the Department of Labor that about $38 million in alleged fraudulent unemployment insurance benefits were paid to claimants. Fraud against the Government ranks fourth among all criminal cases filed by Justice. As of March 1978, pending civil fraud suits in Justice totaled about $250 million. According to Justice officials, this number is only a fraction of the actual amount defrauded from the Government.

Opportunities for defrauding the Government are virtually limitless because of the number, variety, and value of Federal programs. These programs, amounting to billions of dollars, involve numerous recipients, providers of goods and services, and public employees at all levels of government. The involvement of so much money, and so many people and institutions makes the Federal programs vulnerable to fraud. (See ch. 2.)

Passive approach to detection of fraud

Federal agencies have not acted aggressively to detect fraud in their programs, and their practices are generally inadequate to identify potential fraud.

Agencies have not established management information systems on fraud. As a result, they do not know the amount of identified fraud in their programs, nor can they estimate the potential amount of unknown fraud. Without such data, agencies have no basis for establishing the level of resources needed to combat fraud, map antifraud strategies, and evaluate the scope and effectiveness of antifraud activities. The absence of management information systems also precludes agencies from taking affirmative actions aimed at identifying and anticipating fraudulent activity, such as:

Tracking fraud occurrences to determine trends and patterns,

Zeroing in on investigative targets,

Directing investigative resources where most needed, and

Pinpointing management procedures and program weaknesses which require strengthening to prevent recurrences of fraud. (See pp. 13 to 17.)

Until recently, agencies have not made fraud detection a high priority. Because their overriding concern is program execution, emphasis is on such things as providing loan assistance. The low priority given to fraud detection leads to passiveness regarding potentially fraudulent situations. The Federal Highway Administration, for instance, generally views contract violations as honest mistakes, with no consideration of the underlying reasons for the violations or potential fraud. The Department of Labor regards questionable personnel and training cost reports submitted by prime sponsors as possible funds to be recovered rather than possible fraud. (See pp. 17 to 19.)

None of the agencies reviewed have, until recently, designated a focal point responsible for seeking out and identifying fraud. Consequently, they generally take a reactive, rather than active, approach to fraud detection. However, a reactive approach is inadequate for detecting fraud, since there is often no obvious incident to react to. The only ongoing, systematic mechanism to actively look for fraud in those agencies reviewed is the Department of Housing and Urban Development's operational survey—a concentrated effort by joint teams of investigators and auditors to detect fraud and program weaknesses. The surveys have consistently uncovered numerous occurrences of suspected fraud. In other isolated instances where agencies have actively sought fraud, they also identified suspected fraud cases. (See pp. 19 to 22.)

Agencies have no assurance that those personnel administering programs are referring all suspected frauds for investigation because:

There are no controls to see that suspicious matters are reported.

Large workloads hinder identifying suspected fraud by program personnel. For example, only three employees were responsible for administering $104 million in one Department of Labor program.

Employees lose interest in reporting suspected frauds when followup actions, such as investigations and prosecutions, are not promptly taken.

Many Federal programs are administered by State, local, or private sector institutions, and Federal agencies often unjustifiably rely on these non-Federal entities to identify and report frauds. (See pp. 23 to 26.)

Agency investigators often do not have the background, experience, and training needed to effectively detect and identify fraud. About 70 percent of them have had no prior experience in fraud investigations, and about 80 percent have had no formal training in investigating fraud. Where investigators have had such training, it was generally limited to procurement fraud. Most investigators have also lacked the education in finance and accounting-related subjects often needed to identify fraud. Since fraud against the Government often involves examining financial documents, absence of a financial background could be detrimental to effective fraud investigations. (See pp. 26 to 28.)

Justice needs to provide stronger leadership

The Department of Justice has been slow to assist, coordinate, and monitor the antifraud efforts of Federal agencies. Justice has not provided agencies with

overall management information on how fraud has occurred and can occur in their programs and

specific, formal guidelines on which types of fraud cases will be accepted for prosecution and how they should be developed to increase the likelihood of successful prosecution.

In 1975 Justice, recognizing the need to deal with white-collar crime, established a white-collar crime committee. One activity of this committee was to provide guidance to agencies on combating fraud. It has met extensively with agency officials and has assisted agencies in carrying out several successful projects demonstrating the existence of fraud in their programs. However, this effort's effectiveness relies on persuasion and encouragement and the availability of resources Justice can devote to it. (See ch. 4.)

Actions needed to enhance the Federal effort

Current national media coverage of the alleged frauds in building construction and maintenance contracting at the General Services Administration highlights Federal vulnerability to white-collar crime and the consequent need for an effective strategy to combat it.

GAO believes a more active, systematic approach to identifying fraud is needed. Heads of the Federal agencies discussed in this report should:

Develop management information systems aimed at providing information on the most likely types and methods of fraud, including the development of techniques for estimating the magnitude of fraud in agency programs.

Elevate fraud identification to a high agency priority.

Take steps to make employees more aware of the potential for fraud and establish controls to see that irregularities are promptly referred to appropriate personnel.

Fix organizational responsibility for identifying fraud.

Provide agency investigators with appropriate fraud training. In future hirings, concentrate or recruitment of personnel with backgrounds and education more suited to the financial complexities of fraud.

The Attorney General should establish a formal plan to assist Federal agencies in combating fraud, including such procedures as:

Working with Federal agencies to develop information on the nature of potential fraud in their programs.

Consulting with agencies to devise systems to identify and investigate fraud.

Advising agencies of the types of cases which will receive priority for prosecution and working with agencies to devise alternative solutions for those which will not.

Providing feedback to Federal agency officials on program and administrative weaknesses developed by Federal prosecutors during the course of various prosecutions.

Agencies' comments and recent actions taken or to be taken

The various Federal program agencies agree that more needs to be done to effectively cope with fraud and abuse in Government programs. Most of the program agencies have said that they have recently made fraud identification a high priority and have fixed organizational responsibility for fraud detection. These agencies have also identified certain other actions they have taken or plan to take to further bolster the fraud detection effort. (See apps. I to VII.)

The Department of Justice also agrees that there is substantial room for improvement in its efforts and those of agency enforcement groups. It believes that efforts already underway such as expanding resources committed to program fraud, training investiga-

tors in fraud detection, and establishing special fraud units in U.S. attorney offices, will upgrade the Department's effectiveness. (See app. VIII.)

Some of these agencies did voice concern over certain statements contained in this report and the manner in which the report characterizes their fraud detection efforts. Chapter 5 addresses these concerns and the various agency actions taken.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business, with statements limited therein to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVALS

A message from the President of the United States reported that on today, September 18, 1978, he approved and signed the following acts:

S. 9. An act to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes; and

S. 1633. An act to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes.

MESSAGES FROM THE HOUSE

At 12:31 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to House Concurrent Resolution 713, providing for a joint session of the Houses on Monday, September 18, 1978, to receive a message from the President of the United States, in which it requests the concurrence of the Senate.

At 4:45 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bills, without amendment:

S. 3069. An act to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members; and

S. 3468. An act to amend the Agricultural Act of 1949 to ensure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Res. 546. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3161 (Rept. No. 95-1198).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DURKIN:

S. 3500. A bill to amend the Trade Act of 1974 in order to provide for Federal reimbursement to States for unemployment insurance benefits paid to workers who are eligible for adjustment assistance benefits under such Act, and to repeal the provisions of law which reduce certain tax credits for employers in any State which does not enter into, or fulfill its commitments under, a Federal-State agreement regarding the administration of worker adjustment assistance benefits; to the Committee on Finance.

By Mr. SCHMITT:

S. 3501. A bill to amend the Internal Revenue Code of 1954 to exempt from the Federal excise tax on distilled spirits ethanol used as a solvent for compounds used in environmental monitoring activities; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURKIN:

S. 3500. A bill to amend the Trade Act of 1974 in order to provide for Federal reimbursement to States for unemployment insurance benefits paid to workers who are eligible for adjustment assistance benefits under such act, and to repeal the provisions of law which reduce certain tax credits for employers in any State which does not enter into, or fulfill its commitments under, a Federal-State agreement regarding the administration of worker adjustment assistance benefits; to the Committee on Finance.

● Mr. DURKIN. Mr. President, in 1974, Congress passed the Trade Act of 1974, a bill with many good features including some financial compensation to workers who are unemployed because of unfair foreign competition.

But in the midst of doing this good work, that Congress introduced provisions which require the States to carry the brunt of the financial burden of paying the trade readjustment assistance. Additionally, under that act, States which do not enter into or fulfill commitments under a Federal-State agreement regarding the administration of trade readjustment assistance benefits are penalized by having the employers in their States lose substantial tax credits.

The legislation which I am introducing today will remove these two senseless provisions from that act. The bill will require Federal reimbursement to States for unemployment insurance benefits paid to workers who are eligible for trade assistance benefits under the trade adjustment assistance benefits under the Trade Act. Additionally, the bill will repeal the relevant paragraphs in the Internal Revenue Code which permit the Federal Government to reduce tax credits for employers in States which are not engaged in an agreement with the Federal Government.

This legislation is particularly germane in these days when unfair foreign competition is costing so many American workers their jobs. I believe in free competition, but this must mean fair competition. And fair competition means that products sent to this country from abroad are manufactured and sold at reasonable costs, not costs which are artificially low because a foreign government has in effect subsidized their production.

Today, many American workers are in danger of losing their jobs because of floods of cheap imports which can drive American firms out of business. As we well know, these imports range from shoes to textiles to televisions to steel to electronics products. American workers deserve at the minimum an even break, so that their jobs are not always on the brink of being lost in the flood of the imports. I believe the American worker can compete successfully against any foreign worker, but I do not believe the American worker should be forced to compete against a foreign government.

The need for better trade practices aside, I also cannot understand why the Congress and the President, after recognizing a special type of unemployment problem caused by unfair imports, put the financial burden for dealing with the resulting unemployment on the States. My State and all others across the country have enough burdens without this being added. The special nature of those unemployed is a result of cheap imports dictates that compensation be paid to the States by the Federal Government for the costs the States incur as part of the trade readjustment assistance.

What is even more upsetting is the penalty to be imposed: A loss of tax credits to State employers. It makes no sense that employers in the State of New Hampshire, or in Maine, or in California, or in Nevada should lose 15 percent of their tax credits because their State government was not able to work out an agreement with the Federal Government on the administration of adjustment assistance programs. Punishing employers with a loss of tax credits will not lead State governments to cooperate in the program. However, it will lead to more unemployment, which will impose further burdens on State treasuries.

One more relevant point about my bill, Mr. President. Because the inequity my bill seeks to redress affects every State in the Nation which has lost jobs to unfair foreign competition, it is a national bill not a regional bill, for this is truly a national problem.

Mr. President, I trust my colleagues,

seeing the double inequity in the Trade Act of 1974, will join me in cosponsoring this legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3500

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended by adding at the end thereof the following new subsection:

"(g)(1) If unemployment insurance is paid under a State law to an adversely affected worker for a week for which—

"(A) he receives a trade readjustment allowance, or

"(B) he makes application for a trade readjustment allowance and would be entitled (determined without regard to subsection (c) or (e)) to receive such allowance,

the State agency making such payment shall, unless it has been reimbursed for such payment under Federal law, be reimbursed from funds the authorization contained in pursuant to section 254(b)(1), to the extent such payment does not exceed the amount of the trade readjustment allowance which such worker would have received, or would have been entitled to receive, as the case may be, if he had not received the State payment. The amount of such reimbursement shall be determined by the Secretary on the basis of reports furnished to him by the State agency.

"(2) In any case in which a State agency is reimbursed under paragraph (1) for payments of unemployment insurance made to an adversely affected worker, such payments, and the period of unemployment of such worker for which such payments were made, may be disregarded under the State law (and for purposes of applying section 3303 of the Internal Revenue Code of 1954) in determining whether or not an employer is entitled to a reduced rate of contributions permitted by the State law.".

SEC. 2. Section 241(a) of the Trade Act of 1974 (19 U.S.C. 2313(a)) is amended by adding at the end thereof the following new sentence: "Sums reimbursable to a State pursuant to section 232(g) shall be credited to the account of such State in the Unemployment Trust Fund and shall be used only for the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.".

SEC. 3. Paragraph (4) of section 3302(c) of the Internal Revenue Code of 1954 (relating to credits against Federal unemployment tax) is repealed.●

By Mr. SCHMITT:

S. 3501. A bill to amend the Internal Revenue Code of 1954 to exempt from the Federal excise tax on distilled spirits ethanol used as a solvent for compounds used in environmental monitoring activities; to the Committee on Finance.

● Mr. SCHMITT. Mr. President, we frequently find that laws enacted by the Congress while accomplishing their original aims, also produce undesirable side effects. An example of this has recently come to my attention.

One of my constituents in New Mexico, Mr. William M. Turner, is involved in the development and use of ground-water tracers. These tracers are dissolved in ethanol and are used in labeling or tracing moving ground-water. They have applications in monitoring associated with deep well, waste disposal systems, and in certain processes associated with mineral processing. These tracers, while nontoxic, do not readily dissolve in water and must be suspended in ethanol. This is where a problem has developed.

The Bureau of Alcohol, Tobacco, and Firearms, in its wisdom, has not approved the use of ethanol in quantity for the purposes I have described. Mr. Turner's firm is not allowed to purchase ethanol in quantity, can buy only 1 gallon at a time, and must pay the Federal excise tax on the purchase. Their minimum usage is 2.5 gallons per month.

When the Alcohol, Tobacco, and Firearms legislation was passed in the 1930's, the Environmental Protection Agency did not exist. Now that the protection of the environment is one of our important concerns, new and better techniques must be developed for tracing ground water. If Congress is to require monitoring of the movement of ground-water, then it should also encourage the businesses and individuals involved in this undertaking. In that regard, I am introducing legislation to provide for the suspension of the excise tax on ethanol when used for environmental monitoring purposes. It is to be hoped that the Finance Committee will consider his legislation promptly and include it in this year's tax package which is currently before that committee.

I ask unanimous consent that a letter from Mr. William Turner and the text of the bill be printed in the RECORD.

There being no objection, the bill and letter were ordered to be printed in the RECORD, as follows:

S. 3501

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 5214 of the Internal Revenue Code of 1954 (relating to withdrawal of distilled spirits from bonded premises free of tax or without payment of tax) is amended by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and", and by adding at the end of such subsection the following new paragraph:

"(11) in the case of ethanol, free of tax for use as a solvent for compounds used in subsurface environmental monitoring activities.".

(b)(1) Section 5003 of such Code (relating to cross references to exemptions, etc.) is amended by adding at the end thereof the following new paragraph:

"(16) For provisions authorizing the withdrawal of distilled spirits free of tax for use in environmental monitoring activities, see section 5214(a)(11).".

(2) Subparagraph (B) of section 5004(a)(2) of such Code (relating to exceptions for distilled spirits subject to lien for tax) is amended by striking out "section 5214(a)(1), (2), or (3)," and inserting in lieu thereof "paragraph (1), (2), (3), or (11), of section 5214(a),".

(3) Subsection (d) of section 5005 of such Code (relating to withdrawals free of tax) is amended by striking out "section 5214(a)(1), (2), or (3)" and inserting in lieu thereof "paragraph (1), (2), (3), or (11) of section 5214(a)(1)".

(4) Paragraph (6) of section 5025(e) of such Code (relating to mingling of distilled spirits) is amended by striking out "section 5214(a)(1), (2), or (3)," and inserting in lieu thereof "paragraph (1), (2), (3), or (11) of section 5214(a)(1),".

(5) Paragraph (1) of section 5271 of such Code (relating to requirements for permits) is amended by striking out "section 5214(a)(2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (11) of section 5214(a)".

(6) Section 5275 of such Code (relating to records and reports) is amended by striking out "section 5214(a)(2) or (3)," and inserting in lieu thereof "paragraph (2), (3), or (11) of section 5214(a),".

(7) Paragraph (2) of section 5314(a) of such Code (relating to special applicability of certain provisions of Puerto Rico) is amended by striking out "section 5214(a)(2) and (3)" each place it appears and inserting in lieu thereof "paragraph (2), (3), or (11) of section 5214(a)".

(8) Subsection (b) of section 5314 of such Code (relating to special applicability of certain provisions to the Virgin Islands) is amended by striking out "section 5214(a)(2) and (3)" each place it appears and inserting in lieu thereof "paragraph (2), (3), or (11) of section 5214(a)".

SEC. 2. Paragraph (1) of section 6 of the Federal Alcohol Administration Act (27 U.S.C. 206) is amended by inserting "for use in a trade or business for the use described in paragraph (11) of section 5214(a) of the Internal Revenue Code of 1954," after "industrial alcohol plant,".

SEC. 3. The amendments made by the first section of this Act shall apply with respect to ethanol withdrawn from warehouse more than 30 days after the date of enactment of this Act. The amendment made by section 2 shall take effect 30 days after the date of enactment of this Act.

AMERICAN GROUND WATER CONSULTANTS, INC.,
June 14, 1978.

HON. HARRISON SCHMITT,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR SCHMIDT: American Ground Water Consultants has developed a new suite of groundwater tracers which have a number of unique attributes. They are non-toxic, indestructable, inert, organic compounds which are not absorbed by clay minerals in the subsurface environment and are detectable at concentrations of 0.01 parts per trillion. They are inexpensive and their analysis is inexpensive. At normal temperatures the compounds are gases. When they are dissolved in ethanol they may be introduced into closed groundwater systems at concentrations of only several parts per billion. They are entrained by moving groundwater and may be used to label or trace the movement of the groundwater. They have applications in monitoring associated with deep well, waste-disposal systems, and they have applications in determining the interstage mixing efficiencies of counter-current-decantation systems used for mineral processing. In using these compounds as tracers, it is necessary to dissolve the compounds in a carrier solution because they are immiscible in water. Therefore, not only must the tracers be non-toxic, the solvent must be non-toxic as well and it must be highly miscible with the tracer compounds.

We have determined that ethanol is the only compound which ideally meets these criteria. Furthermore, OSHA is concerned that even though our tracers are non-toxic, when they are dissolved in a solvent other substances may be produced which are toxic. We find ourselves in a bind. Denaturing agents are toxic and probably could not be introduced into a ground water system. Secondly, the denaturing agents may also react in some way with the tracer compounds to produce toxic compounds thereby complicating matters further than if only pure ethanol were used.

We are led to understand by the local Alcohol-Tobacco and Firearms office that

our use is not an approved use for undenatured ethanol in quantity, and if we do buy ethanol, we can only buy one gallon at a time and must pay the federal excise tax. Our minimum usage per installation runs about 2.5 gallons per month. Now, when the ATF legislation was passed in the 1930's neither NEPA nor the EPA had been heard of. Now that we have them and must measure our impact upon our environment, newer and better techniques are being developed to meet the need. We believe that our tracers are such an advancement. And, we believe we need either legislative or administrative relief to offer these methods to industry. It is my understanding that the atavistic character of the ATF legislation has been recognized and that it may currently be under review by Congress. We would appreciate an amendment that would permit the use of pure, undenatured ethanol by individuals (in its broadest sense) as a solvent for compounds used in environmental monitoring activities and for said purpose the federal excise tax would be waived. It seems to me that because Congress has required monitoring as a result of legislation that they should do everything possible to reduce the cost of industry and the American people. We look to you for assistance and we would be happy to present testimony on this matter. Should you require additional information, please let me know.

Sincerely,

WILLIAM M. TURNER,
President.●

ADDITIONAL COSPONSORS

S. 3496

At the request of Mr. BAYH, the Senator from Minnesota (Mr. ANDERSON) and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 3496, the Small Business Nonprofit Organization Patent Procedures Act.

SENATE JOINT RESOLUTION 153

At the request of Mr. THURMOND, his name was added as a cosponsor of Senate Joint Resolution 153, authorizing the President to proclaim the third week in June 1979 as "National Veterans' Hospital Week."

AMENDMENTS SUBMITTED FOR PRINTING

REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3601

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

DEFERRED COMPENSATION PLANS FOR STATE EMPLOYEES

● Mr. BUMPERS. Mr. President, sections 121 and 122 of H.R. 13511 as passed by the House concern deferred-compensation plans. These plans permit taxpayers who are being paid for services rendered to agree with their employer that a certain portion of their compensation shall be set aside and deferred until a later year. Up until February 1, 1978, these plans were effective to defer the inclusion in gross income of the amounts of compensation deferred, on the entirely reasonable principle that a tax should be paid on income when it is received and enjoyed by the taxpayer, and not before. These types of plans have been popular with State governments, Arkansas among them. As a matter of fact, the State of Arkansas has used this kind of plan rather extensively. It is an important tool in attracting and holding high-quality employees, and our general assembly has specifically authorized this method of compensation by statute.

One of the most important agencies of State government using this kind of plan is the Department of Human Resources, which is responsible for seeing that medical care is available to persons who cannot afford to pay for it out of their own pockets. This department has a number of contracts with physicians or physicians' associations under which medical care is rendered to indigent citizens of Arkansas, and these contracts typically include a deferred-compensation provision. Both the State officials administering the plans and the physicians and others who participate in them are well pleased with the results.

Unfortunately, the Internal Revenue Service has recently begun taking the position—contrary to an earlier letter ruling given to the State of Arkansas—that these plans are not effective to defer the taxability of income. The service claims that all of the compensation owed, present and future, is "constructively received" in the year that the services are performed, and that an income tax is therefore due in that year with respect to the full amount of compensation agreed on.

I am convinced that it is in the public interest for these plans to continue, and for that reason I am happy that the House chose to include sections 121 and 122 in its bill. Section 121 covers deferred compensation plans with respect to service for State and local governments, while section 122 covers certain private deferred compensation plans. In general, these provisions will permit the deferral of a portion of the income of the participants in these plans. A limitation of $7,500, or one-third of the participant's compensation, whichever is less, is imposed.

Mr. President, there are a few relatively minor points with respect to which the House bill could be improved, and the amendment that I am submitting today would change the bill in three respects in order to meet these concerns. I would like to explain each of them to the Senate.

First. As indicated above, the most that can be deferred in any given year is $7,500, or one-third of the participant's "includible compensation," whichever is less. In practice, however, the limitation will really be lower, because of a quirk in the definition of "includible compensation." The bill defines this term to mean "compensation for services performed for the State which—taking into account the provisions of this section but not taking into account section 403(b) is currently includible in gross income."

Let us take an example in order that the operation of this definition in practice can be made clear. Suppose a physician receives $20,000 in a certain year. How much of this compensation can be deferred under the House bill? One-third of $20,000 is $6,666.67. Since this number is less than $7,500, one might think that the amount that can be deferred is in fact $6,666.67, which is one-third of total compensation received. But "includible compensation," according to the peculiar definition written into the bill, must be computed by taking into account the provisions of the new section that the bill adds. Presumably this means that "includible compensation" is two-thirds of the $20,000, or $13,333.33. The 33 percent alternative limit would then be applied to this lesser figure, with the result that only $4,444.44 could be deferred. In effect, the ceiling on deferral is reduced from one-third to two-ninths.

This result may not have been intended, and the computation I have just gone through is confusing, unclear, and circular, but at the very least the language of the bill needs to be clarified. This can be easily done simply by removing the offending phrase "taking into account the provisions of this section." "Includible compensation" would then mean the entire $20,000. Such a rule would be much more realistic and fair, as well as easier to understand and administer.

Second. Next, the bill contains a detailed definition of what is an "eligible State deferred compensation plan." The plan must provide, for example, that all of the deferred compensation remains, until made available to the participant or his beneficiary, the sole property of the State, subject to the claims of the State's general creditors. The purpose of this provision is to ensure that the compensation deferred is not set aside in any trust fund or similar entity but remains available for use by the employing governmental organization. The definition is unfortunately complicated by the addition of another phrase: the compensation deferred must be "available for the State's use for whatever purposes it desires." This phrase is confusing and unnecessary. The succeeding phrase, requiring that sums deferred be subject to the claims of the State's general creditors, is entirely sufficient to accomplish the desired object.

A reference to "whatever purposes" the State desires could raise complicated issues of State law. Suppose, for example, that the employing State agency is a hospital. Funds retained by that hospital as deferred compensation might, under State law, be available only for hospital purposes. That sort of decision ought to be made by the State legislature, and whichever way it goes, the legitimate tax objectives of the House bill would not be impaired. I therefore propose to strike from the House bill the phrase "available for the State's use for whatever purposes it desires."

Third. Finally, the House bill appears to limit participation in an eligible State plan to natural persons. Many participants in Arkansas' plans are professional associations or partnerships. These entities actually have the contract with the State or State agency. This form of organization, of course, is common among professional people, for good reasons. These entities should not be excluded from participation, and the dollar and percentage limitations are inappropriate for them. A $7,500 limitation might make sense, for example, if the participant in the plan is an individual

physician. It makes no sense if the participant is a professional association of several physicians. In addition, section 122, relating to private plans, excludes from coverage employees of entities exempt from tax under section 501. In other words, non-State supported colleges or hospitals, trade associations, charitable foundations, labor unions, and similar groups could not set up a deferred compensation plan under section 122 of the bill as passed by the House. I cannot understand why such a distinction should be made.

I therefore propose to amend section 122 to accomplish two objectives: first, to make eligible section 501 entities, and second, to remove the dollar and percentage limitations in the case of plan participants, whether they render services to States or private entities, that are independent contractors or other than natural persons. The dollar and percentage limitations would remain in effect for employees who are natural persons.

Mr. President, these changes will improve the bill and make it more nearly in line with the real needs that sections 121 and 122 were designed to meet. I urge the approval of the amendment and ask unanimous consent that it be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page 27, line 3, 4, delete the following words: "available for the state's use for whatever purposes it desires,";

On page 28, lines 23 and 24, delete the following words: "taking into account the provisions of this section but"; and

On page 34, lines 12 through 14, strike the following words: "and not an organization which is exempt from tax under section 501 of such code" and insert in lieu thereof the following: "or where the person performing the service is either an independent contractor or not a natural person, regardless of whether the person for whom the service is performed is a State".

NOTICES OF HEARINGS

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

● Mr. ABOUREZK. Mr. President, I wish to announce that the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, will continue hearings on the FBI charter concerning overall policy. The hearings will be held Tuesday at 10 a.m., September 26, 1978, in room 2228 Dirksen Building.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the sessions of the Senate on today and Tuesday, September 19, 1978, to hold markup sessions on H.R. 13511, the tax cut bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, September 20, to conduct hearings relating to the national tourism policy study.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Wednesday, September 20, 1978 and Thursday, September 21, 1978 to hold markup sessions on H.R. 13511, the tax-cut bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

THE CAMP DAVID SUMMIT

● Mr. BELLMON. Mr. President, when Prime Minister Begin and President Sadat arrived at Camp David, their host, President Carter, asked the peoples of the world to pray that their negotiations would be successful. By resolution the Senate asked all Americans to join in those prayers. Yesterday, a victorious President Jimmy Carter announced to a scarcely believeing world, "Your prayers have been answered."

President Carter deserves much praise for his role in the accomplishment of these agreements. The world knows how perilous the situation was. The possibility of failure was clear. The consequences of failure were sobering: More war in the Middle East, and the weakening of our President's leadership in the free world.

What these courageous men have now done, must not be undone. There are those who do not want a peaceful settlement in the Middle East. There may even be those, within the governments whose leaders have reached agreement at Camp David, who are determined that no agreement is better than the one reached.

Let us resolve, Mr. President, that this Congress, that the Government of the United States, will vigorously support the efforts of President Sadat and Prime Minister Begin to live up to their ends of the agreement. Let us give no aid or support to those who would have a continuation of confrontation in the Middle East. Let us give no aid to those who would undo the good that has been done. Let us make clear to the peoples of Egypt and Israel that this country will work for the success of these agreements, not for the Israeli side of the agreement, not for the Egyptian side of the agreement, but for the entire agreement.

I claim no expertise when it comes to solving the problems that beset the Middle East. Some experience at war, however, long ago convinced me that peace in the Middle East could not come through force of arms. For a long time, our policy in the Middle East relied too much upon insuring Israel's ability to defeat her adversaries on the battlefield. In 1956, and again in 1967, war was widely percieved to have settled the Arab-Israeli conflict. However, neither war brought the settlement either side wanted. In spite of astonishing Israeli victories, the vanquished seemed even more determined to fall back, rearm, and reenter the fray.

This country's moral obligation to maintain the existence and independence of the State of Israel has often been proclaimed. Our actions since the founding of that State can leave no doubt as to our intention to honor that obligation. Some nations have even used our commitment to that obligation as an occasion to test our resolve. Thev have attempted to turn the continued existence of the State of Israel into a confrontation of the major world powers.

Since some nations who could contribute to a solution of the problem, seek to worsen it, I have long thought it incumbent upon this country to take an even-handed approach and have so stated frequently beginning in 1969.

Therefore, I include among the actions this Nation has taken to promote a peaceful settlement in the Middle East, the sale of aircraft to Israel, Egypt, and Saudi Arabia. As I said on the Senate floor at the time (May 15, 1978):

Mr. President, this is the first time since I have been in the Senate that the U.S. is taking an even-handed position so far as arms sales to the Middle East is concerned. In my judgment, this action, which does not jeopardize the security of Israel, will help create a more favorable climate for negotiations and assist in the achievement of a lasting peace settlement. So long as the U.S. is perceived to be primarily concerned with the security and survival of Israel, our credibility as an honest broker is impaired. The approval of this sale should make it plain that, while the U.S. interest in peace in the Middle East is in no way diminished, we are willing to be helpful to our friends on both sides of the question.

Mr. President, to those who are troubled that the sale may touch off an arms race in the Middle East, let me only say that it is my feeling that it will have exactly the reverse effect. There has long been an arms race in the Middle East but the contestants have not been competing on an equal footing. Therefore, neither side has been as receptive to a peaceful settlement as the world interests would mandate. This sale should give the Arabs the confidence they need to negotiate on equal terms toward a peace settlement and should encourage the Israelis to place less reliance on the strength of arms.

Therefore, Mr. President, I support this sale as a move in the direction of a lasting peace.

This arms sale by the United States may have turned out to be a critical element in getting President Sadat and Prime Minister Begin to negotiate at Camp David. It may prove to be even more important when it comes to gaining general approval in the Middle East for the agreement that has been obtained at Camp David.

I once again congratulate the President on his role in convening this Camp David Summit, or "Jimmy Carter Summit," as it has been called. May the agreements reached provide the beginning of a just and lasting peace in the Middle East. As enduring peace materializes, our prayers will truly have been answered.●

SUNSET LEGISLATION

● Mr. MUSKIE. Mr. President, tomorrow, I intend to introduce an amendment to S. 2, the sunset legislation I have proposed, in the nature of a substitute for the bill as reported by the Committee on Rules and Administration earlier this year. The substitute, which has been agreed upon in cooperation with the majority leader, represents our best effort so far in refining the sunset idea to fit the way Congress works.

As many of my colleagues know, we have been working on the sunset legislation for almost 3 years. During this time, sunset has been the subject of much editorial commentary, both in the national media and in local newspapers throughout the country.

In almost every case, the comments have been favorable. And in one editorial after another, the reasons given for supporting sunset are the same: the critical need to provide the American taxpayer with a more effective return on the tax dollars he pays.

I find this display of editorial support gratifying, because we have worked so long and hard on this bill. I ask that a selection of these articles be printed in the RECORD at this point.

The material follows:

[From the Miami Herald, Aug. 1, 1978]

WARM GLOW FOR THE SUNSET LAW

For at least a decade, voters have been sending a message that they're exasperated with the unbridled growth of bureaucracy at all levels of government.

First the message reached the capitals of the states. In 28 of them—including Florida—legislators responded by enacting some form of "sunset law" to terminate programs and agencies that have outlived their usefulness.

Now the voters' message has finally reached that Mecca of bureaucracy, Washington, D.C. There, debate is expected to begin soon on sunset legislation that has been languishing around Congress in one form or another for several years.

Sponsored by Senate Budget Committee Chairman Edmund Muskie and others, the bill known as S2 would force Congress to conduct periodic reviews of Federal agencies and programs.

At present, half of all Federal programs have no expiration date. And as Senator Muskie points out, "Support for reexaming them simply does not exist. Every agency, committee, and lobby wants its own program to not only continue but grow."

Senator Muskie's bill would place most agencies and programs on a 10-year cycle of review whereby they would be terminated unless Congress were persuaded to extend them. Duplication of federal efforts would also be attacked because programs would be grouped for review according to their function.

Co-sponsoring Sen. William Roth points out, for example, that "to handle water-pollution research and development, Congress has created 25 bureaus in 14 different departments or independent agencies."

So congressional action setting up machinery to review Federal programs is badly needed to eliminate duplication as well as to terminate programs which no longer serve any purpose.

The public's present mood makes such a bill timely. And the Carter Administration's professed interest in reducing bureaucracy impels its cooperation should the bill pass. Moreover, the brief experience of states with sunset laws proves they can work whether or not the executive branch is cooperative.

Nevertheless, Senator Muskie's proposed bill faces an uncertain fate. As Common Cause points out, the bill is opposed by some powerful committee chairmen who have developed a cozy relationship with the Federal agencies within their jurisdiction and with the special interests associated with them.

The question, then, is no longer whether the voters' message to do something about bureaucracy has reached Washington: it has, loud and clear. Yet, to be determined is whether Congress will respond.

[From the Los Angeles Times, Feb. 18, 1976]

MUSCLE-BOUND—AND FAT-BOUND

Sen. Edmund S. Muskie (D-Me.) has come up with the refreshing idea that the best way to restore public faith in government is to weed out federal programs that, however well-intentioned, aren't working well enough to earn their keep. More refreshing still, he has gone beyond easy rhetoric to offer a practical means of achieving this result.

Legislation introduced by Muskie early this month would require virtually every federal program to be reviewed by Congress every four years to determine if it should be continued—and, if so, at what level of spending. Those failing to win reauthorization would expire.

The only spending programs exempt from the automatic quadrennial review would be interest payments on the national debt and programs, such as Social Security, under which individuals make payments to the national government in the expectation of later compensation.

Because Muskie's proposal calls for fundamental changes in the psychological atmosphere in Washington, as well as in actual procedures, it is likely to encounter stiff resistance.

But it strikes us as one of the most sensible ideas to come along in years.

The way the political system now operates, members of Congress concentrate on generating new programs to solve real and not-so-real national problems. But once the legislation is enacted, they move on to new frontiers and show scant interest in following up to determine whether the hoped-for results are in fact achieved. In the meantime, the programs gain powerful constituencies of their own in the bureaucracy and in the public. Social and defense programs alike generate pressures for their continuance, and against their reexamination. The question, "Should we be doing it at all?" is too seldom asked.

The cumulative result is a government in which performance increasingly falls short of promise.

Muskie notes that the Catalog of Federal Domestic Assistance lists, among other things, 228 health programs, 156 income-security and social service programs, and 83 housing programs. The federal government manual lists not only 11 Cabinet departments and 44 independent agencies, but also 1,240 advisory boards, committees, commissions and councils. And while dozens of new such bodies are created each year, the old ones rarely go out of business.

As an all-too-typical case of overlapping social programs, the Maine senator told of one city where the General Accounting Office found eight clinics operating in one neighborhood under several different programs—each proceeding without regard to what the others were doing. The GAO has found agencies that were unable to say how much they spend on administrative costs as opposed to actual services.

The American people are understandably turned off, Muskie added, by a government that is too muscle-bound to do the things it is trying to do. He cited complaints from citizens who had to wait 18 months for a ruling on claims for disability compensation, and from towns that had to wait many months for federal approval of sewer systems mandated by federal law.

Muskie, who has done a highly creditable job as chairman of the Senate Budget Committee, says the point is not that there should be a freeze on new programs to help people, but that the country cannot afford new programs unless Congress is willing to eliminate old ones that are ineffective, unnecessary or redundant.

The same sort of waste and duplication is to be found in military programs; they would be subject to the proposed reauthorization procedure, too.

As part of the quadrennial review process that would be required by Muskie's bill, congressional committees would have to make "zero-base" evaluations. That is, they would consider the comparative effects of eliminating a program, of funding it at existing or greater levels, or of funding it at various levels in between. Their findings would be reported to the full House and Senate.

Congress took a big step toward rational setting of national priorities when it established the House and Senate budget committees last year. The Muskie proposal is a natural follow-up; it deserves the support of everybody in and out of Congress who believes in responsible, effective government.

[From the Honolulu Advertiser, July 31, 1978]

WASHINGTON SUNSETS?

Just as it does in 28 states, including Hawaii, the sun may one day be setting over agencies of the federal empire. Spurred by Proposition 13, a proposed federal sunset law has emerged from a series of Senate committees where it has long been held up.

Sunset laws, pioneered by the citizens' lobby Common Cause, provide for government agencies to be automatically closed down after a fixed period unless close legislative inspection proves the agency ought to continue in operation.

In Hawaii after one year of operation our sunset law has had mixed results. A stronger devil's advocate is needed here to push the view that each agency should be abolished and the Legislature also needs to ignore special interests and be a little more efficiency-minded in its deliberations.

The Senate bill would set up a staggered 10-year schedule for the Congress to review all of the estimated 1,250 federal programs.

They would be reviewed in groups according to function, that is, all the health or defense programs at once. It is hoped this will encourage duplicative agencies to combine to compete more strongly for limited funds in each functional area.

As it is now a program is rarely reviewed once Congress creates it. Close scrutiny is reserved for new programs while old ones generally get refunded at the same or higher level whether they are necessary and productive or not.

Not all programs would have to prove their importance from scratch each ten years. The federal judiciary; civil rights programs; Social Security and Medicare which depend upon taxpayer contributions, and interest on the national debt would be exempted.

A controversial item now exempted is tax loopholes or tax expenditures as they are properly called. Some 76 tax expenditures or preferences now cost the government about $130 billion a year in uncollected taxes. This money is in effect being spent by the government with almost no checks on how it is being used. Neither is there any automatic termination date for most of these tax loopholes.

Senator Edmund Muskie, the Maine Democrat who is the bill's chief sponsor, believes that Proposition 13 has put the fear of a cut-taxes-limit-government-spending revolt into most members of Congress. This has improved the bill's chances. The House has also seen the light of Proposition 13 but will await the results in the Senate, according to

Rep. Norman Mineta, D.-Calif., who is sponsoring it there.

The bill now under consideration has been studied and rewritten with considerable care. The lessons from state sunset laws starting with Colorado in 1975 have helped eliminate some pitfalls like overloading the legislative body with too many decisions in too little time.

The Federal sunset law ought to be passed. And the now-exempt tax loopholes ought to be included in the review process.

Those spending programs and tax expenditures that can justify their existence will remain. But the threat of automatic termination is the best way to meet the people's demand for more efficient government.

[From the Boston Globe, July 28, 1978]

AN ATTRACTIVE SUNSET BILL

One of the more radical pieces of legislation working its way through Congress now has the not-very-revolutionary objective of compelling Congress to review periodically and systematically the effects of its past decisions. The so-called sunset bill would force termination of virtually all federal programs over a 10-year period unless Congress, after a careful assessment, decided they should continue.

Now, bureaucracies are created and perpetuated; members of Congress carve out areas of expertise and influence; constituencies develop; and along the way the original rationale for programs and the need to reexamine their usefulness are forgotten. The proposed sunset law seeks to end this process of automatic perpetuation.

One fear that has been voiced is that social programs, approved in the decidedly different climate of the 1960s, would be allowed to die, not because they aren't working, but because a majority of Congress does not want them to work any longer. But many current social programs already have limited authorizations—education aid and food stamps, for instance—and are subject to periodic review.

And a review of agencies squirreled away in the Commerce or Interior or Agriculture Departments, that now receive virtually no congressional scrutiny, might well uncover expenditures that could be more effectively made elsewhere, such as for social programs.

One major flaw in the bill approved by the Senate Government Operations Committee is that it fails to provide for a systematic review of federal taxing policy, of the more than $100 billion in annual tax loopholes approved over the years. If Congress is going to scrutinize the money it spends, it ought also to review the money it desides not even to collect, to make sure the incentives created by those tax preferences are still meeting their stated objectives.

With that important amendment, the sunset bill deserves congressional approval. It would be an effective, responsible reaction to the antibureaucracy mood in the nation signified by Proposition 13. Regrettably, the legislation reported out of the Senate Rules Committee on June 21 has yet to be scheduled for Senate debate. A failure to afford the bill the airing it deserves will only confirm and harden current public attitudes.

[From the Tulsa (Okla.) World, July 16, 1978]

INTO THE SUNSET

The U.S. Senate soon will debate a controversial measure that would require periodic review of Government programs with an aim to discontinuing those that no longer are serving a valid purpose.

The legislation is a modified version of the so-called "Sunset" laws that have been enacted by 28 States.

The intent of the legislation is to deal with what perhaps is one of the biggest problems in the Federal Government. It is a good program, as demonstrated by the fact that powerful committee chairmen have fought to keep it from being considered, because they want to be able to control questionable programs which special interest groups want continued.

The Sunset legislation is backed by Sen. Edmund Muskie of Maine, who contends, "If we want to spend more money on a good program, we're going to have to throw a bad one out."

That of course is exactly what most taxpayers want. Not more spending and more Government programs, but a selective spending on Government programs that are vital with an end to those that have outlived their time, if indeed there ever were a time for some of them.

The Federal legislation corrects some of the problems that have cropped up in States which have been overzealous in passing Sunset bills. The Federal version would result in a review of all Federal programs every 10 years, the sponsors correctly realizing that it would be impossible for Congress to review every program annually. If after review Congress did not reauthorize a program it would be allowed to die.

The Sunset proposal, spearheaded by Common Cause, is a move in the right direction. Hopefully, the Senate and later the House will pass the bill. A forced review of wasteful Federal programs is vital if spending ever is to be brought under control.

[From the San Francisco Examiner, Aug. 8, 1978]

DELAYING THE "SUNSET BILL"

It's good to see the citizens lobby, Common Cause, express concern about the "government's size, complexity and poor performance," as that organization pushes for a "sunset law" at the federal level.

Some observers may consider this a peculiar tack for a group considered quite liberal, but a good many liberals nowadays are just as aggravated as anybody at the monolithic immovability of some of the federal agencies set up to do good works. This impression often comes from first-hand involvement with a particular agency and the stunning discovery that it's a self-serving blob, for the most part, rather than the cutting edge of reform, as the deflated idealist first supposed.

In any case, Common Cause has a good cause in the sunset law, which has the admirable purpose of weeding out or renovating deadwood bureaucracies. Actually, the organization has been active in this movement for some time and such laws now are in effect in 28 states. Now it's time for Washington to heed the example of that majority of states, and Senator Edmund Muskie of Maine has put forward the mechanism in his Senate Bill 2.

What the bill would do, if the process worked, would be to automatically terminate almost every federal program over a 10-year cycle. Only those which passed a rigorous test of essentiality and competence would be recreated and get to live on for another decade. This would force Congress into the most comprehensive continuous examination of federal programs seriously envisioned in these times and the development is long overdue.

We say "these times" because unremembered by most people, a similar course was advocated back in the early 1930s when the New Deal agency proliferation was taking place. And strangely enough, it was the liberal academic William O. Douglas (later to serve on the Supreme Court) whose voice sounded in the inner circle of President Franklin D. Roosevelt for an automatic 10-year termination date for the bureaucracies being created. He argued perceptively that they could by their very nature become fat and ineffectual, and come to serve, in too many cases, the interests they were supposed to regulate. He argued that each should have to prove, at regular periods, its right to continued existence, but nobody listened.

Senator Muskie notes that the demand for new spending amounts to more than five times the amount of added revenues in sight over the next five years and says, "If we want to spend more money on a good program, we're going to have to throw a bad one out." Well said, except that bad ones should be thrown out even without creating new ones, so the savings can be applied to anti-inflationary reduction of the Federal deficit.

One question is whether Congress really is capable of this size of a task, of analyzing the agencies all the way to the bottom. Some, due to their complex specialization, almost defy analysis. But Congress somehow has to shape up, and the bill spreads the workload and the time-around so that the job is not impossible if the legislators are ready to work, rather than merely talk about containing the bloat and duplication of government.

Despite Muskie's exhortations, a general commitment to this still is not apparent: His measure has won approval of the relevant Senate committees but it may die for this session because of his inability to get it to the floor for a vote. We must hope that the Senate leadership will prove more responsive to what the public demands (as in passage of Proposition 13) and give the bill a chance before the session ends.

There's a longstanding notion in Washington that whatever is already established cannot be stopped, no matter how unnecessary it may have become, but the public is fed up with this idea and the sooner the senators learn it the better.

[From the Nevada (Mo.) Mail, July 18, 1978]

WE NEED SUNSET

Most surveys among Americans show a growing anger at government's size, complexity and poor performance.

The U.S. Senate will soon debate legislation designed to answer to the growing discontent.

The Sunset concept, which 28 states already have adopted for themselves, would force Congress into systematic and comprehensive oversight of federal programs.

Sunset's chief congressional sponsor, Sen. Edmund Muskie (D-Maine) has said, "If we want to spend more money on a good program, we're going to have to throw a bad one out."

The bill requires committees to select priority programs for in-depth evaluation and to reauthorize only those which careful review shows are needed and can work.

John Glenn (D-Ohio), with the backing of Muskie, Common Cause and others, will offer an amendment to include 76 permanently authorized tax expenditures which cost the government $120 billion last year.

Common Cause president David Cohen says, "Common Cause believes that Sunset legislation is a significant and positive response to the public's concern about the failings of government performance and the role that government has played in fueling inflation. A recent Harris survey indicated that the American public favors passage of a strong Sunset bill this year by a clear 54 percent to 34 percent majority."

The Sunset concept is aimed at the maxim that "government agencies never die; they don't even fade away." In Colorado, for example, it was learned that some regulatory agencies had existed for 50 or more years without undergoing searching review. This discovery helped convince the Colorado legislature to pass the first Sunset law in 1976.

A president can do little, without the assent of Congress, to weed out unproductive programs and agencies. Once enacted, programs acquire special interest clients who have a stake in their continuation.

Congressional committees, though charged with continual oversight of the programs and

agencies under their jurisdiction, do a poor job of fulfilling this unglamorous task.

Another principal objective of Sunset is to weed out or merge numerous programs that duplicate one another.

Among the examples that have been cited as part of the "maze" of overlapping government programs are these:

—29 health programs are related to cancer prevention, yet a comprehensive cancer prevention plan proposed by the state of New Jersey last year has yet to be funded because individual federal agencies couldn't get together in a joint effort to help the state.

—While the Department of Health, Education and Welfare has consolidated its student-aid programs into one office, there are probably six or seven or eight more in other departments of government.

—To handle water-pollution research and development, Congress has created 25 bureaus in 14 different departments or independent agencies—for example, a Water Resources Council (interagency), an Office of Water Research and Technology (Interior), an Office of Water Planning and Standards (Environmental Protection Agency) and the Agricultural Research Service (Agriculture Department).

Passage of the Sunset law will show that the Senate has heeded the public's cry that government should work for its citizens, not the special interests.

[From the Freeport (Ill.) Journal-Standard, June 15, 1978]

SUNSET LEGISLATION

One of the most effective ways of trimming the ever-growing federal bureaucracy is through "sunset" legislation.

Sunset legislation would put all federal spending programs on a certain time cycle. The program would automatically terminate if Congress decided not to renew its cycle after evaluation.

Senate Bill 2 (S. 2) would put federal programs on a six-year review cycle. The legislation was introduced by Sen. Edmund Muskie (D-Me.) and Sen. William Roth (R-Del.). More than half the Senate co-sponsors the measure.

In fact, the support for S. 2 is so widespread that it has brought together the consumer-advocates of Common Cause and a triumvirate of its usual adversaries: the Chamber of Commerce, the Business Roundtable and the National Association of Manufacturers.

The Senate Governmental Affairs Committee unanimously approved S. 2 in June 1977 after hearing from 30 witnesses during six days of testimony.

It would be assumed then that such a universally popular piece of legislation would sail through Congress, particularly in an election year when such an accomplishment would impress the folks back home. Not so.

In the year since that committee action was taken, the sunset legislation has languished in the Senate Rules Committee, which has threatened to shred it by limiting the bill to covering the Senate only and not the House. The counterproposal offered by the committee staff would have no termination date. It would require Senate committees to submit evaluation plans with their funding proposals each year.

Ironically, the Carter Administration, which has done a lot of talking about whittling the federal bureaucracy while it continues to grow, endorsed S. 2 but has not tried to pry it from committee.

The rules committee is expected to vote on the measure this month, however. If the members of that committee have had a recent chance to take the pulse of the national mood (particularly in light of the taxpayer revolt in California) S. 2 should pass unscathed.

Congressmen must start acting in the national interest, not their own self-interest. Passage of S. 2 would be one indication of that intent.

[From the Anderson (Ind.) Bulletin, July 21, 1978]

S. 2—THE FEDERAL SUNSET BILL

Legislation will soon come before the U.S. Senate that its sponsors, including two Senate committees, believe is an answer to nation-wide anger about uncontrolled government programs. The legislation is a Sunset bill, a name given to the concept by the Colorado branch of Common Cause in 1975. The bill (S. 2) sets autuomatic termination dates for almost all federal programs so that each will expire unless Congress, after careful review, decides it warrants continuation.

The Sunset concept is aimed at a maxim that "government agencies never die; they don't even fade away." In Colorado it was found that some regulatory agencies had existed for 50 or more years without undergoing searching review. This discovery helped convince the Colorado legislature to pass the first Sunset law, covering certain regulatory agencies, in 1976. Since then 27 more states, including Indiana, have passed their own Sunset laws.

The Sunset proposal has teeth. It calls for automatic termination of programs and agencies after a period of years unless the legislature, after careful evaluation, decides to modify, merge, or give a vote of approval to a program or agency through reauthorization. It is designed to force legislatures to do what they generally fail to do—carry out systematic oversight of government programs.

It is estimated that 50% of federal programs have no termination date. Under present appropriations procedures these programs are funded routinely year after year while Congress tends to pay attention to only the newest programs.

These permanent authorizations are a main target of the Sunset bill's chief Congressional sponsor, Sen. Edmund Muskie (D-Maine). "They never come up on a regular basis for thorough, top-to-bottom review," Muskie said in an April speech. "Support for reexamining them simply does not exist. Every agency, committee and lobby wants its own program to not only continue but grow," he added.

Not only direct spending programs but also most of the $136 billion a year in tax expenditures have no termination dates and rarely undergo review. A study by Common Cause of tax expenditure programs—tax incentives or preferences which are equivalent to direct spending programs—found that "nearly 90 percent of the tax expenditure items, representing 97 percent of the dollars spent through the tax system, are permanent and do not have to be reauthorized periodically."

Another principal objective of Sunset is to weed out or merge numerous programs that duplicate one another. The chief Republican sponsor of Sunset, Sen. William Roth (Del.), has said, "The Sunset legislation is innovative because it groups programs for review by function. This means that similar programs would compete for limited tax dollars on the basis of which ones are working most effectively."

Sunset legislation makes good sense. It is the most capable plan yet for reducing mind-boggling government wastefulness, and that in turn should help reduce taxes. We hope S. 2 passes with all speed.

[From the Los Angeles Times, July 26, 1978]

SUNSET FOR WASTEFUL PROGRAMS

A member of Congress—or of any legislative body—accumulates influence or power by specializing. Over time, other members seek the specialist's views, often relying more on his word than on formal reports. He can attract funds for his state or district by making sure funds from the programs he influences go to other states and districts. Over time, a member is inclined to stop digging too deeply into the budget for agencies that administer the programs he knows best because he is in the same boat as the executive agency, rising and falling with the tide of money. Also over time, these relationships spin out a web of give and take with strands as strong as steel cables.

As chairman of the Senate Budget Committee, Sen. Edmund S. Muskie of Maine is just such a specialist, but his perspective is different. He is there to challenge, not to advocate, programs.

Two years ago, Muskie concluded that, standing alone, the budget act of 1974 under which his committee functions did not allow the rigorous review of spending programs he thought it would. Examining, analyzing and challenging requests for money for programs already in existence took more hours in a day than most people would find reasonable. As long as old programs continued to expand, they ate up all the funds that might be used for new social programs. Yet there was neither time nor energy in the year-by-year budget process to take the last step of challenging not just spending levels but the programs themselves.

Muskie then introduced what has since come to be called the Sunset Bill. The bill calls for an automatic end to virtually all federal programs after 10 years, unless Congress deliberately extends their lives. Some compromises were required to get the bill through committees and some programs are exempted, but the bill that has now cleared all committees is essentially the same Sunset Bill he introduced.

The Sunset concept is not only sound but overdue. Some members object to the bill in its present form on the ground that, under some circumstances, a minority of Congress could kill programs that meet pressing social needs but have little popular appeal. Those objections, it seems to us, could be met with technical safeguards that would always leave the fate of programs in the hands of a majority of the Senate and House.

The Sunset Bill has never been warmly endorsed in Congress, particularly among senior members who have specialized and accumulated. Muskie himself believes that the bill has gotten as far as it has because of the way Congress is reacting to Proposition 13 and to other expressions of taxpayer dissatisfaction around the nation. He is probably correct, and there may never be a better time to bring the bill to the floor for debate.

Unfortunately, Congress is getting close to adjournment with its calendar still crowded with important issues. As a result, the Senate leadership is trying to keep as much legislation off the floor as possible so the Senate can finish on or near schedule.

There is too much at stake for the Sunset Bill to be delayed. Muskie noted recently that over the next five years Congress will be under pressure to create or expand a series of programs at a cost of nearly $500 billion but that revenue will increase during that time by only about $90 billion. Included on his list of programs were national health insurance, increased student aid and higher defense spending that might be necessary if the SALT talks break down. There are only three ways to make up a difference of that scale: keep running massive deficits, increase taxes, or—using the Sunset approach—start cutting out programs that no longer are needed.

The leadership should make an exception for the Sunset Bill and schedule it for debate at the earliest opportunity. The decade-long cycle on which Sen. Muskie proposes that Congress will review federal programs is not exactly a quick-fix and the process should

begin as soon as possible. The bill is important to the taxpayers, but it is no less important to the federal government itself.

[From the Seattle Times, Aug. 10, 1978]

"There are 29 federal-government health programs related to cancer prevention, 7 or 8 federal student-aid programs, and 25 separate bureaus dealing with water-pollution research and development.

"These are just three examples, cited by Common Cause, the citizens' reform movement, of the maze of overlapping government programs developed over the years.

"Dozens of such examples could be cited in support of 'sunset' legislation that has cleared two Senate committees and is sponsored by Edmund Muskie, the Maine Democrat who has acquired considerable expertise on government waste while * * *

"Muskie's bill would set automatic termination dates for almost all federal programs so that each would expire unless Congress, after a review, decided it warranted continuation.

" 'Sunset' laws are no cureall§ for excessive government. That much has been established in a number of states, including our own, where an experiment with the 'sunset' concept is undergoing a slow and uncertain start.

"Still, we agree with Muskie that 'the keys to a "sunset" bill—a regular review of like programs on a fixed schedule and the threat of automatic termination—are the keys to bringing efficiency back to the federal government.' "

[From the Beaver (Pa.) Times, Aug. 1, 1978]

SUNSET LAW MAY BE A STEP IN THE RIGHT DIRECTION

Under the taxpayer pressure generated by California's Proposition 13, uneasy state and federal legislators are on a very hot spot. On the one hand, they are facing demands that taxes be cut; on the other hand, they are expected to provide all the programs and services to which certain segments of the population have become accustomed.

Walking this tightrope, lawmakers at both levels of government are beginning to take a hard look at ways and means of cutting spending and thereby holding down taxes. This has focused new attention on "Sunset" legislation in various forms.

The name given such legislation is derived from the concept initiated by the Colorado branch of Common Cause in 1975. It provides for automatic termination dates for most federal programs unless Congress, after careful review, decides that they should be continued.

Pending before the Senate is just such a bill that its sponsors and two Senate committees believe could save the taxpayers millions of dollars. Common Cause points out that in a recent Harris poll the American people favor passage of a Sunset bill this year by a 54 to 38 percent majority.

Unlike the maxim that "old soldiers never die, they just fade away," a great many government agencies neither die nor fade away. According to Common Cause, some Colorado regulatory agencies had existed for 50 years or more without undergoing searching scrutiny. This prompted the Colorado legislature to pass the nation's first Sunset law in 1976. Since that time, 27 other states have passed similar legislation.

Under these laws, government programs are not automatically funded, as at present. Instead, they have to prove their worth. Periodically, they are subjected to careful evaluation and unless the legislators decide to modify, merge or approve their continuation they are abolished. It is estimated by Common Cause that 50 percent of federal programs have no termination date. Consequently, they are routinely funded year after year.

As a safeguard against creating hardship, certain veterans' benefits and trust funds, such as Social Security, are exempted from the termination provision. Furthermore, agencies and programs would not be wiped out in one fell swoop. The proposed legislation provides a 10-year timetable for review of the agencies and programs.

It might not be the perfect answer to the problem of government spending and waste, but the Sunset legislation, if enacted into law, at least would be a start toward placating the increasingly angry taxpayer.

[From Business Week, Apr. 11, 1977]

SUNSET ON THE POTOMAC

If congressmen mean what they say about "cleaning up the mess in Washington," there is a way to do it. Senator Edmund S. Muskie (D-Me.) is pushing a "sunset" bill that would provide for regular review of all government agencies and programs. Any program not renewed by Congress after review would automatically go out of business.

The Muskie bill itself needs careful study and some changes. In its present form, it would put all the reviews on a five-year cycle; this probably is too short a time for some programs and too long for others. The sunset reviews, moreover, should not be extended to the revenue side of the budget as Muskie proposes. The inclusion of "tax expenditures," such as accelerated depreciation and the exemption for municipal bond interest, would simply disrupt the markets and create uncertainties for investors. Tax law should be written for the long term so that individuals and business can plan without fearing erratic changes.

The general approach of the Muskie bill, however, is the right one. Periodic, in-depth reviews of federal programs would weed out the underperformers and put the spotlight on ineffective, costly regulations. Congress has learned from its new budget-making process that the government's resources are not unlimited. Tradeoffs have to be made, and if a new program goes into effect, inefficient or outdated programs should be cut back to finance it. Pyramiding new programs on the remains of old ones is the process that has made Washington a mess.

If for no other reason, Congress should periodically review the federal programs to see what it has created in its past spasms of legislating. As Muskie says: "The system today is so complicated that no one really knows exactly how many federal programs there are . . . (or) what we are buying for the billions of federal dollars we pour into them every year." ●

ELI LILLY & COMPANY COMMENDED ON HUMAN INSULIN PRODUCTION

● Mr. LUGAR. Mr. President, recently I called to the attention of my colleagues the outstanding performance of Eli Lilly & Company in increasing employee productivity. Only days later Lilly, a pharmaceutical firm headquartered in Indianapolis, announced a scientific breakthrough in which human insulin was produced from bacteria in a laboratory. In addition, Lilly expressed its commitment to the eventual commercial production of human insulin.

This exciting medical advance was accomplished by scientists from Genetech, Inc., and the City of Hope National Medical Center, based on the findings of recombinant DNA research to date. Producing insulin by this process would offer an alternative to extracting the hormone from the pancreas glands of animals.

I congratulate the scientists who have achieved this important first step toward production of human insulin. I commend Eli Lilly & Company on its show of faith in this endeavor, in the form of an agreement to support long-range development. The backing of this far-sighted firm will make available the fruits of research to diabetics in this country and around the world, and will contribute to broader applications of recombinant DNA research. ●

ERA: NO TIME LIMIT ON EQUALITY OR FAIRNESS FOR MEN AND WOMEN

● Mr. BAYH. Mr. President, many doubts have been raised in regard to the legality, constitutionality and fairness of the proposed extension to the time period for ratification of the proposed 27th amendment to the Constitution—the equal rights amendment. The need for the equal rights amendment has not diminished since its enactment in 1972. At the present time 35 States have ratified the equal rights amendment. These States represent nearly three-fourths of the population of the United States. Since its passage in 1972, interest and debate in the ERA has continued to grow. At the same time, in a few State legislatures the ERA has yet to be voted on in both legislative bodies. Numerous editorials and columns have been written throughout the country's newspapers which address themselves to the fairness of extending the deadline of the proposed equal rights amendment. I would like to take the time to cite excerptions from a portion of these commentaries favorable to the ERA extension.

The Baltimore Evening Sun:

The extension can be justified on the legal and moral grounds; there is ample evidence that the majority of the recalcitrant states favors ratification.

The Los Angeles Times:

The question is whether an extension would set any worrisome precedents. Our answer is that it would not, because the idea of a time limit on amendments is a relative late-comer anyway in the whole process of amending the Constitution.

The Grand Rapids Press:

The arbitrary time limit was adopted on the assumption that it was thought to be a reasonable period to assure full and open debate. Instead, parliamentary tricks, and an organized campaign of misinformation and scare tactics have prevented the proposal from receiving objective consideration on several legislative floors.

Ellen Goodman, the Washington Post:

The ERA was passed by Congress in 1972. There was nothing especially sacred about the seven-year limitation . . . . The extension is the prerogative of the Congress. It is well within the rule book known as the Constitution.

Tom Wicker, the New York Times:

There's no real tradition or custom—much less a constitutional or statutory requirement—for a time limit for passage of a constitution. The first 18 amendments . . . had no such limit. There's no fundamental reason why Congress cannot change its collective mind and chose to extend the period . . . . It's nonsense to call such an extension for the ERA 'unfair' as the time limit was arbitrary, so would be the extension, and one is

no less unfair than the other. To let the ERA die . . . by an arbitrary time limit would be the opposite of the calm, thoughtful, and orderly process the Constitution provides.

The Christian Science Monitor:

There is no constitutional bar to extending the deadline . . . . Congress should take timely action to ensure authorization of the proposed extension for another seven years. After all, ERA deserves no less consideration than many amendments for which no ratification was specified. These things take time, and many other matters compete for congressional and presidential attention. Yet the constitutional recognition of the equal rights of men and women under the law is of such fundamental importance that it should be fostered in every way.

Mr. President, so that my colleagues may have the benefit of reading the editorials and columns in full I ask the text of the aforementioned articles be printed at this point in the RECORD.

The articles follow:

[From the Los Angeles Times, Oct. 16, 1977]

A DEADLINE THAT SHOULDN'T BE

It has been five years since Congress approved and sent to the states the constitutional amendment to prohibit discrimination because of sex. Its supporters have two more years to go to push it through, and they are worried about running out of time.

Now President Carter appears to be coming around to the idea of extending the deadline for the states to act. He has asked the Justice Department whether this could be done so that women's rights groups and other backers of the amendment could pursue their efforts to win over three more state legislatures.

So far 35 of the necessary 38 states have approved the amendment and voted to incorporate it into the Constitution. But, as things stand, the whole effort will die on March 22, 1979, unless the needed states come through or Congress votes to extend the traditional seven-year period for adoption.

The question is whether an extension would set any worrisome precedents. Our answer is that it would not, because the idea of a time limit on amendments is a relative late-comer anyway in the whole process of amending the Constitution.

No deadlines were set for the approval of the first 17 amendments. Not until 1917 did Congress decide to place a seven-year limit on the time available for action by state legislatures. It was an arbitrary deadline, because no such period was mentioned in the Constitution itself.

Two years later, in 1919, when the 19th Amendment on equal suffrage was presented to the states, Congress again decided against any time limit. Since then—and the equal-rights proposal would be the 27th Amendment—Congress has returned to the seven-year clause.

Until 1960, this was inserted into the amendment itself. Since then, the seven-year period was mentioned only in the congressional resolution introducing the amendment. So it would appear to a be a rather simple matter to extend the deadline, but this is what the Justice Department is now trying definitively to determine.

For an amendment that appears to be an expression of basic common sense, it has stirred up considerable opposition. It says simply: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of Sex."

But women's groups and others opposed have been rather effective. Three states—Idaho, Nebraska and Tennessee—first approved the amendment and then voted to rescind the action. Whether it is constitutionally possible to reverse such a vote is not yet decided, so the approval of the three states still stands for the present.

As the opponents see, the amendment actually would damage the rights of women. The critics argue that it would mean that women could be drafted, that they would lose child support and alimony, the right to be supported by their husbands, and protection under the labor laws, and even find themselves with the financial obligation of supporting their husbands. All these arguments are disputed by the supporters, but the effect has been to confuse rather than to clarify the issues—hence the reluctance of some states to act.

We are not confused. We think that the amendment is just, and that it should be approved. And, to make sure that it is, Congress should extend the deadline, if at all possible. A little more time on an issue of this importance could well result in more good than harm.

[From the Kansas City Times, July 20, 1978]

Go! ERA

Put aside all the hysterical nonsense about ERA destroying the American family and forcing womankind into lesbianism, trench warfare and numerous unmentionable fates worse than death, and most rational people would have to admit that women, in general, have had less than a fair deal.

We refer to equal pay for equal work, access to credit and other financial aids, jobs, promotions and opportunities that men can look to as a matter of course if they are qualified. There is nothing in the Equal Rights Amendment that would force women out of the invaluable and essential roles of wife, mother, homemaker. Those are time-honored pursuits that are enough for anyone—a life's work—for the women who want them, and many do. Some women want to combine home and professional or business careers. Others will give priority to commerce, the arts or a profession. The point is that the rules ought to be the same for both sexes. ERA would underline the right of equal treatment, and the recommendation by the House Judiciary Committee for an extension of three years will bring a necessary amendment closer to reality.

THE NAME OF THE (ERA) GAME IS POLITICS

(By Ellen Goodman)

BOSTON.—As the movement to extend the deadline for ratification of the Equal Rights Amendment gains momentum, I keep hearing pro-ERA forces accused of "trying to change the rules in the middle of the game."

I am well aware that women are generally held up to the purest standards that can dance on the head of a pedestal. But this is ridiculous. The name of the ERA game is, after all, politics. These people are not trying to change the rules; they are trying to use them to win. Which is the point of the game.

The ERA was passed by Congress in 1972. There was nothing especially sacred about the seven-year limitation for state ratification. "Seven" was the number arrived at, not by tarot cards or the Constitution, but by custom and political compromise.

At the time, ERA supporters agreed to this figure despite the warnings of old hands like Alice Paul. They felt as hopeful as Martha Griffiths, who probably remembers every night before she goes to sleep that she once said, "Personally, I have no fears that this amendment will be ratified . . . as quickly as the 18-year-old vote."

Now, led by the National Organization of Women, they are trying the perfectly legal tactic of urging the Congress to extend the limit for seven more (and final) years. This extension is the prerogative of the Congress. It is well within the rule book known as the Constitution.

But what bothers me most about the whole "rules of the game" chatter is the sheer chutzpah of the chatterers. It is the ERA opponents who should be thrown into the penalty box.

While the pro-ERA forces have been playing chess, their opposite numbers have been playing rugby. It was the pros who behaved like good little Goo-Goos, targeting their candidates, signing nomination papers and getting the votes out—just like it says in government classes. If the fix hadn't been in, the ERA would have passed its last three states months ago.

In Nevada, 11 state legislators who were elected on pro-ERA platforms went sheeplishly over to the other side at the first cry of "Red Rover." Eight of them (may their debts swell and block their gateway to paradise) accepted pro-ERA campaign contributions.

This charming athletic display was reenacted in Florida. There, the women voted out the anti-ERAs and voted in the pros, and then watched as the two pivotal "yes" votes turned into "no's."

The Illinois rematch, on the other hand, looked like something created by Dick Tuck from his bag of tricks. Twice the ERA gathered a majority vote in the state legislature. In any other state, that simple majority would have meant passage. But in Illinois, you need a three-fifths majority under the new state constitution although—excuse me while I break into hives—this rule is generally considered unconstitutional.

As Ellie Smeal, president of NOW, puts it: "We were ignored in the election process." Speak to me not of rule-rigging.

Only in the past year have the pro-ERA forces learned the effectiveness of end runs around politics. The "conventions boycott" in nonratified states has been deliciously successful. This vision of clout has done the amendment more good than all the "due process."

But we still are in a situation in which the "will of the majority" has been thwarted by a handful of legislators. A full two-thirds of the states have passed this amendment. A majority of people polled—including those in unratified states—are in favor of it. The younger population overwhelmingly supports it. Yet it is in great danger of failing.

Some crucial state legislatures won't even meet again to vote until after March 1979. Perhaps the most potent problem facing passage before the deadline is the deadline itself. During the Florida fight, buttons sprang up with the slogan "ERA Won't Go Away." The pro-ERA people were aware that the opposition tactic was to convince legislators that if they held firm one more time, the amendment would just disappear.

The ERA won't go away. But if it fails to meet the deadline, it could become part of the collective consciousness of women in this country. They would realize that they had experienced dissappointment and betrayal precisely because they believed—not wisely but too well—in the game.

The pro-ERA people wouldn't be purists if they neglected to press for extension. They'd be pure fools.

[From the Miami Herald, June 12, 1978]

The fight for the ERA has been particularly handicapped by deliberate distortions by its opponents. As much as the issue has been discussed, the truth about ERA has had a difficult time emerging in some areas.

"This is one of the reasons why we believe the extension of the ratification deadline would be justified. In this democracy, the Constitutional guarantee of equal protection for all citizens is too scared to be abandoned to unfounded fears based on ignorance or worse.

[From the Baltimore Evening Sun, Feb. 21, 1978]

"ERA has suffered more painfully narrow defeats in Southern legislatures, and in some

states it has been bottled in committee for years. The only hope for this campaign lies in extension of the deadline for another seven years.

"The extension can be justified on legal and moral grounds; there is ample evidence that the majority of citizens of the recalcitrant states *favors* ratification."

[From the Christian Science Monitor, June 16, 1978]

"There is no constitutional bar to extending the deadline, according to the Justice Department. Congress should take timely action to ensure authorization of the proposed extension for another seven years. After all, ERA deserves no less consideration than many amendments for which no ratification deadline was specified. President Carter's State of Georgia did not ratify the original Bill of Rights amendments until 1939.

"These things take time, and many other matters compete for congressional and presidential attention. Yet the constitutional recognition of the equal rights of men and women under the law is of such fundamental importance that it should be fostered in every way."

[From the Grand Rapids Press, June 16, 1978]

"Opponents of the Equal Rights Amendment no doubt cheered last week when the Illinois House failed to provide a necessary three-fifths majority for passage. But their victory was hardly something to brag about. If nothing else, it exposed the kind of irrelevant hurdle that this simple statement of sexual equality has had to surmount.

"The Illinois experience, however, lends substance to the views of Senator Birch Bayh, D-IN, who says the arbitrary time limit was adopted on the assumption that it was thought to be a reasonable period to assure full and open debate. Instead, parliamentary tricks, such as those in Illinois, and an organized campaign of misinformation and scare tactics have prevented the proposal from receiving objective consideration on several legislative floors.

"Eventually the Equal Rights Amendment will be adopted, and soon afterward everyone will wonder what all the fuss was about. And you'll still be able to look in vain for unisex toilets."

[From the New York Times, July 7, 1978]

POLITICS AND THE E.R.A.

(By Tom Wicker)

In 1976, Jim McDuffie won one of the four seats from North Carolina's 22d State Senate District, finishing third in an at-large race, just a thousand votes behind the leader. But when Senator McDuffie sought reelection last May, he came in fifth, 4,000 votes behind the top man, and lost his seat.

In 1976, you see, Jim McDuffie promised to support the Equal Rights Amendment. But once in the Senate, he cast the single vote that *defeated* the E.R.A., after it had passed the House. So in 1978, E.R.A. supporters helped unseat him. That's politics.

And that kind of give-and-take and play of forces in our fluid American political life is an excellent reason why Congress should vote to extend the time limit for passage of the E.R.A. That would be politics, too—not a question of how you play the game, but of who wins.

As was pointed out in a recent letter to this newspaper by Representative Elizabeth Holtzman, the principal sponsor of the extension resolution, and other proponents, there's no real tradition or custom—much less a constitutional or statutory requirement—for a time limit for passage of a constitutional amendment. The first 18 amendments, including the Bill of Rights and the monumental Fourteenth, had no such limit. The original seven-year limitation on passage of the E.R.A. was not part of the amendment itself but a section of the legislation by which Congress proposed it to the states; so there's no fundamental reason why Congress cannot change its collective mind and choose to extend the period.

And it's nonsense to call such an extension for the E.R.A. "unfair"; as the time limit was arbitrary, so would be extension, and one is no more and no less unfair than the other. To those who say extension would be like changing the rules of baseball in the eighth inning because one team is behind, an equally dubious analogy should be cited—that many a manager has stalled for time, hoping for rain to end the game in the eighth inning while his team was ahead. That's baseball and politics.

Besides, an extension would provide as much time for rescissions—of which there already have been three by states that had passed the E.R.A.—as for ratifications. Whether rescissions are legal ultimately will be up to Congress, which decides whether or not the necessary three-fourths of the states have ratified an amendment; but if an extension should result in numerous rescissions, Congress surely would be impressed. That's a chance E.R.A. proponents must take.

Besides, the purpose of the torturous amendment process provided by the Constitution is to make sure that hasty and ill-conceived amendments are not whipped through by impatient majorities. In this instance, extension would serve that sound purpose, because of the campaign of distortion, intimidation, innuendo, slander, shabby maneuver and outright lies waged by numerous opponents of E.R.A., many of them—like the John Birch Society—veterans of far-right causes back to the vilification of Dwight Eisenhower.

In a democratic society, that's politics, too, but to let the E.R.A. die under such pressures and by an arbitrary time limit would be the opposite of the calm, thoughtful and orderly process the Constitution prescribes. And that is particularly so since the E.R.A. is before state legislatures at a time when it must bear symbolic identification with rising hysteria against abortion, homosexual rights, busing and other "liberal" ideas. The amendment has become a sort of stand-in against which opponents of any of these can vent their opposition to all.

So Congress should provide an extension as a legitimate political action to save the E.R.A. from being killed without constitutional justification, by the seven-year time limit—not by the states. Indeed, 35 of the necessary 38 States have passed it (the three remaining rescissions notwithstanding). In numerous of the 15 other States, the amendment has been bottled up in committee, or otherwise sidetracked, rather than finally defeated; in Utah, for example, the opposition of the Mormon Church has kept it from coming to a vote. Again, that's politics.

But the legislative situation in the states is such that three additional ratifications cannot possibly be had by the deadline, March 22, 1979. Equal rights marchers therefore ought to make this crucial point in their Washington demonstrations—that Congress, which by two-thirds vote of both houses recommend the E.R.A. to the states, has the political power to prevent its defeat, just as various forces have so far had the political power to prevent its ratification.

If Congress wants the Equal Rights Amendment to pass, that is, it must vote for extension; if Congress does not provide an extension, Congress will have killed the E.R.A. An arbitrary time period will have been allowed to frustrate the intent of the Constitution; forces of reaction and untruth will have prevailed politically when they might have been countered politically. But, as Jim McDuffie learned, politics won't stop there.

[From the Washington Post]

VOTING AGAINST EQUAL RIGHTS?

(By Tom Braden)

There was a timely sense of outrage to the statement of Sen. Birch Bayh (D-Ind.) on the occasion of his announcement that he would lead the fight to extend the time for the Equal Rights Amendment: "When we are dealing with the issue of equality for all Americans, we are not playing a game. This issue is one of tremendous importance to each and every citizen, to those now living and those not yet born who will be looking back on the history of this effort and will hold us accountable for our action."

I doubt that Bayh could have made that statement a couple of years ago. If he had, I could not have agreed with it. Because the amendment didn't seem to me all that important. Wasn't equality of rights for women assumed in the Constitution? The 14th Amendment, for example, defines a citizen as a person and guarantees all citizens equal protection of the laws.

So I thought—or at least hoped. But now that the amendment seems about to be defeated by a narrow failure to win three-fourths of the state legislatures, the negative seems to me far more important than the positive would have been. In other words, it may not be important to say that women do have equal rights. But it is surely very important to say that they do not.

Which is what the minority who oppose the ERA are about to make us do.

I do not know what setbacks this statement may suggest for more than half the citizens in the country who happen to be women, but I don't like the sound of it.

At the very least, it seems to me, it suggests that opportunities for women in fields that are now effectively closed to them—trade-union leadership, for example—will continue to be closed and that the trend that has recently brought a few women to leadership posts in business and industry will halt, about where it is now.

Moreover, we ought to be somewhat ashamed of the manner in which the amendment was attacked. Opponents convinced a good many women that the real issue was lesbianism and unisex toilets and a good many men thought their wives were going to have to carry guns in the front lines, drive bulldozers and lift bales. It was a dirty campaign, and Birch Bayh is right to say that the right wing used "false issues and outright lies."

So I'm in favor of the time extension that ERA proponents are requesting. On this point, I have changed my view.

One reason is that the original seven-year limit on the time required for the amendment to be adopted by the states was set forth in the preamble to the amendment itself. The state legislatures did not vote on the preamble and this fact seems to me to invalidate the charge that ERA proponents are trying to change the rules in the middle of the game.

Nor is there any question that the Congress has the authority to set any time limit it wishes or to set no time limit at all as was the case for the first 17 amendments and the 19th.

So the Supreme Court ruled in 1921. And in 1939, the court further said that the Congress has the right to revise the ratification time "set by that body."

So with the questions of legality and fairness settled, I'm for giving the amendment another chance. "Equality of Rights under the law shall not be denied or abridged by the United States or any State on account of sex." Maybe it wasn't necessary to say "yes" to that simple statement.

But it makes me very uncomfortable to think that my country is about to say "no."

[From the Cedar Rapids Gazette, July 20, 1978]

ERA STILL FAVORED

To hear the Equal Rights Amendments' enemies tell, ratification has failed three states shy of the 38 needed because of a countrywide public-opinion shift against the ERA. Polls now show, they claim, that people's past support has turned to opposition, which is why the ERA is losing out in legislatures that have stopped it cold.

The only flaw in that appraisal is its lack of truth. If any polls show general rejection of the ERA, they must be special-interest, narrow-focus, client-titled samplings engineered to bring results that someone wants. The standard professional polls for general consumption continue to depict clear public favor for the ERA.

Notably, the Gallup and Harris organizations both have just come up with unmistakable support again. Gallup's reading brought out 58–31 percent approval of the ERA, with 11 percent undecided. Harris's results were 55–38 percent in favor, 7 percent not sure. The first amounted to just under 2–1 support. The second was equivalent to almost 3–2.

If legislatures cared to base their actions on what clear majorities of people want, in other words, more ratifying would emerge. Since 15 legislatures still refuse (along with four that tried to cancel earlier approval), forces other than the public's overall support must hold the key.

What ERA-denying legislatures seem to heed instead of public sentiment is the concentrated, busy, unrelenting, very vocal pressure of opponents—close to a one-issue pack in their intimidation of incumbents—far outstanding all the less vociferous support.

The broader but unorganized body of backing, apart from hard-core ERA promoters, correspondingly is much less intense. This quieter majority's more mild attitude may also trace, in part, to turned-off self-detchment from the ERA's aggressive wing: Bella Abzug blowhard leadership has been too visibly identified with ERA campaigning from the start.

If several legislatures' misperceptions of the public mood can give way to a sensing of the wider gentle backing that a popular majority still gives, the ERA might still succeed as most Americans would like to see it do.

[From the St. Louis Post-Dispatch, May 24, 1978]

WHAT THE ERA WOULD DO

Certain misrepresentations about what the Equal Rights Amendment would do are used continually by its opponents, as was the case recently when Phyllis Schlafly spoke to a gathering in Eldred, Ill. Her remarks need to be answered in some detail, as unfounded fears about the amendment have slowed the march toward fairness under the law.

Mrs. Schlafly says passage of the ERA would benefit homosexuals because the amendment would prohibit any kind of sex discrimination. Mrs. Schlafly is confusing the word sex in the amendment, which refers to gender discrimination, and sexual behavior. The ERA would not legalize homosexual marriages. The Supreme Court in the state of Washington ruled that state's ERA did not invalidate state law prohibiting homosexual marriages. Mrs. Schlafly's assertion is incorrect.

Mrs. Schlafly says that the ERA would benefit the federal government because of its enforcement power. This unjustified fear comes from the amendment's second section, "Congress shall have power to enforce by appropriate legislation the provisions of this Article." These words are also part of the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-third and Twenty-fourth Amendments. The section is necessary to change federal law, and does not empower Congress to write state law; states already have the power to make constitutional changes through the Tenth Amendment. Courts will have the same jurisdiction they have in other constitutional cases. Again Mrs. Schlafly has misrepresented the ERA.

Mrs. Schlafly says, "ERA won't give women any thing they don't already have. It can only take things away." But the ERA will add to the protection and status of women. The U.S. Supreme Court has held that the Fourteenth Amendment's protections extend to races and religions as suspect classes, but has not consistently included women under the guarantees. Women deserve the constitutional recognition of their rights under the law and they need the prominence, accessibility and, particularly, the permanence of a constitutional amendment to help them gain enforcement of laws and equal opportunities.

The ERA will be used for more than symbolism and access, however; it will help bring about some still-needed changes. It would be used to stop Social Security practices that are injurious to families of working women, to halt discrimination in charging and sentencing female juveniles with status offenses such as incorrigibility, to make equal the age of majority, and to combat inequality in public employment and labor laws and so forth.

The Senate Majority Report on the ERA dealt specifically with labor laws and said, ". . . such restrictive discriminatory labor laws as those which bar women entirely from certain occupations will be invalid. But those laws which confer a real benefit, which offer real protection, will, it is expected, be extended to protect both men and women." Women and men will gain, therefore, contrary to opponents' fears.

Mrs. Schlafly says ERA supporters "want to teach our childern there is nothing different between men and women." Most ERA supporters do want children to be taught that they can be and do whatever they want, letting them set their own limits. But the ERA would only affect laws. It will not change social mores and customs, it will not remove the right of privacy, it will not enable the state to intrude in a marriage. Neither will it affect the rearing of children. The ERA is too often misrepresented and then becomes an object of fear. While it would help bring about constructive change, it is basically a statement that should have been in the Constitution nearly 200 years ago—all men and women are equal under the law.

[From the Washington Star, July 19, 1978]

CLASS PRIVILEGES AND FEAR OF ERA

(By Garry Willis)

If I were opposed to the Equal Rights Amendment, its enemies would convert me. Phyllis Schlafly, for instance, talks more nonsense per appearance than anyone I have ever heard. Her comment on the ERA march recently was typical. She said the marchers were "a combination of federal employees and radicals and lesbians who march and demonstrate in order to get this illegal extension of time."

Now some of the marchers were my friends. Indeed, one was my son. And none of the ones I know is a federal employee, a radical, or a lesbian. When three First Ladies supported the ERA in Houston last year, Mrs. Schlafly was there giving us the same old line about radical lesbians. Lady Bird Johnson? Betty Ford? Rosalynn Carter?

But the vilifying prelude was less distortive than Mrs. Schlafly's final clause. There is nothing illegal about Congress setting a new time period for the amendment. It does this by the same power that let it set the first period. It is a matter left to congressional discretion.

The proponents of an extended period say they need time to fight all the distortions of people like Mrs. Schlafly. I don't know whether that kind of demagogy can be fought. Certainly the feminists have not been very successful in their fight against it so far.

Why is that? The first response to the ERA was very heartening. Thirty states ratified it in the first year. Then six years of setbacks followed. That is a longer time than candidates get to correct the distortions of rival candidates. It is two years longer, for an "educating process," than most people spend in college. If things have gone so badly for the ERA in the last six years, might it not get further battered in the next four or six or seven years, however long the extension that might be granted?

There is certainly a reaction to the '60s activism in our national life. This is apparent in the forms of current religiosity a new discipline in the schools and the home, and a faltering of the civil rights cause. Is that what hit the ERA?

That is part of the problem. There is no urge to experiment on the grand, the constitutional, scale. Instead, we are witnessing a stress on protection of one's turf, on taking care of Number One. Mrs. Schlafly has very cleverly played on this. Her pitch is direct to the selfishness of her white middle-class female constituency.

What Mrs. Schlafly argues is that equality before the law would be a setback because it will destroy female privilege. It will, that is, take away the preferential treatment some women get in terms of draft, tax, and child custody laws.

Both proponents and opponents of the ERA talk of present inequalities; but the proponents deplore these, while the opponents want to retain them. Both sides are right about the facts. They are just talking about different sectors of our society. Mrs. Schlafly is defending the privileges of women who have privilege, not because they are women but because they are part of a privileged class.

The proponents of the ERA look to the double disadvantage of women who are both women and part of the non-privileged class. That is the social structure of the problem. Then how can Mrs. Schafly claim that it is just a radical chic crowd of dissatisfied college graduates that agitates for the ERA? She can attack those who speak for the poor and oppressed, just as all privileged people who want to extend their privilege have been attacked.

If the ERA does not pass, the real tragedy will not be that this or that legal inequity was not more quickly solved—most will be corrected in time. The tragedy will be that Mrs. Schlafly's crusade for class selfishness has succeeded.●

CITIZEN BAND RADIO

● Mr. MATHIAS. Mr. President, all of us know of the great and growing popularity of citizens band radios.

We should all also be aware of their growing importance to highway safety. Just recently, I learned that the emergency telephones on the Washington Beltway will be removed and that the police and emergency repair vehicles would instead rely on passing motorists with CB radios to report breakdowns and accidents.

Clearly, Mr. President, the CB radio should not be considered a toy, and we should encourage responsible use.

To its credit, the Washington Metropolitan Area Sideband Association has sent to the Chairman of the Federal Communications Commission a resolution that urges him to use the power

and resources of his agency to educate CBers on proper radio procedures. I think that the point is a good one, and I urge all of my colleagues to read it.

I ask, Mr. President, that the resolution be printed in the RECORD.

The resolution follows:

Date: August 18, 1978.

To: Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554.

From: The Metropolitan Area Sideband Association (MASA), P.O. Box 18094, Oxon Hill, Maryland 20021.

Subject: An appeal to the FCC for help in our efforts to gain respect for and in compliance with the law as it pertains to personal radio communications.

Problem: Our problem is to convince an ever increasing number of old and new law violators that they should:

a. Keep their promised word, pledged at the time of license application, and

b. Make honest efforts to comply with all pertinent FCC PR. regulations.

We, who hope to enjoy a legal and justifiable PR service, desire your guidance to insure our course of action maximizes our potential for assistance.

Discussion: We have no desire or intent to serve as a gestapo, however, we are ready and willing to assist you in any legal manner in your plans to improve PR operating conditions, which are rapidly approaching a chaotic state.

Our past record has not been free from legitimate criticism; our image is tarnished. We, some fifteen thousand personal radio operators, claim no infallibility; we have made errors but we do not do so repeatedly and intentionally.

We solicit your suggestions to insure our future meets with your approbation and the commendation of all honest, sincere and legal PR operators.

We can invite public attention, on the air, to deliberate and flagrant law violators, especially those illegal operators who interfere with legal communications and normal radio and television reception.

We can collect and collate such data as your suggestions indicate necessary and proper by whatever practical method is indicated.

Local personal radio communications have deteriorated—in some instances to an incredible farce; we have noted and do now recognize your claim to have inadequate and insufficient resources.

We offer the help of at least fifteen thousand locals who wish to do what is right, what is legal and what is necessary and proper.

enforcement more effective, we shall consider our efforts mutually beneficial and their cost such as any loyal, law-abiding U.S. citizen should be honored to donate.

Respectfully,

EDWARD F. MCCLENAHAN, KRI–1104,
Deputy Director.●

ERA

● Mr. GARN. Mr. President: our colleague in the House, TOM RAILSBACK, is a supporter on the equal rights amendment (ERA). However, he is not only concerned with passage of ERA but also with maintaining the integrity of the process by which constitutional amendments are proposed, debated, ratified, or rejected. TOM RAILSBACK'S regard for fairness led him to sponsor the attempt in the House of Representatives to amend House Joint Resolution 638 to insure that States have the right to reconsider earlier actions. In Representative RAILSBACK'S words:

It is undeniable that providing States with the right to reconsider their earlier actions could result in rescissions by some. I hope that that does not occur. Nevertheless, this is a risk which I feel we must take if we are to assure the American people that their Constitution is not being unfairly altered.

The importance of TOM RAILSBACK'S entire views is great, so I ask that his "Separate Views" from House Report 95–1405 be printed in the RECORD.

The material follows:

SEPARATE VIEWS OF MR. RAILSBACK

Charles L. Black, Jr., Sterling professor of law at Yale, stated before the House Judiciary Subcommittee on Civil and Constitutional Rights, "that it would be entirely impermissible to extend the time for ratification without also extending the time for rescission." After close examination of the law and policy surrounding the issues of extension and rescission, I find myself in agreement with Professor Black's statement.

Without question, we are, by our actions on House Joint Resolution 638, writing on a blank page of constitutional law. We must take care to write fairly and precisely so that the image we create will not come back to haunt us during the consideration of some future constitutional amendment. Though I have supported the equal rights amendment in principle and practice since voting for it in 1971, the issue of extending the time deadline for its ratification has implications far beyond the merits of this, or any, amendment. The extension resolution now pending before the House of Representatives must be judged in this light.

Extension of the deadline for ratification of the equal rights amendment has been challenged on the grounds that it is unconstitutional and that it is fundamentally unfair. From my reading of the Supreme Court's decision in *Coleman* v. *Miller*, 307 U.S. 433 (1939), and the testimony of a number of constitutional scholars, I am convinced that Congress' article V powers include the power to increase the time for consideration of this amendment. I cannot, however, so readily dismiss the charge that an extension in the form provided by the pending resolution is fundamentally unfair. The New York Times, Washington Post, Washington Star, Chicago Sun Times, Charlotte Observer, Baltimore Sun, New Republic, and a host of other newspapers and magazines have offered their editorial opposition to the extension for just this reason.

Providing an extended period of years for ratification, but not for reconsideration by those States having earlier ratified, smacks of expedient rules-changing. To many Americans, such an action would suggest that Congress has decided to amend the Constitution by whatever means it finds necessary and at whatever price. Despite the nobility of the ends sought by the proponents of the equal rights amendment, these ends do not, in my opinion, justify the use of means which give rise to the appearance of impropriety in the constitutional process. Use of such means can do little more than to reinforce the resolve of those who oppose this amendment.

Because I want to see the equal rights amendment ratified, but cannot support the extension proposal in its present form, I intend to offer an amendment on the House floor similar to that which I offered in the Judiciary Committee. My amendment would simply provide those States ratifying the equal rights amendment during the first 7-year period with the right to reconsider that action during the extension period. I recognize that such an amendment, as with the extension resolution itself, would not bind future Congresses, but it would serve as an expression of how this Congress believed the rescission question should be resolved if and when that determination must be made.

It is undeniable that providing States with the right to reconsider their earlier actions could result in rescissions by some. I hope that that does not occur. Nevertheless, this is a risk which I feel we must take if we are to assure the American people that their Constitution is not being unfairly altered.

In addition to increasing fundamental fairness in the amending process, the limited right of rescission which I will propose has the ancillary benefit of guaranteeing that ratification of the equal rights amendment, when it occurs, will manifest the contemporaneous approval of the States, an implicit requirement of article V according to the Supreme Court's opinion in *Dillon* v. *Gloss*, 256 U.S. 368 (1920). The existence of contemporaneous approval must surely be in doubt where States are allowed to ratify for more than 10 years, yet not once allowed to reconsider a vote of approval. Only by recognizing a right of rescission during the extension period can we be certain that ratification by 38 States means the equal rights amendment continues to have the support of the constitutionally required number of States.

Those suggesting that a rescission amendment is "clearly unconstitutional" have apparently failed to take note of statements made by a number of constitutional experts appearing before the Subcommittee on Civil and Constitutional Rights. Professor Charles Black, in addition to expressing his belief that a failure to provide for rescission during any extension would be entirely impermissible, stated that, "it is going to be very hard as a practical matter for anyone to argue in the future that rescission is not available to the States, although. Congress has in effect exercised the same right." Though on policy grounds he did not favor such action. Laurence Tribe, Professor of Law at Harvard, indicated his belief that Congress could provide a statutory right of rescission and concluded in his testimony that:

"Congress should, after the passage of an extended period, be willing to treat as effective a State's attempted retraction of its own prior ratification, as well as a State's attempted retraction of its own prior rejection; the quid pro quo for Congress' power to alter the time for ratification in such cases should arguably be Congress' duty, absent extraordinary circumstances, to treat as stale any State vote (pro or con) that has many years later been unambiguously reversed. In this way, a State would be assured that its vote on an amendment could not bind the State's people into the indefinite future * * *.

"I say this with hesitation, as someone who has supported the equal rights amendment. I don't relish the prospect of a reverse bandwagon of rescissions, but the question here is one of constitutional procedures and I am obliged to testify accurately on that question whether it cuts in favor of my substantive views or against them. It seems to me it is at least bizarre to construe the Constitution in such a way that the power of Congress to extend, which it seems to me is simply a corollary of the inability of Congress to bind its successors, somehow cuts for and not against ratification of the amendment. It seems to me it does cut both ways."

Erwin Griswold, former Dean of Harvard Law School and Solicitor General of the United States, testified that he found, "no real basis for . . . saying that once a State has ratified, no matter how long a time has passed, it cannot rescind although once it has rejected, it can always ratify thereafter." These statements are representative, but not exhaustive, of the testimony of four out of seven constitutional scholars appearing before the subcommittee in November. Their

thrust, as is readily apparent, is that Congress can, if it chooses, constitutionally provide a statutory right of rescission.

Rescission is not an issue distinct and separate from the extension resolution which we are now considering. It is not a question which would best be deferred to some later Congress. It is, I contend, our responsibility to the States and to the American public to establish guidelines in this area as we act on the pending resolution. I urge my colleagues on both sides of the aisle to carefully consider my amendment and to support it as an attempt at compromise and fundamental fairness. TOM RAILSBACK.●

ADDRESS BY SENATOR CRANSTON BEFORE VFW JOINT OPENING SESSION

● Mr. STAFFORD. Mr. President, Senator CRANSTON, chairman of the Veterans' Affairs Committee, recently addressed the joint opening session of the Veterans of Foreign Wars convention in Dallas. He discussed what we on the committee have done this year for America's veterans and how our legislative activities have corresponded to the priorities of the VFW.

The Senate Committee on Veterans' Affairs under the able leadership of, our friend and colleague, Senator CRANSTON, has accomplished a great deal this year, and I would like to share Senator CRANSTON's speech at the VFW convention with my colleagues. I wish to submit it for the RECORD.

The address follows:

SPEECH BY SENATOR ALAN CRANSTON

I'm delighted to speak to you today. I wish you the very best for a successful 79th VFW convention. I know a great deal of time and energy has gone into making this a convention you'll be proud of and remember for years to come.

The VFW is widely respected in Congress not only as the oldest of the veterans' organizations, but because it is one with real grass roots strength. When we in Congress talk to your fine Washington representatives, Cooper Holt, Don Schwab, Tip Marlow and others, we know they are backed up by the 2 million, 4 hundred thousand members of the VFW and its Ladies Auxiliary. Everywhere one goes in this great country of ours—from Maine to Hawaii and from Alaska to Florida—there are VFW Posts, with many in my home state of California.

The lines of communication go from these local Posts directly to your staff back in Washington; and I keep an open door to them because I value your thoughts and the great contributions you have made.

You have been striving since 1913 to insure that America's veterans and their survivors receive fair and equitable compensation and pension, education and housing benefits, and effective employment assistance, and good health care, and to ensure that those who administer those benefits do so competently and compassionately.

Those are my goals too, and I'm honored to work together with you on behalf of our Nation's veterans and their survivors. And I draw new energy from you for the many tasks and challenges that lie ahead.

You served in our country's Armed Forces—as did I—with the conviction that you did so in the cause of freedom. All who fought honorably since the beginning of this Nation have helped preserve our 200-year-old inheritance of freedom, individuality, equality, and strength. How grand it is to live in a country where men and women are willing to do battle to secure our right to live in freedom.

But you and I and all of us face an increasingly difficult task in trying to help this country's veterans obtain and keep the benefits they have earned and so richly deserve.

The Veterans' Administration will be fifty years old in just two years. Sounded in 1930 primarily to care for World War One veterans and their dependents, now forty-eight years and three wars later, it has assumed gigantic proportions as the largest independent agency in the Federal government.

There are now more than 30 million veterans in America, and the V.A. has a quarter of a million employees to serve them, their dependents, and their survivors.

However, as the V.A. has grown larger over the years, it has—of necessity—also become more cumbersome and it is saddled now with the same problems as any large bureaucracy. It runs the largest hospital system in the nation, the largest program of educational assistance, the largest housing loan guaranty program, and two of the country's biggest cash payment programs, as well as a vast life insurance program.

You and I know how important it is that our veterans and their dependents get competent, knowledgeable, sympathetic, and courteous service from the V.A. That is the only way to fulfill our nation's obligations to those who have served it in time of need.

The V.A. is trying. I believe it is trying even harder with Max Cleland in charge. He is dynamic, compassionate, and dedicated; but it takes time for the strong feelings of commitment of a leader to filter down in a sytem as vast as the V.A.

And that is one reason why your services to veterans are so valuable. You help narrow the gap between those who provide and those who need to receive the special assistance mandated by law for veterans.

Your service officers help veterans to plead their cases, and you let us in Congress know about inequities you see in veterans' laws, and failings you uncover in the V.A.'s implementation of those laws.

Let me discuss with you where our Committee and I stand on your legislative goals for 1978.

In presenting to the Veterans' Affairs Committee your legislative recommendations last March, Dr. John Wasylik, your National Commander in Chief, said: "our veterans and their survivors are very special, for because of them, and only because of them, we have a free nation where we, you and I, may live with dignity and honor in freedom, and progress in accordance with our individual abilities and motivation."

I could not agree with John more. Our veterans and their survivors are very special—to all of us. It was in that spirit that the Senate Committee on Veterans' Affairs listened—very closely—to your priorities.

One of your first priorities is for the V.A. to remain a durable, independent agency and for its health care system to keep its separate status—despite the recommendation to the contrary made by the National Academy of Sciences in its report on "Health Care for American Veterans" in June of 1977.

I totally agree with you.

The V.A. medical system must remain independent.

And it will!

I hold that belief as strongly today.

The N.A.S. study generated much controversy, but it was the most comprehensive review ever undertaken of the V.A. health-care program; one that needed to be conducted; and one that it is helping us chart the future for a stronger V.A. hospital and medical care system.

You know and I know that there are problems and deficiencies in V.A. health care. If this report brings about improvement and better medical care for our veterans, then the report was well worthwhile, despite the controversy.

And it seems that improvements are already underway.

Dr. John Chase, who just retired as the V.A.'s Chief Medical Director, said about the N.A.S. report: "this indepth evaluation, and the publicity it generated, together with the department's intensive self-examination in response, set forces in motion that unquestionably will shape a constructive blueprint for V.A. health care delivery for many years to come."

I say to you today that we must never allow the quality of care for our veterans to decline. We must constantly strive to make that care truly second to none.

Together we can—we must—help the V.A. find innovative ways to strengthen the system and to continue meeting the needs of America's sick and disabled veterans.

A second of your recommendations to the Congress was for an increase in the V.A. budget. Let me tell you what's happened so far.

The Senate and House Veterans' Affairs Committees recommended, and the Congress agreed, that $200 million should be added in the Congressional First Concurrent Budget Resolution—over and beyond the President's budget request for V.A. health-care services and programs. My House counterpart, Chairman Ray Roberts of Texas, did a tremendous job in taking the case to the floor of the House of Representatives—and I worked hard in the Senate—to increase the congressional budget to provide necessary staffing and construction, and in order to maintain the V.A.'s medical research program.

There were other areas in the V.A. that also needed additional funding, and, when the dust had finally settled, with your help we had increased the total congressional budget for the V.A. by over $2 billion.

We succeeded in making sure there was room to make great improvements in the compensation program, to provide a new, more fair and equitable pension program, and to make several other major gains in V.A. benefits—especially health care.

We are now working together to get these budgeted funds appropriated for the V.A.'s health-care system.

This is not an easy task, however. So far, the House has done great work.

And I believe that the Senate conferees on the appropriations bill will sympathetically consider the increases approved by the House. The Senate Subcommittee Chairman, Bill Proxmire, has promised me that.

With the V.F.W.'s strong and constant support, I feel very confident that the moneys appropriated for V.A. medical care, research, and construction in the new fiscal year will exceed the Administration's appropriations request by about $100 million—enough to maintain the system and make high-priority improvements.

Another V.F.W. priority is the upward adjustment of compensation and D.I.C. benefits to keep pace with inflation, and to insure general improvement in the V.A. service-connected benefit programs.

Our Committee will do all in its power to see to it that the rates of service-connected disability compensation and D.I.C. are adjusted to prevent those benefits from being eroded by inflation.

We recommended to the Senate, and on August 7 the Senate unanimously passed, legislation to provide a 7.3-percent increase in these rates.

The 7.3-percent raise was based on the amount of the Congressional Budget Office's projected 12-month jump in the Consumer Price Index from October, 1977, the date of the last rate increase.

The House-passed bill calls for a 6.5-percent increase.

But I think I can predict confidently that the Congress will provide the full 7.3-percent add-on. It will be effective Oct. 1.

You have recommended that there be a presumption of service-connection for death where a veteran had a permanent and total service-connected disability at the time he or she died.

I share the V.F.W.'s strong concern about the survivors of veterans who were totally disabled from a service-connected cause but whose deaths have not been found to be service-connected by the V.A.

I believe that my amendment, which the Committee and the Senate adopted, would deal with this problem in a fair, equitable, and compassionate fashion by providing survivors benefits based primarily on the length of time the veteran was totally disabled.

In this way, benefits would compensate for the impact of the injury or illness on the totally disabled veteran's ability to provide for his family after death.

The House passed a bill with some differences, but with the same basic goal: and I know we will reach agreement on a good, fair result.

Our bill also includes my proposal for an $800 increase, from $3,300 to $4,100, in the auto assistance allowance, and an increase of $700, from $800 to $1,500, in funeral and burial benefits paid in the case of a service-connected death.

You have stated—strongly—your support for a new restructured pension program.

We've worked closely with the V.F.W.; and the provisions of my bill, which passed the Senate unanimously on July 31, address some of your strongest concerns.

I believe that passage in both Houses of pension reform legislation should insure a successful culmination to our five-year effort to correct the inequities and inadequacies in the V.A.'s pension program.

But, even more importantly, this legislation will save needy veterans and survivors from having to turn to welfare by providing a new program with income standards that will assure that pensioners' incomes do not fall below the Department of Labor's poverty guidelines.

You strongly support—and the new program in this legislation would guarantee—comparable pension increases each time there is a cost-of-living increase in social security benefits. This will ensure that, under the new program, pensioners will not suffer any reduction in benefits when social security benefits are increased.

The Senate bill sets a minimum income standard of $3,240 a year for a single wartime veteran. This would mean a significant boost for all V.A. pensioners with incomes below the national minimum standard of need.

The amount of the increase would depend on several factors, including other family income and number of dependents.

Let me give you an example of how the Senate program would work.

A needy veteran with one dependent and no other income now receives a maximum pension of $2,544—far below the poverty level. Under the bill, developed by a unanimous Senate Veterans' Affairs Committee, and approved 85 to 0 by the Senate, he would get $4,284—a 68-percent increase.

In addition, our bill would exclude all unreimbursed medical expenses over $100—or five percent of the total income. This is one provision you stressed very strongly in your testimony on the bill.

I am very hopeful that when the conference meets in September, we will, with your help, be able to work out the differences between the House and Senate approaches in a way that will secure enactment of this vital legislation.

Another V.F.W. priority is an increase in the amount of the V.A. loan guarantee for conventional housing from $17,500 to $25,000.

I am in complete agreement with this aim. So is the Committee and so is the Senate, which unanimously adopted our legislation on August 7 to make this increase.

The bill would also increase the V.A. specially adapted housing award—the wheelchair home grant—from $25,000 to $30,000.

We should—and we must—do everything in our power to help veterans become homeowners, especially now as both the prices of homes and interest rates continue to skyrocket.

The bill we just passed would also provide for expansion and improvement of the V.A. mobile home program so that Vietnam and other veterans will have a better chance to take advantage of this less expensive form of housing.

You have stated in very strong terms your opposition to attempts by the Administration to eliminate or dilute veterans preference in federal employment.

The Administration's proposal would surely have an adverse effect on the employment of veterans, especially disabled and certain younger veterans whose unemployment rates continue to be too high.

We should not—and we will not—diminish the Federal government's commitment to help these veterans successfully make the transition from military to civilian life and to find jobs. I've discussed this with key members of the Committee handling this issue—the Senate Governmental Affairs Committee—and they agree. The Committee deleted from the Civil Service Reform bill any changes in veterans preference and instead directed that a Veterans' Affairs Committee and Governmental Affairs Committee task force look into this matter.

I'm on the task force and as far as I'm concerned, if anything comes out of it, it will be to strengthen—not weaken—certain aspects of veterans preference.

I have already conducted a thorough review of the existing and proposed Civil Service law and I've found a number of areas in which the enforcement of preference rights needs to be strengthened.

After much discussion of those provisions with the Administration and with the Senate Governmental Affairs Committee, I am preparing an amendment to strengthen existing preference laws for disabled veterans and to eliminate from the proposed law those provisions that would weaken enforcement of preference rights.

I believe that these improvements stand an excellent change of enactment and that we'll wind up with a better, stronger system of veterans preference laws than we had when we started.

The V.F.W. has also called for establishment of salary levels which would be more attractive to V.A. health-care personnel. I have long shared this concern.

My bill—now law—providing for a one-year extension of the special-pay program was only a temporary solution to the V.A.'s needs for a permanent program to enhance its ability to recruit and retain qualified health-care professionals.

I have strongly urged the Office of Management and Budget to submit a legislative proposal to achieve pay comparability for physicians and dentists in all Federal agencies and to eliminate existing inequities.

As Chairman of the Veterans' Affairs Committee, I will be deeply involved in consideration of whatever Administration proposal is finally submitted. I will do all I can to ensure that the legislation finally enacted provides an equitable solution to the problem.

There is still a great deal we have to do before this Congress adjourns later this year. We have five major pieces of veterans' legislation now back before the House which have to be resolved in the coming weeks.

But I'm confident that—with your assistance and support—we'll continue to help the V.A. system provide better and better benefits, services, and health care for all of America's veterans.

This is a top priority with me. We must make the V.A. truly responsive. I know this is our common goal.

I pledge to you my continued strong efforts. Together we will continue to fight on, and together we will prevail.

I know you will do much to achieve these ends.

I thank you.●

CENTRALIZE MANAGEMENT OF NUCLEAR WASTE IN SINGLE AGENCY

● Mr. MATHIAS. Mr. President, the Committee on Radioactive Waste Management of the National Academy of Sciences (NAS)' National Research Council, recently issued an excellent report on "Solidification of High-Level Radioactive Wastes." The Committee was chaired by the distinguished director of the Pennsylvania State University Materials Research Laboratory, Dr. Rustrum Roy. I met Dr. Roy last year when he testified before the Energy and Nuclear Proliferation Subcommittee of the Committee on Governmental Affairs on the radioactive waste problem.

The NAS Committee's report contains many valuable suggestions in the area of waste solidification which I commend to my colleagues. But I want to highlight one of its key rcommendations that goes to the heart of the radioactive waste issue. The Committee recommended that the responsibility and authority for all radioactive waste management efforts of the Government be centralized in a single agency. As many of my colleagues know, that concept has been the core of my bill, S. 63, which was introduced nearly 2 years ago. Subsequent versions of that measure, such as my bill S. 2189, have retained this central feature.

If the increasing number cf hearings on this issue in the House and in the Senate is a reasonable indicator of the interest, it seems to me that the mood of the Congress is moving in the direction of tackling the nuclear waste issue head on in the next session. I intend to provide the legislative vehicle for that early in 1979. In the meantime, since the problem will not go away until the Congress deals decisively with it, I hope my colleagues will look carefully at the NAS recommendation concerning how the Government should manage its efforts in this area.

I ask that the text of an excerpt from Nucleonics Week of August 31, 1978, summarizing the NAS recommendations on this subject be printed in the RECORD.

The material follows:

[From Nucleonics Week, Aug. 31, 1978]

CENTRALIZE ALL WASTE MANAGEMENT IN ONE AGENCY, SCIENTISTS' PANEL URGES

Responsibility and authority for all radioactive waste management, including solidification r&d, should be centralized. Basic and applied research would then be most directly translated into engineering and production. In addition, a single agency could conduct international negotiations on behalf of the

U.S. in waste handling, reprocessing, solidification, etc. This is one of the recommendations of the National Academy of Sciences/National Research Council's panel on waste solidification, Committee on Radioactive Waste Management, expressed in the panel's report "Solidification of High-Level Radioactive Wastes." The report is being released in sections.

The panel also recommends that a comprehensive and stable research, development and demonstration program of limited duration be established for second-generation waste management technology. The panel estimates that an annual total of $150-million (including $15-million for basic research) over a period of about 10 years would be required to run the program.

In an allusion to the need to bring in scientists who have not hitherto associated themselves with the nuclear waste issue, the panel recommends that all future research programs should be designed to draw continuously on the personnel, experience and research capabilities "not only of the government-owned, company-operated facilities or the national laboratories, but also of the nation's industries, universities, and non-profit laboratories."

U.S. authorities responsible for managing radwaste should take the lead in organizing coordinated international research programs and information-sharing mechanisms to avoid needless duplication of effort "and to hasten a convergence of the various technologies and criteria for waste disposal," the panel recommends. Because U.S. programs on storage and disposal of spent nuclear fuel are all new, international meetings and perhaps joint development programs should be used to mobilize the best available talent.

On management issues, the panel—chaired by Rustum Roy, director of the Pennsylvania State University Materials Research Laboratory—states that the technology for solidification and disposal of high level wastes has not kept pace with nuclear reactor technology. The cause is not technical difficulty but the low priorities assigned to the problem. "Nevertheless, the panel finds that the development of waste solidification technology, in general, is adequate to proceed with DOE's plans for first-generation demonstration and implementation, namely the Wipp [Waste Isolation Pilot Project near Carlsbad, N.M.] project and a pilot plant for geological disposal of commercial wastes," the panel says. A comprehensive and coordinated plan for waste solidification r&d has been lacking, it continues, and although particular areas of technology have received attention and funding there has not been a balanced r&d program designed to develop the capabilities and understand the requirements of a broad range of solid waste form candidates. "Research and development have been concentrated far too heavily on glass, which may in many systems be much less desirable than other solid waste forms. In the recent past, because of limited funds and the need to demonstrate any feasible solution quickly there has been a tendency to neglect alternatives while pushing glass technology to engineering and pilot plant stages. Steady support for research and development of alternative, second-generation technologies has therefore been neglected," the panel says.

"Relatively little research and development would be required to provide the options needed to assure that optimized or second-generation methods for solidifying various types of high-level liquid radioactive wastes are available. Stable support over a relatively short period of a decade would suffice. Technically optimum methods could probably be selected for DOE wastes in a shorter time, perhaps five years," the panel states. There is time to do more r&d, the panel finds, because of the current U.S. policy of deferring reprocessing. Defense wastes, which are relatively low in radioactivity and thermal power density, can best be solidified by low-temperature processes such as those used to produce cement-matrix and some ceramic forms, the panel says. For solidification of fresh commercial wastes that are high in specific activity and thermal power density the panel recommends that, in addition to glass, "the use of fully crystaline ceramics and metal-matrix forms be actively considered."

The panel says that preliminary analysis of the characteristics of spent fuel pins indicates they may be eligible for consideration as a waste form but the pins must be understood in detail and a packaging system developed before they can be so considered.

In discussing the limitations of glass, the panel notes that of all primary solid waste forms "ceramics are the most thermally stable and the most resistant to leaching and radiation damage. Furthermore, some ceramic forms are capable of greater waste loading per unit volume than any other form except calcine." The major disadvantage of ceramics derives from the relative complexity of some of the high temperature processing methods required to create them, the panel notes.

The panel expresses puzzlement as to why glass "has come to be regarded, worldwide, as the form of choice for solidifying high level liquid wastes, since glass has a number of disadvantages. The choice appears to result from the assumption that the single criterion of solid waste performance is low leachability. While some high-silica glasses have very low solution rates according to conventional tests, glass is definitely not the best form in this respect. Its metastable nature invites physical and chemical changes by phase separation, devitrification, and hydrothermal decomposition. In terms of processing, glass is probably the least desirable of solid waste forms," the panel states. This challenge to waste vitrification is refuted by those engaged in the program (NW, 24 Aug, 2).

The panel notes that research on interactions between waste and the host rock of the repository has only just been funded so that direct data are not yet available. But as a generality, it continues, it can be said that under conditions expected near the waste canisters within a geological repository—temperatures of 200–800 C, pressures of 1–300 bars, and the presence of water (from cavities, hydrated minerals, etc.)—"extensive interaction and alteration of the original wastes is certain." The panel says that such interactions "will affect glass more than any of the crystalline forms. Salt will be more reactive (because of the differences in free energies) with oxide wastes than will granite or shale."—ROGER SMITH.●

INVESTIGATION INTO FRAUD IN THE GENERAL SERVICES ADMINISTRATION

● Mr. RIBICOFF. Mr. President, the Governmental Affairs Subcommittee on Federal Spending Practices today received from the General Accounting Office a shocking report called "Federal Agencies Can, and Should, Do More To Combat Fraud In Government Programs." The report says, "Federal economic assistance programs amounting to about $250 billion annually are susceptible to fraud and related white collar crimes. No one knows the extent of fraud against the government, but Department of Justice officials believe it ranges from 1 to 10 percent of the expenditures." The report goes on to state, "Federal agencies have not been doing enough to identify fraud in their programs. and the Department of Justice has been slow in assisting federal agencies' antifraud efforts."

I long ago discussed with the subcommittee chairman, LAWTON CHILES, expanding the present investigation of fraud within the General Services Administration to other agencies, and he has done so. This GAO report was a subject of his hearing this morning.

I want to commend Senator CHILES for his thorough, careful, and responsible investigation and oversight. The committee and the Senate are grateful to him.

I have repeated to Senator CHILES today my suggestion to provide him with whatever support he may need to properly discharge his oversight responsibility of Federal agencies' spending practices. The subcommittee plans further hearings as soon as the study is fully reviewed.●

FAIR EMPLOYMENT RESOLUTION, SENATE RESOLUTION 431

● Mrs. HUMPHREY. Mr. President, I urge my colleagues to support Senate Resolution 431, the Lee Metcalf fair employment relations resolution. Passage of this resolution will be a confirmation of our commitment to equal employment opportunity. It will elevate the Congress to a position of leadership in the struggle to end job discrimination.

Senate Resolution 431 is simple and straightforward. It establishes a procedure for the resolution of discrimination complaints. It justly and evenhandedly protects the civil rights of Senate employees and job applicants while at the same time maintaining the rights of Senators to hire staff based upon legitimate, job-related criteria.

Senate Resolution 431 would be an excellent companion to Senate Resolution 110, which Congress passed last year and which contained provisions that prohibit discrimination based upon an individual's race, color, religion, sex, national origin, age, or state of physical handicap. It would insure that Senate Resolution 110 is an effective barrier to employment discrimination.

The need for Senate Resolution 431 is clear. To eliminate charges of job discrimination in the Senate, we must establish a complaint procedure that is coupled with the monitoring of hiring and recruitment. It is imperative that we continue to move toward rectifying some of the problems inherent in Senate employment and to equalize salary levels.

In recent testimony before the Governmental Affairs Committee, it was indicated that in 1977 there was a $10,000 median salary differential between female employees and male employees of the Senate. The median salary of women employees of Senators was only 58 per-

cent of that of men. The salary differential at professional levels was just under $6,000. Of the approximately 1,100 professional employees of the Senate, less than 30 are black.

Over 15 years have passed since the Congress accepted legislation guaranteeing fully the civil and constitutional rights of American citizens. During this time, the private sector and Federal Civil Service have done much to improve hiring practices and salary levels. Affirmative action programs are now the norm rather than the exception.

This Congress should take its rightful position of leadership in the area of equal employment opportunity by assuring that Senate employees are accorded the same rights as other American citizens.

The Senate should move now to set an example for the rest of this Nation by passing Senate Resolution 431.●

THE CAMP DAVID SUMMIT—AN HISTORIC STEP TOWARD MIDDLE EAST PEACE

● Mrs. HUMPHREY. Mr. President, on Sunday evening, President Carter, Prime Minister Begin, and President Sadat announced to the world that an extraordinary agreement had been concluded between the Government of Israel and the Government of Egypt. In a dramatic and unprecedented display of statesmanship, Prime Minister Begin and President Sadat signed their names to documents which may well put an end to the history of repeated conflicts in the Middle East.

For almost 2 weeks, the leaders of three great nations undertook continuous and intensive negotiations to lay the foundations for lasting peace in this wartorn land. The agreements reached at Camp David, "A Framework for Peace in the Middle East" and "A Framework for the Conclusion of a Peace Treaty Between Egypt and Israel" address virtually every outstanding issue, with the exception of one or two, that has divided the two nations since the establishment of the State of Israel.

Under the provisions of the first accord, Israel has agreed to the withdrawal of military forces in the West Bank and Gaza Strip to specified locations and a halt to new settlements, in exchange for a guarantee of the security of the area by United Nations forces and negotiations with representatives of Palestine and Jordan to determine the areas' final status.

Under the second accord, covering bilateral relations between Israel and Egypt, Israel has agreed to a phased withdrawal from Sinai and the return of airfields to Egyptian civilian control, in exchange for security arrangements in Sinai and a normalization of relations between the two nations.

The leaders of the three nations deserve our most profound respect and admiration. And we should be especially proud of our President. The stakes were high, the risks of failure great. There is still much work that lies ahead, and many complex negotiations remain to be concluded. But the image of the public embrace of Mr. Begin and Mr. Sadat has been indelibly etched on the public consciousness, offering new hope for the successful outcome of these negotiations.

After weeks of guarded optimism about the outcome of the Camp David Summit, we now stand on the threshold of a new era of peace in the Middle East. The leaders of the three nations are to be commended for their dedication in the face of despair, for their perseverance in the face of pessimism. It is with fervent hope and prayer that our leaders have begun, at last, the long and difficult task of turning swords into ploughshares.●

RURAL TRANSPORTATION: KEY TO OUR EXPORT MARKETS

● Mrs. HUMPHREY. Mr. President, it has become increasingly clear to me in recent months that our rural transportation system, especially our railroads, is of vital importance in maintaining and expanding our agricultural export markets.

The levels of agricultural production continue to increase, and our producers have become increasingly dependen on export markets. Our grain exports recently have been running at a level of more than 90 million bushels a week, a level even greater than that during the outburst of exports to the Soviet Union in 1973. Agricultural trade is expected to result in exports of about $26 billion this year with a net agricultural trade surplus of $12 to $13 billion. The United States needs this favorable agricultural sector. In 1977, this country had a $40.1 billion balance-of-trade deficit in the nonagricultural sector which was reduced to a deficit of $29.9 billion as a result of our agricultural export sales.

While these statistics are encouraging, it is quite clear that the transportation system is straining to keep up with demand. Last winter the coal strike and the severe weather caused serious breakdowns. As a result, this country was hard pressed to make scheduled grain shipments to the Soviet Union which later sent a team to this country to review the problems and see what could be done.

The loss of two export elevators last December in the gulf ports also served to reduce our export capacity. Although this situation has been improved in recent weeks, it is yet another indication of the vulnerability of the total transportation system.

Of immediate concern are the boxcar shortages which have been a common problem to our farmers. There are few people from the rural Midwest who have not seen grain piled high in the middle of Main Street because there were no boxcars to haul it. Now we are faced with a shortage of locomotives as well.

I am not an expert on transportation. I do not pretend to fully understand the Interstate Commerce Commission's ratemaking structure and regulatory regime. But, I do understand farmers and the economics of small farms, which both support and benefit from American agriculture. I understand their problems and concerns. And, I understand the importance of an efficient transportation system and export markets to them.

It is now clear that our current as well as potential trading partners also understand the importance of an efficient domestic transportation system to international trade. We have every indication that the Canadian grain producers are extremely concerned that the People's Republic of China has turned to the United States for wheat purchases, 2.5 million tons thus far, this year in part because Canada's transportation system has not been able to ship grain in a timely fashion. Reportedly, the Japanese also have increased their purchase of feed grains from the United States because of Canada's shipping problems. The United States has to take effective steps to insure the viability of our rural railroad system.

Senator Hubert Humphrey was long interested in the problems of rural transportation, and it was a result of his efforts that the Department of Agriculture was required to carry out a major study on rural transportation in the early 1970's. We are still struggling with the same issues today: How to establish a rural transportation system which effectively meets our national transportation requirements without at the same time overlooking the needs of our small towns and cities. We should not forget that the deterioration of our rail system makes us run the risk of sharply increasing the food bill of the American family.

Right now, in Minnesota, there are light density lines where you can no longer see the railroad ties; where boxcars have to be used instead of hoppers because the track can not handle the additional weight; where the maximum speed allowed is 10 miles per hour, and it takes a crew 2 days to move a train 75 to 100 miles. That is bad from a transportation standpoint. It is a human tragedy from the standpoint of the towns and people and businesses that rely on those lines as their primary economic link to the outside world.

Now we in the Grain Belt are faced with the same longrun problem the Northeast faced a few years ago. Four or five of our granger railroads are in severe financial trouble. Two have filed for bankruptcy, and I fear others may follow suit, especially as millions of dollars of low-interest Reconstruction Finance Corporation loans come due in the next few years, and have to be refinanced at four or five times the Government-subsidized interest rates of years ago.

To say that this situation causes farmers, elevator operators, and other rural shippers some concern, is a terrible understatement. In human terms, it means that the jobs and economic well-being of tens of thousands of rural people are in jeopardy.

Mr. President, if we wait much longer to start repairing our rural railroad system, we will run the risk of allowing the system to fall into total disrepair. We need a comprehensive plan of action to meet the immediate transportation needs

of rural communities and to anticipate future supply and demand conditions for transportation services in rural areas. In the short run, we must begin by replacing worn tracks, upgrading railbeds, and efficiently allocating boxcar space. But just as importantly, we need to study the effects of rail abandonment and the impact of changes in rates and regulations on the transportation needs of farmers and rural people. Put quite simply, we need to develop an understanding of the importance and relationship of transportation to rural development.

When President Johnson established the Department of Transportation, he did so in the hope that we could move toward an integrated transportation system which serves the needs of all the people. It is time to fulfill his vision.●

CRS COMPLETES STUDY ON THE EFFECT OF TAX INCENTIVES ON THE SOLAR ENERGY INDUSTRY

Mr. PERCY. Mr. President, on July 20, Senator HART and I requested the Congressional Research Service to study the impact on the solar energy industry of the congressional delay in approving the solar tax credits. That study was completed on August 31. I would like to insert it in the RECORD so my colleagues can see the results of this fine piece of work.

Senator HART and I asked CRS to answer these questions: What have been the effects on the consumer solar market of the congressional delay in approving solar tax credits? What have been the effects on the configuration of the solar energy industry of its recent decline in growth rate? To what degree is congressional delay responsible for these configurational effects?

Based on the limited information available, CRS made the following conclusion:

> The credits will make a substantial difference in the growth rate (of the solar energy industry), but that growth will probably be high compared to the present in any case. A major problem, however, is the very sluggish growth rate expected between 1977–1982, absent the incentive package. Thus, failure to expeditiously pass the credits could cause a difficult period for the industry. This, in turn, could result in the closing of additional small producers.

This conclusion supports the testimony we received from many solar manufacturers and distributors concerning the current state of the industry.

Much of the strength and vitality of the young solar energy industry comes from its many small, independent, and hungry businesses. But small operations have the hardest time weathering the lulls. Several have dropped out already. Congress must, therefore, approve the solar tax credits as soon as possible, and return the solar energy industry to its rapid growth rate.

On August 23, the Senate expressed its commitment to the solar and conservation tax credits by attaching them to H.R. 112, a small tax bill, on the Senate floor. It is now up to the House of Representatives to recognize the urgency of the situation, and take appropriate action. I urge all my colleagues on the other side of the Capitol to read over this CRS study. I urge them further to act quickly to go to conference and accept H.R. 112 with the tax credit amendment.

I ask unanimous consent that the Congressional Research Service's analysis of "The Impact of Tax Incentives on the Solar Energy Industry" be inserted in the RECORD at this point.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

THE IMPACT OF TAX INCENTIVES ON THE SOLAR ENERGY INDUSTRY—SUMMARY

As a consequence of the concern over the impact of delay in the passage of the solar incentive package in the National Energy Plan on the development of solar energy, Senators Hart and Percy asked CRS to look at the effect on consumer markets and on the solar industry.

The producers tend to be small and independent, although several large corporations such as Exxon, Grumman, and Honeywell are also in the field. Despite the relatively large number of producers, 44 percent yielded 90 percent of the output in 1977. This may be greater in 1978. Some 56 percent of the producers have a capacity of less than 10,000 square feet.

Output has increased steadily through the years with a dip in the second half of 1977. The upward march resumed in 1978. It appears, however, that the production upswing is the result of an inventory buildup rather than the resumption of increased sales. This contention is difficult to support since there is no sales or inventory data available. Considering, however, that the number of producers may have declined by as much as 13 percent, the point appears valid.

In any case, the potential market for solar is large, but hampered by economic or other problems. Despite this an estimated 3,400 houses will install unsubsidized solar space heating in 1978, with double that number putting-in hot water units. This is less than earlier projections, and appears to be below 1977.

The passage of the tax credit package has been estimated to result in 1.9 million solar installations in the 1977–85 period. Failure to pass the package is estimated to reduce the installations to about one-third of that number, with the slowest growth in the 1977–82 period. In 1977, installations are estimated at 15.5 thousand residences.

We can conclude from the above that the credits will make a substantial difference in the growth rate, but that growth will probably be high compared to the present in any case. A major problem, however, is the very sluggish growth expected between 1977–82, absent the incentive package. Thus, failure to expeditously pass the credits could cause a difficult period for the industry. This, in turn, could result in the closing of additional small producers.

Larger, better financed producers, are likely to stay in for the long pull, using the resources of their parent corporation, in some cases, to stay alive. Considering the potential size of the pot of gold at the end of the rainbow, the Exxon's, Honeywells', etc, will probably not be adverse to such action.

THE IMPACT OF TAX INCENTIVES ON THE SOLAR ENERGY INDUSTRY

INTRODUCTION

Since the Arab oil embargo of 1973, a significant number of bills have been introduced in Congress to promote solar businesses and encourage the residential application of solar energy through special financial incentives.[1] Today, in the 95th Congress, well over 50 "solar incentive" bills are pending. Bills providing tax credits for homeowners, investment tax credits for businesses, low interest loans to homeowners and manufacturers, and a range of other possible financial incentives have been proposed. Much debate has been generated concerning the proper type and level of economic incentives to encourage the use of solar energy. The President's National Energy Plan, however, has narrowed the debate by focusing on the homeowner as the major first market for solar energy devices and the refundable tax credit as the mechanism for promoting this market.[2]

The proposal, as modified by the House-Senate Conference Committee, now provides for a credit of 30 percent of the first $2,000 and 20 percent on the next $8,000 on qualifying equipment, for a maximum credit of $2,200. Under the conference formula the credit would be available for equipment installed between April 20, 1977, and December 31, 1985, in a principal residence, cooperative or condominium.

Both the Congress and the Administration have been strongly supportive of a residential solar tax credit as a measure to accelerate the pace at which solar energy can contribute to our energy demand. These measures, however, have been stalled as a consequence of the discussion over the more controversial portions of the Energy Plan (crude oil equalization tax, oil and gas user tax, gas guzzler tax, etc.). If the deadlock cannot be broken, the solar and other noncontroversial provisions of the plan will die along with the controversial items when Congress adjourns.

As a result, some solar proponents have suggested separating the incentive package from the Energy Plan. This effort has been spurred by the concern that the solar industry is being hurt by buyer indecision occasioned by anticipation of the incentives eventually becoming law. In a letter to Dale Myers, DOE Undersecretary, Sheldon Butt, President of the Solar Energy Industries Association, stated the association's belief that "continued indecision concerning solar tax credits, extending into [1979] will inevitably result in the failure of literally hundreds of small solar businesses."[3]

This concern prompted Senators Hart and Percy to request CRS to investigate two particular areas:

1. What have been the effects on the consumer solar market of the Congressional delay in approving the solar tax credits
2. What have been the effects on the configuration of the solar energy industry of the recent decline in growth rate? To what degree is congressional delay responsible for these configurational effects?

This report is an effort to sift through the rather sparse data, and conflicting claims in an effort to answer those questions.

THE INDUSTRY AND ITS PROBLEMS

The solar industry is currently a highly fragmented group of relatively small producers, most of whom are independent. A few large, well-diversified corporations, such as Grumman, Honeywell, and Exxon, have entered the field through subsidiaries.

The products of the industry are generally classified into low (60–90° F) and medium (140–250° F) temperature collectors. The low temperature units, primarily for heating swimming pools, comprise some 74% of production. The medium-temperature units are most commonly used for residential space heating and not water systems, and we will deal largely with them. These medium temperature units can be further classified as follows:

1. medium-temperature flat collectors, composed of a metal collector plate under glazing in a rigid frame, and generally capable of operating temperatures of 140–180 deg. F;
2. high performance medium temperature flat plate collectors, with heat traps, selective

Footnotes at end of article.

coatings or other features allowing temperatures up to 250 deg. F)capable of use for absorption cooling systems); and

3. "special: collector designs, including evacuated-tube and concentrating collectors that further reduce heat loss in operation and improve high-temperature operating performance.

A survey of collector manufacturers indicated there were 186 medium temperature producers during the Jan.–June 1977 period.[4] Of these, 16% were new producers, and 12% stopped production. The bulk (56%) of the producers had a capacity of less than 10,000 square feet, with an additional 34% in the 10,001 to 50,000 sq. ft. range, and the remaining 10% with capacity greater than 50,000. Actual production, however, was concentrated among the larger producers. Ninety percent of the Jan.-June 1977 output was derived from those producers capable of over 10,000 sq. ft. annually.

According to a recent survey prepared by Muller and Company for the Solar Energy Research and Education foundation, the number of domestic manufacturers or importers of solar collectors is presently 162, representing a thirteen percent decline from 1977.[5]

Production of medium temperature and special collectors (MTC) rose steadily until the 2nd half of 1977. At that time, output declined by more than 13%, compared with the previous 6 months. Production turned around, however, in the first half of 1978 by twenty-seven percent compared with the second half of 1977, and by nearly ten percent over the first half of 1977. Data prepared by DOE, however, indicates a somewhat more modest decline in 1977 and a more dramatic increase in 1978. Both sets of data are presented in Table 1. Thus, the picture indicated by these production statistics is that the solar energy industry is one which has continuously expanded with the exception of the second half of 1977. Based solely on production figures, and even on numbers of firms, it would not appear that this is an industry which is in need of Federal assistance.

There are, however, two problems with this initial conclusion. First, although production figures are up, the industry is claiming that sales have fallen off sharply, primarily as a result of inaction on the Federal solar tax credit legislation. The Muller and Company report concluded: "it would appear . . . that a rather large inventory buildup of solar collectors has occurred at the distributor and dealer levels."[6] There are, however, no reasonably reliable statistics on sales or inventories to support this impression.

TABLE 1.—*Solar collector manufacturing Activity, 1975–78*[1]

Year and period	Medium temperature and special collectors (thousand square feet)	
	Muller	DOE
Total 1975	—	717
January–June, 1976	704	704
July–December, 1976	1,220	1,220
January–June, 1977	1,885	1,885
July–December, 1977	1,633	1,832
January–June, 1978 (estimated)	2,069	2,319

[1] Sources: DOE Survey of Solar Panel Collector Production (1977 2nd half and 1978 unpublished) and Muller and Co. report referenced in footnote 5 of the text.

Further, while production of solar collectors has been maintained at a high level, that level is significantly below industry expectation. These expectations are indicated by the fact the producers expanded productive capacity of MTC to approximately 4 million square feet per 6 month period.

Footnotes at end of article.

PROBLEMS AND BARRIERS

The difficulties facing the solar industry can be characterized as economic, institutional, legal, technological, and environmental.[7] The environmental and technological barriers are not believed to be substantial. The legal problems revolve around access to the sun, land use restrictions and zoning ordinances. Institutional barriers, on the other hand, involve uncertainty in regard to the impact of solar units on housing resale values and the consequent reluctance of lenders to grant mortgages. In addition, the institutional problems include building codes and standards, as well as the relationship with electric and gas utilities.

Of considerable importance in this regard is the current involvement of State utility rate structure reform and marginal cost pricing. Currently most electric and gas utility companies price their services on a fully distributed average cost basis. This average cost is below marginal (or replacement) cost, and thus understates the value of the utility service to the customer. The current movement of State commissions toward marginal cost based rate structures is designed to make rates more accurately reflect the costs of providing service. As utility rates move closer to marginal cost, solar energy is likely to become a cost-effective alternative to conventionally fueled systems. A complication here, however, is the price at which utility companies provide service for the back-up or auxiliary systems which are usually required by a solar installation. Care must be taken to ensure that the price of this service reflects the actual costs imposed upon the supplying utility. Solar installations which reduce the energy requirements placed upon the supplying utility system but do not reduce the demand requirements may have to pay prohibitively high utility rates to reflect the costs imposed upon the system. On the other hand, solar installations which reduce the demand requirements of a utility system should be rewarded with lower utility rates which reflect the benefit provided. Careful analysis of individual utility system characteristics is necessary to ensure that owners of solar installations are charged rates commensurate with the costs imposed upon the utility system.

The economic barriers are perceived to be the most critical in regard to solar commercialization. These include cost of equipment and competition with other fuels. In view of the importance of these problems, we will discuss them in greater detail in the next section.

SOLAR COSTS, COMPETITION, AND THE MARKET

If solar energy systems are to be employed on a wide-scale basis and replace a significant portion of current energy sources (oil, natural gas, coal and nuclear), they must prove to be a cost-effective source of useable energy. Widespread use of solar powered systems depends upon the cost of these systems in comparison with the cost of systems using conventional fuels. Solar space heating and cooling systems and solar domestic water heating systems are capital intensive, requiring a much larger capital investment than conventionally-fueled systems. Once the solar system is in place, however, it experiences low maintenance costs and except for the fuel used in the auxiliary system, has zero fuel costs. Because of its high initial capital investment, the cost competitiveness of solar systems vis-a-vis conventional systems is highly dependent on the cost of capital (interest rate) for the initial investment funds. In addition, since solar powered systems have zero fuel costs (except for the back-up system), the price of competitive fuels also has a substantial impact on the cost-effectiveness of this type of energy system. Government programs which affect these two cost components will have a substantial effect on the relative cost advantage (or disadvantage) of competitive energy systems.

Solar systems and the competition

The National Science Foundation performed a life-cycle cost analysis of solar space heating systems in a newly constructed, detached single family dwelling in comparison with conventional systems.[8] A solar system was determined to be "economical" when the costs associated with the solar system were found to be less than the costs of a conventionally fueled system (natural gas, fuel oil and electricity are considered to be conventional fuels). The study analyzed only solar collector systems; photovoltaic systems were not considered due to their high cost and relatively low level of technological development. Cost comparisons were based on 1975 solar costs, two reduction scenarios were postulated which presume solar system cost reductions derived from mass production techniques and from advanced collector design. The costs of conventional fuels are projected from 1975 costs with adjustments for inflation at a 5 percent annual rate. The cost comparisons mentioned above were based on an 8 percent annual rate. The life expectancy of both solar and conventional systems was established at 20 years.

Cost comparisons were made for 20 cities throughout the U.S., based on local weather conditions and conventional fuel costs. In locations where solar heating was determined not to be cost effective, the price increase for conventional fuels necessary to bring about a competitive situation between the two types of systems was provided. These increases were computed for two cases. Case II represents cost reductions achieved through mass production of solar system flat plate collectors; Case III incorporates projected costs and solar system performance achievable with mass production of an advanced collector design.

The study is summarized by the statement that ". . . solar heating in 20 U.S. cities shows that there may be considerable potential for the tapping of this energy source by economically prudent home owners. However, the final assessment of economic feasibility is critically dependent on assumptions about the cost and availability of conventional sources of fuel. The true potential for solar energy will be known only when more certainty exists concerning the future of conventional energy."[9]

Of the 20 cities considered in the analysis under present cost conditions, (Case I), a solar fueled heating system was found to be cost competitive with an electric heating system only in New York City. Solar systems were not found to be cost effective in any of the cities studied when compared against fuel oil and gas heating systems.

Under Case II conditions, a solar system could be competitive with electric heating in 5 of the 20 cities with no real price increase in electricity, and in 9 of the cities with a 2 percent (or lower) real increase in electricity prices.

Case III solar heating is shown to be cost-effective with electricity in 13 of the 20 cities with no real price increase and in 17 cities with a 2 percent (or lower) real price increase. Of the 15 cities where a real average annual price increase for electricity would be necessary for a Case II solar system to be competitive, the lowest increase necessary would be in Los Angeles (0.2 percent) and the highest in Seattle (12.2 percent). The average price increase for all 15 cities is 4.17 percent.

For fuel oil, the real price increase ranges from 5.3 percent in Madison (Wisconsin), to 8.4 percent in Indianapolis (Indiana), with the average increase for the 8 cities where oil heating systems are generally available at 7.29 percent. Natural gas price increases required to improve the competitive

situation of solar systems range from 5.6 percent in New York City to 19.3 percent in Miami, Florida, with the average being 12.59 percent. It should be remembered that these are "real" price increases, i.e., they are in addition to the inflation rate.

Price indexes for retail prices of various fuels and utility services are reported on a monthly basis by the Bureau of Labor Statistics (BLS). The indexes reported are components of the Consumer Price Index which measures price changes for commodities and services purchased throughout the U.S. According to the BLS statistics, the average annual price increase for residential electric consumption (at 500 kwh/month) between January 1975 and January 1978 was 7.2 percent. The same figure for residential fuel oil was 9.1 percent, and for gas used in residential heating 19.6 percent. Comparing these figures with the total annual average figures for Case II solar systems mentioned above, only prices for national gas have risen fast enough over the last 3 years to make solar energy competitive with a conventionally fueled system.

From the above analysis it would appear that a combination of conventional fuel price increases and solar system cost reductions is necessary if solar energy is to become cost-effective. Along these lines, the Federal Government has several options with which to influence the competitiveness and thus the market acceptability of solar energy systems. First of all the Government may reduce the initial cost of investment in a solar system by providing tax incentives similar to those contained in the National Energy Act. Since solar systems are capital intensive and tend to be immune from inflation, any action which reduces the initial amount of capital investment would have a large impact on the cost-effectivenes of solar systems. Once the initial investment is made, the low maintenance cost and zero fuel cost of a solar system make the effects of inflation over the life of the system minimal.

The solar market

The claim that Congressional failure to approve residential solar tax credits has hurt the solar equipment industry by turning potential solar buyers into "waiters," necessarily assumes that a strong and growing market for solar products already exists in the absence of further subsidies. If this is the case, then an absolute end to expectations of a solar credit should restore the market regardless of whether or not such credits are approved. On the other hand, the claim that expectations of a tax credit have created a reasonable anticipation of expanded solar markets, on which the solar industry has acted by expanding production but without which sales have not increased, assume only that tax credits would lower solar installation costs sufficiently to induce current non-buyers into the market. In either case, any determination of the extent of the residential solar market depends crucially on the constraints imposed by the economic patterns of housing and the use of solar incentives and subsidies already in existence.

The Existing Housing Stock.—Although the size of the physically possible residential market for solar installations is large, the size of the current economically rational market is, at best problematic. Factors affecting the retrofit market include location of the existing housing stock, tenancy, structural compatibility, pay-back periods, turnover price differentials, and the prior need for installation of insulation and other energy conserving measures. Data from the Annual Housing Survey for 1976 indicate that there are about 81 million housing units, of which about 74 million are intended for year-round use and are occupied. A statistically insignificant number of these units are already solar equipped.

Based on use data from the HUD subsidized solar demonstration program, geographic availability of sun-time, regionally related fuel cost patterns, the most likely markets for solar equipment consist of single-family, owner-occupied units located in the Northeast and North Central regions, with compatible heating ductwork already in place. There were about 20 million such units in 1976. Approximately 14 million of the affected households had incomes sufficient ($10,000 or more) to be able to purchase solar equipment without considerable outside assistance. Such figures do not consider such physical factors as sun accessibility which could be blocked by trees or other buildings, suitable insulation which is necessary in a low energy technology, or economic factors such as financing availability, or individual pay-back periods.

The financial factors which must be considered include the costs of financing where savings cannot be tapped, the likelihood of the installer remaining in residence for the duration of the pay-back period, the possible impact on property taxes, and the possible price differential when the house is sold. Where water heating is concerned, costs are generally low and financing may not be a serious problem. For space heating, where costs commonly run to $10,000, financing becomes a virtual necessity. Under FHA's property improvement loan insurance program, a homeowner can get a 12 percent loan for a period of up to 15 years to cover solar costs. A $10,000 system could thus be financed with monthly payments of $120. Conventional loan programs (including second mortgages) do not generally have such generous terms. Even where 15 year financing is available, moreover, it is not necessarily reasonable. According to the U.S. Savings and Loan League the average life of a home mortgage is only about 10 years, and considerably shorter in areas of high mobility such as California. A homeowner anticipating remaining in residence for 5 years from the time of solar installation could amortize the $10,000 loan by paying $222 per month, but would probably not break even on operating savings.

There is, as yet, no evidence as to whether a solar retrofitted house will sell for sufficiently more than a similar conventional house to justify solar installation as an investment. If the evidence from builders of new housing is applicable, then water heating costs should prove recoverable on resale, but space heating costs only partially recoverable. As alternative fuel costs rise, and when system depreciation costs become clearer, this could change. Regardless of any change in market value, there is likely to be an increase in assessed value for tax purposes which could offset any realizable gain. In recognition of this problem, 27 states allow for at least partial exemption of solar installations from property tax assessments (table 2).

New Construction.—A realistic market may be coming into existence for new construction. Historically, housing has been a highly cyclical industry, reaching peak building rates of 2.4 million in 1972 and trough rate of 1.3 million in 1974, for example. Housing has always been highly dependent upon the supply of funds for mortgage credit and has traditionally constricted severely whenever interest rates have risen sharply. Such cyclicality implies undependable demand for the solar industry just as it always has for suppliers of other construction materials.

TABLE 2.—*States providing solar incentives*

State and Solar Incentives

Arizona: A state income tax credit until 1984; exemption from property tax.

Arkansas: Deduction of solar cost from gross income for state tax.

California: State income tax credit until 1981; for disaster stricken homes, an interest free loan to add solar equipment.

Colorado: Solar systems assessed at 5 percent of value for property taxes.

Connecticut: Sales, use-tax exemptions; authorizes zero assessment by local tax unit.

Georgia: Refund of sales, use taxes; authorizes exemption from property tax.

Hawaii: 10 percent state income tax credit; exemption from property tax increase.

Idaho: Cost deduction from taxable income for state.

Illinois: Reduced valuation of solar equipment for assessment

Indiana: Annual deduction from assessed valuation for solar costs (mobile homes included).

Iowa: Exemption of entire solar system from property tax assessment until 1986.

Kansas: A 25% deduction from state income tax, reimbursement on property tax, and five-year amortization of solar on business tax returns.

Maine: Five-year exemption from property tax; refund of sales, use tax; $400 subsidy for solar domestic hot water installation.

Maryland: Authorization of property tax credits by local units, assessment reduction.

Massachusetts: Authorization of liberal bank, credit union loans, real estate tax exemption, and corporate tax deduction for year of solar installation.

Michigan: Use tax exemption; authorization for property tax exemption; business tax break.

Minnesota: Exclusion of solar equipment from assessment.

Montana: State income tax credit for solar installation; property tax exemption.

Nevada: Allowance for reduction of assessed valuation of solar equipment.

New Hampshire: Property tax exemptions.

New Jersey: Property tax deductions.

New Mexico: State income tax credit of 25% of solar cost up to $1,000.

New York: Provision for property tax exemption.

North Carolina: Allowance for personal, corporate income tax credits; assessment break.

North Dakota: Provision for state income tax credit; five-year property tax exemption.

Oklahoma: Income tax credit for residence—25% up to 2,000.

Oregon: State income tax credit of 25% up to $1,000; allows liberal veteran's loans for solar installation; allows property tax reduction.

South Dakota: Allowance for residential owners annual deduction from assessed valuation; property tax credit for new or retrofit solar on residential or commercial.

Tennessee: Property tax exemption.

Texas: Exemption from sales tax; business tax credit.

Vermont: Personal property tax exemptions; personal, business tax credits.

Virginia: Allowance for personal property tax exemptions.

Washington: Property tax exemption.

In 1978, the supply of mortgage funds has been ample in most areas, and housing demand has remained strong. The reasons for this are twofold: first, the primary mortgage lending institutions have been allowed to offer new deposit certificates which have allowed them to compete effectively for new funds in spite of rising returns on alternatives. Specifically, savings and loan associations now offer 6-month certificates which yield to the depositor the 180-day Treasury bill rate plus a quarter point. In June 1978, under circumstances which would normally result in greatly reduced inflows, or even outflows of funds from the "S&Ls," an estimated $2.6 billion in new money (as opposed to shifting from other lower-yielding accounts) entered the lending institutions.

The second major reason for the new stability in housing construction and sales

has been very strong support from the major secondary market institutions, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and several major private investors in mortgages. These institutions buy mortgages from the primary lenders as investments thus replenishing the lenders' funds for further mortgage lending. If the ability to compete effectively for new deposits in periods of high interest rates and the support of secondary market operations continue to operate as well in the future as has been the case so far this year, a far greater degree of stability could characterize the housing industry in the future.

The basic economic limitations on solar collectors in new housing still exist, however, given current technology. In the first half of 1978, 986,000 housing units were started, of which 707,000 were single-family units. The Northwest and North Central regions accounted for about 290,000 or 30 percent of the total. Surveys taken by the Solar Energy Industries Association indicate that about 3,400 houses will have unsubsidized solar space heating equipment installed in 1978; approximately double that number will have solar water heating equipment.

It is considerably easier to sell new houses with solar installations than to sell equipment for retrofitting partly because it is cheaper to build solar in initially, but mainly because it is easier to finance. The added cost of solar water heating, for example, tends to range from $1,200 to $2,500, carries pay-back periods ranging from 3 to 7 years, and can be financed at first mortgage rates (currently around 9½ percent) over 30 years. The $10,000 space heating system loan could contribute $85 per month to mortgage costs, without requiring a separate loan.

An unsubsidized market for solar units, especially for hot water, is thus beginning to grow, with the encouragement given by states and localities, and in the absence of federal subsidies. Since stability in homebuilding is a necessary base for reliable solar demand in the future, timely cyclical support from the federally-backed secondary mortgage market might be considered indirect solar support.

Aside from the above, since the passage of the Solar Heating and Cooling Demonstration Act of 1974, the Department of Housing and Urban Development (HUD) has carried out several cycles of grants, covering hot water, air conditioning, and passive design, in both single-family and multiunit structures. Through fiscal year 1979, some 300 grants involving about 7,000 units have been made. The demonstration projects are located in 46 states, and were installed by 69 collector manufacturers. In addition, grants for hot water have been made to 11 states and are expected to provide about $400 for each of 10,000 installations. The bulk of HUD's projects have been located in New England and in the Rocky Mountain area.

In addition to the federal demonstration program, several states have some form of subsidy for solar installations aside from property tax arrangements. These range from income tax write-offs, through refunds of sales taxes, to a $400 subsidy for hot water installation (related to the HUD grants). The latter applies in Maine.

The provision of such incentives implies that the lawmakers perceive a social benefit in the expansion of solar energy use, but the consumer perceives the present prices of solar equipment as being "too high." Presumably he would be willing to purchase more such equipment if the prices of solar equipment being effectively lowered to consumers (with the price reduction being paid for by all taxpayers), producers of solar equipment argue that the Federal Government should also institute credits. It is difficult, however, to gauge just how responsive consumers would be to the magnitude of the reductions in solar equipment prices which would be created by the tax credits.

SOLAR ENERGY CREDITS

In view of the presumed social benefits to be derived from solar energy, the large potential market, the lack of competitiveness vis-a-vis other fuels, and the reluctance of the consumer to incur the substantial capital costs involved, the Congress has been considering a large number of measures designed to improve the situation. These follow four basic approaches: tax credits; loan guarantees; use on federal buildings; and intensive research, development, and commercialization programs.

Inasmuch as we are concerned, in this paper, with tax credits, the review of pending legislation that follows will likewise focus on such credits.

The 94th Congress [9]

Of the more than 50 solar energy bills introduced in the 94th Congress, 42 were incentive related. Of those 42 bills, 16 dealt with solar tax credits. Solar tax credits seem to be the most widely supported financial incentive considered by Congress, yet none of the 42 bills introduced passed. Three solar tax bills appeared, at the time, to have the best chance of passage. These were H.R. 2166, H.R. 6860, and H.R. 10612, and are summarized below.

H.R. 2166—This bill known as the "Tax Reduction Act of 1975" was passed by the House without any solar provisions. The Senate added an amendment to provide a tax credit for qualified solar equipment and insolation expenditures. The credit was for 40 percent of the first $1,000 of cost and 20 percent for the next $1,000 on residences and commercial buildings. It was added to the bill by Senator Domenici. In conference, the solar tax credit amendment was deleted.

H.R. 6860—The "Energy Conservation and Conversion Act" contained a provision similar to H.R. 2166. The credit would have been effective through 1980. In House floor debate, the Act was amended to increase the credit to 25 percent of the first $8,000 for a maximum credit of $2,000. The Act was further amended to include a 5-year amortization for certain equipment and to extend the credit period to 1981. See H.R. 10612 for the subsequent disposition of this bill.

H.R. 10612—The "Tax Reform Act of 1976" was passed by the Senate with solar tax provisions similar to H.R. 2166. The Senate version of H.R. 10612 differed radically from the version originally passed in the House. In conference, the Senate agreed to drop the solar provisions from the bill, if the provisions were added to H.R. 6860 and reported to the floor. This was done, but H.R. 6860 died because of adjournment.

The 95th Congress

There have been more than 280 solar bills introduced in the current Congress. These have included loan guarantees, solar energy development banks, solar energy trust funds, and federal building conversion. Approximately 30 different solar tax credit bills were proposed, not counting the solar tax credit amendments in the National Energy Act. No solar tax credit bills have been passed to date. The main interest of this Congress, in terms of energy, has been on the passage of the National Energy Act, thus, this section will deal primarily with action on that act.

National Energy Act—The differing Senate and House versions of the National Energy Act are currently being debated by a Conference Committee. The conferees have been unable to arrive at a consensus on all portions of the Act, but have agreed at least tentatively to the several parts of the Act that deal with solar incentives, including solar tax credits. The conferees chose the Senate formula for residential solar credits. Under this formula, a credit of 30 percent on the first $2,000 and 20 percent on the next $8,000 would be allowed with a maximum credit of $2,200. The credit would be effective from April 1977 to December 1985. Other provisions that have been agreed upon include loans for solar equipment, grants to institutions for solar installation and demonstration of solar units on federal buildings.

H.R. 11335 and H.R. 11205.—Several bills that provide for solar tax credits have been introduced recently, perhaps partly as a response to the delay on the National Energy Act. H.R. 11335 and H.R. 11205 are examples. Both have been referred to the Committee on Ways and Means. These two bills call for a 30% credit on the first $1500 and a 20% credit on the next $8500. Other bills have similar measures with minor changes in the credits provided. All are still in committee and have not been acted upon.

THE IMPACT OF SOLAR INCENTIVES

A baseline estimate

In this section an estimate is made of the number of solar homes likely to appear between now and 1985, in the absence of the residential solar tax credit or any other broad-based Federal market incentive. The purpose of the estimate is to provide a "baseline" for gauging the market impact of the solar tax credit now pending in the National Energy Act. The material in this section is based on market impact projections developed by Regional and Urban Planning Implementation, Inc. (RUPI), under contract to the Department of Housing and Urban Development (HUD).[10]

The projection is confined to solar domestic hot water applications in both existing and new homes and to combined space heating and hot water in new homes only. Retrofit space heating was excluded on the grounds that the structural problems of converting most homes to solar energy for space heating purposes, and the consequently higher first costs incurred, precludes sufficient retrofit activity to warrant market analysis. Similarly, solar space cooling would be eligible for the proposed tax credit, but with installed costs substantially higher than space heating, the technology still appears to be a good number of years away from mass marketability.

Any estimate of the future market impact of solar energy systems is subject to major uncertainties and limitations. Adding the tax credit as another variable to the equation can only further diminish the reliability of an already unreliable forecast. At this time, no analytical technique is available which eliminates the uncertainty associated with an unknown future. Therefore, the results of all market forecasts should be viewed with reservation and an awareness of their basic limitations. With respect to solar market forecasts, some of the more important limitations relate to: (1) uncertainty about future trends in fuel prices, conservation, building inventories and the social/economic setting for the solar energy market; (2) uncertainy about consumer acceptance of life cycle cost accounting techniques and various other relationships between solar and conventional energy costs; (3) problems in combining a large number of potentially important factors into manageable groups; and, in the case of the tax credit, (4) the effect of continued congressional delay.

In addition to the inherent difficulties of forecasting future demand for any new housing technology, the solar energy case is compounded by the lack of reliable data on the number of homes that have already been equipped with solar devices. The Energy Information Administration's (EIA) survey of solar collector manufacturing activity provides the only comprehensive and authoritative information available on the current size

Footnotes at end of article.

of the solar market, but it is in a form that cannot be translated into actual numbers of solar homes.

The EIA totals cannot be disaggregated by type of building sector (residential, commercial, government), foreign versus domestic sales, number of installations, housing type (single-family, multi-family), or type of solar application (domestic hot water, space heating, space cooling). This informational void precludes tying baseline projections for residential solar use to any documented starting point.

In the absence of definitive numbers, RUPI made a retrospective estimate of solar homes for 1975 up to 1978 and projections to 1985 (Table 3). The retrospective estimate is based on a sifting of expert opinion and the inventory of solar heated residences compiled by the Franklin Institute as part of its solar information dissemination contract with HUD. The rate of growth shown for the 1975–1977 period conforms with the proportional increases in the volume of solar collectors manufactured in those years as reported in the EIA surveys.

The point of departure for the solar tax incentive is the estimate that 48,000 single-family homes are likely to be equipped with solar energy systems as of December 1978. Of this total, approximately three-fourths are assumed to have been retrofitted to existing structures and one-fourth to have been new homes incorporating the solar features at the time that they were built. Solar water heater installations account for roughly 45,000 or about 95 percent of all solar homes estimated as being in place through 1978. RUPI projects a fairly modest increase in the estimated annual number of solar units installed between 1977 and 1982. However, beginning in 1983, the forecast level of market demand accelerates noticeably with the total number of solar systems installed rising by a factor of 3 between 1983 and 1985.

The visible upswing in the baseline estimates of solar use from 1983 through 1985 is expected to occur due to a more favorable conjunction between system price, fuel savings, and users' incomes assumed to have materialized by that point in time, combined with increased levels of awareness and the influence of the "bandwagon" effect once a substantial number of units are in place.

TABLE 3.—*Estimates of solar energy systems, single-family housing market, 1975–85, without the residential solar tax credit*[1]

Year	Number of units annually				Year	Number of units annually			
	Hot water only		Heat/water new housing	Total		Hot water only		Heat/water new housing	Total
	Retrofit	New housing				Retrofit	New housing		
1975	2,800	500	300	3,600	1981	27,200	15,300	3,300	45,800
1976	5,800	1,500	500	7,800	1982	35,600	20,900	4,400	60,900
1977	11,800	2,900	800	15,500	1983	54,000	28,000	5,800	87,700
1978	15,100	4,900	1,200	21,100	1984	100,800	36,600	7,500	144,900
1979	18,400	7,500	1,700	27,600	1985	199,000	47,100	9,700	255,800
1980	22,000	10,900	2,400	35,300					

[1] Source referenced in footnote 10 of text.

Needless to say, these forecasts are subject to a great deal of uncertainty: another oil embargo, an unanticipated reduction in solar system costs, or a Government decision to deregulate natural gas and oil could precipitate a surge in market demand well beyond the levels envisaged by RUPI. Conversely, failure to overcome known market barriers which are expected to fall with widescale implementation, or a rash of unfavorable publicity about performance could undermine the credibility of the nascent solar industry and retard the growth of its sales.

An estimate assuming passage of the credits

In this section an estimate is made of the number of solar homes likely to be installed between now and 1985, in the presence of a residential solar tax credit similar to the one now pending in the National Energy Act. This estimate is compared with the RUPI baseline estimate discussed above. The assumption can be made that the difference between these two figures is an estimate of the shortfall in solar installations and energy production that might be expected if Congress does not act on the credit.

The Administration indicated that the credit, along with the supporting solar incentive provisions of the Act, would result in the installation of 2.5 million solar homes by 1987. The Solar Energy Industries Association predicted that with the credit the cumulative total of solar homes through 1987 would exceed 7.5 million.[11] Less optimistic were the estimates of the Congressional Research Service at approximately 1 million installations, the Office of Technology Assessment at 1.3 million homes, and the Congressional Budget Office at approximately 773,000 homes.[12]

DOE conducted an analysis based on a modified version of the MITRE/METRIC Solar Heating and Cooling Market Penetration Model.[13] We will use this here. One incentive analyzed by DOE allows the home owner a tax credit of 30 percent on the first $1,500 of system cost, and 20 percent on the next $8,500 for a maximum credit of $2,150, effective for the period 1977–1985. This compares to the credit pending in the Energy Act which allows 30 percent on the first $2,000 and 20 percent on the next $8,000 for a maximum credit of $2,200, effective for the period 1977–1985. For the present study, the estimate of the number of solar homes likely to be installed between now and 1985 is based on the DOE analysis of the tax credit. The following is an explanation of the methodology used by DOE in its analysis, with the results expressed in cumulative solar installations and equivalent energy "produced" and "saved" for the period 1977–1985.

The model used in the DOE analysis disaggregates the U.S. into 16 climatic regions. Simulations were run for 7 of the 16 regions containing approximately 70 percent of the existing and the anticipated new buildings through 1985. The results were then scaled accordingly to derive comprehensive estimates. The nine building types contained in the model were aggregated into residential and commercial classifications. It was assumed that inflation would proceed at an annual rate of 5 percent, that fuel prices would increase at an annual rate of 7 percent, and that no incremental property taxes would be assessed on the solar energy system.

System costs varied by building type (residential, commercial), system type, and by region. The following average costs were used: residential water heating systems in 1977 cost $17.40 per square foot, plus a fixed cost of $397; residential combined water/space heating systems cost $29.31 per square foot plus a fixed cost which is region dependent; commercial water heating systems in 1977 cost $22.61 per square foot plus a fixed cost of $13,615; commercial water/space heating systems cost $27.64 per square foot plus a fixed cost that is region dependent. A moderate "learning curve" effect was incorporated into the analysis which gradually reduced system costs as total production increased.

DOE divided the total cost for a solar hot water and combined space-water heating system into two categories. This included those that will be subject to cost decreases due to experience, and those which will not decrease. System costs that are subject to experience include the collector and its hardware, control systems, and some design, installation and markup charges. Those costs not subject to experience include pumps, heat exchangers, plumbing material, auxiliary heating units, tanks, etc. The experience related costs represent approximately 25 percent of total system costs.

An 85 percent learning curve slope was assumed for the experience related costs. This means, for each doubling of the current cumulative production, the experience related costs are reduced by 15 percent. When these cost decreases are combined with the non-experience costs, an overall learnng curve with a 90 percent slope is derived. Thus, for every doubling of the current cumulative production, there should be a decrease in the total system cost of approximately 4 percent. The larger the total production under any scenario, the greater the learning curve effect.

For each housing region used in the DOE analysis an optimal solar system was determined for hot water only, and for combined water/space heating. This was done by employing a design program which uses a set of design charts to estimate the thermal performance of a solar system based on the collector characteristics, storage, energy demands, and regional climatic data. Using the result of the thermal analysis, an iterative procedure was used to select a collector area which minimized the cycle costs of the system. Like the RUPI baseline projection, DOE assumed there would be no market penetration of solar cooling systems through 1985, even with incentives. It was assumed that solar systems would be competitive only against electric water and space heating systems through 1985.

For each region in each year, life cycle cost ratios were computed. This is the ratio of the life cycle cost of the solar system to the life cycle cost of the conventional (electric) system. Separate ratios were computed for residential water heating systems, commercial water heating systems, and commercial water/space heating systems. The new construction market was considered separately from the retrofit construction market. For each system type, the potential new construction market was considered to be the number of new buildings constructed scaled by an adjustment factor. The retrofit construction market was treated as the existing number of electric systems, adjusted by a suitability factor.

Once the model produced estimates of the life cycle costs for conventional and

Footnotes at end of article.

solar installations, the two cost estimates were converted into market penetration estimates for solar energy using using a widely accepted logit model.[14] The price of conventional and solar were calculated on a life cycle basis, using a discount (interest) rate of 9 percent. Since the logit model has two parameters, two data points were needed to fit the curves. The first point was taken from the 1976 estimated 1.9 percent market penetration by solar—5,000 solar systems installed on a target housing population of 30,000, DOE's estimate of the number of residential and commercial structures built in 1976 that were (a) all electric; (b) oriented to the sun, plus the retrofit market target population, which were (a) all electric; (b) oriented to the sun; and (c) had more than 20 years useful life remaining. The second point on the curve was based upon an estimate that solar hot water heating will achieve 50 percent market penetration when it has a four-fold life cycle cost advantage over conventional systems. This is a conservative assumption on DOE's part, since a 50 percent market penetration might be expected when the two prices are approximately equal. DOE's choice of the much more conservative number reflects the uncertainly associated with future solar maintenance and operating costs.

A comparison of the DOE data against the RUPI numbers is shown in table 4.

TABLE 4.—*Solar installations with and without tax credits*

	Cumulative number of installations 1977–85 (thousand units)		
	No credit	Credit	Percent difference
Residential water heating	605	1,574	−160
Residential water/space heating	38	314	−726
Total	643	1,888	−194

From the above, it would appear that failure to institute the tax credits would result in a substantial drop in the number of residences having solar units installed in the 1977–85 period. As a consequence, the expansion of the industry would occur at a slower rate. With the credit, an annual average of 236 thousand residences are estimated to install solar collectors over the 1977–85 period, compared with an average of 80 thousand without the credit. In 1977, the estimated number of solar installations was 15,500.

FOOTNOTES

[1] A. U.S. Congress. House. Committee on Science and Technology. "Solar Energy Legislation Through the 94th Congress." December 1976. Washington [For sale by Supt. of Docs. Serial TTT] U.S. Govt. Print. Off., 1977, 1603 p.

B. Moore, J. G., "Solar Power", CRS, Library of Congress, Issue Brief 74059. Continuously updated.

[2] Executive Office of the President, "The National Energy Plan." April 29, 1977. Washington [For sale by Supt. of Docs.] U.S. Govt. Print. Off., 1977. 103 p.

[3] Solar Engineering Magazine." Solar Programs Slow: Legislation Needs Push." July 1978: p. 9.

[4] Energy Information Administration, "Solar Collection Manufacturing Activity and Applications in the Residential Sector, Jan. through June 1977", DOE, Feb. 1978, p. 6–7.

[5] Muller and Company, "Solar Thermal Collector Manufacturing Activity: July through December 1977; January through March 1978; April, May, June and July (estimated) 1978," (Prepared for the Solar Energy Research and Education Foundation under contract to the U.S. Department of Energy), July 26, 1978, p. 1.

[6] Referenced footnote 5, pp. 4–5.

[7] Task Force on Solar Energy Commercialization, "Solar Heating and Cooling of Buildings (SHACOB) Commercialization Report, Options and Strategies, Part A, Volume 1—Executive Summary," FEA, 1977, p. 10–18.

[8] National Science Foundation, "Solar Heating and Cooling: An Economic Assessment", Washington, D.C., 1976.

[9] Referenced in footnote 8, page VIII.

[9a] Information on the 94th Congress is from "Solar Energy Legislation through the 94th Congress," for U.S. House of Representatives, Committee on Science and Technology, 94th Congress, 2nd session, by Congressional Research Service, Dec. 1976.

[10] RUPI, Inc., "Final Report to the U.S. Department of Housing and Urban Development. Federal Incentives for Solar Homes: An Assessment of Program Options." HUD Contract H–2544. July 1977.

[11] Butt, Sheldon H. "The Solar Future—1978." Paper presented by S. Butt, President of the Solar Energy Industries Association at the Association's national meeting, Phoenix, Arizona, February 6, 1978.

[12] The goals of the National Energy Plan were analyzed for Congress by CRS, OTA, CBO, and the General Accounting Office (no solar analysis). The findings of these analyses were summarized by the Republican Policy Subcommittee and inserted in the Congressional Record of August 4, 1977, by Mr. Tower (S 13804–S 13805).

[13] Bezdek, Dr. Roger H. and Elliott Roseman. "Cost and Impacts of Financial Incentives For Solar Energy Systems." Internal document. No date. 5 p.

[14] Following a long line of researchers, DOE adopted the logit model developed by MacFadden and the first applied in the fuel choice literature by Joskow and Baughman.

SENATE AND HOUSE ACT TO DEAL WITH PROBLEM OF PARAQUAT-POISONED MARIHUANA

Mr. PERCY. Mr. President, on August 10, Senate and House conferees agreed to a compromise amendment concerning the spraying of marihuana with herbicides that are likely to cause serious harm to the health of potential users.

The compromise language tracks the sentiments of both the House and the Senate. It stresses the need to discontinue the use of herbicides on marihuana that pose serious health risks to potential users. Currently, paraquat, a highly toxic herbicide is being used in Mexico. According to the Department of HEW paraquat-sprayed marihuana may present a serious health risk to potential marihuana users.

Under the compromise, Mexico may choose to continue its eradication program, without any cutoff of U.S. funds, if it uses an effective warning agent in conjunction with paraquat, making the herbicide clearly and readily identifiable. Any substance used as a warning agent on paraquat-sprayed marihuana must effectively warn the marihuana user of the presence of the herbicide. The warning agent should be ineradicable, and it should be readily detectable to potential users of sprayed marihuana without resort to laboratory analysis or the use of costly, specialized equipment which is not commonly available to the average person.

The amendment further delineates the responsibilities of the Secretary of State to see that adequate testing is done on any future herbicides used in any marihuana-eradication programs involving the United States, and to report to the Congress the efforts he has taken to insure compliance with the legislation and to prevent the spraying of marihuana with herbicides that may be harmful to human health.

The State Department has begun an experimental program in Mexico to spray marihuana with a compound of paraquat mixed with a red dye—rhodamine-B.

Current reports indicate that once the sprayed marihuana is dried and crushed, the red dye cannot be seen except under a black light. Thus, rhodamine-B would not be an agent that will "clearly and readily" warn the potential marihuana user. I have also been informed by the State Department that the red dye may not be seen with the naked eye, but if you place the sprayed marihuana in water it will turn the water pink. While this would be an effective warning by turning water pink, it could mean that rhodamine-B is water soluble and could be washed off the contaminated marihuana by devious traffickers. It then could be peddled, undetected.

Due to these serious problems, many questions still need to be answered before we can say with any certainty that rhodamine-B would qualify under this amendment as an effective warning agent.

Funds authorized in this act are intended solely for use in the poppy-eradication program. Over time, the Government of Mexico has applied U.S. assistance aimed at poppy-eradication to its own program of marihuana eradication with paraquat. This amendment is not meant to interfere with Mexican internal affairs. We cannot force the Mexican Government to halt its paraquat-spraying program, even though that program constitutes a danger to a large segment of U.S. citizens—some 16.2 million regular users of marhuana, according to Government estimates.

However, the amendment serves to signal the serious concern of the Congress and the American people about the health risks of paraquat. We are asking—we are urging—the Mexican Government to halt the use of paraquat until a suitable, safe alternative is found. If the Mexican Government is unwilling to halt the use of paraquat, we are suggesting that Mexico accompany the use of paraquat with an effective agent which clearly and readily warns the potential user of the presence of herbicide. If the Government of Mexico chooses to ignore our concerns, we are asking it to provide an assessment and accounting of the amount of U.S. assistance used for marihuana eradication so that the allocable share of such assistance may be deducted from the entire $13.5 million authorization.

If no acceptable replacement for the hazardous herbicide is found or no effective warning agent is used in conjunction with the herbicide, U.S. funds or assistance shall not be used for the purpose of marihuana eradication. The intent of this provision is not to stop or impede in any manner the funds authorized under this act from being used to eradicate poppy plants. If the Government of Mexico refuses to halt its spraying of paraquat on marihuana, or add an effective warning agent, or provide an accurate accounting of the allocable costs of using U.S. funds and assistance in that program, by implication it becomes incumbent on the part of the Secretary of State to undertake such an accounting and deduct that share from the $13.5 million authorized in the act. The share of those funds directly or indirectly used for the eradication of marihuana—including aircraft, spraying equipment, and technical assistance—must be deducted from the total amount of appropriated funds. The remaining sum, which is the accurate cost of the poppy-eradication program, shall continue to be available for use in the poppy program.

The Congress does not wish to jeopardize the poppy-eradication program in any way. It is working admirably, diminishing substantially the amount of heroin entering this country. However, we cannot afford to wait another year or another several months before responsible action is taken to deal with the existing health risks posed by Mexico's paraquat-spraying program on marihuana.

Hopefully with the provisions of this amendment, developed out of concern expressed by both the House and the Senate, the Mexican Government—which has been such a strong ally in our effort to reduce the insidious trafficking in heroin—will come to understand better the health concerns we have in this matter, even if, as a matter of policy, they disagree with us. I trust that President Lopez Portillo, who is exercising such a strong leadership role in Mexico and whose judicious and creative decision making has won him respect in such a short time in the nations of the world, will be sensitive to the concerns that we express through this amendment.

I further hope that, in the future, the U.S. Government will approach our drug eradication program with a new awareness of the dangers we ourselves can produce, and thereby avoid the needless poisoning of Americans in the future.

APPROPRIATE TECHNOLOGY—A NEGLECTED ENERGY SOURCE

Mr. PERCY. Mr. President, I am pleased to report that the Department of Energy has begun a Midwest appropriate technology grant program. This program will award approximately $950,000 to investors and innovators in a six-State region: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Midwesterners have already shown great enthusiasm for the program. Since DOE announced the program on August 4, almost 5,000 individuals and groups have requested applications. The Department estimates that, by the October 23 deadline, at least 2,000 applications will have been filed.

Applicants can be individuals, local nonprofit organizations, educational institutions, State and local public agencies, Indian tribes, and small businesses. Grant requests can range up to $50,000 or can be as small as a few hundred dollars.

DOE's new program focuses on a variety of "appropriate" energy technologies. Among them are solar power, wind power, biomass conversion—turning plant and animal residue into usable energy, and better use of hydro power. It will also promote conservation and recycling techniques, and more efficient energy end-use in appliances, buildings, agriculture, and transportation.

The Midwest program is part of the DOE small grants program, which began last year as a pilot program on the wset coast. Currently 3 Federal regions are involved: The Midwest, New England, and the west coast. Next year the program will expand to include all 10 Federal regions.

WEST COAST PILOT PROGRAM

Established in September 1977, the west coast pilot program has enjoyed great success. Originally DOE gave the program $500,000 in grant-making capacity. By November, over 1,100 applicants had filed for grants totalling $22 million. A technical review gave 218 of these, amounting to $3.5 million, "good" or "excellent" ratings. To meet this large demand, DOE boosted the grant money to $1.3 million, which still allowed only 108 applicants to be funded.

West Coast recipients are involved in a broad assortment of appropriate technology, or "AT" experiments. Diversity is one of AT's greatest strengths. Compared to most large-scale technologies, the diversity of AT options permits greater sensitivity to local economic, social, and physical conditions.

The following examples illustrate the range of projects funded by the west coast program:

The city of Palo Alto received $20,000 to build a mini-solar utility." Solar collectors mounted atop a parking garage will provide space heating and hot water to 14 surrounding homes.

A firm in Santa Monica, Calif., has been given $49,000 to design barges which will generate electricity. Fast-moving streams, damsites, and tidal areas could provide suitable settings for these devices.

A nonprofit group in Bisbee, Ariz., is using a $2,500 grant to develop an energy-conservation curriculum for public school students.

In Hawaii, a research institute is using a $12,700 grant to experiment with a method of using waste heat from refrigerators to provide domestic hot water.

THE NEED FOR DIVERSIFIED ENERGY

The exploration of new energy technologies appeals to many research scientists and investors—but is it necessary? The answer is an emphatic yes.

Two centuries ago, our country satisfied its energy needs through a variety of decentralized, renewable resource technologies. Wood supplied much of our heating and cooking needs. Animals, wind, and water generated most of the mechanical power required for farming, industry, and transport. Being largely autonomous, individual communities developed their own, often unique means of harnessing the available energy.

In the past half century, our energy needs have expanded tremendously but, ironically, we have narrowed our energy base. We have some to depend almost exclusively upon a small number of nonrenewable energy sources, most notably coal, petroleum, and natural gas. For a time, these sources were plentiful, and there seemed little reason to seriously question our narrow dependence.

Today we realize that our fossil fuel supplies are severely limited. In 1967, we imported 20 percent of the oil we consumed. By 1977, that figure had risen to an appalling 47.2 percent. The tapping of Alaskan oil has had some downward effect on this trend, but imports are still very high—44 percent this year. Clearly, we must learn to use a broader range of energy sources.

THE FEDERAL ROLE

In light of the need for diversified energy technologies, the Federal Government should be playing a leadership role in promoting research and development in new energy fields. The funding of small R. & D. schemes should be a priority.

Small businesses and individual inventors in America have been responsible for a large proportion of the significant technical breakthroughs of this century. Air-conditioning, automatic transmissions, the jet engine, the radio, photo-typesetting, magnetic recording, and the helicopter are a few of the technologies which grew out of research conducted by small teams working either outside large institutional structures or in universities. The radio, for example, arose from the discoveries of several people who had no ties to established firms in the communications industry.

In spite of the momentous contributions made by independent inventors and small businesses, these people have a hard time securing early financial backing. Private lending institutions shun small, innovative businesses because they dislike the risks involved. They also see little advantage in processing small loans, which often require at least as much paperwork as larger ones.

The Federal Government generally exhibits a similar bias. Within the energy field this has been especially true. A 1976 study conducted by the General Accounting Office ranked ERDA, the Department of Energy's major predecessor, 26 out of 31 Federal agencies, in terms of support for small businesses. In fiscal year 1977, 50.8 percent—$3.4 billion—of ERDA's procurement budget went to 10 big businesses, their subsidiaries, and affiliates. Only 10.3 percent of the agency's budget reached small businesses.

On March 13 of this year, I introduced the Small Scale Energy Technology Programs Reorganization Act (S. 2732). This bill proposed the establishment of an Office of Small Scale Technology within DOE, to better coordinate and expand

the Department's appropriate technology activities. Responding to my bill, DOE is considering the creation of an Office of Small Scale Technology. I have discussed this matter with Omi Walden, DOE's newly appointed Assistant Secretary for Conservation and Solar Applications. She has assured me of her deep interest in this office as a way to give the Department's appropriate technology work a unified direction.

The small grants program is one concrete step which DOE has taken to give small businesses, inventors, and innovators a better deal. But budgetary constraints curtail this program's impact. Funding for the entire small grants program, as originally proposed by the Ford administration, was $3 million. This would have meant that all 10 Federal regions would have drawn upon a budget scarcely twice the size of the west coast pilot program's $1.3 million allocation.

Senator METZENBAUM and I worked successfully in the Senate to raise the proposed budget for 1979 to $8 million—a more manageable but still modest amount. This budget is now in House-Senate conference.

This year's Midwest program provides a sobering preview of next year's probable funding scarcity. Covering a region with nearly double the west coast region's population, the Midwest program has considerably less grant-making money—$950,000 as compared to $1.3 million. Even with its greater funding capacity, the west coast program had to turn down fully half of its technically qualified applicants. It is therefore reasonable to expect that a much greater proportion of worthy Midwestern inventors and innovators will be disappointed.

SMALL GRANTS PROGRAM—A GOOD BEGINNING

Despite its modesty, DOE's small grants program represents an important new direction for DOE. Many creative individuals will be able to develop ideas which may greatly improve our Nation's energy prospects. Small-scale, decentralized technologies using renewable or inexhaustible resources can and should be major components of our energy system.

ALASKA LANDS: THE LAST GREAT FIRST CHANCE

Mr. GRIFFIN. Mr. President, supporters of the much-publicized legislation to protect and preserve millions of acres of our Nation's vast land-holdings in Alaska have coined the slogan, "The Last Great First Chance." Some may find this slogan trite—but in many respects it is right.

Alaska stands as a final and irretrievable opportunity for Americans to preserve whole ecosystems, including wildlife habitats, free-flowing rivers and untrammeled wilderness of awesome beauty and variety. Such opportunity exists in no other area of the United States—perhaps not in the world.

As a Senator who has worked hard to save forest land, lakes and streams in my own home State—and throughout the country—I support the enactment of strong, effective Alaska national interest lands legislation.

The Senate should do no less than the House in passing a truly protective bill.

Few land-related issues have stirred more controversy than those concerning Alaska, from the time of ridiculing "Seward's Folly" back in 1867 to the more recent debates over the oil pipeline and land use. In retrospect, of course, Secretary Seward's shrewd purchase of Alaska for the United States was one of the greatest bargains ever—about 2 cents an acre. It is with this same type of foresight that we must address questions relating to how this great bargain is best to be used in this and future generations.

The issue before Congress now is the last stage of a process that began in 1958 with the passage of the Alaska Statehood Act. At that time, the Federal Government held title to more than 99 percent of Alaska's 375 million acres. The Statehood Act authorized the State to select 104 million acres—an area about the size of California—for land grants by 1984. It is my understanding that applications have been made already for 71 million acres.

In addition, in 1971 the Alaska Native Claims Settlement Act allowed Eskimos, Indians, and Aleuts to select about 44 million acres of land. That act also created a procedure whereby a substantial portion of the remaining land—the so-called "national interest" lands—could be withdrawn for possible classification under various Federal land management systems—for example, national parks, wildlife refuges, and wilderness areas. It now is up to Congress to decide how these lands should be classified.

These "national interest" lands certainly are well-named, because all Americans—most of whom have never set foot in Alaska—are affected by what happens there. For example, a significant percentage of the migratory waterfowl found within the continental United States—indeed on three continents—originates from feeding and nesting grounds in Alaska. Some of these species—for example, the dusky Canada goose and the emperor goose—breed nowhere else.

The habitats of millions of birds also are home to a broad spectrum of fish and mammals. Caribou, Dall's sheep, and polar bears are found nowhere else in the Nation.

If the number of acres under consideration for preservation sounds immense, it should be remembered that such territory is required in order to preserve whole ecosystems in pristine settings. I am told, for instance, that one grizzly bear needs 100 square miles to forage for food, and a caribou herd must roam thousands of square miles to support itself. As one person said:

> This is America's last chance to do with Alaska what we did not do with wilderness in the rest of the country. We have a chance to preserve the caribou herds, where we decimated the buffalo herds.

All this is not to say that we should forget our very real needs for energy sources and other raw materials. During development and consideration of the various legislative proposals before Congress many attempts have been made to provide for these needs—as well as for the economic requirements of the citizens of Alaska. And as the Alaska Department of Natural Resources explains, "The existing State-selected lands provide a wide-ranging balance of resource lands which can be used to support the Alaskan economy."

Although studies are far from definitive, it appears that the greater part of Alaska's petroleum reserves are outside the boundaries of the "national interest" lands. Furthermore, those reserves that do lie within the "national interest" lands can serve as a natural resources "savings account" which the Nation could dip into in the future if necessary.

These buried resources will not disappear. Thus, prudence dictates that we give the benefit of the doubt to setting aside "too much" land rather than "not enough." The wisdom of this philosophy was brought home to Congress earlier this year when it authorized $400 million to acquire tracts adjacent to the Redwood National Forest in California. This expenditure never would have been necessary if the Congress of a century ago had had the foresight to keep this land in public ownership.

Unfortunately, if the Alaska "national interest" lands are not protected, the greatest losses will not be economic, but instead will be the forfeiture of benefits that—in the future—would not be available for repurchase at any price.

In May, the House of Representatives passed Alaska national interest lands legislation by the overwhelming vote of 277 to 31. Since that time, the Senate Energy and Natural Resources Committee has completed hearings and now is marking up its version of the legislation. It is my hope that a strong national interest lands bill will be presented to the President for his signature before the 95th Congress adjourns. But time is running out.

Therefore, I encourage all my Senate colleagues—and particularly those who serve on the Energy and Natural Resources Committee—not to let our "Last Great First Chance" slip away, but rather to act to leave an unprecedented environmental heritage to our children and to future generations of Americans.

ORDER TO INDEFINITELY POSTPONE SENATE RESOLUTION 489

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order 1060, (S. Res. 489), which is a resolution concerning disapproval of Reorganization Plan Numbered 3, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

CIVIL RIGHTS COMMISSION ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 3067) entitled "An Act to extend the Commission on Civil Rights for three years,

to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Civil Rights Commission Act of 1978".

SEC. 2. (a) Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a)) is amended by striking out "section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808)." and inserting in lieu thereof the following: "section 5703 of title 5 of the United States Code.".

(b) Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b)) is amended by striking out "the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)" and inserting in lieu thereof the following: "subchapter I of chapter 57 of title 5 of the United States Code."

SEC. 3. (a) Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c) is amended—

(1) in each of subsections (a)(1) and (a)(2), by inserting "age, handicap," after "sex,";

(2) in each of subsections (a)(3) and (a)(4), by inserting ", age, handicap," after "sex";

(3) in subsection (a)(2) by inserting "discrimination or" before "a denial";

(4) in each of subsections (a)(3) and (a)(4), by inserting "discrimination or" before "denials";

(5) by redesignating pargraph (6) of subsection (a) as subsection (b);

(6) by redesignating subsections (b) and (c) as (c) and (d), respectively; and

(7) by adding at the end the following:

"(e) As used in this section, the term 'handicap' means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6)).

"(f) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion."

(b) Subsection (b) (which is redesignated as subsection (c) by this Act) of section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b)) is amended by striking out "fiscal year 1978" and inserting in lieu thereof "the fiscal year ending September 30, 1983".

SEC. 4. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a)) is amended by striking out "and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year".

SEC. 5. Section 105(c) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(c)) is amended—

(1) by striking out "may constitute such advisory committees within States" and inserting in lieu thereof the following: "shall constitute an advisory committee within each State"; and

(2) by striking out "and may consult" and inserting in lieu thereof the following: ". The Commission may consult".

SEC. 6. Section 105(d) of the Civil Rights Act of 1957 (42 U.S.C. 1975(d)) is amended by striking out "sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99)" and inserting in lieu thereof the following: "sections 203, 205, 207, 208, and 209 of title 18 of the United States Code".

SEC. 7. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975e) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 106. (a) There are authorized to be appropriated not to exceed $12,752,000 for the fiscal year ending September 30, 1979, and not to exceed $14,000,000 for the fiscal year ending September 30, 1980, to carry out the provisions of this Act.

"(b) No sums made available to the Commission shall be used at any time, directly or indirectly, to undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except when the Commission is requested to give an opinion.".

Amend the title so as to read: "An Act to extend the Commission on Civil Rights for five years, to authorize appropriations for the Commission, to effect certain technical changes to comply with changes in the law, and for other purposes."

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the other body on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. BAYH, Mr. KENNEDY, Mr. METZENBAUM, Mr. MATHIAS, and Mr. HATCH conferees on the part of the Senate.

AUTHORIZATION FOR APPOINTMENT OF ESCORT COMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee of Senators on the part of the Senate to join with a like committee on the part of the House of Representatives to escort the President of the United States into the House Chamber.

WATER RESOURCES PLANNING ACT—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on S. 2701 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2701) to amend the Water Resources Planning Act (79 Stat. 244, as amended), having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 15, 1978.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDERS TO HOLD BILLS AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 9945 and H.R. 10965 are received, those measures be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL ORDER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, Mr. ABOUREZK be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, have other Senators had orders for recognition on tomorrow?

The PRESIDING OFFICER. There are no orders for other Senators.

Mr. ROBERT C. BYRD. Very well.

ORDER FOR CONSIDERATION OF S. 2883, THE PUBLIC BROADCASTING BILL, ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the orders for the recognition of Senators tomorrow, the Senate proceed to the consideration of the public broadcasting bill, S. 2883, if proceeding at that time is in conformity with the time agreement entered into on the natural gas bill. If not, I ask unanimous consent that at such time or times during debate tomorrow that no Senator is seeking recognition to speak in relation to the natural gas bill, the Senate turn—or return, whatever the case may be at that point—to the consideration of the public broadcasting bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 7:30 P.M.—PROGRAM

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 7:30 p.m. today.

Before the Chair acts on the motion, I shall restate that at 7:40 p.m., Members of the Senate will gather in a body and will proceed at 7:45 p.m. to the Hall of the House of Representatives, to participate in a joint session to receive a message from the President of the United States.

Upon the dissolution of the joint session, the Senate will stand in recess until 10 o'clock tomorrow morning.

After the recognition of the two leaders and the recognition of a Senator under an order previously entered, the Senate either will go to the natural gas conference report or will take up the public broadcasting bill, with the conference report having top priority.

At 3 o'clock tomorrow afternoon, the Senate will proceed to vote on the motion by Mr. METZENBAUM and other Senators to recommit the conference report on the

natural gas bill. There will be a rollcall vote. Conceivably, there could be rollcall votes tomorrow prior to 3 p.m. on amendments to the instructions included in that motion, or other matters—for example, public broadcasting.

After 3 p.m., the Senate will proceed to resume consideration of the public broadcasting bill, if it has not been disposed of by that time, and other matters during the afternoon. So there will be rollcall votes throughout the day tomorrow.

Now, Mr. President, I make my motion.

The motion was agreed to, and at 6:29 p.m. the Senate recessed until 7:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. NUNN).

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the Hall of the House of Representatives.

Thereupon, at 7:45 p.m., the Senate, preceded by the Secretary of the Senate, J. S. Kimmitt; the Sergeant at Arms, Frank N. Hoffman; and the President of the Senate (Vice President WALTER F. MONDALE), proceeded to the Hall of the House of Representatives to hear the address by the President of the United States.

(The address by the President of the United States, this day delivered by him to the joint session of the two Houses of Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

RECESS UNTIL 10 A.M. TOMORROW

At the conclusion of the joint session of the two Houses, and in accordance with the order previously entered, at 8:38 p.m. the Senate recessed until tomorrow, September 19, 1978, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate, September 18, 1978:

DEPARTMENT OF STATE

John Gunter Dean, of New York, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Republic of Lebanon.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. James Madison Lee, [redacted], Army of the United States (brigadier general, U.S. Army).

THE UNITED NATIONS

Richard W. Petree, of Virginia, a Foreign Service officer of class 1, to be the Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Peter Henry Wolf, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for a term of 15 years, vice Harold H. Greene.

HOUSE OF REPRESENTATIVES—*Monday, September 18, 1978*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Humble yourselves under the mighty hand of God, that in due time He may exalt you.—I Peter 5: 7.

Eternal God, our Father, the same yesterday, today, and forever, grant unto us clean hands and pure hearts as we set out upon the duties of this day. Be Thou our refuge and our strength, our ever-present help in times of trouble. When we are weary, refresh us; when we are worried, renew us; when we are weak, revive us; and when we are worn out, rekindle in us faith and hope and love. Let no bitterness separate us and no bigotry sever our relationships, but in all things and at all times may we persevere in doing what is right and good for our country.

God bless the endeavors for peace between Egypt and Israel. May these two nations and all nations find the way to live together peacefully, justly, and with good will: for Thy name's sake. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 7814. An act to authorize Federal agencies to experiment with flexible and compressed employee work schedules;

H.R. 12772. An act to facilitate the exchange of certain lands in the State of Oregon, and for other purposes; and

H.R. 12860. An act to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 10898. An act to amend the Regional Rail Reorganization Act of 1973 to authorize appropriations for the U.S. Railway Association for fiscal year 1979.

The message also announced that the Senate had passed a bill and a joint resolution of the following titles, in which the concurrence of the House is requested:

S. 1147. An act to relieve the liability for the repayment of certain erroneously made contributions by the United States; and

S.J. Res. 160. Joint resolution to initiate preliminary studies for the restoration and renovation of the Pension Building in Washington, District of Columbia, to house a Museum of the Building Arts, and for other purposes.

THE ACHIEVEMENT AT CAMP DAVID

(Mr. BRADEMAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRADEMAS. Mr. Speaker, last night's agreement on a framework for a Middle East settlement marks an historic achievement for which the world must be grateful to President Carter, Prime Minister Begin, and President Sadat.

Mr. Speaker, I think it is clear that the tensions between the Israeli and Egyptian leaders were so great that only the involvement of another force could have brought them together, and President Carter undertook this initiative with great courage and effectiveness at Camp David.

It must also be clear, Mr. Speaker, that President Carter believed that both Mr. Begin and Mr. Sadat were men so deeply committed to peace in the Middle East that a settlement was possible. But it was imperative that the two men meet face to face and that an intense effort be made to resolve their differences—and doing so was President Carter's remarkable accomplishment.

Obviously, there are important issues still to be resolved but the crucial decision has now been taken.

Mr. Speaker, President Carter deserves the support of every American and he, Prime Minister Begin, and President Sadat, deserve the gratitude of all humankind for this giant step toward peace.

PROVIDING FOR ASSEMBLAGE OF CONGRESS ON TODAY TO RECEIVE COMMUNICATIONS FROM THE PRESIDENT OF THE UNITED STATES

Mr. BRADEMAS. Mr. Speaker, I offer a privileged concurrent resolution

(H. Con. Res. 713) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 713

Resolved by the House of Representatives (the Senate concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Monday, September 18, 1978, at 8 o'clock postmeridian, for the purpose of receiving such communications as the President of the United States shall be pleased to make to them.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING SPEAKER TO DECLARE RECESSES ON TODAY

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that today, September 18, 1978, the Speaker be authorized to declare recesses subject to a call of the Chair.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. BAUMAN. Reserving the right to object, what was the request, Mr. Speaker?

The SPEAKER. To recess at the desire of the Chair.

Mr. BAUMAN. I thank the Speaker, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. ROUSSELOT. Reserving the right to object, Mr. Speaker, is this for a joint session?

The SPEAKER. It is for a joint session; the gentleman is correct.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

REQUEST THAT VOTES POSTPONED PURSUANT TO CLAUSE 3(b), RULE XXVII, NOT REACHED TODAY BE CONSIDERED UNFINISHED BUSINESS FOR SEPTEMBER 19, 1978

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that any votes postponed pursuant to clause 3(b) under rule XXVII not reached today shall be considered as unfinished business for Tuesday, September 19, 1978.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. BAUMAN. Reserving the right to object, Mr. Speaker, does this mean that votes that would not occur by a certain time and the leadership desires to rise, all of the votes will be put over until tomorrow?

Mr. BRADEMAS. If the gentleman will yield, it means that if we have completed debate on suspensions and then start voting on suspensions but have not completed the votes on all suspensions by approximately 5:30 p.m., which is the time when the Chamber must be prepared for the President's address to the joint session, any recorded votes which have not by that time been taken would be considered unfinished business and be put over until tomorrow.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, this could result in a situation in which we may have dealt with 17 or 18 suspensions, and then we would conclude the business at the leadership's desire and no votes would occur.

It seems to me a better situation would be to arrive at 4 o'clock, and if the leadership desires, hold the votes on those suspensions that have been considered at that time and leave. But, I would object to any request that would postpone until tomorrow all votes on these suspensions. Members have been told that there will be votes, and I think we should conclude and then continue tomorrow.

The SPEAKER. May the Chair make this announcement:

The Chair has been informed that the House Chamber shall be vacated by 5:30, as the majority whip said, for the plans of the Secret Service and the setting up of the House Chamber to receive the President.

The House can either debate suspensions until such time as ordered rollcalls would carry over until 5:30; or the House could go to 5:30 on all debate and perhaps some votes and postpone the remaining votes until tomorrow. If there is an objection to the second plan, then the House will follow the first.

Is there objection to the second plan of going to 5:30 and postponing remaining votes until tomorrow when they would come up as unfinished business?

Mr. BAUMAN. Mr. Speaker, I would object to that request.

The SPEAKER. There has never been a precedent for postponing votes under suspension, to a subsequent day. If the gentleman objects, the Chair hears the objection.

The House will proceed to debate suspension motions and to conduct sufficient record votes to carry us to 5:30. To give plenty of leeway the Chair will suspend early enough on the list so that we may complete the votes on those suspensions by 5:30 today.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 13125, DEPARTMENT OF AGRICULTURE APPROPRIATIONS, 1979

Mr. MAHON. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight, Monday, September 18, 1978, to file a conference report on the bill (H.R. 13125) making appropriations for the Department of Agriculture, rural development, and related agencies for the fiscal year ending September 30, 1979.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to make an announcement.

After consultation with the majority and minority leaders, and with their consent and approval, the Chair announces that on today, September 18, 1978, the day set for the joint session to hear an address by the President of the United States, only the doors immediately opposite the Speaker and those to his left and right will be open.

No one will be allowed on the floor who does not have the privileges of the floor of the House.

The Chair will repeat: No one will be allowed on the floor who does not have the privileges of the floor. In other words, tonight we ask the Members not to bring their families or children. Due to the large attendance which is anticipated, the Chair feels that the rule regarding privileges of the floor must be strictly adhered to. Children of Members will not be permitted on the floor. The cooperation of all Members is requested.

CONSENT CALENDAR

The SPEAKER. This is Consent Calendar day. The Clerk will call the first bill on the Consent Calendar.

PROVIDING FOR DISPOSITION OF FUNDS APPROPRIATED TO PAY A JUDGMENT IN FAVOR OF THE COWLITZ TRIBE OF INDIANS

The Clerk called the bill (H.R. 5523) to provide for the disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. GAMMAGE. Mr. Speaker, I ask unanimous consent that the bill H.R. 5523, be stricken from the Consent Calendar.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PROVIDING FOR NATIONWIDE SERVICE OF SUBPENAS IN ALL SUITS INVOLVING THE FALSE CLAIMS ACT

The Clerk called the bill (H.R. 12393) to provide for nationwide service of subpenas in all suits involving the False Claims Act, and for other purposes.

There being no objection, the Clerk read the bill as follows:

H.R. 12393

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3491 of the Revised Statutes, as amended (31 U.S.C. 232), is amended by adding a new subsection (F), as follows:

"(F) A subpoena requiring the attendance of a witness at a trial or hearing conducted under sections 3490 through 3494 and 5438 of the Revised Statutes, as amended, may be served at any place in the United States.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PAUL P. RAO UNITED STATES CUSTOMS COURT AND FEDERAL OFFICE BUILDING

The Clerk called the bill (H.R. 7279) to name the U.S. Customs Court and Federal Office Building at 1 Federal Plaza, New York, N.Y., the "Paul P. Rao United States Customs Court and Federal Office Building."

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. GAMMAGE. Mr. Speaker, I ask unanimous consent that the bill H.R. 7279, be stricken from the Consent Calendar.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

CHARLES A. LINDBERGH FEDERAL BUILDING

The Clerk called the bill (H.R. 7296) to designate the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island, N.Y., as the "Charles A. Lindbergh Federal Building."

There being no objection, the Clerk read the bill as follows:

H.R. 7296

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the new Terminal Radar Approach Control Federal Building on Steward Avenue, Hempstead, Long Island, New York, shall hereafter be known as the Charles A. Lindbergh Federal Building. Any reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be held to be a reference to the Charles A. Lindbergh Federal Building.

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 7296 honors a famous aviator, Charles A. Lindbergh, by designating the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island, N.Y., as the "Charles A. Lindbergh Federal Building." On May 20, 1927, Charles A. Lindbergh launched a new era in aviation by flying his single-engine *Spirit of St. Louis* solo from Roosevelt Field in New York to Le Bourget Aerodrome near Paris, France. Mr. Lindbergh's contribution to aviation did not stop when his airplane landed in France. For much of the remainder of his life, he was dedicated to advancing the cause of aviation in the United States. Partly as a result of his efforts, the past 50 years have seen vast improvements in aircraft design, air navigation systems, and all other facets of aviation.

The terminal radar approach control (TRACON) facility located on a site a quarter mile from what was Roosevelt Field, is scheduled for completion in September 1978. The TRACON facility provides approach and departure traffic control service under instrument flight rule conditions through the use of radar and air/ground communications.●

● Mr. MINETA. Mr. Speaker, H.R. 7296 would designate the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island, N.Y., at the "Charles A. Lindbergh Federal Building."

Charles A. Lindbergh was one of America's greatest aviation heroes. In one courageous flight, the first solo nonstop transatlantic flight, he became an enduring symbol of American individualism and announced to the world the coming preeminence of American aviation.

The late Charles Augustus Lindbergh, born in 1902, had an early career as a stunt pilot and as an airmail pilot. At the age of only 25, on May 20, 1927, Lindbergh took off from Long Island, N.Y., in the *Spirit of St. Louis* on his historic flight to Paris.

His career since that world-acclaimed flight has emphasized continued improvements in aircraft design and navigation. In view of his lifelong leadership in American aviation, it is fitting and proper that the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island—so near to the place from which he took off on his transatlantic flight—should be named in his honor as the "Charles A. Lindbergh Federal Building." ●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WILLIAM L. SPRINGER BUILDING

The Clerk called the bill (H.R. 7305) to designate a certain Federal building in Champaign, Ill., the "William L. Springer Building."

There being no objection, the Clerk read the bill as follows:

H.R. 7305

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building located at 202 West Church Street in Champaign, Illinois, is hereby designated as the "William L. Springer Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the William L. Springer Building.

● Mr. MINETA. Mr. Speaker, H.R. 7305 would designate a certain Federal building in Champaign, Ill., the "William L. Springer Building."

Congressman William L. Springer was born in Sullivan, Ind., on April 12, 1909, and was educated in the public schools of Sullivan. He graduated from DePaul University in 1931 with an A.B. and from the University of Illinois Law School in 1935 with an L.L.B.

He was admitted to the bar in 1935 and commenced the practice of law in 1936 in Champaign, Ill. He served as the State's attorney of Champaign County from 1940 to 1942, and then served in the U.S. Navy until 1945. After World War II, he was county judge of Champaign County from 1946 until 1950.

He was elected to the U.S. Congress in 1950 and served in the Congress until 1972. He is particularly remembered for his work as ranking minority member of the Committee on Interstate and Foreign Commerce.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of the 22d Congressional District, to the State of Illinois, and to the Nation, it is fitting and proper that the Federal building in Champaign, Ill., be named in his honor as the "William L. Springer Building." ●

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 7305 Honors a prominent American—former Congressman William L. Springer—by naming the Federal building located at 202 West Church Street in Champaign, Ill., after him. Congressman Springer was a highly regarded Member of Congress, serving 22 years, from January 3, 1950, to January 3, 1973, as the Representative of the 22d District of Illinois. Before his election to the House of Representative, he distinguished himself as State's attorney of Champaign County, and, after service as a lieutenant in the U.S. Navy, he served as Champaign County judge.

During his years in Congress, Congressman Springer served not only the State of Illinois, but the entire country in helping to build America. He is particularly remembered for his work as ranking minority member of the Committee on Interstate and Foreign Commerce. He labored long and hard and served the Congress and his constituents with distinction.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOE SKUBITZ SOCIAL SECURITY ADMINISTRATION CENTER

The Clerk called the bill (H.R. 12634) to designate the Social Security Administration District Office Building in Pittsburg, Kans., as the "Joe Skubitz Federal Building."

There being no objection, the Clerk read the bill as follows:

H.R. 12634

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Social Security Administration District Office Building located at the intersection of South Broadway and East Adams Streets, in Pittsburg, Kansas, shall hereafter be known and designated as the "Joe Skubitz Federal Building". Any reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be held to be a reference to the Joe Skubitz Federal Building.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Social Security Administration District Office Building located at the intersection of South Broadway and East Adam Streets, in Pittsburg, Kansas, shall hereafter be known and designated as the "Joe Skubitz Social Security Administration Center". Any reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be held to be a reference to the Joe Skubitz Social Security Administration Center.

SEC. 2. This act shall take effect on January 4, 1979.

The committee amendment was agreed to.

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 12634 honors an outstanding American and our distinguished colleague who has announced that he will retire from the Congress at the end of the 95th Congress, Congressman JOE SKUBITZ, by naming the Social Security Administration District Office Building in Pittsburg, Kans., after him.

In 1963 Congressman SKUBITZ was elected to the 88th Congress and began a role of public service that became marked with various legislative accomplishments. During his years in the Congrees, he has served on numerous committees, including the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs. Throughout his years in the House, JOE SKUBITZ has gained the respect and admiration of his colleagues because of his unending dedication to the job, the State of Kansas, and the entire country. In light of his past and continuing achievements, it is appropriate to name the Social Security Administration Building in his honor.●

● Mr. MINETA. Mr. Speaker, H.R. 12634, as amended, would designate the Social Security Administration District Office Building in Pittsburg, Kans., as the "Joe Skubitz Social Security Administration Center." Such naming would take effect at the convening of the 96th Congress.

Congressman JOE SKUBITZ was born in Frontenac, Kans., in 1906, and received his early education in the public schools of Kansas. He graduated from Kansas State College and attended law school at both Washburn University in Kansas and George Washington University in Washington, D.C., and received his LL.B. degree from the latter.

Congressman SKUBITZ was first elected to the 88th Congress in 1962 and has been reelected to each succeeding Congress. He is particularly noted for his service on the Committee on Interior and Insular Affairs and on the Committee on Interstate and Foreign Commerce. He has announced that he will retire from the Congress at the end of the 95th Congress.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of the Fifth Congressional District, to the State of Kansas, and to the Nation, it is fitting and proper that the Social Security Administration District Office Building in Pittsburg, Kans., be named in his honor as the "Joe Skubitz Social Security Administration Center." ●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to designate a building in Pittsburg, Kans., as the "Joe Skubitz Social Security Administration Center".

A motion to reconsider was laid on the table.

E. C. "TOOK" GATHINGS BUILDING

The Clerk called the bill (H.R. 8812) to name a certain Federal building in Jonesboro, Ark., the "E. C. 'Took' Gathings Building".

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I do not plan to object, I support this bill, but I ask unanimous consent to revise and extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to request of the gentleman from Arkansas?

There was no objection.

Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to take a few moments to express my strong support for H.R. 8812, which will pay a dear friend a special tribute in designating the Federal Building located at 615 South Main Street, Jonesboro, Ark., as the "E. C. 'Took' Gathings Building."

The Honorable E. C. Gathings has a most distinguished record. He entered politics almost immediately after graduation from law school and won a seat in the Arkansas State Senate for 4 years, followed by 30 years of service as a Representative to the U.S. Congress. For 34 years, almost half his life, he chose to serve the House of Representatives, his district, and the Nation in an exceptional fashion. We choose to honor him in this way not only for his length of service but for the caliber and number of his accomplishments during that period. Here in the House, "Took" won the hearts of his colleagues as well as their respect and those who have had the pleasure of working with "Took," as I did as a freshman Congressman, will recall a most rewarding experience.

His service in Congress is not only a credit to his ability and dedication, but it serves as a tribute to the foresight of the citizens of Arkansas in the First District who selected him as their Congressman on 15 occasions.

It would be impossible in the time alloted to enumerate all of the significant legislative enactments that bears his name or on which he left his mark, however, he has rightfully earned the reputation as the "farmer's friend" and one of the most knowledgeable men in the field of agriculture. As vice chairman of the Subcommittee on Farm Labor, he rendered tireless and unique service to the cause of American agriculture. He brought to the committee a profound understanding of the problems facing the farmers of America and showed compassion for that segment of our population which still tills the soil. Took will continue to be known as a man who fought for the advancement and prosperity of the American farmer.

On a personal note, Took has been a source of great inspiration, leadership, and guidance to all the Congressmen and Senators from Arkansas. His special style has endeared him to all who have known him. I am proud to claim him as a friend.

Today, Took continues to contribute to the betterment of life in Arkansas. This outstanding citizen has certainly played his part in making this country great.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill as follows:

H.R. 8812

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building located at 615 South Main Street in Jonesboro, Arkansas, is hereby designated as the "E. C. 'Took' Gathings Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the E. C. "Took" Gathings Building.

● Mr. MINETA. Mr. Speaker, H.R. 8812 would name a certain Federal building in Jonesboro, Ark., the "E. C. 'Took' Gathings Building."

Congressman Ezekiel Chandler "Took" Gatherings was born in Prairie, Monroe County, Miss., on November 10, 1903. He attended public schools and the University of Arkansas, from which he received his law degree in 1929 .

He had a distinguished career of civic service and public office, including his service as a State senator from 1935 to 1939. He served in the U.S. Congress from 1939 until 1969, representing the First Congressional District of Arkansas. He is particularly remembered in the Congress for his years of expert service on the Committee on Agriculture.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of his community, his State, and his country, it is fitting and proper that the Federal Building in Jonesboro, Ark., be named in his honor as the "E. C. 'Took' Gathings Building." ●

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 8812 honors a prominent American, former Congressman E. C. "Took" Gathings by naming the Federal Building located at 615 South Main Street in Jonesboro, Ark., after him.

In 1939, "Took" Gathings was elected to the 76th Congress and served admirably through the next 30 years until his retirement at the end of the 90th Congress. During his years in the Congress, he held various committee posts and sponsored major bills, including legislation dealing with agriculture.

He was held in high regard by his colleagues for his dedication and service not only to the State of Arkansas but the entire country. It is most fitting to name the Federal Building in Jonesboro, Ark., in his honor.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

C. BASCOM SLEMP BUILDING

The Clerk called the bill (H.R. 11671) to designate a certain Federal building in Big Stone Gap., Va., the "C. Bascom Slemp Building."

There being no objection, the Clerk read the bill as follows:

H.R. 11671

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building located at 322 East Wood Avenue in Big Stone Gap, Virginia, is hereby designated as the "C. Bascom Slemp Building". Any reference in any law, regulation, document, record, map or other paper of the United States to such building shall be considered to be a reference to the C. Bascom Slemp Building.

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 13187 honors a distinguished American—former Congressman C. Bascom Slemp—by naming the Federal building located at 322 East Wood Avenue in Big Stone Gap, Va., after him.

C. Bascom Slemp represented the 9th District of Virginia in the Congress from 1907 to 1923. For 16 years his constituents were ably served in the House of Representatives.

The post office and court house located in Big Stone Gap, Va., is listed on the national register of historic places. No finer tribute could be made to the memory of this outstanding citizen than to have this historic landmark carry his name. It will be a lasting monument to his many years of service to the people of southwestern Virginia.●

● Mr. MINETA. Mr. Speaker, H.R. 11671 would designate a certain Federal building in Big Stone Gap, Va., the "C. Bascom Slemp Building."

C. Bascom Slemp was born in Turkey Cove, Va., in 1870. He was educated in the local public schools and was later graduated from the Virginia Military Institute at Lexington, Va. He studied law at the University of Virginia at Charlottesville, was admitted to the bar in 1901, and began his practice in Big Stone Gap, Va.

In 1907 he was elected to the U.S. Congress to fill the vacancy caused by the death of his father, Col. Campbell Slemp. He served in the Congress until 1923, when he was appointed as Secretary to President Calvin Coolidge. In 1925 he returned to Big Stone Gap and continued his law practice until his retirement in 1932. He died in 1943.

In view of his distinguished career of service to the people of his community, of the State of Virginia, and of the Nation, it is fitting and proper that the Federal building in Big Stone Gap, Va., be named in his honor as the "C. Bascom Slemp Building." ●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOHN J. FLYNT, JR., FEDERAL BUILDING

The Clerk called the bill (H.R. 13187) to designate the U.S. Post Office and Federal Building in Griffin, Ga., the "John J. Flynt, Jr., Federal Building."

There being no objection, the Clerk read the bill as follows:

H.R. 13187

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Post Office and Federal building located in Griffin, Georgia, is hereby designated as the "John J. Flynt, Jr. Federal Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the "John J. Flynt, Jr. Federal Building".

With the following committee amendment:

On the first page, after line 8, insert the following new paragraph:

"SEC. 2. This Act shall take effect on January 4, 1979."

The committee amendment was agreed to.

● Mr. MINETA. Mr. Speaker, H.R. 13187, as amended, would designate the U.S. Post Office and Federal Building in Griffin, Ga., the "John J. Flynt, Jr. Federal Building." Such naming would take effect at the convening of the 96th Congress.

Congressman John James Flynt, Jr., was born in Griffin, Ga., in 1914. He began his education in the public schools of Griffin and in 1936 graduated from the University of Georgia. In 1940, he graduated with an LL.B and J.D. from George Washington University Law School.

He served in the U.S. Army from 1941 until the end of 1945, and was awarded the Bronze Star Medal for meritorious service in Normandy and Northern France. In his career in law he has served as assistant U.S. attorney for the northern district of Georgia, and as solicitor general of the Griffin judicial circuit.

He was a member of the House of Representatives of the State of Georgia in 1947 and 1948 and was elected to the 83d Congress in a special election held in 1954. He has been reelected to each succeeding Congress and has announced that he will retire at the end of the 95th Congress. He served as chairman of the Committee on Standards of Official Conduct, and on the Committee on Appropriations and the Select Committee on Ethics.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of the 6th Congressional District, to the State of Georgia, and to the Nation, it is fitting and proper that the U.S. Post Office and Federal Building in Griffin, Ga., be named in his honor as the "John J. Flynt, Jr., Federal Building." ●

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 13187 honors a prominent American and our distinguished colleague who has announced he plans to retire at the end of the 95th Congress, Congressman JOHN J. FLYNT, Jr., by naming the U.S. Post Office and Federal Building located in Griffin, Ga., after him.

Congressman FLYNT has had a long and distinguished career and has dedicated 31 years of his life in representing the State of Georgia. He was a member of the house of representatives of the State of Georgia in 1947 and 1948 and was elected to the 83d Congress in a special election held in 1954. During his years in the Congress, he has gained the admiration and respect of his colleagues for his forthright and eloquent belief in our system of government and the American way of life. He currently serves as chairman of the Committee on Standards of Official Conduct, and on the Committee on Appropriations and the Select Committee on Ethics. He has been the driving force behind meaningful legislation designed to assist the entire country. I am sure that all of the people in Georgia would agree that JOHN FLYNT is a very fine Congressman and would enthusiastically agree with the contents of this bill.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FREDERICK G. PAYNE BUILDING

The Clerk called the bill (H.R. 13481) to name the post office and Federal building in Portland, Maine, the "Frederick G. Payne Building."

There being no objection, the Clerk read the bill as follows:

H.R. 13481

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the post office and Federal building located at 151 Forest Avenue, Portland, Maine, shall hereafter be known as the "Frederick G. Payne Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be held to be a reference to the "Frederick G. Payne Building."

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 13481 honors a prominent American, Frederick G. Payne, by naming the post office and Federal building located at 151 Forest Avenue, Portland, Maine, after him.

The late Frederick G. Payne represented the State of Maine in the U.S. Senate from 1953 to 1959. He served from

1949 to 1953 as Governor of Maine and from 1940 to 1942 served as Maine Commissioner of Finance and Director of Budget. He served as mayor of Augusta, Maine, from 1935 to 1941. In light of his dedication and service not only to the State of Maine but the entire country, it is fitting to name the Federal building located in Portland, Maine, in his honor.●

● Mr. MINETA. Mr. Speaker, H.R. 13481 would name the post office and Federal building in Portland, Maine, the "Frederick G. Payne Building."

The late Frederick G. Payne was born in Lewiston, Maine, on July 24, 1904. He attended public schools in Lewiston, and later studied at the Bentley School of Accounting and Finance in Boston. He had a distinguished career in public service as well as in private enterprise. From 1935 to 1941 he served as mayor of Augusta, Maine, and from 1940 to 1942 he served as Maine Commissioner of Finance and Director of Budget. From 1942 to 1945 he served in the U.S. Air Force. He served from 1949 to 1953 as Governor of Maine, and from 1953 to 1959 as U.S. Senator from Maine. In the Senate, he was particularly noted for his service on the Committee on Banking and Currency and the Committee on Interstate and Foreign Commerce and for his interest in legislation for the protection of small industries and for aid for the blind and elderly.

In view of his distinguished career of service to the people of his community, of the State of Maine, and of the Nation, it is fitting and proper that the U.S. post office and Federal building in Portland, Maine, be named in his honor as the "Frederick G. Payne Building."●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOE WAGGONNER FEDERAL BUILDING

The Clerk called the bill (H.R. 13514) to name a certain Federal building in Shreveport, La., the "Joe Waggonner Federal Building."

There being no objection, the Clerk read the bill as follows:

H.R. 13514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building located at 500 Fannin Street in Shreveport, Louisiana, is hereby designated as the "Joe Waggonner Federal Building." Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the Joe Waggonner Federal Building.

With the following committee amendment:

On the first page, after line 8, insert the following new paragraph:

SEC. 2. This Act shall take effect on January 4, 1979.

The committee amendment was agreed to.

● Mr. MINETA. Mr. Speaker, H.R. 13514, as amended, would name a certain Federal building in Shreveport, La., the "Joe Waggonner Federal Building." Such naming would take effect at the convening of the 96th Congress. H.R. 13514, as introduced, is identical to H.R. 13727.

Congressman JOE D. WAGGONNER, JR., was born near Plain Dealing, La., in 1918. He attended local public schools and graduated from Louisiana Tech University.

He served in the U.S. Navy in both World War II and in the Korean conflict.

He was first elected to the Bossier Parish School Board in 1954 and served thereafter in a number of offices important to education in the State of Louisiana, among them as a member of the Louisiana State Board of Education. First elected to the 87th Congress in 1961, he has been reelected to each succeeding Congress. He is particularly noted for his years of service on the Committee on Ways and Means. He has announced that he will retire from the Congress at the end of the 95th Congress.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of the Fourth Congressional District to the State of Louisiana, and to the Nation, it is fitting and proper that the Federal building in Shreveport, La., be named in his honor as the "Joe Waggonner Federal Building." ●

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 13514 honors an outstanding American and our distinguished colleague who has announced he plans to retire at the end of the 95th Congress, Congressman JOE WAGGONNER, by naming the Federal building located at 500 Fannin Street in Shreveport, La., after him.

JOE WAGGONNER has devoted 17 years to serving the people of the Fourth Congressional District, the State of Louisiana, and the Nation in the U.S. House of Representatives. He was first elected to the 87th Congress in 1961, and he has been reelected to each succeeding Congress. His record in the Congress is full of landmarks and achievements and he is leaving his mark as an outstanding and progressive leader. During his years in the Congress, he has held various committee posts and sponsored major legislation. He is most noted for his work on the Committee on Ways and Means. In view of his long and distinguished career, this is a fitting tribute to pay Congressman JOE WAGGONNER.●

● Mr. BREAUX. Mr. Speaker, as the House considers the matter of the naming of Federal buildings, I would like to express my special interest in the naming of the Federal building in Shreveport, La., for Congressman JOE D. WAGGONNER.

His record is all inclusive and has provided a history of service to his constituents which any Member of this body would be proud to have. I know him as an aggressive and effective leader for his district and Louisiana priorities. The Congress knows him as an astute legislator. He is best known by all, however, for his honest and down-to-earth approach to Government which has caused some tremendous legislative victories for him and a number of disappointments for his opponents.

The Federal building in Shreveport should be named in honor of JOE D. WAGGONNER. I can think of no other deserving, physical tribute to the man and his proud constituency. I ask your favorable consideration of this matter.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MODIFYING THE BOUNDARY OF THE WHITE RIVER NATIONAL FOREST IN COLORADO

The Clerk called the Senate bill (S. 2101) to modify the boundary of the White River National Forest in the State of Colorado.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. SCHULZE. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

CLARIFYING STATUS OF CERTAIN PRESIDENTIAL APPOINTEES UNDER EMPLOYEE LEAVE SYSTEM

The Clerk called the Senate bill (S. 1626) to clarify the status of the Librarian of Congress under subchapter I of chapter 63 of title 5, United States Code, relating to annual and sick leave.

There being no objection, the Clerk read the bill as follows:

S. 1626

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6301(2)(B) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of clause (xi);

(2) by striking out the period at the end of clause (xii) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new clause:

"(xiii) the Librarian of Congress.".

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 6301(2) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of clause (xi);

(2) by striking out the period at the end of clause (xii) and inserting "; or" in lieu thereof; and

(3) by adding at the end thereof the following new clause:

"(xiii) an officer in the legislative or judicial branch who is appointed by the President.".

SEC. 2. Sections 5551(b), 6302(e), and 6306(b) of title 5, United States Code, are each amended by striking out "section 6301(2)(x)–(xii)" each place it appears and inserting "section 6301(2)(x)–(xiii)" in lieu thereof.

SEC. 3. Section 8339(m) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.".

SEC. 4. (a) The amendments made by the first section and section 2 of this Act shall take effect beginning on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act.

(b) The amendment made by section 3 of this Act shall apply only with respect to employees who retire or die on or after the date of the enactment of this Act.

The committee amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "An Act to clarify the status of certain legislative and judicial officers under the provisions of title 5, United States Code, relating to annual and sick leave, and for other purposes."

A motion to reconsider was laid on the table.

AMENDING THE ACT CREATING THE INDIAN CLAIMS COMMISSION TO REPEAL PROVISION LIMITING ACTIVITIES OF COMMISSIONERS DURING THE 2 YEARS FOLLOWING THEIR TERMS OF OFFICE

The Clerk called the bill (H.R. 9945) to amend the act creating the Indian Claims Commission to repeal the provision limiting the activities of Commissioners during the 2 years following their terms of office.

There being no objection, the Clerk read the bill as follows:

H.R. 9945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 3(c) (25 U.S.C. 70b (c)) of the Act entitled "An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes", approved August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70 et seq.), is amended by striking out "or for a period of two years thereafter".

With the following committee amendment:

Page 1, following line 8, add a new paragraph reading as follows:

Section 105(j) of the Indian Self-Determination Act (88 Stat. 2206, 2210) shall not apply to those members of the Indian Claims Commission affected by this Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ACQUIRING CERTAIN LANDS BY SISSETON-WAHPETON SIOUX TRIBE

The Clerk called the bill (H.R. 13096) to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members.

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of a similar Senate bill (S. 3069) to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members, and ask that it be considered in lieu of the House bill.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There being no objection, the Clerk read the Senate bill as follows:

S. 3069

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first section of the Act of October 26, 1974, Public Law 93–491 (88 Stat. 1468) is amended—

(1) by inserting "or upon the request of any member of the tribe" after "South Dakota" the first place it appears;

(2) by inserting "for the tribe or member thereof" after "gift, or exchange";

(3) by inserting "or member thereof" after "available to the tribe"; and

(4) by inserting "or for the individual member for whom the land is acquired" before the period at the end thereof.

(b) Section 2 of the Act of October 26, 1974, Public Law 93–491 (88 Stat. 1468) is amended by redesignating subsection (b) as subsection (c) and adding after subsection (a) the following new subsection:

"(b) Notwithstanding any other provision of law, the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, acting through its governing body or its designated agent, shall have a preference right to purchase any land held by the United States in trust for any member or members of the Sisseton-Wahpeton Sioux Tribe offered at public sale or auction. The tribe shall have thirty days from the date bidding is closed to match the high bid and the terms of the notice of sale.".

(c) The amendments made by this Act shall become effective on the date of the enactment of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 13096) was laid on the table.

PROVIDING FOR SALES OF PUBLIC LANDS IN RED MOUNTAIN, SAN BERNARDINO COUNTY, CALIF.

The Clerk called the bill (H.R. 11168) to provide that the sales of public lands in the town of Red Mountain, San Bernardino County, Calif., be conducted under the Townsite Act.

There being no objection, the Clerk read the bill as follows:

H.R. 11168

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding sections 203, 208, and 209 of the Federal Land Policy and Management Act of 1976, the sales of public lands in the town of Red Mountain, San Bernardino County, California, shall be made by the Secretary of the Interior in accordance with sections 2382 through 2384, 2386 through 2389, and 2391 through 2394 of the Revised Statutes (commonly referred to as the Townsite Act), as in effect before October 21, 1976.

With the following committee amendment:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

(a) That notwithstanding the provisions of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior (hereafter referred to as the "Secretary") within 90 days after the date of enactment of this Act, shall establish specifications for an association of the residents of Red Mountain, San Bernardino County, California (hereafter referred to as the "association") which may through such trustee as they may designate, make application for the conveyance of such lands as are located within the area described in paragraph (b) of this section. Such application shall include, inter alia, a complete internal survey of the area; shall indicate the extent and character of any improvements on any lot and the name or names of the owners (hereinafter referred to as "owner") thereof; shall indicate all unoccupied lots and lands; and shall include a general land use plan for such area.

(b) The lands subject to conveyance pursuant to the provisions of this Act are described as follows:

T. 30 S., R. 41 E.,

Sec. 6; SW¼SE¼NE¼, SW¼NE¼NE¼, S½NW¼NE¼NE¼, SE¼NW¼NE¼, E½SW¼, W½SE¼NE¼, NW¼NE¼SE¼, NW¼NW¼NE¼SE¼, E½NW¼, E½SW¼NW¼SE¼, E½SW¼SE¼, E½NW¼SW¼SE¼, E½SW¼SW¼SE¼.

Sec. 7; N½NE¼NW¼NE¼, N½NW¼NW¼NE¼, Mount Diablo Meridian, California.

SEC. 2. Within 120 days after receipt of such application from the association, the Secretary shall determine if it complies with the specifications established pursuant to section 1 of this Act. If he determines that additional information is required, he shall so notify the association, through such trustee as it may designate, in order to allow it to supplement or correct such application. The Secretary shall require the association to verify, under oath or otherwise, that the owner is, at the time of the enactment of this Act and was, on or before February 27, 1978, in fact, the true owner of improvements located within the area and the association shall certify such verifications to the Secretary as a supplement to its application.

SEC. 3. As soon as reasonably practicable, but not later than two years after receipt of an application, or corrected application, complying with the specifications which he established, the Secretary shall convey to the association or its trustee, as he deems appropriate, all unoccupied lots or lands and all lands presently used for public purposes, and shall convey to the owner verified pursuant to section 2 of this Act title to the lot (which shall comply as nearly as possible with the established boundaries of the area now occupied but shall not exceed one-half of an acre) upon which the improvement of such owner is located. The Secretary may in his discretion, convey title to all improved lots to the trustee for recon-

veyance to the appropriate owners in order to minimize administrative costs. Each such deed of conveyance by the Secretary or reconveyance by the trustee (i) shall convey the land without cost to the owner, except for payment of the respective administrative and recording costs which shall be paid by said association or owner as the case may be; (ii) shall be subject to any valid existing rights arising under the laws of the United States unless relinquished by the holder thereof; (iii) shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine and remove minerals under applicable laws and such regulations as the Secretary may prescribe; and (iv) shall contain such covenants, mutually enforceable between the landowners, as the Secretary has determined to be appropriate to assure compliance with the land use plan submitted pursuant to section 1 of this Act. In conveying title to any unoccupied lands to the association, or its trustee, the Secretary may impose such restrictions or reserve such interests as he deems reasonable and appropriate to assure compliance with the general land use plan and may permit the association or its trustee to reconvey any or all of such lands: *Provided*, That the proceeds derived from such conveyance shall be transferred to the appropriate county or town officials to be used for public purposes within the Town of Red Mountain.

SEC. 4. Unless an application for conveyance of the lands described in section 1 of this Act is received by the Secretary within 5 years after the date of enactment, the provisions of this Act shall expire and such application shall then be made only pursuant to the provisions of the Federal Land Policy and Management Act of 1976.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "To provide for the conveyance of certain public lands in San Bernardino County, Calif., to the Town of Red Mountain, and for other purposes."

A motion to reconsider was laid on the table.

OMAR BURLESON FEDERAL BUILDING

The Clerk called the bill (H.R. 13808) to designate the "Omar Burleson Federal Building."

There being no objection, the Clerk read the bill as follows:

H.R. 13808

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled, That the United States post office and courthouse located at 341 Pine Street in Abilene, Texas, is herby designated as the "Omar Burleson Federal Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the Omar Burleson Federal Building.

With the following committee amendment:

At the end of the bill add the following new section:

"SEC. 2. This Act shall take effect on January 4, 1979."

The committee amendment was agreed to.

● Mr. MINETA. Mr. Speaker, H.R. 13808, as amended, would designate the U.S. Post Office and Courthouse in Abilene, Tex., as the "Omar Burleson Federal Building." Such naming would take effect at the convening of the 96th Congress.

Congressman OMAR BURLESON was born in 1906 in Anson, Tex. He has a long and distinguished career in public service. He served as a county attorney and a county judge for Jones County, Tex. Later he was a special agent with the Federal Bureau of Investigation. During World War II he served 3 years in the U.S. Navy.

He was elected to the 80th Congress in 1946, and has been reelected to each successive Congress. He has announced that he will retire from the Congress at the end of the 95th Congress. He has long been noted for his diligent work on the Ways and Means Committee, and has more recently joined the Budget Committee as well.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of the 17th Congressional District, to the State of Texas, and to the Nation, it is fitting and proper that the U.S. Post Office and Courthouse in Abilene, Tex., be named in his honor as the "Omar Burleson Federal Building." ●

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 13808 honors an outstanding American and our distinguished colleague who has annonuced that he will retire at the end of the 95th Congress, Congressman OMAR BURLESON, by naming the U.S. Post Office and Courthouse located at 341 Pine Street in Abilene, Tex., after him.

OMAR BURLESON has devoted 32 years to serving the people of the 17th Congressional District of Texas. He was elected to the 80th Congress in 1946, and has been reelected to each succeeding Congress. Throughout his years in the House, he has gained the respect and admiration of his colleageus, because of his unending dedication to the job and the State of Texas. Congressman BURLESON has served admirably on numerous committees, however, is most noted for his service on the Ways and Means Committee. He has been the driving force behind major legislation designed to benefit all Americans.

I am pleased to join in recognizing the contribution OMAR BURLESON has made to our Nation and in paying tribute to him by designating this building in his honor. ●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GEORGE H. MAHON FEDERAL BUILDING

The Clerk called the bill (H.R. 13809) to designate the "George H. Mahon Building."

There being no objection, the Clerk read the bill as follows:

H.R. 13809

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building, United States post office and courthouse located in Midland, Texas, is hereby designated as the "George H. Mahon Federal Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the George H. Mahon Building.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Federal building, United States post office and courthouse located in Midland, Texas, is hereby designated as the "George Mahon Federal Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be considered to be a reference to the George Mahon Federal Building.

SEC. 2. This Act shall take effect on January 4, 1979.

The committee amendment was agreed to.

● Mr. JOHNSON of California. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague, the chairman of our Subcommittee on Public Buildings and Grounds, Mr. MINETA.

H.R. 13809 honors an outstanding American and our distinguished colleague who has announced that he will retire from the Congress at the end of the 95th Congress. Congressman GEORGE MAHON, by naming the Federal building, U.S. Post Office and Courthouse in Midland, Tex., after him.

GEORGE MAHON has devoted 44 years to serving the people of Texas in the U.S. House of Representatives. He was elected to the 74th Congress as the first Representative of the newly formed 19th Congressional District of Texas in 1934 and has been reelected to each succeeding Congress. Congressman MAHON has served admirably on numerous committees, however, is most noted for his service on the Appropriations Committee. He became a member of the Appropriations Committee in 1939. As chairman of the House Appropriations Committee since 1964, his record speaks for itself. He has distinguished himself not only as an effective leader but as a brillian legislative tactician—able to bring reason and compromise to some of the most difficult issues of our time.

I am pleased to join in recognizing the contribution GEORGE MAHON has made to our Nation and in paying tribute to him by designating this building in his honor.●

● Mr. MINETA. Mr. Speaker, H.R. 13809, as amended, would designate the U.S. Post Office and Courthouse in Midland, Tex., as the "George Mahon Federal Building." Such naming would take effect at the convening of the 96th Congress.

Congressman GEORGE MAHON, who is serving his 44th year in Congress, was born on September 22, 1900, near Haynesville, La., one of eight children of John Kirkpatrick and Lola Mahon. In

1908 the family moved to Loraine, Tex., and MAHON grew up on a cotton farm there. He attended rural schools, later graduating from Simmons College (now Hardin-Simmons University) in Abilene, Tex. In 1925 he earned his law degree from the University of Texas.

Mr. MAHON began his public service career in 1927 after being elected county attorney of Mitchell County. Later that year he was appointed district attorney of the 32d Judicial District and was elected to that post in 1928, 1930, and 1932. He served in this capacity until 1934 when he was elected to the 74th Congress as the first Representative of the newly formed 19th Congressional District.

Congressman MAHON became a member of the Appropriations Committee in 1939 and chairman of the Defense Appropriations Subcommittee in 1949. He was elected chairman of the Appropriations Committee in 1964 and has served continuously in that capacity longer than any Member in the history of the Congress. Senior in point of service in the entire Congress, Mr. MAHON has announced his retirement at the end of the 95th Congress.

During his tenure in Congress Mr. MAHON has received numerous citations and awards for public service, not only in the fields of fiscal affairs and defense, but in agriculture and energy, both at the national level and from groups in Texas.

Mr. MAHON became a member of the Department of the Army Appropriations Subcommittee in 1940 and in that capacity cooperated in providing the funds and maintaining the secrecy for the development of the atomic bomb. He served as chairman of the Joint Senate-House Committee on Reduction of Federal Expenditures; as a member of the Joint Senate-House Study Commission on Budget Control; and is currently a member of the Board of Regents of the Smithsonian Institution of Washington, D.C.

In view of his long and distinguished career, and in view of his many years of outstanding service to the people of the 19th Congressional District of Texas and to the Nation, it is fitting and proper that the Federal building, U.S. Post Office and Courthouse located in Midland, Tex., be named in his honor as the "George Mahon Federal Building."●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to designate the 'George Mahon Federal Building'."

A motion to reconsider was laid on the table.

The SPEAKER. This concludes the call of the Consent Calendar.

GENERAL LEAVE

Mr. JOHNSON of California. Mr. Speaker, I ask unanimous consent that I may be permitted to revise and extend my remarks and include extraneous material, and that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material, on the public building designation bills considered on the Consent Calendar today.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

CALL OF THE HOUSE

Mr. YATES. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 787]

Addabbo	Fascell	Murphy, Ill.
Ambro	Findley	Nichols
Ammerman	Flowers	Oakar
Anderson, Ill.	Ford, Mich.	Pepper
Andrews, N.C.	Ford, Tenn.	Pettis
Applegate	Forsythe	Pickle
Archer	Fraser	Preyer
Armstrong	Frey	Pursell
AuCoin	Garcia	Quie
Baucus	Gephardt	Rhodes
Beard, Tenn.	Gilman	Risenhoover
Bedell	Goldwater	Rodino
Bellenson	Gonzalez	Rogers
Bingham	Gradison	Roncalio
Blanchard	Harkin	Rose
Boland	Harrington	Rosenthal
Bonker	Harsha	Ryan
Brademas	Heckler	Santini
Brodhead	Hefner	Sarasin
Broomfield	Hightower	Scheuer
Burke, Calif.	Hollenbeck	Shipley
Burton, John	Howard	Shuster
Butler	Hyde	Skubitz
Caputo	Jenrette	Smith, Nebr.
Carr	Jones, Okla.	Solarz
Chisholm	Jones, Tenn.	Spellman
Clay	Kasten	Steed
Cleveland	Kastenmeier	Stokes
Cohen	Kazen	Teague
Coleman	Krueger	Thompson
Collins, Ill.	Leggett	Thone
Conyers	Long, Md.	Traxler
Corman	Lujan	Treible
Cornell	McCormack	Tsongas
Cornwell	McKinney	Tucker
Cunningham	Mann	Vander Jagt
Danielson	Marlenee	Vento
de la Garza	Mathis	Walgren
Dellums	Meeds	Waxman
Dent	Meyner	Whitehurst
Derrick	Michel	Winn
Dickinson	Mikva	Wirth
Diggs	Milford	Wolff
Dodd	Miller, Calif.	Wright
Eckhardt	Moffett	Young, Fla.
Edwards, Calif.	Moorhead, Pa.	Zeferetti
Emery	Moss	

The SPEAKER pro tempore. (Mr. BEVILL). On this rollcall 292 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

CARTER'S TOP ACHIEVEMENT

(Mr. SIKES asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. SIKES. Mr. Speaker, the concurrence obtained between Egypt and Israel at the Camp David summit conference may be the top achievement of the Carter administration to date. It is one that should have strong endorsement at all levels in the United States and in the free world. Exceptions will be taken to some phases of the agreements but, on the whole, they represent a very significant step toward peace in a troubled part of the world. It was by dogged determination that last-minute agreements were reached, and the depth of the agreements make the achievement more spectacular.

It is obvious that both Mr. Begin and Mr. Sadat are running risks. There will be criticism in Israel and in the Knesset that Israel is giving up too much. The old bugaboo that Israel will be left much more vulnerable to attack if Israeli forces leave the West Bank will surface again. In 5 years, of all the Arab territory seized by Israel for buffer zones, only the Golan Heights will be in Israel hands. The remainder will be in neutral zones or under an autonomous, but unarmed, government.

On the other hand, they will have achieved the best guarantee for peace since Israel's troubled existence began in that they will achieve a separate peace with Egypt. This is the point on which some Arab nations will part company with Sadat. They bitterly object to a separate peace between Egypt and Israel. They know that without Egypt the Arabs cannot launch a war against Israel with hope of success. They will consider Egypt is turning its back on the Arabs. Mr. Sadat's own people will hail the return of captured territory and the Arab world should welcome a home for the Palestinians.

Consequently the agreements should strengthen Mr. Sadat at home, but they may do him more harm than good with other Arab nations. The risk to Mr. Sadat personally from extremists will increase.

All in all, the persistence with which the President worked to bring about a concurrence on a framework for settlement in the Middle East is highly meritorious. It is to be hoped he will use the same persistence in dealing with other trouble spots where he has followed bad advice in prior years.

PROSPECTS FOR PEACE IN THE MIDDLE EAST

(Mr. FUQUA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FUQUA. Mr. Speaker, the jubilant announcement last night that a basic framework for lasting peace in the Middle East was welcome news far beyond all reasonable expectations.

Although, as President Carter pointed out, there are still many difficult negotiations which lie ahead involving many potential diplomatic pitfalls, never in the last 30 years have the prospects for peace in the Middle East been so good.

The highly successful conclusion of the Camp David summit meeting among President Carter, President Sadat of Egypt, and Prime Minister Begin of Israel, gives us confident hope that the strife in that area of the world will soon end.

There will be obstacles ahead, but the fact that we have traveled so far on the road to peace is irreversible. With the courage, vision, and determination which produced this significant breakthrough at Camp David, the roadblocks can be overcome and there can be lasting peace in the Middle East.

CAMP DAVID SUMMIT

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

● Mr. BIAGGI. Mr. Speaker, last night, the East Room became the Peace Room for in it came the dramatic announcement that the Camp David summit had achieved the framework for an unprecedented peace agreement between Israel and Egypt.

It is critical that we evaluate the summit for exactly what it was—a modern-day profile in courage. For each of the three participants, President Sadat, Prime Minister Begin, and President Carter, the risks in this venture were profoundly real. A summit which collapsed or which proved inconclusive would have severely damaged each of them and threatened their ability to govern.

Yet despite these risks the Camp David conferees chose to pursue the one common denominator—peace for the Middle East. They wanted to emerge from Camp David with an agreement signaling visible progress toward peace. This has been done. Millions viewed the historic signing ceremony last night in a dramatic ceremony which was heavy with emotion and symbolism.

We will learn the exact details of the agreement tonight from the President. Yet what we do know is that three men of conviction overcame strong adversities and gave the world its first real hope for peace in the Middle East. It is a triumph which all men of peace should relish.●

PEACE IN THE MIDDLE EAST

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. Speaker, I would just like to join with my other colleagues here today in extending profound appreciation and gratitude to the President of the United States for having been the catalyst that has led apparently to a framework of principles which will yield peace in the Middle East.

Mr. Speaker, in 1975 it was my privilege to have gone through the Middle East on a factfinding tour, during which we had a chance to speak to President Sadat and then to Prime Minister Rabin of Israel.

It seemed to me then that there were ingredients in this war-shattered area that could lead, with the proper kind of conditioning, to a lasting peace. I am glad to see the first steps have happened. I would certainly encourage all of us to continue our prayers that these beginnings will lead eventually to a true peace in the Middle East.

TARIFF SCHEDULE AMENDMENTS FOR YANKEE DRYER CYLINDER ROLLS

Mr. VANIK. Mr. Speaker, before we begin the series of bills that are submitted by the Committee on Ways and Means this afternoon, I want to point out that all of these bills were reported out the Subcommittee on Trade of the Committee on Ways and Means without objection. There was no objection at the time they were taken up by the Committee on Ways and Means, and it is my hope that we can act on these bills under unanimous consent, and thereby save the time of the House, because we have a long calendar today that might be expedited.

With that statement, Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 7108) to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee dryer cylinder rolls until the close of December 31, 1977.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. STEIGER. Mr. Speaker, reserving the right to object, I do so first for the purposes of thanking my distinguished colleague from Ohio for his understanding and for his willingness to allow us to use this procedure.

I yield to the gentleman from Ohio (Mr. VANIK) for the purposes of explanation.

Mr. VANIK. Mr. Speaker, the purpose of H.R. 7108 is to suspend the duty on imports of Yankee Dryer Cylinders until December 31, 1981.

H.R. 7108 was introduced by our colleague, Mr. EDGAR of Pennsylvania.

Yankee Dryer Cylinders are components of papermaking machines used to dry and finish various grades of paper. There are no U.S. producers of this product and no acceptable substitutes are available. Domestic paper producers would benefit from this legislation, as the duty suspension would eliminate a cost on a needed material without jeopardizing U.S. industry.

The Departments of Commerce and Treasury favor enactment of H.R. 7108, as amended. The Department of Labor has no objection to the bill. No opposition to H.R. 7108 has been received from any source.

The bill was amended to eliminate the retroactive application of the duty suspension to August 31, 1975, the date domestic production of this product ceased, as it was felt that a refund of the duty might provide windfall profits to domestic firms importing Yankee Dryer Cylinders who may have passed on the duty to their customers. The bill was also amended to provide for temporary duty suspension until December 31, 1981.

The committee was unanimous in reporting H.R. 7108, as amended, on July 14, and I urge its passage.

Mr. STEIGER. Mr. Speaker, further reserving the right to object, I ask unanimous consent to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. STEIGER. Mr. Speaker, I rise in support of H.R. 7108 which creates a new item under the Tariff Schedules of the United States. As well, it provides for a suspension of duty, through December 31, 1981, on so-called Yankee dryer cylinder rolls.

As the distinguished chairman of the Trade Subcommittee has already described, Yankee dryer cylinders are components of papermaking machines and are used to dry and finish various grades of paper. Currently there are no U.S. producers of this product and there is no acceptable substitute available. By suspending the duty on these items production costs of domestic paper producers would be lowered. Since the suspension will continue only to the end of 1981, it should not discourage the entry of a new domestic producer.

There was no objection to the bill. The yearly customs revenue loss would be approximately $206,000. I would urge my colleagues to support passage of this bill.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill as follows:

H.R. 7108

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately after item 911.25 the following new item:

"912.20	Yankee Dryer Cylinder Rolls (provided for in item 668.06, part 4D, schedule 6)----	Free--	No change.	On or before 12/31/77".

SEC. 2. (a) The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

(b) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of the enactment of this Act, the entry or withdrawal of any article—

(1) which was made after August 31, 1975, and before the date of the enactment of this Act; and

(2) with respect to which there would have been no duty if the amendment made by the first section of this Act applied to such entry or withdrawal

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 or any other provisions of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act.

With the following committee amendments:

Page 1, line 5, strike out "911.25" and insert "912.05".

Page 1, strike out the matter appearing after line 6 and insert the following:

912.06	Yankee Dryer Cylinders (provided for in item 668.06, part 4D, schedule 6)------	Free--	No change	On or before 12/31/81.

Page 2, line 1, strike out "(a)".

Page 2, strike out lines 5 through 17, inclusive.

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee Dryer Cylinders until the close of December 31, 1981."

A motion to reconsider was laid on the table.

DUTY CLASSIFICATION OF BALL OR ROLLER BEARING PILLOW BLOCKS, FLANGES, TAKEUP, CARTRIDGE, AND HANGAR UNITS

Mr. VANIK. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 8755) to make specific provisions for ball or roller bearing pillow block, flange, takeup, cartridge, and hanger units in the Tariff Schedules of the United States.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. STEIGER. Mr. Speaker, reserving the right to object I shall not object, and I yield to the gentleman from Ohio under my reservation.

Mr. VANIK. Mr. Speaker, the purpose of H.R. 8755 is to provide separate provisions for certain ball and roller bearing units and parts thereof that are currently classifiable elsewhere in the Tariff Schedules of the United States.

H.R. 8755 was introduced by our colleague, Mr. COTTER of Connecticut.

The new single provision in the Tariff Schedules covering these bearing units will enable more specific statistical coverage with respect to imports. Although there are separate provisions in the Tariff Schedules for ball bearings, there is no specific provision for mounted bearings other than pillow blocks. Subsequently, there is a lack of statistical information on the imports of these units and the bearings contained therein.

A number of technical objections to the bill as introduced were received from executive branch agencies and the U.S. International Trade Commission, including a possible increase in duties unintended by the sponsors of the legislation.

In light of such objections and comments, and in consultation with both Customs officials and representatives from the industry, the bill was amended and the problems raised in the agency reports on H.R. 8755 were resolved.

The committee was unanimous in reporting H.R. 8755, as amended, and urge its passage.

Mr. STEIGER. Mr. Speaker, further reserving the right to object, I ask unanimous consent to revise and extend my remarks at this point in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. STEIGER. Mr. Speaker, I join the distinguished chairman of the Trade Subcommittee in his support of this bill.

As the gentleman has ably explained, this bill merely provides a specific category under the Tariff Schedules of the United States for mounted ball or roller-ball bearings. Currently, there are various provisions in the Tariff Schedules under which ball bearings may be classified, but none of these categories provide for mounted bearings. Consequently, there is a lack of statistical information on imports of mounted or housed bearings. This dearth of information exists at a time when industry is complaining that imports of mounted bearings are increasing rapidly and causing it injury. This bill would facilitate the collection of statistical information and, thereby, provide much needed information for assessing the domestic industry's claims.

The bill before us today incorporates amendments addressing objections from the Departments of Commerce, and State and from the Special Trade Representative. Since the bill for the most part does not propose changes in existing rates of duty, the impact of customs revenue is likely to be negligible. I would urge your support for this bill.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 8755

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the Tariff Schedules of the United States be amended by inserting in the superior heading for item 680.50 after "pillow blocks" and before the "," the following: "(except ball or roller bearing pillow blocks)".

SEC. 2. That the superior heading to the Tariff Schedules of the United States items 680.33, 680.34, 680.35, and 680.36 be amended by inserting "and including such bearings together with pillow block, flange, take-up, cartridge, and hanger mounts or holders into which they are assembled; all the foregoing" before "and parts thereof:".

SEC. 3. That Tariff Schedules of the United States items 680.35 and 680.36 respectively be redesignated items 680.37 and 680.38 and inserting after item 680.34 the following new items:

" 680.35	Bearings together with pillow block, flange, take-up, cartridge and hanger mounts or nolders into which they are assembled, and parts thereof	9.5% ad val.	45% ad val.
680.3	If Canadian article and original vehicle equipment (see headnote 2, part 6B, Schedule 6)	Free.	"

SEC. 4. The amendments made by this Act shall apply as if made by the Tariff Schedules Technical Amendments Act of 1965; except that such amendments shall not apply with respect to any article entered, or withdrawn from warehouse, for consumption, on or before the sixtieth day after the date of the enactment of this Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That subpart J or part 4 of schedule 6 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by redesignating items 680.52 and 680.54 as items 680.55 and 680.56, respectively; and

(2) by striking out item 680.50 and inserting in lieu thereof the following new items:

680.50	Pulleys and shaft couplings, and parts thereof Pillow blocks and parts thereof:	9.5% ad val.	45% ad val.
680.51	Ball or roller bearing type.	9.5% ad val.	45% ad val.
680.52	Other types	9.5% ad val.	45% ad val.
	Flange, take-up, cartridge, and hangar units, and parts thereof:		
680.53	Ball or roller bearing type.	9.5% ad val.	45% ad val.
680.54	Other types	9.5% ad val.	45% ad val.

SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time was read the third time, and passed, and a motion to reconsider was laid on the table.

SUSPENSION OF DUTY ON CERTAIN NITROCELLULOSE

Mr. VANIK. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 9628) to suspend until the close of June 30, 1980, the duty on certain nitrocellulose.

The clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. STEIGER. Mr. Speaker, reserving the right to object, I shall not object, and I yield to the gentleman from Ohio (Mr. VANIK) for an explanation of the bill.

Mr. VANIK. Mr. Speaker, the purpose of H.R. 9628 as reported is to suspend the duty on imports of certain nitrocellulose until June 30, 1980.

H.R. 9628 was introduced by our colleagues, Messrs. PREYER, BROYHILL, and VANDER JAGT.

H.R. 9628 applies to "soluble" nitrocellulose which is the essential ingredient used in durable lacquer coatings primarily used by the wood furniture industry. There have been two domestic producers supplying most of the soluble nitrocellulose to the U.S. paint and coatings industry. One of these suppliers has discontinued production, thus forcing U.S. users to utilize overseas sources to secure adequate supplies of this needed material.

Reports with no objections were received from the Departments of Commerce, Interior, State, and Labor. The Department of Treasury favors enactment. No objections to this legislation have been received from any source.

The committee was unanimous in reporting H.R. 9628 on July 14, and I urge its passage.

Mr. STEIGER. Mr. Speaker, I further reserve the right to object.

Mr. Speaker, I join the chairman of the Trade Subcommittee in support of H.R. 9628. This bill would suspend the duty on imports of soluble nitrocellulose until June 30, 1980.

As the chairman has described, soluble nitrocellulose is the essential ingredient used in the manufacture of durable lacquer coatings by the wood furniture industry. Other uses of these lacquer coatings include automotive refinishing, primers, paper coatings, and fingernail polishes. The soluble nitrocellulose which is used in these coatings is presently without any known economical substitute.

Currently, domestic production falls short of domestic demand by some 20 percent. Until September of 1977, there were two domestic producers supplying most of the soluble nitrocellulose to U.S. users. Since then, one of the U.S. suppliers announced that it was phasing out production of this material and the second producer has indicated that it is unable to make up for the lost production. The present tariff of 9.7 cents per pound results in approximately a 10-percent increase over the prevailing U.S. price of soluble nitrocellulose. Consequently, then, a suspension of duty would result in a measurable production cost savings.

No objections to this bill were heard from the administration or from the private sector. I would strongly urge its passage.

Mr. Speaker, I yield back the balance of my time, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill as follows:

H.R. 9628

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subpart B of part 1 of the appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately before item 907.80 the following new item:

" 907.77	Nitrocellulose (provided for in item 445.25, part 4A, schedule 4).....	Free	No change	On or before 6/30/80".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

With the following committee amendments:

Page 1, line 3, strike out "appendix" and insert "Appendix".

Page 1, line 5, strike out "907.80" and insert "909.01".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EXTENSION OF EXISTING SUSPENSION OF DUTY ON CERTAIN FORMS OF ZINC

Mr. VANIK. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 9911) to continue until the close of June 30, 1981, the existing suspension of duties on certain forms of zinc.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. STEIGER. Mr. Speaker, reserving the right to object, and I shall not object, I do so for the purpose of yielding, under my reservation of objection, to the gentleman from Ohio (Mr. VANIK) for the purpose of explaining the legislation.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, the purpose of H.R. 9911 as reported is to continue the temporary suspension of duties on imports of certain zinc ore and concentrates until June 30, 1981.

H.R. 9911 was introduced by our colleagues, Messrs. DUNCAN of Tennessee, JONES of Oklahoma, and RISENHOOVER of Oklahoma.

H.R. 9911 would continue the duty suspension on zinc ores and concentrates used by domestic zinc manufacturers as necessary raw materials in the production of zinc metal. The duty on these items was originally suspended in 1975 in recognition of the fact that U.S. mines do not have sufficient capacity to satisfy demand. The domestic zinc producers are seeking continuation of this temporary duty suspension to help them compete more effectively against foreign zinc producers.

Reports favoring H.R. 9911 were received from the Departments of Labor, Interior, Treasury, State, and Commerce. The Office of the Special Trade Representative reported no objection to the bill. No objections to H.R. 9911 have been received from any source.

The committee was unanimous in reporting H.R. 9911 on July 14, and I urge its passage.

Mr. STEIGER. Mr. Speaker, I further reserve the right to object.

Mr. Speaker, I join my colleague in supporting H.R. 9911, a bill continuing the existing suspension of the column 1 rates on duty on certain zinc ores and and concentrates. The suspension provided by the bill would run from June 30, 1978 through June 30, 1981.

As already outlined by the gentleman from Ohio, the bill extends for a second 3-year period the duty suspension on zinc bearing ores, zinc dross and skimmings, zinc bearing materials, and zinc waste and scrap. These are the raw materials used by smelters and refiners for the production of zinc slab. Canada supplies about 50 percent of the necessary imports, with three or four South American and Southeast Asian countries supplying the remainder. Australia also exports zinc raw materials to the United States.

The first suspension was enacted in 1975 after Congress was petitioned by domestic zinc producers who found that the duty was undermining their competitive position with respect to other zinc-producing countries. These producers have asked that the duty suspension be renewed in order that they might continue to compete effectively with producers in countries that apply no duty to imports of the raw materials. As was the case 3 years ago, U.S. mines do not have sufficient capacity to meet demands and domestic supplies of raw materials continue to dwindle. Zinc smelters and refiners, therefore, must supplement domestically mined ores and concentrates with imported raw materials.

During hearings held on the bill in May, no objections to renewing the suspension were heard from any source. The administration supported the bill on the grounds that the added costs incurred through the duties serve no beneficial purpose to any domestic industry, and in fact the competitive position both at home and abroad of U.S. smelters and refiners would be seriously threatened should such duties be reimposed.

Mr. Speaker, I believe the bill to be meritorious; and, again, I urge my colleagues to approve the measure at this time.

Mr. Speaker, I withdraw my reservation of objection, and yield back the balance of my time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 9911

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) items 911.00, 911.01, 911.02, and 911.03 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) are each amended by striking out "6/30/78" and inserting in lieu thereof "6/30/81".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption, after June 30, 1978.

With the following committee amendments:

Page 1, line 3, strike out "(a)".

Page 1, line 5, before "amended" insert "each".

Page 1, line 7, strike out "(b) The amendment made by subsection (a)" and insert "SEC. 2. The amendments made by the first section of this Act".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SUSPEND DUTY ON NATURAL GRAPHITE

Mr. VANIK. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 10625) to

suspend the duty on natural graphite until the close of June 30, 1981.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. STEIGER. Mr. Speaker, reserving the right to object, and I shall not object, I do so for the purpose of yielding to the gentleman from Ohio (Mr. VANIK) for the purpose of explaining the legislation.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. STEIGER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, the purpose of H.R. 10625 as reported by your committee, is to continue the temporary suspension of duty on imports of natural graphite to June 30, 1981.

H.R. 10625 was introduced by our colleagues, Messrs. BURLESON and POAGE of Texas.

Graphite is used in foundry facings, steelmaking, lubricants, refractories, pencils, and batteries. Alternate materials cannot substitute for natural graphite except at substantially higher cost. There is only one operating domestic graphite producer and this company supplies only a minor share of domestic consumption. The parent firm of the single domestic producer is seeking the continued duty suspension. The suspension helps reduce production and consumer costs of graphite and make U.S.-produced graphite products more competitive in foreign markets.

A technical amendment was made to substitute language in section 2 to make the bill effective with respect to articles entered or withdrawn from warehouse, for consumption after June 30, 1978. This language would insure that natural graphite would remain eligible for duty-free entry in the event that H.R. 10625 is enacted after June 30, 1978.

Reports favoring enactment of H.R. 10625 were received from the Departments of Commerce, Treasury, and Labor. The Department of State indicated that it has no objection to the bill. No opposition has been received from any source.

The committee was unanimous in reporting H.R. 10625 on July 14, and I urge its passage.

Mr. STEIGER. Mr. Speaker, I further reserve the right to object.

Mr. Speaker, I support the views of the chairman of the Trade Subcommittee, Mr. VANIK, in his endorsement of this legislation.

As the gentleman has indicated, this bill would extend until June 20, 1981, the duty suspension on imports of natural graphite which, under the Tariff Schedules, expired June 30 of this year. This extension of the duty suspension enjoyed by imports of natural graphite is necessary, because there is presently only one domestic graphite producer in operation and this producer supplies only a very small portion of domestic demand. Against this limited production by the domestic producer, U.S. demand for natural graphite has been increasing annually. Moreover, certain grades of natural graphite are considered essential to the national defense and have been designated strategic materials.

Support for this duty suspension comes from the parent firm of the sole domestic producer. The firm feels that a duty suspension would help reduce production costs which in turn would contribute to a limitation on consumer prices for natural graphite products as well as enhance the competitive position in foreign markets of U.S.-produced graphite products. The Departments of Commerce and Treasury submitted reports to the committee favoring this bill and the Department of State indicated that it had no objection to it. In fact, no objections to this legislation were submitted to the committee. The committee passed this bill unanimously and I urge that the bill be approved by this body.

Mr. Speaker, I withdraw my reservation of objection, and yield back the balance of my time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 10625

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by adding immediately after item 907.80 the following new item:

" 909.01	Graphite crude and refined, natural (provided for in item 517.21, 517.24, or 517.27, part 1E, schedule 5)..	Free	No change	On or before 6/30/81".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

With the following committee amendments:

Page 1, strike out lines 3, 4, 5, and 6 and the matter appearing after line 6 and insert the following:

That item 909.01 of the Appendix of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "6/30/78" and inserting in lieu thereof "6/30/81".

Page 2, lines 7 and 8, strike out "the date of the enactment of this Act." and insert "June 30, 1978".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to continue the existing suspension of duty on natural graphite until the close of June 30, 1981."

A motion to reconsider was laid on the table.

DUTY-FREE IMPORTATION OF DYEING AND TANNING MATERIALS

Mr. VANIK. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 11409) to extend indefinitely the period during which certain dyeing and tanning materials may be imported free of duty.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. STEIGER. Reserving the right to object, Mr. Speaker, and obviously, I will not do so, I yield to my friend, the gentleman from Ohio (Mr. VANIK) for an explanation of the bill.

Mr. VANIK. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. STEIGER) for yielding.

Mr. Speaker, the purpose of H.R. 11409, as reported, is to eliminate the duties on imports of certain dyeing and tanning materials.

H.R. 11409 was introduced by our colleague, Mr. BURKE of Massachusetts.

These dyeing and tanning materials are primarily used by the U.S. leather industry in converting rawhides and skins into leather. Temporary duty suspensions have been granted and extended since original enactment in 1957. The last extension, enacted in 1975, provides for duty suspension until June 30, 1978.

There has been very little domestic production of most dyeing and tanning materials for many years. Consequently, the U.S. users depend on imports for virtually all of their requirements. Elimination of duty helps American tanners compete with foreign producers and provides benefits to consumers by holding down the price of leather.

Reports favoring H.R. 11409 were received from the Department, of Commerce, Treasury, and Agriculture. No objections to this bill have been received from any source.

The committee was unanimous in reporting H.R. 11409 on July 14, and I urge its passage.

Mr. STEIGER. Mr. Speaker, I thank the gentleman for his explanation.

I, too, support passage of H.R. 11409, eliminating the duties of certain dyeing and tanning materials. The bill is a definitive response to a long-standing economic situation with respect to the leather industry. It is a good bill and should be enacted.

As explained by my colleague, H.R. 11409 would permanently remove the duties on various vegetable dyeing and tanning extracts. The duties on such items have been suspended for consecutive temporary periods since 1957 in recognition of the fact that there has been very little domestic production of natural dyeing and tanning extracts for many years. The most recent extension expired on June 30, 1978.

Vegetable dyeing and tanning extracts are used primarily by the leather industry in their finishing process, but are also used as a thinner for fluids used in certain oil well drilling operations. Al-

though some chestnut tanning extract is produced in this country, it comprises only a fraction of what is needed by domestic industries. Therefore, virtually all of private industry's requirements for vegetable tanning extracts are imported, mostly from Argentina, Brazil, Paraguay, Peru, and France. It is very unlikely that this situation will change since natural dyeing and tanning substances are taken from trees that either do not grow in this country at all or that have become less and less available—such as the chestnut tree.

The leather industry maintains that the continuous suspension of these duties has allowed them to compete effectively with imported leather goods, and consequently has kept down costs to consumers. The administration agrees, and states that a permanent duty reduction in this instance would in no way undercut our negotiating position in the current multilateral trade negotiations.

Mr. Speaker, the Trade Subcommittee received no objections to this bill from any source and approved the measure unanimously. I urge the House to vote for passage at this time.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 11409

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) item 907.80 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is stricken out and in lieu thereof, items 470.15, 470.23, 470.25 Part 9A schedule 4 and 470.57, and 470.65 Part 9B schedule 4 of the Tariff Schedules of the United States (19 U.S.C. 1202) are amended as follows:

"SCHEDULE 4 PART 9A

Item	Stat suffix	Articles	Units of quantity	Rates of duty 1	Rates of duty 2
		Brazil wood, cutch, fustic, henna, logwood, madder, Persian berry, safflower and saffron:			
470.10	00	Crude or processed	Pound	Free	Free
		Other:			
470.15	00	Logwood	Pound	Free	Free
470.18	00	Other	Pound	4% ad val.	15% ad val.
		Canaigre, chestnut, curupay, divi-divi, eucalyptus, hemlock, larch, and tara:			
470.20	00	Crude or processed	Pound	Free	Free
		Other:			
470.23	00	Chestnut, divi-divi, and hemlock	Pound	Free	Free
470.25	00	Other	Pound	Free	Free

"SCHEDULE 4 PART 9B

Item	Stat suffix	Articles	Units of quantity	Rates of duty 1	Rates of duty 2
		Mangrove, myrobalan, oak, quebracho, sumac, urunday, and wattle:			
470.50	00	Crude or processed	Pound	Free	Free
	30	Quebracho	Pound		
	40	Wattle	Pound		
	70	Other	Pound		
		Other:			
470.55	00	Myrobalan and Sumac	Pound	Free	Free
470.57	00	Other		Free	Free
	40	Quebracho	Pound		
	60	Wattle	Pound		
	90	Other	Pound		
		Valonia:			
470.60	00	Crude or processed	Pound	Free	Free
470.65	00	Other	Pound	Free	Free

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption after June 30, 1978.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) subpart A of part 9 of schedule 4 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by striking out item 470.15 and inserting in lieu thereof the following:

	Other:			
"470.16	Logwood	Free	Free	
470.18	Other	4% ad val.	15% ad val.".	

(2) by striking out "15% ad val." in each of items 470.23 and 470.65 and inserting in lieu thereof "Free";

(3) by striking out "6% ad val." and "15% ad val." in item 470.25 and inserting in lieu thereof "Free";

(4) by striking out "2.5% ad val." and "15% ad val." in item 470.55 and inserting in lieu thereof "Free"; and

(5) by striking out "3.5% ad val." and "15% ad val." in item 470.57 and inserting in lieu thereof "Free".

(b) Item 907.80 of the Appendix to such Schedules is repealed.

SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after June 30, 1978.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to make permanent the existing temporary suspension of duty on certain dyeing and tanning materials."

A motion to reconsider was laid on the table.

REQUEST FOR CONSIDERATION OF H.R. 12739, DUTY SUSPENSION ON LIVE WORMS

Mr. VANIK. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 12739) to suspend the duty on live worms until the close of June 30, 1981.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

Mr. STEIGER. Mr. Speaker, I ask unanimous consent that the bill H.R. 12739 be passed over without prejudice.

Mr. VANIK. Mr. Speaker, I will withdraw the bill at this time.

The SPEAKER pro tempore. The gentleman from Ohio withdraws his request.

EXTENDING BOUNDARY OF WHITE RIVER NATIONAL FOREST IN COLORADO

Mr. RUNNELS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 2101) to modify the boundary of the White River National Forest in the State of Colorado.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

Mr. JOHNSON of Colorado. Mr. Speaker, reserving the right to object, and I shall not object, I yield to the gentleman from New Mexico (Mr. RUNNELS) for a brief explanation of the bill.

Mr. RUNNELS. Mr. Speaker, I thank the gentleman from Colorado for yielding.

Mr. Speaker, S. 2101, as amended by the Committee on Interior and Insular Affairs, extends the boundary of the White River National Forest in Colorado to include 73,852 acres. The Senate-passed bill extends the boundary to include 2,416 acres near Aspen, and the committee included an additional 71,000 acres near Minturn.

Extension of the forest boundary will provide uniform administration of public land under one Federal agency; eliminate duplication of management services; give flexibility to exchange lands presently outside the U.S. Forest Service boundaries to achieve a more efficient, economic, and desirable management program; and reduce costs for public land management functions.

S. 2101, as amended, provides the specific legislative authority necessary to expand the White River National Forest, and authorizes the use of land and water conservation funds for acquisitions. Except for nominal administrative costs, no significant costs should be incurred as a result of enactment of this legislation.

Mr. Speaker, I urge the passage of S. 2101 as amended.

Mr. JOHNSON of Colorado. Mr. Speaker, I endorse what the gentleman has said.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2101

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the exterior boundary of the White River National Forest in the State of Colorado is hereby modified to include the following described lands, containing 2,416 acres more or less:

(1) Township 10 south, range 85 west, sixth principal meridian:

Section 1, lots 1–7; and

(2) Township 10 south, range 84 west, sixth principal meridian:

Section 5: entire;

Section 6: north half, and southeast quarter except that part platted as a portion of the Red Mountain subdivision;

Section 7: east half of the east half, and that part of lot 27 outside the east half of the east half;

Section 8: entire;

Section 17: east half, north of the northwest quarter, and lots 1, 3, and 6.

Section 18: that part of the northeast quarter of the northeast quarter bounded by M.S. 3905, M.S. 6120, and M.S. 6899.

SEC. 2. Subject to valid existing rights, all lands owned by the United States in the areas described in section 1 of this Act are hereby added to the White River National Forest, and shall be administered in accordance with the laws, rules, and regulations applicable thereto.

SEC. 3. For the purposes of section 7 of the Act of September 3, 1964 (78 Stat. 903, as amended; 16 U.S.C. 4601–9), the boundary of the White River National Forest, as modified by section 1 of this Act, shall be treated as if it were the boundary of the forest on January 1, 1965.

With the following committee amendments: Page 2, after line 14, insert a new section 2 reading as follows and renumber the succeeding sections accordingly:

SEC. 2. (a) The exterior boundary of the White River National Forest is hereby further modified as follows: Beginning at a point on the White River National Forest boundary at the southwest corner of Lot 1, Section 8, T. 2 S., R. 82 W., 6th P.M., Colorado; thence north to the northern right-of-way boundary of State Highway #131; thence westerly along the northern boundary of said Highway to its intersection with northern boundary of tract 38, Section 7, T. 2 S., R. 82 W., 6th P.M.; thence west to its confluence with the western most bank of the Colorado River; thence generally southwesterly along the western most bank of the Colorado River to its confluence with the west bank of Goodson Creek; thence southerly along the west bank of Goodson Creek traversing through Sections 25 & 36, T. 2 S., R. 83 W., 6th P.M., and Sections 1, 2, 10 & 11, T. 3 S., R. 83 W., 6th P.M.; thence southwesterly across the watershed divide to the headwaters of Alkali Creek; thence southerly along the west bank of Alkali Creek traversing through Sections 10, 15, 22, 27 & 34, T. 3 S., R. 83 W., 6th P.M., and Sections 3, 9, 10 & 16, T. 4 S., R. 83 W., 6th P.M., to its confluence with the Eagle River; thence southeasterly along the south bank of the Eagle River to its intersection with the west section line of Section 15, T. 4 S., R. 83 W., 6th P.M.; then south along the section line to the southwest corner of Section 27, T. 4 S., R. 83 W., 6th P.M.; thence west to the ¼ corner common to Sections 28 and 33, T. 4 S., R. 83 W., 6th P.M.; thence south to the White River National Forest boundary which is common with the ¼ corner of Sections 16 & 21, T. 5 S., R. 83 W., 6th P.M.

(b) Except as provided in this section, nothing in this Act shall affect the validity or term of any existing right-of-way, license, lease, applications filed under the Unintentional Trespass Act pursuant to section 214 of the Federal Land Policy and Management Act (43 U.S.C. 1722), or easement covering lands transferred by this Act. Any permit or grazing authorization covering lands transferred by this Act shall continue to be effective until March 1, 1980, at which time such authorization shall be cancelled and the holder thereof may apply for new permit or grazing authorization to the agency which acquires administrative jurisdiction of the lands which such authorization covers.

Page 4, line 24, strike the words "section 1" and insert in lieu thereof "sections 1 and 2".

Page 5, line 6, strike the words "section 1" and insert in lieu thereof "sections 1 and 2".

Page 4, line 13, strike "Sec. 2." and insert "SEC. 3."

Page 5, line 3, strike "Sec. 3," and insert "SEC. 4."

Mr. RUNNELS (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The committee amendments were agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

INCREASED COMPENSATION FOR NEEDY PARENTS OF VETERANS

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 11887) to amend title 38, United States Code, to increase the rates of dependency and indemnity compensation for parents, and for other purposes.

The clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I do not plan to object; but I take this time in order that the distinguished chairman of the subcommittee can explain the bill to the Members of the House.

Mr. MONTGOMERY. Mr. Speaker, this is the sixth bill we have brought before the House of Representatives pertaining to a cost-of-living increase for veterans and for their dependents. We have to do it by law each year. This is the last of the six bills; so what this bill would provide is a simple cost-of-living increase for parents of veterans who have died as a result of service-connected disease or injury.

Mr. Speaker, the Subcommittee on Compensation, Pension and Insurance conducted several days of hearings earlier this year on various aspects of programs administered by the Veterans' Administration for veterans who have incurred disability while serving in the Armed Forces of the United States as well as for the survivors of veterans who have died as the result of service-connected disease or injury.

As a result of these hearings, the committee favorably reported six bills. The other five have already passed the House. I wish to thank all of the members of the committee for their diligence and hard work in reporting these bills. I especially wish to thank our chairman, Mr. ROBERTS, the distinguished gentleman from Texas, for his strong leadership as well as Mr. HAMMERSCHMIDT, the ranking minority member from Arkansas, for his support. There has been a very heavy workload this year, and I want to commend the subcommittee members for their tireless efforts and all of the time they put into these hearings. I especially wish to commend the ranking minority member of the subcommittee, Mr. WYLIE of Ohio, for his unfailing attendance and assistance.

The last and final compensation bill which we today put before you is H.R. 11887, and it deals with the ever-important dependency and indemnity compensation program for needy parents of veterans who died of service-connected causes. The purpose of this benefit is to provide partial compensation to the designated survivors for the loss in financial support sustained as the result of the service-connected death. For a parent to be eligible for DIC benefits, his or her annual income must not exceed $3,770; or if there are two parents, their combined countable annual income must not exceed $5,070. The reported bill would increase these income limitations to $4,000 for one parent and $5,370 for two parents living together.

Income exclusions which apply to the nonservice-connected pension program generally apply to the dependency and indemnity compensation program for dependent parents. These benefits are also payable on a graduated scale to assure that the parent or parents with the least amount of income, and obviously in greater need, receive the greater rate of benefit. There are now 67,000 parents relying on their DIC monthly payments.

Under current law, an additional allowance of $79 monthly is provided for dependent parents who are in a nursing home or who are in need of the regular aid and attendance of another person. H.R. 11887 would increase this allowance to $84 monthly.

Since this benefit program has a needs test, it has been traditional to consider the parents' dependency and indemnity compensation rates at the same time that veterans and survivors pension rates were adjusted to keep up with inflation. However, in view of this year's pension reform legislation, it is necessary to take this issue up separately.

H.R. 11887 proposes an increase in payment formula of 6 percent, an amount that was chosen in an effort to keep pace with rising costs of living. During the hearings, the committee demonstrated that increases in income limitations and in rates are required for 1979 if substantial adverse effects on overall DIC entitlements are to be averted. Benefits for these dependents were last increased on January 1, 1978.

The cost of this bill for fiscal year 1979 is estimated at $3.7 million and is within our budget allocation and within inflationary guidelines.

I urge you to vote for this bill, which completes the package of bills for the service-connected veteran and dependents. The bill, as I have explained, is important, since DIC is not indexed by law to keep these payments from being eroded away.

Mr. HAMMERSCHMIDT. Mr. Speaker, I support what the gentleman has said.

Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague and chairman of our committee, the Honorable RAY ROBERTS of Texas, and rise in wholehearted support of H.R. 11887, to provide a 6-percent increase in dependency and indemnity compensation rates for our veterans' dependent parents. The proposed increase is based on the projected cost-of-living increase for this year, 1978.

The purpose of this benefit is to provide partial compensation to designated veterans' survivors for the loss in financial support sustained as a result of a service-connected death of the veteran.

The reported bill will increase the maximum allowable income from $3,770 to $4,000 for a single parent, and from $5,070 to $5,370 for two parents living together.

H.R. 11887 would also increase to $84 per month the additional allowance provided for dependent parents who are in nursing homes or who are in need of the regular aid and attendance of another person.

Mr. Speaker, as stated earlier, H.R. 11887 is a simple cost-of-living increase and I urge my colleagues to vote for this needed legislation.

● Mr. WYLIE. Mr. Speaker, I support H.R. 11887, which I cosponsored and will increase dependency and indemnity compensation (DIC) for needy parents of veterans who died of service-connected causes.

In general, the measure would provide a 6 percent increase in DIC rates for dependent parents. Since this particular VA benefits program is not automatically indexed to the cost-of-living rate, it is fitting for the Veterans' Affairs Committee and the Congress to adjust these compensation levels from time to time. These rates were last increased in January of 1978, and the higher monthly amounts here provided would take effect on January 1, 1979 to cover the increase in inflation for calendar year 1978.

This will help to provide a measure of partial compensation to the surviving parents who meet the eligibility criteria for the financial loss they have sustained by the service-connected death of a son or daughter who served the United States by answering the country's call to arms. I urge its passage.●

● Mr. CORRADA. Mr. Speaker; I rise in support of H.R. 11887.

This bill provides for a 6 percent increase in dependency and indemnity compensation (DIC) rates for dependent parents.

At the present time there are 1,993 constituents of mine who will be greatly benefited by this legislation. Since DIC benefits for dependents parents are not automatically indexed by law, Congress is doing justice to the needy parents by adjusting the rates of compensation. It is a well intended piece of legislation and I believe it should be enacted into law. It is precisely in these difficult times that such increases are becoming necessary.

However I think proper at this time to mention that the Senate passed on July 31, 1978, its version of H.R. 10173—originally S. 2384—the Veterans' and Survivors' Pension Improvement Act. Section 306 of the Senate version provides that the improved pension benefits may not be paid to any person residing outside the 50 States and the District of Columbia. This is a blatant case of discrimination against the veterans living in Puerto Rico as well as a dangerous precedent for all other veterans living in domestic areas outside the mainland United States.

Furthermore, section 201 of the bill provides also that the improved dependency and indemnity compensation for service-connected deaths shall not be paid to any parent residing outside the 50 States and the District of Columbia. Instead of giving the equal and just treatment to all needy parents, as the House Committee on Veterans' Affairs did in H.R. 11887, the Senate opted for the establishment of categories by reason of geography. This is also a dangerous precedent which I believe should be stopped now that we are on time.

I am the sole representative in Congress of 3.5 million American citizens living in Puerto Rico. I was never consulted or invited by the Senate Committee on Veterans' Affairs nor even requested to express my points of view on this subject matter. I was shocked to see the exclusion of Puerto Rican veterans and needy parents from the Senate bill.

The report on the Senate bill does not even recognize or take into account the fact that Puerto Ricans are U.S. citizens subject to the same draft laws as their counterparts in the mainland.

I am amazed that the Senate committee even dared to make recommendations to the Senate without a fair assessment of pertinent and available data and statistics about Puerto Rico. Facts available on Puerto Rico like population, average persons per family, birth and death rates, per capita income, families under poverty levels, consumers' price index, rate of inflation, and the level of unemployment have been ignored.

The report indicates that the restriction is considered advisable because the need-based income maintenance benefits under the improved pension program are keyed to poverty guidelines based on economic data and the rise in the Consumers' Price Index in the United States.

If the House Committee on Veterans' Affairs or the conferees believe that this matter should be further studied I have no objection. However, the lack of a study at this time should not be the basis for leaving Puerto Rican veterans and needy parents behind in this reform and excluding them blindly from the improved pension program. If there is going to be a study it should be expanded to include the 50 States and the District of Columbia. The cost of living in Hawaii, Alaska, Mississippi, or in any other particular State, might be completely different in one area from the other. If there is uniformity in the pensions and dependency and indemnity compensation program for service connected death for the 50 States, including Hawaii, Alaska, and the District of Columbia why should Puerto Rico be left out as if we were not a domestic area?

Hawaii, Alaska, and Puerto Rico are outlying domestic areas and there is no reason to include two and exclude one of these areas from the bill. I will venture to say that if an objective study is made, the veterans and needy parents living in Puerto Rico will be entitled to a higher pension and compensation in order to maintain a decent standard of living. As you probably know, the U.S. Civil Service Commission has prescribed cost of living allowances for Federal employees in Puerto Rico ranging from 5 to 12.5 percent based on comparisons with cost-of-living indexes in the Washington, D.C., area.

The hasty action taken by the Senate is unprecedented and unwarranted. I trust the House conferees will protect our Puerto Rican veterans and needy parents by supporting the House version of H.R. 10173 and H.R. 11887 and not receding to the Senate.

The 14,000 plus veterans and the 1,993 needy parents living in Puerto Rico, who will be deprived of the benefits of these improved programs, will appreciate the House support in defeating the Senate's version. The veterans of Puerto Rico served gallantly and with pride when they were needed. They faced the same bullets and suffered the same in the name of democracy as their fellow American citizens in the mainland. Our youth in Puerto Rico will be called to arms should there be a need to defend our Nation in the future just as other American youngsters. They should not be humiliated by knowing beforehand that should they be eligible in the future for a pension as a veteran the benefits provided to them or their parents are inferior while the risks to their lives and health in war will be the same.

H.R. 11887 as reported out by the House Committee on Veterans' Affairs has my support and endorsement and I urge you to vote for it.

I would also like to take this opportunity to commend the members of the House Veterans' Affairs Committee for their outstanding dedication on behalf of the veterans of this Nation. In particular I want to commend Chairmen ROBERTS and MONTGOMERY for the support they have given me in order to defeat the Senate's intent of discriminating against the Puerto Rican veterans and the needy parents.●

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the bill, as follows:

H.R. 11887

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 415 of title 38, United States Code, is amended—

(1) by amending the table in subsection (b)(1) to read as follows:

"The monthly rate of dependency and indemnity compensation shall be $161 reduced by—	For each $1 of annual income	
	Which is more than—	But not more than—
$0.00	0	$800
.03	$800	1,000
.05	1,000	1,200
.06	1,200	1,400
.08	1,400	4,000";

(2) by striking out "$3,770" in subsection (b)(3) and inserting in lieu thereof $4,000";

(3) by amending the table in subsection (c)(1) to read as follows:

"The monthly rate of dependency and indemnity compensation shall be $113 reduced by—	For each $1 of annual income of such parent	
	Which is more than—	But not more than—
$0.00	0	$800
.02	$800	1,100
.02	1,100	1,900
.06	1,900	4,000";

(4) by striking out "$3,770" in subsection (c)(3) and inserting in lieu thereof "$4,000";

(5) by amending the table in subsection (d)(1) to read as follows:

"The montly rate of dependency and indemnity compensation shall be $108 reduced by—	For each $1 of the total combined annual income	
	Which is more than—	But not more than—
$0.00	0	$1,000
.02	$1,000	1,900
.03	1,900	2,700
.04	2,700	3,500
.05	3,500	5,370";

(6) by striking out "$5,070" in subsection (d)(3) and inserting in lieu thereof "$5,370"; and

(7) by striking out "79" in subsection (h) and inserting in lieu thereof "$84".

SEC. 2. Section 322(b) of title 38, United States Code is amended by striking out "$79" and inserting in lieu thereof "$84".

SEC. 3. The amendments made by this Act shall take effect January 1, 1979.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WELL DONE, Mr. PRESIDENT. CONGRATULATIONS MR. BEGIN AND MR. SADAT

(Mr. BOLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOLAND. Mr. Speaker, since September 5, the world has been waiting for some indication of how the Camp David summit was progressing. Last night we received news of progress toward a real peace in the Middle East that far exceeded the expectations of most observers.

The Camp David accords, which were signed at the White House last night, establish a framework for negotiations which will hopefully result in a formal peace treaty between Egypt and Israel being signed. The hope for peace, which was so dim just 2 weeks ago is now many times brighter.

The world owes a debt of gratitude to President Carter, Prime Minister Begin and President Sadat. Mr. Begin and Mr. Sadat were willing to put the bitterness caused by 30 years of bloodshed and hostility behind them in their search for fair and just solutions to the differences that have separated their peoples. They are statesmen and leaders in the very best sense of those terms.

Mr. Speaker, I believe that the efforts of President Carter deserve our special thanks and praise. He convened the summit at a time when the risks of failure were great. By holding the talks at Camp David, in what amounted to almost a total news blackout, he managed to get away from diplomatic business as usual. Over 13 of what must have been exceedingly trying days he kept the negotiating process in motion. Those traits of patience and perseverance, which are so much a part of his personality, must have served him well at Camp David. This was very much his summit in concept and in execution and he has every right to feel proud at the results. I know I speak for many Members of Congress, of both political parties, Mr. Speaker, when I say, "Good work, Mr. President."

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

After all motions to suspend the rules have been entertained and debated, and after those motions to be determined by "nonrecord" votes have been disposed of, the Chair will then put the question on each motion on which the further proceedings were postponed.

MEDICARE AMENDMENTS OF 1978

Mr. ROSTENKOWSKI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13097) to amend certain provisions of title XVIII of the Social Security Act as they relate to the medicare program established by a part A of such title, as amended.

The Clerk read as follows:

H.R. 13097

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Medicare Amendments of 1978".

HOME HEALTH SERVICES

SEC. 2. (a) Section 1811 of the Social Security Act is amended by striking out "and related post-hospital services" and inserting in lieu thereof ", related post-hospital, home health, and community mental health services".

(b) Section 1812(a)(3) of such Act is amended to read as follows:

"(3) home health services; and".

(c) Section 1812(d) of such Act is repealed.

(d) Section 1812(e) of such Act is amended—

(1) by striking out "(b), (c), and (d)" and inserting in lieu thereof "(b) and (c)"; and

(2) by striking out "post-hospital extended care services, and post-hospital home health services" and inserting in lieu thereof "and post-hospital extended care services".

(e) Sections 1814(a) and 1835(a) of such Act are amended by adding the following new sentence at the end of each such section: "With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than June 30, 1979, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.".

(f) Section 1814(a)(2)(D) of such Act is amended—

(1) by striking out "post-hospital home health services" and inserting in lieu thereof "home health services"; and

(2) by striking out ", for any of the conditions" and all that follows through "extended care services".

(g) Section 1832 (a)(2)(A) of such Act is amended by striking out "for up to 100 visits during a calendar year".

(h) Section 1833(b) of such Act is amended—

(1) by striking out "and" at the end of clause (1) in the first sentence; and

(2) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: ", and (3) such deductible shall not apply with respect to home health services.".

(i) Section 1834 of such Act is repealed.

(j) Section 1861(e) of such Act is amended—

(1) by striking out "subsections (i) and (n)" in the material preceding paragraph (1) and inserting in lieu thereof "subsection (i)"; and

(2) by striking out "subsections (i) and (n)" in the third sentence and inserting in lieu thereof "subsection (i)".

(k) Section 1861(m)(4) of such Act is amended by inserting the following before the semicolon: "who has successfully completed a training program approved by the Secretary".

(l) Section 1861(n) of such Act is repealed.

(m) Section 1861(o) of such Act is amended—

(1) by striking out "and" at the end of paragraph (5), by inserting "and" at the end of paragraph (6), and by adding the following new paragraph after paragraph (6):

"(7) meets such additional requirements as the Secretary finds necessary for the effective and efficient operation of the program;"; and

(2) by striking out "except that" the first time it appears in the material following paragraph (6) and all that follows through "regulations; and".

(n) Section 1816(e) of such Act is amended—

(1) by inserting "(subject to the provisions of paragraph (4))" after "the Secretary may" in paragraph (2); and

(2) by adding the following new paragraph at the end thereof:

"(4) Notwithstanding subsection (a) and (d) and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1861(o)) in the region.".

(o) Section 226(c)(1) of such Act is amended—

(1) by striking out "and post-hospital home health services" and inserting in lieu thereof "and home health services"; and

(2) by striking out "or post-hospital home health services" in clause (B).

(p) Section 7(d)(1) of the Railroad Retirement Act of 1974 is amended by striking out "posthospital home health services" and inserting in lieu thereof "home health services".

(q)(1) The amendments made by this section shall become effective with respect to services furnished on or after July 1, 1979; except that the amendments made by subsections (m) and (n) shall become effective on the date of the enactment of this Act.

(2) The Secretary shall take administrative action to assure that improvements, in accordance with the amendment made by subsection (m)(1), will be made with respect to home health services by June 30, 1979.

ELIMINATION OF SECOND WAITING PERIOD FOR REENTITLED DISABILITY BENEFICIARIES

SEC. 3. (a)(1)(A) Section 226(b)(2) of the Social Security Act is amended by striking out "consecutive" in clauses (A) and (B).

(B) Section 226(b) of such Act is further amended by striking out "consecutive" in the matter following paragraph (2).

(2) Section 1811 of such Act is amended by striking out "consecutive".

(3) Section 1837(g)(1) of such Act is amended by striking out "consecutive".

(4) Section 7(d)(2)(ii) of the Railroad Retirement Act of 1974 is amended by striking out "consecutive" each place it appears.

(b) Section 226 of the Social Security Act is amended by redesignating subsection (f) as subsection (g), and by inserting after subsection (e) the following new subsection:

"(f) For purposes of subsection (b) (and for purposes of section 1837(g)(1) of this Act and section 7(d)(2)(ii) of the Railroad Retirement Act of 1974), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on such basis effective with any particular month (or to be deemed to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1837(f)), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

"(1) more than 60 months before that particular month in any case where such monthly benefits were of the type specified in clause (A)(i) or (B) of subsection (b), or

"(2) more than 84 months before that particular month in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period.".

(c) The amendments made by this section shall apply with respect to hospital insurance or supplementary medical insurance benefits for months after the month in which this Act is enacted.

RECIPROCAL AGREEMENTS FOR SERVICES COVERED OUTSIDE THE UNITED STATES

SEC. 4. Title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"INTERNATIONAL AGREEMENTS

"SEC. 1882. (a) The President is authorized to enter into agreements establishing reciprocal arrangements between the programs established by this title and the program of any foreign country under which similar services are provided directly to entitled individuals or under which insurance is provide to meet all or part of the expenses of entitled individuals for such services.

'(b) Any agreement establishing such a reciprocal arrangement pursuant to this section shall specify—

"(1) the nature and extent of payment to be made to or on behalf of (A) individuals entitled to benefits under this title for services covered under such title when such individuals are present in the foreign country and receive such services from persons who are authorized under the program of that foreign country to furnish them, and (B) individuals entitled to benefits under the program of that foreign country who receive such services in the United States from persons meeting such requirements or conditions as are required under such title;

"(2) such limitations on the nature and duration of services for which payment may be made in one country to individuals entitled to benefits under the program of the other country, as the President deems appropriate, except that no agreement shall authorize any individual to receive benefits in the United States on a reciprocal basis in excess of those provided for individuals entitled to benefits under this title;

"(3) such limitations on entitlement of individuals to benefits on a reciprocal basis under an agreement in the Unted States and in the foreign country, as the President deems appropriate, except that no agreement shall provide entitlement to benefits under this title in the United States for an individual who does not meet the requirements for entitlement applicable under such title with respect to age or medical condition;

"(4) the methods by which the cost of providing services to persons on a reciprocal basis shall be shared equitably by the persons receiving such services and by the respective programs of the United States and the foreign country; and

"(5) such other provisions, not inconsistent with this section, as the President deems appropriate.

"(c) The Secretary shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

"(d) Pending the conclusion of an agreement under this section with a foreign country, the Secretary is authorized to enter into interim arrangements with any hospital in that country which is accredited by the Joint Commission on Accreditation of Hospitals, or such other hospitals as the Secretary finds meet health and safety standards equivalent to those required under this title for hospitals in the United States and which are accredited in the foreign country concerned, under which payment may be made for inpatient hospital services, as defined in section 1861, to or on behalf of an individual who is entitled to such benefits under part A of this title. For purposes of making payment under such an interim arrangement, the Secretary shall use whichever of the methods provided for in section 1814(f) he finds appropriate, except that any payments made under part A of this title to the individual or to the hospital shall be reduced to the extent that the individual has no legal obligation to pay for any items or services furnished to such individual by reason of the laws of the foreign country in which the hospital is located, or such individual's membership in an insurance plan that provides for payment for such items or services.".

DENTISTS' SERVICES

SEC. 5. (a) Clause (2) of the first sentence of section 1861(r) of the social Security Act is amended to read as follows: "(2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions,".

(b) Section 1814(a)(2)(E) of such Act is amended to read as follows:

"(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services; or".

(c) Section 1862(a)(12) of such Act is amended by inserting "or because of the severity of the dental procedure" after "clinical status".

TREATMENT OF PLANTAR WARTS

SEC. 6. Section 1862(a)(13)(C) of the Social Security Act is amended by striking out ", warts,".

COMMUNITY MENTAL HEALTH CENTERS

SEC. 7. (a) Section 1812(a) of the Social Security Act is amended by striking out "and" at the end of paragraph (2) and by adding the following new paragraph at the end thereof:

"(4) community mental health center services for—

"(A) up to 10 outpatient visits (as defined by the Secretary) during a calendar year; and

"(B) up to 60 partial hospitalization visits (as defined by the Secretary) during a calendar year."

(b) Section 1812(c) of such Act is amended by addirg the following new sentence at the end thereof: "In determining the 190-day limit with respect to any individual under subsection (b)(3), the Secretary shall include 1 day for every 4 partial hospitalization visits to a community mental health center by such individual.".

(c) Section 1812 of such Act is amended by adding the following new subsection at the end thereof:

"(g) Payment under this part may be made for community mental health center services furnished an individual for only—

"(1) up to 10 outpatient visits to such a center during any calendar year; and

"(2) up to 60 partial hospitalization visits to such a center during any calendar year, if the individual has not amended the limitation on inpatient psychiatric hospital services described in subsection (b)(3).

Services shall be taken into account for purposes of paragraphs (1) and (2) and the second sentence of subsection (c) only if payment is or would be, except for this sec-

tion or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.".

(d) Section 1814(a)(2) of such Act is amended by striking out "or" at the end of subparagraph (d) and by adding the following new subparagraph at the end thereof:

"(F) in the case of community mental health center services, (i) such services are or were medically necessary, (ii) a plan for furnishing such services has been established by a physician (as defined in section 1861(r)(1)) or other mental health professional (as defined for this purpose in regulations by the Secretary) and is periodically reviewed and approved by a physician, (iii) such services are or were furnished while the individual is or was under the care of a physician, and (iv) in the case of services provided with respect to a partial hospitalization visit, the individual would otherwise require or have required (in the professional judgment of such physician) inpatient psychiatric services;".

(e) Section 1814(a) of such Act is amended by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and by adding the following new paragraph at the end thereof:

"(8) with respect to services furnished by a community mental health center in connection with a partial hospitalization visit, such center obtains a statement (pursuant to regulations prescribed by the Secretary), in writing and signed by the individual or his representative, indicating that the individual understands that 4 partial hospitalization visits will reduce by 1 day the number of days of inpatient psychiatric hospital services to which such individual is entitled during his lifetime under this part.".

(f) 1814(b) of such Act is amended by adding the following new paragraph at the end thereof:

"(2) The amount paid with respect to community mental health center services shall be equal to the costs which are reasonable and related to the cost of providing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A)."

(g) Section 1861(l) of such Act is amended by inserting "or community mental health center" after "nursing facility" each time it appears therein.

(h) Section 1851(u) of such Act is amended by inserting "community mental health center," after "home health agency,".

(i) Section 1861(w)(1) of such Act is amended by inserting "community mental health center,", after "nursing facility,".

(j) Section 1861 of such Act is amended by adding the following new subsection at the end thereof:

"Community Mental Health Center Services

"(bb)(1) The term 'community mental health center services' means the following items and services furnished to an individual as an outpatient by a community mental health center or (to the extent permitted in regulations by the Secretary) by others under arrangements with them made by the center—

"(A) active diagnostic and therapeutic services furnished by qualified mental health professionals (as defined by the Secretary in regulations), including psychologists and psychiatric social workers;

"(B) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered; and

"(C) such items and supplies as are ordinarily furnished to outpatients by community mental health centers in connection with an active mental health program of diagnosis and treatment,

excluding, however, any item of service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

"(2) The term 'community mental health center' means a facility which—

"(A) meets the definition of a community mental health center under section 201 of the Community Mental Health Centers Act and the regulations prescribed thereunder;

"(B) is primarily engaged in providing outpatient mental health services;

"(C) has a requirement that all mental health services are provided under the supervision of a physician;

"(D) meets such requirements as the Secretary may prescribe with respect to staffing requirements and qualifications of the staff;

"(E) maintains clinical records on all patients;

"(F) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

"(G) has in effect an agreement with a hospital pursuant to subsection (1);

"(H) in the case of a community mental health center in any State in which State or applicable local law provides for the licensing of community mental health centers, is licensed pursuant to such law;

"(I) has appropriate procedures or arrangements (in compliance with applicable State and Federal law) for storing, administering, and dispensing drugs and biologicals; and

"(J) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such center.".

(k) Section 1832(a)(2)(B)(i) of such Act is amended by striking out "or" at the end of subclause (I), by striking out "and" at the end of subclause (II) and inserting in lieu thereof "or", and by adding the following new subclause after subclause (II):

"(III) a physician to a patient in a community mental health center; and".

(l) Section 1864(a) of such Act is amended—

(1) by inserting ", or whether a facility therein is a community mental health center as defined in section 1861(bb)(2)" before the period at the end of the first sentence;

(2) by inserting "or a community mental health center" after "home health agency" in the second sentence; and

(3) by inserting "community mental health center," after "laboratory," each time it appears in the fifth sentence.

(m) Section 226(c)(1) of such Act is amended by inserting "community mental health center services" after "post-hospital extended care services" the first time it appears therein.

(n) Section 7(d)(1) of the Railroad Retirement Act of 1974 is amended by inserting "community mental health center services," after "inpatient hospital services.".

(o) The amendments made by this section shall become effective with respect to a community mental health center's first accounting period which begins on or after March 1, 1979.

COMPREHENSIVE OUTPATIENT REHABILITATION SERVICES

SEC. 8. (a) Section 1832(a)(1) of the Social Security Act is amended by striking out "subparagraphs (B) and (D)" and inserting in lieu thereof "subparagraphs (B), (D), and (E)".

(b) Section 1832(a)(2) of such Act is amended by striking out "and" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof "; and", and by inserting the following new subparagraph (D):

"(E) comprehensive outpatient rehabilitation services.".

(c) Section 1835(a)(2) of such Act is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof "; and", and by inserting the following new subparagraph after subparagraph (D):

"(E) in the case of comprehensive outpatient rehabilitation services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.".

(d) Section 1861(u) of such Act is amended by inserting "comprehensive outpatient rehabilitation of facility," immediately after "skilled nursing facility,"

(e) Section 1861(z) of such Act is amended by striking out "extended care facility," and inserting in lieu thereof "skilled nursing facility, comprehensive outpatient rehabilitation facility,".

(f) Section 1861 of such Act, as amended by section 7 of this Act, is further amended by adding the following new subsection at the end thereof:

"Comprehensive Outpatient Rehabilitation Services

"(cc)(1) The term "comprehensive outpatient rehabilitation services' means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

"(A) physicians' services;

"(B) physical therapy, occupational therapy, speech pathology services, and respiratory therapy;

"(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

"(D) social and psychological services;

"(E) nursing care provided by or under the supervision of a registered professional nurse;

"(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

"(G) supplies, appliances, and equipment, including the purchase or rental of equipment; and

"(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an outpatient of a hospital.

"(2) The term 'comprehensive outpatient rehabilitation facility' means a public or private institution which—

"(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, or sick persons;

"(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in section 1861(r)(1), who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

"(C) maintains clinical records on all patients;

"(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) to govern the

comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

"(E) has a requirement that every patient must be under the care of a physician;

"(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standard establishment for such licensing;

"(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

"(H) has in effect an overall plan and budget that meets the requirements of subsection (z); and

"(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities."

(g) Section 1863 of such Act is amended by striking out "and (o)(6)" in the first sentence and inserting in lieu thereof "(o)(6), and (cc)(2)(I)".

(h) Section 1864(a) of such Act is amended—

(1) by inserting "or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2)" after "section 1861(aa)(2)" in the first sentence; and

(2) by inserting "comprehensive outpatient rehabilitation facility," after "rural health clinic," each time it appears in the second and fifth sentences.

(i) The amendments made by this section shall become effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after March 1, 1979.

OPTOMETRISTS' SERVICES

SEC. 9. (a) Clause (4) of the first sentence of section 1861(r) of the Social Security Act is amended by striking out "but only with respect to establishing the necessity for prosthetic lenses," and inserting in lieu thereof "but only with respect to services related to the treatment of aphakia,".

(b) The Secretary of Health, Education, and Welfare shall submit to the Congress by June 1, 1979, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act for services furnished by optometrists in connection with the treatment of cataracts and for such other services which they are legally authorized to perform.

DEMONSTRATION PROJECTS FOR HOSPICE SERVICES

SEC. 10. (a) The Secretary of Health, Education, and Welfare shall develop and carry out demonstration projects, as authorized in accordance with section 222 of Public Law 92-603, to permit reimbursement under title XVIII of the Social Security Act for services provided by hospices offering comprehensive health services.

(b) The demonstration projects developed under subsection (a) shall be of sufficient scope to allow the Secretary to evaluate—

(1) the types of services and levels of care provided by hospices in various settings;

(2) whether hospice services in various settings are an alternative to traditional services or an additional set of services;

(3) the costs of hospices' services;

(4) the appropriate standards for assuring quality care; and

(5) mechanisms for utilization control.

(c) The Secretary shall submit to the Congress, no later than January 1, 1981, a detailed report on the demonstration projects described in subsection (b). Such report shall include any recommendations for legislative changes in title XVIII of the Social Security Act which the Secretary finds necessary or desirable as a result of carrying out such demonstration projects.

STUDY COVERAGE FOR ORTHOPEDIC SHOES

SEC. 11. The Secretary of Health, Education, and Welfare shall, in consultation with appropriate professional organizations, conduct a comprehensive study of methods for providing coverage under part B of title XVIII of the Social Security Act for orthopedic shoes for individuals with disabling or deforming conditions who require special fitting considerations to help protect against increasing disability or serious medical complications or who require special shoes in conjunction with the use of an orthosis or foot support. The Secretary shall submit to the Congress, no later than January 1, 1980, a detailed report on the findings as he finds appropriate with respect to the utilization, cost control, quality of care, and equitable and efficient administration of such an extension of coverage.

ANTIGENS

SEC. 12. Section 1861(s)(2) of the Social Security Act is amended by striking out "and" at the end of subparagraph (E), by inserting "and" at the end of subparagraph (F), and by inserting the following new subparagraph after subparagraph (F):

"(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in section 1861(r)(1), for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;".

PAYMENT WHERE BENEFICIARY NOT AT FAULT

SEC. 13. Section 1879 of the Social Security Act is amended by adding the following new subsection at the end thereof:

"(e) Where payment for inpatient hospital services or extended care services may not be made under part A of this title on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of sections 1861(e) or (j) by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, professional standards review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary may take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.".

FLEXIBILITY IN APPLICATION OF STANDARDS TO RURAL HOSPITALS

SEC. 14. Section 1861(e) of the Social Security Act is amended by adding the following new sentence at the end thereof: "The term 'hospital' also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

"(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

"(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, and (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients; and

"(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary may (i) waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.".

CERTIFICATION AND UTILIZATION REVIEW BY PODIATRISTS

SEC. 15. (a) Section 1861(r)(3) of the Social Security Act is amended to read as follows: "(3) a doctor of podiatry or surgical chiropody for the purpose of subsection(s) of this section but only (unless clause (1) of this subsection also applies to him) with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k) and (m) of this section and sections 1814(a) and 1835 but only if his performance of functions under subsections (k) and (m) and sections 1814 (a) and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform,".

(b) Section 1861(k)(2)(A) of such Act is amended by inserting after "two or more physicians" the following: "(of which at least two must be physicians described in subsection 1861(r)(1) of this section".

PHYSICIAN TREATMENT PLAN FOR SPEECH PATHOLOGY

SEC. 16. Section 1835(a)(2)(D)(ii) of the Social Security Act is amended by inserting after "established" the following: "by a physician or by the speech pathologist providing such services".

PAYMENT FOR PHYSICIANS' SERVICES WHERE BENEFICIARY HAS DIED

SEC. 17. (a) Section 1870(f) of the Social Security Act is amended to read as follows:

"(f) If an individual who received medical and other health services for which payment may be made under section 1832 (a)(1) dies, and no assignment of the right to payment

for such services was made by such individual before his death, and payment for such services has not been made—

"(1) if the person or persons who provided the services agree that the reasonable charge is the full charge for the services, payment for such services shall be made to such person or persons, and

"(2) if the person or persons who provided the services do not agree that the reasonable charge is the full charge for the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.".

(b) The amendment made by this section shall apply only to claims filed on or after the date of the enactment of this Act.

PRESUMED COVERAGE PROVISIONS

SEC. 18. (a) Section 1814 of the Social Security Act is amended by striking out subsections (h) and (i) and by redesignating subsection (j) as subsection (h).

(b) Section 1814(c) of such Act is amended by striking out "subsection (j)" and inserting in lieu thereof "subsection (h)".

PAYMENT TO PROVIDERS OF SERVICES

SEC. 19. (a) Section 1814(b) of the Social Security Act is amended by striking out everything following "section 1813," and inserting in lieu thereof the following: "be, except as provided by paragraph (2), the reasonable cost of such services, as determined under section 1861(v) and as further limited by section 1881(b)(2)(B)."

(b) Section 1833(a) of such Act is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D) and (E) of section 1832(a)(2))—

"(A) with respect to home health services, the reasonable cost of such services, as determined under section 1861(v);

"(B) with respect to other services (except those described in subparagraph (C) of this paragraph), the reasonable costs of such services, as so determined, less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may such amount exceed 80 percent of such costs;

"(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services;

"(3) in the case of services described in subparagraphs (D) and (E) of section 1832(a)(2), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A), less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may such amount exceed 80 percent of such costs; and

"(4) with respect to expenses incurred for physician services in a community mental health center, an amount determined in accordance with section 1814(b)(2).".

(c) Section 1833(c) of such Act is amended by striking out the period at the end thereof and inserting in lieu thereof a comma, and by adding the following after paragraph (2): "except that the provisions of this subsection shall not apply to expenses incurred by an individual as a patient of a community mental health center.".

(b) The amendments made by this section shall apply to services furnished on or after January 1, 1979.

LIMIT ON PREMIUM INCREASES DUE TO LATE ENROLLMENT

SEC. 20. The first sentence of section 1839(d) of the Social Security Act is amended by inserting the following immediately before the period at the end thereof: "; except that in no case may the total amount of such increase exceed 30 percent of such monthly premium so determined".

ENROLLMENT IN PART B

SEC. 21. Section 1837(b) of the Social Security Act is repealed.

CHIROPRACTOR SERVICES

SEC. 22. Section 1861(r)(5) of the Social Security Act is amended by striking out "demonstrated by X-ray to exist" and inserting in lieu thereof "demonstrated by X-ray or other chiropractic clinical findings to exist".

INPATIENT PSYCHOLOGISTS' SERVICES

SEC. 23. (a) Section 1861(r) of the Social Security Act is amended by striking out "or" at the end of clauses (3) and (4) of the first sentence and by inserting the following before the period at the end of the first sentence: ", or (6) a clinical psychologist who is licensed as such by the State (or in a State which does not license clinical psychologists as such, is legally authorized to perform the services of a clinical psychologist in the jurisdiction in which he performs such services) and who meets uniform minimum standards prescribed by the Secretary, but only for the purpose of section 1861(s)(1) and only with respect to the treatment of an individual who is an inpatient of a hospital (as defined in subsection (e) of (f) of this section) and is receiving inpatient hospital services for which payment may be made pursuant to section 1812 and only with respect to services which he is legally authorized to perform by the State or jurisdiction in which such services are furnished".

(b) Section 1861(b) of such Act is amended by striking out "or" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; or", and by adding the following new paragraph at the end thereof:

"(8) a physician described in 1861(r)(6).".

DEMONSTRATION PROJECT FOR SERVICES OF CLINICAL SOCIAL WORKERS

SEC. 24. (a) The Secretary of Health, Education, and Welfare shall develop and carry out demonstration projects, as authorized in accordance with section 222 of Public Law 92-603, to determine the administrative, financial, and other aspects of making the services of clinical social workers more generally available as part of the benefits received under title XVIII of the Social Security Act.

(b) The Secretary shall submit to the Congress, no later than twenty-four months following the date of enactment of this Act, a detailed report on the demonstration projects conducted under this section. Such report shall include any recommendations for legislative changes in title XVIII of the Social Security Act which the Secretary finds necessary or desirable as a result of carrying out such demonstration projects.

The SPEAKER pro tempore. Is a second demanded?

Mr. DUNCAN of Tennessee. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 20 minutes and the gentleman from Tennessee (Mr. DUNCAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 13097, as reported by the Committee on Ways and Means, would make a number of benefit and administrative improvements in the medicare program.

This bill is the result of lengthy and careful deliberations by the Committee on Ways and Means. We knew when we first took up consideration of legislation to amend the medicare program that there were any number of popular benefit improvements which, if enacted, would cost the program billions of dollars. However, I believe the committee acted in a most prudent manner, setting a strict limit of $100 million on the increase in medicare outlays for fiscal year 1979. As you know, this was the amount approved in both the congressional budget resolutions for fiscal year 1979.

It was not easy working within this limitation. Difficult decisions were made at both the subcommittee and full committee levels. I would want to make clear that the failure to include a particular provision or benefit improvement in the bill does not mean that an adverse judgment was made about the merits of that provision. Rather, because of the severe budgetary limitations, such a decision often represented a choice between benefit improvements that should be included in the program at this time and benefit improvements that might be more appropriately considered at a later date.

The provisions included in H.R. 13097, as amended, represent solutions to problems which have come to the attention of the committee in a variety of ways. A number of the provisions in the bill result from issues raised during the committee's public hearings and oversight work on the medicare program. Other problems were brought to our attention by letters from concerned beneficiaries. An important source of the provisions included in this legislation were the medicare bills introduced by my colleagues in the House and problems resulting from their office case work which were brought to the attention of the committee.

Consequently, I believe that the development of H.R. 13097, as amended, represented a process of sifting through all possible amendments to the medicare program in order to determine those low cost benefit improvements and noncontroversial administrative improvements that are appropriate at this time.

Among the benefit improvements are several which are designed to make the medicare home health benefit more effective so that, hopefully, more costly care in an institution can be avoided. The bill would provide for unlimited visits under parts A and B of medicare; eliminate the present 3-day requirement for prior hospitalization under part A; eliminate the $60 deductible with respect to home health services under part A; and elim-

inate the present requirement that proprietary home health agencies be licensed under State law in order to participate in medicare.

In addition to expansion of the home health benefit, the bill includes several provisions to assure the more efficient and economical administration of this benefit. For example, the Secretary is directed to establish additional standards and requirements for all home health agencies. Other related provisions would require home health aides to complete an appropriate training program; provide that the physician who performs the certification for home health services and establishes the plan of treatment could not have a substantial financial or ownership relationship with the home health agency; and directs the Secretary to designate regional intermediaries for home health agencies.

The bill would also provide for elimination of the second medicare waiting period for reentitled disability beneficiaries; coverage for services furnished in community mental health centers and outpatient rehabilitation facilities; elimination of the requirement that an X-ray be used in every case to demonstrate the need for chiropractors' services; and authorization for the President to enter into reciprocal agreements with other countries to provide hospital and medical services to medicare beneficiaries while outside the United States. Among other changes are benefits and administrative improvements relating to services furnished by dentists, optometrists, psychologists, podiatrists and speech pathologists. The Secretary is also directed to carry out a demonstration project for medicare reimbursement of Hospice services. The objective of a Hospice is to provide the unique medical and social services required by terminal patients and their families.

Several improvements in the general administration of the medicare program are provided for in the legislation. The Secretary would be directed to exercise flexibility in the application of medicare standards to rural hospitals. In addition, provisions of present law would be amended to eliminate financial hardships for survivors of deceased beneficiaries with respect to payment for physicians' services and the Secretary would be authorized to make payment where a beneficiary was erroneously placed in a nonparticipating part of an institution. Finally, a number of minor provisions in present medicare law which provide for limitations or penalties with respect to enrollment in the program have been modified or, where found to be no longer necessary, eliminated.

Mr. Speaker, I would strongly recommend that my colleagues support this legislation. Many have argued that we have not done enough for the elderly; others have suggested that even this limited expenditure is too much at a time when we are trying to hold the line on Federal expenditures. I feel that what we have done in this bill is not only responsible in a fiscal sense but imperative when one considers that there have been no increases in general medicare benefits for the aged and disabled since 1972.

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of H.R. 13097, the Medicare Amendments of 1978. I believe the explanation of the gentleman from Illinois provides a firm, accurate basis and sound justification for approving the measure, and I expect this legislation will prove most beneficial.

In the first place, it provides for many additional benefits in important areas. It remedies many problems about which many constituents of mine, and of my colleagues, have been expressing concern for a number of years.

It would be difficult, and perhaps unnecessary, to point to any particular provisions of H.R. 13097 as being superior to the others; I certainly find that every provision serves a very important purpose. Yet, from a personal standpoint, I am well aware that certain important needs of our Nation's dentists, optometrists, podiatrists, psychologists and many other provider groups, and their patients, will be fulfilled by H.R. 13097, and am gratified that this bill was approved, without dissent, by our committee.

I am particularly pleased that home health care benefits under medicare will be greatly liberalized, and look forward to the development by HEW of meaningful standards, criteria and guidelines that will allow care of the elderly and chronically ill in settings other than institutions to continue to develop and expand.

I also want to emphasize that the value of many of the changes often referred to as "administrative" in nature should not be minimized. For example, it is most heartening that presently undesirable burdens, such as severe monetary penalties for elderly citizens who voluntarily enroll in part B of medicare late, but for valid reasons, will be reduced under H.R. 13097. Also, I expect that the increased flexibility that would be allowed in regulations for our rural hospitals will result in greater access to needed high quality services for beneficiaries in those areas of the country.

Mr. Speaker, this legislation is remarkable in another important way as well; namely, the cost of the entire bill is most modest. It certainly will not "break the medicare bank," and in fact stays well within the boundaries set by the budgetary process.

As I am certain my colleagues can well imagine, in considering this legislation the chairman of both our Health Subcommittee and the full committee were concerned—as indeed all of us are—that many other desirable benefits and liberalizations could not be provided in this bill, simply because of the huge expense that would be required in most cases. I commend the leadership of these gentlemen and the strong support given to them by all members of the committee and subcommittee, because the citizens of this country will reap the advantages of the carefully balanced, low-cost, sensible changes provided by H.R. 13097.

I should point out that several of the provisions of this bill may lead to still further improvement of benefits and services in very innovative ways. We certainly will look forward, for example, to reports from the Secretary of Health, Education, and Welfare of various studies and demonstration projects that this bill directs him to undertake—in such areas as coverage of services for cataract patients provided by optometrists, Hospice services, and services provided by clinical social workers.

In conclusion, Mr. Speaker, I just want to say that in my opinion H.R. 13097 is very beneficial legislation for improving the medicare program. It should prove effective and helpful to our health care institutions, providers and medicare beneficiaries. It is generous, yet reasonable in cost—representing a well-conceived, carefully constructed legislative effort by our committee.

I would therefore strongly urge my colleagues to approve this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. O'BRIEN).

Mr. O'BRIEN. Mr. Speaker, I would like to take this opportunity to engage the chairman in colloquy for purposes of clarification.

Directing the gentleman's attention to page 33 of the bill, section 12, captioned "Antigens," and page 14 of the report, at the end of the second paragraph, I cite conditions that I believe are covered, but I would like to make sure they are covered.

In the case of the patient whose physician prepares and administers to him the antigen, there is and has been no problem.

In the case of, let us say, an aged or infirm patient whose antigen is prepared by one physician and transmitted to another for supervising the administering thereof, there would be no problem on account of the effect of this bill.

But the cases of patients, particularly those in the Southwest, and other relatively remote areas, who have great difficulty in reaching either physician, are of concern to me. Consequently, the nature and extent of the meaning of the words "under the supervision of a physician" or "under the supervision of another such physician," as contained in the bill, call for some clarification.

Would the chairman agree with me that the administering of the antigen to the patient in question by a wife, parent, or other person in attendance, who had previously been instructed by either physician in the proper manner thereof, be included under the language of the bill?

Mr. ROSTENKOWSKI. If the gentleman will yield, I agree with the gentleman from Illinois that there are a number of cases where the Secretary would want to, I am sure, use flexibility in the application of this provision.

Of course, he would take into account professional judgment, certainly about what is medically appropriate and what is not appropriate.

Mr. O'BRIEN. Then we should be guided in this situation by reasonableness and flexibility.

I thank the chairman for his explanation.

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky (Mr. CARTER).

Mr. CARTER. Mr. Speaker, I support the objective of H.R. 13097 which is to improve medicare benefits for the program's beneficiaries. While I do not endorse every single provision of this bill, I do support its overall intent. In particular, I would like to express my strong support for those provisions relating to home health benefits—rural hospitals—ambulance services—and hospices.

First, I support the legislation's proposed liberalization of medicare's home health benefits. The bill would significantly increase access to needed home health care by removing the 100-visit limit under parts A and B of medicare law. It would also reduce barriers to obtaining needed home health care by eliminating the 3-day prior hospitalization requirement under part A and by dropping the $60 deductible under part B. These changes will help assure that the appropriate level of care is available to medicare beneficiaries.

Second, I support the provisions which allow the Secretary of HEW flexibility in applying medicare standards to rural hospitals of 50 beds or less. This authority would relate to medicare requirements for nursing services—and certain health, fire, and safety requirements. As a physician from a rural area, I am sensitive to the special needs of rural hospitals, and I feel this proposed authority is reasonable. I would like to emphasize, however, as did the committee's report, that this authority would be permissible only to the extent that it does not jeopardize or adversely affect the health and safety of patients. It would still be necessary for the Secretary to assure that there is compliance by rural hospitals with appropriate quality and safety requirements.

Third, I want to express my support for the direction the Ways and Means Committee has given HEW with respect to the reimbursement of ambulance services. As mentioned in the committee's report, current interpretation of the law has resulted in situations where patients have been transported to the nearest hospital without consideration of whether that hospital has the appropriate medical staff available to take care of the patients' particular needs. As a result, some medicare beneficiaries have had to be transported to another more distant facility to obtain the necessary services and then had to pay for the additional ambulance expense. The expression of committee intent on this matter should greatly reduce the unintended, illogical situations which have occurred under present policy interpretations and which have resulted in additional expenses for medicare patients.

Finally, I support the provision in this legislation relating to hospice services. As you know, the hospice concept is rooted in a humane concern for the dying person and his family, and it is an approach which has been receiving increased public attention and support. The bill's provision which directs HEW to conduct demonstration projects to pay for hospice services is certainly worthwhile and will be helpful in determining the best way to support such services in the future.

Thank you, Mr. Speaker.

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. I thank the gentleman for yielding.

Mr. Speaker, I have some questions on the bill.

Why did we eliminate the requirement that proprietary home health agencies, which join in medicare programs, be licensed under State law? Because it is discriminatory? Should not all such agencies be licensed?

Mr. DUNCAN of Tennessee. Mr. Speaker, if the gentlewoman will yield, my understanding is that we considered it, and it is discriminatory.

Mr. ROSTENKOWSKI. If the gentlewoman will yield, home health agencies are the only medicare providers subject to such a tax-related requirement.

Mrs. FENWICK. Should not all of the home health agencies be licensed by State law if they are to be used under medicare?

Mr. ROSTENKOWSKI. If the gentlewoman will yield, it is my understanding that they all have to meet the same standards.

Mrs. FENWICK. Are those standards set by HEW or State law?

Mr. DUNCAN of Tennessee. If the gentlewoman will yield, standards for home health agencies are prescribed by HEW. In addition, certain licensing requirements may be imposed by State law.

Mr. ROSTENKOWSKI. HEW sets standards for all medicare home health agencies, some States also have licensing procedures.

Mrs. FENWICK. Are there no standards imposed by the Federal Government with which these agencies must comply?

Mr. DUNCAN of Tennessee. The Federal Government does impose standards.

Mr. ROSTENKOWSKI. The bill provides for additional standards for all medicare home health agencies.

Mrs. FENWICK. My second question is why did we move into liberal agreements with other countries to provide hospital and medicare benefits to medicare beneficiaries living or traveling outside the United States? Is not that widening our responsibility very heavily, if someone chooses to be a resident of a foreign country?

Mr. ROSTENKOWSKI. In our consideration, we are just looking for some practical arrangement with other countries so that, in the case of illness in another country, a medicare beneficiary would have some health insurance pro-

Mrs. FENWICK. We do not know, though, the nature of the services that might be rendered to the American citizen who, presumably, would have been paying for medicare under part A or part B. We would not know the quality of the services. We would not know whether or not a bona fide doctor is caring for the patient.

Mr. ROSTENKOWSKI. What we intend is for the Secretary to negotiate some agreements and arrangements in this area.

Mrs. FENWICK. So that presumably an American citizen of appropriate age living abroad, as many do, paying medicare, of course, would be entitled to go into the care of a foreign doctor or institution?

Mr. DUNCAN of Tennessee. May I say that I have a bill pending in the committee that will cover this entire question It is a very serious one.

Mrs. FENWICK. Yes.

Mr. DUNCAN of Tennessee. Reciprocity with the various countries is very important, and the committee is concerned with this particular question. It is not an easy one to answer, but we are moving into working up some kind of arrangement. But, I do say that I will be pleased if the gentlewoman will cosponsor the bill.

Mrs. FENWICK. Mr. Speaker, I have one final question. Why do we foresee such an enormous jump in cost? In 1979, it is $95 million; in 1980, it is $150 million; and $593 million in the following fiscal years, if that is a correct summary of the costs.

Mr. DUNCAN of Tennessee. The increase in expenditures?

Mrs. FENWICK. Yes. Why is it so enormous?

Mr. DUNCAN of Tennessee. Many things that until now have not been covered are provided for. For example, one that comes to mind is oral surgery for people; until now, there have been deficiencies in the coverage for such services. This bill covers expansion of the program in certain ways, and our committee believed that we could handle this much without breaking the medicare bank. It is an extension of the many services we have.

Mrs. FENWICK. But it goes up so rapidly, from $95 million to $150 million in 1980—which is not so enormous—but then to $593 million.

Mr. ROSTENKOWSKI. The full impact of the legislation is not felt in the first fiscal year. Some provisions are not in effect, for example, until March 1, 1979.

Mrs. FENWICK. Because, if this keeps on, with what has been happening in this House, we are never going to balance the budget. If we are committing ourselves year after year after year, 5 years from now, to these enormous increases——

Mr. ROSTENKOWSKI. I think if the gentlewoman would turn to page 24, the amount for fiscal year 1983 is $223 million as opposed to $523 million.

Mrs. FENWICK. The 522 figure is the cumulative for the 3 years?

Mr. DUNCAN of Tennessee. I think it is $223 million.

Mrs. FENWICK. The summary says 523.

Mr. DUNCAN of Tennessee. I do not know where the gentlewoman got that.

Mrs. FENWICK. From the summary. Maybe that included 3 years, 1981, 1982, and 1983.

Mr. DUNCAN of Tennessee. Also, down the road the population of our country is getting older.

Mrs. FENWICK. But we are going to have to watch, I think, very closely these tremendous committed further increases.

Mr. DUNCAN of Tennessee. Mr. Speaker, I have one question I would like to ask the chairman. I would like to ask the chairman of the subcommittee to reaffirm his commitment made in the full committee to the effect that this or any other health bill will not be used as a vehicle for the consideration in a conference of the cost containment legislation without coming back and having serious consideration of any cost containment proposals by the Ways and Means Committee.

Mr. ROSTENKOWSKI. Mr. Speaker, if the gentleman will yield, as was pointed out in our committee—and my colleague from Tennessee well remembers—I made the observation that certainly we would consult with the entire membership of the Ways and Means Committee on this legislation before considering a conference committee. We have no control over what the other body might add to this bill. We would certainly come back to the full committee and discuss in depth what should be the avenue of approach with respect to any amendments to this legislation by the other body.

Mr. DUNCAN of Tennessee. I thank the gentleman.

Mrs. FENWICK. Mr. Speaker, if the gentleman will yield further, I have one more question.

Mr. DUNCAN of Tennessee. I yield.

Mrs. FENWICK. A constituent yesterday spoke to me about a requirement under medicare of which I was not aware. This constituent was told that her husband, who has had a very severe stroke and is now in a nursing home, will not be supported in a nursing home because they believe his case to be terminal. Is that a proper refusal of support?

Mr. ROSTENKOWSKI. If the gentleman from Tennessee will yield, no. The fact that a patient is terminal is not taken into account in determining whether a service is covered.

Mrs. FENWICK. He should be covered, should he not? He should be taken care of?

Mr. ROSTENKOWSKI. Yes; if he requires at least the minimum level of care that medicare covers, and he is otherwise qualified for medicare benefits.

Mrs. FENWICK. Well, it is terrible that he was refused. I thank the gentleman very much.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Kansas (Ms. KEYS).

Ms. KEYS. Mr. Speaker, I quite agree with my colleague, the gentlewoman from New Jersey (Mrs. FENWICK), that we must be mindful of the Federal budget, but I think we must also be mindful of the budgets of many of our senior citizens who are stretched to the limit and for whom medicare is not delivering the kind of protection and coverage we planned for it in the beginning to provide.

This is a very responsible bill prepared in line with the requirements of our budget. It provides much needed improvements in the medicare law very carefully kept within the budget guidelines. It expands the coverage of services for the elderly in the areas of eye and foot care, dental, chiropractic, and home health services among other things.

One of the many provisions I would like to mention would be the expanding of mental health services for the elderly. By giving provider status of federally funded community mental health centers, the legislation will increase the availability of outpatient services as an alternative to long-term and expensive hospitalization. The bill would lend additional support to this important approach to mental health services.

In addition, the bill provides for direct reimbursement for the services of psychologists in inpatient settings. It has been demonstrated to us many times in the committees through research that has been done that adequate mental health services can reduce the need for more intensive medical services. Thus I feel this provision will eventually save us money in other areas in addition to senior citizens.

This is a responsible and necessary step. I commend the chairman and the committee for their work in preparing this responsible bill within our budget guidelines. I support this bill.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Mr. Speaker, I rise in support of H.R. 13095. The medicare amendments included in this bill will help fulfill the commitments made to older Americans.

The administrative reforms contained are necessary and the liberalization of benefits realistic. The cost for the improvements are within the budget.

This measure tends to recognize new flexibility for expanded service by dentists, optometrists, and chiropractors.

In addition, elimination of the waiting periods, deductibles, and more relaxed licensure, and home health care will permit a more commonsense approach to meet the health needs of older Americans. I commend my colleagues on the committee for their support and urge positive action by this House.

● Mr. DRINAN. Mr. Speaker, in most all of our human services programs we have moved or are moving away from a reliance on institutionalization as a response to particular human problems. Mental institutions have yielded to the community mental health movement, orphanages to foster homes and other child care programs and large correctional institutions to smaller facilities or half-way houses.

This is happening because institutionalization has proved to be unsuccessful in many instances, expensive and at times counterproductive as a response to a specific problem.

Over the years the Federal Government unwittingly has adopted a costly institutional bias toward the elderly. Our well-intentioned programs such as medicare and medicaid serve to encourage the displacement of older citizens from their homes to nursing facilities when it may not be necessary. Modest estimates are that one-fourth of those in nursing homes could have remained in their homes if certain services were available to them.

Our institutions must be made more humane for there will always be some need to provide shelter and care in such a setting. However age is not synonomous with such a need nor is it of itself a condition which must result in institutionalization. We are beginning to recognize that many older citizens want to remain in their homes and could if appropriate home health and related services were available. From a human standpoint we are coming to appreciate the importance of the bond which exists between an older person and his or her home and neighborhood. We know that uprooting an elderly person can rob them of their dignity and independence. We recognize that there should be a freedom of choice. From an economic standpoint we are seeing that the costs associated with institutionalization far exceed the price of alternatives.

The GAO report commissioned by the Select Committee on Aging to look at home health care concluded that "Until older people become greatly or extremely impaired, the cost of nursing home care exceeds the cost of home care". The GAO report recommended a number of steps to expand the availability of home health services.

Current medicare requirements can actually serve as an obstacle to receipt of home health services by older citizens. In order to receive home health care, an elderly person must have had a prior hospital stay of at least 3 days; the plan of care must be prescribed by a physician; the care must be skilled; and the home visits are limited under part A (hospital insurance) to 100 visits per period of illness and under part B (medical insurance) to 100 per calendar year.

As a member of the Select Committee on Aging, Subcommittee on Health and Long-Term Care, I have worked with our esteemed colleague, Congressman CLAUDE PEPPER in the development of legislation to reverse the institutional bias in our medicare and medicaid programs.

H.R. 13097, the Medicare Amendments of 1978, contain some of the Aging Committee's recommendations. Unlimited home health visits should be available under both parts A and B of medicare; the 3-day prior hospitalization requirements under part A would be eliminated; and home health benefits under part B would no longer be subject to the $60 deductible.

H.R. 13097 does not go as far as legislation recommended by the House Aging Committee but it is a good first step. As our colleague Congressman PEPPER has said:

Home health care is an idea whose time has come. The cost of institutionalizing people when it can be avoided cannot be measured merely in dollars; it must also be measured in terms of its effect on the quality of life. The human cost involved in tearing elderly persons from their homes and their communities is incalculable.

H.R. 13097 also makes a number of other modest but important changes in the medicare law. The President would be authorized to enter into agreements with other countries so that medicare beneficiaries traveling or living outside the United States would have medical protection. Dental services would be covered when the condition warrants hospitalization. Podiatry services for the treatment of plantar warts would be covered as would optometrists' services in the treatment of patients without the natural lens of the eye. Also the Secretary of HEW would be required to report back to Congress within 9 months with recommendations for including the treatment of cataracts under medicare. Other changes will facilitate coverage of partial back dislocation by chiropractors and all allergies.

Services like these represent a major out-of-pocket expense for older citizens and are often forsaken due to the lack of medicare coverage. Left neglected such ailments can result in more serious conditions which will require hospitalization down the line at far greater expense. Attention to preventive services must be a cornerstone of our health programs. H.R. 13097 will at least fill in some of the gaps in the medicare program.

By providing incentives for home health care and the early treatment of various common ailments of the elderly, H.R. 13097 could actually result in a savings to the medicare program. I support this legislation and urge its adoption.●

● Mr. PEPPER. Mr. Speaker, I rise in support of the Medicare Amendments of 1978, H.R. 13097.

While this legislation is by no means perfect in that even more expansion of home health care is both possible and desirable, I am delighted to give my full support as a major beginning in reversing the institutional bias which keeps the medicare program from being all it should be.

Among its other provisions, the bill would make important improvements in the home health benefit. As my colleagues are aware, the Select Committee on Aging, which it is my privilege to chair, has strongly supported the expansion of home health care.

In January of 1976, in a report entitled, "New Perspectives in Health Care for Older Americans," the committee stated:

It is a tragedy of our times that we as a Nation should find ourselves in the position of thinking of home health care for the elderly as an alternative to institutionalization. Somehow, it shocks the conscience and goes against the grain to deal with the subject in that context. It only stands to reason that in the natural order of things it should be just the reverse. Institutionalization should be an alternative to home health care. While there will always be highly disabled patients who require full-time institutionalization in nursing homes, persons capable of remaining in their own homes should have the right to choose.

Last February, the committee unanimously adopted a resolution reiterating its support for expansion of home health benefits under medicare. At that time I introduced H.R. 10738, which sought to make four changes in the program: removal of the prior hospitalization requirement under part A (hospital insurance); removal of the visit limits under both parts A and B; removal of the requirement that a patient be confined to home as a qualification for receiving home health care; and addition of homemaker and periodic chore services to the list of covered in-home services. This bill has well over 100 cosponsors. It is clear that the Congress supports our efforts to make home health care more available to the elderly and disabled.

Joined by many of our Aging Committee members, I testified before the Ways and Means Health Subcommittee, which is so ably chaired by my colleague, DAN ROSTENKOWSKI, in support of this legislation. It is with great pride that we note that the committee saw fit to include two of these provisions in the reported bill: removal of the prior hospitalization requirement and deletion of the visit limits, effective July 1, 1979.

It should be noted that legislation pending in the Senate, H.R. 5285, also includes these changes. It is my fervent hope that they will become law before the Congress adjourns next month.

While these changes represent important steps forward, they must not be considered the climax of our efforts. Much remains to be done to make home health care more available to our people. Earlier this year, in a report entitled, "Home Health—The Need for a National Policy to Better Provide for the Elderly," the General Accounting Office concluded:

Until older people become greatly or extremely impaired, the cost of nursing home care exceeds the cost of home care.

Mr. Speaker, this report confirmed what we have suspected: Responsible expansion of home health care can only hasten the realization of cost-effective use of our fiscal resources in meeting the Nation's health care needs.

Yet we continue to spend a disproportionate share of the Nation's health dollars on institutional care—care that is not the most appropriate for the vast majority of older citizens.

Medicare expenditures totalled $20.8 billion in fiscal year 1977; yet only 2.2 percent of this amount paid for home health care. Of the $16.3 billion spent by the Federal and State governments, only 1.1 percent was for home health care, while nearly 40 cents of every Federal dollar pays for nursing home care. And only 6 percent of medicaid beneficiaries reside in nursing homes. Of the amounts spent for the elderly under medicaid, some 70 percent is spent for nursing home care. Approximately 1 million elderly persons live in nursing homes, and a HEW-contracted study has determined that 14 to 25 percent of these could be more appropriately cared for in another manner. The need for home health care is great.

HEW has indicated that some 7 million of the noninstitutionalized civilian population cannot perform a major activity that is necessary to daily living. Yet we continue to be reticent about making necessary changes. Next year, we must continue our efforts in other directions as recommended by our committee—deleting the homebound requirement under medicare, as well as inclusion of comprehensive home health care in any national health insurance legislation that may develop.

I applaud the inclusion of a provision which would eliminate the $60 deductible for home health care under part B. In conjunction with removal of the coinsurance provisions, which was accomplished in 1972, this represents an important step forward in removing the obstacles to receipt of these services under the supplementary medical insurance program.

The committee has also acted to require that home health aides meet certain qualification standards. Requiring that they complete a training program can serve to improve the uniformity of services throughout the country and upgrade the status of these aides, who provide a most valuable service.

The bill also prohibits a physician who establishes a plan of in-home treatment from having significant ownership or financial interest or contractual relationship with the home health agency which is to provide the services prescribed. This effort to prevent any potential conflict of interest is a sound one, in my judgment.

The committee has also approved a measure which requires the Secretary to designate regional intermediaries for home health agencies. This provision seems to merit support, as it seeks to correct some of the disparities which have been observed between reimbursement standards in various parts of the country. I have received many letters from home health providers who labor under certain interpretations of reimbursement guidelines, and it is my hope that this will eliminate some of these problems. This and other administrative changes and recommendations included in the bill should, however, be monitored carefully to ensure that they do not hinder providers from rendering necessary services, or prevent patients from receiving the care they need and to which they are entitled.

I am compelled to register concern over the provision which would allow medicare reimbursement of proprietary home health agencies without the current requirement that they be licensed by the States in which they operate.

Certainly there is no inherent evil in the concept of profitmaking in the field of home health. On the other hand, a requirement that these agencies meet certain standards in order to benefit from Federal funds is consistent with other

statutes and with our philosophy of government.

We have struggled with this issue before. Almost 3 years ago, the Department of Health, Education, and Welfare, under different leadership, issued proposed regulations which would have removed the licensure requirement as a condition for participation in medicaid.

Those proposed regulations were the object of considerable controversy, and our Subcommittee on Health and Long-Term Care conducted a joint hearing with our counterpart in the Senate to explore the issues involved. At that time, we heard from more than 20 witnesses, and our conclusion was clear: This action would have had a deleterious effect on the quality of home health care. As a result of this examination, the regulations were withdrawn.

Moreover, it was learned at that time that the Department had conducted no studies to determine whether opening the door to for-profit agencies without the benefit of licensure was necessary or beneficial, or what comparative cost and quality considerations would demonstrate. To my knowledge no such information has yet been made available.

As you know, Mr. Speaker, Public Law 95–142, the Medicare/Medicaid Anti-Fraud and Abuse Amendments, requires that the Secretary of HEW report to the Congress on every aspect of home health care. It is our hope that this report, due next month, will address issues such as this, as well as the critical subject of standards for the provision of all home health care.

Many other provisions of the pending bill, H.R. 13097, warrant support. Time constraints do not permit comment on each, but I wish to especially point out a few of these.

First, the bill includes authorization for the President to enter into reciprocal agreements with other countries to provide hospital and medical benefits for medicare beneficiaries living or traveling outside the United States. I called for adoption of this provision in my testimony before the Health Subcommittee, and I am pleased to note its inclusion.

Second, the reported bill includes provision for greater medicare support of outpatient mental health treatment provided in community mental health centers and provides for medicare coverage of services provided by clinical psychologists to hospital inpatients. These are very positive steps forward, and I am hopeful that the next Congress will give very careful consideration to going a step further, as proposed in my bill, H.R. 13460, which seeks to put mental health treatment on a par with treatment for physical illness, provide for direct reimbursement of psychologists, and prevent the "dumping" of elderly mental patients in the community without support and care.

Finally, Mr. Speaker, the bill includes several provisions which seek to improve the role of dentists, optometrists, and podiatrists in the medicare program. I applaud these improvements, but I am hopeful that the Ways and Means Committee will give favorable consideration to legislation I have introduced, H.R. 1127, which would provide coverage for eyeglasses and eye examinations; hearing aids and examinations for hearing aids; and dentures and other services in connection with the care of teeth and foot care and treatment of foot conditions.

Once again, Mr. Speaker, I wish to commend the Ways and Means Health Subcommittee and my colleagues who have worked so diligently to bring this bill before the full House.●

● Mr. BAUCUS. Mr. Speaker, I wish to add my full support to the Medicare Amendments of 1978. There are several points I want to make about this legislation.

In liberalizing the home health benefit, this bill takes a first step in recognizing that home health care for the elderly is a viable and preferable alternative to institutionalization.

I also want to comment on the provision in the legislation requiring the Secretary of HEW to apply flexible standards for rural hospitals. My district contains many hospitals and facilities serving small rural communities. These hospitals experience problems unique to sparsely populated rural areas. The small number of beds, the scarcity of qualified health personnel, and the lack of a diversity of services are all problems confronted by rural hospital facilities. Despite the fact that small rural health facilities have special problems shared only among themselves, it is nonetheless true that these facilities have had a difficult time complying with HEW regulations for medicare certification.

Recognizing the need to address this situation, I introduced legislation in March of 1977 to amend the medicare and medicaid provisions as they relate to rural health care facilities. My bill mandated that the Secretary apply greater flexibility in requiring that small rural hospitals meet Federal compliance regulations. My bill gave the Secretary the authority to waive certain requirements as to health, safety, and fire regulations so long as the facility was making a good faith effort to comply, and that the waiver would not jeopardize the safety and health of the patients. One of the specific measures in my bill proposed to make permanent the 24-hour nursing waiver.

I am pleased that these provisions relating to rural health facilities have been incorporated a part of the Medicare Amendments of 1978. With the passage of this legislation, we can finally begin to guarantee that quality health care will be provided to Americans residing in urban and isolated rural areas alike. I therefore urge a yes vote on this legislation.●

● Mr. HEFNER. Mr. Speaker, I would like to take this opportunity to voice my support for H.R. 13097, the Medicare Amendments of 1978, and I also commend the Ways and Means Committee for the fine job they have done in developing this bill.

The Medicare Amendments of 1978 embody a principle that I have long supported. We have a very good health care system in this country but in our Federal programs, such as medicare, we have not taken advantage of the full range of quality services provided by health professionals. This bill goes to the heart of that problem by making coverage under medicare more rational.

For example, medicare coverage for chiropractic services is limited under current law to the manual manipulation of the spine to correct a displacement which can be demonstrated by X-ray. The cost of the X-ray itself is not reimbursed by medicare, but the X-ray is required before other chiropractic services may be provided.

This is a faulty policy in two respects. But not reimbursing the cost of a mandatory X-ray, the current program imposes a disincentive for chiropractic care. Also, by requiring an X-ray that may not be medically necessary, te patient could be exposed to needless radiation. It makes little sense to me that we have been requiring medicare patients to go to other specialists or through procedures which may not be in their best interest in order to be reimbursed for medical care that can be provided in a simpler and less expensive manner.

I sponsored a bill to change this policy, and I am pleased that section 22 of H.R. 13097 follows the legislation I proposed. It would provide reimbursement for the cost of an X-ray if, indeed, an X-ray is necessary. In addition, it would cover the physical examination and treatment of a displacement found through normal clinical procedures without a mandatory X-ray.

I hope this important change will be enacted into law as quickly as possible and urge my colleagues to support H.R. 13097.●

● Mr. WOLFF. Mr. Speaker, I rise today in strong support of H.R. 13097, medicare amendments, and urge my colleagues to overwhelmingly adopt this important bill. I would first like to commend the gentleman from Illinois (Mr. ROSTENKOWSKI), for his hard work and leadership in bringing this bill to the floor.

Mr. Speaker, the time has come to relieve the intolerable burden medical expenses imposes on millions of older Americans. Our senior citizens, forced to eke out an existence from social security, their life time earnings, or fixed incomes, are often left in the dire straits when illness or ill-fate in the form of accidents strike.

Horror stories abound, as I am sure my colleagues can attest to, when the elderly seek medical care, medical care which has rapidly outpaced their incomes. Few options for adequate health care, at prices the aging and disabled can afford, are available to this neglected segment of our society. Our senior citizens should have the right to live out their autumn years with dignity and security, not deprivation and fear.

In the past, the stringent requirements imposed by medicare have contributed to the breakdown of the American family by forcing our elderly into institutional settings in order to satisfy eligibility criteria. These criteria have been partially responsible for creating an American

caste system, segregating the old from the young. They have forced the elderly to be considered a "people apart" in a country they have helped build. They are the foundation of our society, and we should reap benefits from their company, learning from their experience and wisdom.

Medicare must be expanded to improve essential health care assistance for the chronically ill, aged, and those stricken with catastrophic illness. This expansion should not be a rigid one, dictating the types of services available to older citizens. Rather the expansion should be flexible, providing freedom of choice in the provision of medical services. Medicare must be expanded to provide a low cost alternative to institutionalization. That is why I support this legislation today.

Some time ago, I established a Citizens Health Advisory Committee in my congressional district, comprised of leading New York area health field specialists. This committee of dedicated men and women served as a valuable resource in helping me analyze the complex problems of health care delivery in terms of new legislative proposals.

As a result of the work of my advisory committee, I introduced H.R. 11139, a bill which, among other things, provided for medicare subsidies of low-cost home health care. My bill, the prototype of this sort of legislation, amended title XVIII of the Social Security Act by removing all limits on the number of home health visits for which payment may be made, included additional types of services as home health care, and provided for coverage for services furnished in outpatient rehabilitation facilities and elderly day care centers.

Major portions of my original legislation have been incorporated into the bill now before us. This bill is a good and compassionate bill. It meets the needs of the elderly at the same time it saves the taxpayers money. If you agree that these are worthy goals, I urge you to vote for H.R. 13097.●

● Mr. COTTER. Mr. Speaker, I would like to express my support for H.R. 13097 and strongly urge my colleagues to do the same.

This bill represents extremely responsible action on legislation that could have easily become a runaway budget item. It is very difficult to say no to improvements in a program for the aged and the disabled even when one realizes how fast the cost of the medicare program is increasing. In developing this legislation, the Ways and Means Committee was forced to say no to many desirable and appealing benefit improvements. However, a limit of $100 million in additional medicare outlays was established early in the budget process; and we followed that limit rigorously. The bill before you calls for $95 million in additional outlays in fiscal year 1979. Each of many individual benefit improvements we could have included would by themselves have cost that much or more.

This bill represents those benefit improvements the committee thought should be made now. There are many others we indicated that we thought should be considered at a later date. The administrative improvements in the bill are noncontroversial but extremely helpful to those beneficiaries who are being unnecessarily penalized by present law.

I think this is a fine piece of legislation. It shows we can act in a fiscally responsible manner in times that call for budgetary restraint. I know my colleagues will be proud to join with me in support of this bill.●

● Mr. ULLMAN. Mr. Speaker, the Medicare Amendments of 1978, H.R. 13097, is legislation that Members of this body can be proud to support. Enactment of this bill would do much to increase the protection afforded many aged and the disabled beneficiaries of the medicare program. Benefit improvements in medicare are long overdue. We last enacted comprehensive medicare benefit improvements in the 92d Congress.

My colleagues can be especially proud of this legislation because they had a substantial role in its development. A large proportion of the issues the Ways and Means Committee considered and responded to in the bill came to our attention because of medicare legislation introduced by Members of the House or through Members' communications with us about problems their constituents were having with medicare.

These benefit improvements—although they are not major in the context of the entire medicare program—are much needed and are eagerly anticipated by many of the elderly and disabled people who depend on the medicare program for their protection against the cost of health care. We have provided in the bill for a number of liberalizations in the medicare home health benefit. Proposals for such liberalizations have a long history of active support. These home health care improvements would allow many who might otherwise require care in a hospital or a skilled nursing facility to remain at home. Not only would patients generally prefer to remain at home where possible but home care is also desirable because it can mean less in program expenditures than expensive care in an institution.

The bill would also eliminate the second waiting period for entitlement to medicare benefits for disability beneficiaries who attempt to return to work but who are unsuccessful and need to return to the disability rolls. Elimination of the second medicare waiting period in such cases would do away with a major distincentive for the disabled to try to return to the labor force. This provision may ultimately save the social security system many times its initial cost.

Other provisions would expand coverage for rehabilitation services, community mental health center services and services furnished by a variety of health care practitioners including dentists, psychologists, podiatrists, optometrists, and chiropractors. The bill eliminates or modifies a number of present administrative requirements in the program to avoid unnecessary adverse effects on some beneficiaries. The unique problems facing rural hospitals are addressed in the bill by providing authority for the Secretary of HEW to exercise flexibility in applying medicare requirements to these institutions.

Mr. Speaker, the Ways and Means Committee would have liked to have made many other desirable improvements in medicare but budget constraints made it necessary to include only low cost items in order to keep the bill to a modest cost. Nonetheless, this is a fine bill—one we can be proud to have counted among our legislative achievements for the year. Many of the benefit improvements that are included have long been actively supported by the aged and disabled population. I would urge my colleagues to join with me in enthusiastic support of this bill.●

● Mr. BIAGGI. Mr. Speaker, I rise in complete support of H.R. 13097, the medicare amendments of 1978. Perhaps one of the most commonly heard, and I might add, justified criticisms of the medicare program is that it contains a long standing bias against home health care. I am pleased to say that passage of H.R. 13097 will begin the process of reversing this bias and with it the unnecessary institutionalization of our elderly citizens.

I am pleased to serve as the chairman of the Subcommittee on Human Services of the House Select Committee on Aging. The committee, my subcommittee has been deeply involved advancing legislative proposals to provide alternatives to institutionalization for the elderly. To use an old expression with respect to this effort, "All roads led to medicare." What I mean is that when we looked for the programs responsible for prolonging unstricting home health care, we found medicare. Therefore logically, when pursuing a means of reforming the present situation we seek amendments to the medicare law.

Specifically H.R. 13097 removes the present ICC visit limitation contained in medicare parts A and B. In addition the bill eliminates the archaic, if not arbitrary requirement that a person to be eligible for home health services have been hospitalized for 3 consecutive days. This provision alone is expected to directly benefit some 1.1 million medicare beneficiaries. Finally this legislation provides that home health benefits would no longer be subject to the $60 deductible.

The net impact of these amendments will be to make the medicare program less of an adversary with respect to home health care. Existing law is rigid with requirements for coverage of home health services and as a result a minuscule amount of medicare's funds goes to cover costs of home health care services. Continuation of this would provide no real incentive to deinstitutionalize our elderly, thus making this term rhetorical rather than real. One can only expect that both the quantity of home health services covered under medicare and the quality of care pro-

vided will both be significantly improved with the passage off H.R. 13097.

Study after study, report after report has documented that home health care is more cost effective than institutional care. The most widely consulted report was done by the General Accounting Office in December of 1977. It confirmed not only the cost effective argument but also charged that upward of 25 percent of all persons in institutions today are there unnecessarily. A related fact uncovered during a Subcommittee on Human Services hearing I conducted last April was a similar percent of persons in nursing homes were there simply because of an inability to maintain a proper diet. Consequentally, both the House and Senate have passed legislation providing for a greatly expanded national home delievered meals program under the Older Americans Act.

The very heart of this issue today is this—it is time that our major Federal health programs were made flexible enough to provide, where feasible, alternatives to institutionalization. This as contrasted to preserving an outdated, fiscally wasteful and inhumane status quo which simply equates old age with being put away.

Hopefully we are on the threshold of national health insurance. We realize the need for such a program is based in part on the inadequacy of medicare of medicaid. For too many seniors in this Nation, the gaps in coverage in these programs exceeds those services which are permissable under the programs. Obviously from my vantagepoint and that of the Select Committee on Aging, providing for expanded home and community based health services is critical to any national health insurance program. Yet while we await the formal adoption of a program, let us take steps such as we are today with the enactment of H.R. 13097.

As we consider this bill I wish to salute two "inspirations" whose advocacy of this cause helped bring us to this point today. The first of course is CLAUDE PEPPER the chairman of the House Select Committee on Aging who has worker through sponsorship of legislation and conducting of hearings around the Nation to make reforms in the medicare programs. The other main champion of this cause is our former colleague and now mayor of New York City, Ed Koch.

I joined Ed Koch and CLAUDE PEPPER as a cosponsor of legislation which sought to lift the visitation requirement as well as the prior hospitalization requirement. H.R. 13097 achieves this. Ed Koch was an expert in this area and remains so. On February 6 of this year I conducted a hearing in New York City on home health care and Mayor Koch in the course of his testimony stated:

I have been concerned about home health care for a number of years, and I made it one of my major legislative attacks if you will, introducing the first legislation on that subject because it was clear to me at that time and it regrettably continues today is that we put people into nursing homes when in fact they do not need nursing homes. For one third or one half of the cost you could keep those persons in their own homes.

H.R. 13097 is a modest but critically important step forward. It places the medicare program in step with the prevailing sentiments of the American people that home health care for senior citizens deserves greater visibility and support. We have a long way to go to completely reverse the pro institutional bias of the medicare program but we are beginning and I urge support of this legislation.●

● Mr. GILMAN. Mr. Speaker, I rise in support of the medicare amendments of 1978 legislation which liberalizes the medical home benefits program, and which generally improves the availability and quality of medicare services to many individuals who had formerly been denied full benefits. Mr. Speaker, it is about time that medicare became more realistic in reaching the people that it had originally intended to do. These amendments allow coverage for some basic services, for example, increased services for mental health, psychologists, allergists, increased dental services, and more adequate ambulance transportation.

Also, the medicare amendments take a more realistic view of the special problems of rural residents, and places more attainable conditions on hospitalization requirements before reimbursement.

While many abuses must be eliminated in the medicare program, I believe that these amendments go a long way in meeting some of the complaints that recipients now express. Coupled with a strong effort to reduce the instances of abuse, I believe that increased coverage will serve to make the American public more receptive to the idea of medicare, and that some of the present inequities will be eliminated.

Accordingly, I urge my colleagues to join with me in supporting this legislation which is beneficial to all Americans.●

● Mr. HEFNER. Mr. Speaker, I would like to take this opportunity to voice my support for H.R. 13097, the Medicare Amendments of 1978, and I also commend the Ways and Means Committee for the fine job they have done in developing this bill.

The Medicare Amendments of 1978 embody a principle that I have long supported. We have a very good health care system in this country but in our Federal programs, such as medicare, we have not taken advantage of the full range of quality services provided by health professionals. This bill goes to the heart of that problem by making coverage under medicare more rational.

For example, medicare coverage for chiropractic services is limited under current law to the manual manipulation of the spine to correct a displacement which can be demonstrated by X-ray. The cost of the X-ray itself is not reimbursed by medicare, but the X-ray is required before other chiropractic services may be provided.

This is a faulty policy in two respects. By not reimbursing the cost of a mandatory X-ray, the current program imposes a disincentive for chiropractic care. Also, by requiring an X-ray that may not be medically necessary, the patient could be exposed to needless radiation. It makes little sense to me that we have been requiring medicare patients to go to other specialists or through procedures which may not be in their best interest in order to be reimbursed for medical care that can be provided in a simpler and less expensive manner.

I sponsored a bill to change this policy, and I am pleased that section 22 of H.R. 13097 follows the legislation I proposed. It would provide reimbursement for the cost of an X-ray if, indeed, an X-ray is necessary. In addition, it would cover the physical examination and treatment of a displacement found through normal clinical procedures widthout a mandatory X-ray.

I hope this important change will be enacted into law as quickly as possible and urge my colleagues to support H.R. 13097.●

● Mr. DERRICK. Mr. Speaker, I would like to voice my support for H.R. 13097, the Medicare Amendments of 1978, and to commend the Ways and Means Committee for the fine work they have done in developing this bill.

This measure allows for a more rational approach to health care delivery in America. It recognizes the importance of home health care as an alternative to institutionalization—an alternative that has been proven to be more cost effective in meeting the health care needs of our elderly citizens.

Further, it calls for greater flexibility in the application of medicare standards to rural hospitals, realizing the unique and special problems shared by rural health facilities. The bill also eliminates the second waiting period for entitlement to medicare benefits for disability beneficiaries who attempt to return to work who are unsuccessful. This should prove to be economically beneficial to the entire social security system. Other provisions include expansion for community mental health and rehabilitation services, as well as for services provided by a variety of health care practitioners including dentists, optometrists, chiropractors, psychologists, and podiatrists.

While this legislation is by no means perfect in that even more expansion of home health care—including occupational therapy—is desired, I am pleased to support this measure which signifies a beginning in the development of improved health care services.●

Mr. ROSTENKOWSKI. Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. ROSTENKOWSKI) that the House suspend the rules and pass the bill H.R. 13097, as amended.

The question was taken.

Mr. ROSTENKOWSKI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

HEALTH PROGRAMS AMENDMENTS UNDER SOCIAL SECURITY ACT

Mr. ROSTENKOWSKI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13817) to amend the Social Security Act with respect to health programs authorized under it and for other purposes, as amended.

The Clerk read as follows:

H.R. 13817

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SECITON 1. Section 1152(b)(1)(A) of the Social Security Act is amended—

(1) by inserting "and, if the organization so elects, of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges," after the comma in clause (ii); and

(2) by inserting "except as otherwise provided under section 1155(c))" after "does not" in clause (vi).

REGISTERED NURSE AND DENTIST MEMBERSHIP ON STATEWIDE COUNCIL ADVISORY GROUP

SEC. 2. Section 1162(e)(1) of the Social Security Act is amended by inserting "(including at least one registered professional nurse and at least one doctor of dental surgery or of dental medicine)" after "representatives".

NONPHYSICIAN MEMBERSHIP ON NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

SEC. 3. (a) Section 1163(a)(1) of the Social Security Act is amended by inserting "one doctor of dental surgery or of dental medicine, one registered professional nurse, and one other health practitioner (other than a physician as defined in section 1861(r)(1))," after "physicians,".

(b) Section 1163(a)(2) of such Act is amended by striking out "four members" and inserting "five members" in lieu thereof.

(c) Section 1163(a)(3) of such Act is amended by inserting "physician" after "the".

(d) Section 1163(b) of such Act is amended by striking out "Members" and inserting in lieu thereof "Physician members".

(e) Section 1173 of such Act is amended by striking out "(except sections 1155(c) and 1163)" and inserting in lieu thereof "(except section 1155(c))".

ADVISORY COMMITTEE TO THE NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

SEC. 4. Section 1163 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f)(1) The Council shall be advised and assisted in carrying out its functions by an advisory committee (of not less than seven nor more than fifteen members) which shall be made up of representatives of health care practitioners (other than physicians) for whose services payment may be made (in whole or in part) under any program established by or pursuant to this Act.

"(2) The Secretary shall by regulations provide the manner in which members of such advisory committee shall be selected and the terms of service.

"(3) The expenses reasonably and necessarily incurred, as determined by the Secretary, by such committee in carrying out its functions shall be considered to be expenses necessarily incurred by the National Professional Standards Review Council."

HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES ("SWING-BEDS")

SEC. 5. (a)(1) Title XVIII of the Social Security Act is amended by adding the following new section at the end thereof:

"HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES

"SEC. 1882. (a)(1) Any hospital (other than a hospital which has in effect a waiver of the requirement imposed by section 1861(e)(5)) which has an agreement under section 1866 may (subject to subsection (b)) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute post-hospital extended care services.

"(2)(A) Notwithstanding any other provision of this title, payment to any hospital for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

"(B)(i) The reasonable cost of the services furnished during any calendar year by a services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

"(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of (I) the number of patient-days during the year for which the services were furnished, and (II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the previous calendar year under title XIX to skilled nursing facilities located in the State in which the hospital is located and which have agreements entered into under section 1902(a)(28).

"(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

"(b) The Secretary may not enter into an agreement under this section with any hospital unless—

"(1) for a period (of not less than twelve months) specified by the Secretary which period immediately hospital has had an average daily occupancy rate of less than 60 percent, and

"(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act) for the State in which the hospital is located.

"(c) An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1866 (unless the hospital fails to satisfy the requirements specified in subsection (b)) and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1866; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1866, or where there is in effect for the hospital a waiver of the requirement imposed by section 1861(e)(5). A hospital whose agreement under this section has been terminated shall not be eligible to undertake a new agreement until a two-year period has elapsed from the termination date.

"(d) Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1866; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this title (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1866.

"(e) During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement received for routine services from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine title XVIII reimbursement for routine hospital services.

"(f) With respect to a hospital's furnishing (under an agreement in effect under this section) of services of the type which, if furnished by a skilled nursing facility, would constitute post-hospital extended care services—

"(1) the hospital shall be required to meet all the requirements of this Act that a skilled nursing facility would be required to meet with respect to the furnishing of such services, and

"(2) the provisions of such services shall be treated and subject to the same requirements of this Act as post-hospital extended care services furnished by a skilled nursing facility under this title,

except such requirements of section 1861(j) and such other requirements as the Secretary determines to be inappropriate in the case of these services being furnished by a hospital under this section.".

(2) Within three years after the date of the enactment of this Act, the Secretary shall submit to the Congress a report evaluating the program established by the amendment made by paragraph (1) of this subsection and shall include in such report an analysis of—

(A) the extent and effect of the agreements under the program on availability and effective and economical provision of long-term care services, and

(B) whether the program should be continued.

(b) Title XIX of the Social Security Act is amended by adding after section 1912 the following new section:

"HOSPITAL PROVIDERS OF SKILLED NURSING AND INTERMEDIATE CARE SERVICES

"SEC. 1913. (a) Notwithstanding any other provision of this title, payment may be made, in accordance with this section, under a State plan approved under this title for skilled nursing facility services and intermediate care facility services furnished by a hospital which has in effect an agreement under section 1882.

"(b)(1) Payment to any such hospital, for any skilled nursing or intermediate care facility services furnished shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under this title to skilled nursing and intermediate care facilities located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the

same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

'(2) With respect to any period for which a hospital has an agreement under section 1882, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services received from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine title XIX reimbursement for routine hospital services.".

(c) The amendments made by this section become effective on the date on which final regulations, promulgated by the Secretary to implement the amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth calendar month following the month in which this Act is enacted.

COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

SEC. 6. (a) Title XI of the Social Security Act is amended by inserting after section 1126 the following new section:

"COORDINATED AUDITS

"SEC. 1127. If an entity provides services reimbursable on a cost-related basis under title V or XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under title V or XIX and the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be the amount that would have been apportioned to the State under the title (for the expenses of the State incurred in the common audit) if it had participated in the common audit.".

(b)(1) Section 1902(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (39);

(B) by striking out the period at the end of paragraph (40) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (40) the following new paragraph:

"(41) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of the proportion of costs of each such common audit of such an entity equal to the proportion of total program benefit payments to the entity (by all third-party payers participating in the common audit for the period being audited) which are payments under this title.".

(2) The amendments made by paragraph (1) shall apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on and after the first day of the first calendar quarter beginning more than 30 days after the date of enactment of this Act.

(c)(1) Section 505(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (15) the following new paragraph:

"(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of the proportion of costs of each such common audit of such an entity equal to the proportion of total program benefit payments to the entity (by all third-party payers participating in the common audit for the period being audited) which are payments under this title.".

(2) The amendments made by paragraph (1) shall apply to services provided, under a State plan approved under title V of the Social Security Act, on and after the first day of the first calendar quarter beginning more than 30 days after the date of enactment of this Act.

(d) The Secretary shall report to the Congress, not later than March 31, 1980, on actions the Secretary has taken (1) to coordinate the conduct of institutional audits and inspections which are required under the programs funded under title V, XVIII, or XIX of the Social Security Act, and (2) to coordinate such audits and inspections with those conducted by other cost payers, and he shall include in such report recommendations for such legislation as he deems appropriate to assure the maximum feasible coordination of such institutional audits and inspections.

EFFECTIVE DATE FOR PSRO AMENDMENTS

SEC. 7. The amendments made by sections 1, 2, 3, and 4 shall be effective 180 days after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. DUNCAN of Tennessee, Mr. Speaker, I demand a second. I am not opposed to the bill, but I demand a second only for the purpose that we might have a colloquy on the bill.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a major purpose of H.R. 13817 is to improve the effectiveness of peer review activities in medicare and medicaid by providing for the participation of nonphysician health professionals in the work of PSRO's—the professional standards review organizations which under present law are responsible for reviewing the necessity and quality of health services. There is a broad consensus within the health care community that the participation of nonphysician health professionals, along with physicians, in the work of the PSRO's would help considerably to improve their performance.

The bill would accomplish this objective by: First, expanding the present membership of the National Professional Standards Review Council to include a dentist, a nurse, and one other nonphysician health professional; second, creating an advisory committee to the National Council, composed of nonphysician health professionals; third, requiring statewide PSRO advisory bodies to include at least one nurse and one dentist; and finally, authorizing local PSRO's, at their option, to offer membership to health professionals, such as dentists and podiatrists, who hold independent hospital admitting privileges.

It is our conviction that the increased participation of these health professionals will better enable PSRO's to serve as catalysts for improving the efficiency and quality of health services.

H.R. 13817 would also modify present law to eliminate costly duplication of auditing procedures under the medicare and medicaid programs, and permit greater flexibility in the use of hospital beds as long-term care beds for patients no longer requiring the full range of intensive hospital services. Both of these changes would significantly improve the efficiency and effectiveness of the two programs: The common audit provision by eliminating wasteful duplication in the auditing of health care institutions participating in both medicare and medicaid; the "swing bed" provision by permitting more efficient use of hospital beds to accommodate the changing needs of patients and hospitals to provide long-term care services.

Mr. Speaker, the Congressional Budget Office estimates that H.R. 13817, particularly the common audit provision, would reduce Federal liabilities and thereby permit a reduction of $20.5 million for fiscal year 1979 in the budget authority for medicaid; and also result in a saving of $6 million in medicare for fiscal year 1979. Equally important, however, is the fact that H.R. 13817 can be expected to produce improvements in the peer review process which, over time, should result in the more efficient and effective delivery of health care care services generally. I urge my colleagues, therefore, to support H.R. 13817 as still another important step in the direction of improved management of the medicare and medicaid programs.

Mr. CARTER. Mr. Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Kentucky (Mr. CARTER).

Mr. CARTER. Mr. Speaker, I commend the gentleman from Illinois (Mr. ROSTENKOWSKI) for his hard work on this legislation to improve the PSRO program. As you know—in order to have an effective PSRO program we must have the commitment and participation of physicians. Any changes in the composition of PSRO's should be consistent with maintaining a harmonious relationship among the members.

In that regard—I would like to ask the distinguished chairman a question about the intent of your committee.

Is it your intent that the new nonphysician health professionals to be selected under the provisions of this bill will be only those professionals who are recognized by and have worked closely with the medical profession—such that the inclusion of these new professionals

in PSRO activities will serve to strengthen rather than weaken the program's effectiveness? Am I correct that this is the committee's intent with respect to the selection of the nonphysician health professionals?

Mr. ROSTENKOWSKI. Mr. Speaker, the gentleman is absolutely correct.

Mr. CARTER. Mr. Speaker, I thank the distinguished gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to express my support for H.R. 13817.

This legislation would, first of all, significantly improve the quality of peer review by Professional Standards Review Organizations by allowing and encouraging greater participation by many types of health care practitioners, yet without in any way diminishing the necessary authority of physicians to act in matters relating to other physicians.

For example, I am pleased that our Nation's dentists and podiatrists may be invited to participate in the evaluation of services provided by their professional colleagues under medicare, and hope that the PSRO's will act promptly to include those health professionals to the greatest extent possible.

Also, I believe that tribute to the vitally important services provided by our nurses and allied health professionals, finally is being paid. I am certain that the role that these professionals will play in both the advisory groups to statewide councils and the Advisory Committee to the National Council will be of great importance.

In recent months, the Congress and the Secretary of HEW have expressed concern about the cost-effectiveness of the PSRO program. It is clear that the next several months—perhaps years—will provide much-needed evidence as to whether this program will meet the goals, requirements, and needs that must be fulfilled.

It would seem to me that, whatever the verdict may be, the changes made by H.R 13817 will enhance the program's opportunity to succeed by encouraging and promoting more participation, coordination and self-scrutiny among all of the providers who serve our citizens in Government health programs.

Finally, Mr. Speaker, I would add that the provision of H.R. 13817 that makes it easier for hospitals to obtain Federal reimbursement for utilizing "swing beds" to provide needed long-term care services to medicare beneficiaries is most constructive. This amendment will be extremely helpful and efficient, particularly in certain of our rural areas where acute care beds frequently go unused in some hospitals at the same time that the patients in those institutions require, and are entitled to receive, skilled nursing care.

Similarly, the provision with respect to coordinated audits under the Social Security Act should prove both wise and cost-effective.

In conclusion, Mr. Speaker, H.R. 13817 is a bill that appears to deserve support and enactment. I would urge my colleagues to vote for its passage.

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I fully support H.R. 13817, the amendments to health programs authorized under the Social Security Act, which Chairman ROSTENKOWSKI has so ably presented to the House today. The provisions of the bill are sound ones. As Members may know, these amendments fall within the jurisdiction of the Interstate and Foreign Commerce Committee as well as Ways and Means. The committee did not require formal referral of the legislation, however, because the two major provisions of the bill have previously been approved and reported by the Commerce Committee in substantially similar form as part of the Hospital Cost Containment Act, H.R. 6575 as amended. One of these provisions relates to a requirement for common audits of providers in the medicare and medicaid program, a measure which can reduce paperwork and result in cost savings for the taxpaying public. The second allows small underutilized hospitals to provide long-term care services, and receive appropriate reimbursement from medicare and medicaid, without meeting a number of detailed requirements or establishing a distinct part of the institution to provide skilled nursing facility services.

The third provision, relating to PSRO's has widespread support. It recognizes the important role of nurses in making PSRO's effective entities.

I urge the Members to support the amendments.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Kansas (Ms. KEYS).

Ms. KEYS. Mr. Speaker, I strongly support this legislation.

Professional standards review organizations were mandated by Congress in 1972 to insure the delivery of quality health care through the process of peer review. PSRO's are presently authorized to review the full scope of health care services in both hospitals and long-term care facilities.

The health care delivery system is made up of many health professionals. There are at least 15 nonphysician health professions, each with its own professional standards.

The largest of these is nursing. There is no health profession which affects as many phases of health care. The most direct and continuous contact which a patient has with health care is nursing. Nurses provide care round-the-clock care in all settings. Nurses provide for the immediate needs of the patient; they respond in emergencies, administer medication, prepare patients for surgery, and advise them on home care before leaving the hospital.

Nursing is the largest component of our health care delivery system. There are over 900,000 professional registered nurses and many more licensed practical nurses. Registered nurses outnumber doctors 9 to 1.

Yet neither nurses nor the 14 other nonphysician health care professions are represented on PSRO's. At present the national PSRO council is limited to 11 physicians. The bill before us recognizes the need for genuine peer review by providing for nonphysician participation at the State and national level. The bill provides for—

Three additional members on the national PSRO council. This would add one professional registered nurse, one dentist, and one other health professional.

An advisory committee to the national PSRO council composed of nonphysicians. This will offer the other health professions a voice in establishing PSRO standards and policies for their own professions.

At least one professional registered nurse and one dentist on the advisory group to each statewide PSRO council.

Authority for the local PSRO to offer membership, at its own option, to health care practitioners who hold independent hospital admitting privileges.

The legislation also contains provisions which will assist small rural hospitals by allowing them to utilize unused hospital beds for long-term care patients. This will result in a savings for both the hospitals and the Government.

This legislation, including its audit provisions, will save the taxpayers $6 million in 1979. It has the endorsement of HEW and is supported by the Health Care Practitioner Committee, the American Nurses Association, and the American Dental Association. I hope it will receive your support.

Mr. Speaker, I think it is, therefore, terribly important that these health professionals be represented on the PSRO National Board, along with dentists and other nonphysician professionals, and that all nonphysician health care professionals be included in a special advisory board at the national level as well as boards at the State level.

Mr. Speaker, some of the excellent testimony which was provided to us by many nurses and other nonphysician professionals who came to appear at our hearings last year certainly proved to those of us on the committee that this would be a very responsible way to directly make our health care delivery system more in tune to the patient's need.

Again, Mr. Speaker, I support the legislation as well as the provision for the rural swing-bed arrangement, which is most necessary in hospitals in States such as my own, Kansas, which has many small hospitals in rural communities.

Ms. OAKAR. Mr. Speaker, will the gentlewoman yield?

Ms. KEYS. I yield to the gentlewoman from Ohio.

Ms. OAKAR. Mr. Speaker, I thank the gentlewoman for yielding.

I want to associate myself with her very eloquent remarks, not only with respect to her comprehensive review of the legislation, but especially her views concerning nurses. I, for one, think that their advice is critical when it comes to health care. They provide such an in-

tegral part of our health care service that they should certainly be placed in the capacity of giving input as members of the Professional Standards Review Organizations. It is time to make these boards more representative of all deliverers of health care.

Again, Mr. Speaker, I thank the gentlewoman for yielding and thank her very much for her remarks. I think nurses across the country will applaud her efforts in this regard.

Mr. VENTO. Mr. Speaker, will the gentlewoman yield?

Ms. KEYS. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I first want to start by paying tribute to the gentlewoman from Kansas (Ms. KEYS) for her leadership in terms of expanding the PSRO Boards. I think she has scored a legislative victory in terms of the acceptance by the committee and, hopefully, of this House of nurses and other professional membership on PSRO's.

Mr. Speaker, I was pleased to cosponsor the initial legislation proposals in 1977 with Representative KEYS. I want to extend my congratulations to the committee for their good work on H.R. 13817, and I hope the Members of the House will ratify this measure.

When Congress created the Professional Standards Review Organizations in 1972, a giant step was taken to insure that Federal moneys expended for health programs would be subject to the professional review of physicians.

PSRO's have provided a valuable service since that time, but it is obvious that many qualified and highly trained members of the medical community have been denied the chance to participate in this important process.

I have been personally contacted by many nonphysician groups and many health professionals who want to participate in that process.

Nurses, in particular, are grossly under-represented in most all professional review organizations. This is especially evident when one considers the tremendous impact nursing has on all facets of health care in this country. Nurses often have the most intimate contact with patients over the longest period of time. In every sense, nurses are primary health care providers. Their responsibilities are enormous; their tasks varied and difficult. It is only appropriate, for that reason, that they now take a prominent place on both local and State PSRO's that review and determine standards of acceptable health care.

It is my hope, however, that all local PSRO's will open their organizations to the many dedicated and highly talented people who serve our health needs and work so hard to set quality standards so we can realize the best health care possible.

Mr. Speaker, I urge my fellow colleagues to join with me in supporting this important legislation which provides for a more fair and equal representation on our Professional Standards Review Organizations. I commend again my colleague from Kansas, Congresswoman KEYS for her enthusiastic table efforts on behalf of this bill.

Mr. Speaker, I thank the gentlewoman from Kansas for yielding.

● Mr. ULLMAN. Mr. Speaker, I am pleased that the House will have this opportunity to act on the improvements made by H.R. 13817 in the medicare, medicaid and PSRO programs. By providing for increased nonphysician participation in the peer review activities of professional standards review organizations, the bill would significantly enhance the capacity of PSRO's to effectively review all services furnished under the medicare and medicaid programs.

The bill would also make two important improvements in the administration of these programs: First, by requiring the coordination of audits of health facilities participating in both medicare and medicaid; and second, by allowing greater flexibility for hospitals with low occupancy rates to use acute care beds that would otherwise remain idle to pro vide skilled nursing care services.

Mr. Speaker, I believe these changes represent desirable substantive improvements in the medicare and medicaid programs, and I strongly recommend passage of H.R. 13817.●

● Mr. GILMAN. Mr. Speaker, if the American system of health is to be the most efficient system in the entire world, it is incumbent upon American medical professionals and ourselves as legislators, to insure that all members of the medical profession are able to express their thoughts and views on how best to streamline, improve, and significantly affect the course of American medicine. The health program amendments which are before us today offer us the opportunity of allowing more input into the planning process and to enable the American public to be more fully represented by different segments of the medical community.

As we are all aware, steps have been taken in the last several years to encourage participation by professionals in the health planning aspects of delivery of service. PSRO units (Professional Standards Review Organizations) have met with success in reviewing the necessity of hospitalization ordered by other physicians. In this system of peer review, substantial sums of money has been saved, and the health field has experienced a trend toward more careful thinking in prescribed actions. Yet, under present law, some important health professionals are excluded from participation in the PSRO's. For instance, nurses and dentists are excluded, and this legislation, H.R. 13817, enables each PSRO to offer membership to health care practitioners who hold independent hospital admitting priviliges, with the reasonable limitation imposed that such health personnel cannot make a final determination with respect to the conduct of MD's or DO's.

The bill also provides medicare reimbursement, as well as medicaid reimbursement to hospitals which have an occupancy rate of less than 60 percent daily, and those which are certified by the State as having need for the provision of long-term care services.

Mr. Speaker, I believe that the savings incurred by the passage of the legislation are significant, and I believe that patients will in the long run benefit as a result of this legislation. I urge my colleagues to support this bill.●

Mr. ROSTENKOWSKI. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. ROSTENKOWSKI) that the House suspend the rules and pass the bill H.R. 13817, as amended.

The question was taken.

Mr. VOLKMER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the two bills, H.R. 13097 and H.R. 13817, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AUTHORIZE THE SMITHSONIAN TO ACQUIRE MUSEUM OF AFRICAN ART

Mr. NEDZI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 10792) to authorize the Smithsonian Institution to acquire the Museum of African Art, and for other purposes, as amended.

The Clerk read as follows:

H.R. 10792

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Board of Regents of the Smithsonian Institution (hereinafter in this Act referred to as the "Board") is authorized to accept a deed or other instrument donating and transferring to the Smithsonian Institution, the land and improvements thereto, collections of works of art, and all other assets and property of the Museum of African Art.

SEC. 2. There is established in the Smithsonian Institution a bureau which shall be known as the "Museum of African Art" (hereinafter in this Act referred to as the "Museum"). The functions of such bureau shall be those authorized by section 3(a).

SEC. 3. (a) For the purpose of carrying out sections 1 and 2 of this Act, the Board may—

(1) purchase, accept, borrow, or otherwise acquire additional works of art or any other real or personal property for the Museum;

(2) preserve, maintain, restore, display, loan, transfer, store, or otherwise hold any property of whatsoever nature acquired pursuant to section 1 or paragraph (1) of this subsection;

(3) conduct programs of research and education; and

(4) subject to any limitations otherwise expressly provided by law, and, in the case of any gift, subject to any applicable restrictions under the terms of such gift, sell, exchange, or otherwise dispose of any property of whatsoever nature acquired pursuant to the provisions of this Act: *Provided*, That the

proceeds from the sale of any property acquired pursuant to section 1 shall be designated for the benefit of the Museum.

(b) In carrying out the purposes of this Act, the Board shall consider the recommendations of the Commission established pursuant to section 4.

SEC. 4. (a) There is established a Commission for the Museum of African Art (hereinafter the "Commission") which shall provide advice and assistance to the Board concerning the operation and development of the Museum, its collections and programs.

(b) The Commission shall consist of fifteen members to be appointed by the Board. In addition, the Secretary and an Assistant Secretary of the Smithsonian Institution shall serve as ex officio members. The Board shall appoint to the first term on the Commission no less than ten members of the Board of Trustees of the Museum of African Art who are serving on the date of the enactment of this Act. Each initial member so appointed shall serve for a three-year term. Thereafter, in appointing members of the Commission the Board shall continue to include representatives of African descendents in the United States, collectors of African Art, and scholars in the fields of African art and culture.

(c) Members of the Commission shall be appointed to serve for a three-year term, except that after the appointment of the first term of the Commission as specified in subsection (b), the terms of office of members next appointed shall expire, as designated by the Board at the time of appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his precedessor was appointed shall be appointed for the remainder of such term. Members may be reappointed.

(d) A majority of the appointed members of the Commission shall constitute a quorum and any vacancy in the Commission shall not affect its power to function.

(e) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(f) The Commission shall select officers, from among its members biennially and shall make bylaws to carry out its functions under this Act.

SEC. 5. The Board may appoint and fix the compensation and duties of the Director and such other officers and employees of the Museum as may be necessary for the efficient administration, operation, and maintenance of the Museum; the Director and two other employees of the Museum may be appointed and compensated without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and all of the employees of the Museum who are serving on the date of the transfer authorized under section 1 shall be offered employment by the Smithsonian under its usual terms of employment and may be appointed without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5.

SEC. 6. (a) The faith of the United States is pledged that upon the completion of the acquisition in section 1, the United States will provide such funds as may be necessary for the upkeep of the Museum and the administrative expenses and costs of operation thereof, including the protection and care of works of art acquired by the Board, so the Museum shall at all times be properly maintained and works of art contained therein shall be exhibited regularly to the general pubic free of charge.

(b) There is authorized to be appropriated for the first fiscal year under this Act, the sum of $1,000,000 and such amounts as may be necessary for the succeeding fiscal years in order to carry out the provisions of this Act.

SEC. 7. Except for the provisions in sections 1 and 6(b), the provisions of this Act shall take effect on the date of transfer of a deed or other instrument under the provisions of section 1.

The SPEAKER pro tempore. Is a second demanded?

Mr. FRENZEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. NEDZI) will be recognized for 20 minutes, and the gentleman from Minnesota (Mr. FRENZEL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI. Mr. Speaker, I have only one request for time. To my knowledge, I know of no objection to this legislation.

Mr. Speaker, at this time I yield 6 minutes to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. BOGGS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of H.R. 10792.

In the spring of 1977, I served with Dr. Caryl Haskins, Senator BARRY GOLDWATER, and Judge Leon Higgenbotham as a member of an ad hoc committee of the Board of Regents to study the desirability of the Smithsonian's acquiring the Museum of African Art. At the outset, we noted that one of the few serious gaps in the coverage of art in the national museums of the Smithsonian is that of the Continent of Africa. Elsewhere within the Institution the visitor and scholar alike can find worthy presentations of the art of Europe, of the Americas, of the Near and Far East—but not of Africa.

As many Members of this House know, during the last several years it has been belatedly recognized that African art is, indeed, one of the major art traditions of the world. The modern art of Picasso, Matisse, Braque, and others reflect the artistic expressions found in the sculpture of the tribal peoples of Africa.

As a consequence of this rediscovery, other museums around the country have moved decisively to fill similar gaps in their own collections. For its own part, unless the Smithsonian acts to seize the unique opportunity afforded by the interest of the Museum of African Art in joining the Institution, we will likely lose our one best chance to involve the Smithsonian in any major way in this important area of art scholarship.

Since May of 1975 there has been a series of discussions by the Board of Regents and evaluations by the staff of the Institution to determine the feasibility of the acquisition of the Museum by the Smithsonian. These discussions culminated in a visit to the Museum by our ad hoc committee and a favorable report to the Board.

We were very impressed with what we observed during our visit. We found the Museum to be a cultural institution of significant importance to the Nation in the study and appreciation of the art of Africa. Its collection is one of the best in the country; its staff is dedicated and enthusiastic; and we were generally convinced of the essential educational role the Museum can play in informing a public which is still largely ignorant of the traditional cultural expressions of the peoples of Africa. Particularly now that so many of our fellow citizens have become so very interested in the heritage of black Americans, the Museum will be filling a large need for well-researched and mounted exhibitions, for publications, and educational outreach programs in African art.

In recommending the acquisition of the Museum to the regents, the committee felt that the success of the Museum and its promise for future important contributions to the understanding of the art of the African Continent has been based substantially upon the interplay between its excellent collection of objects, its dedicated staff, its corollary collections of photographic and reference materials, its ambitious educational programs, and the ambience of its physical setting and exhibition space. We felt that the twin prospects of acquiring the Museum and providing for a close working relationship between it and various other units of the Institution would be of benefit to all involved and would further enable the Smithsonian to accomplish its objective of increasing and diffusing knowledge for all mankind.

As many of us know, there have been three reports on the internal management procedures of the Smithsonian. A general theme found in all of these reviews is need for better communication between the regents and Congress regarding the affairs of the Institution. While the primary responsibility for conducting the affairs of the Smithsonian is vested in the regents, I think all are agreed that new programs of appreciable size which are likely to require substantial Federal appropriations should, at the very least, be brought to for this museum in academia, in the committees of the Congress before the Smithsonian undertakes them. The Museum of African Art certainly fits this category.

Accordingly at our January 16 meeting, the regents voted to support this acquisition and to seek appropriate congressional approval of this action. The legislation which is before this House today will provide authority to the regents to proceed with the acquisition. Our colleagues in the other body have already voted unanimously to approve similar legislation, S. 2507.

I think we all recognize the tremendous support and enthusiasm that exists for this museum in academia, in the community at large, and here in Congress. I hope this House will share my feelings about the desirability of proceeding with the mechanics of acquisition and will act upon this legislation as soon as possible. The Museum of African Art is a fine and important institution and deserves

to be made a part of our National Museum.

I urge favorable action on this legislation.

GENERAL LEAVE

Mr. NEDZI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. NEDZI. Mr. Speaker, I have no further requests for time.

Mr. FRENZEL. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I rise in support of this bill and in support of the statement made by the distinguished gentlewoman from Louisiana (Mrs. BOGGS) in support of the bill of which she was the original sponsor. I concur in everything the gentlewoman said, except I am not expert on ambiance. But I will trust the gentlelady from Louisiana on that score and assume we will get that in the package as well. I hope the bill is swiftly passed.

Mr. Speaker, I now yield 5 minutes to the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I thank the gentleman from Minnesota (Mr. FRENZEL) for yielding this time.

Mr. Speaker, I rise in opposition to this bill. To start with, I think we should remember that this is not money we have on hand that we are spending: this is money that we are borrowing, because everytime we spend an extra dollar that is just that much more money Congress must borrow.

We borrow, we borrow, we borrow, and this country is going more heavily into debt month after month, day after day, and week after week. Excessive spending is what is causing inflation in America.

We need to draw the line somewhere, and this might as well be one of the first places where we draw the line.

We learned, when we started considering the particular fundamentals in this bill, that the present African Museum budget is $645,000, but the first thing that the committee recommended was that we start with $1 million for this museum. As desirable and as wonderful as it might be to have additional museums, I really wonder whether this should be a top priority in this country today.

As we take on the African Art Museum, the question into my mind: What should we do for Minnesota, for example, the State represented by the gentleman from Minnesota (Mr. FRENZEL)? One would think they would want a museum perhaps for the Norwegians or the Swedes.

I know that my cousins up in Boston who are Irish would probably like to have a museum for the Irish. In my State of Texas we would certainly want to have a museum for our Spanish-American art and for Mexican art, because that is the heritage of our great State.

In New Mexico, they would want a museum for the Indians because theirs has been a heritage of the Indians. And certainly if we had one museum, it should be for the Indians, because, after all, they were in America when others came here.

But we get back to this fundamental question: Can we in the Congress continue to spend money for everything that comes down the road? An art museum is something that ought to be supported by the private sphere of our economic system. It is something that we should pay for out of our own good pockets. We should not call upon the Government to pay for it. A government cannot do all things for all people. The statement that President Ford made is, I think, one of the greatest statements when made. He said, "A government that is big enough to give you everything you want is a government that is big enough to take from you everything you have."

If we are big enough to pay for a million-dollar museum, we are big enough to pay for everything.

But the question remains that inflation is No. 1 in America today, and inflation is caused by congressional overspending. One of the best places, and certainly the best one that comes to mind today, is that Congress cannot buy an African art museum.

Mr. FRENZEL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NEDZI. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. BOGGS. Mr. Speaker, I would like to advise my respected colleague, the gentleman from Texas (Mr. COLLINS), that we are acquiring a $10 million property. The million dollars is for the running of the property that we are acquiring. So I think that the Government is coming off in a very fine light in this regard. All of the other ethnic groups which you mentioned and our native Americans, the Indians, are already represented in the Smithsonian Institution.

Mr. FRENZEL. Mr. Speaker, will the gentlewoman yield?

Mrs. BOGGS. I yield to the gentleman from Minnesota.

Mr. FRENZEL. I thank the gentlewoman for yielding.

Mr. Speaker, I think it also important to note that we are getting, along with the liability of the cost of running the museum, about $375,000 a year of income which the museum will turn in against the operating expenses which we will absorb. So it is not as frightening a cost aspect as first seems apparent.

Mrs. BOGGS. Mr. Speaker, as the chancellor of the Smithsonian Institution, the Chief Justice, said, this is a bride with a dowry because the real estate in which the museum is housed is worth a great deal of money also.

● Mr. DIGGS. Mr. Speaker, I urge my colleagues to support H.R. 10792, a bill which authorizes the Smithsonian Institution to acquire the Museum of African Art.

First proposed in 1975, the merger of the Museum of African Art with the Smithsonian would enable the latter to represent more fully the arts and cultures of Africa and provide stability for the former. H.R. 10792 has a companion bill in the Senate (S. 2507) which already passed that body. In the Senate, the companion bill had the strong support of Senator PELL, Senator GOLDWATER, and the late Senator Humphrey who was the first Chairman of the Board of the Museum of African Art. H.R. 10792 also has the full support of both the Smithsonian Institution and the Board of the Museum.

Let me state briefly why I believe that this bill should be adopted. The Museum of African Art, opened in 1964, has become a cultural resource not only to the District but also to the Nation at large. It has become a leading museum in this country in the field of traditional African art and has made notable contributions through its collections, its photographic archives, its exhibitions and its educational programs. The Smithsonian has within its complex museums devoted to each of the major artistic traditions of the world except that of Africa. As the Secretary of the Smithsonian has stated, the interest of his institution is to assure that the Museum of African Art "has an appropriate home, one which will permit its exhibition, research, and educational programs to thrive as they should."

Affiliation with the Smithsonian would be of benefit to both institutions. Its acquisition would attract to the museum several of the major private collections in the United States if the museum can demonstrate the financial base and facilities to accommodate, preserve, and display these collections. The Smithsonian can provide the expertise to achieve this goal and to make the museum the principal center in this country for the exhibition and study of African art and culture. Acquisition of the museum would further the mandate of the Smithsonian Institution. In addition, in a city with a predominantly black population and one which houses the diplomatic representatives of some 42 African nations, the Museum of African Art becomes an institution of even greater importance.

I urge that it be adopted.●

● Mr. LONG of Louisiana. Mr. Speaker, I rise in support of H.R. 10792, legislation which would provide for the acquisition of the African Museum of Art by the Smithsonian Institution. As a cosponsor of the bill, I would like to join the distinguished chairman of the Subcommittee on Libraries and Memorials, Mr. NEDZI, in urging support for the transfer of this remarkable museum of black art and culture to the Smithsonian Institution.

Seldom do we have the opportunity to consider legislation with more widely acclaimed merit. Senator Hubert Humphrey first proposed the idea of merging the museum with the Smithsonian as a means of strengthening financial support for the necessary maintenance, personnel, and curatoria: service. His proposal ultimately received the full support of the Senate and the Board of Regents

of the Smithsonian. It now provides those of us in the House of Representatives an opportunity to contribute to a creative partnership between these two vital cultural institutions in a way which will enhance the qualities of both.

The seeds of the partnership were planted 13 years ago when, armed with determination, the help of a few friends, black community leaders, and loans from private collectors, Mr. Warren Robbins opened the African Art Museum at the Washington residence of the noted 19th century freedom fighter, Frederick Douglass.

It was a bold idea—a "teaching museum" which would utilize its exhibits and resources to provide a social understanding of the contribution of African history to black American culture.

It has been a bold success. The museum now houses nearly 7,000 objects on permanent exhibition, a fully developed library, and a picture gallery of nearly 150,000 photographs which comprise 30 years work by the late Eliot Elisofon, renowned filmmaker and photographer for Life magazine. In addition, the museum has embarked on an ambitious education program through which lectures and classes are offered locally in the elementary and secondary schools. An advanced study program which would grant college degrees to students of African art is now in the planning stages.

Mr. Speaker, the goal of the African Museum of Art is to bring an awareness to Americans throughout the country of the rich historical and cultural ties we have with the African nations. The legislation we consider today would be a great advancement in stability as well as stature for the African Museum. In return, the museum could continue to build a deeper understanding of the African people and, consequently, a broader culture for our Nation.

I urge my colleagues to join me in supporting this legislation as the necessary first step to creating a national museum of black cultural heritage.●

Mr. NEDZI. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. NEDZI) that the House suspend the rules and pass the bill H.R. 10792, as amended.

The question was taken.

Mr. COLLINS of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

AGRICULTURE ACT AMENDMENTS FOR INTEREST ON COTTON LOANS

Mr. BOWEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13675) to amend section 103(f)(1) of the Agricultural Act of 1949 by deleting the third sentence thereof in order to insure that interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities as amended.

The Clerk read as follows:

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Mississippi (Mr. BOWEN) will be recognized for 20 minutes, and the gentleman from Louisiana (Mr. MOORE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. BOWEN).

Mr. BOWEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 13675, as amended, is the same as the Senate bill (S. 3460), and simply involves numbering and technical differences. This bill passed the House Agriculture Committee by a vote of 33 to 0, and it involves a change in the manner in which the loan rate is established by the Commodity Credit Corporation for Cotton.

Last year, during the debate on our farm bill, the Food and Agriculure Act of 1977, we included a provision that required that the CCC loan rate for upland cotton be established on a quarterly basis, reflecting the interest rate for ordinary obligations of the United States. That was a very sound provision, but there is no statutory language for determining CCC rates for other commodities. As a result, the Commodity Credit Corporation has established as its policy that it will make adjustments in the interest rates for other commodities annually.

Consequently, we have now arrived at a point where there is a disparity between rates. The interest rate for cotton is now 7¾ percent, and it is 7 percent for other commodities. At the point of the next adjustment, October 1, it might well go as high as 8 percent for cotton.

As a result, we are offering this bill, Mr. Speaker, which will eliminate the disparity between the way in which the rate is established for cotton and for other commodities. I think it will be an important step in providing much fairer and more usable Commodity Credit Corporation loan program for our cotton farmers and will allow a uniform procedure for all commodities.

It is supported by the Department of Agriculture. They have indicated that they will move swiftly to establish uniform rates as soon as the Congress and President have acted.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am a cosponsor of this bill along with the gentleman from Mississippi, and I commend him for having brounght this bill to my attention, out of the Subcommittee on Cotton of the Committee on Agriculture.

Mr. Speaker, H.R. 13675 amends the Agricultural Act of 1949.

CURRENT LAW AS IT AFFECTS PRICE SUPPORT LOANS FOR UPLAND COTTON

One. The Food and Agriculture Act of 1977 mandated quarterly adjustments in the interest rate on price support loans based on lowest current rate on ordinary obligations of the United States.

Two. Interest rates on all other commodity loans are discretionary with the Board of Directors of the Commodity Credit Corporation.

NEED FOR LEGISLATION

One. Quarterly adjusted interest rates have resulted in an interest rate on cotton loans of 7¾ percent while the interest rate for all other commodities is 7 percent (should this provision remain in effect, the interest rate for the next quarter beginning October 1 will be 8⅜ percent).

Two. Should cotton prices fall below the loan level, excessively high interest rates would have an adverse effect on producers.

ADMINISTRATION POSITION

One. Recommends adoption of the bill to provide equitable treatment for all producers.

Two. USDA and the Congressional Budget Office estimates there would be no net budgetary outlays under this proposal.

Three. Treat like all commodities.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. BOWEN) that the House suspend the rules and pass the bill H.R. 13675, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BOWEN. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar bill (S. 3468) to amend the Agricultural Act of 1949 to insure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3468

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 103(f) of the Agricultural Act of 1949 is amended by striking out the fourth sentence of paragraph (1).

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 13675) was laid on the table.

GENERAL LEAVE

Mr. BOWEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise

and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

DIPLOMATIC RELATIONS ACT

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and take from the Speaker's desk the bill (H.R. 7819) to complement the Vienna Convention on Diplomatic Relations, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 4, strike out lines 3 to 11, inclusive, and insert:

SEC. 5. Any action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations, under section 3(b) or 4 of this Act, or under any other laws extending diplomatic privileges and immunities, shall be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure.

Page 5, after line 7, insert:

SEC. 7. (a) That chapter 85 of title 28, United States Code, is amended by the addition of the following new section:

"§ 1364. Direct actions against insurers of members of diplomatic missions and their families

"(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is a member of a mission (as defined in the Vienna Convention on Diplomatic Relations) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

"(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.".

(b) The chapter analysis of chapter 85 of title 28, United States Code, is amended by adding after the item relating to section 1363 the following new item:

"1364. Direct actions against insurers of members of diplomatic missions and their families.".

Page 5, line 9, strike out "7." and insert "8."

Page 6, line 9, strike out "8." and insert "9."

The SPEAKER pro tempore. Is a second demanded?

Mr. BUCHANAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. FASCELL) will be recognized for 20 minutes, and the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7819 is a bill which has resulted from 2 years of work on the part of four congressional committees. The House unanimously passed similar legislation last year. Just to refresh our memories on this, Mr. Speaker, this is a bill that is long overdue and will correct a matter which has been lying dormant for 188 years.

Since 1790, the entire foreign diplomatic community in this country, from ambassadors to chauffeurs, have enjoyed absolute immunity under U.S. law. What this legislation does is to remove that immunity from almost two-thirds of the diplomatic community, which numbers about 19,000 people in Washington alone, by substituting a limited diplomatic immunity specified in the Vienna Convention on Diplomatic Relations.

That was the first objective of this bill, and, as I say, Mr. Speaker, it was passed unanimously last year by this House.

Complementary to that is a bill which corrects another major problem, and that is the question of according U.S. citizens some recourse in the event that there is an injury as a result of some act involving a member of the diplomatic community. To date, Americans have had no recourse because of the absolute immunity of diplomats.

Now, by bringing the United States under the Vienna Convention, we have first of all limited the amount of immunity possessed by members of the diplomatic community. A second problem will be solved by the Senate amendments, which reflect the language contained in a complementary bill which has been reported out of the House Judiciary Committee.

While this bill will require that the diplomatic community take out liability insurance, the Senate amendment will also provide that direct actions may be taken against the insurers with regard to actions arising under those contracts.

The other Senate amendments are primarily technical. One was to cover certain high U.N. officials that we found should have been included in the direct action provision. It was our intent to include them in the original House judiciary language in H.R. 7679, but we did not through an oversight. They were included in the House-passed version of H.R. 7819.

The other amendments are mainly technical and drafting corrections.

So, if there are any questions about whether or not there is any need for this legislation, let me point out that, although the cases are not numerous, they are distressing. Only 2 weeks ago we had another tragedy where an elderly Washingtonian was struck by a hit-and-run driver while he was crossing an intersection with the light in his favor. Fortunately somebody got the diplomatic license number. But without this legislation there will be absolutely no recourse except an ex gratia payment by the government if the Congress wished it. With this legislation in effect, you would have the requirement that the diplomatic community would have to take out liability insurance and the American citizen who was hurt would have recourse through a suit against the diplomat and through direct action against the insurer. We would certainly not see the tragic situation that exists today in the Washington area and other places in the United States where Americans cannot even go into court against diplomats.

As many Members will remember, the House passed H.R. 7819, the Diplomatic Relations Act, over a year ago on July 27, 1977. The bill was passed by the Senate on August 17 of this year with four amendments. Of the four Senate amendments, only one is substantive in nature and constitutes an improvement over the House-passed bill. It is also similar to a bill already approved by the House Judiciary Committee and concurred in by the gentleman from California (Mr. DANIELSON) who chairs the subcommittee which held hearings on the bill. The Senate amendment is a provision allowing a direct action to be brought against insurers of diplomats in the event that diplomatic immunity prevents a plaintiff from suing the diplomat directly. This provision is vitally necessary to provide recourse for Americans injured by a category of diplomats who would otherwise escape liability for certain actions. These are "diplomatic agents," who include ambassadors and professional staff, as well as their families, who still possess full immunity from the civil and criminal jurisdiction of the United States under the Vienna Convention on Diplomatic Relations.

If such a diplomat is involved in a traffic accident while on official business, he could not be sued, although the country he represents could be sued. However, if the diplomat is on private business when the accident occurs, neither he nor the country he represents could be sued. This is the situation covered by the direct action provision. It will provide recourse directly against an insurer in cases where diplomatic immunity prevents suit against a diplomatic agent.

A second amendment inserted by the other body rewords an existing section in the House-passed bill concerning the procedure to be used in the dismissal of actions by a court when diplomatic immunity applies. While we have no objection to the minor changes made, I must repeat the intent expressed by the International Relations Committee that the Department of State not be placed in a position where it is expected by anyone to appear in court on behalf of the diplomatic community to assert the immunity of a diplomat. That is not the function of the State Department, but should properly be left to the diplomatic community, its attorneys, or the court.

Mr. Speaker, I urge my colleagues to join me in concurring in these amendments and placing the diplomatic community within reach of U.S. law.

Let me emphasize too, Mr. Speaker, that what we are doing here is con-

sistent with what is done with respect to the diplomatic communities in almost all nations. We require diplomats to carry liability insurance and we limit their diplomatic immunities.

I want to thank my colleagues who have supported this long-overdue legislation, particularly those who come from the immediate area and who have been direcly involved, such as our colleagues, the gentlemen from Virginia (Mr. FISHER and Mr. HARRIS) and our colleagues, the gentleman from Maryland (Mr. STEERS) the gentlewomen from Maryland (Mrs. HOLT and Mrs. SPELLMAN) as well as our colleagues from New York City who are concerned about the U.N. officials stationed there. This is a matter which all of them have been vitally interested in. They join me in urging all Members to adopt this legislation that would protect American citizens.

I must say it has been difficult. As I say, it has been through four committees. It has been under consideration a long time both by the House and the Senate. I am glad that, at long last, through sheer determination and the cooperation of the committees, the Justice Department, the State Department, and others, that we finally have a bill which will give American citizens some recourse.

One hundred and fifty nations have signed the Vienna Convention on Diplomatic Relations, Mr. Speaker. I do not know whether we are the last to enforce it, but we are pretty close to the bottom of the list in implementing it. It is high time we joined the community of nations in this regard.

Mr. BUCHANAN. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the bill that is before us represents a bill passed by the House in a very different form at an earlier time. The Senate then took practically the same contents as a bill called H.R. 7679 and included it in this measure as an amendment. However, the result of the Senate's work is rather different from the work of the House Committee on the Judiciary with respect to that part of the bill that is H.R. 7679.

I object to what is being proposed for the reason that the House has worked on a measure and come out with what I believe to be a far better, far superior approach to a very difficult problem, which will not unnecessarily place a burden upon other insurance policy holders who will pay increased insurance premiums because of the risks arising by virtue of this legislation. The problem consists in having such insurance carried by private insurance carriers while, in turn, their customers have to pay the premiums.

The problem is, of course, that diplomatic immunity is a matter that has not been dealt with fully. As the gentleman from Florida (Mr. FASCELL) has said, it has been lying dormant for 188 years.

Mr. Speaker, I would urge that it is better for us not to go ahead with this bill at the present time because of its faulty content, but instead, to take up H.R. 7679, as was scheduled to be the case otherwise, and approach that part of the problem in a much more logical way, even if it means that there is some delay beyond the present 188 years.

Why now? Why in such a hurry? I do not know.

Mr. Speaker, what the Senate has done in this measure is to say that when a direct action is brought against an insurance company, not against the diplomat involved, but against an insurance company, the action shall not be subject to a defense that the insured is immune from suit, that the insured is an indispensible party; or, in the absence of fraud or collusion, that the insured has violated a term of the contract.

What that means is that the diplomat does not have to comply with the contract of insurance; but the insurance company still has to defend the cause of action brought against the insurance company as though it were the wrongdoer. Indeed, that puts the other customers of that insurance company, who have to pay the premiums, in the position of the insurance company having to defend, without the usual ability to defend. There are usually contract requirements that the insured must cooperate in the conduct of the defense, but a diplomat does not have to do that.

Mr. Speaker, there is nothing in this legislation which can really be enforced, for that matter, in terms of requiring the diplomat to even buy the insurance. The only sanction that can be applied is if our Government were to declare the diplomat, who refuses to buy insurance, persona non grata. However, our State Department has said to the Committee on the Judiciary, "No we are very, very unlikely to do that by reason of a diplomat or a member of a mission failing to buy such insurance."

That is the problem right there. There is no way to enforce this thing. What will happen is that there will be policies of insurance bought by some diplomats for this purpose. They will be in an assigned-risk pool rather than purchasers of regular insurance. Incidentally, this is not just for automobile-liability and property-damage insurance; it is far broader in scope than the Vienna Convention requires. Indeed, the wording of the section which I have just referred to, which the Senate has dealt with in what I believe to be a very open manner, is much broader than the language of H.R. 7679 required in order to comply with the Vienna Convention.

Property damage and personal injury, very broadly, are covered by this language, not just the operation of motor vehicles and boats and aircraft and that sort of thing. That is all that would be required by the Vienna Convention.

The SPEAKER pro tempore. The time of the gentleman from Ohio (Mr. KINDNESS) has expired.

Mr. BUCHANAN. I yield 2 additional minutes to the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I thank the gentleman for yielding.

In other words, Mr. Speaker, we are going too far in this present bill. We do not have to go that far to comply with the Vienna Convention whatsoever.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. KINDNESS. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding.

I know that this subject has received active consideration by the House Committee on the Judiciary.

Can the gentleman tell us what the status is as far as the Committee on the Judiciary bill is concerned, because I know it is a fairly complex subject which requires very careful attention as far as the legal, constitutional, and treaty aspects are concerned.

Mr. KINDNESS. Mr. Speaker, I appreciate the gentleman's asking about that because the House bill H.R. 7679, comes very close to being in about the same posture as this bill; that is, it was, I believe, due to be on the Suspension Calendar some time this week or very shortly. Instead, what is sought to be done here is to take the Senate language which is far inferior, and the Senate approach, which is far inferior, and, in effect, ask the House to accept the work of the Senate on this part, whereas I do not think enough thought has been given to it over in the other body.

Mr. McCLORY. Mr. Speaker, if the gentleman will yield further, I have a little difficulty understanding how we happen to have a bill before us which would permit damage claims for torts committed by persons with diplomatic immunity. This measure coming before us today appears not to have been referred to our committee.

Mr. KINDNESS. Mr. Speaker, the gentleman makes a good point. The main purpose of H.R. 7819, as passed by the House, was to codify the privileges and immunities provisions of the Vienna Convention on diplomatic relief and to repeal some existing Federal legislation that was inconsistent with that.

Then the content of H.R. 7679, which has not yet been brought up on the House floor, was added to this bill over in the other body which has to do with a direct action against the insurance company in enforcing liability.

Mr. BUCHANAN. Mr. Speaker, I yield myself 1 minute. I do so to answer the question of the gentleman from Illinois.

This bill originated in our Committee on International Relations, and the Subcommittee on International Operations, which held extensive hearings. However, in this committee, we do not, of course, deal with certain aspects that were in this body handled by the Committee on the Judiciary.

When the bill reached the Senate, the Senate added amendments which comprise substance comparable to that reported out of the Committee on the Judiciary in the House. That is how we arrived at this point in the legislative process.

Mr. Speaker, I now yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, there is no question but that the

current U.S. law on diplomatic immunity is too broad. Too many individuals are covered by this antiquated umbrella. So, I support those features of H.R. 7819 which would cut back the number of individuals eligible for diplomatic immunity. For too long the cloak of immunity has frustrated recovery by innocent Americans who are victims of intentional or negligible actions by an "immuned" diplomat.

But H.R. 7819 returns from the other body with an unfortunate amendment. Added is a new section to title 28, granting the U.S. district courts jurisdiction over suits brought by injured persons against the insurers of individuals entitled to diplomatic immunity. It is a direct action statute. Under this provision, the insurance company would be the only named defendant. The diplomat could not be a party to the action. The insurance carrier is not permitted to plead the defense "that the insured is immune from suit or that the insured is an indispensable party." Further, the bill provides that any breach of the liability insurance contract by the insured diplomat does not constitute valid defense.

What does this mean to the insurance carrier? As I have already said, a diplomat cannot be a named party in a civil action based upon negligence. Also, he cannot be required to testify in court and probably cannot be required to submit to a deposition. Further, the standard "cooperation" clause in automobile policies, for example, could be ignored with impunity by the diplomat. He is free to refuse to cooperate in the defense in any fashion. The diplomat could even neglect to report the accident to the insurance company and, under the terms of H.R. 7679, the insurer conceivably would still have to defend such an action in court. Plain and simple, the insurance company is required to defend their diplomatically immune insured with no assurance that he will cooperate in the defense, nor with any means of enforcing the terms of their contract against him.

In the House, legislation (H.R. 7679) containing this direct action feature was referred to the Judiciary Committee. After hearings and extensive markup, we reported this measure amended to the full House—House Report 95–1410. Importantly, our version of the bill tried to balance the rights of insured parties with those of the insurers and their policyholders. Under H.R. 7679, an insurer would have been able to plead the failure of the insured diplomat to comply in the terms of the contract if that "substantially prejudices the insurer."

Should this direct action legislation become law, it effectively will close the voluntary market on liability insurance to diplomats in the United States. They will be forced into assigned risk pools or other residual market mechanisms. This means that those insurance companies who have the largest share of the market in both metropolitan Washington, D.C., and metropolitan New York will bear the brunt of the burden. Clearly, they then will attempt to pass this cost on to their policyholders.

Mr. Speaker, I think the reason these changes were made is perhaps because Members who are handling the House legislation felt they could not get a rule or they could not get the bill through a conference committee this late in the session. but I think that the Members can see that the very good work was done by the Administrative Law Subcommittee of the Judiciary Committee and by the Committee on the Judiciary was completely laid aside when this version of the bill was brought to the floor. It is a procedure to eliminate any kind of difficulty in getting a rule. By this procedure we accept what the Senate has to offer right now, but the Senate version is a poor substitute compared to what the House has offered. It will not do justice to the American people, and I think we should very carefully consider going back to the House version, bringing it up under a rule, passing it on the floor, and sending it to the conference committee before we take action.

Mr. FASCELL. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Virginia (Mr. FISHER).

Mr. FISHER. Mr. Speaker, I thank my distinguished colleague, the gentleman from Florida (Mr. FASCELL), for yielding this time to me.

Mr. Speaker, I rise in support of this bill and in support of the statement made by my distinguished friend. This legislation is long overdue. It is, in fact, many, many years overdue.

The case for it is clear. The House bill went through here with no opposition whatsoever. A great deal of publicity has been given to this bill and to various tragedies its passage would alleviate, one of which my colleague cited—an accident out on Connecticut Avenue a couple of weeks ago.

I would like to remind my friends on the other side that we are just talking about one feature of this bill, and that is the feature that the Senate added to the House bill. The argument is made that this will penalize one or two or several insurance companies which write a good deal of liability insurance in the Washington and New York areas. I do not know what companies they are, but the total number of diplomatic personnel who might be required to carry liability insurance under this proposed legislation is not very great, compared to the total number insured in these two metropolitan areas. It is hardly even a drop in the bucket when we consider insurance coverage all over the country.

In the case of automobile insurance, many States require liability insurance on motor vehicles, and the few thousand policy holders who are diplomatic personnel would be a tiny number in the total. It is hard for me to imagine that adverse decisions that might arise would cause a noticeable change in the rates.

Mr. KINDNESS. Mr. Speaker, will the gentleman yield?

Mr. FISHER. I am glad to yield to the gentleman from Ohio.

Mr. KINDNESS. Mr. Speaker, I thank the gentleman for yielding.

I believe the point was attempted to be made that it is the constituents of the gentleman and other Members in the Washington metropolitan area and the New York metropolitan area who are in all likelihood going to have to do the paying for this, not the insurance companies, and it is those people we are trying to look out for. I assume the gentleman has their best interests at heart, too.

Mr. FISHER. Yes. However, Mr. Speaker, my point is that the number of diplomatic personnel who would be involved in this is very small indeed.

In the calculation of premium rates, it is hard for me to imagine that there would be a noticeable change in the rates charged on account of covering these few additional persons.

I would like to bring out one other point that has been referred to, and that is the irony of the United States having agreed to an additional convention, along with 150 other countries, regarding the treatment of foreign diplomats in the several capital cities, major cities, all over the world, and at the same time not bringing our own domestic laws into conformity with the convention that we agreed to some years ago. It seems to me that this just ought to be corrected. It is not a big deal to correct an inconsistency of this kind. But the miracle is, the wonder is, that we have not done it before. The administration, the State Department, the Justice Department, the House, the Senate—everybody agrees with this. Under dispute is only this one feature of it, and that, it does seem to me, is not significant enough to cause us to delay this reform any longer. It simply will not make that much more difference to the premiums that anyone will have to pay for this kind of insurance coverage.

Mr. FASCELL. Mr. Speaker, I want to commend the gentleman from Virginia (Mr. FISHER), who has not only introduced legislation on this matter, but has diligently followed it, along with a number of our colleagues on both sides of the aisle who have an immediate responsibility, not only here in Washington, but in other places where the diplomatic community is resident.

Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Wisconsin (Mr. ZABLOCKI), the chairman of the full committee.

Mr. ZABLOCKI. Mr. Speaker, I rise in support of the bill, H.R. 7819, the Diplomatic Relations Act of 1978. This bill is the product of 2 years' effort, and consideration of the issue by two committees. I would like to take this opportunity to thank our colleagues Chairman PETER RODINO, and the Honorables DANTE B. FASCELL, GEORGE DANIELSON, and JOSEPH FISHER for their diligence and cooperation on behalf of the legislation. This is a well-crafted and important measure which will enable legal recourse by citizens in accident cases where diplomatic immunity has previously been invoked.

Enactment of this bill will repeal the antiquated statute which prohibits lawsuits against diplomats, and will require liability insurance coverage of all embassy personnel and their families.

The 1790 statute granting diplomatic immunity was enacted long before District streets witnessed the treads of the

automobile—it is time for a revision of this anachronistic code. The current statute serves as a disincentive for compliance with parking and driving laws by exonerating diplomatic personnel from retribution from their violations. The diplomats should be treated as the responsible citizens they are deemed to be—as evidenced by representation for their respective countries—which means holding them accountable for their actions.

This measure will, to a certain extent, serve to alleviate the myriad of unpaid parking tickets by restricting the number of individuals to whom full diplomatic immunity is extended.

It is time to remove the cloak of diplomatic immunity which has discriminated against citizens who must comply with the law—the innocent accident victims who are unprotected, and without legal redress, as a result of current laws.

Mr. Speaker, I urge adoption of this bill which will safeguard the rights of individuals involved in accident by permitting legal access to compulsorily insured diplomats.

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me say a few more things, in light of some of the concerns some of my colleagues have raised with regard to the objections of the insurance companies under this bill.

First of all, let me say that the precedent here is settled.

Direct action is permitted now in about 12 or 15 States in the United States, in a variety of liability cases.

Second, as the insurance companies have already admitted in their testimony—they do not have to write this insurance. They are not required to do it.

If a company wants to write this insurance and is concerned about the risk they might be taking—a risk which is not borne out by the facts—then they can simply raise the premiums they charge diplomats.

I might note here that over 50 percent of the nations of the world—many of them as highly industrialized as the United States—have direct action statutes. The premium for diplomats in those nations are equal to or lower than those charged to ordinary citizens. I find it difficult to believe that an insurance industry as highly organized and competent as the American insurance industry cannot manage to equal the record of the industries in other industrialized nations.

Mr. KINDNESS. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Ohio.

Mr. KINDNESS. Mr. Speaker, I think what concerns us is that the Senate bill would put into the law for the first time a statement to the effect that the action is not subject to the defense that the insured has violated the terms of the contract. That is just an extraordinary concept to put in the law. That is the problem.

Mr. FASCELL. I understand what the gentleman says. I have great respect for the insurance industry, but I think that that problem can be handled.

For example, any country can and will waive the immunity of the insured diplomat under the Vienna Convention for the limited purpose of testifying, which seems to be the major problem bothering the insurance industry.

As a matter of fact, we have cases now where diplomats do cooperate in this matter. The record of the majority of diplomats proves that they do comply with the terms of insurance contracts, even now when their immunity is absolute. The only thing they are really concerned about is personal liability. Once we give them the assurance that they will be protected, I do not think there will be any problem in their compliance with the terms of insurance contracts.

On another matter, I cannot imagine that any court in a proceeding would find for the plaintiff where the basic testimony is not available because of a claim of immunity. In other words, the evidence is not there. How could the court find for the plaintiff? I just do not believe that would happen.

Mr. MOORHEAD of California. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. Certainly.

Mr. MOORHEAD of California. I think the big concern here is that everyone who is sued must under their insurance contract at the present time, be willing to go to court or give depositions or do whatever is necessary in order to get their side of the case before the court or before the jury. Under this legislation, the insurance company can be sued. They are hanging out there by themselves. They were not at the accident; they do not know what happened.

It could be that somebody who is at fault in an accident would sue the insurance company for their damages. Unless the diplomat who was hit, was willing to go to court and testify or give the facts from his point of view, there would be no defense that could be presented. The testimony of the plaintiff would be sufficient to base a judgment on. The insurance company would not have the information, even though with all the facts presented there would be no case whatsoever for the people suing.

Unless we require cooperation from the insured, the insurance company would have to pay. It is necessary that the insured go to court and tell what the facts were. That is the thing we are concerned about, not the immunity. We are concerned that the facts get before the court, and the insurance company does not have to pay out in cases where there is really no liability. It is the policy owners who have to pay in increased premiums.

Mr. FASCELL. I understand what the gentleman is getting at. We also want the facts to get before the court, I assure the gentleman. I do not see any way that an insurance company will be put in an awkward position. The only reason for the language at all; frankly, was to prevent simply the dismissal of a case on some technicality such as 24-hour notice.

As I said, I just cannot conceive that any judge would allow a case to go without the basic evidence being before him.

Mr. MOORHEAD of California. If the gentleman will yield further, if the only evidence that is offered shows a prima facie case, the judge will allow a verdict. I would say to the gentleman that if he would accept the wording that came out of the Judiciary Committee, what he wants would be satisfied. What Mr. FISHER wants would be satisfied, but also the people of this country would be protected.

Mr. FASCELL. If there is a prima facie case, the diplomat has every reason to testify to try to mitigate. He has nothing to lose by allowing his immunity to be waived for the limited purpose of testifying. You know, I respect the difference of opinion. I submit that the American people will be protected. The matter has been reviewed very carefully. I cannot believe the insurance industry is so incapable that it cannot deal with the problem that is presented here.

Mr. Speaker, I reserve the balance of my time.

Mr. BUCHANAN. Mr. Speaker, I yield myself 2 minutes.

Our colleagues on the Committee on the Judiciary have made a persuasive case, and yet I would concur with the remarks of the gentleman from Virginia (Mr. FISHER) and our distinguished chairman of the subcommtitee.

We are talking here about a relative handful of cases—only about 14 at the present time—and if the cost of claims against the insurance company in that limited number of cases spread among the whole pool of those insured is so spread, I cannot believe it can have a substantial impact on the rates. We have American citizens who are not protected now and I hesitate to delay that needed protection for American citizens over some contingency that may or may not occur. We have a record of cases where Americans have been injured and there has been no reimbursement because of diplomatic immunity. I think it is time to act. I therefore urge adoption of this legislation.

Mr. KINDNESS. Mr. Speaker, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Ohio.

Mr. KINDNESS. Mr. Speaker, I believe the gentleman is correct that there probably are not too many cases but they are concentrated to such a great extent in the Washington, D.C., metropolitan area and the New York metropolitan area so they give rise to some concern.

I would like to point out one matter for clarification, if I might, that the history of the Vienna Convention and our compliance with it is a kind of funny thing.

Article 31 of the convention provides for three exceptions to the general rule of diplomatic immunity. Those three exceptions are: First, actions relating to private immovable property; second, actions involving wills and decedent's estates, and third, actions involving the professional or commercial activities of the diplomatic agent performed outside his official duties.

At the time the convention was being debated a fourth exception was proposed and considered, and that was actions based upon negligent or tortious conduct of the diplomatic agent. However, this very logical exception was rejected, primarily due to the opposition of certain Third World countries.

It is a defect in the treaty, the Vienna Convention itself, that gives us this problem, not a defect in the laws of the United States. We are attempting to overcompensate, I believe, in the laws of the United States and for that reason I believe we ought to approach this quite cautiously and not in the way the other body's language does it.

Mr. BUCHANAN. I would say in practice if there proved to be problems with this legislation, the Congress can address those problems subsequently. I hesitate to delay further needed protection for Americans because there may be problems with which we can deal at a future time. Since over 50 percent of the nations of the world have direct statutes that work quite well, I rather doubt that the problems raised by the gentleman will occur.

I, therefore, urge passage of this legislation and I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from Florida (Mr. FASCELL) that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 7819.

The question was taken.

Mr. KINDNESS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3 of rule XXVII, and the prior announcement of the Chair, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

HEALTH PLANNING AND RESOURCES DEVELOPMENT AMENDMENTS

Mr. ROGERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 11488) to amend title XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development, as amended.

The Clerk read as follows:

H.R. 11488

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES TO PUBLIC HEALTH SERVICE ACT; AND TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Health Planning and Resources Development Amendments of 1978".

(b) Whenever in this Act (other than in section 115(1)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

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TITLE I—REVISION OF HEALTH PLANNING AUTHORITY

REVISION AND REPORTING ON NATIONAL GUIDELINES FOR HEALTH PLANNING

SEC. 101. (a)(1) Section 1501 is amended (A) by striking out "and shall, as he deems appropriate, by regulation revise such guidelines" in subsection (a), and (B) by adding after subsection (c) the following:

"(d) The Secretary shall, on an annual basis, review the standards and goals included in the guidelines issued under subsection (a). In conducting such a review, the Secretary shall review the health systems plans and annual implementation plans of health systems agencies and State health plans. If the Secretary proposes to revise a guideline issued under subsection (a), he shall make such revision by regulations promulgated in accordance with section 553 of title 5, United States Code.

"(e)(1) The Secretary shall collect data to determine whether the health care delivery systems meet or are changing to meet the standards and goals included in the guidelines issued under subsection (a) and to determine the personnel, facilities, and other resources needed to meet such standards and goals. The Secretary shall prescribe (A) the manner in which such data shall be assembled and reported to the Secretary by health systems agencies, State health planning and development agencies, and other entities, and (B) the definitions which shall be used by such agencies and entities in assembling and reporting such data.

"(2) The Secretary shall from the data collected under paragraph (1) periodically make public a (A) statement of the relationship between such standards and goals and the status of the supply, distribution, and organization of health resources with respect to which such standards and goals were established, and (B) summary of changes (either through additions or reductions) in resources needed to meet such standards and goals.".

(2) Subsection (b)(1) of section 1501 is amended by adding at the end thereof the following: "Such standards shall reflect the unique circumstances and needs of medically underserved populations, including populations in isolated rural communities.".

(3) subsection (c) of section 1501 is amended by striking out "In issuing guidelines under subsection (a) the Secretary shall" and inserting in lieu thereof "At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) or a revision under subsection (d) of such a guideline, the Secretary shall, with respect to such proposed guideline or revision,".

(b)(1) Section 1513(b)(1) is amended by adding after and below subparagraph (F) the following:

"The agency shall also assemble and report to the Secretary such data (including data on the personnel, facilities, and other resources needed to meet the goals set forth in the agency's health system plan) as the Secretary may require to carry out his responsibilities under section 1501(e). The Secretary may not require the assembling and reporting of data under this paragraph which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this title.".

(2) Section 1522(b)(10) is amended by inserting after "require the State agency to" the following: "(A) assemble and report to the Secretary data (other than data which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this title) which the Secretary may require to carry out his responsibilities under section 1501(e), including data on the personnel, facilities, and other resources needed to meet the goals set forth in the State health plan, and (B)"

(c) Section 1503(b)(1) is amended (1) by striking out "fifteen members" and inserting in lieu thereof. "twenty members", (2) by inserting "the Assistant Secretary for Rural Development of the Department of Agriculture," after "Department of Defense," in the second sentence; and (3) by striking out "not less than five shall be persons who are not providers of health services" in the fourth sentence and inserting in lieu thereof "not less than eight shall be persons who are not providers of health care and shall include members of urban and rural medically underserved populations".

NATIONAL HEALTH PRIORITIES

SEC. 102. Section 1502 is amended by adding at the end the following:

"(11) The discontinuance of duplicative or unneeded services and facilities.

"(12) The adoption of policies which will (A) contain the rapidly rising costs of health care delivery, (B) insure more appropriate use of health care services, and (C) promote greater efficiency in the health care delivery system.

"(13) The elimination of inappropriate placement in institutions of persons with mental health problems and the improvement of the quality of care provided those with mental health problems for whom institutional care is appropriate.

"(14) Assurance of access to community mental health centers and other mental health care providers for needed mental health services to emphasize the provision of outpatient as a preferable alternative to inpatient mental health services.".

DESIGNATION OF HEALTH SERVICE AREAS

SEC. 103. (a) The first sentence of section 1511(b)(4) is amended by striking out "if he determines that a boundary for a health service area no longer needs the requirements of subsection (a), he may revise the boundaries" and inserting in lieu thereof the following: "if he determines, after providing reasonable opportunity for a public hearing—

"(A) that a health service area does not meet the requirement of paragraph (1) of subsection (a) relating to effective planning and development of health services, and

"(B) revision of the boundaries would establish an area which needs such requirement and which better meets at least one other requirement of such subsection, he may revise the boundaries.".

(b) Section 1511(c) is repealed.

(c)(1)(A) Section 1536(a) is amended by inserting "the Commonwealth of Puerto Rico," before "the Virgin Islands".

(B) Section 1531(1) is amended by striking out "and the Commonwealth of Puerto Rico".

(2) The amendments made by paragraph (1) shall apply on and after the date the designation agreements (under section 1515 of the Public Health Service Act) in effect on the date of the enactment of this Act for the health systems agencies in the Commonwealth of Puerto Rico expire.

DESIGNATION OF HEALTH SYSTEMS AGENCIES

SEC. 104. (a) Section 1515(b)(4) is amended by striking out the last sentence and inserting in lieu thereof: "In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor for approval. When the Secretary enters into an agreement with an entity under paragraph (1), the Secretary shall notify the Governor of the State in which such entity is located of such agreement.".

(b) The last sentence of section 1515(c)(2) is amended to read as follows: "In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor for approval.".

(c) Section 1515(c) is amended by adding after paragraph (3) the following:

"(4) Before renewing an agreement with a health systems agency under this subsection, the Secretary shall provide the State health planning and development agency of the State in which the health systems agency is located an opportunity to comment on the performance of such agency and to provide a recommendation on whether such agreement should be renewed and whether its renewal should be made subject to conditions as authorized by paragraph (3).

"(5) If the Secretary enters into an agreement under this subsection with an entity or renews such an agreement, the Secretary shall notify the Governor of the State in which such entity is located of the agreement, its renewal, and, if any conditions have been imposed under paragraph (3), such conditions.".

(d)(1) Paragraphs (1) and (3) of section 1515(c) are each amended by striking out "twelve months" and inserting in lieu thereof "thirty-six months".

(2) Section 1515(c)(1) is amended—

(A) by inserting "(A)" after "(c)(1)",

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by amending clause (ii) (as so redesignated) to read as follows:

"(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the entity is not complying with the provisions of such agreement.", and

(D) by adding at the end the following:

"(B) Before the Secretary may terminate, under subparagraph (A)(ii), an agreement with an entity for designation as the health systems agency for a health service area, the Secretary shall—

"(i) consult with the Governor and the Statewide Health Coordinating Council of each State in which is located the health service area respecting the proposed termination,

"(ii) give the entity notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the entity is not in compliance with the agreement, and (II) the actions that the entity should take to come into compliance with the agreement, and

"(iii) provide the entity with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.".

(3) The amendments made by paragraphs (1) and (2) shall take effect with respect to designation agreements entered into under section 1515(c) of the Public Health Service Act after the date of the enactment of this Act.

(e) Section 1515(c) (as amended by subsection (d)) is amended by adding after clause (ii) of paragraph (1)(A) the following: "A designation agreement under this subsection may be terminated by the Secretary before the expiration of its term if the health service area with respect to which the agreement was entered into is revised under section 1511(b)(4) and the Secretary determines, after consultation with the Governor of each State in which the health service area (as revised) is located, that the health systems agency designated under such agreement cannot effectively carry out the agreement for the area (as revised). In terminating an agreement under the preceding sentence, the Secretary shall provide that the termination shall not take effect before an agreement for the designation of a new agency takes effect and shall provide the agency designated under the agreement to be terminated an opportunity to terminate its affairs in a satisfactory manner.".

(f) Section 1514 is amended (1) by striking out "under section 314(b) or title IX or", and (2) by striking out "304" and inserting in lieu thereof "305".

LIMITS ON DESIGNATED AGENCIES

SEC. 105. Section 1515(c)(3) is amended by adding at the end thereof the following: "If the Secretary determines that a health systems agency has not so fulfilled such functions or does not continue to meet such requirements, the Secretary may renew a designation agreement for such agency under such conditions as the Secretary determines appropriate, including conditions which limit the functions which the agency would be authorized to perform or the amount the agency may receive under a grant under section 1516.".

PLANNING GRANTS

SEC. 106. (a) Section 1516 is amended by redesignating subsection (c) as subsection (d) and by striking out subsection (b) and inserting in lieu thereof the following:

"(b) The amount of any grant under subsection (a) to a health systems agency designated under section 1515(b) shall be determined by the Secretary.

"(c)(1) Except as provided in paragraphs (2) and (3), the amount of a grant under subsection (a) to a health systems agency designated under section 1515(c) shall be the greater of the amount determined under subparagraph (A), (B), or (C) as follows:

"(A) The amount of a grant to a health systems agency shall be the lesser of—

"(i) if the population of the health service area for which the agency is designated—

"(I) is not over one million, the product of $0.70 and the population of such area,

"(II) is over one million but not over two million, the sum of $700,000 and the product of $0.50 and the population of such area which is over one million, or

"(III) is over two million, the sum of $1,200,000 and the product of $0.30 and the population of such area which is over two million, or

"(ii) $3,750,000.

"(B)(i) If the application of the health systems agency for such grant contains assurances satisfactory to the Secretary that the agency will expend or obligate in the period in which such grant will be available for obligation non-Federal funds meeting the requirements of clause (ii) for the purposes for which such grant may be made, the amount of such grant shall be the sum of—

"(I) the amount determined under subparagraph (A) or (C), whichever is applicable, and

"(II) the lesser of the amount of such non-Federal funds with respect to which the assurances were made, or the product of $0.25 and the population of the health service area for which the agency is designated.

"(ii) The non-Federal funds which an agency may use for the purpose of obtaining a grant under subsection (a) which is computed on the basis of the formula prescribed by clause (i) shall be funds which are not paid to the agency for the performance of particular services by it and which are otherwise contributed to the agency without conditions as to their use other than the condition that the funds shall be used for the purposes for which a grant made under this section may be used.

"(C) The amount of a grant to a health systems agency may not be less than—

"(i) $200,000 in the case of a grant made in the fiscal year ending September 30, 1979,

"(ii) $215,000 in the case of a grant made in the fiscal year ending September 30, 1980, and

"(iii) $230,000 in the case of a grant made in any succeeding fiscal year.

"(2) The amount of a grant to a health systems agency which is subject to a condition imposed by the Secretary under section 1515(c)(3) shall be determined in accordance with such condition.

"(3) If the Secretary determines, after review of the budget of a health systems agency, that the amount of a grant which is to be made to the agency in accordance with paragraph (1) is in excess of the amount needed by the agency to adequately perform its functions under its designation agreement, the amount of the grant to the agency shall be such amount as the Secretary determines the agency needs for the performance of such functions.".

(b) Subsection (d) (as so redesignated) is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) Of the amount appropriated under paragraph (1) for any fiscal year, the Secretary may use not more than 5 per centum of such amount to increase the amount of a grant in such fiscal year to a health systems agency under subsection (a) to assist the agency in meeting extraordinary expenses (including extraordinary expenses resulting from the agency's health systems area being located in more than one State or from the agency serving a large health service area) which would not be covered under the amount of the grant that would be available to the agency under subsection (c).

"(3) Notwithstanding subsection (c)(1), if the total of the grants to be made in any fiscal year to health systems agencies designated under section 1515(c) exceeds the total of the amounts appropriated under paragraph (1) for such grant in such fiscal year (reduced by the amount retained by the Secretary for use under paragraph (2)), the amount of the grant to be made in such fiscal year to each such health systems agency which but for this paragraph would have its grant amount determined under subparagraph (A) or (B) of subsection (c)(1) shall be an amount which bears the same ratio to the grant amount prescribed for such agency in such fiscal year by such subparagraph as the total of the amounts appropriated under paragraph (1) for that fiscal year (as so reduced) bears to the total amount required to make grants to all such agencies in accordance with subparagraphs (A) and (B) of subsection (c)(1).".

(c) The second sentence of section 1516(a) is amended by inserting "(including submission of the health systems agency's budget)" after "such conditions".

CARRYOVER OF GRANT FUNDS

SEC. 107. (a)(1) The second sentence of section 1516(a) is amended by striking out ", and shall be available for obligation" and all that follows in such sentence and inserting in lieu thereof a period.

(2) Such section is amended by inserting after the second sentence the following: "Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, except that (1) no funds under any grant to an agency may be obligated in any period in which a designation agreement is not in effect for such agency, and (2) notwithstanding clause (1), a grant made to a conditionally designated entity with which the Secretary will not enter into a designation agreement under section 1515(c) shall be available for obligation for such additional period as the Secretary determines such entity will require to satisfactorily terminate its activities under the agreement for its conditional designation."

(b) The second sentence of section 1525(a) is amended to read as follows: "Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency.".

(c) Section 1526(c) is amended (1) by striking out "(1) such a grant" and all that follows through "(2)", and (2) by inserting at the end the following: "Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency.".

MEMBERSHIP REQUIREMENTS

SEC. 108. (a)(1) Section 1512(b)(3)(C)(i) is amended (A) by striking out "and racial populations," and inserting in lieu thereof ", and racial populations and", (B) by striking out the comma after "health service area", and (C) by inserting before the period "(including labor organizations)".

(2) The first sentence of section 1512(b)(3)(C)(iii) is amended (A) by striking out "residents of" and inserting in lieu thereof "residents of, or have their principal place of business in,", and (B) by striking out subclauses (II), (III), (IV), and (V) and inserting in lieu thereof the following: "(II) hospitals and other health care institutions (such as facilities for long-term care and health maintenance organizations), (III) if the health service area contains one or more accredited schools of medicine, the dean of at least one such school, (IV) health professional schools (other than schools of medicine if such schools are represented pursuant to subclause (III)), (V) the allied health professions, (VI) health care insurers, and (VII) other providers of health care as defined in section 1531(3).".

(3) The second sentence of section 1512(b)(3)(C)(ii) is amended (A) by striking out "one-third" and inserting in lieu thereof "one-half", and (B) by inserting before the period at the end the following: "and of such direct providers of health care, at least one shall be a person engaged in the administration of a hospital".

(b)(1) Section 1512(b)(3)(C)(iii) is amended by redesignating subclauses (II) and (III) as subclauses (IV) and (V) respectively, and by striking out subclause (I) and inserting in lieu thereof the following:

"(I) include (either through consumer or provider members) public elected officials and other representatives of general purpose local governments in the agency's health service area,

"(II) include (either through consumer or provider members) representatives of public and private agencies in the area concerned with health,

"(III) include (through consumer and provider members) individuals who are knowledgeable about mental health services (including services for substance abuse),".

(2) Subclause (IV) (as so redesignated) of such section is amended (A) by striking out "is equal" and inserting in lieu thereof "is at least equal", and (B) by striking out "and" at the end.

(3) Such section is amended by striking out subclause (V) (as so redesignated) and inserting in lieu thereof the following:

"(V) if the health systems agency serves an area in which there is located one or more hospitals or other health care facilities of the Veterans' Administration, include, as an ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated for such purpose, and

"(VI) if the agency serves an area in which there is located one or more qualified health maintenance organizations (within the meaning of section 1310), include at least one member who is representative of such organizations.".

(c) Section 1512(b)(3)(C) is amended by inserting after and below clause (iv) the following:

"A member of a governing body or other entity appointed pursuant to clause (iii) (IVV) shall not be considered in determining the number of members of the governing body for purposes of the numerical limit prescribed by subparagraph (A).".

(d)(1) Section 1512(b)(3)(C)(i) is amended by striking out "who are not (nor within the twelve months preceding appointment been) providers of health care" and inserting in lieu thereof "who are not providers of health care and have not within the twelve months preceding appointment been direct providers of health care (as defined in section 1531(3)(A))".

(2) Section 1531(3) is amended to read as follows:

"(3) The term 'provider of health care' means an individual—

"(A) who is a direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, substance abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

"(B) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in clause (ii) or (iv) of subparagraph (C) other than an entity described in such clause which is also an entity described in section 501(c)(3) of the Internal Revenue Code of 1954 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instructions for health professionals, or the production of drugs or articles described in clause (iii) of subparagraph (C);

"(C) who receives (either directly or through his spouse) more than one-tenth of his gross annual income from any one or combination of—

"(i) fees or other compensation for research into or instruction in the provision of health care,

"(ii) entities engaged in the provision of health care or in research or instruction in the provision of health care.

"(iii) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care, or

"(iv) entities engaged in producing drugs or such other articles;

"(D) who is the spouse of an individual described in subparagraph (A), (B), or (C); or

"(E) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits.".

(e) Section 1512(b)(3)(C)(iv) is amended by adding before the period at the end a comma and the following "except that appointments shall be made to such subcommittees and groups in such a manner that a majority of their members shall be consumers of health care."

GOVERNING BODY SELECTION

SEC. 109. Section 1512(b)(3) is amended by adding after subparagraph (C) the following new subparagraph:

"(D) SELECTION.—Each health system agency shall establish a process for the selection of the members of its governing body which process is designed to assure that (i) such members are selected in accordance with the requirements of subparagraph (C), (ii) there is the opportunity for broad participation in such process by the residents of the health service area of the agency, (iii) the participation of such residents will be encouraged and facilitated, and (iv) nominations and selections for at least one-half of the consumer members and one-half of the provider members on the governing body will not be made by the governing body. Each agency shall make public such process and report it to the Secretary.".

RESPONSIBILITIES OF GOVERNING BODIES

SEC. 110. (a) Section 1512(b)(3)(B)(i) is amended to read as follows:

(i) shall be responsible for—

"(I) the internal affairs of the health systems agency, including matters relating to the staff of the agency and the agency's budget, except that the governing body for health planning of an agency which is a public regional planning body or unit of general local government shall not be responsible for the establishment of personnel rules and practices for the staff of the agency or for the agency's budget unless authorized by the planning body or unit of government, and

"(II) procedures and criteria developed and published pursuant to section 1532 and ap-

plicable to its functions under subsections (e), (f), and (g) of section 1513;".

(b) Section 1512(b)(3)(A) is amended (1) by striking out "have a governing body for health planning, which is established in accordance with subparagraph (C)," and inserting in lieu thereof "appoint a governing body for health planning in accordance with subparagraph (C)", and (2) by striking out "not more than twenty-five members" and inserting in lieu thereof "not less than ten members and of not more than thirty members".

(c) Section 1512(b)(3)(B)(ii) is amended by inserting before the semicolon a comma and the following: "except that each such plan for a health systems agency described in subparagraph (B) or (C) of paragraph (1) shall be subject to the approval of the public regional planning body or unit of general local government which is the health systems agency".

(d) Section 1512(b)(3)(B)(iii) is amended by striking out "(g), and (h)" and inserting in lieu thereof "and (g)".

MEETINGS AND RECORDS

SEC. 111. (a) Section 1512(b)(3)(B)(viii) is amended (1) by striking out "business meetings" and inserting in lieu thereof "business meetings (other than those parts of meetings which involve matters respecting personnel of the agency)", and (2) by striking out "records and data" and inserting in lieu thereof "records and data (other than records and data on the personnel of the health systems agency)".

(d) Section 1512(b)(3)(B)(iii) is amended by striking out "(g), and (h)" and inserting in lieu thereof "and (g)".

MEETINGS AND RECORDS

SEC. 111. (a) Section 1512(b)(3)(B)(viii) is amended (1) by striking out "business meetings (other than those parts of meetings which involve matters respecting personnel of the agency)", and (2) by striking out "records and data" and inserting in lieu thereof "records and data (other than records and data on the personnel of the health systems agency)".

(b) Section 1512(b)(6) is amended by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D) and by adding before subparagraph (B) (as so redesignated) the following:

"(A) provide that any executive committee of the agency and any entity appointed by the governing body or executive committee of the agency shall (i) conduct its business meetings (other than those parts of meetings which involve matters respecting personnel of the agency) in public, (ii) give adequate notice of its meetings to those persons who have requested such notice, and (iii) make its records and data (other than records and data on personnel) available, upon request, to the public;".

(c) Section 1522(b)(6) is amended (1) by striking out "business meetings" and inserting in lieu thereof "business meetings (other than those parts of meetings involving matters respecting personnel of the agency)", and (2) by striking out "records and data" and inserting in lieu thereof "records and data (other than records and data on the personnel of the State Agency)".

(d) Section 1524(b)(3) is amended by striking out "business meetings" and inserting in lieu thereof "business meetings (other than those parts of meetings involving personnel matters)".

SUPPORT AND REIMBURSEMENT FOR MEMBERS OF GOVERNING BODIES

SEC. 112. (a) Section 1512(b)(3) is amended by adding after subparagraph (D) (added by section 109 of this Act) the following new subparagraph:

"(E) SUPPORT.—Each health systems agency shall have an identifiable program of providing assistance to the members of its governing body, executive committee (if any), and any entity appointed by the governing body or executive committee in making decisions for the agency, and shall include in such program means to determine the support needs of the members and to provide for meeting those needs (including the provision of training and continuing education).".

(b) Section 1512(b)(3)(B)(vi) is amended by striking out "reimburse" and by inserting in lieu thereof "reimburse (or when appropriate make advances to)".

(c) Section 1512(b)(2)(A) is amended by adding at the end the following: "At least one member of the staff shall be designated to have the responsibility of providing the consumer members of the governing body of an agency with such assistance as they may require to effectively perform their functions.".

CONFLICTS OF INTEREST

SEC. 113. (a) Section 1512(b)(3) is amended by adding after subparagraph (E) (added by section 112 of this Act) the following new subparagraph:

"(F) CONFLICTS OF INTEREST.—No member of a governing body, executive committee, or any entity appointed by a governing body or executive committee may, in the exercise of any function of the agency described in subsection (e), (f), or (g) of section 1513, vote on any matter before the governing body, executive committee, or any such entity respecting any individual or entity with which such member has any substantial ownership, employment, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the governing body, committee, or entity to make a written disclosure of such relationship before any action is taken by the body, committee, or entity with respect to such matter in the exercise of any function of the agency described in section 1513 and to make such relationship public in any meeting in which such action is to be taken.".

(b) Section 1524 is amended by adding at the end the following new subsection:

"(d) No member of any SHCC may, in the exercise of any function of the SHCC described in subsection (c)(6), vote on any matter before the SHCC respecting any individual or entity with which such member has any substantial ownership, employment, fiduciary, contractual, creditor, or consultative relationship. Each SHCC shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the SHCC to make a written disclosure of such relationship before any action is taken by the SHCC with respect to such matter in the exercise of any function under subsection (c) and to make such relationship public in any meeting in which such action is to be taken.".

STAFF EXPERTISE

SEC. 114. The first sentence of section 1512(b)(2)(A) is amended (1) by striking out "and" after "health planning,", and (2) by inserting before the period a comma and the following: "(v) to the extent feasible, financial and economic analysis, and (vi) to the extent feasible, prevention of disease and other public health matters".

HEALTH PLAN REQUIREMENTS

SEC. 115. (a) Section 1524(c)(1) is amended by striking out "Review" and inserting in lieu thereof "Establish a uniform format for HSP's and review".

(b) Section 1513(b)(2) is amended (1)) by striking out "establish" in the first sentence and inserting in lieu thereof "establish (in accordance with the format established pursuant to section 1524(c(1))", and (2) by inserting after the first sentence the following: "The HSP of the agency shall include goals for the delivery of mental health services in its health service area which goals shall be developed under a procedure under which persons (acting as an advisory group or subcommittee appointed by the agency or, if the agency requests and is authorized by order of the Secretary to use an existing group, acting as part of such a group) knowledgeable about such services (including services for substance abuse) will be consulted with respect to such goals.".

(c)(1)(A) Section 1523(a)(1) is amended by inserting "(A)" after "(1)" and by inserting before the period a comma and the following: and (B) determine the statewide health needs of the State after providing reasonable opportunity for the submission of written recommendations respecting such needs by the State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor for the purpose of making such recommendations, and after consulting with the Statewide Health Coordinating Council".

(B) Section 1523(a)(2) is amended by striking out "statewide health needs" and inserting in lieu thereof "statewide health needs determined under paragraph (1)(B)", and (2) by inserting after the first sentence the following: "In carrying out its functions under this paragraph, the State Agency shall refer the HSP's to the State health authority, the State mental health authority, and other agencies of the State government (designated by the Governor to make the review prescribed by this sentence) to review the goals and related resource requirements of the HSP's and to make written recommendations to the State Agency respecting such goals and requirements.".

(C) Subsection (a) of section 1523 is amended by adding after and below the last paragraph the following: "If in determining the statewide health needs under paragraph (1)(B) or in preparing or revising a preliminary State health plan under paragraph (2) the State Agency does not take an action proposed in a recommendation submitted under the applicable paragraph, the State Agency shall when publishing such needs or health plan make available to the public a written statement of its reasons for not taking such action.".

(2) Section 1513(b)(2) is amended (A) by striking out "and" after "resources of the area;", (B) by striking out "resources" and inserting in lieu thereof "resources (including entities described in section 1532(c)(7))", and (C) by inserting before the period at the end of the first sentence a semicolon and the following: "and (D) which are responsive to statewide health needs as determined by the State health planning and development agency".

(3) Section 1524(c)(2) is amended by inserting "as determined by the State Agency of the State" after "statewide health needs" each place it occurs.

(d) Section 1513(b)(2) is amended (1) by striking out "establishing" in the second sentence and inserting in lieu thereof "establishing or revising", and (2) by inserting after the first sentence the following: "The HSP shall also include a statement of changes (through increases or reduction, or both) in personnel, facilities, and other resources which the agency determines are required to meet the goals set forth in the preceding sentence.".

(e) Section 1513(b)(3) is amended by adding at the end the following "The AIP shall include a statement of the personnel, facilities, and other resources which the agency determines are required to meet the objectives described pursuant to the first sentence. Before establishing or revising an AIP, the agency shall conduct a

public hearing on the proposed AIP and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to such hearing, the agency shall publish in at least two newspapers of general circulation throughout its health service area a notice of its consideration of the proposed AIP, the time and place of the hearing, the place at which interested persons may review the AIP in advance of the hearing, and the place and period during which to submit written comments to the agency on the AIP.".

(f)(1) Section 1513(b)(4) is amended to read as follows:

"(4) If a health service area includes an area under the jurisdiction of an Indian tribe or an Alaska Native Village, the establishment of an HSP and AIP under this subsection for such health service area does not affect the authority of such tribe or Village to establish and carry out a health plan for the Indian health programs in the area under its jurisdiction; and if such tribe or Village establishes such a health plan, such plan shall be included in the HSP for such health service area.".

(g)(1) Section 1513(b)(2)(C) is amended by striking out "and is consistent with".

(2) Section(b)(2) is amended by adding at the end the following: "The agency shall make its HSP available to the State health planning and development agency of each State in which the health service area of the health systems agency is located for inclusion in the preliminary State health plan to be prepared under section 1523(a)(2) and, if the goals contained in the HSP are not consistent with guidelines issued by the Secretary under section 1501, it shall provide the State agency with a detailed statement of the reasons for the inconsistency between such goals and guidelines. When making such HSP available to a Statewide Health Coordinating Council under section 1524(c)(2)(A), the agency shall also report such statement to such Council.".

(h) Section 1524(c)(2) is amended by adding at the end the following:

"(C) The State health plan or any revised State health plan approved by the SHCC shall be the State health plan for the State for purposes of this title unless, within 60 days from the date the plan was approved, the Governor of the State disapproves the plan. The State health plan for a State may be disapproved by the Governor of the State only if the Governor determines that the plan does not effectively meet the statewide health needs of the State as determined by the State Agency for the State. In disapproving a State health plan, a Governor shall make public a detailed statement of the basis for the determination that the plan does not meet such needs and shall specify the changes in the plan which the Governor determines are needed to meet such needs. Subparagraph (B) does not apply to the preparation of revisions of a State health plan disapproved by a Governor.

"(D) In carrying out its functions with respect to the goals and resource requirements for mental health services of the State health plan, the SHCC may establish a procedure under which persons (acting as or as part of an advisory group or subcommittee appointed by the SHCC) knowledgeable about mental health services (including services for substance abuse) will have the opportunity to make recommendations to the SHCC respecting such services.

"(E) The State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor, shall carry out those parts of the State health plan which relate to the government of the State.".

(i)(1) Section 303(a) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 is amended by adding after and below paragraph (16) the following: "Such plan shall be consistent with the State health plan in effect for such State under section 1524(c) of the Public Health Service Act.".

(2) Section 409(e) of the Drug Abuse Office and Treatment Act of 1972 is amended by adding after and below paragraph (13) the following: "Such plan shall be consistent with the State health plan in effect for such State under section 1524(c) of the Public Health Service Act.".

CRITERIA AND PROCEDURES FOR REVIEWS

SEC. 116. (a)(1) The first sentence of section 1532(a) is amended (A) by striking out "; and in performing" and inserting in lieu thereof "; in performing", and (B) by inserting before the period a semicolon and the following: "and in performing its review functions a Statewide Health Coordinating Council shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the Council in accordance with regulations of the Secretary".

(2) The second sentence of such section is amended by striking out "and States Agencies" and inserting in lieu thereof ", State Agencies, and Statewide Health Coordinating Councils".

(b)(1) Subsections (b) and (c) of section 1532 are each amended—

(A) by striking out "agency and State Agency" each place it occurs (other than in paragraph (11) of subsection (b)) and inserting in lieu thereof "agency, State Agency, and Statewide Health Coordinating Council", and

(B) by striking out "agency or State Agency" each place it occurs and inserting in lieu thereof "agency, State Agency, or Statewide Health Coordinating Council".

(2) Subsection (b)(4) of such section is amended by striking out "agency or a State Agency" and inserting in lieu thereof "agency, State Agency, or Statewide Coordinating Council".

(3) Section 1532(c)(1) is amended by striking out "HSP and AIP" and inserting in lieu thereof "HSP, AIP, and State health plan".

(c) Section 1532(a) is amended by adding at the end the following: "Health systems agencies, the State Agency, and, if appropriate, the Statewide Health Coordinating Council within each State shall cooperate in the development of procedures and criteria under this subsection to the extent appropriate to the achievement of efficiency in their reviews and consistency in criteria for such reviews."

(d) Section 1532(c)(6) is amended to read as follows:

"(6) In the case of health services proposed to be provided—

"(A) the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services,

"(B) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided,

"(C) if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes,

"(D) the availability of alternative uses of such resources for the provision of other health services, and

"(E) the extent to which such proposed services will be accessible to all the residents of the area to be served by such services.".

(e) Section 1532(c) is amended by adding at the end the following:

"(10) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.".

(f) Section 1532(b)(2) is amended by adding at the end the following: "Failure of a health systems agency, State Agency, or Statewide Health Coordinating Council to complete a review within the period prescribed for the review may not be deemed by such an entity to constitute a negative finding, recommendations, or decision with respect to the subject of such review.".

CERTIFICATE OF NEED PROGRAMS

SEC. 117. (a) Part C of title XV is amended by adding at the end the following:

"CERTIFICATE OF NEED PROGRAM

"SEC. 1527. (a) The certificate of need program required by section 1523(a)(4)(B) shall, in accordance with this section, provide for the following:

"(1) Review and determination of need under such program for—

"(A) major medical equipment, health care facilities, institutional health services, and home health services, and

"(B) capital expenditures,

shall be made before the time such equipment or facilities are acquired, such services or facilities are offered or developed, substantial expenditures are undertaken in preparation for such offering or development, or capital expenditures are obligated.

"(2) The acquisition, offering, and development of only such equipment, facilities, and services as may be found by the State Agency to be needed; and the obligation of only those capital expenditures found to be needed by the State Agency.

"(3) After a certificate of need is issued an annual review shall be conducted of the progress being made in making the equipment, facility, or service for which the certificate was issued available for use, and if it is determined that adequate progress is not being made, the certificate shall be withdrawn but only after consideration of any recommendation made by the health systems agency with jurisdiction over the area to be served by such equipment, facility, or service.

"(4) In issuing a certificate of need, the State shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The program shall, in accordance with regulations promulgated by the Secretary, prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

"(5) The program shall provide that each decision of the State Agency not to issue a certificate of need shall, upon request of the person who applied for such certificate, be reviewed under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

"(6) The program shall provide that each decision of the State Agency to issue a certificate of need (A) shall not be inconsistent with the State health plan in effect for each State under section 1524(c), and (B) shall be issued by the State Agency solely on the basis of the record established in administrative proceedings held with respect to the application for each certificate.

"(7) The program may permit reviews of applications for certificates of need to be conducted in such a manner that (A) comparisons of applications for such certificates may be made, and (B) priorities for approval of such applications may be established.

"(b) Notwithstanding section 1532(c), an application for a health maintenance organization (as defined in section 1301) for a certificate of need for new institutional health services or health care facilities shall

be approved by the State Agency if the State Agency finds (in accordance with criteria prescribed by the Secretary) that—

"(1) approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll, and

"(2) the health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

"(c)(1) Under the program a certificate of need shall not be required for the acquisition of major medical equipment which will not be owned by or located in a health care facility unless—

"(A) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

"(B) the State gency finds, within 30 days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

"(2) Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person shall notify the State Agency of the State in which such equipment will be located of such person's intent to acquire such equipment. Such notice shall be made in writing and shall be made at least 30 days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

"(d) In granting certificates of need under such a program, a State Agency shall take into account recommendations made by health systems agencies within the State under section 1513(f).".

(b)(1) Section 1523(a)(4)(B) is amended by striking out "new institutional health services proposed to be offered or developed within the State" and inserting in lieu thereof "the obligation of capital expenditures within the State and the offering and development within the State of new institutional health services, home health services, and health care facilities and the acquisition of major medical equipment".

(2) The second sentence of section 1523(a)(4) is amended to read as follows: "A certificate of need program shall not be found satisfactory to the Secretary unless each determination of need within the State is made by the State Agency solely on the basis of its review conducted in accordance with the procedures and criteria it has adopted in accordance with this title and regulations promulgated under it.".

(3)(A) Section 1531 is amended (i) by striking out "For purposes of this title" and inserting in lieu thereof "Except as otherwise provided, for purposes of this title", and (ii) by adding after paragraph (5) the following new paragraphs:

"(6) For purposes of sections 1523 and 1527, the term 'capital expenditure' means an expenditure—

"(A) made by or on behalf of a health care facility; and

"(B)(i) which (I) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

"(ii) which (I) exceeds $150,000, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

Such term does not include an expenditure to obtain (either by purchase or under lease or comparable arrangement) an existing health care facility the services or bed capacity of which is not changed in being so obtained. For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure desribed in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds $150,000. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under section 1527 shall be considered capital expenditures for purposes of section 1523 and 1527, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such sections if a transfer of the equipment or facilities at fair market value would be subject to review under section 1527.

"(7) For purposes of sections 1523 and 1527, the term 'major medical equipment' means medical equipment which is used for the provision of medical and other health services and which costs in excess of $150,000, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such Act.".

(B) Section 1531(5) is amended by striking out "and health maintenance organizations (as such facilities and organizations" and inserting in lieu thereof "(as such facilities".

(4)(A) Section 1522(b)(13)(A) is amended by inserting after "agencies," the following: "or, if there is no such State law,".

(B) Section 1522(b)(13)(B) is amended by inserting "under subparagraph (A)" after "the reviewing agency".

(c) Within 180 days of the date of the enactment of this Act, the Secretary of Health, Education, and Welfare shall promulgate such regulations as may be necessary to enable the States to establish certificate of need programs which meet the requirements of section 1527 of the Public Health Service Act.

APPROPRIATENESS REVIEW

SEC. 118. (a)(1) Section 1513(g)(1) is amended by striking out "all institutional health services offered in the health service area of the agency" and inserting in lieu thereof "at least those institutional and home health services which are offered in the health service area of the agency and which have been designated by the Secretary by regulation for appropriateness review under this paragraph".

(2) Section 1523(a)(6) is amended by striking out "all institutional health services being offered in the State" and inserting in lieu thereof "all institutional and home health services which are offered in the State and which have been designated by the Secretary for appropriateness review under this paragraph".

(b) Part C of title XV is amended by adding after section 1527 the following new section:

"GRANTS TO STATES FOR REDUCTION OF EXCESS HOSPITAL CAPACITY

"SEC. 1528. (a) For the purpose of demonstrating the effectiveness of various means for reducing excesses in resources and facilities of hospitals (referred to in this section as 'excess hospital capacity'), the Secretary may make grants to State health planning and development agencies designated under section 1521(b)(3) to assist such agencies in—

"(1) identifying (by geographic region or by health service) excess hospital capacity,

"(2) developing programs to inform the public of the costs associated with excess hospital capacity,

"(3) developing programs to reduce excess hospital capacity in manner which will produce the greatest savings in the cost of health care delivery,

"(4) developing means to overcome barriers to the reduction of excess hospital capacity, and

"(5) any other activity related to the reduction of excess hospital capacity.

"(b) Grants under subsection (a) shall be made on such terms and conditions as the Secretary may prescribe. The Secretary shall report annually to the Congress on the activities assisted with grants under subsection (a).

"(c) There are authorized to be appropriated to make payments under grants under subsection (a) $4,000,000 for the fiscal year ending September 30, 1979, $4,000,000 for the fiscal year ending September 30, 1980, and $4,000,000 for the fiscal year ending September 30, 1981."

REVIEW AND APPROVAL OF PROPOSED USES OF FEDERAL FUNDS

SEC. 119. (a) Section 1524(c)(6) is amended—

(1) by striking out "approve or disapprove" in the first sentence and inserting in lieu thereof "recommend approval or disapproval of (A)",

(2) by striking out "or the Comprehensive" in the first sentence and inserting in lieu thereof "section 409 of the Drug Abuse Office and Treatment Act of 1972, or the Comprehensive",

(3) by inserting before the period at the end of the first sentence a comma and the following: "and (B) any application (and any revision of an application) submitted to the Secretary by a State for a grant or contract under any provision of law referred to in clause (A) for projects in more than one health service area of the State",

(4) by amending the third sentence to read as follows: "If a SHCC recommends disapproval of such a plan or application, the Secretary, after making a finding that such plan or application is not in conformity with the State health plan, may not make Federal funds available under such State plan or application.",

(5) by inserting after the third sentence the following new sentence: "If the Secretary makes such a finding, he shall notify the Governor of his finding and the reasons therefor and advise him that he has 30 days in which to submit a revised State plan or application that conforms with the State health plan.", and

(6) by striking out "If after such review" in the last sentence and inserting in lieu thereof the following: "If after reviewing a recommendation of a SHCC to disapprove such State plan or application,".

(b)(1) Section 1513(e)(1)(A)(i) is amended—

(A) by inserting "of 1972" after "Treatment Act", and

(B) by inserting after "health resources" the following: "by any entity other than the government of a State unless such resources are solely within the health service area of such agency".

(2) Section 1513(e)(1)(A)(ii) is amended by striking out "an allotment" and inserting in lieu thereof "an allotment, contract, or grant".

(3) The first sentence of section 1513(e)(1)(B) is amended by striking out "under

title IV, VII, or VIII of this Act" and all that follows in such sentence and inserting in lieu thereof the following: "for research or training unless the grants or contracts are to be made, entered into, or used for the development, expansion, or support of health resources which, in the case of grants or contracts for training, would make a significant change in the health services available in the health service area or which, in the case of grants or contracts for research, would change the delivery of health services, or the distribution or extent of health resources, available to persons in the health service area other than those who are particip nts in such research."

(4) Section 1513(e)(2) is amended—

(A) by striking out "such paragraph" in the first sentence and inserting in lieu thereof "paragraph (1)(A)(i)", and

(B) by striking out "If" in the second sentence and inserting in lieu thereof "If under paragraph (1)(A)(i)".

(5) Section 1513(e) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) The Governor of a State shall allow health systems agencies sixty days to make the review required by paragraph (1)(A)(ii). If under such paragraph an agency disapproves a proposed use of Federal funds in its health service area, the Governor may not make such Federal funds available for such use until ha has made upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Governor shall give the State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Governor its comments on the decision. The Governor, after taking into consideration such State Agency's comments (if any), may make such Federal funds available for such use, notwithstanding the disapproval of the health systems agency. Each such decision by the Governor to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision.".

COORDINATION OF HEALTH PLANNING WITH RATE REVIEW

SEC. 120. (a) Section 1513(d) is amended by inserting after the first sentence the following: "Each health systems agency shall also coordinate its activities with any entity of the State in which the agency is located which reviews the rates or budgets of health care facilities located in the health systems agency's health service area.".

(b) Section 1522(b)(7)(A) is amended by inserting before the comma at the end the following: "and for the coordination by the State Agency in the conduct of its activities with any entity of the State which reviews the rates or budgets of health care facilities in the State".

(c)(1) Section 1526 is amended—

(A) by striking out "(not later than six months after the date of the enactment of this title)" in the first sentence of subsection (a); and

(B) by striking out the last sentence of subsection (a); and

(2) Such section is further amended—

(A) by inserting before the period in the first sentence of subsection (a) "or to any other entity of the government of a State which has not indicated an intent to regulate such rates";

(B) by striking out "A State Agency" in subsection (b)(1) and inserting in lieu thereof "An entity";

(C) by striking out "the State Agency" in subparagraphs (A) and (F) of such subsection and inserting in lieu thereof "the entity";

(D) by inserting "if it is a State Agency," after "(D)" and "(E)", respectively, in such subsection;

(E) by adding after and below subparagraph (G) of such subsection the following: "If an entity which is not a State Agency receives a grant under subsection (a), such entity shall coordinate its activities under the grant with the State Agency for the State in which such entity is located, share with the State Agency data obtained from such activities, and for purposes of such activities, develop with the State Agency criteria for the review of hospital services, equipment, and facilities which guidelines are not in conflict with criteria adopted by the State Agency.";

(F) by striking out "a State Agency" in subsection (b)(2) and inserting in lieu thereof "an entity" and by striking out "the State Agency" in such subsection and inserting in lieu thereof "the entity"; and

(G) by striking out "State Agency" in subsection (d) and in the first sentence of subsection (c) and inserting in lieu thereof "entity".

COORDINATION WITHIN STANDARD METROPOLITAN STATISTICAL AREAS AND WITH OTHER ENTITIES

SEC. 121. Subsection (d) of section 1513 is amended (1) by inserting "(1)" after "(d)", (2) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and (3) by adding at the end the following:

"(2) Each health systems agency which has all or part of its health service area within a part of a standard metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its activities with the activities of any other health systems agency which has any part of its health service area within such standard metropolitan statistics area. Such coordination shall be carried out in accordance with a plan approved by the Secretary which shall at least provide that each health systems agency designated for a health service area within any part of a single standard metropolitan statistical area shall review (A) each HSP and AIP for each such health service area, (B) the criteria used in accordance with section 1532 for reviews affecting any such area, and (C) each decision under certificate of need programs which affect any such area.

"(3) The Secretary shall by regulation provide for the sharing of health planning data between health systems agencies and Indian tribes and Alaska Native Villages.".

STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

SEC. 122. (a) Section 1521(b)(4) is amended by adding at the end the following: "Before renewing an agreement under this paragraph with a State Agency for a State, the Secretary shall provide each health systems agency designated for a health service area located (in whole or in part) in such State an opportunity to comment on the performance of the State Agency and to provide a recommendation on whether such agreement should be renewed.".

(b)(1) Paragraphs (3) and (4) of section 1521(b) are each amended by striking out "twelve months" and inserting in lieu thereof "thirty-six months".

(2) Section 1521(b)(3) is amended—

(A) by inserting "(A)" after "(3)",

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by amending clause (ii) (as so redesignated) to read as follows:

"(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B) that, the designated State Agency is not complying with the provisions of such agreement.", and

(D) by adding at the end the following:

"(B) Before the Secretary may terminate an agreement with a designated State Agency under subparagraph (A)(ii), the Secretary shall—

"(i) consult with the Statewide Health Coordinating Council of the State for which the State Agency is designated respecting the proposed termination,

"(ii) give the State Agency notice of the intention to terminate the agreement and in the notice specify with particularly (I) the basis for the determination of the Secretary that the State Agency is not in compliance with the agreement, and (II) the actions that the State Agency should take to come into compliance with the agreement, and

"(iii) provide the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.".

(3) The amendments made by paragraphs (1) and (2) shall apply with respect to designation agreements entered into under section 1521(b)(3) of the Public Health Service Act after the date of the enactment of this Act.

(c)(1)(A) Section 1513(h) is repealed.

(B) Section 1522(b)(13) is amended by striking out ", (g), or (h)" and inserting in lieu thereof "or (g)".

(C) Section 1513(a) is amended by striking out "through (h)" and inserting in lieu thereof "through (g)".

(2) Paragraph (3) of section 1523(a) is amended by striking out "review of the State medical facilities plan required under section 1603, and in the".

(3) Section 1523(a) is amended by adding after paragraph (6) the following new paragraph:

"(7) Prepare an inventory of the medical facilities located in the State and determine on an ongoing basis the extent to which such facilities are in need of modernization or conversion to other uses. Such inventory and determinations shall be reported to the health systems agencies designated for health service areas located (in whole or in part) in the State for purposes of the functions of the agency under section 1513(b).".

(d) Section 1521(d) is amended by striking out "an agreement under this section" and inserting in lieu thereof "an agreement under subsection (b)(3) of this section".

(e) Paragraph (5) of section 1523(a) is amended by striking out "1413(f)" and inserting in lieu thereof "1513(f)".

(f) Section 1521(b)(1) is amended by striking out "this part" and inserting in lieu thereof "this title".

STATEWIDE HEALTH COORDINATING COUNCIL COMPOSITION

SEC. 123. (a)(1) Section 1524(b)(1)(A)(ii) is amended by inserting before the period a comma and the following: "except that the number of representatives on the SHCC to which a health systems agency designated for a health service area which is not entirely within the State shall be a number which is based on the relationship of the population of the portion of such health service area within the State to the population of the largest health service area located entirely within the State, except that each such agency shall be entitled to at least one representative on the SHCC".

(2) Section 1524(b)(1)(A)(iii) is amended to read as follows:

"(iii) Except as otherwise provided in clause (ii) and this clause, each such health systems agency shall be entitled to at least two representatives on the SHCC. If there are more than ten health systems agencies within a State, each health systems agency within such State shall be entitled to only one representative on the SHCC. Of the representatives of health systems agencies on the SHCC, not less than one-half shall be individuals

who are consumers of health care and who are not providers of health care."

(3) Section 1524(b)(1)(A)(i) is amended (A) by inserting "(or if the number of representatives on the SHCC to which health systems agencies are entitled under the second sentence of clause (iii) is less than sixteen, no fewer than the number to which they are entitled)" after "sixteen representatives", (B) by striking out "at least five", and (C) by adding at the end the following: "Each agency shall submit a number of nominees to the Governor which is at least twice the number of representatives on the SHCC to which the agency is entitled.".

(4) Section 1524(b)(1) is amended by inserting after subparagraph (D) the following:

"(E) Members of the SHCC who are consumers of health care and who are not providers of health care must include individuals who are members of rural and urban medically underserved populations if such populations exist in the State.".

(b) Section 1524(b)(2) is amended to read as follows:

"(2) The Governor may select the chairman of the SHCC from among the members of the SHCC. If the Governor does not select the chairman, the SHCC shall select the chairman from among its members.".

(c) Section 1524(b)(1)(C) is amended (1) by striking out "one-third" and inserting in lieu thereof "one-half", and (2) by inserting after the period the following: "Members of a SHCC who are providers of health care shall represent the classifications of providers listed in section 1512(b)(3)(C)(ii) and of such members at least one shall be a person engaged in the administration of a hospital."

(d) The first sentence of section 1524(c)(2)(B) is amended by striking out "State agency" and inserting in lieu thereof "State Agency".

AUTHORIZATIONS

SEC. 124. (a) Section 1516(d)(1) (as amended by section 107) is amended—

(1) by striking out "and" after "1976,", and

(2) by inserting before the period the following: ", $150,000,000 for the fiscal year ending September 30, 1979, $160,000,000 for the fiscal year ending September 30, 1980, and $170,000,000 for the fiscal year ending September 30, 1981".

(b) Section 1525(c) is amended—

(1) by striking out "and" after "1976,", and

(2) by inserting before the period the following: ", $35,000,000 for the fiscal year ending September 30, 1979, $37,000,000 for the fiscal year ending September 30, 1980, and $39,000,000 for the fiscal year ending September 30, 1981".

(c) Section 1526(e) is amended—

(1) by striking out "and" after "1976,", and

(2) by inserting before the period the following: ", $6,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, and $8,000,000 for the fiscal year ending September 30, 1981".

(d) Section 1534(d) is amended—

(1) by striking out "and" after "1976,",

(2) by inserting before the period the following: ", $10,000,000 for the fiscal year ending September 30, 1979, $11,000,000 for the fiscal year ending September 30, 1980, and $12,000,000 for the fiscal year ending September 30, 1981", and

(3) by adding at the end the following: "The authority of the Secretary to enter into contracts under subsection (a) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts."

(e) Section 1640(d) is amended—

(1) by striking out "and" after "1976,", and

(2) by inserting before the period the following: ", $120,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, and $150,000,000 for the fiscal year ending September 30, 1981".

REPORT OF EFFECTIVENESS OF PLANNING LAW

SEC. 125. Section 1535 is amended by adding after subsection (d) the following new subsection:

"(e) The Secretary shall report to the Congress on the results of the reviews conducted pursuant to subsections (c)(7) and (d)(6) respecting improvements in health and health care and restraints on increases in health care costs."

EFFECTIVE DATE

SEC. 126. The amendments made by this title (other than by sections 101, 102, 103(d), 104(d), 107, 122(b) and 124) shall take effect one year after that date of the enactment of this Act, except that on and after the date of the enactment of this Act—

(1) the changes in the membership of the health systems agencies and the Statewide Health Coordinating Councils required by amendments to section 1512, 1524, and 1531 shall be implemented through selections of members to fill vacancies occurring after such date,

(2) a health systems agency, a State health planning and development agency, and a Statewide Health Coordinating Council may make the organizational and related changes required by the amendments to sections 1512, 1522, 1523, 1524, and 1531 of the Public Health Service Act, and

(3) such agencies, State health planning and development agencies, and Statewide Health Coordinating Councils may act in accordance with the changes in their functions made by the amendments to section 1513, 1522, 1523, 1524, 1527, and 1532 of the Public Health Service Act.

The amendments made by section 106 shall apply with respect to grants made under section 1516 of the Public Health Service Act after the date of the enactment of this Act.

TITLE II—REVISION OF AUTHORITY FOR HEALTH RESOURCES DEVELOPMENT

REVISION AND EXTENSION OF ASSISTANCE

SEC. 201. (a) Part B of title XVI is repealed.

(b) Subsections (a) and (b) of section 1620 are amended to read as follows:

"(a)(1) The Secretary, during the period ending September 30, 1981, may, in accordance with this part, make loans from the fund established under section 1622(d) to any public or nonprofit private entity for projects for—

"(A) modernization of medical facilities,

"(B) construction of new outpatient medical facilities,

"(C) construction of new hospitals in (i) areas which have experienced (as determined under regulations of the Secretary) recent rapid population growth, or (ii) areas where merger or closure of medical facilities has resulted in a reduction in the number of hospital beds available in such areas, and

"(D) conversion of existing medical facilities to outpatient medical facilities or facilities for long-term care.

"(2)(A) The Secretary, during the period ending September 30, 1981, may, in accordance with this part, guarantee to—

"(i) non-Federal lenders for their loans to nonprofit private entities for medical facilities projects described in paragraph (1), and

"(ii) the Federal Financing Bank for its loans to nonprofit private entities for such projects,

payment of principal and interest on such loans.

"(B) In the case of a guarantee of any loan to a nonprofit private entity under subparagraph (A)(i), the Secretary shall pay, to the holder of such loan and for and on behalf of the project for which the loan was made, amounts sufficient to reduce by 3 per centum per annum the net effective interest rate otherwise payable on such loan. Each holder of such a loan which is guaranteed under such subparagraph shall have a contractual right to receive from the United States interest payments required by the preceding sentence.

"(b) The principal amount of a loan directly made or guaranteed under subsection (a) for a medical facilities project, when added to any other assistance provided such project under part B, may not exceed 90 per centum of the cost of such project unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the principal amount, when added to other assistance under part B, may cover up to 100 per centum of such costs.".

(c) Section 1625 is amended to read as follows:

"PROJECT GRANTS

"SEC. 1625. (a)(1) The Secretary may make grants for construction or modernization projects designed to (A) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (B) avoid noncompliance with State or voluntary licensure or accreditation standards. A grant under this paragraph may only be made to a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation, for a project described in the preceding sentence for any medical facility owned or operated by it.

"(2) The amount of any grant under paragraph (1) may not exceed 75 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

"(3) There are authorized to be appropriated for grants under paragraph (1) $100,000,000 for the fiscal year ending September 30, 1979, $100,000,000 for the fiscal year ending September 30, 1980, and $100,000,000 for the fiscal year ending September 30, 1981.

"(b)(1) The Secretary may make grants to public and nonprofit entities for projects for (A) construction or modernization of outpatient medical facilities which are located apart from hospitals and which will provide services for medically underserved populations, and (B) conversion of existing facilities into outpatient medical facilities or facilities for long-term care to provide services for such populations.

"(2) The amount of any grant under paragraph (1) may not exceed 80 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

"(3) There are authorized to be appropriated for grants under paragraph (1) $30,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending September 30, 1980, and $40,000,000 for the fiscal year ending September 30, 1981.".

CONFORMING AMENDMENTS

SEC. 202. (a) Part A of title XVI is repealed and parts C, D, E, and F of title XVI are redesignated as parts A, B, C, and D, respectively.

(b) Part C (as so redesignated) of title XVI is amended by striking out section 1630, by redesignating sections 1631 through 1635 as sections 1622 through 1626, respectively,

and by inserting before section 1622 (as so redesignated) the following:

"GENERAL REGULATIONS

"SEC. 1620. The Secretary shall by regulations—

"(1) prescribe the manner in which he shall determine the priority among projects for which assistance is available under part A or B, based on the relative need of different areas for such projects and giving special consideration—

"(A) to projects for medical facilities serving areas with relatively small financial resources and for medical facilities serving rural communities,

"(B) in the case of projects for modernization of medical facilities, to projects for facilities serving densely populated areas,

"(C) in the case of projects for construction of outpatient medical facilities, to projects that will be located in, and provide services for residents of, areas determined by the Secretary to be rural or urban poverty areas,

"(D) to projects designed to (i) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) avoid noncompliance with State or voluntary licensure or accreditation standards, and

"(E) to projects for medical facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

"(2) prescribe for medical facilities projects assisted under part A or B general standards of construction, modernization, and equipment, which standards may vary on the basis of the class of facilities and their location: and

"(3) prescribe the general manner in which each entity which receives financial assistance under part A or B or has received financial assistance under part A or B or title VI shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

"APPLICATIONS

"SEC. 1621. (a) No loan, loan guarantee, or grant may be made under part A or B for a medical facilities project unless an application for such project has been submitted to and approved by the Secretary. If two or more entities join in a project, an application for such project may be filed by any of such entities or by all of them.

"(b)(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth—

"(A) in the case of a modernization project for a medical facility for continuation of existing health services, a finding by the State agency of a continued need for such services, and, in the case of any other project for a medical facility, a finding by the State Agency of the need for the new health services to be provided through the medical facility upon competion of the project;

"(B) in the case of an application for a grant, assurances satisfactory to the Secretary that (i) the applicant making the application would not be able to complete the project for which the application is submitted without the grant applied for, and (ii) in the case of a project to construct a new medical facility, it would be inappropriate to convert an existing medical facility to provide the services to be provided through the new medical facility;

"(C) a description of the site of such project;

"(D) plans and specifications therefor which meet the requirements of the regulations prescribed under section 1620(2);

"(E) reasonable assurance that title to such site is or will be vested in one or more of the entities filing the application or in a public or other nonprofit entity which is to operate the facility on completion of the project;

"(F) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed, and, for the purpose of determining if the requirements of this subparagraph are met, Federal assistance provided directly to a medical facility which is located in an area determined by the Secretary to be an urban or rural poverty area or through benefits provided individuals served at such facility shall be considered as financial support;

"(G) the type of assistance being sought under part A or B for the project;

"(H) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c);

"(I) in the case of a project for the construction or modernization of an outpatient facility, reasonable assurance that the services of a general hospital will be available to patients at such facility who are in need of hospital care; and

"(J) reasonable assurance that all times after such application is approved (i) the facility or portion thereof to be constructed, or modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

"(2)(A) The Secretary may waive—

"(i) the requirements of subparagraph (D) of paragraph (1) for compliance with modernization and equipment standards prescribed pursuant to section 1620(2), and

"(ii) the requirement of subparagraph (E) of paragraph (1) respecting title to a project site,

in the case of an application for a project described in subparagraph (B) of this paragraph.

"(B) A project referred to in subparagraph (A) is a project—

"(i) for the modernization of an outpatient medical facility which will provide general purpose health services, which is not part of a hospital, and which will serve a medically underserved population as defined in section 1624 or as designated by a health systems agency, and

"(ii) for which the applicant seeks a loan under part A the principal amount of which does not exceed $20,000.".

(c) Part C (as so redesignated) of title XVI is amended by adding at the end thereof the following new section:

"ENFORCEMENT OF ASSURANCES

"SEC. 1627. The Secretary shall investigate and ascertain, on a periodic basis, with respect to each entity which is receiving financial assistance under this title or which has received financial assistance under title VI or this title, the extent of compliance by such entity with the assurances required to be made at the time such assistance was received. If the Secretary finds that such an entity has failed to comply with any such assurance, the Secretary shall report such noncompliance to the health systems agency for the health service area in which such entity is located and the State health planning and development agency of the State in which the entity is located and shall take any action authorized by law (including an action for specific performance brought by the Attorney General upon request of the Secretary) which will effect compliance by the entity with such assurances. An action to effectuate compliance with any such assurance may be brought by a person other than the Secretary only if a complaint has been filed by such person with the Secretary and the Secretary has dismissed such complaint or the Attorney General has not brought a civil action for compliance with such assurance within 6 months after the date on which the complaint was filed with the Secretary.".

TECHNICAL AMENDMENTS

SEC. 203. (a) Part A (as so redesignated) of title XVI is amended—

(1) by striking out section 1621 and by redesignating sections 1620 and 1622 as sections 1601 and 1602, respectively,

(2) by striking out "section 1622(d)" in subsection (a)(1) of section 1601 (as so redesignated) and inserting in lieu thereof "section 1602(d)", and

(3) by striking out "section 1620(b)(2)" each place it occurs in subsection (d) of section 1602 (as so redesignated) and inserting in lieu thereof "section 1601(a)(2)(B)".

(b) Section 1625 of part B (as so redesignated) is redesignated as section 1610.

(c) Subsection (a)(1) of section 1622 (as so redesignated) is amended by striking out "section 1604" and inserting in lieu thereof "section 1621".

(d) Section 1623 (as so redesignated) is amended by striking out "STATE" in the heading for such section.

(e) Section 1624 (as so redesignated) is amended by striking out paragraphs (1) and (2) and by redesignating paragraphs (3) through (16) as paragraphs (1) through (14), respectively.

(f) Section 1626 (as so redesignated) is amended by striking out "section 1604" and inserting in lieu thereof "section 1621".

(g)(1) Section 1602 (as so redesignated) is amended by adding at the end thereof the following:

"(f) The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this part or under title VI, including taking possession of holding, and using real property pledged as security for such a loan or loan guarantee.".

(2) Paragraphs (1) and (2) of subsection (d) are each amended (A) by striking out "and" at the end of subparagraph (D), (B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ", and", and (C) by adding after subparagraph (E) the following:

"(F) to enable the Secretary to take the action authorized by subsection (f).".

EFFECTIVE DATE

SEC. 204. The amendments made by this title shall take effect October 1, 1978.

The SPEAKER pro tempore (Mr. MURTHA). Is a second demanded?

Mr. CARTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) and the gentleman from Kentucky (Mr. CARTER) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that I may be permitted to revise and extend my remarks and that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, the legislation before us today is H.R. 11488, the Health Planning and Resources Development Amendments of 1978, a bill which would amend titles XV and XVI of the Public Health Service Act to revise and extend the program of health planning and resources development.

The health planning program which we are proposing to extend and amend was established by Public Law 93–641, the National Health Planning and Resources Development Act of 1974. Since its passage significant progress has been made in implementing this law. Two hundred and five health systems agencies (HSA's) have been designated on a conditional basis. Of these, more than 145 have moved to full designation. Fifty-six State health planning and development agencies (SHPDA's) have been established. In addition, 10 health planning centers have been put in place to meet the technical assistance and training needs of the agencies.

H.R. 11488 is the result of careful analysis of the existing health planning program, four full days of hearings and several days of markup by the Committee on Interstate and Foreign Commerce. As a result of this progress, the Committee has concluded that the basic structure of the planning system is sound.

The HSA's after spending much of their inital efforts on organizational matters are now beginning to concentrate on the development of health plans and their implementation. These agencies will begin to realize their full potential during the next 3 years if not deterred from their focus on planning by new and unnecessary organizational requirements. However, the early experience of this program indicates that some minor changes in the law are in order. H.R. 11488 accomplishes these changes without undue disruption to the developing planning effort. The reported bill deals with seven major issues.

First, the planning program is extended for 3 years at funding levels which recognize inflation and the increase in responsibility required of fully designated health planning agencies. The bill would authorize $205 million in fiscal year 1979 and $219 million and $233 million in fiscal years 1980 and 1981 respectively.

Second, HSA organizational requirements are slightly modified and the governing body requirements are strengthened. The self-perpetuation of HSA governing bodies would be prohibited. Provisions are made for active local elected official participation in the health planning process. The process for selecting HSA governing body members would be required to be open and well publicized. More adequate support would be required to be given to continuing education and training of governing body members so that their decisionmaking capability would be enhanced. In addition, a member of the HSA staff would be designated to have responsibility for providing the consumer members of the governing body with such assistance as they may require to effectively perform their functions. In public HSA's, the bill would provide the regional planning board or unit of local government with more authority over health planning in its area.

Third, the reported bill would provide a larger role for Governors and State government in the health planning process. It would assure a Governor's active involvement in both health service area and in HSA designation. In addition, the SHPDA would be required to define the statewide health needs for local HSA's to consider in their planning activities. The Governor of each State would be permitted to disapprove the State health plan if he finds the plan does not effectively meet those established statewide health needs.

Fourth, the legislation would strengthen the linkages between planning at local and State levels and that which takes place at the Federal level. The Secretary would be required to analyze and review the health plans which are developed by the HSA's and the States and use that analysis in modifying the national guidelines for health planning and in developing additional guidelines. The bill makes it clear that the national guidelines for health planning are not to be rigid standards inflexibly applied but rather benchmarks which HSA's can adjust as local circumstances require. The bill requires more adequate consultation with various groups prior to provision and establishment of additional national guidelines.

Fifth, the requirements for State certificate-of-need programs are strengthened. The reported bill requires closer ties between planning and regulatory decisions by requiring that certificate-of-need decisions not be inconsistent with the State health plan. Required certificate-of-need coverage would be extended to home health services and major medical equipment—defined as equipment over $150,000—that would be used to serve inpatients of a hospital. This later change would close a loophole in existing certificate-of-need requirements where a physician can purchase equipment and install it in leased space in a hospital or in a facility adjacent to a hospital and carry out diagnostic or treatment procedures avoiding certificate-of-need review.

Sixth, the planning agencies are encouraged to begin planning for a reduction in unneeded and duplicative health facilities and services. Experts have testified that we have 100,000 excess hospital beds. Such excesses contribute to total costs because higher prices must be charged to cover fixed costs of keeping the unit or facility in operation. Health planning agencies should begin to identify this excess capacity while assuring access to needed services. I should point out, however, that while the health planning agencies are expected to focus on making the health care system more efficient, neither the bill or the existing law contains authority for the health planning agencies to force or require individual institutions to close unneeded or duplicative services. Such changes would have to come about voluntarily. We would hope that health care providers will work together cooperatively with the HSA to carry out the appropriateness review findings and recommendations.

Finally, the resource development authority of title XVI of the Public Health Service Act is also revised and extended. The bill would extend Federal loan and loan guarantee support for health care facilities although support would be limited to priority areas. Project grant authority for the construction and modernization of public hospitals and health care facilities to correct life safety code and other accreditation violations and authority for the area health services development fund would be extended. New grant authority for the construction of outpatient medical facilities in medically underserved areas and the conversion of existing facilities into facilities for outpatient and long-term care would be established. The legislation repeals the provisions of existing law that have provided allotment grants to States to develop health care facilities. The bill would authorize $250 million for fiscal year 1979 and $290 million in fiscal years 1980 and 1981 for the development of health care resources.

Mr. Speaker, the bill before us today is identical to that reported on May 15, 1978, by the Interstate and Foreign Commerce Committee (House report 95–1185) with several minor exceptions:

First, the provision of the bill—section 103(c)—which would allow the Governor of any State to request the redesignation of a health service area which contains an interstate standard metropolitan statistical area is deleted. Deletion of this amendment will assure that the Governors of both affected States will be involved in decisions regarding these interstate areas and will further the committee's desire to keep interstate standard metropolitan statistical areas from being divided unnecessarily into separate planning areas.

Second, an amendment is added which will clarify existing policies regarding the health systems agency re-

view of proposed uses of Federal funds to support research and training. The amendment would require review of training grants or contracts only in the case in which a grant or contract is used to support health resources which make a significant change in the health services available in the health service area or require review of research grants or contracts only in a case in which a grant or contract would change the delivery of health services or the distribution or extent of resources available to persons in the health service area other than those who are participants in the research project.

Third, provisions in section 203 of H.R. 12460, the Health Centers Amendments of 1978, are added to the bill. These amendments were reported by the Committee on Interstate and Foreign Commerce on May 15, 1978—House report 95–1186. These amendments seek to assure the active involvement of persons knowledgeable about mental health services, including substance abuse, in the health planning process. These amendments also seek to bring about better coordination between health and mental health planning. Since these provisions amend the planning law it is appropriate that they be included in H.R. 11488.

Fourth, several amendments are included which will require the participation of persons from urban and rural medically underserved areas in the National Council on Health Planning and Development and in Statewide Health Coordinating Councils. The amendments further require the National Health Planning Guidelines to reflect the unique circumstances and needs of medically underserved populations including isolated rural communities. These amendments will help assure that those who live in areas with inadequate health resources, particularly those in rural areas, will be involved in the health planning process. The amendments will also increase the number of members on the National Council on Health Planning and Development so that the Secretary can appoint a representative of the hospital industry which is currently not represented.

Finally, the legislation includes an amendment which is technical in nature and is required to bring the bill into conformity with the requirements of the Budget Act by limiting contract authority of the Secretary to such extent or in such amounts as provided in advance in appropriation acts.

I believe that these amendments perfect the bill as reported by the Committee on Interstate and Foreign Commerce and deserve to be supported by the Members of the House.

Mr. Speaker, there is one issue that is not dealt with in the legislation that should be clarified. It is my understanding that concern has been expressed that an HSA and health care providers who voluntarily carry out the mandates or health planning laws may be in violation of the antitrust laws.

Public Law 93–641 requires the HSA to engage in activities and carry out functions which will lead to market allocations. We have found that there is a minimal price competition within the health sector and that the competition that exists is primarily around the provision of services and results in hospitals acquiring duplicative and expensive equipment and facilities leading to higher costs for the consumer. In enacting Public Law 93–641, the Congress made a specific judgment that it is not desirable for health care facilities to develop or maintain unneeded services or facilities and created a health planning system that would, with the participation of providers, use regulation and voluntary action to carry out its plans.

Title XV requires the HSA's to bring together both consumers and providers to plan for more efficient health care system that will meet the area's needs. This requires the HSA governing body to make decisions that affect market allocation in both the health plan and in appropriateness review. They should set goals relating to the number of beds and other hospital resources that are needed in this area. If there is excess capacity in the area they will want to identify it and call for its reduction. In doing so, they may develop institutional specific recommendations; for example, hospital X should close its underutilized cardiac catherization laboratory, or develop broader recommendations, such as, three cardiac catherization laboratories in the area should be consolidated. In the latter case, it is our intent that the providers would work together in cooperation with the HSA to determine how best to carry out this recommendation. Without this voluntary cooperation by providers, the provision of law dealing with the development of a plan and the review of institutional health services could not be carried out.

The law also requires that the HSA recommend to the State whether new institutional health services are needed and a certificate of need should be granted. This control function directly affects entry into the market and competition. I think that since such decisions are tied to a State certificate of need law there is little question that they are exempt from antitrust laws.

The law is clear that to carry out these activities the HSA needs the cooperation of providers and that they are to work together. One such explicit reference to this is contained in the national health priorities which set forth the expectation that providers should work together to coordinate and consolidate services. Priority 2 calls for the development of multi-institutional systems for coordination of consolidation of institutional health services. Priority 5 calls for the development of multi-institutional arrangements for the sharing of support services necessary to all health service institutions.

Although Public Law 93–641 contains no specific exemptions from the antitrust laws, it is clear by the points just made that the Congress in enacting the National Health Planning and Resources Development Act of 1974 sanctioned activities which might otherwise be in violation of our antitrust laws. Obviously, then, the intent of Congress in enacting Public Law 93–641 was that the HSA's and the providers who voluntarily work with them in carrying out the HSA's mandate in the law not be subject to the antitrust laws. If they were, then Public Law 93–641 simply could not be implemented. Thus, it is my view that the planning law be carried out without disruption.

Mr. Speaker, H.R. 11488 is important legislation. The health planning program and the resources development program have great potential to help us move toward a more efficient health care delivery system and to prevent duplication of unnecessary facilities and services and thus help contain rapidly rising health care costs. It will also provide for the identification of areas where services are not adequate or access to services is poor and a mechanism to work to solve this problem. Yet the health planning program needs strengthening. We believe that the 3-year extension and these substantive changes will greatly assist the planning program in reaching maturity and beginning to fulfill its promise of working toward increasing accessibility to care, maintaining quality of care, and restraining increases in cost for the citizens of our Nation.

Mr. SATTERFIELD. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to my distinguished colleague, the gentleman from Virginia (Mr. SATTERFIELD), who is the ranking member on the subcommittee.

Mr. SATTERFIELD. Mr. Speaker, I thank the gentleman for yielding.

As the gentleman knows, I have had some concern about section 117 of this bill which is a provision directing the State health planning and development agencies to apply, apparently, a special certificate of need criteria to applications from federally qualified health maintenance organizations.

Specifically, it would require that approval be given when necessary for an HMO to meet the needs of its existing and anticipated membership, and, when necessary, for the HMO to provide "its institutional health service in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization which makes such services available on a long-term basis through physicians and other health professionals associated with it."

Which leads to my question that, under present law, the State health planning agencies are now required to make a determination as to whether a new health facility or service is needed by the community as a whole. The provision to which I refer would appear to require instead that State health planning agencies consider the needs of the HMO and its members separately; on the surface, at least, requiring that such special criteria be applied to the applications of HMO's is contrary to the philosophy of the Health Planning Act. Can the chairman of the subcommittee clarify for me the purposes of this section?

Mr. ROGERS. The provisions to which the gentleman refers are intended to apply to situations in which the other providers in a community discriminated against the HMO by denying it access to necessary services and facilities. In

such cases, the State health planning agency would be required to allow HMO's to develop such services and facilities as needed for reasonable growth and to provide contractually required services to their memberships.

Mr. SATTERFIELD. If the gentleman will yield further, am I correct in my understanding that the purpose of this provision is not to give HMO's a favored status in relation to other providers, but rather to put them on an equal footing?

Mr. ROGERS. The gentleman is entirely correct in his understanding.

Mr. SATTERFIELD. And is it also correct to say that it is not intended that the applications of other providers be subject to stricter or more restrictive criteria than the application of HMO's?

Mr. ROGERS. The gentleman is correct. That was not the intention.

Mr. SATTERFIELD. Mr. Speaker, I thank the gentleman very much.

Mr. ROGERS. I thank the gentleman.

Mr. BLOUIN. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the distinguished gentleman from Iowa.

Mr. BLOUIN. Mr. Speaker, I would like to call to the attention of my colleagues from rural parts of the country, the inclusion of a number of provisions which insure that the health care planning process will recognize the needs of our constituents from rural areas.

As many of you will recall, the proposed national guidelines for health planning issued by HEW last fall stimulated much controversy and opposition. The publication of these proposed guidelines were of particular concern to those of us who care about the health care needs of individuals in rural areas. The widespread fear was that their hospitals would not meet the national standards and consequently would be forced to close.

At that time, it was apparent that the unique circumstances in less populous areas had not been taken into consideration. HEW subsequently revised the guidelines and provided the flexibility that was crucial if the guidelines were to respond to the overall goal of providing access for everyone for health care services.

The promulgation of the guidelines were in direct response to a mandate in this legislation which we are considering today. I introduced a bill along with Congressman BAUCUS which amended the health planning law to give special emphasis to the needs of those from medically underserved rural areas in the application of this law. The committee has included a number of these amendments. I would like to commend the chairman for his recognition that the health planning process must address the health needs of the population in rural areas as well as our more urbanized centers.

The enactment of the Health Planning Law of 1974 was a major step forward in establishing a national framework to assess the health care needs of our constituents, the resources available to satisfy those needs, and promote the development of a rational plan for the coordination of existing services with new ones. The problem of rapidly escalating health care costs is an area of great concern to the Congress and the American people.

In rural areas, the need to reduce the prohibitive costs of health care must be balanced against the need to provide access to services. This presents a dilemma for health planning. Nowhere are the choices so difficult. It is my hope that the adoption of this legislation, with its emphasis on local health planning based on the special needs of their communities, will greatly assist in the resolution of this dilemma.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support H.R. 11488 the Health Planning Amendments of 1978. I believe the committee has fashioned a good bill, one which we can all support, and one which has received strong support on both sides of the aisle. As reported by the committee, H.R. 11488 provides a total authorization of $1.487 billion for fiscal years 1979, 1980, and 1981. The sum of $657 million of this total is authorized for health planning activities and $830 million is provided for the development of health resources.

I would like to emphasize what I believe are some of the important improvements in health planning contained in this bill. First, the committee has taken steps to insure that health planning will be primarily a local process done by and for local people in consideration of their special needs and circumstances. The bill makes clear that the national guidelines for health planning are not to be used by the Secretary of HEW to dictate to local health systems agencies the content of their health plan. In making this change, it is my strong belief that the committee has reaffirmed the original intent of Congress in passing the Health Planning Act.

Second, the committee bill provides assurances that local health systems agencies will have the benefit of the expertise of those most affected by their decisions by insuring that hospital administrators, medical schools, and public officials will be represented on HSA boards. I believe that it is extremely important that HSA boards be composed of interested, informed, decisionmakers. In that regard, I would note that the committee has once again rejected the idea that strict quotas be used to select the consumer members of an HSA board. It is certainly important to have each point of view represented on these community boards, but I do not believe that it is necessary that each group in the population be represented in strict accordance with its numbers. To do so would be detrimental to the health planning process.

Third, the committee bill charts a responsible course on the subject of review and determination of need for health care facilities and services under the certificate of need program. The bill proposes to extend certificate of need review to major medical equipment which is used to provide services to inpatients regardless of ownership or physical location. The committee has taken this step because we have found that at times an attempt has been made to evade the certificate of need process through having another individual purchase the equipment, locate it within or near the hospital, and then provide that service to the hospital's inpatients. However, the bill does not propose a blanket extension of certificate of need to provide for the construction or modernization of free-standing outpatient clinics. I believe that the priorities reflected in the committee's proposal for health resources development provides for the most prudent management of our limited health care dollars and represents the best approach to meeting the unmet health care needs of the Nation.

Mr. Speaker, this bill provides important improvements in our efforts to assist local citizens in making decisions about health care, and I believe that passage of this bill will have a beneficial impact upon the cost, availability, and the accessibility of needed health care services.

Thank you, Mr. Speaker.

Mr. CARTER. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina (Mr. BROYHILL).

Mr. BROYHILL. Mr. Speaker, I rise in support of H.R. 11488, the Health Planning and Resources Development Amendments of 1978. As a member of the Commerce Committee's Subcommittee on Health and the Environment and a cosponsor of the bill, I think that this legislation represents a responsible and appropriate extension of the health planning law. One significant and important aspect of this bill is that it increases the role of local and State health planning authorities to establish and implement their own State programs. The approach taken in this legislation, namely to grant more authority and independence to States and localities in carrying out Federal programs, should be encouraged and applied more often in the consideration of other legislation.

I would further urge my colleagues to support this bill because I believe that the health planning law represents a positive step in controlling health care costs. As many of my colleagues know, the health planning program was designed to eliminate the duplication of health services and to coordinate health planning in an effort to check rising health costs. We are seeing significant cost-savings which justify the continuation of this program.

For example, the Southeastern health service area in the United States, in which North Carolina is included, reported this past January the recommended disapproval of 235 proposals for spending in that region.

This action resulted in a cost-savings of more than $367 million. H.R. 11488 will foster and strengthen the planning process so that we can see an orderly and rational approach to containing health care costs.

If I may, for just one moment, ask the distinguished chairman of the Health Subcommittee, Mr. ROGERS, a question with respect to section 117 of

the bill. Section 117 of H.R. 11488 would exempt independent laboratories from the necessity of securing a certificate of need before purchases of major items of medical equipment. It was the opinion of the subcommittee that the certificate of need process should not be applied to independent labs since they are already fully regulated by competition in the marketplace.

Am I not correct in stating for the record that this provision was introduced by the gentleman himself during the subcommittee's consideration of the bill, that it was adopted without opposition by the subcommittee, and subsequently approved by the full committee without dissent?

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Florida.

Mr. ROGERS. I thank the gentleman for yielding.

The gentleman is correct.

Mr. BROYHILL. I thank the distinguished chairman. I urge that he and the other House conferees recognize and insist on the House position with respect to this section.

Mr. ROGERS. Will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Florida.

Mr. ROGERS. I thank the gentleman for yielding.

We certainly will make every effort to maintain this position.

Mr. BROYHILL. I thank the gentleman.

Finally, may I take this opportunity to compliment the chairman of the subcommittee, Mr. ROGERS, and the ranking minority member, Dr. CARTER, for their cooperation and efforts during consideration of this bill in committee.

Mr. CARTER. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I thank the gentleman from Kentucky.

Mr. Speaker, I am apprehensive about this authorization. Basically $1.487 billion seems like a lot of money for us to be spending under suspension. Frankly, in the general committee I did not completely understand the bill. I am not sure that many of us today understand it.

I do know this much, that all the health planning and resources development and all this Government administration that we are getting into is growing at a very, very rapid scale. I just looked at some sections of this bill yesterday showing planning grants started at $60 million and they are now at $150 million.

When I looked at this title, and I would like to ask the chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS), if the gentleman can clarify this for me.

I understand in this administrative title XVI, which authorizes $830 million, that the administration did not ask for anything on this. Is that right? Would the gentleman from Florida tell us just what the administration asked for on this title XVI?

Mr. ROGERS. Mr. Speaker, if the gentleman will yield, the administration did not ask for that. Because of the need to support ongoing programs, and need to support the modernization of public hospitals who do not meet life safety code violations, we felt it was necessary. Now, this is over a 3-year period. I am sure the gentleman knows that.

Mr. COLLINS of Texas. If the administration did not ask for $830 million, I would hope the Committee on Appropriations would take this into account.

Is the Health Committee making any strong recommendation that we do this, or are they merely putting it in the bill?

Mr. ROGERS. Mr. Speaker, if the gentleman will yield further, I think it is a vital item to include. As I said, it goes over 3 years. I would urge that those items be funded.

I would say to the gentleman, we tried to go over the bill carefully. As a matter of fact, this authorization for 1979 is 9 percent less than the authorization for 1978; so the committee has tried to be realistic. We have not tried to just go wild. Rather, we have tried to establish responsible levels.

As the gentleman from North Carolina has just pointed out, we are just now beginning to effect savings throughout the Nation in the health care bill, because of the functioning of these health systems agencies.

You see, the bill was only signed in 1975. It has taken awhile for these agencies to begin, to get started, and to have some impact.

They did a study in the Southeast part of our country with 41 of HSA's and the savings alone in that section of the country is over $367 million in an 18-month period. Now, that is a pretty good record that I think the gentleman could feel comfortable with it.

We feel that is being duplicated all over the Nation. I think we are going to find savings between $1.8 and $3 billion over the past 2 years when we carefully examine the records of planning agency activities. These amounts have been projected in recent studies.

Mr. COLLINS of Texas. I want to come back to where I started; that is, that I hope the Committee on Appropriations is very careful to consider that the administration in its wisdom asked for nothing on title XVI and in our bill we have spent half this authorization for an item that the administration does not request at all. Appropriations should be careful.

I would like to add this. I am no authority on what the Government does in the way of administration or regulations on health; but I do know a little bit about what they have done in the way of energy. In the Government's energy program today we spend more money for the cost of regulations than it takes for the private industry to take care of oil research, leasing, drilling, and producing from 500,000 oil and gas wells. Congress spends more on regulations than does the entire industry in production.

Mr. ROGERS. Mr. Speaker, will the gentleman yield further?

Mr. COLLINS of Texas. I am glad to yield to the gentleman.

Mr. ROGERS. Mr. Speaker, I might point out, that a large portion of these funds the gentleman is talking about are for public hospitals. We have done away with grants under the Hill-Burton program; so these are to help those hospitals that cannot get funds in the money market.

Mr. COLLINS of Texas. Has not the gentleman done what he can from encouraging hospitals to limit expansion and not build new hospital beds?

Mr. ROGERS. That is right. That is what the plan does. Unless it is really justified, this says you are not to do it.

Mr. COLLINS of Texas. We are giving construction more money. How do we justify it?

Mr. ROGERS. This is for renovation and modernization of hospitals, if it can be justified.

Mr. CARTER. Mr. Speaker, this country spent approximately $5.2 billion for hospital construction just a few years ago. Now we have limited Federal support to a program for modernization, renovation, and construction for outpatient departments and long-term facilities only.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. CARTER. Mr. Speaker, I yield 2 additional minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. Speaker, if the gentleman from Texas will yield further, we are not spending as much now as we were. Unfortunately, we did not do as much planning for hospital construction as we should have done. In fact, we overbuilt in the hospital field.

And this is the purpose of this bill; to build and renovate facilities and beds where we need them. We have not done enough planning in the past, but we are starting to do it now. This process has been underway since this legislation was first passed.

This is excellent legislation. It is something which we failed to do years ago, but now we are planning and we are going to build such as we need and discontinue those things we do not need, and we will save money. Even though this seems to be a large amount, it is much less than we appropriated each year for Hill-Burton.

Mr. Speaker, I will say to my good friend, the gentleman from Texas (Mr. COLLINS), that this is a savings.

Mr. COLLINS of Texas. Mr. Speaker, I will say to my distinguished friend, the gentleman from Kentucky (Mr. CARTER), who is a doctor and who certainly understands the medical field, that there was a time when we had a shortage of hospital facilities. That is when we needed Hill-Burton funding.

Mr. CARTER. Yes, and if the gentleman will permit me to say it, that is when we needed health planning.

Mr. COLLINS of Texas. Mr. Speaker, it seems that we have too much planning, and I want to quote one section from this report, which is typical. It asks nothing about the ability of these people who serve on this National Council. I would think we would want to be sure the type of people who are represented

on the Council knows something about health.

Here in the report they talk about the composition of the Council, which includes five women; three minority representatives (two black, one Hispanic); three physicians (two from private practice, one from a university); one practicing hospital administrator; one professor of health care administration; one health insurance representative; one labor leader; and one representative of industry.

Nowhere does the report say whether they have a brain or know anything about health. We are so busy drawing up arbitrary guidelines that I wonder how much medical knowledge we have in Health Administration.

Mr. CARTER. Mr. Speaker, if the gentleman will yield, I think in the gentleman's own words he stated that in that group there were three physicians and one hospital administrator. And was there not a nurse mentioned there?

Are these not talented professions, and are they not providers? Are these not the very people we want? Nobody better knows about health planning and hospital administration practices than nurses.

The SPEAKER pro tempore. The time of the gentleman from Texas (Mr. COLLINS) has expired.

Mr. CARTER. Mr. Speaker, I yield 1 additional minute to the gentleman from Texas (Mr. COLLINS).

Mr. Speaker, if the gentleman will yield, I think the distinguished gentleman from Texas (Mr. COLLINS) will support the bill when he understands it and what is behind it and understands that we are actually saving money. I have understood that the gentleman might be a fiscal conservative, and along that line I hope that he will jump on the bandwagon and go along with us in support of the bill.

Mr. COLLINS of Texas. Mr. Speaker, I thank the gentleman.

Mr. Speaker, this does shake me up when we discuss appropriating or authorizing $1.487 billion, and the gentleman is right, that does sum up my apprehensions about the bill.

Mr. Speaker, I thank the gentleman for his explanation.

Mr. CARTER. Mr. Speaker, I thank my distinguished friend, The gentleman from Texas (Mr. COLLINS). He is a congenial gentleman and a distinguished individual.

Mr. Speaker, I yield such time as he may consume to the gentleman from Delaware (Mr. EVANS).

Mr. EVANS of Delaware. Mr. Speaker, I thank the distinguished gentleman from Kentucky (Mr. CARTER) for yielding this time to me.

Mr. Speaker, I asked for this time for the purposes of asking the gentleman from Kentucky or the distinguished gentleman from Florida (Mr. ROGERS) several questions.

Let me say at this point that I think the distinguished gentleman from Florida (Mr. ROGERS) has done a magnificent job not only on this bill but on many others as well, and he will be sorely missed in the United States Congress.

Mr. CARTER. Mr. Speaker, if the distinguished gentleman will yield, let me say on that that it would be very difficult anywhere in the country to find a chairman who is more congenial and easier to work with and one who is more interested in the health of the people of our Nation than the distinguished gentleman from Florida.

Mr. EVANS of Delaware. Mr. Speaker, I thank the gentleman from Kentucky.

Mr. Speaker, I recently had the opportunity to look firsthand at several of our hospitals in the Delaware area. I was concerned about regulations which increase costs without doing anything to improve quality.

We live in a society today that is overregulated. There are some regulations that are very important and very necessary. However, with limited resources at our disposal, there are some regulations that do not fit into the category of helping to improve health care. I have discussed this with the distinguished chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS).

Let me give the Members one example of what the regulators are doing to just one hospital in Wilmington, Del., and I presume that they have asked for this across-the-board in an effort to improve safety in hospitals. They have asked the Wilmington Medical Center to move its fire alarms approximately a foot to 18 inches from about 4 or 5 feet in height to a height where anyone in a wheelchair could reach them. In some areas I think that might be a wise expenditure, but in hospitals which are labor intensive, where there are a number of nurses and others on duty 24 hours a day, it just appears to me to be an unwise expenditure in terms of improving health care especially in view of our limited resources.

Mr. Speaker, I would be happy to have the gentleman from Florida (Mr. ROGERS) or the gentleman from Kentucky (Mr. CARTER), or both, respond, if they will.

Mr. CARTER. If the distinguished gentleman will yield, I will say that I am familiar with this, and if the gentleman looks into it I believe he will find that this regulation is by the State fire protection agency or group which each State has, one of these areas, and they go about and they make these regulations themselves. I have seen them go into the hospitals, and it is the very thing that the gentleman mentioned, sometimes to the distress and, really, the trouble of the hospital people.

Mr. EVANS of Delaware. It was my impression, in speaking with the administrators of the Wilmington Medical Center, that this was not State-mandated but it was mandated out of the regional office of HEW in accordance with the regulations promulgated under section 504 of the Rehabilitation Act of 1974.

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. EVANS of Delaware. I yield to the gentleman from Florida.

Mr. ROGERS. I thank the gentleman for yielding.

Mr. Speaker, I will say to the gentleman from Kentucky (Mr. CARTER) that, in many instances, the statement that the gentleman made is correct. We have seen some of the regulations.

Also, there is a commission on accreditation which goes in the hospitals before they accredit them. Before medicare and medicaid pays, a hospital is supposed to be accredited, and they must meet certain standards. Now I agree with the gentleman. I think many of these so-called standards are not being applied with reason, and I think the gentleman would be reassured to know that there is a General Accounting Office study being conducted on this now, and this study will come to the committee. It will enable us to really get into this matter some. There are many examples, and I have heard of them, too—they have been reported to the committee—where there is not too much good sense being applied.

The SPEAKER pro tempore. The time of the gentleman from Kentucky (Mr. CARTER) has expired.

Mr. ROGERS. Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky.

Mr. CARTER. Mr. Speaker, in further response to the distinguished gentleman from Delaware, the project grants in section 1625 of this bill would help to modernize and meet the code standards, the fire code and safety standards. There is $100 million allocated for this purpose by this section of the bill.

Mr. EVANS of Delaware. If the gentleman will yield, I would like to thank the distinguished gentleman from Florida (Mr. ROGERS) and the distinguished gentleman from Kentucky (Mr. CARTER) for their explanation. I am very pleased that we are proceeding in the direction of eliminating unreasonable regulations which are creating a tremendous burden on the patients and the taxpayers of this country.

Mr. ROGERS. Mr. Speaker, I want to thank the gentleman for his concern, and I want to say that I do share his concern. Certainly the General Accounting study will be of help.

Mr. Speaker, I want to thank my distinguished colleagues, the gentleman from Delaware (Mr. EVANS) and the gentleman from Kentucky (Mr. CARTER) for their kind and generous comments about me. They have been most generous.

Mr. DORNAN. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from California.

Mr. DORNAN. I thank the gentleman for yielding.

Mr. Speaker, I would also like to associate myself with the remarks of my 2 colleagues and state emphatically how impossibly difficult it will be to replace the chairman of this committee with someone of his expertise.

Mr. Speaker, I realize that because of the press of legislation we must necessarily consider many matters under suspension of the rules. However, I am convinced that H.R. 11488—although the product of many hours of dedication and

labor—contains one important omission; namely, an ethical standard.

Heavy stress is laid on the planning process and cost factors. Well and good. But these considerations were part of totalitarian medicine. There is no ethical standard in this legislation by which policy decisions are to be made. With abortion, test tube babies, cloning, human experimentation, renal dialysis machines, euthanasia, an overloaded social security system, lazer beam surgery, and so forth, how can ethics be ignored? If we have medicine without ethics, what are we? Men with hollow chests and no heart? Christ said that it is not by bread alone that we live.

We saw what happened when German medicine abandoned the ancient oath of Hippocrates—mercy killing, selective abortion for racial purposes, deliberate killing of the infirm or feeble minded, lethal experiments on human subjects without their knowledge or consent, bodily mutilation of concentration camp victims for so-called scientific advances, cold water immersion, deliberate septic infection, experimental operative surgery—nonindicated operations—for instructional purposes, liver puncture, deliberate spreading of typhus, and more.

In response to these atrocities (so excellently portrayed in the TV series "Holocaust") the World Medical Association restated the ever valid ethical principles contained in the ancient Oath of Hippocrates at their September 1948 meeting held in Geneva.

The Oath reads:

Now being admitted to the profession of medicine, I solemnly pledge to consecrate my life to the service of humanity. I will give respect and gratitude to my deserving teachers. I will practice medicine with conscience and dignity. The health and life of my patient will be my first consideration. I will hold in confidence all that my patient confides in me.

I will maintain the honor and the noble traditions of the medical profession. My colleagues will be as my brothers. I will not permit consideration of race, religion, nationality, party politics or social standing to intervene between my duty and my patient.

I will maintain the utmost respect for human life from the time of its conception. Even under threat, I will not use my knowledge contrary to the laws of humanity.

Mr. Speaker, if it had been possible to amend this bill by the addition of an amendment requiring Health Systems Agencies to indicate how their plans show their recommendations agree with or diverge from the principals of the Oath of Hippocrates Geneva Version, 1948, I think it would have been a much better bill than it is. I am sure other Members here have heard from their constituents concerning the antics, at times, of Health Systems Agencies.

I have received many letters from persons around the country who have had personal experience with the workings of Health System boards. They have for the most part pointed out the huge moral vacuum under which policy decisions are being made. The executive director of the Northern Virginia Health Systems Agency, a Mr. Dean Montgomery, even went so far as to tell a group of Northern Virginia residents less than 2 weeks ago, that moral considerations are peculiar to individuals and are of no value in public policy deliberations concerning medical care. This is incredible. With that kind of attitude, how can anyone trust public officials?

I know that a commonsense reading of the Health Planning Act would recognize the ethical values of a community under that section dealing with "community acceptability." But I fear this is not the case. And that is why I believe we need the Health Systems Agencies to describe their plans in terms of the Hippocratic Oath. Thank you, Mr. Chairman.

I will try with my amendment again next year. It reads as follows:

AMENDMENT TO H.R. 11488, AS REPORTED OFFERED BY MR. DORNAN

[Hippocrates]

Page 97, insert after line 24 the following:

(1) Section 1513(b) is amended by adding at the end the following:

"(5) The HSP of a health systems agency shall include a statement of the effect that achievement of the goals of the HSP will have on the requirements placed on the practice of medicine by the Oath of Hippocrates (as restated in Geneva, Switzerland, in 1948 by the World Medical Association), and the AIP of a health systems agency shall include a statement of the effect that achievement of the objectives in the AIP will have on such requirements."

WAR CRIMES AND MEDICINE

(Adopted by the General Assembly of the World Medical Association, September 1948)

THE GERMAN BETRAYAL AND A RESTATEMENT OF THE ETHICS OF MEDICINE

Among the declared objects of the World Medical Association are the maintenance of the honor of the medical profession, the promotion of world peace and the helping of all peoples to attain the highest possible level of health. The first meeting of the General Assembly was held in September, 1947, soon after the passing of judgment, by the International Military Tribunal sitting at Nuremberg, on 23 Nazi doctors found guilty, as German major war criminals, of horrible crimes against human beings, many of them committed in the name of medical science. It was, therefore, appropriate that the Assembly should devote some time to the consideration of such a betrayal of the traditions of Medicine, and should authorize the publication of a statement of the attitude of the representatives of the medical profession throughout the world. Why did these doctors lack a moral or professional conscience, and forget or ignore the humanitarian motives and ideals of medical service? How can a repetition of such crimes be averted?

THE CRIMES

The 23 German doctors tried at Nuremberg were not the only guilty ones; numerous unnamed doctors who carried out inhuman orders, who acted as technicians, or who connived at criminal acts were equally culpable. Since the end of the Second World War evidence has been published in several countries of the widespread criminal conduct of the German medical profession since 1933. A group of Czechoslovak doctors, for instance, published in "Medical Science Abused" an account of atrocities committed in their country by German doctors; three Swiss doctors, Dr. G. Menkes, Dr. R. Herrmann, and Dr. A. Miege, described in "Cobayes Humains" their visit to the concentration camps at Dachau and Struthof. A summary of the German medical crimes has recently been prepared by the United Nations War Crimes Commission. In addition, the Palestine Jewish Medical Association submitted to the World Medical Association a list of the crimes against Jews committed since 1933 by German doctors in the ghettos, concentration camps and extermination camps in Germany and Eastern Europe. Among articles in the medical press was one in the British Medical Journal of January 25, 1947, by Dr. K. Mellanby, describing the "Medical Experiments on Human Beings in Concentration Camps in Nazi Germany."

It is unnecessary to repeat here the ghastly and incredible details revealed by this and other evidence. The crimes committed by doctors have been classified by the United Nations War Crimes Commission as follows:

Experiments without consent on human subjects authorized by high authorities on the pretext of scientific research in the interests of war.

Experiments without consent conducted by medical officials in concentration camps on their own initiative in order to gain experience.

Deliberate selection of prisoners in camps for subsequent killing, by willful medical neglect or by lethal injections.

Deliberate killing of infirm or feeble-minded patients and of children in hospitals and asylums.

The evidence indicates that the so-called experiments include:

The effect of vacuum and pressure chambers.

Sterilization—chemical, operative, and radiological, with controls by artificial insemination.

Blood transfusion.

Cold water immersion, with periodic tests and different methods of resuscitation.

Liver puncture.

Deliberate septic infection.

Excision of parts of the body.

Experimental operative surgery—non-indicated operations—for instructional purposes.

Exposure to gas and other chemicals for varying periods and results checked by autopsy.

Methods of "mercy killing," gas, benzene injections, cremation of semi-moribund individuals, etc.

There is also evidence that certain doctors have taken part in the preparation of the means of warfare or have placed their medical knowledge at the disposal of others concerned with such preparations.

Allegations have also been made that certain German doctors took part in projects for bacterial warfare. The UNWCC reports that positive information on the subject is very limited, possibly owing to the destruction of most of the evidence. It may be concluded from the evidence in the Nuremberg trials that from 1942 onwards researches were being carried out in Germany, under the complete direction of the higher Nazi authorities, by specialized medical personnel, into methods of bacteriological warfare, and that the greatest secrecy was being observed in connection with them.

The Soviet Extraordinary Commission established that the Germans took deliberate steps to spread typhus among the Soviet population and the Red Army. If this is so, it is reasonable to assume that their plans were made with the advice of medical experts.

A SOLEMN CONDEMNATION

Having considered this evidence and the statements made to the General Assembly by medical representatives of countries which had been occupied by the Germans and by doctors who had personally experienced German brutality, the World Medical Association endorses the judicial action taken to punish those members of the medical profession who shared in the crimes and it solemnly condemns the crimes and inhumanity committed by doctors in Germany and elsewhere against

human beings, both during the Second World War and in the years preceding that war.

THE ESSENCE OF THE CRIMES

But these crimes, vivid and repulsive to the imagination as they still are and persistent though their effects may be, now belong to history, and the doctors of the world, having expressed their indignation, must now consider how any repetition may be prevented. To arrive at a conclusion, it is necessary first to consider what was the essence of the criminality of the doctors who stand condemned by their fellows. The Council of the British Medical Association, in a statement submitted to the World Medical Association, sums up the moral and professional offense as follows:

"It is clear that certain doctors carried out their inhuman experiments both for the furtherance of the war effort and for research in disease. In the course of the experiments and in the application of their findings, they deliberately killed persons politically undesirable to the regime in power. They misused their medical knowledge and prostituted scientific research. They ignored the sanctity and importance of human life, exploiting human beings both as individuals and in the mass. They betrayed the trust society had placed in them as a profession.

The doctors who took part in these deeds did not become criminals in a moment. Their amoral methods were the result of training and conditioning to regard science as an instrument in the hands of the State to be applied in any way desired by its rulers. It is to be assumed that initially they did not realize that the ideas of those who held political power would lead to the denial of the fundamental values on which Medicine is based. Thus, the care of the individual patient ceased to be the doctor's primary aim and the humanitarian purpose of medical science was subordinated to the needs of war."

The reclamation of the German medical profession cannot be effective until the German doctors themselves acknowledge the iniquity of their conduct and declare their determination to return to the time-honored traditions and ideals of medical practice. Astonishment was expressed in the General Assembly of the World Medical Association that no sign whatever had come from Germany that the doctors were ashamed of their share in the crimes, or even that they fully realized the enormity of their conduct. The three Swiss doctors who reported on concentration camps write:

"When questioned after the defeat of Germany, many professors and others who had conducted the experiments in the laboratories had not the strength of character to maintain their former attitude. The only excuse they gave was that of a child caught misbehaving itself, 'We were only obeying orders' or other forms of 'It wasn't I'—which is lamentably true, at least in part. But what was most repugnant in this capitulation was that there was no confession of weakness, still less any expression of regret or remorse."

AN INVITATION TO THE GERMAN PROFESSION

German doctors have now had more than two years in which to think over their conduct, and it may be that there is a latent desire among them, perhaps more especially among young doctors, to rehabilitate themselves in the eyes of the world. A formal solemn declaration by a representative organization of German doctors to the World Medical Association, which represents national medical associations throughout the world, would seem to provide the German profession with an opportunity of giving a promise of their future good behavior. The General Assembly of the World Medical Association approved the following statement which it offers to the German profession for endorsement and signature:

"We, as the accredited representatives of the organized German medical profession, hereby acknowledge the participation of certain German doctors, both individually and collectively, in numerous acts of cruelty and oppression, and in the organization and perpetration of brutal experiments on human beings without their consent. We acknowledge that in performing these acts and experiments, which have resulted in the deaths of millions of human beings, the German medical profession has violated the ethical tradition of Medicine, has debased the honor of the medical profession, and has prostituted medical science in the service of war and political hatred.

"We express our regret that no protest was made by the organized medical profession in Germany against the base uses to which it knew that medical knowledge was being applied, and we now place on record our condemnation and abhorrence of the crimes committed by members of our profession in Germany and Eastern Europe since 1933.

"We hereby solemnly give our promise, through the World Medical Association, to the medical profession throughout the world never again to participate in or permit such a betrayal of Medicine. We undertake to expel from our organization those members who have been personally guilty of the crimes referred to above, or who are not willing to promise to maintain a high standard of professional behavior in the future. We will exact from all our members a standard of conduct that recognizes the sanctity, moral liberty, and personal dignity of every human being."

Since this statement was issued there has come to the attention of the World Medical Association a declaration purported to come from the physicians of Western Germany.

"The German doctors and their professional organizations are aware of the fact that the crimes committed against humanity by a number of German physicians have destroyed their professional reputation throughout the world.

"The committee of the Chambers of Physicians of Western Germany has taken the following actions:

1. Since June 14, 1947, every doctor on obtaining his license takes the Hippocratic Oath as revised by this group.

2. On October 18, 1947, a resolution was passed condemning all crimes against humanity and all the German Physicians who had participated in the war crimes against humanity.

3. On November 29, 1947, the committee requested the German government to reinstate to full medical rights, as soon as possible, all those physicians who had been deprived of those rights by the National Socialistic government for reasons of race, religion or politics."

RESOLUTION OF THE MEDICAL CHAMBERS OF WESTERN GERMANY CONCERNING THE NUREMBERG TRIALS

"The German medical profession along with the peoples of the whole world were aghast to learn of the actions which were the basis of the Nuremberg trial of doctors. The German medical profession as a whole mourns for the victims sacrificed by a despotic regime which availed itself of science as one of its instruments and was assisted in so doing, by doctors. The doctors deeply regret that men out of their own rank committed such horrifying crimes.

"Now that the trial is over, every doctor will receive a copy of the conclusions reached by those German doctors designated as observers to the trial, and will then be able to form his own opinions. It is possible to state that compared to the number of doctors working in Germany, only a very small number of members of the medical profession share in these crimes. It is a part of a despotic regime that a criminal minority is entrusted with power over life and death.

"The German medical profession is aware of the wider dangers which are engendered in the errors of a few. It wants to formulate basic principles for the present and the future.

"Modern science cannot dispense with a complex machinery of research which is often incomprehensible to individual doctors. From this we conclude that the private interests of medical scholars (such as their quest for priority of discoveries) should take a secondary role where new incisive methods are being tried, such experiments to be submitted to a body of experts for their consent. This body would also explain the significance of such experiments to the public before they were tried on human beings.

"The trial also served to demonstrate the danger of interference of government authorities in medicine, since bureaucracies have no contact with the problems of doctors in their relationship with their patients. It was the N.S.D.A.P. and the army that tried to interfere with the freedom of the medical profession and to destroy it. It would be possible for foreign powers or the bureaucracy of the social services to act in a like manner. It is, therefore, fundamental to preserve the individuality and independent responsibility of the doctors in medical activities. Society must guarantee the doctor his sovereignty in his own field. In giving medical care, a doctor should not be subjected to any orders or directives from government, but should live up to his knowledge of science and professional standards of good conduct.

"Doctors, with the exception of members of the medical services of the State and the professors of universities should be prohibited from becoming officials, since civil service status is incompatible with the right of self-determination, which is the code of the medical profession. This applies especially to any medical work for military organizations. The position of doctors within public health services and within publicly owned clinics and hospitals should also be subjected to close scrutiny.

"After the experiences of the Nazi dictatorship the medical profession regards it as a duty to consider critically the effects on the medical profession of the present political and social conditions, which may imply the return of dangers similar to those of the Nazi regime. This critical attitude is indispensable for the preservation of a fundamental professional freedom and public interest.

"The German doctors are conscious of their duty for the welfare of their profession in all its many aspects.

"Bad Nauheim, the 18th of October, 1947."

The World Medical Association decided to accept this as a preliminary statement from the doctors of Western Germany and to inform them that as soon as they have carried out the promises expressed in their statement, and as soon as there is established a recognized medical association, the World Medical Association will be glad to enter into further negotiations with them.

MEDICINE AND SOCIETY

The signing of this declaration is, of course, only the first step the German profession must take to regain the confidence of the rest of the world. German doctors and, indeed, the doctors of every country where there is a tendency for political and social doctrines to develop at the expense of individual responsibility, should bear constantly in mind the moral aspect of medical research and practice. To quote again the British Medical Association's memorandum:

"Research in Medicine as well as its practice must never be separated from eternal moral values. Doctors must be quick to point out to their fellow members of society the likely consequences of policies that degrade

or deny fundamental human rights. The profession must be vigilant to observe and to combat developments which might again ensnare its members and debase the high purpose of its ideals. The medical crimes committed in the late war have shown only too convincingly how medical knowledge and progress, unless governed by humantarian motives, may become the instruments of wanton destruction in the pursuit of war.

"The influence of Medicine throughout a nation is often underestimated. Individually the doctor is more than the exponent of medical opinion and the technical expert. He is the confidant, the friend and the trusted adviser, and wields an influence far beyond the immediate realm of physical needs. Collectively the medical profession can cultivate throughout the world the growth of international amity."

The World Medical Association, which represents 500,000 doctors, should be able to exert influence in maintaining high professional standards in the countries of its member-associations. Through it the common responsibilities of doctors the world over to mankind and their common aspirations in the field of international friendship will find expression. It provides a channel for the interchange of information and ideas and for personal contacts between representative doctors in the different countries. Resolutions of its General Assembly should afford, on the one hand, moral support for national associations whose members may be experiencing a conflict between material interests and professional duty, and on the other hand, a warning to doctors who are in danger of allowing themselves to be lured from the path of duty.

THE TEACHING OF THE STUDENT

A good deal of responsibility devolves on the teachers of medical students. They must see that their teaching is permeated with the ideals of Medicine. They must help their students to honor the traditions of Medicine and to absorb its humanitarian purposes—the succor of the bodily and mental needs of the individual irrespective of class, race or creed; the cure of disease; the relief of suffering; the prolongation of human life; and the prevention of disease. In a word, the ultimate aim of medical practice must be, as the World Medical Association puts it in the list of its own objects, "to assist all peoples of the world to attain the highest possible level of health." The prospective doctor should be taught by both precept and practice that this aim must be pursued by the scientific method coupled with the spirit of charity and service.

BACK TO HIPPOCRATES

It used to be the custom for every doctor on graduation or on receiving a license to practice medicine to take the Hippocratic Oath. In many medical schools, however, this custom has fallen into disuse or has become a mere formality. The World Medical Association believes that the restoration of the taking of the Hippocratic Oath or of a suitable modern substitute as a serious part of the graduation or licensing ceremony would help to impress on newly-qualified doctors the fundamental ethics of medicine and to raise the general standard of professional conduct.

Although the forms of medical practice may change, and new medical knowledge become available, the spirit of the Hippocratic Oath endures, and it may, in every age and in every country, be accepted as the foundation of the conduct of every medical practitioner. It enjoins:

the brotherhood of medical men;

the motive of service for the good of patients;

the duty of curing, the greatest crime being cooperation in the destruction of life by murder, suicide, or abortion;

purity of living and honorable dealing;

professional secrecy for the protection of patients;

dissemination of medical knowledge and discovery for the benefit of mankind.

It is desirable that a uniform promise should be devised to be administered in every country to all practitioners when receiving authority to practice. The Association considered several different forms of undertaking in use in various countries and it recommended for the consideration of universites and licensing authorities the adoption of the following or a similar promise:

At the time of being admitted as Member of the Medical Profession

I solemnly pledge myself to consecrate my life to the service of humanity.

I will give to my teachers the respect and gratitude which is their due;

I will practice my profession with conscience and dignity;

The health of my patient will be my first consideration:

I will respect the secrets which are confided in me;

I will maintain by all the means in my power, the honor and the noble traditions of the medical profession;

My colleagues will be my brother;

I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient;

I will maintain the utmost respect for human life, from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity.

I make these promises solemnly, freely and upon my honor.

In view of the recent war crimes and the continued troubled state of the world, the giving of this promise by every newly qualified doctor should have a beneficial effect on his attitude to medical practice and its obligations. In the long run the common promise given by all doctors should afford a world-wide bond uniting them in a common service to humanity.

SUMMARY

1. The World Medical Association solemnly condemns the crimes committed against humanity since 1933 by German medical practitioners. It endorses the judicial punishment of such crimes.

2. The Association invited a representative organization of German doctors to make a public declaration acknowledging the participation of the German medical profession in prewar and war crimes and promising in the future to respect the personality, dignity and freedom of the human being (See page 9.)

3. Eternal vigilance on the part of all doctors and a full recognition of the influence of medicine on society are necessary to prevent the recurrence of such crimes as have been committed in Germany.

4. The traditional aims and ethics of medicine should pervade the medical curriculum.

5. It is desirable that a uniform oath or promise based on the spirit and content of the Hippocratic Oath should be subscribed to by every medical practitioner on receiving his medical degree or his license to practice.

FOR INSTRUCTION IN THE INTERNATIONAL MEDICAL CODE

(By J. Voncken, Liege, Belgium)

The degradation of the medical profession by German national socialism gave the opportunity to A. C. Ivy of Chicago to publish in the *Journal of the American Medical Association* an article of high moral importance. He concludes that it is necessary to complete the education of young doctors of medicine by inculcating them with the principles of medical ethics.

In our opinion it is a restriction to limit this instruction to the elementary principles of medical practice as it concerns the individual: it is not only in times of peace that the principles of medical ethics must be scrupulously observed: the dignity of human person and the respect it deserves make it imperative that these principles be maintained in an even more strict manner during war. This is the aim, which has been proposed for more than 20 years, by the International Committee of Military Medicine in view of the inadequacy of the texts of the humanitarian Conventions.

The experience of the great war of 1940–45 is decisive in this respect: two types of facts, of immense general importance from the point of view of the medical ideal, dominate all medicine during this period and it is in order to draw practical conclusions. Physicians have been condemned, even executed, in occupied countries for giving aid to the injured who were put in their care. Physicians have lent their cooperation and their science to the political authorities to perpetrate attacks on the life and the health of human beings. It is necessary at any price that under the present day circumstances efforts be made to try to create a superstate authority which can intervene to guarantee to the physician the free exercise of his noble profession and prevent his employment for criminal purposes. This is a sphere for international legislation.

But to create laws is not sufficient; it is necessary that the conscience of each individual be prepared to respect them. And if one succeeds in impressing the mind of each physician with the fundamental principles of medical ethics, it is certain that a great conquest will have been realized for the safeguarding of our civilization. The moral development of the physician, the education of his heart, the knowledge of his duties occupy an important place in the role which he will be called on to play. The conduct of the physician, if it conforms to the principles of pity and of humanity, can constitute a decisive element in the relations between peoples, even between belligerent peoples. Examples are not difficult to find where this can be realized in the camps of prisoners, civil or military, in the zones occupied by a victorious adversary, provided the physician is granted complete professional freedom. For all persons, whatever their nationality, their race and opinion or their religion, it will be a great comfort to be able to find in the physician the good missionary who helps and who eases his pain without danger, without risk, without menace of denunciation of secret accusation. In a general conflagration this will be the only fixed point of humanitarianism which can still give some hope in the midst of indescribable horror. When all the physicians of the world, under whatever political regime they may live, are convinced in their inner conscience that their two essential duties are first of all that of caring to the best of their ability for those who have been given into their care, friend or enemy, even in times of war, and then that they abstain from all acts which can injure the health of a neighbor and threaten his life, then finally we can find in the medical profession a precious aid for the battle against the spirit of barbarism and for halting the march on the road toward the abyss to which we have been led by the inconceivable aberration of Nazi medicine between 1940 and 1945. In order to realize this, it will be desirable that all schools and faculties of medicine in the world organize a course in international medical ethics which will specify the rights and duties of physicians in all circumstances of peace and of war. This course will be consecrated by a solemn oath such as is already demanded by the World Medical

Association; but, in our opinion, the administering of this oath is best to be accomplished under the Permanent Court of International Justice which in order to put this purpose into practice can delegate authority to the various faculties. Given the power of the Permanent Court of International Justice, the importance of the oath cannot be misunderstood by anybody and all perjury can be prosecuted and punished. This oath will be only the résumé of the international medical ethic, an attempt of codification of which has already been attempted by the International Committee of Military Medicine in a study which will be published very soon. In fact by a medico-jurisdical collaboration which has existed for more than 20 years, this committee has attempted to define the international position of the physician with the exclusive aim of safeguarding the rights of the wounded, the sick, prisoners and even the civil population. Through this privileged juridical position of the physician, which rests by definition above the general conflict of interests, we can attain notable results for the protection of the human person itself, for the combat against the crimes of "lese-humanité" and the maintenance of civilization.

Mr. CARTER. Mr. Speaker, if the gentleman will yield, I just want to state that, as ranking member of the subcommittee, my relationship with the chairman of the full committee and the chairman of the subcommittee has been excellent. We have had a chairman with whom one can work out problems, and I want to commend the gentleman for being able to take all of the troubles that many of us heap upon him, and still smile. It is my feeling, Mr. Speaker, that perhaps the Subcommittee on Health and the Environment works more than any other subcommittee in the House.

I hardly understand; it is difficult to see how the chairman of the subcommittee can put up with all of us, particularly with me.

Mr. ROGERS. May I say to the gentleman that it is very easy to put up with the gentleman from Kentucky because of the great contribution he has made. He is reasonable; he is trying to do what is best for the American people, and that has been consistently shown in his actions and in his support for bills to improve the health of the American people. It has been a joy to work with him and I shall, of course, treasure his friendship.

Mr. Speaker, I yield to the distinguished chairman of our committee, the gentleman from West Virginia (Mr. STAGGERS), who has given us such great support.

Mr. STAGGERS. Mr. Speaker, I thank the gentleman for yielding. I want to rise in support of the bill. It is a very good bill. Its title explains exactly what it is about: Health planning and resource development. These activities are highly needed in this country, because there are so many health problems that need our attention.

Mr. Speaker, I am not going to list all the reasons this bill should be supported; they were brought up very ably by the chairman of the subcommittee and the ranking minority member. I simply wish to add my strong endorsement.

I also wish to pay tribute to the chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS). As many members have already said, he has worked hard in his capacity as chairman, and has done a great service for America. He is going to be sorely missed, and I do not know who could take his place.

I would also like to compliment the gentleman from Kentucky (Mr. CARTER). It has been a partnership on health legislation. It has never been politics in any way. It has always been what is good for America. I want to compliment Dr. CARTER for this very much, because he has always asked not whether this is Democrat or Republican philosophy, but, is this good for this land. I think that is what all ought to be doing when we are legislating for America.

Mr. Speaker, I want to compliment both these Members as a team, and also the staffs, who have worked so hard. We have kept them working night and day, early in the morning and late at night. I urge every Member to vote for the bill. I hope Mr. COLLINS of Texas will also vote for it when the final vote is taken.

Mr. Speaker, I urge my colleagues in the House to join me in support of H.R. 11488, the Health Planning and Resources Development Amendments of 1978. This bill provides for the extension and amendment of titles XV and XVI of the Public Health Service Act to revise the authorities and requirements for Health Planning and Resources Development. It is the result of careful analysis of the existing health planning system and its strengths and its weaknesses by the Committee on Interstate and Foreign Commerce and its Subcommittee on Health and the Environment.

Mr. Speaker, our Nation faces many persistent health problems. High infant mortality in some areas, excess hospital capacity in others, maldistribution of physician resources, lack of preventive health care services, and rapidly rising health care costs are just a few of the many health care problems which demand solutions. Yet the importance and extent of each of these problems varies through the various regions of our country.

One of the major strengths of the health planning system which this bill extends is that it permits the identification of health problems and workable solutions at the local level. It establishes a process by which communities can work to achieve quality health care at reasonable costs through the participation of consumers and providers as well as local and State governmental agencies and officials. I believe these amendments strengthen that existing process and, therefore, help assure the success of health planning in our nation.

Mr. Speaker, authority for health planning under title XV and XVI of the Public Health Service Act expires on September 30, 1978. This bill will extend that authority for an additional 3 years and make necessary amendments. I urge you and the other Members of the House to vote favorably for this important legislation.

Mr. ROGERS. I thank the Chairman for his kind remarks. I too want to commend the staff on both sides. It has been hard work on all these health bills, and they have done a great job.

Mr. Speaker, I also want to mention that we hope to take up H.R. 12460, which is scheduled next, at the end of the health bills rather than next. That is the health centers amendments bill and we have cleared that with both sides of the aisle.

● Mr. BAUCUS. Mr. Speaker, I rise today to speak in support of the Health Planning and Resources Development Amendments of 1978. I have been very concerned with the issue of health planing and I believe this bill promotes a more effective and improved health planning process.

I would like to commend the subcommittee and the committee for favorably reporting that this bill should pass. I want to extend my special thanks to Mr. ROGERS for making these modifications of the proposed legislation. These changes indicate that we must address the unique health problems facing rural communities in our health planning proposals. We in Montana are especially concerned with rural health needs. And this legislation includes several provisions which will have a positive impact in improving the delivery of health services to rural communities not only in Montana, but all over the country.

In modifying this bill, the gentleman from Florida has incorporated several of the measures included in my bill, H.R. 122401, the Rural Health Needs Planning Act of 1978. I introduced this bill April 26, in an effort to place greater emphasis on rural health care needs and health planning. My bill asks for greater flexibility in applying the national guidelines for health planning to rural communities and underserved populations. And included in this legislation is a provision mandating that the national health planning guidelines take into account the needs and concerns of rural people.

A second provision in my bill amended the Public Health Service Act by expanding the National Council on Health Planning and Development. This measure adds an Assistant Secretary for Rural Development of USDA, increases consumer representation, and requires that some of those members come from urban and rural medically underserved populations. I am pleased that this provision has just been incorporated into the bill before us today.

Rural consumer representation on the statewide health coordinating council is a third provision of my bill which has just been incorporated into the health planning and resources development amendments.

Rural health care needs must be represented in any health planning legislation. I believe that this bill will significantly help in improving the health of our rural populations.

I would also like to take this opportunity to extend my thanks and best wishes to my colleague from Florida, Mr. ROGERS. His expertise and wisdom on health issues will be sorely missed in this body and I hope we can count on his advice and guidance in the future.●

● Mr. WOLFF. Mr. Speaker, I rise today in strong support of H.R. 11488, the Na-

tional Health Planning and Resources Development Amendments of 1978. This legislation, aimed at extending and strengthening the influence of community-based health planning activities, is essential if cost containment is to be realized in the health field.

Mr. Speaker, the bill now before us directly deals with the operations of the so-called health system agencies (HSA's). I am proud to represent in Congress an area which is serviced by an HSA—the Nassau-Suffolk HSA. I would like to take this opportunity to commend the Nassau-Suffolk HSA for its great strides in improving the health of the area's residents; increasing the accessibility, acceptability, continuity, and quality of health services; restraining increases in health care costs; and preventing unnecessary duplication of health resources in the area served by this dedicated group of people.

In this time of fiscal restraint, there needs to be an effective health planning system. Last year, this country spent $163 billion for health care, and by 1983, the Department of Health, Education, and Welfare estimates that the United States will spend $313 billion, if we do not intensify our efforts to rationally plan and effectively reduce costs.

I think the legislation before us is good legislation. It is money well spent. It is money well spent because I endorse the principles of the HSA network. Consumers and providers should actively participate in developing and assessing health policies and programs within local, State, and national institutions.

It is money well spent because health services should be provided in ways that respect individual dignity, values, and rights.

It is money well spent because quality health data are essential for planning, monitoring, and evaluation and should be collected in ways that avoid unnecessary duplication.

It is money well spent because I believe that health status among all population groups be improved to the maximum extent.

It is money well spent because health promotion and the prevention of illness and disability should be given priority attention by the health care system.

It is money well spent because the health care system should provide equal access to quality health care at a reasonable cost.

And it is money well spent because I believe a lack of income should not be a barrier to needed health care.

For these reasons, I support the legislation now before us. With its planning, cost containment, resource development, and review aspects, H.R. 11488 brings a community orientation and public accountability to the decisionmaking process in the health field. This bill has emerged as a realistic response to the complex economic and political forces that shape the health field. It is worthy of the support of my colleagues and I urge an overwhelming vote of approval.●

Mr. ROGERS. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 11488, as amended.

The question was taken.

Mr. ROUSSELOT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PSYCHOTROPIC SUBSTANCES ACT OF 1978

Mr. ROGERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12008) to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to meet obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12008

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Psychotropic Substances Act of 1978".

SEC. 2. The Congress makes the following findings and declarations:

(1) The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances.

(2) The United States has joined with other countries in executing an international treaty, entitled the Convention on Psychotropic Substances and signed at Vienna, Austria, on February 21, 1971, which is designed to establish suitable controls over the manufacture, distribution, transfer, and use of certain psychotropic substances. The Convention is not self-executing, and the obligations of the United States thereunder may only be performed pursuant to appropriate legislation. It is the intent of the Congress that the amendments made by this Act, together with existing law, will enable the United States to meet all of its obligations under the Convention and that no further legislation will be necessary for that purpose.

(3) In implementing the Convention on Psychotropic Substances, the Congress intends that, consistent with the obligations of the United States under the Convention, control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970. This will insure that (A) the availability of psychotropic substances to manufacturers, distributors, dispensers, and researchers for useful and legitimate medical and scientific purposes will not be unduly restricted; (B) nothing in the Convention will interfere with bona fide research activities; and (C) nothing in the Convention will interfere with ethical medical practice in this country as determined by the Secretary of Health, Education, and Welfare on the basis of a consensus of the views of the American medical and scientific community.

SEC. 3. (a) Subsection (d) of section 201 of the Controlled Substances Act (21 U.S.C. 811(d)) is amended by inserting "(1)" after "(d)" and by adding the following new paragraphs at the end thereof:

"(2)(A) Whenever the Secretary of State receives notification from the Secretary-General of the United Nations that information has been transmitted by or to the World Health Organization, pursuant to article 2 of the Convention on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it fram the schedules, the Secretary of State shall immediately transmit the notice to the Secretary of Health, Education, and Welfare who shall publish it in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the scientific and medical evaluations which he is to prepare respecting such drug or substance. The Secretary of Health, Education, and Welfare shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization respecting the drug or substance with respect to which a notice was transmitted under this subparagraph.

"(B) Whenever the Secretary of State receives information that the Commission on Narcotic Drugs of the United Nations proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit timely notice to the Secretary of Health, Education, and Welfare of such information who shall publish a summary of such information in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the recommendation which he is to furnish, pursuant to this subparagraph, respecting such proposal. The Secretary of Health, Education, and Welfare shall evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

"(3) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to a schedule specified in the notification or receives notification (referred to in this subsection as a 'schedule notice') that existing legal controls applicable under this title to a drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act do not meet the requirements of the schedule of the Convention in which such drug or substance has been placed, the Secretary of Health, Education, and Welfare, after consultation with the Attorney General, shall first determine whether existing legal controls under this title applicable to the drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act, meet the requirements of the schedule specified in the notification or schedule notice and shall take the following action:

"(A) If such requirements are met by such existing controls but the Secretary of Health, Education, and Welfare nonetheless believes that more stringent controls should be applied to the drug or substance, the Secretary shall recommend to the Attorney General

that he initiate procedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply such controls.

"(B) If such requirements are not met by such existing controls and the Secretary of Health, Education, and Welfare concurs in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

"(C) If such requirements are not met by such existing controls and the Secretary of Health, Education, and Welfare does not concur in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall—

"(i) if he deems that additional controls are necessary to protect the public health and safety, recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply such additional controls;

"(ii) request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the Convention, pursuant to paragraph 7 of article 2 of the Convention, to the Secretary-General of the United Nations;

"(iii) request the Secretary of State to transmit a notice of qualified acceptance as prescribed in clause (ii) and request the Secretary of State to ask for a review by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the Convention, of the scheduling decision; or

"(iv) in the case of a schedule notice, request the Secretary of State to take appropriate action under the Convention to initiate proceedings to remove the drug or substance from the schedules under the Convention or to transfer the drug or substance to a schedule under the Convention different from the one specified in the schedule notice.

"(4)(A) If the Attorney General determines, after consultation with the Secretary of Health, Education, and Welfare, that proceedings initiated under recommendations made under subparagraph (B) or (C)(i) of paragraph (3) will not be completed within the time period required by paragraph 7 of article 2 of the Convention, the Attorney General, after consultation with the Secretary and after providing interested persons opportunity to submit comments respecting the requirements of the temporary order to be issued under this sentence, shall issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this title which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. In the case of proceedings initiated under subparagraph (B) of paragraph (3), the Attorney General, concurrently with the issuance of such order, shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations pursuant to paragraph 7 of article 2 of the Convention. A temporary order issued under this subparagraph controlling a drug or other substance subject to proceedings initiated under subsections (a) and (b) of this section shall expire upon the effective date of the application to the drug or substance of the controls resulting from such proceedings.

"(B) After a notice of qualified acceptance of a scheduling decision with respect to a drug or other substance is transmitted to the Secretary-General of the United Nations in accordance with clause (ii) or (iii) of paragraph (3)(C) or after a request has been made under clause (iv) of such paragraph with respect to a drug or substance described in a schedule notice, the Attorney General, after consultation with the Secretary of Health, Education, and Welfare and after providing interested persons opportunity to submit comments respecting the requirements of the order to be issued under this sentence, shall issue an order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention in the case of a drug or substance for which a notice of qualified acceptance was transmitted or whichever the Attorney General determines is appropriate in the case of a drug or substance described in a schedule notice. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this title which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. If, as a result of a review under paragraph 8 of article 2 of the Convention of the scheduling decision with respect to which a notice of qualified acceptance was transmitted in accordance with clause (ii) or (iii) of paragraph (3)(C)—

"(i) the decision is reversed, and

"(ii) the drug or substance subject to such decision is not required to be controlled under schedule IV or V to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention,

the order issued under this subparagraph with respect to such drug or substance shall expire upon receipt by the United States of the review decision. If, as a result of action taken pursuant to action initiated under a request transmitted under clause (iv) of paragraph (3)(C), the drug or substance with respect to which such action was taken is not required to be controlled under schedule IV or V, the order issued under this paragraph with respect to such drug or substance shall expire upon receipt by the United States of a notice of the action taken with respect to such drug or substance under the Convention.

"(C) An order issued under subparagraph (A) or (B) may be issued without regard to the findings required by subsection (a) of this section or by section 202(b) and without regard to the procedures prescribed by subsection (a) or (b) of this section.

"(5) Nothing in the amendment made by the Psychotropic Substance Act of 1978 or the regulations or orders promulgated thereunder shall be construed to preclude requests by the Secretary of Health, Education, and Welfare or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention, for review of scheduling decisions under such Convention, based on new or additional information.".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end the following:

"(29) The term 'Convention on Psychotropic Substances' means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term 'Single Convention on Narcotic Drugs' means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.".

(c) For the purpose of carrying out the minimum United States obligations under paragraph 7 of article 2 of the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, with respect to pipradrol and SPA (also known as (-)-1-dimethylamino - 1,2 - diphenylethane), the Attorney General shall by order, made without regard to sections 201 and 202 of the Controlled Substances Act, place such drugs in schedule IV of such Act.

SEC. 4. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812(d)) is amended by striking out "and" before "(2)" and by adding the following before the period at the end thereof: ", and (3) such exception does not conflict with United States obligations under the Convention on Psychotropic Substances".

SEC. 5. Section 307 of the Controlled Substances Act (21 U.S.C. 827) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) In addition to the reporting and recordkeeping requirements under any provision of this title, each manufacturer registered under section 303 shall, with respect to narcotic and nonnarcotic controlled substances manufactured by it, make such reports to the Attorney General, and maintain such records, as the Attorney General may require to enable the United States to meet its obligations under articles 19 and 20 of the Single Convention on Narcotic Drugs and article 16 of the Convention on Psychotropic Substances. The Attorney General shall administer the requirements of this subsection in such a manner as to avoid the unnecessary imposition of duplicative requirements under this title on manufacturers subject to the requirements of this subsection.".

SEC. 6. Section 1002(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(b)) is amended by inserting immediately before the period at the end of paragraph (2) the following: ", except that if a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention".

SEC. 7. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953(e)) is amended—

(1) by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof a semicolon;

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (3) the following new paragraph:

"(4) in any case when a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention, instead of the invoice required by paragraphs (2) and (3) of this subsection.".

SEC. 8. (a) Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end thereof the following new section:

"APPLICATION OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS

"SEC. 412. Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit the provision of treatment, education, or rehabilitation as alternatives to conviction or criminal penalty for offenses involving any drug or other substance subject to control under any such treaty or agreement.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting—

"Sec. 412. Application of treaties and other international agreements."

immediately after

"Sec. 411. Proceedings to establish previous convictions.".

SEC. 9. (a) Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended by redesignating subsection (d) as subsection (e), and by adding after subsection (c) the following new subsection:

"(d) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.".

(b) Section 303 of the Public Health Service Act (42 U.S.C. 242a) is amended by redesignating subsection (b) as subsection (c), and by adding after subsection (a) the following new subsection:

"(b) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.".

SEC. 10. Subsection (f) of section 303 of the Controlled Substances Act (21 U.S.C. 823(f)) is amended by adding at the end the following sentence: "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title.".

SEC. 11. Subsection (c) of section 307 of the Controlled Substances Act (21 U.S.C. 827(c)) is amended by adding the following after and below paragraph (3): "Nothing in the Convention on Psychotropic Substances shall be construed as superseding or otherwise affecting the provisions of paragraph (1)(B), (2), or (3) of this subsection.".

SEC. 12. Subsection (n) of section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) is amended by adding the following new sentence at the end thereof: "Nothing in the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, shall be construed to prevent drug price communications to consumers.".

SEC. 13. This Act and the amendments made by this Act shall take effect on the date the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, enters into force in respect to the United States.

The SPEAKER pro tempore. Is a second demanded?

Mr. CARTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) will be recognized for 20 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 12008.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, I am pleased to present to the House of Representatives H.R. 12008, the Psychotropic Substances Act of 1978. This bill was unanimously reported by the Committee on Interstate and Foreign Commerce. Ten members of the Subcommittee on Health and the Environment and 11 members of the Select Committee on Narcotics Abuse and Control joined me in sponsoring this legislation and its precursor, H.R. 9796. Fifteen members of the Senate, including Senators CULVER, EASTLAND, BAYH, KENNEDY, HATHAWAY, and PERCY introduced companion legislation which was recently passed in the Senate. The Subcommittee on Health and the Environment held 1 day of hearings on this legislation this year and 1 day of hearings during the previous Congress on comparable legislation.

H.R. 12008 amends the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other U.S. laws to prescribe administrative procedures to meet our obligations under the 1971 Convention on Psychotropic Substances upon ratification of that international agreement by the United States.

The Convention on Psychotropic Substances is an international agreement aimed at halting the distribution and use of abusable psychotropic substances for purposes other than legitimate medical and scientific ones. The United States is currently not a party to the Convention on Psychotropic Substances which became effective in 1976, although it has been a party to the 1961 Single Convention on Narcotic Drugs since 1967. The psychotropic substances controlled under this convention include the hallucinogens, amphetamines, barbiturates, and tranquilizers.

The Psychotropic Substances Convention is not self-executing, and thus requires parties to it to amend their laws in a manner necessary to meet its requirements. It requires parties to it to provide for regulatory controls respecting the manufacture, distribution, exportation, and importation of these substances.

Although most of these requirements are met by existing U.S. laws governing controlled substances, some conforming changes in these laws are proposed in this legislation to be made to meet all these requirements and to prescribe the administrative procedures for meeting these requirements. The primary purpose of the administrative procedures spelled out in section 3 of the bill is to assure adequate notice and opportunity for input by the scientific, medical, industrial, and consumer interests alike, in proceedings to determine what position the United States should take respecting proposed international decisions to control psychotropic substances and to determine what types of controls are necessary, if any, under U.S. laws and regulations to meet the requirements of international control decisions once they are made. The second major purpose of the administrative procedures in section 3 of the bill is to prescribe the respective duties of the State Department, the Justice Department, and the Department of Health, Education, and Welfare at each stage of deliberation and implementation by the United States of proposed and final requirements for the control of psychotropic substances under the convention. H.R. 12008 reinforces the provisions of existing controlled substances laws that all determinations respecting medical and scientific matters, as they affect the controls required in our laws to meet the requirements of the convention, are to be made by the Secretary of HEW. HEW's medical and scientific determinations are binding on the representatives of the State Department in international negotiations under the convention and upon the Department of Justice in determining which schedules of controls under the Controlled Substances Act are appropriate with respect to meeting the convention's requirements.

I believe passage of this legislation and ratification of the convention by the United States is vital to our efforts aimed at controlling the trafficking and abuse of dangerous drugs at home and abroad. The President has requested us to enact this legislation in his message to Congress on Drug Abuse and his White House Domestic Council and Office of Management and Budget Advisors, Secretary Califano, Attorney General Bell, and Secretary Vance unanimously support this bill.

I want to thank the heads and staff members of the following offices and agencies for their assistance on this legislation: The Office of Drug Abuse Policy and Domestic Policy staff of the White House, the Drug Enforcement Administration of the Justice Department, the National Institute on Drug Abuse, and the Food and Drug Administration of the Department of Health, Education, and Welfare, and the Office of International Narcotic Control Matters of the State Department.

Mr. Speaker, I want to take this opportunity to thank the chairman of the full committee (Mr. STAGGERS) for his support of programs aimed at curbing drug trafficking. I particularly want to thank the distinguished ranking minority member of the subcommittee, Dr. CARTER for his leadership and efforts in bringing this bill to the floor of the House. Finally, I want to thank all the other members of the Subcommittee on Health and the Environment, Mr. SATTERFIELD, Mr. PREYER, Mr. SCHEUER, Mr. FLORIO, Mr. MAGUIRE, Mr. MARKEY, Mr. WALGREN, Mr. BROYHILL, Mr. MADIGAN, and Mr. SKUBITZ, for their work on this bill.

I urge all the Members of the House of Representatives to join me in voting for this legislation to strengthen our efforts against drug abuse. If the United States is to have any credibility in its negotiations with narcotic—plant—producing countries to persuade them to control cultivation or eradicate these

plants, it must demonstrate its willingness at the international level to control the illegitimate distribution of the psychotropic drugs it produces.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 12008, the Psychotropic Substance Act of 1978. The bill provides for the necessary amendments to the Comprehensive Drug Abuse and Control Act of 1970 and other laws relating to drugs which will enable the United States to meet its obligations under the Convention on Psychotropic Substances. In this regard, the bill essentially provides a vehicle for the United States to recognize and participate in international efforts to control the distribution and abuse of psychotropic drugs for other than legitimate medical purposes. Importantly, the bill does so while making only minor changes in our present drug abuse control laws.

The United States has a long history of involvement in international efforts to control the illicit use of drugs. In fact, it was largely due to the initiative of President Theodore Roosevelt that the International Opium Commission met in Shanghai in 1909 to begin the process of instituting international controls on drug abuse. Since that time the United States has consistently been in the forefront of international efforts to control drug abuse, including the international opium conventions of 1912 and 1925, the 1931 convention limiting the manufacture of narcotic drugs, the 1936 Narcotics Convention, and the 1961 Single Convention on Narcotic Drugs. Moreover, the United States presently spends $29.4 million to fund 666 law enforcement positions overseas and has entered into 9 bilateral cooperative agreements in order to assist other nations in their illicit drug control efforts.

This country has taken this position for sound domestic reasons. Abuse of drugs continues to be a serious problem in the United States.

In material terms, the cost to the Nation runs into the billions of dollars each year. But in terms of human suffering, destroyed lives, and broken homes, the cost is incalculable. This domestic problem has always had international implications since many of the serious drugs of abuse originate in foreign countries. It has long since been recognized that the effective curtailment of trafficking in illegal substances depends heavily on control being exerted as closely as possible to the source. Once the substances have reached our 96,000 mile border, or have been distributed in the United States, control becomes a massive problem for law enforcement. Thus the burden on our own law enforcement agencies can be reduced significantly to the extent that foreign governments are willing and able to cooperate in the control of drug abuse in their own countries.

Mr. Speaker, all of the heroin, cocaine, and hashish used in this country comes from abroad. In the case of certain stimulants and depressants, legally manufactured here and in Europe, substantial quantities of these drugs are illegally diverted and distributed internationally through illegal channels. For example, in August of 1977, Mexican police seized 325 kilograms of methaqualone, a depressant. Our drug enforcement administration traced the drug back to the Federal Republic of Germany via Switzerland where the trail ended. In another example, again involving methaqualone, the DEA seized 4 kilograms of methaqualone in Miami which were being smuggled in from the Netherlands. The point is that the illicit use of drugs is an international problem which demands international solutions.

Mr. Speaker, I had the honor of being a member of the U.S. delegation to the Convention of Pyschotropic Drugs in Vienna in 1971. Because of the serious international implications of drug abuse, I and the other members of the U.S. delegation strongly urged strict controls of psychotropic substances. Yet, at this point in time, 7 years have passed and the United States has not yet implemented the terms of the convention—while 49 other countries have done so. I believe that it is imperative that we ratify the convention, and in so doing, notify the international community of our serious commitment to strong cooperative efforts to combat this problem. I am convinced that this step will enhance our ability to persuade other nations to cooperate in mutual efforts to interdict the supply of both narcotic and psychotropic drugs at their source, as well as improving the international effort to reduce the toll of human suffering caused by drug abuse.

Mr. COLLINS of Texas. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Speaker, it is my understanding that there is no money of any type, no funds requested in any way in this bill?

Mr. CARTER. The distinguished gentleman from Texas certainly is correct. He can keep every penny he has in his pocket. He will not lose a dime.

Mr. COLLINS of Texas. This is simply so we can work with the Senate?

Mr. CARTER. This is simply to conform to the 1971 convention adopted in Vienna. I happened to be present at that convention. There are certain regulations with which we should comply.

Mr. COLLINS of Texas. Does the gentleman have any doubt or any questions as to whether we should adopt this?

Mr. CARTER. If I had any doubt I would not be here speaking for it.

If there is something with which we do not agree, within 2 years we can remove ourselves from the convention.

Mr. COLLINS of Texas. I thank the gentleman from Kentucky.

Mr. CARTER. I thank my great friend, the gentleman from Texas.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. I thank the gentleman from Kentucky for yielding.

Mr. Speaker, I rise in support of H.R. 12008, the Psychotropic Substances Act of 1978. As cosponsor of this measure, I commend the distinguished chairman of the Subcommittee on Health and the Environment, the gentleman from Florida (Mr. ROGERS) and the ranking minority member of the subcommittee, the gentleman from Kentucky (Mr. CARTER) for their leadership on this important issue, as well as to commend the distinguished chairman of the parent committee—the Interstate and Foreign Commerce Committee—the gentleman from West Virginia (Mr. STAGGERS) and the ranking minority member, the gentleman from Ohio (Mr. DEVINE) for bringing H.R. 12008 before the House today for our consideration.

H.R. 12008 amends the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to meet this Nation's obligation under the 1971 Convention on Psychotropic Substances, a multinational agreement relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances.

The 1971 Psychotropic Convention, which is the first attempt to multinationally control psychotropic drugs, became effective in 1976. It is not a self-executing agreement but requires domestic legislation to implement the treaty. Although this Nation was an active participant in the formulation of the 1971 convention and is a signatory to that agreement, the Senate has postponed its advice and consent until our domestic drug laws are amended to conform to the 1971 convention.

Under the leadership of the gentleman from New York (Mr. WOLFF), the Select Committee on Narcotics Abuse and Control, of which I am a member, recently held hearings on Phencyclidine, commonly known as PCP or "angel dust," the most dangerous hallucinatory, psychotic schizophrenic inducing drug on the market to date, and on the advertising, detailing, and medical prescribing practices of the psychotropic drug industry. And as the author of H.R. 11727, that would place PCP into schedule I of the Controlled Substances Act and that would establish mandatory minimum prison sentences for those who illicitly manufacture, dispense, or distribute PCP or any of its derivates, variants or analogues, it is my opinion that H.R. 12008 is vital in our Nation's efforts to multinationally wage "war" on drug abuse. This legislative proposal is crucial to effectuate the ratification process of the 1971 Psychotropic Convention, to meet our obligations under that convention, and to join with the 49 other nations, who as of May 1, 1978, have ratified or acceded to the convention. Since 1967, the United States has been a party to the 1961 Convention on Narcotic Drugs. In order to attack the unlawful manufacture of psychotropic drugs on a multinational level, it is necessary for Congress to pass H.R. 12008, thereby facilitating the ratification process, and to demonstrate to the world our commitment to waging "war" on drug abuse at the multinational level.

Mr. Speaker, H.R. 12008 is not controversial. The proposal specifically states that our Nation's obligations under the convention can be met by passage of this measure and that no further legislation would be necessary to accom-

plish the purposes of the 1971 convention. The President in his August 2, 1977, message on drug abuse, recommended that the Senate give its advice and consent to the 1971 convention.

Accordingly, Mr. Speaker, I urge my colleagues to support H.R. 12008, a measure that also has the support of the Departments of State, Justice, and Health, Education, and Welfare the three departments that would be responsible for carrying out the administrative requirements to implement the 1971 Psychotropic Convention and a measure that would assist this Nation in domestically and internationally regulating the unlawful manufacture, distribution, importation, and exportation of psychotropic substance.

Mr. CARTER. Mr. Speaker, I appreciate the remarks of the gentleman from New York, and again yield myself such time as I may consume, just to say that I appreciate the very fine remarks of the distinguished gentleman from New York who is a studious and good Representative of the area of New York from which he was elected.

I urge passage of this legislation.

● Mr. STAGGERS. Mr. Speaker, I urge all Members to support H.R. 12008 which amends the Controlled Substances Act and other laws to implement the 1971 Convention on Psychotropic Substances upon its ratification by the United States.

The Convention on Psychotropic Substances is an international agreement aimed at halting the distribution and use of abusable psychotropic substances for purposes other than legitimate medical and scientific ones.

The Subcommittee on Health and the Environment held hearings on this legislation and it was unanimously reported by the Committee on Interstate and Foreign Commerce.

I believe passage of this legislation and ratification of the Convention by the United States is vital to our efforts aimed at controlling the trafficking and abuse of dangerous drugs at home and abroad.

Mr. Speaker, I urge you and the other Members of the House to vote favorably for this bill.●

● Mr. WOLFF. Mr. Speaker, I rise in support of H.R. 12008 and I would like to commend the distinguished chairman of the Health Subcommittee for both his leadership and his committee's exemplary work on this issue. I am sure that I speak for all of us in saying that he will be missed in the 96th Congress.

This bill constitutes prerequisite legislation which will permit the Senate to ratify the 1971 Convention on Psychotropic Substances. This Convention is not self-executing, and this bill will conform our laws to the requirements of the treaty. The result will be to allow the United States to join with scores of other nations in halting the flow of psychotropic substances across international borders for illicit purposes. I think it is also important to stress that the bill will not place limitations on the legitimate use and research of psychoactive drugs: rather it will form a part of the roadblock in front of those who would traffic in them for personal profit and encourage their abuse.

The Select Committee on Narcotics Abuse and Control, which I have the privilege of chairing, recently held hearings on the question of the abuse of psychoactive drugs. The abuse of these legitimately produced drugs far outstrips the abuse of other drugs, including both heroin and cocaine. Psychotropic drugs constitute this country's number one drugs of abuse. The Select Committee's recent hearings, as well as hearings on the prescribing practices of these drugs scheduled for tomorrow, demonstrate that the abuse of psychoactive substances has become a phenomenon common to many countries. Only through international cooperation and coordination, which this legislation will facilitate, can we begin to bring this serious problem under control.

The administration has given its full and complete support of this legislation. The other body approved companion legislation by voice vote several months ago. The full House Committee on Interstate and Foreign Commerce ordered this bill reported by a unanimous vote. I cannot urge my colleagues strongly enough to follow suit and pass this vitally important measure.●

Mr. ROGERS. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore (Mr. BEVILL). The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12008, as amended.

The question was taken; and—two-thirds having voted in favor thereof—the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. ROGERS. I ask unanimous consent to take from the Speaker's table a similar Senate bill (S. 2399), to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to meet obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Psychotropic Substances Act of 1978".

TITLE I—ENABLING PROVISIONS FOR THE CONVENTION ON PSYCHOTROPIC SUBSTANCES

SEC. 101. The Congress makes the following findings and declarations:

(1) The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances.

(2) The United States has joined with other countries in executing an international treaty, entitled the Convention on Psychotropic Substances and signed at Vienna, Austria, on February 21, 1971, which is designed to establish suitable controls over the manufacture, distribution, transfer, and use of certain psychotropic substances. The Convention is not self-executing, and the obligations of the United States thereunder may only be performed pursuant to appropriate legislation. It is the intent of the Congress that the amendments made by this Act, together with existing law, will enable the United States to meet all of its obligations under the Convention and that no further legislation will be necessary for that purpose.

(3) In implementing the Convention on Psychotropic Substances, the Congress intends that, consistent with the obligations of the United States under the Convention, control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970. This will insure that (A) the availability of psychotropic substances to manufacturers, distributors, dispensers, and researchers for useful and legitimate medical and scientific purposes will not be unduly restricted; (B) nothing in the Convention will interfere with bona fide research activities; and (C) nothing in the Convention will interfere with ethical medical practice in this country as determined by the Secretary of Health, Education, and Welfare on the basis of a consensus of the views of the American medical and scientific community.

SEC. 102. (a) Subsection (d) of section 201 of the Controlled Substances Act (21 U.S.C. 811(d)) is amended by inserting "(1)" after "(d)" and by adding the following new paragraphs at the end thereof:

"(2)(A) Whenever the Secretary of State receives notification from the Secretary-General of the United Nations that information has been transmitted by or to the World Health Organization, pursuant to article 2 of the Convention on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall immediately transmit the notice to the Secretary of Health, Education, and Welfare who shall publish it in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the scientific and medical evaluations which he is to prepare respecting such drug or substance. The Secretary of Health, Education, and Welfare shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization respecting the drug or substance with respect to which a notice was transmitted under this subparagraph.

"(B) Whenever the Secretary of State receives information that the Commission on Narcotic Drugs of the United Nations proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State

shall transmit timely notice to the Secretary of Health, Education, and Welfare of such information who shall publish a summary of such information in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the recommendation which he is to furnish, pursuant to this subparagraph, respecting such proposal. The Secretary of Health, Education, and Welfare shall evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

"(3) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to a schedule specified in the notification or receives notification (referred to in this subsection as a 'schedule notice') that existing legal controls applicable under this title to a drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act do not meet the requirements of the schedule of the Convention in which such drug or substance has been placed, the Secretary of Health, Education, and Welfare, after consultation with the Attorney General, shall first determine whether existing legal controls under this title applicable to the drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act, meet the requirements of the schedule specified in the notification or schedule notice and shall take the following action:

"(A) If such requirements are met by such existing controls but the Secretary of Health, Education, and Welfare nonetheless believes that more stringent controls should be applied to the drug or substance, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply such controls.

"(B) If such requirements are not met by such existing controls and the Secretary of Health, Education, and Welfare concurs in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

"(C) If such requirements are not met by such existing controls and the Secretary of Health, Education, and Welfare does not concur in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall—

"(i) if he deems that additional controls are necessary to protect the public health and safety, recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply such additional controls;

"(ii) request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the Convention, pursuant to paragraph 7 of article 2 of the Convention, to the Secretary-General of the United Nations;

"(iii) request the Secretary of State to transmit a notice of qualified acceptance as prescribed in clause (ii) and request the Secretary of State to ask for a review by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the Convention, of the scheduling decision; or

"(iv) in the case of a schedule notice, request the Secretary of State to take appropriate action under the Convention to initiate proceedings to remove the drug or substance from the schedules under the Convention or to transfer the drug or substance to a schedule under the Convention different from the one specified in the schedule notice.

"(4)(A) If the Attorney General determines, after consultation with the Secretary of Health, Education, and Welfare, that proceedings initiated under recommendations made under subparagraph (B) or (C)(i) of paragraph (3) will not be completed within the time period required by paragraph 7 of article 2 of the Convention, the Attorney General, after consultation with the Secretary and after providing interested persons opportunity to submit comments respecting the requirements of the temporary order to be issued under this sentence, shall issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this title which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. In the case of proceedings initiated under subparagraph (B) of paragraph (3), the Attorney General, concurrently with the issuance of such order, shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations pursuant to paragraph 7 of article 2 of the Convention. A temporary order issued under this subparagraph controlling a drug or other substance subject to proceedings initiated under subsections (a) and (b) of this section shall expire upon the effective date of the application to the drug or substance of the controls resulting from such proceedings.

"(B) After a notice of qualified acceptance of a scheduling decision with respect to a drug or other substance is transmitted to the Secretary-General of the United Nations in accordance with clause (ii) or (iii) of paragraph (3)(C) or after a request has been made under clause (iv) of such paragraph with respect to a drug or substance described in a schedule notice, the Attorney General, after consultation with the Secretary of Health, Education, and Welfare and after providing interested persons opportunity to submit comments respecting the requirements of the order to be issued under this sentence, shall issue an order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention in the case of a drug or substance for which a notice of qualified acceptance was transmitted or whichever the Attorney General determines is appropriate in the case of a drug or substance described in a schedule notice. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this title which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. If, as a result of a review under paragraph 8 of article 2 of the Convention of the scheduling decision with respect to which a notice of qualified acceptance was transmitted in accordance with clause (ii) or (iii) of paragraph (3)(C)—

"(i) the decision is reversed, and

"(ii) the drug or substance subject to such decision is not required to be controlled under schedule IV or V to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention,

the order issued under this subparagraph with respect to such drug or substance shall expire upon receipt by the United States of the review decision. If, as a result of action taken pursuant to action initiated under a request transmitted under clause (iv) of paragraph (3)(C), the drug or substance with respect to which such action was taken is not required to be controlled under schedule IV or V, the order issued under this paragraph with respect to such drug or substance shall expire upon receipt by the United States of a notice of the action taken with respect to such drug or substance under the Convention.

"(C) An order issued under subparagraph (A) or (B) may be issued without regard to the findings required by subsection (a) of this section or by section 202(b) and without regard to the procedures prescribed by subsection (a) or (b) of this section.

"(5) Nothing in the amendments made by the Psychotropic Substances Act of 1978 or the regulations or orders promulgated thereunder shall be construed to preclude requests by the Secretary of Health, Education, and Welfare or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention, for review of scheduling decisions under such Convention, based on new or additional information.".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end the following:

"(29) The term 'Convention on Psychotropic Substances' means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term 'Single Convention on Narcotic Drugs' means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.".

(c) For the purpose of carrying out the minimum United States obligations under paragraph 7 of article 2 of the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, with respect to pipradrol and SPA (also known as (-)-1 - dimethylamino-1,2-diphenylethane), the Attorney General shall by order, made without regard to sections 201 and 202 of the Controlled Substances Act, place such drugs in schedule IV of such Act.

SEC. 103. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812 (d)) is amended by striking out "and" before "(2)" and by adding the following before the period at the end thereof: ", and (3) such exception does not conflict with United States obligations under the Convention on Psychotropic Substances".

SEC. 104. Section 307 of the Controlled Substances Act (21 U.S.C. 827) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) In addition to the reporting and recordkeeping requirements under any other provision of this title, each manufacturer registered under section 303 shall, with respect to narcotic and nonnarcotic controlled substances manufactured by it, make such reports to the Attorney General, and maintain such records, as the Attorney General may require to enable the United States to meet its obligations under articles 19 and 20 of the Single Convention on Narcotic Drugs and article 16 of the Convention on Psychotropic Substances. The Attorney General shall administer the requirements of this subsection in such a manner as to avoid the unnecessary imposition of duplicative requirements under this title on manufacturers subject to the requirements of this subsection.".

SEC. 105. Section 1002(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(b)) is amended by inserting immediately before the period at the end of paragraph (2) the following: ", except that if a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed

by regulation of the Attorney General, as are required by the Convention".

SEC. 106. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953(e)) is amended—

(1) by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof a semicolon;

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding the following new paragraph:

"(4) in any case when a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention, instead of the invoice required by paragraphs (2) and (3) of this subsection.".

SEC. 107. (a) Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end thereof the following new section:

"APPLICATION OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS

"SEC. 412. Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit the provision of treatment, education, or rehabilitation as alternatives to conviction or criminal penalty for offenses involving any drug or other substance subject to control under any such treaty or agreement.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting—

"Sec. 412. Application of treaties and other international agreements."

immediately after

"Sec. 411. Proceedings to establish previous convictions.".

SEC. 108. (a) Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended by redesignating subsection (d) as subsection (e), and by adding after subsection (c) the following new subsection:

"(d) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.".

(b) Section 303 of the Public Health Service Act (42 U.S.C. 242a) is amended by redesignating subsection (b) as subsection (c), and by adding after subsection (a) the following new subsection:

"(b) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.".

SEC. 109. Subsection (f) of section 303 of the Controlled Substances Act (21 U.S.C. 823 (f)) is amended by adding at the end the following sentence: "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title.".

SEC. 110. Subsection (c) of section 307 of the Controlled Substances Act (21 U.S.C. 827 (c)) is amended by adding the following after and below paragragh (3): "Nothing in the Convention on Psychotropic Substances shall be construed as superseding or otherwise affecting the provisions of paragraph (1) (B), (2), or (3) of this subsection.".

SEC. 111. Subsection (n) of section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) is amended by adding the following new sentence at the end thereof: "Nothing in the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, shall be construed to prevent drug price communications to consumers.".

SEC. 112. This title and the amendments made by this title shall take effect on the date the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, enters into force in respect to the United States.

TITLE II—PCP CRIMINAL PENALTIES AND PIPERIDINE REPORTING

SEC. 201. Subsection (b) of section 401 of the Controlled Substances Act (21 U.S.C. 841 (b)) is amended—

(a) by inserting after the phrase "such person shall" in the first sentence of paragraph (1)(B) the following: ", except as provided in paragraphs (4) and (5) of this subsection,", and

(b) by adding after paragraph (4) the following new paragraph:

"(5) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by manufacturing, distributing, or possessing with intent to manufacture or distribute, except as authorized by this title or title III, phencyclidine, shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under paragraph (1)(B) of this section or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term if imprisonment of not more than 20 years, a fine of not more than $50,000 or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment. For the purposes of this paragraph, 'phencyclidine' means 1-(1-phenylcyclohexyl) piperidine, its salts and any analog, derivative, or variant of 1-(1-phenylcyclohexyl) piperidine that is in a schedule pursuant to section 202 of this title.".

SEC. 202. The Controlled Substances Act (Subchapter I of chapter 13 of title 21 of the United States Code) is amended by adding at the end thereof the following new part:

"PART II—PIPERIDINE REPORTING

"§ 800. Reporting requirement

"(a) It shall be unlawful—

"(1) For any person to sell, transfer, or otherwise furnish any piperidine unless such person reports such sale, transfer, or exchange to the Attorney General pursuant to regulations promulgated under section 801.

"(2) For any person to sell, transfer, or otherwise furnish any piperidine unless the purchaser, transferee, or other recipient of such piperidine presents positive personal identification pursuant to regulations promulgated by the Attorney General under section 801.

"(3) For any importer of piperidine to receive piperidine without reporting such receipt to the Attorney General pursuant to regulations promulgated under section 801.

"(b) The provisions of paragraph (a) of this section shall not apply to—

"(1) Intracompany sales or transfers of piperidine.

"(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of piperidine is solely for the purpose of transporting such substance in the usual course of his business or employment; *Provided*, That the Attorney General may require any such carrier or warehouseman to retain and report any shipping documents for such substance.

"§ 801. Nature of reports

"(a) Any person required to submit a report pursuant to section 800 shall submit such report on a common reporting form to be issued in blank by the Attorney General.

"(b) Such reporting form shall contain information as to—

"(1) The quantity and form of the piperidine sold, imported, transferred, or otherwise furnished.

"(2) The date the piperidine was sold, imported, transferred, or otherwise furnished.

"(3) The name, address, and age of any individual who purchases, imports, or otherwise receives such piperidine.

"(4) The type of identification presented by the individual purchaser, importer, or other transferee.

"(5) The name and address of any business entity that purchases, imports, or otherwise receives piperidine, including the name, address, and title of the employee placing the order for purchase, import, or other receipt of piperidine for such business entity.

"(6) The purpose of such purchase, importation, or transfer, including a description of the intended usage of such piperidine. This requirement shall not apply to quarterly reports authorized by the Attorney General under section 802(b).

"(7) The date and manner that such piperidine was shipped or otherwise transferred and the address of the destination of any such shipment or transfer.

"(8) Such other information, including that necessary for establishing positive, buyer or transferee identification, as the Attorney General may deem necessary for the enforcement of this part.

"(c) The Attorney General is authorized to promulgate such regulations as are necessary for the enforcement of this part.

"(d) Not later than one year after the effective date of this part, the Attorney General shall submit to the President and the Congress an analysis and evaluation of the effectiveness of piperidine reporting in reducing the illicit manufacture of phencyclidine. Such analysis and evaluation shall also contain an assessment of any burden such reporting places on legitimate transactions in and uses of piperidine and such recommendations as the Attorney General deems appropriate.

"§ 802. Filing deadline for reports

"(a) Except as provided in subsections (b) and (c) of this section, any person required to submit a report to the Attorney General pursuant to section 800 shall submit such report within 7 days of the purchase, transfer, importation, or other exchange of piperidine.

"(b) The Attorney General may authorize any person required to submit a report to the Attorney General pursuant to section 800 to submit such report on a quarterly basis with respect to repeated, regular transactions between the furnisher and the recipient if the Attorney General determines that (1) a pattern of regular supply of pipeline exists as between the person who sells, imports, transfers, or otherwise furnishes such piperidine and the recipient of the piperidine and (2) the recipient has established a record of utilization of such piperidine for lawful purposes.

"(c) Any person required to submit a report to the Attorney General pursuant to section 800 within the first 90 days after the

enactment of this part may submit such report at any time up to 100 days after the enactment of this part. Such report shall contain the information specified in paragraphs (b)(1) through (b)(7) of section 801.

"§ 803 Retention and inspection of records

"(a) Any person who sells, imports, transfers, or otherwise furnishes piperidine shall maintain such records as are deemed necessary by the Attorney General to enforce this part. Such records shall be kept and be available, for 2 years, for inspection or copying by officers or employees of the United States authorized by the Attorney General.

"(b) Upon the request of any State or any political subdivision thereof, the Attorney General may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this part with respect to identification of persons within such State or political subdivision thereof who have purchased, imported, or otherwise received piperidine together with a description of such piperidine.

"§ 804. Lost or stolen piperidine

"Any person who manufactures, sells, purchases, imports, transports, transfers, or otherwise furnishes or receives piperidine shall report any theft or loss of such piperidine to the Attorney General within 7 days of the actual discovery of such theft or loss. Such reports shall contain such information as the Attorney General may require under regulations promulgated under this part.

"§ 805. False or misleading statements

"It shall be unlawful for any seller, purchaser, importer, transferor, transferee, or other provider or recipient of piperidine to knowingly make any false, oral, or written statement or misrepresentation with respect to information required to be reported pursuant to regulations promulgated under this part or to knowingly omit any material information required to be reported pursuant to regulations promulgated under this part.

"§ 806. Penalties, enforcement

"(a) Whenever it shall appear that any person has violated any provision of section 800, 801, 802, 803, 804, or 805, the Attorney General may bring a civil action for such relief (including injunctions) as may be appropriate.

"(b)(1) Except as provided in paragraph (2), any person who violates section 800, 801, 802, 803, 804, or 805 shall, with respect to any such violations, be subject to a civil penalty of not more than $25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph.

"(2)(A) If a violation of section 800, 801, 802, 803, 804, or 805 is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (b)(2)(B) of this section be sentenced to imprisonment of not more than one year or a fine of not more than $25,000, or both.

"(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of $5,000, or both.

"(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of section 800, 801, 802, 803, 804, or 805 does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) of this subsection shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

"It shall be unlawful for any person to import, purchase, transport, transfer, receive, conceal, store, barter, sell, manufacture or otherwise furnish or dispose of any piperdine if—

"(a) such person—

"(1) is under indictment for, has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) is a fugitive from justice; or

"(3) is an unlawful user of any depressant or stimulant substance (as defined in 21 U.S.C. 802(9)) or narcotic drug (as defined in 21 U.S.C. 802(16)), or

"(b) such person knows or has reasonable cause to believe—

"(1) that such piperdine will be used to manufacture phencyclidine, except as authorized by this title or title III,

"(2) that such piperdine has been stolen, or

"(3) that the purchaser, transferee, or other recipient of such piperdine—

"(A) is under the age of 18;

"(B) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(C) is a fugitive from justice; or

"(D) is an unlawful user of any depressant or stimulant substance (as defined in 21 U.S.C. 802(9)) or narcotic drug (as defined in 21 U.S.C. 802(16)).

"§ 808. Criminal penalties

"Any person who violates any provision of section 807 shall be fined not more than $20,000, or imprisoned not more than five years, or both.

"§ 809. Confidentiality

"Reports and records obtained by the Department of Justice under this part shall be considered confidential, commercial and financial information, and as such shall not be publicly disclosed, unless needed in a civil or criminal action.

"§ 810. Sunset provision

"(a) At the end of a period of time consisting of three calendar years beginning on the date of enactment of this part, this part shall be repealed unless legislation to continue the existence of this part is enacted during such period of time.

"(b) Any repeal of this part pursuant to subsection (a) of this section shall not affect or abate any civil or criminal proceedings for any violation of this part if such violation occurred prior to the date of such repeal.

"§ 811. Definitions

"For purposes of this part—

"(1) "Person" includes any individual or business entity;

'(2) "Piperidine" means piperidine, its salts and its acyl derivatives;

"(3) "Phencyclidine" means 1-(1-phenylcyclohexyl) piperidine, its salts and any analog, derivative, or variant of 1-(phenylcyclohexyl) piperidine that is in a schedule pursuant to section 202 of this title; and

"(4) "Attorney General" means the Attorney General of the United States.".

SEC. 203. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting immediately after

"Sec. 709. Appropriations authorizations."

"PART H—PIPERIDINE REPORTING

"Sec. 800. Reporting requirement.
"Sec. 801. Nature of reports.
"Sec. 802. Filing deadline for reports.
"Sec. 803. Retention and inspection of records.
"Sec. 804. Lost or stolen piperidine.
"Sec. 805. False or misleading statements.
"Sec. 806. Penalties, enforcement.
"Sec. 807. Prohibited transfers of piperidine.
"Sec. 808. Criminal penalties.
"Sec. 809. Confidentiality.
"Sec. 810. Sunset provision.
"Sec. 811. Definitions.".

TITLE III—FORFEITURE OF PROCEEDS OF ILLEGAL DRUG TRANSACTIONS

SEC. 301. Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881) is amended—

(a) by adding at the end of subsection (a) the following new paragraph:

"(6) Any moneys, negotiable instruments, securities, and other things of value intended to be furnished by any person in exchange for a controlled substance in violation of this title or title III, and all proceeds directly traceable to such an exchange, except that no proceeds shall be subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent", and

(b) by adding after the words "Whenever property" in subsection (e) the words "described in subsections (a)(1) through (a)(5)"; and

(c) by adding a new subsection (h) at the end thereof as follows:

"(h) Whenever property described in subsection (a)(6) is forfeited for violation of this title or title III, the Attorney General, making due provision for the rights of any innocent person—

"(1) may dispose of property other than moneys, negotiable instruments, and securities in the manner set forth in subsection (e);

"(2) may dispose of negotiable instruments and securities in the manner prescribed in subsection (e)(2); and

"(3) shall forward currency obtained from sales pursuant to paragraph (2) and moneys forfeited under subsection (a)(6) to the Treasurer of the United States for deposit in the general fund of the United States Treasury.".

MOTION OFFERED BY MR. ROGERS

Mr. ROGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ROGERS moves to strike out all after the enacting clause of S. 2399 and to insert in lieu thereof the text of H.R. 12008 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 12008) was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 713. Concurrent resolution providing for a joint session of the Houses on Monday, September 18, 1978, to receive

a message from the President of the United States.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 11318. An act to amend the Small Business Act and the Small Business Investment Act of 1958.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 11318) entitled "An act to amend the Small Business Act and the Small Business Investment Act of 1958," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. NELSON, Mr. MCINTYRE, Mr. NUNN, Mr. HATHAWAY, Mr. HASKELL, Mr. ABDNOR, Mr. WEICKER, Mr. BARTLETT, and Mr. PACKWOOD to be the conferees on the part of the Senate.

DRUG ABUSE PREVENTION AUTHORIZATIONS

Mr. ROGERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12348) to amend the Drug Abuse Office and Treatment Act of 1972 to extend the programs of assistance under that act for drug abuse prevention, education, treatment, and rehabilitation, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12348

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Drug Abuse Prevention and Treatment Amendments of 1978".

EXTENSION OF SECTIONS 409, 410, AND 503

SEC. 2. (a) The first sentence of section 409(a) of the Drug Abuse Office and Treatment Act of 1972 is amended (1) by striking out "and" after "1977,", and (2) by inserting after "1978," the following: "and September 30, 1979,".

(b) Section 410(b) of such Act is amended by adding at the end the following: "For the fiscal year ending September 30, 1979, there is authorized to be appropriated (1) $153,000,000 for grants and contracts under paragraphs (3) and (6) of subsection (a) for drug abuse treatment programs, and (2) $24,000,000 for grants and contracts under such subsection for other programs and activities.".

(c) Section 503(b) of such Act is amended (1) by striking out "and" after "1977,", and (2) by inserting before the period a comma and the following: "and $7,000,000 for the fiscal year ending September 30, 1979".

REPORTS

SEC. 3. (a) Section 502 of the Marihuana and Health Reporting Act (Public Law 91-296) is amended by striking out "annually" and inserting in lieu thereof "biennially".

(b) Section 405(b) of the Drug Abuse Office and Treatment Act of 1972 is amended to read as follows:

"(b) The Secretary shall transmit a report to the President and the Congress with respect to each fiscal year on—

"(1) the health consequences and extent of drug abuse in the United States,

"(2) a description and evaluation of the effectiveness of the drug abuse prevention functions carried out through any entity of the Department of Health, Education, and Welfare in the fiscal year for which the report is made,

"(3) a description of the manner in which such functions were carried out, a description of the amount of funds expended in carrying out such functions, and a description and evaluation of the coordination within the Department of Health, Education, and Welfare in carrying out such functions,

"(4) a description and evaluation of the effectiveness of experimental methods and programs implemented in carrying out such functions, recommendations for implementation of such methods and programs by others in carrying out their drug abuse prevention functions, and a description and evaluation of the effectiveness of the means used to disseminate information respecting such methods and programs, and

"(5) proposals for changes in the drug abuse prevention functions carried out through the Department of Health, Education, and Welfare (including recommendations for legislation).

The report required by this subsection shall be transmitted not later than January 15 of each year.".

(c) Not later than 120 days after the date of the enactment of this Act, the Secretary of Health, Education, and Welfare shall submit to the Congress a report on the extent and nature of drug abuse in rural areas, the special needs and circumstances which must be addressed in providing drug abuse prevention functions to these areas, and specific recommendations respecting such functions in these areas.

STATE PLANS FOR FORMULA GRANTS

SEC. 4. Section 409(e) of the Drug Abuse Office and Treatment Act of 1972 is amended—

(1) by striking out "July 15" and inserting in lieu thereof "July 31.

(2) by inserting after "groups," in paragraph (3) "of political subdivisions in the State,",

(3) by inserting after "areas of the State" in paragraph (3) "and from population groups in the State which are seriously affected by drug abuse",

(4) by striking out "in carrying out" in paragraph (3) and inserting in lieu thereof "in preparing and carrying out', and

(5) by amending paragraph (7) to read as follows:

"(7) provide reasonable opportunity for political subdivisions in the State to submit to the State agency recommendations respecting the preparation and carrying out of the State plan;".

TECHNICAL ASSISTANCE

SEC. 5. Section 502(b)(3) of the Drug Abuse Office and Treatment Act of 1972 is amended by striking out "control and treatment" and inserting in lieu thereof "prevention, control, and treatment".

ACTIVITIES OF THE NATIONAL INSTITUTE ON DRUG ABUSE

SEC. 6. (a) Section 410(a) of the Drug Abuse Office and Treatment Act of 1972 is amended by inserting ", acting through the National Institute on Drug Abuse," after "Secretary" the first place it appears.

(b)(1) Title V of such Act is amended by adding at the end thereof the following new section:

"§ 504. Review of programs and activities

"The Secretary, acting through the Institute, shall, by regulation, provide for review of all grants made, and contracts entered into, for research, training, treatment, prevention, and other programs and activities authorized under this Act by utilizing, to the maximum extent possible, appropriate peer review groups, composed principally of non-Federal scientists and other experts in the field of drug abuse.".

(2) The table of sections at the beginning of such title is amended by adding at the end thereof the following new item:

"504. Review of programs and activities.".

The SPEAKER pro tempore. Is a second demanded?

Mr. CARTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) and the gentleman from Kentucky (Mr. CARTER) will be recognized for 20 minutes each.

The Chair now recognizes the gentleman from Florida (Mr. ROGERS).

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today, it is my pleasure to present to the House of Representatives H.R. 12348, the Drug Abuse Prevention and Treatment Amendments of 1978. This bill proposes a revision and extension of the authorizations of appropriations for 1 year under the Drug Abuse Office and Treatment Act of 1972 to continue drug abuse research and prevention, treatment, and rehabilitation programs of the National Institute on Drug Abuse in the Department of Health, Education, and Welfare. It proposes a total authorization level of $229 million for fiscal year 1979. Of that $153 million is authorized for treatment programs and $24 million for prevention, demonstration, and other programs and activities. This amounts to a total authorization of $177 million for drug abuse project grants and contracts under section 410 of the Drug Abuse Office and Treatment Act of 1972. In addition, it proposes $45 million in authorizations for fiscal year 1979 for State drug abuse formula grants under section 409 of the act and $7 million in authorizations for special addictive and therapeutic substance research.

The proposed legislation also requires the Secretary of Health, Education, and Welfare to submit an annual report to Congress and the President describing the problems of drug abuse in the United States and the Department's response to those problems. This reporting requirement is intended to replace the requirement that the Secretary of HEW submit an annual report respecting new drug abuse treatment and rehabilitation methods to the Director of the Office of Drug Abuse Policy which was recently abolished under the President's Reorganization Plan No. 1.

I believe this annual report will increase the evaluation capabilities of both the executive branch and the Congress, provide invaluable information to those working in the field, and serve as

an additional mechanism by which the President's drug abuse reorganization measures can be gaged.

The bill also provides that the report to Congress on marihuana and health be made on a biennial rather than annual basis.

In addition, the bill proposes a requirement that State plans for drug abuse formula grants provide for representation on the State drug abuse advisory board by political subdivisions of the State, representation on the State drug abuse advisory board by population groups in the State which are seriously affected by drug abuse, consultation by the State drug abuse agency with the State drug abuse advisory board in its preparation of the State plan, and reasonable opportunity for political subdivisions in the State to submit to the State agency recommendations respecting the preparation and carrying out of the State plan. Finally, the bill requires the Director of the National Institute on Drug Abuse to provide technical assistance to State and local governments to assist them in applying for grants and contracts for drug abuse prevention programs.

On April 10, 1978, the Subcommittee on Health and the Environment held hearings on H.R. 11660. The bill was amended and reported out of the subcommittee by unanimous voice vote as a clean bill. H.R. 12348 on April 17, 1978. On May 2, 1978, H.R. 12348 was reported out of the full Committee on Interstate and Foreign Commerce by unanimous voice vote. Similar legislation, S. 2916, has passed the Senate.

Because of the fact that the 95th Congress is nearing adjournment and the House of Representatives still has an extremely heavy schedule for the remainder of this year, we have met with the Senate to resolve the differences between the bill reported by our committee and the comparable bill which passed the Senate. Both the House and Senate bills have identical authorization levels and propose a simple 1-year extension. The bills have nearly identical annual agency reporting requirements. There are actually very few differences between the House and Senate bills. It was therefore considered to be appropriate to resolve these differences and incorporate acceptable Senate provisions as amendments to H.R. 12348 as reported by the Committee on Interstate and Foreign Commerce. I understand that this compromise is agreeable with the members of our committee as well as with the members of the Senate Committee on Human Resources.

Under the compromise agreement, the Senate would agree to the provisions of the House bill and the House would agree to four additional provisions of the Senate bill. These additional Senate provisions are embodied in amendments to H.R. 12348 which I inserted in last Friday's CONGRESSIONAL RECORD, and which I will now describe.

First, there is an amendment to require the Secretary of Health, Education, and Welfare to list in his annual drug abuse report to the President and Congress, the amount of funds expended by HEW in carrying out its drug abuse prevention functions.

Second, there is an amendment to require the Secretary to submit a report to the Congress on the extent and nature of drug abuse in rural areas, the drug abuse program needs for these areas and recommendations respecting programs for these areas.

Finally, there are two amendments to clarify that the provisions of drug abuse project grants and contracts under section 410 of the act and the review of grants and contracts for research, training, treatment, and prevention programs and activities under the act shall be conducted by the Secretary through the National Institute on Drug Abuse.

This is in conformity with actual practice as well as the comparable statutory provisions relating to the National Institute on Alcohol Abuse and Alcoholism.

Testimony on this legislation at hearings conducted by the Subcommittee on Health and the Environment this year reaffirmed the need to continue the drug abuse prevention and treament programs of the National Institute on Drug Abuse in the Department of Health, Education, and Welfare. Representatives of the Alcohol, Drug Abuse and Mental Health Administration and the National Institute on Drug Abuse reported that within the last 30 days, over 1 million Americans have nonmedically used hallucinogens, sedatives, or tranquilizers. The level of nonmedical use of these drugs is cause for concern as their misuse can have a disastrous impact on the health of their users. In addition, while there are indications that the incidence of heroin abuse has declined somewhat in the last year, the use of PCP, cocaine, and marihuana appears to be on the rise. The National Survey of Drug Abuse: 1977, reveals that of our Nation's population of slightly more than 170 million over the age of 12, currently 92,300,000 use alcohol, 67,570 smoke cigarettes, 16,-210,000 smoke marihuana, and 4,870,000 smoke hashish. Over 1½ million persons each use cocaine and stimulants nonmedically and it is estimated that just over a million persons each have used hallucinogens, sedatives, or tranquilizers nonmedically within the last 30 days.

The National Institute on Drug Abuse should be equipped with the tools to confront new, emerging drug abuse problems, such as those involving polydrug abuse, PCP, and similar dangerous psychotropic drugs, and the use of drugs in combination with alcohol. I believe that the committee's bill adequately addressed these concerns. The separate authorization of $24 million for drug abuse prevention, demonstration, and other "non-treatment" program under section 410 of the act is intended to place emphasis on primary prevention and early abuse not normally dealt with by heroin treatment programs.

Mr. Speaker, I want to take this opportunity to thank the chairman of the full committee, Mr. STAGGERS, for his support of programs aimed at curbing drug abuse I particularly want to thank the distinguished ranking minority member of the subcommittee, Dr. CARTER for his leadership and efforts in bringing this bill to the floor of the House. Finally, I want to thank all the other members of the Subcommittee on Health and the Environment—Mr. SATTERFIELD, Mr. PREYER, Mr. SCHEUER, Mr. FLORIO, Mr. MAGUIRE, Mr. MARKEY, Mr. WALGREN, Mr. BROYHILL, Mr. MADIGAN, and Mr. SKUBITZ—for their support of this bill.

Mr. Speaker, I strongly urge you and my colleagues in the House to support this legislation for the continued authorization of the drug abuse prevention and treatment programs at the National Institute on Drug Abuse.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, although great efforts have been made in combating the problems of drug abuse over the last several years, drug abuse continues to be one of the most serious health problems facing this country today. I am, therefore, pleased to support this 1 year extension of funding for the National Institute of Drug Abuse.

This bill, H.R. 12348, authorizes the expenditure of $229 million in fiscal year 1979.

Of this, $45 million is earmarked for use by States in their drug abuse programs; $153 million is authorized for treatment programs and activities; $24 million is authorized for prevention, demonstration, and other programs and activities; finally, $7 million is authorized for research into the problems associated with drug abuse.

Mr. Speaker, progress in combating the terrible problem of drug abuse has been made. Recent data indicate that there has been a decline of 15 to 20 percent in the number of daily heroin users during the last year or two. Unfortunately, though, we now find there have been large increases in almost every other category of drug use. For example, annual epidemiologic surveys of drug use among high school seniors show that there has been an appreciable rise in marihuana use since 1975. It is now thought that over 16 million Americans smoke marihuana, while almost 5 million smoke hashish. We also find that there have been significant increases in the use of alcohol, cocaine, stimulants, hallucinogens, sedatives or tranquilizers. Most alarming of all, Mr. Speaker, has been the tremendous rise in the use of the drug phencyclidine called PCP or Angel Dust. An estimated 7 million individuals between ages 12 and 25 have reportedly tried PCP, a drug which can cause unpredictable behavior, irrational and violent actions, delusions of grandeur and persecution, distorted perceptions and catatonic rigidity. Moreover, this drug is extremely easy to manufacture, and is often produced in basement laboratories for very little money. Mr. Speaker, these are the problems that we face. They are serious, they are pervasive and we must do all that we can to combat this serious health problem.

Nevertheless, drug abuse is not the kind of problem that we can solve by simply throwing Federal money at it. I believe that drug abuse is a symptom, not a cause. It is a symptom of serious unemployment among our youth, a symptom of decay in our cities, a symptom of an educational system that does not engage the attention of its students, and finally, a signal that we must do more to provide opportunities for our young people to engage in the kind of creative activities which will reduce the desire to use drugs. I realize that we cannot expect a quick cure with this strategy but I believe that we must recognize that drug abuse is the kind of long term community problem that demands this kind of solution.

In order to implement the strategy which I have outlined, I believe that we must do three things: First, we must commit a higher percentage of our available resources to the prevention of drug abuse. It is disquieting to me to find that in fiscal year 1978 only an estimated 2½ percent of the total Federal support for drug abuse programs is committed to prevention. For this reason, I strongly support the action of the committee in specifying that a minimum of 8 percent of the authorization for fiscal year 1979 be used for prevention.

The second thing which I would advocate is that we do far more to coordinate the activities of the multiple entities involved in drug abuse. In that regard, I would point out that there are 17 or more Federal agencies involved in the drug abuse field. When the Select Committee on Narcotics Abuse and Control studied the ability of these agencies to coordinate their activities, it found "that the Federal Government has failed in even the relatively simple task of teaching its own computers operated by the several agencies to talk to each other. The lack of fundamental data and the 'turf wars' which have plagued the treatment and enforcement communities have severely limited Federal and State public policymakers from fully comprehending the nature of drug abuse and drug enforcement and thus has prevented the public from such an understanding." I would also like to express my concern about the abolishment by the President of the Office on Drug Abuse Policy. That Office was created by Congress to deal with the problem of a lack of coordination between the several Federal agencies involved in drug abuse. In light of the recent resignation of the President's adviser on drug abuse, I believe that the efforts of the executive branch in coordinating drug abuse problems must be closely scrutinized by the Congress during the 1-year extension of the program which this bill provides. We must also keep in mind that due to the multiple factors leading to the problem of drug abuse each agency of the Federal Government providing social services to our citizens should evaluate its activities in light of their possible impact upon drug abuse.

Finally, Mr. Speaker, I believe we must do far more to ensure that the available resources for combating drug abuse are used more effectively and responsibly than they appear to have been used in the past. Evidence presented to the Select Committee on Narcotics Abuse and Control indicates that the Federal Government has done far too little in evaluating the effectiveness of the programs that we are supporting.

In that regard, I would take note of a memorandum written by Lee I. Dogoloff, deputy special assistant to the President, regarding the need for evaluation of our treatment programs. I certainly think that an effort of this kind should have begun long ago, but I would commend the executive branch for at least making a beginning at this time. Of course, I will be very interested to view the result of Mr. Dogoloff's memorandum. It is also true that evidence presented to the Subcommittee on Oversight and Investigations of the Commerce Committee indicates that the management practices of the National Institute on Drug Abuse warrant a great deal of scrutiny and may require significant modification. I have been informed that a beginning has been made in dealing with the problems that have been identified. Nevertheless, I would state again that these activities must be carefully studied in the course of the coming year.

In conclusion, Mr. Speaker, I believe that there is a great deal left to be done in combating the problems of drug abuse. For this reason, I support this 1-year extension of the authorization for the National Institute on Drug Abuse. I would urge Members to join me in supporting this bill, and I would also urge that they join me in an effort to insure that the funds which we authorized to combat this serious problem are used as effectively as possible.

Thank you, Mr. Speaker.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding and I rise in support of H.R. 12348, authorizing the appropriation of $229 million for fiscal year 1979 to continue the drug abuse research, prevention, treatment, and rehabilitation programs of the National Institute on Drug Abuse (NIDA) for 1 year. It also requires a biannual report to the Congress on marihuana and health and requires the Secretary of the Department of Health, Education, and Welfare to to submit an annual report to the President and the Congress describing the effectiveness of its drug abuse prevention functions.

Mr. Speaker, NIDA is one of the vitally important line agencies in this Nation's efforts to prevent and control drug abuse and to wage "war" on a problem that has reached epidemic proportions for the hundreds of thousands of our Nation's citizens and for individuals throughout the world.

The Committee on Interstate and Foreign Commerce, in its report accompanying H.R. 12348, stated:

> The drug abuse research, prevention, treatment and rehabilitation programs authorized by this legislation are of critical importance to the Nation. They are designed to permit an understanding of drug abuse, to discourage individuals from beginning drug abuse, and to provide for treatment and rehabilitation of individuals with drug abuse problems. The authorization levels in H.R. 12348, in the committee's view, offer a significant opportunity to lower the economic and social costs of drug abuse in this Nation.

Mr. Speaker, as a member of the Select Committee on Narcotics Abuse and Control that has extensively investigated the problems of drug abuse prevention and control in this country and abroad, and that has sought to raise the consciousness of our citizens regarding the dangers of drug dependence and drug addiction, I want to underscore the objectives and importance of NIDA's programs. Accordingly, I urge my colleagues to support this vitally important legislation.

Mr. CARTER. Mr. Speaker, I thank the distinguished gentleman from New York (Mr. GILMAN) for his statement.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I thank the gentleman for yielding.

H.R. 12348 extends for 1 year the authorization of appropriations under this Drug Abuse Prevention and Treatment Act to continue the drug abuse, research, prevention, treatment, and rehabilitation programs of the National Institute on Drug Abuse.

It proposes a total of $229 million for fiscal year 1979.

Mr. Speaker, it is clear that we cannot realistically aspire to have an effective program of international drug control until our multifarious Federal and State programs interlock smoother than they do now.

That Federal policy on drugs is beset with confusion, conflicts, and misjudgments is amply demonstrated in an Interim Report of the Select Committee on Narcotics Abuse and Control (H. Rept. 95–32). In that report the committee stated its conclusion that in the main the prevention programs being operated by NIDA are ineffective, inadequately researched, and improperly implemented. Further, on page 67, the report stated:

> Competition between the law enforcement community and the public health community whose primary aim is prevention and treatment is unacceptably weak if not virtually nonexistent. Our drug problems have created a drug related "profession" numbering approximately 400,000 persons. This committee has found that often there is a hostile, adversary relationship between many of these persons whose livelihoods have come to depend on maintaining an occupational interest in drug abuse.

There is considerable doubt about its cost-effectiveness. I might note in passing that only 1 day of drug hearings was held on this legislation which ultimately resulted in this bill, H.R. 12348.

Last, the continuing woeful Federal effort in drug abuse prevention and treatment is ample testimony of the need for wholesale revision of the various programs leading to greater reliance on ac-

tion by State and local authorities. Those authorities, being in closer touch with the issues involved, could do a better job than that demonstrated by the incompetent Federal bureaucracy.

If I could, I would like to ask someone who is familiar with these agencies, either my friend, the gentleman from Kentucky (Mr. CARTER), or the chairman, the gentleman from Florida (Mr. ROGERS). Recently there was an oversight hearing and Dr. DuPont, who had headed up a program on drug abuse, was there. I asked him specifically, to what extent do the people who are our professionals in charge of this drug-abuse program use drugs, or what has been their history in drugs? Dr. DuPont said that he had no idea in the world, that he thought it was an invasion of privacy to ask them for that information, and it was a violation of the civil service.

Where people are working on the drug program, I think a history of drugs would be most important, and if they are now actively using drugs, I think it is most important.

President Carter has expressed himself on it. Could either of the gentlemen, the chairman or our ranking member, express himself on how he feels about drug staff in civil service using drugs?

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Florida.

Mr. ROGERS. I thank the gentleman for yielding.

Of course, I would be concerned if anyone running a drug program was using drugs, but I do not think that has been the pattern. There may be some examples, of course.

It is analogous to alcohol abuse treatment programs. I am sure the gentleman knows what Alcoholics Anonymous has done. They have a history of having been alcoholics, but what a magnificent job they do in getting people to give up alcohol because they have been through it. They have experienced it.

The gentleman from Texas, I am sure, has never used drugs, and other Members of the House have not, so they do not know how to approach a man who has been to the dregs on drugs. The same thing is true of alcoholism. There is some validity in having someone who has been through it to use his experience to help others. That is all. But certainly we do not want current drug users in these programs, nor have I seen any real history of drugs being used in these programs. If it exists corrective action should be taken.

I think the gentleman can take some consolation in the fact that the program is working. May I just state in conclusion the fact that there has been a drop in the actual deaths and injuries from heroin.

Mr. COLLINS of Texas. Not in marihuana.

Mr. ROGERS. These are heroin deaths. These are hard facts. If the gentleman would permit, in 1974 there were an estimated 1,465 deaths attributed to heroin and morphine use, 1,770 in 1975 1,671 in 1976, and does the gentleman know how many in 1977? About one-third fewer—583. So the program is beginning to pay off. Injuries relating to heroin and morphine use amounted to 12,860 in 1974, 17,942 in 1975, 18,567 in 1976, and 11,204 in 1977. This is good progress.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ROGERS. I yield 2 minutes to the gentleman from Texas.

Mr. COLLINS of Texas. I appreciate the gentleman's yielding.

To go back, the gentleman mentioned heroin. It is true it is decreased, but is it not true that marihuana and cocaine, the two primary drugs, have been on the increase? Before the gentleman answers, while I still have some time, I want to make one other comment.

Mr. ROGERS. If the gentleman will yield, that is why we are trying to do something about it.

Mr. COLLINS of Texas. I would hope that if we spend a quarter billion dollars we could start someplace to do something about reducing drug use. It is like Alcoholics Anonymous. I have the utmost respect for people who belong to Alcoholics Anonymous and have turned their backs on alcohol.

Mr. ROGERS. That is what we are trying to do in the drug abuse field.

Mr. COLLINS of Texas. What I have seen here is top administration will not ask their staff whether they are taking drugs or not. I have never taken drugs, and I will not take drugs today, but I want to emphasize this: Anyone working for this drug agency should not take drugs, and the administration should ask each person.

Mr. ROGERS. I will say to the gentleman that I am sure they are not.

I do not know whether we should ask them or not. We can check into it.

Mr. COLLINS of Texas. Dr. DuPont said it was a violation of their right of freedom, the right of privacy.

Mr. ROGERS. You know, Dr. DuPont is no longer with the program.

Mr. COLLINS of Texas. To sum it up, it would be the gentleman's wish and desire that everybody working there not take drugs in any form if they work on this program.

Mr. ROGERS. Well, of course, just as we do not want people drinking in alcoholism programs.

Mr. BIAGGI. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, I am grateful to the gentleman for yielding.

The response that the chairman, the respective chairmen have given, would be appropriate except in the instance where you are dealing with the alcoholic who has withdrawn from the consumption of alcohol. Those people ought to be deeply admired and they are valuable instruments in fighting the scourge of alcoholism; however, the precise question of the gentleman from Texas was, Do you have staff people, medical people, who are currently using drugs in positions in these programs? I think that is the precise question.

The fact of the matter is, and I heard the response, I expected nothing less; for the record, so the people in those agencies understand, they do not have a sacred right of privacy in this regard, because there is a peril there, because we have learned that the peer pressure of drug addicts is one of the most influential factors in increasing the problem. They represent the Nation and not the world.

I am glad Dr. DuPont is not there. Perhaps his successor will adopt this philosophy.

I can say, my experience with them has been that when they go to different hospitals and programs, they say, "What is the point? The doctors themselves are addicts."

Mr. ROGERS. Well, may I say, I do not know that we can just paint with a brush and say everybody is an addict all all over the Nation. I do not think that I understand what the gentleman is saying, but I do think the program is trying to get people off drugs.

I agree with the gentleman, that people running the program should not be on drugs. I do not know who created the fact that they are. Just because someone asks the question does not mean that that is going on. I do not know of it going on. This is just a question somebody raises and everybody takes off as if it is an accomplished fact. It just is not true.

The people running the programs, as far as I know, are not on drugs, and if they are, they ought not to be involved.

Mr. CARTER. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Speaker, it is my understanding that any addict who is accepted into the program must first have a urinalysis to determine if there is any drug present in his urine and that these urinalyses are repeated. If for a 1-year period, he has had no trace of any drug in his urine, then he is considered clean. That is the usual way of doing it; however, I regret to say, in agreement with my good friend, the gentleman from Texas, and with the gentleman from New York City, that we do have some other questionable characters in this program. I have watched it.

Mr. Speaker, I want us to monitor this program closely in the next year to see that it is effective.

You know, many times I have stated before our committee that we should urge our children that are not busily engaged in work to take part in athletics, sports, art, or music. You know, an idle mind is the devil's workshop. I have urged these things many, many times. Actually, I think that many times, as a result of idleness, our young people take up drugs in order to experiment.

Mr. ROGERS. Well, of course, I know that there is a problem with recidivism in drug usage of those in treatment programs and also of those in alcoholism programs; it is a problem and I am sure the committee will watch it.

But it is a good program which we need to continue. We do have a significant drug abuse problem. However, we are making significant headway in some areas.

Mr. Speaker, I urge the passage of the bill.

● Mr. STAGGERS. Mr. Speaker, I urge all my colleagues in the House to join me in support of H.R. 12348, the Drug Abuse Prevention and Treatment Amendments of 1978. This bill provides for a revision and 1-year extension of the authorizations of appropriations under the Drug Abuse Office and Treatment Act of 1972 to continue the drug abuse research, prevention, treatment and rehabilitation programs of the National Institute on Drug Abuse in the Department of Health, Education, and Welfare. It authorizes a total of $229 million for fiscal year 1979. This amount represents a $17 million increase over the authorization for fiscal 1978. This modest 7½-percent increase is necessary to offset inflation and to assure program continuity.

Mr. Speaker, drug-related deaths in this country have decreased over the past 4 years, in part I am sure, because of the programs of the National Institute on Drug Abuse. Nevertheless, in 1977, there were 2,803 drug-related deaths. Testimony before the Subcommittee on Health and the Environment indicated an upward trend of drug use among the youth. Recent studies of drug use among high school seniors show that the use of marihuana increased from 40 percent of those surveyed in 1975 to 44.5 percent in 1976 and to 47.6 percent in 1977. These studies also show that the use of cocaine increased from 5.6 percent in 1975 to 6 percent in 1976 and to 7.2 percent in 1977. These statistics indicate that drug abuse in this Nation remains a serious problem.

I, therefore, believe that this legislation is vital to the continuation of efforts of the National Institute on Drug Abuse, aimed at prevention and treatment of drug abuse in this Nation which affects all population groups in both urban and rural areas alike.

Mr. Speaker, I urge you and the other Members of the House to vote favorably for this bill.●

● Mr. WOLFF. Mr. Speaker, I rise in support of H.R. 12348. This bill amends the Drug Abuse Office and Treatment Act of 1972 by extending for 1-year programs for drug abuse prevention. education, treatment. and rehabilitation. The bill also extends the National Institute on Drug Abuse (NIDA) for 1 year. This is indeed a vitally important piece of legislation.

NIDA has waged a continuing battle against the devastating effects of drug abuse by establishing drug abuse treatment and prevention centers throughout the Nation. Since the Institute was created, it has effectively funneled millions of dollars to single State agencies—funds which have facilitated the establishment of some 101,000 drug abuse treatment slots providing services to over 170,000 individuals annually.

The work and investigations of the Select Committee on Narcotics Abuse and Control have made it all too clear that drug abuse problems in this Nation are still severe and cannot be solved as quickly as was envisioned by the 1972 act. Although we have been successful in reducing the level of heroin addiction in recent years, there has been a corresponding increase in the abuse of cocaine and more deadly drugs such as PCP. I do not think there is any question that drug abuse has become the most serious health problem confronting this Nation. Our passage of this bill today will insure that we continue to devote needed resources to combat this serious problem.

The Federal Government has aided in the effort against heroin addiction, reducing the number of addicts in the country by 20 percent in the last several years. But there is much more to be done. We must seek to lower the demand for these dangerous drugs while we continue to move against traffickers wherever we find them.

In some ways the drug abuse problem is even more serious than it was 10 years ago. America needs a strong and effective mechanism by which to combat the scourge of drug abuse. This bill will enable the Federal Government to continue to play an important role in this effort and I urge my colleagues to support its passage.●

● Mr. CORRADA. Mr. Speaker, I voice my support for the bill H.R. 12348.

This bill would authorize $229 million for fiscal year 1979 under the Drug Abuse Office and Treatment Act of 1972, to continue the drug abuse research, prevention, treatment, and rehabilitation programs of the National Institute on Drug Abuse (NIDA) in the Department of Health, Education, and Welfare (HEW).

The division of the authorizations of appropriations for drug abuse project grants and contracts under section 410 of the act between those for treatment programs and those for prevention, demonstration and other programs and activities, as proposed by the Committee on Interstate and Foreign Commerce, would undoubtedly result in a greater guidance to the Secretary of HEW respecting expenditures for the programs and activities authorized. Furthermore, and of significant importance are the amendments to require the representatives of State drug abuse agencies to consult and work with the representatives of local political subdivisions and those of population groups which are seriously affected by drug abuse in the preparation and implementation of State drug abuse plans.

This legislation has my support. The continuance of these programs is not only necessary, but responsive to a need of our society. I urge the Members of the House to vote for it.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12348, as amended.

The question was taken.

Mr. COLLINS of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

So (two-thirds having voted in favor thereof), the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. ROGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2916) to amend the Drug Abuse Office and Treatment Act of 1972 to extend the programs of assistance under that act for drug abuse prevention, education, treatment, and rehabilitation, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2916

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Drug Abuse Office, Prevention, and Treatment Amendments of 1978".

SEC. 2. (a) Section 1 of the Drug Abuse Office and Treatment Act of 1972 is amended by striking "Office" and substituting "Office, Prevention,".

(b) The first sentence of section 409(a) of such Act is amended (1) by striking out "and" after 1977,", and (2) by inserting after "1978," the following: "and September 30, 1979,".

(c) Section 410(a) of such Act is amended by inserting after "Secretary" a comma and the following: "acting through the National Institute on Drug Abuse,".

(d) Section 410(b) of such Act is amended by adding at the end thereof the following: "For the fiscal year ending September 30, 1979, there is authorized to be appropriated (1) $153,000,000 for grants and contracts under paragraphs (3) and (6) of subsection (a) for drug abuse treatment programs, and (2) $24,000,000 for grants and contracts under such subsection for programs and activities, (other than for grants and contracts under paragraphs (3) and (6) of subsection (a)).

(e) Section 503 of such Act is amended (1) by striking "and" after "1977"; and (2) by inserting after "1978" the following: "and $7,000,000 for the fiscal year ending September 30, 1979".

SEC. 3. (a) Section 405(b) of the Drug Abuse Office and Treatment Act of 1972 is amended to read as follows:

"(b) The Secretary shall transmit a report to the President and the Congress with respect to each fiscal year on—

"(1) the health consequences and extent of drug abuse in the United States,

"(2) a description and evaluation of the effectiveness of the drug abuse prevention functions carried through any entity of the Department of Health, Education, and Welfare in the fiscal year for which the report is made,

"(3) a description of the manner in which such functions were carried out, the amount of funds expended, and a description and evaluation of the coordination within the Department of Health, Education, and Welfare in carrying out such functions,

"(4) a description and evaluation of the effectiveness of experimental methods and programs implemented in carrying out such functions, recommendations for implementation of such methods and programs by others in carrying out their drug abuse prevention functions, and a description and evaluation of the effectiveness of the means used to disseminate information respecting such methods and programs, and

"(5) proposals for changes in the drug abuse prevention functions carried out through the Department of Health, Education, and Welfare (including recommendations for legislation).

The report required by this subsection shall be transmitted not later than January 15 of each year.".

(b) Section 405 of such Act is amended by addingg at the end thereof a new subsection (c) as follows:

"(c) Within one hundred-twenty days of the date of enactment of the Drug Abuse Office, Prevention, and Treatment Amendments of 1978, the Secretary shall submit to the Congress a report on the extent and nature of drug abuse in rural areas, the special needs and circumstances which must be addressed in providing drug abuse prevention functions to these areas, and specific recommendations to alleviate drug abuse in rural areas. For purposes of this subsection, 'rural areas' means areas that are nonurbanized areas as defined by the Bureau of the Census.".

(c) Section 502(b)(3) of such Act is amended by striking "control and treatment" and substituting "prevention, control, and treatment".

SEC. 4. Section 303(2) of the Drug Abuse Office and Treatment Act of 1972 is amended by inserting immediately after "used" the following: "and shall include a mechanism to identify, provide for, and evaluate effective drug abuse prevention programs, especially for primary prevention designed to discourage persons from beginning drug abuse with equal attention to the needs of metropolitan areas and areas which are not urbanized areas as defined by the Bureau of the Census".

SEC. 5. (a) Section 409(e)(7) of the Drug Abuse Office and Treatment Act of 1972 is amended to read as follows:

"(7) provide assurance that the State agency will coordinate its planning with local drug abuse planning agencies, and with State and local health planning agencies and educational agencies, as appropriate;".

(b) The first sentence of section 409(e) of such Act is amended by striking "July 15" and substituting "July 31".

SEC. 6. (a) Title V of the Drug Abuse Office and Treatment Act of 1972 is amended by adding at the end thereof the following new section:

"§ 504. Scientific Peer Review

"The Secretary, acting through the Institute, shall, by regulation, provide for review of all research grants and contracts, training, treatment, and prevention activity grants, and programs over which he has authority under this Act by utilizing, to the maximum extent possible, appropriate peer review groups, composed principally of non-Federal scientists and other experts in the field of drug abuse.".

(b) The table of sections at the beginning of title V of such Act is amended by adding at the end thereof the following new item:

"504. Scientific Peer Review.".

SEC. 7. Section 502 of the Marihuana and Health Reporting Act (Public Law 91-296) is amended by striking out "annually" and inserting in lieu thereof "biennially".

MOTION OFFERED BY MR. ROGERS

Mr. ROGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ROGERS moves to strike all after the enacting clause of S. 2916 and to insert in lieu thereof the provisions of H.R. 12348, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DEVELOPMENTAL DISABILITIES ACT AUTHORIZATIONS, 1978

Mr. ROGERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12326) to amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs under that act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12326

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Developmental Disabilities Act Amendments of 1978".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Developmental Disabilities Services and Facilities Construction Act.

SHORT TITLE; FINDINGS AND PURPOSES

SEC. 2. Part A is amended by striking out section 101 and inserting in lieu thereof the following sections:

"SHORT TITLE

"SEC. 100. This title may be cited as the 'Developmental Disabilities Act'.

"FINDINGS AND PURPOSES

"SEC. 101. (a) The Congress finds that—

"(1) there are more than two million persons with developmental disabilities in the United States;

"(2) individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than individuals who have a normal developmental period on which to draw during the rehabilitation process;

"(3) persons with developmental disabilities often require specialized services to be provided from birth to death and by many agencies in a coordinated manner in order to meet the persons' needs;

"(4) general service agencies and agencies providing specialized services to disabled persons tend to overlook or exclude persons with developmental disabilities in their planning and delivery of services;

"(5) it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care, to meet the needs of persons with developmental disabilities; and

"(6) there is a need for a national plan for persons with developmental disabilities which takes into account the needs common to the entire developmentally disabled population as well as those needs unique to each identifiable group in the population.

"(b)(1) It is the overall purpose of this title to assist States to assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through a system which coordinates, monitors, plans, and evaluates those services and which ensures the legal and human rights of persons with developmental disabilities.

"(2) The specific purposes of this title are—

"(A) to assist in the provision of services to persons with developmental disabilities, with priority to those persons whose needs cannot be comprehensively covered or otherwise met under the Education of All Handicapped Children Act, the Rehabilitation Act of 1973, or other health, education, or welfare programs;

"(B) to develop a national plan for meeting the identified and unmet needs of persons with developmental disabilities, which plan is coordinated with State plans relating to persons with developmental disabilities;

"(C) to assist States in appropriate planning activities;

"(D) to make grants to States and public and private, nonprofit agencies, in accordance with specified national priorities, to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel;

"(E) to make grants to university affiliated programs to assist them in administering, operating, planning, and developing demonstration programs for the provision of services to persons with developmental disabilities, and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

"(E) to make grants to university affiliated programs to assist them in administering, operating, planning, and developing demonstration programs for the provision of services to persons with developmental disabilities, and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

"(F) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities without regard to age or eligibility for services funded under this title.".

DEFINITIONS

SEC. 3. (a) Section 102(1) is amended by inserting "the Northern Mariana Islands," after "Guam,".

(b) Paragraph (7) of section 102 is amended to read as follows:

"(7) The term 'developmental disability' means a severe, chronic disability of a person which—

"(A)(i) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or dyslexia; or

"(ii) is attributable to any other condition of a person found to be similar to mental retardation, cerebral palsy, epilepsy, autism, or dyslexia because such condition results in similar impairment of general intellectual functioning or adaptive behavior and requires treatment and services similar to those required for such persons;

"(B) is manifest before the person attains 22 years of age;

"(C) is likely to continue indefinitely;

"(D) results in substantial functional limitations in three or more of the following activities: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

"(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are lifelong or of extended duration and are individually planned and coordinated.".

(c) Paragraph (8) of section 102 is amended—

(1) by inserting "(A)" after "(8)";

(2) by striking out "means specialized services" and all that follows through "such term includes" and inserting in lieu thereof the following: "means priority services (as defined in subparagraph (B)), and any other specialized services or special adaptations of generic services for persons with developmental disabilities, including in these services the"; and

(3) by adding at the end thereof the following new subparagraphs:

"(B) The term 'priority services' means case management services (as defined in subparagraph (C)), child development services (as defined in subparagraph (D)), alternative community living arrangement services (as defined in subparagraph (E)), and nonvocational social-developmental services (as defined in subparagraph (F)).

"(C) The term 'case management services' means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, edu-

cational, and other services; and such term includes—

"(i) follow-along services which insure, through a continuing relationship (lifelong if necessary) between an agency or provider and a person with a developmental disability and his family, that the changing needs of the person and the family are recognized and appropriately met; and

"(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the persons' progress.

"(D) The term 'child development services' means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, and includes (i) early intervention services, (ii) counseling and training of parents, (iii) early identification of developmental disabilities, and (iv) diagnosis and evaluation of such developmental disabilities.

"(E) The term 'alternative community living arrangement services' means such services as will assist persons with developmental disabilities in maintaining suitable residential arrangements in the community, and includes in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, and staff training, placement, and maintenance services.

"(F) The term 'nonvocational social-developmental services' means such services as will assist persons with development disabilities who are over 18 years of age in performing daily living and work activities.".

(d) Paragraph (9) of section 102 is amended to read as follows:

"(9) The term 'State Planning Council' means a State Planning Council established under section 137.".

(e) Paragraph (10) of section 101 is amended to read as follows:

"(10) The term 'university affiliated program' means a program which is operated by a public or private nonprofit entity, which is associated with (or is an integral part of) a college or university, and which provides for at least the following activities:

"(A) Interdisciplinary training for personnel concerned with developmental disabilities and related handicapping conditions.

"(B) Provision of exemplary services relating to persons with developmental disabilities and related handicapping conditions.

"(C) Technical assistance and consultation for State and local public agencies, private agencies, service providers, State Planning Councils, protection and advocacy systems (described in section 113), and other similar entities.

"(D)(i) Dissemination of research findings, relevant to services provided to persons with developmental disabilities, to entities described in subparagraph (C), (ii) providing researchers and government agencies sponsoring such research with information on the needs for further service-related research, and (iii) conducting selected service-related research.".

NATIONAL ADVISORY COUNCIL ON SERVICES, FACILITIES, AND RIGHTS OF THE DEVELOPMENTALLY DISABLED

SEC. 4. (a) Paragraph (1) of section 108(a) is amended to read as follows:

"(1)(A) There is established a National Advisory Council on Services, Facilities, and Rights of the Developmentally Disabled (hereinafter in this section referred to as the 'Council'). The Council shall consist of—

"(i) sixteen ex officio members, described in subparagraph (B); and

"(ii) twenty members appointed, in accordance with subparagraph (C) and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, by the Secretary from persons (I) who are advocates in the field of services to persons with developmental disabilities (including leaders in State or local government, in institutions of higher education, and in organizations which have demonstrated advocacy on behalf of such persons), and (II) who are not full-time employees of the United States.

"(B) The ex officio members (referred to in subparagraph (A)(i)) of the Council shall be twelve representatives from the Department of Health, Education, and Welfare, two representatives from the Department of Labor, one representative from the Department of Housing and Urban Development, and one representative from the Department of Transportation, each such representative to be designated by the Secretary of the respective Department.

"(C) Of the appointed members (referred to in subparagraph (A)(ii)) of the Council—

"(i) eight shall be persons with developmental disabilities or with a milder form of any such disability;

(ii)(I) seven shall be immediate relatives or guardians of persons with mentally impairing developmental disabilities, and (II) at least one of such relatives or guardians shall be an immediate relative or guardian of an institutionalized person with a developmental disability;

"(iii) one shall be the director of a protection and advocacy system (described in section 113) for developmentally disabled persons;

"(iv) one shall be the staff director of a State Planning Council (established under section 137); and

"(v) three shall be selected from State and local direct service providers (both public and private) and from university affiliated programs.".

(b) Section 108(a)(3) is amended by striking out "twice" and inserting in lieu thereof "three times".

(c) Section 108(b) is amended—

(1) by inserting "office" after "shall hold", and

(2) by striking out "has expired" and inserting in lieu thereof "have expired".

(d) Subsection (c) of section 108 is amended to read as follows:

"(c) The Council shall—

"(1) develop a national five-year plan for persons with developmental disabilities, which plan identifies the unmet service needs of persons with developmental disabilities and the actual and potential infringements of the legal and human rights of these persons;

"(2) annually review and revise this five-year plan;

"(3) recommend to the Secretary priorities (consistent with the priority of the services described in section 102(8)(B)) for special projects authorized under part D of this title;

"(4) advise the Secretary with respect to any regulations promulgated or proposed for promulgation by the Secretary in the implementation of the provisions of this title;

"(5) monitor the execution of this title and report directly to the Secretary on any delay in the rapid execution of this title; and

"(6) submit to the Congress each year a report on the Council's activities under this subsection during the year and on any needs and priorities relating to persons with developmental disabilities not being met under this title."

(e) Subsection (d) of section 108 amended to read as follows:

"(d) The Secretary shall make available to the Council at least one full-time professional staff person and one full-time secretarial assistant, such other secretarial, clerical, and other assistance, such statistical and other pertinent data prepared by or available to the Department of Health, Education, and Welfare, and such other resources as the Council may require to carry out its functions.".

(f) The heading to section 108 is amended by striking out "SERVICES AND FACILITIES FOR" and inserting in lieu thereof "SERVICES, FACILITIES, AND RIGHTS OF".

(g)(1) Section 110(a) is amended by striking out "Services and Facilities for" and inserting in lieu thereof "Services, Facilities, and Rights of".

(2) Subsections (a) and (e) of section 145 are amended by striking out "after consultation with the National Advisory Council on Services and Facilities to the Developmentally Disabled" and inserting in lieu thereof "taking into consideration the priorities established by the National Advisory Council on Services, Facilities, and Rights of the Developmentally Disabled".

(h) Notwithstanding the amendment made by subsection (a) of this section, the appointed members of the National Advisory Council on Services and Facilities for the Developmentally Disabled (as established under section 108(a) of the Developmental Disabilities Services and Facilities Act as in effect before the date of the enactment of this Act) shall be considered appointed members of the National Advisory Council on Services, Facilities, and Rights of the Developmentally Disabled (as established under the amendment made by subsection (a) of this section) until their terms (as of the date of the enactment of this Act) expire or such members resign from their offices.

REGULATIONS

SEC. 5. The text of section 109 is amended to read as follows:

"SEC. 109. The Secretary, not later than one hundred and eighty days after the date of enactment of any Act amending the provisions of this title, shall promulgate such regulations as may be required for the implementation of such amendments.".

EVALUATION SYSTEM

SEC. 6. (a) Section 110(a) is amended—

(1) by striking out "within two years of" and all that follows through "Bill of Rights Act develop" in the first sentence and inserting in lieu thereof "develop, not later than October 1, 1979,";

(2) by striking out "Within six months after the development of such a system, the" in the second sentence and inserting in lieu thereof "The";

(3) by striking out "the receipt of assistance under this title, that each State" in the second sentence and inserting in lieu thereof "a State's receipt of assistance on and after October 1, 1980, under this title, that the State";

(4) by striking out "Within two years after the date of the development of such a system, the" in the third sentence and inserting in lieu thereof "The"; and

(5) by striking out "the receipt of assistance under this title, that each State" in the third sentence and inserting in lieu thereof "a State's receipt of assistance on and after October 1, 1982, under this title, that the State".

(b) Subsection (c) of section 110 is amended to read as follows:

"(c) Upon development of the evaluation system described in subsection (b), the Secretary shall submit to Congress a report on the system, which report shall include an estimate of the costs to the Federal Government and the States of developing and implementing such a system.".

(c) Section 110 is amended by striking out subsection (d).

RIGHTS OF THE DEVELOPMENTALLY DISABLED

SEC. 7. Section 111 is amended by adding at the end thereof the following new sentence:

"The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.".

PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SEC. 8. (a) Section 113(a) is amended—

(1) by striking out "The Secretary shall require" and all that follows through "such system will (A)" and inserting in lieu thereof "In order for a State to receive an allotment under part C, (1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities; (2) such system must (A)";

(2) by striking out "State" in clause (2)(B);

(3) by striking out "and (B)" and inserting in lieu thereof "(B) not be administered by the State Planning Council, and (C)";

(4) by inserting before the period at the end of the first sentence the following: "; and (3) the State must submit to the Secretary in a form prescribed by the Secretary in regulations (A) a report, not less often than once every three years, describing the system, and (B) an annual report describing the activities carried out under the system and any changes made in the system during the previous year"; and

(5) by striking out the last sentence thereof.

(b) The second sentence of section 1.13(b)(1) is amended to read as follows: "Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsections (a)(1) and (d) of section 132, except that no State in any fiscal year shall be allotted an amount which is less than the greater of $50,000 or the amount of the allotment to the State under this paragraph for the previous fiscal year.".

(c) Paragraph (2) of section 113(b) is amended to read as follows:

"(2) For allotments under paragraph (1), there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1979, $12,000,000 for the fiscal year ending September 30, 1980, and $15,000,000 for the fiscal year ending September 30, 1981.".

GRANT AUTHORITY, APPLICATIONS, AND AUTHORIZATION OF APPROPRIATIONS FOR UNIVERSITY AFFILIATED PROGRAMS

SEC. 9. (a) Part B is amended to read as follows:

"PART B—UNIVERSITY AFFILIATED PROGRAMS

"GRANT AUTHORITY

"SEC. 121. (a) From appropriations under section 123, the Secretary shall make grants to university affiliated programs to assist in the planning, development, administration, operation, and maintenance of the activities described in section 102(10), and of such additional activities as the Secretary determines to be appropriate to carry out the purposes of this title.

"(b) The Secretary may make one or more grants to a university affiliated program receiving a grant under subsection (a) to support one or more of the following activities:

"(1) Affiliation of the program with governmental and nonprofit organizations, in order to promote the provision of quality services to persons with developmental disabilities who reside in geographical areas where adequate services are not available.

"(2) Expansion of the program so it can assess the need for trained personnel in providing assistance to persons with developmental disabilities or with related handicapping conditions.

"(3) Provision of service-related training to practitioners providing services to persons with developmental disabilities or with related handicapping conditions.

"(4) Conducting a long-term applied research program which can develop methods for applying basic research findings to produce more efficient and effective methods (A) for the delivery of services to persons with developmental disabilities or with related handicapping conditions, and (B) for the training of professionals, para-professionals, and parents who provide these services.

"APPLICATIONS

"SEC. 122. (a) Not later than six months after the date of the enactment of the Developmental Disabilities Act Amendments of 1978, the Secretary shall establish standards for university affiliated programs. These standards for programs shall reflect the special needs of persons with developmental disabilities or with related handicapping conditions who are of various ages, and shall include performance standards relating to each of the activities described in section 102(10).

"(b) No grant may be made under section 121 unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

"(1) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds; and

"(2) the applicant's program (A) is in compliance with the standards established under subsection (a), or (B)(i) is making reasonable progress toward complying with such standards and (ii) will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a), whichever is later, comply with such standards.

"(c) The Secretary shall establish such a process for review of applications for grants under section 121 as will ensure that each Federal agency that provides funds for the direct support of the applicant's program reviews the application.

"(d) The amount of any grant under section 121(a) to a university affiliated program in a fiscal year shall not be less than $150,000.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 123. (a) For the purpose of making grants under section 121, there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1979, $18,000,000 for the fiscal year ending September 30, 1980, and $21,000,000 for the fiscal year ending September 30, 1981.

"(b) Of the sums appropriated under subsection (a), not less than—

"(1) $9,000,000 for the fiscal year ending September 30, 1979,

"(2) $10,000,000 for the fiscal year ending September 30, 1980, and

"(3) $11,000,000 for the fiscal year ending September 30, 1981,

shall be made available for grants under section 121(a) to qualified applicants which receive grants under section 121(a) during the fiscal year ending September 30, 1978. The remainder of the sums appropriated for such fiscal year shall be made available as the Secretary determines, except that not less than 40 percent of such remainder shall be made available for grants under section 121(b).".

(b) Section 103(c) is amended—

(1) by striking out "university-affiliated facility or a satellite center" and inserting in lieu thereof "university affiliated program"; and

(2) by striking out "a project" and inserting in lieu thereof "a program".

(c) Section 112(a) is amended by striking out ", facility,".

AUTHORIZATION AND ALLOTMENTS FOR FACILITY GRANTS

SEC. 10. (a) The text of section 131 is amended to read as follows:

"SEC. 131. For allotments under section 132, there are authorized to be appropriated $60,000,000 for the fiscal year ending September 30, 1979, $75,000,000 for the fiscal year ending September 30, 1980, and $90,000,000 for the fiscal year ending September 3, 1981.".

(b) Section 132(a) is amended—

(1) by striking out subparagraph (B) of paragraph (1) and paragraph (2), (3), and (4);

(2) by striking out "(A)" in paragraph (1)(A) and by redesignating clauses (i) through (iii) of such paragraph as subparagraphs (A) through (C), respectively; and

(3) by inserting at the end thereof the following new paragraphs:

"(2) For any fiscal year, the allotment under paragraph (1)—

"(A) to each of American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $100,000, and

"(B) to any other State may not be less than the greater of $250,000 or the amount of the allotment (determined without regard to subsection (d)) received by the State under this subsection for the fiscal year ending September 30, 1978.

"(3) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services and facilities for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 133(b)(2)(B), in the State plan of such State.".

(c) Subsections (b) and (c) of section 132 are amended by striking out "134" and inserting in lieu thereof "133" each place it appears.

STATE PLANS FOR PROVISION OF SERVICES AND FACILITIES

SEC. 11. (a) Subsection (b) of section 133 is amended to read as follows:

"(b) In order to be approved by the Secretary under this section, a State plan for the provision of services and facilities for persons with developmental disabilities must meet the following requirements:

"State Planning Council and Administration of Plan

"(1)(A) The plan must provide for the establishment of a State Planning Council, in accordance with section 137, for the assignment to the Council of personnel in such numbers and with such qualifications as the Secretary determines to be adequate to enable the Council to carry out its duties under that section, and for the identification of the personnel so assigned.

"(B) The plan must designate the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise).

"(C) The plan must provide that each State agency designated under subparagraph (B) will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

"(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this part.

"Description of Objectives and Services

"(2) The plan must—

"(A) set out the specific objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

"(B) describe (and provide for the review annually and revision of the description not less often than once every three years) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for federally assisted State programs as the State has relating to education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services and comprehensive health and mental health, and under such other plans as the Secretary may specify;

"(C) for each fiscal year, assess and describe the extent and scope of priority services (as defined in section 102(8)(B)) being or to be provided under the plan in the fiscal year; and

"(D) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

"Use of Funds

"(3) The plan must contain or be supported by assurances satisfactory to the Secretary that—

"(A) the funds paid to the State under section 132 will be used to make a significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State;

"(B) part of such funds will be made available by the State to public or nonprofit private entities;

"(C) the funds paid to the State under section 132 will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

"(D) there will be reasonable State financial participation in the cost of carrying out the State plan.

"Provision of Priority Services

"(4)(A) The plan must—

"(i) provide for the examination not less often than once every three years of the provision, and the need for the provision, in the State of the four different areas of priority services (as defined in section 102(8)(B)); and

"(ii) provide for the development, not later than the second year in which funds are provided under the plan after the date of enactment of this paragraph, and the timely review and revision of a comprehensive statewide plan to plan, financially support, coordinate, and otherwise better address, on a statewide and comprehensive basis, unmet needs in the State for the provision of at least one of the areas of priority services, such area or areas to be specified in the plan, and (at the option of the State) for the provision of an additional area of services for the developmentally disabled, such area also to be specified in the plan.

"(B)(i) Except as provided in clause (iii), the plan must provide that not less than $100,000 or 70 percent of the amount available to the State under section 132, whichever is greater, will be expended, as provided in clause (ii), for service activities in the areas of services specified in the plan under subparagraph (A)(ii).

"(ii) For any year in which the sums appropriated under section 131 do not exceed—

"(I) $60,000,000, not less than $100,000 or 70 percent of the amount available to the State under section 132, whichever is greater, must be expended for service activities in no more than two of the areas of services specified in the plan under subparagraph (A)(ii), or

"(II) $90,000,000, not less than $100,000 or 70 percent of the amount available to the State under section 132, whichever is greater, must be expended for service activities in no more than three of the areas of services specified in the plan under subparagraph (A)(ii).

"(iii) A State plan, in order to comply with clause (i) for a fiscal year beginning before January 1, 1980, is not required to reduce the amount available to the State under section 132 which is expended for planning activities below the amount so expended in the preceding fiscal year, if substantially the remainder of the amount available to the State, which is expended for other than administration, is expended for service activities in the areas of services specified in the plan under subparagraph (A)(ii). For purposes of this clause, expenditures for planning activities do not include any expenditures for service activities (as defined in clause (iv)).

"(iv) For purposes of this paragraph, the term 'service activities' includes, with respect to an area of services, provision of services in the area, model service programs in the area, activities to increase the capacity of institutions and agencies to provide services in the area, coordinating the provision of services in the area with the provision of other services, outreach to individuals for the provision of services in the area, the training of personnel to provide services in the area, and similar activities designed to expand the use and availability of services in the area.

"(C) The plan must provide that special financial and technical assistance shall be given to agencies or entities which are providing or are planning to provide service activities in the areas of services specified in the plan under subparagraph (A)(ii) for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

"Standards for Provision of Services and Protection of Rights of Recipients of Services

"(5)(A) The plan must provide that services furnished, and the facilities in which they are furnished, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

"(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 112 (relating to habilitation plans).

"(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this title will be protected consistent with section 111 (relating to rights of the developmentally disabled).

"Protectional Assessment and Evaluation Systems

"(6) The plan must provide for—

"(A) an assessment of the adequacy of the skill level of professionals and paraprofessionals serving persons with developmental disabilities in the State and the adequacy of the State programs and plans supporting training of such professionals and paraprofessionals in maintaining the high quality of services provided to persons with developmental disabilities in the State; and

"(B) the planning and implementation of an evaluation system (in accordance with section 110(a)).

"Additional Information and Assurances Required by Secretary

"(7) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part."

(b) Section 133(d)(1) is amended by striking out "for such purpose" and inserting in lieu thereof "for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) for the administration or supervision of the administration of the State plan".

(c) Section 133(d)(2) is amended by striking out "during the fiscal year ending June 30, 1975" and inserting in lieu thereof "during the previous fiscal year".

STATE PLANNING COUNCILS

SEC. 12. (a) Section 137(a) is amended—

(1) by inserting "higher education training facilities," after "representatives of the principal State agencies," in the third sentence; and

(2) by amending the fourth sentence to read as follows: "Of the members of the Council—

"(1) at least one-sixth shall be persons with development disabilities or with a milder form of such disability, and

"(2)(A) at least one-sixth shall be immediate relatives or guardians of persons with mentally impairing developmental disabilities, and (B) at least one of such relatives or guardians shall be an immediate relative or guardian of an institutionalized person with a developmental disability,

who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any State agency or of any other entity which receives funds or provides services under this part and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.".

(b) Section 137(b) is amended to read as follows:

"(b) Each State Planning Council shall—

"(1) develop the State plan required by this part, including the specification of areas of services under section 132(b)(4)(A)(ii);

"(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

"(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities;

"(4) promote planning for training of personnel needed to provide services (including advocacy and training in consumer participation) to persons with developmental disabilities; and

"(5) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

The State shall provide, to the maximum extent feasible, an opportunity for the State Planning Council to prior review and comment on all its State plans described in paragraph (3).".

(c) Section 137 is amended by striking out subsection (c).

SPECIAL PROJECT GRANTS AND CONTRACTS

SEC. 13. (a) Section 145 is amended—

(1) by inserting ", and may enter into contracts with," in subsections (a) after "may make project grants to";

(2) by inserting "(particularly priority services" after "otherwise improving services" in subsection (a)(1);

(3) by striking out ", including programs" and all that follows through the semicolon at the end of paragraph (1) of subsection (a) and inserting in lieu thereof "; and";

(4) redesignate paragraph (1) of subsection (a) as subparagraph (A);

(5) insert "(1)" in subsection (a) after "(a)";

(6) by inserting "or contract" after "grant" in subsection (b);

(7) by inserting "and contracts" after "grants" in subsection (c);

(8) by inserting "or contract" after "grant" each place it appears in subsection (c);

(9) by striking out "to make grants" in subsection (f) and inserting in lieu thereof "for grants or contracts";

(10) by striking out "subsection (d)" in subsections (e) and (f) and inserting in lieu thereof "subsection (e)" each place it appears;

(11) by redesignating subsections (b) through (f) as subsections (c) through (g), respectively; and

(12) by inserting after paragraph (1) of subsection (a) the following (and redesignating paragraphs (2) through (9) of subsection (a) of paragraphs (1) through (8), respectively):

"(B) demonstrations (and research, training, and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving protection and advocacy services related to the statewide protection and advocacy system (described in section 113).

"(2) The Secretary may make grants to, and enter into contracts with, public or nonprofit private entities for demonstrations (and research and evaluation in connection therewith) for determining the service needs of persons who are not developmentally disabled but who have a severe, chronic disability which (A) is attributable to a mental or physical impairment or combination of mental and physical impairments, (B) is manifest before the person attains 22 years of age, and (C) constitutes a substantial handicap to such person's ability to function normally in society.

"(3) The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(b) Grants and contracts provided under subsection (a)(1) shall include grants and contracts for—".

(b) The last sentence of section 145(c), as so redesignated, is amended by striking out "The Secretary" and inserting in lieu thereof "In the case of a project under subsection (a)(1), the Secretary".

(c) Section 145(e), as so redesignated, is amended to read as follows:

"(e) For the purpose of making payments under grants and contracts under subsection (a), there are authorized to be appropriated $25,000,000 for the fiscal year ending September 30, 1979, $28,000,000 for the fiscal year ending September 30, 1980, and $31,000,000 for the fiscal year ending September 30, 1981.".

(d)(1) The heading to part D is amended by inserting "AND CONTRACTS" after "GRANTS".

(2) The heading to section 145 is amended by inserting "AND CONTRACT" after "GRANT".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 14. (a) Section 112 is amended—

(1) by striking out "after September 30, 1976," in subsection (a);

(2) by striking out "Such" in subsection (b)(3) and inserting in lieu thereof "The"; and

(3) by striking out "an" before "objective criteria" in clause (B) of subsection (b)(3).

(b) Section 134 is amended—

(1) by striking out "CONSTRUCTION," in its heading;

(2) by striking out "(a)" in subsection (a); and

(3) by striking out subsection (b).

(c) Section 135 is amended—

(1) by striking out "CONSTRUCTION," in its heading;

(2) by striking out "(a)" in subsection (a); and

(3) by striking out subsection (b).

(d) The heading to part C is amended by striking out "CONSTRUCTION AND".

EFFECTIVE DATE

SEC. 15. The amendments made by this Act shall apply to payments under title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 for fiscal years beginning on and after October 1, 1978.

The SPEAKER pro tempore. Is a second demanded?

Mr. CARTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) will be recognized for 20 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, this bill represents an extension of the authority for various programs designed to identify and serve the needs of developmentally disabled persons. Many do not fully understand exactly who the developmentally disabled are; it is a term which does not immediately call a specific condition or disability to mind. Very simply, it is this: It is a disability which strikes someone at birth or during their childhood years. It is a disability which impinges on the normal development of the individual. Mental retardation, cerebral palsy, autism, epilepsy—these and similar disabilities are the conditions which result in a developmentally disabled person. We know that at least 10 million persons suffer to a greater or lesser degree from disabilities which affect their developmental years. Estimates of the number with a severe handicap resulting from such a disability range from 2 million to nearly 5 million. These are the persons who make up the target population for this legislation.

This bill would extend the State formula grant program, which is at the core of this legislation, for 3 fiscal years, and authorize a gradual increase in funding to support these efforts, beginning at $60 million in fiscal year 1979 and moving to $90 million by fiscal year 1981. Generally, the legislation recommended by the committee has attempted to retain the program in its current form; this program is a modest one with an ambitious mandate, and the committee felt it was not appropriate to change significantly the functions or responsibilities of the State planning councils and State agencies which receive funding through this grant program. The legislation does, however, set out several broad priorities for service areas to be addressed for the developmentally disabled population. These are: alternative community living arrangements, individual case management, child development services, and nonvocational social development services. The legislation requires States to concentrate 70 percent of their expenditures under this program on no more than two priority areas, one of which must be one of the priority areas established in this bill, the second area is completely open to State determination. As appropriations for this program increase in the future, additional areas can also be given priority. Once a State has established its goals or priorities for serving developmentally disabled persons, they may use the relatively limited funds made available by this legislation to fill gaps in other programs, to do outreach, to gain entry to other service programs more effectively, to establish model service programs, to train personnel and increase the capacity of other institutions and agencies, as well as to provide direct services.

Under the current law, each State is required to have a developmental disabilities council which is broadly representative of State and local agencies and consumers interested in developmental disabilities. This legislation continues that requirement, and clarifies the council's responsibility for development of the State plan for serving the developmentally disabled. And the legislation increases support for State protection and advocacy systems for the developmentally disabled.

Support for university-affiliated programs (UAP's) is a second major feature of the Developmental Disabilities Act. These programs are charged with interdisciplinary training for personnel serving the developmentally disabled population, with demonstrating exemplary service programs for the developmentally disabled, with providing technical assistance to public and private agencies serving the developmentally disabled, and with conducting research and disseminating information on the effective provision of service to the developmentally disabled. H.R. 12326 requires the development of standards for these programs, which must be met by a program within 3 years or its funding will cease. Additionally, the legislation establishes a minimum grant of $150,000 for UAP's.

The legislation directs the Secretary to develop an adequate evaluation system for the program and have it in place by 1982. it provides him with contract authority—as well as the grant authority of existing law—to support special projects, it enlarges the national advisory council on developmental disabilities to include other relevant Federal agencies—HUD and Labor—as well as HEW, and makes other minor changes in the existing legislation.

I should note that I have been informed by the Budget Committee that a technical amendment is needed clarifying that contracts are not authorized for more than the amount that is appropriated. I want to assure the committee that this amendment is included in the legislation before the House.

This legislation deserves the support of the Members of the House, and I urge its adoption.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly support H.R. 12326 which revises and extends for 3 years the developmental disabilities program.

The purpose of the original legislation has been to improve and coordinate provision of services to persons with developmental disabilities.

Some 10 million of our citizens suffer from disabilities incurred during the developmental years—and for at least 2 million, their handicap is a severe one.

Far too often the needs of the developmentally disabled persons are overlooked. In other cases, these individuals simply "fall through the cracks" of existing programs.

The purpose of the amendments we are considering today is to strengthen the ability of States to serve their developmentally disabled citizens through better planning, through improved coordination of programs, and through protection and advocacy of their rights.

Actually most of the funds from this program are not to be spent on direct services payment. Instead they are used to provide access and "tap into" existing programs to improve their ability to serve the "D.D." population.

For this reason, I believe the developmental disabilities program is one of the best examples of the effective use of very minimal Federal funding through stimulation of State and local efforts.

This year we revised the legislation to focus on four priority service areas:

Case management services;

Child development services;

Alternative community living arrangement services; and

Nonvocational social-developmental services.

States will be required to set priorities among these areas—and concentrate their funds on at least two of them. And possibly more—depending on funding levels.

The legislation also extends the authority for State formula grants to support planning efforts to improve services and programs for the developmentally disabled.

The bill increases the authorizations for protection and advocacy programs which have proved effective in the past but the total authorization for fiscal year 1979 is the same as the total last year.

Finally, I am pleased that the legislation clarifies the inclusion of the condition—dyslexia—so that these individuals who are substantially handicapped by this disability—can be served by the developmental disabilities program.

Mr. Speaker, the population identified by this leigslation needs our continued support and I believe this program has made significant progress in serving their needs.

I urge that the bill be favorably considered.

Mr. ROGERS. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. CARTER. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I want to commend the gentleman specifically on addressing the problem of dyslexia. That is one outstanding breakthrough we have had in the past few years, and we are all impressed with what people who have dyslexia can do, not only so far as a complete adjustment, but they more than compensate, in many cases, by strong achievement performance.

Mr. Speaker, I would like to ask the gentleman from Florida something about this bill. Does the gentleman have any idea of how many people are specifically included in this program on disabilities?

Mr. ROGERS. If the gentleman will yield, the best estimate we have is about 2 million.

Mr. COLLINS of Texas. That is how many people need it. How many of them are we actually serving?

Mr. ROGERS. Since this program provides little direct service, but emphasizes planning, coordination, advocacy, making other programs more accessible and responsible to the developmentally disabled and similar activities, I believe probably most of those 2 million gain substantial benefit from it.

Mr. CARTER. Mr. Speaker, if the distinguished gentleman from Texas will yield, when I go to small rural towns in my district, I find a school for the mentally retarded in almost every one of them. One in Berea, Ky., is called the School of Hope. They used to have a Chinese teacher there, and I wish you could see what he has done with these mentally retarded children. You would be forever grateful to this man.

Mr. COLLINS of Texas. That is very encouraging.

What happens with so many of these programs is that we set them up in Congress with good intentions, and so much of the money goes for administration and to counselors, and when it comes to the people who need it, very little filters down. To what extent can the chairman explain what is going to the disabled?

Mr. ROGERS. If the gentleman will yield, we have gone into the reports, we have heard from the groups involved, from the consumers of these services, and the parents. We get consistently favorable reports on this. I would reemphasize that the program does not in all cases provide a direct service. It also provides information about what services are available and what can be done, directing them on what treatment they can get, what aid they can get. The States have a great deal of flexibilty in how they run this program, as the gentleman knows.

Mr. COLLINS of Texas. When we started in 1970, what was the original appropriation? We have increased all of these programs considerably. Does the gentleman know what we started with?

Mr. ROGERS. I am sorry, I cannot recall that at this moment for the gentleman. The appropriations for the last 3 fiscal years have remained relatively constant, growing from $56 million in fiscal year 1976 to $59 million in fiscal year 1978.

Mr. COLLINS of Texas. I notice here that we have a total of $339 million, which seems a large sum.

Mr. CARTER. If the gentleman will yield, actually the bill authorizes $109 million for fiscal year 1979 which I regret to say, will be $3 million less than was authorized this year, $112 million.

The authorization does increase in 1980, but every bit of this money is wisely and well-used, in my opinion.

Mr. COLLINS of Texas. I thank the chairman.

Mr. ROGERS. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. CARTER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Delaware (Mr. EVANS).

Mr. EVANS of Delaware. Mr. Speaker, I thank the gentleman for yielding. I would like to congratulate him especially on the amendment relating to dyslexia. I think it is penny-wise and dollar-foolish not to identify this type of problem early so that can enable young people of our Nation to lead happy as well as productive lives, so that they will be contributing to society and contributing to this country.

Mr. Speaker, I congratulate the gentleman from Kentucky on his amendment.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. EVANS of Delaware. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, I would like to associate myself with the remarks of the gentleman from Delaware and add my support to this excellent cost-efficient and humane legislation.

Mr. CARTER. I thank the gentleman.

● Mr. STAGGERS. Mr. Speaker, I urge the Members of the House to support H.R. 12326, a bill to extend the developmental Disabilities Services Act. This legislation was reported without dissent by the Committee on Interstate and Foreign Commerce. It extends and increases the Federal Government's commitment to support State efforts to serve a very disadvantaged segment of our population, developmentally disabled individuals. These people, who are mentally retarded or who have epilepsy or cerebral palsy or autism or similar disabilities which interfere with their normal development into adulthood, deserve help in receiving services, in having their rights protected, and in receiving the assistance they need to develop to their maximum potential.

This bill provides funds which support State planning councils which are made up of citizens who are working to focus attention on the developmentally disabled. This bill provides grant funds to States to develop plans to serve the developmentally disabled and to fill the gaps which too often exist between our current programs. This bill supports research into how to deliver services to this population more effectively.

We cannot turn our backs on those among us who are unfortunate victims of disabling conditions in their childhood

years. I urge the Members to support the bill.●

● Mr. STUDDS. Mr. Speaker, as we are considering today H.R. 12326, the Developmental Disabilities Act amendments, I think that it is appropriate for me to address briefly a subject with which we both are familiar—Tuberous Sclerosis. As we serve together on the Board of Directors of the Tuberous Sclerosis Association of America, we can appreciate the need for greater understanding by the public of this devastating genetic disease and for greater resources with which to combat the suffering it creates.

H.R. 12326 would be an excellent vehicle with which to enhance our capabilities to fight the disease. But as reported out of the House Committee on Interstate and Foreign Commerce, it would provide coverage for a severe chronic disability which either is attributable specifically to mental retardation, cerebral palsy, epilipsy, autism, or dyslexia, or one which meets a rather narrow functional definition of a developmental disability. In short, under this definition, Tuberous Sclerosis would not be included under the bill—even though the committee acknowledged that it was "impressed" with the testimony of persons concerning the need for coverage of the disease.

The Senate Committee on Human Resources has reported out similar legislation which deals with developmental disabilities. The Senate version, however, provides a broader functional definition of a developmental disability, one which would cover Tuberous Sclerosis. Because we are considering H.R. 12326 under suspension, no amendments can be offered from the floor. If this were not the case, I would offer an amendment to broaden the House definition to meet that of the Senate legislation. With this in mind, I hope very much that the conferees chosen to resolve the differences between the two bills will see fit to agree on the broader definition of a developmental disability. To do otherwise would be to deprive thousands of unfortunate people in this country of an opportunity to reduce their suffering and to help prevent similar tragedies for thousands of others who may be unknowing targets of the disease.●

● Mr. GILMAN. Mr. Speaker, I am rising in support of H.R. 12326, the Developmental Disabilities Act authorizations, fiscal year 1978. Our disabled deserve comprehensive services which will insure that their lifestyles are reflective of their full potential, and that their lives are made as comfortable and fulfilling as possible.

The developmental disabilities authorization legislation before us now provides for a 3-year extension of the act's programs and authorizes $109 million for fiscal year 1979, $133 million for fiscal year 1980, and $157 million for fiscal year 1981. The eligibility requirements for receiving assistance have been expanded to include disabilities which manifest themselves before age 22, rather than 18. HEW is urged to develop a comprehensive service evaluation system by October 1979 which will outline States cost estimates.

Mr. Speaker, I am heartened to see that our development disabilities program is being continued for several more years and that the disabled individuals of this Nation can expect to continue to receive services provided them in recent years. It is time that the Congress recognizes the plight of our developmentally disabled, a group which spans all of society, cutting across class and economic lines including millions of individuals who can benefit from our foresight and programs.

I urge my colleagues to support this worthwhile legislation.●

Mr. ROGERS. Mr. Speaker, I have no further requests for time.

Mr. CARTER. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12326, as amended.

The question was taken.

Mr. LEVITAS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

NURSE TRAINING AMENDMENTS OF 1978

Mr. ROGERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12303) to amend title VIII of the Public Health Service Act to extend for 2 fiscal years the program of assistance for nurse training, and for other purposes.

The Clerk read as follows:

H.R. 12303

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE —NURSE TRAINING

SEC. 101. (a) This Act may be cited as the "Nurse Training Amendments of 1978".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 102. Section 801 relating to authorizations for construction grants) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 103. (a) Subsections (a) and (b) of section 805 (relating to loan guarantees and interest subsidies) are each amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (e) of such section is amended by inserting after "in fiscal year 1978" the following: "and in each of the next two fiscal years".

SEC. 104. Subsection (f) of section 810 (relating to capitation grants) is amended by inserting after "fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 105. The first sentence of subsection (d) of section 820 (relating to special project grants and contracts) is amended by striking out "and" after "1977," and by inserting before the period the following: ", $20,000,000 for the fiscal year ending September 30, 1979, and $20,000,000 for the fiscal year ending September 30, 1980".

SEC. 106. Subsection (b) of section 821 (relating to advanced nurse training programs) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 107. Subsection (e) of section 822 (relating to nurse practitioner programs) is amended by striking out "for fiscal year 1978" and inserting in lieu thereof "for the fiscal year ending September 30, 1978, and for each of the next two fiscal years".

SEC. 108. Subsection (b) of section 830 (relating to traineeships) is amended by inserting before the period "and for each of the next two fiscal years".

SEC. 109. (a) Subsection (b)(4) of section 835 (relating to loan agreements) is amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Section 837 (relating to authorizations for student loans funds) is amended (1) by inserting before the period in the first sentence "and for each of the next two fiscal years", (2) by striking out "fiscal year 1979" and inserting in lieu thereof "the fiscal year ending September 30, 1981", and (3) by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1980".

(c)(1) Subsection (a) of section 839 (relating to distribution of assets) is amended by striking out "September 30, 1980, and not later than September 30, 1977" and inserting in lieu thereof "September 30, 1981, and not later than December 30, 1983".

(2) Paragraph (1) of such subsection is amended by striking out "1980" and inserting in lieu thereof "1983".

(3) Subsection (b) of such section is amended by striking out "1980" each place it occurs and inserting in lieu thereof "1983".

SEC. 110. (a) Subsection (b) of section 845 (relating to scholarship grants) is amended (1) by striking out "next two fiscal years" in the first sentence and inserting in lieu thereof "next four fiscal years", (2) by striking out "1979" and inserting in lieu thereof "1981", and (3) by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (c)(1) of such section is amended (1) by striking out "next two fiscal years" in subparagraph (A) and inserting in lieu thereof "next four fiscal years", (2) by striking out "1978" in subparagraph (B) and inserting in lieu thereof "1980", and (3) by striking out "1979" in such subparagraph and inserting in lieu thereof "1981".

SEC. 111. Subpart I of part B of title VIII (relating to traineeships) is amended by adding after section 830 the following:

"TRAINEESHIPS FOR TRAINING OF NURSE ANESTHETISTS

"SEC. 831. (a)(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for the training, in programs which meet such requirements as the Secretary shall by regulation prescribe and which are accredited by an entity or entities designated by the Commissioner of Education, of licensed, registered nurses to be nurse anesthetists.

"(2) Payments to institutions under this subsection may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. Such payments may be used only for traineeships and shall be limited to such amounts as the Secretary finds necessary to cover the costs of tuition and fees, and a stipend and allowances (including travel and subsistence expenses) for the trainees.

"(b) For the purpose of making grants under subsection (a), there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, and $3,000,000 for the fiscal year ending September 30, 1980.".

SEC. 112. Section 836(b)(3) (relating to student loans) is amended (1) by inserting after "(3)" the following: "in the case of a student who received such a loan before the date of enactment of the Nurse Training Amendments of 1978,", and (2) by striking out "any such loan" and inserting in lieu thereof "any such loan made before such date".

SEC. 113. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall arrange, in accordance with subsection (b), for the conduct of a study to determine the need to continue a specific program of Federal financial support for nursing education, taking into account—

(1) the need for nurses under the present health care delivery system and under that system as it may be changed by the enactment of legislation for national health insurance,

(2) the cost of nursing education, and

(3) the availability of other sources of support for nursing education, including support under general programs of Federal financial support for post secondary education, under State and other public programs, and from private sources.

(b)(1) The Secretary shall first request the National Academy of Sciences (hereinafter in this section referred to as the "Academy"), acting through the Institute of Medicine, to conduct the study, required by subsection (a), under an arrangement whereby the actual expenses incurred by the Academy directly related to the conduct of such study will be paid by the Secretary. If the Academy agrees to such request, the Secretary shall enter into such an agreement with the Academy.

(2) If the Academy declines the Secretary's request to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with another appropriate public or nonprofit private entity to conduct such study.

(3) Any arrangement entered into under paragraph (1) or (2) of this subsection for the conduct of a study shall require that such study be completed and reports thereon be submitted within such period as the Secretary may require to meet the requirements of subsection (c).

(c) Not later than October 1, 1979, the Secretary shall report to the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives the results of the study conducted pursuant to subsection (a) together with such recommendations for legislation as the Secretary determines are appropriate.

TITLE II—OTHER HEALTH PROFESSIONS PROGRAMS

SEC. 201. Section 338(a) (relating to authorizations for the National Health Service Corps) is amended by striking out "$57,000,000" and inserting in lieu thereof "$63,000,000".

SEC. 202. Section 729(a) (relating to limits on Federal loan insurance and insured loans) is amended—

(1) by inserting before the period in the first sentence a comma and the following: "except that in the case of loans to students in schools of medicine, osteopathy, and dentistry, the Secretary may increase the total of such loans which may be covered by Federal loan insurance to $15,000 if he determines that the costs of education at such schools requires such increase"; and

(2) by inserting before the period in the second sentence a comma and the following: "except that the Secretary may increase such amount for borrowers who are or were students in schools of medicine, osteopathy, and dentistry to $60,000 if he determines that the costs of education at such schools requires such increase".

SEC. 203. Section 739(b)(2) (relating to eligibility of institutions to participate in the guaranteed student loan program) is amended by striking out "in each class in the institution" and inserting in lieu thereof "enrolled in the institution".

SEC. 204. Section 752(b)(5)(A) (relating to service requirements for National Health Service Corps scholarships) is amended by striking out "(not to exceed three years)" and inserting in lieu thereof "(not to exceed three years of such greater period as the Secretary may authorize)".

The SPEAKER pro tempore (Mr. HOLLAND). Is a second demanded?

Mr. CARTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) will be recognized for 20 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 12303.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the legislation before us today, H.R. 12303, as amended, would amend title VIII of the Public Health Service Act to extend for 2 fiscal years the program of assistance for nurse training.

The legislation, as reported from the Committee on Interstate and Foreign Commerce, has four principal purposes.

First, it would extend the authorities of existing law with respect to nurse training including authorizations for construction grants, loan guarantees and interest subsidies, capitation grants, advanced nurse training programs and traineeships, nurse practitioner programs, and student loans and scholarships at the 1978 authorization level. It would increase the authorization of appropriations for special project grants by $5 million and allow the existing authority for financial distress grants, which has not been funded for 4 years, to lapse.

Second, it would add new authority to provide traineeships to professional nurses in training to become nurse anesthetists.

Third, it would require the conduct of a study and report to the Congress with respect to the need to continue the program of Federal financial support for nursing education.

Finally, it would encourage an increase in the supply of nurses in medically underserved areas by providing that loan forgiveness would only be authorized for nurses who agree to practice in underserved areas. Existing law authorizes loan forgiveness for virtually all practicing nurses regardless of location of employment.

In addition, the measure before us today includes one technical and three minor, substantive amendments.

First, it contains an amendment to section 113 of the bill to conform that section to the provisions of the Budget Control and Impoundment Act of 1974 to make it clear that any funds obligated to implement the section are limited by amounts available under an appropriation act and that no such funds could be obligated prior to October 1, 1978.

Second, it includes an amendment to section 781 of the Public Health Service Act—relating to the area health education centers program—which would amend the existing requirement that each medical and osteopathic school participating in an AHEF program conduct a program for the training of physician assistants or nurse practitioners. Under the amendment, only one such school within an AHEC program would have to conduct such a training program.

Third, it contains an amendment to section 802 of the Health Professions Educational Assistance Act of 1976 (Public Law 94-484) which would enable area health education centers which first received funding under section 774 of the Public Health Service Act before October 12, 1976, to continue to be eligible to receive support through fiscal year 1981 without meeting the new requirements for area health education centers under new section 781 of the act. This extension of eligibility for gradually diminishing Federal funding will provide the 11 original AHEC programs which a sufficient period of time in which to find alternative sources of State and local support.

Finally, it includes a minor amendment to the authority under section 748 of the Public Health Service Act—relating to traineeships for students in schools of public health—to permit students in schools of public health who received traineeship support during school year 1977-78 under the authority of old section 312 of the act to continue to be eligible for such support for school year 1978-79 whether or not they meet the new requirements of new section 748.

Under section 748 of the act, 45 percent of the traineeship funds awarded to a school of public health must be used to provide traineeships to individuals who have either a postbaccalaureate degree or 3 years work experience in a health services field and who intend to pursue a specified course of study. Unfortunately, in school year 1977-78, several schools made awards under the old authority to some 242 students beginning a 2-year course of study who do not meet the requirements of section 748 which superseded section 312. The amendment will enable these students to complete their education.

Mr. Speaker, the Nurse Training Amendments of 1978 is a noncontroversial measure which is cosponsored by all 14 members of the Subcommittee on

Health and the Environment and which was reported by the Committee on Interstate and Foreign Commerce by unanimous voice vote. Its enactment will continue the program of Federal support for nursing education for 2 fiscal years and provide the Congress with the opportunity to examine in detail and reevaluate the necessity for Federal support for all health professions education activities and to develop a consistent Federal policy in this regard.

I commend this legislation to my colleagues and urge its immediate adoption.

Mr. BROYHILL. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from North Carolina.

Mr. BROYHILL. Mr. Speaker, I asked the gentleman to yield just for the purpose of a comment and perhaps a question. As the gentleman knows, this is only one program which provides Federal support for health professions training. There are several others that we do have in operation. The gentleman from Florida, I know, is familiar with the allegations that are made that there is an ample supply of nurses now and we should start cutting back on this program.

I, of course, as one member of the committee think we should recognize these allegations and concerns, but at the same time I am concerned about any abrupt termination of support of the nurse training program at this time.

What I would like, if the chairman would be willing to do it, is to have him comment on these allegations and as to the progress of any studies that could shed more light on the need of the future for the continuation of the program at present levels.

Mr. ROGERS. I thank the gentleman from North Carolina for his comments.

As a matter of fact, the committee bill authorizes, as the gentleman knows, a study so that we can have the actual facts and the committee may make that judgment as soon as that study is completed. I do think we need to look at it because we do not want to fund programs unless they are necessary. I am sure the gentleman would agree with me that we still have a maldistribution problem; it is difficult often to determine whether it is a lack of actual supply of personnel or a missettlement of those personnel.

Also, we have gone through the experience of bringing in foreign trained alien nurses from the Philippines. New Orleans had this problem, the gentleman may recall. So in many areas of the country we still have nurse shortages.

As I say, this study I think will help us make a judgment as to whether it is appropriate for us to continue to support nurse training.

Mr. BROYHILL. The gentleman has addressed an issue that I am interested in, and that is the maldistribution of the professional nurses. I wonder if the gentleman would comment. As the gentleman knows, we do have a problem in North Carolina. I know in certain parts of my congressional district there are shortages still, even though there apparently is a surplus nationwide. Would the gentleman address himself to the points of the amendments we made to these programs to try to encourage people to go into these areas where they are needed?

Mr. ROGERS. I would be delighted. The gentleman is correct. We restricted the forgiveness of educational loans to loans of those persons who are willing to serve where they are really needed in medically underserved areas. We hope that will begin to help some to handle the maldistribution problem.

I am not sure I agree with some of the statements made that there is an oversupply of nurses because there are so many areas we simply have not identified where we do have shortages. So I think the thrust of the gentleman's concern I believe is answered basically by the bill in encouraging nurses to practice in underserved areas and, second, in studying the support program to see whether it should be continued.

I thank the gentleman for his contribution.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the legislation.

As the gentleman said, there are areas that are underserved. One of them that remains a constant concern of mine as a member of the Select Committee on the Aging is that of geriatrics. We have held extensive hearings in this area and further in connection with the future of the aged, and one fact came through very glaringly, which is that the medical profession across the board is most remiss in focusing attention on the medical problems of the elderly.

We suggest that whenever possible that that condition be corrected. I was wondering if the chairman has any expression to make with relation to the training of the nurses?

Mr. ROGERS. Yes, I think the gentleman raises a very valid point that as we develop a greater aging population in this country, and we are, more attention does need to be given, and certainly in this area of nursing for supportive services, as the elderly population grows older and becomes larger. We are trying to direct the Institute on Aging to get into those programs that will keep a person as healthy as long as possible, but the time inevitably comes when we all need to have some help.

So I would say that instead of an over number of nurses that there is still the necessity to address many needs. As far as the health care system is concerned, you can go into understaffed nursing homes, we are not doing the proper job in home health care, and both of those types of facilities need more nurses. I thank the gentleman for calling this to our attention and the fact that we need to develop in that direction. Hopefully, this bill will enable more and more of the nurses to direct their attentions to those areas because certainly those are jobs that are waiting for people.

Mr. BIAGGI. I am grateful to the gentleman for those remarks because that is the point I was trying to raise.

I would also ask whether the bill does provide sufficient latitude for the educators in the training process to deal with this problem of geriatrics?

Mr. ROGERS. Yes, very definitely. Although we do not try to direct them into the areas that they must teach. But we are going to try to direct the nurses toward those programs by forgiveness of their loans. I think that can be very effective.

Mr. BIAGGI. I thank the gentleman for his very constructive remarks.

Mr. COLLINS of Texas. Mr. Speaker, if the gentleman will yield, can the gentleman tell me first did we ask for more money in this committee bill than the administration asked for?

Mr. ROGERS. Yes, we did.

As the gentleman knows, it has been the practice, and I am sure the gentleman realizes, that every administration, and I do not care which it is, whether Republican or Democrat, tries to keep its budget down and make it look good, and there are certain programs they cut out because they know that the Congress is going to take prompt action and respond to the need of the Nation. This happens to be one of those programs. As you may recall, the Ford administration asked no money for the training of nurses, but what has the Congress done? It has looked at what the need is and it has responded and here again we have acted to meet the need.

Mr. COLLINS of Texas. Of course, all of us know that President Carter is working to balance the budget.

Mr. ROGERS. We all are, I would assure the gentleman.

Mr. COLLINS of Texas. And this is along that same line of reducing Government spending.

Mr. ROGERS. I would ask the gentleman if the gentleman supported the veto of the $2 billion naval vessel?

Mr. COLLINS of Texas. Of course, but defense is for national security.

Mr. ROGERS. I am just asking the gentleman the question. Did the gentleman support that veto? This is legislation for health, people's lives are involved, this is on the firing line right now.

Mr. COLLINS of Texas. If the gentleman from Florida will just recall just a couple of weeks ago——

Mr. ROGERS. Would the gentleman just answer my question, Did he vote to cut out the $2 billion?

Mr. COLLINS of Texas. I certainly voted for the national security and a strong national defense.

Mr. ROGERS. So did I, but did the gentleman vote to save the $2 billion? You will recall the President said we did not need it, and you said let us stick with the President.

Mr. CARTER. Mr. Speaker, if the distinguished gentleman will yield.

Mr. COLLINS of Texas. The gentleman from Florida (Mr. ROGERS) has control of the time.

Mr. ROGERS. I will yield to the gentleman from Kentucky.

Mr. CARTER. On this very thing last year the authorization was $206 million, I would say to my good friend the gentleman from Texas (Mr. COLLINS) and this year it is $208 million. There is an addition in there that goes for national health courses, scholarships for nurses to go into the rural areas and into the ghetto areas. But this legislation does not include the inflationary factor. So actually if you include that, then there is less money than there was for last year.

So I would hope that the gentleman would be pleased that the authorization is lessened, but I can assure you that the health care will be carried on. and it will not be diminished, even though we are cutting the authorization actually. I trust that that satisfies the gentleman's demand for savings, but I do not like to see it at the expense of health care.

Mr. COLLINS of Texas. Will the gentleman from Kentucky yield me 5 minutes?

Mr. CARTER. Would I yield the gentleman 5 minutes?

Mr. COLLINS of Texas. Yes. You have control of the time.

Mr. CARTER. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I thank the gentleman for yielding.

One thing about whether we need it, of course, breaks down into two subjects. The first one is when we discussed hospital costs; and, of course, the gentleman from Florida (Mr. ROGERS) is most eloquent in talking about the great desire to keep down the costs of hospitals.

The situation here is, do we have as many nurses as we need, or do we have as many nurses as we can afford? I ask that because today I heard time and again that as far as the number which the hospital systems can economically afford in their present operations indicates that they are adequately staffed, and we would make a mistake in America to oversupply the number of nurses.

Mr. Speaker, there was a day when we were short on teachers I remember when the gentleman from Kentucky (Mr. CARTER) was talking about leveling out on the number of nurses. We had a time when we wanted to develop more teachers; but I asked the schools in my district about teachers recently. That is something we can specifically put our finger on. Schools had 20 applications for every teacher position in many of our school systems.

The question on nurses is, Do we need an oversupply of nurses? Is this good for the nursing profession? Is it good for America?

What figures does the gentleman have? I know nurses are needed in the rural areas. However, if we just simply oversupply the cities, what do we accomplish?

Mr. CARTER. Mr. Speaker, if my distinguished friend, the gentleman from Texas, will yield, we have at the present time about 850,000 full-time practicing nurses. Actually there are about 1.3 million nurses in the United States today, but about 500,000 of them are not practicing full time. Today our main problem is the maldistribution of nurses. Personally I do not think we have enough in rural areas. It is hard to find a sufficient number of them.

As the gentleman knows, these nurses are wonderful people. They are well trained; and if the distinguished gentleman from Texas (Mr. COLLINS) ever gets sick, I hope he will be where they can cool his fevered brow.

Mr. COLLINS of Texas. Mr. Speaker, the distinguished gentleman from Kentucky, a doctor, speaks with a knowing voice.

However, a little more than that is involved here, I am afraid. The basic problem about nurses is the shortage in the rural areas; and as the old saying goes, "How are you going to keep them down on the farm, after they have seen New York?"

The problem is that a lot of people today just do not want to make the sacrifices and undergo the privations that are experienced by those who live in rural areas.

This bill does not solve that question.

Mr. CARTER. If the distinguished gentleman will yield further, I happen to be from a rural area. If the good Lord permits, I am going to go back to that area this weekend, and I will go back again next weekend.

There are those who may say that they do not like rural areas, but I believe that such areas are wonderful where mountains are steep, trees are tall, and the land is beautiful. I like rural country, and I am going back there.

I commend the distinguished gentleman from Texas for his interest.

No, we do not have enough nurses in rural areas but we are trying to get them. Certainly we do not have enough nurses in many medically underserved areas.

Nursing is a noble and great profession, and I regret that we have difficulty in obtaining nurses in certain parts of this country.

As far as I am concerned, I want to continue our support for them. The bill provides for a study to see if we might in the future have an oversupply and to make recommendations about future Federal support.

If the gentleman has any further questions, I will be happy to yield to him.

Mr. COLLINS of Texas. No. Does the gentleman from Florida (Mr. ROGERS) concur in the statements of the gentleman from Kentucky? My friend, the gentleman from Kentucky (Mr. CARTER), believes that there is a very strong need for more nurses. Does the gentleman from Florida have that strong feeling?

Mr. ROGERS. If the gentleman will yield, yes, I do feel that. For instance, we had a situation not too long ago where a cancer ward out there at the Clinical Center at NIH was closed because they could not get nurses.

Therefore, this problem exists in many spots all over the Nation. I dare say that we can find many right in Texas.

There are areas where there may be too many nurses; but in many areas of the country there are serious shortages.

Furthermore, as the gentleman from New York pointed out, we are now seeing some advances infl health care. For instance, let us take home health care. We are trying to develop less expensive ways to deliver care and yet still take care of people. One way to see this develop, I think, is to have nurses who will be able to go into the homes of the elderly. Perhaps they will have to go by there once a day or twice a week while not having the doctor, the highly trained and highly expensive expert, go by; and still keep people healthy.

Therefore, this will be a cheaper way, too, of trying to deliver health care.

Therefore, I think the gentleman can very well support the bill.

Mr. Speaker, I have no further requests for time.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

I am pleased to support H.R. 12303, the Nurse Training Amendments of 1978. This bill amends title VIII of the Public Health Service Act, and extends the programs of financial assistance for nurse training for an additional 2 years.

Although nurses are the largest group of health professionals in the country, there is a shortage of nurses with advanced degrees. Currently, less than 1 percent of all nurses receive doctoral degrees, and fewer than 14 percent earn baccalaureate degrees. Clearly this results in a deficit of nurses adequately prepared for teaching, administrative, or research positions.

The emphasis in recent years on primary care has also increased the demand for nurses with advanced training. The nurse practitioner is a registered nurse qualified to deliver primary care, who places emphasis on health prevention and health maintenance, and education for self-care. In my district, for instance, the Frontier Nursing Service is an outstanding example of the use of nurse practitioners to deliver health services not only to individual patients, but to the family and community as well.

Federal funds are a major source of support for advanced nurse training and nurse practitioner programs. At the present time, almost one-half of the nurse practitioner programs in the country are supported by Federal funds. And these programs graduate approximately 1,000 practitioners yearly. The advanced nurse training awards have assisted 2,000 nursing students over the past 2 years in a variety of programs. Both of these programs need our support if they are to continue to provide the Nation with the numbers of well-qualified nursing personnel that it needs. And this legislation will provide that needed support.

Also H.R. 12303 establishes a new grant authority for the training of nurse anesthestists—who currently provide the largest percentage—48.5 percent—of anesthesia services in the country. They are vital in medically underserved areas, where they provide over 65 percent of such services in hospitals of less than 100 beds. Training for nurse anesthetists typically involves 2 full years of intensive study and clinical training. During this time, employment is strongly discouraged by the schools, and, with the estimated tuition for anesthesia school at $5,000, it is easy to see why financial aid is needed. I was pleased to cosponsor this

new provision with the chairman because I believe such support is needed.

In conclusion, Mr. Speaker, I urge favorable consideration of this legislation which continues our Federal commitment to nursing education for 2 years.

● Mr. CONTE. Mr. Speaker, I rise in support of the Nurse Training Amendments of 1978.

This measure provides for a 2-year extension at current levels of the nurse training authorities under title VIII of the Public Health Service Act and further reflects a recognition of new roles for nursing personnel which promise to strengthen the attractiveness of the profession and, ultimately, to reduce the cost of health care in America.

Among the extended programs are: The program of annual capitation grants to schools of nursing, which has proven an effective stimulant to nursing school enrollment.

The projects and grants authority for advanced nurse training programs, aimed at preparing nurses for teaching and for service in administrative and supervisory capacities, programs which have served over 2,000 graduate nursing students over the past 3 fiscal years.

The program of grants and contracts for the training of nurse practitioners was first authorized by the 1975 act. This program supports nearly 100 nurse practitioner training programs, graduating approximately 1,000 practitioners annually. Particularly noteworthy is the fact that almost half the graduates are employed in ambulatory care settings in inner cities and rural areas.

The authority to provide low interest student loans for nursing students and to make grants to schools of nursing for scholarships to students of exceptional financial needs. Though fiscal year 1978 nursing student loans under the Nurse Training Act totaled $22.5 million, only 11 percent of nursing students currently receive these loans, which average $800 per student annually.

The authority to provide grants to public or nonprofit private institutions to cover the costs of traineeships for the advanced training of professional nurses, a program which, in fiscal year 1978, aided approximately 3,600 trainees enrolled in graduate programs at 140 participating institutions.

The authority for special projects grants and contracts to improve nursing education, a program which encompasses development of cooperative arrangements between hospital training programs and academic institutions; curricular improvement; continuing education for active nurses; retraining opportunities for inactive nurses desiring to reenter practice; efforts to increase educational opportunities for persons from disadvantaged backgrounds; and efforts to improve the geographic and specialty distribution of nursing personnel. This authority currently supports 160 grants and 6 to 8 contracts annually.

This legislation adds a significant new provision to the Public Health Service Act to authorize HEW to make grants to public or private nonprofit institutions to cover the costs of traineeships for the training of licensed, registered nurses to be nurse anesthetists. There has been a developing trend for nursing and allied health professions to assume new roles. Nurses can and do perform many functions once done only by doctors and rendering anesthesia services is one of them. Though 48.5 percent of anesthesia services are provided by nurse anesthetists, analysts anticipate a growing demand for their services and there is a need to step up training in this area. Nurse anesthetists offer significant cost benefits in this time of spiraling health care costs—the majority of nurse anesthetists are salaried employees of hospitals earning an average annual salary of $19,000; the average annual income of a hospital-based anesthetist, compensated on a fee-for-service basis, exceeds $75,000.

The nurse training amendments are necessary, practical, cost-efficient, and deserving of your support.

Thank you.●

○ Mr. MICHEL. Mr. Speaker, there are several observations I would like to make regarding this bill, particularly from the standpoint of the Appropriations Committee.

First of all, it is noteworthy that the nursing authorization levels for fiscal years 1979 and 1980 are identical with the 1978 level, with the exception of an additional $2 million for the new nurse anesthetist training program. It is an unusual situation when the authorization committee refrains from raising the authorization levels, irrespective of the amounts appropriated, and when this occurs, it usually indicates some doubt as to the need or direction of the program.

Second, the authorization level of $208 million, despite being stabilized, is still nearly twice the amount we appropriated last year, $119.5 million, and is 10 times the total requested by President Carter in his 1979 budget. I would anticipate that when we take up the appropriations question, the amount will be in the neighborhood of last year's figure, and nowhere near the authorization level. So once again, we are talking about the adoption of unrealistically high authorization levels which are out of step with the actual spending policies of Congress.

I note that the bill contains a provision requiring HEW to conduct a study "to determine the need to continue a specific program of Federal financial support for nursing education." According to the committee report:

> The study is to take into account the need for nurses under the present health care delivery system and under that system as it may be changed by the enactment of national health insurance legislation, the cost of nursing education, and the availability of other sources of support for nursing education including support under general programs of Federal financial support of post-secondary education under State and other public programs and from private sources.

I hope this study will finally give us some straight answers as to the real nursing needs in this country, but I would have to question the supposedly unbiased nature of the study if the study group includes too many representatives of the nursing profession.

Finally, I want to call attention to, and express support for, the committee amendment pertaining to the area health education center program which is included as part of this package. That amendment would basically exclude existing AHEC's from coverage under new HEW regulations governing this program—regulations which were apparently required by Congress—and allow such AHEC's to finish their funding cycles under the present regulations.

Requiring them to operate under new regulations would be like changing the rules in midstream, and would be particularly onerous to the University of Illinois, because it would apparently require the Division of Medicine to change its entire structural organization. This would be another example of the Federal, bureaucracy making life unreasonably difficult for our educational institutions.●

● Mr. STAGGERS. Mr. Speaker, nurses are a national resource. There is no better investment in America than to invest in training of our Nation's nurses.

H.R. 12303, reported by the Committee on Interstate and Foreign Commerce, continues this Nation's commitment to quality nurse training. It extends, at reasonable levels, authorizations for construction of nursing facilities, institutional support of nursing schools, graduate training programs, nurse practitioner programs, and student loan and scholarship programs. In addition, it contains an important technical amendment which would allow the existing area health education centers to receive Federal funding during the coming year.

Mr. Speaker, all of us can support this legislation, which is critical to nursing education. I urge its adoption.●

Mr. CARTER. Mr. Speaker, I have no further requests for time. I strongly urge passage of this legislation.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12303.

The question was taken.

Mr. WEISS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

HEALTH CENTERS AMENDMENTS OF 1978

Mr. ROGERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12460) to amend the Public Health Service Act and the Community Mental Health Centers Act to revise and extend the programs under those acts for health care delivery centers, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12460

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Health Centers Amendments of 1978".

TITLE I—PUBLIC HEALTH SERVICE ACT AMENDMENTS

REFERENCE TO ACT

SEC. 101. Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

MIGRANT HEALTH CENTERS

SEC. 102. (a)(1) Subsection (a)(1) of section 319 is amended by inserting after "as may be appropriate for particular centers" in subparagraphs (D) and (E) the following: "(as determined by the centers)".

(2) Subparagraph (G) of such subsection is amended to read as follows:

"(G) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals,".

(3) Subparagraph (F) of subsection (a)(6) of such section is amended to read as follows:

"(F) pharmaceutical services.".

(4) Subsection (a)(7) of such section is amended—

(A) by amending subparagraph (F) to read as follows:

"(F) dental services (including preventive dental services);",

(B) by amending subparagraph (K) to read as follows:

"(K) social services (including counseling, referral to assistance, and followup services for patients for the social and other nonmedical needs which affect their health status);",

(C) by amending subparagraph (M) to read as follows:

"(M) health education services (including nutrition education).", and

(D) by striking out subparagraphs (I) and (N), by inserting "and" at the end of subparagraph (L), and by redesignating subparagraph (J), (K), (L), and (M) as subparagraphs (I), (J), (K), and (L), respectively.

(b) The second sentence of subsection (b)(1) is amended by inserting a comma before the period and the following: "except that no area which is not a high impact area and in which the number of migratory agricultural workers and the members of their families residing is less than one thousand shall be assigned a priority over a high impact area".

(c)(1) Subparagraph (B) of subsection (d)(1) is repealed and subparagraph (C) of such subsection is redesignated as subparagraph (B).

(2) Paragraph (2) of subsection (d) is amended by striking out "or (1)(B)".

(3) Paragraphs (1) and (3) of subsection (f) are each amended by striking out "(d)(1)(C)" and inserting in lieu thereof "(d)(1)(B)".

(4) Subsection (h)(2) is amended by striking out "(d)(1)(C)" each place it occurs and inserting in lieu thereof "(d)(1)(B)".

(d) Paragraph (3) of subsection (d) of such section is amended to read as follows:

"(3)(A) The amount of any grant made in any fiscal year under subparagraph (A) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the projected costs of operation of the center in such fiscal year exceed the total of—

"(i) the State, local, and other funds, and

"(ii) the fees, premiums, and third-party reimbursements

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, the Secretary, if funds have been requested for a service described in subparagraph (D) or (E) of subsection (a)(1) or a supplemental health service described in subparagraph (B), (F), (J), or (L) of subsection (a)(7), shall include (in an amount determined by the Secretary) funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

"(B) Payments under grants under subparagraph (A) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

"(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) of this paragraph received by a center in such fiscal year, and

"(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, adjustment in the grant to the center in the succeeding fiscal year shall be made in such a manner that the center may retain one-half of the amount by which such sum exceeded such cost but only for the purpose of enabling the center to expand and improve its services, to increase the number of persons it is able to serve, to construct and modernize its facilities, to improve the administration of its service programs, and to establish the financial reserve required for the furnishing of services on a prepaid basis.".

(e) Subsection (f) of such section is amended by redesignating paragraph (2) as paragraph (3) and by adding after paragraph (1) the following:

"(2) An application for a grant under subparagraph (A) of subsection (d)(1) for a migrant health center shall include (A) a description of the need in the center's catchment area for each of the health services described in subparagraphs (D) and (E) of subsection (a)(1) and in subparagraphs (B), (F), (J), and (L) of subsection (a)(7), (B) if the applicant determines that any such service is not needed, the basis for such determination, and (C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request. In considering an application for a grant under subparagraph (A) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.".

(f)(1)(A) Subparagraph (G) of paragraph (3) (as so redesignated) of subsection (f) of such section is amended by striking out clause (ii) and inserting in lieu thereof the following: "(ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center, establishes general policies for the center; and if the application is for a second or subsequent grant for a public migrant health center, the governing body of the center has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;".

(B) The change in the governing board requirements for migrant health centers made by the amendment made by subparagraph (A) to section 319(f)(3)(G)(ii) of the Public Health Service Act shall not apply with respect to any public migrant health center which met the governing board requirements in effect under such section before October 1, 1978.

(2) Subparagraph (H) of such paragraph is amended (A) by striking out "and (IV)" and inserting in lieu thereof "(IV)", and (B) by inserting before the semicolon at the end ", and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(3)(B)".

(g)(1)(A) The first sentence of subsection (h)(1) of such section is amended by striking out "and" after "1977," and by inserting before the period a comma and the following: "$2,200,000 for the fiscal year ending September 30, 1979, $2,500,000 for the fiscal year ending September 30, 1980, and $2,900,000 for the fiscal year ending September 30, 1981".

(B) The second sentence of such section is amended by striking out "two fiscal years".

(2)(A) The first sentence of subsection (h)(2) of such section is amended (i) by striking out "other than" and inserting in lieu thereof "including", (ii) by striking out "and" after "1977,", and (iii) by inserting before the period a comma and the following: $38,800,000 for the fiscal year ending September 30, 1979, $44,600,000 for the fiscal year ending September 30, 1980, and $51,300,000 for the fiscal year ending September 30, 1981".

(B) The third sentence of such section is amended by striking out "fiscal years ending September 30, 1977, and September 30, 1978" and inserting in lieu thereof "any fiscal year".

(3) Section 319(h)(3) is amended to read as follows:

"(3) In any fiscal year, the Secretary shall obligate for payments under grants and contracts in such fiscal year under subsection (d)(1) for the provision of inpatient and outpatient hospital services not less than 10 per centum of the amount appropriated in such fiscal year under paragraph (2) and not more than $5,000,000.".

(h) The amendments made by this section shall apply with respect to grants and contracts made under section 319 of the Public Health Service Act from appropriations for the fiscal year ending after September 30, 1978.

COMMUNITY HEALTH CENTERS

SEC. 103. (a) Subsection (a) of section 330 is amended by striking out "as may be appropriate for particular centers" in paragraph (4) and inserting in lieu thereof "as may be appropriate for particular centers (as determined by the centers)".

(b) Subsection (b)(1) of such section is amended by amending subparagraph (F) to read as follows:

"(F) pharmaceutical services.".

(c) Paragraph (2) of subsection (b) such section is amended—

(1) by amending subparagraph (F) to read as follows:

"(F) dental services (including preventive dental services);",

(2) by striking out subparagraph (I),

(3) by amending subparagraph (K) to read as follows:

"(K) social services (including counseling, referral to assistance, and followup services for patients for the social and other nonmedical needs which affect their health status);",

(3) by amending subparagraph (M) to read as follows:

"(M) health education services (including nutrition education); and",

(4) by striking out "outreach workers" in subparagraph (N) and inserting in lieu thereof "appropriate personnel", and

(5) by redesignating subparagraphs (J) through (N) as subparagraphs (I) through (M), respectively. (d) Paragraph (4) of subsection (d) of such section is amended to read as follows:

"(4)(A) The amount of any grant made in any fiscal year under paragraph (1) to a community health center shall be determined by the Secretary, but may not exceed the amount by which the projected costs of operation of the center in such fiscal year exceed the total of—

"(i) the State, local, and other funds, and

"(ii) the fees, premiums, and third-party reimbursements

which the center may reasonably be expected to receive for its operation in such fiscal year. In determining the amount of a grant for a center, the Secretary, if funds have been requested for an environmental health service described in subsection (a)(4) or a supplemental health service described in subparagraph (B), (F), (J), (L), or (M) of subsection (b)(2), shall include (in an amount determined by the Secretary) funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

"(B) Payments under grants under paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

"(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) received by a center in such fiscal year, and

"(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, adjustment in the grant to the center in the succeeding fiscal year shall be made in such a manner that the center may retain one-half of the amount by which such sum exceeded such cost but only for the purpose of enabling the center to expand and improve its services, to increase the number of persons it is able to serve, to construct and modernize its facilities, to improve the administration of its service programs, and to establish the financial reserve required for the furnishing of services on a prepaid basis.".

(e)(1) Subsection (e) of such section is amended by redesignating paragraph (2) as paragraph (3) and by adding after paragraph (1) the following:

"(2) An application for a grant under subsection (d) for a community health center shall include (A) a description of the need in the center's catchment area for each of the health services described in subsection (a)(4) and in subparagraphs (B), (F), (J), (L), and (M) of subsection (b)(2), (B) if the applicant determines that any such service is not needed, the basis for such determination, and (C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request. In considering an application for a grant under subsection (d), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) or (b) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.".

(2)(A) Subparagraph (G) of paragraph (3) (as so redesignated) of such subsection is amended by striking out clause (ii) and inserting in lieu thereof the following: "(ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center, establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;".

(B) The change in the governing board requirements for public community health centers made by the amendment made by subparagraph (A) to section 330(e)(3)(G)(ii) of the Public Health Service Act shall not apply with respect to any public community heath center which met the governing board requirements in effect under such section before October 1, 1978.

(3) Subparagraph (H) of such paragraph is amended (A) by striking out "and (IV)" and inserting in lieu thereof "(IV)", and (B) by inserting before the semicolon at the end ", and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B)".

(4) Subsection (e) is amended by adding at the end the following:

"(4) The Secretary shall approve applications for grants under subsection (d) for community health centers which have not received a prior grant under such subsection or which have applied for such a grant to expand their services in such a manner that the ratio of the medically underserved populations in rural areas which may be expected to use the services provided by such centers to the medically underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.".

(f)(1) Paragraph (1) of subsection (g) of such section is amended by striking out "and" after "1977," and by inserting before the period a comma and the following: "$6,300,000 for the fiscal year ending September 30, 1979, $7,500,000 for the fiscal year ending September 30, 1980, and $9,000,000 for the fiscal year ending September 30, 1981".

(2) Paragraph (2) of such subsection is amended by striking out "and" after "1977," and by inserting before the period a comma and the following: "$359,700,000 for the fiscal year ending September 30, 1979, $431,500,000 for the fiscal year ending September 30, 1980, and $518,000,000 for the fiscal year ending September 30, 1981".

(g) The amendments made by this section shall apply with respect to grants made under section 330 of the Public Health Service Act from appropriations for fiscal years ending after September 30, 1978.

TECHNICAL ASSISTANCE GRANTS AND ASSESSMENT OF CONTINUING EDUCATION

SEC. 104. (a) Part A of title III is amended by adding after section 314 the following new section:

"TECHNICAL ASSISTANCE GRANTS

"SEC. 315. (a)(1) The Secretary may make grants to entities of State governments and to nonprofit private entities (other than schools of the health professions) to assist such entities in meeting their costs of providing technical assistance to entities engaged in the planning, development, or operation (or in any combination of such activities) of migrant health centers under section 319, community health centers under section 330, or any other centers for the delivery of primary health care. The technical assistance with respect to which a grant may be made under this paragraph includes—

"(A) assistance in the selection of sites for such centers,

"(B) assistance in the selection of governing boards for such centers,

"(C) assistance in the management of the service programs of such centers,

"(D) assistance in the recruitment, selection, and retention of personnel (including members of the National Health Service Corps) for such centers,

"(E) assistance in financial management, and

"(F) assistance in the procurement of facilities, equipment, and supplies for such centers.

"(2) In making grants under paragraph (1), the Secretary shall, to the extent feasible, make such grants to—

"(A) entities which will provide technical assistance on a statewide basis for the planning, development, and operation of centers to provide primary health care in urban and rural areas,

"(B) entities which will provide technical assistance solely for the planning, development, and operation of centers to provide primary health care in large, densely populated areas,

"(C) entities which will provide technical assistance solely on a statewide basis for the planning, development, and operation of centers to provide primary health care in rural areas, and

"(D) entities which will provide technical assistance on a regional basis in large States. Grants under paragraph (1) to nonprofit private entities may only be made to such entities to provide technical assistance in the States in which they are primarily engaged in business.

"(b)(1) No grant may be made under subsection (a) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary may require by regulation.

"(2) The amount of any grant under subsection (a) shall be determined by the Secretary, except that no grant to any entity in any fiscal year may exceed $500,000. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

"(c) The Secretary shall establish a Primary Health Care Advisory Committee (hereinafter in this subsection referred to as the 'Committee') to make recommendations respecting—

"(1) the capabilities of applicants for grants under subsection (a) to effectively carry out the projects for which the grants would be made;

"(2) the renewal of grants under such subsection; and

"(3) the evaluation to be made under section 104(b) of the Health Centers Amendments of 1978.

The Committee shall consist of five members appointed by the Secretary, in accordance with section 222, from individuals who are not officers or employees of the Federal Government and who because of their expertise in providing technical assistance to primary health care centers are particularly qualified to serve on the Committee. Section 208(c) shall apply to compensation and allowances for members of the Committee.

"(d) For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $3,000,000 for the fiscal year ending September 30, 1981.".

(b) Not later than January 1, 1981, the Secretary of Health, Education, and Welfare shall submit a report to the Congress on—

(1) the effectiveness of the entities assisted with grants under section 315 of the Public Health Service Act in—

(A) establishing centers which meet the requirements of section 319 or 330 of the Public Health Service Act,

(B) improving the acceptability, in the communities served, of migrant health centers, community health centers, and other centers engaged in the delivery of primary health care,

(C) improving the ability of such centers in attracting and retaining health professions personnel,

(D) assisting such centers in reducing their dependence on public funding;

(2) the effect on the effectiveness of entities assisted under grants under such section 315 of (A) the type of area to be served by the centers for which planning, development, and operation assistance was provided by such entities, and (B) the organizational structure of such entities.

(c) The Secretary of Health, Education, and Welfare shall conduct an assessment of the various types of continuing education programs available for health professions personnel in medically underserved areas and the effect such types of programs have on the retention of such personnel by centers engaged in the delivery of primary health care in such areas. The Secretary shall report the results of such assessment to the Congress not later than January 1, 1980.

DEMONSTRATION PROJECTS IN RURAL MEDICALLY UNDERSERVED AREAS

SEC. 105. The Secretary of Health, Education, and Welfare may make grants to—

(1) public and nonprofit private entities which received grants from appropriations made for the fiscal year ending September 30, 1978, to carry out demonstration projects under section 1110 of the Social Security Act related to health services in rural medically underserved areas, and which before September 30, 1978, had applications approved by the Secretary under such section for grants for the fiscal year ending September 30, 1979, and

(2) to any public and nonprofit private entity which before September 30, 1978, had an application approved by the Secretary under such section for a grant for the fiscal year ending September 30, 1979, to enable such entities to carry out demonstration projects under such applications in the fiscal year ending September 30, 1979. For the purpose of the grants under this section, there is authorized to be appropriated $13,500,000 for the fiscal year ending September 30, 1979.

HEALTH MAINTENANCE ORGANIZATIONS

SEC. 106. (a) Section 1304(j) of the Public Health Service Act is amended by striking out "1978" and inserting in lieu thereof "1979".

(b) Section 1309(a) of the Public Health Service Act is amended (1) by striking out "ending September 30, 1979" and inserting in lieu thereof "ending September 30, 1980", (2) by striking out "and" after "1977,", and (3) by inserting ", and $25,000,000 for the fiscal year ending September 30, 1979" after "1978".

TITLE II—MENTAL HEALTH PROGRAMS

SHORT TITLE; REFERENCE TO ACT

SEC. 201. (a) This title may be cited as the "Community Mental Health Centers Amendments of 1978".

(b) Whenever in this title (other than in sections 203, 211, 212) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Community Mental Health Centers Act.

COMMUNITY MENTAL HEALTH CENTERS REQUIREMENTS

SEC. 202. (a)(1) Section 201(b)(1) is amended to read as follows:

"(b)(1) The comprehensive mental health services which shall be provided through a community mental health center are as follows:

"(A) Beginning on the date the community mental health center is established for purposes of this title, the services provided through the center shall include—

"(i) inpatient services, emergency services, and outpatient services;

"(ii) assistance to courts and other public agencies in screening residents of the center's catchment area who are being considered for referral to a State mental health facility for inpatient treatment and provision, where appropriate, of treatment for such persons through the center as an alternative to inpatient treatment at such a facility;

"(iii) provision of followup care for residents of its catchment area who have been discharged from inpatient treatment at a mental health facility;

"(iv) consultation and education services which—

"(I) are for a wide range of individuals and entities involved with mental health services, including health professionals, schools, courts, State and local law enforcement and correctional agencies, members of the clergy, public welfare agencies, health service delivery agencies, and other appropriate entities; and

"(II) include a wide range of activities (other than the provision of direct clinical services) designed to develop effective mental health programs in the center's catchment area, promote the coordination of the provision of mental health services among various entities serving the center's catchment area, increase the awareness of the residents of the center's catchment area of the nature of mental health problems and the types of mental health services available, and promote the prevention and control of rape and the proper treatment of the victims of rape; and

"(v) the services required by subparagraph (B) which the center shall provide in accordance with a plan approved by the Secretary under which the center will during the three-year period beginning on such establishment date assume in increments the provision of the services required by subparagraph (B) and will upon the expiration of such three-year period provide all the services required by this subparagraph and subparagraph (B).

"(B) After the expiration of such three-year period, a community mental health center shall provide, in addition to the services required by subparagraph (A), services which include—

"(i) day care and other partial hospitalization services;

"(ii) a program of specialized services for the mental health of children, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

"(iii) a program of specialized services for the mental health of the elderly, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary):

"(iv) a program of transitional half-way house services for mentally ill individuals who are residents of its catchment area and who have been discharged from inpatient treatment in a mental health facility or would without such services require inpatient treatment in such a facility; and

"(v) provision of each of the following service programs (other than a service program for which there is not sufficient need (as determined by the Secretary) in the center's catchment area, or the need for which in the center's catchment area the Secretary determines is currently being met):

"(I) A program for the prevention and treatment of alcoholism and alcohol abuse and for the rehabilitation of alcohol abusers and alcoholics.

"(II) A program for the prevention and treatment of drug addiction and abuse and for the rehabilitation of drug addicts, drug abusers, and other persons with drug dependency problems."

(2) Section 204 is amended by striking out "section 201(b)(1)(D)" each place it occurs and inserting in lieu thereof "section 201(b)(1)(A)(iv)".

(b) Section 201(b)(2)(A) is amended by striking out "in the" and inserting in lieu thereof "in or serving the residents of the".

(c) Subparagraph (B) of section 201(c)(1) is amended to read as follows:

"(B) Subparagraph (A) shall not apply to a community mental health center which is operated by a governmental agency or a hospital, but the agency or hospital operating the center shall appoint a committee to advise it with respect to the operations of the center, which committee shall be composed of individuals who reside in the center's catchment area, who are representatives of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.".

HEALTH PLANNING REQUIREMENTS

SEC. 203. (a) Section 1502 of the Public Health Service Act is amended by adding after paragraph (10) the following:

"(11) The elimination of inappropriate placement in institutions of persons with mental health problems and the improvement of the quality of care provided those with mental health problems for whom institutional care is appropriate.

"(12) Assurance of access to community mental health centers and other mental health care providers for needed mental health services to emphasize the provision of outpatient as a preferable alternative to inpatient mental health services.".

(b) Section 1513(b)(2) of the Public Health Service Act is amended by inserting after the first sentence the following: "The HSP of the agency shall include goals for the delivery of mental health services in its health service area which goals shall be developed under a procedure under which persons (acting as an advisory group or subcommittee appointed by the agency or, if the agency requests and is authorized by order of the Secretary to use an existing group, acting as part of such a group) knowledgeable about such services (including services for substance abuse) will be consulted with respect to such goals.".

(c)(1) Section 1523(a)(1) of the Public Health Service Act is amended (A) by inserting "(A)" after "(1)", and (B) by inserting before the period a comma and the following: "and (B) determine the statewide health needs of the State after providing reasonable opportunity for the submission of written recommendations respecting such needs by the State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor for the purpose of making such recommendations, and after consulting with the Statewide Health Coordinating Council".

(2) Section 1523(a)(2) of the Public Health Service Act is amended by inserting after the first sentence the following: "In carrying out its functions under this paragraph, the State Agency shall refer the HSP's to the State health authority, the State mental health authority, and other agencies of the State government (designated by the Governor to make the review pre-

scribed by this sentence) to review the goals and related resource requirements of the HSP's and to make written recommendations to the State Agency respecting such goals and requirements.".

(3) Subsection (a) of section 1523 of the Public Health Service Act is amended by adding after and below paragraph (6) the following: "If in determining the statewide health needs under paragraph (1)(B) or in preparing or revising a preliminary State health plan under paragraph (2) the State Agency does not take an action proposed in a recommendation submitted under the applicable paragraph, the State Agency shall when publishing such needs or health plan make available to the public a written statement of its reasons for not taking such action.".

(d) Section 1524(c)(2) of the Public Health Service Act is amended by adding after subparagraph (B) the following:

"(C) In carrying out its functions with respect to the goals and resource requirements for mental health services of the State health plan, the SHCC may establish a procedure under which persons (acting as or as part of an advisory group or subcommittee appointed by the SHCC) knowledgeable about mental health services (including services for substance abuse) will have the opportunity to make recommendations to the SHCC respecting such services.

"(D) The State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor, shall carry out those parts of the State health plan which relate to the government of the State."

(e) Section 1512(b)(3)(C)(iii) of the Public Health Service Act is amended by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively, and by adding after subclause (I) the following:

"(II) include (through consumer and provider members) individuals who are knowledgeable about mental health services (including services for substance abuse),".

(f)(1) Section 303(a) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 is amended by adding after and below paragraph (16) the following: "Such plan shall be consistent with the State health plan in effect for such State under section 1524(c) of the Public Health Service Act.".

(2) Section 409(e) of the Drug Abuse Office and Treatment Act of 1972 is amended by adding after and below paragraph (13) the following: "Such plan shall be consistent with the State health plan in effect for such State under section 1524(c) of the Public Health Service Act.".

(g) The amendments made by this section shall take effect one year after the date of the enactment of this Act, except that on and after the date of the enactment of this Act the change in the membership of health systems agencies required by the amendments of section 1512 of the Public Health Service Act shall be implemented through selections of members to fill vacancies occurring after such date.

OPERATIONS GRANTS TECHNICAL ASSISTANCE AND MONITORING

SEC. 204. (a) Section 203(e)(1)(A)(i) is amended by striking out "unless it meets the requirements of section 201" and inserting in lieu thereof the following: "(other than section 271) unless it provides, at a minimum, the comprehensive mental health services described in clauses (i) through (iv) of section 201(b)(1)(A)".

(b Section 206(e) is amended (1) by inserting "(1)" after "(e)", and (2) by adding at the end the following new paragraph:

"(2) Not more than one per centum of the total amount appropriated under sections 203, 204, and 205 for any fiscal year shall be used by the Secretary to enter into contracts with State mental health authorities under which the authorities (A) would monitor the activities of community mental health centers (other than centers operated by such authorities) receiving grants under this title to determine if the requirements of this title applicable to the receipt of such grants are being met, and (B) would be provided funds to meet the expenses of conducting such monitoring. The authority of the Secretary to enter into contracts under this paragraph shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.".

SUPPLEMENTAL SUPPORT GRANTS

SEC. 205. (a) Effective October 1, 1978, part B is amended—

(1) by amending the part heading to read as follows:

"PART B—SUPPLEMENTAL SUPPORT GRANTS",

(2) by inserting after the part heading the following:

"Subpart 1—Financial Distress Grants", and

(3) by adding after section 213 the following:

"Subpart 2—Supplemental Support Grants

"SUPPLEMENTAL SUPPORT GRANTS

"SEC. 215. (a)(1) The Secretary may make annual grants to community mental health centers to assist them in meeting the costs of providing the consultation and education services described in clause (iv) of section 201(b)(1)(A) and the followup services described in clause (iii) of such section and in meeting the costs (as defined by regulations of the Secretary) of administering all the service programs of the centers. A community mental health center may not receive a grant under this paragraph unless the center—

"(A) received a grant under section 220 of this title (as in effect before the date of enactment of the Community Mental Health Centers Amendments of 1975) for compensation of personnel for its initial operation and, because of the limitations respecting the period for which grants under that section may be made, may not receive under section 203(e) an additional grant under such section 220 for compensation of such personnel; or

'(B) received a grant under section 203 (a) and, because of the limitations respecting the period for which grants under such section may be made, may not receive an additional grant under such section.

"(2) The Secretary, under exceptional circumstances, may make grants to community mental health centers to assist them in meeting the costs of providing the consultation and education services described in clause (iv) of section 201(b)(1)(A) and required to be provided as a condition to the receipt of a great under section 203. A community mental health center may not receive a grant under this paragraph unless the Secretary determines that without a grant under this setcion the center would not be able to provide such required consultation and education services. No grant may be made under this paragraph to a center until it has received four grants under section 203 or atfer the date it qualifies under subparagraph (A) or (B) of paragraph (1) for a grant under such paragraph.

"(b) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Except as provided in regulations of the Secretary, such an application shall meet the requirements of section 206 (c)(1) and shall contain assurances satisfactory to the Secretary that the applicant will, during the period which it receives a grant under this section, provide at a minimum, the comprehensive mental health services described in clauses (i) through (iv) of section 201(b)(1)(A), and section 206(d) shall apply with respect to such application. An application for a grant to a community mental health center which has not received a grant under this subsection may be approved by the Secretary only if the National Advisory Mental Health Council has recommended that the application be approved.

"(c)(1) Each grant under subsection (a) shall be made for the one-year period beginning on the first day of the first month beginning after the date the grant is made.

"(2) The amount of a grant under subsection (a) to a community mental health center shall be determined by the Secretary, except that no grant to such a center may exceed the product of $1.00 and the population of the catchment area served by the center. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Paragraph (4) of section 206(c) shall apply with respect to grants made under subsection (a). The populations of the catchment areas shall be determined on the basis of the latest figures for the populations of the States available from the Department of Commerce.

"(d) For the purpose of making grants under subsection (a), there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1979, $45,000,000 for the fiscal year ending September 30, 1980, and $50,000,000 for the fiscal year ending September 30, 1981. Not more than 5 per centum of the amount appropriated under this subsection in any fiscal year may be used to make grants for such fiscal year under section 215(a)(2).".

(b)(1) Section 213 is amended by striking out "and" after "1977," and by inserting after "1978," the following: "and $25,000,000 for the fiscal year ending September 30, 1979,".

(2) Effective October 1, 1980, subpart 1 of part B (as so designated by the amendments made by subsection (a)) and the heading for subpart 2 are repealed.

(c)(1) Section 204(c) is amended (A) by inserting "(1)" after "(c)", and (B) by adding at the end the following:

"(2) For the purpose of making grants under this section—

"(A) to community mental health centers which are described in subsection (a)(1)(B) and which received grants under this section from appropriations made for the fiscal year ending September 30, 1979, and

"(B) until such centers are eligible for grants under section 215, as added by the Community Mental Health Center Amendments of 1978,

there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $1,500,000 for the fiscal year ending September 30, 1981."

(2) Effective October 1, 1981, section 204 is repealed.

(d)(1) Section 205(c) is amended (A) by inserting "(1)" after "(c)", and (B) by adding at the end the following:

"(2) For the purpose of making grants under this section to community mental health centers which received grants under this section from appropriations made for the fiscal year ending September 30, 1978, or the next fiscal year, there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1979, and $25,000,000 for the fiscal year ending September 30, 1980."

(2) Effective October 1, 1980, section 205 is repealed.

(e) Section 211(1)(A) is amended (1) by inserting "for compensation of personnel for its initial operation" after "1975)", and (2) by inserting "for compensation of such personnel" after "under that section".

APPLICATIONS

SEC. 206. Section 206(c)(2) is amended—

(1) by amending the matter preceding subparagraph (A) to read as follows: "The Secretary may approve an application for a grant under section 203, 204, or 205 only if the application meets the requirements of paragraph (1) and, except as provided in paragraph (3)—";

(2) by inserting "the Secretary" before "determines" in subparagraphs (A) and (B); and

(3) by striking out "and" at the end of clause (iii) of subparagraph (B), by striking out the period at the end of clause (iv) of such subparagraph and inserting in lieu thereof a semicolon, and by adding after such subparagraph the following:

"(C) in the case of an application for the first grant under section 203, 204, or 205, or an application for a grant under such section which requests a grant in an amount greater than the amount specified by the applicant in its plan and budget submitted in accordance with paragraph (1)(A)(i), the application is recommended for approval by the National Advisory Mental Health Council; and

"(D) in the case of an application of a community mental health center operated by a governmental agency or hospital for a grant which is not the first grant, the committee appointed pursuant to section 201(c)(1)(B) has approved the application or if such committee has not approved the application, the Secretary determines that the failure to approve the application was unreasonable.".

CATCHMENT AREAS

SEC. 207. Section 238(2) is amended by inserting "health service areas," after "political subdivisions,".

AUTHORIZATIONS

SEC. 208. (a) Section 202(d) is amended by striking out "and" after "1977,", and inserting before the period a comma and the following: "$1,000,000 for the fiscal year ending September 30, 1979, $1,000,000 for the fiscal year ending September 30, 1980, and $1,000,000 for the fiscal year ending September 30, 1981".

(b)(1) Section 203(d)(1) is amended by striking out "and" after "1977,", and inserting before the period a comma and the following: "$30,000,000 for the fiscal year ending September 30, 1979, $35,000,000 for the fiscal year ending September 30, 1980, and $40,000,000 for the fiscal year ending September 30, 1981".

(2) Section 203(d)(2) is amended (A) by striking out "1978" and inserting in lieu thereof "1981", and (B) by striking out "two fiscal years" and inserting in lieu thereof "five fiscal years".

(c) Section 231(d) is amended by striking out "and" after "1977,", and inserting before the period a comma and the following: "$8,000,000 for the fiscal year ending September 30, 1979, $9,000,000 for the fiscal year ending September 30, 1980, and $10,000,000 for the fiscal year ending September 30, 1981".

(d)(1)(A) Subsection (b)(1) of section 203 is amended by adding before the period a comma and the following: "except that if at the end of such period a center or entity has not obligated all the funds received by it under a grant, the center or entity may use the unobligated funds under the grant in the succeeding year for the same purposes for which such grant was made but only if the center or entity is eligible to receive a grant under subsection (a) for such succeeding year".

(B) Subsection (c) of section 203 is amended by adding at the end the following: "The amount of a grant prescribed by paragraph (1) or (2) for a community mental health center for any year shall be reduced by the amount of unobligated funds from the preceding year which the center is authorized, under subsection (b)(1), to use in that year."

(2)(A) Paragraph (1)(A) of subsection (e) of such section is amended (i) by striking out "and" at the end of clause (i), (ii) by redesignating clause (ii) as clause (iii), and (iii) by inserting after clause (i) the following:

"(ii) the amount prescribed for a grant under the applicable repealed section for an entity for any year shall be reduced by the amount of unobligated funds from the preceding fiscal year which the entity is authorized, under subparagraph (B) of this paragraph, to use in that year, and",

(B) Paragraph (1)(B) of such subsection is amended by inserting before the period a comma and the following: "except that if at the end of any period for which such a grant is made an entity has not obligated all of the funds received by it under the grant, the entity may use the unobligated funds under such grant in the succeeding grant period for the same purposes for which such grant was made but only if the entity is eligible to receive such a grant for such grant period".

STATE PLAN REQUIREMENTS

SEC. 209. (a) Subsection (a) of section 206 is amended to read as follows:

'(a) No grant may be made under this part to any entity or community mental health center in any State for a fiscal year ending after September 30, 1981, unless a State health plan meeting the requirements of section 1524 of the Public Health Service Act is in effect for such State.".

(b)(1) Subsection (a) of section 222 is amended by striking out "pursuant to a State plan approved under section 237".

(2) Paragraphs (2) and (3) of section 222 (b) are amended to read as follows:

"(2) the Secretary finds that the application meets the applicable requirements of subsection (a); and

"(3) the Secretary finds that the application has been approved and recommended by the State agency and is entitled to priority over other projects within the State as determined by the State agency.".

(c)(1) Subsection (c)(1) of section 223 is amended (A) by striking out "the provisions required by section 237 to be in a State plan or" in subparagraph (A), (B) by striking out subparagraph (D), (C) by striking out "or" at the end of subparagraph (C), and (D) by inserting "or" at the end of subparagraph (B).

(2) Subsection (c)(2)(B) of section 223 is amended by striking out "(C), or (D)" and inserting in lieu thereof "or (C)".

(d) Section 224(2) is amended by striking out "or 237(c)".

(e) Section 227(a) is amended by striking out "(with State plans approved under section 237)" and inserting in lieu thereof "(with State health plans in effect under section 1524 of the Public Health Service Act after September 30, 1981)".

(f) Section 235(2) is amended by striking out "section 314(d)" and inserting in lieu thereof "section 314(g)".

(g) Section 236 is amended (1) in paragraph (1), by striking out "(A)" and ", or (B)" and all that follows in that paragraph through "hospital", (2) by striking out paragraph (3), (3) by striking out "and" at the end of paragraph (2), and (4) by inserting "and" after paragraph (1).

(h) Section 237 is amended to read as follows:

"STATE MENTAL HEALTH AUTHORITY

"SEC. 237. (a) The State mental health authority shall—

"(1) establish minimum standards for the maintenance and operation of community mental health centers which receive financial assistance under this title and provide for the enforcement of such standards and shall insure that the assistance provided under this title is in furtherance of the State health plan in effect for the State under section 1524 of the Public Health Service Act;

"(2) establish a program for community mental health centers within the State (A) which is based on a statewide inventory of existing facilities and the need for the comprehensive mental health services described in section 201(b); (B) which shall provide for adequate community mental health centers to furnish needed services for persons unable to pay therefor; (C) which is consistent with the State health plan in effect for such State under section 1524(c); and (D) which conforms with regulations prescribed by the Secretary under section 236;

"(3) set forth the relative need, determined in accordance with regulations prescribed under section 236, for the projects included in a program described in paragraph (2); and

"(4) make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

"(b) The State mental health authority shall designate a State advisory council to consult with it in carrying out its functions under this title and title XV of the Public Health Service Act. Such council shall include (1) representatives of entities concerned with the planning, operation, or use of community mental health centers and other mental health facilities, and (2) representatives of consumers and providers of the services of such facilities who are familiar with the need for such services. A majority of the members of such council shall be individuals who are not providers of health care (as defined in section 1531(3) of the Public Health Service Act).".

RAPE CONTROL

SEC. 210. Section 231(c) is amended by inserting after the first sentence the following: "The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee.".

STATE MENTAL HEALTH PROGRAMS

SEC. 211. Subsection (g) of section 314 of the Public Health Service Act is amended to read as follows:

"State Mental Health Programs

"(g)(1) From allotments made pursuant to paragraph (4), the Secretary shall make grants to State mental health authorities to assist them in meeting the costs of carrying out their function under title XV and section 237 of the Community Mental Health Centers Act and, after September 30, 1979, providing mental health services.

"(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary may require, and shall contain or be supported by assurances satisfactory to the Secretary that—

"(A) the mental health services provided within the State under the grant applied for will be provided in accordance with the State health plan in effect for such State under section 1524(c);

"(B) funds received under the grant applied for will (i) be used to supplement and, to the extent practical, to increase the level of non-Federal funds that would otherwise be made available for the purposes for which the grant funds are provided, and (ii) not be used to supplant such non-Federal funds;

"(C) the State mental health authority will—

"(i) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursements of and accounting for funds received under grants under paragraph (1);

"(ii) from time to time, but not less often than annually, report to the Secretary (through a uniform national reporting system and by such categories as the Secretary may prescribe) a description of the mental health services provided in the State in the fiscal year for which the grant applied for is made and the amount of funds obligated in such fiscal year for the provision of each such category of services; and

"(iii) make such reports (in such form and containing such information as the Secretary may prescribe) as the Secretary may reasonably require, and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

"(D) the State mental health authority will—

"(i) perform the duties prescribed by section 237 of the Community Mental Health Centers Act;

"(ii) prescribe and provide for the enforcement of minimum standards for the maintenance and operation of mental health programs and facilities (including community mental health centers) within the State;

"(iii) provide for assistance to courts and other public agencies and to appropriate private agencies to facilitate (I) screening by community mental health centers (or, if there are no such centers, other appropriate entities) of residents of the State who are being considered for inpatient care in a mental health facility to determine if such care is necesssary, and (II) provision of follow-up care by community mental health centers (or if there are no such centers, by other appropriate entities) for residents of the State who have been discharged from mental health facilities; and

"(iv) establish and carry out fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions taken to eliminate inappropriate placement in institutions of persons with mental health problems, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum effort will be made to guarantee the employment of such employees.

"(3(A) The Secretary shall review annually the activities undertaken by each State mental health authority with an approved application to determine if it complied with the assurances provided with the application. The Secretary may not approve an application submitted under paragraph (2) if the Secretary determines—

"(i) that the State for which the application was submitted did not comply with assurances provided with a prior application under paragraph (2), and

"(ii) that he cannot be assured that the State will comply with the assurances provided with the application under consideration.

"(B) Whenever the Secretary, after reasonable notice and opportunity for a hearing to the State mental health authority of a State, finds that, with respect to funds paid to the authority under a grant under paragraph (1), there is a failure to comply substantially with assurances provided under paragraph (2) with respect to the receipt of such grant, the Secretary shall notify the authority that further payments will not be made to it under such grant (or in his discretion that further payments will not be made to it from such grant for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no payment to such authority from such grant, or shall limit payment under such grant to activities in which there is no such failure.

"(4) For the purpose of determining the total amount of grants that may be made to the State mental authorities of each State, the Secretary shall, in each fiscal year and in accordance with regulations, allot the sums appropriated for such year under paragraph (7) among the States on the basis of the population and the financial need of the respective States. The populations of the States shall be determined on the basis of the latest figures for the population of the States available from the Department of Commerce.

"(5)(A) The Secretary shall determine the amount of any grant under paragraph (1); but the amount of grants made in any fiscal year to the mental health authorities of any State may not exceed the amount of the State's allotment available for obligation in such fiscal year. Payments under such grants may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

"(B) The Secretary, at the request of a State mental health authority, may reduce the amount of the grant to it under paragraph (1) by—

"(i) the fair market value of any supplies or equipment furnished the State mental health authority, and

"(ii) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State mental health authority and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State mental health authority and for the purpose of carrying out any project with respect to which its grant under paragraph (1) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the State mental health authority.

"(6) In any fiscal year not less than 70 per centum of the amount of a State's grant shall be available only for the provision of mental health services and for the conduct of mental health planning activities in communities of the State.

"(7) For the purpose of making grants under this subsection there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1979, $25,000,000 for the fiscal year ending September 30, 1980, and $28,000,000 for the fiscal year ending September 30, 1981.

"(8) Regulations (including substantive amendments to regulations) under this subsection shall be promulgated by the Secretary after consultation with a conference of State mental health authorities. The Secretary shall consult with such conference prior to the publication of proposals for such regulations or amendments.".

MISCELLANEOUS

SEC. 212. (a) Effective July 29, 1975, section 225 is amended by striking out "this part" and inserting in lieu thereof "this title".

(b) Section 504(a) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 is amended by adding after and below paragraph (2) the following: "Insofar as practicable, the Secretary shall approve applications under this subsection in a manner which results in an equitable geographic distribution of Centers.".

EFFECTIVE DATE

SEC. 213. The amendments made by this title (other than by sections 203, 205, and 212(a)) to the Community Mental Health Centers Act shall apply with respect to grants made under the Community Mental Health Centers Act from appropriations for fiscal years ending after September 30, 1978.

The SPEAKER pro tempore. Is a second demanded?

Mr. CARTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) will be recognized for 20 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may require.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, first of all I wish to compliment Dr. CARTER, the ranking minority member of the Subcommittee on Health and the Environment for his usual splendid cooperation in bringing this important piece of legislation to the floor. He has been a strong and consistent supporter of improved primary health care services; and this bill is the latest of a number of pieces of legislation he has supported to accomplish this goal. I also wish to acknowledge the chairman of the Interstate and Foreign Commerce Committee, Mr. STAGGERS, who has been most supportive in our efforts to have this bill enacted. He has established a distinguished record of support for better health care in this country. I commend him for his record and thank him for his assistance and support.

Mr. Speaker, there are approximately 49 million American citizens who live in medically underserved areas and who need access to primary health care services, both physical and mental. The programs included in H.R. 12460 have assisted public and private organizations in providing physical health services to almost 5 million people and mental health services to over 2 million people. Not only have these programs improved the health status of their patients, but as

importantly, they have provided outpatient health services instead of more expensive inpatient health services. H.R. 12460 will extend programs which provide needed health care in the most cost efficient manner.

The bill modifies and extends for 3 fiscal years the migrant health and community health center programs and the State mental health and community mental health center programs. It extends the health maintenance organization programs for 1 additional year without substantive change. It authorizes two small health service delivery demonstration programs which will demonstrate new ways of developing and delivering health services in medically underserved areas. And last, it integrates planning for mental health services and facilities into the health planning programs authorized by title XV of the Public Health Service Act.

In addition to the bill as reported by the committee, this legislation includes three other provisions. I intended to recommend adoption of these changes on the floor if a rule had been granted. First, there are two minor perfecting amendments to the Community Mental Health Center Act regarding the number of mandated services for centers begun prior to 1975 and the monitoring of the performance of centers. Second, there is a reduction in authorizations for the health maintenance organizations program for fiscal year 1979 from $45 million to $25 million. And third, there is an amendment to clarify that new contract authority is not effective for any year unless appropriations are made for that new authority. There are other amendments which are technical and conforming in nature.

Mr. Speaker, H.R. 12460 is important legislation. The health services programs supported by the provisions of this bill are of critical importance to the health and welfare of many Americans. Those programs are designed to prevent illness and to provide primary health care before far more costly secondary or tertiary care may be needed. The cost benefit ratios of such services are clear. H.R. 12460 offers a significant opportunity to lower the economic and social costs of disease.

I urge all Members to join me in supporting this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. CARTER. Mr. Speaker. I yield myself such time as I may consume.

Mr. Speaker. I rise in strong support of H.R. 12640 which revises and extends the following health care delivery programs:

Community health centers, for 3 years.

Migrant health centers, for 3 years.

Community mental health centers, for 3 years.

State mental health programs, for 3 years.

Rape prevention programs, for 3 years.

This bill also authorizes a program of technical assistance for 3 years to assist these centers in planning and development. Finally, this legislation provides for a 1-year extension of the "health underserved rural areas" program and provides 1 additional year of new authorization for the health maintenance organization program.

Mr. Speaker, the basic philosophy behind most of these programs is to provide for the delivery of health care through community-based centers. Whether the center is designed to serve rural medically underserved individuals or migrant workers or persons with mental health problems the source of health care is intended to be locally initiated and accessible to the community.

For example, in 1963 when we first wrote the legislation establishing the community mental health centers program. We recognized the need for a community-based alternative to the large State mental institutions. Since that time Federal funds have supported the initiation of 675 community mental health centers—of which 592 are fully operational.

These 592 community mental health centers have made direct services available to over 2 million persons through the provision of a broad range of clinical, preventive, and consultative services.

Yet, there are still 783 catchment areas without funded community mental health centers.

Clearly, significant progress has been made by these centers programs over the years in providing needed services but I regret that there has not been enough oversight and monitoring of the centers' operations.

In particular I have been concerned about the community mental health centers program. I have been concerned that too much money from the centers' budgets has been going toward costs of administration and that not enough money has been spent on providing needed services.

Also, I believe that the decentralized nature of the program within the National Institute of Mental Health and its regional offices makes it difficult to conduct proper monitoring and review activities. Clearly, there ought to be more accountability from the centers to HEW—and to the Congress—about how tax-dollars are being spent.

To help address some of these concerns the committee adopted my amendment to help improve management of the mental health centers program. It provides new authority for HEW to contract with the States to monitor the centers' activities to determine whether they are in compliance with the act. This monitoring authority should help to identify and correct potential problems early or before they become a hindrance to the center's operation. If needed, HEW can also provide technical assistance to the centers.

Mr. Speaker, although I have had strong concern about certain aspects of these programs I am hopeful that improvements will be forthcoming and I do support their continuation. During our hearings we realized some of the difficulties which centers were facing were because of provisions in the law itself and so we have made those changes where appropriate.

For example, we have amended the law to allow new mental health centers to begin with six basic services and a plan to phase in the remaining services within 3 years instead of the requirement of current law to provide all services at once.

Also, we have given more flexibility to migrant centers and community health centers in determining health service needs of the people they serve.

Finally, I would like to emphasize my support for continuation of the "health underserved rural areas" program—known as HURA.

HURA is a research and demonstration authority that was created in 1975 to fund innovative health service delivery projects in rural medically underserved areas across the country.

According to the 1977 HURA report there are 88 projects funded by HURA which provide or promote health services in 583 counties in 37 States. These projects range from rural community hospitals to experimental group practices. Still other HURA projects have been funded to examine implications of reimbursement decisions on rural health care and expenditures.

In general, the experiences from these projects should help increase our knowledge about ways to improve health services delivery in medically underserved areas.

In conclusion, Mr. Speaker, I believe these programs are helping to reach many millions of our citizens who need health care and who might not otherwise have access to that care.

I urge favorable consideration of this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. ROGERS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for yielding.

Once again, we commend the chairman for this legislation; but my concerns remain steadfast with relation to the problems of the elderly. This program is to extend this work for some 3 years, and yet very significantly it does not address itself toward some special effort toward increasing assistance to the elderly in the mental health program.

According to the Library of Congress, less than 4 percent of all new patients served in community mental health centers were elderly. Yet, according to the President's report of 1978 by the Commission on Mental Health, 25 percent of all persons over age 65 have significant mental problems. This report charged that the elderly are underserved by the present mental health service system, of which community mental health services is an integral part.

The question I ask again is what latitude does this legislation give in providing for additional assistance that the elderly require, and does it provide for possible outreach efforts to bring the elderly within the purview of this legislation?

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. BIAGGI. I would be delighted to yield.

Mr. ROGERS. Outreach activities are an important facet of the programs envisioned in this legislation where you have a community health center that provides health services for individuals in their own neighborhood. It makes it available. It puts it close to where the aging can get to it. There are outreach programs included in the community mental health centers program as well, which means we do not always begin by certifying people and sending them to warehouses or big State hospitals.

Instead, it would keep them in their surroundings whenever possible.

So, Mr. Speaker, this is a program designed to help get at the problems the gentleman from New York (Mr. BIAGGI) lists, including the elderly, because it is certainly designed to fit in with the problems that exist with the aged.

Mr. BIAGGI. Mr. Speaker, I appreciate the gentleman's response, and I understand the gentleman's sympathetic attitude toward the elderly.

However, what troubles me are the hard statistics, especially the figure of less than 4 percent. Yet we have from the President's report the statement that in 1978 25 percent of all persons over 65 have significant mental health problems. The report also charges that it is an area that is underserved, and I think it would be more precise if we were to elucidate the situation.

Are these community centers especially charged with outreach for the elderly?

Mr. ROGERS. Yes. We do have specific directions that there should be an outreach program for the aged and for minorities as well when such a program is determined to be needed.

Mr. BIAGGI. Mr. Speaker, if the gentleman will yield further, I wish to deal with this point in a clarifying fashion.

Have we been able to assess the effects of those outreach efforts, or have we been able to assess the quality and quantity of those outreach efforts?

Mr. ROGERS. Mr. Speaker, I think we are constantly trying to do this.

I might say further, in answer to the gentleman, that if a center requests money for social services, which would include outreach services, the Secretary must grant some funds to the center for these sources unless he finds there is good cause not to do so.

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for his explanation.

Mr. MAGUIRE. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I am delighted to yield to the distinguished gentleman from New Jersey (Mr. MAGUIRE), who has made such a fine contribution on the subcommittee.

Mr. MAGUIRE. Mr. Speaker, I thank the distinguished chairman of the subcommittee very much.

Mr. Speaker, I want to point out to my colleagues that the bill before us helps immeasurably with a problem with the community mental health center program which has concerned citizens throughout the country. The problem is that grants for community mental health centers are limited to an 8-year period, but the fact is that in many instances the valuable work of those centers justifies continuation of Federal support beyond the current limits. The bill would provide past eighth year funding for centers, thereby enabling the provision of nonreimbursable services like consultation and education follow-up, and administrative services for disadvantaged mental patients.

The centers are running into funding problems basically because medicare and medicaid payments and insurance payments are not adequate to offset decreasing Federal funds under the program.

The community mental health centers have successfully reduced the number of people admitted to State mental hospitals. That is a very important point, Mr. Speaker, in terms of overall cost efficiencies. They have provided outpatient care for many people who otherwise would not receive it at all. Forty-four percent of the population now has access to community mental health centers, and the services are provided through 672 programs.

Mr. Speaker, I want to congratulate the chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS), for his leadership in this very important legislation, which will, I think, mark a turning point for our community mental health center programs throughout the Nation.

Mr. ROGERS. Mr. Speaker. I thank the gentleman from New Jersey (Mr. MAGUIRE), and I thank him also for his contribution on the committee.

Mr. CARTER. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Indiana (Mr. JOHN T. MYERS).

Mr. JOHN T. MYERS. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of this legislation. However, it has concerned me in recent years that every year we have to appropriate more money for health and mental care centers. That indicates to me that we are missing something here. We are treating problems after the fact, and we are not doing enough to prevent this type of health or mental cases from developing.

What is being done in preventive medicine and preventive care to prevent mental cases, as one example?

Mr. CARTER. Mr. Speaker, if the gentleman will yield, I would say that in the first category of health services is included specific health services, including children's eye and ear examinations to determine the need for vision and hearing correction, as well as prenatal services, well child services, and family planning services.

This, of course, includes immunizations, periodic examinations; the whole arena of public health, in other words.

We have included preventive medicine, the preventive aspect, remembering the old addage that an ounce of prevention is worth a pound of cure.

Mr. JOHN T. MYERS. I thank the gentleman for his comment.

How about mental care? I know of a couple of centers where the workload is increasing every year. What is being done or what can be done to prevent the workload from increasing in mental health care centers?

Mr. CARTER. That is quite difficult, I suppose, because of the fast pace in which we live and the stresses we are under and we have an increase in the number of mentally ill. We try to assist them by having these mental health centers, where necessary, and also other treatment.

In the program, as the gentleman might realize, we do not have the old snake pits, where we used to confine our mentally ill. But by new methods of treatment, new medicines, and also different methods of shock treatment, and so on, we are able to return these people, these mentally ill, to a normal life. This has been done over the years by our new mental health centers and hospitals.

Mr. JOHN T. MYERS. I thank my colleague for his response. I urge that, whatever the committee can do, more attention be given to preventive care, particularly with our youth, our young people, who have not yet been subjected to this stress the gentleman speaks of, and still we see an increase in the volume of mental problems, at least in the areas I am familiar with, and I hope more can be done, more attention can be given, so that we can hopefully level this thing off and not expand it.

Mr. CARTER. I want to thank the distinguished gentleman for his comments. It bears upon drug abuse, really, and the prevention of that. I think we should look toward prevention of the use of drugs, and we can do this by keeping our youngsters busy, as I said time after time, with athletics, music, art, sports, and other means of recreation.

Mr. JOHN T. MYERS. How about work?

Mr. CARTER. Of course, that comes first. But we simply do not have it, as we did when I was a youngster. Most of us were busy all of the time.

Mr. JOHN T. MYERS. I thank the gentleman.

Mr. CARTER. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from North Carolina (Mr. BROYHILL).

Mr. BROYHILL. Mr. Speaker, I rise in opposition to this bill. It is not my purpose to address the operation of these programs or to question their operations. In fact, I have been a strong supporter of many of these programs. For example, the community mental health service program was enacted back in the 88th Congress, the first Congress in which I served. But I am concerned about the huge increases in authorizations that are contained in this legislation. For example, the appropriation for the several programs in 1978, that is this current fiscal year, was $360 million, whereas in 1979 the authorizations that are contained here are $587 million, and it goes up to $714 million in 1981, a 98-percent increase.

Mr. CARTER. If the distinguished gentleman will yield, I can explain $50 million of that, in that the President asked for $50 million for the "inner city initiative" under the community health

centers program. Another $14 million which was also included in the authorization for the community health centers program was an amendment which I supported to provide centers for rural areas. These funds would help the gentleman's area, and I hope the distinguished gentleman would not object at least to that $14 million.

Mr. BROYHILL. Of course, the problem that we have here is that the bill is brought up under a procedure so that we cannot offer amendments in order to reduce these authorizations to more moderate levels.

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Florida.

Mr. ROGERS. Mr. Speaker, I do not believe that the gentleman's figure also gives credit to the fact that we have reduced authorization for HMO's from the current authorization of $50 million to $25 million, nor to the reduction in the health in underserved rural areas program of $1.5 million. The gentleman just quoted an overall figure.

Mr. BROYHILL. What I am doing is taking the figures that are in the report.

Mr. ROGERS. That is why I said you did not include these reductions; they are not in that figure.

Also, I think the gentleman would want to point out that even though the authorizations for the community mental health centers program for fiscal year 1979 include a substantial increase, support is partially phased out through 1981. In fiscal year 1981 authorizations are $92.5 million, or the same amount as authorized this year. So, there is a built-in decrease in the program. I agree with the gentleman that there is some increase in authorization for the next year, and particularly in the community health centers program. Most of the increase in that program was requested by the President for his urban health initiative. The committee also provided some additional authority for rural programs which I think the gentleman was not opposed to.

Mr. BROYHILL. Will the gentleman refer to the table on page 4 of the report, which is a table supporting the consideration of the legislation. That is where I am getting the figures which show that within a few short fiscal years we are having almost a doubling of this program. I am not arguing against the programs. As the gentleman knows, I have supported these, but I also happen to serve on another committee of this House, which is the House Budget Committee, which has been expressing some concerns lately about the exploding cost of various programs; not only this, but many others. I think we have to be concerned about this. I think we have already seen what is happening with the value of the dollar and inflation as a result of continued spending.

The SPEAKER pro tempore. The time of the gentleman from North Carolina has expired.

Mr. CARTER. Mr. Speaker, I yield 2 additional minutes to the gentleman from North Carolina.

Mr. BROYHILL. Mr. Speaker, I point out that although this is not an appropriation bill, it does give high levels of expectation to those who are getting services or who are working with this program. I think that authorizations should be more reasonable and in my judgment, pegged to some budget realities. That is the point I am trying to make. I am concerned if we take up this bill under this procedure and not have a reasonable opportunity at least to make amendments to more moderate levels.

Mr. ROGERS. If the gentleman will yield further, of course we did go through the committee process where the gentleman could have amended there, but I did just want to point this out——

Mr. BROYHILL. I might point out that I did not have the votes in committee.

Mr. ROGERS. I understood, and I would hope the gentleman would not have them here. But nevertheless, may I say to the gentleman that often we look at the cost of a bill without determining what the benefits are, so that we do not give proper balance to the net cost of a program or to the effect on the lives of people.

Now, for instance, let us look at the community mental health centers program. We have shifted, as the gentleman knows, to an outpatient program. As a result, we have reduced psychiatric hospital beds in the United States by 36 percent. Now, no one figures out the benefit or savings to all of us from reducing the cost of eliminating those beds—36 percent of them. That is what we need to do.

Mr. CARTER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I would like to sum up the whole basic issue about this. We are all for health centers and we are all for health, but we are bringing up under suspension a bill that involves $4.26 billion. The other day we spent 4 hours talking about some electronic equipment.

Mr. CARTER. Mr. Speaker, I would say the total is $1.984 billion.

Mr. COLLINS of Texas. I appreciate being corrected. Let us review this grand total of $4.6 billion. What is this?

Mr. CARTER. I believe the gentleman from Texas is confused. The total I see here is $1.984 billion.

Mr. COLLINS of Texas. The gentleman from Kentucky is correct. If I can straighten this out, I would like to clarify where I made a mistake. The committee started out with two bills, a bill on health services and one on the health centers. The health services began from two bills. It was decided to combine them and the committee passed out two bills. It is both bills combined where the total is $1.2 billion greater, it is 36 percent greater than in the two predecessor bills. We had two bills and combined them into one bill, but we increased the dollar total of the two bills by 36 percent. Is that right, I will ask the gentleman from Florida, because I have gone through this, that we increase the total of this spending by $1.2 billion, and is it 36 percent greater than that contained in the two prior bills?

Mr. ROGERS. Mr. Speaker, there are two different bills. As the gentleman knows that other bill will be addressed by the House at another time.

Mr. COLLINS of Texas. We took two bills originally and we redesignated them. Have we not increased them by 36 percent?

Mr. ROGERS. No; we took one bill and changed it into two bills. There was an increase of course.

Mr. COLLINS of Texas. Of 36 percent?

Mr. ROGERS. I don't know the percentage.

Mr. COLLINS of Texas. On page 107 in our remarks in the bill report, it summarizes the last figure on that issue. My major objection is, we are increasing the budget too fast and, above all, should we be taking these billion dollar bills under a suspension of the rules? Is that good procedure?

Mr. ROGERS. We are bringing the other one up under a rule.

Mr. COLLINS of Texas. Yes, but this one is for over a billion dollars.

Mr. ROGERS. That is for migrant centers and community health programs. These are well-established programs that are ongoing. Everybody is familiar with them. And we have, as I tried to point out, a decrease of psychiatric hospital beds of 36 percent in this Nation. I am going to get the gentleman these figures, because he ought to be vigorously in support of this bill for its cost savings alone.

● Mr. STAGGERS. Mr. Speaker, I wholeheartedly endorse this legislation because it provides support for the provision of high quality health care services. It is most unfortunate, but there are still millions of Americans who live in medically underserved rural and urban areas. Those citizens do not have access to primary health care services, either physical or mental.

The major programs included in H.R. 12460 have been approved by Congress before. They should be approved again because they have been successful. These physical and mental health service programs are preventing illness and providing less expensive primary care services to people who previously were without health care.

In passing H.R. 12460 the House will be assuring millions of Americans that they will have health care services. I urge all Members to join me in supporting this important legislation.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules on the bill H.R. 12460, as amended.

The question was taken.

Mr. BROYHILL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, and the prior announcement of the Chair, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore. Because of the time limit, debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed, in the order in which the motion was entertained.

Votes will be taken in the following order:

H.R. 13097, H.R. 13817, H.R. 10792, Senate amendments on H.R. 7819, H.R. 11488, H.R. 12326, H.R. 12303, and H.R. 12460.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

PARLIAMENTARY INQUIRY

Mr. CHARLES H. WILSON of California. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore (Mr. HOLLAND). The gentleman will state his parliamentary inquiry.

Mr. CHARLES H. WILSON of California. Mr. Speaker, it is my understanding that we have had scheduled some 25 bills for consideration under Suspension of the Rules today and we are quitting now at 4:35 p.m. What is the reason for it? Have we run into TV time, or something?

The SPEAKER pro tempore. The Chair will state that the House finds its necessary to conclude its business around 5:30 p.m. today in order that arrangements may be made for the President to address a joint session of the Congress this evening.

Mr. CHARLES H. WILSON of California. I thank the Chair.

MEDICARE AMENDMENTS OF 1978

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 13097, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. ROSTENKOWSKI) that the House suspend the rules and pass the bill H.R. 13097, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 398, nays 2, not voting 32, as follows:

[Roll No. 788]

YEAS—398

Abdnor	Bafalis	Bowen
Addabbo	Baldus	Brademas
Akaka	Barnard	Breaux
Alexander	Baucus	Breckinridge
Ambro	Bauman	Brinkley
Anderson, Calif.	Beard, R.I.	Brodhead
	Beard, Tenn.	Brooks
Anderson, Ill.	Bedell	Broomfield
Andrews, N.C.	Benjamin	Brown, Calif.
Andrews, N. Dak.	Bevill	Brown, Mich.
	Biaggi	Brown, Ohio
Annunzio	Bingham	Broyhill
Applegate	Blanchard	Buchanan
Archer	Blouin	Burgener
Ashbrook	Boggs	Burke, Fla.
Ashley	Boland	Burke, Mass.
Aspin	Bolling	Burleson, Tex.
AuCoin	Bonior	Burlison, Mo.
Badham	Bonker	Burton, John
Burton, Phillip	Hanley	Murphy, N.Y.
Butler	Hannaford	Murphy, Pa.
Byron	Hansen	Murtha
Carney	Harkin	Myers, Gary
Carr	Harrington	Myers, John
Carter	Harris	Myers, Michael
Cavanaugh	Harsha	Natcher
Cederberg	Hawkins	Neal
Chappell	Heckler	Nedzi
Chisho.m	Heftel	Nichols
Clausen, Don H.	Hightower	Nix
	Hillis	Nolan
Clawson, Del	Holland	Nowak
Clay	Hollenbeck	O'Brien
Cleveland	Holt	Oakar
Cochran	Holtzman	Oberstar
Cohen	Horton	Obey
Collins, Ill.	Howard	Ottinger
Collins, Tex.	Hubbard	Panetta
Conable	Huckaby	Patten
Conte	Hughes	Patterson
Corcoran	Ichord	Pattison
Cornell	Ireland	Pease
Cotter	Jacobs	Pepper
Coughlin	Jeffords	Perkins
Crane	Jenkins	Pettis
Cunningham	Jenrette	Pickle
D'Amours	Johnson, Calif.	Pike
Daniel, Dan	Johnson, Colo.	Poage
Daniel, R. W.	Jones, N.C.	Pressler
Danielson	Jones, Okla.	Preyer
Davis	Jones, Tenn.	Price
de la Garza	Jordan	Pritchard
Delaney	Kastenmeier	Pursell
Dellums	Kazen	Quayle
Dent	Kelly	Quillen
Derwinski	Kemp	Rahall
Devine	Keys	Railsback
Dicks	Kildee	Rangel
Diggs	Kindness	Regula
Dingell	Kostmayer	Reuss
Dodd	Krebs	Rhodes
Dornan	Krueger	Richmond
Downey	LaFalce	Rinaldo
Drinan	Lagomarsino	Risenhoover
Duncan, Oreg.	Latta	Roberts
Duncan, Tenn.	Le Fante	Robinson
Early	Leach	Roe
Edgar	Lederer	Rogers
Edwards, Ala.	Leggett	Roncalio
Edwards, Calif.	Lehman	Rooney
Edwards, Okla.	Lent	Rose
Eilberg	Levitas	Rosenthal
Emery	Livingston	Rostenkowski
English	Lloyd, Calif.	Rousselot
Erlenborn	Lloyd, Tenn.	Roybal
Ertel	Long, La.	Rudd
Evans, Colo.	Long, Md.	Runnels
Evans, Del.	Lott	Ruppe
Evans, Ga.	Lujan	Russo
Evans, Ind.	Luken	Ryan
Fary	Lundine	Santini
Fascell	McClory	Satterfield
Fenwick	McCloskey	Sawyer
Findley	McCormack	Scheuer
Fish	McDade	Schroeder
Fisher	McEwen	Schulze
Fithian	McFall	Sebelius
Flippo	McHugh	Seiberling
Flood	McKay	Sharp
Florio	McKinney	Shuster
Flynt	Madigan	Sikes
Foley	Maguire	Simon
Ford, Mich.	Mahon	Sisk
Ford, Tenn.	Mann	Skelton
Forsythe	Markey	Skubitz
Fountain	Marks	Slack
Fowler	Marlenee	Smith, Iowa
Fraser	Marriott	Smith, Nebr.
Frenzel	Martin	Snyder
Fuqua	Mathis	Solarz
Gammage	Mattox	Spellman
Garcia	Mazzoli	Spence
Gaydos	Metcalfe	St Germain
Gephardt	Meyner	Staggers
Giaimo	Michel	Stangeland
Gibbons	Mikulski	Stanton
Gilman	Mikva	Stark
Ginn	Miller, Ohio	Steers
Glickman	Mineta	Steiger
Goldwater	Minish	Stockman
Gonzalez	Mitchell, Md.	Stokes
Goodling	Mitchell, N.Y.	Stratton
Gore	Moakley	Studds
Gradison	Moffett	Stump
Grassley	Mollohan	Symms
Green	Montgomery	Taylor
Gudger	Moore	Thompson
Guyer	Moorhead, Calif.	Thone
Hagedorn		Thornton
Hall	Moorhead, Pa.	Treen
Hamilton	Moss	Trible
Hammer-schmidt	Mottl	Tucker
	Murphy, Ill.	Udall
Ullman	Weiss	Wydler
Vander Jagt	Whalen	Wylie
Vanik	White	Yates
Vento	Whitehurst	Yatron
Volkmer	Whitley	Young, Alaska
Waggonner	Whitten	Young, Fla.
Walker	Wiggins	Young, Mo.
Walsh	Wilson, Bob	Young, Tex.
Wampler	Wilson, C. H.	Zablocki
Watkins	Wilson, Tex.	Zeferetti
Waxman	Winn	
Weaver	Wolff	

NAYS—2

Bennett	McDonald

NOT VOTING—32

Ammerman	Eckhardt	Sarasin
Armstrong	Flowers	Shipley
Beilenson	Frey	Steed
Burke, Calif.	Hefner	Teague
Caputo	Hyde	Traxler
Coleman	Kasten	Tsongas
Conyers	Meeds	Van Deerlin
Corman	Milford	Walgren
Cornwell	Miller, Calif.	Wirth
Derrick	Quie	Wright
Dickinson	Rodino	

The Clerk announced the following pairs:

Mr. Rodino with Mr. Caputo.
Mr. Ammerman with Mr. Frey.
Mr. Corman with Mr. Hyde.
Mrs. Burke of California with Mr. Coleman.
Mr. Shipley with Mr. Quie.
Mr. Steed with Mr. Dickinson.
Mr. Teague with Mr. Tsongas.
Mr. Van Deerlin with Mr. Sarasin.
Mr. Wirth with Mr. Walgren.
Mr. Wright with Mr. Milford.
Mr. Cornwell with Mr. Hefner.
Mr. Flowers with Mr. Eckhardt.
Mr. Derrick with Mr. Conyers.
Mr. Miller of California with Mr. Traxler.
Mr. Meeds with Mr. Beilenson.

Mr. MURPHY of New York changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "An Act to amend certain provisions of title XVIII of the Social Security Act with respect to the medicare program established by such title, and for other purposes.".

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b)(3), rule XXVII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rules on which the Chair has postponed further proceedings.

HEALTH PROGRAMS AMENDMENTS UNDER SOCIAL SECURITY ACT

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 13817, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. ROSTENKOWSKI) that the House suspend the rules

and pass the bill (H.R. 13817, as amended), on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 359, nays 40, not voting 33, as follows:

[Roll No. 789]

YEAS—359

Abdnor	Early	LaFalce
Addabbo	Edgar	Lagomarsino
Akaka	Edwards, Ala.	Le Fante
Alexander	Edwards, Calif.	Leach
Ambro	Eilberg	Lederer
Anderson, Calif.	Emery	Leggett
	Erlenborn	Lehman
Anderson, Ill.	Ertel	Lent
Andrews, N.C.	Evans, Del.	Levitas
Andrews, N. Dak.	Evans, Ga.	Livingston
	Evans, Ind.	Lloyd, Calif.
Annunzio	Fary	Lloyd, Tenn.
Applegate	Fascell	Long, La.
Archer	Fenwick	Long, Md.
Ashley	Findley	Lujan
Aspin	Fish	Luken
AuCoin	Fisher	Lundine
Bafalis	Fithian	McClory
Baldus	Flippo	McCloskey
Barnard	Flood	McCormack
Baucus	Florio	McDade
Beard, R.I.	Flowers	McEwen
Beard, Tenn.	Foley	McFall
Bedell	Ford, Mich.	McHugh
Benjamin	Ford, Tenn.	McKay
Bennett	Forsythe	McKinney
Bevill	Fountain	Madigan
Biaggi	Fowler	Maguire
Bingham	Fraser	Mahon
Blanchard	Frenzel	Mann
Blouin	Fuqua	Markey
Boggs	Gammage	Marks
Boland	Garcia	Marlenee
Bolling	Gaydos	Marriott
Bonior	Gephardt	Martin
Bonker	Giaimo	Mathis
Bowen	Gibbons	Mattox
Brademas	Gilman	Mazzoli
Breaux	Ginn	Metcalfe
Breckinridge	Glickman	Meyner
Brinkley	Gonzalez	Michel
Brodhead	Goodling	Mikulski
Brooks	Gore	Mikva
Broomfield	Gradison	Mineta
Brown, Calif.	Grassley	Minish
Brown, Mich.	Green	Mitchell, Md.
Brown, Ohio	Gudger	Mitchell, N.Y.
Broyhill	Guyer	Moakley
Buchanan	Hagedorn	Moffett
Burgener	Hall	Mollohan
Burke, Fla.	Hamilton	Moore
Burke, Mass.	Hammer-schmidt	Moorhead, Pa.
		Moss
Burleson, Tex.	Hanley	Mottl
Burlison, Mo.	Hannaford	Murphy, Ill.
Burton, John	Harkin	Murphy, N.Y.
Burton, Phillip	Harrington	Murphy, Pa.
Byron	Harris	Murtha
Carney	Harsha	Myers, Gary
Carr	Hawkins	Myers, John
Carter	Heckler	Myers, Michael
Cavanaugh	Heftel	Natcher
Cederberg	Hightower	Neal
Chisholm	Hillis	Nedzi
Clausen, Don H.	Holland	Nichols
	Hollenbeck	Nix
Clay	Holt	Nolan
Cleveland	Holtzman	Nowak
Cohen	Horton	O'Brien
Collins, Ill.	Howard	Oakar
Conable	Hubbard	Oberstar
Conte	Huckaby	Obey
Corcoran	Hughes	Ottinger
Cornell	Ichord	Panetta
Cotter	Ireland	Patten
Coughlin	Jacobs	Patterson
D'Amours	Jeffords	Pattison
Daniel, R. W.	Jenkins	Pease
Danielson	Jenrette	Pepper
de la Garza	Johnson, Calif.	Perkins
Delaney	Johnson, Colo.	Pickle
Dellums	Jones, N.C.	Pike
Dent	Jones, Tenn.	Poage
Derrick	Jordan	Pressler
Derwinski	Kastenmeier	Preyer
Dicks	Kazen	Price
Diggs	Kelly	Pritchard
Dingell	Kemp	Pursell
Dodd	Keys	Quayle
Dornan	Kildee	Quillen
Downey	Kostmayer	Rahall
Drinan	Krebs	Railsback
Duncan, Oreg.	Krueger	Rangel
Duncan, Tenn.	Regula	Shuster
	Reuss	Sikes
	Rhodes	Simon
	Richmond	Sisk
	Rina.do	Skelton
	Risenhoover	Skubitz
	Roberts	Slack
	Robinson	Smith, Iowa
	Roe	Smith, Nebr.
	Rogers	Solarz
	Roncalio	Spellman
	Rooney	St Germain
	Rose	Staggers
	Rosenthal	Stangeland
	Rostenkowski	Stanton
	Roybal	Stark
	Runnels	Steers
	Ruppe	Steiger
	Russo	Stokes
	Ryan	Studds
	Santini	Thompson
	Sawyer	Thone
	Scheuer	Thornton
	Schroeder	Treen
	Schulze	Trible
	Sebelius	Tucker
	Seiberling	Udall
	Sharp	Ullman
		Vander Jagt
		Vanik
		Vento
		Waggonner
		Walsh
		Wampler
		Waxman
		Weaver
		Weiss
		Whalen
		White
		Whitley
		Whitten
		Wilson, Bob
		Wilson, C. H.
		Wilson, Tex.
		Winn
		Wolff
		Wydler
		Wylie
		Yates
		Yatron
		Young, Alaska
		Young, Fla.
		Young, Mo.
		Young, Tex.
		Zablocki
		Zeferetti

NAYS—40

Ashbrook	English	Rudd
Badham	Flynt	Satterfield
Bauman	Goldwater	Snyder
Butler	Hansen	Spence
Chappell	Jones, Okla.	Stratton
Clawson, Del	Kindness	Stump
Cochran	Lott	Symms
Collins, Tex.	McDonald	Taylor
Crane	Miller, Ohio	Volkmer
Cunningham	Montgomery	Walker
Daniel, Dan	Moorhead, Calif.	Watkins
Davis		Whitehurst
Devine	Pettis	Wiggins
Edwards, Okla.	Rousselot	

NOT VOTING—33

Ammerman	Evans, Colo.	Sarasin
Armstrong	Frey	Shipley
Bellenson	Hefner	Steed
Burke, Calif.	Hyde	Stockman
Caputo	Kasten	Teague
Coleman	Latta	Traxler
Conyers	Meeds	Tsongas
Corman	Milford	Van Deerlin
Cornwell	Miller, Calif.	Walgren
Dickinson	Quie	Wirth
Eckhardt	Rodino	Wright

The Clerk announced the following pairs:

Mr. Rodino with Mr. Sarasin.
Mr. Ammerman with Mr. Walgren.
Mr. Shipley with Mr. Kasten.
Mr. Teague with Mr. Hyde.
Mr. Wright with Mr. Caputo.
Mr. Van Deerlin with Mr. Dickinson.
Mr. Corman with Mr. Frey.
Mr. Cornwell with Mr. Stockman.
Mr. Traxler with Mr. Quie.
Mr. Steed with Mr. Coleman.
Mr. Miller of California with Mr. Latta.
Mr. Wirth with Mr. Milford.
Mrs. Burke of California with Mr. Tsongas.
Mr. Bellenson with Mr. Evans of California.
Mr. Hefner with Mr. Eckhardt.
Mr. Meeds with Mr. Conyers.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING SMITHSONIAN INSTITUTION TO ACQUIRE MUSEUM OF AFRICAN ART

The SPEAKER pro tempore (Mr. HOLLAND). The unfinished business is the question of suspending the rules and passing the bill H.R. 10792, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. NEDZI) that the House suspend the rules and pass the bill H.R. 10792 as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 350, nays 54, not voting 28, as follows:

[Roll No. 790]

YEAS—350

Abdnor	Edwards, Calif.	Levitas
Addabbo	Edwards, Okla.	Livingston
Akaka	Eilberg	Lloyd, Calif.
Alexander	Emery	Lloyd, Tenn.
Ambro	English	Long, La.
Anderson, Calif.	Erlenborn	Long, Md.
	Ertel	Lujan
Anderson, Ill.	Evans, Colo.	Lundine
Andrews, N.C.	Evans, Del.	McCloskey
Annunzio	Evans, Ga.	McCormack
Applegate	Fary	McDade
Ashley	Fascell	McFall
Aspin	Fenwick	McHugh
Bafalis	Fish	McKinney
Baldus	Fisher	Madigan
Barnard	Fithian	Maguire
Baucus	Flippo	Mahon
Beard, R.I.	Flood	Mann
Beard, Tenn.	Florio	Markey
Bedell	Flowers	Marks
Benjamin	Foley	Marlenee
Bennett	Ford, Mich.	Marriott
Biaggi	Ford, Tenn.	Martin
Bingham	Forsythe	Mathis
Blanchard	Fountain	Mattox
Blouin	Fowler	Mazzoli
Boggs	Fraser	Metcalfe
Boland	Frenzel	Meyner
Bolling	Fuqua	Mikulski
Bonior	Gammage	Mikva
Bonker	Garcia	Mineta
Bowen	Gaydos	Minish
Brademas	Giaimo	Mitchell, Md.
Breaux	Gilman	Mitchell, N.Y.
Breckinridge	Ginn	Moakley
Brinkley	Glickman	Moffett
Brodhead	Goldwater	Moore
Brooks	Gonzalez	Moorhead, Pa.
Broomfield	Goodling	Moss
Brown, Calif.	Gore	Mottl
Brown, Mich.	Gradison	Murphy, Ill.
Brown, Ohio	Green	Murphy, N.Y.
Broyhill	Gudger	Murphy, Pa.
Buchanan	Guyer	Murtha
Burgener	Hall	Myers, Gary
Burke, Fla.	Hamilton	Myers, John
Burke, Mass.	Hanley	Myers, Michael
Burlison, Mo.	Hannaford	Natcher
Burton, John	Harkin	Neal
Burton, Phillip	Harrington	Nedzi
Butler	Harris	Nichols
Byron	Harsha	Nix
Carney	Hawkins	Nolan
Carr	Heckler	Nowak
Carter	Heftel	O'Brien
Cavanaugh	Hightower	Oakar
Cederberg	Hillis	Oberstar
Chappell	Holland	Obey
Chisholm	Hollenbeck	Ottinger
Clay	Holtzman	Panetta
Cleveland	Horton	Patten
Cochran	Howard	Patterson
Cohen	Huckaby	Pattison
Collins, Ill.	Hughes	Pease
Conable	Ireland	Pepper
Conte	Jacobs	Perkins
Corcoran	Jeffords	Pettis
Cornell	Jenkins	Pickle
Cotter	Jenrette	Pike
Coughlin	Johnson, Calif.	Pressler
D'Amours	Johnson, Colo.	Preyer
Daniel, Dan	Jones, N.C.	Price
Danielson	Jones, Okla.	Pritchard
Davis	Jones, Tenn.	Pursell
de la Garza	Jordan	Quayle
Delaney	Kastenmeier	Rahall
Dellums	Kazen	Railsback
Dent	Kemp	Rangel
Derrick	Keys	Regula
Derwinski	Kildee	Reuss
Dicks	Kindness	Rhodes
Diggs	Krebs	Richmond
Dingell	Krueger	Rinaldo
Dodd	LaFalce	Risenhoover
Dornan	Latta	Roberts
Downey	Le Fante	Robinson
Drinan	Leach	Roe
Duncan, Tenn.	Lederer	Rogers
Early	Leggett	Roncalio
Edgar	Lehman	Rooney
Edwards, Ala.	Lent	Rose

Rosenthal	Spence	Walsh
Rostenkowski	St Germain	Wampler
Roybal	Staggers	Watkins
Runnels	Stanton	Waxman
Ruppe	Stark	Weaver
Russo	Steers	Weiss
Ryan	Steiger	Whalen
Santini	Stockman	White
Sawyer	Stokes	Whitehurst
Scheuer	Stratton	Whitley
Schroeder	Studds	Whitten
Schulze	Thompson	Wiggins
Sebelius	Thone	Wilson, Bob
Seiberling	Thornton	Wilson, Tex.
Sharp	Treen	Winn
Shuster	Trible	Wolff
Sikes	Tucker	Wydler
Simon	Udall	Wylie
Sisk	Ullman	Yates
Skubitz	Van Deerlin	Yatron
Slack	Vander Jagt	Young, Alaska
Smith, Iowa	Vanik	Young, Fla.
Smith, Nebr.	Vento	Young, Mo.
Snyder	Volkmer	Young, Tex.
Solarz	Waggonner	Zablocki
Spellman	Walgren	Zeferetti

NAYS—54

Andrews, N. Dak.	Flynt	Michel
Archer	Gephardt	Miller, Ohio
Ashbrook	Gibbons	Mollohan
AuCoin	Grassley	Montgomery
Badham	Hagedorn	Moorhead, Calif.
Bauman	Hammer-schmidt	Poage
Bevill	Hansen	Quillen
Burleson, Tex.	Holt	Rousselot
Clausen, Don H.	Hubbard	Rudd
Clawson, Del	Ichord	Satterfield
Collins, Tex.	Kelly	Skelton
Crane	Kostmayer	Stangeland
Cunningham	Lagomarsino	Stump
Daniel, R. W.	Lott	Symms
Devine	Luken	Taylor
Duncan, Oreg.	McC.ory	Walker
Evans, Ind.	McDonald	Wilson, C. H.
Findley	McEwen	
	McKay	

NOT VOTING—28

Ammerman	Eckhardt	Sarasin
Armstrong	Frey	Shipley
Beilenson	Hefner	Steed
Burke, Calif.	Hyde	Teague
Caputo	Kasten	Traxler
Coleman	Meeds	Tsongas
Conyers	Milford	Wirth
Corman	Miller, Calif.	Wright
Cornwell	Quie	
Dickinson	Rodino	

The Clerk announced the following pairs:

Mr. Rodino with Mr. Frey.
Mr. Ammerman with Mr. Hyde.
Mr. Wright with Mr. Sarasin.
Mr. Shipley with Mr. Caputo.
Mr. Meeds with Mr. Dickinson.
Mrs. Burke of California with Mr. Quie.
Mr. Corman with Mr. Milford.
Mr. Miller of California with Mr. Hefner.
Mr. Wirth with Mr. Teague.
Mr. Traxler with Mr. Eckhardt.
Mr. Steed with Mr. Coleman.
Mr. Tsongas with Mr. Beilenson.
Mr. Cornwell with Mr. Conyers.

Mr. HAGEDORN changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. NEDZI. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the Senate bill (S. 2507) to authorize the Smithsonian Institution to acquire the Museum of African Art, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2507

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Board of Regents of the Smithsonian Institution (hereinafter in this Act referred to as the "Board") is authorized to accept a deed or other instrument donating and transferring to the Smithsonian Institution, the land and improvements thereto, collection of works of art, and all other assets and property of the Museum of African Art.

SEC. 2. There is established in the Smithsonian Institution a bureau which shall be known as the Museum of African Art (hereinafter in this Act referred to as the "Museum"). The functions of such bureau shall be those authorized by section 3(a).

SEC. 3. (a) For the purpose of carrying out sections 1 and 2 of this Act, the Board may—

(1) purchase, accept, borrow, or otherwise acquire additional works of art or any other real or personal property for the Museum;

(2) preserve, maintain, restore, display, loan, transfer, store, or otherwise hold any property of whatsoever nature acquired pursuant to section 1 or paragraph (1) of this subsection;

(3) conduct programs of research and education; and

(4) subject to any limitations otherwise expressly provided by law, and, in the case of any gift, subject to any applicable restrictions under the terms of such gift, sell, exchange, or otherwise dispose of any property of whatsoever nature acquired pursuant to the provisions of this Act: *Provided*, That the proceeds from the sale of any property acquired pursuant to section 1 shall be designated for the benefit of the Museum.

(b) In carrying out the purposes of this Act, the Board shall consider the recommendations of the Commission established pursuant to section 4.

SEC. 4. (a) There is established a Commission for the Museum of African Art (hereinafter the "Commission") which shall provide advice and assistance to the Board concerning the operation and development of the Museum, its collections and programs.

(b) The Commission shall consist of fifteen members to be appointed by the Board. In addition, the Secretary and an Assistant Secretary of the Smithsonian Institution shall serve as ex officio members. The Board shall appoint to the first term on the Commission no less than ten members of the Board of Trustees of the Museum of African Art who are serving on the date of the enactment of this Act. Each initial member so appointed shall serve for a three-year term. Thereafter, in appointing members of the Commission the Board shall continue to include representatives of the communities of African descendants in the United States, collectors of African art, and scholars in the fields of African art and culture.

(c) Members of the Commission shall be appointed to serve for a three-year term, except that after the appointment of the first term of the Commission as specified in subsection (b), the terms of office of members next appointed shall expire, as designated by the Board at the time of appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Members may be reappointed.

(d) A majority of the appointed members of the Commission shall constitute a quorum and any vacancy in the Commission shall not affect its power to function.

(e) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(f) The Commission shall select officers from among its members biennially and shall make bylaws to carry out its functions under this Act.

SEC. 5. The Board may appoint and fix the compensation and duties of the Director and such other officers and employees of the Museum as may be necessary for the efficient administration, operation, and maintenance of the Museum; the Director and two other employees of the Museum may be appointed and compensated without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and all of the employees of the Museum who are serving on the date of the transfer authorized under section 1 shall be offered employment by the Smithsonian under its usual terms of employment and may be appointed without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5.

SEC. 6. (a) The faith of the United States is pledged that upon the completion of the acquisition in section 1, the United States will provide such funds as may be necessary for the upkeep of the Museum and the administrative expenses and costs of operation thereof, including the protection and care of works of art acquired by the Board, so the Museum shall at all times be properly maintained and works of art contained therein shall be exhibited regularly to the general public free of charge.

(b) There is authorized to be appropriated for the first fiscal year under this Act, the sum of $1,000,000 and such amounts as may be necessary for the succeeding fiscal years in order to carry out the provisions of this Act.

SEC. 7 (a) It is the intent of the Congress that, as soon as possible, the Museum shall be relocated in another building of the Smithsonian Institution which is more fitting for the display of works of art and generally to serve the function of a museum.

(b) Not later than two years after the effective date of this section, the Board submit a report to the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives setting forth the plans undertaken by it, in consultation with the Commission, to carry out the intent expressed in subsection (a).

SEC. 8. Except for the provisions in sections 1 and 6 (b) the provisions of this Act shall take effect on the date of transfer of a deed or other instrument under the provision of section 1.

MOTION OFFERED BY MR. NEDZI

Mr. NEDZI. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. NEDZI moves to strike all after the enacting clause of S. 2507 and to insert in lieu thereof the text of H.R. 10792, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 10792) was laid on the table.

DIPLOMATIC RELATIONS ACT

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and concurring in the Senate amendments to the bill, H.R. 7819.

The Clerk read the title of the bill.

The SPEAKER. The question is on the motion offered by the gentleman from Florida (Mr. FASCELL) that the House suspend the rules and concur in the Senate amendments to the bill H.R. 7819, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 397, nays 7, not voting 28, as follows:

[Roll No. 791]

YEAS—397

Abdnor	Collins, Ill.	Goodling
Addabbo	Conable	Gore
Akaka	Conte	Grassley
Alexander	Corcoran	Green
Ambro	Cornell	Gudger
Anderson, Calif.	Cotter	Guyer
Anderson, Ill.	Coughlin	Hagedorn
Andrews, N.C.	Crane	Hall
Andrews, N. Dak.	Cunningham	Hamilton
Annunzio	D'Amours	Hammer-schmidt
Applegate	Daniel, Dan	Hanley
Archer	Daniel, R. W.	Hannaford
Ashbrook	Danielson	Hansen
Ashley	Davis	Harkin
Aspin	de la Garza	Harrington
AuCoin	Delaney	Harris
Badham	Dellums	Harsha
Bafalis	Dent	Hawkins
Baldus	Derrick	Heckler
Barnard	Derwinski	Heftel
Baucus	Devine	Hightower
Bauman	Dicks	Hillis
Beard, R.I.	Diggs	Holland
Beard, Tenn.	Dingell	Hollenbeck
Bedell	Dodd	Holt
Benjamin	Dornan	Holtzman
Bennett	Downey	Horton
Bevill	Drinan	Howard
Biaggi	Duncan, Oreg.	Hubbard
Bingham	Duncan, Tenn.	Huckaby
Blanchard	Early	Hughes
Blouin	Edgar	Ichord
Boggs	Edwards, Ala.	Ireland
Boland	Edwards, Calif.	Jacobs
Bolling	Edwards, Okla.	Jeffords
Bonior	Eilberg	Jenkins
Bonker	Emery	Jenrette
Bowen	English	Johnson, Calif.
Brademas	Erlenborn	Johnson, Colo.
Breaux	Ertel	Jones, N.C.
Breckinridge	Evans, Colo.	Jones, Okla.
Brinkley	Evans, Del.	Jones, Tenn.
Brodhead	Evans, Ga.	Jordan
Brooks	Evans, Ind.	Kastenmeier
Broomfield	Fary	Kazen
Brown, Calif.	Fascell	Kelly
Brown, Mich.	Fenwick	Kemp
Brown, Ohio	Findley	Keys
Broyhill	Fish	Kildee
Buchanan	Fisher	Kostmayer
Burgener	Fithian	Krebs
Burke, Fla.	Flippo	Krueger
Burke, Mass.	Flood	LaFalce
Burleson, Tex.	Florio	Lagomarsino
Burlison, Mo.	Flowers	Latta
Burton, John	Flynt	Le Fante
Burton, Phillip	Foley	Leach
Byron	Ford, Mich.	Lederer
Carney	Ford, Tenn.	Leggett
Carr	Forsythe	Lehman
Carter	Fountain	Lent
Cavanaugh	Fowler	Levitas
Cederberg	Fraser	Livingston
Chappell	Frenzel	Lloyd, Calif.
Chisholm	Fuqua	Lloyd, Tenn.
Clausen, Don H.	Gammage	Long, La.
Clawson, Del	Garcia	Long, Md.
Clay	Gaydos	Lott
Cleveland	Gephardt	Lujan
Cochran	Giaimo	Luken
Cohen	Gibbons	Lundine
Coleman	Gilman	McCloskey
	Ginn	McCormack
	Glickman	McDade
	Gonzalez	
McDonald	Pease	Spellman
McEwen	Pepper	Spence
McFall	Perkins	St Germain
McHugh	Pettis	Staggers
McKay	Pickle	Stangeland
McKinney	Pike	Stanton
Madigan	Poage	Stark
Maguire	Pressler	Steers
Mahon	Preyer	Steiger
Mann	Price	Stockman
Markey	Pritchard	Stokes
Marks	Pursell	Stratton
Marlenee	Quayle	Studds
Marriott	Quillen	Stump
Martin	Rahall	Symms
Mathis	Railsback	Taylor
Mattox	Rangel	Thompson
Mazzoli	Regula	Thone
Metcalfe	Reuss	Thornton
Meyner	Rhodes	Treen
Michel	Richmond	Trible
Mikulski	Rinaldo	Tucker
Mikva	Risenhoover	Udall
Miller, Ohio	Roberts	Ullman
Mineta	Robinson	Van Deerlin
Minish	Roe	Vander Jagt
Mitchell, Md.	Rogers	Vanik
Mitchell, N.Y.	Roncalio	Vento
Moakley	Rooney	Volkmer
Moffett	Rose	Waggonner
Mollohan	Rosenthal	Walgren
Montgomery	Rostenkowski	Walker
Moore	Rousselot	Walsh
Moorhead, Pa.	Roybal	Wampler
Moss	Rudd	Watkins
Mottl	Runnels	Waxman
Murphy, Ill.	Ruppe	Weaver
Murphy, N.Y.	Russo	Weiss
Murphy, Pa.	Ryan	Whalen
Murtha	Santini	White
Myers, Gary	Satterfield	Whitehurst
Myers, John	Sawyer	Whitley
Myers, Michael	Scheuer	Whitten
Natcher	Schroeder	Wilson, Bob
Neal	Schulze	Wilson, C. H.
Nedzi	Sebelius	Wilson, Tex.
Nichols	Seiberling	Winn
Nix	Sharp	Wolff
Nolan	Shuster	Wydler
Nowak	Sikes	Wylie
O'Brien	Simon	Yates
Oakar	Sisk	Yatron
Oberstar	Skelton	Young, Alaska
Obey	Skubitz	Young, Fla.
Ottinger	Slack	Young, Mo.
Panetta	Smith, Iowa	Young, Tex.
Patten	Smith, Nebr.	Zablocki
Patterson	Snyder	Zeferetti
Pattison	Solarz	

NAYS—7

Butler	McClory	
Collins, Tex.	Moorhead, Calif.	
Gradison	Wiggins	
Kindness		

NOT VOTING—28

Ammerman	Frey	Sarasin
Armstrong	Goldwater	Shipley
Beilenson	Hefner	Steed
Burke, Calif.	Hyde	Teague
Caputo	Kasten	Traxler
Conyers	Meeds	Tsongas
Corman	Milford	Wirth
Cornwell	Miller, Calif.	Wright
Dickinson	Quie	
Eckhardt	Rodino	

The Clerk announced the following pairs:

Mr. Rodino with Mr. Frey.
Mr. Ammerman with Mr. Goldwater.
Mr. Cornwell with Mr. Hyde.
Mr. Shipley with Mr. Sarasin.
Mr. Traxler with Mr. Caputo.
Mr. Wright with Mr. Dickinson.
Mr. Wirth with Mr. Eckhardt.
Mr. Meeds with Mr. Milford.
Mr. Hefner with Mr. Quie.
Mrs. Burke of California with Mr. Tsongas.
Mr. Corman with Mr. Teague.
Mr. Steed with Mr. Beilenson.
Mr. Conyers with Mr. Miller of California.

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

HEALTH PLANNING AND RESOURCES DEVELOPMENT AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 11488, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 11488, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 261, nays 141, answered "present" 1, not voting 29, as follows:

[Roll No. 792]

YEAS—261

Addabbo	Eilberg	McCormack
Akaka	Emery	McDade
Alexander	Erlenborn	McFall
Ambro	Ertel	McHugh
Anderson, Calif.	Evans, Colo.	McKinney
Anderson, Ill.	Evans, Del.	Madigan
Annunzio	Evans, Ga.	Maguire
Applegate	Fary	Mann
Ashley	Fascell	Markey
Aspin	Findley	Marks
AuCoin	Fisher	Marlenee
Baldus	Flippo	Mazzoli
Baucus	Flood	Metcalfe
Beard, R.I.	Florio	Meyner
Bedell	Flowers	Mikulski
Benjamin	Ford, Mich.	Mikva
Biaggi	Ford, Tenn.	Mineta
Bingham	Fowler	Minish
Blanchard	Fraser	Mitchell, Md.
Blouin	Frenzel	Mitchell, N.Y.
Boggs	Fuqua	Moakley
Boland	Garcia	Moffett
Bolling	Gaydos	Mollohan
Bonior	Gephardt	Moore
Bonker	Giaimo	Moorhead, Pa.
Bowen	Gibbons	Moss
Brademas	Gilman	Mottl
Breaux	Ginn	Murphy, Ill.
Breckinridge	Glickman	Murphy, N.Y.
Brodhead	Gore	Murphy, Pa.
Brown, Calif.	Gradison	Murtha
Broyhill	Green	Myers, Gary
Burke, Mass.	Hamilton	Myers, Michael
Burton, John	Hammer-schmidt	Natcher
Burton, Phillip	Hanley	Neal
Byron	Hannaford	Nedzi
Carney	Harkin	Nichols
Carr	Harrington	Nix
Carter	Harris	Nolan
Cederberg	Hawkins	Nowak
Chisholm	Heckler	O'Brien
Clausen, Don H.	Heftel	Oakar
Clay	Holland	Oberstar
Cleveland	Hollenbeck	Obey
Cochran	Holtzman	Ottinger
Collins, Ill.	Horton	Patten
Conte	Howard	Patterson
Corcoran	Huckaby	Pattison
Cornell	Jacobs	Pepper
Cotter	Jeffords	Perkins
D'Amours	Jenrette	Pike
Daniel, Dan	Johnson, Calif.	Pressler
Danielson	Johnson, Colo.	Preyer
Davis	Jordan	Price
Delaney	Kastenmeier	Pritchard
Dellums	Keys	Pursell
Dent	Kildee	Quillen
Derrick	Krebs	Rahall
Dicks	Le Fante	Railsback
Diggs	Leach	Rangel
Dingell	Lederer	Reuss
Dodd	Leggett	Richmond
Downey	Lehman	Rinaldo
Drinan	Lent	Roe
Duncan, Oreg.	Lloyd, Calif.	Rogers
Early	Long, La.	Roncalio
Edgar	Long, Md.	Rooney
Edwards, Ala.	Luken	Rosenthal
Edwards, Calif.	Lundine	Rostenkowski
Edwards, Okla.	McClory	Roybal
	McCloskey	Ryan
		Santini

Scheuer	Steers	Waxman
Schroeder	Stokes	Weaver
Seiberling	Stratton	Weiss
Sharp	Studds	Whalen
Simon	Thompson	Whitehurst
Sisk	Thornton	Whitten
Skubitz	Tucker	Wilson, Bob
Slack	Udall	Wilson, C. H.
Smith, Iowa	Ullman	Wilson, Tex.
Snyder	Van Deerlin	Winn
Solarz	Vander Jagt	Wolff
Spellman	Vanik	Yates
Spence	Vento	Yatron
St Germain	Walgren	Young, Mo.
Staggers	Walsh	Zablocki
Stark	Wampler	Zeferetti

NAYS—141

Abdnor	Fountain	Myers, John
Andrews, N.C.	Gammage	Panetta
Andrews, N. Dak.	Goldwater	Pease
	Goodling	Pettis
Archer	Grassley	Pickle
Ashbrook	Gudger	Poage
Badham	Guyer	Quayle
Bafalis	Hagedorn	Regula
Barnard	Hall	Rhodes
Bauman	Hansen	Risenhoover
Beard, Tenn.	Harsha	Roberts
Bennett	Hightower	Robinson
Bevill	Hillis	Rousselot
Brinkley	Holt	Rudd
Brooks	Hubbard	Runnels
Broomfield	Hughes	Ruppe
Brown, Mich.	Ichord	Russo
Brown, Ohio	Ireland	Satterfield
Buchanan	Jenkins	Sawyer
Burgener	Jones, N.C.	Schulze
Burke, Fla.	Jones, Okla.	Sebelius
Burleson, Tex.	Jones, Tenn.	Shuster
Burlison, Mo.	Kazen	Sikes
Butler	Kelly	Skelton
Cavanaugh	Kemp	Smith, Nebr.
Chappell	Kindness	Stangeland
Clawson, Del	Kostmayer	Stanton
Cohen	Krueger	Steiger
Coleman	Lagomarsino	Stockman
Collins, Tex.	Latta	Stump
Conable	Levitas	Symms
Coughlin	Livingston	Taylor
Crane	Lloyd, Tenn.	Thone
Cunningham	Lott	Treen
Daniel, R. W.	Lujan	Trible
de la Garza	McDonald	Volkmer
Derwinski	McEwen	Waggonner
Devine	McKay	Walker
Dornan	Mahon	Watkins
Duncan, Tenn.	Marriott	White
English	Martin	Whitley
Evans, Ind.	Mathis	Wiggins
Fenwick	Mattox	Wydler
Fish	Michel	Wylie
Fithian	Miller, Ohio	Young, Alaska
Flynt	Montgomery	Young, Fla.
Foley	Moorhead, Calif.	Young, Tex.
Forsythe		

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—29

Ammerman	Frey	Rose
Armstrong	Hefner	Sarasin
Bellenson	Hyde	Shipley
Burke, Calif.	Kasten	Steed
Caputo	LaFalce	Teague
Conyers	Meeds	Traxler
Corman	Milford	Tsongas
Cornwell	Miller, Calif.	Wirth
Dickinson	Quie	Wright
Eckhardt	Rodino	

The Clerk announced the following pairs:

Mr. Rodino with Mr. Caputo.

Mr. Ammerman with Mrs. Burke of California.

Mr. Teague with Mr. Frey.

Mr. Shipley with Mr. Hefner.

Mr. Rose with Mr. Sarasin.

Mr. Wright with Mr. Tsongas.

Mr. Wirth with Mr. Quie.

Mr. Corman with Mr. Kasten.

Mr. Cornwell with Mr. Bellenson.

Mr. Traxler with Mr. Eckhardt.

Mr. Steed with Mr. Dickinson.

Mr. Meeds with Mr. Hyde.

Mr. Miller of California with Mr. LaFalce.

Mr. Conyers with Mr. Milford.

Messrs. FORSYTHE, JOHN T. MYERS, JONES of North Carolina, CAVANAUGH, BURKE of Florida, MARTIN, SCHULZE, KEMP, PANETTA, PEASE, BAFALIS, YOUNG of Florida, BEVILL, WHITE, DERWINSKI, RISENHOOVER, WYDLER, BRINKLEY, WYLIE, and THONE, Mrs. SMITH of Nebraska, Messrs. MATHIS, and JONES of Tennessee, Mrs. LLOYD of Tennessee, Messrs. LUJAN, BROOKS, RUNNELS, and RUSSO, Mrs. PETTIS, Messrs. YOUNG of Alaska and LOTT changed their votes from "yea" to "nay."

Messrs. RUSSO, GLICKMAN, and EDWARDS of Oklahoma changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

AUTHORIZING THREE REMAINING SUSPENSION VOTES POSTPONED PURSUANT TO CLAUSE 3(b), RULE XXVII, BE CONSIDERED UNFINISHED BUSINESS FOR TOMORROW

Mr. ROSTENKOWSKI. Mr. Speaker, because of the commitment made to vacate the premises so that the security can come in and check the Hall of the House of Representatives. I ask unanimous consent that the three remaining suspension votes be postponed until tomorrow, that they be at that time considered unfinished business, and that we will then commence voting on the three remaining bills.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ASHBROOK. Mr. Speaker, I reserve the right to object.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. For those Members who were not in the Chamber earlier in the day, the Chair announces that the majority whip took the floor and explained the situation, saying that we would either stop around 4 o'clock and anticipate the amount of rollcalls that we would have, or he would ask unanimous consent to continue the rollcalls as unfinished business, in view of the fact that we had been requested by the Secret Service that we vacate the Chamber at 5:30 in order that they may make the usual inspection, in view of the fact that we will have the usual inspection, and in view of the fact that we will have the President of the United States, the President of Israel and the Prime Minister of Egypt here this evening. I am sure that was fully understood at that particular time.

The gentleman from Illinois (Mr. ROSTENKOWSKI) is making such a unanimous-consent request at this time.

Mr. ASHBROOK. Mr. Speaker, I reserve the right to object.

Mr. ROUSSELOT. Mr. Speaker, I reserve the right to object.

The SPEAKER. The gentleman from Ohio (Mr. ASHBROOK) reserves the right to object. I do not believe the gentleman was in the Chamber at the time of the earlier dialog.

Mr. ASHBROOK. That is correct.

Mr. ROUSSELOT. Reserving the right to object, Mr. Speaker, I was.

The SPEAKER. The gentleman from Ohio (Mr. ASHBROOK) reserves the right to object.

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I appreciate the explanation of the situation. But as I understand it, the Rules of the House still prevail. I would be constrained to say that we have established a number of questionable precedents in the last 2 years. I hope we do not add this to a long list of precedents.

Mr. ROSTENKOWSKI. Mr. Speaker, if the gentleman will yield, these are extenuating circumstances. The President of the United States and, it is hoped, two heads of foreign governments will be here, as our guests, on a most important issue, and I was hoping that, because of the commitment that was made here, the House would consent unanimously to this request.

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I will not object, but I think it is fair to say that the commitments made by a few are not commitments made by all.

The SPEAKER. In view of the dialog that has taken place, does the gentleman from Ohio (Mr. ASHBROOK) object?

Mr. ASHBROOK. No, I will not object, Mr. Speaker, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, will the gentleman from Illinois (Mr. ROSTENKOWSKI) assure us that these votes will be taken the first thing tomorrow morning?

Mr. ROSTENKOWSKI. Mr. Speaker, the gentleman's request is that this be considered unfinished business, and I should imagine that would be the determination.

Mr. ROUSSELOT. May we have that assurance?

The SPEAKER. The Chair will state that the votes will be the first order of business.

PARLIAMENTARY INQUIRY

Mr. SNYDER. Mr. Speaker, I have a parliamentary inquiry.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Kentucky (Mr. SNYDER) to state his parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. SNYDER. Mr. Speaker, may I ask, will the first vote in the morning be for 15 minutes?

The SPEAKER. The answer is in the affirmative. The first vote will be for 15 minutes.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

TOURISM: OUR NATION'S GREATEST ASSET—PART II

(Mr. SKUBITZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKUBITZ. Mr. Speaker, Thursday, I outlined the crisis and the sickness which is pervading our travel industry. I indicated that I would present a series of short statements to bring to the attention of the greatest number of my colleagues the crisis being faced by our U.S. travel service. I continue today, therefore, with part II.

THE U.S. TRAVEL SERVICE (USTS): FROM ITS CREATION TO THIS DAY

USTS was established by the International Travel Act of 1961 (22 U.S.C. 2121–27) to strengthen the domestic and foreign commerce of the United States and to promote friendly understanding and goodwill by encouraging foreigners to visit the United States and facilitating international travel.

Under this legislation, USTS's catalytic role is to:

Stimulate travel to the United States by foreign visitors for pleasure, business, or study;

Encourage the development in the United States of tourist facilities, low-cost unit tours, and other arrangements for meeting the needs of foreign visitors;

Foster and encourage the widest possible distribution of the benefits of travel, at the lowest rates, between foreign countries and the United States;

Encourage the reduction and elimination of barriers to travel to the United States and facilitation of international travel generally; and

Collect, publish, and provide for the exchange of statistics and technical information relating to international travel and tourism.

In 1970 an amendment to the International Travel Act elevated the Director of USTS to the rank of Assistant Secretary of Commerce for Tourism. This amendment also increased USTS's budget authorization from $4.7 million to $15 million and established a grant program under which USTS can match—USTS's share not to exceed 50 percent—the funds provided by States and cities, through private and nonprofit organizations for projects designed to promote travel to the United States.

The U.S. travel service maintains six regional overseas offices located in Great Britain, France, Germany, Canada, Mexico, and Japan.

In contrast to the promotional effort of numerous foreign nations in which the promotion of tourism is the sole mission of a cabinet level department or agency, the Federal effort to promote tourism has been less than enlightened. Historically, the executive branch has accorded tourism a very low priority, and it is not surprising that the efforts to date of the USTS to fulfill its mission have been weak and ineffective. These efforts have been most frequently undertaken in disjointed cooperation with travel organizations who do not represent a valid cross segment of the industry. Surviving amid a morass of Federal confusion, the failings of this agency can be directly attributed to inadequate funding levels derived from arbitrary budgetary constraints and lack of understanding of the importance of tourism to the national economy.

The executive branch through many administrations has continued to slash this agency's budget. The Congress, despite repeated warnings by the General Accounting Office, has not heeded the advice that something had to be done to offset the increased travel gap of the United States which now stands in excess of $30 billion which is a significant addition to the overall U.S. balance-of-payments deficit.

It is interesting to note that the General Accounting Office reported that the United States has found it difficult to maintain or increase its share of the growing international travel market because of competition from other countries.

The latest report from the tourism committee of the organization for economic cooperation and development should be mandatory reading to certain members of our Department of State who are clamoring for closing the USTS offices overseas as an economy measure. The OECD study found that the accelerated growth of international tourism in 1977 was due to the renewed efforts to step up the promotional activities pursued abroad by most member countries. It is interesting to note further that the OECD goes on to say that international tourist receipts increased 28 percent for the European member countries and less than 20 percent for the United States.

It is worth repeating today what the General Accounting Office recommended as early as 1973, for circumstances have not changed. On the contrary, competition is all the more acute for the same tourist dollar. The GAO recommended the the USTS allocate more of its resources to directly assist in developing and promoting competitive package tours and travel programs. The GAO recommended that the Secretary of Commerce direct the USTS to:

Act as a catalyst for getting foreign tour operators together with U.S. travel providers to discuss the details of developing travel programs to the United States.

Strengthen its field staff to provide direct regular consultation to tour operators and others interested in developing and promoting travel programs to the United States.

Devote research effort to meeting informational needs of those elements of the travel industry interested in developing travel programs to the United States.

Generate to the travel trade a regular flow of ideas and information on happenings in the United States around which the U.S. travel programs could be developed and promoted.

Consider furnishing direct financial and promotional assistance to the travel industry for such things as the printing of tour catalogs and brochures; photographs and promotional material; joint promotion efforts, including advertising; and travel trade promotional activities and seminars.

I have personally inspected the European offices of the USTS in Frankfurt, in Paris, and in London and can assure you that these programs and the recommendations by GAO are being carried out, but when compared to the type of support, financial backing, and encouragement from diplomatic posts which other governments provide their national tourism offices, our USTS effort is something to be ashamed of. Not only is this agency buried and ignored in the bureaucratic maze which is the Department of Commerce, but our Ambassadors overseas in key diplomatic posts are doing everything possible to discourage, downgrade, and generally ignore the efforts of this agency. Perhaps as an economy measure, we should consider closing the embassy and leave USTS offices to handle visa problems.

It is time we faced the fact that we are an underdeveloped Nation as far as tourism is concerned, and that tourism properly promoted and manipulated is the only available tool that we have which will readily reverse our disastrous balance of payments problem. Our message to the travel trade and to our diplomats overseas has got to be: "America '78—there's never been a better time."

Tomorrow my remarks will concern the London office of USTS: Scope of activity, programs and impact on the community.

LAND CONSOLIDATION FOR THE SISSETON-WAHPETON SIOUX TRIBE

(Mr. PRESSLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. PRESSLER. I would like to take this opportunity to provide you with some additional information on H.R. 13096, a bill that I have sponsored to enable the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation to consolidate its landholdings and reduce fractionated ownership of alloted land. I was pleased that the House passed H.R. 13096 this morning by unanimous consent.

Earlier this summer, when the House Subcommittee on Indian Affairs held hearings on H.R. 13096, the Washington Post published a somewhat misleading article on the legislation. The following information includes the Post article and my response, which appeared as a "Letter to the Editor." I hope that this will answer any questions that arise regarding the intent of H.R. 13096.

[From the Washington Post, July 26, 1978]

HILL UNIT VOTES INDIAN LAND BILL

A House Interior subcommittee approved legislation yesterday that would give Sioux Indians an edge over non-Indians in purchasing reservation land in South Dakota.

The bill, sponsored by Rep. Larry Pressler (R.–S.D.), would give members of the Sisseton-Wahpeton Sioux tribe the right to purchase Lake Traverse Reservation land if they can match the highest bid within 30 days after the land is auctioned.

The bill also would make individual Indians exempt from property taxes and federal and state income taxes on earnings from

Lake Traverse Reservation land. Under current law, tribes have been exempt from taxes but Indians who purchase reservation land as individuals have not been.

The bill is an effort to reverse an 1887 law that permits white settlers to purchase reservation land. Currently, non-Indians own 88 percent of the reservation's 919,000 acres.

[From the Washington Post, Aug. 1, 1978]

PROTECTING LANDS FOR A SIOUX TRIBE

I was interested to see a brief article on legislation affecting the Sisseton-Wahpeton Sioux Tribe in the Washington Post this morning (Wednesday, July 26, 1978), and I am concerned that the information contained in that article was not entirely accurate.

First of all, the legislation discussed in this morning's Washington Post story is identical to S. 3069—introduced early this Congress by Senators Abourezk and McGovern—which passed the Senate last Friday.

H.R. 13096, or S. 3069, does not change any tax laws affecting the Sisseton-Wahpeton tribe or tribal members on or off the Lake Traverse Indian Reservation. The bill does not give individual tribal members any advantage in buying trust or non-trust lands offered at public sales or auctions.

The legislation does provide the Sisseton-Wahpeton Sioux Tribe with an opportunity to purchase Indian-owned land that is already held in trust by the federal government when it is auctioned by matching the highest bid within 30 days and meeting the terms of the notice of sale. It also encourages the consolidation of lands that are now fractionated by multiple-heir ownership through voluntary sales and purchases by individual tribal members. This would provide for better use of Indian-owned lands and simplified administration of trust lands by the federal government.

I am sending a copy of the report submitted by the Bureau of Indian Affairs to the House Indian Affairs Subcommittee. This should clarify any misunderstandings you might have about this legislation, and I hope you will contact my office if you have any questions in the future.

Thank you for giving me this opportunity to discuss H.R. 13096 with you.

Sincerely,

LARRY PRESSLER,
Member of Congress.

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY OF THE INTERIOR-INDIAN AFFAIRS

Mr. Chairman, I am pleased to present the Interior Department's testimony in favor of enactment of H.R. 13096.

H.R. 13096 would amend the Act of October 26, 1974 which now provides for the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation to consolidate its landholdings in North and South Dakota. The amendments authorize (1) the Secretary of the Interior to acquire and hold in trust for individual members of the Sisseton-Wahpeton Sioux Tribe lands within the boundaries of the Lake Traverse Reservation and (2) a first right of purchase in the tribe with respect to lands held in trust by the United States for tribal members when the lands are offered for sale at public sale or auction.

The Lake Traverse Indian Reservation was established by the Treaty of February 19, 1867 (15 Stat. 505). The original reservation area is V-shaped and lies in the northeast corner of South Dakota with a small portion in the southeast corner of North Dakota. The original reservation contained some 919,000 acres. The allotment of tribal lands to individual members and the sale of "surplus" tribal land for homesteading purposes resulted in much of the land passing into non-Indian ownership.

Currently, over 10,000 acres are held in trust for the tribe, and over 97,000 acres are held in trust for individual tribal members. The remaining Indian trust lands are scattered throughout the original reservation area. Many of these are trust allotments with highly fractionated multiple ownership. Because of these factors, the tribe has had a very limited opportunity to manage its lands for the common good. To alleviate these problems, the Act of October 26, 1974 was enacted. That Act authorizes the tribe to sell, exchange, or mortgage tribal lands for the purpose of acquiring other lands within the boundary of the reservation through purchase, gift, or exchange. The lands so acquired may be taken in trust by the United States for the benefit of the tribe. The effect of the Act is to permit the tribe to consolidate its current tribally owned lands into manageable units.

The existing Act is inadequate to respond to the needs of individual members to acquire land for homesites or businesses or to buy out other owners of fractional interests. Moreover, individually owned Indian trust lands within the reservation are passing out of Indian ownership at public sales or auctions as the result of foreclosure proceedings.

Enactment of H.R. 13096 will alleviate these problems by allowing individual members of the Sisseton-Wahpeton Sioux Tribe the same authority as the tribe to acquire land for homesites or businesses or to buy out other heirs. The bill would permit consolidated land ownership for individual tribe members as well as the tribe. By reducing the fractionated ownership of allotted land, the bill would allow the land to be developed and used more efficiently and would simplify administration of the Federal trust responsibility for the land. Land consolidation under the bill would rely on voluntary sales and purchases. Any lands thus acquired would be held in trust by the Secretary of Interior.

The amendment of section 2(b) of the Act would provide the tribe with a first right of purchase when individual trust land is offered for sale at public sale or auction. This is especially desired to allow the tribe the first option to buy in the event of a mortgage foreclosure proceeding against a tribal member. It will help prevent Indian land from passing out of Indian ownership and provide the tribe with another mechanism for acquiring the land base needed for increased self-sufficiency.

This concludes my prepared statement and I will be pleased to respond to any questions the Subcommittee may have.

THE SIGNING OF S. 9—THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

(Mr. MURPHY of New York asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

● Mr. MURPHY of New York, Mr. Speaker, early this morning, the President signed and thus enacted into law the Outer Continental Shelf Lands Act Amendments of 1978. This new law—S. 9—is one of the key energy/environmental bills of the 95th Congress. It passed both Houses overwhelmingly. It is supported by industry, labor, citizens, coastal States, environmentalists, Republicans, and Democrats. It is the result of 3½ years of extensive work by a special committee of this House and over 6 years work by the Senate Interior and then Senate Energy Committee.

The President had indicated that he intended to hold a signing ceremony to commemorate the final enactment of these much needed offshore drilling reforms. However, in light of the Camp David meeting and the events resulting from that meeting, he was forced to cancel such a ceremony and sign the bill this morning. He has indicated, however, that he considers this new law a significant part of his overall energy program and of his continuing desire to balance energy development and environmental protection.

As chairman of the Ad Hoc Select Committee on the Outer Continental Shelf, I would like to personally extend my gratitude to President Carter, Secretary Andrus, and their staffs for the wholehearted support of the administration for the OCS bill. I would also like to thank all the Members of Congress and their staffs and the various other groups—coastal States, citizen groups, and environmentalists, fishermen, and some energy companies—that have worked long and hard to forge balanced and effective OCS reform legislation.

This moment is particularly satisfying for me, because of the diligent efforts of the Ad Hoc Select Committee on Outer Continental Shelf over the past 3½ years to update the outmoded 1953 OCS Act. For the first time in the history of Congress, the House set up a special ad hoc select committee to handle a piece of major legislation, and the special procedure worked.

The culmination of this effort, embodied in OCS legislation comes at an especially meaningful time with the recent announcement by Texaco of the discovery of natural gas in the Baltimore Canyon, which clearly illustrates the need for this law as we move into new areas of potential oil and gas production.

This law is a victory for the American people, because the bill will provide for more competition, more protection of the coastal environment and will lessen our dependence on foreign oil. The importance of OCS resources to the United States cannot be overstated. When the select committee began its work over 3½ years ago, the Nation was importing approximately 35 percent of its crude oil. That percentage has risen quickly and steadily. Our imports of foreign crude oil now exceed periodically 50 percent of our domestic consumption. OCS oil and gas resources presently account for 15 percent of the U.S. oil production and 23 percent of natural gas production; and the prospects are that the U.S. Continental Shelf can be the largest new domestic source of oil and gas between now and the 1990's.

Conscious of the need to conserve the environment, this bill provides for the protection of living marine resources, as well as for protection of the coastal areas most likely to be affected by OCS activities. Ample Federal assistance is provided to the coastal States to ameliorate the adverse impacts of OCS activities. Formula grants are to be allocated to States participating in the coastal zone management program to the tune of $130 million annually for 10 fiscal years starting in fiscal year 1979. In addition, the legislation requires the Secretary of Interior to conduct an environmental re-

view, after exploration and before production of OCS leases. It provides for an offshore oilspill pollution fund to insure that damages from OCS spills are speedily compensated. And it provides for compensation to fishermen for any gear damaged or profits lost, because of OCS development.

S. 9 also details procedures to insure competition, a better return to the public for the sale of its mineral rights, and better information to the Government on OCS resources. To spur competition among the oil companies in the bidding process, the legislation provides for new arrangements to lease oil and gas rights and requires the Government to use them during the next 5 years. These new bidding systems will encourage smaller energy companies to participate in OCS development.

S. 9 encourages input from State and local governments on proposed OCS activities. It allows officials of these groups and citizens to respond to Federal proposals, plans, and actions. An open decisionmaking process will eliminate present delays caused by citizen suits, initiated because of dissatisfication with present procedures. A special provision expediting judicial action will reinforce this reduction in lawsuit delays.

Another important provision of this legislation is the provision that OCS rigs and vessels ordinarily be U.S. documented and manned. This requirement will insure safe operation of all OCS facilities and vessels, and reconcile the dual concerns of providing the fullest possible employment for Americans and of eliminating the likelihood of retaliation by foreign nations against American workers on their OCS.

In the past, objections to OCS reforms were focused on those provisions which some, I believe improperly, claimed would establish a national oil company and unnecessarily increase safety burdens on employers. The new law retains existing law and maintains the present authority of the Secretary of Interior to authorize exploration activities and does not in any way encourage, support, or create a national oil company. Second, the new law provides for workers safety regulations by the Coast Guard—the present agency authorized to promulgate regulations. The Coast Guard is expected to focus its attention and resources on setting and enforcing standards for the unregulated working conditions on the OCS. And Congress will be looking to the Coast Guard to protect employees working on the OCS. Present authority of other agencies is not altered. For example, it was never intended that OSHA would be automatically relieved of responsibility in this area. On the contrary, it is expected that OSHA will function as it always has and that jurisdictional lines between the two agencies with responsibilities on the OCS would be covered by section 4(b)(1) of OSHA. That is, where the Coast Guard issues a standard applicable to a working condition on the OCS, OSHA would be precluded from any enforcement as to that condition.

S. 9 does not alter present arrangements between OSHA and Coast Guard. Neither agency is the exclusive agency for issuing standards for presently unregulated working conditions on the shelf. Both Coast Guard and OSHA authorities are preserved, with section 4(b)(1) providing the dispositive jurisdictional limits both as to presently regulated working conditions as well as to the unregulated areas.

This vital piece of energy legislation will substantially speed up the production of offshore oil, in an orderly manner. It will help this country eliminate the burden of foreign oil imports, contribute to a more favorable balance-of-payments position, provide employment for U.S. citizens, and for the first time involve not only the Federal Government and a few oil companies, but smaller energy companies, State, and local governments, and the people in the development of their resources.

As with all new pieces of legislation, it will be up to the President and the executive department to appropriately implement the policies, programs, procedures, and goals of the OCS Act. It will be up to us—the Congress—to oversee—carefully—this implementation.●

BUSINESS AS USUAL FOR ARMAND HAMMER

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, American businessman Francis Crawford was recently arrested, imprisoned for 15 days, interrogated repeatedly, convicted, and given a suspended sentence by a Soviet court on trumped up charges. Meanwhile it is business as usual for Armand Hammer, chairman of the Occidental Petroleum Co., and a sympathizer of Communist causes over the years.

In what has been called "the biggest deal in history between the Soviet Union and a Western business," Hammer has just opened a large ammonia plant in the Ukraine. This plant is part of a $20 billion, 20-year agreement between the Soviets and Occidental Petroleum.

The difference in treatment accorded these two American businessmen by Soviet authorities is not surprising. Hammer has always had a special relationship with the Soviet Government.

I discussed this special relationship at some length in a speech entitled "One Man's Soviet Trade," delivered in the House of Representatives on October 17, 1973. As early as the 1920's Hammer was trading fast and furious with the Soviet Union. A major asset was the Communist connections of both his father and himself. I have recently shown the connection between big business and liberal-leftist causes.

Lenin viewed Hammer as a person sympathetic to the Soviet point of view who could lead a path to American business. In a letter to Stalin urging complete cooperation with Hammer, Lenin stated:

> I am giving both Armand Hammer and B. Mishell a special recommendation on my own behalf and request all C.C. members to give these persons and their enterprise particular support. This is a small path leading to the American "business" world, and this path should be made use of in every way.

Hammer's communistic sympathies and connections proved worthwhile. While other businessmen later watched their enterprises appropriated by the Soviets, Hammer profited from his investments.

There are some important lessons in this episode for American businessmen. While trade with the Soviets may be profitable to a few select individuals having a special relationship with the Communist leaders, arrest and expropriation can await those who do not enjoy such a relationship.

Nor should Americans doing business with the Soviets expect justice and fairness. The Communist leadership is prepared to fabricate charges against innocent persons such as Francis Crawford if it will advance Soviet interests. Doing nothing illegal is no protection and no defense.

The Soviets look at trade with the United States as a way of building up their industrial base. Western technology is useful to them, because it strengthens their position against the Capitalist countries. As a Soviet spokesman said in 1926 about allowing foreign concessions:

> On the one hand, we admit capitalist elements, we condescend to collaborate with them: on the other hand our objective is to eliminate completely, to conquer them, to squash them economically as well as socially. It is a furious battle, in which blood may necessarily be spilled.

More than five decades of dealing with the Soviets has been an economic success for the U.S.S.R. and a political and economic disaster for the United States. It has not stopped war, it has not given us peace. It has given the Soviets increased industrial and military power and the ability to press for its never ending goal of world domination.

ADMINISTRATION PLEDGES PROTECTION FOR ALASKA'S NATIONAL INTEREST LANDS

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, as all Members know, the deadline is fast approaching for congressional action on the most important conservation issue of our time—the protection of the crown jewels of Alaska's Federal lands.

Under section 17(d)(2) of the Alaska Native Claims Settlement Act of 1971, interim protection was given to these "national interest" lands—lands which are the heritage and legacy of all the American people. But that interim protection expires on December 18 of this year. Unless Congress or the administration acts before that deadline, the decisions about the future of these public lands will be made, not by the public's representatives, but by agents of private interests.

Mr. Speaker, the House of Representatives has met its responsibilities regarding this matter. On May 19, as all

our colleagues will recall, we passed H.R. 39, the Alaska National Interest Lands Conservation Act, by the overwhelming vote of 277 to 31. However, the Committee on Energy and Natural Resources of the other body has not yet completed its consideration of this issue, and no bill has yet been reported to the floor on that side of the Capitol.

I am still hopeful that time remains for the completion of congressional action. Despite the imminence of adjournment, it is still possible that a bill can be passed on the other side, and that differences between that and H.R. 39 can be resolved in a conference between the two bodies. I hope that this will be the case.

However, this is a matter too important to be decided by default. Therefore, I believe that all our colleagues will join me in applauding the recent statement of Secretary of the Interior Cecil Andrus, concerning the determination of the Carter administration to take whatever steps are necessary to insure that—

The natural treasures of Alaskan wilds are protected for as long as necessary to give Congress time to act.

As the Secretary put it in a speech last week:

We have no intention of letting Alaska become a private preserve for a handful of rape, ruin, and run developers.

The Secretary stressed that President Carter has "made it absolutely clear that he stands behind whatever measures we must take to protect those Alaskan wildlands."

Mr. Speaker, these are welcome words for all of us who are seeking to assure that the matchless scenic, wildlife, scientific, wilderness, and other values of the American people's Alaskan lands will be protected for the benefit of generations to come. So that all our colleagues may know just where the administration stands on this matter, I am including at this point in the RECORD the text of Secretary Andrus' recent speech, and a brief summary of it which was distributed by the Department of the Interior:

ANDRUS PLEDGES ADMINISTRATION WILL ACT TO PRESERVE CONGRESSIONAL OPTIONS ON FEDERAL LANDS IN ALASKA

Interior Secretary Cecil D. Andrus said tonight that "President Carter and I will make sure that the natural treasures of Alaskan wilds are protected for as long as necessary to give Congress time to act" on legislation designating national parks and refuges in the nation's newest state.

Noting that time is running out for Congress to act this session on a national interest land bill for Alaska, Andrus told The Nature Conservancy Annual Awards Banquet in Arlington, Va.:

"We have no intention of letting Alaska become a private preserve for a handful of rape, ruin and run developers."

Andrus said that several key members of Congress have urged him to begin drafting the necessary proclamations to create new national monuments in Alaska under authority of the Antiquities Act of 1906. Such proclamations issued by the President would prohibit development of natural resources in the prescribed areas at least until Congress completes action on pending legislation.

The Secretary said he also has authority under the Federal Land Policy and Management Act of 1976 to protect wild and scenic areas of Alaska.

"On my recent float trip with President Carter, we discussed Alaska, and he made it absolutely clear that he stands behind whatever measures we must take to protect those Alaskan wildlands," Andrus said.

Congress has a self-imposed deadline of December 18, 1978, for deciding which of Alaska's 375 million acres should be designated as national parks, wildlife refuges, wild and scenic rivers, and national forests. President Carter proposed 92.5 million acres for these protective designations, and the House of Representatives voted overwhelmingly for legislation covering more than 100 million acres. The Senate has not acted, however, and no legislation is enacted, a 1971 law barring development from proposed park and refuge areas will expire.

Andrus charged that those who in 1971 agreed to the process for establishing national parks and wildlife refuges in Alaska are now reneging and attempting to rewrite history. The Secretary also cited the long process of study and consultation which preceded the Administration's recommendations for Alaska.

"Those who say that Alaska is too big to destroy or too tough to damage either don't know what they're talking about or are willing to taken chances we won't," Andrus said.

REMARKS OF THE HONORABLE CECIL D. ANDRUS

Thank you, Tom, for that generous introduction.

One of the pleasures of being Governor of Idaho was having Tom McCall as a neighboring Governor and fellow conspirator against destruction of our environment. He provided inspirational leadership up in our Northwest corner of the country, and although he has temporarily retired from public office, the legend lives on.

We were the first governors who were able to raise questions about the wisdom of helter-skelter development and boomtowns in our states—states which had traditionally been the domain of the boomers—and live to tell about it.

But The Nature Conservancy did not invite us here tonight to pat each other on the back.

The tributes tonight go to those award winners who have been recognized during this program. I join in congratulating them for their outstanding contributions to conservation.

I also want to thank The Nature Conservancy on behalf of myself and the American people for all the great work that this organization has done over the years.

It has been my good fortune to work with the Conservancy to protect some key areas in America.

The wonderful thing about the Conservancy is that it tackles problems head-on, and it so often does what government agencies cannot do, or cannot do in time, to save an endangered wild area or to protect an endangered species.

The Conservancy, working with the U.S. Fish and Wildlife Service, has helped acquire more than 358,000 acres of prime habitat.

On numerous occasions, habitat essential for endangered species, migratory waterfowl or unique ecological wildlife areas was available on the market and threatened with destruction. Interior was unable to act expeditiously because of government red tape. In these cases, the Conservancy has stepped in, acquired the land and held them until appropriations were available.

Our current example is the Leetown Fish Hatchery in West Virginia where adjacent land is being purchased to protect the hatchery's watershed. In addition, there are the Sea Rim Refuge and the Smith Marsh in Texas, and Great Meadows Refuge in Massachusetts, to mention only a few others the Conservancy is working on right now.

In the past decade, the Conservancy has acquired 126 parcels of land on 22 refuges which have been conveyed to the Fish and Wildlife Service at a savings to taxpayers of more than six and one-half million dollars.

Far more important than dollars saved are the thousands of acres of habitat which would have been destroyed if the Conservancy had not acted promptly.

In a sense, the Conservancy has become a court of last resort. Often, the Conservancy has stepped in to help save the last remnant of an ecosystem or home for the last population of some animal or plant. You understand both the necessity and the pain of this kind of environmental salvage work. Fortunately for our Nation, you keep at it.

Tonight, though, I want to talk about Alaska—an area we don't need to salvage—yet.

Alaska still has the free flowing rivers.

Alaska still has the free roaming caribou herds.

Alaska still has the masses of nesting herds.

Alaska is the place the rest of our country once was.

We don't talk about remnants in Alaska. We talk about healthy, thriving natural systems. We don't need to manage Alaska. We just need to protect it.

Since you here tonight so often deal in "lasts" and "onlys" and "one-of-a-handfuls," I am sure that you appreciate both the challenge and the opportunity we have in Alaska.

Our ability to balance development and conservation will make Alaska a source of pride for future generations. It will not merely be the last place we took the opportunity to destory our natural heritage.

Today we have reached the historic decision point. Alaska has always been too cold, too far, too rugged, too expensive for most development. We have now overcome those technical and financial problems. But as we learned to work—and destroy—in the far north we also learned how and why we should conserve and protect. Today we know how to destroy and we know why we should conserve. Whatever course we take in Alaska will be with our eyes wide open. There can be no more excuses.

It is no accident that the world's most expensive and ambitious privately constructed civil engineering project—the Trans-Alaska Pipeline—is in Alaska. Or that it may soon be followed by an even more ambitious natural gas pipeline. The conditions imposed by the arctic require projects on a mammoth scale if they are to succeed. But, of course, such huge projects are in themselves a mammoth threat to Alaska's still healthy natural systems.

Like development, conservation in the far north must also be mammoth in scale. A barren ground grizzly bear requires one hundred square miles of territory. A caribou migrates hundreds of miles. It would be worse than useless to try to protect them with national parks and wildlife refuges scaled to the lower 48 states. It would be fraud.

Fortunately, a farsighted Congress in 1971 gave us the opportunity today to conserve many of Alaska's most important natural areas.

Section 17(d)2 of the Alaska Native Claims Settlement Act directs the Secretary of the Interior to nominate federal land in Alaska for new national parks, wildlife refuges, national forests and wild rivers. At the same time Congress gave itself until December 18 of this year to act.

The Carter Administration met its obligations under the Act last September with a balanced proposal for 92.5 million acres of new conservation areas. Last May the House endorsed similar, but more ambitious, legislation by the overwhelming margin of 277–31. In the Senate today, let's just call the situation less than desirable.

As we developed these proposals we listened to every segment of society with an interest in Alaska.

We listened to the miners—and left more than 70 percent of hard rock minerals outside the boundaries.

We listened to the oil men—and left 90 percent of high potential oil and gas provinces outside the boundaries.

We listened to the hunters—and more than 90 percent of Alaska will be open to sport hunting.

We listened to the Natives—and encouraged the traditional subsistence culture.

We listened to the State—and supported language speeding conveyance of statehood lands.

And we listened to the two thousand Americans who appeared before the House Interior Committee. The majority urged swift action to protect Alaska's wilds—including a majority of those who appeared in Alaska.

When we drew the final boundaries—cut from 120 million acres endorsed by Assistant Secretary Bob Herbst—our major tool was a computerized resource analysis developed by the state. As we made our final decisions, resource consultants from the state government offered advice from an office just down the corridor from my own office.

But despite our best efforts to balance our proposals and accommodate the entire National Interest, these proposals have come under some of the most vitriolic attacks I have witnessed in all my years of public life.

I want to read two statements to you. Here's the first quote from a well known American:

"If I were writing a script for the great American adventure story I could not pick a better location for it than Alaska—a land which is still free, clean and unspoiled. Up until recent times we placed great emphasis on growth—development, industry, new highways and increasing our population. Now a community or state is valued for its open spaces, its unspoiled natural beauty, its clean air and pure water . . ."

Now the second statement from another well-known American:

"Outsiders don't understand Alaska. They only come up here in the summer. They don't realize this is the Arctic. To survive, you need a habitat. Hey, let me tell you. American industry has learned more about the environment in the last 10 years than the environmentalists have learned about the needs of man—ever."

Wait. Both these statements were made by Walter J. Hickel, the first as my predecessor in the office of Secretary of the Interior in 1970, the second a few weeks ago as a candidate for Governor of Alaska.

I don't know how such strong statements for conservation can be replaced by such demagoguery over a period of a few short years. I can't say why.

What I can say though, is that such demagoguery won't work—it didn't even work in Alaska.

Mr. Hickel recently spent $535,000 in his primary election campaign. That's nearly $17 for every one of the thirty-one-thousand-seven-hundred or so votes he got. The boomer philosophy that was represented by that half-million investment was rejected by Alaska's voters. A majority of voters in both parties voted for moderation and responsible consideration.

I am not seeking to criticize Mr. Hickel personally, but I do criticize the boomer philosophy that he represents. Those espousing that philosophy now seek to work their will on the American people by rewriting history.

The State of Alaska has already received enormous wealth from the United States, but there are those who seek even more—at the expense of our last remaining wildlands—lands that belong to all Americans and at the expense of Alaskans who value their life style.

As you well know, the modern history of legislation for Alaska is the history of development legislation. Let me review that history quickly:

In 1959 a generous nation gave Alaska 103 million acres as a statehood grant. This is 30 percent of Alaska—far more either in absolute or proportional terms than any other state received. When Idaho was admitted in 1890—to pick an example I know intimately—we received seven percent of the land.

In 1971, Alaska's Natives, with the backing of the state and the North Slope oil producers, came to Congress seeking settlement of their long-standing aboriginal claims. Congress was just and generous—awarding the Natives 44 million acres and nearly $1 billion in cash. And, not incidentally, clearing title to the proposed right of way for the Alaska pipeline at the same time.

In 1974 Alaskans and oil companies were back again seeking an exemption from the National Environmental Policy Act so they could begin construction on the pipeline immediately.

The Alaska Native Claims Settlement Act contained Section 17–d–2, though.

Senator Ted Stevens agreed to this section.

Senator Mike Gravel agreed to this section.

The late Congressman Nick Begich agreed to this section.

Both Governors Egan and Hickel agreed to this section.

The oil companies agreed to this section.

The mining companies agreed to this section.

Virtually every person, organization, industry with an important interest in the future of Alaska agreed to that section. It was a small price. One paragraph of conservation language to balance an entire bill aimed at development. And the language of the bill and the conference report is clear.

But, now that millions of dollars in Prudhoe Bay oil money is flowing every day into the Alaska treasury—a gift from the people of the United States to the people of Alaska—some Alaskans are whining that Section 17(d)(2) will throttle their state's development. Such charges are pure baloney.

I say that such a repudiation of this agreement is too mean-spirited for most Alaskans to accept. I say that such an attempt to rewrite history is not worthy of Alaskans' honor.

We have explained so carefully and so many times what these proposals will and will not accomplish. They balance conservation with development, protecting the finest wildlife and scenic resources while leaving the majority of minerals and hydrocarbons available for development. I can only assume now that many of those who misstate the proposals or who read dire consequences for Alaska into them no longer do so from well meaning ignorance. They know the facts, and they choose to ignore them.

We have no intention—as some have charged—to turn Alaska into some sort of wilderness playground for the rich. And equally, we have no intention of letting Alaska become a private preserve for a handful of rape, ruin and run developers. Alaska's magnificent resources belong to all Americans—for all time.

I say to you tonight that Alaskans have an obligation to support the national interest in conservation today just as vigorously as the nation supported Alaska's interest in development yesterday.

Alaska's beauty and natural richness is no secret. Travelers have been tramping through her mountains, catching her fish and writing memoirs about her spectacular scenery for more than 75 years. In the 1930s Bob Marshall was writing that nearly every acre north of the Yukon River should be set aside for conservation.

There have been a long string of conservation proposals for Alaska since Marshall. Today, nearly half a century after he wrote, we are starting to recapture his vision and his understanding of what is needed in Alaska.

Our 92.5 million acre proposal is the bare minimum necessary to protect Alaska's scenic, living and cultural resources. These areas were chosen because they are—literally—the Crown Jewels of Alaska's wilds. In Alaska we didn't even consider mountain ranges and river valleys that—in the lower 48—would be targeted for national park status. In Alaska they were mundane.

There was nothing accidental about our proposals. They were designed to protect vital and often unique resources. They were based on the principle that to protect resources you have to protect their surroundings as well. So we drew our boundaries—wherever possible—along watershed contours.

The lesson of the Redwoods and Big Cypress-Everglades is that you protect a resource only if you protect its watershed as well. In a sense, size may be meaningless—a vast area whose boundaries are one hundred yards below the ridge crest may be threatened. Add two hundred yards around the perimeter and it will be safe.

In Alaska we are not playing a numbers game—we are protecting resources. That is a simple concept, but so difficult for some to understand.

Last July I tore myself away ffrom Washington—not too difficult that time of year—for 10 days in Alaska looking at some of the arctic areas we hope to include in our national park and refuge systems.

Flying through Anaktuvik Pass in the central Brooks Range I saw the tragic results of the first attempts to ram a winter road through to the North Slope oil fields. The pressure of the "cat trains" driving over the snow killed the thin vegetation below. Without insulation the tundra was bare to the 24-hour arctic summer sun. The permafrost just a few inches below the surface began to melt and erode. Today much of that "road"—known as the Hickel highway after the former governor who ordered its construction—is a morass of stagnant pools of water that widen and deepen a little more every year as the permafrost continues to melt.

In other parts of the state, tailings left from mines closed half a century ago still look fresh and streams gouged by high pressure hydraulic mining are still raw long after the miners have departed.

The machinery available today dwarfs the equipment these oldtimers used and it no longer takes months to move it.

Even without industrial pressure, though, Alaska wildlife and landscape can be threatened by use that seems minimal by lower 48 standards.

Walker Lake in the Brooks Range is the picture of the Alaskan wild, nestled in a valley surrounded by sharp peaks. Walking along the water's edge I saw fresh bear tracks. Within a few minutes of laying a dry fly on the water I was rewarded with a substantial lake trout. The Eskimo call Walker Lake the "Lake of the Big Fish."

But in these chilly waters—frozen over seven months of the year—fish grow slowly. A handful of greedy fisherman could turn some of Alaska's best fishing lakes into barren water holes.

The next day, flying over the arctic coastal plain I spotted a portion of the Porcupine Caribou Herd. There were about 40,000 animals—one third of the herd. Not since Americans saw the buffalo on the great plains has there been a wildlife spectacle comparable to the caribou. But they maintain a delicate balance with their environment—always moving to keep from overgrazing the thin layer of vegetation. Slight changes

could upset the balance of thousands of years.

The thousands and thousands of caribou in the Porcupine Herd filled an area three miles wide by fifteen miles long. In the lower 48 this is a big area. In Alaska, not very big at all. Those caribou migrate more than a thousand miles every year. They walk the equivalent of a round trip between Washington and Chicago every year.

The arctic is not a feed lot.

The Eskimos say that "no one knows the way of the wind and the caribou." We certainly don't pretend to. What we do know is that once a caribou herd has distintegrated the most adept biologists may not be able to put it back together again.

So to those who say that "oil is where you find it" I say, caribou are only where you you find them too—and unlike the oil, we know exactly where the caribou are .

I want to say a few words about the Alaska lifestyle at this point because I think that it's important to separate myth from reality, and the most enduring Alaska mythology—aside from stories about grizzly bears—is about the traditional Alaska lifestyle.

That tradition—characterized by the independent miner, the homesteader and the roving trapper supported only by rifle and wits—is about as appealing as anything I know.

Unfortunately, though, the Alaska lifestyle survives today mostly in romantic magazine articles. Alaska is one of the most urbanized states in the union. Of 400,000 Alaskans, only about 50,000 can claim to be "bush" residents. The vast majority of Alaskans live in Anchorage, Juneau and Fairbanks.

The major industry in Alaska today—aside from government—is oil, a capital intensive business that hires relatively few permanent workers and insulates them from the country in futuristic "camps" when they are outside urban areas.

The only time most Alaskans see the remote back country of their spectacular state, unfortunately, is during brief vacation safaris. The days when you could drive to the outskirts of Anchorage, shoot a winter moose and be home for lunch are long gone. Not too long ago, students at the University in Fairbanks kept rifles in their dorm rooms to be ready to go caribou hunting near the campus on a moment's notice. Today you are lucky to see a caribou anywhere near Fairbanks.

Even in the remote back country, hunting pressure is cutting into the size of Dall Sheep and Brown Bears now being killed. Research is underway to find out whether sheep in the Brooks Range are simply moving away from the gravel bars and lakes that are convenient landing sites or are actually getting smaller.

Those who say that Alaska is too big to destroy or too tough to damage either don't know what they're talking about or are willing to take chances we won't take.

Well, where does that leave us now? Here is the situation in the Senate.

Markup in the Senate Energy and Natural Resources Committee has not been completed. The Committee's bill thus far contains some major changes from the House passed bill and the Administration's recommendations;

Portions of the proposed Yukon Flats and Arctic Range wildlife refuges have been designated as a national forest, despite the fact that the timber in that area is not commercial quality while the wildlife resources are outstanding.

The Arctic Wildlife Range will be opened up to oil and gas exploration.

Portions of the Gates of the Arctic and Wrangells-St. Elias National Parks will be opened to mining.

Thus far, only about 25 million acres of wilderness have been designated in the parks and refuges; the Committee has not yet made a decision on wilderness in the national forests in Southeast.

As it stands now, it appears unlikely that the House would accept the Senate bill without going to a conference, and time is running out.

Chairmen Udall and Seiberling both still hope that a bill can be passed this year, but they recognize that it may not. They have written urging me to start preparing the necessary proclamations to create new national monuments in Alaska.

I truly hope, though, that Congress will complete action this year to protect these priceless national treasures. But if it doesn't, the Administration does have several shields. On my recent float trip with President Carter, we discussed Alaska, and he made it absolutely clear that he stands behind whatever measures we must take to protect those Alaskan wildlands.

What are the shields?

The Antiquities Act of 1906 gives the President authority to establish national monuments by executive order. If we take this route, the traditional subsistence way of life will be protected.

Section 603 of the Federal Land Policy and Management Act directs me to study all roadless areas over 5,000 acres under BLM jurisdiction for inclusion in the national wilderness system. I have 15 years for the study, but right now it looks like most of Alaska would qualify.

I have other withdrawal authorities under the BLM Organic Act.

The stakes in Alaska are too high for hesitation. The loss to the Nation would be too great. If the Congress fails to act this year, the President and I will.

The caribou may not survive if we don't act.

The waterfowl that fly to 46 states from Alaska may not survive if we don't act.

The only unthreatened populations of grizzly bears may not survive if we don't act.

The only major pristine river valley may not survive if we don't act.

The only great virgin forest may not survive if we don't act.

So make no mistake. We will act.

President Carter and I will make sure that the national treasures of Alaskan wilds are protected for as long as necessary to give Congress time to act.

As a Native Alaskan told the House Interior Committee: "If we fail God may forgive us, but our grandchildren won't"

Well, in Alaska our grandchildren aren't going to have to forgive us.●

RECESS

The SPEAKER. The Chair declares the House in recess until 7:40 p.m.

Accordingly (at 5 o'clock and 41 minutes p.m.), the House stood in recess until 7:40 p.m.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 7 o'clock and 43 minutes p.m.

HOUR OF MEETING ON TOMORROW

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 11 a.m. on tomorrow, Tuesday, September 19, 1978.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

JOINT SESSION OF THE HOUSE AND SENATE HELD PURSUANT TO THE PROVISIONS OF HOUSE CONCURRENT RESOLUTION 713 TO HEAR AN ADDRESS BY THE PRESIDENT OF THE UNITED STATES

The SPEAKER of the House presided.

The Doorkeeper, the Honorable James T. Malloy, announced the Vice President and Members of the U.S. Senate, who entered the Hall of the House of Representatives, the Vice President taking the chair at the right of the Speaker, and the Members of the Senate the seats reserved for them.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to escort the President of the United States into the Chamber the gentleman from Texas (Mr. WRIGHT; the gentleman from Indiana (Mr. BRADEMAS); the gentleman from Washington (Mr. FOLEY); the gentleman from Illinois (Mr. ROSTENKOWSKI); the gentleman from Arizona (Mr. RHODES); and the gentleman from Illinois (Mr. MICHEL).

The VICE PRESIDENT. On behalf of the Senate, the Chair appoints the following Senators to escort the President of the United States into the House Chamber: the Senator from West Virginia (Mr. ROBERT C. BYRD); the Senator from California (Mr. CRANSTON); the Senator from Alabama (Mr. SPARKMAN); the Senator from Hawaii (Mr. INOUYE); the Senator from Connecticut (Mr. RIBICOFF); the Senator from South Dakota (Mr. ABOUREZK); the Senator from New Jersey (Mr. CASE); the Senator from Tennessee (Mr. BAKER); the Senator from Nebraska (Mr. CURTIS); the Senator from Texas (Mr. TOWER); the Senator from Wyoming (Mr. HANSEN); and the Senator from New York (Mr. JAVITS).

The Doorkeeper announced the Ambassadors, Ministers, and Charges d'Affaires of foreign governments.

The Ambassadors, Ministers, and Charges d'Affaires of foreign governments entered the Hall of the House of Representatives and took the seats reserved for them.

The Doorkeeper announced the Cabinet of the President of the United States.

The members of the Cabinet of the President of the United States entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

At 8 o'clock and 2 minutes p.m., the Doorkeeper announced the President of the United States.

The President of the United States, escorted by the committee of Senators and Representatives, entered the Hall of the House of Representatives, and stood at the Clerk's desk.

[Applause, the Members rising.]

The SPEAKER. Members of the Congress. I have the high privilege and the

distinct honor of presenting to you the President of the United States.

[Applause, the Members rising.]

ADDRESS BY THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95-383)

The PRESIDENT. Vice President MONDALE, Speaker O'NEILL, distinguished Members of the United States Congress, other leaders of our great Nation, ladies and gentlemen:

It's been more than 2,000 years since there has been peace between Egypt and a free Jewish nation. If our present expectations are realized this year, we shall see such peace again.

[Applause.]

The first thing I would like to do is to give tributes to the two men who made this impossible dream now become a real possibility, the two great leaders with whom I have met for the last 2 weeks at Camp David.

First, President Anwar Sadat of Egypt.

[Applause.]

And the other, of course, is Prime Minister Menachem Begin of the Nation of Israel.

[Applause.]

I know that all of you would agree that these are two men of great personal courage representing nations of peoples who are deeply grateful to them for the achievement which they have realized, and I am personally grateful to them for what they have done.

At Camp David we sought a peace that is not only of vital importance to their own two nations, but to all the people of the Middle East, to all the people of the United States and indeed to all the world as well. The world prayed for the success of our efforts, and I am glad to announce to you that these prayers have been answered.

[Applause.]

I have come to discuss with you tonight what these two leaders have accomplished and what this means to all of us. The United States has had no choice but to be deeply concerned about the Middle East and to try to use our influence and our efforts to advance the cause of peace for the last 30 years through four wars. The people of this troubled region have paid a terrible price in suffering and division and hatred and bloodshed. No two nations have suffered more than Egypt and Israel, but the dangers and the cost of conflicts in this region for our own nation have been great as well.

We have longstanding friendships among the nations there and the peoples of the region, and we have profound moral commitments which are deeply rooted in our values of the people. The strategic location of these countries and the resources that they possess mean that events in the Middle East directly affect people everywhere.

We and our friends could not be indifferent if a hostile power were to establish domination there. In few areas of the world is there a greater risk than a local conflict could spread among other nations adjacent to them and then perhaps erupt into a tragic confrontation between us superpowers, ourselves. Our people have come to understand that unfamiliar names like Sinai, Aqaba, Sharm el-Sheikh, Ras en Naqb, Gaza, the West Bank of Jordan, can have a direct and immediate bearing on our own well-being as a Nation and our hope for a peaceful world. That is why we in the United States cannot afford to be idle bystanders, why we have been full partners in the search for peace, and why it is so vital to our Nation that these meetings at Camp David have been a success.

Through the long years of conflict, four main issues have divided the parties involved. One is the nature of peace—whether a peace will simply mean that the guns are silenced, the bombs no longer fall, that the tanks cease to roll or whether it will mean that the nations of the Middle East can deal with each other as neighbors and as equals, and as friends, with a full range of diplomatic and cultural and economic and human relations between them, that has been the basic question.

The Camp David agreement has defined such relationships, I am glad to announce to you, between Israel and Egypt.

[Applause.]

The second main issue is providing for the security of all parties involved, including, of course, our friends, the Israelis, so that none of them need fear attack or military threat from one another. When implemented, the Camp David agreement, I am glad to announce to you, will provide for such mutual security.

[Applause.]

Third is the question of agreement on secure and recognized boundaries, the end of military occupation and the granting of self-government or else the return to other nations of territories which have been occupied by Israel since the 1967 conflict. The Camp David agreement, I am glad to announce to you, provides for the realization of all these goals.

[Applause.]

And finally, there is the painful human question of the fate of the Palestinians who live or who have lived in these disputed regions. The Camp David agreement guarantees that the Palestinian people may participate in the resolution of the Palestinian problem in all its aspects, a commitment that Israel has made in writing and which is supported and appreciated, I am sure, by all the world.

Over the last 18 months, there has been, of course, some progress on these issues.

Egypt and Israel came close to agreeing about the first issue, the nature of peace. They then saw that the second and third issues, that is, withdrawal and security, were inimately connected, closely entwined but fundamental divisions still remained in other areas—about the fate of the Palestinians, the futures of the West Bank and Gaza, and the future of Israeli settlements in occupied Arab territories. We all remember the hopes for peace that were inscribed by President Sadat's initiative, that great and historic bid at Jerusalem last November that thrilled the world, and by the warm and genuine personal response of Prime Minister Begin and the Israeli people and by the mutual promise between them publicly made that there would be no more war. These hopes were sustained when Prime Minister Begin reciprocated by visiting Ismailia on Christmas Day. That progress continued, but at a slower and slower pace to the early part of the year. And by early summer the negotiations had come to a standstill once again. It was this stalemate and the prospect for an even worse future that prompted me to invite both President Sadat and Prime Minister Begin to join me at Camp David.

They accepted, as you know, instantly—without delay, without preconditions, without consultation even between them. It is impossible to overstate the courage of these two men for the foresight they have shown. Only through high ideals, through compromises of words and not principles and through the willingness to look deep into the human heart and to understand the problems and hopes and dreams of one another can progress in a difficult situation like this ever be made. That is what these men and their wise and diligent advisors who are here with us tonight have done during the last 13 days.

[Applause.]

When this conference began, I said that the prospects for success were remote. Enormous barriers of ancient history and natioinalism and suspicion would have to be overcome if we were to meet our objectives.

But President Sadat and Prime Minister Begin have overcome these barriers, exceeded our fondest expectations, and have signed two agreements that hold out the possibility of resolving issues that history had taught us could not be resolved.

The first of these documents is entitled, "A Framework for Peace in the Middle East Agreed at Camp David." It deals with a comprehensive settlement—comprehensive settlement—between Israel and all her neighbors, as well as the difficult question of the Palestinian people and the future of the West Bank and the Gaza area.

The Agreement provides a basis for the resolution of issues involving the West Bank and Gaza during the next 5 years. It outlines a process of change which is in keeping with Arab hopes, while also carefully respecting Israel's vital security..

The Israeli military government over these areas will be withdrawn and will be replaced with a self-government of the Palestinians who live there and Israel has submitted that this government will have full autonomy. Prime Minister Begin said to me several times, "not partial autonomy but full autonomy." Israeli forces will be withdrawn and redeployed into specified locations to protect Israel security. The Palestinians will further participate in determining their own future through talks in which their own elected representatives, inhabitants

of the West Bank in Gaza, will negotiate with Egypt and Israel and Jordan to determine the final status of the West Bank and Gaza. Israel has agreed, has committed themselves that the legitimate rights of the Palestinian people will be recognized. After the signing of this framework last night and during the negotiations concerning the establishment of a Palestinian self-government, no new Israeli settlements will be established in this area. The future settlements issue will be decided among the negotiating parties. The final status of the West Bank and Gaza will be decided before the end of the 5-year transitional period during which the Palestinian Arabs will have their own government as part of a negotiation which will produce a peace treaty between Israel and Jordan specifying borders, withdrawal, all those very crucial issues. These negotiations will be based on all the provisions and the principles of Security Council Resolution 242 with which you all are so familiar.

The agreement on the final status of these areas will then be submitted to a vote by the representatives of the inhabitants of the West Bank and Gaza, and they will have the right for the first time in their history, the Palestinian people, to decide how they will govern themselves permanently. We also believe—of course, all of us—that there should be a just settlement of the problems of displaced persons and refugees which take into account appropriate United Nations resolutions.

Finally, this document also outlines a variety of security arrangements to reinforce peace between Israel and her neighbors.

This is, indeed, a comprehensive and fair framework for peace in the Middle East, and I am glad to report this to you.

[Applause.]

The second agreement is entitled, "A Framework for the Conclusion of a Peace Treaty Between Egypt and Israel." It returns to Egypt its full exercise of sovereignty over the Sinai Peninsula, and establishes several security zones, recognizing carefully that sovereignty right for the protection of all parties. It also provides that Egypt will extend full diplomatic recognition to Israel at the time the Israelis complete an interim withdrawal from most of the Sinai, which will take place between 3 months and 9 months after the conclusion of the peace treaty. [Applause.] And the peace treaty is to be fully negotiated and signed no later than 3 months from last night.

I think I should also report that Prime Minister Begin and President Sadat have already challenged each other to conclude the treaty even earlier. [Applause.] And I hope that they do. This final conclusion of a peace treaty will be completed late in December and it would be a wonderful Christmas present for the world. [Applause.]

Final and complete withdrawal of all Israeli forces will take place between 2 and 3 years following the completion of the peace treaty.

While both parties are in total agreement on all the goals that I have just described to you, there is one issue on which agreement has not yet been reached. Egypt states that agreement to remove the Israeli settlements from Egyptian territory is a prerequisite to a peace treaty. Israel says that the issue of the Israeli settlements should be resolved during the peace negotiations themselves.

Now, within 2 weeks with each member of the Knesset of the Israeli parliament acting as individuals not constrained by party loyalty, the Knesset will decide on the issue of the settlements. Our own government's position, my own personal position is well known on this issue and has been consistent. It is my strong hope, my prayer, that the question of Israeli settlements on Egyptian territory will not be the final obstacle to peace.

None of us should underestimate the historic importance of what has already been done. This is the first time that an Arab and an Israeli leader have signed a comprehensive framework for peace. It contains the seeds of a time when the Middle East, with all its vast potential, may be a land of human richness and fulfillment, rather than a land of bitterness and continued conflict. No region in the world has greater natural and human resources than this one, and nowhere have they been more heavily weighed down by intense hatred and frequent war. These agreements hold out the real possibility that this burden might finally be lifted.

We must also not forget the magnitude of the obstacles that still remain. The summit exceeded our highest expectations, but we know that it left many difficult issues which are still to be resolved. These issues will require careful negotiation in the months to come.

The Egyptian and Israeli people must recognize the tangible benefits that peace will bring and support the decisions their leaders have made so that a secure and a peaceful future can be achieved fully. The American public, you and I, must also offer our full support to those who have made decisions that are difficult and those who have very difficult decisions still to make.

What lies ahead for all of us is to recognize the statesmanship that President Sadat and Prime Minister Begin have shown and to invite others in that region to follow their example. I have already last night invited the other leaders of the Arab world to help sustain progress toward a comprehensive peace. We must also join in an effort to bring an end to the conflict and the terrible suffering in Lebanon. [Applause.] This is a subject that President Sadat discussed with me many times while I was in Camp David with him, and the first time that the three of us met together this was the subject of heated discussion. On the way to Washington last night in the helicopter we mutually committed ourselves to join with other nations, with the Lebanese people themselves, all factions, with President Sarkis, with Syria and Saudi Arabia, perhaps European countries like France, to try to move toward a resolution of the problem in Lebanon which is so vital to us and to the poor people in Lebanon who have suffered so much. We will want to consult on this matter and on the documents on their meaning with all of the leaders, particularly the Arab leaders. I am pleased to say to you tonight that just a few minutes ago King Hussein of Jordan and King Khalid of Saudi Arabia, and perhaps other leaders later, but these two have already agreed to receive Secretary Vance, who will be leaving tomorrow to explain to them the terms of the Camp David agreement. [Applause.] And we hope to secure their support for the realization of the new hopes and dreams of the people of the Middle East.

This is an important mission. And this responsibility, I can tell you, based on my last two weeks with him, could not possibly rest on the shoulders of a more able and dedicated and competent man than Secretary Cyrus Vance.

[Applause.]

Finally, let me say that for many years the Middle East has been a textbook for pessimism. A demonstration that diplomatic ingenuity was no match for intractable human conflicts. Today we are privileged to see the chance for one of the sometimes rare, bright moments in human history—a chance that may offer the way to peace. We have a chance for peace because these two great leaders found within themselves the willingness to work together to seek a lasting prospect for peace which we all want so badly; and for that, I hope that you will share my prayer of thanks, and my hope that the promise of this moment shall be fully realized.

The prayers at Camp David were the same as those of the shepherd King David who prayed in the 85th Psalm:

> Wilt Thou not revive us again: that Thy people may rejoice in thee?
>
> I will hear what God the Lord will speak: for He will speak peace unto His people, and to His saints: but let them not turn again to folly.

And I would like to say as a Christian to these two friends of mine the words of Jesus: "Blessed are the peacemakers, for they shall be the children of God."

At 8 o'clock and 34 minutes p.m., the President, accompanied by the committee of escort, retired from the Hall of the House of Representatives.

The Doorkeeper escorted the invited guests from the Chamber in the following order:

The members of the President's Cabinet.

The Ambassadors, Ministers, and Charges d'Affaires of foreign governments.

JOINT SESSION DISSOLVED

The SPEAKER. The Chair declares the joint session of the two Houses now dissolved.

Accordingly, at 8 o'clock and 38 minutes p.m., the joint session of the two Houses was dissolved.

The Members of the Senate retired to their Chamber.

The SPEAKER. The Chair declares a recess subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 8 o'clock and 43 minutes p.m.

REFERENCE OF PRESIDENT'S MESSAGE

Mr. YOUNG of Missouri. Mr. Speaker, I move that the message of the President be referred to the Committee of the Whole on the State of the Union and ordered printed.

The motion was agreed to.

A PROPOSITION 13 NEEDED FOR HUD

The SPEAKER. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognizedfor 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, having read an investigative report compiled by United Press International, I am appalled to learn that the U.S. Department of Housing and Urban Development has spent millions of dollars on activities which are doing very little, if anything, to improve the housing conditions for Americans.

When Congress passed the National Housing Act in 1949, it set as a goal for this country a policy of clearing slums and blighted areas, and the elimination of substandard housing units in urban and rural areas. When HUD was created during the Johnson administration, it was hoped that the various Government programs for housing and community development would be coordinated under one agency. Since its inaugural year of 1965, the Department has spent nearly $66 billion, but the findings of the UPI investigation reveals that much of the money expended by the agency has little to do with meeting the objectives of a national housing policy.

The annual HUD budget is currently in the neighborhood of $10 billion. At least $50 million is being appropriated for research which duplicates the work of other Government projects. A significant amount of HUD funds are not going to the poor, but corporate interests, consulting firms, and university professors who are conducting studies for the Department. In some cases, community development programs spend as much as three-quarters of their grants on overhead.

One priority of the top brass at HUD is an expensive public relations blitz to encourage support for the Carter administration's "image-building" effort to dispel "the perception that * * * that the Department is fragmented, scandal-ridden, inefficient, and an agent of the last resort whose clientle is on welfare."

It would seem to me that the public impression is not too far from the mark. The agency spends $268 million on salaries for a staff which will increase by 15 percent in the next fiscal year. Already, there are nearly 2,500 HUD employees earning more than $30,000 a year. One HUD worker, who asked not to be identified, said that more than $22 million a year is spent by the agency on travel which is rampant and unnecessary.

Another chunk of the agency budget is spent on helping to bail out banks who make loans to individuals who default on the repayments. This has amounted to $7.6 billion in just the last 6 years, and the Department, at the beginning of this year, had approximately $6 billion in loans outstanding.

Mr. Speaker, it is this very type of activity in Government which has inspired the tax revolt movement. It is the Congress which must be sensitive to the public sentiment, and being involved in the operations of an agency like HUD is certainly in order. What we in Congress need to do, Mr. Speaker, is pass our own version of proposition 13, and cut out this needless waste of tax dollars in HUD.●

U.S. NAVAL POWER MUST BE SUPREME

The SPEAKER. Under a previous order of the House, the gentleman from Arizona (Mr. RUDD) is recognized for 15 minutes.

Mr. RUDD. Mr. Speaker, I spent some time this past weekend visiting one of the great fighting ships in our Nation's history, the U.S.S. *Constitution*, affectionately known as Old Ironsides.

This magnificent sailing vessel in the Port of Boston was launched in 1797, and played a key role against the British invasion and attempted takeover of our young country in the War of 1812.

I toured every inch of the *Constitution*, which stands as a tribute to the naval concept of "a moving platform to take the war to the enemy"—the only reason for a fighting vessel, and just as important a military strategy today as it was almost 200 years ago.

The visit to Old Ironsides reminded me of this important era of American history, and how the lessons of our lack of preparedness for the War of 1812 might relate to the status of our Navy today and the current world situation.

Despite the superfrigates *Constitution*, and her sister ship the *Constellation*, the United States had a pitifully small Navy in the early 1800's. This was because President Thomas Jefferson—despite his many good qualities—combined his economy-mindedness with an intense distrust of the military. He cut the U.S. Army by one-third and cut the Navy down to only six ships with small crews.

The British knew this, and their invasion of our shores in 1812 was planned on sure intelligence that the United States would be hopelessly outclassed militarily and easily defeated if our Government put up any kind of a fight.

Thankfully, the British had not counted on the hundreds of valiant American privateers—private commercial shippers, who entered the fight to save our country from the British Naval Forces. The privateers ended up inflicting more damage on the British than did our own regular Navy, and without them the British would have easily overrun us.

American privateers captured or destroyed about 1,350 British merchant ships, despite a powerful British convoy system and an ever-tightening blockade, which eventually stopped their efforts. By the end of the war, the British Navy had virtually destroyed our entire naval fleet, even though the United States was saved.

Mr. Speaker, as I think of this lesson of the War of 1812, despite the tremendous ingenuity that made possible the building of an Old Ironsides, because of the acts of a well-meaning President to strip our country of its military muscle in the interests of economy and peace, I am led to think about the tremendous error of President Carter's veto of another nuclear aircraft carrier for our Navy.

This veto signals the end of a much needed nuclear carrier program, in light of a massive Soviet naval buildup throughout the world, aimed at control of the world's sea lanes.

The Russians had gained control of the North Sea by 1959. During the Vietnam era of the 1960's, they intruded into South China Sea. The Soviet fleet is also dominant in the Mediterranean and has vital access to the Caribbean through its client State of Cuba.

The Soviets have also directed efforts to obtain naval dominance over seven critical sea passage points—Singapore, Ceylon, the Horn of Africa, the Cape of Good Hope, Gibraltar, the Straits of Magellan, and the Panama Canal.

Mr. Speaker, the administration and Congress must take immediate steps to prevent a repetition of the defense shortsightedness in our early history that left us vulnerable to defeat in the War of 1812.

Recognizing the vital importance of supremacy on the seas, our national leadership must repudiate the policies of those who would deny our defense forces the most modern, efficient, and effective "platforms to take the war to the enemy," if that necessity should ever arise. To do otherwise would be to invite disaster at the hands of expansionist enemies.

A highly important book on the current state of U.S. Naval Forces, and our ability to project American military power abroad, has been written by Adm. Thomas H. Moorer, retired Chairman of the Joint Chiefs of Staff, and Dr. Alvin J. Cottrell of Georgetown University's Center for Strategic and International Studies.

A review of this book, and the current U.S. naval situation, has been published by the prestigious Foreign Affairs Research Institute of London. I would like to include this important paper at this point in the RECORD:

THE DANGERS OF THE REDUCTION OF U.S. OVERSAS BASES

(By Ronald Waring)

In the years which followed the ending of the Second World War and with the emergence of the United States, armed with nuclear weapons, as the world's first Super Power, it was not very difficult for the Americans to create a network of bases all over the world for their enormous armed forces. America was respected, popular and feared. Host countries, with which America made basing agreements, were pleased to have an

American presence on their soil, and it gave them a feeling of security. In the 30 years or so which have since elapsed, this situation has changed radically, both for America and for the host countries.

For America, the requirement has not remained constant; the American forces themselves have been greatly reduced in size, but the range, accuracy and destructive capabilities of their new weapons have increased enormously. At the same time, the challenge of the second great Super Power, the Soviet Union, has arisen and increased to a position of parity with the United States. China has grown to the stature of a Super Power and the ideological struggle between the Communist and Capitalist worlds has become global.

New nations have come into being, and very many of them do not want military bases of foreign states on their soil. Many of them have come under the ideological persuasion of Moscow, while others either do not believe that America can, or would, protect them in the face of Soviet aggression. Some want no part in any future conflict between the Super Powers, with its implied nuclear threat, and want to be, and be seen to be, neutral. Socialist and Communist political parties all over the world demand the reduction or removal of American bases from national territory, and the attitude of other host countries where the left is still in a minority has, in many cases changed from a welcoming acceptance of American bases on their soil to one of acceptance only if the price is right, and if an offer is made which they cannot refuse.

The situation, and its projection into the future, is examined in a comprehensive and thoughtful study[1] prepared by the Center for Strategic and International Studies of Georgetown University.

This study examines the present distribution of American bases throughout the world, the closing down of more than three quarters of them from the peak period until today for reasons of economy, adverse political pressure, reduction in the numbers of the armed forces themselves and non-requirement in view of the new weapons and their capabilities. It examines in detail the present situation with regard to those bases still in operation, the possibilities that they will be able to continue to operate in the next ten years and the factors which could prevent this. It studies possible alternatives and suggests the development of irreducible and essential bases.

THE VITAL AZORES

Starting with the Azores, the study points to the continuing political chaos in Lisbon, and to the possibilities of the emergence of a far left wing government in Portugal. It mentions the existence of a growing and powerful independence movement on the islands, and mentions pressures from Arab quarters which would like to prevent the Azores from ever being used again for an American airlift of armaments to Israel. The study goes on to mention the actual use of the Azores, both in defence of the North Atlantic as part of the NATO Alliance, and also with regard to the Middle East and US global strategy. The Soviet Backfire bomber can reach the Azores from bases in the Soviet Union and return: such aircraft carry the new Soviet missiles with a range of some 850 nautical miles. The missiles are fitted with nuclear warheads and could be used as non-precision weapons against convoy concentrations in the North Atlantic. Without the Azores base, this could be a considerable threat. An alternative is suggested using the American base at Rota in Spain, but this presents many difficulties.

The situation in Spain is then examined in the same way the changing political factors, and also the last Spanish leasing agreement which has whetted the appetites of many host countries when considering new rental agreements for American bases and re-negotiation of existing agreements.

From Spain, the study moves on to Italy and comments on the ambiguous attitude of the Italian Communist Party, the near certainty of some sort of "Historic Compromise" which will bring the Communists into a position of greater power in government and the possible and probable implications of this. Italy is essential for America: the Mediterranean is no longer an American lake, and if American military installations and bases were to be required to leave Italy, or subjected to such restrictions and controls that they could not work, it is impossible to see where else they could go. It could result in a virtual withdrawal of the American military presence from the Mediterranean.

The situation with regard to both Greece and Turkey is near disastrous. The Carter Administration has linked Turkish concessions over Cyprus with the supply of military equipment to Turkey, while the strong Greek lobby in Congress has blocked any improvement of relations between the US and Turkey, and at the same time the Greek left wing maintain considerable pressure on the Karamanlis Government and have, as a declared policy, their intention of taking Greece out of NATO entirely. In the case of both Greece and Turkey, the result has been to restrict very severely the operations of American bases in this crucial area.

THE INDIAN OCEAN AT RISK

To some extent this has been compensated for, as regards to intelligence gathering, by an agreement with Iran, but here again the Carter Administration's insistence on human rights has not improved relations with the Shah.

Within the last few months, the whole situation in the Persian Gulf, and in the Horn of Africa has changed radically, and not for the better. The Soviets are expanding their base at Aden, and there is an increasing Soviet naval presence in the Indian Ocean. The Soviets are building a major base at Nacala in Northern Mozambique, while for reason of internal politics, and the Carter Administration's preoccupations with human rights, America has denied herself the excellent facilities offered by South Africa. On the West Coast, Luanda and Bissau both offer facilities to Soviet aero-naval units. The Cubans now control the airfield at Sao Tome, while in the Cape Verde, the Soviets are building a major aero-naval base which will cover the South Atlantic.

The study stresses the need for the rapid expansion of Diego Garcia in the Indian Ocean but the future of this base is very uncertain as it is believed that President Carter may be prepared to abandon this as part of the SALT Agreements with the Soviet Union, by which the Indian Ocean would be declared a "Zone of Peace". It is probable that the United States will be obliged to leave Bharein, and India is strongly opposed to US bases of any sort in the Indian Ocean anywhere.

The situation is rather better in Australia and New Zealand, at least at the present time, but this cannot be regarded as permanent. Mr. Gough Whitlam made no secret of his desire to take Australia into a position of neutrality, and there are political trends in Australia which would like to see all American naval facilities stopped.

The Vietnam war, and the American withdrawal, has had its effect not only on America itself but also on the whole of South East Asia, and there is no enthusiasm in this area for any American aero-naval bases.

A SIGN OF WEAKNESS

The Carter Administration's decision to withdraw from South Korea as soon as possible has had a very great effect too on the Japanese, and there is a certain feeling of doubt as to the value of America as a protector and as an ally. Neither the South Koreans nor the Japanese asked for the American withdrawal from South Korea and the intention to do so is taken as a sign of weakness.

The Americans maintain a very considerable base in the Philippines, but here again relations have become strained with President Marcos on the matter of human rights. However, due to considerations of finance and employment locally, the Philippines may be considered to be fairly safe for the time being, although it is said that President Marcos is much impressed with the handsome financial leasing agreement negotiated between the United States and Spain.

American bases in the Pacific are safe, but they are, in many cases, removed by very considerable distances from any operational areas.

In Latin America, the pattern is repeated. The matter of the Administration's obsession with human rights has alienated, and is causing stresses with, Chile, the Argentine and Brazil, and many Latin Americans believe that the United States is giving secret backing to left wing "liberation movements" in those countries, while in Congress liberal politicians want to have nothing to do with these more authoritarian governments.

Even in the Caribbean, the situation is not entirely a happy one with the large American base in Cuba under a virtual state of siege.

The study stresses the urgent need for a visible and coherent American policy which for some time now has not been by any means clear. It urges examination of what is vital for America in the way of overseas military bases in the light of an agreed and definite policy, and how this may be achieved. It is obvious that the money asked by host countries for such bases will always be more, but the alternatives may be even more costly. It suggests that certain compromises will have to be made on attitudes towards human rights where the vital interests of the United States are at stake. It points out that bases conceded reluctantly, and surrounded by a hostile population, cannot be fully effective, and it sounds a very clear warning as to the deteriorating position and dangers which lie in the immediate future.

PSYCHOLOGICAL FACTOR

It raises the whole question as to America's role, what is the value of overseas bases in maintaining an American military presence round the world, the protection of American interests, American shipping, routes for the supply of raw materials, and the political influence of an American armed presence on the spot in many parts of the world which would be a vital necessity in the event of war.

America will be obliged to make a decision in the face of these changing circumstances, taking into account the huge and ever growing Soviet fleet, the building of more and more large Soviet aero-naval bases, and their ever increasing ability to show the flag. It is obvious that a missile in a silo in California has not the impact on a local population some thousands of miles away as has the actual physical presence of a new Soviet cruiser bristling with missiles actually in their port. There is a psychological factor involved when one major power withdraws and is no longer seen, and another power parades its armed might in the area. This fact is very well known to the Soviets, and the presence

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[1] *U.S. Overseas Bases: Problems of Projecting American Military Power Abroad.* By Adm. Thomas H. Moorer and Dr. Alvin J. Cottrell, Center for Strategic and International Studies, Georgetown University, 1800 K Street NW., Washington, D.C., 20006, USA. $3 or £1.50.

of Soviet warships is always a considerable stimulus to the activities of local Communist Parties, and to those who, while denying that they are Communists, point out that it is more prudent to be friendly to the man with a gun who is actually there. Politicians should also reflect on the fact that such military appearances are also invariably accompanied by trade missions on shore.

The study suggests two alternatives to shore bases. First, the possibility of a purely sea based fleet, operating over long distances and with supply ships, which is extremely expensive. It is not as effective as shore bases and certainly has an effect on the morale of the sailors. Second, it considers the use of the new technology, the building of floating islands, huge concrete platforms anchored at sea and used as permanent bases. This is technically possible, but again immensely expensive and not very satisfactory as they in turn have to be provisioned by supply ships with virtually everything, and in time of war they would be even more vulnerable than land bases.

In the ultimate, it comes down to a matter of political will, and to end I quote from the text of the study. "Thus, of necessity, naval forces will increasingly become the key—if not the only—service capable of projecting US influence abroad, given the political and military environment for the future. This will have to be achieved largely from bases or facilities on the coasts of the United States, with recourse to only a few scattered facilities abroad.

"The options seem to be quite clear in regard to the overseas basing structure, provided that the United States rejects the idea to permit the inexorable erosion of access to the present overseas military facilities and accept the military and political consequences of such a loss. But hopefully some combination of all the above options will permit the United States to adopt a policy of sustaining a forward presence in areas critical to US strategic, political and economic interests. To assume otherwise is to project a final demise of the United States as a world power and, conceivably, as a viable national entity."

Arguments so ably presented in this study are equally applicable to British and other European overseas bases and residual colonial dependencies.

CASH DISCOUNTS PUT MONEY IN THE BANK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, for over 50,000 Missouri consumers, paying for goods by cash means money in the bank—literally.

These persons hold Savings Plus cards, offered through savings and loan associations and honored by merchants all over the State. By presenting the Savings Plus card when paying by cash to participating merchants, these consumers receive a discount of up to 5 percent, which is deposited directly into their savings account.

The plan was initiated 10 months ago and already 50,000 Missouri consumers have joined. Also, the card is being accepted by a wide variety of merchants, from grocery store chains to used car salesmen. Merchants honoring the card are reporting that sales have doubled and tripled due to the card.

Mr. Speaker, this type of plan was exactly what I had in mind when I included a cash discount provision in the Fair Credit Billing Act of 1974. Prior to the act, such discounts were subject to truth-in-lending requirements and lengthy disclosure forms. The act eliminated this requirement for sellers offering discounts up to 5 percent. Furthermore, the act prohibited credit card companies from refraining merchants from offering cash discount plans.

The design of a cash discount plan is simple. For instance, when a merchant sells a $100 item to a customer who pays by credit card, the credit card company keeps a certain percentage for allowing the merchant to offer instant credit. The percentage varies from card company to company, but may run as high as 6 percent. So, the merchant may get only $94 back from the $100 sale.

By offering a discount of up to 5 percent to customers paying by cash, both the merchant and the consumer come out ahead. The merchant develops a good relationship with his customer and encourages business, while actually saving 1 or 2 percent of the sale. He is also relieved of the paperwork hassle associated with credit card purchases. And the consumer is able to save up to 5 percent off the regular price of the item.

With the cash discount plan, both the merchant and the consumer benefit without jeopardizing the ability of the merchant to still offer credit to anyone wanting to pay by credit card.

I want to make it clear that I am not opposed to the use of credit cards. With over 600 million credit cards in circulation today, it is a fact that buying by credit is an accepted way of life.

However, it is true that merchants who accept credit cards must pay a service fee to the credit card companies and it is inevitable that these extra costs will turn up as higher prices. The cash discount plan assures that consumers who do not qualify for credit cards or choose not to use them are not subsidizing those who do.

Since passage of the Fair Credit Billing Act, I have repeatedly urged merchants and consumers to push for a greater use of cash discount plans. The savings plus program is an excellent example of how beneficial these plans can be to everyone concerned.

Mr. Speaker, I would like to submit for the RECORD an article which appeared in the Christian Science Monitor, which outlines the savings plus plan.

[From the Christian Science Monitor, Aug. 29, 1978]

CASH DISCOUNTS—"IN THE BANK"

(By Paul Van Slambrouck)

BOSTON.—Discounts, trading stamps, and "super sales" are just fine. But cold cash is a consumer's best friend.

Increasingly, that is what retailers in Missouri are finding. Supermarkets, department stores, florists, and used-car dealers there are experimenting with a new way of luring customers: They offer cash discounts that are automatically deposited in their patron's savings accounts.

The plan, called Savings Plus, is catching on fast in Missouri, according to bankers and merchants who say it likely will spread to other parts of the United States before the end of the year.

FRANCHISE OPERATION

"Our customers are happy about it. Some who used to shop out of town are coming back to us, and we're getting a lot of new business," notes Steve Hodges, manager and part-owner of the Tru Valu IGA grocery store in East Prairie, Missouri.

Merchants like Mr. Hodges give a discount to Savings Plus card holders if they make their purchase in cash. Discounts are usually between 1 and 5 percent. The cards are issued by savings and loan associations, which receive a weekly tally from the retailers detailing how much money should be credited to each customer's savings account.

The concept is not unique and has been tried by other savings institutions. Savings Plus, however, is a francise operation and has "greater potential for growth," according to an official with the United States League of Savings Associations.

Savings Plus originator John Wilson, a Sikeston, Missouri, lawyer, says there are more than 50,000 card holders in Missouri. The 10-month-old program, he notes, is "growing much faster than I expected."

Mr. Wilson also has "letters of commitment" from 17 savings and loan associations in Florida, Louisiana, Oklahoma, Arkansas, Tennessee, and Ohio that plan to start issuing Savings Plus cards. And he boasts of 200 more requests for information from financial institutions "in just about every state in the country."

IT TEACHES PEOPLE . . .

"The big thing is that it teaches people how to save," comments James M. Beaird, president of Security Federal Savings & Loan in Sikeston, the first thrift institution to enroll in the program. Savings Plus, he says, allows "people in the low-income strata and others who have never had a savings account" to begin to accumulate money without having to make deposits in the traditional sense.

Mr. Beaird says Security Federal has more than 3,000 Savings Plus accounts, each averaging $33. While not a great sum, he notes that the accounts are less than a year old and should grow considerably over time. "If nothing else, they make good Christmas savings plans."

Mr. Wilson envisions banks, credit unions, and more savings and loans participating in Savings Plus. "It's right for any institution eager to get new, small accounts," he says.

Carondelet Savings & Loan in St. Louis has been offering Savings Plus accounts for a little over a month and says it has increased its total number of account holders more than 20 percent. Carondelet marketing director Gary Strong says consumers may benefit most from growing competition among retailers to "outdiscount" each other. The average discount is 4.6 percent in the St. Louis area, he notes, with some merchants offering discounts as high as 20 percent.

While retailers could conceivably raise prices to compensate for their Savings Plus discount, Mr. Wilson is confident that "competition will rule." Card holders, he believes, "will continue to price-shop, and that will stop retailers from simply boosting prices."

Mr. Hodges of Tru Valu says his store's 1.25 percent Savings Plus discount is worthwhile for the extra business it has brought in. "We know our sales per customer have increased. The Savings Plus average purchase

is three times higher than normal transactions," he claims.●

ALLAN BLANCHARD

The SPEAKER. Under a previous order of the House, the gentleman from Michigan (Mr. DIGGS) is recognized for 5 minutes.

● Mr. DIGGS. Mr. Speaker, this morning we received the very sad news of the death of Allan Blanchard, chief of the Detroit News Washington Bureau and a respected journalist and friend to many Members. Mr. Blanchard was the victim of the so-called Legionnaire's disease.

Al Blanchard worked for the Detroit News for 24 years. During those years, he became one of the most respected and insightful reporters of the political scene, both in Michigan and in the Nation's Capital. He covered the major newsstories of that quarter-century with style, integrity, and grace, and impressed all with his good humor, intelligence, and friendly manner. He will be sorely missed by all those with whom he worked, and those of us who were his "beat" in Washington. I know my colleagues join me in offering sincere condolences to Allan Blanchard's wife, family, and coworkers in this time of sorrow.

I enclose the obituary which appeared in this morning's Washington Post:

ALLAN E. BLANCHARD, CHIEF OF DETROIT NEWS BUREAU

Allan E. Blanchard, 49, chief of the Washington bureau of The Detroit News, died yesterday at George Washington University Hospital where he had been under treatment for Legionnaire's disease.

Mr. Blanchard, who had worked for The News for 24 years, covering a wide variety of major stories at home and abroad, was admitted to the hospital Aug. 14, but did not respond to treatment, according to a nursing supervisor.

Mr. Blanchard was one of two persons reported earlier this month to be under treatment in the District of Columbia for Legionnaire's disease—a form of pneumonia. The second man was reported yesterday to be still under treatment in the intensive care unit at the Washington Center. His condition was described as serious but steadily improving.

No other persons here are known to be suffering from the disease, first diagnosed after 29 persons attending an American Legion convention in Philadelphia in 1976 died from a then-mysterious cause.

Since that time a number of cases have been reported around the nation and abroad. Five cases, including two deaths had previously been reported here.

Dr. Martin Levy, chief of communicable disease control for the District of Columbia, said he had no idea how Mr. Blanchard contacted the illness. "We wish we knew that," he said. "You never know on these isolated cases."

An award-winning journalist, Mr. Blanchard was known in the 1960s as his paper's top general assignment reporter, and covered such stories as the six-day war in the Middle East, the civil rights movement in the South, and the trial of Jack Ruby for the shooting of Lee Harvey Oswald.

He was caught in a firefight in 1965 between American forces and rebel snipers during the United States intervention in the Dominican Republic.

After beginning a column in 1968 in which he showed an ability to treat news topics with wit and whimsy as well as seriousness, he became national editor in 1970. Mr. Blanchard came here as bureau chief in 1975.

Mr. Blanchard, an avid trombonist, was a graduate of Wayne State University in Detroit, where he studied music and journalism.

In addition to his wife, Shirley, survivors include two sons, Stephen and John, of the home in McLean, his father and stepmother, Mr. and Mrs. Frank E. Blanchard, of Grosse Pointe, and a brother, Donald, of Grand Rapids.●

CONGRATULATIONS TO THE PARTICIPANTS OF THE CAMP DAVID SUMMIT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. WOLFF) is recognized for 5 minutes.

● Mr. WOLFF. Mr. Speaker, I wish to offer my sincere congratulations to the participants of the Camp David Summit Conference for their intense 13-day effort to overcome those difficult issues which have deadlocked Egyptian-Israeli peace negotiations since last December. President Carter, President Sadat, and Prime Minister Begin have earned the appellation "statesmen," and have well served the cause of peace. The jubilation of November in Jerusalem has reason to be reborn; the world again can hope to see peace in that troubled region for the first time in 30 years.

The two accords resulting from the summit have set up a framework for both an Egyptain-Israeli peace treaty and a structure to resolve the future of the West Bank and the Gaza Strip. While these two agreements do not constitute the final treaties, they have set forth principles and timetables by which final versions can be negotiated. These accords have broken the impasse which stalled any progress since the historic meeting of President Sadat and Premier Begin in Jerusalem last November.

I strongly urge King Hussein of Jordan to participate in these negotiations, so that a permanent peace can be established, and full normalized relations among the parties will at long last be instituted in the Middle East. Should Jordan fail to enter into these negotiations, the best chance for peace since Israel's founding could be lost. The accord is well-balanced, with many details still to be negotiated. It deserves King Hussein's support. The "Framework for the Conclusion of a Peace Treaty Between Egypt and Israel" should produce a final treaty between the two nations within just 3 months.

I must commend President Carter for his statesmanship, and international leadership. It was a stroke of genius to hold the summit conference in the solitude of Camp David. The virtual press blackout, while nerve-wracking to the press corps, served the very important purpose of allowing the parties to negotiate various points without their changing positions being broadcast throughout the world. While the final agreements are, and ought to be, open to press scrutiny, the enforced silence in Catoctin Mountains served the very important purpose of furthering the cause of peace.

"Congratulations" is too weak a word to express my profound sense of praise and appreciation of the achievement of President Carter, President Sadat, and Prime Minister Begin. I join with a grateful nation in praying that no more stumbling blocks will be put in the path of peace and that the frameworks negotiated at Camp David will lead to final treaties and a comprehensive, lasting peace. It will then be with rejoicing that the nations of that region can "beat their swords into plowshares" and tend to the well-being of their people in peace and cooperation. Camp David has beaten the Goliath of war.●

ENDANGERED SPECIES NEED CONTINUED PROTECTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. OTTINGER) is recognized for 5 minutes.

● Mr. OTTINGER. Mr. Speaker, I would like to call to the attention of my colleagues the fact that this very week the Merchant Marine Committee is to begin action on reauthorizing the Endangered Species Act.

It is my sincerest hope that the committee will keep the act as it now is, with no weakening provisions.

The act is profoundly significant for our country, and is one of the most important of all our environmental laws. Congress in its wisdom in 1973 acted upon the recognition that the pressures of population growth and concomitant development necessitated some form of protection for our precious resource bank of biological diversity. In passing this law it required us to pause and weigh the consequences of our acts for the biological chain of which we are a part—for fear that our failure to do so could render us an endangered specie.

Seemingly insignificant creatures—whether endangered or not—have proved useful directly to humankind. Blood research on the horseshoe crab is one example, and has provided us with significant information on blood coagulation. Endangered species often provide us with a measure of the vitality of a particular ecosystem; where a specie is endangered it provides a bellwether for the possible endangerment of the entire habitat.

The snail darter, for example, despite its bad press, shows us that the little Tennessee valley is the last remaining place in Tennessee where such high quality habitat exists that has direct human and economic importance. The snail darter's extinction in other Tennessee rivers indicates clearly a diminished vitality and diversity of ecosystems.

A recent discovery of qualities in a sponge off the coast of Florida and the Bahamas revealed to us an organism unique in its own self-preservation, and one which can contribute directly to human health. Because this small sponge is susceptible to encephalitis—like we

humans—it needed to develop antibodies to save itself; scientists have now discovered that the antibodies can be extracted and utilized for curing viral infections in humans, including smallpox and, perhaps, even the common cold. In fact, the newly discovered substance is the only truly safe antiviral medicine—which does not kill off other than the diseased parts of the cell—and is being regarded as a discovery equivalent in importance to that of penicillin. If we had destroyed the sponge, we never would have had a biological model from which to synthesize this new wonder drug. I would like to submit for the consideration of my colleagues two interesting articles on the subject which appeared in Science News and the Charleston Gazette a year ago.

FIRST ANTIVIRUS DRUG HAILED AS SUCCESS

BETHESDA, MD.—Federal medical researchers reported Wednesday the discovery and successful experimental use of the first true antiviral drug, an achievement the scientists equated with the discovery and use of the first antibiotic, penicillin.

Officials of the National Institute of Allergy and Infectious Diseases, a branch of the National Institutes of Health, said the new drug has been highly successful in treating a small number of cases herpes virus encephalitis, a disease that destroys the brain.

The drug, named adenine arabinoside, or ara-A, was termed by Dr. Richard M. Krause, the director of the allergy institute, as "a major advance in the treatment of serious viral disease."

Derived from a sponge found in the waters off Florida and the Bahamas, the drug was developed in a collaborative effort involving the institute, a group of American laboratories and clinical centers, Parke, Davis & Co., a Detroit pharmaceutical house, and two French scientists who first suggested its possible antiviral properties.

Krause said the use of the ara-A was "the first successful treatment of a life-threatening viral disease." However, he and the six other scientists at the news conference here said that they believed the implications of the development were much more far-reaching than the successful treatment of a brain disease that, while generally fatal, is relatively rare.

The broader possibility, they said, was that it and similar agents could be used to cure a wide variety of viral diseases, ranging from smallpox to the common cold.

Antibiotics such as penicillins and tetracyclines are effective only against diseases caused by bacteria.

The problem of viral diseases is immensely more complicated than that of bacterial diseases because viruses must get inside a cell to grow and replicate themselves. Thus, to prevent a virus from multiplying and producing disease, an agent had to be found that would penetrate the cell wall without harming the cell itself.

The search for such an agent has been under way since 1941 when penicillin was first found to be effective against some types of bacteria. The discovery of beneficial effects of penicillin and other antibiotics has revolutionized the practice of medicine.

As described at the news conference, adenine arabinoside was isolated 20 years ago from a variety of Caribbean sponge, cryptothetia crypta, during a routine investigation of chemicals that might be effective against cancer.

Dr. Charles A. Alford Jr., a professor at the University of Alabama Medical Center, said the chemical was a member of a class named purine nucleotides that has been suspected of producing anticancer activity.

"But of the 300 agents tested, it was the only one found to tackle viral infections without damaging the cell itself," Alford said.

Two French scientists, M. Private of Garilhe and J. De Rudder, were credited by the federal researchers with first suggesting that adenine arabinoside might be used against viral infections.

ANTIVIRAL DRUGS: POSSIBILITIES AGAINST HERPES

Unlike the development of antibiotics back during the 1940s and 1950s, the creation of antiviral drugs has been slow in coming. A primary reason is that antibiotics attack bacteria in the bloodstream without hurting cells. Hence, antibiotics are safe as well as effective. Antiviral substances, in contrast, have trouble killing viruses without also harming the cells they infect.

Nonetheless, medical scientists are finding or designing drugs that attack viruses selectively, that is, by largely or even totally sparing the cells that house them. Two of these drugs look especially promising in the treatment of more serious viral diseases, those that strike the body internally. One is Virazole. It has successfully countered flu in both animals and humans (SN: 3/20/76, p. 187). The other is adenine arabinoside or ara-A, which also goes by the trade name of Vira-A.

Last year, ara-A was found to lessen pain and to accelerate healing in immunosuppressed patients with herpes zoster infections. Herpes zoster can be extremely debilitating and sometimes fatal. Now ara-A has dramatically reduced both death and neurological damage among herpes encephalitis patients, thus constituting the first effective treatment of a life-threatening viral disease. Previously there was no way to counter this highly fatal brain infection that strikes several thousand Americans a year.

The study demonstrating ara-A's effectiveness against herpes encephalitis was conducted by Richard J. Whitley and Charles A. Alford of the University of Alabama at Birmingham and by researchers at both Alabama and 14 other medical centers. They describe their findings in the Aug. 11 New England Journal of Medicine as a "breakthrough in systemic antiviral therapy." Richard Krause, director of the National Institute of Allergy and Infectious Diseases, hailed the results as a "major advance" at a NIAID press conference last week. NIAID financed much of the study.

Encephalitis due to herpes simplex virus is the most common cause of sporadic fatal encephalitis in the United States. If victims do manage to survive the disease, they are usually left with permanent neurological damage. So medical investigators attempted to treat it with two experimental antiviral compounds—idoxuridine and cytosine arabinoside. Idoxuridine looked promising until studies showed clear-cut toxicity without efficacy. That is when Whitley, Alford and their colleagues began conducting a clinical trial to see whether another experimental antiviral drug, ara-A, might be both effective and safe in the treatment of this disease.

For patients to be enrolled in this trial, they had to first show symptoms indicative of herpes simplex encephalitis, such as altered consciousness, fever, personality change, memory loss, headache and vomiting. Herpes brain infection then had to be tentatively diagnosed with electroencephalograms, arteriograms, and computerized axial tomography brain scans. Only if these procedures indicated that a herpes brain infection was present did patients then undergo brain biopsies. A biopsy consisted of drilling a tiny hole in that area of a patient's skull where herpes infection was suspected and withdrawing a bit of brain tissue for viral examination.

Twenty-eight patients proved to be brain-biopsy positive for herpes infections. Eighteen of these patients received ara-A, 10 a placebo, for a 10-day period. All of the patients were monitored daily for progression of disease, and clinical observations were recorded at five-day intervals for one month or until death. Follow-up exams, performed at 2, 3, 6, 12 and 24 months, focused on improvement or deterioration in neurological function.

Ara-A not only significantly reduced death among the patients, from 70 to 28 percent, but also the amount of permanent disability. Four of the surviving 13 drug-treated patients are now fully recovered, in contrast to only one of three surviving untreated patients. What's more, these improvements were achieved without evidence of acute toxicity, such as damage to bone marrow, liver or kidney.

Ara-A had its origin 13 years ago when two French scientists screened a battery of plant and animal substances from land and sea for possible anticancer activity. Adenine arabinoside, from a Caribbean sponge, did little to retard the growth of cancer cells, the researchers found, but it did possess antiviral activity. So scientists at Parke, Davis and Co. in Detroit developed the chemical into an antiviral drug, and medical investigators began exploring its possible effectiveness against various herpes diseases.

Like some other promising antiviral drugs, ara-A appears to inhibit virus functions while partially sparing cellular ones. Whether it is free enough from toxic effects to be approved by the Food and Drug Administration for use against herpes encephalitis remains to be seen, though. The drug is known to harm bone marrow if used in large enough dosages. It has also triggered birth defects in the offspring of experimental animals and liver tumors in rats. However, the FDA did approve it earlier this year for external body use—specifically, to treat herpes infections of the eye.

Currently, only two other antiviral drugs are on the American market—idoxuridine, also for topical treatment of herpes eye infections, and amantudine, which has actually been approved by the FDA for preventing, rather than treating a particular strain of flu.

I simply cannot see the great need to amend an act which for 5 years has been the basis of very numerous and delicate negotiations to accommodate our developmental progress to the goal of conserving our biological diversity. For 5 years this act has succeeded in producing harmonious resolutions of these conflicts with only one notorious exception—the Tellico Dam case—and two lesser ones.

Why now, after 5 years, is pressure surfacing to weaken the act? I think the Congress needs to face this issue honestly. I have heard from a few quarters that we did not have in mind saving snail darters and insignificant weeds when we passed this act. As I indicated earlier, no members of the biosphere should be regarded as "insignificant;' they simply are not.

As an early opponent of the Tellico Dam proposal in the mid-1960's, I recall well that the trouble with the project was not the snail darter, but a whole raft

of questions relating to the spending of $120,000,000 on a project which would produce negligible power or flood control, and turn a magnificient agricultural valley into an unneeded recreational lake in an area with more miles of lake front than the Great Lakes. This Congress has a responsibility to curtail its wasteful spending on questionable projects, and it is clear that most, if not all, of the projects that are heading into trouble with the Endangered Species Act are in trouble in other areas—questionable cost-benefit claims, environmental damage being ignored, adverse economic impacts, refusal to consider other less costly, more environmentally sound alternatives, et cetera.

In my view what is happening here is that the public is questioning the value of many proposed projects. The question should not turn on whether to save a specie alleged to be standing in the way of progress, but rather whether to build questionable projects with taxpayer dollars.

If we weaken this law protecting endangered species, there is no way of assessing the damage to the biosphere which may ensue. This is a very dangerous road to travel when we consider the consequences of man's first conscious termination of species. As the pressures of population and the complexity of our problems increase, humankind will need the diversity of the world's species increasingly to help unlock the secrets of nature for human benefit. We have barely begun to tap the vast potential of the biological resources of our planet. Now is certainly not the time to retreat. We should be planning our progress in harmony with the preservation of our natural resources. I hope this Congress will give this excellent law another 3 years of authorization, unencumbered with weakening amendments, and a chance to prove its merits to society. It is a law I believe our children will be profoundly grateful to us for having had the prescience to preserve.

CONFERENCE REPORT ON H.R. 13125

Mr. WHITTEN submitted the following conference report and statement on the bill (H.R. 13125) making appropriations for the agriculture, rural development, and related agencies programs for the fiscal year ending September 30, 1979, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95–1579)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13125) making appropriations for the Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendments numbered 7, 8, 9, 12, 13, 16, 17, 18, 20, 21, 22, 23, 29, 30, 34, 35, 37, 38, 43, 45, 46, 52, 54, 59, 60, 61, 74, 81, 86, 90, 93, 94, 97, 107, 108, 109, 110, 111, and 119.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 11, 15, 19, 27, 42, 44, 47, 48, 49, 55, 56, 57, 63, 65, 66, 68, 69, 70, 71, 73, 75, 79, 85, 88, 92, 96, 98, 99, 100, 102, 104, 112, 114, and 118, and agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$7,871,170"; and the Senate agree to the same.

Amendment Numbered 6: That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$18,597,000"; and the Senate agree to the same.

Amendment numbered 24: That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "$1,500,000 for Rural Development Research as authorized under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2668), including administrative expenses; $31,273,000 for contracts and grants for agricultural research under the Act of August 4, 1965, as amended (7 U.S.C. 450i), of which $15,773,000 is for special research grants, $15,000,000 is for competitive research grants, and $500,000 is for grants in accordance with section 1419 of Public Law 95–113, including administrative expenses;".

And the Senate agree to the same.

Amendment numbered 25: That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following: "$5,000,000 for the support of animal health and disease research programs authorized by sections 1433 and 1434 of Public Law 95–113;".

And the Senate agree to the same.

Amendment numbered 26: That the House recede from its disagreement to the amendment of the Senate numbered 26, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$174,395,000"; and the Senate agree to the same.

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$51,810,000"; and the Senate agree to the same.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: "$2,500,000 for Rural Development Education as authorized under the Rural Development Act of 1972 (7 U.S.C. 2661–2668);".

And the Senate agree to the same.

Amendment numbered 32: That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$10,115,000"; and the Senate agree to the same.

Amendment numbered 33: That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$268,856,000"; and the Senate agree to the same.

Amendment numbered 36: That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$80,112,000"; and the Senate agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows:

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623(b)), $1,600,000.

And the Senate agree to the same.

Amendment numbered 40: That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$227,527,000"; and the Senate agree to the same.

Amendment numbered 41: That the House recede from its disagreement to the amendment of the Senate numbered 41, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$327,392,000"; and the Senate agree to the same.

Amendment numbered 50: That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "23,000"; and the Senate agree to the same.

Amendment numbered 51: That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$425,500,000"; and the Senate agree to the same.

Amendment numbered 53: That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$282,500,000"; and the Senate agree to the same.

Amendment numbered 58: That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

SELF-HELP HOUSING LAND DEVELOPMENT FUND

For direct loans pursuant to section 523(b)(1)(B) of the Housing Act of 1949 (42 U.S.C. 1490c) and related advances, $1,000,000.

And the Senate agree to the same.

Amendment numbered 62: That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$218,432,000"; and the Senate agree to the same.

Amendment numbered 64: That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$24,805,000"; and the Senate agree to the same.

Amendment numbered 67: That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amend-

ment insert "$255,466,000"; and the Senate agree to the same.

Amendment numbered 72: That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$11,847,000"; and the Senate agree to the same.

Amendment numbered 76: That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "(of which $23,500,000"; and the Senate agree to the same.

Amendment numbered 77: That the House recede from its disagreement to the amendment of the Senate numbered 77, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: "including authorization of 6 new areas,".

And the Senate agree to the same.

Amendment numbered 78: That the House recede from its disagreement to the amendment of the Senate numbered 78, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$25,000,000"; and the Senate agree to the same.

Amendment numbered 80: That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$18,288,000"; and the Senate agree to the same.

Amendment numbered 87: That the House recede from its disagreement to the amendment of the Senate numbered 87, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,782,300,000"; and the Senate agree to the same.

Amendment numbered 89: That the House recede from its disagreement to the amendment of the Senate numbered 89, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$24,000,000"; and the Senate agree to the same.

Amendment numbered 91: That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: ", to remain available until September 30, 1980"; and the Senate agree to the same.

Amendment numbered 95: That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: ", to remain available until September 30, 1980"; and the Senate agree to the same.

Amendment numbered 101: That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "on long-term credit sales and carryover balances; and"; and the Senate agree to the same.

Amendment numbered 103: That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "$456,500,000 is hereby appropriated and the balance to be derived by financing from the Commodity Credit Corporation or"; and the Senate agree to the same.

Amendment numbered 105: That the House recede from its disagreement to the amendment of the Senate numbered 105, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$295,154,000"; and the Senate agree to the same.

Amendment numbered 106: That the House recede from its disagreement to the amendment of the Senate numbered 106, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$15,304,000"; and the Senate agree to the same.

Amendment numbered 113: That the House recede from its disagreement to the amendment of the Senate numbered 113, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows:

"SEC. 608. None of the funds provided in this Act may be used to reduce programs by establishing an end-of-year employment ceiling on permanent positions below the level set herein for the following agencies: Farmers Home Administration, 7,440; Agricultural Stabilization and Conservation Service, 2,473; Foreign Agricultural Service, 738; and Soil Conservation Service, 13,955."

And the Senate agree to the same.

Amendment numbered 115: That the House recede from its disagreement to the amendment of the Senate numbered 115, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "609"; and the Senate agree to the same.

Amendment numbered 116: That the House recede from its disagreement to the amendment of the Senate numbered 116, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "610"; and the Senate agree to the same.

Amendment numbered 117: That the House recede from its disagreement to the amendment of the Senate numbered 117, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "611"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 10, 14, 82, 83, and 84.

JAMIE L. WHITTEN,
FRANK E. EVANS,
BILL D. BURLISON,
MAX BAUCUS,
BOB TRAXLER,
BILL ALEXANDER,
MATTHEW F. MCHUGH,
ROBERT L. F. SIKES,
WILLIAM H. NATCHER,
GEORGE H. MAHON,
MARK ANDREWS,
J. KENNETH ROBINSON,
JOHN T. MYERS
(except for amendment No. 118),
ELFORD A. CEDERBERG,
Managers on the Part of the House.

THOMAS F. EAGLETON,
JOHN C. STENNIS,
WILLIAM PROXMIRE,
ROBERT C. BYRD,
DANIEL K. INOUYE,
BIRCH BAYH,
LAWTON CHILES,
QUENTIN N. BURDICK,
WARREN G. MAGNUSON,
HENRY BELLMON,
MILTON R. YOUNG,
MARK O. HATFIELD,
TED STEVENS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13125) making appropriations for Agriculture, Rural Development and Related Agencies programs for the fiscal year ending September 30, 1979, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

STATEMENT OF THE CONFEREES

The conferees have taken cognizance of section 628 of the U.S. Code, which reads as follows:

Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others,

and for that reason have gone into some detail in the Statement of the Managers so that the Congressional intent will be clear.

TITLE I—AGRICULTURAL PROGRAMS

OFFICE OF THE SECRETARY

Amendment No. 1: Appropriates $4,310,000 for the Office of the Secretary as proposed by the Senate instead of $3,791,000 as proposed by the House. Included is $300,000 for coordination and direction of energy-related policy development and evaluation, as was provided in the Senate Bill.

For the Offices of the Assistant Secretaries, the conference agreement includes $1,730,335 as proposed by the Senate instead of $1,511,335 as proposed by the House. The conferees take note of the numerous past delays in filling Assistant Secretary positions, and will expect that a Deputy Secretary be promptly appointed to assist the Secretary in managing the Department. The conferees will also expect that any new staff offices or functions implemented will not diminish the traditional action programs of the Department.

DEPARTMENTAL ADMINISTRATION

Amendment No. 2: Earmarks $220,000 to provide for increased emphasis and coordination of public access to the activities and operations of the Department as proposed by the Senate. The issue of payment of intervenors is addressed under Amendment No. 118.

Amendment No. 3: Earmarks $2,790,530 for Personnel as proposed by the Senate instead of $2,340,530 as proposed by the House. Included is $450,000 for the coordination of safety and health activities by and for the Department as provided in the Senate Bill. The conferees are in agreement that these activities should be directed solely toward the enhancement of the health and safety of USDA employees and not attempt to duplicate OSHA requirements on the private sector.

Amendment No. 4: Earmarks $1,844,650 for Equal Opportunity as proposed by the Senate instead of $1,550,650 as proposed by the House.

Amendment No. 5: Earmarks $7,871,170 for Governmental and Public Affairs instead of $7,721,170 as proposed by the House and $7,921,170 as proposed by the Senate. The $50,000 reduction below the Senate amount is for Congressional liaison.

Amendment No. 6: Appropriates $18,597,000 for Departmental Administration instead of $17,483,000 as proposed by the House and $18,647,000 as proposed by the Senate.

OFFICE OF THE INSPECTOR GENERAL

Amendments No. 7 and 8: Appropriate $22,945,000 for the Office of the Inspector General as proposed by the House instead of $31,564,000 as proposed by the Senate.

The conference agreement provides that the transfer of $8,619,000 from the Food Stamp Program be continued, as proposed by the House. While activities relating to food stamps remain a very high priority, it is the intention of the conferees in maintaining this transfer that the Inspector General have reasonable flexibility in the allocation of funds to meet critical audit or investigative issues.

AGRICULTURAL RESEARCH SERVICE

Amendment No. 9: Deletes language added by the Senate providing for the purchase of lands for the United States Biological Control Laboratory at Valbonne, France. The conferees will expect the Department to report to the appropriate Committees of Congress as to what justification exists for the establishment of such a laboratory.

Amendment No. 10: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $338,416,000 for the Agricultural Research Service instead of $334,100,000 as proposed by the House and $337,991,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

For research on improving small-scale farm production the conferees have agreed to a total of $2,250,000 for in-house research and $750,000 for extramural research instead of $3,000,000 for in-house research as proposed by the House, and $1,500,000 for in-house research and $1,500,000 for extramural research as proposed by the Senate.

For integrated pest management research the conferees have agreed to $1,000,000 for in-house research and $500,000 for extramural research instead of $1,500,000 for in-house research as proposed by the House, and $500,000 for in-house research and $1,000,000 for extramural research as proposed by the Senate.

For energy conservation and climatic stress research the conference agreement provides $1,400,000 for in-house research and $1,805,000 for extramural research instead of $3,000,000 for in-house research as proposed by the House and $3,884,000 for extramural research as proposed by the Senate.

In connection with the conferees' decisions regarding in-house and extramural research, the Department is directed to drop completed projects and lowest priority items in cases where a redirection to a higher priority field of research would be appropriate and essential.

The conferees continue to support contract research to improve the utilization of cottonseed protein, as well as sunflower and peanut protein.

For tropical and subtropical agricultural research the conference agreement provides $2,200,000 instead of $793,000 as proposed by the House and $5,293,000 as proposed by the Senate.

For processing, storage and distribution efficiency research the conference agreement provides $54,630,000 instead of $56,078,000 as proposed by the House and $48,630,000 as proposed by the Senate. The conference agreement does provide for the termination of some low priority research items. In addition, the conferees will expect the Department to continue to work toward the objective of shifting some work to private industry or to being funded by private industry where appropriate. The conferees expect the Department to continue the Acala cottonseed program at the Shafter Research Station in California until such time as the growers can assume the full cost of this program themselves.

For staffing and equipment for the Appalachian Fruit Research Station at Kearneysville, West Virginia, the conference agreement provides $1,100,000 instead of $900,000 as proposed by the House and $1,300,000 as proposed by the Senate. The conferees will expect Phase I staffing to be reached by the end of fiscal year 1979.

For staffing and equipment for the Regional Veterinary School at Virginia Polytechnic Institute the conference agreement includes $1,250,000 as proposed by the House. These funds are contingent upon VPI being designated as a regional veterinary school. In addition, these funds do not constitute a commitment for funding in future years.

For operations and personnel for the Children's Nutrition Laboratory at Baylor College of Medicine, the conference agreement includes $1,500,000. (See Amendment numbered 13).

In connection with the feasibility study for a nutrition research center at Letterman Army Hospital at the Presidio in San Francisco, California, the conference agreement deletes the $100,000 included in the House version. The conferees will expect this study to be carried out within available funds with a view toward using this facility in connection with a university.

For research on chalk brood disease in leafcutting bees the conference agreement includes a total of $100,000 instead of $80,000 as proposed by the House and $200,000 as proposed by the Senate. The $100,000 will provide for full funding for the first year of research on this very serious problem, and the conferees will expect that these funds will be matched by non-Federal funding.

For pea and lentil research the conference agreement includes $100,000 as proposed by the House instead of $150,000 as proposed by the Senate.

For the National Herb Garden the conference agreement includes a total of $200,000 as proposed by the House. These funds will match the $200,000 which has been raised by private industry.

For English walnuts the conference agreement includes $150,000 as proposed by the House.

For pickles, onions and carrots the conference agreement includes $60,000 as proposed by the House.

For range management research at Woodward, Oklahoma, the conference agreement includes $100,000 instead of $200,000 as proposed by the Senate.

For shipping fever and range management research at El Reno, Oklahoma, the conference agreements includes $125,000 instead of $250,000 as proposed by the Senate.

The conference agreement also includes $150,000 for a beef forage crop residues study as proposed by the Senate.

The conference agreement deletes the $250,000 added by the Senate for tanning research since the restoration of funds for processing, storage and distribution will provide for the ongoing tanning research work now being done under that heading. The conferees wish to stress the importance of this research and will expect that it be funded at not less than the 1978 level.

For forage crops and range research to be conducted at Burns, Oregon, the conference agreement includes $150,000 instead of $300,000 as proposed by the Senate.

The conference agreement deletes the $13,000 added by the Senate for potato and tomato research at Prosser, Washington.

The conference agreement includes $450,000 for sugarcane research in Houma, Louisiana, as proposed by the Senate.

For updating of Handbook No. 8 on pork nutrition standards the conference agreement includes $200,000 instead of $300,000 as proposed by the Senate.

The conference agreement also deletes $25,000 for Congressional liaison activities as proposed by the Senate.

For the development of new varieties of sugarcane that are resistant to sugarcane smut the conference agreement includes $357,000 as proposed by the Senate.

For the High Plains Grasslands Research Station at Cheyenne, Wyoming, the conference includes an increase of $205,000 over the House amount instead of $500,000 as proposed by the Senate. The $205,000 in addition to the $295,000 included in the restoration of base funds will provide a total of $500,000 for fiscal year 1979.

For nutrition research initiatives the conference agreement includes $1,550,000 instead of $3,100,000 as proposed by the Senate. These funds are to be used consistent with language on page 11 of the Senate Report.

For alcohol fuels the conference agreement includes $500,000 instead of $2,000,000 as proposed by the Senate. These funds will be used for alcohol fuels as described in the Senate Report. In addition, funding provided to the Northern Regional Research Center in the conference agreement should also be used to fund research to evaluate plants with high hydrocarbon content and biomass productivity; develop efficient handling techniques; improve processing and fermentation technology to make them less costly and more energy efficient; to use surplus agricultural commodities and to make possible the use of lower quality and distressed crops, agricultural residues and cellulose materials for use in alcohol production and for other petroleum-saving purposes. The conferees will also expect that this work be integrated with other research in this field.

The conference agreement deletes the $100,000 added by the Senate for studies of field crops and their relation to wildlife in Alaska.

The conferees have agreed to provide $170,000 for planning and design of a greenhouse-headhouse complex at Stillwater, Oklahoma, instead of the $1,700,000 proposed by the Senate for construction included in the Buildings and Facilities account. Additional greenhouse facilities are needed at this location to meet current demand and to replace deteriorating existing structures. The conferees direct that careful consideration be given to the size and features of this new facility to minimize cost while assuring that it will be adequate to meet realistic research demands.

The conference agreement includes $100,000 for a cotton dust study instead of $200,000 as proposed by the Senate. The conferees fully support the need for such a study but feel that $100,000 is the most such a study will cost.

With regard to research funds for contagious equine metritis, the conferees agreed to the Senate proposal that these funds be matched on a cumulative basis as may be determined by the Department, rather than on a year-to-year basis as proposed by the House.

The conference agreement deletes $500,000 added by the Senate for the establishment of a Fruit and Nut Germ Plasm Repository at Corvallis, Oregon, since these funds are included under the Buildings and Facilities account. For fiscal year 1980 the conferees will expect that this $500,000 revert to the bases ARS account.

Amendment No. 11: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

Amendment No. 12: Deletes language added by the Senate which would have exempted the Fruit and Nut Germ Plasm Repository at Corvallis, Oregon, from the limitation on the cost of construction. This language is not necessary since funds for the construction of this facility are provided under the Buildings and Facilities account.

BUILDING AND FACILITIES

Amendment No. 13: Appropriates $35,720,000 for Buildings and Facilities as proposed by the House instead of $15,000,000 as proposed by the Senate. Included in the conference agreement are the following facilities:

1. Fruit and Nut Germ Plasm Repository (Corvallis, Oregon)	$500,000
2. Planning for Plant Stress Center (Lubbock, Texas)	800,000
3. Mint Research Greenhouse (Corvallis, Oregon)	20,000
4. Human Nutrition Center at Tufts University (Boston, Massachusetts)	21,100,000
5. Planning for move of Animal Disease Center (Denver, Colorado)	700,000
6. North Central Dairy Research Center (Madison, Wisconsin)	9,000,000
7. Soil Erosion Center at Purdue University (Lafayette, Indiana)	3,600,000

The conferees have agreed to delete the $1,700,000 added by the Senate for construction of a greenhouse-headhouse at Stillwater, Oklahoma. Planning funds for this facility have been included under the Agricultural Research Service Salaries and Expenses account. The conferees wish to stress that all of the above Federal facilities are to be constructed on Federal property or property under long-term lease or agreement as specified in 7 U.S.C. 2250(a) and are to be stated primarily by Federal employees and under the control of the Federal Government.

The conferees have agreed that the Centers at Baylor and Tufts are to be operated by the Science and Education Administration of the Department of Agriculture, and be a part of a coordinated nutrition research program conducted by the Department. Members of the Nutrition Centers faculty may hold joint appointments with the University, subject to the approval of the responsible Department of Agriculture officials. The Directors of the Human Nutrition Centers will be appointed after approval of the Secretary of Agriculture or his designee and be responsible only to the Department of Agriculture. The conferees are concerned that the purpose of the research program at the Centers be consistent with the research program at the National Institutes of Health, and that the Centers support similarly high quality programs. Therefore, the conferees direct the USDA to establish a Board of Scientific Counselors, external to the Centers, to review and advise the Department as to the scope and quality of the research. Further, the conferees direct the USDA and the Directors of the Centers to ensure that there is close cooperation and coordination with the National Institutes on Aging or Child Health and Human Development, as appropriate, of the Department of Health, Education, and Welfare, that the research and program plan of the Centers is consistent with the purposes of the Institute, and that the USDA and the National Institutes of Health develop appropriate interagency mechanisms to ensure coordination of this program, and advise the appropriate Committees of Congress of the procedures, their implementation, and effectiveness.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Amendment No. 14: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $232,141,000 for the Animal and Plant Health Inspection Service instead of $230,817,000 as proposed by the House and $230,150,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $4,000,000 for animal welfare as proposed by the House instead of $3,781,000 as proposed by the Senate.

For brucellosis eradication the agreement provides $64,355,000 instead of $63,355,000 as proposed by the House and $65,355,000 as proposed by the Senate. The additional funds are provided for accelerated efforts in calfhood and adult vaccination. The conferees note the recent report of the National Brucellosis Technical Commission and will expect the Department to prepare a detailed response to the findings of the Commission and to fully report its actions in that regard during the appropriations hearings on the fiscal year 1980 budget. Specifically, the conferees will expect the Department to report on the feasibility and cost of achieving eradication of this disease within a ten-year period.

The conference agreement includes $4,620,000 for cattle fever ticks instead of $5,120,000 as proposed by the House and $3,620,000 as proposed by the Senate.

The agreement also includes $5,370,000 for cattle scabies as proposed by the House instead of $2,070,000 as proposed by the Senate.

For the fire ant program the conferees have agreed to $1,942,000 as proposed by the House instead of $1,000,000 as proposed by the Senate. This is in addition to $5,713,000 reserved for the fire ant program which, if not needed by the end of the fiscal year, may be used to repay the Commodity Credit Corporation. Under Amendment No. 18, it was agreed to reserve $1,000,000 of the funds for fire ant control for matching purposes with states which may come into the program.

The conference agreement includes $1,365,000 for the rangeland grasshopper control program as proposed by the House instead of $6,365,000 for a general grasshopper control program including cropland as proposed by the Senate. The conferees note that APHIS has traditionally operated grasshopper control programs only on rangeland and not on cropland. This agreement is also reflected in Amendments numbered 16 and 17.

The conferees also agreed to $4,028,000 for the gypsy moth program as proposed by the House instead of $3,778,000 as proposed by the Senate.

For the Japanese beetle program the agreement includes $800,000 as proposed by the House instead of $500,000 as proposed by the Senate.

For miscellaneous animal diseases and pests the conferees agreed to $3,255,000 as proposed by the Senate instead of $3,005,000 as proposed by the House.

The conference agreement includes $200,000 for a program on hydrilla to be conducted in cooperation with the State of Florida, and $550,000 for activities under the Federal Noxious Weed Act to be closely coordinated with other efforts of weed control, quarantine, and eradication. The House bill included no funding for noxious weeds and the Senate Bill provided $1,500,000.

For the pink bollworm program the conference agreement includes $3,726,000 instead of $4,226,000 as proposed by the House and $3,226,000 as proposed by the Senate. Normal program costs, if any, in excess of this amount should be borne by the growers.

The conferees agreed to $1,006,000 for the range caterpillar program as proposed by the Senate instead of $506,000 as proposed by the House

For salmonella typing activities the agreement includes $360,000 as proposed by the House instead of no funding as proposed by the Senate.

With regard to a feasibility study of converting the Mission, Texas, screwworm production plant to a general biocontrol plant, the conferees agreed to $50,000 to fund the study instead of $100,000 as proposed by the House. The Senate Bill proposed undertaking the study within available funds.

The conference agreement includes $6,694,000 for tuberculosis eradication as proposed by the House instead of $5,248,000 as proposed by the Senate.

For West Indian sugarcane root borer the conferees agreed to $500,000 instead of $626,000 as proposed by the House and $126,000 as proposed by the Senate.

With regard to funds for contagious equine metritis, the conferees agreed to the Senate proposal that these funds be matched on a cumulative basis as may be determined by the Department, rather than on a year-to-year basis as proposed by the House. This will allow states with multi-year budgeting systems more leeway in meeting the matching requirement. It shall be up to the Department to determine whether consideration shall be given to in-kind contributions.

Amendment No. 15: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

Amendments No. 16 and 17: The conferees agreed to delete the provisions added by the Senate earmarking $5,000,000 of contingency funds to be available for control of grasshoppers after notification to Committees of Congress.

Amendment No. 18: The conferees agreed to reserve $1,000,000 of the funds for fire ant control for matching purposes with States which may come into the program, as proposed by the House, instead of deleting this language as proposed by the Senate.

FOOD SAFETY AND QUALITY SERVICE

Amendment No. 19: Appropriates $271,104,000 for the Food Safety and Quality Service as proposed by the Senate instead of $271,019,000 as proposed by the House.

FUNDS FOR STRENGTHENING MARKETS, INCOME AND SUPPLY (SECTION 32)

Amendments No. 20 and 21: Restore language deleted by the Senate which provides for the transfer of $4,678,000 from Section 32 funds to the Agricultural Marketing Service for the formulation of marketing agreements and orders.

COOPERATIVE STATE RESEARCH SERVICE

Amendment No. 22: Appropriates $109,066,000 for payments to agricultural experiment stations under the Hatch Act and for penalty mail as proposed by the House instead of $104,366,000 as proposed by the Senate.

Amendment No. 23: Appropriates $16,360,000 for payments to the 1890 Land-Grant Colleges including Tuskegee Institute as proposed by the House instead of $17,060,000 as proposed by the Senate.

Amendment No. 24: Appropriates $31,273,000 for contracts and grants for scientific research instead of $22,435,000 as proposed by the House and $57,398,000 as proposed by the Senate. The conference agreement includes $300,000 for rural development centers as proposed by the House. The conferees have also agreed to $25,000 for dried bean research as proposed by the House.

Also included in the above are funds for research which offers promise for improving efficiency of both milk and meat production.

The conferees have agreed to delete $100,000 for mesquite research, $100,000 for cattle fever ticks, and $1,500,000 for range caterpillar research, as proposed by the Senate. The conference agreement also includes an addition .1 $38,000 for research on mushroom by-products as proposed by the Senate. The conference agreement also includes $50,000

for bean and beet research at the Saginaw Valley Bean and Beet Research Farm as proposed by the House. The conferees have also agreed that within the base funds for special grants and contracts, $500,000 is to be earmarked for alcohol fuels research.

For competitive grants the conference agreement includes $15,000,000 instead of $30,000,000 as proposed by the Senate. The conferees will expect that $5,000,000 of this amount shall be used for human nutrition research and $10,000,000 shall be used primarily for basic plant research. The conferees have agreed to continue the $15,000,000, the same as the fiscal year 1978 level, in order to allow time to evaluate the competitive grants recently awarded. Because of this, the conferees have also agreed to delete $5,000,000 proposed by the House for special grants for human nutrition research and to specify that for the $10,000,000 proposed by the House for animal health and plant research, principal emphasis should be placed on animal health research. With the $10,000,000 thereby specified as primarily special grants for animal health research, the conferees have agreed to delete $15,000,000 of the funds identified for animal health research as proposed by the Senate in Amendment numbered 25. The conferees will expect to be advised by the Department of the purpose and amount of each competitive grant after the grant has been awarded. The conferees further agree that the competitive grants program shall not be to the detriment of the research programs at the existing Land-Grant institutions.

The conference agreement also includes $1,500,000 for rural development research under Title V of the Rural Development Act.

The conference agreement deletes the $2,500,000 added by the House for solar research and provides $500,000 for research on alcohol fuels instead of $2,000,000 as proposed by the Senate.

Amendment No. 25: Appropriates $5,000,000 for animal health and disease research authorized by sections 1433 and 1434 of Public Law 95–113 instead of $20,000,000 as proposed by the Senate.

Amendment No. 26: Provides a total of $174,395,000 for the Cooperative State Research Service instead of $163,057,000 as proposed by the House and $190,020,000 as proposed by the Senate.

It has come to the attention of the conferees that several States may plan to decrease their monetary commitment to Hatch Act and McIntire-Stennis programs in an amount equal to any increased appropriations granted by Congress. This is clearly not the intent of Congress regarding the use of such funds. When additional funds are appropriated for a program, such increases are not meant to relieve the States of their responsibility. This is applicable whether the State share of the program comes from in-State funds or from revenue sharing funds. The conferees hope this will suffice as an adequate expression of their feeling on this matter.

EXTENSION SERVICE

Amendment No. 27: Appropriates $179,831,000 for cooperative extension work under the Smith-Lever Act as proposed by the Senate instead of $176,031,000 as proposed by the House.

Amendment No. 28: Appropriates $51,810,000 for nutrition and family education work in low-income areas instead of $53,060,000 as proposed by the House and $50,560,000 as proposed by the Senate.

Amendment No. 29: Appropriates $3,000,000 for the Urban Gardening Program and $1,000,000 for rural development work under section 3d of the Smith-Lever Act as proposed by the House

Amendment No. 30: Appropriates $1,020,000 for payments for the farm safety program as proposed by the House.

Amendment No. 31: Deletes $2,500,000 for solar research as proposed by the Senate, and restores $2,500,000 for rural development education authorized by the Rural Development Act as proposed by the House.

Amendment No. 32: Appropriates $10,115,000 for the 1890 Colleges and Tuskegee Institute instead of $10,013,000 as proposed by the House and $10,412,000 as proposed by the Senate.

Amendment No. 33: Provides $268,856,000 for the Extension Service instead of $270,204,000 as proposed by the House and $260,383,000 as proposed by the Senate.

Amendment No. 34: Restores House language which provides that "not less than $75,579,000 shall be available for Home Economics."

Amendment No. 35: Restores House language which provides that of the funds available for Federal administration and coordination, "not less than $2,029,000 shall be available for Home Economics."

ECONOMICS, STATISTICS, AND COOPERATVES SERVICE

Amendment No. 36: Appropriates $80,112,000 for the Economics, Statistics, and Cooperatives Service instead of $79,860,000 as proposed by the House and $80,137,000 as proposed by the Senate. Included in the conference agreement is $4,718,000 for the improvement of price statistics instead of $4,349,000 as proposed by the House and $5,087,000 as proposed by the Senate.

The conference agreement also includes $94,000 for reporting on commodities grown in three or fewer states as proposed by the House.

For assistance to the farmer cooperatives the conference agreement includes $3,990,000 instead of $4,240,000 as proposed by the House and $3,740,000 as proposed by the Senate.

In addition, the conference agreement also includes $133,000 as proposed by the Senate for the continuation of the Study of Foreign Investment in the United States.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

Amendment No. 37: Restores language deleted by the Senate which provides for the administration and coordination of payments to states.

Amendment No. 38: Appropriates $46,502,000 as proposed by the House for Marketing Services instead of $49,070,000 as proposed by the Senate. Included in the conference agreement is the restoration of $2,000,000 for the Wholesale Market Development Program as proposed by the House.

The conferees agreed to restore $110,000 stricken by the Senate for supergrade positions. The conferees are in agreement that the supergrades requested by the Agricultural Marketing Service have been validly justified to meet their requirements, and that the Senate-recommended reduction was not warranted.

The conferees are concerned with recent changes in the enforcement and administration of the Perishable Agricultural Commodities Act with respect to the informal settlement process; the definition of categories of violations; and treatment of late payment by receivers. The conferees are particularly interested in the basis for any changes in procedures of enforcement and the possibility of unequal application. The Secretary is directed to report back to the appropriate Committees of Congress within 30 days concerning these issues.

PAYMENTS TO STATES AND POSSESSIONS

Amendment No. 39: Restores language deleted by the Senate which provides for the Payments to States and Possessions under the Agricultural Marketing Act of 1946. The conference agreement provides $1,600,000 for these payments instead of the $2,000,000 proposed by the House.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

SALARIES AND EXPENSES

Amendment No. 40: Appropriates $227,527,000 for salaries and expenses for the Agricultural Stabilization and Conservation Service instead of $227,552,000 as proposed by the House and $217,527,000 as proposed by the Senate.

Included in the conference agreement is a reduction of $25,000 in funds available for Congressional liaison activities as proposed by the Senate.

In view of the great increase in the responsibilities of the County office employees created by the enactment of the new Farm Bill, the conferees will expect the Department to develop rules and regulations immediately so as to help prevent problems such as have occurred in the past because of inadequate regulations.

Amendment No. 41: Provides a total of $327,392,000 for the Agricultural Stabilization and Conservation Service instead of $327,417,000 as proposed by the House and $317,392,000 as proposed by the Senate.

Amendment No. 42: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

COMMODITY CREDIT CORPORATION

NEW BORROWING AUTHORITY

Amendment No. 43: Appropriates $5,500,000,000 for new borrowing authority by the Commodity Credit Corporation as proposed by the House instead of $10,500,000,000 as proposed by the Senate. The conferees have agreed to defer action on the additional $5,000,000,000 in borrowing authority pending receipt of a budget request.

REIMBURSEMENT FOR NET REALIZED LOSSES

Amendment No. 44: Appropriates $990,900,000 to reimburse the Commodity Credit Corporation for net realized losses sustained in prior years as proposed by the Senate instead of $580,000,000 as proposed by the House. With additional $5,500,000,000 in borrowing authority provided in the Bill, adequate funds are available to operate CCC. However, the conferees have agreed to full restoration of capital impairment so that funds would be available if needed. These additional funds will not result in any additional budget outlays and, therefore, have no impact on the budget.

LIMITATION ON ADMINISTRATIVE EXPENSES

Amendment No. 45: Provides a limitation of $50,100,000 on administrative expenses of the Commodity Credit Corporation as proposed by the House instead of $45,898,000 as proposed by the Senate.

Amendment No. 46: Restores House language which provides for the Office of the General Sales Manager independent of the Foreign Agricultural Service and the State Department.

Amendment No. 47: Provides a limitation on the export credit sales program of $2,200,000,000 in fiscal year 1979 as proposed by the Senate instead of $1,700,000,000 as proposed by the House. The conference agreement adopts the Senate language which authorizes $60,000,000 in loan guarantees by the Commodity Credit Corporation for four pilot projects for the production and marketing of industrial hydrocarbons and alcohols from industrial products.

TITLE II—RURAL DEVELOPMENT PROGRAMS

RURAL DEVELOPMENT ASSISTANCE

FARMERS HOME ADMINISTRATION

RURAL HOUSING INSURANCE FUND

Amendment No. 48: Provides $3,776,000,000 for insured loans as authorized by Title V of the Housing Act of 1949, as amended, as proposed by the Senate, instead of $3,774,200,000 as proposed by the House. The in-

crease over the House amount provides for an additional $1,800,000 in site development loans, for a total program of $3,000,000 in fiscal year 1979.

Amendment No. 49: Provides $500,000,000 in unsubsidized interest guaranteed loans as proposed by the Senate.

Amendment No. 50: Provides for 23,000 units of rental assisted housing during fiscal year 1979 rather than 20,000 units as proposed by the House and 25,000 units as proposed by the Senate.

Amendment No. 51: Limits the total obligations for rental assisted housing over the life of the agreements to $425,500,000 instead of $370,013,000 as proposed by the House and $462,500,000 as proposed by the Senate.

AGRICULTURAL CREDIT INSURANCE FUND

Amendment No. 52: Deletes Senate language which would have provided that of the total amount available for farm ownership loans, $250,000,000 would be for loans at rates equivalent to those charged the government to borrow money and $100,000,000 would be available for loans at five percent or less to limited resource borrowers. The conferees have agreed to delete the language since similar language has been incorporated into the Agricultural Credit Act of 1978, under which the fund will now operate.

RURAL WATER AND WASTE DISPOSAL GRANTS

Amendment No. 53: Appropriates $282,500,000 for rural water and waste disposal grants instead of $300,000,000 as proposed by the House and $265,000,000 as proposed by the Senate. The conferees have taken their action in view of the fact that the $50,000,000 for water and waste disposal grants contained in the Second Supplemental Appropriation Act will not be available until the start of fiscal year 1979.

Amendment No. 54: Retains language deleted by the Senate which allows funds appropriated for rural water and waste disposal grants to remain available until expended.

VERY LOW-INCOME HOUSING REPAIR GRANTS

Amendment No. 55: Appropriates $19,000,000 for very low-income housing repair grants as proposed by the Senate instead of $24,000,000 as proposed by the House.

RURAL HOUSING FOR DOMESTIC FARM LABOR

Amendment No. 56: Appropriates $33,000,000 for rural housing for domestic farm labor as proposed by the Senate instead of $38,000,000 as proposed by the House.

MUTUAL AND SELF-HELP HOUSING

Amendment No. 57: Appropriates $13,500,000 for mutual and self-help housing as proposed by the Senate instead of $16,500,000 as proposed by the House.

SELF-HELP HOUSING LAND DEVELOPMENT FUND

Amendment No. 58: Retains a new section of the bill added by the Senate which appropriates $1,000,000 for the self-help housing land development fund. The conference agreement deletes language added by the Senate which provided that the funds remain available until expended since the fund, under law, operates without regard to fiscal year limitations.

RURAL COMMUNITY FIRE PROTECTION GRANTS

Amendment No. 59: Restores language deleted by the Senate which would appropriate $3,500,000 for rural community fire protection grants as proposed by the House.

RURAL DEVELOPMENT PLANNING GRANTS

Amendment No. 60: Restores House language and $5,000,000 deleted by the Senate which provides for a program of rural development planning grants.

RURAL HOUSING SUPERVISORY ASSISTANCE GRANTS

Amendment No. 61: Restores House language deleted by the Senate which appropriates $2,500,000 for rural housing supervisory assistance grants.

SALARIES AND EXPENSES

Amendment No. 62: Appropriates $218,432,000 for salaries and expenses for the Farmers Home Administration instead of $219,563,000 as proposed by the House and $217,582,000 as proposed by the Senate. The conference agreement provides $4,033,000 for the Unified Management Information System as proposed by the House instead of $4,183,000 as proposed by the Senate. The conferees agree that the additional computer terminals can be delayed as proposed by the House.

The conference agreement also provides a total of $2,000,000 for contractual assistance instead of $3,000,000 as proposed by the House and $1,000,000 as proposed by the Senate. As specified in the House Report these funds are to be used by Farmers Home Administration to make sure that FmHA borrowers are receiving full value from purchases and to identify, carry out and monitor community projects, the purpose of which is to improve rural communities and cause them to better meet the needs of the people as authorized by law, including contractual research on the needs of rural America.

The conferees have agreed to delete $109,000 for the Federal Assistance Programs Retrieval System as proposed by the Senate since this program has now been transferred to the Office of Management and Budget and the funds are no longer required in the Farmers Home Administration budget.

In addition, the conferees have also agreed to delete $25,000 for Congressional liaison costs as proposed by the Senate.

Amendment No. 63: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

The conferees will expect that the 594 additional permanent positions and $7,000,000 included in both the House and Senate Bills be made available to the Farmers Home Administration. The conferees wish to stress that all of these additional positions are to be located outside of the Metropolitan Washington area.

RURAL ELECTRIFICATION ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 64: Appropriates $24,805,000 for salaries and expenses for the Rural Electrification Administration instead of $24,905,000 as proposed by the House and $24,658,000 as proposed by the Senate. Included in the conference agreement are funds for six additional engineers for the telephone program as proposed by the House. The conferees have agreed to the Senate reduction of $25,000 for Congressional liaison activities.

In addition the conferees have agreed to a reduction of $75,000 in contractual instead of a reduction of $150,000 as proposed by the Senate.

Amendment No. 65: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

CONSERVATION

SOIL CONSERVATION SERVICE

CONSERVATION OPERATIONS

Amendment No. 66: Deletes House language which provides that funds for conservation operations shall remain available until expended.

Amendment No. 67: Appropriates $255,466,000 for conservation operations instead of $262,491,000 as proposed by the House and $255,296,000 as proposed by the Senate.

The conference agreement deletes the $4,000,000 added by the House for technical assistance on the Sec. 208 program. (See Amendment numbered 84). The agreement includes $170,000 for the Grand Valley Salinity Control Project as proposed by the House and deletes $3,000,000 because of carryover balances as proposed by the Senate. The agreement also deletes $25,000 for Congressional liaison as proposed by the Senate.

Amendment No. 68: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

RIVER BASIN SURVEYS AND INVESTIGATIONS

Amendment No. 69: Deletes House language which provides that funds for river basin surveys and investigations shall remain available until expended as proposed by the Senate.

Amendment No. 70: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

WATERSHED PLANNING

Amendment No. 71: Deletes House language which provides that funds for watershed planning shall remain available until expended as proposed by the Senate.

Amendment No. 72: Appropriates $11,847,000 for watershed planning instead of $12,587,000 as proposed by the House and $5,759,000 as proposed by the Senate.

Amendment No. 73: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

Amendment No. 74: Appropriates $169,607,000 for watershed and flood prevention operations as proposed by the House instead of $227,522,000 as proposed by the Senate.

WATERSHED AND FLOOD PREVENTION OPERATIONS

Amendment No. 75: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

Amendment No. 76: Earmarks $23,500,000 for P.L. 534 projects instead of $25,744,000 as proposed by the House and $20,876,000 as proposed by the Senate.

RESOURCE CONSERVATION AND DEVELOPMENT

Amendment No. 77: Restores House language which provides for the authorization of new RC&D areas. The conference agreement provides for six new authorizations rather than ten as proposed by the House.

Amendment No. 78: Appropriates $25,000,000 for the resource conversation and development program instead of $31,979,000 as proposed by the House and $16,797,000 as proposed by the Senate.

Amendment No. 79: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

GREAT PLAINS CONSERVATIONS PROGRAM

Amendment No. 80: Appropriates $18,288,000 for the great plains conservation program instead of $23,288,000 as proposed by the House and $13,288,000 as proposed by the Senate.

NONPROFIT SOURCE POLLUTION CONTROL GRANT AGREEMENTS AND TECHNICAL ASSISTANCE

Amendment No. 81: Deletes language added by the Senate which would have appropriated $60,000,000 for nonpoint source pollution control. (See Amendment numbered 84).

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE AGRICULTURAL CONSERVATION PROGRAM

Amendment No. 82: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which reads as follows:

, except that no participant in the Agricultural Conservation Program shall receive more than $3,500, except where the participants from two or more farms or ranches join to carry out approved practices designed to conserve or improve the agricultural re-

sources of the community): Provided further, That such amounts shall be available for the purchase of seeds, fertilizers, lime, trees, or any other conservation material, or any soil-terracing services, and making grants thereof to agricultural producers to aid them in carrying out enduring conservation and environmental enhancement measures and practices, as specified in section 1501 of Public Law 95–113 (including those practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased cost of production, thus assuring a continuous supply of food and fiber necessary for the maintenance of a strong and healthy people and economy) as determined by the County Committees, approved by the State Committees and the Secretary, under programs provided for herein: Provided further, That such assistance will not be used for carrying out measures and practices that are primarily production-oriented or that have little or no conservation or pollution abatement benefits

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement updates the appropriation language in line with P.L. 95–113.

Amendment No. 83: Reported in technical disagreement. The managers on the part of the House will move to concur in the amendment of the Senate which provides that unexpended funds previously appropriated to liquidate outstanding balances during 1975 through 1978 shall be merged with the 1979 appropriation as of December 31, 1978.

NONPOINT SOURCE POLLUTION CONTROL

Amendment No. 84: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment. The effect of the amendment is to delete differing House and Senate language relating to the nonpoint source pollution control program which is also referred to as the Rural Clean Water Program or the Sec. 208 Program. The conferees have agreed to delete this program from the Bill since no additional funds or staff were requested for the program in the budget and implementation of the program could well result in reducing the existing Soil Conservation Service programs and the Agricultural Conservation Program.

The Administration has taken the position that there should be a single consolidated cost-share program designed to meet the objectives of the Agricultural Conservation Program (ACP), the Great Plains Conservation Program and the new Rural Clean Water Program funded under the Agricultural Stabilization and Conservation Service (ASCS). Neither the House nor Senate concurred in this recommendation. In addition, the authorizing legislation specifies that the program must be separately funded. The Secretary of Agriculture placed the program under the Soil Conservation Service (SCS) but no funds or staff were requested to carry out a program under the SCS budget.

The conferees have deleted all funds for this program from the Bill without prejudice and will await a supplemental request.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

FORESTRY INCENTIVES PROGRAM

Amendment No. 85: Updates legislative citations as proposed by the Senate.

Amendment No. 86: Appropriates $15,000,000 for the forestry incentives program as proposed by the House instead of $17,500,000 as proposed by the Senate.

TITLE III—DOMESTIC FOOD PROGRAMS

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

Amendments No. 87, 88 and 89: Appropriate $1,285,535,000 and provide a transfer of $1,411,575,000 from Section 32 for Child Nutrition Programs instead of an appropriation of $1,364,535,000 and $1,336,575,000 by transfer as proposed by the House and an appropriation of $1,281,535,000 as proposed by the Senate. The Section 32 transfer is the same as the Senate amount.

The conferees intend for the Department to purchase surplus commodities with Section 32 funds, however, Section 32 balances should not be drawn below $225,000,000 unless they are needed to stabilize prices.

In agreeing to $24,000,000 for the Equipment Assistance Program instead of $28,000,000 as proposed by the House and $20,000,000 as proposed by the Senate the conferees take note of the anticipated expansion of the School Breakfast Program and the continuing needs of those schools without food service equipment. Although the conferees have not identified any specific over all percentage to be set aside, priority consideration must be given to those schools without food service equipment.

Toward that end, the Department is directed to develop and maintain statistics on the recipients of these funds, especially regarding whether the equipment acquired is for new service or replacement, and report those statistics to Congress as part of the explanatory notes to the fiscal year 1980 budget and thereafter. The Department will also be expected to conduct, within available funds, a detailed survey of requirements and inventory of school food service equipment, and promptly report such findings to the appropriate Committees of Congress.

Participation of schools in the breakfast program is reported to be only 24 percent of the level of participation in the School Lunch Program. Recent State and Federal legislation indicates, and in some cases mandates, expansion of the breakfast program. There appears to be a variance among schools in the availability of food service equipment and personnel needed to offer regular breakfasts, and the conferees agreed, therefore, to provide $24,000,000 for School Food Service Equipment Assistance under Amendments numbered 87 and 89, rather than reduce this level as proposed in the budget request. Formulated grain-fruit products, as currently in use to encourage participation in the breakfast program by schools without facilities to serve a regular breakfast, were developed at the request of the Department to at least make some type of breakfast available.

The Department has proposed to ban the use of these products based the belief that they may promote poor eating habits. The conferees share the Department's concern that both proper nutrition education and proper nutrition be available to students.

The conferees recognize the existing authority of the Secretary of Agriculture to prescribe meal pattern for both the School Breakfast and Lunch Programs. At the same time, recognition must be given to the situation discussed above, and the General Accounting Office study of this matter which is expected to be completed shortly. Consequently, the conferees agree that the option of serving formulated grain-fruit products, or other nutritional products, where there are insufficient facilities or personnel to provide a regular breakfast, shall be left to the determination of each school only through the school year which is now beginning.

The conferees are to be kept fully advised of any actions proposed to be taken by the Department during the school year beginning September, 1979, with regard to the formulated grain-fruit products.

Amendment No. 90: Provides that these funds be available for three years, as was proposed by the House, rather than one year as was proposed by the Senate.

SPECIAL MILK PROGRAM

Amendment No. 91: Provides that these funds shall remain available for two years, rather than three years as proposed by the House and one year as proposed by the Senate.

SPECIAL SUPPLEMENTAL FOOD PROGRAMS (WIC)

Amendment No. 92: Appropriates $569,500,000 as proposed by the Senate instead of $580,000,000 as proposed by the House.

The conferees concur in the language of the House Report regarding the maintenance of separate identities of W.C and the Commodity Supplemental Food Program.

Amendment No. 93: Provides that these funds be available for three years, as was proposed by the House, rather than one year as was proposed by the Senate.

FOOD STAMP PROGRAM

Amendment No. 94: Provides that these funds be available for three years, as was proposed by the House, rather than one year as was proposed by the Senate.

FOOD DONATIONS PROGRAM

Amendment No. 95: Provides that these funds shall remain available for two years, rather than three years as proposed by the House and one year as proposed by the Senate.

FOOD PROGRAM ADMINISTRATION

Amendment No. 96: Appropriates $74,275,000 for Food Program Administration as proposed by the Senate instead of $71,300,000 as proposed by the House. Included is $3,000,000 over the House amount to be used exclusively for reimbursement to the Social Security Administration for certification of food stamp recipients, and a reduction of $25,000 for Congressional liaison.

TITLE IV—INTERNATIONAL PROGRAMS

FOREIGN AGRICULTURAL SERVICE

Amendment No. 97: Appropriates $53,645,000 for the Foreign Agricultural Service as proposed by the House instead of $56,403,000 as proposed by the Senate. Included in the agreement is $29,311,000 for foreign market development as proposed by the House instead of $28,311,000 as proposed by the Senate.

In addition, the conference agreement deletes the $3,758,000 for the Office of the General Sales Manager as proposed by the Senate since the conferees have agreed that this office should remain independent of the Foreign Agricultural Service.

Amendment No. 98: Provides a single appropriation amount for both salaries and expenses as proposed by the Senate instead of separate amounts as proposed by the House.

PUBLIC LAW 480

Amendments No. 99 and 102: Add language as proposed by the Senate which specifies that funds available under Titles I, II, and III of Public Law 480 be limited to the amounts specified in the Bill.

Amendment No. 100: Specifies the amount appropriated as proposed by the Senate rather than the amount to be derived from the proceeds of sales of foreign currencies and dollar loan repayments as proposed by the House.

Amendment No. 101: Adds carryover balances as a source of funds for Titles I and III as proposed by the Senate.

Amendment No. 103: Specifies the amount appropriated as opposed to the amount derived from carryover balances and includes language covering the financing from the Commodity Credit Corporation for the Title II program as proposed by the Senate. The conference agreement deletes Senate language referring to reimbursement in subsequent years since such language is in permanent law.

Amendment No. 104: Deletes language added by the House which would have pro-

hibited any assistance to Korea under the P.L. 480 program.

TITLE V—RELATED AGENCIES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 105: Appropriates $295,154,000 for the Food and Drug Administration instead of $289,854,000 as proposed by the House and $295,454,000 as proposed by the Senate.

The conference agreement includes $5,000,000 for salaries which were deleted by the House Bill based on conditions in effect when the House considered the Bill. Subsequently, the agency has been issued revised personnel allotments which now make possible proper utilization of these funds.

For nutrition initiatives the agreement provides $300,000 for dietary and other nutrition studies consistent with language in the Senate Report. The direction of these studies should be closely coordinated with USDA.

The conferees are in agreement with the House Report which earmarks $250,000 for research on antibiotics in animal feeds and provides that FDA hold in abeyance implementation of their proposal pending the final results of this research and any such evidentiary hearings as may result from the notices of opportunity for hearing that have been published by FDA.

The issue of payment of public intervenors, including attorneys' fees, is addressed under Amendment numbered 118.

COMMODITY FUTURES TRADING COMMISSION

Amendment No. 106: Appropriates $15,304,000 for the Commodity Futures Trading Commission instead of $15,804,000 as proposed by the House and $14,974,000 as proposed by the Senate. The conferees agree that these funds shall be available for authorized purposes, including monitoring of forward contracts. The conferees concur in the Senate intent that any additional personnel be for the action-oriented aspects of CFTC operations, such as the areas of enforcement, trading and markets, and surveillance. Personnel should not be added to the Offices of Policy Review, Congressional Relations, or the immediate administrative offices of the Commissioners.

NATIONAL ALCOHOL FUELS COMMISSION

Amendment No. 107: Deletes language added by the Senate which would have established the National Alcohol Fuels Commission and appropriated $1,500,000 for that Commission. The conferees have passed over the item without prejudice since the Commission is not authorized by law. Serious consideration will be given to funding the Commission when authorized.

TITLE VI—GENERAL PROVISIONS

Amendment No. 108: Restores House language which provides that funds for the rural housing for domestic farm labor program shall remain available until expended.

Amendment No. 109: Restores House language which provides that funds for the mutual and self-help housing program shall remain available until expended.

Amendment No. 110: Restores House language which provides that funds for the resource conservation and development program shall remain available until expended.

Amendment No. 111: Restores House language which provides that funds for the emergency conservation measures program shall remain available until expended.

Amendment No. 112: Adds language as proposed by the Senate which provides that funds for the agricultural conservation program shall remain available until expended.

Amendment No. 113: Restores language deleted by the Senate which provides for a floor on permanent positions for various agencies. The conference agreement sets a floor on Foreign Agricultural Service positions at 738 instead of 776 as proposed by the House.

Amendment No. 114: Deletes House language which prevented a State Agricultural Stabilization and Conservation Service Committee from prohibiting a County Committee from authorizing any practice under the agricultural conservation program.

Amendments No. 115, 116 and 117: Renumber sections of the Bill.

Amendment No. 118: Deletes the section in the House Bill which would have prohibited the availability of any funds to pay the expenses of parties intervening in regulatory proceedings or other activities.

Any public participation programs utilizing funds provided in this Act shall not be operated until the Department or agency has promulgated regulations that comply with the Comptroller General's rulings on the matter. Furthermore, except for expert witnesses whose technical expertise is required, no applicant shall be eligible to receive reimbursement if he is not a resident of the locality to be affected, or if the interest he seeks to represent is already adequately represented by the Department or another participant.

The conferees direct the Department and agencies to provide information on the amounts spent for this purpose and the recipients of the funding.

The conferees also direct the Department to provide the Congress, within 90 days of enactment of this Act, with detailed estimates of the total costs of the financial assistance, the criteria by which the assistance would be allocated, and the requirements for recordkeeping, reporting and auditing of amounts and persons paid.

Amendment No. 119: Deletes language added by the Senate which prohibited the Farmers Home Administration from implementing new thermal insulation standards for concrete masonry.

In deleting this Amendment, the conferees will expect the Farmers Home Administration to undertake a revision of its standards, based upon available information on the thermal performance aspects of masonry wall construction as agreed to by the Secretary of Agriculture in his letter of September 11, 1978. In the course of this study the Farmers Home Administration should consult with the various construction materials industries, State, local and Federal Government agencies, engineering societies, and various code and standards-writing bodies.

Within 90 days of enactment of this Act, the conferees will expect the Farmers Home Administration to publish in the Federal Register a proposal for adjustments of the thermal performance standards that are indicated as a result of this study. Such adjustments, if the study so indicates, should be in the form of a separate performance thermal insulation standard for masonry construction.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1979 recommended by the Committee of Conference, with comparisons to the fiscal year 1978 amount, the 1979 budget estimates, and the House and Senate bills for 1979 follow:

New budget (obligational) authority, fiscal year 1978	$13,198,341,000
Budget estimates of new (obligational) authority, fiscal year 1979	18,090,152,000
House bill, fiscal year 1979	18,014,029,000
Senate bill, fiscal year 1979	23,365,764,000
Conference agreement	18,288,201,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1978	+5,089,860,000
Budget estimates of new (obligational) authority, fiscal year 1979	+198,049,000
House bill, fiscal year 1979	+274,172,000
Senate bill, fiscal year 1979	−5,077,563,000

JAMIE L. WHITTEN,
FRANK E. EVANS,
BILL D. BURLISON,
MAX BAUCUS,
BOB TRAXLER,
BILL ALEXANDER,
MATTHEW F. MCHUGH,
ROBERT L. F. SIKES,
WILLIAM H. NATCHER,
GEORGE H. MAHON,
MARK ANDREWS,
J. KENNETH ROBINSON,
JOHN T. MYERS
(except for amendment No. 118),
ELFORD A. CEDERBERG,
Managers on the Part of the House.

THOMAS F. EAGLETON,
JOHN C. STENNIS,
WILLIAM PROXMIRE,
ROBERT C. BYRD,
DANIEL K. INOUYE,
BIRCH BAYH,
LAWTON CHILES,
QUENTIN N. BURDICK,
WARREN G. MAGNUSON,
HENRY BELLMON,
MILTON R. YOUNG,
MARK O. HATFIELD,
TED STEVENS,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. RODINO (at the request of Mr. WRIGHT) for today, on account of illness in the family.

Mr. AMMERMAN (at the request of Mr. WRIGHT) for the week of September 18 through 22, for hospitalization.

Mr. CORMAN (at the request of Mr. WRIGHT) for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. RUDD) to revise and extend their remarks and include extraneous material:)

Mr. DUNCAN of Tennessee, for 5 minutes, today.

Mr. GOLDWATER, for 5 minutes, today.

Mr. RUDD, for 15 minutes, today.

(The following Members (at the request of Mr. YOUNG of Missouri), to revise and extend their remarks, and to include extraneous matter:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. BINGHAM, for 5 minutes today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. PEPPER. for 10 minutes, today.

Mr. BAUCUS, for 5 minutes, today.

Mr. DIGGS, for 5 minutes, today.
Mr. WOLFF, for 5 minutes, today.
Mr. OTTINGER, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. RUDD) and to include extraneous matter:)

Mr. FINDLEY in two instances.
Mr. DERWINSKI in three instances.
Mr. EMERY.
Mr. RHODES.
Mr. BROWN of Ohio.
Mr. COLLINS of Texas in two instances.
Mr. GREEN.
Mr. CONABLE.
Mr. SYMMS in two instances.
Mr. DORNAN.

(The following Members (at the request of Mr. YOUNG of Missouri) and to include extraneous matter:)

Mr. BINGHAM in 10 instances.
Mr. CARNEY.
Mr. RODINO in two instances.
Mr. ANNUNZIO in six instances.
Mr. GONZALEZ in three instances.
Mr. ANDERSON of California in three instances.
Mr. BROWN of California in 10 instances.
Mr. MAZZOLI.
Mr. EDWARDS of California.
Mr. DOWNEY.
Mr. EDGAR.
Mr. VOLKMER.
Mr. VENTO.
Mr. BAUCUS in two instances.
Mr. VAN DEERLIN.
Mr. HEFNER.
Mr. BRECKINRIDGE in two instances.
Mr. CONYERS.
Mr. MURPHY of New York.
Mr. LEDERER.
Mr. PEPPER.
Mr. MOTTL.
Mr. MCDONALD.
Mr. LAFALCE.
Mr. UDALL.
Mr. HAMILTON.
Mr. LONG of Louisiana.
Mr. BREAUX.
Mr. STARK.
Mr. RANGEL.

SENATE BILL AND CONCURRENT RESOLUTION REFERRED

A bill and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1147. An act to relieve the liability for the repayment of certain erroneously made contributions by the United States; to the committee of the judiciary; and

S.J. Res. 160. Joint resolution to initiate preliminary studies for the restoration and renovation of the Pension Building in Washington, District of Columbia, to house a Museum of the Building Arts, and, for other purposes; to the Committee on Public Works and Transportation.

ENROLLED BILLS SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1427. An act for the relief of Marie Grant;

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 5097. An act for the relief of Dr. Daryl C. Johnson;

H.R. 6760. An act for the relief of Charles M. Metott; and

H.R. 12772. An act to facilitate the exchange of certain lands in the State of Oregon, and for other purposes.

ADJOURNMENT

Mr. YOUNG of Missouri. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 47 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, September 19, 1978, at 11 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4988. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting plans for works of improvement in two watersheds, neither of which involves a project with a structure providing more than 4,000 acre-feet of total storage capacity, pursuant to section 5(3) of the Watershed Protection and Flood Prevention Act, as amended; to the Committee on Agriculture.

4989. A letter from the Chairman, Cost Accounting Standards Board, transmitting a proposed new cost accounting standard entitled "Part 416—Accounting for Insurance Costs—a Cost Accounting Standard which establishes criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods and their allocation to cost objectives," pursuant to section 719(h)(3) of the Defense Production Act of 1950, as amended; to the Committee on Banking, Finance and Urban Affairs.

4990. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b; to the Committee on International Relations.

4991. A letter from the Secretary, Federal Energy Regulatory Commission, transmitting the annual report on final valuations of properties of common carriers for ratemaking purposes, pursuant to section 19a(d) of the Interstate Commerce Act, as amended; to the Committee on Interstate and Foreign Commerce.

4992. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting plans for works of improvement in various watersheds, each of which involves a project with at least one structure which provides more than 4,000 acre-feet of total storage capacity, pursuant to section 5(3) of the Watershed Protection and Flood Prevention Act, as amended; to the Committee on Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. REUSS: Committee on Banking, Finance and Urban Affairs. H.R. 9937. A bill to amend the One Bank Holding Company Act of 1970; with amendment (Rept. No. 95–1574). Referred to the Committee of the Whole House on the State of the Union.

Mr. STRATTON: Committee on Armed Services. H.R. 11945. A bill to authorize the Secretary of the Army to return 10 paintings to the Navy of the Federal Republic of Germany; with amendment (Rept. No. 95–1575).

Mr. REUSS: Committee on Banking, Finance and Urban Affairs. H.R. 12728. A bill to amend the Coinage Act of 1965 to change the size, weight, and design of the $1 coin, and for other purposes; with amendment (Rept. No. 95–1576). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 11741. A bill to amend section 118 of the Internal Revenue Code of 1954 to clarify the treatment of contributions in aid of construction to regulated electric or gas public utilities; with amendment (Rept. No. 95–1577). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 12828. A bill to amend the Internal Revenue Code of 1954 to exclude from the definition of an unrelated trade or business qualified convention and trade show activities carried out by an organization described in section 501(c)(3); with amendment (Rept. No. 95–1578). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHITTEN: Committee of conference. Conference report on H.R. 13125 (Rept. No. 95–1579). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were intoduced and severally referred as follows:

By Mr. BROWN of Ohio:

H.R. 14097. A bill to provide for an Afro-American History and Culture Board, which shall establish a museum to be known as the National Museum of Afro-American History and Culture; to the Committee on Education and Labor.

By Mr. HALL:

H.R. 14098. A bill to delegate power to the States, through their State legislatures, to disapprove certain specified activities licensed by the Nuclear Regulatory Commission, and for other purposes; jointly, to the Committees on Interior and Insular Affairs, and Interstate and Foreign Commerce.

By Mr. HAMMERSCHMIDT:

H.R. 14099. A bill to prohibit the Secretary of Agriculture and the Secretary of Health, Education, and Welfare from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until the development of a satisfactory alternative food preservative; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. BROWN of Ohio:

H.R. 14100. A bill to establish a program of Federal grants to encourage the employment and training of unemployed individ-

uals; to the Committee on Education and Labor.

By Mr. LAFALCE:

H.R. 14101. A bill to amend the National Foundation on the Arts and Humanities Act of 1965 to authorize the purchase and display of works of art, and for other purposes; to the Committee on Education and Labor.

By Mr. LAFALCE (for himself, Mr. BYRON, Mr. HEFTEL, Mr. HOLLENBECK, Mr. MARKEY, and Mr. PATTEN):

H.R. 14102. A bill to amend the Internal Revenue Code of 1954 to encourage the targeting of manufacturing related investments in labor surplus areas by providing, with respect to property placed in service in such areas, an additional depreciation deduction and an additional investment tax credit, and by providing, with respect to real property located in such areas, an additional deduction for State and local real property taxes; to the Committee on Ways and Means.

By Mr. LAFALCE (for himself, Mr. CARR, Mr. ST GERMAIN, and Mr. STOKES):

H.R. 14103. A bill to amend the Internal Revenue Code of 1954 to provide for cost-of-living adjustments in the amount of the personal exemption and in the individual tax rates; to the Committee on Ways and Means.

By Mr. LEGGETT (for himself, Mr. MURPHY of New York, Mr. DINGELL, Mr. RUPPE, Mr. FORSYTHE, Mr. BOWEN, Mr. OBERSTAR, Mr. DE LA GARZA, Mr. YOUNG of Alaska, Mr. AUCOIN, Mr. EMERY, Mr. HUGHES, Mr. AKAKA, Mr. DORNAN, Mr. EVANS of Delaware, Mr. TRIBLE, and Mr. ROONEY):

H.R. 14104. A bill to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mrs. SMITH of Nebraska:

H.R. 14105. A bill to amend the Internal Revenue Code of 1954 to remove certain limitations on the estate and gift tax marital deductions; to the Committee on Ways and Means.

By Mr. WEISS (for himself, Mr. EILBERG, Mr. GREEN, Ms. HOLTZMAN, Mr. MANN, Mr. STEERS, and Mr. STOKES):

H.R. 14106. A bill to provide for payments in lieu of taxes to local governments by the Administrator of General Services based upon the amount of certain tax exempt property owned by the United States and foreign governments within such locality; to the Committee on Government Operations.

By Mr. WEISS (for himself, Mr. LAFALCE, Mr. OTTINGER, Ms. SCHROEDER, Mr. SOLARZ, and Mr. STARK):

H.R. 14107. A bill to facilitate the economic adjustment of communities, industries, and workers to civilian-oriented initiatives, projects, and commitments when they have been substantially and seriously affected by reductions in defense contracts, military facilities, and arms export which have occurred as a result of the Nation's efforts to pursue an international arms control policy and to realign defense expenditures according to changing national security requirements, and to prevent the ensuing dislocations from contributing to or exacerbating recessionary effects; jointly, to the Committees on Armed Services, Banking, Finance and Urban Affairs, Education and Labor, Government Operations, and Ways and Means.

By Mr. LEACH:

H.R. 14108. A bill to provide indemnities to livestock and poultry producers who incur certain losses as a result of incorrect Government announcements relating to the safety of using nitrites in cured livestock and poultry products; to the Committee on Agriculture.

By Mr. LEACH (for himself and Mr. CAVANAUGH):

H.R. 14109. A bill to direct the Secretary of Agriculture to conduct research with respect to the effects of nitrites on animals and with respect to possible nitrite substitutes; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. LEACH (for himself and Ms. OAKAR):

H.R. 14110. A bill to provide for the striking and public sale of a series of gold medallions commemorating outstanding individuals in the American arts; to the Committee on Banking, Finance and Urban Affairs.

By Mr. PEPPER (for himself and Mr. DRINAN):

H.R. 14111. A bill to amend title XVIII of the Social Security Act to reduce certain deductibles and coinsurance under the medicare program and to fund such reductions from general revenues; jointly, to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. POAGE:

H.R. 14112. A bill to authorize and direct the Secretary of Agriculture to establish a national program of rangeland research to be carried out by the several States; to the Committee on Agriculture.

By Mr. FRASER (for himself, Mr. STOKES, Mr. OTTINGER, Mr. SEIBERLING, Mr. BEDELL, Mr. WAXMAN, Mr. DRINAN, Mr. NOLAN, Mr. MARLENEE, Mr. EDWARDS of California, Mr. DICKS, Mr. BAUCUS, Mr. HUGHES, Mr. MIKVA, and Mr. JEFFORDS):

H. Res. 1352. Resolution urging the United States and Canada to cooperate in their efforts to improve the quality of air in the boundary regions; to the Committee on International Relations.

By Mr. HARRIS (for himself and Mr. FLIPPO):

H. Res. 1353. Resolution disapproving the alternative plan for pay adjustments for Federal employees recommended and submitted by the President to the Congress on August 31, 1978, under section 5305(c) of title 5, United States Code; to the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Ms. HOLTZMAN introduced a bill (H.R. 14113) for the relief of Jean Bernard, which was referred to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

537. The SPEAKER presented petition of the American Theatre Association, Washington, D.C., relative to the Lifelong Learning Program; which was referred to the Committee on Education and Labor.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. COUGHLIN:

(To the amendment offered by Mr. DANIELSON.)

—On page 8, immediately after line 5, insert the following:

(7) The identity of all positions held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution, except that this paragraph shall not require the reporting of positions held in any religious, social, fraternal, charitable, or political entity.

—On page 8, immediately after line 5, insert the following:

(8) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employee.

H.R. 1

By Mr. DANIELSON:

(Amendment to the amendment in the nature of a substitute.)

—Page 27, line 2, strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 27, after line 23, insert "Each report referred to in subsection (b) of this section shall, with respect to the spouse of the reporting individual, contain information listed in paragraphs (1), (3), and (4) of subsection (a) only.".

Page 27, line 24, strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 28, line 7, after "benefit." insert "Each report referred to in subsection (b) of this section shall, with respect to any dependent child, contain information listed in paragraphs (3) and (4) of subsection (a) only.".

Page 57, line 22, strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 58, after line 19, insert "Each report referred to in subsection (b) of this section shall, with respect to the spouse of the reporting individual, contain information listed in paragraphs (1), (3), and (4) of subsection (a) only.".

Page 58, line 20, strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 59, line 4, after "benefit." insert "Each report referred to in subsection (b) of this section shall, with respect to any dependent child, contain information listed in paragraphs (3) and (4) of subsection (a) only.".

H.R. 1

By Mr. ECKHARDT:

(Amendment to the amendment (H.R. 13850) offered by Mr. DANIELSON.)

—Page 49, immediately after line 24 insert the following new subsection:

"(g) The prohibitions contained in subsection (c) of this section shall not apply with respect to any formal or informal appearance before or communication to a department or agency by a person who is a member in good standing before, and is licensed or certified to practice in a profession by, any Federal or State licensing or certifying authority for such profession, if the following conditions are met:

"(1) Such person is subject to discipline, including suspension or revocation of such person's license or certification to practice, by the licensing or certifying authority on account of—

"(A) a failure to possess the requisite qualifications to represent others,

"(B) a lack of character or integrity, or

"(C) engaging in unethical or improper professional conduct.

"(2) Such department or agency has in effect standards of ethical conduct—

"(A) for its officers and employees which, at a minimum, proscribe and subject such

officers and employees to disciplinary action, including suspension or dismissal, for—

"(i) using public office for private gain,

"(ii) giving preferential treatment to any person,

"(iii) impeding Government efficiency or economy,

"(iv) compromising independence or impartiality,

"(v) making a Government decision outside official channels, or

"(vi) affecting adversely the confidence of the public in the integrity of government; and

"(B) for its former officers and employees which, at a minimum, provide for disciplinary action, including the suspension or revocation of the privilege of appearing or practicing before it, upon a finding (after notice and an opportunity for hearing) of—

"(i) failure to possess the requisite qualification for representing others,

"(ii) lack of character or integrity; or

"(iii) engaging in unethical or improper professional conduct.

"(3) Such appearance before, or communication to such department or agency is of a category exempted from the prohibitions contained in subsection (c), for purposes of this subsection, by general rule or regulation promulgated by the department or agency, in consultation with the Director of the Office of Government Ethics, and published in the Federal Register.

"(4)(A) A file containing—

"(i) any such written communication (and responses thereto),

"(ii) memoranda stating the substance of any such oral communication (and responses thereto), and

"(iii) all written communications (and responses thereto) and memoranda stating the substance of all oral communications (and responses thereto) in connection with any such appearance,

is made available for public inspection and copying immediately upon request, notwithstanding any provision of section 552(a)(6) of title 5, United States Code.

"(5) Such appearance is not before, or communication is not with, any person under the direct supervision and control of such former officer or employee, while employed with such department or agency.

"(6) Such former officer or employee files a written declaration with the department or agency that he or she is currently qualified to appear in a representative capacity before the department or agency, and that the appearance or communication is not intended to have, and cannot reasonably be expected to have, any effect described in paragraph (2)(A)(i) through (vi) of this subsection. For purposes of this subsection, the term "State" includes the District of Columbia and any territory or possession of the United States.

Page 49, line 25, strike out "(g)" and insert in lieu thereof "(h)."

Page 50, line 21, strike out "(h)" and insert in lieu thereof "(i)".

H.R. 11733

By Mr. GIAIMO:

—On page 84, after line 4, insert the following new section:

POLICY ON LEVEL OF AUTHORIZATIONS FROM HIGHWAY TRUST FUND

SEC. 101A. (a) Chapter 1 of title 23 of the United States Code is amended by inserting after section 101 the following new section:

"§ 101A. Policy on level of authorizations from Highway Trust Fund.

"(a) DECLARATION OF POLICY.—(1) It is hereby declared to be the national policy that annual authorizations for programs to be financed from the Highway Trust Fund be closely related to anticipated annual receipts accruing to the fund in order that the decision on appropriate program levels and the decision on sources of revenue to finance the program be made in conjunction with each other.

"(2) It is further declared that whenever authorizing legislation provides for growth in program levels, such growth should be consistent with (A) the rate of growth of revenues from existing sources, (B) the ability of States responsibly to obligate increased Federal funds, and (C) a sound overall Federal fiscal policy.

"(3) In determining for these purposes whether or not authorizations are closely related to Highway Trust Fund receipts, the estimated net receipts are to be adjusted upward as described in subsection (e) of this section. The annual authorizations will be considered to be closely related to receipts if they are less than or equal to the adjusted net receipts; but if the new authorizations from the Highway Trust Fund for the next fiscal year are greater than the adjusted net receipts, such new authorizations are to be reduced as provided for in the following subsections.

"(B) DETERMINATION OF NEED FOR CUTBACK IN AUTHORIZATIONS.—(1) The Secretary of the Treasury, after consultation with the Secretary of Transportation and at least 120 days before the beginning of each fiscal year, shall estimate—

"(A) the adjusted net receipts of the Highway Trust Fund for such fiscal year, and

"(B) the new Highway Trust Fund authorizations for such fiscal year.

"(2) If the Secretary of the Treasury estimates that the new Highway Trust Fund authorizations for the fiscal year will exceed the estimated adjusted net receipts for such fiscal year, he shall determine the percentage which such adjusted net receipts are of such authorizations, and he shall publish this percentage in the Federal Register at least 90 days before the beginning of the fiscal year.

"(c) CUTBACK OF NEW HIGHWAY TRUST FUND AUTHORIZATIONS.—Notwithstanding any other provision of law, if for any fiscal year the new Highway Trust Fund authorizations exceed adjusted net receipts, the Secretary of Transportation shall—

"(1) in the case of any new Highway Trust Fund authorization which is of the kind subject to apportionment, apportion (in lieu of the amount which, but for this subsection, would be apportioned) the amount obtained by multiplying the amount authorized to be apportioned for such fiscal year by the percentage determined for such year, and

"(2) in the case of any new Highway Trust Fund authorization which is not of the kind subject to apportionment, place a ceiling on the amount of such authorization for such fiscal year which is the amount obtained by multiplying the amount of such authorization by the percentage determined for such year.

"(d) ADJUSTMENT SUPERSEDED BY LEGISLATION REDUCING AUTHORIZATIONS.—An adjustment made by the Secretary of Transportation under subsection (c) shall not go into effect if, prior to the start of the fiscal year involved, the Congress passes legislation containing new Highway Trust Fund authorizations that are less than or equal to the estimated net adjusted receipts.

"(e) DEFINITIONS.—For purposes of this section—

"(1) The term 'net receipts', with respect to any fiscal year, means—

"(A) the amounts appropriated to the Highway Trust Fund by section 209(c) of the Highway Revenue Act of 1956 for such year, reduced by the amounts transferred to other trust funds and further reduced by payments and credits under the Internal Revenue Code of 1954, and

"(B) interest credited to the Highway Trust Fund for such year.

"(2) The term 'adjusted net receipts', with respect to any fiscal year, means the net receipts for such year, appropriately adjusted as follows:

"(A) For each of the fiscal years 1979, 1980, 1981, and 1982, the net receipts shall be increased by $300,000,000, $300,000,000, $300,000,000 and $300,000,000, respectively.

"(B) The net receipts shall be further adjusted by the amount by which any new Highway Trust Fund authorization taken into account for a prior fiscal year under this section has lapsed, been cancelled, or otherwise been changed.

"(C) The net receipts shall be further adjusted by the amount by which the actual net receipts for the most recent fiscal year for which actual receipts are known differ from the estimate made by the Secretary of the Treasury for that year.

"(D) The net receipts shall be further adjusted for any excess of adjusted net receipts over the new Highway Trust Fund authorizations, to the extent such excess has not theretofore been taken into account under subsection (f) of this section.

"(3) The term 'new Highway Trust Fund authorization', with respect to any fiscal year, means authorization to make appropriations out of the Highway Trust Fund which first becomes available for obligation in such fiscal year. The term includes contract authority.

"(f) TECHNICAL CONSIDERATIONS—RESTORATION OF CERTAIN WITHHELD AMOUNTS.—(1) If—

"(A) the Secretary of the Treasury estimates that the adjusted net receipts for a fiscal year will exceed the new Highway Trust Fund authorizations for such fiscal year, and

"(B) the Secretary of Transportation has reduced new Highway Trust Fund authorizations for any preceding fiscal year pursuant to subsection (c),

the Secretary of the Treasury shall compute the amount of the excess referred to in subparagraph (A) and shall advise the Secretary of Transportation of the amount thereof. The Secretary of Transportation shall then apportion (or otherwise make available for use) the new Highway Trust Fund authorizations referred to in subparagraph (B) for their authorized purposes.

"(2) For purposes of paragraph (1)—

"(A) the aggregate amount restored for any fiscal year shall not exceed the excess determined under paragraph (1) for such fiscal year;

"(B) restoration under this subsection shall be made in the order of the fiscal years for which amounts were withheld under subsection (c);

"(C) in the case of any partial restoration of authorizations for any fiscal year, the amount of any authorization restored shall bear the same relation to the total amount restored as the amount of such authorizations withheld bore to the aggregate amount withheld under subsection (c) for such fiscal year; and

"(D) any amount restored shall remain available for the period for which it would be available if the authorization took effect with the fiscal year for which there is restoration under this subsection.

"(g) TRANSITIONAL RULES.—(1) In the case of the fiscal year beginning October 1, 1978, the Secretary of the Treasury—

"(A) shall make the estimate under subsection (b) not later than 5 days after the date of the enactment of this section, and

"(B) shall publish the percentage in the

Federal Register not later than 10 days after such date.

"(2) Any new Highway Trust Fund authorization which becomes available on the enactment of the Surface Transportation Assistance Act of 1978 shall be treated as a new Highway Trust Fund authorization for the fiscal year 1979.".

"(h) EFFECTIVE DATE.—The provisions of this amendment shall first be effective for trust fund authorizations for fiscal years beginning after September 30, 1978 and shall not be interpreted to reduce or withhold any funds authorized for prior fiscal years."

(b) The table of sections for chapter 1 of such title 23 is amended by inserting immediately after the item relating to section 101 the following new item:

"101A. Policy on level of authorizations from Highway Trust Fund.".

H.R. 11942

By Mr. VOLKMER:

—On page 8, strike lines 20 and 21 and insert in lieu thereof the following: "which is filed on or after the date of enactment of this Act."

H.R. 12161

By Mr. GILMAN:

—On the first page, beginning on line 5, strike out "$2,300,000,000" and insert in lieu thereof "$2,309,000,000".

Page 2, line 3, strike out "$2,300,000,000" and insert in lieu thereof "$2,309,000,000".

Page 2, line 6, strike out "$3,300,000,000" and insert in lieu thereof "$3,309,000,000".

Page 2, immediately after line 6, insert the following new subsection:

(d) Section 301 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

"(k) RECONSTRUCTION.—(1) The Corporation shall (A) carry out such reconstruction of the railroad bridge over the Hudson River at Poughkeepsie, New York, as is necessary for the purposes of this subsection and make appropriate repairs and improvements in rail yards and tracks which service the rail system using such bridge, (B) restore freight service on such system at least to the extent provided prior to the fire damage to such bridge in 1974, and (C) take appropriate steps to promote the use of such system.

"(2) Not more than $9,000,000 of the funds received by the Corporation from the sale of its securities to the Association under section 216 of this Act shall be available for purposes of carrying out the provisions of this subsection.".

EXTENSIONS OF REMARKS

MERIT SHOP CONSTRUCTION

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. RHODES. Mr. Speaker, the construction industry is this country's largest and perhaps most important industry. In recent years, the construction industry has been undergoing some fundamental changes, changes that, by most accounts, are producing new levels of competition in a vital industry.

It is not always appreciated that those who now perform the majority of construction in this country represent a relatively new and fresh breed of construction contractors intent on preserving and enhancing the free market in construction without undue interference from the Government or any other group.

Quite appropriately, they call themselves "merit shop" contractors, which means that construction jobs are awarded to the lowest responsible bidder, that other construction firms, whether independent or union, should be protected in their right to do business with one another, and that individual workers should be free to choose whether or not they want to belong to a union.

Mr. Speaker, I would like to call your attention and that of my colleagues to the week of September 18–22 which has been designated Merit Shop Week by Associated Builders and Contractors to bring attention to this important segment of the construction industry and to highlight its campaign for an interference-free construction industry.

Joseph Burton, President of the Associated Builders and Contractors, one of the Nation's largest groups of builders and contractors, explains it this way:

Construction is this country's largest single industry, contributing nearly 10 percent to the gross national product. And, the Merit Shop has become an important part of the construction industry, whose volume this year will come close to $178 billion.

We decided to designate September 18–22 as Merit Shop Week because we felt more people should be aware of the construction industry, its participants, its impact on the economy, and the best way to keep it strong and healthy.

First, it gives us the opportunity to spread the message of the Merit Shop and how and why it has arrived at the position it now enjoys. The Merit Shop owes its position in the market to the economic forces of competition; quality work; quality prices; and high productivity. These factors are helping to turn the construction industry away from the high cost and low productivity that have characterized it in recent years.

Merit Shop Week also gives us the opportunity to tell why the business of building America is so important and why its management should not be encroached upon by the excesses of "big government and "big" labor, which is intent on protecting its share of the construction industry from the open market.

Unless we are allowed to take full advantage of the competitive potential of the construction industry, it will be in serious trouble. Excessive wages and low productivity coupled with a countless number of ever-increasing government regulations are depriving the industry and consumers of the economic benefits of the nation's largest industry.

During this week, we are attempting to familiarize more people with the cost advantages of "merit shop" construction, which offers the buying public a cost alternative. And, we are attempting to inform elected state and federal officials that the public is tired of paying more and more and getting less and less for their construction dollar."●

NO JOBS FOR YOUTH

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. FINDLEY. Mr. Speaker, the decision of the Congress to reject the youth differential when considering minimum wage bills keeps a lot of young people from jobs where they could get work experience and earn some needed pocket money. The case for the youth differential was eloquently set forth in the September 11 issue of the Hillsboro and Montgomery County News. The editorial was written by Robert R. Bliss:

NO JOBS FOR YOUTH

It's the kids who get the dirty end of the stick when it comes to jobs. Unemployment of young people, now unable to find first jobs, is not only a hardship on them, but a threat to their future well being.

They are learning more and more they can get by either through the generosity of their families or by being added to public welfare rolls. They are not learning the work ethic, one of the major reasons America has risen to its record level of productivity, but instead they are becoming social drones, contributing nothing but their presence.

It's no fault of their own. It's greatly the fault of a misguided Congress that establishes minimum wages, at levels too many employers refuse to pay for inexperienced and untrained workers.

At the present time a high school-age kid with little more then two hands to offer must be paid $2.65 an hour by all employers subject to wage and hour laws. This rate will jump to $2.90 an hour next January 1 and to $3.05 an hour a year later. The high cost of training the young people must be borne by the employer as well as the hourly pay for limited productivity.

If common sense prevailed in Congress and the politicians were not so fearful of labor union demands the $2.90 raise would not be effected as scheduled.

When an employer is surveying the field for an employee he realizes that the current $2.65 an hour is not all he must pay. Should he hire a youth for a 40-hour week he pays out $106 a week in wages plus $6.41 for the employer's share of Social Security, plus $4.24 for state and federal unemployment taxes, a total of $116.65 a week, not counting any other fringe benefits. Thus, the cost of minimum wages at today's rate is actually $2.92 an hour out of the employer's pocket. When the minimum jumps to $2.90 the employers contribution to Social Security will be $7.01 a week and the unemployment tax contribution will be $4.64 a week, so that the actual expense for each minimum wage is no actually $2.90 but $3.19 an hour.

At the News for decades there has been a job open to high school youth assigned to empty wastebaskets, do light janitorial duties and to serve as substitute carrier when regular carriers are absent. At nearly $3 an hour this sort of unskilled help is too expensive; consequently we are not hiring.

We know kids would love to have a job to earn pocket money at a wage rate considerably below the legal requirement. But we know, too, that if labor department inspectors learn of such cozy arrangements the employer would be subject to massive penalties and punitive damages.

Labor unions are generally responsible for ever-increasing minimum wage legislation. Our memory goes back to a level of 40 cents an hour. Top wages then were about $2 an hour. In the ensuing 40 years the levels have incr ..sed nearly ten fold. When the bottom rung on the wage ladder is elevated all of the other rungs go up too, with the top rung much more than the bottom rung ratio of escalation. Since unions prosper from a percentage of the total payroll it is easily understood why higher and higher labor costs are the principal goals of the labor bosses.

We refuse to agree with the principle of liberal do-gooders that it is better for a teenager to be involuntarily unemployed at $2.65 an hour then voluntarily employed at some lower wage level.

We do believe that if more kids had more jobs there would be a pronounced decline in teenage crime statistics. Unemployment and under employment understandably breed contempt for law and order.

Too often teenagers have demonstrated that their materialistic demands will be met, if not by working for them, then by theft and other felonious crimes.

We hope that Congress puts a lid on this endless climb of minimums to halt the increase of teenage jobless, so that kids are not forever handed the dirty end of the job stick—R.R.B.●

PEACE IN THE MIDDLE EAST

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. RODINO. Mr. Speaker, I would like to share my joy at the news of a successful Camp David conference. The greatly improved possibility for peace in the Middle East is a direct result of the hard work and good faith of President Carter, Prime Minister Begin, and President Sadat. The conference should be a catalyst toward final settlement for a lasting peace.

Mr. Speaker, like all Americans, I am proud of the leadership of President Carter has taken to point the way toward peace. When Prime Minister Begin said last night that:

The Camp David Conference should be renamed. It was the Jimmy Carter conference.

He was acknowledging the vital role the President took in bringing these two nations together to try to end 30 years of conflict.

Such courageous action is never without risks. However, with the support of the Congress and of all Americans I am hopeful that President Carter, Prime Minister Begin, and President Sadat can continue the progress they have made, and that a peace treaty will be signed within 3 months.●

A STRONG AND LOYAL ALLY

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. DERWINSKI. Mr. Speaker, the Republic of China has long been a strong and loyal ally of the United States, and in recent years has become a major trading partner as well. These facts ought never to be lost sight of as our Government decides its Asian policies.

The next few years will be critical in United States-Chinese relations. From all indications, President Chiang Ching-kuo, as an experienced, able, and genuinely popular statesman, will be able to provide the Republic of China with the strong and forward-looking leadership that will be required as it meets the many challenges before it. Vigilance and determination will be necessary on both sides of the Pacific if our mutual interests as democratic free-enterprise nations are not to be needlessly sacrificed.

In a recent interview with Reader's Digest's editor David Reed, President Chiang answered questions on a number of key issues concerning his country's future. His replies to those questions give a brief but clear picture of the policies and attitudes of the Republic of China's Government at this historic juncture. Therefore, I recommend this interview to the Members, and wish to insert it at this point:

A TALK WITH PRESIDENT CHIANG

(By David Reed)

Q. Mr. President, the Republic of China has had more hard knocks than most nations—loss of the mainland, compelled to withdraw from the United Nations, political isolation. Yet the country thrives. How has this been possible?

A. We have developed despite hardships because we have never abandoned our political objective, that is, to overthrow the mainland's communist regime and build a united, democratic China. Fortunately, we have great internal unity. The people and the government have always stood together and worked together. Since the government moved to Taiwan, we have developed the economy from zero to what it is today, and this has enabled us to be politically secure. Moreover, that security is bolstered by a strong defense: more than half of our government budget goes for defense.

Q. On the mainland, you were stronger than the communists, militarily, financially and in other respects. How, then, did they become the victors?

A. It is a question I'm frequently asked. From the time the Republic of China was established in 1911 until 1949 and especially during the war against Japan, we didn't have time to pay proper attention to internal affairs. By infiltration, by intangible force, they usurped the mainland and forced us to leave.

It was a lesson we didn't forget: that we could not allow any communist activity in our army, our economy, our schools, or anywhere else in our society. When we came here in 1949, there were communist guerrilla bases in the suburbs of Taipei. There were communist organizations in the railroad administration, and secret organizations in our army and factories. Their activities were coordinated by the communist organization on the mainland. It took us three years, but we got rid of them.

Q. Some say that infiltration by communist agents to stir up trouble is still the real threat facing the Republic of China. Do you share that concern?

A. We are paying a great deal of attention to this problem. Last year, the communists established a committee responsible for infiltrating Taiwan. We have discovered several instances of espionage. But we have the ability to overcome this problem.

Q. There are others who argue that the Republic's biggest threat is neither invasion nor infiltration, but slow economic strangulation. Are you having economic difficulties because of your increasing political isolation?

A. Not having diplomatic relations with other countries does affect us economically, of course. Nevertheless, our trade volume last year was close to $18 billion. We now have trade relations with more than 120 countries and territories. And we want to continue to expand our trade with others—as long as they are not communist countries.

Q. President Carter recently sent a message to Hua-Kuo-feng saying that the United States is "committed to normalization of relations with the People's Republic of China on the basis of the Shanghai Communique"—which was made in February, 1972 in which the U.S. and the communist regime agreed that the normalization of relations between the two countries is not only in the interest of the Chinese and American people but also contributes to the relaxation of tension in Asia and the world. Can the Republic of China continue to prosper, indeed survive, if this happens?

A. The Republic of China has never considered the so-called Shanghai Communique—signed by Chou En-lai and the ousted Nixon administration—a valid legal document. As to the question of our survival, I have always said that our interests and those of America cannot be divided. If we stick together, both will benefit. If we go separate ways, both will suffer. In any case, the Republic of China will persist.

Q. It has been proposed that the United States adopt the "Japanese formula" vis-a-vis the Republic of China—not have diplomatic relations, but still have strong trade relations. What is your reaction?

A. We cannot even entertain the idea. The two cases are quite different. The Republic of China and the United States have had formal and friendly relations for years. We have fought side by side against the Japanese aggressors. China and America have a Mutual Defense Treaty, ratified by the United States Senate. This treaty has legal status.

Q. When will your forces return to the mainland?

A. It is difficult to say just when it will take place, but we will return, at the suitable time. As I see it, there are two ways the communist regime may go. One is by the uprising of the people on the mainland. The second way is by internal division within the regime itself. We must grasp these opportunities, and also create opportunities.

Q. Do you think Hua Kuo-feng will promote a more humane form of communism than did Mao Tse-tung?

A. Impossible. The regime's oppression of the mainland Chinese will inevitably become more and more severe, because without it, the people would revolt immediately. Yet the more you oppress them, the more pressure you put on people to rise in revolt.

Q. Is it possible, within the foreseeable future, that your government will try to reduce tensions or work out some sort of a peaceful solution with the mainland regime?

A. That is totally impossible. Negotiating with the communists is tantamount to suicide. What free-world country has ever suc-

cessfully done so? Negotiations are a means the communists use to defeat their enemies. We can't forget this because when we were on the mainland we tried some negotiations with the communists. The more we negotiated, the more setbacks we suffered. Never even under the difficult circumstances, will we negotiate with them again. This is the most fundamental policy of the Republic of China.

Q. Recently the Carter administration reported that while what it calls human-rights violations in the Republic of China have diminished, such violations "continue to occur." Is the report accurate?

A. The fundamental difference between the Republic of China and the mainland's communist regime is that we do protect human rights. Respect for human rights is a moral principle this government fully supports, an important aspect of our anti-communist struggle. But if a person is working for the communists, against our anti-communist policy of safeguarding human rights and people's freedom—then of course that is quite a different story.

Q. Earlier we talked about the remarkable economic progress the Republic of China has been making. What developments do you see in this area in the years to come?

A. We must control the budget and not go into the red. This is an absolute. The government also must control market prices in order to avoid inflation and have continued economic stability. There may be other nations that are developing even more rapidly, but not with the degree of stability we have.

By the end of next year, most of the ten major construction projects now underway will have been essentially completed. Then we will start another 12:* At the same time, it is important that we use our land and water effectively, and mechanize our agriculture. We also want to change our labor-intensive industries to more sophisticated, technologically-advanced ones. This way we can improve the quality of our exports to better compete with other countries. This will gradually improve the standard of living, helping our people to live better lives: this year better than the last, and next year better than this.

Q. Why did you decide to run for President instead of remaining Premier?

A. I am a member of the Kuomintang, the ruling party. Since the party nominated me for the office of the Presidency, I agreed to run.

Q. Some people interpreted the selection of Shieh Tung-min as vice-president as a move to meet the political aspirations of those of your citizens born in Taiwan. Will more Taiwanese assume high posts?

A. When I nominated Mr. Shieh Tung-min as my running mate, I never thought about where he comes from. I knew only that he is Chinese. As a matter of fact, all the people in Taiwan are Chinese. As Vice-President Shieh himself has said, we all come to Taiwan from the mainland.

The only difference is some came first, others came later.●

* The ten major construction projects are: the North-South Freeway, railroad electrification, the Suao-Hualien Railroad, the Taoyuan International Airport, the Taichung Harbor, the expansion of the Suao Harbor, the Kaohsiung Shipyard, the Integrated Steel Mill in Kaoshsiung, the petrochemical complex, and nuclear power plants.

The 12 projects which will be started are: a round-the-island railroad, a new cross-island highway in central Taiwan, expansion of the Pingtung-Oluanpi Highway, extension of the North-South Freeway to Pingtung, second-phase and third-phase construction of the Taichung Harbor, building of the Second and Third Nuclear Power Plants, continued construction of the Integrated Steel Mill, establishment of a fund for agricultural mechanization, improvement of important irrigational systems, construction of sea dikes and river embankments, building of new towns and expansion of housing projects, and establishment of cultural centers at cities and counties.

PRESIDENT'S ROLE IN PEACE NEGOTIATIONS

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. BINGHAM. Mr. Speaker, President Carter, Prime Minister Begin, and President Sadat are all to be congratulated for their courage and statesmanship in arriving at the Camp David accords.

Peace has not yet come to the Middle East, but with these accords the road to peace is open.

I had the privilege of being present at the historic signing ceremony in the East room of the White House Monday evening. At that time I rejoiced to see the faces of Menachem Begin and the other Israelis wreathed in smiles. Some even had tears of joy in their eyes. This obviously did not mean that they considered Israel had made no concessions. What the Israeli smiles did mean to me was that they now can see a total peace with Egypt, complete with diplomatic relations, only a few weeks away.

The negotiations over the future of the West Bank and Gaza will no doubt be long and painful. Many questions are left open in the documents, including the thorny problem of Jerusalem. But the beauty of the situation from the Israeli point of view is that these negotiations can take place without the threat of hostile military action on the part of Egypt.

President Carter has made a place for himself in history with the success of the Camp David meetings. He had the courage to invite the Egyptian and Israeli leaders to the meetings without any assurance of success—something Henry Kissinger had said no President had ever done or should do. And he had the courage also, when both sides pressed him for help in the resolution of their differences, to come forward with American suggestions. He did this, not in a threatening manner, but as a skilled mediator would do in a complex labor negotiation. His attitude was never "agree to this, or the United States will punish you;" it was always: "If you want an agreement, this is the approach we think you may have to take."

Americans can and should be proud of their President today. So can the Israelis be proud of their Prime Minister, and the Egyptians of their President.●

FOREIGN POLICY

HON. STEVEN D. SYMMS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. SYMMS. Mr. Speaker, this Nation's foreign policy is often a mirror image of our domestic policy. This Nation's current internal chaos is exemplified in the Federal bureaucracy's great land grabs of our Western States; the refusal to break ahead with nuclear reactors for power; the push by the whimps and whiners to protect every endangered species except man, and so forth, ad nauseam.

Our foreign policy is equally mired in unreality. We are mistaking friends for enemies and accepting foes as associates. The current foreign policy that this Nation endures is carefully analysed by Clare Boothe Luce, a former Congresswoman, former Ambassador to Italy and playwright.

I am pleased to share with my colleagues excerpts of Mrs. Luce's article "Carter's Foreign Policy—A New World for the Russians" published in the American Spectator, October 1978.

The excerpts follow:

[From the American Spectator, October 1978]

CARTER'S FOREIGN POLICY—A NEW WORLD FOR THE RUSSIANS

(By Clare Boothe Luce)

Walter Lippmann once called U.S. foreign policy the "Shield of the Republic." A sound foreign policy is the shield that protects a nation's vital interests abroad, its territorial integrity, its political independence, and the lives and fortunes of its people. The primary goal of a sound foreign policy is the maintenance of the nation's security, by peaceful or diplomatic methods if possible, but by war if necessary. This is what Washington meant when he said in his Farewell Address that our foreign policy should be such that "we may choose peace or war, as our interest, guided by justice, shall counsel."

A nation can make no worse mistake in foreign policy than to substitute the ideal of peace for the idea of security. The corollary of this goal invariably becomes unilateral disarmament. Central to idealistic, pacifistic, and, perhaps, democratic thought has always been the belief that armaments are the cause of war, and that a nation that rejects the concept of force and unilaterally disarms will produce a similar "peace-loving" response from its enemies. This has been the most costly illusion of the democracies in this century. The substitution of the ideal of peace for the idea of security led an unarmed Britain to Munich in 1938; Munich led to World War II in 1939. Two years later, a U.S. foreign policy which had also made peace its supreme goal led America unprepared to Pearl Harbor.

In the lawless world of sovereign nations, the threat of force lies behind all international relations. The triad of diplomacy is persuasion, negotiation, and compromise. But diplomacy can be successful only insofar as it is backed by the triad of adequate military force—air, sea, and land power—and above all by the nation's will to use force, when diplomacy fails, to maintain its security.

Since the end of World War II our interests and those of our allies, "guided by justice," have constantly counseled that we should contain, at every step, the expansion

of Soviet imperialism, by peaceful or diplomatic means if possible, but by war if necessary. The policy of global containment was designed in 1947 to prevent this expansion. Backed by predominant U.S. military strength, and supported by the people, it stood the test of Communist aggression in Korea. It succeeded in Western Europe where it has maintained peace for the longest period Europe has ever known.

The policy of containment perished in the long, ill-conceived, and badly fought war in Vietnam. Dismayed by the magnitude of the task to contain Communist ideological and military expansion, the U.S. cut back its military commitments to the NATO bone, and in the name of a "higher morality" of peace, abandoned the Cold War struggle. And the ideal of peace, embodied in the policy of détente, once again became the supreme goal of U.S. foreign policy.

The melancholy results for American security of the past six years of détente have now become apparent. "A nation has security," Lippmann wrote, "when it does not have to sacrifice any of its vital interests in order to avoid war." Today the American people are beginning to realize that if the U.S. and its allies wish to avoid conflict with the USSR, or its surrogates, they must do so at the sacrifice of some of their vital interests. At the same time, many Americans fear that unless we do avoid war—war anywhere—we will risk nuclear annihilation.

Opinion polls would show that many Americans believe that any war fought in Asia or Africa would turn into "another Vietnam." Despite our superior equipment and overwhelming firepower, we would get "bogged down" in jungles or mountains or savannahs or deserts, and the wily guerrilla tactics of the natives would wear us out and eventually drive us to a humiliating withdrawal. If the natives were supported or provisioned by the Soviets, we "certainly" couldn't win, since the very attempt to win would lead to a "confrontation" with Moscow. And *that* could lead to a nuclear war.

Nor, it seems, could we any longer win a conventional war in Europe. The conventional forces of the Warsaw Pact now outnumber NATO forces three to one. The only way we could halt a Soviet blitz to the channel would be to employ tactical nuclear weapons. And that would "certainly" escalate into nuclear war.

We can't fight a war in the Middle East, even though Israel's survival should depend on it. War on the side of Israel would not only lead to the destruction of the oil fields, on which the economies of all the industrial democracies now rely, but the Soviets would "certainly" come in on the side of the Palestinians, Syrians, Libyans, and Egyptians. And that, too, would lead to nuclear war.

And, as everyone knows, "nobody can win a nuclear war."

So what should we do when we begin to perceive that our vital interests are everywhere threatened by the advance of the enemy, but when at the same time we are certain that any military effort to defend them would end in nuclear destruction? The first thing we should do is to recognize that we have come a long way down the road to Munich since Vietnam. Without public recognition that the "Shield of the Republic" is in desperate need of repair, America has little hope of avoiding World War III—or the alternative of acquiescence to Soviet hegemony. But what we have done instead is to deny to ourselves that our vital interests and our national security really are threatened by the growing might of the USSR and its slow but steady geopolitical advance; to cling desperately to our détente policy of trying to buy Soviet "friendship" with food, money, and technological goods; and to pretend to ourselves that our diplomatic concessions and military withdrawals, in any area of the world where we are faced with the slightest risk of "confrontation," are guided by "moderation," "restraint," and even (as in the case of Israel) by a wise concern for the "best interests" of our allies. What we also have done is to elect a President admirably equipped by temperament, inclination, and inexperience to help us make a virtue of our political, military, and moral impotence.

Consider that major address on foreign policy which Mr. Carter delivered in June 1977, at Notre Dame. This speech epitomized all the intellectual ruses by which we have been concealing from ourselves—and hoping to conceal from the world—the spirit of appeasement and defeatism that now guides our East-West policy. "I believe in détente with the Soviet Union," the President said. "To me, it means progress towards peace." Furthermore, "We are now free of our inordinate fear of Communism." What has freed us of this "inordinate fear" is the "lesson" that the U.S., then the strongest military power in the world, learned from the licking it took in Vietnam at the hands of the Communists. This "lesson," it seems is that it is stupid and wicked for America to try to halt Communist military aggression with military means.

Said the President, "We fought fire with fire, never thinking that fire is better quenched with water. This approach failed, South Vietnam the best example of its intellectual and moral poverty." And what is this miraculous "water" that will now quench the fires of Communist military aggression? Why, the water of *words*, specifically, a flood of pietistic presidential rhetoric. While the President fully understood "the limits of moral suasion, it is a mistake to undervalue the power of words. . . . In the life of the human spirit, words are actions. . . ."

"We live in a new world," the President said. This presumably is the post-Vietnam world in which all right-thinking nations have come to realize that armed resistance to armed aggression is not only futile, but immoral. The principle that had once guided our foreign policy was "a belief that Soviet expansion was almost inevitable, and must be contained," but in the "new world" right is stronger than might, and so this principle is no longer valid. Words being actions, the President had acted—he had "reaffirmed America's commitment to human rights as a fundamental tenet of our foreign policy." And already his human-rights policy had begun to turn the evil tide of totalitarianism: "We can already see dramatic worldwide advances in the protection of the individual from the arbitrary power of the state. . . . The spirit of confidence [in the democratic system] is spreading." Obviously, this "new world . . . calls for a new foreign policy—a policy based on the consistent decency of its values, and an optimism in its historical vision." And what is that "historical vision"? The nearest the President came to defining it was to say that America's "historical role" is "to serve mankind." The address was, essentially, a peace-in-our-time rationalization of the long American Munich that began in Vietnam. It was everything that a people subconsciously ashamed and afraid to stay on the road to Munich—but consciously more afraid to get off—wanted to hear.

A year has passed since Mr. Carter unveiled his new-world, born-again foreign policy. But alack for Mr. Carter—and alas for America—the Communists have shown no willingness to be baptized in the salvific waters of Carterian rhetoric. The Soviet military buildup, in all weapon categories, including nuclear, has proceeded at the same furious pace as before the "new world" of democratic-totalitarian cooperation was created by presidential fiat. Soviet SALT negotiators have proved tougher than ever in their demands that the U.S. strip itself of its newest military "equalizers"—the cruise missile and neutron bomb. And, to the dismay of all except the congenital isolationists and spaced-out doves, like George McGovern, and the Black Africa-Firsters, like Andrew Young, the Soviets together with some 40,000 Cubans are off once again lighting new fires in Africa.

And indeed, what is to prevent them? Mr. Carter has gone on record that it is intellectually and morally reprehensible to "fight fire with fire" in far-off places with strange-sounding names. So for the Soviets and Cubans the military risks of expansion in Africa are negligible, while the material gains in controlling countries with valuable raw materials and the strategic advantages in securing coastal bases on the oil-shipment routes of the West are enormous. The long-term gains of expansion in Africa were long ago pointed out by Lenin. "Who controls Africa," the Father of the USSR said, "controls Europe." The political and military vacuum that has existed on that vast, rich, disorganized continent since the end of European colonialism is not going to be filled by Washington hot air about human rights and majority rule. Dynamic Soviet imperialism has begun to fill it.

In the Middle East, no amount of shuttle diplomacy or Arab and Israeli state visits to Washington can any longer conceal the inability of the U.S. to produce an Arab-Israeli peace treaty acceptable to both sides. Mr. Carter's capacity to ignore international realities, and his proclivity for confusing presidential prestige and rhetoric with military power and political action, were again revealed in the address he delivered last May on the occasion of the 30th Anniversary of the founding of the state of Israel. "The United States," he declared, "will never waver from our deep friendship with Israel; our total, absolute commitment to Israel's security." The "total, absolute commitment" of one nation to the security for another is something that calls for a formal military alliance—such as the U.S. has with the NATO countries. But surely the President knew, even as he spoke, that not a dozen U.S. senators would support a U.S.-Israeli military treaty, or for that matter, any kind of commitment to Israel that might involve us in military action against the Arab nations. U.S. imperatives in the Middle East are militarily to strengthen the Saudis, Iranians, and Egyptians against the USSR and—at whatever costs to Israel—to maintain the flow of Arab oil to the West.

Israel has two imperatives: legitimacy and security—the recognition by its Arab neighbors of its right to nationhood, and its desperate need for defensible borders. But the mere recognition of its "right to exist" by the Arabs is not enough to protect Israel from the Arabs. Without the strong, unambiguous backing of the U.S.—Israel's only ally—Israel's chances of securing defensible frontiers, either in direct negotiations with the Arabs or at the Geneva peace table, are virtually nil.

With the shift in the balance of military power in favor of the USSR, and America's continued dependence on Arab oil, Israel can no longer count on this backing. Israel's demands for security are now seen in Washington as an "obstacle to peace." On the détente road to Munich as it winds through the Middle East, Israel is likely to become a victim.

And what has happened to that other "total and absolute" presidential commitment—Carter's global human-rights policy? His only contribution to foreign policy (which may be fortunate), Carter's attempt to apply his human-rights crusade to the USSR has been a stunning failure. Iron-

ically, this attempt has done even more than events in Africa or the Middle East to expose the impotence of Washington *vis-a-vis* Moscow.

The President's insistence that Moscow honor the human-rights provisions of the Helsinki accords, followed by his overt support of Soviet dissidents, provoked a violent reaction in Moscow. And with some reason. The government of a sovereign nation has the right to treat its own citizens in any way it chooses. Overt interference by another nation with this right is always deeply resented, and (as any Class 4 Foreign Service Officer could have told Mr. Carter) not only worsens their relations but invariably fails—unless it is backed by strong political, economic, or military pressures.

Soviet leaders lost no time impressing upon Carter the fact that the U.S. is fresh out of such pressures. In the toughest language to come out of Moscow since the détente agreements were signed, they told President Carter that détente and SALT would not survive his interference in Soviet internal affairs. Soviet human-rights dissidents, and several Jews who had agitated to emigrate, were given show trials and sentenced to long years in prison, or hard labor in the Gulag. To emphasize further their displeasure, the Soviets charged F. J. Crawford, a Moscow-based executive of International Harvester, with illegal currency manipulation. And two American Moscow correspondents, from the New York Times and the Baltimore Sun, were accused of slandering the Soviet state and fined for failing to reply to a Soviet court order to publish retractions.

The President has responded to all of these developments with a few small slaps on the mailed fist of the Kremlin. At Annapolis in June he warned the Soviet leaders against further adventurism in Africa. They must choose, he said, between "confrontation and cooperation" (whatever that meant). And in reprisal for Moscow's treatment of its own nationals, and ours, he called off several American technological missions scheduled to visit Moscow, cancelled the sale of a giant computer, and imposed an export-licensing system on sales of oil-related equipment.* But at the same time he reiterated his devotion to détente ("the road to peace and progress") and his desire for the consummation of a SALT treaty that is "fair to both parties."

In its notes on U.S.-Soviet affairs, the Advanced International Institute summed up: "Carter's Annapolis speech . . . evoked a Soviet frontal assault on all major areas of U.S. policy towards the USSR. . . . The keynote of this assault [a *Pravda* editorial] contained uparalleled overtones of arrogance and contempt, as well as threats to peace if the U.S. did not 'mend its way.'" The gist of the "frontal assault" was that the "objective reality" is now a preponderance of military and ideological power in Soviet hands, and short of initiating a suicidal nuclear holocaust, there is nothing the United States can do to prevent the USSR from accomplishing its world revolutionary mission. America's leaders do not seem to realize that America has "lost its strategic supremacy." Washington "is not taking into account the growth of the forces of World Socialism," and when it does, it will see that "the concept of confrontation holds no promise in the long term. . . . Washington strategists would be well advised to understand this." In the Soviet view, America can no longer "choose war or peace," as U.S. interests, guided by justice, counsel. Henceforth, America has no choice but to accept détente—and peace—on Soviet terms.

The Soviets do not ignore the reality of the vast potential strength of the U.S. But their confidence in the ultimate triumph of a Soviet-dominated world is based on the belief that the American people have lost the will to resist, and that our leadership is too confused, vacillating, and indecisive to develop policies, strategies, and capabilities to restore the balance of power to the West. Like the President himself, we are too enamored of the ideal of peace to focus on the idea of our own security—though it has now become a question of our survival.

But the Soviets could be wrong. There is a strong, stubborn current in America of anti-Communism which has now begun to surface again. Americans have been learning the hard way—thanks to Soviet actions in the last year—a lesson that it is not yet too late for President Carter to learn: that the foreign policy of a great nation cannot be made "in the realm of the spirit." It must be made in the jungle world of sovereign nations, where foresight, purpose, and resolve are more productive of peace and progress than noble visions and moral impulses, where firm actions speak louder than fair words, and where—in the end—mind more than heart, and might more than right, decide the fortunes of nations.●

* Shortly after this, however, the administration approved the sale of a Dresser Industries welding machine to the Soviet Union.

THE TRIAGE APPROACH TO LONG-TERM CARE DELIVERY

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. PEPPER. Mr. Speaker, the June 1978 issue of the Greater Hartford, Conn., Business Review carried an excellent article regarding the Triage program in Plainville, Conn., and its executive director, Mrs. Joan Quinn.

For 4 years, Triage, Inc., has captured the attention of professionals in the fields of health and aging, as it is among the foremost projects designed to demonstrate alternative methods of providing health and social services to elderly persons. Supported by grants from the Department of Health, Education, and Welfare and the State of Connecticut as well as section 222 of the 1972 Social Security Act Amendments, Triage functions as a case management system for the elderly, providing an initial assessment—conducted in the home of the elderly person—and assuring that the necessary services are delivered. As a demonstration project, Triage has been able to secure medicare reimbursement for services not generally covered and to arrange for other health and social services which are not readily available to older persons because of restrictive requirements and eligibility criteria.

In its few years of operation, Triage has not only served 2,100 clients, but it has developed a research function which will be useful to the Department of Health, Education, and Welfare and to others who seek to establish similar single-entry models of care for the elderly.

The emphasis of the Triage program is on home care, and every effort is made to maintain elderly persons in their own homes, surrounded by their own belongings and close to the familiar comforts of family and friends. As my colleagues are aware, the Select Committee on Aging, which it is my privilege to chair, has been deeply involved in efforts to make in-home health services more readily available under the medicare program. I am pleased that the Ways and Means Committee has brought before the House legislation which includes two of the steps we have proposed: Removal of the prior hosptalization requirement under part A and deletion of the visit limits under both parts A and B.

Moreover, the House-Senate conferees on H.R. 12255, the Older Americans Act Amendments of 1978, retained a proposal similar to legislation proposed by Congressman WILLIAM COHEN, ranking minority member of the Subcommittee on Health and Long-term Care, which I also chair, and me, which seeks to make funds available for the creation of community initiatives designed to assure that older persons receive the health and social services to which they are entitled and for which reimbursement is available. In short, we want to see that elderly persons receive the services they need when they need them. And that is what the Triage program has done. It is a fine program, and Mrs. Quinn and the staff of Triage deserve recognition by the Congress.

Mr. Speaker, I insert the article regarding Mrs. Quinn and Triage, Inc. at this point in th RECORD:

EXECUTIVE PROFILE—JOAN QUINN BATTLES RUNAWAY HEALTH COSTS

"Once again, your President and your nation are calling upon the patriotism, ingenuity, and enlightened self-interest of the private sector. This time, the problem is equally urgent: it is the problem of runaway health costs," spoke Joseph Califano, Secretary of the Department of Health, Education, and Welfare, recently at a Washington conference convened for executives of labor and management.

The cost of healthcare is a problem well-known to Joan Quinn, the Executive Director of Triage, Inc. in Plainville, Connecticut. Mrs. Quinn, a nurse-clinician, has led the Triage Program in a four year battle to keep elderly people independent in their homes and exempt from costly institutionalization in hospitals and nursing homes. The Triage research and demonstration program is the first and only effort in the United States to evaluate the total health, social, and life support needs of the elderly. In addition, the Secretary of DHEW has authorized broad and comprehensive waivers to Triage which pay for numerous services not generally reimbursed under Medicare.

"Triage manages the system for the elderly person. We utilize when appropriate, less expensive home delivered services to reduce the incidence of costly institutional services. We accomplish this through a single-entry assessment of all medical, social and life-support needs which an older adult may have," explained Joan Quinn. As a research and demonstration project, Triage has managed the healthcare and social service systems for over 1,800 individuals in the New Britain/Bristol area. "This is the first time in our country that the healthcare needs of the elderly have been evaluated on such a broad and comprehensive basis," said Quinn.

Triage functions in the following manner: Masters degree prepared nurse-clinician/social service coordinator teams assess the elderly person's health and social service needs in their own home, order services from contracted existing community providers, and monitor the need for continued delivery of services. In addition, through Medicare waivers authorized by Section 222 of the Social Security Act of 1972 (P.L. 92-603) and a unique reimbursement system established jointly with the Division of Direct Reimbursement of the Social Security Administration, Triage approves each bill for serv-

ices, captures cost data for the cost-effective design of a University of Connecticut Research Team, and provides payment for all services deemed appropriate to assist the elderly person to remain independent in his own environment.

Quinn was prepared for the Triage effort through twelve years of progressive teaching and administrative responsibility at St. Francis Hospital, a 740 bed acute care facility in Hartford. She was educated at the University of Connecticut's School of Nursing, graduating in 1959 with a Bachelors of Science degree in Nursing. Later, after her St. Francis Hospital experience, she returned to U-Conn. to complete her Masters degree in 1974. Subsequently, she qualified as a "Certified Geriatric Nurse Practitioner," a designation bestowed upon qualified individuals by the American Nurses Association.

Quinn has remarked that "government officials, labor, and business are all searching for a system to control the rising costs of elderly care, not only for the elderly but for the general population. Triage provides a solution to half of that dilemma. Its assessment, coordination, and monitoring function serves as a third party control on the utilization on health and social services paid by a third party such as the government. It is still necessary for someone such as Connecticut's Commission on Hospitals and Healthcare to control the rate charged for those services. The rate control provides the other half of a cost containment measure."

At various points, Quinn also has interspersed teaching as a clinical instructor at the University of Hartford, University of Connecticut, and Central Connecticut State College, sharing her nursing administration and experiences with the elderly, with others. She has guest lectured frequently at other academic institutions including St. Joseph College, Central Connecticut State College, Boston College, and the University of Bridgeport. Mrs. Quinn has also addressed national audiences at the request of sponsoring nurse, social worker, and health planner groups at their respective conventions.

Having just returned from consulting with Long Beach, California's emerging homecare program, Mrs. Quinn is preparing to address the A.N.A.'s national educational symposium for Registered Nurses called chautaugau '78 to be held this August in Vail, Colorado. "The federal government encourages the dissemination of the new information gained from Triage. Since there is no cost to our agency. I am quite willing to share the information with other interested groups," she remarked.

As a result of the overwhelming support for the Triage model of homecare for the elderly, Quinn has been requested to speak regularly throughout the country. In 1977 alone, Quinn was invited to speak in Chicago, Kansas City, Minneapolis, New York, Boston, Trenton, Cleveland, and numerous times in Washington, D.C.

In addition, Triage receives requests for information from legislators, agencies, universities, service providers, insurance companies, etc. from almost every state of the United States. Considerable support is pending for the concepts implemented by Triage. Recently, the U.S. General Accounting Office issued a report "home Health—The Need for National Policy to Provide for the Elderly" indicating a need for community comprehensive health and social service.

Previously, the Congressional Budget Office issued an options paper entitled "Long-Term Care for Elderly and Disabled," which also supported the Triage model. Other nationally known organizations have supported the single-entry comprehensive homecare program for the elderly. They include: Blue Cross Association, American Hospital Association, National League for Nurses, American Medical Association, the National Council for Homemaker/Home Health Aid services.

Further pending legislation proposed by various senators and representatives includes Representative Conable, Representative Fraser, Representative Pepper, Representative Cohen, former Representative Koch, and Senator Domenici. Business and labor are also beginning to take an interest in healthcare and the system which provides it. Robert Kilpatrick, President of Connecticut General Life, said, "We need to review the flagging effort to reform and restructure the delivery system from within, to stimulate competition and internal cost control incentives."

The newly formed Washington Business Group on Health recently suggested, "We are compelled to talk of incentives, to conserve, to question the philosophy that more equals better, to waste less and so doing, expand the service capacity of our existing system. We are simply not getting a very good return on a gigantic investment."

Quinn says her management style is that of the school of the behaviorist; however, she feels quite comfortable directing her 35 member staff, including 20 professional staff members. Her leadership can be readily seen in Triage's office environment through the warm and congenial conversations overhead there. One of her assistants warned, "Be careful what you say about Joan. As you know, she's not only my boss; she's my friend." The casual observer can easily recognize the respect and loyalty shown Quinn at Triage headquarters.

Quinn, a resident of Wethersfield, has also served on many governmental and professional committees. Most prestigious of these committees was the governor's Blue Ribbon Committee to Investigate Nursing Homes. She also serves on the committee of her local Health Systems Agency and Professional Standards Review Organization. At the national level, Mrs. Quinn is a member of the National Certification Board for Geriatric Nurse Practitioners; a certification process of the American Nurses Association. She is presently serving on three of the Commissioner of the Department on Aging's Advisory Councils: Home Health-Licensure, Certificate of Need, the Rate Regulation.

In addition to her activities as an Executive Director, Quinn fulfills the role of mother and wife to her family. She can be seen supporting the athletic endeavors of her three boys Eric, Kevin, and Matthew at area ball fields throughout the summer. In addition, her husband, an Expense Analyst at Connecticut General Life Insurance Corporation in Bloomfield, is active in the community, organizing and coaching in various athletic leagues. "My family is very understanding of my professional obligations and I of their athletic endeavors. Both keep us constantly on the go," said Quinn.●

PEACE AND THE MIDDLE EAST

HON. DAVID F. EMERY

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. EMERY. Mr. Speaker, the historic announcement made by President Carter that the leaders of Egypt and Israel had reached an agreement on a framework for settlement of the Arab-Israeli conflict, comes as good news to all of us in the Congress and the United States.

The agreements clearly point out the intense desire of both sides to reach a final and effective peace and the willingness of both leaders to work long and hard at compromise in order to attain the desired outcome. Our gratitude to President Sadat and Prime Minister Begin is unquestionable.

We in the Congress should also take a moment to thank the one person who worked so hard to convene the Camp David summit and then to bring it to such a fruitful conclusion. I refer, of course, to President Carter.

Mr. Speaker, it is not often that I have the opportunity to praise the President for his leadership in foreign policymaking. However, at this moment, I wish to extend my sincerest congratulations to Jimmy Carter for his hard word and dedication to the achievement of peace in the Middle East.

Both the Arabs and the Israelis have a long and difficult journey ahead of them in establishing a lasting peace. Nevertheless, I am confident that the spirit of cooperation shown at Camp David, and the willingness of the President to guide the participants through the tough negotiations yet to come, will ultimately prevail.

Mr. Speaker, I ask all of my colleagues in the House to join me in support of President Carter and his efforts on behalf of peace in the Middle East.●

PRESIDENT CARTER SHOULD WIN THE NOBEL PEACE PRIZE

HON. RONALD M. MOTTL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. MOTTL. Mr. Speaker, I would like to share with you my letter to the Nobel Peace Prize Committee in Oslo, Norway, urging the awarding of the 1979 Nobel Peace Prize to President Carter.

The letter reads as follows:

SEPTEMBER 18, 1978.

Dr. A. SVERDRUP,
Secretary Nobel Peace Prize Committee, Stortingets Nobel Komite, Oslo, Norway.

DEAR DR. SVERDRUP: I would like to nominate President Jimmy Carter for the 1979 Nobel Peace Prize for his leadership in laying a solid foundation for a permanent and lasting peace in the Middle East.

Only because of President Carter were President Anwar Sadat of Egypt and Prime Minister Menachem Begin of Israel brought together at Camp David for their Summit Conference.

Only because of President Carter did these two great leaders spend hours upon hours during a 13-day period in discussion and negotiation.

Only because of President Carter did President Sadat and Prime Minister Begin reach agreement on and sign two peace accords on September 17.

And only because of President Carter will these two nations continue to meet and negotiate in an effort to reach a final peace treaty and full diplomatic relations hopefully later this year.

As Prime Minister Menachem Begin said last night, it was "the Jimmy Carter Conference." Without President Carter's guiding hand and dedication, we would be no closer to peace in the Middle East than we were several months ago.

President Carter showed great courage in setting up the Summit Conference and seeing it through to a successful conclusion. He deserves a place in history next to Presidents

Theodore Roosevelt and Woodrow Wilson who received the Nobel Peace Prize respectively in 1906 and 1919.

President Carter's role in laying the foundation for peace in the Middle East will be remembered as one of the outstanding achievements of the 1970's. He should be given special recognition in the form of the Nobel Peace Prize for his great efforts.

Sincerely,

RONALD M. MOTTL,
Member of Congress.●

SEARCHING FOR THE OUTER LIMITS

HON. ROBERT W. EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. EDGAR. Mr. Speaker, I would like to share with my colleagues a paper by Jerry L. Fletcher which was published in the September issue of the Educational Researcher. Fletcher points out that our present educational strategy is obsessed with improving the baseline of minimum educational skills. What has been neglected, Fletcher points out, is providing the framework for measuring and expanding the potential of our species in a number of areas, such as creativity, the senses, and motivation.

Fletcher proposes that research papers be commissioned to explore the limits of human capacity in a number of identified areas. The paper, entitled "The Outer Limits of Human Educability: A Proposed Research Program" follows:

THE OUTER LIMITS OF HUMAN EDUCABILITY: A PROPOSED RESEARCH PROGRAM

(By Jerry L. Fletcher)

While the educational goal "to enable each child to develop to his or her full potential" probably ranks near the top of the list approved by school boards throughout the country, educators rarely examine this goal seriously. Educational research literature, for example, does not contain a systematic effort to examine what we might mean by "full human potential," not to analyze the kinds of educational experiences which enable people to operate at maximum capability. Educational practice seems just as negligent in operationalizing "full potential."

Instead, the climate of opinion that presently dominates education is oriented toward minimums—minimum skills, basic skills, minimum competencies—to the virtual exclusion of anything else.

This should not be allowed. We need a vision of what education could be that goes far beyond the basics; a vision that is also solidly grounded in research and in substantive content to avoid the problems so endemic with "experimental" educational programs.

A solid conception of what the human organism can become, of what the outer limits of human educability are, has promise for providing this vision. Simply put, there is now sufficient, albeit hazy, knowledge about the outer limits of what human beings can be educated to do, that a scholarly attempt to identify and describe in careful detail these limits seems possible. This effort would have several important payoffs. First, focusing on the outer limits of human educability might well create a different and highly useful perspective on the more immediate problems which so often dominate education. Second, the very task of identifying limits serves to focus energy on going toward or beyond those limits. Third, it is likely that the same types of educational experiences that develop outstanding human performance would also enable ordinary people to perform at levels far beyond what they achieve through our present educational programs. Rather than selecting the "gifted and talented," the emphasis would be on enabling all to realize more of their inherent potential.

WHAT DO WE MEAN BY LIMITS OF EDUCABILITY?

The limits of educability are interwoven with the limits of human performance and human development. While we could have chosen any of the words (or all three), we selected "educability" to maintain a focus on the possibility of deliberate attainment of some limit of human capability or performance.

Some limits appear relatively certain. The structure of the human body pretty definitely precludes certain capabilities, such as running 50 mph, flying, or leaping tall buildings. Death, too, appears to be a certainty, though efforts to prolong life without serious deterioration are certainly underway.

Other limits may or may not have certainty, but efforts to modify them are demonstrably difficult. Each individual has a certain genetic makeup, an "evolutionary potential," and while pressing the limits for any individual is difficult, work with severely retarded individuals suggests that no known educational technology can substantially alter the limits of such makeup.

Additionally there appear to be internal limits that are a function of maturation. According to the structural stage theories (e.g., cognitive growth), certain forms of logical reasoning are apparently not possible at certain early stages of development, and again no known educational methodology can overcome these limits of development. Whether much more of the life span is limited by such structural/developmental limits is unknown. There may be structural stages of emotional growth, or of social awareness that also, at certain stages, preclude certain kinds of awareness and knowledge.

Some have identified life stages or life transitions as predictable stages through which adults go in their lifetimes. These are not structural and developmental in the same way as the above mentioned stages, but rather are more culturally specific and situationally determined. They, nevertheless, do serve to limit a person's activities and the way one interacts with the world while in the transition.

More subtle limits to human abilities also exist. There are the limitations of the Western scientific world view, which constrain severely the kinds of phenomena that are considered worthy of investigation. There are limits of language, which make certain natural phenomena, such as subatomic physics, unexplainable. Four dimensional space (or more) cannot be described in a language which is designed for three dimensions.

If these are some of the larger "limits of educability" that are relatively impermeable, there are limitations of the receptor and processing capabilities of the organism that are formidable barriers. At least taken separately, the eyes can see only a small band of electromagnetic radiation; the ears only react to a severely limited range of the possible rates and amplitudes of air vibration; the nose has a tiny capacity to discriminate smells; taste and touch are equally limited. Working together the senses appear to allow a broader range of experience to be received than if each acted separately, and other means of assimilating experience exist in human beings, but are rarely developed. Of course, through mechanical assistance the range of the senses can be vastly increased.

Improving the efficiency of the retrieval capacity of the human organism is a major need. While past events can be recalled in complete detail under hypnosis, electrical stimulation, or certain drugs (indicating that complete storage is a fact), the normally conscious adult can retrieve only the tiniest fraction of what is stored, and that is often badly distorted. Little is known about the way in which experience is stored. There is some evidence that emotionally laden experiences are organized in groups with a common pattern of emotion, and stored that way internally. In what ways this pattern of emotional organization affects learning and recall of essentially cognitive material is unknown.

Since assimilation of experience is interactive, how one's experience is organized internally affects what one experiences. The concepts that one has with which to organize experience affect what one sees. These patterns of internal organization thus represent a "limit" to educability. From studying certain dysfunctional persons who must undergo therapy to reorganize their thought patterns and processes, it is clear that what one can learn is greatly affected by the structure of memory. Once emotional "blocks" are re-experienced, by reliving more or less in reverse order the layers of emotional experiences that are clumped together in memory, there is a release that allows the person to fully aind freely explore an area of his life that previously had been avoided.

There also appears to be some truth to the notion of interference between different internal processes. Some forms of meditation are used to "stop the mind," to eliminate the cognitive noise or dissonance that for must of us is always present. Apparently, eliminating that process opens the awareness to many other forms of knowledge that were merely masked by cognition.

Still other limits to educability fall in the category of purpose. The values that one lives by, and the visions of the possible or the ideal that govern action in particular circumstances set demonstrable limits. When those values or visions are "bought" from the culture at large, or from significant others in one's life, they very often are not congruent with one's own experience. To inquire into, and to find, one's own purpose is a way of escaping these limits that is usually freeing and expanding.

Of course, there is value in limits. Too many options can create a type of paralysis. Conceptual filters enable the human organism to escape being overwhelmed by the stimulation of reality. Appropriately set, limits provide a manageable arena to explore. They provide a sensible way for a person to take risks and yet survive and learn from failures. If the limits remain too long when the arena they define has been fully explored, they become repressive. The "limits of human educability" for any individual need to take into account the capacity of the individual to cope successfully with new behavior, and a person may not at first be able to reach for the outer limits of the possible.

There are also probably limits to the degree that societies can support the personal development of individuals and still remain stable and cohesive. Little is known of these limits, though it is clear that the degree of support found in the surrounding society greatly affects the capacity of individuals to deal with and transcend their own personal limitations.

Given the fact that there are numerous "limits" of educability, and that none of them is truly absolute, the policy issues of finding the optimal place to invest resources seem complex. At a general level it appears

that the criterion should be either (1) to pick the areas where the gaps are greatest between what is currently achieved and what is demonstrably possible, or (2) to pick the areas where the gaps can be most readily or cheaply bridged. Certainly some of the limits appear to be much more formidable than others, and instead of expending enormous energy attacking limits that may be biologically (or evolutionarily) determined (for example, speeding up the attainment of higher levels of cognitive functioning), it may make much more sense to expend those resources on developing additional, mostly undeveloped, capacities while waiting for the maturation to take place.

In summary, the notion of the "limits of educability" is complex, and yet exploration of the concept might genuinely enlighten practitioners and policymakers alike by providing a particularly powerful perspective on what are generally described as the "problems of education."

AN APPROACH TO INQUIRY INTO LIMITS OF EDUCABILITY

We [1] propose to commission a set of papers, each of which would explore in a scholarly manner, the nature of one "limit" of educability. To provide a framework for authors to use in developing their papers, we examined the history of science for insight into how major bodies of systematic thought are advanced. We identified five breakthrough points:

New Paradigms — The greatest breakthroughs in systematic thinking come when new ways of organizing what is known are developed which more adequately account for what is known.

New Instruments for Extending Abilities and Senses—Often the invention of a new instrument—from the telescope, microscope or cloud chamber to the projective test—initiates a massive breakthrough in knowledge.

New Methodologies or Experimental Designs—Many times a field of systematic thought really begins to advance when there is the development of a manipulable experimental situation which can be thoroughly exploited.

Unexplained Phenomena—These are the critical features of the pressure to develop a new paradigm.

New Symbol Systems—In mathematics, the development of a new system of symbols sometimes enabled the field to advance enormously (arabic numerals instead of roman numerals; negative numbers). Similarly, new concepts often change dramatically what someone attends to as important.

The most useful questions the authors can deal with might be: What are the competing paradigms for structuring inquiry into an area, and how might they be interrelated? What instruments are available (or might be developed) to explore more fully the nature of human limits in a particular arena? What methodologies or experimental designs seem most promising for investigating the phenomena of the limits in a particular area? What are the unexplained phenomena about which some structured way of thinking needs to be developed? What new concepts or other symbol systems are needed to deal with the arena?

In determining the topics of the papers we sought a framework that would at once structure the discussion of the limits of educability and yet would not be either so novel as to confuse nor so common as to be limiting. After considering several different ways of organizing the topic of "limits of educability," we decided that the best structure was to discuss limits within four broad categories:

1. Capacities to assimilate experience
2. Capacities to process (store, combine, synthesize) experience
3. Capacities to take action
4. Capacities to determine or create purpose

INTRODUCTION

The meaning and reality of limits of educability

This paper would explore the concept of limits of educability as it pertains to the other papers. As such it would be an introductory piece whose preparation could be left to last. We have described some of the limits in the first part of this prospectus:

Absolute Limits. While nothing can ever be considered an absolute limit, there are certain structural limits to the human body and certain biological limitations that for all practical purposes are absolute.

Evolutionary Limits. There appear to be certain inherent strengths and limitations in every person's genetic makeup that are very difficult to bridge.

Developmental Limits. A number of the structural stage theories suggest that certain capacities cannot be developed until a certain amount of biological maturation takes place, and that little can be done to speed up this maturation. In addition, they suggest that there are "critical periods" during which certain capacities need to be developed, because they are very difficult to develop later.

Cultural Limits. Culture heightens the value of certain capabilities and restricts that of others. Escaping the limitations of a particular world-view often vastly increases one's insight and capacity to act effectively.

Assimilation Limits. There are certain limits to the capacity of the receptor organs of a person to receive stimuli. Various approaches have been developed to increase the range of these receptors and to increase the rate and complexity of the organism's capacity to assimilate experience.

Processing Limits. Internal processing limitations of the organism are very real, though there are various approaches to increasing storage, retrieval, and creative synthesis powers of the organism.

Action Limits. The capacity of a person to act depends on many things, from the state of the health of the organism to the capacity to create a group of people of shared purpose who together can do more than they could do if all acted separately. Various fears and past unresolved emotional experiences affect, in a variety of complex ways, how many limits to action a person faces.

Meaning Limits. One's capacity to derive meaning from experience or to determine sense of purpose affects how effectively one acts.

Interlocking Limits. One's capacity to develop any capability to extend one's limits in a particular area is affected by how well developed the other capabilities are that one has, and whether the development of any one interferes with the development of another, as for example, a well developed analytic capacity might interfere with freely expressing love.

CAPACITIES TO ASSIMILATE EXPERIENCE

Increasing the power of our common ways of experiencing

As commonly employed, our five senses have relatively severe limits. Work is underway, employing a variety of approaches, to increase the power of these senses. Some of these approaches seek to increase the rate of input, or the accuracy of sensory discrimination, as in speeded reading, hearing speeded speech, or identifying particular tastes or smells. Other approaches seek to determine whether under hypnosis, meditation or other altered states of consciousness, these senses operate more efficiently. Certain drugs and diets do affect the senses radically. Finally, since assimilation is interactive: one's concepts, expectations, and experiences affect what is perceived, certain approaches have employed "advanced organizers" in a cognitive sense, or guided fantasy to provide internal categories for the material to be assimilated.

Expanding the number of ways we experience

Several lines of research suggest that there are additional "senses" that the human organism possesses, most of which can be developed. One approach encourages people to regard their entire bodies as receptors, and to discriminate in great detail the body's reaction to something. Internal sensations often mirror something that is happening outside. Other approaches look for human equivalents of senses that other animals have, and numerous ones have been found. Most of them are not developed, and various approaches, generally involving biofeedback in some form, are being used to develop these vestigial senses. Finally, there is a body of solid research literature investigating extra-sensory perception or psi phenomena. Psi phenomena are in the realm of "unexplained phenomena," though recent theoretical developments in modern physics appear to make psi events plausible. While instruments and a methodology exist, the study of psi phenomena is hampered by the inability of investigators to reliably produce them on demand.

Knowing from reading the inner order

Eastern and Greek philosophic traditions suggests strongly that complete assimilation of experience comes from looking inward. The approach to enlightenment comes through meditation and contemplation. Two lines of Western research—Jung's investigation of the "Collective Unconscious" with the discovery of cultural and species "archetypes;" and Grof's work in psychotherapy during which clients relived in great detail prenatal, preconception, and what they described as "past-life" experiences—suggest the possible truth that all knowledge can be found by looking within oneself. In these lines of thinking the world outside a person reflects what is true inside and is set up to complement it. Knowing of one's past collective and personal patterns will show how they control what happens in the present, and what must be done to break out of these limitations. Generally this involves relieving and taking responsibility for the past actions.

CAPACITIES TO PROCESS EXPERIENCE

Stage theories, critical periods, and the limits of internal processing

Structural development theories suggest that as people mature, they go through a series of stages of development. Each successive stage is qualitatively different from the previous ones, at least partly because certain cognitive operations not available at earlier stages suddenly become available. Internal processing capability at each stage of development is limited by the cognitive operations available.

While structural developmental stage theories are being extended to other realms of human activity (e.g., emotional development), other age/stage theories, particularly as applied to adult life, are being developed. These stage theories are more a conceptualized listing of common experience. While more socially determined, culturally specific, and non-hierarchial in comparison to the structural developmental theories, they nonetheless involve internal processing to come to grips with some fundamental question, and non-resolution, or becoming "fixed" at a particular stage, severely limits a person.

Releasing and reordering the unconscious patterns

Several theories suggest that much of a person's behavior is controlled by subconscious patterns that affect the way the person perceives the world, processes information re-

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ceived from it, and later remembers it. These patterns are often very limiting. Escaping from the limits they impose involves reordering the unconscious patterns. Psychotherapy and various other counseling techniques are concerned with reordering emotional patterns, sometimes through "reexperiencing" the initial event that set the pattern, accepting that event, and reintegrating it. Various other approaches involve more cognitive (planning, goal setting, problem-solving) approach to reordering behavior through an effort of the "will," which in turn leads to reorganization of the ways in which the subconscious is organized.

The psychoanalytic, behaviorist, and rationalist paradigms are well developed, though their relationship to internal processing limitations is only worked out for psychotherapy, and then in only a limited fashion. Instances of breaking free from a previous pattern are difficult to observe, and methods for investigating whether there has been a reordering of the unconscious are difficult to devise. Nevertheless, a powerful case can be made that people do break free of subconscious patterns.

Developing nonlinear processing capabilities

Conscious internal processing capabilities are most often logical and linear. While thinking in such forms has great utility so do many other models of internal processing. Programs have been developed to train people to organize material in patterns and arrays, to make use of analogies, to employ myth and metaphor, and to deliberately attribute intention, purpose, and personification to inanimate objects as ways of gaining remarkable insight into reality. Many of these nonlinear patterns enable people to overcome the limitations of their usual way of processing reality.

Maximizing creativity

Careful research into creativity has only grown in a major way in the last twenty years. A creative breakthrough for a person or a field of work represents a major expansion of previous limits, and as such is particularly relevant to this set of papers. At one level this paper should deal with the nature of great new syntheses of thought, as in physics or biochemistry. At another level it should deal with the philosophic and legal or other examples of creative coping with some problem or crisis. At still another level it should review the various training efforts to enhance creativity (e.g., synectics) to determine their bases and validity.

While much has been done in the field of creativity, the theoretical bases for it are not well known. There are instruments for measuring some facets of creativity, and some experimental situations that require creative acts of the subjects. Still, much of what constitutes creative work is largely unexplained.

CAPACITIES TO TAKE ACTION

An inventory of extraordinary human capabilities

One approach to the identification of the limits of human educability is to inventory extraordinary human behavior. Such an inventory can be generated through the study of other cultures, or through the careful review of documents, myths, and legends. Then present day examples or counterparts of such capabilities can be sought.

Since some of this behavior falls into the category of "unexplained" phenomena, the paper would have to deal carefully with the truth of the claims. Not only would it be necessary to develop paradigms to explain how it might be true that one or another of the capabilities exists, but efforts to create similar illusions through magic would need to be reviewed. Instruments and methodologies for testing people who possess extraordinary capabilities need to be developed, with controls carefully enough established that the data so generated are free from the most viable competing interpretations. Much could also be done with examining the conditions under which these abilities manifest themselves. Some result from long and very disciplined training; others happen under drugs or some other external stimulation; some appear under hypnosis or other special states of consciousness.

Maximizing positive group synergy: The conditions of inspired performance

The limits of a person's educability depend in an intricate fashion on the relationship of that person to other people. A group which has positive synergy creates a condition where together people can do more than they could do if each acted independently. The great athletic teams of Vince Lombardi or John Wooden, the self-help groups like Weight Watchers, Synanon or Alcoholics Anonymous, and extraordinarily creative groups, like the Bauhaus, the Vienna Circle, and the writers in Paris in the 1920's are examples.

Much research work on small groups has been done, looking at leadership style, process, and a variety of other mechanisms. Many of these theoretical paradigms, instruments, and methodologies are well developed. And yet the conditions in small groups that give rise to really extraordinary or inspired individual performance on the part of all of the members—exceeding the limits that they thought they had—remain enigmatic.

Deriving maximum value from life's transition phases

Various events in life, some planned and some unplanned, can create major life transitions: marriage, birth of a child, loss of a job, a major promotion, a major illness, retirement, or loss of a spouse are just a few. Some people are able to take positive advantage of such transitions and come through them better than before; others are beaten by the crises and end up more limited and constrained.

Exploring the limits of a person's capacity to cope creatively with crises is a critically important topic. Some descriptive work has been done with patterns of coping employed in successful and unsuccessful cases.

Three settings appear crucial: the family, the work setting, and the larger community, and successful examples appear to be able to create in each setting a supportive environment. Only the beginning of conceptual work has been done in describing the nature of the supportive environment that would maximize personal growth in each type of transition phase. This is despite the fact that much intervention work is underway: organizational development work, family counseling, and even various communal or "live-in" support groups.

The development and educable abilities of older people: The greening of grandpa

The inevitability of deterioration of abilities with advancing age is widely and rapidly being called into question. Some of these efforts have concentrated on changing the social conditions which seem to advance the rate of deterioration. Others have explored the way in which the image of old people fostered by our culture—forgetful, halting of step, needing care—creates a form of self-fulfilling prophecy for the elderly. Among other things, recently inaugurated athletic competitions for older age groups suggest that the limits of physical performance, given proper training, may diminish much more slowly at older ages than thought previously.

As the population of the United States grows proportionately older, much effort is likely to go into finding significant activities for older people. Instead of the leisure, recreational, time-passing activities so common now, it is highly likely that given appropriate educational experiences, older people are capable of job retraining, as well as other activities of personal and social significance that are denied them now.

Beyond health as the absence of disease: Super health as a conscious act

So much of Western medicine has concentrated on curing disease, on reestablishing "normality," that the concept of positive health has never been well developed. Yet merely being "normally healthy" may be an unnecessarily restricted limit on human capability.

Conceptions of "super health" are available. One is the athletic notion of being "in shape," though conditioning is related to some performance expectations: one is "in shape" for something. Another conception is resistance to disease. Still another is energy level: some people have very little need for sleep. Still another conception might involve performing some of the extraordinary behaviors discussed earlier.

Creating space in organizations for personal growth

Various efforts over the past thirty years have attempted to create more humane organizations, through such approaches as participatory management and a variety of other communication and motivational mechanisms. The organizational development approach has worked to make organizational environments more humane.

Yet in all of these there is the implicit assumption that personal satisfaction and development are subordinate to task accomplishment and efficiency. Improved output is still the criterion. It is legitimate to ask what the limits of personal growth are that can be attained within an organization that has such a criterion, even if it is agreed that in a competitive business world, efficiency has a necessary place.

It is also legitimate, as many are presently proposing, to look on work as a means to personal development. Work ideally should serve people, and not the other way around. An organization dedicated to such a value would seek ways of educating people to find personal significance in what they are doing. It may be that many of the apparent limitations of work environments can be transcended by educating people to take responsibility for making their tasks meaningful.

CAPACITIES TO DETERMINE OR CREATE PURPOSE

The conscious design of the future: The macro-evolutionary view

One approach to creating purpose is to develop a conception of what one would like the future to be. Since not all futures are possible, such a conception must work in concert with the larger evolutionary forces, and yet still have some margin of adjustment.

There are several approaches to futurizing. The computer simulation approach and the development of scenarios by Delphi techniques both involve extrapolation from the present. This may quite radically limit conceptions of the future that are actually viable. Another approach to finding the action that would take maximum advantage of the evolutionary forces and potential in the world is to inquire by analogy. Several macro-evolutionary thinkers have identified the characteristics of various critical transition points in evolutionary history and have suggested by analogy what man might do now to create the next big transition points. Most of these thinkers believe the next step involves the development of higher forms of consciousness and the diversion of energy from production and development in the outer world to internal exploration.

Modes of discovering about purpose: Creating the myths of transformation

As diversity increasingly characterizes modern society, there is a desperate need to

create a collective sense of purpose. One is to get in touch with one's own story, through studying one's ancestry, telling one's own life story, and casting it within the framework of some of the great myths of history. If fundamentally each person's story is Everyman's story, everyone being in touch with his personal story would create a unifying myth.

Other modes involve journeys inward, reading "inner signals." The rediscovery and deliberate modeling of heros from other ages and cultures is another avenue. The deliberate use of different metaphors in describing reality is another: using erotic metaphors, rather than mechanistic metaphors in describing reality, for example, would imply joy and union, rather than energy, utility, production, and consumption.

While new unifying myths may be developing, we know little about the "sense of purpose" they are supposed to engender. While various approaches to "knowing thyself" have been developed, there is no instrumentation for measuring whether there is any greater sense of purpose. Most of our instruments are for measuring lack of purpose, alienation, anomie, and disorientation.

The educated person and conceptions of the good life

Conceptions of the good life guide what people do with their lives, and often they are severely limiting. Even when the conception has been attained, people often are unable to determine whether it is a good conception. If they do find it inadequate, they have trouble generating alternatives. Conceptions of the good life also determine much of what education deals with. Our present conceptions of the good life—getting a job, making money, and accumulating possessions—are intimately related to the instrumental skills and narrow notions of career education that are widely found in education. A look at alternative conceptions of the good life and what an education system would be like that served them would greatly expand the limits of our present thinking.

The social significance of enhanced personal development

Virtually all of the paths for developing a deep personal sense of purpose involve a well-developed social conscience. Yet there is, at present, great concern about the social significance of the emphasis on personal development, as it appears often to lack any concern for social values and social justice. Minority groups, for instance, often regard the widespread dabbling in "growth" experiences as the latest middle-class fad for avoiding dealing with larger social questions.

Even if such accusations as narcissism and avoidance of social responsibility are valid only for a few, the fact remains that for a long time social theorists have assumed that conformity to a set of group norms was necessary for a functioning society. Little has been done to describe how the particular social norms in American culture limit personal development and growth, and even less has been done to delineate the nature of the social changes that might be expected if large numbers of individuals began functioning at a much higher level of personal capability.

NEXT STEPS

Policy questions: The politics of personal growth

The intent of this paper would be to look at the implications of an educational system organized around maximizing personal growth and to raise various policy questions that would need to be addressed before any major movement in this direction would be possible. The questions would range from legal and constitutional questions, to distinctions between personal growth theories and religion, to the psychological basis for such theories, to problems of fairness and equity, to the social limits of personal growth.

A second concern would be instrumental. Where are the points of greatest leverage in changing the relevant parts of the existing system? What kinds of development and research tasks might be undertaken? In what fashion should smaller trials be held to test some of the ideas? In short, the paper would address the question of basing action on the ideas raised in the prior papers.

A general synthesis: Ten challenge questions for educational research

While several synthesis papers might be generated, the outlines of which will have to wait for the writing of the other papers, one idea seems sufficiently promising to record now. This would be to lay out a set of research questions (say ten), the solution to any one of which would revolutionize education. Challenge questions have worked extremely well in the history of mathematics, in physics and biochemistry, and in other fields of thought. They serve to focus effort on really critical issues. If from the set of papers ten could be gleaned, this might provide the most powerful form of synthesis.

FOOTNOTE

[1] Preparation of this paper was initiated by a conference supported by a grant from the National Institute of Education. Earlier drafts have been reviewed by many people. Those attending the initial conference were: Alfred Alschuler, Visiting Professor, School of Education, University of California at Santa Barbara; Frank Barron, Professor, University of California at Santa Cruz; Stanley Elam, Director of Publications, Phi Delta Kappa; Thomas Green, Chairperson, Cultural Foundations of Education, Syracuse University; Barbara Hubbard, Chairperson, Committee for the Future, Washington, D.C.; Joe Kamiya, Langley Porter Neuropsychiatric Institute, San Francisco, California; Bailey W. Jackson, Director, Juvenile Justice Program, School of Education, University of Massachusetts; Dale G. Lake, Applied Behavioral Scientist; Michael Murphy, Founder, The Esalen Institute; Thomas B. Roberts, Professor, Department of Education, Northern Illinois University; and John N. Williamson, Trainer, Lifespring, Inc.●

FIRST-CLASS SHOULD NOT SUBSIDIZE THIRD-CLASS MAIL

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. FINDLEY. Mr. Speaker, on September 8, an article appeared in the Wall Street Journal which raised my ire. According to the article, the Postal Service Board of Governors has just voted to propose lower rates for certain large-volume users of third-class mail and parcel post. The rate reduction is being proposed not because of new cost efficiencies resulting from these large volume users, but simply to remain competitive with alternative mail carriers, such as UPS. The net result can only be that those who use first class mail will be subsidizing to an even greater degree those who send out junk mail. How can the Postal Service continue to raise rates for first-class users and then turn around and lower rates for third-class mail? Is this any way to run a business?

I found it hard to believe that Postmaster General Bolger told the Governors that cutting the postal rates was the right direction to move when in fact the Postal Service needs $920 million from the public till this year to keep afloat.

In 1970 Congress established the postal system as an independent agency with the understanding that service would improve. Instead, first-class mail rates are regularly boosted while service continues to slide.

I hope my colleagues will note this current attempt on the part of the Board of Governors to transfer the cost of junk mail to those who use first-class mail.

THE CONTINUING CRISIS OF UNEMPLOYMENT

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. CONYERS. Mr. Speaker, the right to a job and full employment economy are policy goals the American people have embraced consistently for more than a quarter-century. For example, the authoritative New York Times/CBS poll in 1960 reported that 63 percent of those surveyed believed the Federal Government ought to find work for those who seek but cannot find it. The same poll this year registered 78 percent in support of full employment. A recent Department of Labor/Roper survey similarly showed that 64 percent of those surveyed thought Government has a responsibility to provide the unemployed with jobs that "make ends meet." Yet these goals have been consistently sidetracked or thwarted.

The reasons why the vast majority want to eliminate unemployment are not hard to discover. During the depth of the last recession the Joint Economic Committee of Congress found that more than 40 million Americans were affected by unemployment, either directly or as members of households in which a breadwinner was out of work. Far from being a minority matter, most Americans realize that unemployment affects all segments of society.

Americans also recognize the incredible social and economic costs that as taxpayers they bear as a result of massive unemployment. The link between unemployment and crime has been firmly established. Besides the cost of unemployment in crime and drug addiction, it also has created an enormous burden in welfare and other forms of public assistance. That full employment would cost society far less over the long run than the current costs of chronic high levels of unemployment has become obvious to those who have studied the issue.

There is another important reason Americans give priority to the achievement of a full employment economy. Past experience shows that the private sector, left to its own devices, cannot and will

not generate all the jobs that are needed for those who seek work. Despite the hundreds of billions in tax and other incentives Washington has provided big business over the past two decades, job creation in the private sector has proved woefully inadequate to sustain a full employment economy. Moreover, those sectors that are most heavily subsidized have proved the least capable of significant job expansion. Big corporations, for example, generate far fewer new jobs relative to their income than do small businesses, which receive relatively little support.

The failure of the economy to generate sufficient jobs has been a longstanding one and will continue and even worsen in future years. Were it not for public employment, the jobless rate would be double digit. As it is, official statistics greatly under-report the extent and nature of unemployment and subemployment. Consider also the job-substitution function of key social institutions such as forced early retirement, the military, prisons and reformatories, the dual labor market, and the welfare system. At the turn-of-the-century, for example, 67 percent of those over age 65 participated in the labor force. Today only 22 percent do; in other words, 16 million senior citizens have been taken out of the labor market although more than a third would return to work if they could. Similarly, the military with its more than 2 million personnel and the more than half a million individuals incarcerated in Federal, State, and local penal institutions function in a way that depresses labor force participation.

Anxiety over inflation and taxes have obscured public support for full employment, but have not eliminated it. The current preoccupation with planning for the development and allocation of energy resources has temporarily overshadowed the even greater challenge of planning for full employment, which can be stalled, but eventually it will have to be faced. The need to provide a sufficient number of jobs and upgrade the quality and rewards of existing ones years to come. And this is precisely the meaning of the Humphrey-Hawkins Full Employment Act (H.R. 50; S. 50), the first major legislation in 30 years to deal reasonably and responsibly with the unemployment crisis.

The continuing and future crisis of unemployment is the subject of a highly provocative article written by Willis Harman that appeared in the August 1978 issue of the Futurist magazine. It provides a much-needed perspective on current economic questions, and I strongly recommend it to my colleagues.

The article follows:

[From the Futurist, August, 1978]

CHRONIC UNEMPLOYMENT: AN EMERGING PROBLEM OF POSTINDUSTRIAL SOCIETY

(By Willis W. Harman)

Demographic forecasts suggest a serious worsening of the job problem before the end of the century. Economic growth no longer seems able to keep up with the influx of new workers. One possible solution might be the development of "central projects"—an idea as old as building pyramids and as new as establishing colonies in space.

It is probably not too much to claim if there were satisfactory work opportunities for everyone, many of the social problems in the United States would disappear: The federal budget could be more easily balanced. Teenagers would enter the work force. Elderly persons would find part-time employment. The poor, blacks, and other minorities would meet less discrimination. Welfare problems would be reduced. Governmental interference in private lives could be diminished. Urban decay could be slowed or halted, bringing relief in a host of related problem areas—crime, drugs, safety, housing, school problems, and city financial crises.

Unfortunately, the lack of sufficient and satisfactory jobs is not just a problem of the present, but one that will remain and perhaps intensify in the years ahead. Our studies at the Center for the Study of Social Policy, a branch of SRI International in Menlo Park, California, indicate that chronic unemployment and underemployment may be one of the most fundamental problems of postindustrial society.

The possibility of long-term chronic unemployment and underemployment rests on two propositions: (1) Over the long run, economic growth may not continue to generate enough jobs to accommodate the expanding work force and, (2) the quality of available jobs may not be compatible with rising educational levels of the work force.

The problematic character of economic growth arises primarily from the tension between growth and the cluster of problems relating to resources and the environment. These problems could be eased if economic growth were modified to lessen resource utilization, but since the economy displays a built-in correlation between employment and resource utilization, a reduction in growth tends to increase unemployment. Despite a commitment to growth and full employment, enviromental constraints and resource limitations may keep the economy from generating enough satisfactory jobs to meet the demand.

Economic and demographic trends will partially obscure this problem through the mid 1980's. The labor force has been increasing at a rate of something like two million persons per year, the high growth rate being due partly to the entering teenagers in the population bulge caused by the baby boom, and partly to an increase in female participation Both of these effects are projected to drop dramatically in the next few years, so that by the mid 1980's the rate of increase will be halved. There are signs that the rate of labor productivity increase will drop and stay significantly below the 3% long-term rate of the past, so the rate of job creation as the economy grows will be higher. New energy-related projects (finding new supplies and taking conservation measures), together with further expansion of the services sector, will create new jobs. Furthermore, increasing numbers of people will probably voluntarily reduce their participation in the work force to attain a more leisurely way of life.

Thus the short-term prospects may well be for some temporary easing of the national unemployment problem, although there will still be severe regional problems, particularly in New England. However, this outlook may be modified by international migration (particularly from Mexico) if the U.S. employment picture is significantly better than in other countries.

THE CYBERNETIC THREAT

In Cybernation: The Silent Conquest (1962), social psychologist Donald Michael forecast that a shortage of jobs caused by the rapidly expanding cybernation of production processes would be a key problem in the future For some years following this warning conventional wisdom regarded Michael as an alarmist, and argued that new technology would continue to generate more jobs than it displaced. The notion that automation and technological change would cause unemployment was temporarily laid to rest in 1966 by the report of the National Commission on Technology, Automation, and Economic Progress. But during the 1973–5 recession, the belief that technological progress causes unemployment suddenly revived.

The effects of automation and technological change vary from industry to industry, through technological advances in the production of goods and some services have generally permitted growing demands to be fulfilled by smaller and smaller proportions of the work force. Technology may entirely eliminate some jobs and the need for some skills, as happened when linotype machines began to be replaced by phototypesetters. Technological progress may also impoverish jobs by reducing the amount of variety and craftsmanship in the work itself; one example is the decline of some carpentry skills with the advent of mass-produced, prefabricated buildings. At the same time, technological progress may enrich jobs by extending basic human sensory, perceptual, cognitive, and motor abilities; for example, man-computer interactive systems for text editing may have such an impact on the publishing industry.

No satisfactory statistical analyses manage to identify all the effects of automation on unemployment. But Kenyon DeGreene has postulated four overlapping stages of automation in the United States and their probable outcome:

Stage 1, from about 1945 to 1965, encompassed the initial mass mechanization and automation, particularly of agriculture and mining. This stage was characterized by large-scale displacement of labor, with chronic unemployment among older persons and persons with no or low-level skills.

Stage 2, from about 1960 through the present, is characterized by the continued rapid diffusion of several kinds of mechanization and automation in banking and credit, office work, industry, record-keeping and data storage and retrieval. Other areas, such as sales, design, and communications, are also increasingly affected. Large-scale displacements of manpower during this stage have not been evident for two main reasons: The automation has not required a significantly higher order of skills that before, and expanding demands have led to the reemployment of most people displaced by automation.

Stage 3, which began in the 1960s and is continuing through the present, is characterized by: technological obsolescence of many people with specialized skills, an oversupply of highly educated persons, an increased split between those whose skills are needed and those whose skills are not, and system stresses that hinder economic expansion and indicate a redirection of society. During this stage, manpower dislocation and unemployment will probably increase, and most of the work force will require a continual updating of skills.

Stage 4, whose main features are already evident, "is characterized by the spread of mechanization, rationalization; and cybernation to most institutions of society, and by the development of machines and systems capable of at least some of the higher-level perceptual, cognitive, and adaptive capabilities of human beings. These developments are likely to render millions of workers superfluous and present societal problems defying easy solution."

HIDDEN UNEMPLOYMENT

Despite these indications of trouble ahead, scholars do not yet agree that chronic unemployment and underemployment will be a problem in the future. The lack of agreement probably reflects, in part, differing perceptions of the extent to which the prob-

lem already exists. Much of the problem has been concealed; for example, it seems apparent that the U.S. economy since the 1930s has been able to maintain a politically acceptable level of employment only by preparing for war and by becoming arms supplier to the world (a role which Americans harshly criticized Germany for playing over a half century ago).

The hidden aspect of unemployment shows up in the pressures on older employees to get out of the work force by retiring early (a form of "age discrimination" now being challenged). The unemployment problem may also be seen in inflated age and education criteria for job entry, in delays imposed on job-eliminating automation of routine operations, in subtle forms of featherbedding, and in panic reactions when there is talk of canceling a defense contract or space project. Fear of unemployment is a key factor in the energy policy issue; energy conservation is largely feared because of doubts about the U.S.'s ability to handle the unemployment that it would presumably cause.

Various estimates have been made of real unemployment in the U.S., taking into account the despairing who no longer seek work, workers who are quite clearly in featherbedding or makework situations, dropouts in holding institutions such as reform schools and mental institutions, etc. These estimates range from 25 to 30 percent of the potential work force.

In 1966, Williard Wirtz, as Secretary of Labor, made a survey of subemployment in the slums of 10 cities. His subemployment index included those working but earning at the poverty level or below, and those of working age who had dropped out of the labor force because of discouragement. Subemployment rates ran over 40 percent in several cities. In poor urban neighborhoods, more than 30 percent of workers had incomes below the poverty level at a time when the national unemployment was 3.8 percent.

Statistics are not available on either the subemployed who work at jobs that do not use their skills and abilities, or on the involuntarily retired. But clues to the size of the latter group appear in a recent report of the National Council on the Aging. From a poll of over 3,000 Americans, half under and half over age 65, an overwhelming majority (86 percent) oppose mandatory retirement at a fixed age if the worker wants and is able to continue working. Of the retired persons polled, 37 percent said that retirement was not by their own choice and 31 percent said they would like to continue working. The labor participation rate for workers over age 65 dropped from 67 percent in 1890 to 22 percent in 1975; yet old persons are now healthier and more mentally vigorous than ever before. Rising opposition to age discrimination will no doubt bring changes in mandatory retirement customs and social security laws, making work opportunities more accessible to the elderly.

RISING DISCONTENT OVER UNDEREMPLOYMENT

Underemployment is also fast becoming a major source of workplace problems in society. As the educational level of the work force rises, discontent and alienation spread among highly educated workers forced to take jobs previously performed by workers with less schooling. By 1980, one in four American workers will have a college degree; half of these college-educated workers will be under 35, while half of all the workers with only an elementary school education will be over the age of 50. More workers will be in white-collar jobs, but these can be at least as stultifying, repetitive, and unchallenging as any blue-collar work.

The proportion of the adult labor force with one or more years of college rose from 19 percent in 1960 to 27 percent in 1970. However, the proportion of total employment represented by managerial, administrative, technical, and professional positions rose more slowly, going from 20 percent in 1960 to 22 percent in 1970 (as contrasted with nearly 50 percent of young adults who expect these kinds of work). In sum, more of the future work force will be better educated and will demand jobs that offer challenge, growth, and self-fulfillment; since there will not be enough such jobs to go around, many workers will become disaffected.

Many observers have noted that young people are making increasing demands on the occupational careers that "the system" offers them. Not only do they expect upper-middle class income and status from their jobs, but on top of that they want opportunities for creativity and self-expression. This constitutes a remarkable shift in occupational motives and intentions.

This motivational change differs in one important respect from those that have occurred before. Previous shifts in occupational aspirations followed transformations in the basic order of production. There was, first, the great movement from agricultural to industrial work, followed by a shift from blue-collar to white-collar work and then a change within the world of white-collar work from clerical to more sophisticated and bureaucratized jobs. In each of these cases, the market demand for the new types of jobs greatly expanded. Furthermore, through each transformation, the values of achievement and the Protestant work ethic remained fairly constant.

A quite different situation exists today. The new values partially conflict with those of achievement and the Protestant work ethic, and no section of the occupational structure is expanding to accommodate the large number of people aspiring for jobs offering high income, high status, and personal meaning.

THEORIES OF UNEMPLOYMENT

Before examining possible approaches to the problems of unemployment and underemployment, some explanations must be sought for the persistence of the problems. Basically, there appear to be four current theories of unemployment:

The Structuralist Theory: In this view, the principal causes of unemployment and underemployment are technological displacement, shifting patterns of industrial production, and other factors which disrupt the matching of jobs and workers. The structuralist solution to unemployment lies in programs that correct imbalances in the labor market through manpower training and relocation.

The Growth Theory: This view holds that unemployment rises when the government's macroeconomic policies are too cautious and fail to maintain economic growth at a pace that permits absorption of new workers and increased productivity. On the other hand, if growth is too rapid, excessive inflation may occur.

The Dual-Labor Market Theory: This explanation postulates a labor market that is divided into a primary sector containing the better-paying, steady, and preferred jobs, and a secondary sector characterized by low-paying, unstable, and dead-end employment. Institutionalized discrimination tends to close primary-sector jobs to various groups of workers, with race, sex, and ethnicity among the main discriminating factors. Followers of this theory recommend the elimination of discriminatory barriers and the upgrading of jobs from the secondary to the primary sector.

The Intrinsic Dilemma Theory: A fourth explanation was advanced by John Maynard Keynes in his Essays in Persuasion (1930) as a dilemma that would arise in the future:

If the economic problem, the struggle for subsistence, is solved, mankind will be deprived of its traditional purpose . . . . Thus for the first time since his creation man will be faced with his real, his permanent problem—how to use his freedom from pressing economic cares . . . . There is no country and no people, I think, who can look forward to the age of leisure and abundance without a dread. . . . It is a fearful problem for the ordinary person, with no special talents, to occupy himself, especially if he no longer has roots to the soil or in custom or in the beloved conventions of a traditional society.

Many observers believe that in recent years Keynes's vision has moved toward realization. The industrialization of production has been so successful that only a faction of the potential labor force is needed to produce all the goods and services that the economy can effectively dispose of and the environment stand. A very significant part of the potential labor force is simply unneeded—certainly not at the skill levels for which their education has prepared them.

Since all human history has been characterized by a continuous struggle for subsistence and physical comfort, industralized society is unprepared to deal with the puzzling problem of what to do with people no longer needed for production. Simply increasing the amount of free time that people have does not solve the problem, because jobs in economic production have traditionally served not one but three major functions in society. Besides producing needed goods and services, they also act to assure equitable distribution of income and to provide people with meaningful and satisfying roles in society. With industrialization, increased educational levels, and impending constraints on production, jobs no longer satisfactorily serve all three functions.

Before the rise of modern industrial society, the challenge of producing goods and services in the desired quantities was a major goal of society, welcoming all available hands. Income distribution on the basis of contribution to this central project seemed rational and equitable. But during the past half century, a number of flaws in this arrangement have begun to appear. First, a reduction of the fraction of the work force needed for agricultural and industrial production inevitably accompanies industrial development. As a result, contribution to production has become less satisfactory as the primary basis for income distribution.

A second flaw is that the ability of people to subsist by their own efforts, independent of the economy, decreases as industrialization proceeds. Thus, more and more, transfer payments (e.g., welfare and scholarships) replace contribution to production as a basis for income distribution.

A third problem is that rising educational levels have led many people to expect that work should utilize their talents and develop their potentialities. But a significant fraction of the jobs in industrialized society are neither intrinsically challenging nor obviously related to inspiring societal challenges.

FINDING A CURE

Numerous approaches to the employment problem have been proposed, but most fall into four categories:

Generate more jobs.

Make better use of existing jobs.

Devise new approaches to meaningful participation.

Devise new income distribution approaches.

To find the optimum blend of these reforms, systems scientist Harold Linstone of Portland State University in Oregon has used a series of "relevance trees" to analyze the work-manpower gap. Linstone's studies indicate that increasing the number of available jobs and activities is far more effective than shifting or reducing the labor force.

One possible approach is a major development of volunteer programs. This implies a drastic expansion of the concept of the Peace Corps, Vista, and similar public or private programs.

A guaranteed income program could substitute a single universal cash transfer system for the present confusion of welfare, food and housing subsidy, and social security programs. These schemes are of two sorts: the negative income tax and the credit income tax. Under a negative income tax, the government pays individuals whose income is less than a zero-tax level some fraction of the difference. The credit income arrangement grants a flat tax credit to everyone to apply against his income tax bill; if the credit exceeds his liability, the government refunds him the difference. Both of these guaranteed income plans have been advanced as ways of simplifying the welfare system, removing disincentives to work, correcting inequities, and promoting societal and economic stability.

The use of large-scale projects to solve unemployment recalls such major civilian projects as the 19th-century transcontinental railroads, the Tennessee Valley Authority's dams, and the Apollo moon program. One of the earliest such efforts was ancient Egypt's construction of the Great Pyramid of Cheops, which for 20 years absorbed the labors of 100,000 men (out of a population of 2,000,000). Technological forecaster Joseph P. Martino, of the University of Dayton Research Institute, estimates that 20 percent of Egypt's GNP was used annually in this project. By contrast, Apollo consumed less than 1 percent of the U.S. GNP per year.

Much has been made in recent years of the "limits of growth" that arise from approaching various kinds of planetary limits on resources and pollution-absorbing capacities.

The appropriate question is not whether we should stop growing, but in what new dimensions should the next phase of growth take place. One possibility is some vast new project such as space colonization. The O'Neill plan, for example, involves establishing self-maintaining human communities in outer space, with construction materials partially obtained from the moon. The first of these space communities would cost something like an order of magnitude more than the Apollo program and could be operational before 1990. Another possible central project for our society would be the exploration of "inner space"—the human psyche and its aesthetic, metaphysical, ethical, and religious potentialities.

Great central projects like the building of a pyramid or a space station offer one possible approach to solving the long-term problem of unemployment and underemployment. In addition, they may provide what William James termed a "moral equivalent of war"—something that gives people not only employment but purpose and meaning. Another, totally different, approach is along the "new age" direction of drastically changed life-styles which embrace "voluntary simplicity" by de-economizing, de-industrializating, and de-centralizing much of human activity.

In any event, our studies foresee chronic long-term unemployment and underemployment as a future problem for our society. Any temporary respite should be used as an opportunity to look for acceptable solutions, and not be wasted through complacency and self-deception regarding the fundamental systemic nature of the problem.●

SISTERS OF ST. JOHN THE BAPTIST

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. RODINO. Mr. Speaker, on September 23 many of the people of my district will join together to celebrate the 100th anniversary of the founding of the Sisters of St. John the Baptist, a religious order founded in Angri, Italy, which has grown to include 800 women worldwide in service to God and mankind. The people of my home parish of St. Lucy's Church in Newark hold a special appreciation for the Sisters of St. John the Baptist, because since 1906 the sisters have been an integral part of our community. With unselfish dedication they have taught in our schools, and cared for our sick, elderly, and disadvantaged. When Newark Archbishop Peter L. Gerety celebrates mass on September 23 at St. Lucy's, hundreds of people will give thanks for the Sisters of St. John the Baptist.

The contribution of the sisters at St. Lucy's has been rewarded in a very special way this year, because a member of our own community, Sister Alberta Stango, has recently been chosen Mother General for the entire order of the Sisters of St. John the Baptist. As a lifetime member of St. Lucy's parish—she even graduated from St. Lucy's School as a youngster—Sister Alberta Stango's work has not gone unnoticed. While the United States has been fortunate to have 160 sisters of St. John the Baptist, all in New York and New Jersey, Sister Alberta Stango is the first American to be named Mother General.

Mr. Speaker, I am proud of the record of goodness and service of the Sisters of St. John the Baptist at St. Lucy's and around the world. I join with the people of my district in saluting the sisters and in sending my best wishes to Sister Alberta Stango as she assumes her role as head of the order in Rome.●

CONSIDERING THE SUGAR STABILIZATION ACT OF 1978

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. LEDERER. Mr. Speaker, in the near future the House will be considering H.R. 13750, the Sugar Stabilization Act of 1978. My colleagues will have the opportunity to replace the Agriculture Committee language with the version proposed by the Ways and Means Committee for title II.

The Ways and Means Committee version of this bill is a responsible approach to meeting the legitimate needs of both the consumers and producers of this Nation. This is in contrast to the Agriculture Committee bill which through its exclusive reliance on restrictive import quotas would rip off the consumer for $1 billion a year, skyrocketing the price of sugar in the United States to an extent where the Consumer Price Index could go up 1 full percent.

The consuming public of this Nation is aware of this billion dollar ripoff by the sugar producers. The following is an abstract from Jack Anderson on "Good Morning America," September 13, 1978:

"GOOD MORNING AMERICA"

Americans have a sweet-tooth weakness, a national addiction to sugar. It's found in almost everything we eat. Children are weaned on sugar from the time they begin eating their candy-coated breakfast cereals. This has created a booming market for the sugar producers. But they're still not happy. The sugar daddies complain that they're not making enough profit. They are victims, they say, of inflation and competition. So the producers want Congress to give them some relief. The sugar lobbyists are working the backrooms of Congress, seeking an increase in Federal sugar subsidies.

The White House is opposed. President Carter's economists point out that the measure would cost consumers more than $1 billion a year. They have the support of Ohio Congressman CHARLES VANIK. He took the trouble of ordering a study on sugar profits. The General Accounting Office discovered that the industry's profits are cyclic.

In 1974, for example, the industry earned a staggering one billion, five hundred million dollars. Now the profits are down a little. So the producers want the taxpayers to make up the difference—so they can continue to live in the manner to which they have become accustomed.●

LUCIAN C. WARREN, REPORTED IT ALL

HON. BARBER B. CONABLE, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. CONABLE. Mr. Speaker, Lucian C. Warren, the dean of the Buffalo Evening News Washington Bureau and one of the senior reporters in the Washington press corps, is retiring this month after 33 years of reporting events in the Nation's Capital. Few newspapermen are as widely known or as highly regarded in all branches of the news media and the Government.

Residents of Western New York have been the fortunate beneficiaries of his well-informed, wisely interpreted reports for many years, and we are pleased that they will be continued after his retirement, even though on a less than regular basis. It is no surprise that his retirement will be only partial.

Lu Warren has been an active participant in the news reporting community of Washington, as well, being selected by his colleagues for their most important leadership positions. He was president of the National Press Club, chairman of the Standing Committee of Correspondents and president of the Gridiron Club.

The Buffalo Evening News recently carried a report on Lu Warren's career here and I ask unanimous consent to reprint in the RECORD the article of September 5, 1978.

RETIRING DEAN OF NEWS D.C. BUREAU 'SAW IT ALL' IN 33 YEARS AT CAPITAL

WASHINGTON.—After a newspaper reporting career that began in the 1930s as a high school stringer and included heading three prestigious journalism organizations in Washington, Lucian C. Warren, The Buffalo Evening News Washington Bureau chief, is retiring with no regrets about that career.

He would do it all over again and, in fact, at age 65, still plans to keep his hand in on the Washington scene by free-lancing.

"I'm one of the few newspapermen here who doesn't want to leave Washington after retiring," Mr. Warren said. "I like Washington not just as a news capital but because of its cultural advantages."

Mr. Warren, who will retire officially Sept. 30, knew what he wanted to do back in his student days at Jamestown High School. He wrote stringer items for the Jamestown Evening Journal. That led to his getting a job as a summer reporter.

He was graduated in 1936 from Denison University where he gained Phi Beta Kappa honors. In 1952 he was presented a "distinguished achievement" award by the Society of the Alumni of Denison University.

Mr. Warren was hired as a general assignment reporter by the Buffalo Courier-Express in the late 1930s. In 1945 he became that paper's Washington correspondent and in 1968 became Washington Bureau chief for The News.

In his 33 years in Washington, Mr. Warren has covered it all. There have been more than a dozen trips abroad, including accompanying presidents and going to see for himself. He prefers the latter because too many presidential trips are "ceremonial" and "you're chained to the president." He twice covered the Vietnam War and won an Ernie Pyle journalism award for a series on that war.

In 1972 he visited most of the Eastern European countries for a series of articles, and last year he spent six weeks in Scandinavia writing on the political and economic conditions of the Nordic nations. Back in the 1950s he was on hand for naval maneuvers in the North Sea and in the 1960s visited and wrote about Middle Europe.

Even with retirement, the travel and writing continue. He is now on a world trip with his wife, the former Katherine Smith of Ashland, Va., and will visit Japan, India, Turkey, Egypt, Israel, Lebanon, Syria and Jordan.

Mr. Warren has been at the national political conventions and personally has known all the presidents who served during his three decades here. At the last Gridiron dinner, when President and Mrs. Carter went on the stage to take part in a dance, Mr. Warren was chosen by his colleagues, to be the first lady's partner.

Perhaps the word "achiever" can best describe his activity here. Mr. Warren is one of those people who doesn't just belong to things, but takes part and leads. His career has included presidency of the National Press Club in 1955; chairman in 1967 of the Standing Committee of Correspondents, which oversees new coverage of Congress; and in 1975 the ultimate honor, presidency of the Gridiron Club, a limited-membership organization of top news people.

It is generally agreed that few newspapermen in this city have as wide a range of acquaintances in government. It is not odd for him, on the trail of a story, to bypass normal press channels and call some "old friend" at a department or in Congress to get his information quickly and first hand.

Most of his years with the Courier-Express were concerned with coverage of the "local angle" stories, that he says are still the single most important responsibility of a Washington bureau. But at The News, he expanded his duties, covering the White House on a daily basis, a task made difficult because The News required quick reports to meet dayside deadlines, a challenge he admits he is sure to miss. The News also provided him the opportunity to write a weekly column in which his views based on years of experience were shared with readers.

Reporters are supposed to be cynical, but Mr. Warren has kind things to say about people in government, especially those in the top echelons.

"The people in government by and large are a very articulate and for the most part very warm. Sometimes if you get into the lower echelons, right into the bureaucracy, this is not so. But I have been impressed by the high caliber, the warmth, the personality and the comprehension of subjects of the people in government, especially those high in government."

Relationships in the executive branch have varied.

President Eisenhower's press secretary, Jim Haggerty, got the highest marks for working with and helping the press. He was "the best of the lot, the most knowledgeable, and he could talk on his own. He seemed to have carte blanche from Eisenhower."

It's varied greatly from administration to administration. Ron Zeigler under Nixon drew low grades, but Mr. Warren conceded it was not his fault alone; it was more the system and that Mr. Ziegler really was not clued in on everything.

Mr. Warren has some favorites. One is Former Rep. William E. Miller, who was "very straightforward" in dealing with reporters. There are Republicans who say Mr. Warren played a role in making Rep. Miller the GOP vice presidential nominee in 1964. Mr. Warren wrote a column suggesting the idea, and the GOP National Committee made copies and passed it among delegates.

On the occasion of Mr. Warren's retirement, Murray B. Light, managing editor/news, remarked: "Lu Warren has served the News and its readers well in his 10 years as chief of our Washington Bureau. As a reporter, he has maintained the highest professional standards, and he is recognized among his peers and in the high counsels of government for these standards.

"Explaining the goliath that is Washington is no simple chore. Lu has explained and clarified Washington for Western New York readers for three decades. It is a singular service in which he can take great pride.

"The News is happy that Lucian Warren's byline will continue to appear from time to time in our news columns as time permits him to comment on people and issues in Washington and throughout the world."

The Warrens have three daughters, a son and six grandchildren.●

THE DEMISE OF PRODUCTIVITY

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. LaFALCE. Mr. Speaker, on Friday, September 29, 1978, at 6 p.m., the National Center for Productivity and Quality of Working Life will die, a symbol of high hopes once held, and still retained by a few, and the victim of both Republican and Democratic administration negligence. This is a situation to be deplored, not only because the work of the Center will be missed, but also because it indicates a lack of commitment to hard and subtle answers to complex economic problems.

Three years ago, during my first year in Congress, we created the National Center to deal with the problems of declining productivity and its impact on the American economy. At that time, the Economic Stabilization Subcommittee of the House Banking Committee held extensive hearings on the issue, and had top notch witnesses from industry, labor, and the Federal Government. The extent of our enthusiasm is demonstrated by the tremendously broad tasks which were assigned to the Center in the enabling legislation, more than any agency could hope to accomplish, and certainly far more than could be expected from a small agency given a budget of only $3 million. Any one of the goals of the Center could have used up all its resources and still demanded even further attention.

Last week, the Economic Stabilization Subcommittee again held hearings on the subject of productivity, and the plans this administration had for reversing the alarming downturn which our productivity rate has taken in recent months. This time, instead of Cabinet level witnesses, we heard from individuals who can repeat the figures that go along with the recent productivity story, but who appeared to have little understanding of the real ramifications of poor productivity rates and what the intricacies of the solution to a productivity slump are. The perceptions of both labor and management are an integral part of the productivity potential, yet there was no indication during our hearings as to what labor and management thought about the problem.

The National Center has been active in bringing labor and management closer together at all levels, plant, industry, and nationwide, and this is one of the most significant portions of its task. One major factor in its success in this regard was its neutrality and the complete cross section of the American economy represented on its Board of Directors. The Productivity Council proposed by OMB in its testimony has absolutely no representatives of the private sector, either labor or management. How then can the administration expect this group to be more effective in improving private sector productivity than the Center? It seems to me that the Government has taken a giant step backward in thinking that it can, singlehandedly, through the Productivity Council, improve our productivity record by the imposition of directives on business from without. It is precisely the lesson most often learned from individual plant efforts to improve productivity, that the worker on the line knows the most about how to do his job better and "work smarter" not the management MBA, that the Government is failing to recognize here. Productivity improvement must be a cooperative effort, desired by all concerned, because of the benefits it will provide to all involved.

The testimony offered by OMB at last week's hearings is painfully thin in the suggestions it offers for transferring the functions of the dying Center to existing Government line agencies. There is a total lack of imagination in how to deal with a very serious, albeit elusive, problem. In fact, nothing has been added to the testimony since the discussions which were held in my office in May on

the future of the Center. At that time, some general referrals of responsibility were outlined, and that is all that has been offered now, after 4 months of work with a task force intended to get down to the details in this matter. The testimony repeatedly states:

We will be recommending to the President . . .

I must ask when are those recommendations going to be made? In 2 weeks, the line agencies will be off on their responsibilities for the new fiscal year, many with new programs or shifted priorities. If improved productivity is to be one of these, as OMB claims it is, the agencies need to know now what will be expected of them, what resources will be available to them to carry out new responsibilities, and what sort of a commitment the President is going to make to improving our national productivity.

On top of all of this, the Center was informed last Friday afternoon that they were to be moved to new offices for their final 2 weeks of existence. Another Government agency had overstayed its lease and was to use their space. An entire work crew, at overtime pay rates, spent Saturday sitting around while GAS and the Center negotiated. With hundreds of last minute details to be attended to, and literally thousands of publications to be mailed out, little could be more absurd than to force an agency to move, thereby breaking what little continuity there is and the orderly transition to private agencies of its activities which the Center has tried to accomplish.

The productivity problem will not go away simply because we no longer have a national center through which to focus our attention on the problem. We will diffuse the limited efforts now addressed to productivity with the net effect of lessening every one. It is, indeed, fortunate for us that our Nation has a strong economic base from which it operates. Otherwise we would not have been able to survive the productivity slump of the last decade. With current figures showing an absolute decline in productivity, we are treading on very thin ice. The longer we delay in attending to productivity improvement, the longer we can expect to experience high inflation and unemployment and a gradually declining standard of living.●

HONORING GEORGE HANAWALT

HON. MARK W. HANNAFORD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. HANNAFORD. Mr. Speaker, let me take a few moments of your time and that of my colleagues to tell you about the extraordinary community service career of Mr. H. G. "George" Hanawalt. George will be retiring from his position as coastal area manager of the California Edison Co. this week. I feel it is appropriate that the U.S. Congress assembled honor the valuable contributions George has made, both to his employer and to the Long Beach area.

George's concurrent responsibilities at Edison are considerable, encompassing liaison duties with area governments and governmental boards and including community relations activities sponsored by Edison. His associates at Edison have the highest regard for George's attributes as manager and as a person. They confirm what I already know to be true of George—that he is an outgoing, fair-minded, and energetic individual. His previous assignments as Edison district manager for the San Fernando, Fullerton, and Long Beach districts bear further testimony to his managerial and interpersonal skills.

George is no nine-to-fiver. He works hard at his job, and he works hard at being a good citizen. I have examined his schedule, and it rivals my own as a Representative in Congress. George never misses a breakfast, lunch, or dinner sponsored by an area civic group. Yet his family tells me that he still finds time to be an outstanding husband and father.

Those community action groups certainly get something in return for all of those meals they serve George. George is a past president of the Long Beach Area Chamber of Commerce. He is a past president of the Long Beach Rotary. He is a past president of the Southland Builders' Exchange. He is a director of the Metropolitan YMCA, and he serves on the executive committees of the Long Beach Area Boy Scouts and the Boys' Clubs of Long Beach. The list goes on and on, Mr. Speaker. I think you get the idea.

George may be retiring from his full-time employment, but it is going to be hard to keep him from using his other 16 hours per day for his favorite form of recreation—helping others. The George Hanawalts of the world are few and far between, Mr. Speaker. I know you will join me in wishing him a happy, productive retirement.●

THE U.S. COMMISSION ON CIVIL RIGHTS—LET'S SET THE RECORD STRAIGHT

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. EDWARDS of California. Mr. Speaker, I must correct the RECORD regarding statements made September 6. Those points go to: First, the Department of Justice investigation of seven instances of apparent employee misconduct with respect to overtime, and second, findings made by our subcommittee after extensive hearings on this authorization bill (H.R. 12432).

As I noted in my statement on the floor (CONGRESSIONAL RECORD 28088), the Washington Star report of the Justice Department's investigation was inaccurate in several respects but more importantly, the article strongly suggested Commission officials were "covering up" the investigation to insure passage of their extension authorization. I have reviewed the matter and am convinced the Commission has acted properly in pursuing the appropriate adminstrative and criminal remedies in this matter.

The facts show that not only are the criminal and administrative proceedings going forward, but there has been restitution of at least one-half of the wrongfully paid money. Furthermore, the Commission has made the necessary adjustments in procedures for authorizing and reporting overtime to prevent any further abuses.

As with other Federal employees, Commission personel have limitations on their overtime compensation; these limitations are set forth in the Federal Employees Pay Act and the Federal personnel manual. Generally, overtime is available to compensate for work done in exigent circumstances, that is, work which has not been routinely scheduled and cannot be deferred to normal business hours.

Employees are compensated for overtime by overtime pay or compensatory leave. The method of compensation is at the discretion of the office director for those employees with a grade of GS–11 or more; employees below GS–11 may themselves choose between the two methods of compensation. In rare instances, professional overtime is needed—compensatory time cannot be spared—thus, those employees are paid overtime.

As the following figures reflect, much less than 1 percent of the Commission's budget goes to overtime.

ACTUAL FUNDS SPENT FOR OVERTIME

Fiscal year	Total appropriated budget	Amount of overtime	Percent
1975	$7,000,000	$49,000	0.007
1976	10,285,306	57,000	.007
1977	10,078,000	72,000	.007
1978	10,048,000	51,000	.006

Note: Through July.

Let me now turn to the "findings" my colleague said were made by this subcommittee in its review of the Commission and its work. (CONGRESSIONAL RECORD 28094). The allegations set forth by Mr. BUTLER are not true.

The Commission has not received funding increases anywhere near 30 percent per year, as a review of the chart above will show. Commission increases from 1975 to the present are reflective of inflationary trends as well as employee benefits and payments as required by law and a special age discrimination study, as mandated by Congress.

We made no finding that their costs were escalating at an exorbitant level and far from finding their work duplicative of other agencies, we concluded the unique contribution made by the Commission in the field of civil rights made the continuation of the Commission for at least another 5 years compelling.

We found that limited Commission resources prevented its review of all forms of discrimination; thus, it has not done extensive review of white ethnic or re-

ligious discrimination, but it has done numerous studies on national origin. It is reviewing the most blatant forms of civil rights violations.

Only one witness, representing no one but himself, questioned the Commission's review of issues which impact disproportionately on women. This witness also suggested that the discrimination confronting the aged and handicapped should be outside the Commission's scope of review. His primary recommendation was that the Commission's jurisdiction be confined to those issues it reviewed in 1957, when it was originally established. His views and recommendations were not, I am happy to say, adopted by the committee or the Congress.●

HAS CAPITALISM A FUTURE?—A HISTORIAN'S VIEW

HON. STEVEN D. SYMMS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. SYMMS: Mr. Speaker, the September issue of the Bank Credit Analyst printed the text of a speech given by the noted British author and historian, Paul Johnson, to an economic conference in Bermuda last May. Mr. Johnson's speech concerned the future of industrial capitalism and highlighted the benefits that that particular economic system has brought to mankind.

Johnson discusses five current threats to the survival of industrial capitalism; two of which are the Marxist-socialist influence found in many leading universities and the radical ecology movement. About the latter he states:

As it is, the ecology panic has been a potent destructive force. The panic mongers played a crucial role in persuading the Middle Eastern oil producers, especially Iran, to quadruple the price of oil in the autumn of 1973, the biggest single blow industrial capitalism has suffered since the Wall Street crash of 1929. That was the beginning of the profound recession from which we have not yet emerged. In the end, as was foreseeable at the time, the huge rise in oil prices did not do any one any good, least of all the oil producers. But it ended the great postwar boom and robbed Western capitalism of its tremendous elan, perhaps for good. And it is significant that the ecological lobby is now striving desperately with fanatic vigor and persistence, to prevent the development of nuclear energy.

I consider Mr. Johnson's observations to be especially noteworthy, because he was one of the leading members of the intellectual left in the United Kingdom and a well-known member of the British Labor Party. From 1965–70 he was editor of the New Statesman, a leading academic socialist weekly. Recently, he broke completely with his colleagues over what he saw as their growing frontal assault on the basic freedoms which are so critical to the survival of a free society, its wealth-producing capabilities and the personal freedoms provided by industrial capitalism. He is the author of a recent book, "Enemies of Society," published by Atheneum Press.

One point that Johnson makes explicitly is that capitalism and its associated personal freedom is a new idea; that the old ideas are socialism, feudalism, and poverty.

I would like to commend the Johnson statement to my colleagues in Congress:

HAS CAPITALISM A FUTURE?—A HISTORIAN'S VIEW

Let me begin by defining my terms. By "capitalism" I mean large-scale industrial capitalism, in which privately-financed publicly-quoted corporations, operating in a free market environment, and with the backup of the private enterprise money market, constitute the core of national economies. This is a pretty broad definition, but I think it will do.

Now the first thing to be noted is that this phenomenon is pretty recent. I would date it, in its earliest phase in England, only from the 1780's. It is thus less than 200 years old anywhere. As a widely-spread phenomenon, it is barely 100 years old. Seen against the grand perspective of history, capitalism is a newcomer. We now possess some knowledge of economic systems going back to the early centuries of the third millenium B.C. I could give you, for instance, an outline account of the economic structure of Egypt under the Old Kingdom, about 2700 B.C. Our knowledge of how civilised societies have organised their economic activities thus covers a stretch of more than 4600 years. And in only about 200 of those years has industrial capitalism existed. Now the next point to note is the remarkable correlation between the emergence of industrial capitalism and the beginnings of really rapid economic growth. Throughout most of history, growth rates, when we have the statistical evidence to measure them, have been low, nil or minus. A century of slow growth might be followed by a century of decline. Societies tended to get caught in the Malthusian Trap: that is, a period of slow growth led to an increase in population, the outstripping of food supplies, followed by a demographic catastrophe, and the beginning of a new cycle.

There were at least three economic "Dark Ages" in history, in which a sudden collapse of the wealth-making process led to the extinction, or virtual extinction, of civilised living, and the process of recovery was very slow and painful.

The last of these three Dark Ages extinguished Roman civilization in Western Europe, in the 5th Century A.D. It was not until the 13th century that equivalent living standards were again achieved—the recovery thus took 800 years. Society again fell into a Malthusian trap in the 14th cenutry and again recovery was slow, though more sure this time, as intermediate technology spread more widely, and methods of handling and employing money became more sophisticated. Even by the first half of the 18th century, however, it was rare for even the most advanced economies, those of England and Holland, to achieve one per cent growth in any year. And there is a possibility (I myself would put it higher) that mankind would again have fallen into a Malthusian trap towards the end of the 18th century if industrial capitalism had not made its dramatic appearance.

And it was dramatic. By the beginning of the 1780's, in England, an unprecedented annual growth rate of two percent had been achieved. During that decade, the two percent was raised to four percent. This was the great historic "lift off", and a four percent annual compound growth rate was sustained for the next 50 years, on average. Since this English, and also Scottish, performance was accompanied by the export of capital, patents, machine tools and skilled manpower to several other advanced nations, the phenomenon soon became international.

I don't want to overburden you with figures, but some are necessary to indicate the magnitude of the change that industrial capitalism brought to human society. In Britain, for instance, in the 19th century, the size of the working population multiplied fourfold. Real wages doubled in the half-century 1800–1850, and doubled again, 1850–1900. This meant there was a 1600 percent increase in the production and consumption of wage-goods during the century. Nothing like this had happened anywhere before, in the whole of history. From the 1850's onward, in Belgium, France, Austria-Hungary, above all in Germany and the U.S., even higher growth rates were obtained; and feudal empires like Japan and Russia were able to telescope a development process which in Britain had stretched over centuries into a mere generation or two.

The growth rates of twelve leading capitalist countries averaged 2.7 percent a year over the whole 50-year period up to World War I. There was, it is true, a much more mixed performance between the wars. The U.S., for instance, which in the 44 years up to 1914 had averaged a phenomenal 4.3 percent growth rate, and which in the seven years up to 1929 had increased its national income by a staggering 40 percent, then saw its national income fall 38 percent in the mere four years 1929–32.

But following World War II, growth was resumed on an even more impressive scale. In the 1950's, for instance, the 12 leading capitalist economies cited before had an average annual growth of 4.2 percent. In Germany it was as high as an average of 7.6 percent. In all the West European economies, the rate of investment in the 1950's was half as high again as it had ever been on a sustained basis. In several such countries it was over 20 percent of the GNP; in Germany and the Netherlands it was 25 percent, in Norway even higher. Moreover, this high capital formation took place not at the cost of private consumption, but during a rapid and sustained rise in living standards, particularly of industrial workers. These tendencies were prolonged throughout the 1960's and into the 1970's. So far as the mature economies were concerned, the second industrial revolution, 1945–70, was entirely painless—and largely so even in Japan, where even higher investment and growth rates were sought, and obtained, to catch up with the U.S. and Europe.

In short, after nearly five recorded millenia of floundering about, in relative or absolute poverty, humanity suddenly in the 1780's began to hit on the right formula: industrial capitalism. Consider the magnitude of the change over the last 200 years or less. We all know the wealth of present-day West Germany: all of us (I am sure) have seen it for ourselves. In the year 1800, in the whole of Germany there were less than 1,000 people with annual incomes of 1,000 dollars a year or more. Or again, take France. France now has more automobiles per capita even than Germany, and more second homes per family than any other country in Europe. In the 1780's, four/fifths of French families spent 90 percent of their incomes simply on buying bread—only bread—to stay alive.

Now I have said enough (I could say much more) to demonstrate that industrial capitalism, judged simply by its capacity to create wealth, and to distribute it, is a phenomenon unique in world history. It could be argued that it is the greatest single blessing ever bestowed on humanity. Why, then, am I giving a talk, not in any spirit of paradox either, called has capitalism a future?

You may well ask. But I think we know

the answer. I am giving it because capitalism is threatened, and we feel it to be threatened: the question is not academic. But before we go any further, I would like to clear up one important point. The idea has got around, and it is widely believed, especially among young people—and above all, alas, among young people who like to think they are well educated—that industrial capitalism is unpopular, and always had been. That it is the work of a tiny, interested minority who have thrust it upon the reluctant mass of mankind.

Nothing, in fact, could be further from the truth. The storage economies of remote antiquity were often hideously unpopular. So was the slave-based economy, combined with corporatism, of the classical world. Agricultural feudalism was certainly unpopular; and mercantilism had to be enforced, in practice, by authoritarian states.

But capitalism, industrial capitalism—no! From the very start it received the demonstrable approbation of the masses. They could not vote in the ballot box, but they voted in a far more positive and impressive manner, with their feet. And this for a simple reason. The poorest member of society values political freedom as much as the richest and the well educated—that is my belief. But the freedom he values most of all, the freedom which means most to him, is the freedom to sell his labour and skills in the open market. It was precisely this that industrial capitalism gave to men for the first time in history. Hence it is a profound error of fact, in my view, to see what Blake called the "dark, satanic mills" of the industrial revolution, as the enslavement of man. The factory system, however harsh it may have been, was the road to freedom for millions of agricultural workers. Not only did it offer them an escape from rural poverty, which was deeper and more degrading than anything experienced in the cities, but it allowed them to move from status to contract, from a stationary place in a static society, with tied cottages and semi-conscript labour, to a mobile place in a dynamic one. That was why the common man voted for industrial capitalism with his feet, by tramping from the countryside to the towns, in enormous numbers, first in Britain, then throughout Europe. And tens of millions of European peasants, decade after decade, moved relentlessly across the Atlantic in pursuit of that same freedom, from semi-feudal estates and small holdings in Russia, Poland, Germany, Austria-Hungary, Italy, Ireland, Scandinavia, to the mines and factories and workshops of New York, Chicago, Pittsburgh, Cleveland, Detroit. It was the first time in history that really large numbers of ordinary people were given the chance to exercise a choice about their livelihood and destiny, and to move, not as a member of a tribe or a conscript soldier, but as free individuals, selling their labour in the open market.

They voted for industrial capitalism with their feet not only because they felt in their bones that it meant a modest prosperity for their children and grandchildren—and on the whole they have been proved abundantly right—but because they knew it meant a new degree of freedom for themselves.

Indeed, the success of industrialisation, despite all its evils, continues to persuade countless ordinary men and women, all over the world, to escape the poverty and restraints of rural status-society and to enter the free labour markets of the towns. Hence the growth of the megalopolises all over the world—Calcutta and Bombay, Teheran and Caracas, Mexico City and Djakarta, Shanghai and Lagos, Cairo and Johannesburg; there are now literally scores of million-plus cities all over the Third World. This never-ending one-way flow from countryside to city is plainly a voluntary mass choice, for most governments fear and resent it and many are attempting, sometimes savagely but always ineffectively, to halt or reverse it. It is more marked in the free market economies, but it is marked everywhere. Short of evacuating the cities by force and terror, as is now apparently being practiced in parts of southeast Asia, there is no way to stop this human flood. There seems to be an almost irresistible urge in human beings to move away from the status society to contractual individualism—the central feature of industrial capitalism. And this operates even in totalitarian societies, as witness the efforts, for instance, of the Chinese and Polish governments to limit the urban explosions they are experiencing.

Well, then, if industrial capitalism is both unique in its wealth-producing capacity, and also has the endorsement of a popular mandate, why is it under threat? And who is threatening it?

Let me look at five principal elements. The first, and in some ways the most important, is that the free enterprise idea is losing, if it has not already lost, the intellectual and moral battle. Not long ago I went into Blackwell's, the great book shop at Oxford University. I wandered over the huge room which houses the books on politics and economics, and having been disagreeably surprised by what I saw there, I made a rough calculation. New books extolling the economic, social and moral virtues of Communism and collectivism—and there were literally hundreds and hundreds from all over the world—outnumbered books defending free enterprise, or merely seeking to take an objective view of the argument, by between five and six to one. Now this overwhelming predominance of collectivism was not due to any sinister policy on the part of Messrs. Blackwell's, which is a highly efficient capitalist enterprise. It was a marketing response to demand, on the part of students and teachers. And this was Oxford University, not one of the new slum universities of recent years, some of which have been virtually shanghaied by Marxist factions, but one of the free world's greatest centres of learning, where the battle of ideas is fought under the best possible conditions.

There can be no doubt that the intellectual and moral assault on free enterprise, and the exaltation of Marxist collectivism, which is such a striking feature of the 1970's, is directly related to the huge expansion of higher education, put through at such cost to the capitalist economies, in the 1960's. Now there is in this a huge and tragic irony. For in the 1950's, the decade when the university expansion was planned, it was the prevailing wisdom among the leading thinkers of the West, that the growth of higher education was directly productive of industrial growth—that the more university graduates we turned out, the faster the GNPs of the West would rise. This was the thesis outlined by President Clark Kerr of Berkeley, in his 1963 Godkin lectures at Harvard, and it was a thesis put forward, with immense effect in Britain, by Sir Charles, now Lord Snow. Kerr said: "What the railroads did for the second half of the last century, and the automobile for the first half of this century, may be done for the second half of the 20th century by the knowledge industry: that is, to serve as the focal point for national growth". And Kerr added that more graduates would not only mean a bigger GNP but act as a reninforcement for middle class democracy, with all its freedoms.

Now to speak of the "knowledge industry" was to ask for trouble. Knowledge is not a manufactured commodity. There is knowledge for good and knowledge for evil, as the Book of Genesis says. The 1960's, during which most Western nations doubled, and in some cases trebled, their university places, did not reinforce democratic freedoms, or enlarge GNP or strengthen the free enterprise system. They produced the students revolts, beginning in Paris in 1968; they detonated the Northern Ireland conflict, which is still harassing Britain. They produced the Baader-Meinhoff Gang in West Germany, the Red Brigade in Italy, the Left Fascist terrorism of Japan. They produced an enormous explosion of Marxist studies, centered around the social sciences and especially sociology and a new generation of university teachers and school teachers, dedicated by faith and by a sort of perverted religious piety, to the spread of Marxist ideas.

There are ironies within the general irony. Thus, the new university of the air, created in Britain at enormous expense to bring higher education to adults, and therefore christened the Open University, has become a centre virtually closed to any teacher not of proven Marxist opinions. Nuffield College, Oxford, founded by that great capitalist pioneer, Lord Nuffield, who created the British automobile industry, has become a centre of trade union ideology, of the very ideas which, slowly but surely, are putting the British automobile industry out of world markets and out of business. Warwick University, created in the 1960's as a powerhouse of ideas and clever graduate executives for the West Midlands industrial complex, Britains biggest, has become a seminary of Marxist and psuedo-Marxist agitators dedicated to the destruction of the wealthproducing machine which brought their university into existence.

I could go on. It is true, of course, that student unrest, as such, has quietened down. But the steady diffusion of ideas hostile to our free system continues remorselessly. Industrial capitalism, and the free market system, is presented as destructive of human happiness, corrupt, immoral, wasteful, inefficient and above all, doomed. Collectivism is presented as the only way out compatible with the dignity of the human spirit and the future of our race. The expanded university threatens to become not the powerhouse of Western individualism and enterprise, but its graveyard.

There is a second threat, what I call in my book the "Ecological Panic". Now this movement, again, began with the best intentions. I well remember when Rachel Carson's work, The Silent Spring, first appeared in The New Yorker, and the surprise and concern it rightly aroused. We were tending to ignore some of the destructive side effects of very rapid industrial expansion. The wave of concern that followed was justified, and the steps then taken, notably the clean air policies, and the policies for cleansing lakes and waterways, have been spectacularly successful. Thanks to smokeless fuel, London fogs, which were real killers, have been virtually eliminated. The last really serious London fog was in 1952. The Thames is now cleaner, and has greater quantities of fish, and more varieties in it, than at any time since before the Days of Spenser or Shakespeare. Similar successes are now being registered in the U.S., which adopted such legally enforceable remedies somewhat later than Britain did. These are examples of what can be done by thoughful, unemotional, systematic and scientifically justified application of conservation and anti-pollution policies.

But most of these were put in hand before the ecological panic started. Once ecology became a fashionable good cause, as it did in the late 1960's, reason, logic and proportion flew out of the window. It became a campaign not against pollution, but against growth itself, and especially against free enterprise growth—totalitarian Communist growth was somehow less morally offensive. I beg of those of you who have not already read it to get a copy of Professor Wilfred Beckerman's In Defense of Economic Growth. Beckerman is one of the best of our econo-

mists, and was a member of the Royal Commission on Environmental Pollution; he knows the subject better perhaps than any other working economist and his book is a wonderful sane and lucid summary of the entire subject.

I have never yet been able to persuade any committed ecology campaigner even to look at this book. Of course not. They have a faith, and they do not want to risk it. One of the most important developments of our time (I would argue) is the growth, as a consequence of the rapid decline of Christianity, of irrationalist substitutes for it. These are not necessarily religious, or even quasi-religious. Often they are pseudo-scientific in form, as for instance the weird philosophy of the late Teilhard de Chardin. The ecology panic is another example. It is akin to the salvation panic of 16th century Calvanism. As I say in my book, when you expel the priest, you do not inaugurate the age of reason—you get the witchdoctor. But whereas Calvinist salvation panic may have contributed to the rise of capitalism, the ecology panic could be the death of it.

If the restrictions now imposed on industrial development had operated in 18th century England, the industrial revolution could not have taken place. It would in effect have been inhibited by law—as of course many landowners of the day wished it to be—and in any event legal requirements would have eliminated the very modest profits by which it originally financed itself. We would still be existing at 18th century living standards, and wallowing in 18th century levels of pollution, which were infinitely worse than anything we experience today—if you want to see what they were like, visit the slums of Calcutta or Djakarta.

As it is, the ecology panic has been a potent destructive force. The panic mongers played a crucial role in persuading the Middle Eastern oil producers, especially Iran, to quadruple the price of oil in the autumn of 1973, the biggest single blow industrial capitalism has suffered since the Wall Street crash of 1929. That was the beginning of the profound recession from which we have not yet emerged. In the end, as was foreseeable at the time, the huge rise in oil prices did not do any one any good, least of all the oil producers. But it ended the great postwar boom and robbed Western capitalism of its tremendous elan, perhaps for good. As Browning put it, "Never glad confident morning again". And it is significant that the ecological lobby is now striving desperately with fanatic vigor and persistence, to prevent the development of nuclear energy, allegedly on the grounds of safety. Now it is a fact, a very remarkable fact in my view, that throughout the West (we have no figures for Russia or China) the nuclear power industry is the only industry, the only industry, which over 30 years has contrived to avoid a single fatal industrial accident. Its record is unique, and has been achieved by the efforts of the industry itself, and the responsible governments, without any assistance from the ecolobby. But of course they would like a few fatal accidents. That would suit their purposes very well. In Britain recently, we had a long, public enquiry, what we call a statutory enquiry, into whether or not it was right to go ahead with the enriched uranium plant at Windscale. The enquiry was a model of its kind. The ecolobby marshalled all the scientific experts and evidence they could lay their hands on. At the end the verdict was that there was no reason whatever why the program should not proceed. Did the ecolobby accept the verdict? On the contrary. They immediately organised a mass demonstration, and are planning various legal and illegal activities to halt the program by force. Now it is notable that a leading figure in this campaign is the man who is perhaps Britain's leading Communist trade unionist, Mr. Arthur Scargill of the Mine-workers. He has never, so far as we know, campaigned against Soviet nuclear programs, peaceful or otherwise. But the mass of the movement, in the U.S., Britain, France, Germany, and Italy, so far as I have been able to observe, is not politically motivated. They are simply irrational: but irrationality is an enemy of civilised society, and it can be, and is being exploited by the politically interested.

A third factor in the future of capitalism is the growth of government. Let me put it this way. Industrial capitalism, or rather the free enterprise economy, and Big Government, are natural and probably irreconcilable enemies. It is no accident that the industrial revolution took place in late 18th century England. It was a period of minimum government. Of all the periods of English history, indeed of European history, it was the time when government was least conspicuous and active. If was the age, very short alas, of the Night Watchman state. As a matter of fact, the industrial revolution—perhaps the most important single event in human history—seems to have occurred without the English government even noticing. By the time they did it was too late; happily—otherwise they would probably have stopped it.

It is almost inevitable that government, particularly an active, interventionist government, should view free enterprise with a degree of hostility, since it constitutes a countervailing power in the state. The tendency, then, is to cut free enterprise down to size, and this may be done in a number of ways. In the U.S. the characteristic technique is government regulation and legal harassment, and this of course has been far more pervasive and strident since the ecolobby swung into action. In Britain the technique is both through direct assault—nationalization—and slow starvation. In a way, nationalization is ineffective, since it allows the public to make comparisons between the performance of the nationalized sector and that of the free sector—nearly always to the latter's advantage. Starvation is more insidious. By this I mean the progressive transfer, by taxation and other government policies, of resources from the private to the public sector.

In 1955, for instance, public expenditure in Britain as a proportion of GNP was just over forty per cent. By 1975, twenty years later, it has risen to nearly sixty percent. Moreover, this rise was accompanied by a record budget deficit of about 22 billion dollars, itself a further 11½ per cent of GNP. Of course, the taxation had to be provided, and the deficit serviced, by the private sector. We have, then, an Old Man of the Sea relationship, in which the parasitical Old Man is growing bigger, and poor Sinbad smaller, all the time. The shrinking productive sector has to carry the burden of an ever-expanding loss-making public sector. Thus Britain's nationalized steel industry will lose one billion dollars this year, and it has just been authorized by statute to borrow up to seven billion dollars, guaranteed by government and taxpayer. Now the interesting thing is that in Britain the public sector, and the civil service, generally, are now paying higher wages, providing better conditions, and giving larger pensions—which in a growing number of cases are index-linked, and so inflation-proof—than the private sector can possibly afford. And of course they are financing these goodies out of tax-guaranteed deficits—that is, from the dwindling profits of the private sector. This is what I call the starvation technique. When a private firm goes bust, provided it is big enough, the state takes over, the losses are added to the taxpayer's bill, and the private sector has one more expensive passenger to carry. This is the starvation method.

In this technique, the fourth factor, the trade unions, play an important part. In Britain it's demonstrably true that the legal privileges of the trade unions, which virtually exempt them from any kind of action for damages (including, now, libel), led directly to restrictive practices, over-manning, low productivity, low investment, low wages and low profits. Thus trades union action tends, in itself, to undermine the performance of industrial capitalism as a wealth-creating system. In Britain, for instance, the trade unions can rightly claim that capitalism is inefficient, because they make sure it is inefficient. Ford workers in Britain, using exactly the same assembly line machinery as in West Germany, produce between 20 and 50 percent less automobiles. ICI Chemicals, one of the best companies in Britain, nevertheless has a productivity performance 25 percent lower than its Dutch and German competitors. A recent analysis shows this is entirely due to over-manning and restrictive practices. The private sector is now threatened by further union devices; the legally-enforced closed shop, which compels the workforce to join designated unions on pain of dismissal without compensation or legal redress; and new plans to force firms to appoint up to 50 percent worker directors, these worker directors to be appointed not by the work force themselves, nor even necessarily from among them, but by and from the trade union bureaucracy (Bullock Report). This has to be seen against the explicit policy of some groups within the unions of driving private sector firms to bankruptcy, by strikes and harassment, so that the state will then have to take them into the public sector.

Of course I don't want to make your flesh creep by arguing that what is happening in Britain will necessarily happen elsewhere. But certainly if the bill now before the Senate giving unions much wider and more effective powers to organize goes through, the U.S. will be well launched on the road we have travelled; and I may say there are many other ways in which the present U.S. administration seemed determined to follow Britain's example. The West Germans, too, are now beginning to adopt some of the institutions which flourish in British trades unionism, notably the shop stewards' movement. Businessmen all over the free world may despise the performance of British industry, but trades unionsist all over the world admire and envy the power of British trades unionists and are actively seeking to acquire it for themselves.

Let me end on a word of warning. I have said nothing of the fifth threat on industrial capitalism and the free enterprise system—the threat from without. But of course this is bound to increase as the military superiority of the Soviet Union over the U.S. is reinforced. I have never thought that the Communist system would triumph by a direct assault. I have always assumed that it would first establish an overwhleming military predominance and then, by pressure and threats, begin to draw the political and economic dividends of it. If the U.S. opts out of the competitive arms race with the Soviet Union, while providing, as she supposes, merely for her own defence, then we must expect to see this fifth threat hard at work winding up industrial capitalism and free enterprise all over the world.

Thus, when we ask has capitalism a future? I answer: it all depends on the U.S., West Germany and Japan, it is true, have strong free enterprise economies; they also have a tradition of state capitalism, and would adapt themselves with surprising speed and readiness to a new collective order. France already has a huge public sector and a long tradition of dirigisme or etatisme. All three are Janus-faced. Britain, I believe, is profoundly anti-collective and will remain so if it continues to be given the choice. But its private enterprise system is now very weak, and its business and financial elites are de-

moralised and defeatist. Is there demoralisation, is there defeatism, on this side of the Atlantic? You can answer that question better than I can. I myself think that capitalism will survive, because of its enormous intrinsic virtues as a system for generating wealth, and promoting freedom. But those who man and control it must stop apologizing and go onto the ideological offensive. They must show to ordinary people that both the Communist world, and the third world, are parasitical upon industrial capitalism for their growth technology. That without capitalism, the 200 years of unprecedented growth which have created the modern world, would gradually come to an end. We would have slow growth, then nil growth, then minus growth; and then the Malthusian catastrophe.

In short, those who wish to maintain the capitalist system must endeavour to teach the world a little history, and remind it, and especially the young, that though man's achievements are great they are never as solid as they look. If man makes the wrong choice, there is always another Dark Age waiting for him round the corner of time.●

CUBA SPEARHEADS DRIVE AGAINST PUERTO RICO

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. McDONALD. Mr. Speaker, acting with the support of the Soviet Union and its other political and economic satellites, the Cuban Communist regime has intensified its interference in U.S. internal affairs regarding the Commonwealth of Puerto Rico. The Communist bloc is carrying out this interference via the United Nations via claims that Puerto Rico is a colony that must be relinquished by the United States.

It is not surprising that the drive against Puerto Rico has been revived following the giving up of the Canal Zone and Panama Canal by this country. The Communists can read the signal as well as any that the United States is fast retreating from its former position of world leadership and know that now is the time to push for new gains.

As both the Cubans and U.S. Communist Party officials have long pointed out, after the bases in Panama that are now being closed out, the United States' defense installations in Puerto Rico are the vital lynchpins of America's southern defenses. The Cuban Communists have been backing the Castroite Communist Puerto Rican Socialist Party (PSP) since the late 1950's when it was formed as the Movement for Independence (MPI). In recent years the PSP and individual Castroites have built a network of additional supporting revolutionary groups around the PSP which range from the terrorist FALN (Armed Forces of National Liberation) to the Puerto Rican Peace Council, a section of the World Peace Council, that is controlled by the Soviet KGB and the Soviet Communist Party. Members of this body who have been concerned with these developments will doubtless recall that the PSP, in collaboration with the overt support arm of the Weather Underground terrorists, set up the so-called July 4 coalition which conducted a demonstration in Philadelphia in opposition to the celebration of the Bicentennial of this Nation and to demonstrate their support of terrorist "revolutionary armed struggle."

The leader of the PSP was joined by a number of other Marxist-Leninist revolutionaries, representatives of terrorist support groups, other supporters of Puerto Rican independence and a few who supported either statehood or continuation of commonwealth status in giving statements to the United Nations Special Committee of 24 on Decolonization, August 29 to 31, 1978. During the meetings of the U.N. committee, the supporters of FALN terrorists were in evidence not only outside the U.N. at picket lines and rallies, but inside the U.N. also giving statements to the Special Committee of 24 on Decolonization.

Undoubtedly responsible persons who participated in the U.N. meetings will want to disavow support of the Puerto Rican Socialist Party, whose leader threatened to use revolutionary violence if the U.N. did not force the United States to abandon Puerto Rico; and of the much smaller Puerto Rican Socialist League whose leader not only praised the FALN butchers, but also commended the "revolutionary command" that murdered attorney Allan Randall in Puerto Rico earlier this year.

And finally, responsible persons who participated in the United Nations event will reject the assertions of a number of speakers who appear to have been parroting the propaganda broadcasts of Radio Havana which describe the five Puerto Rican terrorists who attempted to assassinate President Truman in 1950, and who tried to murder Members of this House in a 1954 shooting spree from the House Visitors Gallery as "political prisoners."

The Information Digest, a highly informative newsletter on violence-prone organizations in the United States, recently published the following article on events surrounding the United Nations Decolonization Committee meetings:

DECOLONIZATION OF PUERTO RICO

The 24-member United Nations Special Committee on Decolonization opened meetings on August 29, 1978, in New York to consider the "question" of the status of Puerto Rico. As representatives of many Puerto Rican Marxist-Leninist, Castroite, terrorist support, and militant groups spoke in opposition to continuation of Puerto Rico's commonwealth status with the United States, picket lines and rallies were held outside the U.N. to show "mass support" for ending alleged U.S. "colonialism imperialism and repression" in Puerto Rico.

The U.N. Committee opened its sessions with an appearance by Puerto Rican Governor Carlos Romero Barcelo who argued for retention of Puerto Rico's present commonwealth status. Very few speakers in favor of either full U.S. statehood for Puerto Rico or of continuation of the present relationship appeared, and the U.S. again officially boycotted the Committee although Ambassador Young's office issued a statement that the President would adhere to his 7/25/78 proclamation that the U.S. would abide by any referendum decision by the Puerto Rican voters.

The governor was followed by Eneida Vasquez, president of the Puerto Rican Peace Council, a section of the Soviet-controlled World Peace Council (WPC), whose demands and allegations of "repression" were typical of the militants. Vasquez demanded support for freeing four Puerto Rican Nationalist Party terrorists from federal prison; support for demands that U.S. "repressive agencies" be withdrawn from Puerto Rico, particularly the FBI; support for demands that the U.S. military presence in Puerto Rico be ended; and support for a demand that the U.S. not proceed with any program of statehood for Puerto Rico.

On the afternoon of August 30, the lead speaker was Rep. Ronald Dellums [D–CA], whose speech was extensively reprinted in the Daily World on 9/7/78 and 9/8/78. Dellums, who said he represented the views of a group of U.S. citizens concerned with ending "domination by the United States over the subject nation of Puerto Rico," stated they believed the U.S. government and U.S. political parties were "trying to create new forms of domination of the Puerto Rican people that will ensure continued, uninterrupted economic, political and military control of the island."

Rep. Dellums went on to argue that there could be no valid expression of self-determination by Puerto Ricans until "they alone exercise their sovereignty. That is, Puerto Rico must be a sovereign entity first, in order then to be able freely to choose what its relations with other countries, peoples, and governments should be."

Completely denying the validity of present U.S.-Puerto Rican relationships, Dellums charged that Puerto Rico "has to tolerate the presence of a huge, repressive and dangerous military establishment" and that in such areas of "U.S. prerogative" as citizenship, currency, defense and market, the relationships are invalid because they are "clearly in the political, economic and military interest of the USA."

Dellums cited among the "overwhelmingly clear" facts indicating Puerto Rico's colonial status were that the U.S. Federal courts are the final arbiters of law and constitutionality of statutes passed by the Puerto Rican legislature, that "more than one-third of all Puerto Rican women of childbearing age have been sterilized in a program planned and financed by the Department of Health, Education, and Welfare;" that a "sustained attack has been carried out against the culture, customs, and language of the Puerto Rican nation;" that there has been "repression and covert operations against individuals and organizations demanding an end to this colonial status;" and that U.S.-based corporations earn "superprofits of about $1.3 billion per year from Puerto Rican labor."

The bad effects on the U.S. from the continued "colonization of Puerto Rico" include "the threat to our youth of wars for continued domination of Puerto Rico."

Additional statements were provided by attorney Luis M. Chaves Ghiglíotty who called for full "autonomy" for Puerto Rico in international affairs, use of its natural resources and similar matters; American Friends Service Committee (AFSC) executive secretary Louis Schneider who said the AFSC board of directors had issued a statement that Puerto Rico was a U.S. colony, and asked that Puerto Rico be placed on the U.N. list of colonies in order to "help the people of the United States and Puerto Rico address the problem;" Rudolfo C. Contreras, chairman of the National House of Culture in Puerto Rico, who attacked the use of Engish in Puerto Rico as causing "a collective schizophrenia" and denounced the "monopoly" of news supplied to Puerto Rico by the "two North American news agencies."

Ruben Berrios Martinez, head of the Puerto Rican Independence Party (PIP), a Marxist party which has been subjected to several takeover attempts from the Castroite, Marxist-Leninist Puerto Rican Socialist

Party (PSP), declared that the four remaining jailed Puerto Rican Nationalist Party terrorists were examples of U.S. "political prisoners." Concluding speakers included Marco Antonio Rigau; Efren Ramirez, a supporter of commonwealth status; Isabel Rosado of the Cruzado Pro-Rescate de Vieques [Crusade for the Return of Vieques, an island used for bombing practice] who said we had spent long years in jail "for the offense of having advocated independence for my own country," and warned "when all other paths are closed, the patriots are left with nothing but a path to desperate actions;" and Francisco Hernando Vargas, head of Puerto Ricans against Statehood, who said that Puerto Rico was not a colony but a sovereign nation that had been subjected to a military invasion and occupation.

The United Nations Special Committee of 24 on Decolonization continued its meetings on August 31 with the appearance of Juan Antonio Corretjer, head of the small Puerto Rican Socialist League which has long been aligned with the Progressive Labor Party. According to Corretjer, repression by "yankee imperialists" against "patriotic organizations" was severe and thus "a kind of guerrilla warfare was being waged."

Corretjer stated that the Fuerzas Armadas de Liberacion Nacional (FALN) was "functioning in North American territory" and that various other clandestine organizations were operating in Puerto Rico. According to Corretjer, these revolutionary terrorist groups were conducting their campaigns "with heroism and prudence," and would continue to operate until there was a political victory via the U.N. Corretjer listed among the actions carried out in Puerto Rico by a "revolutionary command" assassination of attorney Allan Randall for trying to "undermine the concept" of Puerto Rican unions. It is noted that following this statement, the crown of independentista supporters packed into the public galleries erupted into noisy applause.

Speakers following Corretjer included Luis Fernando Abreu Elias of the Masonic organization El Gran Oriente National de Puerto Rico who supported independence as a means to stop becoming an "accomplice" of "inhuman Yankee imperialism" and "exploitation by transnational corporations;" PSP secretary-general Juan Mari Bras who exhibited a section of the FBI files on him obtained under the Freedom of Information Act, said that such "persecution" prevented any free exercise of self-determination, and warned that the U.N. must do all it could to promote a peaceful decolonization of Puerto Rico because his PSP "would not hesitate to confront the violence of the enemy with the violence of the Puerto Rican revolutionary spirit."

Additional speakers included Nelson W. Canals, chairman of the National Committee for the Freedom of Puerto Rican Nationalist Prisoners [Comite Nacional Pro-Libertad de los Prestos Nacionalistas]; Olaguibeet Lopez-Pacheco, Sovereign Grand Commander of the Supreme Masonic Council of Puerto Rico, who denounced the "repressive system operated in Puerto Rico" via an atmosphere of assassination, fear and mistrust; Jose Lopez, head of the Movimiento de Liberacion Nacional (MLN), who said that the "imperialists" were "aware of the threat posed" by Puerto Ricans, the 25 million Chicanos and Mexicanos, and the 35 million blacks in the U.S.; Rafael Soltero Peralta, secretary for external affairs of the National Grand Lodge of Puerto Rico; Carmen Puigdollers, Committee of Puerto Ricans in the United States; Manuel Roman, president of the Statehood or Democratic Republic Movement, who said that the great majority of the Puerto Rican people rejected both socialism and communism and that the political status of Puerto Rico was an internal matter between the two parties.

During the meetings of the U.N. Committee, Cuba and Iraq introduced a draft resolution that the U.N. keep the Puerto Rican matter "under continuous review" until all provisions are carried out. The Cuban draft resolution supported the call of Rep. Dellums for the U.S. transfer to Puerto Rico sovereignty and power, after which Puerto Rico may decide whether or not to reassociate with the U.S. If not, the Cuban draft would return to Puerto Rico "all lands now occupied by the armed forces of the United States." The Cuban resolution would also prohibit Puerto Rico from voting to become a state of the United States by requiring that an association with the U.S. "must be such that Puerto Rico will qualify to have its own representation in the international community and organizations."

The Cuban draft resolution also calls for the "unconditional release of the four Puerto Rican political prisoners who have been incarcerated by United States authorities for more than 24 years." The Cuban document proposed the U.N. Committee declare formally that "the persecutions, harassments and repressive measures" to which those struggling for independence have been "continuously subjected" by U.S. police and military forces "constitute violations of the national and human rights of the Puerto Rican people to self-determination and independence;" and that various other U.S. actions constitute "violations of the national and human rights of the Puerto Rican people."

In response to the Cuban draft resolution, Australia introduced a number of extensive amendments on 9/6/78. Australian U.N. representative Harold D. Anderson said that the draft resolution sponsored by Cuba and Iraq contained provisions in violation of the U.N. Charter and of several General Assembly resolutions by requiring the Decolonization Committee to "deny to the people of Puerto Rico the right to choose the manner in which they may determine their constitutional future."

The series of demonstrations outside the U.N. were sponsored by the Puerto Rican Nationalist Party [Partido Nacionalista Puertorriqueno (PNP)]; the MLN/EL Comite; the East Coast Committee to Free the Four Nationalist Prisoners of War operating from Box 83, 161 East Houston Street, New York, NY 10002; the New York Committee Against Repression (NYCAR); the new May 19th Communist Organization (formerly the N.Y. chapter of the Weather Underground Organization's Prairie Fire Organizing Committee (PFOC); and the Puerto Rican Solidarity Committee (PRSC).

On 8/29/78, some 250 demonstrators assembled to hear speakers including Juan Antonio Corretjer, LSP; Juan Mari Bras, PSP; Carlos Velez Rickenhof, PNP; and Nelson Canals. With Youth Against War and Fascism providing the majority of the non-Latino demonstrators, chants included "U.S. out of Puerto Rico" and the more lively "Ni con rifle, ni con bala, este lucha no se para!" ["Neither with guns nor bullets will this struggle be stopped."] About 300 demonstrators appeared for the 8/30/78 rally which featured five hours of picketing and a very brief speech by Juan Mari Bras. Later in the evening, Mari and PSP Political Committee member Jose Alberto Alvarez were featured speakers at a PSP rally held at Public School 134 in Brooklyn.

On 8/31/78, an "Evening of Solidarity with Puerto Rican Independence" was held at the Theater Arts Center, Lexington Ave. and 110th Streets, at which scheduled speakers included Luis Rosado; Andres Figueroa Cordero, one of the Nationalist prisoners released from prison because of a terminal cancer condition; Corretjer and Velez Rickenhoff.

The East Coast Committee to Free the Four Nationalist Prisoners of War, which has openly supported the FALN terrorists, published a statement by Corretjer praising the "revolutionary morality" of armed terrorist attacks in Puerto Rico by the Fuerzas Armadas de Resistencia Popular (FARP) which attacked a police station in Montebello and left behind slogans in support of the PSP-led strike by the Puerto Rican Electrical Workers Union (UTIER); and of the 7/3/78 seizure of the Chilean consulate in San Juan by Nydia Esther Cuevas and Pablo Marcano.

Corretjer goes on to assert that the 7/25/78 shootout in Puerto Rico in which two terrorists attempting to blow up power lines were killed was an "execution." Corretjer goes on in his statement to say that during the time he was in prison in San Juan along with PNP founder Pedro Albizu Campos, the two were witnesses in a prison marriage of another PNP militant, Pablo Rosado Ortiz, the grandfather of Arnaldo Dario Rosado, one of the terrorists killed. According to Corretjer, for the grandson, "waiting was intolerable, and the military alternative the only way, exclusive and obligatory."

Corretjer concluded:

"With the guerrilla cunning and combat technique which they didn't have, in some place in Puerto Rico someone is getting ready to render them honor by surpassing their efforts! History will not be able to keep from fulfilling it. I do not doubt it."

During the picket lines and rallies outside the U.N., the MLN/El Comite disturbed a bilingual pamphlet, Discussion Document No. 4, which also called for "armed struggle" and praised the FALN. The MLN is calling for formation of a broad National Liberation Front of all the independentista parties to coordinate a four-point program of:

"1. Mass struggle—*** the political structure that will unify these masses within a multi-level struggle, multi-fronts, multiple tactics ***."

2. Popular war—*** Without taking away the importance of mass struggle, it is armed struggle which raises our liberation effort to the level of international priority,***."

3. International Anti-Imperialist Offensive—expanding the political struggle in the United Nations such as done previously by the Algerian FLN, the Palestine Liberation Organization, Vietnamese NLF, and Rhodesian Patriotic Front.

4. Defeating the Enemy in the Rearguard—*** The F.A.L.N. has clearly shown that North American imperialism has its weakest point in its home grounds.*** If the F.A.L.N. were to achieve nothing more, it has managed to show that the enemy can be defeated in its own backyard." The MLN notes that a unified movement could conduct a multiplicity of terrorist attacks "in tune to the needs of our national liberation struggle."●

WESTERN AID CONSORTIUM FOR PORTUGAL

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. HAMILTON. Mr. Speaker, I want to bring to the attention of my colleagues correspondence Congressman FINDLEY and I have had with the Department of State on the status of disbursements to Portugal of a loan of $750 million by an international lenders group. The United States is participating in this lenders' group in the amount of $300 million. Earlier this summer, we were concerned

that, while the United States has disbursed $200 million of its pledge, only an additional $79 million had been disbursed by the other donors and that the German Federal Republic had not disbursed any of its pledged funds.

The Department of State has now informed us that at least $489 million has now been disbursed, including the entire West Germany pledge, and that it is actively seeking information from donors which have not yet disbursed their pledged loans or have only partially done so, as to when they would do so.

We also understand that the recent government crisis in Portugal has delayed disbursement of the remaining $100 million pledged by the United States.

We believe it is important that the United States, in cooperation with its European allies and other interested Western nations, continues to support this nascent democracy as it struggles through difficult political and economic times provided the Portuguese remain determined to reform and improve their economy and social programs.

The correspondence follows:

WASHINGTON, D.C.,
August 16, 1978.

HON. CYRUS R. VANCE,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: We were distressed to learn that as of August 15, 1978 only some $279 million of the more than $750 million pledged by the United States and our allies to help the Government of Portugal cope with pressing economic problems has been disbursed and that the United States Government has disbursed $200 million or over two-thirds of the money made available to date.

We are further troubled that the West German Government which played a leading role with the United States in organizing financial help for this fledgling democracy is apparently yet to disburse any funds.

We would like to know why more of the pledged money has not been disbursed, why the West Germans have not disbursed any funds and what we are doing to have other donor commitments honored and funds disbursed. It might be well to delay the disbursement of the remaining $100 million of our own loan until other donors have disbursed to the Portuguese a majority of the funds they promised to give.

We appreciate your consideration of this matter.

Sincerely yours,

LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East.

PAUL FINDLEY,
Ranking Minority Member, Subcommittee on Europe and the Middle East.

WASHINGTON, D.C.,
September 8, 1978.

HON. LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East, Committee on International Relations, House of Representatives.

DEAR MR. CHAIRMAN: The Secretary has asked me to respond to your letter of August 16th, also signed by Mr. Findley, in which you expressed concern that some countries which cooperated with the United States in the $750 million international lenders group for Portugal have not yet disbursed their pledges. I am sending a similar reply to Mr. Findley.

The information provided to the Subcommittee as a result of your August 8 meeting with the Director of the the Office of Western European Affairs and the desk officers for Portugal and Spain was the most recent of the periodic updatings of disbursements of pledged loans. It did not include any disbursements after June 1978. As a result of conversations with our embassies in Bonn and Lisbon, we are pleased to report that the West German loan of 420 million deutsche marks ($204.13 million), in which you were particularly interested, was disbursed in its entirety on July 7. This information was provided by telephone to Mr. Soriano of the Committee staff at the end of August.

During the past year, in cooperation with the Treasury Department, the Department has repeatedly encouraged prompt conclusion of loan agreements by the other 13 lenders and rapid disbursement of those loans. In 1977, on July 13, September 3, and December 24, instructions were sent to our embassies in all participating countries to ascertain the status of loan negotiations and to encourage rapid disbursement. Department officials in Washington and abroad have also discussed the loans with diplomats of the participating countries. Prior to the release of the initial $200 million of the $300 million U.S. loan on May 12, 1978, Norway, Venezuela, and Switzerland had disbursed all of their loans and Canada and the U.K. had released half of their loans. On June 9, 1978, the Department again instructed the embassies in countries which had not disbursed to call on host governments for information about when disbursement could be anticipated. The total amount disbursed by all participating countries was at least $489 million as of the end of July. Another telegram was dispatched to embassies in all the participating countries on September 8, 1978, with particular emphasis on obtaining the plans for disbursement by those countries which have released none of their pledges (France, Italy, and Belgium) and those which have released substantial portions but not the entire amount of their loans (Japan, the United Kingdom, Sweden, the Netherlands, and Canada).

In response to the September 8 telegram our embassies in countries involved in the lenders group are currently submitting the latest information on loan disbursements. We shall report to you shortly on the status of all loans pledged by members of the group.

Sincerely,

DOUGLAS J. BENNET,
Assistant Secretary
for Congressional Relations.●

A BILL TO PROVIDE JOBS AND TRAINING FOR THE HARD-TO-EMPLOY

HON. CLARENCE J. BROWN
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. BROWN of Ohio. Mr. Speaker, in the 10 years that I have served on the Joint Economic Committee, I believe that I have dealt with every major economic enigma that confronts our Nation. But there is one economic problem that I truly believe is the most devastating to society. That problom is structural unemployment—that is, unemployment essentially caused by low skills; skills so few and so minimal that the person literally faces a life of unemployment or at best only occasional employment.

Think, for example, what a life of unemployment means to the 50 percent of big city minority youths who are structurally unemployed. Try to realize their frustration. Try to imagine their outrage if this Congress continues to give them unworkable answers to their desperate problem.

The structurally unemployed live in despair, knowing that they will have to depend on the charity of the State and that they will never know the freedom and opportunity of holding a permanent job. It is because of their desperate situation and their inevitable and hopeless future that the structurally unemployed present this country with its most severe test.

To meet this test, I am, today, introducing a bill that will deal directly with structural unemployment. This bill puts to use our most potent weapon in fighting this or any economic probem—the private sector.

But by the private sector I do not mean just business, but the entire private sector—labor, business, schools, religious organizations, citizen groups, and other members of the local community. Under this bill, all segments of the nongovernmental sector will work together to match the structurally unemployed with available jobs. This community combination has proved highly successful in many localities across the country for the opportunities industrialization centers, the Committee for Economic Development, and other organizations that deal directly with structural unemployment.

The bill provides a wage subsidy paid to employers for training and employment. States would approve acceptable employer programs and petition the Secretary of Labor for the subsidy money. The subsidy, which begins at 50 percent of the wage, is decreased at 6-month intervals until it ends after 2 years of employment.

The 2-year length of the subsidy program will insure that the person who is hired becomes a valuable employee by the time the subsidy terminates, which will help guarantee that the job becomes permanent. Also, the subsidy is lower at higher wages, on the theory that less of a hiring incentive is necessary for a person who is skilled enough to warrant a higher wage.

I stress that this subsidy would only be paid if training is provided. Training is the key to the problem. If structural unemployment is caused by low skills, then any bill that does not stress training for a specific job is a waste of time and money. This bill will establish training for an existing job need as a requirement in order to provide the structurally unemployed with what they need most.

The bill also establishes a priority system for approving subsidies to private employers. These various priorities, which do not exclude other employers, will direct the subsidies to the areas where they are most needed and will be most successful.

The first priority established by this bill is the targeting of subsidies to areas of high unemployment. It is an unfortunate fact of our economy that structural unemployment is most severe in the

most desperate of economic situations. This fact leads to the structurally unemployed not only lacking skills but facing a job market so depressed that they have only a small chance of receiving employment or training. They have lost man's most important defense—hope.

The second priority is for small business. The Joint Economic Committee has studied the problem of structural unemployment in many forums. The opinion that the committee has heard time and time again over the years is that the most dynamic solution to this problem is small business. The reasons are simple. Every community has a great number of small businesses. These are the employers that are most responsive to wage breaks. And these are the employers whose condition and needs are most known to the rest of the community.

As I said earlier, this concept of community is very important to solving the problem of structural unemployment. The biggest problems that face any training and employment program are the location of jobs and job retention. Local, private organizations that draw together various segments of the community to solve the problem of structural unemployment have shown a far greater success in placing people in permanent jobs than any Federal Government training program. It is because of the impressive record of these organizations that this bill offers its final priority to those employers who use these organizations in finding employees. This priority guarantees that the hired worker will be carefully matched to the specific job. And just as importantly, these organizations will provide the support services after employment which are so critical to the newly hired low-skill employee. The use of these organizations—called intermediate organizations—separate this bill from other employment and training bills. And judging from the unmatched success of intermediate organizations, it makes this bill superior.

No bill dealing with unemployment, no matter how high its principles, is assured of success. We have seen solid, intelligent legislation bogged down by redtape and legislative language. Many times the result is that in the end very little aid reaches those who need it. Often our efforts fail to be of monumental accomplishment and, instead, are monuments to waste and inefficiency. This bill offers two provisions that guarantee that the subsidies will help those who need it the most.

The first provision addresses the question of which potential employees are eligible for the subsidy. In other words, who are structurally employed? This bill uses a simple but reliable definition for structural unemployment that prevents the loss of time and effort just trying to figure out who can be hired under the subsidy.

The place of the usual, complicated, unverifiable eligibility criteria, those eligible under this bill are simply those who have been out of work for at least 5 weeks and those ineligible to receive unemployment compensation.

Inability to receive unemployment compensation identifies workers who have been out of work for a long time and workers who have such low skills that their spotty pattern of employment provides them with only a short time period of unemployment compensation. Also, this simple definition would include youths who have never held a job and, therefore, are not eligible for unemployment compensation. Likewise eligible would be the growing number of women who, by personal choice or economic hardship, have returned to the labor market after an absence of many years and with low marketable skills.

Highly skilled workers would not be eligible under this definition unless they faced dire economic circumstances. The reason is that highly trained workers who lose their job would receive unemployment compensation for a long period of time. This is so because the highly trained worker has had substantial contributions made in his name to the unemployment compensation fund. He or she would not be eligible for this subsidy until that compensation ran out, by which time most highly trained workers will have found another job.

The second feature of this bill which improves efficiency is a minimum paperwork provision. This provision provides that no State will receive any Federal money for job subsidization until that State has assured the Secretary of Labor that its modus operandi requires a minimum of paperwork on the part of the employer. This unique feature ingrains administrative efficiency in the program at its inception. This is far different than other bills that start a program and then find out it is impossible to administer.

Mr. Speaker, we must solve this problem because millions are unemployed and have little chance for employment. We must solve this problem because our slumping economy needs their input. But most crucially, we must solve this problem to help millions of people who find their lives robbed of security, opportunity, and, most of all, hope.●

BALANCE(S) OF POWER SERIES: BOOK III(G)(ii)—NORTHEAST ASIA

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, in the last Thursday's issue of the CONGRESSIONAL RECORD, I inserted the first part of an article entitled, "Japan and the Future Balance in Asia" by Henry S. Rowen, appearing in the Orbis, Summer, 1977 edition. The conclusion of Mr. Rowen's article follows:

POSSIBLE JAPANESE DEFENSE POSTURES

Many Japanese perceive two principal rivalries in the world: the Sino-Soviet and the U.S.-Soviet. In regard to the former, they have been trying to maintain a posture of "equidistance" (recently with a tilt toward Peking). They have not seen themselves centrally involved in the latter rivalry.

Perhaps the fact that Japan is more immediately under pressure in its relations with China vis-a-vis the Soviet Union makes that contest especially prominent. The United States-versus Soviet competition is seen as more remote. Moreover, to many on the Left, the American ties and troop presence suggest that Japan could get drawn unwittingly into a conflict. On the other hand, the United States' role in offsetting Soviet strength is important to most Japanese' sense of security.

The Japanese have, understandably, a strong preference for the status quo, which enables them to concentrate on economic growth. Ther low-profile foreign policy minimizes the likelihood of being pulled into a conflict, and Japan's alliance with the United States, its strong economy, and its capacity to mobilize give the Japanese hedges against uncertainty. However, the trends described above raise the possibility that the status quo may not survive. We must examine, therefore, the several broad directions that Japan might choose in the next decade:

(1) *No Major Change.*—This implies continuing with a narrow self-defense orientation, continuing to depend on the United States for essential protection, retaining a low political profile, and continuing to focus on economic growth.

(2) *Strengthened Self-Defense*—This course could lead in time to Japan's playing a wider, tacit regional role; later, Japan might take on an explicit regional role.[9]

(3) *A Heavily Armed, Neutral Japan*—At some point in the future, perhaps in response to a major international shock, Japan might strike out on an independent path, build a large defense establishment, develop nuclear weapons, and loosen or even end its mutual defense relationship with the United States.

These three positions do not exhaust the possibilities. For instance, a Japan which no longer had a treaty relationship with the United States could, as Japanese on the Left have argued, seek to be both neutral and disarmed. This prospect seems remote.

Course 1: No major change

The "No Major Change" course provides for incremental improvements in the Japanese defense posture as the economy grows. It finds powerful support in the long-standing view that there are no serious threats to Japan. This alternative would produce a level of defense spending in 1986 of about $10 billion (in 1976 dollars), assuming an annual 5 per cent real growth rate for the economy and defense spending at 1 per cent of GNP. Spending in this amount would permit maintenance of present force levels and limited missions while substantially improving antisubmarine air-defense and ground-force equipment. The resulting posture would not be insignificant, but Japan, by itself, would not have the capacity to defend its sea lines of communication at a distance or to influence regional developments strongly. Within this framework, however, useful cooperation between Japan and South Korea could take place—improvements in their political relationship permitting.

Whether future Japanese governments will judge that "No Major Change" will be

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[9] This opinion does not exclude the possibility of eventual Japanese possession of nuclear weapons. A Japan so armed might maintain, as do Britain and France, an alliance with the United States. However, the internal political changes associated with Japanese acquisition of such weapons might open a good deal of political distance between America and Japan.

adequate, we can only guess; at present, the odds substantially favor this course.

Course 2: Strengthened self-defense

A policy of "Strengthened Self-Defense" would mean increases in defense spending. Over a decade, the share of GNP devoted to defense might approach that of the NATO countries, 3 or 4 per cent. At 3 per cent of GNP by 1986, the defense budget would be about $30 billion (1976 dollars), and over the ten-year period the aggregate would be around $150 billion. Allowing for increasing real costs, maintenance of the existing force would cost perhaps $60 billion, leaving a substantial $90 billion for force modernization and expansion.

With resources of this magnitude, Japan could create a strong and technologically advanced military force. In addition to being far better able to counter Soviet naval and air strength in the Pacific, Japan would have the capacity to alter the military balance in Korea and to influence the Sino-Soviet balance.

An almost certain issue would be Japan's possession of capabilities that would appear to be offensive in nature—longer-range ships and aircraft, tactical cruise missiles, and so on. The ASDF might also acquire a ground-attack mission. An even greater departure from Japan's post-1945 posture would be the acquisition at some point of sea-based air power (e.g., V/STOL aircraft on sea-control ships).

This course, while offering important advantages in an uncertain environment, would have palpable risks. The most critical would be the heightened possibility of involvement in a U.S.-Soviet conflict not centering on Japan or perhaps not even originating in the region. Plausible Japanese objectives in such a contingency would be (1) to avoid direct involvement, (2) to prevent domination of Japan by any hostile power, and (3) to avoid isolation from the United States as a consequence of Japan's failure to help us in a serious struggle with the Soviet Union.

These objectives, however, could be in sharp conflict. The Japanese would have strong reasons to avoid direct involvement while at the same time wanting us to succeed.[10] Many possible options exist in the case of a conflict originating elsewhere: (1) Stay out altogether and deny America the use of bases in Japan; (2) Provide only tacit support (e.g., substitution of Japanese for U.S. forces in Japan or at sea, thus freeing our forces for use elsewhere); (3) Provide some symbolic and material support (e.g., giving only logistic support to U.S. forces and allies); (4) Allow U.S. use of bases in Japan except for direct combat operations, or allow the United States to use them even for combat operations; (5) Use Japanese forces in "defensive" missions only (e.g., escorting convoys and providing other ASW surveillance around Japan); or (6) Use Japanese forces "offensively." How far the Japanese would be willing to go down this list would depend not only on the perceived threat to Japan and the strength of Japanese forces but on the balance between their desire for noninvolvement and their fear of the possible consequences of noninvolvement. It is important to note that the Japanese might be able to provide considerable help without actively involving themselves in combat (viz., through Option 4), and even a modest probability of Japanese participation would go a long way toward determining some conflicts.

[10] The Japanese are not likely to forget that it does not pay to be allied to a loser. Recall that the Soviets, after the defeat of Germany in 1945, quickly transferred forces to the east in order to defeat the Kwantung Army in Manchuria.

The "Strengthened Self-Defense" course might also pose problems for the United States, despite assumed close ties between Japan and the United States. Certainly Japan's capacity to make trouble would be greatly increased, and an armed Japan would have a political character somewhat different than it does today.

What would be the likely effect on other nations? Which nations might feel threatened? It has been widely held in Japan and elsewhere that a rearmed Japan would be an alarming force in the world. This was understandable in the 1950s and 1960s, but would it be in the 1980s? After more than thirty years, it is difficult to see what the Japanese could do that they have not already done to make it clear that they do not have political and military designs against others. Those who express alarm over Japanese militarism have memories, understandably bitter, of a now remote past, or they hold theories about innate characteristics of the Japanese people which to most people are unpersuasive. Nonetheless, many Koreans might be alarmed and also the Chinese. For instance, how might China view a Japanese navy regularly patrolling the sea lanes off the cost of China? Such worries would be greatly eased if U.S. commitment and a tangible U.S. military presence continues. This also would be true for more distant countries in Southeast Asia as well as for Australia and New Zealand. In time some of these nations might even favor alliance ties to Japan through a collective security system also including the United States.

This course is also consistent with Japanese development of closer ties to China. Indeed, a Chinese-Japanese-United States alignment is not excluded, although it is likely to come about only in response to clearly threatening Soviet moves.

On balance, some approximation to this course seems most likely to meet American needs for the 1980s, and may meet Japanese needs. But change from a narrow self-defense concept, if it comes, will be slow. We would not press the Japanese on this doctrinal issue; instead, there are many specific tasks, described below, to be carried out.

Course 3: A heavily armed, neutral Japan

The third course, that of a "Heavily Armed, Neutral Japan," is consistent with the view that the period since 1945 has been unnatural for the Japanese, since they have been so dependent on a foreign power. Indeed, this is an unprecedented relationship for Japan, inconsistent with its geographic, cultural and linguistic insularity. Although practiced in assimilating ideas and techniques from others, the Japanese have done so selectively and have adapted these borrowings to the Japanese culture.

This tendency toward political and cultural isolationism conflicts with the powerful outward pull of Japanese global economic interaction. But the Japanese have shown great skill at decoupling economic relationships from political and military ones. In time, Japan might sharply reduce its dependence on the United States and acquire much greater military capacity—possibly including nuclear arms—while vigorously pursuing economic interests worldwide.

What processes or events might bring about such a change? One possibility is a grave crisis in which it suddenly becomes evident that the United States cannot or will not protect Japan. Another is a political victory by a faction committed to a policy of nondependence on the United States. Whatever the cause, it is clear that Japan could over time acquire very substantial military strength.

This "Heavily Armed, Neutral Japan" course includes, more than the others, the possibility of Japanese nuclear weapons, which might be proposed in accordance with the theory of "proportional deterrence," wherein a medium-size nation can deter a larger one by its ability to inflict civil damage on the latter, even though the medium-size state might suffer far more damage. There is something to this theory, but the asymmetry in capacity suggests that there would be an important difference in bargaining strength. And, too, some kinds of risks would be heightened. Moreover, a Japanese nuclear force designed to kill large numbers of Russians or Chinese is not likely to appear to meet realistic national defense needs.

Yet Japan's economy is nearly at the great-power level, and it seems entirely in the Japanese national character that if Japan were to acquire nuclear weapons at all, it would do so on a substantial scale. The British and French model of small, largely symbolic forces does not fit the Japanese style: the Japanese do not do things by halves. Japan could allocate $10 billion a year to a nuclear force, an amount quite sufficient to support a substantial nuclear program. Even so, Japan would face serious difficulties. The essential requirement of having a secure force is not met simply by assumption. Fixed bases (e.g., missile silos) are already vulnerable, and mobile nuclear forces would be difficult to operate on Japan's terrain.

In the field of nuclear submarines, Japan would be starting out from scratch, and it would have to contend with Soviet undersea surveillance and attack techniques of the late 1980s. If the Japanese submarine fleet were to be small in order to limit costs (say, on the scale of Britain's force, which at times has no more than one of its four submarines on station), then Soviet antisubmarine forces might have a good chance of locating most or all of that fleet. Moreover, if the Japanese were to seek the ability to strike most of the Soviet Union, they either would have to face long transits or build missiles and submarines with ranges comparable to that of the U.S. Trident 1.[11]

Another possibility is the use of cruise missiles in diesel-electric submarines such as Japan already has. The high accuracy attainable with these missiles mean that small warheads producing low collateral damage would be feasible. Also, very high accuracy means that, for some missions, they could be effective with non-nuclear warheads, a capability that might be of particular interest to the Japanese.

Japan has a broad industrial base which could be put to work on nuclear weapons and delivery vehicles. Further, neither the international system of IAEA safeguards nor U.S. agreements in regard to cooperation on nuclear technology preclude Japan from having—without violation—direct and ready access to nuclear-explosive materials. Indeed, these agreements (not only in the case of Japan but, unhappily, much more widely) do not prevent non-weapon states from being within days of the ability to explode a nuclear device—again, without violation. In the Ford and Carter administrations, we have begun to understand the incoherence of existing rules on nuclear energy as they relate to our nonproliferation objectives, and the United States has begun to try changing them. Whatever rules emerge from the current rethinking, Japan will never-

[11] For further analysis of the problems a Japanese nuclear-submarine program would face, see A. Wohlstetter *et al., Moving Toward Life in a Nuclear Armed Crowd?* a report to the U.S. Arms Control Disarmament Agency, 1976.

theless have a formidable capacity to develop nuclear weapons if it so chooses.[12]

It seems most unlikely, however, that Japan will do so in the foreseeable future. Domestic political obstacles are formidable, and nonnuclear weapons seem adequate for almost any military mission Japanese forces might have to undertake. The strongest case for Japanese nuclear weapons is that they could deter a nuclear attack; thus, so long as the U.S. guarantee has essential credibility, Japan is not likely to want nuclear weapons. This judgment, however, also assumes that South Korea, Taiwan or some other country in the region will not acquire nuclear weapons. It should be an important objective of American and Japanese policy to encourage these regional states to maintain their nonnuclear status.

Japanese nuclear weapons aside, a more independent, armed Japan which has preserved its democratic institutions and has no ambition to greatly extend its influence over the smaller states of Asia could contribute importantly to regional stability. Japan might, in effect assume the role of "protector" of the small nations against the power of the Soviet Union or China. In this role, Japan might partially or even wholly replace the United States. But this course of action poses dangers much more serious than those of the two alternatives. For one thing, great and dangerous changes in Japanese domestic politics might occur. For another, a more heavily armed Japan without ties to the United States, would be viewed with alarm. Remote as this prospect seems, major and sometimes abrupt shifts in Japan's external relations have occurred before, and they cannot be excluded for the future.

CONFLICTING POLITICAL TRENDS IN JAPAN

Two conflicting political trends will affect Japan's defense policies: (1) the progressive weakening of the Liberal Democratic Party (LDP) and (2) the gradual lessening of political opposition to the self-defense forces and to the U.S.-Japanese security treaty. The first trend makes it more difficult for the government to muster a majority on defense issues and on defense spending. The Socialist and Communist parties still formally oppose the security treaty, although JSP (Japanese Socialist Party) opposition has been weakened by Chinese support of the treaty. Only the JSP proposes unarmed neutrality. Even the Communists support a people's armed force. Clearly, then, defense is acquiring greater legitimacy. This suggests that if Japan's external environment worsens, a political basis for a substantially larger defense program will exist.

The results of the 1976 elections (in which the conservative LDP lost heavily) does not imply a popular shift against defense. The votes lost went predominantly to the New Liberal Club and other middle-of-the-road parties. That opponents of the self-defense forces and the security treaty are now generally less militant means that contention on these issues is now within the range of normal politics.

The public opinion polls show increasing support in Japan for stronger defense. In a poll taken in 1976 on attitudes toward security issues, 76 per cent of the respondents supported the self-defense forces, and 59 per cent supported both the self-defense forces and the security treaty with the United States. Support for the treaty varied predictably by party, but members of the Japanese Communist Party (JCP) were evenly divided on this issue—31.5 per cent in favor, 32.6 per cent opposed.[13] Futhermore, JCP supporters favored the self-defense forces by 51.1 per cent to 28.9 per cent.[14]

This support, to to be sure, is for defense spending under the threshold of 1 per cent of GNP. Assuming little change in Japan's external environment and given the loss in LDP strength, the 1 per cent barrier, or something close to it, will probably remain effective. The environment, however, is changing, and if it is seen to become substantially more dangerous, that barrier is likely to be breached.

IMPLICATIONS FOR ACTION

At the very least, this analysis suggests the importance of strengthening ties between the United States and Japan. Despite notable obstacles of culture and language, there is much that supports the relationship and the Japanese see it as worth the cost. Increased cooperation implies reducing the asymmetry of the present relationship—although that asymmetry will not be eliminated soon. The United States should accept some changes in its independent stance and operating procedures with regard to Japan. For its part, Japan should gradually broaden its concept of self-defense.

COMPLEMENTARITY

Both partners should take the idea of "complementarity" more seriously and exploit comparative advantages in their mutual defense effort. The United States has not done so, the nature of the security treaty has not required it, nor has the sense of threat motivated it. To date, unilateral American and Japanese decisions have given the United States flexibility and have suited Japan's desire to avoid involvement in dangerous situations. Looking ahead, the case for complementarity is stronger.

Japan has advantages in surveillance around Japan, in ground facilities, in availability of skilled people, in close-in naval operations, in merchant-ship operation, in deployment of surface-to-air defensive missiles, and in its large and accessible industrial base. America's advantages 'nclude its advanced and rapidly deployable air and naval forces, its worldwide intelligence and surveillance network, its airlift capability, its sophisticated munitions—non-nuclear as well as nuclear—and its ability to operate in areas remote from Japan. The tailoring of our forces to exploit these respective advantages would build a strong sense of commitment and improve efficiency; it would somewhat reduce both parties' capacity for independent action, a price that the United States, at least, should be willing to pay. Taking Japanese defense more seriously also implies that Americans should not hesitate to make recommendations to the Japanese on the basis of our technical and combat experience, and also that the United States should be more consistent in its support of Japanese efforts.

SPECIFIC CONTINGENCIES

Much is to be gained by jointly focusing on specific contingencies. The absence of specific goals makes it difficult to establish performance standards for our forces or even to present a plausible justification for their existence. Contingency planning has been much easier for West European and Korean defense: the clear-and-present danger of attack helps focus attention.[15] But there are meaningful and concrete tasks to be carried out—especially in air defense and the protection of Japan's sea lanes. Possible goals are to assure that a certain minimum number of ships could get in and out of Japan each month (subgoals might include criteria for undersea surveillance and target acquisition, provision of escorts, and armament of merchant ships) or to assure that the Soviet naval route from the Sea of Japan to the Pacific could be effectively and rapidly blocked. Another possibility is to cooperate in protecting the sea lines of communication to Alaska. A related possibility—to think what was once completely unthinkable—might be to arrange for MSDF use of bases in the Philippines under certain circumstances (if we retain those bases).

Contingencies in Korea should be reexamined. For example, the ability to send air-defense tracking information directly between Japan and South Korea would be of mutual benefit, and the creation of such a link would be a useful signal to the Soviet Union. Also, the gains from Japanese-Korean cooperation in the production of some types of weapons and in the operation of repair facilities could be large.

Specific performance goals would also have the useful effect of shifting from a nearly exclusive focus on resource input (i.e., the share of GNP allocated to defense) to output (i.e., the tasks ahead). In the end, if neither we nor the Japanese can identify important, specific goals for our forces, we should not be surprised to find that they have low combat effectiveness or that they are subject to budget cuts.

INTELLIGENCE AND SURVEILLANCE

Intelligence and surveillance activities are consistent with Japan's restrictive definition of defense. Yet, one of Japan's weaknesses is its poor ability to collect information on the strength, technical characteristics and movements of other nation's forces. The United States shares some of its intelligence information, but this is largely general in character. There are problems in regard to sharing information with Japan (which has an even more porous security system than we do), but there is reason to ask whether we are doing enough. Part of the problem may be that the relevant American bureaucracies want a quid pro quo; it might help if the Japanese had more trading material. Geography puts the Japanese in good position to supply information on critical undersea movements, on the airspace around Japan, and on adjoining land areas, especially the Soviet maritime provinces. Japan may have other areas of information advantage, in North Korea, for example.

MOBILIZATION PREPARATIONS

Japanese preparations for possible crises could be made more effective if coordinated with American provisions for reinforcements, logistic support and increasing weapons production. The time required in a crisis for a large increase in strength could probably be greatly shortened.

COOPERATIVE RESEARCH AND DEVELOPMENT

Many Japanese and Americans hold that Japanese-style R&D is adaptive and incremental rather than original. This view seems somewhat overstated. Japanese products in

[12] Japan is in a key position to help bring about changes in the international rules which might reduce the dangers of nuclear energy while still enabling nations to enjoy its benefits. The proposed changes, which would limit wide access to plutonium and highly enriched uranium, would restrict technically unnecessary, economically dubious and exceptionally dangerous activities. The problem is not that Japan is likely to make a sudden move to acquire nuclear explosives—domestic opposition is powerful. But if there is to be wider international appreciation of the proliferation dangers inherent in certain types of nuclear power, then Japan, and other major industrial states, will have to be in the vanguard. So far, it is not clear that a consensus on the changes needed will emerge among the industrial powers.

[13] *Sankei Shimbun*, January 1, 1976. See also the poll results published in the November 3, 1976, issue.

[14] Masamichi Inoki, "Japan's National Security," *Japan Echo*, vol. 3, no. 3 1976 (trans. from *Shokun*, May 1976).

[15] To argue that some Japanese-American planning should focus on specific contingencies is not inconsistent with my earlier observation that decisions on America's Asian force posture should not be dominated by focus on a few specific scenarios.

many lines (e.g., ship designs) are superior to those offered by others, and Japanese auto producers have recently been more innovative than have those of Detroit. But very large investments in defense technology, over a long period of time, will be needed if Japan is to build up a competency comparable to that of the Soviet Union or the United States. This suggests that military R&D ventures with American firms might be attractive. The United States is weak in some fields of technology, most obviously in ground-force equipment. Perhaps the Japanese could be of help here, as well as in other fields in which they excel or have promise. U.S. firms, too, should be interested: the Japanese military-procurement market is growing rapidly, despite Japan's preference for producing most of its hardware domestically. Today, there is a billion-dollar market annually, and this could well become much larger in the 1980s.

NOW IS THE TIME TO ACT

It will be objected that the present state of Japanese party politics and the American preference for autonomy preclude moving very far along these lines. However, those enmeshed in American domestic politics may well find the realtity of growing Soviet strength, combined with a continued low-profile military policy on the part of Japan, increasingly hard to accept; the inherent tension of such a situation would undermine political support for a continued American presence in Asia. There is no doubt that action along the five lines described above would have to be taken step by step and implemented over a long period. Improved consultative machinery, however, does exist in the U.S.-Japanese Subcommittee on Defense Cooperation, one of whose functions is to discuss joint countermeasures for emergencies. Now is the time to press more vigorously on substance.

With any luck at all, the more troublesome possibilities will not emerge. We should certainly hope so, for the present balance in Asia, with all its latent problems, will be difficult to improve on. But if unfavorable trends continue to develop and impact on East Asia, both Japan and America will face some hard choices. Japan's political culture and the leaders it produces have been conservative in both familiar senses. This implies little change, but it also suggests latent support for defense efforts which, sooner or later, may be seen as important to undertake. It is very much in the American interest to see that these efforts develop within a framework of close cooperation—which implies a continued, visible and strong American presence in the region.●

1980 OLYMPIC GAMES

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. DERWINSKI. Mr. Speaker, the setting of the 1980 Olympic games in Moscow is causing a great deal of discussion as to whether the Soviet Union is employing this event to their political advantage. One area of special concern is the attempt to stage some of the events in the Baltic States for propaganda purposes. As we and most countries of the free world do not recognize the forcible occupation and incorporation of Estonia, Latvia, and Lithuania by the Soviet Union, I wish to insert a statement issued by the Estonian American National Council which I believe expresses the feelings of the Baltic peoples and others held captive in the U.S.S.R.:

OLYMPIC GAMES 1980

As part of the Olympic Games in Moscow, a Yachting Regatta will be held in Tallinn, capital of the Soviet-occupied Republic of Estonia.

The Soviet Russian rulers in Estonia are using this event for their political propaganda purposes.

Most countries of the free world have never recognized the forcible annexation of the three Baltic States, Estonia, Latvia and Lithuania, by the Soviet Union. This illegal act took place in 1940 as a result of the notorious pact between Stalin and Hitler.

Since then Soviet Russia has made efforts to cover up this international crime. By bringing the Olympic Regatta to the territory of an occupied country, the Russians intend to give the impression that conditions there are quite "normal" and the incorporation of Estonia into the Soviet Union a generally accepted fact.

During the period of Estonia's freedom, Estonian athletes participated under their national colors in Olympic Games and other international contests. If Estonia would be a free country, all the people would have greeted with pleasure the Olympic Regatta in Tallinn, a well-known center of yachting on the Baltic Sea. However, under present circumstances the Estonians look at this event with mixed feelings nor dare they express freely their thoughts about it.

As a commendable example of understanding of the Estonian problem, we quote in English translation the following passage of an article in the Norwegian yachting magazine "Seilsport" (No. 2–1977):

"Should or ought Norwegian yachting sportsmen or those from other free countries take part in a sporting contest with the Russians on occupied Estonian territory in 1980? If Germany had won the last war, what would the Norwegians have said and thought when German-arranged winter Olympics had been held in Oslo? Would not a participation in Tallinn be a mockery against all freedom-loving people over the whole world, and especially against the occupied Estonians?

Should not the Norwegian yachting sportsmen and organizations show a straight-forward adherence to leading principles of life among free people and abstain from participating in Tallinn, and preferably take the initiative to a similar attitude among yachting sportsmen of other countries?"

The Estonian community in the free world is appealing to all concerned to realize under what conditions the Olympic Regatta is being held in Estonia and to refrain from any acts which would damage the justified claims for freedom of the Estonian people or the international status of the Republic of Estonia.●

HARRIS POLL SHOWS NATIONWIDE SUPPORT FOR GUN CONTROL LAW

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. GREEN. Mr. Speaker, the issue of gun control legislation has been vehemently debated in Congress and other forums for many years. To date, the Congress has not seen fit to pass the strict laws which many of us believe are necessary to aid in the fight against crime, while at the same time recognizing the rights of legitimate gun owners.

One of the paradoxes of this congressional failure to act is that public opinion polls favor stricter gun control laws. In my own 18th Congressional District of Manhattan, 83.2 percent of my constituents said that they favored Federal legislation requiring handgun control in a questionnaire I sent out this spring. Of the 10 questions asked, this elicited the greatest number of favorable responses for action on the Federal level.

In a recent letter from one of my constituents, I received the full results of a nationwide Louis Harris poll which shows increasing support around the country for gun control laws. The survey, released on August 7, shows that 80 percent of the public favors a Federal law "requiring that all handguns people own be registered by Federal authorities." This support is slightly higher than a similar survey in 1975. I found it most interesting that of the 43 percent of the people who own guns, 71 to 27 favor Federal mandatory registration of handguns.

I believe that this demonstration of public support deserves the attention of all Members of the House as they consider this very important issue. It is for this reason that I am placing in the CONGRESSIONAL RECORD the full text of the Harris survey results sent to newspaper subscribers around the country.

SUPPORT OF A GUN CONTROL LAW REACHES RECORD HIGH

(By Louis Harris)

Support for gun control legislation in the United States is now higher than at any time in recent years. However, the anti-gun control forces are able to mobilize their supporters more effectively than those who oppose them.

According to a recent Harris Survey of 1,500 adults nationwide, an 80–18 percent majority favors a federal law "requiring that all handguns people own be registered by federal authorities." This is slightly higher than the 77–19 percent who favored such legislation back in 1975. Among the 43 percent of the public who own guns, federal mandatory registration of handguns is favored by 71–27 percent.

By 73–24 percent, a majority would also favor "requiring that a permit be obtained by anyone who purchases a rifle." Back in 1975, a smaller 66–30 percent majority felt this way. Among gun owners, a 59–39 percent majority now favors requiring permits in order to purchase a rifle. Such permits are not now required under the law.

There has been no change in the 73–25 percent majority that continues to favor "federal laws which would control the sale of guns, such as making all persons register all gun purchases no matter where the purchases are made." Among gun owners, a 61–37 percent majority also favors gun control.

Gun owners turn out to be a substantial segment of the population these days, with 43 percent of the public reporting that someone in their household owns a gun. By region, the highest ownership can be found in the South, where 57 percent report ownership, followed by the West, where 46 percent own guns. Rural areas have a 61 percent gun ownership, followed by small towns at 50 percent and cities at 34 percent. Significantly, 45 percent of all whites own a gun, compared with a much lower 28 percent of blacks.

What kind of guns belong to gun-owning families?

At the top of the list are rifles, owned by 72 percent of all gun owners, up from 71 percent in 1976. Nearly one third of all the families in the country now own a rifle.

A substantial 65 percent of all gun owners possess a shotgun. This means that 28 percent of the nation's households own a shotgun.

47 percent of all gun owners have a pistol or handgun. This means that one in every five families has a handgun in the house.

Finally, 8 percent of all gun owners possess a muzzle-loader.

The findings of the Harris Survey indicate that the extent of gun ownership has not changed substantially over the past decade. As the population has grown, gun ownership has grown at about the same rate.

Serious efforts to exercise some federal control over the sale and possession of guns began after the assassinations of John and Robert Kennedy and Martin Luther King, Jr. in the 1960s. But legislation in Congress has been bottled up largely through the efforts of the anti-gun control lobby, led by the National Rifle Association.

Members of Congress know that sizable majorities of the public favor various forms of gun control, but when the legislative chips are down, the heavy pressure comes from the anti-gun control group and it seems to be decisive. This is surprising considering the arithmetic of the political situation.

In the latest Harris Survey, the 80 percent of Americans who favor federal registration of all handguns were asked if they would reject a candidate for Congress mainly on the grounds that he took a stand against gun control. By 57–33 percent, members of this group said no, they would not reject a candidate for this reason. The bottom line, then, turns out to be that a 26 percent segment of the public not only supports gun control but also would vote against a congressional candidate if he opposed it.

As for the 18 percent minority who oppose the federal registration of all handguns, 45 percent of them indicate that they would vote against any candidate who favors this form of gun control. The bottom line here is that 8 percent of the public not only oppose gun control but also would reject any congressional candidate who is for it.

Despite these numbers, the anti-gun control group has simply been more effective politically than those who support control.

TABLES

Between June 27th and July 1st, the Harris Survey asked the cross section:

"Do you favor or oppose federal laws which would control the sale of guns, such as making all persons register all gun purchases no matter where the purchases are made?"

FEDERAL LAWS CONTROLLING SALE OF GUNS

[In percent]

	1978	1975
Favor	73	73
Oppose	25	24
Not sure	2	3

"Anyone can now purchase a rifle without a permit. Do you feel a permit should be required by law in order for anyone to purchase a rifle, or do you think such a permit is not necessary?"

PERMIT FOR PURCHASING RIFLES

[In percent]

	1978	1975
Permit should be required	73	66
No permit necessary	24	30
Not sure	3	4

"Do you favor or oppose a federal law requiring that all handguns people own be registered by federal authorities?"

FEDERAL LAW REQUIRING HANDGUN REGISTRATION

[In percent]

	1978	1975
Favor	80	77
Oppose	18	19
Not sure	2	4

"Do you favor or oppose a federal law requiring that all handguns people own be registered by federal authorities?"

FEDERAL LAW REQUIRING HANDGUN REGISTRATION

[In percent]

	Own guns	Don't own guns
Favor	71	88
Oppose	27	10
Not sure	2	2

●

CALVARY LUTHERAN CHURCH

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. RINALDO. Mr. Speaker, I would like to bring to my colleagues' attention an important anniversary that has just been celebrated in the 12th Congressional District of New Jersey, which I represent.

This past Saturday, September 16, marked the 50th anniversary of the Calvary Lutheran Church of Cranford.

Organized by 25 men and women on September 16, 1928, Calvary has grown over the years to a congregation of 816 baptized members. They come from many towns in my area, including Clark, Colonia, Cranford, Edison, Elizabeth, Fanwood, Garwood, Kenilworth, Linden, Mountainside, Plainfield, Rahway, Roselle, Roselle Park, Scotch Plains, Union, and Westfield.

After renting facilities for several years, Calvary purchased part of its present property at 108 Eastman Street in 1936. The present sanctuary and education building were dedicated in 1966.

Over the years, Calvary has been actively involved in its community, and it has a long tradition of dedicated, faithful pastors—extending back to 1929, when William F. Behrens, Jr., was its head. From 1942 to 1951, William F. Niebanck led the congregation, and since 1951 the pastor has been the Reverend Arnold J. Dahlquist. Reverend Dahlquist has been especially active in social reform issues, and he has been ably served by Walter H. Wagner and Gordon L. Huff.

Since the first worship service in the summer of 1928, Calvary has had an active, and devoted, lay leadership, the current president, Douglas Nordstrom, who is a constituent in my district, is a lifelong member of Calvary.

At the same time, the entire congregation of Calvary has set a Christian example for others to follow. It has supported a humanity community program in Newark, and also participated in "we care too." It also helped to relocate and support a Vietnamese family. Additionally, the care corps and charity sewing have given time, talent, and skill to the needy.

A number of staff members deserve particular recognition for their active work at Calvary.

They are Donald Anderson, Judith Anderson, Betty Dahlquist, Elwood Henning, Jean Henning, Erskine Roberts, and Mary Lou Stevens.

Mr. Speaker, the past 50 years have witnessed tremendous changes in our country. During that half century, Calvary Lutheran Church has continued to grow to meet the needs of its congregation and community. But it has always held fast to the example of Christ, and has not wavered in its devotion to serve God.

The members of Calvary have been blessed, and they have shared those blessings with others. I salute them on their 50th anniversary and wish them 50 more years of dedicated and rewarding service to God and humanity.●

THE CORNER HOUSE CHRISTIAN CHURCH IN HUBBARD, OHIO CELEBRATES 150TH ANNIVERSARY

HON. CHARLES J. CARNEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. CARNEY. Mr. Speaker, the Corner House Christian Church in Hubbard Township, Ohio, will celebrate its 150th anniversary with a 3-day observance from September 29 to October 1.

The family of Christians, now known as Corner House Christian Church, began in 1828, in the home of Baptist believer Jessie Hall; Walter Scott, an evangelist for the Mahoning Association, spoke to them and urged them to become an independent church. The congregation that met in the Hall home became the Corner House Church of Christ, and adopted and applied the New Testament teachings as its only guide and took "Bible names for Bible things", "the name of Christian for its members", and the slogan "Where the Bible speaks we will speak, and where the Bible is silent we are silent", and strived to restore the Christian way of unity that appeared in the New Testament Churches. These principles are still the core of motivation for the local independent congregation, that for all but 6 of the past 150 years has held services on the corner of Chestnut Ridge Road and Route 7 in Hubbard Township.

At one time, a log house and two frame buildings of the church were destroyed by fire. Today, the congregation with 686 members on its roll, meets in a brick church house, with a parsonage,

a cemetery, and a recreation area to serve the community. The Lord's supper is served every Sunday at both the morning and evening services. Mr. Kenneth W. Sherrod is the minister serving the congregation, along with 7 elders, 10 deacons, 6 trustees, and 11 deaconesses.

During the celebration, Mr. Leroy Garrett, premier historian for the Christian and Churches of Christ, will be at the Corner House Church presenting bits of interesting and humerous church history. On Friday, September 29, there will be an old fashioned "singspiration." Activities for Saturday, September 30, will include: A display of hobbies, crafts, and historical items in the church building; games for people of all ages; the opening of the corner stone which was sealed 50 years ago at the 100th anniversary celebration; and a picnic supper on the church grounds. October 1 is homecoming Sunday, and 50-year members and their families will be honored during the 10:45 a.m. worship service. At 3 p.m., there will be a dedication of the new church sign donated by the Peter Snyder family, and a birthday cake and ice cream to top off a grand 150th anniversary celebration. A special gift will be given to each family attending.

Mr. Speaker, I want to extend my special congratulations and my sincere best wishes, to Pastor Kenneth W. Sherrod, to the 50-year members, and to all the families who worship at the Corner House Christian Church in Hubbard, on their 150th anniversary.●

ILLINOIS BRICK LEGISLATION H.R. 11942

HON. HAROLD L. VOLKMER

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. VOLKMER. Mr. Speaker, today I have placed in the record an amendment to the Illinois Brick legislation, H.R. 11942, a bill amending section 4 of the Clayton Act to permit consumers, businesses, and governments injured by anti-trust violations to recover whether or not they have dealt directly with the anti-trust violator.

The amendment I will offer when this bill comes to the floor, deals only with section 5 of the bill which retroactively applies the act to litigation pending on the date of enactment. My amendment would make the bill applicable to only those cases filed on or after the date of enactment of the bill.

I have serious doubts as to the wisdom of retroactive application. There are two possible constitutional objections to such application. Because the bill would make the so-called pass on defense available to defendants, direct purchaser plaintiffs who have suits pending at this time and have relied on the Supreme Courts 1968 decision in Hanover Shoe are now in danger of having their claims reduced or their suits dismissed. The high costs associated with preparation for anti-trust litigation and the punitive damages at stake will, in effect, go down the drain as a result of retroactive application. I believe that a strong argument could be made that this would amount to deprivation of property without due process of law as required by the fifth amendment.

The second constitutional objection raised is that the separation of powers set forth in our constitution is violated by our actions overturning a Supreme Court decision and then retroactively applying our action to those cases pending. We are replacing the Supreme Court's statement as to what the law has been for pending actions under the Clayton Act, and substituting the views of this Congress as to what it feels the law should have been. By applying this legislation to pending actions we are intruding into a role reserved for the judiciary.

Beyond the constitutional objections raised by retroactive application, I believe it is a legislatively unwise policy. Retroactive application of H.R. 11942 would hamper private enforcement of our antitrust laws begun during the period of the Illinois Brick decision. Retroactive application would encourage the reopening of cases settled or dismissed on the basis of Illinois Brick. This encouragement is disruptive to the stability of our legal system.

For these reasons I urge the House during consideration of the Illinois Brick legislation, H.R. 11942, to apply the legislation prospectively rather than retroactively.●

INS COMMISSIONER CASTILLO ON ALIEN SMUGGLING

HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. UDALL. Mr. Speaker, several months ago I introduced H.R. 11581, legislation which would authorize the seizure and disposition of vehicles used to illegally transport persons into the United States. Identical bills have since been introduced in the House by Representatives ASHBROOK and MCDONALD, and in the U.S. Senate by Senators HUDDLESTON and DECONCINI.

This proposal has been endorsed by the chief patrol agents of the U.S. Border Patrol in Tucson, Ariz., and Yuma, Ariz., and by the assistant U.S. attorney for Arizona, Michael Hawkins. In a report printed by the House Judiciary Subcommittee on Immigration, Representative HAMILTON FISH includes this measure as one of the recommendations he made after taking a trip to the border area.

Just before the August recess, Senator DECONCINI chaired a hearing of the Senate Judiciary Subcommittee on Immigration in order to look at this legislation. Testimony was heard from numerous witnesses, including Leonel Castillo, Commissioner of the U.S. Immigration and Naturalization Service. Mr. Castillo expressed his support for this bill, and I wanted to share his comments with my colleagues.

The comments follow:

TESTIMONY OF LEONEL J. CASTILLO

I am pleased to be here this morning to testify in favor of legislation which will allow the INS to impound vehicles used in the smuggling of aliens.

I am sure that you are all aware of the effects of alien smuggling. Not only do a large number of undocumented aliens enter our country through this route, but the smuggled aliens are victimized and brutalized by the professional smuggler. Smugglers often will demand an alien's entire life savings in order to arrange the illegal entry. The smuggling operation may involve cramming large numbers of persons into tiny spaces, false bottoms, or hidden compartments where they must remain without food, water, proper ventilation, or sanitation for many hours. Such inhumane conditions have resulted in the death or serious injury of some smuggled aliens.

In his message to the Congress on immigration policy last summer, the President stated his commitment to smuggling prevention. In response, I created an Office of Anti-Smuggling Activities to coordinate the nationwide anti-smuggling effort.

We now have approximately 106 full time anti-smuggling agents operating in the field, and we will be adding 164 additional anti-smuggling agents during Fiscal Year 1979. The total number of alien smuggling violations presented to United States Attorneys for prosecution during the first three quarters of Fiscal Year 1978 was 32 per cent greater than the number presented for prosecution during the entire Fiscal Year 1977. Even more significantly, the Anti-Smuggling Unit has investigations pending on more than 400 individuals identified as top level participants in major smuggling rings.

Although we have made tremendous strides administratively in the anti-smuggling effort, we are still faced with some persistent problems. One of the greatest of these is the repeat use of vehicles by smugglers. At present, the INS has no authority to impound vehicles used in alien smuggling. As a result, when we make a smuggling arrest the owner of the vehicle may simply claim it from us. Often the vehicle is back in use for smuggling by the next day.

I can illustrate this with several examples from the Chula Vista Border Patrol Sector where our officers have apprehended and successfully sought prosecution of a large number of smuggling rings. A 1978 Ford one ton stake bed truck was purchased on April 14, 1978. On April 18, the truck was stopped with smuggled aliens in it. The owner picked it up from storage the same day, and on April 29, the truck again was involved in a smuggling apprehension. Again, the owner picked it up from storage the same day. The next day, April 30, the truck was stopped carrying smuggled aliens. Perhaps exercising an abundance of caution, the owner waited two days, until May 2, before picking up the truck. Thereafter, the vehicle was stopped and seized by the Customs Service, which does have impoundment authority. In another case, a 1967 Chevrolet pickup engaged in smuggling operations was stopped by INS officers twelve times between April, 1977 and March, 1978.

These are merely several examples of the blatant repeat violations which we encounter. In the Chula Vista Sector, 828 of the 3600 vehicles intercepted while transporting undocumented aliens during Fiscal Year 1977 were repeaters. Nationwide, the repeat rate is about 20 percent. Without new legislation,

this "revolving door" phenomenon will continue.

S. 3093 presents a simple and straightforward approach to the problem. The bill amends section 274 of the Immigration and Nationality Act, 8 U.S.C. 1324, to provide for the seizure and forfeiture of any vessel, vehicle, or aircraft which has been, or is being, used in transporting any alien into the United States in violation of law. The bill would apply to common carriers only where the owner or other person in charge was a consenting party or privy to the illegal act. There would be no forfeiture where the owner could establish that the unlawful act was committed by a person who had illegally acquired possession of the vehicle, vessel, or aircraft.

The bill also provides that any conveyance subject to seizure under the bill could be seized without warrant if the seizure were incident to an arrest or the Attorney General had probable cause to believe that the conveyance had been used in the illegal bringing in, transportation, or harboring of undocumented aliens. The Supreme Court appears to view the validity of such a provision as an open question. See *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 680 n. 14 (1974). However, at least some lower courts have ruled that, absent circumstances where a warrant would not be required, seizures for forfeiture purposes may not be made without a warrant. *See, e.g., United States* v. *One 1972 Chevrolet Nova*, 560 F. 2d 464, 467–68 (1st Cir. 1977); *United States* v. *McCormick*, 502 F. 2d 281 (9th Cir. 1974); *Melendez* v. *Schultz*, 356 F. Supp. 1205, 1210–11 (D. Mass. 1973) (three-judge court). While other courts have ruled that a warrant is not necessary, *see, e.g., United States* v. *White*, 488 F. 2d 563 (6th Cir. 1973); *United States* v. *Francolino*, 367 F. 2d 1013 (2nd Cir. 1966), the decisions requiring a warrant in forfeiture situations, absent exigent circumstances or other situations where a warrant would not be required, would cast serious doubt on the constitutional validity of the approach adopted in the bill unless steps are taken to demonstrate that Congress does not intend to authorize seizures beyond those allowed under the Fourth Amendment.

The bill would adopt the procedures applicable in seizure and forfeiture cases under the customs laws. Provisions of the bill would be enforced by officers designated by the Attorney General who would have the same duties and authorities as customs officers for the purpose of enactment of the bill. Proceedings instituted against vessels would be subject to the rules for admiralty and maritime claims.

The Department of Justice has strongly and consistently supported the enactment of legislation of this type. This legislation would increase the costs associated with smuggling operations and thereby decrease the number and size of those operations.

Since I became Commissioner, the INS has made great progress administratively toward more effective and efficient administration of our immigration and nationality laws. We realize, however, that there is a limit to what we can do administratively. Many improvements, although quite simple and desirable, require your support in the form of new legislation. Some of these measures were contained in the INS "efficiency bill" which was submitted to Congress by the Attorney General on June 21, 1978. S. 3093 is another measure which would greatly increase the efficiency and effectiveness of our operations, and is needed in the fight against smuggling. I strongly urge its passage.

Thank you. I would be pleased to answer questions.●

"CITIZENSHIP FOR GUREVICH"

HON. LIONEL VAN DEERLIN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. VAN DEERLIN. Mr. Speaker, Friday, I introduced a bill to allow Vladimir Gurevich, a marine biologist living and working in San Diego, to be eligible for early U.S. citizenship.

To properly pursue his research in marine mammals, Mr. Gurevich must attend international scientific conferences, yet because of his "stateless" position, and because he left the Soviet Union under a cloud in 1974, he feels it is dangerous to travel outside the United States.

As a Jewish intellectual, Mr. Gurevich experienced discrimination and persecution throughout his life in Russia. The bill would help him complete the transition to his new life in the United States, by allowing him to enjoy the protections of citizenship a year ahead of schedule.

In the following article from the San Diego Union, Mr. Gurevich tells what his life was like in Russia and why he would like to become a U.S. citizen.

INDEPENDENCE SPELLS LIFE FOR RUSSIAN IMMIGRANT

(By Don Learned)

For some 216 million Americans, yesterday was Independence Day.

But not for Vladimir Gurevich.

For him, independence day was April 26, 1974—the nerve-wracking day when he stood harassed in a line at the Moscow Airport preparing to end his life in Communist Russia . . . on his way to beginning a new life in San Diego.

Today, the 39-year-old marine biologist is working in research studies of whales and dolphins at the Hobbs-Sea World Research Institute in San Diego's aquatic playground.

And as Americans celebrated—in their own holiday fashion—the 201st anniversary of their fight for freedom against colonial British rule, Gurevich has time for thoughts of his own on the ideas of freedom and independence.

Personally, they have come to mean that his life is "quieter" and happier—and it's not hard to understand why.

Ever been followed for nine months, footstep by footstep, by a government agent in a war of nerves you can only lose?

Ever been dropped in position from senior scientist to lab technician because you filed an official application the government did not like?

Ever stood in a line on the last day you can leave a country—facing jail if you don't—only to be told the plane is full and you cannot leave?

Gurevich has. The incidents are all part of the Soviet system he grew up into and chose to leave.

He is not bitter or angry towards his former homeland.

He simply says: "The country is great, the people are good and the system is bad."

The words are, in a way, a reflection of his personality, a man almost totally absorbed by his work at the present.

He is a full-time zoologist during the day at Sea World and is studying by night at Scripps Institute of Oceanography for the American equivalent of his Russian doctorate in marine biology.

In build and in his steady prodding manner, he brings to mind the image of the Russian bear symbol, his body reflecting the muscles of the days he was training in hopes of becoming an Olympic wrestler.

"Actually I feel much more quiet, much better," he says of his life in the United States.

So, if one mentions that not many Americans would be thinking about freedom on July 4 and asks if he has any thoughts on the subject, his immediate reaction is one of surprise.

Asked what Americans have got, he begins a rambling response:

"A lot of things.

"Nobody lives like Americans, in any country . . . I've traveled through Europe . . . not there. It's a great country, the richest country in the world . . . there is also great opportunity. . . .

"The system here is much better . . . not perfect . . . much better than Russia. There is no comparison.

"Americans think that dictatorships are more efficient? . . . can you name me any dictator who finished okay. In my mind, democracy is much more efficient than any dictatorship.

"Also, there is individual freedom . . . many things are up to you. You can be successful. But there, even though you are talented, you can be held down."

But none of these is the reason, his wife, Gurevich-Marina, and young daughter, Ilena, left Russia.

The reason is the fifth line of the "passport" that Russian citizens carry with them at all times.

"If it says Russian, or Georgian, or Ukrainian, that's okay."

But Gurevich's said Jewish—in a land where persecution of Judaism is a long-standing tradition.

The first thoughts of Gurevich's leaving the Soviet Union came from his father, a journalist with the Izvestia newspaper, who once had a good position but later ran into heavy harassment during "Big Joe" time, the Stalin era.

"Yeah, I had trouble through all my life," he says.

"Americans will maybe never understand this point. It was very hard to get into a university. I applied and passed all the tests and was turned down because I was a Jew. The second time I did only A grade and there was no reason to say me no.

"It's also very hard to get a job. In America, when you've got young people, old people coming down to take a job, nobody cares about your nationality. But in Russia, everybody have a passport."

The Moscow-born student earned a degree in biology and began seven years of work in Russia's fur farming industry, studying breeding and other habits of animals.

He later returned to Moscow State University for further study and began working with dolphins in the White Sea and the Bering Sea—a prelude to his work here.

The problems really began when he went to the Foreign Office and applied for permission to leave the country.

"This is very dangerous, of course, because I lose my job. Not completely. Officially they cannot fire you. I was a senior scientist and I become a lab technician. They not fired me, but, how you say, I got a lower position."

Toward the end of the 2½ years he waited for the application to be approved.

"They follow me eight or nine months. They follow me everywhere. I go to movie. Ice house. Every day. Every minute. Everywhere.

"They had a guy who followed me. And I knew him. He knew me. He seem to me he had a problem with his stomach, his ulcer. And I run around all day and he came to me and he say, wait a minute. Let's go get something to eat. And I say, yeah, okay. Let's go."

Why did they do that?

"Just a war with my nerves."

Did they succeed?

"I had two car accidents."

When permission to leave did come, Gurevich and his family had 10 days to pack some possessions—six huge boxes, mostly books.

On the last day, a Friday, they were at the end of the line, waiting from 8:30 in the morning till 2 in the afternoon.

"When I get to the front, they say no, no more space on the plane. I say look, I have long day. I have official visa. This is last day I can stay in the country officially. They say no."

(He found out later that a man who could not leave on his last Friday went back to the Foreign Office on Monday and wound up spending three years in jail for being in the country illegally.)

"They were very simple. Very brief. Very short. They don't care. They have no wish to help. It was a very hard time because I don't know what to do."

What saved Gurevich was that a friend working in the other airport—the one used for foreigners, without lines, without long inspections—somehow got him through customs there.

"I don't know how she did it, how she got permission. I don't know if she got in trouble. It was a unique case for me. I know of no one who has done it that way."

He flew on an Austrian flight to Vienna.

"I find out later there is plenty of free space on the first plane . . . from my friends who went on the plane . . . I met them in Vienna later. The inspectors did not wish to bother."

After looking for work traveling through Europe, he came to the United States in October 1974.

A friend, Dr. William E. Evans, of the Hobbs research unit, was his sponsor for coming into the country and helped get him his job at Sea World. He has been busy there from almost the first day he hit American soil.

He is an authority on the beluga white whale and is studying its behavior at the sea park. He is also doing acoustical studies involving hearing of dolphins.

His wife, meanwhile, has been given creditation to teach at Miramar College and is working to get creditation to teach at the university level.

And in a lot of ways, life hasn't changed that much in the switch between countries.

Gurevich is still highly work-oriented, in the scientist mold, as he was there. Money is about the same more here, but more expensive costs, too. There hasn't been much time for sampling the night life; maybe two or three movies in as many years. He eats pretty much the same food as before.

But Gurevich says there are differences.

"I can work and do whatever I want."

In Russia, attending a foreign conference took nine months of paperwork and approval. Here, though he is not yet a citizen and must go through extra forms, it took only a few weeks.

Nor does he see the same sort of prejudice against Jews he felt there—"not for me, anyway."

He sums it up:

"For me personally, I feel much more quiet, more secure." ●

NATIONAL PORT WEEK—SEPTEMBER 17–23, 1978

HON. JOHN M. MURPHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. MURPHY of New York. Mr. Speaker, yesterday was the first day of National Port Week. The week of September 17–23, 1978 has been proclaimed by the Congress and President Carter as a time when we recognize the vital role our ports have played in making the United States the world's greatest trading Nation.

The legislation, House Joint Resolution 773, was cosponsored by 222 of our colleagues in this body, and Senators INOUYE and CANNON introduced the resolution in the Senate. I thank all of you who joined in this resolution.

I also want to thank the Governors of Alaska, American Samoa, California, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, Oklahoma, South Carolina, South Dakota, Texas, Vermont, and Virginia. These Governors have issued proclamations inviting the people of their State to join in the observance of National Port Week.

I also especially thank President Carter for taking the time during the Camp David summit to review the legislation, and issue the signed proclamation. A copy of the Executive proclamation follows.

Mr. Speaker, I am also inserting into the RECORD an article from the June 1978 issue of American Seaport magazine entitled "A Dollar Value for U.S. Ports." The article answers the question as to why a special week for U.S. ports.

A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA ON NATIONAL PORT WEEK, 1978

Since the days of its early settlement, the United States has been dependent on water transportation for its trade. Populations tended to locate around harbors, which rapidly became the economic centers of the New World. Now there are some 170 commercial seaports in this country, as well as numerous inland ports on our navigable inland waterways. The result has been the creation of a network of ocean and inland ports that includes many of the country's most important centers of industry, distribution, finance, and education.

Ports provide the vital link between land and water carriers. The port industry contributes enormously to the Nation's economy. It facilitates international trade, employs significant numbers of people, provides substantial personal and business incomes, and generates revenues for State and local governments.

Now, therefore, I, Jimmy Carter, President of the United States of America, in order to remind Americans of the importance of the port industry of the United States to our national life, do hereby designate the seven calendar days beginning September 17, 1978, as "National Port Week." I invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe such week with appropriate ceremonies and activities.

In witness whereof, I have hereunto set my hand this ——— day of September, 1978, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States the two hundred and third.

JIMMY CARTER.

A DOLLAR VALUE FOR U.S. PORTS

(By John M. Pisani)

Since the days of early settlement, the United States has been dependent on water transportation of its trade. Populations tended to locate around harbors, which rapidly became the economic centers of the New World. In just over 200 years, this dependency on shipping and trade has led to the development of some 170 commercial seaports in this country, occupying only 1,650 miles or a mere 2 percent of our national shoreline.

In addition to these coastal gateways, numerous inland ports emerged along navigable waterways as the nation expanded westward. The end result has been the creation of a network of ocean and inland ports which comprise many of the country's important centers of commerce, industry, distribution, finance, education and culture.

Functionally, ports perform the vital interface role of transshipping cargo between land and water carriers. But their essential reason for being is to further the economic development of their surrounding communities through the provision of jobs, income and tax revenues. Thus, U.S. ports uniquely mirror the economies of the regions they serve. They are sensitive to population and industrial growth, to raw material patterns and to government policy. They serve, but do not in themselves create trade.

LIMITED INFORMATION

Although most people have been generally aware that the ports mean much in the nation's economic life, no one could say how much in definitive terms. The extent of available information concerning the annual amount of economic activity generated by the U.S. port system has been limited to the knowledge that the industry:

Handles over 1.7 billion tons of waterborne commerce valued in excess of $200 billion;

Contributes over $5 billion to the U.S. Treasury in Customs collections and $1 billion to the Balance of Payments; and

Invests some $300 million in marine terminal development.

The recent completion of the first nationwide economic evaluation of the U.S. port industry for the Maritime Administration under a two year research and development contract to let the Port Authority of New York and New Jersey has filled this information vacuum. The analysis was accomplished through the creation of an input (purchases)—output (sales) model with data supplied by the Commerce Department's Bureau of Economic Analysis.

The Maritime Administration study demonstrates in quantifiable terms the extent to which the nation's economy relies on the port industry. It shows that the total direct and indirect impact of the industry in terms of its sales of services to its users—domestic and foreign shippers, and passengers, and private and government customers—was approximately $56 billion in 1977. This means that the total impact of U.S. ports on the economy averaged about $153 million per day during last year.

These figures are quite distinct from the "value added" to gross national product. Using the value added concept, which omits cumulative resale values, the port industry's total contribution to GP in 1977 was approximately $30 billion or $82 million per day.

INDUSTRY IMPACT

The Port Authority research team also found that the industry was directly and indirectly responsible for:

1,046,800 jobs, or one job in the national economy for each 600 tons of foreign waterborne commerce handled through ports;

Personal income of $19.2 billion;

Business income totalling $7.4 billion;

Federal taxes of $10.4 billion; and

State and local taxes amounting to $4 billion.

International traders are by far the best customers of the U.S. port industry. In 1977, some $32 billion of port revenues was generated from the industry handling of waterborne exports and imports. This meant that each ton of our foreign trade cargo moved last year produced port revenues of $44. Application of the 1.6 multiplier generated for the port industry by the input-output model meant that each ton contributed direct and indirect port revenues of $70 to the U.S. economy in 1977. (The model gave a multiplier of 1.6 for the chain reactions initiated by all purchases for port industry operations throughout the nation. This meant that each dollar of sales to the port industry produced $1.60 in sales within the economy. This consisted of $1 direct sales plus 60 cents of indirect sales.)

The findings reported in the Maritime Administration study dramatically show that the port industry in the United States is a vital part of the national economy, not only because of its strategic function in assuring the flow of cargoes, but also because of the chain of economic activity that it generates. Its services to the economy in terms of sales, purchases, jobs, income and taxes are on a par with those of other major industries. The dollars that continuously flow into and out of the port industry affect in some way each and every industry in the economy.

Who has been responsible for the development of U.S. ports as valuable assests to the national economy?

Shoreside port development in the U.S. traditionally has been carried out by both public and private interests. Public port authorities, functioning under cities, counties, and states, are the primary developers of transfer facilities for handling general cargo. At some ports, such as in Charleston, South Carolina, port authority staff operate marine terminals while at others, such as in New York, the port authority acts strictly as a landlord and leases all facilities to private terminal operators.

On the other hand, bulk facilities, particularly for petroleum, are predominantly owned and operated by private corporations as an integral part of their total production to consumption physical distribution system.

AUTHORITIES DOMINATE

Municipal and country authorities still are the dominant form of local public port administration. They are centered mostly on the Pacific, Gulf and Great Lakes coasts. State port agencies, on the other hand, are concentrated mostly on the East Coast, particularly in the South Atlantic.

Although creatures of government, public ports engage competitively in commercial enterprise. This public utility/private business role has allowed public ports to respond more quickly to shipper service needs while at the same time attracting economic development to local communities.

Except for some federal grant programs with non-port related objectives, public ports must depend on reinvestment revenues and/or bond issues for financing expansion programs. This public sector of the port industry owns nearly 50 percent of some 2,000 deep draft marine terminals with a total investment, since 1946, of approximately $4 billion.

The existing concept of the public port authority, therefore, with all its diversity of structure and mission, has proven its value consistently in the past. The necessary new terminals and services have been developed to accommodate expanding trade and modern ship types.

These landslide port development activities of local public agencies are basically matched by the Federal Government on the water side. The U.S. Army Corps of Engineers constructs and maintains all main shipping channels while the U.S. Coast Guard provides navigational aids and oversees port safety.

MARAD ROLE

The Maritime Administration is the third major federal organization that contributes to the development of the U.S. port capabilities. It is the federal port promoter, planner and technical adviser in peacetime and the federal port controller in time of national emergency.

Beyond these three agencies, there are some 50 other federal bodies that carry out responsibilities impacting on ports. All of these agencies basically have non-port related goals and objectives, but influence the course of port development. For example, there are: regulatory agencies such as the Environmental Protection Agency, the Federal Maritime Commission and the Occupational Safety and Health Administration; inspectional agencies such as U.S. Customs, Agriculture, Public Health, and Immigration; and promotional agencies such as the Commerce Department's Industry and Trade Administration, Economic Development Administration and National Oceanic and Atmospheric Agency.

This fragmentation of federal port-related activities mirrors the uncoordinated policy towards ports in this country. This does not appear to be in concert with the traditional non-Federal Government towards ports embodied in Article I, Section 9 of the Constitution, which states in part ". . . No preference shall be given by any regulation of commerce or revenue to ports of one State over those of another . . ."

This initial statement of federal port policy has been continually reinforced by subsequent Executive and Congressional actions supporting non-federal involvement in the development of shoreside port facilities. Thus, unlike many foreign trading nations, such as the United Kingdom, Canada, Japan, France and the Netherlands, for example, who centrally plan, develop and finance their ports, the U.S. port industry has attained its current state of development without federal master planning and financial aid. This autonomous capability to respond rapidly and take risks on new technology at the local level in a competitive market has been the U.S. port system's cornerstone.

Dramatic technological improvements have been made in ocean transportation of general and bulk cargoes in the last 15 years. The advent of intermodal containerships, roll/on-roll/off carriers, barge-carrier vessels, supersized crude tankers, combination bulk ships, liquid natural gas carriers and slurry vessels are but a few examples. Each of these developments has had a significant impact on transforming a highly labor intensive port industry, characterized by low productivity and high operating costs, into a highly capital intensive, increasingly automated, and more productive segment of the total ocean transportation system.

SHORESIDE EFFICIENCY

U.S. port management recognized clearly in the sixties that the efficiency of terminal facilities and cargo transfer methods must keep pace with vessel productivity increases, if the full benefits of new high technology shipping in the form of reduced total system cost were to be realized.

Resolution of the broad range of major issues and problems, however, currently facing U.S. ports will result in additional changes in technology, trade and government policy that will require continued industry adaptation in the future.

Cited here are a few of the industry's expressed concerns.

1. Federal Control. The industry is opposed to any federal assumption of its marine terminal development role.

2. Excessive Regulation. There is a definite need for better balance between environmental protection and economic development; better integration of port development requirements into state coastal zone management planning; and better and more timely processing of construction and dredging permits by government at all levels.

3. Facilities Cost and Funding Crunch. U.S. ports are caught in a financial cross current of increases in facility costs, due to capital intensive technology, inflation, impact of mandated government regulations, local sharing of federal waterway projects, etc., and a growing scarcity of local funds to meet these increased costs.

4. Labor Stoppages. Ports are most frequently affected by waterfront strikes although rarely directly involved in disputes. This is one of the few times, when ports gain the public's attention.

5. Waterway Development. There is a need for a consistent federal policy toward waterway development, standardization of evaluation criteria, availability of adequate dredging equipment and opposition to user charges.

6. Deepwater Ports. A clear federal policy is needed on the development of deepwater ports to handle very large crude carriers and its relationship to a federal energy policy.

7. Free Trade. Ports support the maintenance of a free trade policy and oppose protectionist measures.

8. Regulatory Jurisdictions. There is a need to resolve the FMC and ICC overlapping jurisdiction dispute relative to ocean and inland rates because it has discouraged development of international, intermodal transportation.

9. Panama Canal. Ports seek assurance of a stable rate structure and continued access by international shipping.

WHAT'S IN STORE

What of the future? What can the port industry expect to happen in the remaining years of the twentieth century?

Improvements in vessel productivity will continue to be made and these will further stimulate the need for new or improved port terminal design and operation.

Much of the stimulus for this continuing development will come from the steadily growing volume and changing nature of U.S. foreign trade itself, which currently amounts to over 800 million tons annually. Maritime Administration forecasts indicate that this volume will increase to over 1.4 billion tons annually by the year 2000.

Therefore, increased demand will be exerted on vessel operators and public ports to achieve further productivity increases to hold down the costs of shipping the projected growth in general cargo and bulk commodities. This translates into a steady pressure for new technology to increase the speed and efficiency with which these cargoes can be moved.

Thus there will be a clear need for further port development in the United States to handle the future volume of waterborne commerce. Because of the large scale increases in cargo throughout, however, brought about by advanced port technology, additions to marine terminal capacity are likely to be more incremental than quantum.

Facility costs, however, will rise due to continued high cost technology, inflation and mandated governmental requirements and be accompanied by narrow financial margins for port bodies to absorb these increased costs.

Increased port development funding from state and local governments to cover deficits that future facilities may incur will continue to be more difficult to obtain, because competition for limited local monies with other public priorities of the urban and state environment is likely to remain severe.

Therefore, public ports will be required to assume a more "pay as you go" position depending more and more on the reinvestment of port earnings for development purposes and the most efficient use of other financial resources. Depressed port usage charges over time will have to become more remunerative to cover facility costs and increase revenues.

FEDERAL IMPACT

Federal aid for shoreside port development is another possibility. Until recently, U.S. ports have staunchly resisted any concept of federal assistance, fearing that it would lead to federal control and restrict the competitive structure of the industry. But this attitude is changing as more and more individual public ports apply for and receive funds from a diverse number of non-port related federal agencies. This type of federal aid, while it may not *per se* diminish local control of port development, is and will continue to impact on the competitive relationship of ports.

It is not my intention here to debate the relative merits or problems associated with federal assistance to ports. Suffice it to say, however, that the port industry in the future must come to grips with and place in proper perspective this question of more or less federal involvement in local marine terminal development.

Similarly, the Federal Government will continue to play a major role in several highly sensitive and extremely non-revenue producing areas of local ports. These include coastal zone management, waterfront renewal, marine fire protection, harbor traffic control, pollution control, cargo security, and waterfront labor productivity, stability and safety. Most of these areas constitute matters of significant public interest not easily absorbed into the business approach of local public port agencies, yet nevertheless needed and of a port nature.

The port industry, with one hand, has pressed the Federal Government into resolving these problem areas, but with the other, has performed a delicate balancing act to keep the government from intruding into the historical preserve of the public port agency, namely, marine terminal construction and commerce development.

These latter two limited areas were appropriate for the close of World War II when they constituted the dominant port needs at that time. It doesn't appear that this approach, however, can be sustained indefinitely in the future. Unless the public port industry changes its posture, it could ultimately cease to be the caretaker of the nation's ports, which would in my opinion be an unfortunate situation.

SLOW CHANGE

The Federal Government role in waterway development is not likely to change dramatically in the foreseeable future. By the end of the century, some major seaports may have federally constructed shipping channels of 50 feet or more. Private or state-owned offshore deepwater port facilities should be operating on the Gulf and Atlantic coasts by that time.

It is only a question of time and type before users of the inland waterways will have to start paying a fee. Great Lakes shippers have been paying user charges since the St. Lawrence Seaway opened in 1959. Attempts will continue to be made to extend user charges to deep draft ports and harbors on the other three coasts.

Before the end of this century, an effort will be made to establish a cohesive national port policy and to consolidate the major federal port related agencies to enforce the policy and deal on a more unified basis with port matters.

Coordinated port planning on a regional basis is, I believe, a necessity for today's strong public concern for the protection of the environment. The growing trend for public ports to amalgamate themselves into large groups for planning purposes will continue to gain momentum. I believe some elements of the port industry recognize that this is essential if they are going to compete effectively for local and state monies. It is clear that as resources become more scarce in the future, port planning becomes more important and must adopt as broad a viewpoint as is possible, to be truly effective.

The American port industry is a national asset. It has a proven track record. I believe it will continue to grow to meet the expanding needs of the nation's waterborne commerce as well as enhance the economy.●

PEACE AT CAMP DAVID

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. RANGEL. Mr. Speaker, this evening's address by President Carter before a joint session of Congress is one of those unique moments in history when a peaceful and amicable solution to a long and bitter armed confrontation is within our grasp.

The President must be praised for his courage and ability in bringing these two confrontation states together at a time when all the world was prepared to concede that the spirit of the Sadat initiative of late last year had been lost. The achievements at Camp David take on an even greater significance when one realizes that the parties came together without any prior commitments on the nature of the talks and the extent that each side was prepared to compromise in order to reach an agreement.

It must not be forgotten that the political risks for both Prime Minister Begin and President Sadat were and are great.

Because of the highly emotional nature of the issues involved, both men had to realize that were their efforts to be successful they would incure severe criticism from some of their closest friends and supporters.

Yet the achievements of Camp David clearly show that both Sadat and Begin were and are sincere in their desire to achieve peace, no matter what the risk.

We can now only hope and pray that the achievements of Camp David will culminate in an overall peace between all the parties who have had to suffer during the past 30 years.●

MIA SIGHTINGS—VI

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. DORNAN. Mr. Speaker, during the past several days, I have been inserting documents into the RECORD, letters from Vietnamese refugees concerning sightings and other relevant information on American personnel listed as "Missing in Action" in Southeast Asia. I have been exchanging these letters with the Defense Intelligence Agency in order to have the information contained within them investigated and, if possible, verified. Once again, I cannot stress enough the importance of Members of this House refraining from a premature acceptance of the view that the American personnel listed as "Missing in Action" ought to be presumed dead.

It is my firm conviction that we are approaching an informational threshold on this entire question. If the testimony of Ngo Phi Hung, that he saw 49 living Americans in Vietnam, is upheld in its integrity after a thorough analysis of the Defense Intelligence Agency, then we may assume that other testimony, such testimony as is found in letters and oral reports from Vietnamese refugees, is likewise true. These reports keep coming in increasing numbers. They are to be thoroughly sifted by competent authorities.

We should also pay attention to corroborating evidence.

For example, recently members of my staff interviewed a 75-year-old Vietnamese refugee living in Maryland, Mr. Pham Huy Giang, formerly a public works engineer under the South Vietnamese government. Giang claims that, late in 1975, he visited a Communist "victory" exposition in Gia Long Palace in Saigon where the Communist had on display photos and identification cards of pilots who had been shot down in the air war over Vietnam.

There were, in the words of Giang, at least 1,000 of these cards, including photos of wives and children, scattered randomly over a large table at the "victory" exposition. Accompanying the exposition of the military identification cards and photos, was the inscription: "Here are the photos and identification cards of Americans we have captured after their planes went down." Unfortunately, Giang said, there was no indication of whether these documents belong to men who were alive or dead.

I would only say this, Mr. Speaker: If the Communists in South Vietnam were to obtain and keep the identification cards and photos of so many men, then they must have some idea where these men are, or were, located. It is not easy to believe that a Communist regime, otherwise so methodical, would fail to keep accurate records. Again, Mr. Speaker, I am perfectly willing to admit that my assessment of the situation may be in error. But, this is where the Vietnamese Communists must be forthcoming. This is where we can effectively discuss the long-

term future of our relations with Vietnam in a fruitful fashion. We cannot pass up the diplomatic opportunities that we are now afforded. But the central issue must remain the status of those Americans listed as "Missing in Action" in Vietnam and elsewhere.

Consider the conditions. According to the testimony of the Members who visited Vietnam with Mr. MONTGOMERY, Vietnam's economic situation is chaotic. There are food shortages. There is a great need for outside assistance in the form of technical and agricultural assistance. We have been told that Vietnam faces serious diplomatic and political problems with China to the North and Cambodia to the West. We know that the Vietnamese are having grave difficulties. A normalization of relations with the United States would certainly be in Hanoi's best interests.

If Hanoi could turn up live Americans, I do not see how the United States could fail to move in a positive direction on the question of normalizing relations and related, outstanding problems. It would be the very best foundation for forgetting the past, and finally, putting the dark memories of the Vietnam war behind us, once and for all. That, I am sure, would also be in the interests of the regime in Hanoi.

I say this, Mr. Speaker, because there is reason to believe that Hanoi may not, in fact, have as much control over the situation as many of us might assume. On September 15, 1978, I inserted a copy of a letter from a refugee who claimed that 30 American POW's—along with their Vietnamese guards—were gunned down by Cambodian Khmer Rouge forces in the region of Bokor Mountain, Kapot Province, in November or December of 1974. There is also some evidence of stubborn resistance by certain Communist elements in South Vietnam who, for a number of reasons, refuse to politically unite with the Hanoi regime. These dissident South Vietnamese forces may also be holding living American prisoners of war, captured during the fighting with American troops in the long course of American involvement in South Vietnam. Again, it is an area where Hanoi may not have direct control, but the Vietnamese Communist regime could certainly exercise leverage over their former allies, if such is the case, and secure the release of any living Americans.

Once again, I hope and pray that the Vietnamese will be forthcoming on this issue. And, finally, we may put our minds to rest.●

SEVENTY-FIVE YEARS OF OUTSTANDING COMMUNITY SERVICE

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. STARK. Mr. Speaker, on September 29, the Plumbers and Gas Fitters Union, Local No. 444, will celebrate the 75th anniversary of its organization in Alameda County, Calif.

For the past 75 years. Local No. 444 has played an active and important role in the development and building of industrial, commercial, residential, utilities, marine, and environmental projects throughout Alameda County. The union has worked diligently and successfully to secure decent wages, working conditions, and health and retirement benefits for its members. Local No. 444 has also pursued social goals through its active participation in the local, State, and Federal legislative and political process. Today, under the leadership of business manager George A. Hess, Plumbers and Gas Fitters Local No. 444 has a strong affirmative action program and is helping to open the doors to steady employment for minorities and women wishing to enter the construction industry.

I know that my colleagues join me in congratulating the Plumbers and Gas Fitters Local Union No. 444 for 75 years of outstanding service to laboring men and women in Alameda County.●

MY FINANCIAL STATEMENT AS OF DECEMBER 31, 1977 FOLLOWS

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. DOWNEY. Mr. Speaker, in keeping with a practice I began in 1975, I am publishing my financial statement for 1977. I believe that public officials have an obligation to make a full financial disclosure in order to have on the public record the sources of all income, and taxes paid so that no question as to self-enrichment or conflict of interest can ever arise.

INCOME FOR 1977

Salary—U.S. House of Representatives	$54,275.00
Other income:	
Honorariums	3,823.00
Mileage reimbursement	114.00
Total income	58,212.00
Less Business Expenses Non-Reimbursable	8,380.00
Adjusted Gross Income	49,832.00
Itemized Deductions:	
Medical	120.00
Taxes	6,481.00
Interest Expenses	58.00
Contributions	195.00
Miscellaneous Congressional Expenses	2,902.00
Grant to Travel & Study Foreign Programs (included in AGI under Honorariums	2,648.00
Net adjusted gross income	37,428.00
Less Personal Exemption	750.00
1977 Taxable Income	36,678.00
Federal Income Tax Paid	11,790.00
New York State Income Tax Paid	4,486.00

Statement of net worth, December 31, 1977.

Assets:	
Cash value, congressional retirement system	11,035.77
Personal Property (approximately)	10,000.00
Liabilities: None.	
Total assets	21,035.77

I have no outside business interest, and no connection with any business entity, except in an honorary capacity, that does business with the Federal Government, or subject to Federal regulatory agencies.●

MANOLO REYES

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. PEPPER. Mr. Speaker, I would like to call the attention of our colleagues to a recent article dealing with Cuban-Americans which appeared in one of the top Canadian news magazines MacLean's.

Dr. Manolo Reyes, who was interviewed in the article, is a dear and close friend who is deeply involved with the plight of Cubans living in the United States. Dr. Manolo has led numerous attempts to combat communism in Cuba through legal political means and has aided thousands of Cubans who desired to acquire American citizenship. His many appearances before Congress have resulted in a greater understanding of the pain, anguish, and expectations which exiled Cuban-Americans feel. I insert this article at this point in the RECORD:

THE ENEMY GROWS OLDER

(By William Lowther)

Manolo Reyes pushed a loaded .38 across his desk. For a man with his name on a death list he looked awfully confident. "Do you think they'll take me easy?" he asked. A macho gesture, a touch of cowboy. But the atmosphere in Little Havana that has convinced him to carry a gun is real enough. At 54, the laugh and worry lines mingle in his face. He speaks with a lilting Spanish accent:

"The killings began about four years ago. It was a Good Friday. Jose de la Torriente was the first one. He was an old man. They shot him in his own house and left behind a list of 10 names. Since then, six of the men on that list have been assassinated. A seventh committed suicide. An eighth had his legs blown off. There is only me and one other left on the hit parade. No one has been caught. But all of us, all the men on the list had only one enemy—Fidel. And he has agents here."

"Here" is Miami, specifically the huge Cuban ghetto known as Little Havana, home to more than half the 700,000 Cubans who live in exile in the United States. They have been described as the best-trained army of terrorists in the world today, and they possess an enormous potential for violence against the detested Castro regime and its supporters. They have been here for 18 years, since they fled or were forced out when Fidel Castro led his ragged rebel troops down from the Sierra Maestra hills to turn their island into a Communist stronghold. And not since the death of John F. Kennedy (in which some suggest they played a sinister role) has anyone in a position of real power considered the exiles to have any chance

to return, victoriously, to overthrow the "dictator."

At one time nearly 60 per cent of the Cuban men in the Miami area were in the pay of the Central Intelligence Agency (CIA) and received intense tuition as guerrilla fighters. But that connection ended years ago—they have been on their own for a good decade, their violence and hatred smouldering. They are fiercely anti-Communist, bursting with rage against Castro. The years of frustration since the disastrous Bay of Pigs fiasco, the abortive, CIA-backed attack on Cuba in 1961, have blinded many of them to reason.

But now, curiously, this society in microcosm believes again that it has a part to play in international affairs. It believes that Castro is overstepping the boundaries of his power, at home and abroad. The Cubans in exile say that not since the early '60s has the time been more opportune to strike out again against the man they call, with bitter familiarity, "Fidel."

There are dozens of factions and groupings among the exiles, but basically they fall into two schools. One, led by men like Manolo, wants to combat the Communists through strictly legal political means—through Washington, the United Nations, the World Court. Others believe that diplomatic pressure is a waste of time. They want to attack the Castro regime at home and abroad with violence. They have formed a "secret army" which has conducted literally dozens of bombings against pro-Castro targets. They have kidnapped and murdered Cuban officials. They have blown up an airliner, killing all aboard, and they have launched flotillas of highly armed speedboats to harass Cuban and Soviet shipping in the Caribbean. Even now four men are waiting to stand trial on charges that they violated the U.S.-Cuban neutrality laws by preparing "a military and naval expedition" against the territory and dominion of the Republic of Cuba.

This summer coincidentally, through a set of unrelated circumstances, both the violent and the nonviolent factions in Miami have fresh hope for damaging the Castro regime. They see new ways emerging for them to influence events.

The bearded revolutionary has become vulnerable, they say, as a result of his adventurism in Africa. Cuba, by most estimates, now has well over 40,000 soldiers on that continent. For a poor albeit well subsidized country with fewer than 10 million people, it is a huge commitment to foreign wars from which the only gain is likely to be a spurious ideological nature. Allowing for the difference in populations, the Cuban venture is on the same scale as the United States' in Vietnam in 1968. It's fair to say that every Cuban family has a relative or at least knows a soldier in Africa.

Not surprisingly, this is leading to a good deal of quiet dismay and uneasiness at home. At least that is what the exiles in Miami believe. The intelligence they receive from relatives and sources back on the island indicates that dissatisfaction is growing. But there is no obvious pressure to "bring the boys home." This is partly because the Communist system is well enough organized to stamp out the fires of rebellion before they catch hold, and partly because of high unemployment at home. Work is scarce and Africa is a chance for promotion and equality. Most Cubans are mulatto or black yet nearly all the top jobs in Havana are held by whites. Colored soldiers, especially junior officers, are far commoner in the units in Africa than in the Cuban forces as a whole. Thus race plays its part.

In the back bar of Centro Vasco, Little Havana's classiest restaurant, a Bay of Pigs veteran explained: "You see Fidel, he has this charisma. He is a genius. We don't deny that. A genius, but an evil genius. He holds the people under a spell. The spell could be broken by his death. There is no one of stature to succeed him. No one can take his place. If we could kill him now it would be possible to rally the people to revolt. With all that is happening in Africa, the time is right for action. We must let the Cuban people back home know that we are still ready and prepared to help them."

The world is a very different place viewed from the neat, narrow streets of Little Havana. Ideals that seem absurd elsewhere take on new reason when explained over *café cubano* in the crowded sidewalk bars. You can easily believe that you are in the real thing, the real Havana, and forget that it's a transplant. Virtually no English is spoken in the shops and cafés. The Spanish culture thrives. Stores with statues of saints, stone-studded crosses and religious paraphernalia flourish. Old men gather in dusty little squares to play dominoes. The gourmets agree that Little Havana restaurants serve Cuban food superior to those "back home." Black bean soup and variations on paella are the specialities.

Back of the main street—the Tamiami Trail—are bright rows of white and pastel stucco houses. There is a safe and secure air. It looks like a good place to bring up the kids. It's hard to believe that it's also a hotbed of plots, counter-plots and conspiracy. But it is.

For the last few months, a fragile peace seems to have fallen over the area. There have been no bombings, murders or kidnappings in the Cuban community. The list with Manolo's name on it would appear to have been put on the shelf. And the state and federal anti-terrorist squads who keep a close watch on the community believe they know why it's so quiet. In off-the-record talks, police officers acknowledge that Castro does indeed have agents in Miami. They were all working—Manolo still is—to tackle Castro through such international organizations as the UN and World Court. Those who favor terror tactics see what might be called the "Manolo faction" as a waste of time, a hindrance. They want to discourage that approach at any price.

Eighty per cent of the 100 and more bombings and killings in the Miami area since 1974 remain unsolved. Congressional hearings, grand juries and the like have been markedly ineffective. However, when arrests are made or convictions handed down, the persons involved turn out to be known members of the community with long records of anti-Castro activity. So the current lull in terrorism has been caused, the police believe, by two factors. First, several exile leaders with records of violence are now awaiting trial on a variety of terrorist charges and police say their sympathetic colleagues are lying low so as not to prejudice the cases. Second, and equally important, there are indications that the pro-attack group is concentrating its efforts directly against Cuba, 110 miles away. Buoyed by the belief that the people are fed up with Castro's Africa policies, the exiles want to make the most of what could be a passing opportunity.

"I really would put absolutely nothing past them," says one leader of the state's anti-terrorist squad. A Cuban himself, he adds: "These people are very intelligent and quite fanatical. They are prepared to lose their lives, to become martyrs for the only cause that means anything to them."

Their record is quite extraordinary. The four men now awaiting trial on charges of violating American neutrality laws—Armando Lopez Estrada, Pedro Gil, Juan Arce and Isidoro Pineiro—were arrested after police found weapons cache and three powerboats they said were to be used in a naval raid on Cuba. Among weapons in the haul: a 20mm cannon, a 50-calibre machine-gun, a 30-calibre machine-gun and five AR-15 automatic rifles. They have claimed that in conducting raids on Cuba they were "pursuing a legitimate goal of the U.S. government." The prosecutor in turn argues that the United States does not sanction private armies. "Fifteen years ago, perhaps, the U.S. did give approval for raids," he said. "Now there is no authorization and this amounts to a recruitment of a private or secret army." It is reflective of the atmosphere and mood of Miami however that up to this point the legal system, as applied locally, has tended to work in favor of the Cubans and turn a blind eye to raids into the Caribbean. Even now the betting is that the four will eventually have their case dismissed on some legal technicality.

The naval expeditions are aimed at keeping the Cuban authorities disturbed and on edge. A couple of random examples: On February 12, 1976, when the Soviet freighter Dzhordano Bruno was sitting motionless 35 miles off Cuba's north coast, a small boat raced up and raked it with heavy machine-gun fire. The Soviets said no one was injured. About two months later, two Cuban fishing boats were similarly attacked. This time, one fisherman was killed.

But it is the exile community's more visible acts of terrorism that get the publicity. Perhaps the most noted came in October, 1976, when a Cubana airliner was sabotaged en route to Cuba from Barbados. Seventy-three people were killed.

But as the police point out it's not just those who serve Castro but also those who oppose terrorist actions in general who fall victim to the renegades. Emilio Milian, news director of Miami's most popular Spanish-language radio station, had his legs blown off when he turned on the ignition of a car—shortly after broadcasting an editorial pleading for an end to terrorism. It happened two years ago but although several known terrorists have been questioned (one of them failed a lie detector test) no one has been convicted.

Leaders of the terrorist bands are hard to identify. However a pediatrician, Dr. Orlando Bosch, has emerged as a major figure. He was caught firing a bazooka at a Polish ship in Miami harbor in 1968 and was sentenced to 10 years in prison. Released on parole after four years, he returned to the movement and is now under arrest in Venezuela charged along with three other men in connection with the Cubana airliner bombing.

Many of the pro-violence Cubans have connections with the Bay of Pigs Fighters Association Assault Brigade 2506, formed by invasion veterans. To a man they are fiercely anti-Castro.

In a dimly lit bar just off a Little Havana side street, two of the men who once worked for the CIA and conducted raids against Cuba talked into the early morning hours recently about their hopes. Roberto Carballo—a dramatic dashing individual with thick black wavy hair, shirt opened to show an ornate silver cross—said: "I don't believe that the present Cuban regime can exist without Fidel. He controls everything. If he were gone, if he were killed, all that he has done would crumble. Have you seen the pictures of him lately? He has a big fat paunch now. And he is one of the biggest liars alive. I was at the Bay of Pigs invasion. I was the only member of the brigade to escape after we were captured. You know there were only 1,260 of us landed, 106 were killed. Fidel said that we killed only 92 of his troops but that was a lie. We killed about 800 of them. I myself saw them carrying the bodies away in trucks."

Urbano Menendez, a big man with a gentle face, added: "It is so easy to fight Fidel in Miami. All you have to do is talk about it and nothing else. But it will be another thing if the real chance is presented again for us to invade the island. We are always asking ourselves how many of the Cuban men here would really stand and fight. Of course it depends on who blows the horn. In the end

you can only really know for yourself. Many of our people have done very well in America. They are successful and wealthy businessmen. Would they give that up to go back to Cuba? We can't turn back the clock. Things have changed a great deal."

Indeed. Things are still changing. Manolo Reyes put away his gun. We were talking in his plush little office—refrigerated bar and mirror-fronted desk—on the third floor of the hospital where he works as vice-president in chage of communications and patient relations. A self-promoter, he has testified 12 times in the last eight years before Congress as a "leader of the Cuban community in exile."

His schemes for bringing down Castro through complex arguments and unlikely power plays in Washington and New York are trotted out with over-practised fluency. It's not from these dubious ploys that Manolo will ever hurt Cuba, rather it's from one of his other pursuits—the welfare of the exiled community. For he has led a drive to persuade the patriotic Cubans to take out American citizenship. "I decided that as a special tribute to the United States I would convince my brothers to become Americans. Does this mean we are renouncing our roots, our country, our history? No, you love and always will love the mother who gave you your body and soul, but you also love the woman who helps you raise your children. You cannot compare them. Cuba is our mother, America is our wife."

In 1976, when Manolo started his drive, 30,000 Cuban exiles became Americans. Last year another 22,000 took the oath of allegiance. This year at least as many are expected to follow suit. The result is that for the first time since they went into exile the Cubans have become a voting political force. They are gathering clout in Congress. Their ballots can be relied upon to elect anti-Castro candidates who will, through the committees and caucuses, fight against any Washington-Havana reconciliation and recognition.

It is at least partly as a result of a national sentiment against Cuban troops in Africa that President Jimmy Carter is now taking the hardest line of his own administration to label the island as a Soviet satellite totally under the Kremlin's thumb. In so doing. Carter has rejected the friendship overtures Castro has been making with increasing frequency this year. This latest development has come as a sweet relief to Little Havana. For the president started his regime with moves towards Cuba. Diplomats were swapped, treaties signed, agreements reached on fishing and freedom of passage. Now, with the impasse over Africa, relations again look ready to slump.

Last word from Manolo: "The Cuban people are not Communists at heart. What are Cuban boys doing fighting in Africa? Cuba is famous for rum, the conga and maracas. We are not warriors."

A FRAMEWORK FOR PEACE

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 18, 1978

● Mr. ANDERSON of California. Mr. Speaker, the peoples of the United States, Israel, Egypt, and the world, received truly wonderful news last night. Thirteen days of effort at Camp David have borne fruit. A framework for peace in the Mideast has been agreed to by the leaders of two countries that have been at odds for 30 years.

I imagine most of us have now seen the photograph of Prime Minister Begin and President Sadat embracing, with President Carter applauding at their side. All three of these leaders deserve our applause. They have been working hard at bringing peace to a region of the world that is of such great importance to us. There can be no more worthy endeavor.

Let us not mistake these accords for a final peace agreement. They are not. But we are certainly nearer to such an agreement than we were a month ago. For this we can all be thankful, and say to Messrs. Begin, Sadat, and Carter, "Congratulations, gentlemen, on a job well done." ●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 19, 1978, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 20

9:00 a.m.
Agriculture, Nutrition, and Forestry Nutrition Subcommittee
To hold hearings to examine the curriculum offered by medical schools in nutrition education.
1318 Dirksen Building

Judiciary
Administrative Practice and Procedures Subcommittee
To resume hearings on S. 2011, proposed Regulatory Reduction and Congressional Control Act.
2228 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

2:00 p.m.
Commerce, Science, and Transportation
To hold hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

Conferees
On S. 2640, to reform the Civil Service laws.
S–146, Capitol

2:30 p.m.
*Human Resources
Labor Subcommittee
To continue hearings on S. 3060, proposed National Workers Compensation Standards Act.
4232 Dirksen Building

3:00 p.m.
Conferees
On H.R. 15, authorizing funds through FY 1983 for elementary and secondary education programs.
EF–100, Capitol

SEPTEMBER 21

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

9:30 a.m.
Environment and Public Works
To hold hearings on the nomination of Richard M. Freemen, of Illinois, to be a Member of the Board of Directors of the TVA.
4200 Dirksen Building

Judiciary
Antitrust and Monopoly Subcommittee
To resume hearings on conglomerate mergers and their effect on the economy, on a community, and on employees.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

Commerce, Science, and Transportation
Business meeting on pending calendar business.
235 Russell Building

Finance
To continue mark up of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

Rules and Administration
To further consider S.J. Res. 142, authorizing the FDR Memorial Commission to proceed with construction of a Memorial in West Potomac Park.
301 Russell Building

Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

2:00 p.m.
Conferees
On H.R. 15, authorizing funds through FY 1983 for elementary and secondary education programs.
H–328, Capitol

SEPTEMBER 22

9:30 a.m.
Human Resources
Labor Subcommittee
To resume hearings on S. 3060, proposed National Workers' Compensation Standards Act.
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

Finance
To continue mark up of H.R. 13511, to reduce income taxes.
2221 Dirksen Building

* Judiciary
Administrative Practices and Procedure Subcommittee
To hold hearings on S. 2862, proposed Regulatory Control Act.
2228 Dirksen Building

SEPTEMBER 25

8:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To resume hearings to examine the Federal Government's role in food safety and quality, with emphasis on the nitrite situation.
322 Russell Building

SEPTEMBER 26

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on problems of small business defense contractors.
5302 Dirksen Building
Commerce, Science, and Transportation
To hold hearings on the nomination of Marvin S. Cohen, of Arizona, to be a Member of the Civil Aeronautics Board.
235 Russell Building
Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to receive testimony on nuclear reactor safety systems from NRC Chairman Hendrie.
4200 Dirksen Building
Finance
Public Assistance Subcommittee
To hold hearings on H.R. 10848 and H.R. 12972, to modify the disability aspects of the Supplemental Security Income program.
2221 Dirksen Building
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter concerning overall policy.
2228 Dirksen Building
Conferees
On H.R. 15, authorizing funds through FY 1983 for elementary and secondary education programs.
H-328, Capitol

2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 27

9:00 a.m.
Governmental Affairs
Civil Service and General Service Subcommittee
To hold hearings on S. 1390, to authorize certain National Guard employment to be credited for civil service retirement, and S. 1821, to provide paid leave for Federal employees participating in athletic activities as an official representative of the U.S.
3302 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on financing of future energy needs.
5302 Dirksen Building

1:30 p.m.
Conferees
On H.R. 15, authorizing funds through FY 1983 for elementary and secondary education programs.
S-207, Capitol

SEPTEMBER 28

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on national export policy.
235 Russell Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on financing of future energy needs .
5302 Dirksen Building
Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building

2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

OCTOBER 3

9:30 a.m.
Human Resources
Labor Subcommittee
To hold oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 4

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 5

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To hold oversight hearings on international housing programs.
5302 Dirksen Building

OCTOBER 6

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To continue oversight hearings on international housing programs.
5302 Dirksen Building

OCTOBER 10

9:00 a.m.
Armed Services
Manpower and Personnel Subcommittee
To hold hearings on alleged abuses in U.S. Marine Corps recruiting practices.
1114 Dirksen Building

OCTOBER 11

9:00 a.m.
Armed Services
Manpower and Personnel Subcommittee
To continue hearings on alleged abuses in U.S. Marine Corps recruiting practices.
1114 Dirksen Building

SENATE—*Tuesday, September 19, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT MORGAN, a Senator from the State of North Carolina.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Hear the words of the fifth chapter of the Gospel of Matthew.

Blessed are the pure in heart: for they shall see God.

Blessed are the peacemakers: for they shall be called the children of God.

Dear Lord and Father of mankind, grant to all of us that purity of heart and that clarity of mind which qualifies us to be makers of peace in this turbulent, terror-ridden world. Give us grace to join those leaders whose patient, concerted, and skillful work has opened the door and pointed the pathway to enduring peace. Grant to them and to us the faith to expect much and the courage to dare much. Give Thy higher wisdom to those in consultation this very moment on this Capitol Hill, and be with those who travel afar with tidings of peace. May some miracle of grace remove the obstacles, overcome the barriers, and surmount the impediments to the advancement of Thy kingdom. Keep us all in Thy love and in accord with Thy will that the end may be consistent with the beginning.

We pray in the name of the Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 19, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT MOR-

GAN, a Senator from the State of North Carolina, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. MORGAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The majority leader, the Senator from West Virginia, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I reserve my time for the moment.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The minority leader, the Senator from Tennessee (Mr. BAKER) is recognized.

Mr. BAKER. Mr. President, I have no requirement for my time under the standing order, and I am happy to yield it to the majority leader or to anyone else who may need it.

Mr. HARRY F. BYRD, JR. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Yes. If the Senator will withhold momentarily, I will be delighted to yield.

ASIAN/PACIFIC AMERICAN HERITAGE WEEK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 1007.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 1007) authorizing and requesting the President to proclaim the 7-day period beginning on May 4, 1979, as "Asian/Pacific American Heritage Week".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the joint resolution be considered as having been read the first and second time and the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, the joint resolution will be considered as having been read twice by its title.

Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

● Mr. MATSUNAGA. Mr. President, I rise in support of Senate Joint Resolution 72, authorizing the President to proclaim annually a week during the first 10 days of May as "Pacific/Asian American Heritage Week."

Throughout the United States, over 4 million Americans trace their ancestry to Asia and the Pacific islands. Yet even though these individuals constitute a significant minority group, most Americans are unaware of the history of Pacific and Asian Americans in the United States, and their contributions to our Nation's cultural heritage.

The history of Pacific and Asian Americans is a history of proud accomplishments and triumph over adversity. Through their labor, Chinese Americans helped build the Nation's transcontinental rail system, and made major contributions to the growth of farming and agriculture. Native Hawaiians developed the first constitutional monarchy in the Pacific, and were deeply involved in the American whaling enterprises of the 19th century. In the Second World War, the 100th Infantry Battalion and the 442d Regimental Combat Team, composed of Japanese-American volunteers, became the most decorated unit in the U.S. military history.

As individuals, Pacific and Asian Americans have brought honor and distinction to the United States. In 1957, Chinese Americans Chem Ning Yang and Tsung Dao Lee received international recognition as recipients of the Nobel Prize in physics. Dr. Thomas Noguchi, the Los Angeles County Coroner, is a nationally known figure in forensic medicine. In the arts, both Minoru Yamasaki and I. M. Pei, architect of the new East Building of the National Gallery of Art, have received international acclaim. In sports, from my home State of Hawaii, Duke Kahanamoku, a native Hawaiian, won fame for winning gold medals in swimming at the 1932 Olympics, and this fall, U.S.C. football fans will cheer the exploits of Samoan-born Mosi Tatupu, now a resident of Hawaii. In politics, four Asian-Americans have been elected to the U.S. Senate—former Senator Hiram L. Fong and Senators DANIEL K. INOUYE, SAMUEL I. HAYAKAWA and myself. Congressmen NORMAN MINETA and DANIEL AKAKA presently serve in the U.S. House of Representatives, while Patsy Mink, a former Congresswoman, recently served briefly as an Assistant Secretary of State. George Ariyoshi is the only Governor of a State in the Union who is of Asian ancestry.

Mr. President, the purpose of the resolution before this body is twofold. First, it seeks to foster an increased national awareness of the history and contributions of Asian and Pacific Americans, and second, it is intended to imbue a renewed sense of pride among our citizens of Pacific and Asian ancestry. In this regard, the pending resolution is consistent with prior congressional actions, designating a Hispanic Heritage Week and setting aside February as Black History Month.

The dates designated in the resolution are particularly significant. May 7, 1979 will mark the 136th anniversary of the arrival of the first Japanese who immigrated to America. May 10, 1979 will be the 110th anniversary of the driving of the Golden Spike, signifying the contributions of Chinese Americans to building the transcontinental railroad.

Until very recent times, it was believed that there was only one acceptable road to Americanism for citizens of Pacific and Asian ancestry: to give up all of the things which were familiar and dear to them in the country from which they had come, and to submerge their old way of living, their thinking, and their personality into the one acceptable mode. Cultural differences were recognized only to the extent that it was felt they should be erased—the sooner, the better. This belief inevitably created unfortunate family tensions between parents, who wished to preserve the old country culture, and children and grandchildren, who regarded such culture as incompatible with the American way of life.

The recent resurgence of ethnic and cultural pride is particularly gratifying since pride in one's own ethnic background fosters a spirit of understanding and appreciation of our neighbor's or friend's cultural heritage. Observance of an annual Pacific and Asian American Heritage Week, especially in the Nation's schools, would contribute toward a better understanding of the cultural contributions made by Asian Americans and Pacific islanders to our American way of life.

Mr. President, I believe that as a nation of citizens of diverse backgrounds, we become more American by developing a keener sense of appreciation of our ethnic heritage. Therefore, Mr. President, I urge the adoption of the resolution.●

The ACTING PRESIDENT pro tempore. The joint resolution is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the joint resolution.

The joint resolution was read the third time.

The ACTING PRESIDENT pro tempore. The joint resolution having been read the third time, the question is, Shall it pass?

The joint resolution (H.J. Res. 1007) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 3375.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 3375) entitled "An Act to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal District Court Organization Act of 1978".

PLACES OF HOLDING COURT

SEC. 2. (a) The last sentence of section 97(a) of title 28, United States Code, is amended to read as follows:

"Court for the Eastern District shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.".

(b) The last sentence of section 104(a)(1) of title 28, United States Code, is amended to read as follows:

"Court for the eastern division shall be held at Aberdeen, Ackerman, and Corinth.".

DIVISIONS WITHIN JUDICIAL DISTRICTS

SEC. 3. (a)) Section 98(c) of title 28, United States Code, is amended to read as follows:

"Western District

"(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

"Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.".

(b) Section 114 of title 28, United States Code, is amended—

(1) in paragraph (2), by striking out "Sheridan, Steele, Stutsman, and Wells" and inserting in lieu thereof "Steele, and Stutsman";

(2) in paragraph (3), by striking out "Bottineau,", "McHenry,", and "Pierce,"; and

(3) by amending paragraph (4) to read as follows:

"(4) The Northwestern Division comprises the counties of Bottineau, Burke, Divide, McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells, and Williams.".

JUDICIAL DISTRICT DIVIDING LINES

SEC. 4. (a) Section 89 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Madison," immediately after "Liberty,"; and

(2) in the first paragraph of subsection (b), by striking out "Madison,".

(b)(1) Section 93 of title 28, United States Code, is amended to read as follows:

"§ 93. Illinois

"Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

"Northern District

"(a) The Northern District comprises two divisions.

"(1) The Eastern Division comprises the counties of Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, McHenry, and Will.

"Court for the Eastern Division shall be held at Chicago.

"(2) The Western Division comprises the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago.

"Court for the Western Division shall be held at Freeport and Rockford.

"Central District

"(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Knox, Livingston, Logan, McDonough, McLean, Macaupin, Macon, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

"Court for the Central District shall be held at Danville, Peoria, Quincy, Rock Island, and Springfield.

"Southern District

"(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

"Court for the Southern District shall be held at Alton, Benton, Cairo, and East Saint Louis.".

(2) Section 133 of title 28, United States Code, is amended by striking out the item relating to Illinois and inserting in lieu thereof the following:

"Illinois:
"Northern ---------- 13
"Central ---------- 2
"Southern ---------- 2".

(c) Section 112 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Columbia," immediately after "Clinton,", by inserting "Greene," immediately after "Fulton,", and by inserting "Ulster," immediately after "Tompkins,"; and

(2) in the first paragraph of subsection (b), by striking out "Columbia,", "Greene,", and "Ulster,".

EFFECTIVE DATE

SEC. 5. (a) The amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent for its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the Senate concurred in the House amendments.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO HOLD H.R. 10965 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as it is received, H.R. 10965 be held at the desk pending further disposition.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I now yield to the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.).

Mr. HARRY F. BYRD, JR. I thank the majority leader.

The ACTING PRESIDENT pro tempore. The Senator from Virginia is recognized.

THE MIDDLE EAST

Mr. HARRY F. BYRD, JR. Mr. President, last evening in the Chamber of the House of Representatives was one of the most dramatic joint sessions of Congress that I have attended.

I especially congratulate and commend the President of the United States on his address last evening. I commend him for the bold approach which he took to the Middle East problem when he invited President Sadat and Prime Minister Begin to meet with him at Camp David.

I also commend him for his persistence and patience in long negotiations which took place between the two Middle East leaders.

President Carter devoted untold hours in an effort to bring to agreement, at least in a general way, two great leaders from another part of the world.

It is too early, I think, to judge just how successful the Camp David conference will eventually be. Certainly at this point it offers much hope to the world. It offers hope that an area long troubled is making progress toward a just and lasting peace.

I have only one question that I wish to put to the distinguished majority leader as I assume that he above all others would have knowledge of such a fact, if indeed it is a fact.

The press dispatches from the Middle East have indicated that, as a part of the agreements which were worked out at Camp David, the United States would build American airbases in the Middle East.

Nothing was said about that last evening.

I think it is important that the American people know all the facts. If the reports coming out of the Middle East are in error, I hope that those in a posi-

tion to do so would so indicate to the American people.

But if the reports coming out of the Middle East are accurate, then I hope that all of the facts would be laid on the table.

So my question to my distinguished colleague, the majority leader, is: Does he have information in regard to these Middle East reports that the United States has agreed to build American airbases in that area?

Mr. ROBERT C. BYRD. Mr. President, this subject was referred to by the President yesterday at the White House when he briefed a number of Members of the House and Senate, and I want to be absolutely accurate when I respond to the Senator, so I will withhold any further comment until I have gotten an accurate, precise response for the Senator, and I will put it in the RECORD.

Mr. HARRY F. BYRD, JR. I thank the Senator. As I say, my reason for raising the point is that I think it is very important that all the cards be put on the table. I think the American people have a right to know just what commitments have been made in their name as a result of the recent negotiations.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. I yield.

Mr. ABOUREZK. I heard the President say yesterday there were no commitments made of specifics. The only commitment made to Israel on the airfields was that Israel would consult with the United States. There was no commitment to provide money. But I think you and I both know what "consult" means. They will come over here and ask for the money and Congress will give it to them, and that will be the end of it. So all they needed to do was to have an agreement to consult.

Mr. HARRY F. BYRD, JR. I am not expressing criticism of whatever might have been done for the simple reason that I do not know what has been done.

Mr. ABOUREZK. I am.

Mr. HARRY F. BYRD, JR. But if commitments have been made for American airbases, if commitments have been made for American military presence, if commitments have been made in any way that involve the United States or its citizens, then I hope that all the facts will be made available. Now is the time to make such facts available. I appreciate what the distinguished majority leader has just said.

Mr. ROBERT C. BYRD. Mr. President, may I say further the President stated at that conference, which was attended by Mr. ABOUREZK and others, and during which Mr. ABOUREZK addressed several questions to the President, that there were no commitments under the table. He said, no commitments under the table.

I am going to get for the Senator from Virginia precisely what was said and what the facts are in respect to the two bases to which he has alluded. I want to be absolutely correct when I respond, and I will do that on the record. But the President assured us during our personal attendance that everything—I will not use the word commitment—but he assured us that there were no commitments under the table. Everything is right out on top of the table, and I want to get the Senator the precise information on the question he asked. I would be doing a disservice to him and to the President and to the countries involved if I were to do anything other than to get an exact, accurate response for the Senator.

Mr. HARRY F. BYRD, JR. I think the Senator from West Virginia is so correct. The President made no mention of American airbases in his speech last evening, so I was surprised to read the press reports from the Middle East. I thank the Senator from West Virginia.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, if I may, the Senator from Wisconsin had asked me to yield to him, so I will yield to him first, and then, if the distinguished Senator from South Dakota wishes me to, I will yield to him.

NOW IS THE TIME TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. I thank the distinguished majority leader.

Mr. President, could there be a better time to ratify the Genocide Convention?

As millions focus on the outstanding steps taken by leaders in the Middle East, so must we also focus on our international humanitarian duty, a duty that is highlighted even more today.

It is obvious from the events at Camp David that the international community respects the leadership the United States has offered in efforts toward peace. And rightly so—we should be proud because the agreements reached on American soil mark a positive turning point in the history of the Middle East conflict. Before the summit, continuous stalemate had defeated peaceful negotiations throughout a 30-year period.

Mr. President, I could not agree more with President Carter when he said Sunday night:

> I hope that the foresight and the wisdom that have made this session a success will guide these leaders and the leaders of all nations as they continue the progress towards peace.

Mr. President, from such actions states of the world can clearly see our dedication to peace-seeking diplomacy, supported by our commitment to human rights.

But, Mr. President, the Senate is missing a prime opportunity to show it truly means business in human rights.

For nearly 30 years this Chamber has ignored the most fundamental of all human rights, a right clearly protected by the Genocide Convention—the right to live.

Mr. President, there is no better time than now to ratify this important human rights treaty. There is no better time than now to express consistency in our policies toward peace.

I thank the distinguished majority leader, and I yield the floor.

SPECIAL ORDER

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). The remaining time of the majority leader is yielded to the Senator from South Dakota (Mr. ABOUREZK).

Mr. ABOUREZK. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. Do I have a special order for 15 minutes this morning?

The PRESIDING OFFICER. Yes, the Senator does.

Mr. ABOUREZK. May I use that time?

The PRESIDING OFFICER. Yes; the majority leader, if he has any remaining time, the Senator from South Dakota can have that.

Mr. CHAFEE. Mr. President, will the Senator yield for a question? I would like to ask one quick question. Where are we now? After we have finished the special order of 15 minutes then what happens?

The PRESIDING OFFICER. The Senate will then proceed to the consideration of the natural gas conference report if any Senator wishes to address it.

Mr. CHAFEE. So that will be the conclusion of morning business for 15 minutes?

The PRESIDING OFFICER. There is no order for morning business at the moment.

Mr. CHAFEE. I see.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

(Mr. PROXMIRE assumed the chair.)

MIDDLE EAST SUMMIT AGREEMENT

Mr. ABOUREZK. Mr. President, amidst the euphoria of the moment, and in the face of the substantial media hype underway on the Middle East summit agreement, it is difficult to offer any analysis or conclusions on the agreement that differ from what seems to be a developing bandwagon in its favor.

I can recall the same sort of self-deluding congratulations at the time of the Sinai II agreement signing in 1975, when some of us expressed the fear that even that minimal, but separate, agreement would tear apart the Arab world with tragic consequences for everyone involved.

Of course, that happened in Lebanon. There were some 60,000 people who died as a result of the aftershock of the Sinai II agreement.

Now we are presented with, and are asked to support, the final, separate peace agreement between Israel and Egypt that contains, in my view, the

seeds of destruction of untold numbers of people in the Middle East, and the suffering of untold millions more.

I will try to outline the major points of the two agreements, both as I understand them from a reading, and from responses to questions directed to President Carter and Secretary of State Vance during their briefings of the Congress on Monday.

First of all, if the Knesset agrees to withdrawal of the settlements from the Sinai, a separate peace agreement between Israel and Egypt will become formalized.

The second agreement, which purportedly sets out a framework for peace in the Middle East, outlines how the future of the West Bank and Gaza is to be determined. The terms of that document provide for withdrawal of Israel's military forces in unspecified numbers from the West Bank, with part of that military force to remain within the West Bank area in "cantonments."

This redeployment, as I said, has no specific numbers placed on it. Yesterday on television Prime Minister Begin said he had not agreed to any specific numbers, which means that one or two troops withdrawn would satisfy whatever requirement was placed upon him.

The agreement states that immediately upon the election of the so-called administrative council of the West Bank and Gaza, the Israeli military government and its civilian administration will be withdrawn.

The agreements stand by themselves. In other words, the separate treaty between Egypt and Israel does not rise or fall, depending on the establishment of a final agreement regarding the Palestinians. Thus, if nothing more were to happen vis-a-vis the West Bank, the agreement between Egypt and Israel would remain in place.

With respect to settlements on the West Bank, while President Carter has said there is a freeze during the period of negotiation on new settlements, he has also said there is no prohibition on the expansion of existing West Bank settlements, a practice which, in fact, Israel has undertaken in the past to avoid the appearance of new settlements being established.

The agreement itself is silent on the question of the settlements, so we must assume that Mr. Begin has unilaterally agreed to maintain the freeze.

And again on television last night, Prime Minister Begin said that he had only agreed to a freeze on the settlements for 3 months, during the period of time Israel and Egypt were negotiating, while the President said during his briefings yesterday that it was to be during the 5-year period of negotiation on the status of the West Bank and Gaza.

In any event, the new arrangements spelled out in the summit agreement are in total contradiction to our previous position on settlements and, in fact, are in total violation of the Geneva Civilians Convention of 1949, a treaty of the United States which all the parties at the recent summit have long ago ratified.

Article 49, paragraph 6, of that convention specifically states that—

> The occupying power shall not deport or transfer part of its own civilian population into the territory it occupies.

Article 47 of the same convention states that protected persons in the occupied territories cannot be deprived of the benefits of the convention by any change introduced, as a result of the occupation of a territory, into the institutions or government of the territory, nor by annexation, as in the case of Jerusalem, nor by any agreement between the authorities of the occupied territories, for example, a quisling government, and the occupying power. The United States has always claimed the settlements were illegal, based on that convention, that is, until the signing of their agreement Sunday night.

The key point, however, is the concept of self-determination, or the lack of it, provided to the Palestinians in this agreement. The words of significance which run all the way through the document are the words, "by agreement of all the parties." "All the parties" refers primarily to Israel, Egypt, Jordan, and the Palestinian "Administrative Council."

Thus it is provided that all the parties must agree on the procedures for establishing the so-called self-governing authority in the West Bank and Gaza. Israel is given the right to veto those procedures. Israel is also given the right of veto over a number of other actions, such as:

First. Which Palestinians other than those from the West Bank and Gaza may be included in the Egyptian and Jordanian delegations.

Second. The nature of the so-called self-governing authority to be exercised in the West Bank and Gaza.

Third. Which refugees displaced by the 1967 war can return to the West Bank and Gaza.

Fourth. Any decision made by the Palestinians on the grounds of security for Israel, which provision eliminates what little was left of the label "self-rule."

Fifth. The final status, following the 5-year interim period, of the West Bank and Gaza. Specifically, and this is the most important point, Israel can veto a Palestinian decision establishing an independent Palestinian State.

This interpretation was confirmed to me by Secretary Vance, who told me that Israel not only could veto such a state, but, he said, Israel very likely would exercise such a veto to prevent a Palestinian State from coming into existence.

So, Mr. President, the dreaded hour has finally arrived, the separate peace treaty between Egypt and Israel, which President Sadat swore would not come from him, and for which Israel has hoped for so long a time. It is a revival of the "Begin plan" of last November which was rejected out of hand by President Sadat. It is the exchange of a great deal of sand in the Sinai for the elimination of Egypt as any kind of negotiating threat. It is the ratification of the expansionist dreams of Israel.

Now, with the inclusion of President Carter, what was reprehensible last year has now become a "great victory." The continued denial of self-determination for the Palestinians is given a sheen and a gloss designed to cover over what it really is—an Israeli occupation under a different name, but this time with a quisling government to make legal what was previously illegal. What other name can honestly be given to such an arrangement, conceived by the occupying power, Israel, and approved by the United States and Egypt, the only two powers who might have prevented it?

This action not only denies the right of self-determination to the Palestinians, but its result can only be large-scale disruption throughout the Arab world. Without Egypt, the military balance will be tipped overwhelmingly in favor of Israel. Too weak militarily to threaten, or even to negotiate on an equal basis, the remaining members of the Arab bloc will, in all probability, suffer deep divisions amongst themselves, much as they did in 1975. Radicalism, and all that comes with it, will be greatly encouraged, since radicalism is the only real alternative left to people who have been denied a normal political outlet. The upheavals will reverberate throughout the Middle East, and the cost in human suffering in that part of the world simply to raise President Carter's popularity rating here at home will not, I think, be worth it.

I reserve the remainder of my time.

Mr. CRANSTON. Mr. President, will the Senator yield to me at this point?

Mr. ABOUREZK. I yield.

Mr. CRANSTON. Will the Senator from New York forgive me if I proceed very briefly on a totally extraneous matter?

Mr. MOYNIHAN. Be happy to.

The ACTING PRESIDENT pro tempore (Mr. MORGAN) assumed the chair.

THE BUNKER CHAIRS

Mr. CRANSTON. Mr. President, during this time of truly momentous historic development, it is not altogether unfitting that we pause briefly to take note of a less momentous but also, in its way, historic event. Tonight, in a special ceremony in the Hall of Flags in the National Museum of History and Technology, the Smithsonian Institution will formally take possession for the ages of two distinctive artifacts of modern American culture: the chairs of Archie and Edith Bunker.

Millions of Americans have laughed at and with Archie Bunker and his family on the great TV series "All in the Family," and we have all laughed each time

Archie got upset when someone sat in his chair. Well, the Smithsonian has selected that chair, along with Edith's, to be preserved as "part of the cultural legacy of our country."

As a Californian proud of the immense contributions my State has made to the entertainment industry, I am especially proud of the achievements of fellow Californian Norman Lear, originator, producer, and guiding spirit of "All in the Family," and of his extraordinarily talented cast, Carroll O'Connor, Jean Stapleton, Bob Reiner, and Sally Struthers. My congratulations to them all.

All around the Washington area, Mr. President, we have beds about which people proudly claim that "Washington slept here." Now we have a chair about which we can proudly say "Archie sat here."

Mr. PROXMIRE. Mr. President, will the Senator from California yield?

Mr. CRANSTON. I yield.

Mr. PROXMIRE. I congratulate the Senator from California on his statement. I was delighted to see "All in the Family" receive the Emmy Awards that they received—six of them, I think—on Sunday night. But I think what was missed is that, although it has brought a great deal of joy and laughter to millions of Americans, it has also done more to diminish prejudice and bias, by getting people to laugh at the prejudices we all hold, than almost any other action that has taken place in the last 10 years. I think it is very, very hard for us to really appreciate the effect of this kind of satire and this kind of intelligent, thoughtful, probing irony that so many people can identify with. I think if we have made progress since the great civil rights actions of 15 or 20 years ago in overcoming our biases, there is no activity that has done more to accomplish it than this program, "All in the Family."

Mr. CRANSTON. I absolutely agree with the Senator.

Mr. ABOUREZK. Mr. President, I agree with everything Senator PROXMIRE and Senator CRANSTON have said, but I want to add a little bit to that.

It is not known here, but Jean Stapleton, in fact, has portrayed Eleanor Roosevelt to a degree better than anybody I have ever seen in that kind of portrayal. She did so and brought her film here at the time we had hearings on the Eleanor Roosevelt Memorial near Hyde Park, N.Y.

There is another reason besides everything other Senators have said: I held a fund raiser in Los Angeles, Calif., in 1972, when I was running for the Senate. I had pledges of thousands of dollars from people who came to that fund raiser. The only one who ever fulfilled his pledge and sent his money in was Norman Lear.

I just want to say that I especially appreciate that program and all the other programs that he produces.

Mr. CRANSTON. Mr. President, I thank my colleagues for their contributions to this discussion. Had other Senators known that this would occur at this moment they would have been here to add their thoughts. It is absolutely true that in addition to entertaining and giving the joy of laughter to so many tens of millions of Americans, a great contribution has been made to our Nation and our society by "All in the Family" in terms of dealing with bigotry and prejudices of all sorts in our society in a way that has leavened the atmosphere and greatly reduced, I believe, bigotry in our society. A tremendous contribution has been made.

INVESTMENT OF NEW YORK CITY AND STATE PENSION FUNDS IN NEW YORK CITY OBLIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1115.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 4007) to amend the Internal Revenue Code of 1954 to designate the home of a State legislator for income tax purposes, and for other purposes.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Finance with an amendment to strike all after the enacting clause and insert the following:

SECTION 1. QUALIFIED STATUS OF PARTICIPATING PENSION PLANS.

(a) GENERAL RULE.—A participating pension plan shall not be considered to fail to satisfy the requirements of section 401(a) of the Internal Revenue Code of 1954, and shall not be considered to have engaged in a prohibited transaction described in section 503(b) of such Code, merely because—

(1) during the period beginning on July 1, 1978, and ending on June 30, 1982, the plan acquires city indebtedness which meets the requirements of section 2 or

(2) the plan continues to hold any city indebtedness acquired—

(A) pursuant to this Act or Public Law 94–236, or

(B) before November 26, 1975.

(b) ACQUISITION OF INDEBTEDNESS PURSUANT TO AGREEMENT.—The acquisition of city indebtedness by a participating pension plan under an agreement for the acquisition of city indebtedness meets the applicable requirements of section 2 if—

(1) the agreement is not disapproved by the Secretary under subsection (c), and

(2) the plan certifies to the Secretary (and furnishes to the Secretary and to the appropriate committees of the Congress such supporting information and documentation as the Secretary shall require) that the acquisition—

(A) is made under the agreement, and

(B) meets the applicable requirements of section 2 (determined without regard to the provisions of subsections (b), (c), and (f) of section 2).

(c) SIXTY-DAY PERIOD FOR DISAPPROVAL.—

(1) IN GENERAL.—Before entering into an agreement described in subsection (b), and before acquiring any city indebtedness not covered by such an agreement, the participating pension plan shall notify the Secretary of the proposed agreement or acquisition. If the Secretary determines (not later than 60 days after the date of such submission or such shorter period as the Secretary may establish) that such agreement or acquisition does not meet any requirement of section 2, the Secretary shall disapprove such agreement or acquisition (as the case may be). For purposes of this subsection, an amendment, or a waiver of any provision, of such an agreement shall be treated as a new agreement.

(2) NOTIFICATION.—The Secretary shall, not later than the 10th day after the close of the period applicable under paragraph (1), notify the appropriate committees of the Congress of the determinations he has made with respect to the submission and the reasons on which such determinations were based.

SEC. 2. REQUIREMENTS.

(a) LIMITATIONS ON AMOUNT OF DEBT TO BE ACQUIRED.—

(1) PERCENTAGE LIMITATIONS.—In acquisition of city indebtedness by a participating pension plan does not meet the requirements of this section if—

(A) AGGREGATE LIMIT ON ACQUISITIONS BY CITY PLANS.—In the case of a city plan, the plan acquires any city indebtedness after June 30, 1979, and before the city plans meet the percentage limitation on holdings of city indebtedness applicable under this subparagraph for the 12-month period ending on the most recently preceding June 30. The percentage limitation on holdings of city indebtedness under this subparagraph is not met if the value of city indebtedness held by all city plans exceeds a percentage of the aggregate assets of all city plans equal to—

(i) 40 percent for the 12-month period ending on June 30, 1979,

(ii) 36 percent for the 12-month period ending on June 30, 1980,

(iii) 33 percent for the 12-month period ending on June 30, 1981, and

(iv) 30 percent for the 12-month period ending on June 30, 1982.

(B) LIMIT ON ACQUISITIONS BY EACH CITY PLAN.—In the case of a city plan, the plan requires any city indebtedness which, when added to other city indebtedness held by such plan, would cause such holdings to exceed 50 percent of the assets of such plan at the time of the acquisition.

(C) LIMIT ON ACQUISITIONS BY STATE PLAN.—In the case of a State plan, the plan acquires any city indebtedness which, when added to other city indebtedness held by such plan, would cause such holdings to exceed 10 percent of the assets of such plan at the time of the acquisition.

(D) DETERMINATIONS OF WHETHER THE PERCENTAGE LIMITATIONS HAVE BEEN MET.—

(i) AGGREGATE LIMIT.—For the purpose of determining whether the percentage limitation on holdings of city indebtedness under subparagraph (A) has been met for any 12-month period described in that subparagraph, the plan shall use the arithmetic mean (expressed as a percentage) of 4 fractions, the numerators of which are the value of city indebtedness held by all city plans as of the close of each calendar quarter within the 12-month period for which the determination is being made and the denominators of which are the value of the assets of

all city plans as of the close of each such calendar quarter. If the percentage limitation under subparagraph (A) is not met for a 12-month period on the basis of the 4 fractions for the 4 calendar quarters within that 12-month period, the plan shall make a redetermination for that 12-month period as of the close of the first calendar quarter, if necessary, the second calendar quarter and, if necessary, the third calendar quarter following the 12-month period using the 4 fractions for the 12-month period and the fraction or fractions for the additional quarter or quarters. If the value of city indebtedness or plan assets is not available for any quarter at the time the determination of the fraction for that quarter is being made, the plan shall use a value derived from interpolations from the most recently available semiannual valuations.

(ii) PLAIN LIMIT.—In making a determination of whether or not an acquisition of city indebtedness meets the requirements of subparagraph (B) or (C), the plan shall make determinations based on the most current data available as to the holdings of city indebtedness and on the basis of the most recently available semi-annual valuation of assets of the plan.

(2) METHOD OF VALUATION.—For purposes of this subsection—

(A) city indebtedness is to be valued by the plan at its face value, and

(B) all other assets are to be valued by the plan under methods determined by the Secretary to be consistent with the methods of valuing assets for purposes of section 412 of the Internal Revenue Code of 1954.

(b) STANDARDS.—

(1) OVERALL STANDARD.—The overall standard used by the Secretary under this Act in determining whether or not to disapprove an agreement for the acquisition of city indebtedness under section 1(c) shall be the extent to which the acquisition of city indebtedness under the agreement will, in the case of a city plan—

(A) maintain the ability of the city—

(i) to make future contributions to the plan or trust, and

(ii) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such plan or trust, and

(B) protect the sources of funds to provide retirement benefits for members and beneficiaries of the plan or trust.

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—In determining whether or not to disapprove such an agreement the Secretary shall take into account (among other factors) the terms of the obligations which are to be acquired under the agreement.

(3) FISCAL PARTICIPATION BY PRIVATE SOURCES OR PUBLIC CREDIT MARKETS.—The Secretary shall disapprove any such agreement unless he has received assurances to his satisfaction that there will be significant participation in the acquisition of city indebtedness by the State, an agency of the State, or private sources, or through public credit markets.

(c) REQUIREMENTS WITH RESPECT TO FISCAL CONDITION OF THE CITY.—

(1) SUBSTANTIAL PROGRESS TOWARD A BALANCED BUDGET BY 1982.—An acquisition of city indebtedness by a participating pension plan during any fiscal year beginning after June 30, 1979, does not meet the requirements of this section unless the Secretary has determined for such fiscal year that the city is making substantial progress toward operating under expense budgets which do not show a deficit.

(2) PRINCIPLES TO BE APPLIED UNDER PARAGRAPH (1).—The Secretary shall make the determination required under paragraph (1) on the basis of—

(A) whether or not the requirements of paragraph (5) of section 103 of the New York City Loan Guarantee Act of 1978 (as such Act is in effect on the date of enactment of this Act) are being met, and

(B) the annual audited financial statements of the city prepared in accordance with generally accepted accounting principles (including principles applicable to municipal governments which provide for a clear division between operating outlays and revenues on the one hand and capital expenditures and revenues on the other hand) and in accordance with generally accepted auditing standards.

(d) PLANS HAVING NEGATIVE CASH FLOW.—

(1) IN GENERAL.—An acquisition of any city indebtedness by a city plan does not meet the requirements of this section if the plan would have a negative cash flow for the fiscal year of acquisition.

(2) SPECIAL RULES.—For purposes of paragraph (1)—

(A) cash flow shall be determined by the plan for each fiscal year, and also whenever the plan enters into an agreement which must be submitted to the Secretary under section 1(c) (including any amendment of, or waiver under, such an agreement),

(B) cash flow shall be determined in the same manner as provided in paragraph (3) of subsection (e), and

(C) the effect of completed and proposed acquisitions during the plan year on the cash flow shall be taken into account.

(e) REPORTS.—

(1) Annual report by plans on receipts, disbursements, holdings, and cash flow.—

(A) ANNUAL REPORT.—An acquisition of any city indebtedness by any participating city pension plan does not meet the requirements of this section unless, for each preceding plan year beginning after June 30, 1978, and ending more than 8 months and 15 days before the date of the acquisition, the plan has submitted an annual report which meets the requirements of paragraph (2) to the Secretary and to the appropriate committees of the Congress.

(B) PROJECTED CASH FLOW.—An acquisition of city indebtedness by any participating city pension plan for any plan year does not meet the requirements of this section unless the plan has submitted to the Secretary and to the appropriate committees of the Congress a statement showing the projected cash flow for the plan year.

(2) ANNUAL REPORT BY INDEPENDENT PUBLIC ACCOUNTANT.—An annual report does not meet the requirements of this paragraph unless it—

(A) includes an analysis of compliance by the plan throughout the fiscal year with the requirements of this paragraph unless it—

(A) includes an analysis of compliance by the plan throughout the fiscal year with the requirements of subparagraphs (A) and (B) of subsection (a) (1),

(B) is prepared in accordance with generally accepted accounting principles, and

(C) meets the requirements of paragraph (3) of section 103(a) of the Employee Retirement Income Security Act of 1974, as in effect on the date of enactment of this Act (without regard to the last 4 sentences of subparagraph (A) of that paragraph).

(3) RULES FOR DETERMINING CASH FLOW.—For purposes of paragraph (1)(B), the cash flow—

(A) shall take into account contributions and other income (such as dividends and interest) on the one hand and the payment of benefits and expenses on the other hand, and

(B) shall not take into account items properly chargeable to capital account (such as the proceeds from the sale or redemption of assets), other than—

(i) payment of principal during the period a debt is outstanding,

(ii) payment of principal at maturity or redemption, and

(iii) proceeds from the sale of obligations having a maturity of one year or less at the time of sale.

(f) CITY MUST COMPLY WITH REQUIREMENTS OF SECTION 103(7) OF NEW YORK LOAN GUARANTEE ACT OF 1978.—An acquisition of city indebtedness by a city pension plan for any plan year does not meet the requirements of this section unless, at the time of the acquisition, the Secretary has determined that the requirements of paragraph (7) of section 103 of the New York City Loan Guarantee Act of 1978, as in effect on the date of enactment of this Act, have been met.

SEC. 3. NOTIFICATION OF PLANS AND CITY OF ACQUISITIONS WHICH FAIL TO MEET REQUIREMENTS OF THE ACT; REGULATIONS.

(a) NOTIFICATION OF PLANS AND CITY.—

(1) NOTICE OF FAILURE TO MEET REQUIREMENTS.—Whenever the Secretary determines that an acquisition of city indebtedness has not met one of the requirements of section 2, he shall notify the participating plan or plans involved.

(2) NOTICE OF POSSIBLE PROSPECTIVE FAILURE.—The Secretary shall notify each participating pension plan and the city whenever he finds, based on information available to the Secretary, that a future acquisition of city indebtedness will fail to meet the requirements of section 2 because of the requirement of subsection (a)(1)(A) or (c) of that section, and he shall notify the participating pension plan concerned and the city whenever it appears that a future acquisition of city indebtedness by that plan will fail to meet the requirements of section 2 for any other reason.

(b) REGULATIONS.—The Secretary of the Treasury or his delegate is authorized to prescribe such regulations as may be necessary to carry out the provisions of this Act.

SEC. 4. DEFINITIONS AND SPECIAL RULES.

For purposes of this Act—

(1) PARTICIPATING PENSION PLAN.—The term "participating pension plan" means any city plan or State plan.

(2) CITY PLAN.—The term "city plan" means any of the following:

(A) the New York City employees' retirement system,

(B) the teachers' retirement system for the city of New York,

(C) the New York City Police Pension Fund, article 2,

(D) the New York City Fire Department Pension Fund, article 1-B, and

(E) the board of education retirement system for the city of New York.

(3) STATE PLAN.—The term "State plan" means any of the following:

(A) the New York State employees' retirement system,

(B) the New York State policemen's and firemen's retirement system, and

(C) the New York State teachers' retirement system.

(4) APPROPRIATE COMMITTEES OF THE CONGRESS.—The term "appropriate committees of the Congress" means the Committee on Ways

and Means of the House of Representatives and the Finance Committee of the Senate.

(5) REFERENCES TO PLAN INCLUDE REFERENCES TO TRUST.—A reference to a plan includes a reference to any trust forming a part thereof.

(6) CITY INDEBTEDNESS.— The term "city indebtedness" means any city obligation or any State financing agency obligation.

(7) CITY OBLIGATION.—The term "city obligation" means any indebtedness for money borrowed by the city.

(8) STATE FINANCING AGENCY OBLIGATION.— The term "State financing agency obligation" means any indebtedness for money borrowed by the State financing agency.

(9) STATE FINANCING AGENCY.—The term "State financing agency" means any agency or instrumentality of the State of New York duly authorized by such State to act on behalf of or in the interest of the city, and no other subdivision of the State, with respect to the city's financial affairs.

(10) CITY.—The term "city" means the city of New York.

(11) FISCAL YEAR.—The term "fiscal year" means a 1-year period beginning on July 1 or, where the Secretary determines it to be appropriate, the plan year of a participating pension plan.

(12) SECRETARY.—The term "Secretary" means the Secretary of the Treasury. Except as provided in section 3, no function, power, or duty of the Secretary under section 1, section 2, or this section may be delegated.

(13) ACQUISITION.—The term "acquisition" includes—

(A) a purchase or an exchange (whether pursuant to a rollover or otherwise), and

(b) to the extent provided in regulations prescribed by the Secretary, any modification in the terms of an obigation or in the rights of the holder of an obligation.

SEC. 5. RELATIONSHIP OF THIS ACT TO PUBLIC LAW 94-236.

Effective on the date of the enactment of this Act, the waiver of the requirments of section 401(a) and 503(b) of the Internal Revenue Code of 1954 contained in subsection (a) of the first section of Public Law 94-236 shall not apply to acquisition of city indebtedness on or after such date.

SEC. 6. FEDERAL FINANCIAL PARTICIPATION IN STATE PLANS FOR CHILD SUPPORT.

(a) IN GENERAL.—Section 455(a) of the Social Security Act is amended—

(1) by striking out the semicolon at the end of paragraph (2), and inserting in lieu of such semicolon a period, and

(2) by striking out all that follows paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on July 1, 1978.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. MOYNIHAN. Mr. President, this is a measure reported from the Finance Committee as an accompanying measure to the New York City loan guarantee legislation which the Senate adopted sometime ago and which the President has now signed.

In order for the city of New York's employee pension funds to be able to purchase debt obligations——

Mr. ROBERT C. BYRD. Mr. President, may we have a little better order so the Senator can be heard?

The ACTING PRESIDENT pro tempore. The Senate will be in order.

Mr. MOYNIHAN. In order for the New York City employee pension funds to purchase more bonds of the city of New York, in order for the city to carry forward its financial plan, the pension funds must be exempted from Federal legislation which requires that portfolios be distributed over a wide range of obligations, and in particular that a pension fund not heavily invest in the securities of the employer.

This exception was made 3 years ago. It is repeated and extended in the present legislation.

I would particularly like to acknowledge the work of Senator BENTSEN, who was most concerned that the rights of members of these pension plans be protected even in the face of the complex fact that unless these investments are made the larger security of all the city pension funds would be jeopardized. I think we have struck a fair balance. I think this legislation meets its purpose.

I would like to make a general statement in order that the Senate would know of the situation in New York City.

I have been, I hope, appropriately expressive of the gratitude Senator JAVITS and I feel to the entire body for the assistance we have had so far. But I also find it necessary to state that all New York City has obtainced in this loan legislation is the right to go deeper in debt and, in the process, to pay a higher rate of interest than is the case for other municipalities.

There has been no transfer of resources in this matter. It is to the point of transfer of resources that I will speak very briefly.

The other day on the floor the Senate dealt with the question of the President's labor-intensive public works program. Leading the debate on behalf of the President's position, I said this was a test of the President's urban policy. The Senate will recall the test was failed rather conspicuously. As I recall, we obtained 21 votes.

We are in jeopardy with respect to the countercyclical revenue-sharing measures; the CETA program is not what we hoped it would be; public works is certainly jeopardized although not finally lost. In consequence, it is simply the case that the projected budgets of the city of New York are now much more tenuous than they were even 6 months ago.

This legislation, as you know, Mr. President, requires a balanced budget by fiscal year 1982. Further, it provides that the Secretary of the Treasury will only issue loan guarantees if he is satisfied that there is progress toward that balanced budget. It is not something we wait 4 years to discover whether we have achieved.

In full candor, I must inform the Senate that this situation is tenuous and growing more so. Just yesterday the mayor of New York had to announce a hiring freeze. There will be more such in the years ahead.

The falling off of Federal programs providing aid to cities, most of which were begun as countercyclical measures—and the Congress would with some reason think that at the end of 13 quarters of expansion such programs might be dispensed with for the economy as a whole—is calamitous to the city for it has still not recovered from the recession. Our prognosis is not good. This should be understood. It is only for the purpose of having this in the record that I rise.

I would like to thank the majority leader for his unfailing courtesy in looking to the seeming unending emergencies of the world's greatest city.

Mr. President, that is the extent of my remarks and I move passage of the bill.

● Mr. JAVITS. Mr. President, on June 28, 1978, the Senate voted overwhelmingly in favor of the New York City Loan Guarantee Act of 1978, which was the first part of the President's program to continue support for the city of New York.

Today, with Senate passage of H.R. 4007, that includes a Finance Committee amendment filed by my colleague, Senator MOYNIHAN, the city and its people now have the necessary tools to comply with the strict provisions of the city's 4-year financial plan. This bill allows New York City and State pension fund trustees to acquire New York City and other relevant securities like those of the Municipal Assistance Corp. (MAC) without violation of the fiduciary standards established in the Internal Revenue Code of 1954.

It is important to note that the purchase of securities by these pension funds has staved off bankruptcy for New York City since 1975. The extension of this authorization is a vital element in the consummation of any financial plan for New York City which will accomplish the objective recommended by the President and the Secretary of the Treasury.

The city now has the opportunity to attain financial viability and to continue as the great national and world city which is its true character and role. Clearly, the road to recovery is full of danger. Recent Federal budget cuts in vitally needed social services programs must be offset by fiscal austerity measures, such as those already proposed by Mayor Koch, if the city is to regain access to the public credit markets.

The keystone of the plan is now in place, and it is my expectation that in coming years we will make all Americans proud of New York City.

There remains one additional action, House Joint Resolution 1088, an appropriations resolution required by the authorizing legislation to complete the program on the New York City Loan Guarantees. This resolution has already passed the House, been approved by the Senate Appropriations Committee, and

is awaiting Senate floor action. I lend my strong support to its consideration at the earliest possible time.●

The ACTING PRESIDENT pro tempore. If there be no further amendment to be proposed, the question is on agreeing to the amendment in the nature of a substitute.

The committee amendment was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4007) as amended, was passed.

The title was amended so as to read:

An act relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MOYNIHAN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I thank the distinguished Senator for his diligence and devotion to his State and city.

Mr. President, I yield the floor.

THE NATION NEEDS A GOOD ENERGY BILL

Mr. BAYH. Mr. President, I rise today as one of a bipartisan group of Senators to urge my colleagues to join in passing a constructive energy package, that can get through the Congress before we adjourn and will be a positive step forward in dealing with our national problems. I believe that the recommittal motion, which we will offer, is a rational and sound alternative to the deadlock over energy policy that has existed for almost a year now. Our recommittal motion instructs the House/Senate energy conferees to report the utility and conservation bills, which have been virtually completed since last fall, but kept off the Senate floor, to the Senate floor for final approval. In addition it instructs the conferees to also report back to the Senate sections of the gas bill facilitating transfer of surplus and emergency gas to the interstate market when necessary. Together with the coal conversion conference report, on which the Senate has already acted, and the residential tax credits for solar and conservation investment—which we have also passed—these measures represent a helpful beginning to resolving our energy problems.

Mr. President, I want to make clear that I rise in support of this alternative and in opposition to the pending natural gas conference report only after prolonged and serious consideration of the matter before us. I am well aware of the President's deep commitment to securing passage of the natural gas conference report as one part of his energy package. I have been a strong supporter of the President's. I have been very moved by his arguments, and reluctant to go against him when he so obviously believes it is important for the Nation to secure passage of this gas bill as part of the energy package. But, in all good conscience, I cannot agree with the advice he is getting on this issue. I also rise in support of this alternative with all due respect by my colleagues who have labored long and hard on the natural gas conference report. They have worked hard on the bill and they have tried to meet their responsibilities as best they could. The issue of resolving the problems that have resulted from a dual market system and the desire of producers to be free of regulation has been deeply controversial for over 20 years, and one on which feelings and convictions run deep. Billions of dollars were at stake in their decisions. Conferees brought widely different philosophical beliefs to the conference, and represented very different constituencies. Their task was not easy.

Now that the issue is back before the full Senate, Mr. President, every Member of this body is faced with a very difficult decision. Supporters of the natural gas conference report have called it one of the most important votes of this session of the Congress, as have the President and prominent members of his administration. Faced with these presentations, none of us will make a decision lightly. I know I have not. As a Senator from a State which is dependent on gas for residential, industrial, and agricultural uses, and one which has experienced the ravages of severe natural gas shortages, and lived under the threat of curtailment, I know personally—in a way many of my colleagues from other regions of the country may not—what such shortages mean—to local communities, to States, to regions, and to the national economy.

And so, Mr. President, I preface my remarks with these observations, because I want my colleagues, and the President, to know that I have not arrived at this position easily and that I wanted an equitable, beneficial, and rational resolution to the natural gas question—and, indeed, the entire energy package—as much as any Member of this body.

Having said all this, Mr. President, and having thought long and hard about my responsibilities to my constituents and the Nation, I have reluctantly come to the conclusion that I cannot, in good conscience, support the conference report that has been sent back to us. Instead, I will vote in favor of the alternative policy embodied in the recommittal motion that will be offered later in this debate.

The pressure to put aside our doubts and approve the conference report has been enormous. The press writes daily about the need for "an energy bill." The President has said passage of this bill is a test of our national will; that the eyes of the world are on the Congress; that the strength of the dollar will be compromised without it; that future industrial growth and economic health depend on it.

I urge my colleagues to examine these arguments closely before they give assent to a bill—any bill—just to say we have done something. This conference report is not the President's energy package, it is but one of five bills in that package. I do not believe this bill will have the effects its proponents claim. Rather, I believe this bill is more likely to harm, than help, the Nation. I believe there are positive steps we can take now which will be constructive.

THE NATURAL GAS CONFERENCE REPORT IS NOT EQUIVALENT TO THE NATIONAL ENERGY PLAN

As you know, Mr. President, the national energy plan consisted of five separate legislative proposals: A conservation bill, a coal conversion bill, a utility reform bill, a natural gas pricing proposal, and an energy tax bill. The Senate considered each of these measures separately, at great length, and passed them along to the conferees as soon as they were approved on the Senate floor. The House of Representatives, on the other hand, considered the President's proposals as a package, at one time, and have treated them as such in the conference.

The conferees finished the work, in essence, on the conservation bill on November 1, 1977; on the coal conversion bill on November 11, 1977; on the utility bill on December 1, 1977. For whatever reason, we have not been permitted to act on these bills, despite the urging of many of us that we do so, with the exception of the coal conversion report, which the Senate considered in July, when the President was in Europe at the economic summit conference. The House has still not acted on this conference report. The conferees on the energy tax bill have chosen not to continue their work, awaiting action on the natural gas bill. In lieu of a comprehensive energy tax proposal, this month the Senate passed the residential tax credits for solar and conservation investments that the tax conferees had agreed on. We are awaiting action by the House on that bill.

Mr. President, it is important for us all to remember that each of these proposals was made with particular and specific goals in mind. The conservation bill was included in the package to put an end to the wasteful use of energy so apparent in the United States, compared to other industrialized nations. The coal conversion bill was included to stimulate conversion of utilities and industry off oil and gas to coal and other alternative energy sources, as was the energy tax bill. The utility bill was included to deal with failures on the part of our State public service commissions to provide equitable rates to different groups of

consumers and make most efficient and effective use of existing generation and transmission facilities. And finally, Mr. President, the natural gas proposal was included, in the wake of a winter of severe gas shortages, in order to remedy the distortions produced by a poorly performing dual gas market system.

Since the natural gas bill has been reported, its proponents have shifted to new arguments in its behalf—stressing the important contribution its passage will have for reducing oil imports, and thus reducing our balance-of-payments deficit, and stopping erosion of the dollar.

I must say, Mr. President, with all due respect to my colleagues on the other side of this issue, that this was never the intent of the President's natural gas proposal, and I do not believe this will be the effect of the natural gas conference report before us today. In fact, many have argued that this bill will, instead, increase our use of oil, further aggravating our problems. Nor do I believe it is an equitable answer for dealing with our gas supply situation, which was its original intent.

Mr. President, when the administration sent the national energy plan to the Congress in April 1977, it predicted the following savings from the five proposals that made up the energy package:

The energy tax bill, 43 percent.

The coal conversion bill, 37 percent.

The conservation bill, 19 percent.

The utility reform bill, 1 percent.

The natural gas bill, 0 percent.

Throughout the year-long debate on the energy package, the administration consistently maintained, as reflected in the above figures, that the wellhead tax—which would have put a tax on oil at the wellhead to bring all domestic oil prices up to OPEC prices—was the "centerpiece" of the national energy plan and would be responsible for saving the bulk of reductions in oil consumption that the administration desired. Further oil savings were to come as a result of the conversion and conservation bills. The natural gas proposal was never meant to save oil. I repeat, the natural gas proposal—one of the five bills in the national energy plan—was never meant to save oil. This was made clear again in July 1977 in the "National Energy Plan Savings Estimate" released by the White House which said:

> Increased availability of gas to the residential and commercial sector and incremental pricing of natural gas would have no effect on oil imports.

It is only recently, with the certain death of the wellhead tax proposal, that the argument has begun to be made that the natural gas conference report will save oil, save the dollar, and solve our import problem.

The first hint of this switch came in July shortly after the conferees had supposedly agreed to a compromise gas bill. At that time, the Department of Energy released a study claiming that the natural gas conference report would save 300,000 barrels of oil per day in imports compared to continuation under the existing gas system. This month, with final agreement by the conference, suddenly the estimates began to escalate. First we were told the import savings would be 500,000 barrels per day by 1985; then 1 million. Estimates now circulated by the Department are that it will save 1.4 million barrels of oil per day. Mr. President, I must submit that someone is playing with numbers here, and that such estimates are well-near impossible, given the elaborate assumptions on which they are based, and that no one has explained to my satisfaction why the so-called gas compromise will produce these results.

In fact, Mr. President, much of the information I have received from those in the business indicates that rather than save oil, this bill will stimulate increased oil imports. This is the information I have received, for example, from the gas distribution companies in my State that have large industrial customers.

I plan to address this question further later in my remarks. Right now I just reiterate that it is only in the last month, since the conference report has been signed, that the argument is suddenly being made that the natural gas bill is crucial to save oil, crucial to the dollar, and crucial for our world image. As late as this July, when the President was in Europe at the economic summit, the administration was insisting that America could only convince our trading partners of our resolve by raising domestic oil prices up to world levels. Now, with a gas deregulation proposal before us, this argument has been put on the back burner. Suddenly, the debate on oil prices has been shelved for the moment. Instead we are being told that it is the natural gas bill that is the litmus test of the national will; that it is the natural gas bill that will save oil; that it is the natural gas bill that will save the dollar.

I point out to my colleagues that this argument is directly contrary to the original national energy plan, which relied on conversion to coal and tough conservation measures to help solve our economic and energy problems. In fact, until recently, most administration officials argued that gas was much too "good" a fuel to be used for anything but the most essential purposes—and should not be wasted in boilers, when other fuels could do the job.

I urge my colleagues to look very closely at the premises on which current argument for this bill rests. In its simplest form, the argument is that this conference report will reduce oil imports because:

It will bring significantly more gas than the existing system will; and

That users in the interstate market, assured of adequate and stable gas supplies, will substitute gas for oil, thus reducing oil imports.

Supporters of this bill argue that its passage is essential for achieving increased interstate supplies. Further, they argue that these increased supplies will reduce oil consumption and relieve the pressure on the dollar. In order to bring this about, they are asking the American public to pay anywhere from $29 to $41 billion—depending on whose figures you accept—over the next 6 years and more thereafter, to reap these benefits.

Mr. President, we owe it to the citizens of this country to examine these assumptions very closely before asking them to reach deeper down into their pockets, at a time of reduced purchasing power, pinched family budgets, skyrocketing taxes, soaring utility bills, and increasing inflation, to transfer billions of dollars to gas producers that our people desperately need to keep for themselves.

IS THIS PRICE REALLY NECESSARY FOR INCREASED INTERSTATE GAS SUPPLIES?

Last fall, in anticipation of the Senate's consideration of his original natural gas proposal, which ended the dual market system by extending price and nonprice regulations to the whole Nation, President Carter had a few things to say about the relationship of gas prices to gas supplies. In September 1977, the President said:

> . . . deregulation of natural gas prices would provide windfall profits without increasing supply. Deregulation would cost consumers an extra $70 billion by 1985, but would increase supplies very little if any.

In October 1977, the President reiterated this opinion:

> If we tripled the price of oil and natural gas, there could be no substantial increase in the rate of exploration. It would be just an enormous windfall of profits.

This May—3 short months ago—the distinguished Senator from Washington—Senator JACKSON, the chairman of the Senate Energy Committee, with whom I have been associated in earlier debates on this issue—commented on the conference report:

> We are unable to predict any amount of new gas flowing into the interstate market from the bill. No one can predict that.

Mr. President, we should not try to fool ourselves or others on this issue. The difficulties encountered in gas consuming States since the late 1960's have arisen primarily because two different markets for natural gas currently exist in this country. Pipelines serving the producing States, or intrastate market, have been permitted to bid for gas at any price. Pipelines serving the nonproducing States, or interstate market, have been subject to price ceilings.

This system was designed to protect consumers from economic blackmail at the hands of natural gas producers. Up until 1968, it worked reasonably well. In fact, at the onset of the Nixon administration, gas was selling at slightly lower prices in the intrastate market than in the consuming States. Companies were guaranteed an adequate return on investment and gas supplies were flowing freely in both markets. Producers were not happy with Government regulation. As businessmen, naturally they wanted to be free to get what they could. But the system was working.

Then, in 1968, President Nixon's appointee to the Federal Power Commis-

sion, John Nassikas, announced that a round of price increases were in order. Since that time, the push for deregulation has gathered full steam and we have seen enormous and inflationary price increases in both gas markets, shortages in the interstate market, and the cry that only higher and higher prices will get enough gas into the interstate market.

Mr. President, the price increases for newly discovered natural gas since 1968 have been truly astounding. Ten years ago, the average price for new gas sold to pipelines serving nonproducing States was about 19 cents per Mcf, compared to about 18 cents in the producing States. By 1974, new gas was selling in the interstate market for 56 cents per Mcf, three times the price in 1969. Today it is selling at about $1.50—almost seven times greater than a decade ago. These increases, plus the unregulated short-term sales and direct purchases between industrial users and producers now permitted, have raised the average price of all gas sales in the interstate market from 19 cents in 1968 to about 96 cents per Mcf today. Projections under this bill, Mr. President, for the interstate market, are that residential customers will be paying $3.30 per Mcf for gas in 1985. Industrial customers in the interstate market will be paying considerably more than they are paying now, about $2.45, and a great deal more than their counterparts in the producing States, because of the discriminatory nature of the incremental pricing provisions. In 1985, when price controls come off, prices will likely rise further.

Before we put this burden on consumers and industry alike, Mr. President, we must ask if these increases will really produce the increases proponents predict. Or, without the temptation of deregulation, will gas producers put their shut-in reserves into the interstate market in any case, making equal or almost equal amounts of gas available as would flow from this bill? Or are alternative energy sources a better deal?

Mr. President, I have asked several times for a breakdown of administration estimates of where their predicted additional supplies will come from and how much of the price tag associated with the bill really pays for gas we would not otherwise get. The answers, to say the least, are imprecise.

Some things are clear:

Some of what is called new gas under this bill—which gets healthy price hikes and eventual deregulation—is either gas already discovered or offshore gas which will go into the interstate market by law under the existing system;

Some of what is called special development incentive gas—which gets price hikes—is already discovered and dedicated to the interstate market; and

Currently producing stripper wells will get higher prices.

So, we will be paying higher prices for this gas—old gas or gas that must go to the interstate market anyhow—as ransom money for whatever new supplies this bill will get to the interstate market. And how much are these new supplies, Mr. President, if we exclude Alaskan gas—which we can have with or without this bill?

Administration figures now estimate a 5-percent increase in supply—or 1 trillion cubic feet of gas by 1985. Earlier the Department of Energy estimated less. And the Congressional Budget Office even less. That translates into something on the order of $16 to $60 per mcf for these additional supplies, Mr. President, according to the arithmetic of my friend from Ohio. This is far less than projected unit costs of alternatives such as SNG or coal gasification, for example, both of which are being actively explored by gas companies in my State.

Mr. President, I suggest that this bill is less a carefully drawn compromise, targeting increases to areas where it will pay off, than the result of a shopping list of requests put together to get nine Senate signatures on a conference report. It will result in sharply increased prices to industry, to the agricultural community, and to small businesses and homeowners. It will get only marginally increased supplies to the interstate market, if any, at an exorbitant price.

I point out, Mr. President, that while we are debating this bill, the intrastate market is saturated and prices have fallen there from over $2, in some cases, to $1.60 to $1.75. Producers have no place to sell their gas but the interstate market. And they have been selling it.

After almost 5 years of no new dedications to the interstate market in the early 1970's, higher regulated prices have had their impact. After 5 years of no new gas to the consuming States, producers are putting it there. In 1976, 2.8 trillion cubic feet of new gas was voluntarily dedicated to consuming States—until those wells run out—25 percent of current usage. In 1977, 8.6 Tcf was dedicated—or 80 percent of usage. These are astounding figures, Mr. President, and indicate that paying $41 billion to producers is not the only way to get the gas we need.

While gas may have been priced too low in the past, Mr. President, recent price increases are now adequate and have spurred drilling from 900 new wells in 1973 to 2300 last year. Drilling is at a peak. If this bill fails, FERC will likely issue a biennial price adjustment which will make our market very attractive to producers—since it is the only market they will have to consistently absorb their surpluses. The shut-in surplus gas in Texas and Oklahoma—that has been withheld until this debate is over—will cross State lines because producers need that cash to pay off their investments.

And demand in the producing States can only continue to go down. With price increases there, industry and utilities in producing States have already begun to switch to other, cheaper fuels—No. 6 fuel oil, coal and nuclear. Under the Coal Conversion Act, utilities and large industrial boilers must switch off gas. In Texas right now, 90 percent of electricity is generated with gas. This will not be permitted under the Coal Conversion Act. With this loss of market in the producing States, gas producers should be happy to sell their gas to consuming States at the cost plus 15 percent profit allowed by FERC.

The gas producers of this country have been playing economic blackmail, withholding a vital resource from the public in order to build political pressure to lift all price controls. If they succeed, we will have unnecessarily high prices for gas in this country in the not too far distant future. If they fail, they will sell their gas at prices more than adequate to give them a profit and stop withholding it.

Mr. President, existing law allows short-term 60-day purchases by the interstate market at unregulated prices if purchasers need these supplies. It also permits direct purchases by industry at unregulated prices. The alternative gas bill I am supporting would also restore the President's ability to allocate gas and permit additional emergency purchases should we unexpectedly suffer another period of shortage in the consuming States. Our recommittal motion would permit 2-year interstate contracts for purchase of surplus intrastate gas. While these provisions would mean paying higher prices for these extra gas supplies, at least we will only be paying more for what we need and will not otherwise get. And we will not be faced with certain deregulation.

Other recent developments reinforce my opinion that the existing system will work better in the future:

All future offshore gas will go to the interstate market;

FERC has authority to grant increased prices to truly high cost gas; and

This May, the Supreme Court rendered a ruling in the Southland case which could potentially bring large quantities of old gas into the interstate market. In a last minute change to the conference report, in order to get the minimum number of signatures necessary, this ruling was nullified. If our alternative is accepted, the Southland decision will stand and may further contribute to an equitable distribution of national gas supplies.

Mr. President, I submit that $29 billion or $41 billion is too high a price to pay for the minimal increases we have been promised.

The 3- to 6-percent increase in gas supplies promised by this bill, at blackmail prices, would certainly cost more per unit than alternative energy sources.

Further, I would add at this point, that those in the business of producing gas—the independent domestic gas producers—who do most of the exploratory drilling, discover most of the new fields, and discover half of our new reserves—are opposing this bill because they feel that it will reduce new gas supplies, because of its complexity—over 20 different pricing categories and a new structure of costly Government regulation that will lead to endless delay and litigation. The independent gas producers have called this bill a "blueprint for disaster, leading to less gas, not more." Some of my colleagues from gas-producing States, such as the Senator from Wyoming (Mr. HANSEN), who is the ranking Republican member of the Energy Committee, and the Senator from Louisiana (Mr. LONG),

who is chairman of the Finance Committee, as well as the two Senators from Oklahoma, and others, have made the same point.

The head of FERC's division of enforcement, responsible for administering this bill, in an August 14 memorandum to FERC chairman Curtis, wrote that—

> The proposal is so complex, ambiguous, and contradictory that it would be virtually impossible for this Commission to enforce in a conscientious manner. At best, the legislation would require lengthy litigation—including in all likelihood a number of Supreme Court decisions—before the meaning of the provisions is settled.

The memorandum further stated:

> The potential for abuse is enormous, particularly in view of the fact that each producer is responsible for designating the pricing categories into which production from each source falls. Because of the economic incentives to classify production in the highest price category, every ambiguity will become an obstacle to fair and effective enforcement of the pricing structure.

I understand that Chairman CURTIS has had a new review done on the conference report, subsequent to the last minute changes made that purportedly added $12 to $13 billion to its price tag. Although I have not yet seen it, I gather this evaluation indicates that some of the ambiguities and administrative problems with the bill have been dealt with. However, and I am sure this is the most generous appraisal FERC could come up with, this latest memo purportedly concludes that the bill still creates a "most difficult" challenge for FERC and can only be enforced if Congress substantially increases the regulatory apparatus—to the tune of 300 new employees at a cost of $30 million to expand the bureaucracy. Further, I understand, it states that it may take years of litigation to establish what the conference report really means.

Mr. President, this prediction is not the "price certainty" that DOE is telling us is necessary to get the increased supplies they project under this bill. Right now gas is priced on the basis of one criterion—the date it is found. Under this bill, 23 different pricing categories rest on such factors as: Well depth; drilling date; date lease signed; formation type; distance from existing well; rate of flow; and date gas discovered.

The regulatory commissions of the various States are charged with making these determinations. Then FERC must approve them. Then the courts must hear challenges over them. No wonder the independent producers—who discover most of the new gas in this country—and who do not have a platoon of lawyers and accountants working for them like the majors do—oppose this bill. No wonder that we will have to increase the bureaucracy by 300 people to try and administer it—and have a "difficult challenge" at best and a collapse of the system at worst.

Mr. President, this bill does not do away with the two-market system which has been at the root of our natural gas supply problems. It continues differences in pricing provisions between the two markets for all but new gas; it continues differences in curtailment and allocation provisions between the two markets—which will allow future shortages and shutdown in consuming States—of factories, hospitals, and schools—while gas is used for nonessential purposes in producing States; it establishes a new discriminatory pricing system for industrial customers in the two markets which may have a devastating impact on the economies of the consuming States and the Nation as a whole. It does not meet the principles which characterized the President's original proposal—of continued price ceilings, price incentives only for truly new gas and high cost gas, elimination of the dual market system and administrative simplicity. It may well lead to production of less gas. It certainly does not offer the certainty—or even the likelihood—of significant supply increases to the interstate market.

IS THE CONFERENCE REPORT THE ONLY WAY TO BRING ALASKAN GAS ON STREAM?

Mr. President, one of the factors that made me most reluctant to oppose this conference report is the fact that it contains provisions necessary for progress on the Alaskan gas pipeline. As some of my colleagues may remember, I was an early and strong supporter of the trans-Canadian Alaskan gas pipeline that the administration recommended and the Congress approved last year. It is with great reluctance that I take any step which might further delay this project.

The Alaskan gas pipeline has been held hostage to the natural gas bill, as it were, along with the other portions of the national energy plan. This is unfortunate. It has probably caused a delay in the early delivery of Canadian gas which this project promised, its final completion date, and added to the ultimate cost of the pipeline.

But this bill is not the only way to get the pipeline. Instead, we can incorporate the Alaska gas pricing provisions in the conference report in the recommittal motion, and have the pipeline without further delay. To this end I have introduced an amendment with several of my colleagues to modify the recommittal motion to instruct the conferees to report back to the Senate those provisions dealing with Alaska gas.

Mr. President, a positive vote on this amendment, by those on both sides of the natural gas bill, should assure that the Alaska gas provisions will be included in any subsequent recommittal motion that may be offered should the first motion fail.

The Alaska gas pipeline has widespread support in Congress. The Senate approved it by a vote of 87 to 2. The House approved it by voice vote. The President has made clear his strong belief that construction of the pipeline is in the national interest. The only remaining obstacle is the setting of a price for Alaska gas, which is necessary before gas sales contracts can be signed and financial arrangements for the project completed. The Alaska gas pricing provisions in the conference report will stabilize the price of Alaska gas and permit private financing for its construction. These provision are in no way logically related to the rest of the bill. The fate of the pipeline should stand on its own merits and not hang on the outcome of the controversial natural gas conference report. Progress on the project has already been unnecessary delayed for a year, because of congressional debate over deregulation of natural gas prices.

Giving a final green light to this project is the most immedate way of avoiding future natural gas shortages. It will mean the predelivery of 1.04 billion cubic feet of additional Canadian gas from Alberta to the lower 48 States in 1980 due to early construction of the southern spurs of the system, which will deliver gas both east and west of the Rockies. Alaskan gas will come on line at the rate of 2 billion cubic feet per day in early 1984, increasing to 2.4 billion cubic feet per day by 1990. Finally, construction of the pipeline offers the possibility of continued imports of Canadian gas, currently running at 2.7 billion cubic feet per day, if necessary.

The reserves at the Prudhoe Bay field on the North Slope of Alaska, estimated at 26 trillion cubic feet, are likely to permit gas flow at this rate for 25 to 30 years. Undiscovered reserves elsewhere in Alaska could run as high as 72 to 185 trillion cubic feet. Construction of this pipeline is a safe, reliable, and efficient way of significantly increasing American natural gas supplies to the parts of the country that need new supplies most. And we can have it without this bill.

WILL THE NATURAL GAS CONFERENCE REPORT SAVE OIL IMPORTS AND STABILIZE THE VALUE OF THE DOLLAR?

So far, Mr. President, I have addressed the question as to whether or not the natural gas conference report will lead to significant gas supply increases for the interstate market. I have stated my opinion that I do not believe it will. In closing, I would like to address myself to the question as to what impact this proposal might have on our oil imports, trade deficit, and the value of the dollar.

Earlier in my remarks, Mr. President, I noted that the purpose for including a natural gas proposal in the national energy plan was to bring about a more equitable distribution of the Nation's natural gas supplies than has existed over the last decade under the dual market system. And I indicated that at that time, and, in fact, up until the very last month or so, no oil savings were claimed for this conference report.

Recently, administration officials and other proponents of this bill have argued that it will reduce our oil imports because of switches from oil to gas that will take place as a result of its passage. From what I have been able to gather, this is supposed to occur as a result, primarily, of increased industrial use of gas.

Mr. President, information I have received from gas companies in my State, which serve large industrial customers, indicate exactly the opposite is likely to occur. That is, it leads to the conclusion that if industrial energy purchasing patterns are affected at all by this bill, it will be in the direction of forcing further conversion from gas to oil, wherever possible, rather than from oil to gas.

NIPSCO—Northern Indiana Public

Service Co.—the gas utility serving industry in northern Indiana—reports that passage of this conference report will cost them 24 percent of current sales, because their major industrial customers have told them they will switch to oil, where possible, if this part of the energy plan passes. In addition, because the provisions of this bill which deal with industrial gas prices apply only to nonproducing States, NIPSCO believes that industry will be discouraged from expanding or locating in Indiana, resulting in a loss of job opportunities for people working and living there. Finally, NIPSCO estimates that gas bills for their residential customers could increase by 49 percent—I repeat, 49 percent—because the loss of industrial customers will make the costs of gas to their residential and commercial customers so much higher, as they pick up overhead and transportation costs that are now shared among all types of users. Surely, Mr. President, the analysis done by this major gas supplier does not lead me to believe that this bill will save oil.

Similar conclusions have been reached by Citizens' Gas and Coke, a natural gas distributor in the Indianapolis area. In commenting on the natural gas conference report, Citizens' wrote:

I believe the intent of this portion of the report is to drive industrial gas boiler customers to coal. However, considering the constrictions on the use of coal, such as stockpiling and pollution control devices, it is our feeling, substantiated by discussion with other utilities which have polled their industrial customers, that these customers will switch to oil. This will only compound our energy problem and aggravate our economic problem through an increased balance of payments deficit.

Charles Cicchetti, chairman of the Wisconsin Public Service Commission, noted the same effects in Wisconsin. In a letter to all Senators, Mr. Cicchetti wrote:

Wisconsin's industry would be forced to convert to higher priced energy, probably foreign oil. Wisconsin would lose jobs to gas producing states. Furthermore, Wisconsin residential gas customers would have to pay both the higher costs of the "deregulated" gas and a higher share of the fixed costs of the distribution utilities caused by industrial conversion from natural gas.

According to figures sent to my office by the Department of Energy on August 24, 1978, the industrial heartland of the country—Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin—will be paying the highest industrial prices for natural gas by 1985 of any part of the Nation. Also subject to these high prices are heavy industry in the mid-Atlantic region—Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. According to industrial representatives and gas distribution spokesmen, gas prices to industry in these regions will be such, by 1985, Mr. President, that conversion to oil will be cheaper than conversion to or continued use of gas. In addition, discriminatory pricing against these parts of the country will likely be an economic death-knell for future industrial growth and cause loss of jobs, economic dislocation and hardship, as well as even higher than predicted gas prices for residential, agricultural, and commercial users of gas.

Mr. President, I submit that this makes no sense. This is not in the national interest. And it certainly is not in the interest of the people residing in these States. It will mean economic hardship. It will mean loss of jobs. It will mean increased oil imports and more economic problems.

Beyond this argument, Mr. President, noted economists and leaders in the business community have questioned the extent to which oil imports are responsible for causing the recent and dramatic erosion of the value of the dollar.

Oil imports, once the Nation's leading import, are now, according to July Department of Commerce figures, in third place behind machinery and transport equipment. While the amount of oil imports, and their cost, have increased dramatically in the 1970's, since the Arab oil embargo, and OPEC price increases, so far 1978 oil imports are down 13 percent and our trade deficit with the OPEC nations appears to be stabilizing while it is getting worse vis-a-vis the Big Seven OECD nations.

Mr. President, in 1973 we were paying other nations $8.4 billion for oil. Last year we paid $45 billion. No doubt this has contributed to our current trade deficit. But other factors are more responsible for its increase, as well as the erosion of the dollar. Nonoil imports have increased, in the same time period, from $62 to $107 billion. And since 1975 our exports have not grown at earlier rates. The natural gas bill is not going to arrest this trend. If anything, it will aggravate it because higher energy prices to our industries and manufacturers will make their products less competitive abroad. The $2.5 billion in import savings that may result from the increased gas supplies predicted under this bill will barely make a dent in our $152 billion trade deficit.

I am not an economist, Mr. President, but to me these trade figures indicate that something besides our oil imports is to blame for the worsening deficit; that nonoil trade problems are increasing, while the oil situation may be stabilizing. Passing this conference report, with the minimal chance that it might result in a slight decline in imports, but more likely will have no effect or a negative effect on our energy situation, and our economy, will not solve these other problems. It will not help us export more farm goods, or machinery. And, if industry in fact converts to oil, because of this bill—and there is and will be an oil glut to accommodate this type of switch for the next few years—the conference report will only aggravate our economic problems.

Further, economists are now questioning the extent to which oil imports, and even our overall trade deficit, are related to pressure on the dollar. In June, the Congressional Budget Office noted that—

Other variables play a more pivotal role in determining the balance of payments than oil imports.

In late August, the Wall Street Journal argued that—

The dollar fell not primarily because the U.S. imports too much oil, but because the U.S. created too many dollars. If the expansion of world dollar reserves is not arrested, it would continue to fuel world inflation even if the energy problem could be solved tomorrow.

Mr. President, as has been pointed out by others who have spoken on this point, energy imports and exports do not seem to be related to the value of different currencies today. Canada is an energy exporter and her dollar is losing value relative to other currencies. Japan and Germany are heavy energy importers—but their currencies are gaining value. Robert Slighton, vice president of Chase Manhattan Bank, wrote to the Business Roundtable in August that the major problem with the dollar now is inflation:

"The argument that passage of the compromise gas bill would play an important role in halting the decline in the dollar and strengthening the U.S. balance of payments outlook is at best highly exaggerated and at worst just plain wrong.

Mr. Slighton noted that any short-run positive effect of passing the legislation would not be permanent and that—

In the longer run, the legislation could actually result in some weakening of the dollar as foreign exchange markets come to perceive that the long run supply of natural gas in the U.S. is as likely to be reduced as increased under the new regulatory regime.

The letter goes on to state that the major source of weakness of the dollar now is not a weak current or prospective trade balance, but accelerated inflation and a monetary policy which can only worsen the inflationary spiral. Further, it noted that—

It is by no means clear that the market will perceive the compromise bill as resulting in an enhanced long-run supply of natural gas . . . (rather) our belief is that once market analysts have time to examine the legislation carefully, they are likely to conclude that the status quo provides at least as much production incentive as the proposed regulatory regime.

Mr. President, this bill will likely add to the inflationary spiral, thus worsening the plight of the dollar. Twenty-seven percent of the energy used in this country is natural gas. About half of all homes are heated with gas. Our homeowners and small businessmen are going to see significant increases in their utility bills with this legislation. Most of my constituents are already finding it hard to pay their bills. Every business that uses gas in the industrial process will be charged higher prices for their gas. These increases will ripple through the economy—making all our products more expensive and adding to the already growing cry for wage and salary increases. This can only further hurt the dollar.

Mr. President, we cannot magically label this conference report a "national energy policy" and expect it to solve all our problems by telling our trading partners that it will. Those overseas concerned about the dollar will not be long fooled by this bill. If our rhetoric has so escalated that passage might have a temporary salutory effect, it will not last. And then our credibility will be even worse. Passing a bad bill—and calling it an energy policy—will not solve America's problems.

The natural gas conference is not the national energy plan. It is one part of that plan, and was never meant as a means of cutting oil imports, reducing inflation or saving the dollar. I regret very much that some proponents of this conference report have escalated the rhetoric used in its defense to this level. In the short run, if we recommit this bill, and pass a stripped down version of it—minus the pricing provisions—I believe we will be acting in the Nation's best interests. We may see some disconcerting headlines—"The United States Cannot Pass an Energy Bill" or "The United States Congress is in Disarray" or "President Carter's Energy Plan Goes Down to Defeat," because of the arguments being developed to get a majority of votes behind this bill.

Such headlines, and analyses, are unfortunate and untrue. I hope this debate will clarify exactly what is and what is not at stake in the Senate this week.

I urge my colleagues to join with me in supporting the recommittal motion that will be offered by Senators METZENBAUM, ABOUREZK, HANSEN, BARTLETT, LONG, and others. This should assure that by the end of the session we will have passed a good deal of what the President proposed last year.

These are provisions which make sense and to which virtually all of the Senate and House conferees have agreed. I do not see why, if this is the Senate's will, the conferees should not speedily adopt them and permit us to vote on the rest of the energy package. I, for one, will be willing to work next year, with the administration and the rest of my colleagues, on additional measures that are reasonable responses to the energy problems this Nation faces.

Mr. President, assenting to our alternative proposal over this bill shows no lack of national discipline. Rather, it tells me that we will not permit ourselves to be stampeded into passing a bad bill so we can say we have done something.

An editorial that recently appeared in the Scripps-Howard papers summed it up best by saying:

Here is a time when doing almost nothing is better than great showboating actions to make the public think "Government is rising to the energy crisis."

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

AMENDMENT 3600

Mrs. HUMPHREY. Mr. President, I call up printed amendment number 3600 to the instructions contained in the motion offered by the Senator from Ohio, Mr. METZENBAUM to recommit the conference report on H.R. 5289.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Minnesota (Mrs. Humphrey) for herself, Mr. BAYH, Mr. ANDERSON, and Mr. STEVENS, proposes amendment numbered 3600.

At the end of the instructions contained therein add the following: "*Provided, however,* That all provisions of the conference report pertaining to natural gas produced in Alaska be incorporated in the conference report reported back.".

Mrs. HUMPHREY. Mr. President, my amendment instructs the conferees to report back the bill with the provisions in H.R. 5289 pertaining to natural gas produced in Alaska.

Specifically my amendment instructs the conferees to report back with the following sections included: Section 2(36); sections 101(a)(1), 101(a)(2), 101(a)(3), 101(b)(3), 101(b)(4), 101(b)(6), 101(b)(7), 101(b)(8); sections 109(a)(4), 109(b)(1); section 110; sections 203(a)(8), 203(a)(9)(A), 203(a)(9)(B), 203(a)(9)(C); section 203(b)(1); sections 207(b), 270(c)(2); section 208; sections 601(a)(1)(A), 601(a)(1)(D), 601(b)(1)(A)(i), 601(c)(1), and 601(c)(2)(A), and with such conforming language and/or definitions as may be required.

My sole purpose in offering this amendment is to assure the financing of the pipeline to bring Alaskan natural gas to the contiguous 48 States if the motion by the Senator from Ohio is successful.

Mr. President, this amendment was thoroughly discussed by my distinguished colleagues, Senators BAYH and STEVENS, last Friday. I hope we can all agree to support it.

I yield the floor.

Mr. METZENBAUM. Does the Senator from Alaska care to be heard now?

Mr. STEVENS. I thank the Senator from Ohio, not now.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, as I stated before when the amendment of the Senator from Minnesota was introduced, I am happy to support the amendment she is offering to the motion offered by the Senator from Ohio. The effect of this amendment will be to add the provisions that are in the conference committee bill as outlined in its report to the bill that would be reported back from the conference if the motion to recommit offered by the Senator from Ohio is successful. I believe this is the correct procedure to follow because of the great importance of the provisions pertaining to the Alaska natural gas pipeline. Provisions contained in the report provide a ceiling price for the gas produced in Alaska at $1.45 per million Btu's. The provisions also provide for rolled-in pricing for Alaska's gas and provide for the treatment to be given to the facilities that are needed for transporting Alaska's gas to the markets of the south 48.

Mr. President, these provisions are most important because they eliminate much of the uncertainty concerning the financeability of the Alaska natural gas pipeline. Adoption of these provisions will enable that pipeline to proceed as scheduled. The line will be financed because some certainty would exist regarding the pricing of Alaska's gas, the handling of the cost of conditioning the gas, and the mechanism of rolled-in pricing.

It is important, I think, to keep in mind that there are some people who do not support the construction of the Alaska natural gas transportation system as it was outlined by the President in his decision. For that reason, any hearings before the Federal Energy Regulatory Commission could result in litigation concerning any decision made by FERC. By placing these items in the conference committee bill or in the bill that would be reported back from the conference should the motion to recommit be adopted, we can assure the financial institutions of this Nation—in fact, of the world, because there will be an international interest in financing this pipeline—that we have done as much as we can to eliminate the uncertainty concerning the actual ceiling price for Alaska's gas and the treatment of the costs of conditioning the gas.

I am indebted to the Senator from Minnesota and to the Senator from Indiana for their consideration and for offering this motion to assure that the recommital motion of the Senator from Ohio would include the Alaska gas pipeline provision.

Mr. President, I ask unanimous consent that the summary of the sections that would be included in this bill if the recommital motion is successful be printed in the RECORD following my statement, along with a statement of the specific sections that would be included in the motion to recommit if it is adopted.

Mr. METZENBAUM. Reserving the right to object, and I shall not object, I just make the observation that at an appropriate point, I am prepared to accept the amendment, as soon as the Senator from Alaska understands that we have not had an opportunity to check into those particular sections. I do not want my silence with respect to the subject to be interpreted as total agreement. That being merely a drafting matter, certainly the intent of the parties is very clear and unequivocal and I just want to make certain that my own position on the subject is not misinterpreted. For the record, I do not object.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I support the amendment that has been offered by the distinguished Senator from Minnesota and other Senators. This does not, however, lessen to any degree my opposition, which is total, to the motion to recommit it with instructions.

I do congratulate the distinguished Senator from Minnesota, the distinguished Senator from Indiana, and the distinguished Senator from Ohio and others on the amendment to the instructions which are contained in the motion by Mr. METZENBAUM. As a matter of fact, I ask unanimous consent that I may be joined as a cosponsor of the amendment proposed by Senator HUMPHREY.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I thank the majority leader. The statement of the Senator from Ohio is acceptable to me. The information that I have placed in the RECORD has been prepared by the staff. If there is an error in it, we would be most ready to accommodate the Senators.

I have discussed this amendment of the Senator from Minnesota with Senator JACKSON, and he authorized me to state that he finds the amendment acceptable and I am sure he has conveyed that to the Senator from Ohio, also. It is my hope that this will be a noncontroversial matter, as I think it should be. It is a most necessary amendment to insure the transportation system that will provide the Nation with access to 10 percent of our reserves of natural gas is built. I think it is a very worthwhile amendment.

Mr. METZENBAUM. I did not mean in any manner to suggest that drafting of the language was inappropriate, but merely want to preserve the record in case there is some reason to discuss some specifics in connection with that language. I am certain that, if and when the motion to recommit is adopted with this amendment added to it, we shall have no difficulty with respect to the language pertaining to Alaska.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY

2(36). Defines Prudhoe Bay Unit of Alaska as the area subject to the unit agreement approved by the State.

Sec. 101. Provides for and describes an inflation adjustment factor to permit increases in ceiling price as provided for in conference report. In new conference report this provision would be limited to gas from the Prudhoe Bay Unit of Alaska, which is transported through Alaska Natural Gas Transportation System.

Sec. 109. Establishes a ceiling price for Alaskan gas of $1.45 per million BTUs.

Sec. 110. Provides that the maximum price can include amounts needed to recover costs of State severance taxes. Limitation is imposed on State severance taxes to those in effect or enacted before December 1, 1978, unless the increase applies to both inter- and intra-State gas.

Also allows ceiling price to be increased to cover costs of conditioning the gas.

Sec. 203. Is the general provision relating to what is to be incrementally priced under conference report.

Alaskan gas is entitled to rolled in pricing in the conference report and so any subsequent conference report should provide guaranteed rolled-in pricing for Alaskan gas.

This section will have to be significantly modified since in the present conference report it is part of an entire scheme to mandate incremental pricing. In any subsequent bill it would probably be alone, and extensive revisions would be required to provide the same treatment for Alaskan gas.

Sec. 207. Provides that gas imported into the United States under the prebuilding arrangement be rolled in.

President's decision recommended prebuilding of certain southern parts of the project to allow Alberta gas to be imported into the U.S. temporarily.

As gas transported through the Alaska Natural Gas System it is entitled to rolled-in pricing. It is our intent that application of this section be limited strictly to gas transported through part of the Alaska Natural Gas Transportation System.

Sec. 208. Provides for rolled-in pricing of acquisition cost and transportation costs of Alaskan gas.

Sec. 601. Required provisions to coordinate with Natural Gas Act and to limit FERC review since Congress will have acted to set price of Alaskan gas.

The motion to recommit should be interrupted as specifically instructing the conferees to report back with the following sections included: Section 2(36); sections 101(a)(1), 101(a)(2), 101(a)(3), 101(b)(3), 101(b)(4), 101(b)(6), 101(b)(7), 101(b)(8); sections 109(a)(4), 109(b)(1); section 110; sections 203(a)(8), 203(a)(9)(A), 203(a)(9)(B), 203(a)(9)(C); section 203(b)(1); section 207(b), Section 207(c)(2); section 208; sections 601(a)(1)(A), 601(a)(1)(D), 601(b)(1)(A)(i), 601(c)(1), and 601(c)(2)(A), and with such conforming language and/or definitions as may be required.

Mr. BAYH. Mr. President, I join with my colleague from Alaska and my colleagues from Minnesota in calling up this amendment to modify the recommittal motion that has been made by Senator METZENBAUM and others. The purpose of this amendment is clear. It is meant to assure that the fate of the Alaska gas pipeline should stand on its own merits and not hang on the outcome of the controversial natural gas conference report.

The Senate has reached agreement to vote on this recommittal motion on the natural gas conference report today. If this motion fails, others may be offered. The motion offered today will instruct the conferees to report certain nonpricing sections of the natural gas conference back to the Senate as a substitute for the conference report now pending. The amendment we are offering to the Metzenbaum recommittal motion will modify the instructions to include the provisions in the conference report dealing with the Alaska gas pipeline.

Senator STEVENS and I have copies of the language we reference in our amendment available for those of our colleagues who may be interested. The provisions included in our amendment deal only with the Alaska gas pricing provisions and mirror the agreement of the conferees to the letter. It is our understanding that the only provisions included, which might possibly have an impact on gas supplies not associated with the Alaska gas project, are sections 207(b) and 207(c)(2).

Our inclusion of these provisions is meant to assure that costs incurred as a result of the early delivery of Canadian gas associated with this project are rolled in. If, despite our best information, there are other contracts that could be covered by these provisions, I would like to state clearly that this was not our intent and that the conferees should make whatever drafting changes are necessary to mold the language to our intent.

A positive vote on this amendment, by those on both sides of the natural gas bill, should assure that the Alaska gas provisions will be included in any subsequent recommittal motion that may be offered should the first motion fail.

The Alaska gas pipeline has widespread support in Congress. The Senate approved it by a vote of 87 to 2. The House approved it by voice vote. The President has made clear his strong belief that construction of the pipeline is in the national interest. The only remaining obstacle is the setting of a price for Alaska gas, which is necessary before gas sales contracts can be signed and financial arrangements for the project completed. The Alaska gas pricing provisions in the conference report will stabilize the price of Alaska gas and permit private financing for its construction. These provisions are in no way logically related to the rest of the bill. The fate of the pipeline should stand on its own merits and not hang on the outcome of the controversial natural gas conference report. Progress on the project has already been unnecessarily delayed for a year because of congressional debate over deregulation of natural gas prices.

Giving a final green light to this project is the most immediate way of avoiding future natural gas shortages. It will mean the predelivery of 1.04 billion cubic feet of additional Canadian gas from Alberta to the lower 48 States in 1980 due to early construction of the southern spurs of the system which will deliver gas both east and west of the Rockies. Alaskan gas will come on line at the rate of 2 billion cubic feet per day in early 1984, increasing to 2.4 billion cubic feet per day by 1990. Finally, construction of the pipeline offers the possibility of continued imports of Canadian gas, currently running at 2.7 billion cubic feet per day, if necessary. The reserves at the Prudhoe Bay Field on the North Slope of Alaska, estimated at 26 trillion cubic feet, are likely to permit gas flow at this rate for 25–30 years. Undiscovered reserves elsewhere in Alaska could run as high as 72 to 185 trillion cubic feet. Construction of this pipeline is a safe, reliable and efficient way of significantly increasing American natural gas supplies to the parts of the country that need new supplies most.

No matter what any Senator's position on the pending conference report, I urge all my colleagues to support this amendment, meant to insure construction of the pipeline regardless of the division in the Senate on the conference report. An affirmative vote by the Senate for the pipeline should assure that if the first recommittal motion fails, the pipeline provisions will be included in any subsequent recommittal motions that will be offered. A rejection of this amendment could be construed as a lack of support in the Senate for this project and would not be in anyone's interest.

Mr. President, I feel that those Members of the Senate realize that the full resolution of the energy problem confronting this country today involves more than the passage of one piece of legislation. The matter in dispute before us right now, the great controversy, is how to dispose of the natural gas pricing mechanisms of this country. On that there is, to say the least, significant difference of opinion.

Although there is no unanimity of feeling on how the Alaska natural gas problem should be resolved, I think

there is a great majority of support for the proposition that expeditious and equitable distribution of Alaska gas is an important plan in building an energy program for this country. Thus, it seems only right that this plan should be included, not only in the original proposal that is supported by the administration, but in the recommital motion, which is supported by the Senator from Ohio.

We have to get that gas down to the lower 48. It has to be distributed in a way that the entire country gets it and not have what happened in the Alaskan oil situation that existed, as far as natural gas.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ZORINSKY). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

Mr. STAFFORD. Mr. President, this afternoon at 3 p.m. we will be voting on a motion to recommit the conference report on H.R. 5289—the Natural Gas Policy Act of 1978.

Some little time ago I concluded that while the act is far from perfect, it is much better than no action at all and should be supported.

Therefore, for several weeks I have been prepared to oppose recommitting the act, action almost certain to result in no act at all.

This Senator has very recently returned from a 10-day meeting of the International Parliamentary Union in Bonn, Germany. Parliamentarians from 72 nations were present including representatives from the parliaments of the industrialized western nations with whom the United States is usually closely associated.

Although worldwide energy problems were not among the several subjects of formal deliberation and resolution at this conference, the energy difficulties of the United States in particular, and the world generally, the perceived lack of a U.S. policy on energy, our trade imbalances, and the fall of the dollar, all believed to be related, were very frequent topics of informal discussions, especially among our allies in the industrialized nations.

It became very clear to me, as a result of such discussions and conversations with our allies and representatives at Bonn that adoption of the Natural Gas Policy Act on our past, even though far from perfect, would be perceived as a strong positive move on the part of the United States to establish a national energy policy. I believe it would strengthen the dollar, and that belief is shared by representatives of the Western nations at Bonn, West Germany.

I suggest this as an additional reason for voting against recommittal of the conference report this afternoon and later voting for its adoption at the time that question arises.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Vermont for the statement that he has made. I am also grateful for his reference to his recent experiences and discussions in Europe with leaders there.

I feel that that information not only has a direct bearing on this issue, but will be very helpful for the Senate to have.

I congratulate him and I thank him.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have much respect for the distinguished Senator from Vermont. I congratulate him. I think he was just recently elected to one of the international bodies. I know that he has great stature in the international community, as well as in this Nation.

I also know that he reports accurately to us. I am certain that there is a concern internationally with respect to an adequate national energy plan for this Nation.

Yet, I would have to point out to him that I am certain that those who are most knowledgeable in the international community, who would have the greatest concern about the value of the dollar, the strength of the American economy, would also be smart enough and wise enough to recognize that a bill that has been described as not much of a bill, as a bill being the only bill in town and for that reason we have to pass it, a bill that has been described by Mr. Strauss, or the international trade negotiator, as being a C-minus bill and a bill that will not contribute to solving the problems of this Nation with respect to natural gas, will be perceived by the international community for that which it is once they have had an opportunity to examine into it.

But having said that, I think it may be an appropriate time at this point to bring the attention of the Senate to the fact that regardless of what the international community might think, the energy policy task force of the Consumer's Federation of America, which is the Nation's largest energy coalition of consumer, labor, public power, farm, and urban organizations feels that no natural gas bill is better than a bad bill, and this is unquestionably a bad bill, so they stated in a letter to the editor in the Cleveland Plain Dealer dated September 17, 1978.

Mr. President, I ask unanimous consent that there be printed in the RECORD the entire letter from Ellen Berman, Director of Energy Policy Task Force.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

[From the Cleveland Plain Dealer, Sept. 17, 1978]

GAS DEREGULATION BILL WOULD HARM OHIO

Judging from its editorials, The Plain Dealer is so eager to see a national energy bill enacted, at any price, that it has ignored the disastrous consequences that natural gas regulation would bring with it. The Energy Policy Task Force of the Consumer Federation of America, the nation's largest energy coalition of consumer, labor, public power, farm and urban organizations, however, feels that no natural gas bill is better than a bad bill. And this is unquestionably a bad bill.

The deregulation agreement that has emerged from the House-Senate conference committee, and which is to be voted on in the Senate this week, would wreak economic havoc on Ohioans and Ohio's industry, and on consumers across the country. The conference agreement guarantees only one thing—that consumers will have to pay much more for gas. It does not guarantee that consumers will receive increased or even ample supplies of gas.

The higher gas prices mandated by the agreement will mean that consumers will pay producers a minimum of $29 billion more over the next six years, according to the conservative estimate of the Department of Energy. David Sweet, a member of the Public Utilities Commission of Ohio, calculates that Ohioans, who use 5% of the nation's natural gas, would pay $1.5 billion more through 1985 for this bill. That translates into nearly $600 more for the average family. As always, the poor and elderly would be the hardest hit.

In exchange for this exorbitant price, Ohioans would not be assured of ample gas supplies or equal access to all the nation's gas reserves. The conference agreement allows consumers in gas-producing states to buy gas at prices higher than those that will be permitted in interstate markets, so gas would remain more plentiful in the gas-producing states.

Ohio's industry would be badly hurt, too. The conference agreement would pass on all the initial costs of deregulation to industrial users of gas while exempting industrial users in the gas-producing states. Fuel costs for Ohio industry would soar and Ohio would lose jobs to industry in gas-producing states.

As costly as the bill would be in jobs and dollars, the worst defect for Ohioans may be that the bill provides no assurance that the specter of last winter's shortages and layoffs will not be repeated. The bill does not contain the authority for directing gas from the plentiful intrastate market to consuming states like Ohio in times of shortage.

The defeat of this bill would not mean that the United States would be left without a gas policy. The United States already has a natural gas policy in the Natural Gas Act of 1938. What is needed is for the new Federal Energy Regulatory Commission (FERC) to enforce the law more vigorously and effectively than its predecessor, the FPC, did during the previous two administrations. We believe that FERC already has ample authority to ensure that adequate supplies reach the interstate market, and it shows promise of exercising this authority.

We agree with The Plain Dealer that this country needs a national energy plan. But that can certainly be accomplished without inclusion of the catastrophic natural gas bill.

President Carter has called conservation the "cornerstone" of his energy plan. If the gas bill is defeated, congressional leaders will release the conservation, coal conversion and utilities portions of the national energy plan, which they have held hostage to the natural gas bill. These portions of the plan, which can be swiftly enacted, would provide a sound basis for a national energy policy.

ELLEN BERMAN,
Director,
Energy Policy Task Force.

Mr. METZENBAUM. I believe that the point they make in the headline of that particular letter that the gas deregulation bill would harm Ohio is to me, and to the concerns of my constituents, and I think to the concerns of many other Members of this Senate, to the constituents of many other Members of this Senate, more important than the mis-

taken impression or perception that the international community might have with respect to this legislation, because there can be no doubt about it that it is not going to help the American economy, it is not going to help the value of the dollar, to have a bill that, by its terms, is inflationary, that increases the price of natural gas, that costs the American people more, that both directly and indirectly will add to the inflationary spiral.

That cannot be good for the value of the dollar, that cannot be good for the American economy, that cannot be good for the stability of money markets, and it can be very bad, not alone for the people who live in Ohio, but for the people who live in all of the other States in this Nation that are consuming States.

I cannot believe that the people of Europe, or those others in the international community, think that it is good and more help to the American economy to have industries move from the Northeast and Midwest and other parts of the Nation which are considered as consuming States, move to the Southwest where the oil is produced by reason of the fact that industry under this bill gains if it operates in a producer State and loses if it operates in a consumer State.

I cannot believe that the international community can think it is good if we have a piece of legislation that places the burden, more of the burden, on the residential users of this country, rather than on the industrial users.

So, Mr. President, having noted that the Senator from Minnesota has now arrived in order that he might address himself to the question of the Alaska pipeline amendment, I yield the floor to him in order that he may address himself to that question, so that all of us may dispose of the Alaska pipeline amendment at an early moment, because I think some of us would like to be present to share in the meeting with the prime minister from Israel.

Mr. ANDERSON. Mr. President, I wish to speak in support of the amendment offered by Senator HUMPHREY and others to include the Alaskan gas pricing provisions in the recommittal instructions to the conferees.

By 1985, Minnesota will hopefully be receiving 30 to 40 percent of its natural gas from Alaskan reserves. These supplies can only become a reality if we can get the Alaskan gas pipeline built. We do not seek Federal funds for construction of this line. Our request is far simpler. We must insure a stable price for gas delivered from Alaska to the lower 48 in order to enable the consortium building the line to secure private financing for construction of the line.

Alaskan gas holds the greatest promise for new supplies. Construction of the line will mean the predelivery of 1.04 billion cubic feet of additional Canadian gas from Alberta to the lower 48 States in 1980 due to early construction of the southern spurs of the system which will deliver gas both east and west of the Rockies. Alaskan gas will come on line at the rate of 2 billion cubic feet per day in early 1984, increasing to 2.4 billion cubic feet per day by 1990. Construction of the pipeline offers the possibility of continued imports of Canadian gas, currently running at 2.7 billion cubic feet per day. Gas from the Prudhoe Bay field is likely to run at a rate of 26 trillion cubic feet for a period of 25 to 30 years. Natural gas from undiscovered reserves elsewhere in Alaska could run as high as 185 trillion cubic feet.

We need this natural gas in the lower 48. Construction of an Alaskan gas pipeline is the most reliable means of heading off future gas shortages.

If the motion to recommit the natural gas conference report is successful, as I hope it will be, I want to insure that the Alaskan gas pricing provisions are a part of the alternative natural gas bill which the conferees can report to the Senate for its concurrence.

I thank the distinguished majority leader, Senator BYRD, the chairman of the Senate Energy Committee, Senator JACKSON, and Senator METZENBAUM for their cooperation and I move consideration of the amendment.

(Mrs. ALLEN assumed the chair).

Mr. McCLURE. Madam President, I commend the Senator from Vermont for his comments. I appreciate very much not only the statement he has made but the facts which are contained in the statement, which I think are compelling. I compliment him on the understanding of the issue and the fact that he has informed himself upon the issue in order to come to this conclusion.

Mr. President, while I have the floor, I might also mention that I very much support the amendment of the Senator from Minnesota (Mrs. HUMPHREY) with respect to the Alaska pipeline, because I think it is important that it be adopted.

I am a little confused, however, by the support of some of the people who oppose this bill on the basis of allowing intrastate gas to move in intrastate commerce with absolutely no control over the price. I had understood that the opposition to the bill was on the basis that it was going to raise the price to consumers. Now I find the motion to recommit stating that the interstate supplies will be without price limitation.

I am also surprised, then, when I see the motion of the Senator from Minnesota with regard to the Alaska pipeline, to find that, again, the people who have opposed this measure have abandoned their opposition to the failure of the Alaska pipeline provision to require incremental pricing.

I can only assume from those two things that the real motivation is the destruction of the bill, rather than the construction of any legitimate position upon natural gas or pricing or protection of the consumer.

I shall, however, support the amendment with regard to the Alaska pipeline, because I think it does address a very critical problem that must be addressed, and must be addressed in this Congress, if we are going to get that pipeline built in time to avoid the reduction in supply of oil that would accompany the impossibility of marketing the Alaskan natural gas in this country.

I am not certain that the Alaska pipeline can be financed—that has yet to be seen—but I am certain that it cannot be financed if we do not have the provision which is being offered now as an amendment to the motion to recommit. It preserves the opportunity to the promoters of that pipeline to approach the producers of the gas for contracts, to approach potential consumers of that gas for contracts. It would then make it possible at least to approach the problem of financing and then possibly the construction of that pipeline, a very difficult undertaking in terms of production, in terms of sales, in terms of financing, as well as in terms of construction of the pipeline. But that gas will move down to the upper Midwest of the United States. I also am hopeful that it would firm up supplies to my State, although it probably would not come directly to my State, because 70 percent of the gas supply sold in my State comes from Canada.

There are opportunities to increase and augment the supply of natural gas to the Pacific Northwest by reason of the Alaska pipeline, although the pipeline itself may not bring any Alaskan gas to the Northwest.

Madam President, again, I am somewhat confused about the motivations of the motion to recommit, because it certainly cannot be called a protection for the consumer in its price provisions; yet, that is the guise under which it is flying.

I must assume, then, from what I can determine of the effect of the motion to recommit that it is not a genuine attempt to protect the consumer but a genuine attempt to kill the bill.

Madam President, I yield the floor.

Mr. METZENBAUM. Madam President, I point out to my good friend, the Senator from Idaho, who is far more knowledgeable than I on subjects such as these, that he is reading something different from what I am reading and understanding as the import and the thrust and the language of our amendment.

There is something in our amendment that makes it possible for intrastate gas to move into the interstate market without control over its price. As a matter of fact, the language comes directly from the conference committee report. As we understand that language, it provides that it may move in interstate commerce subject to FERC control as to pricing and that those prices must relate to the weighted average of intrastate gas at that particular point.

So that when my friend from Idaho says there is nothing in our amendment that protects the consumer, I think he reads the language totally different from the way we do.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. METZENBAUM. For a question.

Mr. McCLURE. For a comment, and then I will ask the question.

Mr. METZENBAUM. All right.

Mr. McCLURE. I do not want to misrepresent what the Senator is for. I am reading the "Dear Colleague" letter of September 18. It is a letter, incidentally, that is signed by eight Senators, including the Senator from Ohio. It says in the third paragraph:

Under the substitute proposal, surplus gas now in the intrastate market can be sold to interstate consumers without coming under FERC jurisdiction.

If it does not come under FERC jurisdiction, then it is not subject to any price control, and it will be sold at whatever the negotiated price may be. If, on the other hand, it does come under FERC jurisdiction, then it does not avoid the criticism that has been leveled against it, that we have to depend upon FERC to free up those supplies.

That is the reason I made the comment I did, and I ask the Senator if, as a matter of fact, I misread the "Dear Colleague" letter.

Mr. METZENBAUM. I am not at all suggesting that the Senator from Idaho is misrepresenting the "Dear Colleague" letter. But I say to the Senator from Idaho that we do not pass legislation around here on the basis of "Dear Colleague" letters.

The Senator possibly could be correct with respect to the "Dear Colleague" letter, but if the Senator will refer to the language of the motion which is before the Senate, a copy of which is on his desk, he will note that it makes very clear the sections we are talking about from the bill.

Therefore, I do not think there can be any question about the fact that under the language of this conference committee report, which is the specific language we are putting into this, it would be under FERC control, and it would be based only upon surplus gas coming from the intrastate market into the interstate market.

Mr. McCLURE. Madam President, will the Senator yield further?

Mr. METZENBAUM. I yield.

Mr. McCLURE. First of all, I do not think the Senator would want to be misunderstood as saying that the "Dear Colleague" letter is inaccurate.

Mr. METZENBAUM. I do not have the "Dear Colleague" letter before me. Let me read to the Senator what is in the conference committee report.

Mr. McCLURE. Before the Senator does that, I make this comment: The implication of the letter and my understanding of the motion is that the price is not controlled, under the Senator's motion to recommit. The amount of money that could be charged for transportation would be subject to controls, but the wellhead price would not be controlled, and the ultimate cost to the consumer would not be under the control of FERC.

I think that is consistent with the "Dear Colleague" letter which the Senator has signed and is the result of the language which is in his motion to recommit.

Mr. METZENBAUM. Let me direct my friend's attention to page 43 of the conference committee report. It reads:

(b) COMMISSION APPROVAL OF SALES.—

(1) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) RATES AND CHARGES.—

(A) MAXIMUM FAIR AND EQUITABLE PRICE.—The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

And that has to do with the cost of the natural gas, not just the pipeline's charges:

(ii) an amount computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

Therefore, I have to say to my friend from Idaho that although he may have been informed that it has only to do with restrictions as pertains to the pipeline's charges, certainly that language which says, "such intrastate pipelines weighted average acquisition costs of natural gas," certainly is applicable here.

If the Senator is saying that something in this bill is making it possible for us to come in and control the price of that intrastate gas, then I would have to agree with him on that point.

Mr. McCLURE. Madam President, will the Senator yield?

Mr. METZENBAUM. I yield.

Mr. McCLURE. I thank the Senator for yielding because I think it is important that we at least understand what the intentions are of the authors of the motion to recommit.

Let me say to the Senator from Ohio that the language which he has read does not vest in the Federal Energy Regulatory Commission the authority to look at acquisition cost of the gas or to control it. They are permitted under that language to look at it from the standpoint of what the ultimate sale price will be but not to control the acquisition cost.

Mr. METZENBAUM. The Senator is correct. They look at it and they can determine what the weighted acquisition cost is but there is no control of intrastate gas prices.

Mr. McCLURE. If that is the case, then the intrastate gas price is uncontrolled and the amount that will be paid by the consumer is totally outside of the control of FERC except for the acquisition cost which will be passed through regardless of what it is and the regulation of the reasonable charges for the transportation and distribution of that gas in intrastate markets.

If the Senator from Ohio can tell me how then FERC can protect the consumer against high wellhead costs I would be grateful for the explanation.

Mr. METZENBAUM. I will respond to the Senator from Idaho and say to him that I do not want to mislead him nor anyone else, and I gather and I assume from what he is saying it is terrible that FERC does not have the right to control those intrastate prices. I agree with him. It is terrible.

Mr. McCLURE. Madam President, will the Senator yield?

Mr. METZENBAUM. Not at this point. Let me complete my thought if I may.

Mr. McCLURE. Surely.

Mr. METZENBAUM. This is the language we are talking about that prevents brokering. It prevents the add-on charges by the pipeline company for the cost over and above their cost. But what we are really talking about at this point is not everything that I would like to have in the bill. And I am glad that the Senator from Idaho recognizes that there is some merit to that, but it is obvious that he and I and many others are not in agreement on that.

If the Senator from Idaho will permit at this point, I wonder if we could dispose of the Alaska pipeline issue at this point?

Mr. McCLURE. I am very happy to at this moment, if I may have the floor to respond.

I will not delay this discussion because certainly the Senator from Ohio and I approach this problem from diametrically opposite positions, and I am not at all unhappy that the motion to recommit permits unregulated prices in the intrastate market to be passed on as costs to the consumer. That is deregulation, which I happen to favor.

But I am a little surprised that the motion to recommit is being put forward as a way to protect the consumer against unregulated prices, when, as a matter of fact, on this subject of the availability of intrastate gas to the interstate market it is precisely that. It is a total deregulation of the price of intrastate gas as it will move into the interstate market.

Mr. METZENBAUM. Madam President, will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. METZENBAUM. Only with respect to surplus gas and only under FERC control.

Mr. McCLURE. Of course, it is only surplus gas that would be moving because no other gas would be moving. As a matter of fact, it is that 1 trillion cubic feet that we are trying to get into the interstate market that is one of the reasons for doing away with the dual pricing system, and the Senator would permit the dual pricing system and still permit the consumer to pay the full unregulated cost which I would submit will be much higher under the Senator's proposal than it would be under the conference report.

Second, the Alaska pipeline provision that I will support in the amendment of the Senator from Minnesota allows that gas to move through and be rolled into the rate base exactly as the conference report has suggested it would, and again the Senator from Ohio has been consistently throughout all of this debate vehemently opposing that kind of provision that will permit that gas to move forward at essentially market prices.

So in a couple of respects it seems to me I must conclude that the Senator from Ohio is not so much trying to protect the consumer by the provisions of the motion to recommit as he is trying to protect the consumer by making certain that the conference report never does get adopted.

Mr. METZENBAUM. No; I am not willing to accept that concept. I think what I am saying is that a reasonable compromise under emergency conditions is appropriate in the country's interest, and I believe also we are recognizing in connection with the Alaska pipeline the need

for the additional gas that will be forthcoming from there, and we cannot do that unless we provide a means to finance it.

Mr. McCLURE. I am very happy to recognize that the Senator from Ohio now recognizes we are going to have adequate supply. We have to have adequate supplies and if we try to control the price we are going to stifle the supply. That I think has been the root of the argument all along, and I welcome his addition to the ranks of those who have seen wisdom.

Mr. METZENBAUM. Only because I cannot find much use in trying to get the last word with my good friend from Idaho, Madam President, I now suggest we take up the matter of the Alaska pipeline amendment.

Mr. STEVENS. Madam President, may I renew the motion of the Senator from Minnesota to amend the motion offered by the Senator from Ohio.

Mr. McCLURE. Before doing that and again not to have the last word but so that this record in this particular instance may reflect the full range of the opinion which the Senator from Idaho has with respect to the pricing provisions of the motion to recommit, in addition to what I have said already, interstate purchasers of surplus intrastate gas must pay the intrastate pipeline an amount over and above the weighted average acquisition cost to cover the cost of gas the intrastate must purchase to keep its customers from paying more than they would have without such sales.

I think if the Senator looks at the results of the motion to recommit, far from protecting the consumers better than the conference report does, both in supply and in price, the motion to recommit is much worse than the conference report.

Mr. METZENBAUM. Madam President, as I understand the rules it is not possible for me to accept this amendment to my motion to recommit and that the parliamentary procedure requires a voice vote. Unless there be further discussion, I am prepared to vote at this point.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STEVENS. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Madam President, one more unanimous-consent request: At this point I ask unanimous consent that there be an element of humor added to this debate in connection with the Natural Gas Pricing Act, and that an article by Art Buchwald entitled "Charge of the Light * * * and Oil and Gas Brigade" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CHARGE OF THE LIGHT . . . AND OIL AND GAS BRIGADE

(By Art Buchwald)

When President Carter first introduced his energy bill, he described it as the "moral equivalent of war." The bill now being debated in the Senate bears no resemblance to the one Carter asked for. What went wrong?

To find out I went to see an energy general at his headquarters. He had charts all over the war room and his aides were pushing dollar signs back and forth across a large map on the table.

"How's the war going?" I asked.

"Everything's going according to plan," he replied. "Our boys should be home from the Senate by Christmas."

"Reports from the front lines indicate your people took a terrible mauling from the oil and gas companies, and the energy bill that the commander-in-chief was hoping to get is in ruins."

The general scowled. "We had to destroy the bill to save it."

"But didn't your people surrender on every major front?"

"We didn't surrender," he said. "We made an orderly retreat. When you're waging the moral equivalent of war, you have to expect casualties. We lost the battle on deregulation of gas, and we suffered a setback on the excise profits tax on oil, and we were hit with a surprise attack in our attempts to make industry switch from gas to coal. But we decided they weren't worth fighting for. Our main objective now is to rescue the energy bill before it is killed."

"I thought the original objective was to protect the consumer and conserve our oil and gas supplies."

"The consumer is safe," the general said "He may have to pay more for gas and oil if the bill is saved, but you can't fight a moral war without some civilians getting hurt. The strategy of the commander-in-chief is to win the hearts and minds of the people so we can have free elections in 1980."

"What about conservation? Your forces seem to have lost that battle."

"We haven't lost the battle, We've just changed our tactics. Instead of charging up the hill, we have the enemy surrounded. If they expect to survive, they're going to have to produce more oil and gas. Our troops are dug in and our intelligence indicates morale amongst the major oil companies is dropping every day. It's only a matter of time before the energy forces that have been fighting us will wave the white flag."

"They seem to have won everything they wanted. Even if they sued for peace tomorrow what will your side have gained?"

The general said bitterly, "The media keeps saying we're losing. But there is more at stake here than whether we win or lose a few skirmishes. Do you realize if we don't save the energy bill, the entire prestige of the United States will go down the drain? The dollar will be attacked and the national will of Americans to fight for energy will be in doubt."

An aide put several more dollar signs on the map.

"What's he doing?" I asked the general.

"We have to put more bucks into the line," the general said. "Our original estimates of what this war would cost every American were much lower than we thought."

"Why don't you people just quit and start all over again?"

"Because," said the general tartly, "the commander-in-chief doesn't want to go down in history as the first president to have lost a moral equivalent of war."

Mr. GARN. Madam President, we have heard a lot of discussion from the other side about alternatives in this debate. They continually repeat that those of us who are opposed to the bill and support the motion to recommit "have no alternatives."

Let me first say, before going into a discussion of the motion to recommit, that this is a peculiarly bankrupt argument. Surely, it is the minimum responsibility of those who propose any bill that they prove that it is better than the situation in effect now. In fact, the distinguished manager of the bill put it quite well in his opening remarks when he said, "If this bill is not a major step forward toward a sound natural gas pricing policy, we should defeat it."

I agree with the distinguished manager of the bill. We disagree on whether it is a sound step forward. I think it is not and should be defeated.

I think that remark alone answers the question as to alternatives, which has been made repeatedly. It has even been stated that it would be tragic for the country not to "have a natural gas pricing policy." But it is certainly better to have no policy, if that is what the current situation is, than to have policy that is positively harmful.

Even though a physician and a faith healer may not have agreed on policy as to the secrets of health, they can both agree that a person should reject a cup of poison.

Two different religions may have no common religious policy, but they can still reject fire worship without being asked, "Where is your alternative?" In short, it is certainly better to have no philosophy than to have a philosophy of self-destruction as proposed in this particular bill.

Certain Greek cities, we are told, had a policy that anyone proposing new laws had to do so from a platform in the public market—with a rope around his neck. If the law was adopted, they removed the rope. If it was rejected, they removed the platform.

Perhaps adoption of this classical system would insure that we got no more of these C-minus bills or D-minus bills that we are told to pass because it is in the interests of the country, but do not worry about the details of the bill. Let us just forget them. We must have the bill.

Let me add one other comment in the same vein. Under this bill the Government for the first time takes over complete regulation of intrastate gas sales. One of the things which is done under this regulation is to cancel the legal and property rights of parties who previously found gas with their own money in complete good faith. They now find the fruits of their labor taken away from them.

I refer specifically to the sections controlling existing intrastate contracts and intrastate roll-overs—sections 105, 106 (b).

Under this bill, a person who found gas and decided to sell it, let us say, for a period of 5 years at a fixed price, understanding that at the end of that period the gas would be his to do with as he chose, now finds that the Government has in effect confiscated much of his property. Once this intrusion takes place, who can place any faith in the

Government's assurances of what will be the future course of policy?

On Friday, there was considerable colloquy between the Senator from Illinois and the chairman of the committee as to the course of the administration's policy with regard to future extensions of regulation, or diminishing of whatever deregulation occurs in this bill. The Senator from Illinois noted that he had received "an unequivocal answer" from "representatives of the President, speaking on his behalf," who said "that at no time during the Carter administration would the President attempt to change the deregulatory direction of this bill except in case of a total, all-out national emergency." (S. 15218)

Now, of course, these representatives are speaking on behalf of the same President who has already changed his direction at least three times on natural gas matters during the course of the last 2 years. They also include the same representative who time and again during the proceedings in this gas matter has made assurances to Senators with regard to their actions or the actions of the President which have not proven to be true.

So, quite frankly, it would be an extremely gullible producer or citizen who would put his money at risk in a fashion where the proceeds could be confiscated by changes in regulatory direction in the future. It is, in fact, another of the many tragedies of this type of regulation that it tends to force citizens to put their money into the most short-term and liquid instruments rather than investing for the longer haul because of the uncertainty of Federal regulation.

Of course, it is possible that the representatives were simply relying on the phrasing of the question by noting that they would not "attempt to change the deregulatory direction of this bill" because there is very little deregulatory direction in this bill. The bill provides for less deregulation in 1985 than there is now. And it provides the means for the President at his whim and without further legislation to impose total control on all gas markets. So I suppose that they would have little fear of making a commitment not to change that direction.

I, for one, feel that this bill is extremely complex, too complex, and creates many new tiers of pricing levels and, for the first time, goes into States and regulates intrastate sales of gas. Traditionally States have been allowed to regulate that gas within their own borders.

I wonder what kind of precedent we are setting with natural gas or other types of products, minerals, whatever, within a State? I suppose that if for no other reason I would vote against this particular conference report because of the Federal Government's intrusion for the first time into the rights of States to regulate sales that are purely within their own boundaries, because I do feel it will set a precedent in other areas that we will continue to find the Federal Government deciding that it is in the national interest to take away the rights of States, and that the Federal Government will now regulate sales of many other products within the boundaries of the States.

I am sorry we cannot go back to what many of us feel is the real answer to this energy crisis. Not phased deregulation with long, long years of rules and regulations and forms imposed upon producers and individuals and States. I think we would be amazed if we had the courage, had the real courage, to go for immediate and total deregulation of both natural gas and oil. I think we would be surprised at the amount of new oil and gas we would find in this country.

I think we would be surprised at how rapidly over a period of a relatively few years we could become independent of the Third World countries for purchasing of our energy supplies.

I think we would be amazed at what would happen to the retail price of gasoline and fuel oil. I think we would find that, by producing a surplus, the market forces would work and the consumer would be paying less than he will under government regulation. Anyone can look at the gas pumps in this country today and find out that the price of retail gasoline is less than the regulated prices posted on the pumps. They are not at the level allowed by government.

We find we have a surplus on the west coast due to Alaska oil which is being shipped to Japan because we cannot use it. I think hindsight will show us that the law of supply and demand does work and is in the consumer's interest.

With all of those who cry that we must have this to protect the consumer, if we really wanted to protect the consumer we would deregulate immediately and totally and we would find that unregulated prices would be less than attempting through taxation and regulation to raise our prices to the world market level.

So I do intend to support the motion to recommit. I do intend, if that fails, to vote against this conference report; because, in my judgment, it is in the best interests of the American people to do so.

BUDGET ACT WAIVER

Mr. ROBERT C. BYRD. Madam President, going to the fourth track, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1058, which is the Budget Waiver Act with respect to the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 532) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 991, was considered and agreed to, as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 991. Such waiver is necessary because (1) S. 991 is an unusually complex bill which establishes a new Cabinet-level Department of Education and transfers to it the functions of the Education Division of the Department of Health, Education, and Welfare, as well as certain functions of other agencies; and (2) the Administration did not indicate its position on this bill until the middle of April 1978, and did not present substantive comments relative to S. 991 until May 17, 1978. This late action on the part of the Administration made it impossible for the committee to consider and act on the bill by May 15, 1978.

Mr. ROBERT C. BYRD. Madam President, I move to reconsider the vote by which the resolution was agreed to.

Mr. RIBICOFF. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF EDUCATION ORGANIZATION ACT OF 1978

Mr. ROBERT C. BYRD. Madam President, I now ask unanimous consent that the Senate, in accordance with the agreement on the natural gas conference report and without prejudice to the Public Broadcasting bill, proceed to the consideration of Calendar Order No. 1000, S. 991, the Department of Education Organization Act, with the understanding that there be no amendment on busing received today, and that the bill be before the Senate no longer than until 3 o'clock p.m. today, without any understanding as to when it shall be further called up except that the majority leader, after consultation with the minority leader, may be authorized to call it up at a future date.

Mr. STEVENS. Madam President, reserving the right to object, is my understanding correct that the intent would be to call it up after a vote on the energy bill; is that correct?

Mr. ROBERT C. BYRD. That it would not come up today at all.

Mr. STEVENS. No, the vote on a week from tomorrow.

Mr. ROBERT C. BYRD. Oh, I am sorry if I left that impression. The bill would be before the Senate no longer than until 3 o'clock p.m. today; and, of course, under the natural gas conference report agreement, anything must be set aside for that conference report if any Senator wishes the floor. After the vote on the motion to recommit today, and still in accordance with the natural gas conference report agreement, if no Senator seeks the floor with respect to the conference report, the Senate would take up the Public Broadcasting Service bill under the order of yesterday, and I believe there is a time agreement on that; I know there is. Hopefully the Senate can dispose of that bill today.

What I am saying with respect to the Department of Education bill is that it would not come up again today, and it would be up to the majority leader, after consultation with the minority leader, to determine when it would again be called up for the resumption of consideration; and that there would be no busing amendment offered today.

Mr. STEVENS. Reserving the right to object, and again I shall not object, as I understand, this is still subject to concurrence as far as calling up the Department of Education bill again. There are some of us who have amendments; I specifically have an amendment, and I will be out of town on Friday. I know

the Senator from Connecticut will be out of town on Thursday. I wanted to make sure that I would not be foreclosed on that amendment.

Mr. RIBICOFF. If the Senator will yield, I will be out of town until Tuesday, so the Senator from Alaska is fully protected.

Mr. STEVENS. I feel confident in that protection, and I do not object.

Mr. ROBERT C. BYRD. For the further information of the Senator from Alaska, we are now operating on a triple track system, and can even go beyond that; so it is a multiple track system.

Is there objection to the request of the Senator from West Virginia?

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I hope we can make at least some progress on that measure today.

Mr. RIBICOFF. I thank the majority leader and the acting minority leader for an opportunity to bring up this most important piece of legislation.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 991) to establish a Department of Education, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs with an amendment in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. RIBICOFF. Madam President, I ask unanimous consent that the following staffers of the Committee on Governmental Affairs be permitted to remain on the Senate floor during the consideration and votes on S. 991, to establish a Department of Education, and for other purposes: Dick Wegman, Marilyn Harris, Bob Heffernan, and Jon Greenblatt; Charlottee Tsoucalas, Terry Jolly, Bob Harris, Cheryl Davis, Dru Smith, Tom Cator, John Childers, Lawrence Grisham, Brian Conboy, Link Hoewing, Nancy Anderson, Carl Flair, Mary Ann Simpson, Martina Pearson, and Jill Porter; and the following staffers from the Committee on Human Resources: Franklin Zweig, Jean Frohlicker. Marsha McCord, Greg Fusco. and Steve Paradise.

The PRESIDING OFFICER. Without objection. it is so ordered.

Mr. RIBICOFF. Madam Presdent. for the first time in the history of this body, we are considering legislation to create a separate, Cabinet-level Department of Education.

In January of 1965, I introduced a bill to create a Department of Education. Now, some 13 years later, the full Senate is considering the concept.

More than 60 Senators—Democrats, Republicans, moderates, liberals, and conservatives—have sponsored this legislation. This is not, by any means, a partisan issue.

The Committee on Governmental Affairs gave very serious consideration to S. 991 and reported the bill unanimously.

I wish to thank Senator PERCY, the ranking minority member of the Governmental Affairs Committee, and the other committee members for their support of this legislation.

We are indebted to American education for the vital role it plays in the development and success of this Nation. Democratic government depends on an informed and educated public. Education is important to the American people. This country was built on the basic belief that hard work, commonsense, and education are the keys to a successful and happy life. A recent Harris poll showed 90 percent of the public surveyed felt "achieving quality education for children" was very important. Another showed 75 percent of those surveyed believe a "free, unlimited education" is a major factor to our country's future success.

Today, more than 50 million people in the United States are directly involved with education. Total education spending approaches the $180 billion level, nearly 10 percent of the gross national product. State and local governments spend more money on education than anything else—approximately 40 percent of their budgets.

Yet today education programs in the Federal Government are buried four and five levels deep within the massive Department of Health, Education, and Welfare. They are scattered among 40 Federal agencies. Their leadership is split between a Commissioner of Education and an Assistant Secretary for Education. They are smothered by the overwhelming and dominant concerns of health and welfare. Their coordination is almost nonexistent.

Although the Federal Government spends more than $25 billion on education for over 300 programs there is no visibility or accountability in the Federal Government. Education is not represented at the Cabinet table with other important concerns such as agriculture, labor, transportation, and housing. HEW's responsibilities are so vast and the HEW Secretary is spread so thinly that inevitably some programs suffer from lack of attention. Education is often the victim of neglect and poor interdepartmental competition with massive health and welfare programs. Out of HEW's $180 billion budget, at least $168 billion will be expended for health and welfare.

The creation of a Department of Education remedies institutional deficiencies presently existing within HEW. By removing education from HEW, we will achieve a number of benefits:

There will be one high-level Federal official who will speak for education in the Federal Government.

The administration of and attention given to all three components—education, health, and welfare—will improve as a result of the reorganization.

By separating education from the overwhelming influences of health and welfare, the Congress will be better able to clearly evaluate budget allotments for education.

The legislation goes far toward achieving a significant measure of consolidation of the widely scattered Federal education programs. Altogether, more than 170 programs would be incorporated in the new Department.

Creation of the new department will provide better opportunities for Congress and the President to focus more clearly on better management of education programs.

The head of the new department, the Secretary of Education, will be more accountable to Congress and the public for Federal education services.

A Secretary of Education will improve the administration of Federal education programs. A major problem in the Education Division of HEW now is that the structure and lines of authority are unclear and often confusion. Education responsibilities are fragmented within HEW between the Assistant Secretary for Education and the Commissioner of Education. Little in the way of responsibility is assigned to the Assistant Secretary. Most programs are under the purview of the Commissioner of Education—a position evidenced by frustration. In the last 12 years, the commissionership has changed hands 13 different times.

A Department of Education would allow education programs to be administered by a clearly ordered structure, where the lines of authority and responsibility are clearly defined. This would be a sound administrative and managerial move. The American Society for Public Administration, for the first time in its history, has endorsed the creation of a Cabinet department—the Department of Education. They state:

The addition of another Cabinet Department would not unduly stretch the President's span of major organizational control. On the other hand, coordination of educational programs to minimize unnecessary administrative burdens and expense for educational institutions and to rationalize inconsistent educational policies would be facilitated if a Cabinet official were given this as a major assignment.

Coordination is necessary to reduce costs and redtape. The situation today is one where there are many Federal education officials, each promulgating their own rules, their own regulations, and their own paperwork requirements. There is inevitably some overlap and duplication. This increases costs for States and localities. For example, Illinois State Superintendent Joseph Cronin told the Governmental Affairs Committee that his State's education agency employs 20 individuals at average salaries of $15,000 each just to keep up with Federal paperwork.

The Governmental Affairs Committee has considered carefully the question of whether a Department of Education means Federal interference in State and local policymaking. States, localities, and institutions have the constitutional right to determine their own individual educational needs and policies. The Federal effort in education is designed to assist and complement States, localities, and institutions which provide education services. It has important programs in education which greatly benefit States and localities. For example, Federal programs designed to guarantee equal educational opportunities or assist in pro-

viding more opportunities for the handicapped to have a quality education are good examples of how the Federal Government assists States and local governments.

Thus, effective management, more visibility, and increased status does not mean "more control." Creating a Department of Education is not a "backdoor" way of controlling education in the United States. Instead, better management of Federal education resources by the Secretary of Education will mean improved accountability, coordination, and advocacy.

I believe the bill before the Senate is a product that reflects careful study.

The bill will significantly improve the design and management of Federal education programs.

It directs the new department to involve parents, students, and the public more directly in developing and implementing education programs.

It stresses the importance of maintaining good intergovernmental relations, and closer cooperation with State, local, tribal, and private agencies.

It balances educational interests by placing them on an equal footing with each other.

It works toward strengthening interagency coordination of Federal education programs.

It gives proper recognition to and increased status for the Department's many and varied components. The bill names high-level officers for:

Elementary and secondary education. This officer will administer approximately $6 billion for elementary and secondary education programs participated in by more than 48 million students.

Postsecondary education. The Assistant Secretary for Postsecondary Education will have program spending authority in the approximate amount of $3.6 billion. He or she will help coordinate programs designed to improve postsecondary educational opportunities.

Indian education. Federal Indian education functions and programs totalling more than $500 million annually would be consolidated into a new Office of Indian Education, headed by an Assistant Secretary for Indian Education.

Child nutrition. Location of children's feeding programs in the new Office of Child Nutrition will provide a uniform administrative chain between the Federal Government and State education agencies which administer 95 percent of the programs at the State level.

Handicapped. An Office of Special Education and Rehabilitative Services will combine the functions of the Office of Education's Bureau of Education for the Handicapped and the Office of Human Development Service's Rehabilitation Services Administration into a comprehensive program of education and rehabilitative services for the handicapped.

Civil rights. An Office of Civil Rights—independent of the Department's programs headed by an executive level IV, who reports directly to the Secretary—will continue and improve the Federal commitment to insuring access by every individual to equal educational opportunities.

Intergovernmental relations. An Assistant Secretary will insure a State and local perspective on a continuing basis in all the Department's activities and will work with the Intergovernmental Advisory Council on Education in advising the Secretary of intergovernmental problems, progress, and concerns.

Research and Improvement. An Office of Educational Research and Improvement, containing the National Institutes of Education, the Fund for the Improvement of Postsecondary Education, the National Center for Educational Statistics, and certain science education programs, will assist in the development of new knowledge about the educational process.

Occupational, adult, and community education. This officer will provide needed visibility for education assistance to States and localities in delivering effective education and training and adult community services.

Madam President, the Department has widespread public support. I ask unanimous consent that the list of the more than 70 organizations which support the concept of a Department of Education be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS SUPPORTING DEPARTMENT OF EDUCATION

Alliance of Associations for the Advancement of Education.
American Alliance for Health, Physical Education, and Recreation.
American Association of Colleges of Teachers Education.
American Association of Community and Junior Colleges.
American Association of School Administrators.
American Association of University Professors.
American Association of Workers for the Blind.
American Choral Directors Association.
American Coalition of Citizens with Disabilities.
American Dance Guild.
American Dietetic Association.
American Educational Research Association.
American Federation of State, County, and Municipal Employees.
American Library Association.
American Personnel and Guidance Association.
American School Food Service Association.
American Society for Public Administration.
American Theatre Association.
American Vocational Association.
Americans for Democratic Action.
Americans for Indian Opportunity.
Association of Childhood International.
Association for Supervision and Curriculum Development.
Children's Foundation.
Citizens Committee for a Cabinet Department of Education.
Coalition of American Public Employees.
Coalition of Independent College and University Students.
College Art Association of America.
College Band Directors National Association.
College Music Society.
Committee on Research in Dance.
Council for Educational Development and Research.
Council for Exceptional Children.
Council of Chief State School Officers.
Council of State Administrators of Vocational Rehabilitation (Executive Committee)
Education Commission of the States.
El Congresso.
Home Economics Education Association.
International Council of Fine Arts Deans.
International Reading Association.
Music Educators National Conference.
Music Teachers National Association.
National Art Education Association.
National Association for the Deaf.
National Association of College Wind and Percussion Instructors.
National Association of Elementary School Principals.
National Association of Mexican-American Women.
National Association of Secondary School Principals.
National Association of Schools of Art.
National Association of Schools of Music.
National Association of State Boards of Education.
National Association of State Directors of Migrant Education.
National Audio-Visual Association.
National Committee for Citizens in Education.
National Congress of Parents and Teachers.
National Council of La Raza.
National Council of State Agencies for the Blind.
National Council of Teachers of Math.
National Dance Association.
National Education Association.
National Federation of the Blind.
National Governors Association.
National Guild of Community Schools of the Arts.
National Rehabilitation Association.
National School Boards Association.
National School Public Relations Association.
National Student Association.
National Student Lobby.
National University Extension Association.
National Urban League.
Overseas Education Association.
Speech Communication Association.
State Higher Education Executive Officers Association.
Student National Education Association.
U.S. Catholic Conference Secretariat for the Spanish Speaking.
Young Audiences, Inc.

Mr. RIBICOFF. As my colleagues know, President Carter and Vice President MONDALE have attached a high priority to the establishment of the Department of Education this year. The committee has worked closely and harmoniously with the President's reorganization project for the past year in developing S. 991.

Madam President, for too long education has suffered for lack of attention, status, visibility, and focus in the Federal Government. The Federal education effort is considerable in size. The new department would consist of programs having a total budget of approximately $17 billion. It would rank in size higher than six other Cabinet departments.

Federal education programs are too important to be mismanaged or smothered in bureaucracy. The Federal education effort must be efficient, effective, and helpful to States, localities, and other agencies.

We need a Department of Education, and I urge my colleagues to support this measure.

Mr. DOMENICI. Will the Senator yield for a unanimous-consent request?

Mr. RIBICOFF. I yield.

Mr. DOMENICI. Madam President, I ask unanimous consent that Letitia Chambers and Eileen Winkelman of my staff be granted the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Madam President, if the Senator will further yield, I ask unanimous consent that Mary Ann Simpson of my staff be granted the privileges of the floor during the consideration of the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIBICOFF. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIBICOFF. Madam President, I ask unanimous consent that the distinguished Senator from Alabama (Mrs. ALLEN) be added as a cosponsor of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIBICOFF. I do want to point out that no person in this body is more concerned with the education of our young people than the distinguished Senator from Alabama. The late Senator Jim Allen was a cosponsor of this legislation. I talked with him directly in fashioning this bill. I know what this legislation meant to him.

In many conversations over the past months with the present Senator from Alabama, MARYON ALLEN, she has continuously expressed her concern that we give the children of Alabama and the children of this Nation the best possible education.

We do not believe that the huge expenditures that are being made by the Federal Government today are properly doing the job that has to be done. So much remains to be done that I consider it a privilege and most important to have the Senator from Alabama cosponsor this legislation with us.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call re rescinded.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

UP AMENDMENT NO. 1841

(Purpose: to refine certain provisions relating to Indian education)

Mr. DOMENICI. Mr. President, I send to the desk an unprinted amendment and ask that it be immediately considered.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI) for himself and Mr. MELCHER proposes unprinted amendment No. 1841.

Mr. DOMENICI. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 57, strike out lines 12 through 20, and insert the following:

(b) The transfer of functions from the Secretary of the Interior or the Department of the Interior shall not modify or eliminate any eligibility requirments for participation in programs administered by the Secretary of the Interior or the Department of the Interior which were in existence on the date before the date of enactment of this Act.

(c) The trust responsibility of the United States as contained in treaties, laws, and Executive Orders, administered by the Secretary of the Interior on the day before the date of enactment of this Act for the education and training of Indians, Alaskan Natives, and Aleuts shall be continued by the Secretary and shall not be altered in any way.

On page 57, line 21, strike out "(c)" and insert "(d)".

On page 58, between lines 6 and 7, insert the following:

(e) The provisions of the Indian Self-Determination and Education Assistance Act shall be applicable to all functions administered by the Secretary through the Assistant Secretary for Indian Education—transferred by this Act to the Secretary from the Secretary of the Interior or the Department of the Interior

(f) The provisions of the Indian Self Determination and Education Assistance Act shall be applicable where appropriate to all functions administered by the Secretary through the Assistant Secretary for Indian education transferred by this Act to the Secretary from the Secretary of Health, Education, and Welfare or the Department of Health, Education, and Welfare

On page 58, line 7, strike out "(d)" and insert "(g)".

On page 69, between lines 2 and 3, insert the following new sections:

NATIONAL COUNCIL ON INDIAN EDUCATION

SEC. 217. (a) There is hereby established as an advisory committee, to be known as the National Council on Indian Education (hereinafter referred to as the "Indian Council"), which shall consist of fifteen members who are Indians, Alaskan Natives, and Aleuts. The members of the Indian Council shall be appointed by the President.

(b)(1) The President shall appoint to the Indian Council—

(A) one individual from each of the twelve service areas or districts, as determined by the Commissioner of the Bureau of Indian Affairs of the Department of the Interior; and

(B) three other individuals.

(2) The President shall appoint members to the Indian Council from lists of nominees furnished by tribal governments. Not more than two of the three members appointed pursuant to paragraph (1)(B) shall be from Indian tribes which are not Federally recognized.

(C) Members of the Indian Council shall be appointed for a term of two years, except that the term of office of the members first appointed shall expire, as designated by the President at the time of appointment, seven at the end of one year and eight at the end of two years.

(d) The President shall designate one of the members of the Indian Council as the Chair of the Indian Council.

(e) Eight members of the Indian Council shall constitute a quorum, but a lesser number may hold hearings. Any vacancy in the Indian Council shall not affect its power to function.

(f) The Indian Council shall—

(1) advise the Secretary and the Assistant Secretary for Indian Education concerning priorities and guidelines for the administration of all functions of the Office of Indian Education established in section 211;

(2) advise the Secretary and the Assistant Secretary for Indian Education with respect to the administration (including the development or regulations and of administrative practices and policies) of any educational program in which Indian children or adults participate or from which they can benefit, including title III of the Act of September 30, 1950 (Public Law 874, Eighty-First Congress), and section 810 of the Elementary and Secondary Education Act of 1965;

(3) review applications for assistance under title III of the Act of September 30, 1950 (Public Law 874, Eighty-First Congress), section 810 of the Elementary and Secondary Education Act of 1965, and section 314 of the Adult Education Act, and make recommendations to the Secretary and the Assistant Secretary for Indian Education concerning the approval of such applications;

(4) evaluate programs and projects carried out under any program of the Department or the Department of Health and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(5) assist the Secretary and the Assistant Secretary for Indian Education in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950 (Public Law 874, Eighty-First Congress) and for other functions of the Office of Indian Education established under section 211;

(6) provide technical assistance to local educational agencies, institutions, and organizations to assist them in improving the education of Indian children; and

(7) submit to the Congress not later than June 30 of each year a report on its activities, including—

(A) recommendations concerning the improvement of Federal educational programs in which Indian children and adults participate, or from which they can benefit; and

(B) a statement of the recommendations of the Indian Council to the Secretary and the Assistant Secretary for Indian Education concerning the funding of any such Federal programs for Indian children and adults.

(g) With respect to the functions of the Indian Council under paragraphs (3), (4), and (6) of subsection (f), the Indian Council is authorized to contract with any public or private nonprofit agency, institution, or organization for assistance in carrying out such functions.

(h) From the sums appropriated pursuant to section 400(d) of the General Education Provisions Act which are available for the purposes of section 411 of such Act and for part D of such Act, the Secretary shall make available such sums as may be necessary to enable the Indian Council to carry out its functions under this section.

REPEAL AND REDESIGNATION

SEC. 218. (a) Section 422 of the Indian Education Act is repealed.

(b) Any reference to the National Advisory Council on Indian Education in any rule, regulation, or law other than section 422 of the Indian Education Act shall be deemed to refer and apply to the National Council on Indian Education established under section 217.

On page 75, line 10, insert "and trust re-

sponsibilities" immediately after the word "functions".

On page 82, beginning with line 23, strike out through line 4 on page 83 and insert the following:

"(e)(1) Any function administered by the Office of Indian Education established under section 211 and which is subject to section 12 of the Act of June 18, 1934 (25 U.S.C. 472), or any other Indian preference law in effect on the day before the effective date of this Act shall continue to be subject to such law."

On page 40, in the table of contents, insert immediately after item Sec. 216. the following:

"Sec. 217. National Council on Indian Education.

"Sec. 218. Repeal and redesignation."

Mr. DOMENICI. Mr. President, as a long-time supporter of legislation to create a separate, Cabinet-level Department of Education, I am most pleased that S. 991 has reached the Senate floor today, and hope for its prompt passage. The Senate Governmental Affairs Committee deserves high praise for its commitment to the bill and for its successful effort to bring it to the floor before the close of the 95th congressional session. I commend particularly my able colleague, (Mr. RIBICOFF), and my able colleague (Mr. PERCY) for their leadership in this effort.

I believe it is time to take the "E" out of HEW. Educational matters are not receiving the high priority attention they deserve under the present structure at the Department of Health, Education, and Welfare. I do not believe that is anyone's fault; I just do not think it can happen with a combined department. All too often, educational matters get lost in the shuffle at this burgeoning bureaucracy. Our Nation's commitment to the expansion of educational opportunities necessitates a separate Department of Education devoted solely to educational matters. Support for the measure runs high in my State among educators and parents. It is my hope that the new Department of Education, once it is created, will be more truly responsive to the educational needs of educators and consumers of education programs throughout the country.

My position in favor of this legislation might best be summarized by the closing remarks in my testimony on this issue which I presented to the Governmental Affairs Committee:

I am an advocate of education. I believe our children are the greatest resources of this country. Just as individual children need attention from their parents and teachers, so education needs priority attention from the Federal Government. I believe the Congress should establish that priority by creating a separate Department of Education.

While I am a strong supporter of S. 991, I do have concerns about the section which includes Indian education programs in the new Department. While I support the transfer of Indian programs to the new Department, do have questions concerning specific legislative language affecting this transfer.

Responsibility for Indian education is currently split between the Office of Education in HEW and the Bureau of Indian Affairs in the Department of the Interior. S. 991 proposes that Indian education be transferred from both agencies to the new Department, and creates an Assistant Secretary for Indian Education to administer the programs.

I have long been concerned about the quality of education in schools administered by the BIA, since approximately one-half of all Indian children drop out of these schools before they reach the secondary level. The major mission of the BIA is not (nor was it meant to be) education. By moving Indian schools administered by the BIA to an agency whose sole responsibility is education, I believe the quality of education for our Indian students can be improved significantly. At the same time, the BIA, relieved of the responsibility for running schools, can focus more clearly upon its major missions so that it can more effectively serve the Indian people.

As a Senator from a State with the second largest Indian population in the Nation, I have been very active on behalf of my Indian constituents, and thus have a great interest in all issues affecting Indian people. Because of this interest I attended a portion of the hearing held on this school issue by the Government Affairs Committee. On reading the testimony from the various tribal groups and Indian organizations, I noted that the Indian people are split on this issue, with some favoring the transfer while other groups fear that the transfer would have an adverse effect.

In analyzing the testimony, four major themes were apparent. First, many feared that the transfer would abrogate the trust responsibility of the U.S. Government with regard to Indian children. Second, there was concern that program eligibility requirements would be changed, eliminating some current participants. Third, there was concern that the gains made by passage of the Indian Self-Determination and Education Assistance Act would be lost. And finally, some felt that the Indian tribes and Indian people would have no control over the schools.

These issues raised by Indian organizations are certainly valid, and I agree with the assessment that a transfer which does not address these issues could have a negative effect for Indian people. I have therefore studied the language of S. 991 and found that certain changes need to be made in order to assure a transfer which will protect the interest of our Indian and Alaskan Native population.

Mr. President, I have sent to the desk an unprinted amendment. It is now under consideration. This amendment addresses the concerns expressed by Indian tribes and organizations. This amendment will:

First. Assure that eligibility requirements for program participation are not modified in any way by the transfer.

Second. Clarify that the trust responsibility of the United States with regard to Indian education will be continued unaltered by the Secretary of Education.

Third. Clarify the applicability of the Indian Self-Determination and Education Assistance Act to functions administered by the Secretary through the Assistant Secretary for Indian Education.

This amendment assures that the provisions of the Indian Self-Determination and Educational Assistance Act apply: First, to programs transferred from the Secretary of Interior without modification, and second, to programs transferred from the Secretary of HEW when such programs are consistent with the intent of that act.

Mr. President, in the bill before the Senate, Indian education is transferred to this new Secretary of Education and to the new department.

Mr. President, the fourth objective of the amendment that is pending will:

Create a National Council on Indian Education to be appointed by the President from nominees submitted by tribal organizations. This Council will have extensive responsibilities, including advising the Secretary concerning the administration of all programs for Indian children and setting priorities and developing guidelines, regulations, and evaluations for all functions administered by the Office of Education.

The Council will submit to the Congress each year a report on its activities, along with recommendations for the improvement of Federal education programs serving Indian children and adults.

As a Senator concerned with the needs and the rights of our American Indian population, I feel this amendment will protect their interests while providing an opportunity for vast improvement in Indian education programs. The most important considerations are our Indian children and the education and opportunities available to them. Therefore, I strongly support the transfer of all Indian education programs to the new Department of Education, with the changes contained in my amendment.

Mr. President, I ask the distinguished chairman and floor manager of the bill if he will engage in a colloquy for clarification purposes with me?

Mr. RIBICOFF. I am pleased to.

May I express my gratitude and appreciation to the Senator from New Mexico for his constructive support. I find it absolutely essential to rely on those Members of this body who nave special knowledge and experience in various fields.

The Senator from New Mexico, I believe, has probably one of the largest populations of Indian children in all the 50 States. His experience and knowledge of Indian affairs and Indian education is absolutely essential to assure that what we are doing will actually benefit the Indian children.

I am more than pleased to engage in a colloquy with the distinguished Senator from New Mexico.

Mr. DOMENICI. I thank my good friend.

Let me say, as the Senator knows and as I indicated in my opening remarks, there is not unanimous feeling on this issue among the Indian people. But I do believe the distinguished Senator had a similar experience at one time when we were talking about Indian health years ago.

Mr. RIBICOFF. May I say, when I was designated a member of the Kennedy Cabinet, one of my first discussions with President Kennedy was the basic concern and problem with Indian health and Indian education. The President asked me to look into these matters. I was appalled at the low state of health and education given to the Indians at large cost and what we considered a poor job being done by the Bureau of Indian Affairs.

When I was Secretary, we did get around to doing something about Indian health and transferring it out of the Bureau of Indian Affairs and into HEW where it became a matter of prime concern and prime importance in trying to improve it.

I am sure the distinguished Senator from New Mexico and the distinguished Senator from Arizona on this floor will attest to the great improvement in every phase of health for the Indians, especially in the Western States where they have a large population.

I left the cabinet and never did get around to the second phase of President Kennedy's directive about Indian education. But I did always feel in our surveys that the Indian children were being shortchanged, that for the large sums of money we were spending we were not giving the Indian children the benefit of the education they deserved.

It is my hope that in transferring Indian education to a Department of Education, where it is up front, we will have someone who is concerned with education, who has orders from Congress to do something about improving the education of Indian children. I know there are some who would like to keep it where it is, but the safeguards of the rights of Indians in self-determination, trust responsibility, and Indian preference must be maintained.

The amendment that has been offered by the distinguished Senator from New Mexico, joined in by the Senator from Montana (Mr. MELCHER), whose State also has a large Indian population, improves what we seek to achieve and makes certain that our objectives are spelled out clearly in the act.

I express my appreciation and gratitude to the distinguished Senator from New Mexico.

Mr. DOMENICI. I understand that the report of the Governmental Affairs Committee on this legislation specifies that the programs, services, and funds administered by the Assistant Secretary for Indian Education not be channeled through State education agencies. Is that correct?

Mr. RIBICOFF. The Senator from New Mexico is absolutely correct. The committee feels there will be more efficient use of Federal Indian education funds whenever there is a direct funding relationship between the Federal Government and Indian tribes and organizations. By transferring these programs to the Department of Education, we do not intend that these Indian education programs be connected to or administered by State education agencies. This is not to say, however, that we are discouraging States from aiding Indian education, but they certainly are not going to control it.

Mr. DOMENICI. As I understand it S. 991 specifically mandates that existing Indian preference laws, where now applicable, shall continue to be applicable in the new Department. Is that right?

Mr. RIBICOFF. Again, the Senator is correct. The committee fully supports the aims of Indian preference in employment in the programs aiding Indian education. We believe Indian preference should be strengthened in the new Department's Office of Indian Education. Under this bill, Indian preference will continue to apply in exactly the same way it now applies.

However, I do want to point out that the committee does not intend that, under this legislation, Indian preference apply to those schools contracted for under the Indian Self-Determination Act by Indian tribes. Those schools should continue to have the right to hire their own qualified Indian and non-Indian educators, as they wish.

Mr. DOMENICI. I also understand that S. 991 provides for the continued application of the Indian Self-Determination Act in those programs transferred from the Bureau of Indian Affairs. Am I correct?

Mr. RIBICOFF. That is correct. As the Senator knows, it has been 3 years since Congress passed into law the Indian Self-Determination and Educational Assistance Act. The full impact of this landmark legislation has yet to be felt in Indian country. The committee strongly supports the concept of self-determination. We want to make absolutely certain the new Assistant Secretary for Indian Education and the new Office of Indian Education recognize the importance of self-determination and take strong steps to implement the law. We fully expect self-determination will be reinforced and strengthened as a means for increasing the level of local control of education by Indian people.

Mr. DOMENICI. How will S. 991 affect existing eligibility standards for Indian education programs?

Mr. RIBICOFF. The legislation preserves all eligibility standards, of both the Office of Education (HEW) and the BIA Indian education programs. They will not change as a result of this transfer.

Mr. DOMENICI. How will programs and services for school construction be affected by S. 991?

Mr. RIBICOFF. The Governmental Affairs Committee fully intends that with the transfer of the BIA school system, funds and authorities for the construction and improvement of Indian schools will also be transferred to the Department of Education.

Mr. DOMENICI. I think it is important that the new Department fully recognize the special and unique nature of the Indian people's "civil rights." Has the committee considered this?

Mr. RIBICOFF. Yes, the committee has indeed given serious thought to the protection of these unique "rights." The committee report directs the Secretary of Education to establish in the new Office for Civil Rights authorized in the bill a separate branch for Indian affairs. We believe this will be a strong step to insure that Indian people will not lose their "Indianness" by this reorganization. The Office for Civil Rights will most likely be concerned with maintenance of the trust responsibility, Indian preference in employment and contracts, self-determination and other important rights of the Indian people.

Mr. DOMENICI. As the distinguished floor manager knows, my amendment on Indian education abolished the existing National Advisory Council on Indian Education and replaces it with a new council with broadened jurisdiction.

Mr. RIBICOFF. I commend the Senator from New Mexico for taking this step. It is clearly evident that the mandate of the existing council is not sufficiently broad enough to cover all of the new transferred authorities of the new Office of Indian Education. The new council will go a long way toward giving Indian people more input at the Washington level. I would hope, however, that the President would make a strong effort to reappoint those members now on the existing council to the new council so that they may complete the remainder of their terms. Does the Senator from New Mexico concur with that recommendation?

Mr. DOMENICI. I certainly do.

Mr. President, I thank Senator MELCHER for his assistance in this matter. His support and cosponsorship of this amendment indicates his dedication to the educational needs of our young Indian people.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. RIBICOFF. I am pleased to yield to the distinguished Senator from Arizona.

Mr. GOLDWATER. Mr. President, I hardly know where to start my discussion, because I understand that the pending business is the amendment of the Senator from New Mexico, which I probably will support but which I have some qualms about, and that the basic business that confronts us in this early discussion is the transfer of Indian education to a central bureau of education. So I will address myself first to the amendment of the Senator from New Mexico, with some remarks that will apply to any solution we might try to come to relative to Indian affairs.

I am proud to represent my State of Arizona, which has more native Indians than any other State in the Nation. In fact, almost 25 percent of the native Indians of our country live in Arizona. There are 15 different tribes, speaking three different basic language roots, living on 19 different reservations, or about 27 percent of our land.

Mr. President, that very fact should spell out to my colleagues what always has been a basic problem in approaching Indian affairs. We say we want to solve the Indian problem. Well, there are 400 tribes within the continental limits of the United States and 300 tribes in Alaska, and each tribe has a different, specific problem. So when we say we are going to solve the problem of the American In-

dian, there is no such thing, and there is no way we can do it in one fell swoop.

However, if you were to ask me to name a problem that has been common to all tribes down through the years we have been abusing our Indian friends, it would be education; and if you were to ask my appraisal of the Bureau of Indian Affairs' approach to education, I would have to say that over the years it has been rather dismal.

However, I am happy to report that there has been a turn, particularly in my State, where, as I say, we have native Indians. They speak their own language. They are not too anxious to learn English. They have their own cultures; they do not want to lose their cultures. They have their own religions, and they do not want to lose them. This has been the problem that was set up between the Indian tribes and the Bureau of Indian Affairs.

For example, a young Apache from the San Carlos Reservation—this example could be applied to any one of the tribes—would be sent to a BIA school, where the first thing he was told was that he had to learn English. Most Indian children want to learn English, because they know that, sooner or later, they have to use it in commerce or in getting along with their white friends. But then the BIA approach would be, "You have to forget the culture of your tribe, because you are going to live among a white population whose cultures are different," and the Indian began to rebel.

The Apache did not want to lose the culture that had been handed down through the centuries—a culture, I must say, on which those of us who live in the Southwest depend upon very heavily for our own cultural sources.

Then came the problem of religion. Some of our tribes—such as the Hopi Tribe and the Zuni Tribe in the State of New Mexico—have more than 250 gods. Some of them worship legends. Some, like our Navaho people, will find their gods living on five different mountains, and every mountain has something to do with an aspect of their life. They believe in these things.

For example, the Navaho, who weave the beautiful rugs, were taught that the "Spider Woman" taught them how to weave; and out of respect to the "Spider Woman," they always leave a little hole in the blanket, so the "Spider Woman" can get through it. This has been handed down.

They still practice in their religion what we call sand paintings, which, in effect, become an alter for the person who is being prayed for.

When the Bureau of Indian Affairs began to tell the Indian child that he would have to give up these concepts of religion and take up white man's religion the Indians really rebelled. In fact, it got so bad that up to about 15 years ago the Indians would not allow their children, in the main, to attend schools. This was not true across the board. We had some tribes who lived much closer to white communities than the one I have been talking about where they more or less in a natural way had taken on many of the things that the BIA tried to teach.

So what happened? When it became very apparent that in some of our larger tribes, the Navaho, the two Apache tribes, the Hopi. and I must say, Mr. President, that as to our tribes—and this is another problem—our tribes range from maybe 25 members to over 100,000 members, and this is true across the United States. So that presents a problem. But what happened when this rebellion set in? A number of us, who were close to the Indians and who lived with them, talked to the BIA and pointed out where they were wrong, that they should not take the attitude that culture was wrong, that the Indian had to change his religion, and we urged them to confer with tribal leaders and chiefly with members of the families, and when these conferences ended the BIA gave up on these ancient approaches and now they teach the native tongue where this was never done before.

Mind you, that is not easy because in the case of the Navaho language, the Hopi language, the Apache languages, which are related to the Navaho, there is no printed language. There is no alphabet. There is no printed vocabulary. So we were successful in getting the BIA to change so that today they stress their native language by teaching it, and I must say very happily that it is also available to white students in our colleges. These languages are so difficult to understand that, for example, as to the Hopi language, I have only known one white man in my life who could speak it, and it was used, as Senators know, during World War II in the Pacific, in the open, and it so confused the Japanese that they gave up ever trying to understand either the Hopi or the Navaho.

They now stress culture, the importance of the Indian child retaining the ability to produce pottery, to produce baskets, to produce rugs, to produce silver, and so forth and so on.

They stress their religion and stress their language, although they do stress English to the point that the Indian children learn it.

Mr. President, there is no great feeling of unanimity amongst the Indian tribes in this country in having their education transferred to one central agency.

I have, for example, a list here of practically every State, and in each of these States practically every Indian tribe is represented as being opposed to it.

My friend from New Mexico, of course, shares with my State the gigantic Navaho population, and yet in his State the Mescalero Apache Tribal Council, the Navaho, the Picuris Pueblo, and the Tesuque Pueblo Council all oppose it.

In my State every tribe opposes it, and I am going to have this printed in the RECORD, Mr. President, so that my colleagues will have the benefit of knowing the tribes in their State that now oppose the transfer of education to a central agency.

I ask unanimous consent that this list be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

POSITION OF FEDERALLY RECOGNIZED TRIBES OR ORGANIZATIONS REPRESENTING FEDERALLY RECOGNIZED TRIBES ON TRANSFER OF BIA EDUCATION TO DEPARTMENT OF EDUCATION

State, tribe or organization opposed to transfer:

Alaska: Akiak Village, Alaska Federation of Natives, Association of Village Council Presidents, and Tanana Chiefs.

Arizona: Ak Chin Community Council, Arizona Inter-Tribal Council, Cocopah Tribal Council, Colorado River Tribal Council, and Fort McDowell Mohave-Apache Community Council.

Havasupai Tribal Council, Hopi Tribal Council, Hualapai Tribal Council, Kaibab Tribal Council, Navajo Tribal Council, Papago Council, Salt River Pima-Maricopa Community Council, San Carlos Council, White Mountain Apache Tribal Council, Yavapai Apache Community Council (Camp Verde), Yavapai-Prescott Board of Directors, and Yavapai Tonto Apache (Payson).

California: Barona General Council, Big Pine General Council, Bishop Tribal Council, Cedarville Rancheria, Covelo Community Council (Round Valley), Dry Creek Tribal Council, Fort Bidwell Community Council, Fort Independence General Council, Hoopa Valley Business Council, La Jolla General Council, Laytonville General Council, Lone Pine Tribal Council, Manchester Community Council, Morongo General Council, Pala General Council, Pauma General Council, Pechanga Tribal Council, Rincon Business Committee, San Manuel General Council, San Pasqual General Council, Santa Rosa General Council Rancheria, Santa Rosa General Council Reservation, Santa Ynez General Council, and Soboba General Council.

Tuolumne Community Council, Twenty-nine Palms General Council, Viejas Tribal Council (Baron Long), Resighnini Rancheria, Inter-Tribal Council of California, Big Laguna Rancheria, Bridgeport Indian Colonoy, Cold Springs Rancheria, Hopland Rancheria, Stewart's Point Rancheria, Cycuan Reservation, and Table Mt. Reservation.

Colorado: Southern Ute Tribal Council, and Ute Mountain Tribal Council.

Florida: Miccousukee Business Committee, and Seminole Tribal Council.

Idaho: Coeur d'Alene Tribal Council, Fort Hall Business Council (Shoshone-Bannock), Idaho Inter-Tribal Conference, Kootenai Tribal Council, and Nez Perce Tribal Executive Committee.

Iowa: Sac and Fox Tribal Council.

Kansas: Iowa Executive Committee, Kickapoo Tribal Council, and Prarie Potawatomi Business Committee.

Michigan: Bay Mills Executive Council, Hannaville Community Council, Inter-Tribal Council of Michigan, Keweenaw Bay Tribal Council (L Anse), Michigan Inter-Tribal Education Committee, and Saginaw-Chippewa Tribal Council (Isabella).

Minnesota: Boise Forte Reservation Business Committee, Fond du Lac Reservation Business Committee, Grand Portage Reservation Business Committee, Leech Lake Reservation Business Committee, Mille Lacs Reservation Business Committee, Minnesota Chippewa Tribal Executive Committee, Red Lake Tribal Council, and White Earth Reservation Business Committee.

Montana: Blackfeet Tribal Business Council, Chippewa Cree Business Committee (Rocky Boy's), Crow Tribal Council, Flathead Tribal Council, and Fort Belknap Community Council.

Nevada: Duckwater Shoshone Tribal Council, Fallon Paiute Shoshone Business Council, Pyramid Lake Paiute Tribal Council, and Shoshone Paiute Business Council (Duck Valley).

New Mexico: Mescalero Apache Tribal Council, Navajo, Picuris Pueblo Council, and Tesuque Pueblo Council.

New York: Cayuga Nation, Oneida Nation of New York, and St. Regis Mohawk Council of Chiefs (Akwesasne).

North Dakota: Devils Lake Sioux Tribal Council (Ft. Totten), Port Berthold Tribal Business Council, Standing Rock Tribal Council, Turtle Mountain Tribal Council, and United Tribes Education Technical Center.

Oklahoma: Absentee-Shawnee Business Committee, Caddo Executive Committee, Cheyenne-Arapaho Business Committee, Citizen Potawatomi Business Committee, Comanche Business Committee, Creek Nation of Oklahoma, Delaware Executive Board, Eastern Shawnee Tribal Council, Fort Sill Apache Business Committee, Iowa Tribal Council, Kaw Business Council, Kickapoo Council, Kiowa Business Committee, Miami Business Committee, Otoe-Missouri Business Committee, Ottawa, Pawnee Business Council, Peoria, Ponca Business Committee, Quapaw Tribal Business Committee, Sac and Fox Business Committee, Seminole Nation (Oklahoma), Seneca-Cayuga Tribal Business Committee, Tokawa Business Committee, Wichita Executive Committee, and Wyandotte Council.

Oregon: Umatilla Board of Trustees and Warm Springs Tribal Council.

South Dakota: Lower Brule Sioux Tribal Council, Oglala Sioux Tribal Council (Pine Ridge), Rosebud Sioux Tribal Council, Sisseton-Wahpeton Sioux Tribal Council, Standing Rock Sioux Tribal Council, and Yankton Sioux Tribal Business and Claims Committee.

Utah: Uintah and Ouray Tribal Business Committee.

Washington: Chehalis Business Council, Colville Business Council, Kalispel Business Committee, Lower Elwha Community Council, Lummi Business Council, Makah Tribal Council, Nisqually Community Council, Puyallup Tribal Council, Spokane Business Council, Squaxin Island Tribal Council, Tulalip Board of Directors, Upper Skagit Tribal Council, and Yakima Tribal Council.

Wisconsin: Great Lakes Inter-Tribal Council, Inc., Lac Courte Oreille Governing Board, Lac du Flambeau Tribal Council, Menominee Restoration Committee, Oneida Executive Committee, Red Cliff Tribal Council, Sokaogon Chippewa Tribal Council (Mole Lake), Stockbridge-Munsee Tribal Council, and Wisconsin Winnebago Business Committee.

Louisiana: Chitimacha Tribal Council and Coushatta Tribal Council.

NATIONAL INDIAN ORGANIZATIONS WHICH OPPOSE TRANSFER OF BIA EDUCATION TO DEPARTMENT OF EDUCATION

National Congress of American Indians.
National Tribal Chairmen's Association.
American Indian Scholarships, Inc.
National Indian Education Association.
American Indian Higher Education Consortium.
Coalition of Indian Controlled School Boards.
Association on American Indian Affairs.

Mr. GOLDWATER. Mr. President, I also ask unanimous consent that a letter from the National Congress of American Indians, which also opposes this transfer, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 15, 1978.

Re S. 991.

DEAR SENATOR: On behalf of the National Congress of American Indians, we wish to reaffirm our strong support of the floor amendment to be offered by Senator Stevens to delete the proposed transfer of Indian Education programs from the Bureau of Indian Affairs to the proposed new Department of Education.

We are opposed to the Domenici-Melcher amendments, which do not meet the wishes or needs of American Indian Tribes.

American Indian people believe it is the proposed transfer, itself which would be harmful; and that no amount of perfecting amendments will protect our efforts to provide the best education possible for our children.

Sincerely,

ALBERT W. TRIMBLE,
Executive Director.

Mr. GOLDWATER. Mr. President, I do not want to seem overly critical of putting education in one department, but I can recall when I first came to this body nearly 25 years ago, I wholeheartedly opposed Federal aid to education and I grew to be known as an opponent of education. No. I was an opponent of the Federal Government having anything to do with the education of my children in the elementary schools.

I do not think we have to look far to find out that those of us who opposed Federal aid to elementary education were absolutely right. I think I can withstand any argument that never in the history of this country has elementary education been at such a low level as we find it today, and the States are very rare that can turn out acceptable students for colleges from their elementary school system.

I do not want to risk having a central bureau of education. I am going to oppose this when it comes to a final vote, because I have seen no proof that the Department of Health, Education, and Welfare has adequately handled the educational problem at our elementary level. Forget the college level. The Federal Government has been tied up in colleges ever since we have been a republic. It sometimes makes me laugh to hear people talk about the separation of church and state when this Federal Government has been supporting some of our largest colleges ever since we drew up a declaration.

So, Mr. President, I hope that when the time comes for a vote on the Domenici amendment we can agree to it. I do not think it will do a lot of good, because we have too much dissension between the Indian tribes, and the Senator knows it.

It took us over 25 years in Arizona to bring our 15 tribes together so that they would even talk to each other. It was sort of a victory like we celebrated last night. And even with them now talking to each other we do not get much done, because they are still dominated by one big tribe and the little tribes do not like that.

I do not see how moving Indian education under one department is going to help them, because we have not solved the basic problem of really how to educate them, and I doubt seriously that a department that has not yet contributed anything to the betterment of education amongst white children can hope to do any better in the education of the children of some 400 tribes within our continental limits and 300 tribes in Alaska.

So I am going to vote for the Domenici amendment, because I think it is worth a try, and I am going to oppose putting Indian education under any central agency.

Lord knows, it is bad enough now without messing it up more by putting it under some Federal bureaucracy.

I thank the Chair.

Mr. PERCY. Mr. President, the Senator from Illinois has benefited from listening to the discussion by our distinguished colleague from Arizona, Senator GOLDWATER, who has had a lifelong interest in Indian affairs and has probably done more than any other individual of whom I know to further their legitimate interests and to assist them in every way to stand on their own feet and to be proud Americans.

I know that this comes as probably somewhat of a surprise, but we have 20,000 American Indians living in the city of Chicago. Certainly, regarding the education of those who have decided to move to an urban community, such as Chicago, there is an absolute necessity for them to have a command of the English language.

The Senator from Illinois has been disturbed that once the Indian leaves the reservation, in a sense, and moves into an area like Chicago, the reach, assistance, and help to the American Indians has not always been there.

The Senator from Illinois would have to really disagree, however, with my distinguished colleague that there has been any relationship between the poor quality of education we may have in various areas of the country at the primary level, and the Federal Government's becoming involved. I think the Senator from Illinois would have to say that the quality of education would have been worse. I cannot see that the 8.2-percent average provided in Federal support for the education of our children is in any way controlling our educational system. It is an assist and a help in many areas. There is too much paperwork involved and too much in administrative costs and I would prefer block grants, but I do not think that we can say that the Federal Government is controlling education.

The first priority must be put on moving toward a balanced budget. But as we can relieve costs in other areas we will probably have to assist in education more, providing we can do so in such a way that it leaves control absolutely in the hands of the local community without the hand of the Federal Government intervening.

I would like to go to the amendment of my distinguished colleague, Senator DOMENICI, because the Senator from Illinois——

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. PERCY. Yes, of course.

Mr. GOLDWATER. Mr. President, the Senator from Illinois has brought up yet another problem, and that is regarding those Indians who move from reservations to the cities. Here again you will find no general pattern.

For example, on the reservations of New Mexico, Utah, and Arizona, where the native Indians live, most Indians

who go to school, graduate from college, go back to live with their families to try to improve the life of their families.

I might say that at the present time, and I believe I am right, we have now over 3,000 graduate degrees among our college people; I think we have now 10 Ph. D.'s, two lawyers, and one doctor, and this has been done, I must say, without the aid of the Federal Government. It has been done with tribal funds.

When the Senator gets to the question of what happens to an Indian who comes to Chicago who cannot handle English, then there is a different problem. I think that is a problem that can be handled. If an Indian decides to leave the reservation, I think in the school system of every city there should be a training school—I forget what we used to call it—where basic skills are taught, where the English language is taught so that if he wants to stay, he will not work with any handicap.

We find, say, a Navajo who wants to leave a reservation and come down South to work in the field, he has very little trouble getting along, because he has had a basic knowledge of English. But this is just another problem.

Before the Senator engages with my friend from New Mexico in colloquy I will point out that my chief worry about Federal aid to education has always been that the Federal Government has got its hand too far into the business of running schools in my district. They tell our school system what books are appropriate; they establish standards for teachers; they establish standards for pay. The National Education Association, I think we can say today, is probably the most powerful union in the United States.

My children are all educated or have been exposed to it and have taken various degrees. But I would rather have the parents of my grandchildren have something to say about what the school is going to be like. If they do not like the books that are being used they have a right in Maricopa County, Ariz., to say so, not to be told by some bureaucrat 2,500 miles away in Washington "We know what is best for your child." That, I have to say to my good friend from Illinois, is my basic worry.

I agree with him if we can make this money available in block grants, just write out a check to the State of Illinois or the State of Arizona and get the meddling and no-nothing hands of Washington out of it, I think you would see a great improvement in our educational system.

I thank the Senator for allowing me to finish my little colloquy.

Mr. PERCY. I appreciate the Senator's comments very much, indeed. I think in revenue sharing we have demonstrated that we do best on the Federal level by raising the money and then granting it back to the States and local communities in such a way that there is a minimum of overhead. One-thirtieth of 1 percent is the estimated cost of supervising the revenue-sharing program, which dispenses 6.5 billion a year. We set that up originally so that there would be a minimum amount of paperwork, a minimum amount of bureaucracy, and a maximum leeway in the local community and at the State level. That kind of approach strengthens the Federal system, and I hope we can move in the direction of bloc grants.

Now, to return to the amendment of the distinguished Senator from New Mexico. As I understand it, the amendment now before the Senate would create a National Council on Indian Education; clarify the applicability of the Indian Self-Determination Act and Education Assistance Act to functions which would still be administered by BIA; clarify the trust responsibility of the United States regarding Indian education; and assure that the eligibility requirements for program participation not be modified in any way by the transfer.

If that is the correct understanding of the amendment, the Senator from Illinois would certainly find this an improvement over the pending legislation, and would find it very acceptable. I know of no objection on this side of the aisle.

Mr. DOMENICI. The Senator is correct in his assumption of what it does. As I indicated in my remarks regarding my amendment—and the Senator from Illinois was unavoidably detained at that point—we went through the record of the hearing and found that wherever there were objections by the Indian people or Indian tribes and groups that basically they fit in these categories, and we have attempted to cover all of them by this amendment as best we could. The Senator is absolutely correct.

Mr. PERCY. Mr. President, I ask unanimous consent that Lenora Moragne of Senator DOLE's staff have the privileges of the floor during the discussion of and votes on the pending legislation; and also Alan Bennett of the Governmental Affairs Committee staff, and Eric Hultman of the Judiciary Committee staff, have the same privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I shall not oppose the amendment of the Senator from New Mexico, but I want to make it clear that it does not obviate the need for my amendment, the amendment I shall offer, as soon as the Senator from New Mexico's amendment is disposed of.

It is my understanding that the committee will accept the Domenici amendment. The National Congress of American Indians and all of those with whom I have been working, in connection with the problem pertaining to the transfer of Indian education programs from the BIA to the new Department of Education, are opposed to the Domenici amendment.

I see no reason to have a vote on it, however, because in the event my amendment is adopted, it would strike the section that the Domenici amendment would amend, and it is my understanding that my amendment would carry with it the language of the Domenici amendment in the event it would be adopted.

I just want to make certain the Senate understands that this amendment is not acceptable to the American Indian tribes. It does not have the support of the organizations which do articulate the need of the American Indian people, and I do not think it meets their objections as they presented them to the committee and presented them to those of us who attempt to speak for the Indian people here in the Senate.

Mr. RIBICOFF. Mr. President, the Domenici amendment is acceptable to the manager of the bill. I think it is an excellent amendment. It improves the bill and helps clarify any questions on Indian education.

The PRESIDING OFFICER. The Senator from South Dakota was seeking recognition next.

Mr. ABOUREZK. Mr. President, I just want to say that I would like to be heard a little bit longer in debate on the Stevens amendment, but I will not be able to be present, because I have another commitment I have to get to now. But, before the Senate acts on this amendment, I would like to say a word or two about the Stevens amendment and the proposal by the Government Affairs Committee to transfer Indian education out of the Bureau of Indian Affairs into the new Department of Education.

This is one of the most difficult decisions I have had to make since I have been in politics. The reason is that a great many Indian tribes—not all of them, but a great many—are opposed to a transfer of Indian education functions out of the BIA.

I do not pretend to speak for the Indian people in any respect, but I want to try to describe the relationship between the Indian tribes and the Bureau of Indian Affairs since I have been privileged to deal in the area of Indian affairs. It is a kind of love-hate relationship. In fact, they severely and vehemently dislike the Bureau of Indian Affairs and the patronizing attitude and manner with which the BIA treats tribes and the Indian people themselves. But any time that anybody says "We are going to abolish the BIA" or abolish one of the functions of the BIA, the Indians are the first to rush to their defense.

The reason for that is, I think, that the Indians feel the BIA is all they really have. They are pretty vulnerable. They are subject to attack by the dominant society, by the power establishment in any community in which they live, and they are very much afraid to have any other agency try to represent them, even though they will be the first to confess that the Bureau of Indian Affairs does the poorest job of anybody they can imagine. I do not think any Member of this body will disagree with that.

So my policy has always been to try to do legislatively what the tribes have indicated they wish or want me to do. I would say this is the first time I have departed from that, and I want to make clear my reasons why I am supporting Senator RIBICOFF's and Senator PERCY's attempt to transfer the Indian Education Office out of the BIA into the new department.

I support it simply because I think the very vicious training ground of Indian politics, which is manifested primarily in the area offices around the country, has taken over in this case. Any time the Bureau of Indian Affairs and its very

practiced bureaucrats see a threat to their survival, to their jobs, to their positions, they run to the tribes and say, "This is tantamount to termination."

The word "termination" to Indians is a word like "extermination" is to Jews; it is that serious to them. Any time the Bureau of Indian Affairs talks to the Indian people and says "You are going to be terminated" by this law or this action, they immediately rush to the defense of the Bureau of Indian Affairs, and that is the design. That is deliberate. That is exactly why the bureaucrats do it.

In this instance, I believe the best thing that can happen for the country and for the Indian people is to transfer education out of the Bureau of Indian Affairs and the hopeless state in which it is found in that agency. I do not know how well the Department of Education will do it, but they cannot possibly do it any worse than the Bureau of Indian Affairs has done, and for God's sake I hope they can do it better.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. ABOUREZK. I yield.

Mr. GOLDWATER. Mr. President, I find myself in absolute and complete accord with my friend from South Dakota in his remarks about the BIA. They do try to prevail on Congress, they do try to prevail on the tribes.

But as I said before the Senator came to the floor, as bad as the BIA has been, I think we have in HEW a perfect example of how not to run the country. That is the major reason why I am going to object to transferring this function, not that I think they are going to be any better off under BIA, particularly, but at least we have the BIA moving more in the Indians' direction now than they ever have before. I have seen such disastrous results to education under HEW that I cannot abide the thought of extending that to any other group of people. I just hate to think of an education department having anything more to do with teaching white children or black children or Mexican-Americans. They just are not geared to do the job, and the major reason, I believe, is that they are under the complete domination of the National Education Association. I would rather take my chances as a part of the BIA than to join the new Department of Education.

Mr. RIBICOFF. Mr. President, if the Senator will yield for a moment, I think this colloquy between the Senator from Arizona and the Senator from South Dakota indicates the need for a Department of Education.

I agree completely with my distinguished colleague that education under HEW has not done the job. Let me explain something to the distinguished Senator from Arizona.

In a period of 12 years, we have had 13 different Commissioners of Education. There has been no continuity. The Secretary of HEW has so many programs, so many tasks, and so many burdens, the one segment of the department that gets the least attention is education. That was a concern of mine when I was Secretary, and it has been a concern of every succeeding Secretary. When these outstanding educators come into HEW to administer education programs, they feel the frustration, they feel the lack of progress that has been called to our attention by the distinguished Senator from Arizona. We realize, with all the money we are spending and the lack of progress that is being achieved, the time has come to pull all the education programs under a Secretary of Education who has the necessary authority.

Just a year ago the Commissioner of Education had to go to a conference with the President at the White House. When he came to the gate, the attendant at the gate did not know who he was and would not let him in. You cannot imagine that happening with a member of the Cabinet; at least he could come in by the door. The Commissioner of Education cannot come in the front door.

I am deeply impressed with the discussion that has taken place. I think it is most important to have this discussion between the Senator from Arizona, the Senator from Alaska, the Senator from New Mexico, and the Senator from South Dakota, because we are involving here men who have specific knowledge and experience with Indians and Indian education. The time has come to bring these matters out in the open, because the statistics we have on Indians show that Indian education is an absolute disgrace, that the Indians are being shortchanged. We find that the record shows that today the achievement rates of Indian students continue to stay far below the national average. Dropout rates for Indian children at the elementary and secondary level exceed 50 percent. Dropout rates for Indian students in post-secondary institutions exceed 75 percent.

I listened with a great deal of interest to the deep knowledge of the mores, experience. and customs of the Indians in Arizona as related by the Senator from Arizona. That is the first I had ever heard it. I respect it, and I respect the need and the desire of the Indians to preserve their traditions. I love traditions. I do not want to eliminate tradition. I think it is absolutely essential that we keep in continuity the past, the present, and the future. A society disintegrates which dishonors the past.

But what we are seeking, with the help of the Senator from New Mexico and the Senator from South Dakota, is to try to assure that as a result of this debate and discussion, when the Secretary of Education comes into office, when there is an Assistant Secretary for Education in Indian Affairs or Indian Education, they will look at this record and understand that there is a concern.

The concern is not just on the part of Senators from States with Indians; it is a concern that every American has, a concern that every Senator has, to improve education and not to neglect the Indians, not to neglect the Indian children.

That is why I accepted the amendment by the Senator from New Mexico and the Senator from Montana.

I felt that what they were doing was nailing down, and nailing down tightly, that there would be no encroachment whatever on Indian prerogatives and Indian rights. This has been doubly assured by the Senator from South Dakota.

The Senator from South Dakota has talked to me numerous times, and he has told me of his concerns. He has told me about the rivalries. He has told me of his commitment to the welfare of Indians. I do not think anyone in this country has to have an explanation from the Senator from South Dakota when it comes to Indians, and everything that has to do with Indians and human beings. I welcome his support for this improvement.

May I say to the distinguished Senator from Arizona, irrespective of when or how this bill comes into existence—and I hope that the Indian education will be part of this measure—I personally will continue to work with the Senator from Arizona, the Senator from New Mexico, the Senator from South Dakota, and the distinguished chairman of the Subcommittee on Human Resources, the Senator from Rhode Island, to assure that we improve the education of Indian children.

I think one of the great disgraces in America in the treatment of the lowest ebb of any segment of the American population must be reserved for the Indians of our Nation.

Out of this colloquy, I am positive will come a great improvement in Indian education, the colloquy from the people on this floor who are for this measure and those who are against this measure.

I express my appreciation and gratitude to the Senator from South Dakota, the Senator from New Mexico, and the Senator from Arizona, whether they support this proposal or not.

Mr. ABOUREZK. Mr. President, I think what Senator GOLDWATER said about educational programs in HEW are severely lacking is very accurate. I do not disagree with that at all. Like Senator RIBICOFF, I am very hopeful that things will improve under the Department of Education.

I want to say another word about the Bureau of Indian Affairs, and the area directors in particular who have mastered the art of Indian politics to probably the highest degree. One director of the Indian health service said in my presence once that Indian politics would be a good training ground for anybody who wants to run for President. I think it is probably true. It is the most cutthroat kind of politics I have ever seen in my life. Anybody who has been involved in it would not disagree with that.

I was going to use another word there but I thought better of it. [Laughter.]

In any event, I had a hearing earlier this year on the Bureau of Indian Affairs. One of the witnesses used to be a superintendent in the Bureau of Indian Affairs. He later came on my staff as an Indian specialist after he left the Bureau of Indian Affairs. In fact, I hired him from the Bureau of Indian Affairs. He had more knowledge of the internal operations of the BIA than anybody I had ever seen. He was a critic of the BIA who had worked for them for years and maintained his honesty and independence all that time, which is very difficult to do.

He described the actions of the area directors and those other politicians, bureaucrat politicians, in the Bureau of Indian Affairs. He described them with two words: survival management. He said it is survival not of the Indian people, but of the bureaucrats in the BIA. That is all they are concerned about, nothing else. Survival of their jobs, of their positions, of themselves. And the more the Indians fail, the more happy they are and the more successful they become. That is exactly what it is.

No matter how bad it is in the Department of Education or in HEW, I do not think it can be as bad as in the Bureau of Indian Affairs. I will say why. Even though they stopped the practice, for a number of years they were experimenting on Indian children on how to get rid of the Indian problem by getting rid of Indians. They did it by taking children out of their homes. They took them away from their mothers, took them to a boarding school, and never let them see their families again.

They have stopped that practice, thank God. But who knows when this bunch of experimenters will start it again? If there is a permissive Congress, if there is nobody here jumping at them, they might just try it all over again. They say one way to treat the Indians is this way and another is that way, but, "We know what is good for the Indians."

Mr. GOLDWATER. Will the Senator yield?

Mr. ABOUREZK. I yield.

Mr. GOLDWATER. I cannot argue with what the Senator said about the Bureau of Indian Affairs. I fought this group before I got into politics. I have tried my influence on every President I have known. I have tried all during my life to get something done about it. As the Senator said, they are a pretty powerful bunch. I think one of the mistakes I made in 1964 was I did not go to their school long enough.

If the Senator will further yield for a moment, I just want to relate a problem or two that we are going to be faced with, and which the BIA is faced with.

I have to say that in my first 12 years here I served on the Educational Subcommittee and I had the pleasure of being chairman of it for one term. The distinguished chairman from Connecticut has mentioned the record of Indians. I think if we took it across the board, the record might even be worse. We can take isolated cases of isolated tribes where their school attendance records are as good as the whites, where their ambition to go further in education is every bit as good as the whites. I cannot say that these are in the majority by any means, but they do exist.

The Senator from South Dakota is well aware of the problem that I am going to mention. The biggest tribe in this country, the Navaho tribe, almost 140,000 people, live in what we call seminomadic conditions. They do not live in pueblos like the Hopis, Zunis, and other tribes in our Southwest. They live in isolated family groups. Here there may be two or three hogans, which is what they call their house, and over here, 10 miles, is another one.

When it comes time to getting these children in school, talk about a problem of busing. We have been wagoning and busing Indian children as long as I can remember, trying to get them to the few schools that we can afford. I do not advocate that we build a school at every crossroads. We could not do that.

For example, children who live where the Senator and I have just visited, in Black Mountain, live 40 miles from the nearest high school. So they ride horseback or they walk and stay in the town where the high school is.

This is not going to be an easy problem to change. I would hope that we could magically bring these seminomadic peoples into living in the communities where they could develop schools, hospitals, and their own industrial abilities.

I might mention that when we are talking about Indians, particularly the Indians I know, we are not talking about what I would call dumbbells. The highest IQ's known to this country come out of the Hopi Indian children. Do not ask me why. We have been investigating that for years. But I can say that standing outside the Indian school in Phoenix will be all of the electronics people from the factories around Phoenix, waiting to grab ahold of a Hopi young man. Here is a young man who probably never saw a light bulb before he went to school. Yet give him 2 months on schematic drawings and he can outproduce any white man in the institution. Why? We do not know.

Two of the best men I have ever appointed to the military academies have been Hopi Indians. They outperformed the whites all around the periphery of the big reservation.

So, again, we are not dealing with people who do not have basic knowledge. We are dealing with people who just have not had exposure to schools. I must say where they have been exposed to schools they have not been the kind of schools we would like to see.

In summing up, Mr. President, we do have problems. I do not care whether it goes over to another bureau or remains with the Bureau of Indian Affairs; getting our Indian children to school or getting them to stay in school is not an easy thing.

I think of one more thing. One of the prosperous crops of my Navajo Indians is what we call the piñon nut. It comes off the pine tree. Every first frost of October, all the kids quit school and go out and pick piñon nuts. Those are the little things that happen out of adherence to their family ways of life and their culture, their religion. We are not going to solve this thing, as much as we would like to. If the move is successful to put this under one bureau, I shall help in every way that I can, because I should like to see the education of our Indians improved. I should like to see their chances improved with the white people when they go out to work among them.

I thank the Senator.

Mr. DOMENICI and Mr. BARTLETT addressed the Chair.

The PRESIDING OFFICER (Mr. INOUYE). Who yields time?

Mr. RIBICOFF. There is no control over time. The Senator is entitled to whatever time he wants.

Mr. STEVENS. I have the management of the time on this side. Does the Senator from Oklahoma wish some time?

Mr. BARTLETT. Yes, I should like to speak on this if someone will yield to me. I do not know whether the Senator has any time or not.

Mr. RIBICOFF. There is a half hour on the Domenici amendment, but I would be pleased to yield on the bill to the distinguished Senator from Oklahoma.

Mr. DOMENICI. I wonder if the Senator from Oklahoma would have any objection to adopting the Domenici amendment? I understand the Senator from Oklahoma wants to oppose the transfer. However, this has nothing to do with the Domenici amendment.

Mr. BARTLETT. I wanted to speak very briefly on the amendment. I oppose the amendment.

Mr. DOMENICI. Fine.

Mr. BARTLETT. Mr. President, I have here from Albert W. Trimble, executive director of the National Congress of American Indians, the letter which was introduced earlier by the distinguished Senator from Arizona (Mr. GOLDWATER). In that letter, on behalf of the National Congress of American Indians, he expresses strong support of the floor amendment by Senator STEVENS. He also opposes the Domenici-Melcher amendment, which does not, according to him, meet the needs or wishes of the American Indian tribes.

My personal opinion is that the Domenici amendment really does not do anything. It does not really provide any needed clarification. Therefore, it is just a sort of camouflage for the bill itself.

I am very concerned about the bill. I am tempted to talk on the bill because the other Senators were discussing provisions that are in the bill, but I shall not do that. I just want to express my opposition to the Domenici amendment and that I hope it will be voted down.

Mr. DOMENICI. Mr. President, I understand the basic issue as to whether or not Indian education should be transferred to the Department of Education. I hope we will hear a lively debate on the transfer issue this afternoon.

In all deference to my good friends (Mr. BARTLETT and Mr. GOLDWATER), who have indicated that there is Indian opposition to this Domenici-Melcher amendment which clarifies the treaty language, I do believe that the opposition is based upon opposition to the transfer in toto, not to the clarifying amendments. I cannot imagine that they would really be opposed to a clarification which stipulates that the Indian Self-Determination and Education Assistance Act still applies after the transfer.

I cannot imagine that Indian preference and its clarification being attendant on transfer are opposed by these various groups.

I do not believe that a National Council on Indian Education advising the Assistant Secretary would be opposed. I believe the opposition stems from the fact that many of those groups—and I acknowledge that—do not want the Bureau of Indian Affairs to get out of the

education business at all. It is for that reason that they oppose the amendment.

I yield my time and move the adoption of the Domenici amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask unanimous consent that the privilege of the floor be granted to Richard Jerve of the staff of the Committee on Human Resources; Mark Ash and Allen Bloom of Senator METZENBAUM's staff; Tom Polgar of Senator MORGAN's staff; and Karyn Mandan of Senator CRANSTON's staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I commend the Senator from New Mexico for his clarifying amendment. I think it is a very useful and good thing to have.

I also want to say how much our Subcommittee on Education has appreciated the opportunity of working with the Committee on Governmental Affairs toward this excellent bill that has emerged. I am delighted at the opportunity for cooperation that has been given to our staff and to us.

The bill that is before us, I think, is a truly excellent one, one in support of which I am glad to rise. It creates a Cabinet-level Department of Education. I have long supported such a department and I am proud to be an original cosponsor of this legislation.

Why? The education division alone has a budget of $9.1 billion, more than the budget of four Cabinet agencies. Yet this division, made up of the offices of the Assistant Secretary of Education, the Office of Education, and the National Institute of Education, would be only a part of the Department of Education as envisioned in S. 991. S. 991 would also include in the new Department the Education Directorate of the National Science Foundation, along with the school lunch programs, the overseas dependent schools, Indian education, now as clarified by the excellent Domenici amendment, and college housing programs.

While I recognize that inclusion of these programs may be controversial to some of my colleagues, I believe that the Senate should support as broadly-based an Education Department as possible.

Current education efforts are fragmented among a large number of agencies, with no mechanism to coordinate their provisions or to measure their impact on States, school districts, and institutions. A single department would provide the structure for such coordination.

In addition, it is my belief that funds for education are kept artificially low by the very structure of the Department of Health, Education, and Welfare. More than 90 percent of HEW's budget is considered uncontrollable, as costs of such programs as social security and medicare rise annually.

As a result, the portions of the HEW budget which are subject to the annual appropriation process continue to feel the squeeze of static funding. Education, as the largest controllable program area in HEW, is always the area that budget-cutters look to first as they seek to keep funding at a reasonable level.

Cabinet-level representation for education would allow education to be judged on its own merits, rather than in competition with other domestic programs with scarce dollars. It would also provide for direct access to the President of the voice of education.

This voice deserves to be heard, for education is vital to our Nation's continued growth and development. More than 65 million people are involved in education enterprises, nearly one in every three of our citizens. Surely an "industry" of this size and scope deserves Cabinet rank.

Finally, I note President Carter's deep commitment to the creation of a Department of Education, and I applaud him for that commitment.

In conclusion, I wish to say what an excellent job I believe the Senator from Connecticut, as chairman of the Committee on Governmental Affairs, has done, and what a fine bill it is. Think how many years it has taken to emerge, and, thanks to the Senator from Connecticut, it is finally adopted and voted on.

Mr. RIBICOFF. I thank the distinguished Senator from Rhode Island because, under his leadership, we have made great strides in education. The Senator from Rhode Island is concerned and knowledgeable in this entire field. His support for this Department has great significance and meaning, because his responsibility in the authorization process in all education programs gives him the special insights into why we need this Department.

Accompanying him in this support is the distinguished Senator from Washington (Mr. MAGNUSON), chairman of the Appropriations Committee. Hardly a day goes by that Senator MAGNUSON does not ask me, "When is this bill coming up?" Because of his responsibility for education appropriations, there is no one in this body who is more concerned with the necessity of having a separate Department of Education to make sure that the job is being done and the full amount of taxpayers' value is being received from the sums we are spending in the field of education.

AMENDMENT NO. 3588

(Purpose: To eliminate the transfer of Indian education programs from the Secretary of the Interior to the Secretary, and for other purposes)

Mr. STEVENS. Mr. President, I call up my amendment No. 3588.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for himself, Mr. YOUNG, Mr. GOLDWATER, Mr. CHILES, Mr. ANDERSON, Mr. BARTLETT, Mr. CHURCH, Mrs. HUMPHREY, Mr. HANSEN, Mr. BURDICK, Mr. JACKSON, Mr. GRAVEL, and Mr. MATHIAS proposes amendment numbered 3588.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 48, strike out line 1.

On page 48, line 2, strike out "(C)" and insert "(B)".

On page 48, line 3, strike out "(D)" and insert "(C)".

On page 48, line 5, strike out "(E)" and insert "(D)".

On page 48, line 7, strike out "(F)" and insert "(E)".

On page 48, line 9, strike out "(G)" and insert "(F)".

On page 48, line 11, strike out "(H)" and insert "(G)".

On page 48, line 12, strike out "(I)" and insert "(H)".

On page 48, line 13, strike out "(J)" and insert "(I").

On page 48, line 14, strike out "(K)" and insert "(J)".

On page 49, strike out lines 3 through 7.

On page 51, beginning with the word "programs" on line 3, strike out through the word "individuals" on line 6 and insert "certain programs relating to the education of Indians, Alaskan Natives, and Aleuts".

On page 56, line 8, strike out "section 304" and insert "section 303".

On page 56, beginning with line 15, strike out through line 13 on page 58.

On page 58, line 16, strike out "SEC. 212." and insert "SEC. 211.".

On page 59, line 6, strike out "section 305" and insert "section 304".

On page 59, line 11, strike out "SEC. 213." and insert "SEC. 212.".

On page 60, line 4, strike out "SEC. 214." and insert "SEC. 213.".

On page 60, line 12, strike out "SEC. 215." and insert "SEC. 214.".

On page 66, line 2, strike out "SEC. 216." and insert "SEC. 215.".

On page 75, strike out lines 7 through 24.

On page 76, line 3, strike out "SEC. 304." and insert "SEC. 303."

On page 77, line 14, strike out "SEC. 305." and insert "SEC. 304.".

On page 78, line 12, strike out "SEC. 306." and insert "SEC. 305.".

On page 78, line 21, strike out "SEC. 307." and insert "SEC. 306.".

On page 79, line 3, strike out "SEC. 308." and insert "SEC. 307.".

On page 79, line 12, strike out "SEC. 309." and insert "SEC. 308.".

On page 82, beginning with line 23, strike out through line 12 on page 83 and insert the following:

"(e) Nothing in this Act shall be construed to prevent the application of any Indian preference law in effect on the day before the date of enactment of this Act to any function transferred by this Act and subject to any such law on the day before the date of enactment of this Act. Any function transferred by this Act and subject to any such law shall continue to be subject to any such law.".

On page 86, between lines 9 and 10, insert the following:

"(J) Office of Indian Education;".

On page 86, line 10, strike out "(J)" and insert "(K)".

On page 86, line 11, strike out "(K)" and insert "(L)".

On page 87, strike out lines 9 and 10.

On page 87, line 11, strike out "(4)" and insert "(3)".

On page 87, line 14, strike out "(5)" and insert "(4)".

On page 106, line 1, strike out "(9)" and insert "(8)".

On page 107, beginning with line 20, strike out through line 15 on page 112.

On page 112, line 18, strike out "SEC. 511." and insert "SEC. 510.".

On page 113, line 2, strike out "SEC. 512." and insert "SEC. 511.".

On page 113, line 19, strike out "SEC. 513." and insert "SEC. 512.".

On page 40, in the table of contents, strike out item Sec. 211. and redesignate items Sec. 212. through Sec. 216. as items Sec. 211. through Sec. 215., respectively.

On page 40, in the table of contents, strike out item Sec. 303. and redesignate items Sec. 304. through Sec. 309. as items Sec. 303. through Sec. 308., respectively.

On page 41, in the table of contents, strike out item Sec. 510. and redesignate items Sec. 511. through Sec. 513. as items Sec. 510. through Sec. 512., respectively.

Mr. STEVENS. Mr. President, I ask unanimous consent that these amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, it is with deep regret that I rise to oppose the chairman of our committee with regard to one of the provisions of this bill. Although I am not a cosponsor of this bill, I do believe in the establishment of a separate Department of Education.

I do believe, however, because I was called on as a member of the Governmental Affairs Committee to chair the hearing when the Indian people from throughout the country came in to object to this particular provision that my amendment would delete, or the total concept of my amendment would delete, the transferring of the Bureau of Indian Affairs' schools and education programs from the Department of Interior to the new Department of Education, that it is incumbent upon me to speak at some length about it.

The Indian people of our country made a great case when they came before the Governmental Affairs Committee and pleaded with us to delete these provisions that would transfer the BIA schools and education programs from the Department of the Interior to the new Department of Education.

I say this without criticism of other members of the committee because I know we are all busy, but I was there alone, and these people came in from throughout the country, distinguished leaders of their own communities, who represented a great many Indian tribes that have existing relationships with our Federal Government, and they opposed this provision.

There are some from the Indian community who disagree. But the overwhelming majority of the American Indian people oppose the transfer of the BIA schools and education programs as contemplated by this bill.

For example, the National Tribal Chairmen's Association and the National Congress of American Indians, representing over 200 tribes nationwide, testified against this transfer at the hearing I chaired. At that time it was quite clear that the Indians oppose this administratively forced transfer. They oppose it because they feel that the bill does not adequately address trust responsibility or their tribal sovereignty rights.

As has been stated, and the Senator from Oklahoma put the letter from the National Congress of American Indians in the RECORD, they do not feel the Domenici amendment protects those rights and they oppose the bill's provisions even as amended by the Domenici amendment.

I spent a substantial portion of my career in the Department of the Interior and was Chief Counsel of the Department of the Interior.

I know the defects of the BIA operation as it has applied to the Indian trust responsibility despite the good intentions of the BIA.

The Indians themselves have been very forceful in their criticism of the BIA operations. But to be categorical and to be concise and candid about criticism does not mean they seek to do away with the entity that now is showing responsiveness to their needs.

The Bureau of Indian Affairs has had the historic responsibility of fulfilling treaty and statutory obligations to the tribes for over 100 years. This is what the Indians refer to as trust ressponsibility. With it go the assurances that include tribal involvement in the development of Indian policy, standards for recognition, and eligibility of members of the federally recognized tribes for services, assurances of Indian preference in hiring, and processes for implementation of the Indian Self-Determination and Education Assistance Act.

Just 3 years ago we passed the Indian Self-Determination and Education Assistance Act. This act recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities, to make these services more responsive to the needs and desires of those communities. I am convinced that we are breaking the promises we made in that legislation if this forced transfer of BIA schools and education programs is mandated by the Congress.

Mr. President, as one who served for some 6 years on the Interior Appropriations Subcommittee of our Appropriations Committee in the Senate, let me point out one of the major defects in this proposal.

All of the Indian matters that come before the Appropriations Committee are in the Interior Appropriations Subcommittee coverage.

We deal with housing programs, we deal with employment programs, we deal with community programs of water and sewer, we even deal with the health service that normally would be in the HEW budget.

We deal most specifically with the educational needs of the Indian community in relationship to all of the other requirements for Federal funding.

I think the record is clear that we have had an increasing response to the requests of the Indian community as they have come forward under the Indian Self-Determination Act to be more and more involved in the education of their children.

Now it is proposed to take the school functions, the BIA programs, away from BIA and put them in the new Department of Education, a department that has no track record, a department that deals with different committees in the Congress, both authorization committees and appropriations committees. It deals with people that had nothing to do with Indian affairs and will have nothing else to do with it except as it might involve the Department of Education.

If self-determination means anything, it means the Indian people ought to be listened to in terms of how Congress reacts to their demands.

I think that nothing will show that the Federal Government speaks still with forked tongues to the Indian people than to do this, to transfer the Indian function for education to the new Department of Education against their will.

People talk about self-determination around here. The Indians have spoken and we have an obligation to listen to them.

The whole point of self-determination is to allow the decisions affecting Indians to be made in the tribal council rooms and not in Washington, D.C.

Congress jeopardizes that commitment if we allow this transfer against the express wishes of the American Indian people.

Self-determination is just now beginning to take hold firmly in the Indian community. Ten years ago there were two tribally operated contract schools. Now there are 35, and a number awaiting contracts when funds become available.

Indians and Alaskan Natives are going to college for the first time in significant numbers. These college-educated Indians hold the promise of a better future for Indian education, better than the new megastructure such as the Department of Education could provide.

A promise was made to the Indian community by this administration that tribal leaders would be consulted before initiating changes that would directly affect them.

This bill is in direct violation of that promise. The least we can do in the Senate is to respect the stated wishes of the native Americans and provide an opportunity for tribal input before restructuring Indian education programs.

The House Committee on Government Operations wisely chose to leave the Bureau of Indian Affairs schools and education programs in the Department of the Interior.

I realize some of my colleagues may object to leaving schools and education programs with the Bureau of Indian Affairs because of the shortcomings of the Bureau's past efforts in education, and those have been commented upon here before. As I said, as the ranking minority member on the Interior Appropriations Subcommittee, I know something of those complaints, too.

Some of my colleagues in the Senate may be familiar with a GAO study completed recently outlining the problems in BIA education. This study has identified areas where improvement is required and has recommended changes. The Bureau deserves the opportunity to try to correct these problems, and the Indian people who are becoming more

and more in control of BIA deserve the right, under self-determination, to try to bring the Bureau around as they believe it should be operated under the Indian Self-Determination Act. I do not think we will accomplish anything by sending these same problems over to a new department of education, which will be disorganized and getting its feet wet in many other pressing issues.

But it needs a track record first, to justify the support of the Indian people over the Bureau, when the Bureau now has shown, in recent years, an inclination to make the changes that are requested by the Indian people.

Several years ago, Dr. Rufus Miles, of Princeton, who was formerly Director of Administration at HEW, did a study on a Cabinet level Department of Education which served as the basis of the legislation before us today.

It was Dr. Miles' recommendation that the Indian education programs remain in the Bureau of Indian Affairs because the Office of Education has no trained professionals in school administration and cannot fulfill the goals of the Indian Education and Self-Determination Act. He further stated that moving Indian education to the Department of Education would be an encumbrance on the new Department and hamper its chances for success. If the Indian schools were poorly managed, it would lead to severe criticism of the top level management of the new Department, thus tending to subordinate the Department's leadership and planning responsibilities to those of the day-to-day administration of a school system.

Let me emphasize that. Nowhere else in the Federal Government is there day-to-day administration of a school system as there is in the Indian area.

If the Department were successful in significantly upgrading the level of Indian education programs, it could lead to pressures for the Federal Government to become more directly involved in the day-to-day operations of schools throughout the Nation.

So, in addition to being a poor alternative from the point of view of the Indians, so far as the original proponent of this Cabinet level Department of Education is concerned, it was a no-win proposition for the new Department to be saddled with this additional responsibility.

All of the other programs which are being put into the new department are now part of the Department of Health, Education, and Welfare. The school nutrition programs and the Head Start programs will remain in their current status. Some might say that these programs are not truly educational in nature and that Indian education is so we need to consolidate all of the Federal efforts in this area.

The significant difference between BIA education programs and the other Federal educational activities is that the Bureau, in many instances, acts as a local educational agency. The Bureau is responsible for hiring teachers, determining curriculum, building maintenance, building construction, running boarding schools, and a host of other activities which set it apart from the grant and loan processing functions of the present Office of Education. It is quite possible that the native American community may, at some future date, choose to have the BIA education programs included in the Department of Education. The point is that the choice should be theirs. Other than producing a nice diagram of Federal education activities, I would challenge any of my colleagues to tell me how the lot of the individual Indian child will be improved if the Indian education programs are consolidated in this new department. They will have the same teachers, the same books, the same building, and the same funding. But they will lose control, because under the BIA, the Indian people now know they have control over their education programs.

The education budget of the Bureau of Indian affairs is the single largest account—and one of the largest within the entire Department of Interior. However, it pales in comparison to the title I programs, impact aid funding, and basic educational opportunity grants of the Office of Education. The BIA education function in connection with the HEW education budget is miniscule, but it is extremely important to the Indian people. In Interior, the problems stand out, and thus the Interior Appropriations Subcommitte is in a position to push for improvements that are necessary. In the Department of Education, attention will be focused on the big money accounts and the Indian education program will be the forgotten stepchild. Grants-manship is what gains attention in HEW. The individual Indian child and his family count at the Bureau.

The Office of Indian Education, now part of the Department of Education, has not, in my opinion, and that of the Indians, proved to be a success. They fund a program for 1 year only—with no guarantees for a continuation grant. Just as the people have begun working on the part B and C program funded in 1 fiscal year, they have discovered that they will not be refunded for the next year. Education in the Indian community cannot work that way. A long-term commitment must be made. We cannot allow the education of Indian children to be affected by every new educational fad which sweeps the Nation. With the Bureau programs offering the only opportunity for direct Federal intervention in education from kindergarten through college, I can foresee the native American children being used as guinea pigs for every new scheme developed by the National Institute of Education, the Office of Bilingual Education and the Office of Civil Rights. The way this bill now stands, we have no guarantee that this will not happen.

This would be the only operation portion of the new Department of Education. In the day to day operation of schools, in the maintenance of schools, this is the only involvement in the curriculum directly from a Federal level.

Within this new department, if this bill is passed as it stands, is the perfect test tube area to try out all the new dreams and schemes of those people who are involved in the new Department of Education. I can see that the Indian people do not want that to happen, and they want a way to guarantee that it will not happen. So they have asked many of us personally to take an interest in this bill for the purpose of trying our best to take out of this bill the proposals to transfer the BIA education programs to this new department.

I cannot emphasize enough the importance of the Indian self-determination act during consideration of this new department. The American Indian community is watching us to see if we will live up to that commitment we made, in which the Federal Government—Congress and the Executive—promised Indian control over Indian programs to the maximum extent possible. If we force this transfer, against almost the unanimous objection of the tribes, we will have done irreparable damage to the Federal relationship with the Indian tribes and Alaskan Native people. Congress will have demonstrated to the Indian people that the Federal Government does not truly believe that Indians are capable of knowing what is best for themselves; and in the final analysis, without regard to their views, Congress and the executive branch will have the final say.

I urge that the Senate adopt this amendment, which has been cosponsored by Senator YOUNG, Senator GOLDWATER, Senator CHILES, Senator ANDERSON, Senator BARTLETT, Senator CHURCH, Senator HUMPHREY, Senator HANSEN, Senator BURDICK, Senator JACKSON, Senator MATHIAS, and my colleague from Alaska. This would leave the Indian education programs where they are, in the Department of the Interior, where the Indians feel they have the most recognition and will receive the best treatment in the future.

Mr. President, I take great pleasure in announcing that the chairman of the Committee on Energy and Natural Resources, my good friend from Washington, Senator JACKSON, supports this amendment.

I call attention to the fact that after this year is passed, the jurisdiction over Indian affairs will revert to his committee.

I note also that Senator BARTLETT, who has been the ranking Republican on the Select Committee on Indian Affairs, opposes the provisions of the bill and supports my amendment.

We have contacted over 200 tribes or Indian organizations that have asked to be listed as opposing the transfer of these function to the new Department of Education.

I point out, significantly, that leading that list is the Alaska Federation of Natives, which represents 201 Indian, Eskimo, and Aleut villages. About 75,000 Native American people in the AFN oppose the provisions of this bill, as I have stated.

Mr. President, I ask unanimous consent that the position of these organizations which represent these federally recognized tribes be printed in the RECORD.

There being no objection, the material

was ordered to be printed in the RECORD, as follows:

POSITION OF FEDERALLY-RECOGNIZED TRIBES OR ORGANIZATIONS REPRESENTING FEDERALLY-RECOGNIZED TRIBES ON TRANSFER OF BIA EDUCATION TO DEPARTMENT OF EDUCATION

State, tribe or organization opposed to transfer:

Alaska: Alaska Federation of Natives, representing 201 Indian, Eskimo, and Aleut Villages.

Arizona: Ak Chin Community Council Arizona Inter-Tribal Council, Cocopah Tribal Council, Colorado River Tribal Council, Fort McDowell Mohave-Apache Community Council.

Havasupai Tribal Council, Hopi Tribal Council, Hualapai Tribal Council, Kaibab Tribal Council, Navajo Tribal Council, Papago Council, Salt River Pima-Maricopa Community Council, San Carlos Council, White Mountain Apache Tribal Council, Yavapai Apache Community Council (Camp Verde), Yavapai-Prescott Board of Directors, Yavapai Tonto Apache (Payson).

California: Barona General Council, Big Pine General Council, Bishop Tribal Council, Cedarville Rancheria, Covelo Community Council (Round Valley), Dry Creek Tribal Council, Fort Bidwell Community Council, Fort Independence General Council, Hoopa Valley Business Council, La Jolla General Council, Laytonville General Council, Lone Pine Tribal Council, Manchester Community Council, Morongo General Council, Pala General Council, Pauma General Council, Pechanga Tribal Council, Rincon Business Committee, San Manuel General Council, San Pasqual General Council, Santa Rosa General Council Rancheria, Santa Rosa General Council Reservation, Santa Ynez General Council, Soboba General Council, Tuolumne Community Council, Twenty-nine Palms General Council, Viejas Tribal Council (Baron Long), Resighnini Rancheria, Inter-Tribal Council of California, Big Laguna Rancheria, Bridgeport Indian Colony, Cold Springs Rancheria, Hopland Rancheria, Stewart's Point Rancheria, Cycuan Reservation, Table Mt. Reservation.

Colorado: Southern Ute Tribal Council, Ute Mountain Tribal Council.

Florida: Miccosukee Business Committee, Seminole Tribal Council.

Idaho: Coeur d'Alene Tribal Council, Fort Hall Business Council (Shoshone-Bannock), Idaho Inter-Tribal Conference, Kootenai Tribal Council, Nez Perce Tribal Executive Committee.

Iowa: Sac and Fox Tribal Council.

Kansas: Iowa Executive Committee, Kickapoo Tribal Council, Prairie Potawatomi Business Committee.

Michigan: Bay Mills Executive Council, Hannahville Community Council, Inter-Tribal Council of Michigan, Keweenaw Bay Tribal Council (L Anse), Michigan Inter-Tribal Education Committee, Saginaw-Chippewa Tribal Council (Isabella).

Minnesota: Boise Forte Reservation Business Committee, Fond du Lac Reservation Business Committee, Grand Portage Reservation Business Committee, Leech Lake Reservation Business Committee, Mille Lacs Reservation Business Committee, Minnesota Chippewa Tribal Executive Committee, Red Lake Tribal Council, White Earth Reservation Business Committee.

Montana: Blackfeet Tribal Business Council, Chippewa Cree Business Committee (Rocky Boy's), Crow Tribal Council, Flathead Tribal Council, Fort Belknap Community Council.

Nevada: Duckwater Shoshone Tribal Council, Fallon Paiute Shoshone Business Council, Pyramid Lake Paiute Tribal Council, Shoshone Paiute Business Council (Duck Valley).

New Mexico: Mescalero Apache Tribal Council, Navajo, Picuris Pueblo Council, Tesuque Pueblo Council.

New York: Cayuga Nation, Oneida Nation of New York, St. Regis Mohawk Council of Chiefs (Akwesasne).

North Dakota: Devils Lake Sioux Tribal Council (Ft. Totten), Fort Berthold Tribal Business Council, Standing Rock Tribal Council, Turtle Mountain Tribal Council, United Tribes Education Technical Center.

Oklahoma: Absentee-Shawnee Business Committee, Caddo Executive Committee, Cheyenne-Arapaho Business Committee, Citizen Potawatomi Business Committee, Comanche Business Committee, Creek Nation of Oklahoma, Delaware Executive Board, Eastern Shawnee Board, Eastern Shawnee Tribal Council, Fort Sill Apache Business Committee, Iowa Tribal Council, Kaw Business Council, Kickapoo Council, Koawa Business Committee, Miami Business Committee, Otoe-Missouri Business Committee, Ottawa, Pawnee Business Council, Peoria, Ponca Business Committee, Quapaw Tribal Business Committee, Sac and Fox Business Committee, Seminole Nation (Oklahoma), Seneca-Cayuga Tribal Business Committee, Tonkawa Business Committee, Wichita Executive Committee, Wyandotte Council.

Oregon: Umatilla Board of Trustees, Warm Springs Tribal Council.

South Dakota: Lower Brule Sioux Tribal Council, Oglala Sioux Tribal Council (Pine Ridge), Rosebud Sioux Tribal Council, Sisseton-Wahpeton Sioux Tribal Council, Standing Rock Sioux Tribal Council, Yankton Sioux Tribal Business and Claims Committee.

Utah: Uintah and Ouray Tribal Business Committee.

Washington: Chehalis Business Council, Colville Business Council, Kalispel Business Committee, Lower Elwha Community Council, Lummi Business Council, Makah Tribal Council, Nisqually Community Council, Puyallup Tribal Council, Spokane Business Council, Squaxin Island Tribal Council, Tulalip Board of Directors, Upper Skagit Tribal Council, Yakima Tribal Council.

Wisconsin: Great Lakes Inter-Tribal Council, Inc., Lac Courte Oreille Governing Board, Lac du Flambeau Tribal Council, Menominee Restoration Committee, Oneida Executive Committee, Red Cliff Tribal Council, Sokaogon Chippewa Tribal Council (Mole Lake), Stockbridge-Munsee Tribal Council, Wisconsin Winnebago Business Committee.

Louisiana: Chitimacha Tribal Council, Coushatta Tribal Council.

NATIONAL INDIAN ORGANIZATIONS WHICH OPPOSE TRANSFER OF BIA EDUCATION TO DEPARTMENT OF EDUCATION

National Congress of American Indians.
National Tribal Chairmen's Association.
American Indian Scholarships, Inc.
National Indian Education Association.
American Indian Higher Education Consortium.
Coalition of Indian Controlled School Boards.
Association on American Indian Affairs.

Mr. STEVENS. Mr. President, it is my hope that those people who represent these Indian tribes and organizations and the States from which they come will take heed of their position.

Again, I emphasize that the Indian people have informed me that they do support the new Department of Education but they do not support the transfer of these functions to it.

They also have indicated to me that, if they are properly consulted and if the terms under which the transfer will take place in the future were explained to their organizations and discussed with them and their tribal councils, it is entirely possible that they would accept and support a transfer of these functions to the new Department of Education after it has developed a track record. But they should not be compelled to accept what other people think is best for them.

● Mr. JACKSON. Mr. President, I have cosponsored Senator STEVENS' amendment deleting the transfer of the Indian education programs of the Bureau of Indian Affairs to the Department of Education. A good many tribes in my State of Washington have opposed the transfer, including the Affiliated Tribes of Northwest Indians. This transfer would be a setback to Indian self-determination and to the ability of Indian people to control their destiny.

Transfer of these programs to a new, larger, and more diffused bureaucracy would reduce the effectiveness of the Indian education programs by making it ever more difficult for Indian tribes to maintain personal and effective relationships with the Government personnel responsible for Indian programs.

The concept of self-determination is less than 8 years old. That concept, along with Indian preference, is just beginning to make its impact on the BIA, its administrators, and the Indian tribes. The Federal Government does have a special responsibility to provide adequate education for Indian people. The last thing we want to happen is for the children to suffer. Tribal control of education and other contract services is crucial to the continuing improvement of the socio-economic condition of the tribes.

Over my term in Congress, I have consistently opposed bills which would decrease the control all people, and particularly Indian people, have over their own lives and the education of their children. I, therefore, oppose the transfer and support Senator STEVENS' amendment to delete the transfer from S. 991.●

Mr. STEVENS. Mr. President, I ask unanimous consent that Jill Porter, of Senator MATHIAS' staff, be accorded the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. MATHIAS. Mr. President, while I am a cosponsor of S. 991 to create a Cabinet-level Department of Education, I am opposed to those provisions of the bill that would transfer American Indian Schools and education programs from the Bureau of Indian Affairs, Department of the Interior, to the new Department.

The overwhelming majority of American Indian tribes, and the national organizations that represent the tribes' interests, such as the National Congress of American Indians and the National Tribal Chairmen's Association, are against what they perceive to be a forced transfer of their educational programs against their best interests and the best interests of their children. American Indian tribes across the country have contacted the Congress to oppose the transfer.

I urge my colleagues to listen to the virtually unanimous voice of the Indian people in this matter and join the tribes in their efforts to have the transfer deleted.

Felix Cohen, the eminent jurist and former solicitor for Indian Affairs of the Department of the Interior, once proposed a matter-of-fact definition of self-government. Self-government, he said, means that form of government in which decisions are made by the people most directly affected. American Indians have left no doubt that they believe a forced transfer would be harmful to their efforts to make a better life for themselves and their children.

It is now more than 30 years since Felix Cohen proposed his simple definition of self-government, but less than 4 years since Congress said essentially the same thing when we passed the Indian Self-Determination and Education Assistance Act (Public Law 93-638) by overwhelming margins. One of the findings of Congress in that act, whose purpose was to mandate the right of American Indian tribes to operate their own educational as well as other programs, was that:

> The prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities . . . and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities.

The hopes aroused by the Indian Self-Determination Act are, the tribes believe, just beginning to be fulfilled. Ten years ago there were two tribally operated contract schools, today there are 35 and a number more awaiting contracts when funds are available. Ten years ago 2,660 Indian students attended college with the aid of BIA scholarships; today, 20,000 Indians do so.

Perhaps most important, the tribes believe that to transfer their programs against their wishes would violate the principle and spirit of local self-government. Indeed, to force the Indian people into the new Department against their will would be almost to guarantee from the outset the development of an inimical relationship in which educational progress would be impossible.

One of the purposes of S. 991 is to "encourage the increased involvement of parents, students, and the community in the decisionmaking process relating to education." The decision of Indian parents, students, and communities is clear at this point, and I join with them in the hope that the Senate will respect their wishes and support them in their efforts to provide the best education possible for their children through the BIA.

There are no federally recognized Indian tribes in my State of Maryland. However, a danger to the well-being of American Indian tribes endangers all other minorities in our land. "And who of us," Felix Cohen asked, "is not a member of some minority?" ●

INDIAN SELF-DETERMINATION IN EDUCATION

● Mr. CHURCH. Mr. President, I rise today in strong support of the Stevens amendment to S. 991, which would maintain Indian self-determination in their education programs, rather than eliminating it by incorporating them into the Department of Education which S. 991 would establish.

Self-determination has been the paramount desire of Native Americans throughout our history, but it is only in recent years that Congress has seriously responded to this most basic of all human rights. The efforts of Robert F. Kennedy in my own State of Idaho focused congressional attention on the necessity of Indians' being responsible for their own affairs. I joined those efforts, and they led to the enactment of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as recently as 1975.

S. 991 would establish a Cabinet-level Department of Education, and I support that concept. Nevertheless, I must strongly oppose the provisions in S. 991 which would dismantle Public Law 93-638, and would, in my judgment, represent yet another abrogation of a promise by the United States to Native Americans.

Mr. President, the importance of this issue is underscored by the fact that Idaho Indian Tribes are unanimous—together with the vast majority of Indians throughout the country—in support of the Stevens Amendment. I submit for the Record correspondence I have had from the All Idaho Indian Conference and on behalf of every Idaho Indian Tribe.

Mr. President, I have been impressed repeatedly over the years with the fact that Indians alone hold the ability to solve Indian problems, and they must have the responsibility to meet them. These problems include education of Indian children. I urge the Senate not to renege on the promises we have made, and to adopt the Stevens Amendment.

The material follows:

IDAHO INTER-TRIBAL POLICY BOARD, INC.,
Boise, Idaho, April 18, 1978.

FRANK CHURCH,
Russell Senate Office Building,
Washington, D.C.

HONORABLE SIR: Representatives of the Idaho Indian Tribal Governments met in Boise, Idaho on April 12 through 14, 1978, to discuss issues of Importance to Native Americans. More than 150 Native Americans joined together to make their feelings clear to the public. Of special concern to the group attending the "All Idaho Indian Conference" is the disposition of S.B. 991: The Department of Education Act. The Conference unanimously agreed to condemn the act because of its counter-productive effects for Indian People nation wide. As chairman of the Conference, of the Idaho Inter-Tribal Policy Board, and of my Tribe: The Nez Perce, I ask that you consider carefully your position on S.B. 991 in light of the Resolution attached.

Respectfully yours,
WILFRED A. SCOTT,
Chairman,
All Idaho Indian Conference.

RESOLUTION

Idaho All Indian Conference, a conference of the peoples of the five Indian Tribes in the States of Idaho, Shoshone-Bannock, Couer d' alene, Kootenai, Shoshone Paiute, and Nez Perce, do hereby resolve;

Whereas, Bill S-991, the Department of Education Bill introduced by the Honorable Senator Ribicoff, is a bill designed to transfer the Indian Education Programs of the Bureau of Indian Affairs to a new executive department, and

Whereas, this transfer would jeopardize specific trust responsibilities obliged on the Government of the United States of America under treaties executed and in force between the United States and the sovereign Indian Tribes and their governments, and

Whereas, the proposed new department will not be charged with specific responsibilities focused on the special and diverse Indian Education concerns, and

Whereas, Bill S-991 will transfer Indian Education programs from the Bureau of Indian Affairs, an agency organized to recognize Tribal sovereignties and to implement trust responsibilities of the United States Government to Indian Tribes, and

Whereas, Bill S-991 will create administrative problems for Tribal Governments who rely on the Bureau of Indian Affairs for the execution of Indian Education Programs, and

Whereas, Bill S-991 will, in effect, abrogate the trust responsibilities of the United States Government to the various Indian Tribes with regards to Indian Education and force Tribal Governments to compete for educational funds with numerically larger groups of people, and

Whereas, there are no provisions in Bill S-991 to provide a policy of Indian Preference in hiring within the proposed Department of Education and,

Whereas, Bill S-991 is contrary to the statuatory objective of Federal Indian Policy, "an orderly transition from Federal domination of programs for and services to Indians, to an effective and meaningful participation by the Indian people in the planning, conduct, and administration of these programs."

Now, therefore be it resolved; the Idaho All Indian Conference, i.e. the five Indian Tribes within the State of Idaho, is in complete opposition to placing Interior BIA schools and any Indian related Education programs in Bill S-991 and efforts to transfer Indian Education Programs from the Bureau of Indian Affairs to the proposed Department of Education. and

Be it further resolved, the Idaho All Indian Conference urges the President and Congress of the United States of America to solicit the input from the various Tribal Government as to the future organization and direction of Indian Education Policy Development and Program Management.

The foregoing resolution has been adopted at the spring Conference of the Idaho Indian Tribes, April 12, 13, and 14, 1978 at the Rodeway Inn, Boise, Idaho.

FORT HALL, *Indiana,*
July 12, 1978.

Hon. FRANK CHURCH,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: The Shoshone-Bannock tribes of Indians is in support of Senator TED STEVENS' amendment to Senate Bill 991 (Department of Education bill). The amendment excludes the Bureau of Indian Affairs from the creation of the Department of Education. The tribes feel a split of the Bureau of Indian Affairs will erode the trust responsibilities and the United States' commitment through her treaties. We ask that the amendment be re-introduced on the floor.

GILBERT C. TETON,
Chairman,
Shoshone-Bannock Tribes of Indians.

COEUR D'ALENE TRIBAL COUNCIL,
Plummer, Idaho, May 4, 1978.

FRANK CHURCH,
Russell Senate Office Building,
Washington, D.C.

DEAR MR. CHURCH: The Coeur d'Alene Tribe wishes to go on record as opposing S-

991 (The Department of Education Bill) introduced by Senator Ribicoff.

Specifically, we are concerned about the United States Government's trust responsibility to the Indian people and Indian Education. Under the proposed Bill, this new Department of Education will not be charged with specific responsibility to the special trust relationship of the Federal Government to Indian people and the specific concerns of Indian Education.

In response to Senator Ribicoff's letter to Charles E. Trimble (NCAI), we do not favor the transfer of any portion of the Bureau's Indian Education programs to a new and separate Department of Education. We feel that under the present system, we do control the direction of Indian Education and Indian Education Programs, which is Indian self-determination and in line with P.L. 93-638.

We as a small Tribe would not be able to compete numerically with the larger Tribes for Education funds. We also oppose the fact that there is no provision for Indian Preference in employment in this new Department.

Perhaps there is merit in the development of a separate Department of Education, however, there are many questions unanswered, plus the time factor did not allow for the thorough consideration of the proposal.

Sincerely,

BERNARD J. LASARTE,
Chairman, Coeur d'Alene Tribe.

Whereas, S-991 (The Department of Education Bill) has been introduced by Senator Abraham Ribicoff, and

Whereas, this Bill is to establish a new and separate Department of Education and proposes to transfer the Bureau of Indian Affairs Education Programs to this new Department, and

Whereas, S-991 does not speak directly to the special trust responsibility of the United States Government to the Indian people and to the Education of Indian people, and

Whereas, the future of Indian Education Programs will be jeopardized if removed from the Bureau of Indian Affairs.

Therefore, be it resolved that the Bureau of Indian Affairs Education Programs not be included within S-991.

CERTIFICATION

The foregoing resolution was adopted at a meeting of the Coeur d'Alene Tribal Council, held at the Coeur d'Alene Sub-Agency, near Plummer, Idaho on May 3, 1978 with the required quorum present by a vote of 5 for and 0 against.

BERNARD J. LASARTE,
Chairman, Coeur d'Alene Tribal Council.
EVANGELINE ABRAHAM,
Secretary, Coeur d'Alene Tribal Council.

KOOTENAI TRIBE OF IDAHO,
Bonners Ferry, Idaho, April 25, 1978.

Hon. ABRAHAM RIBICOFF,
U.S. Senate, Committee on Governmental Affairs, Washington, D.C.

DEAR SENATOR RIBICOFF: Submitted are comments from the Kootenai Tribe of Idaho as you requested in your letter of April 4, 1978. Consideration from the Tribe is focused on the Indian students at the reservation level and how a new Department of Education could be a deterrent toward successfully educating our Indian students in the future. The Tribal concern is whether the new Department of Education would recognize the unique relationship the American Indians possess with the Federal Government or would the American Indians be treated as just another minority. There are no assurances in the recommendations that Indian Tribes will be recognized for their sovereign rights through their respective treaties with the Federal Government. It is dangerously possible that the lack of understanding with the upper echelon in any new department of education could hinder or destroy by conglomerating Indian education funds and allocating these funds on competitive basis.

Your committee should not ignore the special educational needs of the many full-bloods that the Federal Government is especially responsible to and who continue to strive for their betterment in their education and employment goals.

1. (A). No—To include Bureau of Indian Affairs schools to a new Department of Education would greatly jeopardize the trust responsibility of the Federal Government and endanger the sovereignty of all Indian Tribes. Basically Bureau of Indian Affairs schools are an essential need for the education of many Indian students who are victims of neglect either through broken homes or death of their parents. Many of these students would not be able to function effectively in a public school situation and could possibly be destined toward correctional institutions.

(B). Yes—The selection of an all Indian School Board would be necessary, however, this board should be carefully screened before selections are made. This board should have dual concerns of upgrading the curriculum to equal public school standards and also to develop curriculum to stress the identity of the Indian students.

(C). Yes—Tribes will need representation at this level for recognition and services for their educational needs to all Reservation Indians. However, we are still opposed to the transfer of the Bureau of Indian Affairs functions to a new Department of Education.

2. No—The possibilities of this recommendation would endanger Bureau of Indian Affairs administered services of the Johnson O'Malley and Continuing Education Programs to reservation Indian Tribes. There are no assurances that the Johnson O'Malley and the Continuing Education Program funds would continue to direct services to Indian Tribes.

3. To allow high priority to Reservation Tribes for funding, as major educational problems and needs exist within the public schools, Tribal schools and Bureau of Indian Affairs schools. More emphasis to encourage Tribes to develop a comprehensive long range plan to develop their goals and objectives accordingly without limitations to financial assistance from the Federal Government, and to enable Reservation Indian Tribes to achieve toward their objectives and goals.

The administration responsibilities should be focused at the energy level with the Bureau of Indian Affairs by the fact they are most familiar, as the Tribes are, with the existing reservation problems and needs for the improvement of Indian Education for our Indian students.

Sincerely,

DIXIE A. COOPER,
Chairperson, Kootenai Tribe of Idaho.●

Mr. DOMENICI. Mr. President, will Senator PERCY yield me 5 minutes?

The PRESIDING OFFICER. There is no restriction on time.

Mr. PERCY. There is no time agreement on the bill. The Senator may take whatever time he chooses.

Mr. DOMENICI. Mr. President, let me say at the outset that I support the transfer of the Bureau of Indian Affairs' role in Indian education to the new Department of Education. It is very difficult for me to stand and oppose the distinguished Senator from Alaska on a matter that concerns the Indian people. In my 5½, going on 6 years in the Senate I have found Senator STEVENS one of the strongest advocates of the Indian people and native Alaskans of any Senator in this body.

I found his role on the Appropriations Subcommittee one of genuine concern about the issues of Indian education and Indian health. I have sought Senator STEVENS' counsel on the many Indian problems I have encountered. However, on this particular issue, it appears to me that a decision to leave Indian education within the BIA assumes that the BIA will improve upon its record in the area of Indian education. I do not agree with that assumption.

The views of the Indian people on this issue have been listened to from the start. I have reviewed the entire record and I understand the concern that the Indian people have with the transfer. We are all traditional people, and they are among the most traditional people. Their concerns have been prompted by certain people within the bureaucracy.

However, with the adoption of the Domenici-Melcher amendment, they need not fear. What could their fears be?

The Bureau of Indian Affairs has not done a good job. I need not repeat what the Senator from Arizona, Senator GOLDWATER, said about Indian education and how poorly we have done. I need not repeat what the Chairman of the Select Committee on Indian Affairs, Senator ABOUREZK, said about the matter.

My amendment protects the Indian trust relationship, the Indian sovereignty relationship, and Indian preference. It also creates an Assistant Secretary for Indian Education. Furthermore the amendment creates by statute a council to advise the Assistant Secretary on Indian Education. It appears to me that these are adequate safeguards and that our Indian people need not fear.

There is a split among Indians in my State on this issue. However, for the most part, the Pueblos in New Mexico support what I am trying to do. The all Indian Pueblo Council, which represents most of the Pueblo Indians in my State, is anxious to try the transfer, as long as my clarifying language is included in the bill.

Obviously, there is nothing to lose. I do not understand what my opponents believe we could lose. We protected the trust relationship. There is nothing sacred about Indian education programs being under the Bureau of Indian Affairs. That was also created by Congress, just as we are creating the Department of Education here today.

I recall talking with my good friend, Senator RIBICOFF, about Indian health. He informed me that he was the Secretary of HEW when Indian health was still in the Bureau of Indian Affairs, and I am certain the same arguments were made: "It has been run by the Bureau. The Bureau knows how to do it."

All the fears that are injected into this issue were injected then. Yet we moved Indian health out of the Bureau into the professional health delivery system of the U.S. Government, the Public Health Service.

I can attest, after 5½ years in the Senate, that Indian health is substantially better today than it was 5½ years ago.

I believe those who were here before me when Indian health programs were part of the Bureau would have to attest that it is many times better today than it was before. It is moving in the direction of providing some real health delivery opportunities to Indian people which never would have been there had Indian health matters not been moved to the Public Health Service.

I think the same thing is going to happen in Indian education. In this new department there will be a better chance for the Indian people of our country to preserve their traditions, their culture, and to receive the quality education they so richly deserve. I sincerely believe that our Indian people will be substantially better off shortly after the adoption and creation of this department. There will be a better opportunity for their voices to be heard. Unfortunately they go unheard today.

I am convinced that the new council which will be created by my amendment will have some real input to the Assistant Secretary for Education of the Indian People.

I greatly respect and admire the distinguished Senator from Alaska, my good friend from Oklahoma, Senator BARTLETT, and the other Senators who share their views. However, I am firmly convinced of two things. There is no serious risk involved in this transfer. Second, there is indeed a chance that our Indian people will get a much better opportunity to be educated properly. The American people will get more for the money they spend on Indian education than they will if Indian education programs remain in the BIA.

I commend the committee not only for the entire bill but for the particular diligence they put into Indian education. They communicated with Indian leaders and Indian people across this land. They submitted questionnaires to Indian leaders and Indian people across the land. They set aside ample time for hearing on just this issue, and I commend them for that.

They could have been less diligent in this matter, which is a small part of the total function of the Department of Education.

As we conclude this discussion, I urge Senators to vote not only for this bill but for this transfer. If it does not work, we can do something about it later. I assure you that we have protected our Indian people as well as they are protected now. The chances of their getting something better for their children, in my opinion, really rests within the new Department of Education, not within the BIA.

Mr. RIBICOFF. Mr. President, as floor manager of this legislation, I strongly oppose the Stevens amendment.

For the past 150 years, primary responsibility for Indian education has rested with the Bureau of Indian Affairs. The BIA's performance record is a national disgrace.

Today, achievement rates of Indian students continue to stay far below the national average;

Dropout rates for Indian children at the elementary and secondary level exceed 50 percent;

Dropout rates for Indian students in postsecondary institutions exceed 75 percent.

The condition of Indian education is extremely poor. Indian education will simply not improve if it is left in the BIA. Should the Stevens amendment be adopted, we could expect another 150 years of stagnation by one of the most inefficient agencies of the Federal Government—the BIA.

Report after report, study after study has been issued over the years condemning the BIA's performance and suggesting corrective action.

Nothing has worked.

Even the moving and powerfully written Senate report, "Indian Education: A National Tragedy, A National Challenge," issued in 1969 under the direction of Senator KENNEDY, has been largely ignored by the BIA. Few of its recommendations have been implemented. The poor condition of Indian education described in that report nearly a decade ago has not changed.

Indian education today is still a national tragedy.

Yet how can we expect an agency which is predominantly concerned with natural resources and land management to have the expertise and ability to improve Indian education?

The fact is nearly every Cabinet department has special programs for Indians in its field of expertise. For example, the Labor Department has a $62 million Indian employment program, HUD has $30 million in Indian housing, and HEW has the $370 million Indian health service. Why should we leave Indian education out of the Education Department?

BIA's institutional weaknesses inhibit an effective Indian education policy. The Bureau's area offices usually view education as a secondary function. The BIA Director of Education has little input in the system.

Despite congressional mandates, tribes still have little influence or local control over Indian education. Fewer than 35 tribes have contracted with the BIA for school operations. The BIA has slowly implemented the Indian Self-Determination Act.

The Bureau's education budget has been mismanaged and spent inefficiently. In 1977, the BIA spent as much as $13,000 per student in its day schools, and as much as $22,000 per student in its boarding schools. The nationwide average per pupil cost for children in public schools in 1977 was $1,561, $2,000 less than the average amount spent in BIA day schools. For large sums like these, we could send Indian students to some of the finest college preparatory schools in the country, where tuition now averages just $6,000 or $7,000 per year.

Members of the Senate should note that the per-pupil costs for the Defense Department's overseas dependents schools—which will also be transferred to the Department of Education—are much lower than those of the BIA. Even though the DOD schools are spread out across the world, their per-pupil costs did not exceed $2,500 in 1977.

The sad reality is, in spite of these large sums of money, Indian students are receiving an education of very low quality. The American taxpayer, and the Indian people, are not getting the most out of their dollars.

The Federal Government has an obligation to provide Indian people an education of equal or superior quality to that afforded the rest of the country.

But today there is no comprehensive strategy for Indian education. The BIA has refused to develop one.

Indian education programs are fragmented between two different agencies—the Office of Education and the BIA. The $500 million we spend each year for Indian education is split nearly evenly between these two agencies. They rarely talk with each other. There is no coordination between the two.

The Federal Government has no high-ranking Indian education official to tackle these tough problems. There is a Director of Education in BIA and a Deputy Commissioner in OE. Both are submerged in bureaucracy. Since 1966, the average tenure of the BIA Education Director has been just 9 months.

These are all serious problems that cannot be remedied within BIA. In examining the past performance of the BIA, I can find no justification for leaving education in that agency.

The Governmental Affairs Committee consulted extensively with Indian people on this proposed reorganization. The Indian people had a number of legitimate concerns with the original version of S. 991. As reported by the committee, the bill before the Senate today addresses their concerns:

It sets up a distinct, tangible office in the new Department of Indian Education, headed by an Assistant Secretary. The office will be on an equal footing with other interests in the Department.

The bill contains a provision requiring the Department to uphold the trust responsibility.

It insures the transfer will not change existing eligibility standards of BIA and OE programs.

It provides specifically for the continuation of existing Indian preference laws in the new Department.

It amends the Indian Self-Determination Act to make its provisions fully applicable to the new Department.

The legislation directs the Secretary of Education to institute more local control of education by Indian people.

It provides for Indian representation on the Intergovernmental Advisory Council on Education.

The legislation provides for a 3-year phase-in period for BIA schools which will allow for the transfer to be conducted with little disruption and much consultation.

S. 991 will not terminate the Federal responsibility for assisting Indian education. It will enhance it. I believe it will be the single greatest improvement of the Federal effort in this area.

In 1961 when I was Secretary of HEW, we worked hard to complete the transfer of Indian health services from

BIA to HEW. By all accounts, Indian medical services have dramatically improved since the transfer.

Likewise, I expect Indian education will improve greatly by the transfer we are considering today.

We are serious about doing something to improve the education of Indians, Alaskan Natives, and Aleuts. As long as it remains in BIA, it will never significantly improve.

I hope the Stevens amendment is defeated.

Mr. PERCY. Mr. President, I ask unanimous consent that a letter from Secretary Andrus, Secretary of Interior, and an accompanying statement by the President of the United States, Jimmy Carter, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 11, 1978.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I am writing to urge your support for S. 991, the Department of Education Organization Act of 1978. The President considers this an important initiative, and urges passage this year. The creation of a Department of Education represents a vital step in increasing the Government's capacity to provide visible and effective leadership in addressing our country's educational needs.

Let me further urge support for the transfer of the Indian education programs now located in the Interior Department to the new Department. The Federal Government spends over $500 million annually on education programs for Indians, divided almost equally between BIA and the Office of Education. Placing all of these programs in one Department will permit for the first time a comprehensive approach to Indian education policy development and management.

Indian tribes and their members enjoy certain special relationships with the Federal Government, and great care has been taken to protect those relationships in S. 991. Self-determination policies, Indian preference in personnel actions, eligibility criteria, and the trust relationship have been protected by specific provisions in the bill. A separate office for Indian education reporting directly to the Secretary will give Indians a strong policy voice at the Federal level. To minimize disruption and ensure adequate consultation with all Indian people, S. 991 provides that the transfer of the BIA schools is to be phased in over a three-year period.

In a recent message, the President commented on the importance of the special relationships that the Federal Government has with Indian tribes and pledged that the transfer of the BIA programs would not diminish them. I am enclosing a copy of that statement. I believe that this offers a significant opportunity for improving Indian education.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Enclosure.

THE WHITE HOUSE,
Washington, July 19, 1978.

Under my proposal for a Cabinet Department of Education, the Indian education programs now located in the Bureau of Indian Affairs (BIA) would be moved to the new Department. I have recommended this transfer because I believe it will make Federal school-based programs more effective.

This transfer will not change the special relationships between the government and Indian tribes and Indian people in any way. These relationships include Federal trust responsibilities, Indian self-determination, and Indian preference in hiring. My goal is to improve the delivery of education services to Indians while maintaining these special relationships.

It is especially important that we maintain educational services to Indians without interruption, protect their civil rights, preserve the integrity of the education programs, and strengthen participation of parents, tribes, and Indian people in the education of their youth. A clear recognition of the importance of these issues will help us achieve an orderly, phased transfer of the BIA programs to the new department, while protecting the interests of Indian people. I expect and hope that Indian tribes and Indian people will work with my Reorganization Project staff to assure that these objectives are met.

Throughout the Nation, our educational systems are facing important challenges. For the first time, the new department will permit a coordinated and high-level response to these challenges. I ask Indian tribes and Indian people to join with us in shaping a new Department of Education that is responsive to their concerns and worthy of their support.

JIMMY CARTER.

Mr. PERCY. Mr. President, I would like to say that I regretfully have to oppose the pending amendment for three reason, the first being the overriding reason for the transfer is the poor nature of Indian education. For example, 50 percent of Indian students entering elementary school will have dropped out before they finish high school; 75 percent of Indian college students will drop out. The potential for improving Indian education will be greater if jurisdiction for it lies with a department whose sole purpose is education.

The bill creates an office within the Department of Education solely devoted to improving Indian education headed by an Assistant Secretary. In addition, the committee expects and urges that that Assistant Secretary be of Indian, Alaska Native, or Aleutian origin.

The bill directs the Secretary of Education and the Assistant Secretary for Indian education to institute more local control of Indian education by the Indian people themselves. This is in keeping with our belief that primary policy responsibility for school should reside with the local community.

Mr. STEVENS. Mr. President, there are others who have indicated that they wished to speak. I see the Senator from Oklahoma is here.

I would just say again, as far as I am concerned it does little good to say that we submitted questionnaires to the Indian people and to say that we held hearings and asked them to come in and discuss a proposal made by the Federal Government.

The commitment was made to them that they would be consulted before such a change would even be suggested. The promise was made to them that we would go to their councils and we would work with them to try to figure out what was the best course to take with regard to BIA schools and education programs and other Indian programs.

I find it very difficult and sad that I do not have the support of the Senator from New Mexico on this matter, but it is quite clear to me, as the one who did chair the hearings, that their complaint is twofold: first, they oppose this; and, second, they vehemently object to the procedure which denies them the consultation they were guaranteed. They were guaranteed in the Indian Self-Determination Act the right to consultation, and they were guaranteed that by President Carter. President Carter sent a telegram to every tribal chairman, and promised that this administration would consult with the Indian people in their tribal councils before making decisions which would affect the Indian people.

I am not being political, because they came before me as I represented the chairman of the committee and all other members of the committee, and the record is clear, that it was the Indian people who raised this question of the commitment that was made to them that changes like this would not even be suggested without consultation with them in their tribal councils. Now that is the second portion of their objection, and I think it is valid, just as valid as their total opposition to the transfer itself, which is their opposition based upon the fact that they were not consulted as the President had committed his administration to consulting with the tribal leaders prior to making such a representation.

I again say to the chairman and the ranking minority member of the committee, while we can have complete support for a Department of Education, that is, I think, it is like taking ROTC from the Department of Defense and turning it over to the Department of Education, that it makes no sense because these people are part of a whole community, an Indian community, as such. There is a different type of community in most places of the country than the non-Indian or native communities, and they work with problems all the way across the community, not only educational programs but the whole concept of the modernization and improvement of their way of life which is involved in their council operations. This takes it away from them at the very time they have achieved a degree of responsibility and control under acts we passed in this Congress just within the last 6 to 8 years. It takes away from them the very reasons for self-determination, and that is the control over the educational programs of their own children.

I think if we propose to do this for all of the unincorporated areas—let us just assume this was all the unincorporated areas of the United States, and the Federal Government came along and said, "We can do it better than the local people; let us put this in the Department of Education and manage their daily functions from Washington"—the reaction would be overwhelming. But that is exactly what this says. This is a local school responsibility, and the only reason it comes into the Federal Government at all is because of the Federal Government's prestige and responsibility to the Indian people. And the beneficiaries of that trust have demanded that

the educational function stay with the BIA.

I hope the Senate will not let the Indian people down in this regard today.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, will someone yield me time? I do not know how time is being allocated.

The PRESIDING OFFICER. There is no limitation on time.

Mr. BARTLETT. Fine.

Mr. METZENBAUM. Mr. President, will the Senator from Oklahoma yield for a question?

Mr. BARTLETT. I yield for a question?

Mr. METZENBAUM. Yes.

Mr. BARTLETT. I yield.

Mr. METZENBAUM. Is the Senator going to address himself to the Indian Affairs matter?

Mr. BARTLETT. Yes.

Mr. METZENBAUM. I would like to say to the Senator from Oklahoma and others concerned that there is a priority understanding with respect to the natural gas bill. If this matter can be concluded in 10 or 15 minutes, I see no particular problem with it. If not, I would raise the point, but I am certainly willing to stand back for 10 or 15 minutes.

Mr. STEVENS. Mr. President, if I may say so, the Senator from Oklahoma has been waiting, and if the Senator from Ohio will accord him the courtesy of listening to his remarks, I think it would be appropriate. There are other Senators who wish to speak also. The Senator from Ohio is entitled to time before the vote on this motion, of course; I would respect the Senator's wishes in that respect.

Mr. METZENBAUM. May I suggest that we accord the Senator from Oklahoma appropriate time?

Mr. STEVENS. Such time as he may wish, and then afterwards set this aside, with the consent of the chairman. That is the understanding, that the energy bill comes first. I know Senator GOLDWATER wishes to be heard, and other Senators have indicated that they wish to be heard, but they are not present.

Mr. METZENBAUM. That is satisfactory.

Mr. STEVENS. However, first I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. I certainly understand the request of the Senator from Ohio, and I will be fairly brief.

Mr. President, the Indian people throughout this country have every reason to expect this Congress to adopt Senator STEVENS' amendment. Having received in 1975—just 3 years ago—through enactment of the Indian Self-Determination and Education Assistance Act, this Congress expression of support for maximum Indian participation in the policymaking decisions that affect their lives and well-being and in the direction of programs and services administered and delivered for their benefit, the Indian people are probably just as perplexed as I am as to why in the face of overwhelmingly strong opposition to the transfer of Indian schools and education programs the proposal to transfer these activities to the new Department of Education was advanced by the administration at all.

When President Carter, on October 14, 1976, delivered his special message to American Indians, it was replete with assurances that Indian self-government will prevail in the administration's handling of the affairs of Indian people; that decisions affecting Indian tribes would be made in the tribal council rooms and not in Washington, D.C. A most impressive ending to that message must have been music to the ears of Indian people throughout the country, when the President stated:

> Finally, I will not take unilateral action on any issue regarding Indian affairs or Indian programs without full consultation with tribal representatives. Ours will be a Government of participation, of action, of program involvement, and of true self-government.

First I want to address myself to the first part, the Indian self-determination. Certainly it is true that the Bureau of Indian Affairs can be severely criticized for their inadequate and inept handling of Indian education. But I think by the same token the Bureau of Education of HEW can likewise be criticized for their inept handling of education.

There are many Indian students in our public school system. In fact, in Oklahoma there are more Indian youngsters in our public school system than there are in the Indian schools. And I think that our public school system in Oklahoma ranks fairly well nationally.

But I would like to point out that the Johnson-O'Malley funds which are to be available in public schools for the special needs of Indians have not really been utilized effectively or efficiently for them and their needs.

One of their great needs is counseling. They have a different culture. They look upon competition in schools differently from the white students. They have special needs that have not been met in the public schools.

So, I do not see the reason for the great desire to move very quickly to transfer this to the Department of Education, and I presume to the public school system. I think that perhaps the public schools do offer a great opportunity for some Indian students, but only with adequate counseling and only with special consideration of Indian culture and Indian needs.

I am reminded by the apparent reverse action here—or at least the effort to reverse the action on Indian self-determination by the President and this committee to take away Indian education from the Indians themselves—that self-determination started the first effort among the Indians at having their own school boards, of having responsibility for the first time for their own educational system. Obviously, in 3 years you can only effect a beginning; you cannot very well adequately establish a real change in an education program.

So, just at the time when we had told the Indians of this country that we want them to determine their own future, we then take away the opportunity for them to do that, as far as the very important area which their education is to them is concerned.

Education, of course, is most basic to the continuation, perpetuation, and instruction in their culture. By invading this very important area, I think we are guilty of breaking our word once again to the Indians. The President, through his action, is doing likewise. It reminds me of the letter he wrote to Governor Boren of Oklahoma concerning deregulation of natural gas, saying he was for it. This was 17 days before the election. But now he is for controls on natural gas. Here again is an example of his completely reversing himself, and this time to the Indian people.

I would say to the distinguished floor manager that it reminds me of when I was young, and we used to have cowboy and Indian games. I learned then about "Indian giving." I do not know whether the distinguished Senator from Connecticut has ever heard about Indian giving. But Indian giving, to me as a boy, was portrayed as Indians giving their word or giving something of tangible value to someone else, and then later taking it back.

I would like to say to the distinguished Senator from Connecticut that that really is not Indian giving. I really found out as an adult, a few years later, what Indian giving is. I learned it at several Indian pow-wows which I attended. At these pow-wows, they quite often will pick out one or more people who are men or women to be honored by the tribe.

As they honor them, they have a special dance in which the honoree and his family make a parade and dance around the area. Then the men, in the several cases I saw, would stand in front of all the other Indians. The other Indians as they kept dancing, would bring gifts to him. These gifts could either be money or they could be blankets, various things of value, which they would place at the foot of the honoree.

Then as the gift giving part was finished, the honoree would pick up the gifts. Then he would dance around the dancing area and he would give these out. He would give these gifts, money, blankets, and other things of value, to the older people, to the obviously poorer people, and those who would have need for either the money or the gifts.

This is Indian giving. It is the kind of giving I think we should emulate rather than the kind of Indian giving that we have thought for so long was really Indian giving, which is white man giving. It is the white man saying, "Yes, we will recognize Indian self-determination, but for now we are not going to give the chance to the Indians to develop their Indian committees on education, to do the job they know needs to be done."

The record clearly shows that 90 to 95 percent of the federally recognized tribes and Indian interest organizations oppose this transfer. They list a number of reasons for their objections.

Although the Governmental Affairs Committee made an effort to address these objections in the bill, it is obviously still not satisfactory to Indian tribes as the mail, telephone calls, and office visits continue to call attention to Indian opposition to the transfer.

Mr. President, I have a rather lengthy speech which quotes many of the reactions of Indian tribes throughout the country to the proposed transfer, which indicates just how strongly they feel about this matter, and lists major reasons why the transfer should not take place, reasons that are based on the Indians' experience in dealing with the Federal Government for many, many years.

To me, their reasons make sense and are clearly reason enough to let the Indian schools and education programs remain where they presently are, at the focal point of Indian activity in the Bureau of Indian Affairs.

I ask unanimous consent that my speech be made a part of the RECORD at the conclusion of these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BARTLETT. I think possibly the Colorado River Indian Tribe in Arizona hit the nail on the head in its response to the question of transferring education programs to the new department, when they stated:

> It is not a new department that is needed but implementation of the promises, goals, and objectives that have been expressed in the past.

Mr. President, my State has more Indian tribes than any other State, 37, and it has more Indians than any other State. All the tribes and all the responses I have received from my State have indicated their strong opposition to this transfer of Indian education to the new department.

Obviously, the new department will know very little about the special requirements and needs of Indian educacation. I would tell the distinguished floor manager it has been my experience in Oklahoma that this is a very unique need that the Indians have. They do not compete the same way. They are not as many white children, wanting to raise their hand to answer a question. They will not raise their hand when they think one of their friends does not know the answer. They do not want to show them up. So they do have a different culture, a very good one. It is one that we could imitate, if we would, in many regards.

I think we are getting ourselves into something here that the committee was not equipped to properly assess, nor was the President properly advised, nor would the Congress be acting in good faith to the Indians of this country if they continued this provision in the Education Act.

I introduced legislation on a new Department of Education some years ago, and I have a bill in now. So I am in favor of a new department. I think it is most important that we have it. But I am just as strongly opposed to the new department taking over the responsibilities of the Indians because they know absolutely nothing about them. BIA does have a lot of knowledge.

I do think we are on the right track in dealing with the self-determination bill which gives primary responsibility to the Indians, which gives them the opportunity of devising a sensible program.

I earnestly urge my colleagues to oppose this provision in the bill, to support the Stevens amendment, and to make sure that the Indians are going to be dealt with squarely, and with justice.

EXHIBIT 1

STATEMENT BY MR. BARTLETT

I rise today in support of Senator Stevens' amendment to S. 991, the Department of Education Organization Act of 1978.

I oppose the transfer of BIA schools and education programs to the proposed Department of Education for many of the same reasons the vast majority of Indian people and Indian interest organizations do.

During the 93rd Congress, I actively supported the enactment of the Indian Self-Determination and Education Assistance Act which was designed to provide maximum Indian participation in matters affecting Indian people and Indian lives. In enacting this Legislation in 1975, Congress declared policy in part with the following words:

"The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities."

Approximately one year later on October 14, 1976, President Carter delivered a special message to American Indians that was replete with assurances that Indian self-government will prevail in the handling of the affairs of Indian people, that decisions affecting Indian tribes will be made in the Tribal Council rooms and not in Washington, D.C. The President ended his special message to the Indian people by stating that:

"Finally, I will not take unilateral action on any issue regarding Indian affairs or Indian programs without full consultation with tribal representatives. Ours will be a government of participation, of action, of program involvement, and of true self-government."

In view of the Congress' declared policy in enacting the Self-Determination Act and the President's pronounncements that true-government will prevail in deciding Indian issues, I find it difficult to understand how the Administration and the Governmental Affairs Committee on July 11, ignored the expressed wishes of the vast majority of recognized Indian tribes and took action to transfer the BIA schools and education programs to the new Department of Education.

The Committee report on this action states that comments and input were actively solicited from more than 350 tribes and organizations across the country, but the report does not speak to the results of that solicitation. If I may, Mr. President, I would like to share with my colleagues some of the responses the Committee received from recognized tribal governing bodies and Indian interest organizations across the country. These comments represent the views of the vast majority of Indian tribes contacted who are served by the schools and education programs the Committee wishes to transfer.

From the National Tribal Chairmen's Association, National Congress of American Indians, and the Alaska Federation of Natives, all organizations that represent the federally recognized tribes in the United States the response was "an emphatic and uncompromising no to the transfer of Indian education out of the BIA, Department of the Interior, to the proposed Department of Education."

The Shoshone-Bannock Tribe of Idaho: "We are convinced that, regardless of any assurance to the contrary, to place our BIA and tribal schools in such a Department would lead to public school control of everything. We oppose very strongly any attempt to erode the basic structure, however gradual, of the current system."

Colorado River Indian Tribes of Arizona: "After all the years it has taken the Bureau of Indian Affairs to understand the operation of government schools for our youth, it would take much longer and more to orient a new Department. It is not a new department that is needed but implementation of the promises, goals, and objectives that have been expressed in the past."

Red Cliff Band of Lake Superior Chippewa of Wisconsin: "Our tribe and many others believe that the BIA has not been perfect in the past, but through years of struggle, turmoil, and negotiation, we have gotten the BIA in a place where they are finally acting as the advocate and trust agency it was intended to be. We urge you to leave BIA education programs in the Indian Bureau where we have guarantees of improved quality education programs while we have major unresolved issues with USOE. . . ."

Lac Courte Oreille Tribal Governing Board of Wisconsin: "We regard this proposed transfer as an effort to evade the trust responsibility and commitments of the Federal Government."

Mescalero Apache Tribe of New Mexico: "We strongly feel that the Federal Government has a distinct and unique relationship to Indian people and tribes through treaties, etc., and should not lose this identity by lumping us and our special needs in with all other programs concerning education, for fear of being lost in a giant maze of educational gobbledygook . . . We do not favor transferring the operational and policy responsibility of the Bureau of Indian Affairs schools to such a department as the trend to more local Indian control of these schools needs to continue rather than be relinquished."

Comanche Indian Tribe of Oklahoma: "The concept of including those educational functions now assigned to the Assistant Secretary of Interior for Indian Affairs in a new Department of Education would not result in any improvement in Indian education systems. The transfer of the BIA-run school system to the Department of Education would lead to total elimination of schools separately established and identified for Indians."

The views of the Comance Tribe are representative of responses my office received from other tribes in my State of Oklahoma. The United Tribes of Western Oklahoma and Kansas comprising a total of 23 tribes—21 Oklahoma tribes and 2 Kansas tribes and representing more than 55,000 Indian members—are "unanimously opposed to the transfer of the Bureau of Indian Affairs educatios programs and services to the proposed Department of Education." I could go on and on with responses from Federally recognized tribes that oppose this transfer. It is clear to me that 90 to 95 percent of the Federally recognized tribes and Indian interest organizations throughout the country do not want Indian education programs moved to the proposed new department. To proceed with this action, which certainly runs counter to the desires of the Indian people, is not in line with either the declared policy of Congress in enacting the Indian Self-Determination and Education Assistance Act or the President's pronouncements that true self-government will prevail in Indian affairs matters.

Indian tribes must have a focal point, an agency with which to deal on all matters relating to Indians. Despite its management and organizational problems the BIA re-

mains the focal point for the tribes and has an understanding of the magnitude of the problems. To separate this trust obligation from the lead agency charged with administering the trust responsibility to American Indians is the beginning of the end of the trust and would diminish the agency's advocacy role to a level of ineffectiveness. One of the reasons President Carter gave for not including transfer of Veteran's Education Programs to the new Department is that he was committed to one-stop shopping for Veterans. That same one-stop commitment is equally appropriate for Indians as it is for veterans. By placing Indian education programs in the new Department, Indian tribes will be forced to compete with larger, more powerful constituent groups. Experience has shown that when an Indian program is begun by another department or agency that has no long range goal in Indian affairs or little sensitivity to the desires of Indian people, Indians are just another disadvantaged minority. Indians are not "just another" minority; Indians are the only minority with which the Federal Government has a long-standing unique legal and historical relationship. The problems are similar to other minorities; the relationship with the Federal Government is not. It will be difficult if not imposible for tribes to stand on an equal footing with outside special interest groups who will influence decision making within this new Department of Education. A good example of what happens to Indian programs in an agency with little or no experience in administering to Indian needs is the Department of Housing and Urban Development's efforts to provide safe, decent and sanitary housing for Indian and Alaska Natives.

There is no assurance that improvements in Indian education will be achieved any faster or to any greater degree by placing it in a new structure than can be achieved in its present location. Historically USOE has given little or poor service to Indian education programs, which attests to the USOE's lack of commitment and understanding of tribal educational and social needs at the reservation level. USOE is a grant-oriented agency without even a general background in providing services to Indian tribes and communities, and I can see no advantage to placing Indian education programs in this setting. Surely the transfer is not considered necessary if the programs are to be funded and managed adequately. There is no convincing explanation as to why Indian programs can only be adequately funded and managed if removed from the BIA.

Most importantly, the true goal of Indian self-determination cannot be achieved with the transfer of Indian education. Indian people are striving for self sufficiency and control over all aspects of their lives; education is the method of attaining these goals, but such cannot be achieved if education occurs in a social, political, or economic vacuum. Indian people must have a part in directing Indian education policies and emphasis must follow if they are to see the concepts of self-determination come to fruition.

Indian opposition to this transfer is based on many years experience in dealing with the Federal Government. The apparent determination of the Administration to proceed with the transfer despite the wishes of the vast majority of Indian tribes indicates that, in an effort to provide an organizationally-efficient government, the Carter Administration is signaling an end to the BIA and fragmentation of all of the functions housed therein. To remove Indian education programs from the BIA which represents approximately two-thirds of the employees and approximately one-third of the budget, would reduce the Bureau's stature in the Department of Interior which the Indian people have worked many years to achieve and destroy the only true advocacy agency for Indian people existing in our governmental structure.

Mr. President, in view of the detrimental effect removal of this major function from the Bureau of Indian Affairs will have on the agency and the Indians' faith in their trustee, the Federal Government, I ask my colleagues to support Senator Stevens' amendment so Indian tribes will know that at least some of us listen to what they have to say and believe it is they who know what is best for their well-being.

NATURAL GAS POLICY ACT

Mr. JACKSON. Will the Senator yield for a unanimous-consent request?

Mr. RIBICOFF. I yield.

Mr. JACKSON. Mr. President, I ask unanimous consent that David Johnson, of Senator MUSKIE's staff, be granted the privileges of the floor in connection with the debate on the natural gas conference report.

The PRESIDING OFFICER (Mr. ANDERSON). Without objection, it is so ordered.

Mr. STEVENS. Mr. President, did my good friend from Montana wish me to yield? I wanted to have a colloquy with the Senator from Connecticut about this amendment. The energy conference report does take priority. We are prepared, with the majority leader's consent, to enter into an agreement that there be 40 minutes on each side on my amendment and the amendment would come up following the disposition of the energy bill on Wednesday, the 27th, if that would meet with the approval of the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I just cannot see that far down the road beyond the disposition of the conference report at the moment.

Mr. STEVENS. May we enter into the 40 minutes on each side?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. Subject to the chairman's request, I would be agreeable to that.

Mr. RIBICOFF. That is agreeable to the manager of the bill.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

The Senator from Montana.

Mr. HATCH. If the Senator will yield, I ask unanimous consent that Chris Palmer of my staff be granted the privileges of the floor during the consideration of the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

UP AMENDMENT NO. 1842

(Purpose: To provide for a unified approach to rural family education)

Mr. MELCHER. In light of the unanimous-consent agreement on the Stevens amendment, I ask unanimous consent that it be in order to present an amendment at this time on the education bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MELCHER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 1842.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 54, immediately after the period on line 11, insert the following: "The Secretary, through the Assistant Secretary for Occupational, Adult, and Community Education, shall also provide a unified approach to rural family education through the coordination of programs within the Department and shall work with the Federal Interagency Committee on Education to coordinate related activities and programs of other Federal departments and agencies.".

Mr. MELCHER. Mr. President, the amendment I am offering today to S. 991 does not create any new Federal programs. What it does, is give to the planned Office of Occupational, Adult, and Community Education the specific authority to coordinate existing educational programs scattered throughout the new Department of Education and work with the Federal Interagency Committee on Education to coordinate support functions located in related Federal agencies, into a unified family education approach to better serve the needs of our Nation's rural economically disadvantaged families.

For many years now, those of us representing States with large rural constituencies have been aware that most of the Federal programs that have been created to break the cycle of structural poverty in the United States have been of little benefit to the rural poor. The nature of the problem lies not in the substance of the programs, but in the nature of their delivery. Authority for administering the programs is divided up, bureaucratically, with very little coordination at the point of delivery. One office concentrates on vocational and occupational education, another on education for home management, another on adult basic education, another on special education for children, yet another on health education, and so on down the line. Such fragmentation has been possible in dealing with urban populations, because of the close geographical proximity of the families that take part—although even here I think many of our planners are beginning to realize that without better overall coordination the result is unnecessary overlap of some programs and gaps between others. This reduces the beneficial impact on the families that take part, and leads to waste and inefficiency.

But what is an inconvenience in an urban setting becomes an insurmountable difficulty in rural areas. For example, in Montana vocational educational schools are often hundreds or more miles apart, as are adult education centers, counseling centers, child development centers, career education centers, and so on. More important it seems never to be the same

hundred miles. Often our rural disadvantaged do not even have the ability to seek out and find help when the services are so fragmented and geographically scattered. These problems are not unique to Montana. I am sure they exist throughout much of rural America, and they require attention if we are not to continue to discriminate against our rural families.

In Montana, we have tried to meet some of the needs of rural disadvantaged families in our State, as well as North Dakota, South Dakota, Wyoming, Nebraska, and Idaho, by providing an integrated family education program in a residential setting. The key concept which governs this approach is that the families are brought together in a residential setting, and a broad range of educational and supporting services are provided—treating the entire family as a unit. The families, recruited from within the six-State region, take up residence in existing facilities on what used to be Glasgow Air Force Base near Glasgow, Mont. They reside there for approximately 9 months while they take part in an educational program designed to meet the needs of the entire family. This includes vocational education and career education for the head of household (and sometimes the spouse as well), education in home management and parental responsibility, consumer education, basic adult education, elementary and secondary education, health education, and special education programs when needed. As you can see from this list we offer the student families the entire range of educational services to be included in the new Department of Education. Central to this entire approach is the concentration of services and the focus on the entire family as a productive and mutually supportive unit.

The program has, we believe, been very successful on the limited level that we have been able to maintain it, without the support of a coordinated Federal effort. It is an approach which goes beyond the traditional concept of "job training." In treating the educational needs of the entire family together in a residential setting, it represents an effective way to not only improve employability, but also increase the standard of living and participation in the community for disadvantaged families.

The viability of this approach has long been recognized by those in close contact with it. It has received strong support during its 6 years of existence from the Governors of the region, the congressional members of the six States, the regional governmental councils, the agencies within the region, and most important of all from the student families who participate.

This approach has also begun to gain national recognition. President Carter has called for more attention to the development of a sound American family. In announcing the White House Conference on Families to be convened in Washington during 1981, he stated that—

The main purpose of the Conference will be to examine the strengths of American family life, the difficulties faced, and the ways in which family life is affected by public policies.

The President proclaimed that—

Government policy should be aimed at strengthening and supporting the family as our most vital and enduring social resource.

This is a laudable goal and I wholly support it. However, I do not think that we must or should wait until 1981, or after, to take the first step to see that our disadvantaged rural families have full access to the kinds of educational services that can help to improve all facets of their life. The Office of Occupational, Adult, and Community Education is the right place to coordinate a family educational approach. The Government Affairs Committee's report states that a major mission of the Office of Occupational, Adult, and Community Education is to coordinate a "blend" of programs that will "improve the quality of life and coordinate education and work programs" for the American people. I believe that part of this mission should be to give the Office of Occupational, Adult, and Community Education the authority to assist in meeting the needs of the rural family as a unit, and to coordinate efforts from all sectors of the Department of Education, and other related agencies, to accomplish this goal.

My amendment is a modest request, in light of the dozens of programs and some $17 billion of authority to be assigned to the new Department of Education—however, it is vitally important to thousands of rural families that may be helped by better coordination at the Federal level. I urge my colleagues to support this amendment.

Mr. RIBICOFF. The Melcher amendment is acceptable to the manager of the bill, Mr. President.

Mr. PERCY. It is acceptable as far as I know. I know of no objection on this side.

Mr. MELCHER. I thank the Senators and I yield back the remainder of my time.

Mr. RIBICOFF. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1843

(Purpose: To insure that the Department of Education carries out Career Education programs consistent with the structure of Public Law 95-207)

Mr. RIBICOFF. Mr. President, on behalf of the Senator from Maine (Mr. HATHAWAY) I send an amendment to the desk and ask that it be stated. It is in behalf of the Senator from Maine (Mr. HATHAWAY).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) on behalf of himself and Mr. HATHAWAY proposes unprinted amendment No. 1843:

On page 50, between lines 20 and 21, insert the following:

"(4) administration of programs pertaining to career education;".

On pages 50, 51 and 52, redesignate "(6)", "(7)", "(8)", "(9)", "(10)", "(11)", "(12)", "(13)", "(14)", "(15)", and "(16)" as "(7)", "(8)", "(9)", "(10)", "(11)", "(12)", "(13)", "(14)", "(15)", "(16)" and "(17)", respectively.

On page 71, line 25, strike out the period and insert "; and".

On page 71, after line 25, insert the following:

"(xiv) under the Career Education Incentive Act.".

On page 85, line 7, strike out "subsection (b)" and insert in lieu thereof "subsections (b) and (c)".

On page 86, strike out line 5.

On page 86, lines 6-11, redesignate "(F)", "(G)", "(H)", "(I)", "(J)", and "(K)" as "(E)", "(F)", "(G)", "(H)", "(I)", and "(J)", respectively.

On page 86, after line 25, insert the following:

"(c) The Secretary may not alter, consolidate or discontinue the Office of Career Education, or reallocate the functions vested in such Office by the Career Education Incentive Act, Section 406 of the Education Amendments of 1974, or any other statute prior to October 1, 1983 unless (A) funds are not appropriated to carry out the provisions of such Act for any fiscal year preceding such date and (B) a period of ninety days has passed after the receipt by the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of notice given by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this subsection and the facts and circumstances relied upon in support of the proposed action. After October 1, 1983 such Office shall not be altered, consolidated or discontinued, or its functions reallocated unless a period of ninety days has passed after the receipt by the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of notice given by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this subsection and the facts and circumstances relied upon in support of the proposed action.".

On page 87, line 1, strike out "(c)" and insert "(d)".

Mr. HATHAWAY. Mr. President, the intention of this amendment is to insure that the new Department of Education carries out the purpose of the Career Education Incentive Act consistent with the structure envisioned by Congress in enacting that legislation, which was signed into law on December 13, 1977.

The amendment would require that for the next 5 fiscal years the Office of Career Education could not be discontinued or consolidated unless for any year Congress failed to appropriate funds to carry out the purposes of that act and unless the conditions already established in section 413 of the committee bill were complied with. Those conditions allow discontinuation or alteration of a number of statutorily created offices if a period of 90 days has passed after notification to the Senate Committee on Human Resources and the House Committee on Education and Labor, including a complete justification for the rationale behind the reorganization.

This aspect of my amendment thus provides for a limited exception to the reorganization provisions contained in the committee's bill. But, for reasons I shall explain, I believe this exception is vitally needed if Congress clearly expressed goals regarding career education are to be fulfilled.

The amendment also would include administration career education programs in the functions of the Department listed in section 203 of the bill, and would explicitly include the carrying

out of the Career Education Incentive Act in the transferred functions listed in section 301 of the bill.

Together, these changes will insure that the 5-year career education program so recently enacted by Congress will receive appropriate, focused attention in the new department.

The Career Education Incentive Act was intended by Congress to instill career education concepts into the elementary and secondary levels over a 5-year period of time. At the conclusion of this time period, all Federal funding would cease. Consistent with this, the act provides authorizations of $50 million in fiscal year 1979, $100 million in fiscal year 1980 and fiscal year 1981, $50 million in fiscal year 1982 and $25 million in fiscal year 1983. Concurrent with these bell-shaped authorizations, the required non-Federal share of the part of State and local education agencies gradually increases over the same period, from no match required in fiscal year 1979 and 1980, to 25 percent in fiscal year 1981, 50 percent in fiscal year 1982, and 75 percent in fiscal year 1983. In this way, when Federal expenditures cease, the State and local education agencies will be in a position to undertake the entire burden.

This unusual, built-in sunset feature will require a smoothly functioning administrative structure for career education at the Federal level. Further, because career education by its very nature integrates basic educational skills, specific job skills, and knowledge of available job opportunities and requirements, it is essential that coordination of all relevant Federal programs and policies be carried out.

With this in mind, the Career Education Incentive Act requires that administration at the Federal level be undertaken by the Office of Career Education, established within the Office of the Commissioner of Education by the Education Amendments of 1974. Under this organizational structure, the relevant elements of all appropriate Federal educational programs can be focused to achieve the goals of career education. Equally important, States and local educational agencies can look to one location for assistance in carrying out their career education plans. Under the new bill this office must continue to exist within the office of the Secretary and its functions must be continued lest the will of Congress and the needs of the States be frustrated.

At this point in time it is especially important that we underline our commitment to the importance of career education and that we insure its continued integrity in the new department.

I am fearful that unless these amendments are incorporated into the pending bill, the administration will attempt to submerge career education in the interstices of a disinterested bureaucracy as part of a conscious effort to impede its progress rather than carrying out the law as enacted by Congress.

The Career Education Incentive Act was passed overwhelmingly by Congress in spite of administration opposition. For fiscal year 1979, the first program year under the act, Congress will provide between $22.5 and $25 million for elementary and secondary career education formula grants, despite administration opposition.

Despite the requirements of section 431 of the General Education Provisions Act, regulations have yet to be published in the Federal Register, a full 9 months after the bill was signed, and 1 month after the final deadline.

For all of these reasons it is necessary to incorporate into the legislation establishing this new Department of Education explicit provisions preserving the programmatic integrity of career education.

Mr. President, I appreciate very much that the distinguished Senator from Connecticut offered this amendment on my behalf. I did just arrive back from Maine and I am prepared to offer the amendment myself.

This would simply exempt the Career Education Office from the reorganization provisions of the bill, which would otherwise provide that the Secretary may abolish any one of 10 offices including the Career Education Office after 90 days of consultation with the House and Senate committees. Since the Career Education Act is only a 5-year bill, I thought it would be better to allow this office to be abolished only if Congress did not appropriate any money for that.

Mr. RIBICOFF. Mr. President, the amendment has a good purpose and is acceptable to the manager of the bill.

Mr. PERCY. Mr. President, there is no objections on the minority side. The amendment is acceptable.

Mr. HATHAWAY. I thank the Senators.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

● Mr. SASSER. Mr. President, the legislation we are considering today is a long-needed step in improving our Nation's Federal education policy.

For many years, the education experts in Congress and across the country have stressed the need to remove the education programs from the Department of Health, Education, and Welfare and establish a separate Department of Education in the Cabinet. And in my campaign for the Senate and since the beginning of my term, I have witnessed almost unprecedented support in my State of Tennessee for a Department of Education.

This bill, Mr. President, has my unqualified support.

I wish to commend the distinguished chairman of the Committee on Governmental Affairs, the distinguished floor manager of S. 991, Senator RIBICOFF, for his tireless efforts in behalf of this bill. He is a friend of the education community and, without his leadership, we would not have a Department of Education bill before the Senate today.

Mr. President, one of our Nation's most eloquent spokesmen for education was our late colleague, Hubert Humphrey. In considering this historic legislation today, it is wise to recall Senator Humphrey's testimony to the Governmental Affairs Committee last year:

So many offices and institutions deal with education in the federal government, that speaking about an education policy is mere wishful thinking. Yet, even though education is left to the states in our system, this lack of coherent education policy on the federal level has caused an undue burden on state and local authorities. Much of this burden stems from a fragmenting of federal education decision and policy making. It is caused by a duplication and reduplication of requirements on local education authorities.

The Department of Education Act, S. 991, correctly emphasizes the primary role that State and local governments have in the education of our children. This local control is essential and is the backbone of our public school system.

But the Federal Government must be prepared to meet its obligations in assisting the States. We must realize that State and local governments are reaching the breaking point in their ability to raise revenues for public schools, and we must be prepared to provide imaginative leadership in this critical period for education. Federal assistance must be maintained at an adequate level and our efforts must be well-coordinated. A fragmented HEW can no longer offer the necessary leadership.

A Department of Education in the Cabinet will allow us to consolidate and coordinate efforts at the Federal level. At the same time, by eliminating overlapping and conflicting jurisdictions, we can save the State and local governments time and money, we can cut paperwork, avoid duplication, and give greater emphasis to those areas where Federal involvement is needed. I was particularly impressed by the endorsement of S. 991 by Dr. Sam H. Ingram, the commissioner of the Tennessee Department of Education. Dr. Ingram believes that having a single Department of Education in the Cabinet will improve the ability of each State to carry out its education policies in a unified, comprehensive manner.

The current Federal approach to education is fragmented and only adds to the problem instead of the solution. Public education remains one of the most important services that Government can provide for its citizens. It is, literally, an investment by each generation in the success of the next. A Department of Education is essential to keeping that promise. A Department of Education will give us the most bang for each education buck. It is a sensible and long-needed bill, and I urge its passage.●

Mr. METZENBAUM. Is the Senator from Connecticut prepared to yield the floor?

Mr. RIBICOFF. I have no choice. Other people want recognition, but the Senator from Ohio has been most indulgent. I personally do not dare, have the temerity, to ask for any more requests. It is up to the Senator from Ohio and other Members on the floor.

Mr. PERCY. I have just one remaining piece of business, Mr. President. I send to the desk a modification to my amendment 3409 and ask that it be printed in the RECORD at this time.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 3409

On page 48, strike out line 2.

On page 48, line 3, strike out "(D)" and insert "(C)".

On page 48, line 5, strike out "(E)" and insert "(D)".

On page 48, line 7, strike out "(F)" and insert "(E)".

On page 48, line 9, strike out "(G)" and insert "(F)".

On page 48, line 11, strike out "(H)" and insert "(G)".

On page 48, line 12, strike out "(I)" and insert "(H)".

On page 48, line 13, strike out "(J)" and insert "(I)".

On page 48, line 14, strike out "(K)" and insert "(J)".

On page 49, line 10, strike out "section 203 (11)" and insert "section 203 (10)".

On page 49, line 15, strike out "(13)" and insert "(12)".

On page 50, strike out line 24.

On line 51, line 1, strike out "(6)" and insert "(5)".

On page 51, line 3, strike out "(7)" and in-insert "(6)".

On page 51, line 7, strike out "(8)" and insert "(7)".

On page 51, line 10, strike out "(9)" and insert "(8)".

On page 51, line 12, strike out "(10)" and insert "(9)".

On page 51, line 15, strike out "(11)" and insert "(10)".

On page 51, line 23, strike out "(12)" and insert "(11)".

On page 51, line 24, strike out "(13)" and insert "(12)".

On page 52, line 5, strike out "(14)" and insert "(13)".

On page 52, line 8, strike out "(15)" and insert "(14)".

On page 52, line 12, strike out "(16)" and insert "(15)".

On page 55, strike out lines 12 through 23.

On page 56, line 3, strike out "Sec. 210." and insert "Sec. 209.".

On page 56, line 8, strike out "304," and insert "303,".

On page 56, line 16, strike out "Sec. 211." and insert "Sec. 210.".

On page 56, line 23, strike out "303" and insert "302".

On page 58, line 16, strike out "Sec. 212." and insert "Sec. 211.".

On page 59, line 6, strike out "305" and insert "304".

On page 59, line 11, strike out "Sec. 213." and insert "Sec. 212.".

On page 60, line 4, strike out "Sec. 214." and insert "Sec. 213.".

On page 60, line 12, strike out "Sec. 215." and insert "Sec. 214.".

On page 66, line 2, strike out "Sec. 216." and insert "Sec. 215.".

On page 74, strike out all beginning with line 14 through line 6 on page 75.

On page 75, line 9, strike out "Sec. 303." and insert Sec. 302.".

On page 76, line 3, strike out "SEC. 304." and insert "Sec. 303.".

On page 77, line 14, strike out "Sec. 305." and insert "Sec. 304.".

On page 78, line 12, strike out "Sec. 306." and insert "Sec. 305.".

On page 78, line 21, strike out "Sec. 307." and insert "Sec. 306.".

On page 79, line 3, strike out "Sec. 308." and insert "Sec. 307.".

On page 79, line 12, strike out "Sec. 309." and insert "Sec. 308.".

On page 82, line 24, strike out "section 211" and insert "section 210".

On page 83, line 11, strike out "section 211" and insert "section 210".

On page 106, line 1, strike out "(9)" and insert "(8)".

On page 40, in the table of contents, strike out item "Sec. 209. Office of Child Nutrition.".

On page 40, in the table of contents, renumber items Sec. 210. through Sec. 216. as items Sec. 209. through Sec. 215., respectively.

On page 40, in the table of contents, strike out item "Sec. 302. Transfers of functions from the Department of Agriculture.".

On page 40, in the table of contents, renumber items Sec. 303. through Sec. 309. as items Sec. 302. through Sec. 308, respectively.

Mr. PERCY. I thank the distinguished Senator from Ohio for holding off so we could finish our business.

Mr. ROTH. Mr. President, I have two or three things I would like to take up.

Mr. METZENBAUM. If the Senator from Delaware will yield, is this on the Natural Gas Pricing Act?

Mr. ROTH. No, it is not.

Mr. METZENBAUM. The Senator from Ohio has sat back, patiently waiting, until a number of persons were heard in connection with the pending education matter. As the Senator from Delaware is aware, there is a priority understanding with respect to the Natural Gas Pricing Act. Without being disrespectful to him at this point, I would like to claim the floor in order that the last 50 minutes may be devoted to the Natural Gas Pricing Act debate.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. Who yields time?

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, this morning, I engaged in a colloquy with the distinguished Senator from Idaho (Mr. MCCLURE), who suggested that the motion to recommit and the provisions in connection with that motion were not sufficiently protective of consumers, although making clear his point that he is a strong advocate of deregulation, suggesting that, in some manner, we are doing violence to the very concerns about which we were speaking. It is true, in a strict sense, that the Federal Energy Regulatory Commission—Mr. President, may we have order? It seems to me there is a caucus over there.

The PRESIDING OFFICER. May we have order? Will the Senators clear the aisles?

Mr. METZENBAUM. I thank the Chair.

It is true that, in a strict sense, the Federal Energy Regulatory Commission will not have direct control over the wellhead price of gas allowed to reach the interstate market by the surplus provisions, but the real fact is that the sale cannot be made in the first instance unless FERC agree to approve the sale. If FERC decides that the prices are too high and the acquisition costs are more than they should be, then FERC is in a position to deny the approval in the first instance.

In addition, these provisions apply only to surplus gas. It is a fact that, under these provisions, in order to protect the consumer, the wellhead price, the acquisition price of the pipeline, may not exceed the average acquisition cost. This is a safeguard against the practice known as brokering, where pipeline companies which were really set up to transport gas from one part of the country to another found themselves able to make literally millions of dollars and, in some instances, billions of dollars by being able to broker gas from the intrastate market into the interstate market. So, in some instances, if they paid $2.30 per thousand cubic feet for gas under a new contract by reason of the provisions in this legislation, they would only be able to sell it for that which would be the average price, which might be $1.40, might be $1.60, might be $1.90.

That restriction in the conference report and also in our language, which is provided for in the motion to recommit, does provide some element of protection for the consumer. The restriction actually is a rollback from the current practice because, under the present procedures, 60-day sales are currently being made, or were in the recent past, at prices between $2.25 and $2.50 per Mcf, which is way above the average new gas price in the intrastate market, which, today, is roughly $1.80 per Mcf.

Surplus gas under the provision in the congressional alternative, as well as that in the conference report, because the language is the same, will now be made available at significantly lower prices. That is the point that my friend from Idaho failed to emphasize this morning.

I should further point out that he talked about something in a "Dear Colleague" letter. I do not happen to have that "Dear Colleague" letter before me at the present time, but certainly, there can be no question about the fact that the motion to recommit, while not being a panacea, not being the total answer for consumers, not being all that I would like it to be and my cosponsors would like it to be, is a step in the right direction. It does not include those provisions that are in the conference committee report, which will add $29 to $41 billion in additional costs to the American people in the next 7 years between now and 1985, or an average cost of about $800 per family between now and 1985. So I say that, although certainly no one argues that the proposal that we are making to recommit is the perfect answer, we do not claim that, but we claim that it is far more perfect than the proposal that has been offered to the Senate in the pending measure in the conference report.

Mr. President, I reserve the remainder of my time.

Mr. JACKSON. Mr. President, I yield such time as the distinguished lady from Alabama may need at this time.

Mrs. ALLEN. Mr. President, by coincidence today marks my 100th day in service to the State of Alabama and the Nation as a Member of the United States Senate. Those days have been filled with sadness and excitment, frustration and fulfillment, and above all education—never-ending day-in-day-out education. In those few days I have been called upon by my constituents and my colleagues here to make decisions upon matters of critical importance to Alabama and the Nation that—111 days ago—I considered the special province and expertise of my late husband, Senator Jim Allen.

Today marks another "decision day" for me and for all our colleagues. We are testing whether this Congress, as representative of the diverse interests and concerns of our vast country, can agree upon a beginning point for a national energy policy, which is the No. 1 or No. 2 domestic problem facing the Nation.

This past Sunday night, in a precedent-shattering announcement, our President revealed a breakthrough in foreign policy which our country, certainly, and the whole world has been waiting for 30 years. Can we do any less than make a breakthrough today on a domestic policy which has been on the national agenda for nearly the same amount of time?

Like most of our colleagues, Mr. President, I have heard from every conceivable group, organization, business, and individuals from all walks of life and of all political persuasions in my State with reference to the natural gas policy conference report.

Based on my brief but educational tenure in the Senate, and based upon my daily contacts throughout the State of Alabama, I answer "yes" to the question of supporting the conferees, because I recognize the need for a national energy policy of which this bill is the centerpiece. And, Mr. President, I also recognize the simple fact that neither this Congress nor any Congress will agree unanimously on just exactly what is the proper course for such an energy policy. The answer, then, is a "yes" with respect to the legislative approach before us on this segment of the national energy policy.

The people of Alabama demand that I take a stand on the energy issue of the day, and I say "yes" to the creation of a policy and "no" to the recommittal motion, which in effect is a vote for doing nothing.

Mr. President, I believe I know what Jim Allen would have done had he been faced with the unenviable choices we have before us; I believe I have properly gaged the tone and temper of the vast majority of the people of Alabama about our country's energy policy, therefore, I believe I am right in joining with the distinguished chairman of the Senate Energy and Natural Resources Committee, the majority leader, the majority of the conferees on this measure, and some of the producers of natural gas, and consumers of natural gas, in supporting passage of this critical part of the total package of energy-related bills in the 95th Congress.

And, Mr. President, it is my humble opinion that this Congress must act on this bill before it adjourns, and before it turns to other pressing public business.

Last year, after voting 103 times on matters relating to the natural gas pricing policy, Jim Allen made up part of that four vote majority that passed S. 2104, the Pearson-Bentsen natural gas deregulation measure. Passage of that bill by the Senate set the stage for a confrontation with the House that has lasted to this moment. The result of that deadlock called for compromise. And, a compromise we have. The bill does not go far enough in the direction a majority of the Senate desired in 1977, but it does move the country, with deliberate pace, in the direction envisioned by the Senate just a year ago.

In accepting the work of the conferees, we are taking a tiny step at getting the Government out of the hair of the entrepreneur who seeks, profitably, to increase domestic natural gas supplies. Those of us who basically favor total deregulation and decontrol of the Government's impact on the free market in energy did not get all we wanted in this bill, but we have made a step in the right direction. A small step is better than no step.

While I have not participated in all of the debate on this measure to date, it has never been far from my mind. As I have travelled the State of Alabama over the past few weeks, I can assure you that this debate, this issue, has been on the minds of the people of Alabama. I have studied the reports—both pro and con—I have listened with respect to the conference report's detractors and with equal respect to the conference report's supporters. I have weighed the consequences of not acting as we are asked to do and found the "no go," "stand part," "status quo," arguments, unconvincing.

Mr. President, the natural gas conference report is a sound compromise that will be good for the Nation, and we must pass it or admit that the Congress of the United States cannot act on a demonstrated national need.

The terms of the compromise will increase supplies of our premium fuel for the consumers while providing price certainty and new markets for the natural gas producers. Those who oppose the bill—for whatever reason—admit the fact that substantial additional quantities of natural gas will flow into the interstate market at prices below that of displaced alternate fuels if the legislation is enacted.

We are starting the country on a period of pricing certainty which has been lacking for 25 years. In spite of the reported complexity of the legislation, we are embarking on a new system of pricing which will replace that which all agree is an antiquated and generally unworkable system—particularly in times of crisis and shortages. The conference report opens the interstate market to producers, allowing gas now backed up in the intrastate market to flow into the interstate market where it is sorely needed.

The compromise, Mr. President, concentrates the rewards of higher prices where they are most needed—on the discovery of, and development of, new, high-cost gas. The system of incremental pricing is a sore point across the length and breadth of the industrial world. However, the policy envisioned in the legislation protects the residential and small commercial consumers who most need protection from excessive price increases, and in fluctuations in prices due to uneven demand in the intrastate market. While I have heard a great deal of opposition to the incremental pricing system and the categories of natural gas that will be created, I am emboldened to note that some of the detractors of this particular bill in 1977, voted in support of S. 2104 which contained the outlines of just such a pricing system.

The language of the conference report is designed to, by 1985, reduce our country's dependence on high-cost foreign crude oil by a significant amount. No one truly believes that this bill will be the cure-all for our national gas energy problems. But, Mr. President, a decisive and clear-cut congressional vote on this measure is a necessary step in the direction of getting our country off dead center relative to energy demands.

I support the conference report because it is apparent that we have argued long enough; we have debated long enough; we have considered long enough; we have procrastinated long enough in formulating a response to the new era of international economic reality where "energy" is the rock upon which all free economies will stand or flounder. It has been 5 years since the OPEC oil embargo. It is time for Congress to act.

And let us make no mistake about this being our last best chance for making the desired step toward a national energy policy. Last Friday, the distinguished majority leader and the distinguished chairman of the Senate Energy Committee explained why it is all but impossible to contemplate a "better" bill coming down the legislative chute this year, next year, or the year following. Where does that put us should they be right, or even half-right? It puts our country in the position of waiting, just waiting, hoping for a better combination of circumstances, before acting on something as vital as the creation of a national energy policy.

The majority of the American people do not believe we can afford to wait, 1, 2, 4, or 5 years, before we make up our mind on how to marshal our enormous resources to move in the direction of solving our vexing energy problems.

The time to act is now. The vehicle for action is before us in the report of the conferees on H.R. 5289. We must approve this bill as a demonstration to the American people that its Congress does respond to public needs.

Critics will say the bill is not perfect. Is any piece of legislation that leaves these halls perfect? Many call the bill complex—too complex—for rational enforcement. That has been the cry of many against the present system for years, and those who cried the loudest helped fashion this compromise. The bill, it is claimed, will cost this group, or that group, too much money, one way or another. What bill would not? No bill? Of course not. Were the present system to remain intact, natural gas prices would continue to soar and there would be no certain means of moving scarce supplies from one part of the country to another in response to demand.

Mr. President, the critics of the legislation point the finger at the conferees and say, "do it again," but offer nothing as a substitute other than standing pat. Many of those same critics of this bill have been the most vociferous in support of a national energy policy.

One does not make scrambled eggs without cracking eggs and we cannot

make a national energy policy without cracking some of the fossilized thinking about various components of energy policy that we have had for decades.

Mr. President, we cannot move ahead without taking a step and H.R. 5289 is a step in the direction of creating the energy policy most admit we need. I support passage of the conference report, and disapprove of the motion that would, effectively, kill the establishment of a natural gas-pricing policy and a national energy policy, by recommitting it to the conference committee. I urge my colleagues to join in making this historic step for the country by supporting passage of the conference report.

Several Senators addressed the Chair.

Mr. JACKSON. Will the Senator yield for a second?

Mr. ROBERT C. BYRD. Yes.

Mr. JACKSON. Mr. President, I want to commend the distinguished gentlelady from Alabama for an excellent statement, a well-reasoned statement, a responsible statement. I think she summed it up very well when she said that the choice here is really a question of doing something or doing nothing.

I commend her for an excellent statement on this subject.

Mr. ROBERT C. BYRD. Mr. President, I join with the distinguished manager of the conference report in expressing commendations to the distinguished Senator from Alabama (Mrs. ALLEN) on the decisions she has reached to vote against recommittal and to support the national energy policy that is envisioned in this conference report, along with the other conference reports dealing with the energy policy.

Her statement is forthright. It is courageous. I think that it is the right decision. I compliment her and I thank her.

Mr. JACKSON. Mr. President, I yield such time as the distinguished Senator from California may require.

Mr. CRANSTON. I thank the distinguished chairman and I compliment him on his very prolonged and effective work on this measure.

Mr. JACKSON. I thank my colleague.

Mr. CRANSTON. Mr. President. I intend to vote for the conference committee report on natural gas pricing.

No miracles will flow from passage of this piece of the energy package. It is far from perfect. It does not totally satisfy me. Some of my fellow Californians support it, some are uncertain, some oppose it.

Nobody can say with absolute certainty what will happen—good or bad—if we pass this bill. Just as nobody can say with absolute certainty what will happen—good or bad—if we do not.

But my judgment tells me that for all its uncertainties, for all its possible flaws, this bill offers a better prospect for our country than the alternatives: No bill at all or, what is more likely, a bill that would bring about much more rapid and complete deregulation.

Mr. President, this compromise legislation has been depicted—oversimply and erroneously—as a bill deregulating natural gas. Period. Nothing more.

True, controls over new natural gas are scheduled to end January 1, 1985 under the bill.

But the bill also does this:

First. It expands regulation—to cover a major category of natural gas that is presently exempt from control. For the first time, instrastate gas—which constitutes 40 percent of the national supply—will be brought under Federal regulation. This provision is of particular importance to my State of California which desperately needs the natural gas that producers are keeping off the interstate market.

Second. It perpetuates the regulation of old gas—for an indefinite period.

Third. It brings under price control about 15 to 20 percent of our national new gas production—or about 50 percent of the new gas flowing in most pipelines—which currently escapes regulation because it falls under short-term or emergency sales, and

Fourth. It continues Federal regulation of new gas for 6 additional years—and possibly more.

Even after 1985, the bill provides that after a lapse of 6 months, regulation can be reinstituted for as long as 18 months by the President (unless Congress disapproves) or by Congress (by concurrent resolution), any time prior to June 30, 1987. Congress can, of course, then enact more permanent regulation legislation if it wishes.

Clearly this bill cannot categorically be labeled "deregulated." And it certainly is not a bill for total, immediate deregulation.

That is why the U.S. Chamber of Commerce opposes it.

"Although styled a deregulation bill," the Chamber notes, "it is, rather, a comprehensive and near total regulation of the gas industry."

And that is why the Independent Petroleum Association of America says:

> Though widely publicized as a "deregulation" proposal, the compromise in fact would *increase* rather than remove or decrease regulation. (Emphasis theirs.)

Much closer to a real deregulation bill was the measure the Senate passed last October—and which I opposed.

The Senate bill, which the majority of this body still favors, would have immediately eliminated all controls over new onshore gas. And it would have ended regulation of new offshore gas in 5 years—with no provision for temporary congressional or Presidential reimposition of controls.

That is the sort of bill we are trying to stop with this compromise.

As the Congressional Budget Office points out:

> There is no doubt but that the compromise agreement provides for lower consumer prices in 1985 than does the Senate bill.

Mr. President, I shall vote for the conference bill for a number of reasons.

I feel it strikes a reasonable balance in resolving a highly complex, highly controversial problem. It is, in the classic and best sense, a compromise. And I have concluded that it is an acceptable compromise both for the good of our Nation and for my State of California.

I believe this bill is important to our future. It should move us towards a stable, workable national energy policy.

It should help shore up the American dollar by assuring our NATO friends and allies around the world that we are serious about dealing with our energy problem. The current weakness of the U.S. dollar abroad has many causes. But none is more important than our negative balances of trade and payments, caused primarily by our heavy dependence on foreign oil.

This bill should help us cut back on enormous trade deficits created by our continuing heavy imports of foreign oil. If we continue to remain so dependent on foreign oil, we will be forced to pay even more for it as the value of the dollar keeps going down. This will further worsen our trade imbalance, further weaken world confidence in the dollar, and further aggravate inflation here at home.

The bill should lessen our dependence on Arab oil—with two significant consequences. We will be less vulnerable to Arab price increases or embargoes. And we will be less vulnerable to Arab pressures on our foreign policy decisions in the Middle East and elsewhere.

The bill should bolster our national economy, reduce inflationary pressures, and insure continuing employment in industries heavily dependent on natural gas.

Finally, I believe strongly that this bill is vital to my State of California. It offers promise of more plentiful supplies of natural gas—something California desperately needs.

California is the most gas-dependent State in the Nation. Fifty percent of our nontransportation energy comes from natural gas. Unlike other areas of the country, California cannot readily switch to coal or to large scale use of oil: doing so would radically worsen our already critical smog and air pollution problems.

But producers in the Southwest, from whom we in California buy 65 percent of our gas, are cutting back drastically in their deliveries. Southern California Gas Co. alone, for example, was cut back 23 percent last year. We must get more gas to survive. The Stanford Research Institute estimates that the growing gas shortage, unless reversed, could throw 800,000 Californians out of work by the mid-1980's.

How do we get additional gas? One way is to get our present suppliers to sell us more. But right now they will not. Billions of cubic feet of Southwestern gas are being withheld from us and from other out-of-State customers because interstate sales are subject to price controls while intrastate sales are not. Producers sell as much high-priced, unregulated gas as they can within their own States. What they cannot sell that way, they prefer to leave in the ground. While southern California, for instance, was consuming 2 billion cubic feet a day, Texas gas wells last summer produced 3 billion cubic feet a day below their capacity.

This bill—far from a "deregulation"

bill—seeks to meet this problem by, for the first time, imposing the same regulations on intrastate as on interstate gas. As a result, California will, for the first time, have equal access to Texas' rich supplies of natural gas. California, if this bill passes, will have parity with all other consumers of Texas gas—something we have never had before.

The additional supplies of natural gas that should become available to California under this bill can significantly improve our air quality by reducing our use of smog-producing oil. It can reduce the likelihood that we will be forced to produce oil in sanctuaries like those in Santa Barbara Channel designed to protect our beautiful coast. And natural gas is a far preferable alternative to nuclear energy which, because of its dangers, its uncertainties, and its costs, troubles millions of Californians, myself among them.

In addition we can reasonably expect substantial additional supplies of gas from new wells which will be developed as a result of the gradual deregulation of new gas production.

Where else can Californians hope to get natural gas? Alaska.

The proposed Alaska gas pipeline is designed to transport about 800 billion cubic feet of gas annually by the mid 1980's. A substantial portion would be headed for California. Almost 20 percent of southern California's gas supply is expected to come through that pipeline by 1985.

But the pipeline will not be built soon—perhaps it will never be built—if this bill is killed. Two important provisions are specifically designed to encourage investors by making Alaskan gas much more marketable for long term contractual suppliers. One exempts Alaskan gas from incremental pricing. The other provides "rolled in" pricing so Alaskan gas can meet the competition.

Passage of this bill would give investors the kind of pricing information they need to have the confidence to invest in the $10 billion project. Failure to pass this bill could mean years of delay in getting the pipeline started. And with each year of delay adding another $1 billion to the cost, a long enough delay will ultimately kill any chance of getting the gas pipeline built.

Now, what is going to happen to the price of gas that the consumer is going to have to pay?

For Californians—and for most of the Nation—the hard, unpleasant fact is that natural gas prices are going to go up. Inescapably, with or without this bill. They are already going up. The startling fact is that natural gas prices have gone up 500 percent over the past 6 years—with present regulation and price control laws.

Foreign gas costs even more. (Mexican gas: $2.60 per million cubic feet compared to an average $1.15 for natural gas in California.) Alternative fuels cost more yet: Like liquefied natural gas (LNG) $3.50–$4; and synthetic natural gas (SNG) $5–$8. Foreign oil costs far more than natural gas, too, as we all know only too well.

This bill will not stop the current increases in gas prices. But I believe the Congressional Budget Office is correct in concluding:

> The inflationary . . . effects of the bill are minimal and . . . residential consumers are protected from rapid price increases. Even by 1985, the residential cost of natural gas will still be less than that of alternative fuels such as heating oil or electricity.

And as the California State Energy Commission noted last March: "If Congress fails to act, new gas prices may increase even more rapidly than they would under legislation now being considered" because of price increases that will probably be granted by the Federal Energy Regulation Commission.

Mr. President, over the next several days we will be voting on a number of recommittal motions with instructions. Some of them will be superficially attractive. Some may appear to be substantial improvements over the conference bill. Some may look so good that many of us who support the bill may be tempted to vote for them.

But they all will have one fatal flaw: None of them will ever become law. I am absolutely convinced that none of them could ever get out of conference. Their approval by the Senate will accomplish absolutely nothing—except to kill this bill and the one chance Congress has to enact a reasonable energy program.

And there is a worse possibility. Killing this bill may lead to both total, almost immediate deregulation, and runaway high prices—the very thing many of us fear the most.

We face a very real likelihood that if this compromise fails, Congress may vote for more immediate decontrol next year. That is what antiregulation Senators are predicting. I hope they are wrong. But—in view of the Senate passage of the Pearson-Bentsen deregulation amendment last October and the narrow defeats of the comparable Krueger proposals in the House—I am not at all sure they are wrong.

Mr. President, the compromise before us, warts and all, deserves the support of every one of us who favors continued regulation.

It may not be all that we want. But if we hold out for more, we may well end up with much, much less.

The compromise bill will, in all probability, open up new supplies of badly needed natural gas and help deter any new push for nuclear energy, at least in California. It should help strengthen the dollar abroad and reduce inflationary pressures at home. It will reduce our dependency on politically and economically costly Arab oil. And it will—along with provisions for energy conservation, coal conversion, and utility rate reform already approved by the conference committee—give us the beginnings of a national energy policy that will convince Americans and the world that we are serious about meeting our energy crisis.

I earnestly urge my colleagues to adopt the conference report.

Mr. ROBERT C. BYRD. Mr. President, we live in a time of difficult, urgent, and sometimes painful decisions.

It is my opinion that this U.S. Senate has acted courageously in meeting the challenges before it during this 95th Congress.

Today, we are confronted with another test.

As we pull our cars up to the gasoline pumps, we are reminded that nearly half of our oil is imported from sources that are only as certain as the whims of man and the stability of a particular region.

As we buy a loaf of bread from the supermarket, we are reminded that the purchasing power of our dollar does not go as far as it did last year.

As colder weather approaches, we are reminded of the frozen rivers of early 1977, and we wonder whether this winter will bring staggering unemployment and blackouts because of shortages in the natural gas supply.

Today, we are reminded of all these things; and because of these and many other reasons, I oppose the motion to recommit the natural gas conference report.

I am guided in my belief by one basic question, really, and it is this: If the U.S. Senate does not muster the will to make the tough decisions on our energy problem, who, then, will?

Recommittal is inaction. We will have shadowboxed with this monumental task for 17 months during this Congress and then walked away at the final minute of the final round, without having delivered the telling punch.

Let us divest this motion of its rhetoric and get down to what we all should know to be the basic fact. Recommittal of this conference report will be the death knell of legislative action on natural gas.

This opportunity is not likely to come our way again in the near future. It is not realistic to expect that we can pass a "stripped-down" version of the report and then return at an early date to begin work all over again, from the ground up, on the gas pricing and regulation question.

We have devoted months to this legislation: to debate, to votes, and to painstaking negotiations. We have reviewed, discussed, and studied every nook and cranny, every detail and every nuance of this issue. If we cannot fashion a compromise now, what evidence is there that a better result—or any result— will be forthcoming next year, or the next year, or the next? This problem has defied resolution for more than 3 decades, and there is no legislative magic to be summoned for a better compromise.

Recommittal means failure to deal with our serious natural gas problems. The entire natural gas policy and plan would be buried.

There would be no long-term national energy policy with respect to natural gas pricing and regulation.

If we succeed in defeating the motion to recommit, and if we succeed in adopting the conference report—and I anticipate that we will succeed in both instances—the national interest will be served.

This bill will establish a single, national market for natural gas, and this will serve to bring more gas into the interstate pipeline system. It will protect the residential user, the farmer, and the small businessman against sharply accelerating costs.

This bill will help moderate our reliance on imported crude oil—imports which contribute heavily to our adverse balance of payments.

One of the major factors behind the weakness of the dollar is our trade deficit. An energy policy that will help us to reduce our dependence on foreign oil and on imports of foreign gas should generate international support for the dollar.

This is particularly important to the average American who experiences one of the consequences of a weaker dollar in the form of higher prices. Not only must an individual pay the higher dollar costs of imports, but, on an overall basis, the decline of the dollar in relation to foreign currencies during the past 12 months is estimated to have added a full percentage point to the U.S. inflation rate. This affects every American.

In short, adoption of the conference report should produce substantial benefits for the dollar. Of equally great importance for the dollar is the symbolic value of adoption of the conference report. It is this broad aspect of the question which none of us can afford to overlook.

The value of the dollar is determined as much by what we do as by what our trading partners expects us to do. Right now, they are uncertain about whether we will deal with our fundamental economic problems—the large trade deficits, the energy situation, and high inflation. Adoption of the conference report on next Wednesday, a week from tomorrow, as part of the overall energy package, will assure our trading partners that we are ready to take the necessary steps to put our house in order. The net result should be increased support for the dollar.

I feel that it is vitally important that we demonstrate to the international community our determination to take action against conditions which produce an unstable dollar. An unstable dollar is particularly disruptive to international economic relations. It works against the achievement of economic growth here at home as well as in all the other democratic industrial nations.

European leaders with whom I spoke this past summer emphasized their concern about these points. They view this as the litmus test of our economic probity.

Mr. President, for days now, Senators have argued eloquently and persuasively all points of view on this issue. On the threshold of this important vote, I am reminded of an excerpt from a speech made by Senator William H. Seward in the Senate on May 26, 1854. He said:

> Questions sometimes occur, which seem to have two right sides. Such were the questions that divided the English nation between Pitt and Fox—such the contest between the assailant and the defender of Quebec. The judgment of the world was suspended by its sympathies, and seemed ready to descend in favor of him who should be most gallant in conduct. And so, when both fell with equal chivalry on the same field, the survivors united in raising a common monument to the glorious but rival memories of Wolfe and Montcalm.

Mr. President, our national interests will not be served if only monuments to our energy problems are built. We must settle this issue, and we must settle it soon—and by soon, I mean now.

Knowing that an uncertain future may be as close as the next sunrise, we must not vote for recommittal and thus become the guardians of the status quo and the defenders of a defeated energy policy.

Let us vote up or down on this issue, for all the world to see, and bear the weight of our decision, and not our indecision.

Therefore, Mr. President, I urge that the Senate today vote against this motion to recommit. I say this with all due respect to those who support the motion to recommit. I respect their integrity and their desire to do what they think best. Mr. President, but this motion, if it were to carry, would sabotage the efforts of 17 months in this Congress, the best chance we have had in more than three decades to the finding of a solution to our natural gas pricing problem.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. JACKSON. Mr. President, I take this opportunity commending the distinguished majority leader for the role that he has played in our effort to bring to the Senate the opportunity to vote on a major piece of legislation that will honestly and truly do something about our No. 1 problem, that is, oil imports.

The majority leader, the distinguished Senator from West Virginia, has given of himself over and over again, day after day, week after week, month after month, to get action, and I cannot speak too highly of the contribution that he has made in our quest for a national energy policy.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Washington, the manager of the conference report, for his overly-charitable remarks concerning me.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 4 minutes to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. ABOUREZK. Mr. President, today we are considering a bill that by consensus, should not exist. My colleague, the chairman of the Energy and Natural Resources Committee, has repeatedly stated that he does not agree with the provisions of this bill. The President has repeatedly told the people of this country that he would not collaborate with the energy companies to raid the purses of the working and middle classes. The leaders of the House-Senate conference on the natural gas section of the energy plan declared themselves committed to the principles of the President's initial proposal.

Outside the Government, other groups object to the provisions of the bill. Consumer groups, the National Association of Regulatory Utility Commissioners, independent oil and gas producers, the chamber of commerce, the farmers union, major industrial users, trade unions—none of these have anything good to say about this proposed piece of legislation. But unlike the national political leadership, these groups actually oppose the passage of the conference report.

The supporters of this bill ask us to vote for the conference report "because it is there"—as if we could make this one the sow's ear into a silk purse. As if we would not in fact be making a bad bill into a bad law and setting in motion inflationary waves whose eventual strength cannot be predicted. Even the Wage Price Board will not touch the question of how much inflation this bill could cause.

Those who have any sympathy for the "because it is there" argument should remember that this bill did not come before us by accident. It took a massive effort to get it here. In view of this I have a hard time taking seriously the claims that we should ignore the massive flaws in the bill and vote for it because it serves some symbolic purpose.

When the administration last January cajoled and coerced a small and select group of Senators and Congressmen into private discussions of just how much the producing States wanted before they would release any of the gas supplies they have been holding, Secretary Schlesinger had already decided that the administration would take any bill the group came up with. Any bill. Schlesinger dismissed the President's early concern over windfall profits for the industry—after all, with all the resources of the executive branch at their command, the administration could demand congressional acceptance of any bill, even one that contained deregulation.

The administration was obviously willing to go out on a limb for deregulation—the worse the bill got, the more the administration could portray the vote on natural gas as a vote of confidence in the administration itself. It figured its chances on that issue were better. Nevertheless, the focus has still remained on the contents of the bill, and it is clear to me that there are many members of this body who wonder whether voting for this compromise would really help the administration after all.

There are real long-term political dangers in the game the administration is playing. If this bill were a bottle of bad wine at a dinner party, the guests, wanting to be polite, wanting to save the host embarrassment, might drink the wine. If the wine were very bad, and the host very sincere and important, the guests might even compliment the wine and ask for seconds. Let me assure you that this is no favor to the sincere host. Not only do the guests risk getting sick from the wine, but the host will simply be encouraged to go out and buy more of the stuff. Now I do not think that we are dealing with a naive host in this case. Mr. Schlesinger knows quite well how bad the wine is. And if we drink it down with a will, the latest energy czar will chuckle into his sleeve about what a clever fellow he is and take a drink of wine from his no doubt excellent private stock.

When we are in the U.S. Senate talking about laws that will shift billions of dollars from one group of people to another, the consequences of trying to

"save" the President's face are going to be much more severe than the consequences of drinking bad wine. But I am convinced that much of our constituent's cynicism about government—and much of the outcry against regulation and bureaucracy—arises from the passage of similar legislation—on equally specious grounds—for similar motives of political appeal.

I fear, Mr. President, that we in the Senate are being used. The American consumer is being used. The image of the United States is being used. This bill will not change the course of history, though the administration has decided to portray it that way. This bill will not reverse or otherwise determine the future of American prestige in the world. This bill will not break the budget of most American families. This bill is not even "the energy bill' but only one-fifth of it. It proposes to do something—raise the price of natural gas to the equivalent of OPEC oil prices—which is very probably possible to do under existing law.

No, this bill in reality is not what it has been made to seem in appearance. It will not stand between us and "Eurodollar panic." And I repeat, it will not even destroy the purchasing power of the working American. It will only be another brick in the wall of higher and higher prices for basic necessities that has been growing up around the working family. A wall that has been put in place brick by brick with the assistance of the elected government. As the Wall Street Journal pointed out in a recent article called Polling the Pollsters,

> The "tax revolt" is as much a protest against rising prices, skyrocketing utility bills and high interest rates as against high taxes or big government.

Each time there is a chance to give the American public a little help in keeping its head above the top of the wall—as in the labor law reform bill, or the consumer protection agency bill, or antitrust reform—those efforts are smashed. Apparently, the prestige of the United States does not rest on the fair treatment it accords the mass of working people who labor to make it great. The President never goes out a limb for those measures, as he goes out on a limb for the powerful business interests who will be the direct—and perhaps the only—beneficiaries of the natural gas compromise bill. Apparently, giving them greater "incentives" is crucial to the national interest, just as it is crucial to the national interest that Federal employees be held to no more than a cost-of-living pay increase; or that postal workers, and teachers and police and firemen—not to mention steelworkers, autoworkers, textile workers, and so forth—not receive wage increases above the level of inflation.

Congress cannot defeat the President's natural gas bill—the administration defeated its own natural gas bill months ago when it abandoned the principles that formed the essential basis of its new "national" policy.

Early in December a group of the President's Senate supporters met to discuss the situation facing the conferees. After that meeting, Chairman JACKSON released a statement briefly laying out what any compromise would have to contain for it to be preferable over current policy.

He said:

> The following items are essential to our support of any natural gas bill to be reported from this conference committee.

I continue quoting from the chairman's statement.

> First, there must be price regulation of all new gas. We are willing to agree to a small increase in the House new gas price of $1.75.

Mr. President, under the compromise now before us, the operation of a 10-percent annual escalator will put the new gas price at $2 to begin with. This price is higher than the current average new gas price in the unregulated intrastate market.

Again, quoting:

> New gas must be limited to gas produced from new reservoirs. We are not willing to allow a higher price for gas produced from extensions of existing reservoirs.

Mr. President, under the compromise, new gas prices will indeed apply to gas from existing reservoirs—simply and directly, this essential preservation of the distinction between truly new gas and truly old gas was abandoned.

Again, quoting from Chairman JACKSON's statement:

> Incremental pricing must be included and it must cover both interstate and intrastate gas.

Mr. President, under the compromise incremental pricing does not cover intrastate gas. It does not treat all new gas alike. It does not treat like consumers alike.

And finally:

> The new price legislation must not include a phase-out of new gas price controls regardless of what happens to oil price controls.

Mr. President, under the compromise, as we all know very well by now, some gas is deregulated within a year, and price controls on other gas expire in 1985.

The chairman concluded his statement by saying that:

> If the conferees are not willing to include these principles, we will have to admit that our negotiations are at an impasse and that there will be no gas price policy bill this year.

Mr. President, that was a strong statement and a reasonable one. It represents the reality of why we are here in the first place—not to funnel money to industry, but to formulate consistent national policies where national interests are at stake.

At that point last winter, neither the supporters of continued regulation, nor those who wanted full decontrol had found any areas of agreement. Trial balloons from each group had met with no success. Days of discussion among members and staff succeeded only in demonstrating the gulf that separated the two sides.

Yet, we are now confronted with the very bill the leadership said was unacceptable. What is so important about this bill that the leadership has abandoned its principles to bring it out?

The statement of principles from the Senate conferees and their chairman held through Christmas, when the deregulation forces among the Senate conferees came forth with a proposal that was promptly labeled the "Christmas turkey." It was soundly denounced by other members of the conference who rejected it with a 16-to-2 vote.

Senator JACKSON issued a statement specifying that no bill which failed to extend the allocation authority contained in the emergency Natural Gas Act to intrastate gas would serve the national interest.

The bill now before us does not, of course, contain such authority—but Senator JACKSON went further, saying in no uncertain terms that:

> The national interest requires that all new natural gas be treated alike. With serious energy shortages in the offing, we cannot continue to insulate the 40 per cent of the Nation's natural gas burned in the intrastate markets from some Federal control. We cannot perpetuate the situation where intrastate natural gas can be used for low priority industrial uses while the high priority needs of small businesses and homeowners go unfilled elsewhere in the country.

I could not have stated that problem better myself, Mr. President, But the compromise now before us does not treat all new natural gas alike. New natural gas in the intrastate market is not subject to national curtailment priorities. New natural gas in the intrastate market is not subject to incremental pricing. New natural gas in the instrastate market is not subject to emergency allocation.

We are writing into law with this bill precisely the situation the chairman said we must have new legislation to correct. Under the compromise, intrastate natural gas can be used for low priority industrial use while the high priority needs of small businesses and homeowners go unfilled elsewhere.

I must ask again, Mr. President, what is so important about this bill that requires us to abandon the very principles that would have justified its passage?

After 2 months of discussion last winter, it was clear to members of the conference that no gas bill responsive to the public's need to be protected against exploitation by the oil and gas industry was possible. And it was also impossible to get a bill that would create a uniform national market for natural gas, over the objections of conservatives determined to maintain intrastate consumers on a different footing than those in the interstate market. Conferees began to prepare to fold up their tents and go home.

Enormous pressure to continue meeting then came from the administration. They used the press to announce that they were prepared to accept a "compromise" which included prices tantamount to deregulation. Not only did these announcements undercut any remaining ability by the majority of the conferees to protect the consumer, but they set in motion the process which brought us to the position of debating a bill which has no merits.

Suddenly, after the bill had already died a couple of what would eventually become many deaths, the administration entered the picture in a big way. Secretary Schlesinger began a series of visits to the hill. The President seemed to re-

verse his stand on deregulation. Schlesinger told reporters that the White House would accept deregulation and prices of $2. His statements made the front page of the New York Times. They also made a mockery of the conference leader's efforts to hold the line against the deregulation forces. These combined with a heavy barrage of administration accusations that the conferees were holding up the entire energy package—a package whose integrity would be lost without this one component—according to the administration. It was the beginning of the end.

In the meantime, our distinguished and very able colleague from Louisiana, Mr. RUSSELL LONG, whose knowledge of the oil and gas industry is exceeded only by his knowledge of politics, was sitting on what the President had proclaimed to be the "centerpiece" of the energy plan. Perhaps you remember the crude oil equalization tax? This "centerpiece" was largely ignored by the press, which was intent on reporting the refusal of the gas conferees to move toward a compromise. The Finance Committee escaped the accusations that were heaped on the gas conferees—whose main crime at that point seemed to be that they were holding fast for a consistent national gas policy.

No, the distinguished and amiable Mr. LONG went about his business, free from the intense and constant pressure to "get a bill," "get a bill," any bill—this of course meant an industry bill, because the industry, unlike the administration, was prepared to accept no bill rather than one which did not reach their price objectives.

No, RUSSELL LONG sat tight. As a result, we are not in here today discussing a crude oil equalization tax, with the Secretary telling the country and the world that the value of the dollar depends on it; oil import reduction depends on it; and Western civilization as we know it depends on it. The President's energy program lost its centerpiece long ago, with no fanfare and no ill effects for the Western World as we know it. So we're here discussing natural gas price deregulation, as if the value of the dollar and Western civilization depends on that.

In the meantime, as the likelihood of a crude oil tax bill faded from sight, the administration pursued a gas bill with more and more zeal. The small group of conferees continued to meet privately, conducting negotiations over every item of the legislation, away from the public eye. They did not have to contend with the obstructive presence of those conferees who were committed to a new gas policy that would actually treat all new gas alike, and insure that gas users paid no more than a reasonable price.

Even without these individuals to cause trouble, the ad hoc conferees had rough sledding.

Each time the producer demands would seem to have gone too far, Secretary Schlesinger would appear. He would pull a few rabbits out of his hat, make a few veiled threats, find another principle to sacrifice to the great god of gas revenues. When the talk faltered, Schlesinger was there to help clothe a special price increase in regulatory language, or to draw subtle and arbitrary distinctions between "too much" and "too much." The bill's complexities come largely from this procedure, so will big fees for fancy lawyers that will argue interpretations and definitions if this bill passes. What the ad hoc conferees could not agree on, they left ambiguous, to avoid confronting any contradictions that threatened their unholy alliance.

From time to time, I got reports on what went on in the secret sessions. The group dwelled with loving concern on the situation of the gas producer. A typical problem might be one where a producer buys a lease which had previously been owned by another lessor. An old nonproducing well stands on that lease. Is not it necessary to give any gas flowing from that well the new gas price, since otherwise you would be forcing the individual to drill an unnecessary new well just to get more money for the gas, when it would be cheaper and more efficient for him to go through the old well?

Now if that level of concern and detail were lavished on the consumer, perhaps people would become interested in Government again. Let us take a family living in a good-sized uninsulated house in South Dakota with an income of $9,000 per year (which is a decent income for South Dakota), two children, and a gas furnace. That family's heating bill went from $38 during a bad month two winters ago to $68 for a bad month last winter, and every hope that family had of buying a new, more efficient furnace, or installing insulation disappeared as the utility bill ate away a larger and larger share of the household budget every month. Should not we write in a provision to take care of that householder, as we write in a provision to take care of the businessman with his old well on a new lease? Believe me, the question never even comes up.

Between Christmas and May 4 of this year, the official conferees did not meet in public. And I assure you that if the conference had continued to meet in public, we would not be here discussing this messy deregulation proposal. Open meetings, covered by the press, would have let the public know too much about how it was being sold out.

By meeting secretly, Schlesinger and the others hoped to avoid challenges by the public or "troublesome" members of Congress or the press. Public criticism was muted by the administration's portrayal of the situation as a struggle for supremacy between an obstinate Congress and the President, rather than as a struggle by certain interests in Congress to preserve some shred of the President's program. They expected to emerge with their verbal accord all sewn up like a well-tailored suit with the tucks, and pockets and the smooth rich lining carefully hidden inside.

Drafting the details of a new natural gas bill in private meetings may have made the job look easier, but there are costs to working in secret.

It almost worked. The headlines of the papers said "Carter wins victory on gas accord." Then people involved in the agreement found that the suit, with all its details, did not quite fit. It was not quite big enough. By then it was summer. The bill seemed to die another death, but the administration resurrected it yet again. They managed to find room for a few billion dollars worth of alterations here and there, and a couple of patches for holes in other garments, and finally they got a majority of signers on the conference report.

Of course, it was more like an old-fashioned horse trade worked out in smoke-filled rooms, accommodating the particular needs of the participants, with the President's man sitting in, than a recognizable national policy. But a little twisted imagery can make anything into shinning public policy if you try hard.

But even after the bare majority of signatures was obtained, the report faced more ups and downs. A Department of Energy analysis prepared by the Energy Information Administration indicated that the conferees had worked out an incremental pricing provision which reversed the intention of the House and Senate to protect residential gas consumers from the effects of the new high prices established by legislation. The administration's own shop went on to tell us that marketed natural gas production would decline by about 1.5 trillion cubic feet below present levels if the compromise were to become law—despite price hikes which add up to at least $30 billion over the next 7 years.

The official analysis also estimated that as a result of the legislation, oil imports might decline by 300,000 barrels per day. But none of these figures seemed to justify passing a $30 to $40 billion transfer of income from consumers to oil companies, so the administration does not use them. Secretary Schlesinger has his own private numbers, which he uses to show that the natural gas compromise will do just about everything the administration ever claimed the entire energy package would do. In particular, of course, it is supposed to lower imports by 500,000 barrels a day immediately and by a full million barrels by 1985—with a $5 billion (or sometimes Schlesinger says $6 billion, or $7 billion, or $8 billion, depending on the day of the week—savings on the balance of payments deficit, compared to the paltry $1.6 billion associated with the Department of Energy original estimate.

If the truth were acknowledged, the Carter energy plan was lost long ago: the Senate rejected most of the original utility rate reform proposal; it slipped a catch-all exemption into the coal conversion bill, and it agreed in May to deregulate the price of natural gas. What Congress has before it is a very different animal, and not basically different from the National Energy Policy that is in place right now.

What the compromise really does of course is confuse everyone. However, certain provisions are not confusing:

The bill sets a "protective" new gas ceiling price higher than the average price now being paid in the unregulated intrastate market—$2 per mcf as opposed to an unregulated average price of about $1.83 per mcf. This discrepancy is even greater than it appears, since the price of gas in the unregulated market

includes State taxes of around 7.5 percent, and the price established by the compromise is a wellhead price that does not include the tax.

The bill deregulates four categories of gas one year after enactment.

As of January 1, 1978, it eliminates the ceiling on all "new" gas and classifies old gas as new gas.

It establishes at least 17 different categories of gas, each subject to different regulatory treatment.

It treats old gas as "new" gas when it comes from:

State-owned lands;

"Special" wells deeper than 5,000 feet;

"Special" wells shallower than 5,000 feet (2 years later);

Certain contracts that exceed $1.00/mcf in 1984;

Coal mines;

Offshore gas discovered since July 1976; and

"Noncommercial" properties (which produced in small quantities before 1977).

It gives the Federal Energy Regulatory Commission (FERC) authority to OK prices in excess of interim ceiling prices where "necessary."

It pushes the price for gas from old wells producing less than 60 mcf/day in 1977 up to $2.09 to start with.

It effectively forbids emergency allocation of intrastate gas by the President.

It relies on "exempt" sales of gas outside the regulatory structure to take care of emergency shortages.

It maintains two gas markets by exempting intrastate consumers from the incremental pricing structure.

It creates incremental pricing that charges a disproportionately higher share of new price increases to residential consumers and a lower share to industrial users (the reverse of the House and Senate intent).

It eliminates the requirement of "prudent operation" of wells by gas sellers, which opens the door for them to manipulate the rate of production.

It understates the real new gas price. Costs of gathering, treating, and compressing gas will be added to the initial wellhead price, rather than included in, as is currently the case.

That is what the compromise does. But what would a continuation of the status quo do? It is not a panacea; it is not even the ideal gas policy. But I hope that we are beginning to be somewhat suspicious of panaceas at this point, and arrogant claims at this point.

The Natural Gas Act and the Federal Energy Regulatory Commission have been operating well recently.

The existing policy was well drafted; the regulations written under it are flexible and increasingly well tested. Under a tough and capable Commission like the one we have got now, it can accomplish at least as much as the compromise and maybe more. And I believe it can do this at less cost, with less uncertainty, and with less damage to the concept of government itself than the proposed compromise.

The current FERC has already shown itself to be far better at its job than any commission of the past decade. So let us look at where we would be without any new legislation. First, we do not need the compromise to end the shortage of gas that appeared in the interstate market in the 1970's. Under the current policy, the latest cost-based price has resulted in the highest drilling rate the Nation has seen. Drilling rigs are put to work as fast as they come off the assembly line. More gas was added to our reserves last year than in any year of the past decade. Three times the 1975 discoveries went into the interstate market that year. This drilling rate may slow the rate of decline in our supply of domestic gas, but even then it will not reverse it. That is why economists have rejected deregulation time and time again.

Producing states are overflowing with gas supplies, and independent producers have stated their readiness to sell gas at the current regulated price of $1.45—unless Congress offers them more with this gold-plated compromise.

Most future gas discoveries are expected to come from offshore where, by law, all gas must go to interstate users at regulated prices. And if higher prices are ever called for, FERC has the power to raise prices as high as necessary to attract new gas supplies. The only condition is that the price increase actually must result in increased gas.

If no legislation affecting gas pricing is passed by this Congress, FERC would proceed to set a new national ceiling price in the following manner:

FERC would institute a "national area rate proceeding" in which all interested parties would submit data—including gas producers, distribution companies, utilities, and so forth, and also including the Secretary of Energy if he wished.

The Commissioners would then examine that testimony in light of their own calculations of costs of production, which would be based on the method applied in the proceeding of November 1976 which yielded the $1.45 rate for new contracts and 93¢ for 1975 biennium gas. This was known as opinion 770A.

The FERC rate, once decided, could be appealed by any of the intervening parties, first to the commission itself, and then to the courts. Although both producers and consumers appealed opinion 770, the new price went into effective immediately, and was upheld by the court the following summer.

FERC operating under the current law as embodied in the Natural Gas Act would continue to use actual costs of production as the basis for any new ceiling price.

Some observers speculate that the methodology of 770A could yield a current "cost-based" price of $1.90 per mcf. However, the new national area rate would apply only to new contracts entered into after the decision, so the actual cost to consumers would differ greatly from a similar price set by legislation which extends the definition of "new" gas and lifts ceiling prices for all old gas as well.

In addition, it is critical to point out that the law does not require that the price set by the FERC be cost-based, except that, in the absence of full cost justification, the FERC must show the tangible benefits to consumers. This is the "end result test" established in FPC against Hope Natural Gas Co. In that case the court stipulated that if the FPC wanted to offer "incentive" prices above the actual cost plus a fair rate of return, it had to show that more gas would in fact result, and had to establish a basis for the level of "incentive." A number of other court cases make the same judgment.

Further, FERC has established several circumstances in which gas can be sold to interstate purchasers above the cost-based rate. These include small producer rates, emergency purchase exceptions, and direct purchase exceptions.

Nothing prevents FERC setting the rates at whatever level is necessary actually to elicit new supply, a price which could, in theory, equal the intrastate price.

Certain options are available to interstate users who have had problems obtaining gas under the regulated rates.

Industrial users suffering from unemployment, or otherwise qualifying as "essential industries" have the right to purchase gas directly from producers at unregulated prices.

Interstate pipelines suffering curtailment of any priority customers can purchase gas from intrastate pipelines at unregulated prices, and the FPC has the authority to set compensation rates, including amounts to adjust for the higher cost of replacement gas (gas purchase adjustment clauses), for 60 days. The FPC has been granting such purchases and extending them for an additional 60 wherever necessary. The average price of gas sold on 60-day certificates in 1976 was $1.21 mcf.

Limited term certification by the FERC has also allowed interstate users to buy gas on short-term contracts at rates above the national ceiling. In 1976 the average limited term price was 60 percent higher than the average interstate price.

Now, Mr. President, it so happens that the industry has never succeeded in demonstrating that any price beyond a cost-based price would bring on more supplies than would result from a cost-based price. Only legislation which abandons the "just and reasonable" standard for setting a gas price can provide a price higher than necessary to gas producers. That explains the proposed compromise which gives the producers higher prices and gets nothing in return.

To continue, the compromise bill will not help reduce our energy consumption. It will not reduce our oil imports. It could increase them. And since it will not reduce our oil imports appreciably, it will have no significant impact on our balance of payments deficit.

Under current policy, manufacturing industries are gradually reducing their dependency on gas. In 1972, natural gas was 38 percent of all energy consumed. By 1977, it was only 30 percent, with the entire reduction coming from manufacturing.

Under the compromise, industries in the interstate market report that they will not conserve. Instead, they will con-

vert to oil because of abrupt and discriminatory price increases flowing from the incremental pricing provision. One State utility commissioner calls the compromise "an industrial gas conversion bill and an incentive for jobs to move from consuming to producing States." Replacing gas with oil will add to our imports and our balance-of-payments problems.

The authors of this compromise may have invested so much time and ego in this bill that they can no longer perceive the potential benefits of the existing law. President Carter and the Energy Committee leadership may be stuck in the position of throwing good money after bad. We are not so constrained. For the rest of the Congress to assume that the FERC will not act to carry out its responsibility is to assume that the public interest can never prevail, either in the legislative or in the regulatory arena. The current commission could, if given a chance, restore integrity to the regulatory process.

I will cite one example of FERC changes that will increase supply. In a recent decision, FERC instructed the major oil companies to begin selling all of their offshore production to interstate consumers. Until that decision, the big oil companies had reserved large quantities of interstate gas for use in their own plants at a time when communities across the United States were facing massive gas cut-offs.

There is no reason the FERC cannot call on its powers under the Natural Gas Act to create a smoothly functioning national market. No reason, unless Congress buries the Commission and the consumers—and the producers—under the massive burdens of the pending natural gas "compromise."

At a time when even legitimate regulation by Government is under attack as more costly, more time consuming, and more obstructive than it is valuable, passing a piece of legislation which creates innumerable rules based on no consistent principle is worse than self-defeating. It undermines the support for future Government actions which may be necessary and worthwhile, but will fall victim to the criticisms which will inevitably be raised against the regulations adopted to implement this bill. It has occurred to me that the major oil companies support the compromise first because they have sunk costs in their legal staffs, and second, because they figure if you give the Federal Government enough red tape, it will hang itself.

Our current policy is to allow energy use to be determined largely by the market. Large increases in energy prices have been moderated somewhat by Government controls, but the price of energy to consumers has still risen more in the United States than in any other major industrial countries. These high prices have already established an incentive for millions of energy users—residential and industrial—to cut back on their consumption. What is needed now is not Government-imposed price increases, but time. Time for people and businesses to make an adjustment to these new pricing levels without experiencing serious economic dislocation or hardship, as is likely for many of the 40 million families that use natural gas to heat their homes if we adopt this compromise.

Mr. President, I wish at this point to read an excellent analysis of our existing energy policy and how it operates.

ANALYSIS

HOW CURRENT REGULATORY POLICY OPERATES

Natural gas accounts for about 26 percent of the total energy consumed in the United States, with petroleum providing 48 percent, and coal 18 percent. Hydroelectric and nuclear power provide the remaining 7 percent. Between 1972 and 1977, natural gas consumption fell by about 7 percent, with all of the decrease coming from the manufacturing sector.

The natural gas industry has three major sectors:

The production market is the market for gas at the wellhead. Producers of natural gas search out and develop natural gas reserves and then contract with a pipeline company to deliver gas to the company over a set time period. While the discovery of gas has historically been a by-product of the search for oil, refinements in geological techniques have made it possible to explore and develop separate gas and oil prospects. Twenty-five oil companies supply about 80 percent of the natural gas purchased by pipelines in the U.S.

The pipeline companies, which link the production and distribution markets, do not act as common carriers. Instead, they purchase gas in the field from producers (at "wellhead" prices), transport it to markets and sell it either to distribution companies for resale, or directly to industrial customers. The largest 12 pipeline companies control about 70 percent of the total sales revenues.

Natural gas pipelines require a large investment in plant relative to short-term revenues. During the 20-year period from 1950–70, pipeline companies invested an average $1 billion in annual plant additions. Borrowed money is an important source of capital for pipelines, and often represents as much as 75 percent of externally-generated capital. The success of this method of financing is clear from the substantial growth, consistent dividends, and strong earnings of the industry. Between 1965 and 1975, return on net investment increased from 6.6 percent to 10 percent. Natural gas pipelines have consistently had higher earnings than other utilities.

The distribution market is composed of distribution companies, usually local public utilities, which sell gas to residential, commercial and industrial consumers. The West South Central states, which include Texas and Louisiana, consume about 300 mcf of gas per capita, compared to the national average of about 90 mcf, and 20 mcf for New England. Consumption by industries accounts for about 80 percent of the total usage in producing states.

Approximately 60 percent of all natural gas in the U.S. is subject to Federal Energy Regulatory Commission (FERC) regulation, which began in 1938 and was expanded in 1954. The price of "new" natural gas sold in interstate commerce is currently about $1.50 per thousand cubic feet (mcf). Intrastate gas is not subject to regulation; and, consequently, its price has been higher than the price of regulated interstate gas (intrastate natural gas is currently selling at between $1.50 and $2 per mcf). Ever since 1954, the major oil companies have sought to remove price controls from all natural gas.

Increasing demand

Natural gas was not widely used and marketed until after World War II, at which time it gained in popularity because it could be delivered to homes via pipeline, its cost was low, it burned cleanly, and its heating value was high. It became the preferred residential and commercial fuel and also found many industrial applications. This demand led to the construction of interstate pipelines, which required large sums of money. In order to sell interstate, a producer had to guarantee 20 years of gas delivery, which gave financial institutions a basis on which to make long-term investment plans.

FPC REGULATION

Background

The controversy over natural gas producer price regulation began soon after passage of the 1938 Natural Gas Act, a statute that gave the FPC jurisdiction over interstate pipeline transportation of natural gas and sales by pipeline companies to local distributors. However, the act did not regulate the sales of gas to pipelines by producers or sales by local distributors to ultimate consumers. The Act required that the FPC set "just and reasonable" rates for gas without specifying any formula.

In 1954, the United States Supreme Court ruled (in Phillips Petroleum Co. v. Wisconsin) that the 1938 Act had intended the FPC to regulate wholesale gas prices, thus giving the Commission authority to fix ceilings on the first sale prices of gas in interstate commerce. In this decision, the Court stressed that the "primary aim" of the Natural Gas Act was "protection of consumers against exploitation at the hands of the natural gas companies."

In the 1960's, the FPC began to set ceiling prices based on the cost of producing gas in various geographical areas. The rates guaranteed producers would recoup all costs and make a rate of return on investment comparable to other industries. Although producers opposed the area rates and the principles used to shape them, they continued to sell interstate pipelines all the gas they needed through the 1960's. In 1969, however, after an unsuccessful suit against the area rate, gas producers began to revise down their estimates of reserves.

In 1969, the FPC under a new chairman appointed by Richard Nixon, decided to make substantial new rate increases to encourage the industry to produce more gas. In addition, various alternative pricing procedures offered exemptions from the FPC ceiling. New commitments under area rates declined sharply. From 1971 to 1976, gas sold under area rates decreased from 52% to 18% of new commitments. The special pricing rules have constituted administrative deregulation, and account for the inordinate 400% rise in average prices between 1970 and 1976. The major changes in FPC regulatory policy are described below:

Rulemaking

In 1970, the FPC adopted a rulemaking procedure in place of the previous adversary proceeding. In setting prices by rule making (instead of the customary policy of trial-type hearings which take three or four years to resolve) the FPC solicits written statements from all parties, make its own inquiries, and then decides without permitting cross-examination or discovery of new evidence.

Emergency exemption

Under the emergency sales exemption, producers could sell gas to interstate consumers without regard to any protective ceiling price. In originating the procedure in 1970, the FPC placed a 60-day limit on such sales, which increased to 180 days for the winter of

1973–74. The 180-day emergency order was stayed by the U.S. Court of Appeals on December 10, 1973, pursuant to a motion by consumer organizations. The stay was vacated by the Supreme Court on December 20, 1973. The 180-day option expired in March 1974.

Under the 60-day emergency sales, natural gas dedicated in 1976 was selling at an average price of $1.25/mcf.

Limited term certificates

Under a 1972 policy of limited term certificates, producers could earmark short term supplies to the interstate market at higher than the prevailing area rates. Under the area rate concept, producers were required to contract for long periods (usually 20 years), and they could not remove their gas from interstate commerce even after contracts expired, unless they got the FPC's permission. Under limited term pricing, the producers could get price increases more frequently and could switch their gas to the intrastate market upon expiration of a contract.

Of all the FPC's new pricing concepts, limited term certificates is the only procedure not brought under litigation. For that reason and the flexibility of committing gas to the interstate system for only brief periods, producers consider it the most attractive of the FPC's deregulation options.

Natural gas that has been dedicated to interstate commerce through limited term certificates has been selling at approximately 44¢ more than the average for all interstate gas in 1977—approximately $1.21 per mcf.

Optional pricing

Under an optional pricing procedure adopted in 1972, producers and pipelines could agree to higher than area rates for long-term supplies of new gas, provided they convinced the FPC that the higher rates were needed to draw gas away from long-term intrastate contracts, that producer costs merited the increase, and that the rate did not exceed those for other sources of supply (such as oil or gas from non-conventional sources).

The Commission in 1976 authorized two sales under this procedure, one for $1.44 per mcf, and one for $1.52 per mcf. Seven more cases are pending, with prices of about $2.95 per mcf.

Small producers

Prices charged by small producers (those selling fewer than 10 billion cubic feet of gas a year) were deregulated in 1971. This procedure was overturned by the U.S. Court of Appeals (Texaco v. FPC), and as of July 7, 1976, small producers were subjected by the FERC to a maximum rate somewhat higher than the national area rate.

Emergency Natural Gas Act

Legislation passed in February of 1977 allowed pipelines and industries threatened with shortages to bid for gas from intrastate producers at unregulated rates. Although this particular authority has expired, in effect it did not differ from the 60-day emergency pricing procedure.

Other rulings

The FPC offered special incentives in south Louisiana and the Gulf Coast to producers dedicating gas to the interstate market. Those incentives include the tying of future price escalations to the attainment of the industry-wide interstate dedication goal and the forgiving of previously ordered refund obligations in proportion to interstate dedications.

The FERC allows regulated pipeline rates to include research and development costs. and briefly allowed advance payments to producers for exploration and development.

HOW FERC WOULD SET THE PRICE OF NATURAL GAS IF NO BILL IS PASSED

FERC would institute a "national area rate proceeding" in which all interested parties would submit data—including gas producers, distribution companies, utilities, etc., and also including the Secretary of Energy if he wished.

The Commissioners would then examine that testimony in light of their own calculations of costs of production, which would be based on the method applied in the proceeding of November 1976 which yielded the $1.45 rate for new contracts and a 93¢ rate for 1974–75 vintage gas (known as Opinion 770A).

The FERC rate, once decided, could be appealed by any of the intervening parties, first to the Commission itself, and then to the courts. When both producers and consumers appealed Opinion 770, the new price went into effect immediately, and was upheld by the Court the following summer.

FERC operating under the current law as embodied in the Natural Gas Act would continue to use actual costs of production as the basis for any new ceiling price.

Some observers speculate that the methodology of 770A could yield a current "cost-based" price of $2.00 per mcf. However, the new national area rate would apply *only* to new contracts entered into after the decision, so the actual cost to consumers would differ greatly from a similar price set by legislation which extends the definition of "new" gas and lifts ceiling prices for old gas as well.

In addition, it is critical to point out that the law does not require that the price set by the FERC be cost-based, except that in the absence of full cost justification, the FERC must show the tangible benefits to consumers. This is the "end result test" established in FPC v Hope Natural Gas Company, in which the Court stipulated that if the FPC wanted to offer "incentive" prices above the actual cost plus a fair rate of return, it had to show that more gas would actually result, and had to establish a basis for the level of "incentive." A number of other courts cases make the same judgment.

In addition, FERC has established several circumstances in which gas can be sold to interstate purchasers above the cost-based rate. These include small producer rates, emergency purchase exceptions, direct purchase exceptions (as detailed below).

Nothing prevents FERC setting the rates at whatever level is necessary actually to elicit new supply, a price which could in theory, equal the intrastate price.

Mr. President, after listening to part of the majority leader's speech, he was doing nothing more than repeating arguments that I have heard over several months by supporters of this monstrosity legislation.

First of all, we heard that this compromise report, or this natural gas conference report, would increase production of natural gas. That was the argument by Schlesinger, by Carter, and other supporters.

When that was disproved, when it was discovered and learned that it would not get one more drip of natural gas out of the ground, then they turned to other arguments. For example, at some point during the debate they said it would decrease oil imports.

The President said last year when he was on our side, before he switched sides the second time, that this bill, this deregulation would not decrease oil imports one bit. In fact, with the increase in price of natural gas what it really will do is it will make people switch over to residual fuel oil instead of natural gas and increase the use of oil, half of which is being imported into this country.

Then the third argument that they came up with is that it would strengthen the dollar.

As Senator RUSSELL LONG said, and we have repeated a number of times, you cannot take any empty piece of paper, write "Energy Plan" on it and expect to fool international finance people, people who deal in changing money for a living.

So the last argument that they used, and they have been using this quite heavily, along with another argument, they have been saying, "Well, if you cannot buy any of the other arguments what you can do is vote for the bill because it will increase the confidence in the President. The President is low in the polls. He needs his confidence increased."

Now that he has taken care of the Palestinian problem I submit that we do not need to increase his confidence by raising the price of natural gas because that is all that remains in this bill. There is nothing in it that will increase production and save the dollar. It will not do anything more for the President's poll figures.

The only thing that remains in it now is high prices for the American public.

Second, the thing I wish to say about it, Mr. President, is that the majority leader has argued that we should not vote for recommittal of this bill because that would kill it; what we should do is vote up and down instead, and he has presented a strange kind of catch-22 situation.

What that amounts to is that you should not vote against recommittal because that may kill it due to the perfidy of the conferees. That is what he is saying. But you should vote up and down on it and then once we get around to that, if we lose this, he is going to say, "Do not vote against it because that will kill the bill."

We have heard just about every conceivable argument that they can come up with.

I simply urge my colleagues to vote for the motion to recommit. It is the only way to get a decent gas bill out this year.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 3 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I ask unanimous consent that Sally Rogers of Senator THURMOND's staff and Deming Cowles of Senator GRAVEL's staff be accorded the privilege of the floor during consideration and votes on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the Congress has been considering energy legislation for nearly 18 months. The natural gas pricing initiatives proposed by the administration in April of 1977 were misdirected, and unfortunately the conference report pending before the Senate is unworkable.

Mr. President, I have listened to the debate on the natural gas pricing conference report. The Senator from Kansas is concerned that this Congress adopt

legislation that is in the best interest of the United States. However, in good conscience, I cannot support this conference report.

CONSUMERS HURT

Mr. President, the conference report, if adopted into law, will cause economic hardship on the American consumer. It will cause more inflation at a time when prices are soaring at double-digit levels.

The Department of Energy calculates that over the next 6 years, consumers will pay producers $29 billion more than if the present system of natural gas pricing remains in effect. Consumer groups estimate that the increased costs will be even higher—from $35 to $50 billion. No one really knows how costly the bill will become.

The natural gas conference report particularly hurts residential users of gas. Unlike the Senate-passed gas bill, the pricing mechanism in the conference report will sharply increase the price of gas to residential consumers, because most residences are unable to convert to alternative fuels, the American working man can expect higher and higher utility bills. Naturally, the poor and the elderly will be the hardest hit.

Mr. President, the conference report is an administrative nightmare. The complicated pricing system will be an administrative monstrosity. The Director of Enforcement for the Federal Energy Regulatory Commission calls the measure "complex, ambiguous and contradictory," and "impossible to administer conscientiously." The report defines more than 20 categories of gas. FERC will have to approve and monitor separate pricing systems for each type of gas. FERC now has a backlog of 15,000 filings awaiting action. Major oil companies have recently defended their violations of the 1973–74 oil pricing regulations with the excuse that the regulations were too complex to understand. How will the companies respond when faced with the tangled system that the report would establish?

In its last-ditch effort to coerce a majority of conferees to sign the conference report, the administration claimed that the legislation was urgently needed to reverse the slide of the dollar. If the legislation has any effect at all, it will have nothing more than a fleeting psychological effect on the dollar.

We must decide to vote on the gas bill based on its merits, not based on pressure from abroad.

One of the major sources of weakness in the dollar is the weakening expectation about inflation. Indeed. the dollar remains weak even though there have been reports that the trade deficit has peaked and will decline in 1979.

Mr. President, the natural gas price bill is all that is left of the administration's national energy plan. The centerpiece of the plan—the crude oil equalization tax—is on the critical list and is not likely to be revived.

Mr. President, because Kansas is a producing State, I am naturally concerned that the bill spreads Federal controls into the intrastate market. Extension of Federal control to an unregulated and free market is simply bad policy, and, in fact, will not result in any new incentives for gas discovery.

Mr. President, the conference report is controversial. The administration has lobbied hard. However, in the final analysis the costs of this bill outweigh its benefits.

Mr. President, I think the distinguished Senator from South Dakota has just more or less summarized what many of us consider to be the flaws in this legislation.

This is not a gas policy measure. There is no additional gas to be produced. It is more regulation, more bureaucracy, but no more natural gas to be produced, and it does not reduce imports.

That is the same argument the administration made on the crude oil equalization tax and the same argument the administration made on the so-called import fees: Somehow we are going to reduce oil imports by passing various pieces of legislation.

The Senator from Kansas will only say this: A year ago we were told, in fact over a year ago, that the centerpiece of the administration's energy plan was the crude oil equalization tax. That measure passed the House of Representatives. It was not passed by the Senate. In fact it was offered as an amendment and defeated by a margin of about 5 to 1.

As a matter of strategy and public relations when it was obvious that the crude oil equalization tax was dead the administration shifted then to the centerpiece being the so-called Gas Pricing Act.

I suggest that this does not produce any additional gas. It produces a lot more regulation, a lot of gas in this Chamber, but it does not do anything for the American consumer.

It has been pointed out that we are talking about millions and billions of dollars. There is no incentive for producers. Kansas produces some natural gas. I have not seen any great support for this measure from my small producers in Kansas or any support from consumers.

I suggest that this is a desperate effort to give the administration some credibility in the energy area. All they need to do is send us an energy bill, not a tax bill, or not a bill for more regulation. Then I think Congress would respond and I do not say that in criticism of anyone in the Senate. I applaud all the conferees who worked many, many hours on this so-called compromise, but it is not a compromise. It is not a policy measure. It is a regulatory measure that brings more regulation and higher costs to the American consumer and more regulation to the producer.

I thank the distinguished Senator from Ohio for yielding. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 5 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senate is approaching a critical vote which may bring to a close one of the most protracted and closely contested debates of this century. More than any other issue in recent memory, the natural gas portion of the national energy plan has been honed down over months and months of work to a compromise so carefully crafted, so narrowly precise, and so fragile that it has been difficult for many Senators to stand firmly and resolutely on the ground that remained.

However, the President has called upon us to vote for the compromise to help bolster the dollar. Some of my colleagues have called for passage of this bill as the only alternative available—an imperfect document, to be sure, they say, but the best we can achieve. Others see this bill as so deeply flawed that it constitutes an outrage, either because it does not deregulate completely or because it does not maintain today's prices.

But slowly and reluctantly, Senators have begun to take sides. I want to make clear that I respect the work of my colleagues on the Energy Committee who labored with such patience to bring a bill back to this Chamber. They deserve our thanks. And I respect the arguments the President has made and the intensity with which he has pressed his case. His concern about our international fiscal situation is very deeply held. He has commitments to leaders of other countries, which he intends to honor, and the legislation before us presents him, he believes, with that opportunity.

Yet, when the dust has settled, I feel confident about my intention to vote to recommit this conference report to the conferees with instructions to preserve those portions which establish the emergency powers of the President regarding natural gas supplies, but to eliminate those portions dealing with natural gas prices. In fact, I believe such a course of action is the only way to avoid years of litigation and uncertainty. Moreover, I am convinced, that this legislation will not have any substantial effect on the soundness of the dollar. Let me first discuss those two issues with you.

Let me start with the nature of the crisis. We have been told repeatedly that the decline of the dollar on the world money markets is directly related to the failure of Congress to enact the administration's energy plan and, in particular, the natural gas bill. I will accept, uncritically for the sake of argument, the proposition that the decline of the dollar is a very serious matter. What I want to examine here is the proposition that there is some connection between the behavior of the dollar on the world market and this natural gas bill.

The theory behind the dollar-natural gas connection runs something like this: Americans are energy gluttons, and our gluttony is protected by price controls on domestic oil and gas, which encourages consumption. Raising the price of gas will encourage conservation, reduce imports, and improve our balance of payments, causing confidence in the dollar to rise.

While it is true that America consumes a great deal of the world's energy, we may not understand that Americans have

been subjected to energy price increases as great or greater than those in the rest of the industrial world. The average price of energy has already gone up more than 200 percent since 1972. The average wholesale price of natural gas alone this past June was more than 300 percent higher than the 1972 average, according to the Bureau of Labor Statistics.

In New England, between 1970 and 1976 the price of residual oil increased 312 percent. Electricity went up 92 percent and showed the highest absolute increase—$6 per million Btu's. Natural gas went up 155 percent during this time, distillate oil 125 percent, and gasoline 80 percent. Thus, it makes no sense to claim that Americans have not been given any incentive to conserve and therefore, need another stiff price increase. In New England, we have already borne the full brunt of higher prices, and we have already made dramatic cutbacks in consumption.

Our Nation, as a whole, has not done badly in saving energy either. A recent study by the American Enterprise Institute indicates that our industrial energy conservation has exceeded that of any major industrial nation. In total conservation, we have outperformed all our major competitors except those in which industry accounts for a much larger portion of energy consumption.

But, it has been argued, we strated with much higher levels of consumption and it is time we pushed conservation even further by letting our energy costs rise to levels being paid by the rest of the world. This argument is a two-edged sword. Before we accept it, we ought to carefully examine the motives and interests of its proponents.

I wonder how many realize that in Japan the real price of oil is approaching the 1973, preembargo levels. What has happened is simple. The price of oil is set by OPEC in terms of dollars. As inflation has eroded the value of the dollar, the real cost of oil has fallen. But for those who purchase oil in currencies that have remained stable—such as the yen and the deutchmark—oil prices have declined dramatically. In fact, Germany and Japan are in danger of reentering the era of cheap oil.

But oil is not the only commodity traded in the world and the decline of the dollar has had a different effect in other markets. It has increased the value of American goods overseas. The Japanese or German consumer is now getting more for his money when he buys American goods. So, when Japanese Prime Minister Fukuda called for action to stabilize the dollar during his visit to Saudi Arabia last week, he was not expressing concern for our welfare, but for his country's trading position. His concern is not with our consumption of oil, but rather his country's consumption of American goods.

When we begin to examine the real causes of the decline of the dollar, we do not have to look very far before discovering inflation as a major culprit. I fail to understand, however, how inflation will be reduced by legislation which guarantees that the price of a major component of the GNP inflator—natural gas—will increase at a rate as much as 4.2 percent higher than inflation. How can inflation be eased by a decision to increase prices faster than the rate of inflation?

Another argument heard frequently is that this legislation will help reduce energy consumption, thereby reducing imports. This bill may reduce natural gas consumption, but it will not reduce energy consumption.

If higher prices would prompt a shift from gas to coal, we would at least be using a domestic fuel. But under the incremental pricing provisions of this bill, the industrial price of natural gas rises to the switching point with heating oil as the alternative fuel. In fact, owing to the complexity of the legislation, the inevitable delays—which I will discuss later—and the possibility of curtailment, industrial users are likely to convert to oil well before the switching price is reached.

Rather than improve the dollar's soundness, this bill will have just the opposite effect. Oil imports will increase, causing further deficits in our balance-of-payments account—not the remedy one would prescribe to improve the value of the dollar.

Finally, if we think back to the days when the national energy plan was first proposed, and if we look at econometric models used to indicate the effect of higher prices on imports, we will find that the entire energy package—oil prices brought to world level by means of taxation plus the natural gas bill—was never expected to reduce imports by more than 500,000 barrels per day. The crude oil tax, which would have accounted for most of that very small savings, is dead, as we all know. What we are left with is, at best, ragged, inconclusive evidence that the natural gas bill would have any effect on imports or improve the value of the dollar.

In truth, what has happened is that when the standby gas tax collapsed and the oil tax collapsed, natural gas became the only symbolic gesture left to indicate to the world our seriousness about energy. For that reason, all international arguments left over from gasoline and oil have been brought to bear on the most unlikely subject of all, natural gas.

Proponents now stake their claim on a symbolic gesture. Like "business confidence" in this country, "international confidence" in the dollar is as much shadow as substance, and does, momentarily, respond to gesture as much as to reality. Yet, the symbolic gesture is a gesture of our own creation and a poor one at that.

In the end, we are dealing here with matters of pride and perception, not economic reality and national welfare.

Let me now turn to this legislation itself. A look at the bill tells us why so few defend it on its own merit. It is, in brief, a regulatory monstrosity. The costs of its enforcement will be enormous, both for the Government and in private legal expenses. For additional litigation, this bill is a lawyer's delight.

The natural gas bill creates 23 separate categories of natural gas, to give you an idea of its complexity, let me read just 4 of the 23 classifications.

New natural gas from a new well 2.5 miles from a marker well, a well which produced in commercial quantities between January 1, 1970, and April 20, 1977.

New natural gas from a new well 1,000 feet deeper than a marker well.

Special development incentive onshore gas from wells drilled after February 19, 1977, in an old reservoir within 2.5 miles of an existing well, if drilled to a depth less than 5,000 feet and not committed to interstate commerce.

Stripper gas from nonassociated wells producing 60 million cubic feet per day over 3 consecutive months.

The correct classification of each of these types of gas must come from reports made by the producers themselves. Yet, there is no way the Federal Energy Regulatory Commission can adequately review the determinations made by the producers regarding the correct classification of the 11,000 new gas wells completed in 1977 or the larger number of new wells which will be completed in 1978 and 1979.

The statute imposes an extremely short 45-day-period for the Commission to reach an interim judgment and a 120-day period for the final determination. If the Commission contests even a small number of determinations, producers will seek administrative and judicial review. Further delay will result. If the Commission does not contest these determinations, producers' classifications will be allowed to stand without examination.

From this one example, I see an infinite possibility for delay and confusion. The incremental pricing provision is another such example.

Industrial customers will be faced with uncertainty about the price they will have to pay. They first must wait until the complicated process of incrementally pricing the 23 types of gas by the FERC and the interstate pipelines is completed and then wait for the State regulatory commissions and State distribution systems. Industrial customers, for whom a secure source of supply and not price is frequently the issue, have expressed strong opposition to this provision precisely for this reason.

Moreover, the incremental pricing provision may accelerate the movement of industries using natural gas away from the northern industrial States to the producer States, which, under the provisions of the bill, do not have to incrementally price their gas. The Northern Indiana Public Service Co., which serves a half million customers in northern Indiana, estimates it will lose 24 percent of industrial load and could lose as much as 49 percent. The company's losses on the industrial side can only be made up by residential customers. Equally important, the company fears loss of industrial customers to producers.

In short, the bill will not work. It is simply too complicated. There are too many questions that will inevitably be subjected to the slow process of litigation. It leaves consumers and industrial users with no way to make reasonable predictions about their energy costs. It is

unenforceable. It requires too many decisions to be made on a well-by-well or reservoir-by-reservoir basis.

The bill creates a set of incentives that will produce not gas, but inefficiency. The economic rewards provided in this bill will not go to the firms that are most skilled in finding and producing new gas, but to those with the most skilled and well-connected legal counsel. Talent and energy that should go toward drilling holes in the ground will go toward drilling holes in this bill.

The way to make money under this bill is not by risking capital on new exploration. Rather, it is by finding ways of converting old gas reservoirs into higher-priced new gas reservoirs. If anyone doubts this, they should look at the rate at which "old crude" oil has become "new crude" oil, largely through the work of clever lawyers.

Last year, advocates of deregulation contended that higher prices for natural gas would produce greater supplies. I did not agree then and cited studies showing that complete decontrol would bring in only 5 or 6 percent more natural gas. Yet, proponents now claim that a bill with lower price incentives is needed to bring on greater production.

I want to remind Senators that the means of increasing production is already available in the form of the Federal Energy Regulatory Authority. Sufficient authority already exists to establish prices which will bring forth gas at a "just and reasonable" price and to vary that price according to conditions. The FERC has done so in numerous cases, most recently for Alaskan gas and geopressurized methane.

If, as many believe, significant supplies exist below 15,000 feet, we do not need this legislation to deregulate such gas and establish an incentive price. If gas in tight sands or in devonian shale or in pressurized brine costs more to produce and evidence exists that a higher price will bring forth additional supplies that, too, can be handled by FERC.

But the oil and gas producers want more than special incentives of this kind. The provisions of this bill will decontrol all gas eventually and insure that gas in conventional areas produced at conventional costs will receive unconventional prices.

This bill does not even give us the benefits of outright deregulation. It does not test the argument that new supplies would be available in a free market. Instead, the bizarre complexities of this bill will distort the oil industry's incentives. The safe and certain way to make money will be to move existing reserves into the higher priced categories, converting "old gas" into "new gas." Genuine exploration in conventional fields may cease altogether.

If some means could be found to give the benefits of a deregulated price to independent firms—to firms without ties to OPEC without the major oil company's long record of monopolistic practices—a strong case could be made that new supplies would appear. The independents in this country are the real wildcatters who will find the frontier oil and gas. But this legislation does not provide such incentives. Instead, it extends the benefits across-the-board, to the bold and the timid, to the wildcatter and the fatcatter alike.

And so, Mr. President, for these reasons I will vote to recommit the conference report. It is, indeed, time to come to terms with the natural gas issue, to put it to rest and get on with the remainder of the national energy plan. I know the temptation to accept this bill—to accept any bill—is strong. Perhaps we could be spared another exhausting exercise next year or thereafter. Perhaps we could tell the country that the Congress takes the energy crisis seriously. Our international partners could be reassured about our intention to conserve.

I wish the facts justified this course of action. I regret that an examination of the bill does not bear out these hopes. It is unfortunate that the legislation holds so little promise of bolstering the dollar or ending confusion and uncertainty about natural gas pricing. But the facts are otherwise and the proper course is clear. We have fought too many years to maintain the "just and reasonable" cost principle to give it up now. This is not a time to choose symbol over substance. It is time to rely on existing law and precedent, not plunge into the labyrinth of uncertainty which lies ahead.

And so, in summary, Mr. President, I join the Senators from Ohio and South Dakota, Senators METZENBAUM and ABOUREZK, in urging the recommittal of this legislation before the Senate.

The arguments have been made. They have been repeated here this afternoon. The impact of this legislation on the rate of inflation of the country, I believe, will be significant.

The case for an increase of production has failed as a convincing argument, both in the earlier part of this year, when we were arguing about higher prices in natural gas, and in the conference report itself.

I think from an administrative point of view it is an absolute monstrosity, Mr. President, with 23 classifications of gas. For example, here are two of the different classifications we are talking about.

Special development incentive onshore gas from wells drilled after February 19, 1977, in an old reservoir within 2.5 miles of an existing well, if drilled to a depth less than 5,000 feet and not committed in interstate commerce.

Second, stripper gas from nonassociated wells producing 60 mcf per day over 3 consecutive months.

The whole elaborate difficult procedure of appeals from judgments made on the basis of classifications like this means, I think, it is going to be unpredictable for producers and for the commercial and business enterprises in this country. I think basically it is unfair to the consumer.

Finally, Mr. President, I vote for the recommittal of this measure because I do believe it is possible to develop an alternative measure which can meet the criteria stated by the President as an objective for a legitimate energy policy.

I do not vote for recommittal as a matter of killing this legislation but in the firm belief that something better can be developed, and can be developed in the closing days of this Congress.

I think there have been presented here suggestions and recommendations of what those provisions ought to be. It seems to me that the wisest course, both from an energy point of view, from the consumer's point of view, from the economic point of view, and from industry's point of view, is to support the motion of the Senator from Ohio and the Senator from South Dakota.

I reserve the remainder of my time.

Mr. METZENBAUM. Mr. President, I yield 3 minutes to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I think I should address the procedural questions involved. Over the last several days we have been treated to long disquisitions concerning the cluttered state of the Senate's docket, and the great difficulties in coming to any agreement on natural gas. I think that neither of these factors is the relevant consideration.

As explained earlier, it is not going to be a question of hammering out a completely new bill upon recommital. The language in the sections to be included has been well specified, and these are sections which passed both the House and Senate conferees in a vote on June 12 by 14 to 0 among the Senate conferees, and by voice vote among the House conferees. Even one of those speaking up for the bill, the Senator from Montana, has correctly noted that these are not matters in controversy between the House and Senate.

In addition, we have now had the absolute assurance by the chairman of the committee and the chairman of the Senate conferees that if the motion to recommit is adopted he will uphold the position of the Senate. The only question which then remains is whether the House conferees and the administration would, in fact, try to make good on the threats currently being made.

Mr. President, it has been their argument that the country must have some type of an energy bill. It has been their argument that it will be impossible to get any action next year. And it is their argument that the worst thing that could happen would be to do nothing.

Under those circumstances, can you really believe that they would, simply out of spite, refuse to go along with reporting back good and useful provisions, on which there is virtually unanimous agreement? I do not find that to be a credible proposition.

Similarly, the spectre has been raised that some filibuster might be staged against the conference report as reported back. Again, this appears to me to be an idle threat. Those of us who support the motion to recommit are certainly not going to filibuster against that which we have wrought, and similarly those who oppose the motion to recommit are exactly the ones arguing that we must have some type of bill this year and that next year nothing can be done.

So, it appears to me that the question on the motion to recommit boils down

to the true merits of the bill. The bill does not represent an advance in natural gas policy. The motion to recommit is an effective means of salvaging from the bill those good and useful provisions on which there is little disagreement and to rescue them from their current captivity in the innards of the Rube Goldberg machine that the conferees have built.

The VICE PRESIDENT. Who yields time?

Mr. METZENBAUM. Mr. President, I yield myself the remainder of the time.

Mr. President and Members of the Senate, we have before us a bill today that everyone has agreed is not a good bill. The only argument that has been made for it is that it is the only bill in town. It is a C-minus bill. That somehow Helmut Schmidt and the Western European bankers are going to be concerned about what we do here today.

Nobody claims it is going to produce any more natural gas except some claim it will be an insignificant amount additional.

The cost to the American people for every 1,000 cubic feet additional gas, no matter whose figure you use, whether you use the figure of the most conservative figure or the highest figure, will be anywhere from 10 times to 40 times the amount we are paying for natural gas at the present time.

For every additional 1,000 cubic feet the consumer will pay anywhere from $16 per thousand per cubic feet to $60 per thousand cubic feet, and the present price in interstate commerce is $1.50.

Now, Mr. President, the argument has been made that we needed this bill to move gas from the intrastate market to the interstate market. That is possible under the motion to recommit with instructions. But the original basis of the administration's proposal was that there would be mandatory allocation, that we would give the President the right to move gas and go in and take it from the intrastate market and move it into the interstate market. As a matter of fact, it was stated that that was an irreducible minimum, that nothing less than that would be acceptable to some of those who finally wound up signing the conference committee report. But that is not in the legislation anymore, and there is no mandatory allocation.

The argument was made we were going to protect the residential user. But the fact is that although this Senate tried to protect the residential user, and the House tried to protect the residential user, when they got behind those closed doors and worked out this conference committee report, it was the residential user who was made to pay the additional cost for natural gas, and the industrial user is the one protected.

Then between industrial users in the Northeast and the Midwest, and those in the producing States, the consumer States as against the producer States, this bill did something special in those closed door meetings, when some of us who are members of the conference committee were not permitted to attend. This bill provided that the industrial users in the consuming States would be required to pay more than the industrial users in the producing States. What an incentive that provides! What an impact upon our economy to make it possible to move more and more industry from those parts of the country that are fighting for their very existence into those parts of the country that are today doing extremely well.

I say that we do not want to kill the bill but it would be better to have no bill than this bill.

We are proposing a positive alternative. We are proposing a bill that makes it possible, gives the President the authority that he needs, to move gas into priority users on an allocation basis, and it makes it possible for the Federal Energy Regulatory Commission to move surplus gas from the intrastate market to the interstate market under controlled conditions with respect to price.

We also accepted this morning an amendment having to do with the Alaska pipeline. This proposal that we make is a congressional alternative. It is a way of saying to the House, "Here is a measure that you can live with without having such a negative impact upon the American economy, without it being inflationary, without it making it more difficult for residential users."

The VICE PRESIDENT. The Senator's time has expired.

The Chair recognizes the Senator from Washington for 1 minute.

Mr. JACKSON. Mr. President, the issue is very simple. On the one hand we have before the Senate a bill, after 17 months, that gives us a program that will provide a saving, by 1985, of 1.5 million barrels of oil a day. The motion to recommit, Mr. President, offers the Senate a no-bill. All it does is provide for certain emergency relief, and then, Mr. President, as an afterthought—it was not even in their program—they discovered that Alaska gas was needed. Now they have amended it—amended it after a bill.

But after 17 months, they come in with a no-bill. I would have greater respect for a motion to recommit that offered a comprehensive program to deal with the most urgent domestic problem that confronts this Nation.

As to the charge of secret meetings, we would not have had a Middle East settlement without some secrecy. And we would not have had a conference report on this bill without a chance to express our views quietly and effectively.

Mr. HEINZ. Mr. President, I rise in opposition to this motion to recommit. The fact is that this motion is simply a tactic to kill the bill. While this conference report is a compromise and is complicated and far from perfect, I am convinced that it would be a mistake to end up with no bill. While flawed, the conference report is the beginning of a national energy policy. To shelve the conference report is to defeat the prospect of any national energy policy now or for the future.

I have carefully examined the conference report compromise. And I share the sentiments of those who correctly observe that it means an unnecessarily complicated regulatory framework. The people of this country want less Government redtape, not more, and this argument weighs against the bill.

But the gas consumers in this country, particularly the residential consumers, small businesses, and others from my State of Pennsylvania, want two protections above all from any natural gas legislation. First, they want their supply protected. Second, they want their pocketbooks protected against rising utility bills.

The past two winters have amply demonstrated to Pennsylvania's residential, commercial, and industrial consumers the need for an adequate, reliable supply of gas. Curtailments and interruptions of supply have been tremendously costly in terms of layoffs, plant shutdowns and school and business closings. This compromise will help forestall the recurrence of such disasters by providing incentives for increased supplies of gas and insuring that they will be available to consuming States. Moreover, it will alleviate immediate supply problems by allowing interstate pipelines access to the current surplus of intrastate gas.

Estimates of the additional gas the bill will make available in 1985 range from 0.7 to 5.0 trillion cubic feet, not including the additional supplies the Alaska gas pipeline will bring on line. In addition, by bringing interstate and intrastate prices more in line, the compromise will insure that supplies of gas currently being held in producing States will flow into interstate pipelines to consuming States like Pennsylvania.

In addition to increasing supplies, the compromise will protect residential and commercial consumers from excessive price increases. The bill does not deregulate currently flowing interstate gas, which is an important part of current residential supplies.

Moreover, the incremental pricing provisions of the bill make sure that the cost of new, more expensive gas will be passed on to industrial users, insulating consumers from the increased expense. The independent Energy Information Administration, for example, estimates that in 1985 residential prices under this compromise will be only 9 cents—per million Btu—greater than under current law. Natural gas will continue to be significantly less expensive than alternative forms of energy suitable for residential uses. I supported the incremental pricing provisions of the Pearson-Bentsen bill which the Senate passed last year, and I continue to believe strong incremental pricing language is necessary to protect residential consumers, particularly the elderly, from price increases.

It is important to remember, moreover, that failure to enact this legislation will mean failure to stimulate increased production of gas domestically and therefore an increased reliance on synthetic natural gas and imported LNG, both of which are far more expensive. Similarly, pipeline gas from either Mexico or Canada would cost far more than we would currently pay for existing intrastate gas supplies. It makes no sense to pay foreign producers more than we are willing to pay American producers.

The compromise will help insure not

only more domestic gas production but also that a higher volume of gas will flow through interstate pipelines. This will prevent a huge cost increase to consumers during the periods of shortage we have had and would in the future otherwise experience. Approximately 56 percent of a consumer's gas bill in the mid-Atlantic region is for transportation charges and other fixed costs. If less gas flows through the pipelines, the Federal Energy Regulatory Commission must concentrate those same fixed costs on a smaller volume of gas, thus increasing the cost per unit of gas.

As a result, reductions in volume have a tremendous impact on consumers' gas bills, even though they may be using no more gas. Therefore, we must protect consumer's pocketbooks by insuring an adequate supply of natural gas for the interstate pipelines on which Pennsylvania and other States depend. This compromise bill will do that by insuring increased supplies from the intrastate market and new drilling.

Mr. President, the motion to recommit the bill with instructions to report back only its emergency provisions is simply not an adequate remedy for either my State's consumers or our Nation's energy problems. It would result in little or no increase in production. That is bad in itself. He is clearly not in our national interest to allow ourselves to maintain our dependence on imported energy supplies, especially when we can produce more domestically. Worse still, I think the recommittal would result in higher prices. If the recommittal motion were adopted, the existing relationship between intrastate and interstate markets would be maintained, a relationship heavily weighted in favor of keeping supplies in the producing States.

Nor would the emergency purchase provisions successfully deal with industrial supply problems, since industry's primary need is for certainty and reliability of supply, which the emergency program cannot provide.

The emergency provisions could also result in higher prices for residential and commercial consumers, since such purchases would not be protected by incremental pricing and the higher costs could be passed through directly to individual consumers.

Mr. President, this compromise conference report, as I said earlier, is not a perfect one. Of particular concern are the regulatory burden the bill could impose on producers and its failure to extend the incremental pricing provisions to intrastate industrial users. On balance, however, with respect to the critical questions of increasing supply and maintaining reasonable prices for consumers, this bill represents a distinct improvement over the recommital motion. While it may be that better legislation may be offered at another time, it would be an irresponsible act to sacrifice their compromise prematurely by recommitting it. I hope my colleagues will join in defeating this attempt by selfish special interests to forestall a reasonable first step toward a national energy policy.

● Mrs. HUMPHREY. Mr. President, there are very few issues which this Nation faces that are as critical as meeting our energy needs. Solving our energy problems must be one of our top priorities. We need an energy policy. We need responsible programs which stimulate production and increase conservation. We need to develop responsible programs which will reduce our dependency on foreign energy supplies. Unfortunately, this natural gas conference report would not accomplish those objectives and, in fact, may create as many problems as it purports to solve.

The only justification for increasing the price of natural gas is to increase its supply. None of us wants a natural gas shortage in the winter. But we should not compound the supply problem by charging residential consumers more for natural gas, when it is clear that there will not be a significant increase in the supply of gas. In the last 7 years, there has been an eightfold increase in the price of natural gas, yet natural gas supplies have not shown any such similar increase.

Mr. President, I fail to see how this bill will do anything else but raise the price of gas to consumers without appreciably increasing the supply to them. The Department of Energy's own Energy Information Agency, in a June 19, 1978, analysis of the conference report, shows that this legislation substantially increases the retail price of natural gas far beyond the price that either the House or the Senate had previously accepted in their respective bills. But, equally serious is the fact that the agency's analysis supports my statement that the higher prices created by the conference report will not create similar increases in supply.

Furthermore, Mr. President, this conference report inequitably and disproportionately shifts the burden of increased natural gas prices from industry to the consumer. While both the House and the Senate bills provided for a decrease in the retail price of gas for residential consumers and an increase in the price of gas for industrial users, the conference report really does just the opposite. It results in the smallest increase in industrial prices, in comparison to the House and Senate bills, at the expense of dramatically increased residential consumer prices. To further burden American workers, whose paychecks are being stolen by spiraling inflation, is unconscionable and I will not be a party to it.

The intent of both the House and the Senate was to protect residential consumers and small businesses from sharply increased natural gas prices, and at the same time provide an incentive to large industrial users to shift to other sources of energy by raising their price for gas. This conference report does nothing less than remove any incentive for industrial users to convert to other sources of energy. There is no justifiable reason for transfering the economic burden of higher natural gas prices from industry to residential consumers and small businesses.

Mr. President, I know that many of my colleagues believe that this bill is vitally important to efforts to reduce our balance-of-trade deficit. I, too, want to strengthen the value of the dollar and reduce our trade deficit. Certainly, our energy imports are one reason for the weakness of the dollar, but surely there are other more important reasons, the most significant of which is simply an oversupply of dollars which are held by foreigners.

Some of my colleagues argue that our oil imports are causing this oversupply of dollars abroad. They are correct that oil imports send our dollars overseas. But let me point out that the United States is currently importing approximately 1.1 million fewer barrels of oil per day this year than last year. The DOE study projects that the so-called compromise in the conference report on natural gas legislation will reduce oil imports by 600,000 barrels per day, a reduction of approximately 5 percent. For that marginal decrease, we are asked to raise prices by $29 billion. That is an unacceptable trade-off. Furthermore, we should understand that the domestic rate of inflation, and fear abroad that we cannot control inflation, as well as slow economic growth in Germany, Japan, and our other principal trade countries are at the heart of the problem of dollar devaluation.

Mr. President, the Library of Congress has analyzed the impact of the conference report on Minnesota. The study indicates that Minnesotans would pay an additional $1.26 billion over the next 7 years. The average Minnesota homeowner would experience a 71-percent increase in the cost of natural gas he or she consumes. This bill would have a devastating effect on Minnesota's economy, result in the loss of jobs, create economic hardship for residential consumers, and perhaps would ruin the lives of many citizens.

I am sure that all of my colleagues share the common objective of increased supplies of natural gas at reasonable prices. But the simple fact is that this bill will not do that. I cannot vote, in good conscience, for this bill with all its problems, just because we need a natural gas bill. I do not subscribe to the notion that any bill is better than no bill at all. After careful study, I am forced to conclude that the present law is better than that proposed in the conference report.●

● Mr. CHILES. Mr. President, after listening to the considerable debate of the last weeks concerning the natural gas conference report, I want to state my support for the compromise and my opposition to efforts to recommit the bill to conference.

For too long the Congress has struggled with the issue of natural gas policy. No beneficial purpose can be served by further delay and there is little reason to suppose that additional consideration by the conferees would result in an improved bill. The divisions and disagreements on this issue are fundamental and strongly held. In many respects there has been no ground for compromise which is why the conference has been such an extraordinarily difficult process.

It is an achievement of no little consequence that a compromise was hammered out. Not to pursue this compromise

and pass a natural gas bill in this Congress could well mean no natural gas legislation for the foreseeable future. Certainly the Senate leadership has indicated that if we fail this year there is not much prospect of another natural gas measure in 1979 or 1980. Continuation of our current policy of drift will not serve to reverse the decline in energy supplies but will aggravate the decline in the dollar.

Obviously the fact that a conference report was accomplished after months of debate and discussion is not reason enough to argue for its passage. We cannot and should not pass a bill simply so we can say that the Congress has acted on the natural gas issue. Some have made this charge and maintain the bill now before the Senate will not help our supply or economic situation.

I disagree. It is my assessment that the compromise represents a workable and beneficial policy. It is hardly a perfect measure. It is substantially different from the Senate passed version which I actively supported. It does not include all the provisions I would prefer and I doubt that it is 100 percent satisfactory to hardly any Member of Congress. Such is the nature of compromises.

In evaluating the conference report my concerns included whether the legislation would increase natural gas supplies, whether it would treat consumers fairly, and how the economy may be affected.

Adoption of the conference report will result in increased supplies of natural gas flowing into the interstate market at prices below that of displaced alternate fuels. The Congressional Budget Office estimates that production will increase by at least 0.7 trillion cubic feet and possibly by 1.4 trillion cubic feet.

Further, the bill will facilitate construction of the Alaska gas pipeline, resulting in a total increase of 30 percent in interstate gas by 1985. This translates into a saving of approximately 1.4 million barrels per day of imported oil by 1985 and a $6 to $8 billion a year reduction in our trade deficit.

The conference report aims for reasonable prices for industrial and residential consumers. Under the bill the supply of gas throughout the Nation will increase for residential and industrial users at prices well below the cost of any other substitute fuels. Residential consumers are shielded from abrupt price increases by incremental pricing provisions and with the resulting increased gas supplies home hook-ups can be resumed throughout the country.

At the most, the Congressional Budget Office estimates that by 1985 the conference report will cost all consumers between 5 to 8 percent more than current policy.

The potential effect on our economy is a prime consideration in whether the conference report should pass. There has been speculation that the inflation rate may be aggravated by passage of the legislation. Studies by the Congressional Budget Office, however, refute this charge. The CBO estimates virtually no effect on the inflation rate with a maximum increase of less than one-tenth of 1 percent a year.

The beneficial effect on the strength of the dollar resultiing from enactment will have a direct impact on our Nation's economic well-being. The dollar's erosion against other currencies is linked to our failure to enact a national energy policy, our continued heavy reliance on imported oil and the very substantial trade deficit we suffer.

Since April of last year, the dollar's value has declined 16 percent against the German mark, 34 percent against the Swiss franc and 31 percent against the Japanese yen. The President has indicated that leaders of the world's major economic countries attribute a substantial part of the dollar's decline to the lack of a U.S. energy policy. A continued slide in the value of the dollar can only serve to adversely affect the Nation's inflation rate.

On balance the natural gas conference report represents perhaps the best compromise that can be achieved in this Congress. It has obvious benefits from the standpoint of increased energy supplies and the strength of the dollar.

Failure to enact this legislation would mean a continued absence of policy on natural gas for this year and perhaps years to come. From an energy and economic standpoint we just cannot afford that.●

Mr. PERCY. Mr. President, on yesterday, September 18, 1978, I sent to all Members of the Senate the following "Dear Colleague" letter:

DEAR COLLEAGUE: We will be voting tomorrow on a motion to recommit the natural gas compromise bill to conference with instructions. I think we are all aware that this gas bill has a lot of problems. There is a great temptation to vote it back to conference and hope for a better bill next year.

In a colloquy on the Senate floor on Friday, I asked what the reality of that hope was. Senator Jackson said that recommitting the bill with instructions will kill the bill. Senator Robert Byrd said this:

"What would happen if we send this report back to conference? We would have to deal with a new conference report, signed by 13 out of 25 of the House conferees, and 9 out of 17 of Senate conferees. Time is running out, and the sands in the hour glass are dropping one by one by one. So just forget it. There will not be a bill."

What is the likelihood of a bill next year, if we fail this year? The chairman of the Energy Committee stated that:

"I do not intend, unless I am overruled in the committee, and I would doubt that, to take up a natural gas bill, a comprehensive bill, in 1979 or 1980, because we have top priority legislation pending that has to take precedence.

Senator Mark Hatfield, next year's ranking minority member of the Energy Committee, agreed completely. Senator Robert Byrd said that if we kill this bill, "Those who think they will get something better soon had just better forget it."

With these three leaders on record, I am convinced that the reality of the situation is that it is this compromise or nothing for several years.

Several assurances I received on Friday make the natural gas conference report more attractive. I was concerned that in the long phase-in period before deregulation took place, policy could be changed which might reverse the trend toward market pricing. Ambassador Strauss, Secretary Schlesinger and Mr. Stu Eisenstat, Chairman of the White House Domestic Council, each assured me that the Carter Administration would do nothing to change the deregulatory direction of this bill. Senator Jackson assured me that the Energy Committee would use its oversight jurisdiction to hold the Administration to that commitment.

But this raised the more fundamental issue of modifying and amending the natural gas compromise in years to come. Senator Mark Hatfield told me, and I think we can all concur with this from our own experience, that "if it is possible to get a bill of this kind adopted, it is easier to correct it once on the statute books, than starting from square one." And Senator Jackson committed the Energy Committee to looking at amendatory legislation to correct problems that might arise.

On the Senate floor on Friday, I raised four potential problem areas: criminal penalties becoming a disincentive to drill, incremental pricing provisions driving large industrial gas users to convert to oil or to move to a gas-producing state, the burden of regulation on small gas producers, and the cost of the regulatory program of this legislation. On each of these issues, Senator Jackson responded with arguments I consider satisfactory. But more important, he reiterated his commitment to work to amend the bill, if these problems do indeed become serious.

We have all been provided by colleagues, constituents and interest groups with plenty of reasons to vote against this compromise. And we have all been provided by the Administration and other colleagues, constituents and interest groups, with plenty of reasons to vote in favor of the bill.

There are merits to the arguments on both sides. But if we adopt the compromise, we can get to work on improving it next year. If we kill it outright or by recommitting it, we will not get the chance to improve the status quo for several years. And I have heard very few arguments in favor of the gas pricing system in effect today.

On the basis of these considerations, and the overwhelming need to begin implementing a national energy policy, I urge you to vote against recommittal tomorrow. I hope that you will support the compromise.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

The VICE PRESIDENT. Under the previous order, the Senate will now proceed to vote on the motion to recommit the conference report with instructions, by the Senator from Ohio (Mr. METZENBAUM). The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair keep the well clear. All Senators have tally sheets on their desks. I ask also that the clerk repeat the name of each Senator and his response after he votes.

The VICE PRESIDENT. The well will be cleared. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE) and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

The result was announced—yeas 39, nays 59, as follows:

[Rollcall Vote No. 378 Leg.]

YEAS—39

Abourezk	Hansen	Packwood
Anderson	Haskell	Proxmire
Baker	Hatch	Riegle
Bartlett	Hayakawa	Roth
Bayh	Hollings	Sarbanes
Bellmon	Humphrey	Schmitt
Bentsen	Johnston	Schweiker
Biden	Kennedy	Scott
Byrd, Harry F., Jr.	Laxalt	Thurmond
	Long	Tower
Curtis	Lugar	Wallop
Dole	McGovern	Weicker
Garn	Metzenbaum	
Goldwater	Nelson	

NAYS—59

Allen	Griffin	Moynihan
Bumpers	Hart	Muskie
Burdick	Hatfield, Mark O.	Nunn
Byrd, Robert C.		Pearson
Cannon	Hatfield, Paul G.	Pell
Case		Percy
Chafee	Hathaway	Randolph
Chiles	Heinz	Ribicoff
Church	Hodges	Sasser
Clark	Huddleston	Sparkman
Cranston	Inouye	Stafford
Culver	Jackson	Stennis
Danforth	Javits	Stevens
DeConcini	Leahy	Stevenson
Domenici	Magnuson	Stone
Durkin	Mathias	Talmadge
Eagleton	Matsunaga	Williams
Eastland	McClure	Young
Ford	McIntyre	Zorinsky
Glenn	Melcher	
Gravel	Morgan	

NOT VOTING—2

Brooke	Helms

So the motion to recommit was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. JACKSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The VICE PRESIDENT. The Senate will be in order.

Mr. PERCY. Mr. President, I should like to congratulate the majority leader and the chairman of the Energy Committee on the last vote.

I believe it was a very difficult vote. Senators have thought long and hard about this issue. I do feel that the decision made by the majority leader to fight to keep this bill from being recommitted was wise. The next fight that we are going to have is to keep the bill from being defeated. The bill is in the national interest and in the interest of the constituents from our respective States.

The alternative is simply no legislation at all, no national energy policy. I cannot imagine a more disastrous message to send out to the world. We would be saying that the Senate of the United States, after all these months of deliberation, cannot come to grips with this issue and cannot enact a national energy policy. Without the gas bill, the centerpiece, all else is for naught.

I thank the majority leader for his leadership and the position he took. I thank him for the way in which he went about gaining what I think is an outstanding victory. I trust there will be the same result a week from Wednesday.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator for his very kind comments and his very gracious and overly generous praise. I am deeply grateful.

Mr. President, I should like to ask a question at this time.

Mr. FORD. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). The Senator will suspend. The Senate will be in order.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I merely protect the floor at this time to inquire whether or not the Senate wishes to proceed with the natural gas conference report or go to the public broadcasting bill, for which there is an order at this time in the event the Senators do not wish to proceed with the natural gas bill.

Mr. LONG addressed the Chair.

Mr. PERCY. May I direct a question to the majority leader?

Mr. LONG. Will the Senator yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. Let me say that it has been my feeling for some time that in the event the motion to recommit does not carry, those of us who do not feel disposed to vote for this conference report should have an opportunity to propose a broader compromise. I know that those of us who favor the producer side of the argument find a lot of things in the bill that we can live with very well. What bothers us is the monstrous amount of bureaucracy that will be entailed, the fact that the bill, in my judgment, will require the expenditure of more money for lawyers and accountants and court reporters and stenographers and filing clerks than you pay for oil field workers. It really does not help the cause of deregulation to put every cubic foot of gas under Federal regulation.

On the other side of the argument are those who have been approaching this from the consumer point of view and, I understand, quite wisely felt that they did not want to concede that they are going to have to live with the big price increases that are in this bill. From our point of view, we would be willing to sell gas at a cheaper price if we could be spared the tremendous amount of bureaucracy, uncertainty, court litigation, criminal prosecution and fines, and goodness knows what else that is in this bill, needlessly and far beyond any purpose that the bill could serve. So perhaps at this point, we shall be able to persuade our friends from the consumer States to realize that they are going to have to make some concessions that they did not want to make. They can look at the bill now and see what is in it.

If this bill becomes law, as sure as I am talking here, everybody in this country is going to get a big increase in their gas bill. In my State, it will not be their gas bill they will be complaining about so much as they will be screaming about their electric bill. Everybody will tell their constituents, "That is the best we could do, it was this or nothing, so we voted to give you this bill."

Mr. President, the things that are in the bill that would help to give some additional production are things that we all enthusiastically support. What we object to from the consumer point of view is things in this bill that are going to keep you from getting more gas. You are going to pay a tremendous increase in price, and you are not going to get the increase in supply you ought to be getting.

I hope those from the consumer areas will recognize the fact that they are going to have to pay these prices. The billions of dollars we are talking about are something they are ultimately going to have to pay. They yet have the opportunity—if they will come together with those of us who are concerned about the bureaucracy, the fantastic amount of needless litigation, the redtape, hearings, delays, and uncertainty in this bill—to help us get together with something that means both a lower price for the consumer yet would encourage more production. Even if we limit it just to provisions that are already in the conference report, we could produce a better bill than this. I hope we have the opportunity to spend some time discussing this matter over the next day or so to see if we cannot work out a broader agreement, one that will have a great deal more support.

I can show Senators from consuming States just a couple of things that they will be better off with in this bill. With that, I think we would have some additional support from producing States, or those interested in the producing problems. I hope very much that those from the producing States would also consider what there is in this bill that they find essential, that must be here. Because, Mr. President, I would think anybody, whether he is thinking about the producer or the consumer, could list provision after provision in this conference report that he would like to spare his constituents.

I hope we shall have the opportunity to work for that. For that reason, I think it would serve a purpose if the Senate did move on to other legislation. We are not asking for any quarter; we just feel it would serve the purpose of all if we could have a little time to get together and see what we can work out that people on both sides of the issue could, perhaps, agree upon.

Mr. ROBERT C. BYRD. Mr. President, I am sorry, the Senator from Illinois did not yield the floor. I thought he had yielded the floor when he yielded to me. I release the floor back to him.

I would like to inquire, so the Senate will know how soon this afternoon it might proceed to the public broadcasting bill, how many Senators wish to speak at this time, now, on the natural gas pricing conference report, which has the first priority.

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. And

other Senators do. All right; how long does the Senator anticipate?

Mr. METZENBAUM. Not more than 5 or 10 minutes at the most.

Mr. ROBERT C. BYRD. The Senator from Virignia wants about the same and the Senator from Wyoming about the same and the Senator from Montana the same.

It appears, Mr. President, that at around 4 p.m., the Senate will likely go on the public broadcasting bill.

I thank the Senator for yielding.

HISTORY OF REGULATION OF NATURAL GAS

● Mr. ABOUREZK. Mr. President, during early days of the gas industry, it became obvious that building competing pipelines to deliver gas to the communities would be wasteful and costly. It was obvious that once a pipeline was in place, consumers would lose their ability to shop around for better prices than their local distribution company was offering. Pipelines would be in the same situation when it came to signing contracts with producers, once the major pipelines were in place. For these reasons, the gas industry was considered a kind of monopoly which would have a great affect on the public interest. States where the industry operated created commissioners to set rates that would allow companies to earn a fair profit and also protect consumers from monopoly pricing.

The need for Federal regulation over the interstate market came about because the individual State regulatory commissions were powerless to influence transactions where gas crossed State lines. The Supreme Court had ruled that various State commissions were prohibited from regulating the price that pipeline companies charged to local distributors. The pipeline companies often charged as much as the market would bear.

In the 1930's, discovery of large reserves of natural gas in Texas, Oklahoma, and Kansas made available a cheap and abundant supply of gas. It was so cheap that oil companies flared most of it in the field. Pipelines could buy this gas for 1 to 3 cents, since the oil producers considered it a waste product. Nonetheless, the interstate nature of the pipeline system created a no man's land that allowed the companies to take full advantage of their position to reap monopoly profits from consumers, in spite of the State regulatory commissions.

In 1938, Congress acted to plug this "regulatory gap" by passing the Natural Gas Act. In the act, the Congress cites a Federal Trade Commission report which showed that there was heavy concentration both in production and distribution of natural gas. "The four largest producer groups account for about 72 percent of the output of natural gas produced by 32 holding company groups in 1930." The Commission concluded on the basis of its detailed investigation of the industry:

> The prime characteristic of the situation described is of a steadily developing concert of interests dominating the producing, transporting, and distribution branches of the industry. (S. Doc. No. 92, pt 83-A, 70th Cong., 1st Sess. published 1936)

During the first 10 years of FPC regulation, the gas industry remained a buyer's market as far as pipeline companies were concerned. With the rapid growth of demand for natural gas after World War II, pipelines began to lose their bargaining power to the major oil companies that produced most of the gas.

In 1947, natural gas producers made their first attempt to get legislation passed which would exempt them from regulation. The producers were reacting to a ruling of the FPC and the appeals court in the famous case, Interstate Natural Gas Co. against FPC. In this case the FPC ruled in 1943 that the Interstate Natural Gas Co. had to reduce the price of certain of its sales of natural gas from a large gas field in Louisiana. The FPC's jurisdiction to regulate such sales was upheld by the Supreme Court on June 16, 1947. The court stated firmly:

> We have held that these sales are in interstate commerce. It cannot be doubted that their regulation is predominantly a matter of national, as contrasted to local concern. All the gas sold in these transactions is destined for consumption in States other than Louisiana. Unreasonable charges exacted at this point of the interstate movement becomes perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumers. It was to avoid such situation that the Natural Gas Act was passed.

The FPC's jurisdiction over certain interstate sales of natural gas aroused the anger of some natural gas producers, especially the major oil companies. They viewed the extension of Federal regulation to the producing level as a violation of what they considered their exempt status under the Natural Gas Act. Unable to convince the Supreme Court of this, the producers next set out to get Congress to pass a bill specifically exempting them from regulation. It must be noted that in 1945 the FPC had inaugurated a comprehensive investigation of the natural gas industry. The results of the inquiry led the FPC to believe it had to broaden its jurisdiction over gas production if it was to carry out its responsibilities under the Natural Gas Act.

Only the House passed the 1947 producer's exemption bill. In the meantime, the results of the FPC study showed that it could no longer protect natural gas users against price gouging by regulating interstate pipeline prices only. The study's findings were powerful enough to change the mind of the Chairman of the FPC (Leland Olds) who had previously supported exempting producers from regulation. The majority of the FPC now supported regulation of producer prices. (By the way, Olds' reversal prompted a drive by producer-interests to prevent his reconfirmation.) Alarmed by the threat, producers again turned to Congress. They relied on the same arguments which have become all too familiar to Members of recent Congresses—the specter of a shortage.

The debate on the Kerr-McGee bill, introduced to prohibit regulation of producers' prices was heated. The opposition to deregulation was led by Senator Paul Douglas of Illinois joined by Senators Kefauver, Morse, Gillette, Brewster, and Humphrey.

Douglas presented figures showing that the majority of companies controlling the Nation's natural gas reserves were major oil companies, such as Standard Oil of New Jersey (Exxon), Phillips Petroleum, the Texas Co. (Texaco), and so forth. And these companies had control of most of the major gas fields. In this regard, Douglas remarked,

> . . . The control of individual fields by one, two, or three companies is the greatest factor in making the selling of gas monopolistic in nature because once lines are laid, the bargaining power of the pipe line company is so diminished that it is practically extinct. (Cong. Rec., 3728, March 21, 1950)

Many of the issues raised in 1950 are the same as those raised by proponents of deregulation in 1975, 1976 and 1978.

Senator George Aiken, Vermont Republican, pointed out during the 1950 debate that—

> It has been represented that if the Senate does not approve (deregulation), producers of natural gas in the Southwest will not sell gas to interstate pipelines and, as a result, the New England states will not get gas.

But he concluded:

> Economic coercion of members of Congress deserves our most serious consideration. I am sure we all agree that this is not a sound basis for determining public policy.

The final vote in the House of Representatives on the Kerr bill to exempt producers from regulation was 176 in favor and 174 opposed. In the Senate, the bill had been passed by a comfortable margin. This left the final decision up to President Truman. Truman, on April 15, 1950 vetoed the legislation saying it was not in the national interest. Truman noted "the concentration of ownership of natural gas reserves" by a few major companies limited competion. He stated that the continuance of the FPC's authority to regulate sales of gas to interstate pipelines "will adequately protect the public interest by permitting the Commission to prevent unreasonable and excessive prices which would give large windfall profits to gas producers, at the expense of consumers, with no benefit to the Nation in terms of additional exploration, and production."

Senator Aiken's scorn for the gas industry's empty threat was confirmed by events. After the 1950 deregulation bill was vetoed, the dual market continued to operate, and increasing amounts of gas were dedicated year after year to the regulated interstate pipelines.

Meanwhile, the gas interests turned their attention to the FPC, where more sympathetic appointees had replaced those responsible for suggesting regulation of producers. In 1951, the Commission refused to exercise jurisdiction over a natural gas sale by Phillips Petroleum Co., then the biggest in the business.

Phillips claimed that its sales of natural gas did not come under the FPC's jurisdiction and four of the Commissioners agreed with the company. The FPC refused to assume jurisdiction. The State

of Wisconsin and other States and towns appealed the decision and the U.S. circuit court of appeals reversed the FPC ruling in 1953 and ordered the Commission to exercise its authority over Phillips. In June of 1954, the Supreme Court in a now-famous action, affirmed the decision.

The producers, who thought they had a complaint Commission, were outraged by the Supreme Court's decision. They immediately put pressure on the Congress to nullify the Court's decision by enacting legislation to exempt producers from regulation. The oil and gas industry mounted a massive lobbying and public relations effort (planned by the public relations firm of Hill and Knowlton) funded with contributions totaling nearly $2 million. With Eisenhower, a sympathetic President, in the White House, the gas producers were convinced that they would at last win the battle for deregulation. The debate in Congress in 1956 thus centered on the Harris-Fulbright bill. Most of the issues were identical to those debated in 1950. Again, Senator Paul Douglas led the fight in opposition to deregulation.

In summing up his opposition to the bill, Douglas said:

"• • • The passage of the Fulbright bill would inevitably mean a large increase in the price of gas in the field, amounting to at least 10 cents per thousand cubic feet; that the increase would be passed on to the pipelines; that the protections in the bill are grossly inadequate, indeed, almost nonexistent; that the pipelines would pass the price increase on to the distributing companies; that the residential customers, 21 million families who have to pay most if not all of the $600 million a year which would be charged. (Cong. Rec. 1248, January 25, 1956.)

Agreeing with the opponents of the bill, Senator John F. Kennedy explained why he thought the Senate should reject the legislation:

. . . I agree with the general principle that regulation by the Federal Government of any business activity should be undertaken only where there is the clearest demonstration that such regulation is absolutely necessary to protect the interest of the public. Applying that principle to the natural gas situation now before us, it seems to me abundantly clear that the nature of the industry calls for regulation.

When we talk about the public interest, and when we weigh the interests of the 20 million consumers dependent upon natural gas against the interests of the major companies which control the great percentage of production of natural gas, it seems to me there is no doubt that the interests of consumers would best be served by the defeat of the bill. The companies which would be subject to regulation have all flourished in recent years, and their future prospects are excellent." (Cong. Rec., 1262–63, January 25, 1956)

Senator Hennings of Missouri pointed to the fundamental issue in the debate over regulation:

We hear these days very unctuous eulogies of the virtues of free enterprise from those who would destroy it completely by monopoly.

The greatest enemy within this country of a truly competitive free enterprise is the creeping, and hidden, and camouflaged monopolist who, year in and year out, has sought to fix prices, in one way or another, according to one principle and one alone—all that the traffic will bear under the seller's control.

That is what the real originators within the big oil companies, of the pending measure, aim to do, under the vague, fine-spun and legalistic phrase "reasonable market price."

We have seen how, within the past 10 years, their relentless efforts have been defeated once by the Congress, once by the Executive, and once by the U.S. Supreme Court. We have seen today how they have returned to the attack.

Again, it looked as if the pro-deregulation forces had victory in their grasp. But on February 3, 1956 the Republican Senator from South Dakota, Francis Case told the Senate that he had been offered and had refused a $2,500 campaign contribution from a representative of the Superior Oil Co. of Texas, a large gas producer.

Case told the Senate:

I cannot vote for the bill as it stands. In the light of evidence personal to me that the bill has prospects of unusual monetary profit to some, and that with that profit would go the means for a continuing effort to influence the course of government for private gain, I must vote to maintain in people's Government the opportunity to control the profits from a monopoly product.

The campaign contribution offered to Senator Case came out of a fund established by Superior Oil Co. chairman, Howard B. Keck. The account was administered by Elmer Patman, an attorney for Superior. Patman hired a Nebraska lawyer, John Neff, whose job included sounding out various Senators on the upcoming vote on the Harris-Fulbright bill. Among those Senators selected by Neff for a contribution was Francis Case. After Case's dramatic revelation, the Senate formed a special committee, tilted in favor of deregulation supporters to investigate the contribution. The Senate committee found the attempted bribe to be "improper" but not "illegal." A Federal grand jury, however, did not agree and returned indictments in July, 1956 against Superior Oil, Neff and Patman. They all pleaded guilty, and the court fined Superior $10,000 and the two attorneys $2,500 each.

Despite the fact that Congress passed the bill and despite the fact that he favored the legislation, President Eisenhower refused to sign it saying:

. . . A body of evidence has accumulated indicating that private persons, apparently representing only a very small segment of a great and vital industry, have been seeking to further their own interest by highly questionable activities. These include efforts that I deem to be so arrogant and so much in defiance of acceptable standards of propriety as to risk creating doubt among the American people concerning the integrity of governmental processes.

Essentially, this ended for a period the major battle over producer regulation. While the Harris bill was introduced again in 1958, it did not come to a vote. In 1959 it was again introduced, and defeated. When John Kennedy was elected President the FPC began serious efforts to construct a "just and reasonable" regulatory framework which was fair to both producers and consumers. Yet the producers continued to challenge the FPC's authority to set gas prices. Most of the battles during the 1960's took place at the FPC and in the courts.

Supplies did not dry up after this second failure to end price controls. In fact, the volume of gas sold in interstate commerce increased from 5 trillion cubic feet to 8 trillion cubic feet between 1954 and 1961, and the regulated price advanced steadily, from an average of 9.5 cents per Mcf to 16.5 cents per Mfc. Intrastate sales represented far smaller volumes, and intrastate prices lagged behind the regulated price.

The period of 1960–68 was marked by constant clashes between the Commission and oil and gas companies. Former Republican Commissioner Charles R. Ross (who served from September 1961 to September 1968) recalled that

. . . Throughout this period the industry suffered badly because of its misguided attempts to force changes at the commission. The following actions all served to cause the Commission to question the industry's credibility; constant blatant attempts to pull power plays in Congress; repetitive instances of crying wolf; unwillingness to disclose complete and accurate industry data; failure to make the Natural Gas Advisory Council as effective an advisory voice as the Electric Advisory Council; the holding back of the pipeline companies from seeking to contest the higher wellhead rates and their threat to pull out of pipeline production if they did not get what they want; the delight of the industry at the rough handling that Chairman Swidler received at the hand of Albert Thomas, chairman of the House Appropriations Subcommittee on regulatory agencies; obvious efforts to influence President Johnson to dump me, as well as attempts to name the industry's own people to the commission; and the opposition to Canadian imports as a supplement to our reserves. ("Producer Regulation; A Commissioner's Viewpoint" by Charles R. Ross in *Regulation of the Natural Gas Producing Industry*, Ed. by Keith C. Brown, John Hopkins University Press 1971).

Despite all of this, the FPC managed to establish a method for computing a fair price, and issued its first ceiling rate in 1965. This and following ceiling prices were based on the historical production costs for each geographical area. They included a 12 percent rate of return on invested capital for procedurers. The Supreme Court rejected the producers' claim that the ceiling was too low, on the ground that each year the producers discovered enough new gas to replace their entire production—and then some.

After this Supreme Court decision for the first time in the history of the U.S. gas industry, additions to reserves dropped below production. The companies had good reason to expect higher prices—and achievement of their long-sought goal of deregulation—during the Nixon administration. Upon his appointment to the FPC chairmanship, John Nassikas announced that he wanted a "Nassikas round of gas rate increases." But despite his resolve, Nassikas could not simply ignore the Natural Gas Act and use his regulatory powers to eliminate regulation.

What Nassikas managed to do was substitute a policy of "gradual deregulation" for the FPC's statutory responsi-

bility to regulate. He ushered in a series of increases in ceiling prices which culminated in the $1.42 rate promulgated in August of 1976. The average price for new gas sold to interstate pipelines was 19.2 cents when Nassikas assumed the chairmanship of the FPC in 1969, 5 years later it had risen to 56 cents.

While the regulated rate was increasing, the FPC was taking other steps to increase the earnings of the producers. It tried to end price regulation for small producers, but ran into trouble in the courts. In 1972, the Commission proposed an "optional procedure" for carrying out its task of setting prices for producers. It would allow producers to raise their prices above the regulated rate unless the FPC intervened to prevent it. The late Senator Philip Hart, Michigan Democrat, denounced the "optional procedure" as a "blatant and arrogant usurpation of the legislative function * * * manifestly anticonsumer and pro-industry."

Between 1973 and 1975, the Commission proposed several other piecemeal deregulation measures, including unregulated 180-day "emergency" sales (challenged and ultimately barred by the courts); 60-day "emergency" sales, and direct purchases in which industrial users could buy directly from producers without regard to any ceiling price. The last two of these are currently in effect.

In 1976, the Carter administration's first act on energy was to propose further "emergency" deregulation to end the shortage of gas that appeared that cold January. As a result, interstate pipelines used these emergency purchases to maintain or increase sales to low-priority customers that had alternate fuel capacity. Intrastate producers used the opportunity to make some quick sales of surplus gas at $2.25—a price substantially higher than they were getting from normal intrastate sales.

But, this bleak picture of the way regulation has failed to protect consumers need not apply to future regulation. There is evidence that the existing law, based on the fact that consumers have little bargaining power once they are hooked into the gas pipeline, can meet the needs of the market today. Even before the adoption of the $1.45 ceiling price, the rapid decline in exploration had been arrested. In 1977, new additions to reserves amounted to 11.9 trillion cubic feet, 58 percent more than was added in 1976, and the largest increase since 1968. What is more important, new additions to reserves for the interstate market in 1977 were 8.5 trillion cubic feet—three times what they had been in 1976. Demand in the intrastate market is unlikely to grow as fast as new reserve additions. Currently, a trillion cubic feet of gas is backed up awaiting a decision on new prices. Some producers have announced their readiness to sell to interstate customers even at the prevailing regulated rate of $1.50. At the same time, the FERC under the chairmanship of Charles Curtis has moved to examine whether loopholes in the ceiling price should be eliminated.

Finally, gas from the Outer Continental Shelf promises to supply an increasing proportion of U.S. demand—and all OCS production must by law be sold to interstate consumers. Again, the FERC recently ended a practice which allowed major producers to divert this gas to use in their own refineries, thus depriving the interstate market of much needed new supplies.

There is every reason to believe that the regulations will at last operate as intended—to encourage the greatest production at the most efficient price. Let us not abandon this on the doorstep of success.●

THE REGULATORY REFORM ACT

Mr. SPARKMAN. Will the Senator from Illinois yield to me?

Mr. PERCY. I am going to make a unanimous-consent request, then I shall yield the floor.

Mr. President, I should like to draw attention to the fact that I trust that, early next year, one of our urgent pieces of business will be S. 600, the Regulatory Reform Act, which we trust will be voted out by the Committee on Governmental Affairs, in which I am privileged to have the majority leader join as a principal cosponsor, together with Senator RIBICOFF, the chairman of the Committee on Governmental Affairs.

CHAIRMAN KAHN PROVEN RIGHT: AIRLINES PROSPER AND CONSUMERS BENEFIT

Mr. PERCY. Mr. President, it seems that each month during the 15-month tenure of Civil Aeronautics Board Chairman Alfred E. Kahn, the Nation's airlines have surged ahead in passenger loads and profits. August of 1978 was no exception. Here are just a few examples:

Braniff International reported a 38.3 percent increase in passenger traffic, the fourth consecutive monthly increase. The Texas-based airlines listed new routes and bargain fares as the reason for this surge.

American Airlines said that for the third consecutive month it set a record with an increase of 27.7 percent in traffic.

Washington, D.C.-based Allegheny Airlines said that business was up 17 percent from last August with an impressive 67.1 percent of airline seats filled compared with 60.1 percent a year ago.

The Nation's largest air carrier, United Airlines, reported that its business increased 30.8 percent, the third consecutive month of record revenue passenger miles and the seventh consecutive month of double digit growth. United said it also set a record for daily average passenger load factor—the percentage of seats occupied in scheduled service—during the jet era, filling 74.4 percent of its seats for the month.

National Airlines said that August traffic was up 30 percent over the same month last year, continuing a pattern of increased passenger growth and profits.

North Central Airlines said its August traffic rose 43 percent to 195.7 million revenue passenger miles from 137 million in August 1977.

Of course, the statistics do not fully reflect the new-found satisfaction of millions of Americans. They are now able to take advantage of budget vacation opportunities that were only dreams a short while ago, and can arrange more frequent family reunions, made less costly by discount fares. The excitement of returning home or visiting faraway places cannot be reduced to a ledger sheet. At a time when inflation is making it more and more difficult for working families to make ends meet, Chairman Kahn is to be congratulated for helping to make it possible for people of moderate means to travel by air.

Economist Eliot Janeway has written an excellent column on airline regulatory reform which appeared on September 11, 1978, in the Chicago Tribune. The article focuses on Kahn and states:

. . . Kahn has easily proven to be the most successful of President Carter's appointees of the alphabet agencies.

I concur. We are all very grateful to CAB Chairman Kahn for his bold initiatives.

A fascinating account of his tenure is contained in an excellent National Journal article of August 26, 1978, written by Ms. Linda E. Demkovich. I ask that "A Pleasant Surprise for Wall Street," by Eliot Janeway, and "The Pros and Kahns of Airline Deregulation," by Linda Demkovich be printed in the RECORD at the conclusion of my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Sept. 11, 1978]

A PLEASANT SURPRISE FOR WALL STREET

(By Eliot Janeway)

NEW YORK—If markets are people, people who make names for themselves become market-makers. Chairman Alfred Kahn, for example, of the Civil Aeronautics Board [CAB] in Washington, is being looked to as a new Wall Street messiah.

The CAB has enjoyed control over rate-making for the airlines; and the country, as well as the industry, has suffered for it. But Kahn has easily proven to be the most successful of President Carter's appointees of the "alphabet agencies." In fact, the prominence he has won has come as something of a pleasant surprise.

Kahn's prior tour of duty as chairman of the New York State Public Service Commission did not reveal any hint that he might plump for all-out deregulation, although, of course, deregulation isn't feasible for electric and gas utilities as it is for transportation companies. Neither did any spirited advocacy on his part when he was still professor at Cornell University.

But the Kahn doctrine—self-regulation by airlines proposing fare cuts of up to 50 per cent and increases of up to 5 per cent, plus cuts in their bureaucracies—has worked. Overnight, it has freed the public to latch onto airline travel as the one conspicuous bargain within reach. The contrast with the ongoing gallon in the cost of everything else could not have been more dramatic.

The response has been electric, as the around-the-clock mob scenes in airports show. Old rules of thumb about off-peak travel times are dead as the dodo. So is the time-honored dependence of commercial airlines on a relatively small number of people in higher income brackets who fly often. Planes are now being loaded up with new classes of customers, who may or may not be "repeaters."

Even overseas flights are carrying more Americans out of the country—proof that

dollar devaluation isn't working as promised to close the trade gap. Apparently, air fare bargains are offsetting the exchange losses Americans are suffering overseas because of the dollar's slide.

Back in Wall Street, the response of the market-makers and their customers has been at least as enthusiastic. Against the background of a sputtering rally losing momentum, the great airline move of recent months has made market history.

Not only have airline securities performed sensationally; even Pan American has made a sudden recovery.

The Street may often be slow to catch on to a new idea, but it's quick to run with it once it has. Its more prominent and articulate figures have big plans for Kahn. They don't see what more he can do for them, or the market, at the CAB—after all, the airlines have had their move, and have probably overdone it.

Specifically, the next move the Street's movers and shakers are talking about is not in stocks. It's for Kahn to switch from the CAB to the ICC.

Before it became the target of investigation for scud, the ICC's claim to rank as the worst agency in Washington was hard to dispute. Certainly, one place to start processing complaints against the government for inflating costs, deflating earnings, and slowing the wheels of progress is the ICC. The Street's way of thanking Kahn for his hand in the airline move is to vote its confidence in him and hope that he moves over to the chairmanship of the ICC.

THE PROS AND KAHNS OF AIRLINE DEREGULATION

(By Linda E. Demkovich)

Alfred E. Kahn: hero or goat? Ask airline officials what they think of the unconventional chairman of the Civil Aeronautics Board and you will hear it both ways.

Take two of the industry giants, for example. Delta Air Lines, which recorded the highest profits of the 10 long-distance domestic airlines in 1977, contends that Kahn's deregulation policies will disrupt service to smaller cities and lead ultimately to a system run by a few big carriers. United Airlines, which had higher operating revenues and carried more passengers last year than any of its rivals, agrees with Kahn's philosophy that there's plenty of room for everyone and the more competition, the better.

Since it was created in 1938, the CAB has acted to shield airlines from competition by stringently regulating where they could fly and how much they could charge to fly there. Kahn is taking steps to change all that.

Under his direction, the board is giving domestic carriers latitude to lower their fares—and eventually to raise them—without first getting CAB approval. It is also testing the theory of multiple permissive entry by awarding certain domestic routes to all eligible and fit carriers that want to fly them, instead of singling out one or a few airlines to provide service between cities. Finally, the board has approved new rules that should help charter airlines, damaged by some of the board's other innovations, to compete with the scheduled airlines.

If these policies succeed, it may be only a matter of time before the CAB puts itself out of the regulatory business entirely.

Kahn's chairmanship, which began in May 1977, coincides with a period of unprecedented prosperity for the airline industry. In the first half of 1978, air traffic increased by 16.3 per cent over the same period in 1977, with more than 180 million passengers on scheduled U.S. domestic and international flights. June traffic was up 21.9 percent over the same month a year ago. Typically loaded only to 50 per cent to 55 per cent of capacity, airplanes recently have been flying with an average of 70 per cent of their seats occupied—which means that on the more popular routes, prospective patrons must be turned away. Profits in 1978 are expected to reach between $800 million and $1 billion, which would make it the best money-making year in the history of commercial aviation.

The economy, of course, has had a lot to do with the upsurge in traffic. But it is clearly Kahn's policy of encouraging discount fares—a policy that began under his predecessor, John E. Robson—that has helped airlines to attract large numbers of customers who might otherwise have found cheaper ways to travel, or simply stayed at home.

Yet Kahn is hardly the darling of the airlines.

A number of key carriers, led by Delta and Trans World Airlines (TWA) among the trunks and Allegheny Airlines among the regional carriers, argue that his deregulation strategy holds an inherent danger: oligopoly. By opening up routes to all comers, they warn, Kahn exposes the industry to an eventual takeover by a handful of giants. In time, the weaker companies would have to line up mergers or go out of business. Either way, many small and medium-sized cities would find themselves without adequate air service.

Delta has taken legal issue with Kahn. In a suit challenging the CAB's preliminary decision to open the Las Vegas-Dallas/Fort Worth route—a market served exclusively and profitably by Delta—to Braniff International and Texas International Airlines, Delta charges that Kahn has overstepped the bounds of current law.

(If Congress acts on its airline deregulation bill this year, the outcome of the court test would probably matter less. Initially controversial, the legislation now would do little more than add legal weight to actions the board already has taken.)

Still, Kahn's policies have more industry support—or at least less opposition—than at the height of the deregulation debate in Congress last year. A number of carriers, including United, Pan American World Airways, which is excluded from flying domestic routes under the existing regulatory scheme, and Frontier Airlines, one of the top three regional lines, seem to share his view that the airlines are in a better position than the government to know what routes and what prices are going to be profitable.

There seems to be no discernible pattern among those who support or oppose what the board is doing under Kahn. Size, type of route configuration, financial stability—those factors seem less important than management's sense that competition would (or would not) be good for the financial health of the industry.

Kahn, meanwhile, seems unruffled by the controversy and, if anything, determined to stir up even more. In an interview, he said he intends to proceed with his deregulation strategy, case by case, unless the courts tell him otherwise.

No longer an "apostle of gradualism," Kahn said he now wants to move as rapidly as the law allows toward a totally free system.

CUT-RATE FARES

Like a peanut butter and jelly sandwich, airline deregulation has two key ingredients: flexible pricing and freedom of entry into the marketplace. Without the latter, which promises to bring in competitors, airlines would have little incentive to offer lower fares.

Airlines, with tacit CAB approval, have traditionally been reluctant to offer discounts for fear that their profits would suffer. When one carrier chose to introduce a new fare, its rivals were dragged along reluctantly.

In the spring of 1975, for example, National Airlines introduced a "no frills" fare to Florida that brought cries of outrage from its two chief competitors, Delta and Eastern Air Lines. Once the CAB authorized it, however, Delta and Eastern were forced to copy it. The same thing happened in the spring of 1977, when American Airlines applied to the board for its transcontinental "super saver" fare. United and TWA strongly opposed it, but were compelled to imitate it after it had CAB approval.

So far, the wave of discounts has been a boon both to the traveler and to the industry. But there are signs that the appeal may be wearing off.

For one thing, the fares have so many conditions that airline employees who try to explain them are getting as confused as the customers. For example: beginning Sept. 25, United's "freedom fare," available on 35 per cent of its coach seats to any city it serves, will offer passengers a 20 per cent mid-week discount and a 15 per cent Friday-through-Sunday discount (except between 9 p.m. and 6:59 a.m., when the discount rates are 30 per cent and 25 per cent), if reservations are made at least seven days in advance and the return flight isn't before the first Sunday after departure, up to 45 days. That's just one type of discount. United also offers "super saver," "super coach," night coach, a variety of excursion fares, senior citizens fares, the "Las Vegas jackpot" fare and so on.

More important, however, many carriers fear the discounts are ceasing to be profitable. With planes near capacity, they say they are no longer attracting enough new business to offset the lower fares.

They also warn that the windfall that hit the airline industry in 1978 is probably, as one industry official described it, "a short-term bonanza" produced as much by a strong economy as by discount fares. Also, the airlines had enough excess capacity so that filling planes with less than full-fare passengers was profitable. With forecasts of economic recession on the horizon, and the existing fleets carrying above-normal loads, most companies say they don't expect the bonanza to last much longer.

Herbert Kelleher, president of Southwest Airlines, which is exempt from CAB regulation because it operates only in Texas, discounts the importance of the state of the economy to airline profitability. Since 1962, when Southwest initiated cut-rate fares, the company has prospered.

"We've demonstrated again and again, in good times and bad, that we can gain enormous increases in traffic," Kelleher said. In one two-year period in the 1960s, during a lull in the economy, Southwest doubled its share of the market, he said.

But Kelleher may be in a minority. Many of the airlines may want to restore normal fares on at least some of their routes before too much longer.

Kahn, however, intends to ensure that travelers continue to get the benefits of price competition. Thus, on about Sept. 1, a fare policy modeled on the one used by Southwest will take effect and codify what the CAB has been doing case by case for the past year or so.

Until then, fares will continue to be computed according to mileage, regardless of ridership between cities. The new CAB rules will allow the airlines to discount their basic coach rates by as much as 50 per cent and sometimes 70 per cent without prior approval by the CAB.

In general, the carriers say they like the new authority to cut fares, although most argue for the flexibility to raise fares as well. Under the policy that will take effect in September, airlines will be allowed to raise fares by 10 per cent in markets where four or more non-stop carriers are operating and 5 per cent in markets with less competition.

Kahn conceded that the formula is more restrictive than the airlines would like, but said it should become more palatable as new

markets open up. In addition, he said, carriers may appeal for higher fares if they can demonstrate to the board that 10 per cent increases are insufficient to cover costs. "We are aware that there may be markets getting inadequate service now because their rates are too low," he said.

OPENING MARKETS

Step two of Kahn's deregulation strategy—to ease restrictions so that new and existing airlines can gain access to markets closed under the current system—is already bearing fruit.

Chicago's Midway Airport provides a good example. Midway, a bustling traffic center in the 1950s, all but closed down when O'Hare International Airport, now billed as the busiest airport in the world, opened in 1962. At the moment, Delta is the only scheduled carrier operating regular flights out of Midway. For more than 15 years, the city of Chicago has been trying to restore service to its "other" airport.

Kahn is finally giving it the chance. On July 12, the CAB announced it will award new route authority between Midway and six cities to five carriers, including two new companies, Midway Airlines and Midway (Southwest), a subsidiary of Texas-based Southwest Airlines. At the same time, the board began to consider applications from 21 carriers (including the two new lines, plus Federal Express and DHL, a courier service) to 17 additional markets.

A second case involves Oakland International Airport, which asked the CAB in April 1977 to open service into 22 markets. Like Midway, the Oakland facility was losing traffic to another giant, in this case San Francisco International Airport. In April of this year, the board granted service awards to six carriers in 15 of the 22 markets.

The Midway and Oakland cases are less controversial than they might be because no airline is threatened with the loss of its monopoly service between two cities. But to Kahn, they will serve as the precedents he needs to carry out his freedom of entry policy elsewhere.

Currently, the CAB is considering six cases, including the one in which Delta has filed suit, in which it plans to test multiple entry after it resolves the legal and environmental implications.

Kahn won the first round in the Delta suit when the U.S. Court of Appeals for the District of Columbia refused to grant Delta's request to delay letting two other airlines enter the Las Vegas-Dallas/Fort Worth route. It may be next spring before the case is decided. By that time, Delta says, even if the court rules in its favor, it's going to be hard to undo what the board has done.

In the process of developing its theory, the CAB has cut one time-consuming and expensive step out of the regulatory process. No longer will it wade through the requests of all qualified applicants to serve a particular new route. Instead, any airline can provide service; the market will determine how many airlines can operate profitably.

Kahn's affinity for cutting corners has upset some of the airlines. James W. Callison, Delta's general counsel, said that Kahn, as an economist, "seems to think that due process gets in the way" of his plans.

Furthermore, Callison said in an interview, the CAB chairman has gone beyond his legal authority. "The real question we raise," he said, "is whether [Kahn] isn't arrogating to himself the power of Congress."

Kahn and other backers of deregulation counter that it's a matter of interpretation, that the board is simply reading the law in light of the changes that have occurred in the airline industry since the Civil Aeronautics Act (52 Stat. 923) was enacted in 1938. Unless the court rules otherwise, Kahn said, he feels free—"market by market"—to proceed with the effort to deregulate the industry.

The entry of new airlines into routes now served by only one or two carriers is likely to promote Kahn's goal of cutting air fares. David Boies, counsel to the Senate Judiciary Subcommittee on Antitrust and Monopoly, said the next wave of fare discounts "will not be an effort to attract new business but to take business away." The effects of that effort, he said, probably will not be felt for another 18 months to two years.

In view of what Kahn has done already, many of the airlines may have begun to rue their earlier stance against legislation permitting modest deregulation. Under the automatic entry provision of the bill (S 2493) that the Senate passed in April, carriers would be able to select one new route in 1979 and 1980 (assuming enactment in 1978) and two new routes each year thereafter. The House bill (HR 12611), which is expected to go to the floor soon, calls for a one-year experiment in which a carrier could enter one new market.

Kahn concedes that the automatic entry provisions of the legislation are modest by comparison to what the board has initiated. "The main value of the legislation to me is its declaration of policy, which will increase the likelihood of our being sustained in the courts," he said.

In addition, said several congressional aides who have been following the legislation, it is important that the changes be enacted so that Kahn's successors don't reverse what the present board has done.

FEAR OF NOT FLYING

The threat of a "General Motors of the airline industry" hangs over many of the carriers like the sword of Damocles. Translated, GM means United.

United, which accurately calls itself the "largest airline in the free world," favors deregulation, other airlines speculate, because it has been effectively stopped from growing under the existing regulatory system. Because of its vast resources, they say, United could afford to enter new markets and drive away competitors, even if it had to sustain temporary losses.

Monte Lazarus, United's senior vice president for government affairs, said the company's size is not a factor in its proderegulation stance. He said it hopes more competition will allow the industry to overcome its history of "dismal" earnings and meet its $60 billion in capital requirements by 1990.

"Sure, we've been shut out for a long time on routes," he said, "but if the board did nothing henceforth, [United] wouldn't suffer."

The carriers that side with Kahn are just as suspicious of Delta's motives. Delta, based in Atlanta, has become the most profitable of the major carriers because of its ability to carry passengers along its own routes to major market centers. Its potential competitors feel Delta is afraid that if another carrier invaded its territory, it might lose its dominance along some of its more profitable routes.

Location could be another part of the story. Frontier, which operates a route system out of Denver that is similar to Delta's, favors a freer entry policy.

Lawrence Bishop, Frontier's vice president for corporate communications, said that the population growth in the mountain states might explain Frontier's difference of opinion with Delta. "The cities are smaller, but the potential for growth is bigger," he said.

Until now, he said, getting new route awards from the CAB has been "like pulling teeth." So a free entry policy should be good for a company such as Frontier that wants to expand.

Does Frontier fear the competition? Bishop said no: "Ninety per cent of our profits now come from routes where we're competing with one or more carriers."

But other carriers apparently are not convinced by the optimism of the Frontiers and Uniteds. To them, the threat of control by a handful of big carriers outweighs any advantage that more competition might have to offer.

If Kahn's multiple entry theory is applied everywhere, said a spokesman for TWA, the airlines would soon resemble the automobile industry. "Before long, there own't be any Packards, Studebakers or Reos around."

Kahn said that the "possibility" of oligopoly is not reason enough to prevent competition. But he clearly does not envision that possibility as likely.

"If you open up only a couple of markets, there is always a danger that the incumbent carriers will try to smother the opportunities," he said. "That's why I am so persuaded that we have to move faster and open up a lot of markets."

He pointed out that the smaller airlines are still pounding on the CAB's door to seek entry rights into markets where they would be competing with giants such as Delta and Eastern. And the small carriers have so many advantages over the bigger ones—lower labor costs, higher productivity, equipment better adopted to specialized markets—"that I'm convinced they will find niches in which they can operate."

One early industry response to the threat of competition may come in the form of merger applications. Two such applications—between Continental Air Lines and Western Air Lines and between North Central Airlines and Southern Airways—already are pending before the CAB, and industry observers say more may follow, especially if National accepts Pan Am's recent offer to merge the two lines.

According to Kahn, the initial applications for mergers might represent a "psychological rushing for security blankets." But since the board is opening up new markets to the carriers, it is less likely to look kindly on those that want to expand their system the "easy" way. "I'm not saying we're flatly opposed to these mergers, but we're going to put a very heavy burden of proof on them," he said.

Delta's Callison said the board should look at history. "Every time we've gone through one of these [economic] cycles, and we've gone through them regularly since World War II, the industry has shrunk in size. It's happening all over again. Conditions are pushing the industry toward a smaller and smaller oligopoly, and I'm not sure that's good for the public."

OTHER FEARS

If deregulation forces some airlines out of business, it also may leave some small and medium-sized cities without airlines to serve them. That argument provided the basis for much of the early congressional resistance to the deregulation bill. (*See NJ 7/30/77, p. 1193.*)

In response, proponent points out that the airlines have been abandoning routes with regularity—nearly 200 since the mid-1960s—under existing policies.

"Regulation has never historically kept airlines on unprofitable routes," said Philip J. Bakes, the CAB's general counsel. In addition, Bakes said, the kind of service provided to small towns in the past often has not served the needs of the people.

Commuter airlines, fast becoming an important part of the air transportation system, might provide at least part of the answer. Currently, there are about 200 commuter companies, serving over 600 communities and transporting over eight million passengers a year.

The major advantage of the commuters over the bigger lines is their ability to schedule more flights per day because they don't

have to fill up such large planes. "At first, people [in small cities] don't like to lose their big shiny jets," said Tulinda Deegan, director of government affairs for the Commuter Airlines Association of America. "But they soon find that increased services make up for it."

Another related problem is the job security of airline employees. In its efforts to serve travelers better, some airlines argue, the CAB seems to have forgotten that employees are an equally important part of the public interest equation.

"If one airline goes down the tubes, who's going to hire the 50-year-old captain or the 57-year-old mechanic?" an attorney for the Air Line Pilots Association asked. Even if they were hired, he said, they would drop back to the bottom of the seniority list.

"I do have to admit that greater competition creates greater [job] insecurity," Kahn said, "but that's something that we should protect through general social security, unemployment compensation and severance pay arrangements." But more competition, he added, should produce even more jobs.

"I see no necessary conflict between the interest of consumers and the interest of the financial side of the industry," Kahn said. "There is no reason why it cannot earn good profits and pay excellent wages while also providing consumers the benefits of competition."

A final concern of some of the carriers is what they call "selective deregulation"—the deregulation of fares and entry combined with new regulations governing other aspects of the business. The CAB's attempt to impose smoking rules is one example. Another is a proposal asking the airlines' cooperation in putting together a quality-of-services index for consumer information purposes.

These efforts, one airline official said, constitute "a meddlesome interference with our business."

"The thing we fear most is uneven regulation, and that's exactly what's happening today," said another. "The CAB is a very, very inconsistent regulator."

"We're subject to more detailed regulation and reporting than ever before," said a third official.

Kahn's reply: "Absolute propagandistic garbage." In the past year or two, he said, the agency has cut the amount of paperwork requirements by nearly 45 per cent, and its efforts to reduce the amount of evidence required at hearings should help even more. "If [the airlines] don't know the difference between simply providing consumer information and the government telling carriers who may go in and who may not and in which markets and what prices they may charge," Kahn said, "then they ought to go back to law school."

Nonetheless, many airlines now insist that if deregulation is going to be a fact of life, it should be total. In other words, abolish the CAB and turn its consumer protection and safety functions over to the Federal Trade Commission and the Transportation Department.

Kahn probably would like nothing better.

THE VICTIMS OF DISCOUNT FARES

On Sept. 11, Overseas National Airways will make its last flight. A supplemental, or charter, air carrier, Overseas National is going out of business, victim of the recent wave of fare discounting by scheduled U.S. airlines.

That's not the whole story, of course. Overseas National, which began operating in 1950, has had a string of hard luck, including the loss of two of its planes in 46 days during the winter of 1976. More recently, a strike by McDonnell Douglas Corp. delayed delivery of a plane it was counting on during the three-month summer peak, a period that Overseas National president James W. Bailey called the equivalent "of Easter Sunday at church."

But the promotional fares offered by the regularly scheduled airlines were the last straw, Bailey said. The company felt their impact late in 1977, when cancellations began to mount. Even if the new plane had been delivered on time, "the discount fares eventually would have caused us to take this action," he said.

The story of Overseas National, although extreme, suggests the problems facing the charter airline industry. Until recently, charter flights were the only source of low-fare travel available in this country. But soon after the scheduled carriers began heavily promoting special discount fares in April 1977, the charters began losing business. In June, for example, the number of Americans traveling abroad went up by only 1.9 per cent over June 1977. The scheduled airlines recorded a 30 per cent increase in the number of passengers; the charters, on the other hand experienced a 36 per cent decline in passengers.

Currently, the charter industry has only about five viable carriers—the biggest being World Airways and Trans International Airlines, with Evergreen International Airlines gaining in strength. The industry has diminished gradually since 1962, when Congress cut the number of supplementals from 100 to 13.

Bailey said he doesn't think the rest of the industry will necessarily follow Overseas National's path to liquidation. "Those with financial strength and desire will eventually come out all right," he said.

The Civil Aeronautics Board (CAB), which has encouraged the airlines to discount their fares as part of its attempt to deregulate the industry, nevertheless has been concerned by the situation facing the charters. CAB chairman Alfred E. Kahn said he recognized the danger last fall and tried to moderate the special fares, fearing they were "too sudden" and might drive the charters out of business. But President Carter overruled him, and so now, Kahn said, the CAB has to give the charters a break.

On Aug. 17, the board approved new rules to establish a single "public charter" class and eliminate many of the restrictions (advance purchase requirements and limitations on the length of stay and group size) in an effort to help them compete. The rules do not waive the requirement that the supplementals sell through tour operators, however. (Sen. Howard Cannon, chairman of the Senate Commerce, Science and Transportation Committee and its Subcommittee on Aviation, introduced legislation (S. 3363) in August that would allow charters to sell a small percentage of their tickets directly.)

In addition, Kahn said that he will be looking out for the best interests of the charters as the U.S. negotiates its air treaties with other countries. The United States, already has obtained multiple landing rights in Israel and the Benelux nations, and hopes to get a similar agreement with West Germany later this year.

"But when it comes right down to it," he said, "I'm not in the business of protecting the supplementals. I'm in the business of giving them the fairest and fullest opportunity to compete, but I don't believe that one preserves competition in the last analysis by maintaining artificial restrictions to protect individual competitors."

Edward J. Driscoll, president of the National Air Carrier Association, the charters' trade group, said the industry will watch carefully to see what the board does. "So far, all we've had are promises," he said. And he asked whether Kahn is looking at the big picture as he moves to deregulate the industry. "Are you just pulling strings, and starting something you don't know the end result of?"

Mr. PERCY. Mr. President, this is an example of what can happen to the vitality of American industry as it is deregulated.

DEPARTMENT OF ENERGY IGNORES RECYCLING

Mr. PERCY. Mr. President, I wish to bring to the attention of my colleagues a "brown-bag" luncheon meeting focusing on the "feasibility of waste recycling." The speaker, Mr. Neil Seldman of the Institute for Local Self-Reliance, will discuss the potential for Federal involvement in this field. The meeting will be held this Wednesday, September 20, from 12 to 2 p.m., in room 2117, Waterside Mall.

An organization known as FAT—the Friends of Appropriate Technology—will sponsor the luncheon. FAT is an informal network of people interested in exploring alternatives to large-scale, energy- and resource-intensive technology. Its 250 members represent government agencies, congressional offices, and citizens' groups.

In the past year, FAT meetings have focused on issues such as appropriate technology in less developed countries, the Family Farm Development Act, the social and political implications of appropriate technology, and the sweat-equity work of the New York City 11th Street Movement. FAT has also helped to establish monthly study groups on appropriate technology at the Commerce Department, the Department of Energy, and the Environmental Protection Agency.

RECYCLING HAS MANY BENEFITS

The year of sanitary landfill is fast receding as the amount of open space available for garbage disposal near urban centers diminishes. Even if land were still available, however, we could no longer afford to disregard the resource and energy value of our Nation's solid waste.

Recycling offers numerous advantages as a way to handle solid waste. It is resource- and energy-efficient; it is economically competitive with other means of solid waste management; and it is socially constructive.

Reuse of materials such as aluminum, steel, paper, and glass cuts down vastly on the energy required for their manufacture. Using recycled rather than virgin materials creates energy savings of 95 percent in aluminum manufacturing, 74 percent in steel manufacturing, 30 percent in paper manufacturing, and 25 percent in glass production.

Recycling also cuts down on resource consumption. The United States today imports 75 percent of its tin, 81 percent of its aluminum, and 66 percent of its newsprint. Trimming our demand for these commodities will reduce domestic inflation and improve our international balance of payments.

Jobs are an added benefit of recycling. Every $15,000 of capital spent on recycling produces a new job. By setting up recycling centers, many urban neighborhoods have reduced their unemployment, provided valuable training in local government administration, and created a source of revenue.

FEDERAL INDIFFERENCE

All these factors bode well for recycling as a solid-waste management technology. It is a new technology, however, and will benefit from further development. Unfortunately, the Federal Government has neglected to give recycling the attention it deserves.

The Department of Energy is now working on a commercialization plan, designed to identify innovative energy technologies which are worthy of Federal support. I am sorry to learn that this plan has failed to include recycling. Instead, it has focused upon the large-scale conversion of solid wastes into usable energy. Most commonly, these plants use heat generated by burning wastes to produce steam for electricity.

Garbage-to-energy technology faces many problems. Unlike recycling operations, which are flexible in scale, current designs for garbage-to-energy facilities call for large, centralized plants which depend upon a guaranteed supply of garbage for the expected life of the facility. To insure such a supply, some privately owned plants have obtained contracts requiring municipalities to pay penalties if these quotas are not met. Subscribing municipalities thus have an economic stake in perpetuating the throw-away consumption habits of their residents.

Air pollution is another problem associated with garbage-generated energy. Electrostatic precipitators, installed to minimize dangerous emissions, must be finely adjusted to the composition, temperature, moisture-content, and velocity of released gasses. Because garbage varies in composition and moisture-content, unacceptable amounts of heavy metals and particulates often escape. Toxic gasses from burning plastic are an additional hazard.

In contrast to recycling operations, energy-generating waste plants produce few new jobs. For every $1.8 million invested, only one job is created.

Converting solid waste into energy may be suitable in some circumstances, but we must not overlook its drawbacks. By the same token, we must recognize the important contribution which recycling can make to solid-waste management. The upcoming FAT-sponsored meeting should prove interesting and informative. I urge my colleagues to take advantage of this opportunity to learn more about this issue.

ORDER OF PROCEDURE

Mr. PERCY. Mr. President, I yield the floor.

Mr. SPARKMAN. Mr. President, will the Senator yield to me long enough to call up a conference report?

Mr. METZENBAUM. For the purpose of calling up a conference report, I yield to the Senator from Alabama without losing my right to the floor.

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, is this a conference report or a request for a conference?

Mr. SPARKMAN. It is to ask for a conference with the House and appoint conferees.

Mr. HARRY F. BYRD, JR. And to appoint conferees. I say to the Senator from Ohio that this matter is going to take a little time, so he can decide whether to yield at this point or not. The Senator from Virginia is going to speak for a little while, so I know it is going to take a while.

Mr. METZENBAUM. That being the case, I say to my good friend from Alabama that if this matter is going to take more than just a moment, I think we ought to keep the discussion on the floor on the natural gas bill. I have no objection if it is just a matter of yielding the floor for 1 or 2 minutes, but I gather from the comments of the Senator from Virginia that that is not what he has in mind.

Mr. SPARKMAN. I cannot know what the Senator from Virginia has in mind. I think I know what his position is going to be.

Mr. HARRY F. BYRD, JR. I say to the Senator from Alabama that I do not expect to speak long, but I do expect to speak.

Mr. SPARKMAN. I presume that the Senator from Virginia knows that the amendment he is interested in is in the Senate bill.

Mr. HARRY F. BYRD, JR. I am well aware it is in the Senate bill, but I want to address myself to it, nevertheless.

Mr. ROBERT C. BYRD. Mr. President, perhaps I can be of help.

The conference report on natural gas has first priority under the agreement. I want to help the Senator from Alabama get his conference report up, if possible. Could we agree on a time limitation on the conference report that Mr. SPARKMAN——

Mr. HARRY F. BYRD, JR. This is not a conference report.

Mr. ROBERT C. BYRD. I am sorry, I thought it was.

Mr. HARRY F. BYRD, JR. It is a request for a committee of conference.

Mr. ROBERT C. BYRD. I see.

Mr. SPARKMAN. I am merely asking that the matter go to conference and we appoint conferees.

Mr. HARRY F. BYRD, JR. All I am asking is that I have an opportunity to speak on that. I approve of what the Senator from Alabama wants done, but I want to present my views on the case.

Mr. ROBERT C. BYRD. Could the Senator from Virginia indicate how much time he will need and we will try to get it, because it will take unanimous consent under the agreement.

Mr. HARRY F. BYRD, JR. I do not want to make a firm time, but I would say 10 or 15 minutes, maybe 20 minutes.

Mr. JAVITS. If the Senator will yield to me, I would want a few minutes to reply, not an extraordinary amount, but 5 or 10 minutes.

Mr. METZENBAUM. Under those circumstances, I believe we are on the natural gas bill, I have no objection to yielding for the purpose of 1 minute on an agreed-upon matter, but it is obviously a matter that is contentious. I suggest it take its normal place after we get done with this discussion.

Mr. ROBERT C. BYRD. Would the Senator allow me to make one request?

I ask unanimous consent that there be 30 minutes on the matter the Senator from Alabama is attempting to call up, with 20 minutes for the Senator from Virginia, 10 minutes for the Senator from New York, and 10 minutes for Mr. SPARKMAN.

If we can get 40 minutes out of 30, it is a real bargain.

Mr. JAVITS. Mr. President, reserving the right to object, and I hope not to object, will these minutes, whatever they are, be used today? Because I cannot agree to tomorrow.

Mr. ROBERT C. BYRD. They would be used before the day is out.

Mr. JAVITS. That is fine.

Mr. ROBERT C. BYRD. But not interfere with the Senate's proceeding now on this natural gas matter, I hope they would come after the public broadcasting measure, because the Senator from South Carolina is here ready to lead the charge on that and it was indicated we were going to have it up after 3:30 today.

So, Mr. President, will the Chair put the request?

Mr. FORD. Reserving the right to object, Mr. President, if I may, just for a point of information, if this motion is agreed to, then we go to the natural gas matter and we have four or five speakers who will take 5 minutes or so each, about 30 minutes. Then do we come to this, or go to the communications?

Mr. ROBERT C. BYRD. We would stay on natural gas as long as Senators wish to stay on it, then go to the public broadcasting, but before the day is over go to Mr. SPARKMAN's motion.

Mr. FORD. I have no objection, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, I want to cooperate with the able Senator from Alabama and I will not take much time, but I would like to make just a few remarks.

Mr. SPARKMAN. I have no objection.

Mr. ROBERT C. BYRD. So that would be 20 minutes for the Senator from Virginia (Mr. HARRY F. BYRD, JR.), 10 minutes for Senator JAVITS, 10 minutes for Senator SPARKMAN, and the Senator from Virginia (Mr. HARRY F. BYRD, JR.) indicated he would not take all that, so I hope it will be less than 30 minutes.

The PRESIDING OFFICER (Mr. SASSER). Without objection, it is so ordered.

The Senator from Ohio.

NATURAL GAS POLICY ACT OF 1978— CONFERENCE REPORT

Mr. METZENBAUM. Mr. President, I appreciate the majority leader's efforts to work out an orderly schedule for the disposition of the Senate's business. But I would like to address myself to the comments made by the distinguished Senator from Louisiana.

He hit the nail right on the head when he said that the conference committee report does provide that there will be a big increase in the gas bill for the consumers of this country, and that is correct. That is an indisputable fact. That part of the bill is not the part that con-

cerns the Senator from Louisiana. It is the part that concerns the Senator from Ohio.

The fact is that we will use the next 8 days to attempt to fashion a new kind of compromise, a piece of legislation that will cut costs to the American people, while not imposing any additional bureaucracy or complex legislation on the producers of this country, because that serves no useful purpose whatsoever.

It should be pointed out, and I represent to the Senate, that at least five Members of the Senate have indicated that although they did not vote to recommit the bill, they are prepared to vote down the bill. They are prepared to kill the bill, and that may be the only alternative left to the Members of the Senate.

But I believe these next 8 days can be used advantageously to see whether or not we can create a piece of legislation that will do a job that is fair to the American people while not imposing a burden on the producers.

Mr. SCOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. SCOTT. Mr. President, I have heard this proposal referred to as the national energy bill, and this is a misnomer.

We are talking about a gas pricing bill, not a national energy bill. It does not have anything in it about the use of nuclear energy. I do not believe it has anything in it about the use of coal, our most abundant fossil fuel. It does not have anything in it about the use of oil.

This is a bill to establish a price mechanism for natural gas. I believe we all ought to think about it within that limitation.

I voted for the motion to recommit, because I believe that the bill before us will only result in higher prices for natural gas.

I believe that the producers and distributors of natural gas will have a great deal of discretion as to whether they will use the highest priced gas or they will use the lower priced gas. If we believe that the businessman attempts to make a profit, it seems logical he would not use the highest priced gas.

I would like to see a truly national energy policy. I would like to see a policy developed through our committee or on the floor, if necessary, that would provide more energy for this country. We live in an industrial Nation. We need more energy, not the rationing of a scarce product, if we are going to increase productivity in this country, if we are going to help our balance-of-payments problem, if we are going to have more of the material things of life for the American citizens. That is not in this bill that is before us.

All that is in the bill, as I see it, and I am not on the committee, I certainly was not on the conference committee, but I have looked at the conference report and have acquired a general familiarity with the matter, it just appears to me that it is a method to raise the price of natural gas.

One thing this country does not need is more inflation.

Mr. President, I will comment further sometime in the future on this matter. I know that the distinguished Senator from South Carolina wishes to speak on another matter. It was said that it was hoped we would get off the natural gas bill in half an hour.

However, I think we should talk in terms of what is really in this bill and what is not in the bill. If we talk in terms of a national energy policy, this bill is not it. We have to look somewhere else for a national energy policy.

I yield the floor.

Mr. HANSEN. Mr. President, when we discuss the tactical future of the gas bill, one other factor should be kept in mind. We have already explained why it is clear that we can salvage the portions of the gas bill that are good and noncontroversial.

If, however, the bill goes to the House intact, the House will not have that option, as they cannot recommit a bill which has been passed by one of the two Houses. Their only choice will be up or down.

And we should not overestimate the appeal of the full conference report in the other body. I have here a dear colleague letter in opposition to the gas bill signed by a very broad spectrum of House Members.

I note that it appears very unlikely that there will be any significant Republican support for the bill in the House, which is quite different from the situation here. In addition, the strong opposition of such influential Democrats as JOHN MOSS and PHILLIP BURTON, among consumer State representatives, and BOB KRUEGER and JOE WAGGONNER, among producer State representatives, means that the bill may have very tough sledding over there.

While I do not agree that the total defeat of any gas bill would be a very great tragedy, those in this body who wish, as do I, to see some reasonable gas bill adopted, should consider that the motion to recommit may well be the best means to reach that end.

Mr. President, I ask unanimous consent to have printed in the RECORD a "Dear Colleague" letter signed by JOHN J. RHODES, JOHN B. ANDERSON, CLARENCE J. BROWN, JOHN E. MOSS, PHILLIP BURTON, and TOBY MOFFETT.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C., *September 19, 1978.*

DEAR COLLEAGUE: Last Thursday, September 14, we invited all Members to join in bipartisan support of the Senate's effort to recommit the natural gas pricing conference report. Response to our invitation has been encouraging.

Today the Senate will vote on recommittal. Regardless of the outcome, we remain strongly opposed to this most counterproductive legislation. We urge you to join us in this opposition.

Sincerely,

JOHN J. RHODES,
JOHN B. ANDERSON,
CLARENCE J. BROWN,
JOHN E. MOSS,
PHILLIP BURTON,
TOBY MOFFETT.

Mr. HANSEN. Mr. President, I ask unanimous consent that another "Dear Colleague" letter, signed by quite a number of Members of the House of Representatives, on both sides of the aisle, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
September 6, 1978.

DEAR COLLEAGUE: The Senate will soon begin consideration of the natural gas pricing conference report. At that time, a bipartisan coalition of 24 Senators will move to recommit the conference report with instructions to report an alternative bill which would contain provisions already agreed on by the conferees. These provisions would permit the transfer and sale of surplus and emergency supplies of natural gas to the interstate market under certain circumstances and would allow the President to allocate supplies of natural gas in times of emergency. The motion will also require the conferees to complete action on the utility and conservation parts of the National Energy Act which have been delayed pending consideration of the gas legislation.

We strongly support this Senate effort, and if the motion to recommit with instructions passes, we intend to move in the conference that the House accept the Senate instructions. However, if the motion to recommit the conference report with instructions fails in the Senate and the original conference report passes, we intend to strongly oppose passage of this most counterproductive legislation and urge you to support us in this effort.

Our individual reasons for opposition to the present bill vary due to our differing constituent interests and philosophical views. Nonetheless, we oppose the natural gas agreement due to one or more of the following serious defects:

1. The proposal is hopelessly complex and confusing. FERC's own Office of Enforcement has labeled the proposal "so complex, ambiguous and contradictory that it would be virtually impossible for this [Federal Energy Regulatory] Commission to enforce it in a conscientious and equitable manner."

2. The proposal will not produce more gas than the status quo.

3. The proposal increases consumer prices without any assurance of additional gas supplies.

4. The incremental pricing provisions unfairly penalize industrial users in the Northeast and Midwest which are dependent on interstate supplies of natural gas. As a result, a significant relocation of factories and jobs could occur.

5. Without any apparent logic, the proposal creates at least 20 categories of natural gas. Certain of these categories that are not now regulated are brought under Federal controls temporarily or indefinitely; certain now-regulated categories are deregulated; and certain now-regulated categories remain subject to Federal price controls indefinitely.

Because of these serious deficiencies, virtually no organization supports this legislation. Major industrial users of natural gas oppose this bill because they will pay more for their natural gas without receiving any assurances of increased supplies. Labor and consumer groups oppose the bill because of the economic impact that it will have on lower and middle income consumers. Small independent natural gas producers oppose this measure because they fear that they will be unable to cope with the bill's uncertainty, complexity, and confusion.

Attached is a summary of the major provisions of the bill and of the motion to recommit. We urge your careful review of this material, and we ask your support in opposing this legislation if the motion to recom-

mit the conference report with instructions fails in the Senate.

Sincerely,

John J. Rhodes, Clarence J. Brown, John E. Moss, Peter H. Kostmayer, John B. Anderson, Anthony Toby Moffett, Andrew Maguire, Fortney H. (Pete) Stark, James T. Broyhill, Bill Archer, Larry Winn, Jr., Tim Lee Carter, Henry J. Hyde, Mickey Edwards, W. Henson Moore, Robert L. Livingston, Richard T. Schulze, and Paul Findley.

Samuel L. Devine, Frank Horton, Norman F. Lent, James M. Collins, Dave Stockman, William A. Steiger, Jack F. Kemp, Ralph S. Regula, Marjorie S. Holt, John N. Erlenborn, Manuel Lujan, Jr., Elford A. Cederberg, Tom Hagedorn, Gene Taylor, John Paul Hammerschmidt, Clarence E. Miller, Philip M. Crane, and Robert McClory.

Wes Watkins, Glenn English, James R. Jones, Hamilton Fish, Jr., Ronald A. Sarasin, Lawrence Coughlin, Jack Hightower, Edwin B. Forsythe, Benjamin A. Gilman, Barber B. Conable, Jr., William F. Goodling, David F. Emery, George Hansen, Ron Marlenee, G. William Whitehurst, Thomas N. Kindness, Edward R. Madigan, John W. Wydler, Edward J. Markey, Robert A. Young, Phillip Burton, Donald M. Fraser, and Robert W. Edgar.

SUMMARY OF NATURAL GAS POLICY ACT OF 1978

1. Federal price controls extended over all intrastate natural gas for the first time.

2. Establishes over 20 categories of natural gas, each of which differs either in price treatment or in definition or both. Each of the nearly 10,000 successful gas wells drilled each year in this country will be subject to State regulatory authority, FERC and judicial determinations as to the category and price treatment to be accorded gas produced from such well. (There are no time deadlines placed on the final determinations made under this bill).

3. Controls over virtually all gas are to remain in effect until at least January 1, 1985—and possibly until 1989.

4. At any time between June 31, 1985 and July 1, 1987, either Congress or the President (subject to Congressional veto) can reimpose controls for 18 months, thus potentially extending controls until January 1, 1989.

5. Industrial boiler fuel users on interstate pipelines will pay the increased costs associated with pipeline purchases of higher cost gas.

6. Bill establishes a myriad of prices ranging from $2.09 per Mcf to $.54 per Mcf.

7. Contains emergency purchase and allocation authority.

8. Establishes agricultural and industrial process and feedstock curtailment priorities.

9. Preempts State's ability to determine end user prices within State.

10. Essentially eliminates industrial use of Order 533 direct purchase provisions.

SUMMARY OF MOTION TO RECOMMIT WITH INSTRUCTIONS

1. Any interstate pipeline or local distribution company may be authorized to purchase emergency supplies of natural gas.

2. President may order any pipeline to transport natural gas in times of emergency.

3. In order to meet the needs of high-priority users of natural gas, President may allocate surplus volumes of gas in the interstate market.

4. FERC authorized to permit intrastate pipeline to assign its right to receive surplus natural gas to an interstate pipeline upon such terms and conditions as the FERC deems appropriate.

5. Intrastate pipelines authorized to transport natural gas on behalf of any interstate pipeline or any local distribution company served by an interstate pipeline.

6. FERC may authorize intrastate pipeline to sell natural gas to any interstate pipeline or any local distribution company served by an interstate pipeline without affecting its jurisdictional status.

Mr. HANSEN. Mr. President, I make these points, and these are made in the "Dear Colleague" letters signed by a number of House Members:

The proposal is hopelessly complex and confusing. FERC's own Office of Enforcement has labeled the proposal "so complex, ambiguous and contradictory that it would be virtually impossible for this (Federal Energy Regulatory) Commission to enforce it in a conscientious and equitable manner."

The proposal will not produce more gas than the status quo.

The proposal increases consumer prices without any assurance of additional gas supplies.

The incremental pricing provisions unfairly penalize industrial users in the Northeast and Midwest which are dependent on interstate supplies of natural gas. As a result, a significant relocation of factories and jobs could occur.

Without any apparent logic, the proposal creates at least 20 categories of natural gas. Certain of these categories that are not now regulated are brought under Federal controls temporarily or indefinitely; certain now-regulated categories are deregulated; and certain now-regulated categories remain subject to Federal price controls indefinitely.

Mr. MELCHER. Mr. President, quite often during the debate on the natural gas conference report, some very general statements have been made on regulations which have not been rebutted and have not been clarified. I wish the senior Senator from Louisiana were present on the floor at this point, because some of the statements he made a few moments ago deserve to have a response. It is for that purpose that I address my remarks at this time.

The senior Senator from Louisiana spoke about the administrative nightmare in the natural gas conference report with respect to reporting and the paperwork necessary for producers. He mentioned, I believe, that it would entail numerous additional lawyers for gas companies. I believe he intimated that it would lead to new litigation and delay in sales of gas waiting for decision by the courts.

Forget for a moment the pending natural gas conference report. What happens now, under the present law? That point is not being addressed by the senior Senator from Louisiana.

The point that is in the conference report, the bill presented to us, that deals with paperwork and elimination of the burden of required reports goes at least to two points:

First, section 4 of the Natural Gas Act requires, in many instances, nonpricing reporting because of nonpricing regulation. Under the existing Natural Gas Act regulations, a great deal of reporting is caused. It is a heavy burden. It is there now in place.

The Federal Power Commission, since its creation in the 1930's, and then after the Phillips Supreme Court case in 1954, resulted in added regulations that increased tremendously all during those years to the amount of paperwork required of producers in interstate sales. That had nothing to do with price. These were nonpricing regulations. That heavy and costly burden of regulations exists now under present law.

The bill before us in this conference report repeals that part of section 4 of the Natural Gas Act; that is, I repeat, an outright repeal of those regulations dealing with "nonpricing regulations" reporting.

In terms of section 7 of the Natural Gas Act, the conference report also repeals the requirement of reporting on abandonment. That may not sound like a great deal as we discuss it in the Senate, but I can assure Senators that the producing companies that have to make those reports and file them—many of them every 30 days—can attest to the heavy paperwork, and the burden that places upon them. Those requirements are repealed.

The agency that will enforce these requirements, in the proposed conference report is FERC, the Federal Energy Regulatory Commission. I should like now to read an assessment that I received today from that commission. It is entitled "An Assessment of the Administrative Burdens Under the Natural Gas Conference Report."

I quote:

Three areas under the bill will require the most significant administrative effort—wellhead pricing, incremental pricing, and the agricultural and industrial curtailment priorities.

First, the wellhead pricing provisions of the bill will lead to a significant reduction in the regulatory burdens under the Natural Gas Act of 1938. For virtually all new wells, producers selling in interstate commerce will not be required to file, and the FERC will not be required to process, certificate applications, rate increase filings, or abandonment applications or to conduct rate determination proceedings.

I state, out of context, that those are the parts in section 4 and section 7 of the Natural Gas Act that are going to be repealed by this conference report.

I read again from the assessment by the Federal Energy Regulatory Commission:

The vast majority of FERC's current caseload deals with producer regulation. For example, the projected 1979 caseload for the Commission is 47,522 cases and producer certificates and rate filings under the Natural Gas Act constitute 81 percent or 37,682. Those types of cases would be eliminated for the future.

Mr. President, that is 37,682 of those 47,522 cases, and the 37,682 is a reduction of cases. We cannot possibly talk about what this conference report requires in paperwork without talking about what it eliminates in paperwork. The interest of gas producers — particularly independents—the wildcatters that discover natural gas and then sell it on a contract—is whether or not the overwhelming re-

quirements of Federal reports under the existing requirements of the Natural Gas Act will continue under the pending bill.

Mr. President, I think that the statement of Charles Curtis, chairman of the Federal Energy Regulation Commission says a lot about what will be the reduction in paperwork for interstate sales. That is welcome news and an advantage in the proposed new law.

I want to get to intrastate sales.

If the senior Senator from Louisiana would have explained it more thoroughly, he would have told us that under existing law for intrastate sales, in their State, Louisiana governs, and in my State, Montana governs on intrastate sales, as it is in all the producing States.

This conference report brings intrastate sales under the tent of Federal control.

Does it pose, then, a terrific new problem for paperwork for producers on intrastate sales? As it has been explained to me, the answer is no.

I have asked the Federal Energy Regulatory Commission, Charles Curtis and Donald Smith—Charles Curtis being the chairman and Donald Smith one of the commissioners—what is it going to mean to a producer in Montana if the sale is going to be intrastate? And here is what they said.

They will file with the Montana State Oil and Gas Commission a notice of a producer. They will ask that commission for a price. That is the State commission. The State commission will set the price based on this bill, and they will tell the producer who in turn will execute a contract with a gas company and file that contract with the State commission and go about his business of producing and selling the gas under the terms of that contract.

The part that FERC would play in that would be one of oversight and one of spotchecking to see that there were no mistakes made in the pricing and that the contract did not violate the law. Mr. President, here is the complete letter from Mr. Curtis:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, D.C., September 19, 1978.

Hon. JOHN MELCHER,
U.S. Senate,
Washington, D.C.

DEAR SENATER MELCHER: This is in reply to your letter of September 19, 1978, inquiring with respect to the proposed Natural Gas Policy Act of 1978 (NGPA) how a producer who drills a new well, onshore, and who affects the sale to an interstate purchaser will be able to establish the price ceiling applicable to gas produced from such well. In responding, I will make two basic assumptions. First, it is assumed that the gas produced from the new well is not dedicated or committed to interstate commerce. Second, I have assumed that the gas is to be sold under a contract pursuant to which the purchaser has agreed to pay the highest maximum lawful price applicable production from the new well under the NGPA.

In such circumstances, several possibilities present themselves. Initially, I would point out that section 101 provides that natural gas which qualifies under more than one provision of the Act shall be entitled to the highest applicable price unless the parties have agreed by contractual terms to be bound to a lesser price (see subsections (b) (5) and (9)).

Given the assumptions set out in the first paragraph to this letter, a producer could expect to encounter the following requirements in determining the price eligibility for gas produced from a new well:

(1) If drilling of the well was commenced on or after February 19, 1977, the producer could qualify for the Section 109 price of $1.45 per million Btu's adjusted for inflation back to April 1977. Drilling records establishing the "spud" date of the well would conclusively establish eligibility. Nothing more is required.

(2) A producer may alternatively establish eligibility for the Section 103 price of $1.75 per million Btu's adjusted for inflation back to April 1977. Here, eligibility is demonstrated merely by showing that surface drilling began on or after February 19, 1977 (i.e., the spud date), and that the well satisfied any applicable state well spacing requirements and was not within a proration unit. It is generally the case that waiver from a state agency is required in order to drill within an existing proration unit. Accordingly, both producers and state agencies are likely to have geological records which are readily ascertainable to demonstrate eligibility under this pricing category. Indeed, state production maps may be all that is required to demonstrate eligibility beyond the showing of the spud date for the well.

(3) A producer could also seek qualification for the new gas price under Section 102 for any new well which was commenced on or after February 19, 1977. In this case, qualification depends on whether the new well is 2½ miles or more from a "marker well" or is producing from a completion location located at a depth at least 1,000 feet below the deepest completion location of any marker well within 2½ miles. Also, a producer may qualify a new gas well for the new gas price if it is producing from a new reservoir. The determinations under section 102 will be more difficult. Essentially, much of the burden will fall upon the state agency to derive information from its existing records demonstrating eligibility or to collect additional information as may be necessary to meet the statutory standards. It is difficult to make any general comment at this time concerning the administrative difficulties which will be encountered and the time necessary to conclude the determination process. We have engaged in certain preparatory dialogues with a number of state agencies in an effort to seek ways to effectively and efficiently administer these provisions of the Act. That work still progresses and will, of course, intensify if the legislation is enacted.

I should also note, parenthetically, that following the first year after date of enactment, a producer may, in certain circumstances, be able to qualify a new well for the deregulated price treatment provided under section 107 for "high-cost" gas. Conceivably, also, after some production history is developed, a well spudded after February 19, 1977, could qualify under the stripper well category.

In terms of your assessment of the administrative burdens, I should call your attention to the interim collection procedures set out in section 503(e). Generally speaking, these provisions allow a producer, either pursuant to implementing rules to be promulgated by this Commission or under the terms of this statute itself, to charge the highest price to which he believes he is entitled subject to refunding those amounts which may ultimately be determined to be overcharges. In this respect, I would refer you to the discussion of these procedures appearing at pages 72 through 78 of the Section by Section Analysis which I previously submitted to Senator Jackson.

I hope the foregoing is responsive to your question. I would be happy to amplify my comments if you require further information and analysis.

Sincerely,

CHARLES B. CURTIS,
Chairman.

That process is not envisioned as to taking much time. It will be in terms of days, not months, in terms of days. That process is not envisioned in delaying the producer from selling his natural gas any longer than a matter of days. That is important in the cash flow of the producer.

Is there something in the bill that will hamstring intrastate sales?

Let me point out this, and I am quoting again from the assessment from the FERC assessment:

In regard to incremental pricing, the commission will be required to assemble data to a degree of specificity not heretofore required, . . .

That is, on the incremental pricing.

And to conduct two extensive rulemakings within 18 months after the enactment of the bill.

Mr. President, we decided we wanted incremental pricing, but will it apply to intrastate sales? And the answer to that is no, not unless the individual State enacts statutes of its own requiring it and all of the producing States have always refused to have incremental pricing as part of their State statutes regarding the sale of natural gas.

So, also, in this regard, the incremental pricing features in the conference report bill, which will require a new entry by the Federal people into the field to regulate the incremental pricing, need not ever apply except to interstate sales unless a particular State passed statutes of their own affecting their own State, and only in that case would those incremental pricing regulations that the commission will have to develop come into effect on interstate sales.

Finally, Mr. President, the question how does the implementation of the agricultural priority place a burden on FERC: they explain in their assessment that "that will require a limited reopening of the existing curtailment cases before the Commission for the purpose of establishing the entitlements.

However, recent court rulings may require reopening of many of the curtailment plans without regard to this legislation.

In this respect, Chairman Curtis concluded that:

Taking this, the flexibility under the bill, into account and also taking into consideration the more important factors that the curtailment activities of FERC are currently extensive and requirements for reexamination of curtailment policies exist independent of the Natural Gas Policy Act, it appears that the additional requirements of the NGPA will add only incrementally to what already will require a major commitment of Commission resources.

Mr. President, on that point we know how important agricultural priority is. It is part of what we deem is absolutely essential for the agricultural industry of this country.

So, in that regard, we are placing an extra burden on FERC, and they will have to develop regulations on that.

I think, in all fairness, Mr. President,

it can be said that criticism of this natural gas conference report on the basis that it will add additional paperwork and additional burdens and cost to producers is not founded in fact; that the elimination of parts of section 4 reporting and section 7 procedures on abandonment which are repealed by this act, eliminates a tremendous amount of paperwork that now exists under the Natural Gas Act, and that it would be fair to say that there will likely be less paperwork under this new bill than there is under the current act pertaining to interstate sales.

Mr. President, I ask unanimous consent that the full assessment of the administrative burdens under the natural gas conference report from the Federal Energy Regulatory Commission be printed in the RECORD.

There being no obejction, the material was ordered to be printed in the RECORD, as follows:

AN ASSESSMENT OF THE ADMINISTRATIVE BURDENS UNDER THE NATURAL GAS CONFERENCE REPORT

Three areas under the bill will require the most significant administrative effort—wellhead pricing, incremental pricing, and the agricultural and industrial curtailment priorities.

First, the wellhead pricing provisions of the bill will lead to a significant reduction in the regulatory burdens under the Natural Gas Act of 1938. For virtually all new wells, producers selling in interstate commerce will not be required to file, and the FERC will not be required to process, certificate applications, rate increase filings, or abandonment applications or to conduct rate determination proceedings. The vast majority of FERC's current caseload deals with producer regulation. For example, the projected 1979 caseload for the Commission is 47,522 cases and producer certificates and rate filings under the Natural Gas Act constitute 81 percent or 37,682. Those types of cases would be eliminated for the future. The FERC will not be required to conduct extended rate proceedings. As Chairman Curtis concludes, "It is reasonable to expect that the Commission's present caseload attributable to functions now conducted under the Natural Gas Act will significantly diminish in future years." In place of those Natural Gas Act functions, the Commission will be required to oversee and review the administration of the price ceilings under the bill.

The Commission will establish guidelines for state or USGS administration of these price ceilings, but will be involved in the routine administration of these functions only in a review capacity. For the most part, the Commission will be able to confine its review workload to those cases that present clear error on the part of the initial fact finder. As Chairman Curtis notes, wellhead pricing provisions of the Natural Gas bill provide "seemingly difficult problems of administration but (also) considerable opportunity to evolve a creative and efficient mechanism for giving effect to the policies enunciated in the Act."

With respect to the state or USGS initial administration of the new gas pricing standards, it should be noted that the standards for establishing eligibility for price are basically readily determinable facts such as distance and depth in relation to old wells. The states should be able to quickly establish a routine for these matters that would require little additional administrative burden. The classification of new reservoirs is a somewhat more complex determination but such inquiries proceed along well established lines of geological inquiry. The states of Louisiana and Texas, for example, routinely today define reservoirs for purposes of establishing proration units. In the past, Texas has provided an incentive for discovery of new oil reservoirs that is analogous to the purposes of the Natural Gas bill. Newly discovered oil reservoirs were allowed an exemption from production limits.

Thus, while states will have somewhat increased administrative responsibilities under the Natural Gas bill, it is not foreseen that large increases in personnel will be required. Representatives of the FERC and the Interstate Oil Compact Commission have had several meetings to discuss approaches to implementation of this legislation. Preliminary discussions have also been held with the State Commissions or agencies that will have the majority of responsibility under the Act. FERC is also planning schedules for expedited proceedings to implement the Act in conjunction with the states.

In regard to incremental pricing, the Commission will be required to assemble data to a degree of specificity not heretofore required, and to conduct two extensive rulemakings within eighteen months after the enactment of the bill. However, once the principles are established and the data base regarding the affected users is in place, the future administration of incremental pricing will flow into the Commission's normal pipeline rate-making process. Chairman Curtis concluded that "In short, implementation of Title II (incremental pricing) implies a significant statistical effort and some lesser modifications to the Commission's procedures. However the workload, policy and procedural requirements appear achievable."

The implementation of the agricultural priority will require a limited reopening of the existing curtailment cases before the Commission for the purpose of establishing the entitlements. However, recent court rulings may require reopening of many of the curtailment plans without regard to this legislation. In this respect, Chairman Curtis concluded that "Taking this (the flexibility under the bill) into account, and also taking into consideration the more important factors that the curtailment activities of FERC are currently extensive and requirements for reexamination of curtailment policies exist independent of the Natural Gas Policy Act, it appears that the additional requirements of the NGPA will add only incrementally to what already will require a major commitment of Commission resources."

Mr. MELCHER. Mr. President, I yield the floor.

PUBLIC TELECOMMUNICATIONS FINANCING ACT OF 1978

Mr. HOLLINGS. Mr. President, while Senators have now concluded momentarily their remarks on the natural gas conference report, under the previous order and agreement I ask that the Senate proceed to the consideration of Calendar Order No. 789, S. 2883, the Public Telecommunications Financing Act of 1978.

The PRESIDING OFFICER (Mr. HODGES). The order has been entered to that effect.

Mr. HOLLINGS. All right.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2883) to amend the Communications Act of 1934 to extend and improve the provisions of such Act relating to long-term financing for the Corporation for Public Broadcasting and relating to certain grant programs for public telecommunications, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation with amendments as follows:

On page 2, line 16, after "1934" insert "(47 U.S.C. 390)";

On page 2, line 22, strike "public telecommunications services" and insert "noncommercial educational and cultural radio and television programs";

On page 3, line 2, strike "public telecommunications services" and insert "noncommercial educational and cultural radio and television programs for ";

On page 3, line 4, strike "owned" and insert "operated";

On page 3, line 5, strike "by" and insert "by,";

On page 3, line 7, after "provide" insert "such noncommercial";

On page 3, line 7, strike "services" and insert "programs";

On page 3, line 11, after "1934" insert "(47 U.S.C. 391)";

On page 3, line 25, after "1934" insert "(47 U.S.C. 392)";

On page 4, line 8, strike "five-year" and insert "5-year";

On page 4, line 12, strike "an entity which is eligible to be licensed or is licensed by the Federal Communications Commission as a noncommercial educational broadcast station" and insert "a public broadcast station";

On page 4, line 16, strike "system of public" and insert "noncommercial";

On page 4, line 16, strike "broadcast stations" and insert "telecommunications entity; or";

On page 4, line 17, strike "nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (D) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State" and insert "system of public telecommunications entities";

On page 5, line 11, after "technologies" insert "and coordination with State educational television and radio agencies, as appropriate";

On page 5, line 18, after "in" strike "the" and insert "an";

On page 5, line 20, strike "per centum" and insert "percent";

On page 6, line 5, after "(a)" insert "of this section";

On page 6, line 18, after "393" insert "of this subpart";

On page 6, line 19, after "(e)" insert "of this section";

On page 6, line 22, strike "ownership" and insert "operation";

On page 7, line 2, after "such" insert "other";

On page 7, line 4, strike "ten" and insert "10";

On page 7, line 9, strike "an agency, institution, foundation, corporation, or association" and insert "a station, entity, or system";

On page 7, line 11, after "(a)(1)" insert "of this section";

On page 8, line 4, after "including" insert "a complete and itemized inventory of all telecommunications facilities under the control of such recipient, and";

On page 8, line 20, after "(a)" insert "of this section,";

On page 9, line 4, after "1934" insert "(47 U.S.C. 393)";

On page 9, line 8, strike "for Public Broadcasting";

On page 9, line 17, after "(a)" insert "of this section";

On page 9, line 20, strike "unserved by public broadcasting" and insert "not receiving noncommercial educational and cultural programs";

On page 10, line 2, strike "owned" and insert "operated";

On page 10, line 5, after "provide" insert "noncommercial";

On page 10, line 6, strike "services" and insert "programs";

On page 10, line 7, after "391" insert "of this subpart";

On page 10, line 8, strike "per centum" and insert "percent";

On page 10, line 9, after "available" insert "to extend delivery of noncommercial educational and cultural programs to areas not receiving such programs through grants";

On page 10, line 11, strike "the creation" and insert "facilities";

On page 10, line 12, strike "for the expansion of the service areas";

On page 10, line 14, strike "creation and expansion" and insert "facilities";

On page 10, line 21, strike "per centum" and insert "percent";

On page 11, line 3, after "1934" insert "(47 U.S.C. 394)";

On page 11, line 6, strike "appropriate" and insert "the Corporation, public telecommunications entities, and as appropriate with other";

On page 11, line 9, after "390" insert "of this subpart";

On page 11, line 10, strike "five-year" and insert "5-year";

On page 11, beginning with line 14, insert the following:

"(b) The Secretary of Commerce shall prepare annually a comprehensive and detailed inventory of funds distributed by Federal departments and agencies to public telecommunications entities during the preceding fiscal year.

On page 11, line 18, strike "(b)" and insert "(c)";

On page 11, line 18, strike "shall be";

On page 11, line 19, strike "and a" and insert "an annual";

On page 11, line 20, after "plan," insert "and the inventory required in subsection (b)";

On page 12, line 1, after "Congress" insert "on or before the 31st day of December of each year";

On page 12, line 7, after "202" insert "of this title";

On page 12, line 17, after "392A" insert "(47 U.S.C. 392A)";

On page 12, beginning with line 21, insert the following:

(2) by inserting above section 395(a), as so redesignated in paragraph (1) of this section, the following new heading:

"DECLARATION OF PURPOSE; GRANTS AND CONTRACTS";

On page 13, line 2, strike "(2)" and insert "(3)";

On page 13, line 3, after "(1)" insert "of this section";

On page 13, line 6, strike "(3)" and insert "(4)";

On page 13, line 7, after "(1)" insert "of this section";

On page 13, line 10, strike "(4)" and insert "(5)";

On page 13, line 11, after "(1)" insert "of this section";

On page 13, line 14, strike "(5)" and insert "(6)";

On page 13, line 15, after "(1)" insert "of this section";

On page 13, line 18, strike "(6)" and insert "(7)";

On page 13, line 19, after "(1)" insert "of this section";

On page 13, line 22, strike "(7)" and insert "(8)";

On page 14, line 1, after "(1)" insert "of this section";

On page 14, line 4, strike "(8)" and insert "(9)";

On page 14, line 5, after "(1)" insert "of this section";

On page 14, line 8, strike "(9)" and insert "(10)";

On page 14, line 9, after "(1)" insert "of this section";

On page 15, line 8, after "392" insert "of this part";

On page 15, line 11, strike "(10)" and insert "(11)";

On page 15, line 13, strike "(11)" and insert "(12)";

On page 15, line 19, strike "(12)" and insert "(13)";

On page 15, line 24, after "1934)" insert "(47 U.S.C. 396(a))";

On page 16, line 2, after "declares" insert "that";

On page 16, line 3, strike "that";

On page 16, line 7, strike "(6)" and insert "(2)";

On page 16, line 7, strike "that";

On page 16, line 10, strike "programming and services; and" and insert "radio and television programs;";

On page 16, line 12, strike "(2)" and insert "(3)";

On page 16, line 12, strike "that";

On page 16, line 16, strike "(3)" and insert "(4)";

On page 16, line 17, strike "broadcasting" and insert "telecommunications";

On page 16, line 21, strike "(4)" and insert "(5)";

On page 16, line 22, strike "public broadcast programming" and insert "noncommercial educational and cultural radio and television programs";

On page 17, line 4, strike "(5)" and insert "(6)";

On page 17, line 6, strike "public broadcasting" and insert "noncommercial educational and cultural radio and television programs";

On page 17, line 10, strike "a" and insert "the Corporation for Public Broadcasting";

On page 17, line 11, strike "be created to";

On page 17, line 12, strike "to";

On page 17, line 17, after "1934" insert "(47 U.S.C. 396(d)(1)";

On page 17, line 19, after "Board" delete the colon and insert "as Chairman;";

On page 17, line 22, after "1934" insert "(47 U.S.C. 396(g))";

On page 18, line 2, strike "may" and insert "is authorized to";

On page 18, line 7, strike "television or radio broadcast stations and noncommercial";

On page 18, line 13, strike "public television or radio" and insert "noncommercial educational and cultural radio or television";

On page 18, line 15, strike "television or radio broadcast stations and noncommercial";

On page 18, line 17, strike "stations or";

On page 18, line 20, strike "broadcast stations and noncommercial";

On page 18, line 25, after "freedom of" strike "the";

On page 18, line 25, strike "television or radio broadcast" and insert "telecommunications";

On page 19, line 2, strike "stations and noncommercial" and insert "public";

On page 9, line 11 strike "broadcast stations" and insert "telecommunications entities";

On page 19, line 15, strike "public television or radio" and insert "noncommercial educational and cultural radio and television";

On page 19, line 17, strike "for national or regional noncommercial distribution" and insert "to be made available for use by public telecommunications entities";

On page 19, line 21, strike "broadcast stations and noncommercial";

On page 19, line 22, after "financing" insert "the production or acquisition of";

On page 19, line 23, after "noncommercial" insert "educational and cultural radio and";

On page 19, line 24, strike "and radio programming costs of" and insert "programs by";

On page 19, line 25, strike "stations and";

On page 20, line 1, strike "thereto" and insert "to programs";

On page 20, line 2, strike "stations and";

On page 20, line 3, after "maintain," insert "or contribute to,";

On page 20, line 4, strike "public" and insert "noncommercial educational and cultural radio and";

On page 20, line 5, strike "or radio";

On page 20, line 7, strike "television or radio" and insert "telecommunications";

On page 20, line 14, strike "television or radio" and insert "radio and television";

On page 20, line 14, strike "and services";

On page 20, line 15, strike "broadcast stations and noncommercial";

On page 21, line 1, after "use of" insert "broadcast and";

On page 21, line 3, after "dissemination" insert "to the public";

On page 21, line 4, strike "television or radio" and insert "radio and television";

On page 21, line 4, strike "programs," and insert "programs;";

On page 21, line 5, strike "except that any such contracts entered into shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts, and;" and insert "and";

On page 21, line 11, strike "subsection" and insert "section";

On page 21, beginning with line 12, insert the following:

Nothing contained in this paragraph (2) shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

On page 21, line 18, strike "and consistent with the provisions of this subpart,";

On page 22, line 3, strike "producing, acquiring, scheduling, or distributing programs" and insert "producing programs, scheduling programs for dissemination, or disseminating programs to the public";

On page 22, line 13, after "1934" insert "(47 U.S.C. 396(h))";

On page 22, beginning with line 21, strike through and including page 23, line 2, and insert in lieu thereof the following:

"(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunications entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.".

On page 23, line 22, after "1934" insert "(47 U.S.C. 396(i))";

On page 24, line 1, strike "for transmittal to" and insert "and";

On page 24, line 2, strike "31st" and insert "15th";

On page 24, line 2, strike "December" and insert "February";

On page 24, line 8, strike "on public telecommunications";

On page 24, line 9, after the semicolon insert "and";

On page 24, beginning with line 10, strike through and including line 13;

On page 24, line 14, strike "(D)" and insert "(C)";

On page 24, line 19, strike "five" and insert "5";

On page 24. line 20, strike "programming and";

On page 25, line 2, strike "section" and insert "subsection";

On page 25, line 3, strike "396";

On page 25, line 3, after "(1)" insert "of this section";

On page 25, line 7, after "1934" insert "(47 U.S.C. 396(k))";

On page 25, line 16, strike "per centum" and insert "percent";

On page 26, line 13, after "(1)" insert "of this subsection";

On page 27, line 8, strike "per centum" and insert "percent";

On page 27, line 11, strike "per centum" and insert "percent";

On page 27, line 14, strike "per centum" and insert "percent";

On page 28, line 12, strike "per centum" and insert "percent";

On page 28, line 3, after "available" insert "by the Secretary of the Treasury";

On page 28, line 4, strike "(1)(C)" and insert "(2)(A)";

On page 28, line 7, strike "per centum" and insert "percent";

On page 28, line 8, after "available" insert "by the Secretary of the Treasury";

On page 28, line 9, strike "(1)(C)" and insert "(2)(A)";

On page 28, line 11, after "(g)(2)" insert "of this section";

On page 28, line 12, after "(B)" insert "of this paragraph";

On page 28, line 16, after "(g)(2)" insert "of this section";

On page 28, line 17, after "(B)" insert "of this paragraph";

On page 28, line 18, strike "per centum" and insert "percent";

On page 28, beginning with line 21, strike "subsection to the Public Broadcasting Service, National Public Radio, or to the licensee or permittee of any public broacast station" and insert "part to any public broadcasting entity or public telecommunications entity";

On page 28, line 25, strike "organization" and insert "entity";

On page 29, line 7, strike "personnel matters" and insert "matters relating to personnel, proprietary information, litigation and other matters requiring the confidential advice of counsel, or the purchase of property or services whenever the premature exposure thereof would compromise the business interests of any such entities";

On page 29, beginning with line 14, strike "subsection to the licensee or permittee of any public broadcast station" and insert "part to any public broadcasting entity or public telecommunications entity";

On page 29, line 17, strike "the" and insert "any";

On page 29, line 17, after "and" insert "any";

On page 29, line 19, after "(1)(3)(B)" insert "of this section";

On page 29, line 21, strike "establish and";

On page 29, line 22, strike "the percentage" and insert "its division";

On page 29, line 23, after "(3)(A)" insert "of this subsection";

On page 30, line 2, after "(3)(A)" insert "of this subsection";

On page 31, line 1, after "(3)(A)" insert "of this subsection";

On page 31, line 2, strike "may" and insert "shall";

On page 31, line 21, after "1934" insert "(47 U.S.C. 396(1)(3))";

On page 31, beginning with line 23, strike through and including page 23, line 8, and insert in lieu thereof the following:

"(3)(A) Within 1 year after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Corporation and as appropriate with others, shall adopt accounting principles which shall be uniformly used by all public telecommunications entities receiving funds under this part. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities. All financial information of such entities relating to such purposes, including all funds received by such entities from any private or governmental source, and all funds expended for any purpose, may be audited by the Comptroller General of the United States, who shall have access to all books, records, accounts, reports, and other materials of such entities.

On page 32, line 23, strike "noncommercial broadcast licensee or permittee" and insert "public broadcasting entity and public telecommunications entity";

On page 33, line 1, strike "subpart" and insert "part";

On page 33, line 9, strike "Corporation" and insert "Comptroller General of the United States";

On page 33, line 11, strike "General Accounting Office" and insert "Corporation";

On page 33, line 14, strike "and operations that" and insert "as";

On page 33, line 16, strike "(other than a broadcasting licensee or permittee)";

On page 34, line 3, after "The" insert "Comptroller General of the United States and the";

On page 34, line 4, strike "its" and insert "their";

On page 34, line 8, after the period, strike through and including line 12;

On page 34, line 15, after "1934" insert "(47 U.S.C. 398)";

On page 34, line 20, strike "except to the extent authorized in subsection (b),";

On page 34, line 25, strike "of" and insert "or";

On page 35, line 6, after "C" insert "of this part";

On page 35, beginning with line 16, insert the following:

"(B) The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's responsibilities under this section which are of interest to or affect the functions of the Commission so that, to the maximum extent possible consistent with the enforcement responsibilities of each, the reporting requirements of public broadcast licenses shall be uniformly based upon consistent definitions and categories of information.

On page 36, line 9, strike "require to satisfy itself that the recipient is in compliance with this subsection. The Corporation shall monitor the equal employment opportunity practices of each recipient, and provide technical assistance as necessary, throughout the duration of the grant or contract" and insert "require";

On page 36, line 14, strike "Based upon its responsibilities under paragraph (3), the" and insert "The";

On page 36, line 18, strike "31st" and insert "15th";

On page 36, line 18, strike "December" and insert "February";

On page 36, beginning with line 20, strike "Secretary in order to determine whether recipients are in compliance with paragraph (1)" and insert "Secretary";

On page 36, line 23, after "396(1)" insert "of this part";

On page 36, line 25, strike "and with any analysis";

On page 37, line 6, after "(1)" insert "of this subsection";

On page 37, line 7, strike "direct" and insert "inform";

On page 37, line 7, after "Corporation" insert "of such determination, including any order";

On page 37, line 10, strike "comply with such directive" and insert "thereupon so reduce or suspend such payments";

On page 37, beginning with line 18, insert the following:

"(6) The provisions of paragraphs (2), (3), (4) and (5) of this subsection shall not apply to any recipient having less than five full-time employees.

On page 37, line 21, strike "the" and insert "this";

On page 38, line 6, after "1934" insert "(47 U.S.C. 397)";

On page 38, line 15, strike "Broadcasting authorized to be established in subpart C of this part" and insert "Broadcasting";

On page 38, beginning with line 17, insert the following:

"(3) The term 'interconnection' means the use of microwave equipment, boosters, translators, repeaters, communication space satellites or other apparatus or equipment for the transmission and distribution of television or radio programs to public telecommunications entities.

On page 38, line 22, strike "(3)" and insert "(4)";

On page 38, line 24, strike "(which may include the selection and scheduling of programs for such distribution)";

On page 39, line 3, strike "(4)" and insert "(5)";

On page 39, line 9, strike "(5)" and insert "(6)";

On page 39, line 21, strike "(6)" and insert "(7)";

On page 40, line 17, strike "(7)" and insert "(8)";

On page 40, line 22, strike "distributing" and insert "disseminating";

On page 40, line 23, after "video" insert "noncommercial educational and cultural";

On page 40, line 23, after "programs" insert "to the public";

On page 41, line 3, strike "(8)" and insert "(9)";

On page 41, line 5, strike "net earnings" and insert "income or assets,";

On page 41, line 7, strike "private shareholder or individual" and insert "officer or employee thereof, except as reasonable compensation for services";

On page 41, line 10, strike "(9)" and insert "(10)";

On page 41, beginning with line 19, insert the following:

"(11) The term 'public broadcasting entity' means the Corporation, any licensee or permittee of a noncommercial educational broadcast station, or any nonprofit institution engaged in the production, acquisition, distribution, or dissemination of educational and cultural radio or television programs.

On page 41, line 25, strike "(10)" and insert "(12)";

On page 42, line 1, strike "as used in subpart B";

On page 42, line 3, strike "(B) receives funds from the Corporation under section 396(k); and (C) distributes public television or radio program services to the public" and insert "and (B) disseminates noncommercial educational and cultural radio or television programs to the public";

On page 42, line 8, strike "(11)" and insert "(13)";

On page 43, line 1, strike "(12)" and insert "(14)";

On page 43, line 5, strike "(13)" and insert "(15)";

On page 43, line 5, strike "broadcast stations'" and insert "telecommunications entities'";

On page 43, line 6, strike "two or more" and insert "combination of";

On page 43, line 7, strike "television or

radio stations" and insert "telecommunications entities";

On page 43, line 8, strike ", on a formal or informal basis,";

On page 43, line 10, strike "programming and";

On page 43, line 18, after "201" insert "of this Act";

On page 43, line 20, after "1934" insert "(47 U.S.C. 396(k)(1))";

On page 43, line 21, after "306" insert "of this Act";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Telecommunications Financing Act of 1978".

TITLE I—CONSTRUCTION AND PLANNING OF FACILITIES

DECLARATION OF PURPOSE

SEC. 101. (a) The heading for part IV of title III of the Communications Act of 1934 is amended to read as follows:

"PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING".

(b) The heading for subpart A of part IV of title III of the Communications Act of 1934 is amended to read as follows:

"Subpart A—Assistance for Public Telecommunications Facilities".

(c) Section 390 of the Communications Act of 1934 (47 U.S.C. 390) is amended to read as follows:

"DECLARATION OF PURPOSE

"SEC. 390. The purpose of this subpart is to assist (through matching grants) in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of noncommercial educational and cultural radio and television programs to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase noncommercial educational and cultural radio and television programs for, and facilities available to and operated by, minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide such noncommercial educational and cultural programs to the public.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 391. There are authorized to be appropriated $40,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary of Commerce pursuant to this part have submitted within the fiscal year.".

CONSTRUCTION AND PLANNING

SEC. 103. (a) Section 392 of the Communications Act of 1934 (47 U.S.C. 392) is amended to read as follows:

"GRANTS FOR CONSTRUCTION AND PLANNING

"SEC. 392. (a) For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary of Commerce an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that—

"(1) the applicant is (A) public broadcast station; (B) noncommercial telecommunications entity; or (C) system of public telecommunications entities;

"(2) the operation of such public telecommunications facilities will be under the control of the applicant;

"(3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

"(4) such public telecommunications facilities will be used only for noncommercial educational or cultural purposes;

"(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

"(6) the applicant will make the most efficient use of the grant.

"(b) Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary of Commerce shall make a grant to the applicant in an amount determined by the Secretary, except that such amount shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

"(c) The Secretary of Commerce may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligibility requirements of subsection (a) of this section to receive construction assistance.

"(d) Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary of Commerce, if such studies are conducted through the use of funds received under this section.

"(e) The Secretary of Commerce shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

"(f) In establishing criteria for grants pursuant to section 393 of this subpart and in establishing procedures relating to the order of priority established in subsection (e) of this section in approving applications for grants, the Secretary of Commerce shall give special consideration to applications which increase minority and women's operation of, and participation in, public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

"(g) If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—

"(1) the applicant or other owner of such facilities ceases to be a station, entity, or system described in subsection (a)(1) of this section; or

"(2) such facilities cease to be used in whole or in part for noncommercial public telecommunications purposes (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so),

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bears to the cost of construction of such facilities.

"(h) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary of Commerce to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all telecommunications facilities under the control of such recipient, and records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

"(i) The Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.".

(b) The provisions of section 392(g) of the Communications Act of 1934, as added by subsection (a) of this section, shall apply to any grant made under section 392 of such Act before, on, or after the date of the enactment of this Act. Any authority and responsibilities of the Secretary of Health, Education, and Welfare regarding the administration of such grants are hereby transferred to the Secretary of Commerce.

CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

SEC. 104. Section 393 of the Communications Act of 1934 (47 U.S.C. 393) is amended to read as follows:

"CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

"SEC. 393. (a) The Secretary of Commerce, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

"(b) The Secretary of Commerce shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) of this section and designed to achieve—

"(1) the provision of new telecommunications facilities to extend service to areas presently not receiving noncommercial educational and cultural programs;

"(2) the expansion of the service areas of existing public telecommunications entities;

"(3) the development of public telecommunications facilities operated by and available to minorities and women; and

"(4) the improvement of the capabilities of existing public broadcast stations to provide noncommercial educational and cultural programs.

"(c) Of the funds appropriated pursuant

to section 391 of this subpart, not less than 75 percent shall be available to extend delivery of noncommercial educational and cultural programs to areas not receiving such programs through grants for facilities of new public telecommunications entities and of existing public telecommunications entities, and preoperational expenses associated with such facilities. In choosing among applicants for grants, the Secretary shall compare the advantages of alternate technologies on the basis of costs and benefits.

"(d) The total of the grants made under this subpart from the appropriation for any fiscal year for the construction of public telecommunications facilities in any State may not exceed 8½ percent of such appropriation".

LONG-RANGE PLANNING FOR FACILITIES

SEC. 105. Section 394 of the Communications Act of 1934 (47 U.S.C. 394) is amended to read as follows:

"LONG-RANGE PLANNING FOR FACILITIES

"SEC. 394. (a) The Secretary of Commerce, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 390 of this subpart. Such plan shall include a detailed 5-year projection of national needs for public telecommunications, the broadest and nonbroadest public telecommunications facilities required to meet such needs, and the expenditures necessary to provide those facilities.

"(b) The Secretary of Commerce shall prepare annually a comprehensive and detailed inventory of funds distributed by Federal departments and agencies to public telecommunications entities during the preceding fiscal year.

"(c) The plan required in subsection (a), updated annually, an annual summary of the activities of the Secretary of Commerce in implementing the plan, and the inventory required in subsection (b) shall be submitted concurrently to the President and the Congress on or before the 31st day of December of each year.".

TITLE II—TELECOMMUNICATIONS DEMONSTRATIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. Section 395(h) of the Communications Act of 1934, as so redesignated in section 202 of this title, is amended by striking out "September 30, 1977, and $250,000 for the period July 1, 1976, through September 30, 1976, to carry out the provisions of this section." and inserting in lieu thereof "September 30, 1979, to be used by the Secretary of Health, Education, and Welfare to carry out the provisions of this section.".

TECHNICAL AMENDMENTS

SEC. 202. Part IV of title III of the Communications Act of 1934 is amended—

(1) by redesignating section 392A (47 U.S.C. 392A) as section 395 and inserting above the heading for such section the following new heading:

"Subpart B—Telecommunications Demonstrations";

(2) by inserting above section 395(a), as so redesignated in paragraph (1) of this section, the following new heading:

"DECLARATION OF PURPOSE; GRANTS AND CONTRACTS";

(3) by inserting above section 395(b), as so redesignated in paragraph (1) of this section, the following new heading:

"Application Approval";

(4) by inserting above section 395(c), as so redesignated in paragraph (1) of this section, the following new heading:

"Amount of Grant or Contract; Payment";

(5) by inserting above section 395(d), as so redesignated in paragraph (1) of this section, the following new heading:

"Uses of Funds";

(6) by inserting above section 395(e), as so redesignated in paragraph (1) of this section, the following new heading:

"Nonbroadcast Telecommunications Facilities";

(7) by inserting above section 395(f), as so redesignated in paragraph (1) of this section, the following new heading:

"Duration of Funding of Demonstration";

(8) by inserting above section 395(g), as so redesignated in paragraph (1) of this section, the following new heading:

"Summary and Evaluation";

(9) by inserting above section 395(h), as so redesignated in paragraph (1) of this section, the following new heading:

"Authorization of Appropriations";

(10) by inserting after section 395(h), as so redesignated in paragraph (1) of this section, the following new subsections:

"Records; Access by Secretary and Comptroller General

"(i)(1) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary of Health, Education, and Welfare to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.

"Rules and Regulations

"(j) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under section 392 of this part or to determining the amounts of grants for such projects.";

(11) in section 395 thereof, by striking out the heading for such section;

(12) by redesignating section 395 as section 395(k) and inserting above it the following new heading:

"Assistance by Commission; Coordination With Commission and Corporation";

and

(13) by redesignating subpart B as subpart C.

TITLE III—CORPORATION FOR PUBLIC BROADCASTING

DECLARATION OF POLICY

SEC. 301. Section 396(a) of the Communications Act of 1934 (47 U.S.C. 396(a)) is amended to read as follows:

"SEC. 396. (a) The Congress hereby finds and declares that—

"(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

"(2) it is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of noncommercial educational and cultural radio and television programs;

"(3) that expansion and development of public telecommunications and of diversity of its programing depend on freedom, imagination, and initiative on both local and national levels;

"(4) that the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

"(5) that it furthers the general welfare to encourage noncommercial educational and cultural radio and television programs which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence;

"(6) that it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make noncommercial educational and cultural radio and television programs available to all the citizens of the United States;

"(7) that the Corporation for Public Broadcasting private corporation should be to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.".

CHAIRMAN OF THE BOARD

SEC. 302. Section 396(d)(1) of the Communications Act of 1934 (47 U.S.C. 396(d)(1)) is amended by striking out "President shall designate one of the members first appointed to the Board as Chairman; thereafter the".

PURPOSES AND ACTIVITIES OF CORPORATION

SEC. 303. Section 396(g) of the Communications Act of 1934 (47 U.S.C. 396(g)) is amended to read as follows:

"Purposes and Activities of Corporation

"(g)(1) In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a) of this section, the Corporation is authorized to—

"(A) facilitate the full development of public telecommunications in which programs of high quality, obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

"(B) assist in the establishment and development of one or more interconnection systems to be used for the distribution of noncommercial educational and cultural radio or television programs so that all public telecommunications entities may disseminate the programs at times chosen by the entities;

"(C) assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and

"(D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of telecommunications systems and local public telecommunications entities from interference with, or control of, program content or other activities.

"(2) In order to carry out the purposes set forth in subsection (a) of this section, the Corporation may—

"(A) obtain grants from and make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

"(B) contract with or make grants to national, regional, and other systems of public telecommunications entities, public broadcast stations, noncommercial telecommunications entities, and independent production entities for the production or acquisition of noncommercial educational and cultural radio and television programs to be made available for use by public teelcommunications entities;

"(C) make payments to existing and new public telecommunications entities to aid in financing the production or acquisition of noncommercial educational and cultural radio and television programs by such entities, particularly innovative approaches to programs, and other costs of operation of such entities;

"(D) establish and maintain, or contribute to, a library and archives of noncommercial educational and cultural radio and television programs and related materials and develop public awareness of, and disseminate information about, public telecommunications services by various means, including the publication of a journal;

"(E) arrange, by grant to or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and transmission of educational and cultural radio and television programs to public telecommunications entities;

"(F) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this subpart;

"(G) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to public television or radio broadcasting and the use of nonbroadcast communications technologies for the dissemination of noncommercial educational and cultural television or radio programs;

"(H) make grants or contracts for the use of broadcast and nonbroadcast telecommunications technologies for the dissemination to the public of noncommercial radio and television programs; and

"(I) take such other actions as may be necessary to accomplish the purposes set forth in subsection (a) of this section.

Nothing contained in this paragraph (2) shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

"(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, except that the Corporation is prohibited from—

"(A) owning or operating any television or radio broadcast station, system, or network, community antenna television system, interconnection system or facility, program production facility, or any public telecommunications entity, system, or network; and

"(B) producing programs, scheduling programs for dissemination, or disseminating programs to the public.

"(4) All meetings of the Board of Directors of the Corporation shall be open to the public under such terms, conditions, and exceptions as are set forth in subsection (k)(4) of this section.".

INTERCONNECTION SERVICE

SEC. 304. Section 396(h) of the Communications Act of 1934 (47 U.S.C. 396(h)) is amended to read as follows:

"Interconnection Service

"(h)(1) Nothing in this Act, or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services, subject to such rules and regulations as the Federal Communications Commission may prescribe.

"(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunications entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.".

ANNUAL REPORT TO CONGRESS

SEC. 305. Section 396(l) of the Communications Act of 1934 (47 U.S.C. 396(l)) is amended to read as follows:

"Report to Congress

"(l)(1) The Corporation shall submit an annual report for the preceding fiscal year ending September 30 to the President and the Congress on or before the 15th day of February of each year. The report shall include—

"(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this subpart and such recommendations as the Corporation deems appropriate;

"(B) the plan required in paragraph (2) of this subsection; and

"(C) the summary of the annual report provided to the Secretary of Health, Education, and Welfare pursuant to section 398(b)(4) of this subpart.

"(2) The Corporation, in consultation with public telecommunications entities, and as appropriate with others, shall create a 5-year plan for the development of public television and radio services. Such plan, updated annually, and a summary of activities under such plan, shall be included in the report required in paragraph (1)(A) of this subsection.

"(3) The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (l) of this section, or any other matter which such committees may determine.".

FINANCING; OPEN MEETINGS AND FINANCIAL RECORDS

SEC. 306. Section 396(k) of the Communications Act of 19344 (47 U.S.C. 396(k)) is amended to read as follows:

"Financing; Open Meetings and Financial Records

"(k)(1)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the 'Fund'), to be administered by the Secretary of the Treasury.

"(B) There is authorized to be appropriated to the Fund, for each of the fiscal years 1978, 1979, and 1980, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $121,000,000 for fiscal year 1978, $140,000,000 for fiscal year 1979, and $160,000,000 for fiscal year 1980.

"(C) For each of the fiscal years 1981, 1982, and 1983, there is authorized to be appropriated to the Fund an amount equal to four-ninths of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $180,000,000 for fiscal year 1981, and $200,000,000 for each of the fiscal years 1982 and 1983.

"(D) Funds appropriated under this subsection shall remain available until expended.

"(2)(A) The funds authorized to be appropriated by this subsection shall be used by the Corporation solely for its grants, contracts, and administrative costs. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to in paragraph (1) of this subsection for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, except that the Corporation may include in its certification non-Federal financial support received by a public broadcasting entity during its most recent fiscal year ending before September 30 of the year for which certification is made. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.

"(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter.

"(3)(A) The Corporation shall reserve for distribution among the licensees and permittees of public television and radio stations an amount equal to (i) not less than 40 percent of the funds disbursed by the Corporation from the Fund under this section in each fiscal year in which the amount disbursed is $88,000,000 or more, but less than $121,000,000; (ii) not less than 45 percent in each fiscal year in which the amount disbursed is $121,000,000 or more, but less than $160,000,000; and (iii) not less than 50 percent in each fiscal year in which the amount disbursed is $160,000,000 or more.

"(B) The Corporation shall establish an annual budget according to which it shall make grants for production or acquisition of public television or radio programs, for interconnection facilities and operations, and for distribution of funds among public telecommunications entities. All funds contained in such budget shall be distributed to entities outside the Corporation and shall not be used for the general administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation. During each of the fiscal years 1981, 1982, and 1983, such budget shall consist of not less than 95 percent of the funds made available by the Secretary of the Treasury to the Corporation pursuant to paragraph (2)(A) of this subsection.

"(C) In fiscal year 1981, the Corporation may expend an amount equivalent to not more than 5 percent of the funds made available by the Secretary of the Treasury during such fiscal year pursuant to paragraph (2)(A) of this subsection for those activities authorized under subsection (g)(2) of this section which are not among those grant activities described in subparagraph (B) of this paragraph.

"(D) In fiscal years 1982 and 1983, the amount which the Corporation may expend for activities authorized under subsection (g)(2) of this section which are not among those grant activities described in subparagraph (B) of this paragraph shall be 105 percent of the amount derived for the preceding fiscal year.

"(4) Funds may not be distributed pursuant to this part to any public broadcasting entity or public telecommunications entity

unless the governing board of any such entity holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, and no member of the public shall be required, as a condition to attendance at a meeting of a governing board, to register his or her name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent the governing board from holding executive sessions to consider matters relating to personnel, proprietary information, litigation and other matters requiring the confidential advice of counsel, or the purchase of property or services whenever the premature exposure thereof would compromise the business interests of any such entities.

"(5) Funds may not be distributed pursuant to this part to any public broadcasting entity or public telecommunications entity that does not maintain for public examination copies of any annual financial and any audit reports submitted to the Corporation pursuant to subsection (1)(3)(B) of this section.

"(6)(A) The Corporation, in consultation with public television and radio licenses, shall review annually its division of funds reserved pursuant to paragraph (3)(A) of this subsection, and the criteria and conditions regarding the division and distribution of such funds among public television and radio stations.

"(B) The funds reserved for public broadcast stations pursuant to paragraph (3)(A) of this subsection shall be divided into two portions, one to be distributed among radio stations and one to be distributed among television stations. The Corporation shall make a basic grant from the portion reserved for television stations to each licensee and permittee of a public television station that is on-the-air. The balance of the portion reserved for television stations and the total portion reserved for radio stations shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria that promote the public interest in public broadcasting, and on the basis of a formula designed to—

"(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

"(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

"(iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant.

"(7) No distribution of funds pursuant to this subsection shall exceed, in any fiscal year, one-half of a licensee's or permittee's total non-Federal financial support during the fiscal year second preceding the fiscal year in which such distribution is made.

"(8) Funds distributed pursuant to paragraph (3)(A) of this subsection shall be used at the discretion of the recipient for purposes relating to the provision of public television and radio pragramming, including, but not limited to—

"(A) producing, acquiring, broadcasting, or otherwise disseminating public television or radio programs;

"(B) procuring national or regional program distribution services that make public television or radio programs available for broadcast or other dissemination at times chosen by stations;

"(C) acquiring, replacing, or maintaining facilities, and real property used with facilities, for the production, broadcast, or other dissemination of public television and radio programs; and

"(D) developing and using nonbroadcast communications technologies for public television or radio programming purposes.".

FINANCIAL MANAGEMENT AND RECORDS

SEC. 307. Section 396(1)(3) of the Communications Act of 1934 (47 U.S.C. 396(1)(3)) is amended to read as follows:

"(3)(A) Within 1 year after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Corporation and as appropriate with others, shall adopt accounting principles which shall be uniformly used by all public telecommunications entities receiving funds under this part. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities. All financial information of such entities relating to such purposes, including all funds received by such entities from any private or governmental source, and all funds expended for any purpose, may be audited by the Comptroller General of the United States, who shall have access to all books, records, accounts, reports, and other materials of such entities.

"(B) Each public broadcasting entity and public telecommunications entity receiving funds under this part shall be required—

"(i) to keep its books, records, and accounts in such form as may be required by the Corporation;

"(ii) to undergo an annual audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Comptroller General of the United States in consultation with the Corporation; and

"(iii) to furnish annually to the Corporation a copy of the audit report required pursuant to clause (ii), as well as such other information regarding finances as the Corporation may require,

"(C) Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(D) The Comptroller General of the United States and the Corporation, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance that are related to assistance received under this section.

EQUAL EMPLOYMENT OPPORTUNITY

SEC. 308. Section 398 of the Communications Act of 1934 (47 U.S.C. 398) is amended to read as follows:

"FEDERAL INTERFERENCE OR CONTROL PROHIBITED; EQUAL EMPLOYMENT OPPORTUNITY

"SEC. 398. (a) Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under, this Act; or (2) to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.

"(b)(1) Equal opportunity in employment shall be afforded to all qualified persons by all public telecommunications entities receiving funds pursuant to subpart C of this part (hereinafter in this subsection referred to as 'recipients'), and no person shall be subjected to discrimination in employment by any such recipient on the grounds of race, color, religion, national origin, or sex.

"(2)(A) The Secretary of Health, Education, and Welfare is authorized and directed to enforce this subsection and to prescribe such rules and regulations as may be necessary to carry out the Secretary's functions under this subsection.

"(B) The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's responsibilities under this section which are of interest to or affect the functions of the Commission so that to the maximum extent possible consistent with the enforcement responsibilities of each, the reporting requirements of public broadcast licenses shall be uniformly based upon consistent definitions and categories of information.

"(3) The Corporation shall incorporate into each grant agreement or contract with any recipient entered into on or after the effective date of the rules and regulations prescribed by the Secretary of Health, Education, and Welfare pursuant to paragraph (2), a statement indicating that, as a material part of the terms and conditions of the grant agreement or contract, the recipient will comply with the provisions of paragraph (1) and the rules and regulations prescribed pursuant to paragraph (2). Each recipient shall provide to the Corporation any information that the Corporation may require.

"(4) The Corporation shall provide an annual report for the preceding fiscal year ending Sepember 30 to the Secretary of Health, Education, and Welfare on or before the 15th day of February of each year. The report shall contain information in the form required by the Secretary. The Corporation shall submit a summary of such report to the President and the Congress as part of the report required in section 396(i) of this part. The Corporation shall provide other information in the form which the Secretary may require in order to carry out the Secretary's functions under this subsection.

"(5) Whenever the Secretary of Health, Education, and Welfare makes a final determination, pursuant to the rules and regulations which the Secretary shall prescribe, that a recipient is not in compliance with paragraph (1) of this subsection, the Secretary shall inform the Corporation of such determination, including any order to reduce or suspend any further payments of funds under this part to the recipient and the Corporation shall thereupon so reduce or suspend such payments. Resumption of payments shall take place only when the Secretary certifies to the Corporation that the recipient has entered into a compliance agreement approved by the Secretary. A recipient whose funds have been reduced or suspended may apply at any time to the Secretary for such certification.

"(6) The provisions of paragraphs (2), (3), (4), and (5) of this subsection shall not apply to any recipient having less than five full-time employees.

"(c) Nothing in this section shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services, or over the curriculum or program of instruction of any educational institution or school system.".

TITLE IV—GENERAL PROVISIONS

DEFINITIONS

SEC. 401. Section 397 of the Communications Act of 1934 (47 U.S.C. 397) is amended to read as follows:

"DEFINITIONS

"SEC. 397. For the purposes of this part—

"(1) The term 'construction', as applied to public telecommunications facilities, means acquisition (including acquisition by lease),

installation, and modernization of public telecommunications facilities and planning and preparatory steps incidental thereto.

"(2) The term 'Corporation' means the Corporation for Public Broadcasting.

"(3) The term 'interconnection' means the use of microwave equipment, boosters, translators, repeaters, communication space satellites or other apparatus or equipment for the transmission and distribution of television or radio programs to public telecommunications entities.

"(4) The term 'interconnection system' means any system of interconnection facilities used for the distribution of programs to public telecommunications entities.

"(5) The term 'meeting' means the deliberations of at least the number of members of a governing body required to take action on behalf of such body where such deliberations determine or result in the joint conduct or disposition of the governing body's business, but only to the extent that such deliberations relate to public broadcasting.

"(6) The terms 'noncommercial educational broadcast station' and 'public broadcast station' mean a television or radio broadcast station which (A) under the rules and regulations of the Federal Communications Commission in effect on the date of the enactment of the Public Telecommunications Financing Act of 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.

"(7) The term 'non-Federal financial support' means the total value of cash and the fair market value of property and services (except for personal services of volunteers) received—

"(A) as gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational television or radio programs, and related activities, from any source other than (i) the United States or any agency or establishment thereof; or (ii) any public broadcasting entity; or

"(B) as gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational television or radio programs, or payments in exchange for services or materials respecting the provisions of educational or instructional television or radio programs.

"(8) The term 'noncommercial telecommunications entity' means any enterprise which (A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency or nonprofit private foundation, corporation, or association; and (B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

"(9) The term "nonprofit', as applied to any foundation, corporation, or association, means a foundation, corporation, or association, no part of the net earnings income or assets of which inures, or may lawfully inure, to the benefit of any officer or employee thereof, except as reasonable compensation for services.

"(10) term 'pre-operational expenses' means all nonconstruction costs incurred by new telecommunications entities before the date on which they begin providing service to the public, and all nonconstruction costs associated with expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating broadcasting station or other telecommunications entity.

"(11) The term 'public broadcasting entity' means the Corporation, any licensee or permittee of a noncommercial educational broadcast station, or any nonprofit institution engaged in the production, acquisition, distribution, or dissemination of educational and cultural radio or television programs.

"(12) The term 'public telecommunications entity' means any enterprise which (A) is a public broadcasting station or a noncommercial telecommunications entity; and (B) disseminates noncommercial educational and cultural radio or television programs to the public.

"(13) The term 'public telecommunications facilities' means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including, without limitation, studio equipment, cameras, microphones, audio and video storage or reproduction equipment or both, signal processors and switchers, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds, or intelligence, except that such term shall not include the buildings to house such apparatus, with the exception of small equipment shelters which are part of satellite Earth stations, translators, microwave interconnection facilities, and similar facilities.

"(14) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"(15) The term 'system of public broadcast stations' telecommunications entities' means any two or more combinations of public telecommunications entities acting cooperatively, to produce, acquire, or distribute programs, or to undertake related activities.".

TECHNICAL AMENDMENT

SEC. 402. Part IV of title III of the Communications Act of 1943 is amended by redesignating subpart C as subpart D.

EFFECTIVE DATES

SEC. 403. The provisions of this Act, and the amendments made by this Act, shall take effect on October 1, 1978, except that the amendments made by sections 102 and 201 of this Act, and the provisions of section 396(k)(1) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)) (as amended by section 306 of this Act), shall take effect on the date of the enactment of this Act.

The PRESIDING OFFICER. Time for debate on this bill is limited to 2 hours, to be equally divided and controlled by the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Michigan (Mr. GRIFFIN), with 1 hour on any amendment in the first degree, except an amendment to be offered by the Senator from Wisconsin (Mr. PROXMIRE), over which there shall be 2 hours; with 30 minutes on any amendment in the second degree; and with 20 minutes on any debatable motion, appeal, or point of order.

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the privilege of the floor be accorded during the consideration of S. 2883 to the following staff members from various Senators' offices: John Smith, Gordon Funk, Aubrey Sawis, Keith Geeslin, Ray Strausberger, Ward White, Mary Jo Manning, Steve Holloway, Kevin Curtain, Tom Dougherty, and Martha Malony.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, will the Senator yield for a similar request?

Mr. HOLLINGS. I yield.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Ken Dameron of my staff be accorded the privilege of the floor during debate on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina has the floor.

Mr. HOLLINGS. Mr. President, this bill reflects a consensus in most important respects with the House Commerce Committee bill, H.R. 12605, which passed the House on July 10, 1978. In April of this year Congressman VAN DEERLIN, chairman of the House Subcommittee on Communications, and I introduced companion bills, building upon the administration bill and strengthening several of its provisions, in particular those relating to public accountability, equal employment opportunity, and reduction of duplication and waste by public broadcasting entities. In May, the Senate Committee on Commerce, Science, and Transportation held 2 days of hearings on S. 2883 and reported out the bill with certain technical and other amendments which clarify and strengthen the objectives of this legislation.

Mr. President, the bill before the Senate today reflects the views of many who take a keen interest in the welfare of public broadcasting in this country. It is the product of many efforts, including those of Senators CANNON and FORD, other members of the committee, the chairman of the House Communications Subcommittee, the administration, and a broad segment of the public broadcasting community.

The chief objectives it seeks to accomplish are as follows. First, it continues the present system of multiple-year advance authorizations for noncommercial educational and cultural radio and television programs and provides for moderate increases in the funding levels. Second, it encourages the growth and development of nonbroadcast, as well as broadcast, communications technologies to insure that public programing is available to as many citizens of the United States as possible, by the most efficient and economical means. Third, this bill stimulates new efforts to expand opportunities for minorities and women in employment, training, and operation of public telecommunications facilities. Fourth, S. 2883 clarifies the mission of the Corporation for Public Broadcasting and reduces unnecessary overlap of the Corporation's activities with other public broadcasting organizations. Fifth,

the bill facilitates access to the system by independent program producers. Sixth, it mandates long-term planning for future needs by both the Corporation and the Department of Commerce, which is given new responsibilities in administering Federal assistance for construction and expansion of public telecommunications facilities. Seventh and significantly, this bill provides greater participation by, and accountability to, the public by all recipients of the public's funds, but does not permit the Government to interfere with sensitive program content or other related activities of these recipients.

Enactment of this bill will reinforce and expand the mission of the two principal programs of Federal support for public broadcasting—assistance for construction and improvement in communications facilities, and assistance for production of noncommercial educational and cultural programs.

This bill recognizes the technological changes that are occurring in the communications field by expanding the concept of "public broadcasting" to one of "public telecommunications." The goal is to consider the service provided and not the way in which the service is provided. In the past only traditional, over the air facilities were considered to be eligible for Federal support. In this bill, cable, translators, and other innovative methods of transmission can be funded. The objective is to encourage the extension of noncommercial educational and cultural television and radio program services to areas of the country and segments of the population presently unserved by public broadcasting. It is estimated that the signal of public radio can be received in about 60 percent of American homes, and that only 50 percent of the public receive an acceptable quality public television signal. Since all taxpayers support public broadcasting, it is imperative that a larger percentage of the public receive good public broadcast service. Hence, this bill mandates the Secretary of Commerce to make grants to applicants proposing to reach more viewers by the most efficient means. Moreover, so as to insure that the reach of public telecommunications extends to unserved or underserved populations, the bill directs the Secretary to devote no less than three-fourths of the money made available to applicants proposing improved or expanded service. The remaining funds would be used to replace equipment or obtain new equipment to better serve the station's present audience.

The bill authorizes a level of $40 million, an increase of $10 million over the current authorization, to assist in the expansion and improvement in facilities for public telecommunications. This increase recognizes the critical need for financial support of both new entrants and existing broadcasters. At this authorization level, it is likely that the level of spending for improvements in equipment and other facilities needs of existing stations can continue to increase over levels devoted to these purposes in the past few years. Thus, the committee feels that existing public broadcasters should suffer no setback in support from this program due to eligibility of new technologies for facilities funds. At the same time applications of other distribution technologies will be able to demonstrate how innovation and imagination can be put to practical use in providing public television and radio programs to the public.

The second major part of this bill involves the Federal commitment to public television and radio programing. This bill continues the present system of multiyear authorizations for the activities of the Corporation for Public Broadcasting, the congressionally established vehicle for distributing funds for the production and dissemination of noncommercial educational and cultural programing. S. 2883 reauthorizes the "public broadcasting fund" for 3 years—fiscal years 1981, 1982, and 1983—and increases the level of Federal support over previous fiscal years.

In the first fiscal year (1981) a total of $180 million is authorized, as compared to $160 million for fiscal year 1980. Another $20 million increase is set for fiscal year 1982 and 1983, at a level of $200 million in each of these 2 years. These multiyear authorizations will remain coupled with the practice of 2-year advance appropriations.

The multiyear authorization mechanism which this bill continues has served several important purposes, for both public broadcasting and the Congress. Chaos and uncertainty were the unhappy result of the annual authorization and appropriation process which existed during the first 7 years of the Public Broadcasting Act. The annual authorization and appropriation process retarded long-term planning and made public broadcasting more vulnerable to pressures from the executive and the legislative branch. Public broadcasting took on the appearance of a beleaguered Federal Government agency. The multiyear advance authorization process instituted in 1975 removed many of these difficulties for the first time.

In addition, the 3-year advance authorization in S. 2883 will permit Congress to exercise a more thorough oversight of the activities of public telecommunications. This bill provides several new standards for public accountability, openness, and EEO, under which public telecommunications must operate in the future. We want to gage carefully the progress made under these new rules. The 3-year cycle will enable public broadcasting to adjust to the new standards, and it will enable the Congress to judge the record of their performance. In this way, when the advance authorization period expires, Congress will have a track record on which it may assess that performance.

At the end of this authorization period, the Congress must look at the important question of financial support for public telecommunications—what sources that support should come from and in what amounts. Further, we must review the various technologies that have been given application in the public telecommunications facilities program and whether nonbroadcast technologies should receive financial support for their operations from the Public Broadcast Fund. Three years should provide us with the experiences and insights needed to answer these important questions.

Of equal importance to the level of annual authorizations is the provision which reduces the ratio by which recipients of Federal support earn their entitlement. Under current law, the matching formula is 2.5 to 1, which means a station must raise $2.50 in order to get $1 of Federal matching funds. Beginning in fiscal year 1981 that ratio will be reduced to 2.25 to 1. While the ratio has been modified to provide greater rewards for the efforts of local broadcasters to raise local support, the ratio is still maintained at a level which guarantees that the bulk of support for public broadcasting will still come from sources other than the Federal Government. Any much lower level would tip the scale toward excessive Federal assistance, undermining the need for public broadcasting to be independent of improper governmental pressure.

Mr. President, I think that this bill makes important new strides in the national commitment to public telecommunications: increased authorization levels, continued adherence to the idea of advanced year funding, a greater degree of Federal assistance consonant with the funds raised. However, hand in hand with this increased commitment to public telecommunications goes a correspondingly larger obligation on the part of the recipients of that assistance to be accountable to the American public for the expenditure of the public's money. This bill mandates important new procedures to be followed by all recipients of Federal support, either from the Department of Commerce or from the Corporation for Public Broadcasting, to manage their grant money prudently and to be prepared to document all uses made of Federal financial assistance. For example, the bill requires the keeping of inventories of all equipment purchased in whole or in part with Federal money. All recipients of money from the Corporation must undergo an independent annual audit, based upon uniform accounting principles, and to disclose to the public all reports, audits, and other financial information submitted to CPB.

These financial management provisions are not designed to invite or allow governmental intrusion into the operations and editorial decisions of public broadcasters. Recognizing the sensitivity of the public broadcast media to even the potential of such interference, this bill is closely worded to avoid any implication that the financial management and audit provisions authorize any agency of the Government, or the Congress, to invade the provinces of the editor, the program developer, or any activities relating to program content. The objective of these provisions is to encourage better management practices among telecommunications entities and to give the public the information it needs in order to understand how funds are being spent by such entities.

This bill incorporates other provisions

designed to open up the processes of public telecommunicators to the public which supports them and which they are pledged to serve. Meetings of the governing boards of public stations and other direct recipients of CPB support must be open to the public, except for certain limited situations. As I mentioned, financial records submitted to CPB must also be made available for public examination.

The bill also opens up the system of program production and distribution to independent producers by affording conditional access by such people to the public television satellite distribution system soon to go into nationwide operation. The purpose of this provision is to open the door to what has been termed a "closed club" of major public program producers to new, at times untried, sources of programing creativity. Due to a printer's error in the committee report (95–858, at page 19) on this bill, there is some confusion as to what the satellite access provisions would accomplish.

The satellite access provision will afford an added measure of assistance to small independent producers who are seeking to solicit offers to buy a program or series or financial backing for a planned program. The provision is not intended to afford any person not qualifying as a public telecommunications entity to disseminate programs directly to the public.

The idea of public accountability is also reflected in the provisions relating to equal employment opportunity. This bill institutes clear and forceful standards to assure that recipients of Federal money do not discriminate, and that they take affirmative steps to seek out new employees from the minority communities and among women. The bill also requires the Secretary of Commerce to take special steps to encourage the participation of minorities and women in the management and operation of public telecommunications facilities. (I will offer today several additional amendments to clarify the scope of these EEO provisions so as to make even clearer our intent that poor EEO performance by the benficiaries of Federal assistance will no longer go unheeded.)

The bill eliminates any uncertainty over which agency should enforce EEO over public broadcasting and other public telecommunications entities. The FCC already administers its own EEO rules and policies as to its public television and radio licensees. This bill gives the Department of HEW additional authority to assure equal employment opportunity over all recipients of assistance, whether licensed by the FCC or not. I anticipate that both the FCC and HEW will exercise their respective responsibilities in this area energentically, and in coordinated fashion to avoid duplication and confusion in their regulation. I do not anticipate that each agency will simply "pass the buck" to the other, but that they will make continuing efforts to carry out their separate mandates from Congress. In particular, I expect the Department of HEW to review in an affirmative fashion all EEO information supplied to it from the Corporation, as provided in this bill, and rely upon the periodic review procedures of the FCC in this regard.

Mr. President, I think that public telecommunications in this country is at a crossroads. It must make fundamental decisions on its future direction. These decisions should not be made by the Congress or any agency of the Government. This bill expresses a vote of confidence in the ability of those in public telecommunications to make those decisions correctly, without overbearing guidance from the Government. That confidence could not be more expressly shown than in the increased levels of financial support, continuation of multiyear authorizations, and maintenance intact of the basic system of nongovernmental public broadcasting outlets throughout the country.

Public telecommunications, nevertheless, must be more accessible and responsive to the general public, to minorities and women, to new sources of creativity, and to the whole range of special interests concerned with the future of public telecommunications. Without such accessibility and responsiveness, public telecommunications cannot hope to reach a new sound definition of its nature and mission. S. 2883 gives public telecommunications the means to achieve the objectives of openness, responsiveness, and accountability. S. 2883 gives to those directly involved the tools to make public telecommunications into the system of excellence originally conceived by the Congress in enacting the first major Public Broadcasting Act in 1967. S. 2883 will help public broadcasting achieve the credibility and stability it needs in order to become a major force in the new telecommunications era we are entering.

IMPROVING PUBLIC BROADCASTING

Mr. SCHMITT. Mr. President, I support S. 2883, the "Public Telecommunications Financing Act of 1978." This bill substantially increases the Federal monetary commitment to a public telecommunications system, while providing the system with incentives to achieve the openness and excellence the public rightfully expects and deserves.

S. 2883 contains new authorizations of $580 million on a matching basis during fiscal years 1981, 1982, and 1983. The ratio of private funds to Federal money has been decreased from 2.50 to 1 to 2.25 to 1. This money is to be used for funding grants for production and acquisition of noncommercial, educational and cultural programs, interconnection of program distribution facilities and operations, and for discretionary grants to public television and radio stations.

The bill further authorizes $40 million annually through fiscal year 1981 to assist in the planning and construction of public telecommunications facilities. This provision is intended to extend the delivery of noncommercial, educational and cultural radio and television programs to unserved areas.

The bill as amended authorizes $1 million for telecommunications demonstrations in fiscal years 1979, 1980, and 1981. This money is to be used to promote the development of nonbroadcast facilities and services for the distribution of health, educational, and social service information.

Since 1962, the Federal Government has demonstrated its commitment to a public communications system. Initially, this commitment consisted of a program of matching grants which were used to assist the development of noncommercial educational television broadcasting stations in unserved areas of the country. Since that time, the Federal Government's role has expanded to include assisting the development of a public broadcasting system which includes radio. Today there are approximately 260 noncommercial television stations and 959 noncommercial radio stations on the air.

This bill recognizes that other technologies are now available for the dissemination of educational and cultural radio and television programs. Therefore, it provides assistance to public telecommunications entities which are defined as "any enterprise which (A) is a public broadcasting station or a noncommercial telecommunications entity and (B) disseminates noncommercial educational and cultural radio or television programs to the public." Coaxial cable, fiber optics, and lasers are among the technologies that can benefit from this bill.

In the 16 years since the Federal Government's initial commitment, public support for the system has grown. As a result of the combined resources of the Federal Government, State and local governments and the public, quality programing for diverse audiences is closer to realization.

However, many problems remain unsolved. There was evidence before the Communications Subcommittee of political influence, waste, and inefficiency, and lack of control over inventory. The internecine rivalry between the Corporation for Public Broadcasting (CPB) and the Public Broadcasting Service (PBS), including the possible overlap in their functions, National Public Radio's lack of fiscal responsibility, and the apparent limited opportunity for independent producers, have not promoted the public interest.

What concerned me most, however, was the evidence of the inappropriate desire of some officials in public broadcasting to transform the system into a fourth network in competition with the three commercial networks. I was pleased to read therefore a recent statement by Charles Allen, the program manager of the Los Angeles Public Television Station KCET, that the inauguration of public broadcasting's satellite distribution system has ended "the Public Broadcasting Service's perennial dilemma over whether it should strive to be a fourth TV network." His statement continued, "the increasing selection and flexibility provided by the satellite . . . will present each public station opportunities to program specifically for its market."

I hope Mr. Allen's prediction is accurate. In my judgment, the Congress cannot allow public moneys to be used to foster the development of a centralized public broadcasting network. The hear-

ings of our Communications Subcommittee clearly indicate that the potential for abuse is great with such a system. As the public broadcasting satellite distribution system is phased-in, the Congress should insure that the potential for "selection and flexibility" in that system is fulfilled.

Along these lines, Mr. President, it is most important to insure that independent producers have access to the public telecommunications distribution system. We do not need a fourth network but we do need a reservoir of good programs. Independent production entities or persons should be able to distribute programs without a centralized "gate keeper" making evaluative judgments about content. This desire is consistent with the original Public Broadcasting Act's intent to bring to the American people "programs of high quality obtained from diverse sources * * * made available to (local) stations who choose to use them at times chosen by the (individual) stations."

Again, Mr. President, to insure a reservoir of such programing, the individual stations must have the same opportunity to develop, distribute, and air programs some of which may be local in appeal, others of which may well have a broader, regional or national appeal. In any event, they should not have to air programs which are part of the so-called network system simply because they are not allowed to develop alternatives.

Unfortunately, I cannot represent that this bill will cure all the ills of the public broadcasting system. However, I can say with confidence that this bill, in conjunction with a responsible attitude on the part of the officials in the system and vigilance by the public, may assist public broadcasting in achieving its original goals.

As I have already indicated, the bill increases the Federal financial contribution. However, that increase is tied to more effective accountability of public broadcasting to the public it serves. The bill requires GAO, in consultation with CPB and others, to develop accounting principles that will be used uniformly by public telecommunications entities. It requires them to undergo an annual audit by independent auditors and maintains and strengthens the present authority of GAO and CPB to audit recipients of assistance. Specifically, it permits GAO to audit all financial information that relates to public telecommunications purposes "including all funds received by such entities from any private or governmental source, and all funds expended for any purpose. * * *" This language is intended to permit a comprehensive review of the financial operations of these recipients.

The bill also establishes a policy of open meetings for all public telecommunications entities, including CPB, PBS, NPR, and any other nonprofit institutions engaged in the production, acquisition, distribution, or dissemination of educational and cultural radio or television programs.

The bill outlines clear standards and procedures for enforcement of equal employment opportunity through rules, regulations, reporting requirements, and the penalty of loss or reduction of Federal support for violations.

In summary, Mr. President, S. 2883 will help public broadcasting "get its house in order" so that all segments of the American public will have available the quality programing that the public broadcasting system has promised for so long.

Mr. President, in addition there are two areas of concern that need to be emphasized for the purposes of legislative history. The majority and minority managers agree on the following statements:

Title I of S. 2883 provides Federal support of the planning and construction of public telecommunications facilities. Applicants for facility construction grants under title I, must provide certain assurances to the Secretary of Commerce. Among the required assurances is that the planning for such facilities has been coordinated with the appropriate State agency. It is expected that in fulfilling this requirement, applicants will provide copies of their applications for construction grants to the designated State agency.

Title III provides new audit and accounting procedures. In light of financial abuses that become evident during our Communications Subcommittee hearings, the committee developed new procedures which I expect will insure greater financial accountability for the expenditure of public funds, as well as those received from private sources. While it is recognized that this extends the Comptroller General's access to all financial information of public telecommunications entities receiving Federal funds, the committee believes this to be necessary as in fact, all moneys received by public telecommuncations entities are from the public. Community service grants received from CPB are often commingled with funds received from the facilities grant program, as well as monevs received from private sources. If the public is to receive an accurate financial accounting reflecting the receipt and expenditure of funds, it is necessary to expand the Comptroller General's authority. However, I want to emphasize that it was not the committee's intention to require licensees to establish duplicative financial reporting systems. University or college licensees, for example, which are subjected to comprehensive annual audits by a State will not be required to obtain an additional annual independent audit because of the provisions of this bill.

UP AMENDMENT NO. 1844

Mr. HOLLINGS. Mr. President, I send to the desk several technical amendments. I have just checked these with my ranking colleague, the distinguished Senator from Michigan (Mr. GRIFFIN). These technical amendments are being offered, and I request their immediate consideration en bloc. I ask unanimous consent that they be considered en bloc, three amendments.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an unprinted amendment numbered 1844, being technical amendments.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, line 2, insert the following:

"SEC. 106. The position of Deputy Assistant Secretary of Commerce for Communications and Information, established in Department of Commerce Organization Order Numbered 10-10 (effective March 26, 1978), shall be compensated at the rate of pay in effect from time to time for level V of the Executive Schedule under section 5316 of title 5, United States Code".

On page 8, immediately after line 25, insert the following new subsections:

"(c) The personnel employed in connection with or in support of, or as an integral part of the mission of, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred to the Secretary of Commerce from the Secretary of Health, Education and Welfare by subsection (b) of this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are hereby transferred to the Secretary of Commerce for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

"(d) The Director of the Office of Management and Budget, in consultation with the Secretary of Commerce and the Secretary of Health, Education and Welfare, is authorized and directed to make such determinations as may be necessary with regard to the transfer of the functions transferred to the Secretary of Commerce from the Secretary of Health, Education and Welfare by subsection (b) of this section and to make such additional incidental dispositions of personnel, assets, liabilities, contacts, property, records, and unexpended balances of appropriations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by subsection (b) of this section, as he may deem necessary to accomplish the purposes of this Act.".

On page 29, line 8, immediately after "to", insert "individual".

On page 35, line 5, strike "qualified".

On page 35, line 6, strike "entities" and insert in lieu thereof "entities and public broadcasting entities".

On page 12, line 11, insert the following immediately after "1979,": "$1,000,000 for the fiscal year ending September 30, 1980, and $1,000,000 for the fiscal year ending September 30, 1981,".

On page 29, line 18, immediately after "reports", insert "or other information regarding finances".

On page 16, line 16, strike "that".

On page 16, line 21, strike "that".

On page 17, line 4, strike "that".

On page 17, line 10, strike "that".

On page 17, line 11, strike "private corporation".

On page 19, transpose lines 20 and 21.

Mr. HOLLINGS. These amendments accomplish the following objectives:

To authorize a second executive schedule position within the National Telecommunications and Information Administration of the Department of Commerce, at the same rate of compensation

already provided for. This amendment would not constitute a pay raise.

To clarify the transfer of personnel and assets for the educational broadcasting facilities program from the Department of Health, Education, and Welfare to the Department of Commerce.

To assure that the "personnel matters" exemption to the open meeting requirement of the bill relates to the privacy of individual, specific employees, not to discussion of general personnel policy matters, which should be open to the public.

To make the EEO provisions in the bill apply to all job applicants and employees.

To make all recipients of funds from the Corporation for Public Broadcasting subject to the bill's EEO provisions, including PBS and NPR.

To provide for authorizations of appropriations for telecommunications demonstrations to run concurrently with the telecommunications facilities authorizations.

Several clerical and technical changes to delete redundant wording, conform parallel language and correct a printing error.

These have been cleared, and I ask that they be considered en bloc and agreed to en bloc.

The PRESIDING OFFICER. The Chair would remind the Senator from South Carolina that there are committee amendments pending, and it will require unanimous consent to consider these at this time. Is the Senator seeking that unanimous consent?

Mr. HOLLINGS. That is right. I seek such unanimous consent.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator is also asking that these be considered en bloc, and is asking unanimous consent?

Mr. HOLLINGS. Yes.

Mr. PROXMIRE. I understand the Senator is offering those amendments and that they be considered as original text?

Mr. HOLLINGS. Correct.

The PRESIDING OFFICER. Without objection, they will be considered en bloc.

The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was agreed to.

Mr. HOLLINGS. I yield to my ranking member.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that privileges of the floor be granted to Hugh Hadden and Eric Hultman of Senator THURMOND'S office; Tim McKeever of Senator STEVENS' staff; and Mr. Marc Steinberg of my staff.

The PRESIDING OFFICER (Mr. STONE). Without objection, it is so ordered.

Mr. GOLDWATER addressed the Chair.

Mr. JAVITS. Mr. President, I ask unanimous consent that Senator GOLDWATER may yield to me without losing his right to the floor, and that I will only keep it for a minute.

Mr. GRIFFIN. I thought the Senator wanted to make a unanimous-consent request for privileges of the floor.

Mr. JAVITS. No.

Mr. GRIFFIN. Mr. President, this bill before us today, the Public Telecommunications Financing Act of 1978, represents the first thorough effort by Congress to examine the Public Broadcasting Act since its passage in 1967.

The Public Broadcasting Act has the most worthwhile objective of attempting to meet the educational and cultural needs of the American public. As part of this objective, the Educational Television Facilities Act provides important grant program funding to public stations so that they may purchase needed equipment and construct necessary facilities.

The bill before us today amends these acts in an attempt to make public broadcasting more effective and responsive to the public interest.

Of particular relevance is that S. 2883, the bill we are now considering, amends the Public Broadcasting Act of 1967. There can be little question that when enacted, this act represented an unprecedented undertaking: the creation of a private corporation; namely, the Corporation for Public Broadcasting, authorized to expend Federal appropriations for the full development of educational broadcasting.

Our legislative mandate to the Corporation for Public Broadcasting requires that in funding noncommercial licensees, the Corporation is authorized to—

facilitate the full development of educational broadcasting in which programs of high quality, obtained from diverse sources, will be made available to noncommercial educational television or radio broadcast stations, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature . . .

In mandating that the Corporation adhere to objectivity and balance in all programs of a controversial nature, Congress declined, for sound constitutional reasons, to become involved in the program judgments of publicly funded licensees.

Nevertheless, the U.S. court of appeals has made it clear that Congress alone has the oversight responsibility to enforce the statutory mandates of the act. This can be best accomplished, held the court, through our control over the appropriation process.

Although Congress should not and cannot act constitutionally as a censor over noncommercial licensees funded by the Corporation, it is clear that we do have certain responsibilities in controlling the purse strings: First, whether the Corporation is facilitating the full development of educational broadcasting in which programs of high quality, obtained from a variety of sources, will be made available to noncommercial educational broadcast stations? Second, because these programs are funded by the public, as a whole, do they present an objective and balanced presentation of the controversial issues raised?

It is solely up to us, not the individual citizen or any other entity, to assure that these statutory mandates are carried out. Because of the importance of this issue, I will during consideration of this bill offer an amendment which will help assure Congress that it will exercise this oversight function in a responsible manner.

Finally, Mr. President, I want to acknowledge the outstanding leadership of the chairman of the Communications Subcommittee, the Senator from South Carolina (Mr. HOLLINGS). He has guided this important legislation through the Senate with skill and adroitness. He has given the Senator from Michigan every courtesy in the consideration of this bill.

In addition, I want to express my appreciation to the Senator from New Mexico (Mr. SCHMITT) and the Senator from Arizona (Mr. GOLDWATER) for their exceptionally able participation in the development of this legislation; particularly their attendance at the committee hearings on this bill.

Mr. President, I now yield the floor.

Mr. GOLDWATER. Mr. President, I yield such time to the Senator from New York as he may desire, without losing my right to the floor.

UP AMENDMENT NO. 1845

Mr. JAVITS. Mr. President, if I may have Senator PROXMIRE's attention, I have another hearing and I have a small procedural amendment which I will describe first before asking unanimous consent to have it considered. It will take just 1 minute.

This bill calls for uniform accounting principles by stations which get any loans or assistance from the PBC. Channel 13 in New York feels it may be too onerous for them—and other stations Senator HOLLINGS informs me have similar problems—so we are about to write into the uniformity section the following words: "taking into account organizational differences between and among various categories of such public telecommunications entities."

If there is no objection, I ask unanimous consent that the amendment may now be considered and adopted as part of the bill, notwithstanding the pendency of committee amendments, and I send the amendment to the desk.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an unprinted amendment numbered 1845.

The amendment is as follows:

On page 32 line 14 after the word "part" insert the following: ", taking into account organizational differences between and among various categories of such public telecommunications entities"

Mr. JAVITS. There is no further debate necessary unless there is objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. I thank my colleagues.

The PRESIDING OFFICER. Does the Senator from South Carolina wish to of-

fer the committee amendments and offer them as original text?

Mr. HOLLINGS. I so make that request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The committee amendments were agreed to.

UP AMENDMENT NO. 1846

(Purpose: To prohibit certain discrimination by the Federal Government in providing programs)

Mr. GOLDWATER. Mr. President, I send to the desk an unprinted amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from Arizona (Mr. GOLDWATER) proposes an unprinted amendment numbered 1846.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, line 2, strike out the quotation marks and the period following, and between such line and line 3 insert the following:

"(d) Any department, agency, or part of the Federal Government which provides a television or radio program to a public broadcasting entity shall make such program available, on the same basis, to commercial broadacsting licensees.".

Mr. GOLDWATER. Mr. President, our consideration of S. 2883, the "Public Telecommunications Financing Act of 1978," provides an appropriate occasion to discuss a subject which has required more of my attention during this administration than in any other that I can remember: the manipulation of the electronic media by the White House.

I realize that it is not new for an incumbent administration to try to use the media so that the administration and its policies are cast in a favorable light. Unfortunately, this practice probably started with the advent of broadcasting, despite the fact that freedom of the press, including the electronic press, is one of our most cherished freedoms.

In 1975 it was reported in an article by Prof. Fred Friendly in the New York Times Magazine that the fairness doctrine was used by Presidents Kennedy and Johnson to stifle criticism of their administrations from conservative broadcasters. In fact, according to Friendly, the landmark Red Lion decision which upheld the FCC's personal attack rules, resulted from these campaigns to silence the opposition.

More recently, of course, the Nixon administration was accused of attempting to intimidate the media, and according to the White House tapes, President Nixon even threatened to use the FCC's license renewal processes against his media opponents. I am sure that there are examples of abuses in other administrations that will be revealed with the passage of time.

Unfortunately, the Carter administration is breaking new ground in its attempts to acquire a favorable media image. White House staff members are even trying to manage the news. This administration has moved menacingly first into public broadcasting and more recently into the commercial area.

I am sure that many of my colleagues are aware of what some are now calling the "Horowitz Affair." According to news reports the White House decided to use the Vladimar Horowitz concert to bring the Carter cultural philosophy to the American people. Public Broadcasting, which is subsidized by Federal funds, was chosen as the vehicle to achieve this purpose. Public Broadcasting participated willingly. What else would we expect? Soon after President Carter's inauguration, the president of the Public Broadcasting Service, Lawrence Grossman, and the president of a Washington public broadcasting station, WETA, wrote to President Carter that:

The Public Broadcasting Service, which is a membership organization of 267 local public television stations in communities around the country, and WETA Washington, which serves the stations as a major producer of current events programs, would be pleased to work with you to open channels of communication with the American people.

The request for coverage of the Horowitz concert came from Barry Jagoda, then the President's media advisor. Mr. Jagoda, at the time, was involved in drafting authorization legislation affecting public broadcasting's future, development of the President's budget with respect to public broadcasting, and assisting in the selection of nominees for the board of directors of the Corporation of Public Broadcasting. Of course at the same time, Mr. Jagoda was in charge of polishing up the President's tarnished media image.

The concert was a great success, but the White House role did raise serious questions about government influence over PBS programing. As a result of press reports, I asked the subcommittee chairman, Senator HOLLINGS, to invite Mr. Jagoda to testify before our subcommittee, to explain his role in effecting communications policy and nominations to communications positions. Mr. Jagoda declined to testify. I still have some questions that I would like to ask him, but in July he was replaced by Gerald Rafshoon. The subcommittee chairman and I conferred with Mr. Rafshoon shortly after his appointment. He assured us that he understood the sensitive relationship between the White House and the media.

However, soon thereafter the White House became more aggressive in its attempts to influence coverage by commercial broadcasters. The August 1, 1978 edition of the CBS Evening News reported that:

(u)nder the guidance of the Administration's new image builder (Gerald Rafshoon), the White House has gone into the television business.

Now, Mr. President, I am very concerned about this. I know that my chairman is concerned about this. We have discussed it, and I am appealing to him through these words to set up hearings at a proper time so that we can get into this whole question. But I want to continue just for a short while.

According to the report, the White House is now offering Cabinet members for interviews by local television stations at the taxpayers' expense. Costs for the tape, equipment, crew, and shipment of the tape airfreight to the station are all borne by the taxpayers.

Even more disturbing is the fact that the local stations contacted by the White House are not permitted to interview a Cabinet member of their choice, but must take whomever the administration is featuring. Apparently, many stations have been delighted to "get an interview with a member of the Cabinet, which they otherwise could not afford," and are taking advantage of the White House offer. It was not clear from the CBS report just how extensively Mr. Rafshoon intends to distribute these Government tapes.

This practice strikes me as a clear-cut abuse of television in an attempt to present news favorable to the administration. There is a very real danger that stations, which must be licensed by the Federal Communications Commission, may feel compelled to provide administration spokesmen with a forum, even though they are not in a position to select the Cabinet member they desire.

The initiation of this practice so soon after the controversy surrounding the White House staff efforts to influence programs on public broadcasting, indicates that the White House staff is not yet sufficiently sensitized to the delicate constitutional issues raised by Government interference in the electronic media.

The purpose, Mr. President, of my amendment—and I do not intend to press it—is to make it possible for the established networks, CBS, ABC, and NBC, to attend these Sunday afternoon or Sunday evening expositions of high culture at the White House if they care to. Maybe they do not want to; but if they care to, I think they should be allowed to, just as public broadcasting is allowed to. We do not know whether they care to or not, because we have not had hearings, and I implore my chairman to hold hearings as soon as possible, to see whether they care to attend these cultural extravaganzas.

I think the American people can always stand a little more culture, but I do not know as all of them want to pay for all the time.

Further, an announcement that PBS will televise a series of special events honoring world-renowned concert artists this fall raises a further question about White House intentions to use public broadcasting for political purposes and the apparent willingness of PBS to be used for that purpose. I believe we must consider this legislation in this context of White House efforts to subvert the first amendment. It may be necessary in the future to consider whether additional action is appropriate to insure that commercial and public broadcasting are free of governmental influence.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. GOLDWATER. That is the intent

of my amendment. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I commend the distinguished Senator from Arizona for this amendment, and also for his excellent statement. I think few of us realize the overwhelming effect that radio and particularly television have on our society. It is tremendous.

We also realize the great dominant office in this country is that of the Presidency; and if the President is able to have an influence on the culture of this country, it is something that we should be aware of.

I intend to dwell on this subject further a little later in connection with an amendment I intend to offer in connection with the influence an administration—any administration, whether it is Kennedy, Johnson, Nixon, Ford, or Carter—can have on the commercial television stations, and why we should be very much aware of that, and aware of the fact that there is a kind of censorship in this country if we open our eyes to it. We should be constantly aware of that, and keep our eyes open; so I particularly congratulate the Senator from Arizona on his efforts along that line in connection with the amendment he is offering.

Mr. GOLDWATER. Mr. President, what the Senator from Wisconsin has said is very true. If these cultural afternoons or evenings were made available to the other networks, I would not complain. As I say, they may not want to bother with them. But it does not take a great deal of imagination or understanding to understand the terrific impact of a genius like Horowitz being brought into our living rooms on a Sunday afternoon or Sunday evening from the White House, by a Public Broadcasting System.

Not only that, they are using equipment that we have paid for as American taxpayers. They are mailing these pieces out across the country at our expense. There is a grave question in my mind about the legality of that.

In fact, the Compliance Division of the Programing Section of the FCC believes there is no legal restriction on programing of public events by commercial TV. On the other hand, there is no FCC rule allowing commercial television access to events occurring at public places, and it has been held that the Government can deny access to commercial broadcasters if it wishes.

I do not care whether it is a Democratic President or a Republican President, because I have to admit the Republicans have been guilty of this just as Democrats are being guilty of it, but I would like to see some better understanding come about as to whether they are violating the law or not, or as to whether these other networks can go into the White House at these cultural events and participate.

Mr. WEICKER. Mr. President, will the Senator yield?

Mr. GOLDWATER. I yield.

Mr. WEICKER. Mr. President, I commend the Senator from Arizona on his amendment, and more particularly on his words of admonition. There is no question as to the fact that this should be a matter of concern to the Senate now, under the circumstances that the Senator has described.

Certainly, in hearings held over the past several years, regardless of administration, the issue has been raised. As the Senator from Wisconsin says, this is a matter that has enormous impact, and in the hands of any administration, ill-used it could in effect be a method of thought control in this country; it is as simple as that.

I do not know how we are going to get away from this, whether it be influence by Congress, which also has a hold on public television, or influence by the Executive, until the day comes that we set up some kind of program policy with massive financing, and then get the heck out of that business and allow the moneys to take care of public broadcasting either to be seed money to attract other money, or in some other fashion. Because there is always a danger in Congress having a connection with public broadcasting.

But I will also note, at this juncture, that if there is a problem of the Chief Executive being in television, there is also one of the two political parties, because as the rules are worded and intrepreted, the only candidates who are going to be heard are the Republican and Democratic candidates. So let us understand that these principles we are speaking of also apply to us in this body.

But I think what the Senator from Arizona has put forth here is terrific, and believe me, I have a strange feeling that there is something very prophetic in what he is saying to the U.S. Senate at this juncture. We have to come to grips with the problem sooner or later, or it will come back to haunt us.

Mr. GOLDWATER. Mr. President, I yield to the chairman.

Mr. HOLLINGS. Mr. President, let us be a little bit more deliberate and a little bit more cautious before we charge and try to convict the President and the administration on what could well be a bum rap. That does not mean that we are not concerned. As the Senator from Arizona has pointed out, the Horowitz affair did bring out the inference that the White House was pressuring Public Broadcasting to cover it.

We do know that the former PR representative of the President bragged openly about his influence, and called the Public Broadcasting bill, the one we now have under consideration, his bill at one time.

Of course, it is not. It is our bill from the Commerce Committee. In fact, we did the principal draftsmanship on it even before the House did, and then we got our distinguished colleague on the House side, LIONEL VAN DEERLIN to submit it there at the same time we submitted ours.

We did have that conference with Mr. Jagoda separately, and since that time he has moved on, and we have had a conference with Mr. Gerry Rafshoon, and explained our concerns.

I reiterate my concern, similar to that of the Senator from Arizona, that we not have Presidential and political influence over the policies and programing of Public Broadcasting. I do not think, necessarily, that has occurred. When I heard about the TV articles, and my friend Senator GOLDWATER was courteous enough to correspond with me and sent me one article, I did call Mr. Rafshoon and ask him about it. It was his answer at that time that the Public Broadcasting Service had called and asked the White House for coverage on Mr. Rostropovich, a particular program, and similar cultural programs that they have. As of this minute, as lawyers we could say the best evidence is that Public Broadcasting is the one that requested, and the best evidence is that no one has been excluded. That is why I say let us be very cautious before we indict, try, and convict, because these folks who write magazine articles just love to run off and make a touchdown in the wrong direction.

With respect to access, I agree with what the Senator from Arizona was reading as to the FCC rules and regulations. I know, as a Senator, that if I have a hearing or if I have a news conference, in our committee, for example, that is equally accessible to both Public Broadcasting and to commercial TV.

If the Senator would like to require that, I could see no danger in it. At least, we would have it with us in conference to see if we could find something wrong with it with the conferees on both sides.

The amendment now reads, "Any department, agency, or part of the Federal Government which provides a television or radio program."

I think as the Senator has indicated, "which provides access to an event of such department, agency, or executive department to a public broadcasting entity, they shall make such access available on the same basis," not the program or whatever it is, I think the only one department we have formulating programs in that sense is HEW. Maybe there are some in Defense. I think access is well taken. I do not think they are excluded from it, and I see no danger to it.

I have asked the President's public relations counsel, Mr. Rafshoon, to contact the Senator from Arizona. I think he has done that and they have set up a time when they can confer. We will watch it closely. We remember the movies put out during the war on Vietnam under President Johnson. Under President Nixon, I happened to support the appointment of Clement Haynsworth, in fact suggested it, and I wish the Senate had confirmed him. He is a distinguished judge now in the Fourth Judicial Circuit and many Senators since that time have regretted their failure to vote confirmation. The executive department orchestrated appearances for the Senator from South Carolina at that time because the executive department has that power. They know how to get exposure for their supporters.

It will not be an easy thing to write in the law. The President, such as coming in the night before last on TV at 11 o'clock, was breaking in on all the programs, but no one would dispute the reasonableness of that. It was historical.

That was access to commercial and to public broadcasters as well.

The President is our President, and if he goes culturally I would have thought some of my friends distant from our section of the country would have said, "Well, now, he is at least getting some culture, instead of just fishing in a pond with country music. Now we have Rostropovich and Horowitz. We down South now are getting a little culture, and it is good to show the President getting that exposure."

I really do not believe that the President is demanding what perhaps happened in the Horowitz case. On the contrary, public broadcasters are the ones who requested it. But let us make sure that access is equally available, as it is with any one of our particular events, hearings or otherwise, here in the legislative branch. I readily accede to that. We can still continue.

As I was telling the Senator in our brief conversation about this amendment, we will bring this up at a hearing.

Mr. GOLDWATER. Mr. President, I realize this is an easy case to state but it is not an easy case to decide, particularly on the floor of the Senate when the idea of the amendment just struck me literally a few hours ago. I am meeting with Mr. Rafshoon on Thursday, I believe. I do not know if this is the subject he wants to discuss with me or not, but I assume after today it will enter into the conversation at some length.

I have great respect for my chairman. We have worked together very, very well. I would like to have his assurance that we could hold at least one hearing and invite the networks and Public Broadcasting. We may find that the networks do not give a darn about this thing.

In fact, I kind of yield to the southerners; I like that hillbilly music. It is hard for me to understand that highfalutin stuff. Maybe I ought to listen to Mr. Rafshoon more often.

If the Senator will give me the assurance that we will hold a hearing sometime before the end of this year on this subject, giving our own staff members, which I will have to admit I surprised today, a chance to look into the law and legalities of this, and allow the FCC a chance to present what they consider the legalities or illegalities, I do not care to push my amendment. I merely want to get something started that will clear this thing up.

Mr. HOLLINGS. Very well, I will make those assurances to the Senator and even further assurances about other matters. One of the articles was that there was some question about the equipment, the tapes, and the cost. We want to cover that, too. I understand the Department of Defense assigns the communications team to the White House. The team is really on the payroll of the Defense Department.

Mr. GOLDWATER. That particular kind of abuse, as I see it, stems from whoever it is in the administration selecting a Cabinet member and having him available to answer telephone questions or make his own speech using equipment that comes, I believe, from the Pentagon. The statement was equipment that is not being used by other departments of the Government. But somebody has to operate it; somebody has to provide the visual tapes; somebody has to mail it. It costs money. I would like to get that cleared up. If they can use surplus equipment out of the Pentagon for those purposes, I suggest that the party not in power might be able to do the same thing.

Mr. HOLLINGS. Let us have that hearing because I have different feelings. I do not think it is surplus. I think the President ought to be covered. I know executive departments and the various cabinet members are constantly out proposing programs, listening, having hearings, going public. I am not going to get prudish about this, but here are Senators, individuals, and we are constantly being interviewed and sending tapes back home ourselves. We are in a similar kind of situation of trying to make certain that our views and our conduct in office in Washington are brought to the people at home. What is the difference?

In fact, I complained about a Coast Guard plane. We can get into all kinds of good subjects of equity. I was trying to get the Coast Guard into an ocean agency. The claim has always been that they kept the Coast Guard in Transportation so that was fast, clean travel for that Secretary and all the rest of the Secretaries. We brought up the actual travel documents to show how they were racing them all around the country.

So when the Senator gets the tapes, maybe we can get the planes and maybe get some of these other areas. We will get into all kinds of extraneous subjects. Let us not press it at this particular time when we frankly do not know.

Mr. GOLDWATER. The big difference, of course, is that the Senator and I pay for it. We do not have the Department of Defense or the Department of Interior making available facilities for events which involve the Senator from South Carolina and the Senator from Arizona.

If the Senator will give me his assurance that he will have such a hearing that can be perfectly well set up by the staff, I shall be very happy to withdraw.

Mr. HOLLINGS. I give the Senator that assurance.

The PRESIDING OFFICER. Does the Senator withdraw his amendment?

Mr. GRIFFIN. Will the Senator yield to me before doing that?

Mr. GOLDWATER. I yield to the Senator from Michigan before I withdraw the amendment.

Mr. GRIFFIN. I do not want to talk him out of withdrawing his amendment, but I point out to the Senator from Arizona that if the bill before us passes, we shall be authorizing, 5 years in advance, public television program operation. I shall have an amendment to limit that to 3 years, which is what we have been doing in the past. It is true, of course, that even though we pass an authorization bill 5 years ahead, I suppose that it is possible that the Senator from Arizona could have some hearings and try to get a bill passed that would have some effect on public broadcasting. The only thing I can say to the Senator from Arizona and to others is that it is an awful lot of years to have some impact at a point where there is an authorization bill going through.

I think we would be making a big mistake as far as our own responsibilities are concerned if we do not cut that authorization back to 3 years rather than 5 years, so that we will at least have an opportunity in that period of time to do something to this legislation.

Mr. GOLDWATER. I agree with the Senator. I think 5 years is too long and I shall vote with him on 3.

Mr. GRIFFIN. I just wanted to make that point.

Mr. GOLDWATER. I should hate to see this amendment offered and defeated, because we have not had adequate time to prepare our arguments. I think defeat of this amendment could indicate political favoritism by one side or the other, or political naivete, whichever he wants to choose.

Mr. President, I ask unanimous consent that I may withdraw my amendment.

The PRESIDING OFFICER. The Senator does not need unanimous consent. If the Senator wants to withdraw his amendment, he may do that.

The amendment was withdrawn.

UP AMENDMENT NO. 1847

(Purpose: To authorize volunteer services to be counted as "non-federal financial support" for matching grants provided by the Corporation for Public Broadcasting)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposed an unprinted amendment numbered 1847.

Mr. JOHNSTON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 39, strike lines 21 through 24 and add the following:

"(7) The term 'nonfederal financial support' means the total value of cash and the fair market value of property and services (including, to the extent provided in the second sentence of this paragraph, the personal services of volunteers) received—."

On page 40, add between lines 16 and 17, the following new sentence:

"Such term includes the fair market value of personal services of volunteers but only with respect to such services provided to public telecommunications entities and only, with respect to such an entity in a fiscal year, to the extent that the value of the services does not exceed 5 percent of the non-federal support of the entity in that fiscal year."

Mr. JOHNSTON. Mr. President, this amendment authorizes volunteer services to be counted as non-Federal revenue for matching grants provided by the Corporation for Public Broadcasting. It further provides a safeguard by setting a 5-percent limitation in the amount of non-Federal financial support attributed to volunteer services. This limitation will facilitate oversight by the Corporation for Public Broadcasting.

This amendment would allow Public Broadcasting stations to count volunteer services, as telephone answerers during pledge periods or on-the-air talent, as private matching funds up to 5 percent of the total non-Federal contributions received by a public telecommunications entity in a fiscal year. I want to emphasize, of course, that the total Federal matching contribution for this purpose is limited by Congress in the Public Telecommunications Financing Act of 1978 that we are now considering.

Mr. President, many Public Broadcasting stations, according to testimony before the House Subcommittee on Communications, are hard put to survive as broadcasters. This amendment will help these hard-pressed public stations to survive and to stay in business. Many precedents exist in other programs for this kind of matching fund treatment, including Heart Start, the Community Services Administration, the United Planning Organization, and the arts and humanities. In effect, this amendment also gives to low- and middle-income citizens the ability to contribute to public broadcast programing by making their contribution in services rather than in dollars.

Mr. President, the Corporation for Public Broadcasting should and, I believe, will provide guidelines detailing how volunteer service contributions shall be treated, putting limits, for example, on the number of hours a week and the maximum compensation per hour of volunteers and that sort of thing. The Corporation for Public Broadcasting should promulgate concise and simple rules or guidelines to implement a standard method of recording the value of volunteer services.

Mr. President, I think this in an excellent amendment to award the legitimate and important contributions of volunteers and to allow hard put public broadcasting stations to survive. I hope the chairman will accept it.

Mr. HOLLINGS. Mr. President, my distinguished friend from Louisiana talked to me about this. I have been trying my level best to determine what should be a dependable system for measuring volunteer services. There have been misgivings by those who had considered it heretofore. The argument for limiting the level to 5 percent—I think that this limitation is in the House bill—was that volunteer contributions could be subjected to abuse. The 5 percent would soon be considered inadequate and proponents would want 10 or 15 percent. It is one of these things that, in my opinion, is uncontrollable. As a veteran member of the Budget Committee, I hesitate getting into this area. Yet it may very well be an excellent idea.

We do not want to stultify the activity and enthusiasm that has brought public television to this particular point. I agree with the Senator's constituents on that point: Is there some way we can get the Corporation for Public Broadcasting to make us a study and recommendation? Every group wants to take a little percent here, a little percent there. The result is that to the Corporation for Public Broadcasting has no discretion. It would be all percentaged, with little room for innovation or creativity.

If the Senator would not press amendment at this time, we can get a recommendation from CPB.

I am not opposing his amendment, nor am I accepting it. I think if we had a rollcall, I would have to ask that it be opposed at this time, because I do not want it fixed in the bill. I have not heard from the CPB, and we have not been able to get a reasonable, rational form or dependable basis for measuring volunteer contributions.

Mr. JOHNSTON. Mr. President, do I understand the chairman to be saying that we could seek that opinion from the Corporation for Public Broadcasting?

Mr. HOLLINGS. Yes, and if they cannot give us one by the time of the conference, at least they could make a study and make a recommendation to us.

The chairman of the full Committee on Commerce is on the floor. He will assure the Senator from Louisiana and I will assure him that we will take it up as an amendment to this act at a later date, after study of that recommendation.

Mr. JOHNSTON. What the chairman is saying is if we can get a recommendation that is consonant with good sense and good budgetary practice prior to the conference, the chairman of the subcommittee would be inclined to look on it favorably.

Mr. HOLLINGS. Favorably, yes, sir.

Mr. JOHNSTON. Mr. President, in view of that attitude on the part of the chairman of the subcommittee and his statement that he does tend to look on this favorably, that he does want to encourage volunteer activity, it is my belief that the Corporation for Public Broadcasting could give that opinion prior to conference and I believe it is in their interest to do so; I certainly would want to go along with the wishes of the chairman of the subcommittee and withdraw this amendment at this time. with the assurance that we get the Corporation for Public Broadcasting immediately to give us that opinion.

So, Mr. President, I thank the subcommittee chairman and I withdraw the amendment at this point.

Mr. HOLLINGS. I thank my distinguished colleague.

The amendment was withdrawn.

Mr. CANNON. Mr. President, I ask unanimous consent that Beverly Charles, of Senator JAVITS' staff, and Patty White, of Senator HAYAKAWA'S staff, be granted the privilege of the floor during consideration of this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, may I say to my distinguished colleague from Louisiana, who is bound to be here longer than any of the rest of us, because he has just been reelected for a 6-year term, I can assure him that we will certainly look at him with deference on this point when it comes up. I congratulate him on his recent victory. That point is in the House bill, as he knows and we will certainly give consideration to it in line with the assurance from the distinguished chairman of the subcommittee.

Mr. JOHNSTON. Mr. President, I thank my distinguished colleague from Nevada for those kind comments. I only hope he will not use my 6-year and 2-month term as an excuse for delaying the matter that long.

Mr. CANNON. Mr. President, the main purpose of S. 2883 is to extend and increase the authorization of funds for public broadcasting, improve the efficiency of the system, and expand its reach to viewers not being adequately served at the present time.

In 1975, Congress established the practice of authorizing public broadcast programing funds several years in advance, combining this with appropriations 2 years in advance. S. 2883 continues that practice by authorizing money through fiscal year 1983. The principle of multiple-year authorizations and advance appropriations continues to be sound, not only because it insures stability and continuity of program production, but also because it performs an important first amendment function. Public television and radio programing must be insulated from external political intrusion to the maximum extent possible, and freedom from annual authorization legislation provides the independence necessary to insulation without removing important standards of public accountability.

The bill does not effect any major changes in the system, but it does contain some modest provisions designed to strengthen financial management practices, increase public access to information and broaden the opportunities available to public broadcasting. The bill will make public broadcasting available to groups who have been unserved or underserved in the past, including minority groups, viewers in rural areas beyond the reach of existing transmitters, and independent producers who feel they have sometimes encountered a "not-produced-here" syndrome when attempting to sell their programs to public television and radio distributors.

Responsibility for enforcing equal employment opportunity is assigned to HEW. Past legislation had not clearly indicated who the responsible agency should be, and the Corporation for Public Broadcasting has asserted that its nongovernmental status would be compromised if it were asked to carry out this enforcement role.

The General Accounting Office is authorized to establish accounting principles for public television and radio stations and to follow up with audits where appropriate. In fiscal year 1977, the Corporation was able to audit fewer than one-third of its station grantees; of that number, 44 percent were classified as having "serious" deficiencies. Funds from all sources are frequently commingled by the recipients, making it difficult to distinguish the uses of public and private moneys. The bill gives GAO authority to examine the utilization of all such funds, but it clearly does not allow GAO, or any other Government en-

tity, to get involved in programing decisions.

Besides requiring stations to open their books to greater public scrutiny, the measure establishes a sunshine requirement for board meetings, with certain exceptions for matters which ought to be discussed in private, such as individual personnel matters and legal discussions.

Independent program producers and others may have access to the satellite interconnection system if excess capacity exists. The public television stations have in the past distributed their programs through A.T. & T. cables and microwave towers, but they are now in the process of changing over to a satellite distribution system. With most of the money coming from the Corporation for Public Broadcasting, four channels on a Western Union satellite are being leased for distribution to dish antennas on the ground. S. 2883 provides that excess channel time will be available to independent producers seeking to sell or distribute their programs to stations.

The facilities program presently located at the Department of Health, Education, and Welfare is being transferred to the Commerce Department and is further amended by S. 2883 to place important emphasis on extending the reach of public broadcasting to areas which do not receive adequate public signal reception. Funds for the purchase of all equipment, such as cameras and transmitters, is authorized at a level of $40 million in each of the years 1979 through 1981. This increase of $10 million over current levels is necessary in order to insure that equipment replacement activities can continue at adequate levels at the same time that increased expenditures are set aside for expanded coverage. Three-fourths of the funds appropriated must be spent to start new stations or extend the reach of existing stations to areas not presently served. Equally important, the fund is opened up for application to nonbroadcast technologies where appropriate. For small towns, remote from broadcast transmitters, the facilities money could be used to purchase access rights to cable TV systems. Rural school districts might find video tape recorders to be more cost-effective than new broadcast stations, and the particular needs of each unserved segment of the public could be met under the revised criteria of this legislation by the most appropriate means, without regard to the type of facilities or method of transmissions involved.

In sum, S. 2883 is a progressive, farsighted bill. The Public Telecommunications Financing Act of 1978 will strengthen our public television and radio system and enable it to achieve its goal of programing excellence, while at the same time making it more responsive and accountable to the people it serves. Open meetings and open account books will expose it to the fresh winds of public opinion. We hope better access to the satellite interconnection system coupled with renewed interest by public stations will bring an infusion of new creative talent. Clear responsibility for EEO enforcement will assure a more diverse representation of viewpoints into the studios and management offices. A strong facilities program will mean that all taxpayers—who support public broadcasting—will be better able to receive its programs and will be more likely to view programing that reflects their interests. The bill is a firm step toward a strong, well-financed, and innovative public telecommunications system, and I urge its adoption by the Senate.

Mr. President, I thank my distinguished colleague, the chairman of our subcommittee, for his leadership in this very important field.

Mr. HOLLINGS. I thank the Senator from Nevada for his wonderful help on this measure.

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 1848

(Purpose: Relating to obscenity in broadcasting)

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes unprinted amendment numbered 1848:

At the end of the bill insert a new section as follows:

"PROHIBITION OF CERTAIN TELEVISION BROADCASTING

"SEC. 332. (a) The Congress finds that in view of the purpose of this Act, as stated in section 301, 'to maintain the control of the United States over all the channels of interstate and foreign radio transmission', television broadcasting stations should in the public interest be prohibited from broadcasting programs portraying nudity, obscenity, explicit sexual activity, gross physical violence or morbid torture, any of which are offensive to the public taste and morals.

"(b) The Commission shall as soon as practicable prescribe regulations prohibiting such broadcasting stations from broadcasting such portrayals of nudity, obscenity, explicit sexual activity, gross physical violence or morbid torture."

Mr. THURMOND. Mr. President, I rise today to offer an amendment which I believe may ultimately affect the attitudes, behavior, and moral fiber of the citizens of this great Nation.

With the advent of the television, all Americans—old and young, rich and poor—were given the opportunity to become a more meaningful part of our society. This medium was a giant step in modern technology and mass communications. Broad vistas of opportunities and challenges were opened to all who viewed these "images-on-screen." People could travel to the four corners of the Earth without leaving their living room. The confines of a classroom or library were removed, giving way to a vehicle through which all Americans could become better educated and improve their status of life. The impact of this invention is immeasurable, yet, Mr. President, this great gift to mankind has become a two-edged sword.

Recently, many Americans have become concerned about the effects that the television has had on young people during their maturation process. Educators like Dr. Benjamin Bloom, of the University of Chicago, maintain that by the time a child reaches 5 years of age, he has undergone as much intellectual growth as will occur over the next 13 years. According to the noted television pollster, A. C. Nielsen, children under the age of 5 watch an average of 23.5 hours of television a week. On the other hand, adults have a far greater appetite for television, consuming an alarming 44 hours per week; however, the effects on young people can be enormous and possibly dangerous. It has been estimated that by the time of one's high school graduation, today's typical teenager will have logged approximately 15,000 hours before a television screen. These are perhaps the most important years of an individual's life. They are growing years, the learning years.

Mr. President, I stand today not as a foe and archenemy of the field of television and its related industries, but rather as both a concerned parent of our children 7 years of age or younger, and as an advocate of responsible television programing. The question I place before the Senate today in the form of this amendment is whether we, as Senators, owe a duty to require responsible regulation of an industry which profoundly affects the attitudes, behavior and general complement of Americans.

Each of us recognizes that television broadcasting is unique because it is directed indiscriminately toward the public. In a different way from other media of mass communication, it is both pervasive and intrusive. The passive act of watching television is different, practically, socially and physically from obtaining literature or gaining admission to a movie theater. To gain access to risque literature or motion pictures, a consumer must enter a store or theater and make a purchase. Bookstore and theater proprietors can easily exclude persons who are under age and thus reduce the likelihood that young children will be exposed to matters that are deemed unacceptable for their consumption.

Furthermore, the use of magazines, books, and movies are matters which parents find it both simple, and natural, to regulate. Parents can monitor both the movies their children see and the books they read. But television broadcasts are much more difficult for parents to supervise. Such broadcasts are easily accessible to young persons even in the privacy of the home, without the need for comparable affirmative acts. The offensive matter may be received and consumed with no one the wiser.

Thus, unlike a bookstore owner or theater operator, a broadcast licensee has no comparably effective means of sorting out and excluding youthful customers. Moreover, as is widely known and widely deplored in our society, television viewing for young children is an experience largely devoid of direct parental supervision. Although most parents monitor their children's viewing and listening habits some of the time—particularly during later evening hours when parents themselves place heavy reliance on broadcast media to satisfy

their entertainment needs—it is unrealistic to expect such close oversight all the time.

Mr. President, it is those times when unsupervised children are most likely in the audience that I express particular concern. It is at this time that I believe broadcasters must use the "public interest" standard, and program accordingly. A broadcaster should not force parents to accept the risk that their children will be exposed to portrayals of nudity, obscenity, and gross physical violence while in the privacy of their own home.

Mr. President, I believe that a licensee television network or station should conduct itself as a fiduciary with obligations to present those views and voices which are representative of the communtiy which it serves. Also, the courts have long recognized the existence of a special societal interest in protecting young children from sexually explicit material. This interest is warranted not only by the State's interest in the moral and emotional adjustment of children, but also a recognition of parents' right to rear their children according to their own best judgment.

Therefore, Mr. President, I believe it is entirely appropriate for Congress, through legislation, to assist the FCC to determine and define the standards by which the "public interest" is judged. It seems to me that an elementary standard of the "public interest" would be to take into account the concern that millions of Americans share about the level of sexual material, violence and carnage entering their homes.

Today, I am offering this amendment which would empower the FCC to prohibit television stations from broadcasting portrayals of nuditiy, obscenity, explicit sexual activity, gross physical violence, or morbid torture, any of which is offensive to the public taste and morals. The public deserves to be protected from broadcasting policies that undermine the moral fiber of Americans. I urge my colleagues to support this amendment.

Mr. President, all this amendment does is this: It simply provides that television broadcasting stations, in the public interest, should be prohibited from broadcasting programs—of what kind? Programs portraying nudity. Is there a Senator in this Chamber who wants that kind of program broadcast? As to programs portraying obscenity, I cannot believe there is a Senator here who wants that. I am sure no Senator wants programs that portray expicit sexual activity, gross physical violence, or morbid torture. Phychiatrists have testified to the effect that these things cause a great deal of violence among the young people of this country, when they see them on television.

We believe that the public feels that it is offensive to the public taste and morals for those things to be broadcast.

That is all the amendment does, except that it is provided that the Commission, as soon as practicable, shall prescribe regulations prohibiting such broadcasting stations from broadcasting the things I have mentioned—that is nudity, obscenity, explicit sexual activity, gross physical violence, or morbid torture.

Mr. President, we feel that the public is entitled to this protection. We feel that parents want their children protected from these things that appear on television.

If it is desired to have risque shows, let those shows appear in theaters or where people can make their choice. But when those things appear on television, they practically have no choice. The children in their homes want to see shows, and these programs appear whether they like them or not. There they are, and the children are going to see them. It certainly does not do the children good to see the programs of this kind.

I realize that the question might be raised as to the first amendment or about censorship, but I say this to the Senate, in good faith: The first amendment does not mean that anybody can say anything. The courts have held that. In other words, if a man rushes into a threater and yells, "Fire" when there is no fire, he has no right to do that. That is not freedom of speech as exercised and as construed under the Constitution.

We believe that this Commission should use its discretion and prohibit programs of the type I have mentioned. Suppose it is a form of censorship. A lot of things are forms of censorship. Freedom of speech does not mean that you have a right to say anything, anywhere, anytime, or show pictures anywhere, anytime.

We feel that this is important for the public good.

I ask my distinguished and esteemed colleague from South Carolina whether he can accept this amendment and see if we can have it adopted in conference.

Mr. HOLLINGS. Mr. President, I think my senior colleague knows better.

I say this as to the concern and what has been done for a most difficult subject: To begin with, Congress has been concerned with preventing obscenity, profanity, and indecency. Under title 18 of the United States Code, section 1464, both the Justice Department and the Federal Communications Commission are empowered to enforce the prohibition against obscenity, profanity, and indecency on the air waves. So the fundamental law is on the books.

Incidentally, I would not want to be technical at this point, but I do not think the amendment amends any section of our bill and further it is not germane because our bill has to do with Public Broadcasting, and it does not discuss program content. But I am not raising those points of order.

On the contrary, I am trying to address the concerns of the senior Senator from South Carolina.

The general law that the Senator speaks of is now on that book, and he agrees with it, and I agree with it. While there have been many attempts and failures in enforcement, the most recent case, of course, is Pacifica Foundation versus the FCC, or better known as the "seven dirty words" case, wherein a radio broadcaster just continually, habitually and constantly kept pumping into the airwaves a raucous set of four-letter, indecent words, during the daytime when children could hear and were likely to hear. As the Senator says you cannot close their ears, and it can be heard.

The Supreme Court recently upheld the Commission, against that particular broadcaster holding that that broadcast was illegal under the Constitution and the criminal code. In other words, that was an upholding of a finding with respect to obscenity.

Generally speaking, obscenity and indeceny have been equated as one and the same thing. In the FCC law it is not.

Mr. President, the Court went on to find that the true principal test of obscenity is whether or not the matter in question appeals to the prurient interests and has no literary value or redeeming social value to it.

But over and above that general rule, the FCC just without those particular tests can rule against indecency. But the hangup is that of attempting to be a King Solomon. How do you define obscenity? And therein we have tried, as the Senator from South Carolina knows. We constitutionally are somewhat restricted because of the difference in not the clear-cut cases. but the difference in opinion and difference in morals and customs. The Senator started out by saying just that. that what he would hope to do would be to affect the attitudes and moral fiber of our society. Perhaps personally I could agree with him but as a U.S. Senator let me say that I am not sure that we could agree on each one of the particular items that would be included in that fiber. When you come down to it what is obscene in language? Where does nudity begin and where does it end?

I also saw the 60-minute program during which there were bikini-clad, bathing suit-clad young ladies on the screen. Now many a beauty queen wins a contest as a result of that bathing suit exposure. Some will say that that is indecent; others will say it is prize-winning.

You could go right down the particular items of this amendment in a similar fashion: What is sexual activity, what is gross physical violence, and what is morbid torture.

As to the broadcasters, it should be stated for all to know and realize, that there is some feeling of public responsibility and morality amongst broadcasters. They have in the National Association of Broadcasters a morality-obscenity code, and they tried to do some self-policing though we do not think it is adequate, and the PTA does not think it is adequate either. The American Medical Association does not think it is adequate. By bringing to the advertisers' attention the undesirability of these particular type programs, the PTA and AMA have been able to get them off the air.

National advertisers heretofore regularly paid for such programs because they got the greatest viewing audience and hence the greatest exposure for the sale of their particular product. As a result of the PTA and AMA, they are now being self-restricted and are canceling certain contracts and going to more family-type programs and those acceptable to the general public.

I applaud the work of the Parent-Teachers Association and the American Medical Association and I try with our Communications Subcommittee to bolster that in our oversight responsibility and bring the broadcasters to task and find out what they are doing.

CBS in particular had one gentleman who impressed me at our oversight hearings, showing how they took their particular movies and scripts and removed scenes they believed to be excessively violent, obscene or indecent. Each of the networks have similar reviews for all its programing, and this is healthy and helpful.

I think we have them moving in the right direction. I know that under our former chairman, Senator Pastore, with whom I was serving at that particular time on the subcommittee, we asked the question. What could we do constitutionally to control programing, especially the area of children's viewing, to insure that we have a family viewing time until after 9 o'clock at night? They adopted the family hour and it has been brought before the courts and found unconstitutional because of the way it was agreed to by the networks and the matter is presently on appeal.

So it had not been a lack of interest or a lack of concern, but there is an equal right here. There is an equal right. Some would say: "I put you to the wall. When you vote against this amendment you are voting for obscenity and for nudity and for morbid torture."

But I think our society is mature and understanding and realizes that there cannot be this kind of blanket condemnation and then have it enforced any better than the general law that we now have on the books pertaining to obscenity, profanity and indecency on the airways under title 18, section 1464.

And we may contest under that law and the FCC can move under that section and the broadcasters can move under that section, but we should not take the public broadcasting bill and act as if we do not give any concern whatever.

On the contrary, I have outlined our concerns, and I would hope that the Senator would not press the amendment because I am confident, as the Senator appeared before our committee and had a hearing, it was considered by his colleagues. As he said, he knows of no Senator who wants to knowingly present obscenity on the public airwaves, and that is very true. But then to get down to a redefining and a specifying under the law itself what that conduct really constitutes and how to block out conduct defined by judgment, you need a King Solomon. We continue to work on it, and I think the best approach is with the general statute that we now have on the books, coupled with the awareness that the public is beginning to demonstrate more and more every day. That was the pitch, incidentally, of the "60 Minutes" program, namely, that if the public did not turn it on, if they did not buy the products advertised, they could really cut it out in that fashion, and you would see far, far less nudity, obscenity, violence, and morbid torture.

But nothing was more morbid torture in all of our eyes than the news reports of the war in Vietnam, and no one in a second would say you could not have had those reports. It brought back the morbid torture of the war in Vietnam. Everyone would agree that those news reports were unfortunate but were properly carried on the airwaves and had a marked effect on this country in its conduct of its foreign policy and its venture into various wars around this globe.

We are going to continue. I would ask the senior Senator to press further in his campaign against obscenity and morbid torture and physical violence. I know this Senator will continue to press as the chairman of the subcommittee. But I do not know any better pressing that can be done at this particular moment other than the general statutes, and to use our oversight responsibilities and, as a committee, bring these broadcasters and bring the advertisers in and continue to do it in that particular fashion.

I think that is the effective fashion. I do not like to lead the public to believe that we are all-powerful. There are certain things a Senator cannot do. I wish this Senator really could put in one bill and stop inflation without throwing the country into a depression. I wish there was a bill that I could put in that would immediately hire all the unemployed. I know everybody is for Humphrey-Hawkins. Nobody believes in unemployment. But if there were some law, some practicable, reasonable, realistic approach to actually hire everybody in the country and finance it without throwing us into recession, depression, inflation, and generally wrecking the economy, every Senator would put that bill in.

I think we mislead, and we have been guilty of that so long—we mislead our constituency—when we act like other Senators do not care. We say, "Mr. Voter, I care. I am worried. But, you know, that hooky crowd up in Washington, they are not careful about this and they do not worry, and we just have to keep fighting."

I think that is one of the greatest disservices we can render our constituency, when we act as if obscenity can be done with a new statute.

We have the general statute on the books. The amendment to this particular Public Broadcasting bill is not going to enhance that in any fashion. I think the offering of the amendment and the dialog between the senior Senator and myself are going to have a helpful effect again on the broadcasters. But I hope he will not press the amendment further because then we will have to go into further debate. I would like to hear from the Senator, so let me yield at this time.

Mr. THURMOND. Mr. President, I realize it would be too late in this session to hold any hearings this year, and I am wondering if the distinguished Senator will—and I am sure he will—carry strict surveillance over this programing and also set some hearings for sometime next year on this question we have been discussing?

Mr. HOLLINGS. Very, very definitely. I am sorry that the Senator from Pennsylvania (Mr. HEINZ) left, because I have been interested in children's broadcasting, and he has a children's endowment bill. We have had before us the children's advertising on sugared cereals where we opposed language in the Federal Trade Commission appropriation because we thought it was a function of the authorizing or legislative committee not the appropriations committee to address the issue. So we are going to be going into all children's programing in the authorizing commerce committee, we will go directly into those being affected by these obscenities, nudities, and physical violence and morbid torture.

So, we are definitely going to set those hearings next year, and we would welcome the Senator's appearance at that time.

Mr. THURMOND. Mr. President, in view of the fact that hearings will be held on these matters concerning children in which, as a parent, I am very interested, and for the other parents of this country, too, I am willing to withdraw this amendment and let the hearings be held, and we will see what comes out of that.

I wish to thank the distinguished Senator.

Mr. HOLLINGS. I thank my distinguished colleagues for bringing it to our attention.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 1849

(Purpose: To delete funding past fiscal year 1981)

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. METZENBAUM). The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. GRIFFIN) proposes an unprinted amendment numbered 1849.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, strike all from "For" on line 23 through "1983," on line 24, and insert in lieu thereof "For the fiscal year 1981,"

On page 26, lines 4–5, strike "and $200,000,000 for each of the fiscal years 1982 and 1983"

On page 28, strike line 1, and insert in lieu thereof "During the fiscal year 1981, such.".

On page 28, strike lines 14–19.

Mr. GRIFFIN. Mr. President, at the present time the Corporation for Public Broadcasting has advance authorizations for 3 years and advance appropriations for 2 years.

Under the bill we are about to adopt we will extend the authorization so the Corporation will be authorized for 5 years in advance.

I believe that Congress, and particularly the committee on which I have the honor to serve with the Senator from South Carolina, who is chairman of this subcommittee, has a responsibility that we delegate away when we pass a bill

that extends an authorization 5 years into the future.

I have no particular quarrel with the idea that the Corporation for Public Broadcasting should not be required or expected to come to Congress each year for the next year's funding or authorization, but I think we are quite generous under the present arrangement where the Corporation has a 3-year advance authorization. Also, which is very unusual they actually receive appropriations 2 years in advance.

The Corporation has considerable flexibility and opportunity to plan and to operate without feeling, so to speak "under the gun" of the Congress.

There are many policy questions connected with public broadcasting, and we have heard a few of them aired today on the Senate floor.

The courts have ruled that Congress has an oversight responsibility with respect to public broadcasting, and that the Congress recognizes that responsibility.

We abdicate this responsibility if we do not exercise that oversight authority. That does not mean we become censors or become programers of public broadcasting. No one is suggesting that, but still, it seems to me, we have a very important responsibility.

I know I will hear the argument that we still have oversight responsibility even with the passage of the bill as it has been reported. That is true.

But I believe the public is better protected, and there is more assurance that we will exercise our oversight responsibility, if, at reasonable intervals, new authorizing legislation is required. As a matter of fact we are talking about sunset legislation that applies across the board to invoke that principle. It seems to me that it is even more appropriate in this situation.

This is an amendment similar to the one I offered in the committee. As I recall it lost by a rather narrow margin. However, it is a question that I would like to put before the Senate for a rollcall vote. I will say to the distinguished chairman of my subcommittee I do not really believe there is a need to take a great deal of time on the amendment.

I will be glad to yield the floor.

Mr. HOLLINGS. Mr. President, before I point out the mechanics, let me discuss briefly the year-by-year funding mechanism previously provided for public broadcasting, this is, annual authorizations and appropriations. I wish the Senator from Arizona were here now. That scheme permitted real political influence over public broadcasting. That was our experience some 4, 5, and 6 years ago, causing the Congress in the main to institute forward funding in order to remove public broadcasting from the annual year-to-year type of political pressures and influence.

Let me point out another mechanical aspect of the Federal funding. Public broadcasting is required to raise, under present law—we have a change in the law in our Senate bill to $2.25—$2.50 for every $1 of Federal funds.

A public broadcasting station—wondering how much it must raise to match—has a pretty good idea what its budget is going to be by the endeavor it puts out to solicit and bring in private contributions.

The fiscal year 1981 appropriation will be contained in the fiscal year 1979 Labor-HEW appropriation bill, which we have yet to pass. So the public broadcasters do not know to this minute what is going to be in that target here. That will have to be done this year, 1978. This amount will only be for matching activity; the Treasury obviously will not disburse the funds until the beginning of 1981.

Let me emphasize that we are at this minute under 2-year authorizations. So this present bill extends us for 3 more years, 1981, 1982, and 1983. The Corporation for Public Broadcasting, the administration itself, asked for 5 more years. The House bill has 3.

Mr. GRIFFIN. Would that have made it 7 years from now?

Mr. HOLLINGS. That would have made it 7 years; yes.

Mr. GRIFFIN. That would have been something.

Mr. HOLLINGS. That is right. I resisted that, as the distinguished ranking Republican member knows, but what we did was cut it to 3, so that in sum total it would be for a 5-year period.

But let us return to the mechanic of funding. During fiscal 1979, public broadcasters will engage in their fundraising activity all over the land to match that target amount, and then, in 1980, these same broadcasters will compile their individual fundraising results and send that information to the Corporation for Public Broadcasting. In fiscal year 1980 the CPB will audit the reports, and certify that aggregate amount to the Treasury.

Then at the beginning of 1981, the proper level of Federal funds is disbursed to the Corporation for Public Broadcasting.

Mr. President, in no event does the Corporation for Public Broadcasting receive more than has been previously authorized or appropriated. However, without forward funding there would be a whip effect, great difficulty in making long-term planning. The distinguished Senator's amendment would severely hamper that advance planning process.

Mr. GRIFFIN. Of course, to keep our arithmetic straight, we have to keep in mind that they already have 2 years advance authorization; so under my amendment they would have 1 more year, which would be 3 years.

Mr. HOLLINGS. That is right; keep the arithmetic straight. They presently have in the law the 2 years—fiscal year 1979 and 1980. This bill would now authorize 3 years, and we think this is orderly procedure.

There are many reasons. We did not choose the 3-year period arbitrarily. There are several factors that led the committee to determine that the 3-year authorization was the most desirable length of time.

Under the reform concept involved in S. 2883, 3 years are needed for us to obtain the information on which to act and guide us in our congressional oversight, and not hurt it. Any shorter period would mean we would be acting without the information sought to be provided by S. 2883. The major objective of multiyear authorizations is always that of insulating public broadcasting against political influence, and giving it as much autonomy as possible. Since we have been talking with the distinguished leaders of the nations of Egypt and Israel about the difference between sovereignty and autonomy all day, we can borrow that word. We have afforded discussion within the committee in our hearings, and I want to note also that on the House side, they also agreed to the additional 3-year authorization.

As the Senator indicates, you can argue, you can talk about the oversight and elaborate more on the politics, but this 3 years is the general consensus and recommendation. It is not necessarily wholly in harmony with the Corporation for Public Broadcasting itself, because they would like to have a 5-year authorization, but being on the Budget Committee, I try to cut back on the multiyear bills because there are too many uncontrollables now.

I think the 3-year authorization is a proper compromise authorization. It passed the full committee almost unanimously—the Senator from Michigan did disagree; he has his amendment there, and I would suggest, unless there is further discussion, we go ahead and vote the amendment up or down.

Mr. GRIFFIN. I agree with the Senator.

Mr. HOLLINGS. Does the Senator wish the yeas and nays?

Mr. GRIFFIN. Yes.

Mr. HOLLINGS. The Senator does wish an up-or-down vote on this amendment.

Mr. GRIFFIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. GRIFFIN. I suggest the absence of a quorum.

Mr. HOLLINGS. Well, let me cover several other matters while we get a quorum here.

We can also send for our distinguished friend the Senator from Wisconsin, who had a matter he would like to bring up on the floor, and is waiting. And if we can withhold there, Mr. President, I could go into one dialog we were going to have between the distinguished Senator from Connecticut (Mr. WEICKER) and myself. We wanted to have this exchange relative to the long-range planning requirement.

Again, here is another Senator who says the issue is not just censorship, not just the White House and the Executive, but the Congress itself.

COLLOQUY BETWEEN SENATOR WEICKER AND SENATOR HOLLINGS

Mr. WEICKER. Mr. President, I have several questions I would like to ask the distinguished floor manager of this bill.

I am particularly interested in section 305 which requires the Corporation for Public Broadcasting to create and update annually, a 5-year plan for the de-

velopment of television and radio services. That is certainly a laudable objective. I note, however, that in contrast to the House bill, S. 2883 would require that this plan be submitted annually to the Congress. Can the Senator assure us that such reports are for informational purposes only, and that it is not the intention of this provision to have the Congress influence the programing plans of public television entities or the Corporation?

Mr. HOLLINGS. I can assure the Senator that we do not intend this 5-year plan to be a vehicle for the Congress to meddle in the programing of the public television and radio stations on the Corporation. Our goal here is to force the Corporation to plan ahead, to go through the discipline each year of looking down the road, of anticipating problems, of setting goals and objectives. This is simply good management.

Mr. WEICKER. Then the Senator is saying that it would be inappropriate for the Congress, having received these plans from CPB, to try and influence the programing of public television and radio, either directly or through punitive action with regard to appropriations?

Mr. HOLLINGS. That is correct.

Mr. WEICKER. Has the committee considered the possible "chilling effect" upon the Corporation's program planning that this provision would have without the assurances that the Senator has just given us? And given our common desire to avoid congressional intrusion into public broadcast programing, do the benefits of this provision outweigh the misinterpretations to which it might be subject?

Mr. HOLLINGS. I hope my replies to the Senator's questions will provide the kind of assurance he and others are seeking. There should be no misinterpretation here—we are not trying to let Congress meddle in television and radio programing. Instead we are trying to bring to the Corporation the sound business practices it needs to do a more effective job in the future.

Mr. WEICKER. I raise these questions because the Senator from South Carolina and I have just gone through this kind of exercise on the question of children's advertising on television. In that case we tried to make it clear that the Constitution and not the Government should be the arbiter of what this Nation sees, hears, or reads. The Senator's replies here today assure me that our intentions in that case will be carried through to this bill.

I thank the Senator.

Now, Mr. President, I ask for the yeas and nays on the amendment of the Senator from Michigan.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. McCLURE. Will the Senator yield?

Mr. HODGES. I yield.

Mr. McCLURE. I believe there is an effort being made to get a sufficient second for the yeas and nays. I wonder if I might at this time raise a question with respect to a provision in the bill and perhaps get some assurances, or at least some feeling, from the managers of the bill concerning a problem which is not directly touched upon by this bill which is pending before us now, S. 2883, but is in the House-passed bill.

It is an issue of considerable concern to me and, I imagine, to the Members of this body. I refer to the provision in H.R. 12605 which would, for the first time, permit editorializing by public broadcasting stations.

Under section 399 of the Communications Act, no noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office. The House bill would eliminate this prohibition for all stations and substitute a new provision merely prohibiting them from supporting or opposing candidates for public office. The Senate bill contains no such language and leaves section 399 intact.

Mr. President, I believe it would be extremely unwise and unfortunate for the Congress to amend section 399 and permit public telecommunications entities to express their opinions on political candidates or editorialize on public issues in any way.

To remove the prohibition against editorializing is contrary to the purpose for which the public broadcasting system was conceived and the charter under which it was established. Public broadcasters are, themselves, not unanimous or enthusiastic in their support for this proposed change. Moreover, to allow noncommercial broadcasters to become embroiled in politics and political debate would, in my opinion, destroy the integrity and nonpartisan framework of the public broadcasting service, impair popular acceptance and support for a public-financed telecommunications system, and jeopardize continued congressional support for the Corporation for Public Broadcasting, the Public Broadcasting Service, and National Public Radio.

This issue was thoroughly debated when the 90th Congress considered and passed the Public Broadcasting Act of 1967, and it was decided then that a prohibition against editorials by noncommercial educational outlets was advisable. The conference report on the legislation establishing the Corporation for Public Broadcasting (S. 1160) stated:

It should be emphasized that these provisions are not intended to preclude balance, fair, and objective presentation of controversial issues by non-commercial, educational broadcast stations. These provisions are consistent with the requirements of section 396(g)(1)(A) of the Communications Act of 1934—

Which was also added at that time—

Which require that programs or series of programs of a controversial nature which are made available by the Public Broadcasting Corporation must adhere strictly to objectivity and balance.

Although the legislation contained this language preventing editorializing as well as a provision for a bipartisan board of directors (CPB), some Members of Congress warned that the danger that noncommercial television could become a partisan political tool was not entirely eliminated. Although it was assumed then that stations would adopt a fairminded approach when presenting "fair" and "unbiased" documentaries, public affairs and news programs, there was, and is, no guarantee of objectivity or balance. Of course, it is impossible to appear "impartial" or "nonpartisan" or even "fair" to every viewer.

As we all know, there have been instance when Public Broadcasting has been criticized for exhibiting bias and a woeful lack of objectivity in its programing. On several occasions PBS has offered programs which have seemed to many viewers to contain blatantly partisan content or even left-wing propaganda. Fortunately, these deplorable instances have not been commonplace and the major portion of noncommercial programing has been fare of exceptional quality and without controversial overtones. Moreover, local public radio and TV outlets, such as those in Idaho, have done a good job of presenting both sides of the question when covering public issues of interest to local communities. Still, I shudder at the idea of giving taxpayer-supported, noncommercial broadcasting stations carte blanche to do whatever their management might want, to offer controversial programing, without strict adherence to objectivity and balance.

Let my position be completely clear: I oppose Government restrictions on free speech and, as a general rule, I do not favor Federal controls on broadcasting.

Mr. GRIFFIN. Will the Senator yield so we may ask for the yeas and nays on the Griffin amendment?

Mr. McCLURE. I yield without losing my right to the floor so that we might ask for the yeas and nays on the Griffin amendment.

Mr. HOLLINGS. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. I doubt that the so-called fairness doctrine and other such FCC regulations have done much to guarantee fairness in programing. I suspect they have been counterproductive, by creating a chilling effect on broadcasting and even preventing local broadcasters from exploring controversial issues.

But public noncommercial radio and TV is not the same as private commercial broadcasting. Since taxes are being used to support the public telecommunications system in our Nation, the public broadcast licensees have a duty to see that the programing they offer—especially the presentation of controversial public issues—is nonpartisan, balanced, and fair. Many local public broadcasters share my views on this matter. Recently I received a letter from the general manager of a public radio and TV facility in Idaho critical of the House bill. He said in part, and I quote:

I do not feel it is appropriate for these stations to provide editorial comment. Our station has a policy that on controversial issues, we seek both sides of the issue and provide adequate time for the issue to be presented. Comment by responsible people representing the various viewpoints are welcome. However, the station does not take an official position on either side.

For these reasons, Mr. President, I believe that any relaxation of the section 399 prohibition against editorializing by noncommercial public broadcasters must be resisted. I, for one, would oppose any future Federal funding for a public telecommunications system which could be exposed to the vagaries of politics and the pressures of partisanship.

I strongly urge the Senate conferees, particularly the distinguished chairman and ranking member of the Communications Subcommittee, to insist that the language of the House bill be stricken on this point and that the section 399 prohibition remain as provided in the Senate bill.

Mr. President, I wonder if the distinguished Senator from South Carolina would comment with respect to the intentions of the Senate conferees in regard to the House provision striking the prohibition of editorial comment?

Mr. HOLLINGS. I simply say, Mr. President, that my sentiments are those of the Senator from Idaho. The fact of the matter is that I agree with him that if we allow editorializing or sponsorship of political candidates, it could be the death knell of public broadcasting. That is precisely the matter of concern which we discussed with the distinguished Senator from Arizona.

Section 399 of the Communications Act of 1934 provides:

> No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office.

This is the intent of the committee, that we adhere to that provision although modified in the House bill, the section is not changed in our bill.

Mr. McCLURE. I appreciate the comment of the Senator. I know that he will be one of the more influential of the Senate conferees when they go to conference with the House on this measure. I assume the comment that was made is that it would be the intention of the conferees to insist that that language be stricken when they get to conference. Am I correct in that assumption?

Mr. HOLLINGS. Yes.

I yield to the Senator from New Mexico.

Mr. SCHMITT. I cannot guarantee that I shall be a member of the conference committee, but certainly, if I am, I completely agree with what both the Senator from Idaho and the Senator from South Carolina have said. This is a completely inappropriate authority for Public Broadcasting and we shall do everything we can to assure that the House position does not prevail on this issue.

I have a distinct impression that the conferees on the Senate side feel strongly enough on this issue that the House, in fact, will not prevail.

Mr. McCLURE. I thank the Senator.

Mr. SCHMITT. I also compliment the Senator for his statement on this subject. I think it expresses the sentiment of a large majority of the Senate and we shall do our best to assure that it is also the sentiment of the Congress as a whole.

Mr. McCLURE. I thank the Senator for that comment. It is my understanding that the Senator from Michigan also shares that feeling. I do not want to put words in his mouth in assuming that and I shall allow him to speak for himself.

I should like to say that, as a Member of the other body when the act was passed some years ago, one of the great reservations I had in my mind was whether or not the Public Broadcast System could be immune from manipulation on behalf of or against certain elements in our society. I voted for it and I have supported public broadcasting since that time. I am happy to say that the worst fears of those who were afraid it might happen have not been realized. The best judgment that has been given is that the objectivity level has been very high, not uniform and not total, and judgment may vary upon that score.

As for the Senator from Idaho, I have not been displeased with their ability to refrain from trying to persuade the public or propagandize the public toward a particular point of view. If they ever move away from that standard, I think they will be in very grave difficulty in both Houses of Congress because, certainly, we do not want a Government propaganda agency funded by the taxpayers' dollars.

Mr. President, I understand that we are about ready to vote on the amendment of the Senator from Michigan. Is that correct?

Mr. HOLLINGS. That is correct. As soon as he returns, we are going to yield back our time, and the yeas and nays have been ordered.

Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. HOLLINGS. What we are trying to do, Mr. President, is give stability to public broadcasters. They never have had real stability. We have never been able to guarantee absolute political independence. That is what we are doing under this 5-year proposal. That is why the committee, after due deliberation, defeated a similar amendment in executive session. I ask that our colleagues turn this amendment down at this time in favor, of course, of the 5-year program.

The 3-year forward funding provision of this bill is added on to the remaining 2 years we have in the law right now. In other words, under the law, today, we have an authorization for 1979 and 1980. The bill we are now voting on will pick up the years 1981, 1982, and 1983. If you favor the Griffin amendment, you just cut it back 2 years and it will only be a 1-year funding provision under this bill.

The yeas and nays have been ordered, Mr. President.

Mr. SCHMITT. Mr. President, if the Senator will yield, it is my understanding that the Senator from Michigan has no further comment and is willing to yield back the remainder of his time. I do so in his behalf.

Mr. HOLLINGS. I have just been given word that the Senator from Nevada would like to be heard on this amendment.

Mr. McCLURE. Mr. President, I asked the Senator from Michigan if it would be all right that I ask unanimous consent to be added as a cosponsor to his amendment. He indicated that it would. I therefore make that unanimous-consent request at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, we are prepared to yield back our time; we are ready to vote.

Mr. SCHMITT. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. CLARK), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Georgia (Mr. NUNN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) and the Senator from Iowa (Mr. CLARK) would each vote "nay."

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from North Carolina (Mr. HELMS), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The result was announced—yeas 20, nays 63, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS—20

Allen	Domenici	Packwood
Baker	Garn	Schmitt
Bartlett	Griffin	Schweiker
Bellmon	Hatch	Wallop
Chafee	Hayakawa	Young
Curtis	Laxalt	Zorinsky
Dole	McClure	

NAYS—63

Anderson	Hart	Metzenbaum
Bayh	Hatfield, Mark O.	Morgan
Bentsen	Hatfield, Paul G.	Moynihan
Bumpers	Hathaway	Muskie
Burdick	Heinz	Nelson
Byrd, Harry F., Jr.	Hodges	Pell
Byrd, Robert C.	Hollings	Percy
Cannon	Huddleston	Proxmire
Case	Jackson	Randolph
Chiles	Javits	Riegle
Church	Johnston	Roth
Cranston	Kennedy	Sarbanes
Culver	Leahy	Sasser
Danforth	Long	Sparkman
DeConcini	Lugar	Stafford
Durkin	Magnuson	Stevens
Eagleton	Mathias	Stevenson
Eastland	Matsunaga	Stone
Ford	McGovern	Talmadge
Glenn	Melcher	Thurmond
Gravel	Metcalf	Weicker
		Williams

NOT VOTING—17

Abourezk	Haskell	Pearson
Biden	Helms	Ribicoff
Brooke	Humphrey	Scott
Clark	Inouye	Stennis
Goldwater	McIntyre	Tower
Hansen	Nunn	

So the amendment (UP No. 1849) was rejected.

UP AMENDMENT NO. 1850

(Purpose: To place a limit on salaries of officers of the Corporation, the Public Broadcasting Service, and National Public Radio)

Mr. McCLURE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1850.

Mr. McCLURE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17, between lines 19 and 20, insert the following:

COMPENSATION OF OFFICERS AND EMPLOYEES

SEC. 303. Section 396(e)(1) of the Communications Act of 1934 is amended by inserting after the first sentence the followingg new sentence: "No officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code.".

Redesignate sections 303 through 308 as sections 304 through 309, respectively.

On page 31, line 18, strike out the closing quotation marks and the second period, and after line 18 insert the following:

"(9) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization) unless assurances are provided that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code.".

Mr. McCLURE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, will the Senator yield for 1 minute?

Mr. McCLURE. I yield.

Mr. JAVITS. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. MATSUNAGA). The Senate will be in order. Members will please cease conversation. Senators will take their seats. Staff members will retire to the assigned seats in the rear of the Chamber.

Mr. JAVITS. Mr. President, I would like the attention of the manager of the bill.

Senator CRANSTON and I are deeply interested in the handicapped, and we have noticed that in the nondiscrimination section of the bill, respecting employment by all public telecommunication entities receiving funds pursuant to subpart C, and so forth, which is contained in section 398(b), at page 35, the question of discrimination is limited to the grounds of race, color, religion, national origin, and sex. It does not includes the handicapped.

We realize that Secretary Kreps, who is going to have administration of this, is a very enlightened lady. We realize, also, that the Senator would like to have some concept as to what it would mean to include the handicapped in this particular section, but that the manager of the bill is very strongly in favor of a fair employment opportunity for the handicapped, as are we.

Therefore, the suggestion has been made—and we would like to have his views and confirmation—that he could get a letter from the Secretary of Commerce, before the matter goes to conference, as to what will be the policy of the PBC respecting this question of discrimination regarding the handicapped.

Mr. HOLLINGS. Mr. President, I thank the Senator from New York and the Senator from California for bringing this to the attention of the Senate. It concerns me.

We all have been concerned with the handicapped. I have dealt directly with that particular provision in education matters. My only misgiving, momentarily, is that I do not know the impact on the telecommunications facilities fund. I am sure that Secretary Kreps will give us a satisfactory answer.

I say to the Senator that we have spent a good deal of time with respect to equal employment opportunity for minorities and for women under this bill. We put strong EEO provisions in this bill after good, comprehensive hearings.

However, we were not apprised of the specific matter of including the handicapped in this bill until a few days ago.

So I ask the Senator's forbearance until we can get that letter from Secretary Kreps as to her particular policy now, with her new functions and duties under this bill. I am sure it will be satisfactory. Then we can look closely at that $40 million telecommunications facilities fund and realistically provide ample funding for all its purposes. I do not want to include it in this particular statutory language. Of the 75 percent allocated for new and expanded existing telecommunications facilities, and 25 percent to refurbish present public broadcasting stations. I am concerned of possible excessive dilution of this limited fund, but do want to focus directly on the issue.

Mr. JAVITS. Mr. President, under the circumstances, and considering that the Senator is on our side, that solution seems satisfactory to me.

Mr. HOLLINGS. I am sure the Senator from California would want to join in this.

Mr. CRANSTON. Mr. President, I conferred with both Senators during the rollcall vote that was just completed.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Idaho has the floor. Does the Senator from Idaho yield to the Senator from California?

Mr. McCLURE. What is the time limit on the Senator's amendment?

The PRESIDING OFFICER. Thirty minutes to each side.

Mr. McCLURE. Mr. President, I do not wish to cut off the colloquy, but it is my time that is being consumed.

Mr. HOLLINGS. Let us yield time on the bill. Is that satisfactory to the Senator from Idaho?

Mr. McCLURE. Of course.

Mr. HOLLINGS. Mr. President, I ask unanmious consent that the time consumed by the Senator from New York, the Senator from South Carolina, and the Senator from California with respect to the provision for the handicapped be allocated to the bill, not to the amendment of the Senator from Idaho.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. I wish that there had been an opportunity in the hearings to go into this matter.

I wish we had time in the Chamber to consider the matter now, but the manager of the bill feels that it is necessary to learn more before dealing with the problem intelligently.

Senator JAVITS. I know, wishes to proceed but understands the difficulties of proceeding at this time.

I concur with the suggestion made by the Senator from New York and accepted by the Senator from South Carolina that we write and see what response we get from the Secretary. If the response does not give satisfactory assurances and I am not sure there can be satisfactory assurances without specific provisions in the law, then we do have an understanding, as I take it, that there will be hearings on this matter and we can move forward with legislation to deal with the problem.

Mr. HOLLINGS. Very definitely, I say to the Senator, that we will get the communication from the Secretary of Commerce. If there is any question or any feeling on the part of any of the parties concerned or any Senator concerned that we should have hearings, I would welcome those hearings, at which time we would hear from the Secretary and other interested parties. If necessary, we would simply proceed to amend the Public Broadcasting Act again, We can always amend and provide further.

Mr. CRANSTON. There will be a vehicle available for that purpose—that is, legislation to deal with this problem.

Mr. HOLLINGS. Yes.

Mr. CRANSTON. With that understanding, fine. I had been prepared to offer an amendment with regard to handicapped individuals. As a result of the assurances by the floor manager, I will not offer that amendment now. I ask unanimous consent that the text of the amendment and a floor statement in support of it be printed at this point in the RECORD.

There being no objection, the amendment and statement were ordered to be printed in the RECORD, as follows:

On page 3, line 5, strike out "minorities and women" and insert in lieu thereof "mi-

norities, women, and handicapped individuals".

On page 6, line 22, strike out "minority and women's" and insert in lieu thereof "minority, women's, and handicapped individuals".

On page 6, lines 24 and 25, strike out "minority and women" and insert in lieu thereof "minorities, women, and handicapped individuals".

On page 10, lines 2 and 3, strike out "minorities and women" and insert in lieu thereof "minorities, women, and handicapped individuals".

On page 35, line 10, strike out "sex" and insert in lieu thereof "sex; and no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be subjected to discrimination in employment by any such recipient".

On page 38, between lines 16 and 17, insert the following new paragraph:

"(3) The term 'handicapped individual' means any such individual as defined in section 7 (6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 706(6))."

On page 38, line 22, strike out "(4)" and insert in lieu thereof "(5)".

On page 39, line 3, strike out "(5)" and insert in lieu thereof "(6)".

On page 39, line 9, strike out "(6)" and insert in lieu thereof "(7)".

On page 39, line 21, strike out "(7)" and insert in lieu thereof "(8)".

On page 40, line 17, strike out "(8)" and insert in lieu thereof "(9)".

On page 41, line 3, strike out "(9)" and insert in lieu thereof "(10)".

On page 41, line 10, strike out "(10)" and insert in lieu thereof "(11)".

On page 41, line 19, strike out "(11)" and insert in lieu thereof "(12)".

On page 41, line 25, strike out "(12)" and insert in lieu thereof "(13)".

On page 42, line 8, strike out "(13)" and insert in lieu thereof "(14)".

On page 43, line 1, strike out "(14)" and insert in lieu thereof "(15)".

On page 43, line 5, strike out "(15)" and insert in lieu thereof "(16)".

FLOOR STATEMENT

Mr. President, the amendments I offer for myself, Mr. JAVITS, the ranking minority member of the Committee on Human Resources, and Mr. RANDOLPH, the chairman of the Subcommittee on the Handicapped, are designed to make specific that handicapped individuals are covered by appropriate provisions with respect to special consideration and equal employment opportunity requirements.

Mr. President, the report to accompany S. 2883 asserts that "since all taxpayers support public broadcasting, it is imperative that service to unserved or underserved populations be substantially increased". In this regard, the bill, as reported, includes as a "basic objective" the involvement by and increase of non-commercial, educational and cultural radio and television service to minorities and women. To accomplish this end, the secretary of commerce is required to take affirmative steps to inform minorities and women of the availability of funds and the localities where new public telecommunications facilities are needed and to provide such other assistance and information as may be appropriate. Further, the secretary is required to give special consideration to applications which increase minority and women operation of, and participation in, public telecommunications entities.

In addition, with respect to the approval of applications for construction and planning grants, the Secretary of Commerce is required to base determinations of whether to approve an application, in part, on criteria designed to achieve "the development of public telecommunications facilities operated by and available to minorities and women".

Mr. President, the requirements for special consideration, and so forth, that I have cited do not include handicapped individuals among the covered groups. I find this apparent oversight unfortunate.

As indicated recently by Stanley Fleishman, the counsel for the California Association of the Physically Handicapped:

"Television confers status on those individuals and groups it selects for placement in the public eye, telling the viewer who and what is important to know about, think about, and have feelings about".

But, as emphasized by Mr. Fleishman, with respect to fair treatment in television, "virtually no progress has been made on behalf of people with handicaps".

Mr. President, the place to start in order that progress might be made is right here with public broadcasting. As stressed in the committee report, it is imperative that service to unserved or underserved populations—such as handicapped individuals—be substantially increased.

The proposed amendment would place handicapped individuals on the same footing as minorities and women with respect to steps to be taken to increase participation. Again I quote from the committee report—"public broadcasting must be responsive to the needs and interests of all segments of the population, especially to the needs and interests of disadvantaged groups." Certainly, handicapped individuals comprise one such group.

In addition to including handicapped individuals on equal footing with minorities and women with respect to such special consideration, the proposed amendment would extend the bill's equal employment opportunity requirements to include handicapped individuals.

Mr. President, recently, I received from a constitutent a letter with respect to a complaint he had filed under section 504 of the Rehabilitation Act of 1973 concerning discrimination by a public broadcaster against the deaf and hearing impaired.

In response, Frances Farmer, director of the Intergovernmental Affairs Office for Civil Rights, of the Department of Health, Education, and Welfare, wrote that Congress recently held hearings to determine what agency will have responsibility for enforcing civil rights provisions as part of its consideration of the Public Broadcasting Financing Act of 1978. She said:

"Because the corporation for public broadcasting receives Federal funds from several sources (including this department) and is licensed by the Federal Communications Commission, there was disagreement about which agency should have civil rights enforcement responsibility. . . . I regret that I am unable to provide specific information about civil rights enforcement in public television broadcasting. We will hold your complaint and contact you when the Congress decides which agency shall have enforcement responsibility."

Unfortunately, with respect to complaints based on handicap, under the bill, as reported, there would continue to be disagreement.

No protection is extended to handicapped individuals and no determination is made as to enforcement responsibility. The proposed amendment would remedy this failure to include handicapped individuals among those covered by the equal employment requirements added by the bill, for which H.E.W. is given enforcement responsibilities.

In addition, the proposed amendment would make specific that, for the purposes of this act, handicapped individuals would be defined as presently defined, for purposes of Civil Rights programs, in the rehabilitation act of 1973. This provision would assure administrative ease and avoid confusion caused by having different definitions.

In sum, Mr. President, the proposed amendments make specific that, with respect to equal employment opportunities, special consideration requirements, and other Civil Rights obligations handicapped individuals, are included.

Mr. JAVITS. I thank my colleagues.

Mr. HOLLINGS. I thank my colleagues.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I did not make a request in regard to time, because I expect I will not take all of my time on this amendment. It is a relatively simple amendment and can be explained very quickly.

The amendment I have offered will place a limit on the salaries of public broadcasting executives.

This amendment would provide that no officer or employee of the Corporation for Public Broadcasting could be compensated at an annual rate of pay above level I rates under the Executive Schedule. And I might just note that level I rates are the rates paid for Cabinet officers, and they are currently fixed at $66,000 per year.

Further, funds would not be distributed by the Corporation to the Public Broadcasting Service or National Public Radio unless it receives assurances that no officer or employee of PBS or NPR will be compensated at an annual rate above Executive Level I.

This amendment is identical to language contained in the public broadcasting bill passed by the House. I refer to sections 303 and 307 of H.R. 12605.

The purpose of this amendment is to insure that no official at any public telecommunications organization which receives Federal funds will be paid more than $66,000 a year. I do not believe this is an unreasonable restriction. And I see no good reason why an executive at the Corporation for Public Broadcasting, the Public Broadcasting Service, or National Public Radio should receive a higher salary than a Cabinet Secretary.

All of these public broadcasting entities receive Federal funding, and there is a necessary commingling of private contributions and public moneys in the funds from which the Corporation, PBS, and NPR compensate their employees. The taxpayers of this Nation have a legitimate interest and concern in having their tax dollars in these funds used wisely and effectively. They also have a stake in the growth and development of a public telecommunications system in this country.

I think it is fair to say that the American people are not interested in paying public broadcasting executives exorbitantly high salaries.

The purposes for which long-term financing is to be provided under this legislation are laudable. I do not quarrel with spending the people's taxes on improving the facilities, operations and programing of our Nation's public radio and TV systems. But the limited funds that we can afford to authorize at this juncture for the development of public broadcasting in the near future should be used carefully.

Noncommercial telecommunications services are not yet widely appreciated, understood, or supported by the public. It would be unfortunate if this fledgling public medium which is supposed to serve the people were to develop an image of profligacy and fat-cat elitism.

The Corporation for Public Broadcasting, PBS, and NPR does not have to pay extraordinarily large salaries to attract good talent. I have found that those employed at public radio and TV stations in Idaho and elsewhere are dedicated, motivated, and talented professionals. Like school administrators and other public officials, they hold jobs which depend on public support and for which they provide a public service. They take immense pride in their work. They do not expect to be rewarded for their efforts as if they were high-priced corporate executives, nor do they expect officials at CPB, PBS, and NPR to be so highly paid.

Public broadcasting is not in competition with commercial broadcasting. It performs a wholly different function, it provides a different kind of service and it operates in a different way. The Commerce Committee's report on this legislation makes this point quite clear. At page 20, for instance, the report states that

> The Committee is concerned about the trend toward accumulation of centralized "network" powers in public broadcasting . . . From the very first, the Congress has made clear its determination that public broadcasting not develop into a "fourth" network . . .

I share the committee's concern. Accordingly I do not believe that either the Corporation or the CPB-funded public radio and TV organizations should pay their executives at levels comparable to ABC, CBS, or NBC officials.

In the wake of proposition 13 and in light of increasing public demands for Government to exercise frugality, to eliminate frills and to limit spending, I think it would be unwise for the Members of the Senate not to accept the House's language and approve some modest limits on the salary levels of public radio and TV personnel. For these reasons I hope that the Senate will approve this amendment.

Mr. President, it seems to me that Cabinet officers, Secretaries of the President's Cabinet, are certainly as deserving of pay as are officials of the public broadcasting system.

I might note, Mr. President, that it has been argued and undoubtedly will be argued that there are not very many above this and I will not save very much money. Let me answer that argument before it is made, Mr. President, by indicating that, indeed, it will not save very much money; therefore, it cannot be much of an imposition unless it is the intention of those within the public broadcasting service to have a very large increase in salaries in their near future.

Mr. President, there is now no limitation on the salary that can be paid except the judgment of those who are setting the salary schedule and not Congress, and this is taxpapers' money commingled with private funds that pay these salaries.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield myself a few minutes.

I understand the Senator wants the yeas and nays. Do we have enough Senators in the Chamber?

Mr. McCLURE. They have already been ordered.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

Mr. HOLLINGS. They have been ordered. Excuse me. All right.

Mr. McCLURE. I thank the Senator.

Mr. HOLLINGS. I shall be as brief as I possibly can, not because this is unimportant, but because there are strong arguments both ways.

There is an argument on the sides of the Corporation—if it is a private entity, without political influence, and let us try to treat it as such. If we start legislating salary limitations we treat it as a governmental entity. That would be my real objection in this particular matter.

When one talks about "fat cat" elitism, I could make a nice talk on that particular score. The truth is that the salary levels in this particular industry are as follows: The ABC chairman receives $750,000 plus stock options, totaling in excess of a million dollars. The CBS chairman receives $500,000 plus stock options; the NBC chairman receives $300,000 plus stock options; and then the different presidents as well as the chairmen. One can come right down, Mr. President, to the weatherman. If we can get a break here and go on home and turn on the television weatherman in this town we are going to listen to a gentleman, Mr. Willard Scott, who makes between $80,000 and $90,000 a year.

I do not know about elitism, but when we finally get down to the weatherman then you and I have to look at whether that is right or that is wrong, that is what they are paying him. I certainly do not recommend that we try to equal it. The Corporation is bringing in now as its president the president of the University of Michigan to replace Mr. Loomis, and it is reported—but I am not certain of this—that he would be paid at the same level of $70,000. I do not think that level to be exorbitant. On the contrary, I am confident if he is coming from the University of Michigan he is taking a cut in pay. You see, CPB officers do not make honoraria by going out and making talks or writing articles or the like. Nor can they own a farm or run a farm and make earned income there. Rather we just look at the salary levels and see whether we have got a public problem, and if you will turn to page 137 of the particular hearing, you will find there are only three individual positions which exceed the Senator's proposed salary ceiling: Involved at $69,352, $70,000, and $62,000. If we pass the Senator from Idaho's amendment, then what we have done is to say, in a demeaning sense, is, "Look, you really are a governmental entity," and all the Government saves is approximately $5,000. That is why the committee resisted a salary level.

With that stated, Mr. President, I would be glad to hear from any other Senator and yield back the balance of our time.

We will have to oppose the amendment because, while the Corporation may be paying a little bit more than the distinguished Presiding Officer and I are paid, and we are going to pay, it is not excessive, it is not fat cat elitism. Furthermore, we do have committee oversight here, and if it really is the fat cat elitism charged, I am going to be hollering louder than the Senator from Idaho.

The PRESIDING OFFICER. Does the Senator from Idaho yield back his time?

Mr. McCLURE. Mr. President, I do not question that the Senator from South Carolina can yell louder than the Senator from Idaho. I think that has been demonstrated, and I yield that award to him. [Laughter.]

But I would say this: that the Senator has mentioned the salaries of executives of the three networks, multibillion dollar enterprises, who get very high salaries indeed.

I might point out that, I think, it has been reported in the public press that Secretary Blumenthal in his last 18 months as president of Bendix Corp., received in pay and stock options something like $2 million. He is now working for the Government and for the taxpayers of this country at $66,000 a year.

It does not seem to me, Mr. President, that you can ask any more of men who will become Secretaries or the President in the President's cabinet than you would ask of people who are going to serve the taxpayers as executives of the public broadcast media.

I might add, too, Mr. President, I do not know of any restriction on outside income that these men have, and I am not sure it is correct to represent to us that they can have no outside income. They may not be able to earn outside income, and I know my good friend from Maine feels very deeply about the restrictions that have been voted on the floor of the Senate on activities of Members of this body, and that is a sentiment that I share fully, that the coupon clippers are not necessarily more important to this body than are those who may earn some money outside these Chambers.

But, Mr. President, it seems to me that $66,000 a year is sufficient for the men who will be the executives of these public broadcast media if that is an appropriate level for the President's Cabinet officers.

Mr. President, it just seems to me to be beyond any kind of reasonable argument to say that because they are in the broadcast media they, therefore, must be paid more or at least permitted to be paid more.

Saying that, Mr. President, I do not mean to say anything at all to detract from my confidence in the oversight committee. I am conscious of that fact that there is an oversight committee. But there is a very great increase in the amount of money and the stability of that funding for these purposes that I suspect the executives will be trying to get a portion of that increase if this legislation becomes law without any limitation placed upon the salary schedule.

Finally, Mr. President, not because I think we are going to change anybody's mind within the hearing of either of us on the floor, but there is a provision

which the House has put in their bill, and at least the other body has seen fit to establish a limit on this compensation, just as the Congress has placed limits on others who receive payment from the Federal Treasury, from the taxpayers of this country.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, is there a Senator who wishes a rollcall on final passage? I have been trying to indicate to my colleagues whether there is going to be any other rollcall votes tonight. I think this will be the last rollcall. I know the Senator from Wisconsin has a very important matter to discuss, but I think we can reconcile it, once we make that record, without a rollcall.

Before I yield back, I would simply say we are not talking about only the funds in the bill, at $200 million; public broadcasters must raise at least $500 million which added to our $200 million is a $700 million budget. The responsibility is very great, but I did get down to the weatherman. You did not get me down to the weatherman who gets $80,000 and $90,000 a year, and there are plenty of weathermen giving the weather, and I hope we can close quickly enough to go home and get the weather report.

Mr. CURTIS. Mr. President, will the distinguished Senator yield?

Mr. HOLLINGS. I yield.

Mr. CURTIS. I do not think we have had very good weather at that price.

[Laughter.]

Mr. HOLLINGS. I yield back the remainder of my time.

Mr. McCLURE. Mr. President, let me just end by saying the salary schedules in the public broadcast media seem to be more similar to salaries by other public bodies rather than those of private entities. If, as a matter of fact, we are going from $200 million to $500 million, does that imply we go from $70,000 a year salary to $150,000 a year salary? That is a concern this Senator has. Since it is taxpayers' funds that are being spent here, money taken away from the hard-working people of this country, not at their request but at the order of the Congress of the United States, we have a right and they have a right to expect that we will establish as limits for compensation exactly the same level that is established for Cabinet members, $66,000 a year at current salary levels.

Mr. HOLLINGS. Mr. President, 1 minute on the bill before I yield my time. Under section 396(e)(1) on page 68 of the Communications Act of 1934, there is a prohibition against any outside compensation. It is in the act.

Mr. McCLURE. Outside compensation is different from outside income, as the Senator from Maine was very vocal about in expressing it before this body and, incidentally, that distinction——

Mr. HOLLINGS. It is earned income, and that is what I referred to in my earlier remarks.

Mr. McCLURE. It failed to impress this body at that time, and I hope it will impress the body at this time.

● Mr. DOLE. Mr. President, I rise in support of the amendment which would place a cap on the salaries of officials of the Corporation for Public Broadcasting, National Public Radio, and the Public Broadcasting System.

This limitation strikes me as a reasonable response to a genuine public concern about the salaries of Government corporations and independent organizations that receive funding from the Federal Government. There are, of course, valid reasons for insulating the Public Broadcasting System from the political pressures that would surely arise if it were another agency of the Government.

However, one danger of such insulation is that the salaries of officials will get out of hand. This amendment handles the problem without endangering the independence of CPB, NPR, and PBS. I agree with the House limitations and believe that we should include them in the Senate bill as well.

The amendment limits the salaries to that rate of pay in effect for level I of the executive schedule. Right now, that limit stands at $66,000.

There are only three officials, two at PBS and one at CPB that would currently be affected. As such, this is a modest proposal and would not cause major realinements of salaries. However, it will serve as a barrier to future increases in pay above the level I rate.

This amendment is an appropriate approach to the problem and I urge its adoption.●

Mr. HOLLINGS. I yield back the remainder of my time.

Mr. McCLURE. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). All time having been yielded back, under the previous order, a rollcall vote having been ordered, the question is on agreeing to the amendment of the Senator from Idaho.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from North Carolina (Mr. HELMS), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 33, nays 48, as follows:

[Rollcall Vote No. 380 Leg.]

YEAS—33

Anderson	Domenici	Metzenbaum
Baker	Eagleton	Morgan
Bellmon	Garn	Muskie
Byrd, Harry F., Jr.	Griffin	Roth
Chafee	Hatch	Sasser
Church	Hatfield, Mark O.	Schmitt
Clark	Hayakawa	Schweiker
Curtis	Heinz	Stafford
Danforth	Laxalt	Talmadge
DeConcini	Leahy	Thurmond
Dole	McClure	Zorinsky

NAYS—48

Bartlett	Hathaway	Pell
Bentsen	Hodges	Percy
Bumpers	Hollings	Proxmire
Burdick	Jackson	Randolph
Byrd, Robert C.	Javits	Riegle
Cannon	Johnston	Sarbanes
Case	Kennedy	Sparkman
Chiles	Long	Stevens
Cranston	Lugar	Stevenson
Culver	Magnuson	Stone
Durkin	Mathias	Wallop
Ford	Matsunaga	Weicker
Glenn	McGovern	Williams
Gravel	Melcher	
Hart	Moynihan	
Haskell	Nelson	
Hatfield, Paul G.	Nunn	
	Packwood	

NOT VOTING—19

Abourezk	Hansen	Ribicoff
Allen	Helms	Scott
Bayh	Huddleston	Stennis
Biden	Humphrey	Tower
Brooke	Inouye	Young
Eastland	McIntyre	
Goldwater	Pearson	

So the amendment (UP No. 1850) was rejected.

The PRESIDING OFFICER. The Senator from New Mexico.

UP AMENDMENT NO. 1851

(Purpose: To require an annual report from the National Telecommunications and Information Administration)

Mr. SCHMITT. Mr. President, very quickly, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT) proposes an unprinted amendment numbered 1851.

Mr. SCHMITT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 43, between lines 10 and 11, insert the following:

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ANNUAL REPORT

SEC. 402. The National Telecommunication and Information Administration shall make an annual report to Congress not later than January 31 of each calendar year, beginning with the calendar year 1980. Such report shall contain information on the activities of the Administration with respect to—

(1) domestic communications;
(2) international communications;
(3) Government communications;
(4) spectrum plans and policies; and
(5) any other matters.

On page 43, lines 12 and 16, redesignate sections 402 and 403 as sections 403 and 404, respectively.

Mr. SCHMITT. Mr. President, Reorga-

nization Plan No. 1 of 1977 and the implementing Executive Order 12046 abolished the Office of Telecommunication Policy (OTP) in the Executive Office of the President and largely transferred its functions to the Secretary of Commerce. With this reorganization, the Secretary of Commerce became principal advisor to the President on telecommunications policy. The Secretary is responsible for the development and implementation of telecommunications policy by the executive branch.

The National Telecommunications and Information Administration (NTIA), under the direction of the Assistant Secretary of Commerce for Communications and Information, was created within the Department of Commerce to perform the functions delegated to the Secretary.

During the time that OTP was responsible for telecommunications policy, an annual report was submitted on an informal basis to the Congress on the principal activities of that Office. I believe it would be useful to the Congress to be kept informed of the principal activities of NTIA and, therefore, I am offering this amendment which requires an annual report to the Congress on NTIA's activities within the following areas: Domestic communications, international communications, Government communications, spectrum plans and policies, as well as any other matters that may be of interest to the Congress.

Mr. President, I believe that the majority manager of this bill has agreed to the amendment. I see that the majority manager has disappeared momentarily, but I can vouch for his agreement.

Mr. President, I am prepared to yield back the remainder of my time. I believe the Senator is in agreement with this amendment for an annual report from NTIA. I have no further comment.

Mr. HOLLINGS. That is the position of the manager of the bill. We agree to the amendment and yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. SCHMITT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

(The following proceedings occurred during Mr. SCHMITT's remarks.)

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for a few moments?

Mr. SCHMITT. I will be happy to yield.

Mr. ROBERT C. BYRD. Mr. President, I sought the floor to inquire as to whether or not any Senator intends to ask for the yeas and nays on any amendment to the bill today or on final passage of the bill today.

The PRESIDING OFFICER. Will the Senator suspend until we have order in the Chamber, please?

The Senate will come to order.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, Mr. SCHMITT has an amendment. Will the Senator ask for the yeas and nays?

Mr. SCHMITT. No, I will not.

Mr. HOLLINGS. Mr. President, the managers will not request the yeas and nays on passage.

Mr. PROXMIRE. Mr. President, I will withdraw my amendment after discussing it.

Mr. McCLURE. If the Senator will yield, I thank the Senator from Wisconsin for allowing me to go ahead of his amendment because he did not expect to have a rollcall vote on his amendment and I did expect to have a rollcall vote on mine. That was done by the Senator from Wisconsin to accommodate the other Senators.

Mr. PROXMIRE. I thank the Senator very much.

Mr. ROBERT C. BYRD. Mr. President, I believe there is a general understanding that there will be no more rollcall votes today on this measure, which includes final passage. Following this measure there will be a message from the House in connection with which Mr. SPARKMAN will speak concerning the appointment of conferees. There will not be a vote. Mr. SASSER will bring up a legislative conference report. I understand there will be no vote on that matter.

Mr. PROXMIRE. Mr. President, I will speak on shipbuilding claims but there will be no rollcall vote.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when these matters are disposed of there be a period for the transaction of routine morning business. Mr. PROXMIRE, I believe, wants to speak at some length.

Mr. PROXMIRE. Yes, on the shipbuilding claims, and that will take some time.

Mr. ROBERT C. BYRD. We will not need morning business because we will have the natural gas report before us, and a Senator can speak on other matters.

Mr. JAVITS. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. We have spoken with Senator HOLLINGS about giving Senator SASSER 2 minutes on the business of appointing conferees, and then Senator SPARKMAN will want to speak. There would be 10 minutes overall.

Mr. ROBERT C. BYRD. Very well, I make that request, Mr. President.

The PRESIDING OFFICER. Will the Senator repeat the request?

Mr. JAVITS. Two minutes on the conference report to be brought up by Senator SASSER and 10 minutes overall on the appointment of conferees by Senator SPARKMAN. We can go ahead now and displace this bill momentarily and then return to it.

Mr. SCHMITT. Reserving the right to object, Mr. President, it will only take a minute or two to complete the action that I began.

Mr. ROBERT C. BYRD. Mr. President, I ask that the request that has just been made follow action on the amendment by Mr. SCHMITT.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank all Senators.

ROUTINE MORNING BUSINESS TODAY—ORDER TO RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business following the statement by Mr. PROXMIRE later today on shipbuilding claims; and that, at the close of that morning business period, which, Mr. President, I ask not to extend beyond 30 minutes overall, the Senate then stand in recess until the hour of 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL ORDER FOR TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, Mr. BARTLETT be recognized for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE BRANCH APPROPRIATIONS, 1979—CONFERENCE REPORT

Mr. SASSER. Mr. President, I submit a report of the committee of conference on H.R. 12935 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12935) making appropriations for the legislative branch for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 9, 1978.)

Mr. SASSER. Mr. President, the 1979 legislative branch appropriation bill, as agreed to in conference, is $1,118,244,000 which is the same as the Senate bill, $26 million below the budget estimates, and well within the $1.2 billion ceiling set for this bill in the first concurrent resolution. The bill is also subject to a further reduction of 5 percent which the Members included in the Senate bill by a rollcall vote of 72–0.

The conference report is the product of a great deal of preparation and effort on the part of both Houses to reach a compromise. Mr. SHIPLEY, Mr. ARMSTRONG, and their fellow conferees were most courteous and gracious to us in our joint effort.

Mr. President, I do not think it is necessary to go over the details of the conference report. The report has been available for some weeks now and I am sure this has given the Members an opportu-

nity to become aware of the result of the conference.

I wish to express my sincere thanks to the distinguished ranking minority member of the subcommittee (Mr. SCHWEIKER) for his support and assistance during the conference.

I also want to express my thanks and appreciation to Mr. Terry Sauvain, the subcommittee clerk, Mr. Pete Bonner of the minority staff, and Mr. Paul Cooksey of Senator SCHWEIKER's staff, for their splendid work.

Mr. President, because this conference report has already been adopted by the House of Representatives and because the chairman of the House conferees included in the RECORD a tabulation which sets out completely the action of the conference, I ask unanimous consent that the usual tabulation of figures be incorporated in the RECORD by reference.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See page 26758 of the RECORD of August 17, 1978.)

Mr. SASSER. Mr. President, before offering the motions, I yield to the distinguished Senator from Pennsylvania for any remarks he may wish to make at this time.

Mr. SCHWEIKER. Mr. President, this conference report is essentially the same bill approved by the Senate August 3, 1978. Significantly, it retains the 5-percent across-the-board cut which we approved.

I support it and I commend the chairman of our subcommittee (Mr. SASSER) for his strong leadership in this area.

This 5-percent cutback, however, did generate some early questions when the conferees attempted to determine the impact such an across-the-board cut would have on the various agencies funded by this bill. Because of the procedure for increasing salaries under Public Law 91–656, the Federal Salary Comparability Act, annual budget increases are mandated by law. For instance, beginning last October 1977, a mandatory 7-percent increase was authorized, and the fiscal year 1978 second supplemental appropriations bill made the necessary funds available to pay this increase.

Since the salaries and other operating expenses for agencies and subagencies are normally combined into an overall budget figure, it has been difficult to compare nonsalary services on a year-to-year basis. For example, nonsalary services would include new books for the Library of Congress, computer rental services for the Congressional Budget Office, or outside consultant services contracted by the Office of Technology Assessment.

When the House and Senate conferees met on this bill, we agreed that all future budget requests should include a separate breakdown for nonsalary services. All future nonsalary requests will compare the current request with the previous year's appropriation, plus any supplemental increases, and will include both the funding level and the percentage of the increase or decrease.

I think this is a very worthwhile bookkeeping change, which I hope might focus more attention on the size of budget increases.

Mr. SASSER. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. SASSER. I move to reconsider the vote by which the conference report was agreed to.

Mr. SCHWEIKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SUPPLEMENTARY FINANCING FACILITY OF THE INTERNATIONAL MONETARY FUND

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9214.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 9214) to amend the Bretton Woods Agreement Act to authorize the United States to participate in the Supplementary Financing Facility of the International Monetary Fund, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from Alabama yield to me?

Mr. SPARKMAN. Mr. President, I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, first I want to express appreciation to the Senator from Wisconsin and the Senator from South Carolina for permitting this measure to come up at this time. I might say in this connection that the Senator from Wisconsin has been sitting here, waiting to speak, since 4 o'clock and it is now 1 minute before 7 o'clock. I am grateful to the Senator from Wisconsin and the Senator from South Carolina.

I say also that I am most grateful to the distinguished Senator from Alabama, the chairman of the Committee on Foreign Relations (Mr. SPARKMAN). I shall not be speaking on the legislation itself.

Mr. JAVITS. Will the Senator yield?

Mr. HARRY F. BYRD, JR. Yes.

Mr. JAVITS. Will he leave 3 minutes for me and ask the Chair to remind him when he has used 7 minutes?

Mr. HARRY F. BYRD, JR. I ask the Chair to remind the Senator from Virginia when 3 minutes remain.

The PRESIDING OFFICER. The Chair will remind the Senator.

Mr. HARRY F. BYRD, JR. Since this matter was first brought up this afternoon, I have had a chance to talk with the Senator from Alabama, who will be the chairman of the Senate conferees. The matter is which the Senator from Virginia is interested is not the bill itself but an amendment which is incorporated in that piece of legislation. The amendment the Senator from Virginia is interested in is now locked into the bill, so it will not be necessary to take much time of the Senate.

On July 31, 1978, the Senate adopted this amendment to the legislation which the Senate is now discussing:

> Beginning with the fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

That amendment was adopted, approved by the Senate, by a vote of 58 to 28, more than 2 to 1.

On September 14, the House of Representatives, in a motion made by Mr. GRASSLEY of the State of Iowa, instructed the House conferees to accept the Senate amendment. So the amendment to which the Senator from Virginia is now directing his remarks is locked into the bill.

It has been passed by the Senate by a 2 to 1 vote and the House of Representatives, on September 14, by a vote of 286 to 91, instructed its conferees to accept the amendment mandating a balanced budget beginning in fiscal year 1981.

While, technically, it still needs to be approved by the committee of conference, all of us know, of course, that the conferees on the part of the Senate and of the House, are honorable individuals and while they are not bound legally, they are bound morally. So as a practical matter, this amendment is now locked into the legislation.

Prior to the action of the House, I had expected to take a little more time of the Senate. But because of the House action, that will not be necessary.

Mr. President, I reserve the remainder of my time and yield 3 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I rise because I think this amendment if construed very narrowly has the potential of becoming a critical bone in the throat of the United States, or, if construed broadly, could, or I believe, express the feeling of the Congress that by fiscal year 1981 we should have a balanced budget.

If we construed the amendment literally, we could conceivably jeopardize the borrowing ability of the United States and the ability of any bond rating group to give the United States a clean bill of health for the issuance of U.S. securities. The most eloquent statement as to why the amendment should be construed broadly rather than narrowly is found in the report of the Banking Committee majority on the Full Employment and Balanced Growth Act of 1977, Report No. 95–1177. It says as follows:

> The Banking Committee recognized that a balanced budget may be counter-productive at times; for example, during periods of recession, or in times of national emergency such as when there is a need for new and expanded military expenditures. The Banking Committee agreed that in times of national emergency, such as wars or other events, there may be good reason for the balanced budget goal to be set aside temporarily.

Now, it is very critical that we crank this view into what is being said here. We are not automatons, and if this Na-

tion is in difficulty and in real danger, a balanced budget simply is not going to be done, notwithstanding that it is in the law.

The provision of the amendment has no sanctions and no operative section. In my judgment, it simply expresses the will and desire of the Congress.

Senator BYRD is 100-percent right; when he said we passed it 2 to 1, I would, however, like to remind my colleagues that it was passed without debate at a very late hour in the day.

I voted against it for the very reasons I have just stated. This is a very eloquent expression of proposition 13 psychology. But it is also a very eloquent expression of where proposition 13 psychology could lead us.

Therefore, it is my duty to insure that this view is on the record.

In view of the fact that this amendment is, as Senator BYRD says, part of a very important bill which may be signed into law, this amendment must be administered and construed, according to the way the Banking Committee has defined what can and cannot be a balanced budget expectation.

I thank my colleague for yielding.

Mr. HARRY F. BYRD, JR. Mr. President, I say that what the Banking Committee report may or may not say, or some other committee report may or may not say, has little to do with the proposition before us.

I will read precisely what the legislation is that was approved by the Senate:

Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

The House of Representatives by a recorded vote in overwhelming numbers, 286 to 91, instructed its conferees to accept that amendment.

For myself, I have every confidence in those who will be Senate conferees, with the distinguished Senator from Alabama being the chairman of the Senate conferees.

If I recollect correctly, of those who will be appointed conferees, most of those voted against the balanced budget amendment when it was before the Senate. But all of them are honorable men and I am certain that the conferees will support the position of the Senate, just as the House conferees will support the mandated position of the House of Representatives.

Mr. SPARKMAN. Mr. President, I say to the Senator from Virginia that he probably knows that I was included; among those who voted against that proposal.

I agree fully with what the Senator from New York has said about what could happen. I certainly do not foresee its happening. I hope we will be able to meet the requirements of it.

But the Senate did approve that amendment and the conferees will certainly, I am sure, go along unanimously with what the Senate has already passed, and the House of Representatives, too.

Mr. HARRY F. BYRD, JR. I thank the Senator from Alabama.

Mr. SPARKMAN. Mr. President, has the matter been laid before the Senate?

The PRESIDING OFFICER. Yes, it has.

Mr. SPARKMAN. Mr. President, I move that the Senate insist on its amendment and agree to the conference requested by the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate whose names I believe the clerk has.

The motion was agreed to; and the Presiding Officer (Mr. PAUL G. HATFIELD) appointed Mr. SPARKMAN, Mr. CHURCH, Mr. SARBANES, Mr. PROXMIRE, Mr. STEVENSON, Mr. CRANSTON, Mr. CASE, Mr. JAVITS, Mr. BROOKE, and Mr. HEINZ conferees on the part of the Senate.

THE NEGOTIATIONS AT CAMP DAVID

Mr. SPARKMAN. Mr. President, President Carter has earned the gratitude of peace loving people everywhere by his able leadership in the negotiations at Camp David. President Sadat and Prime Minister Begin have shown true statemenship in reaching agreement on the two historic documents that culminated those negotiations. Let us hope that the momentum toward peace will continue until at last there is a full settlement in the Middle East.

Mr. President, today both President Sadat and Prime Minister Begin appeared before the Foreign Relations Committee with a great many of the Senators and perhaps even some Members of the House of Representatives in attendance.

It was a great manifestation, I feel, of their interest in permanent peace in the Middle East, and their zeal in working toward that end.

Mr. President, I ask unanimous consent that the two documents by President Carter, and signed by Mr. Begin and President Sadat, be printed in the RECORD.

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

A FRAMEWORK FOR PEACE IN THE MIDDLE EAST AGREED AT CAMP DAVID

Muhammad Anwar al-Sadat, President of the Arab Republic of Egypt, and Menachem Begin, Prime Minister of Israel, met with Jimmy Carter, President of the United States of America, at Camp David from September 5 to September 17, 1978, and have agreed on the following framework for peace in the Middle East. They invite other parties to the Arab-Israeli conflict to adhere to it.

PREAMBLE

The search for peace in the Middle East must be guided by the following:

The agreed basis for a peaceful settlement of the conflict between Israel and its neighbors is United Nations Security Council Resolution 242, in all its parts.*

After four wars during thirty years, despite intensive human efforts, the Middle East, which is the cradle of civilization and the birthplace of three great religions, does not yet enjoy the blessings of peace. The people of the Middle East yearn for peace so that the vast human and natural resources of the region can be turned to the pursuits of peace and so that this area can become a model for coexistence and cooperation among nations.

The historic initiative of President Sadat in visiting Jerusalem and the reception accorded to him by the Parliament, government and people of Israel, and the reciprocal visit of Prime Minister Begin to Ismailia, the peace proposals made by both leaders, as well as the warm reception of these missions by the peoples of both countries, have created an unprecedented opportunity for peace which must not be lost if this generation and future generations are to be spared the tragedies of war.

The provisions of the Charter of the United Nations and the other accepted norms of international law and legitimacy now provide accepted standards for the conduct of relations among all states.

To achieve a relationship of peace, in the spirit of Article 2 of the United Nations Charter, future negotiations between Israel and any neighbor prepared to negotiate peace and security with it, are necessary for the purpose of carrying out all the provisions and principles of Resolutions 242 and 338.

Peace requires respect for the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force. Progress toward that goal can accelerate movement toward a new era of reconciliation in the Middle East marked by cooperation in promoting economic development, in maintaining stability, and in assuring security.

Security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations. In addition, under the terms of peace treaties, the parties can, on the basis of reciprocity, agree to special security arrangements such as demilitarized zones, limited armaments areas, early warning stations, the presence of international forces, liaison, agreed measures for monitoring, and other arrangements that they agree are useful.

FRAMEWORK

Taking these factors into account, the parties are determined to reach a just, comprehensive, and durable settlement of the Middle East conflict through the conclusion of peace treaties based on Security Council Resolutions 242 and 338 in all their parts. Their purpose is to achieve peace and good neighborly relations. They recognize that, for peace to endure, it must involve all those who have been most deeply affected by the conflict. They therefore agree that this framework as appropriate is intended by them to constitute a basis for peace not only between Egypt and Israel, but also between Israel and each of its other neighbors which is prepared to negotiate peace with Israel on this basis. With that objective in mind, they have agreed to proceed as follows:

A. West Bank and Gaza

1. Egypt, Israel, Jordan and the representatives of the Palestinian people should participate in negotiations on the resolution of the Palestinian problem in all its aspects. To achieve that objective, negotiations relating to the West Bank and Gaza should proceed in three stages:

(a) Egypt and Israel agree that, in order to ensure a peaceful and orderly transfer of authority, and taking into account the security concerns of all the parties, there should be transitional arrangements for the West Bank and Gaza for a period not exceeding five years. In order to provide full autonomy to the inhabitants, under these arrange-

*The texts of Resolutions 242 and 338 are annexed to this document.

ments the Israeli military government and its civilian administration will be withdrawn as soon as a self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government. To negotiate the details of a transitional arrangement, the Government of Jordan will be invited to join the negotiations on the basis of this framework. These new arrangements should give due consideration both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of the parties involved.

(b) Egypt, Israel, and Jordan will agree on the modalities for establishing the elected self-governing authority in the West Bank and Gaza. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed. The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority to be exercised in the West Bank and Gaza. A withdrawal of Israeli armed forces will take place and there will be a redeployment of the remaining Israeli forces into specified security locations. The agreement will also include arrangements for assuring internal and external security and public order. A strong local police force will be established, which may include Jordanian citizens. In addition, Israeli and Jordanian forces will participate in joint patrols and in the manning of control posts to assure the security of the borders.

(c) When the self-governing authority (administrative council) in the West Bank and Gaza is established and inaugurated, the transitional period of five years will begin. As soon as possible, but not later than the third year after the beginning of the transitional period, negotiations will take place to determine the final status of the West Bank and Gaza and its relationship with its neighbors, and to conclude a peace treaty between Israel and Jordan by the end of the transitional period. These negotiations will be conducted among Egypt, Israel, Jordan, and the elected representatives of the inhabitants of the West Bank and Gaza. Two separate but related committees will be convened, one committee, consisting of representatives of the four parties which will negotiate and agree on the final status of the West Bank and Gaza, and its relationship with its neighbors, and the second committee, consisting of representatives of Israel and representatives of Jordan to be joined by the elected representatives of the inhabitants of the West Bank and Gaza, to negotiate the peace treaty between Israel and Jordan, taking into account the agreement reached on the final status of the West Bank and Gaza. The negotiations shall be based on all the provisions and principles of UN Security Council Resolution 242. The negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements. The solution from the negotiations must also recognize the legitimate rights of the Palestinian people and their just requirements. In this way, the Palestinians will participate in the determination of their own future through:

(1) The negotiations among Egypt, Israel, Jordan and the representatives of the inhabitants of the West Bank and Gaza to agree on the final status of the West Bank and Gaza and other outstanding issues by the end of the transitional period.

(2) Submitting their agreement to a vote by the elected representatives of the inhabitants of the West Bank and Gaza.

(3) Providing for the elected representatives of the inhabitants of the West Bank and Gaza to decide how they shall govern themselves consistent with the provisions of their agreement.

(4) Participating as stated above in the work of the committee negotiating the peace treaty between Israel and Jordan.

2. All necessary measures will be taken and provisions made to assure the security of Israel and its neighbors during the transitional period and beyond. To assist in providing such security, a strong local police force will be constituted by the self-governing authority. It will be composed of inhabitants of the West Bank and Gaza. The police will maintain continuing liaison on internal security matters with the designated Israeli, Jordanian, and Egyptian officers.

3. During the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a continuing committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern may also be dealt with by this committee.

4. Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem.

B. Egypt-Israel.

1. Egypt and Israel undertake not to resort to the threat or the use of force to settle disputes. Any disputes shall be settled by peaceful means in accordance with the provisions of Article 33 of the Charter of the United Nations.

2. In order to achieve peace between them, the parties agree to negotiate in good faith with a goal of concluding within three months from the signing of this Framework a peace treaty between them, while inviting the other parties to the conflict to proceed simultaneously to negotiate and conclude similar peace treaties with a view of achieving a comprehensive peace in the area. The Framework for the Conclusion of a Peace Treaty between Egypt and Israel will govern the peace negotiations between them. The parties will agree on the modalities and the timetable for the implementation of their obligations under the treaty.

C. Associated Principles.

1. Egypt and Israel state that the principles and provisions described below should apply to peace treaties between Israel and each of its neighbors—Egypt, Jordan, Syria and Lebanon.

2. Signatories shall establish among themselves relationships normal to states at peace with one another. To this end, they should undertake to abide by all the provisions of the Charter of the United Nations. Steps to be taken in this respect include:

(a) full recognition;

(b) abolishing economic boycotts;

(c) guaranteeing that under their jurisdiction the citizens of the other parties shall enjoy the protection of the due process of law.

3. Signatories should explore possibilities for economic development in the context of final peace treaties, with the objective of contributing to the atmosphere of peace, cooperation and friendship which is their common goal.

4. Claims Commissions may be established for the mutual settlement of all financial claims.

5. The United States shall be invited to participate in the talks on matters related to the modalities of the implementation of the agreements and working out the timetable for the carrying out of the obligations of the parties.

6. The United Nations Security Council shall be requested to endorse the peace treaties and ensure that their provisions shall not be violated. The permanent members of the Security Council shall be requested to underwrite the peace treaties and ensure respect for their provisions. They shall also be requested to conform their policies and actions with the undertakings contained in this Framework.

For the Government of the Arab Republic of Egypt:

For the Government of Israel:

Witnessed by:

Jimmy Carter, President of the United States of America.

TEXT OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 242 OF NOVEMBER 22, 1967

(Adopted unanimously at the 1382nd meeting)

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity:

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independent of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles of this resolution.

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

TEXT OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 338

(Adopted by the Security Council at its 1747th meeting, on 21/22 October 1973)

The Security Council

1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;

2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council Resolution 242 (1967) in all of its parts;

3. Decides that, immediately and concurrently with the cease-fire, negotiations start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

FRAMEWORK FOR THE CONCLUSION OF A PEACE TREATY BETWEEN EGYPT AND ISRAEL

In order to achieve peace between them, Israel and Egypt agree to negotiate in good faith with a goal of concluding within

three months of the signing of this framework a peace treaty between them.

It is agreed that:

The site of the negotiations will be under a United Nations flag at a location or locations to be mutually agreed.

All of the principles of U.N. Resolution 242 will apply in this resolution of the dispute between Israel and Egypt.

Unless otherwise mutually agreed, terms of the peace treaty will be implemented between two and three years after the peace treaty is signed.

The following matters are agreed between the parties:

(a) the full exercise of Egyptian sovereignty up to the internationally recognized border between Egypt and mandated Palestine;

(b) the withdrawal of Israeli armed forces from the Sinai;

(c) the use of airfields left by the Israelis near El Arish, Rafah, Ras en Naqb, and Sharm el Sheikh for civilian purposes only, including possible commercial use by all nations;

(d) the right of free passage by ships of Israel through the Gulf of Suez and the Suez Canal on the basis of the Constantinople Convention of 1888 applying to all nations; the Strait of Tiran and the Gulf of Aqaba are international waterways to be open to all nations for unimpeded and nonsuspendable freedom of navigation and overflight;

(e) the construction of a highway between the Sinai and Jordan near Elat with guaranteed free and peaceful passage by Egypt and Jordan; and

(f) the stationing of military forces listed below.

STATIONING OF FORCES

A. No more than one division (mechanized or infantry) of Egyptian armed forces will be stationed within an area lying approximately 50 kilometers (km) east of the Gulf of Suez and the Suez Canal.

B. Only United Nations forces and civil police equipped with light weapons to perform normal police functions will be stationed within an area lying west of the international border and the Gulf of Aqaba, varying in width from 20 km to 40 km.

C. In the area within 3 km east of the international border there will be Israeli limited military forces not to exceed four infantry battalions and United Nations observers.

D. Border patrol units, not to exceed three battalions, will supplement the civil police in maintaining order in the area not included above.

The exact demarcation of the above areas will be as decided during the peace negotiations.

Early warning stations may exist to insure compliance with the terms of the agreement.

United Nations forces will be stationed: (a) in part of the area in the Sinai lying within about 20 km of the Mediterranean Sea and adjacent to the international border, and (b) in the Sharm el Sheikh area to ensure freedom of passage through the Strait of Tiran; and these forces will not be removed unless such removal is approved by the Security Council of the United Nations with a unanimous vote of the five permanent members.

After a peace treaty is signed, and after the interim withdrawal is complete, normal relations will be established between Egypt and Israel, including: full recognition, including diplomatic, economic and cultural relations; termination of economic boycotts and barriers to the free movement of goods and people; and mutual protection of citizens by the due process of law.

INTERIM WITHDRAWAL

Between three months and nine months after the signing of the peace treaty, all Israeli forces will withdraw east of a line extending from a point east of El Arish to Ras Muhammad, the exact location of this line to be determined by mutual agreement.

For the Government of the Arab Republic of Egypt:

For the Government of Israel:

Witnessed by:

Jimmy Carter, President of the United States of America

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). The Chair would like to take this opportunity, as a Senator from the State of Montana, to thank the chairman of the Committee on Foreign Relations for his invitation to attend those meetings that were held today.

Mr. SPARKMAN. I thank the Chair.

U.S. AID TO THE MIDDLE EAST

Mr. CASE. Mr. President, Secretary of State Vance today begins a trip to Jordan, Saudi Arabia, and Syria to discuss with leaders of those countries the results of the Camp David meeting.

I wish him well in his efforts and realize, as I am sure we all do, the delicacy and importance of the peace efforts.

Recognizing the delicate situation, the Senate Appropriations Committee, on which I serve, last Thursday approved a foreign aid appropriations bill containing $90 million in U.S. foreign aid to Syria. The Carter administration had requested the money but it was defeated by the House of Representatives during its floor debate on the bill, H.R. 12931. It is too early to tell what the Senate and the conference committee might do regarding the Syrian funds, but the attitudes of Members are likely to be affected by the Syrian response toward the agreements reached at the Camp David summit.

I also want to note that the Appropriations Committee approved an amendment Senator EAGLETON offered and I seconded to provide $50 million in foreign military sales credits for Lebanon. The committee report language makes it clear that the committee believes the reconstituted Lebanese army should protect all the religious communities in that country and replace the Syrian forces as expeditiously as possible.

I cite this background because it relates to the Camp David summit and its aftermath.

As I said yesterday in a press statement, the only discordant note in the chorus of well deserved acclaim which has greeted the achievements reached at Camp David has come from those who oppose—and there are still those who do oppose—the survival of Israel as an independent nation.

President Carter, Prime Minister Begin, and President Sadat deserve high praise for their wisdom, courage, and persistence.

Our task now is to convince the remaining moderate Arabs that their true best interest dictates their support of the leadership which President Sadat has shown. For such support is crucial to the final success of all efforts to bring peace to the Middle East.

THE NEED FOR ELECTRONIC FUND TRANSFER LEGISLATION

Mr. HEINZ. Mr. President, my distinguished colleague from Massachusetts, Senator BROOKE, has a long-standing interest in the question of consumer protections in electronic fund transfers (EFT) in his capacity as ranking minority member of the Senate Banking Committee. Senator BROOKE is necessarily absent from the Senate today, and I ask unanimous consent that his statement on the need for Senate action on EFT legislation, with an accompanying article on this subject, be printed in its entirety in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY MR. BROOKE

I call the attention of my colleagues to an article in Parade Magazine entitled "Banking By Computer, Is Your Money Safe?" This article illustrates the need for prompt consideration by the Senate of legislation to provide consumer protections in electronic fund transfers, (EFT).

EFT is a new and rapidly growing form of banking which relies on computer and other electronic signals, rather than checks or other paper instruments, to transfer funds to or from bank accounts. EFT has the potential to offer consumers faster, more convenient, and lower cost banking services. However, these new electronic banking services operate outside existing state laws governing checks and Federal law covering credit cards.

Significant policy questions including consumer liability for funds withdrawn with a lost or stolen EFT card, bank responsibility to promptly investigate and correct computer errors, what records the customer receives, and responsibility to complete transfers if there is a technical malfunction are now left unanswered or for the financial institution to decide. The Parade magazine article points to some of the problems this uncertainty has created.

In May of this year, the Banking Committee reported to the Senate S. 3156, a bill to settle these questions and provide consumer protections in electronic banking. Several amendments to this bill have been filed and should be discussed on the floor. I hope my colleagues will agree that we owe the banking public prompt attention to the problems raised by EFT. The House has already passed companion legislation, H.R. 13007. I sincerely believe this body should promptly consider S. 3156 so that we can go to conference with the House and enact EFT consumer protection legislation during this Congress.

I ask that the text of the Parade magazine article be printed in the RECORD.

[From Parade, Sept. 17, 1978]

BANKING BY COMPUTER: IS YOUR MONEY SAFE?

(By Lisa Berger)

Consumers are discovering that the latest credit card look-alike—a plastic "access" card used to make automatic withdrawals, deposits or money transfers from bank accounts 24 hours a day—offers new risks with its conveniences:

In Ann Arbor, Mich., a woman's access card and secret identification number were stolen. The thief emptied here checking account and overdrew her savings account by almost $100. The bank did not notify her of the savings loss, her checks bounced, and her credit record suffered.

A woman in Chicago was mailed an access card and personal identification number without her knowledge. Both were intercepted and used to empty her $600 account

and create a $1200 overdraft. A month later, the bank announced that she was overdrawn and froze her other account. It took two months and an attorney to release her money.

The Citizens and Southern Bank in Atlanta, Ga., told a Congressional staff that its computer tape containing information about customers' electronic money transactions had been destroyed. The bank had no duplicate records and had to rely on customer complaints to learn how much was in their accounts.

Computerized banking—called "electronic fund transfers" (EFT)—is spreading and may soon become as common as writing checks. The Electronic Money Council, a group of financial institutions set up to promote EFT, says that more than 10 percent of the country's banks, savings and loan institutions and credit unions either offer or plan to offer some kind of computer-based banking service.

FOUR COMPUTER SERVICES

EFT includes four services: automated teller machines operated by the customer, retail-store computers that automatically verify checks or immediately transfer money from a person's bank account to the store automatic payment of regular bills and deposit of salary checks, and pay-by-phone systems which allow a customer to call his bank and order payment to third parties.

Most popular are the automatic tellers—computer terminals, activated by access cards, located at either banks or other convenient locations such as shopping centers. Congress estimates that there are currently 9000 such machines in the country, making about 200 million yearly transactions.

Rep. Henry Reuss (D., Wis.)—chairman of the House Committee on Banking, Finance and Urban Affairs, which is sponsoring a bill to regulate EFT—warns: "Consumers are generally unaware of or confused about the differences between EFT cards and credit cards and thus are unaware of the risk of losing their life savings. Every day more and more cases are reported in which consumers have lost thousands of dollars."

Many banks tell customers only in fine print that access cards may not include a liability limit. (Federal law limits individual credit-card losses to $50.) Except in seven states that have a $50-limit law (Wisconsin, Iowa, Colorado, Minnesota, Montana, New Mexico and Kansas), individual banks decide how responsible they are for money lost through access cards.

The most vulnerable part of the new system is the customer's personal identification number (PIN), used with the access card to make transactions.. If a customer's card is stolen, his money is supposedly safe if the PIN is not disclosed. But the system is not foolproof.

Spencer Nilson, a Los Angeles financial expert, reports: "From eight to 10 people in any bank know the PIN of anybody in that bank. It's not possible to send out a form letter notifying me of my PIN without a programmer, supervisor, mail clerk or secretary knowing what it is if they want to."

Dishonest bank employees may be only one danger. Surveys of customers in Wisconsin and Syracuse, N.Y., revealed that even though banks tell people to memorize their PIN's, more than half wrote their number on the access card or kept it in their wallets.

Banks have even let customers choose their own PIN to help them memorize it, but the system is still vulnerable. Thomas Whiteside, author of *Computer Capers*, a book on computer crime, tells of a man who broke the system in France by impersonating a bank officer and telling customers they were getting a new number for security reasons. He then extracted their current PIN and with a counterfeit access card stole 66,000 francs ($15,400).

Security was one of the issues studied by the ad hoc National Commission on Electronic Fund Transfers, established by Congress to recommend legislation. Former commission member Albert Foer says that, according to government security experts, EFT systems are "totally vulnerable."

Foer cites a personal example: "At my bank there is an automated teller machine that cannot be used without strangers having the opportunity to look over my shoulder and not only learn about my transaction but watch me enter my PIN."

He says that EFT are least safe when people make cash deposits, because there's no way of proving how much is put in. The terminal receipt could differ with the actual amount deposited.

SHORTCHANGED

A Boston consumer complained to his Congressman that when he tried to withdraw $100 from a money machine, he only received $90 although the receipt showed the full amount. The next person in line was shortchanged $20. Fortunately, enough people complained about the machine, and the bank reimbursed them.

These experiences highlight Foer's main caution about EFT. "The problem," he says, "is that if an error or unauthorized use occurs, the consumer could be left without funds for a substantial period of time."

Other people fear that EFT will fall victim to the mushrooming field of computer crime. Donn Parker, who investigates all types of computer abuse at Stanford Research Institute, says the EFT machine is potentially the most vulnerable type of computer. "It has the greatest risk because of the large number of transactions." He speculates that criminals may regard the EFT computer as a new kind of "vault" just waiting to be cracked.

Parker's studies of hundreds of computer crime cases show that while the average bank fraud or embezzlement nets less than $100,000, the average computer bank fraud totals $430,000.

Not all computer crime requires ultrasophisticated knowledge. Parker's studies show that most computer crime is actually "data diddling" instead of exotic technical manipulation. The famous Equity Funding Insurance Company fraud, involving $200 million in fabricated assets, was pulled off by feeding fake information into company computers.

Financial expert Nilson told a Congressional hearing that he could easily crack a cash dispenser. "I know it and anybody could know it," he said. "Built into the system is a very easy way to gain access to it for someone who knows how to get in."

Both Nilson and Parker fear that organized crime may move into the EFT field. Investigators found that data processors at Chicago banks were dipping into bank computer accounts to pay off loan shark and gambling debts. "EFT will be the biggest change in conducting business since we went off the barter system, and organized crime knows it," warns Nilson.

Three bills are pending before Congress that would strengthen computer crime laws and protect EFT users. Both House and Senate legislation would limit consumer liability to $50 unless the consumer reveals his PIN, fails to notify the bank of a theft or, in the House bill, writes the PIN on his card.

The liability issue is the most controversial. Many bankers prefer a "negligence" requirement making consumers liable if they handle access cards irresponsibly. But consumer groups are opposed to using negligence as a standard because, they say, it's too hard to prove. Without a $50 liability limit, says Jerry Hogan of Consumer Federation of America, "a customer could be wiped out."

Under a negligence rule, if a person's account were broken into, banks could argue that the customer was responsible. An Ohio woman, for instance, lost $1350 after her access card and secret number were stolen from her home. Although she claimed she didn't know about the theft or illicit withdrawal and offered to take a lie detector test to prove it, the bank decided she was negligent and would not reimburse her.

HOW TO PROVE NEGLIGENCE?

Other problems arise in trying to prove customer negligence: If a stolen access card is etched with its secret number, how does the bank prove who put it there? What happens when an unsolicited card and number are intercepted in the mail, used to steal from an account, and the customer claims the card was never received? What if an account is emptied with a counterfeit card that's never discovered?

The House Subcommittee on Consumer Affairs, which introduced the Electronic Fund Transfers Act, says the liability issue is the most important for consumers. I don't think we should wait for all sorts of consumer tragedies before we provide consumer protection such as limits on consumer liability for losses," explains subcommittee chairman Frank Annunzio.

Lawmakers are uncertain whether EFT legislation will pass this year. Until it does, it's "buyer beware" when using the newest plastic card.

MUHAMMAD ALI ACHIEVES WORLD ACCLAIM

● Mr. PERCY. Mr. President, last Friday night's heavyweight championship boxing match between Leon Spinks and Muhammad Ali should lay to rest any doubts that Muhammad Ali is the greatest heavyweight boxer ever.

The bee has not lost its sting, as many believed. And for the first time, and possibly the last, a man has regained the championship title a third time.

Life has not always been easy for Muhammad Ali. The style in which he overcame all of the obstacles life placed before him truly makes him a champion.

Growing up as a streetfighter in Louisville endowed him with a perspective and understanding that many people do not possess. He rose from an obscure background to gain such international acclaim that millions of people around the world are inspired by his success. He is an epic hero to the oppressed during times of despair.

Having been stripped of his title in 1964 because he refused military service for religious reasons, and again losing it 7 months ago to Leon Spinks, he has achieved a distinction that no heavyweight boxer in the history of the sport has ever known.

This exemplified the kind of man Muhammad Ali is and the qualities needed to be a true champion. He spent more time and energy; showed more determination and perserverance; and worked harder and more intensely than any other fighter of his time.

His skilled trainer, Angelo Dundee, once said of Ali:

I knew I had a winner. Of all the fighters I've ever known, only he could make the heavy bag sing when he hit it.

Ali has done more for boxing than perhaps any other athlete in the world. His personal dynamism seems to create electricity in a crowd as no other U.S. sports figure.

But Ali's significance goes far beyond the boxing ring. He became the symbol of racial pride to millions of blacks in the heat of the civil rights movement. He became a hero to the thousands of young people during the tumultuous sixties because of his stand against the Vietnam war. And he has been one of the most effective goodwill ambassadors our Nation has ever known.

Mr. President, I first met Ali when he was a guest on my public service television program, "Your Senator Reports," and have had several opportunities since to realize the depth of Ali's commitment to peace, justice and the needs of every citizen.

I was particularly impressed when just 2 weeks after he lost his championship title to Leon Spinks last February—even though he was physically and emotionally bruised—he rose above the defeat to do a charity bout I had invited him to in Springfield, Ill. The proceeds were donated to the Illinois Youth Service Bureau, whose efforts were aimed at counteracting community conditions that breed delinquency. This is indicative of his deep-rooted sincerity to help those who are less fortunate.

Ali's victory last Friday night was a victory for all that he stands for nationally and internationally. And it proves that the bee has not lost his sting; that the butterfly is afloat and soaring. Ali is, indeed, "The Champ."

At this time, I ask unanimous consent to print in the RECORD an outstanding article written last March by a former staff member and close friend of mine, Cal Fentress—now senior editor of New Times magazine—that best capsulizes Ali's career.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE CHAMP

(By Calvin Fentress)

After he beat up Muhammad Ali in Vegas, Leon Spinks recalled that as a kid in St. Louis he was the nicest guy on the block—"a very tough block," he quickly added. It must have been. You've got to be tough to wrinkle a legend.

Spinks' up-from-the-ghetto, Marine-to-riches story is itself a more stirring tale than Sylvester Stallone ever dreamed of. But Leon is only life-size. It's not *his* fault that no one will ever name a stadium for him (as they did for Ali the other day in Bangladesh) or mount a children's TV show around his strength and cunning (as they have for Ali in Chicago).

Ali, Ali, Ali . . . He has been with us forever—manchild, gadfly, butterfly, bee, quickening our days, quenching our blood thirst. Live and in color, we've watched it all: Louisville, the Olympics, the Muslims; Liston, Frazier, Foreman; the grace, the guts, the heart. The fastest mouth this side of Mailer.

"He was good for the sport," said second-ranked Jimmy Young after the Spinks fight. Saying Ali is good for boxing is like saying oxygen is good for breathing: "I *am* boxing," exclaimed Ali, and that was closer to the mark. For the last two years, he was fighting mostly on memory, winning decisions he didn't deserve, a one-man over-the-hill gang clinging to the gravy train. But even then, there were flashes of his younger self—faster than fast, the swiftest, slickest heavyweight anyone ever did see.

The scalpel, not the bludgeon, was Ali's weapon of choice. Gawky beside him, his foes played bull to Ali's matador. He was the Fred Astaire of the ring, a top hat among the cauliflower. Hit, move, slip, slide—*zip, zip pop, pop* . . . the whistling jab faster than a serpent's tongue, lashing the sweat off opponents' heads . . . You didn't have to love boxing to appreciate an *artiste* in action.

Final tribute? Nonsense. Ali, boy and man, Cassius and Muhammad, has gotten up from worse than this. *Frazier* was worse than this—"the next thing to death," Ali called it after the Thrilla in Manila (and he *won*). The irreverent Spinks is merely the latest (little does he suspect) in a long line of memorable Ali foils: the Bear, the Rabbit, the Acorn; Dundee, Bundini, Cossell; Sonji, Belinda, Veronica—supporting players all, all with their moments on the stage. His stage.

Final tribute? Preposterous. Ali will be back. I believe, oh Lord, I believe. Rematch, victory, retirement, the legend secure forever. And if not, what the hell—the legend is secure already. Like the Beatles (who came to watch him train), Ali is immutable, a benchmark of his time.

In the McLuhan age, Madison Square Garden could never hold him. (Even his name couldn't hold him.) Munich, Tokyo, Toronto, Kinshasa, Djakarta, Dublin—Ali fought everywhere, sometimes putting whole nations on the map as he went. He was our first global superstar.

And what staying power! Early on he mastered the care and feeding of the media, and he's milked it ever since. Even in defeat, we found him more compelling than any other gladiator of his age (notice who was on *Time*'s cover the week after Spinks' championship victory). For two decades, he put us on, knew that we knew, and put us on some more. We needed him, and he knew that, too.

Ali was inescapable to the public as well. He made sure of that. In and out of the ring, he took the big chances. He made a lot, spent a lot, gave a lot away—and it wasn't all money. Jeer him or cheer him, he was our main man and the best game in town.

The jive, the taunts, the *name* . . . wearing his blackness like a medal—it was all too uppity for many. Ali, reported the *New York Times* in 1967, was "intolerable to a large segment of white America." There remain disbelievers, of course. But call him what they will—an overrated blowhard, whatever—Ali is untouchable; his long dominance of his craft speaks for itself. Besides, his finest hours were never confined to the ring.

In his autobiography, the words stand like a tombstone midst the list of his fights; In Exile: April, 1967 to September 1970. Three years a champion, his biggest payday at hand, Ali was barely 25 when he refused induction into the Army; for that exercise of conscience, he was sentenced to five years in prison and stripped of his title by the now-ludicrous World Boxing Association.

At 25, 26, 27, 28, Ali found himself in involuntary retirement, banned in his own country from the only profession he had ever known, his passport lifted so he couldn't practice it in any other, prime championship years slipping away forever. It was four years before the Supreme Court unanimously overturned his draft evasion conviction, seven before he would regain his title. The heavyweight championship of the world is no small thing, least of all to the son of a black Kentucky sign painter, and Ali plainly reveled in it. His enduring glory is that he let it all go. It wasn't worth the killing. As he put it for the rest of us, "I ain't got no quarrel with the Viet Cong."

Even in the ring, Ali infrequently seemed bent on mayhem. Through the years it was said that he lacked the killer instinct, that he couldn't finish his man (though he usually finished him enough). "There was always something in me that rebelled against boxing," he once explained. "I always had this image of two slaves in the ring."

"You wuz robbed," Ali's handlers insisted after he lost to Spinks. "I wasn't robbed," said Ali later that night. "We're all going to lose in life. You lose your mother, you lose your father, you lose people you love." But Ali is beyond defeat now, his championship season as incandescent as the lightning in his jab. When Leon Spinks is savored only by trivia buffs, the memory of Ali—sleek and strong and sassy—will still be young and easy under the apple boughs . . . *zip, zip, pop, pop, POW!*●

Mr. HOLLINGS. Mr. President, I heard in the speech of the Senator from Illinois that we get into morbid torture. Later I heard a good boxer tell me that neither one threw a good punch. This could bar the Leon Spinks and Muhammad Ali championship bout if we adopt this amendment.

I hope the Senator will listen closely. This is a heated debate here.

BUDGET ACT WAIVER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1111.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 544) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to consideration of H.R. 11092, a bill to amend the Act of December 22, 1974 (88 Stat. 1712) relating to the Navajo and Hopi Indian Relocation Commission.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 544) is as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to consideration of H.R. 11092, a bill to amend the Act of December 22, 1974 (88 Stat. 1712) relating to the Navajo and Hopi Indian Relocation Commission. This waiver is necessary because the Commission estimates that during fiscal year 1979 it will relocate approximately five hundred families of the estimated one thousand one hundred Navajo and Hopi families to be relocated from areas of the joint use area partitioned to the respective Navajo and Hopi Tribes of which the relocatees are not members. H.R. 11092 increases the authorization of appropriations for the operation of the Commission from $500,000 a year to $1,000,000 a year. In anticipation of enactment of H.R. 11092 the House and Senate Committees on appropriations have reported out appropriations bills which increase the appropriations for the operation of the Commission (by $490,000 and $430,000 respectively) over and above the $500,000 presently authorized by the Act of December 22, 1974. The existing authorization for the Commission's operating expenses is insufficient for the Commission's enormous task in relocating the estimated five hundred families and fulfilling their other duties under the law during fiscal year 1979. The increased authorization will enable the Commission to hire the additional personnel needed to adequately carry out their activities.

H.R. 11092 passed the House of Representatives April 11, 1978, however, the Senate Select Committee was not able to take action on the bill until well after May 15,

1978, because of ongoing research and investigation of other issues related to the implementation of the relocation efforts.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1189), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because H.R. 11092 authorizes enactment of new budget authority which would be available in fiscal year 1979, and the bill was reported after May 15, 1978, a resolution waiving section 402(a) with regard to H.R. 11092 must be adopted before the Senate may consider the bill. In reporting favorably on Senate Resolution 544, the Budget Committee is recommending that the Senate proceed to consideration of H.R. 11092, but is not otherwise prejudging the merits of the bill.

BUDGET CONSIDERATIONS

H.R. 11092 increases the authorization for operating expenses of the Navajo and Hopi Indian Relocation Commission from $500 thousand to $1 million. The bill also creates a Navajo and Hopi Indian Relocation Coordinating and Planning Committee, to coordinate the efforts of the several agencies involved in relocation activities.

According to the Select Committee on Indian Affairs, failure to enact this bill will frustrate needed reforms to establish more efficient and effective operations by the Commission. The bill will have no significant new budgetary impact because the Interior and Related Agencies Appropriation bill, which has already passed the House and Senate, includes funding for the Commission at a level near full funding of this authorization.

To permit orderly consideration of H.R. 11092, the Budget Committee reports favorably on Senate Resolution 544 and recommends its adoption.

NAVAHO AND HOPI INDIAN RELOCATION COMMISSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for not to exceed 3 minutes to the consideration of Calendar No. 1081.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 11092) to increase the authorization of appropriations under the Act of December 22, 1974 (88 Stat. 1712),

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Select Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Navajo and Hopi Indian Relocation Commission Amendments of 1978".

SEC. 2. Section 12(b) of the Act of December 22, 1974 (88 Stat. 1712, 1716) is amended by inserting before the period at the end of the sentence the following: ": *Provided*, That effective March 1, 1979, no person who is serving in an elected Federal, State, or local public office shall be eligible to serve or continue to serve as a member of the Commission".

SEC. 3. The first sentence of section 12(e) of the Act of December 2, 1974 (88 Stat. 1712, 1717) is amended by inserting before the period at the end thereof the following: ": *Provided*, That effective October 1, 1978, no such member shall be paid more than $28,000 during any fiscal year".

SEC. 4. Section 13(c)(5) of the Act of December 22, 1974 (88 Stat. 1712, 1718) is amended by striking out "thirty" and inserting in lieu thereof "one hundred and twenty".

SEC. 5. (a) Section 25(a) of the Act of December 22, 1974 (88 Stat. 1712, 1723) is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000".

(b) The Navajo and Hopi Indian Relocation Commission is authorized, subject to the approval of the Committees on Appropriations of the House of Representatives and the Senate, to utilize not to exceed $400,000 of the appropriations otherwise available to them for the fiscal year ending September 30, 1978, for the administration and operation of the Commission under the Act of December 22, 1974 (88 Stat. 1712).

SEC. 6. (a) There is hereby established a Navajo and Hopi Indian Relocation Coordinating and Planning Committee (hereinafter referred to as the "Committee").

(b) The Committee shall be composed of one member and the executive director of the Navajo and Hopi Indian Relocation Commission, the Secretary of the Interior or his designee, provided that the Secretary may not designate other than an Under Secretary or Assistant Secretary, the Director of the Joint Use Administration or his designee, the Secretary of Health, Education, and Welfare or his designee, the Chairman of the Navajo Tribe or his designee, and the Chairman of the Hopi Tribe or his designee.

(c) The Secretary of the Interior or his designee shall serve as the Chairman of the Committee. In the absence of the Secretary or his designee the Director of the Joint Use Administration shall serve as Chairman of the Committee.

(d) Five members of the Committee shall constitute a quorum.

(e) A number of the Committee who is an officer or employee of the United States shall serve without additional compensation. Each Federal department or agency shall reimburse their officers or employees for travel, subsistence, and other expenses incurred by them in the performance of their duties as members of the Committee. All nongovernmental members of the Committee shall be reimbursed for travel, subsistence, and other expenses incurred by them in the performance of their duties as members of the Committee by the Department of the Interior.

(f) The designees of the Committee shall be named by the respective Federal agencies and tribes within forty-five days of the date of the enactment of this Act and the first meeting of the Committee shall be held within sixty days of such date.

(g) The Committee shall have the following responsibilities:

(1) Assess the allocation and adequacy of Federal and tribal services being provided to relocatees who are residing within the relocation area and those who have been relocated on or off the respective reservations. Such assessment shall identify specific problems associated with the delivery and adequacy of the services provided and shall further include specific recommendations to the Federal agencies and tribes concerning what steps they should take to ensure that the Federal and tribal programs and services are coordinated, funded, and allocated in a manner which will adequately meet the needs of the relocatees.

(2) Submit semiannual reports to the Congress by February 1 and August 1 of each year concerning the assessment of services required by subsection (g)(1) including an assessment of services required by subsection (g)(1) including an assessment of the degree of coordination which is taking place between the Commission, the Navajo and Hopi tribal officials, and the respective Federal agencies.

(3) Within sixty days after the Commission submits its "relocation plan" to the Congress pursuant to section 13(c) of the Act of December 22, 1974 (88 Stat. 1712, 1717) the Committee shall submit a report to the Congress assessing the feasibility of implementation and the adequacy of the relocation plan in meeting the mandates of said section 13(c).

(4) Each tribe and Federal agency represented on the Committee which does not agree with the respective majority reports of the Committee required by subsections (g) (2) and (3) of this section shall submit their separate views to the Congress at the time the respective Committee reports are submitted.

(h) The head of each Federal agency not represented on the Committee but identified by the Committee as being necessarily involved in the implementation of the relocation plan and the provision of services shall submit semiannual reports to the Congress on April 1 and October 1 each year detailing the level of funding and services being provided to the relocatees prior to and following their relcation and the degree to which such funding and services conform to the assessments and recommendations made by the Committee. Such reports shall further specify the degree to which such respective Federal agencies are consulting and coordinating with the Commission with regard to the feasibility of implementing the "relocation plan".

(i) The Joint Use Administration shall provide the staff, supplies, and equipment necessary for the preparation of the reports of the Committee and the meetings of the Committee.

(j) The Department of the Interior shall provide for the publication of the reports required of the Committee including any separate views of the respective members. The respective Federal agencies which are not members of the Committee shall bear the expenses of the preparation and publication of the reports required of them.

(k) The Committee shall cease to exist when the Commission has expired.

Mr. DECONCINI. Mr. President, I ask unanimous consent that Karl Funke have the privilege of the floor during the consideration of this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1852

(Purpose: To provide a life estate to certain members of the Navajo and Hopi Tribes who would otherwise be required to relocate)

Mr. DECONCINI. Mr. President, I send to the desk an amendment to H.R. 11092. It has been cleared by the chairman of the Select Committee on Indian Affairs, Mr. ABOUREZK, and members of the minority on that committee.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI) proposes an unprinted amendment numbered 1852.

Mr. DECONCINI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, beginning with line 12, strike out all through line 15 and insert in lieu thereof the following:

SEC. 4. Section 13(c)(5) of the Act of December 22, 1974 (88 Stat. 1712, 1718), is amended to read as follows:

"(5) take effect one hundred and twenty days (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) after the date of submission to the Congress pursuant to subsection (a) of this section, unless during such one hundred and twenty day period one House of the Congress adopts a resolution disapproving such plan: *Provided, however,* that the Commission is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.".

At the end of the bill, add the following:

SEC. 7. (a)(1) Notwithstanding the provisions of the Act of December 22, 1974 (88 Stat. 1712), in any case in which a Navajo or Hopi individual believes that he or she can qualify as an eligible applicant (as defined by subsection (e)(1) of this section), such individual is authorized, within the forty-eight month period following the effective date of the relocation plan pursuant to the Act of December 22, 1974, to file an application with the Navajo and Hopi Indian Relocation Commission requesting that he or she be granted a life estate in lands in accordance with this section. Such application shall be submitted in such manner, and contain such information, as the Commission shall prescribe.

(2) If the Commission determines, on the basis of such application, timely filed, that the applicant is an eligible applicant, the Commission shall make available to such applicant a limited tenure, of such land as the Commission determines necessary, in order to avoid the necessity of relocating such applicant, and his or her spouse and dependents, if residing with such applicant. Such tenure shall consist of the right of use and occupancy of such land, including a grazing area of such size as the Commission determines necessary in order to enable such applicant to raise livestock in such numbers as are necessary to meet a subsistence level for such applicant, his or her spouse, and dependents residing with such applicant, for a term ending at the death of the applicant or the death of the spouse of the applicant, whichever last occurs. Nothing in this Act shall preclude such applicant from making improvements within the area covered by such tenure. Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon relinquishing such estate, by such means or instrument as the Secretary of the Interior shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary of the Interior comparable to those provided by subsections (b), (c), and (d) of section 15 of such Act of December 22, 1974.

(b) The Secretary of the Interior is authorized to receive, consider, and pay any claim received by it from the Navajo Tribe, or Hopi Tribe, for compensation for any losses or other expenses incurred by such tribe by reason of such life estates conferred pursuant to this section. Such claims shall be submitted at such time, in such manner, and contain such information, as the Secretary of the Interior may prescribe. Any payment made pursuant to a claim filed under this subsection shall be in lieu of rental payments under section 16 of the Act of December 22, 1974, with respect to lands covered by such claim.

(c) Notwithstanding any other provision of law, the Secretary of the Interior shall compensate the head of such household, who receives a life tenure of land under an application submitted pursuant to this section, for the fair market value of the habitation and other improvements owned by such head of a household within the area from which he, but for such tenure, was required to relocate. Such compensation shall be paid to the estate of such head and shall be based on the fair market value of such habitation and improvements as of the time of the expiration of such tenure, and, except as hereinafter provided, shall not be payable until such time. Any such compensation or assistance owing to the estate of any such head shall be paid and distributed in accordance with the last will and testament of such head, or in the event no such valid will and testament is left, such compensation shall be paid and distributed to his heirs in accordance with the laws of the tribe of which such head is a member. Notwithstanding the foregoing provisions of this subsection, in any case in which any such compensation would be payable to the estate of any such applicant, such compensation shall, in the event such applicant relinquishes such life estate prior to its termination in accordance with subsection (a)(3) of this section, be payable to such applicant at the time of the relinquishment of such life estate. Such payment shall be in lieu of any other payment pursuant to subsection (a) of section 15 of the Act of December 22, 1974.

(d) (1) Any such eligible applicant, and his or her spouse and dependents so living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and any such eligible applicant and his or her spouse and dependents so living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe, except that the land laws of the Navajo Tribe shall not be applicable to any tenure granted to a member of the Hopi Tribe, and the land laws of the Hopi Tribe shall not be applicable to any tenure granted to a member of the Navajo Tribe.

(2) Within ninety days following the date of the enactment of this subsection, the Secretary shall promulgate such regulations as may be necessary to assure that in the case of a life estate granted pursuant to this section, no person may reside on the land covered by such life estate other than the applicant, his or her spouse, and the applicant's dependents, except that such regulations may provide that in case of illness or disability persons necessary to attend upon and care for such applicant, spouse, or dependent may reside on such lands during such illness or disability. Such regulations shall further provide for the right of all residents and visitors to the lands covered by such life estate to have access thereto by use of all established roads or ways leading thereto.

(3) The Secretary of the Interior is authorized to take such action as may be necessary in order to assure the protection, until relocated, of the rights and property of individuals subject to relocation pursuant to the Act of December 22, 1974, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to this section.

(4) With respect to any individual referred to in paragraph (3) of this subsection, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

(e) As used in this section, the term—

(1) "eligible applicant" means, with respect to a Navajo or Hopi individual, an individual—

(A) who on December 22, 1974, maintained a place of abode in an area from which such applicant, but for this section, would be required to relocate, and who, but for this section would be relocated in an area other than an area comprising a part of the reservation of which such individual is a member or an area made a part of any such reservation by reason of a final judgment of partition or the Act of December 22, 1974; and

(B) who on or before the date of application for a life estate, was at least forty years of age; and

(C) with respect to whom the Commission determines, if required to relocate, would most likely be unable to earn a livelihood by reason of age, mental or physical disability, inability to adequately speak the English language, lack of education or skill, or otherwise;

(2) "Commission" means the Navajo and Hopi Relocation Commission;

(3) "dependent" shall have the same meaning as that provided by section 152 of the Internal Revenue Code of 1954.

(f) Notwithstanding any other provision of this section, any applicant who meets the requirements of clause (C) of subsection (e)(1) by reason or his or her mental or physical disability shall not be required to meet the requirements of clause (B) of subsection (e)(1).

(g) The Secretary of the Interior is authorized to make available to applicants receiving a life tenure under this section such assistance, during that tenure, as may be necessary to enable such applicant to feed and maintain that applicant's livestock.

(h) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 8. (a) Section 11(a) of the Act of December 22, 1974 (88 Stat. 1712), is amended by inserting a comma immediately after "Arizona" and the following: "Utah,".

(b) The Commission is authorized to purchase, with appropriated funds, such lands, not to exceed 25,000 acres, in the aggregate, as the Commission determines necessary to enable it to relocate members of the Navajo tribe pursuant to the Act of December 22, 1974. Title to such lands so acquired by the Commission, if contiguous or adjacent to the Navajo Reservation, shall be taken by the United States in trust for the benefit of the Navajo Tribe. With respect to such lands so acquired which are not so contiguous or adjacent to such reservation, the Commission is authorized to transfer title to such lands to the head of a household and his or her spouse so relocated thereon.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section:

SEC. 9. Effective December 22, 1974, paragraph (4) of section 5(a) of the Act of December 22, 1974, is repealed.

SEC. 10. Notwithstanding any other provision of law to the contrary, the Commission shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of section 15 of the Act of December 22, 1974, to the head of each household of members of the Navajo Tribe who were evicted from district 6 of the Hopi Indian Reservation a consequence of the survey conducted by the Department of the Interior in 1972: *Provided,* That such heads of households have not already received equivalent assistance from Federal agencies.

Mr. DECONCINI. Mr. President, this amendment will modify Public Law 93–531, the Navaho-Hopi Settlement Act, which was designed to resolve the Hopi-Navaho joint-use area land dispute.

The Navaho-Hopi Settlement Act established procedures for the resolution of a century-old dispute between the Hopi and Navaho Tribes over joint-use area lands in Arizona. The act basically provides for a negotiated settlement of the dispute, or failing agreement, a mediated settlement to be approved by the district court. Guidelines for mediation and court settlement are set forth in the act and mechanisms are established for the transition period following a settlement.

Negotiations having failed, the mediator, William Simkin, filed his report to the court on December 12, 1975. The report recommended partition of the lands between the tribes and set out a line of partition. Hearings and filings of briefs were held through 1976. On February 10, 1977, the court issued its judgment of partition in which it confirmed the report of the mediator and ordered that the lands be partitioned in the manner set out in the report.

Since the issuance of the partitioning judgment by the U.S. District Court for the District of Arizona, the Relocation Commission—a three-member panel, established by Public Law 93–531 to administer the required relocation of trial members—has begun to formulate its relocation plan for approximately 3,500 Navahos and 32 Hopis who must move. However, on May 15, 1978, the U.S. Court of Appeals for the Ninth Circuit vacated the original partition decree. Although the substance of the court's opinion is important, its most dramatic effect will be to delay the submission of the relocation plan to Congress. The Relocation Commission, according to Public Law 93–531, cannot submit its plan until the district court issues its decision on the full, final line of partition.

Thirty days following the plan's submission to Congress it becomes effective. According to the law, the Commission must complete the entire relocation plan 5 years after its effective date.

The act directs the Commission to make relocation incentive payments of decreasing value each year after the plan is in effect to households which voluntarily enter into relocation contracts with the Commission. Additionally, payments and programs to make restitution for dwelling and improvements, as well as funds for new housing after relocation, are authorized.

Mr. President, the intent of this law to resolve a century-old land dispute is admirable. However, implementation problems have arisen which should be considered. The law authorizes the Secretary of the Interior to transfer, upon the payment of fair market value, up to 250,000 acres of Bureau of Land Management lands to the Navaho Tribe so as to restore a portion of the Navaho land base lost in partitioning. The additional land would be used by those Navahos required to relocate.

Although a draft environmental impact statement has been issued, and hearings were completed last Friday, no land has been transferred to the Navahos. Bureau of Land Management land in the House Rock Valley-Paria Plateau area of Arizona is one of the areas being considered for purchase. The purchase of land in this area is strongly opposed by ranchers in the vicinity and various environmental and wildlife organizations. Even if this land transaction were consummated, it is estimated that only 10 percent of the Navaho families now living on the Hopi portion of the joint-use area would be accommodated.

An alternative suggestion has been to relocate at least a portion of the Navajos in urban areas such as Gallop, Flagstaff, or Albuquerque. Many of these relocatees have no skills that would allow them to become productive members of an urban population and in all probability they would be forced onto the welfare rolls.

The Senate Committee on Interior and Insular Affairs, in its report which accompanied H.R. 10337, as amended, now Public Law 93–531, recognized the serious impact relocation would have if not handled properly:

> The Committee believes it vitally important, that the plan take into account all social, economic, cultural, and other adverse impacts of relocation on persons involved in the relocation and be developed to avoid or minimize, to the extent possible, such impacts. The plan must also identify the sites to which such households are to be relocated and assure that housing and related community facilities are available at the relocation sites. The Committee believes this requirement is particularly important in effecting the purpose of minimizing the adverse impacts of relocation.

In view of the fact that lands have not yet been found for most of the relocatees, the committee's intent "of minimizing the adverse impacts of relocation" may not be implemented.

Mr. President, not only will relocatees possibly suffer "adverse impacts," but many have lived their entire lives on the joint-use area, and it is home. I recently received a letter which vividly illustrates the plight of those residing in the disputed area:

> We, the McCabes, of Tolani Lake (Area 5–B), would like to express our true feelings about our land . . .
>
> Our late father, Everett McCabe, Sr., was born on this land that we now live on and he is buried on the land, too. Our father worked on the land so that we can have a home. We were all born on this land and he raised all 12 of us along with our mother until he died in 1956. Now there are 81 of us including all our children and mother. Our grandmother and her family have been moved three times before for the same problems. It is high time that we, the children and grandchildren, put our foot down and demand our rights. So this is where we all stop and stay for the rest of our lives.
>
> Our father and mother had a grazing permit (350) for this land and they raised sheep, cattle, and horses. They built homes, wells, dikes, fences, and planted trees and corn. To this day we still have all of what they built we still plant corn, and plus fond memories of our childhood and our families. We know every square foot of our land. Our relatives and friends live close by and this is our happiness. . . .

Hearings, conducted by the Senate Select Committee on Indian Affairs in February of this year on S. 1714, a bill I introduced to lessen the impact of relocation, gave me additional incentive to pursue modification of Public Law 93–531. The hearings were held in Winslow, Ariz., with over 200 Navahos and Hopis in attendance.

Also, on May 27, of this year, Senator ABOUREZK and I visited the joint-use area and personally talked with many of those who will be required to relocate. This personal contact indicated to me that the Congress has no choice but to help these people.

Several legislative alternatives have been reviewed, all of which would help alleviate the relocation problems previously discussed. After listening to many of the relocatees and studying various proposals, I am convinced that some form of life estate should be provided—at least for those most adversely affected by relocation.

Therefore, Mr. President, the amendment that I am offering today is a modified version of S. 1714, the bill that I introduced on June 17, 1977. This proposal will assist those who are most adversely affected by relocation—the elderly. They will be allowed to live out their remaining years on their traditional homelands with sufficient livestock for their livelihood.

This amendment provides for limited life estates. In order to qualify for the life estate, one of the spouses of the household must be at least 40 years of age, and it must be determined that the household cannot be relocated within the boundaries of the tribal reservation of which the household is a member.

After meeting these two criteria, then it must be established that the head of household does not have the necessary job skills to compete in an urbanized society. Heads of households who are disabled may receive life estates without meeting the age requirement.

The life estate bill I originally introduced, S. 1714, required that the Secretary of the Interior implement the program. A major modification is included in this amendment—the Navaho-Hopi Relocation Commission will be required to implement the life estate program. This change will not extend the life of the Commission because the life estates must be granted prior to the expiration of the 5-year relocation period. Assistance to those receiving a life estate will be provided through the Secretary of the Interior. Thus, the Commission will end its duties related to the relocation process as envisioned in Public Law 95–531.

This amendment will require the Commission to grant life estates with enough land for the family to maintain livestock at a subsistance level. Further, the Secretary of the Interior is authorized to give assistance to those who maintain livestock.

The remaining major provisions in the amendment include:

First. Those receiving life estates will be able to make improvements on the property during the tenure of the life estate.

Second. The life estate will remain in effect until the head of household or spouse dies, whichever is later.

Third. A one-House veto of the Commission's plan is added.

Fourth. The Relocation Commission will be authorized to purchase up to 25,000 acres for relocation purposes. No condemnation authority is granted—the sales are voluntary.

Mr. President, this amendment will provide for a more humane relocation than is called for in present law. I urge my colleagues to support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

An Act to amend the Act of December 22, 1974 (88 Stat. 1712) relating to the Navajo and Hopi Indian Relocation Commission.

Mr. DECONCINI. Mr. President, I thank the Senator from South Carolina (Mr. HOLLINGS) for permitting time in which to handle this matter. I know he has been here a long time today. I also thank Senator PROXMIRE for permitting this matter to be taken up at this time, as a personal favor to me.

It is not that I would not want to stay and listen to the fine speeches, but I promise to read them tomorrow in the RECORD.

REPORT ON AMERICAN FOREIGN POLICY INTERESTS IN EUROPE, THE MIDDLE EAST, AND INDIA (S. DOC. NO. 95–125)

Mr. PROXMIRE. Mr. President, on behalf of Mr. WILLIAMS, the chairman of the Senate Delegation on American Foreign Policy Interests in Europe, the Middle East, and India, I am submitting the report of the delegation to the Senate and I ask unanimous consent that it be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUBLIC TELECOMMUNICATIONS FINANCING ACT OF 1978

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 1853

(Purpose: To repeal the equal time requirement and the fairness doctrine as applied to broadcasting solely by radio)

Mr. PROXMIRE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposed an unprinted amendment numbered 1853.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert a new section as follows:

REPEAL OF EQUAL TIME REQUIREMENT AND FAIRNESS DOCTRINE AS APPLIED TO RADIO BROADCASTING

SEC. 404. (a) Section 309 of the Communications Act of 1934 is amended by inserting at the end thereof the following:

"(i) Notwithstanding any other provision of this part, effective on and after the date of the enactment of this subsection for the purposes of this part as applied to broadcasting solely by radio (excluding television broadcasting), the term 'public interest, convenience, and necessity' shall not be construed to give the commission jurisdiction to require the provision of broadcast time to any person or persons or for the expression of any viewpoint or viewpoints.".

(b) Section 315 of such Act is amended by inserting at the end thereof the following:

"(e) The provisions of this section shall not apply to broadcasting solely by radio (excluding television broadcasting).".

(c) The amendments made by this section shall be effective on the date of enactment of this Act.

Mr. PROXMIRE. Mr. President, the amendment I have just sent to the desk would abolish the so-called fairness doctrine and equal time rule as they apply to radio.

Since 3 o'clock or 3:30 this afternoon, we have been discussing public broadcasting, and it is fascinating that the principal emphasis of the discussion has been on how to keep public broadcasting free of political interference. I think that was a constructive effort. I wholeheartedly support public broadcasting. I believe it has greatly improved the quality of broadcasting generally, as well as enriched the lives of the American people, and I am happy to vote for and support this legislation.

However, we must recognize that public broadcasting is funded by Government, controlled by Government, directed by Government; that all the officials are appointed by the Federal Government. There is no question that there is no way that public broadcasting can be insulated—or should be insulated, for that matter—from the control of Congress, control of the President of the United States, and the direction, fundamentally, of the President of the United States and Congress.

I believe that is consistent with a free society only because the principal broadcasting in this country is not public broadcasting but private, outside the aegis, outside the control, outside the domination of the Federal Government.

My amendment would recognize that it is time, because of technological developments; it is time, because of the fundamental convictions of our Founding Fathers and of the overwhelming majority of Americans, that we should have freedom of the press. It is time to recognize that the reality of freedom of the press can be achieved only if we have freedom of the electronic media from government regulation and government control.

This is a first, small, modest step. We should recognize that the great majority of people do not get their news from newspaper. I think there is an illusion that they do. Seventy-six percent of the people say that they get their principal news—and many of them, their exclusive news—from radio and television.

At the present time there is no question that there is no freedom of the press for radio and television. They are censored; they are licensed; they are subject to not only oversight by the FCC but also to the denial of their license if they do not comply with the Federal regulations. There is no question that this is a censorship.

If you talk to any owner of a station or become involved in any way in a station's operation, you know how sensitive they are to that kind of Government regulation and that kind of Government control.

I contend that, for many reasons, the time has come to end that control, that political control of the private sector, and I think the place to begin is with radio.

We should recognize, for example, the number of newspapers we have in New York City and the number of radio stations. The number of newspapers is something like 3, or perhaps 4, and the number of radio stations is something like 50.

There is no question that with the advent of FM, the number of radio stations in communities throughout this country is going to increase greatly.

So if we really believe in freedom, we should recognize that we no longer can argue the scarcity argument. In the old days, you could say that there were only a certain number of frequencies available and that they could be allocated fairly only by the Government.

If we do not require a certain standard of fairness and a standard of equal time, and so forth, of the radio stations, it will mean that the plutocrats, who have the money to buy a radio station, are going to determine—not the Government, not society as a whole—who should have access to it.

We should see what has happened with freedom for our newspapers; because, while it is not unique, it is almost unique in this world that a Government permits its newspapers to operate with an amendment that prohibits any Government censorship or Government interference.

As I say, one-city ownership is characteristic in this country. It is hard to find any city except the big ones, such as New York and Chicago, that has more than one newspaper.

In a metropolis like in our State, Milwaukee, for instance, there is one ownership. The Milwaukee Journal Co. owns both newspapers, and that is true in the overwhelming majority of cities in this country, one ownership, monopoly ownership of the newspapers.

Yet, Mr. President, they are free and they should be free, and the first amendment to the Constitution guarantees their freedom from Government regulation, Government censorship, and Government control.

How is that operated?

Well, years ago I worked on my doctoral dissertation and the subject of it was, "developing standards for evaluating the political content of the American newspaper," and in the course of working on that thesis, which I have never finished, I discovered that American newspapers have vastly improved. They have improved in professionalism. They have improved far more than they would have, in my judgment, if they had an FCC applying to newspapers.

They have op-ed pages where they have an editorial page, of course, expressing their view, but in most cases opposite the editorial page they have the expression of columnists and others who disagree with their viewpoint.

Take a look at the Washington papers. You can see that. Take a look at your own hometown paper. The Chicago Tribune, which I think has been recognized as one of the most biased, one-sided papers in the country, has had that reputation, but it changed and improved vastly. Opposite their editorial page, they have the expressions of columnists who vigorously disagree with the Chicago Tribune line and do so every day.

But even more important is the fact that you have the professionalism of the reporters. It is only a relatively recent phenomenon that we had journalism schools. We have now developed reporters who take great pride in objectivity and they are taught to be objective, fair, and comprehensive, and that has greatly expanded and improved our coverage.

In what other ways have newspapers become more fair and unbiased? Here is how:

For one thing, by expanding their coverage. There was a time—not too long ago—when we could not read stories about environmental and health hazards, such as those caused by insecticides, food additives, and other previously arcane chemicals.

There was time, too, when we did not see stories about social concerns, such as crime-ridden neighborhoods, venereal diseases, old age, population growth, race relations, and school curriculum.

Women's rights, it is true, have been reported on since long before the Bloomer Girls. But now we get searching reports on what women's rights really mean.

The list is endless. But fair coverage means that problems, advances, and experimentation in areas of life affecting all of us are covered in all their aspects.

Mr. President, take the argument that many people for many years—I guess some still subscribe to it—that newspapers can be forced by their advertisers to support a particular viewpoint, an economic viewpoint or a particular social viewpoint, or even an individual who is a heavy advertiser.

Mr. President, anyone who really knows newspapers knows that is no longer true. You rarely hear the charge. When it is made it is made out of ignorance. There is no advertiser who is going to make a newspaper publisher knuckle under. If there is any example of that I would like to hear it because I have never seen it. I do not know anyone who maintains it, and that is no longer the situation. They police their advertising. There is no advertising pressure on the editorial concept.

So, with no licensing, no censorship, just with freedom, responsible vigorous journalism has flourished.

Mr. President, one of the best examples of that, of course, has been with the development during the worst scandal that hit this country in perhaps the last century, and that was the Watergate scandal.

What was the reason why the President of the United States so occupying the most powerful office in this country, maybe in the world, was forced to leave office? There is no question that it was not because of any governmental group or any agency. While the House of Representatives played a part in this matter, there is no question that the drive that forced a correction of this situation in our society and in our Government came from the free press, came from the newspapers.

I think everyone acknowledges that, Mr. President.

Mr. President, I think the clearest way we can understand how unnecessary and improper is the Federal Communications Commission control of radio and television is to ask ourselves why not try an FCC for newspapers. I challenge anyone to propose on the floor of the Senate or the floor of the House of Representatives or propose seriously anywhere that we provide for a new commission which would apply equal time or fairness doctrine for newspapers.

Why not? Why not? Why should not we apply it to newspapers if we apply it to radio? As I point out we have many radio stations in communities throughout the country and throughout the country far more radio stations than newspapers.

It is far easier for someone to start a radio station. It takes far less capital than to start a newspaper. And the radio stations, as I pointed out, are a vital source of news for the American people.

So, Mr. President, I think that anyone who supports the notion that we should have a continuation of the fairness doctrine for radio or equal time rule, I should ask why they would not apply it to newspapers.

Mr. President, let me also point out that the denial of first amendment rights to the radio stations and to television is self-defeating.

Under the fairness doctrine, for example, broadcasters are required to, first, devote a reasonable amount of time to the discussion of controversial issues, and second, afford reasonable opportunities for opposing viewpoints.

In 1972, NBC broadcast a documentary entitled, "Pensions: The Broken Promise," which dealt with corporate pension plans and how they often do not keep faith with the workers they are intended to benefit.

The airing of the program led to the filing of a fairness doctrine complaint with the FCC.

NBC claimed in defending itself that the subject of private pension plans was not controversial because as far as it knew the subject had not been dealt with previously on network television.

CATCH 22

Accuracy in Media, Inc., complained that contrasting viewpoints were not aired on the progrm.

The FCC rejected AIM's allegation of distortion but did decide that NBC had violated the fairness doctrine. It then ordered the network to broadcast balancing material.

NBC said that it had done a fair job and had no intention of giving the subject more air time.

Before moving on to what happened in the courts, I should point out a "Catch 22" aspect of this situation. I do so because it is but one example of the nightmare of complexities that accompanies the attempt to administer the fairness doctrine. Had NBC devoted more time to the subject, giving additional viewpoints, there would have been no issue before the FCC. So in order to prove its point, to test the matter in the courts, NBC could air no more shows on the subject without making its case moot.

Now back to the courts. A three-judge panel of the District of Columbia Court of Appeals ruled in favor of NBC, saying that this country needs investigative reporting. Subsequent court actions left this ruling intact.

What is the lesson of the Pensions case? It is this. The fairness doctrine can interfere with journalistic discretion, particularly in investigative reporting.

RESTRICTING BROADCAST EFFORTS

Just think of the implications if the court had decided the other way. Such a ruling would have meant that Government could, in the words of fairness doctrine analyst Fred Friendly:

Substitute its judgment for that of the network as to what issue was involved in a broadcast documentary and order that more

air time be given to elements that the journalist never thought central to the story.

The end result would be to restrict broadcast efforts at investigative reporting because of the difficulty in airing any program that took a point of view or was controversial.

But wait a minute, you might say. There is no problem here. NBC won its case. It was home free and clear. There is no lingering aftereffect.

True? Not necessarily.

The result of that requirement is that fear of losing a license persuades stations to avoid controversy. We could have a far more stimulating society, far greater opportunity for people to express controversial views—no question about it—if we did not have the kind of licensing situation we have and the requirement of compliance with equal time and the fairness doctrine.

Mr. President, I wish to call the attention of the Senate to the experience of one television network with the fairness doctrine and how self-defeating that is if we expect to achieve the kind of controversial discussion that we wish to achieve.

NBC's problems in airing two television documentaries help to illustrate the point.

Let us look at how NBC reportedly agonized over its 1975 television documentary on handguns entitled, "A Shooting Gallery Called America?"

According to New York Times writer John J. O'Connor, complaints from the public even before the program was shown caused a rewriting of the script to avoid fairness doctrine complaints to the FCC after the fact.

And, O'Connor further reports, this documentary on a controversial issue of public importance—gun control—drew little response from a national television audience of about 10 million (381 complaints out of the 441 letters received in the 2 weeks after the show) because it failed to take a stand.

CHILLING EFFECT

If O'Connor is right, then this is a good example of the chilling effect on journalism caused by governmental control of broadcasting.

I believe NBC executives should not have felt the hot breath of the FCC and its fairness doctrine on the backs of their necks. For if O'Connor is correct, the existence of the fairness doctrine indirectly restrained the producers of "Shooting Gallery."

And if O'Connor is right, if NBC news executives ordered a new script for the "Shooting Gallery" because of the fairness doctrine, I wonder if it was because of the time and expense NBC went through before the FCC and the courts in the wake of its 1972 documentary on "Pensions: The Broken Promise?"

I firmly believe that broadcast journalists would not be chilled into blandness and sameness if it were not for governmental controls as exercised through the FCC's fairness doctrine.

I believe that without the fairness doctrine there would be more, not less, programing of controversial issues.

Restrictions like the fairness doctrine are, in my view, self-defeating. Their proponents want diversity of ideas and the presentation of controversial and contrasting points of view. What they promote, instead, is sameness, blandness, timidity, and conformity. The American people are the losers.

Now, Mr. President, the most important reason why the censorship of radio through the fairness doctrine-equal time rule is wrong is because it is dangerous.

DANGEROUS DENIAL: THE TYRANNY OF GOVERNMENT

Denying broadcasters their first amendment rights is wrong for a final reason. It is dangerous.

Letting Government be the final arbiter of "fairness," for example, confers immense power. This is especially true when that same Government decides on the granting of broadcast licenses.

Three examples from the recent past remind us how the power of Government—although often exercised in the name of "fairness"—can amount to the tyranny of Government.

These examples all involve past Presidents of the United States. The President, of course, is the head of Government, the same Government that controls broadcasters through the Federal Communications Commission.

In recalling the stories that follow, it is important to remember, too, that the President himself appoints the members of the FCC and designates who shall be Chairman.

NIXON ADMINISTRATION

My first example comes from the Nixon administration. Relevant episodes from that period are still fresh in our minds. I need only cite some of them briefly here.

FCC Chairman Dean Burch called CBS President Frank Stanton in November 1969 to request a transcript of that network's news analysis after a Nixon address the night before.

Vice President Agnew made his famous Des Moines speech 9 days later blasting the network's news coverage and reminding them that they held licenses at the pleasure of the FCC.

CBS President Stanton reported that there were a number of White House phone calls over the succeeding 3 years conveying displeasure with news broadcasts.

There was a memo of September 1970 from Charles Colson to H. R. Haldeman proposing that the White House get a ruling from the FCC on the "role of the President, when he uses TV." This, Colson argued, would have "an inhibiting impact on the networks."

There was, too, the December 1972 Indianapolis speech by Clay T. Whitehead, director of the White House's Office of Telecommunications Policy, condemning the "ideological plugola" and "elitist gossip" of network news.

And there was, finally, President Nixon on tape telling Haldeman that:

> The main thing is the Post is going to have damnable, damnable problems out of this one. They have a television station. . . . And they're going to have to get it renewed.

KENNEDY AND JOHNSON ADMINISTRATIONS

But this is not a partisan matter. Fred Friendly has reported that the Kennedy and Johnson administrations, with financial backing from the Democratic National Committee, used the fairness doctrine to subdue right-wing radio commentators who were critical of administration goals.

These clandestine campaigns, which reportedly began in 1963, were also meant to inhibit stations from carrying commentary supporting Senator BARRY GOLDWATER, who was then a prospective Presidential candidate.

Friendly reported that both the Kennedy and Johnson administrations maintained professionally staffed organizations that monitored stations carrying right-wing commentary and then demanded time for reply under the fairness doctrine.

Such demands for air time, which the stations would have to provide at no cost, were regarded by many broadcasters as harassments that they chose to avoid. As a result, they either dropped the commentaries or diluted them. This, according to Friendly, was exactly what the White House had in mind.

What do these three examples of the abuse of Government power tell us?

It is wrong to deny broadcasters their first amendment rights because a free press—and that should include free broadcasters—is needed to protect us all from the tyranny of Government power.

WHY NOT TAKE A CHANCE ON FREEDOM?

What I have been saying tonight can be reduced to this simple thought: Why not take a chance on freedom? If it is power we are concerned about, and we should be, the power of the electronic media is a pygmy compared to the power of Government.

In 1977, U.S. News & World Report surveyed the leading citizens of this country in business, labor, the universities, the newspapers and the Government as to who were the people who ran America.

Where did the electronic media rate? Think of this:

The only person from the media who was rated in the 10 most influential Americans was Walter Cronkite and he was a distant ninth. In fact, Cronkite was the only electronic media person in the 30 most influential Americans.

Who are the most influential? The answer is emphatic. It is Government. Eight of the top 10 persons who run America were Government officials.

By denying the electronic media their first amendment rights, we give the big guy—Government—more power and from the less influential—the media—we take it away.

To those who would claim that it is safer to take a chance on Government than a chance on freedom and a free press, there are two clear rebuttals.

GOVERNMENTAL POWER

First, governments traditionally have gathered more and more power unto themselves without regard to the liberties of their citizens. Europe and South America and Asia are replete with such examples. And we in this country can cite some near-misses, the most recent being, of course, what we have come to know by the shorthand term of Watergate.

And second, it is easy for a government, with its power to give jobs and favors, to present a solid front in con-

trolling information about itself. But it is impossible, with members of a free press competing among themselves, to conspire to suppress information about Government or anything else. As Jefferson once said, whoever heard of a newspaper suppressing a government?

You might say whoever heard of a radio station suppressing a government? The reverse, as I demonstrated here, has happened. It happened in this country, it happened recently, and it is likely to happen again and again.

Freedom of the press can be abused by individual reporters, papers, magazines, broadcasters, or broadcasting stations. But, with competition the drive to be best, to be first with the news, to make money—there is little or no danger of all elements of the press forming a clique or cabal to take over the Government, or—and most important—to deceive the citizens, their customers.

FREE SOCIETY IS BEST

As long as the Government is kept from the neck of the press by the first amendment, the public should be informed. And that is why the first amendment was written the way it was—as a direct prohibition against governmental interference with five basic freedoms: Of religion, of speech, of press, of assembly, of redress.

Let us not brush away the wisdom of the men who wrote the Constitution and its Bill of Rights.

But it is easy to do that. Look at what the Government has done already through abridging the freedom of the press by imposing controls over the content of radio and television broadcasts.

If there is any risk in the belief that, in Jefferson's words:

> . . . the people . . . may safely be trusted to hear everything true and false, and to form a correct judgment.

And there is—then it is the risk inherent in any free society. But a free society is not the safest way of life. It is only the best.

Mr. President, for the reasons that I have been discussing, I shall continue my efforts to secure enactment of S. 22, so that not only radio—but all broadcasters—may be freed from the burdens of the fairness doctrine and the equal-time rule.

MODEST STEP

But if I am right in pursuing the goals sought to be realized through enactment of S. 22, then surely it is proper to ask that we take this more modest step of abolishing the fairness doctrine and the equal-time rule in the case of radio broadcasting.

And that is what can be achieved through approval of the amendment that I offer today.

Am I pursuing a hopeless cause through the introduction of this amendment? Some may think so.

And I am the first to admit that this fight has been a long one. I have been trying since 1975 to get Senate approval of my bill to abolish the fairness doctrine and the equal-time rule for both radio and television.

Earlier this year the Senate Communications Subcommittee held hearings on this bill. But nothing further has happened. The measure still languishes in subcommittee.

I confess, too, that I am partly to blame for this state of affairs. After all, I had a part in the establishment of the fairness doctrine. I was one of its early supporters.

But since then I have seen the light. And I hope my colleagues will join me in this new vision and this new insight.

Mr. President, I do not stand alone in wanting to take this limited but important step toward giving fuller meaning to our first amendment's guarantee of freedom of the press.

The same concept is included as a part of the Communications Act "rewrite" that was introduced earlier this year in the House of Representatives by Congressman LIONEL VAN DEERLIN, the chairman of the House Communications Subcommittee, and that unit's ranking Republican, Congressman LOU FREY.

Mr. President, this is coming. The Senate is going to have to face it. The House is going to have to face it. There are those in the committee on the House side that favor this kind of freedom for the communications media.

SCARCITY ARGUMENT

Chairman VAN DEERLIN has stressed—and quite rightly, in my view—that the so-called "scarcity argument" can no longer be used in attempting to justify continuing governmental control over radio programing content.

Mr. President, the hard facts speak for themselves in this regard. On January 1, 1977, the latest date for which figures are available, there were 8,173 radio stations on the air in this country. This compares with a total of 2,946 radio stations on the air for that same date in 1952, an increase of over 177 percent.

And contrast these figures with similar data for newspapers in this country. In 1977, we had only 2,412 newspapers in the United States; 25 years earlier, in 1952, the figure was 2,331.

Let us look, too, at related comparative figures for two cities in the United States—Milwaukee and New York.

In Milwaukee, at the end of 1977, there were 24 radio stations on the air—21 commercial and 3 public. And contrast this with the two newspapers that were being published in Milwaukee on that same date.

In New York City, there were, at the end of 1977, 40 radio stations operating—33 commercial and 7 public—as compared with 10 newspapers.

These same kinds of relative figures are repeated in city after city throughout the United States.

MULTIPLICITY OF VOICES

In view of this multiplicity of voices that radio provides, how can a "scarcity argument" be reasonably offered as a sound basis for restrictions like the fairness doctrine and equal-time rule?

These restrictions are even more ill-conceived when we stop to realize that our Nation's citizens receive information and ideas not only from radio but also from a multitude of other sources, including television, newspapers, books, magazines, newsletters, educational institutions, private and public organizations, and many more.

The pluralism reflected in these competing sources of news and views is the best protection we can have against possible "abuses" by radio broadcasters.

And once a democratic society gives up on this kind of protection—and looks instead to Government "protection"—the freedoms we all enjoy are put in jeopardy.

Mr. President, having said all this, I am going to withdraw my amendment at this time. The bill presently before us—S. 2883—may not, in the view of some, be the most appropriate vehicle through which to attempt to achieve what my amendment seeks.

I do not want to see the important issue that lies at the heart of my amendment obscured by procedural diversions that might accompany its introduction at this point.

But I do want my colleagues to know that I shall continue to pursue the vital aims of this amendment—and other related efforts on behalf of fuller first amendment freedoms for the broadcast media—whenever the opportunity arises.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

Mr. HOLLINGS. Mr. President, I learned before I ever saw public service that once a judge has ruled with you, you never continue to argue the case.

The PRESIDING OFFICER. On what amendment is the Senator speaking?

Mr. HOLLINGS. I will take time on the bill to answer my friend on a most important doctrine even though the amendment has been withdrawn; because, yes, we will be here fighting just as vigorously on the other side, because I feel, as a new student of this field, that there is no question about the efficacy and wisdom of a fairness doctrine.

The Senator starts out by saying, "Wait a minute, you can't insulate the public radio or public TV from the control of Congress, from the control of the President; you have to take things right on down; you have to admit it is being controlled, and continually, by the doctrine."

Then what is the point of a fairness doctrine to try to protect you from political controls? It is a non sequitur. If you follow the Senator's argument, the only thing that has really faced us at all, and established credibility, and continues to get support for public broadcast media generally, is the fairness doctrine.

This started out some years back, after the Radio Act was passed in 1912, and there is a reference to it in my general statement, which I ask to have inserted in the RECORD at this point.

WHAT S. 22 WOULD DO

S. 22 would eliminate the ban on editorializing by public broadcasting stations and repeal the equal time provision for candidates for public office. It would also wipe out all of the Commission's other powers to review the content of programing broadcast by commercial

stations. The effects were summarized by Robert L. Shayon in his testimony at the 1975 fairness doctrine hearings, which dealt with an earlier incarnation of the Proxmire bill containing language similar to this year's bill:

Now, if the Congress passes this bill, the FCC would be precluded from comparing rival proposals for program service both in applications for construction permits or from considering past and promised performance in license renewal applications. Program service could not be considered in petitions to deny or in "jump applications." The entire process of ascertainment . . . would be thrown out. The Commission could not require information from licensees about categories of programs nor could it specify percentages for either adequate, substantial or superior service. A licensee could with impunity drop all news and public affairs programs, all local programs, broadcast his or her partisan political views and make personal attacks without according anyone the right to reply or the public the opportunity to hearing opposing views. A television station could put on an hour of children's programs on Saturday morning and devote as much as 30 minutes of that hour to commercials addressed to children. . . . (I)t would throw the whole question of obscenity into the criminal statutes. . . . The Commission would have no discretion or review of content including four-letter words.

A POSSIBLE HIDDEN AGENDA: ALTERNATIVES TO THE FAIRNESS DOCTRINE

The fairness doctrine is tolerated and even embraced by some broadcasters because they believe that its demise would precipitate the passage of more draconian measures designed to break up the concentration of control in the broadcasting industry.

William Sheehan, president of ABC News, candidly admitted that strategy in the 1975 hearings:

One difficulty we have with the outright repeal proposal is that there is no assurance that if the fairness doctrine were taken off the books, it would not be replaced with a new and more onerous obligation. . . . The large vacuum which some perceive would result from a complete elimination of the fairness doctrine would likely lend renewed credence to those who have argued for a system of mandatory broadcast access. In our view, such a system would be wrong for the public, and unworkable for the broadcaster.

Not only would the repeal generate political pressures for mandatory access and related measures; it might give the courts a plausible basis for imposing such measures on constitutional grounds. Henry Geller has compared the broadcast license to public auditoriums to find such a requirement:

Suppose the Government were to license the use of the main park in Jackson to one party, the White Citizens Council, for three years, and allow no one else to use that park for parades, rallies, etc.; and suppose black groups sought the right to present their parades or rallies. Clearly they would succeed in striking down the above governmental action as unconstitutional.

Public interest groups have supported the doctrine as a second-best choice; many have stated that they would prefer to replace the fairness concept with more basic changes. Thus, Frank Lloyd, representing the Citizens Communications Center at the 1975 hearings, stated that his organization had—

Consistently attempted to foster alternatives * * *. We have argued for structural, economic, and other objective, content-neutral forms of regulation that would better insure the first amendment goals of diversification of viewpoints and increased public access. We have fought for these alternatives, arguing that they pose less risk than existing, potentially subjective forms of FCC regulation.

Lloyd then listed a series of structural reforms which he had advocated. Most of them involved an antitrust approach designed to break up concentrations of ownership. They included:

The Prime Time Access Rule, now a part of FCC regulations, which bans the networks from using 1 of the 4 prime-time station hours each night.

Divestiture of local newspaper-television-radio crossownership, partially implemented in FCC rules and subject to possible expansion by the courts.

Elimination of coowned AM and FM radio stations, still allowed under present regulations.

Enforcement of the "top 50 markets" policy. Now under review by the Commission, it would prevent broadcasters from acquiring more than three television stations—or two VHF stations—in the top 50 cities.

Breakup of clear channel radio stations into numerous local outlets.

Drop-in of additional VHF channels and improvement of UHF television.

Elimination of restrictions on pay cable, which has since occurred in the Home Box Office case.

Elimination of broadcast-cable crossownership, currently imposed by FCC rules.

Elimination of newspaper-cable crossownership, already in effect under a rule affecting acquisitions and subject to expansion under a court challenge which could apply it to existing crossownerships.

In addition to his antitrust measures, Lloyd supported a mandatory access concept proposed by the Committee for Open Media. In a subsequent 1977 decision, *National Citizens Committee for Broadcasting* v. *FCC*, 41 RR 2d 1311, the District of Columbia Circuit Court of Appeals directed the Commission to reconsider the COM proposal, which would establish a presumptive compliance with the fairness doctrine for stations which set aside 1 hour per week for public access. Half of the time would be opened up on a first-come-first-served basis, and the other half would be offered to representative spokespersons selected by the licensee.

The most prestigious proponent of structural reforms has been David L. Bazelon, who in 1975 was chief judge of the District of Columbia Circuit Court of Appeals. In a speech that year at Duke University, Bazelon attacked the main rationale used to justify the fairness doctrine—scarcity of spectrum.

(I)t is important to distinguish between the power gained by oligopoly in the production of news and entertainment programming for radio and TV and the power inherent in the medium. . . . The problem is not "scarcity" . . . but rather simple, old-fashioned concentration of economic power and ownership of TV facilities. . . . (T)he major concentration is caused by the dominance of the networks in the programming field. The dominance of the networks makes enforcement of diversification of ownership policies an insufficient effort to deal with the concentration of economic power in TV programming.

Bazelon then went on to propose a number of policies to increase the diversity of programing outlets:

The first step is to limit the networks' ability to sell blocks of programming to the licensees and to increase the feasibility of new networks. Second, the Commission should act to encourage the development of cable, in both pay and nonpay forms, and the further development of UHF. . . . (T)here should be provision for common carrier public stations or common carrier time periods on regular public stations, to which access may be had by lottery or through bidding. . . . A fourth strategy would be to . . . increase the viability of minority taste programming by introducing some form of subscriber TV service.

Proposals like those advocated by Bazelon and Lloyd raise questions of the possible consequences of a repeal of the fairness doctrine and related measures like the equal time rule. A repeal could generate strong political pressure for structural reforms, and arguments that mandatory access in such a context should be viewed as a constitutional requirement by the courts.

LEGAL HISTORY OF THE FAIRNESS DOCTRINE

This section summarizes seriatim the major legal developments leading up to and articulating the fairness doctrine.

The Federal Government began general regulation of the spectrum when Congress passed the Radio Act of 1912, which forbade operation of radio transmitters without a license from the Secretary of Commerce and Labor. Problems of interference were rare prior to the first World War, but military research accelerated hardware development. The first standard broadcast stations were established in 1921, and by 1923 there were several hundred such stations throughout the country. In 1924 the Secretary of Commerce established a policy of assigning specified frequencies to particular stations. When the number of applicants exceeded the number of available frequencies. the Secretary initiated a policy of dividing frequencies into time segments, limiting the hours of operation of stations to enable several stations to use the same channel.

Court decisions restricted the Secretary's power. In *Hoover* v. *Intercity Radio Co.*, 286 F. 1003, the District of Columbia Circuit Court of Appeals held that the Secretary had no statutory authority to deny a license to an otherwise legally qualified applicant on the ground that the proposed station would interfere with existing private or Government stations. In 1926 an Illinois district court held that the Secretary had no power to impose restrictions as to frequency, power, and hours of operation, and that a station's use of a frequency not assigned to it was not a violation of the Radio Act of 1912. *United States* v. *Zenith Radio Corp.*, 12 F. 2d 614. Soon thereafter the Acting Attorney General issued an opinion stating his agreement with the district court, and the next day the Secretary of Commerce announced that he

was withdrawing from attempts to regulate radio transmission.

The resulting chaos led to passage of the Radio Act of 1927, which created the Federal Radio Commission. Its main provisions were later incorporated in the Communications Act of 1934, including power to license in the "public interest, convenience, or necessity." Section 3(h) expressly provided, and still provides, that:

A person engaged in radio broadcasting shall not . . . be deemed a common carrier.

Early decisions laid the groundwork for the fairness doctrine. In 1929 the Federal Radio Commission held that the "public interest requires ample play for the free and fair competition of opposing views and the commission believes that the principle applies * * * to all discussion of importance to the public." Great Lakes Broadcasting Co., 3 F.R.C. Ann. Rep. 32, 33 (1929), rev'd on other grounds, 59 App. D.C. 197, 37 F. 2d 993, cert. dismissed, 281 U.S. 706 (1930). For an extended period the licensee was obliged not only to cover and to cover fairly the views of others, but also to refrain from expressing his own personal views. Mayflower Broadcasting Corp., 8 F.C.C. 333 (1940).

The Commission made its first explicit statement of the fairness doctrine in its 1949 report on editorializing by broadcast licensees. The report repealed the ban on editorializing and established a twofold requirement, first, that the broadcaster cover important issues, and second, that it provide coverage of various viewpoints on the controversial issues it did cover.

Congress endorsed the doctrine in 1959. While amending the statutory requirement of section 315's equal time provision to except certain appearances of candidates on news programs, it added language stating that the change constituted no exception "from the obligation imposed upon them under this act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." Act of September 14, 1959, 1, 73 Stat. 557, amending 47 U.S.C. 315 (a). The language which survived in the statute is comparatively mild compared to the language initially proposed by Senator PROXMIRE, which read as follows:

(B)ut nothing in this sentence shall be construed as changing the basic intent of Congress with respect to the provisions of this act, which recognizes that television and radio frequencies are in the public domain, that the license to operate in such frequencies requires operation in the public interest, and that in newscasts, news interviews, news documentaries, on-the-spot coverage of news events, and panel discussions, all sides of public controversies shall be given as equal an opportunity to be heard as is practically possible. 105 Cong. Rec. 14457.

The Proxmire amendment was altered in conference and survived in the language cited above.

The doctrine began to take a more definite shape in 1963, when the FCC sent a letter to the Cullman Broadcasting Co. of Cullman, Ala., ordering it to play a tape sent to it by the Citizens Committee for a Nuclear Test Ban Treaty. In language which was often cited in later decisions, the Commission said:

Where a licensee permits the use of its facilities for the expression of views on controversial local or national issues of public importance such as the nuclear weapons test ban treaty, he must afford reasonable opportunities for the presentation of contrasting views by spokesmen for other responsible groups. . . . (T)he public's paramount right to hear opposing views of controversial issues of public importance cannot be nullified by . . . the inability of the licensee to obtain paid sponsorship of the broadcast time. . . .

The background of the Cullman letter did not become public knowledge until 1975, when Fred Friendly published an article on the fairness doctrine in the New York Times magazine. It stated:

It was in 1963 that the doctrine began to change from a vague public-interest policy to an instrument of politics and inhibition. That year, President Kennedy worried that one of the noblest goals of his Administration—the nuclear test-ban treaty with the Soviet Union—was being jeopardized by right-wing commentators who denounced the treaty and argued against its ratification. His political strategists monitored stations broadcasting such commentary and then prompted test-ban treaty advocates to demand time to state their side of the issue, citing the fairness doctrine in their letters to the stations involved. The campaign resulted in a dramatic number of broadcasts favoring the treaty in areas of the country where such views might not otherwise have been heard. The White House believed this political use of the fairness doctrine had made an important contribution to the eventual Senate vote to ratify.

The most famous fairness doctrine case came in 1969—*Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367. The Red Lion decision actually involved two cases which were consolidated for purposes of review. In one of them, the FCC had ordered the Red Lion Broadcasting Co. to offer reply time following a personal attack on a journalist named Fred J. Cook. The attack had come during a 15-minute broadcast by the Reverend Billy James Hargis as part of a "Christian Crusade" series. Hargis attacked Cook's latest book, "Goldwater: Extremist on the Right," and claimed by that Cook had been fired by a newspaper for making false charges against city officials; that Cook had then worked for a Communist-affiliated publication; that he had defended Alger Hiss and attacked J. Edgar Hoover and the Central Intelligence Agency; and that he had now written a "book to smear and destroy Barry Goldwater."

The Supreme Court upheld the FCC's directive to provide reply time for Cook, and it also sustained the Commission in the face of a challenge to its personal attack rules, adopted after the Red Lion litigation was begun. Those rules had been challenged in a separate action by the Radio Television News Directors Association.

Fred Friendly's New York Times Magazine article in 1975 created a minor scandal and played a significant role in that year's fairness doctrine hearings with its revelations about the background of the Red Lion case:

Fred Cook, it turns out, did not bring his action against WGCB simply as an offended private citizen; instead, his actions grew out of a politically motivated campaign to use the fairness doctrine to harass stations airing right-wing commentary, an effort inspired and managed by the White House and the Democratic National Committee and financed in large measure with political contributions.

Emboldened by the Red Lion opinion, the commission revoked the license of a station in Media, Pa., which was indirectly controlled by the Reverend Carl McIntire. *Brandywine-Main Line Radio* v. *FCC*, 473 F.2d 16 (1972) upheld the decision. The station had refused to offer reply time after broadcasting statements by McIntire which were said to be "deliberate distortions of the facts relating to various public issues such as race relations, religious unity, foreign aid, et cetera." The minister was also said to have made " 'intemperate' attacks on other religious denominations and leaders, various organizations, governmental agencies, political figures, and international organizations."

In *Columbia Broadcasting System* v. *Democratic National Committee*, 412 U.S. 94 (1973), the Supreme Court overturned a lower court ruling which might have provided a mandatory access alternative to the fairness principle. The decision upheld an FCC ruling that television stations were free to impose a flat ban on all paid public issue announcements. The Burger opinion stated that Congress had consistently rejected efforts to impose on broadcasters a "common carrier" right of access for all persons wishing to speak out on public issues. The chief justice emphasized that the Commission was—

Entitled to take into account the reality that in a very real sense listeners and viewers constitute a "captive audience." . . . The "captive" nature of the broadcast audience was recognized as early as 1924, when Commerce Secretary Hoover remarked at the Fourth National Radio Conference that "the radio listener does not have the same option that the reader of publications has—to ignore advertising in which he is not interested—and he may resent its invasion of his set." *Id.* at 127–128.

The Court nevertheless held open the possibility that:

(c) Conceivably at some future date Congress or the Commission—or the broadcasters—may devise some kind of limited right of access that is both practicable and desirable. *Id.* at 131.

Twenty-five years after its first report dealing with the fairness doctrine, the Commission issued a second fairness report in 1974. The main accomplishment of that document was to reverse the earlier direction set by the FCC in the 1960's. In a decision which was upheld in *Banzhaf* v. *F.C.C.*, 405 F. 2d 1082 (D.C. Cir. 1968), the Commission had issued a ruling requiring radio and television station which carried cigarette advertising to devote a significant amount of broadcast time to presenting the case against cigarette smoking. Though it later sought to distinguish cigarettes as a special case, the Commission found itself in trouble when the District of Columbia Circuit Court of Appeals refused to accept the limitation and found no logical basis on which to distinguish advertisements for high-powered auto-

mobiles. The excessive pollution caused by such automobiles was said to constitute a public health threat. *Friends of the Earth* v. *FCC*, 449 F. 2d 1164 (D.C. Cir. 1971). In its 1974 fairness report, the Commission's response was to retract the Banzhaf decision and limit the doctrine's application to commercials "which are devoted in an obvious and meaningful way to the discussion of public issues."

A case which is often mentioned in discussions of the fairness doctrine is *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974). That decision struck down a Florida statute which sought to provide a right of access to persons attacked in newspapers.

The last major case dealing with the doctrine was National Broadcasting Co. against FCC, a 1974 D.C. Circuit ruling popularly dubbed Pensions.[1] In it the court reversed a Commission ruling that NBC had failed to present both sides of a controversial public issue, the quality of private employee pension plans. The FCC had acted in response to a petition by Accuracy in Media, Inc., which complained about the allegedly one-sided presentation concluding with the following summation by narrator Edwin Newman:

Our own conclusion about all this, is that it is almost inconceivable that this enormous thing has been allowed to grow up with so little understanding of it and with so little protection and such uneven results for those involved.

The situation, as we've seen it, is deplorable.

The Court of Appeals reversed the Commission, concluding that NBC had acted reasonably and in good faith (516 F.2d at 1125–32).

CURRENT FCC RULES IMPLEMENTING THE DOCTRINE

Several Commission regulations give detailed outline to the fairness doctrine. They include:

The personal attack rule, section 73.123 (a) and (b), which read as follows:

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportuntiy to respond over the licensee's facilities

(b) The provisions of paragraph (a) of this section shall not be applicable (i) to attacks on foreign groups or foreign public figures; (ii) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, or other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (iii) to bona fide newscasts, bona fide news interviews and on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (a) shall be applicable to editorials of the licensee).

This section applies to AM radio.

Sections 73.300, 73.598, 73.679, and 76.209 apply identical personal attack rules to commercial FM, noncommercial FM, television, and origination cablecasting, respectively. All track the language of the AM provision cited above.

The fairness doctrine has not been further delineated in FCC rules. Commission practice since 1962 has been to review alleged violations on a case-by-case basis, without waiting until the station comes up for a license renewal. It has not attempted to impose any requirements governing the precise amount of time accorded to different sides of controversial issues under the fairness doctrine.

The equal time provision, which applies to political candidates, is separate and distinct from the fairness doctrine. The fairness doctrine has not been interpreted as requiring equal time for opposing viewpoints.

As I say, back in 1929, Mr. President, the Federal Radio Commission held:

The public interest requires ample play for the free and fair competition of opposing views.

I repeat that. This is back in 1929, this is not the fairness doctrine. This is what was the thinking back in President Hoover's day, when he was Secretary of Commerce just before he became President:

The public interest requires ample play for the free and fair competition of opposing views, and the Commission believes that the principle applies. . . . to all discussions of importance to the public.

There you are. Adding up the first amendment rights going back to Jefferson, let us remember it was Jefferson who said:

As between a free newspaper and a free government, I would select a free newspaper.

He knew which could control the most.

He knew, as we all do now, that it was not "We, the press" or "We, the Congress," or "We, the Supreme Court," but, as stated in the preamble to the Constitution, "We the people of the United States, in order to form a more perfect union," and so on.

Let us look and find out whose first amendment rights, under that Constitution, are to be protected.

The people's rights. Because the distinguished presiding officer, myself, the Senator from Wisconsin, and everyone else in here, presumably has no radio station rights or franchise. But we certainly have airwaves that belong to us. Those airwaves belong to the people of the United States, and, admittedly are to be used for the public benefit. For that reason we instituted a franchise system of licensing after hearing, and the licenses are given that exclusive franchise, with certain duties, under a public trust.

Oh, I have been to some of the broadcasters' conventions, and I have heard talk about the fairness doctrine, and they really begin to think they own the public's airwaves, that they have got a right. You know, everyone has a right to everything: A right to trial, a right to a lawyer—we cannot finance it all. It seems they have a right, not to equality of opportunity, but to equality of results; "I have a first amendment freedom of speech right."

If we were to assume that to be the case, heavens above, you would assume no one could have access to the airwaves. You would assume as our friend Henry Geller did, that they could come on the air, as just like the case of a public park.

I think he was alluding to a particular case at the time, that you would have a public park in a town, and you would say no one else in that town could use that public park to demonstrate or parade except the Ku Klux Klan. How long would that last? I think they tried that once here.

Notwithstanding what we are doing with respect to 8,000 or 9,000, a little less than 10,000 broadcast and TV station owners, what about the two hundred twenty million nine hundred ninety some thousand other Americans? Are not we the group? Are not we the people, the ones who are really guaranteed, with the fairness doctrine, the first amendment right?

That is the freedom of speech. Where have we placed ourselves as a people? Let me refer, if you please, to Justice Burger under the Columbia Radio Broadcasting System case in 1973. The Chief Justice emphasized that the Commission was entitled to take into account the reality that in a very real sense listeners and viewers—that is, we the people—constitute a captive audience.

The captive nature of the broadcast audience was recognized as early as 1924, to quote Justice Burger, "When Commerce Secretary Hoover remarked at the Fourth National Radio Conference that, 'The radio listener does not have the same option that the reader of publications has, to ignore advertising in which he is not interested, and he may resent its invasion of his set.' " He is in the captive audience.

We the people have the first amendment. The Constitution is for we the people of the United States, not we the 10,000 licensees. Do not try to slough this off and compare it to newspapers. Physically speaking, there is not any more spectrum in certain areas to allocate. All you need for a new newspaper is money. And in some cases there are eleemosynary publications which are mailed without charge. I can get a press and grind out anything and get it around. I can always get a newspaper. Do not worry about that. Of course, the great dangers are the big mergers and buy-ups, according to the program the Senator from Wisconsin was quoting.

The truth is that in the large cities the spectrum is overallocated. You cannot get any more spectrum for broadcast without major changes in present allocation policy. You can go to the rural areas, technically, but you cannot take from those areas and increase in saturated areas.

[1] 516 F.2d 1101, *reversal vacated & rehearing en banc granted*, 516 F.2d 1155, *rehearing en banc vacated*, 516 F.2d 1156, *second reversal vacated as moot & remanded with direction to vacate initial order and dismiss complaint*, 516 F.2d 1180 (D.C. Cir. 1974).

Incidentally, under the conference report that we agreed to just last week with respect to the Federal Communications Commission appropriations, increased the appropriations to try to technically redesign sets and improve the UHF spectrum channels so as to increase that portion of the spectrum. That is fine, but that is the difference.

In the newspaper you can print what you want to and others will buy or not buy it. They are not captives.

Recognizably, once you turn on a set, and we all have them, radio being what we are talking about, then we are as Chief Justice Berger has said, "a captive audience."

The fairness doctrine goes to just exactly what the Senator is concerned about, first amendment rights, only he speaks for first amendment rights for some 10,000 at most. Actually, if you want to get technical there, there are only 933 in public radio broadcasting. He is talking, if you please, in his amendment, which was proposed and withdrawn, for 933 Americans as composed to the almost 220 million that I speak for, the people in general.

Mr. PROXMIRE. Will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. PROXMIRE. I am delighted the distinguished Senator from South Carolina has chosen to respond to this. I was afraid he would not. I am very impressed. He always is a very brilliant speaker, very logical, and very persuasive. I do hope with his quick mind and his great ability he does not take as long as I did to change my mind.

As he knows, I was one of the principal authors of the fairness doctrine back in 1958. How wrong I was. It took me a while to learn, but the Senator from South Carolina is a quicker learner.

Mr. HOLLINGS. With that remark, Mr. President, the Senator from South Carolina now is ready to move for third reading.

Mr. PROXMIRE. May I tell the distinguished Senator that, of course, what he has done is he has said he does not want to talk about just the rights of a few thousand radio station owners or a few hundred television station owners, but it is the right of the people which counts.

How right he is. That is exactly what the Founding Fathers had in mind when they wrote freedom of the press as the first amendment to the Constitution. They were not thinking of the owners of the newspapers. They were thinking about the people who get the newspapers, who read the newspapers, who rely on the newspapers for news.

No matter how my friend from South Carolina squirms, no matter how he moves, no matter what magic he weaves with his oratory, he cannot escape from the fact that the newspapers of this country have been free of censorship; they have not had an FCC guiding them. They have not had to be licensed. They have been free.

What have we gotten out of that? Greatly improved newspapers, a greatly improved press. We have had freedom of Government domination or censor. I have cited specific instance after specific instance of Democratic and Republican Presidents who, to some extent, have tried, and succeeded to some extent, in dominating newspapers.

Furthermore, I think the Senator from South Carolina should recognize this is not 1929 which he quotes, but this is 1978, a time when the technology has transformed electronic media. We now have far more, as I pointed out—and I would like him to meet this argument—far more radio stations available, far more easily and cheaply available, than newspapers. We have a situation in which the people get their news primarily not from newspapers but from radio and television.

So if the Senator really believes in freedom of the press, if he believes in the competition of ideas, if he believes what our Founding Fathers found was necessary, that you have to protect the people from the Government itself by prohibiting the Government from interference or interfering with the freedom of the newspapers and protect the people in doing so, then I say you should apply that to radio and television and do as the House subcommittee itself is doing, or the direction in which they are moving, exempt radio from the fairness doctrine and the equal time rule. Then you have real freedom, real competition, and a far more vigorous electronic media.

Mr. HOLLINGS. If the Senator is going to quote the Founding Fathers, let us agree they never heard of a radio spectrum. But where a speaker can enlarge upon his own speech, transmitting it in a controlled fashion, namely on radio waves, air waves—to broadcast it—then your licensing becomes necessary to protect the spectrum. For the few, for the benefit of the many we have that licensing scheme, and invest licensees with the public trust. It sometimes seems that they do not want that public trust once they have it, but you ought to hear them when they apply for a initial license. We do not want to go into all of that. The fact is they do have a public trust; they do have certain responsibilities arising out of that trust.

If the Senator is right about his analogy, there is nothing due the minorities nothing due the handicapped, nothing due with respect to sex discrimination. I am sure the Senator, as a leader in civil rights, would not want to say, since the Founding Fathers did not have any blacks in radio stations when they passed the Constitution, they would never get any. I am confident of that.

What he is trying to say now is once a broadcaster has received that license he then does not owe any more duties to the people who gave him that privilege to broadcast. I am saying that he does. I am saying one of his duties is to provide balanced treatment to the American people on controversial and important issues. That has been a finding substantiated by this Congress and the courts under the Constitution. I think it is sound,

Mr. PROXMIRE. I say to my good friend, take a chance on freedom. It has worked for the American newspapers brilliantly. Our newspapers have vastly improved. Our people are more informed because the newspapers have done a better job. The job they did on Watergate was probably the finest job newspapers ever did in this country. I think we all would have to agree they are more competitive, more comprehensive, than ever before. If you give that kind of freedom to radio and television there is no reason they should not develop along the same lines with exactly the same kind of free competition we believe in in the economic marketplace. I say apply it to the area of good ideas.

Mr. HOLLINGS. Very well. Mr. President, are there any further amendments?

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 903, H.R. 12605.

I am replacing the Senate bill with the House bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 12605) to amend the Communications Act of 1934 to extend and improve the provisions of such Act relating to long-term financing for the Corporation for Public Broadcasting and relating to certain grant programs for public telecommunications, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

Mr. HOLLINGS. Mr. President, I move to strike all after the enacting clause of H.R. 12605 and that the text of S. 2883, as amended, be substituted for the text of H.R. 12605 as reported and as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 12605) was passed.

Mr. HOLLINGS. I move to reconsider the vote by which the bill was passed.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of H.R. 12605, as it passed the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that consideration of S. 2883 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I move that the Senate insist on its amendments to H.R. 12605, as passed by the Senate, and request a conference thereon with the House of Representatives and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. PAUL G. HATFIELD) appointed Mr. CANNON, Mr. HOLLINGS, Mr. MAGNUSON, Mr. GRIFFIN, and Mr. SCHMITT conferees on the part of the Senate.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Wisconsin for his interest, his indulgence, and his courtesy in this matter, and for his consideration. I thank particularly the Presiding Officer and the Senator from Alaska, who has been leading the way.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

Mr. PROXMIRE. Mr. President, what is the parliamentary situation now?

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the conference report on H.R. 5289.

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, is there any time limitation?

The PRESIDING OFFICER. There is no time limitation.

THE GREAT NAVY SHIPBUILDING BAILOUT

Mr. PROXMIRE. Mr. President, I shall speak as briefly as I can, but I think this is an extremely important matter that I am taking up tonight and I must call it to the attention of the Senate because of the time involved.

When the Senate adjourns tonight, the bell will have tolled on the payment of a $359 million bailout on one defense contractor, and by the end of the Friday session, the bell will have tolled on a $182 million bailout to another Navy contractor. A total of $541 million in bailouts will have been tacitly approved by the Senate.

These bailouts are incorrectly referred to as "settlements" of Navy shipbuilding claims disputes. But they are not settlements at all. The $541 million is being handed over to the shipbuilders as sweeteners above and beyond what the Navy experts found were owing to the contractors for their claims.

The Navy experts found General Dynamics' claim of $544 million is worth $125 million. In other words, they found that it is worth less than one-fourth of what they claimed.

I might point out that this Navy Board that made this finding was a competent, expert, professional board, whose findings have not been challenged. They found that Litton's claim of $1.1 billion is worth $312 million or less than a third of what they claimed, about 30 percent. If the Navy had settled the claims on the basis of the Navy experts' findings, a fair and equitable settlement could have been achieved. Instead, the Secretary of the Navy took the findings of his experts and added in lump sum payments totaling $541 million. As a result, the taxpayer is being forced to pay $978 million for claims which the Navy experts found are worth only $437 million.

Uncle Sugar—in this case, Uncle Sap—is handing over to the two defense contractors $541 million in "financial relief."

The distinguished cartoonist for the Washington Post, Herblock, was so outraged that he drew these two cartoons, which I have here in the back of the Chamber. The cartoons point to the marvelous position that defense contractors find themselves in. What they do is say to the Pentagon, "Pay off or we will stop production and you will not get your ships." As Herblock points out in the cartoon on the far side, the Pentagon waves its white flag and caves in—gives in.

I want to point out in detail how outrageous this settlement is. Before I do that, I call attention to the other cartoon by Herblock, "Arrivals and Departures," pointing out how the President of the United States, by vetoing the aircraft carrier, saved hundreds of millions of dollars. However, we turn around and ship out those hundreds of millions of dollars—not to get any hard equipment, not to strengthen our military force, but just as a payoff to incompetent, inefficient contractors above their contracts and above their value in claims.

Navy Secretary Claytor says, in defense of these bailouts, that they will avoid "years of litigation, with a substantial risk of greater cost to the Government as well as disruption of vital Navy shipbuilding programs."

In addition, Claytor says that the large losses which the two shipbuilders are being forced to accept will discourage other contractors from attempting "to obtain the kind of relief that these settlements provide for." Let us take a look at each of these justifications. First, the argument that the two contractors are suffering large losses.

Mr. President, the contracts that are the basis for the claims in question will not be completed for several years. Many of the ships in question are still under construction and will not be delivered for months and years to come. Thus, we are talking about hypothetical losses which the shipbuilders may realize when the contracts are fully performed. There may, in fact, be no such losses, or they may be far below present estimates.

As I point out, if the estimated losses, which only the contractor has estimated—the Navy has not made an estimate, only the contractor has—if they have, which they may very well have, exaggerated these losses, then they can lose money. They can lose over $100 million, for example, and make a nice fat profit on the loss. That is how bad these contracts are.

The hypothetical losses can even be transformed into profits at the taxpayers' expense.

But even if there are losses, the bailouts are unjustified. Where is it written that the taxpayer must spend his money to reduce or eliminate losses incurred by defense contractors?

The two shipbuilders have experienced large cost overruns on their ship contracts. The cost overruns are the cause of the claims. Why did the cost overruns occur and who should be responsible for them?

These are precisely the questions the Navy experts addressed when they examined the claims. They concluded, as I indicated earlier, that most of the responsibility is the shipbuilders'. They rejected most of the shipbuilders' claims. The reason they rejected most of their claims is that the shipbuilders themselves are responsible for most of the cost overruns.

There is ample evidence that the cost overruns occurred because of the incompetence and mismanagement of the two defense contractors.

We had hearings on this before the Joint Economic Committee. We have had hearings over the last 2 years on this. We have documented this incompetence. We have had people from the shipyards come in and testify to it. Management personnel has done so. Labor personnel has done so. The incompetence is outrageous and they do not like it.

The bailouts are thus a huge subsidy of waste, incompetence and inefficiency. But worse—much worse—they are a precedent that could invite a Niagara of waste, incompetence and inefficiency.

NATIONAL SECURITY

The concern has been created in the minds of many Senators that without the bailouts the Navy may not get the ships that are vital to the national security. This is a legitimate concern raised by the actions of the Navy. After all, when the Navy quakes in its boots and raises a white flag—as Herblock has depicted in his dramatic cartoon—every time the shipbuilder threatens to shut down unless its demands are met, we are entitled to question whether the ships will be built.

But I asked this question directly to Secretary Claytor in a hearing less than 2 weeks ago. On September 8 I asked Claytor if the Navy was afraid that it would not get the ships unless these payments were made. Claytor said the Navy knew it could get the ships. Secretary Claytor testified that the construction of the ships would not be stopped.

Of course, the Navy can see to it that its ships are built. There is ample recourse through the courts and the law to obtain ships needed for national security.

In the few instances of threatened shutdowns by Navy shipbuilders in recent years, the Navy has obtained injunctions from the courts requiring construction to continue.

I challenged the Secretary of the Navy and the Assistant Secretary to cite me one case where they could not get the injunction. They could not, because there were not any.

Would the contractors go bankrupt if they were not bailed out by the Navy? The answer is no. The Secretary of the Navy has testified and the facts confirm the Navy's conviction that neither of these firms would go bankrupt if they

were not saved from their own mismanagement.

HUGE FIRMS CAN SURVIVE LOSSES

These firms are not little Mom and Pop stores.

Litton is the 69th largest industrial firm in the country. Last year it had sales of more than $3.4 billion—I repeat, $3.4 billion. It has more than $850 million in equity. It is doing so well that its stock is selling near its high for the year.

After this settlement was made, the Secretary said that we are imposing a tremendous loss on these people. The stock went up sharply and near to its high. It is now virtually at its high for the year. One of the highest levels ever.

General Dynamics is the 85th largest firm in the country. Last year its sales exceeded $2.9 billion—that is not a penny ante operation. Its equity is in excess of $730 million. So they have lots of equity. They can afford to take a loss. Like Litton, General Dynamics' stock is also selling near its high for the year, up around $90. It was down less than one-third of that earlier in the year.

It is true that if the estimates are accurate these firms will suffer serious losses. But this is precisely what the free enterprise system is supposed to be all about. If a firm is incompetent and wasteful, it is supposed to pay the price.

The Federal Government is not supposed to step in and babysit with them and pay them hundreds of millions—give them welfare checks, in effect. So neither firm will go bankrupt if they are not bailed out. And the shipbuilding will continue. It will not be interrupted because the Navy can go to court and require its continuation, and the Secretary of the Navy said he would do that.

Why then, this surrender of $541 million to pay off incompetence and waste?

NAVY FEARS LITIGATION

The reasons given by Secretary Claytor really boil down to one, that is to end the litigation.

Why is the Navy afraid of litigation? Litigation means the Navy fights for what it believes the Government has coming to it. It means the Government does not cave in. The Herblock cartoon, showing the Pentagon caving in to the shipbuilder's demands with the white flag of surrender being waved out of the window of the Pentagon to give in to the shipbuilders, because the shipbuilders wheel up—right off the bat— their big gun: The threat to stop production of ships, gives a vivid dramatization of what is happening. Secretary Claytor says he is not frightened by the shipbuilder's threat to stop production. He says he knows he will get the production. What really scares him enough to whip out the white flag seems to be the prospect of a court fight.

Why should it?

Mr. President, if ever there was a reason for having a court make a decision, here it is: No trial has been held. And a trial should be held. The facts should be adduced, in full. We do not know them. All we have is representations by the shipbuilders If the Navy and the contractors cannot agree to a settlement on the merits of the claims, the contractors have a right to appeal to the Armed Services Board of Contract Appeals. They also have the right to appeal an adverse decision of the Board to the courts. They have not done that. A court trial would determine who is legally responsible for the increased costs beyond any doubt. To date the record suggests that that responsibility is mostly the contractors. That is why the Navy experts rejected most of the claims. In spite of that, the Navy is about to pay the contractors $541 million over and above the value of their claims, the money of all the taxpayers listening here tonight.

NAVY EXPERT FINDING UNQUESTIONED

Consider the implications of this decision. No one has questioned the validity of the findings of the Navy experts. There is not one shred of evidence in the congressional hearings that the claims are worth a dime more than what the Navy experts say they are worth. It is significant to me that the contractors themselves have been silent on the matter.

The reason is clear. The Navy established two teams of professional contracts specialists to evaluate the claims. They spent many months examining the voluminous documentation submitted by General Dynamics and Litton. At the end of that process they concluded the claims were worth only a fraction of their face value. Those findings are unchallenged.

Instead, Secretary Claytor has come up with reasons to give the contractors the value of the claims plus more than one-half of a billion dollars. But when you scrutinize the Secretary's reasons they fall apart.

There is no realistic danger of a work stoppage. The Navy will get its ships with or without a bailout.

There is no danger of bankruptcy. The contractors are capable of taking their losses and surviving.

There is a possibility of protracted litigation. But what of it? The Government has gone to court before and it will go again. In this case the Navy should be willing to go to court to enforce its contractual rights.

ENFORCE CONTRACTUAL RIGHTS

The Navy will be better off and the taxpayers will be better off if the Navy's contractual rights are enforced. The alternative—the cave-in Secretary Claytor has arranged—is a disgrace and a waste of taxpayers' funds.

Mr. President, what is the average citizen to make of the Navy's actions? I described the situation in my August newsletter. Here is what one citizen, a resident of Sturgeon Bay, Wis., wrote:

I just finished reading your August report concerning the Navy Shipbuilding Handouts! I am grateful for your continued concern and alertness to this rip-off of the American taxpayer. It's no wonder that a proposition 13 passed in California and that similar bills will pass in other states. What this says is that the taxpayers are concerned and are frustrated about what they can (or can't) do about it. I feel that daily we approach a taxpayers revolt type of situation because of this sort of goings-on.

Mr. President, this reaction is typical of the many communications I have received in recent weeks. I believe it typifies the sense that many citizens have that the Navy is not protecting their interests. The feeling has become widespread that the Navy kowtows to its contractors.

TRIAL NEEDED

Mr. President, if there were a million dollars at stake, a trial would be logical, but this is not $1 million, it is $541 million, that is a million dollars for every minute that has expired since 11:15 this morning. I think the presiding officer who sat so patiently through this may be moved by that concept. Every minute that has passed, there is another $1 million going out, since 11:15 this morning, to make up the $540 million we are talking about.

Mr. President, what is the matter with this country of ours? Where is the fight and fire that made this country free in 1776? Where is the sense of sacrifice, the raw courage that cost hundreds of thousands of deaths in the war between the States?

Where is the sense of idealism and gallant bravery that this country showed so nobly in World War I and World War II when American boys gave their lives to combat tyranny?

What has happened to the spirit of a country when the top ranking officials in the U.S. Navy fall on their knees quailing before a defense contractor?

This is the fighting Navy? John Paul Jones' great motto—I have not yet begun to fight—has thrilled and inspired Americans for generations. And American Navy heroes have chosen death by fire or drowning for this Nation. Capt. James Lawrence told his officers while wounded in the War of 1812 not to give up the ship.

But today? The John Paul Jones spirit has fled the Pentagon, not before shock and shell of a mighty sea battle, not before the keening drive of an enemy torpedo or the vast concussion of a nuclear bomb, but before the prospect of a fight, where? In court. In court.

The Navy has decided that it will not fight for its rights and the rights of all American taxpayers in court. John Paul Jones—where are you?

As I said, Mr. President, it is the precedent that is most serious here. Consider what the Navy with congressional concurrence is doing.

It is saying to defense contractors: Waste your manpower and material. Hire hundreds of untrained. unskilled personnel as General Dynamics did in this case, according to testimony before our committee. Mismanage your manpower. Allow productivity to fall. Whatever your losses are we will pay half. If it is millions—forget it. It is only the taxpayers' money. If it is hundreds of millions—that is just as easy.

Where is the incentive for holding down cost in those circumstances, Mr. President? What happens to the free enterprise system when you subsidize the losers?

SUBSIDIZE INEFFICIENCY

Newport News, another major shipbuilder, said exactly that in a recent letter to the Navy—they want some of this

gravy, too. This firm wrote the Secretary that if their competition—General Dynamics and Litton—are bailed out under Public Law 85–804, they want exactly the same treatment. They want the bailout too.

Now Newport News is not losing money. It is building ships for the U.S. Navy and making a profit. But it says the Navy has used Public Law 85–804 to bail out two of their big competitors. To do this and not to give Newport News the same treatment is worse than unfair. Newport News argues that if they do not get the same treatment it means that the inefficient are rewarded, the efficient penalized. So now Newport News is asking for more money even though it is making a profit on its Navy contracts.

GOVERNOR LONGLEY COMMENTS

Mr. President, the Governor of Maine, James B. Longley—he is not a Democrat, he is not a Republican, he is an independent who is not running for reelection and therefore has no political motivation—has written a fascinating letter in which he points out that the Bath Shipbuilding firm in his State has done a remarkably efficient job, producing their ships under cost, without overruns and on time.

He expresses outrage that this particular give-away to General Dynamics and Litton is being made. I will quote from Governor Longley's letter of August 31, 1978:

> Furthermore, as a Governor who has worked with the Republicans and Democrats in the Legislature to bring fiscal responsibility to the State of Maine, I want to plead with the Congress and in particular, our own Congressional Delegation, that they join with Senator PROXMIRE and Representative DOWNEY in fighting any voluntary payment of cost overruns by defense contractors except those that the Pentagon can legitimately say are proper. I feel as a Governor of one of the fifty states as well as a taxpayer that the Pentagon is participating along with other federal bureaucrats and professional politicians in "ripping off" from the pocketbooks and paychecks of American taxpayers to the extent they "pay-off" firms that are guilty of "rip-off" rather than fighting our defense through the courts based on what is right rather than bow down to hard-handed and unfair lawyers representing large defense contractors on the basis of a threat that they will take us to court.
>
> As a matter of fact, if it wasn't so ironic and sad, it would be amusing to find that the very organization charged with the defense of the country, namely the Pentagon, frequently throws in the towel rather than defend the American taxpayer. Hopefully, the Pentagon, the organization charged with the defense of we the citizens, will strongly resist and insist on proof in the courts through litigation in fairness as well as defense for the taxpayers as opposed to General Dynamics' and Litton Industries and Ingalls Shipbuilding attempts to further rip-off the citizens and taxpayers and the very defense budgets designed to protect innocent citizens of Maine and America.

That is the protest of the Governor of Maine, Governor Longley, against this outrageous payment which goes into effect when we adjourn in a few minutes.

MAGIC: LOSSES BELOWS PROFITS

Now, Mr. President, the Secretary argues that the precedent is not going to be serious for what may seem at a glance to be a practical reason. He argues that no firm would deliberately lose money just because the Federal Government might come in and pick up half the loss.

I want to return to the question of the hypothetical losses because there is some logic to this argument, Mr. President. But the trouble is that it does not fit the agreement the Secretary has made in this case, and here is why.

What this agreement says to future contractors is go ahead and lose money—make your incompetence so conspicuous that there will be testimony on the record that such glaring inefficiency must be accompanied by very big losses. This conspicuous waste and incompetence is on the record in the General Dynamics and Litton Electric Boat cases.

Then make a very big estimate of loss—say, four times larger than you are likely to suffer. The alleged loss cannot be audited when the Secretary makes his deal. No one can predict the future so there is no limit on the loss you can estimate.

Under this kind of agreement, you can lose plenty and end up with a fat profit. For example:

Say you estimate a $400 million loss after the Navy has paid you in full for the part of the claims the Navy finds is the Navy's fault. The Navy agrees to pay you an additional $200 million. That is one-half of your estimated losses. And they say that amount. But your real losses turn out to be not $400 million but only $100 million. The Navy has already paid $200 million, so you are $100 million in the black, and that is just the beginning. Under the General Dynamics settlement, the Navy will get one-half or $150 million of the $300 million reduction in cost below the estimates, and you will get $150 million, so that is a beautiful $250 million profit for your firm, although it actually lost $100 million. Thanks to the Navy, the contractor has used taxpayers' funds to turn a loss into a profit.

In other words, you go out and lose $100 million, and you end up with a $250 million profit. There is no reason why that cannot be exactly the result of this contract—if not in this case, where I think the losses are very severe, in future cases, because the precedent has been established and the framework and the formula put into effect.

DANGEROUS PRECEDENT

Mr. President, if you think this kind of precedent will not appeal to defense contractors and become a dangerous and immensely expensive precedent, you must believe in the tooth fairy, Goldilocks and the Three Bears, and that the Chicago Cubs are going to win the World Series.

So the prospects of losing money will not keep contractors from going this route. Anyone who has ever been in business knows that one of the easiest things on the face of the Earth to do is to lose money. There are a million ways to do it, all perfectly legal. You can even tell your conscience that you are helping the economy by providing jobs to people who do not have to do anything but come in and collect the taxpayers' money. And in this case your loss will actually blossom into a beautiful, big, fat, juicy profit.

Defense contractors take note. The Secretary of the Navy and the Congress of the United States have now said to defense contractors, "Come and get it. All you need is management with plenty of brass, imagination and enough visible incompetence to convince a casual observer that your losses could be huge."

Both the Electric Boat Division of General Dynamics in Groton, Conn., and the Ingalls Shipbuilding Division of Litton at Pascagoula, Miss., have demonstrated incompetence. We have pages of testimony in our hearing records documenting gross inefficiency.

The Navy is rewarding inefficiency. It is paving the way for future claims based on cost overruns which result from contractor inefficiency.

Even now there is reason to believe, according to Admiral Rickover, that the contractors are preparing the ground for new claims.

TRIDENT OVERRUN NEXT?

Does anyone doubt that there will be a large claim on the Trident? I am informed that there is an estimated $500 million cost overrun on the first seven Tridents.

How large a claim will be filed on the Trident contract? What will the Navy do if General Dynamics threatens to stop construction unless demands for a new bailout are met?

Mr. President, the Navy has failed to take any steps toward solving the underlying causes of shipbuilding claims. The agreements they have entered into with General Dynamics and Litton are simply payoffs. The contractors are being given hush money to stop complaining about past cost overruns.

When the new cost overruns grow large enough they will be back. There will be new demands for bailouts.

When that happens, the political appointees in the Pentagon who put together the present bailout agreements will be long gone. The Navy experts will be here worrying about what the next group of political appointees will do. And the taxpayers will be here to pay the bill.

Mr. President, it was suggested to me by people who feel deeply about this matter, who have worked on this, that I should speak all night on this matter, or that I should at least speak for 9 hours—1 minute for every million dollars it is costing the taxpayers. But I recognize how much of a sacrifice has been made by the Presiding Officer and the distinguished officials of the Senate who are sitting in the front of the Chamber, so I will not do that. I was sorely tempted to do that, because I think we have to do something to wake up this country and wake up this Congress.

Apparently, there was no protest in the Armed Services Committee about this giveaway. I cannot understand that. I can understand how people want to spend a half-billion dollars on some program I may not approve or vote against; but I cannot, for the life of me, under-

stand how Senators can so overwhelmingly say that we are going to give $500 million away to defense contractors because they have been incompetent and say they are losing money. That is exactly what we are doing here.

I am not going to press my resolution of disapproval tonight, because I recognize that I do not have the votes for it. I have made this speech tonight and brought in these cartoons and made this presentation because I hope we can move the Senate to recognize what is going on.

I serve notice that when the authorization bill comes before the Senate, requesting $209 million, which is part of the money to pay these claims—the Navy has hundreds of millions of dollars available, but not enough to pay these claims—when that comes before the Senate, I am going to do my best with an amendment to knock it out. I hope Senators will at least recognize the situation under those circumstances. That is the least we can do for the American taxpayer.

Mr. PELL. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. PELL. I thank the Senator very much.

Mr. President, I have listened to the Senator's exposition—deeply held, very sincere—and I congratulate him on his thoroughness and detail.

I should like to present a different viewpoint and hope our colleagues will bear in mind the positive merits of this agreement, because the mark of any good settlement is the fact that it represents the absolute bottom line for both parties.

I believe that that characterization can truly be applied to this settlement, which was arrived at only after long negotiations which threatened to fall through right up to the 11th hour.

The settlement announced on June 9 prevented the threatened shutdown of the Electric Boat facilities at Groton, Conn., and Quonset Point, R.I., which would have involved the layoff of over 8,000 workers, a great many of whom are from my own State of Rhode Island.

I know how hard the parties worked to settle this claim, because I was in telephone contact with both Secretary Claytor and Chairman Lewis in the final days before the threatened shutdown, and I know that both the Navy and General Dynamics made significant 11th hour compromises in a great effort to settle the claim.

It is conceivable that the shipbuilding would have gone on under a court injunction. But if there had been a preliminary injunction, and I am fully aware the Navy was prepared to ask for it, we should bear in mind that the Government would have been ordered by the court to pay a higher percentage of the General Dynamics claim than is authorized by this settlement. This is what happened in one such case, involving Litton Industries, where the Government had to pay 91 percent of the shipbuilder's costs under a preliminary injunction.

Frankly, the settlement was painful for both sides. General Dynamics will take a $359 million fixed loss, the largest ever assumed by a contractor in dealings with the Navy, and representing more money than Electric Boat has earned in profits in its 80-year history. An essential element of all Navy discussions with General Dynamics was the concept of a severe fixed loss as the key to any settlement. This was the crucial issue which led to the collapse of the negotiations in March and the threatened shutdown. General Dynamics, with extreme reluctance, agreed to the unprecedented loss after the Navy compromised and agreed to the substantial initial progress payment of $300 million to relieve the unreimbursed costs which the company has been financing under existing contracts.

I would also point out that the costly and traumatic claim process has led Electric Boat to take an entirely new approach to ship construction. The new shipbuilding management has taken decisive action to reduce overhead and increase productivity. The settlement announced June 9 contains significant incentives for cost reductions by Electric Boat, as well as providing a flexible and reasonable method of resolving any future unforeseen costs without another claim. This settlement clearly does not create a bad precedent for the Navy because no sane contractor would choose the claim process merely to achieve the kind of relief provided by this settlement. Indeed, this claim process has a negative impact on the willingness of private shipyards to build Navy ships.

I urge my colleagues to view this settlement in light of the alternative—a long and very costly legal battle lasting years and seriously impairing the Nation's all important submarine building program. It is necessary that Electric Boat return to shipbuilding without the destructive and contentious controversy which has occupied the time and attention of Navy and General Dynamics officials for years. The result to the American taxpayer would almost certainly be more costly if the Congress disapproves these settlements and sends the parties back to court. A disruption for any period in the 688 class submarine program will have potentially catastrophic consequences for our strategic preparedness in the world. The Nation needs these submarines, which are the keystone of our naval forces and combat readiness.

In testimony before the House earlier this month on these settlements, the General Accounting Office took the position that these settlements are the only realistic option available to the Government in dealing with the cost overruns problem. For Congress to disapprove these settlements simply does not make any sense, from the standpoint of either the American taxpayer or the national security. The long months of hard negotiations tied up the resources of far too many people, and raised fears about job security in the minds of thousands of workers, but the end result is a reasonable solution of the 688 class claims and the underlying problems between the Navy and Electric Boat. I urge my colleagues to sustain this settlement and let the Navy and Electric Boat get on with the business of supplying combat-ready ships for our Naval fleet.

I yield the floor.

Mr. PROXMIRE. Mr. President, I wish to tell my good friend from Rhode Island that I do greatly respect him, admire him and like him, but I myself disagree with him as vigorously as I know how on this particular issue.

As usual he is doing a fine job in defending what he feels is the interest of his State, and I certainly respect that and admire him.

Mr. President, in the first place, he starts out by saying this is the absolute bottom line. How does he know? There is nothing that is going to keep General Dynamics from coming in again and again saying they have additional claims.

Mr. PELL. Both sides have said so.

Mr. PROXMIRE. They have not signed any agreement that they will not come in again. They are free to come in with more claims. They indicated they will, and the indications are they will do exactly that.

Mr. President, he talked about long negotiations. I am sure that there were efforts on the part of the Secretary of the Navy and Assistant Secretary Hidalgo in this particular case.

The fact is what they did is something that as far as I know is unprecedented. There may be an example of it before. What they have done is taken an estimate of the contractor, his estimate alone, unverified as to what his losses are. He said, all right, we will give you half those losses after the Navy has made a very careful examination over a period of many months as to what the Navy should pay in additional claims, because of costs that the Navy was responsible for.

Now the Navy did request changes. The Navy did delay production. In some cases, the Navy did not give information. In all those cases the Navy is paying in full, including the entire cost of inflation, but they found that was only one-third of the claims.

Then they go ahead and they pay half of what the contractor himself says would be the loss.

Here is the problem with the reasoning of the Senator from Rhode Island. The Senator says no one in his right mind wants to do this again. No one wants to lose money. The fact is there is no way that we know they are going to lose money. I say it is the contractor's estimate. They have every incentive to making the most gigantic kind of estimates they can think of and that they can dream up.

Then, if the estimate falls short—and I will give an example here—if the estimate is $400 million and they actually lost $100 million, for instance, the Federal Government has already given $200 million. That is $100 million profit for them, although they made a loss of $1 million. In addition to that, they get back a substantial proportion. In fact, in the General Dynamics case they get back half of the cost reductions so they are making a $250 million profit.

I think this is an absolutely outrageous ripoff. It is protested by Admiral Rickover vigorously. The professional Navy

thinks it is very bad. The people who have to work with these ships, who depend on our security, who want a strong Navy say this is wrong, and I think under these circumstances I feel that we can settle more cheaply by going to court. I think just there is no way that can stand up.

I say the people who are expert on this tell us that all the Navy will owe is about a third of what the claims are and $540 million less than is being settled.

One other technical point: The distinguished Senator from Rhode Island pointed out that in one case a court injunction was secured against the Pascagoula, Miss., shipyards and in that case the Government had to pay 91 percent of the cost of the claims under the court order. I might point out that was a temporary order, a temporary order which would only apply for a relatively brief period of time, and it would not, of course, apply to the overall contract.

The whole thing would be reconciled based on the finding at the end of the period.

At any rate, all I am asking for, it seems to me, is perfectly reasonable. Before the Federal Government pays a nickel we should know what the facts are. We do not know the facts now. We should have a trial to determine the facts. We should at least require the contractor to exhaust the remedy at the Contract Board of Appeals before we give this kind of a handout to them, particularly when they are big firms and are not going to go bankrupt anyway.

Mr. PELL. I thank my colleague for his kind introductory remarks. I understand the sincerity and seriousness with which he reviews this matter.

I would add though that the question of whether this is an open door for more claims or whether it is a one-time procedure I think has been pretty well answered by the report of the House Armed Services Committee which has already said in its report that the committee has the express understanding that this is a one-time action which will, in fact, settle the shipbuilding claims problem.

My understanding as a nonlawyer is if it did go to court it would take a great many years, more than a half dozen years, before it will finally be laid to rest.

Mr. PROXMIRE. May I say to the Senator these ships are not going to be finished tomorrow or next month or next year, as the Senator knows. They are going to continue on for years, so this is an ongoing matter.

While fighting a battle in court for an individual citizen such as the Senator from Rhode Island or myself might be expensive, when we are dealing with a half billion dollars, there is no question but the court costs would be a tiny fraction of the amount at stake here, and the decision would then be determined based on the facts, based on an understanding of what all the facts showed, and not based on some guess and based primarily on what the contractor himself says his own losses are.

I thank the distinguished Senator and I am sure we are going to enjoy joining battle again when this matter comes up on the procurement bill.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now transact morning business for not to exceed 30 minutes.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 10:30 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1427. An act for the relief of Marie Grant;

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 5097. An act for the relief of Dr. Daryl C. Johnson;

H.R. 6760. An act for the relief of Charles M. Metott; and

H.R. 12772. An act to facilitate the exchange of certain lands in the State of Oregon, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. EASTLAND).

At 12:44 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House agrees to amendments of the Senate to H.R. 7819, an act to complement the Vienna Convention on Diplomatic Relations.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 8729. An act to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes.

At 2:25 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bill, without amendment:

S. 3271. An act to amend the pilot project workfare provision of the Food Stamp Act of 1977.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 11887. An act to amend title 38, United States Code, to increase the rates of dependency and indemnity compensation for parents, and for other purposes.

At 4:19 p.m. a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bills, without amendment:

S. 1896. An act to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1979; and

S. 3272. An act to amend the Packers and Stockyards Act, 1921, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 105. A concurrent resolution authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry.

The message further announced that the House insists upon its amendments to the bill (S. 3067) to extend the Commission on Civil Rights for 3 years, to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. EDWARDS of California, Mr. SEIBERLING, Mr. DRINAN, Mr. VOLKMER, Mr. BEILENSON, Mr. BUTLER, and Mr. MCCLORY were appointed managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, each with amendments in which it requests the concurrence of the Senate:

S. 1626. An act to clarify the status of the Librarian of Congress under subchapter I of chapter 63 of title 5, United States Code, relating to annual and sick leave; and

S. 2101. An act to modify the boundary of the White River National Forest in the State of Colorado.

The message further announced that the House has passed the following bill, with an amendment in which it requests the concurrence of the Senate:

S. 2399. An act to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to meet obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to H.R. 8449, an act for the relief of Lourdes Marie Hudson.

The message also announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 7108. An act to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee Dryer Cylinders until the close of December 31, 1981;

H.R. 7296. An act to designate the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island, N.Y., as the "Charles A. Lindbergh Federal Building";

H.R. 7305. An act to designate a certain Federal building in Champaign, Ill., the "William L. Springer Building";

H.R. 8812. An act to name a certain Federal building in Jonesboro, Ark., the "E. C. 'Took' Gathings Building";

H.R. 9628. An act to suspend until the close of June 30, 1980, the duty on certain nitrocellulose;

H.R. 9911. An act to continue until the close of June 30, 1981, the existing suspension of duties on certain forms of zinc;

H.R. 9945. An act to amend the act creating the Indian Claims Commission to repeal the provision limiting the activities of Commissioners during the 2 years following their terms of office;

H.R. 10625. An act to continue the existing suspension of duty on natural graphite until the close of June 30, 1981;

H.R. 11168. An act to provide for the conveyance of certain public lands in San Bernardino County, Calif., to the town of Red Mountain, and for other purposes;

H.R. 11671. An act to designate a certain Federal building in Big Stone Gap, Va., the "C. Bascom Slemp Building";

H.R. 12393. An act to provide for nationwide service of subpoenas in all suits involving the False Claims Act, and for other purposes;

H.R. 12634. An act to designate a building in Pittsburg, Kans., as the "Joe Skubitz Social Security Administration Center";

H.R. 13187. An act to designate the U.S. Post Office and Federal Building in Griffin, Ga., the "John J. Flynt, Jr. Federal Building";

H.R. 13481. An act to name the post office and Federal building in Portland, Maine, the "Frederick G. Payne Building";

H.R. 13808. An act to designate the "Omar Burleson Federal Building"; and

H.R. 13809. An act to designate the "George Mahon Federal Building".

At 4:58 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House agrees to the amendments of the Senate to H.R. 12841, an act to prohibit issuance of regulations on the taxation of fringe benefits, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1678) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

The message further announced that the House disagrees to the amendment of the Senate to H.R. 12050, an act to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition; agrees to the conference requested by the Senate on disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. BURKE, of Massachusetts, Mr. ROSTENKOWSKI, Mr. VANIK, Mr. BURLESON of Texas, Mr. CONABLE, and Mr. DUNCAN of Tennessee were appointed managers of the conference on the part of the House.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 13514. An act to name a certain Federal building in Shreveport, La., the "Joe Waggonner Federal Building".

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 7108. An act to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee Dryer Cylinders until the close of December 31, 1981; to the Committee on Finance.

H.R. 7296. An act to designate the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island, N.Y., as the "Charles A. Lindbergh Federal Building"; to the Committee on Environment and Public Works.

H.R. 7305. An act to designate a certain Federal building in Champaign, Ill., the "William L. Springer Building"; to the Committee on Environment and Public Works.

H.R. 8729. An act to provide assistance to airport operators to prepare and carry out noise compatibility programs, to provide assistance to aircraft operators to comply with noise standards, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 8812. An act to name a certain Federal building in Jonesboro, Ark., the "E. C. 'Took' Gathings Building"; to the Committee on Environment and Public Works.

H.R. 9628. An act to suspend until the close of June 30, 1980, the duty on certain nitrocellulose; to the Committee on Finance.

H.R. 9911. An act to continue until the close of June 30, 1981, the existing suspension of duties on certain forms of zinc; to the Committee on Finance.

H.R. 10625. An act to continue the existing suspension of duty on natural graphite until the close of June 30, 1981; to the Committee on Finance.

H.R. 11168. An act to provide for the conveyance of certain public lands in San Bernardino County, Calif., to the town of Red Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 11671. An act to designate a certain Federal building in Big Stone Gap, Va., the "C. Bascom Slemp Building"; to the Committee on Environment and Public Works.

H.R. 11887. An act to amend title 38, United States Code, to increase the rates of dependency and indemnity compensation for parents, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 12393. An act to provide for nationwide service of subpoenas in all suits involving the False Claims Act, and for other purposes; to the Committee on the Judiciary.

H.R. 12634. An act to designate a building in Pittsburg, Kans., as the "Joe Skubitz Social Security Administration Center"; to the Committee on Environment and Public Works.

H.R. 13187. An act to designate the U.S. Post Office and Federal Building in Griffin, Ga., the "John J. Flynt, Jr. Federal Building"; to the Committee on Environment and Public Works.

H.R. 13481. An act to name the post office and Federal building in Portland, Maine, the "Frederick G. Payne Building"; to the Committee on Environment and Public Works.

H.R. 13514. An act to name a certain Federal building in Shreveport, La., the "Joe Waggonner Federal Building"; to the Committee on Environment and Public Works.

H.R. 13808. An act to designate the "Omar Burleson Federal Building"; to the Committee on Environment and Public Works.

H.R. 13809. An act to designate the "George Mahon Federal Building" to the Committee on Environment and Public Works.

HOUSE BILL HELD AT THE DESK

The following bill was read by title and held at the desk pursuant to the order of September 18, 1978:

H.R. 9945. An act to amend the act creating the Indian Claims Commission to repeal the provision limiting the activities of Commissioners during the 2 years following their terms of office.

REPORTS OF THE COMMITTEES

The following reports of committees were submitted:

By Mr. ABOUREZK, from the Select Committee on Indian Affairs, with an amendment and an amendment to the title:

S. 857. A bill to amend the Indian Education Act and certain other related education assistance programs to provide Federal financial assistance to Hawaiian Natives, and for other purposes (Rept. No. 95-1199).

By Mr. ABOUREZK, from the Select Committee on Indian Affairs, with an amendment:

S. 2460. A bill to amend the Indian Self-Determination and Education Assistance Act (Rept. No. 95-1200).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. CHURCH (for himself and Mr. WILLIAMS):

S. 3502. A bill to amend title XVI of the Social Security Act to permit States to replace supplementary payments with vendor payments on behalf of residents of certain facilities, and for other purposes; to the Committee on Finance.

By Mr SASSER:

S. 3503. A bill to amend certain provisions of the Tennessee Valley Authority Act of 1933, as amended, relating to the charge rates for power of the Tennessee Valley Authority; to the Committee on Environment and Public Works

By Mr. THURMOND:

S. 3504. A bill for the relief of Anita Singh; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself, Mr. CRANSTON, and Mr. LONG):

S. 3505. A bill to amend the Social Security Act to improve the operation of the aid to families with dependent children program and thereby provide fiscal relief for State and local welfare costs as a first step toward providing Federal funding equal to at least 75 percent of the present level of State and local welfare costs; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHURCH (for himself and Mr. WILLIAMS):

S. 3502. A bill to amend title XVI of the Social Security Act to permit States to replace supplementary payments with vendor payments on behalf of residents of certain facilities, and for other purposes; to the Committee on Finance.

SSI STATE SUPPLEMENTATION

● Mr. CHURCH. Mr. President, on behalf of myself and Senator WILLIAMS, I introduce for appropriate reference a bill to amend the supplemental security income (SSI) law to allow States flexibility when making payments for the care of SSI recipients who are residents of group care facilities. This bill would also significantly enhance the State's ability to audit and maintain standards for group care facilities serving SSI residents.

In 1976, two laws were enacted which directly affected the SSI supplements made by the States. First, Public Law 94-585 required the States to "pass-along" SSI cost-of-living increases by continuing the existing levels of all cash

State supplements or by maintaining in cash supplements the aggregate prior year's expenditure for these payments.

The second statute, Public Law 94–566 (the Keys amendment), required the States to define and enforce standards for group care facilities in which SSI recipients resided. It also provided, in effect, that vendor payments based on need, made by State or local governments on behalf of residents of group care facilities, will not be considered as income in determining one's SSI eligibility and payment level. Such vendor payments are made to group care facilities for services provided to SSI recipients.

However, a problem has arisen. Many States have been paying a substantial part of their SSI State supplements to persons who reside in group care facilities. Some States would like to make these payments directly to the facilities and contribute "to the care of the SSI recipient" instead of paying the supplement to the individual directly. This would also enable States to have authority to audit the financial records of the group care facilities receiving vendor payments. Moreover, States would have a greater control in assuring "what is purchased is in fact being provided."

Under the current SSI statute, States that make supplementary payments to individuals who then turn over these amounts to group care homes must continue to make these payments, because they are controlled by the pass-along requirement. This provision requires States to continue their cash supplements from the previous year or maintain in cash supplements the aggregate supplementary payment expenditures of the prior year. Some States would prefer to purchase group care through vendor payments and be allowed to deduct this amount from the previous year's expenditure level to be met under the pass-along provision.

My bill would make two major changes. First, it would permit States to replace SSI cash supplements to individuals residing in group care facilities with vendor payments to these facilities. Second, if a State has opted to maintain a previous year's total expenditures for supplementary payments instead of passing along Federal benefit increases, the State would be allowed to reduce its previous year's expenditure by the amount replaced by vendor payments. The vendor payments would not be controlled by the pass-along. However, if a State discontinued vendor payments it would be required to restore the cash supplements replaced by the vendor payments.

These two changes would allow the States greater flexibility in controlling group care facilities. For example, Idaho administrators tell me that direct vendor payments would permit the State to conduct financial audits of facilities and develop a cost-related reimbursement formula for these facilities. By allowing vendor payments to be used to purchase group care, States would have far greater authority to enforce standards of care as required by Public Law 94–56.

In addition, this bill would provide States relief from the penalties that the law imposes, because they were unable to meet all the requirements of the pass-along provision for State supplementary payments for the past year. States have complied to the best of their ability with the spirit of the law so that SSI beneficiaries have not been adversely affected. Current law penalizes States by taking away all of their Federal medicaid funds, even though they may have just barely missed meeting the technical requirements of the law. My bill would give the States an additional 1-year grace period to meet the pass-along requirements for State supplementation.

Mr. President, the method of supporting and administering group and domiciliary care homes differs from State to State. These differences, as well as differences in State supplementary payments, have caused administrative obstacles which usually result in poorer standards of care. My bill would permit States to remove these obstacles and to develop more effective methods in controlling group care facilities. The Senate Committee on Aging has a longstanding interest in improving care in these facilities. I believe that allowing the States auditing and access authority to enforce better standards of care is consistent with the committee's position to give States a more direct role in enforcing these standards. I urge my colleagues to support this measure.

Mr. President, I ask unanimous consent that the text of this bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3502

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 1618(b) of the Social Security Act is amended by inserting "(1)" after "(b)", and by adding the following new paragraph (2):

"(2)(A) In determining whether a State meets the requirements of this subsection with respect to any twelve-month period in which the State begins to make vendor payments of the type described in subparagraph (C), and (if in the twelve-month period in which the State first makes vendor payments, the State begins those payments after the first month of the twelve-month period) with respect to the subsequent twelve-month period, there shall be excluded from the State's expenditures in the preceding twelve-month period (according to a methodology prescribed by the Secretary) the amount of State supplementary payments replaced by vendor payments.

"(B) In determining whether a State meets the requirements of this subsection with respect to any twelve-month period in which the State discontinues making vendor payments of the type described in subparagraph (C), and (if in the twelve-month period in which the State discontinues making vendor payments, the State discontinues them after the first month of the twelve-month period) with respect to the subsequent twelve-month period, there shall be added to the State's expenditures in the preceding twelve-month period (according to a methodology prescribed by the Secretary) the amount of State supplementary payments which had previously been excluded on account of the vendor payments that the State is discontinuing.

"(C) The term 'vendor payments' as referred to in this subsection means vendor payments begun after June 30, 1977, to institutions, foster homes, or group living arrangements on behalf of residents of such institutions, homes or arrangements, made in lieu of State supplementary payments formerly payable to individuals in such categories of living arrangements.".

(b) Section 1618(b) is further amended by adding the following new paragraph (3):

"(3) The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) with respect to the levels of its supplementary payments for individuals in categories of living arrangements for a particular month or months if for such month or months, the State makes vendor payments to those individuals as described in subparagraph (2) (C) in replacement of State supplementary payments previously made.".

SEC. 2. Section 1618(a) of such Act is amended by striking out "June 30, 1977" each place it appears and inserting in lieu thereof in each instance "June 30, 1978".

SEC. 3(a) The amendments made by the first section of this Act shall be effective after the date of the enactment of this Act.

(b) The amendments made by section 2 of this Act shall be effective with respect to calendar quarters beginning after June 30, 1977, and no reductions in payments to States pursuant to title XIX of the Social Security Act shall be made under section 1618 of such Act for any quarter beginning prior to June 30, 1978.●

● Mr. WILLIAMS. Mr. President, I am pleased to join my good friend Senator CHURCH in sponsoring legislation to allow States greater flexibility, under supplemental security income (SSI) law, in making payments on behalf of SSI recipients who are housed in group care facilities. Partly because of requirements in currently existing SSI law, the States cannot respond fully to the needs of SSI recipients residing in such group care facilities as boarding homes that provide personal services. The legislation which I propose would allow my own State to implement an integral part of its effort to alleviate what is acknowledged to be a "boarding home crisis."

In 1976, two statutes were enacted which directly affected State supplements to Federal SSI payments. Public Law 94–585 required States to "pass along" SSI cost-of-living increases. States can meet this requirement by either preserving the existing supplemental payment to individual recipients or by maintaining the previous year's aggregate expenditure for these payments. Public Law 94–566, in addition to requiring States to develop standards for group care facilities in which SSI recipients reside, provided that payments made on behalf of these residents directly to the vendors of such facilities not be considered as income in determining an individual's SSI eligibility. In effect, this provision means that a State cannot count vendor payments as part of its supplemental payment for purposes of fulfilling the pass-along requirement.

In many States, a large share of the SSI State supplement is paid to individuals residing in group care facilities. Some States would like to make these payments directly to the operators. By so doing, a State could create a system of cost-based reimbursement as an incentive for these facilities to expand and upgrade their services. In addition, a system of direct payments would place the State in a better position to monitor these

facilities and to insure that the rights of the SSI recipients themselves are observed.

By allowing States to replace SSI cash supplements to individuals in group care facilities with vendor payments to these facilities, the legislation being proposed today would allow the States much greater flexibility in meeting the pass-along provision and in providing for the special needs of these SSI recipients. Let me emphasize that this bill in no way mandates the States to institute a system of vendor payments. Instead, it merely makes this option available to States who wish to use it.

The administrative obstacles created by the current system of supporting group care homes can only lead to lower standards of service. The bill I am introducing along with the distinguished chairman of the Senate Special Committee on Aging, Senator CHURCH, would remove these obstacles and allow States to develop more effective systems of monitoring group care facilities. I strongly urge my colleagues to support this legislation.

I have received a letter that outlines the need for this bill from Ann Klein, the commissioner of the New Jersey Department of Human Services. Mr. President, I ask unanimous consent that the text of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

TRENTON, N.J.,
August 25, 1978.

HON. HARRISON A. WILLIAMS, Jr.,
U.S. Senate,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR WILLIAMS: To achieve a partial solution to the boarding home crisis in New Jersey, we are requesting your support for legislation to permit vendor payments made by States on behalf of Supplemental Security Income recipients to be counted as State Supplementation to SSI. Currently, the Social Security Act provides that State Supplementation must be paid directly to the recipient which therefore excludes vendor payments. As a result, we cannot redirect existing Supplementation funds for vendor payments since a maintenance of effort of the aggregate Supplement funds is required. Although we agree with the concept that a State should be required to maintain its aggregate SSI Supplementation expenditures, we do believe that there should be a provision allowing some of these payments to be redirected to licensed sheltered boarding homes on a variable rate basis on behalf of the SSI residents without violating this maintenance of effort requirement.

I've included a copy of this proposal and an example of how this legislation could be drafted although modifications may be needed to meet the needs of other States. The benefits generated by this proposal are expected to be as follows:

The quality of licensed sheltered boarding homes would increase. Since all of these facilities receive the same flat rate from the SSI residents, there is currently little or no incentive to expand services. Under a variable rate system, these facilities would be reimbursed for adding more costly services. This would also allow us to justify upgrading the State Standards for licensure.

These facilities would become more efficent. Since these facilities would be audited, a determination would be made regarding the appropriate cost of the services provided in determining each facility's rate. This would encourage better management of these facilities and curb any excess profits that some facilities may be making under the current flat rate system.

It should expand the quantity of shelter care placements. One of the causes of the boarding home problem is that there is an insufficient supply of these facilities. As a result, it is a sellers market and SSI recipients are often forced to live in inadequate housing because they have no other alternatives. Reimbursing facilities on a cost rather than a flat rate basis would make the shelter care business more attractive to invest in. We also expect that this would provide an incentive for unlicensed boarding homes to meet the higher standards for licensure.

It would reduce the number of inappropriate placements in nursing homes. An Urban Health Institute study found that 10 percent of all persons in long term care institutions could be discharged if there were appropriate lower levels of care available in the community. The Study concluded that the most appropriate community placement for most of these persons would be in congregate facilities that provided upgrade services. Such facilities, the Study found, were not available in sufficient quantity.

The rights of residents could be better protected. Through auditing of these facilities, the State could assure that the $30 earmarked for personal spending is given to the SSI recipient. Currently, these funds are sometimes retained by the facility. It is also likely that with greater State involvement in monitoring these facilities, that other serious abuses would be discovered and remedied.

A more rational shelter care system could be developed. Little is known currently about shelter care facilities since there has been little government involvement. For example, although we believe that it will be necessary to increase the State's SSI Supplement to these facilities, it is unclear what the amount of that increase should ultimately be since it is not known how much it actually costs to operate these facilities. Without this information some of these facilities could make wind-fall profits if there were a substantial increase in the shelter care rate. Once a variable rate system is established, we would consider utilization review which would assure that these shelters matched the individual needs of the residents.

We believe that this proposal along with the Congregate Housing Services Act of 1978 which you recently introduced would substantially improve the housing needs of the elderly and disabled population. These very vulnerable individuals deserve our assistance and protection.

If I can be of any further assistance, please let me know.

Sincerely,

ANN KLEIN,
Commissioner.●

By Mr. SASSER:

S. 3503. A bill to amend certain provisions of the Tennessee Valley Authority Act of 1933, as amended, relating to the charge rates for power of the Tennessee Valley Authority; to the Committee on Environment and Public Works.

TVA FUEL ADJUSTMENT

● Mr. SASSER. Mr. President, today I want to introduce a bill for the benefit and protection of the Tennessee Valley. This bill prohibits the Tennessee Valley Authority from using automatic fuel adjustment rate increases. This bill also requires that all rate increases be approved by the Board of Directors of the TVA.

The use of the automatic fuel adjustment clause, which began in an effort to meet the problem of rapidly rising costs of coal, has become a fiscal bypass for inefficient contracting procedures and for lax control of the price of electricity.

Since its inception in 1974, the fuel adjustment clause has raised rates to Tennessee Valley consumers of electricity by 36 percent. These routine, undiscussed increases are not in the public interest.

In August of 1974, when the fuel adjustment clause became effective, the residential rate per 1,000 kilowatthour was $17.18. The October, 1978 residential rate for 1,000 kWh will be $29.81. This is an increase of $12.63, of which approximately 50 percent, or $6.30 is attributable to the fuel adjustment clause. The fuel adjustment has accounted for a 36 percent increase in the 1974 rate.

A recent study by the Congressional Research Service and the Intergovernmental Relations Subcommittee led to the conclusion that:

> Utilities whose rate increase requests were subjected to formal proceedings obtained only half of what they asked for in 1977. It is possible that the $11 billion increase obtained through automatic FAC's [fuel adjustment clauses] might have been similarly reduced had it been submitted to evidentiary hearings.

While the study did not include the TVA increases, I have no doubt that TVA's increases would have been lower had each increase been subjected to closer scrutiny rather than being systematically passed on to consumers. If all rate increases required the affirmative vote of the Board of Directors, such increases and the costs which necessitate them would be carefully, fully and publicly considered.

This seems to have been the case since David Freeman assumed his position as Chairman of the Board of Directors of the Tennessee Valley Authority. While I am encouraged by Chairman Freeman's attitude toward rate increases in general and automatic fuel adjustment increases in particular, I wish to insure that the pernicious habit of automatically passing on, without question, all fuel costs is replaced by a system of careful consideration by the Board of all rate increase proposals.

On August 30, I outlined my objections to fuel adjustment increases to Mr. Freeman when I appeared before the Board of Directors to testify against a proposed rate increase. The Board did, in fact, reject the increase. At that time, I told Chairman Freeman that:

> I think elimination of the clause would set up a firmer cost discipline at TVA and encourage greater efficiency of operation. This would serve notice that TVA is sharpening its cost-cutting pencil and looking for more competitive prices.

There is no more crucial issue facing the people of the Tennessee Valley than escalating electric rates. In large part because of TVA's aggressive marketing of "all electric" homes, the national trend of rate increases in recent years has been borne more heavily by the consumers of the valley and particularly by those in the valley who can least afford it: the poor, the elderly, and the handicapped.

Continual, unquestioned rate increases must be stopped. I intend to use my in-

fluence to stop such increases. This bill is the opening shot in the battle to halt this inequitable practice.

Further, I intend to determine Mr. Richard Freeman's attitude on this matter when his nomination to the Board of Directors of the Tennessee Valley Authority is considered.

It is time to discontinue a practice that has been widely criticized for its unfairness and inequity.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3503

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 15d of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831n-4(f)), is amended by adding at the end thereof the following new sentence: "The Corporation, notwithstanding any other provision of law, shall not put into effect any increase in the cost of power sold by the Corporation unless the Corporation has first approved such increase by an affirmative vote of the board, including any increase associated with or arising out of or in connection with the purchase by the Corporation of fuel for the production of power.".●

By Mr. MOYNIHAN (for himself, Mr. CRANSTON, and Mr. LONG):

S. 3505. A bill to amend the Social Security Act to improve the operation of the aid to families with dependent children program and thereby provide fiscal relief for State and local welfare costs as a first step toward providing Federal funding equal to at least 75 percent of the present level of State and local welfare costs; to the Committee on Finance.

STATE AND LOCAL WELFARE REFORM AND FISCAL RELIEF ACT OF 1978

● Mr. MOYNIHAN. Mr. President, the bill I am introducing today, on behalf of myself and Senators CRANSTON and LONG, embodies several revisions to S. 3470, the State and Local Welfare Reform and Fiscal Relief Act of 1978, which we introduced on August 25. The changes rectify certain technical problems that have been called to our attention and are faithful to the spirit of our original announcement of June 28.

Although the sponsors of this bill still hope that the Congress will see fit to adopt our proposal this year, we are aware that the administration's strong opposition to it inevitably diminishes that prospect.

I wish to be absolutely clear about my own interest in this matter. A year ago, I introduced President Carter's comprehensive welfare reform bill in the Senate. The Subcommittee on Public Assistance held extensive hearings on that measure. I watched with deepening disappointment as those who strove to see it enacted found themselves unable to move that bill, and later variations on that bill, even to the stage of full committee consideration in the House of Representatives.

Following that failure, my colleagues and I set about to see if we could devise a more modest bill that would achieve important goals in the area of welfare reform and that would perhaps stand a realistic chance of enactment in the final months of the 95th Congress. We have now offered such a proposal, only to be met with the strong opposition of the administration and some groups that favor a more "comprehensive" (and expensive) approach.

If our present effort comes to nought, I will expect the administration to come forth with a new proposal early in the 96th Congress. We should be clear that the stated reason for the administration's opposition to our bill, as communicated in Mr. Eizenstat's letter of September 14 to Senator KENNEDY, is a desire "to insure that the Senate avoids any action this session that might jeopardize substantial reform next year." It is therefore incumbent upon the administration to deliver the substantial reform of which they speak, and I will certainly bend every effort to help them do so.

Should they again fail, I will again attempt to craft a bill that could be enacted by the Congress—at least one that could be enacted if it were not again opposed by the administration. As Senator from New York, I cannot in conscience sit quietly by as a lasting stalemate in welfare reform continues to contribute both to the fiscal distress of my State and city and to the steady erosion of benefits available to our dependent mothers and children—some 1.5 million in all. I commence to wonder whether for too long now we have allowed abstract ideological notions about welfare reform conceptions with little chance of enactment to stymie urgently needed, if less ambitious, changes in our public assistance structure.

I ask unanimous consent that there be printed in the RECORD a fact sheet outlining the major provisions of the bill and the text of the bill itself.

There being no objection, the bill and fact sheet were ordered to be printed in the RECORD, as follows:

S. 3505

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State and Local Welfare Reform and Fiscal Relief Act of 1978".

BLOCK GRANTS TO STATES

SEC. 2. (a) Section 403 (a) of the Social Security Act is amended by striking out all which precedes paragraph (2) and inserting in lieu thereof the following:

"SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter beginning after June 30, 1979, and before October 1, 1984.

"(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-fourth of the adjusted base period amount for such State (as determined under section 412) plus any supplemental grant payable to such State under section 413;".

(b) Part A of title IV of the Social Security Act is amended by adding at the end thereof the following new sections:

"ADJUSTED BASE PERIOD AMOUNT

"SEC. 412. (a)(1) The base period amount for any State shall be equal to—

"(A) the total amount which the Secretary determines would have been payable to such State for the fiscal year beginning October 1, 1977 (hereinafter in this section referred to as the base period) under paragraphs (1), (3), and (5) of section 403 (a), taking into account the provisions of section 1118 of this Act and section 9 of the Act of April 19, 1950 (64 Stat. 47), but without regard to subsections (c) through (j) of section 403 (as in effect during such period), and excluding the amounts payable to such State with respect to social and supportive services provided pursuant to section 402(a)(19)(B); plus

"(B) an amount which bears the same ratio to $660,000,000 as the amount expended as aid to families with dependent children under the State plan of such State during the month of June, 1978, bears to the amount expended as aid to families with dependent children under the State plans of all States (other than Puerto Rico, Guam, and the Virgin Islands) during such month, plus

"(C) an amount which bears the same ratio to $660,000,000 as the amount allocated to such State under section 106 of the State and Local Fiscal Assistance Act of 1972, for the most recent entitlement period for which allocations have been made under such section prior to the date of the enactment of this subsection, bears to the total of the amounts allocated to all States under such section 106 for such period.

"(2) The adjusted base period amount for any State for the fiscal year beginning October 1, 1977, shall be equal to the base period amount.

"(3) The adjusted base period amount for any State for the fiscal year beginning October 1, 1978, and each fiscal year thereafter, shall be equal to the base period amount as adjusted in accordance with subsections (b), (c), and (d).

"(b) The adjusted base period amount as determined under subsection (a) shall be increased for each fiscal year, starting with the fiscal year beginning on October 1, 1978, by an amount equal to the product of—

"(1) the adjusted base period amount as determined for the preceding fiscal year, and

"(2) a percentage equal to the percentage increase (if any) in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-living increases under section 215(i) of this Act, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fiscal year (rounded to the nearest one-tenth of one percent).

For purposes of this subsection the Consumer Price Index for any quarter shall be the arithmetical mean of such index for the three months in such quarter.

"(c) The adjusted base period amount as determined under subsection (a) and increased under subsection (b) shall be increased (in the case of a State having an increase in population) for each fiscal year, starting with the fiscal year beginning on October 1, 1978, by an amount equal to the product of—

"(1) the adjusted base period amount as determined for the preceding fiscal year, and

"(2) a percentage equal to the percentage increase in the population of the State on January 1 of the preceding fiscal year as compared to the population of the State on January 1 of the second preceding fiscal year (as determined by the Secretary not later than April 15 of the preceding fiscal year, on the basis of the best estimates available from the Bureau of the Census, and rounded to the nearest one-tenth of one percent).

"(d)(1) for purposes of this subsection the term 'low payment State' means a State in which the average monthly payment of aid to families with dependent children under the State plan during the base period to a family whose income consisted solely of payments made under the State plan ap-

proved under this part, when combined with the average monthly bonus value (within such State) of food stamps for which such family was eligible during such period, was less than—

"(A) $170 for a family consisting of 1 member,

"(B) $219 for a family consisting of 2 members,

"(C) $261 for a family consisting of 3 members,

"(D) $334 for a family consisting of 4 members,

"(E) $394 for a family consisting of 5 members,

"(F) $444 for a family consisting of 6 members, or

"(G) $548 for a family consisting of 7 or more members.

"(2) The adjusted base period amount of any low payment State shall be increased with respect to payments made to the State for quarters starting with the first full quarter beginning after June 30, 1979, with respect to which the average monthly payment of aid to families with dependent children under the State plan is increased (subject to the limitation in paragraph (3)) to that amount (as estimated by the Secretary) which would have been the adjusted base period amount (as determined under subsections (a), (b), and (c)) for such State if the increased average monthly payment level of aid to families with dependent children in such State had been payable during the base period with respect to those recipients who were receiving aid to families with dependent children during such period.

"(3) No increase in the average monthly payment of aid to families with dependent children shall be considered an increase for purposes of paragraph (2) to the extent that such increase results in any average monthly payment amount for any family, which amount, when combined with the average monthly bonus value (within such State) of food stamps for which such family is eligible, exceeds the average monthly payment level for a family of the same size set forth in subparagraphs (A) through (G) of paragraph (1).

"(4) Determinations under this subsection shall be made in the manner prescribed by the Secretary on the basis of such surveys, samples, or other methodologies, as may be specified in regulations promulgated by him not later than 90 days following the date of enactment of the State and Local Welfare Reform and Fiscal Relief Act of 1978.

"SUPPLEMENTAL GRANTS TO STATES WITH HIGH UNEMPLOYMENT

"SEC. 413. (a) The Secretary shall pay to any State for each quarter a supplemental grant equal to the product of—

"(1) one-fourth of the adjusted base period amount for such State (as determined under section 412); and

"(2) the excess unemployment percentage for such quarter (as determined under subsection (b)).

"(b) The excess unemployment percentage for any State for each quarter shall be the percentage (rounded to the nearest one-tenth of one percent) equal to the remainder (if any) obtained by subtracting from the insured unemployment rate in such State for such quarter (as estimated by the Secretary based upon the weekly rate of insured unemployment used in making determinations under section 203(e) of the Federal-State Extended Unemployment Compensation Act of 1970) the greater of—

"(1) the insured unemployment rate in such State (as so estimated) during the corresponding calendar quarter during the base period (as defined in section 412(a)); or

"(2) 6 percent.

"(c) Notwithstanding any provision of section 403(b) to the contrary, a supplemental grant payable for any quarter under this section shall be paid as soon as practicable after the unemployment statistics required in order to compute the amount of such grant become available to the Secretary.".

PASS-THROUGH TO LOCAL JURISDICTIONS

"SEC. 3. Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (28);

(2) by striking out the period at the end of paragraph (29) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(38) provide that the State shall pay to any political subdivision thereof so much of such subdivision's proportional share (based upon the amount of its contribution for such quarter under the State plan as a portion of the total amount of all such contributions by subdivisions in such State) of that portion of the amount paid to such State under section 403(a) for each quarter which is payable by reason of the provisions of subparagraphs (B) and (C) of section 412(a)(1) (as such portion would be increased under the provisions of section 412 (b), (c), and (d) if it comprised the entire base period amount) as does not exceed 100 percent of the amount contributed by such political subdivision for such quarter under the State plan.".

LIMITATION ON USE OF GRANT

SEC. 4. Section 403 of the Social Security Act is amended by adding at the end thereof the following new sentence: "Grants made to any State under the provisions of subsection (a)(1) may be used by such State only for social welfare purposes, except that any increase in such grant for any fiscal year, beginning with fiscal year 1981, over the previous fiscal year, resulting from the cost-of-living adjustment under section 412(b), must be passed on to recipients of aid under the State plan unless there is a finding by the State agency, conveyed in writing to the Secretary, that additional payments are not necessary to provide adequate benefits to such recipients. The State agency shall establish and publish the definition of adequacy of benefits pursuant to State administrative procedures. A State's determination on the adequacy of benefits shall be accorded the weight of substantial evidence in any judicial proceedings relating to such determination.".

CONFORMING CHANGES

SEC. 5. (a) Section 403(a)(3) of the Social Security Act, except as it applies to Puerto Rico, the Virgin Islands, and Guam, is repealed.

(b) Paragraph (5) of section 403(a) of the Social Security Act is amended by striking out "in the case of any State" and inserting in lieu thereof "in the case of Puerto Rico, the Virgin Islands, and Guam".

(c) Section 1118 of such Act is amended—

(1) by striking out "403 (a),"; and

(2) by inserting after "1603(a)" the following: ", and paragraph (2) of section 403 (a),".

(d) Section 403(a) of such Act is amended in the first sentence following paragraph (5) by striking out "paragraph (1) or (2)" and inserting in lieu thereof "paragraph (2)".

(e) Section 408(c) of such Act is repealed.

(f) Section 431(a) of such Act is amended by inserting ", including the making of payments to States for social and supportive services provided pursuant to section 403 (a)(19)(G)" before the period at the end of the first sentence thereof.

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall become effective on July 1, 1979.

FACT SHEET: STATE AND LOCAL WELFARE REFORM AND FISCAL RELIEF ACT OF 1978

(Revised, September 19, 1978)

1. Declares that this bill is a "first step toward providing Federal funding equal to at least 75 percent of the present level of State and local welfare costs".

2. Converts federal financial participation in the program of Aid to Families with Dependent Children (A.F.D.C.) from the present matching formula to a system of block grants for a period of five years beginning with FY 1980.

3. Each state's block grant in 1980 will be the sum of present federal A.F.D.C. spending in that state plus a portion of approximately $1.5 billion. The additional funds are distributed among the states according to a formula identical to that used for A.F.D.C. fiscal relief in the 1977 Social Security Amendments (except that the base periods are updated).

4. In subsequent years, state block grants will be adjusted in the following ways:

(a) Increased to keep pace with changes in the consumer price index.

(b) Increased if state population rises.

(c) Temporarily augmented if the state experiences very high unemployment.

(d) In those states where welfare benefit levels (including Food Stamps) are less than 65 percent of the federal poverty line, the block grants will be increased to the extent that benefits are increased to that level.

5. In states where local governments participate in A.F.D.C. financing, the additional federal funds must be "passed through" to offset local welfare costs.

6. Funds provided under the block grant may only be used for social welfare purposes; additional funds resulting from the annual cost of living increase must ordinarily be passed through to A.F.D.C. recipients to provide them with adequate welfare benefits.

7. Savings resulting from improved administration, reduction in fraud and error, successful placement of welfare recipients in employment and from other improvements permitted under Section 402 of the Social Security Act will be wholly retained by the states (or localities). Additional welfare costs not covered by itemized adjustments in the block grant must be absorbed by them.

8. In F.Y. 1979, this bill would provide fiscal relief of approximately $400 million to states and localities on the same basis as set forth above.●

● Mr. CRANSTON. Mr. President, Senators LONG and MOYNIHAN and I are reintroducing today our proposed "State and Local Welfare Reform and Fiscal Relief Act of 1978." We first introduced this measure as S. 3470 on August 25.

Mr. President, on September 12, Senator MOYNIHAN chaired a hearing on this proposal before the Public Assistance Subcommittee of the Senate Finance Committee. The changes in the legislation being introduced today reflect some of the concerns expressed by various witnesses with respect to the need for inclusion of various adjustments in the size of the block grants States will be entitled to receive under the proposal, and include certain technical and clarifying changes.

LIMITATION ON TIME FOR BLOCK GRANT APPROACH

Mr. President, one of the most significant changes from S. 3470 is a provision

limiting the block grant to a fixed period of years—5 years—so that we can have an opportunity to reassess its effectiveness in stimulating reforms on the local level and the adequacy of the levels established to assist States and localities in meeting the needs of welfare recipients.

Many of the witnesses at the hearings testified about their concern that over a period of time, the initial block grant would not—even with the adoption of cost-effective procedures and elimination of unnecessary expenditures—keep pace with the inflationary costs of welfare programs and unforeseen additional costs for States and localities. Establishing a fixed period of time for the initial block grant provides assurances that Congress will examine the situation again to assess these needs.

This fixed-time approach also is designed to make clear that we do not view this as a permanent resolution—that we are not abandoning efforts to bring about comprehensive welfare reform.

PROVISIONS TO ENCOURAGE STATES WITH LOW BENEFITS TO RAISE BENEFITS

Mr. President, many witnesses testified about their concerns that States with extraordinarily low-benefit levels would be unable under the block grant approach to raise benefits to adequate levels. The revised bill contains a provision—which was part of our original outline released last June but not included in S. 3470—to provide increases in the block grant to States with benefits below 65 percent of the poverty line when these States raise their benefit levels—up to that 65-percent figure. Although this proposal does not provide the national minimum benefit level that many seek to have enacted, it does provide an incentive for States to move in that direction.

UNEMPLOYMENT AND POPULATION ADJUSTMENTS TO BLOCK GRANT

Mr. President, today's proposal also contains adjustments to the block grant based upon exceptionally high unemployment rates in a State or increases in a State's population. These adjustments—again part of our original outline of last June—will provide a State with increased funds to meet the potential increases in AFDC caseloads arising from these factors.

EARNED INCOME TAX CREDITS AND TARGETED JOBS CREDIT

Mr. President, in our original outline of last June, we also proposed substantial expansion of the current earned income tax credit and welfare recipient employment tax credit. Expansion and improvement of these programs is vital to achieving welfare reform. The Finance Committee is currently working on our earned income tax credit proposal, and I am hopeful that they will include provisions along the lines outlined in our proposal. In addition to continuing to support the expansion of the employment tax credit and a strong outreach and marketing effort by the Labor Department along the lines we originally described, I have joined with Senator NELSON in his proposal to expand the categories of individuals covered by the new targeted employment tax credit for AFDC and disabled SSI recipients to include as well economically disadvantaged Vietnam-era veterans and youths between the ages of 18 and 24, and handicapped individuals. I think this kind of effort to encourage employment through the private sector is critical to our efforts to reduce dependency upon public assistance and other federally subsidized programs. Action on both of these proposals will be taken by the Finance Committee very shortly. Adoption of these proposals is critical to our overall welfare reform efforts in this area.

MOVEMENT FORWARD IN WELFARE REFORM

Mr. President, many of the witnesses at the hearing last week expressed their desire for broader and more comprehensive reforms of our welfare system. However, it is clear that these costly and controversial measures cannot be enacted in this Congress.

Mr. President, I still believe that something worthwhile can be achieved in this Congress. I hope that the three changes being made from S. 3470 by the bill we introduce today will bring about a reassessment on the part of those who have expressed reservations about the approach of the former measure. I reiterate my view, which I expressed at the hearing last week, that unless action is taken now to relieve the local communities, States, and individual taxpayers from the intolerable welfare burden by providing fiscal relief in a fiscally responsible manner, it is the welfare recipients—the mothers and children who need assistance from the AFDC program for their basic survival—who will be the ones to suffer from the results of congressional inaction.

Mr. President, I ask unanimous consent that the text of my testimony before the Public Assistance Subcommittee of the Senate Finance Committee be printed in the RECORD at this point.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF SENATOR ALAN CRANSTON

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to speak on behalf of S. 3470, the proposed "State and Local Welfare Reform and Fiscal Relief Act of 1978". I thank the Chairman, who for so long has been a leader in the effort to achieve welfare reform, and Senator Long, who has likewise played such a vital role in this field, for their efforts in developing this legislation.

Mr. Chairman, I think it is important to begin by stressing that I don't believe that S. 3470 provides the answer to the concerns of many about the problems inherent in our current welfare system. I know that you recognize and share my view that this proposal is only a "first step" towards the kinds of reforms that are needed in the present system. It does not contain all of the measures I would like to see enacted, but it is an important and significant first step in that direction that we can and should take *now*.

There are many who oppose providing fiscal relief to states and localities without comprehensive reform of the welfare system. I cannot accept that position. Unless strong action is taken now to relieve the local communities, states, and individual taxpayers from the intolerable welfare burden by providing relief in a fiscally responsible manner, I am convinced that welfare recipients—the mothers and children who need assistance from the A.F.D.C. program for their basic survival—will be the ones who will suffer from the results of Congressional inaction. There are already signs throughout the country of widespread dissatisfaction over the cost of welfare programs for local and state governments. I have also heard some of our colleagues in the Senate voice very serious concerns about continuing the present open-ended federal commitment to ever-expanding A.F.D.C. caseload. This dissatisfaction may soon find itself expressed in the form of reduction of benefits for those who most need help unless steps are taken now to provide relief in a manner that will induce and stimulate cost-effective administration of welfare programs.

I know that there are many individuals who have expressed concern and reservations about the proposal to provide federal assistance through the block-grant approach. While I think we certainly must be careful to examine the full implications of this change and to be sure that sufficient flexibility is built into such a block grant to meet needs in future years, I nevertheless feel that this approach merits careful consideration. It provides incentives for states and localities to develop innovative, cost-effective programs on the local level within the existing federal framework. Perhaps by stimulating various constructive activities on the state and local levels, we can develop models to guide our future efforts on the federal level in the area of welfare reform. This block-grant approach also provides real incentives for local governments to find jobs for welfare recipients who can—and should—work and leave more resources available to support those who truly need our help.

Mr. Chairman, because the block-grant approach is so new, it would be agreeable to me to try it out for two fiscal years—FY 1980 and 1981—so that we can find out its true impact and effects. I urge the Committee to consider this approach.

Mr. Chairman, in our original plans for this legislation, we included strong provisions to strengthen the existing welfare recipient employment tax credit and the earned income tax credit. Expansion and improvement of these programs is vital to achieving welfare reform, but it can also serve other important public policy purposes. That is why I have joined with Senator Nelson in his proposal to expand the categories of individuals covered by the new targeted employment tax credit for A.F.D.C. and disabled S.S.I. recipients to include as well as economically disadvantaged Vietnam-era veterans and youths between the ages of 18 and 24, and handicapped individuals. I think this kind of effort to encourage employment through the private sector is critical to our efforts to reduce dependency upon public assistance and other federally-subsidized programs.

In conclusion, Mr. Chairman, let me reiterate my view that we must take a first step now towards providing state and local governments with fiscal relief in a manner designed to stimulate reduction of welfare costs, eliminate unnecessary expenditures, and allow us to provide adequate support in a humane and caring fashion for those who truly need our help. I strongly believe that unless we take these first steps now, those most in need may in the very near future be the ones who will suffer the most by our inaction. We cannot continue to hold this relief hostage for the broader comprehensive reforms which must also be addressed.●

ADDITIONAL COSPONSORS

S. 1674

At the request of Mr. LAXALT, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 1674, a bill to amend the Internal Revenue Code to limit employers' recordkeeping and information return requirements with respect to employees' tips.

S. 1974

At the request of Mr. NELSON, the Senator from Colorado (Mr. HART) and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of S. 1974, the Regulatory Flexibility Act.

S. 2860

At the request of Mrs. ALLEN, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2860, the Solar Power Satellite Research, Development, and Demonstration Program Act of 1978.

S. 3111

At the request of Mr. MOYNIHAN, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 3111, a bill to amend the Internal Revenue Code of 1954 to allow the charitable deduction to taxpayers whether or not they itemize their personal deductions.

S. 3136

At the request of Mr. BAKER, the Senator from Tennessee (Mr. SASSER) was added as a cosponsor of S. 3136, a bill to amend section 15d of the Tennessee Valley Authority Act of 1933 to provide that expenditures for pollution control facilities will be credited against required power investment return payments and repayments.

S. 3176

At the request of Mr. LAXALT, the Senator from Nevada (Mr. CANNON) and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of S. 3176, a bill to amend section 118 of the Internal Revenue Code of 1954 to clarify the treatment of contributions in aid of construction to regulated electric or gas utilities.

S. 3414

At the request of Mr. WALLOP, the Senator from Utah (Mr. GARN) and the Senator from South Dakota (Mr. MCGOVERN) were added as cosponsors of S. 3414, a bill to amend the Internal Revenue Code of 1954 to provide that nonresident aliens are taxable on gain from the sale or exchange of farming property and undeveloped real property at capital gains rates.

S. 3453

At the request of Mr. WALLOP, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of S. 3453, a bill to limit imports of feeder and slaughter cattle and to authorize a trade agreement for that purpose in lieu of statutory quotas.

SENATE JOINT RESOLUTION 152

At the request of Mr. WILLIAMS, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of Senate Joint Resolution 152, requesting the President to designate the month of June as "National First Aid Month."

SENATE JOINT RESOLUTION 155

At the request of Mr. ZORINSKY, the Senator from New Mexico (Mr. DOMENICI) and the Senator from Montana (Mr. PAUL G. HATFIELD) were added as cosponsors of Senate Joint Resolution 155, to increase the price support for milk, wheat, corn, soybeans, and cotton, to not less than 90 per centum of the respective parity prices therefor, and for other purposes.

SENATE JOINT RESOLUTION 161

At the request of Mr. CHAFEE, the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), and the Senator from Oregon (Mr. MARK O. HATFIELD) were added as cosponsors of Senate Joint Resolution 161, to authorize the U.S. Navy Memorial Foundation to erect a memorial in the District of Columbia.

AMENDMENT NO. 849

At the request of Mr. NELSON, the Senator from Colorado (Mr. HART) and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of amendment No. 849 intended to be proposed to S. 1974, the Regulatory Flexibility Act.

AMENDMENT NO. 3409 (AS MODIFIED)

At the request of Mr. PERCY, the Senator from Tennessee (Mr. BAKER), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HASKELL), the Senator from Hawaii (Mr. INOUYE), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maryland (Mr. SARBANES), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of amendment No. 3409 (as modified) intended to be proposed to S. 911, a bill to establish a Department of Education, and for other purposes.

AMENDMENTS SUBMITTED FOR PRINTING

INTERSTATE HORSERACING ACT OF 1978—S. 1185

AMENDMENTS NOS. 3602 THROUGH 3616

(Ordered to be printed and to lie on the table.)

Mr. STEVENSON submitted 15 amendments intended to be proposed by him to S. 1185, a bill to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes.

NATIONAL PARK SYSTEM AMENDMENTS—S. 2876

AMENDMENTS NOS. 3617 AND 3618

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted two amendments intended to be proposed by him to S. 2876, a bill to provide for increases in appropriations ceilings for development ceilings, land acquisition for boundary changes in certain units of the National Park System, and for other purposes.

DEPARTMENT OF EDUCATION—S. 991

AMENDMENTS NOS. 3619 THROUGH 3621

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted three amendments intended to be proposed by him to S. 991, a bill to establish a Department of Education, and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON HUMAN RESOURCES

● Mr. CRANSTON. Mr. President, I wish to announce hearings of the Human Resources Committee on S. 2020, my bill to amend the Longshoremen's and Harbor Workers' Act to clarify its coverage. The hearings will be held on Thursday, September 28, 1978, 10 a.m. to 12 noon, in room 4232, Dirksen Senate Office Building, Washington, D.C.●

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

● Mr. LEAHY. Mr. President, I wish to announce that there has been a time change in the upcoming nitrite hearings before the Subcommittee on Agricultural Research and General Legislation. The subcommittee will meet at 9:30 a.m., Monday, September 25 in room 324, Russell, to hear from Donald Kennedy, Commissioner, Food and Drug Administration, and Carol Foreman, Assistant Secretary for Food and Consumer Services, USDA. Anyone wishing further information should contact the committee staff at 224–2035.●

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON THE CONSTITUTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Constitution Subcommittee of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold a hearing on S. 1845, the Polygraph Control and Civil Liberties Protection Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY IN THE DISTRICT OF COLUMBIA AND THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Governmental Affairs Subcommittee on Government Efficiency in the District of Columbia be permitted to meet at 2 p.m. today on three District bills. Does the Senator know anything about this?

I also ask unanimous consent that the Judiciary Committee may be permitted to meet tomorrow during the session.

Mr. President, I withdraw the two requests momentarily and I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Utah.

Mr. ROBERT C. BYRD subsequently said: Mr. President, I now renew my request for the meeting of the Committee on the Judiciary and the Governmental Affairs Subcommittee on Government Efficiency tomorrow.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

NEW TRACER FOR TERROR BOMBINGS

● Mr. STEVENSON. Mr. President, we are on the verge of a technological breakthrough in preventing terrorist and criminal bombings and in apprehending individuals who engage in such activities. Already scientists have developed a system whereby microscopic particles, or "taggants," are placed in all explosives; these taggants would allow the explosives to be traced to the point of sale or theft even after detonation. This should provide substantial aid in capturing criminal and terroist bombers. Soon it will be possible to add another type of taggant to explosives which will enable authorities to detect the presence of explosives before detonation; the lifesaving potential of this innovation is self-evident. S. 2236, an Act to Combat International Terrorism, would establish a program that requires the taggants to be added to explosives. This program then is designed to attack the grave problem of criminal and terrorist bombings.

Mr. President, I would like to share with my colleagues two excellent pieces, one from the Christian Science Monitor of August 31, and the other from the Washington Post of September 18, which discuss the desirability of tagging explosives of all types, and I would like to ask that they be printed in the RECORD.

The articles follow:

[From the Christian Science Monitor, Aug. 31, 1978]

NEW TRACER FOR TERROR BOMBINGS

(By Peter C. Stuart)

WASHINGTON.—Federal explosives experts have spent thousands of hours investigating the bombing that ripped through a baggage area at New York's La Guardia Airport in December, 1975, killing 11 persons and injuring 75.

They have been unable to discover even what type of explosive was used.

The unsolved La Guardia bombing is no exception. Only 8 percent of federal bombing cases result in arrests.

Bombings account for 90 percent of the domestic terrorist incidents in the United States—reaching a record 1,058 explosions last year. Clearly, if the nation is to control terrorism, it must control bombings.

LEGISLATIVE POSSIBILITY

Government explosives specialists say they have developed an important technique to help in this effort, and Congress will decide next month whether to include it as part of a broader antiterrorism bill.

The technique, which involves the use of explosives "taggants," promises to give authorities an effective means of combating terrorist bombings. But it has run into opposition from Washington's powerful gun lobbyists, who fear it may also interfere with the ammunition supplies of legitimate sportsmen.

The method is the product of five years of work by a team of technicians from the explosives and arms industries, security ranks, airlines, universities, and the government. It calls for manufacturers to insert chemical materials into explosives. This would help in tracing bombs after they were detonated (using taggants that are indestructible and coded as to origin) and in detecting concealed bombs before they are detonated (using taggants that emit a vapor).

BREAKTHROUGH CLAIMED

"This is a major breakthrough," says Richard J. Davis, assistant secretary of the Treasury for enforcement and operations. "It will not solve all our bombing cases, but will help us solve more of them—and more quickly."

Taggants are ready to be put into the most common bomb-making ingredients—dynamite and the other so-called "cap-sensitive" explosives, used in 30 percent of criminal bombings—as soon as a factory is built to produce them. These common explosives cause the bulk of bombing fatalities, injuries, and property damage. Taggants for other types of explosives would be phased in by 1981.

Once explosives are tagged, the puny arrest rate for bombings should grow by a margin of anywhere from 50 percent to 400 percent, according to a government-commissioned study.

Any increase in the detection of unexploded bombs and in deterrence of would-be bombers is much harder to predict quantitatively.

But Treasury official Davis says it would be well worthwhile in human terms: "To make use of a technique that can identify a bomb before it goes off and kills or hurts people, on a cost-beneficial basis, is a rather important thing to try and do."

The financial cost is estimated to be modest, adding 1¼ cents to the price of a pound of explosives.

CONTROVERSY OVER POWDER

The bomb-control provisions of the antiterrorism bill would stir barely a murmur of controversy, were it not that the materials slated for tagging include the black and smokeless powders used by target shooters, antique firearms collectors, and other gun buffs.

The National Rifle Association is concerned that the taggants might impair weapons and their ballistic performance, and that the record-keeping required of dealers and buyers threatens to impose what an NRA lobbyist calls "ammunition control."

The powder favored by gun enthusiasts also happens to be the second most common explosive in bombs in this country, used in 19.8 percent of the bombings tabulated last year by the Treasury's Bureau of Alcohol, Tobacco, and Firearms, accounting for eight deaths and 73 injuries.

"It's the most convenient explosive to use," John G. Krogman, acting director of the bureau, says. "You just stick it in a pipe."

Treasury officials want authority to tag black and smokeless powders if testing now under way finds that taggants are harmless in gun use.

They worry that exempting powders used as propellants in firearms, as one House subcommittee has already done, would provide terrorist bombers a giant loophole through which to secure a continued supply of untraceable explosives.

"We have no doubt that the NRA has a great ability to influence members of Congress," Mr. Davis says. "But this issue is not a gun-control issue, and we hope Congress doesn't allow it to be turned into one."

[From the Washington Post, Sept. 18, 1978]

KEEP YOUR POWDER TAGGED

An ingenious new weapon against criminal bombing and terrorism has come under fire from groups who use old-fashioned, muzzle-loading firearms for sport and show. One might think that futuristic technology could hold its own against the flintlock, especially when better public protection is at stake. But the National Rifle Association has taken up the muzzle-loaders' banner, and the outcome in Congress is in doubt.

At issue is a plan that would make bombs less anonymous and much easier to trace. The system, developed by federal agencies, industry representatives and other experts, involves tagging explosives by mixing in microscopic particles with identifying codes. The tiny tags, which could be found after a blast, would tell where and when that batch of explosives had been made. With those codes fed into existing record-keeping systems, investigators could track the materials at least through the last legal sale. Another kind of tag being developed would enable security forces to detect bombs more easily in letters, luggage and the like.

This is a noteworthy use of space-age technology with obvious public benefits. Identification tagging of dynamite and other cap-powered explosives is ready to start as soon as Congress approves the program. Within a year or two, the experts think they can perfect tagging of black and smokeless powders, which are often used in pipe bombs and have been involved in over one-fifth of the criminal "explosives incidents" reported to the FBI in recent years.

That's where the NRA comes in. Black and smokeless powders are also used, lawfully, by people who reenact historic battles, target-shoot with antique firearms and reproductions, or reload bullets at home. There are also the symphony orchestras that do full-blast renditions of the "1812 Overture." The orchestras have not been heard from, but the NRA certainly has. It argues that innocent hobbyists could certainly be hurt—not by the tagging but by the record-keeping stores would have to do. Keeping track of powder packages need not be a major new chore, since everyone who buys even a pound of black or smokeless powder must already fill out a form. The NRA fears, though, that any new rules could cause some retailers to stop selling the powders. And it fears that powder-tagging could lead to ammunition-tagging or even—you guessed it— registration of guns.

Thus the gun group wants smokeless powder and sporting-grade black powder exempted from the tagging program now being advanced in the Senate and House. In our view, that would be a dangerous mistake. It would amount to putting on a different kind of tag—an invitation to criminals to make more bombs with these easily bought materials because they will be the hardest to trace. Instead of encouraging potential terrorists, Congress should spur the tagging program on. It wouldn't make it all that much harder to reenact the battle of Manassas—if that's your worry—or to perform the "1812 Overture." And it would almost certainly make it easier to combat criminals bent on terrorist bombings. Even the NRA ought to be in favor of that.●

FREE ENTERPRISE KEEPS AMERICA HEALTHY

● Mr. MATHIAS. Mr. President, there are those that say that the free enterprise system is no longer significant in a world of government cartels and subsi-

dized corporations. I would disagree with that judgment.

The free enterprise system has long been responsible for the vigor and inventiveness of the American economy. Even when our economy experiences such ills as inflation and depression, the competitive free enterprise system remains its cornerstone and promises to be its best remedy. We have the highest standard of living in the world and much of that success can be attributed to our economic freedom.

Nonetheless, the world is full of naysayers and criticism abounds, so it is good when someone reaffirms our faith in the competitive free enterprise system. One such person is the executive director of the Carroll County, Md., Chamber of Commerce, Charles D. Schaffer.

This year. the Carroll Countv commissioners declared July 1 as "Free Enterprise Day." Charlie was asked to point out a few of the virtues of free enterprise and those comments appeared in the Carroll County Times.

The observations he makes on economic freedom and enterprise are well worth my colleagues' attention.

Mr. President, I ask that the article entitled "Free Enterprise Keeps America Healthy," from the Carroll County Times be printed in the RECORD.

The article follows:

FREE ENTERPRISE KEEPS AMERICA HEALTHY

The Carroll County Commissioners have declared Saturday, July 1 as Free Enterprise Day. Consequently, it is appropriate to point out a few of the virtues of:

THE COMPETITIVE FREE ENTERPRISE SYSTEM

The free enterprise system is the economic counterpart of the political free society. It is the only way men have yet discovered to combine effective cooperation in production with individual liberty. In fact, the private enterprise has been and remains one of the most productive and energizing elements in the modern world.

ECONOMIC FREEDOM

The object of liberty, as against government, is to be let alone. Economic liberty means that each person is free to use his resources in his own way to satisfy his own wants. Economic freedom means that farms and factories in this country can be privately owned and operated. It means that an individual or a corporation is free to create new and better ways to produce goods and services, and to reduce costs.

In the free society, the individual may become self-employed, a jobholder or a jobmaker; his role depends on his applied ability, his means and his will. Anyone is free, ideally, to try any activity he wishes that is not illegal.

The free society is a system of voluntary contract. Voluntary contract means mutual exchanges of promises, free from force or fraud. Coercion and lying deceit are not within the ethics of freedom.

Economic freedom is the opposite of a government-planned or operated economy. It is the opposite of a government controlled labor market or "nationalized" industries. It is the opposite of unnecessary hampering and restricting government rules, regulations, and infringements. It is the opposite of government-created monopolies, of government-assigned investment or production quotas.

Economic freedom is the opposite of any establishment of favored firms, producing government-specified goods and services for the "public interest," as defined by government, at the pleasure and by the indulgence of benevolent government officials. The market responds to the highly diversified and varied interests of the consumer.

THE LIMITS TO ECONOMIC FREEDOM

The great enemy of the free society, both political and economic, is concentrated power-monopoly. Ideally, the enterprise economy comprised of many competitors leaves no possibility of coercive monopoly.

Economic freedom, like political freedom, has limits. Freedom does not imply that the individual has the right to run roughshod over the rights of others. It does not imply that there is no need whatever for rules of the game, for umpiring, and for regulations and control to guard free trade itself and to prevent monopoly. Thus, in the sphere of economics, the free society prefers to use the coercive force of government to prevent coercion of some citizens by others and to maintain the marketplace from force or fraud.

For this reason, effective government must enforce the rules of the competitive game. And for this reason, Congress has enacted the antitrust laws. In the public interest, also, industries of high technology and monopoly tendency are regulated. Also, there are certain needed controls on transportation, and communication. Other limitations on all-out economic freedom are in areas of national defense interest, where freedom jeopardizes the defense potential. These include notably research having to do with military and space technology and with nuclear energy.

However, we must be careful to guard against excessive and unnecessary regulation and interference with business. Experience has shown that this can be counterproductive.

Nor should government compete in business with its own citizens. The public sector should not compete with the private sector. An economic system half public and half free will eventually result in the government ownership and operation of the means of production and distribution of goods and services.

FREEDOM TOLERATES DIVERSITY

The ethical claim of economic freedom is the claim to one's just deserts. It can be demonstrated that, under enterprise assumptions, we get out of the productive process the value of what we put into it.

The principle requires no government preachments or presumptions. There is no preachment that each should produce according to his abilities. There is no presumption that government can set a free man's needs. Not, "From each according to his ability: to each according to his needs." Rather, the prescription of a free society is, "From each according to his own free will; to each according to his contribution to production."

Indeed, the competitive free enterprise system takes the individual and his skills as they are. Free enterprise economics demonstrates competitive efficiency under certain limited assumptions, for example, that individuals (1) are rational, (2) are knowledgeable, and (3) want freedom.

FREEDOM PROMOTES EDUCATION

It is clear that the free society has excelled in setting social policy to proliferate general education and scientific progress. In the free society, the government may not preempt education for government does not have a monopoly of the truth. So we have our great and glorious private educational institutions and our modest and quiet ones, operating freely side by side with public education in tolerance and mutual respect.

ECONOMIC FREEDOM IMPROVES MAN'S LOT

The massive growth of general education, of scientific progress, and of democracy has coincided both in time and place with the emergence of the free enterprise system of organizing the marketplace. Is this mere accident? And it has been in the free society where the innovating power of intellectual and economic freedom has been steadily applied to improving the common lot of ordinary people in growing numbers without the loss of freedom or the coercion of centralist authority.

THE ROLE OF ENTERPRISE

An enterprise, according to Webster, is "an attempt or project, especially one which involves activity, courage, energy, or the like; a bold, arduous, or hazardous attempt; an importnt undertaking."

The heart of enterprise is risk taking. Risk-taking demands boldness; it is arduous; it puts energy and courage to the test of performance. Enterprise calls for the determined rebel to remain at war with the status quo. "For every new idea, there are 1,000 men to stand forth and defend the past."

FREE ENTERPRISE STIMULATES CREATIVITY

Our ideal is freedom of enterprise. The word "freedom" here means exactly that anyone is free to take the risk of success or failure in any legal venture.

Free enterprise is a social device for stimulating creative individuals to undertake the risks of new ways of producing things attractive to consumers. Freedom of entry into a business or industry is vital for the producer. It is as vital as freedom of choice for the consumer. Without freedom of entry there is no way for the new man to challenge the industrial status quo.

PROFITS REFLECT THE CONSUMER'S WANTS

After all, why take risks or innovate? Why take the risk of the enterpriser? The answer is the chance of unusual reward. Profit—the right to a residual share of earnings after all other costs are paid—gives that chance. Exceptional effort and determination are offered exceptional chance of reward.

Profits have a social function. Russian and East European communists are only now beginning to learn it. For society, profits measure the excess in value of goods and services, over their other costs of production, that consumers are willing to pay for wanted products.

Profits, in short, give society a way to tell what consumers want. And consumers, when society lets them tell, want products of convenience, well-made and attractive, with style and taste and newness; they want some originality, some individuality, some elegance—along with lower and lower cost.

Profits have an economic function. The drive for profits leads to more efficiency in production. The producer can increase profits either by upping prices and sales or by reducing costs. Facing competition, the producer cannot get far by upping prices. He risks losing sales. So he is given a powerful drive to cut costs. Cutting costs means getting more output with the same input. When producers cut costs, while producing wanted goods, everyone benefits.

Profits, finally, lead to good management of people. It is not accident that businesses facing competition lead the world in courtesy to customers. The bored bureaucrat has a sinecure and does not care for customers.

But the astute businessman must give his customers courteous treatment or see them walk down the street to a competitor's shop.

Helping to preserve our competitive free enterprise system and the concept of the free market place is everybody's business. It is not only our business—it is your business and responsibility too.—CHARLES D. SCHAFFER.●

ERA: NO TIME LIMIT ON EQUALITY FOR MEN AND WOMEN

● Mr. BAYH. Mr. President, the need to extend the time period for the ratification of the proposed 27th amendment to the Constitution—the equal rights amendment—has been acknowledged by the testimonies of both the National Women's Political Caucus and the National Council of Negro Women. Each group in their affirmation, reiterates the necessity for the adoption of the equal rights amendment as a legal and moral foundation to end sex discrimination in our country, for there is no piece of legislation, including the Civil Rights Act, that would have the legal impact of permanence of a constitutional amendment.

The purpose for the 7-year time limit customarily set by Congress for the ratification of most amendments since the 18th, is twofold: First, to avoid having unratified amendments "floating around" after interest in them has waned, and second, to show that some kind of "contemporaneous consensus" existed on the proposed amendment. The vitality of the current ERA debate attests to the continued public interest, and public opinion polls reveals that support for the ERA has remained consistently high, therefore, it is believed that contemporaneous consensus exists to justify an extension of the time period for ratification.

Mr. President, I now ask that the testimonies of the National Women's Political Caucus and the National Council of Negro Women, along with the article by Roy Wilkins, "Rallying Blacks to ERA" which appeared in the July 7, 1978 issue of the Gary Post Tribune, be printed in the RECORD.

The material follows:

STATEMENT BY MILDRED JEFFREY

My name is Mildred Jeffrey. I am pleased to present to the Constitutional Amendments Subcommittee a statement in support of S. J. Res. 134, a resolution to extend the ratification period of the Equal Rights Amendment. I am appearing here today as Chair of the National Women's Political Caucus, a multi-partisan organization of 35,000 members and contributors. Our members include Republican and Democratic activists, elected officials, women and men from all walks of life who share a common concern for issues of importance to women. Our long range goal is to bring women into active and significant participation in American politics.

Passage of the Equal Rights Amendment has been our priority issue since our inception in 1971, for we believe that ERA is necessary to provide a legal and moral foundation to eradicate sex discrimination in this country. NWPC's strategy for achieving ratification is to elect pro-ERA state legislators and to unseat legislators who have consistently voted against constitutional equality for women and men. We have established a special political committee, the NWPC ERA Fund, which has already in 1978 contributed over $100,000 to targeted candidates in unratified states.

While it is possible that ERA could be ratified before March 22, 1979, we believe that Congress should extend the deadline to insure ratification of ERA. We believe those committed to ending sex discrimination will unite behind this proposal to extend the ratification period.

In my testimony I will discuss why we believe Congress has both the responsibility and the authority to extend the ratification period. I will review the current political situation throughout the country and touch on the legislative history of ERA in unratified states. Though this committee has heard from legal scholars who are much better versed than I in the technical complexities of extension and related questions, I will briefly review the legal issues to show why we believe Congress has the clear authority to pass S. J. Res. 134 without a rescission amendment or a two-thirds vote requirement.

CONGRESSIONAL RESPONSIBILITY FOR ERA

The Equal Rights Amendments is a necessary moral and legal foundation to end sex discrimination in our country. Support for the amendment, as demonstrated in numerous public opinion polls, has remained strong and consistent. Yet a handful of legislators in a few states have played politics with this fundamental human rights issue and blocked its final ratification. The 95th Congress can show its support for equal rights by extending the ratification period to insure passage of this amendment.

Sex discrimination is still prevalent in our country. The U.S. Civil Rights Commission report released this week states that women still earn only half as much as white males and that women with college degrees earn less than men with high school degrees. The study found that there is "virtually no financial ladder" for women, since there has been little or no improvement in the earnings of full-time working women between the ages of 20 and 44. Though Title VII of the Civil Rights Act provides important language for ending sex discrimination in employment, there are still many instances of discrimination. Title IX of the Education Amendments of 1972 provides language to end sex discrimination in education, but enforcement has been inadequate. HEW currently has 1,400 sex discrimination cases pending in their files. The Civil Rights Act and other legislation can go far to end sex discrimination, but no piece of legislation has the legal impact or permanence of a Constitutional amendment.

The need for ERA also becomes clear when you review the current laws in our country. Many, many laws at both the federal and state level condone sex discrimination. At the federal level, a title-by-title review of the U.S. Code in 1977 revealed over 800 sex-biased laws, the cumulative effect of which is to assign women, on the basis of their sex, to subordinate roles. State law codes are also permeated with sex discrimination. For instance, in Georgia the family home belongs to the husband, even if the wife supports the husband and makes the payments on the home. In Virginia, a husband's property cannot be seized to pay his wife's debts, but a wife's property can be seized to pay her husband's debts. In West Virginia and Maine, if a husband and wife run a business together, the profits belong to the husband. Only with passage of ERA can these antediluvian laws be revised in a systematic and efficient way.

ERA opponents have claimed that the Fourteenth Amendment is sufficient to prohibit sex discrimination. We disagree and our position was well articulated by Justice Lewis Powell in his opinion on the Bakke case:

". . . The court has never viewed such classification (gender-based distinctions) as inherently suspect or as comparable to racial or ethnic classification for the purpose of equal protection analysis."

How fortunate we are to have Supreme Court Justice make such a compelling case for ERA.

The inconsistent decisions that the courts have been rendering on gender-based discrimination laws further point up the urgency of ERA. Recently, women have achieved some victories in the courts. Only last Friday, Judge Sirica in the District Court here in Washington ruled that the Navy must allow women to serve on Navy ships and that individual ability, not a person's gender, must be the sole qualification for ship duty. In recent years, the Supreme Court has struck down pension and social security laws that provided disparate treatment for men and women. During this same period, however, the courts have also upheld laws that perpetuate sex discrimination. Women's groups were shocked last year when the Supreme Court denied a young woman in Philadelphia the opportunity to attend an all boys public technical school, and said that the Philadelphia school district can continue its exclusionary admissions policy. Also, a Florida state court upheld an automatic property tax exemption for widows, a policy that clearly discriminates against needy widowers. What these contradictory decisions tell us is that we need ERA to establish a national policy against sex discrimination. We need a fundamental permanent standard that will tell judges, legislators, employers, unions, educators and all other citizens that discrimination based on sex violates the legal and moral foundations of our society. That is why the Equal Rights Amendment was written and that is why it must become part of our Constitution.

Support for ERA remains consistently strong. If you were in town July 9, you must have seen the tens of thousands of men and women who assembled in the heat and humidity of the Mall to march for ERA. Public opinion polls have shown consistent majority support for ERA. Since 1975, when ERA questions were first included on the Gallup and Harris Polls, support for the amendment has changed by only one percentage point. The July 1978 Harris and Gallup Polls show that ERA is supported by over 57% of those surveyed. A regional breakdown of the Harris Poll shows that ERA is supported by a majority in every region of the country. As the Harris Survey states:

"Indeed, the key to the ERA majority today is the fact that majorities of nearly all groups favor it."

The same Harris Poll shows that a strong majority (57–40 percent) favors Congress extending the time limit for ratification. Again, this support is consistently strong in every region of the country. Many organizations from all walks of American life support ERA. For instance, more than 200 organizations and 20 city and country governments have gone on record that they will only hold conventions in states that have ratified ERA. A partial list of the more than 200 organizations who support the extension of the ERA ratification period is attached to this testimony.

Though support has been demonstrably strong throughout the ratification process, several factors have impeded ratification. Misrepresentation and misunderstandings have been bandied about by ERA opponents.

Fears have been planted, cultivated and harvested, even though numerous responsible, impartial authorities have spoken against them. If I believed ten percent of the nonsense opponents attribute to ERA, I would think twice about supporting it. But we know what ERA is really about: it's about ending discrimination based on sex . . . and that is all. Thirty-five states representing approximately 75% of this country's population have seen through the nonsense and have ratified ERA. We expect others will soon follow.

A handful of legislators have prevented ratification. Political deals, often unrelated to ERA have stopped ratification in some states. The writers of the Constitution intended the state legislatures to consider Constitutional amendments, yet in five states (Alabama, Arkansas, Mississippi, Utah and Virginia) ERA has not yet had a recorded vote in both Houses of the legislature. Certainly every citizen has a right to have her/his elected representative cast a vote on such an important issue as a Constitutional amendment. In Virginia, Majority Leader Jim Thompson consistently kept ERA bottled up in the House Privileges and Elections Committee. ERA supporters worked together in the last election and defeated Thompson.

Earlier this year, partisan in-fighting, leadership struggles and parliamentary maneuvers prevented Illinois from passing ERA. Illinois requires a supra-majority of three-fifths to ratify ERA. Without this unnecessary requirement, Illinois would already have ratified, since both Houses have passed it by a majority vote.

The most frustrating examples of these instances of political chicanery are the legislators who ran for office on a platform supporting ERA, who accepted help from ERA supporters and then voted against ERA when their vote was needed. Nine legislators in Nevada voted against ERA in 1977 after having voted for it in 1975 and 1976. All nine had been endorsed and received contributions from pro-ERA groups. We are doing something about these double-crossers in the 1978 election. In the North Carolina Senate, ERA lost by only two votes. One of the "no" votes was cast by James McDuffie, who had been elected in 1976 with our support because he favored ERA. NWPC/ERA Fund worked with others to oust the turn-coat McDuffie and he came in last in a field of five candidates in the May 1978 primary.

We who support ERA have been dismayed by some of the things that have taken place in the ratification process. We were appalled that anyone would take seriously some of the nonsense propagated by ERA opponents. We were shocked that someone would consider something as important as a Constitutional amendment in terms of where he would go to the bathroom. We were stunned when legislators stalled in committee such an important issue and wouldn't let every legislator vote on ERA. We were horrified when legislators who had run as ERA supporters turned against ERA when it was time to vote. We are angry about these things—but we are also very determined. We have redoubled our efforts. We're lobbying in small towns and large cities, we're lobbying in the state legislatures, we're raising money and working in campaigns. We're showing legislators that they can't play foot-loose and fancy-free with ERA any more. We're in there to win and we'll keep at it until we do. This is our responsibility and our commitment.

We think the Congress also has a responsibility for ERA. We've talked about how important ERA is for our country, how vital it is that it become a part of our Constitution. We think the overwhelming majority of this Congress will agree with the overwhelming majority of Americans that ERA should be ratified. Now I think it is necessary to show your support for ERA in a concrete way by granting this time extension for ratification. NWPC hopes that three more states will ratify by the March deadline, but the extension will provide sufficient time to insure ratification. The Congress initiated ERA in 1972 because it believed it would benefit in a very fundamental way the citizens of our country. To continue the commitment to equality made by the 92nd Congress, we ask you to extend the ratification period.

CONGRESSIONAL AUTHORITY FOR ERA EXTENSION

I know that during the past two days eminent legal scholars have addressed the legality of extension and the two-thirds and rescission questions. Let me just state for the record that NWPC endorses the statements prepared by Ruth Bader Ginsberg, Thomas Emerson and Laurence Tribe in which they all conclude that Article V of the Constitution clearly grants Congress the power to set a deadline for ratification of a constitutional amendment, and that nothing in the Constitution or relevant scanty case law prohibits Congress from altering that time period.

Congress first established a time limit for ratification with the 18th amendment. It then became customary for Congress to include a seven year time limit on most subsequent amendments. The purpose of the seven year limit was two-fold: 1) to avoid having unratified amendments "floating around" after interest in them had substantially waned, and 2) to show that some kind of "contemporaneous consensus" existed on the proposed amendment. Clearly, the vitality of the current ERA debate attests to the continued public interest in ERA and belies any view that the issue is dormant. Additionally, our previous discussion of both current and past public opinion polls reveals that support for ERA has remained consistently high. More organizations than ever before have gone on record in support of ERA and have taken the additional steps of joining the boycott of unratified states and supporting extension. Since interest in and support for ERA is clearly strong, we believe the necessary "contemporaneous consensus" exists to justify an extension of the time period for ratification.

Opponents of extension argue that ratified states may feel "cheated" by an extension because they ratified on the assumption that the deadline would occur on March 22, 1779. We reject this notion for two reasons. First, each state has ratified only the text of the amendment, not the instruction on time which is contained in the resolving clause. Secondly, the Caucus has been involved in the ratification process in numerous states and we have never seen any evidence that the seven year limit played a role in any legislator's decision to vote for ERA.

Constitutional law experts have also debated the question of whether a simple majority or a two-thirds vote of Congress is required to pass extension. NWPC supports the conclusions reached by Professors Ginsberg, Tribe and Emerson that the Constitution requires only a simple majority vote by both the Senate and House to pass S. J. Res. 134 and H. J. Res. 638. Because the time limit is part of the resolving clause and not part of the amendment, the time limit is a mere procedural detail, and not subject to the same two-thirds standard required of the amendment itself.

Now I would like to address rescission—an issue which has impaired rational consideration of the extension measure. Rescission has been attached to extension for political reasons. It is essentially unrelated to extension in any legal sense. A rescission amendment is totally unacceptable to NWPC.

Rescission first came up in connection with the Fourteenth and Fifteenth Amendments (though there is some important correspondence on the subject by the founding fathers). The Supreme Court has held that the Congress sitting at the time three-quarters of the states have ratified must validate or reject rescissions. In the past, Congress has consistently rejected rescissions. NWPC believes that precedent is the soundest guide to the rescission question and that it is unnecessary and premature to act on the issue before ratification is complete.

Furthermore, proponents of rescission fail to recognize that the "ground rules" governing ratification do not prohibit a state from passing a rescission resolution. The legislatures in three states (Nebraska, Tennessee and Idaho) have recently attempted to rescind their ratification of ERA. We believe that an extension of the deadline would in no way preclude additional states from attemtping to rescind. Congress does not need to grant any additional authority on rescission, and to do so would be gratuitous.

Finally, we are totally opposed to rescission because it would set a dangerous precedent for future amendments. Congressionally sanctioned rescission would promote chaos in the traditional process of ratification. If Congress explicitly permits state legislatures to ratify one year and rescind the next, how will any amendment ever be ratified? How will a state's decision on an amendment be counted if it has acted in several contradictory ways? We strongly urge you to reject any rescission provision.

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In the past decade, there has been much debate about the role of women in our society. Many assume that, because women are becoming more vocal about their concerns, they are making tremendous progress toward equality. It is therefore important to step back and take a good, realistic look at what is actually happening to women. The report of the U.S. Civil Rights Commission, released this week, is an important indicator of the tragic situation women are in our society. The report shows in cold, hard facts that women have not made any significant progress toward economic and social equality with white men since 1960. There is something drastically wrong with a society that discriminates against half of its population.

The Equal Rights Amendment is absolutely necessary to end this continuing pattern of discrimination. If we allow the amendment to be defeated we as a country are going on record in favor of discrimination against half our citizens solely because of their sex. On the other hand, when we ratify ERA, our country will say in a clear, permanent and unshakeable way that women and men should be treated as equals. We ask that you insure that ERA become a part of our Constitution by extending the time period for ratification.

ORGANIZATIONS SUPPORTING EQUAL RIGHTS AMENDMENT EXTENSION

ABC Maintenance Development Corporation.

Alexandria (VA) Commission on the Status of Women.

Amalgamated Clothing and Textile Workers Union.

Amalgamated Meat Cutters and Butcher Workmen of North America.

American Alliance for Health, Physical Education, and Recreation.

American Anthropological Association.

American Association of University Professors.

American Association of University Women.

American Baptist Women.

American Civil Liberties Union.

American College of Nurse/Midwives.
American College Personnel Association.
American Federation of Government Employees.
American Federation of Labor-Congress of Industrial Organizations (AFL–CIO).
American Federation of State, County and Municipal Employees.
American Federation of Teachers.
American Friends Service Committee.
American Home Economics Association.
American Jewish Committee.
American Library Association Committee on the Status of Women in Librarianship.
American Newspaper Women's Club.
American Personnel and Guidance Association.
American Society for Public Administration.
American Society of Planning Officials.
American Women in Radio and Television.
Americans for Democratic Action.
Arlington (VA) Democratic Committee.
Association for Intercollegiate Athletics for Women.
Association for Women in Mathematics.
Association for Women in Science, Inc.
Association of Flight Attendants.
Barbers, Beauticians and Allied Industrial International Association.
B'nai B'rith Women.
Cambridge (MA) Democratic City Committee.
Catholics Act for ERA.
Chicago Catholic Women.
Christian Feminists.
Church of the Brethren Washington Office.
Council for Women's Rights.
Cincinnati Teachers Association.
Coalition of Labor Union Women.
Communications Workers of America.
Consumer Federation of America.
COPUS (Coalition of Independent College and University Students).
Council for Women's Rights.
Democratic National Committee.
Democratic Socialist Organizing Committee.
8th Day Center for Justice.
Elizabeth (NJ) Teachers Union.
Federally Employed Women.
Federation of Jewish Philanthropies.
Feminist Congress of Greater Cincinnati (OH).
Friends Committee on National Legislation.
Gay Pride Conference.
Gray Panthers.
Housewives for ERA.
Humanist Association of the National Capitol Area.
Independent Student Coalition.
Institute of Women Today.
Intercollegiate Association for Women Students.
International Association for Personnel Women.
International Association of Machinists and Aerospace Workers.
International Ladies' Garment Workers' Union.
International Union of Electrical, Radio, and Machine Workers.
International Union of Operating Engineers.
International Women's Year Commission and Continuing Committee.
Jewish Labor Committee.
Jewish Peace Fellowship.
Jewish Welfare Board.
Latin American Studies Association.
Leadership Conference on Civil Rights.
Los Angeles (CA) City Commission on the Status of Women.
MANA (Mexican American Women's National Association).
Medical Library Association.
Michigan State University Board of Trustees.
Michigan State University Students for ERA.
National Alliance of Black Feminists.
NAWR, National Assembly of Women Religious.
National Association for the Advancement of Colored People.
National Association of Counties.
National Association of Cuban-American Women.
National Association of Human Rights Workers.
National Association of Social Workers.
National Association of Women Business Owners.
National Association of Women Lawyers.
National Coalition of American Nuns.
National Conference of Puerto Rican Women.
National Congress of Hispanic American Citizens.
National Consumers League.
National Council of Administrative Women in Education.
National Council of Churches, Division of Church and Society.
National Council of Jewish Women.
National Council of Negro Women.
National Council of Senior Citizens.
National Council of Alcoholism Forum Conference, Women's Track.
National Education Association.
National Federation of Business and Professional Women's Clubs.
National Federation of Temple Sisterhoods.
National Gay Task Force.
National Jewish Community Relations Advisory Council.
National Legal Aid and Defender Association.
National Organization for Non-Parents.
National Organization for Women.
National Organization for Women Legal Defense and Education Fund.
National Panel of American Women.
National Student Association.
National Student Lobby.
National Woman's Party.
National Women's Health Network.
National Women's Political Caucus.
Network (A Religious Lobby for Social Justice).
New American Movement.
New Democratic Coalition.
New Jersey Organization for the Women's Plan of Action.
New York University Law Women.
Newspaper Guild, The.
Northwest Women's Action Conference.
Office & Professional Employees International Union.
Oil, Chemical and Atomic Workers International Union.
Oklahoma Governor's Commission on the Status of Women.
Organization of Women for Legal Awareness.
Pennsylvania Human Relations Commission.
Pennsylvania Social Services Union.
Pennsylvania State Education Association.
Planned Parenthood Federation.
Priests for Equality.
Producers Guild of America, Inc.
Public Interest Law Center of Philadelphia.
Quixote Center.
Religious Committee for ERA (Interfaith Organization of Catholic, Protestant, and Jewish Groups).
Retail Clerks International Union.
Rural American Women, Inc.
Sacramento (CA) Women in Advertising.
San Jose (CA) State University, Associated Students of.
San Mateo County (CA) Central Labor Council.
Santa Cruz (CA) Commission on the Status of Women.
Service Employees Intenational Union.
Sevice Employees International Union Joint Council 45 (PA).
St. Joan's International Alliance.
Syracuse (NY) Education Association.
UAW-International Union, United Automobile, Aerospace & Agricultural Implement Workers of America.
Unitarian Universalist Association Executive Committee.
Unitarian Universalist Women's Federation.
United Church of Christ Office for Church and Society.
United Farm Workers of America.
United Methodist Church Board of Global Ministries Women's Division.
United Methodist Family Life Committee.
United Presbyterian Church, Synod of the Trinity.
West Virginia Women's Commission.
Wisconsin Education Association Council.
Women's National Democratic Club Political Action Committee.
Women in Communications, Inc.
Women's Action Alliance, Inc.
Women's American ORT (Organization for Rehabilitation and Training).
Women's Bureau, U.S. Department of Labor.
Women's Equity League.
Women's Institute for Freedom of the Press.
Women's International League for Peace and Freedom.
Women's Law project.
Women's Legal Defense Fund.
Women's Lobby.
Women's Ordination Conference.
York County (PA) Democratic Committee.
Young Women's Christian Association.
Zero Population Growth.

STATE, COUNTY, AND RESOLUTIONS

Delaware State Senate.
Detroit, Michigan.
Essex County, New Jersey.
Forty Fort, Pennsylvania.
Hudson County, New Jersey.
Los Angeles, California.
Montgomery County, Maryland.
Ocean County, New Jersey.
Pasadena, California.
Seattle, Washington.
Sonoma County, California.
Union County, New Jersey.
Washington, Pennsylvania.
Washtenaw County, Michigan.
Ypsilanti, Michigan.

NATIONAL COUNCIL OF NEGRO WOMEN, INC., TESTIMONY GIVEN TO THE SENATE SUBCOMMITTEE ON CONSTITUTION

I am Dorothy I. Height, President of the National Council of Negro Women, a 43 year old organization composed of a coalition of 27 national affiliated organizations and involved individuals, with an outreach to 4 million women throughout the country.

Since its founding by Mary McLeod Bethune, the National Council of Negro Women has worked to advance opportunities and the quality of life for Black women in every walk of life.

I am here today to speak in support of the proposed extension for ratification of the ERA. Of particular importance is the understanding of what the ERA will mean to our society. The public has been flooded with sensational misrepresentation of the

effects of the amendment, financially backed by a consortium of interest groups who feel they have more at stake in the status quo than in moving our culture toward implementation of the spirit of this constitution, guaranteeing basic human rights to its citizens with every piece of social legislation, it has taken time for society to lessen its fears of the change and to understand the positive effects of the change on the society. The ERA does not take away rights, protection and guarantees of liberties. It extends basic rights and opportunity to both men and women. The ERA is not for white middle class women only, it's for Black, Brown, Yellow, Red and White women and men from every economic level.

Although the opposing forces have worked to divide feminist and minority interest, major organizations that represent minority constituencies, are fighting for ERA—understanding its particular importance to their specialized needs and concerns. The additional time period is crucial to allowing these organizations to help their constituencies unlearn the misinformation that went hand in hand with the scare tactics of the anti-ERA forces. In several of the states where ERA was not ratified, thousands of leaflets were passed out by anti-ERA forces using a quote from a former officer of the National Council of Negro Women saying that ERA would be detrimental to Black women—it would make them "lifters and toters". This quote was issued several years ago when the previously proposed ERA would have voided protective state legislation limiting the number of pounds a woman could be forced to lift. With Black women being in abundance in the service trades, this was of concern to us. However, this state legislation has since been repealed making the present ERA necessary as a protection to both men and women. Even though NCNW has taken a strong stand in support of the present ERA, this out-of-date literature was utilized to deliberately misinform Black women. Black women have a right to be properly informed. The public has a right to be informed. The three year extension will give the public the necessary time to sort fact from fiction and truly understand that this is a universal civil rights issue.

I would like to feel that our legislators believe in the basic rights of people because ERA is a fundamental human rights issue and it will not go away after March 1979. Can we afford to spend the time and energies of our Congress, our state legislators and the public by beginning the process once again when we have so many other crucial issues to address?

[From the Post-Tribune, July 7, 1978]

RALLYING BLACKS TO ERA

(By Roy Wilkins)

NEW YORK.—The proposed 27th Amendment to the U.S. Constitution, the Equal Rights Amendment, is in dire trouble. With only three states needed for ratification, the Illinois legislature rejected it twice last month and dashed the hopes of reversing a trend against the simple phrase, "Equality of rights under the law shall not be denied or abridged by the United States or by any States on account of sex."

Just as the public debate over affirmative action has been muddled by some blacks who say they are opposed to "racial quotas," there are women who are vocal in their opposition to ERA. That is proving to be a critical factor, as male legislators, in the main, consider the views of their electorate and assess the mood of the people about equal rights for women.

In 20th century America, there are still many women who prefer "inferior" status, or think they do. The problem, as ERA backers see it, is that some women fear they will lose the special protection and status the law gives them; laws, which, for example, exclude women from the military draft and give them alimony and child support payments in cases of separation or divorce.

Feminists reply that ERA will continue the test of who is able to support in separation and divorce cases, for alimony and child support. Presently we are reminded that only 38 percent of fathers are making full child support payments one year after the divorce decree. Child custody, we are assured, will be based on which parent can better care for the child.

And as for the draft, women would be eligible; but Congress already has the power to conscript women.

ERA supporters emphasize that what is sought is equality—putting an end to the practice of demanding higher qualifications for women than for men in the armed forces, and in such occupations such as police officers, and thereby opening up new career opportunities and benefits to women.

The problems which face ERA are as much cultural, then, as they are political. It is a public education campaign that feminists seem to be losing, as they lobby diligently for three more states to ratify ERA. America is used to its women in the home, taking care of children, cooking, cleaning, and having the males be the breadwinners.

The irony is that some of the opposition to ERA comes from black males who, by virtue of race discrimination, have found it difficult to hold onto a job. Some black men and women see the ERA as a guarantee of "jobs for white women." They prefer not to have the white or black woman compete with black men in a shrinking job market. These "cultural" considerations are probably more responsible for the rising opposition to ERA than groundless fears that ERA will "desexregate" restrooms.

If there is a serious and candid discussion of the ERA on its merits, ERA will prevail. This nation needs a new attitude toward its female citizens. Women are not inferior persons, and they shouldn't be second-class citizens. The laws should not be used to deny women equality under the guise of benevolence.

ERA should not be viewed only as a statement of national commitment to equality for women. It should also be seen as benefit for males. ERA can help liberate men by doing away with sexist customs. ERA would prohibit assumptions (based on sexual stereotypes) upon who is the proper guardian for children in a divorce case: it would require in each case that the welfare of the child be the criterion in determining child custody.

Once blacks know the facts regarding the Equal Rights Amendment there's no question they will support its ratification. This is not to say that there aren't already many black supporters of the proposed amendment. The NAACP has already endorsed it and called upon its 1700 branches to campaign for ERA ratification. It is not a trade-off of rights; both groups, women and blacks, have been assigned inferior status in this society.

Americans need to correct their bias and sexual stereotypes immediately. That is wholly within the power of each citizen, but the first step can be the constitutional pronouncement of that intention.●

THE SAN FRANCISCO PEAKS

● Mr. GOLDWATER. Mr. President, earlier this year I wrote the President of the United States suggesting that we seriously consider declaring the San Francisco Mountains in Arizona a holy shrine. I did this because these beautiful mountains, the tallest in Arizona, are sacred to both the Hopi Indians and the Navajo Indians. The President, I am happy to say, has expressed keen interest in it, and after we have had a time to study the situation for the balance of this year, I fully intend to introduce legislation to accomplish this in the next Congress. There are parts of the San Francisco Mountains that are already in use for purposes of skiing, now called the snow bowl, so any preservation of the mountains would have to exclude that area, but it cannot be seen from the general points of the compass from which the mountain is viewed.

The Navajo people are extremely interested in this, as are the Hopi, but I was visited by a group of Navajos during my last visit to the reservation, some 3 weeks ago, and they presented me with a resolution on which they are securing signatures, which in turn, will be passed on to the Department of the Interior. In order that my colleagues may have a better understanding of just what these mountains and other mountains mean to the Navajo and the Hopi people, I ask that the resolution against the development of the San Francisco peaks be printed in the RECORD.

The resolution follows:

RESOLUTION AGAINST DEVELOPMENT OF THE SAN FRANCISCO PEAKS

Whereas, the undersigned are members of the Navajo Tribe of Indians presently residing on the Navajo Reservation located in the northern portion of the State of Arizona, and

Whereas, we have learned that the United States Government, through the United States Forest Service, is thinking about allowing its Snow Bowl ski area permittee to expand their operations on the San Francisco Peaks, and

Whereas, we understand that this contemplated development will mean that the earth will be dug up on the mountains, and some trees will have to be removed, the road to the ski area will be enlarged and widened, and that the other changes on the mountain will occur as a result of the planned development, and

Whereas, the San Francisco Peaks in general, and Mount Humphrey in particular, are sacred to the members of the Navajo Tribe of Indians and to me personally for many reasons, only some of which are detailed below, we oppose all planned development of the mountain.

(a) The San Francisco Peaks has a unique religious significance on our daily religious lives; it has complete bearing on our daily personal lives and the longevity of our existences, and has complete connection with our daily songs and prayers to our cosmic gods.

The Navajo Indian Tribe embraces the San Francisco Peaks as its church, where their offerings of turquoise, white shells, abalone shells, jet black shells, native silver, blue pollen, pollen, prayers and songs are expressed at the foot of the peaks, on the sides and on the top of the peaks. The San Francisco Peaks is like a shrine where the Navajo people communicate through their offerings with their cosmic gods that are residing on the top of the peaks and elsewhere, unseen by human eyes.

That barks of the pine trees, the Douglas fir, the Spruce trees, the Spanish sword cactus and the hundred of different herbs that grow on the peaks are used in the religious ceremonies of the Navajo peoples.

The basic principle of the Navajo religion is based on nature, the mountains, the

rivers, the oceans, the stars and the universe and all of nature as they are living beings just as the human race. The Navajo people are nature's children. To this concept, the Navajo people exist with their sacred mountains, their sacred rivers, their sacred earth—that they walk on in beauty. The other sacred mountains or religious shrines, naming only six (6), while there are more, are as follows: (1) East Spanish Fork, (2) Mount Taylor, (3) San Francisco Peaks, (4) Hesperus Mountains, (5) Huerfano Mountains, and (6) Governor Knob.

The sphere within the six (6) sacred shrines forms what may be referred to as the hogan of the Navajo people; each of the sacred mountains is recognized as a corner post of the hogan; within the space or the center of the sacred mountains the Navajo people reside and the sacred mountains are the outer boundaries of the Navajo people's aboriginal land.

(b) The sacred mountains have been placed under the care of the Navajo people. The San Francisco Peaks, and the area surrounding them, have been placed under our care, under the care of our ancestors and of their ancestors before them. One reason that the mountain is sacred and that we object to development of it is that the mountain brings rain to the people. We use its forest, trees, and plants for medicine. The mountain is there for the benefit of the people.

It is known that the sacred mountains speak to each other. Sisnajini speaks to Tsodzil', Doko's-sliid (the San Francisco Peaks) speaks to Dibentsa. These sacred mountains are endowed with plants, food and medicine. They bring harmony and balance to the people. People live according to the mountains.

The mountain also is a teacher. It teaches people the way of life. If the white man desecrates, ruins, or develops the mountain, its teaching will be lost to the people. The gods have ordained that these mountains are the bodies and lives of the people. The Navajo people also know this. The mountain teaches our young their responsibilities as Navajo and Indian people. It keeps our traditions, prayers and songs intact for future generations. We cannot and will not allow the mountain to be ruined for the benefit of a few.

The white man does not know the mountain. He does not know its benefits. He does not know how to treat it. He does not know how to live with the mountain. For example, a road has been built from the eastern side of the mountain. This past Christmas white people have cut many trees from the mountain. As soon as Christmas is over, these trees are thrown out in the trash and hauled to dumps. This glaring fact shows the white man's misuse of the mountain. Navajos view the mountain as sacred and would not do this to its trees. Navajos use the trees for their benefit, for shelter, medicine and food. The white man uses the trees for ornaments, with no respect for the trees or the mountain. The result of the white man's attitude is that the trees end up in trash and dumps.

The white man is supposed to have an organization, the Forest Service, to protect the trees. What has become of them? What is their philosophy which allows the destruction of the trees? These people are supposed to be trained concerning the effects of destruction of the trees. But if this destruction of the trees continues, the mountain will be left bare as a result of the white man's thinking.

In the east is the sacred mountain, Sisnajini, to the south the sacred mountain is Tsodzil'. And to the north the sacred mountain is Dibentsa. The people who live in these areas protect those mountains. They will not allow their destruction. Likewise, the people who live in the west, by Doko-o-sliid, are its protectors. We look up to the mountain. The mountain is the mother of our people. We Navajos living in the west do not want any kind of destruction or desecration of our mountain to take place. Our ancestors and their medicine men have always protected the mountain. That is why it remains whole. The mountain has been protected in the past and it is our responsibility to protect it in the present day.

Doko'o-sliid was set in the west and adorned with abalone shells. Doko'o-sliid was made to speak to Dibentsa, the sacred mountain of the north. And Dibentsa looks and speaks to Doko'o-sliid. The sacred mountains were made to speak and to look at each other and to remain as a whole together. The destruction of one mountain affects all of the other sacred mountains. They are interrelated and speak to and look at each other.

The sacred mountains provide life. The white man has never learned this. He has learned some things, like water will provide power. He has learned some of the benefits that can be derived from the mountains, but often what the white man thinks of as benefits from the mountains are taken at the cost of the destruction of the mountains. The basis of life is derived from the mountains.

The benefits of the mountains known to Navajos and other Indian people are different from the white man's benefits and are in harmony with the mountain itself. These benefits have been known for a long time. For example, we make a mixture of plants called mountain tobacco, which is used for medicinal purposes. It heals people and animals.

The plans for these mountains have been derived from the gods. According to their plans the sacred mountains have been made. First Man and First Woman, First Girl and First Boy knew of the mountains' existence and of the plans that were made. Just as white missionaries and Christians have their gods and their Jesus, we have our ways and our religion. Many of the ways that we respect and practice our religion are similar to the ways of the white man.

Doko'o-sliid is used as a place of prayer, and offerings are made to the gods that live there. At the mountain we make prayers for Navajo young people who go overseas to fight for the American people and in the wars of the Americans. We ask the mountain to help our children so that they may be safe and return home to our lands. We look to the mountain to help us and our children who are helping the white people fight their wars.

Leave the sacred mountain alone. If white people want to develop and destroy, there are other mountains and other places which are not sacred to the people. Take your development, destruction and desecration elsewhere if this is what will benefit you white people as human beings. If these are your values take them some place else. We have our values, and we know what is right. We have been here for centuries and we know what is sacred and of benefit to us.

According to the ancestral laws of our people, although those laws are not written, the holy mountains have names. They are not to be desecrated. They are the names of the gods. The mountains are beings. Stop this development. We know now that the white man does not know what is sacred.

Our medicine men have learned the uses of plants in administering medicines. When doctors are unable to heal, often we do. We know the Yei-Bi-Chai healing rites and chants. We know the Night Way and Blessing Way and other related songs and prayers. We know other songs and prayers as the Mountain Way, the Enemy Way and the Shooting Way. Many times when all else fails, medicine from these mountains has healed the sick and wounded and restored balance and harmony among the people. The mountains have protected us from destructive forces.

Who are these white man who are making plans regarding the mountains? Do these men have pollen? Do these men have an offering to give to the mountains? Do these men know the prayers, legends and songs from the feet of the mountain to its head? Do these men have the necessary things to allow them to approach the mountain and ask for its benefits, instead of just taking from the mountain? Does the white man feel that he can take what does not belong to him? Perhaps we can give the white man an offering to take to the mountain. Then he will learn to do things the right way, and will no longer wish to develop the sacred mountain.

(c) Our medicine men carry a medicine pouch in their medicine bag. This pouch has within itself four more pouches. In each of these four pouches are soils from each of the four sacred mountains of the Navajos—each pouch represents a sacred mountain and each pouch is identified by the cuts made on the lip of the pouch. The stone in the middle of the four pouches is representative of the inside of the sacred mountain.

Among those pouches are also carved images of a horse, a sheep and a cow. These are representative of the importance of the horse, sheep and cow to the existence of the Navajos. Tied around the pouch is a string of turquoise—for the sacredness of the mountain soil deserves only the turquoise. Every medicine man has a pouch like this. This allows us to have within reach the soils of the four sacred mountains, wherever we may be. This is important to us for the well being of ourselves and to our medicine. If we allow the white man to dig away at our sacred mountain he is also tearing at this pouch and destroying its sacredness. He is, in essence, destroying our very soil. We must not allow the white man to desecrate our religion and thereby our soil.

Doko'o-sliid, beigns with a single cloud to bring us rain, it brings us the snow in the winter and it also brings the wind. We go up on Doko'o-sliid for our medicine and we go there to pray and when we see it from our home, it tells us things are well and good. If we destroy the mountain, we will also destroy the rain, the snow, the wind and we will destroy the serene life we have now under Doko'o-sliid's eyes.

We will no longer be able to see the clouds as they drift forth from Doko'o-sliid, bringing us rain, nor will we be able to seek comfort by the sight of our sacred mountain, for we will have violated her and we will not be worthy of her powers.

There are other mountains, why do you not tear at those other mountains? There are other areas you can develop for recreation—why do you have to invade the sacred areas. We state again, we can not state any stronger, our determined opposition to the proposed development of the Doko'o-sliid mountain. Listen well to our medicine man for they speak for Doko'o-sliid.

(d) When our people get sick offerings are made on Doko'o-sliid mountain to our gods to make the patient well. If the patient is well enough to travel he and his medicine man must travel to Doko'o-sliid to make an offering to our gods. This offering includes presenting abolone, shells, jet black shells, native silver and blue pollen to the gods. Piece by piece these offerings are made to our gods and then placed on the ground and left there. If the patient is not well enough to travel a family member must go with the medicine man to make the offerings.

Our people have been making these offerings for hundreds of years. The remains of these offerings are scattered throughout the peaks in innumerable locations known only to the patient (or his representative) and his medicine man. The ceremonies and the offerings involved cost a great deal of money and have a deep significance to our people.

(e) Two of our gods, i.e. Evening Boy and Evenings Girl, reside in the San Francisco Peaks. Thus the Peaks, and the mountain involved here, are our shines as therein our

gods dwell. Digging in the Peaks partially destroys the home of our gods and injures the holiness of our shrines. Every time the government performs excavations and digs in the Peaks, the holiness of our shrines therein is lessened; if the government keeps digging in the Peaks, they will not be holy anymore.

(f) Attached to this resolution is a copy of the law passed by the Congress and signed by the Great White Father, our President, guaranteeing and protecting our religious freedom and ability to practice our religion. The government's contemplated development of the Peaks injures and destroys our shrines and our ability to practice our religion and thus violates this new law.

(g) The Forest Service in its Environmental Impact Statement about the Peaks did not consider the new law described above. If the Forest Service develops the Peaks without considering the effect of the new land and the effect development has on our religion, then the Forest Service breaks this new promise to our people just like it has broken its promise in the past.

Wherefore, be it resolved, That the undersigned adamantly opposes all development, excavations, cuttings and other disturbances of our holy place, the San Francisco Peaks and Agassiz Peak now and for all times and,

Be it further resolved, That the undersigned specifically opposes all the proposed, planned, and contemplated development covered in the Forest Service's Environmental Impact Statement relating to the Snow Bowl operations on Agassiz Peak.●

FLORIDA CONSUMERS PROTECTED BY CONFERENCE REPORT

● Mr. STONE. Mr. President, last week I announced my support for the conference report on natural gas pricing. As I said in that announcement, this conference report represents a reasonable compromise on a subject which has divided the Congress and the country for decades.

Regional as well as policy differences have been difficult to resolve. Throughout consideration of this bill, I have been especially concerned about the impact of this legislation on Florida. Florida's continuing economic development requires secure and adequate energy supplies. The well-being of Florida's citizens means that energy must be reasonably priced. I have discussed Florida's special energy problems on many occasions with the able chairman of the Senate Energy Committee, Senator JACKSON, who has always been understanding and helpful. We were able to reach agreement on certain provisions in the Senate bill, retained in this conference report, which protect Florida's electric ratepayers from sudden and sharp rate increases which would otherwise have resulted.

Although Florida, like the rest of the country, will be moving toward greater utilization of coal for the generation of electricity, an abrupt prohibition of Florida's use of natural gas for the generation of electricity of excessive pricing for this use would have resulted in millions of dollars in higher electric rates for Florida consumers. This would have also meant greatly increased foreign oil imports because few of Florida's present generating plants can convert from natural gas to coal.

The conference report wisely protects against such a result and I am indebted to the chairman of the Energy Committee for his cooperation in this respect. I am pleased to say that we have saved millions of dollars in higher electric bills for Florida consumers by drafting this legislation to take into account Florida's special energy problems.●

AMALGAMATED MEAT CUTTERS—DISTRICT LOCAL 1, NEW YORK

● Mr. JAVITS. Mr. President, I am pleased to call to the attention of the Senate that October 22, 1978 will mark the 25th anniversary of the establishment of District Local 1 of the Amalgamated Meat Cutters and Butcher Workmen of North America.

District Local 1, located in Utica, N.Y., represents the finest traditions of the trade union movement and stands as a notable example of the success of our Nation's commitment to industrial democracy through the right of workers to organize and to bargain collectively with their employers.

It is the labor movement, with this union in the forefront, that has helped to create the great wealth of this country and has made it possible for so many to share that wealth. It has fought to improve conditions for all working Americans by the enactment of landmark Federal legislation establishing the 8-hour day, the minimum wage, occupational safety and health regulation, equal employment opportunity, pension reform and so many others.

District Local 1 can rightfully take pride in the part it has played in these efforts. It is the direct descendant of the first two unions of butcher workers in New York State dating back to the 1890's. These two unions located in Syracuse and Utica played a significant role in the establishment of the International Union in 1897, with John F. Hart of Utica elected the first vice president of the fledgling international union.

District Local 1 was formed in 1953 with the merger of locals in Syracuse, Utica, Auburn, Geneva, Rochester, Jamestown, and Albany—a merger brought about by the inspired leadership of Joseph Belsky and Samuel J. Talarico.

Mr. President, I ask that the remarks of Joseph C. Talarico, president of District Local 1, at the commemoration of the union's 25th anniversary be printed in the RECORD.

The remarks follow:

Mr. TALARICO. Today marks the 25th Anniversary of the establishment of District Local 1. It is traditional on such occasions to pause and look back at the accomplishments made by our predecessors. We can learn much from history and the achievements of those who came before us must stand as a monument to inspire us, to guide us, and yes, to chastise us if we break faith with the promise that is Labor.

But today I want to break with tradition, and talk about the future, remembering always that our resolve has been fashioned from the bitter struggle endured by those who came and fought before us . . . Men and women, who fought for decency, dignity, a fair wage, better working conditions.

The names of all those who died in Scranton, in Chicago, in Boston and hundreds of other places will not be found in any history book, but their sacrifices must be indelibly fixed in our memories. We keep faith with them by keeping faith with the dream that is America.

The struggle for human rights is never-ending. The easier path is to look beyond the continental shelf of North America and look to the Third World nations and those behind the Iron Curtain.

Though concerned with brutality everywhere, we must not be detracted from those conditions at home that effect our treatment of minorities, the poor and workers.

Some may question that priority, but working towards the elimination of social injustice is a goal to which all of Labor must re-dedicate itself.

Despite the fact that the old days of labor strife, violence and turbulence are behind us, we still must do battle with those who would exploit workers.

Today, however, we are engaged in a different kind of fight, though less violent, it could prove to be more insidious—a fight aimed at disfranchising workers and their families from unions.

Those who oppose us do so with a sophistication and knowledge of human behavior that has serious consequences not only for us as trade unionists, but as a nation.

We face foes, who in their determintaion to control labor, would recreate a climate of divisiveness and suspicion that can cause us irreparable damage as a nation.

Alert to the danger, we must show our solidarity and our unfailing faith in this nation.

That is a challenge from which there can be no retreat.

Faced with high unemployment, inflation and the shocking realization of a shortage of resources, it is not uncommon for people to respond to the calls of demagogues, to seek quick solutions where there are none, and scapegoats upon whom to affix blame.

Yet, we live in a country where people have a highly developed sense of social consciousness.

The seemingly incompatibility of times must not be allowed to diminish our concern for human rights, for freedom, for dissent.

Those were principles for which our forefathers fought.

Today we commemorate a quarter century of service to our members by reaffirming our belief in those basic principles set forth by our founders.

"No man is an island", and "we are our brother's brother."●

IOWA'S ENDANGERED SPECIES PROGRAM

● Mr. CULVER. Mr. President, the Congress enacted the Endangered Species Act of 1973 in recognition of the fact that, while the natural order dictates that species may gradually appear and disappear on earth, man's activities all too often have accelerated this evolutionary process. The real tragedy of this fact is that, in most instances, these plants and animals are extirpated before their value to human health and welfare is known. Consider the horseshoe crab, an organism that has existed for millions of years. Only recently have we discovered its value as a detector of toxins in human blood. How tragic it would have been if this crab had become extinct, like the passenger pigeon or the Carolina parakeet, before its life-saving potential was identified.

The authorization for the Endangered Species Act expires on September 30, 1978. Throughout consideration of legislation to extend the program, attention has been devoted to determining whether the administration of the act is too rigid,

and unfortunately this discussion has led some individuals to call for the total emasculation of the act or ad hoc exemptions of projects. On July 19, the Senate passed S. 2899, a bill which Senator BAKER and I introduced to establish a seven-member Endangered Species Committee. This committee is charged with arbitrating irresolvable conflicts that arise between the law and Federal projects only after serious efforts have been made to resolve these impasses under normal procedures. This proposal continues the act's strong protections for endangered species and establishes a stronger procedure for reducing impasses which will occur in the future. The House Merchant Marine Committee is now considering similar legislation.

Mr. President, I fear that because of the significant public attention that has been devoted to such recent conflicts with the act as Tellico Dam, we have lost sight of the fact that the Endangered Species Act is basically essential to our survival on this planet. Though S. 2899 makes the necessary improvements in the act, it is based on the important medical, scientific, aesthetic and cultural reasons for saving endangered species.

Last year, the Iowa Conservation Commission established a State endangered species program, listing those plants and animals which are endangered or threatened in Iowa. In the July 1978 edition of the Iowa Conservationist, State Ecologist Dean M. Roosa has written an excellent article describing this important program and explaining reasons for protecting such species. Entitled "Endangered! Twilight of an Era or Dawn of a New Day?" The article discusses Iowa's endangered plants and vertebrates, including the mountain lion, least tern, and the swamp birch. As Dr. Roosa states, "A goal of a well-conceived endangered species program is to prevent needless, premature extirpations and extinctions."

I ask that Dr. Roosa's article be printed in the RECORD.

The article follows:

ENDANGERED! TWILIGHT OF AN ERA OR DAWN OF A NEW DAY?

Have we learned to care in time to save our endangered species? In late 1977, the State Conservation Commission adopted a list of plants and animals considered to be endangered or threatened in Iowa. This was the state's first attempt to identify and actively manage rare forms of wildlife and plants. Let's look at the importance of preserving these rare organisms, what type of organism becomes endangered, why one species and not another becomes endangered and what a private citizen can do.

Many species have vanished from Iowa in the past 100 years; the large herbivores, the buffalo and elk, were first to go, followed soon by the large carnivores, the black bear, gray wolf and mountain lion. Some, like the deer and beaver, were extirpated but have been reestablished and now flourish as a result of good wildlife management. The trend continues as evidenced by the near disappearance of the Red-shouldered Hawk in the early 1960's, the near loss of the spotted skunk in the past two decades, the near depletion of the Upland Sandpiper, Least Tern and Peregrine Falcon and by the almost total loss of the lovely Pink Ladyslipper. Many people are concerned; others feel it not important, saying that species become extinct naturally. This latter is true, but consider the following: extinction in the 'natural' world occurred at a rate of about one species per 1,000 years; by 1950, this rate was a species each year. Natural extinction is a process for culling the species which cannot adapt to natural changes; man has so drastically altered the planet that today's extinctions are those species which cannot adapt to man's technology.

Many of the surviving species have been forced into small refuges almost like islands in a hostile environment, or have been forced from their 'niche' altogether. A 'niche' is the habitat which supplies the requirements of a species; some species have narrow, specialized niches, other have broad, general niches. The latter have adapted well and thrive; the former have vanished or have become greatly reduced in number. Animals or plants which become endangered, in addition to having special niches and being unable to adapt, may have some of the following characteristics: they compete with humans for space or food; have low numbers of offspring and a long juvenile period; exist at the top of a food chain; are prized for their beauty or the beauty of their pelt.

We must relate the species to their environment; each species is part of an ecosystem which contains an exceedingly large number of different kinds of organisms. This is called diversity and helps to provide stability for natural ecosystems, a balancing of nature's forces. This large number of organisms exhibit a nearly infinite range of sensitivity; a few cannot tolerate even subtle changes in their environment and when such changes do occur, the more tolerant organisms increase in response to decreased competition. Increases in the populations of House Sparrows, Starlings and certain blackbirds are easily observed examples. Each time an organism is removed the ecosystem or community becomes less stable, less complex and more vulnerable to disease and disorder. In this way, sensitive species may act as an 'early warning system', heralding changes not yet felt by human populations. For example, our first indication that certain pesticides were disruptive to metabolic activities was from the effect on falcons and eagles. Consider the consequences if we had been obliged to wait until changes began occurring in humans!

Less obvious reasons compel our commitment to saving rare species. Each species has a unique genetic complement. Once a species is destroyed, man has no means of recreating it, despite our marvelous technology. We have no way of knowing what the future needs of man may be and this genetic resource may be of inestimable value to mankind. Many people, out of strong moral conviction, simply respect the right to existence of all living things. They feel a deep appreciation for the wild and rare treasures of nature and feel a grave sense of responsibility for the preservation of the richness of our natural heritage for future generations. We can put a price tag on the sight of a Northern Harrier coursing the fields, the call of an Upland Sandpiper, the beauty of a Pink Lady-slipper or the knowledge that Iowa yet has places wild enough to harbor Prairie Rattlesnakes and Bobcats?

Some people take an emotional approach to saving rare species. Emotion alone, however sincere, will not save rare species; it must be coupled with research to learn the ecological parameters of each species and the translation of this knowledge into management. This management may range from leaving the species alone to propagating it in captivity, as in the case of the successful captive-raising of peregrine falcons at Cornell University. Some will defy attempts to learn their secrets; some will yield their secrets easily. A few, whose problems are complex, subtle and tied to the entire community, may never be fathomed or may take world-wide implications as in the case of the Bald Eagle and the DDT ban. Our goal in learning the secrets of their ecological needs is to apply this knowledge to their well-being and hopefully remove them from the endangered species' list.

Realism must be present in an endangered species program—the realism that we cannot save everything, that we must have priorities and that extinctions and extirpations will occur in spite of our best efforts. A goal of a well-conceived endangered species program is to prevent needless, premature extirpations and extinctions.

It is futile to speak of endangered species without centering on endangered habitats; only by protecting buffered tracts which include a rare species habitat can we insure adequate space and long-term survival. Frequently this preserved habitat is suitable for many of our native wildlife species including game and other species known to be directly beneficial to man. These areas, or parts of them, may be compatible with other uses such as hiking, photography, educational purposes, hunting, or simply as wild places for man's comfort and appreciation—a refuge for a rare and fragile species may also provide respite for city-weary mankind. This is where the private citizen can help. Only about two percent of Iowa's land is publicly owned. This is not enough to provide space for recreation and protection of rare species; it is certainly not enough land to adequately minister to the needs of future generations. Only by public support for increased appropriations for land acquisition in the next few years can the Conservation Commission locate and acquire sufficient land to provide safe habitat for our endangered co-inhabitants of Earth. We hope you will help.

IOWA'S ENDANGERED VERTEBRATES

What is the impact of the disappearance of an animal from the state or from the world? Unimportant? Unfortunate? A tragedy? Your answer will depend on your job, your past training and your ecological education. "We're doing all right without the dinosaurs, aren't we?" is a trite retort and scarcely relevant. Because we evolved as a race in the company of natural systems and a full array of wild species, perhaps we are closer to them than we may think. Many people believe we simply do not have the moral right to consciously cause the extinction of a species. Do you believe any species have been extirpated (gone from our state) in our history? Many. A few are the Whooping Crane, Long-billed Curlew, Elk, Gray Wolf, Gilt Darter and River Redhorse. Do you think any species have become extinct in your lifetime? Yes. Since settlement of this country, the Carolina Paroquet, Passenger Pigeon and Bison (as a wild species) have disappeared; they all once called Iowa their home. At this very minute, two other species are teetering on the brink of the void of extinction and may well already be over the edge; these are the Ivory-billed Woodpecker, and, closer to home, the Black-footed Ferret of the Great Plains just west of Iowa. Unimportant? Perhaps. But one thing is for sure—once a species is gone, we have no way of recreating it, despite our sophisticated technology.

What is being done to protect the very rare animals in Iowa? In 1977, the Conservation Commission adopted a list of threatened and endangered vertebrates; it is cooperating with nearby states to determine the status of animals that occur in both states; it is re-introducing certain animals that are very rare or extirpated; hopefully, a joint venture with nearby states and the federal government will be initiated this year to learn as much as possible about the biology of the Indiana Bat and the Peregrine Falcon, both on the federal endangered species list. At-

tempts are being made to determine what endangered or threatened species occur on state-owned land so their welfare can be considered in management decisions. We are working with scientists throughout Iowa to learn the location of the most important sites of endangered and threatened species. Our goal is to prevent needless, premature extirpations.

Following is a listing of vertebrates which the Conservation Commission, acting in conjunction with specialists throughout Iowa, considers to be in jeopardy. Terminology used in compiling the lists is as follows:

Extinct—no longer found on this planet.

Extirpated—no longer found in the state as a breeding population.

Endangered—in danger of becoming extirpated if its habitat worsens or no management steps are taken.

Threatened—in danger of becoming endangered if its habitat worsens or no management steps are taken.

Undetermined—known to exist in low numbers, but of which insufficient information is available to make judgment on its status.

MAMMALS

Iowa is a meeting ground for mammals whose ranges center in other parts of the country. The Red Squirrel, Woodland Vole, Grasshopper Mouse, Pygmy Shrew and Meadow Jumping Mouse are examples of mammals whose normal ranges are more northern; the Big Free-tailed Bat and Cotton Rat are examples of animals with a southern distribution; a number of species from the eastern deciduous woodland terminate their ranges in Iowa; relict species, like the Red-backed Vole, are hold-overs from an earlier age. Some, like the Pronghorn and Prairie Dog, were restricted and nearly prevented from becoming part of the Iowa fauna by the barrier effect of the Missouri River. These factors combine to make Iowa an interesting place to study mammals.

Large-scale conversion of the tall-grass prairie to agricultural use, draining of most wetlands and grazing or logging of most woodlands has had an adverse effect on Iowa mammals; however, 60 of the 72 native species yet occur in the state, though some are sporadic visitors and others are very rare. The status of the very rare is given in the following list.

Insectivora—Insect-eating animals

Pygmy Shrew (*Microsorex hoyi*), undetermined.

Least Shrew (*Cryptotis parva*), undetermined.

Chiroptera—Bats

Keene's Myotis (*Myotis keenii*), threatened.

Indiana Bat (*Myotis sodalis*), endangered.

Evening Bat (*Nycticeius humeralis*), extirpated.

Rodentia—Rodents

Plains Pocket Mouse (*Perognathus flavescens*), endangered.

Grasshopper Mouse (*Onycomys leucogaster*), endangered.

Red-backed Vole (*Clethrionomys gapperi*), endangered.

Woodland Vole (*Microtis pinetorum*), endangered.

Porcupine (*Erethizon dorsatum*), extirpated.

Carnivora—Flesh-eating Animals

Gray Wolf (*Canis lupus*), extirpated.

Black Bear (*Ursa americana*), endangered.

Fisher (*Martes pennanti*), extirpated.

Ermine (*Mustela erminea*), undetermined.

Long-tailed Weasel (*Mustela frenata*), undetermined.

Wolverine (*Gulo gulo*), extirpated.

Spotted Skunk (*Spilogale putorius*), undetermined.

River Otter (*Lutra canadensis*), threatened.

Mountain Lion (*Felis concolor*), extirpated.

Lynx (*Lynx canadensis*), extirpated.

Bobcat (*Lynx rufus*), endangered.

Artiodactyla—Hoofed Animals

American Elk (*Cervus elophus*), extirpated.

Bison (*Bison bison*), extirpated.

Pronghorn (*Antilocarpa americana*), extirpated.

BIRDS

There is good documentation of historical trends in Iowa's bird populations. R. M. Anderson wrote a statewide review of the status of birds in 1907; Phil DuMont wrote a similar report in 1933 and in 1970, Woodward Brown published a status update. These works, along with information from the members of the Iowa Ornithologists' Union and field biologists of the State Conservation Commission, were utilized in compiling a list of rare birds for Iowa. One Iowa bird appears on the federal endangered species list. This is the Peregrine Falcon, which migrates through Iowa and nested in northeast Iowa in years past and still may do so. The Bald Eagle is on the federal list, but it has not been known to nest in Iowa since about the turn of the century.

Following is a list of the status of Iowa's rarest birds. It pertains only to nesting populations.

Podicipedidae—Grebes

Eared Grebe (Podiceps caspicus), threatened.

Anatidae—Ducks and Swans

Trumpeter Swan (Olor buccinator), extirpated.

Accipitridae—Kites, Hawks and Eagles

Swallow-tailed Kite (Elanoides forficatus), extirpated.

Sharp-shinned Hawk (Acipiter striatus), extirpated.

Cooper's Hawk (Accipiter cooperi), threatened.

Red-shouldered Hawk (Buteo lineatus), endangered.

Broad-winged Hawk (Buteo platypterus), threatened.

Bald Eagle (Haliaeetus leucocephalus), extirpated.

Northern Harrier (Circus cyaneus), endangered.

Peregrine Falcon (Falco peregrinus), endangered.

Tetraonidae—Grouse

Greater Prairie Chicken (Tympanuchus cupido), extirpated.

Sharp-tailed Grouse (Pediocetes phasianellus), extirpated.

Gruidae—Cranes

Whooping Crane (Grus americana), extirpated.

Sandhill Crane (Grus canadensis), extirpated.

Charadriidae—Plovers

Piping Plover (Charadrius melodus), endangered.

Scolopacidae—Sandpipers

Long-billed Curlew (Numenius americanus), extirpated.

Upland Sandpiper (Bartramia longicauda), endangered.

Laridae—Terns

Least Tern (Sterna albifrons), endangered.

Columbidae—Pigeons and Doves

Passenger Pigean (Ectopistes migratorius), extinct.

Psittacidae—Parrots and Paroquets

Carolina paroquet (Conuropsis carolinensis), extinct.

Cuculidae—Cuckoos

Black-billed Cuckoo (Coccyzus erythropthalamus), undetermined.

Tytonidae—Barn Owls

Barn Owl, (Tyto abla), endangered.

Strigidae—Owls

Burrowing Owl (Speotyto cunicularia), endangered.

Long-eared Owl (Asio otus), threatened.

Short-eared Owl (Asio flammeus), extirpated.

Tyrannidae—Tyrant Flycatchers

Say's Phoebe (Sayornis says), threatened.

Laniidae—Shrikes

Loggerhead Shrike (Lanius ludovicianus), threatened.

Vireonidae—Vireos

Bell's Vireo (Vireo bellii), undetermined.

Parulidae—Wood Warblers

Blue-winged Warbler (Vermivora pinus), threatened.

Yellow Warbler (Dendroica petechia), undetermined.

Birds seem to be accurate and sensitive indicators of the general condition of the environment; hawks are on the top of a food chain and reflect the general health of their prey; certain warblers need quite specific sites for nesting. When a species disappears from the state, as in the case of at least ten Iowa birds, we should be moved to action.

REPTILES AND AMPHIBIANS

Iowa's herpetofauna includes over 70 species or subspecies. These reptiles and amphibians constitute an interesting and important part of the state's fauna. There are no known extirpations in Iowa, although the Wood Turtle, Speckled Kingsnake, Western Slender Glass Lizard and Great Plains Skink exist in very low numbers and may well soon disappear from the state. Habitat destruction, largely through degradation of streams and draining of marshes, has forced these animals into smaller and smaller areas; for example, the Massasauga once occurred widely across the state, but is now found in a very few widely scattered locations.

Iowa occupies an important position in reptile and amphibian protection; it is located on the fringe of many species' ranges and thus can act as a sentinal for changes in population shifts or declines. What happens on the edge of an animal's range may be a forecast for the future of its entire range. These organisms can be useful in making inferences about our past environmental conditions. They are slow to migrate, adapt poorly and have narrow environmental tolerances. Thus, relict populations can give a clue to what conditions existed during postglacial times. With a fairly static human population in Iowa and with the concern shown in recent years for rare species, perhaps we can protect our remaining populations so they will always be part of the Iowa landscape.

Testudinata—Turtles

Kinosternidae—Musk and Mud Turtles

Stinkpot (*Sternotherus odoratus*), threatened.

Illinois Mud Turtle (*Kinosternon flavesens spooneri*), endangered.

Emydidae—Box and Water Turtles

Wood Turtle (*Clemmys insculpta*), endangered.

Ornate Box Turtle (*Terrapene ornata*), threatened.

Red-eared Turtle (*Chrysemys scripta*), threatened.

Blanding's Turtle (*Emydoidea blandingi*), threatened.

Squamata—Skinks, Lizards and Snakes

Sinicidae—Skinks

Five-lined Skink (*Eumeces fasciatus*), threatened.

Great Plains Skink (*Eumeces obsoletus*), endangered.

Anguidae—Glass Lizards

Western Slender Glass Lizard (*Ophiosaurus attenuatus*), endangered.

Colubridae—Water, Earth and Rat Snakes

Diamondback Water Snake (*Natrix rhombifera*), threatened.

Yellow-bellied Water Snake (*Natrix erythrogaster*), threatened.
Graham's Water Snake (*Natrix grahami*), threatened.
Western Earth Snake (*Virginia valeriae*), threatened.
Black Rat Snake (*Elaphe obsoleta*), threatened.
Speckled Kingsnake (*Lampropeltis getulus*), endangered.

Viperidae—Pit Vipers and Rattlesnakes

Northern Copperhead (*Agkistrodon contortrix*), endangered.
Prairie Rattlesnake (*Crotalus viridis*), endangered.
Massasauga (*Sistrurus catenatus*), threatened.

Caudata—Salamanders and Newts

Ambystomatidae—Mole Salamanders

Small-mouthed Salamander (*Ambystoma texanum*), threatened.
Blue-spotted Salamander (*Ambystoma laterale*), endangered.

Salamandridae—Newts

Central Newt (*Notophthalmus viridescens*), endangered.

Anura—Frogs and Toads

Pelobatidae—Spadefoot Toads

Plains Spadefoot (*Scaphiopus bombifrons*), threatened.

Hylidae—Tree frogs and Allise

Spring Peeper (*Hyla crucifer*), threatened.

FISH

Perhaps members of Iowa's aquatic communities have been most seriously affected by human activities, particularly pollution, stream channelization and agricultural intensification. The fish populations in the state have not been intensively studied for over twenty years, but it appears that a number of species are either gone from Iowa's waters or in some danger of disappearing. Fortunately Seth Meek and Ellsworth Call did considerable collecting just before the turn of the century so we have some idea of what species were present then. Later workers did follow-up studies in some of the areas to determine what species were still present and it appears that at least seven species have disappeared from Iowa. Following is a report on the status of Iowa's rarest species of fish:

Petromyzontidae—Lampreys

Chestnut Lampery (*Ichthyomyzon castaneus*), threatened.
American Brook Lamprey (*Lampetra lamottei*), threatened.

Acipenseridae—Sturgeous

Lake Sturgeon (*Acipenser fulvescens*), endangered.
Pallid Sturgeon (*Scaphirhynchus albus*), endangered.

Clupidae—Herrings

Alabama Shad (*Alosa alabamae*), extirpated.
Skipjack Herring (*Alosa chrysochloris*), threatened.

Esocidae—Pikes

Grass Pickerel (*Esox americanus*), threatened.

Cyprinidae—Minnows

Redside Dace (*Clinostomus elongatus*), extirpated.
Southern Redbelly Dace (*Chrosomuserythrogaster*), threatened.
Sturgeon Chub (*Hybopsis gelida*), extirpated.
Sickelfin Chub (*Hybopsis meeki*), endangered.
Lake Chub (*Couesius plumbeus*), endangered.
Gravel Chub (*Hybopsis x-punctata*), threatened.
Pugnose Shiner (*Notropis anogenus*), threatened.
Ironcolor Shiner (*Notropis chalybaeus*), extirpated.
Blacknose Shiner (*Notropos heterolepis*), endangered.
Weed Shiner (*Notropis texanus*), threatened.
Silverband Shiner (*Notropis shumardi*), endangered.
Topeka Shiner (*Notropis topeka*), threatened.
Pugnose Minnow (*Notropis emiliae*), undetermined.
Pearl Dace (*Semotilus margarita*), endangered.

Catostomidae—Suckers

Lake Chubsucker (*Erimyzon sucetta*), extirpated.
River Redhorse (*Moxostoma carinatum*), extirpated.
Black Redhorse (*Moxostoma dugesnei*), endangered.

Cyprinodontidae—Killifishes

Starhead Topminnow (*Fundulus notti*), endangered.
Plains Topminnow (*Fundulus sciadicus*), endangered.

Centrarchidae—Sunfishes

Longear Sunfish (*Lepomis megalotis*), endangered.
Crystal Darter (*Ammocrypta asprella*), undetermined.
Western Sand Darter (*Ammocrypta clara*), threatened.
Mud Darter (*Etheostoma asprigene*), threatened.
Bluntnose Darter (*Etheostoma chlorosomum*), threatened.
Least Darter (*Etheostoma microperca*), endangered.
Orangethroat Darter (*Etheostoma spectabile*), endangered.
Gilt Darter (*Percins evides*), extirpated.

Aphredoderidae—Pirate Perch

Pirate Perch (*Aphredoderus sayanus*), undetermined.

IOWA'S ENDANGERED PLANTS

Contrary to the impression many people have that Iowa has little to offer except agricultural crops, it is an interesting place to study and appreciate native wild plants. The diversity of plant life is a result of the state's physical location; it is a meeting ground for plants from the Great Plains, the boreal region and the eastern deciduous woodland. The dissected topography of northeast Iowa, especially in the 'driftless area', provides habitats reminiscent of those normally found in northern Minnesota or northern Wisconsin and here are found such rare plants as Bunchberry, Bearberry, Dwarf Scouring Rush, Shinleaf, Blueberry and Twinflower. The dry, west-facing loess hills in western Iowa along the Missouri River provide habitat similar to that of the Great Plains and here are found many species characteristic of western United States. Careful looking may turn up rare plants such as Buffalo Grass, Buffalo Berry, Tumble Grass, Western Beard-tongue and Prickly-pear Cactus. In the dry woodlands of southern Iowa, habitats similar to those in the Ozarks harbor trees like Pawpaw, Persimmon, Sassafras and Blue Ash. The dissected, moist woodlands of eastern Iowa, where elements of the eastern deciduous woodland end, may disclose such beautiful, delicate and rare plants as Pink Ladyslipper, Monkshood, Muskroot and Twinleaf.

Iowa has some very unusual habitats where some of the rarest plants of the state are found. In northwest Iowa a number of 'fens' are found; these are springy areas on hillsides with upwelling, calcareous water where one may find rare plants like Arrow-grass, Grass of Parnassis, Northern Green Orchid and Beaked Rush. The only true bog in Iowa is in the northern part of the state and contains some very rare plants such as Cotton Grass and the insect-eating Sundew. Because so many of Iowa's marshes and prairie potholes have been drained, some marsh or aquatic plants are having trouble existing in the state. Some of the rarest are Bogbean, Mare's tail, Water Horsetail, Wild Rice, Water Marigold and Water Shield. Aspen bogs in northern Iowa still harbor Adder's tongue fern, White Lady-slipper, and Swamp Birch. Growing around ice caves in northeast Iowa are plants that normally are found in boreal America. Sandy areas in Iowa furnish some exceedingly rare plants like the curious lower vascular plant Meadow Spike-moss, Erect Dayflower, Royal Fern, Cinnamon Fern and Golden Corydalis.

Travelling around Iowa, poking into the remote corners, may pay dividends like seeing a plant so rare that it occurs in only one place in the state, or you may see over 90 percent of the world's population of a certain species. These are experiences to be savored; they may not be possible in tomorrow's world.

While some Iowa plants are very rare, others have not been so lucky as to survive; because most of our state has been plowed, drained or grazed, and because many of our streams have been channelized, many plants lost their prime habitat and have disappeared. Over 80 plants which formerly grew here can no longer be found and at least 35 others are now known from a single location in Iowa. Many of these rarities require special habitats and specific conditions; in many cases, the less human visitation, the better; in other cases, a form of management is needed.

Only recently has the government begun to think about the problem of protecting rare species of plants. In December of 1973, passage of the U.S. Endangered Species Act (Public Law 93-205) supplied the needed impetus for the protection of endangered and threatened plants as well as animals. In January, 1975, the Secretary of the Smithsonian Institution presented to Congress House Document No. 94-51, "A Report on Endangered and Threatened Plant species of the United States", which listed 2,099 species, or approximately 10 percent of the native flora. Three plants which occur in Iowa appeared on this list; they are Monkshood (Aconitum noveboracense), Mead's Milkweed (Asclepias meadii) and Prairie Bushclover (Lespedeza leptostacya). Considerable field checking has occurred to determine the status of these plants in Iowa. They are proposed for inclusion on the federal endangered and threatened species list; at present, only Monkshood appears on the federal list and is termed 'threatened'.

We have identified the plants considered endangered or threatened; they deserve our utmost caution and loving care if they are to be a part of our children's world. We are attempting to locate all sites in Iowa of plants termed 'endangered'; when found, the site should be protected—acquired by the state, if possible. This is where public support of the Commission's acquisition program is essential. We will need your help.

Following is a list of the plants thought to be in the most danger of not surviving in Iowa; they are termed 'endangered'. Because of space limitations, only the endangered plants are listed below, but a complete list of endangered, threatened, extirpated (gone from Iowa) or 'status undetermined' plants may be obtained from the Conservation Commission.

Lower Vascular Plants

Adiantaceae (Maidenhair Fern Family):
Purple Cliffbrake, Pellaea atropurpurea.
Aspleniaceae (Spleenwort Family):
Glandular Wood Farm, Marginal Shield Fern, Limestone Oak Fern, Rusty Cliff Fern,

Western Cliff Fern, Dryopteris intermedia, Dryopteris marginalis, Gymnocarpium robertianum, Woodsia ilvensis, Woodsia orgegana.

Equisetaceae (Horsetail Family):
Dwarf Scouring Rush, Woodland Horsetail, Equisetum scirpoides, Equisetum sylvaticum.

Ophioglossaceae (Adder's-tongue Family):
Leather Grape Fern, Least Grape Fern, Adder's-tongue Fern, Botrychium multifidum, Botrychium simplex, Ophioglossum vulgatum.

Osmundaceae (Flowering Fern Family):
Cinnamon Fern, Osmunda cinnomomea.

Selaginellaceae (Spikemoss Family):
Meadow Spike-moss, Selaginella eclipes.

Lycopodiaceae (Clubmoss Family):
Running Clubmoss, Round-branched Clubmoss, Crowfoot Clubmoss, Rock Clubmoss, Lycopodium clavatum, Lycopodium dendroideum, Lycopodium flabelliforme, Lycopodium porophilum.

Dicots

Acanthaceae (Acanthus Family):
Water Willow, Justicia americana.

Asclepiadaceae (Milkweed Family):
Eared Milkweed, Wooly Milkweed, Mead's Milkweed, Asclepias auriculata, Asclepias lanuginosa, Asclepias meadii.

Asteraceae (Aster Family):
Forked Aster, Water Marigold, Spreading Goldenrod, Aster furcatus, Bidens beckii, Solidago patula.

Berberidaceae (Barberry Family):
Twinleaf, Jeffersonia diphylla.

Betulaceae (Birch Family):
Swamp Birch, Betula pumila.

Boraginaceae (Borage Family):
Northern Lungwort, Mertensia paniculata.

Caprifoliaceae (Honeysuckle Family):
Twinflower, Linnaea borealis.

Capparidaceae (Caper Family):
James' Cristatella, Cristatella jamesii.

Caryophyllaceae (Pink Family):
Field Chickweed, Cerastium arvense.

Cistaceae (Rockrose Family):
Poverty Grass, Pinweed, Hudsonia tomentosa, Lechia intermedia.

Cornaceae (Dogwood Family):
Bunchberry Cornus canadensis.

Droseraceae (Sundew Family):
Sundew Drosera rotundifolia.

Elatinaceae (Waterwort Family):
Waterwort Elatine trianda.

Ericacease (Health Family):
Bearberry Prince's Pine Huckleberry Shinleaf Low Sweet Blueberry Velvet-leaf Blueberry Arctostaphylos uva-ursi Chimaphila umbellata Gaylussacia baccata Pyrola secunda Vaccinium angustifolium Vaccinium myrtilloides.

Fabaceae (Leguminosae) (Pea Family):
Fragrant False Indigo Rattle Vetch Prairie Bush Clover Silky Prairie Clover Amporpha nana Astragalus striatus Lespedeza leptostachya Petalostemon villosum.

Haloragaceae (Water-milfoil Family):
Rough Water Milfoil Mermaid Weed Myriophyllum pinnatum Proserpinaca palustris.

Hippuridaceae (Mare's-tail Family):
Mare's-tail Hippurus vulgaris.

Hypericaceae (St. John's-wort Family):
Northern St. John's-wort Hypericum boreale.

Lamiaceae (Mint Family):
Blue Giant Hyssop Agastache foeniculum.

Lentibulariaceae (Bladderwort Family)
Humped Bladderwort, Flat-leaved Bladderwort, Small Bladderwort, Utricularia gibba, Utricularia intermedia, Utricularia minor.

Lythraceae (Loosestrife Family):
Water Willow, Decodon verticillatus.

Melastomataceae (Melastoma Family):
Meadow Beauty, Rhexia virginica.

Menyanthaceae (Buckbean Family):
Bogbean, Menyanthes trifoliata.

Nymphaeaceae (Water-lily Family):
Water Shield, Brasenia schreberi.

Papavaraceae (Poppy Family):
Golden Corydalis, Corydalis aurea.

Polygalaceae (Milkwort Family):
Pink Milkwort, Polygala incarnata.

Portulacaceae (Purslane Family):
Fameflower, Rough-seeded Fameflower, Talinum parviflorum, Talinum rugospermum

Ranunculaceae (Crowfoot Family):
Monkshood, Aconitum noveboracense.

Rubiaceae (Madder Family):
Partridge Berry, Mitchella repens.

Salicaceae (Willow family):
Shining Willow, Bog Willow, Salix lucida, Salix pedicellaris.

Saxifragaceae (Saxifrage Family):
Golden Saxifrage, Northern Currant, Chrysosplenium ioense, Ribes hudsonianum.

Scrophulariaceae (Figwort Family):
Round-stemmed False, Foxglove, Pale False Foxglove, American Brookline, Kitten-tails, Gerardia gattingeri, Gerardia Skinneriana, Veronica americana, Wulfenia bulli.

Violaceae (Violet Family):
Green Violet, Hybanthys concolor.

Vitaceae (Vine Family):
Summer Grape, Vitis aestivalis.

Monocots

Cyperaceae (Sedge Family):
Clustered Sedge, Crawford's Sedge, Slender Sedge, Intermediate Sedge, Rocky Mountain Sege, Deep Green Sedge, Purple Spike-rush, Dwarf Spike-rush, Tall Cotton-grass, Slender Cotton-grass, Slender Fimbristylis, Prairie Bulrush.

Carex aggregata, Carvex crawfordii, Carex leptalea, Carex media, Carex saximontana, Carex tonsa, Eleocharis atropurpurea, Eleocharis coloradoensis, Eriophorum angustifolium, Eriophorum gracile, Fimbristylis autumnalis, Scirpus paludosus.

Hydrocharitaceae (Frog's-bit Family):
Tapegrass, Vallisneria americana.

Juncaceae:
Alpine rush, Green's rush, Juncus alpinus, Juncus greenii.

Liliaceae (Lily Family):
Nodding Wild Onion, Allium cernuum.

Orchidaceae (Orchid Family):
Pink Ladyslipper, Pale Green Orchid, Prairie-fringer Orchid, Hooded Lady's Tresses, Cypripedium reginae, Habenaria flava, Habenaria leucophaea, Spiranthes romanzoffiana.

Poaceae (Graminae) (Grass Family):
Buffalo Grass, Rice Gress, Slim-leaved Panicum, Weak Bluegrass, Tumble Grass, Spear Grass.

Buchloe dactyloides, Oryzopsis pungens, Panicum linearifolium, Poa languida, Schedonnardus paniculatus, Stipa comata.

Pontederiaceae (Pickerel Weed Family):
Mud Plantain, Heteranthera limosa.●

EXCESSIVE GOVERNMENT SPENDING

● Mr. STONE. Mr. President, most Members of Congress have now come to understand the absolute necessity of reducing the level of Federal Government spending. I believe the public is beginning to appreciate the relationship between excessive Federal spending and the inflation which now plagues our economy.

It is certainly one of my highest priorities to work toward the reduction of Federal Government spending and toward the elimination of the unacceptably high deficits incurred in recent years. This year I have joined other Senators in various efforts to reduce excessive Government spending. One of the most recent efforts was an amendment to the budget resolution for fiscal year 1979 to reducc by $30 billion the President's budget. Although this amendment was not adopted, I am pleased to call the Senate's attention to the fact that the Wall Street Journal, in its editorial of September 18, 1978, gives support to this effort. It is my hope that we can work toward the development of greater support in the Congress for the next few years to achieve a real reduction in Government spending which would thereby bring inflation under control.

I ask that the Wall Street Journal editorial of September 18, 1978, be printed in the RECORD.

The editorial follows:

THE BUDGET "BATTLE"

Senate and House budget conferees, it seems, are locked in gentlemanly combat over House insistence on authorizing a further $2 billion for "soft" public works in the 1979 budget. The Senate wants no further authorization, and as a result of the dispute Congress failed to meet its Sept. 15 deadline for agreeing on a second budget resolution for fiscal 1979.

This little tempest will not become a major crisis, we can safely assume. Great institutions don't crumble over a piddling $2 billion. Some compromise will be found and there will be agreed-upon targets for authorizations, outlays, revenues, the federal deficit and the federal debt for 1979.

But the struggle does give occasion for wondering if the congressional budget process, now three years old, will ever begin to accomplish what was intended when it was devised. It was intended to bring self-discipline to Congress by having that body set a budget ceiling that would force members and committees to hold their individual spending appetites in check.

The idea was that the size of the federal budget and the federal deficit would be determined by economic assessments. If the nation were suffering inflationary pressures, for example, an attempt would be made to put the budget into surplus to relieve the pressures. In a recession a deficit could be tolerated to help preserve jobs and demand. A large brain trust, the Congressional Budget Office, was set up to help with such calculations.

But the "soft" public works fight shows that it isn't so easy to persuade a major committee—House Public Works in this case—to give up some goody, even if there isn't room for it under the budget umbrella and the umbrella is already too big. Individual appetites still count for something in Congress.

The difficulty is emphasized by the fact that the $2 billion authorization isn't something most people would consider to be of crucial importance. There will be an appropriation for soft public works in fiscal 1979 anyway, under existing authorizations. The authorization could be extended next year. A lot of people wonder whether soft public works, which focus on projects that employ unskilled labor, are worth all the trouble it takes to organize them. If a budget item like this can't be scrapped, what can be?

As it happens, a bold attempt was made in the Senate to make the intended budget process work. Nine Senators—Proxmire, Hatch, Hayakawa, DeConcini, Bentsen, Roth, Stone, Harry F. Byrd, Jr., and Thurmond—proposed to cut 1979 budget authority to

$540 billion. That would still be an increase of 7% from a year ago, but it would be some $30 billion under the President's budget authority target and would offer prospects for wedging the federal deficit down to a more reasonable level.

Well, it didn't work. The Senate adopted the $557 billion authority of its own Budget Committee. Deficits of $40 billion or more will be with us for some time, it seems, even though everyone agrees that inflation is the nation's number one problem.

And the House, fighting for that $2 billion public works pork, isn't even content with the generosity the Senate has already displayed in a budget authority target that is up 11% from a year ago.

Senator Proxmire put his finger on the problem by saying on the floor that the budget process hasn't changed the reluctance of his fellow Senators to attack someone else's spending project. "Senators soon learn that the best way to get along is to go along and that the 'something in it for everybody policy' is easier to live with than rocking the boat," said the Wisconsin Senator.

The soft public works battle shows how true that is. It is an exaggeration, quite clearly, to call it a battle when there is so little evidence that anyone has really begun to fight.●

EMPLOYEE RETIREMENT INCOME SECURITY ACT

● Mr. JAVITS. Mr. President, I ask to have printed in the RECORD the transcription of a speech which I delivered on September 10 in Atlanta. It was the keynote address at the Annual Educational Conference of the International Foundation of Employee Benefit Plans, there.

The speech follows:

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Thank you very much, Bill Oliver, and thank you very much ladies and gentlemen for the warmth of your reception. I suggest that you relax for the next three-quarters of an hour and let me do the work. I hope you will absorb a good deal of what I have to say for I am supposed to give you your keynote address. This is a very important field to me as I will explain in a moment.

I would like to say that normally I would handle questions after I speak. I hope you will forgive me, but I have had a slight bout with a very thorough medical examination. It was touch and go as to whether I would appear at all today. I wanted very much to do it, so I am here with all my doctors very worried about it. I hope you will forgive me if I leave the answers to questions to Peter Turza sitting right there with the stripped yellow tie who is on the platform with me. He will be here during your conference, and his answers will be authoritative. I will be committed by whatever he tells you about particular aspects of either ERISA itself or of the ERISA Improvements Act of 1978.

I am very flattered by the size of this audience and by the invitation of the International Foundation, which I know is a very important organization particularly with respect to multiemployer plans which so deeply concern us in ERISA. I thank Bill Oliver for the warmth and graciousness of his introduction. I was met at the plane today by Lee Polachek, your Executive Vice President. Also gracing the platform is Bill Ward, who is your Chairman Elect, Helen Kleczka, who is, I understand, a very distinguished officer of this organization, and your past president, Charles Jackson.

When Bill was speaking, I noted two things which appealed to me very deeply. He spoke of the enigma known as ERISA. And he spoke of good old fashioned American ingenuity. These points, naturally, are not in my prepared text, but I would like to address them first. That is why I said let's relax and enjoy the afternoon.

You know, ERISA is an enigma in terms of the statute and the related law. But I would rather have an enigma than a disgrace to the national honor of the United States; and the pension plans of this country were a disgrace before the coming of ERISA. Sure, before ERISA you had few enigmas. But you also had very little justice. As far as the worker was concerned, whoever administered the pension plan was the final word. And the reality was that American workers didn't care much about pension plans, except with some of the very major companies where they were really a factor. As for the rank and file's attitude toward pension plans, well, maybe they'd get a pension or maybe they wouldn't. They really didn't know too much about it or they didn't count on it too heavily.

Now the law is an enigma because people are counting on pension plans, and they must consider the limitations of Social Security and the strictures of our economy. People are beginning to know what pension plans contain, and they are beginning to understand that they are critical elements in employment. And that goes for big and small employers, which is the way it ought to be in the U.S.A. So, if ERISA is an enigma, it is an enigma very well worth dealing with and very well worth resolving in the interest of 35 million people who are covered by these plans. And ultimately, governmental plans will also be covered by the law—there isn't any real reason why they should be excluded.

To emphasize for you the importance of pension plans, I want to say that I called an economic conference the other day about a matter quite unrelated to the one we are discussing today. One of the chief executive officers of one of America's greatest companies—and when I say greatest, I mean the first five—said that the main source of capital for the future as far as his enterprise was concerned as well as most other enterprises were the pension funds. He said they will dominate capital supply for the American industrial and business machines.

How true that is when we note that private pension fund assets today total $280 billion. So that you get a concept of that sum, there is something called M–1 that the Federal Reserve Board always talks about. M–1 means the amount of cash and demand deposits in the United States for corporations and individuals. M–1 amounts to roughly $330 billion on the average. So private pension funds will very soon, within two or three years, equal the aggregate amount of cash and demand deposits of the United States. And when you add to this $280 billion which protects the pensions as I said, of about 35 million Americans, $130 billion which is held by State and local government plans and another $55 billion which is held by federal retirement programs outside of Social Security, you come to close to $500 billion of capital funds which are in the hands of pension funds. These funds today total about ⅛ of the nations financial securities. By 1985, not very long from now, these assets are expected to aggregate $1,000 billion—one trillion dollars—about ⅔ of the gross national product of the United States every year. And eventually, within the foreseeable future, pension assets will provide nearly one-half of all the external capital raised by U.S. enterprises.

It is an enigma—ERISA, that is. It is an enigma which will be resolved. As I said a moment ago, Senator Williams and I who are largely responsible for this legislation, with the magnificent aid of Senator Lloyd Bentsen of Texas, a member of the Finance Committee and a man who is essentially business dedicated but who like Senator Williams and I, who are very labor oriented, took a deep interest is this proposition as a very fundamental element of the business system of the United States, have created this enigma. But by this enigma we have also overcome deep injustices and the disgrace of unregulated pension plans in the United States. This law is very susceptible of being made viable and being made a very rational instrument for fairness and for high enterprise as far as workers are concerned.

Now I take my lead from the second part of what Bill Oliver said, "good old fashioned American ingenuity." Yes, I agree with that, but I add to it, Bill, "good old fashioned American ingenuity and fairness—and fairness." I represent 18 million people with Senator Moynihan, also of New York. There are two senators in every state, no matter how large or how small, and there is a congressman in every district. I have found that many of these enigmas can be resolved often very practically by the intercession of your legislators. Most of them will come to me or Senator Williams or to Senator Bentsen or to some other senator or congressman who takes an ardent hand in these matters. I have found very few cases where there is not a practical way out. In some cases, the employer has to do something; in other cases, the employees have to do something. In many cases, the Administration has to do something. But very few cases, even today, notwithstanding the reputation of ERISA, cannot be resolved.

I have one last point. An effort was made for a time—and mind you, I am given to plain speaking and I hope you will forgive me for that; you won't misunderstand me—for a time, an effort was made to drag down ERISA, to destroy it, by people who sought to kill it on the charge that it called for too much paperwork. Now, I am all for condemning paperwork as much as anybody else, but again that cannot be used as a means to destroy a great social reform. Paperwork must be cut down, and human beings are very capable of cutting it down. But it should not be utilized as a means for destroying this great law. And yet, so superficial, unfortunately, are many people, either unintentionally or by design, that in the last few years, ERISA came very close to being destroyed by those who were against paperwork, as if paperwork would feed hungry mouths or look after older people or do all the things which these pension and welfare funds do.

Now it is not hard to see why pension plans have developed into one of the truly essential elements of our economic system. Yet, some critics have suggested scrapping the private pension system and merging it into one colossal federal retirement program. Such a move in my opinion would be a terrible mistake. It would harm retirees and the nation as a whole. Certainly there are problems, as I have just explained in some detail, with the private retirement system, but to establish one federal retirement program with Social Security as its cornerstone, would be jumping from the frying pan into the fire. Anyone familiar with the recently highlighted financing problems of Social Security and its lack of advance funding should know that the private pension system with these hundreds of billions of dollars of rapidly growing assets looks extraordinarily healthy when compared with Social Security.

In my view, what we need is a national retirement income policy which will coordinate the various elements of the retirement income continuum. Private pension plans should be coordinated with Social Security but should not be merged into Social Security.

Last September in Chicago at a comparable meeting, I called for the active development of a national policy on retirement income. On July 12, the President established a Presi-

dential Commission on Pension Policy which has the responsibility, and I quote, "to develop national policy for retirement survivor and disability program". This Commission will study private, federal, state and local pension programs. And I believe the work of the Commission will accelerate the growth of a concensus that a coordinated national retirement income policy must be developed and implemented. I am also hopeful that the various studies which have been launched will conclude that the best way to implement such a national retirement income program is to establish a single retirement income agency.

I come now to the bill which Senator Williams and I have proposed. Senator Williams is from New Jersey and is Chairman of the Human Resources Committee which has primary jurisdiction in these matters. He and I have had an enviable partnership in this matter and in many others of a completely bipartisan character. And I might tell you what I think about my own role with respect to ERISA. I believe that two of the greatest landmarks in my long legislative career are, first, the War Powers resolution which for the first time in 200 years restrains the power of the President, as in Vietnam, to put us in war without a declaration of war and, second, ERISA. That is my own judgment as to the importance of my own work.

Senator Williams and I have been partners in all of these employee benefit matters. He and I have proposed the ERISA Improvements Act of 1978, known in the Senate as S. 3017. We have proposed that a single Employee Benefits Commission be established to administer ERISA. Such a single agency is supported by many groups including the AFL–CIO. It would combine most of the jurisdiction and personnel of the existing agencies and would become the key administrative mechanism for implementing a coherent retirement income policy. Our proposal for a single agency is very similar to what the Administration has done, for example, in the energy field. It consolidates a multiplicity of administrative units into one and charges the single entity with the implementation of an important national policy. It is my judgment that a national policy on retirement is just as vital as a national policy on energy.

The Administration has submitted its ERISA Reorganization Plan to us, and I happen also to be a member of the Governmental Affairs Committee which handles Reorganizations. The ERISA Reorganization program is a small, good, but small, first step toward better administration of the pension benefit law. But as the Plan sponsors admit, the Reorganization Plan is only an interim measure. It will be followed on or before April 30, 1980, by a definitive recommendation, namely, the Administration's long-term proposal. I hope that concern for the national good and the welfare of retirees will override shortsighted concerns about jurisdiction between Congressional committees or executive departments and will give us a single agency.

Let us remember that as of today, there are three agencies administering ERISA—The Department of Labor, the Treasury Department, and the Pension Benefit Guaranty Corporation. And, if the *Daniel* case stands up, we will have the Securities and Exchange Commission, and with the transfer of jurisdiction of various types of discrimination to the Equal Employment Opportunity Commission, we may have the EEOC, too. You can see how all signs point to the absolute need for a unification of administration in this field.

I believe this interim Reorganization Plan is likely to be approved, provided that it is made very, very clear that it is short term and that it is to be succeeded by a definitive plan, as I said, on or before April 30, 1980. Under the interim Plan, the Treasury Department will have authority for minimum standards including vesting and funding, but the Labor Department will have a veto over certain minimum standards matters which would, and I quote, "significantly impact on or substantially affect collectively bargained plans." It would seem that many minimum standards matters would substantially affect such collectively bargained plans and that the two agencies may not be out of each other's hair much more than they are now in this particular area. Thus, my emphasis on the fact that it has to be considered interim.

Again, with the respect to fiduciary matters under the interim Plan, the Labor Department will have primacy, although the Treasury Department will still administer the Internal Revenue Code's exclusive benefit rule. The Labor Department will, however, have a veto power over the Treasury's disqualification of a plan for violation of the exclusive benefit rule. In addition, both agencies, Labor and Treasury, will maintain their current enforcement powers even with respect to the substantive areas over which the other agency has the lead role. The IRS will retain tax enforcement powers, and the Department of Labor will retain equitable enforcement powers. There is much overlap of authority, therefore, built into this Reorganization Plan, and I hope variations on the old dual jurisdiction theme will not be heard in the future. But still there is some effort to do better, especially respecting the granting of prohibited transaction exemptions, to which I will refer in a moment.

As the population grows older, it is clear that the need for retirement income in addition to social security will become more urgent. Now, this brings me to a subject of great sensitivity to which I would like now to refer. That is the problem of plan terminations. ERISA has become a convenient scapegoat as the cause for increased plan terminations since 1974. But a recent study by the General Accounting Office, which is the watchdog office of the Congress, concluded that, and I quote, "economic and other factors played a more significant role in decisions to terminate pension plans," than did ERISA. Since 1977, the ratio of new plans to terminated plans has in fact increased, and I predict will continue to increase, particularly as workers become more knowledgeable with respect to pension benefits, and employers recognize the morale value of such plans. For the first six months of this year alone, 34,122 new plans have been established against an estimated 8,290 which have been terminated. The number of new plans has increased sharply over prior years, and I think this promising trend will continue.

In view of this trend, I hope you will forgive me if I state that I must be highly critical of employers who terminated their pension plans even though business conditions did not absolutely require them to do so. I view a private pension as a benefit earned in an ongoing business rather than a gift from an employer. A loyal employee who has worked at least five years for the employer and who by his or her labor has contributed to the success of the enterprise should receive some form of employer-provided pension benefit in his or her later years. The employer owes at least this to the men and women who have spent a good piece of their lives in the enterprise.

In non-union situations, I think there will be greater efforts to unionize employers where private pension plans are not provided. Where there is unionization, I believe we will see tougher bargaining and more strikes where private pensions are not a element of employment. On the whole, I hope with experience in hand and with the knowledge that American productivity is in the cellar, as they say in baseball, as compared with the ten leading industrial nations in the world, that employers, who other than for business reasons are proposing to terminate pension plans, will give it another thought, both in the interest of their own businesses and worker productivity and in the interest of the Nation.

PROPOSALS TO ASSIST MULTIEMPLOYER PLANS

I come now to the subject of multiemployer plans which have given us quite a headache in respect to ERISA. I am well aware of the unique problems which multiemployer plans have. In addition to the paperwork reductions which Senator Williams and I have included in our pending bill which will benefit all plans, our bill also contains provisions to try to deal with multiemployer plan problems.

For example, our bill will require employers who are obligated to contribute under the terms of collectively bargained plans to make such contributions in accordance with the terms of a plan. We give the fiduciary the power to enforce this new statutory right and to recover reasonable attorney's fees and the costs of the action. Personally, I am also willing to consider expanding this new statutory duty so that fiduciaries will be clearly able to enforce plan provisions requiring reasonable liquidated damages because of delinquencies in making contributions. Such liquidated damages will assist in making the plan whole for costs of collection other than attorney's fees and for lost investment earnings.

Our bill further permits multiemployer plans to return a mistaken employer contribution within one year. Now this is a fine distinction, and I beg you to listen closely. By the way, I love applause, but I cannot tell you how much I appreciate the fact that you are listening—it is critically important to me; and this is a very subtle distinction, so listen to it carefully. Our bill permits multiemployer plans to return an employer contribution within one year after the plan administrator knows that the contribution was made by a mistake of fact rather than under the present rule which requires the return within one year after the contribution is made. Mind the difference, one year after the plan administrator knows or finds out that there has been a mistaken payment, as contrasted with one year after the mistaken payment is made, even if he does not know. The present rule, in our judgment, has proved to be particularly difficult for multiemployer plans which cover many small employers with inadequate bookkeeping systems. A plan may now be accepting mistaken contributions in good faith on both sides on behalf of employees who should not be participating in the plan. But if the mistake is discovered after more than one year, under present law, the contribution cannot be returned. That is the situation we must correct, and I believe we will correct.

Our bill also has a number of other technical provisions. Again, this may be dull and boring, but I beg you to listen, because it is very important:

We facilitate reciprocal agreements between plans to increase portability—this is one of the big things we have not yet dealt with in ERISA, but it can be done by agreement between plans;

We permit the crediting of service for eligibility purposes on a plan year basis rather than a year based on the commencement of employment;

We permit the summation of different benefit accrual rates over the course of a participant's career rather than having the last accrual rate apply retroactively for all years of service;

We broaden the suspension of benefits rule if a retiree is reemployed;

We permit plans to comply with final regulations even if such regulations differ from temporary or proposed rules which were followed by the plan;

We permit by statute the use of the elapsed time method of crediting service; and

We require the funding method to take account of future plan amendments.

These and many other provisions affecting multiemployer plans are quite complicated and may require further fine-tuning in light of the comments which we have received in the course of hearings on our bill.

Now in addition to the provisions of our bill, I think we ought to talk about other ideas which you may want to discuss at this conference. Other amendments may be considered to have merit, and I will look forward with very great anticipation to your recommendations. I will take them seriously, and if given to me in adequate form, I will see that they become part of the record of our hearings.

The time has come, in my judgment, to take a hard look at the efficacy of ERISA's prohibited transaction provisions. The key to making these proscriptions workable is the exemption procedure. The evidence to date is that this procedure has not worked as well as we had hoped. I think the Administration's Reorganization Plan, which I described to you, will somewhat open the administrative bottleneck by removing the deleterious effect of dual jurisdiction. But I am concerned that even with the solution of the dual jurisdiction problem, the exemption procedure may not work the way it was intended. The complexity of the issues raised by exemption applications and the inadequate number of trained agency personnel to deal with them leads me to raise the question of our permitting some "play in the joints" in the body of prohibited transaction law. I do not want this ERISA protection, as desirable as it is, to become an artificial and impractical impediment to perfectly acceptable business transactions which will benefit the very plans which our law was meant to protect.

I also want to discuss our amendments repealing the well-known *Daniel* case. I would like to speak about that because those provisions are open to amendment because we are convinced they ought to be changed. I think further refinement of our bill respecting *Daniel* is in order. We should, among other things, make clear that a participant's interest in most types of pension plans is not a security. Both Senator Williams and I are convinced of that. But, it may be appropriate to do something about fraud. In my judgment, it would not be desirable to incorporate the whole body of the anti-fraud law contained in the Securities Act into the already densely populated area of pension plan regulation. As Mr. Oliver said, we should not add to the enigma; we should subtract from it.

But I think it is not inappropriate to give serious consideration to adding an antifraud provision to ERISA which will supplement the existing ERISA antifraud prohibitions. While I think it is unwise to add yet another agency to the complex of ERISA administration, to wit, the SEC, I believe basic fairness and equity may require that we do something about antifraud provisions stronger than those in ERISA today. In addition, further study should be given to the possibility of facilitating some retroactive form of relief for individuals like Mr. Daniel, who had a short break in service. Enabling federal courts to hear state common law fraud actions even where there is no diversity jurisdiction and thereby making federal class actions more available may be extremely useful in order to do justice in such cases as the *Daniel* case. The feasibility of this idea, which does not involve the creation of a new retroactively effective federal cause of action, needs to be assessed.

PLAN TERMINATION INSURANCE

It is estimated that there are now about 2,000 defined benefit multiemployer plans which cover about 8 million participants. We deal in big numbers here. A PBGC study found recently that about 10% of these plans which cover 1.3 million workers out of the 8 million workers are experiencing financial difficulties that could result in plan termination over the next 10 years.

Now, one idea that has been kicked around—and I hope we will not only kick it around but kick it out of this auditorium—is the idea that all of these plans are going to go bust at the same time. If they did, it would involve an estimated PBGC liability of almost $5 billion. That liability figure would require an annual premium of about $80 per participant per year for multiemployer defined benefit plans. But we know that that probably won't happen. If, within the next ten years only those plans projected to become insolvent are considered alone, the net cost, if they all go broke, is $560 million and the requisite premium to take care of that kind of disaster would not be $80 but rather $9 per participant for multiemployer, defined benefit plans. Obviously, an $80 premium would send all the multiemployer plans into a tailspin and is therefore unthinkable. We must not let it happen; I will do my utmost to see that it does not happen.

The July 1 PBGC study sets out a series of options dealing with the problems of the multiemployer termination insurance program. Their suggested alternatives include redefining multiemployer plans, changing minimum funding standards, and instituting a plan reorganization program to encourage the continuation of plans. The PBGC also suggested providing financial assistance to ongoing plans or revising insurance guarantees and employer liabilities for terminated plans. Changes in the phase-in rules for the guarantee of benefit increases and in employer liability upon withdrawal from a continuing plan were also mentioned in the July 1 report.

PBGC estimates that premiums can be held down by requiring stricter funding rules and greater deferral of the phase-in of benefit increase guarantees and by removing the current net worth limit on employer liability. The agency estimates that these changes alone would hold premiums to the $12–20 range rather than the $45–80 range which has been talked about. Whether the foregoing mix changes is the one we should choose is still an open question. Much discussion and analysis will have to be engaged in, and I hope you will give these issues an honored place at this conference.

Because time is of the essence, I think it is essential that the Administration send its Title IV recommendations to the Congress no later than November 1 of this year. Senator Williams and I have requested Secretary of Labor Marshall to have the Administration's proposals to us by that date.

I should add that the Senate Committee report on the Second Supplemental Appropriations Bill directs the Department to send the Title IV recommendations to the Congress by November 1.

If the Administration does not meet this deadline, I can assure you that the Congress will develop its own program and will move ahead on its own. I consider the revision of Title IV a matter of the highest urgency which must be dealt with as soon as possible. The protection of too many covered workers hangs in the balance for there to be any more delay in making ERISA's Title IV insurance a completely viable program.

CONCLUSION

Ladies and gentlemen, I have detained you for some time, and I close as follows.

The overriding concern behind the ERISA Improvements Act of 1978 and the other changes which I have discussed today is to strengthen the private pension system. Our bill removes unwarranted hindrances to plan growth, proposes new ideas for expanding pension coverage, and proposes new improved protection for millions of working men and women.

I feel that those attending this conference share my commitment to strengthen the U.S. private pension system. I urge you to hold up your end and let your Senators and Congressmen know where you stand on these important issues as voting time is very near. We are probably only 6 to 7 weeks away from the close of this Congress and possibly from voting on parts of the ERISA Improvement Act of 1978.

Finally, a personal word. After all, I do not believe—and I hope many of you here agree with me—that man does not live by bread alone. There has got to be some satisfaction and some joy in the job; some feeling of contribution to the society in which one lives; some view that when you lift your head from the desk at which you are working and look out the window, you see the great horizon beyond you, as well as a magnificent country with magnificent people and magnificent resources, knowing full well that what ails us we have the power to correct. And while we may be stumbling at the moment, we will, as our 200 year history demonstrates, show our best when in the worst trouble.

And I would like to assure those of you who are in the employee benefits field, that in view of our aging population and our fine health care system, our society gives greater longevity, good health, and enjoyment of life than any civilization on Earth of any appreciable size has ever known before. You who work in employee benefits have not only knowledge but a critical place in making this miracle come to pass. I hope that whenever you get really stewed up about the enigma of ERISA, vexed with me and my colleagues, bored with details, and annoyed with your job, you will remember that what you are doing will make happy the lives of millions of Americans for generations to come. Thank you.●

ERA: RESCISSION

● Mr. GARN. Mr. President, a great amount of material is being written and distributed in regard to House Joint Resolution 638, the joint resolution purporting to extend the ratification deadline for the Equal Rights Amendment (ERA). I hope this material is being studied by our colleagues and their staffs, for the decisions that we make on this resolution will have an impact on our primary national policies for decades to come. In fact, because we are dealing with the amendment process, we are dealing with one of the most vital components of any national charter. As John W. Burgess said in his book "Political Science and Comparative Constitutional Law:"

[The amending power] is the most important part of a constitution. Upon its existence and truthfulness, i.e., its correspondence with real and natural conditions, depends the question as to whether the state shall develop with peaceful continuity or shall suffer alternations of stagnation, retrogression and revolution. A constitution, which may be imperfect and erroneous in its other parts, can be easily supplemented and corrected, if only the state be truthfully organized in the constitution; but if this be not accomplished, error will accumulate until nothing short of revolution can save the life of a state.

In short, Mr. President, article V of the Constitution of the United States is perhaps the most critical element of the document, because through the processes

of article V defects in the other parts of the Constitution may be cured. Let us not be lulled into thinking House Joint Resolution 638 deals with benign issues; it deals with fundamental issues, in fact, some of the most fundamental issues that a written document can deal with.

In my consideration of these issues, I have found a comment from the Louisiana Law Review (vol. 37, 1977) of particular help. I ask that Grover Rees' excellent analysis be printed in the RECORD.

The material follows:

RESCINDING RATIFICATION OF PROPOSED CONSTITUTIONAL AMENDMENTS—A QUESTION FOR THE COURT

Since it was proposed by Congress in 1972, thirty-five state legislatures have indicated their assent to the proposed Equal Rights Amendment.[1] Three of these—Tennessee, Nebraska and Idaho—have passed resolutions rescinding their ratifications.[2] Should three more states ratify, it will become impossible to determine the content of the Constitution without first deciding whether the rescissions were constitutionally permissible.

RESCISSION: THE ORIGINAL UNDERSTANDING

Although the Constitution does not explicity provide for rescission of resolutions ratifying amendments,[3] it is reasonable to suggest that the controversy is artificial, in light of the general rule that a legislative body may rescind any of its own actions, at least until they have taken effect.[4] Obviously, once three-quarters of the state legislatures have unequivocally ratified an amendment and it has become effective as part of the Constitution, it can only be repealed by the normal amending process prescribed in Article V.[5] In the absence, however, of some textual or logical limitation on a legislature's right to withdraw its assent to a *proposed* amendment, such power is implicit in the legislature's right to prescribe its own rules.

The tenth amendment to the Constitution would seem to butress the presumption in favor of such state legislative power. However, the power to ratify amendments to the Federal Constitution has been held to be a "federal function" exercised by the state legislatures by virtue of a special grant of power in Article V, and not a reserved power of the states under the tenth amendment.[6] Notwithstanding this construction, state legislatures may apply their own rules to the ratification procedure,[7] even provisions requiring "supermajorities" for passage of ratification resolutions.[8] A rule providing for rescission of resolutions would seem to be no exception.

The most exhaustive attempt at a principled defense of the proposition that a legislature may *not* rescind its ratification was made by John Alexander Jameson in his treatise on constitutional conventions.[9] Judge Jameson found, in the constitutional provision that an amendment is valid "when ratified" by three-fourths of the state legislatures,[10] a grant of special power to each legislature which "when exercised . . . by ratifying . . . ceases to be a power. . . ." [11] Passage by a legislature of a ratifying resolution is, in this view, a sort of sacramental act, which may take only a moment to consummate but which is forever binding on the legislature (and on the whole nation).[12] Jameson also advanced a reliance theory according to which one state's ratification "induces" similar action by other states.[13] Why this is true, or why it should make any difference so long as any state so "induced" may restore itself to its original position by rescinding its own ratification, was not explained.

Footnotes at end of article.

In finding that a ratification becomes "effective" and therefore irrevocable the moment it is passed by the legislature, Judge Jameson blurred the distinction between one state's passage of a resolution, and the completion of the whole process by which the amendment becomes a part of the Constitution. Indeed, he professed to see no difference between rescission before three-quarters of the states had ratified, and afterward; [14] and his horror of a theory which might justify secession (by a state's "rescission" of the Constitution itself) [15] virtually compelled his conclusions.[16]

Judge Jameson's arguments—all, as will be shown, all the important precedents and authorities relied on by those who would deny a state the right to rescind—are rooted in the philosophical and political currents of the Reconstruction Era.[17] Whatever the felt necessities of those times, it is suggested that the framers of the Constitution probably intended, and that the integrity of our constitutional structure certainly demands, that a state be able to reconsider its ratification of a proposal which has not yet become part of the Constitution.

In *The Federalist* No. 85, Hamilton argued that the amending procedure was designed to ensure that "the will of the requisite number" should prevail.[18] The Constitution would be amended "whenever [three-fourths of the] States, were united in the desire of a particular amendment." [19] This emphasis on *consensus* as the essential ingredient in the amending process contrasts sharply with Jameson's assertion, a century later, that the framers had intended each separate legislature's ratification to be irrevocable, regardless of whether a consensus among the states ever existed. If, for example, 38 state legislatures have ratified an amendment over a seven-year period, but 20 of the 38 have rescinded their ratifications, it cannot be said that 38 states were ever "united in the desire" for the amendment.

Those members of the Constitutional Convention who expressed their feelings on the matter saw the amending process as a means of procuring changes about which there was a broad consensus.[20] They rejected the standard of unanimity as too difficult to achieve,[21] but felt that a substantial minority of the states should be able to block changes favored by a majority.[22] and were generally fearful of frequent amendments.[23] Thus it would seem that any ambiguity in the language of Article V ought to be resolved in favor of the interpretation which would make it *more difficult* to amend, and which would prevent change absent a sufficiently broad consensus.

The United States Supreme Court has recognized consensus, and not the formality of a certain number of isolated legislative acts, as the *sine qua non* for ratification:

[A]s ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections at relatively the same period. . . .[24]

The Court's doctrine that an amendment proposed by Congress must be ratified within a "reasonable time" is based on the *possibility* that after such a period has elapsed, even if some states should ratify an "old" proposal, other states which had ratified earlier might no longer be participating in a current consensus.[25] A fortiori, if one or more states have given a positive indication that they no longer support the amendment, they cannot be said to be part of a consensus.[26]

While disagreement exists on the merits of individual proposed amendments, experience has strengthened the view that resort to the amendment process should be made only in extraordinary situations.[27] Thus the canon of contruction proposed above—that ambiguities be resolved in favor of the construction which would make amendment more difficult—has been suggested in other contexts, not as a means of being faithful to the precise wishes of the framers, but as a prudential means of protecting the Constitution from hasty alterations which might not reflect an enduring consensus.[28] One reflection of this attitude was the passage by the United States Senate, in 1973, of a measure expressing support for the view that a state ought to be able to rescind its ratification.[29]

The view that Article V should be read to permit rescission is further strengthened by the general construction of that Article as allowing a state to ratify an amendment after a prior negative action.[30] It is difficult to conceive of the Constitutional Convention promulgating a plan by which pro-amending forces have the unlimited opportunity to bounce back from a defeat, while denying the same right to those who prefer to keep the Constitution as it is.[31]

In view of the foregoing, it is not surprising that the validity of the recent rescissions has not been challenged on the merits. Apparently, no one now claims that the Constitution compels state ratifications to be irrevocable. Rather, the issue has been labelled a "political question," to be resolved by Congress, whose decision on the matter will not be questioned by the courts. Yet no court has ever confronted the issue, and the authorities cited for the proposition are at best questionable.[32]

POLITICAL QUESTIONS: PRINCIPLE OR PRETEXT?

Controversy as to the proper scope of the "political questions" doctrine is inextricable from the debate over the foundations of judicial review.[33] The classical justification for judicial review—the "private rights model" grounded in *Marbury v. Madison* [34]—is that the Supreme Court is the highest *court* in the land. As such, the Court has a duty to vindicate the rights of private parties. When the outcome of a case within the Court's jurisdiction must turn on a construction of the Constitution, the Court is bound to decide what the Constitution says about the case. Whenever the Court has the power to interpret the Constitution, it also has a duty to exercise that power.[35] Therefore, when the Court labels a question "political" it has already interpreted the Constitution and determined *either* (1) that the Constitution has given the political branch unlimited freedom of action in a certain area, so that nothing it could do in this area would be unconstitutional; *or* (2) that while a certain action of the political branch might be unconstitutional, the Constitution has given that branch the authority to *adjudicate* the question, so that the Court has no power to decide whether the action was constitutional.[36] In the first category are, inter alia, the President's power to recognize any foreign government he wishes [37] and the power of the political branch to decide when a certain expenditure is for the "general welfare." [38] In the second category—the only "true political questions" wherein the Court refrains from evaluating the constitutionality of a decision made by another branch—are Congress's right to judge the qualifications of its own members,[39] and the impeachment process.[40] In the classical view, once a case is properly before the Court, its duty to decide all issues can only be superseded by a clear, "textually demonstrable" grant of adjudicative power to some other institution.[41]

Marbury did not assert that the Court's duty to construe the Constitution was unique within the structure of government; in the private-rights model, the views of the Supreme Court will prevail over those of the other branches primarily because of the Court's power to issue writs which other officials are bound to obey.[42] Modern theorists,

on the other hand, emphasize not the Court's duty to litigants who happen to be before it, but the Court's special role as the pre-eminent interpreter of the Constitution.[43] As these same theorists have come to reject the idea of a "mechanical" application of the text of the Constitution to modern problems, the Court has been pictured as an institution with the unique mission of making principled value judgments about legislative and executive decisions.[44] This "special function model" has obvious consequences for the political questions doctrine: if the Court is to be concerned primarily with the long-range effects that its decisions have on society, rather than with strict fidelity to the text of the Constitution in adjudicating certain private disputes, then it is free to choose carefully the areas in which it will render judgments.[45] In order to enhance its own effectiveness as a social institution, the Court may want to avoid certain areas altogether—especially areas in which the public, or the other branches of government, might resist its authority.[46]

Professor Bickel saw the political questions doctrine as the ultimate weapon in the Supreme Court's arsenal of discretionary devices for avoiding constitutional adjudication.[47] Rejecting the classical view, he argued that—

"Only by means of a play on words can the broad discretion that the courts have in fact exercised be turned into an act of constitutional interpretation governed by the general standards of the interpretive process. The political-question doctrine simply resists being domesticated in this fashion. There is . . . about it . . . something greatly more flexible, something of prudence, not construction and not principle. And it is something that cannot exist within the four corners of *Marbury* v. *Madison*." [48]

In *Baker* v. *Carr*,[49] Justice Brennan made an attempt to "domesticate" the political questions doctrine by calling it—

"Essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an . . . initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." [50]

Although Justice Brennan began by tying the doctrine to the constitutional limits on the Court's powers, the criteria he specified seem more consistent with the view that there are "prudential" political questions. Only the criterion of "textually demonstrable constitutional commitment" is truly consistent with the classical view of the political question.[51] In a case where there is a *total* absence of judicially discoverable and manageable standards, or where it is *literally* impossible to decide a case without impermissible policy judgments, the political question doctrine would seem superfluous, since it is difficult to imagine how a plaintiff in such a case could prove an actual violation of a specific constitutional right. In the other instances listed by Justice Brennan, the classical view of judicial review would call for a decision by the Court.

It is probable, however, that Justice Brennan was attempting merely to summarize the *history* of the political questions doctrine. As will be shown,[52] the holding in *Baker* v. *Carr* itself, as well as the modern Court's treatment of other matters involving the political process, suggest that the doctrine is much narrower than Justice Brennan's thesis statement implies.

THE JUSTICIABILITY OF THE AMENDING PROCESS

There is nothing in Article V to suggest that whether a constitutional amendment has been ratified is a political question.[53] Congress is given the power (but not the sole power) to *propose* amendments for ratification by the states [54] and to choose whether ratification will be by state legislatures or by state conventions.[55] These are not adjudicative functions,[56] and there is no language comparable to that granting the Senate power to "try" impeachment and render "judgment" therein [57] or to the provision that "[e]ach house shall be the judge" of its members' qualifications.[58] It is reasonable to suppose that the "necessary and proper" clause [59] of the Constitution grants Congress the power to provide for promulgation of amendments and other "housekeeping" matters; [60] but it should be equally clear that no such "housekeeping" measure can be used as a pretext for substantive restrictions on the power granted to the states by Article V.[61]

In *Hollingsworth v. Virginia*,[62] decided in 1798, the Supreme Court indicated that questions about the amending process are justiciable rather than political. The plaintiff contended that the eleventh amendment had not been properly adopted, since the President had not been given the opportunity to sign or veto the Congressional resolution proposing the amendment. Defendant argued that the Constitution gives the President no role in the amending process. Apparently, neither the Court nor the parties entertained the idea that this question of law ought to be decided by another branch of government; the Court held that the amendment had become part of the Constitution.[63]

Luther v. Borden,[64] a major political questions case decided by the Court in 1849, contains a remark [65] which commentators have regarded as a dictum to the effect that the Court will let Congress decide whether states have ratified amendments to the Federal Constitution.[66] The case has nothing to do with such amendments, however; and the statement makes perfect sense when construed as part of the case's *holding* that Congress would be allowed to decide which of two rival state governments was the legitimate one, and therefore which *state* constitution was in effect.[67] *Luther v. Borden* rested in part upon a construction of the Guaranty Clause,[68] and in part upon the idea that the right of Congress to seat its own members implicitly included a right to "recognize" state governments.[69] It cannot easily be construed as acknowledging a Congressional veto power over the procedures of state governments whose legitimacy is unquestioned.[70]

Yet there was an instance in which Congress exercised just such a veto power without being directly rebuked by the courts. On July 20, 1868, Secretary of State William Seward announced that he had received documents from legislatures in at least three-fourths of the states purporting to certify ratification of the fourteenth amendment.[71] He noted, however, that he had also received official notice that Ohio and New Jersey had withdrawn their consent to the amendment. Expressing his "doubt and uncertainty" as to the legality of these resolutions, he certified that if the Ohio and New Jersey ratifications were still in force, the amendment was valid as part of the Constitution.

On the following day, both houses of Congress passed a resolution delaring that three-fourths of the states, including Ohio and New Jersey, had ratified and that the amendment was part of the constitution.[72] The record of the proceedings suggests bluntly that the Republican majority neither knew nor cared whether the Constitution gave states the right to rescind. The Senate passed the resolution without debate and without a roll-call vote.[73] In the House, the entire debate appears to have lasted only a minute or two.[74] A Massachusetts Republican moved to send the resolution, not to the Judiciary Committee, but to the Committee on Reconstruction. A Democrat protested that "it is an important question, and should go to the committee on the Judiciary." The Republican floor leader then indicated that his intention was to "pass it now," without any committee consideration at all. After some discussion of the idea of adding Georgia to the list (on the strength of a telegram in the possession of the Speaker which a Democrat suggested was a fabrication),[75] the resolution was passed by a near-perfect party line vote.[76] The Congressmen who voted that Ohio and New Jersey could not rescind were, virtually man for man, those who five months earlier had voted to impeach President Andrew Johnson for his refusal to obey unconstitutional orders.[77] It should be emphasized that this Congressional action was never tested in court. By the time the Supreme Court was called upon to construe the fourteenth amendment, in the 1873 *Slaughterhouse Cases*,[78] four additional states had ratified the amendment [79] so that ratification *vel non* by Ohio and New Jersey was a moot point.[80]

Apparently, the resolution of the Reconstruction Congress was not regarded as an important precedent even by contemporaries.[81] The discussion over including Georgia—whose ratification would have brought the total to three-fourths even without Ohio and New Jersey [82]—suggests that the Republican leadership was not entirely confident the gambit would succeed. Moreover, two years later New York rescinded its ratification of the fifteenth amendment,[83] and the Secretary of State did not certify the amendment as valid until enough states had ratified so that New York's action was moot.[84] Shortly thereafter, the Senate twice rejected attempts to declare that no state might rescind its ratification of any future amendment.[85]

The next amendment whose validity was questioned before the Court was the eighteenth. In *The National Prohibition Cases*,[86] the Solicitor General, and Charles Evans Hughes as *amicus* for several states, argued that the challenges were non-justiciable.[87] The principal authorities for this contention appear to have been the Congressional resolution of 1868 [88] and Judge Jameson's statement that, while the Court has the *power* to decide the validity of an amendment, "perhaps" the Court "ought" to accept the judgment of Congress in order to avoid a "spectacle." [89] The state courts, however, which had handled a large volume of litigation involving the validity of state constitutions and amendments, had been virtually unanimous in holding amending procedures subject to judicial review,[90] Implicitly rejecting the suggestion that it had no power to adjudicate the issues, the Court decided all questions in the eight cases before it—including questions about the procedures Article V requires of Congress as well as of state legislatures.

THE COLEMAN DECISION: HARD CASES MAKE BAD LAWS

In several subsequent cases involving the validity of the eighteenth and nineteenth amendments, the Court decided further legal questions involving the amending process.[91] By the 1930's, a review of a line of Court decisions spanning three centuries should have compelled the conclusion that the Court's duty "to say what the law is" [92] included the duty to pass on the constitutionality of amending procedures.[93] Yet in 1939, the Court in *Coleman v. Miller* [94]—without purporting to reverse prior jurisprudence [95]—injected the political questions doctrine into the ratification process. The case does not

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easily yield its precise holdings, and the reasons and authorities which might have persuaded a majority of the Court on any point are even more difficult to discern. Only two Justices joined Chief Justice Hughes in the statement styled "the opinion of the Court"; [96] the divisions in the Court were "sufficient to confound prophets of all schools. . . ." [97]

Coleman involved a constitutional amendment proposed by Congress in 1924 to overrule a controversial Supreme Court decision on child labor.[98] At first, few states had ratified the amendment, and many had rejected it.[99] After nine years, however, there was a surge of interest in the child labor amendment: between 1933 and 1937 twenty-two states ratified, bringing the total to twenty-eight, only eight short of the required number.[100] Kansas legislators who had opposed ratification sued in state court to enjoin state officials from certifying that Kansas had ratified. They claimed the Kansas resolution was invalid on three grounds: (1) a "reasonable time" had elapsed between the proposal by Congress in 1924 and the ratification by Kansas in 1937; (2) Kansas had passed a resolution rejecting the amendment, and they argued that this barred the state from subsequently ratifying; (3) the Lieutenant Governor had cast a tie-breaking vote in favor of the resolution, an act which the plaintiffs suggested was unconstitutional. The Court affirmed a judgment of the Kansas Supreme Court rejecting these attacks on the resolution.[101]

Chief Justice Hughes' opinion held the question whether a reasonable time had elapsed to be a political question, not on the basis of a textually demonstrable commitment of the adjudication of this issue to Congress, but because such a determination would involve "an appraisal of a great variety of relevant conditions, political, social and economic. . . ." [102] The opinion points out that Congress could have prescribed a "reasonable time" when it proposed the amendment, and implies that an evaluation of the salient conditions is essentially the same kind of judgment whether it is made in advance or after attempted ratification by three-fourths of the states.[103]

Declaring that the effect of a previous rejection on a subsequent ratification should also be decided by Congress, the Hughes opinion relied on the precedent set by the Reconstruction Congress in 1868, adding cryptically that "[t]his decision by the political departments of the Government . . . has been accepted." [104]

The Court was evenly divided on whether the legality of the Lieutenant Governor's participation was a justiciable or a political question.[105] The effect of this non-decision was to deprive the Hughes opinion of any consistency, since evidently all three Justices subscribing to it voted to decided on the merits as to the Lieutenant Governor's role.[106] These Justices, therefore, believed the Court powerless to decide whether a state's ratification is invalid on account of the lapse of a reasonable time (a mixed question of law and fact), or an account of a prior rejection (a question of law); but held the same Court competent to decide whether the same ratification is invalid because of the participation of the Lieutenant Governor (also a question of law).

Trying to unravel *Coleman v. Miller*, a contemporary observer suggested a rational basis for the Hughes opinion: on this particular set of facts, the effect of Kansas' prior rejection may have been "too closely linked with the time allowable for ratification" to allow resolution of the two issues in separate fora.[107] This view is especially plausible if the power to define a "reasonable time" is seen as a corallary of the power to propose amendments. A body having the power to propose may also have the power to limit the life of its proposals; [108] there is no reason to insist that the limitation be stated in years. An alternative formula, stating that a reasonable time would expire after seven years or at the occurrence of a certain event, whichever comes first, might be desirable—particularly if the event, such as rejection of the amendment, might indicate the expiration of a consensus.

Acknowledging that Congress has the power to include limitations in its own proposals does not necessarily imply a Congressional right to impose such limitations retroactively after a number of states have ratified. However, if the question before the Court involves divining past legislative intent—what limitations Congress intended when it proposed the amendment, both as to time and as to the effect of a rejection—then deferring to the judgment of Congress on these *facts* is not the same as abrogating the power to decide questions of *law*.[109] Under this analysis, the three Justices' willingness to adjudicate the Lieutenant Governor issue is defensible, since this was a question of constitutional law unrelated to any power granted to Congress by Article V.

The question whether a state may rescind its ratification, unlike the question whether a rejection causes a reasonable time to elapse, cannot be rationally included within Congress' power to propose amendments. If Congress were to decide against rescission, it would not be limiting its own proposal; rather, it would be "bootstrapping" to constitutional consensus where none exists. If the Hughes opinion in *Coleman v. Miller* was based on the Congressional power to define a reasonable time, therefore, the citation of the Reconstruction precedent was unnecessary and inappropriate. If not, the apparent endorsement of that precedent must still be regarded as mere dictum on the question of rescission, which was not before the Court in *Coleman*.

Justice Black's concurring opinion [110] in *Coleman* is not so easily dispensed with.[111] Joined by Justices Roberts, Frankfurter and Douglas, he advanced an internally consistent theory:

"Undivided control of [the amending] process has been given by . . . Article [V] exclusively and completely to Congress. The process itself is "political" in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." [112]

Resting his opinion on a "textually demonstrable constitutional commitment" rather than on any difficulties the Court might have in deciding, Justice Black might have cited the constitutional language on which he based his conclusion. Yet he cited no such language, for the simple reason that nothing in Article V suggests that its interpretation should be handled differently from the interpretation of other parts of the Constitution.[113] Nor did Justice Black cite any historical materials showing that the farmers meant to give Congress authority to bind the Court as to construction of Article V. Indeed, the available records suggest exactly the contrary.[114]

The Black opinion cited only one authority which related to constitutional amendments: a flagrant misquotation of *Leser v. Garnett*.[115] That case held "notice" from "the Legislatures of Tennessee and of West Virginia," certified by the Secretary of State, "conclusive upon the courts." [116] Justice Black translated thus:

"Final *determination* by *Congress* that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.' " [117]

It should be stressed that Justice Black was not arguing that Congress has broad discretion to *act* under Article V; he affirmed that Congress "is governed by the Constitution." [118] Rather, he saw the courts as conclusively bound by an *adjudication* by Congress that its own action was constitutional.[119] To pose the extreme case, if Congress were to propose an amendment, then immediately declare that it had been ratified by the states—when in fact the world could see that not a single state had ratified—the courts would be powerless to declare the amendment invalid, and would be bound to decide future cases as though the amendment were part of the Constitution. The only answer to such a theory is that it is dead wrong. It might also be very dangerous.

JUDGING AMENDMENTS: A FUNCTIONAL ANALYSIS

The concurring opinion in *Coleman* could not have been written by the Hugo Black we now remember, whose very critics remarked on his zeal for fidelity to the text of the Constitution and the intention of the framers. Rather, it was written by the former New Deal Senator who had come to the Court with a mission. Indeed, the votes of all nine Justices in *Coleman* might best be explained by reference to the contemporary controversy over the Court's role as a "counter-majoritarian" institution.[120]

The Child Labor Amendment was proposed in order to overrule a Supreme Court decision imposing substantive due process limitations on the right of Congress to make economic regulations—regulations which presumably had the support of a majority of Americans. It is easy to see how popular regard for the Court might be diminished by its declaring such an amendment invalid.

Judicial review of the amending process, if abused, would confirm the worst suspicions of those who accuse the Court of being a "super-legislature." Some modern observers have suggested that this danger—not so much the actual risk that the Court will improperly invalidate amendments which seek to curb its power, but rather the risk that the people will think the Court is deciding on this basis—would justify the relegation of all issues affecting the amending process to the status of "prudential" political questions.[121]

But the argument proves too much. It fails to consider the alternative. Perhaps the best cure for popular cynicism over the Court's role as a "super-legislature"—a body concerned with imposing the policies favored by its members rather than with construing the Constitution according to neutral principles—is simply judicial restraint. Even the loosest constructionists ought to be persuaded of the wisdom of a strict exegetical approach when the Court is deciding whether the Constitution has been amended. If there is one class of cases in which the Justices ought to strive to forget their personal sympathies, to use a "mechanical" formula involving text, intent and logic, this must be it. Respect for the Court and for the Constitution itself—not in the sense of agreement with every pronouncement, but in the more important sense of a willingness to be governed, born of confidence in the integrity of the institutions—demands that the rules be the same for all amendments; it is particularly important to apply the same rules to amendments which would limit the Court's role and to those which would expand it. Whatever the Court's proper role when it construes provisions universally accepted as part of the Constitution, it must be no more than a "referee" when deciding whether a provision is in the Constitution at all.

The case for judicial restraint in reviewing constitutional amendment procedures is based on the assumption that when a controversy arises in this area, the final decision must rest with someone who can be counted on to "adjudicate" rather than to "legislate." Constitutional amendments may be designed to overturn Court decisions, but they may also seek to limit (or to enhance) the powers of Congress, of the President, or

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of the states. Since it is impossible to find a final arbiter without an institutional conflict of interest, it is essential that the ultimate power of decision rest with the branch *most likely* to find and apply the law without injecting its own interests and passions. By disposition, by training, and by their relative insulation from the political process, the Justices of the Supreme Court are more capable of rendering such a neutral judgment than Congressmen, Presidents and state legislators.[123]

Congress has something of a bad track record at adjudication. The handling of the 1868 resolution concerning the rescissions of Ohio and New Jersey is a case in point.[123] The impeachment of Andrew Johnson, on what are now generally acknowledged to be unconstitutional grounds, is another.[124] A candidate who challenges the official results of a congressional election seems more likely to convince the House or Senate that his cause is just if he is a member of the majority party.[125] A conviction after impeachment, or a congressional judgment as to the qualifications of a Congressman, may not be subject to judicial review, even if based on unconstitutional grounds.[126] The record in these areas, however, suggests that it would hardly be wise for the Courts to surrender "prudentially" to Congress the power to say whether an amendment has become part of the Constitution.

Even assuming every Congress would rise above partisan politics, and would also separate the issue of an amendment's desirability from the question of whether it had been properly passed, it would be virtually impossible to eliminate the problem of inconsistent adjudications. One Congress would not have the power to bind all future Congresses.[127] Dealing with the E.R.A., Congress might find that a state has no constitutional power to rescind its ratification. Five years later, a different Congress might read the Constitution and reach the opposite conclusion. Since this is a question of law and not of fact, it would seem that an adjudication by a subsequent Congress—even though made in the context of another amendment—would have the effect of raising new constitutional doubts as to the validity of amendments previously thought to have been ratified.

The other side of the coin is equally unappealing. Suppose, in the context of an amendment strongly favored by Congress, a question of law was decided in a way which made it possible to amend the Constitution rather easily. Subsequently, when considering a drastic and demagogic amendment which had clearly negotiated this lower hurdle, Congress would be unable to reverse itself without giving rise to justified skepticism about the integrity of the constitutional amending process. Of course, the Court would face the same dilemma if it made such a decision. However, it is submitted that the Court would be more likely, when considering the "nice" amendment, to keep in mind the possibility that "bad" amendments would be proposed in the future, and thus not arrive at a strained interpretation of Article V in the service of easing the path of the former.

It can be argued that inconsistent standards *ought* to be applied to different amendments—that a close question of law should be decided one way so that the Equal Rights Amendment will pass, and another way if it is necessary to defeat a proposal to repeal the Bill of Rights. Even if one were to accept this idea, with all it implies about how seriously one really takes the concept of a rule of laws and not of men, it would be bad to repose in Congress the discretion as to which amendments are subjected to "strict scrutiny." It has been suggested that the Court should refrain from adjudicating the question of ratification, since it might have a stake in the outcome.[128] But Congress has a bigger stake, not only insofar as Congressional power might be limited or expanded by a proposed amendment, but also in that Congress always plays a role in the proposal of the amendment.[129] Elihu Root stated the effect of giving Congress the dual roles of proponent and supreme judge:

"It would certainly be vain for a constitution to declare or imply limitations upon the power to amend it, if those limitations could be transgressed at will by the very persons who were intended by the people to be restrained and confined . . . ." [130]

It must be noted that the sympathies of Congress will, with rare exceptions, be in favor of the amendments it has proposed by a two-thirds margin.[131] To concede to Congress the right to apply inconsistent standards to questions of law, with the underlying assumption that policy considerations will influence the application of these standards, is to give Congress the power to amend the Constitution *unilaterally* when it favors the amendment; and to block amendments through a third political step, after proposal and ratification, when it opposes them.[132]

The members of the Constitutional Convention feared that Congress might gain such power. Edmond Randolph's original proposed Constitution expressly provided that the Constitution should be amended "without requiring the assent of the National Legislature." [133] Every member whose reflections on the matter have been preserved seems to have assumed that since the Constitution was a limitation on the powers of Congress, and on the powers of a majority of the states to harm the interests of a minority, it was important to protect the amending process from manipulation by Congress or even by a simple majority of the states. [134] Only one member of the convention was outspoken in favor of a major role for Congress in the amending process, and his proposals were defeated. [135] Not until the last week of the Convention was it decided to give Congress any more than a ministerial role even in the *proposal* of amendments; [136] later, Hamilton defended the arrangement by pointing to the limited congressional role, and observing:

"We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority." [137]

It is submitted that the concerns which moved the framers to limit the role of Congress are still important. Even those who regard state or sectional interests as unworthy of protection must acknowledge that the Constitution protects other minority interests; and that these interests are equally threatened by granting a single majoritarian institution the effective power to amend the Constitution, as they would be by granting that same institution the final authority on all matters of constitutional interpretation.

A final reason must be advanced against the Court's abrogation of its authority: in each case, consider the worst that could possibly happen. Hamilton called the Supreme Court the "least dangerous" branch of government, not because it will always reach the right decision, but because it has "neither force nor will, but merely judgment." [138] The worst fears of the most unrelenting opponents of judicial power can never be realized, without at least the acquiescence of the other branches of government. Generally, such co-operation will be forthcoming, even when the other branches disagree with the construction of the Constitution put forth by the Court. However, a truly corrupt decision, an attempted judicial *coup d'etat*, might not be enforced; and the knowledge of this would presumably deter even a thoroughly corrupt judge. If it were to become firmly established, however, that Congress was the final judge of the validity of constitutional amendments, such a *coup*, in the form of a proposal of an amendment followed by a declaration that it had been ratified, would be irresistible except by armed rebellion.

BAKER, POWELL, AND THE REJECTION OF UNPRINCIPLED AVOIDANCE

Subsequent Supreme Court cases leave considerable doubt about the vitality of the political questions doctrine, and particularly about whether there is anything left of *Coleman*. It was in *Baker* v. *Carr*,[139] the legislative reapportionment case, that Justice Brennan listed the traditional bases of the political questions doctrine, including the "impossibility of deciding" because of a lack of manageable evidence or a need to make policy judgments; [140] but the holdings in that case and its progeny suggest that the "impossibility" category may be an empty set.[141] Certainly the evidence in *Coleman* was no more complicated, no more "social, political and economic," [142] than that which the federal courts have routinely considered in reapportionment cases. *Baker* also held that issues involving *state* governments are not political questions,[143] implicity overruling prior cases.[144] Since it is the state legislatures whose procedures are in question, this may mean the Court will not hesitate to rule on whether these procedures are constitutional.[145] Nor should a declaration by Congress make any difference; if Congress should declare Tennessee's legislature to be apportioned constitutionally, there is no reason to believe the Court would accept this determination as conclusive.

Powell v. *McCormack* [146] was perhaps the most important political questions case in this century. Reacting to allegations of crime and abuse of office by Adam Clayton Powell, Congress voted to exclude him at the beginning of the session. This was almost certainly unconstitutional, since the Constitution prescribes only age, citizenship and residence as qualifications for the office,[147] and provides that Congress may "expel" a member only by a two-thirds vote.[148] It seemed, however, that Congress would succeed in "expelling" Powell under the pretext of "excluding" him,[149] since the right of Congress to judge the qualifications of its own members is the strongest case of a "textually demonstrable constitutional commitment" of an issue to resolution by a branch other than the Court.[150]

Chief Justice Warren, however, speaking for a nearly unanimous Court [151] (including, perhaps significantly, Justice Black), ruled that Powell had a right to his seat. The Court announced a view of the political questions doctrine even narrower than the classical view; [152]

[A] determination of petitioner Powell's right to sit would require no more than an interpretation of the Constitution. Such a determination falls within the traditional role accorded courts to interpret the law . . . Our system of government requires that federal courts on occasion interpret the constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility." [153]

The Court examined each of the criteria listed in *Baker v. Carr*, and found them inapplicable. Most significantly, *Powell* seems to say that even a broad constitutional grant of *adjudicative* power to Congress may not be exercised unconstitutionally; the only unreviewable power Congress might have would be to determine whether Powell in fact met the qualifications of age, citizenship and residence.[154]

Professor Gunther has expressed doubt whether, after *Powell*, "any constitutional questions remain which the Court is likely to find committed to other branches for final decision." [155] Certainly the "prudential"

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considerations were as strong in *Powell*, where Congress had already made its decision as to its internal affairs, as they would be in a constitutional amendment case, where Congress might or might not have expressed a view on the question. And the "textually demonstrable constitutional commitment" was much stronger in *Powell* than in any Article V case.[156] Since whether a state may rescind its ratification, like whether Congress could exclude Powell, is a pure question of law which "would require no more than an interpretation of the Constitution," [157] the Court should not hesitate to decide the issue.

The contribution made by the Court in *Powell* to a sound resolution of the controversy over the amending process was not limited to its undermining of the theoretical foundations of *Coleman*. The *Powell* Court also confronted a number of past instances of Congressional "exclusion" of constitutionally qualified members-elect, and found the value of such precedents "quite limited." The notion underlying *Coleman*—that if the Court finds a precedent in past Congressional action, it need not undertake its own evaluation of the constitutionality of such action [158]—was summarily rejected.

"That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date. . . . The relevancy of [such] cases is limited largely to the insights they afford in correctly ascertaining the draftsmen's intent. Obviously, therefore, the precedential value of these cases tends to increase in proportion to their proximity to the Convention in 1787." [159]

Given the time, circumstances and manner of its adoption, it would be difficult to underestimate the value of the Reconstruction resolution on rescission of proposed amendments as an aid in determining the intent of the framers of Article V. Accordingly, after *Powell* all authority for the proposition that rescission is a political question—*i.e.*, the Reconstruction resolution and the dictum in *Coleman* relying on that resolution—should be regarded as obsolete.

JUSTICE STEVENS AND THE ERA

The *Coleman* doctrine of partial non-justiciability of constitutional amendment questions was never accepted very enthusiastically by the lower federal courts, which tended to use guarded language about justiciability and then rule on the merits as to adoption of constitutional amendments.[160] The recent opinion in *Dyer v. Blair* [161] deserves noting because it involves ratification of the Equal Rights Amendment and because it was written by Justice Stevens shortly before his accession to the Supreme Court.

A majority of the members of the Illinois House and Senate had voted to ratify the E.R.A. A legislative rule, however, required a three-fifths majority vote so the ratifying resolution failed. Plaintiffs, members of the legislature, argued that this rule was unconstitutional and requested that the court enjoin state officials to certify ratification.

Then-Judge Stevens rejected defendants' contention "that Congress has sole and complete control over the entire amending process, subject to no judicial review." [162] He pointed out that Justice Black's *Coleman* opinion was not the opinion of the Court, and that the Supreme Court had previously rejected the "political question" contention. Applying *Baker* and *Powell*, the court found that a mere interpretation of the Constitution was required, and that the risk of conflict with the views of Congress could not justify a failure to decide. The court distinguished the Hughes opinion in *Coleman* on the ground that there was no explicit congressional precedent concerning "super-majority" requirements and on the ground that, unlike the "reasonable time" involved in *Coleman*, the meaning of the term "ratification" must be the same for every amendment proposed by Congress and therefore is a non-political question.[163]

The *Dyer* opinion contains a thorough exposition of the history and purpose of Article V, as well as the Supreme Court opinions prior to *Coleman*, which indicates that Justice Stevens regards the amending process as justiciable, virtually in its entirety.[164] Had *Dyer* been a Supreme Court decision rather than the opinion of a three-judge panel, it is unlikely that such care would have been taken to distinguish *Coleman*.[165] The reasoning of *Coleman* is clearly inconsistent with that of *Powell*,[166] and then-Judge Stevens applied the latter to the constitutional amending process in *Dyer*.

CONCLUSION

The constitutional requirement of a consensus of three-fourths of the states for ratification can only be met by recognizing that a state can rescind its ratification of a proposed amendment. This is a question of constitutional law which must be decided in a court, not by Congress. The view that the question is justiciable and that states may rescind is consistent with the text and the history of Article V, with all Supreme Court cases prior to *Coleman* v. *Miller*, with the nearly unanimous view in the state courts, and with the reasoning of federal court decisions since *Coleman*. The limitations placed on the political questions doctrine by *Baker* v. *Carr and Powell* v. *McCormack* clearly render the question of rescission justiciable.

The contrary view—that whether states may rescind is a political question—is supported only by the resolution of the Reconstruction Congress, and by dictum in the discredited *Coleman* decision.

For those whose enthusiasm for the particular amendment now being considered might incline them to a "prudential" view that rescission should be a political question, it might be instructive to consider a few possible consequences of this view:

(1) Immediately after proposal of an amendment by Congress, all but one of the needed states ratify. The amendment then stalls due to sectional opposition. Two years later, an unexpected consequence of the yet-unratified amendment comes to light, perhaps because of court decisions in related areas. Constitutional scholars are agreed that the amendment would have this undesirable effect. All 37 previously ratifying states rescind, but Congress (perhaps feeling compelled by its prior decision regarding the E.R.A.) declares the rescissions invalid. Any one state is now free to make the amendment part of the Constitution, even if no other state now favors the amendment.

(2) Sufficient states have apparently ratified an amendment, but procedural attacks have been made on the ratifications of several states. Congress considers the question, the House concluding that the amendment is part of the Constitution, the Senate concluding it is not. The stalemate continues, and eventually the Supreme Court hears a case which must turn on whether the amendment is valid. It cannot be argued that the amendment is invalid unless "approved" by both houses, since ratification occurs as the date the last state ratifies. Very simply, either the House or the Senate is *wrong*, and the Court, having ruled the matter a "political question," is powerless to act.[167]

(3) The Louisiana Legislature, on the same day, ratifies both the Equal Rights Amendment and an anti-abortion amendment. One week later, the legislature votes to rescind both amendments. Congress rules that Louisiana may rescind the E.R.A., but not the anti-abortion amendment.

(4) The ultimate scenario, wherein Congress proposes an amendment, then immediately declares that it has been ratified, has already been suggested. Variations make the idea more plausible: Suppose Congress perceived a "national emergency" and declares that any state not explicitly rejecting the amendment within two weeks would be deemed to have ratified?[168]

(5) Note that a joint resolution of Congress only requires a simple majority in each House. Thus Congress could "judge" a proposal which received less than two-thirds of the votes cast, perhaps declaring the proposal effective on the basis that absent members might have voted in favor. If there is no judicial review, a simple majority in Congress could effectively propose and ratify an amendment.

Constitutional law scholars will recognize here the traditional "parade of horribles." [169] These are extreme examples; a longer list could be compiled of more plausible dangers partaking of the elements of the above. Yet, perhaps alone among decisions the Court can make, the declaration that an issue is a political question attaches to all cases involving the issue, not just those in which the doctrine is convenient.[170] So those who would drag Tennessee, Nebraska and Idaho, kicking and screaming, into an artificial constitutional consensus, leaving the construction of Article V forever in the hands of Congress, are leading the parade.—*Grover Rees III*

FOOTNOTES

[1] 35 CONG. Q. WEEKLY REP. 179 (Jan. 29, 1977).

[2] *Id.*; *Equal Rights Amendment Gains in Two States*, N.Y. Times, Feb. 10, 1977, at 18.

[3] "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislature of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." U.S. CONST. art. V.

[4] L. CUSHING, ELEMENTS OF THE LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES IN THE UNITED STATES OF AMERICA § 1260 (Irish University Press reprint 191) (1st ed. Boston 1856); *cf.* L. ORFIELD, AMENDING THE FEDERAL CONSTITUTION 67 (1942) [hereinafter cited as ORFIELD].

[5] *See* ORFIELD, *supra* note 4, at 72.

[6] Leser v. Garnett, 258 U.S. 130, 136–37 (1922); Hawke v. Smith, 253 U.S. 221 (1920).

[7] Since the state legislature is performing a "federal function" in ratifying, it may make its own rules even where inconsistent with the state constitution. Dyer v. Blair, 390 F. Supp. 1291 (N.D. Ill. 1975) (Stevens, Cir. J.); *cf.* Leser v. Garnett, 258 U.S. 130, 137 (1922). *See generally* ORFIELD, *supra* note 4, at 61–78.

[8] Dyer v. Blair, 390 F. Supp. 1291, *esp.* 1305 n. 34 (N.D. Ill. 1975) (Stevens, Cir. J.).

[9] J. JAMESON, CONSTITUTIONAL CONVENTIONS 629–33 (4th ed 1887) [hereinafter cited as JAMESON].

[10] U.S. CONST. art. V.

[11] JAMESON, *supra* note 9, at 628.

[12] *Id.* at 632.

[13] *Id.* at 632–33.

[14] *Id.* at 633.

[15] *Id.*

[16] Jameson has been widely relied upon, apparently because he was first to publish a comprehensive theory on ratifications and rescissions. But when a contemporary accused him of bias, he proudly replied that his work had been written, "every line of it, literally,

to the beating of the Union drums," expressly to refute theories "which had made possible and easy the wicked revolt of the South." *Id.* at 657 (app. C).

[17] See note 16, *supra;* text at notes 71–80, 86–89, 104, *infra.*

[18] THE FEDERALIST No. 85 (A. Hamilton).

[19] *Id.*

[20] *See id.* No. 39 (J. Madison); No. 43 (J. Madison); No. 85 (A. Hamilton); 1 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787: 476, 478 (rev. ed. 1937) [hereinafter cited as FARRAND].

[21] *See* 1 FARRAND, *supra* note 20, at 476, 478; 3 *id.* at 120–21.

[22] *See* 2 *id.* at 148, 555, 557–59, 629–31.

[23] *See* 2 *id.* at 629–31; 3 *id.* at 127.

[24] Dillon v. Gloss, 256 U.S. 368, 375 (1921).

[25] *See* ORFIELD, *supra* note 4, at 75–76.

[26] *See* S. REP. No. 336, 92d Cong., 1st Sess. 14 (1971).

[27] *See id.* at 6; *id.* at 18–19 (separate views of Messrs. Bayh, Burdick, Hart, Kennedy and Tunney). *Cf.* materials cited in note 28, *infra.*

[28] *See, e.g.,* Black, *Amending the Constitution: A letter to a Congressman,* 82 YALE L.J. 189 (1972); *Federal Constitutional Convention: Hearings on S. 2307 before the Subcomm. on Separation of Powers of the Comm. on the Judiciary, United States Senate,* 90th Cong., 1st Sess. 60, *esp.* 60–61, 67 (1967) (statement of Alexander Bickel) [hereinafter cited as *1967 Hearings*]; *id.* at 237–38 (memorandum by Robert G. McCloskey). Professor McCloskey suggests "the amending process should be made as difficult as the language and intent of the Constitution will permit. We have the oldest stable constitutional system in the world; and I think its stability is related to its . . . relative immutability." *Id.* at 238.

[29] 119 CONG. REC. 22731–37 (1973). The bill sought, *inter alia,* to enact into law the states' right to rescind ratifications of proposed amendments. S. 1272, 93d Cong., 1st Sess. § 13(a) (1973). It died in the House Judiciary Committee. *See* 119 CONG. REC. 23138 (1973). Even had the bill been enacted, it could not have had the force of law, since: (1) if the Constitution compels either result on the rescission question, the bill could neither modify nor add anything to the constitutional rule; (2) if Congress can make the rules about rescission, then a mere statute would not be binding on future Congresses, whose own legislative acts would automatically repeal any prior inconsistent legislation. *Cf.* Black, *supra* note 28, at 192. Passage by the Senate of the measure favoring the state right to rescind is important, however, as the last expression by either House, outside the context of the E.R.A. controversy, on the fairness and desirability of the rule.

[30] *See* JAMESON, *supra* note 9, at 624–29; ORFIELD, *supra* note 4, at 70–71. *Coleman v. Miller,* 307 U.S. 433 (1939), held the effect of a prior rejection to be a political question to be resolved by Congress—but even if this holding is still valid, Congress in theory is obliged to honor any rule implicit in the Constitution. See discussion of *Coleman* in the text at notes 94–121, *esp.* 118–19, *infra.*

[31] *See* ORFIELD, *supra* note 4, at 72 & n. 108.

[32] Even outside the context of the current controversy, most commentators have presumed the question of rescission to be nonjusticiable; the presumption is based not on text, history or logic, but on the dubious precedents discussed in the text at notes 71–85 & 94–170, *infra. See, e.g.,* ORFIELD, *supra* note 4, at 26 & n. 68.

[33] *See* Scharpf, *Judicial Review and the Political Question: A Functional Analysis,* 75 YALE L.J. 517 (1966); Wechsler, *Toward Neutral Principles of Constitutional Law,* 73 HARV. L. REV. 1 (1959).

[34] 5 U.S. (1 Cranch) 137 (1803).

[35] This Comment will not discuss the principles underlying certiorari jurisdiction. The discussion here should be understood to apply once a case is before the Court, whether on appeal or certiorari. *See* Gunther, *The Subtle Vices of the "Passive Virtues"—A Comment on Principle and Expediency in Judicial Review,* 64 COLUM. L. REV. 24–25 (1964).

[36] *See* Wechsler, *supra* note 33, at 9.

[37] "[H]e shall . . . receive Ambassadors and other public Ministers . . . ." U.S. CONST. art. II, § 3. *See* LIBRARY OF CONGRESS, CONGRESSIONAL RESEARCH SERVICE, THE CONSTITUTION OF THE UNITED STATES OF AMERICA REVISED AND ANNOTATED 541–44 (1973 ed.) [hereinafter cited as CONSTITUTION ANNOTATED].

[38] U.S. CONST. art. I, § 8, cl. 1. *See* CONSTITUTION ANNOTATED, *supra* note 37, at 136–41.

[39] "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . ." U.S. CONST. art. 1, § 5. *See* Wechsler, *supra* note 33, at 8.

[40] *See* U.S. CONST. art. I § 3, cl. 6; Wechsler, *supra* note 33, at 8.

[41] *See* Wechsler, *supra* note 33, at 7–9. A commitment strongly *implied* by the text of the Constitution would meet this standard; Professor Wechsler suggests that the Guaranty Clause includes such an implicit commitment. *Id.* at 8. Cf. the text at notes 64–70, *infra.*

[42] *See* 5 U.S. (1 Cranch) 137, 147 (1803).

[43] *See, e.g.,* A. BICKEL, THE LEAST DANGEROUS BRANCH 1–33 (1962) [hereinafter cited as BICKEL].

[44] *See, id., passim, esp.* 58. *See generally* G. GUNTHER, CONSTITUTIONAL LAW CASES AND MATERIALS 1532–35 (1975) [hereinafter cited as GUNTHER].

[45] *See* BICKEL, *supra* note 43 *passim;* Scharpf, *supra* note 33, at 549–66.

[46] *Cf.* Scharpf, *supra* note 33, 549–55.

[47] BICKEL, *supra* note 43, at 183.

[48] *Id.* at 125–26.

[49] 369 U.S. 186 (1962).

[50] *Id.* at 217.

[51] See the text & note 41, *supra.*

[52] See the text at notes 139–66, *infra.*

[53] *See* ORFIELD, *supra* note 4, at 13.

[54] U.S. CONST. art. V.

[55] *Id*

[56] *Cf.* Scharpf, *supra* note 33, at 539–40.

[57] U.S. CONST. art. I, § 3, cl. 6.

[58] *Id.* art. 1, § 5.

[59] *Id.* art. I, § 8, cl. 18.

[60] *See* Comment, *Proposed Legislation on the Convention Method of Amending the Constitution,* 85 HARV. L. REV. 1612, 1617–18 (1972). Current legislation gives the duty of promulgating amendments which have been ratified to someone called the Administrator of General Services. *See* 1, U.S.C. §§ 106b, 112 (1970). Prior to 1951, the Secretary of State was responsible for promulgating amendments. 3 Stat. 439 (1818); 65 Stat. 710–11 (1951).

[61] *See* ORFIELD, *supra* note 4, at 63–65; *cf. Proposed Legislation, supra* note 60, at 1618.

[62] 3 U.S. (3 Dall.) 378 (1798).

[63] *Id.* at 381. It cannot logically be maintained that the issue of justiciability was not before the Court, merely because no party *argued* that the validity of the amendment was non-justiciable. If the question was not justiciable, by definition the Court would be bound not to decide it.

[64] 48 U.S. (7 How.) 1 (1849).

[65] "In forming the constitutions of the different States, after the Declaration of Independence, and in the various changes and alterations which have since been made, the Political Department has always determined whether the proposed constitution or amendment was ratified or not by the people of the State, and the judicial power has followed its decision." *Id.* at 39.

[66] *See, e.g.,* ORFIELD, *supra* note 4, at 8; Clark, *The Supreme Court and the Amending Process,* 39 VA. L. REV. 621, 630 (1953); Dodd, *Amending the Federal Constitution,* 30 YALE L.J. 321, 327 (1921).

[67] The statement cannot be regarded even as a dictum on Federal amendments, since it did not even *purport* to say anything about such amendments. *See* Dyer v. Blair, 390 F. Supp. 1291, 1299–1300 n.20 (N.D. Ill. 1975) (Stevens, Cir. J.).

[68] 48 U.S. (7 How.) at 42–46.

[69] *Id.* at 42.

[70] *See* Dyer v. Blair, 390 F. Supp. 1291, 1299–1300 n.20 (N.D. Ill. 1975) (Stevens, Cir. J.).

[71] 15 Stat. 706 (1868).

[72] CONG. GLOBE, 40th Cong., 2d Sess. 4266, 4295–96 (1868).

[73] The Senate had previously debated the legality of the Ohio rescission, but its validity was opposed primarily on the theory that—the Southern states being ineligible to participate—three-fourths of the states had already ratified, making the amendment already a part of the Constitution prior to the Ohio rescission. *Id.* at 876–78.

[74] *Id.* at 4295–96.

[75] *Id.* at 4296. Georgia actually ratified that day. H. Doc. No. 124, 90th Cong., 1st Sess. 15 (1967). However, the Speaker's ambivalent attitude toward the telegram suggests it may have been previously prepared, in anticipation of a favorable Georgia vote.

[76] The vote was 127 in favor, 33 opposed. Only one Republican voted with the Democratic minority against the resolution. CONG. GLOBE, 40th Cong., 2d Sess. 4296 (1868); S. Doc. No. 8, 92d Cong., 1st Sess., BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1774–1971 *passim* (1971).

[77] *Compare* CONG. GLOBE, 40th Cong., 2d Sess. 1402 (1868) *with id.* at 4296. Except for absentees—and for the one Republican mentioned in note 76, *supra*—the two votes were identical. For a discussion of the constitutionality of Johnson's impeachment, see R. BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 252–96 (1973).

[78] 83 U.S. (16 Wall.) 36 (1873).

[79] H. Doc. No. 124, 90th Cong., 1st Sess. 15 (1967).

[80] Another question about the validity of the adoption of the fourteenth amendment—the fact that the Reconstruction Act compelled the Southern states to ratify as a condition of readmission to the Union—was not mooted by the subsequent ratifications, since it involved more than four states. *See* Suthon, *The Dubious Origin of the Fourteenth Amendment,* 28 TUL. L. REV. 22 (1953). However in *White v. Hart,* 80 U.S. (13 Wall.) 646, 649 (1872), the Court indicated in dictum that such a ratification was "a voluntary and valid offering," apparently alluding to the fact that ratification was a *quid pro quo* which Georgia was technically free not to deliver. In context, it is clear that the Court addressed the merits of the question, and did not, as has been suggested (*see, e.g.,* ORFIELD, *supra* note 4, at 16), mean to say that ratification is a political question. Other arguments for the validity of the Civil War Amendments are that they have been adopted by usage or acquiescence; that they were adopted by implication when the twenty-first amendment was adopted, since it specified the eighteenth by its number, implicitly acknowledging prior amendments as valid; or that the Southern states really did legally secede from the Union, and were thereafter only conquered territories, so that only three-fourths of the "loyal states" were needed to ratify. *See generally* United States v. Gugel, 119 F. Supp. 897 (E.D. Ky. 1954); CONG. GLOBE, 40th Cong., 2d Sess. 876–78 (1868); ORFIELD, *supra* note 4, at 73–74, 78–81. In short, abandonment of the idea that the Court will not review the procedure by which new amendments are adopted would not make it necessary to jettison the fourteenth amendment.

[81] *See* Corwin & Ramsey, *The Constitutional Law of Constitutional Amendment,* 26 NOTRE DAME LAW, 183, 204–06 (1951).

[82] Twenty-eight states were required, assuming all thirty-seven (including the old Confederacy as well as West Virginia, created

without the consent of Virginia's Confederate government) were eligible to participate. *Without* Georgia *or* either of the two rescinding states, the total number of ratifications was only twenty-seven. *See* 15 Stat. 706, 707 (1868).

[83] CONG. GLOBE, 41st Cong., 2d Sess. 377 (1870).

[84] *Id.* at 1477. The proclamation listed New York among states which "had ratified," and added that the New York legislature had passed resolutions "claiming to withdraw" its ratification. *Id.* at 2290.

[85] *See id.* at 3971; *id.*, 3d Sess. at 1381 (1871).

[86] 253 U.S. 350 (1920).

[87] *See* Dodd, *supra* note 66, at 323.

[88] *See id.* at 323, 346.

[89] JAMESON, *supra* note 9, at 627. *See* Dodd, *supra* note 66, at 323.

[90] *See, e.g.*, Carpenter v. Cornish, 83 N.J.L. 696, 85 A. 240 (1912); Collier v. Frierson, 24 Ala. 100 (1854). *See generally* ORFIELD, *supra* note 4, at 14–15; Dodd, *supra* note 66, at 323, 327.

[91] In *Hawke v. Smith*, 253 U.S. 221 (1920), a companion to the *National Prohibition Cases* (see the text at notes 86–90, *supra*), the Court held that ratification is a power bestowed by the Constitution directly on state legislatures or state conventions, and not on the states themselves, so that the states may not restrict their legislatures as to ratification. In *Dillon v. Gloss*, 256 U.S. 368 (1921), the Court held that Article V requires amendments to be ratified within a "reasonable time"; that Congress may prescribe a time when proposing an amendment, provided the time is actually reasonable; that seven years was reasonable; and that an amendment is part of the Constitution as of the time the necessary states have ratified, not as of the time of proclamation by the Secretary of State.

In *Leser v. Garnett*, 258 U.S. 130 (1922), the Court held the nineteenth amendment to be validly adopted, over an argument that Article V imposes *substantive* limitations as to what type of amendments may be made to the Constitution. Plaintiffs also alleged that two state legislatures had violated their own rules, and thus had not validly adopted the amendment; but the Court held that notice by the proper legislative officials to the Secretary of State was binding on him, and "being certified" by him, on the courts. *Id.* at 137. This holding was later misconstrued as an endorsement of the political questions doctrine (see the text at notes 115–17, *infra*), but since it purported only to indicate what sort of evidence courts would accept to prove legislative actions, and since it assumed the Secretary of State to be performing a ministerial function, consistent with the true wishes of the legislature, it certainly cannot be read as acknowledging in the Secretary (much less in Congress) any discretion to derogate from state legislative intentions, or to decide questions of constitutional law. That *Leser* signalled no departure from the doctrine of the justiciability of the amending process is confirmed by the Court's holding in *United States v. Sprague*, 282 U.S. 716 (1931), that the power of Congress to choose between ratification by legislatures or conventions is based on "the plain language of article 5." *Id.* at 729. Far from finding limitations on judicial power to review that article, the Court announced canons of construction to be applied to Article V in the same manner as to other constitutional provisions. *Id.* at 731–32.

[92] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177–78 (1803).

[93] It is significant that a book written in 1936, then apparently the only attempt to catalogue all political questions, (*see* Scharp, *supra* note 33, at 517 n.*) did not mention the amending process, not even as a *potential* source of such questions. C. POST, THE SUPREME COURT AND POLITICAL QUESTIONS (1936).

[94] 307 U.S. 433 (1939).

[95] The opinion of the Court referred, with apparent approval, to *Dillon* and *Leser*. *Id.* at 451–53. Justice Black criticized the Court for its inconsistency in not overruling *Dillon*. *Id.* at 458.

[96] *Id.* at 435. Justices Black, Roberts, Frankfurter and Douglas dissented on the threshold question of standing, which consumed the bulk of the Court's opinion. *Id.* at 437–46, 456–57, 460–70. Justices Butler and McReynolds joined the opinion of the Court as to standing, but dissented on the merits. *Id.* at 470–74. Only Justices Stone and Reed joined Chief Justice Hughes on all issues.

[97] Note, 48 YALE L.J. 1455 (1939). See note 96, *supra*.

[98] 43 Stat. 670 (1924); *see* Coleman v. Miller, 307 U.S. 433, 435 & n.1 (1939). The amendment would have effectively overruled *Hammer v. Dagenhart*, 247 U.S. 251 (1918). *See* Scharpf, *supra* note 33, at 587.

[99] *See* Coleman v. Miller, 307 U.S. 433, 473 n.* (1939) (Butler, J., dissenting).

[100] *See id.* Thirty-six of the forty-eight states were required.

[101] 307 U.S. at 433-37.

[102] *Id.* at 453.

[103] *Id.* at 453-54. But see the text at notes 107-09, *infra*.

[104] *Id.* at 449–50. The court obliquely suggested a theoretical basis for its acceptance of the Reconstruction precedent when it added that "in accordance with this historic precedent" the efficacy of ratification after rejection would be a political question, "with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment." *Id.* at 450. Yet to the exact extent that Congressional control over promulgation is more than an implied "housekeeping" power, it needs a principled defense, which the Court did not attempt. See the text at notes 59–61, *supra* and materials cited in note 61, *supra*.

[105] 307 U.S. at 446-47.

[106] The four Justices joining in the Black opinion regarded the question as political. *Id.* at 456-60. Apparently Justice McReynolds was absent for discussion of this issue. *See* Note, 28 GEO. L.J. 199, 200 n.7. Thus Chief Justice Hughes and Justices Stone, Reed and Butler must have found it justiciable.

[107] ORFIELD, *supra* note 4, at 20.

[108] *See* Dodd, *supra* note 66, at 341.

[109] This distinction is suggested by then-Judge Stevens' opinion in *Dyer v. Blair*, 390 F. Supp. 1291, 1301-03 & n.24 (N.D. Ill. 1975).

[110] 307 U.S. at 456–60.

[111] A technical basis for diminishing the weight accorded to the Black opinion, however, is that after these Justices stated their belief that plaintiffs had no standing (307 U.S. at 456), everything that followed was unnecessary to decision, and therefore mere dictum. In *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975), then-Judge Stevens also felt bound to disregard the Black opinion since "a majority of the Court refused to accept" it, and since it was inconsistent with prior Supreme Court holdings. *Id.* at 1299-1300.

[112] 307 U.S. at 459.

[113] *See* ORFIELD, *supra* note 4, at 13; *Proposed Legislation*, *supra* note 60, at 1637–38.

[114] See the text at notes 133–37, *infra*.

[115] 258 U.S. 130 (1922). *See* 307 U.S. at 457 & n.2.

[116] 258 U.S. at 137.

[117] 307 U.S. at 457 (emphasis added). But see note 91, *supra*.

[118] *Id.*

[119] *See id.* at 457–59.

[120] Justices Butler and McReynolds, the remnant of the "four horsemen" who had stricken New Deal legislation on substantive due process grounds, felt the issues were justiciable. Roosevelt appointees Black, Frankfurter and Douglas were joined by Roberts, regarded as a "swing man" on the New Deal, in advocating a sweeping doctrine of Congressional power over the constitutional amending process. Chief Justice Hughes and Justice Stone, regarded as "moderates," were joined by Reed, the most "conservative" Roosevelt appointee, in taking a "middle course." Political and economic analyses of Supreme Court voting are generally not helpful and often misleading (*see* Wechsler, *supra* note 33, at 13–14), but when so little reason and authority can be given for such a radical change in jurisprudence, resort to these sources is perhaps necessary.

[121] This "hot potato" analysis of *Coleman* is advanced in Scharpf, *supra* note 33, at 587–89.

[122] This point is at the heart of the "special function" argument for judicial review. See the text at notes 42–44, *supra*. It has been suggested that while the Court might be the most suitable forum for final review of ordinary legislation, this "functional" argument does not apply to constitutional amendments. Professor Orfield suggests exactly the contrary: "If orderly procedure is essential in the enactment of ordinary statutes, should it not be even more so as to the adoption of important and permanent constitutional amendments?" ORFIELD, *supra* note 4, at 21.

[123] See the text at notes 71–80, *supra*.

[124] See note 77, *supra*.

[125] *See* 107 CONG. REC. 24 (1961) (Indiana officials certified Republican as winner of House seat; motion to seat the Republican pending congressional investigation of close election rejected, 166 Republicans in favor, 252 Democrats opposed. Party breakdown at 17 Cong. Q. ALMANAC 401, 506 (1961)); 121 CONG. REC. S1014–15 (daily ed. Jan. 28, 1975) (motion to seat Republican certified as winner of close New Hampshire Senate election, pending investigation, rejected 34–58, with only one Democrat in favor and only one Republican opposed. Party breakdown at 31 CONG. Q. ALMANAC 700, 2-S (1975)). *See also* D. MORGAN, CONGRESS AND THE CONSTITUTION 122–139, *esp.* 132 table 4 (1966).

[126] *But see* Powell v. McCormack, 395 U.S. 486 (1969), discussed in the text at notes 146–59, *infra*.

[127] See note 29, *supra*.

[128] See the text and notes 121–22, *supra*.

[129] Article V provides that amendments may be proposed either by a two-thirds vote of each house of Congress, or by a convention called by Congress at the request of two-thirds of the state legislatures. It has been suggested that Congress might have wide discretion in regulating such a convention. *See 1967 Hearings*, *supra* note 28, *passim*. But see materials cited in note 61, *supra*.

[130] *See* Dodd, *supra* note 66, at 323.

[131] However, Congress might oppose an amendment proposed by the convention method, or by a previous Congress.

[132] See illustrations in the text at notes 167–69, *infra*.

[133] 1 FARRAND, *supra* note 20, at 117; *see* 1 *id.* at 22.

[134] *See* 1 *id.* at 202–03; 2 *id.* at 629–31; 3 *id.* at 367–68; 4 *id.* at 61.

[135] *See* 2 *id.* at 467–68; 3 *id.* at 367–78.

[136] *See* 2 *id.* at 557–59.

[137] THE FEDERALIST No. 85 (A. Hamilton).

[138] *Id.* No. 78 (A. Hamilton).

[139] 369 U.S. 186 (1962).

[140] *Id.* at 217. The passage referred to is reproduced in the text at note 50, *supra*.

[141] *See, e.g.*, Reynolds v. Sims, 377 U.S. 533 (1964); GUNTHER, *supra* note 44, at 1621 & n.3.

[142] Coleman v. Miller, 307 U.S. 433, 453 (1939).

[143] 369 U.S. at 210.

[144] *See* Moyer v. Peabody, 212 U.S. 78 (1909); Scharpf, *supra* note 33, at 538 n.73.

[145] When they ratify, the state legislatures are performing a "federal function." See the text at notes 6–8, *supra*. However, the basis on which state actions are distinguished from Federal actions in *Baker* is apparently that the former can be invalidated without a risk of "embarrassment" to co-ordinate branches of the federal government; this "prudential" distinction should put *all* state legislative actions within reach of the federal judiciary.

[146] 395 U.S. 486 (1969).

[147] U.S. CONST. art. I, § 2, cl. 2.

[148] *Id.* art. I, § 5.

[149] The motion to "exclude" Powell did carry by the two-thirds which would have been necessary to "expel" him; but the Court expressed doubt as to whether the required two-thirds vote would have been obtained if the motion had been to expel. 395 U.S. at 508–10.

[150] Impeachment is the only other example of an explicit textual commitment which had been thought unreviewable by the Court. *See* Wechsler, *supra* note 33, at 8.

[151] Only Justice Stewart dissented, on grounds of mootness. Justice Douglas filed a separate concurring opinion. 395 U.S. at 551–74.

[152] The Court's cursory citation of the various types of "prudential" considerations listed in *Baker* is deceptive in light of the concluding statement that whenever "an interpretation of the Constitution" is all a case calls for, these "prudential" considerations are automatically absent. *Id.* at 549. This statement, for which the Court relies on *Marbury*, would indicate an effective return to the classical view of the political question. But the Court's willingness to overlook an apparent "textual commitment" of the issue to resolution by Congress suggests an even narrower view.

[153] *Id.* at 548–49.

[154] The Court explicitly leaves this question open. *Id.* at 520–21 & n.41. Justice Douglas, concurring, states that a determination of fact by Congress as to a member's qualifications would be unreviewable. *Id.* at 552. Thus, by falsely "finding" Powell to be under 25 years of age, Congress might have insulated its decision from judicial review. This distinction—that congressional determinations of fact may be unreviewable, whereas questions of law will always be reviewed by the court—is applied to the amending process by then-Judge Stevens in *Dyer v. Blair*, 390 F. Supp. 1291, 1301–03 & n.24 (N.D. Ill. 1975). Under this analysis, a certification by state legislative officials, or perhaps by the federal official authorized to certify ratifications, that a state had voted to rescind, would be conclusive on the Court; but the legal effect of such a vote would be decided by the Court itself. *See id.* at 1301 n.24.

[155] GUNTHER, *supra* note 44, at 482.

[156] See the text at notes 53–58, *supra*.

[157] 395 U.S. at 548.

[158] See the text at note 104, *supra*.

[159] 395 U.S. at 546–47.

[160] *See, e.g.*, Trombetta v. Florida, 353 F. Supp. 575 (M.D. Fla. 1973); Petuskey v. Rampton, 307 F. Supp. 235 (D. Utah 1969), *rev'd on other grounds*, 431 F.2d 378 (10th Cir. 1970), *cert. denied*, 401 U.S. 913 (1971); United States v. Gugel, 119 F. Supp. 897 (E.D. Ky. 1954).

[161] 390 F. Supp. 1291 (N.D. Ill. 1975).

[162] *Id.* at 1299.

[163] *Id.* at 1302–03.

[164] *Id.* at 1302–07. Then-Judge Stevens clearly regarded the history and text of Article V as susceptible of judicial interpretation; the point of law he decided is perhaps *less* explicit on the face of article V than the question of whether rescission is permissible.

[165] Then-Judge Stevens felt bound by strict rules of *stare decisis*. *See id.* at 1299–1300. It is significant that his opinion advances a logical defense of the *Coleman* holding that Congress may determine a "reasonable time," but simply notes, and distinguishes, *Coleman* on the question of prior rejections and ratifications. *Id. at* 1301–02 & n.25.

[166] The *Coleman* holding as to "reasonable time" may be consistent with *Powell*. See the text at notes 107–10 & 165, *supra*. But since the effect of prior ratification would seem to call simply for an interpretation of the Constitution, it seems impossible to reconcile the *Coleman* dictum on this question with *Powell*. *Cf.* Dyer v. Blair, 390 F. Supp. 1291, 1301 (N.D. Ill. 1975).

[167] Some authorities have also suggested that the President must have a role in any congressional action on an amendment, other than the act of proposing. Black, *supra* note 28, at 206–09; *1967 Hearings*, *supra* note 28, at 23–24 (statements of Senators Tydings and Proxmire). A presidential veto could thus prevent resolution of any political questions involved in determining the validity of an amendment.

[168] Similar arguments, directed more to partisan politics than to constitutional exegesis, were advanced in the 1868 Senate debate over the effect of Ohio's rescission. CONG. GLOBE, 40th Cong., 2d Sess. 876–78 (1868).

[169] Credit for promulgating this phrase has been given to Thomas Reed Powell. Arnold, *Professor Hart's Theology*, 73 HARV. L. REV. 1298, 1305 & n. 26 (1960). It is a venerable technique, and a good one for evaluating the possible effects of actions which may be irreversible. Thus Professor Black calls our attention to the dimensions of the amending power: it can ". . . change the presidency to a committee of three, hobble the treaty power, make the federal judiciary elective, repeal the fourth amendment, make Catholics ineligible for office, and move the national capital to Topeka. These are (in part at least) cartoon illustrations. But the cartoon accurately renders the *de jure* picture, and seems exaggerated only because we now conceive that at least some of these actions have no appeal to anybody." Black, *The Proposed Amendment of Article V: A Threatened Disaster*, 72 YALE L.J. 957, 959 (1963).

[170] It is suggested, for instance, that even the Court's deplorable decision on the merits in *Korematsu* v. *United States*, 323 U.S. 214 (1944), the Japanese exclusion case, was preferable to Justice Jackson's suggestion that the issue be declared a political question (*id.* at 242–48), since this would have been a declaration by the Court that it would never have authority to intervene in any case involving similar government repression of American citizens in time of war. *See* Scharpf, *supra* note 33, at 535–38, 562–66.●

TOBACCO PRODUCTION RESEARCH

● Mr. HUDDLESTON. Mr. President, I have received numerous expressions of thanks and appreciation from tobacco farmers and others interested in tobacco for this body's wisdom in restoring $3.106 million to the USDA budget for tobacco production research. There is no question that the Senate's actions will enable research vital to tobacco to continue, and I am confident that both producers and consumers will greatly benefit from the research funded by the bill.

Senator JESSE HELMS of North Carolina was instrumental in our efforts to restore the funding for tobacco research. From the first meeting we had with USDA officials in my office, to the success we had in obtaining a favorable recommendation for the funding from the Senate Agriculture Committee, to the approval by the Appropriations Committee, and to the final actions on the Senate floor, JESSE HELMS was there offering his full support, encouragement, and effective leadership—as he always does on tobacco matters.

I understand that Senator HELMS will be returning to this body upon his recuperation from his back operation, and I just wanted him to know how much his actions have meant to so many tobaccomen. ●

OUR MIA'S: BARGAINING CHIPS FOR HANOI

● Mr. GRIFFIN. Mr. President, like many other Americans, I share the anguish of families and friends of our servicemen still missing in action or unaccounted for in Southeast Asia.

Throughout the Vietnam conflict, and continuing to this day, our Government—with varying degrees of emphasis—has attempted to obtain a full accounting of our missing. At this time, there still remain more than 2,400 Americans missing or unaccounted for.

For the most part, our Government's efforts have been met with cynical assertions by the Vietnamese that information on our MIA's would not be forthcoming until the United States paid reparations to Vietnam. On numerous occasions, representatives of the Socialist Republic of Vietnam publicly acknowledged that they possessed information on our MIA's, but brazenly refused to provide it.

Ignoring humanitarian and legal obligations, the Government of Vietnam has regarded and treated MIA information as a bargaining chip to extort aid or other concessions from the United States. For political and economic advantage, the Government of Vietnam repeatedly has played on the grief and anguish of the families of our MIA's.

Now, suddenly, Vietnam has dropped its demand for so-called "reparations" and has come forward with new information and also with the remains of 11 American servicemen missing in action.

One of the 11 servicemen whose remains were returned was a brave airman from my own State of Michigan, Air Force Senior M/Sgt. Walter L. Ferguson of Detroit.

A number of factors seem to be involved—and humanitarian concern does not appear to be one of them.

The Vietnamese have not had a sudden change of heart. They have not developed a new concern for the families and friends of our MIA's. They have found that normalized relations with the United States are becoming an urgent necessity.

One of the more important factors prompting Vietnam's newly discovered reasonableness is economic need.

Vietnam's economy is in a shambles, and there are shortages of almost everything. Vietnam is a net importer of food; it has little industry and almost no exports to generate hard currency for the imports it needs.

Despite continuing aid from the Soviet Union and substantial assistance from the World Bank and the International Monetary Fund, Vietnam would benefit greatly from American aid and trade.

Politically, Vietnam could also benefit greatly from normalized relations with the United States.

Normalization would enhance Vietnam's prestige in the international community and also would lend a measure of protection from an increasingly hostile China.

Vietnamese-Chinese relations have deteriorated considerably in recent months, because of alleged mistreatment of ethnic Chinese living in Vietnam and also because of disputes over oil and gas rights in the South China Sea.

Clearly, Vietnam has a lot to gain from a normalization of relations with the United States and little if anything to lose.

Dropping its insistence on reparations and coming forward with additional information on MIA's is a small price to pay for Vietnam's expected benefits.

Vietnam is clearly acting in its own interest and we should not be deceived into thinking that recent events portend a new, more reasonable, and peace-loving Vietnam.

We should normalize relations with Vietnam only if it is clearly in our interest to do so, and at this time I see little reason to do so.

There is strong evidence that the Vietnamese continue even now to withhold information on our MIA's.

In fact, one of the conclusions of the recent report of the President's Commission on Americans Missing and Unaccounted For in Southeast Asia was that the Vietnamese were still holding back information on our MIA's. The report stated:

> Although they almost certainly have at least some additional MIA information available, they did not provide it to the Commission during its visit.

This conclusion was echoed just a few days ago by Congressman W. HENSON MOORE in a report issued by the congressional delegation which just returned from Vietnam in August. Congressman MOORE stated that—

> There is no question in my mind . . . that they have not yet given us all the information they could possess.

Both President Ford and President Carter have said that there must be a full accounting for our MIA's before any normalization of relations. I strongly concur in that position, and I sponsored a Senate resolution to that effect in February of last year.

There is no reason to reward Vietnam with aid, trade, or recognition at this time. They callously have played on the American desire for a full accounting of our MIA's and continue to use this issue as political bait.

In addition, Vietnam has been guilty of gross violations of the human rights of its inhabitants. Since the fall of Saigon in 1975, more than 1 million people have been detained in "reeducation" camps and tens of thousands of persons are still being held without trial and, in most cases, without being charged. Vietnam also has been pursuing a forced relocation program that has forcibly uprooted more than 1.3 million people from what was formerly South Vietnam and relocated them in remote rural areas.

Despite the Carter administration's outspoken policies on human rignts, these gross violations of human rights have received little attention by the administration. In fact, so far as is known, these violations have never even been raised officially in discussions with the Government of the Socialist Republic of Vietnam.

I believe it is time for the Carter administration should raise the human rights issue with the Government of Vietnam. I also believe the administration must continue to emphasize that the matter of our MIA's is a continuing obstacle to normalization of relations.

Until our MIA's are accounted for and until there are substantial improvements in the area of human rights, there should be no diplomatic recognition of Vietnam.

Mr. President, Mitch Kehetian, the managing editor of the Macomb Daily (Michigan) summed up my feelings very eloquently in an open letter he recently addressed to President Carter. In that letter Mr. Kehetian urged the President to "remain firm in his commitment to the human rights of the men who never came back * * *."

That is a haunting phrase. It describes well the obligation that we have to those men who gave their lives in service to their country.

We should not sacrifice the human rights of those men in our haste to normalize relations with Vietnam.

I ask that the text of Mr. Kehetian's open letter, as well as the accompanying list of missing Americans be printed in the RECORD.

The material follows:

AN OPEN LETTER TO THE PRESIDENT: MIA'S DESERVE SAME HUMAN RIGHTS WE CHAMPION

JIMMY CARTER,
The White House, 1600 Pennsylvania Avenue, Washington, D.C.

DEAR PRESIDENT CARTER: Last January, while visiting with you and 34 other newspaper editors from across our country, you reiterated your conviction to the cause of human rights—and to resolving the tragic story of our servicemen who never came back from the war in Indo-China.

In place of our regular editorial page today, I am taking the liberty of addressing you on the still unresolved MIA question, and listing the names of 2,512 missing Americans as provided in the form of a petition from former President Gerald R. Ford.

This initial list, prepared in 1976, includes more than 700 servicemen who were then listed as missing in action (MIA). The remainder were known to have been killed in action but their bodies were never recovered.

Recent developments now indicate that Vietnam, and Laos, are willing to assist in the location of the still missing Americans.

Though the remains of more than 20 Americans have been returned by Vietnam and Laos in the past two years, the MIA question is still a tragic open chapter in our history that must be resolved.

The petition list provided by former President Ford, and which he signed as a private citizen, was in support of the local Fraser VFW Post in its search for our county's remaining MIA, Air Force Capt. Robert Tucci.

When the Fraser VFW delegation attempted to present the list to Vietnamese officials at the Hanoi embassy in Paris on June 4, 1976, the embassy refused to accept Mr. Ford's "complete list."

Now there is talk, according to Frank Sieverts of the U.S. State Department, that Vietnam may be "quite receptive" to the idea of releasing information about recovered American remains at a "lower echelon" government level rather than dealing with official U.S. delegations—which tends to raise political questions.

We recognize the dilemma Hanoi and Laos face each time the remains of missing Americans are released to visiting delegations. The dilemma arises because many of the remains are of men our government long had insisted were alive at the time of capture—an insistence corroborated by Hanoi's own admission during the height of the war.

The case of Capt. Tucci is but one example.

But in our haste to foster the normalization of relations with Vietnam and Laos, for whatever self-interest motives, I would hope you will remain as firm to your commitment to the human rights of the men who never came back as was Mr. Ford in preparing the petition list of 2,512 missing Americans.

I would also urge that the list of names on this page be given to the governments of Laos and Vietnam, and that you insist our own military search teams be allowed to assist in the recovery of missing Americans.

While I recognize that the recovery of all remains is an impossibility, I do believe that a truly sincere offer to assist in the search for American remains will ease the pain for hundreds of MIA families.

Public pressure, and the White House, can do it.

As an example, when Mr. Leonard Woodcock went to Hanoi last year, he returned with word of another Michigan MIA. Navy pilot Walter Estes. Ten years ago, Hanoi publicly boasted of having captured the Williamston (Mich.) airman and for the next 10 denied it could account for his whereabouts.

At the Paris peace talks in 1970, Howard Isham presented evidence that Hanoi could account for Navy pilot Vincent Monroe of New Jersey, but Hanoi denied any knowledge of his fate. Yet, when Congressman G. V. Montgomery and his delegation visited Hanoi last month, the Vietnamese were able to release the remains of this airman.

There are literally hundreds of similar cases, we fear. For that reason, we can understand Hanoi's desire to release remains with little fanfare—presumably to avoid questioning on how these men died in captivity.

A glance at the names on this page represents America.

They deserve more than a glance.

The individuals these names represent, and their families, who still wait for word, deserve the same basic human rights we champion around the troubled world.

The return of their remains is still worth more than the oil rights Vietnam now dangles as bait.

Sincerely Yours,

MITCH KEHETIAN,
Managing Editor, The Macomb Daily.

PETITION

I, in my capacity as a citizen of the United States of America, and in the interest of humanity, demand that a full accounting be made for the Americans still missing in Southeast Asia.

Abrams, Lewis H., Acalotto, Robert J., Acosta-Rosario, Humberto, Adachi, Thomas Y., Adam, John Q., Adams, John R., Adams, Lee A., Adams, Oley N., Adams, Samuel, Adams, Steven H., Adkins, Charles L., Adrian, Joseph D., Ahlmeyer, Heinz, Jr., Alberton, Bobby J., Albright, John S.

Aldern, Donald D., Aldrich, Lawrence L., Alford, Terry L., Alfred, Gerald O., Algaard, Harold L., Allard, Michael J., Allard, Richard M., Allee, Richard K., Allen, Henry L., Allen, Merlin R., Allen Thomas R., Allen, Wayne C., Alley, Gerald W., Alley, James H., Allgood, Frankie E.

Allinson, David J., Alloway, Clyde D., Alm,

Richard A., Almendariz, Samuel, Altizer, Albert H., Altus, Robert W., Alwan, Harold J., Amesbury, Harry A., Jr., Ammon, Glendon L., Amos, Thomas H., Amspacher, William H., Jr., Anderson, Denis L., Anderson, Gregory L., Anderson, Robert D., Anderson, Thomas E.

Anderson, Warren L., Andre, Howard V., Jr., Andrews, Stuart M., Andrews, William R., Angell, Marshall J., Angstadt, Ralph H., Anselmo, William F., Anspach, Robert A., Antunano, Gregory A., Apodaca, Victor J., Jr., Appleby, Ivan D., Applehans, Richard D., Ard, Randolph J., Armitstead, Steven R., Armond, Rober L.

Armstrong, Frank A., Armstrong, John W., Arnold, William T., Arroyo-Baez, Gerasimo, Ashall, Alan F., Ashby, Clayborn W., Jr., Ashby, Donald R., Sr., Ashlock, Carlos, Asire, Donald H., Asmussen, Glenn E., Aston, Jay S., Austin, Carl B., Austin, Charles D., Austin, Ellis E.

Austin, Joseph C., Auxier, Jerry E., Avery, Allen J., Avery, Robert D., Avolese, Paul A., Avore, Malcolm A., Ayers, Darrell E., Ayers, Richard L., Ayers, Gerald F., Ayers, James H., Babcock, Ronald L., Babula, Robert L., Bacik, Vladimir H., Backus, Kenneth F.

Bader, Arthur E., Jr., Badley, James L., Badolati, Frank N., Bailey, John E., Bailey, John H., Baker, Arthur D., Balamoti, Michael D., Balcom, Ralph C. Baldridge, John R., Jr., Bancroft, William W., Jr., Bankowski, Alfons A., Bannon, Paul W., Barber, Robert F., Barber, Thomas D., Barden, Howard L., Bare, Williams O., Barker, Jack L.

Barnes, Charles R., Barnett, Charles E., Barnett, Robert R., Barr, John F., Barras, Gregory I., Bartocci, John E., Bates, Paul Jennings, Jr., Batt, Michael L., Bauder, James R., Bauman, Richard L., Baxter, Bruce R., Beach, Arthur J., Beals, Charles E., Bebus, Charles J., Becerra, Rudy M.

Beck, Edward E., Beck, Terry L., Becker, James C., Beckwith, Harry M., III, Bednarek, Jonathan B., Beecher, Quentin R., Beene, James A., Begley, Burris N., Behnfeldt, Roger E., Belcher, Glenn A., Belcher, Robert A., Belknap, Harry J., Bel, Holly G., Bell, Marvin E., Bell, Richard W., Benedett, Daniel A., Bennefeld, Steven H.

Bennett, Harold G., Bennett, Robert E., III, Bennett, Thomas W., Jr., Bennett, William G., Benson, Lee D., Benton, Gregory R., Jr., Benton, James A., Berdahl, David D., Beresik, Eugene P., Berg, Bruce A., Berg, George P., Bergevin, Charles Lee, Berry, John A., Berube, Kenneth A., Bessor, Bruce C., Beutel, Robert D., Beyer, Thomas J.

Bezold, Steven N., Bibbs, Wayne, Biber, Gerald M., Bidwell, Barry A., Biediger, Larry W., Bifolchi, Charles L., Biggs, Earl R., Billipp, Norman K., Bingham, Klaus Y., Birchim, James D., Bird, Leonard A., Biscailuz, Robert L., Bischoff, John M., Bishop, Edward J., Jr., Bisz, Ralph C., Bittenbender, David F.

Bivens, Herndon, A., Bixel, Michael S., Black, Paul V., WO, Blackburn, Harry L., Jr., Blackman, Thomas J., Blackwood, Gordon B., Blair, Charles E., Blankenship, Charles H., Blassie, Michael J., Blessing, Lynn, Blevins, Lural L., III, Blodgett, Douglas R., Bloodworth, Donald B., Bloom, Darl R., Bloom, Richard M., Bobe, Raymond E., Bodahl, Jon K., Bodden, Timothy R.

Bodenschatz, John E., Boffman, Alan B., Boggs, Paschal G., Bogiages, Christos C., Jr., Bohlig, James R., Bohlscheid, Curtis R., Bois, Claire R. A., Boles, Warren W., Bollinger, Arthur R., Bolte, Wayne L., Boltze, Bruce E., Bond, Ronald D., Bond, Ronald L., Bookout, Charles F., Booth, Gary P., Booth, James E.

Booth, Lawrence R., Booze, Delmar G., Borah, Daniel V., Jr., Borden, Murray L., Borja, Domingo R. S., Boronski, John A., Bors, Joseph C., Borton, Robert C., Jr., Bosiljevac, Michael J., Bossio, Galileo F., Bossman, Peter R., Boston, Leo S., Bott, Russell P., Bouchard, Michael L., Bower, Irvin L., Jr., Bower, Joseph E., Bowers, Richard L., Bowles, Dwight P., Bowling, Roy H.

Bowman, Frank, Bowman, Michael L., Boyanowski, John G., Boyd, Walter, Boyer, Alan L., Boyle, William, Bradshaw, Robert S., III, Bram, Richard Craig, Branch, James A., Brand, Joseph W., Brandenburg, Dale, Brandt, Keith A., Bogard, Lonnie P., Brashear, William J., Brasher, Jimmy Mac, Brassfield, Andrew T., Brauner, Henry P.

Brazik, Richard, Breeding, Michael H., Breiner, Stephen E., Bremmer, Dwight A., Brennan, Herbert O., Brenning, Richard D., Brett, Robert A., Jr., Breuer, Donald C., Brice, Eric P., Bridges, Jerry G., Bridges, Phillip W., Briggs, Ernest F., Jr., Briggs, Ronald D., Brigham, Albert, Brinckmann, Robert E.

Broms, Edward J., Jr., Brooks, John H. R., Brooks, Nicholas G., Brooks, William L., Brower, Ralph W., Brown, Donald A., Brown, Donald H., Jr., Brown, Earl C., Brown, Edward D., Jr., Brown, Frank M., Jr., Brown, George R., Brown, Harry W., Brown, James A., Brown, James W., Brown, Joseph O., Brown, Robert M., Brown, Thomas E., Brown, Wayne G.

Brown, Wilbur R., Brown, William T., Brownlee, Charles R., Brownlee, Robert W., Bruch, Donald W., Jr., Brucher, John M., Brunson, Jack W., Bucher, Bernard L., Buck, Arthur C., Buckley, Louis, Jr., Buckley, Victor P., Buell, Kenneth R., Buerk, William C., Bullard, William H., Bullock, Larry A., Bundy, Norman A., Bunker, Park G.

Burd, Douglas G., Burgess, John Lawrence, Burkart, Charles W., Burke, Michael J., Burnes, Robert W., Burnett, Donald F., Burnett, Sheldon J., Burnham, Donald D., Burnham, Mason I., Burns, Frederick J., Burns, John R., Burns, Michael P., Burris, Donald D., Jr., Busch, Jon T., Bush, Elbert W., Bush, John R., Bush, Robert E., Bush, Robert I.

Bushnell, Brian L., Butler, Dewey R., Butler, James E., Butt Richard L., Byars, Earnest R., Bynum, Neil S., Byrd, Hugh M., Jr., Byrne, Joseph H., Cadwell, Anthony B., Caffarelli, Charles J., Cairns, Robert A., Caldwell, Floyd D., Calhoun, Johnny C., Call, John Henry, III, Callahan, David F., Callahan, Richard J.

Callies, Tommy L., Calloway, Porter E., Cameron, Virgil K., Campbell, Clyde W., Campbell, William E., Canilford, James K., Cannon, Francis E., Canup, Franklin H., Capling, Elwyn R., Cappelli, Charles E., Caras, Franklin A., Carlock, Ralph L., Carlson, John W., Carlson, Paul V., Carlton, James E., Jr., Carpenter, Howard B., Carpenter, Nicholas M., Carpenter, Ramey L.

Carr, Donald G., Carrier, Daniel L., Carroll, John L., Carroll, Patrick H., Carroll, Roger W., Carter, Dennis R., Carter, George W., Carter, Gerald L., Carter, James D., Carter, James L., Carter, William T., Cartwright, Billie J., Cartwright, Patrick G., Carver, Harry F., Case. Thomas F.

Casey, Donald F., Cassell, Robin B., Castillo, Richard, Castro, Reinaldo A., Causey, John B., Cavalli, Anthony F., Cavender, Jim R., Cayce, John D., Cecil, Alan B., Cestare, Joseph A., Chambers, Jerry L., Champion, James A., Chan, Peter, Chandler, Anthony G., Chaney, Arthur F.

Chapa, Armando, Jr., Chapman, Peter H., II, Chapman, Rodney M., Charvet, Paul C., Chavez, Gary A., Chavira, S., Cherry, Allen S., Chesnutt, Chambless M., Chestnut, Joseph L., Chiarello, Vincent A., Chipman, Ralph J., Chomel, Charles D., Chomyk, William, Chorlins, Richard D., Christensen, Allen D., Christensen, John M.

Christensen, William M., Christian, David M., Christiano, Joseph, Christiansen, Eugene F., Christie, Dennis R., Christophersen, Keith A., Chubb, John J., Churchill, Carl R., Chwan, Michael D., Cichon, Michael D., Cichon, Walter A., Clark, Cecil J., Clafiin, Richard A., Clapper, Gean P., Clark, Donald E., Jr.

Clark, Jerry P., Clark, John C., II, Clark, Lawrence, Clark, Philip S., Jr., Clark, Richard C., Clark, Robert A., Clark, Stanley S., Clark, Stephen W., Clark, Thomas E., Clarke, Fred L., Clarke, George W., Jr., Claxton, Charles P., Clay, Eugene L., Clay, William C.

Cleary, Peter M., Clem, Thomas D., Cleve, Reginald D., Cline, Curtis R., Clinton, Dean E., Clydesdale, Charles F., Coady, Robert F., Coakley, William F., Coalston, Echol W., Jr., Coates, Donald L., Cobbs, Ralph B., Cochran, Isom C., Jr., Cochrane, Deverton C., Cody, Howard R., Coen, Harry B.

Cogdell, William K., Cohron, James D., Cole, Legrande O., Jr., Cole, Richard M., Jr., Coleman, Jimmy L., Collamore, Allan P., Collazo, Raphael L., Collette, Curtis D., Collins, Arnold, Collins, Guy F., Collins, Richard F., Collins, Theothis, Collins, Willard M., Colombo, Gary L., Coltman, William C.

Colwell, William K., Comer, Howard B., Jr., Compa, Joseph J., Jr., Compton, Frank R., Conaway, Gary L., Conaway, Lawrence Y., Condit, Douglas C., Condit, William H., Jr., Condrey, George T., Confer, Michael S., Conger, John E., Jr., Conklin, Bernard, Conley, Eugene O., Conlon, John F., III, Conner, Edwin R.

Conner, Lorenza, Connolly, Vincent John, Connor, Charles R., Consolvo, John W., Conway, James B., Cook, Dennis P., Cook, Donald G., Cook, Dwight W., Cook, Glenn R., Cook, Joseph F., Cook, Kelly F., Cook, William R., Cook, Wilmer P., Cooke, Calvin C., Cobley, David L., Cooley, Orville D., Coons, Chester L., Coons, Henry A.

Cooper, Daniel D., Cooper, Richard W. Jr., Cooper, William E., Copack, Joseph S. Jr., Copenhaver, Gregory S., Copley, William M., Corbitt, Gilland W., Cordova, Robert J., Cordova, Robert J., Cordova, Sam G., Corfield, Stan L., Corle, John T., Cornelius, Johnnie C., Cornelius, Samuel B., Cornwell, Leroy J. III.

Corona, Joel, Cota, Ernest K., Cotten, Larry W., Cozart, Robert C. Jr., Craddock, Randall J., Craig, Philip C., Crain, Carroll O. Jr., Cramer, Donald M., Crandall, Gregory S., Graven, Andrew J., Creamer, James E. Jr., Crear, Willis C., Creed, Barton S. LT.

Cressman, Peter R., Crew, James A., Crews, John H. III, Cristman, Frederick L., Crockett, William J., Crody, Kenneth L., Crone, Donald E., Crook, Elliott, Cropper, Curtis N., Crosby, Bruce A. Jr., Crosby, Frederick P., Crosby, Herbert C., Crosby, Richard A., Cross, Ariel L.

Cross, James E., Crossman, Gregory J., Crosson, Gerald J. Jr., Crow, Raymond J. Jr., Crowley, John E., Croxdale, Jack L. II, Crumm, William J., Cruz, Carlos R., Cruz, Raphael, Cudlike, Charles J., Cunningham, Carey J., Cunningham, Kenneth L., Curlee, Robert L. Jr., Curran, Patrick R.

Curry, Keith S. W., Cushman, Clifton E., Cuthbert, Bradley G., Cuthbert, Stephen H., Cutver, Fred C. Jr., Czerwier, Raymond C., Czerwonka, Paul S., Daffron, Thomas C., Dahill, Douglas E., Dailey, Douglas V., Dale, Charles A., Dallas, Richard H., Dalton, Randall D., Danielson, Benjamin F.

Danielson, Mark C. CAP, Darcy, Edward J. SMS, Dardeau, Oscar M. Jr., Darr, Charles E., Davidson, David A., Davies, Joseph E., Davis, Brent E., Davis, Charlie B. Jr., Davis, Daniel R., Davis, Donald V., Davis, Edgar F., Davis, Francis J., Davis, Gene E., Davis, Ricardo G., Davis, Robert C.

Dawes, John J., Dawson, Clyde D., Dawson, Daniel G., Dawson, Frank A., Dawson, James V., Day, Dennis I., Dayao, Rolando C., Dayton, James L., De Herrera, Benjamin D., De Soto, Ernest L., Dean, Donald C., Dean, Michael F., Deane, William L., Deblasio, Raymond V., Decaire, Jack L.

Deere, Donald T., Deichelmann, Samuel M., Deitsch, Charles E., Deleidi, Richard A., Delong, Joe L., Demmon, David S., Dempsey, Jack I., Dempsey, Walter E. Jr., Dennany, James E., Dennis, William R., Dennison, James R., Denton, Manuel R., Derby, Paul D., Derrickson, Thomas G. II.

Deuso, Carroll J., Deuter, Richard C., Dewberry, Jerry D., Dewispelaere, Rexford J., Dexter, Bennie L., Dexter, Ronald J., Di Tom-

maso, Robert J., Diamond, Stephen W., Dibble, Morris P., Dickens, Delma E., Dickson, Edward A., Dilger, Herbert H., Dillender, William E., Dillon, David A., Dinan, David T. III, Dingwall, John F.

Dion, Laurent N., Dix, Craig M., Dixon, Daivd L., Doby, Herb, Dodge, Edward R., Dodge, Ronald W., Dolan, Thomas A., Donahue, Morgan J., Donato, Paul N., Donnelly, Verne G., Donovan, Leroy M., Donovan, Michael L., Dooley, James E., Dority, Richard C., Dotson, Jefferson, S.C.

Doughtie, Carl L., Douglas, Thomas E., Dove, Jack P. Sr., Downing, Donald W., Doyle, Michael W., Draeger, Walter F. Jr., Drake, Carl W., Dreher, Richard E., Driver, Dallas A., Dubbelo, Orie J. Jr., Ducat, Bruce C., Ducat, Phillip A., Duckett, Thomas A., Dudash, John Francis, Dudley, Charles G.

Duensing, James A., Duffy, John E., Dugan, John F., Dugan, Thomas W., Duggan, William Y., Duncan, James E., Duncan, Robert R., Dunlap, William C., Dunlop, Thomas E., Dunn, Joseph P., Dunn, Michael E., Dunn, Richard E., Dusing, Charles G., Duvall, Dean A., Dyczkowski, Robert R.

Dye, Melvin C., Dyer, Blenn C., Dyer, Irby III, Eads, Dennis K., Earle, John S., Earll, David J., Earnest, Charles M., East, James B. Jr., Eaton, Curtis A., Eaton, Norman D., Echanis, Joseph Y., Echevarria, Raymond L., Eckley, Wayne A., Ecklund, Arthur G., Edgar, Robert J.

Edmondson, William R., Edmunds, Robert C. Jr., Edwards, Harry J., Edwards, Harry Sanford Jr., Egan, James T. Jr., Egan, William P., Egger, John C. Jr., Ehrlich, Dennis M., Eidsmoe, Norman E., Eilers, Dennis L., Eisenberger, George J., Eisenbraun, William F., Elkins, Frank C., Ellen, Wade L., Ellerd, Carl J.

Elliott, Robert M. Elliott, Andrew J., Elliott, Jerry W., Elliott, Robert T., Ellis, Billy J., Ellis, Randall S., Ellis, William Jr., Ellison, John Cooley, Elzinga, Richard G., Emrich, Roger G., Engen, Robert J., Englander, Lawrence J., Entrican, Danny D., Erickson, David W., Erwin, Donald E.

Escobedo, Julian Jr., Esphenshied, John L., Estes, Walter O., Estocin, Michael J., Evancho, Richard, Evans, Billy K. Jr., Evans, Cleveland Jr., Evans, James J., Evans, William A., Eveland, Mickey, E., Evert, Lawrence G., Fallon, Patrick M., Fanning, Hugh M. Fanning, Joseph P., Fantle, Samuel III.

Farlow, Craig L., Farris, William F., Featherston, Fieldin W., III, Fegan, Ronald J., Feldhaus, John A., Fellenz, Charles R., Fellows, Allen E., Feneley, Francis J., Fenter, Charles F., Ferguson, Douglas D., Ferguson, Walter, Jr., Ferguson, Walter L., Pickler, Edwin J., Fieszel, Clifford W., Finch, Melvin W.

Finger, Sanford I., Finley, Dickie W., Finn, William R., Finney, Arthur T., Finney, Charles E., Fischer, John R., Fischer, Richard W., Fisher, Donald E., Fisher, Donald G., Fitts, Richard A., Fitzgerald, Joseph E., Fitzgerald, Paul L., Jr., Fivelson, Barry F., Flanagan, Sherman E., Jr.

Flanigan, John N., Fleming, Horace H. III, Flynn, George E. III, Fobair, Roscoe H., Foley, Brendan P., Foley, John J. III, Forame, Peter C., Ford, Edward, Ford Randolph W., Forman, William S., Forrester, Ronald W., Fors, Gary H., Fortner, Frederick J., Foster, Marvin L., Foster, Paul L.

Foster, Robert E., Foulks, Ralph E., Jr., Fowler, Donald R., Fowler, James A., Fowler, James J., Fowler, Roy G., Frakes, Dwight G., Francisco, San D., Franklin, Charles E., Franks, Ian J., Fransen, Albert M., Jr., Frawley, William D., Frazier, Paul R., Frederick, David A., Frederick, Peter J., Frederick, William V., Freng, Stanley J., Frenvea, Edmund H., Frink, John W., Fritsch, Thomas W., Frosio, Robert C., Fryar, Bruce C., Frye, Donald P., Fryer, Bennie L., Fryer, Charles W., Fullam, Wayne E., Fuller, James R., Fuller, William O., Fullerton, Frank E.

Gage, Robert H., Galbraith, Russell D., Gallagher, Donald L., Gallagher, John T., Gallant, Henry J., Galvin, Ronald E., Gan, Leonardo M., Ganley, Richard O., Ganoe, Berman, Jr., Garbett, Jimmy R., Garcia, Andres, Garcia, Richardo M., Gardner, Glenn V., Gardner, John G., Gardner, John H.

Garrett, Maurice E., Jr., Garside, Frederick T., Garwood, Robert R., Gassman, Fred A., Gates, Albert H., Jr., Gates, James W., Gatewood, Charles H., Gatwood, Robin F., Gaughan, Robert C., Gauley, James P., Gause, Bernard Jr., Gauthier, Dennis L., Gee, Paul S., Gehrig, James M., Jr., Geist, Stephen J.

George, James E., Jr., Gerstel, Donald A., Gervais, Donald P., Getchell, Paul E., Giammarino, Vincent F., Giannangeli, Anthony R., Gierak, George G., Jr., Gilbert, Paul F., Gilchrist, Robert M., Gillen, Thomas E., Ginn, David L., Gist, Tommy E., Glandon, Gary A., Glanville, John T. Jr.

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Shaw Edward B., Shaw, Gary F., Shay, Donald E., Jr., Shea, James P., Shea, Michael J., Shelton, Charles E., Sherman, John B., Sherman, Peter W., Sherman, Robert C., Shewmake, John D., Sr., Shimek, Samuel D., Shine, Anthony C., Shingledecker, Armon D., Shinn, William C., Shoneck, John R.

Shorack, Theodore J., Jr., Shriver, Jerry M., Shue, Donald M., Sumway, Geoffrey R., Siegwarth, Donald E., Sigafoos, Walter H. III., Sikkink, Roy D., Silva, Claude A., Silver, Edward D., Simmons, Robert E., Simpson, Joseph L., Simpson, Max C., Simpson, Robert L.

Simpson, Walter S., Singer, Donald M., Singleton, Daniel E., Siow, Gale R., Sisson, Winfield W., Sitek, Thomas W., Sittner, Ronald N., Sizemore, James E., Skarman, Orval H., Skeen, Richard R., Skibbe, David W., Skiles, Thomas W., Skinner, Owen G., Skivington, William E., Jr., Small, Burt C., Jr., Smallwood, John J., Smiley, Stanley K., Smith, Carl A., Smith, David R., Smith, Dean, Jr., Smith, Edward D., Jr., Smith, Gene A., Smith, George C., Smith, Hallie W., Smith, Harding E., Sr., Smith, Harold V., Smith, Harry W., Smith, Herbert E., Smith, Howard H., Smith, Joseph S., Smith, Lewis P. II, Smith, Richard D., Smith, Robert N., Smith, Roger L., Smith, Ronald E.

Smith, Victor A., Smith, Warren P., Jr., Smith, William A., Jr., Smith, William M., Smith, William W., Smoot, Curtis R., Snider, Hughie F., Soucy, Ronald P., Soulier, Duwayne, Soyland, David P., Sparenberg, Bernard J., Sparks, Donald L., Sparks, Jon M., Spencer, Dean C. III., Spencer, Warren R., Spengler, Henry M. III, Spilman, Dyke A., Spindler, John G., Spinelli, Domenick A., Spinler, Darrell J., Spitz, George R., Sprague, Stanley G., Sprick, Doyle R., Springston, Theodore, Jr., Sprott, Arthur R., Jr., Squire, Boyd E., Stacks, Raymond C., Staehli, Bruce W.,

Stafford, Ronald D., Stancil, Kenneth L., Standerwick, Robert L., Sr., Stanley, Charles I., Stanley, Robert W., Stanton, Ronald, Stark, Willie E., Staton, Robert M., Jr., Steadman, James E., Stearns, Roger H., Steen, Martin W., Stegman, Thomas, Steimer, Thomas J., Stephensen, Mark L.

Stephenson, Howard D., Stephenson, Richard C., Stevens, Larry J., Stevens, Philip P., Stewart, Donald D., Stewart, Jack T., Stewart, Paul C., Stewart, Peter J., Stewart, Robert A., Stewart, Virgil G., Stickney, Phillip J., Stine, Joseph M., Stinson, William S., Stoddard, Clarence W. Jr.

Stolz, Lawrence G., Stone, James M., Stonebraker, Kenneth A., Story, James C., Stoves, Merritt III, Stow, Lilburn R., Stowers, Aubrey E. Jr., St. Pierre, Dean P., Strait, Douglas F., Straley, John L., Strange, Floyd W., Stratton, Charles W., Strawn, John T.

Stride, James D. Jr., Stringer, John C. II, Stringham, William S., Strobridge, Rodney L., Strohlein, Madison A., Strong, Henry H., Jr., Stroven, Wiliam H., Stuart, John F., Stubberfield, Robert A., Stubbs, William W., Stuckey, John S. Jr., Stuifbergen, Gene P., Stuller, John C., Suber, Randolph B., Sulander, Daniel A.

Sullivan, Farrell Jr., Sullivan, James E., Sullivan, John B. III, Sullivan, Martin J., Sullivan, Robert J., Sutter, Frederick J., Sutton, William C., Suydam, James L., Swanson, John W. Jr., Swanson, Jon E., Swanson, Roger W., Swanson, William E.

Swigart, Paul E. Jr., Switzer, Jerrold A., Swords, Smith III, Sykes, Derri, Szeyller, Edward P., Tadlos, Leonard M., Talken, George F., Talley, James L., Tapp, John P., Tapp, Marshall L., Tatum, Lawrence B., Taylor, Danny G., Taylor, Edd D., Taylor, Edmund B. Jr., Taylor, Fred, Taylor, James H., Taylor, James L.,

Taylor, Neil B., Taylor, Philip C., Taylor, Ted J., Taylor, Walter J. Jr., Teague, James E., Templin, Erwin B. Jr., Teran, Refugio T., Terla, Lothar G. T., Terrell, Keavin L., Terrill, Philip B., Terry, Oral R., Terry, Ronald T., Terwillinger, Virgil B., Thackerson, Walter A. Jr., Thomas, Daniel W., Thomas, Darwin J., Thomas, Harry E., Thomas, James C., Thomas, James R., Thomas, Kenneth D. Jr., Thomas, Leo Tarlton Jr.

Thomas, Robert J., Thompson, Benjamin A., Jr., Thompson, David M., Thompson, Donald E., Thompson, George W., Thompson, Melvin C., Thompson, William James, Thompson, William Joseph, Thoresen, Donald N., Thorne, Larry A., Thornton, Larry C., Thornton, William D., Jr., Thum, Richard C., Thurman, Curtis F., Tice, Paul D., Tiderman, John M.

Tiffin, Rainford, Tigner, Lee M., Timmons, Bruce A., Tipping, Henry A., Todd, Larry R., Todd, Robert J., Todd, William A., Tolbert, Clarence O., Toms, Dennis L., Toomey, Samuel Kamu III, Towle, John C., Townsend, Francis W., Trampski, Donald J.

Traver, John G. III, Travis, Lynn M., Treece, James A., Thembley, J. Forrest G., Trent, Alan R., Trier, Robert D., Trimble, James M., Trimble, Larry A., Tritt, James F., Trivelpiece, Steve M., Tromp, William L., Trowbridge, Dustin C., Trudeau, Albert R., Trujillo, Joseph F.

Trujillo, Robert S., Tubbs, Glenn E., Tucci, Robert L., Tucker, Edwin B., Tucker, James H., Tucker, Timothy M., Tunnell, John W., Turner, Frederick R., Turner, James H., Turner, Kelton R., Turose, Michael S., Tycz, James N., Tye, Michael J., Tyler, George E.

Uhlmansiek, Ralph E., Underwood, Paul G., Underwood, Thomas W., Uplinger, Bar-

ton J., Upner, Edward C., Urquhart, Paul D., Utley, Russel K., Vaden, Woodrow W., Van Artsdalen, Clifford, Van Buren, Gerald G., Van Campen, Thomas C., Van Cleave, Walter S., Vanbendegom, James L.

Vandegeer, Richard, Vanden Eykel, Martin D. II, Vandyke, Richard H., Vanrenselaar, Larry J., Varnado, Michael B., Vaughan, Robert R., Vennik, Robert N., Versace, Humbert R., Vescelius, Milton J., Jr., Viado, Reynaldo R., Villeponteaux, James H., Jr., Vinson, Bobby G., Viscount, Francis E., Vlahakos, Peter G., Vogt, Leonard F., Jr.

Wade, Barton S., Wadsworth, Dean A., Wagener, David R., Wagner, Raymond A., Wald, Gunther H., Walker, Bruce C., Walker, Kenneth E., Walker, Lloyd F., Walker, Michael S., Walker, Orien J., Jr., Walker, Samuel F., Jr., Walker, Thomas T., Walker, William J., Wall, Jerry M.

Wallace, Arnold B., Wallace, Charles F., Wallace, Hobart M., Jr., Wallace, Michael J., Wallace, Michael W., Waller, Therman M., Walling, Charles M., Walsh, Francis A., Jr., Walsh, Richard A. III, Walters, Donovan K., Walters, Tim L., Walters, William, Walton, Lewis C., Wann, Donald L., Wanzel, Charles J. III, Ward, Neal C.

Ward, Ronald J., Ware, John A., Warren, Arthur L., Warren, Ervin, Warren, Gray D., Washburn, Larry E., Waterman, Craig H., Waters, Samuel E., Jr., Watkins, Robert J., Jr., Watson, Frank P., Watson, Jimmy L., Watson, Ronald L., Wax, David J., Weaks, Melvin L., Weatherby, Jack W., Weaver, George R., Jr., Weger, John, Jr., Weimorts, Robert F.

Weisner, Franklin L., Weissmueller, Courtney E., Weitkamp, Edgar W., Jr., Weitz, Monek, Welch, Robert J., Wellons, Phillip R., Wells, Robert J., Welsh, Larry D., Welshan, John T., Wenaas, Gordon J., Werdehoff, Michael R., West, John T., Westbrook, Donald E., Westcott, Gary P., Wester, Albert D., Weston, Oscar B., Jr., Westwood Norman P., Jr.

Wheeler, Engene L., Wheeler, James A., White, Charles E., White, Danforth E., White, James B., Whited, James L., Whitesides, Richard L., Whitford, Lawrence W., Jr., Whitmire, Warren T. Jr., Whitt, James W., Whitteker, Richard L., Whittemore, Frederick H., Whittle, Junior L., Wickham, David W., II, Widdis, James W., Jr.

Widdison, Imlay S., Widener, James E., Widner, Danny L., Widon, Kenneth H., Wiechert, Robert C. Wiehr, Richard D., Wiggins, Wallace L., Wilbrecht, Kurt M., Wilburn, John E., Wilburn, Woodrow H. Wiles, Marvin B. C., Wiley, Richard D., Wilke, Robert F., Wilkins, Calvin W., Wilkins, George H.

Wilkinson, Clyde D., Wilkinson, Dennis E., Willett, Robert V., Jr., Williams, Billie J., Williams, David B., Williams, David R., Williams, Eddie L., Williams Edward W., Williams, Howard K., Williams, James E., Williams, James R., Williams, Leroy C., Williams, Thaddeus E., Jr., Williamson, Don I., Williams, Robert J., Williams, Roy C., Williams, Thaddeus E. Jr., Williamson, Don I., Williamson, James D., Willing, Edward A., Wills, Francis D., Wilson, Claude D., Wilson, Gordon S., Wilson, Harry T., Wilson, Marion E., Wilson, Mickey A., Wilson, Peter J., Wilson, Richard, Jr., Wilson, Robert A., Wilson, Roger E., Wilson, Wayne V.

Wimbrow, Nutter J., II, Windeler, Charles C., Jr., Winkler, John A., Winningham, John Q., Winston, Charles C., III, Winters, Darryl G., Winters, David M., Wiseman, Bain W., Jr., Wistrand, Robert C., Wogan, William M., Wolfe, Donald F., Wolfe, Thomas H., Wolfkeil, Wayne B., Woloszyk, Donald J., Wolpe, Jack, Wong, Edward P. K., Jr., Wonn, James C., Wood, Don. C.

Wood, Patrick H., Wood, Rex S., Wood, Walter S., Wood, William C., Jr., Woods, David W., Woods, Gerald E., Woods, Lawrence, Woods, Robert F., Woodworth, Samuel A., Worcester, John B., Worrell, Paul L., Worst, Karl E., Worth, James F., Wortham, Murray L., Worthington, Richard C., Jr., Wozniak, Frederick J., Wright, Arthur.

Wright, David I., Wright, Donald L., Wright, Frederick W., Wright, Gary G., Wright, James J., Wright, Jerdy A., Wright, Thomas T., Wrobleski, Walter F., Wrye, Blair C., Wynne, Patrick E., Xavier, Augusto M., Yarbrough, William P., Jr., Yeakley, Robin R. Yeeno, Richard C., Jr., Yonan, Kenneth J., Young, Barclay B., Young, Charles L., Young, Jeffrey J.

Young, Robert M., Zavocky, James J., Zawtocki, Joseph S., Zempel, Ronald L., Zerbe, Michael R., Zich, Larry A., Zimmer, Jerry A., Zissu, Andrew G., Zollicoffer, Franklin, Zook, David H., Jr., Zook, Harold Jacob, Zorn, Thomas O., Jr., Zubke, Delano D., Zukowski, Robert J., Zutterman, Joseph A., Jr.

GERALD R. FORD.

MAY 29, 1976.●

BRUCE CATTON: CIVIL WAR "REPORTER"

● Mr. GRIFFIN. Mr. President, a native son of Michigan and an award-winning chronicler of the American Civil War died recently—perhaps where he would have wished—near his beloved Crystal Lake in Michigan's northwest Lower Peninsula. This north woods country was home to Bruce Catton. Here he grew up, and here he returned nearly every summer to work on his numerous histories.

Catton—who considered himself "a reporter, not a historian"—was winner of the Pulitzer Prize for history and the National Book Award in 1954 for "A Stillness at Appomattox," third in his famous trilogy on the Army of the Potomac.

He was a first-rate historian (despite his preference for "reporter")—the first, it is said, to use regimental histories as a source. And despite the fact that he did not publish his first book until the age of 49, Catton produced 17 major works in his lifetime before dying at the age of 78.

Born in Petoskey, Mich., on October 9, 1899, Catton grew up near Benzonia, not far from my hometown of Traverse City. It was this boyhood that he later chronicled in "Waiting for the Morning Train," a moving autobiographical memoir depicting America in the early 20th century.

As a young lad in Benzonia, Catton's early interest in the Civil War was kindled by stories he heard from aging veterans of the Union Army. So vivid were their recollections that Catton once said:

> I think I had the impression then . . . that the Civil War had been fought 10 miles east of Benzonia and just five years before I was born.

In fact, in the 1960's, Catton credited those Civil War veterans who sparked what became his life's work by dedicating his massive three-volume "Centennial History of the Civil War" to "the one-time members of E. P. Case Post No. 372, Grand Army of the Republic, who now sleep in the village cemetery at Benzonia, Michigan."

As a young man, Catton studied history at Oberlin College but dropped out to become a Navy gunner in World War I. He then returned to his studies for a short time, but left again to launch his career as a newspaperman. Over the next two decades, Catton reported for newspapers in Cleveland, Boston, and Washington. At the outbreak of World War II, he went to work for the Government as Director of Information for the War Production Board.

Catton's first book, a recollection of his own experiences in the war, was published in 1948. Then, inspired by some forgotten Civil War narratives he had found in an old bookstore during the 1930's (apparently some of the best of the many regimental histories that appeared between 1865 and 1910), Catton determined to write a novel of the Army of the Potomac. But he failed.

Catton described his attempt this way:

> Well, I got 200 pages down, and it was awful. Dreadful. But the factual parts, where the armies were moving, when the battles were fought, that wasn't bad.
>
> So I scrapped the fictional parts and just wrote what I always wanted to write, the story of the Army of the Potomac. It was just as impromptu as that.

This began the now-famous trilogy, "Mr. Lincoln's Army" and "Glory Road"—published in 1951 and 1952, respectively—and "A Stillness at Appomattox", which was published in 1953 and brought its author worldwide fame.

Next Catton helped launch the unique "American Heritage" magazine, which is credited with bringing the study of history out of the textbooks and into the hands of an eager public. He served as its editor 1954–59, and as senior editor thereafter until his death.

In these years, Catton published 10 more books on the Civil War—all of which received high praise—including "This Hallowed Ground," "Terrible Swift Sword," "Never Call Retreat," and "Gettysburg: The Final Fury." "Whatever else it is," Catton once said, "history ought to be a good yarn."

We in Michigan also remember Catton for "Michigan: A Bicentennial History," which was published during our Nation's birthday. In it, Catton used the history of our State to make a point for intelligent conservation. I recall with special pride receiving one of the first copies of this volume inscribed by the author to "a fellow Michigander."

This November, Catton's final work, "The Bold and Magnificent Dream: America's Founding Years, 1492–1815," will be published. Appropriately, it was written in collaboration with his only child, William, a professor at Middlebury College in Vermont.

Catton himself never graduated from college. But in recognition of his contributions to American history, many great schools of letters bestowed honorary doctorates upon him including, among others, Oberlin, Northwestern, Syracuse, and Harvard.

Catton also served as a director of the Ford Foundation's Fund for the Republic and received from President Ford in 1977 the nation's highest civilian award, the Presidential Medal of Freedom.

That he should be so honored is no surprise to those who are familiar with Bruce Catton's works. From his background as a reporter, as a painstaking

collector of facts, Bruce Catton of Michigan produced some of the best there is to read about the American Civil War. Perhaps he will forgive us if we credit him as being both an outstanding reporter and an outstanding historian.●

TAGGING EXPLOSIVES

Mr. STEVENS. Mr. President, a recent editorial in the Washington Post considered the issue of "tagging." As the editorial pointed out, a system has been developed which involves tagging certain kinds of explosives by mixing in microscopic particles with identifying codes. The program involving identification tagging of dynamite and other cap-powered explosives is ready to start as soon as Congress approves the program.

However, the technology has not yet been developed for the tagging of black and smokeless powders. As you may know, black and smokeless powders are used primarily for reenacting historic battles, target shooting with antique firearms and reproductions and reloading bullets at home. The National Rifle Association, which opposes mandating tagging for black and smokeless powders before the technology has even been developed, has been accused by the Washington Post as seeing the ghost of gun registration behind every door. Whether or not this is another back-door attempt at gun control is really not even the question here. The really frightening aspect is the increasing trend of Government to control and regulate every aspect of our lives. We are witnessing a twofold assault—the erosion of individual rights and the emergence of a political elite which believes that Government can act more responsibly than its citizens. As Justice Louis Brandeis said a half century ago:

> The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning but without understanding.

First, as I mentioned, there is no technology available to tag powders. No studies have yet been done regarding the impact of taggants on firearms, trajectories, shelf life of powders, and so forth. The Bureau of Alcohol, Tobacco and Firearms have admitted that, even if they now had the technology, it would be impossible to estimate the effectiveness of tagged or untagged detection with any degree of accuracy.

Second, based on BATF's own figures, black and smokeless powders are involved in only 9.3 and 13.9 percent of criminal bombings. Of those, an unknown percent are not commercially manufactured powders and, therefore, would not be tagged. Generally, black and smokeless powders are not used for what are commonly known as terrorist activities because, as Mr. Atley Peterson, the Spesial Assistant to the Director for Research and Development of BATF stated:

> They (black and smokeless powders) produce a low order explosion, loss of life, injuries and property damage are small.

Third, the program would require dealers to keep and cross-reference existing forms on black powder and, if smokeless powder is also tagged, the program would require a horrendous recordkeeping system regarding every half-pound or pound of propellant used by sportsmen throughout the country. Even with that kind of recordkeeping system the purchaser of black or smokeless powder could not be identified because when taggants are added by the manufacturer they are added to thousands of pounds at a time. That powder is divided into small cans and sold to numerous dealers who, in turn, sell it to even more numerous customers. Each can, of course, has the same identifying tag and is indistinguishable from thousands and thousands of other cans.

Complete records would have to be kept on each can. Members of the industry have estimated that the additional cost per can before it reaches the dealer would average 80 cents. The additional cost of handling by the dealer is estimated at 20 cents to 50 cents over that. Therefore, the consumer is paying $1.00 to $1.30 extra per can of propellant at an estimated annual cost of $10 million.

Of course, the consumer (also known as the taxpayer) would foot the bill for the entire tagging program at an estimated $19.4 million per year. For that expenditure, the BATF hypothesizes a 50-percent increase over the current arrest rate of 8 percent. Last year there were 355 "incidents" involving the use of black and smokeless powders. BATF's definition of "explosive incidents" includes noncriminal accidents, stolen explosives, recovered explosives, seized explosives threats, and hoax devices as well as criminal accidents and bombings. Therefore the number of criminal bombings is much less than the 355 incidents listed. But, even taking the whole batch of 355 incidents, simple math tells us that there were approximately 28 arrests and a 50-percent increase in the arrest rate would be an additional 14 arrests at the most optimistic estimate—and let me emphasize that not all those arrests would involve bombing incidents.

So, the scenario goes like this; if we can find a safe and efficient technology for tagging black and smokeless powders and, if all black and smokeless powder used in incidents is commercially manufactured sporting grade powder and, if the proposed terrorist decides to buy the powder instead of making a homemade bomb out of materials which are more highly explosive than black or smokeless powder, we may have a slight increase in the arrest rate.

Well, Mr. President, the public may be gradually growing immune to the tremendous waste promulgated by the bureaucratic elite but, no one should accept such a tremendous expenditure for such a small hypothetical result. This is yet another example of well-meaning civil servants jumping into the fire without the necessary information. This time, let us not just "fall into" something in the "hope" that it will work out.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. If there is no further morning business, morning business is closed.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Pursuant to the previous order, the Senate now stands in recess until 10 o'clock tomorrow morning.

In accordance with the order previously entered, at 8:40 p.m., the Senate recessed until tomorrow, September 20, 1978, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 19, 1978:

THE JUDICIARY

Carin Ann Clauss, of Virginia, to be U.S. district judge for the District of Columbia, vice Howard F. Corcoran, retired.

DEPARTMENT OF JUSTICE

H. Brooks Phillips, of Mississippi, to be U.S. marshal for the northern district of Mississippi.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

J. Clay Smith, Jr., of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1982, vice Colston A. Lewis, term expired.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Norval Morris, of Illinois, to be Administrator of Law Enforcement Assistance, vice Richard W. Velde, resigned.

Homer F. Broome, Jr., of California, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration, vice Paul K. Wormeli, resigned.

Henry S. Dogin, of New York, to be Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration, vice Henry F. McQuade, resigned.

HOUSE OF REPRESENTATIVES—*Tuesday, September 19, 1978*

The House met at 11 a.m.

Rev. William A. Tieck, St. Stephen's Methodist Church, Bronx, N.Y., offered the following prayer:

O Fathers' God, from whom every good and perfect law proceedeth, we acknowledge anew and with gladness Thy sovereignty of righteousness, grace, and goodness. We rejoice that from such a blessed sovereignty derive the sanctions which give validity to our laws and vitality to our institutions. We thank Thee for the brooding presence of those who have peopled these Halls over the years, and who remind us that to lose our heritage is to lose our destiny. Bless to us the realization that our Nation's history is our

Nation's judgment, and continually replenish us in our awareness of the critical role we have in shaping that history. Be with all who come to mind as we think of loved ones, friends, and family, and indeed that larger family which is our constituency. And now, we pray, attend us in the tasks that await us, for Thy name's sake. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1678) entitled "An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act as amended."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2701) entitled "An act to amend the Water Resources Planning Act (79 Stat. 244, as amended)."

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 3067) entitled "An act to extend the Commission on Civil Rights for three years, to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BAYH, Mr. KENNEDY, Mr. METZENBAUM, Mr. MATHIAS, and Mr. HATCH to be the conferees on the part of the Senate.

POSTPONING VOTES ON H.R. 12326, H.R. 12303, AND H.R. 12460

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that the unfinished business of September 18, 1978, on motions to suspend the rules and pass the bills, H.R. 12326, H.R. 12303, and H.R. 12460, on which the yeas and nays were ordered, be postponed until debate has been completed on all motions to suspend the rules today, and that it shall be in order to debate each of said motions for 5 minutes prior to the vote thereon.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. BAUMAN. Reserving the right to object, Mr. Speaker, can the gentleman tell us what the reason for the request is?

Mr. WRIGHT. If the gentleman will yield, Mr. Speaker, I will be glad to describe to the gentleman the reason for this request.

President Sadat of Egypt at this very moment is being received by the House Committee on International Relations; and the leadership, both Republican and Democratic, is invited and expected to be present. We felt that it might be an unnecessary rudeness to our distinguished visiting head of state if Members were interrupted by repeated rollcalls during the time when he was trying to give us his report on the meeting at Camp David. Therefore, in deference to President Sadat and to all which has happened, we thought it would not inconvenience the Members to any degree if we simply postponed the votes on each of the three remaining suspension bills until we were ready to vote later in the day.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, I think the objective is a worthy one.

I wonder whether the gentleman will amend his request so that the time allotted for the debate will be equally divided between the opponents and proponents of the legislation.

The SPEAKER. The Chair will inform the gentleman from Maryland that such an agreement could be reached with the chairman and ranking member of each committee involved.

Mr. WRIGHT. Yes. that is the agreement; that was implicit in the request.

Mr. BAUMAN. Mr. Speaker. I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

REV. WILLIAM A. TIECK

(Mr. BINGHAM asked and was given permission to address the House for 1 minute.)

Mr. BINGHAM. Mr. Speaker, on behalf of the House. I am happy to extend our welcome today to a constituent of whom I am very proud. the Reverend William A. Tieck, who just gave us a beautiful prayer.

Mr. Speaker, Reverend Tieck has served for 32 years as pastor of St. Stephen's Methodist Church in the Kingsbridge-Marble Hill area of New York City. He is retiring this year from that post and has accepted a post as pastor of the Edgehill Church, also in the Bronx, of which I am proud to be a member.

Reverend Tieck has served not only as the unofficial historian of the community of Riverdale, in which I have my home, and has published two books in that capacity, but he has been a leader in many community activities, has received many awards, and served as the chairman of the community council, a group of community organizations. In many ways he has served not only as the spiritual leader in our community, but as a force for good and for the betterment of the community in many, many ways.

Mr. Speaker, I feel privileged to have been able to arrange for Reverend Tieck to be invited to give the prayer this morning.

SMITHSONIAN INSTITUTION HONORS "ALL IN THE FAMILY" TV PROGRAMS

(Mr. BRADEMAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRADEMAS. Mr. Speaker, since January 12, 1971, when Archie and Edith Bunker made their television debut, they and the other characters of the much honored television series "All in the Family" have been weekly visitors into the homes of millions of Americans.

In recognition of the unique contribution made by this program to American culture, the Smithsonian Institution tonight will receive the two chairs used by Archie and Edith. Presenting the chairs on behalf of himself and the cast will be Norman Lear, who, as creator and producer of the show, brought added dimensions to American humor and broke new ground for American television.

It is fitting that the Smithsonian Institution is receiving symbols of the series in the same week that the program and its cast once again have been honored by the National Academy of Television Arts and Science's Emmy Awards.

For the fifth time in its 8 years on television, the show was named the outstanding comedy series.

Carroll O'Connor, who portrays Archie, and Jean Stapleton, who plays the role of his wife Edith, were for the third time named outstanding lead performers in a television comedy.

Bob Reiner, cast as Mike, won his second Emmy for best supporting actor. Sally Struthers, who plays Gloria, previously has been honored for her work.

Also receiving awards Sunday night were director Paul Bogart, and writers Bob Weiskopf, Bob Schiller, Barry Harman, and Harve Brosten.

Mr. Speaker, I salute Norman Lear, the members of the "All in the Family" cast and all those who have made possible this outstanding achievement in American television. Mr. Lear and the cast are in the Capitol today and we extend them a warm welcome.

GENERAL LEAVE

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the subject of the Smithsonian Institution's honoring the "All in the Family" TV program.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

ABRUPT CANCELLATION OF CONTRACT STUDY TO DETERMINE SCOPE OF ILLEGAL ALIEN POPULATION IN THIS COUNTRY

(Mr. BURGENER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURGENER. Mr. Speaker, several weeks ago, the U.S. Immigration and Naturalization Service terminated for

the convenience of the Government a contract study to determine the scope of the illegal alien population in this country for which the Congress has appropriated $1 million. The contractor has spent $750,000 and was approaching a conclusion providing the best count on illegal aliens ever made. This vital information could have served as a base point for future policy and the INS enforcement effort as well.

The abrupt cancellation of the survey calls into question the motives of the INS, which is charged with regulating the flow of aliens into this country.

Notwithstanding the fact that the contractor appears to have performed adequately, and, in fact, most of the delays in completing the survey have been admitted by the Immigration and Naturalization Service itself, it now appears that Congress will have appropriated $1 million and have nothing to show for it.

I hope Director Castillo will offer the House a full explanation of the cancellation of the contract. It is particularly disturbing in view of the Director's own public relations efforts to advise illegal aliens about assistance available in applying for permanent resident alien status.

In another part of today's CONGRESSIONAL RECORD, I am inserting a most timely and excellent editorial on this subject from the Los Angeles Times.

IT MUST BE THE PARENTS' FAULT

(Mr. COLLINS of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Speaker, why do D.C. students not have a better record of academic achievement? It must be the fault of the parents.

The headline in Sunday's Washington Post said there was only one merit scholar from the public schools of the District of Columbia. We would have anticipated 28 merit scholars from the public schools of the District based on the average number that qualified as semifinalists in the National Merit Scholar Competition. Why does the District have only 1 instead of 28 which would have been equal to the average school system?

Washington has typical, average American youngsters. The D.C. schools provide the highest priced education. The national school average for cost per pupil is $1,739, but in D.C. the cost per pupil is $2,368. This is top quality.

Washington, D.C., has outstanding teachers based on the pay scale. The national pay average of teachers is $14,244. But in D.C. the average classroom teacher's annual salary is $18,000.

It is obvious that money does not determine quality of education. Recently, I read that a Harvard sociologist made a survey and determined that parents' interest was the biggest incentive for students' improved academic achievement.

In making this comparison, bear in mind that this is a 12th grade evaluation. There are 5,600 D.C. seniors out of a total enrollment of 115,000 which already reflect the attrition as the incompetent students have dropped out. Based on average size, and yearly classes, we would have anticipated about 8,800 seniors instead of only 5,600.

My first suggestion would be to improve the discipline in the D.C. schools. We read that it is difficult to maintain proper learning environment because of disrespectful students. Where students do not respond to discipline, I would have a designated school for these problem youngsters. To develop respect for discipline requires the full cooperation of the parents.

Washington, D.C., has only 1 instead of 28; it proves what we all know. You cannot buy a good education. Spending money for high quality teachers will not make your youngsters smart. Youngsters must have the desire for educational achievement and this comes from enthusiastic, interested parents.

APPOINTMENT OF CONFEREES ON S. 3067, EXTENDING CIVIL RIGHTS COMMISSION ACT OF 1978

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3067) to extend the Commission on Civil Rights for 3 years, to authorize appropriations for the Commission, to effect certain changes to comply with other changes in the law, and for other purposes, with House amendments thereto, insist upon the House amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. WRIGHT). Is there objection to the request of the gentleman from California? The Chair hears none and, without objection, appoints the following conferees: Mr. EDWARDS of California; Mr. SEIBERLING, Mr. DRINAN, Mr. VOLKMER, Mr. BEILENSON, Mr. BUTLER, and Mr. MCCLORY.

There was no objection.

PRIVATE CALENDAR

The SPEAKER pro tempore. This is Private Calendar Day. The Clerk will call the first individual bill on the Private Calendar.

MORRIS AND LENKE GELB

The Clerk called the bill (H.R. 3084) for the relief of Morris and Lenke Gelb.

Mr. BAUMAN. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

IRENE HOFFMAN

The Clerk called the bill (H.R. 5612) for the relief of Irene Hoffman.

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

BALL STATE UNIVERSITY AND THE AMERICAN ASSOCIATION OF COLLEGES FOR TEACHER EDUCATION

The Clerk called the bill (H.R. 1415) for the relief of Ball State University and the American Association of Colleges for Teacher Education.

Mr. ROUSSELOT. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

LESTER BRUCE PRIDAY

The Clerk called the bill (H.R. 1446) for the relief of Lester Bruce Priday.

There being no objection, the Clerk read the bill, as follows:

H.R. 1446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provision of section 212(a)(23) of the Immigration and Nationality Act, Lester Bruce Priday may be issued a visa and admitted to the United States for permanent resident if he is found to be otherwise admissible under the provisions of that Act: *Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ROLANDO R. GAZA AND TERESITA C. GAZA

The Clerk called the bill (H.R. 2655) for the relief of Rolando R. Gaza and Teresita C. Gaza.

Mr. ROUSSELOT. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ESTABLISHING TRUE LOCATION OF ANGELES NATIONAL FOREST

The Clerk called the bill (H.R. 11451) to establish the true location of a portion of northerly boundary of the Angeles National Forest, located in Los Angeles County, Calif., on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino meridian, and to establish the center quarter corner of said section 16.

There being no objection, the Clerk read the bill, as follows:

H.R. 11451

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) The north one-half of section 16, township 4 north, range 10 west, San Bernardino meridian, was conveyed by the United States to Harry M. Miller by Patent recorded August 13, 1923, in book 2511 at page 336, Official Records of Los Angeles County as to a portion thereof, and the remainder to Herbert Colbeck by Patent re-

corded December 4, 1923, in book 2883 at page 144, Official Records of said county; and

(b) The south one-half of section 16 and section 17 of said township and range are now part of the Angeles National Forest. A question has arisen as to the true location of the common boundary of the Angeles National Forest and the private lands in said section 16; and

(c) The section corners and quarter-corners of said section 16 were established by the United States Government surveyors and depicted upon the official plats of said township approved by the United States Surveyor General on April 24, 1905, and December 4, 1917; and

(d) The southeast, northeast, and northwest corners and the north and east quarter-corners have been recovered; however, the southwest corner and the south and west quarter-corners of said section 16 have been thoroughly searched for on several occasions by both public and private surveyors without success; and

(e) The Los Angeles County surveyor, while running the boundary of the Angeles National Forest in 1933, being unable to find the original west quarter-corner of said section 16, set a monument marked "County Surveyor's Monument Forest Reserve Cor. R.E. 62 J–249–FB", at the theoretically correct location of said west quarter-corner to wit: one-half mile south of the found northwest corner and one mile west of the found east quarter-corner of said section 16; and

(f) Numerous surveyors and private parties have accepted said county surveyor's monument marked "Forest Reserve Corner" for the past forty years as the true west quarter-corner of said section 16 and have subdivided, resubdivided, and improved such private lands by constructing houses, roads, wells, utilities, and pipelines within the north half of said section in relation thereto; and

(g) There are currently numerous parcels of land in private ownership within the north half of said section 16, the boundaries of which would be seriously disrupted should the west quarter-corner of said section be reestablished in any location other than that of the 1933 county surveyor's monument marked "Forest Reserve Corner".

SEC. 2. (a) In order to dispel any uncertainty and to insure that the boundaries of said private land not be needlessly disrupted, it is hereby found and declared that the 1933 county surveyor's monument market "County Surveyor's Monument Forest Reserve Cor. R.E. 62 J–249–FB", which was set at a point one-half mile south of the northwest corner and one mile west of the east quarter-corner of said section 16, as said corners and monument are shown on the county surveyor's map B–745 on file in the Office of the County Engineer of the County of Los Angeles, is at the true location of said west quarter-corner as originally set by the Government Land Office Survey or in 1912 and depicted upon the plat of township 4 north, range 10 west, San Bernardino meridian, approved December 4, 1917.

(b) It is further found and declared that the south line of the north half of said section is a line connecting the east and west quarter-corners hereinabove mentioned and that the center quarter-corner of said section is located at the midpoint of the south line of the north half of said section 16 as hereinabove established.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

BATAVIA TURF FARMS, INC.

The clerk called the bill (H.R. 12556) for relief of Batavia Turf Farms, Inc.

There being no objection, the Clerk read the bill, as follows:

H.R. 12556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Batavia Turf Farms, Incorporated (hereinafter referred to as the farms), doing business in Genesse County, New York, an amount to be determined by the Secretary of Agriculture (hereinafter referred to as the Secretary) to have been lost by the farms during any calendar year commencing with the calendar year 1977, through no fault of its own, as a result of restrictions on the movement of grass sod from the farms under the Federal golden nematode quarantine and supporting regulations in part 301, sections 301.85 and 301.85–1 through 301.85–10 of title 7, Code of Federal Regulations, which deal with measures designed to prevent the spread of the golden nematode. Prior to the payment of any amount of money, the farms shall submit to the Secretary such information as determined by the Secretary to be necessary to determine any losses incurred by the farms. The amounts paid to the farms shall be in full settlement of any and all claims of the farms in a calendar year, resulting from restrictions on the movement of articles under the Federal golden nematode quarantine and regulations during calendar year 1977 and in subsequent calendar years.

SEC. 2. No more than 10 per centum of the amount appropriated in this Act shall be paid to or received by any agency or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $2,000.

SEC. 3. The provisions of this Act shall expire on December 31, 1982.

With the following committee amendment:

Page 2, beginning line 5, delete the sentence which reads:

In the event of a dispute between the Secretary and the farms as to the amount due to the farms, the final determination shall be subject to binding arbitration by a person or persons agreed to by the Secretary and the farms.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

LOURDES MARIE HUDSON

Mr. EILBERG. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8449) for the relief of Lourdes Marie Hudson, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, line 7, strike out "Hudson" and insert "Hudson,".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, will the gentleman from Pennsylvania (Mr. EILBERG) explain just briefly what the difference between the bill and the Senate amendment is?

Mr. EILBERG. Mr. Speaker, if the gentleman will yield, the Senate in its wisdom decided that a comma was necessary after the adopting parents' names as they appeared in the bill.

Mr. ROUSSELOT. Mr. Speaker, may I ask the gentleman, was the Senate in its wisdom right?

Mr. EILBERG. We have no objection to the amendment.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR PRINTING OF PROCEEDINGS INCIDENT TO PRESENTATION OF A PORTRAIT OF THE HONORABLE AL ULLMAN

Mr. HAWKINS, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1580) on the resolution (H. Res. 1285) to provide for the printing of the proceedings incident to the presentation of a portrait of the Honorable AL ULLMAN, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR PRINTING OF REPORT ENTITLED "FREEDOM OF INFORMATION REQUESTS FOR BUSINESS DATA AND REVERSE-FOIA LAWSUITS"

Mr. HAWKINS, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1581) on the resolution (H. Res. 1338) providing for the printing of the report entitled "Freedom of Information Requests for Business Data and Reverse-FOIA Lawsuits," which was referred to the House Calendar and ordered to be printed.

REPORT ON SENATE CONCURRENT RESOLUTION AUTHORIZING PRINTING OF ADDITIONAL COPIES OF VOLUMES 1 AND 2 OF COMMITTEE PRINT ENTITLED "A LEGISLATIVE HISTORY OF THE WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972"

Mr. HAWKINS, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1582) on the Senate concurrent resolution (S. Con. Res. 90) authorizing the printing of additional copies of volumes 1 and 2 of the committee print entitled "A Legislative History of the Water Pollution Control Act Amendments of 1972," which was referred to the House Calendar and ordered to be printed.

REPORT ON SENATE CONCURRENT RESOLUTION AUTHORIZING REPRINTING OF BOOK II OF SENATE REPORT ENTITLED "INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS"

Mr. HAWKINS, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1583) on the Senate concurrent resolution (S. Con. Res. 96) authorizing the reprinting of book II of the Senate report entitled "Intelligence Activities and the Rights of Americans," which was referred to the House Calendar and ordered to be printed.

REPORT ON SENATE CONCURRENT RESOLUTION AUTHORIZING PRINTING OF ADDITIONAL COPIES OF COMMITTEE PRINT ENTITLED "PRELIMINARY GUIDE TO EXPORT OPPORTUNITIES TO JAPAN"

Mr. HAWKINS, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1584) on the Senate concurrent resolution (S. Con. Res. 97) authorizing the printing of additional copies of the committee print entitled "Preliminary Guide to Export Opportunities to Japan," which was referred to the House Calendar and ordered to be printed.

REPORT ON SENATE CONCURRENT RESOLUTION AUTHORIZING PRINTING OF ADDITIONAL COPIES OF FINAL REPORT AND VOLUME II OF EXECUTIVE SESSION HEARINGS ON KOREAN INFLUENCE INQUIRY

Mr. HAWKINS, from the Committee on House Administration, submitted a privileged report (Rept. No. 95–1585) on the Senate concurrent resolution (S. Con. Res. 105) authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry, which was referred to the House Calendar and ordered to be printed.

AUTHORIZING PRINTING OF ADDITIONAL COPIES OF FINAL REPORT AND VOLUME II OF EXECUTIVE SESSION HEARINGS ON KOREAN INFLUENCE INQUIRY

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate concurrent resolution (S. Con. Res. 105) authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 105

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Select Committee on Ethics five thousand additional copies of its final report to the Senate, and two thousand additional copies of volume II of its executive session hearings, on the Korean influence inquiry.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. HAWKINS).

Mr. HAWKINS. Mr. Speaker, this Senate concurrent resolution authorizes the printing of additional copies of the final report of the Korean influence inquiry by the Senate. Because of the nature of it and because it is now in the process of being printed for publication, the other body has requested that we use this method to expedite the printing of it so that it might be made available during this session of Congress.

Mr. Speaker, I know of no opposition to the resolution. I have conferred with the minority side in connection with the resolution, and I have not heard of any opposition to considering it in this manner. I, therefore, ask that it be approved.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

After all motions to suspend the rules have been entertained and debated, and after those motions, to be determined by "nonrecord" votes have been disposed of, the Chair will then put the question on each motion on which the further proceedings were postponed.

HAZARDOUS MATERIALS TRANSPORTATION AUTHORIZATIONS

Mr. ROONEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 11871) to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1979, as amended.

The Clerk read as follows:

H.R. 11871

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 115 of the Hazardous Materials Transportation Act (49 U.S.C. 1812) is amended—

(1) by striking out "and" immediately after "1976,"; and

(2) by inserting immediately before the period at the end thereof the following: ", and not to exceed $5,000,000 for the fiscal year ending September 30, 1979.".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROYHILL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 20 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. ROONEY. Mr. Speaker, H.R. 11871 is a 1-year authorization of the Hazardous Materials Transportation Act. The bill is identical to S. 1896; both bills authorize $5 million for the Materials Transportation Bureau for 1 year, the same level of funding as in fiscal year 1977 and fiscal year 1978.

The Hazardous Materials Transportation Act was enacted in 1974 by the 93d Congress and gives the Secretary of Transportation broad authority to prescribe regulations governing the storage, packaging and transportation of hazardous materials by any mode of transport. Under the act, the Secretary has the power to find that a particular quantity or form of material in commerce may pose such an unreasonable risk to health and safety or property as to be hazardous and thus should be regulated in such a way so as to overcome this risk.

The Department of Transportation has established the Materials Transportation Bureau, and within the Bureau, the Office of Hazardous Materials Operations. The Bureau is responsible for the formulation and issuance of regulations concerning all facets of the transportation of hazardous materials. The individual agencies retain the responsibility for inspection, compliance and enforcement of the regulations, but work with the Materials Transportation Bureau in developing regulations that specifically cover only one particular mode of transportation.

My subcommittee was particularly interested in the Bureau's actions in the area of hazardous materials on railroads because of the recent explosions resulting from railroad accidents.

This summer the Bureau and FRA revised the regulations concerning the installation of shelf couplers, head shields and thermal painting of existing jumbo tank cars which transport so much of our Nation's hazardous materials. I am hopeful that measures such as these will reduce the likelihood of the type of tragedies that were so prevalent in the news earlier this year.

I introduced H.R. 11871, authorizing appropriations for implementing the Hazardous Materials Transportation Act at the level of the President's budget request of $3,727,000. After taking testimony from the National Transportation Safety Board and the Bureau, and consulting with the Public Works Committee, which also has jurisdiction over this act, the subcommittee amended the bill, raising the authorization to $5 million,

the level at which it was authorized in fiscal years 1977 and 1978.

Mr. BROYHILL. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, I want to commend the gentleman from Pennsylvania (Mr. ROONEY), the distinguished chairman of the subcommittee, and the ranking minority member, the distinguished gentleman from North Carolina (Mr. BROYHILL), for their work on this very important measure.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. Speaker, I rise in support of H.R. 11871, a bill which authorizes an appropriation of $5 million under the Hazardous Materials Transportation Act for fiscal year 1979 and commend the gentleman from Pennsylvania, Mr. Rooney, the distinguished Commission chairman and the gentleman from Kansas, Mr. SEBELIUS, the ranking minority member for bringing this measure to the floor.

Since the Hazardous Materials Transportation Act became law on January 3, 1975, the need for the continuity of its provisions has become apparent. According to the act, the Secretary of the Department of Transportation delegated the major rulemaking responsibility to the Materials Transportation Bureau (MTB). Prior to this delegation of authority, regulatory responsibility was under the respective operating administration whose mode of transportation was being used with certain hazardous materials. For example, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration and the U.S. Coast Guard had responsibility in regulating the transportation of hazardous materials within their domain. More and more, however, the shipment of nazardous materials crossed over from the unimodal lines and a need for uniform, comprehensive regulations containing all forms of transportation became essential. With the limited exception of the Coast Guard's formulation of regulations regarding bulk transportation of hazardous materials by waterways, the MTB was assigned primary responsibility for forming and carrying out hazardous materials regulation.

Progress under MTB's leadership in overseeing the various operating administrations has been significant. For example, MTB has taken on the extremely important task of keeping each operating administration under the DOT informed of changes within the other transportation organizations which could affect them. MTB has undertaken major programs in educating the public and in publicizing developments in hazardous materials transportation. An example can be seen in the MTB's recently issued 1978 edition of "Emergency Action Guide for Selected Hazardous Material" which contains essential information for steps to take in the event of spills involving volatile, toxic, gaseous, or flammable material shipped in bulk. This important guide has had a distribution of 1½ million copies.

MTB has also consolidated its regulations, eliminating close to 700 pages and will attain even further clarity in the near future. Examples of this include regulations dealing with shipping paper, marking and labeling which were consolidated into much needed uniform labels to ease transfers of hazardous material between the various modes of transportation and enabling identification of hazardous material by personnel in all modes who need to be alerted to the potential risks. Even more to the Bureau's credit, the MTB has initiated international conferences seeking to provide uniformity in identification systems of hazardous material on a worldwide basis.

The MTB also has taken steps to force more safety measures on jumbo tank cars which are carrying an increasing percentage of volatile materials and have been involved in numerous accidents and tragedies. To combat these dangers, the MTB has ordered specification 112 and 114 tank cars to have headshield and protective head jackets which would reduce the number of punctures so often a major cause of these hazardous spills. All new cars built after January 1, 1978, must have this needed protection and tank cars now have until 1979 to be refitted with these specifications. Following recent hearings held by the MTB, the Secretary of Transportation announced an accelerated schedule for these essential regulations.

Mr. Speaker, in light of these important changes in hazardous material transportation, we must not only commend the successes of the DOT's Materials Transportation Bureau, but realize the need for its continued existence with added appropriations to carry out the necessary programs for the next fiscal year. The President's budget request for fiscal year 1979 for the MTB is $3.2 million. However, Mr. Speaker, I concur with the committee's funding recommendation because the need for constant updating of problem solving strategies within the sphere of hazardous material transportation can best be accomplished at the $5 million funding level the committee has authorized.

In conclusion, I believe H.R. 11871 is essential legislation in this day of widespread transportation of potentially hazardous material and I urge my colleagues to approve this necessary funding so that MTB can continue to oversee essential precautionary measures in this area.

Mr. BROYHILL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROONEY. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. JOHNSON).

Mr. JOHNSON of California. Mr. Speaker, this bill authorizes appropriations for fiscal year 1979 for the Office of Hazardous Materials Operations located in the Department of Transportation. The bill was referred jointly to the Committee on Interstate and Foreign Commerce and the Committee on Public Works and Transportation.

On April 19, two of our subcommittees (Aviation and Surface Transportation) held hearings on this bill and referred it to the full committee. On May 10, 1978, after the Committee on Interstate and Foreign Commerce had reported H.R. 11871, the Committee on Public Works and Transportation agreed to concur in the result reported by the Committee on Interstate and Foreign Commerce, and notified that committee of its concurrence by a letter. That letter is set forth at page 6 of House Report 95–1170, part I.

Today, I take this opportunity to state my personal support of this bill, and I urge that it be favorably acted upon by the House.

● Mr. ANDERSON of California. Mr. Speaker, I rise in support of the bill, H.R. 11871, to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1979.

The Transportation Safety Act of 1974 vested all hazardous materials, powers, functions, and duties in the Secretary of Transportation. It consolidated regulatory and enforcement authority over transportation of hazardous materials in Commerce for the first time. The legislation led to the creation of the Materials Transportation Bureau as the coordinating agency for most of the hazardous materials transportation safety program. The Bureau exercises compliance and enforcement authority over container manufacturers and intermodal shippers of hazardous materials, but the Department's operating administrations retain jurisdiction responsibility for enforcement and compliance actions relating to unimodal transportation of hazardous materials.

Both the Public Works and Transportation and Interstate and Foreign Commerce Committees held hearings on this measure and are in agreement with the level authorized. I know of no controversy surrounding this bill and urge its passage.●

● Mr. HOWARD. Mr. Speaker, I support passage of H.R. 11871, a bill which, if enacted, would authorize $5 million for the operation of the Office of Hazardous Materials Operations of the Materials Transportation Bureau, Department of Transportation.

Last April, three House subcommittees heard testimony on the necessary funding level for the Office of Hazardous Materials Operations. At the conclusion of the hearings, all were in agreement that the funding level for fiscal year 1979 should be $5 million.

The authorization is for only 1 year. Next year it will be necessary to repeat this procedure. At that time a thorough review of this Office's operations will be conducted in order to determine its effectiveness.●

● Mr. DEVINE. Mr. Speaker, I rise in support of H.R. 11871, which provides an authorization of $5 million for fiscal year 1979 so that the Department of Transportation may carry out is responsibilities under the Hazardous Materials Transportation Act. This authorization will be the same as it has been for the last 2 years.

Mr. Speaker, the responsibility for carrying out the Hazardous Materials Transportation Act falls within the Materials Transportation Bureau of the Department of Transportation. That bureau has been in existence for nearly 4

years. During that time, it has made some progress in improving the governmental role with respect to the transportation of hazardous materials. For example, the Department of Transportation Emergency Response System for Hazardous Materials provides the standby capacity for responding to accidents when they occur. In my judgment, the Department is to be commended as is the Manufacturing Chemists Association which works closely with the Department in establishing and operating the Chemical Transportation Emergency Center. That center has the capability of quickly notifying local authorities whenever there is an accident involving hazardous materials.

The Department has also entered into the area of testing in order to achieve as little risk as possible in containers or vehicles carrying hazardous materials.

Over the last 6 years, the number of fatalities resulting from hazardous materials transportation accidents has averaged 22 per year. The number of injuries from hazardous materials accidents has increased from 253 in 1971 to 820 in 1976. The number of accidents has increased from 2,256 to 11,898. In all probability, that increase will continue as the need for transporting more hazardous materials also grows. The goal all of us in Government should seek is to insure that accidents involving hazardous materials do not cause injuries or loss of life. This legislation will enable the Department to continue its efforts to develop guidelines and standards to reduce the risk of injury-producing accidents involving hazardous materials.

It has become clear to me, Mr. Speaker, both in this area and in the area of railroad safety that we simply cannot afford to be too prudent because of the dire consequences which can result from costly and unnecessary accidents. There are times when I have literally held my breath for fear of additional train accidents simply because a railroad fails to follow the safety laws. I have been particularly concerned over the past month and a half about the Norfolk & Western Railroad. As you know, that railroad has been on strike and is operating through the use of management employees. I sincerely hope that the management of that railroad takes extra care so as to assure the absence of accidents which could cause severe damage to their own supervisory personnel or to the public at large. I have urged Secretary Adams to considerably beef up the inspection and surveillance of the N. & W. operations during this period of the strike. It is difficult enough to assure safety on the railroads when both management and labor are in close cooperation. It is extremely difficult to achieve safe operations under the adverse conditions presented by a strike.

Mr. Speaker, I support this bill as another step in our efforts to sensibly utilize the resources of government in order to achieve a safer society.●

● Mr. SKUBITZ. Mr. Speaker, I rise in support of H.R. 11871, which authorizes appropriations of $5 million for fiscal year 1979 to carry out the Hazardous Materials Transportation Act. This represents an authorization identical to the authorizations approved for fiscal year 1977 and fiscal year 1978. Of those authorizations, $2.9 million was appropriated during fiscal year 1977 and approximately $3.6 million was appropriated in fiscal year 1978.

As you know, Mr. Speaker, in the Railroad Safety Act of 1970, Congress directed the Department of Transportation to evaluate existing controls over the transportation of hazardous material and to make recommendations for improving safety in that area. The Hazardous Materials Transportation Act of 1975 grew out of recommendations made by the Department of Transportation. The Materials Transportation Bureau is divided into the Office of Hazardous Materials Operations and the Office of Pipeline Safety Operations. Since its creation, the Bureau has gone a long way toward consolidating Government activities in assuring that the transportation of hazardous material is as safe as possible.

Mr. Speaker, this adoption of this bill will authorize moneys so that the activities under the Hazardous Materials Transportation Act can be continued in fiscal year 1979. The economy of this Nation is heavily dependent upon the safe and efficient transportation of thousands of materials which can create hazards if improperly transported. Adoption of this bill will continue this country's dedication toward further reducing the relatively small risk now inherent in the transportation of many materials needed in a modern industrial society.●

● Mr. MADIGAN. Mr. Speaker, I support the $5 million authorization for fiscal year 1979 contained in H.R. 11871 for the purpose of carrying out the responsibilities authorized under the Hazardous Materials Transportation Act of 1974. The amount of authorization is the same as Congress authorized in 1978 and 1977. The bill as originally introduced had contained a request for $3.7 million which is more in line with the amount which had been appropriated for the current fiscal year. The committee increased that amount because it recognized that DOT can and should do more in carrying out its responsibilities under the act.

Let me briefly state some background information. In the Rail Safety Act of 1970, the Congress called for a thorough evaluation of the existing laws and programs relating to the transportation of hazardous materials irrespective of transportation mode. The Department of Transportation reported to Congress that there was a need for greater consolidation of the Government's efforts at regulating the packaging and shipping of hazardous materials. In 1974, Congress passed the Hazardous Materials Transportation Act which was signed into law on January 3, 1975. That act pulled together hazardous materials transportation regulatory responsibility which had previously been with Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the U.S. Coast Guard. Those activities were placed in the Materials Transportation Bureau which was divided into two parts—the Office of Hazardous Material Operations and the Office of Pipeline Safety Operations. The Office of Pipeline Safety Operations had been in existence since the Natural Gas Act of 1968.

Needless to say, the first couple of years under the new regulation were a shakedown period for the Department of Transportation. During much of that time, there was not even a permanent director for the Materials Transportation Bureau.

During the last 2 years, the Materials Transportation Bureau has consolidated and standardized its regulations, eliminating approximately 700 pages, and expects further clarification in its regulations. During the next few years, I would hope that the Bureau would continue to simplify, reevaluate and strengthen existing regulations.

While the Materials Transportation Bureau was given responsibility for promulgating the regulations relating to hazardous material shipments, their inspection role has been primarily to deal with intermodal shipments. The primary responsibility for the inspections to assure compliance with Government regulations continues to be with the FAA, the FHA, the FRA, and the U.S. Coast Guard. I am particularly concerned that our general program of Government inspections in order to obtain compliance with safety rules and regulations has inherent difficulties. There is no way that the Federal Government can become a neighborhood policeman for the enforcement of every standard and regulation promulgated in Washington. In the years to come, I am hopeful that all of us will be able to devise performance standards which place the primary policing responsibility on industry, rather than on a Washington police force.

Mr. Speaker, I support this legislation because the authorization is clearly needed. I would hope, however, that the Department can do a better job both in promulgating necessary regulations and in achieving compliance with those regulations. Hazardous materials must be transported in order to keep our economy functioning. That transportation, however, should not be a menace to the public. It must be conducted in a safe manner and utilize safe containers.

I intend to carefully watch the actions of the Department in spending the money contained in this authorization.●

Mr. ROONEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ROONEY)

that the House suspend the rules and pass the bill H.R. 11871, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. ROONEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1896) to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1979, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 115 of the Hazardous Materials Transportation Act (49 U.S.C. 1812) is amended by—

(1) striking out "and" immediately after "1976,"; and

(2) inserting ", and not to exceed $5,000,000 for the fiscal year ending September 30, 1979" immediately after "1978".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 11871) was laid on the table.

EXPATRIATION PROVISIONS OF IMMIGRATION AND NATIONALITY ACT

Mr. EILBERG. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13349) to repeal certain sections of title III of the Immigration and Nationality Act, and for other purposes, as amended.

The Clerk read as follows:

HR. 13349

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections (b), (c), and (d) of section 301 and section 350 of the Immigration and Nationality Act are hereby repealed, effective as of the date of enactment of this Act.

SEC. 2. Paragraphs (5) and (8) of section 349 and sections 352, 353, 354, and 355 of the Immigration and Nationality Act are hereby repealed.

SEC. 3. Section 301 of the Immigration and Nationality Act is amended by striking out "(a)" after "SEC. 301.", and by redesignating paragraphs (1) through (7) as subsections (a) through (g), respectively.

SEC. 4. Section 349 of the Immigration and Nationality Act is amended by inserting "(a)" after "SEC. 349.", and by renumbering paragraphs (6), (7), and (9) as paragraphs (5), (6), and (7), respectively.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. EILBERG) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. EILBERG).

Mr. EILBERG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 13349, which has been favorably reported by the Judiciary Committee, has been cosponsored by all of the members of the Subcommittee on Immigration, Citizenship, and International Law. It is a noncontroversial bill which is strongly supported by the Departments of State and Justice and it will mean a great deal to all U.S. citizens who reside abroad.

This bill corrects an inequity which has developed in our citizenship law, by repealing section 301(b) of the Immigration and Nationality Act.

Under present law, there is only one group of U.S. citizens which are subject to the extraordinary step of expatriation for failure to reside for a certain period of time in the United States.

Section 301(b) now provides that a U.S. citizen since birth can be stripped of his U.S. citizenship if he does not reside in the United States for 2 years between the ages of 14 and 28. This applies to persons born abroad of a U.S. citizen parent and an alien parent. Many such indiivduals have lived their entire lives as U.S. citizens and suddenly are expatriated at the age of 26 because they are unable to satisfy this residence requirement. No other group of U.S. citizens must meet such a requirement.

We have received hundreds of letters from Americans abroad many of whom are employed with the U.S. Government or by U.S. corporations. These letters cite the hardship and inconvenience caused by section 301(b) and the committee does not believe that this residence requirement is necessary for the proper administration of our naturalization laws. The immigration law already provides that a U.S. citizen may not transmit citizenship to his children born abroad unless the parent has previously resided in the United States. H.R. 13349 does not change these transmission requirements.

H.R. 13349 also repeals certain other sections of the Immigration and Nationality Act which provide for loss of U.S. citizenship. These provisions no longer have any significant operative effect. All of these sections except one were declared unconstitutional by the Supreme Court years ago. The remaining section has been so limited in scope by Supreme Court decisions that it no longer serves any useful purpose. These same Supreme Court decisions have made the continuing existence of the residence requirement of section 301(b), clearly inequitable. The Departments of State and Justice strongly endorse this legislation as do thousands of our citizens around the world and I urge its approval.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the motion to suspend the rules and pass H.R. 13349. I am most pleased that this bill has been scheduled for consideration and commend the leadership for that action.

Mr. Speaker, this bill would repeal section 301(b) of the Immigration and Nationality Act; the only section of our present immigration law whereby natural-born U.S. citizens can lose their citizenship merely through the passage of time. Section 301(b) now provides that a natural-born U.S. citizen who is born outside the United States of one citizen parent and one alien parent, will lose that citizenship if he or she fails to return to the United States to reside here for 2 years after the age of 14, but prior to reaching the age of 28 years. This section first appeared in the Immigration and Nationality Act in 1934, and historical rationale for its inclusion is unclear. However, I suggest it is the product of a time when the number of U.S. citizens residing abroad was significantly lower than it is today. In 1934, there were few, if any, multinational corporations sending U.S. citizens abroad for extended periods of time. It was also uncommon for our own Government to station its employees, in significant numbers, throughout the world. However, it is commonplace today for our citizens to work for U.S. employers and the U.S. Government, outside of the United States for decades, even for virtually their entire adult lives. It follows with the greatly increased number of U.S. citizens abroad, that marriages between our citizens and citizens of other nations have taken place. It is the children of such marriages that are directly affected by this bill.

Such children, who are U.S. citizens at birth, now face the possibility of losing their U.S. citizenship if they fail to return to the United States after the age of 14, but before they reach the age of 26 years, and remain here for at least 2 years.

This residence requirement only applies to citizens who derive their citizenship through section 301(e)(7). All other natural-born citizens have no fear of loss of citizenship unless they take specific overt acts to renounce it.

I can personally attest to the knowledge of the United States and loyalty to our system of at least three citizens who could lose that citizenship under section 301(b).

Though my grandchildren were born in Switzerland, their mother, my daughter, is a U.S. citizen and her husband is a Swiss national. My daughter and her husband have an older son who was born in the United States, and has no fear of losing that citizenship. I am proud to say that the three younger grandchildren born in Switzerland are as genuinely American as any young boy or girl who resides his or her entire life within our shores. American flags drape their rooms and they follow American affairs as enthusiastically and take pride in the American citizenship as fully as any

American who derives his or her citizenship in any other way.

The bill we consider today repeals this section: 301(b) from the Immigration and Nationality Act, and thereby eliminates this outmoded and illogical requirement now placed on one class of natural-born U.S. citizens.

It should be noted that the bill does not replace section 301(A)(7) of the Immigration and Nationality Act, which requires a U.S. citizen to have spent at least 5 years in the United States after the age of 14, before he or she can transmit U.S. citizenship to a child born outside the United States. Therefore, this bill would not permit the evolution of several generations of persons claiming U.S. citizenship who have never been present in the United States.

This bill also repeals sections of the nationality section of the Immigration and Nationality Act which have been declared unconstitutional; namely sections 349(a)(5), 349(a)(8), and 352. It also repeals sections which become meaningless by enactment of this bill.

In addition, it repeals section 350, a rarely used provision which requires a child of an American citizen who is born abroad to take an Oath of Allegiance to the United States before a U.S. Diplomatic or Consular Officer prior to the expiration of a 3-year period after the U.S. citizen has voluntarily sought or claimed benefits of nationality of any foreign state.

In summary then, this bill repeals several sections of the Immigration and Nationality Act which either have been declared unconstitutional, or have operated to work unnecessary hardships on U.S. citizens with respect to their natural-born rights as citizens.

I congratulate the Subcommittee on Immigration for bringing this matter to the House, and strongly urge my colleagues to vote to suspend the rules and pass H.R. 13349.

● Mr. FISH. Mr. Speaker, I join Mr. EILBERG and Mr. MCCLORY in support of this bill, and urge the adoption of the motion to suspend the rules and pass H.R. 13349.

As was pointed out, the bill would repeal several sections of the naturalization title of the Immigration and Nationality Act which have been held unconstitutional by the U.S. Supreme Court. In addition, it repeals section 301(b), whereby natural-born citizens who hold citizenship pursuant to section 301(a)(7), can lose their citizenship by failing to return to the United States for 2 years between the ages of 14 and 28 years.

Repeal of this section is favored by both the Departments of State and Justice. They report difficulty in administering that section, and hardship resulting from its application in some cases.

This bill does nothing to section 301(a)(7) which requires a U.S. citizen to spend 10 years in the United States, 5 of which are after the age of 14, before he or she can transmit U.S. citizenship to a child—if the child's other parent is an alien.

The bill removes the only provision (section 301(b)) whereby a U.S. citizen at birth can, merely through the passage of time and absence from the country, lose their citizenship. This provision has outlived its usefulness, and I concur in the opinion that it should be repealed.

I support enactment of H.R. 13349.●

Mr. EILBERG. Mr. Speaker, I have no further requests for time.

Mr. MCCLORY. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. EILBERG) that the House suspend the rules and pass the bill H.R. 13349, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. EILBERG. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill H.R. 13349, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

REVISE UNITED STATES CODE, TITLE 49, TRANSPORTATION LAWS

Mr. EILBERG. Mr. Speaker, I move to suspend the rules and pass the bill H.R. 10965, to revise, codify, and enact without substantive change, the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation," as amended.

The Clerk read as follows:

H.R. 10965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted as title 49, United States Code, "Transportation", as follows:

TITLE 49—TRANSPORTATION

Subtitle
I. [Reserved—Department of Transportation]
II. [Reserved—Transportation programs]
III. [Reserved—Air transportation]
IV. Interstate commerce
V. [Reserved—Miscellaneous]

SUBTITLE IV—INTERSTATE COMMERCE

Chapter
101. General provisions.
103. Interstate Commerce Commission.
105. Jurisdiction.
107. Rates, Tariffs, and Valuations.
109. Licensing.
111. Operations of Carriers.
113. Finance.
115. Federal-State Relations.
117. Enforcement: Investigations, Rights, and Remedies.
119. Civil and Criminal Penalties.

Chapter 101—GENERAL PROVISIONS

Sec.
10101. Transportation policy.
10102. Definitions.
10103. Remedies as cumulative.

§ 10101. Transportation policy

(a) To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to this subtitle, and in regulating those modes—

(1) to recognize and preserve the inherent advantage of each mode of transportation;

(2) to promote safe, adequate, economical, and efficient transportation;

(3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

(5) to cooperate with each State and the officials of each State on transportation matters; and

(6) to encourage fair wages and working conditions in the transportation industry.

(b) This subtitle shall be administered and enforced to carry out the policy of this section.

§ 10102. Definitions

In this subtitle—

(1) "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a pincipal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(2) "carrier" means a common carrier and a contract carrier.

(3) "car service" includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier.

(4) "common carrier" means an express carrier, a pipeline carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a freight forwarder.

(5) "contract carrier" means a motor contract carrier and a water contract carrier.

(6) "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.

(7) "express carrier" means a person providing express transportation for compensation.

(8) "freight forwarder" means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title.

(9) "highway" means a road, highway, street, and way in a State.

(10) "motor carrier" means a motor common carrier and a motor contract carrier.

(11) "motor common carrier" means a per-

son holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

(12) "motor contract carrier" means a person, other than a motor common carrier, providing motor vehicle transportation for compensation under continuing agreements with a person or a limited number of persons—

(A) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

(B) designed to meet the distinct needs of each such person.

(13) "motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when—

(A) the transportation is as provided in section 10521(a)(1) and (2) of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(14) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Commission, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

(15) "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(16) "pipeline carrier" means a person providing pipeline transportation for compensation.

(17) "rail carrier" means a person providing railroad transportation for compensation.

(18) "railroad" includes—

(A) a bridge, car float, lighter, and ferry used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

(19) "rate" means a rate, fare, or charge for transportation.

(20) "sleeping car carrier" means a person providing sleeping car transportation for compensation.

(21) "State" means a State of the United States and the District of Columbia.

(22) "tariff", when used in reference to a contract carrier, means a schedule.

(23) "transportation" includes—

(A) a locomotive, car, vehicle, motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

(24) "United States" means the States of the United States and the District of Columbia.

(25) "vessel" means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(26) "water carrier" means a water common carrier and a water contract carrier.

(27) "water common carrier" means a person holding itself out to the general public to provide water transportation for compensation.

(28) "water contract carrier" means a person, other than a water common carrier, providing water transportation for compensation under an agreement with another person, including transportation on a vessel provided to a person other than a carrier subject to the jurisdiction of the Commission under this subtitle when the vessel is used to transport only the property of the other person.

§ 10103. Remedies as cumulative

The remedies provided under this subtitle are in addition to remedies existing under another law or at common law.

Chapter 103—INTERSTATE COMMERCE COMMISSION

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SUBCHAPTER I—ORGANIZATION

§ 10301. General

(a) The Interstate Commerce Commission is an independent establishment of the United States Government.

(b) The Commission is composed of 11 members appointed by the President, by and with the advice and consent of the Senate. The President shall designate one of the members as Chairman. Not more than 6 members may be appointed from the same political party.

(c) The term of each member of the Commission is 7 years and begins when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) A member of the Commission may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(e) A vacancy in the membership of the Commission does not impair the right of the remaining members to exercise all of the powers of the Commission. The Commission may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(f) Subject to the general policies, decisions, findings, and determinations of the Commission, the Chairman is responsible for administering the Commission. The Chairman may delegate the powers granted under this subsection to an officer, employee, or administrative unit of the Commission. The Chairman shall—

(1) appoint and supervise, other than regular and full time employees in the immediate offices of another member, the officers and employees of the Commission, including attorneys to provide legal aid service to the Commission and its members, to represent the public interest in investigations and proceedings of the Commission, and to represent the Commission in any case in court;

(2) appoint the heads of major administrative units with the approval of the Commission;

(3) distribute Commission business among officers and employees and administrative units of the Commission;

(4) prepare requests for appropriations for the Commission and submit those requests to the President and Congress with the prior approval of the Commission; and

(5) supervise the expenditure of funds allocated by the Commission for major programs and purposes.

(g) The Commission shall have a seal that shall be judicially recognized.

(h) The expenses of the Commission shall be paid after presentation and approval by the Chairman of itemized vouchers.

§ 10302. Divisions of the commission

(a) The Interstate Commerce Commission may establish and assign Commissioners to serve on as many divisions as may be necessary and may designate any division as an appellate division. Ech division shall be composed of at least 3 Commissioners. The Commission may assign a Commissioner to serve on more than one division.

(b) Unless otherwise directed by the Commission—

(1) the Commissioner senior in service of the Commissioners on a division is chairman of the division; and

(2) the Chairman of the Commission, or another Commissioner designated by the Chairman, may serve on a division temporarily, when there is a vacancy in the membership of the division or when another Commissioner is absent or unable to serve.

(c) The Commission shall designate each division numerically or by a term descriptive of the function of that division.

§ 10303. Secretary of the Commission; public records

(a) The Chairman of the Interstate Commerce Commission, with its approval, shall appoint the Secretary of the Commission.

(b) The Secretary is the custodian of public records filed with the Commission. Copies of classifications, tariffs, and all arrangements filed with the Commission under this subtitle, and the statistics, tables, and figures contained in reports made to the Commission under this subtitle, are public records. A public record, or a copy or extract of it, certified by the Secretary under the seal of the Commission is competent evidence in a proceeding of the Commission and in a judicial proceeding.

§ 10304. Employee boards

The Interstate Commerce Commission may establish employee boards composed of at least 3 employees. An employee who is a director or assistant director of a bureau, a chief of a section, an employee designated by the Commission, or an attorney may serve on a board.

§ 10305. Delegation of authority

(a) The Interstate Commerce Commission may delegate to a division, an individual Commissioner, an employee board, or an employee appointed under section 3105 of title 5, a matter before the Commission for action, including a matter referred to it by either House of Congress or by Congress. However, the Commission may not delegate a matter required to be referred to a joint board under section 10341 of this title, or a function vested in the Commission under this chapter. The Commission may change or rescind a delegation under this subsection at any time. When a Commissioner or employee cannot act on a matter delegated under this section because of absence or another reason, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

(b) Delegation to a division of a matter related to the validity of rates shall be made according to the character of regulation exercised. The delegation of any such matter may not be made according to the kind of class of carrier involved or to the form or mode of transportation in which that carrier may be engaged.

(c) A division, individual Commissioner, employee board, or an employee may act on a matter delegated under subsection (a) of this section. When acting under this section, a division, individual Commissioner, board, or an employee has the same power and authority and is subject to the same duties and obligations as the Commission. Action taken under this section has the same force and is taken in the same manner as if taken by the Commission.

§ 10306. Conduct of proceedings

(a) A majority of the Interstate Commerce Commission, a division, or an employee board is a quorum for the transaction of business. A Commissioner, the Secretary of the Commission, a member of an employee board, or an employee delegated to act under section 10305 of this title may administer oaths.

(b) A party may appear and be heard before the Commission, a division, an individual Commissioner, a board, or an employee delegated to act under section 10305 of this title in person or by an individual admitted to practice under section 10308 of this title. A hearing before the Commission, a division, an individual Commissioner, a board, or an employee shall be made public on the request of an interested party.

(c) The Commission shall conform its forms for giving notice and their manner of service, to the extent practical, to those used by the courts of the United States.

(d) Votes and other official acts of the Commission, a division, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title shall be recorded and shall be made public on the request of an interested party.

(e) A member of a board and an employee delegated to act under section 10305 of this title may not have a pecuniary interest in, hold an official relation to, or own securities of a carrier providing transportation by any mode.

(f) The Commission shall review at least once every 3 years and revise as necessary the rules of practice for matters related to rail carriers adopted under section 305(c) of the Railroad Revitalization and Regulatory Reform Act of 1976 (90 Stat. 53).

§ 10307. Office and sessions.

(a) The principal office of the Interstate Commerce Commission is in the District of Columbia. Until otherwise provided by law, the Commission may obtain suitable offices for its use and may procure all necessary office supplies.

(b) General sessions of the Commission are held at its principal office. However, the Commission may hold special sessions in any part of the United States, for the convenience of the public or the parties and to avoid delay and expense. The Commission, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title may conduct proceedings under this subtitle in any part of the United States for the convenience of the parties.

§ 10308. Admission to practice

Subject to section 500 of title 5, the Interstate Commerce Commission may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

§ 10309. Access to records by congressional committees

(a) When the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate makes a written request for a record in the possession or under the control of the Interstate Commerce Commission related to a matter involving a rail carrier providing transportation subject to this subtitle, the Commission shall send that record or a copy to the committee by the 10th day after the date of receipt of the request. If the record is not sent, the Commission shall send a written report to that committee within the 10-day period stating the reason why the record has not been sent and the anticipated date on which it will be sent. If the Commission transfers a record in its possession or under its control to another department, agency, or instrumentality of the United States Government, or to a person, it must condition the transfer on the guaranteed return of the record by the transferee to the Commission so that the Commission can comply with this subsection.

(b) Subsection (a) of this section does not apply to a record obtained by the Commission from a person subject to regulation by it if the record contains trade secrets or commercial or financial information of a privileged or confidential nature. Subsection (a) of this section does not limit other authority of Congress, either House of Congress, or a committee or subcommittee of either House, to obtain a record.

§ 10310. Reporting official action

(a) The Interstate Commerce Commission shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Commission and, if damages are awarded, the findings of fact supporting the award. The Commission may have its reports published for public use. A published report of the Commission is competent evidence of its contents.

(b)(1) When actions of the Commission in a matter related to a rail carrier is taken by the Commission, a division, a group of Commissioners, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or another individual or group of individuals designated to take official action for the Commission, the written statement of that action (including a report, order, decision and order, vote, notice, letter, policy statements, or regulation) shall indicate—

(A) the official designation of the individual or group taking the action;

(B) the name of each individual taking, or participating in taking, the action; and

(C) the vote or position of each participating individual.

(2) If an individual member of a group taking an official action referred to in paragraph (1) of this subsection does not participate in it, the written statement of the action shall indicate that the member did not participate. An individual participating in taking an official action is entitled to express the views of that individual as part of the written statement of the action. In addition to any publication of the written statement, it shall be made available to the public under section 552(a) of title 5.

§ 10311. Annual report

The Interstate Commerce Commission shall prepare and send to the Congress an annual report before April 3 of each year. The Commission shall include in the annual report information that may be of value in answering questions related to regulation of transportation and the names and pay of individuals employed by the Commission. The Commission may include in its annual report, or send to Congress at any time, recommendations for additional legislation related to regulation of transportation.

SUBCHAPTER II—ADMINISTRATIVE

§ 10321. Powers

(a) The Interstate Commerce Commission shall carry out this subtitle. Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carrying out this subtitle. The Commission may prescribe regulations in carrying out this subtitle.

(b) The Commission may—

(1) inquire into and report on the management of the business of carriers providing, and brokers for, transportation and service subject to this subtitle;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker; and

(3) obtain from those carriers, brokers, and persons information the Commission decides is necessary to carry out this subtitle.

(c)(1) The Commission, an individual Commissioner, an employee board, and an employee delegated to act under section 10305 of this title may subpena witnesses and records related to a proceeding of the Commission from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpena, the Commission, or a party to a proceeding before the

Commission, may petition a court of the United States to enforce that subpena.

(2) Subpena may be signed by a Commissioner, the Secretary of the Commission, or a member of a board when the subpena relates to a matter delegated to the board under section 10305 of this title.

(3) The district courts of the United States have jurisdiction to enforce a subpena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subbena as a contempt of court.

(d)(1) In a proceeding, the Commission may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending before the Commission may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Commission may subpena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Commission or agreed on by the parties by written stipulation filed with the Commission. A deposition shall be filed with the Commission promptly.

(e) Each witness summoned before the Commission or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

§ 10322. Inital decisions—nonrail proceedings

(a) When testimony is taken at a public hearing, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title shall issue an initial decision that includes a statement of reasons for the decision and an order. The decision and order shall be filed with the Interstate Commerce Commission. An initial decision becomes an action of the Commission on the 20th day after the initial decision is served on the interested parties, including persons referred to in section 10328(b) of this title if the proceeding involves a motor carrier, unless—

(1) an exception to the initial decision is filed by an interested party during that 20-day period or by the end of an extended period if authorized by the Commission, or a division or board designated by the Comission; or

(2) the Commission, or a division or board designated by the Commission, stays or postpones the initial decision.

(b) Before an initial decision of an individual Commissioner, a board, or an employee becomes an action of the Commission, a division or board designated by the Commission, or the Commission, may review the initial decision on its own initiative and shall review the initial decision if exception to it is filed under subsection (a)(1) of this section. An initial decision may be reviewed on the record on which it is based or by a further hearing. If an initial decision is reviewed, it is stayed or postponed pending final determination of the matter, and it is an action of the Commission only after the final determination is made.

§ 10323. Rehearing, reargument, and reconsideration—nonrail proceedings

(a) The Interstate Commerce Commission may grant rehearing, reargument, or reconsideration of a decision that has become an action of the Commission. A party to the proceeding may apply for rehearing, reargument, or reconsideration under Commission regulations. Except as provided in subsection (b)(2) of this section, the Commission may limit the right to apply for rehearing, reargument, or reconsideration of a decision of the Commission or a division to a proceeding or class of proceedings involving issues of general transportation importance.

(b)(1) An application for rehearing, reargument, of reconsideration shall be considered and acted on—

(A) by the Commission if the action of the Commission was taken by it; or

(B) by the Commission, or by an appellate division designated by the Commission, if the initial decision was made by a division, individual Commissioner, board, or employee.

(2) An application for rehearing, reargument, or reconsideration shall be granted and referred to an appellate division for action if—

(A) the matter was delegated for an initial decision to an individual Commissioner, board, or employee;

(B) the application is filed by the 20th day after the date the initial decision became an action of the Commission under section 10322(a) of this title; and

(C) the matter has not been previously reviewed under section 10322(b) of this title.

(c) The Commission or an appellate division may change a decision of a division, an individual Commissioner, board, or employee if the decision appears unreasonable after rehearing, reargument, or reconsideration. However, the subsequent decision is subject to rehearing, reargument, or reconsideration under this section.

§ 10324. Commission action

(a) Unless otherwise provided in this subtitle, the Interstate Commerce Commission may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect. However, an action of the Commission in a proceeding involving a motor carrier, a broker, a water carrier, or freight forwarder may not take effect for 30 days.

(b) An action of the Commission remains in effect under its own terms or until superseded. The Commission may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Commission. A court of competent jurisdiction may suspend or set aside any such action.

(c) An action of the Commission is enforceable unless—

(1) application for rehearing, reargument, or reconsideration is made under section 10323 of this title before the effective date of the action; or

(2) the Commission stays or postpones the action.

§ 10325. Judicial review—nonrail proceedings

A civil action to enforce, enjoin, suspend, or set aside an action of the Interstate Commerce Commission taken by a division, individual Commissioner, employee board, or employee delegated to act under section 10305 of this title may be started in a court of the United States only—

(1) on denial of an application for rehearing, reargument, or reconsideration; or

(2) if the application is granted, after a rehearing, reargument, reconsideration or other disposition by the Commission or an appellate division under section 10323 of this title.

§ 10326. Limitations in rulemaking proceedings related to rail carriers

(a) When, under section 553(e) of title 5, an interested person (including a governmental authority) petitions the Interstate Commerce Commission to begin a rulemaking proceeding in a matter related to a rail carrier providing transportation subject to this subtitle, the Commission, or a division, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or another person authorized to act on behalf of the Commission for any part of the proceeding, shall grant or deny that petition by the 120th day after receiving it. If the petition is granted, the Commission, or its delegate, shall begin an appropriate proceeding as soon as practicable. If the petition is denied, the reasons for the denial shall be published in the Federal Register.

(b)(1) If a petition is denied or action is not taken within the 120-day period under subsection (a) of this section, the petitioner may begin a civil action in an appropriate court of appeals of the United States for an order directing the Commission to begin a proceeding to take the action requested in the petition. A civil action under this subsection must be filed by the 60th day after the date of the denial or by the 60th day after the end of the 120-day period, whichever is appropriate.

(2) The court of appeals shall order the Commission to begin the action requested in the record before the Commission or tis court finds that the action requested in that petition is necessary and failure to take that action will result in the continuation of practices that are not consistent with the public interest or are not in accordance with this subtitle. The finding of the court must be based on a preponderance of the evidence in the record before the Coommission or its delegate, or, if the civil action is based on a petition on which action was not taken, in a new proceeding before the court. The court may not require the Commission to take action under this subtitle other than to begin a rulemaking proceeding.

§ 10327. Commission action and appellate procedure in rail carrier proceedings.

(a) Notwithstanding sections 10322, 10323, and 10324(c) of this title, this section applies to a matter before the Interstate Commerce Commission involving a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title. However, other sections of this subtitle related to action of the Commission in proceedings involving rail carriers supersede this section to the extent that they are inconsistent with the provisions of this section related to deadlines.

(b) A division, individual Commissioner, employee board, or employee delegated under section 10305 of this title to make an initial

decision in a matter related to one of those rail carriers shall complete all evidentiary proceedings related to the matter by the 180th day after assignment of the matter. The initial decision shall be submitted to the Commission in writing. If evidence is submitted in writing or testimony is taken at a public hearing, the initial decision shall be submitted to the Commission in writing by the 120th day after completion of all evidentiary proceedings and shall include—

(1) specific findings of fact;

(2) specific and separate conclusions of law;

(3) an order; and

(4) justification of the findings of fact, conclusions of law, and order.

(c) The Commission, or a division designated by the Commission, may void the requirement of an initial decision under subsection (b) of this section and may require the matter to be considered by the Commission or that division on finding that the matter involves a question of Commission policy, a new or novel issue of law, or an issue of general transportation importance, or that it is required for the timely execution of its functions.

(d) In a proceeding under this section, after the parties have had at least an opportunity to submit evidence in written form, the Commission shall give them an opportunity for briefs, written statements, or conferences of the parties. A conference of the parties must be chaired by a division, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or an employee designated by the Commission.

(e) Copies of an initial decision under subsection (b) of this section shall be served on the interested parties. An initial decision becomes an action of the Commission on the 20th day after it is served on the interested parties, unless—

(1) an interested party files an appeal during the 20-day period, or by the end of an additional period of not more than 20 days, if authorized by the Commission or division designated by the Commission; or

(2) the Commission stays or postpones the initial decision under subsection (g)(2) or (j) of this section within the period or additional period referred to in clause (1) of this subsection.

(f)(1) Before an initial decision becomes an action of the Commission, the Commission, or a division or board designated by the Commission, may review the initial decision on its own initiative, and shall review an initial decision if an appeal is filed under subsection (e)(1) of this section. However, a board may not decide an appeal from an initial decision if the appeal may be further appealed to the Commission.

(2) An initial decision may be reviewed on the record on which it is based or by a further hearing. If an initial decision is reviewed, it shall be stayed pending final determination of the matter, and it is an action of the Commission only after the final determination is made. If an appeal is filed under subsection (e)(1) of this section, the final determination shall be made by the 180th day after the appeal is filed.

(3) Review of, or appeal from, an initial decision shall be conducted under section 557 of title 5. The Commission may prescribe rules limiting and defining the issues and pleadings on review under section 557(b) of that title.

(g)(1) The Commission may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

(A) reopen a proceeding;

(B) grant rehearing, reargument, or reconsideration of an action of the Commission; and

(C) change an action of the Commission.

An interested party may petition to reopen and reconsider an action of the Commission under this paragraph under regulations of the Commission.

(2) The Commission may grant a rehearing, reargument, or reconsideration of an action of the Commission that was taken by a division designated by the Commission if it finds that—

(A) the action involves a matter of general transportation importance; or

(B) the action would be affected materially because of clear and convincing new evidence or changed circumstances.

An interested party may petition for rehearing, reargument, or reconsideration of an action of the Commission under this paragraph under regulations of the Commission. The Commission may stay an action pending a final determination under this paragraph. The Commission shall complete reconsideration and take final action by the 120th day after the petition is granted.

(h) An action of the Commission under this section and an action of a designated division under subsection (c) of this section is effective on the 30th day after service on the parties to the proceeding unless the Commission provides for it to become effective on an earlier date.

(i) Notwithstanding this subtitle, an action of the Commission under this section and an action of a designated division under subsection (c) of this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.

(j) The Commission may extend a time period established by this section for a period of not more than 90 days. The extension shall be granted if a majority of the Commissioners agree to it by public vote. The Commission shall send a written annual report to each House of Congress about extensions granted under this subsection. The report shall specify each extension granted (classified by the type of proceeding involved) together with the reasons for and duration of each extension.

(k) If an extension granted under subsection (j) of this section is not sufficient to allow for completion of necessary proceedings, the Commission may grant a further extension in an extraordinary situation if—

(1) at least 7 Commissioners agree to the further extension by public vote; and

(2) not later than the 15th day before expiration of the extension granted under subsection (j) of this section, the Commission submits a written report to the Congress that a further extension has been granted. The report shall include—

(A) a full explanation of the reasons for the further extension;

(B) the anticipated duration of the further extension;

(C) the issues involved in the matter before the Commission; and

(D) the names of personnel of the Commission working on the matter.

§ 10328. Intervention

(a) Designated representatives of employees of a carrier may intervene and be heard in a proceeding arising under this subtitle that affects those employees.

(b) Under regulations of the Interstate Commerce Commission, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this subtitle related to transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title that is, or is proposed to be, provided in a State shall be given to interested persons and to the authority of that State having jurisdiction to regulate transportation by motor vehicles in intrastate commerce on the highways of that State, or, if there is no such authority, to the chief executive officer of the State.

§ 10329. Service of notice in Commission proceedings

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall designate an agent in the District of Columbia, on whom service of notices in a proceeding before, and of actions of, the Commission may be made.

(2) A motor carrier, a broker, a water carrier, or a freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 of this title shall designate an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Commission may be made.

(b) A designation under subsection (a) of this section shall be in writing and filed with the Commission. A motor carrier or broker providing transportation under a certificate or permit issued under this subtitle shall also file the designation with the authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. The designation may be changed at any time in the same manner as originally made.

(c) Except as otherwise provided, notices of the Commission shall be served as follows:

(1) A notice of the Commission to a rail, express, sleeping car, or pipeline carrier is served on its designated agent at the office or usual place of residence in the District of Columbia of that agent. A notice of action of the Commission shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Secretary of the Commission.

(2) A notice to a motor carrier or broker is served personally or by mail on the motor carrier or broker or its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier or broker does not have a designated agent, service may be made by posting a copy of the notice in the office of the secretary or clerk of the authority having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of the State in which the carrier or broker maintains headquarters and in the office of the Secretary of the Commission.

(3) A notice to a water carrier or freight forwarder is served personally or by mail on the water carrier or freight forwarder or its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when notice is served. If a water carrier or freight forwarder does not have a designated agent, service may be made by posting the notice in the office of the Secretary of tho Commission.

(d) In a proceeding involving the lawfulness of classifications, rates, or practices of (1) a rail, express, sleeping car, or pipeline carrier that has not designated an agent under this section, or (2) a freight forwarder, service of notice of the Commission on an attorney in fact who filed the tariff for the car-

rier constitutes service of notice on the carrier.

(e) In a proceeding involving the lawfulness of classifications, rates, or practices—

(1) service of notice of the suspension of a tariff on an attorney in fact of a carrier or broker, except a freight forwarder, constitutes service of notice on the carrier or broker if that attorney filed the tariff and, if the carrier is a water carrier, the notice specifies the classifications, rates, or practices involved; and

(2) service of notice of the suspension of a joint tariff or schedule on a carrier or a broker, except a freight forwarder, that filed that tariff or schedule to which another carrier or broker is a party and, if the carrier is a water carrier, the notice specifies the classifications, rates, or practices involved, constitutes service of notice on all carriers or brokers that are parties to the joint tariff. Service of notice under this subsection may be made by mail on that attorney or carrier at the address shown in the tariff.

§ 10330. Service of process in court proceedings

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall designate an agent in the District of Columbia on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence in the District of Columbia of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Secretary of the Commission.

(b) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, including a motor carrier or broker operating within the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. The designation shall be in writing and filed with the Commission and with the authority of each State in which the motor carrier or broker operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

(c) A designation under this section may be changed at any time in the same manner as originally made.

SUBCHAPTER III—JOINT BOARDS

§ 10341. Jurisdiction.

(a) The Interstate Commerce Commission may refer a matter related to motor carriers providing, or brokers for, transpotation subject to the juisdiction of the Commission under subchapter II of chapter 105 of this title, to a joint board established under section 10342 of this title for action. When the operation of a motor carrier or broker involves not more than 3 States, the Commission shall refer the following matters to a joint board for action when an opportunity for a proceeding is required or when the Commission finds that it is desirable:

(1) an application for a certificate, permit, or license.

(2) a suspension, changed, or revocation of a certificate, permit, or license.

(3) an application for approval and authorization of a consolidation, merger, or acquisition of control or of an operating contract.

(4) a complaint about a violation by a motor carrier or broker of a requirement established under section 10321(a), 10525, 11101(b), or 11142(b) of this title.

(5) a complaint about rates of motor carriers or practices of brokers.

(b) Notwithstanding subsection (a) of this section, if the Commission is prevented by legal proceedings from referring a matter to a joint board, the Commission may determine the matter under subchapter II of this chapter.

§ 10342. Establishment

(a) The Interstate Commerce Commission may establish and abolish joint boards as necessary to carry out section 10341 of this title. Except as provided in this section, a joint board is composed of a member from each State in which transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title is, or is proposed to be, provided. The Commission may appoint an individual nominated under subsection (b) of this section as a member of a joint board.

(b) The member of a joint board from a State shall be nominated by the State authority having jurisdiction to regulate intrastate transportation by motor vehicle on the highways of that State. If there is no such authority in that State or if that authority does not nominate a member when requested by the Commission, the chief executive officer of the State may nominate the member. If both that State authority and the chief executive officer of that State do not nominate a member when requested, the board is constituted without a member from that State if the Commission has appointed members for at least 2 other States to the board.

(c) When a matter required to be referred to a joint board involves the operation of a motor carrier in or through a place outside the United States, if only one State is involved or if only one State nominates an individual to be a member of the joint board, that State may nominate and the Commission may appoint not more than 3 members to the board.

(d) A substitution in the membership of a joint board may be made at any time in the same manner as an initial nomination and appointment under this section.

§ 10343. Powers

(a) When conducting a proceeding involving a matter referred under section 10341 of this title, a joint board may make an initial decision under section 10322 of this title. Subchapter II of this chapter applies to an initial decision of a joint board. However, a joint board may report to the Interstate Commerce Commission its conclusions on evidence received without making an initial decision. When a joint board makes a report instead of an initial decision, the Commission shall decide the matter. The Commission may consider the conclusions of the joint board in making its decision.

(b) A joint board may make an initial decision or report of its conclusions only by a majority vote. However, if only one member of the board participates in the proceeding, that member shall make the initial decision alone.

(c) When a member of a joint board does not participate in a proceeding referred to that board, after notice of the proceeding, the State from which that member was appointed waives its right to act in that proceeding. The waiver does not affect the duty or power of remaining members of the board to continue the proceeding and make an initial decision.

(d) In addition to decisions made under subsection (a) of this section, the Commission shall decide a matter referred to a joint board when—

(1) the authority of each State from which a member of the board may be appointed waives action on a matter referred to that board;

(2) a joint board does not act, or cannot agree, on a matter referred to it in 45 days after the matter is referred to it (or in another period authorized by the Commission); or

(3) a member is nominated for only one State, except as provided in section 10342(c) of this title.

§ 10344. Administration

(a) Meetings and procedures of joint boards shall be conducted under regulations of the Interstate Commerce Commission. The Commission may designate an employee appointed under section 3105 of title 5 to advise and assist a joint board.

(b) When practicable and when directed by the Commission, a proceeding involving a matter referred to a joint board shall be held at a place in the United States that is convient to the parties to the proceeding.

(c) The members of joint boards and employees designated to advise and assist them under subsection (a) of this section may administer oaths, subpena witnesses and the production of records, and take depositions under section 10321 of this title related to matters referred to the boards.

(d) When carrying out this subtitle, members of joint boards shall receive an allowance for travel and subsistence expenses as the Commission shall provide.

(e) A member of a joint board may not have a pecuniary interest in, hold an official relation to, or own securities of, a carrier providing transportation by any mode.

(f) The Administrator of General Services shall assign space and facilities in the Interstate Commerce Commission building not required by the Commission for the use of the national organization of the State commissions and their represenetatives. The space and facilities shall be available for the use of joint boards and for members and representatives of those boards cooperating with the Commission or with another department, agency, or instrumentality of the United States Government. If suitable space is not available in the Interstate Commerce Commission building, the Administrator shall assign space in another building in convenient proximity to it.

SUBCHAPTER IV—RAIL SERVICES PLANNING OFFICE

§ 10361. Organization

The Rail Services Planning Office is an office in the Interstate Commerce Commission.

§ 10362. Duties

(a) In this section—

(1) "avoidable costs of providing transportation", "reasonable management fee", "reasonable return on the value", and "revenue attributable to the rail properties" have the same meanings as they have when used in section 744 of title 45.

(2) "avoidable cost of providing rail freight transportation" has the same meaning as it has when used in section 10905(b)(2)(A) of this title.

(b) The Rail Services Planning Office shall—

(1) assist the Interstate Commerece Commission in studying and evaluating proposals, submitted to the Commission under subchapter III of chapter 113 of this title for

a merger, consolidation, unification, or coordination project, joint use of tracks or other facilities or acquisition or sale of assets involving a rail carrier subject to this subtitle;

(2) assist the Commission in developing, with respect to economic regulation of transportation, policies likely to result in a more competitive, energy-efficient, and coordinated transportation system using each mode of transportation to its maximum advantage to meet the transportation needs of the United States;

(3) assist States and local and regional transportation authorities in deciding whether to provide rail transportation continuation subsidies to continue in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail transportation continuation subsidies;

(4) conduct continuously an analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of the analysis, and advise the Commission of the results of the evaluation;

(5) maintain regulations that contain—

(A) standards for the computation of subsidies for rail passenger service (except passenger transportation compensation disputes subject to the jurisdiction of the Commission under section 562(a) of title 45) that are consistent with the compensation principles described in the final system plan established under the Regional Rail Reorganization Act of 1973 (87 Stat. 985), as amended, and which avoid cross-subsidization among commuter, intercity, and freight rail transportation; and

(B) standards for determining emergency commuter rail passenger transportation operating payments under section 1613 of this title;

(6) maintain, and from time to time revise and republish after a proceeding under section 553 of title 5, standards for determining the revenue attributable to the rail properties, the avoidable costs of providing transportation, a reasonable return on the value, and a reasonable management fee;

(7) maintains regulations that—

(A) develop an accounting system permitting the collection and publication by the Consolidated Rail Corporation or by profitable rail carriers providing transportation over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units; and

(B) determine the avoidable cost of providing rail freight transportation; and

(8) carry out other duties conferred on the Office by law.

(c) The criteria referred to in subsection (b)(3) of this section shall provide that rail properties are suitable for rail transportation continuation subsidies if the cost of the required subsidy to the taxpayers for the properties each year is less than—

(1) the cost of termination of rail transportation over the properties measured by increased fuel consumption and operational costs for alternative modes of transportation;

(2) the cost to the gross national product in terms of reduced output of goods and services;

(3) the cost of relocating or assisting, through unemployment, retraining, and welfare benefits, individuals and firms adversely affected if the rail transportation is terminated; and

(4) the cost to the environment measured by damage caused by increased pollution.

(d) The Office may at any time revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed under subsection (b)(7) of this section.

§ 10363. Director

(a) The Director is the head of the Rail Services Planning Office and is responsible for administering and carrying out the duties of the Office.

(b) The Director is appointed for a term of 6 years by the Chairman of the Interstate Commerce Commission with the concurrence of at least 5 members of the Commission. The Director may be removed by the Commission only for cause.

(c) The Director is appointed without regard to those provisions of title 5 governing appointments in the competitive service and is paid without regard to chapter 51 and subchapter III of chapter 53 of title 5. However, the annual rate of basic pay of the Director may not exceed the rate for GS–18.

(d) The Director is subject to the direction of, and shall report to, a Commissioner or the Chairman, as designated by the Chairman.

§ 10364. Powers.

(a) With the concurrence of the Commissioner designated under section 10363(d) of this title or, if the Director of the Rail Services Planning Office and the Commissioner disagree (and that Commissioner is not the Chairman), with the concurrence of the Chairman of the Commission, the Director may enter into agreements or other transactions necessary to carry out the duties of the Office. The transactions may be entered into with any person, including a governmental authority, and without regard to section 5 of title 41.

(b) On written request of the Director for assistance, each department, agency, and instrumentality of the United States Government shall consider the request, and may furnish assistance the Director considers necessary to carry out the duties of the Office. Assistance may be furnished on a reimbursable or nonreimbursable basis. Assistance includes the transfer of an officer or employee, with the consent, and without prejudice to the position and rating, of the officer or employee.

SUBCHAPTER V—OFFICE OF RAIL PUBLIC COUNSEL

§ 10381. Organization

The Office of Rail Public Counsel is an independent office affiliated with the Interstate Commerce Commission.

§ 10382. Duties; standing

(a) The Office of Rail Public Counsel—

(1) may petition the Interstate Commerce Commission to begin a proceeding on a matter within the jurisdiction of the Commission involving a rail carrier subject to this subtitle;

(2) may seek judicial review of Commission action on a matter involving a rail carrier providing transportation subject to this subtitle, to the extent, and on the same basis, that a person may seek judicial review;

(3) shall solicit, study, evaluate, and present before an informal or formal proceeding of the Commission, the views of those communities and users of rail transportation affected by a proceeding begun by, or pending before, the Commission, when the Director of the Office determines, for whatever reason (such as size or location), that any such community or user might not otherwise be represented adequately at the proceeding;

(4) shall—

(A) before the Commission and other departments, agencies, and instrumentalities of the United States Government when the policies and activities of any such department, agency, or instrumentality affect rail transportation subject to the jurisdiction of the Commission, evaluate and represent the public interest in safe, efficient, reliable, and economical rail transportation; and

(B) assist in constructively representing that public interest by other means;

(5) in carrying out its duties under clauses (1)–(4) of this subsection, shall assist the Commission in developing a public interest record in proceedings before the Commission; and

(6) shall carry out other duties conferred on the Office by law.

(b) The Office has standing as a party to any informal or formal proceeding that is pending or begun before the Commission involving a rail carrier providing transportation subject to this subtitle.

§ 10383. Director

(a) The Director is the head of the Office of Rail Public Counsel and is responsible for administering and carrying out the duties of the Office.

(b) The Director is appointed by the President, by and with the advice and consent of the Senate, for a term of 4 years.

(c) The Director is paid without regard to chapter 51 and subchapter III of chapter 53 of title 5. However, the annual rate of basic pay of the Director may not exceed the rate for GS–18.

§ 10384. Office staff

The Director of the Office of Rail Public Counsel may—

(1) appoint and fix the pay of employees of the Office; and

(2) procure under section 3109 of title 5, the temporary or intermittent services of experts and consultants.

§ 10385. Powers

(a) Without regard to section 5 of title 41, the Director of the Office of Rail Public Counsel may enter into agreements or other transactions necessary to carry out the duties of the Office.

(b) On request of the Director for information, each department, agency, and instrumentality of the United States Government may furnish the information requested.

§ 10386. Reports

The Director of the Office of Rail Public Counsel shall submit each month to the Chairman of the Interstate Commerce Commission a report on the activities of the Office for the preceding month. In its annual report to Congress, the Commission shall include its evaluation and recommendations with respect to the activities, accomplishments, and shortcomings of the Office.

§ 10387. Budget requests and estimates

The Office of Rail Public Counsel shall submit its budget requests and budget estimates concurrently to Congress and to the President.

§ 10388. Authorizations of appropriations

Not more than $1,000,000 may be appropriated to the Office of Rail Public Counsel for the fiscal year ending September 30, 1978, to carry out this subchapter.

CHAPTER 105—JURISDICTION

SUBCHAPTER I—RAIL, RAIL-WATER, EXPRESS, AND PIPELINE CARRIER TRANSPORTATION

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SUBCHAPTER V—RAIL, RAIL-WATER, EXPRESS, AND PIPELINE CARRIER TRANSPORTATION

§ 10501. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation—

(1) by rail carrier, express carrier, sleeping car carrier, water common carrier, and pipeline carrier that is—

(A) only by railroad;

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment; or

(C) by pipeline or by pipeline and railroad or water when transporting a commodity other than water, gas, or oil; and

(2) to the extent the transportation is in the United States and is between a place in—

(A) a State and a place in another State;

(B) the District of Columbia and another place in the District of Columbia;

(C) a State and a place in a territory or possession of the United States;

(D) a territory or possession of the United States and a place in another such territory or possession;

(E) a territory or possession of the United States and another place in the same territory or possession;

(F) the United States and another place in the United States through a foreign country; or

(G) the United States and a place in a foreign country.

(b) The Commission does not have jurisdiction under subsection (a) of this section over—

(1) the transportation of passengers or property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this subtitle; or

(2) transportation by a water common carrier when that transportation would be subject to this subchapter only because the water common carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, a switching, terminal, lighterage, car rental, trackage, handling, or other charge by a rail carrier for services in the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(c) This subtitle does not affect the power of a State, in exercising its police power, to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Commission under this subchapter unless the State requirement is inconsistent with an order of the Commission issued under this subtitle or is prohibited under this subtitle.

§ 10502. Express carrier transportation

The Interstate Commerce Commission has jurisdiction under this subchapter, and not under subchapter II or III of this chapter, over transportation of an express carrier—

(1) by motor vehicle, to the extent the transportation was subject to the jurisdiction of the Commission on September 18, 1940, under part I of the Interstate Commerce Act (24 Stat. 379), as amended; and

(2) by water in providing express transportation.

§ 10503. Railroad and water transportation connections and rates

(a) When a rail carrier and a water common carrier may or do provide jointly, transportation, not entirely in one State from a place in the United States to another place in the United States, even if part of the transportation is outside the United States, the Interstate Commerce Commission has the following jurisdiction over that transportation:

(1) To establish a physical connection between the railroad lines of the rail carrier and the dock at which an interchange is to be made, the Commission may—

(A) require the rail carrier to make a suitable connection between its lines and tracks that have been constructed from the dock to the limits of the railroad right-of-way;

(B) subject to the same restrictions on findings of public convenience and necessity and other matters that are imposed on construction under sections 10901, 10902, and 10907 of this title, require the rail carrier or water common carrier, or both, to construct to the dock at least one track connecting with the lines of the rail carrier;

(C) determine and prescribe the conditions under which a connecting track is to be operated; and

(D) in the construction or operation of the track, determine the sum to be paid to, or by, either carrier.

(2) The Commission may—

(A) prescribe proportional rates, maximum proportional rates, minimum proportional rates, or maximum and minimum proportional rates, of a rail carrier to and from the ports to which the passengers or property is transported by the water common carrier; and

(B) determine the passengers, property, vessels, and on which conditions those rates apply.

In this paragraph, "proportional rates" means those rates that differ from the corresponding local rates to and from a port and apply only to passengers or property brought to the port or carried from the port by a water common carrier.

(b) The Commission may act under this section only after a full hearing. An order entered as the result of an action may be conditioned on giving security for the payment of an amount of money or the discharge of an obligation that is required to be paid or discharged under that order.

§ 10504. Exempt rail mass transportation

(a) In this section—

(1) "local public body"—

(A) has the same meaning given that term by section 1608(c)(2) of this title; and

(B) includes a person or entity that contracts with the local public body to provide transportation services.

(2) "rail mass transportation" means transportation services described in section 1608(c)(5) of this title that are provided by rail.

(b) The Interstate Commerce Commission does not have jurisdiction under this subtitle over rail mass transportation provided by a local public body if—

(1) the Commission would have jurisdiction but for this section; and

(2) the fares of the local public body, or its authority to apply to the Commission for changes in those fares, is subject to the approval or disapproval of the chief executive officer of the State in which the transportation is provided.

§ 10505. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service because of the limited scope of the transaction or service, when the Commission finds that the application of a provision of this subtitle—

(1) is not necessary to carry out the transportation policy of section 10101 of this title;

(2) would be an unreasonable burden on a person, class of persons, or interstate and foreign commerce; and

(3) would serve little or no useful public purpose.

(b) The Commission may begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Commission may specify the period of time during which the exemption is effective.

(c) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary—

(1) to carry out the transportation policy of section 10101 of this title;

(2) to achieve effective regulation by the Commission; and

(3) to serve a useful public purpose.

(d) The Commission may act under this section only after an opportunity for a proceeding.

SUBCHAPTER II—MOTOR CARRIER TRANSPORTATION

§ 10521. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation to the extent that passengers, property, or both, are transported by motor carrier—

(1) between a place in—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

(b) This subtitle does not—

(1) affect the power of a State to regulate intrastate transportation provided by a motor carrier;

(2) authorize the Commission to prescribe or regulate a rate for intrastate transportation provided by a motor carrier;

(3) allow a motor carrier to provide intrastate transportation on the highways of a State; or

(4) except as provided in section 11504(b)

of this title, affect the taxation power of a State over a motor carrier.

§ 10522. Exempt transportation between Alaska and other States

To the extent that transportation by a motor carrier between a place in Alaska and a place in another State under section 10521 of this title is provided in a foreign country—

(1) the Interstate Commerce Commission does not have jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country; but

(2) the motor carrier, as a condition of providing transportation in the United States, shall comply, with respect to all transportation provided between Alaska and the other State, with the requirements of this subtitle related to rates and practices applicable to the transportation.

§ 10523. Exempt motor vehicle transportation in terminal areas

(a)(1) The Interstate Commerce Commission does not have jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery;

(B) is provided by—

(i) a rail carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

(ii) a water carrier subject to the jurisdiction of the Commission under subchapter III of this chapter; or

(iii) a freight forwarder subject to the jurisdiction of the Commission under subchapter IV of this chapter; and

(C) is incidental to transportation provided by the carrier or service provided by the freight forwarder that is subject to the jurisdiction of the Commission under any of those subchapters.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided by such a rail carrier, under subchapter III of this chapter when provided by such a water carrier, and under subchapter IV of this chapter when provided by such a freight forwarder.

(b)(1) Except to the extent provided in paragraph (2) of this subsection, the Commission does not have jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery; and

(B) is provided by a person as an agent or under other arrangement for—

(i) a rail carrier or express carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

(ii) a motor carrier subject to the jurisdiction of the Commission under this subchapter;

(iii) a water carrier subject to the jurisdiction of the Commission under subchapter III of this chapter; or

(iv) a freight forwarder subject to the jurisdiction of the Commission under subchapter IV of this chapter.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the freight forwarder for whom the transportation was provided and is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided for such a rail carrier or express carrier, under this subchapter when provided for such a motor carrier, under subchapter III of this chapter when provided for such a water carrier, and under subchapter IV of this chapter when provided for such a freight forwarder.

§ 10524. Transportation furthering a primary business

The Interstate Commerce Commission does not have jurisdiction under this subchapter over the transportation of property by motor vehicle when—

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

§ 10525. Exempt motor carrier transportation entirely in one State

(a) The Interstate Commerce Commission shall exempt transportation of a motor carrier subject to the jurisdiction of the Commission under this subchapter from compliance with this subtitle when—

(1) the motor carrier provides transportation entirely in one State; and

(2) the Commission finds that the nature or quantity of transportation provided by the motor carrier does not substantially affect or impair uniform regulation by the Commission of motor carrier transportation in carrying out the transportation policy of section 10101 of this title.

(b) The Commission may begin a proceeding under this section on its own initiative or on application of a motor carrier, a State authority having jurisdiction to regulate intrastate transportation by motor vehicle on the highways of that State, or an interested party. An application must be under oath and must contain information required by Commission regulation. The Commission may exempt the transportation by motor carrier or class of motor carriers. When an exemption is granted, the Commission shall issue a certification of exemption describing the conditions required by the public interest under which the certificate is issued.

(c) When an application for exemption is accompanied by a certificate of the authority of the State in which the applicant provides transportation stating the finding of the State authority that the applicant is entitled to a certificate of exemption under this section, the exemption is effective on the 60th day after the application is filed with the Commission unless the Commission denies the application before that date. If not denied before that date, the exemption remains effective until the Commission thereafter denies or revokes it.

(d) The Commission may revoke any part of an exemption granted under this section when it finds that the nature or quantity of the transportation by the motor carrier or class of motor carriers is, or is likely substantially to affect or impair uniform regulation by the Commission of motor carrier transportation in carrying out the transportation policy of section 10101 of this title. If the exemption is revoked, the Commission shall restore without further proceedings the authority any such motor carrier had to provide transportation subject to the jurisdiction of the Commission under this subchapter at the time the exemption was effective.

(e) State regulation of the operations of a motor carrier covered by an exemption under this section is not a burden on interstate or foreign commerce.

§ 10526. Miscellaneous motor carrier transportation exemptions

(a) The Interstate Commerce Commission does not have jurisdiction under this subchapter over—

(1) a motor vehicle transporting only school children and teachers to or from school;

(2) a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and is not operated on a regular route or between specified places;

(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a common carrier;

(4) a motor vehicle controlled and operated by a farmer and transporting—

(A) the farmer's agricultural or horticultural commodities and products; or

(B) supplies to the farm of the farmer;

(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 1141j(a) of title 12) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State—

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance;

(ii) may not exceed in each fiscal year 15 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(iii) shall be provided only after the cooperative association or federation notifies the Commission of its intent to provide the transportation; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

(6) a motor vehicle carrying, for compensation, only property

and that property consists of—

(A) ordinary livestock;

(B) agricultural or horticultural commodities (other than manufactured products thereof);

(C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted); and

(D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products;

(7) a motor vehicle used only to distribute newspapers;

(8) transportation by motor vehicle incidental to transportation by aircraft; or

(9) the operation of a motor vehicle in a national park or national monument.

(b) Except to the extent the Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of this title, the Commission does not have jurisdiction under this subchapter over—

(1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of the municipality or municipalities, except—

(A) when the transportation is under common control, management, or arrangement

for a continuous carriage or shipment to or from a place outside the municipality, or zone; or

(B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from the jurisdiction of the Commission only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or certificate or permit issued, under this subtitle; or

(3) the emergency towing of an accidentally wrecked or disabled motor vehicle.

SUBCHAPTER IV—FREIGHT FORWARDER SERVICE TRANSPORTATION

§ 10541. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation insofar as water carriers are concerned—

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) by water carrier and rail carrier or motor carrier from a place in a State to a place in another State, except that if part of the transportation is outside the United States, the Commission only has jurisdiction over that part of the transportation provided—

(A) by rail carrier or motor carrier that is in the United States; and

(B) by water carrier that is from a place in the United States to another place in the United States; and (3) by water carrier or by water carrier and rail carrier or motor caier between a place in the United States and a place outside the United States, to the extent that—

(A) when the transportation is by rail carrier, the transportation is provided in the United States;

(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) If transportation by a carrier would be subject to the jurisdiction of the Commission under both subsection (a) of this section and subchapter I of this chapter, then that transportation is subject to the jurisdiction of the Commission under subsection (a) of this section. However, that transportation is also subject to the jurisdiction of the Commission under subchapter I of this chapter to the extent that this subtitle imposes requirements on transportation by carriers subject to the jurisdiction of the Commission under subchapter I that are not imposed on transportation by carriers subject to the jurisdiction of the Commission under subsection (a) of this section.

(c) This subtitle does not—

(1) affect the power of a State to regulate intrastate transportation provided by a water carrier; or

(2) authorize the Commission to prescribe or regulate a rate for intrastate transportation by a water carrier.

§ 10542. Exempt bulk transportation

(a)(1) The Interstate Commerce Commission does not have jurisdiction under this subchapter over transportation by a water carrier of commodities in bulk that, under an existing custom of the trade in the handling and transportation of commodities in bulk as of June 1, 1939—

(A) are loaded and carried without wrappers or containers; and

(B) are received and delivered by the carrier without transportation mark or count.

(2) This subsection does not apply to transportation subject to chapter 23A of title 46 on September 18, 1940.

(b) The Commission does not have jurisdiction under this subchapter over transportation by a water contract carrier of commodities in bulk in a non-oceangoing vessel on a normal voyage during which—

(1) the cargo space of the vessel is used for carrying not more than 3 commodities in bulk; and

(2) the vessel passes in or through waters that are international for navigational purposes by a treaty to which the United States is a party.

(c) The Commission does not have jurisdiction under this subchapter over transportation by water carrier of liquid cargoes in bulk in tank vessels—

(1) designed exclusively for transporting such a cargo; and

(2) certified under regulations of the Secretary of Transportation under section 391a of title 46.

§ 10543. Exempt incidental water transportation

(a)(1) The Interstate Commission does not have jurisdiction under this subchapter when the transportation—

(A)(i) is provided in a terminal area and is a transfer, collection, or delivery; or

(ii) is flotage, car ferrying, lighterage, or towage;

(B) is provided by—

(i) a rail carrier subject to the jurisdiction of the Commission under subchapter I of this chapter; or

(ii) a motor carrier subject to the jurisdiction of the Commission under subchapter II of this chapter; and

(C) is incidental to transportation provided by the carrier subject to the jurisdiction of the Commission under either of those subchapters.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided by such a rail carrier and under subchapter II of this chapter when provided by such a motor carrier.

(b)(1) Except to the extent provided in paragraph (2) of this subsection, the Commission does not have jurisdiction under this subchapter over transportation by water when the transportation—

(A)(i) is provided in a terminal area and is a transfer, collection, or delivery; or

(ii) is flotage, car ferrying, lighterage, or towage; and

(B) is provided by a person as an agent or under other arrangement for—

(i) a rail carrier or express carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

(ii) a motor carrier subject to the jurisdiction of the Commission under subchapter II of this chapter; or

(iii) a water carrier subject to the jurisdiction of the Commission under this subchapter.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is considered transportation provided by the carrier for whom the transportation was provided and is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided for such a rail carrier or express carrier, under subchapter II of this chapter when provided for such a motor carrier, and under this subchapter when provided for such a water carrier.

§ 10544. Miscellaneous water carrier transportation exemptions

(a) Except to the extent the Interstate Commerce Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of this title, the Commission does not have jurisdiction under this subchapter over transportation by water carrier when the transportation is provided—

(1) entirely in one harbor or between places in contiguous harbors, other than transportation under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the limits of the harbor or the contiguous harbors;

(2) by a vessel of not more than 100 tons carrying capacity or 100 indicated horsepower;

(3) by a vessel carrying only passengers and equipped to carry not more than 16 passengers;

(4) by a ferry;

(5) by a water carrier transporting equipment of contractors used, or to be used, in construction or repair for the water carrier; or

(6) to carry out salvage operations.

(b) The Commission may exempt from its jurisdiction under this subchapter the transportation of passengers between places in the United States through a foreign port when the Commission finds its jurisdiction is not necessary to carry out the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on its own initiative or on application of an interested party.

(c) The Commission shall exempt from its jurisdiction under this subchapter the transportation of commodities by water contract carrier when the Commission finds that the transportation is not actually and substantially competitive with transportation provided by a carrier subject to the jurisdiction of the Commission under subchapter I or II of this chapter because of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk. The Commission may prescribe conditions applicable to an exemption under this subsection. The Commission may begin a proceeding under this subsection on application of a water contract carrier.

(d)(1) The Commission does not have jurisdiction under this subtitle over transportation by a water common carrier provided between the 48 contiguous States and Alaska if, before January 3, 1959—

(A) the carrier provided that transportation, was also a motor common carrier, and has continued to provide the transportation since before that date; and

(B) the transportation was subject to chapters 23 and 23A of title 46.

(2) The transportation remains subject to the jurisdiction of the Federal Maritime Commission.

(e) The Commission shall exempt the transportation of property on a vessel furnished by a water contract carrier to a per- Commission may exempt the transportation or service subject to the jurisdiction of the Commission under this subtitle when the person uses the vessel to transport its own property and the Commission finds its jurisdiction is not necessary to carry out the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this section on its own initiative or an application of an interested party. The

Comimssion may exempt the transportation by person or class of persons. The Commission shall specify the period of time during which the exemption is effective. The Commission may revoke the exemption when it finds that its jurisdiction over the transportation of the property is necessary to carry out the transportation policy of section 10101. The Commission may deny or revoke an exemption only after an opportunity for a proceeding.

(f)(1) The Commission shall exempt the transportation of property by a water carrier under this subchapter when the Commission finds that the carrier is transporting only the property of a person owning substantially all of the voting stock of the carrier. When an exemption is granted, the Commission shall issue a certificate of exemption. The Commission may begin a proceeding under this subsection on its own initiative or on application of an interested party.

(2) The Commission may revoke an exemption granted under this subsection when it finds the water carrier is no longer entitled to the exemption. If the exemption is revoked, the Commission shall restore without further proceedings the authority the water carrier had to provide transportation subject to the jurisdiction of the Commission under this subchapter at the time the exemption became effective.

SUBCHAPTER IV—FREIGHT FORWARDER SERVICE

§ 10561. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over service that a freight forwarder—

(1) undertakes to provide; or

(2) is authorized or required under this subtitle to provide; to the extent transportation is provided in the United States and is between—

(A) a place in a State and a place in another State, even if part of the transportation is outside the United States;

(B) a place in a State and another place in the same State through a place outside the State; or

(C) a place in the United States and a place outside the United States.

(b) The Commission does not have jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation—

(1) of an air carrier subject to chapter 20 of this title; or

(2) by motor vehicle exempt under section 10526(a)(8) of this title.

§ 10562. Exempt freight forwarder service

The Interstate Commerce Commission does not have jurisdiction under this subchapter over—

(1) service provided by, or under the direction of, a cooperative association (as defined by section 1141j(a) of title 12) or by a federation of cooperative associations, if the federation has no greater power or purposes than a cooperative association;

(2) service subject to the jurisdiction of the Commission and provided with respect to only one of the following categories:

(A) ordinary livestock;

(B) fish (including shellfish);

(C) agricultural or horticultural commodities (other than manufactured products thereof); or

(D) used household goods;

(3) the service of a shipper or a group of shippers in consolidating or distributing freight on a nonprofit basis, for the shipper or members of the group to secure carload, truckload, or other volume rates; or

(4) the service of an agent of a shipper in consolidating or distributing pool cars when the service is provided for the shipper only in a terminal area in which the service is performed.

Chapter 107—RATES, TARIFFS AND VALUATIONS

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SUBCHAPTER I—GENERAL AUTHORITY

§ 10701. Standards for rates, classifications, through routes, rules, and practices

(a) A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title must be reasonable. A through route established by such a carrier must be reasonable. Divisions of joint rates by those carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b)(1) A rate for transportation provided by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that contributes, or would contribute, to the going concern value of that carrier does not violate subsection (a) of this section because it is below a reasonable minimum rate for the service rendered or to be rendered. This subsection does not prohibit increasing a rate to a level that contributes to the going concern value of a rail carrier if the increase is otherwise reasonable. The increased rate is presumed reasonable if it does not exceed the incremental costs of rendering the transportation to which the increase applies.

(2)(A) A rate for transportation by a rail carrier that equals or exceeds the variable costs of providing the transportation is presumed to contribute to the going concern value of the rail carrier proposing the rate. However, the presumption may be rebutted by clear and convincing evidence.

(B) Variable and incremental costs shall be determined under formulas prescribed by the Commission. However, when making a determination of variable costs, the Commission shall, on application of the rail carrier proposing the rate, determine only the costs of that carrier and only those costs of the specific service in question unless the specific information is not available. The Commission may not include in variable costs an expense that does not vary directly with the level of transportation provided under the proposed rate.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title may not discriminate in its rates against a connecting line of another carrier providing transportation subject to the jurisdiction of the Commission under either of those subchapters or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(d) In a proceeding to determine whether a rate for transportation or service provided by a common carrier subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 of this title complies with subsection (a) of this section, the good will, earning power, or certificate or permit under which that carrier is operating may not be considered or admitted as evidence of the value of the property of that carrier. When the carrier receives a certificate or permit under chapter 109 of this title, it is considered to have agreed to this subsection for itself and for all transferees of that certificate or permit.

§ 10702. Authority for carriers to establish rates, classifications, rules, and practices

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall establish—

(1) rates, including divisions of joint rates, and classifications for transportation and

service it may provide under this subtitle; and

(2) rules and practices on matters related to that transportation or service, including rules and practices on—

(A) issuing tickets, receipts, bills of lading, and manifests;

(B) carrying of baggage;

(C) the manner and method of presenting, marking, packing, and delivering property for transportation; and

(D) facilities for transportation.

(b) A contract carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title shall establish, and file with the Commission, actual and minimum rates for the transportation it may provide under this subtitle and rules and practices related to those rates. However, this subsection does not require a motor contract carrier to maintain the same rates and rules related to those rates for the same transportation provided to shippers served by it. The Commission may grant relief from this subsection when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or groups of contract carriers or on its own initiative for a water contract carrier or group of water contract carriers.

§ 10703. Authority for carriers to establish through routes

(a) A carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall establish through routes as follows:

(1) Rail, express, sleeping car, and pipeline carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes.

(2) Rail and water common carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes.

(3) A motor common carrier of passengers shall establish through routes with other carriers of the same type and shall establish individual and joint rates applicable to them.

(4)(A) A motor common carrier of property may establish through routes and joint rates and classifications applicable to them with other carriers of the same type, with rail and express carriers, and with water common carriers, including those referred to in subparagraph (D) of this paragraph.

(B) A motor common carrier of passengers may establish through routes and joint rates applicable to them with rail carriers or water common carriers, including those referred to in subparagraph (D) of this paragraph, or both.

(C) Water common carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes and may establish—

(i) through routes and rates and classifications applicable to them with motor common carriers; and

(ii) through routes and joint rates and classifications applicable to them with water common carriers referred to in subparagraph (D)(ii) of this paragraph.

(D) A through route or joint rate or classification authorized to be established with a carrier referred to in this subparagraph may be established with a water common carrier providing transportation subject to—

(i) the jurisdiction of the Commission under subchapter III of chapter 105 of this title; or

(ii) section 801 or sections 843–848 of title 46 (including persons holding themselves out to transport goods by water but not owning or operating vessels) and providing transportation of property between Alaska or Hawaii and the other 48 States.

A through route and a rate, classification, rule, or practice related to a through route with a water common carrier referred to in this subparagraph is subject to the provisions of this subtitle governing the type of carrier establishing the rate, classification, rule, or practice.

(b) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title that establishes a through route with another carrier under this section shall establish rules for its operation and provide—

(1) reasonable facilities for operating the through route; and

(2) reasonable compensation to persons entitled to compensation for services related to the through route.

§ 10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Interstate Commerce Commission

(a)(1) When the Interstate Commerce Commission, after a full hearing, decides that a rate charged or collected by a carrier for transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or that a classification, rule, or practice of that carrier, does or will violate this subtitle, the Commission may prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed. The Commission may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Commission.

(2) The Commission shall maintain standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under that subchapter that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Commission shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. However, a rate, classification, rule, or practice of a rail carrier may be maintained at a particular level to protect the traffic of another carrier or mode of transportation only if the Commission finds that the rate or classification, or rule or practice related to it, reduces or would reduce the going concern value of the carrier charging the rate. Revenue levels established under this paragraph should—

(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation; and

(B) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

(b)(1) When the Commission decides that a rate charged or collected by—

(A) a motor common carrier for providing transportation subject to its jurisdiction under subchapter II of chapter 105 of this title by itself, with another motor common carrier, with a rail, express, or water common carrier, or any of them;

(B) a water common carrier for providing transportation subject to its jurisdiction under subchapter III of chapter 105 of this title; or

(C) a freight forwarder for providing service subject to its jurisdiction under subchapter IV of chapter 105 of this title;

or that a classification, rule, or practice of that carrier, does or will violate this chapter, the Commission shall prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed.

(2) When prescribing a rate, classification, rule, or practice for transportation or service by common carriers other than by rail carrier, the Commission shall consider, among other factors, the following:

(A) the effect of the precribed rate, classification, rule, or practice on the movement of traffic by that carrier; and

(B) the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide that transportation or service.

(3) If the carrier is a motor or water common carrier or a freight forwarder, the Commission shall also consider the need, in the public interest, of adequate and efficient transportation or service by that carrier at the lowest cost consistent with providing that transportation or service.

(4) If the carrier is a motor common carrier or a freight forwarder, the Commission shall also consider the inherent advantages of transportation by motor common carrier or the inherent nature of freight forwarding, respectively.

(c)(1) When the Commission finds that a minimum rate of a contract carrier for transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title, or a rule or practice related to the rate or the value of the service under it, violates this chapter or the transportation policy of section 10101 of this title, the Commission may prescribe the minimum rate, rule, or practice for the carrier that is desirable in the public interest and will promote that policy. In prescribing the rate, the Commission may not give a motor or water contract carrier an advantage or preference in competition with a motor or water common carrier, respectively, if an advantage or preference is unreasonable or inconsistent with the public interest and the transportation policy of section 10101 of this title.

(2) When prescribing a minimum rate, or rule or practice related to a rate, for a contract carrier, the Commission shall consider—

(A) the cost of the transportation provided by the carrier; and

(B) the effect of a prescribed minimum rate, or rule or practice, on the movement of traffic by that carrier.

(d) In a proceeding involving competition between carriers of different modes of transportation subject to this subtitle, except rail carriers, the Commission, in determining whether a rate is less than a reasonable minimum rate, shall consider the facts and circumstances involved in moving the traffic by the mode of carrier to which the rate is applicable. Subject to the transportation policy of section 10101 of this title, rates of a carrier may not be maintained at a particular level to protect the traffic of another mode of transportation.

(e) In a proceeding involving a proposed increase or decrease in rail carrier rates, the Commission shall specifically consider allegations that the increase or decrease would (1) change the rate relationships between commodities, ports, places, regions, areas, or other particular descriptions of traffic (without regard to previous Commission consideration or approval of those relationships), and (2) have a significant adverse effect on the competitive positions of shippers or consignees served by the rail carrier proposing the increase or decrease. The Commission shall investigate to determine whether the change or effect violates this subtitle when it finds that those allegations are substantially supported on the record. The investigation may be made either before or after the

proposed increase or decrease becomes effective and either in that proceeding or in another proceeding.

(f) The Commission may begin a proceeding under this section on its own initiative or on complaint. A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Commission. A complaint under subsection (c) of this section must contain a full statement of the facts and the reasons for the complaint and must be made under oath.

§ 10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Interstate Commerce Commission

(a)(1) The Interstate Commerce Commission may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates (including maximum or minimum rates or both), the division of joint rates, and the conditions under which those routes must be operated, for a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II (except a motor common carrier of property), or III of chapter 105 of this title. When one of the carriers on a through route is a water carrier, the Commission shall prescribe a differential between an all-rail rate and a joint rate related to the water carrier if the differential is justified.

(2) The Commission may require a rail carrier to include a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route only when—

(A) required under section 10741–10744 or 11103 of this title;

(B) one of the carriers is a water carrier;

(C) inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative through route that could be established; or

(D) the Commission decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

The Commission shall give reasonable preference, subject to this subsection, to the rail carrier originating the traffic when prescribing through routes.

(3) The Commission may not prescribe—

(A) a through route, classification, practice, or rate between a street electric passenger railway not engaged in the general business of transporting freight in addition to its passenger and express business and (i) a rail carrier of a different character, or (ii) a water common carrier; or

(B) a through route or joint rate applicable to it to assist a participating carrier to meet its financial needs.

(b) The Commission shall prescribe the division of joint rates to be received by a carrier providing transportation subject to its jurisdiction under chapter 105 of this subtitle when it decides that a division of joint rates established by the participating carriers under section 10703 of this title, or under a decision of the Commission under subsection (a) of this section, does or will violate section 10701 of this title. When prescribing the division of joint rates of a rail or water carrier under this subsection, the Commission shall consider—

(1) the efficiency with which the carriers concerned are operated;

(2) the amount of revenue required by the carriers to pay their operating expenses and taxes and receive a fair return on the property held and used for transportation;

(3) the importance of the transportation to the public;

(4) whether a particular participating carrier is an originating, intermediate, or delivery line; and

(5) other circumstances that ordinarily, without regard to the mileage traveled, entitle one carrier to a different proportion of a rate than another carrier.

(c) If a division of a joint rate prescribed under a decision of the Commission is later found to violate section 10701 of this title, the Commission may decide what division would have been reasonable and order adjustment to be made retroactive to the date the complaint was filed, the date the order for an investigation was made, or a later date that the Commission decides is justified. The Commission may make a decision under this paragraph effective as part of its original decision.

(d) When the Commission suspends, for investigation, a rail or water common carrier tariff that would cancel a through route, joint rate, or classification without the consent of all carriers that are parties to it or without authorization of the Commission, the carrier proposing the cancellation has the burden of proving that cancellation is consistent with the public interest without regard to subsection (a)(2) of this section. In determining whether a cancellation involving a rail carrier is consistent with the public interest, the Commission shall, to the extent applicable—

(1) compare the distance traveled and the average transportation time and expense required using (A) the through route, and (B) alternative routes, between the places served by the through route;

(2) consider any reduction in energy consumption that may result from cancellation; and

(3) consider the overall impact of cancellation on the shippers and carriers that are affected by it.

(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint and may take action only after a full hearing. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by rail carrier within one year after the complaint is filed if the proceeding is brought on complaint or within 2 years after the commencement of a proceeding on the initiative of the Commission and must take final action by the 270th day after completion of the evidentiary proceedings. The Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but when the Commission cannot meet those time limits, it must report its reasons to Congress.

(2) When a carrier begins a proceeding to adjust the division of joint rates for transportation by a rail carrier under this section by filing a complaint with the Commission, the carrier must also file all of the evidence in support of its position with the complaint and, during the course of the proceeding may only file rebuttal or reply evidence unless otherwise ordered by the Commission.

(3) When the Commission receives a notice of intent to begin a proceeding to adjust the division of joint rates for transportation by a rail carrier under this section, the Commission shall allow the party filing the notice the same right to discovery that a party would have on filing a complaint under this section.

(f) When there is a shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may prescribe temporary through routes that are desirable in the public interest on its own initiative or on application without regard to subsection (e) of this section, subchapter II of chapter 103 of this title, and subchapter II of chapter 5 of title 5.

§ 10706. Rate agreements: exemption from antitrust laws

(a)(1) In this subsection—

(A) "affiliate" means a person controlling, controlled by, or under common control or ownership with another person and "ownership" refers to equity holdings in a business entity of at least 5 percent.

(B) "single-line rate" refers to a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier.

(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that is a party to an agreement of at least 2 rail carriers or an agreement with a class of carriers referred to in subsection (c)(1)(B)–(E) of this section, that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them, shall apply to the Commission for approval of that agreement under this subsection. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Commission may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

(B) The Commission may approve an agreement under subparagraph (A) of this paragraph only when the carriers applying for approval file a verified statement with the Commission. Each statement must specify for each rail carrier that is a party to the agreement—

(i) the name of the carrier;

(ii) the mailing address and telephone number of its headquarter's office; and

(iii) the names of each of its affiliates and the names, addresses, and affiliates of each of its officers and directors and of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least $1,000,000.

(3)(A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

(i) permit a rail carrier to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, or on rates related to a particular interline movement unless that rail carrier can practicably participate in that movement; or

(ii) permit, provide for, or establish a procedure for joint consideration or joint action to protest or seek the suspension of a rate or classification filed by a rail carrier under section 10707 of this title when that rate or classification is established by independent action.

(B) Subparagraph (A) (i) and (ii) of this paragraph does not apply to—

(i) general rate increases or decreases if the agreement gives shippers, under specified procedures, at least 15 days' notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission; or

(ii) broad tariff changes that are of at least substantial general application throughout the area where the changes will apply.

(C) In any proceeding in which a party alleges that a rail carrier voted or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title (except a rail carrier) that is a party to an agreement of at least 2 carriers related to rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them, may apply to the Commission for approval of that agreement under this subsection. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the antitrust laws, as defined in section 12 of title 15, do not apply to parties and other persons with respect to making or carrying out the agreement.

(c)(1) In this subsection, carriers are classified as follows:

(A) Rail, express, and sleeping car carriers are a class.

(B) Pipeline carriers are a class.

(C) Motor carriers are a class.

(D) Water carriers are a class.

(E) Freight forwarders are a class.

(2) The Commission may not approve an agreement under this section—

(A) between or among carriers of different classes unless, in addition to the finding required under subsection (a) or (b) of this section, the Commission finds that the agreement is limited to matters related to transportation under joint rates or over through routes;

(B) related to a pooling, division, or other matter to which subchapter III of chapter 113 of this title applies; or

(C) establishing a procedure for determination of a matter through joint consideration unless the Commission finds that each party to the agreement has the absolute right under it to take independent action before or after a determination is made under that procedure.

(d) The Commission may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Commission, or its delegate, may inspect a record maintained under this section.

(e) The Commission may review an agreement approved under subsection (a) or (b) of this section and shall change the conditions of approval or terminate it when necessary to comply with (1) the public interest and subsection (a), or (2) subsection (b). The Commission shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

(f) The Commission may begin a proceeding under this section on its own initiative or on application. Action of the Commission under this section (1) approving an agreement, (2) denying, ending, or changing approval, (3) prescribing the conditions on which approval is granted, or (4) changing those conditions, has effect only as related to application of the antitrust laws referred to in subsection (a) or (b) of this section.

(g) The Commission shall review each agreement approved under subsection (a) of this section periodically, but at least once every 3 years (1) to determine whether the agreement or an organization established or continued under one of those agreements still complies with the requirements of that subsection and the public interest, and (2) to evaluate the success and effect of that agreement or organization on the consuming public and the national rail freight transportation system. If the Commission finds that an agreement or organization does not conform to the requirements of that subsection, it shall end or suspend its approval. The Commission shall report to the President and Congress the results of the review as a part of its annual report under section 10311 of this title.

(h)(1) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall prepare periodically an assessment of, and shall report to the Commission on—

(A) possible anticompetitive features of—

(i) agreements approved or submitted for approval under subsection (a) of this section; and

(ii) an organization operating under those agreements; and

(B) possible ways to alleviate or end an anticompetitive feature, effect, or aspect in a manner that will further the goals of this subtitle and of the transportation policy of section 10101 of this title.

(2) Reports received by the Commission under this subsection shall be published and made available to the public under section 552(a) of title 5.

§ 10707. Investigation and suspension of new rail carrier rates, classifications, rules, and practices

(a) When a new individual or joint rate or individual or joint classification, rule, or practice related to a rate is filed with the Interstate Commerce Commission by a rail carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title, the Commission may begin a proceeding, on its own initiative or on complaint of an interested party, to determine whether the proposed rate, classification, rule, or practice violates this subtitle. The Commission must give reasonable notice to interested parties before beginning a proceeding under this subsection but may act without allowing an interested party to file an answer or other formal pleading in response to its decision to begin the proceeding.

(b)(1) The Commission must complete a proceeding under this section and make its final decision by the end of the 7th month after the rate, classification, rule, or practice was to become effective. However, if the Commission reports to Congress by the end of the 7th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision. If the Commission does not reach a final decision within the applicable time period, the rate, classification, rule, or practice—

(A) is effective at the end of that time period; or

(B) if already in effect at the end of that time period, remains in effect.

(2) If an interested party has filed a complaint under subsection (a) of this section, the Commission may set aside a rate, classification, rule, or practice that has become effective under this section if the Commission finds it to be in violation of this chapter.

(c)(1) Pending final Commission action in a proceeding under subsection (a) of this section, the Commission may suspend the proposed rate, classification, rule, or practice for 7 months after the time it would otherwise go into effect or, if a report is made under subsection (b) of this section, for 10 months after the time it would otherwise go into effect. However, the Commission may suspend a rate under this subsection only if it appears from specific facts shown by the verified complaint of a person that—

(A) without suspension, the proposed rate change will cause substantial injury to the complainant or the party represented by the complainant; and

(B) it is likely that the complainant will prevail on the merits.

(2) The burden is on the complainant to prove the facts required under paragraph (1) (A) and (B) of this subsection.

(d) If the Commission does not suspend a proposed rate increase that is the subject of a proceeding under this section, the Commission shall require the rail carriers involved to account for all amounts received under the increase until the Commission completes the proceeding or until 7 months after the increase becomes effective, whichever occurs first, or, if the proceeding is extended under subsection (b) of this section, until the Commission completes the proceeding or until 10 months after the increase becomes effective, whichever occurs first. The accounting must specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be justified, plus interest at a rate equal to the average yield (on the date the proposed increase is filed) of marketable securities of the United States Government having a duration of 90 days. When any part of a proposed rate decrease is suspended and later found to comply with this subtitle, the rail carrier may refund any part of the portion of the decrease found to comply with this subtitle if the carrier makes the refund available equally to the shippers who participate in the rate according to the relative amounts of traffic shipped at that rate.

(e) In a proceeding under this section, the burden is on the carrier proposing the changed rate, classification, rule, or practice to prove that the change is reasonable. The Commission shall specifically consider proof that the proposed rate, classification, rule, or practice will have a significantly adverse effect (in violation of section 10701, 10741–10744, or 11103 of this title) on the competitive posture of shippers or consignees affected by the proposed rate, classification, rule, or practice. The Commission shall give proceedings under this section preference over all other proceedings related to rail carriers pending before it and make its decision at the earliest practical time.

§ 10708. Investigation and suspension of new nonrail carrier rates, classifications, rules, and practices

(a)(1) The Interstate Commerce Commission may begin a proceeding to determine the lawfulness of a proposed rate, classification, rule, or practice immediately, on its own initiative or on application of an interested party when—

(A) a new individual or joint rate or individual or joint classification, rule, or practice affecting a rate is filed with the Commission by a common carrier, other than a rail carrier, under this subtitle; or

(B) a new or reduced rate or rule or practice that causes a reduction of a rate is filed with the Commission by a contract carrier under this subtitle.

(2) The Commission must give reasonable notice before beginning a proceeding under this section but may act without allowing an interested carrier to file an answer or other formal pleading in response to its decision to begin the proceeding. The Commission may take whatever final action on a rate, classification, rule, or practice under this section, after a full hearing (whether completed before or after the rate, classification, rule, or practices goes into effect), as it could in a proceeding begun after a rate, classification, rule, or practice became effective.

(b) Pending final Commission action in a proceeding under subsection (a) of this section, the Commission may suspend the proposed rate, classification, rule, or practice at any time for not more than 7 months beyond the time it would otherwise go into effect by (1) delivering to each affected carrier, and (2) filing with the proposed rate, classification, rule, or practice, a statement of reasons for the suspension. If the Commission does not take final action during the suspension period, the proposed rate, classification, rule, or practice is effective at the end of that period. However, if an increase in a rate for, or related to, transportation of property by an express, sleeping car, or pipeline carrier becomes effective under this subsection, the Commission may require the interested carrier to account for all amounts received under it and specify by whom and on whose behalf those amounts were paid. When the Commission takes final action, it may require the carrier to refund with interest, to the persons on whose behalf those amounts were paid, the part of the increased rate found to be in violation of this subtitle.

(c) In a proceeding under this section, the burden is on the carrier proposing the changed rate, classification, rule, or practice to prove that the change is reasonable. The Commission shall give proceedings under this section preference over all other proceedings related to that type of carrier pending before it and make its decision at the earliest practical time.

§ 10709. Determination of market dominance in rail carrier rate proceedings

(a) In this section, "market dominance" means an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies.

(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title is challenged as being unreasonably high, the Commission shall determine, within 90 days after the start of a proceeding under section 10707 of this title to investigate the lawfulness of that rate, whether the carrier proposing the rate has market dominance over the transportation to which the rate applies. The Commission may make that determination on its own initiative or on complaint. A finding by the Commission that the carrier does not have market dominance is determinative in a proceeding under this subtitle related to that rate or transportation unless changed or set aside by the Commission or set aside by a court of competent jurisdiction.

(c) When the Commission finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum. This subsection does not limit the power of the Commission to suspend a rate under section 10707(c) of this title. However, if the Commission has found that a carrier does not have market dominance over the transportation to which the rate applies, the Commission may suspend an increase in that rate as being in excess of a reasonable maximum for that transportation only if it specifically changes or sets aside its prior determination of market dominance.

§ 10710. Elimination of discrimination against recyclable materials

The Interstate Commerce Commission shall maintain regulations that will eliminate discrimination against the transportation of recyclable materials in rate structures and in other Commission practices where discrimination exists.

§ 10711. Effect of certain sections on rail rates and practices

Sections 10701 (a) and (b), 10707, 10709, 10727, and 10728 of this title, related to rail carriers, do not—

(1) modify the application of sections 10701(c), 10726, 10741–10744, or 11103 of this title in determining whether a rate or practice complies with this subtitle;

(2) make a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition that is necessary in the public interest comply with this subtitle;

(3) affect a law in existence on February 5, 1976, or the authority of the Interstate Commerce Commission related to rate relationships between ports; or

(4) affect the authority and responsibility of the Commission to guarantee the equalization of rates in the same port.

SUBCHAPTER II—SPECIAL CIRCUMSTANCES

§ 10721. Government traffic

(a)(1) Except as provided in this section, the full applicable commercial rate shall be paid for transportation for the United States Government by a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle. Section 5 of title 41 does not apply when transportation for the United States Government can be obtained from a common carrier lawfully operating in the area where the transportation will be provided. When prescribing rates for transportation or service by those common carriers, the Commission shall consider increased revenues those carriers receive under this subsection to reflect those increases in appropriate readjustments of their rates.

(2) Paragraph (1) of this subsection does not apply, and the law related to compensation for transportation for the United States Government in effect immediately before September 18, 1940, applies to a rail carrier if that carrier, or its predecessor in interest, received a grant of land from the United States to aid in constructing the railroad it operates but did not file a release with the Secretary of the Interior before September 18, 1941, of claims against the United States Government to, or arising out of, lands that were granted, claimed to have been granted, or claimed should have been granted to that carrier or its predecessor in interest. This paragraph does not require a rail carrier to reconvey to the United States land patented or certified to it or prevent the patent of land that the Secretary of the Interior found was sold by the carrier to an innocent purchaser for value or as preventing the patent of land listed or selected by the carrier and finally approved by the Secretary of the Interior to the extent that issuance of those patents is authorized by law.

(b)(1) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of Chapter 105 of this title may transport individuals for the United States Government without charge or at reduced rates. The carriers may transport custom inspectors and immigration officers without charge. A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title shall provide transportation for the United States Postal Service under chapters 50 and 52 of title 39, and may transport property for the United States Government, a State, or municipal government without charge or at reduced rates.

(2) Unless a carrier is advised by the United States Government that disclosure of a quotation or tender of a rate established under paragraph (1) of this subsection for transportation provided to the United States Government would endanger the national security, the carrier shall file the quoted or tendered rate, including a retroactive rate made after the transportation has been provided, concurrently, with the Commission and the department, agency, or instrumentality of the United States Government for which the quotation or tender was made or for which the proposed transportation is to be provided. A carrier may quote or tender a rate established under an agreement made and approved under section 10706 of this title, but the exemption from the antitrust laws provided by that section applies only when the filing requirements of this paragraph are met.

(c) A different policy, rule of rate making, system of accounting, method of determining costs of transportation, value of property, or rate of return may not be applied to a water carrier owned or controlled by the United States Government than is applied to a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title.

§ 10722. Special passenger rates

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may establish mileage, excursion, and commutation passenger rates including joint interchangeable 5,000 mile passenger rates with the privilege of carrying an amount of baggage without charge for at least 1,000 miles. A carrier that establishes a rate under this subsection may issue tickets reflecting that rate. A carrier that establishes a joint interchangeable 5,000 mile passenger rate shall also establish rules related to that rate specifying the amount of baggage that may be carried without charge under it.

(b) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may establish reduced rates for individuals when the cost of that transportation is an expense of an individual who—

(1) is a member of the armed forces of the United States or another country when that individual is traveling in uniform on official leave, furlough, or pass; or

(2) has been released from the armed forces of the United States not more than 30 days before beginning that transportation and is traveling home or to a prospective place of abode.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may provide transportation without charge for an individual who is—

(1) a necessary caretaker of livestock, poultry, milk, or fruit;

(2) an executive officer, general chairman, or counsel of an employee organization authorized to represent employees of that carrier under chapter 8 of title 45;

(3) an employee in charge of the mails when working or traveling to or from work;

(4) a newsboy on a train;

(5) a baggage agent; or

(6) a witness attending a legal investigation in which that carrier has an interest.

(d) (1) In this subsection—

(A) "employee of a carrier" includes an individual who—

(i) is furloughed, pensioned, or not on active duty because of advanced age or infirmity that occurred while the individual was employed by that carrier;

(ii) is being transported for purposes of reemployment by that carrier; or

(iii) was killed while employed by a carrier.

(B) "family" refers to the family of an individual named in clause (A) of this paragraph and includes the widow or minor child of an employee who died while employed by a carrier.

(2) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may provide transportation without charge for officers and employees (and their families) of that carrier, another carrier (by exchange of passes or tickets), or a telegraph, telephone, or cable company. A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter may provide services related to movement of property for those individuals without charge. However, transportation of, or service provided for, household goods must be due to a change in the place of employment of an officer or employee while employed by that carrier.

§ 10723. Charitable purposes

(a) (1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may provide transportation without charge for—

(A) an indigent or homeless individual (including an individual transported by a hospital, charitable organization, or municipal government and the necessary agents employed in that transportation);

(B) an individual who is confined to or about to enter or return home after discharge from a—

(i) Veterans' Administration facility;

(ii) State home for disabled volunteer soldiers; or

(iii) soldiers' and sailors' home, under an arrangement with the board of managers of that facility;

(C) a minister of religion; and

(D) an individual who is confined to a hospital or charitable facility.

(2) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may provide transportation for property without charge or at a reduced rate for—

(A) a charitable purpose, including transportation referred to in paragraph (1) of this subsection; or

(B) use in a public exhibition.

(b) (1) A common carrier subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may provide transportation without charge to an individual who is—

(A) engaged only in charitable work;

(B) injured in an accident (together with the physicians and nurses attending that individual); or

(C) a traveling secretary of a railroad Young Men's Christian Association.

(2) That carrier may also establish a rate and related rule equal to the rate charged for the transportation of one individual when that rate is for the transportation of—

(A) a totally blind individual and an accompanying guide or a dog trained to guide the individual; or

(B) a disabled individual and accompanying attendant when required because of the disability.

§ 10724. Emergency rates

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may transport passengers without charge to provide relief during general emergencies.

(b) (1) The Commission may authorize a common carrier providing transportation or service subject to its jurisdiction under chapter 105 of this title to give reduced rates for service and transportation of property to or from an area in the United States to provide relief during emergencies. When the Commission takes action under this subsection, it must—

(A) define the area of the United States in which the reduced rates will apply;

(B) specify the period during which the reduced rates are to be in effect; and

(C) define the class of persons entitled to the reduced rates.

(2) The Commission may specify those persons entitled to reduced rates by reference to those persons designated as being in need of relief by the United States Government or by a State government authorized to assist in providing relief during the emergency. The Commission may act under this subsection without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

§ 10725. Special freight forwarder rates

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may establish—

(1) assembling rates and related classsifications and rules for transportation of less-than-carload or less-than-truckload shipments to a place for further movement as part of a carload or truckload shipment; and

(2) distribution rates and related classifications and rules for transportation of less-than-carload or less-than-truckload shipments moving from a place to which those shipments have moved as a part of a carload or truckload shipment.

(b) A rate and related classification and rule established under subsection (a) of this section applies to freight forwarders and other persons using common carrier transportation under like conditions and may differ from other rates and related classifications and rules that contemporaneously apply to the same common carrier transportation when the difference is justified by a difference in the respective conditions under which that transportation is used. A rate referred to in subsection (a) (1) or (2) of this section may not be established to cover the line-haul transportation between the principal concentration place and the principal break-bulk place.

(c) When establishing a rate, classification, rule, or practice, a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may consider the type of property tendered to it by a freight forwarder for transportation when the property is in parcels that do not exceed 70 pounds in weight or 100 inches in length and girth combined. The carrier may establish the lowest rate for the transportation that allows it to receive adequate compensation for transporting the property.

§ 10726. Long and short haul transportation

(a) (1) A carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I or III of chapter 105 of this title (except an express carrier) may not charge or receive more compensation for the transportation of property of the same kind or of passengers—

(A) for a shorter distance than for a longer distance over the same line or route in the same direction (the shorter distance being included in the longer distance); or

(B) under a through rate than under the total of the intermediate rates it may charge or receive under this chapter. This paragraph does not authorize a carrier to charge or receive equal compensation for transportation over a shorter distance than a longer distance.

(2) Notwithstanding paragraph (1) of this subsection, a carrier operating over a circuitous line or route to or from a place in competition with another carrier of the same type that operates over a more direct line or route may establish a rate (otherwise complying with this chapter) for that transportation to meet the rate of the carrier operating over the more direct line or route. A rate established for transportation over a circuitous route under this subsection is not evidence of the compensatory character of rates in other proceedings.

(b) In special cases, the Commission may authorize a carrier to charge less for transportation over a longer distance than it charges for transportation over a shorter distance. The Commission may prescribe the extent to which a carrier authorized to charge less under this subsection may be granted relief from subsection (a) of this section. However, the Commission may not authorize a rate—

(1) to or from the more distant place unless it is reasonably compensatory; or

(2) because of potential water competition not actually in existence.

(c) A rail carrier that reduces a rate for the transportation of property in competition with a water route to or from competitive places may increase the rate only if, after a proceeding, the Commission finds that the increase is proposed because of a change in conditions other than the elimination of water competition.

(d) The Commission shall begin a proceeding under subsection (b) of this section on application of a carrier. A carrier may file a proposed rate with its application, and if the application is approved, the Commission shall allow the rate to become effective one day after the approval becomes effective.

§ 10727. Demand-sensitive rates

(a) The Interstate Commerce Commission shall maintain standards and procedures to permit seasonal, regional, or peak-period demand rates for transportation by rail carrier subject to its jurisdiction under subchapter I of chapter 105 of this title, that—

(1) provide sufficient incentives to *shippers*, through rescheduling and advance planning, to reduce peak-period shipments;

(2) generate additional revenue for rail carriers;

(3) make better use of the national supply of freight cars;

(4) improve—

(A) the transportation of property by rail carriers;

(B) the level of employment by rail carriers; and

(C) the financial stability of markets served by rail carriers.

(b) The Commission shall submit to Congress an annual report on the implementation of rates under this section and shall include recommendations for additional legislation needed to make it easier to establish those rates.

§ 10728. Separate rates for distinct rail services

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, on its own initiative or at the request of a shipper or receiver of property, establish separate rates for distinct rail services to—

(1) encourage competition;

(2) promote increased reinvestment by rail carriers; and

(3) encourage and make easier increased non-railroad investment in the production of rail services.

(b) The Commission shall maintain expeditious procedures to permit separate rates for distinct rail services to—

(1) encourage those services to be priced in accordance with the cash-outlay incurred by the carrier and the demand for them; and

(2) enable shippers and receivers to evaluate transportation and related rates and alternatives.

§ 10729. Rail carriers; incentive for capital investment

(a) A proposed rate, classification, rule, or practice for transportation by a rail carrier subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title requiring a total capital investment of at least $1,000,000 to implement shall be established and become effective under this section. This section applies whether the investment is made individually or collectively by the carrier or by a shipper, receiver, or agent for any of them, or by a third party.

(b) A rail carrier may file a notice of intent to establish a rate, classification, rule, or practice under subsection (a) of this section with the Commission. The notice must include a sworn affidavit detailing the anticipated capital investment. Unless the Commission after holding a proceeding under subsection (c) of this section, decides by the 180th day after the notice is filed that the proposed rate, classification, rule, or practice would violate this subtitle, the carrier may establish that rate, classification, rule, or practice at any time during the next 180 days, and it may become effective 30 days after it is established. Once a rate, classification, rule, or practice becomes effective under this section, the Commission may not, for 5 years, suspend or set it aside as violating section 10701, 10726, 10741–10744, or 11103 of this title. However, the Commission may order the rate, classification, rule, or practice to be revised to a level equal to the variable costs of providing the transportation when the Commission finds the level then in effect reduces the going concern value of the carrier.

(c) On request of an interested person, the Commission shall hold a proceeding to investigate and determine whether the rate, classification, rule, or practice proposed to be established under this section complies with this subtitle. The Commission must give reasonable notice to interested parties before beginning a proceeding under this subsection but may act without allowing an interested party to file an answer or other formal pleading.

§ 10730. Rates and liability based on value

The Interstate Commerce Commission may require or authorize a carrier providing transportation or service subject to its jurisdiction under subchapter I, II, or IV of chapter 105 of this title, to establish rates for transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper, or by a written agreement, when that value would be reasonable under the circumstances surrounding the transportation. A rate may be made applicable under this section to livestock only if the livestock is valuable chiefly for breeding, racing, show purposes, or other special uses. A tariff filed with the Commission under subchapter IV of this chapter shall refer specifically to the action of the Commission under this section.

§ 10731. Investigation of discriminatory rail rates for transportation of recyclable or recycled materials

(a) In this section—

(1) "recyclable material" means material collected or recovered from waste for a commercial or industrial use whether the collection or recovery follows end usage as a product.

(2) "virgin material" means raw material, including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or other resource that, through the application of technology, is or will become a source of raw material for commercial or industrial use.

(b) When appropriate, the Interstate Commerce Commission shall—

(1) investigate the rate structure for the transportation of recyclable or recycled materials and competing virgin material by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title and the manner in which that rate structure has been affected by successive general rate increases approved by the Commission for those carriers;

(2) determine whether those rate increases affect any part of the rate structure in violation of section 10701 or 10741 of this title and order the rate found to be in violation of either of those sections removed from the rate structure; and

(3) report to the President and Congress, in each of the annual reports of the Commission for 1978 and 1979, and in other appropriate reports, all proceedings started or completed under this subsection.

(c) A determination under subsection (b)(2) of this section may be made only after a public hearing. During the hearing, the real carriers have the burden of proving that rate increases that affect the rate structure applicable to the transportation of those competing materials comply with sections 10701 and 10741 of this title.

(b) In cooperation with the Commission, the Secretary of Transportation shall maintain a research, development, and demonstration program to develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods to facilitate the competitive and efficient transportation of recyclable or recycled materials by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

SUBCHAPTER III—LIMITATIONS

§ 10741. Prohibitions against discrimination by common carriers

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may not subject a person, place, port, or type of traffic to unreasonable discrimination. However, subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may not subject a freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter to unreasonable discrimination whether or not the freight forwarder is controlled by that carrier.

(d) Differences between the rates, classifications, rules, and practices of water and rail common carriers in effect for their respective types of transportation do not constitute a violation of this section or an unfair or destructive competitive practice under this subtitle.

§ 10742. Facilities for interchange of traffic

A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I or III of chapter 105 of this title shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another common carrier under either of those subchapters.

§ 10743. Payment of rates

(a) Except as provided in subsection (b) of this section, a common carrier (except a pipeline or sleeping car carrier) providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle shall give up possession at destination of property transported by it only when payment for the transportation or service is made.

(b)(1) Under regulations of the Commission governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Commission may provide for weekly or monthly payment for transportation provided by motor common carriers and for periodic payment for transportation provided by water common carriers.

(2) Such a carrier (including a motor common carrier being used by a freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

§ 10744. Liability for payment of rates

(a)(1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail, motor, or water common carrier under this subtitle. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

(A) of the agency and absence of beneficial title; and

(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of

the beneficial owner. A consignee giving the carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

(b) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor, named in the bill of lading as consignee, is determined under this subsection when the transportation is provided by a rail or express carrier under this subtitle. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul carrier that is to make ultimate delivery—

(1) to deliver the property to another party identified by the shipper or consignor as the beneficial owner of the property; and

(2) that delivery is to be made to that party on payment of all applicable transportation rates;

that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under clause (2) of this subsection on delivery. However, if the party gives written notice to the delivering carrier before delivery that the party is not the beneficial owner of the property and gives the carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.

(c)(1) A rail carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action during the period provided in section 11706(a) of this title or by the end of the 6th month after final judgment against it in an action against the consignee, or the beneficial owner named by the consignee or agent, under that section.

(2) A water common carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action by the end of the 2d year after the claim accrues or by end of the 6th month after final judgment against it in an action against the consignee or beneficial owner named by the consignee by the end of that 2-year period.

(3) A rail or express carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11706(a) of this title or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

§ 10745. Continuous carriage of freight

A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not enter a combination or arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination whether by change of time schedule, carriage in different cars, or by other means. The carriage of freight by those carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage, or interruption is not made in good faith for a necessary purpose, and with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this subtitle.

§ 10746. Transportation of commodities manufactured or produced by a rail carrier

A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not transport from a State or territory or possession of the United States to another State, territory, or possession or a foreign country, an article or commodity that—

(1) is manufactured, mined, or produced by the carrier or under its authority; or

(2) is owned by the carrier or in which it has an interest.

However, a rail carrier may transport such an article or commodity when it is necessary and intended for use in the business of that carrier. This section does not apply to timber and products manufactured from timber.

§ 10747. Transportation services or facilities furnished by shipper

A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title may publish in a tariff filed with the Commission under subchapter IV of this chapter a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Commission may prescribe the maximum reasonable charge or allowance a carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section. The Commission may begin a proceeding under this section on its own initiative or on application.

§ 10748. Transportation of livestock by rail carrier

(a) Transportation entirely by railroad of ordinary livestock in carload lots to public stockyards shall include necessary services of unloading and reloading in route, delivery of inbound shipments at those stockyards into suitable pens, and receiving and loading outbound shipments at those stockyards. A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may charge a shipper, consignee, or owner an extra amount for those services only if, under Commission regulations, the unloading or reloading in route is at the request of the shipper, consignee, or owner, to try an intermediate market, or to comply with quarantine regulations.

(b) Subsection (a) of this section does not affect the duties and liabilities of a rail carrier in existence on February 28, 1920, under a law related to the transportation of other than ordinary livestock or the duty of providing transportation for shipments other than shipments to or from public stockyards.

§ 10749. Exchange of services and limitation on use of common carriers by freight forwarders

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title may contract with a telephone, telegraph, or cable company to exchange services.

(b) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may use a carrier, including a carrier referred to in this subsection, to transfer, collect, or deliver in a terminal area. However, to provide other services, a freight forwarder may only use—

(1) a rail express, motor, or water common carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title including—

(A) a motor common carrier providing exempt transportation under section 10525 or 10526(a)(8) of this title; or

(B) a water common carrier providing exempt transportation under section 10542(a) of this title or transportation between places in Alaska or Hawaii and betwen those places and other places in the United States,

(2) an air carrier subject to the jurisdiction of the Civil Aeronautics Board under chapter 20 of this title; or

(3) the Alaska Railroad.

§ 10750. Demurrage charges

A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to—

(1) freight care use and distribution; and

(2) maintenance of an adequate supply of freight cars to be available for transportation of property.

SUBCHAPTER IV—TARIFFS AND TRAFFIC

§ 10761. Transportation prohibited without tariff

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

(b) The Commission may grant relief from subsection (a) of this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may provide under this subtitle. A motor on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

§ 10762. General tariff requirements

(a)(1) A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (except a motor common carrier) shall publish and file with the Commission tariffs containing the rates and (A) if a common carrier, classifications, rules, and practices related to those rates, and (B) if a contract carrier, rules and practices related to those rates, established under this chapter for transportation or service it may provide under this subtitle. A motor common carrier shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle. The Commission may prescribe other information that motor common carriers shall include in their tariffs. A motor contract carrier that serves only one shipper and has provided continuous transportation to that shipper for at least one year may file only its minimum rates unless the Commission finds that filing of actual rates is required in the public interest.

(2) Carriers that publish tariffs under paragraph (1) of this subsection shall keep them open for public inspection. A rate contained in a tariff filed by a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 shall be stated in money of the United States. A tariff filed by a motor or water contract carrier or by a freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of that chapter, respectively, may not become effective for 30 days after it is filed.

(b)(1) The Commission shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under this section. The Commission may pre-

scribe specific charges to be identified in a tariff published by a common carrier providing transportation or service subject to its jurisdiction under subchapter I, III, or IV of that chapter, but those tariffs must identify plainly—

(A) the places between which property and passengers will be transported;

(B) terminal, storage, and icing charges (stated separately) if a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter;

(C) terminal charges if a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter III or IV of that chapter;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(2) A joint tariff filed by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter shall identify the carriers that are parties to it. The carriers that are parties to a joint tariff, other than the carrier filing it, must file a concurrence or acceptance of the tariff with the Commission but are not required to file a copy of the tariff. The Commission may prescribe or approve what constitutes a concurrence or acceptance.

(c)(1) When a common carrier providing transportation or service subject to the jurisdiction of the Commission (A) under subchapter I of chapter 105 of this title proposes to change a rate, or (B) under another subchapter of that chapter proposes to change a rate, classification, rule, or practice, the carrier shall publish, file, and keep open for public inspection a notice of the proposed change as required under subsections (a) and (b) of this section.

(2) When a contract carrier providing transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title proposes to establish a new rate or to reduce a rate, directly or by changing a rule or practice related to the rate or the value of service under the rate, the carrier shall publish, file, and keep open for public inspection a notice of the new or reduced rate as required under subsections (a) and (b) of this section.

(3) A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. A proposed change and a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section.

(d)(1) The Commission may reduce the 30-day period of subsections (a) and (c) of this section if cause exists. The Commission may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.

(2) The Commission may prescribe regulations for the simplification of tariffs by carriers providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title and permit them to change rates, classifications, rules, and practices without filing complete tariffs that cover matter that is not being changed when the Commission finds that action to be consistent with the public interest. Those carriers may publish new tariffs that incorporate changes or plainly indicate the proposed changes in the tariffs then in effect and kept open for public inspection. However, the Commission shall require that all rates of rail carriers and rail rate-making associations be incorporated in their individual tariffs by the end of the 2d year after initial publication of the rate, or by the end of the 2d year after a change in a rate becomes effective, whichever is later. The Commission may extend those periods if cause exists, but if it does, it must send a notice of the extension and a statement of the reasons for the extension to Congress. A rate not incorporated in an individual tariff as required by the Commission is void.

(e) The Commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section.

(f) The Commission may grant relief from this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

§ 10763. Designation of certain routes by shippers or Interstate Commerce Commission

(a)(1) When a person delivers property to a rail carrier for transportation subject to the jurisdiction of the Interstate Commerce Commission under subchaper I of chapter 105 of this title, the person may direct the carrier to transport the property over an established through route. When competing rail lines constitute a part of the route, the person shipping the property may designate the lines over which the property will be transported. The designation must be in writing. A carrier may be directed to transport property over a particular through route when—

(A) there are at least 2 through routes over which the property could be transported;

(B) a through rate has been established for transportation over each of those through routes; and

(C) the carrier is a party to those routes and rates.

(2) A carrier directed to route property transported under paragraph (1) of this subsection must issue a through bill of lading containing the routing instructions and transport the property according to the instructions. When the property is delivered to a connecting carrier, that carrier must also receive and transport it according to the routing instructions and deliver it to the next succeeding carrier or consignee according to the instructions.

(b) If no direction is made under subsection (a) of this section, the Commission may designate the route over which the property may be transported after arrival at the end of the route of one carrier or at a junction with the route of another carrier when the property is to be delivered to another carrier for further transportation. The Commission may act under this subsection when the public interest and a fair distribution of traffic require that action.

(c) The Commission may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section.

§ 10764. Arrangements between carriers; copy to be filed with Interstate Commerce Commission

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a copy of each arrangement related to transportation affected by this subtitle that the carrier has with another common carrier. The Commission may require other carriers and brokers subject to its jurisdiction under chapter 105 to file a copy of each arrangement related to transportation or service affected by this subtitle that they have with other persons.

(2) When the Commission finds that filing a class of arrangements by a carrier subject to its jurisdiction under subchapter I of that chapter is not necessary in the public interest, the Commission may except the class from paragraph (1) of this subsection.

(b) The Commission may disclose the existence or contents of an arrangement between a contract carrier and a shipper filed under subsection (a) of this section only if the disclosure is—

(1) limited to those parts of the arrangement that are necessary to indicate the extent of its failure to conform to a tariff then in effect under section 10762 of this title; or

(2) consistent with the public interest and made as a part of the record in a formal proceeding.

§ 10765. Water transportation under arrangements with certain other carriers

(a) The Interstate Commerce Commission may require a common carrier providing transportation or service subject to its jurisdiction under chapter 105 of this title that makes an arrangement with a water carrier (whether or not subject to its jurisdiction under this subtitle) providing transportation from a port in the United States to another country for the through transportation of property from a place in the interior of the United States to another country to make similar arrangements with steamship lines that provide transportation from that port to that country.

(b) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that transports property from a place in the United States through another country to a place in the United States shall publish and keep open for public inspection tariffs as required under section 10762 of this title. The tariffs shall identify the through rate established for that transportation to the United States from another country to which the carrier accepts property for shipment from the United States. Unless the through rates are available for public inspection under that section, the property is subject to customs duties applicable to property produced in another country before the property may be admitted to the United States.

§ 10766. Freight forwarder traffic agreements

(a) A freight forwarder providing service subject to the jurisdiction of the Interstate Commerce Commission under subchapter IV of chapter 105 of this title may agree with another freight forwarder to load traffic jointly between places served under this subtitle. However, the Commission may cancel, suspend, or require changes in the agreement when the Commission finds the agreement is inconsistent with the transportation policy of section 10101 of this title.

(b) A freight forwarder providing service subject to the jurisdiction of the Commission under that subchapter may contract with motor common carriers providing transportation subject to the jurisdiction of the Commission under subchapter II of that chapter, to provide transportation for the forwarder. A copy of that contract must be filed with the Commission. The contract may govern use by the freight forwarder of the services and instrumentalities of the motor common carrier and the compensation to be paid for the transportation. However, the parties to a contract must establish reasonable conditions and compensation that are consistent with the transportation policy of section 10101 of this title and do not unreasonably discriminate against a party or another freight forwarder. When a contract under this subsection governs line-haul transportation of property for a total distance of at least 450 highway miles in truckload lots between concentration and break-bulk places, the compensation paid to a motor common carrier under the contract may not be less than the rate for that transportation established under

this chapter. When the Commission finds that a contract, or its conditions or compensation, under this subsection is or will be inconsistent with this subsection, the Commission shall prescribe consistent conditions and compensation.

(c) The Commission may begin a proceeding under this section on its own initiative or on complaint.

SUBCHAPTER V—VALUATION OF PROPERTY

§ 10781. Investigation and report by Interstate Commerce Commission

(a) The Interstate Commerce Commission shall investigate, establish, and report the value of all property owned or used by each carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title, except a street, suburban, or interurban electric rail carrier not operated as a part of a general railroad system of transportation. However, the Commission may investigate, establish, and report the value of property owned or used by such an electric rail carrier when the Commission decides that action is desirable in the public interest. When the Commission makes an investigation required to be made under this section, it must—

(1) inventory and list the property of that carrier in detail;

(2) indicate the value established under section 10782 of this title for that property; and

(3) classify the physical property under classifications that conform, as nearly as practicable, to the classification of expenditures prescribed by the Commission for railroads and equipment.

(b) Except as provided in subsection (a) of this section, the Commission may prescribe—

(1) the procedure to be followed when conducting an investigation under this subchapter;

(2) the form in which to submit the results of the valuation; and

(3) the classification of the elements that make up the established value.

The report for each investigation conducted under this subchapter shall indicate the value of the property of each common carrier as a whole and separately identify the value of its property in each State and territory and possession of the United States in which the property is located.

§ 10782. Requirements for establishing value

(a) In carrying out an investigation of a common carrier required under section 10781 of this title, the Interstate Commerce Commission shall—

(1) establish, for each piece of property except land owned or used by the carrier as a common carrier, the original cost to date, cost of reproduction new and cost of reproduction less depreciation, and analyze the methods used to establish those costs and the reasons for differences among them;

(2) establish other values, and elements of value, of that property and analyze the methods used to establish them and the reasons for differences between them and the cost values established under clause (1) of this subsection;

(3) establish separately from improvements, the original cost on the date of dedication to public use of all lands, rights-of-way, and terminals owned or used by the carrier as a common carrier and establish their current value;

(4) identify property not held by the carrier as a common carrier, its original cost, and current value and analyze the methods of valuation used;

(5) establish the amount and value of assistance or grant of right of way made to the carrier, or to a previous corporation that operated its property, by the United States Government or by a State, county, or municipal government, or by an individual, association, or corporation and the amount and value of any concession and allowance made by the United States Government or another of those governments in consideration of that assistance; and

(6) identify the grants of land to that carrier, or to a previous corporation that operated its property, by the United States Government, or by a State, county, or municipal government, the amount of money derived from the sale of part of those grants, the value of the unsold parts (established as of the date acquired and currently), and the amount and value of any concession and allowance made by the carrier to the United States Government, or another of those governments, in consideration of that assistance or grant of land.

(b) The Commission may prescribe elements to consider in establishing the cost to date of property owned or used by a carrier. However, in establishing that cost, the Commission shall investigate and include in those elements—

(1) the history and organization of the corporation that currently operates the property and of previous corporations that also operated that property;

(2) increases or decreases of securities during reorganization of that corporation of such a previous corporation;

(3) money received through the issuance of securities by that corporation or such a previous corporation;

(4) syndicating, banking, and other financial arrangements under which those securities were issued and the expenses thereof;

(5) the net and gross earnings of those corporations; and

(6) the expenditure of all money and the purposes of those expenditures in as much detail as the Commission determines to be necessary.

§ 10783. Cooperation and assistance of carriers

(a) Each common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall cooperate with and assist the Commission in valuing property under this subchapter. The Commission may order those carriers to—

(1) give to the Commission maps, profiles, contracts, engineering reports, and other records to assist it in investigating and establishing the value of that carrier's property; and

(2) assist the Commission in valuing property under this subchapter in other ways, including giving its agents free access to its right-of-way, property, and records on request.

(b) A rail carrier whose property is being valued under this subchapter shall—

(1) transport employees of the United States Government who are making surveys and other examinations of the physical property of that carrier in the course of that valuation when reasonably required by them in the actual discharge of their duties;

(2) transport and store the cars of the United States Government that are used to house and maintain those employees when reasonably required during the valuation; and

(3) transport supplies necessary to maintain those employees and the property of the United States Government actually used on the railroad during the valuation.

(c) The transportation required to be provided under subsection (b) of this section is considered a special service for which the Commission may prescribe the compensation to be paid. A rail carrier shall give the Commission an accurate accounting of the transportation provided under this section when required by the Commission.

(d) The Commission shall keep records compiled under this subchapter open for public inspection. However, the Commission may order those records closed to the public but must state its reasons for closing them.

§ 10784. Revision of property valuations

(a) When the Interstate Commerce Commission completes an initial valuation of property under this subchapter, it shall thereafter correct, revise, and supplement that valuation, including previous inventories and classifications, by keeping itself informed of new construction, changes in condition, quantity, use, and classification of property on which an initial valuation was made and the cost of all improvements to, and changes in investment, in that property. The Commission may keep itself informed of current changes in costs and values of railroad property to carry out this section.

(b) The Commission may order a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to give it reports and information needed to carry out this section.

§ 10785. Finality of Valuation: Notice, Protest, and Review

(a) The Interstate Commerce Commission shall notify the carrier, the Attorney General, and the chief executive officer of each State in which property being valued under this subchapter is located, of the completion of a tentative valuation of that property. The Commission may also notify other parties. The notice must be sent by certified mail and must indicate the valuation established for each of that carrier's classes of property. A valuation of property under this subchapter becomes final if a protest is not filed within 30 days after notice of the tentative valuation of that property is given. When the tentative valuation becomes final under this subsection, the effective date is the date of the tentative valuation.

(b) When a carrier files a protest of a tentative valuation, the Commission shall begin a proceeding to consider the protest. If the Commission decides that a tentative valuation should be changed, it may make the necessary changes. The tentative valuation, as changed, becomes final and is effective on the date of the final action of the Commission under this subsection.

(c) The Commission shall publish final valuations and classifications of property established under this subchapter. A final valuation or classification that has become effective under this subchapter is prima facie evidence of the value of the property in a proceeding under this subtitle and in a judicial proceeding to enforce, enjoin, set aside, annul, or suspend an action of the Commission.

(d) When evidence is introduced at the trial of an action involving a final valuation of property established by the Commission and found by the court to be different from the evidence offered to the Commission during a proceeding under subsection (b) of this section or in addition to that evidence and substantially affecting the valuation, the court shall send a copy of that evidence to the Commission and stay further proceedings in the action. The court may determine the duration of the stay of proceedings. The Commission shall consider the evidence and may change the final valuation established under this subchapter. The Commission shall complete its action and report to the court in the time determined by the court. If the Commission changes the valuation, the court must substitute the valuation as changed for the original valuation and give its judgment on the substituted valuation. If the Commission does not change the original valuation, the court must give judgment on the original valuation.

§ 10786. Applicability

In addition to common carriers providing transportation subject to the jurisdiction of

the Interstate Commerce Commission under subchapter I of chapter 105 of this title, this subchapter applies to receivers and operating trustees of those carriers.

Chapter 109—LICENSING

SUBCHAPTER I—RAILROADS AND FERRIES

Sec.
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SUBCHAPTER I—RAILROADS AND FERRIES

§ 10901. Authorizing construction and operation of railroad lines

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

(1) construct an extension to any of its railroad lines;

(2) construct an additional railroad line;

(3) acquire or operate an extended or additional railroad line; or

(4) provide transportation over, or by means of, an extended or additional railroad line;

only if the Commission finds that the present or future public convenience and necessity require or will be enhanced by the construction or acquisition (or both) and operation of the railroad line.

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Commission shall—

(1) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of the railroad line;

(2) send an accurate and understandable summary of the application to a newspaper of general circulation in each area that would be affected by the construction or operation of the railroad line;

(3) have a copy of the summary published in the Federal Register;

(4) take other reasonable and effective steps to publicize the application; and

(5) indicate in each transmission and publication that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application.

(c)(1) If the Commission—

(A) finds public convenience and necessity, it may—

(i) approve the application as filed; or

(ii) approve the application with modifications and require compliance with conditions the Commission finds necessary in the public interest; or

(B) fails to find public convenience and necessity, it may deny the application.

(2) On approval, the Commission shall issue to the rail carrier a certificate describing the construction or acquisition (or both) and operation approved by the Commission.

§ 10902. Authorizing action to provide adequate, efficient, and safe facilities

The Interstate Commerce Commission may authorize a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to take action necessary to provide adequate, efficient, and safe facilities to enable the rail carrier to perform its obligations under this subtitle, including extension of any of the carrier's railroad lines after issuance of a certificate under section 10901 of this title. The Commission may authorize a rail carrier to act under this section only if it finds that the expense involved will not impair the ability of the carrier to perform its obligations to the public. The Commission may conduct a proceeding on its own initiative or on application of an interested party.

§ 10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Commission shall consider whether the abandoment or discontinuance will have a serious, adverse impact on rural and community development.

(b)(1) A proceeding to grant authority under subsection (a) of this section begins on application filed with the Commission. Subject to section 10904–10906 of this title, if the Commission—

(A) finds public convenience and necessity, it shall—

(i) approve the application as filed; or

(ii) approve the application with modifications and require compliance with conditions that the Commission finds are required by public convenience and necessity; or

(B) fails to find public convenience and necessity, it shall deny the application.

(2) On approval, the Commission shall issue to the rail carrier a certificate describing the abandonment or discontinuance approved by the Commission. Each certificate shall also contain provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under section 11347 of this title and section 565(b) of title 45.

(c) Except as provided in sections 10905 and 10906 of this title—

(1) if a certificate is issued without an investigation under section 10904(c) of this title, the abandonment or discontinuance may take effect under the certificate on the 30th day after the issuance of the certificate; or

(2) if a certificate is issued after an investigation under section 10904(c) of this title, the abandonment or discontinuance may take effect under the certificate on the 120th day after the issuance of the certificate.

§ 10904. Filling and procedure for applications to abandon or discontinue

(a)(1) An application for a certificate of abandonment or discontinuance under section 10903 of this title, and a notice of intent to abandon or discontinue, must be filed with the Interstate Commerce Commission at least 60 days before the day on which the abandonment or discontinuance is to become effective.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title files an application and notice of intent, the notice shall include—

(A) an accurate and understandable summary of the rail carrier's application and the reasons for the proposed abandonment or discontinuance; and

(B) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application.

(3) The rail carrier shall—

(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A)–(D) of this paragraph have been satisfied.

(b) The burden is on the person applying for the certificate to prove that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

(c)(1) During the period between the date the application is filed through the day immediately before the date proposed in the application that the abandonment or discontinuance become effective, the Commission shall, on petition, and may, on its own initiative, begin an investigation to assist it in determining what disposition to make of the application. The order to conduct the investigation must be served on any affected rail carrier not later than the 5th day before the proposed effective date of the abandonment or discontinuance. An investigation may include public hearings at any location reasonably adjacent to the railroad line involved in the abandonment or discontinuance. The hearing may be held on the request of an interested party or on the initiative of the Commission.

(2) If an investigation is not conducted, the Commission shall act under section 10903(b) of this title by the last day of the period referred to in paragraph (1) of this subsection. If an investigation is to be conducted, the Commission shall postpone the proposed effective date of any part of the abandonment or discontinuance. The postponement shall be for a reasonable period of time necessary to complete the investigation.

(d)(1) In this subsection, "potentially subject to abandonment" has the meaning given the term in regulations of the Commission. The regulations may include standards that

vary by region of the United States and by railroad or group of railroads.

(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the carrier. The carrier shall submit to the Commission and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

(B) identify each railroad line for which the carrier plans to file an application for a certificate under subsection (a) of this section.

(3) If an application for a certificate is opposed by—

(A) a shipper or other person that has made significant use (as determined by the Commission) of the railroad line involved in the proposed abandonment or discontinuance during the 12-month period before the filing of the application for a certificate; or

(B) a State or political subdivision of a State in which any part of the railroad line is located;

the Commission may issue a certificate under section 10903 of this title only if the railroad line has been described and identified in the diagram or amendment to the diagram of the rail carrier that was submitted to the Commission at least 4 months before the date on which the application was filed.

§ 10905. Offers of financial assistance to avoid abandonment and discontinuance

(a) In this section—

(1) "avoidable cost" means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

(A) working capital and required capital expenditure;

(B) expenditures to eliminate deferred maintenance;

(C) the current cost of freight cars, locomotives, and other equipment; and

(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable federal and State income taxes.

(2) "reasonable return" means—

(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Interstate Commerce Commission; and

(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Commission.

(b) When the Commission finds under section 10903 of this title that the present or future public convenience and necessity require or permit abandonment or discontinuance, it shall publish the finding in the Federal Register. If, within 30 days after the publication, the Commission finds that—

(1) a financially responsible person (including a governmental authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued; and

(2) it is likely that the assistance would be equal to—

(A) the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or

(B) the acquisition cost of that part of the railroad line;

the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance for a reasonable time, not to exceed 6 months, to enable the person or government authority to enter into an agreement with the rail carrier to provide the assistance or to buy that part of the railroad line and to continue to provide rail transportation over the line. Thereafter, the Commission shall determine the extent to which the avoidable cost of providing rail transportation plus a reasonable return on the rail properties involved exceed the revenues attributable to the railroad line or the rail transportation proposed to be abandoned or discontinued. On notice to the Commission that such an agreement has been executed, the Commission shall further postpone the issuance of the certificate as long as the agreement, or an extension or modification of the agreement, is in effect.

(c) The rail carrier shall provide promptly to a party considering offering financial assistance under subsection (b) of this section—

(1) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance; and

(2) traffic, revenue, and other data necessary to determine the amount of financial assistance that would be required to continue rail transportation over that part of the railroad line.

§ 10906. Offering abandoned rail properties for sale for public purposes

When the Interstate Commerce Commission finds under section 10903 of this title that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Commission shall find further whether the rail properties that are involved in the proposed abandonment or discontinuance are suitable for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the rail properties proposed to be abandoned are suitable for public purposes, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Commission. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

§ 10907. Exceptions

(a) Notwithstanding sections 10901 and 10902 and subchapter III of chapter 113 of this title, and without the approval of the Interstate Commerce Commission, a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

(b) The Commission does not have authority under sections 10901–10906 of this title over—

(1) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks if the tracks are located, or intended to be located, entirely in one State; or

(2) a street, suburban, or interurban electric railway that is not operated as part of a general system of rail transportation.

§ 10908. Discontinuing or changing interstate train or ferry transportation subject to State law

(a) When a discontinuance or change in any part of the transportation of a train or ferry operating between a place in a State and a place in another State—

(1) is proposed by a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title; and

(2) is subject to the law of a State, or to a regulation or order of, or proceeding pending before, a court or other authority of a State;

the carrier, notwithstanding that law, regulation, order, or proceedings, may discontinue or change the transportation—

(A) if it files a notice of the proposed discontinuance or change with the Commission at least 30 days before the discontinuance or change is intended to be effective and carries out the discontinuance or change under that notice;

(B) if it mails a copy of the notice to the chief executive officer of each State in which the train or ferry is operated and posts a copy of the notice at each station, depot, or other facility served by the train or ferry; and

(C) except as otherwise provided by the Commission under this section.

(b) On petition or on its own initiative, the Commission may conduct a proceeding on the proposed discontinuance or change if it begins the proceeding between the date the carrier files the notice under subsection (a) of this section and the date on which the discontinuance or change is intended to be effective. After the proceeding begins, the Commission may order the carrier proposing the discontinuance or change to continue any part of the transportation pending completion of the proceeding and the decision of the Commission if the Commission serves a copy of its order on the carrier at least 10 days before the date on which the carrier intended the discontinuance or change to be effective. However, the Commission may not order the transportation continued for more than 4 months after the date on which the carrier intended the discontinuance or change to be effective.

(c) If, after a proceeding completed either before or after the proposed discontinuance or change has become effective, the Commission finds that any part of the transportation is required or permitted by present or future public convenience and necessity and will not unreasonably burden interstate or foreign commerce, the Commission may order the carrier to continue or restore that transportation for not to exceed one year from the date of the Commission order. On expiration of the Commission order, the jurisdiction of each State involved in the discontinuance or change is no longer superseded except to the extent this section is again invoked.

§ 10909. Discontinuing or changing train or ferry transportation in one State

(a) When a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title has proposed a discontinuance or change of any part of the transportation of a train or ferry operated by it entirely in one State and—

(1) the law of the State prohibits the discontinuance or change;

(2) the carrier has requested the State authority having jurisdiction over the discontinuance or change for permission to discontinue or change the transportation and the request has been denied; or

(3) the State authority has not acted finally by the 120th day after the carrier made the request;

the carrier may petition the Commission for permission to discontinue or change the transportation.

(b) When a petition is filed under subsection (a) of this section, the Commission shall notify the chief executive officer of the State in which the train or ferry is operated concerning the petition. Before acting on the petition, the Commission shall give interested parties a full hearing. If such a hearing is requested, the Commission shall give all interested parties at least 30 days notice of the

hearing and shall hold the hearing in the State in which the train or ferry is operated. The Commission may cooperate with, and use the services, records, and facilities of, the State in carrying out this section.

(c) The Commission may grant permission to the carrier to discontinue or change any part of the transportation if the Commission finds that—

(1) the present or future public convenience and necessity require or permit the discontinuance or change to be authorized by the Commission; and

(2) continuing the transportation, without the proposed discontinuance or change, will constitute an unreasonable burden on the interstate operations of the carrier or on interstate commerce.

SUBCHAPTER II—OTHER CARRIERS AND MOTOR CARRIER BROKERS

§ 10921. Requirement for certificate, permit, or license

Except as provided in this subchapter or another law, a person may provide transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter II, III, or IV of chapter 105 of this title or be a broker for transportation subject to the jurisdiction of the Commission under subchapter II of that chapter, only if the person holds the appropriate certificate, permit, or license issued under this subchapter authorizing the transportation or service.

§ 10922. Certificates of motor and water common carriers

(a) Except as provided in this section and section 10930(a) of this title, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor common carrier or water common carrier, respectively, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to provide the transportation to be authorized by the certificate; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation to be provided under the certificate is or will be required by the present or future public convenience and necessity.

(b) A person must file an application with the Commission for a certificate to provide transportation as a motor common carrier or water common carrier. The Commission may approve any part of the application or deny the application. The application must—

(1) be under oath;

(2) contain information required by Commission regulations; and

(3) be served on persons designated by the Commission.

(c)(1) Subject to section 10927(a) of this title, each certificate issued to a person to provide transportation as a motor common carrier shall specify—

(A) the transportation to be provided by the carrier;

(B) any of the regular routes over which, any of the places between which, and off-route places at which, the carrier may provide transportation; and

(C) if transportation is not over regular routes or between specified places, the area in which the carrier may provide transportation.

(2) Under regulations of the Commission, a motor common carrier may occasionally deviate from the regular routes, or the places specified in the certificate, or both.

(3) If a motor common carrier transports passengers, the Commission may authorize transportation of the passengers only over a regular route and between specified places, except to the extent the carrier is authorized to provide special or charter transportation.

(4) A certificate of a motor common carrier to transport passengers may include authority to transport—

(A) newspapers, baggage of passengers, express, or mail in the same motor vehicle with the passengers; and

(B) baggage of passengers in a separate motor vehicle.

(d) Each certificate issued to a person to provide transportation as a water common carrier shall specify each route over which, and each port between which, the carrier may provide transportation.

(e)(1) A motor common carrier may provide transportation under a certificate only if the carrier complies with conditions the Commission finds are required by public convenience and necessity, including conditions—

(A) on extending routes of the carrier; and

(B) to carry out requirements established by the Commission under this subtitle.

(2) The Commission may prescribe necessary conditions under which a water common carrier provides transportation, including conditions on extending routes of the carrier.

(3) The Commission may prescribe conditions when the certificate is issued and at any time thereafter. The Commission may not prescribe a condition preventing—

(A) a motor common carrier or water common carrier from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand; or

(B) a water common carrier, if the carrier has authority to provide transportation over completed parts of a waterway project authorized under law, from extending its transportation over the uncompleted parts of the project when opened for navigation to satisfy business development and public demand.

(f) A certificate issued under this section does not confer a proprietary or exclusive right to use the public highways or public waterways.

§ 10923. Permits of motor and water contract carriers and freight forwarders

(a) Except as provided in this section and section 10930 of this title, the Interstate Commerce Commission shall issue a permit to a person authorizing the person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor contract carrier or water contract carrier, respectively, or to provide service subject to that jurisdiction under subchapter IV of chapter 105 as a freight forwarder, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to provide the transportation or service to be authorized by the permit; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation or service to be provided under the permit is or will be consistent with the public interest and the transportation policy of section 10101 of this title.

(b)(1) A person must file an application with the Commission for a permit to provide transportation as a contract carrier or to provide service as a freight forwarder. The Commission may approve any part of the application or deny the application. The application must—

(A) be under oath;

(B) contain information required by Commission regulations; and

(C) be served on persons designated by the Commission.

(2) In deciding whether to approve the application of a person for a permit as a motor contract carrier, the Commission shall consider—

(A) the number of shippers to be served by the carrier;

(B) the nature of the transportation proposed to be provided;

(C) the effect that granting the permit would have on the transportation of carriers protesting the granting of the permit; and

(D) the effect that denying the permit would have on the person applying for the permit, its shippers, or both, and the changing character of the requirements of those shippers.

(3) The Commission may not deny any part of an application for a freight forwarder permit filed by a corporation controlled by, or under common control with—

(A) a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title, because of the relationship between the corporation and that carrier; and

(B) a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 only because the service to be provided by the corporation will compete with service provided by another freight forwarder subject to subchapter IV of that chapter.

(c) Each permit issued to a person—

(1) to provide transportation as a motor contract carrier is subject to section 10927(a) of this title and shall specify the transportation to be provided by the carrier;

(2) to provide transportation as a water contract carrier shall specify the transportation to be provided by the carrier; and

(3) to provide service as a freight forwarder shall specify the nature or general description about which the service is to be provided, the area in which, and the area between which, the service may be provided by the freight forwarder.

(d)(1) The Commission may prescribe necessary conditions under which a contract carrier or freight forwarder provides transportation or service. The Commission may prescribe the conditions when the permit is issued and at any time thereafter.

(2) The permit for a motor contract carrier shall specify necessary conditions, including each person or number or class of persons for which the carrier may provide transportation—

(A) to ensure that the carrier provides transportation as a motor contract carrier and within the scope of the permit; and

(B) to carry out requirements established by the Commission under this subtitle.

(3) Subject to the permit and its conditions, a motor contract carrier may substitute or add to its equipment and facilities as requests for its transportation develop. The Commission may not prescribe a condition preventing—

(A) a water contract carrier from substituting or adding contracts within the scope of the permit to satisfy the requirements of business development and public demand; and

(B) a water contract carrier or freight forwarder from adding to its equipment and facilities, and transportation or service, as the case may be, within the scope of the permit to satisfy the requirements of business development and public demand.

§ 10924. Licenses of motor carrier brokers

(a) The Interstate Commerce Commission shall issue, subject to section 10927(b) of this title, a license to a person authorizing the person to be a broker for transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to be a broker for transportation to be authorized by the license; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation for which the person is to be a broker will be consistent with the public interest and the transportation policy of section 10101 of this title.

(b)(1) The broker may provide the trans-

portation itself only if the broker also has been issued a certificate or permit to provide the transportation under this subchapter. A broker may use only the transportation of a motor carrier holding a certificate or permit issued under this subchapter.

(2) This subsection does not apply to a motor carrier having a certificate or permit issued under this subchapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other motor carriers holding certificates or permits or with rail, express, or water common carriers.

(c) A person must file an application with the Commission for a license to be a broker for motor carrier transportation. The Commission may approve the application or any part of it, or deny the application.

(d) Commission regulations shall provide for the protection of travelers and shippers by motor vehicle, to be observed by brokers.

§ 10925. Effective periods of certificates, permits, and licenses

(a) Each certificate, permit, and license issued under section 10922, 10923, or 10924 of this title is effective from the date specified in it and remains in effect except as otherwise provided in this section.

(b) On application of the holder of a certificate, permit, or license, the Interstate Commerce Commission may amend or revoke any part of the certificate, permit, or license. On complaint or on its own initiative and after notice and an opportunity for a proceeding, the Commission may suspend, amend, or revoke any part of a certificate, permit, or license—

(1) if a motor carrier, broker, or freight forwarder, for willful failure to comply with this subtitle, a regulation or order of the Commission, or a condition of its certificate, permit, or license; and

(2) if a water carrier, for willful failure to comply with section 10701(a) or 11101(a) of this title, a regulation or order of the Commission, or a condition of its certificate or permit.

(c)(1) Except on application of the holder, the Commission may revoke a certificate or permit of a motor carrier or freight forwarder, or a license of a broker, only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with this subtitle, a regulation of the Commission, or a condition of the certificate, permit, or license of the holder, and the holder willfully does not comply with the order.

(2) Except on application of the holder, the Commission may suspend, amend, or revoke a certificate or permit of a water carrier only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with section 10701(a) or 11101(a) of this title, and the holder willfully does not comply with the order.

(3) The Commisison may act under paragraph (1) or (2) of this subsection only after giving the holder of the certificate, permit, or license at least 30 days to comply with the order.

(d)(1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission may suspend a certificate of a motor carrier, a permit of a freight forwarder, or a license of a broker—

(A) if a motor carrier or broker, for failure to comply with section 10701, 10702, 10761, 10762, 10924(d), or 10927(b) or (d) of this title, or an order or regulation of the Commission prescribed under those sections; and

(B) if a freight forwarder, for failure to comply with section 10762 or 10927(c) or (d) of this title, or an order or regulation of the Commission prescribed under those sections.

(2) The Commission may suspend the certificate, permit, or license only after it gives notice of the suspension to the holder at least 15 days before the date the suspension is to begin. The suspension remains in effect until the holder complies with those applicable sections.

§ 10926. Transfers of certificates and permits

Except as provided in this subtitle, a certificate or permit issued under section 10922 or 10923 of this title—

(1) if a certificate or permit of a motor carrier, may be transferred under regulations of the Interstate Commerce Commission;

(2) if a certificate or permit of water carrier, may be transferred under regulations prescribed by the Commission to protect the public interest and to insure compliance with this subtitle; and

(3) if a permit of a freight forwarder, may be transferred under regulations prescribed by the Commission to insure compliance with this subtitle, if the Commission finds that the person to whom the permit is to be transferred satisfies section 10923 (a) and (b) of this title. However, if the proposed transfer would affect the interests of employees of a freight forwarder, the Commission shall require a fair and equitable arrangement to protect the interests of those employees before the transfer is effective.

§ 10927. Security of motor carriers, brokers, and freight forwarders

(a)(1) The Interstate Commerce Commission may issue a certificate or permit to a motor carrier under section 10922 or 10923 of this title only if the carrier files with the Commission a bond, insurance policy, or other type of security approved by the Commission. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate or permit, or loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A certificate or permit remains in effect only as long as the carrier satisfies the requirements of this paragraph.

(2) A motor carrier operating in the United States when providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country shall comply with the requirements of sections 10329 and 10330 that apply to a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title. To protect the public, the Commission may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection.

(3) The Commission may require a motor common carrier providing transportation under a certificate to file with the Commission a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor common carrier as the result of transportation provided under this subtitle. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor common carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

(b) The Commission may issue a broker's license to a person under section 10924 of this only if the person files with the Commission a bond, insurance policy, or other type of security approved by the Commission to ensure that the transportation for which a broker arranges is provided. The license remains in effect only as long as the broker complies with this subsection.

(c)(1) The Commission may require a freight forwarder providing service under a permit issued under section 10923 of this title to file with the Commission a bond, insurance policy, or other type of security approved by the Commission. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this subtitle.

(2) The Commission may require a freight forwarder providing service under a permit to file with the Commission a bond, insurance policy, or other type of security approved by the Commission sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service under this subtitle.

(d) The Commission may determine the type and amount of security filed with it under this section.

§ 10928. Temporary authority for motor and water carriers

Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Interstate Commerce Commission may grant a motor carrier or water carrier temporary authority to provide transportation to a place or in an area having, respectively, no motor carrier or water carrier capable of meeting the immediate needs of the place or area. Unless suspended or revoked, the Commission may grant the temporary authority for not more than 180 days. A grant of temporary authority does not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

§ 10929. Temporary authority for previously exempt water transportation

When transportation exempt from the jurisdiction of the Interstate Commerce Commission under section 10544 (a)–(c) of this title becomes subject to the jurisdiction of the Commission, the water carrier may continue to provide the transportation without a certificate or permit issued under this subchapter for a period of 120 days beginning on the day the transportation becomes subject to the jurisdiction of the Commission. If the carrier applies to the Commission within that period for a certificate or permit to provide the transportation previously exempt, the Commission shall issue to the carrier the appropriate certificate or permit authorizing the transportation. The Commission shall issue each such certificate and permit without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

§ 10930. Limitations on certificates and permits

(a) Except when the Interstate Commerce Commission finds good cause consistent with the public interest and the transportation policy of section 10101 of this title—

(1) a person may not hold both a certificate of a motor common carrier and a permit of a motor contract carrier issued under this subchapter, or both a certificate of a water common carrier and a permit of a water contract carrier issued under this subchapter to transport property over the same route or in the same area; and

(2) if a person controls, is controlled by, or is under common control with, another person—

(A) one of them may not hold a certificate of a motor common carrier, while the other holds a permit of a motor contract carrier, to transport property over the same route or in the same area; and

(B) one of them may not hold a certificate of a water common carrier, while the other holds a permit of a water contract carrier, to transport property over the same route or in the same area.

(b)(1) A person may not hold a permit of a freight forwarder issued under this subchapter if the person is a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title.

(2) Except for motor vehicle transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title by section 10523(a)(2) of this title, a permit may not authorize a freight forwarder to conduct direct rail, water, or motor carrier transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter.

(3) Except when the Commission finds that service to be provided as a freight forwarder is consistent with the public interest and the transportation policy of section 10101 of this title, a person may not hold a permit of a freight forwarder when—

(A) the principal business of the person is manufacturing and selling, or buying and selling, or both manufacturing and selling and buying and selling articles or commodities, and the service of a freight forwarder (or similar assembling, consolidating, and shipping service is provided by the person for its own business) is commonly used to transport the articles or commodities; or

(B) the person controls, is controlled by, or is under common control with, a person referred to in clause (A) of this paragraph.

§ 10931. Motor common carriers providing transportation entirely in one State

(a) A motor common carrier may provide transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title without a certificate issued by the Commission under section 10922 of this title, when—

(1) the carrier provides transportation entirely in one State;

(2) the carrier is not controlled by, controlling, or under common control with a carrier providing transportation outside the State;

(3) the carrier has applied for, and has been issued, a certificate of public convenience and necessity by the State authority having jurisdiction to issue such a certificate, permitting the carrier to provide intrastate transportation by motor vehicle; and

(4) the intrastate certificate was issued after, and the certificate states that—

(A) notice was given to interested parties through publication in the Federal Register of the filing of the application by the carrier and the desire of the carrier to provide transportation otherwise under the jurisdiction of the Commission within the limits of the certificate issued by the State authority;

(B) reasonable opportunity to be heard was given; and

(C) the State authority considered and found that the public convenience and necessity require that the carrier be permitted to provide transportation under the jurisdiction of the Commission within limits that do not exceed the scope of the certificate issued by the State authority.

(b) An interested party that opposed issuing the certificate to a motor common carrier in a proceeding before a State authority may petition the Commission for reconsideration of a decision of the State authority. On reconsideration, the Commission, based on the record before the State authority, may affirm, reverse, or change that decision, but only with respect to the transportation subject to Commission jurisdiction.

(c) The Commission may require, before a motor common carrier provides transportation authorized under this section, that—

(1) a certified copy of the carrier's intrastate certificate and other appropriate information be filed with the Commission; and

(2) the carrier comply with applicable requirements established by the Commission.

(d)(1) The Commission shall issue a certificate of registration to a motor common carrier authorizing the carrier to provide transportation under this section. The authority granted under the certificate is subject to all other applicable provisions of this subtitle. Except as otherwise provided in this subsection and subchapter III of chapter 113 of this title, the certificate of registration may be transferred if it is transferred with the intrastate certificate. Transfer of the intrastate certificate without the certificate of registration revokes the certificate of registration.

(2) The certificate of registration issued by the Commission is valid as long as the motor common carrier provides transportation entirely in the State from which it received its intrastate certificate and is not controlled by, controlling, or under common control with, a carrier providing transportation outside the State.

(e)(1) On the 180th day after the termination, restriction in scope, or suspension of the intrastate certificate, the authority granted under this section to provide transportation is revoked or likewise restricted unless the intrastate certificate is renewed or reissued or the restriction is removed by that 180th day.

(2) Transportation authorized under this section may be suspended or revoked by the Commission under section 10925 of this title.

§ 10932. Motor carrier savings provisions

(a) Except as specifically provided in a certificate or permit, the holder of a motor carrier certificate or permit issued as the result of an application filed before September 2, 1950, authorizing the carrier to provide transportation in the United States or between the United States and a foreign country (to the extent the transportation is in the United States), may provide the transportation between a place in the United States and a place in a territory or possession of the United States—

(1) without being authorized to do so by the Interstate Commerce Commission; and

(2) to the same extent and subject to the same conditions of the certificate or permit of the carrier.

(b)(1) A motor common carrier providing transportation under an intrastate certificate issued by a State and under a certificate of registration issued by the Commission under section 206(a)(7) of the Interstate Commerce Act (76 Stat. 912) that has been in effect since October 15, 1962, may continue to provide transportation otherwise subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title—

(A) if the certificate of the State authorizing intrastate transportation is limited to a specified period of time, only for that period;

(B) subject to all other applicable provisions of this subtitle;

(C) as long as the carrier provides transportation only in the State issuing the intrastate certificate; and

(D) as long as the carrier is not controlled by, controlling, or under common control with, a carrier providing transportation outside the State.

(2) Except as provided in subchapter III of chapter 113 of this title, the certificate of registration issued by the Commission may be transferred if it is transferred with the intrastate certificate. Transfer of the intrastate certificate without the certificate of registration revokes the certificate of registration.

(3) On the 180th day after the termination, restriction in scope, or suspension of the intrastate certificate, the authority granted under the certificate of registration is revoked or likewise restricted unless the intrastate certificate is renewed or reissued or the restriction is removed by that 180th day. The certificate of registration may be suspended or revoked by the Commission under section 10925 of this title.

(c) Under regulations of the Commission, a motor common carrier transporting passengers under a certificate issued by the Commission as the result of an application filed before January 2, 1967, or under a reissuance of the operating authority provided in the certificate, may provide transportation to any place subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title for special and chartered parties.

(d) The Commission may not prescribe a condition for a motor contract carrier permit issued before August 23, 1957, that restricts the authority of the carrier—

(1) to substitute similar contracts within the scope of the permit; or

(2) to add contracts within the scope of the permit, unless the Commission, on its own initiative or on petition of an interested carrier, finds that the scope of the transportation to be provided by the motor contract carrier under any such additional contract is not confined to transportation provided by a motor contract carrier as defined after August 21, 1957.

§ 10933. Authorizing abandonment of freight forwarder service

When a freight forwarder is controlled by, or under common control with, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title, the freight forwarder may abandon any part of the service it provides subject to the jurisdiction of the Commission under subchapter IV of chapter 105, only if the Commission finds the abandonment is consistent with the public interest and the transportation policy of section 10101 of this title. On making the finding, the Commission shall issue to the freight forwarder a certificate describing the abandonment authorized by the Commission.

Chapter 111—OPERATIONS OF CARRIERS

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SUBCHAPTER I—GENERAL REQUIREMENTS

§ 11101. Providing transportation and service

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide the transportation or service on reasonable request. In addition, a motor common carrier shall provide safe and adequate service, equipment, and facilities.

(b) The Commission may prescribe requirements for continuous and adequate transportation and service provided by motor common carriers and freight forwarders subject to the jurisdiction of the Commission under subchapters II and IV of chapter 105 of this title and for transportation of baggage and express by such motor common carriers of passengers.

(c) The Commission may not regulate the duration of, or the amount of compensation payable under, an arrangement between a motor carrier and another party to use, with a driver, a motor vehicle not owned by that carrier to transport property when—

(1) the motor vehicle—

(A) to be used is that of a farmer or a cooperative association or a federation of cooperative associations under section 10526 (a) (4) or (5) of this title or a motor private carrier;

(B) it is used regularly in the transportation of (i) property referred to in section 10526(a) (6) of this title, or (ii) perishable products manufactured from perishable property referred to in that section; and

(C) is to be used by the carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area where the motor vehicle is based; or

(2) the motor vehicle to be used has completed a movement exempt under section 10526(a) (6) of this title and is next to be used by that carrier in a loaded movement in any direction or in a movement referred to in clause (1)(C) of this subsection, or both.

§11102. Classification of carriers

The Interstate Commerce Commission may classify and maintain requirements for groups of carriers included in the terms "motor common carrier", "water common carrier", "motor contract carrer", or "water contract carrier" and for brokers, when required because of the special nature of the transportation provided by them.

§11103. Use of terminal facilities

(a) The Interstate Commerce Commission may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, to be used by another rail carrier if the Commission finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the carriers cannot agree, the Commission may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a carrier may begin to use the facilities of another carrier under this section.

(b) A rail carrier whose terminal facilities are required to be used by another carrier under this section is entitled to recover damages from the other carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both, as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

§ 11104. Switch connections and tracks

(a) On application of the owner of a lateral branch line of railroad, or of a shipper tendering interstate traffic for transportation, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection—

(1) is reasonably practicable;

(2) can be made safely; and

(3) will furnish sufficient business to justify its construction and maintenance.

(b) If a common carrier fails to install and operate a switch connection after application is made under subsection (a) of this section, the owner of the lateral branch line of railroad or the shipper may file a complaint with the Commission under section 11701 of this title. The Commission shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Commission may direct the common carrier to comply with subsection (a) of this section only after a full hearing.

§ 11105. Protective services

A rail or express carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may arrange for a person to furnish to or for the carrier a protective service against heat or cold for property transported by it subject to that jurisdiction only when the Commission finds the arrangement to be reasonable and in the public interest.

§ 11106. Identification of motor vehicles

(a) The Interstate Commerce Commission may—

(1) issue and require the display of an identification plate on a motor vehicle used in transportation subject to its jurisdiction under subchapter II of chapter 105 of this title; and

(2) require the carrier to pay the reasonable cost of the plate.

(b) A carrier may use an identification plate only as authorized by the Commission.

§ 11107. Leased motor vehicles

Except as provided in section 11101(c) of this title, the Interstate Commerce Commission may require a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary of Transportation on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

§ 11108. Water carriers subject to unreasonable discrimination in foreign transportation

(a) The Interstate Commerce Commission may relieve a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, from the requirements of this subtitle when a rate, rule, or practice established by a person providing water transportation to or from a port in a foreign country in competition with that carrier unreasonably discriminates against that carrier. The Commission may relieve that carrier to the extent and for the period of time necessary to end or ease the discrimination if the relief is in the public interest and consistent with the transportation policy of section 10101 of this title.

(b) The Commission may begin a proceeding under this section on its own initiative or on application.

SUBCHAPTER II—CAR SERVICE

§ 11121. Criteria

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Commission may—

(1) require a rail carrier to file its car service rules with the Commission; and

(2) require that carrier to incorporate those rules in its tariffs.

(b) The Commission may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under section 11123–11125, 11127, and 11128(a) (1) of this title.

§ 11122. Compensation and practice

(a) The regulations of the Interstate Commerce Commission on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include—

(1) the compensation to be paid for the use of a locomotive, freight car, or other vehicle;

(2) the other terms of any arrangement for the use by a rail carrier of a locomotive, freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person; and

(3) sanction for nonobservance.

(b) (1) The rate of compensation to be paid for each type of freight car shall be determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost giving consideration to current costs of capital, repairs, materials, parts, and labor. In determining the rate of compensation, the Commission shall consider the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.

(2) The Commission may increase a rate of compensation determined under paragraph (1) of this subsection by an incentive element only when the Commission finds that the supply of a type of freight car is inadequate and an incentive element will compensate freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and national defense. The Commission may exempt that incentive element from the compensation to be paid by a carrier or group of carriers when the Commission finds that exemption is in the national interest.

§ 11123. Situations requiring immediate action

(a) When the Interstate Commerce Commission considers that a shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in a section of the United States, the Commission may—

(1) suspend any care service rule or practice;

(2) take action during the emergency to promote service in the interest of the public and of commerce regardless of the ownership (as between carriers) of a locomotive, car, or other vehicle on terms of compensation the carriers establish between themselves subject to subsection (b)(2) of this section;

(3) require joint or common use of terminals, including mainline tracks for a reasonable distance outside of those terminals, on terms of compensation the carriers establish between themselves, subject to subsection (b)(2) of this section, when that action will best meet the emergency and serve the public interest; and

(4) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

(2) When the carriers do not agree on terms of compensation under subsection (a)(2) of this section or on terms for joint or common use of terminals under subsection (a)(3) of this section, the Commission may establish for them in a later proceeding terms of compensation the Commission finds to be reasonable.

§ 11124. Rerouting traffic on failure of rail carrier to serve the public

(a) When the Interstate Commerce Commission considers that a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title cannot transport the traffic offered to it in a manner that properly serves the public, the Commission may direct the handling, routing, and movement of the traffic of that carrier and its distribution over other railroad lines to promote commerce and service to the public. Subject to subsection (b)(2) of this section, the carriers may establish the terms of compensation between themselves.

(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

(2) When the carriers do not agree on the terms of compensation under this section, the Commission may establish the terms for them in a later proceeding.

§ 11125. Directed rail transportation

(a) When a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title cannot transport the traffic offered to it because—

(1) its cash position makes its continuing operation impossible;

(2) transportation has been discontinued under court order; or

(3) it has discontinued transportation without obtaining a required certificate under section 10903 of this title;

the Commission may direct the handling, routing, and movement of the traffic available to that carrier and its distribution over the railroad lines of that carrier by another carrier to promote service in the interest of the public and of commerce. Subject to subsection (b) of this section, the Commission may act without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

(b)(1) Action of the Commission under subsection (a) of this section may not remain in effect for more than 60 days. However, the Commission may extend that period for an additional designated period of not more than 180 days if cause exists.

(2) The Commission may not take action that would—

(A) cause a directed carrier to operate in violation of section 421 of title 45; or

(B) impair substantially the ability of a directed carrier to serve its own patrons adequately, or to meet its outstanding common carrier obligations.

(3) A directed carrier is not responsible, because of the direction of the Commission, for the debts of the other carrier.

(4) A directed carrier shall hire the employees of the other carrier, to the extent that they previously provided that transportation for the other carrier, and assume the existing employment obligations and practices of the other carrier for those employees including agreements governing rate of pay, rules and working conditions, and employee protective conditions for the period during which the action of the Commission is effective.

(5) A directed carrier may apply to the Commission for payment of an amount equal to the amount by which (A) the total expenses of that carrier incurred in or attributable to the handling, routing, and moving the traffic over the lines of the other carrier for the period during which the action of the Commission is effective, including renting or leasing necessary equipment and an allocation of common expenses, overhead, and a reasonable profit, exceed (B) the direct revenues from handling, routing, and moving that traffic over the lines of the other carrier during that period. The carrier must submit a current record of those total expenses to the Commission. The Commission shall certify promptly, to the Secretary of the Treasury, the amount to be paid. The Secretary shall pay that amount by the 90th day after the end of the period during which the direction of the Commission is effective, and funds are authorized to be appropriated for that payment. The Commission may audit any such record.

§ 11126. Distribution of coal cars

(a) Subject to subsection (b) of this section, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall make a reasonable distribution of cars for transportation of coal among the coal mines served by it whether the mines are located on its line or are customarily dependent on it for car supply. If the supply of available cars does not equal the requirements of the mines, the carrier shall maintain and apply reasonable ratings of the mines and count each car furnished to or used by a mine for transportation of coal against that mine. However, coal cars supplied by shippers or receivers are deemed not to be a part of the carrier's fleet and are not counted in determining a question about distribution or car count under subsection (b) of this section or section 10102, 10501, 10701–10703, 10707, 10721(b), 10722(c)–(d), 10723(a)–(b)(1), 10724(a), 10741–10744, 10746, 10749, 10750, 10901, 10902, 10907, 11101, 11103–11105, 11121–11125, 11127, 11128(a)(1), 11501(c), 11505(a), 11702(a)(1), 11703, 11901(d)–(e)(2), 11902, 11903, 11905, 11907, 11915, or 11916 of this title.

(b)(1) In this subsection, "unit-train service" means the movement of a single shipment of coal of at least 4,500 tons, tendered to one carrier, one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, over one route.

(2) Unit-train service and non-unit-train service as deemed to be separate and distinct classes of service. A distinction shall be made between them and between the cars used in each class of service. A question about the reasonableness of, our discrimination in, the distribution of cars shall be determined within each class and not between them, notwithstanding a section referred to in subsection (a) of this section.

§ 11127. Service of freight forwarders

(a)(1) When the Interstate Commerce Commission considers that a shortage of equipment, congestion of traffic, or other emergency requires immediate action at a place in the United States, the Commission may—

(A) suspend any service, equipment, or facilities requirement applicable to a freight forwarder under the jurisdiction of the Commission under subchapter IV of chapter 105 of this title;

(B) take action to promote transportation in the interest of the public and of commerce; and

(C) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

(2) When the Commission considers that any such freight forwarder cannot properly serve the public by providing service for the traffic offered it, the Commission may require the handling, routing, and movement of that traffic in another manner to promote commerce and service to the public. When the equipment or facilities of another freight forwarder are required to be used, the freight forwarders may establish terms of compensation between themselves subject to subsection (b)(2) of this section.

(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

(2) When the freight forwarders do not agree on the terms of compensation under this section, the Commission may establish the terms for them in a later proceeding.

§ 11128. War emergencies; embargoes imposed by carriers

(a)(1) When the President, during time of war or threatened war, certifies to the Interstate Commerce Commission that it is essential to the defense and security of the United States to give preference or priority to the movement of certain traffic, the Commission shall direct that preference or priority be given to that traffic under sections 11123(a)(4) and 11127(a)(1)(C) of this title.

(2) When the President, during time of war or threatened war, demands that preference and precedence be given to the transportation of troops and material of war over all other traffic, all carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall adopt every means within their control to facilitate and expedite the military traffic.

(b) An embargo imposed by any such carrier does not apply to shipments consigned to agents of the United States Government for its use. The carrier shall deliver those shipments as promptly as possible.

SUBCHAPTER III—REPORTS AND RECORDS

§ 11141. Definitions

In this subchapter—

(1) "carrier", "broker", and "lessor" include a receiver or trustee of a carrier (except a freight forwarder), broker, and lessor, respectively.

(2) "lessor" means a person owning a railroad, water line, or a pipeline that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the

Interstate Commerce Commission under subchapter I of chapter 105 of this title, and a person leasing a right to operate as a motor carrier or water carrier to another.

(3) "association" means an organization maintained—

(A) by or in the interest of a group of carriers (except water carriers) or brokers providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title that performs a service, or engages in activities, related to transportation under this subtitle; or

(B) only by water carriers providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title that engages in activities related to the fixing of rates, publication of classifications, or filing of tariffs by water carriers.

§ 11142. Uniform accounting systems

(a) The Interstate Commerce Commission shall prescribe, for rail carriers providing transportation subject to this subtitle, a uniform cost and revenue accounting and reporting system (1) under generally accepted accounting principles uniformly applied to those carriers and (2) after consideration of appropriate economic principles. To the extent possible, the system shall be cost effective, without duplication, and compatible with the present and desired managerial and responsibility accounting requirements of those carriers. The Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.

(b)(1) To obtain the most accurate cost and revenue information about light density railroad lines, main line operations, factors used to establish rates, and other regulatory areas of responsibility, the Commission shall identify and define, for each facet of rail transportation—

(A) operating and nonoperating revenue accounts;

(B) direct cost accounts for determining fixed and variable costs for materials, labor, and overhead components of operating expenses and the assignment of those costs to various functions, services, or activities, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services), and general and administrative expenses; and

(C) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of those costs to various functions, services, or activities.

(2) Reports required under the rail accounting system must include information considered appropriate for disclosure under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. To the extent possible, the Interstate Commerce Commission should require that information be reported or disclosed only for essential regulatory purposes including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

(3) The Commission shall review the rail accounting system periodically, but at least once every 5th year after 1977, and revise the system as necessary to conform it to generally accepted accounting principles compatible with the managerial and responsibility accounting requirements of those carriers and to keep it in compliance with this section.

§ 11143. Depreciation charges

The Interstate Commerce Commission shall, for a class of carriers providing transportation subject to its jurisdiction under subchapter I or III of chapter 105 of this title, and may, for a class of carriers providing transportation subject to its jurisdiction under subchapter II of that chapter, prescribe, and change when necessary, those classes of property for which depreciation charges may be included under operating expenses and a rate of depreciation that may be charged to a class of property. The Commission may classify those carriers for purposes of this section. A carrier for whom depreciation charges and rates of depreciation are in effect under this section for any class of property may not—

(1) charge to operating expenses a depreciation charge on a class of property other than that prescribed by the Commission;

(2) charge another rate of depreciation; or

(3) include other depreciation charges in operating expenses.

§ 11144. Records: form; inspection; preservation

(a) The Interstate Commerce Commission may prescribe the form of records required to be prepared or compiled under this subchapter—

(1) by carriers, brokers, and lessors, including records related to movement of traffic and receipts and expenditures of money; and

(2) by persons furnishing cars or protective service against heat or cold to or for a rail or express carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to the extent related to those cars or that service.

(b) The Commission, or an employee designated by the Commission, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a carrier, broker, or lessor; and

(2) inspect and copy any record of—

(A) a carrier, broker, lessor, or association;

(B) a person controlling, controlled by, or under common control with a carrier if the Commission considers inspection relevant to that person's relation to, or transaction with, that carrier; and

(C) a person furnishing cars or protective service against heat or cold to or for a rail or express carrier if the Commission prescribed the form of that record.

(c) The Commission, or an employee designated by the Commission, may, during normal business hours, inspect and copy any record related to motor vehicle transportation of a cooperative association or federation of cooperative associations required to notify the Commission under section 10526(a)(5) of this title. However, the Commission may not prescribe the form of records to be maintained by a cooperative association or federation of cooperative associations.

(d) The Commission may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers, brokers, lessors, and persons furnishing cars or protective services.

§ 11145. Reports by carriers, lessors, and associations

(a) The Interstate Commerce Commission may require—

(1) carriers, brokers, lessors, and associations, or classes of them as the Commission may prescribe, to file annual, periodic, and special reports with the Commission containing answers to questions asked by it; and

(2) a person furnishing cars or protective services against heat or cold to a rail or express carrier providing transportation subject to this subtitle, to file reports with the Commission containing answers to questions about those cars or services.

(b)(1) An annual report shall contain an account, in as much detail as the Commission may require, of the affairs of the carrier, broker, lessor, or association for the 12-month period ending on the 31st day of December of each year. However, when an annual report is made by a motor carrier, a broker, or a lessor or an association maintained by or interested in one of them, the person making the report may elect to make it for the 13-month period accounting year ending at the close of one of the last 7 days of each calendar year if the books of the person making the report are kept by that person on the basis of that accounting year.

(2) An annual report shall be filed with the Commission by the end of the 3d month after the end of the year for which the report is made unless the Commission extends the filing date or changes the period covered by the report. The annual report and, if the Commission requires, any other report made under this section, shall be made under oath.

Chapter 113—FINANCE

SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

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SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

§ 11301. Authority of certain carriers to issue securities and assume obligations and liabilities

(a) In this section—

(1) "carrier" means a rail or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title (except a street, suburban, or interurban electric railway not operated as

a part of a general railroad system of transportation), and a corporation organized to provide transportation by rail carrier subject to that subchapter.

(2) "security" means a share of capital stock, a bond, or other evidence of interest in, or indebtedness of, a carrier.

(b)(1) Subject to subchapter I of chapter 2A, chapter 2B, and subchapter I of chapter 2D of title 15, the Commission has exclusive jurisdiction to approve the issuance of securities by a carrier and the assumption of an obligation or liability related to the securities of another person by a carrier. A carrier may not issue securities or assume those obligations or liabilities without the approval of the Commission. No other approval is required. A security issued or obligation or liability assumed by a carrier in violation of this subsection or in violation of a condition prescribed by the Commission under subsection (d) of this section is void. However, a security or obligation issued or assumed under authority of this section is not void for failure to comply with a procedural requirement of this section or other matter preceding entry of the order of the Commission.

(2) Paragraph (1) of this subsection does not apply to notes issued by a carrier if the notes mature not more than 2 years after their date of issue and total (with all then outstanding notes have a maturity of not more than 2 years) not more than 5 percent of the par value of the then outstanding securities of that carrier. If the securities do not have a par value, the par value of those securities is the fair market value on the date of issue. Paragraph (1) of this subsection applies to a subsequent funding of notes referred to in this paragraph.

(c)(1) A carrier issuing notes referred to in subsection (b)(2) of this section shall file a certificate of notification with the Commission by the end of the 10th day after they are issued. That notification must include substantially the same matter required by the Commission for an application for authority to issue other securities.

(2) A carrier that pledges, repledges, or otherwise disposes of a security referred to in an application for authority or a certificate of notification under this section as pledged or held unencumbered in the treasury of that carrier shall file a certificate of notification with the Commission by the end of the 10th day after it disposes of the security.

(d)(1) The Commission may begin a proceeding under this section on application of a carrier. Before taking final action, the Commission must investigate the purpose and use of the securities issue or assumption and the proceeds from it. The Commission may approve any part of the application and may require the carrier to comply with appropriate conditions. After an application is approved under this section, the Commission may change a condition previously imposed or use that may be made of the securities or proceeds for good cause shown subject to the requirements of this section. The Commission may approve an application under this section only when it finds that the securities issue or assumption—

(A) is for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose;

(B) is compatible with the public interest;

(C) is appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier; and

(D) will not impair the financial ability of the carrier to provide the service.

(2) An application or certificate must be made under oath and signed and filed for the carrier by a designated executive officer who knows the matters stated in the application or certificate. On receipt of an application of a carrier under this section, the Commission shall have a copy of the application served on the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.

(e) The Commission shall require a carrier that issues securities, including notes, under this section to submit reports to it. The reports must identify the disposition of those securities and the application of the proceeds from their disposition

(f) This section does not imply a guaranty or obligation of those securities by the United States Government. This section does not apply to securities issued or obligations or liabilities assumed by the United States Government, a State, or an instrumentality or political subdivision of one of them.

§ 11302. Issuance of securities and assumption of obligations and liabilities by motor carriers

(a) Except as provided in this section, section 11301 of this title applies to—

(1) motor carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title;

(2) corporations organized to provide transportation as carriers subject to the jurisdiction of the Commission under that subchapter; and

(3) corporations authorized by the Commission to acquire control of at least one motor carrier subject to its jurisdiction under that subchapter.

(b) Section 11301 of this title does not apply when the total value of capital stock (or principal amount of other securities to be issued) and the value of capital stock and principal amount of other securities then outstanding is not more than $1,000,000, or to notes of a maturity of not more than 2 years that aggregate not more than $200,000. Notes that, with other outstanding notes of a maturity of not more than 2 years, aggregate that amount may be issued without regard to the percentage limitations applicable under section 11301(b)(2) of this title. The value of capital stock having no par value is the fair market value on the date of issue of that stock, and the value of capital stock that has a par value is the fair market value on the date of issue or the par value, whichever is greater.

(c) This section does not apply to the United States Government, State, or an instrumentality or political subdivision of one of them.

§ 11303. Equipment trusts: recordation; evidence of indebtedness

(a) A mortgage (other than a mortgage under the Ship Mortgage Act, 1920), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of railroad cars, locomotives, or other rolling stock or vessels, intended for a use related to interstate commerce may be filed with the Interstate Commerce Commission. An assignment of a right or interest under one of those instruments and an amendment to that instrument or assignment including a release, discharge, or satisfaction of any part of it may also be filed with the Commission. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Commission regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or recordation of those documents. This section does not change the Ship Mortgage Act, 1920.

(b) The Commission shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Commission shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

§ 11304. Security interests in certain motor vehicles

(a) In this section—

(1) "motor vehicle" means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combination weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

(2) "lien creditor" means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in bankruptcy from the date of filing of the petition in bankruptcy, and a receiver in equity from the date of appointment of the receiver.

(3) "security interest" means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

(4) "perfection", as related to a security interest, means taking action (including public filing, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

(b) A security interest in a motor vehicle owned by, or in the possession and use of, a carrier having a certificate or permit issued under section 10922 or 10923 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a certificate or title, of a security interest in the motor vehicle if the security interest is indicated on the certificate;

(2) a certificate of title has not been issued and the law of the State where the principal place of business of that carrier is located requires or permits public filing or recording of, or in relation to, that security interest if there has been such a public filing or recording; and

(3) a certificate of title has not been issued and the security interest cannot be perfected under paragraph (2) of this subsection, if the security interest has been perfected under the law (including the conflict of laws rules) of the State where the principal place of business of that carrier is located.

(c) This section does not affect a security interest perfected before January 1, 1959.

SUBCHAPTER II—OWNERSHIP

§ 11321. Limitation on ownership of certain water carriers

(a) (1) Notwithstanding sections 11343 and 11344 of this title, a carrier, or a person controlling, controlled by, or under common control with a rail, express, sleeping car, or pipeline carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not own, operate, control, or have an interest in a water common carrier or vessel carrying property or passengers on a water route with which it does or may compete for traffic.

(2) The Commission may decide, after a full hearing, questions of fact related to competition or the possibility of competition under this subsection on application of a carrier. A carrier may file an application to determine whether an existing service violates this subsection and may request permission to continue operation of a vessel or that action be taken under subsection (b) of this section. The Commission may begin a proceeding under this subsection on its own initiative or on application of a shipper to investigate the operation of a vessel used by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter if the carrier has not applied to the Commission and had the question of competition or the possibility of competition determined under this subsection.

(b) Notwithstanding subsection (a) of this section, the Commission may authorize a carrier providing transportation subject to the jurisdiction of the Commission under that subchapter to own, operate, control, or have an interest in a water common carrier or vessel that is not operated through the Panama Canal and with which the carrier does or may compete for traffic when the Commission finds that ownership, operation, control, or interest will still allow that water common carrier or vessel to be operated in the public interest advantageously to interstate commerce and that it will still allow competition, without reduction, on the water route in question. However, section 11343 of this title also applies to a transaction or interest under this subsection if the transaction or interest is within the scope of that section. The Commission may begin a proceeding under this subsection on application of a carrier. An authorization under this subsection is not necessary for a carrier that obtained an order of extension before September 18, 1940, under section 5(21) of the Interstate Commerce Act (37 Stat. 567), as amended, if the order is still in effect.

(c) The Commission may take action under this section only after a full hearing. An order entered as a result of the action may be conditioned on giving security for the payment of an amount of money or the discharge of an obligation that is required to be paid or discharged under that order.

§ 11322. Restrictions on officers and directors

(a) A person may hold the position of officer or director of more than one carrier as defined in section 11301(a)(1) of this title only when authorized by the Interstate Commerce Commission. The Commission may authorize a person to hold the position of officer or director of more than one of those carriers when public or private interests will not be adversely affected.

(b) An officer or director of a carrier referred to in subsection (a) of this section may not—

(1) receive, for the benefit of that officer or director, a thing of value in relation to the negotiation, hypothecation, or sale of a security issued or to be issued by that carrier;

(2) share in the proceeds from the negotiation, hypothecation, or sale of a security issued or to be issued by that carrier; or

(3) participate in making or paying dividends of an operating carrier from funds included in a capital account.

§ 11323. Limitation on ownership of other carriers by freight forwarders

(a) A freight forwarder, or a person controlling, controlled by, or under common control with a freight forwarder, providing service subject to the jurisdiction of the Interstate Commerce Commission under subchapter IV of chapter 105 of this title, may not acquire control of a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter. However, this subsection does not prohibit a carrier providing transportation under subchapter I, II, or III of chapter 105 from acquiring control of another such carrier under subchapter III of this chapter but subject to section 11321.

(b) A director, officer, employee, or agent of a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title or a person controlling, controlled by, or under common control with one of those carriers, may not, for that person's pecuniary benefit, own, lease, control, or hold stock in a freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter. However, this subsection does not prohibit the holding of a director's qualifying shares of stock from which no personal pecuniary benefit is derived by the holder.

(c) This subtitle does not prohibit a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title or a person controlling, controlled by, or under common control with one of those carriers from controlling a freight forwarder. When that control exists, a rate, classification, rule, or practice of one of those carriers may not be found to be unlawful because of the relationship.

SUBCHAPTER III—COMBINATIONS

§ 11341. Scope of auhority

(a) The authority of the Interstate Commerce Commission under this subchapter is exclusive. A carrier or corporation participating in or resulting from a transaction approved by the Commission under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in that transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation on merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

(b) A power granted under this subchapter to a carrier or corporation is in addition to and changes it powers under its corporate charter and under State law. Action under this subchapter does not establish or provide for establishing a corporation under the laws of the United States.

§ 11342. Limitation on pooling and division of transportation or earnings

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may not agree or combine with another of those carriers to pool or divide traffic or services or any part of their earnings without the approval of the Commission under this section or sections 11124 and 11125 of this title. The Commission may approve and authorize the agreement or combination if the carriers involved assent to the pooling or division and the Commission finds that a pooling or division of traffic, services, or earnings—

(1) will be in the interest of better service to the public or of economy of operation; and

(2) will not unreasonably restrain competition.

(b) The Commission may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

(c) This section affects an agreement or combination filed with the Commission before March 19, 1941, to which a water common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title is a party only when the Commission determines that the agreement or combination does not meet the requirements for approval and authorization under subsection (a) of this section.

(d) The Commission may begin a proceeding under this section on its own initiative or on application.

§ 11343. Consolidation, merger, and acquisition of control

(a) The following transactions involving carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I (except a pipeline carrier), II, or III of chapter 105 of this title may be carried out only with the approval and authorization of the Commission:

(1) consolidation or merger of the properties or franchises of at least 2 carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.

(2) a purchase, lease, or contract to operate property of another carrier by any number of carriers.

(3) acquisition of control of a carrier by any number of carriers.

(4) acquisition of control of at least 2 carriers by a person that is not a carrier.

(5) acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

(6) acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or management, including the power to exercise control or management, in a common interest of more than one of those carriers, regardless of how that result is reached, only with the approval and authorization of the Commission under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control management:

(1) A transaction by a carrier has the effect of putting that carrier and persons affiliated with it, taken together, in control of another carrier.

(2) A transaction by a person affiliated with a carrier has the effect of putting that carrier and persons affiliated with it, taken together, in control of another carrier.

(3) A transaction by at least 2 persons acting together (one of whom is a carrier or is affiliated with a carrier) has the effect of putting those persons and carriers and persons affiliated with any of them, or with any of those affiliated carriers, taken together, in control of another carrier.

(c) A person is affiliated with a carrier under this subchapter if, because of the relationship between that person and a carrier, it is reasonable to believe that the affairs of another carrier, control of which may be acquired by that person, will be managed in the interest of the other carrier.

(d)(1) Approval and authorization by the Commission are not required if the only parties to a transaction referred to in subsection (a) of this section are motor carriers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and the aggregate gross operating revenues of those carriers were not more than $300,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties covering the transaction. However, the approval and authorization of the Commission is required when a motor carrier that is controlled by or affiliated with a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter is a party to the transaction.

(2) The approval and authorization of the Commission are not required if the only parties to a transaction referred to in subsection (a) of this section are street, suburban, or interurban electric railways that are not controlled by or under common control with a carrier that is operated as part of a general railroad system of transportation.

§ 11344. Consolidation, merger, and acquisition of control: general procedure and conditions of approval

(a) The Interstate Commerce Commission may begin a proceeding to approve and authorize a transaction referred to in section 11343 of this title on application of the person seeking that authority. When an application is filed with the Commission, the Commission shall notify the chief executive officer of each State in which property of the carriers involved in the proposed transaction is located and shall notify those carriers. If a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title is involved in the transaction, the Commission must notify the persons specified in section 10328(b) of this title. The Commission shall hold a public hearing when a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter is involved in the transaction unless the Commission determines that a public hearing is not necessary in the public interest.

(b) In a proceeding under this section, the Commission shall consider at least the following:

(1) the effect of the proposed transaction on the adequacy of transportation to the public.

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

(3) the total fixed charges that result from the proposed transaction.

(4) the interest of carrier employees affected by the proposed transaction.

(c) The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Commission may impose conditions governing the transaction. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Commission may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. When a rail carrier, or a person controlled by or affiliated with a rail carrier, is an applicant and the transaction involves a motor carrier, the Commission may approve and authorize the transaction only if it finds that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition. When a rail carrier is involved in the transaction, the Commission may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Commission finds their inclusion to be consistent with the public interest.

§ 11345. Consolidation, merger, and acquisition of control: rail carrier procedure

(a) If a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title is involved in a proposed transaction under section 11343 of this title, this section and section 11344 of this title also apply to the transaction. The Commission shall publish notice of the application in the Federal Register by the end of the 30th day after the application is filed with the Commission and after a certified copy of it is furnished to the Secretary of Transportation. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final action of the Commission under section 10327 of this title.

(b) Written comments about an application may be filed with the Commission within 45 days after notice of the application is published under subsection (a) of this section. Copies of those comments shall be served on the Secretary of Transportation and the Attorney General, each of whom may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Commission by the end of the 15th day after the date of receipt of the written comments.

(c) The Commission shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it and given to the Secretary of Transportation by the 90th day after publication of notice under that subsection.

(d) The Commission must conclude evidentiary proceedings by the 240th day after the date of publication of notice under subsection (a) of this section. However, if the application involves the merger or control of at least 2 class I railroads, as defined by the Commission, it must conclude evidentiary proceedings by the end of the 24th month after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 180th day after the date it concludes the evidentiary proceedings. If the Commission does not issue a decision that is a final action under section 10327 of this title, it shall send written notice to Congress that a decision was not issued and the reason why it was not issued.

(e) The Commission may waive the requirement that an initial decision be made under section 10327 of this title and make a final decision itself when it determines that action is required for the timely execution of its functions under this subchapter or that an application governed by this section is of major transportation importance. The decision of the Commission under this subsection is a final action under section 10327 of this title.

(f) The Secretary of Transportation may propose changes in transactions governed by this section when a rail carrier is involved. The Secretary may appear before the Commission to support those changes.

§ 11346. Consolidation, merger, and acquisition of control: expedited rail carrier procedure.

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title or the Secretary of Transportation may apply, before January 1, 1982, for authority for and approval of a merger, consolidation, unification or coordination project (as described in section 1654(c) of this title), joint use of tracks or other facilities, or acquisition or sale of assets involving one of those rail carriers, under this section instead of sections 11344 and 11345 of this title. The Secretary may apply under this section only when the parties to the application that are rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter that consent to an application by the Secretary. A rail carrier may apply under this section only if it sent the proposed transaction to the Secretary for a report under section 11350 of this title at least 6 months before applying under this section.

(b) When the Commission notifies persons required to receive notice that an application has been filed under this section, the Commission must include in the notice a copy of the application, a summary of the proposed transaction, and the applicant's reasons and public interest justification for the transaction. When the Commission notifies the Secretary of Transportation that an application has been filed under this section, the Commission shall also request the report of the Secretary prepared under section 11350 of this title. By the 10th day after receiving an application under this section, the Commission shall send notice of the proposed transaction to—

(1) the chief executive officer of each State that may be affected by the execution or implementation of the proposed transaction;

(2) the Attorney General;

(3) the Secretary of Labor; and

(4) the Secretary of Transportation (unless the Secretary is the applicant under subsection (a) of this section).

(c) The Commission shall designate a panel of the Commission to make a recommended decision on each application under this section. The panel must begin a proceeding by the 90th day after the date the Commission receives the application, complete the proceeding by the 180th day after the application is referred to it, and give its recommended decision and certify the record to the entire Commission by the 90th day after the proceeding is completed. The panel may use employees appointed under section 3105 of title 5 and the Rail Services Planning Office in conducting the proceeding, evaluating the application and comments received about it, and determining whether it is in the public interest to approve and authorize the transaction under the last sentence of subsection (d) of this section. To carry out this subsection, the panel may make rules and rulings to avoid unnecessary costs and delay. In making its recommended decision, the panel shall—

(1) request the views of the Secretary of Transportation about the effect of the transaction on the national transportation policy, as stated by the Secretary, and consider the report submitted under section 11350 of this title;

(2) request the views of the Attorney Gen-

eral about the effect of the transaction on competition; and

(3) request the views of the Secretary of Labor about the effect of the transaction on rail carrier employees, particularly whether the proposal contains adequate employee protection provisions.

The Secretaries and the Attorney General shall send their written views to the panel. Those statements are available to the public under section 552(a) of title 5.

(d) When the recommended decision and record of a proceeding under this section are certified to the entire Commission, it must hear oral argument on the matter certified to it and make a final decision by the 120th day after receiving the recommended decision and record. The Commission may extend a time period under subsection (c) of this section or under this subsection but must make its final decision by the end of the 2d year after receipt of the application by the Commission. The Commission shall consider the report of the Secretary of Transportation under section 11350 of this title in making its final decision. The final decision must be accompanied by a written opinion stating the reasons for the Commission action. The Commission may—

(1) approve the transaction if the Commission determines the transaction is in the public interest;

(2) approve the transaction with conditions and modifications that it determines are in the public interest; or

(3) disapprove the transaction if it determines the transaction is not in the public interest.

§ 11347. Employee protective arrangements in transactions involving rail carriers

When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission shall require the carrier to provide a fair arrangement at least as protective of the interests of its employees who are affected by the transaction as the terms imposed under this section before February 5, 1976, and the terms established under section 565 of title 45. Notwithstanding this subtitle, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).

§ 11348. Interstate Commerce Commission authority over noncarrier that acquires control of carrier

(a) When the Interstate Commerce Commission approves and authorizes a transaction under sections 11344 and 11345 of this title in which a person not a carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title acquires control of at least one carrier subject to the jurisdiction of the Commission, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier being acquired by that person, to the extent specified by the Commission: section 10764, subchapter III of chapter 111, and sections 11301, 11302, 11709, 11711, 11901(f), (h)(1), 11909(a)(1), (b), and 11911(a).

(b) When a person subject to sections 11301, 11302, 11322, 11709, and 11911 of this title because of acquiring control of a carrier, applies to the Commission for authority to issue securities or assume obligations or liabilities under those sections, the Commission may authorize the issue or assumption only when it finds the issue or assumption—

(1) is consistent with the proper performance of public transportation by the carrier that is controlled by that person;

(2) will not impair the ability of the carrier to provide public transportation; and

(3) is consistent with the public interest in other respects.

§ 11349. Temporary operating approval for transactions involving motor and water carriers

(a) Pending determination of an application filed with the Interstate Commerce Commission under this subchapter for approval of a consolidation or merger of the properties of at least 2 motor carriers or at least 2 water carriers, or of a purchase, lease, or contract to operate the properties of at least one motor carrier or at least one water carrier, the Commission may approve, for a period of not more than 180 days, the operation of the properties sought to be acquired by the person proposing in the application to acquire those properties. The Commission may approve operation of motor carrier properties when it appears that failure to grant the approval may result in destruction of or injury to those motor carrier properties the person is seeking to acquire, or substantially interfere with their future usefulness in providing adequate and continuous service to the public. The Commission may approve the operation of water carrier properties only for good cause shown.

(b) The Commission may take action under subsection (a) of this section without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5. Transportation provided by a motor carrier under a grant of approval under this section is subject to this subtitle.

§ 11350. Responsibility of the Secretary of Transportation in certain transactions

(a) When a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title sends a proposed transaction to the Secretary of Transportation under section 11346(a) of this title or the Secretary develops a proposed transaction for submission to the Commission under that section, the Secretary shall publish a summary and a detailed account of the transaction in the Federal Register and give notice of the transaction to the Attorney General and to the chief executive officer of each State in which property of a rail carrier involved in the transaction is located. The Secretary shall initiate an informal proceeding on the proposed transaction under section 553 of title 5.

(b) By the 10th day after an application is submitted to the Commission under section 11346 of this title, the Secretary shall complete and send to the Commission a study of the proposed transaction about—

(1) the needs of rail transportation in the geographical area affected by the transaction;

(2) the effect of the transaction on competition in rail transportation and other modes of transportation in the geographical area affected by the transaction;

(3) the environmental impact of the transaction and of alternative choices of action;

(4) the effect of the transaction on employment;

(5) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

(6) the rationalization of the rail system;

(7) the impact of the transaction on shippers, consumers, and rail carrier employees;

(8) the effect of the transaction on communities in the geographical area affected by the transaction and on geographical areas contiguous to the affected areas; and

(9) whether the proposed transaction will improve rail service.

SUBCHAPTER IV—FINANCIAL STRUCTURE

§ 11361. Scope of authority: changes in financial structure

(a) The authority of the Interstate Commerce Commission to act under this subchapter is exclusive. The Commission may approve and authorize a carrier, as defined in section 11301(a)(1) of this title, to change (1) a part of a class of its securities, as defined in section 11301(a)(2) of this title, or (2) a part of an instrument under which a class of its securities is issued or a class of its obligations is secured. When a change is approved and authorized by the Commission under this subchapter, the carrier may carry out the change notwithstanding an express provision in the affected instrument or a State law and without getting other approval from the Commission or from a State authority. A person participating in carrying out a change that is approved and authorized under this subchapter is exempt from all other law, including State and municipal law, as necessary to let that person carry out the change.

(b) The Commission may not approve an application filed under this section by a carrier that is in equity receivership or reorganization under section 205 of title 11.

(c) A power granted to a carrier under this subchapter changes its powers under its corporate charter and under State law.

(d) This subchapter does not affect the negotiability of a security of a carrier or of the obligation of a carrier that assumed liability related to a security. This subchapter does not apply to an equipment-trust certificate under which a carrier is obligated, to an evidence of indebtedness of a carrier the payment of which is secured solely by equipment, or to another instrument under which that equipment-trust certificate or evidence of indebtedness was issued or by which either of them is secured.

§ 11362. Criteria for approval and authority

(a) A carrier may apply to the Interstate Commerce Commission for approval and authority to make a change under this subchapter. To approve a proposed change, the Commission must find that the proposed change—

(1) is within the scope of section 11361 of this title;

(2) will be in the public interest;

(3) will be in the best interests of the carrier, of each class of its stockholders, and of the holders of each class of the carrier's obligations that are affected by the change; and

(4) will not be against the interests of a creditor of the carrier who is not affected by the change.

If the change involves an issuance of securities, the Commission must also make the findings required under section 11301(d)(1) of this title.

(b)(1) The Commission shall begin a proceeding under this section on receipt of an application but may require an applicant to get assurances of assent to the change from the holders of the outstanding shares of the securities that will be affected by the change before continuing with the proceeding. The Commission may determine the percentage of the principal amount or number of those shares needed to establish assurance of assent to the change. A class of securities is considered to be affected by a proposed change only if the change is proposed to a part of that class or to a part of an instrument under which that class was issued or by which it is secured. However, if a proposed change is to an instrument under which at least 2 classes of securities were issued and are outstanding or secured by that instrument, only those classes to which the change is related are considered to be affected. The Commission shall divide the

securities to be affected by a proposed change under this subchapter into reasonable classes for purposes of this subchapter.

(2) On receipt of an application of a carrier under this section the Commission shall notify, and file a copy of the application with, the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.

(c) The carrier must give notice of the proceeding to the holders of the class of securities affected. The Commission may direct the carrier to give notice to other persons the Commission determines to have an interest in the proceeding. The carrier may give notice under this subsection only after it gets assurances of assent when they are required under this section.

(d) The Commission may impose conditions governing the proposed change. The Commission may determine the effective date for a change it approves and authorizes under this subchapter and may allow it to become effective on publication of a declaration to that effect by the carrier. After an application is approved, the Commission may change a condition imposed and impose supplemental requirements for good cause shown subject to the requirements of this subchapter.

§ 11363. Assent of holders of securities and certain other instruments

(a)(1) After making the findings required under section 11362(a) of this title, the Commission may approve and authorize the change if it is assented to by the holders of at least 75 percent of the aggregate principal amount or number of outstanding shares of each class of securities affected by the change. The Commission may increase the percentage required for assent under this subsection for a class of shares when an increase is in the public interest and—

(A) 75 percent of the shares in that class are held by less than 25 security holders; or

(B) that class is entitled to vote for the election of directors of the carrier and the Commission determines that the assent of at least 25 percent of the security holders of that class are controlled by the carrier or a person controlling the carrier.

(2) The carrier may withdraw its application after the Commission makes the findings required under section 11362(a) of this title. If the application is not withdrawn, the Commission must require the carrier to submit the proposed change, with conditions imposed by the Commission, to the holders of each class of its securities affected by the change for their assent or rejection.

(b)(1) In determining the percentage of outstanding securities when making a finding under section 11362(a) of this title, a security that secures an evidence of indebtedness of the carrier or of a company controlling or controlled by the carrier is considered to be outstanding unless the Commission determines that the proposed change does not materially affect the interest of the holder of that evidence of indebtedness. When that security is considered to be outstanding, assent to a proposed change may be given, notwithstanding another instrument, only—

(A) if the security is pledged as security under an instrument under which an evidence of indebtedness was issued and is outstanding, by the holder of a majority of the principal amount of the evidence of indebtedness; or

(B) if the security secures an evidence of indebtedness not issued under an instrument under which an evidence of indebtedness was issued, by the holder of the evidence of indebtedness.

(2) In addition to a submission required under subsection (a) of this section, the Commission shall require the carrier to submit a proposed change to a security referred to in this subsection, with requirements imposed by the Commission, to the holder of the evidence of indebtedness referred to in paragraph (1) (A) and (B) of this subsection as appropriate, for assent or rejection. A carrier is not required to submit the change to the trustee of the instrument referred to in that paragraph.

(c) If the Commission determines that the assent of the holder of a security not entitled to vote for the election of directors of the carrier or an evidence of indebtedness is in the control of the carrier or of a person controlling the carrier, that security or evidence of indebtedness is not considered to be outstanding.

§ 11364. Procedure

(a) The Commission may prescribe the manner in which assents, assurances of assent, or rejections of the security holders may be solicited whether the solicitation is made before or after the Commission approves and authorizes the proposed change.

(b) The Commission may approve a bank or trust company, incorporated under the law of the United States or a State, that is a member of the Federal Reserve System and has a capital and surplus of at least $2,000,000, to receive assents and revocations of assents from security holders. The Commission may require the security holders to send those assents and revocations to that bank or trust company. That bank or trust company shall certify the result of the submission to the Commission. The Commission may rely on that certification as conclusive evidence in determining the result of that submission.

§ 11365. Effect of change on other persons

(a) When a change becomes effective under this subchapter, the change is binding on, and changes the rights of—

(1) each holder of a security of the carrier of each class affected by the change; and

(2) a trustee or other party to an instrument under which a class of securities has been issued or by which it is secured.

(b) An authorization and approval of a change under this subchapter is authority for, and approval of, a corresponding change of the obligation of another carrier that assumed liability related to that class of securities if that carrier consents to the change in writing. When consent is given, the corresponding change becomes effective when the change of the class of securities or instrument becomes binding. A person who is liable or obligated on a class of securities issued by a carrier is a carrier with respect to that class of the purposes of this subchapter.

§ 11366. Reports

A carrier receiving approval and authorization to make a change under this subchapter shall report the action taken by it in making that change to the Interstate Commerce Commission. The Commission may require periodic or special reports.

§ 11367. Application of other laws

(a) Section 78n(a) of title 15 does not apply to a solicitation related to a proposed change under this subchapter.

(b) If the Interstate Commerce Commission finds an issuance of a security, that is an interest in a railroad equipment trust as defined in section 77c(a)(6) of title 15, under this subchapter complies with section 11301 of this title, it is considered to be an issuance subject to section 11301 within the meaning of section 77c(a)(6) of title 15. Section 77e of that title does not apply to the issuance, sale, or exchange of certificates of deposit representing securities of, or claims against, a carrier that are issued by committees in proceedings under this subchapter. Those certificates and transactions under this subchapter are exempt from subchapter I of chapter 2A of title 15.

Chapter 115—FEDERAL-STATE RELATIONS

11501. Interstate Commerce Commission authority over intrastate transportation.
11502. Conferences and joint hearings with State authorities.
11503. Tax discrimination against rail transportation property.
11504. Withholding State and local income tax by certain carriers.
11505. State action to enjoin rail carriers from certain actions.
11506. Registration of motor carriers by a State.
11507. Prison-made property governed by State law.

§ 11501. Interstate Commerce Commission authority over intrastate transportation

(a)(1) The Interstate Commerce Commission shall prescribe the rate, classification, rule, or practice for transportation or service provided by a carrier subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title when the Commission finds that a rate, classification, rule, or practice of a State causes—

(A) between persons or localities in intrastate and foreign commerce, unreasonable discrimination against those persons or localities in interstate or foreign commerce; or

(B) unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

(2) The Commission may make a finding under this subsection involving a carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title without separating interstate and intrastate property, revenues, and expenses, and without considering the total operations, or their results, of a carrier or group of carriers operating entirely in one State.

(b)(1) The Commission has exclusive authority to prescribe an intrastate rate for transportation provided by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title when—

(A) a rail carrier files with an appropriate State authority a change in an intrastate rate, or a change in a classification, rule, or practice that has the effect of changing an intrastate rate, that adjusts the rate to the rate charged on similar traffic moving in interstate or foreign commerce; and

(B) the State authority does not act finally on the change by the 120th day after it was filed.

(2) When a rail carrier files an application with the Commission under this subsection, the Commission shall prescribe the intrastate rate under the standards of subsection (a) of this section. Notice of the application shall be served on the State authority.

(c) The Commission may take action under this section only after a full hearing. Action of the Commission under this section supersedes State law or action taken under State law in conflict with the action of the Commission.

§ 11502. Conferences and joint hearings with State authorities

(a)(1) In carrying out this subtitle as it applies to a class of persons providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, III, or IV of chapter 105 of this title, the Commission may—

(A) confer and hold joint hearings with the State authorities having regulatory jurisdiction of that class when the conference or hearing is related to an investigation of the relationship between rate structures and practices of carriers providing transportation or service subject to the jurisdiction of

the State authorities and of the Commission, and the Commission may take action as a result of the investigation that may affect the ratemaking authority of a State; and

(B) cooperate with and use the services, records, facilities of the State authorities.

(2) In carrying out this subtitle as it applies to motor carriers and brokers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, the Commission may—

(A) confer and hold joint hearings with State authorities;

(B) cooperate with and use the services, records, and facilities of State authorities; and

(C) make cooperative agreements with a State to enforce the economic laws and regulations of a State and the United States concerning highway transportation.

(b) When an investigation under this subtitle involving a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title, is about a rate, classification, rule, or practice of a State, the Commission shall notify the interested State of the proceeding before disposing of the issue.

(c) When a representative of a State authority sits with the Commission in an investigation about a carrier subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title, the representative may be given an allowance for travel and subsistence expenses. The Commission may determine the amount of the allowance.

§ 11503. Tax discrimination against rail transportation property

(a) In this section—

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchater I of chapter 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

§ 11504. Withholding State and local income tax by certain carriers

(a)(1) In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of a State if the employee—

(A) performs regularly assigned duties on a locomotive, car, or other track-borne vehicle in at least 2 States and the mileage traveled in one State or subdivision of that State is more than 50 percent of the total mileage traveled by the employee while employed during the calendar year; or

(B) is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks from railroad terminals in at least 2 States and the percent of the time worked by the employee in one State or subdivision of that State is more than 50 percent of the total time worked by the employee while employed during the calendar year.

(2) A rail, express, or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall withhold from the pay of an employee referred to in paragraph (1) of this subsection only income tax required to be withheld by the laws of a State, or subdivision of that State—

(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(b)(1) In this subsection—

(A) "State" includes a State, territory, or possession of the United States, and the Commonwealth of Puerto Rico.

(B) an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of a State in which the mileage traveled by the employee in that State or subdivision is more than 50 percent of the total mileage traveled by the employee while employed during the calendar year.

(2) A motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and a motor private carrier shall withhold from the pay of an employee having regularly assigned duties on a motor vehicle in at least 2 States, only income tax required to be withheld by the laws of a State, or subdivision of that State—

(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(c)(1) In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of that State in which the time worked by the employee in the State or subdivision is more than 50 percent of the total time worked by the employee while employed during the calendar year.

(2) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title or a water carrier or class of water carriers providing transportation on inland or coastal waters under an exemption under this subtitle shall file income tax information returns and other reports only with—

(A) the State and subdivision of residence of the employee (as shown on the employment records of the carrier); and

(B) the State and subdivision in which the employee earned more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(3) This subsection applies to pay of a master, officer, or seaman who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal or noncontiguous trade or in the fisheries of the United States.

(d) A rail, express, sleeping car, motor, and motor private carrier withholding pay from an employee under subsection (a) or (b) of this section shall file income tax information returns and other reports only with—

(1) the State and subdivision of residence of the employee; and

(2) the State and subdivision in which withholding of pay is required under subsection (a) or (b) of this section.

§ 11505. State action to enjoin rail carriers from certain actions

(a) The attorney general of a State or transportation regulatory authority of a State or area affected by a violation of sections 10901–10907 of this title, may bring a civil action to enjoin a rail carrier from violating those sections.

(b) A transportation regulatory authority of a State affected by an abandonment of service by a freight forwarder in violation of section 10933 of this title may bring a civil action to enjoin the abandonment.

§ 11506. Registration of motor carriers by a State

(a) In this section, "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Interstate Commerce

Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521(a) (1) and (2) of this title by—

(1) filing and maintaining certificates and permits issued to the motor carrier by the Commission;

(2) registering motor vehicles operating under the certificates and permits;

(3) filing and maintaining proof of required insurance coverage or qualifications as a self-insurer; and

(4) filing the name of a local agent for service of process.

(b) The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a) (1) and (2) of this title when the registration is completed under standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.

(c)(1) The Commission shall maintain standards and amendments to standards (A) prepared and certified to it by the national organization of the State Commissions, and (B) prescribed by the Commission. If the national organization determines to withdraw entirely standards prescribed by the Commission, the Commission shall prescribe new standards by the end of the first year after the national organization determines to withdraw the standards.

(2) An amendment to the standards prepared and certified by the national organization and prescribed by the Commission is effective when the amendment is prescribed or at another time as determined by the national organization.

(d) The national organization shall consult with the Commission and representatives of motor carriers subject to the State registration requirements when preparing amendments to the standards. Different amendments may be prescribed for each class of motor carriers as warranted by the differences in the operations of each class.

(e) This section does not—

(1) authorize standards in conflict with regulations of the Commission; or

(2) affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title.

§ 11507. Prison-made property governed by State law

Goods, wares, and merchandise produced or mined in a penal institution or by a prisoner not on parole or probation and transported into and used, sold, or stored in a State or territory or possession of the United States, is subject to the laws of that State, territory, or possession. This section does not apply to commodities produced in a penal institution of the United States Government for its use.

Chapter 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec.

11701. General authority.

11702. Enforcement by the Interstate Commerce Commission.

11703. Enforcement by the Attorney General.

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11708. Private enforcement: motor carrier and freight forwarder licensing.

11709. Liability for issuance of securities by certain carriers.

11710. Liability when proeprty is delivered in violation of routing instructions.

§ 11701. General authority

(a) The Interstate Commerce Commission may begin an investigation under this subtitle on its own initiative or on complaint. If the Commission finds that a carrier or broker is violating this subtitle, the Commission shall take appropriate action to compel compliance with this subtitle. The Commission may take that action only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) A person, including a governmental authority, may file with the Commission a complaint about a violation of this subtitle by a carrier providing, or broker for, transportation or service subject to the jurisdiction of the Commission under this subtitle. The complaint must state the facts that are the subject of the violation and, if it is against a water carrier, must be made under oath. The Commission may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Commission may not dismiss a complaint made against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title because of the absence of direct damage to the complainant.

(c) A formal investigative proceding begun by the Commission under subsection (a) of this section related to a rail carrier is dismissed automatically unless it is concluded by the Commission with administrative finality by the end of the 3d year after the date on which it was begun.

§ 11702. Enforcement by the Interstate Commerce Commission

(a) The Interstate Commerce Commission may bring a civil action—

(1) to enjoin a rail carrier from violating section 10901–10907 or 10933 of this title, or a regulation prescribed or certificate issued under any of those sections;

(2) to enforce section 10930 or 11323 of this title, or subchapter III of chapter 113 of this title and to compel compliance with the order of the Commission under any of those sections and that subchapter;

(3) to enforce an order of the Commission, except a civil action to enforce an order for the payment of money, when it is violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title;

(4) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under under this subtitle when violated by a motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title;

(5) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this subtitle, except a civil action to enforce an order for the payment of money, when violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title; and

(6) to enforce this subtitle, or a regulation or order of the Commission or permit issued under this subtitle when violated by a carrier providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title.

(b) In a civil action under subsection (a) (4) of this section—

(1) trial is in the judicial district in which the motor carrier or broker operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

§ 11703. Enforcement by the Attorney General

(a) The Attorney General may, and on request of the Interstate Commerce Commission shall, bring court proceedings to enforce this subtitle or a regulation or order of the Commission or certificate or permit issued under this subtitle and to prosecute a person violating this subtitle or a regulation or order of the Commission or certificate or permit issued under this subtitle.

(b) The United States Government may bring a civil action on behalf of a person to compel a common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title to provide that transportation or service to that person in compliance with this subtitle at the same rate charged, or on conditions as favorable as those given by the carrier, for like traffic under similar conditions to another person.

§ 11704. Action by a private person to enjoin abandonment of service

An interested person may bring a civil action to enjoin an abandonment of service in violation of section 10933 of this title or a certificate issued under that section.

§ 11705. Rights and remedies of persons injured by certain carriers

(a) A person injured because a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title does not obey an order of the Commission, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

(b)(1) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff filed under subchapter IV of chapter 107 of this title.

(2) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this subtitle.

(3) A common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II or IV of chapter 105 of this title is liable for damages resulting from the imposition of rates for transportation or service the Commission finds to be in violation of this subtitle.

(c)(1) A person may file a complaint with the Commission under section 11701(b) of this title or bring a civil action under subsection (b)(1) or (2) of this section to enforce liability against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title. A person may begin a proceeding under section 10704 or 10705 of this title to enforce liability under subsection (b)(3) of this section by filing a complaint with the Commission under section 11701(b) of this title.

(2) When the Commission makes an award under subsection (b) of this section, the Commission shall order the carrier to pay the amount awarded by a specific date. The Commission may order a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Commission requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier does not pay the amount awarded by the date payment was ordered to be made.

(d)(1) When a person begins a civil action under subsection (b) of this section to enforce an order of the Commission requiring the payment of damages by a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title, the text of the order of the Commission must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Commission are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district (A) in which the plaintiff resides, (B) in which the principal operating office of the carrier is located, (C) if a rail carrier, through which the railroad line of that carrier runs, or (D) if a water carrier, in which a port of call on a route operated by that carrier is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(3) The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

§ 11706. Limitation on actions by and against common carriers

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

(b) A person must begin a civil action to recover overcharges under section 11705(b)(1) of this title within 3 years after the claim accrues. If that claim is against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III or chapter 105 of this title and an election to file a complaint with the Commission is made under section 11705(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c)(1) A person must file a complaint with the Commission to recover damages under section 11705(b)(2) of this title within 2 years after the claim accrues.

(2) A person must begin a civil action to recover damages under section 11705(b)(3) of this title within 2 years after the claim accrues.

(d) The 3-year period under subsection (b) of this section is extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within that 3-year period. The 3-year period under subsection (b) of this section and the 2-year period under subsection (c)(1) of this section are each extended for 90 days from the time the carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) A person must begin a civil action to enforce an order of the Commission against a carrier for the payment of money within one year after the date the order required the money to be paid.

(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of (1) payment of the rate for the transportation or service involved, (2) subsequent refund for over-payment of that rate, or (3) deduction made under section 244 of title 31, whichever is later.

(g) A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

§ 11707. Liability of common carriers under receipts and bills of lading

(a)(1) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission under subchapter I, II, or IV are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and applies to property reconsigned or diverted under a tariff filed under subchapter IV of chapter 107 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service subject to this subtitle and uses a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to receive property from a consignor, the motor common carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor common carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

(b) The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipts or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c)(1) A common carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as filed provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, rule, or tariff filed with the Commission in violation of this section is void.

(2) If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(3) A common carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on passenger trains, boats, or motor vehicles, or on trains, or boats, or motor vehicles carrying passengers.

(4) A common carrier may limit its liability for loss or injury of property transported under section 10730 of this title.

(d) A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a railroad or route.

(e) A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date that person receives written notice from the carrier that it has disallowed any part of the claim specified in the notice.

§ 11708. Private enforcement: Motor carrier and freight forwarder licensing

(a) If a person provides transportation by motor vehicle or service of a freight forwarder in clear violation of section 10921–10924, 10927, 10930–10932, or 11323 of this title, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this section, trial is in the judicial district in which the person who violated that section operates.

(b) A copy of the complaint in a civil action under subsection (a) of this section shall be served on the Interstate Commerce

Commission and a certificate of service must appear in the complaint filed with the court. The Commission may intervene in a civil action under subsection (a) of this section. The Commission may notify the district court in which the action is pending that it intends to consider the matter that is the subject of the complaint in a proceeding before the Commission. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Commission.

(c) In a civil action under subsection (a) of this section, the court may determine the amount of and award a reasonable attorney's fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.

§ 11709. Liability for issuance of securities by certain carriers

A carrier issuing a security or assuming an obligation or liability that is void under section 11301 of this title and its directors, officers, attorneys, and other agents who participate in authorizing, issuing, hypothecating, or selling that security, or in authorizing the assumption of that obligation or liability, are jointly and severally liable for the damages sustained by a person who acquires for value, in good faith, and without notice that the issue or assumption is void (1) that security, or (2) a security under which an assumption or liability is void. If a security void under that section is acquired directly from the carrier issuing it, the holder may rescind the transaction and recover the consideration given for the security when it is surrendered to that carrier.

§ 11710. Liability when property is delivered in violation of routing instructions

(a)(1) When a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title diverts or delivers property to another carrier in violation of routing instructions in the bill of lading, both of those carriers are jointly and severally liable to the carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.

(2) A carrier is not liable under paragraph (1) of this subsection when it diverts or delivers property in compliance with an order or regulation of the Commission.

(3) A carrier to whom property is transported is not liable under this subsection if it shows that it had no notice of the routing instructions before transporting the property. The burden of proving lack of notice is on that carrier.

(b) The court shall award a reasonable attorney's fee to the plaintiff in a judgment against the defendant carrier under subsection (a) of this section. The court shall tax and collect that fee as a part of the costs of the action.

Chapter 119—CIVIL AND CRIMINAL PENALTIES

Sec.
11901. General civil penalties.
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11913. Disobedience to subpenas.
11914. General criminal penalty when specific penalty not provided.
11915. Punishment of corporation for violations committed by certain individuals.
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§ 11901. General civil penalties

(a) Except as otherwise provided in this section, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, an officer or agent of that carrier or a receiver, trustee, lessee, or agent of one of them, knowingly violating an order of the Commission under this subtitle is liable to the United States Government for a civil penalty of $5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

(b) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or a receiver or trustee of that carrier, violating a regulation or order of the Commission under section 10761, 10762, 10764, 10765, or 11128(a)(2) or (b) of this title is liable to the United States Government for a civil penalty of $500 for each violation and for $25 for each day the violation continues.

(c) A carrier, receiver, or trustee violating subchapter V of chapter 107 of this title, or a regulation under that subchapter, is liable to the United States Government for a civil penalty of $500 for each violation. A separate violation occurs each day the violation continues.

(d) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901–10907 of this title or of a condition of a certificate or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than $5,000.

(e)(1) A carrier, receiver, or operating trustee violating an order or direction of the Commission under section 11123, 11124, 11125, 11127, or 11128(a)(1) of this title is liable to the United States Government for a civil penalty of at least $100 but not more than $500 for each violation and for $50 for each day the violation continues.

(2) A rail carrier, receiver, or operating trustee violating section 11126 of this title is liable to the United States Government for a civil penalty of $100 for each violation. A separate violation occurs for each car not counted when a car count is required under that section.

(f)(1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Commission a record concerning transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that does not make, prepare, preserve, or submit that record as required under that subchapter, is liable to the United States Government for a civil penalty of $500 for each violation.

(2) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, and a lessor, receiver, or trustee of that carrier, violating section 11144(b)(1) of this title, is liable to the United States Government for a civil penalty of $100 for each violation.

(3) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective services against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Commission or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States Government for a civil penalty of $100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(g) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle concerning transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person that (1) does not make the report, (e) does not specifically, completely, and truthfully answer the question, (3) does not make, prepare, or preserve the record in the form and manner prescribed by the Commission, or (4) does not comply with section 10921 of this title, is liable to the United States Government for a civil penalty of not more than $500 for each violation and for not more than $250 for each additional day the violation continues.

(h)(1) Trial in a civil action under subsections (a)–(f) of this section is in the judicial district in which the carrier has its principal operating office or in a district through which the railroad of the carrier runs.

(2) Trial in a civil action under subsection (g) of this section is in the judicial district in which (A) the motor carrier or broker has its principal office, (B) the motor carrier or broker was authorized to provide transportation under this subtitle when the violation occurred, (C) the violation occurred, or (D) the offender is found. Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

§ 11902. Civil penalty for accepting rebates from common carrier

A person (1) delivering property to a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title for transportation under this subtitle or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country, and (2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff filed with the Commission under subchapter IV of chapter 107 of this title, is liable to the United States Government for a civil penalty in an amount equal to 3 times the amount of money that person

accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

§ 11903. Rate, discrimination, and tariff violations

(a) A person that knowingly offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a common carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (1) at less than the rate in effect under chapter 107 of this title, or (2) by practicing discrimination, shall be fined at least $1,000 but not more than $20,000, imprisoned for no more than 2 years, or both.

(b) A carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to the jurisdiction of the Commission under that chapter, that willfully does not file and publish its rates or tariffs as required under chapter 107 of this title or observe those tariffs until changed under law, shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

(c) When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to subsection (a) or (b) of this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

§ 11904. Additional rate and discrimination violations

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, and when that carrier is a corporation, an officer, employee, or agent of the corporation, that by any means knowingly and willfully assists a person in getting, or willingly permits a person to get, transportation provided under this subtitle for property at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(2) A person, or officer or agent of the person, that (A) delivers property for transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or for whom that carrier transports property as consignor or consignee, and (B) knowingly and willfully by any means gets or attempts to get that property transported at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(3) A person, or an officer or agent of a corporation or company that by payment of anything of value, solicitation, or in any other way, induces or attempts to induce a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or any of its officers or agents, to discriminate unreasonably against another consignor or consignee in the transportation of property shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(b) A person, or an officer, employee, or agent of that person, that (1) knowingly offers, grants, gives, solicits, accepts, or receives a rebate, concession, or discrimination in violation of a provision of this subtitle related to motor carrier transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or (2) by any means knowingly and willfully assists or permits another person to get transportation that is subject to the jurisdiction of the Commission under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined at least $200 but no more than $500 for the first violation and at least $250 but not more than $2,000 for a subsequent violation.

(c)(1) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, agent, or employee of that carrier, that knowingly and willfully by any means offers, grants, or gives, or intentionally permits a person to get, transportation provided under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000.

(2) A person that knowingly and willfully by any means solicits, accepts, or receives transportation provided under subchapter III of chapter 105 of this title at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000.

(3) Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

(d)(1) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that freight forwarder, that knowingly and willfully assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less than the rate in effect for that service under chapter 107 of this title, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

(2) A person that knowingly and willfully by any means gets, or attempts to get, service provided under subchapter IV of chapter 105 of this title at less than the rate in effect for that service under chapter 107 of this title, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

§ 11905. Transportation of passengers without charge

A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title that provides transportation of passengers without charge except as provided in section 10721 (b), 10722 (c) and (d) (if the transportation is for its employees on sleeping and express cars or linemen of telegraph and telephone companies), 10723(a)(1) (other than paragraph (1)(A) of that subsection when transportation is arranged by a municipal government), or 10724(a) of this title, shall be fined at least $100 but not more than $2,000. An individual who uses a free ticket for, or accepts transportation subject to the jurisdiction of the Commission under those subchapters, except as provided in those sections, shall be fined at least $100 but not more than $2,000.

§ 11906. Evasion of regulation of motor carriers and brokers

A person, or an officer, employee, or agent of that person that by any means knowingly and willfully tries to evade regulation provided under this subtitle for motor carriers or brokers shall be fined at least $200 but not more than $500 for the first violation and at least $250 but not more than $2,000 for a subsequent violation.

§ 11907. Interference with railroad car supply

(a) A person that offers or gives anything of value to another person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title intending to influence an action of that other person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of that other person, shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

(b) A person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that solicits, accepts, or receives anything of value (1) intending to be influenced by it in an action of that person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or (2) because of the action of that person, shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

§ 11908. Abandonment of service by freight forwarder

A freight forwarder controlled by or under common control with a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title, or a director, officer, receiver, operating trustee, lessee, agent, or employee of that freight forwarder or common carrier, that knowingly authorizes or permits a violation of section 10933 of this title, shall be fined not more than $5,000.

§ 11909. Record keeping and reporting violations

(a) A person required to make a report to the Interstate Commerce Commission, or make, prepare, or preserve a record, under subchapter III of chapter 111 of this title about transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that knowingly and willfully (1) makes a false entry in the report or record, (2) destroys, multilates, changes, or by another means falsifies the record, (3) does not enter business related facts and transactions in the record, (4) makes, prepares, or preserves the record in violation of a regulation or order of the Commission, or (5) files a false report or record with the Commission, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(b) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (6) knowingly and willfully makes a false or incomplete entry in that record about a business related fact or transaction, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than $5,000.

(c) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) willfully falsifies, destroys, mutilates, or changes that report, or record, (5) willfully makes a false or incomplete entry in the record about a fact or transaction required under this subtitle, (6) willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, or (7) knowingly and willfully files a false report or record with the Commission, shall be fined not more than $5,000. Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

(d) A freight forwarder, or an officer, agent, or employee of that freight forwarder, required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (6) knowingly and willfully makes a false or incomplete entry in that record about a fact or transaction related to the business of that freight forwarder, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than $5,000.

§ 11910. Unlawful disclosure of information

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this subtitle without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than $1,000.

(2) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not knowingly disclose to another person, except the shipper or consignee, and another person may not solicit, or knowingly receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this subtitle without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(3) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, receiver, trustee, lessee, agent, or employee of that carrier, or another person authorized by that carrier or person to receive information from that carrier, that knowingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under that subchapter without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee, shall be fined not more than $2,000. Trial in a criminal action under this paragraph is in the judicial district in which any part of the violation is committed.

(4) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that freight forwarder, or another person authorized by that freight forwarder, or person to receive information, who knowingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that forwarder for service provided under that subchapter without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than $100 for the first violation and not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

(b) This subtitle does not prevent a carrier or broker providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(c) An employee of the Commission delegated to make an inspection or examination under section 11144 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Commission, a court, or a judge of that court, shall be fined not more than $500, imprisoned for not more than 6 months, or both.

§ 11911. Issuance of securities; disposition of funds; restriction on ownership

(a) A director, officer, attorney, or agent of a carrier defined in section 11301(a)(1) of this title or of a person to which that section is made applicable by section 11302(a) of this title that knowingly agrees to or concurs in (1) an issue of securities or assumption of obligations or liability in violation of section 11301 of this title, (2) a disposition of securities in violation of an order of the Interstate Commerce Commission, or (3) an application not authorized by the Commission of the funds derived by the carrier through a disposition of securities shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both.

(b) A person that violates section 11322 of this title shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both.

§ 11912. Consolidation, merger, and acquisition of control: violation by a person not a carrier

A person, other than a common carrier, that violates section 11343, 11344, 11345, 11346, or 11347 of this title shall be fined not more than $5,000.

§ 11913. Disobedience to subpenas

A person not obeying a subpena or requirement of the Interstate Commerce Commission to appear and testify or produce records shall be fined at least $100 but not more than $5,000, imprisoned for not more than one year, or both.

§ 11914. General criminal penalty when specific penalty not provided

(a) When another criminal penalty is not provided under this chapter, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, and when that carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this subtitle or an order prescribed under this subtitle, shall be fined not more than $5,000. However, if the violation is for discrimination in rates charged for transportation, the person may be imprisoned for not more than 2 years in addition to being fined under this subsection. A separate violation occurs each day a violation of section 11321(a) or 11342 of this title continues.

(b) When another criminal penalty is not provided under this chapter, a person

that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle, or a condition of a certificate or permit issued under this subtitle related to transportation that is subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, shall be fined at least $100 but not more than $500 for the first violation and at least $200 but not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

(c) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle, or a condition of a certificate or permit issued under this subtitle related to transportation that is subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, shall be fined not more than $500. A separate violation occurs each day the violation continues. Venue in a criminal action under this subsection is in the judicial district in which any part of the violation was committed.

(d) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle or a condition of a permit issued under this subtitle related to service that is subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, shall be fined not more than $100 for the first violation and not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

§ 11915. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this subtitle if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title that is a corporation is also a violation of this subtitle by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

§ 11916. Conclusiveness of rates in certain prosecutions

When a carrier files with the Interstate Commerce Commission or publishes a particular rate under chapter 107 of this title or participates in one of those rates, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 11902 or 11903 of this title. A departure, or offer to depart, from that rate is a violation of those sections.

CONFORMING AND TECHNICAL PROVISIONS

SEC. 2. (a)(1) Title 18, United States Code, is amended—

(A) by striking out of the first definition of section 831 "common, contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended" and substituting "common, contract, or motor private carrier, as those terms are defined in section 10102 of title 49"; and

(B) by striking out of section 835(c) "by the Interstate Commerce Act" and substituting "under subtitle IV of title 49".

(2) The Internal Revenue Code of 1954 (26 U.S.C. 1) is amended—

(A) by striking out of section 48(a)(2)(B)(ii) "subject to part I of the Interstate Commerce Act" and substituting "providing transportation subject to subchapter I of chapter 105 of title 49";

(B) by striking out of section 185(e)(3)(B) "section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a)" and "such section 19a" and substituting "subchapter V of chapter 107 of title 49" and "such subchapter V", respectively;

(C) by striking out of section 250(a)(1) "common carrier by railroad (as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))" and substituting "rail carrier (as defined in section 10102(17) of title 49)";

(D) by striking out of section 281(d)(1)(A) "subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)" and substituting "providing transportation subject to subchapter I of chapter 105 of title 49";

(E) by striking out of section 281(d)(1)(B) "subject to part I of the Interstate Commerce Act" and substituting "providing transportation subject to subchapter I of chapter 105 of title 49";

(F) by striking out of section 354(c) "section 20b of the Interstate Commerce Act" and substituting "subchapter IV of chapter 113 of title 49";

(G) by striking out of section 3231(g) "express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)" and substituting "express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49"; and

(H) by striking out of section 6362(f)(9) "26, 226A, or 324 of the Interstate Commerce Act" and substituting "section 11504 of title 49".

(3) Title 28, United States Code, is amended—

(A) by striking out of section 1445(b) "section 20 of Title 49" and substituting "section 11707 of title 49";

(B) by striking out of section 2321(c) "the cases and proceedings under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)" and substituting "enforcement actions and actions to collect civil penalties under subtitle IV of title 49"; and

(C) by striking out of section 2323 "actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)" and substituting "enforcement actions and actions to collect civil penalties under subtitle IV of title 49".

(4) Title 39, United States Code, is amended—

(A) by striking out of section 5201(2) "motor carrier, or an express company" and substituting "motor common carrier, or express carrier";

(B) by striking out section 5201(5) and substituting the following:

"(5) 'motor common carrier' means a motor common carrier, except a passenger-carrying motor vehicle of such a carrier, within the meaning of section 10102(11) of title 49, that holds a certificate of public convenience and necessity issued by the Commission;";

(C) by striking out the section 5201(6) "company" and "section 1(3) of title 49" and substituting "carrier" and "section 10102(7)", respectively;

(D) by striking out of section 5203 "motor carrier" each time it appears and substituting "motor common carrier" in each place; and

(E) by striking out of section 5215(a) "motor carrier" and substituting "motor common carrier".

(5) Section 308(c)(1) of title 44, United States Code, is amended by striking out "section 66 of title 49" and substituting "section 244 of title 31".

(b) Section 11503 of title 49, as stated in the first section of this Act, is effective after February 4, 1979.

LEGISLATIVE PURPOSE AND CONSTRUCTION

SEC. 3. (a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after May 15, 1978, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1 and 2 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1 and 2 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or suspended.

(d) An action taken or an offense committed under a law replaced by sections 1 and 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

SEC. 4. (a) The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed except as provided in subsection (c) of this section and except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

SCHEDULE OF LAWS REPEALED—STATUTES AT LARGE

Date	Chapter or Public Law	Section	Statutes at Large Volume	Page
1887				
Feb. 4	104	(less 25, 203(a) (22), (23), 204(a)(1) ("qualifications" through period), (a)(2) ("qualifications" through period), (a)(3), (a)(3a), (a)(5), 220(f), 226).	24	379.
1889				
Mar. 2	382		25	855.
	411	1 (proviso)	25	954.
1891				
Feb. 10	128		26	743.
1893				
Feb. 11	83		27	443.
1895				
Feb. 8	61		28	643.
1903				
Feb. 19	708		32	847.
1906				
Mar. 7	P. R. 8		34	823.
Mar. 21	P. R. 11		34	824.
June 29	3591		34	584.
1908				
Apr. 13	143		35	60.
1909				
Feb. 25	193		35	648.
1910				
June 18	309		36	539.
1912				
Aug. 24	390	11 (less last par. on p. 567)	37	566.
1913				
Mar. 1	92		37	701.
Oct. 22	32	1 (last full par. on p. 219 and all language before the heading "United States Courts" on p. 221).	38	219, 221.
1914				
Aug. 1	223	1 (5th full par.)	38	627.
1915				
Mar. 4	176		38	1196.
1916				
Aug. 9	301		39	441.
29	417	1 (2d full par.)	39	604.
1917				
May 29	23		40	101.
Aug. 9	50		40	270.
10	51		40	272.
1920				
Feb. 28	91	(less 1,213, 411 "Sec. 26," 500)	41	456.
May 8	172	1 (1st par.)	41	509.
1921				
Feb. 26	72		41	1145.
27	81		41	1149.
June 10	20		42	27.
1922				
Feb. 24	70		42	393.
June 7	210		42	624.
Aug. 18	280		42	827.
Sept. 22	413		42	1025.
1923				
Mar. 3	233		42	1443.
1924				
June 7	325		43	633.
1925				
Jan. 30	120		43	801.
1926				
July 3	761		44	835.
1927				
Feb. 26	217		44	1247.
Mar. 4	510	(less 6)	44	1446.
1929				
Jan. 19	79		45	1084.
1930				
Apr. 23	208		46	251.
1932				
Mar. 15	78		47	65.
1933				
Feb. 28	136		47	1368.
June 16	91		48	211.
1934				
June 13	498		48	954.
19	648	1 (2d full par.)	48	1056.
	652	602(b)	48	1102.
1935				
Feb. 2	3		49	19.
May 23	136		49	287.
June 14	247		49	376.
July 16	383		49	481.
Aug. 9	498	(less 1 "Sec. 204(a)(1) ('qualifications' through period), (a)(2) ('qualifications' through period), (a)(3), (a)(5), 225").	49	543.
12	509		49	607.
1937				
July 5	432		50	475.
Aug. 25	776		50	809.
1938				
June 23	601	1107(j)	52	1029.
29	811		52	1236.
1940				
Jan. 7	938		54	1226.
Sept. 18	722	(less 14(b), 20(b)(4), 24 "Sec. 220 (f)", 322, 331)	54	898.
1942				
Mar. 27	199	101-103 (title I)	56	176.
May 16	318		56	284.
Aug. 7	552		56	746.
1945				
Nov. 12	299		57	590.
1944				
Sept. 27	423		58	751.
1945				
May 16	128		59	169.
Dec. 12	573		59	606.
1946				
Feb. 20	32		60	21.
1948				
Apr. 9	180	(less 3)	62	162.
June 3	386		62	295.
12	457		62	386.
17	491		62	472.
24	622		62	602.
1949				
May 24	139	133	63	108.
June 29	272		63	280.
July 26	361		63	479.
Aug. 2	379		63	485.
1950				
Sept. 1	835		64	574.
Dec. 20	1140		64	1113.
1952				
June 27	477	402(g)	66	277.
July 3	570	1(a)(25), (26)	66	332.
9	599		66	479.
10	648		66	542.
16	881		66	724.
1953				
June 30	165		67	115.
July 31	292		67	244.
1954				
July 22	563		68	526.
1956				
July 27	759		70	702.
Aug. 3	928		70	983.
1957				
July 11	85-99		71	292.
Aug. 13	85-124		71	343.
14	85-135	4	71	352.
16	85-150		71	369.
22	85-163		71	411.
28	85-176		71	452.
31	85-246		71	564.
Sept. 7	85-309		71	631.
1958				
Aug. 12	85-625		72	568.
23	85-728		72	821.
26	85-762	1	72	859.
Sept. 2	85-857	13(a)	72	1264.
1960				
June 11	86-507	1(38)	74	202.
July 12	86-615		74	382.
1961				
Apr. 1	87-16		75	41.
Sept. 14	87-247		75	517.
1962				
Aug. 24	87-595		76	397.
Sept. 27	87-707		76	635.
Oct. 15	87-805		76	911.
1963				
Dec. 17	88-208		77	402.
1965				
July 24	89-86		79	263.
27	89-93		79	284.
Sept. 6	89-170		79	648.
1966				
May 26	89-430		80	168.
Oct. 15	89-670	8(d)	80	943.
Nov. 10	84-804		80	1521.
1968				
July 26	90-433		82	448.
Oct. 17	90 586	1	82	1149.
1970				
Oct. 15	91-452	243-245	84	931.
Dec. 23	91-569	1-3	84	1499.
28	91-590		84	1587.
1972				
July 7	92-338		86	423.
13	92-348	5, 6	86	463.
1973				
July 10	93-69	201-202 (title II)	87	166-168.
Dec. 27	93-201		87	838.
1974				
Jan. 2	93-236	205, 601(e)	87	993, 1021.
Feb. 8	93-249		88	11.
Oct. 28	93-496	14	88	1532.
Dec. 21	93-528	6(b)	88	1709.
1975				
Jan. 2	93-585	9	88	1918.
Feb. 28	94-5	3	89	7.
1976				
Feb. 5	94-210	201, 202 (less (f)), 203-212, 301-307, 308(a)(3), 309, 310, 312, 402, 403, 801, 802, 804 "Sec. 304(j)", 809(c).	90	34-38, 39-56, 57-60, 62-66, 125-130, 139, 146.
Apr. 21	94-273	11(4)	90	378.
Oct. 19	94-555	206, 218, 220(i)-(o)	90	2621, 2628, 2630.
1978				
Feb. 15	95-231		92	29.

REORGANIZATION PLANS

Year	Plan No.	Section	Statutes at Large Volume	Page
1969	1		83	859.

(c) The laws specified in the schedule in subsection (b) of this section, as they existed on October 1, 1977, are not repealed to the extent—

(1) those laws (A) vested functions in the Interstate Commerce Commission, or in the chairman or members of the Commission, related to the transportation of oil by pipeline, and (B) vested functions and authority in the Commission, or an officer or component of the Commission, related to the establishment of rates or charges for the transportation of oil by pipeline or the valuation of any such pipeline; and

(2) those functions and authority were transferred by sections 306 and 402(b) of the Department of Energy Organization Act (91 Stat. 581, 584, 42 U.S.C. 7155, 7172(b)).

(d) The repeals, by subsection (b) of this section, of section 1(a) (25), (26) of the Act of July 3, 1952, chapter 570, the Act of June 30, 1953, chapter 165, and the Act of July 31, 1953, chapter 169, are effective on September 14, 1978.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. EILBERG) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. EILBERG).

Mr. EILBERG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 10965 restates the Interstate Commerce Act and related laws without substantive change and enacts those laws as subtitle IV of title 49 of the United States Code. The bill is a part of the legislative requirement of the Office of the Law Revision Counsel to prepare a proposed codification of those titles of the United States Code that have not been enacted into positive law.

The Law Revision Counsel selected title 49 for codification at this time because of congressional mandates and prior codification efforts in the transportation area. Because the Interstate Commerce Commission was required to submit a proposed codification of the Interstate Commerce Act and related laws to Congress by February 4 of this year, the Office gave priority to those laws. The Office expects the balance of title 49 to be ready for consideration by the Committee on the Judiciary during the 96th Congress.

Earlier drafts of H.R. 10965 and of a proposed report to accompany the bill have been circulated to obtain comments from the Interstate Commerce Commission and from interested members of the public. Other Government agencies also commented on the drafts. The Interstate Commerce Commission supports passage of the bill. The Law Revision Counsel is satisfied that H.R. 10965, as amended, is an accurate restatement of existing law without substantive change.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleague in supporting enactment of H.R. 10965, a bill to revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation."

As the distinguished gentleman from Pennsylvania (Mr. EILBERG) stated, this bill was prepared by the Office of the Law Revision Counsel of the House of Representatives in compliance with the requirements of law to codify those titles of the Code that have not yet been enacted into positive law. Those requirements were imposed on the Office in 1974 when the Office was established by the House as an independent, nonpartisan office under the speaker.

A number of earlier drafts of the bill were circulated and reviewed by the Interstate Commerce Commission, other interested Government agencies, and members of the public. The Law Revision Counsel and the Commission are satisfied the bill is an accurate restatement of existing law without substantive change.

I urge my colleagues to support H.R. 10965.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. EILBERG) that the House suspend the rules and pass the bill H.R. 10965, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

GENERAL LEAVE

Mr. EILBERG. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 10965, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

INCREASE VETERANS BURIAL ALLOWANCE

Mr. CARNEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12258) to amend title 38, United States Code, to increase the maximum amount which the Administrator of Veterans' Affairs may pay for the funeral expenses of a veteran from $250 to $350.

The Clerk read as follows:

H.R. 12258

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 902(a) of title 38, United States Code, relating to funeral expenses, is amended by striking out "$250" and inserting in lieu thereof "$350".

SEC. 2. The amendment made by the first section of this Act shall apply to the funeral expenses of veterans dying after September 30, 1978.

The SPEAKER pro tempore. Is a second demanded?

Mr. HAMMERSCHMIDT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. CARNEY) will be recognized for 20 minutes, and the gentleman from Arkansas (Mr. HAMMERSCHMIDT) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. CARNEY).

Mr. CARNEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the proposed legislation would increase the veterans' burial allowance from $250 to $350. The current $250 level was established in 1958. There has been no increase in this allowance since that time, although Public Law 93–43, approved June 18, 1973, authorized payment of a plot or interment allowance of $150, in addition to the basic statutory burial allowance of $250.

Therefore, today the maximum allowed is $400, of which $250 is supposed to help defray burial and funeral expenses, and $150 is to help pay the plot or interment cost.

The veterans' burial allowance is payable where the deceased veteran was discharged under conditions other than dishonorable, and was either a wartime or Korean conflict or Vietnam era veteran; or a peacetime veteran entitled to service-connected compensation at the time of death or discharge, or retired for disability incurred in the line of duty.

Mr. Speaker, the veterans' burial allowance has not been increased in 20 years. In 1958, the average funeral cost of an adult American was $661, not including the cost of the cemetery plot. In 1976, the average funeral cost of an adult American was $1,348, not including the cost of the cemetery plot—an increase of more than 100 percent in 18 years.

The Congressional Budget Office has estimated that the reported bill would cost about $31.7 million during the next fiscal year. The projected cost is included in our budget allocation.

I hope this bill will receive unanimous support by the House.

The SPEAKER pro tempore. The Chair now recognizes the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 12258 to increase by $100 the minimum amount the Veterans' Administration may pay for the funeral expenses of a veteran.

The statutory burial provision dates back to 1917—the War Risk Insurance Act, which was amended in 1923 to extend payment of burial expenses to veterans. At that time the allowance was $100 but was subsequently raised to $150 in 1946.

The last increase in this allowance occurred 20 years ago in 1958 when it was increased to the present $250.

While the Veterans' Administration op-

poses this legislation, we on the Veterans' Affairs Committee feel this benefit applicable to veterans was never intended to be connected with the payment of similar benefits by other Federal departments or agencies.

During the hearings on this measure, representatives of the American Legion, Veterans of Foreign Wars, and AMVETS testified in support of the increase.

Mr. Speaker, I support this bill and urge its favorable consideration by my colleagues.

● Mr. ROBERTS. Mr. Speaker, the reported bill would increase the current burial allowance for veterans who die of non-service-connected causes. Although funeral and burial expenses have increased substantially during the past several years, the current allowance of $250 has not been increased since 1958; therefore, I urge my colleagues to support this measure and I hope that the bill is adopted.

Mr. Speaker, I want to commend the very able chairman of our Subcommittee on Cemeteries and Burial Benefits, the distinguished gentleman from Ohio, Mr. CHARLES CARNEY, for the leadership he has displayed during this Congress in behalf of our veterans and their families. This is the fourth cemetery bill the House has passed during this session which was recommended by Mr. CARNEY's subcommittee. I commend him, Mr. Speaker, for the major role he has played this year in our entire legislative program that will benefit millions of veterans throughout the country.

Mr. Speaker, I also want to commend the gentleman from Indiana, ELWOOD HILLIS, for his cooperation and support as ranking minority member of the subcommittee. He too has rendered great service in behalf of our Nation's veterans and their dependents. Both of these gentlemen have worked hard to see that an adequate level of benefits and services are provided our veterans and I want to take this time to acknowledge their great work.●

● Mr. HILLIS. Mr. Speaker, I rise in support of H.R. 12258 which will provide an increase in the VA burial allowance for the first time in 20 years—from the current $250 to $350. Some will oppose this legislation on the grounds there is already too much duplication of Federal burial benefits. To them I would say that all veterans do not qualify for all Federal programs and this legislation will significantly assist the families of our veterans in their period of bereavement and I feel the increase is indeed justified in view of the inflation our Nation has experienced in the past few years.

The committee feels the funeral and burial allowance was never intended to be connected with the payment of benefits to individuals by other agencies or departments of the Federal Government. Additionally, the average cost of funeral and burial expenses has more than doubled during the past 20 years.

I urge a favorable vote on this piece of legislation.●

● Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 12258, a bill to increase veterans' burial allowances, and I commend the Veterans' Affairs Committee for bringing this timely measure before the House.

Under present law, when a veteran dies of non-service-connected causes, two burial benefits are awarded; $150 for a plot interment allowance and $250 for the basic statutory burial allowance. The last increase in the basic allowance was granted in 1958, and since that time, Veterans' Committee estimates indicate that burial expenses have more than doubled.

H.R. 12258 increases the statutory burial allowance from $250 to $350 for veterans dying after fiscal year 1978—after September 30, 1978.

I urge my colleagues to support this bill so that this House may take the long overdue step toward assisting our veterans obtain the much needed dignity in the death that their loyal service to our Nation warrants.●

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time.

Mr. CARNEY. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. CARNEY) that the House suspend the rules and pass the bill, H.R. 12258.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CARNEY. Mr. Speaker, I ask unanimous consent that I may be permitted to revise and extend my remarks made during consideration of the bill H.R. 12258, and that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the same legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

OVERSEAS CITIZENS VOTING RIGHTS ACT AMENDMENTS

Mr. DAVIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 703) to improve the administration and operation of the Overseas Citizens Voting Rights Act of 1975, and for other purposes, as amended.

The Clerk read as follows:

S. 703

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 2 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) 'official postcard' means a postcard application for registration to vote and for an absentee ballot in the form provided in section 204(d) of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc-14(d)).".

SEC. 2. Section 3 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd-1) is amended by inserting before the period the following: "or, in lieu thereof, an alternative form of identification consistent with this Act and applicable State or district requirements, if a citizen does not possess a valid passport or card of identity and registration".

SEC. 3. Section 4 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd-2) is amended by adding at the end thereof the following new subsection:

"(c) In carrying out the provisions of this section, it is recommended that each State—

"(1) accept any official postcard which is duly executed by any person who meets the requirements in section 3 of this Act as a simultaneous application for registration under such States' election laws and for an absentee ballot under such State's absentee balloting laws;

"(2) if a special application is required for registration by mail, provide that the necessary forms will be sent with the absentee ballot and may be returned with it;

"(3) authorize and instruct the State or local election officials, upon receipt of any official postcard application or any other application for registration to vote or an absentee ballot, to mail immediately to the applicant a ballot, instructions for voting and returning the ballot, and a self-addressed envelope; and

"(4) provide that there be printed across the face of each envelope the words 'Official Election Balloting Material—Via Air Mail', or similar language.".

SEC. 4. The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd et seq.) is amended—

(1) by redesignating sections 5, 6, 7, and 8 as sections 7, 8, 9, and 10, respectively; and

(2) by inserting after section 4 the following new sections:

"CURRENT ABSENTEE VOTING INFORMATION

"SEC. 5. (a) The Presidential designee under section 201 of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc-11) (hereinafter in this Act referred to as the 'Presidential designee') shall request, when appropriate, each State to furnish him with information on the current absentee registration and voting procedures of each State pertaining to citizens entitled to vote in Federal elections under this Act. Such information shall include election dates, officers to be elected, any provisions under such State's law requiring the removal of the name of any person from such State's voter registration roll (for whatever reason), and information related to the number of absentee voters in such State who are entitled to vote in Federal elections under this Act. Where consistent with their respective duties, appropriate departments or agencies of the Federal Government shall assist and cooperate with the Presidential designee, both in the collection of such information and in its dissemination to persons who meet the requirements in section 3 of this Act.

"(b) The Secretary of State shall publicize, in the manner best designed to reach the persons meeting the requirements in section 3 of this Act—

"(1) the right of such persons to vote in Federal elections and the procedures available to such persons to enforce that right, as provided in this Act; and

"(2) with the assistance of the Postmaster General, the availability of expedited mail delivery of balloting material under this Act.

The Presidential designee shall notify all appropriate State and local election officials of such availability under this Act and under the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc et seq.).

"PRINTING AND TRANSMITTING OF POSTCARDS; FREE POSTAGE; PUBLICITY

"SEC. 6. (a) The Administrator of General Services shall cause to be printed and distributed to the Department of Justice, the Department of State, and any other appropriate department or agency of the Federal Government official postcards for use in accordance with the provisions of this Act as directed by the Presidential designee. Such departments or agencies shall deliver or make available such postcards to persons meeting the requirements in section 3 of this Act not later than August 15 immediately before any general Federal election for use in such election. To the extent practicable, such postcards shall also be made available at appropriate times to such persons for use in special or primary Federal elections.

"(b)(1) The Postmaster General, the Attorney General, the Secretary of State, and the head of any other appropriate department or agency of the Federal Government shall facilitate the transmission of balloting material, including official postcards, absentee ballots, voting instructions, and envelopes for the return of such ballots, to and from persons meeting the requirements in section 3 of this Act.

"(2) Any balloting material sent from the United States to any person meeting the requirements in section 3 of this Act shall be sent by priority airmail or by the most expedited postal service available.

"(3) Any balloting material sent to the United States by any person meeting the requirements in section 3 of this Act shall be returned by priority airmail or by the most expedited service available, wherever practicable. Such material may be mailed from any Armed Forces post office in an overseas area established as provided in section 406 of title 39, United States Code, unless otherwise prohibited by any treaty or other agreement between the United States and a foreign country. In the case of ballots executed outside the United States by any person, such ballots may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed by the Postmaster General for this purpose.

"(c) Official postcards, ballots, voting instructions, and envelopes, whether transmitted individually or in bulk, shall be free of postage, including airmail postage, when sent from the United States in the United States mails.".

SEC. 5. Section 9 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd-5), as so redesignated in section 4(1), is amended—

(1) by inserting "(a)" before "Nothing"; and

(2) by adding at the end thereof the following new subsection:

"(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State, or local law.".

SEC. 6. The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd et seq.), as amended in section 4, is further amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 11. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.".

SEC. 7. Section 101 of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc) is amended—

(1) by inserting "(a)" before "The"; and

(2) by adding at the end thereof the following new subsection:

"(b) Each State shall enable every citizen in the following categories who is absent from the place of his voting residence to register absentee and to vote by absentee ballot in any Federal election, as defined in section 2(1) of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd(1)), held in his election district or precinct if he is otherwise eligible to vote in that election:

"(1) Members of the Armed Forces while in the active service, and their spouses and dependents.

"(2) Members of the Merchant Marine of the United States, and their spouses and dependents.

The rights granted in this section shall be supplemental to the voting rights presently enjoyed by these citizens under other Federal and State laws.".

SEC. 8. Section 202 of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc-12) is amended by inserting after "voting procedures," the following: "any provision under such State's law requiring the removal of the name of any person from such State's registration roll (for whatever person), information related to the number of absentee voters in a State who are entitled to vote in Federal elections under this Act,".

SEC. 9. Section 203 of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc-13) is amended—

(1) in paragraph (1), by striking out "Council of State Governments" and inserting in lieu thereof "government of the several States"; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following new paragraph:

"(3) the Postmaster General and the heads of the departments and agencies concerned to facilitate the transmission of balloting materials to and from persons to whom this Act is applicable. Any balloting material sent from the United States to such persons shall be sent by priority airmail or by the most expedited postal service available. Any balloting material sent to the United States by such persons shall be returned by priority airmail or by the most expedited service available, wherever practicable. In the case of ballots executed outside the United States by any such person, such ballots may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed for this purpose."

SEC. 10. Section 204 of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc-14) is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding the provisions of subsections (a), (b), and (c), the Presidential designee shall design, for purposes of carrying out the provisions of this Act and the Overseas Citizens Voting Rights Act of 1975, a single form of postcard application for registration to vote and for an absentee ballot. The Presidential designee is empowered to promulgate such form by regulation and upon adoption of such form, subsections (a), (b), and (c) of this section shall have no effect.".

SEC. 11. (a) Section 2401(c) of title 39, United States Code, is amended—

(1) by inserting after "title" a comma and the following: "the Overseas Citizen Voting Rights Act of 1975,"; and

(2) by striking out "Act" before the period and inserting in lieu thereof "Acts".

(b) Section 3627 of tite 39, United States Code, is amended by striking out "or under the Federal Voting Assistance Act of 1955" and inserting in lieu thereof "under the Federal Voting Assistance Act of 1935, or under the Overseas Citizens Voting Rights Act of 1975".

(c) Section 3626 of title 39, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) In the administration of this section, the rates for third-class mail matter mailed by a qualified political committee shall be the rates currently in effect under former section 4452 of this title for third-class mail matter mailed by a qualified nonprofit organization.

"(2) For purposes of this subsection—

"(A) the term 'qualified political committee' means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees the Democratic National Congressional Committee, and the National Republican Congressional Committee;

"(B) the term 'national committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

"(C) the term 'State committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.".

The SPEAKER pro tempore. Is a second demanded?

Mr. WIGGINS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from South Carolina (Mr. DAVIS) and the gentleman from California (Mr. WIGGINS) will be recognized for 20 minutes each.

The Chair now recognizes the gentleman from South Carolina (Mr. DAVIS).

Mr. DAVIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill, S. 703, is intended to improve administration and operation of the Overseas Citizen Voting Rights Act of 1975 and the Federal Voting Assistance Act of 1955.

The bill was unanimously reported by the Committee on House Administration on August 15, 1978. It had previously passed the Senate on a voice vote.

The Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act were adopted by Congress to facilitate and encourage registration and voting by members of the Armed Forces, merchant marine and other citizens residing overseas. The committee found that, despite the enactment of these two bills, many U.S. citizens residing abroad cannot exercise their constitutional right to vote in Federal elections, or are inhibited from so doing.

The committee found numerous reasons for the lack of overseas registration and voting. Among those reasons were the following:

Inconsistent and conflicting State laws;

Administrative impediments imposed by the several States;

Unintentional gaps in coverage between the two acts; and

A fear that the exercise of the Federal franchise will subject them to some form of taxation by the several States. The committee bill attempts to deal with these and other problems.

Generally, Mr. Speaker, the committee bill will do the following:

First. It would require that the several States provide by law for absenteee registration and voting in Federal elections by members of the Armed Forces and the merchant marine and their dependents.

Second. The Secretary of Defense is required to design a standardized postcard to serve as a simultaneous application for both registration and absentee ballot.

Third. The bill encourages the States to accept the standardized postcard as a simultaneous application for registration and absentee ballot.

Fourth. It would extend coverage to include U.S. citizens who, while they do not have current passports or State Department cards or identity, do possess other acceptable forms of identification.

Fifth. The Secretary of State is required to publicize at the various embassies and consulates around the world, the fact that absentee registration and voting materials are available.

Sixth. The bill provides that election materials sent by the States overseas shall be handled expeditiously and shall be free from postage.

Seventh. The bill provides that the exercise by an overseas citizen of his right to register and vote shall not affect the determination of that citizen's residence or domicile for tax purposes.

Eighth. The bill also provides that certain qualified political committees might utilize the third-class postal rate applicable to a nonprofit organization.

Ninth. Finally, the bill makes other provision to generally expedite the exercise of overseas citizens voting rights.

Mr. Speaker, this bill has broaden bipartisan support. It is supported by the Republican National Committee, the Democratic National Committee and the League of Women Voters. The significant votes in the House and the Senate have been unanimous. The bill grants no new rights or privileges to our overseas citizens, many of whom are serving in the Armed Forces or other governmental positions—S. 703 merely assures that these American citizens may have the same rights and opportunities to exercise the franchise as to we here at home.

Mr. Speaker, I strongly urge my colleagues to join me in support of S. 703.

Mr. WIGGINS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to this bill and urge my colleagues not to vote to suspend the rules and pass a bill which should not be considered under this procedure. Instead, in my view, it should not be supported under any procedure.

The real purpose of the bill, Mr. Speaker, has been hidden; and I want to make it clear to my colleagues precisely what is at issue here.

In a previous Congress we authorized U.S. citizens who reside abroad and who do not claim a domicile in any State to vote nevertheless in the State of their last domicile. I thought that was bad policy and bad law; but that bill nevertheless passed the Congress.

The reason, Mr. Speaker, that these U.S. citizens who reside abroad do not wish to maintain a domicile in a given State in the United States, although they are free to do so, is that they do not wish to pay State taxes in that State. Accordingly, as a matter of personal choice, these are free citizens of the United States who reside abroad, but do not have a connection with any State in the Union.

We gave them the right to vote in the State of their last domicile in earlier legislation; but many of these citizens abroad are fearful of voting in the State of their last domicile because they believe that State may impose State taxes upon them if they do so. I sympathize with their problem. No one wishes to pay taxes but, on the other hand, all the rest of us do, and all the rest of us who vote in States typically pay taxes in those States.

But these U.S. citizens residing abroad do not wish to bear that burden. Accordingly, they have been lobbying the Congress for an amendment to the law which we passed just several years ago to exempt them from the payment of State taxes by reason of the fact of their voting in a particular State. That is the purpose of this bill. It has other provisos in it, which I suppose contain needed amendments to prior laws, but that is incidental, Mr. Speaker, to the main purpose of the legislation. I do not identify with and, in fact, oppose the main purpose of the legislation. I do not support the notion that a U.S. citizen residing abroad may vote for Federal officials, in the State of California, for example—State officials in the State of California, for example—without bearing his fair share of State taxes, if that is a sufficient constitutional connection with the State to justify the imposition of any tax upon that citizen.

However, this bill takes the opposite tack and it excludes such citizens from tax liability in the States. Since I do not agree with that premise, and I hope the Members do not, I urge that this bill be defeated on suspension and that some of its salutary provisions—and there are some—be considered separately in the next Congress.

Accordingly, Mr. Speaker, I urge a no vote on the legislation. I reserve the remainder of my time.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume. I would like to say that I understand my distinguished friend's constitutional concerns but respectfully disagree with them.

The 24th amendment to the U.S. Constitution guarantees the right of every citizen to vote in Federal elections, and it prohibits the States from denying its citizens the right to vote "by reason of failure to pay any toll or other tax."

The Committee realizes that the right of overseas citizens to register and vote is not expressly conditioned on the payment of any State tax. However, it seemed clear to the committee, and the other body so found, that thousands of overseas citizens were effectively discouraged from voting in the 1976 Federal elections due to a fear of State taxation. In fact, Mr. Speaker, a survey conducted by the U.S. Chamber of Commerce found that 43.8 percent of overseas citizens not voting in 1976 listed concern about State tax liability as their primary concern. What we have, I would say to the gentleman, is a de facto condition precedent of State taxation, and I submit that this de facto condition precedent is encompassed by the 24th amendment. As a legal matter, however, S. 703 will probably not make much change in the ultimate tax liability of overseas citizens. Seven States have no personal income tax. Twelve States do not tax overseas citizens on overseas income. And 17 States have issued opinions stating overseas citizens would not be subject to taxation solely for voting.

Finally, Mr. Speaker, it should be kept in mind that under S. 703 voting in a Federal election would be an entirely neutral act for tax purposes. S. 703 would not prohibit a state from imposing a tax on an overseas citizen for some other basis such as the use of State services or on a property in the State. And, of course, S. 703 applies only to Federal elections. Voting in a State or local election would leave the State free to use such voting as sufficient reason for tax purposes.

I think this, Mr. Speaker, that S. 703 is constitutional and will lend uniformity to the Federal tax statutes and should be enacted.

Mr. DAVIS. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from South Carolina.

Mr. DAVIS. Mr. Speaker, I would like to address one portion of this bill dealing with the taxation question again. While the understanding is that this mandatory area, the registration and absentee ballots, et cetera, are only applicable for Federal elections; is that correct?

Mr. THOMPSON. That is correct.

Mr. DAVIS. However, if an oversea voter wishes to participate in the election of State and local officials, in addition to the Federal elections, the act of voting for the State or the local official could constitute sufficient contact with the State to provide the basis for the imposition of some tax uniformly applied for all the citizens of that State and this would not be precluded by this bill; is that correct?

Mr. THOMPSON. The bill does preclude States or local governments from imposing any tax on an overseas citizen who votes in a Federal election under the act. Any obligation to the State is a matter for the State to determine.

Mr. DAVIS. But if at the same time he solicited the Federal ballot, he solicited a State and local ballot, what is the situation?

Mr. THOMPSON. That is a matter entirely for the State to determine.

Mr. DAVIS. In other words, this act would not preclude taxation if the individual requested those ballots. This act only goes to the Federal election.

Mr. THOMPSON. That is exactly correct.

Mr. DAVIS. That might be an interpretation for the States themselves to determine, whether a sufficient contact was made by the request.

Mr. THOMPSON. Yes, by the rendering of a State service or in the judgment of the State for citizens of that State for citizens of that State abroad to vote in State or local elections by absentee ballot, the discretion would lie entirely within the State, except if the voter wants exclusively to vote in a Federal election, in which case they would have no right to impose a tax on that basis.

Mr. DAVIS. Mr. Speaker, I thank the gentleman from New Jersey.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. However, when the ballot is sent to that individual overseas, at least from the State I come from, the ballot is on the Federal officials, the President, the Vice President and Members of the House and the Senate and then the State officials.

Now, how is a determination made, pray tell, as to whether the individual voted only in the Federal or in the Federal and the State?

Mr. THOMPSON. In that case, I say to the gentleman from Rhode Island and the Providence Plantations, the State from which the gentleman comes would make the determination, and in this instance would print a separate Federal ballot.

Mr. ST GERMAIN. There would be the requirement for a separate ballot?

Mr. THOMPSON. Yes.

Mr. ST GERMAIN. Does the legislation require a separate Federal ballot?

Mr. THOMPSON. Yes; if the State wanted so to do, then whatever action they take with respect to their State and local elections is a matter for the State's determination.

Mr. ST GERMAIN. But this is left to the discretion of the State as far as a separate ballot is concerned?

Mr. THOMPSON. Yes; it is.

Mr. WIGGINS. Mr. Speaker, I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I think we should be aware of the fact that under the present conditions we are depriving thousands, possibly tens of thousands of American citizens of the right to vote simply because they reside abroad and because we would impose as a condition on the right to vote the payment of a State or local tax.

Mr. WIGGINS. Mr. Speaker, the gentleman is absolutely incorrect in making that statement.

Mr. McCLORY. Mr. Speaker, as I understand this legislation, the only condition which is being eliminated insofar as the right to vote is concerned is the condition that the person may vote in a Federal election without the imposition of a State or local tax. It seems to me that this is entirely reasonable and that the question as to whether or not the person chooses to vote in a local election in which a local tax might apply is something on which the State is going to make the decision.

Mr. WIGGINS. Let us make this clear. There are no conditions upon the right of an overseas resident to vote if he is otherwise qualified to vote. The payment of the tax is not a condition. You do not have to pay the tax first to get to vote, nor is the tax imposed upon you solely because you do so.

Mr. McCLORY. Mr. Speaker, if the gentleman will yield further, the practical effect of the present law is that, if a person exercises the right to vote in a particular State, even if the person desires to vote only for Federal officials, the State at the present time, may, and I am sure in many instances does, impose a tax.

There is no question involved here as far as the imposition of Federal income taxes on Americans who reside abroad. That question is something we will take care of in the Congress in other legislation. What we are trying to take care of here is to tell the States that they have no right to impose State or local taxes on American citizens who reside abroad and who desire to vote in Federal elections, which it seems to me they should have a right to do without having this State or local tax imposed or without their running the danger of having it imposed.

Mr. WIGGINS. Mr. Speaker, I appreciate the gentleman's view.

Mr. Speaker, I have a couple of quick observations to make. The gentleman from South Carolina (Mr. DAVIS)—or perhaps it was the gentleman from Rhode Island—made it clear that we are going to have two sets of ballots to administer this law.

The State tax is appropriate if the overseas citizen votes in a State election but is inappropriate under the bill if he votes only in a Federal election. When we have a common ballot, with Federal officials and State officials on that ballot, obviously the ballot itself has to be inspected in order to determine whether the voter has voted for State as well as Federal officials. This is intolerable, of course. We cannot permit the inspection of ballots in which the voter is identified. States will be driven to printing dual ballots, and that is more than a little administrative inconvenience.

Mr. Speaker, a second point needs to be made. Notwithstanding the views of the distinguished committee chairman, this is not a poll tax under the 24th amendment. This is not a tax imposed which conditions the right to vote, nor is it a tax imposed only upon those who do vote.

Mr. Speaker, I wish to make one final point, and then I will yield time to my friend, the gentleman from Minnesota (Mr. FRENZEL). We are by this bill limiting the power of a State to levy its own taxes, and I think a fair question to ask is this: Where in the world do we get this power? Where does the Federal Government get the right to tell an individual State that it cannot impose its own taxes upon those who are proper subjects of those taxes? A close examination of the source of this Federal power leaves us empty-handed. It is a usurpation, it appears to me, of State power. It is an exercise of naked Federal power against the legitimate rights of States.

Mr. Speaker, this bill ought to be defeated.

Mr. Speaker, I now yield such time as he may consume to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, I wish to endorse the statement made by the gentleman from South Carolina (Mr. DAVIS) when he described the bill and some of its virtues. I would like also to associate myself with the argumentation given by the distinguished chairman of the committee, the gentleman from New Jersey (Mr. THOMPSON).

This bill is a good bill. It is needed to make whole the Overseas Voting Rights Act which we passed in 1975. As most of the gentlemen who have spoken here have already indicated, this bill refers to income taxes of States only, and not to income taxes of the Federal Government.

Those who wish to vote in Federal elections, Mr. Speaker, ought to be able to do so, and they should not be prevented by the threat of taxation by any one of the several States from carrying out the free use of their own franchise.

The gentleman from New Jersey (Mr. THOMPSON) has already stated that in 37 States there is no problem because these taxes are not a threat to overseas residents. I would like to have the RECORD show that in the case of Rhode Island—and there was a query from a Member from Rhode Island—that is a State in which no State taxes are levied on foreign source income. That is also true in the case of the home State of the gentleman from California (Mr. WIGGINS), and in the case of the gentleman from New Jersey (Mr. THOMPSON).

Mr. DAVIS. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from South Carolina.

Mr. DAVIS. Mr. Speaker, I would like to allay one of the fears on the part of some of the Members. My State is a State that does have State taxes, but we are also a State where our standard election procedure is to print a separate Federal ballot. It has always been this way, and I would say it is not a great inconvenience to be able to separate that one item and put one Senator and one Representative in a given area or put the Presidential electors and a representative in an area, and these are the only ballots we are talking about being mandated in this bill.

Mr. Speaker, I think that should be clarified, that we are not creating great administrative havoc by having this one little extra ballot, which is something that has to be printed anyway in most States.

Mr. FRENZEL. I thank the gentleman for his contribution.

I would continue, Mr. Speaker, by saying that there are somewhere in the range of 750,000 Americans resident outside the borders of the United States. Most of these people do not vote. At least one-half of those who do not vote, according to the chamber of commerce survey cited by the gentleman from New Jersey, do not do so because they are nervous about the threat of paying a State income tax.

The right to cast a vote in our Federal election is a precious one which has been zealously guarded by the Supreme Court. This bill seeks to give that right extra protection, and will in this case certainly be upheld.

It is a matter of the 14th amendment. It is also a matter of the reasonableness clause. We ought to take every step we can to protect the precious franchise of these Americans abroad who may or may not choose to participate in State elections but definitely want to participate in Federal elections.

The Americans whose vote we seek to protect are citizens. They are subject to U.S. laws, including the Tax Code. They are citizens in every respect except they are afraid to vote. They need the protection in this bill.

Mr. Speaker, I know of no valid reason why this bill should not be passed, and I urge the House to do so promptly.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. I thank the gentleman for yielding.

Mr. Speaker, I was concerned about paying State taxes. I am concerned about the serviceman and the servicewoman. How does this affect those service persons overseas?

Mr. FRENZEL. As I understand it, the American personnel in the military are covered by an entirely separate law. We do not change this law at all by the bill which is before the House at the moment.

I think I am imposing upon the time of my leader, and maybe the gentleman could ask the distinguished chairman that question.

Mr. WIGGINS. Mr. Speaker, I will say that the servicemen overseas are subject to State taxes if they are domiciliaries of the State and earn sufficient income.

Mr. THOMPSON. Mr. Speaker, the point I would like to make to my colleague, the gentleman from Mississippi (Mr. MONTGOMERY), is that the gentleman from Minnesota (Mr. FRENZEL) is exactly correct. They are covered under a separate act. Because of the extensive experience of the Department of Defense, this legislation calls for them to draft the form which is universally used for overseas personnel. Had the gentleman from Minnesota given the number of Americans abroad to include the military, it would have been many more than the 750,000 civilians.

Mr. MONTGOMERY. If the gentleman will yield, I think the gentleman has answered my question.

Mr. WIGGINS. If the gentleman will yield, no, it has not been answered. The gentleman is concerned, I believe, about whether or not a serviceman overseas is subject to State taxes if he votes in the State. This bill does not address that subject. The bill to which the gentleman from New Jersey referred is a registration bill. It has nothing to do with taxes.

Mr. MONTGOMERY. If the gentleman will yield, the committee report says that the Secretary of Defense will draw up the postal card.

Mr. WIGGINS. The postal card is a registration form. We cry crocodile tears over the 750,000-odd U.S. citizens abroad who might have to pay State taxes if they vote in States. Maybe we should also think of the tens of millions of U.S. citizens who reside in the United States and who vote in their State and, by reason of that fact, and others, pay taxes in their State. How about a little sympathy for them?

Mr. THOMPSON. Mr. Speaker, I would like the record to show that I am sympathetic with them and that they do enjoy on an everyday basis State services which, obviously, someone who is abroad does not enjoy.

Mr. DAVIS. Mr. Speaker, I have no further requests for time.

Mr. WIGGINS. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. THOMPSON) that the House suspend the rules and pass the Senate bill S. 703, as amended.

The question was taken.

Mr. WIGGINS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

H.R. 13149, EXTEND REPORT DATE ON FOOD STAMP PILOT PROJECT WORKFARE PROVISIONS

Mr. RICHMOND. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13149) to amend the pilot project workfare provisions of the Food Stamp Act of 1976.

The Clerk read as follows:

H.R. 13149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, The last sentence of section 17(b)(2) of the Food Stamp Act of 1977 is amended by striking everything after "Act," and inserting in lieu thereof the following: "shall issue an interim report no later than October 1, 1979, and shall issue a final report describing the results of such pilot projects no later than October 1, 1980."

The SPEAKER pro tempore. Is a second demanded?

Mr. JOHNSON of Colorado. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. RICHMOND) will be recognized for 20 minutes, and the gentleman from Colorado (Mr. JOHNSON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. RICHMOND).

Mr. RICHMOND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 13149, a bill to amend the pilot project workfare provisions of the Food Stamp Act of 1977, simply extends by 18 months the time for the Department of Agriculture to undertake a workfare experiment in 14 parts of the country as part of the new food stamp program we enacted last year. The Committee on Agriculture approved it on a vote of 32 to 3. "Workfare" is a term describing the performance of public service work for State or local units of government by food stamp recipients capable of so working in return for their food stamp benefits.

In September 1977, the Congress mandated such an experiment to take place in 14 projects across the country (two Nutrition and Service administrative regions). We originally thought that the experiment could begin by October 1977, and conclude no later than March 1979. Accordingly, we required a final report to be filed describing the results of the experiment by March 29, 1979. Unfortunately, there has been considerable delay in implementing the new food stamp program. Final regulations remain to be promulgated (hopefully in October) before the new program can start to take effect and, even then several months will be needed to assure thorough and full implementation in all of the States.

Since the workfare pilot projects depend upon the regulations being in place and operative, the Department of Agriculture requested that we add another 18 months to the legislative life of the projects in order to assure that there would be sufficient time to test the value of workfare. Therefore, we determined to postpone the target date for the final report until October 1, 1980, which means that the projects should be able to run for approximately 15 months (January 1979 to April 1980), a sufficient period for the collection of useful data, with a period of approximately 5 additional months within which to analyze that data and prepare the final report. To guarantee that the Congress is kept up to date on the progress of the pilot projects, we have required interim reports on an annual basis on or before October 1, 1978, and 1979.

The Department of Agriculture has agreed to furnish the Committee on Agriculture as well as the Senate Committee on Agriculture, Nutrition, and Forestry the unevaluated raw data flowing from project operations as soon as possible after the projects shut down in 1980 so that the committees may undertake their own analyses of the projects' successes and failures.

The technical legal reasons why this 18-month extension is so essential are spelled out in the Department's letter requesting that the bill be considered, which is attached.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 5, 1978.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Enclosed for the consideration of Congress is a proposed bill to extend until October 1, 1980, the final reporting date established in section 17(b)(2) of the Food Stamp Act of 1977 (Public Law 95-113) for the food stamp workfare demonstration project.

Current legislation requires that a final report be submitted on March 29, 1979. Our

general counsel has advised us that since the section of the statute authorizing workfare makes specific reference to other provisions of the program which are being revised (such as the elimination of the purchase requirement and the new benefit levels), we may not legally commence workfare project operation until these new provisions are in effect. As you know, the Department published the initial package of proposed regulations to implement Public Law 95–113 on May 2, 1978. Final regulations are scheduled to be published in late summer, and actual State agency implementation of the new provisions should commence by January 1979. In order to maintain the timetable for the final workfare report established by current legislation, both project operation and evaluation would have to take place during the first 3 months of 1979. Our general counsel has further advised that extension of the project beyond the operational date is not legislatively authorized and could not withstand legal challenge. Taking those two factors, concurrently, it will be very difficult to conduct the congressionally mandated workfare project under the parameters of the current legislation, since the projects would have only a few months of operation. It is impossible to have any meaningful test in so short a period of time.

The proposed legislation would allow for a final report no later than October 1, 1980. This will allow the workfare projects to run through about April 1, 1980, so that all local operations may have at least 1 full year of operation, and then allow 6 months for the final collection and tabulation of data and preparation of the report. The proposed legislation retains the interim report due on September 28, 1978, and provides for an additional interim report by October 1, 1979.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed bill from the standpoint of the administration's program.

A similar letter is being sent to the President of the Senate.

Sincerely,

BOB BERGLAND, *Secretary.*

Mr. JOHNSON of Colorado. Mr. Speaker, I yield myself such time as I may consume.

H.R. 13149 extends the final reporting date for the workfare pilot projects until October 2, 1980, and requires an interim report on the progress of the pilot projects before October 2, 1979.

The Food Stamp Act of 1977 (Public Law 95–113) provided for the implementation by the Department of Agriculture of 14 pilot projects (2 each in the 7 administrative regions of the Food and Nutrition Service) involving the performance of work by food stamp recipients in exchange for their food stamp benefits. The recipients would be employed in a public service capacity for a State or local unit of government already sponsoring public service employment for a period of hours equal each month to the value of the household's food stamp allotment.

The law contemplated progress reports on those projects no later than 6 months (March 29, 1978) and 12 months (September 29, 1978) following enactment, as well as a final report on March 29, 1979.

Implementation of the program has been delayed pending preparation of regulations to administer the 1977 act. Accordingly, H.R. 13149 would extend the period of authorization for the pilot project workfare provisions until October 1, 1980, and further, would give discretionary authority for the Secretary to extend the projects until the termination of the act's authorization, which is September 30, 1981. USDA tells us they expect to get these projects underway in early 1979.

● Mr. FINDLEY. Mr. Speaker, I am delighted by the numerous indications that the Department of Agriculture is prepared to move promptly and vigorously to implement the workfare pilot projects once this bill is enacted into law. Last year, when we sought to include workforce as part of the revised food stamp program, there was some concern that the Department found workfare so distasteful that it would drag its feet rather than put it into effect. But now the Department is exhibiting appropriate flexibility in abiding by the will of Congress and is, indeed, acting in very good faith to initiate this demonstration perhaps by as early as January 1, 1979.

I understand that the Department is willing to provide the States in which the 14 projects are located with 100 percent of the costs associated with the recordkeeping and data collection aspects of the demonstration which may be substantial, even though the Department believes it is bound by the legislative history of the 1977 law not to furnish any cost-sharing for the administration or operational expenses involved in testing welfare, including, for example, the cost of providing the workers with supplies and of supervising them. States may, of course, employ revenue-sharing funds to support project operations. I further understand that the Department is planning to conduct an outreach campaign with the governors of the States to attempt to secure 14 sponsors so that the test may proceed at full strength. This bill is necessary to permit the demonstration to proceed without interruption so that we may obtain sufficient information by 1980 to enable the Congress to decide in 1981 whether the success or failure of workfare warrants its expansion, continuation, or termination.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. RICHMOND).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

Mr. RICHMOND. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 3271) to amend the pilot project workfare provisions of the Food Stamp Act of 1977.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate bill as follows:

S. 3271

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 17(b)(2) of the Food Stamp Act of 1977 is amended by striking everything after "Act," and inserting in lieu thereof the following: "shall issue an interim report no later than October 1, 1979, and shall issue a final report describing the results of such pilot projects no later than October 1, 1980.".

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 13149) was laid on the table.

GENERAL LEAVE

Mr. RICHMOND. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

HUMANE METHODS OF SLAUGHTER ACT

Mr. FOLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1464) to amend the Federal Meat Inspection Act for purposes of requiring that meat inspected and approved under such act be produced only from livestock slaughtered in accordance with humane methods, as amended.

The Clerk read as follows:

H.R. 1464

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Humane Methods of Slaughter Act of 1978".

SEC. 2. Section 3 of the Federal Meat Inspection Act (21 U.S.C. 603) is amended by inserting "(a)" immediately before the first sentence and adding at the end thereof a new subsection (b) as follows:

"(b) For the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this Act. The Secretary may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906) until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.".

SEC. 3. Section 10 of the Federal Meat Inspection Act (21 U.S.C. 610) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and inserting after subsection (a) a new subsection (b) as follows:

"(b) slaughter or handle in connection with slaughter any such animals in any manner not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906);".

SEC. 4. Section 20(a) of the Federal Meat Inspection Act (21 U.S.C. 620) is amended by inserting after the first sentence a new sentence as follows: "No such carcasses, parts of carcasses, meat or meat food products shall be imported into the United States unless the livestock from which they were produced was slaughtered and handled in connection with slaughter in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906).".

SEC. 5. The Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906) is amended by—

(a) inserting before the period at the end of section 2(b) "and handling in connection with such slaughtering";

(b) repealing sections 3, 4(c), and 5;

(c) striking out "for purposes of section 3 hereof" in section 4(b);

(d) inserting "and" after the semicolon at the end of section 4(a); and

(e) striking out the semicolon at the end of section 4(b) and inserting a period in lieu thereof.

SEC. 6. Nothing in this Act shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this Act, in order to protect freedom of religion, ritual slaughter, and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this Act. For the purposes of this section the term "ritual slaughter" means slaughter in accordance with section 2(b) of the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1902(b)).

SEC. 7. The provisions of this Act shall become effective one year after the date of enactment. However, such provisions shall not apply to a person, firm, or corporation for such additional period of time, not to exceed eighteen months, as may be determined by the Secretary, if the Secretary, upon application, finds that compliance with the provisions of this Act on its effective date would cause undue hardship on such person, firm, or corporation.

Amend the title so as to read: "A Bill to amend the Federal Meat Inspection Act to require that meat inspected and approved under such Act be produced only from livestock slaughtered in accordance with humane methods, and for other purposes.".

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Washington (Mr. FOLEY) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington (Mr. FOLEY).

Mr. FOLEY. Mr. Speaker, I rise in support of the bill (H.R. 1464). This legislation would amend the Federal Meat Inspection Act to require the Secretary of Agriculture to survey all inspected establishments to determine whether humane methods of slaughter, and handling in connection with slaughter, are being used.

Effective 1 year after date of enactment, Federal and State inspected establishments would be required to employ methods of slaughter, and handling in connection with slaughter, which are in accordance with the Humane Slaughter Act of 1958. This bill would also repeal provisions of the Humane Slaughter Act which became obsolete on the effective date of the bill. These include provisions which heretofore limited application of humane slaughter and handling requirements to those who sell meat to the Federal Government, required the Secretary to provide for the separate identification of humanely slaughtered carcasses, and gave the Secretary discretionary authority to appoint an advisory committee to assist in the implementation of the act. H.R. 1464 is a noncontroversial measure. An overwhelming majority of meat packers already employ humane methods of slaughter because such methods have proven more economical. The bill entails no additional cost to the Government since both the survey and enforcement of the humane slaughter requirements of the bill would be carried out by existing personnel.

Ritual slaughter is not affected in any way by this bill. Both the provision of the Humane Slaughter Act which finds ritual slaughter according to the tenets of the Jewish faith or any other religious faith to be humane, and the provisions exempting ritual slaughter and the handling or other preparation of livestock for ritual slaughter from the terms of that act are preserved intact. In addition, ritual slaughter, and handling in connection with such slaughter, are specifically exempt from the provisions of this bill.

The Committee on Agriculture reported this bill by voice vote last June and the Senate passed a companion measure last month. With two exceptions the House and Senate versions of the legislation are substantially identical. The two exceptions are: First, the House bill would give the Secretary authority to temporarily suspend inspection where he finds that livestock have been slaughtered by other than humane methods. The Senate measure would in addition authorize the Secretary to refuse inspection to a new plant until it furnished satisfactory assurances that humane methods of slaughter and handling would be employed.

Second, although neither the Senate nor the House bills would become effective until 1 year after enactment, the House bill would empower the Secretary to postpone this effective date for up to 6 months longer if hardship would otherwise result to a slaughtering establishment. The Senate bill would authorize the Secretary to postpone the effective date indefinitely. The purpose of the Senate provision was to allow the Secretary to give States which must enact laws at least equal to the Federal statute in order to maintain inspection programs, a reasonable time for their legislatures to do so. I am advised that it would be reasonable to give such States up until mid-1981 or until about 18 months after the effective date of the bill to enact the requisite State legislation.

Under my motion, I am suggesting that the House suspend the rules and pass the bill with certain noncontroversial amendments. Under my motion the House would: First, adopt language from the Senate bill which grants the Secretary authority to refuse inspection to new plants until satisfactory assurances are given that humane methods of slaughter will be employed but modify the language to confine its application to this type of situation; and second, retain the House provision limiting the period during which the Secretary could postpone the effective date of the bill, but increase the period from the present 6 months to 18 months. I have been assured that these provisions are acceptable to the representatives of the meat packing industry and animal protection groups which have actively followed the legislation, and the Department of Agriculture has informally indicated that it has no objection. My amendments also include such other nonsubstantive technical amendments as are necessary to conform this bill to the measure passed by the Senate. I would then propose that we then return the measure as so amended to the other body. I am assured informally that the Senate will in all likelihood accept the bill with these changes.

I urge my colleagues to agree to the motion and pass the bill with the amendments which I have outlined.

Mr. SEBELIUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the time has come to require humane methods of slaughtering and handling for all meat sold in the United States as is provided for in H.R. 1464.

Over the last 20 years the American people have become increasingly concerned over the proper handling and slaughtering of livestock and humane treatment of animals. The first landmark legislation in this area was the Humane Slaughter Act of 1958, which required all meat sold to the Federal Government to be slaughtered and handled according to several humane methods. The Animal Welfare Act of 1976 was a further indication of our growing consciousness of the merciful treatment of animals. Now is the time to refine and expand the initial humane slaughter legislation to all domestic and imported meat with the passage of H.R. 1464.

In the years following the enactment of the Humane Slaughter Act in 1958, meat packers and processors have discovered that the adoption of humane slaughter methods reduces the incidence of injury to animals, and bruises and broken bones that results in condemned meat. The risk of injury to packing plant workers is also lessened. Therefore, the economic incentive of utilizing humane slaughter methods has expanded to many more packing plants than just those who sell meat to the Federal Government. In fact, the U.S. Department of Agriculture figures show that only 11 percent of the federally inspected packing plants, 5 percent of the State inspected plants and 12 percent of the foreign packing plants exporting meat to the United States continue to use nonhumane slaughtering practices.

Type of plant	Total plants	Number [1]	Percent [1]
Federally inspected	1,771	196	11
State inspected	2,564	136	5
Foreign exporting to United States	522	64	12

[1] Number which slaughter some or all species nonhumanely.

Of the approved humane slaughter methods, the application of the captive bolt stunner is the most widely used method for killing cattle and the administration of a high voltage electric current is the most widely used method of killing hogs and sheep. Shooting with firearms (generally with a .22 rifle) and the administration of carbon dioxide gas are rarely used today.

Yet, the concern by many Americans over the isolated, but persistent reports of continued cruelty to and abuse of livestock at the few plants that are not already using humane methods justify the imposition of a humane slaughtering and handling standard for all meat sold in the United States. This bill, if signed into law, would be enforceable by fines of up to $1,000 and imprisonment of up to 1 year, or both.

Most imported meat is slaughtered in accordance with our law, with the exception of sheep in Australia and possibly New Zealand. This bill would permit them to comply within 12 months following enactment, or 18 months if a hardship existed.

Mr. Speaker, this bill will in no way restrict the freedom of members of the Jewish faith or other religions to conduct ritual slaughter in accordance with their faith. H.R. 1464 and the Humane Slaughter Act specifically exempts kosher and other ritual slaughter methods.

I would like to point out that the Senate passed a companion bill by Mr. DOLE, S. 3042, by unanimous vote on August 7.

For these reasons, I join with the distinguished chairman of the Agriculture Committee, Mr. FOLEY, in urging the passage of this bill.

I yield back the balance of my time.

● Mr. BROWN of California. Mr. Speaker, the House today has passed the Humane Methods of Slaughter Act of 1978, a bill that broadens the scope of the Humane Slaughter Act of 1958. This bill is a tribute to those, in and out of Congress, who worked so hard for its passage. I would especially like to note the efforts of Mr. POAGE, the author of the original Act and longtime supporter of humane legislation.

In passing this legislation, Congress does not create a new maze of regulation but simply adds a new category, a new box to be checked on existing inspection forms. Cost of compliance is slight and the number of firms that are effected is only 176 out of 3,900 plants, the rest having previously complied with the 1958 act. The bill also extends the humane slaughter requirement to all meat imports, again effecting very few operations, in this case only about 1 percent of the plants that export meat to the United States.

The passage of this legislation takes us one step closer to complete assurance that the meat that we consume is not the result of some animal's pain and suffering. With such technological resources as we posses, there is no reason for us to allow unnecessary cruelty to our livestock. And humane slaughter methods also reduce bruising of the meat estimated to run almost $50 worth of damaged meat for every 100 animals slaughtered. The American Meat Institute members agree that humane slaughter methods are efficient methods and testified in support of this bill.

In addition to Mr. Poage's efforts and the efforts of numerous humane organizations and individuals, I would like to again acknowledge the work of the late Dr. Frederick Thomsen, formerly president of the Humane Information Services. Dr. Thomsen worked for years for the passage of this legislation and for the improvement of animal protection in general. This bill should be viewed as a fitting memorial to Dr. Thomsen and a living reminder of the efforts of humane groups everywhere.●

Mr. FOLEY. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. FOLEY) that the House suspend the rules and pass the bill H.R. 1464, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to require that meat inspected and approved under the Federal Meat Inspection Act be produced only from livestock slaughtered in accordance with humane methods, and for other purposes.".

A motion to reconsider was laid on the table.

Mr. FOLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3092) to amend the Federal Meat Inspection Act to require that meat inspected and approved under such act be produced only from livestock slaughtered in accordance with humane methods, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3092

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Humane Methods of Slaughter Act of 1978".

SEC. 2. Section 3 of the Federal Meat Inspection Act (21 U.S.C. 603) is amended by inserting "(a)" immediately before the first sentence and adding at the end thereof a new subsection (b) as follows:

"(b) For the purposes of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this Act. The Secretary may refuse to provide inspection or cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906), until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.".

SEC. 3. Section 10 of the Federal Meat Inspection Act (21 U.S.C. 610) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and inserting after subsection (a) a new subsection (b) as follows:

"(b) slaughter or handle in connection with slaughter any such animals in any manner not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906);".

SEC. 4. Section 20(a) of the Federal Meat Inspection Act (21 U.S.C. 620) is amended by inserting after the first sentence a new sentence as follows: "No such carcasses, parts of carcasses, meat or meat food products shall be imported into the United States unless the livestock from which they were produced was slaughtered and handled in connection with slaughter in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906).".

SEC. 5. The Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906), is amended by—

(a) inserting before the period at the end of 2(b) "and handling in connection with such slaughtering";

(b) repealing sections 3, 4(c), and 5;

(c) striking out "for purposes of section 3 hereof" in section 4(b);

(d) inserting "and" after the semicolon at the end of section 4(a); and

(e) striking out the semicolon at the end of section 4(b) and inserting a period in lieu thereof.

SEC. 6. Nothing in this Act shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this Act, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this Act. For the purposes of this section the term "ritual slaughter" means slaughter in accordance with section 2(b) of the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1902(b)).

SEC. 7. The provisions of this Act shall become effective one year after the date of enactment. However, such provisions shall not apply to a person, firm, or corporation for such additional period of time as may be determined by the Secretary, if the Secretary, upon application, finds that compliance with the provisions of this Act on its effective date would cause undue hardship on such person, firm, or corporation.

MOTION OFFERED BY MR. FOLEY

Mr. FOLEY. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FOLEY moves to strike out all after the enacting clause of the Senate bill, S. 3092, and insert in lieu thereof the text of H.R. 1464, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to require that meat inspected and approved under the Federal Meat Inspection Act be produced only from livestock slaughtered in accordance with humane methods, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 1464) was laid on the table.

GENERAL LEAVE

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

PACKERS AND STOCKYARDS ACT AMENDMENTS

Mr. FOLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9482) to amend the Packers and Stockyards Act of 1921, as amended.

The Clerk read as follows:

H.R. 9482

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 305 of the Packers and Stockyards Act, 1921 (7 U.S.C. 206), is amended by adding immediately before the period at the end thereof the following: ": *Provided, however,* That rates and charges based upon percentages of the gross sales prices of livestock shall not be prohibited merely because they are based upon such percentages rather than on a per head basis".

(a) in the introductory paragraph, by deleting "unjust, unreasonable, or discriminatory" and inserting in lieu thereof "violative of sections 304, 305, or 307";

(b) in subsection (a) thereof—

(1) by deleting "just and reasonable" and inserting after the word "May" the following: "in accordance with the standard set forth in section 305";

(2) by deleting "as both the maximum and minimum" and inserting in lieu thereof "as the maximum or minimum or both";

(3) by inserting immediately before the semicolon at the end thereof ": *Provided, however,* That the Secretary shall prescribe the rate or charge, or rates or charges, on a percentage or per head basis at the election of the stockyard owner or market agency, or on any other basis elected by the stockyard owner or market agency unless the Secretary finds such other basis to be violative of section 305"; and

(c) in subsection (b), by deleting "more or less than the rate or charge" and inserting in lieu thereof "other than the rate or charge or rates or charges".

SEC. 3. The Secretary shall appoint an interagency task force within the Department of Agriculture for the purpose of analyzing and recommending methods by which any livestock sellers, or their agents, may furnish to livestock marketing agencies, dealers or packers, who purchase livestock or provide marketing services, information concerning the existence of any lien or security interest in or against such livestock. The Secretary shall submit a report of the findings and conclusions of such task force, including legislative recommendations, to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives no later than February 1, 1979.

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Washington, (Mr. FOLEY) and the gentleman from Kansas, (Mr. SEBELIUS) will be recognized for 20 minutes each.

The Chair now recognizes the gentleman from Washington (Mr. FOLEY).

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the bill (H.R. 9482), to amend the Packers and Stockyards Act of 1921.

This bill amends section 305 and 310 of the Packers and Stockyards Act, 1921, to make clear that country auction barn tariffs which assess charges for the sale of livestock on the basis of a percentage of the sales price rather than on a per-head basis are lawful under that act. It also requires the Secretary of Agriculture, in the exercise of his regulatory authority to prescribe stockyard rates, to do so on a per-head basis or on any other just, reasonable, and nondiscriminatory basis elected by the stockyard.

This bill would also clarify section 310 of the act to make clear that the Secretary of Agriculture has authority to prescribe either maximum or minimum rates or charges, or both. This amendment is not intended to disturb the existing situation at large terminal stockyards at which several market agencies may operate. The Secretary has for many years had authority to prescribe a single uniform rate for all market agencies operating at a particular stockyard. This amendment does not disturb that authority.

Finally, this bill would require the Secretary of Agriculture to establish an interagency task force within the Department of Agriculture to study and report to the Congress with respect to methods by which sellers of livestock or their agents might disclose the existence of liens or other security interests in the livestock which they sell to packers or through auction barns.

Mr. Speaker, when the Packers and Stockyards Act was first enacted in 1921, most of the Nation's livestock was sold through a relatively few large terminal markets which for the most part were located at major railroad terminals. These markets were relatively few in number by comparison with today and they held a virtual monopoly over trade in livestock. Accordingly, Congress brought them under regulation under public utility principles. In the ensuing years, and particularly after World War II, more and more livestock were traded at small country auction barns throughout the United States which were not subject to the Secretary's jurisdiction. By the mid-1950's, there were some 2,000 such auction markets and there was some concern over the fact that the Secretary no longer had jurisdiction over the great majority of livestock market transactions. Accordingly, in 1958, Congress brought all auction markets selling livestock in interstate commerce under regulation. Congress did not at that time address the types of tariff then in use. But percentage or value-based tariffs were widely prevalent and the legislative history reflects no intention on the part of Congress to change the existing practice.

In recent administrative proceedings, the Packers and Stockyards Administration has interpreted the Packers and Stockyards Act to prohibit percentage or value-based tariffs. To the surprise of many of us, this interpretation has been sustained on appeal. This has worked particular hardship on the auction markets involved in those proceedings and has brought into question the validity of the tariffs at the some 900 auction barns which presently employ percentage or value-based tariffs.

At hearings conducted around the country both by the Subcommittee on Livestock and Grains and by the Packers and Stockyards Administration there was near unanimous support for the principle that the auction markets should continue to be able to establish their charges on a percentage basis and, indeed, on any other basis which the Secretary finds to be lawful. Therefore this bill amends the act to make clear that percentage tariffs do not violate the Packers and Stockyards Act, and that the Secretary must prescribe rates on such percentage, per-head, or other lawful basis as the stockyard owner elects.

The bill preserves residual jurisdiction on the part of the Secretary of Agriculture over auction barn rates and charges to provide against possible unjust discrimination between sellers or other contingencies which might warrant Federal intervention. However, the Secretary has indicated his intention to permit rates and charges to be established by the auction barns on such basis as they may choose and to allow the level of rates to be determined by competition in the marketplace.

Finally, there has been a minor but persistent problem involving failure of livestock sellers to disclose to auction barns or to packers the existence of liens against livestock which they sell. Where the holders of such liens trace such livestock to an auction barn or packer, the auction barn or packer must satisfy such liens even though they had no way of knowing of their existence and frequently have no recourse against the livestock seller. This bill would require the Secretary of Agriculture to study this problem and recommend such legislation as he may deem appropriate by February 1, 1979.

Mr. Speaker, this bill has the support of the administration and of practically every one of the hundreds of witnesses who testified at the hearing conducted by the committee and by the Packers and Stockyards Administration. It was reported unanimously by the Committee

on Agriculture. A companion bill, S. 3272, has already passed the Senate, and my motion includes adoption of a few nonsubstantive grammatical amendments which are necessary to conform the language of the House bill precisely to that of the Senate bill. I know of no controversy attending this measure. It will dispel a cloud which otherwise would overhang the tariffs of practically half the auction barns in the country. It is a good bill. It is needed. And, I urge my colleagues to support it.

Mr. SEBELIUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 9482.

Testimony in hearings held by both the House Agriculture Committee and U.S. Department of Agriculture overwhelmingly favored deregulation of stockyard commission rates by giving auction barns the option of charging either on a percentage basis—(normally 2 to 3 percent of the gross sales price)—or a per-head basis (which in Kansas ranges from about $1.75 to about $3 or $4 per head). However, it was felt that the Packers and Stockyards Administration should still retain standby authority to step in and adjust rates should they get out of line in relation to an auction market's quality of service. I am glad that this bill encompasses that thinking.

Competition, not the Government, is the best way to regulate the auction markets. Stockmen are smart enough to figure out which stockyard offers the best service and sales price for the money. They know when they are overcharged. Yet, the livestock marketing business has been one of the lowest margin types of operations in the United States today, and a tremendous cashflow is also involved. There is no question but that these businesses must be allowed to make enough money to continue to provide quality services. Sections 1 and 2 of this bill, which give the auction market the option of setting tariffs on either a percentage or per-head basis, take care of this problem in an appropriate fashion.

H.R. 9482 also addresses a problem that has plagued the livestock marketing industry for a long time—the selling of mortgaged livestock which have liens or security interests. This bill directs the Secretary of Agriculture to appoint an interagency task force within the Department of Agriculture to analyze the problem and make legislative recommendations to Congress by February 1, 1979. I am hopeful that this will lead to a permanent and meaningful solution to this gadfly in the livestock marketing process.

For these reasons, I join with the distinguished chairman of the Agriculture Committee, Mr. FOLEY, in urging my colleagues to vote overwhelmingly for this bill's passage.

Mr. Speaker, I would like to pay tribute to the gentleman from Arkansas (Mr. THORNTON), who is the author of the bill and who did all of the strong work. We are going to miss the gentleman from Arkansas (Mr. THORNTON) in that committee next year, because he is going back to Arkansas to practice a little law as I understand.

Mr. Speaker, he has done a good job on this legislation. He has been a valued member of the committee.

Mr. THORNTON. Mr. Speaker, will the gentleman yield?

Mr. SEBELIUS. I yield to the gentleman from Arkansas.

Mr. THORNTON. Mr. Speaker, I thank the gentleman from Kansas (Mr. SEBELIUS) very much for his kind remarks.

I do rise in strong support of this legislation which will, as has been mentioned by our distinguished chairman and by the gentleman from Kansas, afford the opportunity for competition to establish the rates for services rendered by market agencies.

I thank the gentleman very much for his comments.

Mr. SEBELIUS. Mr. Speaker, I would like to ask the gentleman from Arkansas (Mr. THORNTON) the following question:

Section 1(b) of the bill would amend section 310 of the Packers and Stockyards Act to delete the phrase "as both the maximum and minimum" and insert in lieu thereof the phrase "as the maximum or minimum or both." Would this amendment have any effect upon the present authority of the Secretary, which has been in effect for many years, to prescribe a uniform schedule of rates for all market agencies operating at a particular stockyard?

Mr. THORNTON. Mr. Speaker, if the gentleman will yield, the answer is "No," the amendment would not disturb that authority. As you indicate, for many years, in prescribing the rates to be charged at a stockyard where the stockyard company furnishes the stockyard facilities and certain basic services, and several market agencies furnish the buying and selling and related services, the Secretary has prescribed a uniform rate schedule for all the market agencies at that market. It is the intent of this amendment of section 310 of the act, to preserve that authority while giving the Secretary flexibility, for example, in the manner in which the level of rates is prescribed. Under the amendment, the Secretary could prescribe the maximum rates to be charged, or he could prescribe the minimum rates, or a combination of the maximum and minimum, or he could prescribe the precise rates to be charged. But I am assured that the Secretary intends to continue the policy that whatever rates are prescribed for a particular market would be charged by all of those agencies operating at that market.

Mr. SEBELIUS. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

Mr. HAMMERSCHMIDT. Mr. Speaker, I want to congratulate the distinguished chairman of the committee, the gentleman from Washington (Mr. FOLEY), for bringing this bill to the floor; and I also thank the distinguished ranking member of the subcommittee, the gentleman from Kansas (Mr. SEBELIUS).

Beyond that, Mr. Speaker, I want to congratulate and thank my distinguished colleague, the gentleman from Arkansas (Mr. THORNTON), for his work on this bill. It is my understanding that in consultation with the U.S. Department of Agriculture, the gentleman from Arkansas (Mr. THORNTON) developed an amendment in the nature of a substitute which is in essence the substance of this bill which has been reported by the committee.

Again, Mr. Speaker, I congratulate him.

Mr. Speaker, as a cosponsor of the Packers and Stockyards Act amendments I urge my colleagues to act swiftly and approve this critical bill which will lift the onerous and costly Federal ratemaking procedures and standards which are presently being applied to auction barns and which threaten to drive many of these markets out of business.

Under this measure small rural auction barns operating in competition with one another will no longer be treated as public utilities whose rates and charges can only be established after elaborate and costly application of Federal ratemaking machinery. However, it will not disturb the jurisdiction of the Secretary of Agriculture over the rates and charges of stockyards which operate without effective competition.

The Packers and Stockyards Act of 1921 provided the Secretary of Agriculture with the authority to set rates and charges at stockyards so that they might be reasonable, just, and nondiscriminatory. At that time, the 71 existing terminal stockyards were operating without effective competition and were rightfully subjected to the Federal ratemaking process designed for public utilities. During the following years, however, increased livestock marketing caused the creation of small stockyards, known as auction barns. When these barns came under the authority of the Secretary of Agriculture in 1958, they were also made subject to Federal regulations setting tariffs by per-head commissions, as determined by an involved formula devised by the Packers and Stockyards Administration.

These restrictive ratemaking procedures which served a legitimate purpose when applied to monopolistic practices of the large stockyards of the early 1920's are creating a damaging situation now that the livestock market has been decentralized.

The Arkansas Livestock Auction Sales Association has demonstrated the gravity of the situation in the very persuasive and compelling manner and has urged legislative assistance to save their industry. There are 1,980 auction barns throughout the United States. In comparison to that number, only a minuscule number of these barns are of the type which Congress considered in 1921 and subjected to regulation as public utilities, yet the same ratemaking policies are being applied to all.

This proposal will ease the plight of small, locally owned auction barns, but will at the same time leave undisturbed the jurisdiction of the Secretary of Agriculture over the very large facility and the isolated facility at which there is no effective competition. I hope my distinguished colleagues will join with me and take a positive step to eliminate one antiquated and excessive Federal regulation which has a potentially devastating effect on the private sector.

● Mr. ALEXANDER. Mr. Speaker, I rise

in support of H.R. 9482, legislation which will make clear that small auction barns can assess charges for the sale of livestock not only on a per-head basis, but also based on the percentage of the gross sale price. This legislation will aid small auction barns who, under Packers and Stockyards Agricultural Marketing Scrvice regulations that would require a per-head rather than percentage commission, have been threatened out of existence.

I think the need for this legislation was best spelled out to me by the owner of such an auction barn in my district, Billy Nix of Ash Flat, Ark. I would like to share with my colleagues the text of a letter that Billy wrote to me earlier this year outlining how these regulations would affect his family-owned and run operation.

APRIL 24, 1978.

BILL ALEXANDER,
House Office Building,
U.S. Capitol,
Washington, D.C.

SIR: I am writing this letter to call to your attention the fact that our whole way of life and the business our family has worked a lifetime to establish is at stake in the recent Packers and Stockyards proposal of Regulations under the disguise of deregulation. I am referring to the proposal published in the federal register March 30, 1978 by the Packers and Stockyards Agricultural Marketing Service, U.S. Department of Agriculture as to its proposed policy statement relating to regulation of rates and charges in tariffs charged for stockyard services.

We were in business in 1959 in the livestock auction at Melbourne, Arkansas and were building our new barn at Ash Flat, which we opened in January 1960. We have also had interests in the Jonesboro Livestock Auction and the Farmer's and Ranchers Livestock Auction in Batesville, Arkansas for short periods of time. We have been selling on 3% commission for 19 years without raising our commission and were not considering doing so. We started out paying employees 75¢ per hour and we are now paying from $2.65 to $7.00 an hour. In all of these years we have never had a customer complain to us because the farmers realize that the more commission we make, the more they take home. It only stands to reason that more interest is taken by the marketman who operates on a percentage rather than by the head.

The percentage concept is upgrading the quality of livestock because the marketman spends time and advertising on good quality livestock to get more money for both his customer and his market. When everyone is forced to sell by the head, the quicker you can get the livestock through the barn the better. It will cease to be an operation on quality and price but on head count only.

What has happened to the free enterprise system when the government tells you the only way you can charge is by the head no matter what quality animal you are selling or what the charge as long as you charge the same per head? What about a sick or blind animal that sells for maybe $1.00 and we are required to collect $3.50 to $7.00 by the head as to size not quality or value? We have been told by the P. & S. not to use unfair and unreasonable practices on small farmers but the same as large producers. It seems unfair to us to charge the small farmer $3.50 to sell his $25.00 grade calf and charge $3.50 to sell a registered calf valued at $200.00 for the large producer. Our charge would now be .75¢ on the $25.00 calf and $6.00 on the $200.00 calf.

It is strange to us that in 1974 and 1975 when cattle were at their lowest that selling by the head was never mentioned. Now that cattle prices are getting better so that we overcome our losses from then, P. & S. comes back with this per head basis. We believe this put around one half of the barns out of business and the farmers will be back to having to ship their livestock to distant markets and only a few will control the market. In 1974 and 1975 when the commission was low the farmers income was also low, so we never thought of changing to a per head charge. We knew that the farmer needed every penny that he could get.

The P. & S. contends that the cost to the market is the same regardless of the price livestock are bringing. What about the operating capital for bonds and the amount the market must have in ready cash for the accounts receivable checks mailed in but not received within the 72 hours we are allowed before we must pay for them ourselves? For a Friday auction the offices are not open and the mail isn't delivered on Sundays and with all of the Monday holidays, this must be paid to the custodial account by the market. The price livestock are bringing sets the amount the market must have on hand at all times to assume this risk. The higher livestock are the bigger the bad checks are and the more risk involved in crippled and accidential death loss. Also our insurance is all based on the price cattle are bringing, never on the number of head.

Judicial Officer Campbell has referred to the operation of a livestock auction as equal to that of an owner-operator of an individual taxi cab. He also stated that the investment is generally less than $50,000.00. We would be glad for you to come by and look our property over including real-estate, trucks, machines, equipment, feed, and supplies that we have invested in our operation. We have an average of $130,000.00 of our own money tied up in accounts receivable alone.

Another one of their contentions is that it only takes one day to run an auction. There are four in our family that work full time putting in from 10 to 15 hours a day each. We have six employees working daily and on our sale day which is Friday we have 30 working. Our son, Mike, who is the auctioneer was five years old at the time we built this barn and he has worked everyday in this business. He would get off of the school bus here.

I am sorry this letter is so long, but there is no way you can defend a lifetime of work, investment and way of life in a few words.

Yours truly,

BILLIE NIX,
President.

Mr. Speaker, as a cosponsor of this legislation, I urge its adoption.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. FOLEY) that the House suspend the rules and pass the bill H.R. 9482, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. FOLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3272) to amend the Packers and Stockyards Act, 1921, and for other purposes, a bill similar to H.R. 9482, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3272

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Packers and Stockyards Act, 1921, is amended as follows:

(a) Section 305 of the Act (7 U.S.C. 206) is amended by inserting immediately before the period at the end thereof the following: ": *Provided,* That rates and charges based upon percentages of the gross sales prices of livestock shall not be prohibited merely because they are based upon such percentages rather than on a per head basis"; and

(b) Section 310 of the Act (7 U.S.C. 211) is amended by—

(1) in the introductory paragraph, striking out "unjust, unreasonable, or discriminatory" and inserting in lieu thereof "violative of section 304, 305, or 307";

(2) in subsection (a) thereof—

(A) striking out "just and reasonable" and inserting after the word "May" the following: "in accordance with the standard set forth in section 305";

(B) striking out "as both the maximum and minimum" and inserting in lieu thereof "as the maximum or minimum or both";

(C) inserting immediately before the semi-colon at the end thereof ": *Provided,* That the Secretary shall prescribe the rate or charge, or rates or charges, on a percentage or per head basis at the election of the stockyard owner or market agency, or on any other basis elected by the stockyard owner or market agency unless the Secretary finds such other basis to be violative of section 305"; and

(3) in subsection (b), striking out "more or less than the rate or charge" and inserting in lieu thereof "other than the rate or charge or rates or charges".

SEC. 2. The Secretary of Agriculture shall appoint an interagency task force within the Department of Agriculture for the purpose of analyzing and recommending methods by which any livestock sellers, or their agents, may furnish to livestock marketing agencies, dealers, or packers, who purchase livestock or provide marketing services, information concerning the existence of any lien or security interest in or against such livestock. The Secretary shall submit a report of the findings and conclusions of such task force, including legislative recommendations, to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives no later than February 1, 1979.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 9482) was laid on the table.

GENERAL LEAVE

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

FARMER-TO-CONSUMER DIRECT MARKETING ACT AMENDMENTS

Mr. FOLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R.

12101) to amend the Farmer-to-Consumer Direct Marketing Act of 1976 for the purposes of directing the Secretary of Agriculture to make grants to assist persons in developing innovative methods of direct marketing and extending the authorization of appropriations of such Act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(b) of the Farmer-to-Consumer Direct Marketing Act of 1976 is amended to read as follows:

"(b) For purposes of carrying out the provisions of section 5, there is authorized to be appropriated $1,500,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979.".

The SPEAKER pro tempore. Is a second demanded?

Mr. GRASSLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Washington (Mr. FOLEY) and the gentleman from Iowa (Mr. GRASSLEY) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Washington (Mr. FOLEY).

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 12101, a bill which amends the Farmer-to-Consumer Direct Marketing Act of 1976 to extend for 1 year at a level of $1.5 million the authorization of appropriations to fund farmer-to-consumer direct marketing pilot projects in the various States.

The Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001 and the following), was enacted October 8, 1976, to promote the development and expansion of direct marketing of agricultural commodities from farmers to consumers. The purpose of the act is to improve the economic viability of farmers, particularly small farmers, and to improve the quality and lower the cost of food to consumers.

Section 7(b) of the act authorizes appropriation of $1.5 million for each of the fiscal years ending September 30, 1977, and September 30, 1978, to fund and evaluate pilot information and technical assistance projects in various States designed to demonstrate the types of activities which best facilitate direct marketing from farmers to consumers. Due to the fact that the act did not become effective until after fiscal year 1977 had begun—October 8, 1976—the regular appropriation act for that year contained no funding for the pilot projects.

The 1977 supplemental—enacted in September 1977—and 1978 regular appropriation acts provided a total of $2 million which has been employed by the Secretary of Agriculture to fund 23 promising prototype projects in 23 States and Puerto Rico. However, the 1978 growing season is the first for these pilot projects. It was intended at the time the act was passed that the pilot project program span at least two growing seasons. This is necessary in order that approaches showing promise during the first growing season may be replicated during the second under different circumstances to demonstrate whether and in what circumstances they are consistently effective in accomplishing their twin purposes of improving farmer income and at the same time improving quality but reducing cost to the consumer. Congress can then make an informed judgment as to whether further Federal support is warranted and, if so, what form such support should take.

In accordance with congressional intent, the Secretary has established the existing projects on a 2-year basis. This bill extends for 1 year the authorization for these projects at the existing level of $1.5 million in order to permit completion and evaluation of the 2-year pilot direct marketing assistance program as originally intended. This extension is essential if American farmers are to improve their return and consumers are to obtain quality food at lower cost under improved direct marketing methods developed as a result of this most worthwhile program. The bill was ordered reported by a rollcall vote of 26 to 6 in the presence of a quorum.

Mr. Speaker, I urge the Members to join me in support of this measure.

Mr. GRASSLEY. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I suppose if a Member stands up to argue against a million-and-a-half-dollar piece of legislation, it might take as much time and cost as much money to argue against that bill as spending the money in the first place, and to a budget of a half trillion dollars, it kind of looks like a spit in the ocean, comparatively speaking. But somewhere along the way these million-and-a-half-dollar bills add up to $500 billion budgets, and we have to start someplace, and there is no place better to start than on what was originally labeled 3 years ago when it passed this House as a "temporary" piece of legislation.

First of all, in opposition to this bill, we have to consider the fact that it is before the House in violation of section 402(a) of the Budget Act, because it authorizes money for fiscal year 1979. This bill, in other words, was not reported by the date that it was supposed to have been reported, by May 15 of 1978. Section 402(a) says:

"SEC. 402. (a) REQUIRED REPORTING DATE.—Except as otherwise provided in this section, it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year."

The Budget Control Act, let me remind the Members, was intended for legislation of this type, and I think it is unwise, without some degree of consideration and sophistication, to willy-nilly grant waivers and continue to grant waivers. If we do this on such a sporadic and unthoughtful way, we are going to jeopardize the credibility of the Budget Control Act, and we are going to ruin its effectiveness in what otherwise is turning out to be a very effective control on spending.

If so, if it is our intention to willy-nilly ignore the Budget Control Act as we are doing by bringing this bill before the House, then we ought to admit it and eliminate the budget control process entirely.

No; in fact, there is provision in the Budget Control Act granting waivers, but they ought to only be used for the most severe cases of need for the waiver. That is the only way the Budget Control Act will fulfill its original intent.

Beyond that point, there is another good reason for opposing this bill. The need for reauthorization ought to be questioned at this point, for this legislation was sold to the House in November of 1975 as a bill that was temporary and experimental.

It is a perfect example of those many bills that we were told we ought to vote for because it is "temporary." In fact, the original sponsor said, "It is only a temporary provision, so let us try it out and see what it will do.

It was sold by a former Member of this House as a 1-year bill. The gentleman from Ohio (Mr. MILLER) asked the gentleman who sponsored this original legislation at the time this bill was being discussed in November of 1975 about it being a temporary measure and the sponsor of the bill answered, and I quote from the CONGRESSIONAL RECORD: "I hope it"—meaning the bill—"does not grow. This is only a 1-year bill."

So we have an opportunity today in the consideration of the reauthorization of this bill to insure that this is, in fact, only a temporary bill, a temporary 1-year bill.

Third, this bill is unneeded, because the Extension Service of the U.S. Department of Agriculture already has authority to conduct both research and educational activities in the area of direct marketing.

Some States have done this. Why let the States do it? That is where it ought to be done, because circumstances differ in varying States and, you know, it just is not possible for us in this Congress in Washington, D.C., to pour in one mold all the different circumstances of this country that should neatly fit, but won't, into it. That is why we have State extension services that have worked so well to satisfy those differing needs. Because they already have the authority, we ought to let them continue to exercise that authority and not add to the mountain of programs we have by the passage of this bill.

Mr. Speaker, the fourth reason for being against the bill and the last reason, is that even beyond the fact that we are being asked to extend what was originally 3 years ago sold to us as a temporary bill, there are suggestions from whence ideas like this originate, in the minds of those people, that this bill ought to be expanded, as evidenced by the original bill. It called for a $3 million, 3-year extension.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. Yes, I yield for a short period of time.

Mr. FOLEY. Mr. Speaker, I think the gentleman would acknowledge that the Senate reported a bill prior to the Budget Act deadline. That bill would reauthorize direct marketing assistance under section 5 of the Farmer-to-Consumer Direct Marketing Act for 3 years at an annual authorization ceiling of $3 million. I believe that the gentleman would also concede that H.R. 12101, as reported by the Committee on Agriculture, would reauthorize this program for only 1 year at a ceiling of $1.5 million. The committee took this action in order to permit the Secretary of Agriculture to carry out the 2-year program originally contemplated when we first passed this legislation. We are not agreeing to the extension of this act beyond the term originally contemplated. We are not going along with the proposal of the Senate to extend the program for 3 years at an annual level of $3 million. I think the gentleman should at least give the Committee on Agriculture credit for that action, which the gentleman joined in bringing about.

Mr. GRASSLEY. Mr. Speaker, I agree, the gentleman's statement is correct.

The distinguished chairman's request gives me an opportunity, by his asking me to yield, to say that it is not possible for the bill the way it was passed in the House, as opposed to the way it was passed in the Senate, that that is going to give an opportunity for compromise at something above the House-passed bill.

I would suggest that the chairman of the subcommittee, in his action in the full committee, suggested that we vote out of the House committee the 3 year, $3 million bill of the Senate's and probably that is the direction the chairman of our subcommittee is going to want us to take.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the chairman of the committee.

Mr. FOLEY. Mr. Speaker, I will assure the gentleman on the record today that if there is a conference, and the committee of conference brings back to the House a bill which provides for as much as $1 more than the authorization contained in this bill, I will join him in asking the House to defeat the conference report. If the authorization level contained in this bill is increased by so much as 1 cent in conference, I will take the well and ask the Members to defeat the conference report.

Mr. Speaker, does that satisfy the gentleman about my intentions?

Mr. GRASSLEY. Mr. Speaker, it satisfies me.

Mr. FOLEY. If there is anything more I can say, I will be glad to do so. I will absolutely oppose any conference report that extends by any amount either the authorization ceiling or the 1 year extension provided for by H.R. 12101.

If the Senate fails to agree to this limitation, as far as I am concerned, I will then do what the gentleman from Iowa (Mr. GRASSLEY) is asking the House to do now: I will oppose enactment of the bill.

Mr. GRASSLEY. Mr. Speaker, the gentleman from Washington (Mr. FOLEY) has made his point well. But this does give me an opportunity to say that in the minds of Members who are suggesting legislation like this, they not only want to extend the existing temporary program beyond the time we thought it would go out of existence, making it more permanent or at least not a temporary program, but they also want to expand it to include $2 million, as was suggested in the original bill, for what is called competitive grants for the development of so-called innovative marketing techniques.

This was in the reauthorization bill as originally introduced. This was not just the extension of the so-called temporary bill that was suggested to us 3 years ago and passed, but it was also the incorporation of other programs as well.

So I will submit to the House, Mr. Speaker, even taking into consideration what the distinguished chairman of the committee said, that this is not a temporary program, it is going to be a permanent one, and now we have an opportunity to say "no" to this temporary program.

Mr. EVANS of Delaware. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the gentleman from Delaware.

Mr. EVANS of Delaware. Mr. Speaker, I thank my distinguished colleague for yielding.

Mr. Speaker, I have asked for this time only for the purpose of asking a question of the gentleman from Iowa (Mr. GRASSLEY).

What has been accomplished by this experimental bill? What benefit did the farmers receive? What benefits did the consumers receive? Did it accomplish anything?

Mr. GRASSLEY. Mr. Speaker, the only way I can answer the gentleman is to say that according to the committee report the evidence is not in yet and that time is needed to continue this program in order to analyze it. I believe that answers the gentleman's question.

Now, to some that might be a justification for the continuation of the program. To me, I think it puts further in jeopardy the reasons for the bill in the first place, and, second, I wonder if we will ever get enough evidence in to convince us, or will that continue to be an excuse to continually reauthorize the program?

In my judgment not much has been accomplished by the program.

Mr. EVANS of Delaware. Mr. Speaker, will the gentleman yield further?

Mr. GRASSLEY. I yield to the gentleman from Delaware.

Mr. EVANS of Delaware. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I just want to congratulate the gentleman from Iowa (Mr. GRASSLEY) on his statement. I have seen the gentleman in action on the Committee on Banking, Finance and Urban Affairs, I have seen him elsewhere, and he has always been one Member who is concerned about the expenditure of the taxpayer's funds.

Mr. GRASSLEY. Mr. Speaker, I thank the gentleman.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. GRASSLEY. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, my understanding is that this was originally supposed to be a temporary program, started in 1975 and continued in 1976, covering two marketing years.

May I ask the gentleman, what innovative ideas came out of these reports? Does the gentleman know?

Mr. GRASSLEY. I do not know.

Mr. ROUSSELOT. Were they presented to the committee?

Mr. GRASSLEY. No, because according to the committee report, there were 23 projects in 23 different States, and they were supposed to cover two growing seasons. However, they did not, and so that is the reason the program should be reauthorized, we are told.

Mr. ROUSSELOT. They were supposed to cover two marketing years beginning in 1976?

Mr. GRASSLEY. Yes.

Mr. ROUSSELOT. Do we have any idea what we got for this money?

Mr. GRASSLEY. I do not.

Mr. ROUSSELOT. We are going to hear about that, I suppose?

Mr. GRASSLEY. Yes.

Mr. ROUSSELOT. Well, I hope we learn more than we have to date.

Mr. Speaker, I reserve the balance of my time.

Mr. FOLEY. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. RICHMOND).

Mr. RICHMOND. Mr. Speaker, H.R. 12101 extends for 1 year the Farmer to Consumer Direct Marketing Act at its current funding level of $1.5 million. The act provides grants to States to experiment with ways of expanding direct marketing opportunities between farmers and consumers, the two groups of our society which have suffered most and benefited least from the inflationary spiral of food prices.

As an urban member of the House Agriculture Committee, I am sensitive to consumer complaints about the high cost of food and the limited selection of fresh fruits and vegetables. I am also aware that a large portion of our valuable farmland is being paved over by urban and suburban expansion into traditional agricultural areas. Each year the number of farmers is decreasing. If we are to keep our small family farmers in business and protect their land, we must be sure that they have local markets for their goods.

The Direct Marketing Act was conceived by Congress in 1976 to do two things: Aid family farmers whose lands are near more populated areas to stay in business and make it possible for more consumers to purchase fresh, field ripened produce at generally lower prices.

Although the original act authorized $1.5 million for each of fiscal years 1977 and 1978, only $500,000 was appropriated in September of 1977 and full funding was made available late this year. A total of 23 projects have been funded to date in 23 States and Puerto Rico but, because of incomplete and delayed funding, this summer is the first operating

season of these programs, all of which are designed to run for 2 years.

Thanks to the impetus of this act, many States are experimenting with innovative ways of bringing farmers and consumers together. In my own State of New York, for instance, we have roadside stands set up at service areas on our thruway.

During the summer months, when families of tourists are driving through some of the most beautiful farm country in America, they have a chance to sample our wholesome agricultural products and, at the same time, keep those farmlands in operation. We are also experimenting with groups of farmers packaging and processing their own products so that they can stay in business throughout the year.

In order to complete the planned cycle of the experimental programs and perform a thorough and complete evaluation of their effectiveness, it is necessary for the program to be continued through 1979 at its original and current funding level of $1.5 million. Such funds will allow the Department of Agriculture to duplicate, in other areas through grants to the States, those projects which show mutual economic advantage to consumers and farmers alike. This legislation is strongly supported by the National Association of State Departments of Agriculture as well as by a large number of consumer groups.

Thank you.

The SPEAKER pro tempore. The time of the gentleman from New York (Mr. RICHMOND) has expired.

Mr. GRASSLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Massachusetts (Mrs. HECKLER).

Mrs. HECKLER. Mr. Speaker, I rise in support of H.R. 12101, which extends for 1 year our Farmer-to-Consumer Direct Marketing Act.

When I first voted for this act, I could not have forecast how it would be dramatically implemented in Massachusetts. I would like to give credit publicly to our new secretary of agriculture for the State of Massachusetts, a position that has really been filled by his efforts, Mr. Frederick Winthrop, who had the good judgment to create inner city projects in Boston.

I visited a number of these markets where not one truck-farmer appeared, but a collection of farmers offering city dwellers the opportunity to buy fresh garden produce—beautiful produce—from them. Two very interesting results came from the demonstration projects.

First of all, the people in the inner city had not one truck stand, but a collection, a central theater where a number of farmers came in and displayed the wide variety of their wares. The people were able to buy produce at lower prices and of a higher quality.

Second, a very interesting ramification occurred in the farming community. In the State of Massachusetts we do not have vast farms. We have largely truck farmers. The market created by this bill and the incentive to produce generated many larger growing areas because the truck farmers for the first time felt there was some support for their efforts.

There are other potential and innovative processes that can come about. For example, there is great discussion about establishing a community canning facility which would be available to people who want to come in and do their canning with professional assistance. Large quantities of seasonal produce could be purchased at lower prices and preserved for use during the winter.

The end result is that farmers are encouraged and consumers are getting a better deal. It has been a project that has, in my judgment, been wisely conceived. I think the analysis by the Department of Agriculture, when they complete their studies, will be positive. What I would like to see in my poorest areas would be an expansion of the farmer's market where consumers could avail themselves of less expensive, nutritious foods.

Some of my colleagues have voted for the billions of dollars for farm subsidies and farm credit in this Congress, and now they are quibbling over $1.5 million in authorizations.

The SPEAKER pro tempore. The time of the gentlewoman from Massachusetts has expired.

Mr. FOLEY. Mr. Speaker, I yield 2 additional minutes to the gentlewoman from Massachusetts.

Mr. EVANS of Delaware. Mr. Speaker, will the gentlewoman yield?

Mrs. HECKLER. I will be glad to yield to the gentleman from Delaware.

Mr. EVANS of Delaware. Mr. Speaker, I thank the gentlewoman from Massachusetts for yielding. I support the concept of new and innovative marketing techniques. So far, I have seen that one of the things we have accomplished is that more people understand that farmer's markets, or roadstand markets, might be a good opportunity to sell farm products. That is something that has been around for decades, I believe.

Second, the gentlewoman from Massachusetts suggests that farmer's markets in the inner city, such as one that has been established in Boston, might be a good idea, and I agree. We have had a farmer's market in Wilmington, Del., for decades, and it does accomplish something. But, I fail to see the need for the Federal Government's involvement in this as opposed to the State government and other local communities, who can see the situation more closely.

Mrs. HECKLER. I would first like to thank my chairman for yielding.

Mr. Speaker, I would like to say that this goes beyond the roadstand market. This is an expansion of markets because many, many producers come in from the far outlying towns and offer their wares in a centralized profitable location. The Massachusetts program was sparked by the Federal Government's involvement, although the grant was very, very small, less than $100,000. Nonetheless, four markets opened in Boston in just 1 month in July—in the inner city.

I believe the program is bringing fresh produce back to the consumer in a dramatic way that is capturing attention beyond the roadside stands which have been available for so many years.

It is, second, sparking the consideration of the canning and alternative preservative facilities for the local citizenry.

This innovative approach is in line with the new concentration on natural foods and nutrition in our food habits by bringing to these cities fresh produce that was not readily available before.

Mr. GRASSLEY. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Speaker, I thank my colleague for yielding.

I would like to direct a question to my friend, the gentleman from Washington (Mr. FOLEY), chairman of the committee.

I listened with interest to his very brief and exact statement of what he would oppose if it would happen in conference that the boundaries of funding would be extended beyond what is contained here. We do not hear that often on the floor. It is very gratifying to know that is the position of the chairman. But one thing I did not hear: Does the gentleman take the same position regarding the expansion of the time of this bill? I understand the Senate has a 3-year provision; this is for 1 year.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, while I believe that I have already addressed the gentleman's question in my earlier remarks, and I think the record will so indicate, I am nevertheless happy to do so again.

If in conference there is so much as 1 cent or 1 day added to the amount or period of the authorization contained in H.R. 12101, I will personally take the well to oppose the adoption of the conference report. I do not believe legislation should be enacted which goes beyond the parameters established in the bill reported by the House Agriculture Committee.

Mr. ASHBROOK. I thank my colleague.

Can we extend on from that the assumption that this is a 1-year bill and when that 1 year is over the gentleman would take the same position or is he reserving his opinion as to what might happen or transpire as a result of the reports coming back?

Mr. FOLEY. My position at the present time is that we should extend this program for just 1 year in order to permit the 2-year pilot project program originally contemplated in Farmer-to-Consumer Direct Marketing Act to be completed. As the gentleman well knows, the amount of money actually allocated to this program is up to the Appropriations Committee. The bill which the Committee on Agriculture has reported carries forward for 1 year the present limit of $1.5 millon. At the end of that time I shall have to see whether the results of the pilot project evaluations justify an ongoing Federal program. I would certainly say that I am not presently committed to an extension of this program. But I would like to have an opportunity to make a judgment after the results are in. Obviously it would require another act of Congress before

any specific program could be carried on.

My interest in this bill is confined to an interest in seeing to it that the original intention of Congress that the pilot projects under the Farmer-to-Consumer Direct Marketing Act be conducted for two growing seasons at the originally authorized level of $1.5 million is carried out.

I will certainly assure the gentleman that, before I would come back in the future and ask for any additional time and money, I would have to be persuaded that there is a necessity for some ongoing program. I think the evidence ought to be very strong before we do take on such a program.

Mr. ASHBROOK. I thank my colleague for that statement. I agree that it is difficult to prejudge and decide what our position will be. It may be very possible the reports on this demonstration project will convince us at that time it is necessary to extend. But with that assurance from the chairman I certainly feel a lot better. I thank the gentleman for his comments.

The SPEAKER pro tempore. The Chair will state that the gentleman from Iowa (Mr. GRASSLEY) has 2 minutes remaining.

Mr. GRASSLEY. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Speaker, having again reviewed the past history on this bill and the clear statement of its author, Mr. Vigorito, at that time, in answer to a question by Mr. MILLER of Ohio, I think that we should review that statement. That answer was very clear. Mr. Vigorito said, in answer to the question by Mr. MILLER concerning the time needed to implement the program:

I hope it does not grow. This is only a one-year bill.

Now this innovative program—and I agree with my colleague, the gentleman from Delaware (Mr. EVANS) that there has been ample opportunity to produce all such innovative material. But that innovative material is not now available for whatever reasons, and I think it is very clear that we are not going to get that much more for an additional $1,500,000.

As has already been stated, you do not need additional reports to learn how to establish innovative marketing programs for fresh produce. The farmers already do it on their own without mountains of Federal reports. I urge the House to vote down H.R. 12101.

Mr. FOLEY. Mr. Speaker, I yield back the balance of my time.

Mr. GRASSLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. FOLEY) that the House suspend the rules and pass the bill H.R. 12101, as amended.

Mr. GRASSLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

NATIONAL WEATHER SERVICES ACT

Mr. FUQUA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 13715) to improve the operational weather programs of the National Oceanic and Atmospheric Administration, to affirm the Federal responsibility for the provision of effective weather and related services, to assure to the maximum possible extent that all available Federal resources are utilized in a coordinated manner for weather-related research, development, and technology, and for other purposes.

The Clerk read as follows:

H.R. 13715

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Weather Services Act of 1978".

FINDINGS

SEC. 2. The Congress finds that recent technological advances have resulted in dramatic changes in the manner in which weather and weather-related services are provided both domestically and internationally. At the same time, shifting priorities and the potential for weather-related disasters have increased the demand for improved weather services. Such services, and the better coordination thereof, are needed to increase aircraft safety; to enable agriculture to cope more effectively with drought, water shortages, and storms; to assure that weather-related information will be more effectively disseminated and communicated to the public generally in the most timely manner feasible; to facilitate and safeguard offshore oil and gas operations and marine transportation, fisheries, and recreation; and to facilitate efforts to meet the increasing environmental, energy, and food needs of the Nation and the world.

PURPOSE

SEC. 3. It is the purpose of this Act to affirm the Federal responsibility for the collection of weather data and the provision of weather services and supporting weather-related research, development, and technology; to maintain effective weather services programs; and in general to improve the provision of weather services in the public interest.

COORDINATION

SEC. 4. (a) The Secretary of Commerce (hereinafter referred to as the "Secretary"), utilizing the facilities, equipment, and personnel of the National Weather Service and the related functions and capabilities of the National Oceanic and Atmospheric Administration, shall be responsible for the coordination of weather-related activities of the Federal Government.

(b) The Secretary is authorized to provide weather services requested by other Federal departments and agencies, to be financed by direct appropriations or by interdepartmental transfer of funds, property, and personnel authority.

(c) The Secretary of Defense shall provide meterological services for support of the military components which cannot be effectively accommodated by other Federal departments or agencies.

(d) Nothing in this Act shall be construed as changing related functions and activities of other Federal departments and agencies as previously authorized by Congress.

AUTHORITY FOR FUNCTIONS AND ACTIVITIES

SEC. 5. (a) The Secretary shall have charge of and be responsible for—

(1) forecasting the weather and issuing warnings for storms and other damaging weather conditions;

(2) forecasting and issuing warnings for river flow, floods, storm surges, and surface water supplies;

(3) forecasting and issuing warnings for weather-related oceanic conditions and for seismic seawaves;

(4) weather forecasts, advices, and warnings in the public interest for the benefit of agriculture, commerce, environmental protection, energy use and conservation, natural resource management and protection, air and marine navigation and safety, public safety and welfare, and transportation;

(5) providing climatological services;

(6) observing, reporting, collecting, distributing, processing, and disseminating, in cooperation with other Federal agencies, meteorological, hydrological, climatological, and oceanic data and information;

(7) conducting research and development in connection with the functions and activities under this Act, including the study of thunderstorms, tornadoes, hurricanes, and other severe environmental disturbances;

(8) developing coordinated interagency operational plans for providing specialized weather services; and

(9) such other functions and activities as may be deemed necessary and appropriate to carry out the provisions of this Act.

(b) In carrying out the functions and activities set forth in subsection (a), the Secretary is authorized to—

(1) construct, alter, modernize, relocate, operate, and maintain facilities and equipment, including the purchase of land or the acquistion of an estate therein for such facilities, in the United States or in locations outside of the United States, in cooperation with the Department of State, other Federal departments and agencies, and foreign countries;

(2) furnish food, clothing, and shelter without repayment therefor to Federal Government employees as necessary for the operation of facilities and equipment, subject to such regulations and limitations as may be promulgated by the Secretary;

(3) establish and maintain facilities and equipment for the printing of environmental maps, bulletins, circulars, forms, and other related charts and publications;

(4) purchase, operate, and maintain environmental satellite systems, aircraft and other airborne devices, and special environmental instruments and equipment, including motor vehicles, without regard to the provisions of any other law;

(5) coordinate all meteorological and supporting research activities of the Federal Government to assure optimum use of available resources;

(6) engage in joint projects and cooperative agreements for the public benefit with any person, firm, or other entity, public or private, including nonprofit organizations, research organizations, public organizations or agencies including Federal, State, county, and municipal agencies and departments, universities, colleges, boards of trade, chambers of commerce, and other local associations of businessmen, business organizations, and individuals, the cost of which may be apportioned equitably, as determined by the Secretary; and

(7) perform services, make studies, and engage in joint projects and cooperative agreements with international organizations and agencies and foreign countries, in cooperation with the Secretary of State.

(c) The Secretary of State shall provide general policy guidance with respect to this Act and shall undertake international negotiations as required with respect to international operations, as outlined in paragraphs (1) and (7).

(d) Subject to the approval of the Office of Management and Budget, and without

charge to the Secretary, other Federal departments and agencies are authorized to transfer to the Secretary facilities, equipment, and supplies which are surplus to their needs and are necessary to carry out the provisions of this Act. The Secretary is also authorized to transfer to other Federal departments and agencies facilities, equipment, and supplies which are surplus to the Secretary's needs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are hereby authorized to be appropriated to carry out the purposes and provisions of this Act such sums as may be specified in annual authorization Acts hereafter enacted. Appropriations made pursuant to this section shall remain available until expended.

REPEAL OF EXISTING LAWS

SEC. 7. Effective on and after the date of the enactment of this Act, the following statutes are repealed:

Act of—	Chapter, number or Public Law	Provisions repealed	Statutes at large
Oct. 1, 1890	1266	Secs. 1, 3, 4, 9	26:653-4
Aug. 8, 1894	238	Matter under center headings "Weather Bureau" and "General Expenses, Weather Bureau".	28:272-4
Mar. 2, 1895	169	Matter under center headings "Weather Bureau", "Contingent Expenses, Weather Bureau", and "General Expenses, Weather Bureau".	28:736-8
Apr. 25, 1896	140	Matter under center heading "Weather Bureau"	29:107-8
July 8, 1898	(No.) 57	All	30:752
May 20, 1926	344	Sec. 5(e)	44:571
July 1, 1943	182	Matter in title III under center heading "Weather Bureau".	57:300-1
Feb. 12, 1946	4	All	60:4
June 2, 1948	373	All	62:286
June 16, 1948	483	All	62:470
Mar. 28, 1960	(Public Law) 86-397	Sec. 2	74:11
Aug. 19, 1964	(Public Law) 88-448	Sec. 401(m)	78:491

The SPEAKER pro tempore. Is a second demanded?

Mr. HOLLENBECK. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. FUQUA) and the gentleman from New Jersey (Mr. HOLLENBECK) will be recognized for 20 minutes each.

The Chair now recognizes the gentleman from Florida (Mr. FUQUA).

Mr. FUQUA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the major purpose of this bill is to clarify and define the responsibilities of the National Weather Service. National policies, responsibilities, and programs regarding weather services and supporting research have never been prescribed as a whole by the Congress. This bill would provide the National Weather Service with an up-to-date statutory charter for the first time in its long history.

As things stand today, there are many legislative references, some dating back more than 100 years, without clear, concise statements of policy on important weather-related issues currently facing the Nation. Furthermore, these various scattered pieces of legislation do not form a coherent whole.

Mr. Speaker, approximately 1 year ago, our distinguished colleague from Texas (Mr. MILFORD) introduced H.R. 13715 following several lengthy discussions with current and past officials of the National Weather Service. It was his intention to be as constructive and helpful as possible, to identify the needs of the Service, and to incorporate the best ideas in this legislation. I am sure it is fair to say that the bill before us today is strongly supported by top management of the National Weather Service.

The Subcommittee on Transportation, Aviation and Weather, which is chaired by Mr. MILFORD, held 8 days of hearings on this bill during May, June, and July of this year. They received the testimony of 31 witnesses representing all interested parties. This bill incorporates agreed-on changes in the statutory framework of the National Weather Service.

This bill sets forth a comprehensive statement of national policies and goals for the provision of weather services to the general public and to specialized user groups such as the aviation, marine, and agricultural interests, and provides a clear congressional mandate to conduct programs necessary to meet those national goals.

Among other things, this bill specifies that the Secretary of Commerce shall be responsible for forecasting the weather and issuing warnings for storms and other damaging weather conditions; for providing weather-related services to other Government agencies; and for conducting appropriate research and development.

This bill also focuses responsibility for interagency coordination of weather-related activities of the Federal Government upon the Secretary of Commerce.

Most important of all, under the terms of this bill, Congress henceforth would specify the direction, scope and authorized funding levels for weather services and supporting research. Annual, comprehensive congressional reviews of overall weather service needs, as prescribed by this bill, will do much to avoid piecemeal, often inadequate programs.

Mr. Speaker, recent years have witnessed a dramatic increase in the demand for specialized weather services needed by such agencies as U.S. Department of Agriculture, Federal Aviation Administration, Environmental Protection Agency, among others. There is every reason to expect that future environmental, energy, and food problems will require new or expanded weather services. I anticipate that issues will arise with an even greater frequency as to how much weather service is enough, and what is the scope of the Government's responsibilities. The annual authorization procedure will provide Congress an opportunity to address such questions on a regular basis.

In conclusion, Mr. Speaker, I urge my colleagues to support H.R. 13715. This bill is not controversial; it is timely; it has the support of the administration and of our committee; and, it has no budgetary consequences.

Mr. HOLLENBECK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 13715, the National Weather Service Act of 1978. In my view this legislation constitutes only the beginning of a concerted effort to develop comprehensive programs for research in weather and climate phenomena.

In order to adequately exercise oversight over complex technical programs such as weather forecasting and the long and short term analysis and understanding of climatic changes, it is essential that Congress conduct annual authorization for program funding.

H.R. 13715 provides an excellent beginning for the initiatives which are anticipated the next Congress. Not only must we facilitate the provision of timely and complete weather data to all users, we must understand far better the trends of climatic change. The basic welfare of all people is inseparable from the effects of weather and climate conditions.

Traditionally, the world has tended to regard weather phenomena as being beyond the scope of human ability to alter. While some scientists maintain that man's contribution to atmospheric contamination is negligible compared to the contribution from pine forests, volcanic eruptions and other sources, the majority of experts find adequate evidence to the contrary. Their message is that continued discharge of atmospheric pollutants including such nontoxic materials as CO_2 and nitrogen, runs the risk of creating an irreversible condition which would have catastrophic impact on the Earth's environment. Indeed, some scientists—undoubtedly some would call them "alarmists"—now claim that some of the more recent aberrations in the Earth's weather patterns have been caused by the insertion of atmospheric contaminants by man's activities. Among such aberrations is the severe extended drought in the Sahel, accompanied by the extreme rainfall in monsoon areas. Such excesses in traditional weather patterns have also been experienced in this country in recent years.

The relationship between the provision of adequate and timely weather and climatic data and the economic and social welfare of people is inseparable.

During this Congress, I introduced the Energy Technology Policy and Planning Act of 1978, as well as a similar bill dealing with materials planning and technological change. These bills call for

long range comprehensive planning relating technological and environmental change to public policies. Future activities of the National Weather Service and the U.S. climate program would provide essential ingredients for such planning.

I intend to reintroduce these measures in the 96th Congress when I shall seek your support. Today, I urge you to join with me and my colleagues on the Committee on Science and Technology in their unanimous support for H.R. 13715. Thank you.

● Mr. BROWN of California. Mr. Speaker, I would very briefly like to clarify the relationship between this legislation, which is basically an "organic act" for the National Weather Service, and H.R. 9708, the Organic Act for the National Oceanic and Atmospheric Administration (NOAA), which is the parent agency of the NWS. H.R. 9708 was introduced shortly after the predecessor to the NWS Act and was jointly referred to the Merchant Marine and Fisheries Committee and to the Science and Technology Committee. NOAA, established in 1970 by Reorganization Plan No. 4, represents a consolidation of widely diversified programs and related legislation concerning the oceans and the atmosphere. In response to concerns that NOAA's authorities are outdated and inadequate and that its missions are often unclear, attempts are being made to develop a single, comprehensive charter for NOAA's activities. Within this effort, the Subcommittee on the Environment and the Atmosphere, which I chair, has focused on NOAA's atmospheric side.

Hopefully, I have succeeded in pointing out that the goals of the NWS legislation and the NOAA Organic Act are both similar and complementary. However, neither bill adequately addresses several important policy issues relating to atmospheric research and weather services, but these issues are now beginning to be fully explored and resolved. For these reasons, it was the original intention of the Science Committee to consider both bills together as component steps in developing a truly comprehensive Organic Act for NOAA. Although we plan to further refine the current version of the NOAA Organic Act, we decided to defer any effort to report it this year due to the lateness of the session. Meanwhile, we have moved forward with the NWS legislation with the understanding that it will eventually be merged with the broader NOAA Organic Act, probably in the next Congress.

One of the most important policy issues which I feel must be considered prior to the development of a NOAA Organic Act is what the respective responsibilties of the Federal Government and the private sector should be for providing weather services. For example, there is, at present, no policy which prevents a private meteorological firm from issuing forecasts which contradict those of the National Weather Service. In the event of a major weather disaster, this situation could lead to severe consequences as well as raise the issue of liability.

Another issue which deserves attention is the respective atmospheric research and development roles of various Federal agencies, including NOAA, NASA, NSF, and the Department of Energy. Finally, I should point out that one of our overriding concerns related to weather services should be to evaluate the potentially profound impacts which technological advances will have upon weather services. In particular, the utilization of so-called continuous, remote sensing technologies, based both on land and in space, promises tremendous improvements in short-term, local weather forecasts.

Therefore, the Subcommittee on the Environment and the Atmosphere, in cooperation with the Senate Commerce, Science and Transportation Committee, the American Meteorological Society, and the National Academy of Sciences, has planned two workshops this fall involving both the scientific and user communities at which these issues would be discussed and alternative policy approaches would be identified. We anticipate that this effort will provide the groundwork for redrafting the NOAA Organic Act for introduction in the 96th Congress in a manner which resolves the major policy issues regarding weather services and research, while consolidating related statutory authorities. In conclusion, I would urge you to support this legislation as an important first step in providing NOAA with a truly comprehensive, balanced legislative charter.●

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FUQUA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FUQUA) that the House suspend the rules and pass the bill H.R. 13715.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

NATIVE LATEX COMMERCIALIZATION ACT

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12559) to establish a research and development effort resulting in the commercialization of native latex rubber, as amended.

The Clerk read as follows:

H.R. 12559

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Native Latex Commercialization Act of 1978".

SEC. 2. Congress recognizes that natural latex rubber is a commodity of vital importance to the economy, defense, and general well-being of the Nation. The United States is totally dependent upon foreign sources for its supplies of natural (Hevea) latex, which total about one million tons per year. Synthetic rubber, which is manufactured from petroleum feedstocks, cannot be substituted for natural rubber. The Congress further recognizes that certain plant species of the genus Parthenium, native to Texas and Mexico, as well as other plants are known to contain commercial quantities of extractable latex. During World War II, through research carried out in the emergency rubber project, the United States demonstrated that Parthenium latex is a promising and realistic substitute to Havea latex. Further research and development are needed, especially into methods for increasing latex yields, before commercialization of native Parthenium latex by private industry is feasible. Such commercialization would not only relieve the Nation's dependence upon foreign latex sources, but it would also provide a valuable cash crop for arid and semiarid regions of the United States and additional industry and employment opportunities for people of the United States. It is the policy of Congress, therefore, to provide for the development and demonstration of economically feasible means of culturing Parthenium, and other hydrocarbon-containing plant species, for the extraction of commercial latex and other products.

SEC. 3. As used in this Act—

(1) The term "Secretary" means the Secretary of Agriculture.

(2) The term "State" means each of the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) The term "commercialization" refers to the stage in the development or advancement of a technology at which point private enterprise is willing to invest in a full scale production facility.

(d) The term "native" refers to hydrocarbon-containing plants which may be cultured in North America, especially members of the genus Parthenium (known as Guayule).

SEC. 4. The Secretary is authorized and directed to coordinate and carry out research leading to and culminating in the commercialization of latex from Parthenium or other hydrocarbon-containing plants.

SEC. 5. There is hereby established a National Advisory Committee to assist the Secretary in carrying out the purposes and activities of this Act. (1) The Advisory Committee shall assist the Secretary in—

(a) developing a plan establishing goals, timetables, and tasks to be undertaken in carrying out the purposes of the section;

(b) establishing broad policy for implementing the plan carrying out the purposes of the section;

(c) establishing criteria for evaluating and awarding of contracts for research, development, and demonstration projects; and

(d) reviewing and advising the Secretary with respect to grants, contracts, and project expenditures above $250,000.

(2) The Advisory Committee shall consist of one representative each of the Departments of Agriculture and Commerce, the Bureau of Indian Affairs of the Department of the Interior, the National Science Foundation, the National Academy of Sciences, and the private sector.

SEC. 6. The Secretary shall conduct, promote, and sponsor basic and applied research, technology development, and technology transfer leading to effective and economical methods for large scale culturing of plantations and the extraction and production

of latex from such crops. Such research will include, but not be limited to—

(a) carrying out extensive seed collections from wild plants in Texas, Mexico, and other areas and borrowing or purchasing seeds from other sources;

(b) developing a stockpile of Parthenium seeds, such stockpile to be appropriately classified and stored at a suitable facility;

(c) carrying out breeding and selection programs for the purpose of improving latex yields, expanding insect and disease resistance, and broadening the ranges of drought and cold tolerance of the Parthenium plant;

(d) establishing a system of experimental plantings in arid and semiarid regions of the United States having suitable climatic and soil conditions for the culture of Parthenium;

(e) carrying out specific studies on the effects of irrigation on plant growth and latex yield and survival potential;

(f) developing equipment needed to carry out nursery operations, planting, cultivating, harvesting, transporting the crop, and other necessary agricultural activities;

(g) further refining present extraction and manufacturing technologies and future extraction and manufacturing technologies, including technologies which utilize solar energy, and

(h) analyzing the economic feasibility of private production and manufacture of native Parthenium latex.

SEC. 7. The Secretary shall establish and maintain a bank of all pertinent research data on native latex including extant United States Government publications and records from the emergency rubber project. Such data shall be made available to other Federal and State agencies and private persons who are interested or involved in native latex research, development, or manufacture.

SEC. 8. The Secretary, in consultation with the Secretary of State, is authorized and encouraged to enter into cooperative projects with the Government of Mexico in order to accomplish appropriate aspects of the research and development provided for in this Act. Such cooperative projects should include, but not be limited to, projects to determine the economic feasibility of latex extraction and processing.

SEC. 9. The Secretary is authorized to accept financial or other assistance from any State or public agency to aid in carrying out the provisions of sections 5, 6, and 7 of this Act and to enter into contracts with respect to such assistance and to enter into agreements with any State or public agency for the purpose of demonstrating, transferring, or applying results of research relating to native latex.

SEC. 10. In carrying out the provisions of this Act, the Secretary is authorized to—

(a) make grants to States, educational institutions, scientific organizations, and Indian tribes as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 U.S.C. 2203), and enter into contracts with such institutions and organizations and with industrial or engineering firms;

(b) acquire the services of biologists, agronomists, foresters, geneticists, chemists, engineers, economists, and other personnel by contract or otherwise;

(c) utilize the facilities of Federal and State scientific laboratories;

(d) establish and operate necessary facilities, pilot plants, and plantations to carry out the continuous research, testing, development, and programing necessary to effectuate the purposes of this Act;

(e) acquire secret processes, technical data, inventions, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation;

(f) assemble and maintain pertinent and current literature and publications, patents and licenses, land and interests in land;

(g) cause onsite inspections to be made of promising projects, domestic or foreign, and in the case of projects located in the United States, cooperate and participate in their development when the Secretary determines that the purpose of this Act will be served thereby;

(h) foster and participate in regional, national, and international conferences relating to native latex culture or manufacture;

(i) coordinate, correlate, and publish information with a view to advancing the development of native latex technology; and

(j) cooperate with other Federal departments and agencies, with State and local departments, agencies, and instrumentalities, and with interested persons, firms, institutions, and organizations.

SEC. 11. In carrying out the provisions of this Act, the Secretary shall insure that his activities are closely coordinated with the activities of other Federal agencies such as the Department of the Interior, National Science Foundation, Department of Commerce, Bureau of Indian Affairs, Federal Energy Administration, Energy Research and Development Administration, Economic Development Administration, Department of Defense, Treasury Department, Federal Preparedness Agency, and others in order to prevent duplication of effort, insure compatibility with ongoing programs and policies, and to fully exploit the opportunities inherent in the culture and manufacture of native latex.

SEC. 12. Relative to the definitions of, title to, and licensing of inventions made or conceived in the course of or under any contract or grant pursuant to this Act, and notwithstanding any other provisions of law, the provisions of sections 9 and 10 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908-9) shall govern.

SEC. 13. The Secretary may dispose of any latex, resin, wax, pulp, and any other by-products resulting from operations under this Act. All moneys received from dispositions under this section shall be paid into the Treasury as miscellaneous receipts.

SEC. 14. The Secretary may issue rules and regulations necessary to effectuate the purposes of this Act.

SEC. 15. The Secretary shall submit to the President and the Congress, no later than December 31, 1980, and each year thereafter through 1982, a report on the status of the research, development, and other work underway under sections 4, 5, 6, 7, and 8 of this Act. Such report shall (1) recommend specific directions for further research, development and other work, and (2) recommend funding levels for various elements of the overall project.

SEC. 16. There is authorized to be appropriated for the fiscal year beginning October 1, 1979, the sum of $5,000,000, for the fiscal year beginning October 1, 1980, the sum of $10,000,000, for the fiscal years beginning October 1, 1981, and beginning October 1, 1982, the sums of $20,000,000 each, to carry out the purposes of this Act, such sums to remain available until expended.

The SPEAKER pro tempore. Is a second demanded?

Mr. GRASSLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. DE LA GARZA) and the gentleman from Iowa (Mr. GRASSLEY) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Texas (Mr. DE LA GARZA).

Mr. DE LA GARZA. I yield myself so much time as I may consume.

Mr. Speaker, this is an attempt to assist the United States of America in an effort to provide our own natural rubber. As most of my colleagues know, all of the natural rubber used in the United States is imported from several countries such as Brazil, Malaysia, and Nigeria. It was during World War II that in a research project we used a native plant which is called "guayule" that produces the same result as natural rubber, this was used during World War II very effectively during the war effort. After the war, because of the low cost of petroleum, we went back to using the petroleum base for synthetic rubber, and we went back to the areas where we imported the natural rubber from.

This is an attempt to bring back that effort and provide some modest funds for research by several universities in cooperation with the industry to bring us back hopefully to where we might produce our own natural rubber. This is the beginning of what we would hope would be the end result of providing all of the natural rubber that we might need for our industrial and military efforts.

Mr. HOLLENBECK. Mr. Speaker, I yield 5 minutes to the gentleman from Iowa (Mr. GRASSLEY).

Mr. GRASSLEY. Mr. Speaker, I rise in support of H.R. 12559, the Native Latex Commercialization Act of 1978.

Native latex rubber is a commodity of vital importance to the economy and general well-being of our country. Our country imports 100 percent, which equals about a million tons annually, of the natural rubber we use. Synthetic rubber, which is produced from petroleum feedstocks, cannot be used as a substitute for natural rubber.

There is a plant, native to Southwestern United States and Mexico that, through research and cultivation, could alleviate our total dependence on foreign sources for our natural rubber supplies. That plant is guayule.

Guayule is a member of the sunflower family, a bushy perennial shrub which grows about 2 feet high in a semiarid environment.

During World War II, the emergency rubber project demonstrated that guayule is a promising and realistic substitute for natural rubber. Toward the end of that program, 15 tons of rubber were produced daily in two factories in California.

The purpose of this bill is to provide the Secretary of Agriculture with authority to carry out research culminating in the commercialization of rubber from guayule and similar plants. It establishes a National Advisory Committee to assist the Secretary in developing a plan, establishing goals and policy, and setting criteria for reviewing and awarding research contracts. Research will include seed collections, breeding programs, expanding insect and disease resistance, developing appropriate equipment, and analyzing the economic feasibility of private production and manufacture of guayule.

In addition to the possible decrease in imports of rubber, the commercialization of guayule would also provide a valuable cash crop for arid and semi-arid regions, and additional industry and employment for people in the southwest region of the United States, an area which suffers from chronic unemployment.

This bill passed both the Committee on Agriculture and the Committee on Science and Technology with strong support. It authorizes appropriations totaling $55 million over the next 4 years. Mr. Speaker, this bill calls for research that in the past proved beneficial, and for the future, proves promising. I urge my colleagues to support this bill.

Mr. DE LA GARZA. Mr. Speaker, I yield 2 minutes to the gentlemen from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I am only one of several Members of the House who have taken an interest in the subject of the development of rubber from native American plants over the years I would like to pay tribute to the senior Member of the House who has had that interest, the distinguished gentleman from Texas (Mr. POAGE) who has been a proponent of this program for many, many years.

My interest in this legislation stems from a number of sources including a report of the National Academy of Sciences recommending a major program in this area. The report is entitled, "Guayule: An Alternative Source of Natural Rubber." It was referred to during the course of the hearings, and its recommendations are included in the bill before us.

But I have here another document from which I would like to quote very briefly, which may be of interest to some of the Members. It is entitled in this section, "Discussion of a Possible Connection of the United States Government With the Guayule Industry." It goes on to state, "it would appear that the Government might be interested in encouraging the guayule industry in the United States in view of"—and it lists about six or eight reasons. Then later on occurs this quotation:

> We are personally convinced that under real encouragement the production of guayule rubber would develop rapidly into an important industry in the United States.

I have said that many times, and many other Members have said that many times. But I quote from a report issued in 1930 by a certain Maj. Dwight D. Eisenhower of the U.S Army. That was 48 years ago. We made an abortive effort to develop that guayule industry during World War II, but we still have not followed through with the recommendations made by Major Eisenhower 48 years ago. I think today we may have the opportunity to remedy that defect by the enactment of this legislation.

I am glad, therefore, on behalf of the Science and Technology Committee, to join my distinguished colleague on the Committee on Agriculture in urging passage by the House of H.R. 12559, the Native Latex Commercialization Act of 1978.

This bill, also known as the "guayule bill," would provide for a long-range program of research and development aimed at the commercialization of rubber production based on the guayule plant. The bill would authorize the sum of $55 million spread over a period of 4 years to initiate this program. Under the provisions of the bill the Department of Agriculture would be given the responsibility for carrying out this effort.

Latex or natural rubber is an essential ingredient in a wide range of products needed to keep our modern industrial society operating. Today every pound of new natural rubber which we use must be imported. These imports amount annually to well over half a billion dollars, and all indications are that our need for natural rubber will continue to grow.

Furthermore, the manufacture of synthetic rubber, which is based chiefly on petroleum, is also, with the price rises for oil, contributing a growing share to the imbalance of payments. As the need to conserve the world's petroleum resources increases it will be more and more important to develop other sources for petroluem products such as synthetic rubber.

The production of natural rubber from the guayule plant is not new. During the Second World War the Forest Service operated an extensive guayule program, the "Emergency Rubber Project," which in 3 years produced 3 million pounds of rubber. But at the end of the war the availability of Malaysian rubber and the expectation that synthetic rubber would be available in near-unlimited quantities led to the termination of this project.

The time is overdue for the resurrection of a domestic rubber industry. The world demand for rubber is rising and so is the demand of American industry. Within another few years we can expect to spend $1 billion annually on natural rubber imports. If a successful domestic rubber industry can be achieved, a gradual but significant reduction in the need for imports can be achieved.

In the process, we can create a new source of employment in the Southwestern States where guayule can be cultivated. During World War II, the emergency rubber project employed 10,000 people. The bill before us would authorize grants to be made to Indian tribes. I expect that when guayule production is proved to be a commercially feasible source of rubber Indians and other groups in the Southwest will find it a viable crop.

H.R. 12559 would authorize the Secretary of Agriculture to carry out research leading to the commercialization of guayule rubber and to establish a National Advisory Committee. The authority for the Secretary would include the conduct and sponsorship of research, the establishment of seed collections and experimental plantings, the development of harvesting and extraction technology, and the performance of economic studies. The Secretary would also be authorized to work with the States and other public agencies and to cooperate with the Government of Mexico where the guayule plant also grows wild and where a significant development effort already is underway.

Mr. Speaker, this bill was reported unanimously by the Committee on Science and Technology. I urge the Members of the House to give it their support.

Mr. HOLLENBECK. Mr. Speaker, I yield 2 minutes to the gentleman from South Dakota (Mr. ABDNOR).

Mr. ABDNOR. Mr. Speaker, I, too, rise in support of the legislation.

I would just like to direct a question of the gentleman from California (Mr. BROWN), if I might.

I also would like to include at this point a letter I received from Dr. Raymond A. Moore, director of experiment station, South Dakota State University.

The letter is as follows:

SOUTH DAKOTA STATE UNIVERSITY,
Brookings, S. Dak., September 1, 1978.

Hon. JAMES ABDNOR,
House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN ABDNOR: Dean Dearborn has shared with me your letter of August 16 and a copy of the bill H.R. 12559 (Native Latex Commercialization Act of 1977). I convened the energy committee of the Agricultural Experiment Station and we went over the bill rather carefully. This committee is very excited about the possibility of producing energy from agricultural plants and products. It does appear that the bill is written specifically for the southwestern part of the United States, with special emphasis on Guayule. We are quite certain that that plant cannot be grown successfully in South Dakota. We do have latex bearing plants that are commonly grown in South Dakota; however the yield of latex is probably quite low. We are thinking quite specifically of the Euphorbia species. We would like to see the bill changed or expanded to include all latex bearing plants, not just those which yield Parthenium latex. We also believe that the authority to carry out the research and development program should be within the Department of Agriculture rather than Commerce.

Finally, we believe that some emphasis should be placed on by-product development. It might very well be that by-product utilization will be required to make energy production economically feasible.

Even without the changes that we have suggested we believe the bill is good and deserving of support. I personally believe that some day agriculture will be able to take care of its own energy requirements and in addition contribute much more to the energy desires of our society. This bill is a step in that direction. We have several energy projects underway in the Agricultural Experiment Station now and plan to initiate some research in the area covered by this bill especially if it were broadened as we suggested. We would like to expand this program. We would also like to discuss this with you personally whenever your schedule would allow.

Sincerely yours,

R. A. MOORE,
Director, Experiment Station.

Mr. Speaker, Dr. Moore is concerned that the wording of the bill seems to indicate a bias toward the southwestern portion of the country. I am not suggesting it does at all, but he does state further that latex bearing plants which grow in South Dakota are not mentioned.

Just as a point of clarification, is it not the intent of the committee that all latex bearing plants are potentially subject to research under this bill and that institutions, such as South Dakota State University, may receive grant assistance to conduct such research?

Mr. BROWN of California. Mr. Speaker, will the gentleman yield?

Mr. ABDNOR. I certainly will.

Mr. BROWN of California. Mr. Speaker, I want to assure the gentleman from South Dakota that the legislation is worded in such a way that it includes latex from any native American plant and the research program contemplated in the legislation is specifically applicable to every State in the United States, so that if the gentleman's State has research programs which warrant support under this bill, they certainly would be eligible.

Mr. ABDNOR. Mr. Speaker, I appreciate that, and I am sure Dr. Moore will appreciate it.

Mr. DE LA GARZA. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. THORNTON).

Mr. THORNTON. Mr. Speaker, I rise to join my colleagues on the Science and Technology Committee and on the Agriculture Committee in support of H.R. 12559.

In doing so I want to pay tribute to the work done by the gentleman from California, the Honorable GEORGE BROWN. Mr. BROWN is a distinguished member of the Subcommittee on Science, Research and Technology on which I have the privilege of serving as chairman. It was a special pleasure for me to find that Mr. BROWN was willing to serve with me as cochairman of the all-day hearing which was held on this bill in June, and I want to thank him for giving us on the Science Committee the benefit of his long-standing interest and study of this subject.

I also want to thank the distinguished gentleman from Texas (Mr. DE LA GARZA), who served as the other cochairman at our joint hearings. Mr. DE LA GARZA, has been a strong supporter of this legislation and is an effective and fair chairman of the Subcommittee on Department Investigations, Oversight, and Research, on which I serve. I also want to congratulate the chairman of the Agriculture Committee, the gentleman from Washington (Mr. FOLEY), and the chairman of the Committee on Science and Technology, the gentleman from Texas, (Mr. TEAGUE) for their cooperation which led to the development of this legislation in a form which allowed it to be brought to the floor under suspension today.

This bill would authorize for the first year $5 million, and for succeeding years amounts of $10 million, $20 million, and $20 million. It would place responsibility for this small but important program in the Department of Agriculture where we hope and expect that it will be pursued vigorously.

I think it is worth emphasizing that the aim of this effort is the commercialization of guayule production. This is not a program which we expect will require an open-ended commitment of Federal funds, even though support will undoubtedly be needed beyond the 4 years that would be authorized by the bill. All the testimony we have heard suggests that there is a very good chance that commercial feasibility can be achieved, perhaps within a decade. The potential contribution to employment and to the expected reduction in our import needs make this program of domestic natural rubber development especially important.

A comprehensive research, development, and demonstration effort aimed at obtaining increased rubber yields from the guayule plant, and at improving the extraction and manufacturing processes is needed before commercialization can be achieved. This bill would provide for such an effort. I urge my colleagues to support this legislation.

Mr. HOLLENBECK. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of H.R. 12559, the Native Latex Commercialization Act of 1978 and I urge my colleagues to support this bill.

As I noted in remarks to our subcommittee in June, contrary to popular belief, synthetic rubber has not supplanted natural rubber: Indeed, about one-third of rubber consumption consists of natural rubber, most of it coming from hevea grown in Southeast Asia. As is the case of other minerals and materials, the United States is totally dependent upon foreign sources for its supplies of natural rubber. These supplies are vulnerable not only to political disruption, but hevea trees are potentially vulnerable to disease which could wipe out Southeast Asia's rubber crop. It is important, therefore, that the United States begin to develop alternative sources of critical materials such as natural rubber. I have consistently supported that position in several bills I introduced this session dealing with national materials policy.

H.R. 12559, in addition, will assist in developing an agricultural potential for the Southwest, where limited rainfall severely hinders normal agriculture. This could be of great use in reducing the high unemployment which occurs amongst the Indians of the Southwest.

To summarize, H.R. 12559 recognizes an important need; namely, to develop alternative sources of materials. I am heartened to see us attempting for once to anticipate this need with regard to rubber, rather than waiting until a crisis descends.

The levels of funding to the authorized are appropriate for fiscal years 1980, 1981, and 1982. The postponement in the program until 1980 will permit the administration to carry out the feasibility study it has requested when presenting testimony. By providing the backup dates, however, the bill gives the administration an incentive to complete its study on time.

Mr Speaker, I urge my colleagues to join me in supporting this bill. I particularly commend my colleague, Mr. BROWN of California, for his leadership on this legislation. As in so many issues, his foresight in perceiving potential problems as well as opportunities, whether in environmental protection or in the development of material and energy resources, has been remarkable. I hope that by its action today, the House will also exhibit the same foresight shown by my distinguished colleague in his sponsorship of the legislation by adopting H.R. 12559.

Mr. DE LA GARZA. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, in the motion made for the bill, as amended, there is an amendment, a technical amendment requested by the Budget Committee, wherein we comply with their request that none of the agencies contract for any period that would extend beyond the authorization period or the appropriation period to satisfy the budget.

Mr. Speaker, finally, I would say that this is one of those rare efforts where two subcommittees have joined together, one from the Committee on Agriculture and one from the Committee on Science and Technology. They held hearings and we all agreed this was a worthwhile effort in the interests of the country.

With that, I hope all my colleagues will support this worthwhile piece of legislation.

● Mr. LLOYD of California. Mr. Speaker, 32 years ago, the Congress terminated a program to grow and process natural rubber from the guayule plant. Today, this country has begun a rediscovery of the economic benefits that this plant can bring to the Southwest and the Nation as a whole. And with this program to research a "new crop", a "new" crop known to the Aztecs 500 years ago, we have opened the door to the research and commercialization of numerous resource saving and marginal area crops.

This program is not a long-shot research project. The economics of guayule has been proven before and, with increasing oil prices and a growing shortage of natural hevea rubber, guayule is once again on the verge of commercial viability. The research funded by this program will bring the agronomic and processing technology developed in the intervening years to practical application on guayule. The Government will provide the catalyst for private investment in guayule production and processing and will accelerate a growing private interest in this product. In addition, the Government is in a position to allow the native Americans of the Southwest to share in the benefits from this program and develop a strong economic base.

Part of the processing research will be directed toward the development of by-products of the latex processing. The wax from guayule leaves is a very high-grade wax and the bagesse, or fibrous parts of the shrub, may have value as paper or cardboard. A recent examination of guayule processing shows a by-product credit of 12 to 20.5 cents per pound of rubber, bringing the net cost of guayule latex to between 29 and 54 cents per pound by 1985. With current natural rubber selling for more than 50 cents per pound, the commercialization of this products looks very good.

We have begun a short-term project to bring the technology surrounding this plant up to date. I consider this legislation a prime example of the role of Government research geared toward commercialization since this is a short-term program that catalyzes private effort and then ends, letting private market forces take over. Other areas of research should follow this example so that we can terminate research that should have passed to private industry years ago, or have been terminated altogether, and free up money for inquiry at the fringes of our expertise.

I would like to acknowledge the effort to many people in getting this legislation passed. Foremost among these is my colleague, Mr. POAGE, who has been interested and involved in the guayule commercialization effort since the Emergency Rubber Project (ERP) during World War II. I would also like to acknowledge Mr. Hugh Anderson, president of the Pacific Rubber Growers, who was also involved in the ERP and who has provided resource and inspiration to the effort culminating in the passage of this bill. Numerous others have doggedly pursued research on this crop and other arid crops of great potential and I hope that they take heart in our action today.●

● Mr. ANDERSON of California. Mr. Speaker, I rise in support of H.R. 12599, the Native Latex Commercialization Act of 1978. This legislation would start a program of research and development of the guayule plant for the production of latex rubber.

Presently the United States imports 100 percent of its natural rubber; this amounts to almost 900,000 tons of rubber at a cost of over $800 million. Natural rubber accounts for 35 percent of our rubber consumption, while synthetic rubber, which is derived from petroleum, accounts for the remaining 65 percent.

Both of these sources are adding to our mounting deficit of payments and contributing to the decline of the American dollar on the international market.

Mr. Speaker, there is an alternative available. In the Southwestern United States grows a native plant, the guayule bush, which contains latex rubber. In 1910 guayule accounted for 10 percent of the world's supply of natural rubber. During World War II, when our foreign sources of latex rubber were cut off, an emergency rubber project was started, and nearly 3 million tons of rubber were produced.

With the advent of synthetic rubber, the cost-effectiveness of extracting rubber from guayule was diminished, and the use of this as a source of latex was virtually stopped.

But today, with the cost of imported oil rising, and the yield of latex per acre increasing due to genetic research and improved harvesting methods, it is very possible that the guayule plant can be used to supplement our natural rubber supply.

Eight private scientists in Mexico have started a guayule processing plant, that has brought interest from persons all over the world. U.S. researchers believe they can improve on this process. In July the Department of Transportation announced that a radial tire made from guayule rubber had passed their high speed and endurance tests. Slowly, progress is being made. But more research is needed to determine where the best locations for guayule farms are situated, and what types of cultivation techniques will produce the most rubber.

An important result from the commercialization of guayule is the effect it will have on the high unemployment rate among Indians in the Southwest. According to the Bureau of Indian Affairs, approximately 39 percent of the total Indian reservation labor force of 137,000 were unemployed in 1974, and another 19 percent were employed only on a seasonal, part-time basis. Conventional crops are not providing the reservations with an economic product. Possibly a plant which thrives in a semi-arid environment such as guayule can provide this area with an economic product. If so, a guayule agribusiness could reduce the funds which the Federal Government now pays to some tribal governments. According to a National Academy of Sciences report, "Much Indian land appears suitable for growing guayule."

Mr. Speaker, as sponsor of similar legislation, H.R. 13238, I wholeheartedly support the concept of this bill, and urge its passage.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. DE LA GARZA) that the House suspend the rules and pass the bill H.R. 12559, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of the Senate bill (S. 1816) to amend the Public Works and Economic Development Act of 1965 to authorize a program of research, development, and demonstration of guayule rubber production and manufacture as an economic development opportunity for the southwestern States, a bill similar to the bill just passed by the House, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1816

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Guayule Rubber Demonstration and Economic Development Act of 1978".

SEC. 2. Title V of the Public Works and Economic Development Act of 1965 is amended by inserting at the end thereof a new section as follows:

"GUAYULE RUBBER DEMONSTRATION PROJECT

"SEC. 518. (a)(1) The Congress recognizes that the development of a natural rubber industry, based on the guayule plant, would convey substantial economic benefits to peoples living in arid regions of the United States. Such an industry would comprise the agricultural production of the guayule plant and the development of processing and manufacturing facilities to extract the rubber and convert it to a usable or salable form.

"(2) The Congress further recognizes that natural rubber is a commodity of vital importance to the economy, defense, and general well-being of the Nation. The United States is totally dependent upon foreign sources for its supplies of natural (Hevea) rubber, which total about eight hundred thousand metric tons per year. Synthetic rubber manufactured from petroleum feedstocks cannot in all cases be substituted for natural rubber.

"(3) The Congress further recognizes that certain plant species of the genus Parthenium (guayule), native to Texas and the Republic of Mexico, are known to contain commercial quantities of extractable rubber. During World War II, through research carried out in the emergency rubber project, the United States demonstrated that guayule rubber is a promising and realistic substitute for Hevea rubber.

"(4) It is the policy of Congress, therefore, to provide for the development and demonstration of economically feasible means of culturing and manufacturing guayule for the extraction of natural rubber and other products to benefit the Nation and promote the economic development of the Southwest.

"(b) As used in this section, the term

"(1) 'Secretary' means the Secretary of Commerce.

"(2) 'State' means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico; and Indian tribes as defined in the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 88 Stat. 2203); and

"(3) 'Regional Commissions' refers to the Regional Action Planning Commissions established pursuant to this title.

"(c) The Secretary, acting through the Regional Commissions, is authorized and directed to initiate and carry out research, development, and demonstration projects to test and demonstrate the economic feasibility of the commercialization of natural rubber from the guayule plant to benefit the Nation and promote economic development of the Southwest. Such activities may include, but shall not be limited to—

"(1) increasing seed stock from wild plants in Texas, the Republic of Mexico, and other areas and borrowing or purchasing seed from other sources;

"(2) breeding and selection programs for the purpose of improving rubber yield, expanding insect and disease resistance, and broadening the ranges of cold and drought tolerance of the guayule plant;

"(3) conducting studies on the planting, cultivation, harvesting, and transporting the crop;

"(4) conducting research and development of extraction and processing techniques;

"(5) economic analysis of the production of guayule, including usable byproducts;

"(6) studying the environmental, social, and economic impacts of the commercial development of guayule in the Southwest;

"(7) evaluating the commercial marketability of guayule rubber; and

"(8) developing pertinent material and records on natural guayule rubber which shall be available to other Federal and State agencies and private persons who are interested in or involved in natural rubber research, development, or manufacture.

"(d)(1) There is hereby established a National Advisory Committee to assist the Secretary in carrying out the purposes and activities of this section. The Advisory Committee shall assist the Secretary in—

"(A) developing a plan establishing goals, timetables, and tasks to be undertaken in carrying out the purposes of the section;

"(B) establishing broad policy for implementing the plan carrying out the purposes of the section;

"(C) establishing criteria for evaluating and awarding of contracts for research, development, and demonstration projects; and

"(D) approving expenditures above $250,000.

"(2) The Advisory Committee shall consist of a representative of the Department of

Agriculture, the Bureau of Indian Affairs of the Department of Interior, the National Science Foundation, National Academy of Sciences, the private sector and the Federal Co-Chairmen of the appropriate Regional Action Planning Commission.

"(e) The Secretary, in consultation with the Secretary of State, is authorized and encouraged to enter into cooperative projects with the Government of Mexico to accomplish appropriate aspects of the research and economic development provided for in this section. Such cooperative projects shall include, but not be limited to, projects to determine the economic feasibility of guayule-based agricultural and manufacturing enterprises.

"(f) The Secretary is authorized to accept financial or other assistance from any State or public agency to aid in carrying out the provisions of this section, and to enter into contracts with respect to such assistance and agreements with any State or public agency for the purpose of demonstrating, transferring, or applying results of research and economic development of guayule rubber.

"(g) In carrying out the provisions of this section, the Secretary, acting through the Regional Commissions, is authorized to—

"(1) make grants to States, educational institutions, associations of educational institutions, and other specific organizations and enter into contracts with such institutions and organizations and with industrial or engineering firms;

"(2) acquire the services of biologists, agronomists, foresters, geneticists, engineers, economists, and other personnel by contract or otherwise;

"(3) utilize the facilities of Federal and State institutions and other scientific laboratories;

"(4) establish and operate necessary facilities and pilot plants to carry out the continuous research, testing, development, and programing necessary to effectuate the purposes of this section;

"(5) acquire secret processes, technical data, invention, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchases, license, lease, or donation; and

"(6) foster and participate in regional, national, and international conferences relating to guayule culture and natural rubber manufacture.

"(h) One year after enactment of this section, the Secretary shall provide a report to Congress on the implementation of the program. No later than thirty-six months after enactment of this section, the Secretary shall report to the Congress on the status and findings of the demonstration program and plans for the remaining authorization.

"(i) Each grant contract, agreement or other arrangement entered into pursuant to this section relating to scientific research shall contain provision governing the disposition of inventions produced thereunder in a manner which will protect the public interest and the person or organization which developed the invention: *Provided, however,* That nothing in this section shall authorize the Secretary to enter into grants, contracts, agreements, or other arrangements inconsistent with any provisions of law affecting the issuance or use of patents.

"(j) No more than 3 per centum of funds authorized under this section shall be available for administration and management of the program.

"(k) There are authorized to be appropriated $5,000,000 for each of the fiscal years ending September 30, 1979, and September 30, 1980, and $10,000,000 for each of the fiscal year ending September 30, 1981, and September 30, 1982. Funds appropriated under this paragraph shall be available for obligation until the last day of the fiscal year after the year for which such funds are authorized.".

MOTION OFFERED BY MR. DE LA GARZA

Mr. DE LA GARZA. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. DE LA GARZA moves to strike all after the enacting clause of S. 1816 and to insert in lieu thereof the text of H.R. 12559, as passed the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "To establish a research and development effort resulting in the commercialization of native latex rubber."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 12559) was laid on the table.

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the order of the House of September 18, 1978, and the order of the House of today, the Chair will now put the question on each motion on which further proceedings were postponed in the order in which that motion was entertained.

The first three votes will be in the following order, with 5 minutes of debate equally divided to precede the vote on each motion:

H.R. 12326, by the yeas and nays;
H.R. 12303, by the yeas and nays; and
H.R. 12460, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series, and all of the subsequent votes on motions debated today will likewise be reduced to 5 minutes. Those subsequent votes will be taken in the following order:

S. 703, by the yeas and nays; and
H.R. 12101, by the yeas and nays.

DEVELOPMENTAL DISABILITIES ACT AUTHORIZATION, 1978

The SPEAKER pro tempore. Pursuant to the order of the House of September 18, 1978, the unfinished business is the question of suspending the rules and passing the bill H.R. 12326, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) and the gentleman from Kentucky (Mr. CARTER) will each be recognized for 2½ minutes.

The Chair now recognizes the gentleman from Florida (Mr. ROGERS).

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I see no point in taking much time. This bill was explained yesterday. The 5-minute debate today is just to allow us to recall for the Members the main points of the bill before the vote.

This legislation extends the authority for the Developmental Disabilities program. This includes authorizations for State formula grants to support planning, programs, and activities for the developmentally disabled, as well as protection and advocacy systems. Additionally, it extends the authority for support of university-affiliated facilities, which carry out interdisciplinary training and service demonstration projects for the developmentally disabled.

Mr. Speaker, this is a bill that is needed. It is a continuation of programs authorized under current law to serve the needs of a very disadvantaged population. I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Kentucky (Mr. CARTER) is recognized for 2½ minutes.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 12326 revises and extends for 3 years the Developmental Disabilities Program Authorities.

I strongly support this legislation—and I believe this program is one of the best examples of the effective use of very minimal Federal funding. The dollars provided in this legislation are used to stimulate States' efforts to serve the developmentally disabled.

Mr. Speaker, it is estimated that some 10 million of our citizens suffer from disabilities incurred during their developmental years—and of that group—at least 2 million have a severe handicap. This legislation was created to serve their needs—since these individuals often "fall through the cracks" of existing programs.

I am also very pleased that this legislation clarifies current law to include the condition of "dyslexia" in the list of conditions that can be covered by this program.

In conclusion, Mr. Speaker, the population identified by this legislation needs our support—and this program has made significant progress in serving the needs of the developmentally disabled. I strongly urge that my colleagues adopt this legislation.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The question is on the motion offered by the

gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12326, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 396, nays 3, not voting 33, as follows:

[Roll No. 796]

YEAS—396

Abdnor	Daniel, R. W.	Howard
Addabbo	Danielson	Hubbard
Akaka	Davis	Huckaby
Alexander	de la Garza	Hughes
Ambro	Delaney	Hyde
Anderson, Calif.	Dellums	Ichord
	Derrick	Ireland
Anderson, Ill.	Derwinski	Jacobs
Andrews, N.C.	Devine	Jeffords
Andrews, N. Dak.	Dicks	Jenkins
	Dingell	Jenrette
Annunzio	Dodd	Johnson, Calif.
Applegate	Dornan	Johnson, Colo.
Archer	Downey	Jones, N.C.
Ashbrook	Drinan	Jones, Okla.
Ashley	Duncan, Oreg.	Jones, Tenn.
Aspin	Duncan, Tenn.	Jordan
AuCoin	Edgar	Kasten
Badham	Edwards, Ala.	Kastenmeier
Bafalis	Edwards, Calif.	Kazen
Baldus	Edwards, Okla.	Kelly
Barnard	Eilberg	Kemp
Baucus	Emery	Keys
Bauman	English	Kildee
Beard, R.I.	Erlenborn	Kindness
Beard, Tenn.	Ertel	Kostmayer
Bedell	Evans, Colo.	Krebs
Beilenson	Evans, Del.	LaFalce
Benjamin	Evans, Ga.	Lagomarsino
Bennett	Evans, Ind.	Latta
Bevill	Fary	Le Fante
Biaggi	Fascell	Lederer
Bingham	Fenwick	Leggett
Blanchard	Findley	Lehman
Blouin	Fish	Lent
Boggs	Fisher	Levitas
Boland	Fithian	Livingston
Bolling	Flippo	Lloyd, Calif.
Bonior	Flood	Lloyd, Tenn.
Bonker	Florio	Long, La.
Bowen	Flynt	Long, Md.
Brademas	Foley	Lott
Breaux	Ford, Mich.	Lujan
Breckinridge	Ford, Tenn.	Lundine
Brinkley	Forsythe	McClory
Brodhead	Fountain	McCloskey
Brooks	Fowler	McCormack
Broomfield	Fraser	McDade
Brown, Calif.	Frenzel	McEwen
Brown, Mich.	Fuqua	McFall
Brown, Ohio	Garcia	McHugh
Broyhill	Gaydos	McKay
Buchanan	Gephardt	McKinney
Burgener	Giaimo	Madigan
Burke, Fla.	Gibbons	Maguire
Burleson, Tex.	Gilman	Mahon
Burlison, Mo.	Ginn	Mann
Burton, John	Glickman	Markey
Burton, Phillip	Gonzalez	Marks
Butler	Goodling	Marlenee
Byron	Gore	Marriott
Caputo	Gradison	Martin
Carney	Grassley	Mathis
Carr	Green	Mattox
Carter	Gudger	Mazzoli
Cavanaugh	Guyer	Metcalfe
Cederberg	Hagedorn	Meyner
Chappell	Hall	Michel
Chisholm	Hamilton	Mikulski
Clausen, Don H.	Hammer-schmidt	Miller, Ohio
		Mineta
Clawson, Del	Hanley	Minish
Cleveland	Hannaford	Mitchell, Md.
Cochran	Hansen	Mitchell, N.Y.
Cohen	Harkin	Moakley
Coleman	Harris	Moffett
Collins, Ill.	Harsha	Mollohan
Conable	Hawkins	Montgomery
Conte	Heckler	Moore
Conyers	Hefner	Moorhead, Calif.
Corcoran	Heftel	
Corman	Hightower	Moorhead, Pa.
Cornell	Hillis	Moss
Cornwell	Holland	Mottl
Coughlin	Hollenbeck	Murphy, Ill.
Cunningham	Holt	Murphy, N.Y.
D'Amours	Holtzman	Murphy, Pa.
Daniel, Dan	Horton	
Murtha	Rose	Thompson
Myers, Gary	Rosenthal	Thone
Myers, John	Rostenkowski	Thornton
Myers, Michael	Rousselot	Traxler
Natcher	Roybal	Treen
Nedzi	Rudd	Trible
Nichols	Runnels	Tucker
Nix	Ruppe	Udall
Nolan	Russo	Ullman
Nowak	Ryan	Van Deerlin
O'Brien	Santini	Vander Jagt
Oakar	Sarasin	Vanik
Oberstar	Satterfield	Vento
Obey	Sawyer	Volkmer
Ottinger	Scheuer	Waggonner
Panetta	Schroeder	Walgren
Patten	Schulze	Walker
Patterson	Sebelius	Walsh
Pattison	Seiberling	Wampler
Pease	Sharp	Watkins
Perkins	Shuster	Waxman
Pettis	Sikes	Weaver
Pickle	Simon	Weiss
Pike	Sisk	Whalen
Poage	Skelton	White
Pressler	Skubitz	Whitehurst
Preyer	Slack	Whitley
Price	Smith, Iowa	Whitten
Pursell	Smith, Nebr.	Wiggins
Quayle	Snyder	Wilson, Bob
Quillen	Solarz	Wilson, C. H.
Rahall	Spellman	Wilson, Tex.
Railsback	Spence	Winn
Rangel	St Germain	Wirth
Regula	Staggers	Wolff
Reuss	Stangeland	Wright
Rhodes	Stanton	Wydler
Richmond	Stark	Wylie
Rinaldo	Steers	Yates
Roberts	Steiger	Yatron
Robinson	Stockman	Young, Alaska
Rodino	Stokes	Young, Fla.
Roe	Stratton	Young, Mo.
Rogers	Studds	Young, Tex.
Roncalio	Stump	Zablocki
Rooney	Taylor	Zeferetti

NAYS—3

Collins, Tex.	McDonald	Symms

NOT VOTING—33

Ammerman	Eckhardt	Milford
Armstrong	Flowers	Miller, Calif.
Burke, Calif.	Frey	Neal
Burke, Mass.	Gammage	Pepper
Clay	Goldwater	Pritchard
Cotter	Harrington	Quie
Crane	Krueger	Risenhoover
Dent	Leach	Shipley
Dickinson	Luken	Steed
Diggs	Meeds	Teague
Early	Mikva	Tsongas

The Clerk announced the following pairs:

Mr. Dent with Mr. Crane.
Mr. Pepper with Mr. Frey.
Mr. Shipley with Mr. Dickinson.
Mr. Steed with Mr. Quie.
Mr. Early with Mr. Pritchard.
Mr. Cotter with Mr. Goldwater.
Mr. Ammerman with Mr. Diggs.
Mr. Mikva with Mr. Eckhardt.
Mr. Teague with Mr. Luken.
Mrs. Burke of California with Mr. Flowers.
Mr. Clay with Mr. Harrington.
Mr. Krueger with Mr. Leach.
Mr. Gammage with Mr. Miller of California.
Mr. Neal with Mr. Risenhoover.
Mr. Meeds with Mr. Tsongas.

So (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b)(3) of rule XXVII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all of the additional motions to suspend the rules on which the Chair has postponed further proceedings.

NURSE TRAINING AMENDMENTS OF 1978

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 12303, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12303, as amended, on which the yeas and nays are ordered.

The gentleman from Florida (Mr. ROGERS) and the gentleman from Kentucky (Mr. CARTER) will be recognized for 2½ minutes each.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume, but I will not take the 2½ minutes.

Mr. Speaker, as the Members of the House know, each of the three Commerce Committee bills which will be voted on this afternoon were thoroughly considered yesterday.

By agreement, a total of 5 minutes has been allotted to me and to the gentleman from Kentucky (Mr. CARTER) on each of the bills just to refresh the Members' memories.

Mr. Speaker, H.R. 12303, the Nurse Training Amendments Act of 1978, extends existing nurse training program authorities for 2 fiscal years at the existing authorization level. This is a noncontroversial measure which will continue the program of support for the training of nurses needed to provide health care in America.

Mr. Speaker, I strongly urge that the House adopt this legislation.

I reserve the balance of my time.

Mr. CARTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly support this legislation which continues authority for our nurse training programs at virtually the same authorization level as the current year.

This bill includes continued authorizations for:

Capitation support to nursing schools;

Support for nurse practitioner programs;

Advanced nurse training programs; and

And existing loan and scholarship programs.

Also we added a new authority to provide support to private non-profit and public institutions to cover the costs of training licensed, registered nurses to become nurse anesthetists.

Nurse anesthetists are doing a tremendous job in many of our rural and medically underserved areas. We know, for example, that nurse anesthetists provide more than 65 percent of the anes-

thesia services in hospitals or less than 100 beds.

In general, Mr. Speaker, the nursing profession does an outstanding job of providing needed health care to our people. As a physician—I know that to be true. But we still lack nurses in medically underserved areas of this country. Also only about 3 percent of the nursing profession has received a masters or doctorate degree which is usually needed for teaching and administrative work. For these reasons—I believe continued Federal support of nurse training programs is necessary.

We have requested HEW to conduct a study—through the Institute of Medicine if possible—to evaluate our Nation's need for nurses in the future and to make recommendations about the proper role of the Federal Government's support in this area.

I look forward to the results of that study in 1979 and I urge favorable consideration of this legislation.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I want to congratulate the chairman of the committee, the gentleman from Florida (Mr. ROGERS), and the ranking minority member, my good friend, the gentleman from Kentucky (Mr. CARTER), for bringing forth this worthwhile bill.

As the old saying goes, "Never turn your back to a nurse."

Mr. Speaker, I hope that this bill is passed unanimously.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12303, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 392, nays 12, not voting 28, as follows:

[Roll No. 794]

YEAS—392

Abdnor	Bolling	Cochran
Addabbo	Bonior	Cohen
Akaka	Bonker	Coleman
Alexander	Bowen	Collins, Ill.
Ambro	Brademas	Conable
Anderson, Calif.	Breaux	Conte
	Breckinridge	Conyers
Anderson, Ill.	Brinkley	Corcoran
Andrews, N.C.	Brodhead	Corman
Andrews, N. Dak.	Brooks	Cornell
	Broomfield	Cornwell
Annunzio	Brown, Calif.	Coughlin
Applegate	Brown, Mich.	Cunningham
Archer	Brown, Ohio	D'Amours
Ashbrook	Broyhill	Daniel, Dan
Ashley	Buchanan	Daniel, R. W.
Aspin	Burgener	Danielson
AuCoin	Burke, Fla.	Davis
Bafalis	Burlison, Mo.	de la Garza
Baldus	Burton, John	Delaney
Barnard	Burton, Phillip	Dellums
Baucus	Butler	Dent
Bauman	Byron	Derrick
Beard, R.I.	Caputo	Derwinski
Beard, Tenn.	Carney	Devine
Bedell	Carr	Dicks
Bellenson	Carter	Dingell
Benjamin	Cavanaugh	Dodd
Bevill	Cederberg	Dornan
Biaggi	Chappell	Downey
Bingham	Chisholm	Drinan
Blanchard	Clausen, Don H.	Duncan, Oreg.
Blouin		Duncan, Tenn.
Boggs	Clawson, Del	Eckhardt
Boland	Cleveland	Edgar
Edwards, Ala.	Latta	Robinson
Edwards, Calif.	Le Fante	Rodino
Edwards, Okla.	Lederer	Roe
Eilberg	Leggett	Rogers
Emery	Lehman	Roncalio
English	Lent	Rooney
Erlenborn	Levitas	Rose
Ertel	Livingston	Rosenthal
Evans, Colo.	Lloyd, Calif.	Rostenkowski
Evans, Del.	Lloyd, Tenn.	Rousselot
Evans, Ga.	Long, La.	Roybal
Evans, Ind.	Long, Md.	Rudd
Fary	Lott	Runnels
Fascell	Lujan	Ruppe
Fenwick	Lundine	Russo
Findley	McClory	Ryan
Fish	McCloskey	Santini
Fisher	McCormack	Sarasin
Fithian	McDade	Satterfield
Flippo	McEwen	Sawyer
Flood	McFall	Scheuer
Florio	McHugh	Schroeder
Flynt	McKay	Schulze
Foley	McKinney	Sebelius
Ford, Mich.	Madigan	Seiberling
Ford, Tenn.	Maguire	Sharp
Forsythe	Mahon	Shuster
Fountain	Mann	Sikes
Fowler	Markey	Simon
Fraser	Marks	Sisk
Frenzel	Marlenee	Skelton
Fuqua	Marriott	Skubitz
Garcia	Martin	Slack
Gaydos	Mathis	Smith, Iowa
Gephardt	Mattox	Smith, Nebr.
Giaimo	Mazzoli	Snyder
Gibbons	Metcalfe	Solarz
Gilman	Meyner	Spellman
Ginn	Michel	Spence
Glickman	Mikulski	St Germain
Goldwater	Mikva	Staggers
Gonzalez	Miller, Ohio	Stanceland
Goodling	Mineta	Stanton
Gore	Minish	Stark
Gradison	Mitchell, Md.	Steers
Grassley	Mitchell, N.Y.	Steiger
Green	Moakley	Stockman
Gudger	Moffett	Stokes
Guyer	Mollohan	Stratton
Hagedorn	Montgomery	Studds
Hall	Moore	Taylor
Hamilton	Moorhead, Calif.	Thompson
Hammer-schmidt		Thone
	Moorhead, Pa.	Thornton
Hanley	Moss	Traxler
Hannaford	Mottl	Treen
Harkin	Murphy, Ill.	Trible
Harris	Murphy, N.Y.	Tucker
Harsha	Murphy, Pa.	Udall
Hawkins	Murtha	Ullman
Heckler	Myers, Gary	Van Deerlin
Hefner	Myers, John	Vander Jagt
Heftel	Myers, Michael	Vanik
Hightower	Natcher	Vento
Hillis	Neal	Volkmer
Holland	Nedzi	Walgren
Hollenbeck	Nichols	Walker
Holt	Nix	Walsh
Holtzman	Nolan	Wampler
Horton	Nowak	Watkins
Howard	O'Brien	Waxman
Hubbard	Oakar	Weaver
Huckaby	Oberstar	Weiss
Hughes	Obey	Whalen
Hyde	Ottinger	White
Ichord	Panetta	Whitehurst
Ireland	Patten	Whitley
Jacobs	Patterson	Whitten
Jeffords	Pattison	Wiggins
Jenkins	Pease	Wilson, Bob
Jenrette	Perkins	Wilson, C. H.
Johnson, Calif.	Pettis	Wilson, Tex.
Johnson, Colo.	Pickle	Winn
Jones, N.C.	Pressler	Wirth
Jones, Okla.	Preyer	Wolff
Jones, Tenn.	Price	Wright
Jordan	Pursell	Wydler
Kasten	Quayle	Wylie
Kastenmeier	Quillen	Yates
Kazen	Rahall	Yatron
Kemp	Railsback	Young, Alaska
Keys	Rangel	Young, Fla.
Kildee	Regula	Young, Mo.
Kindness	Reuss	Young, Tex.
Kostmayer	Rhodes	Zablocki
Krebs	Richmond	Zeferetti
LaFalce	Rinaldo	
Lagomarsino	Roberts	

NAYS—12

Badham	Hansen	Poage
Bennett	Kelly	Stump
Burleson, Tex.	McDonald	Symms
Collins, Tex.	Pike	Waggonner

NOT VOTING—28

Ammerman	Flowers	Pepper
Armstrong	Frey	Pritchard
Burke, Calif.	Gammage	Quie
Burke, Mass.	Harrington	Risenhoover
Clay	Krueger	Shipley
Cotter	Leach	Steed
Crane	Luken	Teague
Dickinson	Meeds	Tsongas
Diggs	Milford	
Early	Miller, Calif.	

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Frey.
Mr. Cotter with Mr. Crane.
Mr. Early with Mr. Pritchard.
Mr. Meeds with Mr. Leach.
Mr. Shipley with Mr. Tsongas.
Mr. Pepper with Mr. Risenhoover.
Mr. Miller of California with Mr. Quie.
Mr. Gammage with Mr. Dickinson.
Mr. Krueger with Mr. Diggs.
Mr. Teague with Mr. Harrington.
Mr. Steed with Mr. Flowers.
Mrs. Burke of California with Mr. Luken.
Mr. Clay with Mr. Milford.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was annouced as above recorded.

A motion to reconsider was laid on the table.

Mr. ROGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2416) to amend title VIII of the Public Health Service Act to extend for 2 fiscal years the program of assistance for nurse training, a similar bill to H.R. 12303, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2416

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. (a) This Act may be cited as the "Nurse Training Amendments of 1978".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 2. Section 801 (relating to authorizations for construction grants) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 3. (a) Subsections (a) and (b) of section 805 (relating to loan guarantees and interest subsidies) are each amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (e) of such section is amended by inserting after "in fiscal year 1978" the following: "and in each of the next two fiscal years".

SEC. 4. Subsection (f) of section 810 (relating to capitation grants) is amended by inserting after "fiscal year 1978" the following "and for each of the next two fiscal years".

SEC. 5. The first sentence of subsection (d) of section 820 (relating to special project grants and contracts) is amended by striking out "and" after "1977", and by inserting before the period the following: ", $20,000,000 for the fiscal year ending September 30,

1979, and $20,000,000 for the fiscal year ending September 30, 1980".

SEC. 6. Subsection (b) of section 821 (relating to advanced nurse training programs) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 7. Subsection (e) of section 822 (relating to nurse practitioner programs) is amended by striking out "for fiscal year 1978" and inserting in lieu thereof "each for the fiscal year ending September 30, 1978, and for the next two fiscal years".

SEC. 8. Subsection (b) of section 830 (relating to traineeships) is amended by inserting before the period "and for each of the next two fiscal years".

SEC. 9. (a) Subsection (b)(4) of section 835 (relating to loan agreements) is amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Section 837 (relating to authorizations for student loan funds) is amended (1) by inserting before the period in the first sentence "and for each of the two fiscal years", (2) by striking out "fiscal year 1979" and inserting in lieu thereof "the fiscal year ending September 30, 1981", and (3) by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1980".

(c)(1) Subsection (a) of section 839 (relating to distribution of assets) is amended by striking out "September 30, 1980, and not later than September 30, 1977" and inserting in lieu thereof "September 30, 1981 and not later than December 30, 1983".

(2) Paragraph (1) of such subsection is amended by striking out "1980" and inserting in lieu thereof "1983".

(3) Subsection (b) of such section is amended by striking out "1980" each place it occurs and inserting in lieu thereof "1983".

SEC. 10. (a) Subsection (b) of section 845 (relating to scholarship grants) is amended (1) by striking out "next two fiscal years" in the first sentence and inserting in lieu thereof "next four fiscal years", (2) by striking out "1979" and inserting in lieu thereof "1981", and (3) by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (c)(1) of such section is amended (1) by striking out "next two fiscal years" in subparagraph (A) and inserting in lieu thereof "next four fiscal years", (2) by striking out "1978" in subparagraph (B) and inserting in lieu thereof "1980", and (3) by striking out "1979" in such subparagraph and inserting in lieu thereof "1981".

SEC. 11. Subsection (e)(2)(B) of section 788 is amended by (1) striking out "$5,000,000" and inserting in lieu thereof "$10,000,000" and (2) inserting "for the fiscal years ending September 30, 1978, and September 30, 1979" after "subsection (b)".

MOTION OFFERED BY MR. ROGERS

Mr. ROGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ROGERS moves to strike out all after the enacting clause of the Senate bill (S. 2416) and insert in lieu thereof provisions of H.R. 12303, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "To amend title VIII of the Public Health Service Act to extend for two fiscal years the program of assistance for nurse training, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill, H.R. 12303, was laid on the table.

House Resolution 1300 was laid on the table.

HEALTH CENTERS AMENDMENTS OF 1978

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 12460, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The gentleman from Florida (Mr. ROGERS) will be recognized for 2½ minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 2½ minutes.

The Chair now recognizes the gentleman from Florida (Mr. ROGERS).

PARLIAMENTARY INQUIRY

Mr. BROYHILL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BROYHILL. Mr. Speaker, it is my understanding the time is to be divided between the pros and the cons on this bill, and, therefore, since I oppose the bill, I wish to be recognized for one-half the time.

The SPEAKER pro tempore. The Chair would like to advise the gentleman from North Carolina (Mr. BROYHILL) that the time for the minority will go to the gentleman who was recognized on yesterday to demand a second and who was not challenged at that time. That gentleman is the gentleman from Kentucky (Mr. CARTER).

The gentleman from Florida (Mr. ROGERS) is recognized for 2½ minutes.

Mr. ROGERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to refresh the memories of the Members on the debate yesterday on the Health Centers Amendments of 1978. The major provisions of this bill are that it extends the community health centers program, the community mental health centers program, and the migrant health program for 3 fiscal years and the HMD program for 1 additional year. It is an essential bill because these programs are providing primary health care services which are needed and which are substituting for more expensive inpatient health services.

For instance, if I may, I will just remind the Members that because we have developed community mental health centers we have been able to reduce psychiatric hospital beds in the Nation by 36 percent. Closing these beds has meant tremendous savings, and establishing these centers has meant that we can treat people in their own communities. The community mental health programs of the Nation are based on the programs that we are presenting here. It is essential for us to continue these programs.

I think the Members will also be interested in knowing something about community health centers.

Mr. BROYHILL. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. If I have time, I will yield later.

Mr. Speaker, I want to bring to the attention of the House what has happened in the community health centers programs. For instance, in three recent studies the savings in hospital costs for patients using community health centers have been very well calculated. Let me just quote from the findings of these three studies for those Members who are interested in saving money on health costs.

First, a 1973 study conducted in Rochester, N.Y. found that the hospital admission rate for children served by a community health center was one-half of the rate for other children in the some community.

The SPEAKER pro tempore. The time of the gentleman from Florida (Mr. ROGERS) has expired.

Mr. ROGERS. I thank the Chair.

The SPEAKER pro tempore. The Chair will inquire, will the gentleman from Kentucky (Mr. CARTER) yield a portion of his time to the gentleman from North Carolina (Mr. BROYHILL)?

Mr. CARTER. Mr. Speaker, I shall be happy to yield a portion of my time to the gentleman from North Carolina (Mr. BROYHILL) after I have made the statement I wish to present.

PARLIAMENTARY INQUIRY

Mr. BAUMAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BAUMAN. Mr. Speaker, it is not the purpose of the gentleman from Maryland to try to keep any Member from speaking, but earlier in the day a unanimous-consent request was made by the majority leader, and at that time the gentleman from Maryland specifically asked the Chair whether the 5 minutes on these bills would be divided between those Members in favor and those Members opposed. The Chair said that was his understanding.

This is a $2 billion authorization bill, and if only two Members are going to speak in favor of it, some Member who knows what is in the bill and is opposed to it ought to be allowed to speak. The gentleman from North Carolina (Mr. BROYHILL) has made that claim as a member of the committee.

Mr. Speaker, I can say one thing: There will not be any more unanimous-consent requests of this native allowed if such remarks are not going to be adhered to.

Mr. CARTER. Mr. Speaker, in all fairness, I will yield one-half of my time to the gentleman from North Carolina (Mr. BROYHILL), and I will allow him to speak at this time, if that is alright.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. BROYHILL) is recognized for 1¼ minutes.

Mr. BROYHILL. Mr. Speaker, no one is taking issue with the gentleman from Florida concerning the purposes and the good things that some of these programs are doing. What we are taking issue with is the tremendous increase in authorizations that have been placed in this bill.

Some of us have put out a "Dear Colleague" on this, to try to explain to the Members the huge jump in authorization. As a member of another committee, the Budget Committee, we have learned one thing: If we are going to get control of this budget, we have to make sure that these authorizations are at least within

some bounds of reason. If we are going to continue to give these high expectations to these people who are operating these programs, no wonder we are going to continue to have a continued busting of the budget as we have had for the last few years.

Mr. Speaker, during the current fiscal year, the appropriations for all of these programs is $360 million. Yet what they are proposing to do is to go up in the authorization to almost double that, over $700 million, by 1981. All I am saying is: Let this bill come up in a normal procedure so that we can at least have some moderate funding level.

Mr. CARTER. Mr. Speaker, I strongly support this bill which revises and extends the following health care delivery programs for 3 years:

Community health centers;

Migrant health centers;

Community health mental health centers;

State mental health programs; and

Rape prevention program.

This bill also authorizes a program of technical assistance for 3 years to assist these centers in planning and development. Finally—this legislation provides for a 1-year extension of "the health underserved rural areas program"—known as "HURA"—and provides 1 additional year of new authorization for the health maintenance organization program.

Mr. Speaker, it is essential that we continue these programs.

There are about 49 million Americans who live in medically under-served areas of this country. These centers programs were created to provide needed health care to those populations who lack adequate services and facilities.

Over 5 million Americans have received direct services through these programs—but many millions more still do not have access to the medical care they need.

These health centers emphasize preventive care through early diagnosis and treatment of conditions. In general they provide a less costly form of health care.

I strongly urge my colleagues to support this legislation.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS) that the House suspend the rules and pass the bill H.R. 12460, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 301, nays 102, not voting 29, as follows:

[Roll No. 795]

YEAS—301

Abdnor	Bafalis	Bonior
Addabbo	Baldus	Bonker
Akaka	Barnard	Bowen
Alexander	Baucus	Brademas
Ambro	Beard, R.I.	Breckinridge
Anderson, Calif.	Beard, Tenn.	Brinkley
	Bedell	Brodhead
Anderson, Ill.	Beilenson	Brown, Calif.
Andrews, N.C.	Benjamin	Buchanan
Andrews, N. Dak.	Bevill	Burgener
	Biaggi	Burke, Mass.
Annunzio	Bingham	Burton, John
Applegate	Blanchard	Burton, Phillip
Ashley	Boggs	Byron
Aspin	Boland	Caputo
AuCoin	Bolling	Carney
Carr	Hollenbeck	Preyer
Carter	Holtzman	Price
Cavanaugh	Horton	Pursell
Cederberg	Howard	Quillen
Chappell	Huckaby	Rahall
Chisholm	Hughes	Railsback
Clausen, Don H.	Ire.and	Rangel
	Jenkins	Regula
Clay	Jenrette	Reuss
Cochran	Johnson, Calif.	Rhodes
Cohen	Johnson, Colo.	Richmond
Coleman	Jones, N.C.	Rinaldo
Collins, Ill.	Jones, Okla.	Rodino
Conte	Jones, Tenn.	Roe
Conyers	Jordan	Rogers
Corman	Kastenmeier	Roncalio
Cornell	Kazen	Rooney
Cornwell	Keys	Rose
Coughlin	Kildee	Rosenthal
Daniel, Dan	Kindness	Rostenkowski
Danielson	Kostmayer	Roybal
Davis	Krebs	Santini
de la Garza	LaFalce	Sarasin
Delaney	Le Fante	Sawyer
Dellums	Lederer	Scheuer
Dent	Leggett	Schroeder
Derrick	Lehman	Sebelius
Derwinski	Lent	Seiberling
Dicks	Levitas	Sharp
Dingell	Lloyd, Calif.	Sikes
Dodd	Lloyd, Tenn.	Simon
Downey	Long, La.	Sisk
Drinan	Long, Md.	Slack
Duncan, Oreg.	Lujan	Smith, Iowa
Duncan, Tenn.	Lundine	Smith, Nebr.
Eckhardt	McCloskey	Snyder
Edgar	McCormack	Solarz
Edwards, Calif.	McFall	Spellman
Edwards, Okla.	McHugh	Spence
Eilberg	McKinney	St Germain
Emery	Maguire	Staggers
Ertel	Mann	Stangeland
Evans, Colo.	Markey	Stark
Evans, Del.	Marks	Steers
Evans, Ind.	Marlenee	Stokes
Fary	Mathis	Stratton
Fascell	Mattox	Studds
Findley	Mazzoli	Thompson
Fish	Metcalfe	Thone
Fisher	Meyner	Thornton
Fithian	Mikulski	Traxler
Flippo	Mikva	Trible
Flood	Mineta	Tucker
Florio	Minish	Udall
Ford, Mich.	Mitchell, Md.	Ullman
Ford, Tenn.	Mitchell, N.Y.	Van Deerlin
Forsythe	Moakley	Vander Jagt
Fountain	Moffett	Vanik
Fowler	Mollohan	Vento
Fraser	Moorhead, Pa.	Volkmer
Fuqua	Moss	Walgren
Garcia	Mottl	Walsh
Gaydos	Murphy, Ill.	Wampler
Giaimo	Murphy, N.Y.	Watkins
Gilman	Murphy, Pa.	Waxman
Ginn	Murtha	Weaver
Glickman	Myers, John	Weiss
Gonzalez	Myers, Michael	Whalen
Goodling	Natcher	Whitehurst
Gore	Neal	Whitley
Green	Nedzi	Whitten
Gudger	Nichols	Wilson, C. H.
Hamilton	Nix	Wilson, Tex.
Hammer-schmidt	Nolan	Winn
	Nowak	Wirth
Hanley	Oakar	Wolff
Hannaford	Oberstar	Wright
Harkin	Obey	Wylie
Harris	Ottinger	Yates
Harsha	Panetta	Yatron
Hawkins	Patten	Young, Alaska
Heckler	Patterson	Young, Fla.
Hefner	Pattison	Young, Mo.
Heftel	Perkins	Zablocki
Hillis	Pickle	Zeferetti
Holland	Pressler	

NAYS—102

Archer	Collins, Tex.	Gephardt
Ashbrook	Conable	Gibbons
Badham	Corcoran	Goldwater
Bauman	Cunningham	Gradison
Bennett	D'Amours	Grassley
Blouin	Daniel, R. W.	Guyer
Brooks	Devine	Hagedorn
Broomfield	Dornan	Hall
Brown, Mich.	Edwards, Ala.	Hansen
Brown, Ohio	English	Hightower
Broyhill	Erlenborn	Holt
Burleson, Tex.	Evans, Ga.	Hubbard
Burlison, Mo.	Fenwick	Hyde
Butler	Flynt	Ichord
Clawson, Del	Foley	Jacobs
Cleveland	Frenzel	Jeffords
Kasten	Moore	Schulze
Kelly	Moorhead, Calif.	Shuster
Kemp		Skelton
Lagomarsino	Myers, Gary	Stanton
Latta	O'Brien	Steiger
Livingston	Pease	Stockman
Lott	Pettis	Stump
McClory	Pike	Symms
McDade	Poage	Taylor
McDonald	Quayle	Treen
McEwen	Roberts	Waggonner
McKay	Robinson	Walker
Madigan	Rousselot	White
Mahon	Rudd	Wiggins
Marriott	Runnels	Wilson, Bob
Martin	Ruppe	Wydler
Michel	Russo	Young, Tex.
Miller, Ohio	Ryan	
Montgomery	Satterfield	

NOT VOTING—29

Ammerman	Flowers	Pepper
Armstrong	Frey	Pritchard
Breaux	Gammage	Quie
Burke, Calif.	Harrington	Risenhoover
Burke, Fla.	Krueger	Shipley
Cotter	Leach	Skubitz
Crane	Luken	Steed
Dickinson	Meeds	Teague
Diggs	Milford	Tsongas
Early	Miller, Calif.	

The Clerk announced the following pairs:

On this vote:

Mr. Ammerman and Mr. Pepper for, with Mr. Teague against.

Mr. Cotter and Mr. Gammage for, with Mr. Breaux against.

Until further notice:

Mrs. Burke of California with Mr. Frey.
Mr. Diggs with Mr. Leach.
Mr. Early with Mr. Krueger.
Mr. Risenhoover with Mr. Dickinson.
Mr. Miller of California with Mr. Milford.
Mr. Shipley with Mr. Skubitz.
Mr. Steed with Mr. Quie.
Mr. Harrington with Mr. Pritchard.
Mr. Flowers with Mr. Luken.
Mr. Meeds with Mr. Tsongas.

So (two-thirds having voted in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

OVERSEAS CITIZENS VOTING RIGHTS ACT AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate bill (S. 703), as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. THOMPSON) that the House suspend the rules and pass the Senate bill (S. 703), as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 326, nays 78, not voting 28, as follows:

[Roll No. 796]

YEAS—326

Abdnor	Annunzio	Bedell
Addabbo	Applegate	Beilenson
Akaka	Ashley	Benjamin
Alexander	Aspin	Biaggi
Ambro	AuCoin	Bingham
Anderson, Calif.	Badham	Blanchard
	Bafalis	Blouin
Anderson, Ill.	Baldus	Boggs
Andrews, N.C.	Baucus	Boland
Andrews, N. Dak.	Beard, R.I.	Bolling
	Beard, Tenn.	Bonior

Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Buchanan
Burgener
Burke, Fla.
Burton, John
Burton, Phillip
Byron
Caputo
Carney
Carr
Carter
Cavanaugh
Cederberg
Chisholm
Clausen, Don H.
Clawson, Del
Clay
Cleveland
Cohen
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Cornell
Coughlin
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Davis
de la Garza
Delaney
Dellums
Dent
Derrick
Derwinski
Dicks
Dingell
Dodd
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
Ertel
Evans, Colo.
Evans, Del.
Evans, Ind.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fraser
Frenzel
Garcia
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Green
Gudger
Guyer
Hagedorn

Hammer-schmidt
Hamilton
Hanley
Hannaford
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Holtzman
Horton
Howard
Hughes
Hyde
Jacobs
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Jordan
Kasten
Kastenmeier
Kazen
Kemp
Keys
Kildee
Kostmayer
Krebs
LaFalce
Le Fante
Lederer
Leggett
Lehman
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, Md.
Lujan
Lundine
McClory
McCloskey
McCormack
McDade
McEwen
McFall
McHugh
McKay
McKinney
Madigan
Maguire
Mahon
Markey
Marks
Marlenee
Marriott
Mathis
Mattox
Mazzoli
Metcalfe
Meyner
Michel
Mikulski
Mikva
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moore
Moorhead, Pa.
Moss
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, John
Myers, Michael
Natcher
Neal
Nix
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta

Patten
Patterson
Pattison
Pease
Perkins
Pickle
Pressler
Preyer
Price
Pursell
Quayle
Quillen
Railsback
Rangel
Regula
Reuss
Rhodes
Richmond
Rinaldo
Rodino
Roe
Rogers
Rooney
Rose
Rosenthal
Rostenkowski
Roybal
Ruppe
Russo
Ryan
Santini
Sarasin
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shuster
Simon
Sisk
Skubitz
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
St Germain
Staggers
Stangeland
Stanton
Stark
Steers
Steiger
Stockman
Stokes
Stratton
Studds
Thompson
Thone
Thornton
Traxler
Trible
Tucker
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Walgren
Walker
Walsh
Waxman
Weaver
Weiss
Whalen
White
Whitehurst
Whitley
Whitten
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

NAYS—78

Archer
Ashbrook
Barnard
Bauman
Bennett
Bevill
Brown, Ohio
Broyhill
Burleson, Tex.
Burlison, Mo.
Butler
Chappell
Cochran
Collins, Tex.
Cornwell
Cunningham
Devine
Edwards, Okla.
English
Erlenborn
Evans, Ga.
Flippo
Flynt
Fowler
Fuqua
Gephardt
Goldwater
Grassley
Hall
Hansen
Hubbard
Huckaby
Ichord
Ireland
Jenkins
Jenrette
Jones, Okla.
Kelly
Kindness
Lagomarsino
Latta
Livingston
Long, La.
Lott
McDonald
Mann
Martin
Miller, Ohio
Montgomery
Moorhead, Calif.
Mottl
Myers, Gary
Nichols
O'Brien
Pettis
Pike
Poage
Rahall
Roberts
Robinson
Roncalio
Rousselot
Rudd
Runnels
Satterfield
Sikes
Skelton
Slack
Stump
Symms
Taylor
Treen
Volkmer
Waggonner
Wampler
Watkins
Wiggins
Young, Alaska

NOT VOTING—28

Ammerman
Armstrong
Burke, Calif.
Burke, Mass.
Cotter
Crane
Dickinson
Diggs
Early
Flowers
Frey
Gammage
Harrington
Krueger
Leach
Luken
Meeds
Milford
Miller, Calif.
Nedzi
Pepper
Pritchard
Quie
Risenhoover
Shipley
Steed
Teague
Tsongas

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Frey.
Mr. Pepper with Mr. Leach.
Mr. Teague with Mr. Quie.
Mr. Cotter with Mr. Pritchard.
Mr. Gammage with Mr. Dickinson.
Mr. Krueger with Mr. Milford.
Mr. Shipley with Mr. Tsongas.
Mr. Diggs with Mr. Luken.
Mr. Miller of California with Mr. Flowers.
Mr. Steeds with Mr. Harrington.
Mr. Early with Mr. Risenhoover.
Mrs. Burke of California with Mr. Nedzi.
Mr. Meeds with Mr. Crane.

Mr. FOUNTAIN changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the Senate bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FARMER-TO-CONSUMER DIRECT MARKETING ACT AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 12101, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. FOLEY) that the House suspend the rules and pass the bill H.R. 12101, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 236, nays 163, not voting 33, as follows:

[Roll No. 797]

YEAS—236

Abdnor
Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Annunzio
Applegate
Ashley
Aspin
AuCoin
Baldus
Barnard
Baucus
Beard, R.I.
Bedell
Beilenson
Benjamin
Biaggi
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonior
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Brown, Calif.
Burlison, Mo.
Burton, John
Burton, Phillip
Byron
Caputo
Carney
Carr
Cavanaugh
Chisholm
Clay
Cochran
Cohen
Coleman
Collins, Ill.
Conyers
Corman
Cornell
Cornwell
D'Amours
Daniel, Dan
Danielson
Davis
de la Garza
Dellums
Dent
Derrick
Dicks
Dingell
Dodd
Downey
Drinan
Eckhardt
Edgar
Edwards, Calif.
Eilberg
Emery
Ertel
Evans, Colo.
Evans, Ind.
Fary
Fascell
Fisher
Fithian
Flood
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fowler
Fraser
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Gonzalez
Gore
Green
Gudger
Hamilton
Hanley
Hannaford
Harkin
Harris
Hawkins
Heckler
Hightower
Holland
Holtzman
Howard
Huckaby
Hughes
Jeffords
Jenkins
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Jordan
Kastenmeier
Kazen
Keys
Kildee
Kostmayer
Krebs
LaFalce
Le Fante
Lederer
Leggett
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lundine
McCormack
McHugh
McKay
Maguire
Mahon
Markey
Marlenee
Mathis
Mattox
Metcalfe
Meyner
Mikulski
Mikva
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Pa.
Moss
Murphy, N.Y.
Murphy, Pa.
Myers, Michael
Natcher
Neal
Nix
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patterson
Pattison
Perkins
Pickle
Pressler
Price
Pursell
Quayle
Rahall
Rangel
Reuss
Richmond
Rinaldo
Rodino
Roe
Rogers
Roncalio
Rooney
Rose
Rosenthal
Roybal
Ryan
Sarasin
Scheuer
Schroeder
Sebelius
Seiberling
Sharp
Sikes
Simon
Sisk
Skelton
Skubitz
Smith, Iowa
Solarz
Spellman
Spence
St Germain
Staggers
Stark
Stokes
Studds
Thompson
Thornton
Traxler
Tucker
Udall
Ullman
Van Deerlin
Vanik
Vento
Wampler
Waxman
Weaver
Weiss
Whalen
White
Whitten
Wilson, C. H.
Wilson, Tex.
Wirth
Wright
Yates
Yatron
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

NAYS—163

Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bennett
Bevill
Broomfield
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Carter
Chappell
Clausen, Don H.
Clawson, Del
Cleveland
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Cunningham
Daniel, R. W.
Delaney
Derwinski
Devine
Dornan
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
English
Erlenborn
Evans, Del.
Evans, Ga.
Fenwick
Findley
Fish
Flippo
Flynt
Forsythe
Fountain
Frenzel
Fuqua
Gibbons
Goldwater
Goodling
Gradison
Grassley
Guyer
Hagedorn
Hall
Hammer-schmidt
Hansen
Harsha
Hefner
Heftel
Hillis
Hollenbeck
Holt
Horton
Hubbard
Hyde
Ichord
Ireland
Jacobs
Johnson, Colo.
Jones, Okla.
Kasten
Kelly
Kemp
Kindness
Lagomarsino
Latta
Lehman
Lent
Livingston
Lott
Lujan
McClory
McCloskey
McDade

McDonald	Poage	Stratton
McEwen	Preyer	Stump
McKinney	Railsback	Symms
Madigan	Regula	Taylor
Mann	Rhodes	Thone
Marks	Roberts	Treen
Marriott	Robinson	Trible
Martin	Rostenkowski	Vander Jagt
Mazzoli	Rousselot	Volkmer
Michel	Rudd	Waggonner
Miller, Ohio	Runnels	Walgren
Mollohan	Ruppe	Walker
Moorhead, Calif.	Russo	Walsh
	Santini	Watkins
Mottl	Satterfield	Whitehurst
Murphy, Ill.	Sawyer	Whitley
Murtha	Schulze	Wiggins
Myers, Gary	Shuster	Wilson, Bob
Myers, John	Slack	Winn
Nichols	Smith, Nebr.	Wolff
O'Brien	Snyder	Wydler
Patten	Stangeland	Wylie
Pease	Stanton	Young, Alaska
Pettis	Steiger	Young, Fla.
Pike	Stockman	

NOT VOTING—33

Ammerman	Flowers	Nedzi
Armstrong	Frey	Pepper
Burke, Calif.	Gammage	Pritchard
Burke, Mass.	Harrington	Quie
Cederberg	Krueger	Quillen
Cotter	Leach	Risenhoover
Crane	Luken	Shipley
Dickinson	McFall	Steed
Diggs	Meeds	Steers
Duncan, Oreg.	Milford	Teague
Early	Miller, Calif.	Tsongas

The Clerk announced the following pairs:

On this vote:

Mr. Ammerman and Mr. Pepper for, with Mr. Teague against.

Mr. Cotter and Mrs. Burke of California for, with Mr. Leach against.

Mr. Early and Mr. Nedzi for, with Mr. Gammage against.

Until further notice:

Mr. Shipley with Mr. Cederberg.
Mr. Risenhoover with Mr. Frey.
Mr. Krueger with Mr. Luken.
Mr. Diggs with Mr. Milford.
Mr. Meeds with Mr. Crane.
Mr. McFall with Mr. Dickinson.
Mr. Steed with Mr. Duncan of Oregon.
Mr. Miller of California with Mr. Flowers.
Mr. Harrington with Mr. Quie.
Mr. Tsongas with Mr. Quillen.
Mr. Steers with Mr. Pritchard.

Mr. STRATTON changed his vote from "yea" to "nay."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

AUTHORIZING APPROPRIATIONS FOR MILITARY RESERVATIONS AND PUBLIC LANDS CONSERVATION PROGRAMS

Mr. LEGGETT. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 13745) to authorize appropriations to carry out conservation programs on military reservations and public lands during fiscal years 1979, 1980, and 1981.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. FORSYTHE. Mr. Speaker, reserving the right to object, I reserve the right to object, Mr. Speaker, because this is a bill that the House did pass. It passed with a substantial vote. It is an extension of the Sikes Act, a very important act for the conservation of game on Federal Government lands. On the Senate side amendments were added which caused it to be vetoed by the White House. We have now brought the bill back with the House language and in a fashion that I believe can now be accepted by the President. I believe that we do also have concurrence in the Senate to again accept the House-passed language in this bill.

I would be happy to yield to either my chairman, the gentleman from California (Mr. LEGGETT), or the gentleman from Florida (Mr. SIKES) if they have additional comments.

I yield to the gentleman from California (Mr. LEGGETT).

Mr. LEGGETT. Mr. Speaker, I thank my colleague for yielding.

This is legislation that this House passed before the President vetoed the bill, because the authorization was too large and also because certain mandatory requirements were imposed on the Executive to report back to the Congress in the event that this program was not funded. These two objectionable features of the vetoed bill have been removed from the existing legislation.

We are funding more for the Department of the Interior, the Department of Agriculture, and the Department of Defense than are included in existing law, but less than was included in the vetoed bill. It is less than $27 million.

This was the understanding with the administration, that they would support a bill which included an authorization of less than $27 million.

I believe that everybody supports this legislation in its current form. It did pass out of our subcommittee and the full committee unanimously when it was last heard.

Mr. FORSYTHE. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Florida, (Mr. SIKES).

Mr. SIKES. Mr. Speaker, I want to thank my distinguished colleagues, Mr. MURPHY, chairman of the Merchant Marine and Fisheries Committee; Mr. LEGGETT, chairman of the Subcommittee on Fisheries, Wildlife Conservation, and the Environment; Mr. DINGELL, the ranking majority member; and Mr. FORSYTHE, the ranking minority member, for their assistance in bringing the bill H.R. 13745 to the floor today. All are among the cosponsors of the bill. In particular do I express appreciation to my dear friend of many years, the distinguished gentleman from Michigan (Mr. DINGELL) for his constant efforts to add to the effectiveness of this legislation and for his contribution to the content of the bill.

The purpose of this legislation is to extend and increase the authorization of appropriations for the Sikes Act to carry out fish and wildlife conservation and rehabilitation, and public outdoor recreation programs on military reservations and on certain other federally owned lands during fiscal years 1979, 1980, and 1981.

A bill to extend this authorization passed both the House and Senate earlier this year but, because of restrictions added by Senate amendments, the President vetoed the measure. The bill before us today, H.R. 13745, is intended to overcome the President's objections to the legislation and was prepared after consultation with members of his staff.

This legislation has been in effect for many years. The original Sikes Act of 1960, known as Public Law 86–97, authorized fish and wildlife programs on military lands. Its success in these programs led to the 1974 amendments which extended the act's provisions to other public lands including national forests, national resource lands, national energy lands, and National Aeronautics and Space Administration lands.

An indication of the importance which is now ascribed to the bill lies in the fact that, although the act originally called for 25.4 million acres of land on military reservations, the total scope has now expanded to 659 million acres. In many areas the bill has been self-financing through fees for use permits. There are areas, however, where the need for conservation and recreation programs simply cannot be met except by direct Federal funding. The authorization for funds provided in this bill is to ensure more general application of the act.

In addition to emphasis on improvement and greater utilization of recreation facilities, the act directs that comprehensive plans for fish and wildlife habitat improvements on eligible lands be developed and implemented by Federal agencies through cooperative agreements with State fish and wildlife agencies.

There are many who see the value of the program and have worked to take advantage of its opportunities but much more could be accomplished if we have a greater degree of cooperation from Government agencies that are affected. The public will be the beneficiary. With the growing diversity of outdoor recreation pursuits and with energy and economic problems forcing many people to seek recreation nearer home, I am confident the bill has served a useful purpose. Obviously, the first requirement is to extend the act. I feel there has been growing recognition of its value and I trust with the continued support of the committee and the Congress we can make this legislation an even more useful instrument in the years ahead.

Mr. FORSYTHE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. LEGGETT)?

There was no objection.

The Clerk read the bill as follows:

H.R. 13745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sikes Act Amendments of 1978".

SEC. 2. Section 106 of the Act of September 15, 1960 (16 U.S.C. 670f(b)) is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) There are authorized to be appropriated to the Secretary of Defense not to exceed $1,500,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981, to carry out this title, including the enhancement of fish

and wildlife habitat and the development of public recreation and other facilities. The Secretary of Defense shall, to the greatest extent practicable, enter into agreements to utilize the services, personnel, equipment, and facilities, with or without reimbursement, of the Secretary of the Interior in carrying out the provisions of this section.

"(c) There are authorized to be appropriated to the Secretary of the Interior not to exceed $3,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981, to carry out such functions and responsibilities as the Secretary may have under cooperative plans to which such Secretary is a party under this section, including those for the enhancement of fish and wildlife habitat and the development of public recreation and other facilities.".

SEC. 3. Section 209 of the Act of September 15, 1960 (16 U.S.C. 670o), is amended to read as follows:

"SEC. 209. (a) There are authorized to be appropriated the sum of $10,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981, to enable the Secretary of the Interior to carry out his functions and responsibilities under this title, including data collection, research, planning, and conservation and rehabilitation programs on public lands. Such funds shall be in addition to those authorized for wildlife, range, soil, and water management pursuant to section 318 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1748), or other provisions of law.

"(b) There are authorized to be appropriated the sum of $12,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981, to enable the Secretary of Agriculture to carry out his functions and responsibilities under this title. Such funds shall be in addition to those provided under other provisions of law. In requesting funds under this subsection the Secretary shall take into account fish and wildlife program needs, including those for projects, identified in the State comprehensive plans as contained in the program developed pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1601–1610).".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ARMED FORCES SURVIVOR BENEFITS

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3702) to amend title 10, United States Code, "to make certain changes in the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan as authorized by chapter 73 of that title, and for other purposes", with the Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

TITLE I—ANNUITIES UNDER SURVIVOR BENEFIT PLAN

DEFINITION OF BASE AMOUNT

SEC. 101. Section 1447(2) of title 10, United States Code, is amended to read as follows:

"(2) 'Base amount' means—

"(A) in the case of a person who dies after becoming entitled to retired or retainer pay, the amount of monthly retired or retainer pay to which the person—

"(i) was entitled when he became eligible for that pay; or

"(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list;

"(B) in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming sixty years of age, the amount of retired pay for which the person would have been eligible—

"(i) if he had been sixty years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title, or

"(ii) upon becoming sixty years of age (if he had lived to that age), for purposes of an annuity to become effective on the sixtieth anniversary of his birth in accordance with a designation made under section 1448 (e) of this title; or

"(C) any amount which is less than the amount otherwise applicable under clause (A) or (B) with respect to an annuity provided under the Plan and which is designated by the person providing the annuity on or before (i) the first day for which he becomes eligible for retired or retainer pay, in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, or (ii) the end of the ninety-day period beginning on the date on which he receives the notification required by section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, but not less than $300;

as increased from time to time under section 1401a of this title.".

APPLICATION OF SURVIVOR BENEFIT PLAN

SEC. 102. (a) Subsection (a) of section 1448 of title 10, United States Code, is amended to read as follows:

"(a)(1) The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

"(A) Persons entitled to retired or retainer pay.

"(B) Persons who would be eligible for retired pay under chapter 67 of this title but for the fact that they are under sixty years of age.

"(2) The Plan applies—

"(A) to a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired or retainer pay, unless he elects not to participate in the Plan before the first day for which he is eligible for that pay, and

"(B) to a person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the ninety-day period beginning on the date he receives such notification.

A person described in subclauses (i) and (ii) of clause (B) who does not elect to participate in the Plan before the end of the ninety-day period referred to in such clause shall remain eligible, upon reaching sixty years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

"(3)(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that election.

"(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elect to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that action.

"(4)(A) An election under paragraph (2)(A) not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay.

"(B) An election under paragraph (2)(B) to participate in the Plan is irrevocable if not revoked before the end of the ninety-day period referred to in such paragraph.

"(5) A person who is not married when he becomes eligible to participate in the Plan but who later marries or acquires a dependent child, may elect to participate in the Plan, but his election must be written, signed by him, and receivable by the Secretary concerned within one year after he marries or acquires that dependent child. Such an election may not be revoked. His election is effective as of the first day of the first calendar month following the month in which his election is received by the Secretary concerned. In the case of a person who is eligible to participate in the Plan under paragraph (1)(B), such an election shall include a designation under subsection (e).".

(b) Subsection (b) of such section is amended—

(1) by striking out "entitled to retired or retainer pay" and inserting in lieu thereof "eligible to participate in the Plan"; and

(2) by adding at the end thereof the following new sentence: "In the case of a person who is eligible to participate in the Plan under subsection (a)(1)(B), such an election shall include a designation under subsection (e).".

(c) Such section is further amended by adding at the end thereof the following new subsection:

"(e) In any case in which an election to participate in the Plan provides for a designation under this subsection, the person making the election shall designate whether, in the event he dies before becoming sixty years of age, the annuity provided shall become effective on the day after the date of his death or on the sixtieth anniversary of his birth.".

PAYMENT OF ANNUITY

SEC. 103. Section 1450 of title 10, United States Code is amended—

(1) by inserting "(or on such other day as he may provide under subsection (j))" in subsection (a) after "of this title applies" the first time such words appear therein; and

(2) by adding at the end thereof the following new subsections:

"(j) An annuity elected by any person eligible to participate in the Plan by virtue of section 1448(a)(1)(B) shall be effective in accordance with the designation made by such person under section 1448(e).

"(k) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411(a) of title 38 due to remarriage of the spouse after reaching age sixty, such annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under subsection (c) of this section if the amount of any refund made under subsection (e) of this section is repaid.".

AMOUNT OF ANNUITY

SEC. 104. (a) The first sentence of subsection (a) of section 1451 of title 10, United States Code, is amended to read as follows: "The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

"(1) 55 percent of the base amount, if the annuity is provided under eligibility to provide an annuity under section 1448(a)(1)(A) of this title, or

"(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, if the annuity is provided under eligibility to provide an annuity under section 1448(a)(1)(B) of this title.".

(b) The last sentence of subsection (a) of section 1451 of such title is amended to read as follows: "For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work.".

(c) Subsection (b) of such section is amended to read as follows:

"(b) The monthly annuity payable under section 1450(a)(4) of this title shall be—

"(1) 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by a person eligible to participate in the Plan by virtue of section 1448(a)(1)(A) of this title, or

"(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the retired pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by a person eligible to participate in the Plan by virtue of section 1448(a)(1)(B) of this title.

A person who provides an annuity which is determined in accordance with clause (2) and who dies before becoming sixty years of age and is otherwise entitled to retired pay shall be considered to have been entitled to retired pay, for the purpose of such clause, at the time of his death, and the retired pay of such person for the purpose of such clause shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity is to become effective in accordance with the designation of such person under section 1448(e) of this title.".

(d) Such section is further amended by adding at the end thereof the following new subsection:

"(d) The percentage to be applied by the Secretary of Defense in determining the amount of an annuity under subsection (a)(2) or (b)(2) shall be 55 percent reduced by such amount as the Secretary shall by regulation prescribe, taking into consideration the age of the person electing to provide the annuity at the time of such election, the difference in age between such person and the beneficiary of the annuity, whether such person provided for the annuity to become effective (in the event he died before becoming sixty years of age) on the day after his death or on the sixtieth anniversary of his birth, appropriate group annuity tables, and such other factors as the Secretary considers relevant.".

SEC. 105. Section 4 of the Act entitled "An Act to amend chapter 73 of title 10, United States Code, to establish a Survivor Benefit Plan, and for other purposes", approved September 21, 1972 (Public Law 92-425), is amended—

(a) by striking out "$2,100" in subsections (a)(3) and (b) and inserting in lieu thereof "$2,340"; and

(b) by adding at the end thereof the following new subsection:

"(c) If at any time after the date of the enactment of this subsection the maximum annual income limitation provided for in section 541(b) of title 38, United States Code, is increased by any amount, the maximum annual income limitation set forth in subsection (a)(3) of this section and the dollar figure set forth in the first sentence of subsection (b) of this section (relating to the computation of annuities payable under this section) shall be increased by a like amount effective on the date on which any such increase with respect to such section 541(b) first takes effect.".

REDUCTION IN RETIRED PAY

SEC. 106. (a) The first sentence of subsection (a) of section 1452 of title 10, United States Code, is amended by striking out "shall be reduced each month" and all that follows in such sentence and inserting in lieu thereof "shall be reduced each month—

"(1) by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount, if the person is providing an annuity under eligibility to provide an annuity under section 1448(a)(1)(A) of this title; or

"(2) by an amount prescribed under regulations of the Secretary of Defense, if the person elects an annuity by virtue of eligibility under section 1448(a)(1)(B).".

(b) Subsection (c) of such section is amended to read as follows:

"(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced—

"(1) in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, by 10 percent plus 5 percent for each full five years the individual designated is younger than that person; or

"(2) in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, by an amount prescribed under regulations of the Secretary of Defense.

However, the total reduction under clause (1) may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this section shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f) of this title.".

NOTIFICATION

SEC. 106. Section 1331(d) of title 10, United States Code, is amended by adding at the end thereof the following new sentence: "Such notice shall include notification of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the effects of such elections.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 107. (a) The first sentence of section 1449 of title 10, United States Code, is amended by striking out "the first sentence of subsection (a), or subsection (b)," and inserting in lieu thereof "subsection (a)(2) or (b)".

(b) Section 1450(d) of such title is amended by striking out "section 8339(i)" and inserting in lieu thereof "section 8339(j)".

(c) Section 1450(f) of such title is amended by striking out "the last three sentences of section 1448(a)" and inserting in lieu thereof "section 1448(a)(5)".

TRANSITION

SEC. 108. With respect to any individual who—

(1) is eligible for retired pay under chapter 67 of title 10, United States Code, on the date of the enactment of this Act but for the fact that such individual is under sixty years of age, or

(2) receives, before the end of the nine-month period beginning on the date of the enactment of this Act, a notification that such individual has completed the years of service required for eligibility for such retired pay.

the ninety-day period referred to in section 1447(2)(C) of title 10, United States Code (as amended by section 101 of this Act), and in sections 1448(a)(2) and 1448(a)(4)(B) of title 10, United States Code (as amended by section 102(a) of this Act), shall be considered to end at the end of the one-year period beginning on the date of the enactment of this Act.

EFFECTIVE DATES

SEC. 109. (a) Except as provided by subsection (b), the provisions of this title and the amendments made by this title shall take effect on October 1, 1978, or the date of the enactment of this Act, whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

(b) The amendment made by section 106 shall apply to notifications under section 1331(d) of title 10, United States Code, on and after the date of the enactment of this Act.

TITLE II—MEDICAL AND DENTAL CARE

SEC. 201. (a) Section 1076 of title 10, United States Code, is amended by (1) redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and (2) adding after subsection (b) a new subsection (c) as follows:

"(c) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare a dependent of a member or former member who—

"(1) is deceased,

"(2) had, prior to his death, completed the years of service required for eligibility for retired pay under chapter 67 of this title but had not, because of age, become entitled to such pay, and

"(3) had elected, prior to death, to participate in the Survivor Benefit Plan provided for under subchapter II of chapter 73 of this title,

may, upon request, on or after the date on which such member or former member would have become entitled to retired pay under chapter 67 of this title had such member or former member attained sixty years of age and made timely application for such retired pay, be given the medical and dental care prescribed in section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.".

(b) Section 1086(c)(1) of such title is amendeded to read as follows:

"(1) Persons covered by sections 1074(b) and 1076 (b) and (c) of this title, except persons covered by section 1072(2)(F) of this title.".

(c) The first sentence of section 1087 of such title is amended by inserting "and (c)" after "1076(b)".

SEC. 202. The amendment made by section 201 shall become effective on October 1, 1978, or the date of the enactment of this Act, whichever is later.

TITLE III—RETIRED SERVICEMEN'S FAMILY PROTECTION PLAN

SEC. 301. (a) Section 1434(a) of title 10, United States Code, is amended by—

(1) striking out "or remarries" in clause (1) and inserting in lieu thereof "or the spouse remarries prior to age sixty"; and

(2) striking out "or remarriage of that spouse" in clause (3) and inserting in lieu thereof "of that spouse or the remarriage of that spouse prior to age sixty".

(b) Section 1434 of title 10, United States Code, is further amended by adding at the end thereof a new subsection as follows:

"(c) Whenever retired or retainer pay is increased under section 1401(a) of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased at the same time by the same total per centum.".

SEC. 302. Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of enactment of this Act to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act is enacted, or as of October 1, 1978, whichever is later, by the total per centum that retired or retainer pay has been increased under section 1401a of that title since September 21, 1972.

SEC. 303. No benefits shall accrue to any person by virtue of the enactment of this Act for any period prior to the first day of the first calendar month following the month in which this Act is enacted or prior to October 1, 1978, whichever is later.

Mr. NICHOLS (during the readings). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the House amendment to the Senate amendment, as follows:

[House amendment to the Senate amendment to H.R. 3702]

In lieu of the matter proposed to be inserted by the amendment of the Senate, insert the following:

That this Act may be cited as the "Uniformed Services Survivors' Benefits Amendments of 1978".

TITLE I—ANNUITIES UNDER RETIRED SERVICEMEN'S FAMILY PROTECTION PLAN

SEC. 101. (a) Section 1434 of title 10, United States Code, is amended—

(1) by striking out "or remarries" in subsection (a)(1) and inserting in lieu thereof "or, if the spouse remarries before age 60, when the spouse remarries";

(2) by striking out "or remarriage of that spouse" in subsection (a)(3) and inserting in lieu thereof "of that spouse or the remarriage of that spouse before age 60"; and

(3) by adding at the end thereof the following new subsection:

"(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.".

(b) No benefits shall accrue to any person by virtue of the amendments made by subsection (a) for any period prior to the first day of the first calendar month following the month in which this Act is enacted or October 1, 1978, whichever is later.

SEC. 102. Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of the enactment of this Act to spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act is enacted, or as of October 1, 1978, whichever is later, by the percentage increase in retired and retainer pay under section 1401a of that title since September 21, 1972.

TITLE II—ANNUITIES UNDER SURVIVOR BENEFIT PLAN

DEFINITION OF BASE AMOUNT

SEC. 201. Section 1447(2) of title 10, United States Code, is amended to read as follows:

"(2) 'Base amount' means—

"(A) in the case of a person who dies after becoming entitled to retired or retainer pay, the amount of monthly retired or retainer pay to which the person—

"(i) was entitled when he became eligible for that pay; or

"(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list;

"(B) in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—

"(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

"(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title; or

"(C) any amount which is less than the amount otherwise applicable under clause (A) or (B) with respect to an annuity provided under the Plan and which is designated by the person providing the annuity on or before (i) the first day for which he becomes eligible for retired or retainer pay, in the case of a person providing an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, or (ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, in the case of a person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, but not less than $300;

as increased from time to time under section 1401a of this title.".

APPLICATION OF SURVIVOR BENEFIT PLAN

SEC. 202. (a) Subsection (a) of section 1448 of title 10, United States Code, is amended to read as follows:

"(a)(1) The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

"(A) Persons entitled to retired or retainer pay.

"(B) Persons who would be eligible for retired pay under chapter 67 of this title but for the fact that they are under 60 years of age.

"(2) The Plan applies—

"(A) to a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired or retainer pay, unless he elects not to participate in the Plan before the first day for which he is eligible for that pay; and

"(B) to a person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.

A person described in subclauses (i) and (ii) of clause (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in such clause shall remain eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

"(3)(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that election.

"(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that action.

"(4)(A) An election under paragraph (2)(A) not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay.

"(B) An election under paragraph (2)(B) to participate in the Plan is irrevocable if not revoked before the end of the 90-day period referred to in such paragraph.

"(5) A person who is not married when he becomes eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan, but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries or acquires that dependent child. Such an election may not be revoked. His election is effective as of the first day of the first calendar month following the month in which his election is received by the Secretary concerned. In the case of a person providing an annuity by virtue of eligibility under paragraph (1)(B), such an election shall include a designation under subsection (e).".

(b) Subsection (b) of such section is amended—

(1) by striking out "entitled to retired or retainer pay" and inserting in lieu thereof "eligible to participate in the Plan"; and

(2) by adding at the end thereof the following new sentence: "In the case of a person providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B), such an election shall include a designation under subsection (e).".

(c) Such section is further amended by adding at the end thereof the following new subsection:

"(e) In any case in which a person electing to participate in the Plan is required to make a designation under this subsection, the person making such election shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on the day after the date of his death or on the 60th anniversary of his birth.".

PAYMENT OF ANNUITY

SEC. 203. Section 1450 of title 10, United States Code, is amended—

(1) by inserting "(or on such other day as he may provide under subsection (j))" in subsection (a) after "of this title applies" the first place it appears therein; and

(2) by adding at the end thereof the following new subsections:

"(j) An annuity elected by any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title shall be effective in accordance with the designation made by such person under section 1448(e) of this title.

"(k) If a widow or widower whose annuity has been adjusted under subsection (c) subsequently loses entitlement to compensation under section 411(a) of title 38 because of the remarriage of such widow or widower, and if at the time of such remarriage such widow or widower is 60 years of age or more, the amount of the annuity of such widow or widower shall be readjusted, effective on the effective date of such loss of compensation, to the amount of the annuity which would be in effect with respect to such widow or widower if the adjustment under subsection (c) had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).".

AMOUNT OF ANNUITY

SEC. 204. (a) The first sentence of subsection (a) of section 1451 of title 10, United States Code, is amended to read as follows: "The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

"(1) 55 percent of the base amount, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title, or

"(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.".

(b) The last sentence of subsection (a) of such section is amended to read as follows: "For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work.".

(c) Subsection (b) of such section is amended to read as follows:

"(b) The monthly annuity payable under section 1450(a)(4) of this title shall be—

"(1) 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title; or

"(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the retired pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

A person who provides an annuity which is determined in accordance with clause (2) and who dies before becoming 60 years of age and is otherwise entitled to retired pay shall be considered to have been entitled to retired pay, for the purpose of such clause, at the time of his death, and the retired pay of such person for the purpose of such clause shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity is to become effective in accordance with the designation of such person under section 1448(e) of this title.".

(d) Such section is further amended by adding at the end thereof the following new subsection:

"(d) The percentage to be applied by the Secretary of Defense in determining the amount of an annuity under subsection (a)(2) or (b)(2) shall be 55 percent reduced by such amount as the Secretary shall by regulation prescribe, taking into consideration the age of the person electing to provide the annuity at the time of such election, the difference in age between such person and the beneficiary of the annuity, whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth, appropriate group annuity tables, and such other factors as the Secretary considers relevant.".

REDUCTION IN RETIRED PAY

SEC. 205. (a) The first sentence of subsection (a) of section 1452 of title 10, United States Code, is amended by striking out "shall be reduced each month" and all that follows in such sentence and inserting in lieu thereof "shall be reduced each month—

"(1) by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount, if the person is providing an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title; or

"(2) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing an annuity by virtue of eligibility under section 1448(a)(1)(B).".

(b) Subsection (c) of such section is amended to read as follows:

"(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced—

"(1) in the case of a person providing the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, by 10 percent plus 5 percent for each full five years the individual designated is younger than that person; or

"(2) in the case of a person providing the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, by an amount prescribed under regulations of the Secretary of Defense.

However, the total reduction under clause (1) may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this section shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f) of this title.".

NOTIFICATION

SEC. 206. Section 1331(d) of title 10, United States Code, is amended by adding at the end thereof the following new sentence: "Such notice shall include notification of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the effects of such elections.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 207. (a) The first sentence of section 1449 of title 10, United States Code, is amended by striking out "the first sentence of subsection (a), or subsection (b)," and inserting in lieu thereof "subsection (a)(2) or (b)".

(b) Section 1450(d) of such title is amended by striking out "section 8339(i)" and inserting in lieu thereof "section 8339(j)".

(c) Section 1450(f) of such title is amended by striking out "the last three sentences of section 1448(a)" and inserting in lieu thereof "section 1448(a)(5)".

TRANSITION

SEC. 208. With respect to any individual who—

(1) would be eligible for retired pay under chapter 67 of title 10, United States Code, on the effective date of this title but for the fact that such individual is under 60 years of age; or

(2) receives, before the end of the nine-month period beginning on the effective date of this title, a notification that such individual has completed the years of service required for eligibility for such retired pay;

the 90-day period referred to in section 1447(2)(C) of title 10, United States Code (as amended by section 201 of this Act), and in sections 1448(a)(2) and 1448(a)(4)(B) of title 10, United States Code (as amended by section 202(a) of this Act), shall be considered to end at the end of the one-year period beginning on the effective date of this title.

MINIMUM INCOME FOR CERTAIN SURVIVORS

SEC. 209. Section 4 of the Act entitled "An Act to amend chapter 73 of title 10, United States Code, to establish a Survivor Benefit Plan, and for other purposes", approved September 21, 1972 (10 U.S.C. 1448 note), is amended—

(1) by striking out "$2,100" in subsections (a)(3) and (b) and inserting in lieu thereof "$2,340"; and

(2) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection (c):

"(c) The amounts specified in subsections (a)(3) and (b) shall be increased by the Secretary concerned whenever there is an increase in the limitation on annual income for purposes of eligibility for benefits under section 541(b) of title 38, United States Code. Any such increase under the preceding sentence shall be in the same amount, and shall have the same effective date, as such increase in limitation on annual income.".

EFFECTIVE DATES

SEC. 210. (a) Except as provided in subsection (b), the provisions of this title and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act, whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

(b) The amendment made by section 206 shall apply to notifications under section 1331(d) of title 10, United States Code, after the date of the enactment of this Act.

TITLE III—MEDICAL AND DENTAL CARE

SEC. 301. Subsection (b) of section 1076 of title 10, United States Code, is amended to read as follows:

"(b) Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member—

"(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

"(2) who died before attaining age 60 and at the time of his death (A) would have been eligible for retired pay under chapter 67 of this title but for the fact that he was under 60 years of age, and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.".

SEC. 302. The amendment made by section 301 shall become effective on October 1, 1978, or on the date of the enactment of this Act, whichever is later.

Mr. NICHOLS (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate

amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

Mr. MITCHELL of New York. Mr. Speaker, reserving the right to object, I do so only for the purpose of affording the chairman of the Subcommittee on Military Compensation an opportunity to explain the import of these amendments.

Mr. NICHOLS. Mr. Speaker, if the gentleman will yield the Senate has acted on H.R. 3702, improvements to the survivor benefit plan for military retirees. The Senate deleted some of the most beneficial changes such as the reduction in the social security offset from 100 to 50 percent and the recalculation of the member's contribution. However, many significant provisions remain. And the Senate amended the bill to incorporate the provisions of H.R. 11797, a bill that passed the House and extends survivor benefit plan protection to reservists before they reach age 60.

The House amendments are simply clarifying, stylistic, and technical in nature. There are no substantive changes.

The Senate approved only some of the provisions of H.R. 3702 as it passed the House:

First. CPI adjustments for retired serviceman's family protection plan widows whose retired spouse died before having the full opportunity to elect into the current survivor benefit plan;

Second. Reinstatement of full survivor benefit plan payments for a widow receiving DIC payments who remarries after age 60; and

Third. Elimination of the social security offset for widows over age 62 who are ineligible for social security benefits because of their social security covered employment.

The Senate added two provisions not originally in the House-passed bill:

First. Continuation of RSFPP annuities in the case of a widow who remarries after age 60; and

Second. Increase in the benefits available under the minimum income provision of the survivor benefit plan.

The Senate did not approve other provisions in H.R. 3702 as it passed the House:

First. Reduction of the social security offset from 100 percent of the social security attributable to military service to 50 percent;

Second. Modification of the formula for calculating the member's contribution;

Third. Elimination of the social security offset when there is a widow and one child and when the widow is receiving social security benefits based on her own earnings; and

Fourth. Elimination of the amount of social security offset based on periods of active duty of less than 30 days when the reservist received a refund of social security contributions.

One of the major reasons for not acting favorably on these last four provisions was the high budget cost between now and the year 2000, and the lack of actuarial calculations concerning the present status of the plan. The Senate report requires the Department of Defense to provide this latter information by February of next year. I strongly concur in this request and would hope that the Department would accomplish this task as soon as possible so that other provisions might be considered early in the next Congress.

The bill, H.R. 11797, extending survivor benefit protection to reservists who have completed 20 years of creditable service but who have not yet reached age 60, was adopted by the Senate with an amendment to delay receipt of medical care to the time the member would have reached age 60. The House-passed bill conferred medical benefits at the same time as the annuity began. The Senate included the provisions of H.R. 11797 as an amendment to H.R. 3702.

I am certain that the original sponsors of H.R. 3702, the gentleman from New York (Mr. STRATTON)—who managed H.R. 3702 admirably on the floor initially—and the gentleman from California (Mr. BOB WILSON)—who is one of the most effective proponents of the survivor benefit plan—are particularly disappointed in the Senate action. Although I am, of course, also disappointed that all of the provisions of H.R. 3702 were not accepted by the Senate, I believe that they are adamant in wanting to wait for further actuarial information.

Mr. MITCHELL of New York. Mr. Speaker, I strongly support the objectives of the bill.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama that the House amendment to the Senate amendment be considered as read and printed in the RECORD?

There was no objection.

The SPEAKER pro tempore. Is there objection to the first request of the gentleman from Alabama (Mr. NICHOLS)?

There was no objection.

A motion to reconsider was laid on the table.

PROVIDING FOR REFUND OF TAX ON DISTILLED SPIRITS, WINES, RECTIFIED PRODUCTS, AND BEER

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 1920) to amend section 5064 of the Internal Revenue Code of 1954 to provide for refund of tax on distilled spirits, wines, rectified products, and beer lost or rendered unmarketable due to fire, flood, casualty, or other disaster, or to breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief while held for sale, with Senate amendment thereto, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. REFUND OF TAX ON ALCOHOLIC BEVERAGE LOSSES RESULTING FROM DISASTER, VANDALISM, OR MALICIOUS MISCHIEF

(a) IN GENERAL.—So much of section 5064 of the Internal Revenue Code of 1954 (relating to losses caused by disaster) as precedes subsection (c) is amended to read as follows:

"SEC. 5064. LOSSES RESULTING FROM DISASTER, VANDALISM, OR MALICIOUS MISCHIEF.

"(a) PAYMENTS.—The Secretary, under such regulations as he may prescribe, shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of—

"(1) fire, flood, casualty, or other disaster, or

"(2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief,

if such disaster or damage occurred in the United States and if such distilled spirits, wines, rectified products, or beer were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such distilled spirits, wines, rectified products, or beer for sale at the time of such disaster or other damage.

"(b) CLAIMS.—

"(1) PERIOD FOR MAKING CLAIM; PROOF.—No claim shall be allowed under this section unless—

"(A) filed within 6 months after the date on which such distilled spirits, wines, rectified products, or beer were lost, rendered unmarketable, or condemned by a duly authorized official, and

"(B) the claimant furnishes proof satisfactory to the Secretary that the claimant—

"(i) was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, or the distilled spirits, wines, rectified products, or beer covered by the claim; and

"(ii) is entitled to payment under this section.

"(2) MINIMUM CLAIM.—Except as provided in paragraph (3)(A), no claim of less than $250 shall be allowed under this section with respect to any disaster or other damage (as the case may be).

"(3) SPECIAL RULES FOR MAJOR DISASTERS.—If the President has determined under the Disaster Relief Act of 1974 that a 'major disaster' (as defined in such Act) has occurred in any part of the United States, and if the disaster referred to in subsection (a)(1) occurs in such part of the United States by reason of such major disaster, then—

"(A) paragraph (2) shall not apply, and

"(B) the filing period set forth in paragraph (1)(A) shall not expire before the day which is 6 months after the date on which the President makes the determination that such major disaster has occurred.

"(4) REGULATIONS.—Claims under this section shall be filed under such regulations as the Secretary shall prescribe."

(b) CLERICAL AMENDMENTS.—The table of sections for subpart E of part I of subchapter A of chapter 51 of such Code is amended by striking out the item relating to section 5064 and inserting in lieu thereof the following:

"Sec. 5064. Losses resulting from disaster, vandalism, or malicious mischief."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters (or other damage) occurring on or after the first day of the first calendar month which

begins more than 90 days after the date of the enactment of this Act.

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I will ask this question: I think the Members would like to know the answer. As I understand it, there are 4 or 5 bills we are going to bring up in this manner; is that not correct?

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, the answer is "Yes."

Mr. ASHBROOK. Mr. Speaker, the question I have is this: I know some of these are substantive bills and are necessary. The only question I have is: Are there any amendments that have been passed in the Senate that are nongermane, any amendments that are of any real substance?

Mr. ULLMAN. Perhaps that is true in some of the bills, but not in this one.

Mr. ASHBROOK. Those are amendments that are nongermane?

Mr. ULLMAN. No, I believe they are all germane, although there was one on which there may have been some question.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from New York.

Mr. CONABLE. Mr. Speaker, I think the ones to be passed by unanimous consent involve only germane amendments, although I may be subject to correction. However, there are several on which we are going to ask to go to conference. Those contain nongermane amendments, but the others involving unanimous consent are not included.

Mr. ASHBROOK. Mr. Speaker, I appreciate that assurance, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the House amendments to the Senate amendment.

The Clerk read the House amendments to the Senate amendment, as follows:

Page 3, line 1, of the Senate engrossed amendment, strike out "or the distilled spirits" and insert in lieu thereof "on the distilled spirits".

Page 4, line 1, of the Senate engrossed amendment, strike out "Amendments" and insert in lieu thereof "Amendment".

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, will the distinguished chairman of the committee explain this measure to us?

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the chairman of the committee.

Mr. ULLMAN. Mr. Speaker, as passed by both the House and the Senate, H.R. 1920 provides for repayments by the Treasury of the excise taxes and customs duties on distilled spirits, wines, rectified products, or beer held for sale, if these products are lost or ruined by fire, flood, casualty, other disaster, or vandalism.

Alcohol excise taxes are payable before the products are shipped by the producer. As compared with the taxes on other products, the prepaid excise taxes on alcoholic beverages constitute a high portion of the costs of the product in the hands of wholesalers or retailers. In some cases, more than half the cost of distilled spirits may represent taxes. Thus, if alcoholic products held for sale are destroyed after taxes have been paid, a large portion of the loss will be attributable to prepaid taxes which cannot be passed on to consumers.

Under present law, the Treasury can pay the tax amounts to the merchant only if the loss results from a major disaster as declared by the President. However, there are other events which likewise can result in substantial losses of alcoholic products. For this reason, the bill expands the events which permit tax refunds to include uninsured losses caused by fire, flood, casualty, other disasters, or vandalism. Theft losses are not covered.

To avoid imposing serious administrative burdens on the Internal Revenue Service, the bill requires that the tax payment claimed on account of any single disaster must be at least $250, except in the case of loss from a major disaster as declared by the President.

The bill would reduce budget receipts by about $500,000 annually.

When H.R. 1920 was considered by the Senate Finance Committee, that committee added to the bill the substance of H.R. 2984 as passed by the House, relating to an exemption for certain farm trailers from the manufacturers excise tax imposed on trailers and semitrailers. On the Senate floor, the provisions of H.R. 2984 were deleted from the pending bill, H.R. 1920.

The substance of H.R. 1920 as passed by both the House and Senate is identical. However, because of the Senate floor action which I described, it is necessary to make clerical and technical amendments to the bill as passed by the Senate.

Mr. Speaker, both the House and Senate have approved the substance of this bill, and I urge the House to concur in the Senate amendments with the House amendments.

Mr. CONABLE. Mr. Speaker, H.R. 1920 as passed by the other body is identical to the bill which passed the House. It permits the refund of the alcohol tax in situations where the product is rendered unmarketable because of damage, vandalism, or malicious mischief.

The alcohol tax is paid by the distiller and passed along to the retailer as a cost of the product. The magnitude of the tax is often a large fraction of the product's cost. Under current law a retailer may receive a refund of the alcohol tax only for damage sustained in a Presidentially declared "major disaster." H.R. 1920 permits a refund in situations of lesser casualty damage than major disasters, vandalism, or malicious mischief. The amount of the refund claim must exceed $250. This provision is intended to prevent the administrative burden which would occur if small claims were permitted.

Mr. Speaker, H.R. 1920 as passed by the other body is identical to the House-passed bill. However, some other provisions were first added and then deleted by the other body. I urge my colleagues to accept the bill.

Mr. Speaker, I withdraw my reservation of objection.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Oregon?

There was no objection.

A motion to reconsider was laid on the table.

REVOCATION OF ELECTION TO RECEIVE RETIRED PAY AS A JUDGE OF THE TAX COURT

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8811) to amend section 7447 of the Internal Revenue Code of 1954 with respect to the revocation of an election to receive retired pay as a judge of the Tax Court, with Senate amendments thereto, and concur in the Senate amendments Nos. 1 and 2 with amendments.

The Clerk read the title of the bill.

Page 4, after line 6, insert:

SEC. 3. FUTA TREATMENT OF GROUP LEGAL SERVICE PLAN CONTRIBUTIONS.

SEC. 3. (a) Section 3306(b) of the Internal Revenue Code of 1954 (relating to the definition of wages for purposes of the Federal Unemployment Tax Act) is amended—

(1) by striking out "or" at the end of paragraph (10);

(2) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).".

(b) Section 3121(a) of such Code (relating to the definition of wages for purposes of the Federal Insurance Contributions Act) is amended—

(1) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(16) any contribution, payment, or service, provided by an employer which may be

excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).".

(c) Section 209 of the Social Security Act is amended—

(1) by striking out "or" at the end of subsection (n);

(2) by striking out the period at the end of subsection (o) and inserting in lieu thereof "; or"; and

(3) by inserting after subsection (o) and before the sentence beginning with "For purposes of this title, in the case of domestic service" the following new subsection:

"(p) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1954 (relating to amounts received under qualified group legal services plans).".

(d) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1976.

Page 4, after line 6, insert:

SEC. 4. INVOLUNTARY CONVERSION OF SPECIALLY VALUED FARM, ETC., REAL PROPERTY.

(a) IN GENERAL.—Section 2032A of the Internal Revenue Code of 1954 (relating to valuation of certain farm, etc., real property) is amended by adding at the end the following new subsection:

"(h) SPECIAL RULES FOR INVOLUNTARY CONVERSION OF QUALIFIED REAL PROPERTY.—

"(1) TREATMENT OF CONVERTED PROPERTY.—

"(A) IN GENERAL.—If there is an involuntary conversion of an interest in qualified real property and the qualified heir makes an election under this subsection—

"(i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

"(ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX WHERE THERE IS NOT COMPLETE REINVESTMENT.—The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

"(i) bears the same ratio to such tax, as

"(ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

"(2) TREATMENT OF REPLACEMENT PROPERTY.—For purposes of subsection (c)—

"(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted, except that with respect to such qualified replacement property the 15-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

"(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

"(C) paragraph (7) of subsection (c) shall be applied—

"(i) by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

"(ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) INVOLUNTARY CONVERSION.—The term 'involuntary conversion' means a compulsory or involuntary conversion within the meaning of section 1033.

"(B) QUALIFIED REPLACEMENT PROPERTY.—The term 'qualified replacement property' means—

"(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

"(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

"(4) CERTAIN RULES MADE APPLICABLE.—The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (2)(B).

"(5) ELECTION.—Any election under this subsection shall be made at such time and in such manner as the Secretary may by regulations prescribe.".

(b) ADJUSTMENT OF BASIS.—Section 1016 of such Code (relating to adjustments to basis) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INCREASE IN BASIS IN THE CASE OF CERTAIN INVOLUNTARY CONVERSIONS.—

"(1) IN GENERAL.—If there is a compulsory or involuntary conversion (within the meaning of section 1033) of any property the basis of which is determined under section 1023 and an additional estate tax is imposed on such conversion under section 2032A(c), then the adjusted basis of such property shall be increased by an amount which bears the same ratio to such tax with respect to the conversion of that property as—

"(A) the net appreciation in value of such property, bears to

"(B) the excess of—

"(i) the value of such property for purposes of chapter 11 as determined with respect to the estate of the decedent without regard to section 2032A; over

"(ii) the value of such property for purposes of chapter 11 as determined with respect to the estate of the decedent with regard to section 2032A.

"(2) NET APPRECIATION IN VALUE.—For purposes of this subsection, the net appreciation in value of any property shall be determined in accordance with section 1023(f)(2) except that—

"(A) the adjusted basis taken into account shall be increased by any adjustment under section 1023.

"(B) the fair market value of such property shall be determined without regard to section 2032A, and

"(C) any net appreciation in value in excess of the amount determined under paragraph (1)(B) shall be disregarded.

"(3) TIME ADJUSTMENT MADE.—Any adjustment under paragraph (1) shall be deemed to have occurred immediately before the compulsory or involuntary conversion.".

(c) CONFORMING AMENDMENT.—Paragraph (1) of section 2032A(f) of such Code (relating to period of limitations) is amended by inserting "(or if later in the case of an involuntary conversion to which an election under subsection (h) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace)" immediately before ", and".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to involuntary conversions after December 31, 1976.

The Clerk read the Senate amendments, as follows:

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the House amendments to Senate amendments Nos. 1 and 2.

The Clerk read House amendments to Senate amendments Nos. 1 and 2, as follows:

On the first page of the Senate engrossed amendments, strike out lines 2 through 4 and insert the following:

SEC. 3. TREATMENT OF GROUP LEGAL SERVICE PLAN CONTRIBUTIONS FOR PURPOSES OF UNEMPLOYMENT AND SOCIAL SECURITY TAXES.

(a) Section 3306(b) of the Internal Revenue

Page 2 of the Senate engrossed amendments, strike out lines 9 through 13 and insert the following:

(1) by striking out "or" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(17) any contribution, payment, or service pro-

* * * * *

(2) Concur in the Senate amendment numbered 2 with the following amendments:

Page 5 of the Senate engrossed amendments, strike out lines 2 through 7 and insert the following:

to such qualified replacement property—

"(i) the 15-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property, and

"(ii) the phaseout period under paragraph (3) of subsection (c) shall be appropriately adjusted to take into account the extension referred to in clause (i),

Page 6, line 21, of the Senate engrossed amendments, strike out "paragraph (2)(B)" and insert in lieu thereof "paragraph (3)(B)(ii)".

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the House amendments to Senate amendments numbered 1 and 2 be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, and I will not object, I want to say that I support H.R. 8811, as passed by the other body. H.R. 8811 comes back to us with the same original provision as passed the House plus two clarifying amendments to the tax law.

First, H.R. 8811 corrects an anomaly in the treatment of retirement plans of judges of the U.S. Tax Court. Present law permits a Tax Court judge to be covered either by the civil service retirement system or the Tax Court retirement system. Once a judge makes an election for coverage in the Tax Court system it is irrevocable. The situation exists whereby a judge, with other Federal service, was appointed to the Tax Court and elected to join its retirement system but failed to become eligible for benefits because of a shortened tenure. The result of this forced election is that an individual with considerable Federal service can be left without a pension. H.R. 8811 corrects this situation by permitting the revocation of elections to join the Tax Court retirement system.

The second provision of H.R. 8811 clarifies the tax treatment of qualified group legal services programs contained under the Tax Reform Act of 1976. The 1976 act recognized group legal services plans as qualified employee benefits, that is, their cost was deductible by the employer but the employee was not imputed with income. The amendment of the other body specifies that amounts paid for group legal service plans are not wages for purposes of FICA or FUTA taxes. This treatment is consistent with other employee benefit plans.

Finally, the other body clarified the treatment of involuntary conversion of real property to which the special use valuation provisions of the Federal tax apply. Special use valuation permits farm land to be appraised at its farming value for estate tax, instead of at some higher value which other commercial use might produce. Tre estate tax law recaptures the benefit conferred by the special use valuation if the farm is disposed of within 15 years. Situations can occur whereby the special use valuation property is involuntarily converted, such as by condemnation, and the recapture applies even though the proceeds received, because of the conversion, are reinvested in farming property.

The amendment of the other body specifies that where the proceeds of the involuntary conversion are reinvested in farm property then the estate tax recapture would not be applied. This is consistent with the overall treatment of involuntary conversions contained elsewhere in the Internal Revenue Code.

Mr. Speaker, H.R. 8811 is a bill which will correct an unusual situation in the retirement coverage of U.S. Tax Court judges as well as codify two common sense interpretations of the Tax Reform Act of 1976. I urge support for H.R. 8811.

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, H.R. 8811, as passed by the House, allows an individual who has filed an election to receive retired pay as a U.S. Tax Court judge to revoke that election at any time before retired pay would begin to accrue. As a result, the individual can then seek to qualify for benefits under the civil service retirement system, but not under both systems.

The Senate added two other provisions to H.R. 8811.

The first Senate amendment conforms the treatment of employer contributions to a qualified legal services plan for payroll tax purposes with the treatment of such contributions for income tax purposes. Under the Tax Reform Act of 1976, amounts contributed by an employer to a qualified group legal services plan for employees are excluded from an employee's gross income. However, since the 1976 act did not expressly exclude these amounts from the definition of "wages" which are subject to payroll taxes under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA), a question has arisen whether the excludable amounts are subject to FICA and FUTA payroll taxes. The Senate amendment provides that any contribution, payment, or service which is excludable from an employee's gross income under the qualified group legal services plan provisions also is to be excluded from wages for FICA and FUTA payroll tax purposes. The House amendments make amendments of a technical nature to this Senate-added provision.

The second Senate amendment corrects an inequity which results under present law if certain property specially valued for Federal estate tax purposes is later involuntarily converted.

Under present law, real property used as a farm for farming purposes or in a closely held trade or business may be valued for Federal estate tax purposes by reference to its actual use, rather than at its fair market value determined on the basis of highest and best use.

To assure that such special use valuation property continues to be used for farming or for other closely held business uses, a recapture rule is provided. In general, this rule results in recapture of the estate tax benefit of the special valuation if the heir disposes of the property or changes its use within 15 years of the death of the decedent.

Under present law, this recapture rule applies to special use valuation property which is involuntarily converted, such as by condemnation, even if the proceeds of the conversion are reinvested in property used for the same special use.

The Senate amendment provides that if an involuntary conversion of qualified real property takes place, no recapture of the estate tax benefit will occur if the property is replaced by other real property of at least equal value to be used for the same use. To the extent involuntarily converted property is not replaced, the recapture tax would be taken into account as a basis adjustment in determining gain or loss for income tax purposes in a manner similar to the adjustment made on account of estate taxes. The House amendments make amendments of a technical nature to this Senate-added provision.

Mr. Speaker, the two provisions added by the Senate to H.R. 8811 are meritorious. The first Senate amendment clarifies a provision of the 1976 Tax Reform Act with respect to payroll tax treatment of employer contributions to qualified legal services plans. The second Senate amendment corrects an inequity which, under present law, arises on condemnation or other involuntary conversion of certain farm or business property. I urge that the House concur in the Senate amendments to H.R. 8811 with the House amendments thereto.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the first request of the gentleman from Oregon?

There was no objection.

A motion to reconsider was laid on the table.

INTERNATIONAL TRADE COMMISSION APPROPRIATIONS, 1979

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 11005) to provide authorization of appropriations for the U.S. International Trade Commission for fiscal year 1979, with the Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, line 9, strike out "$12,813,000" and insert "$13,113,000".

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the House amendment to the Senate amendment.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert "$12,963,000".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I join the distinguished chairman of the Trade Subcommittee, Mr. VANIK, in his support of this legislation.

As the gentleman from Ohio has already explained, this authorization bill for the U.S. International Trade Commission originally passed the House in the amount of $12,813,000 which was some $300,000 less than the Commission requested. The committee made such a reduction in authorization as an incentive for the Commission to pursue operating economies. The Commission budget process lies outside OMB control.

The bill is before us now with an amendment from the other body authorizing the Commission the full $13,113,000 it originally requested. Because the amendment is not that far from the authorization in the bill passed by the House and in view of the fact that the Commission is sure to experience increased activity in the coming fiscal year in antidumping investigations and, most importantly, in assisting our negotiators at the Multilateral Trade Negotiations in Geneva, I urge the passage of this bill as amended by the Senate.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

A motion to reconsider was laid on the table.

PROHIBITING ISSUANCE OF REGULATIONS ON TAXATION OF FRINGE BENEFITS

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12841) to prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 19, after "ALLOWANCES" insert "OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW".

Page 2, line 23, after "allowance" insert "or a subsistence allowance negotiated in accordance with State law".

Page 2, line 24, strike out "and".

Page 2, after line 24, insert:

(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

Page 2, line 25, strike out "(2)" and insert "(3)".

Page 3, line 6, after "allowance" insert "or subsistence allowance negotiated in accordance with State law".

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the Senate amendments be dispensed with, and that they be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, there have been a number of requests from our colleagues about what happened to this bill. It has now come back as passed by the House, and it has been changed in a modest way.

Mr. SPEAKER, I rise in support of H.R. 12841, concerning the taxation of fringe benefits.

The bill, as passed by the House, only benefited subsistence allowances granted State troopers pursuant to a statute. The Senate extended the bill's provisions to include meal allowances granted State troopers as a result of negotiated settlements. Thus, as amended the bill provides uniform treatment for meal allowances granted State troopers.

In other respects, the bill as passed by both the House and the Senate is substantively the same.

I urge the immediate adoption of H.R. 12841 as amended.

Mr. FORSYTHE. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. Mr. Speaker, I am very happy that the Ways and Means Committee has brought this bill back. I think the amendments, as I understand it, on the Senate side do not in an way affect the real concern of the basic legislation as passed by the House. I urge the House to adopt the amendments.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Speaker, do we have now a prospective bill, or just for years in the past?

Mr. CONABLE. This covers past years, as I understand it.

Mr. VOLKMER. Does it cover both? If I remember, when we passed it, it was only past years. Is that correct? That was all that was in it. Has the Senate taken care of the future also?

Mr. CONABLE. My understanding is that it would relieve situations that have sprung up in the past. As to the future, the law is frozen, but only for a certain period of time, and the House is going to have to legislate with respect to fringe benefits generally if people receiving this type of fringe benefits in the future are to be home free.

Mr. VOLKMER. At least we have this dealing with past tax years taken care of.

Mr. CONABLE. At least for the time being.

Mr. VOLKMER. I believe this concerns many of us, and the equity of it. I appreciate what the gentleman has done here, and I think he has taken care of it for the time being, a very serious problem.

Mr. CONABLE. I believe the gentleman understands also that there are a number of fringe benefit problems that need to be dealt with. The IRS has shown a tendency to try to expand the tax base by including fringe benefits within the area of compensation it says is subject to income tax. We have frozen that in this bill. There was a special provision relative to the State troopers that has been broadened by this bill, as amended, and it is my understanding now that the ball is back in Congress court with respect to fringe benefits and their tax status.

The IRS is not going to be able to extend their interpretation of the treatment of fringe benefits to the disadvantage of middle-class taxpayers. However, it is a limited freeze, and the time will come when this House must consider how it wants to treat as a matter of tax policy all kinds of fringe benefits.

Mr. HUGHES. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, I strongly support H.R. 12841, and I commend the Ways and Means Committee for bringing this before the House. I think the Senate amendments actually add to the bill.

I urge my colleagues to adopt this.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

Mr. ULLMAN. Mr. Speaker, H.R. 12841, as passed the House, prohibits the Treasury Department from issuing final regulations dealing with the taxation of employee fringe benefits before 1980. It also prohibits the Treasury from issuing any ruling or regulation prior to 1980, which would change the treatment of certain commuting expenses to temporary worksites. Also, the bill provides for the exclusion from income for certain subsistence allowances paid to State police officers between 1970 and 1978. Finally, the bill provides an income tax exclusion for meals furnished an employee for the convenience of the employer although the employer imposes a partial charge for the meal.

The Senate added two amendments to the provision concerning the exclusion for cash meal allowances for State troopers. As passed by the House, the exclusion would apply in certain cases where a State trooper received a cash meal allowance. To eliminate any possible adverse consequences upon retirement benefits when they are based on gross income, the Senate added an amendment to make the exclusion elective rather than mandatory. Thus, if a State trooper wishes to avoid any possible adverse effects on his retirement benefits, he or she simply would not claim the benefits of the exclusion for cash meal allowances.

In addition, the Senate added an amendment that would extend the exclusion to meals furnished to State police officers pursuant to a negotiated agreement under State law, as well as to allowances specifically provided for in the State statutes. As I understand it, the

amendment relates to the procedure used in Montana to provide subsistence allowances to State highway patrolmen. In general, these allowances are negotiated pursuant to State law. Further State action on the negotiated allowances would arise in the appropriations process. The amendment would treat these allowances the same as those which had been provided by statute in other States.

These amendments are noncontroversial.

Mr. Speaker, I urge the House to concur in the Senate amendments and approve H.R. 12841, as amended, so that the bill may be sent to the President without further congressional action.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

A motion to reconsider was laid on the table.

H.R. 12050, PROVIDING FEDERAL INCOME TAX CREDIT FOR TUITION

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12050) to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon? The Chair hears none, and appoints the following conferees: Messrs. ULLMAN, BURKE of Massachusetts, ROSTENKOWSKI, VANIK, BURLESON of Texas, CONABLE, and DUNCAN of Tennessee.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the various measures just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

CONFERENCE REPORT ON S. 1678 FEDERAL PESTICIDE ACT OF 1978

Mr. FOLEY. Mr. Speaker, I call up the conference report on the Senate bill (S. 1678) to amend the Federal Insecticide. Fungicide, and Rodenticide Act, as amended, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 12, 1978.)

Mr. FOLEY (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume, and I rise in support of the conference report on the bill S. 1678, the Federal Insecticide, Fungicide, and Rodenticide Act of 1978.

Mr. Speaker, I rise in support of the conference report on the bill S. 1678, the Federal Pesticide Act of 1978.

I am pleased to bring you a report which is the culmination of efforts that began almost a year and a half ago with hearings before the House Committee on Agriculture and comparable hearings in the Senate at which time the attention of both Committees was called by scores of witnesses to the need for significant changes in the Federal Insecticide, Fungicide, and Rodenticide Act.

The conference substitute meets these concerns by extending and amending the act to improve the operation of the Federal pesticide program by giving States significant new powers in pesticide regulation and simplifying procedures which have bogged down the administration of the program since the major changes made by the 1972 amendments to the act. It also helps assure agricultural producers the continued availability of herbicides and pesticides needed for maintaining our productive capacity in the United States.

The Senate bill passed June 29, 1977, and the House bill passed the House on October 31, 1977. The conference committee began meeting early this year to resolve a number of difficult issues. With good will and perseverance by the House and Senate conferees on both sides of the aisle, we were able to fashion a conference substitute which provides a major and significant overhaul of existing law. The conference substitute maintains the basic intent of the House bill. It meets concerns expressed in that bill so as to satisfy many divergent interests in pesticide regulation—the farm community, public concern for the environment, the need for cooperative assistance of the States in administration of the act and many others interested in sound pest control legislation, such as the pesticide manufacturers both large and small, pesticide applicator firms, and food processors.

The conference report was signed by all House conferees. It has, as I am sure the gentleman from Virginia the ranking member of the committee (Mr. WAMPLER), will agree, the full support of the minority in its adoption.

I wish to commend my colleague in the Senate, Senator TALMADGE, who headed the Senate conferees, for his usual wise and fair counsel. I also wish to thank Mr. DE LA GARZA, chairman of the Department Investigations, Oversight, and Research Subcommittee; Mr. WAMPLER, the ranking minority member; and Mr. THONE, the ranking minority member of the subcommittee; Mr. FITHIAN of Indiana, Mr. HIGHTOWER of Texas and many others in our committee for their contributions to the resolution of the differences.

EXTENSION OF AUTHORIZATION

The conference report, first, extends the authorization for the pesticide programs operated by the Environmental Protection Agency through September 30, 1979. It authorizes appropriations of $54.5 million in the current fiscal year and up to $70 million for the year beginning October 1, 1978.

STATE AUTHORITY

First. One of the most significant factors in the conference substitute is the enhanced authority of the States over the program. The conference substitute expands and revises the conditions under which a State can approve additional uses of a federally registered pesticide for use in a State to meet special local needs if registration for such use has not previously been denied or cancelled by EPA.

The conference substitute provides that a registration issued by a State will not be effective for more than 90 days if disapproved by the Administrator within that period. Prior to disapproval the Administrator must advise the State of the Administrator's intention to disapprove and the reasons therefor, and provide the State time to respond. The Administrator may not, however, prohibit or disapprove a registration issued by a State on the basis of lack of essentiality of a pesticide, or if its composition and use patterns are similar to those of a federally registered pesticide.

In no instance may a State issue a registration for a food or feed use unless there exists a tolerance or exemption under the Federal Food, Drug, and Cosmetic Act that permits the residues of the pesticide on the food or feed. If the Administrator determines that a registration issued by a State is inconsistent with the Federal Food, Drug, and Cosmetic Act, or the use of a pesticide under a registration issued by a State constitutes an imminent hazard, he may immediately disapprove the registration.

If the Administrator finds in accordance with standards set forth in regulations issued under section 25 of FIFRA that a State is not capable of exercising adequate controls to assure that such registration will be in accord with the purposes of FIFRA or has failed to exercise adequate controls, the Administrator may suspend the authority of the State to register pesticides until such time as the Administrator is satisfied that the State can and will exercise ade-

quate controls. Prior to any such suspension, the Administrator must advise the State of the Administrator's intention to suspend and the reasons therefor and provide the State time to respond.

The minor use issue has been a major source of controversy surrounding FIFRA since the act was amended in 1972. The basic problem concerns high value crops requiring very small amounts of pesticides.

A typical example of this problem is found in forest tree nurseries. In the 13 southern States there are only about 1,300 acres of forest nurseries with an annual crop valued at $13 million. It costs only about $75 per acre per year to control the weeds with pesticides in these nurseries. Without pesticides the cost can go as high as $700 per acre.

Pesticide registrants are reluctant to register products for control of a pest problem when only a small amount of the product is needed. The small profit realized by the manufacturer is not worth the expense and effort involved in meeting the requirement of registration.

However, the amendments to FIFRA that are being considered here today will provide the flexibility necessary to resolve this very critical problem. I, along with every member of the committee, am sure that with these new amendments the minor uses problem will be resolved in a way that is safe to both man and the environment.

Second. The conference substitute also gives States important new enforcement authority. Those States that have entered into cooperative enforcement agreements with the Administrator would have primary enforcement responsibility under the act. In addition, with respect to other States, there would be a rapid evaluation, to be completed no later than 6 months after the date of enactment of the conference substitute, of State applicator certification and training plans approved by the Administrator under section 4 of FIFRA. Those States that are determined to have section 4 plans adequate for enforcement purposes would also have primary enforcement responsibility for pesticide use violations.

Under the conference substitute, if the State does not correct an enforcement deficiency in 90 days, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility. Further, neither new section 26 nor 27 of FIFRA limits the authority of the Administrator to enforce FIFRA, when he determines that emergency conditions exist that require immediate action on the part of the Administrator and the State authority is unwilling or unable adequately to respond to the emergency.

Third. The conference substitute assists States in another important regard. It provides that, effective with the fiscal year beginning October 1, 1978, there are authorized to be appropriated annually such funds as may be necessary for the Administrator to provide through cooperative agreements an amount equal to 50 percent of the anticipated cost to each State and Indian tribe, as agreed to under such cooperative agreement, of conducting applicator training and certification programs. If funds sufficient to pay 50 percent of the costs for any year are not appropriated, the share of each State and Indian tribe will be reduced in a like proportion in allocating available funds.

REGISTRATION AND REREGISTRATION

First. Provisions have been included in the conference report to simplify procedural problems which have stalled the registration process and the reregistration of some 40,000 pesticides by EPA. The conference substitute adopts the basic provisions of the Senate and House bills which authorize conditional registration of pesticides in certain situations even though some of the data required to complete registration or reregistration have not yet been generated or reviewed by EPA for validity or sufficiency. Safeguards are included to protect the public interest. This authority would be exercised on a case-by-case basis and would apply to situations to enable a pesticide to be conditionally registered for a period sufficient to obtain the data required by EPA.

Second. In addition, provisions of the House bill have been continued to allow EPA to classify any currently registered pesticide without waiting for completion of the drawn out process of reregistration. This will facilitate implementation of requirements of existing law which limit the use of restricted pesticides to certified applicators.

Third. The conference substitute also includes provisions for settling a long-standing controversy over compensation for manufacturers whose test data—after submission to EPA to back up registration requests—are used by other firms as part of their later registration applications.

The conference substitute provides that—

First, all test data submitted after December 31, 1969, will be compensable for a period of 15 years from the date the data are submitted;

Second, in the case of pesticides registered after the date of enactment of this provision, there will be a period of exclusive use for data submitted in support of the registration of a product containing a new active ingredient running for 10 years from the date the product is registered, except that there will be no exclusive use for defensive data; and

Third, there will be a period of exclusive use for data submitted in support of the new use registration of a product equal to the time exclusivity remaining under any 10-year exclusive use period of the product.

When data supporting the registration of a pesticide first registered after the date of enactment of the conference substitute that are given exclusive use protection are used within the 10-year period of exclusive use to support the registration of a different product, such data shall continue to have exclusive use protection for the balance of the 10-year period. If such data are used to support the registration of a different product after the expiration of the 10-year period of exclusive use, such data shall not be eligible for any additional period of exclusive use.

It is my judgment that by reaching a decision to allow a period of exclusive use and an additional period of compensatory use for this test data, we will, hopefully, have resolved a very bitter and long-standing controversy between the manufacturing corporations and those who formulate pesticides. It was a particularly difficult and complex issue and a subject of great controversy also in the deliberations of the Agriculture Committee and Committee of Conference.

It is in the interest, I believe, of the agricultural community and of the American consumers everywhere that we have safe and effective pesticides and herbicides and that there be a flow of new research to provide for new basic ingredients and new formulations of those ingredients.

Mr. Speaker, I believe that this section is one of the most critical in the bill, and I believe that all who had a part in attempting to resolve it can be proud.

Fourth, the conference substitute adopts a basic provision of the House bill with respect to trade secrets of pesticide manufacturers to clarify the information that would be available for disclosure to the public. Health and safety data submitted by manufacturers to the EPA will be available to the public. Any data authorized for release to the public if used to support another person's registration would be subject to the exclusive use and compensation requirements of the act.

The conference substitute places limits on disclosure of information to foreign and multinational pesticide producers as contained in the House bill with an important modification. The Administrator would be authorized to disclose information in connection with a public proceeding conducted under the act which information is relevant to a determination as to whether a pesticide or any ingredient therein causes unreasonable adverse effects on health or the environment. These, of course, would be subject to restrictions on the availability of information provided elsewhere in FIFRA.

Fifth, the conference substitute also adopts the House amendment relating to the interim administrative review process familiarly called RPAR (Rebuttable Presumption Against Registration). Under the conference substitute it is provided that the interim review process must be based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment and that notice of the definitions of such test and significant evidence will be published by the Administrator in the Federal Register.

To avoid the time-consuming RPAR process, the Administrator is directed to establish suitable scientific protocols for the development of human exposure data; to work cooperatively with the registrants in the assembling and collection of such data; and then to evaluate and weigh such data prior to initiating an RPAR process. If humans or their environment are not at risk or the potential for exposure is minimal, the Administrator is directed to forego the RPAR process and proceed with the reregistration of the pesticide product.

COMMERCIAL APPLICATORS

Special provisions are included in the conference substitute relating to commercial applicators specifically regarding penalties that may be imposed for violation of the act by such persons and conditions imposed as a prerequisite for inspection of books and records and the establishments of such persons.

First. If there is a violation of FIFRA by a commercial applicator who holds or applies an unregistered pesticide, or a use diluation of any such pesticide, such person would be considered a distributor of pesticides and would be subject to the higher civil and criminal penalties set forth in section 14 of FIFRA (that is a civil penalty of not more than $5,000 for each offense and a criminal penalty of not more than a $25,000 fine and one year imprisonment). Likewise, commercial applicators who violate FIFRA while using pesticides registered for restricted use would be subject to the same higher penalties.

On the other hand, any such person who violates the act while holding or applying a pesticide registered for general use, or a use dilution of a pesticide registered for general use, would be subject to the lower penalties as set forth in sections 14(a)(2) of FIFRA. These civil penalties are amended to permit a penalty of up to $500 for the first offense and up to $1,000 for each subsequent offense. Under current law initial violations may result in a warning but not a money penalty. The criminal penalty cannot exceed $1,000 fin and 30 days imprisonment.

Second. Under the conference substitute the Administrator does not have authority to inspect the books and records, and enter the establishments of commercial applicators without a warrant except when the Administrator, rather than the State, has primary enforcement authority with respect to the pesticide use provisions of FIFRA. In such event, however, the Administrator may inspect the books and records and the establishment of commercial applicators regardless of whether the pesticide is unregistered or registered for general use or restricted use. Before undertaking any such inspection, the owner of the establishment must be presented with appropriate credentials of the person making the inspection and a written statement of the reason for the inspection, including a statement as to whether a violation of law is suspected.

MISCELLANEOUS

I have discussed some of the more important issues that are contained in the report. There are a number of others that are likewise important and which largely comport with provisions of the bill previously adopted by the House. These include provisions relating to use of a registered pesticide in a manner inconsistent with its labeling, the use of a pesticide at a stronger concentration than that specified on the label, requirement for a study of pesticide application methods, arbitration procedures to resolve disputes on data requirements, waiver of data requirements pertaining to efficacy, changes in classification from restricted use to general use, changes in effective dates for certain required actions, conditions imposed on pesticides and devices intended for export to allow foreign countries to be better informed concerning pesticides received from the United States, and provisions relating to experimental use permits and pesticide research.

Reference to these many items reflects the comprehensive nature of the conference report. It is the result of many months of serious effort. I am convinced the report will do much to enhance the workability and acceptability of the Federal pesticide program. I urge the Members to join me in voting for this much needed measure.

I will, of course, stand ready to explain to any Member of the House any questions which that Member might have with respect to the bill.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, I thank the distinguished chairman for yielding.

I notice on page 43 of the conference report, under the heading "Congressional veto of regulations," it appears that the House-passed amendment providing for a congressional veto of the regulations under FIFRA was deleted in the conference.

For the benefit of the House, I wonder whether the chairman would review the proceedings by which that decision was arrived at. As I understand it, there was some back-and-forth discussion on that question.

Mr. FOLEY. As the gentleman knows, this was a very difficult part of the conference committee's work. I personally believe that the decision to drop the House review or veto power of regulations would not have occurred except for some extraordinary situations which relate to the FIFRA law, which are, in my judgment, unique, in the regulatory process.

Under FIFRA, 60 days advance notice of proposed regulations and 30 days advance notice of the final form of regulations is required to be made to the congressional Agriculture Committees as well as to the Secretary of Agriculture and an independent scientific advisory panel. Both the Secretary and the scientific advisory panel have an opportunity to express any concerns to EPA, the Committee on Agriculture and the public and publish their comments in the Federal Register before the regulations became final. A similar advance notice of proposed cancellation of registration is required under the act.

The Agriculture Committees, thus, have an opportunity to make their comments known to EPA before regulations are final.

Thus, we have established in advance of the publication of regulations a more elaborate procedure to insure careful review by Congress and the public than is required under the traditional legislative veto that the gentleman from Georgia (Mr. LEVITAS) has been so active in proposing.

If a congressional veto provision were added to FIFRA, final action on regulations would be delayed for an additional 90 days resulting in a total delay in excess of a half year prior to the issuance of any new regulations under the act.

Any such added delay would be adverse to the interest of the farm community, the States and others who benefit from provisions of the conference substitute which simplify the stringent requirements of the act in a commonsense manner, delegate authority to the States and resolve the major controversies that have beset the pesticide program for many years.

There is an additional consideration for our actions. Congress has imposed what is in effect a 1-year sunset provision on the act. Each year EPA is required to seek an extension and justify activities it has taken during the intervening period. Any problems that arise during the year can be dealt with effectively through this oversight process. Witness, for example, the conference report now before the Members. To be frank about it, in addressing some of the complexities of this particular bill, we ran into the problem that we were not completed with the legislation until the 1-year authorization had expired, and we had to accept the Senate 2-year authorization in order to avoid an immediate review of the legislation. For those two reasons, one, because the act contains highly elaborate prospective review provisions before any action can be adopted, and, secondly, because this committee has followed the practice of keeping the program under such short authorization so that the entire program is subject to frequent review, we felt that the specific regulation review by both Houses of Congress would be not necessary and not as justified in this instance as I know the gentleman feels it is in most other programs.

I would like to say one other thing with respect to this bill. It is hoped by this bill that we will be able to make this program a little more balanced in the direction of providing those necessary chemicals and herbicides, of course, with an eye on the safety of the environment needed for the production of the food and fiber that this

country will need in the future. Those who have worked on this bill on both sides of the aisle have committed themselves to try and remove what they feel were inhibitions and problems in the administration of this program and develop a more agriculturally oriented program than has been operated in the past.

Some things, like conditional registration and added State authority involve, in our view, extremely important new directions for this program. I feel those new directions are not only in the interest of American agriculture but in the interest of American consumers. To have the most complicated preregulation process of any in the Federal Government, followed by postfinal regulation review and a very short authorization period, might make the program extremely difficult to administer. I hope that the work that has been done by the Committee on Agriculture and others here today, who have contributed much to the process by which a very fine conference report has been returned to the House—that all that effort will not come to grief over this issue. I feel that if there is any program which has full congressional review of the regulatory process, it is the Federal Insecticide, Fungicide and Rodenticide Act.

Mr. WAMPLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this conference report, and I urge my colleagues to vote in favor of its adoption.

Some of you may have wondered what happened to the FIFRA legislation since the House passed its bill last October 31, 1977. For one thing, we were unable to get to conference with the Senate on this measure before adjournment in the first session. Next, the committee's legislative schedule to meet the May 15 deadline imposed by the Budget Act hampered our efforts to conclude a conference with the Senate on this bill. Third, and finally, the differences that had to be reconciled between the House and Senate versions of the 1978 amendments to FIFRA were numerous and substantial.

That we are able to present to the Members the conference report which we are now considering is in no small part due to the efforts of the gentleman from Washington (Mr. FOLEY), the chairman of the subcommittee, the gentleman from Texas (Mr. DE LA GARZA) and other conferees. I particularly wish to commend the minority members of the conference, Messrs. THONE, GRASSLEY, MARLENEE, and Mrs. HECKLER, who have made major contributions to this legislation.

Mr. Speaker, the gentleman from Nebraska (Mr. THONE) made a major contribution in guiding this legislation through the subcommittee and the full committee, and he can take a large measure of satisfaction that much of the House bill is incorporated in the conference report.

I should mention to you at this point that if you page through the joint explanatory statement in the conference report, you see a preponderance of the differences resolved with the words;

The conference substitute adopts the House provision.

This conference report which the House conferees bring you contains much more of the House bill than the Senate version.

What were the big differences to be resolved? They included; improved compensation for data provisions; conditional registrations so as to cut down on application time; enlarged State registration and enforcement authority; the reform of EPA's rebuttable presumption against registration process; and many other provisions which we believe improve FIFRA.

Whether or not the 1978 amendments to FIFRA actually improve on the operations of EPA—give better and broader choices on pesticides to farmers and other pesticide and chemical users, balance a need to conduct more research with a need to protect company trade secrets, protect the general health and environment of our citizens—will have to await actions by EPA officials, pesticide producers, State agencies, and others.

In the meantime, I believe all these constituencies will be best served if our committee continues to give considerable oversight to the manner in which FIFRA, as now amended, impacts on the country as a whole. I favor, therefore, a process whereby we have annual authorizations for the pesticide and FIFRA-related programs of the Environmental Protection Agency.

There are presently scheduled hearings on nitrites before the Committee on Agriculture and a hearing scheduled on a bill I introduced, H.R. 13543, which directs the Administrator of EPA to request the National Academy of Science to conduct a study concerning the standardization of certain tests for determining potential carcinogenicity. I offered this legislation because of the differing approaches of Federal agencies in dealing with possible or potential cancer-causing substances.

I must confess that the response to this bill has been very positive. There is interest in the bill in Government agencies, consumer groups, and a host of others. I firmly believe it will be a help to farmers and producers of farm products. However, the interest in it and the increased shift in EPA of pesticides from general to restricted use or outright cancellation illustrates that EPA is one of those agencies we must study so as to give to the general public—which must be perplexed and puzzled by the different Federal agency conclusions and judgments reached using different scientific data, different legislative standards for banning products on the market, et cetera—some assurance that a better and more uniform Federal agency policy will be adopted with regard to this very serious problem.

Turning to the very controversial provisions of this conference report, which I have stated have been largely resolved in favor of the House position, I will not try to review them all but cite some—not all—of the more important ones.

Perhaps the most controversial provisions had to do with section 3(c)(1)(D)—relating to exclusive use and data compensation—and section 10—relating to protection of trade secrets. The conference substitute provides for data compensation for data submitted to EPA after December 31, 1969, for a period of 15 years after original submission.

Registration of products under FIFRA after enactment of this act will have an exclusive use period of 10 years, except for defensive data. In addition, support data, if later used for new registrations, will continue to be subject to exclusive use rights for any time remaining under the 10-year period.

In addition to the above compromise, the trade secret amendments to section 10 follow the House provisions, including the procedures for EPA disclosure of information necessary to protect against unreasonable risk of injury to health or the environment. A binding arbitration provision on data compensation—where the parties cannot reach agreement—helps to round out what appears to be a compromise acceptable to EPA, the pesticide industry, formulators, and farm organizations. Farmers will hopefully be the greatest beneficiaries, because I believe this bill will give the impetus to the research necessary to assure new and improved pesticides in the future.

State enforcement and registration authority is strengthened in the language of the conference report over that which appears in existing law. It largely follows the language of the House bill. I strongly favor this expansion of State authority.

State agencies have proved to be quite effective in dealing with matters relating to pesticides and other chemicals. In many circumstances, States have taken initiatives that the EPA could well emulate. I favor getting as much authority as we reasonably can to those local government entities—in this case the State—that are closest to the problems.

Another important House provision retained in the conference report directs EPA in its regulations and administration of its programs to differentiate between agricultural and nonagricultural products. I am aware that EPA claims they treat these products differently now, but those who wish to register products argue that that is not the case. I trust this amendment will settle the issue.

Authority for simplified registration provided in the House version is retained in the conference report. Currently, the reregistration of pesticides directed to be undertaken in 1975 by Congress is barely underway. This authority given EPA will enable it to more decisively get the reregistration task underway and on a schedule for completion in a reasonable time period.

The amendment to FIFRA which reforms EPA's interim administrative review process—to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses—a rebuttable presumption against registration—RPAR—

prior to EPA initiating a formal action to cancel, suspend, or deny registration of such pesticide—should be a great improvement in how EPA goes about the business of shortcutting the more formal and lengthy cancellation process.

The conference report adopts the House position, with some refinements, which provides that the RPAR process must be based on a "validated test raising prudent concerns of unreasonable adverse risk to man or to the environment." EPA representatives in the conference gave assurances that it could abide by this new standard.

However, the conferees were careful, in my view, to insist that language appear in the joint explanatory statement such that I trust EPA will not attempt to use some new process—such as generic registration—that would undo what Congress has made clear it does not want used in any EPA process to clear up its dockets by unduly impinging on the rights or interests of registrants.

I might also say, Mr. Speaker, that the conference report also adopted the House amendments to FIFRA relating to the scientific advisory panel. In my opinion, EPA has not been fully utilizing this panel. If EPA can provide this panel with some personnel assistance and then utilize it to provide more scientific analyses and advice, I believe that better decisions will be made at EPA.

Mr. Speaker, there are other provisions in the conference report relating to definitions of commercial applicators which give some commonsense leeway to farmers in purchasing their own pesticides for use by commercially certified applicators, and it contains exceptions relating to the use of lower solution pesticides until a study can be used to measure any adverse effects they may have, and other amendments that may improve FIFRA programs for farmers.

Also, Mr. Speaker, the conference report adopts a House provision requiring the administrator of EPA in coordination with the Secretary of Agriculture to establish and maintain a list of pests in order of priority that need to be brought under control to insure improved agricultural production. It appears that such a requirement will aid farmers and Federal agencies in any initiative taken under an integrated pest management program, as well as aiding in the cost benefit evaluations in programs undertaken by EPA, particularly in the use of pesticides.

This latter provision dovetails with another House amendment adopted that requires the EPA Administrator to coordinate research under FIFRA with that undertaken by the Department of Agriculture.

Mr. Speaker, I believe that the conference report presented to us today will provide genuine reform in the field for FIFRA programs; however, it depends to a great extent on the willingness of EPA officials, farm representatives, environmental organizations, and others, to work toward that goal.

Meanwhile, Mr. Speaker, if we in the Congress have misjudged the effect that a particular provision in the 1978 act will have on the effectiveness of FIFRA programs, I urge all those affected to advise us of that fact, so that changes can be made in the law; however, I would urge them only to do so after first trying to work to make this legislation a successful reform measure.

Mr. THONE. Mr. Speaker, will the gentleman yield?

Mr. WAMPLER. I yield to the gentleman from Nebraska.

Mr. THONE. Mr. Speaker, in lieu of any brilliance or profundity here, I am going to confine myself to strict brevity; but I did want to make a couple points.

No. 1, at the full committee level and in conference, this House owes considerably to the chairman of the Committee on Agriculture, the gentleman from Washington (Mr. FOLEY), who skillfully handled the conference with the Senate.

Also, I would like to acknowledge the work of the ranking Republican member, the gentleman from Virginia (Mr. WAMPLER), who also at that stage made a major contribution.

At the subcommittee level, I would like to acknowledge the fine work of our colleague, the gentleman from Texas (Mr. DE LA GARZA).

I would like to make one other brief acknowledgement before I sit down; that is, for the work done by the gentleman from Indiana (Mr. FLOYD FITHIAN). The gentleman from Indiana and I really did work the art of the possible in the highly complex stages of this bill that were alluded to by the chairman of the committee, the gentleman from Washington (Mr. FOLEY).

Lastly, let me say this. I think probably the most important provision in this bill, I would say to the gentleman from Virginia, is that sunset provision.

I think that this particular agency, the Environmental Protection Agency, and especially in the administration of this law, needs to be held on a tight rein.

Mr. Speaker, I rise in support of the adoption of the conference report on S. 1678, amendments to the Federal Insecticide, Fungicide, and Rodenticide Act.

This conference report represents the work of many individuals who have hammered out this compromise. This legislation has been under consideration by the House and Senate for nearly 18 months. The plain facts are that it is indeed a compromise and no one segment is entirely happy with all aspects of this legislation. Many individual citizens, representatives of farm organizations, chemical manufacturers, pesticide formulators, pest control operators, and officials of EPA and State environmental agencies among others have provided advice and guidance as solutions have been sought to bring some semblance of order out of a very complex, chaotic situation.

In 1972, major amendments to the pesticide law, originally enacted in 1947, were enacted but we have continually faced problems in pesticide registration. In 1975, additional amendments were adopted but still the problem persists. In response to this situation, this legislation was introduced and today we can say that this compromise assures the availability of pesticides for agriculture while at the same time providing needed safeguards against unreasonable adverse effects on human health and the environment.

Many folks have recommended that we do away with the Environmental Protection Agency, expressing the feeling that the Agency is the cause of all the problems being experienced in this area. This feeling stems from the frustrations experienced by the public and Congress in the implementation of the pesticide law. Pesticides have not been made available to farmers and many pesticide formulators have had difficulty remaining in business. No one, to my knowledge, has seriously entertained support for this approach but I do feel, as do others, that this legislation as offered here today does provide the wherewithal for all concerned to get on with the business at hand of registering and classifying pesticides. The tools are here and I say that we should all work together to reach the goal that has so far eluded us for the past 6 to 8 years. Douglas Costle, the Administrator of EPA has pledged his cooperation and I feel we should give him the opportunity to prove that EPA can indeed make this legislation work as envisioned by so many.

This legislation gives more authority to the individual States, provides for new procedures to register pesticides, provides for greater effort so that we can have safer and more effective chemicals and also provides for research on biologically integrated alternatives for pest control. The authorization for the implementation of pesticide programs extends through September 30, 1979, so it will be necessary to review the effects of this legislation sometime next year in order to decide whether further amendments are needed or whether a simple extension of the present law will suffice. Under these circumstance, I recommend that this legislation be adopted so that EPA can get on with the implementation of these amendments.

Mr. WAMPLER. Mr. Speaker, I thank the gentleman from Nebraska for his contribution and for his invaluable service as a member of the Committee on Agriculture and also as a member of the conference committee.

Mr. Speaker, I now yield such time as she may consume to the distinguished gentlewoman from Nebraska (Mrs. SMITH).

Mrs. SMITH of Nebraska. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the conference report on the Federal Pesticide Act of 1978, the bill which amends the Federal Insecticide, Fungicide and Rodenticide Act.

I commend all of those who have had a hand—especially my colleague from Nebraska, the Honorable CHARLEY THONE—in resolving the differences between the Senate and House versions of this complex bill.

Admittedly, this is a compromise on which there has been considerable give and take. It should be noted, however, that the compromise has produced many

improvements over the chaotic situation we have now in the certification, registration and regulation of the chemicals our farmers and ranchers need to control weeds and pests.

I refer particularly to the provisions which strengthen the role of the States, such as the primary enforcement responsibility and the authority to issue regulations to meet special local needs. These changes will bring the States into closer partnership with the Environmental Protection Agency in administering this regulatory program. This is good. It can only help bring some sunlight and direction into the murky area of Federal regulation where untold problems abound. The input of the States will be of tremendous value in expediting the solution of these problems which have such an impact on the agricultural economy.

Other changes in the law will institute simplified registration procedures, including a provision for "conditional" registration under certain conditions. These amendments are designed to further accelerate the availability of chemicals so that they can be used while time-consuming paperwork is in progress without jeopardizing protection for man and the environment.

It must be emphasized that this legislation primarily extends the authority for pesticide programs operated by EPA through September 30, 1979. It may be that more examination and refinement of the programs is needed. If so, we have this extension of time in which to conduct further hearings and to recommend additional changes.

Nebraska is one of the States which suffered from a grasshopper infestation this year. Our farmers and ranchers encountered difficulties getting the chemicals they needed. They ran into redtape and delays. Before the grasshoppers descend upon us again, EPA, with the help of the States, and the new procedures, may be in a better position to come to the aid of the people these programs are designed to benefit.

It is important that we adopt the conference report and put these changes on the books. I respectfully urge my colleagues to join in voting for passage of the report.

Mr. WAMPLER. Mr. Speaker, I thank the gentlewoman from Nebraska (Mrs. SMITH).

Mr. Speaker, I now yield such time as he may consume to the distinguished gentleman from Iowa (Mr. GRASSLEY), who serves on the Committee on Agriculture and also served as a member of the conference committee.

Mr. GRASSLEY. Mr. Speaker, I rise in support of the conference report on S. 1687, the Federal Pesticide Act of 1978.

While I am not sure that we have gone far enough in removing the many obstacles which have been in the path of the production of pesticides, I am pleased that we have proceeded this far with amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Time will tell if those responsible for administering these amendments will do so in the spirit in which Congress has intended. For, what we need is increased research on pesticides to assure farmers of a continuing supply of pesticides which are a near necessity in today's modern farming practices.

There are a couple of points which I would like to address briefly. First, during subcommittee markup on this legislation, I offered an amendment to reform the process employed by the Environmental Protection Agency (EPA) in its public interim review procedure of a pesticide prior to cancellation of the registration—familiarly known as rebuttable presumption against registration procedure (RPAR). This procedure was supposedly designed to wave a red flag when there were positive indications that a pesticide could pose possible adverse effects on man and his environment. However, in some instances it had become a fishing expedition where someone, no matter how qualified, could make claims or allegations about the dangers of the pesticide that would result in the chemical being placed on the RPAR list. This type of procedure did not allow for a prudent assessment of the benefits of the chemical to be considered and in many cases it caused tremendous economic harm to a person who had devoted time and resources to developing the pesticide, because of the public's perception of the potential danger of the pesticide once it is placed on this suspect (RPAR) list. In short, my amendment in subcommittee was intended to correct this problem and give some balance to risks and benefits and require EPA to act prudently and reasonably when employing this procedure.

I am pleased that my colleagues agreed with me and kept the substance of my amendment as a part of this legislation in the conference report. The Senate companion bill did not contain a comparable provision and the House and Senate conference committee on this legislation adopted a modified version of my amendment. It now provides that the interim administrative review process must be based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment and that notice of the definitions of such test and significant evidence will be published by the Administrator in the Federal Register. The Administrator is to insure that pesticides shall be subject to the RPAR process only on the basis of a validated test or other significant evidence—and not on the basis of unsubstantiated claims, that the term "validated tests" be defined as a test conducted and evaluated in a manner consistent with accepted scientific procedures, and that the term "other significant evidence" be defined as evidence that relates to the uses of a pesticide and their adverse risk to man or to the environment. It is the intent of the conferees that "other significant evidence" of adverse risk mean factually significant information and is not to include evidence based only on misuse of the pesticide.

During conference committee consideration on FIFRA, the late Senator James Allen was very helpful in the support of my amendment. Senator Allen offered report language for the committee's consideration which was accepted, dealing with the procedures which should be used when a product is under special review. In essence, the administrator of EPA is directed to notify in writing the registrant of a pesticide product under special review of the exact scope and nature of any alleged unreasonable adverse effects to human health or the environment, prior to initiating an RPAR process. Such notification will be by private communication and afford the registrant a reasonable opportunity to correct or clarify such claim or allegation through the submission of information or data related to the claimed risk associated with its pesticide product.

This in turn in many cases could obviate the need for an RPAR to issue. This notification process will furnish a greater degree of protection for the property rights of pesticide registrants and ameliorate the indictment-like characteristics of the RPAR process. It is because of such reasonable and commonsense legislative initiatives that Senator James Allen was admired and respected in the Congress.

To avoid the time-consuming RPAR process, the administrator is therefore directed to establish suitable scientific protocols for the development of human exposure data; to work cooperatively with the registrants in the assembling and collection of such data; and then to evaluate and weigh such data prior to initiating an RPAR process. If humans or their environment are not at risk or the potential for exposure is minimal, the administrator will necessarily forgo the RPAR process.

I feel that this is a great step forward and I trust that the administrator will strive to administer this section as dictated in the 1978 amendments to FIFRA.

Another issue which had been of some concern to me which I believe we have corrected so as to allow farmers to purchase pesticides—sometimes at discounts—at the end of one season and store them to be used the next and applied by a certified applicator. Previously, it had been illegal to sell a restricted-use pesticide to a person who was not a certified applicator and the conference report addresses this point and provides that it will no longer be unlawful. This will allow a farmer who is not a certified applicator to buy restricted-use pesticides and store them to be applied at a later date by a certified applicator without fear of running afoul of the law.

I am also pleased with the provisions of this legislation which gives more authority to the States. I feel the States are qualified and know the local situation far better than some bureaucrat in Washington and are just as qualified—or more so—to enforce and administer certain programs.

There are several other important provisions in this legislation which I feel are a step in the right direction in FIFRA program administration. The burden now lies with the administrator to see that the wishes of Congress are carried out.

Mr. WAMPLER. Mr. Speaker, I reserve the balance of my time.

Mr. FOLEY. Mr. Speaker, I yield such time as ne may consume to the chairman of the subcommittee, the gentleman from Texas (Mr. DE LA GARZA).

Mr. DE LA GARZA. Mr. Speaker, I join my colleagues in complimenting the chairman of the committee and the ranking minority member of the full committee. And on the subcommittee I cannot express adequate appreciation to the ranking minority member, the gentleman from Nebraska (Mr. THONE), as well as all the other Members who cooperated in this endeavor with special mention of my colleague from Texas (Mr. HIGHTOWER) who was of tremendous assistance to me during the markup of this bill.

Mr. Speaker, this legislation, as has been mentioned, is a very technical piece of legislation. The industry, the users, the formulators, and the distributors were, we might say, literally in complete disarray and disagreement. This agency that is involved was perhaps one of the most distrusted agencies throughout the country. If one mentioned EPA or FIFRA in the farming or ranching areas, they were probably right on top of the "least liked" list.

Mr. Speaker, we have done our part here in the Congress and hopefully in a few minutes, with the adoption of this conference report, considering all the different areas in which there was disagreement, we have done what we might call the "art of the possible," which is what legislation is. Good legislation, that is.

Everyone joined in this effort, everyone was giving and taking, and not everyone was entirely satisfied. But we are satisfied that this is the most we could do, this is the most beneficial, and this is the most equitable solution under the circumstances from the standpoint of the user, the manufacturer, and everyone in between.

What I would like to say now is that we have done our part, and with this new era of cooperation with the agency, I might add to me that this means salutary progress as a result of our efforts, because the agency is now listening to the Congress, is cooperating with us, and is in constant dialog with us.

So I think it would be a challenge to that agency that we now have formulated what we think is a workable piece of legislation.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. DE LE GARZA. I yield to the gentleman from Washington.

Mr. FOLEY. I thank the gentleman for yielding.

Mr. Speaker, I just want to take a moment to say that, in the Committee on Agriculture, an amendment to hold either an independent agency, such as EPA, or an agency within the Department of Agriculture to relatively short authorizations for the purpose of oversight is known as the de la Garza amendment. The gentleman from Texas (Mr. DE LA GARZA) has been in the forefront of those who feel it is the responsibility of the standing committees with authorization responsibility to exercise effective and continued oversight of complex and important programs under their jurisdiction. I want to pay tribute to his efforts in this regard, which are well understood and appreciated, I know, by members of the Committee on Agriculture. In a broader context, I think his efforts should be recognized by the entire House.

Mr. WAMPLER. Mr. Speaker, will the gentleman yield?

Mr. DE LA GARZA. I yield to the gentleman from Virginia.

Mr. WAMPLER. Mr. Speaker, I wish to associate myself with the remarks of the chairman of the Committee on Agriculture.

Mr. FOLEY. He is precisely accurate in this regard, because the gentleman from Texas (Mr. DE LA GARZA) has for many years in our committee strongly advocated annual authorization review of the programs over which our committee has jurisdiction, programs in the Department of Agriculture, in particular and those in the Environmental Protection Agency. I commend him for this effort, because I think it does permit our committee, in fact the entire Congress, to monitor the implementation programs which are designed to help American agriculture, to help the consumers, and I want the record to show that we on the minority side, particularly, appreciate his contribution.

Mr. DE LA GARZA. I appreciate the kind words of the gentleman, unmerited as they might be.

Finally, in conclusion, Mr. Speaker, I would like to say this: I am satisfied that Mr. Costle, the administrator of EPA, and all of the individuals concerned in that agency, have assured me that they have, or will try to take, the commonsense approach to the problems out in the field. So we hope that with this legislation, on which all of us have worked so hard and on which all of us have given some and on which all of us have now agreed upon, that they will continue that effort and promise of cooperation, that effort of using commonsense out in the field, so that all of us, the Congress and the executive, would finally prevail in doing what was intended by the initial concept of this law—that we provide safe insecticides, pesticides, and fungicides to the users, that we protect them and the crops which they produce, that we provide equity from the manufacturer and the formulator, that we protect the environment, and finally that we do all of these things in the concept of those two very simple words, "common sense."

So I would hope that my colleagues would support this conference and that we might move forward in this new era of cooperation between that agency and the Congress, and that we do so for the benefit of all concerned. I thank you Mr. Speaker.

Mr. FOLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, first, I would like to thank my good friend and colleague, the distinguished chairman, for yielding to me.

It had been my intention to urge the Members of the House to reject this conference report because the conferees had eliminated the provision for congressional veto of regulations which I feel is so important. And I felt perhaps it would be useful to let the Members of the House, as we approach November 7, have the opportunity to let their constituents at home know whether or not they believe, really, not just in terms of rhetoric, but in terms of reality, whether the Members of this House believe that the elected Congress and not the unelected bureaucrats ought to write the laws that govern the people of this Nation. We have seen in the last few years a continuing increase of rules and regulations having the force and effect of law written not by people elected to, accountable to, and responsible to the public, to the citizens, but rather written by the unelected bureaucracy. I think we have noted in this body a tendency to draw back from that approach and let the elected officials make the decision through the device of a congressional veto.

However, after studying this conference report very carefully and listening to the most persuasive arguments offered by the distinguished chairman of the committee, and by the chairman of the subcommittee and the ranking minority members, it seems to me that this would be a good test case. The conference report keeps the Environmental Protection Agency on a short leash, and certainly if there is an agency that needs to be kept on a short leash, it is the Environmental Protection Agency.

There are a number of provisions written into this which will provide prereview by this committee and other committees of the Congress for the regulatory activity of the Environmental Protection Agency. I think that since we are only talking about a 1-year authorization, we can see how responsive EPA will be. It may be that EPA, as the chairman of the subcommittee has said, is becoming responsive, and I think in large part because they are scared to death that if they are not they are going to get a congressional veto put upon them.

But, I would like to ask either the chairman of the committee or the chairman of the subcommittee (Mr. DE LA GARZA) if it would be possible during this 1-year authorization for his subcommittee to monitor carefully the regulatory activity to ascertain and to report back to the Congress whether or not the EPA is following the congressional intent and is being responsive to the wishes of the elected Congress, and let us know so that next year when we get back here a decision can be made.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman from Texas.

Mr. DE LA GARZA. Mr. Speaker, let me assure the gentleman that this has been a major and constant effort on our part, as far as having legislative oversight over this Agency. As the gentleman mentioned, and even before the gentleman allowed us the honor of having him as a Member of this Congress, we have been working on that effort.

As far as this Member is concerned, this Agency has made a 180-degree turn now. We have constant dialog, and I am satisfied that under this new leadership they are doing everything possible to carry out the intent of the Congress. This subcommittee has had continuous oversight, and I do not know what vehicle we would use for us to report back to the

Congress. But, I certainly will do anything that I can within the constraints of having a vehicle to advise the Members of the House as to what the situation is.

I can assure the gentleman now, at this point, that the dialog is constant between the Agency and at least myself and the staff, and I am sure that it will continue so because of the shortness of the authorization. But, I will find a proper vehicle to so report at an opportune time.

Mr. LEVITAS. I thank my colleague from Texas.

The SPEAKER pro tempore. The time of the gentleman from Georgia has expired.

Mr. FOLEY. Mr. Speaker, I yield 1 additional minute to the gentleman from Georgia.

Mr. WAMPLER. Mr. Speaker, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman from Virginia.

Mr. WAMPLER. Mr. Speaker, I thank the gentleman for yielding. Let me assure the gentleman from Georgia, speaking for the minority, that we will cooperate with the chairman of the full committee and the chairman of the subcommittee to see that the intent just expressed is carried out. We share the gentleman's concern, as he has expressed repeatedly, on effective oversight for all branches of the executive department.

Mr. LEVITAS. I thank the gentleman from Virginia.

Mr. Speaker, let me say this: I looked at the calendar for today. There are two other bills which do contain a congressional veto, which I believe we will adopt. Tomorrow or the next day, we will have an opportunity to make the vote on the congressional veto at this session of Congress, when hopefully this House will defeat the conference report on the Federal Trade Commission amendments.

So, rather than involving ourselves in this 1-year reauthorization on this issue and because a short leash has been put out, it seems to me that with some reservations and some reluctance I will not urge the Members to vote against this conference report for that reason.

Mr. FOLEY. Mr. Speaker, I yield 1 minute to the gentleman from Indiana (Mr. FITHIAN).

Mr. FITHIAN. Mr. Speaker, I just wanted to rise and pay my compliments to the distinguished chairman of the full committee and the subcommittee and the ranking minority member, the gentleman from Virginia (Mr. WAMPLER). In the beginning when this struggle began on this bill, it seemed as though a compromise might elude us altogether. There is one person who helped the gentleman from Nebraska (Mr. THONE) and myself and others on the subcommittee to pull together in a compromise which ultimately got out of the subcommittee and the full committee, and that is my friend, the gentleman from Texas (Mr. HIGHTOWER).

It has been a very long road for this extremely technical but important bill. I am happy to see this harmonious result.

Mr. FOLEY. Mr. Speaker, I yield myself 1 minute.

I did not want to get into a discussion of individual Members and their contributions because I think that this legislation, perhaps more than any other bill that the Agriculture Committee has worked on, has required more effort and patience from each member of the committee, both on the majority and minority sides. This effort, combined with the diligent work of the combined staff, has produced this legislation. This has been a difficult bill.

While I appreciate the remarks of the gentleman from Indiana (Mr. FITHIAN) and the gentleman from Nebraska (Mr. THONE), I want to say that this bill has been the product of the greatest cooperation and joint effort by all of the members of the Committee on Agriculture. I am satisfied that we bring this conference report to the floor with the conviction that all members of the committee and the staff have done our very best to finalize good legislation which we can recommend unanimously to our colleagues.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the Senate bill S. 1678, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

CONFERENCE REPORT ON H.R. 12936, APPROPRIATIONS FOR DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. BOLAND. Mr. Speaker, I call up the conference report on the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 13, 1978.)

Mr. BOLAND (during the reading). Mr. Speaker, I ask unanimous consent that the further reading of the statement be dispensed with.

The SPEAKER pro tempore (Mr. LEVITAS). Is there objection to the request of the gentleman from Georgia?

There was no objection.

The SPEAKER pro tempore (Mr. LEVITAS). The gentleman from Massachusetts (Mr. BOLAND) is recognized for 30 minutes and the gentleman from Pennsylvania (Mr. COUGHLIN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts, Mr. BOLAND.

Mr. BOLAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we bring back to the House today the conference report on the 1979 HUD-independent agencies appropriation bill. As I have remarked in past years—we always face difficult issues in this bill. It is a complicated bill involving the Department of Housing and Urban Development and 17 independent agencies comprising a total appropriation of over $67 billion.

This year was no exception. But I am pleased to report that we have resolved all of our differences and brought back to the House what I believe is a constructive and well thought out conference agreement.

The total amount in this conference report is $67,911,419,000. The House passed this bill on June 19 with a total of $68,208,848,000. The Senate passed the bill on August 7 and approved a total of $67,656,624,000. The conferees have brought back a report that is $1,606,115,000 under the budget request.

The conference report is also $7,231,796,000 below the comparable amount of new obligational authority for the agencies and department in this bill for fiscal year 1978. I should point out, however, that approximately $6 billion of the decline from last year is directly attributable to a substantial amount of subsidized housing budget authority carried forward from 1978 into 1979.

Turning to specifics, the conference agreement has approved $31,757,925,000 for the Department of Housing and Urban Development. We are recommending that $1,322,297,000 of new annual contract authority and $24,395,848,000 of new budget authority be made available for HUD's subsidized housing programs. Current estimates are that this will be sufficient to reserve an additional 393,000 subsidized housing units in fiscal year 1979.

In other major program areas within HUD, the bill includes $3,750,000,000 for community development grants; $400,000,000 for urban development action grants; $53,000,000 for the section 701 comprehensive planning grant program; $230,000,000 for section 312 rehabilitation loans; and $10,000,000 for a new congregate services pilot program.

The bill also includes $5,403,946,000 for the Environmental Protection Agency—of which $1,203, 946,000 is for the operating programs of the agency and $4,200,000,000 is for the massive wastewater treatment construction grants appropriation.

Mr. Speaker, so that there is no misunderstanding concerning the intent of Congress on the issue of advanced wastewater treatment, let me read from the statement of the managers accompanying the conference report:

> The committee of conference agrees that grant funds may be used for construction of new facilities providing treatment greater than secondary as defined by the Environmental Protection Agency in 40 CFR 133, dated August 17, 1973 (38 FR 22298), amended July 26, 1976 (41 FR 30786) and

October 7, 1977 (42 FR 54664), only if the incremental cost of the advanced treatment is $1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements.

Also, the conferees agreed on a total of $4,350,200,000 for the National Aeronautics and Space Administration; $911,000,000 for the National Science Foundation; $7,045,000 for the Selective Service System; and $18,355,691,000 for the Veterans Administration.

I am particularly pleased to report to the House that included in the funds approved for the VA is an increase of $103,814,000 above the budget for health related veterans programs.

Mr. Speaker, I will include in the remarks a table showing the action taken on each item in comparison with 1978, the budget estimates, and the actions of both the House and Senate.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, HUD—INDEPENDENT AGENCIES APPROPRIATION BILL, 1979 (H.R. 12936)

[Note.— All amounts are in the form of appropriations unless otherwise indicated.]

Agency and item	New budget (obligational) authority fiscal year 1978 [1]	Budget estimates of new budget (obligational) authority fiscal year 1979 [2]	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action	Conference action compared with: New budget (obligational) authority fiscal year 1978	Conference action compared with: Budget estimates of new budget (obligational) authority fiscal year 1979	Conference action compared with: House bill	Conference action compared with: Senate bill
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
TITLE I									
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Annual contributions for assisted housing (contract authority)	$31,483,563,000	$24,650,950,000	$24,650,950,000	$24,140,745,000	$24,395,848,000	−$7,087,715,000	−$255,102,000	−$255,102,000	+255,103,000
(increased limitation for annual contract authority)	(1,184,295,000)	(1,334,950,000)	(1,334,950,000)	(1,310,424,000)	(1,322,297,000)	(+138,002,000)	(−12,653,000)	(−12,653,000)	(+11,873,000)
Rent Supplement (contract authority)	24,300,000					−24,300,000			
Housing payments (appropriation to liquidate contract authority)	(4,382,000,000)	(4,503,000,000)	(4,463,000,000)	(4,460,000,000)	(4,460,000,000)	(+78,000,000)	(−43,000,000)	(−3,000,000)	
Housing for the elderly or handicapped (authority to borrow)	750,000,000	800,000,000	800,000,000	800,000,000	800,000,000	+50,000,000			
Congregate services program				20,000,000	10,000,000	+20,000,000	+10,000,000	+10,000,000	−10,000,000
Payments for operation of low-income housing projects	685,000,000	729,000,000	723,000,000	729,000,000	727,000,000	+42,000,000	−2,000,000	+4,000,000	−2,000,000
Troubled projects operating subsidy		74,000,000	74,000,000	74,000,000	74,000,000	+74,000,000			
Federal Housing Administration Fund	15,000,000	352,290,000	352,290,000	352,290,000	352,290,000	+337,290,000			
Government National Mortgage Association									
Emergency mortgage purchase assistance (recapture of repayments)				(4,000,000,000)	(1,000,000,000)	(+1,000,000,000)	(+1,000,000,000)	(+1,000,000,000)	(−3,000,000,000)
Special assistance functions: (authority to borrow)		1,500,000,000	500,000,000	500,000,000	500,000,000	+500,000,000	−1,000,000,000		
(recapture of repayments)	(2,000,000,000)	(500,000,000)	(1,500,000,000)	(1,500,000,000)	(1,500,000,000)	(−500,000,000)	(+1,000,000,000)		
Payment of participation sales insufficiencies	16,587,000	20,477,000	20,477,000	20,477,000	20,477,000	+3,890,000			
Total Housing Programs	32,974,450,000	28,126,717,000	27,120,717,000	26,636,512,000	26,879,615,000	−6,094,835,000	−1,247,102,000	−241,102,000	+234,103,000
Communitty planning and Development									
Community development grants	3,600,000,000	3,750,000,000	3,750,000,000	3,750,000,000	3,750,000,000	+150,000,000			
Urban development action grants	400,000,000	400,000,000	400,000,000	380,000,000	400,000,000				+20,000,000
Comprehensive planning grants	57,000,000	57,000,000	50,000,000	57,000,000	53,000,000	−4,000,000	−4,000,000	+3,000,000	−4,000,000
Rehabilitation loan fund		245,000,000	245,000,000	230,000,000	230,000,000	+230,000,000	−15,000,000	−15,000,000	
Urban homesteading		20,000,000	20,000,000	20,000,000	20,000,000	+20,000,000			
Total Community Planning and Development	4,057,000,000	4,472,000,000	4,465,000,000	4,437,000,000	4,453,000,000	+396,000,000	−19,000,000	−12,000,000	+16,000,000
Federal Insurance Administration									
Flood Insurance	91,000,000	114,000,000	90,000,000	85,000,000	85,000,000	−6,000,000	−29,000,000	−5,000,000	
Neighborhoods, Voluntary Associations and Consumer Protection									
Housing counseling assistance	5,000,000	8,000,000	10,000,000	8,000,000	9,000,000	+4,000,000	1,000,000	−1,000,000	+1,000,000
Policy Development and Research									
Research and technology	52,000,000	62,000,000	56,000,000	59,000,000	57,500,000	+5,500,000	−4,500,000	+1,500,000	−1,500,000
Management and Administration									
Salaries and expenses, Department of Housing and Urban Development	237,534,000	279,570,000	271,553,000	275,851,000	273,810,000	+36,276,000	−5,760,000	+2,257,000	−2,041,000
(By transfer, FHA funds)	(239,929,000)	(250,255,000)	(250,255,000)	(250,255,000)	(250,255,000)	(+10,326,000)			
Total, Department of Housing and Urban Development	37,416,984,000	[3] 33,062,287,000	32,013,270,000	31,501,363,000	31,757,925,000	−5,659,059,000	−1,304,362,000	−255,345,000	+256,562,000

See footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, HUD—INDEPENDENT AGENCIES APPROPRIATION BILL, 1979 (H.R. 12936)—Continued

[Note.– All amounts are in the form of appropriations unless otherwise indicated.]

Agency and item	New budget (obligational) authority fiscal year 1978 [1]	Budget estimates of new budget (obligational) authority fiscal year 1979 [2]	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action	Conference action compared with: New budget (obligational) authority fiscal year 1978	Conference action compared with: Budget estimates of new budget (obligational) authority fiscal year 1979	Conference action compared with: House bill	Conference action compared with: Senate bill
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
FUNDS APPROPRIATED TO THE PRESIDENT									
Federal Disaster Assistance Administration									
Disaster relief	$450,000,000	$200,000,000	$200,000,000	$200,000,000	$200,000,000	−$250,000,000			
Total, title I, Department of Housing and Urban Development:									
New budget (obligational) authority	37,866,984,000	33,262,287,000	32,213,270,000	31,701,363,000	31,957,925,000	−5,909,059,000	−$1,304,362,000	−$255,345,000	+$256,562,000
Appropriations	5,609,121,000	6,311,337,000	6,262,320,000	6,260,618,000	6,262,077,000	+652,956,000	−49,260,000	−243,000	+1,459,000
Contract authority	31,507,863,000	24,650,950,000	24,650,950,000	24,140,745,000	24,395,848,000	−7,112,015,000	−255,102,000	−255,102,000	−255,103,000
Authority to borrow	750,000,000	2,300,000,000	1,300,000,000	1,300,000,000	1,300,000,000	+550,000,000	−1,000,000,000		
(Appropriation to liquidate contract authority)	(4,382,000,000)	(4,503,000,000)	(4,463,000,000)	(4,460,000,000)	(4,460,000,000)	(+78,000,000)	(−43,000,000)	(−3,000,000)	
(Increased limitation for annual contract authority)	(1,184,295,000)	(1,334,950,000)	(1,354,950,000)	(1,310,424,000)	(1,332,297,000)	(+138,002,000)	(−12,653,000)	(−12,653,000)	(+11,873,000)
(limitation on corporate funds to be expended)	(239,929,000)	(250,255,000)	(250,255,000)	(250,255,000)	(250,255,000)	+(10,326,000)			
TITLE II INDEPENDENT AGENCIES									
AMERICAN BATTLE MONUMENTS COMMISSION									
Salaries and expenses	6,463,000	6,240,000	6,240,000	6,240,000	6,240,000	−223,000			
CONSUMER PRODUCT SAFETY COMMISSION									
Salaries and expenses	40,461,000	41,463,000	40,000,000	40,000,000	40,000,000	−461,000	−1,463,000		
DEPARTMENT OF DEFENSE—CIVIL									
Cemeterial Expenses, Army Salaries and expenses	5,000,000	5,200,000	5,100,000	5,100,000	5,100,000	+100,000	−100,000		
ENVIRONMENTAL PROTECTION AGENCY									
Agency and regional management	76,046,000	84,185,000	84,185,000	84,185,000	84,185,000	+8,139,000			
Research and development	319,547,000	324,128,000	328,028,000	328,528,000	328,528,000	+8,981,000	+4,400,000	+500,000	
Abatement and control	526,173,000	664,929,000	664,115,000	710,940,000	692,915,000	+166,742,000	+27,986,000	+28,800,000	−18,025,000
Enforcement	72,837,000	95,555,000	94,555,000	94,755,000	94,755,000	+21,918,000	−800,000	+200,000	
Buildings and facilities		2,563,000	1,063,000	1,063,000	1,063,000	+1,063,000	−1,500,000		
Construction grants:									
Appropriation	4,500,000,000	4,500,000,000	4,200,000,000	4,250,000,000	4,200,000,000	−300,000,000	−300,000,000		−50,000,000
(appropriation to liquidate contract authority)	(5,000,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(−3,600,000,000)			
Scientific activities overseas (special foreign currency program)	4,000,000	4,000,000	2,500,000	2,500,000	2,500,000	−1,500,000	−1,500,000		
Total, Environmental Protection Agency	5,498,603,000	5,675,360,000	5,374,446,000	5,471,971,000	5,403,946,000	−94,657,000	−271,414,000	+29,500,000	−68,025,000
EXECUTIVE OFFICE OF THE PRESIDENT									
Council on Environmental Quality and Office of Environmental Quality	2,854,000	3,126,000	2,926,000	3,026,000	3,026,000	+172,000	−100,000	+100,000	
Office of Science and Technology Policy	2,800,000	2,621,000	2,476,000	2,476,000	2,476,000	−324,000	−145,000		
Total, Executive Office of the President	5,654,000	5,747,000	5,402,000	5,052,000	5,502,000	−152,000	−245,000	+100,000	
GENERAL SERVICES ADMINISTRATION									
Consumer Information Center	4,700,000	1,186,000	1,166,000	1,146,000	1,146,000	−3,554,000	−40,000	−20,000	
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE									
Office of Consumer Affairs	1,800,000	1,737,000	1,700,000	1,700,000	1,700,000	−100,000	−37,000		

See footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, HUD—INDEPENDENT AGENCIES APPROPRIATION BILL, 1979 (H.R. 12936)—Continued

[Note.—All amounts are in the form of appropriations unless otherwise indicated.]

Agency and item	New budget (obligational) authority fiscal year 1978 [1]	Budget estimates of new budget (obligational) authority fiscal year 1979 [2]	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action	Conference action compared with: New budget (obligational) authority fiscal year 1978	Conference action compared with: Budget estimates of new budget (obligational) authority fiscal year 1979	Conference action compared with: House bill	Conference action compared with: Senate bill
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION									
Research and development	$8,013,000,000	$3,305,100,000	$3,292,200,000	$3,290,700,000	$3,292,200,000	+$279,200,000	−$12,900,000		+$1,500,000
Construction of facilities	160,940,000	152,500,000	134,690,000	148,500,000	147,500,000	−13,440,000	−5,000,000	+$12,810,000	−1,000,000
Research and program management	889,761,000	914,000,000	907,000,000	914,000,000	910,500,000	+20,739,000	−3,500,000	+3,500,000	−3,500,000
Total, National Aeronautics and space administration	4,063,701,000	4,371,600,000	4,333,890,000	4,353,200,000	4,350,200,000	+286,499,000	−21,400,000	+16,310,000	−3,000,000
NATIONAL COMMISSION ON AIR QUALITY									
Salaries and expenses	500,000	4,000,000	2,000,000	2,000,000	2,000,000	+1,500,000	−2,000,000		
NATIONAL INSTITUTE OF BUILDING SCIENCES									
Salaries and expenses	1,000,000		1,000,000	500,000	750,000	−250,0000	+750,000	−250,000	+250,000
NATIONAL SCIENCE FOUNDATION									
Research and related activities	785,050,000	850,400,000	806,400,000	836,400,000	827,000,000	+41,950,000	−23,400,000	+20,600,000	+9,400,000
Science education activities	73,200,000	77,600,000	82,600,000	77,600,000	80,000,000	+6,800,000	+2,400,000	−2,600,000	+2,400,000
Scientific activities overseas (special foreign currency program)	4,900,000	6,000,000	4,900,000	3,000,000	4,000,000	−900,000	−2,000,000	−900,000	+1,000,000
Total, National Science Foundation	863,150,000	934,000,000	893,900,000	917,000,000	911,000,000	+47,850,000	−23,000,000	+17,100,000	−6,000,000
SELECTIVE SERVICE SYSTEM									
Salaries and expenses	6,633,000	9,500,000	7,045,000	9,500,000	7,045,000	+412,000	−2,455,000		−2,455,000
DEPARTMENT OF THE TREASURY									
Payments to State and local government fiscal assistance trust fund	5,854,924,000	6,854,924,000	6,854,924,000	6,854,924,00	6,854,924,000				
Antirecession financial assistance fund	1,400,000,000	(4)				−1,400,000,000			
Office of Revenue Sharing, salaries and expenses	7,500,000	7,493,000	7,200,000	7,200,000	7,200,000	−300,000	−293,000		
New York City seasonal financing fund, administrative expenses	1,150,000	1,150,000	1,050,000	1,050,000	1,050,000	−100,000	−100,000		
Total, Department of the Treasury	8,263,574,000	6,863,567,000	6,863,174,000	6,863,174,000	6,863,174,000	−1,400,400,000	−393,000		
VETERANS ADMINISTRATION									
Compensation and pensions	9,606,400,000	9,577,300,000	9,577,300,000	9,577,300,000	9,577,300,000	−29,100,000			
Readjustment benefits	2,665,225,000	2,193,300,000	2,193,300,000	2,144,000,000	2,144,000,000	−521,225,000	−49,300,000	−49,300,000	
Veterans insurance and indemnities	3,485,000	5,750,000	5,750,000	5,750,000	5,750,000	+2,285,000			
Medical care	4,924,649,000	5,279,699,000	5,362,618,000	5,299,699,000	5,334,374,000	+409,725,000	+54,675,000	−28,244,000	+34,675,000
Medical and prosthetic research	111,053,000	112,667,000	127,607,000	120,212,000	122,847,000	+11,794,000	+10,180,000	−4,760,000	+2,635,000
Medical administration and miscellaneous operating expenses	43,316,000	47,855,000	47,058,000	47,058,000	47,058,000	+3,742,000	−797,000		
General operating expenses	581,850,000	622,074,000	616,258,000	615,670,000	615,964,000	+34,114,00	−6,110,000	−294,000	+294,000
Construction, major projects	393,689,000	295,855,000	348,890,000	330,701,000	365,560,000	−28,129,000	+69,705,000	+16,670,000	+34,859,000
Construction, minor projects	95,234,000	121,147,000	119,297,000	85,401,000	85,401,000	−9,833,000	−35,746,000	−33,896,000	
Grants for construction of State extended care facilities	15,000,000	5,000,000	15,000,000	5,000,000	10,000,000	−5,000,000	+5,000,000	−5,000,000	+5,000,000
Assistance for health manpower training institutions	53,411,000	75,000,000	47,437,000	47,437,000	47,437,000	−5,974,000	−27,563,000		
Grants to the Republic of the Philippines	1,700,000					−1,700,000			
Loan guaranty revolving fund (limitation on obligations)	(575,000,000)					−575,000,000			
Supply fund	20,000,000					−20,000,000			
Total Veterans Administration	18,514,992,000	18,335,647,000	18,460,515,000	18,278,228,000	18,355,691,000	−159,301,000	+20,044,000	−104,824,000	+77,463,000
Total, title II, Independent Agencies:									
New budget (obligational) authority	37,276,231,000	36,255,247,000	35,995,578,000	35,955,261,000	35,954,493,000	−1,322,737,000	−301,753,000	−42,084,000	−1,767,000
(appropriation to liquidate contract authority)	(5,000,000,000)	(4,400,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(−3,600,000,000)			
(limitation on obligations)	(575,000,000)					(−575,000,000)			

See footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, HUD—INDEPENDENT AGENCIES APPROPRIATION BILL, 1979 (H.R. 12936)—Continued

[Note.– All amounts are in the form of appropriations unless otherwise indicated.]

Agency and item	New budget (obligational) authority fiscal year 1978 [1]	Budget estimates of new budget (obligational) authority fiscal year 1979 [2]	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action	Conference action compared with: New budget (obligational) authority fiscal year 1978	Conference action compared with: Budget estimates of new budget (obligational) authority fiscal year 1979	Conference action compared with: House bill	Conference action compared with: Senate bill
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
TITLE III									
CORPORATIONS									
FEDERAL HOME HOME LOAN BOARD									
(limitation on administrative expenses)	($17,367,000)	($18,258,000)	($17,793,000)	($17,793,000)	($17,793,000)	(+$426,000)	(−$465,000)		
(limitation on nonadministrative expenses)	(27,800,000)	(30,290,000)	(30,290,000)	(29,895,000)	(29,895,000)	(+2,095,000)	(−395,000)	(−$395,000)	
Federal Savings and Loan Insurance Corporation: (limitation on administrative expenses)	(899,000)	(960,000)	(940,000)	(940,000)	(940,000)	(+41,000)	(−20,000)		
Total, title III, Corporation	(46,066,000)	49,508,000)	(49,023,000)	(48,628,000)	(48,628,000)	(+2,562,000)	(−880,000)	(−395,000)	
RECAPITULATION									
Grand total, titles I, II, and III:									
New budget (obligational) authority	75,143,215,000	69,517,534,000	68,208,848,000	67,656,624,000	67,911,419,000	−7,231,796,000	−1,606,115,000	−297,429,000	+$254,795,000
Appropriations	42,885,352,000	42,566,584,000	42,257,898,000	42,215,879,000	42,215,571,000	−669,781,000	−351,013,000	−42,327,000	−308,000
Contract authority	31,507,863,000	24,650,950,000	24,650,950,000	24,140,745,000	24,395,848,000	−7,112,015,000	−255,102,000	−255,102,000	+255,031,000
Authority to borrow	750,000,000	2,300,000,000	1,300,000,000	1,300,000,000	1,300,000,000	+550,000,000	−1,000,000,000		
(appropriations to liquidate authority)	(9,382,000,000)	(5,903,000,000)	(5,863,000,000)	(5,860,000,000)	(5,860,000,000)	(−3,522,000,000)	(−43,000,000)	(−3,000,000)	
(increased limitation for annual contract authority)	(1,184,295,000)	(1,334,950,000)	(1,334,950,000)	1,310,421,000)	(1,322,297,000)	(+138,002,000)	(−12,653,000)	(−12,653,000)	(+11,873,000)
(limitation on corporate funds to be expended)	(285,995,000)	(299,763,000)	(299,278,000)	(298,883,000)	(298,883,000)	(+12,888,000)	(−880,000)	(−395,000)	
(limitation on obligations)	(575,000,000)					(−575,000,000)			

[1] Includes all supplementals.

[2] Includes the following budget amendments:

H. Doc. 95–331:

Department of Housing and Urban Development:	
Rehabilitation loan fund	$150,000,000
Environmental Protection Agency:	
Agency and regional management	100,000
Abatement and control	46,960,000
Enforcement	700,000
Total, H. Doc. 95–331	197,760,000

[3] Budget estimates of $35,000,000 transmitted in S. Doc. 95–106 and $200,000,000 transmitted in S. Doc. 95–113 not considered due to lack of authorization.

[4] Budget estimate of $1,040,000,000 transmitted in S. Doc. 95–105 not considered due to lack of authorization.

Mr. COUGHLIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman, the gentleman from Massachusetts (Mr. BOLAND), has very ably pointed out that this is a good conference report. As always, the chairman is a tough man when it comes to a conference and he did a superb job.

The conference report is actually under the House bill. Hence, I would only like to briefly point out a couple of highlights. For the first time, we fund, in the amount of $10 million, a pilot program of congregate services. This is an item that was not considered by the House because the authorization legislation had not been enacted in time and it was not requested by HUD.

Let me read from the Senate appropriations report as to what was discussed in the original program.

It says that "a full meals program must be part of each congregate housing service package," as well as housekeeping assistance and transportation to reach shopping and other community activities.

The committee and the members of the conference were very concerned that this could be extremely duplicative of other programs already in existence which provide meals, transportation, and other services.

Mr. Speaker, the Senate asked for $20 million to provide for this program. The House reduced it to $10 million. I frankly wish we could have reduced it even further because I am worried about duplication. However, the House has provided very strong language in the statement of the managers of the conference which indicates that this is just a pilot program and that it should not duplicate other programs.

Second, we held as closely as we could to the House position, which cut a substantial number of positions from those requested by HUD. We ended up cutting a meager 150 new positions from the total of 1,410 new positions requested. Mr. Speaker, 115 of those were cut from community planning and development. They were supposed to be monitors who would have looked over the shoulders of local communities and made redtape in what is supposed to be a flexible, locally run program.

Mr. Speaker, that is exactly what the community development block grant program was designed to prevent. It was designed not to be a program full of redtape, but a program in which local communities could make their own decisions. Therefore, we felt that increasing the number of bureaucrats would make more problems and that there was no need for these additional people.

Mr. Speaker, in passing, at least this Member has concern that HUD may be becoming a political dumping ground of sorts. We read recent reports in the newspapers. We know the number of schedule C positions, which are political appointments, has doubled since the beginning of this administration. I think this warrants careful watching. Providing jobs for unemployed politicos is not part of the mission of our Department of Housing and Urban Development.

Mr. Speaker, in the area of the National Aeronautics and Space Administration, the conference did include an item which was not in the House bill. This was funds for the construction of Space Shuttle launch pad B at the Kennedy Space Center in the amount of $12.8 million. The House did agree with the Senate's position that if, indeed, pad B was needed, it was better to allow for construction of it now while construction equipment was already on the site doing the work on pad A. The result would be a contract price considerably lower under those circumstances. It would be more economical to work on it now rather than to put it off into the future.

Finally, as the chairman has mentioned, the conference does provide a

considerable amount over the budget in Veterans' Administration medical care. It is $32.3 million over the budget for 1,500 additional staff years to keep existing hospital beds open, $18 million over the budget for 700 additional staff years to meet anticipated increases in outpatient caseload, and $4,375,000 over the budget for staffing new medical facilities.

Mr. Speaker, the committee and the members of the conference felt that these funds were vitally important in order to provide adequate health care for veterans.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. COUGHLIN. I am happy to yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for yielding.

I take this time only to call the committee's attention to an amount which was added by the other body, in the amount of $4.9 million for the continuation of the EPA's Chesapeake Bay program. Approximately half of that amount is to be used for abatement and control under the Environmental Protection Agency, which administers this program.

The reason I call it to the committee's attention is that this program was never enacted by an authorizing committee, but rather, came in the form of an appropriation 2 years ago. Originally it was suggested that the EPA would expend these funds for the general purposes of preserving the Chesapeake Bay.

While I certainly support this appropriation and have, in fact, myself sponsored legislation dealing with the preservation of the Chesapeake Bay, it occurs to me that the gentleman's committee might wish next year to take a very close look at the manner in which this program is being administered. Some controversies have arisen as to the manner in which EPA is handling it. The local office of EPA has assigned 10 staffers to conduct the Chesapeake Bay program and they are located in Philadelphia far from the Bay itself. It might well be that Congress may want to provide some legislative guidelines to govern any such appropriation so that the money is spent wisely and not in duplication of other EPA or other Federal agency expenditures.

I think it is best to do that now while the program is at mid-point rather than to waste, if, indeed, any waste does occur, over a period of 5 years both energy and dollars that could be better spent. I say that as one who endorses the EPA program but has concerns about it.

I thank the gentleman for yielding.

Mr. COUGHLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from South Dakota (Mr. ABDNOR).

Mr. ABDNOR. Mr. Speaker, consideration of the conference report on H.R. 12936, which contains appropriations for the Environmental Protection Agency, provides an opportunity to call to the attention of my colleagues some real problems in that Agency's proposed amendments to its drinking water regulations pertaining to synthetic organic chemicals. These should concern us all and not just those who represent the large urban communities initially to be subject to these regulations.

I have had a long-time interest in assuring our citizenry plentiful supplies of safe drinking water at a reasonable cost. Recently, I introduced H.R. 13752 which would amend the Safe Drinking Water Act and the Consolidated Farm and Rural Development Act to authorize the Farmers Home Administration to make grants of up to 90 percent of the cost of bringing small communities—those with a population of less than 5,500 have priority—into compliance with EPA's drinking water regulations.

I am concerned about those EPA programs which impose these compliance burdens. The clearest current example is the Agency's proposed regulations to limit the amount of trihalomethanes in drinking water and to require installation of granular activated carbon systems to screen out certain organic chemicals.

As proposed, these regulations would initially apply only to large water systems serving more than 75,000 persons. In addition, systems serving between 10,000 and 75,000 would be required to monitor THM levels. However, if EPA goes forward to issue those regulations in final form, one should reasonably anticipate that sooner or later EPA may well seek to extend them to smaller systems. The monitoring requirement portends future application of the regulations to these smaller systems.

The National Drinking Water Advisory Council, appointed by EPA, and others have recommended extension of the proposed regulations to cover all community water systems, large and small alike. Moreover, in the February 9, 1978, Federal Register EPA asked for public comment on "How rapidly should the phasing to include smaller systems be instituted?" While EPA may be limiting the application of these proposed regulations "initially," I recognize that future extensions will likely impact smaller communities such as those in my district and State.

Of course, residents of smaller communities should get the protection of the Safe Drinking Water Act, too, but I understand that there is still considerable dispute about the extent of any health hazard to humans stemming from synthetic organic chemicals. I would commend the members of the Appropriation Committee for its report on H.R. 12936, which explicitly recognizes the need for further research and advise EPA to complete its homework in this area before going ahead with the proposed regulations.

There is a great deal of controversy surrounding cost estimates for compliance with the proposed regulations as well. EPA raised its own cost estimates, showing capital outlays going possibly above $800 million. Industry estimates of cost are truly staggering, several times the revised EPA figures, and they seem to have been carefully prepared and soundly based. The Council on Wage and Price Stability has sharply attacked EPA's proposals because they are not based on a sound cost-benefit analysis. One thing is certain—the cost will be substantial.

Generally, because of economies of scale, I would expect that the per customer cost of compliance with regulations such as those proposed by EPA would be higher in smaller systems than in larger ones. EPA's own figures (43 Fed. Reg. 29143) and the comments of industry and the Council on Wage and Price Stability bear this out. This is also an important factor to be kept in mind by anyone who would measure the true long-range impact of EPA's proposal. Considerations such as these led me to introduce H.R. 13752.

My purpose in making this statement is to highlight for my colleagues the possible fiscal burden that these regulations will impose upon all communities to which they ultimately may be applied, whether large or small. Look not only at the costs "initially" imposed on larger communities but also on the costs likely to be incurred in smaller communities in the easily foreseeable future.

I urge that EPA, in choosing its course, be truly sensitive to costs as the Safe Drinking Water Act requires, and consider carefully whether the balance of evidence on the issue of health risk justifies imposing this cost.

As the Council on Wage and Price Stability recently recommended in its comments on the proposed regulations, EPA should more carefully examine the costs and benefits of the various alternatives before requiring massive expenditures of inherently limited resources.

Mr. COUGHLIN. Mr. Speaker, I have no further requests for time, and reserve the remainder of my time.

Mr. BOLAND. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

AMENDMENTS IN DISAGREEMENT

The SPEAKER pro tempore. The Clerk will report the first amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 6: Page 4, after line 9, insert:

CONGREGATE SERVICES PROGRAM

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs as authorized by the Congregate Housing Services Act of 1978, $20,000,000, to remain available until September 30, 1984.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered 6 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment insert:

CONGREGATE SERVICES PROGRAM

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs as authorized by the Congregate Housing Services Act of 1978, $10,000,000, to remain available until September 30, 1984.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 8: Page 5, strike out lines 17 to 20 inclusive and insert:

For assistance payments to owners of eligible multifamily housing projects, in the program of operating subsidies for troubled multifamily housing projects under the Housing and Community Development Amendments of 1978, $74,000,000, together with any excess rental charges collected after September 30, 1977, to remain available until September 30, 1980.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 9: Page 6, after line 10, insert:

EMERGENCY MORTGAGE PURCHASE ASSISTANCE

The aggregate amount of purchases and commitments authorized to be made pursuant to section 313 of the National Housing Act, as amended (12 U.S.C. 1723e), out of recaptured Emergency Mortgage Purchase Assistance authority, if further increased by $4,000,000,000.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered 9 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment insert:

EMERGENCY MORTGAGE PURCHASE ASSISTANCE

The aggregate amount of purchases and commitments authorized to be made pursuant to section 313 of the National Housing Act, as amended (12 U.S.C. 1723e), out of recaptured Emergency Mortgage Purchase Assistance authority, is increased by $1,000,000,000.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 32: Page 21, line 11, after "applies" insert: ": *Provided further*, That none of the funds provided by this Act shall be used to pay an investigator, through a grant, at more than the maximum rate paid for GS–18".

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered 32 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment insert: ": *Provided further*, That none of the funds provided by this Act shall be used to pay an investigator, through a grant, at more than the maximum rate paid for GS–18, unless expressly approved by the Director of the National Science Foundation".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 42: Page 27, line 23, strike out "$348,890,000" and insert "$330,701,000".

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered 42 and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$365,560,000".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 47: Page 37, after line 16, insert:

SEC. 407. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals for projects not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered 47 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 48: Page 38 after line 16, insert:

SEC. 408. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the maximum rate paid for GS–18, unless specifically authorized by law.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves that the House recede from its disagreement to the amendment of the Senate numbered 48 and concur therein.

The motion was agreed to.

A motion to reconsider the votes by which the action was taken on the several motions was laid on the table.

GENERAL LEAVE

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include tables, charts, and other extraneous material, on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

CONFERENCE REPORT ON S. 3040, AMTRAK IMPROVEMENT ACT OF 1978

Mr. ROONEY. Mr. Speaker, I call up the conference report on the Senate bill (S. 3040) to amend the Rail Passenger Service Act to extend the authorization of appropriations for an additional fiscal year, to provide for public consideration and implementation of a rail passenger service study, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 11, 1978.)

Mr. ROONEY (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 30 minutes, and the gentleman from Texas (Mr. COLLINS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Amtrak Improvement Act of 1978 as agreed upon by the committee of conference is a bill which should be particularly pleasing to the overwhelming majority of us who voted for the House bill in June. In essence this bill contains almost every provision included in the House bill.

The House bill provided $600 million for an operational subsidy during fiscal year 1979. The Senate bill provided for only $510 million for this purpose, but they receded from the position. The House members pointed out that $600 million would be required to operate the present system and we wanted to assure the preservation of the present route structure for the entire fiscal year 1979.

The House bill provided $130 million for capital expenditures in fiscal year 1979. You will recall, this amount is considerably less than the amount requested by Amtrak, but it was believed by the House that this amount would be sufficient pending a resolution of the question of the future of the route structure.

The Senate provided for $120 million for this purpose, but readily agreed that our amount was more realistic to present needs.

Of particular importance to many Members was a provision in the House bill which would prevent the discontinuance of any train before October 1, 1979. The bill provides that the Secretary of Transportation will conduct a route structure study and submit his recommendations to the Congress before December 31, 1978. The conferees also adopted a procedure for approval of the route structure study which follows closely the pattern established for the final system plan mandated by the Regional Rail Reorganization Act of 1973. The approval procedure agreed upon provides that the Secretary's final recommendations will take effect October 1, 1979, unless either the House or Senate adopts a resolution of disapproval within the first 90 calendar days after the Secretary's recommendations are received by the Congress.

There were a number of provisions in the House bill for which there were no comparable provisions in the Senate bill. I am glad to inform you that the Senate agreed to each of these provisions in the House bill. For example, this bill retains the House provision which would require the Secretary of Transportation to submit a report to the Congress on the conflict between the needs of commuter rail passenger service and intercity rail passenger service in the Northeast Corridor.

Similarly, this bill contains the House provision requiring the Comptroller General, in consultation with the Secretary of Transportation and the Interstate Commerce Commission, to report on the economic relationship of the fare structure to Amtrak to the intercity bus industry.

The House bill contained a provision requiring that all purchases amounting to more than $100,000 must be made in the United States. The Senate had a similar provision but it set the threshold at $1 million. The Senate provision however, was not as comprehensive as the House version. Therefore, this bill contains the House amendment, but accepts the Senate threshold figure of $1 million because there are many types of equipment costing considerably more than $100,000 which are not manufactured in this country.

There are a number of other provisions contained in the House bill, and as I said, each was agreed to by the Senate and is contained in this bill.

It can therefore be seen that in every important issue the conferees have agreed with the House provision, As I stated at the outset, I am sure this is a bill with which the vast majority of us can agree, and I ask your support.

Mr. COLLINS of Texas. Mr. Speaker, I yield myself such time as I may consume.

Today we are considering a conference report on the Amtrak improvement bill originally debated here this year. I am disappointed to find that the conferees have retained several of the most harmful provisions from the original bill. I remain firmly opposed to these provisions, and I feel now, as I did earlier, that the bill represents an unwise expenditure which would perpetuate the overbudgeted, under-utilized status Amtrak has held for the last five years. Amtrak's passenger rail service cannot be economically justified.

The basic fallacy of the Amtrak situation is that outside of the Northeast corridor, Amtrak does not provide an essential service to most American citizens. Although Amtrak has increased the number of train routes, and spent almost $3 billion in taxpayers' revenues over the last 8 years, the fact is that less than 2 percent of intercity passengers use railroads nationwide. They have been unable to increase substantially the number of people riding trains; only 15.6 percent more passengers in 1977 than in the first year of operation in 1972. This picture is vividly described in a recent GAO report:

> Amtrak's biggest problem is that there are not enough people who want to use the train for intercity travel. While Amtrak attracted about 3 million more passengers in fiscal year 1977 than it did in 1972, it did so by substantially increasing the number of trains available. The number of revenue passengers per train miles decreased. . . . Air travel is much quicker and more convenient for time-sensitive travelers . . . and on longer trips, almost the same price as Amtrak. Buses go more places, usually at a lower cost to travelers. Automobiles give travelers more control over where and when they can travel, and is more economical when more than one traveler is involved.

Amtrak does not serve all of the country equally, all taxpayers must foot the bill for its services. Can it be justified that taxpayers who will never use Amtrak; never see an Amtrak train; and who work hard for their pay should be required to subsidize the vacations of Amtrak travelers to the extent of 83.5 percent—or even 100 percent?

We cannot justify burdening the American taxpayer with this costly and financially unstable system, which does nothing to increase transportation options. Amtrak represents essentially an expensive, inflationary duplication of efforts, because it services routes where unsubsidized, private transportation is already sufficient. In addition, public polls reveal that the vast majority of Americans have no intention of ever using Amtrak, and its termination would work no hardship on this country.

Amtrak could surely take a lesson in efficient business management from some other forms of transportation services—for example, Trailways, which is a national busline. Figures contrasting the experiences of Trailways and Amtrak are undeniable proof of the need for more sound business logic in passenger rail services.

	Trailways	Amtrak
1977 annual revenue	$240,000,000	$270,000,000
1978 Federal subsidy	0	$600,000,000
Communities served	5,500	500
Employees	8,000	17,000
1977 passengers	22,000,000	19,000,000
Route miles	70,000	27,000
Profitable	yes	no

Trailways, alone, serves 10 times as many communities, more route miles, more people, with more schedules, and at one-third the cost with half the number of employees.

Why not admit that Amtrak is a losing proposition and be done with it?

Amtrak has failed, but with so much Government regulation, how could it have a chance to succeed? The type of half-government/half-free enterprise system under which it is forced to operate has meant certain doom from the beginning. We have put Amtrak management in an impossible situation by adding train after train and not permitting them to eliminate even those trains which lose over $100 per passenger every time they run. It is impossible for Amtrak to behave as a well-run business because, under the present circumstances, it cannot take a train off for fear of the political repercussion such an action may have. Now is the time to let our country's needs, not politics, determine our transportation policy.

It is obvious that the Amtrak system needs change. Both DOT and GAO demand that something be done. Unfortunately, those who consent that change is needed, want, for a variety of reasons, to postpone decisive action until October 1979. Why must we put it off for over a year and waste untold millions in taxpayers' dollars in the process? A total of $3 billion has been wasted by Amtrak since its inception 8 years ago. Are we to purposefully freeze any change which might improve that situation? I personally support striking language from this legislation which would prohibit any rate modifications or terminations prior to October 1, 1979.

We must keep a clear view of the needs and desires of the American people. All too often, especially in an election year, the temptation to maintain the status quo is powerful, and often blinding. If Amtrak provides repetitious service at inflated rates to a mere fraction of the citizenry, let us not be afraid to call off this experiment. We must fight our hesitancy to stop a Government program once it is created, and, instead, weigh the costs and benefits in an open-minded balance.

Mr. ROONEY. Mr. Speaker, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Pennsylvania.

Mr. ROONEY. I thank the gentleman for yielding.

Mr. Speaker, I would like to comment on my colleague's erroneous statement that the bus companies have no subsidies. Has the gentleman ever taken

into consideration the billions of dollars the American taxpayers have put into the highway subsidies since 1956?

Mr. COLLINS of Texas. I have seen many buses today that on the back of them have a sign which says how much taxes they pay. I have never seen Amtrak put up a sign of how much taxes they pay. Buses pay taxes for license, gasoline, equipment, franchise and many others. Amtrak rides tax free.

Mr. ROONEY. Let me tell the gentleman that the gasoline taxes paid by the bus companies has not been enough to constitute a fair share especially since Amtrak must pay a similar tax for its fuel.

Mr. COLLINS of Texas. I appreciate the gentleman's remarks.

Mr. ROONEY. Mr. Speaker, I would like to state that it is essential that Members know that the distinguished colleague from the great State of Texas made the same plea when our bill was considered, and overwhelmingly adopted, in June. Mr. COLLINS was not a member of the committee of conference. Every member of the conference committee, both majority and minority, agreed with this report.

Although I have some problems with Amtrak, nevertheless I think we ought to give it another year under the able leadership of its new president, Mr. Alan Boyd.

Mr. Speaker, I yield to the distinguished chairman of the full committee, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, on June 23, the House-passed legislation authorizing appropriations for Amtrak for fiscal year 1979, providing for public consideration and implementation of a rail passenger service route reexamination undertaken by the Secretary of Transportation, and making other statutory improvements to enhance rail passenger service. The House bill differed from that of the Senate and a conference was needed. The conferees have met and filed their report.

The report in many respects follows the House version but contains several provisions from the Senate bill. I will summarize briefly the key points of disagreement between the two versions and the recommended solution:

First, the report authorizes appropriations for Amtrak for fiscal year 1979 in the amounts of $600 million for operating expenses, including operating expenses in the Northeast Corridor, $130 million for capital acquisition and improvement grants, and $25 million for permanent debt retirement. These authorization levels are identical to those contained in the House-passed version. The Senate figures for these three categories were $510 billion, $120 million, and $25 million respectively.

Second, the report directs the Secretary of Transportation, in cooperation with Amtrak, to undertake a comprehensive study of the Amtrak route system and to formulate recommendations on an optimal national rail passenger route system, based upon current and future market and population requirements. In anticipation of the legislation, the Secretary submitted his preliminary recommendations to Congress last May. The Rail Services Planning Office in the Interstate Commerce Commission has already held nationwide public hearings in areas where service would be modified or affected. The Secretary's final recommendations are required to be submitted to the Congress by December 31, 1978.

The Secretary's final recommendations shall be deemed approved after 90 calendar days of continuous session of Congress unless either House passes a resolution of disapproval. This language generally follows the Senate version, except that the period of time for congressional review has been enlarged from 60 to 90 days. The House version had required both Houses to vote to approve the recommendations before they would become effective.

However, in conformity with the House version, the report provides that, with minor exceptions, the Amtrak route system presently in effect shall not be modified or restructured prior to October 1, 1979, or the beginning of fiscal year 1980. This provision should insure an orderly transition to a new system if the Secretary's recommendations are approved.

Third, Amtrak is placed under a domestic purchase preference or "buy America" requirement. This provision was in both versions, and the conferees adopted the Senate figure of $1,000,000, in lieu of the House figure of $100,000, as the threshold purchase amount for which the requirement shall apply. This requirement may be suspended if the Secretary of Transportation determines that it is inconsistent with the public interest, that cost of compliance would be unreasonable, or that supplies are not reasonably available or of satisfactory quality.

Fourth, the report requires Amtrak to institute a model rail safety system program for the rest of the railroad industry, as provided in the House version. However, the conferees eliminated the $250,000 authorization specifically provided for this purpose, and Amtrak is required to fund the program out of general operating expenses.

Fifth, the report changes the law with respect to compensation paid to railroads by Amtrak for use of their tracks and facilities, using an incremental cost concept as a benchmark. The House version contained no such language, and the conferees agreed upon a compromise position.

Finally, the conferees adopted House provisions enhancing State-supported Amtrak service, authorizing Amtrak operation of commuter service, dealing with Amtrak budget proposals and submissions and addressing Amtrak's competition with the intercity bus industry. The conferees also adopted House provisions increasing the Federal share of railroad terminal conversion projects from 60 to 80 percent, requiring certain studies related to rail passenger service, and earmarking $27 million of the existing $1.75 billion authorization for the Northeast Corridor project to reimburse State, local, or regional transportation authorities for equipment modification or replacement costs resulting from the electrification conversion of the corridor.

We are at a watershed point in Amtrak's history, and I believe we have formulated a constructive approach toward solving Amtrak's problems. Rail passenger service has a vital place in the national passenger transportation network, particularly in light of the growing scarcity of energy resources. With sufficient ridership, the passenger train is the most energy-efficient of all passenger transportation modes. At a time when we are importing approximately 45 percent of our domestic petroleum needs and experts have forecast a worldwide oil shortage by the mid-to-late 1980's, it is our responsibility to provide the American public with a safe, reliable, and energy-efficient form of passenger service. This approach represents a step toward fulfillment of that responsibility. Therefore, I urge its adoption.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Speaker, I travel Amtrak twice a week in the coaches. I know how essential it is, and how crowded those coaches are. But, I must confess, Mr. Chairman, that some of the remarks of my colleague from Texas concerning the expense of running lines at $100 per passenger really do describe excessive costs.

Also, what we are going to do about 150 miles being considered a day's work? I have been troubled, I will tell the chairman in all honesty, by the remark of a very able former commmissioner of transportation in my State, who told me that if we continue like this, we cannot possibly run the railroads properly in this Nation.

It is apparently impossible under the conditions that prevail in railroading in America today. He mentioned something similar to the 150 miles constituting a full day's work.

Mr. STAGGERS. The gentlewoman would not want to kill Amtrak just because it is not efficient. It is something we know we need. We had better work to correct its problems. England, Japan and other nations have fine railroad systems that are run by the Government and of course they operate at a loss. Amtrak is also operating at a loss but we hope we can rebuild passenger service to the point where we have a much more efficient system.

Mrs. FENWICK. Mr. Speaker, I have been here 3 years and I see no change. I will just be honest with the gentleman about Amtrak. The new chairman, who has testified before our Small Business Committe—I forget his name, I am sorry to say—struck me as an extremely competent man. I think he used to run the Missouri Pacific or Missouri Southwest. He struck me as extremely able. But I do wish we could somehow feel we are going to address these problems.

Mr. STAGGERS. Let me say to the gentlewoman, this is the reason he is the new President. He is competent. The gentlewoman is right. He has run a rail-

road. He was head of the CAB and then DOT, when it was created. He knows something about what transportation economics are all about. But give him a chance. He has just taken office. He has to have a chance to make some of the improvements that need to be made.

Mrs. FENWICK. But if he is going to run up against Congress itself, if we are not going to allow him to cut out lines that are not profitable, what can he do?

Mr. STAGGERS. Let us not say "if." But let us not go that far. Let us give this man a chance. He knows what he is doing. He is competent. Let us give him a chance.

Mrs. FENWICK. I do not like to interrupt the chairman, but will the chairman work with this man to help him eliminate some of these useless runs?

Mr. STAGGERS. I will work with the gentleman to try to make the system more efficient. That is the reason he is there. I thank the gentlewoman.

Mrs. FENWICK. I thank the chairman.

Mr. SKUBITZ. Mr. Speaker, in order to get the record straight, if the gentlewoman from New Jersey referred to Alan Boyd, I am fearful we have him serving on the wrong railroad and the wrong board. Allen Boyd was an official of the Illinois Central Gulf, not the Missouri Pacific; and he was Chairman of the CAB, not the FAA.

Now that we have got that straight, permit me to submit my views on the conference report.

Mr. Speaker, I signed the conference report and recommend its approval. The conference bill provides enough money for Amtrak to continue all of its trains until October 1, 1979. Since this is my last term in Congress, it will become the problem of my colleagues as to what happens to Amtrak after that date. Over the years, I have been a strong supporter of intercity rail passenger service. I realize that the airplane has the glamour of the 21st century and that the automobile has won the hearts and minds of most Americans. Nevertheless, I am convinced that it would be shortsighted if this Nation were to junk intercity rail passenger service.

Over 20 million people a year ride the trains and those people may ultimately be considered the enlightened people of our time. The energy crisis is viewed today as an illusion, because there are no longer long lines at the gas station. Those of us who have studied the problem know that in fact the energy crisis does exist. It would behoove more Americans to begin to use mass transportation by railroads in order to preserve what energy we have.

I have contended for a number of years that the policies of this Government should be directed toward the end result of strengthening rail passenger service in order to conserve energy and strengthen Amtrak. The conference bill contains a provision added to the House bill at my insistence which will require Amtrak to exert a greater effort toward doing business with the U.S. Postal Service. I would urge the U.S. Postal Service to do all it can to give business to Amtrak so as to reduce the operating losses which have become a serious plague to Amtrak.

Amtrak lost over $500 million this year and I can understand the concern expressed by many of my colleagues about Amtrak being a waste of money. I think it is incumbent upon the new President of Amtrak to do all that he can to reduce Amtrak's losses. Likewise, we in Congress should do all that we can to encourage greater utilization of Amtrak by the Government itself. We should also do all that we can to encourage Amtrak to provide better service so that it can attract more passengers.

This bill, Mr. Speaker, is entitled "The Amtrak Improvement Act of 1978." I believe it does contain measures which will improve the operation of Amtrak. A number of amendments were offered by Mr. MADIGAN that should encourage Amtrak to be financially responsible. Other amendments were offered which require the Secretary of Transportation to thoroughly reevaluate where we are going with Amtrak and how its service can be improved.

Secretary Adams has assured our committee that he intends to reexamine Amtrak's entire route structure with an eye toward having Amtrak trains run where they are needed and will be used. He has also indicated that he shall examine the entire structure of Amtrak so that it can be made more efficient. He will have his report to the Congress by the end of the year. I urge my colleagues in the next Congress to take his recommendations seriously and work closely with the Department of Transportation in order to make Amtrak work. Mr. Speaker, I am not here to make excuses about Amtrak's past failures. Nevertheless, I think it is well to keep in mind that Amtrak is a relatively young company. It did not begin operations until May of 1971. In the 7 years of its operations, it has had to combat the indifference of the executive branch of Government and the insolence of many railroads. A business analyst examining Amtrak could rightfully conclude that the corporation has just "begun to get off the ground."

Alan Boyd was just recently named President of Amtrak. He is uniquely qualified to make Amtrak work. He is a former president of a railroad, he is a former Secretary of Transportation, and he is a former Chairman of the Civil Aeronautics Board. I am confident that within the months to come all of us will see improved performance by Amtrak. This bill provides the money necessary for Amtrak to continue its operations and sets into motion the process whereby Amtrak can be made into a strong corporation.

Finally, Mr. Speaker, let me refer to one specific provision in the bill which created considerable discussion by the conferees. The Senate bill contained a lengthy provision amending section 402 of the Rail Passenger Service Act to provide that compensation for both services and use of tracks and facilities was to be based on an "avoidable" cost concept. The effect of that provision would have been to overrule the so-called Texas and Pacific case which is presently before the court of appeals. In that case, the Commission held that the Texas and Pacific was entitled to compensation from Amtrak for services based on an incremental cost basis, but that track and facilities were not to be based on the incremental cost basis. It seems to me that the Commission was trying to find some method of compensation for the Texas and Pacific Railroad which would be different than the compensation method used for railroads who had joined Amtrak, thereby relieving themselves of the obligation to provide intercity rail passenger service. The Texas and Pacific Railroad had no intercity rail passenger service when Amtrak was created. Consequently, they had received no benefit by the establishment of Amtrak and could not be expected to in effect let Amtrak use its track and facilities at no cost or virtually no cost.

The conferees did not want to interfere with the adjudication of the Texas and Pacific case. That was the first reason that the Senate provision was not adopted. The second reason that the Senate provision was not adopted was that it contained a specific avoidable cost formula which would apply to all railroad property and services whether or not a rairoad had good track and facilities or bad track and facilities. Consequently, the conference substituted a provision which simply placed track and facilities in the category whereby incremental costs would become a threshold for determining what constituted just and reasonable compensation. Of course, Amtrak and any railroad can make any sort of agreement they want to as long as they are able to agree. Subsection 402(a) comes into effect only when a railroad and Amtrak are unable to agree and the matter must be adjudicated by the Commission. The conference substitute and the report by the committee of conference makes it clear that this is a change in the law and the conferees expect the Commission and the courts to give the amendment prospective application only. Furthermore, the conferees do not intend to affect any existing contracts between railroads and Amtrak. Neither do the conferees intend for incentive payments to be made only for improvement in track and facilities. In other words, a railroad which has high-quality track and facilities should be entitled to some payment above incremental costs for their high-quality track or facilities as opposed to track and facilities of another railroad which may be in bad condition. The incentive feature of section 402 has been retained but with the inclusion of track and facilities, the term incentive will be broader than simply "on time" performance.

Mr. Speaker, I urge adoption of the bill as reported by the committee of conference.

I am sure that under the leadership of the chairman of the Subcommittee on Transportation and Commerce of the Committee on Interstate and Foreign Commerce, the gentleman from Penn-

sylvania (Mr. ROONEY), who has followed this program very carefully throughout the years and has been far more critical than most of us regarding Amtrak and will continue to carefully supervise Amtrak and see to it that the taxpayers of America get a dollar's worth for every dollar they pay in taxes.

Mr. ROONEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I take this time to say that I want to commend the gentleman from Kansas (Mr. SKUBITZ) for his comments and to also commend the gentleman for the cooperation he has consistently given the committee. Almost every bill that has been reported out of our committee has been reported out unanimously.

I might point out, Mr. Speaker, that the House bill contained a provision requiring all purchases of more than $100,000 must be made in the United States. That is the "buy American" clause. The Senate bill had a similar provision, but it set the threshold at $1 million. The Senate's provision was not as comprehensive as the House provision and, therefore, the conference report contains the House provision. We did, however, accept the threshold of the Senate bill, because there are a number of pieces of equipment that cost more than $100,000 that are not manufactured in this country.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. ROONEY. I yield such time as he may consume to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Mr. Speaker, first of all, I want to pay credit to the members of the conference committee, the chairman, and I would add the able chairman, the gentleman from West Virginia (Mr. STAGGERS) and the subcommittee chairman, the gentleman from Pennsylvania (Mr. ROONEY) and, of course, the gentleman from Kansas (Mr. SKUBITZ) our ranking minority member, for the work that they have done on this issue.

Mr. Speaker, let me further say that I rise in support of the conference report on the bill S. 3040, the Amtrak Improvement Act.

Amtrak has suffered through a long period of neglect and mismanagement but I am confident that our national rail passenger system is now entering into an era of revitalization.

I might state that in Minnesota we have, on an internal basis, appropriated money in order to keep the lines going. We have had a good relationship with Amtrak and we would like to see that continue. We are working to try to develop on a statewide basis general support for this type of program. It is good to see some commitment coming from the Federal level. Hopefully with the new equipment that is planned for those lines in the northern tier of States, I think the future for the passenger service is, indeed, bright if we continue to provide all Americans with a responsible national rail system, and in the ongoing process I believe that we have taken the necessary initial steps.

I urge my colleagues to support the conference report.

Mr. ROONEY. Mr. Speaker, I have no further requests for time.

Mr. SKUBITZ. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker, I thank the gentleman from Kansas for yielding.

I want once again to emphasize the broad basis for the problem we are having with this Amtrak conference report. When Amtrak, as a passenger railroad, a railroad which last year took in only $270 million, comes in and asks Congress for $600 million to continue going, that means that 33 cents out of every dollar they spend is all they get back in revenue. We cannot keep Amtrak Railroad going on that basis. This is no longer a temporary matter. Amtrak has been going on and on in this inefficient way for years and years and years.

Mr. Speaker, the place for the railroad is in the freight business. I think our distinguished chairman, Mr. STAGGERS, who is certainly the greatest advocate of railroads around, will agree that the place for the railroads is in the freight business. We should take freight cars and load them up from one side to the other. Freight trains are efficient, and they are able to make money. They can take the same amount in revenues and a lower amount in expenses and actually show in the black.

However, when trains get into the passenger business, the economics are just not there. Railroads are for freight.

Mr. SKUBITZ. Mr. Speaker, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Speaker, I agree with the gentleman that the more profitable part of this business is the freight business.

May I ask the gentleman from Texas (Mr. COLLINS) whether he voted for or against the slurry pipeline bill?

Mr. COLLINS of Texas. As I remember, I voted for the slurry pipeline bill.

Mr. SKUBITZ. That is going to take millions and millions of dollars of freight business away from the railroads, and they will be in here for some more money.

Mr. COLLINS of Texas. As times changed, we were not riding the horse anymore. Then we went into trains.

It might be that the slurry pipeline will be one of the ways railroads will get less freight, but I want to see the railroads in the freight business, where they will be on good solid ground. Amtrak is not actually a good freight carrier, but that is the way to make the money, in the freight business, not passengers.

Mr. ROONEY. Mr. Speaker, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Pennsylvania.

Mr. ROONEY. Mr. Speaker, does the gentleman from Texas (Mr. COLLINS) know what the average rate of return on investment is received by railroads today on their freight business? It is only 1 percent.

Mr. COLLINS of Texas. Does the gentleman know what the grocery stores make? They make one-half of 1 percent, but they are still operating. I do not object to people making one-half of 1 percent or 1 percent. What I object to is this Amtrak outfit which loses 66 percent. That is what they are doing. They are losing 66 percent on every dollar. Amtrak is a losing business. There is no way out of it.

Every year we hear the same arguments. Every year we say that we are going to study it for another year.

This is the year to just say, Let us keep railroads in the freight business. Let us put the Amtrak railroads in the freight business where they belong, and let us take Amtrak, once and for all, out of the passenger business, where they do not belong.

Mr. Speaker, Amtrak was formed, because all of the private railroad carriers lost their shirts. They formed this Amtrak Corporation so they could unload the passenger business. Private railroads tried to unload the passenger business, as they could not make it. Therefore, we cannot expect Amtrak to make it, because not only are they in the passenger business, but they are burdened with governmental intervention. Amtrak has every headache it could have. Name it, and they have it.

One of the best ways to help Amtrak would be to vote down this conference report when it comes up today for a vote.

Mr. ROONEY. Mr. Speaker, I yield such time as he may consume to the gentleman from South Carolina (Mr. JENRETTE).

Mr. JENRETTE. Mr. Speaker, I want to compliment the chairman of the subcommittee and the chairman of the full committee for their fine work in seeing that an institution is continued, and that is passenger rail service.

With respect to freight service, I would agree with my friend, the gentleman from Texas (Mr. COLLINS), that money is probably going to be made in the freight business.

Mr. Speaker, I hope the chairman will not think that I am not being germane, but I find myself in somewhat of a quandary when I look at the Postal Service which we are subsidizing and I look at Amtrak which we are subsidizing. The Postal Service and Amtrak do not even have contracts whereby the mail can be placed on Amtrak trains.

Mr. Speaker, that gives me great concern. Here we have two pseudo governmental corporations which are running side by side. The Postal Service runs about eight trucks a day to New York City. We run several Amtrak trains. Why does not the president of Amtrak and the president of the Postal Service not look at things like this so as to try to do away with some of this duplication?

I have talked with the chairman of the full committee. He is in great sympathy with my position. I think that probably we in Congress as we pass this bill today—and I fully support it—should remember when we appropriate funds for

the Postal Service in the future that, if nothing else, the Postal Service and Amtrak should sit down and try to do something together to save some money. We talk about saving energy every day, and the Postal Service is running eight trucks or more back and forth each day to New York City.

Again, Mr. Speaker, I compliment the gentleman from Pennsylvania. It is a hard job to get a bill like this one together.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. JENRETTE. I yield to the gentleman from West Virginia.

Mr. STAGGERS. Mr. Speaker, in section 19 of our bill we directed Amtrak to use all feasible means, including taking into account the needs of the Postal Service in establishing schedules, to attract and serve the bulk mail needs of the U.S. Postal Service. This provision prevailed in conference. If Amtrak were carrying a greater share of the mail of this country today instead of it going to the trucks, I would agree with the gentleman.

If the mail were taken off the trucks and put on the rails, we would use thousands of gallons less gasoline each day, and we would be making an important contribution to reducing Amtrak's deficit. That is one way we can address Amtrak's problems, and I am glad the gentleman mentioned it, because we do have a provision to that effect in the conference report.

Mr. SKUBITZ. Mr. Speaker, will the gentleman yield?

Mr. JENRETTE. The gentleman knows I will be happy to yield to the gentleman from Kansas.

Mr. SKUBITZ. I thank the gentleman for yielding.

Initially, I submitted an amendment to this bill mandating that the Post Office Department contract with Amtrak for the delivery of mail wherever and whenever feasible. We do not have jurisdiction over the postal service so the language in the bill is the best we could do and yet avoid sequential referral.

I would certainly join my colleague if I were in the Congress in legislation that would mandate that the postal authority use the trains whenever possible. I thank the gentleman.

Mr. JENRETTE. I thank the gentleman from Kansas. I appreciate it. I would say also, if I might take just a minute longer, I hate to bring up any name of any major corporation, but a corporation that has headquarters in Wilmington, Del., studied every mode of transportation for bringing goods into Delaware. Because of the supervising engineer in Camden, S.C., the home of my colleague, the gentleman from South Carolina (Mr. HOLLAND) who represents that district, he determined that Amtrak was the best and most dependable source to use—and this was the DuPont Corp.—because of that decision, Amtrak has $10,000 additional each year in revenue. I would hope that the grassroots efforts for Amtrak would extend beyond that and that we would have other corporations begin looking at the utilization of Amtrak services.

Lastly, and I have run the whole gamut, in 1975 in the authorization bill I placed—which the chairman allowed me to—an amendment on Amtrak that would allow the State to request the president of Amtrak to do a study for regional passenger service in seasonal or resort areas. I do not know if this is in the bill now. I do not know that anything was ever done, but there are many areas now that have a massive amount of people moving there for so many months a year, and then out, and it might be a good idea that Amtrak look at these routes on a seasonal basis. I believe the bill provides, Mr. Speaker, that routes must be year-round, I believe it is year-round routes only, that they had no facilities for seasonal routing. But it seems to me as we are in the energy situation that if Amtrak can go to a place, even if it can only go 4 or 5 months a year, it would be helpful and beneficial to the country.

With that, and having run the whole area, Mr. Speaker, I appreciate the gentleman's yielding, and I support the bill.

Mr. ROONEY. Mr. Speaker, I yield such time as he may consume to the gentleman from South Carolina (Mr. HOLLAND).

Mr. HOLLAND. I thank the gentleman for yielding.

Mr. Speaker, I only want to take a few seconds to pose a question. I heard our distinguished chairman talking about the gentleman who is now president of Amtrak. It sounds to me as though he is almost good enough to be elected to Congress. I am wondering by way of information what the present salary is that we are paying the president of Amtrak.

Mr. ROONEY. Mr. Speaker, if the gentleman will yield, the president, incidentally, is Mr. Boyd. He is new on board. He came on board last month. His salary is $85,000.

Mr. HOLLAND. That is the beginning salary?

Mr. ROONEY. That is the salary.

Mr. HOLLAND. The present salary. I recall debate some year or two ago about raising the man at that time to $125,000.

Mr. ROONEY. No, no. That is the statutory salary, $85,000.

Mr. HOLLAND. We did have debate, as I recall it, in the past about raising one of these people.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. HOLLAND. I yield to the gentleman from West Virginia.

Mr. STAGGERS. I thank the gentleman for yielding.

It used to be $125,000, and we reduced it to $60,000. We did not have particularly competent people running Amtrak, in my opinion. The President's salary was raised to $85,000. Almost every independent manufacturing company or railroad in the private sector of this land pays its executives much more than that, and in order to get somebody who was competent, we had to increase the salary.

Mr. HOLLAND. Mr. Speaker, I am in full accord with the gentleman. I know you have to pay somebody good money to do a good job. I only wish this Congress would apply the same standard to its own Members.

● Mr. MADIGAN. Mr. Speaker, I support the adoption of S. 3040, as reported by the conferees. I would like to highlight some of the provisions in the bill which I had proposed in the House and were retained by the conferees.

Section 3 of the bill removes the exemption presently enjoyed by Amtrak from going through the Office of Management and Budget and for that matter even the Department of Transportation. My amendment was adopted on the House floor and I am pleased that it was retained in the bill reported by the committee of conference.

Section 601 of the Rail Passenger Service Act now provides that "no officer or agency of the United States shall have any authority to require the Corporation to submit its legislative recommendations, proposed testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress." The effect of that provision, Mr. Speaker, has been that we in Congress have had to act as arbiters between Amtrak and the various branches of Government over countless decisions involving the provision of intercity rail passenger service. In my judgment, the results of such an undisciplined and adversarial environment has been a deterioration of intercity rail passenger service. With the enactment of this bill, Amtrak will now have the discipline of working with the Department of Transportation and the Office of Management and Budget rather than working in opposition to those institutions. In the long run, Amtrak will benefit from this provision as will the Congress and the taxpayers.

The route reexamination study required by section 4 of the bill will provide an additional opportunity for examining what other means, if any, should be adopted to assure greater financial responsibility by Amtrak. I support Amtrak because good intercity rail passenger service is needed in many parts of the country. I am fearful, however, that unless Amtrak's mounting deficit is curtailed, the entire future of intercity rail passenger service will be in jeopardy. I am hopeful that the Secretary's route reexamination will concentrate on better Amtrak management practices and the continuation of routes based upon absolute need rather than the indirect need for generating political support.

Section 11 of the conference bill contains my provision changing the status of Amtrak from a strictly profit corporation to one that should be operated and managed as though it were a for-profit corporation. This amendment recognizes that in reality, Amtrak has not been a for-profit corporation. It also distinguishes Amtrak from ConRail which I for one shall insist be a for-profit corporation within the near future

and I believe ConRail can realistically obtain that goal.

Section 12 of the bill ties in with the study being undertaken by the Secretary of Transportation. That provision which I had adopted at the committee level requires the Secretary to evaluate the common stock status of Amtrak. As you know, four railroads including the estate of the Penn Central now own all of the common stock in Amtrak. I am hopeful that the Secretary will particularly examine the possibilities for converting that common stock into some sort of employee stock option program. I do not feel that the Government should own Amtrack outright, but neither do I feel comfortable knowing that three active railroads and one former railroad company now own all of the common stock in Amtrak. I am particularly concerned about this matter since Amtrak has acquired substantial property and other holdings since its formation in 1971.

Section 13 of the bill contains a provision which I had adopted at committee for Amtrak to establish a model railroad safety system program. Since Amtrak is being so heavily financed by the Government, the least we can require is that Amtrak set an example for other railroads when it comes to railroad safety. My provision required that Amtrak work closely with labor organizations in order to develop and implement a truly comprehensive safety program affecting not only the operation of Amtrak trains but also work practices in the many shops and other facilities run by Amtrak. The report by the Office of Technology Assessment which was issued last January and concerned railroad safety in general called for greater cooperation between management, labor organizations, and the Government. Any program developed and implemented by Amtrak should attempt to achieve that goal. Likewise, the OTA report called for a more systematic and comprehensive approach for achieving safety. Amtrak in developing a program should pull together and coordinate all of its existing safety practices. In addition, it should carefully examine its accident record to date and develop ways and means for preventing recurrence of such accidents. Finally, the program developed by Amtrak for railroad safety should be far more than simply a manual or new rule book. It should be a complete set of practices which in fact prevent accidents and reduce injuries.

Mr. Speaker, there are a number of other provisions in the bill relating to Amtrak and its effect on both competition and subsidy needs. These are important provisions which I know will be given careful consideration by the new Amtrak management.

Amtrak provides a service which is particularly needed on the east coast, in the Midwest, and the Far West. This bill provides Amtrak with an opportunity to maximize its potential where intercity rail passenger service is most needed. It is purposely an authorization for a period of 1 year so that the Congress can carefully review the steps Amtrak has taken to improve its service and financial performance.

I urge the adoption of the bill as reported by the committee of conference.●

● Mr. JENRETTE. Mr. Speaker, as today we are considering the conference report on Amtrak Improvement Act of 1978, I wish to point out an example of public support for Amtrak regarding an area of concern to me. Since the beginning of my serving Congress, I have worked closely with Amtrak locating alternative revenue sources for the nationwide rail passenger system. Historically speaking, mail and express revenues have made the difference between red and black ink for passenger train operation. I would like to call the attention of this body to the work of a private citizen helping Amtrak to demonstrate the excellent potential which can be realized by Amtrak express.

Thanks to the efforts of a resident of Camden, S.C., we have a perfect example of what it means for Amtrak to have grassroots support.

Mr. Bernard E. Ransom is an engineering supervisor in the du Pont textile plant in Camden. He was instrumental in inaugurating the shipment of materials via Amtrak express between Camden and the du Pont home office in Wilmington. This was done after du Pont conducted extensive tests of all other modes of transport.

As a result, Amtrak express is earning some $10,000 yearly and is providing reliable overnight service. Additional shipments now are being sent from Camden to Orlando, Fla.

Amtrak has a bright future in supplying express service just as it does in handling U.S. mail. Part of that future is in the hands of interested citizens such as Mr. Ransom. He is to be congratulated for his worthwhile efforts.

We believe that this story should be more widely known and that Amtrak officials should place additional emphasis on express. It is hard to believe that Amtrak has only one full-time salesman on its staff for selling express service. Yet in spite of the lack of top-level sales and marketing emphasis, shippers are learning about the service and are spending more than $2 million a year for their shipments.

Express was once an important source of revenue for passenger trains. So was U.S. mail.

Both should be returned to that vital role.●

● Mr. DEVINE. Mr. Speaker, I signed and support the report of the conferees on S. 3040, the Amtrak Improvement Act of 1978.

Quite frankly, I have been disappointed in the performance of Amtrak since it was created in 1970. Amtrak has failed to improve intercity rail passenger service. Amtrak has also failed to decrease the amount of Government subsidy needed for its operation.

The amount of operating subsidy approved for the conferees is $600 million, the same as what was in the bill we had passed. In addition to that sum, there is authorized $130 million for capital expenditures and $25 million for debt reduction. In total this bill contains an authorization of $755 million for fiscal year 1979. It is small wonder that taxpayer associations and others are pointing to Amtrak as an extravagant waste of tax dollars.

Having said that, Mr. Speaker, let me point to several things in the bill which do give me some hope for the future. First of all, section 3 of the bill removes the exemption which had been applicable to Amtrak with respect to the Office of Management and Budget. The effect of section 3 will be to require Amtrak to come under closer supervision by the administration. I am confident that the Office of Management and Budget and the Department of Transportation will require greater justification for Amtrak expenditures. This bill gives them the power to do just that.

Second, section 4 of the bill directs the Secretary of Transportation to continue his route reexamination structure. In his preliminary report, the Secretary suggests approximately a 20 percent reduction in Amtrak. I think the taxpayers deserve much more of a reduction. This section requires the Secretary to report to Congress no later than the end of the year. I am hopeful that his report will show how further savings can be applied to Amtrak.

The bill reported by the conference committee adopts a Senate provision which will permit the Secretary's recommendations to go into effect unless either House of Congress specifically disapproves of them within 90 legislative days. In my judgment, this is an improvement over what was contained in the House bill. The House bill had a provision which, quite frankly, was unworkable in that it required approval by both Houses of Congress before the Secretary's recommendations could go into effect. I had offered an amendment in committee which would have adopted a provision similar to the one in the Senate bill. I am pleased that the conferees accepted the approach I had suggested in my amendment.

Mr. Speaker, I urge the rejection of the conference report. In my judgment, the present level of operation is extravagant, but I am encouraged by the fact that this bill sets into motion a thorough reexamination of Amtrak. In this time of inflation and high taxation, we should all do everything we can to save taxpayers' dollars. Amtrak will have cost the taxpayers over $10 billion by 1982. This bill alone is a three-quarter-billion-dollar burden on the taxpayer. Its only redeeming feature is that it reflects the fact that Congress recognizes that Amtrak can no longer expect to receive limitless funds from the Congress.●

Mr. ROONEY. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. COLLINS of Texas. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 266, nays 127, not voting 39, as follows:

[Roll No. 798]

YEAS—266

Addabbo	Ford, Tenn.	Nix
Akaka	Fowler	Nolan
Alexander	Fraser	Nowak
Ambro	Frenzel	Oakar
Anderson, Ill.	Fuqua	Oberstar
Andrews, N. Dak.	Garcia	Ottinger
	Gaydos	Patten
Annunzio	Giaimo	Patterson
Applegate	Gilman	Pattison
Ashbrook	Ginn	Pease
Ashley	Glickman	Perkins
Aspin	Gonzalez	Pettis
AuCoin	Gore	Pickle
Baldus	Green	Pike
Baucus	Guyer	Preyer
Bauman	Hamilton	Price
Beard, R.I.	Hanley	Pursell
Bedell	Hannaford	Rahall
Beilenson	Harkin	Railsback
Benjamin	Harris	Rangel
Bennett	Hawkins	Regula
Biaggi	Heckler	Reuss
Bingham	Hefner	Rhodes
Blanchard	Hightower	Richmond
Blouin	Hillis	Rinaldo
Boggs	Holland	Rodino
Boland	Hollenbeck	Roe
Bolling	Holtzman	Rogers
Bonior	Horton	Rooney
Bonker	Howard	Rose
Brademas	Hubbard	Rosenthal
Breckinridge	Hughes	Rostenkowski
Brinkley	Hyde	Roybal
Brodhead	Ichord	Santini
Broomfield	Ireland	Sawyer
Brown, Calif.	Jenrette	Scheuer
Brown, Mich.	Johnson, Calif.	Schroeder
Buchanan	Johnson, Colo.	Schulze
Burlison, Mo.	Jones, Tenn.	Seiberling
Burton, John	Jordan	Sharp
Byron	Kastenmeier	Simon
Carney	Kazen	Sisk
Carr	Keys	Skubitz
Carter	Kildee	Slack
Cavanaugh	Kindness	Smith, Iowa
Chappell	Kostmayer	Smith, Nebr.
Chisholm	LaFalce	Solarz
Clausen, Don H.	Le Fante	Spellman
	Lederer	Spence
Clay	Leggett	St Germain
Cleveland	Lehman	Staggers
Cochran	Lent	Stangeland
Cohen	Lloyd, Calif.	Stanton
Collins, Ill.	Lloyd, Tenn.	Stark
Conte	Long, La.	Steers
Conyers	Long, Md.	Stokes
Corcoran	Lundine	Stratton
Corman	McClory	Studds
Cornwell	McCloskey	Thompson
Coughlin	McCormack	Thone
D'Amours	McDade	Traxler
Danielson	McHugh	Tucker
Davis	McKay	Udall
Delaney	McKinney	Ullman
Dellums	Madigan	Van Deerlin
Dent	Maguire	Vanik
Derrick	Mann	Vento
Derwinski	Marks	Walgren
Dicks	Marlenee	Walsh
Dingell	Mattox	Wampler
Downey	Mazzoli	Waxman
Drinan	Metcalfe	Weaver
Early	Meyner	Weiss
Eckhardt	Mikulski	Whalen
Edgar	Mikva	White
Edwards, Calif.	Mineta	Wilson, Tex.
Emery	Minish	Winn
Ertel	Mitchell, Md.	Wirth
Evans, Colo.	Mitchell, N.Y.	Wolff
Evans, Del.	Moakley	Wright
Evans, Ga.	Moffett	Wylie
Evans, Ind.	Mollohan	Yates
Fary	Moorhead, Pa.	Yatron
Fascell	Moss	Young, Fla.
Fish	Murphy, Ill.	Young, Mo.
Fisher	Murphy, Pa.	Young, Tex.
Fithian	Murtha	Zablocki
Flood	Myers, Michael	Zeferetti
Florio	Natcher	
Ford, Mich.	Nedzi	

NAYS—127

Abdnor	Gibbons	Neal
Anderson, Calif.	Goldwater	Nichols
	Goodling	Obey
Andrews, N.C.	Gradison	Panetta
Archer	Grassley	Poage
Badham	Gudger	Pressler
Bafalis	Hagedorn	Quayle
Barnard	Hall	Quillen
Beard, Tenn.	Hammer-schmidt	Roberts
Bevill		Robinson
Bowen	Hansen	Roncalio
Breaux	Harsha	Rousselot
Brooks	Heftel	Runnels
Brown, Ohio	Holt	Ruppe
Broyhill	Huckaby	Russo
Burgener	Jacobs	Ryan
Burke, Fla.	Jenkins	Sebelius
Burleson, Tex.	Jones, N.C.	Shuster
Butler	Jones, Okla.	Sikes
Cederberg	Kasten	Skelton
Clawson, Del	Kelly	Snyder
Coleman	Kemp	Steed
Collins, Tex.	Krebs	Steiger
Conable	Lagomarsino	Stockman
Cornell	Latta	Stump
Crane	Levitas	Symms
Cunningham	Livingston	Taylor
Daniel, Dan	Lott	Thornton
Daniel, R. W.	Lujan	Treen
de la Garza	McDonald	Trible
Devine	Mahon	Vander Jagt
Dornan	Marriott	Volkmer
Duncan, Oreg.	Martin	Waggonner
Duncan, Tenn.	Mathis	Walker
Edwards, Ala.	Michel	Watkins
Edwards, Okla.	Milford	Whitehurst
English	Miller, Ohio	Whitley
Erlenborn	Montgomery	Whitten
Fenwick	Moore	Wiggins
Flippo	Moorhead, Calif.	Wilson, Bob
Flynt		Wydler
Forsythe	Mottl	Young, Alaska
Fountain	Myers, Gary	
Gephardt	Myers, John	

NOT VOTING—39

Ammerman	Foley	Murphy, N.Y.
Armstrong	Frey	O'Brien
Burke, Calif.	Gammage	Pepper
Burke, Mass.	Harrington	Pritchard
Burton, Phillip	Jeffords	Quie
Caputo	Krueger	Risenhoover
Cotter	Leach	Rudd
Dickinson	Luken	Sarasin
Diggs	McEwen	Satterfield
Dodd	McFall	Shipley
Eilberg	Markey	Teague
Findley	Meeds	Tsongas
Flowers	Miller, Calif.	Wilson, C. H.

The Clerk announced the following pairs:

Mr. Markey with Mr. Caputo.

Mr. Ammerman with Mr. Sarasin.

Mr. Phillip Burton with Mr. Quie.

Mr. Cotter with Mr. Pritchard.

Mr. Eilberg with Mr. Rudd.

Mr. Gammage with Mr. Leach.

Mr. Pepper with Mr. Findley.

Mr. Shipley with Mr. Dickinson.

Mr. Teague with Mr. Frey.

Mr. Murphy of New York with Mr. McEwen.

Mr. McFall with Mr. Tsongas.

Mr. Krueger with Mr. Risenhoover.

Mr. Dodd with Mr. Harrington.

Mr. Diggs with Mr. Luken.

Mr. Foley with Mr. O'Brien.

Mrs. Burke of California with Mr. Miller of California.

Mr. Satterfield with Mr. Meeds.

Mr. Charles H. Wilson of California with Mr. Flowers.

Messrs. VOLKMER, RUPPE, and EDWARDS of Oklahoma changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERRING JURISDICTION ON U.S. COURT OF CLAIMS ON THE CLAIM OF COMMANDER EDWARD WHITE RAWLINS, U.S. NAVY (RETIRED)

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 1445) conferring jurisdiction upon the U.S. Court of Claims to hear, determine, and render judgment upon the claim of Comdr. Edward White Rawlins, U.S. Navy (retired) with the Senate amendment thereto, and disagree to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 2, after line 13 insert:

SEC. 3. If such court renders judgment in favor of such claim, such court may award, in addition to any amount awarded for retroactive active-duty pay and allowances and retirement pay, reasonable litigation costs, and a reasonable attorney's fee in an amount not to exceed five percent of the amount awarded for retroactive active-duty pay and allowances and retirement pay.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 12598, FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1979

Mr. FASCELL. Mr. Speaker, I call up the conference report on the bill (H.R. 12598) to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 6, 1978.)

Mr. FASCELL (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement of the managers.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 30 minutes.

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 12598, the Foreign Relations Authorization Act for fiscal year 1979.

The main purpose of this bill is to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, the Board for International Broadcasting, and for related Government programs and activities. The conference substitute authorizes appropriations totaling $1,969,710,000 which is $27,030,000 less than the Senate amendment, $29,974,000 more than the original House bill, and $57,470,000 above the executive branch request.

The increase in the executive branch request contained in the conference substitute is due largely to additional authorizations for migration and refugee assistance for Soviet and Eastern European refugees migrating to Israel and for refugees in Africa. The remainder of the increase is designed to fund various congressional initiatives such as the Commission on Hunger and Malnutrition, the Commission on Security and Cooperation in Europe, and to strengthen the effectiveness of certain programs and activities within the various foreign affairs agencies of the Government.

The total amount authorized in this conference report for the conduct of foreign affairs is essentially within the guidelines set for this purpose in the second concurrent resolution on the budget for fiscal year 1979.

The conference report contains specific fiscal year 1979 authorizations totaling $1,399,253,000 for the Department of State, $420,577,000 for the International Communication Agency, $88,180,000 for the Board for International Broadcasting, $200,000 in additional annual funding for the Commission on Security and Cooperation in Europe, $60,000,000 for the execution of the International Tin Agreement, and $1,500,000 for the Commission on Hunger and Malnutrition. The conference report also retains supplemental fiscal year 1978 authorizations of $37,275,000 for payment of U.S. arrearages to the United Nations Educational, Cultural, and Scientific Organization and $10,468,000 for the Board for International Broadcasting.

Mr. Speaker, in addition to the authorization of appropriations, the conference report also retains various identical or modified policy and administrative provisions which were contained in either the House or Senate versions of the bill.

Among such provisions in title I, relating to the Department of State, are House-passed provisions which earmark $945,000 for the United Nations Conference on Science and Technology for Development; authorize foreign mission solar energy projects, earmark $25 million for assistance to refugees settling in Israel and $5 million for African refugees, consolidate administrative services of foreign affairs agencies; and create posts of Undersecretary of State for Management and Assistant Secretary of State for International Narcotics Matters.

Title I also contains the following identical or modified Senate provisions: authorization of a memorial statue of George Marshall, which has already passed the House as separate legislation; clarification of existing authority to exclude certain aliens from the United States; assistance to bereaved U.S. families; systematic information-sharing between the Department of State and the Foreign Affairs Committees of the House and Senate; sense of the Congress statements on assistance to minority enterprises and the use of diplomatic and official passports; and policy provisions on travel restrictions on U.S. passports and travel restrictions on foreign citizens.

In title II, relating to the International Communication Agency, the conference report retains, in addition to those provisions in both House and Senate versions, Senate provisions detailing the mission of the newly organized agency, authorizing release of an agency film on Roy Wilkins, and a modified version of the Senate provision calling for a gradual expansion of exchange-of-persons activities.

Title III, relating to the Board for International Broadcasting, retains the House provision on the Board's representational expenses and combines House and Senate provisions on the composition of the BIB Board of Directors.

Title IV, entitled "Foreign Service and other Personnel," retains the House provisions on special allowances for certain personnel and for computation of annuities for certain retirees. Title IV also includes Senate provisions on the employment of family members overseas, rest and recuperation travel, reducing family separations during temporary assignments, and a review of Foreign Service personnel requirements and compensation.

Title V retains a series of provisions contained in the House bill which set forth policies and responsibilities for science and technology in foreign policy.

Title VI, "Policy Provisions," retains the House-passed provision on United Nations Palestinian rights units and includes various identical or modified provisions from the Senate amendment involving international communications policy, international efforts to protect marine mammals, international journalistic freedom, an international food reserve, congressional findings regarding the Spanish democracy, discriminatory trade practices affecting U.S. foreign relations, nuclear-powered satellites, atrocities in Cambodia and Uganda, equitable treatment of U.S. citizens living abroad, United States-Canadian negotiations on air quality, and the Cuban presence in Africa.

Title VII, "Miscellaneous Provisions," includes the House provision prohibiting aid or reparations to Vietnam, and a similar version of the House provision prohibiting the use of funds under this act to implement the Panama Canal Treaties without appropriate authorization, the House provision on travel documentation of aliens and U.S. citizens, and modified versions of the Senate provisions on reporting and coordination of international agreements, and the use of foreign air carriers.

Mr. Speaker, the annual Foreign Relations Authorization Act, which covers three agencies and usually affects numerous existing statutes, is by nature a long and complex bill. The committee of conference had to resolve more than 80 differences between the two Houses. The managers on the part of the House strove to uphold the House position of substantive differences and to insure that those Senate provisions which were adopted were compatible with the House-passed bill and with the rules of the House. I believe that we were successful in that effort.

I urge the adoption of the conference report.

Mr. BUCHANAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join the distinguished chairman of our Subcommittee on International Operations (Mr. FASCELL) in urging the adoption of this conference report.

I will speak only briefly because this report differs little from that which passed this body in May.

As the chairman has made plain, the increase over the budget request is substantially the result of an additional administration request for refugee assistance which was submitted subsequent to House passage of this bill.

Our subcommittee had many, many hearings on this legislation and spent many hours in conference resolving some 76 differences between the House and Senate versions. In the overwhelming majority of the cases, the House provisions were adopted.

With regard to the Panama Canal amendment added on the floor, the committee of conference retained, with only a slight modification, the prohibition on the use of funds in this bill for the direct or indirect implementation of the Panama Canal treaties.

The budgets for each of the agencies covered in this legislation, the Department of State, the International Communication Agency and the Board for International Broadcasting, are very tightly drawn but will, in my judgment, enable these agencies to better respond to the demands placed upon them.

Again, Mr. Speaker, I urge the adoption of this conference report.

Mr. FASCELL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Wisconsin (Mr. ZABLOCKI), the chairman of the full Committee on International Relations.

Mr. ZABLOCKI. Mr. Speaker, I rise in support of the conference report on H.R. 12598, the Foreign Relations Authorization Act for fiscal year 1979.

The contents of the conference report have been ably explained by the distinguished and able gentleman from Florida, the chairman of the Subcommittee on International Operations. I would, however, like to take this opportunity to discuss one of the major provisions of the conference report.

Title V, entitled "Science, Technology, and American Diplomacy," is the product of an 8-year-long study by the Committee on International Relations. In our study, we explored the interactions of

science and technology with the conduct of American foreign policy. We found three significant problems toward which title V is directed.

First, we found there was no policy to guide the application of science and technology to problems of international affairs. Sections 501 and 502 provide a policy directing the U.S. Government to assess scientific and technological developments for diplomatic opportunities or problems. These sections further direct the U.S. Government to use science and technology as tools of diplomacy where appropriate to do so.

Second, we found poor coordination of international scientific and technological activities of the U.S. Government with overall foreign policy. Section 503 should significantly improve this shortcoming by instructing the President to insure that the Secretary of State is informed and consulted before any agency takes any major action primarily involving science or technology involving another nation, international organization, or international scientific commission. This provision should facilitate coordination of international activities with overall foreign policy. Furthermore, section 503 provides the Congress with an opportunity to play a major role in the formulation implementation and evaluation of international scientific and technological activities by requiring an annual report on these activities beginning in 1980.

Third, we concluded that there were organizational and structural deficiencies with the Department of State in the area of scientific and technological policy coordination. To remedy these deficiencies, the conference report includes section 504 which charges the Secretary of State with primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries.

Furthermore, section 504 gives the Secretary of State new authority to procure studies, analyses, and training assistance on the application of science and technology to problems of international relations. This authority is intended to give the Department of State the authority it needs to support the creation of centers at academic institutions and nongovernmental research organizations which in turn will generate an infrastructure capable of supporting both government and private sector personnel, research, and operational needs in international scientific and technological activities.

Mr. Speaker, H.R. 12598 is one of the most important bills before the Congress each year in that it enables the Department of State and our foreign affairs agencies to carry out their vital tasks. I would like to commend my fellow conferees on the part of the House and, in particular, the gentleman from Florida, for their leadership, diligence and cooperation in bringing the conference to a successful conclusion.

I urge the adoption of the conference report.

Mr. FASCELL. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 239, nays 153, not voting 40, as follows:

[Roll No. 799]

YEAS—239

Addabbo	Ford, Mich.	Obey
Akaka	Ford, Tenn.	Ottinger
Alexander	Forsythe	Panetta
Ambro	Fowler	Patten
Anderson, Ill.	Fraser	Patterson
Annunzio	Garcia	Pattison
Applegate	Giaimo	Pease
Ashley	Gibbons	Perkins
Aspin	Gilman	Pettis
AuCoin	Gonzalez	Pickle
Baldus	Gore	Pike
Beard, R.I.	Gradison	Poage
Bedell	Green	Preyer
Beilenson	Hamilton	Price
Biaggi	Hanley	Pursell
Bingham	Hannaford	Rangel
Blanchard	Harris	Reuss
Blouin	Hawkins	Richmond
Boggs	Heckler	Rinaldo
Boland	Heftel	Roberts
Bolling	Hillis	Roe
Bonior	Holland	Rogers
Bonker	Hollenbeck	Roncalio
Bowen	Holtzman	Rooney
Brademas	Horton	Rosenthal
Breckinridge	Howard	Rostenkowski
Brodhead	Hyde	Roybal
Broomfield	Ireland	Ruppe
Brown, Calif.	Johnson, Calif.	Ryan
Brown, Mich	Jordan	Santini
Broyhill	Kastenmeier	Sawyer
Buchanan	Kildee	Scheuer
Burke, Fla.	Krebs	Schroeder
Burlison, Mo.	LaFalce	Seiberling
Burton, John	Le Fante	Sharp
Burton, Phillip	Lederer	Simon
Carr	Lehman	Sisk
Carter	Lent	Skubitz
Cavanaugh	Lloyd, Calif.	Slack
Cederberg	Long, La.	Smith, Iowa
Chisholm	Long, Md.	Solarz
Clay	Lundine	Spellman
Cleveland	McCloskey	St Germain
Collins, Ill.	McCormack	Stanton
Conte	McDade	Stark
Corcoran	McFall	Steers
Corman	McHugh	Steiger
Cornell	McKay	Stokes
Cornwell	McKinney	Stratton
Coughlin	Madigan	Studds
D'Amours	Maguire	Thompson
Danielson	Mahon	Thornton
Davis	Mann	Traxler
de la Garza	Marks	Tucker
Delaney	Mazzoli	Udall
Dellums	Metcalfe	Ullman
Dent	Meyner	Van Deerlin
Derwinski	Mikulski	Vander Jagt
Dicks	Mikva	Vanik
Dodd	Milford	Vento
Dornan	Mineta	Walgren
Downey	Minish	Walsh
Drinan	Mitchell, Md.	Waxman
Duncan, Oreg.	Mitchell, N.Y.	Weiss
Early	Moakley	Whalen
Eckhardt	Moffett	Whitehurst
Edgar	Mollohan	Whitten
Edwards, Ala.	Montgomery	Wilson, Bob
Edwards, Calif.	Moorhead, Pa.	Wilson, Tex.
Erlenborn	Moss	Winn
Ertel	Murphy, Ill.	Wirth
Evans, Colo.	Murtha	Wolff
Fary	Myers, Michael	Wright
Fascell	Natcher	Wydler
Fenwick	Neal	Yates
Findley	Nedzi	Yatron
Fish	Nix	Young, Mo.
Fisher	Nolan	Zablocki
Flood	Nowak	Zeferetti
Florio	Oberstar	

NAYS—153

Abdnor	Fuqua	Miller, Ohio
Anderson, Calif.	Gaydos	Moore
Andrews, N.C.	Gephardt	Moorhead, Calif.
Andrews, N. Dak.	Ginn	Mottl
Archer	Glickman	Murphy, Pa.
Ashbrook	Goldwater	Myers, Gary
Badham	Goodling	Myers, John
Bafalis	Grassley	Nichols
Barnard	Gudger	Oakar
Baucus	Guyer	Pressler
Bauman	Hagedorn	Quayle
Beard, Tenn.	Hall	Quillen
Benjamin	Hammer-schmidt	Rahall
Bennett	Hansen	Railsback
Bevill	Harkin	Regula
Breaux	Harsha	Rhodes
Brinkley	Hefner	Robinson
Brooks	Hightower	Rose
Brown, Ohio	Holt	Rousselot
Burgener	Hubbard	Runnels
Burleson, Tex.	Huckaby	Russo
Butler	Hughes	Satterfield
Byron	Ichord	Schulze
Chappell	Jacobs	Sebelius
Clausen, Don H.	Jenkins	Shuster
Clawson, Del	Jenrette	Sikes
Cochran	Johnson, Colo.	Skelton
Cohen	Jones, N.C.	Smith, Nebr.
Coleman	Jones, Okla.	Snyder
Collins, Tex.	Jones, Tenn.	Spence
Conable	Kasten	Staggers
Conyers	Kazen	Stangeland
Crane	Kelly	Steed
Cunningham	Kemp	Stockman
Daniel, Dan	Keys	Stump
Daniel, R. W.	Kindness	Symms
Derrick	Kostmayer	Taylor
Devine	Lagomarsino	Thone
Duncan, Tenn.	Latta	Treen
Edwards, Okla.	Levitas	Trible
Emery	Livingston	Volkmer
English	Lloyd, Tenn.	Waggonner
Evans, Del.	Lott	Walker
Evans, Ga.	Lujan	Wampler
Evans, Ind.	McClory	Watkins
Fithian	McDonald	Weaver
Flippo	Marlenee	White
Flynt	Marriott	Whitley
Fountain	Martin	Wylie
Frenzel	Mathis	Young, Alaska
	Mattox	Young, Fla.
	Michel	

NOT VOTING—40

Ammerman	Gammage	Pritchard
Armstrong	Harrington	Quie
Burke, Calif.	Jeffords	Risenhoover
Burke, Mass.	Krueger	Rodino
Caputo	Leach	Rudd
Carney	Leggett	Sarasin
Cotter	Luken	Shipley
Dickinson	McEwen	Teague
Diggs	Markey	Tsongas
Dingell	Meeds	Wiggins
Eilberg	Miller, Calif.	Wilson, C. H.
Flowers	Murphy, N.Y.	Young, Tex.
Foley	O'Brien	
Frey	Pepper	

The Clerk announced the following pairs:

On this vote:

Mr. Eilberg for, with Mr. Gammage against.

Mr. Cotter for, with Mr. Risenhoover against.

Mr. Rodino for, with Mr. Teague against.

Until further notice:

Mr. Ammerman with Mr. Flowers.

Mrs. Burke of California with Mr. Caputo.

Mr. Markey with Mr. Frey.

Mr. Murphy of New York with Mr. Leach.

Mr. Shipley with Mr. McEwen.

Mr. Foley with Mr. O'Brien.

Mr. Pepper with Mr. Leggett.

Mr. Diggs with Mr. Pritchard.

Mr. Dingell with Mr. Quie.

Mr. Krueger with Mr. Rudd.

Mr. Carney with Mr. Sarasin.

Mr. Charles H. Wilson of California with Mr. Wiggins.

Mr. Miller of California with Mr. Dickinson.

Mr. Meeds with Mr. Luken.

Mr. Harrington with Mr. Tsongas.

Messrs. BEVILL, FLIPPO, and NICHOLS changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 13750, SUGAR STABILIZATION ACT OF 1978

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1587) on the resolution (H. Res. 1354) providing for consideration of the bill (H.R. 13750) to implement the International Sugar Agreement between the United States and foreign countries; to protect the welfare of consumers of sugar and those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 13778, DEPARTMENT OF EDUCATION ORGANIZATION ACT

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1588) on the resolution (H. Res. 1355) providing for consideration of the bill (H.R. 13778) to establish a Department of Education, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3816, FEDERAL TRADE COMMISSION AMENDMENTS OF 1977

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1589) on the resolution (H. Res. 1356) waiving certain points of order against the conference report on the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 11302, ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION AUTHORIZATION ACT OF 1979

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 11302) to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1979, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON H.R. 12222, INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1978

Mr. ZABLOCKI. Mr. Speaker, I call up the conference report on the bill (H.R. 12222) to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that Act and the Agricultural Trade Development and Assistance Act of 1954, to improve the coordination and administration of United States development-related policies and programs, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 7, 1978.)

Mr. ZABLOCKI (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. ZABLOCKI) will be recognized for 30 minutes, and the gentleman from Michigan (Mr. BROOMFIELD) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support and explanation of the conference report on H.R. 12222, the International Development and Food Assistance Act of 1978.

The provisions of the conference report with respect to development assistance are essentially the same as the bill passed by the House.

The major difference between the conference report and the House-passed bill is that the Economic Support Fund (ESF), previously known as security supporting assistance, is not in this report. The House had included a $1.855 billion ESF authorization in the development assistance bill, while the Senate put ESF in the international security assistance legislation. Under the circumstances, the conferees agreed to include ESF in the conference on international security assistance legislation this year rather than in the development assistance bill. ESF thus was in the conference on S. 3075, the International Security Assistance Act of 1978, when it was passed by the House on September 12.

The conference report we are considering today authorizes $1.795 billion for development assistance, $38 billion less than the House authorized for this purpose. This figure includes a 5-percent reduction on total funds authorized, excluding the American schools and hospitals abroad program. This figure is $43.5 million below the administration request for development assistance and somewhat greater than the development assistance total approved by the Senate.

The funds authorized in this conference report provide for assistance to many of the poorest countries in the world, and more importantly, to many of the world's poorest people.

Specifically, the report authorizes, subject to the 5-percent cut formula mentioned above, $665.2 million for food and nutrition programs, $224.8 million for family planning, $148.5 million for health assistance, $109 million for education, and $126 million for technical assistance and special development programs. The bill also authorizes U.S. voluntary contributions to United Nations and other international development efforts, provides for disaster and refugee assistance, supports the American schools and hospitals abroad program, and institutes reforms in the food for peace program.

The conference report also includes several amendments designed to improve the food for peace program, which were not at issue between the House and Senate. These are provisions allowing payment of transportation costs for food for development shipments to the poorest countries and a limited rescheduling of debt obligations for them in connection with the food for development program, and for a study on the effectiveness of food assistance which will be helpful for our future review of food aid.

There were some 60 instances of difference between the House and Senate versions of H.R. 12222. In most regards, however, the House and Senate approaches were compatible, and the managers for the House believe that the resulting conference report maintains fairly the principal development assistance features of the House-passed bill.

The major resolutions reached by the conferees are as follows:

On improved coordination and consolidation of U.S. development assistance programs, the conferees agreed to the basic House position, directing the President to strengthen coordination of U.S. policies which impact on developing nations. The conferees urged the President to consider establishment of an International Development Cooperation Administration, which would supersede the Agency for International Development, to have primary responsibility for U.S. development-related activities.

The committee of conference also agreed with the House provision requiring the establishment of a unified personnel system for the Agency for International Development. Regulations setting up this system are to be submitted to Congress by March 15, 1979, and Con-

gress will have 90 days in which to review them.

The Senate also agreed to the House provision to repeal section 115 of the Foreign Assistance Act, thereby permitting the use of both development and economic support funds in the same country in the same year. Any such use of development assistance funds will have to be fully justified on economic development grounds.

The conference committee accepted a compromise provision on health policy language. The new language maintains health and population assistance authorizations in one account, and gives added emphasis to the role of AID as the primary source of U.S. health-related assistance to developing countries.

On human rights, the conferees agreed to a House provision authorizing AID to spend $1.5 million to encourage positive human rights activities in developing countries. With regard to human rights reports, the conference committee agreed with the House that these reports should be prepared by the Secretary of State. They also accepted the Senate provision identifying countries for which human rights reports are required as those countries which receive U.S. assistance funds.

The conference committee agreed to a Senate provision to consolidate provisions of the Foreign Assistance Act concerning policy with regard to the relatively least developed countries. In addition, this new section also provides that the repayment terms for previous assistance to these poorest countries should accord with the present policy of making assistance to these countries available on a grant basis. The President, therefore, is authorized, on a case-by-case basis, to permit the least developed countries to set up special accounts in their own countries to use for development purposes the paybacks due on their earlier loans from the United States.

The House managers accepted several Senate provisions which were not in the House bill, including provisions regarding program and policy evaluation procedures for AID, a sense of Congress resolution concerning U.N. development program coordination, and earmarking of $2 million in disaster assistance funds to help control locusts plagues in Africa, and establishment of the AID Auditor General as a statutory position.

The Senate managers also agreed to a number of House provisions not in their bill. In addition to the AID consolidation and coordination provision and personnel reforms I described earlier, they accepted other House provisions regarding assistance to African refugees, reimbursable technical assistance, and a U.S. contribution to the U.N. Trust Fund on South Africa.

The House and Senate bills both contained repeals of various obsolete provisions of the Foreign Assistance Act, and the conferees accepted all the repeals from both bills.

House and Senate bills both contained provisions prohibiting assistance to Vietnam, Cambodia, Uganda, and Cuba. The conferees accepted the Senate formulation of this prohibition, which does not specify a prohibition on trade, as this would not be germane to this act, and which does not specify that assistance either directly or indirectly be prohibited. The conferees intend that the prohibition does not apply to U.S. contributions to international organizations, a position which agrees with the action taken recently by the House during consideration of foreign aid appropriations.

Mr. Speaker, the House managers believe that the conference report is a good one. It maintains the principal features of the House bill and is improved in some respects by inclusion of Senate modifications.

We urge its adoption by the House.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 12222, the International Development and Food Assistance Act of 1978.

This legislation authorizes funds for the U.S. bilateral development assistance program for fiscal year 1979. The total authorization provided for in the conference agreement is $1,795,000,000. This figure is $43.5 million less than the President's budget request for fiscal year 1979 and $38.1 million less than the amount authorized in H.R. 12222 as it originally passed the House on May 15. This sum reflects the result of a conference compromise applying a 5 percent reduction to the original total authorization level agreed upon by the conferees, not including the $25 million authorization for the American schools and hospitals abroad program under section 214 of the Foreign Assistance Act of 1961, as amended.

The conference agreement retains the emphasis in the House bill on refining and consolidating the provisions of the Foreign Assistance Act in which Congress established the U.S. foreign aid policy that U.S. assistance should concentrate on helping the poor majority in developing countries to meet their own basic human needs. The language of those provisions of the law dealing with rural development, food and nutrition, population, health, and energy has been clarified.

A number of obsolete or redundant provisions of the Foreign Assistance Act of 1961 are repealed by the legislation before us today. Several other matters worth mentioning are dealt with in the conference agreement. In the interests of time, I would just like to touch on a few of these points.

In order to reinforce the legislative policy of focusing U.S. assistance on basic human needs and self-help development programs in which the poor majority can participate, the conference report follows the House bill's position that U.S. bilateral development assistance should be concentrated on projects which do not entail large-scale capital transfers. Recognizing that occasionally projects involving such transfers will be necessary, the conference report urges that such projects be undertaken in a multilateral arrangement.

The conference agreement also continues and encourages an expansion of the valuable and efficient role played by private voluntary organization (PVO's) in development assistance and in handling disaster relief assistance. Experience with these fine private agencies has generally shown the development and food assistance programs in which they are involved to be among the most effective in terms of both costs and development results.

This legislation gives the President somewhat more flexibility by permitting him to provide both development assistance and economic support funds to any country in the same fiscal year where exceptional circumstances require this action. Congress must, of course, still be given prior notification, under procedures in existing law, when the President's exercise of this authority results in a modification of aid programs already justified to Congress in the regular annual budget presentation materials.

All in all, this conference agreement represents a very acceptable compromise between the House and Senate positions. I do regret that the conferees did not retain the language of the House bill which would have provided more comprehensive coverage in the human rights area by requiring reports on all countries. Perhaps this defect can be remedied next year.

In any event, the authorization levels in this conference report are reasonable, and the total is less than the total in the original House bill. The substantive provisions of the compromise are also generally good.

I urge the House to adopt the conference report on H.R. 12222.

Mr. Speaker, at this time I would like to yield 2 minutes to the gentleman from Kansas (Mr. WINN).

Mr. WINN. Mr. Speaker, I thank the gentleman from Michigan for yielding.

Mr. Speaker, I also rise in support of the conference report on H.R. 12222, the International Development and Food Assistance Act of 1978. This legislation authorizes funds for fiscal year 1979 for the continuation of U.S. bilateral economic assistance for self-help development programs. Their purpose is to aid the poor majority of the people in the less developed countries to participate in and benefit from equitable and productive growth in their economies and standards of living.

There is little in the way of major initiatives in this bill, and therefore this conference report is primarily concerned with reconciling a number of comparatively small differences between the texts passed by the House and Senate, respectively. The main thrust of this year's authorization bill is the consolidation, streamlining, and reinforcement of general and specific policy language already set out by Congress in existing provisions of the Foreign Assistance Act of 1961, as amended.

For example, the conference agreement on H.R. 12222, following the Senate language, reemphasizes the policy that U.S. private investment should, so

far as practicable, be encouraged in development programs supported by the United States. It also reinforces the legislative policy that U.S. aid programs encourage the integration of women in the development process in their countries.

Several provisions of the conference agreement are intended to increase the efficiency and cost effectiveness of U.S. development assistance programs. The bill directs the Administrator of the Agency for International Development (AID) to improve evaluation and assessment procedures, calls for improved administrative coordination and consolidation of U.S. assistance programs, encourages AID to increase its use of competitive procurement practices, and creates a statutory position of Auditor General of AID reporting directly to the Administrator.

The conference agreement authorizes a total of $1,795,000,000 for development assistance programs in the areas of food, nutrition and rural development, health, population, education, energy, and the environment, as well as disaster assistance, and aid to American sponsored or supported schools and hospitals abroad. The funds in this legislation are necessary to U.S. efforts to meet international humanitarian needs and to help promote equitable growth and prospects for long-term international economic stability. I urge the House to approve the conference report on H.R. 12222.

Mr. BROOMFIELD. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Speaker, I would like to ask several questions of my colleague, the chairman of the committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

I notice that the conferees capitulated to the Senate on my amendment which would have prohibited indirect aid to Communist countries. The chairman seemed to gloss over that. It does seem to be totally different from that standpoint. Do I understand it is the intent of the conferees to allow taxpayers' money to go indirectly to Communist countries, to Vietnam and Cambodia and Cuba? That seems to be the substance of what has been accomplished by knocking out my amendment. Is that the intention of the conferees?

Mr. ZABLOCKI. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Mr. Speaker, I thank the gentleman for yielding.

It is certainly not the intent of the conferees to condone the use of U.S. taxpayers' money for purposes contrary to which the gentleman believes they should be used, but there is no way of controlling just how our contributions to the multilateral institutions, for example to the United Nations or other international organizations, will be used. There is no way of controlling their use of our contributions. I admire the gentleman's intent, and as I told him privately, if there were any possible way of doing what he wants I would heartily support him. I am in agreement with his views. But as the gentleman knows, in the conference there is give and take. The Senate conferees were adamant. They pointed out repeatedly that adoption of that amendment would not bring about the situation intended by the gentleman from Ohio. They insisted that our position was unacceptible. Therefore, we had to capitulate, to use the gentleman's starkly descriptive language.

Mr. ASHBROOK. Let me say to my friend and colleague, I think the American taxpayers would be rather astounded to hear that there is nothing we could do. We could simply not send the money there, and that is the purpose of the amendment. So what we are saying in effect is that the conferees have capitulated to the position of the Senate which does allow the taxpayers' money to be used indirectly by multilateral agencies to aid the Communist countries named, that is Vietnam and Cambodia and Cuba. That is the bottom line of what we are talking about, no matter what niceties of the debate might be.

So I just object to the argument that there is nothing we could do but to place our taxpayers' money in the hands of a multilateral agency or organization and they hold the smoking gun and we say we cannot do anything. I just do not buy that.

I understand the gentleman's position and the position of the Senate, but I think the American taxpayers ought to realize that in this conference report we do allow the American taxpayers' money to go to Communist countries indirectly, and we all know that here, and it is the responsibility of all those who vote for this conference report.

Mr. ZABLOCKI. Mr. Speaker, if the gentleman will yield further, I think the first question we must ask ourselves is this: Is it in our country's national interest to belong to the international organizations, to belong, for example, to the United Nations and to the World Bank and to the various other international organizations? And if we come to the conclusion that, yes, it is in our country's national interest to belong to those international organizations because they promote the interests of the United States, then the answer is that, yes, we must put in our contribution. And if we put in our contribution then we cannot have final control under the charters at the various organizations.

I think the primary issue is, and certainly it is my opinion, that it is in our interest to belong to these international organizations.

As far as using that money directly or indirectly, or using our contribution directly or indirectly to assist the countries that are listed, basically, as the gentleman knows, there is absolutely no direct aid from us to these countries.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 additional minutes to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Speaker, let me say to my friend the chairman that I do not believe he states the issue correctly. At least, in my opinion, the fundamental issue here is not whether it is not in our interest to belong to these agencies, the question is, more properly whether or not it is in our interest to belong to these agencies regardless of what they do. The chairman says it is in our interest to belong to these organizations regardless of what they do, it is in our interest to belong to these multilateral agencies, regardless of what they do, regardless of how they spend the money, regardless of what position they may take. I do not think the gentleman would agree with that.

Mr. ZABLOCKI. The answer to the gentleman is "No."

Certainly instructions to our representatives in these international organizations is not to support loans or assistance to these countries that are listed, but we do not make the final decisions that are adopted by these organizations.

I must point out to the gentleman that even though aid programs and loans are made to these countries by international organizations they are made for humanitarian purposes, for the improvement of life in these particular areas. I know the gentleman from Ohio (Mr. ASHBROOK) has charity in his heart and has concern for the poorest of the poor people.

Mr. ASHBROOK. Mr. Speaker, let me just regain my last minute to make one point.

I think we would all want to draw the line somewhere, and the question is where the line should be drawn. I remember during the Watergate era that some of the diehard Members on this side of the aisle, when I was criticizing the President and they were not criticizing the President, I said to them well, at what point would you criticize the President? And there was a thirty second silence, and I said well, there is nothing up with which you would not put before you draw the line. I think that this is the place where we should draw the line. I think this committee would be hard pressed to find a place as to where they would draw the line.

Mr. ZABLOCKI. If the gentleman will yield further, we do have a vote, as the gentleman knows, on setting the policy.

Mr. ASHBROOK. A vote on what line?

Mr. ZABLOCKI. On the setting of policy.

The SPEAKER pro tempore. The time of the gentleman has again expired.

Mr. BROOMFIELD. I yield 2 additional minutes to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ZABLOCKI. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. Go ahead.

Mr. ZABLOCKI. Mr. Speaker, we have a vote and I can assure the gentleman that our votes are not cast in favor of the decisions such as the gentleman refers to, but we do not have control of the final decision. After all, these international lending agencies and international organizations are run in a democratic manner, so we do have a voice, we do have the right to object. We do

not support some of the policies and in the final analysis we do not vote for them but we do not have full control over them.

Mr. ASHBROOK. You do not have the vote but we do, as the elected representatives here.

Mr. ZABLOCKI. We do have a vote.

Mr. ASHBROOK. You do not have a vote to demand that they follow our particular wishes, but we do as Congressmen, as Representatives, have the responsibility of determining where we draw the line. I guess that is the only question that I would ask this committee: Where, at what point do we ever actually draw the line? I am inclined to think that the Committee on International Relations wil not draw a line anywhere.

Mr. ZABLOCKI. The gentleman knows we have drawn the line on direct aid. If the gentleman wants to draw the line further down then it should be done in the legislation that authorizes funds for our contributions to the development banks and other international organizations legislation. Perhaps the gentleman should seek U.S. withdrawal from the organizations.

Mr. ASHBROOK. I will only say that the gentleman has drawn an invisiable line.

Mr. ZABLOCKI. Let me repeat, withdrawal is the only way the gentleman can effectively bring about what he intends with the kind of position he takes.

Mr. ASHBROOK. Mr. Speaker, I would merely conclude by saying that a lot of people want to withdraw behind that invisible line which has been drawn because direct aid means nothing as long as there is money to be used indirectly to accomplish the same purpose which the gentleman indicates will not be done directly.

Mr. Speaker, I thank the gentleman for yielding.

Mr. BROOMFIELD. I yield myself 1 minute.

Mr. Speaker, would the chairman respond to a colloquy.

While I am opposed to indirect aid, I would point out that out of a total authorization of $1.8 billion, there are just one or two U.N. programs, among the several funded by this legislation under which the countries in question may receive some U.N. aid.

Other than those few programs, I do not see where we are giving even any indirect aid to Communist countries; is that not correct?

Mr. ZABLOCKI. The gentleman is correct.

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. ZABLOCKI. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 231, nays 159, not voting 42, as follows:

[Roll No. 800]

YEAS—231

Addabbo	Garcia	Oberstar
Akaka	Gephardt	Obey
Alexander	Gilman	Ottinger
Ambro	Glickman	Patten
Anderson, Calif.	Gonzalez	Patterson
	Goodling	Pattison
Anderson, Ill.	Gore	Pease
Annunzio	Gradison	Perkins
Ashley	Green	Pettis
Aspin	Hamilton	Preyer
AuCoin	Hanley	Price
Baldus	Hannaford	Pritchard
Baucus	Harkin	Pursell
Beard, R.I.	Harris	Railsback
Bedell	Hawkins	Rangel
Bellenson	Heckler	Reuss
Benjamin	Heftel	Rhodes
Biaggi	Hillis	Richmond
Bingham	Hollenbeck	Rinaldo
Blanchard	Holtzman	Rodino
Bouin	Horton	Roe
Boggs	Howard	Roncalio
Boland	Hughes	Rooney
Bolling	Hyde	Rosenthal
Bonior	Johnson, Calif.	Rostenkowski
Bonker	Johnson, Colo.	Ruppe
Brademas	Jordan	Ryan
Brodhead	Kastenmeier	Scheuer
Broomfield	Keys	Schroeder
Brown, Calif.	Kildee	Schulze
Brown, Mich.	Kostmayer	Seiberling
Buchanan	Krebs	Sharp
Burlison, Mo.	LaFalce	Simon
Burton, John	Le Fante	Sisk
Burton, Phillip	Lederer	Skubitz
Carr	Leggett	Smith, Iowa
Carter	Lehman	Solarz
Cavanaugh	Lent	Spellman
Cederberg	Lloyd, Calif.	St Germain
Chisholm	Long, La.	Stanton
Clay	Long, Md.	Stark
Cohen	Lundine	Steers
Collins, Ill.	McCloskey	Steiger
Conable	McCormack	Stockman
Conte	McDade	Stokes
Conyers	McEwen	Stratton
Corman	McFall	Studds
Cornell	McHugh	Thompson
Cornwell	McKay	Thornton
Coughlin	McKinney	Traxler
D'Amours	Madigan	Treen
Danielson	Maguire	Tucker
Delaney	Mann	Udall
Dellums	Marks	Ullman
Dicks	Martin	Van Deerlin
Dodd	Mazzoli	Vander Jagt
Dornan	Metcalfe	Vanik
Downey	Meyner	Vento
Duncan, Oreg.	Mikuski	Volkmer
Early	Mikva	Walgren
Eckhardt	Mineta	Waxman
Edgar	Minish	Weiss
Edwards, Calif.	Mitchell, Md.	Whalen
Erlenborn	Mitchell, N.Y.	Wiggins
Evans, Colo.	Moakley	Wilson, Tex.
Fary	Moffett	Winn
Fascell	Mollohan	Wirth
Fenwick	Moorhead, Pa.	Wolff
Findley	Moss	Wright
Fish	Murphy, Ill.	Wydler
Fisher	Murtha	Wylie
Flood	Myers, Gary	Yates
Ford, Mich.	Myers, Michael	Yatron
Ford, Tenn.	Natcher	Young, Mo.
Forsythe	Nedzi	Zablocki
Fowler	Nix	Zeferetti
Fraser	Nolan	
Frenzel	Nowak	

NAYS—159

Abdnor	Flynt	Myers, John
Andrews, N.C.	Frey	Neal
Andrews, N. Dak.	Fuqua	Nichols
	Gaydos	Oakar
Applegate	Gibbons	Panetta
Archer	Ginn	Pickle
Ashbrook	Goldwater	Pike
Badham	Grassley	Poage
Bafalis	Gudger	Pressler
Barnard	Guyer	Quayle
Bauman	Hagedorn	Quillen
Beard, Tenn.	Hall	Rahall
Bennett	Hammer-schmidt	Regula
Bevill		Roberts
Bowen	Hansen	Robinson
Breaux	Harsha	Rogers
Brinkley	Hefner	Rose
Brooks	Hightower	Rousselot
Brown, Ohio	Holt	Roybal
Broyhill	Hubbard	Runnels
Burgener	Huckaby	Russo
Burke, Fla.	Ichord	Santini
Burleson, Tex.	Ireland	Satterfield
Butler	Jacobs	Sawyer
Byron	Jenkins	Sebelius
Chappell	Jenrette	Shuster
Clausen, Don H.	Jones, N.C.	Sikes
	Jones, Okla.	Skelton
Clawson, Del	Jones, Tenn.	Slack
Cleveland	Kasten	Smith, Nebr.
Cochran	Kazen	Snyder
Coleman	Kelly	Spence
Collins, Tex.	Kindness	Staggers
Corcoran	Lagomarsino	Stangeland
Crane	Latta	Steed
Cunningham	Levitas	Stump
Daniel, Dan	Livingston	Symms
Daniel, R. W.	Lloyd, Tenn.	Taylor
Davis	Lott	Thone
de la Garza	Lujan	Trible
Dent	McClory	Waggonner
Derrick	McDonald	Walker
Derwinski	Mahon	Walsh
Devine	Marlenee	Wampler
Duncan, Tenn.	Marriott	Watkins
Edwards, Ala.	Mathis	Weaver
Edwards, Okla.	Mattox	White
Emery	Michel	Whitley
English	Miller, Ohio	Whitten
Ertel	Montgomery	Wilson, Bob
Evans, Ga.	Moore	Wilson, C. H.
Evans, Ind.	Moorhead, Calif.	Young, Alaska
Fithian		Young, Fla.
Flippo	Mottl	
Florio	Murphy, Pa.	

NOT VOTING—42

Ammerman	Flowers	Milford
Armstrong	Foley	Miller, Calif.
Breckinridge	Fountain	Murphy, N.Y.
Burke, Calif.	Gammage	O'Brien
Burke, Mass.	Giaimo	Pepper
Caputo	Harrington	Quie
Carney	Holland	Risenhoover
Cotter	Jeffords	Rudd
Dickinson	Kemp	Sarasin
Diggs	Krueger	Shipley
Dingell	Leach	Teague
Drinan	Luken	Tsongas
Eilberg	Markey	Whitehurst
Evans, Del.	Meeds	Young, Tex.

The Clerk announced the following pairs:

On this vote:

Mr. Carney for, with Mr. Gammage against.

Mr. Cotter for, with Mr. Risenhoover against.

Mr. Drinan for, with Mr. Teague against.

Until further notice:

Mr. Eilberg with Mr. Breckinridge.
Mr. Markey with Mr. Caputo.
Mr. Shipley with Mr. Kemp.
Mrs. Burke of California with Mr. Leach.
Mr. Pepper with Mr. O'Brien.
Mr. Murphy of New York with Mr. Rudd.
Mr. Giaimo with Mr. Sarasin.
Mr. Ammerman with Mr. Quie.
Mr. Dingell with Mr. Whitehurst.
Mr. Krueger with Mr. Milford.
Mr. Meeds with Mr. Luken.
Mr. Foley with Mr. Holland.

Mr. Diggs with Mr. Dickinson.
Mr. Tsongas with Mr. Evans of Delaware.
Mr. Miller of California with Mr. Flowers.
Mr. Fountain with Mr. Harrington.

Mr. MAHON changed his vote from "yea" to "nay."

Mr. D'AMOURS changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to House Resolution 1350, agreed to on September 15, 1978, the Speaker did on September 19, 1978, make certification to the U.S. Attorney for the District of Columbia, as required by House Resolution 1350, of the refusal of Hancho C. Kim to answer a question in a proceeding being conducted by the Committee on Standards of Official Conduct.

CONFERENCE REPORT ON H.R. 11401, NASA AUTHORIZATION FOR FISCAL YEAR 1979

Mr. FUQUA. Mr. Speaker, I call up the conference report on the bill (H.R. 11401) to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 17, 1978.)

Mr. FUQUA (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with, as I intend to explain this to the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. FUQUA) will be recognized for 30 minutes, and the gentleman from New York (Mr. WYDLER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. FUQUA).

Mr. FUQUA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the committee on conference on the bill (H.R. 11401) authorizing funds for the National Aeronautics and Space Administration for fiscal year 1979 has successfully concluded its work. The conference report before you includes eight changes in the NASA research and development program line items, and one change in the construction of facilities line items. The net result of the House and Senate is a $30 million increase in amount requested ($4,371,600,000) for fiscal year 1979. An increase of less than seven-tenths of 1 percent (0.69 percent) in the amount requested by the administration.

The following actions, representing a net increase of $23,000,000, was taken by the conference committee:

Funds were added to:

First, support future space program definition ($4 million).

Second, provide funds for Spacelab life science experiments ($2 million).

Third, increase space applications programs of the State and local level and provide for the definition of a Stereosat Satellite ($6 million).

Fourth, augment efforts in technology utilization including bioengineering ($3 million).

Fifth, enhance aeronautical research and technology programs ($11 million).

Sixth, increase effort to define the technology necessary for solar satellite power systems ($2 million).

Funds were decreased to:

First, realize savings as conventional launch vehicles are phased out of NASA programs ($2.5 million)

Second, provide a general reduction in rehabilitation and modification funds for NASA facilities ($2.5 million)

I am including a summary of the action taken for the record.

In addition to the increases and decreases noted, language amendment to the basic act was included which clarifies the NASA role in bioengineering technology. A reporting requirement has also been included in the bill with respect to NASA policy regarding standards of conduct, financial disclosure, and conflicts of interest. A technical amendment reparagraphing two construction of facilities line items was also agreed to by the conferees.

In conclusion, the conferees on both sides of the aisle are to be congratulated for their efforts in bringing the conference report to the floor. The conference report before you reflects the need to exercise prudent economy while encouraging full utilization of the potential of space. I urge adoption of this report.

NASA FISCAL YEAR 1979—SUMMARY

Fiscal year 1979	Budget request	House action	Senate committee action	Committee of conference
Research and development:				
Space Shuttle	$1,439,300,000	$1,443,300,000	$1,443,300,000	$1,443,300,000
Space flight operations	311,900,000	308,900,000	318,900,000	315,900,000
Expendable launch vehicles	76,500,000	71,500,000	76,500,000	74,000,000
Physics and astronomy	285,500,000	285,500,000	285,500,000	285,500,000
Lunar and planetary exploration	187,100,000	187,100,000	187,100,000	187,100,000
Life sciences	40,600,000	40,600,000	42,600,000	42,600,000
Space applications	274,300,000	288,300,000	274,300,000	280,300,000
Technology utilization	9,100,000	14,600,000	9,100,000	12,100,000
Aeronautical research and technology	264,100,000	292,300,000	264,100,000	275,100,000
Space research and technology	108,300,000	111,300,000	111,300,000	111,300,000
Energy technology applications	3,000,000	6,000,000	4,000,000	5,000,000
Tracking and data acquisition	305,400,000	304,400,000	305,400,000	305,400,000
Total	3,305,100,000	3,353,800,000	3,322,100,000	3,337,600,000
Construction of facilities	152,500,000	147,500,000	152,500,000	150,000,000
Research and program management	914,000,000	914,500,000	914,000,000	914,000,000
Grand total	4,371,600,000	4,415,300,000	4,388,600,000	4,401,600,000

Mr. WYDLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a good conference report. The bill passed the House overwhelmingly. Actually, we have come back from our conference with the Senate with a bill that is at a lower dollar figure than the bill was when it left the House floor. I think we have represented the House's interests well. Among other things that I think is important in the conference is the fact that we did, as the House wanted to do, increase to some extent the amount of money that is being spent on aeronautics research.

I think that emphasis is a good one for the Congress to maintain at a time when the agency seems somewhat reluctant to give to aeronautical research the emphasis it deserves.

Mr. Speaker, I urge the Members on this side of the aisle to support the conference report. I think the program is well planned for next year, and I hope that everyone on both sides of the aisle will be able to give it the backing that it deserves.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. YATES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 321, nays 54, not voting 57, as follows:

[Roll No. 801]

YEAS—321

Abdnor	Davis	Jones, N.C.
Addabbo	de la Garza	Jones, Okla.
Akaka	Delaney	Jones, Tenn.
Alexander	Derrick	Jordan
Ambro	Derwinski	Kasten
Anderson, Calif.	Dicks	Kastenmeier
	Dodd	Kazen
Anderson, Ill.	Dornan	Kelly
Andrews, N.C.	Downey	Kildee
Andrews, N. Dak.	Duncan, Oreg.	Kindness
	Duncan, Tenn.	LaFalce
Annunzio	Early	Lagomarsino
Applegate	Edgar	Le Fante
Archer	Edwards, Ala.	Lederer
Ashbrook	Edwards, Calif.	Lent
Ashley	Edwards, Okla.	Levitas
Aspin	Emery	Livingston
AuCoin	English	Lloyd, Calif.
Badham	Erlenborn	Lloyd, Tenn.
Bafalis	Ertel	Long, La.
Barnard	Evans, Colo.	Long, Md.
Baucus	Evans, Ga.	Lott
Bauman	Fary	Lujan
Bellenson	Fascell	Lundine
Benjamin	Fisher	McClory
Bennett	Fithian	McCloskey
Bevill	Flippo	McCormack
Biaggi	Flood	McDade
Bingham	Florio	McEwen
Blanchard	Flynt	McFall
Blouin	Ford, Mich.	McHugh
Boggs	Ford, Tenn.	McKay
Boland	Forsythe	McKinney
Bonior	Fountain	Madigan
Bonker	Fowler	Mahon
Bowen	Fraser	Mann
Brademas	Frey	Marks
Breaux	Fuqua	Marlenee
Breckinridge	Garcia	Marriott
Brinkley	Gaydos	Mathis
Brooks	Giaimo	Mazzoli
Broomfield	Gilman	Metcalfe
Brown, Calif.	Ginn	Mikulski
Brown, Mich.	Glickman	Milford
Brown, Ohio	Goldwater	Mineta
Buchanan	Gonzalez	Mitchell, Md.
Burgener	Gore	Mitchell, N.Y.
Burke, Fla.	Gradison	Moakley
Burleson, Tex.	Grassley	Moffett
Burlison, Mo.	Green	Mollohan
Burton, Phillip	Gudger	Montgomery
Butler	Guyer	Moore
Byron	Hagedorn	Moorhead, Calif.
Carney	Hall	
Carr	Hamilton	Moorhead, Pa.
Carter	Hammer-schmidt	Murphy, Ill.
Cavanaugh		Murphy, Pa.
Cederberg	Hanley	Murtha
Chappell	Hannaford	Myers, Gary
Chisholm	Hansen	Myers, John
Clausen, Don H.	Harkin	Myers, Michael
	Harris	Natcher
Clawson, Del	Harsha	Neal
Clay	Hawkins	Nedzi
Cleveland	Hefner	Nichols
Cochran	Heftel	Nix
Cohen	Hightower	Nowak
Collins, Ill.	Hillis	Oakar
Conable	Holland	Oberstar
Conte	Hollenbeck	Panetta
Corcoran	Holt	Patten
Corman	Horton	Patterson
Cornwell	Howard	Pattison
Coughlin	Hubbard	Pease
Crane	Huckaby	Perkins
Cunningham	Ichord	Pettis
D'Amours	Jenkins	Pickle
Daniel, Dan	Jenrette	Pike
Daniel, R. W.	Johnson, Calif.	Poage
Danielson	Johnson, Colo.	Pressler
Preyer	Schulze	Udall
Price	Sebelius	Van Deerlin
Pritchard	Sharp	Vander Jagt
Pursell	Shuster	Vanik
Quillen	Sikes	Waggonner
Railsback	Slack	Walgren
Rangel	Smith, Iowa	Walker
Regula	Snyder	Walsh
Reuss	Solarz	Wampler
Rhodes	Spellman	Watkins
Rinaldo	St Germain	Whalen
Roberts	Staggers	Whitley
Robinson	Stange.and	Whitten
Rodino	Stanton	Wiggins
Roe	Steed	Wilson, Bob
Rogers	Steers	Wilson, Tex.
Roncalio	Stockman	Winn
Rooney	Stokes	Wirth
Rose	Stratton	Wolff
Rostenkowski	Stump	Wright
Rousselot	Symms	Wydler
Runnels	Taylor	Wylie
Ruppe	Thompson	Yatron
Ryan	Thone	Young, Alaska
Santini	Thornton	Young, Fla.
Satterfield	Traxler	Young, Mo.
Sawyer	Treen	Zablocki
Scheuer	Trible	Zeferetti
Schroeder	Tucker	

NAYS—54

Baldus	Hyde	Quayle
Bedell	Jacobs	Rahall
Brodhead	Keys	Richmond
Broyhill	Kostmayer	Rosenthal
Collins, Tex.	Krebs	Roybal
Cornell	Latta	Russo
Dellums	McDonald	Seiberling
Devine	Maguire	Simon
Evans, Ind.	Martin	Skelton
Fenwick	Mattox	Skubitz
Findley	Michel	Stark
Fish	Mikva	Steiger
Frenzel	Miller, Ohio	Studds
Gephardt	Minish	Vento
Gibbons	Mottl	Volkmer
Goodling	Nolan	Weaver
Holtzman	Obey	Weiss
Hughes	Ottinger	Yates

NOT VOTING—57

Ammerman	Evans, Del.	Murphy, N.Y.
Armstrong	Flowers	O'Brien
Beard, R.I.	Foley	Pepper
Beard, Tenn.	Gammage	Quie
Bolling	Harrington	Risenhoover
Burke, Calif.	Heckler	Rudd
Burke, Mass.	Ireland	Sarasin
Burton, John	Jeffords	Shipley
Caputo	Kemp	Sisk
Coleman	Krueger	Smith, Nebr.
Conyers	Leach	Spence
Cotter	Leggett	Teague
Dent	Lehman	Tsongas
Dickinson	Luken	Ullman
Diggs	Markey	Waxman
Dingell	Meeds	White
Drinan	Meyner	Whitehurst
Eckhardt	Miller, Calif.	Wilson, C. H.
Eilberg	Moss	Young, Tex.

The Clerk announced the following pairs:

Mrs. Burke of California with Mr. Caputo.
Mr. Cotter with Mr. Leach.
Mr. Drinan with Mr. Rudd.
Mr. Gammage with Mr. Sarasin.
Mr. Ammerman with Mr. Quie.
Mr. Pepper with Mr. Ireland.
Mr. Teague with Mr. Luken.
Mr. Risenhoover with Mr. Dickinson.
Mr. Eilberg with Mr. Flowers.
Mr. Markey with Mr. Harrington.
Mr. Shipley with Mr. Beard of Tennessee.
Mr. Murphy of New York with Mr. Coleman.
Mr. Dingell with Mr. Evans of Delaware.
Mr. Krueger with Mr. O'Brien.
Mr. Meeds with Mrs. Smith of Nebraska.
Mr. Foley with Mr. Spence.
Mr. Diggs with Mr. Whitehurst.
Mr. Burke of Massachusetts with Mr. Conyers.
Mr. John L. Burton with Mr. Beard of Rhode Island.
Mr. Dent with Mr. Eckhardt.
Mrs. Meyner with Mrs. Heckler.
Mr. Miller of California with Mr. Kemp.
Mr. Lehman with Mr. Leggett.
Mr. Moss with Mr. White.
Mr. Tsongas with Mr. Charles H. Wilson of California.
Mr. Ullman with Mr. Sisk.
Mr. Waxman with Mr. Jeffords.

Mr. FISH and Mr. MARTIN changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT FOR FISCAL YEAR 1979

Mr. FUQUA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 11400) to authorize the appropriation of specified dollar amounts for each of the National Science Foundation's major program areas (and certain subprograms), and to provide requirements relating to period of availability and transfers of the authorized funds, with the Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "National Science Foundation Authorization Act for Fiscal Year 1979".

SEC. 2. (a) There is authorized to be appropriated to the National Science Foundation $934,400,000 for the fiscal year 1979.

(b) Funds authorized for the fiscal year 1979 shall be available for the following categories:

(1) Mathematical and Physical Sciences and Engineering, $266,300,000.

(2) Astronomical, Atmospheric, Earth and Ocean Sciences, $225,300,000.

(3) United States Antarctic Program, $48,500,000.

(4) Biological, Behavioral, and Social Sciences, $156,000,000.

(5) Science Education Programs, $87,700,000.

(6) Applied Science and Research Applications, $73,500,000, of which not less than 15 per centum shall be expended to small business concerns, and of which $2,000,000 is available for a "Handicapped Research Program".

(7) Scientific, Technological, and International Affairs, $22,300,000.

(8) Program Development and Management, $51,800,000.

SEC. 3. In addition to such sums as are authorized by section 2, not to exceed $3,000,000 is authorized to be appropriated for expenses of the National Science Foundation incurred outside the United States to be paid for in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States.

SEC. 4. Appropriations made pursuant to this Act may be used, but not to exceed $5,000 in fiscal year 1979 for official consultation, representation, or other extraordinary expenses upon the approval or authority of the Director of the National Science Foundation, and his determination shall be final and conclusive upon the accounting officers of the Government.

SEC. 5. Appropriations made pursuant to this Act shall remain available for obligation, for expenditure, or for obligation and

expenditure, for such period or periods as may be specified in Acts making such appropriations.

SEC. 6. No funds may be transferred from any particular category listed in section 2 for any fiscal year to any other category or categories listed in such section for that year if the total of the funds so transferred from that particular category would exceed 10 per centum thereof, and no funds may be transferred to any particular category listed in section 2 for any fiscal year from any other category or categories listed in such section for that year if the total of the funds so transferred to that particular category would exceed 10 per centum thereof, unless—

(1) a period of thirty legislative days has passed after the Director of the National Science Foundation or his designee has transmitted to the Speaker of the House of Representatives and to the President of the Senate and to the Committee on Science and Technology of the House of Representatives and to the Committee on Human Resources of the Senate a written report containing a full and complete statement concerning the nature of the transfer and the reason therefor, or

(2) each such committee before the expiration of such period has transmitted to the Director, written notice to the effect that such committee has no objection to the proposed action.

SEC. 7. Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation shall keep the Committee on Science and Technology of the House of Representatives and the Committee on Human Resources of the Senate fully and currently informed with respect to all of the activities of the National Science Foundation.

SEC. 8. (a) The Director of the National Science Foundation, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Energy, the Administrator of the National Aeronautics and Space Administration, and technical experts in public agencies, private organizations, and academic institutions, is authorized to determine the need to provide support under this Act for a study of the feasibility of transmitting solar energy to Earth by using orbital structures manufacturered from lunar or asteroidal materials, and the impact of such a feasibility study, if any, on existing National Science Foundation programs.

(b) (1) If the Foundation determines that such a feasibility study is necessary, the Foundation is authorized to conduct such a study directly or by grants or contracts with public agencies, private organizations, or academic institutions.

(2) At the conclusion of any such study the Foundation shall prepare and submit to the President and to the Congress a report of the study, together with such recommendations as the Foundation deems appropriate.

(3) There are authorized to be appropriated $500,000 for the fiscal year 1979, to carry out the provisions of this subsection.

Mr. FUQUA (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the House amendment to the Senate amendment.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

That this Act may be cited as the "National Science Foundation Authorization Act for Fiscal Year 1979".

SEC. 2. (a) There is hereby authorized to be appropriated to the National Science Foundation for the fiscal year 1979 for the following categories:

(1) Mathematical and Physical Sciences and Engineering, $265,700,000.

(2) Astronomical, Atmospheric, Earth, and Ocean Sciences, $224,700,000.

(3) United States Antarctic Program, $51,200,000.

(4) Biological, Behavioral, and Social Sciences, $157,000,000.

(5) Science Education Programs, $84,800,000.

(6) Applied Science and Research Applications, $69,700,000.

(7) Scientific, Technological, and International Affairs, $23,500,000.

(8) Program Development and Management, $53,300,000.

(b) Of the total amount authorized under subsection (a) (6)—

(1) $2,000,000 is authorized for a "Handicapped Research Program";

(2) $200,000 is authorized for the design of a program in Appropriate Technology; and

(3) not less than 12.5 per centum shall be expended to small business concerns.

SEC. 3. Appropriations made under the authority provided in sections 2 and 5 shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making the appropriations.

SEC. 4. From appropriations made under this Act, not more than $5,000 may be used for official consultation, representation, or other extraordinary expenses upon the determination of the Director of the National Science Foundation, and his determination shall be final and conclusive upon the accounting officers of the Government.

SEC. 5. In addition to the sums authorized by section 2, not more than $4,500,000 is authorized to be appropriated for the fiscal year 1979 for expenses of the National Science Foundation incurred outside the United States, to be paid for in foreign currencies that the Treasury Department determines to be excess to the normal requirements of the United States.

SEC. 6. Funds may be transferred among the categories listed in section 2(a), but neither the total funds transferred from any category nor the total funds transferred to any category may exceed 10 per centum of the amount authorized for that category in section 2, unless—

(1) thirty legislative days have passed after the Director of the National Science Foundation or his designee has transmitted to the Speaker of the House of Representatives, to the President of the Senate, to the Committee on Science and Technology of the House of Representatives, and to the Committee on Human Resources of the Senate a written report containing a full and complete explanation of the transfer involved and the reason for it, or

(2) before the expiration of thirty legislative days both the Committee on Science and Technology of the House and the Committee on Human Resources of the Senate have written to the Director to the effect that they have no objection to the proposed transfer.

SEC. 7. Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation shall keep the Committee on Science and Technology of the House of Representatives and the Committee on Human Resources of the Senate fully and currently informed with respect to all of the activities of the National Science Foundation.

SEC. 8. (a) The Director of the National Science Foundation, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Energy, the Administrator of the National Aeronautics and Space Administration, and technical experts in public agencies, private organizations, and academic institutions, in authorized to determine the need to provide support under this Act for a study of the feasibility of transmitting solar energy to Earth by using orbital structures manufactured from lunar or asteroidal materials, and the impact of such a feasibility study, if any, on existing National Science Foundation programs.

(b) (1) If the Foundation determines that such a feasibility study is necessary, the Foundation is authorized to conduct such a study directly or by grants or contracts with public agencies, private organizations, or academic institutions.

(2) At the conclusion of any such study the Foundation shall prepare and submit to the President and to the Congress a report of the study, together with such recommendations as the Foundation deems appropriate.

(3) Of the funds authorized in section 2, $500,000 shall be available to carry out the provisions of this subsection.

Mr. FUQUA (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Florida?

Mr. HOLLENBECK. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I join my colleague, Mr. HARKIN, in urging the House to adopt the amendment to H.R. 11400. The figures represent the same overall level of spending as that recommended by our committee and passed by the House, while in individual categories they represent an even compromise with the Senate figures.

I believe this is an equitable and sound compromise, which strengthens basic research supported by the National Science Foundation, and would authorize greatly increased support for science education, where I believe the Foundation is doing some extremely interesting and important work. I am also particularly heartened to see that the initial cut proposed by the Senate in authorized expenditures for Antarctic programs has been at least partially restored in the compromise. After my colleague's visit to Antarctica last winter, I am impressed with the importance of the work this country is doing there, with the need to strengthen U.S. presence in the Antarctic, and with the importance of better understanding of the environmental forces and potential resources which exist there. As the designated agency responsible for managing all the U.S. activities in that area, it falls upon the Foundation to carry out all U.S. activities in Antarctica, and I am heartened

to see that this work is being encouraged by the language of the compromise.

Mr. Speaker, I, too, understand that the Senate will accept this amendment if adopted by the House and I urge my colleagues to join me in supporting the amendment to H.R. 11400. Mr. HARKIN and the staff deserve our great appreciation for their efforts in fashioning this compromise.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Florida?

Mr. HARKIN. Mr. Speaker, I reserve the right to object, and I do so only to lend my support to the unanimous consent request of the gentleman from Florida (Mr. FUQUA).

Mr. Speaker, the bill, H.R. 11400, provides authorization for the activities of the National Science Foundation for fiscal year 1979 in the total amount of $934.4 million. This is the same total amount as was presented earlier this year when the bill was passed in the House and in the Senate. Within this fixed total the amendment adjusts each line item slightly. The amount of each line item in the amendment falls between the House-passed figure and the Senate-passed figure. Line items are as follows:

NSF FISCAL YEAR 1979 AUTHORIZATION COMPARISON

Category	Budget request	House passed	Senate passed	Amendment
Mathematical and physical sciences and engineering	268.3	265.1	266.3	265.7
Astronomical, atmospheric, Earth, and ocean sciences	227.3	224.1	225.3	224.7
Biological, behavioral, and social sciences	158.0	158.0	156.0	157.0
Antarctic program	50.7	53.1	48.5	51.2
Science education	77.6	82.0	87.7	84.8
Applied science and research applications	67.0	67.0	73.5	69.7
Scientific, technological and international effairs	24.3	24.3	22.3	23.5
Program development and management	54.8	54.8	51.8	53.3
Foreign currency	6.0	6.0	3.0	4.5
Total	934.0	934.4	934.4	934.4

The bill earmarks funds for four specific items: First, $2 million for handicapped research; second, $200,000 for the design of a program in appropriate technology; third, $500,000 for a solar satellite feasibility study; and fourth, 12.5 percent of applied research funds for expenditure to small businesses.

The chairmen and ranking minority members of the House and Senate committees and subcommittees with jurisdiction over this bill make the following recommendations for the use of the funds authorized in certain categories, as follows:

SCIENCE EDUCATION

The amount authorized by the amendment for science education is $84.8 million. This is $7.2 million above the request of $77.6 million. It is recommended that the Foundation give first priority to funding each program in science education at the level of the request for the program. Recommended funding levels for certain programs, including the increase of $7.2 million, are as follows:

[In millions of dollars]

Program	Increase over request	Recommended program level
Undergraduate research participation and student-originated studies	$2.5	$2.5
Minorities, women, and the handicapped in science	0.7	3.2
Minority institution graduate fellowships	1.3	3.3
Minority institutions science improvement	—	5.0
Resource centers for science and engineering	—	2.8
Science for citizens	0.5	2.2
Ethics and values in science and technology	0.2	1.5
Increase emphasis on educational opportunities for women	2.0	2.0
Total	7.2	22.5

The $2 million recommended for increased emphasis on educational opportunities for women should be distributed among those existing science education programs where it can be used most effectively to increase the participation of women in science; it is not intended for a distinct line item program. In the science for citizens program it is recommended that the increase be used to continue and expand ongoing activities consistent with the mission of the Foundation and its experience.

APPLIED SCIENCE AND RESEARCH APPLICATIONS

In the category of applied science and research applications, in addition to the requirements of the bill for handicapped research, appropriate technology, and small business, it is recommended that $1.2 million be available for the State science, engineering, and technology program and that of the funds available in the 12.5 percent set-aside for small business $3.5 million be available for the small business innovation program.

TWO-YEAR AUTHORIZATION

It is recommended that the Foundation present a 2-year line item authorization to the Congress for fiscal years 1980 and 1981.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Florida (Mr. FUQUA)?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 8149, CUSTOMS PROCEDURAL REFORM

Mr. VANIK. Mr. Speaker, I call up the conference report on the bill (H.R. 8149) to provide customs procedural reform, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the statement.

(For conference report and statement see proceedings of the House of August 17, 1978.)

Mr. VANIK (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Speaker, I request the immediate consideration of the conference report on H.R. 8149, the Customs Procedural Reform and Simplification Act. On August 17, 1978, the conference report and statement of managers was filed with the House, and on August 25, the report was submitted to the Senate and agreed to the same day.

Mr. Speaker, this bill provides long-needed reform and is designed to build flexibility into the customs laws, and permit the use of more modern procedures which will increase the productivity and efficiency of these statutes.

The final version reflects the legitimate interests of the private sector while also permitting the U.S. Customs Service to modernize and simplify its procedures. The bill enjoys widespread support in the importing community and among business interests in general.

The conference agreement accommodated what basically are procedural differences between the versions of the bill or passed by the two Houses and are set forth in the conference report.

Title I of the bill would allow customs to institute up-to-date business methods and adopt accepted financial practices in conjunction with computerized techniques in the processing of importations.

The effect of the relevant title I provisions would be to permit the Secretary of Treasury to alter the customs practices and procedures with respect to the entry, clearance, and verification processes applicable to commercial imports. Title I also amends section 592 of the Tariff Act of 1930, the so-called penalty and fraud provision, by modifying the appropriate penalty levels and expanding the availability of judicial review.

Title II amends various provisions of the customs laws in an effort to avoid undue administrative expense or simplify the entry procedures for certain noncommercial importations. Most of the provisions adjust monetary levels for ad-

ministrative purposes, or make compensation for inflationary factors.

An important provision in this regard is an increase in the personal duty exemption for returning residents from $100 to $300, and from $200 to $600 for residents returning from the U.S. insular possessions. In addition, the next $600 worth of goods purchased by a traveler will be subject to a flat duty rate, thus speeding up the processing of persons arriving in the United States.

Mr. Speaker, this bill is the first major piece of legislation to facilitate the customs clearance of merchandise since the 1950's. Both the private and the public sectors endorse the bill, which will benefit individual travelers as well as importing businesses by reducing the long delays at our ports of entry. I recommend that the House approve the conference report.

Mr. Speaker, I yield to the gentleman from Oklahoma (Mr. JONES).

Mr. JONES of Oklahoma. Mr. Speaker, passage of this conference report will create the first substantial reforms in our customs laws since the early 1950's. Since that time the value of U.S. imports, the amount of duties collected, and the number of passengers passing through customs have increased over 500 percent; yet customary procedures for handling this workload have remained unchanged.

The bill agreed to in conference differs in no significant way from the legislation which passed the House last October. That bill was the product of very close work between the Congress, the Treasury Department, and the importing community. Let me comment briefly on two important provisions.

First, the House bill removed the basic inequities in section 592, the so-called penalty and fraud provision of customs law. In the past, importers were subject to large fines irrespective of the nature of their violation and were effectively precluded from judicial review of customs decisions. H.R. 8149 creates maximum penalty levels and burden of proof requirements for three levels of culpability and provides de novo judicial review in the courts.

The Senate added an amendment to this section which would apply the old law to section 592 cases already under investigation. This amendment was modified in conference to cover only the cases involving the dumping of Japanese televisions which caused the concern in the first place.

Second, the House bill raised the duty-free exemption for returning residents from $100 to $250 and from $200 to $500 for residents returning from U.S. insular possessions. The Senate bill doubled these increases. The conference report has settled on values of $300 and $600. These increases should significantly speed the customs clearance of international passengers.

H.R. 8149 is only the first step we must take in modernizing the Customs Service. As international trade continues to grow in the future, we will want to improve the statistics which customs gathers. We will want to increase our emphasis on preventing unfair international competition. And we must review how customs can best handle its numerous responsibilities across 96,000 miles of our country's borders.

These are broader issues to be addressed in the future. But today H.R. 8149 represents a successful effort for the Congress, the administration, and the people we serve to make our laws and our Government more just and effective. As the Customs Service moves into its third century, it is good to record these small steps we take and to review how much further we still have to go.

Mr. Speaker, I want to pay particular tribute to the chairman of our subcommittee, the gentleman from Ohio (Mr. VANIK), and to the ranking Republican member of the task force, the gentleman from Minnesota (Mr. FRENZEL), who worked so hard to pass this legislation.

Mr. Speaker, I urge adoption of the conference report.

Mr. VANIK. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. STEIGER).

Mr. STEIGER. Mr. Speaker, I join my colleague in supporting the conference report to accompany H.R. 8149, customs procedural reform.

Both the House and the Senate have devoted considerable time and effort toward the achievement of major reforms in the administrative and judicial procedures of U.S. Customs. Modernization, greater efficiency and control, and equity with respect to judicial review were desperately needed. The conference report now before us is the culmination of more than 2 years of task force investigations, extensive public hearings, and discussions among various interested parties as well as legislative action.

Many of the differences between the House and Senate versions of the bill were the result of efforts to clarify, simplify, or fine-tune the provisions as put forward in the respective versions. The compromises, therefore, were noncontroversial and merely a selection of the best way to accomplish a particular objective. However, there were a few important substantive differences that had to be resolved.

One important difference involved the amount of personal exemption accorded returning residents of the United States on articles purchased abroad. The House bill would have increased the personal exemption from $100 to $250 in general and from $200 to $500 for those persons arriving from American Samoa, Guam, and the Virgin Islands. The Senate version would have increased the personal exemption from $100 to $500 and from $200 to $1,000, respectively.

The compromise reached would set the personal exemption at $300 in general and at $600 for individuals returning from the insular possessions. I believe this figure adequately reflects the inflation rate and other economic factors that this country has experienced since the exemption was originally established.

Also, an important part of the compromise on this issue included an expansion of the special treatment afforded travelers returning from the insular possessions. Articles brought back would no longer have to accompany the traveler, but could be mailed back from the insular possessions through a voucher system that would insure the $600 limit was not exceeded.

A second issue that had to be resolved was whether to require periodic renewal of customhouse brokers' licenses. The House bill would have required renewal of such licenses every 3 years. The Senate wanted to delete this provision altogether. Conferees decided that licensed brokers would be required every 3 years to report to customs as to whether they were still actively engaged in business as a customhouse broker and the name and address under such business is being transacted.

House conferees were satisfied with the compromise because it provides for adequate review of practicing brokers and their location, and allows customs to keep an updated list of who is and is no longer in the brokerage business.

Another issue that created a great deal of discussion in its resolution involved changes the bill made in section 592 of the Tariff Act of 1930, especially with regard to pending investigations of dumping of television receivers. The revised section would establish penalties against persons who through fraud, gross negligence or negligence imports or attempts to import goods through the use of false statements or other false pretenses. The bill also makes revisions in the judicial review procedures under this section. Thus the fraud and penalty section is made less arbitrary and certain burden of proof requirements are shifted to the Federal Government.

The conflict between the House and the Senate arose out of the effective date of these provisions. The Senate desired to protect investigations, no matter how cursory or preliminary, already underway with respect to dumping of television sets by the Japanese. The House, on the other hand, felt that the fairer treatment provided by the bill should apply prospectively to all cases except those where official notice of investigation had been issued by customs.

The compromise reached would give the special consideration to TV cases that was desired by the Senate, to the extent that the receivers are a product of Japan and are the subject of antidumping procedures. For these cases, the burden of proof would be on the Federal Government to establish a violation by a preponderance of the evidence rather than by clear and convincing evidence as required under the bill. In any case, the bill's requirement that violations be tried de novo would apply across the board on the date of enactment.

The House conferees viewed the Senate amendment as a special interest amendment on behalf of Zenith Corp., and, therefore, fought hard to have it removed from the bill altogether. However, it appeared that this needed legislation might fail to be enacted if some compromise were not reached in this area. What we have agreed to is much

better than originally proposed by the Senate, even though it is still distasteful to many of the House conferees.

Mr. Speaker, the conference report reflects, in general, improvements over both versions of the bill. It is an important piece of legislation even though it contains one or two flaws. I urge my colleagues to approve the conference report at this time.

Mr. Speaker, I yield such time as he may consume, up to a point, to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, this conference report is a good one. It should be passed promptly.

It is wholly a legislative initiative. A House task force worked for over a year in response to complaints from importers, brokers, traders, and customs officials. Extensive hearings, many of them in the field, formed the basis of extensive revision in the section 592 of the customs law and in other sections of the law relating to customs procedures.

I believe H.R. 8149 will provide a more efficient customs procedures. I know it will give us a fairer system in the revision of section 592.

One important feature is the new duty exemption limit of $300 per person for purchases abroad and the flat 10 percent duty rate on purchases from $300 to $600. This will relieve travelers from onerous duty rates and relieve the Customs Service of unnecessary administration.

Our distinguished colleague from Oklahoma (Mr. JONES) deserves the thanks and congratulations of all of us for his great leadership on this bill.

Mr. Speaker, the other body was helpful in this conference report. The Senate amendments were constructive and contributed to the improvement of the bill. Only amendment No. 58, the so-called Curtis amendment, flaws the final product. No. 58 was modified so it is not as harmful as it was in its original Senate form.

Overall, H.R. 8149 is a fine bill. It should be passed.

Mr. STEIGER. Mr. Speaker, I yield back the balance of my time.

Mr. VANIK. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. DE LA GARZA).

Mr. DE LA GARZA. Mr. Speaker, I wish to commend my distinguished friend, the chairman of the subcommittee, Mr. VANIK, for this progressive piece of legislation. I appreciate all the work that has gone into this conference and the bill that preceded it.

I applaud the effort to simplify the customs procedure, and I know that it will be of great benefit to all concerned. There are areas which I am sure we need to look at further, but this is a good first step.

Also I would like to thank and congratulate the efforts of the subcommittee in providing a $300 returning tourist exemption. This is very important to my area of south Texas and it will also be of tremendous assistance to our neighbor and sister Republic of Mexico. I am sure they will consider our efforts as a friendly gesture, but more important, it will be of mutual benefit, so for all of us, I can respectfully say "muchas gracias."

Mr. VANIK. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUILLEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 360, nays 1, not voting 71, as follows:

[Roll No. 802]

YEAS—360

Abdnor	Crane	Hanley
Addabbo	Cunningham	Hannaford
Akaka	D'Amours	Hansen
Alexander	Daniel, Dan	Harkin
Ambro	Daniel, R. W.	Harris
Anderson, Calif.	Danielson	Harsha
	Davis	Hawkins
Andrews, N.C.	de la Garza	Hefner
Andrews, N. Dak.	Delaney	Heftel
	Dellums	Hightower
Annunzio	Derrick	Hillis
Applegate	Derwinski	Holland
Archer	Devine	Hollenbeck
Ashbrook	Dicks	Holt
Ashley	Dingell	Holtzman
Aspin	Dodd	Howard
AuCoin	Dornan	Hubbard
Badham	Downey	Huckaby
Bafalis	Duncan, Oreg.	Hughes
Baldus	Duncan, Tenn.	Hyde
Barnard	Early	Ichord
Baucus	Edgar	Jacobs
Bauman	Edwards, Ala.	Jenkins
Beard, R.I.	Edwards, Calif.	Johnson, Calif.
Bellenson	Edwards, Okla.	Johnson, Colo.
Benjamin	Emery	Jones, N.C.
Bennett	English	Jones, Okla.
Bevill	Erlenborn	Jones, Tenn.
Bingham	Ertel	Jordan
Blanchard	Evans, Colo.	Kasten
Blouin	Evans, Ga.	Kastenmeier
Boggs	Evans, Ind.	Kazen
Boland	Fary	Kelly
Bonior	Fascell	Keys
Bonker	Fenwick	Kildee
Bowen	Findley	Kindness
Breaux	Fish	Kostmayer
Brinkley	Fisher	Krebs
Brodhead	Fithian	LaFalce
Brooks	Flippo	Lagomarsino
Broomfield	Flood	Latta
Brown, Calif.	Flynt	Le Fante
Brown, Mich.	Ford, Mich.	Lederer
Brown, Ohio	Ford, Tenn.	Leggett
Broyhill	Forsythe	Lehman
Buchanan	Fountain	Levitas
Burgener	Fowler	Livingston
Burke, Fla.	Fraser	Lloyd, Calif.
Burlison, Mo.	Frenzel	Lloyd, Tenn.
Butler	Frey	Long, La.
Byron	Fuqua	Long, Md.
Carney	Garcia	Lott
Carr	Gaydos	Lujan
Carter	Gephardt	Lundine
Cavanaugh	Giaimo	McClory
Cederberg	Gibbons	McCloskey
Chappell	Gilman	McCormack
Chisholm	Ginn	McDade
Clausen, Don H.	Glickman	McDonald
	Goldwater	McEwen
Clawson, Del	Gonzalez	McFall
Cleveland	Goodling	McHugh
Cochran	Gore	McKay
Cohen	Gradison	McKinney
Coleman	Grassley	Madigan
Collins, Ill.	Green	Maguire
Collins, Tex.	Gudger	Mahon
Conable	Guyer	Mann
Conte	Hagedorn	Marks
Corcoran	Hall	Marlenee
Corman	Hamilton	Marriott
Cornell	Hammer-schmidt	Martin
Coughlin		Mathis
Mattox	Preyer	Stanton
Mazzoli	Price	Stark
Metcalfe	Pritchard	Steed
Meyner	Pursell	Steers
Michel	Quillen	Steiger
Mikulski	Rahall	Stockman
Mikva	Rangel	Stratton
Miller, Ohio	Regula	Studds
Mineta	Reuss	Stump
Minish	Rhodes	Symms
Mitchell, Md.	Richmond	Taylor
Mitchell, N.Y.	Rinaldo	Thompson
Moakley	Roberts	Thone
Moffett	Robinson	Thornton
Mollohan	Rodino	Traxler
Montgomery	Roe	Treen
Moore	Rogers	Trible
Moorhead, Calif.	Roncalio	Tucker
	Rooney	Udall
Moorhead, Pa.	Rose	Van Deerlin
Mottl	Rosenthal	Vander Jagt
Murphy, Ill.	Rostenkowski	Vanik
Murphy, Pa.	Rousselot	Vento
Murtha	Roybal	Volkmer
Myers, Gary	Runnels	Waggonner
Myers, John	Ruppe	Walgren
Myers, Michael	Russo	Walker
Natcher	Ryan	Walsh
Neal	Santini	Wampler
Nedzi	Satterfield	Watkins
Nichols	Sawyer	Weaver
Nix	Scheuer	Weiss
Nolan	Schroeder	Whalen
Nowak	Schulze	White
Oakar	Sebelius	Whitley
Oberstar	Sharp	Wiggins
Obey	Shuster	Wilson, Bob
Ottinger	Sikes	Wilson, Tex.
Panetta	Simon	Winn
Patten	Skelton	Wolff
Patterson	Skubitz	Wright
Pattison	Slack	Wydler
Pease	Smith, Iowa	Wylie
Perkins	Snyder	Yates
Pettis	Solarz	Yatron
Pickle	Spellman	Young, Fla.
Pike	St Germain	Young, Mo.
Poage	Staggers	Zeferetti
Pressler	Stangeland	

NAYS—1

Bedell

NOT VOTING—71

Ammerman	Evans, Del.	Quayle
Anderson, Ill.	Florio	Quie
Armstrong	Flowers	Railsback
Beard, Tenn.	Foley	Risenhoover
Biaggi	Gammage	Rudd
Bolling	Harrington	Sarasin
Brademas	Heckler	Seiberling
Breckinridge	Horton	Shipley
Burke, Calif.	Ireland	Sisk
Burke, Mass.	Jeffords	Smith, Nebr.
Burleson, Tex.	Jenrette	Spence
Burton, John	Kemp	Stokes
Burton, Phillip	Krueger	Teague
Caputo	Leach	Tsongas
Clay	Lent	Ullman
Conyers	Luken	Waxman
Cornwell	Markey	Whitehurst
Cotter	Meeds	Whitten
Dent	Milford	Wilson, C. H.
Dickinson	Miller, Calif.	Wirth
Diggs	Moss	Young, Alaska
Drinan	Murphy, N.Y.	Young, Tex.
Eckhardt	O'Brien	Zablocki
Eilberg	Pepper	

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Anderson of Illinois.

Mr. Brademas with Mr. Young of Alaska.

Mr. Pepper with Mr. Dickinson.

Mr. Murphy of New York with Mr. Spence.

Mr. Shipley with Mr. Railsback.

Mr. Ireland with Mr. Horton.

Mr. Burleson of Texas with Mr. Leach.

Mr. Burke of Massachusetts with Mr. O'Brien.

Mr. John L. Burton with Mr. Quayle.

Mr. Cornwell with Mr. Whitehurst.

Mr. Phillip Burton with Mrs. Smith of Nebraska.

Mr. Florio with Mr. Beard of Tennessee.

Mr. Eilberg with Mr. Caputo.

Mr. Drinan with Mr. Evans of Delaware.

Mr. Miller of California with Mrs. Heckler.

Mr. Moss with Mr. Kemp.

Mr. Risenhoover with Mr. Lent.

Mr. Stokes with Mr. Quie.
Mr. Ullman with Mr. Sarasin.
Mr. Waxman with Mr. Rudd.
Mr. Cotter with Mr. Luken.
Mr. Dent with Mr. Krueger.
Mr. Markey with Mr. Whitten.
Mr. Zablocki with Mr. Meads.
Mr. Wirth with Mr. Diggs.
Mr. Conyers with Mr. Milford.
Mr. Clay with Mr. Sisk.
Mr. Teague with Mr. Tsongas.
Mr. Gammage with Mr. Harrington.
Mr. Foley with Mr. Flowers.
Mr. Charles H. Wilson of California with Mr. Breckinridge.
Mr. Biaggi with Mrs. Burke of California.
Mr. Jenrette with Mr. Eckhardt.
Mr. Seiberling with Mr. Jeffords.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. FOUNTAIN. Mr. Speaker, on rollcall No. 800, H.R. 12222, I was engaged in a telephone conversation in the telephone booth just off the floor of the House and did not receive notice of the call for the vote.

Had I been recorded, I would like the RECORD to show that I would have voted "no."

PROVIDING THAT MEMBERS OF CONGRESS MAY ELECT AT RETIREMENT CONVERSION FROM GROUP LIFE INSURANCE TO INDIVIDUAL LIFE INSURANCE

Mr. NIX. Mr. Speaker, I ask unanimous consent that the Post Office and Civil Service be discharged from further consideration of (H.R. 14125) to amend chapter 87 of title 5, United States Code, to provide that Members of Congress may elect at retirement partial (in lieu of full) conversion from group life insurance to individual life insurance, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

H.R. 14125

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8706(a) of title 5, United States Code, relating to conversion of life insurance, is amended by adding at the end thereof the following new sentence: "At the time of retirement, any Member of Congress entitled under subsection (b) of this section to have life insurance continued upon retirement may elect to convert, under the conversion provisions provided by this subsection, to an individual policy of life insurance not to exceed 75 percent of the amount of life insurance in force immediately before retirement.".

(b) The third sentence of section 8706(b) of title 5, United States Code, relating to continuation of life insurance, is amended by inserting before the period at the end thereof the following: "; except that, if such employee elected under the last sentence of subsection (a) of this section to convert to an individual policy of life insurance, then the amount of life insurance continued under this subsection shall be reduced at the time of retirement to 25 percent of the life insurance in force for such employee immediately before retirement".

SEC. 2. The amendments made by the first section of this Act shall apply to any individual retiring on or after the later of—

(1) October 1, 1978; or

(2) the date of the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MODIFYING PORTION OF SOUTH BOUNDARY OF SALT RIVER PIMA-MARICOPA INDIAN RESERVATION IN ARIZONA

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3002) to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. SKUBITZ. Mr. Speaker, reserving the right to object, will the gentleman kindly tell us what this bill is about?

Mr. UDALL. Mr. Speaker, if the gentleman will yield, this bill is identical to the House bill H.R. 12344 as reported a month ago. It ratifies and implements an agreement between the United States and the Salt River Pima-Maricopa Indians and the city of Mesa, and other interested parties, and will settle expensive litigation pending between all these parties, and will settle some quiet title claims. This legislation on the Salt River project is supported by the entire Arizona delegation. I know of no controversy about it.

Mr. Speaker, I am satisfied with the explanation and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3002

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. (a) The Congress hereby finds that—

(1) the Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian community to live in peace and prosperity with other persons in Arizona;

(2) at the time of the erection of such reservation, a portion of the south boundary was established to follow the course of the Salt River;

(3) the United States granted patents for, and leaseholds and other interests in, lands adjacent to such boundary for sand and gravel excavation and for other purposes to persons who were not members of such Indian community;

(4) subsequent to the establishment of such boundary, the course of the Salt River shifted, creating uncertainty with respect to the precise location of such boundry; and

(5) by an Executive order, the Secretary of the Interior located and permanently fixed such boundary in a location which included within such reservation, lands for which the United States had previously issued patents, leaseholds, and other interests, causing confusion and an ongoing controversy between such Indian community and persons holding such patents, leaseholds, and other interests.

(b) The Congress hereby declares that it is the policy of the Congress to resolve, without costly and lengthy litigation, the dispute between the Salt River Pima-Maricopa Indian community and the persons referred to in subsection (a)(3) over the location of the south boundary of the Salt River Pima-Maricopa Indian Reservation.

MODIFICATION OF SOUTH BOUNDARY

SEC. 2. The south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona (hereinafter in this Act referred to as the "reservation"), created by the Executive order issued on June 14, 1879, shall be modified in accordance with the provisions of sections 3 and 4 of this Act. Any portion of such boundary established by this Act sha'l be fixed and permanent and not ambulatory.

RESERVATION LANDS

SEC. 3. (a)(1) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire by purchase or condemnation the lands described in paragraph (2). Upon acquisition, such lands shall be added to the reservation. The acquisition of lands under this subsection, and payment for such lands under section 5(b) of this Act, shall be deemed to have been pursuant to condemnation by the United States.

(2) The lands authorized to be acquired in paragraph (1) are located in township 1 north, range 5 east, Gila and Salt River base and meridian, Arizona, and are those portions of the land in—

(A) the south half of the southeast quarter of section 7 of such township and range;

(B) the south half of the southwest quarter of section 8 of such township, and range; and

(C) the southwest quarter of the southeast quarter of section 4 of such township and range;

which lie north of that boundary line representing the middle of the south channel of the Salt River and the south boundary of the Salt River Indian Reservation as shown of record on a map entitled "Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Arizona, Dependent Resurvey and Survey of the South Boundary of Salt River Indian Reservation" which consists of four sheets, dated August 17, 1972, and is on file and available for public inspection at the Department of the Interior, Bureau of Land Management, Washington, District of Columbia.

(b) Upon the acquisition of the lands described in subsection (a), the reservation shall include all lands in township 1 north, range 5 east, Gila and Salt River base and meridian, Arizona, lying north of that boundary line representing the middle of the south channel of the Salt River and the south boundary of the Salt River Indian Reservation as shown of record on the map referred to in subsection (a)(2), except for any portion of the following parcels of land:

(1) the north half of the northwest quar-

ter of section 18 of such township and range;

(2) the north half of the northeast quarter of section 18 of such township and range;

(3) the north half of the southeast quarter of the northeast quarter of section 8 of such township and range;

(4) the northwest quarter of the northwest quarter of section 9 of such township and range;

(5) the northeast quarter of the northwest quarter of section 9 of such township and range;

(6) the southeast quarter of the northwest quarter of section 3 of such township and range;

(7) the north half of the north half of the southwest quarter of section 3 of such township and range;

(8) the southwest quarter of the northeast quarter of section 3 of such township and range; and

(9) the northeast quarter of the northeast quarter of section 3 of such township and range;

(c) The boundary of the reservation shall be extended to include the following parcels of land:

(1) in township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona—

(A) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and a line parallel to and 150 feet north of the concrete canal lining on the northerly edge of the South Canal within the west 1,000 feet of section 13 of such township and range;

(B) any portion of the southeast quarter of the southeast quarter of section 14 of such township and range lying south and east of the reservation boundary created by the Executive order issued on June 14, 1879, as amended;

(C) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended and a line parallel to and 150 feet north of the top of the concrete canal lining on the northerly edge of the South Canal in sections 24, 23, 22, and 27 of such township and range and the east half of sections 28 of such township and range, except for approximately 16 acres of land described as that part of the west half of the southwest quarter of section 27 of such township and range lying north of the South Canal;

(D) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and the north line of the south half of the southwest quarter of section 28 of such township and range;

(E) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and the north line of the south half of the south half of sections 29 and 30 of such township and range; and

(F) the north 600 feet of the Granite Reef Reserve in lots 2 and 3 of section 13 of such township and range; and

(2) in township 2 north, range 5 east, Gila and Salt River base and meridian, Arizona, the south 450 feet of the Evergreen Reserve in the west half of the northwest quarter of the northwest quarter of the southeast quarter of section 23.

(d) Any lands added to the reservation under this Act shall become a part of the reservation in all respects and upon all the same terms as if such lands had been included in the Executive order issued by the President on June 14, 1879, as amended, except that such lands shall remain tribal lands and shall not be subject to allotment to individual Indians.

STATUS OF ARIZONA CANAL AND OTHER RECLAMATION PROJECT LANDS

SEC. 4. (a) The United States shall have, free of any claim of Indian title or trusteeship by the Salt River Pima-Maricopa Indian community, all rights and interests in, and absolute and unqualified title to, the following parcels of land:

(1) those portions of the Arizona Canal right-of-way within the exterior boundaries of the Salt River Indian Reservation as defined by the March 29, 1913, accepted United States general land office resurveys of township 2 north, range 5 east and township 2 north, range 6 east of the Gila and Salt River base and meridian, Arizona, and supplemental surveys dated September 30, 1924, plats of which are of record in the Arizona State Office of the Bureau of Land Management, United States Department of the Interior, Phoenix, Arizona;

(2) that portion of the reservation in section 13, township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona, lying between the southerly prolongation of the west line of lot 2 and the southerly prolongation of the east line of lot 3 of section 13 and lying between the southerly boundaries of lots 2 and 3 and the southerly reservation boundary created by the Executive order issued on June 14, 1879, as amended;

(3) United States Reclamation Service Reserve (Granite Reef), which consists of lots 2 and 3 in section 13, township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona, except the north 600 feet of such lost 2 and 3, title to which has been confirmed in the United States for the benefit of the Salt River Pima-Maricopa Indian community; and

(4) United States Reclamation Service Reserve (Evergreen), which consists of lot 9 and the west half of the northwest quarter of the northwest quarter of the southeast quarter of section 23, township 2 north, range 5 east, Gila and Salt River base and meridian, Arizona, except the south 450 feet of such Reserve, title to which has been confirmed in the United States for the benefit of the Salt River Pima-Maricopa Indian community.

(b) The reservation boundary shall be modified to exclude from the reservation the parcels of land described in paragraphs (1) through (4) of subsection (a).

COMPENSATION

SEC. 5. (a)(1) The Secretary shall determine the fair market value of those portions of the parcels of land described in paragraphs (1) through (9) of section 3(b) of this Act which lie north of the boundary line referred to in section 3(b) of this Act, and shall pay an amount equal to such fair market value or $1,964,520, whichever is greater, to the Salt River Pima-Maricopa Indian community.

(2) Acceptance of the payment described in paragraph (1) shall constitute a complete release and satisfaction of any claim which the Salt River Pima-Maricopa Indian community may have against the United States or holder of any interest with respect to any right, title, or interest in any portion of the parcels of land described in paragraphs (1) through (9) of section 3(b) of this Act which are located north of the boundary line referred to in section 3(b) of this Act.

(b)(1) Except as otherwise provided in paragraph (2), the Secretary shall determine the fair market value of each parcel of land acquired by the United States and added to the Reservation pursuant to section 3(a)(1) of this Act, and shall pay an amount equal to such fair market value to the owner, under a patent issued by the United States, of such parcel.

(2) If the aggregate of all amounts to be paid under paragraph (1) is less than the sum of $1,951,740, in lieu of such payments under paragraph (1), the Secretary shall pay such sum to the owners, under patents issued by the United States, of the parcels of land acquired by the United States and added to the reservation pursuant to section 3(a)(1) of this Act. In determining the amount of any payment to any person under this paragraph with respect to such parcels of land, the proportion of the amount of the payment to any person to $1,951,740 shall be equal to the proportion of the amount of the acreage of such parcel which such person owns, under a patent issued by the United States, to the total acreage of such parcels.

(3) Acceptance of the payment described in paragraph (1) or (2) by any person shall constitute a complete release and satisfaction of any claim which such person may have against the United States, the Salt River Pima-Maricopa Indian community, or holder of any interest with respect to any right, title, or interest in any portion of the parcels of land described in subparagraphs (A), (B), or (C) of section 3(a)(2) of this Act which are located north of the boundary line referred to in section 3(a)(2) of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. Effective October 1, 1979, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. RHODES. Mr. Speaker, my remarks will be brief and to the point. H.R. 12344 has been introduced to settle a long-standing dispute between the Salt River Pima-Maricopa Indian community and its neighbors regarding a portion of the southern boundary of the community's reservation. This bill represents the fruition of 2 years of hard work on the part of the tribe, the Salt River project, the city of Mesa, and many other people to settle the conflicting claims about this boundary once and for all.

The southern boundary of the Salt River Reservation in the One North, Five East township is a remarkable example of the inequities resulting from misleading, if not downright erroneous, Federal land records. This problem has clouded titles to lands long occupied under good faith color of title, and inevitably this has generated strife among neighbors who otherwise live together in harmony and good will. You will hear testimony today from the Indian community, the Salt River project, and the city of Mesa, and other interested parties concerning the history of this matter and the events that contributed to all of the confusion and prejudice and damage that the land claimants have suffered as a result of the Federal Government's actions. In so doing, keep in mind that this controversy has been the subject of extensive litigation by the various claimants. In agreeing to this legislative compromise, all parties have agreed to dismiss the various suits and counter suits against each other, and have made substantial settlements so they would not have to continue lengthy, expensive legal suits which have only served to exacerbate feelings of ill will between the Indian and non-Indian communities.

I believe that the passage of this bill would be in the best interests of the United States as well as the people of

Arizona. The interest of the United States, of course, incorporates the interest of the Indian community and the public interest in seeing that this matter be settled once and for all with a minimum of expense and delay. Moreover, the passage of this bill would permit the central Arizona project's activities on the reservation to go forward without the complications ensuing from the Indian community's other problems. Because of all of these considerations, I believe that the testimony that will be heard today will show conclusively that H.R. 12344 represents a timely solution to a dispute between one Indian tribe and its neighbors, and perhaps demonstrates how other such conflicts between other tribes and communities can be peaceably resolved so as to promote harmony and the further economic development of all concerned in a spirit of good will and mutual assistance.

The Senate bill was ordered to be read a third time, was read the third time and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 12344) was laid on the table.

MINIMUM WAGE INCREASES

(Mr. BARNARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARNARD. Mr. Speaker, inflation is robbing this Nation, and we must not stand idly by and watch the problem grow worse at the very time such a large part of our efforts are turned to ending it. Next January, we will see inflation jump another half-a-percent on the top of the base rate then current. This jump will come when the minimum wage increases by 9.4 percent to $2.90 an hour.

Although the wholesale price index fell for the first time in over a year last month, we must not become complacent and feel that the crisis is past. All of the increases we have seen so far this year have not filtered through the economy yet, and the probable oil price increase will add still more to the inflation rate We cannot stand another burst caused by the increase of the minimum wage on top of all the other increases of the preceding twelve months.

Treasury Secretary Michael Blumenthal and Federal Reserve Chairman William Miller have both condemned this increase as inflationary and called for its postponement. They have been joined by former Federal Reserve Chairman Arthur Burns, former Chairman of the Council of Economic Advisors Arthur Okun, and many other economists.

The increase will not even help the people it is aimed at, for even this year's increase has resulted in employers who traditionally rely on minimum wage earners reducing hours, cutting employment, and replacing unskilled workers with older, more experienced employees. These workers replace the very people who most need this work—women, minorities, and youth, who now make up most of the problem unemployed—and reduce them to unemployment or underemployment.

On June 29, Chairman MILLER stated to the Joint Economic Committee that:

> The minimum wage has been inflationary. The increase at the beginning of this year was quite large percentage-wise and immediately showed up in a number of sectors—the Service sector particularly—in the economy and contributed to our inflation. . . . I would personally welcome any way possible to defer or change what is going to happen next January 1 to put it off for a couple of years or something so that we do not have another burst of inflationary impact running through a sector of the economy.

Two days later, Secretary Blumenthal, in response to a question at the National Press Club supported the idea and stated:

> The problem is really one that has to be addressed to the Congress whether or not that is politically feasible quite apart from whether or not the Administration would propose it. Given the inflationary pressures that are serious, given the fact that this inflation loses us jobs and is bad for everybody . . . that is a matter I would look on positively.

Because of the tremendous harm that would result from a minimum wage increase next January, I propose that Congress act immediately to delay its introduction until January 1, 1980, and I am introducing legislation to do that today. Not only will this move to defer the inflationary impact of the next hike, it will give Congress the opportunity to study in depth the entire concept of minimum wages and automatic increases in the opening months of the 96th Congress. For it is readily apparent that the effects of these practices demand close scrutiny—and significant modification.

This proposal does not mean that I would deny working Americans an acceptable standard of living. I believe that everyone who works should be paid a fair and equitable wage. The Federal minimum wage was originally introduced to provide this equity in wage distribution. Ironically though, the unfortunate fact is that rapid escalations will totally undermine the intended purpose of the minimum wage.

Service-oriented industries such as retailing, fast-food distribution, and hospitals employ the great majority of workers covered by minimum wage. These industries are labor intensive and operate on relatively narrow profit margins. Consequently, they are least able to absorb the cost of minimum wage increases. Faced with these unmanageable costs, they respond by hiring fewer new employees, especially the unskilled or inexperienced. Many full-time employees are reduced to part-time status. Overtime for experienced employees is increased to cover staff deficiencies because it proves to be cheaper to pay overtime than to pay additional employees the minimum wage. Thus, employment gains are thrown into a tailspin—while consumer prices begin to soar when industry can no longer absorb increased labor costs.

Teenagers suffer in another way. The youth market is traditionally transient, seasonal, and on the whole, unskilled. Therefore, it is more sensitive to cyclic changes in the economy. The 1977 amendment abolished the youth differential scale. This system allowed employers to hire teens for below the minimum wage.

In the past, employers have been willing to hire teenagers because the cost of their lower wages was relatively easy to absorb. But each minimum wage increase tightens the teenage job market. The 1966 increase alone threw one quarter of a million teenagers out of work. An article in the August 15, 1978, Wall Street Journal shows that the same thing is happening today not only to teenagers, but to minorities, women, and students. Chairman MILLER has also come out in favor of restoring the youth differential scale, a position with which I wholeheartedly concur.

Of course we will not stop inflation just by delaying minimum wage increases. Inflation is a many-faceted issue that calls for broad, and often stringent measures, to control its multiple causes. However, it is equally important that we do not worsen the problem at the same time we are trying to solve it. Minimum wage increases, if allowed to go into effect on schedule, will irrefutably do exactly that.

TOURISM: OUR NATION'S GREATEST ASSET—PART III

(Mr. SKUBITZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. SKUBITZ. Mr. Speaker, yesterday, in my continuing effort to underscore the importance of tourism, I described the functions and weaknesses of the U.S. Travel Service. Despite the burden of a bureaucratic and overstuffed headquarters, the regional offices of the USTS have done their level best to build the tourist bridge to the United States, and overcome many of their self-imposed handicaps.

I am shocked, Mr. Speaker, at the attempt by the State Department to close the offices of the USTS in London. The USTS offices in London are neither staffed nor funded by the Department of State and hence outside of their jurisdiction. This closing can only be regarded, once again, as a clumsy attempt to substitute Foggy-Bottom personnel for competent and knowledgeable commercial officers, who are considered experts in the travel trade.

Today, in part III, I will focus on the operation of a specific regional office of the U.S. Travel Service which I have studied with particular care.

THE LONDON OFFICE OF USTS: SCOPE OF ACTIVITY, PROGRAMS, AND IMPACT ON THE COMMUNITY

The London office of the U.S. Travel Service is one of only six regional USTS offices. It shares responsibility for the development of tourism for all of Europe with the regional offices in Paris, France, and in Frankfurt, Germany. The regional office in London covers all of the United Kingdom as "primary market"

and Ireland, all of Scandinavia, and the Netherlands as "special markets."

The United Kingdom with a population of 56 million is a prime market for U.S. destination travel. Researchers have found time and again that the United States is "the most desired" destination for the majority of people. With our dollar at its new low in value, and the growth of package tours and competitive trans-Atlantic airfares, the United States is psychologically and financially within the reach of the "cloth cap" traveller as they are known in Britain. According to the figures that have been made available to me, United Kingdom visitors to the United States have increased since 1970 as follows:

In 1970, 292,752.
In 1972, 388,710, plus 32 percent.
In 1974, 450,077, plus 16 percent.
In 1976, 538,486, plus 19 percent.
In 1978 (est.), 650,000, plus 21 percent.

It is interesting to note that the travel trade in the United Kingdom estimates that every traveller to the United States spends an average of $1,800 while in the United States, excluding airfare.

Despite these startling and welcome figures, this market is in no way a "piece of cake" for the U.S. travel industry. Competing for the same tourist dollar are 66 national tourism offices which spent a total of $8 mllon to promote destinations other than the United States in 1977.

Some $60.8 million was spent on tourism consumer advertising in the United Kingdom market during calendar year 1977. Of this total amount, less than $3 million is estimated to be U.S. oriented. In addition to the 66 national tourism offices, the advertisers can be broken down into 64 airlines, 89 holiday camp and resort organizations, 56 hotel chains, 20 railways, 72 shipping lines and agents, 149 companies specialized in promoting foreign tours and holidays, and 57 specialized travel agents advertising nationally.

Of far greater concern is that $7.9 million was spent in 1977 to directly promote and sell countries other than the United States. Only $383,000 was spent directly selling the United States as a travel destination.

The total budget for the U.S. Travel Service to promote the United States as a destination and to encourage and develop domestic tourism is only $15 million. By comparison, the British Tourist Authority has a budget in excess of $25 million for the promotion of tourism in the United Kingdom. The BTA, in addition to its main office in London, maintains offices in Argentina, Australia, Belgium, Brazil, Denmark, France, Germany, Holland, Italy, Japan, Mexico, New Zealand, the United States—four offices—New York, Los Angeles, Chicago, and Dallas—Canada, Norway, South Africa. Spain, Sweden, and Switzerland. The British Tourist Authority's budget, despite the extreme financial problems which the country has encountered, has been increased regularly.

The USTS office in London which is viewed by the trade as one of the most efficient and effective national tourist offices in Britain carries out the following major programs:

U.S.A. TRAVEL CENTERS

Some 2,600 Travel Centers have been established throughout the United Kingdom to promote the United States as a travel destination. More than 500 of the "U.S.A. Travel Centers" participate financially with USTS in cooperative U.S. advertising and promotion programs.

EDUCATION AND FAMILIARIZATION

"U.S.A. Travel Centers" and other travel trade contacts are serviced by regular visits from USTS personnel; U.S. sales seminars are conducted throughout the country, and in addition, USTS organizes or participates in numerous familiarization trips to the United States for travel trade personnel.

SALES DEVELOPMENT

In order to expand the market, USTS encourages new and more travel operators to enter the "Visit USA" field and to promote new gateways and new U.S. destinations for vacationers and holiday makers from abroad.

VISIT USA

To support and assist foreign wholesalers and operators with the production and promotion of "Visit USA" programs, the USTS provides technical support, product promotion and in some cases financial support to participating operators.

LITERATURE DISTRIBUTION

Literally millions of U.S. sales brochures and promotional publications are distributed to the consumer through "USA Travel Centers."

FILMS AND PHOTOS

A wide range of travel films is available to the travel trade through USTS London. In addition, USTS maintains, through a contractor, a large photographic library of black and white photographs and colored transparencies.

PRESS RELATIONS AND FAMILIARIZATION

Through USTS's press relations contractor, USTS provides regular U.S. travel information and backup material to TV, radio, and printed news media. This program also includes U.S. familiarization visits by recognized travel writers and accredited journalists.

CONSUMER ADVERTISING

An annual consumer advertising campaign, focusing this year on value for money in U.S. travel: "America 1978—there has never been a better time." Consumers are encouraged to visit a travel agent or a "U.S. Travel Center" for further information on the United States.

MARKET RESEARCH

Annual conversion studies and other pertinent field information relating to USTS's marketing plans for the following year are prepared.

It is not surprising that despite its measly resources the U.S. Travel Service in London has received considerable acclaim from the public, the trade, and the press.

In conclusion, I would like to quote from an August 31, 1978, editorial in Travel News:

At such a point in time, how foolish it is for the powers-that-be in Washington even to contemplate shutting down the United States Travel Service Office in London. The USTS has done a tremendous job in developing pleasure traffic to the United States and in servicing those tour operators and travel agents who have built the tourist bridge across the Atlantic . . . to force the USTS to shut up shop in London in the interest of saving a pretty modest number of dollars would, to say the least of it, be a false economy.

Tomorrow, I shall describe for you the impact of closing the USTS Office in London.

Thank you, Mr. Speaker.

CONGRESS SHOULD INVESTIGATE THE PLOT TO OVERTHROW NICARAGUA'S GOVERNMENT

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, it has been charged in the nationally syndicated column of respected journalist Paul Scott that elements of the U.S. Central Intelligence Agency have provided covert assistance to the Sandinista Communist guerrillas, to help their efforts to overthrow Nicaragua's duly constituted government.

I would like to include Mr. Scott's column in the RECORD at the conclusion of my remarks.

These most serious charges come on the heels of evidence that the Sandinista guerrillas are being led by Mexican Marxist Victor Manuel Tirado, and that guerrilla training and other support is being provided by Castro Cuba, Costa Rica, and possibly even Venezuela.

Far from being an internal uprising, what has been termed a "civil war" in the press, the Sandinista terrorist assault appears to be a carefully orchestrated plot, instigated and supported by outsiders, to topple another anti-Communist government in Central America.

I believe that the Congress has a duty to immediately investigate these charges of CIA covert assistance to the Sandinista guerrillas, and other behind-the-scenes activities of our State Department officials and foreign interlopers in Nicaragua.

I am today writing to the chairmen respectively of the House Permanent Select Committee on Intelligence, and the House International Relations Committee, to request that they initiate such an investigation and hearings on this matter of vital importance to our country.

Mr. Speaker, I am most concerned about the administration's failure to stand strongly behind our Central American friends in Nicaragua, in the face of this guerrilla insurgency.

It is a moral outrage that our leaders are not publicly condemning the Sandinista insurgency, and leading efforts to support the Government of Nicaragua in its defense against armed overthrow by Communist revolutionaries.

Our Ambassador to the Organization of American States, Gale McGee, yesterday even further encouraged the in-

surgency in a statement before the OAS permanent council.

In light of our Government's behind-the-scenes overtures and dealings with the Sandinista revolutionaries, Ambassador McGee made the shocking statement that "generosity and sympathetic understanding" would be required from the United States and other OAS members when "the peaceful democratic solution" becomes a reality in Nicaragua.

Implicit in the Ambassador's statement is an acceptance of the Marxist line that the Sandinista guerrillas are a part of the "democratic solution," which is an outrage coming from a member of our own Government's diplomatic corps.

Also implicit in the Ambassador's statement was a veiled bribe to the supporters and those who are not yet supporting the Sandinista insurgency that the United States stands ready to generously shell out foreign aid to help rebuild Nicaragua, once the Communist-led overthrow of the Nicaraguan Government has taken place and the revolutionaries have wrecked the country.

This Communist-inspired assault, aimed at the takeover of Nicaragua, has been underway since 1959.

Leftist elements in our own country—led by such organizations as the Institute for Policy Studies, the pro-Marxist Washington Office on Latin America, and certain influential people in the media—have sympathized with that objective.

These leftist elements have attempted, with some success, to direct U.S. foreign policy to assist in achieving the Marxist goal in Central America, and to manipulate congressional hearings and action on that policy.

It was not until this administration, however, that key U.S. officials favorable to the Marxists' so-called "democratic solution," who have attained top policy-making roles in the State Department, have been able to implement United States behind-the-scenes encouragement and support of an armed Communist assault against a duly constituted Government in Central America.

Mr. Speaker, Nicaragua is a friend and ally of the United States. But it has been a long-time goal of Fidel Castro and other Communist revolutionary leaders to overthrow this nation in Central America, and to establish another Cuba in our hemisphere.

Let me say that I served on diplomatic assignment for our country in Nicaragua and other Latin American nations before my election to the Congress.

For almost 20 years, Nicaragua has been continuously beset with Communist-inspired terrorism and guerrilla warfare in varying degrees. This revolutionary activity has been sponsored and supported by Fidel Castro.

Many people seem to have forgotten that Castro targeted Nicaragua, along with Panama, for takeover only 6 months after he came to power in January 1959.

In that year, two Castro-supported armed invasions outside Cuba occurred in Panama and Nicaragua.

The first invasion, in Panama, by a mixed Panamanian-Cuban guerrilla force, had as its objective the seizure of the Panama Canal after a period of guerrilla insurgency in the countryside.

The guerrillas were confronted and surrendered to an Organization of American States' team in May 1959.

Only one month later, another Castro-supported force of 114 invaders, led by Nicaraguan publisher Pedro Joaquin Chamorro, tried to overthrow the Government of Nicaragua by force and violence.

That invasion also failed, and Chamorro was imprisoned.

Chamorro was released from jail in 1960, and until his murder last January he led the opposition to the Nicaraguan Government and encouraged the Sandinista elements.

Let there be no question that the 20 years of guerrilla revolutionary activity and insurgency in Nicaragua, and the current Marxist-led assault against the government fueled by Chamorro's death, have been inspired and fomented by Fidel Castro and his forces.

Chamorro's own newspaper, La Prensa, published testimony of Tomas Borge Martinez, a leader of 110 terrorists tried by the Nicaraguan Government in 1977, which documented Castro's involvement.

Borge proved the government's claim that the Frente Sandinista de Liberacion Nacional—the FLSN—was Cuban-trained and equipped.

Borge testified that a dozen or more Nicaraguan revolutionary leaders went to Cuba for training as early as 1960.

Here is a verbatim statement made by Borge at his trial, as reported by Chamorro's opposition newspaper, La Prensa—

> The Nicaraguans were lodged in a Havana barracks known as the Fifth District. After the Bay of Pigs invasion, the Cuban Government decided to give us a higher level of military training. The Nicaraguans heard it said that they were the first Latin American group to receive this type of collaboration from the Cuban Government.

I should note for the record, Mr. Speaker, that this Cuban interest in helping the Marxist revolutionaries from Nicaragua after the April 1961, Bay of Pigs invasion was prompted by Nicaragua's having been a staging area for anti-Castro Cubans, who were also being aided by our own Government under President Kennedy.

Mr. Speaker, there is no doubt that our own Government's so-called "human rights" campaign has fallen into the hands of the revolutionaries.

Nicaragua is not a bastion of freedom. How could it be? For the past 20 years, it has been the target of continuous Communist-inspired terrorism and guerrilla warfare. Freedom as we know it is not possible under those circumstances.

Charges of human rights violations in Nicaragua are mostly coming from those who support or favor the revolutionary elements in Nicaragua, against whom action has been taken to quell the terrorism and to maintain as much peace and security for the people as possible.

The current state of siege in Nicaragua will either end in defeat of the Communist insurgents, which will allow the country to return to its attempts to increase security and freedom for all Nicaraguans—or it will end in the Communist overthrow of the Nicaraguan Government, which will deny freedom to the Nicaraguan people and threaten the security and freedom of their Latin American neighbors.

A Communist overthrow of the Nicaraguan Government, or a so-called "coalition government" including the Sandinistas which would be one step towards total Communist control, will have been abetted and assisted by our own Government's tragic policy and actions if it occurs.

Our Government made a similar tragic mistake in 1959, when we followed the same misguided and morally bankrupt policy that the replacement of a semi-military anti-Communist government by insurgent revolutionaries would lead to "a return to democracy."

The government that we sold down the river to Communist rule in 1959 was the Cuban Government of Fulgencio Batista. The Communist revolutionary who was supported by our own Government, and who was hailed as the shining hero to bring freedom and democrary to this neighboring island, was none other than Fidel Castro.

I remember the glowing tributes of Castro by the New York Times, Edward R. Murrow of CBS television, and other prominent U.S. opinion leaders.

How wrong they were then. And our Government is just as wrong today not to take the strongest possible action to support the current Government of Nicaragua against a Communist-inspired overthrow.

The administration's dogmatic human rights policy has rendered it unable to support and take strong action in behalf of an anti-Communist military government—and a vital ally of the United States.

This vacillation is being interpreted by Communist elements throughout the world, as well as our anti-Communist friends, as a sure sign of weakness on the part of the United States.

Such a sign of weakness will prompt the Soviet Union and its client revolutionary regime in Cuba to concentrate on increasing targets of opportunity throughout the world, including our own hemisphere.

Nicaragua is a key country in Central America. It contains a potential transoceanic canal site, in the event that one is needed in addition to the Panama Canal. If Nicaragua falls under Marxist rule, that site will be denied to free world nations, and the governments of Costa Rica, Honduras, El Salvador, and other Latin American nations will be immediately endangered.

Congress must take a firm stand and demand action by the administration now, if we hope to head off further tragic circumstances that could lead to possible war to protect our own security and freedom in the foreseeable future.

[From The Washington News-Intelligence Syndicate, Sept. 13, 1978]

CIA INVOLVED WITH NICARAGUAN GUERRILLAS

(By Paul Scott)

WASHINGTON, D.C., September 13.—The Sandinista guerrillas, whose abortive offen-

sive against President Anastasio Somoza's government in Nicaragua left more than one hundred dead, are receiving covert help from elements within the Central Intelligence Agency and several U.S. journalists as well as from Communist Cuba.

Anti-Castro Cubans, who have succeeded infiltrating the ranks of the guerrillas, report that covert CIA agents in Nicaragua, Mexico, and Costa Rica have been spotted meeting with guerrilla leaders.

What these intelligence agents are doing isn't completely clear although the guerrillas usually have large sums of money to use to buy military supplies following the clandestine get togethers.

There is also evidence that a "third party group", operating as a neutral in the fighting in Nicaragua, is being used by certain elements within the CIA to channel information, food, medicine, and money into the guerrilla forces.

This alarming information indicates the urgent need for an immediate full-scale congressional investigation to determine involvement of these intelligence "operatives" and their contacts with private foreign policy study groups in the U.S. and State Department officials since there is no evidence that President Carter has authorized the CIA or any other government agency to support the guerrillas.

U.S. military intelligence sources, who will not discuss the CIA involvement, report the guerrillas are receiving most of their arms from Cuba, Panama and Mexico via Costa Rica. The recent offensive was launched from bases set up in Costa Rica by the guerrillas.

These guerrilla bases are now being reinforced with newly trained terrorists from Cuba for the "second wave" of the military action against the Nicaraguan government. This is expected to take place later this month or early in October.

USING U.S. NEWSMEN

In addition to their meetings with CIA agents, leaders of the guerrillas also have been getting together with several far-left U.S. newsmen, including Tad Szulc, former New York Times reporter and free-lance writer, whose international communist links are carefully documented in U.S. security files.

Since returning from a secret meeting with guerrilla officials, Szulc has been making the rounds at the State Department and on Capitol Hill spouting the Marxist guerrilla's official line. It goes like this:

The U.S. should quietly increase its links with the Sandinista guerrilla leaders, to lessen the anti-American feeling and, then create a situation in which the revolutionaries would collaborate with the non-violent opposition in Nicaragua in ousting the Somoza government.

To accomplish the coalition, the guerrilla leaders would even accept an inter-American peacekeeping force, dispatched to Nicaragua to arrange for the transition from the Somoza government.

INTERNATIONAL TERRORIST GROUP

What Szulc isn't saying in trying to influence these officials is that the hard core Sandinista guerrillas are recent volunteers for the transnational terrorist war against Israel and want Nicaragua as a base to carry out their activities against Jewish and anti-communist groups in Latin America and the U.S.

According to the highly respected publication, "The Jewish Week," the Sandinistas emerged early in 1978 as the "Latin American connection" for radical anti-Israel activity, making a series of announcements aligning themselves with the Palestine Liberation Organization (PLO) and other Palestinian groups committed to eliminating Israel.

Little known outside Nicaragua until last month, the Sandinistas attracted world attention by capturing more than 1,500 hostages in the presidential palace and trading them for 58 political prisoners, $500,000 and safe passage to asylum in Panama.

The official name of the group is the Sandinista Front for the Liberation of Nicaragua (FSLN). The group takes its name from Augusto Cesar Sandino, a guerrilla leader killed fighting against the U.S. Marines who occupied Nicaragua and helped put the Somoza family in power in 1937.

THE PLO CONNECTION

On February 5, the PLO and the Sandinistas released a "joint communique" in Mexico City, which according to Radio Havana, was to "emphasize the bonds of solidarity which exist between the two revolutionary organizations."

The communique attacked the "racist state of Israel" for its reported military sales to anti-communist Latin American countries, for serving as an enclave of "U.S. imperialism" in the Middle East, and particularly for alleged Israeli economic and military aid to Nicaragua.

Significantly, the communique was put out at a major Moscow-front gathering called the Continental Conference of Latin America and the Caribbean for Peace, Sovereignty and Economic Independence.

The conference was sponsored by Moscow's international "peace and disarmament" organ, the World Peace Council, an organization reportedly run by the Central Committee of Communist Party, USSR, and the KGB, the Soviet secret police and espionage organization.

This newly established tie-in between the PLO and the Sandinistas and their Moscow and Cuban connections clearly indicates the international communist-terrorist threat that would face the U.S. in Nicaragua if these forces shoot their way to power. Congress must move now to force an end to any help that elements within the CIA are giving these terrorists.

MIDDLE EAST UNDERSTANDING A MAJOR ACHIEVEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 5 minutes.

● Mr. GOLDWATER. Mr. Speaker, last night's joint session of the Congress was, perhaps, the most momentous of my time as a Member of the House. Having the heads of state from two countries which have found it so difficult to peacefully coexist, in our chamber, on the occasion of achieving an understanding on a settlement of their disputes, was a major achievement for our foreign policy initiatives.

To observe Prime Minister Begin and President Sadat in such a spirit of cooperation is a tribute to President Carter for his diligent work to reach this agreement. His patience and perseverance at such great risk for a resolution to the problems which beset the Middle East, are worthy of our highest praise.

I salute our President and the heads of state from Israel and Egypt for their most significant contribution to the cause of World peace. There is little more that I can add to what has already been said, Mr. Speaker, but it is with a great sense of pride that the United States has played so important a role in reaching this point.●

LIMITING SEARCH WARRANTS

The SPEAKER per tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. PREYER) is recognized for 5 minutes.

● Mr. PREYER. Mr. Speaker, the Committee on Government Operations recently approved without dissent a report recommending that third parties not believed to be connected with a crime be protected from unannounced searches. Such legislation would curb the impact of the Supreme Court's recent decision in Zurcher against Stanford Daily, the much-discussed newspaper search warrant case.

I am pleased to see that the Washington Post has endorsed the committee's position in recommending protection for third parties generally, not just for news organizations. The Post also agrees with the committee's recommendation that protection should be provided at the State and local levels as well as the Federal level, while recognizing as did the committee that there is an open constitutional question whether Congress can directly impose such standards on State and local authorities.

As chairman of the Subcommittee on Government Information and Individual Rights, which conducted the hearings which led to the full committee's report, I urge Members to read this editorial. I endorse the Post's conclusion that Congress should enact legislation as quickly as possible in this area. The editorial follows:

LIMITING SEARCH WARRANTS

When the Supreme Court announced its decision last spring broadening the use of search warrants in criminal cases, we anticipated a sharp debate over the wisdom of its ruling. No such debate has yet materialized. Instead, the discussions and studies under way on Capitol Hill and inside the administration are aimed at deciding how sharply Congress should curtail the effects of what the court has done. There seem to be few politicians or federal administrators who are prepared to defend a decision that makes it possible for law-enforcement officers to search the private papers and files of all individuals, whether or not they have been implicated in criminal activity.

That decision came in the case of a California newspaper whose files were searched by police seeking (without success) pictures of a particular crime. The court said warrants for searches of that kind can be issued without advance notification to the newspaper or without a prior request that it provide the material voluntarily, so long as there is probable cause to believe it has the evidence the police want.

Most newspapers quickly denounced the decision and called for legislation to overturn it. While that united front may well have something to do with the cold shoulder the decision has received in Congress—no politician wants to alienate the local press in an election year—the effort to change the decision developed much wider support once the realization sank in that it applies to the files of lawyers, doctors, clergymen and ordinary citizens as well as newspapers. A dozen bills, with more than 50 sponsors, have

been introduced. Three congressional committees have held hearings (more are scheduled) and the House Committee on Government Operations has recommended, without dissent from any of its 43 members, that Congress take action.

The problem is that there is no agreement about what that action should be. Some of the bills would bar judges from authorizing such searches of offices without first attempting to get the evidence in other ways. Others would include the files and papers of lawyers, doctors and clergymen in the ban. Still others would prevent all such searches. Some of the bills would limit only federal officials; others attempt to limit state officials as well.

Our view is that Congress should go as far as it constitutionally can in overturning the court's decision. A surprise search of anyone's papers and files—ours or yours—could expose to the police confidential material beyond what they might be entitled to see, and could also be highly disruptive and embarrassing. As Assistant Attorney General Philip B. Heymann said last summer, "Any decent government should attempt to use the least force possible in dealing with its citizens." Searches ought not to take place if requests or subpoenas will produce the evidence—from newspapers, lawyers, doctors, clergymen or ordinary citizens. Searches of those not implicated in crime can be justified only if the police have reason to believe the evidence will be destroyed or hidden if a request for it is made.

Congress should not hesitate in applying those principles to searches by federal officers. Whether it can apply them to searches by state officers as well is unclear. Some constitutional experts say it can through its power under the 14th Amendment; others say it can, at least as far as the news media are concerned, under the commerce clause; others say it can't. We expect the question to be more fully aired later this month when Attorney General Griffin Bell presents the administration's proposals. Once he does, the last reason for delay on the subject will be gone, and Congress should legislate as quickly as possible.●

SPEAK, MR. SPEAKER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ROBERTS) is recognized for 5 minutes.

● Mr. ROBERTS. Mr. Speaker, today I would like to bring to the attention of my colleagues the fact that a new book, "Speak, Mr. Speaker," has been prepared by the Staff of the Sam Rayburn Library. This 500-page book is actually an autobiography of Sam Rayburn.

Although Mr. Sam never wrote his memoirs, the many letters, speeches, and interviews collected by the editors set out a chronological history of this Nation and the world as seen through the eyes of this great American.

This Congress, this Nation, and his native State were, indeed, fortunate to have been served by Speaker Rayburn Those who knew him considered Mr. Sam to be a master in handling the congressional process and in dealing with the executive branch, during both Republican and Democratic majorities. Six U.S. Presidents from Wilson through Johnson respected and relied upon Sam Rayburn's abilities.

I cannot deny my personal affection and esteem for my predecessor. Each of us would do well to attempt to emulate his conduct and decorum in Congress. It was, indeed, a great honor to know and work with Mr. Rayburn, and as this Nation moves ahead in an increasingly complex world, reflection by each of us upon the thoughts and feelings of this gentleman and statesman would seem prudent. Therefore, I highly commend this book to you and would suggest that if interested you contact the Sam Rayburn Library, Bonham, Tex. 75418.●

COMMENTS OF HON. RICHARD L. OTTINGER ON JOINT SESSION OF CONGRESS ON THE CAMP DAVID SUMMIT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. OTTINGER) is recognized for 5 minutes.

● Mr. OTTINGER. Mr. Speaker, I include herewith my statement on the momentous congressional joint session on the Camp David summit agreements last night and the text of the framework agreements reached there:

It was a tremendous thrill to be in the House of Representatives at the joint session of Congress last night and to feel the welling of cheers and applause as Prime Minister Begin and President Sadat shook hands together and committed themselves to the effort towards peace in the Middle East.

I look forward to meeting with each of them separately tomorrow to hear further details on their accomplishments. I am deeply heartened by the events of Camp David, and I congratulate President Carter, Prime Minister Begin and President Sadat on their remarkable achievement—despite the clear pitfalls that lie ahead. For the first time in history has the right of Israel to exist peacefully with her Arab neighbors been formalized in an actual agreement. The willingness of the Egyptians to negotiate a separate peace with Israel, that guarantees a free access to the Suez Canal, the exclusion of the Palestine Liberation Organization as a required participant in future West Bank discussions, have moved Israel and her neighbors closer to peace than they have ever been in the 30 years of Israel's existence—for these achievements we must all be very grateful.

I am hopeful that the spirit of Camp David will persist, starting with Secretary Vance's mission tomorrow, so that this framework can be turned into a true and lasting peace for the Middle East.

A FRAMEWORK FOR PEACE IN THE MIDDLE EAST AGREED AT CAMP DAVID

SEPTEMBER 17, 1978.

Muhammad Anwar al-Sadat, President of the Arab Republic of Egypt, and Menachem Begin, Prime Minister of Israel, met with Jimmy Carter, President of the United States of America, at Camp David from September 5 to September 17, 1978, and have agreed on the following framework for peace in the Middle East. They invite other parties to the Arab-Israeli conflict to adhere to it.

PREAMBLE

The search for peace in the Middle East must be guided by the following:

The agreed basis for a peaceful settlement of the conflict between Israel and its neighbors is United Nations Security Council Resolution 242, in all its parts.*

After four wars during thirty years, despite intensive human efforts, the Middle East, which is the cradle of civilization and the birthplace of three great religions, does not yet enjoy the blessings of peace. The people of the Middle East yearn for peace so that the vast human and natural resources of the region can be turned to the pursuits of peace and so that this area can become a model for coexistence and cooperation among nations.

The historic initiative of President Sadat in visiting Jerusalem and the reception accorded to him by the Parliament, government and people of Israel, and the reciprocal visit of Prime Minister Begin to Ismailia, the peace proposals made by both leaders, as well as the warm reception of these missions by the peoples of both countries, have created an unprecedented opportunity for peace which must not be lost if this generation and future generations are to be spared the tragedies of war.

The provisions of the Charter of the United Nations and the other accepted norms of international law and legitimacy now provide accepted standards for the conduct of relations among all states.

To achieve a relationship of peace, in the spirit of Article 2 of the United Nations Charter, future negotiations between Israel and any neighbor prepared to negotiate peace and security with it, are necessary for the purpose of carrying out all the provisions and principles of Resolutions 242 and 338.

Peace requires respect for the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force. Progress toward that goal can accelerate movement toward a new era of reconciliation in the Middle East marked by cooperation in promoting economic development, in maintaining stability, and in assuring security.

Security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations. In addition, under the terms of peace treaties, the parties can, on the basis of reciprocity, agree to special security arrangements such as demilitarized zones, limited armaments areas, early warning stations, the presence of international forces, liaison, agreed measures for monitoring, and other arrangements that they agree are useful.

FRAMEWORK

Taking these factors into account, the parties are determined to reach a just, comprehensive, and durable settlement of the Middle East conflict through the conclusion of peace treaties based on Security Council Resolutions 242 and 338 in all their parts. Their purpose is to achieve peace and good neighborly relations. They recognize that, for peace to endure, it must involve all those who have been most deeply affected by the conflict. They therefore agree that this framework as appropriate is intended by them to constitute a basis for peace not only between Egypt and Israel, but also between Israel and each of its other neighbors which is prepared to negotiate peace with Israel on this basis. With that objective in mind, they have agreed to proceed as follows:

A. West Bank and Gaza

1. Egypt, Israel, Jordan and the representatives of the Palestinian people should participate in negotiations on the resolution of the Palestinian problem in all its aspects. To achieve that objective, negotiations relating to the West Bank and Gaza should proceed in three stages:

*The texts of Resolutions 242 and 338 are annexed to this document.

(a) Egypt and Israel agree that, in order to ensure a peaceful and orderly transfer of authority, and taking into account the security concerns of all parties, there should be transitional arrangements for the West Bank and Gaza for a period not exceeding five years. In order to provide full autonomy to the inhabitants, under these arrangements the Israeli military government and its civilian administration will be withdrawn as soon as a self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government. To negotiate the details of a transitional arrangement, the Government of Jordan will be invited to join the negotiations on the basis of this framework. These new arrangements should give due consideration both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of the parties involved.

(b) Egypt, Israel, and Jordan will agree on the modalities for establishing the elected self-governing authority in the West Bank and Gaza. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed. The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority to be exercised in the West Bank and Gaza. A withdrawal of Israeli armed forces will take place and there will be a redeployment of the remaining Israeli forces into specified security locations. The agreement will also include arrangements for assuring internal and external security and public order. A strong local police force will be established, which may include Jordanian citizens. In addition, Israeli and Jordanian forces will participate in joint patrols and in the manning of control posts to assure the security of the borders.

(c) When the self-governing authority (administrative council) in the West Bank and Gaza is established and inaugurated, the transitional period of five years will begin. As soon as possible, but not later than the third year after the beginning of the transitional period, negotiations will take place to determine the final status of the West Bank and Gaza and its relationship with its neighbors, and to conclude a peace treaty between Israel and Jordan by the end of the transitional period. These negotiations will be conducted among Egypt, Israel, Jordan, and the elected representatives of the inhabitants of the West Bank and Gaza. Two separate but related committees will be convened, one committee, consisting of representatives of the four parties which will negotiate and agree on the final status of the West Bank and Gaza, and its relationship with its neighbors, and the second committee, consisting of representatives of Israel and representatives of Jordan to be joined by the elected representatives of the inhabitants of the West Bank and Gaza, to negotiate the peace treaty between Israel and Jordan, taking into account the agreement reached on the final status of the West Bank and Gaza. The negotiations shall be based on all the provisions and principles of UN Security Council Resolution 242. The negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements. The solution from the negotiations must also recognize the legitimate rights of the Palestinian people and their just requirements. In this way, the Palestinians will participate in the determination of their own future through:

(1) The negotiations among Egypt, Israel, Jordan and the representatives of the inhabitants of the West Bank and Gaza to agree on the final status of the West Bank and Gaza and other outstanding issues by the end of the transitional period.

(2) Submitting their agreement to a vote by the elected representatives of the inhabitants of the West Bank and Gaza.

(3) Providing for the elected representatives of the inhabitants of the West Bank and Gaza to decide how they shall govern themselves consistent with the provisions of their agreement.

(4) Participating as stated above in the work of the committee negotiating the peace treaty between Israel and Jordan.

2. All necessary measures will be taken and provisions made to assure the security of Israel and its neighbors during the transitional period and beyond. To assist in providing such security, a strong local police force will be constituted by the self-governing authority. It will be composed of inhabitants of the West Bank and Gaza. The police will maintain continuing liaison on internal security matters with the designated Israeli, Jordanian, and Egyptian officers.

3. during the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a continuing committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern may also be dealt with by this committee.

4. Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem.

B. Egypt-Israel

1. Egypt and Israel undertake not resort to the threat or the use of force to settle disputes. Any disputes shall be settled by peaceful means in accordance with the provisions of Article 33 of the Charter of the United Nations.

2. In order to achieve peace between them, the parties agree to negotiate in good faith with a goal of concluding within three months from the signing of this Framework a peace treaty between them, while inviting the other parties to the conflict to proceed simultaneously to negotiate and conclude similar peace treaties with a view to achieving a comprehensive peace in the area. The Framework for the Conclusion of a Peace Treaty between Egypt and Israel will govern the peace negotiations between them. The parties will agree on the modalities and the timetable for the implementation of their obligations under the treaty.

C. Associated principles

1. Egypt and Israel state that the principles and provisions described below should apply to peace treaties between Israel and each of its neighbors—Egypt, Jordan, Syria and Lebanon.

2. Signatories shall establish among themselves relationships normal to states at peace with one another. To this end, they should undertake to abide by all the provisions of the Charter of the United Nations. Steps to be taken in this respect include:

(a) Full recognition;

(b) Abolishing economic boycotts;

(c) Guaranteeing that under this jurisdiction the citizens of the other parties shall enjoy the protection of the due process of law.

3. Signatories should explore possibilities for economic development in the context of final peace treaties, with the objective of contributing to the atmosphere of peace, cooperation and friendship which is their common goal.

4. Claims Commissions may be established for the mutual settlement of all financial claims.

5. The United States shall be invited to participate in the talks on matters related to the modalities of the implementation of the agreements and working out the timetable for the carrying out of the obligations of the parties.

6. The United Nations Security Council shall be requested to endorse the peace treaties and ensure that their provisions shall not be violated. The permanent members of the Security Council shall be requested to underwrite the peace treaties and ensure respect for their provisions. They shall also be requested to conform their policies and actions with the undertakings contained in this Framework.

For the Government of the Arab Republic of Egypt:

_____ _____.

For the Government of Israel:

_____ _____.

Witnessed by:

JIMMY CARTER,
President of the United States of America.

FRAMEWORK FOR THE CONCLUSION OF A PEACE TREATY BETWEEN EGYPT AND ISRAEL

In order to achieve peace between them, Israel and Egypt agree to negotiate in good faith with a goal of concluding within three months of the signing of this framework a peace treaty between them.

It is agreed that:

The site of the negotiations will be under a United Nations flag at a location or locations to be mutually agreed.

All of the principles of U.N. Resolution 242 will apply in this resolution of the dispute between Israel and Egypt.

Unless otherwise mutually agreed, terms of the peace treaty will be implemented between two and three years after the peace treaty is signed.

The following matters are agreed between the parties:

(a) The full exercise of Egyptian sovereignty up to the internationally recognized border between Egypt and mandated Palestine;

(b) The withdrawal of Israeli armed forces from the Sinai;

(c) The use of airfields left by the Israelis near El Arish, Rafah, Ras en Nagb, and Sharm el Sheikh for civilian purposes only, including possible commercial use by all nations;

(d) The right of free passage by ships of Israel through the Gulf of Suez and the Suez Canal on the basis of the Constantinople Convention of 1888 applying to all nations; the Strait of Tiran and the Gulf of Aqaba are international waterways to be open to all nations for unimpeded and nonsuspendable freedom of navigation and overflight;

(e) The construction of a highway between the Sinai and Jordan near Elat with guaranteed free and peaceful passage by Egypt and Jordan; and

(f) The stationing of military forces listed below.

STATIONING OF FORCES

A. No more than one division (mechanized or infantry) of Egyptian armed forces will be stationed within an area lying approximately 50 kilometers (km) east of the Gulf of Suez and the Suez Canal.

B. Only United Nations forces and civil police equipped with light weapons to perform normal police functions will be stationed within an area lying west of the international border and the Gulf of Aqaba, varying in width from 20 km to 40 km.

C. In the area within 3 km east of the international border there will be Israeli limited military forces not to exceed four infantry battalions and United Nations observers.

D. Border patrol units, not to exceed three battalions, will supplement the civil police in maintaining order in the area not included above.

The exact demarcation of the above areas will be as decided during the peace negotiations.

Early warning stations may exist to insure compliance with the terms of the agreement.

United Nations forces will be stationed: (a) in part of the area in the Sinai lying within about 20 km of the Mediterranean Sea and adjacent to the international border, and (b) in the Sharm el Sheikh area to ensure freedom of passage through the Strait of Tiran; and these forces will not be removed unless such removal is approved by the Security Council of the United Nations with a unanimous vote of the five permanent members.

After a peace treaty is signed, and after the interim withdrawal is complete, normal relations will be established between Egypt and Israel, including: full recognition, including diplomatic, economic and cultural relations; termination of economic boycotts and barriers to the free movement of goods and people; and mutual protection of citizens by the due process of law.

INTERIM WITHDRAWAL

Between three months and nine months after the signing of the peace treaty, all Israeli forces will withdraw east of a line extending from a point east of El Arish to Ras Muhammad, the exact location of this line to be determined by mutual agreement.

For the government of the Arab Republic of Egypt:

_____.

For the Government of Israel:

_____.

Witnessed by:

JIMMY CARTER,
President of the United States of America.●

THE PLYMOUTH CONGREGATIONAL CHURCH CELEBRATES ITS 125TH ANNIVERSARY: SEPTEMBER 24, 1853–SEPTEMBER 24, 1978

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. HANLEY. Mr. Speaker—

Pride in the past is a fine incentive for further achievements in the years ahead.

That is how Preston Mitchell, a member of Plymouth Church, summed up the sentiments that prevailed during the celebration of the church's centennial. That was 25 years ago. The members of Plymouth Church have every right to take pride in its achievements throughout the past 125 years.

Plymouth Congregational Church was not the first Congregational Church in Syracuse. Many of the first members were "orphans" from the disbanded First Congregational Church, noted for its strong stand against slavery. Members of this church, including some who later joined Plymouth, took an active part in the Underground Railroad, and were involved in the famous "Jerry Rescue" in 1851. A slave, William McHenry, known, as "Jerry" had escaped from his master in Missouri, and found refuge and employment in Syracuse. His master undertook legal action to have Jerry returned, and he was arrested. During his trial, Abner Bates and Ira Cobb extinguished the lights in the courtroom and assisted McHenry in his escape to Canada.

After various problems caused the First Congregational Church to dissolve, several of its members sought to form their own church. On September 24, 1853 under the guidance of Joel Danforth, A. G. Salisbury, and Abner Bates the new church was organized. The basis of the organization was the deep belief that in the Kingdom of God there can be neither bondsman nor master. The new church was called Plymouth in emulation of Plymouth Church in Brooklyn, whose pastor, Henry Ward Beecher, was an implacable foe of slavery.

The first meeting place of their own, later known as the Wooden Chapel, was designed and constructed by Horatio N. White, a noted architect. Mr. White also designed the old Court House, and the Hall of Languages—the first building of Syracuse University. Both buildings are still standing. The building was dedicated in February, 1855, with the first prayer offered by Rev. Daniel Waldo, a former Chaplain of the House of Representatives. Born in 1792, and a member of the Continental Army, "Father Waldo", as he was known, became Chaplain of the House at the age of 94. He performed his duties efficiently and was reported to be highly regarded by the House.

A new church, again designed by Horatio N. White, in a Norman style architecture was dedicated on August 3, 1859. And by 1873, Plymouth Church was the largest Protestant Church in Syracuse.

In 1925 Burns Lyman Smith donated the famous "Landing of the Pilgrims" silhouette that still stands in a triangular plot of ground between Madison Street and Onondaga Street to serve as a constant reminder that it was these courageous Pilgrims who fled the old order and brought the congregational way to the new world.

In April, 1961 Plymouth became a unit member of the United Church of Christ, but to preserve tradition they still think and speak of themselves as the Plymouth Congregational Church.

The present pastor of Plymouth, Frederick F. Lowry, will open the observance of the 125th anniversary with a service on September 24 with a sermon entitled "Plymouth Congregational Church-United Church of Christ: A Past and A Present." And on October 1, Rev. Richard McCollum, who was ordained at Plymouth in 1969, will preach a sermon entitled: "Plymouth Congregational Church-United Church of Christ: A Future."

Other anniversary activities include a banquet on October 30, and an antique quilt display. The display features a quilt made by the women of the parish, with each block of the quilt portraying some segment of the church's history.

Later in the fall, members of Plymouth will present a play entitled "Winds of Freedom" by Rhonda Scott, which revolves around the "Jerry Rescue."

Plymouth Congregational Church is one of the few Syracuse churches to remain on its original site. It has grown as Syracuse has grown and has played a very important part in the community. I ask you to join me in saluting the Plymouth Congregational Church on its 125th anniversary.●

PERSONAL EXPLANATION

Mr. MIKVA asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. MIKVA. Mr. Speaker, I was unable to be present on the House floor for an hour on Wednesday, September 13, 1978, for rollcall votes No. 768 and No. 769 as I was attending a conference dealing with taxation, which took place away from the Capitol. Had I been present, I would have voted "yes" on both rollcall No. 768, a motion to order the previous question on the rule for H.R. 8729, Aircraft Noise Reduction Act, and rollcall No. 769, House Resolution 1293, the rule under which H.R. 8729 was being considered.

I was also unable to be present for rollcall vote No. 793. Had I been present, I would have voted "aye" on H.R. 12326, the Developmental Disabilities Act amendments.●

CHICAGO TRIBUNE EDITORIAL ON AIRPLANE NOISE REDUCTION

(Mr. MIKVA asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. MIKVA. Mr. Speaker, the Congress this year has an opportunity to take a major step forward to reduce the problem of airplane noise. I am pleased that the House has taken the lead in this important national effort when it recently passed the Airport and Aircraft Noise Reduction Act.

At this time, Mr. Speaker, I would like to share with my colleagues an editorial by the Chicago Tribune of September 18, 1978, which persuasively sets forth the reasons for congressional approval of the airplane noise reduction bill:

ON PAYING FOR SILENCE

A lot of the same people who clamored a couple of years ago for stricter controls on airplane noise are now complaining about the means by which Congress is considering speeding up these controls. They say it will enable the airlines to make the necessary improvements "at taxpayer expense."

The truth is neither as simple nor as offensive as this makes it seem.

First, it would not be at general taxpayer expense. What the bill proposes is to finance about a third of the $6 to $8 that noise-abatement improvements will cost by 1985 out of a fund derived from a special tax on airline tickets and shipments. The improvements would therefore be financed by airline users, not by those who have chosen to live near airports and would benefit from quieter planes.

Second, it would not mean an increase in the ticket tax. The proposed 2 percent tax on tickets would be offset by a 2 percent reduction in the existing 8 percent tax for the Aviation Trust Fund, which is intended for airport costs and has accumulated a substantial surplus.

Third, the use of tax funds—even if they

were to come from general revenues—could easily be justified in this instance, though normally we would oppose it. The present case is not normal. About 1,600 of the planes now in service met all federal standards when they were bought. The present noise law amounts to a retroactive disapproval of all these planes. It is much as if a homeowner were required to rebuild his house because it didn't comply with a new change in the building code.

This means that the engine nacelles of these planes would have to be insulated [thereby increasing weight and adding substantially to fuel consumption]; or new engines put in; or the entire plane replaced, long before it would otherwise be necessary.

The cost of meeting the noise reduction standards, the airlines say, will be from to $6 to $8 billion. Of this, about a third is attributable to the retroactive nature of the law. This $2 to $3 billion is about the same amount that the proposed tax would yield. The fund would be managed by the government, and released on the basis of applications from the airlines. If an airline chose only to put in insulation, it could collect from the government for up to 90 per cent of the cost, since the insulation would do the airline no good and would, in fact, increase fuel costs.

If a line chose to buy new engines, the government would foot 75 percent of the bill. If it chose to replace the plane, the government would pay for only 25 to 40 per cent of the cost, the assumption being that the new plane increased the assets of the airline.

Whether the precise percentages and amounts are accurate we'll have to leave up to experts. But it is hard to dispute the principle that when the government orders an enormously costly change in equipment it has already approved—a change required only for the comfort of people who may never even ride a plane—the government should foot part of the bill.

If opponents think this is too great an imposition on the taxpayers—especially for a noise-control program that doesn't even pretend to deal with the Concorde—perhaps they should go back to Square 1 and rethink the anti-noise laws.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. PEPPER (at the request of Mr. WRIGHT), for September 19, 20, 21, and 22, on account of official business.

Mr. COTTER (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MOORE) to revise and extend their remarks and include extraneous material:)

Mr. GOLDWATER, for 5 minutes, today.

(The following Members (at the request of Mr. HEFNER) to revise and extend their remarks, and to include extraneous matter:)

Mr. BINGHAM, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. PREYER, for 5 minutes, today.

Mr. ROBERTS, for 5 minutes, today.

Mr. OTTINGER, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. MOORE) and to include extraneous matter:)

Mr. BURGENER.

Mr. REGULA.

Mr. VANDER JAGT.

Mr. DORNAN in four instances.

Mr. GOODLING in two instances.

Mr. WHITEHURST.

Mr. RHODES.

Mr. FINDLEY.

Mr. CUNNINGHAM.

Mr. GARY A. MYERS.

(The following Members (at the request of Mr. HEFNER) and to include extraneous material:)

Mr. TEAGUE.

Mr. VENTO in three instances.

Mr. LLOYD of California.

Mr. ANDERSON of California in three instances.

Mr. GONZALEZ in three instances.

Mr. CARNEY in two instances.

Mr. SIKES in two instances.

Mr. THOMPSON.

Mr. AMBRO.

Mr. MOFFETT.

Mr. JENRETTE in two instances.

Mr. FISHER in two instances.

Mr. DE LUGO.

Mr. COTTER.

Ms. OAKAR.

Ms. MIKULSKI.

Mr. WON PAT.

Mr. PATTISON of New York.

Mr. BRECKINRIDGE in four instances.

Mr. BENJAMIN.

Mr. MCDONALD in three instances.

Mr. RYAN.

Mr. MAGUIRE.

Mr. MOTTL.

Mr. NOLAN.

Mr. ZEFERETTI.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H.R. 1427. For the relief of Marie Grant;

H.R. 3460. For the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 5097. For the relief of Dr. Daryl C. Johnson;

H.R. 6760. For the relief of Charles M. Metott; and

H.R. 12772. To facilitate the exchange of certain lands in the State of Oregon, and for other purposes.

ADJOURNMENT

Mr. HEFNER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 55 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, September 20, 1978, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4993. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Army's proposed sale of certain defense equipment to Austria (transmittal No. 78–100), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

4994. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Army's proposed sale of certain defense equipment to Iran (transmittal No. 78–101), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

4995. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2–267, "To amend the District of Columbia Unemployment Compensation Act," pursuant to section 602(c) of Public Law 93–198; to the Committee on the District of Columbia.

4996. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2–268, "To increase the single-family residental real property tax exemption; to classify real property in the District of Columbia for purposes of establishing real property tax rates; to provide an expanded property tax credit for certain renters and homeowners in the District of Columbia, and for other purposes," pursuant to section 602(c) of Public Law 93–198; to the Committee on the District of Columbia.

4997. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2–269, "To amend the District of Columbia Air Quality Control Regulations Relating to the Sulfur Content of Fuels," pursuant to section 602(c) of Public Law 93–198; to the Committee on the District of Columbia.

4998. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2–270, "To provide for the transportation of District of Columbia students on the Metrobus and Metrorail Transit Systems at a reduced fare of 10 cents and to authorize the payment of a school transit subsidy to the Washington Metropolitan Area Transit Authority," pursuant to section 602(c) of Public Law 93–198; to the Committee on the District of Columbia.

4999. A letter from the Assistant Secretary of the Interior, transmitting the Department's views on H.R. 12533, the proposed Indian Child Welfare Act of 1978; to the Committee on Interior and Insular Affairs.

5000. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Amber H. Moss, Jr., Ambassador-designate to Panama, and by members of his family, pursuant to section 6 of Public Law 93–126; to the Committee on International Relations.

5001. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 program in Mali, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

5002. A letter from the Director, Defense Security Assistance Agency, transmitting a quarterly report on foreign military sales as of June 30, 1978, pursuant to section 36 (a) of the Arms Export Control Act; to the Committee on International Relations.

5003. A letter from the Director, Defense Security Assistance Agency, transmitting addenda to the quarterly report on foreign military sales as of June 30, 1978, pursuant to section 36(a) of the Arms Export Control Act; to the Commmittee on International Relations.

5004. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Austria (trans-

mittal No. 78–100), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

5005. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Iran (transmittal No. 78–101), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on International Relations.

5006. A letter from the Secretary of Energy, transmitting recommendations for implementation of a program of Federal financial assistance for demonstrating production and conservation of energy, pursuant to section 19(1)(1) of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended (92 Stat. 69); to the Committee on Science and Technology.

5007. A letter from the Executive Secretary, Agricultural Policy Advisory Committee for Trade Negotiations, transmitting the committee's report on the U.S.-Indian Tropical Products Agreement, dated July 26, 1978, pursuant to section 135(e)(1) of the Trade Act of 1974; to the Committee on Ways and Means.

5008. A letter from the Chairman, U.S. Consumer Product Safety Commission, transmitting a supplemental appropriation request for fiscal year 1979, pursuant to section 27(k)(1) of Public Law 92–573; jointly, to the Committees on Appropriations, and Interstate and Foreign Commerce.

5009. A letter from the Chairman, U.S. Consumer Product Safety Commission, transmitting the Commission's fiscal year 1980 budget estimates, pursuant to section 27(k)(1) of Public Law 92–573; jointly, to the Committees on Appropriations, and Interstate and Foreign Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HAWKINS: Committee House Administration. House Resolution 1285. Resolution to provide for the printing of the proceedings incident to the presentation of a portrait of the Honorable Al Ullman (Rept. No. 95–1580). Referred to the House Calendar.

Mr. HAWKINS: Committee on House Administration. House Resolution 1338. Resolution providing for the printing of the report entitled "Freedom of Information Requests for Business Data and Reverse-FOIA Lawsuits" (Rept. No. 95–1581). Referred to the House Calendar.

Mr. HAWKINS: Committee on House Administration. Senate Concurrent Resolution 90. Concurrent resolution authorizing the printing of additional copies of volumes 1 and 2 of the committee print entitled "A Legislative History of the Water Pollution Control Act Amendments of 1972" (Rept. No. 95–1582). Referred to the House Calendar.

Mr. HAWKINS: Committee on House Administration. Senate Concurrent Resolution 96. Concurrent resolution authorizing the reprinting of book II of the Senate report entitled "Intelligence Activities and the Rights of Americans" (S. Rept. 94–755) (Rept. No. 95–1583). Referred to the House Calendar.

Mr. HAWKINS: Committee on House Administration. Senate Concurrent Resolution 97. Concurrent resolution authorizing the printing of additional copies of the committee print entitled "Preliminary Guide to Export Opportunities to Japan" (Rept. No. 95–1584). Referred to the House Calendar.

Mr. HAWKINS: Committee on House Administration. Senate Concurrent Resolution 105. Concurrent resolution authorizing the printing of additional copies of the final report and of volume II of the executive session hearings on the Korean influence inquiry (Rept. No. 95–1585). Referred to the House Calendar.

Mr. BROOKS: Committee on Government Operations. H.R. 12171. A bill to strengthen the right of access of the Comptroller General to public and certain private records, to allow for limited auditing of unvouchered expenditures, and for other purposes (Rept. No. 95–1586). Referred to the Committee of the Whole House on the State of the Union.

Mr. LONG of Louisiana: Committee on Rules. House Resolution 1354. Resolution providing for the consideration of H.R. 13750. A bill to implement the International Sugar Agreement between the United States and foreign countries; to protect the welfare of consumers of sugar and those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; and for other purposes (Rept. No. 95–1587). Referred to the House Calendar.

Mr. MEEDS: Committee on Rules. House Resolution 1355. Resolution providing for the consideration of H.R. 13778. A bill to establish a Department of Education and for other purposes (Rept. No. 95–1588). Referred to the House Calendar.

Mr. MOAKLEY: Committee on Rules. House Resolution 1356. Resolution waiving certain points of order against the conference report on H.R. 3816. A bill to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes (Rept. No. 95–1589). Referred to the House Calendar.

Mr. REUSS: Committee on Banking, Finance and Urban Development. H.R. 14072. A bill to facilitate the implementation of monetary policy and to promote competitive equality among commercial banks; with amendment (Rept. 95–1590). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BARNARD:

H.R. 14114. A bill to postpone the increase in the minimum wage and the adjustment to the tip credit under the Fair Labor Standards Act of 1938; to the Committee on Education and Labor.

By Mr. COCHRAN of Mississipoi (for himself, Mr. GOODLING, Mr. GUYER, Ms. KEYS, Mr. MCDADE, and Mr. PICKLE):

H.R. 14115. A bill to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws; to the Committee on the Judiciary.

By Mr. DICKS:

H.R. 14116. A bill to reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within the Departments of Agriculture, Commerce, Housing, and Urban Development, the Interior, Labor, and Transportation, and within the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration, and for other purposes; to the Committee on Government Operations.

By Mr. JACOBS (for himself, Mr. MOFFETT, Mr. PATTERSON of California, and Mr. WAGGONNER):

H.R. 14117. A bill to amend title II of the Social Security Act to provide that renewal commissions, received by a retired insurance agent from life insurance policies which were sold by him before his retirement, shall not be taken into account in determining his net earnings from self-employment for purposes of the earnings test; to the Committee on Ways and Means.

By Mr. MATHIS (for himself, Mr. WAMPLER, Mr. SPENCE, Mr. WALKER, Mr. WHITLEY, Mr. GOODLING, and Mr. RAILSBACK):

H.R. 14118. A bill to prohibit the Secretary of Agriculture from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until a satisfactory substitute preservative is commercially available; to the Committee on Agriculture.

By Mr. MATHIS (for himself, Mr. WAMPLER, Mr. ABDNOR, Mr. BLOUIN, Mr. BOWEN, Mr. CORCORAN of Illinois, Mr. ROBERT W. DANIEL, Jr., Mr. DUNCAN of Tennessee, Mr. ERTEL, Mr. EVANS of Georgia, Mr. FINDLEY, Mr. FORSYTHE, Mr. GRASSLEY, Mr. HAGEDORN, Mr. HARSHA, Mr. JOHNSON of Colorado, Mr. KINDNESS, Mr. LAGOMARSINO, Mr. LATTA, Mr. LOTT, Mr. LUKEN, Mr. MADIGAN, Mr. MARTIN, Mr. SEBELIUS, and Mr. SKELTON):

H.R. 14119. A bill to prohibit the Secretary of Agriculture from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until a satisfactory substitute preservative is commercially available; to the Committee on Agriculture.

By Mr. MATHIS (for himself, Mr. WAMPLER, Mr. SPENCE, Mr. WALKER, Mr. WHITLEY, Mr. GOODLING, and Mr. RAILSBACK):

H.R. 14120. A bill to prohibit the Secretary of Agriculture and the Secretary of Health, Education, and Welfare from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until the development of a satisfactory alternative food preservative; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. MATHIS (for himself, Mr. WAMPLER, Mr. ABDNOR, Mr. BLOUIN, Mr. BOWEN, Mr. CORCORAN of Illinois, Mr. ROBERT W. DANIEL, Jr., Mr. DUNCAN of Tennessee, Mr. ERTEL, Mr. EVANS of Georgia, Mr. FINDLEY, Mr. FORSYTHE, Mr. GRASSLEY, Mr. HAGEDORN, Mr. HARSHA, Mr. JOHNSON of Colorado, Mr. KINDNESS, Mr. LAGOMARSINO, Mr. LATTA, Mr. LOTT, Mr. LUKEN, Mr. MADIGAN, Mr. MARTIN, Mr. SEBELIUS, and Mr. SKELTON):

H.R. 14121. A bill to prohibit the Secretary of Agriculture and the Secretary of Health, Education, and Welfare from prohibiting the use of nitrites as a food preservative on the basis of any carcinogenic effect nitrites may be represented to have until the development of a satisfactory alternative food preservative; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. MATHIS:

H.R. 14122. A bill to amend title XVIII of the Social Security Act with respect to the payment for drugs and biologicals under part B of the medicare program; jointly, to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. STAGGERS (by request):

H.R. 14123. A bill to amend the Railroad Retirement Act of 1974 with respect to the computation of certain annuity amounts; to the Committee on Interstate and Foreign Commerce.

By Mr. STUMP:

H.R. 14124. A bill to repeal the Metric Conversion Act of 1975 (89 Stat. 1007); to the Committee on Science and Technology.

By Mr. NIX:

H.R. 14125. A bill to amend chapter 87 of title 5, United States Code, to provide that Members of Congress may elect at retirement partial (in lieu of full) conversion from group life insurance to individual life insurance; to the Committee on Post Office and Civil Service.

By Mr. GARY A. MYERS:

H.R. 14126. A bill entitled "Department of Energy Organization Act Amendments of 1978"; to the Committee on Interstate and Foreign Commerce.

By Mr. PICKLE:

H.R. 14127. A bill to amend the Internal Revenue Code of 1954 to exclude from the gross estate of any individual benefits payable under certain State judicial plans, and for other purposes; to the Committee on Ways and Means.

By Mr. MAHON:

H.J. Res. 1139. Joint resolution making continuing appropriations for the fiscal year 1979, and for other purposes; to the Committee on Appropriations.

By Mr. FARY:

H. Con. Res. 714. Concurrent resolution expressing the sense of the Congress relating to films and broadcasts which defame, stereotype, ridicule, demean, or degrade ethnic, racial, and religious groups; to the Committee on Interstate and Foreign Commerce.

By Mr. ZABLOCKI (for himself, Mr. WRIGHT, Mr. FASCELL, Mr. FRASER, Mr. ROSENTHAL, Mr. WOLFF, Mr. BINGHAM, Mr. RYAN, Mr. SOLARZ, Mrs. MEYNER, Mr. STUDDS, Mr. IRELAND, Mr. PEASE, Mr. DE LA GARZA, Mr. CAVANAUGH, Mr. YATRON, Mr. BROOMFIELD, Mr. FINDLEY, Mr. BUCHANAN, Mr. BURKE of Florida, Mr. WINN, Mrs. PETTIS, Mr. ANDERSON of Illinois, Mr. HYDE, and Mr. YATES):

H. Con. Res. 715. Concurrent resolution commending President Carter of the United States, President Sadat of Egypt, and Prime Minister Begin of Israel for the courageous steps they have taken to resolve the differences between Egypt and Israel and to bring about a comprehensive, just, and durable peace in the Middle East; to the Committee on International Relations.

By Mr. DORNAN (for himself, Mr. BRADEMAS, Mr. DELANEY, Mr. FLOOD, Mr. HARSHA, Mr. MONTGOMERY, Mr. MURPHY of Illinois, Mr. NOWAK, Mr. PEASE, Mr. KEMP, Mr. CORCORAN of Illinois, Mr. EILBERG, Mr. MOORHEAD of California, Mr. ROBINSON, and Mr. LAGOMARSINO):

H. Con. Res. 716. Concurrent resolution expressing the sense of Congress with respect to the Baltic States; to the Committee on International Relations.

By Mr. SOLARZ (for himself, Mr. EDGAR, Mr. PATTERSON of California, and Mr. CHAPPELL):

H. Con. Res. 717. Concurrent resolution expressing the sense of Congress that the Attorney General, under the authority of the Immigration and Nationality Act, should parole into the United States Cambodian refugees currently held in camps in Thailand; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

482. The SPEAKER presented a memorial of the Legislature of the Territory of the Virgin Islands, relative to the proposed equal rights amendment to the Constitution; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. MIKULSKI:

H.R. 14128. A bill to authorize the appointment of Col. Mary Agnes Hallaren, U.S. Army, retired, to the grade of brigadier general on the Retired List of the United States Army; to the Committee on Armed Services.

By Mr. MOORHEAD of California:

H.R. 14129. A bill for the relief of Vista Unlimited, Inc.; to the Committee on the Judiciary.

By Mr. PATTERSON of California:

H.R. 14130. A bill for the relief of Pedro Sagasti-Bilbao, Sylvia Alvarez De Sagasti, Veronica del Pilar Sagasti-Alvarez, Karyn Sagasti-Alvarez, and Pedro Sagasti-Alvarez; to the Committee on the Judiciary.

By Mr. STANTON:

H.R. 14131. A bill for the relief of Nelson M. Collier; to the Committee on the Judiciary.

By Mr. FISHER:

H. Res. 1357. Resolution to refer H.R. 12856, a bill for the relief of Elena Schwarze-Chamier, to the Chief Commissioner of the Court of Claims; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

538. By the SPEAKER: Petition of Tim McCormack and other members of the Ohio Senate, Columbus, relative to natural gas price deregulation; to the Committee on Interstate and Foreign Commerce.

539. Also, petition of the Coal Marketing Subcommittee, Virginia Coal and Energy Commission, Richmond, relative to resolution of the Norfolk and Western Railway strike; to the Committee on Interstate and Foreign Commerce.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1

By Mr. FRENZEL:

(To the amendment in the nature of a substitute (H.R. 13850) offered by Mr. DANIELSON.)

—On page 2, lines 8 and 9, strike out ", and any individual who becomes a candidate in any election for the office of Member".

On page 2, lines 17 and 18, strike out "(1) Except as provided in paragraph (2), each" and insert "Each".

On page 2, lines 19 and 20, strike out ", other than an individual who becomes a candidate in any election for the office of Member,".

On page 3, strike out lines 6 through 9, and on line 10 strike out "(B)" and insert "(2)".

On page 3, strike out line 15 and all that follows thereafter through page 4, line 2.

On page 4, line 3, strike out "(c)" and insert "(b)".

On page 4, lines 3 and 4, strike out "or an individual who is a candidate for the office of Member".

On page 12, line 4, after the word "destroyed" strike out the comma, insert a period, and strike out all that follows through and including line 8.

On page 15, strike out lines 12 through 22, and redesignate the succeeding paragraphs accordingly.

—On page 3, lines 16 and 17, strike out "October 1, 1978," and insert "January 1, 1979,".

—On page 7, line 10, immediately before the period insert "or any deposit in a personal savings account which bears interest".

—On page 8, immediately after line 5, insert the following:

(7) The identity of all positions held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution, except that this paragraph shall not require the reporting of positions held in any religious, social, fraternal, charitable, or political entity.

—On page 8, immediately after line 5, insert the following:

(8) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employee.

—On page 8, strike out lines 12 through 19, and insert:

(1) not more than $2,500,

(2) greater than $2,500, but not more than $5,000,

(3) greater than $5,000, but not more than $10,000,

(4) greater than $10,000, but not more than $25,000,

(5) greater than $25,000.

—On page 9, lines 17 through 19, strike out "; and from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit." and insert a period.

—On page 10, line 25, after "holdings" insert "at the time his interest in the trust was originally placed in such trust, if available,".

—On page 11, strike out lines 14 through 25, and insert:

(c) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

—On page 12, strike out lines 1 through 8 and insert the following:

(d)(1) Any report filed under this title shall be available for public inspection for a period of five years, so long as the reporting individual remains in a position designated in section 101, after which the report shall be destroyed.

(2) If the individual who filed the report is no longer within any position designated in section 101 and so notifies the Clerk or Secretary, the report shall, one year after such notification, no longer be available for public inspection. Such report shall be retained by the Clerk or Secretary for the remainder of the five-year period after which it shall be destroyed.

(3) If an individual specified in paragraph (2) returns to any position designated in section 101 during such five-year period, his report shall again be made available for public inspection for the remainder of that five-year period.

—On page 12, strike out lines 17 through 19 and insert the following:

(D) for use, directly or indirectly, in the solicitation of money for any purpose, other than for a political purpose.

—Page 20, strike out lines 8 through 19.

Page 20, line 6, strike out "(f)" and insert in lieu thereof "(d)".

Page 20, line 20, strike out "(d)" and insert in lieu thereof "(b)".

Page 20, line 21, strike out "(f)" and insert in lieu thereof "(d)".

Page 21, line 1, strike out "(e)" and insert in lieu thereof "(c)".

Page 21, lines 2, 6, and 7, strike out "(f)" and insert in lieu thereof "(d)".

Page 21, line 8, strike out "(d), and (e)" and insert in lieu thereof "(b), and (c)".

Page 22, line 20, strike out "(g)" and insert in lieu thereof "(e)".

Page 23, lines 2 and 3, strike out "(d) and (e)" and insert in lieu thereof "(b) and (c)".

Page 26, lines 5 and 6, strike out "subsections (a), (b), and (c)" and insert in lieu thereof "subsection (a)".

Page 26, line 15, strike out "(e)" and insert in lieu thereof "(c)".

Page 29, lines 22 and 23, strike out "candidates for the office of President or Vice President,".

Page 30, strike out lines 10 through 12.

Page 30, line 13, strike out "(f)" and insert in lieu thereof "(e)".

Page 34, line 6, strike out the comma and all that follows through line 13 and insert in lieu thereof a period.

Page 35, line 22, strike out "(d)" and insert in lieu thereof "(b)".

—Page 21, strike out lines 1 through 6.

Page 20, line 6, strike out "(f)" and insert in lieu thereof "(e)".

Page 20, line 21, strike out "(f)" and insert in lieu thereof "(e)".

Page 21, line 7, strike out "(f)" and insert in lieu thereof "(e)".

Page 21, line 8, strike out "(d), and (e)" and insert in lieu thereof "(d)".

Page 22, line 20, strike out "(g)" and insert in lieu thereof "(f)".

Page 23, lines 2 and 3, strike out "subsections (d) and (e)" and insert in lieu thereof "subsection (d)".

Page 26, strike out lines 14 through 18.

Page 26, line 19, strike out "(d)" and insert in lieu thereof "(c)".

Page 27, line 2, strike out "(e)" and insert in lieu thereof "(d)".

Page 28, line 14, strike out "(f)" and insert in lieu thereof "(e)".

Page 29, line 8, strike out "(g)" and insert in lieu thereof "(f)".

—Page 24, line 15, insert immediately before the period the following: "or any deposit in a personal savings account which bears interest".

—Page 26, strike out line 22 and all that follows through page 27, line 1, and insert in lieu thereof the following:

(1) up to $2,500;
(2) from $2,500 to $5,000;
(3) from $5,000 to $10,000;
(4) from $10,000 to $25,000;
(5) greater than $25,000.

—Page 27, line 2, after "report" insert "referred to in section 202(a)".

Page 27 line 4, after "individual" insert "and each report referred to in section 202 (b) shall also contain information listed in paragraphs (1), (3), (4), and (5) of subsection (a) respecting the spouse of the reporting individual,".

Page 27, line 7, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

Page 27, line 11, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

—On page 27, lines 21 through 23, strike out ", and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit." and insert a period.

—Page 29, line 6, strike out the comma and all that follows through line 7 and insert in lieu thereof a period.

—Page 29, strike out lines 8 through 10 and insert in lieu thereof the following:

(g) Political campaign funds including campaign receipts and expenditures shall not be included in any report filed pursuant to this part.

—Page 30, line 21, strike out "101" and insert in lieu thereof "201".

—Page 32, strike out line 7 and all that follows through page 33, line 7.

Page 33, line 8, strike out "(c)" and insert in lieu thereof "(b)".

Page 33, line 24, strike out "(d)" and insert in lieu thereof "(c)".

—Page 32, line 7, strike out "shall" and insert in lieu thereof "may".

—Page 33, line 2, insert immediately before the period the following: ", except that a copy of such report may be furnished without charge or at a reduced fee if it is determined by the agency that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public".

—Page 33, strike out lines 3 through 7.

—Page 33, lines 17 and 18, strike out "political, charitable, or other purpose" and insert in lieu thereof "purpose other than for a political purpose".

—Page 33, line 24, insert "(1)" after "(d)".

Page 34, after line 13, insert the following new paragraph:

(2) With respect to any individual who files a report pursuant to section 201(e), such report, and any other report filed by such individual pursuant to section 201(a) or 201(d), shall, on or after the date which is one year after the date on which the report is filed pursuant to section 201(e), no longer be available for public inspection. Any such report shall be retained by the agency with which the report was filed, or by the Director of the Office of Government Ethics, as the case may be, for the remainder of the five-year period referred to in paragraph (1), after which it shall be destroyed. If such individual returns to any position designated in section 201(f) during such five-year period, any such report shall again be made available for public inspection for the remainder of such five-year period.

—Page 35, strike out lines 1 through 18.

Page 35, line 20, strike out "208" and insert in lieu thereof "207".

Page 36, line 2, strike out "209" and insert in lieu thereof "208".

—Page 37, line 9, insert immediately before the semicolon "or State or local governments or political subdivisions thereof".

—Page 44, line 18, strike out "or judicial".

—Page 44, line 24, strike out ", or," and all that follows through "to" on page 45, line 2.

—Page 45, line 19, strike out "(i)".

Page 45, line 20, strike out "knowingly" and all that follows through page 46, line 6, and insert in lieu thereof the following: "appears personally as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before ".

—Page 47, line 18, strike out ", or," and all that follows through "to" on line 21.

—Page 48, line 8, strike out "or" and all that follows through "both" on line 9.

—Page 52, strike out line 1 and all that follows through page 66, line 10.

—Page 52, strike out lines 7 through 10.

Page 52, line 11, strike out "(c)" and insert in lieu thereof "(b)".

Page 52, line 16, strike out "(d)" and insert in lieu thereof "(c)".

Page 52, line 22, strike out "(e)" and insert in lieu thereof "(d)".

Page 53, line 15, strike out "(f)" and insert in lieu thereof "(e)".

Page 53, lines 21 and 22, strike out "(c) and (d)" and insert in lieu thereof "(b) and (c)".

Page 56, line 25, strike out "subsections (a) and (b)" and insert in lieu thereof "subsection (a)".

Page 57, line 11, strike out "(d)" and insert in lieu thereof "(c)".

Page 64, line 7, strike out the comma and all that follows through line 11 and insert in lieu thereof a period.

—Page 52, strike out lines 16 through 21.

Page 52, line 22, strike out "(e)" and insert in lieu thereof "(d)".

Page 53, line 15, strike out "(f)" and insert in lieu thereof "(e)".

Page 53, lines 21 and 22, strike out "subsections (c) and (d)" and insert in lieu thereof "subsection (c)".

Page 57, strike out lines 10 through 13.

Page 57, line 14, strike out "(d)" and insert in lieu thereof "(c)".

Page 57, line 22, strike out "(e)" and insert in lieu thereof "(d)".

Page 59, line 11, strike out "(f)" and insert in lieu thereof "(e)".

Page 60, line 9, strike out "(g)" and insert in lieu thereof "(f)".

—Page 55, line 8, insert immediately before the period the following: ", or any deposit in a personal account which bears interest".

—Page 57, strike out lines 17 through 21 and insert in lieu thereof the following:

(1) up to $2,500;
(2) from $2,500 to $5,000;
(3) from $5,000 to $10,000;
(4) from $10,000 to $25,000;
(5) greater than $25,000.

—Page 57, line 22, after "report" insert "referred to in section 302(a)".

Page 57, line 24, after "individual" insert ", and each report referred to in section 302(b) shall also contain information listed in paragraphs (1), (3), (4), and (5) of subsection (a) respecting the spouse of the reporting individual,".

Page 58, line 3, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

Page 58, line 7, strike out "In" and insert in lieu thereof "With respect to information listed in paragraph (2) of subsection (a), in".

—On page 58, lines 17 through 19, strike out ", and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit." and insert a period.

—Page 60, line 6, strike out the comma and all that follows through line 8 and insert in lieu thereof a period.

—Page 60, strike out lines 9 thorugh 11 and insert in lieu thereof the following:

(g) Political campaign funds, including campaign receipts and expenditures, shall not be included in any report filed pursuant to this title.

—Page 62, strike out line 14 and all that follows through page 63, line 13.

Page 63, line 14, strike out "(c)" and insert in lieu thereof "(b)".

Page 64, line 4, strike out "(d)" and insert in lieu thereof "(c)".

—Page 62, line 14, strike out "shall" and insert in lieu thereof "may".

—Page 63, line 8, insert immediately before the period the following: ", except that a copy of such report may be furnished without charge, or at a reduced fee, if it is determined by the Committee that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public".

—Page 63, strike out lines 9 through 13.

—Page 63, line 23, strike out "political, charitable, or other purpose" and insert in lieu thereof "purpose other than for a political purpose".

—Page 64, line 4, insert "(1)" after "(d)".

Page 64, after line 11, insert the following new paragraph:

(2) With respect to any individual who files a report pursuant to section 301(d), such report, and any other report filed by

such individual pursuant to section 301(a) or 301(c), shall, on or after the date which is one year after the date on which the report is filed pursuant to section 301(e), no longer be available for public inspection. Any such report shall be retained by the Committee for the remainder of the five-year period referred to in paragraph (1), after which it shall be destroyed. If such individual assumes a position as a judicial officer or employee again during such five-year period, any such report shall again be made available for public inspection for the remainder of such five-year period.

—Page 65, strike out lines 3 through 24.

Page 66, line 2, strike out "308" and insert in lieu thereof "307".

Page 66, line 6, strike out "309" and insert in lieu thereof "308".

—On page 65, strike lines 9–16 and insert:

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

—The title is amended to read: "A bill to require certain officers and employees of the United States to file reports as to their income and financial holdings and transactions, and for other purposes.".

H.R. 1

By Mr. PANETTA:

(Amendment to the amendment in the nature of a substitute.)

—On page 44, after line 9, add the following new section:

COMPLAINT PROCEDURES

SEC. 224. (a)(1) Any person who believes a violation of title II of this Act or any other statute, rule, or regulation designed to prevent conflicts of interest has occurred may file a complaint with the Office of Government Ethics. Such complaint shall be in writing, shall be signed and sworn to by the person filing such complaint, and shall be notarized. Any person filing such a complaint shall be subject to the provisions of section 1001 of title 18, United States Code. The Commission may not conduct any investigation under this subsection or take any other action under this subsection, solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) The Office upon receiving any complaint under paragraph (1), shall refer such complaint to the agency in which the officer or employee who is the subject of the complaint works except in the case of complaints involving the President, the Vice President, the head of each agency, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and a full-time member of a committee, board or commission appointed by the President which shall be investigated by the Office. The agency or office conducting the investigation shall notify the person involved of such alleged violation and shall make an investigation of such alleged violation in accordance with the provisions of this subsection.

(3) Any investigation under paragraph (2) shall be conducted expeditiously and shall include an investigation, conducted in accordance with the provisions of this subsection, of reports and statements filed by any complainant under this title.

(4) The agency or office conducting the investigation shall afford any person who receives notice of an alleged violation under paragraph (2), a reasonable opportunity to demonstrate that no action should be taken against such person by the agency or Office under this Act.

(5) Thirty days after a matter was referred to an agency under paragraph (2), the agency shall report to the Office on what action has been taken on the complaint and the agency shall report to the Office every thirty days thereafter on the status of such complaint until a final resolution with respect to the complaint has been reached by the agency.

(6) Upon the conclusion of an investigation of a complaint filed under this subsection, the complainant and the subject of such a complaint shall be notified of the resolution of such complaint and the reasons therefor.

(7) If the agency or office conducting the investigation determines that a violation has occurred, it may: (A) take appropriate administrative action; and (B) refer the matter to the Department of Justice for civil or criminal enforcement.

(8) In any case in which the agency or Office conducting an investigation refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Office with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than 60 days after the date the Commission refers any apparent violation, and at the close of every 60-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

H.R. 1

By Mrs. SCHROEDER:

(To the amendment in the nature of a substitute (H.R. 13850).)

—Page 32, line 25, strike the period and insert in lieu thereof ", if the reporting is an officer or employee of the agency at the time the application is received."

Page 63, line 3, strike the period and insert in lieu thereof ", if the reporting individual is an officer or employee in the Judicial branch at the time the application is received."

—Page 64, after line 3, insert the following: "Such remedy shall be in addition to any other remedy available under statutory or common law."

H.R. 11392

By Mr. WIRTH:

(To the amendment in the nature of a substitute (committee print of June 23, 1978).)

—Page 49, after the matter following line 24 insert the following new section:

RESIDENTIAL ENERGY GRANT PROGRAM

SEC. 705. (a) There is authorized to be appropriated to the Department of Energy for the fiscal year ending September 30, 1979, not to exceed $1.2 billion. Subject to the requirements of this section, such funds shall be available for the residential energy grant program described in subsection (b). Functions of the Secretary under this section (other than prescribing rules) shall be carried out by the Assistant Secretary for Conservation and Solar Applications.

(b) The residential energy grant program referred to in subsection (a) is a grant program, which the Secretary of Energy shall establish by rule, under which any person shall be entitled, upon proper application, to receive a grant in an amount, for any calendar year, equal to the sum of—

(1) the qualified energy conservation expenditures, plus

(2) the qualified renewable energy source expenditures, plus

(3) the qualified hydrogen expenditures.

(c) Applications for grants under this section shall be in such form and made at such time and in such manner as the Secretary of Energy shall, by rule, prescribe, and shall provide proof of purchase or such other verification as the Secretary considers appropriate.

(d)(1) For purposes of this section, in the case of any dwelling unit, the qualified energy conservation expenditures are 20 percent of so much of the energy conservation expenditures made by the person during the calendar year with respect to such unit as does not exceed $2,000.

(2) For purposes of this section, in the case of any dwelling unit, the qualified renewable energy source expenditures are the following percentages of the renewable energy source expenditures made by the person during the calendar year with respect to such unit:

(A) 30 percent of so much of such expenditures as does not exceed $2,000, plus

(B) 20 percent of so much of such expenditures as exceeds $2,000 but does not exceed $10,000.

(3) For purposes of this section, in the case of any dwelling unit, the qualified hydrogen energy expenditures are 20 percent of so much of the hydrogen energy expenditures made by the person during the calendar year with respect to such unit as does not exceed $2,000.

(4) If for any prior calendar year a grant was made to the person under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1), (2), or (3) (whichever is appropriate) shall be applied for the calendar year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

(5) No grant shall be available under this section with respect to any calendar year if the amount which would (but for this paragraph) be allowable with respect to any application is less than $10.

(e) For purposes of this section—

(1) The term "energy conservation expenditure" means an expenditure made on or after April 20, 1977, by the person for insulation or any other energy-conserving component (or for the original installation of such insulation or other component) installed in or on a dwelling unit—

(A) which is located in the United States, the Virgin Islands, or Guam,

(B) which is used by the person as his principal residence, and

(C) the construction of which was substantially completed before April 20, 1977.

(2)(A) The term "renewable energy source expenditure" means as expenditure made on or after April 20, 1977, by the person for renewable energy source property installed in connection with a dwelling unit—

(i) which is located in the United States, the Virgin Islands, or Guam, and

(ii) which is used by the person as his principal residence.

(B) The term "renewable energy source expenditure" includes only expenditures for—

(i) renewable energy source property,

(ii) labor costs properly allocable to the site preparation, assembly, or installation of renewable energy source property, or

(C) The term "renewable energy source expenditure" does not include any expenditure properly allocable to a swimming pool used as an energy storage medium or to any other energy storage medium which has a function other than the function of such storage.

(3)(A) The term "hydrogen energy expenditures" means an expenditure made on or after April 20, 1977, by the person for hydrogen energy property and installation installed in connection with a dwelling unit—

(i) which is located in the United States, the Virgin Islands, or Guam, and

(ii) which is used by the person as his principal residence.

(B) The term "hydrogen energy expenditures" includes only expenditures for—

(i) hydrogen energy property, and

(ii) labor costs property allocable to the onsite preparation, assembly, or installation of hydrogen energy property, or to the modification of conventional property for the use of hydrogen as a fuel.

(4) The term "insulation" means any item—

(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

(B) the original use of which begins with the person,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards, if any, which—

(i) have been prescribed by the Secretary of Energy, by rule, and

(ii) are in effect at the time of the acquisition of the item.

(5) The term "other energy-conserving component" means any item (other than insulation)—

(A) which is—

(i) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(ii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

(iii) an electrical or mechanical furnace ignition system which replaces a gas pilot light,

(iv) a storm or thermal window or door for the exterior of the dwelling,

(v) an automatic energy-saving setback thermostat,

(vi) caulking or weather stripping of an exterior door or window,

(vii) a heat pump which replaces an electric resistance heating system,

(viii) meters which display the cost of energy usage,

(ix) a replacement fluorescent lighting system,

(x) an evaporative cooling device,

(xi) is an item (other than a fireplace) which is designed to use wood and peat as a fuel for space heating, the heating of water or cooking of food, or any combination thereof, including any controls, ducts, stovepipes, footing or other item (other than a chimney) necessary for the safe and efficient operation of any such item, or

(xii) an item of the kind which the Secretary of Energy, by rule, as increasing (by conversion or otherwise) the energy efficiency of the dwelling,

(B) the original use of which begins with the person,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards, if any which—

(i) have been prescribed by the Secretary of Energy, by rule, and

(ii) are in effect at the time of the acquisition of the item.

In establishing rules under this paragraph, the Secretary of Energy shall prescribe (i) guidelines setting forth the criteria which are used in the determination of whether an item is an energy-conserving component, and (ii) a procedure under which a manufacturer of an item may request the Secretary of Energy to specify or certify that item as an energy-conserving component.

(6) The term "renewable energy source property" means property—

(A) which, when installed in connection with a dwelling—

(i) uses solar energy in either an active or passive method the primary purpose of which is heating or cooling such dwelling or providing hot water for use within such dwelling, or in the production of electricity,

(ii) uses wind energy for nonbusiness residential purposes,

(iii) is necessary to distribute or use geothermal deposits which provide geothermal energy to heat or cool such building or provide hot water for use within such building, or

(iv) uses any other form of renewable energy which the Secretary of Energy specifies by rule,

(B) the original use of which begins with the person,

(C) which can reasonably be expected to remain in operation for at least 5 years, and

(D) which meets the performance and quality standards, if any, which—

(i) have been prescribed by the Secretary of Energy, by rule, and

(ii) are in effect at the time of the acquisition of the property.

(7) The term "hydrogen energy property" means property—

(A) which, when installed in connection with a dwelling—

(i) uses hydrogen as a fuel for the purpose of heating or cooling such dwelling or providing hot water for use within such dwelling, or

(ii) is used in the electrolysis of water for the production of hydrogen,

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 5 years, and

(D) which meets the performance and quality standards, if any, which—

(i) have been prescribed by the Secretary of Energy, by rule, and

(ii) are in effect at the time of the acquisition of the property.

(8) Performance and quality standards shall be prescribed by the Secretary of Energy under paragraphs (4), (5), (6), and (7) only after consultation with the Secretary of Housing and Urban Development, and other appropriate Federal agencies.

(9)(A) Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when original installation of the item is completed.

(B) In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the person begins.

(C) The amount of any expenditure shall be the cost thereof.

(D) If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of the preceding sentence, use for a swimming pool shall be treated as use which is not for residential purposes.

(10) The determination of whether or not a dwelling unit is a person's principal residence shall be made under principles similar to those applicable to section 1034 of the Internal Revenue Code of 1954, except that—

(A) no ownership requirement shall be imposed, and

(B) the period for which a dwelling is treated as the principal residence of the person shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his principal residence.

(11) No grant shall be available under this section for expenditures with respect to any item described in paragraph (5)(A)(xii) which are to be installed in any metropolitan or other area after the date on which—

(A) the Administrator of the Environmental Protection Agency certifies to the Secretary of Energy that the emissions from such items would cause air quality in such area to be in violation of any Federal law, or

(B) the Secretary of Agriculture certifies to the Secretary that additional consumption of wood in connection with such items would endanger forests in that area.

(f)(1) In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residence by 2 or more individuals—

(A) the amount of the grant shall be available under this section by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one person; and

(B) each of such individuals shall be entitled to receive a grant under this section for the calendar year (subject to the limitation of paragraph (5) of subsection (d)) in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

(2) In the case of an individual who holds stock as a tenant-stockholder (as defined in section 216 of the Internal Revenue Code of 1954) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3) of the Internal Revenue Code of 1954) of any expenditures of such corporation.

(3)(A) In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

(B) For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) of the Internal Revenue Code of 1954 (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(g) This section shall not apply to expenditures made after October 1, 1979.

(h) To the extent not presently authorized and utilized by any agency of the United States in the assessment and collection of income taxes, no procedure or practice which utilizes onsite inspection of the residence of an individual shall be employed to determine if that individual is entitled to a grant, unless such procedure or practice provides that such inspection shall take place only with the written consent of such individual.

(i) Each Federal agency and instrumentality shall, to the maximum extent practicable, cooperate with the Secretary of Energy in carrying out the grant program under this section.

H.R. 11733

By Mr. GOLDWATER:

—Page 166, line 5, insert the following new subsection:

"(c) Any report submitted to the Secretary shall be updated at least once each year by the chief motor vehicle official of the State involved, except in instances where no further official action by such State official regarding the status of the individual's operator's license or driving history remains to be taken."

Page 167, line 24, after "SEC. 225." and before the word "effective" insert "(a)"

And, on page 168, after line 16, insert the following new subsection:

"(b) Any individual who knowingly transmits or causes to be transmitted to the Secretary for inclusion in the files, records, or reports of the National Driver Registry any information regarding the operator's license status or driving history of any individual which is inaccurate or false shall be liable for criminal prosecution for such act, and, upon conviction, shall be fined in an amount not to exceed $10,000, or sentenced to a prison term not to exceed five years, or both."

—Page 168, line 21, after the word "title" strike out the period and insert the following new proviso: "; *Provided*, That no funds authorized for the procurement of automatic data processing equipment and electronic communication equipment under this section shall be expended until the Secretary has reported to the Public Works and Transportation Committee of the House of Representatives, and the Commerce, Science and Transportation Committee of the Senate the total procurement and installation costs of such equipment, and the anticipated costs to be or already incurred by the States in meeting the requirements of sections 221, 222, 223 and 227 of this title;

"*And, Provided Further*, That such report shall have been before such committees for 30 legislative days prior to procurement."

H.R. 11733

By Mr. MITCHELL of Maryland:

—Page 103, immediately before line 8, insert the following:

ADVANCES TO STATES

SEC. 114. Section 124 of title 23, United States Code, is amended by inserting immediately before the first sentence thereof the following: "(a)". Such section 124 is further amended by adding at the end thereof the following new subsection:

"(b) Notwithstanding subsection (a) of this section, if the Secretary of Transportation determines that any toll bridge, toll tunnel, or approach thereto, which meets the requirements of section 129 of this title is necessary to complete an essential gap in the Interstate System then, upon request of the State highway department, the Secretary shall, at any time during construction of such bridge, tunnel, or approach and for one year after it is opened to traffic, and subject to the conditions and limitations of such section 129, advance to such State 100 per centum of the cost of construction of such bridge, tunnel, or approach. So much of the amount so advanced that exceeds the Federal share of such construction cost shall be repaid to the United States as follows:

"(1) 50 per centum within one year of the date such bridge, tunnel, or approach is opened to traffic,

"(2) 25 per centum within two years of such date of opening, and

"(3) 25 per centum within three years of such date of opening.

Any advance made to a State under this subsection shall be from the funds apportioned to said State for the interstate system.".

Renumber succeeding sections and references thereto accordingly.

H.R. 12452

By Mr. DUNCAN of Oregon:

—Page 213, line 18, insert close quotation marks and a period at the end of such line and strike out line 19 and all that follows through line 2 on page 225 and insert in lieu thereof the following:

TRANSFER OF YOUNG ADULT CONSERVATION CORPS

SEC. 3. The Act of August 13, 1970 (16 U.S.C. 1701), is amended—

(1) by inserting immediately after the enacting clause the following:

"TITLE I—YOUTH CONSERVATION CORPS";

(2) by redesignations sections 1 through 6 as sections 101 through 106, respectively;

(3) by striking out "section 6" in section 104(d) (as redesignated by paragraph (2) of this section) and inserting in lieu thereof "section 106";

(4) by striking out "Act" each place it appears in sections 101 through 106 (as redesignated by paragraph (2) of this section) and inserting in lieu thereof "title"; and

(5) by adding at the end thereof the following new title:

"TITLE II—YOUNG ADULT CONSERVATION CORPS

"STATEMENT OF PURPOSE

"SEC. 201. It is the purpose of this title to establish a Young Adult Conservation Corps to provide employment and other benefits to youths who would not otherwise be currently productively employed, through a period of service during which they engage in useful conservation work and assist in completing other projects of a public nature on Federal and non-Federal public lands and waters.

"ESTABLISHMENT OF YOUNG ADULT CONSERVATION CORPS

"SEC. 202. To carry out the purposes of this title, there is hereby established a Young Adult Conservation Corps to carry out projects on Federal or non-Federal public lands or waters. The Secretaries of the Interior and Agriculture shall administer this title through interagency agreements. Pursuant to such interagency agreements, Secretaries of the Interior and Agriculture shall have responsibility for the management of each Corps center, including determination of Corps members' work assignments, selection, training, discipline, and termination, and shall be responsible for an effective program at each center.

"SELECTION OF ENROLLEES

"SEC. 203. (a) Enrollees of the Corps shall be selected by the Secretaries of the Interior and Agricture.

"(b)(1) Membership in the Corps shall be limited to individuals who, at the time of enrollment—

"(A) are unemployed;

"(B) are between the ages 16 to 23, inclusive;

"(C) are citizens or lawfully permanent residents of the United States or lawfully admitted refugees or parolees; and

"(D) are capable, as determined by the Secretaries of the Interior and Agriculture, of carrying out the work of the Corps for the estimated duration of each such individual's enrollment.

"(2) Individuals who, at the time of enrollment, have attained age 16 but not attained age 19 and who have left school shall not be admitted to membership in the Corps unless they give adequate assurance, under criteria established by the Secretaries of the Interior and Agriculture, that they did not leave school for the purpose of enrolling in the Corps and obtaining employment under this title.

"(c) The Secretaries of the Interior and Agriculture shall make arrangements for obtaining referral of candidates for the Corps from the public employment service, prime sponsors designated under section 101 of the Comprehensive Employment and Training Act, sponsors of Native American programs designated under section 302 of such Act, sponsors of migrant and seasonable farmworker programs under section 303 of such Act, and such other agencies and organizations as the Secretaries of the Interior and Agriculture may deem appropriate. The Secretaries of the Interior and Agriculture shall undertake to assure that an equitable proportion of candidates shall be referred from each State.

"(d) In referring candidates from each State in accordance with subsection (c), preference shall be given to youths residing in rural and urban areas within each such State having substantial unemployment, including areas of substantial unemployment determined by the Secretary of Labor under section 125 of the Comprehensive Employment and Training Act to have rates of unemployment equal to or in excess of 6.5 per centum.

"(e)(1) No individual may be enrolled in the Corps for a total period of more than twelve months, with such maximum period consisting of either one continuous twelve-month period, or three or less periods which total twelve months, except that an individual who attains the maximum permissible enrollment age may continue in the Corps up to the twelve-month limit provided in this subsection only as long as the individual's enrollment is continuous after having attained the maximum age.

"(2) No individual shall be enrolled in the Corps if solely for purposes of membership for the normal period between schools terms.

"ACTIVITIES OF THE CORPS

"SEC. 204. (a) Consistent with each interagency agreement, the Secretary of the Interior or Agriculture, as appropriate, shall determine the location of each residential and nonresidential Corps center. The Corps shall perform work projects in such fields as—

"(1) tree nursery operations, planting, pruning, thinning, and other silviculture measures;

"(2) wildlife habitate improvements and preservation;

"(3) range management improvements;

"(4) recreation development, rehabilitation, and maintenance;

"(5) fish habitat and culture measures;

"(6) forest insect and disease prevention and control;

"(7) road and trail maintenance and improvements;

"(8) general sanitation, cleanup, and maintenance;

"(9) erosion control and flood damage;

"(10) drought damage measures;

"(11) other natural disaster damage measures; and

"(12) integrated pest management, including activities to provide the producers of agricultural commodities with information about the appropriate amount of chemical pesticides which, when used in conjunction with nonchemical methods of pest control (A) will provide protection against a wide variety of pests, (B) will preserve to the greatest extent possible the quality of the environment, and (C) will be cost effective.

"(b)(1) The Secretaries of the Interior and Agriculture shall undertake to assure that projects on which work is performed under this title are consistent with the Forest and Rangeland Renewal Resources Planning Act of 1974, as amended by the National Foreign Management Act of 1976, and such other standards relating to such projects as each Secretary shall prescribe consistent with other provisions of Federal law.

"(2) The Secretaries of the Interior and Agriculture shall place individuals employed as Corps members into jobs which will diminish the backlog of relatively labor intensive projects which would otherwise be carried if adequate funding were made available.

"(c) To the maximum extent practicable, projects shall—

"(1) be labor intensive;

"(2) be projects for which work plans could be readily developed;

"(3) be able to be initiated promptly;
"(4) be productive;
"(5) be likely to have a lasting impact both as to the work performed and the benefit to the youths participating;
"(6) provide work experience to participants in skill areas required for the projects;
"(7) if a residential program, be located, to the maximum extent consistent with the objectives of this title in areas where existing residential facilities for the Corps members are available; and
"(8) be similar to activities of persons employed in seasonal and part-time employment in agencies such as the National Park Service, United States Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Bureau of Outdoor Recreation, and Soil Conservation Service.

"(d)(1) The Secretaries of the Interior and Agriculture may provide for such transportation, lodging, subsistence, medical treatment, and other services, supplies, equipment, and facilities as they may deem appropriate to carry out the purposes of this title. To minimize transportation costs, Corps members shall be assigned to projects as near to their homes as practicable.

"(2) Whenever economically feasible, existing but unoccupied or underutilized Federal, State, and local government facilities and equipment of all types shall, where appropriate, be utilized for the purposes of the Corps centers with the approval of the Federal agency, State, or local government involved.

"(e) The Secretaries of the Interior and Agriculture, in carrying out the purpose of this title shall work with the Department of Health, Education, and Welfare to make suitable arrangements whereby academic credit may be awarded by educational institutions and agencies for competencies derived from work experience obtained through programs established under this title.

"CONDITIONS APPLICABLE TO CORPS ENROLLEES

"SEC. 205. (a) Except as otherwise specifically provided in this subsection, Corps members shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

"(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), Corps members shall be deemed employees of the United States and any service performed by a person as a Corps member shall be deemed to be performed in the employ of the United States.

"(2) For purposes of subchapter 1 of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and provisions of that subchapter shall apply, except that the term 'performance of duty' shall not include any act of the Corps member while absent from the member's assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction and supervision of the Secretaries.

"(3) For purposes of chapter 171 of title 18 of the United States Code, relating to tort claims procedure, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee of the Government' as defined in section 2671 of title 28, United States Code, and provisions of that chapter shall apply.

"(4) For purposes of section 5911 of title 5 of the United States Code, relating to allowances for quarters, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in that section, and provisions of that section shall apply.

"(b) The Secretaries of the Interior and Agriculture shall, in consultation with the Secretary of Labor, establish standards for—
"(1) rates of pay which shall be at least at the wage required by section 6(a)(1) of the Fair Labor Standards Act of 1938;
"(2) reasonable hours and conditions of employment; and
"(3) safe and healthful working and living conditions.

"STATE AND LOCAL PROGRAMS

"SEC. 206. (a) The Secretaries of the Interior and Agriculture may make grants or enter into other agreements—
"(1) after consultation with the Governor, with any State agency or institution;
"(2) after consultation with appropriate State and local officials, with (A) any unit of general local government, or (B)(i) any public agency or organization, specifically including the Federal Extension Service and the cooperative extension service of any State with respect to projects described in section 204(a)(12), or (ii) any private nonprofit agency or organization which has been in existence for at least two years;
for the conduct under this title of any State or local component of the Corps or of any project on non-Federal lands or waters or any project involving work on both non-Federal and Federal lands and waters.

"(b) No grant or other agreement may be entered into under this section unless an application is submitted to the Secretary of the Interior or the Secretary of Agriculture, as the case may be, at such times as each such Secretary may prescribe. Each grant application shall contain assurances that individuals employed under the project for which the application is submitted—
"(1) meet the qualifications set forth in section 203(b);
"(2) shall be employed in accordance with section 205(b); and
"(3) shall be employed in activities that—
"(A) will result in an increase in employment opportunities over those opportunities which would otherwise be available,
"(B) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employment benefits),
"(C) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed,
"(D) will not substitute jobs assisted under this title for existing federally assisted jobs, and
"(E) will not result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

"(c) Thirty percent of the sums appropriated to carry out this title for any fiscal year shall be made available for grants under this section for such fiscal year and shall be made on the basis of total youth population within each State.

"SECRETARIAL REPORTS

"SEC. 207. The Secretaries of the Interior and Agriculture shall jointly prepare and submit to the President and to the Congress a report detailing the activities carried out under this title for each fiscal year. Such report shall be submitted not later than February 1 of each year following the date of enactment of this title. The Secretaries shall include in such report such recommendations as they deem appropriate.

"ANTIDISCRIMINATION

"SEC. 208. The Corps shall be open to youth from all parts of the country of both sexes and youth of all social, economic, and racial classifications.

"TRANSFER OF FUNDS

"SEC. 209. Funds hereinafter appropriated which are necessary to carry out their responsibilities under this title shall be made available to the Secretaries of the Interior and Agriculture in accord with interagency agreements between the Secretaries of the Interior and Agriculture.".

Page 225, lines 4 and 8, redesignate sections 3 and 4 as sections 4 and 5, respectively.

H.R. 12452

By Mr. DUNCAN of Oregon:

(To the amendment in the nature of a substitute offered by Mr. JEFFORDS.)

—Insert close quotation marks and a period at the end of section 706 of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered, strike out all of title VIII of such Act as so proposed, and insert at the end of such amendment the following new section:

TRANSFER OF YOUNG ADULT CONSERVATION CORPS

SEC. 3. The Act of August 13, 1970 (16 U.S.C. 1701), is amended—

(1) by inserting immediately after the enacting clause the following:

"TITLE I—YOUTH CONSERVATION CORPS";

(2) by redesignations sections 1 through 6 as sections 101 through 106, respectively;

(3) by striking out "section 6" in section 104(d) (as redesignated by paragraph (2) of this section) and inserting in lieu thereof "section 106";

(4) by striking out "Act" each place it appears in sections 101 through 106 (as redesignated by paragraph (2) of this section) and inserting in lieu thereof "title"; and

(5) by adding at the end thereof the follow new title:

"TITLE II—YOUNG ADULT CONSERVATION CORPS

"STATEMENT OF PURPOSE

"SEC. 201. It is the purpose of this title to establish a Young Adult Conservation Corps to provide employment and other benefits to youths who would not otherwise be currently productively employed, through a period of service during which they engage in useful conservation work and assist in completing other projects of a public nature on Federal and non-Federal public lands and waters.

"ESTABLISHMENT OF YOUNG ADULT CONSERVATION CORPS

"SEC. 202. To carry out the purposes of this title, there is hereby established a Young Adult Conservation Corps to carry out projects on Federal or non-Federal public lands or waters. The Secretaries of the Interior and Agriculture shall administer this title through interagency agreements. Pursuant to such interagency agreements, the Secretaries of the Interior and Agriculture shall have responsibility for the management of each Corps center, including determination of Corps members' work assignments, selection, training, discipline, and termination, and shall be responsible for an effective program at each center.

"SELECTION OF ENROLLEES

"SEC. 203. (a) Enrollees of the Corps shall be selected by the Secretaries of the Interior and Agriculture.

"(b)(1) Membership in the Corps shall be limited to individuals who, at the time of enrollment—

"(A) are unemployed;

"(B) are between the ages 16 to 23, inclusive;

"(C) are citizens or lawfully permanent residents of the United States or lawfully admitted refugees or parolees; and

"(D) are capable, as determined by the Secretaries of the Interior and Agriculture, of carrying out the work of the Corps for the estimated duration of each such individual's enrollment.

"(2) Individuals who, at the time of enrollment, have attained age 16 but not attained age 19 and who have left school shall not be admitted to membership in the Corps unless they give adequate assurance, under criteria established by the Secretaries of the Interior and Agriculture, that they did not leave school for the purpose of enrolling in the Corps and obtaining employment under this title.

"(c) The Secretaries of the Interior and Agriculture shall make arrangements for obtaining referral of candidates for the Corps from the public employment service, prime sponsors designated under section 101 of the Comprehensive Employment and Training Act, sponsors of Native American programs designated under section 302 of such Act, sponsors of migrant and seasonable farmworker programs under section 303 of such Act, and such other agencies and organizations as the Secretaries of the Interior and Agriculture may deem appropriate. The Secretaries of the Interior and Agriculture shall undertake to assure that an equitable proportion of candidates shall be referred from each State.

"(d) In referring candidates from each State in accordance with subsection (c), preference shall be given to youths residing in rural and urban areas within each such State having substantial unemployment, including areas of substantial unemployment determined by the Secretary of Labor under section 125 of the Comprehensive Employment and Training Act to have rates of unemployment equal to or in excess of 6.5 per centum.

"(e)(1) No individual may be enrolled in the Corps for a total period of more than twelve months, with such maximum period consisting of either one continuous twelve-month period, or three or less periods which total twelve months, except that an individual who attains the maximum permissible enrollment age may continue in the Corps up to the twelve-month limit provided in this subsection only as long as the individual's enrollment is continuous after having attained the maximum age.

"(2) No individual shall be enrolled in the Corps solely for purposes of membership for the normal period between school terms.

"ACTIVITIES OF THE CORPS

"Sec. 24. (a) Consistent with each interagency agreement, the Secretary of the Interior or Agriculture, as appropriate, shall determine the location of each residential and nonresidential Corps center. The Corps shall perform work projects in such fields as—

"(1) tree nursery operations, planting, pruning, thinning, and other silviculture measures;

"(2) wildlife habitate improvements and preservation;

"(3) range management improvements;

"(4) recreation development, rehabilitation, and maintenance;

"(5) fish habitat and culture measures;

"(6) forest insect and disease prevention and control;

"(7) road and trail maintenance and improvements;

"(8) general sanitation, cleanup, and maintenance;

"(9) erosion control and flood damages;

"(10) drought damage measures;

"(11) other natural disaster damage measures; and

"(12) integrated pest management, including activities to provide the producers of agricultural commodities with information about the appropriate amount of chemical pesticides which, when used in conjunction with nonchemical methods of pest control (A) will provide protection against a wide variety of pests, (B) will preserve to the greatest extent possible the quality of the environment, and (C) will be cost effective.

"(b)(1) The Secretaries of the Interior and Agriculture shall undertake to assure that projects on which work is performed under this title are consistent with the Forest and Rangeland Renewal Resources Planning Act of 1974, as amended by the National Foreign Management Act of 1976, and such other standards relating to such projects as each Secretary shall prescribe consistent with other provisions of Federal law.

"(2) The Secretaries of the Interior and Agriculture shall place individuals employed as Corps members into jobs which will diminish the backlog of relatively labor intensive projects which would otherwise be carried out if adequate funding were made available.

"(c) To the maximum extent practicable, projects shall—

"(1) be labor intensive;

"(2) be projects for which work plans could be readily developed;

"(3) be able to be initiated promptly;

"(4) be productive;

"(5) be likely to have a lasting impact both as to the work performed and the benefit to the youths participating;

"(6) provide work experience to participants in skill areas required for the projects;

"(7) if a residential program, be located, to the maximum extent consistent with the objectives of this title in areas where existing residential facilities for the Corps members are available; and

"(8) be similar to activities of persons employed in seasonal and part-time employment in agencies such as the National Park Service, United States Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Bureau of Outdoor Recreation, and Soil Conservation Service.

"(d)(1) The Secretaries of the Interior and Agriculture may provide for such transportation, lodging, subsistence, medical treatment, and other services, supplies, equipment, and facilities as they may deem appropriate to carry out the purposes of this title. To minimize transportation costs, Corps members shall be assigned to projects as near to their homes as practicable.

"(2) Whenever economically feasible, existing but unoccupied or underutilized Federal, State, and local government facilities and equipment of all types shall, where appropriate, be utilized for the purposes of the Corps centers with the approval of the Federal agency, State, or local government involved.

"(e) The Secretaries of the Interior and Agriculture, in carrying out the purpose of this title shall work with the Department of Health, Education, and Welfare to make suitable arrangements whereby academic credit may be awarded by educational institutions and agencies for competencies derived from work experience obtained through programs established under this title.

"CONDITIONS APPLICABLE TO CORPS ENROLLEES

"Sec. 205. (a) Except as otherwise specifically provided in this subsection, Corps members shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

"(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), Corps members shall be deemed employees of the United States and any service performed by a person as a Corps member shall be deemed to be performed in the employ of the United States.

"(2) For purposes of subchapter 1 of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and provisions of that subchapter shall apply, except that the term 'performance of duty' shall not include any act of the Corps member while absent from the member's assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction and supervision of the Secretaries.

"(3) For purposes of chapter 171 of title 18 of the United States Code, relating to tort claims procedure, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee of the Government' as defined in section 2671 of title 28, United States Code, and provisions of that chapter shall apply.

"(4) For purposes of section 5911 of title 5 of the United States Code, relating to allowances for quarters, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in that section, and provisions of that section shall apply.

"(b) The Secretaries of the Interior and Agriculture shall, in consultation with the Secretary of Labor, establish standards for—

"(1) rates of pay which shall be at least at the wage required by section 6(a)(1) of the Fair Labor Standards Act of 1938;

"(2) reasonable hours and conditions of employment; and

"(3) safe and healthful working and living conditions.

"STATE AND LOCAL PROGRAMS

"Sec. 206. (a) The Secretaries of the Interior and Agriculture may make grants or enter into other agreements—

"(1) after consultation with the Governor, with any State agency or institution;

"(2) after consultation with appropriate State and local officials, with (A) any unit of general local government, or (B)(i) any public agency or organization, specifically including the Federal Extension Service and the cooperative extension service of any State with respect to projects described in section 204(a)(12), or (ii) any private nonprofit agency or organization which has been in existence for at least two years;

for the conduct under this title of any State or local component of the Corps or of any project on non-Federal lands or waters or any project involving work on both non-Federal and Federal lands and waters.

"(b) No grant or other agreement may be entered into under this section unless an application is submitted to the Secretary of the Interior or the Secretary of Agriculture, as the case may be, at such times as each such Secretary may prescribe. Each grant application shall contain assurances that individuals employed under the project for which the application is submitted—

"(1) meet the qualifications set forth in section 203(b);

"(2) shall be employed in accordance with section 205(b); and

"(3) shall be employed in activities that—

"(A) will result in an increase in employment opportunities over those opportunities which would otherwise be available.

"(B) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employment benefits),

"(C) will not impair existing contracts for services or result in the substitution of Federal or other funds in connection with work that would otherwise be performed,

"(D) will not substitute jobs assisted under this title for existing federally assisted jobs, and

"(E) will not result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

"(c) Thirty percent of the sums appropriated to carry out this title for any fiscal year shall be made available for grants under this section for such fiscal year and shall be made on the basis of total youth population within each State.

"SECRETARIAL REPORTS

"SEC. 207. The Secretaries of the Interior and Agriculture shall jointly prepare and submit to the President and to the Congress a report detailing the activities carried out under this title for each fiscal year. Such report shall be submitted not later than February 1 of each year following the date of enactment of this title. The Secretaries shall include in such report such recommendations as they deem appropriate.

"ANTIDISCRIMINATION

"SEC. 208. The Corps shall be open to youth from all parts of the country of both sexes and youth of all social, economic, and racial clasifications.

"TRANSFER OF FUNDS

"SEC. 209. Funds hereinafter appropriated which are necessary to carry out their responsibilities under this title shall be made available to the Secretaries of the Interior and Agriculture in accord with interagency agreements between the Secretaries of the Interior and Agriculture.".

H.R. 12452

By Mr. MOFFETT:

—Page 32, line 17, insert "representatives of handicapped individuals," immediatelly before "organizations of the elderly,".

—Page 34, line 18, insert "representatives of handicapped individuals," immediately after "veterans organizations,".

(Amendment to the amendment in the nature of a substitute offered by Mr. JEFFORDS.)

—In section 109(b) of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute, insert "representatives of handicapped individuals," immediately before "organizations of the elderly,".

—In section 110(a)(3)(B) of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute, insert "representatives of handicapped individuals," immediately after "veterans organizations,".

H.R. 12452

By Mr. PRESSLER:

(To the amendment in the nature of a substitute offered by Mr. JEFFORDS.)

—Insert the following at the end of section 121(c)(1)(A)(ii) of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered by the gentleman from Vermont:

"In the case of Native American entities described under section 302(c)(1), the Secretary may provide such waivers as the Secretary determines are necessary to prevent severe hardships to participants."

H.R. 12452

By Mr. RICHMOND:

—Page 104, line 15, insert immediately after the period the following new sentence: "For the purpose of carrying out this subsection, the Secretary shall reserve from funds available for this title an amount equal to not less than one percent of the amount allocated pursuant section 202(a).".

H.R. 12452

By Mr. RICHMOND:

(To the amendment in the nature of a substitute offered by Mr. Jeffords.)

—Insert at the end of section 301(c) of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute, the following new sentence: "For the purpose of carrying out this subsection, the Secretary shall reserve from funds available for this title an amount equal to not less than one percent of the amount allocated pursuant section 202(a).".

H.R. 12611

By Mr. McHUGH:

—Page 117, line 14, at the end thereof, insert the following new subsections to the proposed new section 419:

"Essential Air Transportation

"(e)(1) For the purposes of this section, 'essential air transportation' means scheduled air transportation of persons of the extent, character, and quality which the Board finds necessary to satisfy the needs of the community concerned for air transportation to one or more communities of interest and to insure the community's access to the Nation's air transportation at rates, fares, and charges which are not unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial."

"(2) In no case shall the extent of essential air transportation be determined by the Board to be less than two daily round trips, five days per week, to at least one community of interest.

"(3) In determining criteria for the character and quality of essential air transportation, the Board shall consider the community's needs for among other services, the frequency of service, the advance reservation of passenger seats, baggage handling and insurance, pressurized or other specialized equipment, timely departures and arrivals, joint fares, and the establishment of single plane or connecting plane service to points beyond the primary community or communities of interest.

"(4) As soon as practicable after enactment of this section, but not later than January 1, 1980, the Board shall, by rule, and after the consultation required by subsection (c), establish the criteria for essential air transportation for all points.

"Reduction of Air Service Below Essential Levels

"(f) No air carrier shall terminate, suspend, or reduce air transportation to any point below the standards of essential air transportation established by the Board unless such air carrier has given the Board, the appropriate State agency or agencies, and the communities affected at least 90 days notice of its intent to do so. Upon receipt of such notice, the Board may require the air carrier to postpone such termination, suspension or reduction in service for an additional 90-day period and shall assist the communities affected to secure essential air transportation from another air carrier, whether or not such alternate air transportation is to be compensated under this section.

"Continuity of Guaranteed Air Service

"(g)(1) Upon receipt of a notice required by subsection (f) for a point specified in subsection (a)(1), the Board shall require the air carrier to postpone such termination suspension, or reduction in service until another air carrier has begun to provide essential air transportation. If the Board requires an air carrier to postpone an intended service change for more than 90 days, then the Board shall, in accordance with the procedures of subsection (b), compensate such air carrier for any losses that the air carrier demonstrates that it incurred in complying with this requirement, unless such air carrier is already provided compensation under this section or section 406.

"(2) With respect to any point specified in subsection (a)(1), unless the Board has completed the consultation required by subsection (c) and determined the essential air transportation for such point, either individually or by rules adopted under subsection (e)(4), the Board shall, upon petition of any appropriate representative of such point, prohibit any termination, suspension, or reduction of air transportation which reasonably appears to deprive such point of essential air transportation, until the Board has completed such determination.

"(3) The Board's authority under this subsection shall cease to be in effect on the last day of the tenth year which begins after the date of enactment of this section."

Page 117, line 18, insert the following items at the end thereof:

"(e) Essential Air Transportation

"(f) Reduction of Air Service Below Essential Levels

"(g) Continuity of Guaranteed Air Service."

H.R. 12611

By Mr. YOUNG of Alaska:

—Page 138, after line 18, insert the following new section:

LABOR DISPUTES

SEC. 33. Within 10 days after the date of enactment of this section, the President, pursuant to section 10 of the Railway Labor Act, shall create a board to investigate and report on the dispute between Wein Air Alaska, Incorporated, and the Air Line Pilots Association. Such board shall report its findings to the President within thirty days from the date of its creation.

Renumber the succeeding sections of the bill accordingly.

H.R. 13059

By Mr. McCLORY:

—Page 77, after line 3, insert the following new section:

SEC. 170. (a) The first section of Public Law 92-367 is amended by repealing the final sentence.

(b) The second sentence of section 2 of Public Law 92-367 (86 Stat. 506) is amended by striking the "and" after "inspection" and striking the period after "property" and inserting in lieu thereof the following: "and (5) dams located within a State having an approved program under section 8 of this Act.".

(c) Public Law 92-367 (86 Stat. 506) is amended further by adding at the end thereof the following new sections:

"SEC. 7. There is authorized to be appropriated to the Secretary of the Army, acting through the Chief of Engineers (hereinafter

referred to as the 'Secretary'), $15,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981. Sums appropriated under this section shall be distributed annually among the States on the following basis: one-third equally among those States that have established dam safety programs approved under the terms of section 8 of this Act, and two-thirds in proportion to the number of dams located in each State that has an established dam safety program under the terms of section 8 of this Act to the number of dams in all States with such approved programs. In no event shall funds distributed to any State under this section exceed 50 per centum of the reasonable cost for implementing an approved dam safety program in such State.

"SEC. 8. (a) In order to encourage the establishment and maintenance of effective programs intended to assure dam safety to protect human life and property, the Secretary shall provide assistance under the terms of section 7 of this Act to any State that establishes and maintains a dam safety program which is approved under this section. In evaluating a State's dam safety program, under the terms of subsections (b) and (c) of this section, the Secretary shall assure himself that such program includes the following:

"(1) a procedure whereby, prior to any construction, the plans for any dam will be reviewed to provide reasonable assurance of the safety and integrity of such dam over its intended life;

"(2) a procedure to determine, during and following construction and prior to operation of each dam built in the State, that such dam will be operated in a safe and reasonable manner;

"(3) a procedure to inspect every dam within such State at least once every two years;

"(4) a procedure for more detailed and frequent safety inspections, if warranted;

"(5) the State has or can be expected to have authority to require those changes or modifications in a dam, or its operation, necessary to assure the dam's safety;

"(6) the State has or can be expected to develop a system of emergency procedures that would be utilized in the event a dam fails or for which failure is imminent together with an identification for those dams where failure could be reasonably expected to endanger human life, of the maximum area that could be inundated in the event of the failure of such dam, as well as identification of those necessary public facilities that would be affected by such inundation;

"(7) the State has or can be expected to have the authority to assure that any repairs or other changes needed to maintain the integrity of any dam will be undertaken by the dam's owner, or other responsible party; and

"(8) the State has or can be expected to have authority and necessary funds to make immediate repairs or other changes to, or removal of, a dam in order to protect human life and property, and if the owner does not take action, to take appropriate action as expeditiously as possible.

"(b) Any program which is submitted to the Secretary under the authority of this section shall be deemed approved one hundred and twenty days following its receipt by the Secretary unless the Secretary determines that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines such a program cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to enable such plan to be approved.

"(c) The Secretary shall review periodically the implementation and effectiveness of approved State dam safety programs. In the event the Secretary finds that a State program under this Act has proven inadequate to reasonably protect human life and property, he shall revoke approval of such State program and withhold assistance under the terms of section 7 of this Act until such State program has been reapproved.

"SEC. 9. There is authorized to be appropriated in the fiscal year ending September 30, 1979, or any fiscal year thereafter and remain available the sum of $20,000,000 to be placed in a revolving fund by the Secretary, such funds to be available for loans, on terms established by the Secretary, to any owner for any dam required to make repairs, to replace, or to make other safety improvements in such dam under any safety program approved under section 8 of this Act, if such owner can demonstrate to the Secretary that other funds are not reasonably available.

"SEC. 10. The Secretary shall be responsible for reviewing the procedures and standards utilized in the design and safety analysis of dams constructed and operated under authority of the United States, and to monitor State implementation of this Act. The Secretary shall review as expeditiously as possible the plans and specifications on all dams specifically authorized by Congress prior to initiation of construction of such dam, and file an advisory report on the safety of such dam with the appropriate agency, the appropriate State, and the Congress. The Secretary is authorized to utilize the expertise of other agencies of the United States and to enter into contracts for necessary studies to carry out the requirements for this section.

"SEC. 11. The head of any agency of the United States that owns or operates a dam, or proposes to construct a dam in any State, shall, when requested by such State, consult fully with such State on the design and safety of such dam and allow officials of such State to participate with officials of such agency in all safety inspections of such dam.

"SEC. 12. The Secretary shall, at the request of any State that has or intends to develop a dam safety program under section 8 of this Act, provide training for State dam safety inspectors. There is authorized to be appropriated to carry out this section $1,000,000 for the fiscal year ending September 30, 1979, and $500,000 during each of fiscal years ending September 30, 1980 and September 30, 1981.

"SEC. 13. The Secretary, in cooperation with the National Bureau of Standards, shall undertake a program of research in order to develop improved techniques and equipment for rapid and effective dam inspection, together with devices for the continued monitoring of dams for safety purposes. The Secretary shall provide for State participation in such research and periodically advise all States of the results of such research. There is authorized to be appropriated to carry out this section $1,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.".

Renumber succeeding sections and references thereto accordingly.

—Page 78, line 9, immediately after "SEC. 173." insert "(a)".

Page 78, after line 17, insert the following new subsection:

(b) The Secretary of the Army, acting through the Chief of Engineers, shall inspect the Lake-in-the-Hills Dam, Lake-in-the-Hills, Illinois, and perform detailed engineering studies to determine the structural integrity of the dam and spillway. A report shall be submitted to Congress, and a copy thereof furnished the Illinois Department of Transportation, Division of Water Resources, setting forth the results of such inspection and recommendations of the Secretary of the Army of the necessary measures to assure the safety of the dam, spillway, and surrounding areas.

EXTENSIONS OF REMARKS

GRACIELA OLIVAREZ: "OPENING A DOOR FOR THE POOR"

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent to insert in the RECORD an article by Jacqueline Trescott in the Washington Post of September 16, 1978, concerning Graciela Olivarez, Director of the Community Services Administration.

Graciela Olivarez is a most remarkable person, as the article to which I refer makes clear.

I first had the privilege of getting acquainted with her when some years ago she was a student at the law school of the University of Notre Dame, in the congressional district I have the honor to represent.

Graciela Olivarez is giving outstanding leadership in her position of responsibility as Director of the Community Services Administration and I am pleased to call her work to the attention of my colleagues.

I insert the article, "Opening a Door for the Poor," at this point in the RECORD:

OPENING A DOOR FOR THE POOR—GRACIELA OLIVAREZ LEADS THE ADMINISTRATION'S ANTIPOVERTY FORCES

(By Jacqueline Trescott)

When Graciela Olivarez recalls her 18 years as a secretary, heat crisps her tone. "The door to the bosses' offices closed," she begins, still exasperated though 16 years have passed.

"I envied the traveling salesmen, the guys who would come back and talk about the road. The secretaries typed their reports, never got to see the field," she continues, tapping the secretary's envy—perfect, long fingernails—on her office coffee table. "But I hated that door. It indicated that the secretary wasn't important enough or trusted enough to hear. I try not to close my door, except when I am on the phone."

The frustration of that long lesson emerged

a a determination to push her way out of the minority backseat and the typing pool. She has scored: As director of the Community Services Administration, she is the highest-ranking Hispano-American and the third highest-ranking woman in the Carter administration. This week she has been leading the administration's observation of National Hispanic Heritage Week with a series of town meetings across the country.

What she needs above all are double doses of that fiery determination at CSA, the national anti-poverty agency that succeeded the Office of Economic Opportunity. The old OEO, born with the loud cry for social healing in the 1960s, was beleaguered in its infancy and quickly pulled apart by its own internal bumbling, the weariness of confrontation tactics and conservative reluctance at subsidizing the poor. The job was tough and directors from Sargent Shriver to Howard Phillips, the architect of the dismantlement, were maligned by various factions.

Olivarez, the ninth director in 10 years, has inherited a fractured agency that may be phased into oblivion by the administration's federal reorganization plan. She was challenged, she says, by the uphill struggle and intrigued by President Carter's tactic of interviewing her in Spanish.

"I had lost track of OEO/CSA. I knew it had been through battles, a lot of gutting," says Alivarez, her brown wide-set eyes staring intently, "but what I saw was the chance to get a nation to understand that the poor are not lazy, shiftless, living on someone's tax dollar. I understand the frustration of the taxpayer, as well as the person on the bottom."

In the early days of OEO, Oliveraz was working for a private foundation in Phoenix, earning $5,000 a year, and supporting her mother, a sister, a brother and her son. A radio show on an all-Spanish station had earned her a reputation as a community leader and she was appointed to the first advisory committee for OEO.

In the company of Hubert Humphrey, Whitney Young and John Kenneth Galbraith, Olivarez was the only poor person. "I tried very hard to emulate them. I didn't want to stand out like a sore thumb. If you saw pictures of me from that time, I looked like a 'cat-eyes'—all made up. I would always have my hair done in the latest bouffant style," says Olivarez, moving her arms above her currently curly hair.

Not only was she trying to belong but she was compensating for what she considered "inferior looks. For a long time, I was tall, skinny with buck teeth and acne."

"Eventually I changed, I wasn't afraid to speak my mind, in my language. And Shriver once said I was the 'pepper' of the commission. And I said he better hope that I never became the chill."

It took some years for Olivarez, now 50, to develop that peppery feistiness.

She grew up in the segregated mining town of Sonora, Ariz., during the Depression and was forced to leave high school to support her family.

Her father, a machinist in the copper mines for 35 years, had emigrated from Spain. Her mother, a Mexican American, gave piano lessons to stretch the family budget for five children. "We had role models, and I grew up feeling anyone who discriminated against me was losing out."

When her parents split up, she moved to Phoenix, where certain forms of discrimination were legal. "There the public pools were closed to blacks and Mexicans and both groups had to sit in the movie theater balconies. It was a gradual erosion of my confidence in the system."

At age 20, after spells of unemployment and odd jobs, Olivarez ended up at a radio station, where she worked as a secretary, engineer, announcer and talk show host. The mail she received from the show opened her eyes, she says, to the complexities of discrimination. Defying moderate Mexican-American strategy, she joined the black civil rights leaders who were picketing a Mexican restaurant that didn't serve blacks. In 1962 activist Robert Choate, who was starting a children's concerns foundation, asked Olivarez to be his liaison with the Hispanic community and she left radio.

Despite the progress her annual salary remained in the four-figure range.

When she met Rev. Theodore Hesburgh, the president of Notre Dame University in 1966, he told her, "I wouldn't make it in a union card society without the card. He promised to waive the entrance requirements if I wanted to go to law school," says Olivarez. "I hadn't thought about any other schooling. I was bitter, frustrated and I felt: Why should I give up three years of my life?"

But in 1967, with her son from a brief marriage and a nephew, she registered. She was one of few brown, female, divorced and older students. "I went through a lot of self-analysis. It was the first time I was alone. And this will fly in the face of the feminists but I loved being domestic," says Olivarez. "The most important thing was I discovered the library, a whole new world of reading. I almost ruined my eyes." Her activism continued as she forced the university to open the sports facilities and the infirmary to women.

In 1970 Olivarez became the first woman graduate of the Notre Dame Law School and, as predicted, the doors opened.

She returned to Phoenix to direct an OEO-funded program and part of her $22,000-a-year salary went to buy her dream machine, a ¾-ton Ford pickup truck.

Before her appointment to CSA in 1977, she worked in New Mexico for five years, teaching at the state university and working for Gov. Jerry Apodaca.

"Everytime we would send Grace out, the press secretary would say, 'Don't forget to mention the governor.' When President Carter told me he was taking Grace away from a couple of years, I said 'you can have her," recounts a chuckling Apodaca, who retains considerable fondness for Olivarez, despite her frequent inability to follow the press secretary's orders.

Some might call the assembly window-dressing but the Equal Employment Opportunity Commission would surely smile on the motley battalion in Olivarez's office.

Three black males, two white males, one white female, one Indian female, one Spanish-American male, one Cuban female, one Japanese-American male. And, she says, as she rattles off this list, "A Buddhist, two Jews, one Bahai. Also a man who is having a sex-change operation."

Internally, there are some grumblings that the make-up of her staff isn't proof that Olivarez has mastered the art of impartiality. Charges of a "Mexican Mafia" has floated in recent months and some black employes fear that they will lose their ranks to Hispanics in an internal realignment. Yet she is regarded by some civil rights activists as important to any alliance between blacks and Hispanics, who expect to be the nation's largest minority by the late 1980s.

In her first 18 months at CSA, Olivarez has concentrated on boosting morale, sprucing up the agency's reputation, trying to make peace with her congressional critics and eliminating any overlap in the work of CSA and ACTION. Both Olivarez and Sam Brown, the director of ACTION, the combined volunteer programs agency, deny the rumors of a rivalry.

Once again Olivarez finds herself involved in the world of the poor—but this time as a viceroy of the government antipoverty forces.

"I am very apprehensive about being the problem solver. I am acutely aware of the fickleness of upward mobility. I can be poor again, anytime." says Olivarez, quietly. "In this job I see the fine line more clearly. I know I can walk out my apartment, get hit, be handicapped, and not have services."

Her concern and her insistence on procedure fused interestingly last May.

For five days a half-dozen Mexican-American farmers were camped outside CSA's office on 19th Street, their families and babies in tow. They wanted to see Olivarez. She refused, insisting they go through channels, meeting her general counsel first. But she made sure the children had orange juice and food. When the farmers finally agreed to see the counsel, she agreed to join the meeting.

In her apartment on upper Connecticut Avenue, Olivarez has a growing collection of Afro-Cuban jazz albums, nearly 150 now, and a jungle of plants—pineapples, sweet potatoes and avocadoes.

Books abound: Plenty of pop psychology. "Your Erogenous Zones," "Love and Addiction," a bevy of running books. "I like to help the staff identify their problems and then direct them to the professional help," says Olivarez who carried "Aristole For Everyone" in her tote bag last week.

One of her constant worries is her son, Victor, 19, now a college student in the Southwest. "This is the first time we have been apart," she says quietly. And she prays. "I still light my candles at home," she says. "But as I become older the less I want to practice my religion in public. Occasionally I stop off at St. Matthews." (Her Catholic upbringing partly shaped her staunch anti-abortion stance, which in 1975 caused the National Women's Political Caucus to rescind a speaking invitation to her.)

In other areas related to her background Olivarez hasn't been quite as self-confident.

Once she considered Mexican food "poverty food" but now serves her dinner guests tacos and enchiladas. "Eventually I became more secure about who I was," says Olivarez. Now, for instance she laughs, "I don't care anymore about beauty. I have found that the minute you accept yourself, you find people have been accepting you all along."

What she enjoys are long walks, a habit helped along right now by her carless state. "Washington is the prettiest city in the U.S., no other city is a garden," and she looks out the window at a wall of concrete but insists on finding some poetry nonetheless: "Coming from a desert, any blade of grass and patch of water is a miracle."●

INDUSTRY'S ASSAULT ON WORK-PLACE SAFETY

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. VENTO. Mr. Speaker, in the short time that I have served in Congress there has been a thundering chorus of voices critical of Government regulation.

Regulatory reform is certainly one of the greatest challenges that we face. However, while calling attention to the stampede to implement these "reforms," Coleman McCarthy warns of industry's drive to destroy the effectiveness of Occupational Safety and Health Administration standards.

The text of McCarthy's article in today's Washington Post follows:

[From the Washington Post, Sept. 19, 1978]

INDUSTRY'S ASSAULT ON WORKPLACE SAFETY

(By Colman McCarthy)

Two voices are talking to America's 80 million workers about health and safety. One is

the government's, backed by a growing coalition of labor unions intent on securing the most crucial fringe benefit of all: a safe workplace.

The other belongs to those employers who have persuaded a few of their conservative friends in Congress that both small and big business are being unjustly pestered by regulation-happy bureaucrats snooping into the shops and factories. Weaken the Occupational Safety and Health Act, they demand. Get the feds off our back.

If a third voice is heard, it is the muffled cry of the worker himself, who knows bitterly that the violence of occupational death, disease and injury is staggering. Federal officials estimate an annual 390,000 cases of occupational disease, 2.2 million disabling injuries and as many as 100,000 deaths.

Last week, the government was heard from again when Joseph Califano, secretary of health, education and welfare, reported findings that at least 20 percent of future cancer cases will be work related. The study confirmed what public-interest organizations like the Health Research Group have been warning for years, and what even the Department of Labor has recognized for some time.

Instead of being able to deal with the urgency of warding off workplace death and disease, federal officials have been forced to ward off industry assault on the law and the Occupational Safety and Health Administration. Earlier this year, when the agency issued a few mild proposals to limit the exposure of workers to cancer-causing chemicals, it was pounced upon by an industtry group.

"There is no cancer epidemic as implied by OSHA," said the American Industrial Health Council. After pressing the shopworn line that uncounted billions will be needed for compliance, the council argued that "socially acceptable risk is the only practical answer to dealing with this problem."

If argued that way—as a matter of profits and freedom from regulatory hassle—then it is easy enough to ignore the findings that 67,000 workers will die annually from exposure to asbestos. But if seen as the sweatshops of the 19th century becoming the cancer shops of the 20th, then talk of "socially acceptable risk" becomes the crudest mask for institutional violence.

The urgency now is to shift the discussion back to where it belongs—a question of the legal and moral rights of workers. Disasters in such high-risk industries as construction, petrochemicals, transportation and manufacturing regularly produce day-after headlines. But months or years after, when dry-prose Federal reports are issued on the safety violations that caused the tragedies, little notice is taken. We have a high consciousness of the problem as the bodies are removed from the exploded grain elevator or collapsed scaffolding but low consciousness about preventing deaths the next time somewhere else.

Shifting the discussion back to the essentials that led to the 1970 safety law will be arduous work. Efforts to weaken OSHA and its enforcement methods—such as they are—are constant. This past year, Congress has stagnated in a debate about legislation to exempt from OSHA's power most employers with 10 or fewer workers, as well as other businesses. That would mean an exemption of nearly 3 million workplaces, or almost 70 percent of the sites now covered by the law.

The bother of this debate has meant that more crucial questions of ethics have been necessarily put aside. What is the moral obligation of an employer whose worker comes down with a work-related cancer? What is socially acceptable risk when what is gambled is the health of the worker next to the coke oven and not of the owner in the boardroom? What is owed a family left fatherless because of a preventable factory accident? How long can a firm be allowed to do business if its safety record is poor? How much profit should be devoted to industrial hygiene?

Here and there, a few companies are voluntarily performing death-defying acts of courage by investing extra sums in health and safety. But not enough have come forward. As a result, instead of a philosophy of prevention of accidents and disease we have a tactic of prevention of safety: block OSHA, demoralize the worker, weaken the law.●

ILLEGAL ALIENS

HON. CLAIR W. BURGENER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. BURGENER. Mr. Speaker, regardless of one's feelings on the subject, there is an invasion in daily progress from the Republic of Mexico into the United States of America. Although the invasion is peaceful, it is nonetheless illegal, and this Congress and this administration has so far chosen to do nothing but wring its hands and make feeble pronouncements about the problem.

We ought to start, perhaps, with at least as scientific an inventory as we can muster about the number of illegal aliens now living in our own country. At least it would give us valuable information from which we might begin to formulate a national approach. There are grave economic, cultural, social, and ethical problems created by this phenomenon which is virtually out of control. There are serious and unresolved questions about how and if we can assimilate another culture and another language.

In view of all this, it was most alarming for the Immigration and Naturalization Service to recently cancel a study, most of which had been paid for by the taxpayers, just before it reached a conclusion and perhaps the first realistic estimate of the number of illegal aliens in our country. For this reason I am inserting in the CONGRESSIONAL RECORD, the excellent editorial on the subject from the Los Angeles Times edition of Sunday, September 17, 1978. The editorial follows:

IT'S TOO IMPORTANT TO GUESS

An economist, forecasting the behavior of the California economy, includes no figures for illegal immigrants in his statistical model. He knows they exist. He knows that without their numbers in his model, his forecast will not reflect the real world. Since nobody has made a reliable estimate of the size of the illegal immigrant community, his alternative is to guess. If he guesses, he must choose a number between 2 million, the low estimate of the national population of illegal immigrants, and 12 million, the high number. He declines to trade one distortion for another, but he wonders why there is a mystery in the first place and why nobody tries to make a reliable count.

Planning for any activity that requires fairly firm population estimates—education, transportation, energy production, housing—also is off the mark to the degree that population figures do not include illegal immigrants. Without statistics, public discussion of the policies the United States should adopt on the question of illegal immigrants is left completely to emotion. Is the so-called "silent invasion" on a scale that threatens the jobs of citizens? Or can the United States accommodate illegal immigrants with relative ease?

Until recently, it appeared that a study for which Congress appropriated $1 million in 1976 might put an end to the guesswork.

Under contract to the Immigration and Naturalization Service, a Washington contractor, specializing in research and surveys among minority groups, undertook about 10,000 interviews in homes in neighborhoods where illegal immigrants have settled. The survey covered 12 states, including California, where most illegal immigrants come from Mexico, and Florida, where large numbers come from the Caribbean and Central America.

Using sampling techniques similar to those used to estimate unemployment in the United States, the contractor expected to translate the interviews into a firm estimate of illegal immigrants by December. The result would have been only a well-educated guess, to be sure, but it would have been done with accepted sampling techniques, and, even allowing for statistical error, the number would have been closer to the fact than any that now exists.

Then, last week, the agency canceled the contract, with no more explanation than a standard terminating letter saying the action was taken "for the convenience of the government." In an interview, the contracting officer said the contractor had already spent $750,000 and would need more money to finish, but in view of the fact that the original appropriation was for $1 million, money did not seem, on the face of it, to be a serious problem. There was no indication that the federal government over the past 15 years, had fallen down on the job.

The immigration service has said it will take over the raw data and finish the project itself. That may not be possible, regardless of whether it would be desirable. The contractor says he has an agreement in writing that he is not obliged to turn over raw data because it contains home addresses for illegal immigrants who were interviewed during the study. Surrendering the information, he says, would make him an informer.

As things now stand, not only is there no estimate of the number of illegal immigrants in the United States, there is no full explanation for not having one. Given the serious and long-term policy implications involved in this case, Congress should move quickly to find out precisely why the contract was canceled and why it has nothing to show for its money.●

WLAD RADIO WINS AWARDS

HON. ANTHONY TOBY MOFFETT

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. MOFFETT. Mr. Speaker, it is with great pride that I cite radio station WLAD in Danbury, Conn., for its remarkable news-gathering operations.

WLAD has received well-deserved recognition for its outstanding coverage of local events. Under the guidance of its able general manager, Patrick Crafton, and its very capable news director, Judd Everhart, WLAD has set the pace for news broadcasting in western Connecticut. It has done so without benefit of a network affiliation, preferring instead to utilize its own reporters for onsite coverage, with continuing emphasis on local affairs.

Mr. Everhart's efforts, however, have earned him accolades that extend well beyond his own listenership. Most recently, the Connecticut Associated Press Broadcasters Association honored him for his coverage of a number of major stories; the WLAD news staff won 16 first place and 32 honorable mentions in the AP's weekly news contests during the year; that translates into 48 weeks out of 52, in which Judd Everhart was in contention for top honors on a statewide basis.

WLAD contributed a total of 163 news stories to the State AP wire in 1977, ranking second in our entire State. It is, however, the quality rather than the quantity of its news stories that marks WLAD's performance.

My congratulations to the news department and the entire staff at WLAD.●

RESULTS OF 1978 SURVEY

HON. RALPH S. REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. REGULA. Mr. Speaker, from time to time I assess the opinions of my constituents in the 16th District of Ohio via a questionnaire I mail districtwide.

I find the information provided by these questionnaires helpful as I evaluate my position on current issues.

I have just completed tabulation of the questionnaire mailed last month and would like to have the following results printed in the RECORD so my colleagues also may be aware of the views of a representative section of Americans:

[In percent]

	Favor	*Oppose*
Do you favor a strong NATO alliance as part of the U.S. defense effort	88	12
Should regulations to protect the environment be moderated?	73	27
Do you support further research-development of nuclear power plants?	82	18
Do you favor using general revenue funds to pay for Social Security?	38	62
Would you support increased tariffs on imports, such as steel, which threaten domestic jobs even though prices would be increased for those products?	64	36
Do you support government efforts to register firearms?	35	65
Do you favor tax deductions for home insulation improvements?	59	41
Would you support a constitutional amendment requiring an annual balanced federal budget unless a emergency were declared by the President and Congress?	91	9
Do you favor legislation which prohibits federal funds being used to pay for abortions for individuals eligible for Medicare?	66	34
Do you believe a higher gasoline tax would effectively discourage consumption?	10	90
Do you favor tuition tax credits for those:		
Who attend elementary and secondary schools?	31	69
Who attend colleges?	57	43
Should the U.S. be militarily stronger than the Soviet Union?	79	21
Or be roughly equal in power?	72	28
Or be content with a deterrent threat?	19	81

●

CLINICAL LABORATORY IMPROVEMENT ACT

HON. PAUL G. ROGERS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. ROGERS. Mr. Speaker, H.R. 10909, the Clinical Laboratory Improvement Act, has been granted a rule by the Rules Committee, and I expect the House will have the opportunity to consider the legislation shortly.

This legislation was considered and reported by two committees, the Committee on Interstate and Foreign Commerce, which initiated the legislation, and the Committee on Ways and Means. Because of the involvement of the two committees, and the desirability of coordinating the positions of the committees on any amendments which may be offered to the bill during its consideration on the floor, the rule for H.R. 10909 limits amendments only to committee amendments and those amendments which are printed in the RECORD available to the Members 48 hours in advance of floor action.

I want to alert the Members to the provisions of the rule, so that if amendments are intended, they can take steps to meet the requirements for prior notice.

In accordance with the rule, I wish to notify my colleagues of my intention to offer an amendment. The amendment does the following:

First, increases the factors on which variation in licensure fees can be based, by allowing variations relating to complexity of tests performed and to participation in accreditation programs;

Second, eliminates requirements for providing certain information on contractual relationships to the health systems agency since the information is not sufficiently useful for planning purposes to justify the arrangements which would be necessary for the HSA to separate it from disclosable information;

Third, tightens the conditions for revocation of a laboratory's license so that it occurs only if the person who is convicted of fraud or of engaging in prohibited acts has a direct or indirect control interest in the laboratory, or is an officer or managing employee;

Fourth, includes a technical provision, necessary to bring the legislation into conformity with the requirements of the Budget Act, which limits the authority of the Secretary to enter into contracts to the amounts provided in advance by appropriation; and

Fifth, makes minor technical and correcting amendments.

The text of the amendment follows.

AMENDMENT TO H.R. 10909, AS REPORTED OFFERED BY MR. ROGERS

Page 2, in the table of contents add after the item relating to section 104 the following new item:

Sec. 105. Study of clinical laboratory services.

Page 4, line 12, strike out "(A)" and insert in lieu thereof "(i)".

Page 4, line 20, strike out "(B)" and insert in lieu thereof "(ii)".

Page 4, line 21, strike out "purposes" and insert in lieu thereof "purpose".

Page 8, line 6, strike out "(i)" and insert in lieu thereof "(1)".

Page 8, line 8, strike out "(ii)" and insert in lieu thereof "(2)".

Page 8, line 12, strike out "(iii)" and insert in lieu thereof "(3)".

Page 14, line 4, insert "and complexity" after "volume".

Page 14, line 5, insert before the period the following: "and may prescribe variances in such fees to reflect a laboratory's participation in an accreditation program conducted by a qualified public or nonprofit private entity with an agreement with the Secretary under section 377(a)".

Page 14, line 6, strike out "(1)".

Page 14, line 9, strike out "(A)" and insert in lieu thereof "(1)".

Page 14, line 11, strike out "(B)" and insert in lieu thereof "(2)".

Page 14, line 14, strike out "(C)" and insert in lieu thereof "(3)".

Page 14, line 14, insert "(A)" after "applicant".

Page 14, line 16, strike out "(i)".

Page 14, line 20, strike out "(ii)" and insert in lieu thereof "(B) to the Secretary of".

Page 15, strike out line 1 and all that follows through page 16, line 2.

Page 18, line 14, insert "reasonable" before "differences".

Page 18, line 18, strike out "(d)" and insert in lieu thereof "(d)(1)".

Page 19, strike out lines 1 and 2 and insert in lieu thereof the following: "tion became final."

"(2) The Secretary may revoke the license of a laboratory if any person who has a direct or indirect ownership or control interest of 5 percent or more in the laboratory, or who is an officer, director, agency, or managing employee (as defined in section 1126(b) of the Social Security Act) of the laboratory, is not eligible to apply for a license for a laboratory under paragraph (1).

Page 21, line 1, strike out "(b)" and insert in lieu thereof "(b)(3)".

Page 22, line 15, insert "and complexity" after "volume".

Page 22, line 16, insert before the semicolon the following: "and may provide for variances in such fees to reflect a laboratory's participation in an accreditation program conducted by a qualified public or nonprofit private entity with an agreement with the State under section 377(a)".

Page 33, line 21, insert after the period the following sentence: "The authority of the Secretary to enter into contracts under subsections (a), (b), and (c) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

Page 34, line 6, strike out "tests and procedures" and insert in lieu thereof "clinical laboratory services" and in line 7 insert "clinical laboratory" before "services" the second time it occurs.

Page 34, line 26, strike out "section" and insert in lieu thereof "title".

Page 40, line 8, insert "of title III" after "part H" and beginning in line 17 strike out

"the Clinical Laboratory Improvement Act of 1978" and insert in lieu thereof "this Act".

Page 56, strike out lines 16 and 17 and insert in lieu thereof the following: "the applicable requirements of section 1861(e)(9), the second sentence of section 1861(s), or part H of title III of the".

Page 56, line 25, insert "reasonable" before "administrative".

Page 57, strike out lines 19 and 20 and insert in lieu thereof the following: "Laboratory Improvement Act of 1978 meets the applicable requirements of section 1861(e)(9) or the second sentence".

Page 58, line 3, insert "reasonable" before "administrative".●

THE SPREAD OF PACIFISM IN OUR GOVERNMENT—ADDRESS OF PAST NATIONAL COMMANDER, THE AMERICAN LEGION

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. TEAGUE. Mr. Speaker. I wish to call to the attention of my colleagues the address of Maj. Gen. Robert E. L. Eaton, USAF, retired, before the annual convention of the American Legion. Department of Maryland, in Ocean City, Md., on July 12, 1978. General Eaton is a past National Commander of the American Legion and I am sure that you will find his remarks to be thought provoking.

General Eaton graduated from West Point in 1931 and served with distinction in the Air Force until his retirement in 1961. While serving in the Air Force he held many posts of responsibility and received many awards. However, his most distinguished service has been service that he has devoted to his country as part of the American Legion. He was National Commander in 1973 and 1974.

In his remarks, Past National Commander Eaton points out that we are steadily becoming more pacifist in our approach to our foreign relations and defense problems. He quotes from a talk given by Congressman SAMUEL S. STRATTON of the Armed Services Committee before the American Defense Preparedness Association, and refers to a talk by the Honorable Paul Nitze, a former Deputy Secretary of Defense, in his speech before the American Legion. In both of these, our increase in weakness, both in our actions in foreign policy and in our appropriations for defense, is emphasized.

It is interesting to note in relation to this subject the comments of the distinguished chairman of our Armed Services Committee contained in his letter to the President concerning the veto of the fiscal year 1979 authorization bill:

You may recall that I wrote to you a year ago expressing my concern about the impact on national defense capability of a series of decisions which include the cancellation of the B-1, the cancellation of the short range attack missile (SRAM), the termination of the production of the Minuteman III missile, and the slowdown of the development funding for the MX missile system. At that time, I expressed the hope that the Congress could work with the administration to provide necessary defense systems. Since that time, we have had the cancellation of production of the enhanced radiation weapon, the indecision in response to the demonstrated need to protect the vulnerability of our land-based ICBMs, the proposed withdrawal of forces from Korea and now the veto of a defense authorization bill and a determined effort to stop another large aircraft carrier.

I am sure that my colleagues would like to read Past National Commander Eaton's remarks at this point:

SPEECH OF MAJ. GEN. ROBERT E. L. EATON

Mr. Commander, distinguished guests, delegates to the 60th Annual Convention of our Department, I am pleased to be here and have the opportunity to present some of my thoughts concerning the strange world in which we presently find ourselves.

There are those who speak who attempt to be clever; there are those who speak who attempt to be funny; there are those who speak who attempt to be serious—very seldom do you have a speaker who can do all three. In my case, I am not going to even attempt any of those. I am going to attempt to be short and to the point in a language which we understand.

We were just favored today by an excellent address by our National Vice Commander. He covered in detail many of the things that are concerning all of us. Without being repetitive I would like to join with him in emphasizing the seriousness of our national problem, particularly in the field of national defense and foreign policy.

I am encouraged by a speech that I heard by a Congressman from New York—The Honorable Samuel S. Stratton, a democrat and a senior member of the House of Representatives Armed Services Committee. In a talk to the American Defense Preparedness Association on the 20th of March he expressed the grave concern of the House Armed Services Committee about the present and future status of our national defense as a result of the monetary cuts in the defense budget that have already been made and continue to be made by the Executive Branch of the Government. He referred to the B-1 bomber, the nuclear carrier, the M-X missile, and the reduction of military strength in Korea. He pointed out that the annual budget for defense, which despite an increased requirement for NATO, is at the lowest level since 1950.

More important than the enumeration of budgetary cuts, he alluded graphically and with considerable emphasis to the confusing and misleading pronouncements by our Government concerning military strength. This policy, in the face of repeated monetary reductions, seems to follow a pattern of "talk loudly and carry a switch," rather than, as Theodore Roosevelt said "speak softly and carry a big stick." This echoes what Thomas Fuller, a writer many centuries ago, advised in his Introduction And Prudentiam "Let not thy will roar when thy power can but whisper."

Several of these pronouncements referred to by Congressman Stratton regarding our military capabilities are becoming increasingly frequent. There was the speech the President made at Wake Forest assuring us of the importance of adequate military strength. Then at Salt Lake City the President said, "We aren't going to let the Russians push us around." The President's address at Fort Hood, Texas and his speech at the U.S. Naval Academy gave a picture of strength and resolution which reassured everyone. But the policy of asserting a strong military posture, and at the same time failing to back it up with adequate military funding, can only result in accentuating our national weakness. This course of action is confusing to our friends and is encouraging to our enemy. Congressman Stratton quoted from the Book of Corinthians in the New Testament, Chapter 14, Paragraph 8, which says, "for if the trumpet give an uncertain sound who shall prepare himself for battle?" Well, it is hard for us to understand why we, the leaders of the free world, cannot give the necessary clear, sharp signal. We ask, "What is going on?" Our grave concern and apprehension are easy to understand, but the underlying philosophy is catastrophic in its implication.

I think the best explanation to this dilemma is the increased acceptance of pacifism in various parts of our Government. The tenets of pacifism are simple and easy to understand:

First, the pacifist has, as a primary objective, peace at any price. No freedom is worth defending—our freedom or any other freedom.

Secondly, the pacifist fosters a no win philosophy in waging war. Back in the era of Secretary of Defense Robert McNamara we first heard the no win concept of war as related to nuclear war. This thinking brought about the advancement of the concept of Mutual Assured Destruction theory in any nuclear war. Under this approach to war reasonable leaders on both sides would have to believe that neither side if using nuclear weapons could hope to overcome the other side, but rather, complete destruction of each would result—hence, Mutual Assured Destruction. The important aspect of this concept is that the Soviets have not accepted the approach, and they continue to prepare for nuclear war. This argument was advanced, also, during our commitment in Southeast Asia where it was easy for the press and others to say that the war could not be won anyway. A philosophy of no win was adopted during this war where we took military action only "to send the enemy a message in the hope that the enemy would quit."

Thirdly, the pacifist promotes a military posture deliberately weaker than possible enemies, such as the Soviets, for all types of war. Then, in case of a confrontation with them, it will be a matter of "you've got to give up or else." Followed to its logical conclusion the pacifist approach leads to the bottom line on confrontation—"better Red than dead."

Let us take a look at how this posture of pacifism translates into our action in foreign affairs and defense. A good example took place two years ago in our conflict in Angola. At that time we were engaged in encouraging one of the factions favorable to us in the internal upheaval that was going on. Actually, the faction favorable to us was within sight of the capital of Angola, but the pacifist hysteria took over. We pulled out our support, and the result was that the Marxist faction backed by Cuba and the Soviets won out. Thus, Angola has become a typical Marxist country with all the repressions that go with such a regime Our attitude was that we might become committed to intervention militarily which, of course, was not indicated at all. The guiding principle was simply the pacifist line.

Next, let us consider our action in Panama. Here, the controlling element was that if we did not give up the Canal, we would have to take on a guerrilla war in Panama. Panama's population is about 1.2 million and the fear of taking on this small country in a guerrilla exercise overwhelmed our leaders. Of course, the President of Panama helped us out in his television appearance on the day of the final vote when he pointed out to all the world that if the vote had not gone in his direction, he would have taken the Canal by force. The ashes of a once great republic did not, in this instance, give birth to a phoenix.

So it goes everywhere. Take the Middle

East as another example where there is a rushing back and forth and jawboning without anyone assuming that we have any capability or will to play a really strong hand. But the Soviets, on the other hand, twice in recent times have mobilized their divisions for the purpose of intervening in the Middle East. And, of course, in each instance we have backed down in the face of force.

Then, of course, we can turn to Rhodesia where there is a smell of defeat in the air—not just for the Rhodesians, but for our foreign policy. In Rhodesia, a country of 6 or 7 million people, we are actively encouraging the patriotic front, a Marxist combination whose stated purpose is to take over "with the gun." If this happens we will see repressions and droves of people in that country will "go to the wall." Those "going to the wall" will be predominantly Blacks who have been involved in the present government of Rhodesia.

A similar course of action is being undertaken in Southwest Africa where the new republic, Namibia, is to be established. We are again supporting the Southwest African Peoples' Organization (SWAPO) where the leader safely based in Angola has stated that he intends to take Southwest Africa "with the gun." In the instances of Rhodesia and Southwest Africa, unexplainably we find ourselves on the side of the Marxist—a side that will always be opposed to our interests.

So we come to the next application of the pacifist approach—the SALT talks have been much with us in recent months and years. We have become confused about the issues and pronouncements by the pacifists who are implementing our negotiations. At the meeting of the National Executive Committee of The American Legion last spring we were favored by a talk given by The Honorable Paul Nitze who, under a previolus Democratic Administration, was Deputy Secretary of Defense, Secretary of Navy and head of the planning activity of the State Department. He was also, at one time, a chief negotiator for SALT. The thrust of his talk established firmly the idea that the American people are prepared to support a strong foreign policy and the American people are also prepared to support an adequate military force to back up such a policy. He then went on to explain how the present negotiations do nothing but limit our strength with no corresponding reductions or even proposed reductions in armaments on the part of the Soviets at all. In fact, the Soviets have used SALT as a basis for increasing their armaments. So, when it is time for us to consider this most important matter we must consider what Paul Nitze told us: "The crucial point is that if one enjoys a clear superiority in this most terrible realm of possible violence, all manner of situations involving lower levels of violence or of pressure are opened up for possible exploitation. It will be dangerous to challenge the Soviet Union militarily in Europe, in the Middle East or Africa, in the Far East, or on the seas, under the threat of escalation to a level of violence where we cannot prudently meet the challenge."

Of course, all of the discussions about adequate military strength run counter to that element in our Government which would prefer to see less defense expenditures for armaments, no matter how substantially they are required, and direct funds instead into social programs. I am always reminded of what British Air Chief Marshall Slessor once said, "It is customary in democratic countries to deplore expenditures on armaments as conflicting with the requirements for social services. There is a tendency to forget that the most important social service that a Government can do for its people is to keep them alive and free."

I think that we in The American Legion are in step with the best thoughts on defense and foreign policy when we agree with Congressman Sam Stratton and The Honorable Paul Nitze—both of whom strongly oppose our Government's pacifistic position on defense and foreign policy.

Many centuries ago, when Rome was resisting the barbarians, the barbarians breached the barricades when it need not have happened. Rome had more forces at the wall, they were better equipped, their method of fighting was more sophisticated, and in every way the victory should have gone to the defenders—the Romans defending the wall. But the barbarians prevailed, and the reason was simple—the Romans had lost their will to fight. The sons of ancient Rome no longer led their legions throughout the world, but relied on others to take their place while they lived in idleness and dissipation in Rome. There are those who think that *we* have lost the will to fight. High levels of our Government in recent years have felt that we are in retreat world-wide and, therefore, our Department of State should negotiate and maneuver at all times, keeping in mind our basic pacifist philosophy and lack of will, the best terms possible.

Let us consider the parade of our defeats in recent decades. We begin with Korea, where we accepted less than complete victory. It went on to Southeast Asia where we were defeated ignominiously. It continued in Angola where we were at best a poor second in the contest. It continued in Panama—yes, Panama—there the barbarians are breaching the barricades, too. And now in Southern Africa the barricades are being breached and we can promise our people nothing but another defeat. Yet we propose to negotiate a SALT agreement which can contribute only to our weakness. And so it goes.

As we stand at the barricades along with Japan, Korea, Formosa, NATO, the Middle East, Pakistan, Iran, and yes, Southern Africa, we must in some way turn around the concept that we are pacifist and will not show the strength necessary for our side to win.

All of this depends basically on strength—a strength that must be preserved. I would like to leave you with two thoughts on the subject. One thought was expressed by General Nathan Twining, then the retiring Chairman of the Joint Chiefs of Staff in September 1960: "The American capability for decisive, war-winning response to any attack must be kept sure whatever the costs. It is the only reliable guarantee of peace. Forces that cannot win will not deter." Another thought was expressed by Dionysius more than 2,300 years ago: "It is a law of nature, common to all mankind, which time shall neither annul nor destroy, that those who have greater strength and power shall bear rule over those who have less."●

HEALTH PROGRAMS AMENDMENTS

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. PICKLE. Mr. Speaker, yesterday the House of Representatives passed H.R. 13817, the Health Programs Amendments Under the Social Security Act. The bill amends provisions to increase nonphysician participation in professional standards review organizations—PSRO's. I supported the bill in committee and on the floor although I raised a strong objection to the bill in committee on the ground that it did not include optometrists on the National PSRO Council nor on the advisory committee to the national council.

It seems to me to be patently unfair that optometrists are subject to review by the PSRO, but have no formal mechanism to make suggestions or have a say in what kind of guidelines might be set. Since optometrists are undoubtedly equally familiar with just what constitutes quality optometric care than are neurologists or obstetricians, dentists or laymen, I think they should be represented on State and national supervisory boards, and it ought to be made clear in this legislation.

I introduced a bill that would have required each independent health care group to evaluate its own specific practices and needs. In addition, since optometry is the third largest independent health care profession in the country, I think one optometrist should be on the national council.

Peer review was the idea behind the Professional Standards Review Organigation in the first place. Therefore I would hope that we would soon include optometrists on the council and on Statewide council advisory groups. I am confident, based on conversations with members of the committee, that this is the intent and expectation.●

HAWAII TAPS A VOLCANO FOR POWER

HON. CECIL (CEC) HEFTEL

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. HEFTEL. Mr. Speaker, as you know, the development of potential forms of energy is a wide field with even wider implications. Geothermal energy is one example of a source of dependable and unlimited power that can be exploited. Hot water from deep wells, a source of high quality steam heat, has excellent potential for use in the development of energy self-sufficiency as well as for the development of industry. I am pleased to share with you an article from the August 17, 1978, Washington Post describing the initiative developers in Hawaii are taking in the exploitation of this resource.

The article follows:

[From the Washington Post, Aug. 17, 1978]

HAWAII TAPS A VOLCANO FOR POWER

(By Lou Cannon)

KILAUEA, HAWAII.—The volcanoes that created this largest and lushest of the Hawaiian islands and occasionally endanger it now hold the promise of making this tourist-laden state energy self-sufficient and industrialized.

Design work has begun on a $6 million generating plant financed by federal, state and local governments with the assistance of the Hawaiian Electric Co. the pilot plant will be powered by steam from the world's hottest geothermal well.

At the same time, Hawaii is encouraging various consortiums pioneering in the undersea industry of manganese nodule mining to build a refining plant here that will make it economically worthwhile to develop the vast geothermal resources underlying the Kilauea volcano.

"We have a new ball game here," says Hideto Kono, state director of planning and economic development. "Petroleum is no longer a dependable source. Activities will grow in places where there are dependable alternative sources of energy."

The potential "dependable sources" of energy in Hawaii are not limited to geothermal ones alone.

The island of Hawaii already obtains more than a third of its electrical energy from the burning of bagasse, a sugar cane residue that resembles crumpled straw. On the crowded island of Oahu, where most of the state's 800,000 residents live, contracts will be awarded within the next few weeks for the collection of solid waste that will be compacted and used as fuel.

More exotic forms of energy development lie ahead, ranging from eucalyptus tree farms for firewood in the researching of ocean thermal energy to an experimental 16-day energy-generating windmill.

But it is in geothermal energy, where the expected resource is large and the technology well developed, that Hawaii's future seems brightest.

The island of Hawaii, most southern and easterly of the chain that comprises the nation's 50th state, is twice the size of Delaware, rich in volcanoes and sparse in population.

Six years ago the University of Hawaii organized the Hawaii Geothermal Project and after long study drilling commenced on a four-acre site near the town of Pahoa in the eastern rift zone of the Kilauea volcano.

Two years ago the drillers were rewarded with the discovery of an unusually hot well—676 degrees Fahrenheit—at the relatively shallow level of 6,450 feet. The well has been tested periodically since, most recently with 42 days of continuous operation, and has continued to produce high-quality steam. Now, with federal and county assistance, the state has decided to build a three-megawatt pilot generating plant on this site.

Bill H. Chen, the University of Hawaii engineering professor who directs the geothermal project, believes that the intensely hot waters tapped by the well may be part of a vast underground lake that runs from the crater of the volcano to the ocean nearly 40 miles away. The reserves are presently incalculable, but could produce thousands of megawatts of electrical energy.

Development of the geothermal steam is planned in stages. After the pilot plant has been completed and tested in 1980, plans call for construction of a 23 megawatt plant. After that, Kono envisions a 110 megawatt plant that will serve a manganese nodule refinery a decade from now. Ultimately, says Kono, the geothermal well could produce 500 megawatts of electrical energy annually, energy enough to provide power for a city of a half-million for a year.

In terms of energy availability alone this may be severely understating the resource because other volcanoes in Hawaii are thought to possess similar underground reservoirs. But the economics of development are more difficult.

While most regions in the United States are hard-pressed to meet the energy needs of their populations, the big island of Hawaii must find a use for the excess energy it is capable of generating.

Potential uses include development of an energy intensive alumina bauxite refining industry or piping the energy to the Puna Sugar Mill 15 miles away where another federally funded study is trying to determine the feasibility of using geothermal steam in sugar processing.

But the best long-term prospect appears to be the manganese nodule industry, which, because of the huge capital investment needed for deep-sea mining, is expected to locate in countries with stable governments and in states that desire industrial development. Hawaii is strategically located near the richest field of manganese nodules in the Pacific, a band stretching from about 1,000 miles south of the island toward the coast of Baja California.

But in the economic calculus for the project there are many variables, ranging from the world price of petroleum to the now-depressed world price of nickel, one of four minerals extracted from the manganese nodules.

But the biggest variable is the volcano. Because of the same intense volcanic activity that produces the steam, Kilauea holds peril as well as promise for potential developers.

Within sight of the well are two irregularly shaped mounds that were the vents—the places where lava escaped—in a 1955 eruption. From these vents a lifeless river of gray rock now extends to the sea.

The volcano erupted again last year at a site 20 miles away from the well. Because of the volcanic hazards, the Hawaiian Electric Co. is unwilling to participate in extensive commercial development until a costly backup system—which could be activated if the geothermal plant were threatened—is built.

This has led the state and county to think in terms of a government-developed system that would be devoted to industry rather than residential use.

"It's an unacceptable proposition to have your electricity interrupted for a few days at home because of a volcanic eruption," says Chen. "But a large industry could live with this risk if its potential profit is great enough."

Chen believes that a power plant can be located in a relatively safe place and the wells dispersed so that a volcanic eruption would leave most of the system intact.

There appears to be substantial public support for the geothermal plant and accompanying industrialization. Government and private employers here are deluged with job applications, many of them from island residents who have left and want to return.

"People think of Hawaii as grass shacks and hula skirts, and we're responsible for it because we promoted it," says John P. Keppeler, managing director for the county of Hawaii.

"But it isn't an accurate image. We have a skilled labor force here and one that needs work because sugar is depressed, and we have lots of resources. The story up to now has been Oahu and Maui. The story of the next 20 years is going to be development and energy on the big island of Hawaii." ●

STEPHEN PARK, SCHERERVILLE, IND.

HON. ADAM BENJAMIN, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. BENJAMIN. Mr. Speaker, on Sunday, September 17, I was privileged to participate in the dedication of Stephen Park in Schererville, Ind., at the invitation of the Town Trustee Richard Krame and the Park and Recreation Council.

Stephen Park is named after Mathilda Stephen, and her late husband, John, who donated 10 acres and made another 10 acres of land available to the town of Schererville to form a 20 acre park, its largest.

This new park is only one of several new developments on the former 180-acre family farm of the Stephen family. Grimmer and Watson Schools are located in fields the Stephens used to plant corn and beans. The now long-time farm also includes Casa Bella, Spring Hill, Sherwood Forest, and Shady Oaks subdivisions.

In a recent Post Tribune interview in her Shady Oaks home, Mrs. Stephens recalled life on the farm:

"We got up at 5 o'clock every morning, milked the cows and fed the animals. Then at 4 in the afternoon we had to do the milking and feeding all over again," she said.

During the 40 years the Stephens farmed the area, they kept 50 to 60 head of cattle. "We raised corn, oats, sovbeans, and hay," said Mrs. Stephen. "I took care of chickens and turkeys. They were my hobby and my way of raising money."

Mrs. Stephen raised some 500 chickens and 100 turkeys each year and at holiday times had to call on her sisters to help prepare the fowl for customers. (She had plentv of help with eight sisters and two brothers.)

Born a Schumacher, she grow up in her parent's home in Schererville. The late Mr. Stephen also lived in Schererville all his life.

John and Mathilda were married on October 24, 1916, in St. Michael Catholic Church where they celebrated their golden wedding anniversary in 1966.

They had four children, nine grandchildren and seven great-grandchildren. John died in 1974, shortly before their 58th anniversary. The beautiful family was introduced by Assistant Lake Schools Superintendent Fred Jones, a family member.

John was well-known in the area for his concertina playing. He was in demand for weddings and square dances, and he performed regularly at the Halfway House between Crown Point and Cedar Lake, Ind.

"Many times," his wife recalls, "we would stay out dancing so late that when we got home it was almost time to milk the cows."

Mrs. Stephen's talent is displayed in the rugs she knitted and crocheted to decorate her home and won prizes at the Lake County Fair.

She also had a way with flowers, filling her garden every year with roses, peonies, dahlias, and cannas.

"They used to call me the Flower Lady," she said. Although she no longer gardens, Mrs. Stephens still uses her knitting needles with samples of this summer's handiwork evident throughout her home.

Feeding the threshing crew was a highlight of a farm wife's year, she recalled during the interview. All the farmers in the area would work together threshing, filling silos, shredding corn, and storing fodder while their wives cooked a feast.

The big meal was served at noon with an entire table covered with food. Usually the men ate so much they had to take a nap before heading back into the fields. By suppertime the men's appetites had returned for the lighter community meal shared then.

Mr. and Mrs. Stephen retired in 1960 and their son, John, took over the farm.

raising grain for a decade after the cattle were sold. Meanwhile, his parents began selling off parcels of their land with the first 10 acres going to the developer of Sherwood Forest which has become the town's largest subdivision.

John and Mathilda Stephen contributed substantially to the development of Northwest Indiana and the expanding Schererville Community. Their work and dedication exemplify the lost American tradition—to give a perpetual and thoughtful gift to the community in which they raised their family, shared their friends and made their living.

This Sunday, September 22d, Mathilda will celebrate her 80th birthday. Because of her contribution to America, her love of mankind and her vivacious personality which brings out the best in those around her—I know that my colleagues join me in wishing Tillie a most joyous and healthy 80th birthday and many more in the years to come.●

CARTER'S HUMAN RIGHTS POLICY—A STUDY IN INCONSISTENCY

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. GOODLING. Mr. Speaker, from its very beginning the Carter administration has made human rights an integral part of its foreign policy. Seemingly rejecting the quiet diplomacy of the Kissinger years, the administration has publicly denounced foreign powers for their treatment of individuals and acted to restrict trade, loans, and financial aid and every sort of American favor to states that violate basic human rights. According to a State Department spokesman, "(the administration has) sought to move human rights concerns from the periphery to the center of diplomatic discourse."

But as many of my colleagues have pointed out in the past, the execution of this policy has been inconsistent. I rise today to join those voices that ask the administration to reexamine its foreign policy and, in particular, one of its most important components—human rights. Why have I come to this conclusion?

I should like to begin my explanation by bringing to my colleagues' attention what can only be considered a startling example of how this human rights policy has, through its cynical and inconsistent application, caused an injustice to a domestic industry, injured an ally struggling against civil disorder, and called into question our own dedication to human rights.

Some months ago, the Allis-Chalmers hydro-turbine division, which is located in my district, was informed that the Export-Import Bank had denied issuance of a letter of interest to Argentina. This financing was needed so that Argentina could buy 20 hydro-turbines from Allis-Chalmers that would be used to increase their production of electricity. The Department of State recommended to the Export-Import Bank that it not proceed with the transaction because of the human rights situation in Argentina. As a result of this recommendation the Export-Import Bank told Argentina—"Sorry, no deal." I am sure this is a familiar story to many of my colleagues, who have had constituent interests adversary affected by the application of human rights criteria in foreign trade matters decisions.

But what is so startling about this Allis-Chalmers case, and perhaps others as well, is that the decision the Export-Import Bank made in consultation with the Department of State is in direct contradiction to the letter and spirit of the law under which it was made.

The Export-Import Bank Act of 1945, as amended, stipulates that the Bank "shall also take into account, in consultation with the Secretary of State, the observance of and respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such exports may have on human rights in such country." So, the Bank must take into account not only the general atmosphere of human affairs in the country in question, but also the nature of the products to be exported and their effect on human rights. This amendment has two obvious and interrelated purposes, first, to interject into America's international financial dealings the Carter administration's concern for human rights and second, to require that the nature of the products themselves be considered so as to avoid irrational restrictions on trade. We should not, for example, fail to send baby food to a Third World nation because they do not afford due process of law to criminals.

Now this understanding of the law is reflected time and again by State Department officials. In testimony before a subcommittee of the House Banking, Finance and Urban Affairs Committee, Deputy Assistant Secretary of State, Mark L. Schneider, a key human rights watchdog, echoes the full intention of this amendment of the Export-Import Bank Act:

> When reviewing U.S. economic instruments, including bank loans, the Interagency Group examines the human rights situation in the country including trends in the situation . . . and the nature of assistance (i.e. to what extent it meets basic human needs).

Clearly then, when considering the Allis-Chalmers sale, the Export-Import Bank and Department of State are obligated to weigh the effect hydroturbines will have on human rights and to what extent they may help meet or fail to meet basic human needs.

In this context it is useful to note some of the factors the Carter administration takes into consideration when formulating its foreign policy vis-a-vis a particular country. According to spokesman Mark Schneider, human rights include, among other things, "the right to such vital needs as food, shelter, health care and education."

Leaving aside the question of the validity of this understanding of "rights," we must now ask these questions: Does not the production of electricity quite clearly impact upon the basic human rights conditions the President's foreign policy seeks to improve? Can a nation really supply the vital needs of food, shelter, health care, and education without electricity?

But if the State Department and Export-Import Bank are following the law, then they must have concluded that the Allis-Chalmers sale of hydroturbines to Argentina will have an adverse effect on human rights. The law implicity dictates that a connection be found between the products sold and the effect of those products on human rights and human needs. We have seen a linkage between hydroturbines and human needs in Argentina but can the Export-Import Bank and the State Department demonstrate that this equipment will have an adverse effect upon the human rights situation in Argentina? Of course they cannot. In State Department's explanation to me of the loan denial no connection was even hinted at. So why has the loan been denied?

Because of this irrational application of the law, 1,000 workers in the Allis-Chalmers hydroturbine division will be adversely effected, the Argentinians may turn elsewhere for their hydropower needs, perhaps even to the Soviets, and our whole policy on human rights is seen to be foolish.

If this were not enough, allow me to startle you again with yet another strange execution of foreign policy with regard to Argentina.

On August 31, the International Relations Committee received a 30-day notice of proposed issuance of an export license involving the sale of two CH47C helicopters to Argentina. According to the notice, "The helicopters are to be used for logistic support purposes by the Argentinian Army." I understand that they are to be unarmed and unarmored and I congratulate the State Department on its decision because these helicopters are to be used for air-sea rescue. But what I would like to know is: Why helicopters and not hydroturbines? It should be noted that—even though consideration of these two sales took place under differing legislative and administrative procedures—the same human rights questions had to be confronted by the same interagency group before one sale could be denied and the other approved. In fact, in its letter of transmittal to our International Relations Committee regarding these helicopters, the Department of State explicity stated that human rights had been taken into consideration in granting the license. Again I must ask: Why helicopters and not hydroturbines?

I think the Department of State must explain several things. Is there a connection between the sale of hydroturbines and President Videla's ability to deny human rights? If there is no connection, how do you square the Export-Import Bank loan denial with the legal obligations set forth in the Export-Import Bank Act of 1945? If the human rights situation in Argentina is looked upon with such favor that we can now sell them helicopters, why does the Department of State condemn the sale of hydroturbines?

Mr. Speaker, what I am bringing to your attention today only skims the surface of what has become a cynical, confused and counter-productive human rights policy—a policy that cannot even be applied consistently within a given country. One can only imagine what a nightmare we would find if we examined this policy on a global basis.

Finally, all of this suggests a broader question. Are we not doing a disservice to our true dedication to human dignity by playing fast and loose with the law, not to mention common sense? How can we defend, without a blush, our sale of sophisticated drilling equipment to the Soviets, so that they may increase their crucial oil reserves, while simultaneously denying a better electrical system to impoverished and embattled Argentinians? In effect, the administration is telling the world that they believe the Soviets, who deny liberty as a fundamental principle of their regime, have a better record on human rights than the Argentinians.

Against this backdrop, Mr. Speaker, it is imperative that the administration begin immediately to review a policy that is seriously undermining this Nation's ability to conduct an effective foreign policy. Moreover, its continuance along current lines will call into question our own dedication to human rights as it is sure to create the impression that the United States espouses a human rights policy predicated not on principle but expediency.●

WON PAT LAUDS PRESIDENT CARTER

HON. ANTONIO BORJA WON PAT

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. WON PAT. Mr. Speaker, as a member of the House Armed Services Committee I am as deeply committed to peace as I am to insuring that no nation possess the military might to subjugate this country.

In recent years our attention has been centered on the increasingly hostile mood surrounding the Middle East. There were times when we wondered if Israel would ever be at peace with its Arab neighbors.

Today, thanks to the genius and boundless energy of President Jimmy Carter, peace in the Middle East is closer to being a reality than anyone would have dared to guess only 30 days ago. Peace is at hand because of the vision of one man, President Carter, and the devotion to the cause of peace by President Sadat of Egypt and Prime Minister Begin of Israel.

I doubt that no one is more surprised at the rapid turn of events than are these two leaders of great, but warring nations. President Sadat, in particular, must be deeply pleased that the historic peace initiative which he led in January of this year has a new lease on life.

Without question, peace will not be easy. These two countries and their Arab neighbors have much to resolve. Longstanding questions of deep sensitivity must be dealt with before we can expect lasting peace.

The ultimate peace, however, can only come in the hearts and minds of the people themselves. In the short time that has passed since President Carter returned from Camp David, we have seen some criticize the agreement Mr. Carter brought about. I pray that those who see nothing but gloom seek to view the world through the eyes of President Carter who knows that nothing is impossible if we really wish it to be so.

Mr. Speaker, the people of this Nation have long waited for peace in the Middle East. The history of American efforts toward this goal is long and proud. But nothing we have ever done can match the marathon session President Carter just held with Messrs. Begin and Sadat at Camp David. It was readily apparent from the beginning almost 2 weeks ago that Mr. Carter was going to do his level best to bring these two leaders to the point of peace.

And today, he has carried out his mission to an extent none could have foreseen. All parties to the meetings deserve credit for their willingness to negotiate. But no one is more responsible for the final outcome than is Jimmy Carter. Almost alone, he has accomplished the impossible. He has brought the Middle East—and perhaps the world—from the brink of world war to the brink of peace. Nothing he will do in his Presidency may ever be so well remembered as the meetings at Camp David.

I salute President Carter for his remarkable achievements. Truly, we and all of the world are fortunate that this great man is in a position to make his vision of peace ours as well. Thank you.●

TRIBUTE TO FRANK DEXTER LANTERMAN

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. MOORHEAD of California. Mr. Speaker, I would like to take this moment to honor a man who has been one of a rare breed in American politics. I offer this commendation with a sense of honor and ease because few men deserve praise and acclaim more than Frank Dexter Lanterman.

Frank Lanterman is retiring from the California Assembly after 28 distinguished, colorful, successful and grandly entertaining years. During his career, Frank devoted himself to the public good with uncommon vigor and verve. He had a flair for enlightened banter that was unequalled. His sense of whimsey and humor made him a legend with his friends, colleagues and constituents.

I know this to be a fact because I have been an admiring acquaintance for nearly a generation and a warm friend for more than a decade. It would be impossible in a short space to describe Frank the man, or to give him the credit he so unquestionably deserves.

In the eulogies which have followed his retirement, he has been described as an "acknowledged champion of independent higher education," a "benefactor of the handicapped," and an "ever-vigilant representative of the taxpayers."

He has been fondly dubbed the "grand old man of the Assembly" and with scant exaggeration, he has been called "the last of the near-heroic figures."

The adjectives used to describe Frank have been venerable, sage, avuncular, astute, puckish and many others. But while it is easy to put an adjective on Frank, it is difficult to tag him with a political label.

In the realm of monetary affairs, he has been resolute in his fidelity to fiscal sanity. He has been indomitable in his pursuit of sound and sensible tax policies in State government.

Few men have had Frank's mastery of the arcane world of ways and means. And fewer still possess his ability for instant and accurate recall of salient and germane facts and figures.

There has been no accounting of the dollars Frank Lanterman has saved California taxpayers during his nearly three decades of stewardship and diligent overseeing of the treasury. Suffice it to say, it has been considerable.

But as noteworthy as have been Frank's efforts on behalf of fiscal responsibility, his labors for the betterment of the handicapped have been even more meritorious, even more praiseworthy.

In California, he is the man most responsible for ending the custodial warehousing of mentally ill persons in State hospitals; for reintroducing civil liberties in the involuntary commitment process; and for providing community-based, inpatient treatment for persons with mental disorders.

He is the principal architect of the Lanterman-Petris-Short Act, which establishes and governs California's community mental health programs. This act has been singled out as one of the outstanding mental health programs in the Nation and has been used as a guide in many other States.

He is also the author of the Lanterman Development Disabilities Act, which emphasizes community care and provides a wide array of service alternatives for parents of developmentally disabled children.

His contributions go on and on. Because of these gifts of service, labor and love, the added joys and comforts which have come to his benefactors have been immeasurable. So too, I am certain is their gratitude.

I, too, am grateful for all the time he has devoted to the public good, for his hours of service to others, for his rare and restorative wit, for his unique and delightful panache and for his warm, expanding and instructive friendship.

Frank Lanterman is the quintessential public office holder. He has provided an example we all would do well to study, to grow from and to emulate.

His life and career have enriched the lives of many people, including mine. For this I am extremely thankful.●

BUDGET BALANCING MADE EASY

HON. G. WILLIAM WHITEHURST

OF VIRGINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. WHITEHURST. Mr. Speaker, recently I received a letter from a good friend and constituent of mine, Mr. William B. Copeland of Norfolk, Va. With his letter, he enclosed a copy of the editorial which appeared in the Friday, September 1, 1978, edition of the Wall Street Journal.

Because I think that the points raised in the letter and the editorial deserve serious consideration, I am placing both of them in the RECORD at this point:

WILLIAM B. COPELAND,
Norfolk, Va., September 4, 1978.

Congressman G. WILLIAM WHITEHURST,
House Office Building,
Washington, D.C.

DEAR BILL: I hope you didn't miss the Wall Street editorial on the Budget, last Friday. Just in case you might have I am enclosing a copy.

I am taking the liberty of sending a copy of this letter and a copy of the editorial to each of your colleagues in the House. I am also sending copies to each member of the Senate.

Unless some conscientious National Representatives face up to our mounting fiscal crisis our whole economy is "going down the drain."

Sincerely,

BILL.

[From the Wall Street Journal, Sept. 1, 1978]

BUDGET BALANCING MADE EASY

When you ask around Washington why Congress doesn't stop inflation by cutting federal spending, you are apt to hear a lot of defeatist talk about "uncontrollable" items and the like.

This, of course, is utter nonsense. Every dollar of the $500 billion the federal government spends is controllable. Indeed, Congress is charged explicitly by the Constitution with controlling the budget. What people really mean when they say "uncontrollable" is that Congress has made promises to a lot of people and finds it politically inconvenient to withdraw them.

Hence, we have chronic high inflation, public confidence in Congress is at a dangerously low ebb, and there is a strong grassroots movement to take matters out of the hands of Congressmen. In 22 states, the legislatures have passed resolutions calling for a constiutional convention for the purpose of making a balanced federal budget a constitutional requirement. If 34 states so vote, the Constitution requires Congress to call such a convention.

We're not saying that such a historic event will happen, but if it should it would be a collossal vote of no confidence in the United States Congress. The people would be saying that they have finally decided that Congress can't be trusted with money.

To avoid such disgrace, we would urge congress to adopt its own version of zero-base budgeting. Instead of asking where to cut spending, it should start asking what federal spending is of any value to the nation. It's surprising how simple the problem then becomes.

Of major federal activities, national defense and foreign policy seem to us to be the only truly essential ones. The private sector or state and local government could do others, in many cases far more economically. Indeed Washington became the great expansionary colossus it is today, most such activities—welfare, education, transportation, etc.—were so conducted, with generally favorable results.

For the sake of argument, however, we will add several other things the federal government can perhaps justify, even if it doesn't always do them well. Social Security in its simplest form, as an income transfer to the aged and before it became an uncontrollable grab bag, had merit. The federal government also has had good success in supporting broad research—in agriculture, medicine, nuclear development, space exploration and the like. It probably would be imprudent to tinker with that. We would also not deny Washington the task of gathering national statistics. And a case can be made for a Federal Reserve System, although England fared quite nicely for centuries with a private central bank.

Beyond that, the marginal utility of Washington drops sharply. With a few exceptions, such as food inspection and the air safety operations of the Federal Aviation Administration, we doubt that the public would notice the demise of most federal regulatory agencies, except through price declines and an abundance of lawyers looking for jobs. There would be a sharp and sudden tax saving from shutting down the Department of Energy and the Department of Agriculture and transferring any useful research they do to some department for general research that would also take in NASA, etc.

At the Department of Transportation, Amtrak and Conrail should be auctioned to the highest bidders, who would then retain only those parts that have genuine usefulness. There would be huge tax savings. Urban transit should be left up to the cities, where it belongs, forcing them to find efficient means of moving commuters. Similarly, public housing can be safely left to the cities and states, which are in a better position than Washington to measure true needs.

With the cuts we have in mind, we could imagine a federal budget somewhere close to half the size of the present budget. That would leave room for a sharp cut in taxes, some of which would make room for states to finance a loss of grants from Washington. There would also be room in that budget cut to reduce the federal debt, all of which would lower inflation and interest rates generally and certainly reverse the alarming rise in interest costs the federal government pays.

What we've sketched here will be regarded in Washington as an end-of-summer's dream, ignorant of the political realities of the Potomac, where the combined lobbies of special interests protect all the domains we have so casually demolished. We would not deny it. Similarly, the possibility of that constitutional convention looks pretty remote, too, at the moment. But strange things are happening. A few years ago, who would have dreamed that a curmudgeon named Howard Jarvis would turn the whole state of California on its ear? We're simply offering our advice early, in case it's needed in a hurry.●

A TRIBUTE TO JOHN McCRAW

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Ms. MIKULSKI. Mr. Speaker, on September 1, Maryland lost a truly outstanding citizen. John McCraw, who had lived in Baltimore since 1925, was known not only as a professional musician, but also as a dedicated and gifted recreation leader. The outstanding part about these accomplishments is the fact that John lost his sight at the age of 10.

After attending the Maryland School for the Blind, John graduated from Morgan State College in Baltimore, with a B.S. in education. All during this time, John devoted much of his energy to music and learning to play the piano. Since 1944 John has worked as a professional musician, besides which, he has taught travel training, worked as a medical transcriber, and taught in the public school system as a substitute teacher.

When John was elected to a position on the National Federation of the Blind Executive Committee in July 1977, there was no question in anyone's mind that he should have the job. He had long been a favorite with those in the movement who know him, and he was the president of one of the most rapidly growing affiliates in the federation—the NFB of Maryland.

John McCraw worked during the day as a recreationist for the city of Baltimore. A few years ago an article about John appeared in a recreation journal. The following are excerpts from that article:

John T. McCraw is unique to recreation, . . . he is the only blind recreationist working in Baltimore City. Hundreds of children know "Mr. John " as the "big man" who plays the piano, conducts physical exercise, teaches games, and accompanies them on trips. Handicapped adults look forward to talk sessions with John; retarded teens and adults look to him for fun and counsel and sing and dance to his music. Handicapped seniors relate to his dignity, gentleness and humor.

As a recreation director and musician, John had two careers. But the federation was as much a career as either the State NFB affiliate or his executive committee membership. Besides these many activities, John was also chairman of the Board of Blind Industries and Services of Maryland; chairman of the board of Constant Care Community Health Center; member of the Board of Library for the Blind and Physically Handicapped; and member of the board of the mayor's Media for the Handicapped.

John will be frequently thought of for the major contributions that he made to so many of our lives. All of those who knew John, wish his family strength during this difficult time.●

THE SEVENTH ANNUAL NATIONAL HUNTING AND FISHING DAY

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. SIKES. Mr. Speaker, on Saturday, September 23, the nation's sportsman and conservationists will participate in the seventh annual observance of National Hunting and Fishing Day, first celebrated in 1962 following unanimous passage of a House resolution which I was proud to sponsor along with many of my colleagues.

National Hunting and Fishing Day has been requested by Congress or authorized by the President every year since and has quickly grown into one of the Nation's most meaningful and effective conservation programs.

National Hunting and Fishing Day has been very popular with the American people. This event has significant meaning to the more than 55 million hunters and fishermen who have contributed so greatly to conservation and the improvement of outdoor recreation in this country.

Each year National Hunting and Fishing Day has been an outstanding success in hundreds of programs held at State fairs, schools, military installations, shopping centers, and many other facilities. The idea has also spread to Europe and South America. Since its initial observance in 1972 which involved 4 million people, NHF Day has grown tremendously. It is difficult to put into words the many exciting aspects and accomplishments of the most recent NHF Day observances. However, in trying to assess the overall impact and effectiveness of National Hunting and Fishing Day, it is clear that the day has done more to promote the sporstman's role in conservation and to insure a healthy future for the hunting and fishing sports than any other program in existence. Also, NHF Day has made major progress in its attempt to involve all Americans in the effort to conserve this Nation's wildlife and wild places. The day has served to show millions of Americans the differences between conservation—the wise use of natural resources—and preservation—the total nonuse of resources.

On National Hunting and Fishing Day this year, as in past years, thousands of American sportsmen, through their clubs and organizations and through individual effort, will work to explain the sportsmen's role in conservation and to enlist public support for conservation activities. Through films and lectures at sportsmen's clubs and with displays and demonstrations at shopping centers and other public areas, sportsmen will work through the framework of the National Hunting and Fishing Day to spread the conservation message to all Americans.

The National, State, and local significance of these activities has been underscored by the unanimous endorsement of our 50 Governors and proclamations by more than 500 mayors and local officials.

Several years ago, a prominent outdoor magazine labeled National Hunting and Fishing Day as our "newest sporting tradition"—as much a part of the outdoor scene as sunrise in a duck blind or opening day on a favorite trout stream. As we approach September 23, 1978, and the seventh annual observance of National Hunting and Fishing Day, it becomes clear that our "newest" sporting tradition has scored well in the proverbial test of time and has graduated from the "newest" to the greatest and most meaningful activities in the history of the hunting and fishing sports.

I am pleased to have had a role in National Hunting and Fishing Day and want to again congratulate the Nation's sportsmen for their historic role in conservation. I am sure their good work will be continued and I urge my colleagues to join me in supporting their efforts.●

THE CASE FOR IAN SMITH'S RHODESIA PLAN

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. McDONALD. Mr. Speaker, few persons in this city have suffered more indignities, slings, and arrows than Mr. Ken Towsey has in the many years he has directed the Rhodesian Information Office. Harassed in every possible way by the executive branch of our Government, he has steadfastly kept to his job, under almost impossible conditions, trying to pierce the marshmallow curtain of our Department of State and liberal press establishment which sees, hears, and prints nothing about the Rhodesian side of the question. Therefore, I was pleased when the Washington Star lifted this curtain and permitted Mr. Towsey to place an article in the Sunday edition espousing the view of Rhodesian Government. The article follows:

[From the Washington Star, Sept. 17, 1978]

THE CASE FOR IAN SMITH'S RHODESIA PLAN

(By Kenneth Towsey)

Rhodesia brings out some serious cases of moral astigmatism. It is naive to suppose, as some do, that the conflict in Rhodesia is between an artful white contrivance and what has archly been called "authentic" black majority rule. The conflict is essentially between democracy and totalitarianism.

There is nothing remotely fraudulent, as some people suggest, about Rhodesia's constitutional agreement of last March. It was freely negotiated between Mr. Smith, accepting the principle of majority rule, and the leaders of three major black political parties, acknowledging for their part the need to provide special safeguards to preserve white confidence in a dramatic shift of political power.

The need to preserve the confidence of whites is not arguable in view of the immense contribution they have made and can continue to make to Rhodesia's economic prosperity. Certainly the necessity was fully endorsed by the black contracting parties to the March agreement.

One of the ways in which this has been done is to give whites for a limited period 28 seats in a legislature of 100, but without power to join with any other minority group to form a government. The temporary overrepresentation of ethnic minorities has been a feature of a number of constitutions (e.g. Kenya, Tanzania and Zambia), bridging the transition from colonialism to sovereign independence.

The American constitution itself departs from the principle of a strict equality of voting power for reasons which the Founding Fathers deemed sensible. They gave every state two senators regardless of population, and thus it is possible for 70 million citizens represented by 51 senators to frustrate the will of 130 million citizens represented by 49 senators. I do not believe that too many Americans lie awake at night worrying about the inequity of this arrangement. A foreigner might well be forgiven for thinking it was none of his business.

It is patently absurd to pretend, as some do, that the constitutional safeguards which will protect Rhodesia's judiciary and her civil and armed services from political manipulation are devices to perpetuate white political control. The protected agencies are the machinery of government with no political will of their own. The levers of control will be in the hands of black politicians once the new constitution becomes operative.

Ministers of the elected government will be more fortunate than the inheritors of power in previous colonial situations because they will have at their service efficient administrative machinery. When the old colonial regimes were liquidated most of the public servants packed their bags and went home. In Rhodesia, public servants go home every night, and this is one of the reasons why Rhodesia (doubtless transmuted into Zimbabwe) will begin its new life with infinitely better prospects of viability than most of its African neighbors—always supposing the West is willing to give it a chance.

To define the conflict, there is on the one hand an agreement, negotiated between disparate political forces with powerful popular support, that is working towards a multiracial, multi-party democracy based on free elections and a constitutional bill of rights. On the other hand there is a loose political alliance, one of whose leaders, Robert Mugabe, makes no secret of the fact that his preferred Zimbabwe will be a Marxist, one-party state in which elections would be a luxury. The other leader, Joshua Nkomo, is ideologically more reticent but heavily indebted to the Soviets for support.

They both seek, from separate bases in Mozambique and Zambia, to establish their ascendancy by force of arms. To this end they have between them, over the last six years, killed more than 2,000 black and 200 white civilians.

The World Council of Churches recently rewarded them with a grant of $85,000. To date the beneficiaries of this largesse, apart from their broader depredations, have butchered 37 missionaries and members of mission families. Their most recent exploit was to shoot down a Rhodesian civil aircraft with a Soviet surface-to-air missile, and to massacre most of the survivors, including two children aged 4 and 11, with automatic rifle fire. It was "an outrage that stinks in the nostrils of heaven," said the Anglican dean of Salisbury at a memorial service for the dead. It was also an outrage that elicited no word of condemnation from official London or Washington.

To suggest, as some do, that the perpetrators of this and other atrocities represent the authentic voice of black Rhodesia is to reject most of the evidence on who supports whom on the Rhodesian scene. But why not let the matter be judged at the polls?

The leaders of the Patriotic Front are as welcome as the leaders within the Transitional Government to test their popularity at internationally observed elections now being organized in terms of the agreement of last March. Nkomo and Mugabe will be required to put their (Russian) guns away, but that does not seem to be an unreasonable condition of participation if we are looking for an unintimidated popular choice, and one hopes we are.

To assert, as some do, that the internal settlement is a failure is not so much a criticism as an admission of guilt. At this stage the settlement is neither a success nor a failure. It is an uncompleted enterprise

That it is having difficulties is undeniable. The difficulties primarily arise from the relatively poor response to the ceasefire-cum-amnesty appeal issued by the Transitional Government some months ago. The reasons for this are not far to seek, and these reasons have precious little to do with any alleged deficiencies in the constitutional agreement.

First, the men with the guns live in an environment which does not embrace the concept of amnesty, and they are deeply suspicious of the consequences of responding to the offer. Second, they perceive that the West continues to offer hostility, in the form of economic warfare, to the government in Salisbury (talk of neutrality is hokum) whilst the Patriotic Front receives unlimited and unrestrained support from the Soviets. In these circumstances a prudent man is careful about burning boats. Third, the discouragement offered to prospective defectors by a ruthless leadership is terribly compelling.

Notwithstanding these considerations there have developed in certain areas local arrangements negotiated between security force commanders and guerrilla commanders whereby an armed truce is respected on both sides. It is to be hoped these arrangements can multiply and develop into a permanent peace.

It is, of course, within the capacity of the West to encourage this process by offering something more supportive than the back of its hand to the government in Salisbury, and by discouraging neighbor states from fomenting armed aggression across Rhodesia's borders. If the West remains hostile to the democratic forces in Salisbury, and if it declines to use its very considerable leverage to restrain the militancy (including the terror tactics) of the totalitarian forces, the conflict will continue unabated. Bitter and angry Rhodesian blacks and whites will not submit to domination by forces that are ideologically repugnant to them.

A solution of the Rhodesian problem will remain elusive until the West makes it abundantly clear to the totalitarian forces and their sponsors that they will not be permitted to shoot their way into power. There is no evidence that the West is doing anything of the kind.

A decent concern on the part of the West for human rights, in the shape of the lives of innocent black and white Rhodesians, and for democratic principle, in the shape of free elections being recognized as the basis of political authority, is something that is long overdue.●

NATIONAL PORT WEEK

HON. LEO C. ZEFERETTI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. ZEFERETTI. Mr. Speaker, I am pleased to announce that Sunday, September 17 marked the beginning of "National Port Week." Earlier this year, myself and several other members of the House cosponsored a joint resolution that sets aside the week of September 17 to recognize and honor our Nation's ports. Throughout history, our great ocean and inland ports have provided the facilities necessary for sustained economic stimulation, stabilization and expansion. The diligent efforts and cooperation of Federal, State and local governments and private industry have led to the development of our Nation's proud port tradition.

Aside from insuring economic prosperity through efficient international and domestic commerce, our ports have given us our American heritage, and have served as the focal point of our national defense. Today our Port Caucus, with 120 distinguished members, strives to guarantee the safety and vitality of America's ports, connecting waterways, and maritime workers.

As a representative from Brooklyn, I have witnessed the development of the port of New York City, one of the world's finest natural harbors, as it has contributed to meeting the needs of our international and domestic commerce. New York City harbor and its connecting waterways are but one link in a transcontinental system that encompasses a vast network of urban centers of trade, finance, culture and defense. Thus, it is with great pride that I join together with my colleagues in Government and my friends in industry to salute our port communities, which have made us the world's greatest trading nation.●

ENERGY AND ENVIRONMENTAL PROBLEMS

HON. JEROME A. AMBRO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. AMBRO. Mr. Speaker, I would like to express my admiration for the work done by Mr. BEVILL and the Public Works Subcommittee on the fiscal year 1979 public works appropriations. As always, the long hours spent by the subcommittee and its excellent staff are reflected in a balanced, carefully considered bill.

I was especially pleased to see the foresight shown in addressing environmental research and development programs within the Department of Energy. Included within that funding package is money directed to the computer science and mathematics program at the Lawrence Berkeley Laboratory.

The CSAM group at LBL has an impressive history of system development in computer graphics and information analysis. They have actively adapted to the needs of nontechnical users, and they have done an excellent job. As their approach to computerized information analysis receives increased attention in the future, I am confident that a much greater understanding of energy and environmental problems will be the result. I am equally sure that the CSAM group will be viewed as an essential contributor to the entire field as it develops.

It is my understanding that in fiscal year 1979 approximately $500,000 in operating and $350,000 in capital equipment money are required. To date, the Department of Energy has agreed to provide at least $180,000 in operating expenses money and a minimum of $350,000 in capital equipment funds. Congressional action provides the additional $320,000 in operating funds necessary to maintain this program at a satisfactory level in anticipation of the massive influx of 1980 census data. The program, then, will be receiving $500,000 minimum in operating expenses and $350,000 in capital equipment funds from the Department of Energy in fiscal year 1979.●

INDUSTRY'S ASSAULT ON WORKPLACE SAFETY

HON. ANDREW MAGUIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. MAGUIRE. Mr. Speaker, this morning I read an excellent analysis by Colman McCarthy in the Washington Post of what I believe is an unsettling trend of some thinking today: the belief that regulations designed to protect the lives, health and livelihood of American workers are unnecessary or incompatible with the economic interests of business, or both.

Such important OSHA regulations as the proposed cotton dust and berylium standards have even come under attack from such prominent administration figures as James Schlesinger, Charles Schultz, Barry Bosworth and others who, under the rubric of a rather narrowly calculated cost-effectiveness, argue that we cannot afford to keep our workers healthy by protecting them as fully from hazard as our technological ability might permit and our medical knowledge might suggest.

That is nonsense. Moreover, we will save money in the long run by investing in a cleaner, healthier environment now. Those who argue otherwise cannot see the forest for the trees.

I wish to call to my colleagues' attention the Colman McCarthy article which properly focuses on the legal and moral rights of workers, as well as the needs and obligations of business, from the Washington Post, September 19, 1978.

INDUSTRY'S ASSAULT ON WORKPLACE SAFETY

Two voices are talking to America's 80 million workers about health and safety. One is the government's, backed by a growing coalition of labor unions intent on securing the most crucial fringe benefit of all: a safe workplace.

The other belongs to those employers who have persuaded a few of their conservative friends in Congress that both small and big business are being unjustly pestered by regulation-happy bureaucrats snooping into the shops and factories. Weaken the Occupational Safety and Health Act, they demand. Get the feds off our back.

If a third voice is heard, it is the muffled cry of the worker himself, who knows bitterly that the violence of occupational death, disease and injury is staggering. Federal officials estimate an annual 390,000 cases of occupational disease, 2.2 million disabling injuries and as many as 100,000 deaths.

Last week, the government was heard from again when Joseph Califano, secretary of health, education and welfare, reported findings that at least 20 percent of future cancer cases will be work related. The study confirmed what public-interest organizations like the Health Research Group have been warning for years, and what even the Department of Labor has recognized for some time.

Instead of being able to deal with the urgency of warding off workplace death and disease, federal officials have been forced to ward off industry assault on the law and the Occupational Safety and Health Administration. Earlier this year, when the agency issued a few mild proposals to limit the exposure of workers to cancer-causing chemicals, it was pounced upon by an industry group.

"There is no cancer epidemic as implied by OSHA," said the American Industrial Health Council. After pressing the shopworn line that uncounted billions will be needed for compliance, the council argued that "socially acceptable risk is the only practical answer to dealing with this problem."

If argued that way—as a matter of profits and freedom from regulatory hassle—then it is easy enough to ignore the findings that 67,000 workers will die annually from exposure to asbestos. But if seen as the sweatshops of the 19th century becoming the cancer shops of the 20th, then talk of "socially acceptable risk" becomes the crudest mask for institutional violence.

The urgency now is to shift the discussion back to where it belongs—a question of the legal and moral rights of workers. Disasters in such high-risk industries as construction. petrochemicals, transportation and manufacturing regularly produce day-after headlines. Butt months or years after, when dryprose federal reports are issued on the safety violations that caused the tragedies, little notice is taken. We have a high consciousness of the problem as the bodies are removed from the exploded grain elevator or collapsed scaffolding but low consciousness about preventing deaths the next time somewhere else.

Shifting the discussion back to the essentials that led to the 1970 safety law will be arduous work. Efforts to weaken OSHA and its enforcement methods—such as they are—are constant. This past year, Congress has stagnated in a debate about legislation to exempt from OSHA's power most employers with 10 or fewer workers, as well as other businesses. That would mean an exemption of nearly 3 million workplaces, or almost 70 percent of the sites now covered by the law.

The bother of this debate has meant that more crucial questions of ethics have been necessarily put aside: What is the moral obligation of an employer whose worker comes down with work-related cancer? What is socially acceptable risk when what is gambled is the health of the worker next to the coke oven and not of the owner in the boardroom? What is owed a family left fatherless because of a preventable factory accident? How long can a firm be allowed to do business if its safety record is poor? How much profit should be devoted to industrial hygiene?

Here and there, a few companies are voluntarily performing death-defying acts of courage by investing extra sums in health and safety. But not enough have come forward. As a result, instead of a philosophy of prevention of accidents and disease we have a tactic of prevention of safety: block OSHA, demoralize the worker, weaken the law.●

APPOINTMENT OF COL. MARY AGNES HALLAREN TO BRIGADIER GENERAL

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Ms. MIKULSKI. Mr. Speaker, today I am introducing a private bill to authorize the appointment of Col. Mary Agnes Hallaren, U.S. Army, retired, to the grade of brigadier general on the retired list of the U.S. Army.

I have chosen this time because on September 21, Mary A. Hallaren will retire from her third career, executive director of Women in Community Services, Inc. (WICS). WICS is a voluntary coalition of Church Women United, the National Councils of Catholic, Jewish, and Negro Women, plus the American GI Forum. This coalition serves young women living in poverty through a contract with the National Job Corps.

This is the same Mary A. Hallaren (colonel, U.S. Army, retired) whose military career started in July 1942 when she was selected for the first officers candidate class of the newly formed Women's Auxiliary Army Corps at Fort Des Moines, Iowa.

She was Director of the Women's Army Corps from May 7, 1947, to January 3, 1953, the longest term of any Director WAC. It was largely because of her vision, courage, and dedicated leadership that the WAC became a permanent part of the Regular Army and Reserve on June 12, 1948.

Yet she was denied the rank of brigadier general because of a law that restricted the promotion of women beyond the rank of colonel. In fact, at that time in our history, the only woman who could receive the rank of colonel was the Director WAC. This law, which blatantly discriminated against women, was changed by Public Law 90–130. Unfortunately the law was passed too late to benefit Mary Hallaren. As I continue to recount her splendid career, I know that you will agree that this injustice should be corrected. My bill will not cost the taxpayers any money because I am not asking for back pay or other benefits. I am asking only for the change in rank. I think that it is a matter of simple justice to give this outstanding woman proper acknowledgement for her achievement during her military career.

Long before she became Director WAC, Mary Hallaren had shown signs of leadership and fearlessness. In 1942, she was appointed commanding officer of the First WAAC Separate Battalion, which underwent extensive overseas training in the United States, and in July 1943 arrived in Scotland under command of Capt. Mary A. Hallaren, the first WAAC battalion to serve in the European Theater of Operations in World War II. Following her tour as Director WAC, Colonel Hallaren served in the Heaquarters of the European Command and the Office of the Secretary of Defense until her retirement in June 1960.

One of the most respected leaders of the Women's Army Corps, 5-foot-high Colonel Hallaren is known to the Army as the Little Colonel, formerly Captain Peewee. She is also one of the most decorated members of the WAC, having been awarded the Legion of Merit with two Oak Leaf Clusters; the Bronze Star Medal with one Cluster; the French Croix de Guerre avec l'Etoile de Vermeil; and the Legion d'Honneur.

A native of Lowell, Mass., and educated in the parochial and public schools there, Miss Hallaren started her first career as a teacher in the elementary and junior high schools of Lowell and Lexington. She learned to pilot an airplane from a group of men she had joined, who purchased a small private hedgehopper, but her 5-foot torso gave her such a hard time reaching the pedals, that she was forced to design a makeshift platform to cover the gap. One of her great regrets is that her diminutive height prevented her from qualifying to fly an Army plane.

If Mary Hallaren had been born a man, her military career would not have been limited. At this stage in our history when we are all striving to insure that all citizens receive equal treatment under the law, this gesture of bestowing the rank of brigadier general on Mary Hallaren is certainly a simple and just step. I hope my colleagues will support me in this effort.

BIOGRAPHICAL DATA ON MARY A. HALLAREN

Date and Place of Birth: 4 May 1907. Lowell, Massachusetts.

Education: Lowell State Teachers' College (Teaching Certificate); George Washington University (AB Degree); Boston University, Harvard Graduate School.

Career: Present Position: Executive Director, Women In Community Service, Inc. February 1965– .

Civilian: Teacher, Elementary and Junior High School (15 years) Special Work: Remedial Reading.

Volunteer, worked with underprivileged families, contacts through schools (tutoring, etc.).

Lecturer, re walking tours in United States, Alaska, Canada, Europe, Near East, Latin and South America.

Military: August 1942, graduated from first Officer Candidate School, Fort Des Moines, Iowa.

PROMOTIONS

29 August 1942, Second Lieutenant.

7 May 1947, Colonel, Director, Women's Army Corps.

Assignments (Administrator, Advisor, Director).—

October 1942, Commander, First WAC Separate Battalion.

July 1943, WAC Staff Advisor, Strategic Air Force, England, France, Germany ('43–45).

July 1945, WAC Staff Advisor, European Theatre of Operations.

June 1946, Deputy Director, Women's Army Corps.

May 1947, Director, Women's Army Corps.

May 1953, J–1, Hq., U.S. European Com-

mand, Indigenous Labor Agreements w/ NATO Countries, U.S. Dependent Schools, Europe.

May 1957–60, Office of Secretary of Defense (MP&R).

CITATIONS/DECORATIONS

Bronze Star Medal, Legion of Merit, Croix de Guerre avec l'Etoile de Vermeil, Oak Leaf Cluster to Legion of Merit, Commendation Medal, Commendation Medal with Medal Pendant (Oak Leaf Cluster), Second Oak Leaf Cluster to Legion of Merit, WAAC Service Medal, EAME Campaign Medal, Legion d'Honneur.●

SENATE—*Wednesday, September 20, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal God, most high, in whose word it is written, "They that wait upon the Lord shall renew their strength," we pause to worship Thee not only in words and outward ceremony, but in the depths of our spirit and in truth. The toil and thought of daily life leave us little time to think of Thee, yet hour after hour we are aware that Thou dost not forsake us. We have only one offering to make—ourselves, our souls, our minds, and our bodies in Thy service. Come upon us afresh as we seek to serve the Nation and the world. Renew us within until all thought grows reverent, all work is hallowed, and faith reconsecrates all common things as sacraments of love.

We pray in the name of the Great Redeemer. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 20, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. HODGES thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. ROBERT C. BYRD. I yield to the distinguished minority whip.

THE JOURNAL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Journal of the proceedings to date be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

U.S. COMMITMENTS IN THE MIDDLE EAST

Mr. STEVENS. Mr. President, I have just made a statement to the press, and I wish to put it in the RECORD so there is no misunderstanding about it.

Following the meeting that President Sadat had with the Foreign Relations Committee yesterday, which was attended by many Members of the Senate, I had the impression that President Sadat was very much concerned about the future role of Egypt in terms of the problems that are developing in the emerging states of Africa. The President repeatedly indicated that he thought that the United States should provide backing to his efforts to maintain stability in those areas, and I was left with the question, as I came back to the Senate floor from that meeting, as to whether there had been any commitments made by the administration to President Sadat which concerned, not the accords with Israel, but the role that Egypt will play in providing assistance to these emerging nations which wish to maintain an independent course, away from the expanding influence of the U.S.S.R.

I do not know of any such commitments, but I feel that it is incumbent upon us to ask the question as to whether there were any. I do believe that in relationship to the Camp David accords—a great victory for President Carter and the result of a tremendous effort on his part—we ought to know whether any peripheral agreements or commitments have been made to either side with regard to the discussions that were held at Camp David, that did not involve Egypt-Israel relations.

I thank the majority leader for yielding to me.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Alabama (Mr. SPARKMAN), the chairman of the Committee on Foreign Relations, has two conference reports. I yield to him for that purpose.

INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1978—CONFERENCE REPORT

Mr. SPARKMAN. Mr. President, I submit a report of the committee of conference on H.R. 12222 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12222) to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that Act and the Agricultural Trade Development and Assistance Act of 1954, to improve the coordination and administration of United States development-related policies and programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 7, 1978.)

Mr. SPARKMAN. Mr. President, the conference report and accompanying statement provide a detailed explanation of the recommendations of the Committee of Conference. At this time, I will highlight briefly the most important provisions of the conference report.

This legislation includes authorization for fiscal year 1979 appropriations of $1.795 billion for development assistance, international disaster assistance, and contributions to international organizations. This authorization is approximately an even split between the amount authorized by the House bill and the Senate amendment. The total in the bill is $43.5 million less than the amount requested by the President.

By adopting a modified version of the Senate amendment reducing the total amount authorized in the bill by 5 percent, with the exception of funds authorized for the American schools and hospitals abroad program, the committee of conference reduced the total amount authorized in the bill by approximately $93 million.

Although the total of the authorizations included in this conference report is below the President's request, I believe that full appropriation of these authorizations will provide an adequate level of funding for development assistance programs in fiscal year 1979.

Mr. President, since the passage of the New Directions legislation several years ago, our development aid programs have been focused on assistance to the poor

majority of people in developing countries. The International Development Assistance Act of 1978 continues that emphasis. In addition, this legislation provides a long overdue clarification of the objectives of U.S. development assistance programs. Section 101 states:

United States development cooperation policy should emphasize four principal goals:

(1) the alleviation of the worst physical manifestations of poverty among the world's poor majority;

(2) the promotion of conditions enabling developing countries to achieve self-sustaining economic growth with equitable distribution of benefits;

(3) the encouragement of development processes in which individual civil and economic rights are respected and enhanced; and

(4) the integration of the developing countries into an open and equitable international economic system.

The adoption of this revised statement of policy and objectives, along with the clarification of other provisions, the deletion of obsolete provisions and the consolidation of existing reporting requirements, provide an updated, more easily administered Foreign Assistance Act.

Mr. President, the principal policy issues resolved in the conference are as follows:

The committee of conference adopted a compromise provision on population and health assistance which emphasizes the continuing role and responsibility of AID as the primary source of U.S. health assistance to developing countries. This same provision continued the existing prohibition against using funds authorized in this bill to pay for the performance of abortions.

The House provision encouraging the President to use not less than $1.5 million of development assistance funds to encourage or promote increased adherence to civil and political rights was adopted.

The Senate position continuing the American schools and hospitals abroad program was sustained over House language which would have restricted this assistance to no more than four institutions in the same country during any fiscal year, excluding any institutions receiving assistance as of September 30, 1978.

The Senate amendment prohibiting assistance to Vietnam, Cambodia, Uganda, or Cuba was adopted instead of the House version which prohibited direct or indirect assistance. Although the House version would have affected U.S. contributions to international organizations and programs authorized by this legislation, the Senate provision does not.

The Senate position concerning the inclusion of authorizations for the economic support fund in the International Security Assistance Act of 1978 as opposed to the inclusion of the ESF in this legislation was adopted.

Mr. President, this conference report represents a fair and sound compromise between the positions of the House and Senate. By adopting the best provisions of both bills, we have been able to improve on the work of both Houses.

I believe that the conference report deserves the support of the Senate, and I urge its passage.

● Mr. JAVITS. Mr. President, the distinguished chairman of the Committee on Foreign Relations (Mr. SPARKMAN) has given an excellent account of the conference report on the International Development Assistance Act of 1978. I agree with my friend and colleague that this conference report represents a fair and sound compromise between the positions of the House and Senate and is most deserving of our support.

Mr. President, at this juncture I would like to make some general observations concerning this conference report. On January 25 of this year, I joined with a number of my colleagues as a cosponsor of S. 2420, the International Development Cooperation Act of 1978, which reflected the concerns and the desires of our beloved colleague, the late Hubert H. Humphrey.

At the time we introduced S. 2420, I noted that this bill was an important step in modernizing and providing for closer coordination within the U.S. Government in the formulation and delivery of the various U.S. foreign assistance programs.

In addition, I pointed out the bill recognized that economic growth in the developing countries was an important and primary interest of the United States because of the benefits that accrue not only to the developing countries but also to the United States and the other industrialized countries. Economic growth in the Third World will provide the industrialized countries with the expanding markets that the present international economy so urgently requires in order to bring a stable world economic position and to avoid continued confrontation in the trade and monetary fields.

And finally, I said the bill recognized that important economic and technological changes have made for an interdependent world to which private as well as the governmental channels of assistance were relevant.

Unfortunately, due to the prolonged debate over the Panama Canal Treaties, the committee did not have the time to devote to studying the implications of the various organizational issues raised by S. 2420. However, I hope that we will address these questions in the new session of Congress which convenes this January.

Mr. President, despite the time constraints imposed upon us by the Panama Canal treaties debate, significant initiatives in S. 2420 were, nevertheless, incorporated into the International Development and Food Assistance Act of 1978. A number of policy statements which more sharply define the various activities of our bilateral aid program were added to H.R. 12222.

I am gratified that the Senate and House conferees agreed to keep my amendment dealing with the relatively least developed countries (RLDC's) in the final bill.

I believe that the amendment dealing with the RLDC's is an important step in meeting the need of the least developed countries for debt relief. The amendment specifically earmarks, in the first instance, that the funds be converted into local currency to be used for development projects determined jointly by the beneficiary government and the United States.

This amendment will represent a clear signal of the U.S. intention to help those countries whose economies need all the external assistance possible and to seek also to help themselves. Their condition has been exacerbated especially by the fivefold increase in the price of oil by the OPEC cartel, which has eaten away at their already scant resources.

Furthermore, I would like to stress that the amendment dealing with the relatively least developed countries is an important political step for the United States. It will remove from the current North-South debate a contentious issue which has been viewed by many of these relatively least developed countries as an important constraint on their economic growth. In including this language, we will be joining other industrialized countries in forgiving the official debts of these, the poorest countries.

The Senate and House conferees also agreed to a new title III of the Foreign Assistance Act. This title spells out congressional concerns regarding the coordination and administration of development-related programs and policies of the United States. I believe title III is an important policy directive from the Congress and embodies one of the central concerns of S. 2420. Effective coordination of our development programs with the overall formulation and implementation of U.S. foreign economic policy should be a priority concern of our Government. It is my hope that the executive branch will understand the need for strengthened coordination of the development-related programs and policies of the United States.●

I move the adoption of the conference report.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the conference report.

The report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SPARKMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FOREIGN RELATIONS AUTHORIZATIONS ACT, 1979—CONFERENCE REPORT

Mr. SPARKMAN. Mr. President, I submit a report of the committee of confer-

ence on H.R. 12598 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12598) to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 6, 1978.)

Mr. SPARKMAN. Mr. President, the conference report on H.R. 12598, the Foreign Relations Authorization Act for fiscal year 1979, provides a detailed explanation of the recommendations of the committee of conference. Because these recommendations closely parallel the legislation passed by the Senate, I will not take up the Senate's time with a detailed discussion of that bill.

The primary purpose of the legislation is to authorize fiscal year 1979 appropriations for the State Department, the International Communications Agency, and the Board for International Broadcasting. Concerning these budgetary amounts, I ask unanimous consent to have printed in the RECORD a table comparing the executive branch requests in the various authorization categories, the amounts approved by the House, the Senate amendments to those figures and the final conference agreement.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

BUDGET ISSUES—FISCAL YEAR 1979

[In thousands of dollars]

	Executive branch request	House bill	Senate amendment	Conference
Department of State:				
Administration of foreign affairs	$830,143	$849,139	$835,143	$849,118
International organizations and conferences	412,781	412,781	450,261	412,826
International commissions	19,973	20,773	20,773	20,773
Migration and refugee assistance	56,336	91,336	116,536	116,536
Subtotal, Department of State	1,319,233	1,374,029	1,422,713	1,399,253
International Communication Agency	413,327	417,327	423,577	420,577
Board for International Broadcasting	85,180	88,180	88,180	88,180
Commission on Security and Cooperation in Europe	0	200	0	200
International Tin Agreement	60,000	60,000	60,000	60,000
Commission on Hunger and Malnutrition	0	0	1,500	1,500
Return of the "Guernica" to Spain	0	0	500	0
Total	1,877,740	1,939,736	1,936,470	1,969,710

Mr. SPARKMAN. The overall figure approved by the conference committee is slightly larger than that approved by the Senate. The increase is the result of additional costs caused by:

First, the need to strengthen visa processing in connection with the President's undocumented alien program;

Second, the funding of expenses involved with the U.N. Conference on Science and Technology;

Third, the need to strengthen the Department of State's ability to apply science and technology to foreign policy;

Fourth, increased rental acquisitions;

Fifth, increased language training;

Sixth, the need to strengthen the legal staff of the Consular Bureau;

Seventh, the need to regulate the employment status of seasonal employees of the Passport Office; and

Eighth, the need to increase the annual authorization of the Commission on Security and Cooperation in Europe.

Concerning the nonbudgetary or policy amendments, a number of which were significant, I believe the conference was reasonably successful from the Senate perspective. Many of the provisions in the Senate-passed version have been retained with little or no revision. Included among those provisions are strong policy statements on:

First, the Cuban presence in Africa;

Second, atrocities in Cambodia and Uganda;

Third, the World Alternative Energy Conference;

Fourth, prospective bilateral United States-Canadian negotiations on air quality standards;

Fifth, the establishment of a Commission on Hunger and Malnutrition;

Sixth, the negotiation of an international agreement with respect to the safe use of nuclear-powered satellites;

Seventh, the review of discriminatory trade practices;

Eighth, the establishment of an International Food Reserve;

Ninth, actions necessary to support international journalistic freedom; and

Tenth, actions needed to protect certain marine resources. Thus, in both its policy and budgetary provisions, H.R. 12598 contains a significant portion of the bill which passed the Senate.

Mr. President, I ask unanimous consent that a statement that has been prepared by Senator MCGOVERN be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR MCGOVERN

I believe that in the Committee of Conference on this bill a very fair compromise was achieved by the conferees. The Senate version of the bill contained a considerable number of amendments which had been added by the Foreign Relations Committee and by Floor action. Most of these provisions have been retained in the version agreed to by the Committee of Conference and I therefore find the conference report to represent a very satisfactory outcome from the Senate point of view.

I believe that the legislative history must be especially clear regarding two provisions of this conference report.

The first relates to implementation of the Panama Canal Treaties. The House version raised an extremely serious constitutional question. It prohibited implementation of the Panama Canal Treaties until such implementation was authorized by an act of Congress—in effect, nullifying the Senate's approval of those treaties and requiring their reapproval by both Houses of Congress.

I need not point out that that is not precisely the scheme contemplated by our Constitution. It has long been established that certain provisions of treaties may be self-executing—that is, they may become law of the land in the United States without the enactment of implementing legislation. While the Panama Canal Treaties contain a number of non-self-executing provisions—which will require the enactment of implementing legislation—the treaties also contain a number of self-executing provisions, such as those authorizing the transfer of property. But the House version, by refusing to recognize that fact, suggested that the Senate's approval of these treaties was somehow less than legally sufficient. It represented, in reality, an attempted incursion on the constitutional role of the Senate in the treaty-making process, and it was thus firmly and unequivocally rejected by the Senate conferees.

As a result, the corresponding provision appearing in the conference report, although its language may appear similar, is in fact completely different. It does not require reapproval of the treaties by the Congress. Instead, it permits implementation of the treaties to the full extent provided for by the Constitution, which clearly authorizes the implementation of the self-executing provisions. The treaties, having been ratified, are the supreme law of the land. The President is authorized by the Constitution—indeed directed—to "take care that the laws be faithfully executed." Thus the President has full authority under the Constitution to plan and prepare for implementation of the Treaties prior to their entry into force.

In sum, as modified by the conference committee, the provision in question now bears no resemblance to the provision which originally appeared in the House bill. It has no operative legal effect and its presence in this legislation must not be allowed to cause confusion either in the executive branch or in the Government of Panama.

The second provision of the conference report in which the legislative history must be clear is the amendment relating to the "third agency rule." As the joint statement of the managers notes, the amendment was

dropped in conference only because it was deemed unnecessary—section 15(b) of the Basic Authority of the Department of State already requires so-called "third agency" information to be transmitted to the foreign affairs committees when a request is made under that section. The procedure described in the joint statement does not derogate from that requirement; it does not in any way imply a right to refuse to transmit "third-agency" information. Simply put, the law continues to require the department or agency to which the request is made to transmit the requested information regardless of the source of that information and regardless of whether that source may object.

Finally, I refer to a number of provisions in this conference report which strengthen the "Case Act," the law requiring the transmission to Congress of all international agreements. I believe that two items of correspondence will be of interest to the Senate in connection with these new amendments. The first is a response to a letter Senator Sparkman wrote to Secretary Vance recently asking that he set forth the criteria applied by the Department of State in determining whether a given arrangement constitutes an international agreement within the meaning of the Case Act. I ask that the response by the Chairman be entered at this point in the RECORD.

The material follows:

DEPARTMENT OF STATE,
Washington, D.C., June 23, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of June 7 concerning the criteria applied by the Department of State in determining whether a given arrangement constitutes an international agreement within the meaning of the Case Act.

I have enclosed a copy of a statement issued in March, 1976 by the Legal Adviser to key personnel in the Department and sent to all diplomatic posts. This statement lists and discusses the several criteria applied by the Department in making determinations pursuant to the Case Act. In addition, I have enclosed a letter from the Acting Secretary of State in September, 1973, which is relevant to this problem.

Both of these documents were published by the Congressional Research Service of the Library of Congress in its study entitled "International Agreements: An Analysis of Executive Regulations and Practices" (Committee Print, 95th Congress, 1st Session, March, 1977, pp. 49–52), prepared for the use of the Senate Committee on Foreign Relations.

If you have further questions on this matter, you may wish to contact Mr. Arthur W. Rovine, in the Office of the Legal Adviser, on 632–1074.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary for Congressional Relations.

Enclosures: 1. Criteria Statement, March, 1976. 2. Letter from Acting Secretary, September, 1973.

DEPARTMENT OF STATE,
THE LEGAL ADVISER,
March 12, 1976.

To Key Department Personnel.
From L—Monroe Leigh.
Subject: Case Act Procedures and Department of State Criteria for Deciding What Constitutes an International Agreement.

On February 20, 1976, the Comptroller General issued a Report on U.S. Agreements with the Republic of Korea which stated that certain agencies of the Government have not been submitting to the State Department or the Congress all agency-level agreements which they have concluded. The Report states that some agencies have apparently interpreted agreements concluded by agency personnel or agreements of a subordinate or implementing character to be outside the reporting requirements of the Case Act (P.L. 92–403, 1 U.S.C. 112b). The Case Act requires that all international agreements other than treaties be submitted by the Department of State to the Congress no later than 60 days after their entry into force.

The GAO Report called for "clarification of the reporting requirements and improved controls over the reporting of agreements." The Report listed 34 Korean agreements concluded after passage of the Case Act but never submitted by the agencies involved to the Department of State for transmittal to the Congress.

This Report by the GAO, in addition to legislative proposals now before the Congress calling for Congressional authority to disapprove executive agreements, has raised the question of how the Department of State Legal Adviser decides what constitutes an international agreement within the meaning of the Case Act and of the law requiring publication of international agreements (1 U.S.C. 112a).

The following discussion should be brought immediately to the attention of all personnel with responsibilities for the negotiation and conclusion of international agreements, implementing or operating agreements, or government level agreements.

A. It is essential that all international agreements concluded by any officer or representative of the U.S. Government be transmitted to the Assistant Legal Adviser for Treaty Affairs no later than 20 days after entry into force. Most agreements enter into force upon signature. The 20-day limit must be met if the Department is to meet its obligations to process and transmit the agreements to Congress no later than 60 days after entry into force in accordance with the Case Act.

B. Whenever a question arises whether any document or set of documents, including an exchange of diplomatic notes or of correspondence, constitutes an international agreement within the meaning of the Case Act, the documents must be sent for decision to the Assistant Legal Adviser for Treaty Affairs. See also 11 FAM 723.6 and 723.7.

C. The following statement is designed to provide basic guidance with respect to the criteria applied by the Legal Adviser in deciding what constitutes an international agreement. While difficult judgments will have to be made in many cases, it is hoped that the principles set forth below will permit officers in the field to focus on the right questions, and to know when there is an issue for which further guidance from the Department should be sought.

For purposes of implementing legal requirements with respect to publication of international agreements and transmittal of international agreements to Congress, the Legal Adviser applies the following criteria in deciding what constitutes an international agreement:

1. Intention of the parties to be bound in international law;
2. Significance of the arrangement;
3. Requisite specificity, including objective criteria for determining enforceability;
4. The necessity for two or more parties to the arrangement;
5. Form.

1. Intention of the parties to be bound in international law.

The central requirement is that the parties intend their undertaking to be of legal, and not merely political or personal, effect. Documents intended to have political or moral weight, but not intended to be legally binding, are not international agreements. An example is the Final Act of the Helsinki Conference on Cooperation and Security in Europe.

In addition, the agreement must be governed by international law. Most instruments are silent as to governing law, but the intent is normally to seek guidance from rules of international law when questions arise with respect to interpretation or application. However, if the agreement specifies another legal system as entirely governing interpretation or application, we do not consider the arrangement to be a true international agreement. An example of the latter is a foreign military sales contract governed in its entirety by the law of the District of Columbia.

2. Significance of the arrangement.

It is our interpretation of sections 112a and 112b that minor or trivial undertakings, even if couched in legal language and form, do not constitute international agreements. Significance of the obligations undertaken is cited in the House Report on the Case Act (House Rept. 92–1301) as a relevant variable in deciding whether a particular document is an international agreement under the Act. Senator Case himself excluded "trivia" from the coverage of the Act (Hearings on S. 596, October 21, 1971, p. 65).

We have not developed detailed guidelines to assist in deciding what level of significance must be reached before a particular arrangement becomes an international agreement. This must remain a matter of judgment, taking into account the entire context of the particular transaction. It is frequently a matter of degree. For example, a promise to sell one map to a foreign nation is not an international agreement; a promise to sell one million maps probably is an international agreement. At what point between one and one million the transaction turned into an agreement is difficult to say.

The attached letter from Acting Secretary of State Kenneth Rush in September, 1973, to all Government departments and agencies addresses itself to this problem. It requires agencies to transmit to the Department for possible transmittal to the Congress "any agreements of political significance, any that involve a substantial grant of funds, any involving loans by the United States or credits payable to the United States, any that constitute a commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations, and any of that involve continuing or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment."

3. Requisite specificity, including objective criteria for determining enforceability.

International agreements require a certain precision and specificity setting forth the legally binding undertakings of the parties. Many international diplomatic undertakings are couched in legal terms, but are unenforceable promises because there are no objective criteria for determining enforceability of such undertakings. For example, a promise "to help develop a more viable world economic system" lacks the specificity essential to the constitute a legally binding international agreement. At the same time, undertakings as general as those of Articles 55 and 56 of the U.N. Charter have been held to create internationally

binding obligations (though not self-executing ones).

4. The necessity for two or more parties to the arrangement.

While unilateral commitments on occasion may be legally binding and may be significant in international relations, they do not constitute international agreements. For example, a promise by the President to send money to Country Y to help earthquake victims, but without any obligation whatever on the part of Country Y, would be a gift and not an international agreement. It might be an important undertaking, but not all undertakings in international relations are in the form of treaties or executive agreements. There may be a difficult question whether a particular undertaking is truly unilateral in nature, or is part of a larger bilateral or multilateral set of undertakings. Parallel "unilateral" undertakings by two or more states may constitute an international agreement.

5. Form.

While form as such is not normally an important factor in the law of treaties and international agreements, it does deserve some weight. Documents which do not follow the customary form for international agreements, as to matters such as style, final clauses, signatures, entry into force dates, etc., may or may not be international agreements under the law. Failure to use the customary form may on occasion constitute evidence of a lack of intent to be legally bound by the arrangement. On the other hand, if the general content and context reveals an intention to enter into a legally binding relationship, the lack of proper form will not be decisive.

Two types of international arrangements which frequently cause difficulty in this context are agency-to-agency agreements and implementing agreements.

a. Agency-to-Agency Agreements.

Despite variations in prior practice, it is currently our position that agency level agreements are international agreements for purposes of publication and transmittal to the Congress if they meet the above criteria. The fact that an agreement is signed by a particular department or agency of the United States Government, is not determinative. Agencies can and do bind the U.S. Government in international law, and it is questionable whether any Government agency has a separate legal personality. What is important is the substance of the agreement. This is of particular current significance since many departments and agencies are now signing international agreements in their own name. The Rush letter was designed to ensure that the Department is made aware of these agreements in a timely fashion and is placed in a position to transmit them to the Congress, if in its view it is required to do so by the Case Act.

b. Implementing Agreements.

Implementing agreements present still more complicated problems. Assuming that an implementing agreement meets the criteria specified above, the question then becomes how precisely it is anticipated and identified in the underlying agreement it is designed to implement. For example, suppose the underlying agreement calls for the sale by the United States of 1000 tractors, and a subsequent implementing agreement requires a first installment on this obligation by the sale of 100 tractors of the Brand X variety.

In that case, the implementing agreement, is sufficiently identified in the underlying agreement, and would not be subject to the requirements of sections 112a and 112b. However, if the underlying agreement is general in nature, and the implementing agreement meets the specified criteria, it might well be subject to sections 112a and 112b. For example, if the "umbrella" agreement calls for the conclusion of "agreements for agricultural assistance," but without further specificity, then a particular agricultural assistance agreement subsequently concluded in "implementation" of that obligation, provided it meets the specified criteria, would constitute an international agreement independent of the "umbrella" agreement. It would be an "implementing agreement," but nevertheless subject to publication and Case Act requirements.

D. All officers who have not done so should familiarize themselves with the provisions of the Circular 175 Procedure, which sets forth detailed guidelines and information on Department procedures in the negotiation, signature, publication, and registration of treaties and other international agreements of the United States. The Circular 175 Procedure is found at Volume 11 of the Foreign Affairs Manual, Section 700.

Enclosures: 1. The Case Act. 2. Rush letter.

[Public Law 92–403, 92nd Congress, S. 596
August 22, 1972]

An act to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within sixty days after the execution thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 1, United States Code, is amended by inserting after section 112a the following new section:

"§ 112b. United States international agreements; transmission to Congress

"The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President."

SEC. 2. The analysis of chapter 2 of title 1, United States Code, is amended by inserting immediately between items 112a and 113 the following:

"112b. United States international agreement; transmission to Congress."

Approved August 22, 1972.

DEPARTMENT OF STATE,
Washington, September 6, 1973.

Dear Sir: I want to invite your personal attention to the problem of ensuring that all international agreements to which the United States becomes a party are cleared, prior to conclusion, with the Department of State and are submitted; after conclusion, by the Department of State to the Congress, as required by the Case Act (Public Law 92–403; 1 USC 112b). Although cooperation by the various executive departments and agencies has, in general, been most gratifying, there remain difficulties, particularly in achieving mutual understanding of the types of agreements covered by the applicable law and in assuring sufficient awareness by officers and employees of the implications for the operations of their department or agency. It may well be that a combination of new regulations and broad educational efforts within each affected department and agency will suffice to eliminate these difficulties, and I hope you will ensure that the necessary action is taken within your jurisdiction.

A recent Report by the Comptroller General, "U.S. Agreements with and Assistance to Free World Forces in Southeast Asia Show Need for Improved Reporting," B–159451, April 24, 1973, has recommended that the Congress consider legislation requiring that the Secretary of State submit annually to the Congress a list of all such subordinate and implementing agreements made involving substantial amounts of U.S. funds or other tangible assistance, together with estimates of the amounts of such funds or other assistance. I believe that such legislation should be unnecessary. Certainly it is preferable to bring about full cooperation through our own efforts.

On August 15, 1973 the Department of State published in the Federal Register a Public Notice inviting comment on a proposed revision of its Circular 175 Procedure, and related procedures, regarding the authorization, negotiation and conclusion of treaties and other international agreements (38 Fed. Reg. 22084). We would appreciate the opportunity to discuss with you any particular questions or problems that you may have regarding the application of that procedure, which we hope will provide a satisfactory basis for instructions within each of the departments and agencies concerned.

In connection, I would also note that neither the form in which an agreement is expressed nor the fact that an agreement is of a subordinate or implementing character in itself removes the agreement from the requirements of the Case Act or of the law regarding the publication of international agreements (1 U.S.C. 112a). The determination whether an instrument or a series of instruments constitutes an international agreement that is required to be transmitted to the Congress and to be published is based upon the substance of that agreement, not upon its form or its character as a principal agreement or as a subordinate or implementing agreement.

As the subject matter of our international agreements is, in general, as broad as the scope of our foreign relations, it is not practicable to enumerate every type of agreement which the Department of State should receive from the other executive departments and agencies. However, it seems clear that texts should be transmitted to the Department of State of the agreements referred to in the recommendations of the Comptroller General and of any agreements of political significance, any that involve a substantial grant of funds, any involving loans by the United States or credits payable to the United States, any that constitute a commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations, and any that involve continuing or substantial cooperation in the conduct of a particular program or activity, such as scientific, or other cooperation, including the exchange or receipt of information and its treatment. In general, the instruments transmitted to the Congress pursuant to the Case Act, and those published (other than those classified under E. O. 11652), should reflect the full extent of obligations undertaken by the United States and of rights to which it is entitled pursuant to instruments executed on its behalf.

The fact that an agency reports fully on its activities to a given Committee or Committees of Congress, including a discussion of agreements it has entered into, does not

exempt the agreement concluded by such agency from transmission to the Congress by the Department of State under the Case Act.

In the event of a question whether any particular document or series of documents constitutes an international agreement, inquiry may be made of the Assistant Legal Adviser for Treaty Affairs in the Department of State, telephone 632-1074. We look forward to your continued cooperation in ensuring compliance with these requirements.

Sincerely,

KENNETH RUSH,
Acting Secretary.

The second correspondence concerns how the State Department's criteria applied to the declaration issued in Bonn on July 17 after the Economic Summit Meeting. I ask that there appear in the RECORD at this point an August 14 response by the Assistant Secretary for Congressional Relations to a July 27 letter to the Secretary asking the Department's views on this question.

The material follows:

DEPARTMENT OF STATE,
Washington, D.C., August 14, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate

DEAR MR. CHAIRMAN: The Secretary has asked that I reply to your letter of July 27 requesting the Department's views on the legal significance of the declaration issued in Bonn on July 17 after the economic summit meeting. You have also asked for our opinion on the circumstances under which such a declaration would be considered legally binding.

While the declaration issued in Bonn is an important political commitment, it is not an international agreement within the meaning of United States law or international law since the parties did not evidence an intent to be legally bound. There is no indication of intention to depart from the established international practice of concluding non-binding communiques at the conclusion of a summit meeting. Accordingly, while we expect that the Bonn summit participants will comply with the accord, it is not a legally binding commitment.

The circumstances under which such a declaration would be considered legally binding will depend on the specific facts involved as measured against such criteria as intention of the parties to be bound in international law; significance of the arrangement; requisite specificity, including objective criteria for determinng enforceability; the necessity for two or more parties to the arrangement; and the form of the document. I am enclosing a copy of a department memorandum which discusses each of these criteria in more detail.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary for Congressional Relations.

Enclosures: As stated.

JULY 27, 1978.

Hon. CYRUS R. VANCE,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: The purpose of this letter is to request the views of the Department regarding the legal significance of the declaration issued in Bonn on July 17 at the end of the two-day economic summit meeting.

The United States, in this declaration, appears to enter into broad international commitments. According to the version which appeared in the July 18 *New York Times*, the United States pledges that "by year's end, measures will be in effect that will result in oil savings of approximately 2.5 million barrels per day by 1985. In order to achieve these goals, the United States will establish a strategic oil reserve of one billion barrels. It will increase coal production by two-thirds, it will maintain the ratio between growth and gross national product and growth and energy demand at or below 0.8 and its oil consumption will grow more slowly than energy consumption."

One could conceivably construe this language, on its face, to be legally binding, although I understand that this was intended to be merely a statement of policy rather than an obligatory international agreement. Would you please inform the Committee of the Department's position concerning the legal status of this declaration? Also, please provide the Committee with the Department's views on the general subject of whether, and under what circumstances, such a declaration would be considered legally binding.

Sincerely,

JOHN SPARKMAN,
Chairman.

● Mr. PELL. Mr. President, I fully endorse this conference report and urge its adoption by the Senate.

In order that the legislative history of section 402, special allowances, may be complete I request that my exchange of letters with the Department of State concerning this section be inserted in the RECORD at this point.

The letters follow:

COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., August 16, 1978.

Mr. BEN H. READ,
Deputy Undersecretary of State for Management, Washington, D.C.

DEAR BEN: This will confirm our oral agreement regarding the proposal that you raised in your letter of July 28.

In return for your support for a substitute for Section 413 of the House version of the FY 1979 Foreign Relations Authorization bill (H.R. 12598), I agreed to support Section 408 of the House bill. The substitute for Section 413, which was agreed to by the conferees, deleted the repeal of that portion of my amendment to the FY 1978 authorization bill prohibiting overtime pay, leaving only the repeal of my amendment's provision for a compensatory $250 per annum pay increase for all Foreign Service officers of classes 8-5.

Section 408, also agreed to by the conferees, authorizes the Secretary to pay a special allowance to Foreign Service officers "who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements." With regard to the statement in paragraph two of your letter of July 28 as to how this allowance would be administered, I agreed to everything except the key last sentence and proposed a modified version, which you accepted, which will be incorporated into the Statement of Managers as follows:

"The Managers have agreed (a) that in applying the authority granted in Section 408, the Secretary of State should ensure that no officer working in the immediate office of a Principal Officer of the Department of State, i.e., persons paid at Executive Levels I, II, or III, would benefit from the special allowance; and (b) that the grades of the positions eligible for consideration for the special allowance should be limited to grades FSO-8 through 4."

With every good wish.

Every sincerely,

CLAIBORNE PELL.

DEPUTY UNDER SECRETARY OF STATE
FOR MANAGEMENT,
Washington, D.C., July 28, 1978.

Hon. CLAIBORNE PELL,
United States Senate.

DEAR CLAI: As you know, Jerry Christianson of your office and Dwight Mason of mine have been discussing a possible arrangement whereby we would urge the House Conferees to accept a substitute for Section 413 of the House version of the Foreign Relations Authorization (that Section would repeal your amendment of last year terminating overtime pay for Foreign Service Officers on October 1, 1978) in return for your support of Section 408 of the House version (Section 408 authorizes the Secretary to pay a special allowance to Foreign Service Officers "who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements"). Under our proposal, the first section of your amendment would remain intact but the second part—the general pay increase of $250—would be repealed.

If the proposed special allowance were to be approved and enacted, we would wish to undertake a survey of the entire situation. Our intent, subject to the results of that survey would be to authorize this special allowance only for specific positions that require (among other things) either a minimum work week of 50 hours or one routinely requiring unusual working hours or shifts. Qualifying positions would be reviewed periodically to determine whether or not continuation of the allowance was justified. Addition of new positions to the list would be handled in the same manner. The allowance would not be computed on an hourly basis but rather would be a flat amount. No Class Four or above officer working in the immediate office of a Principal Officer of the Department (i.e., persons paid at Executive Levels I, II or III) would benefit from the allowance.

I anticipate that the principal beneficiaries of this special allowance would be officers assigned to the Department's Operations Center, its Executive Secretariat and to the Sinai Support Mission.

Sincerely,

BEN H. READ.●

Mr. SPARKMAN. I move the adoption of the conference report.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the conference report.

The report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SPARKMAN. Mr. President, I move to lay that motion on the table.

Mr. ROBERT C. BYRD. Mr. President, agreed to.

The motion to lay on the table was I yield to my delightful friend, the distinguished Senator from Wisconsin.

INTERDEPENDENCE AND HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, "interdependence" has become a reality in the last decade. And rightly so.

The world is shrinking. Jet planes streak daily from North America to Europe in a few hours. Around the world is something done on a vacation, rather than in 80 days.

The wars of our century have been world wars, and the skirmishes between nations are seen in terms of their global implications. Battlefields are countries. War theaters are continents.

Mr. President, today, more than at any other time in history, the nations of the world cooperate to meet their food and energy needs. The European Common Market nations band together to search for North Sea oil. The United States—the world's bread basket—relies upon its neighbors to fill its larder.

Mr. President, as the world community attempts to unite over these basic issues of food and energy, the need for recognizing a uniform standard of human dignity becomes paramount. The need for concerted efforts to protect human rights is clearer than it has ever been.

Yet the Senate refuses to cooperate on human rights by ratifying the Genocide Convention, a treaty which protects nothing more—nothing less—than the most basic right of all—the right to live.

Mr. President, have we forgotten that our Nation was instrumental in formulating a treaty that addresses this most basic of human needs? Have we forgotten about the need to ratify the Genocide Convention?

In a spirit of international cooperation, the Genocide Convention recognizes a potential that lurks at the heart of even the most civilized of nations: the potential for a nation to kill systematically and brutally its own people.

Mr. President, the genocide treaty will define the unspeakable crime of genocide in terms all nations can understand. It will be an important step to help protect the lives of all citizens, regardless of their ethnic, racial, religious, or national origin. What could be more simple than that?

Why then have we delayed 30 years in ratifying this most fundamental of human rights treaties? Why have we not cast our lot with the nations striving to forge a new, more humane definition of human rights?

There is simply no excuse strong enough to justify our failure to join 83 nations—among them, our most trusted allies—in condemning mass murder.

Mr. President, we must ratify the Genocide Convention.

I thank my good friend, the majority leader, and I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from Wisconsin.

Mr. President, I believe the distinguished Senator from Oklahoma has a special order. I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Does the minority leader yield back his time?

Mr. ROBERT C. BYRD. Mr. President, on behalf of the minority leader, I yield back his time.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oklahoma is recognized for not to exceed 15 minutes.

SALT II AND THE BACKFIRE BOMBER

Mr. BARTLETT. Mr. President, the Backfire bomber question will be among the last SALT II disputes settled. The Soviet Union has insisted that the Backfire bomber is a medium bomber with a tactical mission and should not be dealt with at SALT II. The United States has emphasized the intercontinental capability of the Backfire bomber. However, the United States apparently has agreed to exclude the Backfire bomber from the SALT II ceiling of 2,250 strategic nuclear launch vehicles if, and only if, restrictions are included which would severely constrain its use as a strategic bomber. Agreeing upon such verifiable and effective restrictions for the Backfire has thus far not been possible.

Because the Soviet Union officially refuses to discuss the Backfire issue at Geneva, and because of the great difficulty in resolving that issue, President Carter has reserved for himself the resolution of the Backfire problem. How President Carter settles the Backfire issue will determine the way in which the American people evaluate the SALT II agreements and the President's leadership.

The Tupolev, TU–26, the Soviet bomber whose production model is known to NATO as the Backfire–B, is a swing-wing, Mach 2 aircraft slightly shorter than the American B–1 strategic bomber and weighs about two-thirds as much. The Backfire would be 50 percent longer and 100 percent heavier than the stretched version of the existing FB–111, to be known as the FB–111H, which has been proposed in lieu of the cancelled B–1 bomber.

Precise discussions of the range of the Backfire bomber are difficult. First, because of a lack of technical information about the aircraft, different methods of estimating its performance legitimately produce different results. Second, the range and payload of any Backfire depends largely on the way in which it flies each type of mission. Generally, greater range can be achieved by flying at higher altitudes, at lower speeds, and with lighter payloads.

With an operational payload on the order of 20,000 pounds, the Backfire bomber is capable of flying great distances, Different sources estimate the range of the Backfire, under optimal conditions, at between 3,600 and 6,300 statute miles. Estimates of its combat radius vary from less that 2,600 statute miles to almost 3,400 statute miles. The combat radius for typical hi-lo-hi missions runs some 350 to 550 statute miles less. On missions conducted entirely at low altitude, according to an analysis in the International Defense Review, the radius of the Backfire may be as low as 1,550 statute miles. The same analysis estimated the range of the Backfire with a single refueling at 5,400 statute miles. Lower estimates and much higher estimates exist.

The significance of the Backfire bomber's range is made clearer when that range is compared with the range of other strategic aircraft and with the distance to potential targets.

Past and present strategic bombers have had ranges as follows: The B–29 (2,000 statute miles), the TU–4 (3,000), the FB–111A (3,800), the B–47 (4,000), the TU–16 Badger (4,000), the MYA–4 Bison (6,000), the B–1 (8,000), the TU–95 Bear (8,000), the B–36 (10,000), and the B–52H (12,500). Thus, the Backfire–B with a range between 4,000 and 6,000 statute miles compares favorably with these strategic aircraft, and with future strategic aircraft such as the FB–111H with its range of perhaps 6,500 statute miles. It should be remembered that, in 1959, the United States still had some 1,300 B–47 bombers as part of its strategic forces targeted against the Soviet Union. As can be seen, the B–47 was far less capable than the Backfire. The combat radius of the B–47 was some 1,600 statute miles. Because of its present capability, and because of likely improvements, the Backfire bomber is best considered in the category of aircraft like the B–1 and the FB–111H.

The significant theater capability of the aircraft is obvious. Operating out of Murmansk, the Backfire can attack shipping throughout the North Atlantic, perhaps as far south as the Azores and return to its Russian bases. In the Pacific, operating out of Petropavlovsk, the Backfire can attack American carriers as far south as Guam and as far to the east as Hawaii. With inflight refueling, this range could be extended.

As a strategic bomber, the capability of the Backfire is less certain because the unrefueled ranges are for different "mission profiles." Generally, it is thought that the Backfire bomber, flying hi-lo-hi missions from bases in the Soviet Union and returning to those bases without refueling will be able to attack targets only in the northernmost parts of the United States.

However, the Soviet Union probably would not use its Backfire bombers in that way. With air-to-air refueling, the Backfire could cover all or nearly all of the United States. no matter which range estimate is accepted. Also, the Backfire can clearly cover all of the United States on one-way missions which might recover in Cuba or Mexico.

Much confusion exists about the nature of such one-way strategic missions. They are not "suicide" missions. The attacking bomber moves on past its target to an area where the crew, and perhaps the aircraft, might be recovered. For years, the United States relied upon aircraft with ranges far less than that of the Backfire to conduct strategic attacks on the Soviet Union. Many of these aircraft faced little chance of escaping the boundaries of the Soviet Union. In some cases, the pilots planned to eject from their planes before they crashed for lack of fuel. In the early 1950's, the U.S. Navy even experimented with the P2V Neptune as a strategic bomber. This aircraft could take off from a carrier, but could not land on the carrier. It would have attacked the Soviet Union then attempted to recover in a third country or ditch near friendly ships.

Even after the advent of bombers which fly 10,000 or more miles, the one-way mission is still a day-to-day con-

sideration. Many U.S. bombers are programed to recover in foreign countries after traversing the Soviet Union to carry out their mission. Also, because of certain "Fail Safe" procedures, these long-range bombers may consume a large amount of fuel waiting for final clearance to begin their penetration of Soviet Airspace. Under such circumstances, many aircraft would still not be able to clear Soviet airspace before they would run out of fuel. Crews are trained for this possibility. In light of these facts, the one-way mission recovering in Mexico or Cuba is not unusual, but rather routine.

Thus, no matter what the actual range of the Backfire bomber, if Moscow wishes to use it as a strategic bomber, Moscow can use it effectively.

Should the Backfire bomber be counted at SALT? The Soviet Union says no, arguing that it is a "medium" bomber not a "heavy" bomber, or "long range" bomber. Clearly, a large part of the Backfire bomber force will be deployed with Soviet Naval Aviation, and Defense Secretary Brown has reported that the Soviet Union is building a new aircraft which is clearly a "heavy" bomber.

Nevertheless, the International Institute of Strategic Studies defines a "heavy" bomber as one that has a range of 6,000 statute miles unrefueled at optimum altitude with no weapons. By some estimates, the Backfire bomber has that range. Many other estimates place its range very close to that definition. Thus, the United States can at least make the case that the backfire should count as a "heavy" bomber at SALT II. Because of the agreement to rely upon "national technical means of verification", however, the burden of proof is upon the United States, not the Soviet Union. It remains to be seen how adamantly President Carter will press the case.

Whatever definition of "heavy" bomber is used at SALT II, I believe that it would be wrong to exclude the Backfire bomber from that agreement. In consenting to the ratification of the SALT I Interim Agreement on Offensive Arms, the Congress noted that the Soviet Union was granted superiority in numbers of missiles, a superiority countered by the large American bomber force which was not restricted. If the American bomber force is now included under the SALT II ceiling, and the Backfire is excluded, the Soviet Union will be able to maintain its larger number of missiles while also deploying an unrestricted number of strategic Backfire bombers. Thus, excluding the Backfire will not only permit the Soviet Union to deploy strategic systems above the SALT II ceilings, but it will also have the destabilizing effect of permitting the Soviet Union to deploy a larger number of intercontinental ballistic missiles with which to threaten a first strike against the United States.

Furthermore, counting the Backfire under the SALT II ceiling sets an excellent precedent which will discourage the deployment of "Gray Area" systems which can circumvent the intended restrictions. Certainly the Soviet Union ought not to be given the benefit of the doubt on "Gray Area" systems, especially when it refuses to cooperate in verification.

Some observers have suggested that the Backfire issue is relatively minor, no matter how good the case for counting this Soviet bomber. One form of this argument notes that missiles play a more important role in Soviet strategic planning than do bombers. Certainly the Soviet bomber force of some 150 Bear and Bison bombers is smaller than the American force of approximately 350 B–52's. However, it should be remembered that the American bomber force is a second strike force likely to suffer heavy losses in any surprise attack. Soviet strategic forces, with its preponderance of heavy intercontinental ballistic missiles, is an emerging first strike force which can anticipate that its bombers will not be destroyed on the ground.

In general, those who are least concerned about whether or not the Backfire bomber is counted also believe in "finite deterrence", that is, that both sides have enough and that any more is irrelevant. That is a view not shared by the Joint Chiefs of Staff, who insist that Backfire be counted. Nor is it a view that many Europeans find comfortable. Nevertheless, it is unlikely that the Backfire bomber will be counted. For that reason, the Carter administration is attempting to find a way to deal with Backfire without including it under the SALT II ceilings.

In a July 25th press conference, Gen. David Jones, the Chairman of the Joint Chiefs, indicated that the JCS still believe that the Backfire should be counted and that restrictions being proposed at SALT II by the Soviets are neither reasonable nor verifiable. Jones implied, however, that other steps might be taken which would make SALT II acceptable even if Backfire were not counted. These involved deployment of defensive systems to counter Backfire and offensive systems to compensate for Backfire. Let us examine these options.

Mere assurances from the Soviet Union that the Backfire bomber will not be deployed against the United States are meaningless. However, some steps which impinge upon the strategic effectiveness of the Backfire would be of value. Unfortunately, such steps proposed thus far do not greatly reduce the Backfire threat to the United States and thus do not remove the Backfire issue at SALT II.

For example, the Backfire bomber could be banned from Arctic bases. Unfortunately, the deployment of Backfire bombers to Arctic bases involves little more than a decision, whereas the development of defenses against an Arctic-based Backfire attack would take some time. Also, the prohibition on Arctic basing loses its significance as long as the Backfire can be refueled in the air. Some efforts have been made to negotiate limits on the refueling capability of Backfire. Backfires could have their refueling probes removed and could be banned from participation in air-to-air refueling. Verification, however, would be quite difficult. Backfires could be fitted with refueling probes which are not visible, and air crews could be trained in other aircraft and in simulators. It should be remembered that the extensive in-flight training in air-to-air refueling conducted by American air crews is designed to keep peacetime accident rates down and would not be necessary to achieve a wartime operational capability.

Limits have also been proposed on the number of Backfire and tanker aircraft, but large numbers of these aircraft already exist and many more are obviously planned. Recent reports indicate the production rate of the IL–76 "candid" transport which would make an excellent tanker has been increased, as has that of the Backfire. No matter what is agreed, vertification will be difficult and the Soviet Union will still have a large number of Backfire bombers which can be sent on strategic missions. Most of the restrictions suggested thus far would be more effective on paper than in reality. In any case, these constraints, such as a ban on refueling and Arctic basing, do not take into account the sizable improvement in intercontinental capability of the Backfire which aeronautical engineers say is possible with existing technology. Thus, as General Jones has suggested, these collateral restraints are generally not verifiable and not effective.

What, then, is to be done about the Backfire? Several Members of Congress have suggested that we have no choice but to exclude the Backfire or else lose a SALT II agreement. They have suggested that the United States bite the bullet and spend $4 billion or more on improved air defenses to counter the Backfire. In my view, this is a false dichotomy. First, I believe that a bad SALT II agreement, such as one which excludes the Backfire bomber, is worse than no SALT II agreement. Second, the United States needs to expand and improve its now almost nonexistent air defenses with or without restrictions on Backfire. New satellite based systems and new technologies such as the Airborn Warning and Control Systems (AWACs) and new interceptors, such as the F–14 with its Phoenix missile and the F–15, will make this easier.

The failure to negotiate significant restrictions on the Backfire bomber will, however, result in the need for even more of these costly air defenses. In essence, we will have failed to reduce a Soviet capability and will be forced to respond by increasing our own capability. The problem is amplified by the fact that the same Backfire bombers which threaten the North Atlantic and Europe, dictating the need for improved air defenses there, will also threaten the United States and the Pacific and require improved defenses in those areas also. In short, the Backfire is a highly flexible system which provides a multiplier against Western defenses because it can be used in so many ways. There is no reason why Soviet naval Backfires cannot conduct strategic missions. U.S. Navy aircraft have had that mission for years.

Another response to compensate for the exclusion of the Backfire from the SALT II ceilings would be to increase our own offensive deterrent forces. Though this, too, reduces the chances that SALT II would result in decreased defense expenditures, it would permit the

United States to maintain equality and parity.

Some have suggested that the United States build its own Backfire, either a B–1 that counts at SALT, since the United States does not have sufficient non-MIRVed systems to reach the SALT II ceilings, or FB–111H's which would not count. Such an approach would not reduce the Soviet ICBM advantage under SALT, but it would permit the United States to maintain a manned penetrating bomber force into the 1990's and beyond, a doubtful possibility for our existing large, cumbersome B–52's against the massive, upgraded Soviet air defense which are expected. It would also give the United States a more flexible bomber force. The United States might also expand its plans for the deployment of other weapons systems such as MX.

In my view, it would be a major failure of the SALT process if the Backfire bomber is not counted. It would symbolize that "Gray Area" systems will be a legitimate means for the Soviet Union to circumvent the spirit of a SALT agreement. It would suggest that the goal of the Soviet Union at SALT is advantage, not equality. It would suggest that Moscow wishes to modernize its strategic bomber force without cutting the number of its destabilizing intercontinental ballistic missiles. The Backfire problem also brings out the difficulties of relying on national technical means of verification.

Whether the Backfire is counted or not, the United States must take major and immediate steps to improve both its offensive and defensive strategic forces. Also, because Backfire is a superb theater system, as is that other outstanding "Gray Area" system, the SS–20, the United States must improve its theater nuclear and conventional forces. In particular, I believe the United States should look toward development and deployment of a new theater ballistic missile, either a medium or intermediate-range ballistic missile.

How President Carter handles the Backfire issue may well give us our best picture of the President's views on national defense and the Soviet threat. If he agrees to exclude the Backfire from SALT II then he should demand compensating concessions from the Soviet Union. SALT II should be judged by what it contains, not by what the United States can do to compensate for its inequities. The Congress, in Public Law 92–448 called for an equal agreement. If, overall. SALT II is unequal in its effect, the Senate should reject it. I personally believe it would be better to forego, or delay, SALT II until the Backfire bomber is included, I also believe we should expand SALT II now to deal with civil defense, air defense, and all "Gray Area" systems such as Backfire and the SS–20.

ROUTINE MORNING BUSINESS

(The following proceedings occurred during Mr. BARTLETT's address and are printed at this point by unanimous consent:)

The ACTING PRESIDENT pro tempore. The Senator's 15 minutes have expired. Does the Senator seek some additional time?

Mr. BARTLETT. Yes; I ask unanimous consent to proceed for 1½ minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. Yes, Mr. President; for 10 years, I have objected to extensions of 15-minute orders. The Senator will understand that I do it for that reason.

In order to help the Senator, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 5 minutes each; that the Senator be recognized; and that there be no break in his statement.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered, and the Senator is recognized for 5 minutes.

Mr. BARTLETT. Mr. President, I shall only accept 1½ minutes and I thank the distinguished Senator from West Virginia for the additional time.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF EDUCATION ORGANIZATION ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, now within the framework of the unanimous-consent agreement on the natural gas bill, that the Senate resume consideration of Calendar Order No. 1000, S. 991.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 991) to establish a Department of Education, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I welcome this opportunity to strongly urge my colleagues here in the Senate to give favorable consideration to the creation of a Cabinet-level Department of Education as part of the Federal reorganization of education functions.

The time for fundamental improvement of our broad educational system is now. While education will always be an area of American life in which local, State and private influence is predominant, there is a need for improving the Federal educational services designed to help overcome the major problems and difficult challenges facing our educational systems. Some of these problems and challenges include: A decline in student achievement and in the public confidence in the quality of education, unacceptably high rates of high school dropouts and unemployed youth, and the isolation of educational institutions from family life and community services. I firmly believe that the establishment of a Department of Education will enable the Federal Government to effectively assist State, local, and private agencies to achieve higher standards of quality and to maximize existing Federal resources to serve special needs children and assure a wider degree of parent participation in the educational process.

Education is far too important to be scattered piecemeal among various governmental departments and agencies which are too often busy with other, sometimes dominant, concerns. Too often, State and local educational administrators, our constituents, go from agency to agency, piecing together a package of grants and approvals. They are continually snarled in the redtape of Federal regulations, reporting requirements and the duplication of efforts. Finally, this is not only a waste of time, it is time taken away from the education of our Nation's children.

The result of our present system means that we have no effective Federal management. A Secretary of Education would convey to the American people and to the officials of the executive, legislative, and judicial branches of the Federal and State governments the importance that we as a nation place on education. But more importantly, consolidating education functions will provide a more efficient mechanism for the coordination of the numerous programs in a sensible, workable and effective framework.

Education is one of the Nation's largest businesses. Upwards of 65 million Americans are directly involved in education. Education is the Nation's second largest fiscal commitment. What the schools do shapes society for generations.

The establishment of a Cabinet-level Department will improve the Federal Government's capacity to support the States and local communities in their efforts to provide an equal chance for quality education to all our citizens. This bill has my strong support, and I look forward to successful completion of this legislation at the earliest possible time.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 3409 (AS MODIFIED)

Mr. STEVENS. Mr. President I call up amendment No. 3409 (as modified) and ask for its consideration.

The ACTING PRESIDENT pro tempore. The clerk will report. Will the Senator please send the amendment to the desk. The clerk does not have the amendment.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for Mr. PERCY, Mr. TALMADGE, Mr. MCGOVERN, Mr. DOLE, Mr. ABOUREZK, Mrs. ALLEN, Mr. ANDERSON, Mr. BAKER, Mr. BARTLETT, Mr. BELLMON, Mr. BENTSEN, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. CULVER, Mr. CURTIS, Mr. DANFORTH, Mr. EAGLETON, Mr. EASTLAND, Mr. FORD, Mr. GOLDWATER, Mr. HANSEN, Mr. HASKELL, Mr. PAUL G. HATFIELD, Mr. HAYAKAWA, Mr. HELMS, Mr. HODGES, Mr. HUDDLESTON, Mrs. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JOHNSTON, Mr. KENNEDY, Mr. LEAHY, Mr. LUGAR, Mr. MCINTYRE, Mr. MELCHER, Mr. METZENBAUM, Mr. MORGAN, Mr. NELSON, Mr. NUNN, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROTH, Mr. SARBANES, Mr. SCHMITT, Mr. SPARKMAN, Mr. STAFFORD, Mr. STENNIS, Mr. STONE, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, Mr. YOUNG, and Mr. ZORINSKY proposes an amendment numbered 3409 (as modified).

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 48, strike out line 2.

On page 48, line 3, strike out "(D)" and insert "(C)".

On page 48, line 5, strike out "(E)" and insert "(D)".

On page 48, line 7, strike out "(F)" and insert "(E)".

On page 48, line 9, strike out "(G)" and insert "(F)".

On page 48, line 11, strike out "(H)" and insert "(G)".

On page 48, line 12, strike out "(I)" and insert "(H)".

On page 48, line 13, strike out "(J)" and insert "(I)".

On page 48, line 14, strike out "(K)" and insert "(J)".

On page 49, line 10, strike out "section 203(11)" and insert "section 203(10)".

On page 49, line 15, strike out "(13)" and insert "(12)".

On page 50, strike out line 24.

On page 51, line 1, strike out "(6)" and insert "(5)".

On page 51, line 3, strike out "(7)" and insert "(6)".

On page 51, line 7, strike out "(8)" and insert "(7)".

On page 51, line 10, strike out "(9)" and insert "(8)".

On page 51, line 12, strike out "(10)" and insert "(9)".

On page 51, line 15, strike out "(11)" and insert "(10)".

On page 51, line 23, strike out "(12)" and insert "(11)".

On page 51, line 24, strike out "(13)" and insert "(12)".

On page 52, line 5, strike out "(14)" and insert "(13)".

On page 52, line 8, strike out "(15)" and insert "(14)".

On page 52, line 12, strike out "(16)" and insert "(15)".

On page 55, strike out lines 12 through 23.

On page 56, line 3, strike out "SEC. 210." and insert "SEC. 209.".

On page 56, line 8, strike out "304," and insert "303,".

On page 56, line 16, strike out "SEC. 211." and insert "SEC. 210.".

On page 56, line 23, strike out "303" and insert "302".

On page 58, line 16, strike out "SEC. 212." and insert "SEC. 211.".

On page 59, line 6, strike out "305" and insert "304".

On page 59, line 11, strike out "SEC. 213." and insert "SEC. 212.".

On page 60, line 4, strike out "SEC. 214." and insert "SEC. 213.".

On page 60, line 12, strike out "SEC. 215." and insert "SEC. 214."

On page 66, line 2, strike out "SEC. 216." and insert "SEC. 215.".

On page 74, strike out all beginning with line 14 through line 6 on page 75.

On page 75, line 9, strike out "SEC. 303." and insert "SEC. 302.".

On page 76, line 3, strike out "SEC. 304." and insert "SEC. 303.".

On page 77, line 14, strike out "SEC. 305." and insert "SEC. 304.".

On page 78, line 12, strike out "SEC. 306." and insert "SEC. 305.".

On page 78, line 21, strike out "SEC. 307." and insert "SEC. 306.".

On page 79, line 3, strike out "SEC. 308." and insert "SEC. 307.".

On page 79, line 12, strike out "SEC. 309." and insert "SEC. 308.".

On page 82, line 24, strike out "section 211" and insert "section 210".

On page 83, line 11, strike out "section 211" and insert "section 210".

On page 106, line 1, strike out "(9)" and insert "(8)".

On page 40, in the table of contents, strike out the following item:

"Sec. 209. Office of Child Nutrition.".

On page 40, in the table of contents, renumber items Sec. 210. through Sec. 216. as items Sec. 209. through Sec. 215., respectively.

On page 40, in the table of contents, strike out item

"Sec. 302. Transfers of functions from the Department of Agriculture.".

On page 40, in the table of contents, renumber items Sec. 303. through Sec. 309, as items Sec. 302. through Sec. 308, respectively.

Mr. STEVENS. Mr. President, have Senator PERCY's changes and modifications in this amendment been incorporated in the version the clerk has at the desk?

The ACTING PRESIDENT pro tempore. The clerk indicates that they have. The clerk has the modified printing.

Mr. STEVENS. Senator PERCY has asked me to call up his amendment. The purpose of his amendment would be to strike the proposed transfer of the child nutrition programs. He has outlined to the committee a number of sound reasons for keeping these programs in the U.S. Department of Agriculture.

I ask unanimous consent that the statement that Senator PERCY would have made in support of his amendment if he were here be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT OF SENATOR PERCY

My amendment would strike the proposed transfer of the child nutrition programs. There are a number of sound reasons for keeping these programs in USDA.

First, a Department of Education will, as it should be, be dominated by educators. Educators have had a history of not placing high priority on the placement of these programs within the schools. In testimony received by the Committee, the Food Research and Action Center, a non-profit anti-hunger advocacy center, stated that—

"A good portion of our effort has been in the area of School Lunch and School Breakfast Program expansion. Time after time we have found that state and local Boards of Education have been at best uninterested, and at worst obstructionists, in this expansion effort. FRAC and/or Legal Services attorneys have brought numerous lawsuits seeking to expand school lunch programs in local areas. These lawsuits, brought on behalf of low-income plaintiffs, resulted in the establishment of school lunch programs in Hartford, Connecticut; Bridgeport, Connecticut; Mount Vernon, New York; Cleveland, Ohio; and the State of Rhode Island, among others. In many of these areas, litigation would not have been required if state and local Boards of Education and education administrators had viewed the school food prgrams as integral parts of an educational environment."

FRACs testimony continues—

"In short, in the past, poor people have not been able to look to education administrators and policy makers to spearhead the need for school food programs. Instead, these administrators have often taken the position that such programs are expensive, administratively burdensome, and must take a distant backseat to other education priorities."

In addition to FRAC's testimony, The Children's Foundation testified that it is completing a study on barriers to the implementation of the school breakfast program. The study is entitled "I'd Rather Go to Hell Than Run a Breakfast Program." This was the direct quote of a local school official. It is indicative of the view that many such officials have of these programs.

Second, the transfer will jeopardize the funding of the child nutrition programs. Since educators have not generally viewed nutrition programs as a vital part of the educational process, it is reasonable to assume that a Federal Department of Education would be no more responsive to the importance of such programs. When faced with budgetary constraints, these programs will be seen as expandable. This would be particularly true of those child nutrition programs with little or no connection to school systems, such as the summer food and day care feeding programs.

Third, USDA would still keep the research support vital to these programs. USDA is increasing its research in both nutrition and agricultural economics. It would be counterproductive to remove the child nutrition programs from a Department that is presently equipped to do research in areas directly related to the improvement of these programs.

Fourth, although the Administration has pledged its continued support for the commodities aspect of these programs, this guarantee may become worthless several years down the road as the programs become dominated by educators. Moreover, we must not lose sight of one of the original reasons behind the creation of the school lunch program, which was commodity support. Instead of paying farmers not to grow crops, we are paying them for their surplus crops and using those surplus crops to feed undernourished children. This is a much more efficient use of taxpayers' money. As Senator Talmadge brought to our attention, "The school lunch program today constitutes the only effective means through which the Secretary of Agriculture can provide price and market stability to those farm commodities that do not enjoy the protection of government price support programs."

Fifth, one approach to improving the quality of meals in these programs requires training food service personnel to procure and prepare food more effectively and economically. USDA has the expertise to accomplish this and is initiating activities in this area. A Department of Education is less likely to attack such a problem or to have the expertise to do so effectively.

Sixth, the transfer is opposed by a broad spectrum of groups, including agriculture groups, child-oriented public interest groups, nutritionists, and school food administrators. This grouping includes the American School Food Service Association, which is the largest national association representing people who direct, manage, and work in school

nutrition programs at the State and local level. These groups have worked the closest with and are the most knowledgeable on the child nutrition programs.

Seventh, the President's Reorganization Project is presently conducting a study of the Federal nutrition effort. This study is not scheduled to be completed until next year. As a result, the transfer of these programs at this time would be premature.

Regarding nutrition education, I would again like to quote one of our witnesses, Mr. Hendrik Wentink of the Poultry and Egg Institute of America. He states:

". . . while nutrition education historically has nowhere received the emphasis it has deserved, it cannot be disputed that the USDA is exerting aggressive leadership in the area today. Secretary Bergland has formed a Human Nutrition Policy Committee to coordinate all USDA nutrition programs including food assistance, safety, quality research and education. Interim regulations to implement nutrition education grants to the states under the 1977 Child Nutrition Act amendments have been promulgated. The Department is conducting a novel nutrition awareness project which will test out a multimedia approach for issuing and reinforcing nutrition messages. Authority under recent amendments of the National School Lunch Act to prohibit the sale of "junk food" in participating schools is being invoked. The focus of Extension activities is being expanded to reach urban areas more effectively. The very substantial Expanded Food & Nutrition Program within the Extension Service is developing a special program to emphasize nutrition counseling for food stamp users. And these are far from all the fronts of the USDA's nutrition education campaign."

It has been stated that the best place for nutrition education is in the schools. I agree. But I also ask, if educators are so interested in nutrition education, why have they not instituted these programs in the schools? The answer, of course, is that they are not interested. In fact, they are so disinterested that they have actually promoted nonnutritious "junk foods" in the schools. In order to raise extra money, they have candy and soda machines in the schools. These junk food machines compete with the nutritious lunches served in the school cafeteria. Congress recognized this problem, a problem created by educators, last year when it mandated USDA to ban the sale of junk foods that compete with the school lunch program. USDA has responded to that mandate and that ban is going into effect this summer. How can we justify transfering these programs to a Department which will be dominated by such insensitive interests?

In conclusion, the question has been asked, "Where will these programs best operate and serve our nation's children?" The answer is that they will best operate and serve our children in USDA. As the former Ranking Minority Member of the Select Committee on Nutrition and Human Needs, I have watched with great satisfaction the growth of the child nutrition programs. Due to the work of the Nutrition Committee, we have come to understand that it is vitally important that our food, nutrition and agricultural policies be coordinated. As Senator Talmadge stated in a letter to the Committee, co-signed by the entire Senate Committee on Agriculture, Nutrition and Forestry, USDA is the best place for achieving maximum coordination. In the letter, he states:

"GAO in a recent report on nutrition research, found 'a lack of central focus and coordination' to be the number one barrier to progress in the area. We feel certain that progress in evolving a food and agricultural policy is equally dependent on having a central focus. If the development of a national energy policy demanded a new Department of Energy to coordinate and pull together all aspects of the problem, then we insist that the same principle applies to the development of a national food, nutrition, and agriculture policy. The nutrition programs should not be sent to other agencies cr departments; indeed the food-related functions of other departments should be consolidated within the Department of Agriculture."

As I have shown, educators have a marked disinterest in nutrition education and in the school feeding programs. On the other hand, USDA has demonstrated great interest and enthusiasm. Transfer of these programs would not solve any problems, it would only create new ones. The child nutrition programs should and must remain in a broad-based Department of Agriculture.

SAVE THE DEPARTMENT OF AGRICULTURE

Mr. TALMADGE. Mr. President, I rise to support the amendment by my distinguished colleague from Illinois, Mr. PERCY. The child nutrition programs operated by this Government belong in, and should remain in, the U.S. Department of Agriculture.

All 18 members of the Committee on Agriculture, Nutrition, and Forestry endorse that concept. Fifty-nine Members of the Senate endorse that concept. The House Government Operations Committee endorses that concept. And one is finally led to wonder why we had to face this situation, when so few support the idea of transferring these programs to the new Department of Education?

The child nutrition programs are designed to achieve health, agricultural, and income maintenance objectives. The largest of these programs happen to operate primarily in the schools. The transfer of these programs to an education department seems to be predicated more on the fact that both child nutrition programs and traditional education programs are run through schools, than on potential benefits to child nutrition, education, or administration at any level of Government.

The legislative history of the National School Lunch Act of 1946 indicates that it was enacted to fulfill four objectives. Subsequent legislation expanding the program. or adding new programs, has reiterated the same objectives:

To safeguard the health and nutritional well-being of the Nation's children.

To provide a domestic outlet for commodities acquired through the Department's price support and surplus removal activities.

To promote good eating habits in children by exposing them to a variety of wholesome foods; and

To provide economic assistance to low income families.

Over the past year, the greatest single concern expressed about the child nutrition programs in the media has been the quality of meals served to children and the need to upgrade these meals. The very success or failure of the school food programs rest on the quality of meals.

When meals do not satisfy nutritional standards, or are thrown away rather than eaten, the basic purposes of the program are subverted and millions of dollars of Federal funds are wasted.

To serve quality school meals, schools need to know how to purchase and prepare foods that contain proper nutrient levels, are appetizing, and are economical. To make progress toward these goals, school food service personnel need assistance in how to procure high quality food economically, how to process and prepare it, and how to store it so that nutrient values are retained.

School food personnel who are not skilled in procurement can end up with ground beef that has a high fat content, foods with high salt or sugar content, or other nutritional quality problems. In addition, schools can pay higher amounts than are necessary for food items.

To help school districts across the country do a better job is a major undertaking. The Department of Agriculture is taking on this task and has the necessary expertise to do so. A Department of Educaton is unlikely to have either the inclination or the expertise to get into this area.

In rural Georgia, a USDA expert has helped a nine-school district cooperative education service agency develop an integrated program of food procurement which allows school to purchase better food at a lower cost.

In Nashville, Tenn.; Fresno, Calif.; and southwestern Colorado; USDA specialists have acted as a catalyst in developing a system of direct purchases of fresh produce from local farmers. This has eliminated the extra charges of middlemen and improved the quality of the food served to school children. These projects have also had significant nutrition education aspects, with farmers explaining food production in the classroom and children occasionally picking fresh produce at nearby farms. These projects show great future potential, and USDA is developing model projects for expansion. The projects help develop markets for family farmers at the same time that they improve lunches for children.

A primary reason why small, local food purchasers, such as school districts and hospitals, have had difficulty achieving the efficiency USDA has in large scale community operations is a lack of current price information and how to use that information.

Through the Market News Services of the Agricultural Marketing Service, USDA has been providing up-to-date price information to producers, processors, and wholesalers for years. Now, USDA has developed an information kit which explains to institutional food buyers how to take advantage of current price information to economize on food procurement. This project was a cooperative effort involving the Agricultural Marketing Service and the Food and Nutrition Service.

Another key area in child nutrition is the basic nutritional standards that USDA establishes for meals. These standards are based on nutrition research conducted by USDA's Science and Education Administration (SEA). The Department recently established a Human Nutrition Center within SEA as a focal point for research in this area.

The Food and Nutrition Service (FNS) works with SEA to design research that will provide information in determining the nutritional standards needed in these programs and to test specific proposals for alterations in meal patterns used in the programs.

Recently, FNS proposed the most major changes in the school lunch meal pattern since the passage of the National School Lunch Act in 1946. These proposals were based on several years of work by SEA. Plans are now in final stages for field tests in hundreds of schools of these and other changes in the meal patterns. USDA's Economics, Statistics, and Cooperatives Service (ESCS) is playing a major role in designing and developing these field tests, which will carefully analyze both economic and nutritional impacts of the proposed change.

In addition, SEA, FNS, and ESCS are also working together to mount major nutritional evaluations of the child nutrition programs. The National Food Consumption Survey, conducted by SEA, is collecting information on participation in child nutrition programs and its nutritional impact. SEA is now discussing plans with FNS and ESCS for a major, multiyear nutritional evaluation of the school lunch program, and has been provided funds by Congress for this purpose.

Elsewhere in SEA, the Human Nutrition Center is conducting research into such areas as the importance of trace minerals in the diets of children—research that is also vital to, and coordinated with, the operation of child nutrition programs.

Finally, to help assure that the best quality food is provided with the available resources, ESCS is now involved in 16 major studies concerning FNS food assistance programs. Most of these studies are concentrated in the child nutrition area. ESCS is now conducting studies on the proper level of both food and administrative reimbursements for the summer food program, and on related questions of food quality and food prices and profit margins by private vendors in the summer program.

ESCS has designed an array of studies on the nutritional, economic, administrative, and agricultural impacts of providing cash in lieu of commodities to school districts and is involved in the field tests of changes in school meal patterns. Most of these studies cut across several disciplines—from nutritional to agricultural economics—and it is not likely they could be adequately handled by a Department of Education.

In the foreseeable future, the Federal Government will come into possession of increasing stores of surplus agricultural commodities. A Department of Education would have no particular concern with the use of the child nutrition programs as a domestic outlet for surplus commodities.

The existence of agricultural stabilization and children nutrition programs within USDA permits the development of an integrated food and nutrition policy that uses surpluses when they exist, and maintains the necessary framework for this function by providing commodities purchased at market prices when surpluses have been exhausted.

USDA is able to serve a dual objective—both to support the agricultural economy and to provide nutritious food items to schools and other institutions that care for children.

Even during periods of surplus, USDA supplements the surpluses with purchases of other, nonsurplus commodities that schools need. Such a balanced approach would be difficult to work out with a split jurisdiction on which USDA procures and ships commodities but a Department of Education administers the programs where the commodities are used.

Two particular problems would be likely to arise as a result of a transfer. Housing these programs in a Department of Education could lead to an emphasis on providing more in the way of cash subsidies and less in commodities, with possible adverse effects on agricultural producers. At the same time, a transfer could lead to adverse effects on the types and variety of those commodities that would still be provided to schools.

There is now a balance in the Department's commodity purchase decisions between serving the needs of schools and moving surplus agricultural products.

The reason generally given for moving the child nutrition programs to a Department of Education is to facilitate educational administration at the State and local level. Upon close examination, this contention turns out to be weak.

Commodities would still come from USDA. States would have to deal with two Federal Departments in the operation of food service programs, not one.

The uniformity of Federal program requirements directed through Treasury and OMB circulars, plus integration that has already occurred between FNS and the Office of Education, means that little additional administrative simplification could take place. The particular records and administrative requirements in the child nutrition programs stem from the distinct reimbursement structures carefully constructed for these programs by Congress over the past 30 years. By and large, the same records would still have to be kept. They would simply be submitted by the State to a Department of Education rather than to USDA.

Transfer of these programs to an education department offers no significant opportunities for long-range reduction in administrative costs and burdens at Federal, State, or local levels.

The short-term disruption caused by transfer would be an added cost. Where opportunities exist for reducing administrative costs by integrating FNS and Office of Education activities, integration now takes place.

While a transfer would not accomplish much in the administrative area, it could seriously jeopardize the strength and well-being of the child nutrition programs.

Among educators, child nutrition programs are often perceived as an expendable service to education. Faced with budgetary constraints and the need for trade-offs, Federal education administrators might sacrifice child nutrition efforts.

Successful food service is usually found in schools where administrators view the child nutrition programs as an integral part of the education program, while poor quality food service is frequently found in schools where child nutrition programs are viewed as ancillary to the education program.

Some States are contemplating the shifting of responsibility for the administration of such programs out of State education departments, and Texas has already announced plans for such a move.

Moving the child nutrition programs to a Department of Education would place the programs in an organization which is not concerned with the formulation or execution of nutrition policy; and second, it would whittle away at the total array of interests competing within the Department of Agriculture.

Overall, there is little real gain from moving child nutrition programs to an Education Department. There is risk of substantial loss, however, from such a move. The linkages with human nutrition research, food and consumer economics, agricultural impact studies, food specification writing, and food inspection in USDA would all be lost. Program operation and commodity purchases would be split, thus making the commodity operation more susceptible to pressures to act largely as a surplus removal operation.

The new Education Department would have little ability to work with States and school districts to buy more economically, to purchase cooperatively, to enter into direct marketing arrangements with farmers, or to make high quality nutritional purchases.

On February 28 of this year the Committee on Agriculture, Nutrition, and Forestry unanimously reported to the Senate a simple resolution calling for the maintenance of a strong and independent Department of Agriculture.

A hold was placed on that resolution so that the Senate could not consider it.

I am not one to go about looking for conspiracies, but I am led to wonder whether there are not those in Congress and elsewhere who look forward to the demise of USDA through a whittling away of functions, using Federal reorganization and efficiency as an excuse.

While some attempt to take child nutrition away from the Department, others are making blatant and public attempts to steal the natural resource functions of USDA, partially through discrediting outstanding public servants, such as the Chief of the Forest Service, in the press.

Others have been moving stealthily to capture the rural development functions of the Department.

I can understand their avarice. Since I have been chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, I have always sought to make the USDA a broad-based Department that represents farmers, consumers, and city dwellers.

The USDA is conservatively operated.

Its agencies rank among the best insofar as Federal employee productivity is concerned. Agriculture's share of the Federal budget has declined sharply over the past decade, to only about 3 percent of the Federal budget. Only $6 billion of the funds for the Department of Agriculture are for agricultural programs, while $8.6 billion are for food and nutrition programs. This means that just 1.2 percent of the 1978 Federal budget was earmarked for the support of agricultural programs.

I am not so much concerned about the declining share of the Federal budget for agriculture, because this decline is a tribute to agriculture's success in meeting its obligations.

My distinguished colleague from South Dakota, Mr. McGOVERN, made an outstanding statement about Federal reorganization as it impacts on the Department of Agriculture, on February 8 of this year, when he introduced, with Senator DOLE, S. 2519. I ask that this statement be included in the RECORD at this point:

It seems to me that it might be well to examine this reorganization process as it has been set up, to see what kinds of conclusions might be reached.

First of all it has been established on a functional or incremental basis, which presumes that like kinds of activities ought to be lumped together so as to avoid duplication of effort.

What concerns me about this presumption is that certain agencies are multifaceted in their activities. For instance, the Department of Agriculture manages and conserves national forest lands. This management is tied 'ntimately to national wood and fiber policy on private lands. Most of the private forest lands are held by farmers, whose land is also the base from which we get our food. These private lands are protected through the policies of the Soil Conservation Service. Farm income is protected by the Farmers Home Administration and the Agricultural Stabilization and Conservation Service, as well as other USDA agencies. Various shifts in farm and forestry economies, such as the pitifully low prices farmers are now receiving, having a decided impact on the economies of rural towns, which leads naturally into the department's rural development efforts.

Like the facets on a diamond ring, these functions are irrevocably tied together into a related package of Federal efforts that serve rural America.

The second question that a functional approach to reorganization raises is the desirability of competition between agencies. General Motors, which I think we will agree has had some business success, is organized along competitive lines. The Oldsmobile Division competes with the Buick Division, which competes with the Chevrolet Division, for customers of automobiles. This organizational success, and others like it, would seem to indicate that—while there is a definite need to streamline the Government and eliminate excessive overlap of functions—there is something to be said for having agencies compete with one another. A merging of agencies on a purely functional basis could certainly lead to departmental complacency and bureaucratic laxity. If you have the only store in town, it is easy to forget about customer service.

There is no way to make successful a functional reorganization of the Government; if we have not learned that, as a result of the creation of the Department of Transportation and the Department of Housing and Urban Development, then we have learned nothing. There remain large chunks of Government activity dealing with housing and transportation which remain outside the jurisdiction of both of these agencies, and that is why Senator McGOVERN's statement is so compelling.

The taxpayers are not telling us to move the organization boxes around in an exercise of managerial hokus-pokus. They want the Government to be leaner and more effective. They want it to spend less money and employ fewer people.

In transferring the child nutrition programs to an education department, the opportunities for reductions in cost or administrative burdens in accounting requirements are virtually nonexistent. The accounting manuals used at the local level for both FNS and Office of Education programs were developed by the same accounting firm, with the specific aim of making accounting procedures in both agencies' programs compatible. Differences in these accounting procedures reflect the differences between food service and other educational services. In addition, OMB Circular A-102 sets general standards on Federal accounting requirements for all Federal grain-in-aid programs.

Therefore, the proposal to move the nutrition programs will save the taxpayers not one thin dime, while the cost of the transfer will be substantial.

But, as I said, the piecemeal dismantling of USDA is the broader issue. I for one do not intend to sit idly by while this raid on USDA is being conducted by people who do not even know how to spell "farm." I am appalled that certain persons in the executive branch and Congress are literally falling all over themselves to see how many functions they can yank out of USDA.

Mr. President, I call on my colleagues in the Senate to vote for the Percy amendment. I call on my colleagues to save the Department of Agriculture.

CHILD NUTRITION PROGRAMS AND NEW DEPARTMENT OF EDUCATION

● Mr. DOLE. Mr. President, today a bill to establish a new Department of Education (S. 991) has come to the floor, calling for reorganizing a number of existing Federal programs to form a basis for this new Department. The idea of Government reorganization is not new: The record shows that nearly 100 reorganization plans affecting some 240 departments and agencies were submitted by Presidents between 1939 and 1968.

The idea of stripping the child nutrition programs from the Department of Agriculture to provide a basis for this reorganization is new, however. As one of the early cosponsors of Senator PERCY's amendment to oppose this transfer, I would like to say a few words in support of the courageous stand taken by the distinguished Senator from Illinois.

A BIT OF HISTORY

We are all quite familiar with this issue, but a bit of recent history is in order. Last April 14 the President asked Congress to create a Cabinet-level Department which would control some 164 or so education programs scattered among the Government, with a budget of $17.5 billion and a staff of some 23,000 persons. This new Department would include the higher education programs outside DHEW's Education Division, the overseas Defense Department schools, the Bureau of Indian Affairs schools, and the USDA child nutrition and nutrition education programs. We are all too familiar with the major arguments for a new Department:

A new Department would give education more budgetary clout.

A new Department would eliminate scattering of the over 300 education programs in some 40 Federal agencies, and provide the basis for a national educational policy.

A new Department would provide prestige to an educational entity that encompasses nearly one-third of the population as either students, teachers, or administrators and who deserve representation at the cabinet level.

Of course the justification for the transfer of the child nutrition programs is that they would bring a $3 billion budget base to this new Department.

The merits of a new Department of Education were never the issue with the Senate Agriculture Committee. However, we have gone on record on more than one occasion to oppose the transfer of the child nutrition programs, including the training and nutrition education support services.

AGRICULTURE COMMITTEE OPPOSES TRANSFER

Mr. President, on several earlier occasions I joined with the other 17 Members of the Senate Agriculture Committee and denounced the child nutrition transfer proposal. We held many serious reservations about such a move:

First, why education at this time? Why not wait until Congress is ready to overhaul the health and welfare programs?

Second, why strip the child nutrition programs from agriculture at a time when it is becoming increasingly clear that food, agriculture and nutrition are interrelated? As ranking minority member of the Senate Nutrition Subcommittee I am more and more convinced that agriculture and nutrition must be brought into closer coordination.

Third, why pull school meals from the several basic components of the Department of Agriculture which have contributed to their development and expansion; such as the wholesome agricultural products of the commodity distribution program, our national land-grant system of education and research assistance, the human nutrition research laboratories, and of course the nutrition information and education services? All these key elements of the Department have been instrumental in the advancement of school meals since the inception of the National School Lunch Act of 1946.

Fourth, why interrupt our efforts toward policy development? We cannot successfully develop a new food, farm, and nutrition policy with programs fragmented all over the executive branch of Government.

Fifth, why cut back on USDA's broad base? The scope of the Department of Agriculture must remain broad and diversified if the Department is to serve its constituents better.

Next, why be shortsighted? The administration has obviously overlooked the "separation of powers" concept; too little regard is being paid to the importance of the education committees in both the House and the Senate in the whole reorganization process.

And finally, why ignore American politics? There has been too little attention given to our political system. Increased rationality has been given as the desirable and attainable objective but proponents ignored the political aspects of education which must be at least acknowledged if the reorganization is to have either initial or long-term success.

AGRICULTURE COMMITTEE OPPOSES SPLIT

Mr. President, the administration has not stopped with the child nutrition meal programs. In recent weeks the administration has been desperately working toward a fall-back position; namely the separation of these school meal programs from the "training and nutrition education program" (Sec. 19, Public Law 95–166)—the $26 million annual education and training support services designed to upgrade the quality of meals at school.

True, $26 million is only a fraction of the $3 billion child nutrition program budget, but the separation of the education and training program from the feeding program is an ill-thought-out move for several reasons:

First, Congress reason for legislating a companion education and training component to address growing allegations of stagnant participation rates, inferior food quality, and resultant food and beverage waste in the school meals.

Our intent for this State grant program was to strengthen, support, and even enhance school meal service, and rid the program of these allegations of taxpayer waste. Thus the emphasis on training school cafeteria personnel to put a better meal on the table, and preparing students to better accept that meal.

Second, these education funds are to be used to provide workshops and other training sessions for school cafeteria personnel on the production and service of high quality and nutritious meals; as well as instruct students about diet and its relationship to good health, and develop a core of teachers to do this instruction.

The "purpose" of this grant program as outlined in Public Law 95–166 makes clear that the training and education provision was designed to encourage effective dissemination of information to children "participating or eligible to participate in the school lunch and related child nutrition programs." It goes on to make clear that "such nutrition education programs shall fully use as a learning laboratory in the school lunch and child nutrition programs." Throughout the legislation the emphasis is school-cafeteria-based education and training.

Mr. President, the need for an education and training program to save school meals is well-documented. Results of the only national profile of school food service personnel (a sample of 23,000 schools and 8,500 personnel) issued in February 1977 definitely highlights the need for training of school cafeteria personnel. Survey findings revealed that:

Better than 6 out of 10 workers were promoted or hired as managers without prior training;

Only 3 out of 10 school cafeteria workers completed training in the last 10 years;

Principal reasons for wanting training were to: improve job performance, increase knowledge, learn new food service techniques;

Forty-four percent of the respondents indicated a desire for more training. Mr. President, these grim statistics speak for themselves.

MANY SUPPORTERS OPPOSE TRANSFER

Mr. President, in conclusion, let me remind my colleagues that at last count some 3 dozen organizations had rallied behind the drive to oppose the transfer of any child nutrition program from the Department of Agriculture. They represent thousands of nutrition and health professionals, consumers and consumer groups, farm commodity organizations, and the like. I ask that this list of organizations be printed in the RECORD.

Let me hasten to add that this organizational support is in addition to the 60 cosponsors of the amendment (including all members of Senate Agriculture Committee) to oppose the transfer introduced by the distinguished Senator from Illinois.

The list follows:

ORGANIZATIONS OPPOSING THE TRANSFER OF ANY OF THE CHILD NUTRITION PROGRAMS FROM THE DEPARTMENT OF AGRICULTURE TO A NEW DEPARTMENT OF EDUCATION

1. American Home Economics Association.
2. The Children's Foundation.
3. American School Food Service Association.
4. Department of Health, City of Detroit.
5. Society of Nutrition Education.
6. Department of Public Health, Commonwealth of Massachusetts.
7. Center for Science in the Public Interest.
8. National Fisheries Institute.
9. County of Bergen, New Jersey, Department of Health.
10. The National Grange.
11. Healthy America, Inc.
12. Director of Food Service, Harlem, Illinois, Public School.
13. Center of Community Change.
14. National Association of Counties.
15. Mid-Continent Farmers Association.
16. National Council of Farmers Cooperatives.
17. National Milk Producers Federation.
18. National Farmers Union.
19. Food Research and Action Center.
20. Community Nutrition Institute.
21. National Rural Electric Cooperative Association.
22. Poultry and Egg Institute of America.
23. National Cattlemen's Association.
24. National Turkey Federation.
25. Amalgamated Meat Cutters and Butcher Workmen (AFL–CIO).
26. American Academy of Pediatrics.
27. Congress Watch.
28. Consumer Federation of America.
29. Council for Responsible Nutrition.
30. National Broiler Council.
31. National Dried Bean Council.
32. Peanut Growers of Alabama and Georgia.
33. United Egg Producers.
34. American Farm Bureau Federation.●

Mr. STEVENS. I would state that I think he has made a good case for maintaining these child nutrition programs in the Department of Agriculture.

Mr. CHILES. Mr. President, I concur in the remarks of the Senator from Alaska. On behalf of Senator RIBICOFF, I request that the Percy amendment be accepted by unanimous consent.

The ACTING PRESIDENT pro tempore. Is there objection? Hearing none, the question is on agreeing to the amendment of the Senator from Illinois.

The amendment was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TALMADGE subsequently said: Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. TALMADGE. Has a motion to reconsider been made and tabled on the so-called Percy amendment?

The ACTING PRESIDENT pro tempore. It has.

Mr. TALMADGE. I thank the Chair, and I appreciate the courtesy of my distinguished friends from Florida and Alaska giving me this privilege.

UP AMENDMENT NO. 1854

(Purpose: To redesignate the Department of Health, Education, and Welfare as the Department of Health and Human Services)

Mr. CHILES. Mr. President, I send to the desk a Humphrey amendment to redesignate the Department of Health, Education, and Welfare as the Department of Health and Human Services, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida (Mr. CHILES), for Mrs. HUMPHREY proposes an unprinted amendment numbered 1854.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 67, line 17, strike out "Welfare" and insert "Human Services".

On page 106, line 20, strike out "Welfare" and insert "Human Services".

On page 107, line 2, strike out "WELFARE" and insert "HUMAN SERVICES".

On page 107, line 4, strike out "Welfare" and insert "Human Services".

On page 107, line 5, strike out "welfare" and insert "human services".

On page 110, line 5, strike out "Welfare" and insert "Human Services".

Page 111, line 16, strike out "Welfare" and insert "Human Services".

On page 111, line 21, strike out "Welfare" and insert "Human Services".

On page 112, line 2, strike out "Welfare" and insert "Human Services".

On page 112, line 8, strike out "Welfare" and insert "Human Services".
On page 112, line 21, strike out "Welfare" and insert "Human Services".
On page 113, line 4, strike out "Welfare" and insert "Human Services".
On page 113, line 6, strike out "Welfare" and insert "Human Services".
On page 113, line 13, strike out "Welfare" and insert "Human Services".
On page 113, line 14, strike out "Welfare" and insert "Human Services".
On page 113, line 15, strike out "Welfare" and insert "Human Services".

Mr. CHILES. Mr. President, I ask unanimous consent that a statement by Mrs. HUMPHREY be printed in the RECORD prior to the passage of the amendment by Mrs. HUMPHREY.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY MRS. HUMPHREY

S. 991 is a bill of great importance to the children of this country and to the future of this Nation. Education is one of the most important aspects of our lives and will continue to become increasingly more important as we address the social, economic, and technological problems that this country faces. Education is the key to conquering these problems and the key to fulfilling the dreams and aspirations of our citizens.

I strongly support this legislation to create a cabinet-level Department of Education. This bill will consolidate the more than 300 educational programs scattered among nearly 40 agencies. It will improve coordination of Federal education programs and help remedy their confusing, fragmented network.

Through this consolidation, we can pinpoint more nearly the problems in education today. We can address more effectively the educational needs of special children, which for too long have received a totally inadequate response—including the mentally or physically handicapped child.

Most importantly, the bill reaffirms our commitment to a sound educational system. We need a highly visible, high-ranking Federal official who can be held accountable for the successes and failures of our Federal education programs, who can be an effective manager and who can be a strong advocate for education. By creating the position of Secretary of Education, this bill fulfills those needs.

I was pleased to offer an amendment to this bill in Committee to transfer vocational rehabilitation programs from HEW to the Department of Education, to create an Assistant Secretary for and an office of Special Education and Rehabilitative Services. My amendment was adopted by voice vote.

There are overwhelming advantages to this transfer. First, the effectiveness of the Education for All Handicapped Children Act will be enhanced. Closer relationships between this program and vocational rehabilitation will improve the exchange of expertise and technology between the programs.

Second, better coordination between these programs will facilitate the development of more comprehensive approaches to preparing handicapped young people to make the transition from secondary education to work.

Third, leaving vocational rehabilitation in a Department of Health and Welfare will heighten concern in the handicapped community that efforts will be made to reorient vocational rehabilitation along a welfare line by making eligibility for services contingent on income.

This transfer would open the opportunity for developing new and broader roles for rehabilitation services which is distinct from welfare. It would also protect the program more from attempts to consolidate it with general social services and the welfare-related service programs in the Department of Health and Welfare.

I should like to emphasize that my amendment to transfer vocational rehabilitation to the Department of Education should in no way be interpreted to denigrate the importance of the medical and social aspects of rehabilitation. Medical services and research have been in the forefront of the rehabilitation movement and should continue to have the highest priority of RSA, particularly the medical research and training centers. The professional training program of RSA is the only program which supports the training of physicians in rehabilitation medicine, a field of extreme shortage. It should be continued and expanded also.

In closing, let me make two additional points. First, in developing an agency of this nature, some may question if the Federal government is becoming too embroiled in an area that has traditionally been the responsibility of local and state authorities. I believe that this department will not necessarily further involve the Federal government, but will improve its current involvement. Education nationwide must be a shared Federal-State-local responsibility if we are to provide the kind of quality education our children deserve. As costs increase, this responsibility becomes an awesome task that requires cooperation and improved coordination among all parties involved. Only in this manner can we hope to meet tomorrow's educational needs today.

Second, Mr. President, as the bottom line, we should evaluate this legislation on the basis of whether or not it enhances the educational opportunity of the student. I believe it does and urge my colleagues to support the bill.

Mr. CHILES. Mr. President, I believe this amendment has been cleared on both sides, but I will yield to the Senator from Alaska.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. It is my understanding that this amendment of Senator HUMPHREY's has been agreed to. It seems to be appropriate to make that change in the portion of the Department of Health, Education, and Welfare which will remain after this bill becomes law.

Mr. CHILES. We are ready to vote.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Minnesota.

The amendment was agreed to.

Mr. CHILES. Mr. President. I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1855

(Purpose: To require the Congress to prescribe for the Department for each fiscal year an end strength for personnel)

Mr. CHILES. Mr. President, I send to the desk an amendment sponsored by Senator ROTH to require Congress to prescribe for the Department for each year an end strength for personnel, and I move that it be accepted, along with his introductory statement, by unanimous consent.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida (Mr. CHILES), for Mr. ROTH, proposes an unprinted amendment numbered 1855.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page £4, between lines 10 and 11, insert the following new section:

ANNUAL AUTHORIZATION OF PERSONNEL

SEC. 403. Notwithstanding any other provision of this

(1) Congress shall authorize the end strength as of the end of each fiscal year for personnel for the Department. Except as provided in subsection (b)(1) for the fiscal year beginning October 1, 1978, and ending September 30, 1979, Congress shall authorize the end strength for any fiscal year by prescribing the maximum number of personnel that may be employed by the Department on the last day of such fiscal year. No funds may be appropriated for any fiscal year to or for the use of personnel of the Department unless the end strength for personnel of the Department for that fiscal year has been authorized by law.

(2) The end strength for personnel authorized by law for the Department for any fiscal year shall be apportioned among the offices and agencies of the Department in such numbers as the Secretary shall prescribe. Except as provided in subsection (b)(2), the Secretary shall, within 120 days after the enactment of legislation authorizing the end strength for personnel of the Department for any fiscal year, prepare and transmit to the Congress a report showing the allocation of such personnel among the offices and agencies of the Department. Such report shall include expanations and justifications for the allocations of personnel made by the Secretary among the offices and agencies of the Department.

(3) In computing the authorized end strength for personnel of the Department for any fiscal year, there shall be included all direct-hire and indirect-hire personnel employed to perform functions of the Department whether employed on a full-time, part-time, or intermittent basis, but excluding special employment categories for students and disadvantaged youth, including temporary summer employment.

(4) Whenever any function, power, duty, or activity is transferred os assigned in any fiscal year after the effective date of this Act to the Department from a department or agency outside of the Department, the end strength for personnel authorized for the Department for such fiscal year shall be adjusted to reflect any increases or decreases in personnel required as a result of such transfer or assignment.

(h)(1) For the fiscal year beginning October 1, 1978, and ending September 30, 1979, the Department is authorized an end strength for personnel equal to the sum of (A) the number of personnel to be employed by the Department under the authorizations provided by other sections of this Act, and (B) the number of personnel transferred, under authority of this Act, to the Department from other departments and agencies of the Government during such fiscal year, as determined by the Director of the Office of Management and Budget. If the Secretary determines such action is necessary for the effective administration of the Department, he may employ additional personnel during such fiscal year in excess of the number authorized under the preceding sentence, but the number of such additional personnel may not exceed 1 percent of the number authorized under the preceding sentence.

(2) For the fiscal year beginning October 1, 1978, and ending September 30, 1979, the Secretary shall prepare and transmit the report required by subsection (a)(2) within 120 days after the effective date of this Act.

On page 40, in the table of contents, insert immediately after item Sec. 402, the following:

Sec. 403. Annual authorization of personnel.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Mr. President, if Mr. ROTH were here today, he would have made a statement on behalf of this amendment. It is my understanding that this amendment will add a new section under title IV of the bill which would place a staff ceiling on the new department. The amendment includes a 1-percent leeway in current staff estimates for the department to allow for flexibility in staffing requirements.

Mr. President, I ask unanimous consent that the complete statement Senator ROTH would have delivered be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT OF SENATOR ROTH

The amendment I am proposing to S. 991, a bill to create a separate Department of Education is a simple one. My amendment would add a new section to the bill under Title IV which would place a staff ceiling on the new department. My amendment includes 1 percent leeway in current staff estimates for the Department to allow for flexibility in staffing requirements. However, I do feel that a ceiling is necessary to exercise some Congressional control over the burgeoning bureaucracy. The Governmental Affairs Committee in considering this bill did not anticipate any staff additions outside of the executive positions newly authorized in the bill. One of the major criticisms of creating a new department of education has been the fear that in its authorization Congress is beefing up a bureaucracy which is already bloated and straining an overtaxed budget. I feel we must be responsive to this concern. We need to emphasize that cost containment for the new Department is as important an objective as the intent to provide education with the priority needed to insure its appropriate attention, and in fact, is desirable in terms of management, efficiency, and accountability in the federal involvement in the educational process. This amendment is not without precedent. Language is incorporated into the authorization for the Department of Defense's civilian staff to place a ceiling annually on these personnel levels. I submit for the RECORD at this time a table showing total Federal Civilian Employment for the Month of June covering a five year period from 1973 to 1978.

The table follows:

TOTAL FEDERAL CIVILIAN EMPLOYMENT FOR JUNE 30, SELECTED YEARS, ALL AREAS (INCLUDES CEILING AND NONCEILING)

	1973	1974	1975	1976	1977	1978
Total, all branches	2,824,242	2,893,119	2,896,944	2,883,134	2,893,334	2,937,214
Executive branch, total	2,780,574	2,847,071	2,848,014	2,832,641	2,840,148	2,882,661
Executive Office of President	4,805	5,751	1,918	1,889	1,836	1,627
Executive departments	1,697,347	1,746,682	1,736,872	1,733,457	1,749,392	1,784,591
State	34,523	33,396	30,376	30,457	30,578	30,502
Treasury	108,036	116,213	121,546	125,600	127,321	131,243
Department of Defense	1,052,639	1,070,004	1,041,829	1,010,261	1,008,690	1,007,092
Justice	47,709	50,531	51,541	53,982	53,259	55,241
Interior	74,146	76,919	80,198	81,844	87,437	83,696
Agriculture	113,313	116,203	120,999	128,052	131,756	138,303
Commerce	34,884	35,759	36,228	37,569	39,661	41,580
Labor	14,049	14,487	14,834	16,730	17,096	21,895
Health, Education, and Welfare	128,417	142,159	147,125	155,096	159,469	161,050
Housing and Urban Development	18,249	17,274	17,161	16,579	17,948	17,928
Transportation	71,382	73,737	75,035	77,287	76,177	76,037
Energy						20,024
Independent agencies	1,078,422	1,094,638	1,109,224	1,097,295	1,088,920	1,096,443
Post Office	697,932	707,202	699,174	675,653	658,390	651,090
Veterans' Administration	198,421	202,361	213,143	222,313	224,178	239,760

It is interesting to note from this chart that the most dramatic decreases in federal civilian employment over the 5-year period are in the Department of Defense. It is also interesting to note that language placing a ceiling on federal civilian employment for the Department of Defense was introduced in 1973.

My amendment does not set an exact numerical ceiling for the transition year but provides for the sum of the number of the new personnel authorized in S. 991 and the number of personnel determined by the Office of Management and Budget to be transferred to the new Department on the effective date of the act. Because of the uncertainty of the transfer of some personnel whose functions may have been divided in the current Department of Health Education and Welfare, it has not been possible for the Office of Management and Budget to give an exact numerical requirement. However, they have estimated the figure of personnel for the Department to be approximately 24,700. My amendment will require the Secretary of the Department of Education to report to the Congress within 120 days after the effective date of the Act the exact number of the end strength for personnel for the fiscal year beginning October 1, 1978 and ending September 30, 1979. It is my understanding that this language is acceptable to my esteemed colleague Senator Ribicoff and there will be every conscientious effort made to establish a ceiling at the lowest possible level. This ceiling would then be reviewed and established annually through Congressional action. I move for the adoption of my amendment.

Mr. STEVENS. It is my understanding that both the majority and minority of the committee are prepared to accept the amendment.

Mr. CHILES. That is correct.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Delaware.

The amendment was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ZORINSKY). Without objection it is so ordered.

Mr. ROBERT C. BYRD. The Chair is in great form today. I like that baritone voice.

I ask unanimous consent, Mr. President, that on an amendment to the Department of Education bill by Mr. HAYAKAWA, there be a 2-hour limitation, to be equally divided and controlled in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST—NATURAL GAS CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote on final adoption of the conference report on next Wednesday—may I say, I have already discussed this with the minority leadership, and I know that the distinguished Republican Whip is going to be constrained to object to this request, but I have been asked on my side of the aisle to make the request. I do it just because I have been asked to do it and knowing that I shall not be able to achieve it.

I ask unanimous consent that the vote up or down on the conference report on natural gas pricing occur next Wednesday at 2 p.m. rather than at 1 p.m., as previously agreed to.

Mr. STEVENS. Mr. President, reserving the right to object and, as the majority leader stated, I am constrained to object. Knowing that the request has been made, and we do have an agreement, one of the Members on our side has made arrangements to depart from Washington following the 1 o'clock vote. On that basis, I am constrained to object.

The PRESIDING OFFICER. The objection of the Senator from Alaska is heard.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THIRTY-MINUTE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 11:40 a.m., recessed until 12:10 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. FORD).

DEPARTMENT OF EDUCATION ORGANIZATION ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, the Senate is presently awaiting the arrival of Mr. SCHMITT of New Mexico who, I understand, has been conducting a hearing and who has an amendment or some amendments to the Department of Education bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I understand that Mr. SCHMITT has—three?

Mr. STEVENS. I believe he has three amendments, but whatever he has he will offer today, as I understand.

Mr. ROBERT C. BYRD. I ask unanimous consent that upon the disposition of the amendments by Mr. SCHMITT to the Department of Education bill, that bill then be set aside with the following time agreement thereon:

That there be 1 hour on the bill itself, to be equally divided between and controlled by Mr. RIBICOFF and Mr. PERCY;

That there be a 2-hour limitation on an amendment by Mr. HELMS, to be equally divided and controlled in accordance with the usual form; that when the Senate resumes the consideration of the Department of Education bill, following the disposition of the amendments by Mr. STEVENS——

Mr. STEVENS. We have an agreement of 40 minutes to each side.

Mr. ROBERT C. BYRD. On which there is a time limit already, there be one amendment by Mr. HAYAKAWA, on which there is already a time limitation.

Mr. STEVENS. No——

Mr. ROBERT C. BYRD. Of 2 hours.

Mr. STEVENS. Oh, yes, 2 hours.

Mr. ROBERT C. BYRD. That there be one amendment by Mr. HAYAKAWA, on which there be a time limitation of 2 hours; and that upon the disposition of those amendments the bill be advanced to third reading, without further amendments or motions, appeals, or points of order to be in order.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, I would ask only that the majority leader modify that to permit a motion to recommit should one be made.

Mr. ROBERT C. BYRD. Very well, I so modify the request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. That protects them both ways.

Mr. ROBERT C. BYRD. Mr. President, I thank the minority leader and other Senators.

It is hoped that upon the disposition of the amendments by Mr. SCHMITT the Senate can go to the vocational rehabilitation bill and work on that during the afternoon, and also during the afternoon, that the Senate can take up the New York City appropriations matter.

It would be the intention of the leadership, once Mr. SCHMITT's amendments are disposed of today, to lay the Department of Education bill aside temporarily and go to the other measures I have mentioned.

With that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

TIME-LIMITATION AGREEMENTS—S. 991

Mr. ROBERT C. BYRD. Mr. President, with further regard to the agreement on the Department of Education bill, I ask unanimous consent with regard to Mr. HAYAKAWA, who may want to move to recommit the bill, that there be a 1 hour limitation on the motion to recommit, the 1 hour time limitation to be equally divided in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on amendment No. 3620 by Mr. SCHMITT, amendment No. 3621 by Mr. SCHMITT, and amendment No. 3619 by Mr. SCHMITT, there be a time limitation on each as follows: One hour under the control of Mr. SCHMITT and 30 minutes under the control of Mr. RIBICOFF; provided further that on amendment No. 3619, any tabling motion be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Is that all satisfactory to the distinguished Senator from New Mexico?

Mr. SCHMITT. Mr. President, if the Senator will yield, I thank him and the distinguished majority whip for their effort in this matter. It is a perfectly satisfactory agreement and I hope that within the next week, when the bill is finally disposed of, it will be done expeditiously and, of course, favorably on my side.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. STEVENS. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. There is no agreement as to when the majority leader will call up the bill, but it is the understanding that it will not be this week?

Mr. ROBERT C. BYRD. The understandings, I believe, when the order was entered, that the majority leader will call it up at a future time after consultation with the minority leader or his designee. I make that request if it is not agreed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Senate resumes consideration of S. 991 (Order No. 1000), a bill to establish a Department of Education, and for other purposes, the Senator from New Mexico (Mr. Schmitt) is recognized to call up amendments No. 3620, 3621, or 3619 in any order, on each of which there shall be 1½ hours, to be divided and controlled with 1 hour to the Senator from New Mexico (Mr. Schmitt) and ½ hour to the Senator from Connecticut (Mr. Ribicoff), and with no tabling motion to be in order on amendment No. 3619.

Ordered further, That after the disposition of the Schmitt amendments, the Senator from Alaska (Mr. Stevens) be recognized to call up an amendment on which there shall be 80 minutes, to be equally divided and controlled by the mover of such and the manager of the bill.

Ordered further, That after the disposition of the Stevens amendment, the Senator from California (Mr. Hayakawa) to recognized to call up an amendment on which there shall be 2 hours, to be equally divided and controlled by the mover of such and the manager of the bill.

Ordered further, That after the disposition of the Hayakawa amendment, the Senator from North Carolina (Mr. Helms) be recognized to call up an amendment on which there shall be 2 hours, to be equally divided and controlled by the mover of such and the manager of the bill.

Ordered further, That after the disposition of the Helms amendment, the Senate proceed to third reading of the bill, without any further amendment, motion, appeal, or point or order being in order, except a motion to recommit to be offered by the Senator from California (Mr. Hayakawa), on which there shall be 1 hour.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Connecticut (Mr. Ribicoff) and the Senator from Illinois (Mr. Percy).

THIRTY-MINUTE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 12:51 p.m., recessed until 1:21 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SARBANES).

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR—S. 2600

Mr. STAFFORD. Mr. President, I ask unanimous consent that during the consideration of this bill, the following members of the staff be allowed unlimited access to the floor: Patria G. Forsythe, Betty Griffin, Jo Ellen Hetherington, Helyn Eagle, Jacqueline Jackson, Jan Zarro, Kathy Roy, Peter Harris,

Peter Parham, Judy Robinson, Marcia McCord, Jack Wickes, Shelly Edelman, Ellen Akst, Craig Polhemus, Jack Andrews, Polly Gault, Mike Francis, Sue Walbridge, Sherri Kramer, Fran Paris, Ginny Eby, Nancy Olson, Mary Arneson, Susan Zilstra, David Morse, and Sandra Walker.

The PRESIDING OFFICER. It is the Chair's understanding that the Senator's unanimous-consent request for staff presence applies to the consideration of S. 2600, the Rehabilitation Amendments of 1973, when that will be laid before the Senate; is that correct?

Mr. STAFFORD. The Chair's understanding is correct. The Senator should have stated the number of the bill to start with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REHABILITATION, COMPREHENSIVE SERVICES, AND DEVELOPMENTAL DISABILITIES AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, within the confines of the natural gas conference report agreement, and in accordance with that agreement, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 820, S. 2600.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2600) to amend the Rehabilitation Act of 1973 to extend certain programs established in such act, to establish a comprehensive services program for the severely handicapped, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Human Resources with an amendment to strike all after the enacting clause and insert the following:

That (a) this Act may be cited as the "Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978".

(b) Except as otherwise specifically provided, whenever in title I of this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Rehabilitation Act of 1973 (29 U.S.C. 701).

TITLE I—AMENDMENTS TO THE REHABILITATION ACT OF 1973

VOCATIONAL REHABILITATION SERVICES: AUTHORIZATION OF APPROPRIATIONS

SEC. 101. (a) Section 100(b)(1) is amended by striking out "and" after "1977" and inserting before the period at the end of such paragraph a comma and "$813,000,000 for fiscal year 1979, $880,000,000 for fiscal year 1980, $945,000,000 for fiscal year 1981, $1,015,000,000 for fiscal year 1982, and $1,090,000,000 for fiscal year 1983".

(b)(1) Section 100(b)(2) is amended by striking out "and" after "1976," and by inserting after "1978" a comma and the following: "$50,000,000 for the fiscal year ending September 30, 1979, $60,000,000 for the fiscal year ending September 30, 1980, and $70,000,000 for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending prior to October 1, 1983".

(2) Section 100(b)(2) is further amended by striking out "and part D of this title (relating to the study of comprehensive needs of individuals with the most severe handicaps)".

(3) The last sentence of section 100(b)(2) is amended to read as follows "Twenty-five per centum of the sums appropriated under this paragraph for fiscal year 1979, and 30 per centum of such sums appropriated for fiscal year 1980 and thereafter, shall be available for independent living programs.".

(c) Section 112(a) is amended by inserting after "1978," the following: "and for each succeeding fiscal year ending prior to October 1, 1983".

STATE PLANS

SEC. 102. (a) Section 101(a)(7) is amended by striking out "and" at the end of clause (A), and by inserting before the semicolon at the end thereof a comma and the following: "and (C) provisions relating to the establishment and maintenance of minimum standards to assure the availability of personnel trained to communicate in the client's native language or mode of communication".

(b) Section 101(a)(11) is amended by adding at the end thereof a comma and the following: "specifically including arrangements for the coordination of services to individuals eligible for services under this Act and under the Education of the Handicapped Act and the Vocational Education Act of 1963".

(c) Section 101(a)(18) is amended by inserting "personnel" before "working in the field of vocational rehabilitation".

(d) Section 101(a) is amended—

(1) by striking the "and" at the end of paragraph (18);

(2) by striking the period at the end of paragraph (19) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting at the end thereof the following new paragraph:

"(20) provide satisfactory assurances to the Commissioner that, except as otherwise provided in part D, the State shall provide vocational rehabilitation services to handicapped American Indians residing in the State to the same extent as the State provides such services to other significant segments of the population of handicapped individuals residing in the State.".

SCOPE OF SERVICES; TELECOMMUNICATIONS SERVICES

SEC. 103. (a) Section 103(a)(1) is amended by striking out "emotional" and inserting in lieu thereof "mental or emotional".

(b) Section 103(b) is amended by striking out "and" at the end of clause (1), by striking out the period at the end of clause (2) and inserting in lieu thereof a semicolon and the word "and", and by adding at the end thereof the following new clause:

"(3) the use of existing telecommunication systems (including telephone, television, satellite, and radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programing to meet the particular needs of handicapped individuals.".

PROCEDURAL SAFEGUARDS

SEC. 104. (a) Part A of title I is amended by adding at the end thereof the following new section:

"PROCEDURAL SAFEGUARDS

"SEC. 105. (a) Any State agency which receives assistance under this Act shall establish and maintain procedures to assure that any individual served under this Act is guaranteed procedural safeguards.

"(b) The procedures required by this section shall include, but shall not be limited to—

"(1) an opportunity for the individual to examine all relevant records respecting the development and implementation of an individualized written rehabilitation program under this Act, or the refusal to develop or implement such a program;

"(2) written prior notice to the individual whenever a providing agency—

"(A) refuses to initiate or change,

"(B) refuses to develop, or

"(C) refuses to implement,

an individualized written rehabilitation program as provided under this Act; and

"(3) an opportunity to present complaints with respect to any matter described in clause (2) of this subsection.

"(c)(1) Whenever a complaint has been received under subsection (b) of this section, the individual shall have an opportunity for an impartial hearing which shall be conducted by the State agency. No hearing conducted pursuant to this paragraph shall be conducted by an employee of such agency, or by any employee of any other agency or grantee which is involved in the written individualized rehabilitation program of the individual, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

"(2) Any party to any hearing conducted pursuant to paragraph (1) ot this subsection shall be accorded—

"(A) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped persons,

"(B) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

"(C) the right to a written or electronic verbatim record of such hearing, and

"(D) the right to written findings of fact and decisions.

"(3) A decision made in a hearing conducted pursuant to paragraph (1) of this subsection shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (d) of this section. A decision made under subsection (d) of this section shall be final, except that any party may bring an action under subsection (e) of this section.

"(d) Any party aggrieved by the findings and decision made under subsection (c) of this section may appeal such decision to arbitration by a panel of three persons consisting of one person designated by the head of the State agency, one person designated by the individual, and a third person selected by the head of the State agency and the individual, who shall serve as chairman.

"(e) Any party aggrieved by the findings and decision made under subsection (d) of this section shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this subsection the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall

grant such relief as the court determines is appropriate.

"(f) No civil action may be brought under this section for monetary damages.".

"Sec. 105. Procedural safeguards.".

(b) The table of contents is amended by adding after item 104 the following new item:

STATE ALLOTMENTS

SEC. 105. (a) Section 110(a) is amended by striking out "less than one-quarter of 1 per centum of the amount appropriated under subsection (b)(1) of section 100, or $2,000,000" and inserting in lieu thereof "less than one-third of 1 per centum of the amount appropriated under subsection (b)(1) of section 100, or $3,000,000".

(b) Section 110(a) is further amended by inserting "(1)" after the section designation and by adding at the end thereof the following new paragraph:

"(2) Notwithstanding the provisions of paragraph (1) of subsection (a), for the fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983, each State shall be entitled to an allotment of amounts appropriated under subsection (b)(1) of section 100 in excess of the amount appropriated under subsection (b)(1) of section 100 for the fiscal year 1978, bearing the same ratio of the amount appropriated in excess of the amount appropriated under subsection (b)(1) of section 100 for the fiscal year 1978 as the population of the State bears to the population of all States.".

(c) The first sentence of section 110(b) is amended by inserting after "1973," the following: "or if a State received, due to the maintenance of effort provisions, less than 80 per centum as the Federal share expended by the State for the program (exclusive of non-Federal dollars used for construction),".

CLIENT ASSISTANCE

SEC. 106. Section 112(a) is further amended by striking out "no less than 7 nor more than 20".

AMERICAN INDIAN VOCATIONAL REHABILITATION GRANTS

SEC. 107. (a) Part D of title I is amended to read as follows:

"PART D—AMERICAN INDIAN VOCATIONAL REHABILITATION PROGRAM

"VOCATIONAL REHABILITATION SERVICES GRANTS

"SEC. 130. (a) The Commissioner is authorized, in accordance with the provisions of this part, to make grants to tribal organizations of Indian tribes located on Federal and State reservations to pay 90 per centum of the costs of vocational rehabilitation services for handicapped American Indians residing on such reservations.

"(b) No grant may be made under this part unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application unless the application—

"(1) is made at such time, in such manner, and contains such information as the Commissioner may require;

(2) contains assurances that the rehabilitation services provided under this part to handicapped American Indians residing on a reservation in a State shall be, to the maximum extent feasible, comparable to rehabilitation services provided under this title to other handicapped individuals residing in the State; and

"(3) contains assurances that the application was developed in consultation with the State agency designated under section 101(a)(1).

The provisions of clauses 1 and 3 of section 102(a) of the Indian Self-Determination and Education Assistance Act, shall be applicable to any application submitted under this part.

"(c) In adition to any amounts authorized to be appropriated under any other provision of this Act and for the purpose of carrying out grant programs for American Indian vocational rehabilitation services in accordance with the provisions of this part, there is authorized to be appropriated an amount equal to 1 per centum of the amount appropriated under section 100(b)(1) (for the purpose of making grants to States under part B) for the fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983.

"(d) For the purpose of computing the allotment of any State under section 110(a) the number of American Indians residing on a reservation to be served under this part pursuant to such application shall be subtracted from the population used for such State in section 110(a)(1) as follows:

"(1) 33 per centum of such American Indians in the first fiscal year following the fiscal year in which such application was approved;

"(2) 66 per centum of such American Indians in the second fiscal year following the fiscal year in which such application was approved; and

"(3) 100 per centum of such American Indians in the third fiscal year following the fiscal year in which such application was approved.

"(e) Any application approved under this part shall be effective for not less than twelve months except as determined otherwise by the Commissioner pursuant to prescribed regulations. The State shall continue to provide vocational rehabilitation services under its State plan to American Indians residing on a reservation whenever such State includes any such American Indians in its State population under section 110(a)(1).

"EVALUATION

"SEC. 131. Not less than forty-two months after the date of enactment of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, the Secretary shall submit to the Congress an evaluation of the programs conducted under this part. Such evaluation shall be conducted by persons other than persons immediately responsible for administration of such programs. Such evaluation shall include, but not be limited to—

"(1) an examination of the comparability of vocational rehabilitation services provided under this part to services provided to other handicapped individuals under section 101; and

"(2) the extent to which services provided under this part have been made available to all handicapped American Indians residing on reservations wherein the tribal organization has been approved for a grant under this part.".

(b) The table of contents is amended by striking out Part D and inserting in lieu thereof the following:

"PART D—AMERICAN INDIAN VOCATIONAL REHABILITATION PROGRAM

"Sec. 130. Vocational rehabilitation service grants.

"Sec. 131. Evaluation.".

INNOVATION AND EXPANSION GRANTS

SEC. 108. (a) The first sentence of section 121(a) is amended by—

(1) striking out "or" after "handicaps"; and

(2) inserting before the period a comma and the following: "or of special programs for independent living.".

(b) The first sentence of section 121(b) is amended by striking out "three" and inserting in lieu thereof "five", and by striking out "September 30, 1979" and inserting in lieu thereof "September 30, 1983".

RESEARCH AND TRAINING; AUTHORIZATION OF APPROPRIATIONS

SEC. 109 (a) Section 201(a)(1) is amended by striking out "and" after "1976," and by inserting after "1978" the following: ", $40,000,000 for the fiscal year ending September 30, 1979, $46,000,000 for the fiscal year ending September 30, 1980, $53,000,000 for the fiscal year ending September 30, 1981, $60,000,000 for the fiscal year ending September 30, 1982, and $69,000,000 for the fiscal year ending September 30, 1983".

(b) Section 201(a)(2) is amended by striking out "and" after "1977," and by inserting after "1978" a comma and the following: $35,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending September 30, 1980, $46,000,000 for the fiscal year ending September 30, 1981, $52,000,000 for the fiscal year ending September 30, 1982, and $60,000,000 for the fiscal year ending September 30, 1983".

RESEARCH BY PRIVATE ORGANIZATIONS

SEC. 110. (a)(1) Section 200 is amended by striking out "to State and public or nonprofit agencies and organizations".

(2) Section 202(a) is amended by striking out "public or nonprofit" and inserting in lieu thereof "public or private".

(b) Title II is amended by adding at the ending thereof the following new section:

"DEFINITIONS

"SEC. 205. For the purpose of this title, the term 'public' or 'private agencies or organizations' means any such agencies or organizations whether nonprofit or profitmaking.".

REPEAL OF SET-ASIDE

SEC. 111. The second sentence of section 201(a)(1) is repealed.

RESEARCH AND TRAINING CENTERS

SEC. 112. (a) The second sentence of section 202(a) is amended by—

(1) inserting "(including basic medical and scientific reesarch)" after "activities"; and

(2) inserting atfer "social" a comma and "psychiatric".

(b) Section 202(b)(1) is amended by striking out "rehabilitation reesarch personnel" and inserting in lieu thereof "rehabilitation personnel".

(c) Section 202(b)(2)(A) is amended by striking out "psychological" and inserting in lieu thereof "psychiatric, psychological".

(d) Section 202(b) is amended by inserting immediately at the end of paragraph (5) the following new paragraph:

"(6) Conduct of a research program concerning the use of existing telecommunications systems (including telephone, television, satellite, and radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programming to meet the particular needs of handicapped individuals.".

TRAINING

SEC. 113. (a) Section 203(b) is amended by inserting after "work" a comma and the following: "rehabilitation psychiatry".

(b) Section 203 is amended by adding at the end thereof the following new subsection:

"(c) The Secretary shall measure and evaluate the impact of the training programs authorized by this section, shall determine training needs for personnel necessary to provide services to handicapped individuals, and shall develop a long-term rehabilitation manpower plan designed to target resources on areas of personnel shortage.".

SPECIAL FEDERAL RESPONSIBILITIES

SEC. 114. (a)(1) The first sentence of section 301(a) is amended by striking out "for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, September 30, 1977, and September 30, 1978" and inserting in lieu thereof "for each fiscal year ending prior to October 1, 1983".

(2) The last sentence of section 301(a) is amended by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1985".

(b) Section 302(a) is amended to read as follows:

"SEC. 302. (a) For the purpose of making grants and contracts under this section, there is authorized to be appropriated such sums as may be necessary for each fiscal year ending prior to October 1, 1983.".

(c)(1)(A) Section 304(a)(1) is amended to read as follows:

"(1) For the purpose of making grants under this section for special projects and demonstrations (and research and evaluation connected therewith), there are authorized to be appropriated such sums as may be necessary for each fiscal year ending prior to October 1, 1983.".

(B) Section 304(b)(1) is amended by striking out "programs and facilities" and inserting in lieu thereof "and operating programs and the renovation and construction of facilities, where appropriate".

(2) Section 304 is amended by adding at the end thereof the following new subsection:

"(f) The Secretary, subject to the provisions of section 306, shall make grants to State and public nonprofit agencies and organizations for paying part or all of the cost of initiation of recreation programs to provide handicapped individuals with recreational activities to aid in the mobility and socialization of such individuals. The activities authorized to be assisted under this subsection may include, but are not limited to, scouting and camping, 4–H activities, sports, music, dancing, handicrafts, art, and homemaking. No grant may be made under the provisions of this subsection unless the agreement with respect to such grant contains provisions to assure that, to the extent possible, existing resources will be used to carry out the activities for which the grant is to be made, and that with respect to children the activities for which the grant is to be made will be conducted after school.".

(d) Section 305(a) is amended by striking out "for the fiscal years" and all that follows through "1978" and inserting in lieu thereof "for each fiscal year ending prior to October 1, 1983".

ADMINISTRATION AND EVALUATION

SEC. 115. (a) Section 400(a)(2) is amended by inserting after "work" a comma and the following: "rehabilitation psychiatry".

(b) Section 403 is amended by striking out "the fiscal years" and all that follows through "1978" and inserting in lieu thereof "each fiscal year ending prior to October 1, 1983".

(c) Section 405(d) is amended to read as follows:

"(d) There are authorized to be appropriated for carrying out this section $600,000 for each fiscal year ending prior to October 1, 1983.".

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SEC. 116. (a)(1) Section 502(a) is amended to read as follows:

"SEC. 502. (a)(1) There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the 'Board') which shall be composed as follows:

"(A) Six members shall be appointed by the President from among members of the general public of whom five shall be handicapped individuals.

"(B) The remaining members shall be the heads of each of the following departments or agencies (or their designees whose positions are executive level IV or higher):

"(i) Department of Health, Education, and Welfare.

"(ii) Department of Transportation.

"(iii) Department of Housing and Urabn Development.

"(iv) Department of Labor.

"(v) Department of the Interior.

"(vi) Department of Defense.

"(vii) General Services Administration.

"(viii) Veterans' Administration.

"(ix) United States Postal Service.

The President shall appoint, from among the public members who are handicapped individuals, the first Chairman of such Board who shall serve for a term of not more than two years; thereafter, the Chairman shall be elected by a vote of a majority of the Board for a term of one year.

"(2)(A) The term of office of each appointed member of the Board shall be three years; except that (i) the members first taking office shall serve, as designated by the President at the time of appointment, two for a term of one year, two for a term of two years, and two for a term of three years, and (ii) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed.

"(B) No individual appointed under paragraph (1)(A) of this subsection who has served as a member of the Board may be reappointed to the Board more than once unless such individual has not served on the Board for a period of two years prior to the effective date of such individual's appointment.

"(3)(A) Members of the Board who are not regular full-time employees of the United States shall, while serving on the business of the Board, be entitled to receive compensation at rates fixed by the President, but not to exceed the daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, including traveltime, for each day they are engaged in the performance of their duties as members of the Board; and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

"(B) Members of the Board who are employed by the Federal Government shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

"(C) For any matter upon which a vote of the Board is taken, any vote by a member specified in paragraph (1)(B) of this subsection shall be counted as one-half of one vote and any vote by a member appointed by the President shall be counted as one vote.".

(b)(1) Section 502(b)(1) is amended to read as follows: "(1) insure compliance with the standards prescribed pursuant to the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968 (including the application of that Act to the United States Postal Service) including but not limited to enforcing all standards under that Act, and insuring that all waivers and modifications of standards are based upon findings of fact and are not inconsistent with the provisions of such Act and this section;".

(2) Section 502(b) is amended by striking out "and" at the end of clause (5), by striking out the period at the end of clause (6) and inserting in lieu thereof a semicolon and "and", and by adding at the end thereof the following new clauses: "(7) sue and be sued in its own name, and be represented by its own legal counsel, in all Federal, State, and local courts; (8) establish minimum guidelines and requirements for the standards issued pursuant to the Act of August 12, 1968, as amended, commonly known as the Architectural Barriers Act of 1968; and (9) insure that public conveyances, including rolling stock, are readily accessible to, and usable by, physically handicapped persons.".

(c)(1) The first sentence of section 502(d) is amended by striking out "or contracts with", and by inserting after "organizations" "or contracts with private nonprofit or for-profit organizations".

(2) The second sentence of section 502(d) is amended by striking out "The" and inserting in lieu thereof "Except as provided in paragraph (3) of subsection (e), the".

(3) The last sentence of section 502(d) is amended by inserting "or public conveyance or rolling stock" after "building" and by striking out "prescribed pursuant to the Act cited in subsection (b) of this section" and inserting in lieu thereof "enforced under this section".

(4) Section 502(d) is amended by adding at the end thereof the following new sentences: "Pursuant to chapter 7 of title 5, United States Code, any complainant or participant in a proceeding under this subsection may obtain review of a final order issued in such proceeding. The executive director shall have the authority, at the direction of the Board, to bring a civil action in the appropriate United States district court to enforce, in whole or in part, any final order of the Board under this subsection.".

(5) Section 502(d) further is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) The Board shall develop, in consultation and coordinaton with other concerned Federal departments and agencies and agencies within the Department of Health, Education, and Welfare, and provide appropriate technical assistance to any public or private activity, person, or entity affected by regulations prescribed pursuant to this title with respect to architectural and transportation barriers accessibility. Any funds appropriated to any such department or agency for the purpose of providing such assistance may be transferred to the Board for the purpose of carrying out this paragraph. The Board may arrange to carry out its responsibilities under this paragraph through such other departments and agencies for such periods as the Board determines is appropriate. In carrying out its technical assistance responsibilities under this paragraph, the Board shall establish a procedure to insure separation of its compliance and technical assistance responsibilities under this section.".

(d) Section 502(e) is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraphs:

"(2) The Executive Director shall exercise general supervision over all personnel employed by the Board (other than hearing examiners and their assistants). The Executive Director shall have final authority on behalf of the Board, with respect to the investigation of alleged noncompliance in the issuance of formal complaints before the Board, and shall have such other duties as the Board may prescribe.

"(3) For the purpose of this section, an order of compliance issued by a hearing examiner shall be deemed to be an order of the Board and shall be the final order for the purpose of judicial review.".

(e) Section 502(h) is amended by striking out "and" after "1976," and inserting before the period "and $3,500,000 for fiscal year 1979 and each of the four succeeding fiscal years".

GENERAL PROVISIONS AMENDMENTS

SEC. 117. (a)(1) Section 2(4) is amended to read as follows:

"(4) insure appropriate use of rehabilitation facilities in providing rehabilitation services to handicapped individuals, and assist in the construction, development, and improvement of such facilities;".

(2) Section 2(5) is amended by inserting before "psychological" the following: "psychiatric,".

(b) Section 3 (b) is amended by inserting before "psychological" the following: "psychiatric,".

(c)(1) Section 7(1) is amended by striking out "alteration, and renovation" and in-

serting in lieu thereof "alteration, or renovation".

(2) Section 7(4)(B) is amended by inserting after "medical" a comma and the following: "psychiatric".

(3)(A) Section 7(10)(A) is amended by inserting after "medical" a comma and the following: "psychiatric".

(B) Section 7(10)(F) is amended by inserting before "psychological" the following: "psychiatric,".

(d) Section 7 is amended by inserting at the end of the section the following new paragraph:

"(15) The term 'independent living program' means, for purposes of title I of this Act, a set of organized specially designed services and activities of such scope and duration designed to assist individuals with the most severe handicaps in the achievement and maintenance of such life activities as self-care, communication, learning, mobility, and any other life activity necessary to enhance the ability to function in society and in the community and to prepare for appropriate employment.".

NONDISCRIMINATION PROGRAM PROVISIONS; INTERAGENCY COORDINATING COUNCIL

SEC. 118. (a) Title V of this Act is amended by adding at the end thereof the following new sections:

"REMEDIES AND ATTORNEY'S FEES

"SEC. 505. (a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), including the application of section 706(f) through (k) (42 U.S.C. 2000e–5 (f) through (k)), shall be available, with respect to any complaint under section 501 of this Act, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint.

"(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

"(b) In any action or proceeding to enforce or charge a violation of a provision of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

"INTERAGENCY COORDINATING COUNCIL

"SEC. 506. There shall be established an Interagency Coordinating Council (hereinafter referred to in this section as the 'Council') composed of the Secretary of Health, Education, and Welfare, the Secretary of Labor, the Attorney General, the Chairman of the United States Civil Service Commission (or successor authority), and the Chairman of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this title, and the regulations prescribed thereunder. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.".

(b) The table of contents is amended by adding the following items at the end of title V:

"Sec. 505. Remedies and attorney's fees.
"Sec. 506. Interagency Coordinating Council.

COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

SEC. 119. (a) The Rehabilitation Act of 1973 is amended by inserting at the end thereof the following new title:

"TITLE VI—COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

"PART A—GENERAL PROVISIONS

"SHORT TITLE

"SEC. 601. This title may be cited as the 'Comprehensive Services for Severely Handicapped Individuals Act of 1978'.

"DEFINITIONS

"SEC. 602. For purposes of this title:

"(1) The term 'severely handicapped individual' means an individual who has a mentally or physically handicapping condition or combination of such handicapping conditions which—

"(A) is expected to continue indefinitely;

"(B) indicates a need for life-long or extended duration for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services;

"(C) requires the provision of comprehensive services because of significant functional limitations in at least two of the following life activities:

"(i) self-care;

"(ii) communication;

"(iii) learning;

"(iv) mobility; or

"(v) capacity for independent living; and

"(D) constitutes a substantial barrier to such individual's ability to function in society.

"(2)(A) The term 'nonprofit facility for severely handicapped individuals' means a facility for severely handicapped individuals which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"(B) The term "nonprofit private institution of higher learning' means an institution of higher learning which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"INDIVIDUALIZED WRITTEN PROGRAM

"SEC. 603. (a) As a condition of receiving Federal funds under section 612, each State shall provide assurances to the Secretary that an individual written program is developed for each severely handicapped individual provided comprehensive services by the State. The Secretary shall prescribe regulations for the development of such individualized programs which are in accordance with the provisions of section 102 of this Act and regulations prescribed thereunder modified as may be appropriate to provide comprehensive services for severely handicapped individuals as defined in section 602 of this title.

"(b) The Secretary shall prescribe procedures to insure that the individualized written program required under this section shall, for each individual, be coordinated with the individualized written rehabilitation program, habilitation plan, or education program for such individual required under section 102 of this Act, section 112 of the Developmental Disabilities Services and Facilities Construction Act, and section 612(4) and 614(a)(5) of the Education of All the Handicapped Children Act of 1975, respectively.

"PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

"SEC. 604. (a) The Secretary shall require as a condition to a State receiving an allotment under section 614 and payments under section 612 for any fiscal year after the fiscal year ending September 30, 1979, that the State provide the Secretary satisfactory assurances that (1) the State has in effect a system to protect and advocate the rights of severely handicapped individuals, and (2) such system will (A) have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such individuals who are receiving services under this title within such State, and (B) is independent of any State agency that provides services under this title to such individuals.

"(b) The Secretary shall take such action as may be necessary to insure that the States coordinate the system to advocate and protect the rights of such individuals with the system to protect and advocate the rights of persons with developmental disabilities required under section 113 of the Developmental Disabilities Services and Facilities Construction Act.

"(c)(1) In order to assist States in developing and maintaining systems to meet the requirements of this section, the Secretary shall allot to the States the sums appropriated under paragraph (2) of this section in the same manner as funds are allotted under section 614 of this title and paid under section 612 of this title.

"(2) In order to make payments of allotments under this subsection to carry out the purposes of this section there are authorized to be appropriated $20,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, $25,000,000 for the fiscal year ending September 30, 1981, $25,000,000 for the fiscal year ending September 30, 1982, and $25,000,000 for the fiscal year ending September 30, 1983.

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"SEC. 605. As a condition of providing assistance under this title, the Secretary shall require that each recipient of assistance take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals under the provisions of this Act which govern employment (1) by State rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.

"ADMINISTRATION

"SEC. 606. In the administration of this title, the Secretary is authorized to apply any provision of title I of this Act, modified as necessary to meet the special needs of severely handicapped individuals, which is consistent with the provisions of this title.

"PART B—STATE GRANTS FOR PROVISION OF COMPREHENSIVE SERVICES AND PLANNING FOR SEVERELY HANDICAPPED INDIVIDUALS

"DECLARATION OF PURPOSE; AUTHORIZATION OF APPROPRIATIONS

"SEC. 611. (a) The purpose of this title is to authorize grants to States to assist in developing and implementing comprehensive services for severely handicapped individuals.

"(b) In order to carry out the provisions of this title, there are authorized to be appropriated $110,000,000 for the fiscal year ending September 30, 1979, $170,000,000 for the fiscal year ending September 30 1980, $230,000,000 for the fiscal year ending September 30, 1981, $280,000,000 for the fiscal year ending September 30, 1982, and $350,000,000 for the fiscal year ending September 30, 1983.

"(c)(1) Not less than 30 per centum of the funds paid to a State under section 614 shall be used by such State for the purpose of making grants pursuant to section 617 of this Act for the support of funding, coordination, and development of projects and programs with respect to independent living and other programs services.

"(2) The Secretary may waive all or part of such 30 per centum requirement specified in paragraph (1) if he determines, on the

basis of evidence submitted by such State, that such State does not have and cannot feasibly use the funds required to be expended for the purposes specified in paragraph (1).

"PAYMENTS TO STATES

"SEC. 612. (a) From each State's allotment under this part for any fiscal year (including any additional allotments made to such State under section 614(b)), the Secretary shall pay to such State an amount equal to the Federal share of the cost of comprehensive services for severely handicapped individuals under the State plan approved under section 615, including expenditures for the administration of the State plan, except that the total of such payments to such State for such fiscal year may not exceed its total allotment under section 614, including any additional allotments made to such State under section 614(b) for such year. No payment shall be made in an amount which would result in a violation of the provisions of the State plan approved under section 615.

"(b) The method of computing and paying amounts under subsection (a) shall be as follows:

"(1) The Secretary shall, prior to the beginning of each calendar quarter or other period for payment which he prescribes by regulation, estimate the amount to be paid to each State under the provisions of subsection (a) for such quarter or period. Such estimate shall be based on such records and information furnished by the State as the Secretary may require, as well as any other investigation as the Secretary may find necessary.

"(2) The Secretary shall pay in each calendar quarter or payment period, from the allotment available for each State, the amount estimated for such quarter or period under paragraph (1). The Secretary shall reduce or increase as the case may be such payment by any amount which he finds that his estimate of the amount to be paid to the State for the prior quarter or payment period was greater or lesser than the amount which should have been paid to the State for such prior quarter or period under subsection (a). Payments shall be made—

"(A) prior to audit or settlement by the General Accounting Office;

"(B) through the disbursing facilities of the Treasury Department; and

"(C) in such installments as the Secretary may determine.

"(c) If the Secretary, after investigation, has reason to believe that any act (or failure to act) has occurred requiring action to withhold payments and after he has given the State agency so designated notice of opportunity for hearing pursuant to such section, payment under this section may be withheld, in whole or in part, pending correceive action or action based on such hearing.

"SCOPE OF COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

"SEC. 613. Comprehensive services for severely handicapped individuals provided under this title are any goods or services as may be necessary to enhance the ability of a severely handicapped individual to live independently or to function in society and, if appropriate, secure and maintain appropriate employment. Such goods and services may include—

"(1) those goods and services specified in paragraphs (1) through (11) (especially paragraphs (3), (4), (6), (8), (10), and (11)) of section 103(a) of this Act, to the extent such goods and services are appropriate to carry out the provisions of this title;

"(2) physical, mental, and psychotherapeutic services;

"(3) recreational and leisure time activities; and

"(4) preschool services, including physical therapy, development of language and communication skills, and general child development services.

"ALLOTMENT OF FUNDS

"SEC. 614. (a) From the sums appropriated for any fiscal year pursuant to section 611(b) of this title, each State shall be allotted for payment under section 612 an amount which bears the same ratio to such sums as the population of such State bears to the population of all States, except that—

"(1) each State shall be allotted not less than one-half of 1 per centum of the amounts made available under section 611 (b) for the fiscal year for which the allotment is made except that for purposes of this paragraph, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands; and

"(2) Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands shall each be allotted not less than one-eighth of 1 per centum of the amounts made available under section 611 (b) for the fiscal year for which the allotment is made.

"(b)(1) If by the end of the sixth month of the fiscal year for which sums have been appropriated under section 611(b) the amount allotted to a State has not been paid to such State under such section because of such State's failure to qualify for such sums in accordance with the provisions of this title, the Secretary shall make reallotment of the total amounts not paid to the States in an amount which bears the same ratio to the total amount to be reallotted as the population of each qualifying State bears to the population of all qualifying States.

"(2) The Secretary may make available for reallotment in accordance with the provisions of paragraph (1) of this subsection such amounts paid in any fiscal year to any State under section 612 which he determines, after consultation with such State, will not be used by such State during such fiscal year for carrying out the provisions of this title.

"(3) If the Secretary determines pursuant to paragraph (2) that a State will not use any of the amounts paid pursuant to section 612, such State shall not be eligible for reallotment of funds under paragraph (1) or (2).

"(4) Funds made available by the Secretary through reallotment pursuant to paragraph (1) or (2) of this subsection shall remain available for expenditure until the end of the fiscal year following the fiscal year in which such funds become available for reallotment.

"(c) Whenever the State plan approved in accordance with section 615 provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which, to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of the State plan. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, if the purposes of the State plan will receive proportionate benefit from the combination.

"(d) Whenever the State plan approved in accordance with section 615 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

"ANNUAL STATE PLANS

"SEC. 615. (a) For each fiscal year in which a State desires to participate in the program authorized under this title, a State shall submit to the Secretary for approval a State plan to provide for a program of comprehensive services for severely handicapped individuals designed to enhance the ability of such severely handicapped individuals to function in society and, if appropriate, secure and maintain appropriate employment. Such plan shall be submitted consistent with procedures established by the Secretary with respect to State plans submitted under section 101 of this Act and pursuant to any additional regulations the Secretary may prescribe. Such plan shall be prepared and submitted in accordance with the provisions of sections 616 and 619, and to the maximum extent feasible, in conjunction with the development and submission of the State plan prepared pursuant to section 101 of this Act.

"(b) The State plan required under subsection (a) shall—

"(1) designate the State agency or agencies administering the vocational rehabilitation plan pursuant to title I of this Act as the agency or agencies to administer the provisions of this title;

"(2) describe the quality, scope, and extent of the comprehensive services being provided to severely handicapped individuals and specify the State's goals and plans with respect to the distribution of grants pursuant to the independent living and service programs established under section 617 of this title;

"(3) provide assurances that comprehensive services will be provided only in accordance with the individualized written program required under section 603(a) and describe the efforts undertaken to assure appropriate coordination and consultation in the preparation of such written programs with the plan and programs specified in section 603(b);

"(4) provide that special efforts will be undertaken to provide technical assistance to urban and rural poverty areas with respect to the provision of comprehensive services for severely handicapped individuals and describe such efforts;

"(5)(A) provide assurances that efforts will be undertaken by the appropriate State agency or agencies to eliminate the inappropriate placement of severely handicapped individuals in institutions and to improve the quality of care provided by institutions providing services to severely handicapped individuals; and (B) describe the efforts undertaken by the State during the previous year with respect to such efforts;

"(6) provide for the maximum utilization of all available resources, including—

"(A) community education programs; and

"(B) volunteers serving under the Domestic Volunteer Service Act of 1973 and through other appropriate voluntary organizations, so long as volunteer services supplement and do not provide substitutes for the services of paid employees;

"(7) specify plans for maximizing the use of telecommunication systems, sensory, and other technological aids and devices which have the potential for improving and providing comprehensive services for severely handicapped individuals;

"(8) provide for the adequate staffing and support of the State council on severely handicapped individuals;

"(9) contain such additional information and assurances as the Secretary finds necessary to carry out the provisions of this part;

"(10) conform to such other requirements consistent with the purposes and provisions of this title as the Secretary by regulation may prescribe; and

"(11) specify that the plan required under this section is in accordance with goals and timetables set forth in the long-range plan required under section 616.

"(c) The provisions of subsections (b), (c), and (d) of section 101 of this Act shall

apply to any State plan submitted to the Secretary pursuant to this section.

"LONG-RANGE PLAN

"SEC. 616. (a)(1) Within eighteen months of the date of enactment of this title, each State, as a condition of receipt therefore of its allotment under this title, shall submit to the Secretary a long-range plan concerning the provision of appropriate services under this Act for all severely handicapped individuals residing within such State. Such long-range plan shall include goals and timetables for identifying and providing services under this title to all severely handicapped individuals residing within such State and plans for coordinating available public and private resources with programs and activities to be carried out under this title.

"(2) As part of the annual State plan submitted under section 615 of the fiscal year ending September 30, 1981, and for each fiscal year thereafter, each State shall annually update its long-range plan submitted under paragraph (1).

"(b)(1) From the funds allotted and paid to a State under section 614—

"(A) not more than 10 per centum or $60,000, whichever is the greater, for the fiscal year ending September 30, 1979, and

"(B) not more than 6 per centum or $35,000, whichever is the greater, for the fiscal year ending September 30, 1980,

shall be used by each State for developing the long-range plan required under subsection (a)(1).

"(2) From the funds allotted and paid to a State under section 614, not more than 6 per centum or $35,000, whichever is the lesser, for the fiscal year ending September 30, 1981, and each succeeding fiscal year shall be used by each State for the purpose of updating the long-range plan as required under subsection (a)(2).

"INDEPENDENT LIVING AND OTHER SERVICE PROGRAMS

"SEC. 617. (a) A State receiving payments under this title shall make grants to local public agencies, private nonprofit organizations, or tribal organizations of Indian tribes located on Federal and State reservations, for the establishment or operation of centers to provide services for severely handicapped individuals, such as independent living centers, designed to enable such individuals to secure and maintain employment or to enhance their ability to live independently or function in the society.

"(b) In order to be eligible for a State grant under this section, an agency, organization, or tribal organization shall submit an application containing such information and assurances as shall be prescribed by such State agency, including assurances that such agency, organization, or tribal organization will provide services exclusively to severely handicapped individuals including—

"(1) attendant care and training of personnel to provide such care;

"(2) referral and counseling services with respect to attendant care;

"(3) intake counseling to determine the need for specific services;

"(4) community group living arrangements;

"(5) education and training necessary for living in the community and participating in community activities;

"(6) housing and transportation referral and assistance;

"(7) surveys, directories, and other activities to identify appropriate housing and accessible transportation and provide housing referral, transportation, and other support services;

"(8) health maintenance services;

"(9) peer counseling;

"(10) individual and group social and recreational activities; and

"(11) such other services as may be necessary and not inconsistent with the provisions of this title.

"FEDERAL SHARE; NONDUPLICATION

"SEC. 618. (a)(1) The Federal share of any allotment under this part may not exceed 80 per centum of the necessary cost thereof as determined by the Secretary, except that if the project is located in an urban or rural poverty area, the Federal share may not exceed 90 per centum of the project's necessary costs as so determined.

"(2) The non-Federal share of the cost of any project assisted by a grant or allotment under this title may be provided in kind.

"(b) In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 615, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 614, and (2) the percentage of non-Federal funds required to be expended in programs similar to the programs established under this title.

"STATE COUNCILS ON SEVERELY HANDICAPPED INDIVIDUALS

"SEC. 619. (a)(1) Each State which receives assistance under this part shall establish a State Council on Severely Handicapped Individuals which will serve as an advocate for severely handicapped individuals. The members of a State's Council on Severely Handicapped Individuals shall be appointed by the Governor of such State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of his respective State. Each State Council on Severely Handicapped Individuals shall at all times include in its membership representatives of the principal State agencies, local agencies, and nongovernmental agencies and groups concerned with the provision of services to severely handicapped individuals in that State. At least one-half of the membership of such State Council shall consist of individuals who—

"(A) are severely handicapped individuals or the parents or guardians of such individuals;

"(B) are generally representative of the population of severely handicapped individuals in such State; and

"(C) are not officers or employees of any State agency or any other entity which receives funds or provides services under this part.

"(2) Not more than 25 per centum of the members of a State Council appointed pursuant to paragraph (1) may also serve as members of that State's State Planning Council established under section 137 of the Developmental Disabilities Services and Facilities Construction Act. The Chairman of such State Planning Council or his designee shall serve as a nonvoting ex officio member of the Council established under this section.

"(b) Each State Council on Severely Handicapped Individuals shall—

"(1) advise regarding, supervise the development of, and approve the State plan required by this part;

"(2) monitor and evaluate the implementation of such State plan;

"(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting severely handicapped individuals prior to the submission of such State plan to the Secretary for approval;

"(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably require;

"(5) submit to the Federal Council on Handicapped Individuals, through the Governor, recommendations to assist the Federal Council on Handicapped Individuals concerning (A) the development of a national policy to address the needs of severely handicapped individuals and (B) the development of a plan to implement such policy; and

"(6) coordinate its activities with the State Planning Council established under section 137 of the Developmental Disabilities Services and Facilities Construction Act.

"(c) Each State receiving assistance under this part shall provide adequate staff and support for the State Council on Severely Handicapped Individuals to insure that the Council is able to carry out the provisions of this Act.

"PART C—DEMONSTRATIONS AND MODELS FOR CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF SEVERELY HANDICAPPED INDIVIDUALS

"DEVELOPMENT AND DEMODNSTRATION OF MODELS FOR CENTERS AND SERVICES

"SEC. 621. (a) The Secretary is authorized and directed to provide financial assistance by grants to or contracts with public agencies or private nonprofit institutions for the development and demonstration of models for centers and the provision of services to meet the special needs of severely handicapped individuals. Such models shall include—

"(1) the establishment and operation of training centers to create and utilize the best methods of appraising and developing the employment potential of severly handicapped individuals, including programs to—

"(A) provide training and continuing education for habilitation and rehabilitation personnel and other employment-oriented personnel with respect to the employment of severely handicapped individuals;

"(B) develop model procedures for testing and evaluating the employment potential of severely handicapped individuals;

"(C) develop model training programs for severely handicapped individuals to teach skills which will lead to appropriate employment;

"(D) develop new approaches and techniques for the placement and followup of severely handicapped individuals in employment; and

"(E) provide information services regarding education, training, employment, and placement for severely handicapped individuals;

"(2) the establishment and operation of models for independent living and community service centers for severely handicapped individuals, including—

"(A) a continuum of alternative living arrangements for severely handicapped individuals, which may include community-based group homes, other community living arrangements, or centers designed to enhance the ability of such individuals to function in society, including services for adults residing in such communities who are incapable of caring for themselves without help or supervision;

"(B) appropriate specialized, generic, and interdisciplinary services (which may include home support services), transportation, communication, recreation, and related services;

"(3) models of services for preschool age severely handicapped children, including—

"(A) early intervention, parent counseling, infant stimulation, early identification, diagnosis, and evaluation of severely handicapped children up to the age of three;

"(B) such physical therapy, language development, pediatric, nursing, and psychiatric services as are necessary for such children; and

"(C) appropriate services for the parents of such children, including psychiatric services, parent counseling, and training.

"(b) No grant or contract may be made under this section unless an application therefor is submitted to and approved by the Secretary. Such an application shall be submitted in such form and such manner and contain such information as the Secretary may require. In determining whether to approve an application under this section, the Secretary shall consider the needs of the severely handicapped individuals in the area to be served by the applicant and the capability of the applicant to develop and apply new methods and techniques.

"(c) Pursuant to regulations which the Secretary shall prescribe, funds under this section may be used to cover part of the cost of renovation or modernization of facilities to be used in connection with an activity assisted under a grant or contract made under this section.

"(d) The Secretary shall take such action as may be necessary to coordinate the program of models for independent living authorized under subsection (a)(2) with the special programs for independent living authorized under section 121(a) of this Act.

"(e)(1) There are authorized to be appropriated $60,000,000 for the fiscal year ending September 30, 1979, $85,000,000 for the fiscal year ending September 30, 1980, $115,000,000 for the fiscal year ending September 3, 1981, $140,000,000 for the fiscal year ending September 30, 1982, and $140,000,000 for the fiscal year ending September 30, 1983 to carry out the provisions of this section.

"(2) Not more than 10 per centum of the funds appropriated for any fiscal year under this subsection shall be used for renovation or modernization of facilities pursuant to subsection (c).

"RESEARCH, TRAINING, AND EVALUATION

"SEC. 622. (a) The Secrtary, through the Commissioner, is authorized to make grants to and contracts with public agencies and nonprofit private organizations and academic institutions to pay part of the cost of projects for planning and conducting research, demonstrations, studies, and related activities to develop methods, procedures, and devices to assist in the provision of comprehensive services for severely handicapped individuals. The Commissioner shall coordinate grants and contracts under this subsection with grants and contracts under other appropriate programs of the Department of Health, Education, and Welfare.

"(b) The Secretary, through the Commissioner, is authorized to make grants to and contracts with public agencies and nonprofit private organizations and academic institutions to pay part of the cost of projects for training, traineeships, and related activities designed to assist in increasing the quality of training, and numbers of personnel trained to provide comprehensive services for severely handicapped individuals and perform such other functions as may be necessary to the development of such comprehensive services. The Commissioner shall coordinate grants and contracts made under this subsection with grants and contracts made under other appropriate programs of the Department of Health, Education, and Welfare.

"(c)(1) The Secretary shall provide for the continuing evaluation of all programs and activities conducted pursuant to this title. The evaluation process shall include an examination of—

"(A) the cost of all programs and activities in relation to their effectiveness in achieving stated goals;

"(B) the impact of all programs and activities on the lives of severely handicapped individuals; and

"(C) the implications of all programs and activities under this title for related programs.

"(2) The Secretary is authorized to require such information as may be needed from recipients of assistance under this title and to conduct, either directly or through grants or contracts, evaluation studies to carry out his duties under subsection (a) of this section.

"(d) The Secretary shall report to Congress annually concerning the conditions affecting severely handicapped individuals. The report shall include—

"(1) the results of the evaluations required under subsection (c);

"(2) a report on the level of accomplishment in research and development;

"(3) comments on the quality of services received by severely handicapped individuals; and

"(4) recommendations for future research, training, evaluation, services, procedures, and legislation needed to improve the lives of severely handicapped individuals.

"(e)(1) There are authorized to be appropriated $12,000,000 for the fiscal year ending September 30, 1979, $15,000,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, $21,000,000 for the fiscal year ending September 30, 1982, and $24,000,000 for the fiscal year ending September 30, 1983 to carry out the provisions of this section.

"(2) Of the amounts appropriated under this subsection in each fiscal year, not more than 2 per centum shall be made available to carry out evaluations under subsection (c) with respect to programs carried out under part B of this title.".

(b) The table of contents of such Act is amended by inserting at the end thereof the following new items:

"TITLE VI—COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

"PART A—GENERAL PROVISIONS

"Sec. 601. Short title.
"Sec. 602. Definitions.
"Sec. 603. Individualized written program.
"Sec. 604. Protection and advocacy of individual rights.
"Sec. 605. Employment of handicapped individuals.
"Sec. 606. Administration.

"PART B—STATE GRANTS FOR PROVISION OF COMPREHENSIVE SERVICES AND PLANNING FOR SEVERELY HANDICAPPED INDIVIDUALS

"Sec. 611. Declaration of purpose; authorization of appropriations.
"Sec. 612. Payments to States.
"Sec. 613. Scope of comprehensive services for severely handicapped individuals.
"Sec. 614. Allotment of funds.
"Sec. 615. Annual State plans.
"Sec. 616. Long-range plan.
"Sec. 617. Independent living and other service programs.
"Sec. 618. Federal share; nonduplication.
"Sec. 619. State Councils on Severely Handicapped Individuals.

"PART C—DEMONSTRATION AND MODELS FOR CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF SEVERELY HANDICAPPED INDIVIDUALS

"Sec. 621. Development and demonstration of models for centers and services.
"Sec. 622. Research, training and evaluation.".

TITLE II—FEDERAL COUNCIL ON HANDICAPPED INDIVIDUALS

COUNCIL ESTABLISHED

SEC. 201. There is established a Federal Council on Handicapped Individuals (hereinafter referred to as the "Council"), which shall provide advice and assistance to the President concerning the problems and needs of handicapped and severely handicapped individuals.

DUTIES OF THE COUNCIL

SEC. 202. (a) The Council shall—

(1) advise and assist the President on matters relating to the special needs of handicapped and severely handicapped individuals;

(2) review and evaluate on a continuing basis all policies, programs, and activities concerning handicapped individuals, severely handicapped individuals, and persons with developmental disabilities conducted or assisted by all Federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, the Comprehensive Services for Severely Handicapped Individuals Act of 1978, and the Developmental Disabilities Services and Facilities Construction Act, with a view toward determining the effectiveness of all Federal policies, programs, and activities in meeting the needs of handicapped and severely handicapped individuals;

(3) serve as an ombudsman on behalf of handicapped and severely handicapped individuals by making recommendations to the President and to the Congress with respect to Federal policies, programs, and activities concerning handicapped and severely handicapped individuals;

(4) inform the public about the problems and needs of handicapped and severely handicapped individuals by collecting and disseminating information, conducting or commissioning studies and publishing the results thereof, conducting public hearings, and by issuing publications and reports; and

(5) provide public forums for discussing and publicizing the problems and needs of handicapped and severely handicapped individuals by conducting or sponsoring conferences, workshops, and other such meetings.

(b) The Council shall make such interim reports as it deems advisable and shall make an annual report of its findings and recommendations to the President not later than March 31 of each year. The President shall transmit each such report to the Congress together with his comments and recommendations.

MEMBERSHIP OF THE COUNCIL; APPOINTMENTS; CONDUCT OF BUSINESS

SEC. 203. (a) The Council shall be composed of fifteen members, to be appointed by the President with the advice and consent of the Senate. The members of the Council shall be appointed so as to be representative of handicapped and severely handicapped individuals, national organizations concerned with severely handicapping conditions, providers of services to the handicapped, business concerns, and labor organizations. At least five members of the Council shall be handicapped or severely handicapped individuals.

(b) Members of the Council shall be appointed to serve for a three-year term, except that the terms of office of the members first appointed shall expire, as designated by the President at the time of appointment, five at the end of one year, five at the end of two years, and five at the end of three years. Members shall be eligible for reappointment and may serve after the expiration of their terms until such time as their successors have been appointed by the President and have been confirmed by the Senate.

(c) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(d) The President shall designate the Chairman from among the members appointed to the Council. The Council shall meet at the call of the Chairman but not less often than four times a year. The Secretary of Health, Education, and Welfare shall be an ex officio member of the Council.

(e) Eight members of the Council shall constitute a quorum and any vacancy in the Council shall not affect its power to function.

(f) The Council shall make such bylaws, rules, and regulations as are necessary to carry out its functions under this Act.

COMPENSATION OF COUNCIL MEMBERS

SEC. 204. Each member of the Council who is not a regular full-time employee of the United States shall be entitled to receive compensation at a rate equal to the rate paid a GS–18 under the General Schedule contained in section 5332 of title 5, United States Code, including travel-time, for each day he is engaged in the actual performance of his duties as a member of the Council, and while serving on the business of the Council away from his home or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistance, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service. Members of the Council who are officers or employees of the United States Government shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

RESPONSIBILITIES OF THE SECRETARY

SEC. 205. The Secretary of Health, Education, and Welfare shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities.

AUTHORIZATION OF APPROPRIATIONS

SEC. 206. (a) There are authorized to be appropriated for the purpose of carrying out the provisions of this title $1,200,000 for fiscal year 1979 and each succeeding fiscal year ending prior to October 1, 1983.

(b) Of the amounts appropriated under subsection (a), $200,000 shall be made available in each fiscal year for the employment of staff for the Council.

TITLE III—AMENDMENTS TO THE DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT

DEFINITIONS

SEC. 301. Paragraph (7) of section 102 of the Developmental Disabilities Services and Facilities Construction Act is amended so as to read as follows:

"(7) The term 'developmental disability' means a severe chronic disability of a person which—

"(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

"(B) is manifested before such person attains age twenty-two;

"(C) is likely to continue indefinitely;

"(D) results in substantial functional limitations in three or more of the following areas of major life activity:

"(i) self-care;

"(ii) receptive and expenssive language;

"(iii) learning;

"(iv) mobility;

"(v) self-direction;

"(vi) capacity for independent living;

"(vii) economic self-sufficiency; and

"(E) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services to be individually planned and coordinated during the lifetime of such person or for an extended period of time.".

NATIONAL ADVISORY COUNCIL REPEALED

SEC. 302. Section 108 of the Developmental Disabilities Services and Facilities Construction Act is repealed.

SPECIAL REPORT REQUIRED

SEC. 303. The Development Disabilities Services and Facilities Construction Act is amended by inserting immediately after section 107 the following new section:

"SPECIAL REPORT REQUIRED

"SEC. 108. (a) The Secretary shall make a special report to the Congress concerning the impact of the modification of the definition of 'developmentally disabled' contained in section 102(7) of this Act made by section 301 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. The report shall include—

"(1) an analysis of the impact of the modification of such definition on all categories of persons with developmental disabilities receiving services under this Act prior to the date of enactment of such modification, and for each of the two succeeding fiscal years, including—

"(A) the number of persons with developmental disabilities in all categories served before and after the date of enactment of such modification; and

"(B) the amounts expended under this Act for all categories of persons with developmental disabilities before and after the date of enactment of such modification; and

"(2) an assessment, evaluation, and comparison of services provided to persons with developmental disabilities provided prior to the date of enactment of such modification and for each of the two succeeding fiscal years.

"(b) The Secretary shall submit the report required under subsection (a) within 30 months of the date of enactment of this section.".

EVALUATION SYSTEM

SEC. 304. (a) Section 110(a) of the Developmental Disabilities Services and Facilities Construction Act is amended by striking out "The Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, shall" and inserting in lieu thereof "The Secretary shall".

(b) Section 110(d) of such Act is amended by striking out "The Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, may" and inserting in lieu thereof "The Secretary may".

PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SEC. 305. Section 113(b)(2) of the Developmental Disabilities Services and Facilities Construction Act is amended by—

(1) striking out "and" after "1977,"; and

(2) striking out the period at the end thereof and inserting in lieu thereof ", and $12,000,000 for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years.".

AUTHORIZATION OF APPROPRIATIONS; DEMONSTRATION GRANTS

SEC. 306. Section 123(a) of the Developmental Disabilities Services and Facilities Construction Act is amended—

(1) by striking out "1977, and" and inserting in lieu thereof "1977,";

(2) by striking the period at the end thereof and inserting in lieu thereof a comma; and

(3) by adding immediately at the end thereof the following: "$12,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, $16,000,000 for the fiscal year ending September 30, 1981, and $18,000,000 for each of the fiscal years ending September 30, 1982, and September 30, 1983.".

AUTHORIZATION OF APPROPRIATIONS; CONSTRUCTION

SEC. 307. Section 127 of the Development Disabilities Services and Facilities Construction Act is amended—

(1) by striking out "1977, and" and inserting in lieu thereof "1977,";

(2) by striking out the period at the end thereof and inserting in lieu thereof a comma; and

(3) by inserting immediately at the end thereof the following: "and $3,000,000 for each of the succeeding fiscal years ending prior to October 1, 1983.".

AUTHORIZATION OF APPROPRIATIONS FOR ALLOTMENTS

SEC. 308. Section 131 of the Development Disabilities Services and Facilities Construction Act is amended—

(1) by striking out "and" after "1977," and

(2) by striking the period at the end thereof and inserting in lieu thereof ", $65,000,000 for the fiscal year ending September 30, 1979, $70,000,000 for the fiscal year ending September 30, 1980, $75,000,000 for the fiscal year ending September 30, 1981, $75,000,000 for the fiscal year ending September 30, 1982, and $75,000,000 for the fiscal year ending September 30, 1983.".

STATE ALLOTMENTS

SEC. 309. Section 132(a)(1)(B)(i)(II) of the Developmental Disabilities Services and Facilities Construction Act is amended by striking out "$150,000," and inserting in lieu thereof "$250,000,".

STATE PLANS

SEC. 310. Section 13(b) of the Development Disabilities Services and Facilities Construction Act is amended—

(1) by striking the word "and" at the end of paragraph (29);

(2) by striking the period at the end of paragraph (30) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by inserting the following new paragraph immediately after paragraph (30):

"(31) provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this Act of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.".

STATE PLANNING COUNCILS

SEC. 311. (a) Section 137(a) of the Developmental Disabilities Services and Facilities Construction Act is amended to read as follows:

"SEC. 137. (a) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advocate for persons with developmental disabilities. The members of a State's State Planning Council shall be appointed by the Governor of such State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of his respective State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies, local agencies, and nongovernmental agencies and groups concerned with services to persons with developmental disabilities in that State. At least one-half of the membership of such a Council shall consist of persons who—

"(1) are persons with developmental disabilities or the parents or guardians of such persons; and

"(2) are not officers or employees of any State agency or any other entity which receives funds or provides services under this part.".

(b) Section 137(b) of such Act is amended—

(1) by striking out in subsection (b)(1) "supervise" and inserting in lieu thereof "advise regarding and supervise";

(2) by striking "and" at the end of paragraph (3);

(3) by redesignating paragraph (4) as paragraph (5); and

(4) by inserting immediately after paragraph (3) the following new paragraph:

"(4) coordinate its activities with the State Council on Severely Handicapped Individuals established in the State under section 619 of the Comprehensive Services for Severely Handicapped Individuals Act of 1978, and".

GRANT AUTHORITY

SEC. 312. Section 145 of the Developmental Disabilities Services and Facilities Construction Act is amended—

(1) by striking out "The Secretary, after consultation with the National Advisory Council on Services and Facilities in the Developmentally Disabled, may" and inserting in lieu thereof "The Secretary may";

(2) by redesignating subsections (b) through (f) as subsections (c) through (g), respectively;

(3) by inserting immediately after subsection (a) the following new subsection:

"(b) The Secretary shall establish procedures to insure participation of persons with developmental disabilities and their parents or guardians in determining priorities to be utilized by the Secretary in making project grants under the provisions of this section."; and

(4) by striking out the period at the end of subsection (e) and inserting in lieu thereof: "and for each succeeding fiscal year ending prior to October 1, 1983.".

SHORT TITLE

SEC. 313. Section 101 of the Developmental Disabilities Services and Facilities construction Act is amended to read as follows:

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act'.".

TITLE IV—READER SERVICES FOR THE BLIND; INTERPRETER SERVICES FOR THE DEAF

SHORT TITLE

SEC. 401. This title may be cited as the "Reader Services for the Blind, Interpreter Services for the Deaf, and Rehabilitation Services for the Older Blind Act of 1978".

PART A—READER SERVICES FOR THE BLIND

DECLARATION OF PURPOSE

SEC. 411. The purpose of this part is—

(1) to provide reading services to blind persons through (A) the employment of persons who by reading aloud can provide blind persons with ready access to printed information, (B) the purchase, production, storage, and distribution of Braille materials and sound recordings, and (C) the purchase, storage, and distribution of equipment which allows blind persons to have private individual access to printed materials by mechanical and electronic means;

(2) to authorize grants to States to provide reading services to blind persons who are not otherwise eligible for such services through State and Federal programs; and

(3) to expand the quality and scope of reading services available to blind persons by assuring that, to the maximum extent possible, the services provided pursuant to this part will meet the individual reading needs of blind persons in elementary, secondary, and postsecondary education, and employment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 412. In order to carry out the purposes of this part, there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979; $10,000,000 for the fiscal year ending September 30, 1980; and for each succeeding fiscal year, there are further authorized to be appropriated such additional sums as the Congress may determine to be necessary.

STATE ENTITLEMENTS AND ALLOCATIONS

SEC. 413. (a) From the sums authorized under section 412 of this part, each State shall be entitled to an amount which bears the same ratio to the total amount of such sums as the population of the State bears to the population of all the States which apply for funds pursuant to section 414 of this part. In no case shall a State receive less than $25,000.

(b) Whenever the Secretary determines that any amount of a State's allocation for any fiscal year will not be utilized by such State in carrying out the purposes of this part, he shall make such amount available for carrying out the purposes of this part to one or more other States which he determines will be able to use additional amounts during such year for carrying out such purposes.

STATE APPLICATIONS

SEC. 414. (a) Any State that desires to receive payments pursuant to section 413 of this part for any fiscal year shall submit an application to the Secretary. Such application may be a part of the State's plan for vocational rehabilitation services for the blind submitted to the Secretary pursuant to section 101(a) of the Rehabilitation Act of 1973. In order to be approved by the Secretary, the application must—

(1) designate to administer the reading services program—

(A) the State blind commission or other agency of the State designated under the State plan for vocational rehabilitation services to the blind pursuant to section 101(a)(1) of the Rehabilitation Act of 1973, if such agency includes an identifiable administrative unit that—

(i) is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of the blind and is responsible for the vocational rehabilitation program provided to the blind by such State agency;

(ii) has a full-time director who is directly responsible to the chief administrative officer of such agency and whose functions may not be delegated to any other officer not directly responsible to such director;

(iii) has a staff employed on such rehabilitation work of such identifiable administrative unit all or substantially all of whom are employed full time on such work;

(iv) is located at an organizational level and has an organizational status within such State agency comparable to that of the other major organizational units of such agency; and

(v) develops and administers its own budget; or

(B) an agency of the State, other than an agency described in subparagraph (A) of this paragraph, if such agency is a State agency primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and includes a bureau division, or other identifiable administrative unit that meets the requirements set forth in clauses (i) through (v) of paragraph (1)(A) of this subsection.

(2) contain the plans, policies, and methods to be followed in providing reading services to the blind, including—

(A) a description of the quality, extent, and scope of reading services provided through any other federally or nonfederally assisted program and how funds allotted to the State pursuant to section 413 of this part will be used to complement and augment rather than duplicate or replace the services provided by such other programs;

(B) a description of the steps to be taken to ensure that, to the maximum extent possible, the reading services provided under this part meet the individual needs of blind persons for access to printed information related to their participation in elementary, secondary, and postsecondary education and in employment;

(C) assurances satisfactory to the Secretary that blind persons who receive the direct services of a reader shall have control over the recruitment, training, retention, scheduling, and supervision of such reader, and that such blind persons shall fix the rate of compensation of such reader within guidelines for compensation of readers to be established by the State agency designated to administer the reading services program under paragraph (1) of this subsection;

(D) assurances satisfactory to the Secretary that no person providing reading services to the blind under this part and receiving compensation for such services will be paid at an hourly rate which is less than the rate established under section 6(a) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1); and

(E) a description of the conditions for eligibility for participation of blind persons in the reading services program authorized under this part and, where appropriate, a statement of the priorities for service that are based on an assessment of the needs of the blind for such service as determined by the State, and the procedures to insure that such conditions for eligibility and priorities for service shall be developed in consultation with interested blind persons and organizations of blind persons;

(3) provide assurances satisfactory to the Secretary that such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Secretary to be necessary will be followed;

(4) provide assurances satisfactory to the Secretary that eligibility of blind persons for reading services authorized under this part shall be determined without regard to individual economic need;

(5) provide assurances satisfactory to the Secretary that no residence requirement will be imposed that excludes from services under this part any blind person who is present in the State;

(6) provide assurances satisfactory to the Secretary that the views of blind persons and organizations of blind persons will be taken into account in resolving matters of general policy arising in the administration of the reading services program;

(7) provide assurances satisfactory to the Secretary that the State agency designated to administer the reader services program under paragraph (1) of this subsection will make such reports in such form and containing such information as the Secretary may from time to time reasonably require and will keep such records and afford such access thereto as the Secretary finds necessary to ensure the correctness and verification of such reports; and

(8) provide assurances satisfactory to the Secretary that the funds paid to the State under this part will be disbursed and accounted for in accordance with necessary fiscal control and fund accounting procedures.

(b)(1) The Secretary shall approve any application submitted by a State under subsection (a) if, after review of such application, he determines that it meets the requirements of subsection (a). The Secretary shall disapprove any application submitted by a State under subsection (a) if, after review of such application, he determines that it does not meet the requirements of subsection (a).

(2) Whenever the Secretary, after reasonable notice and opportunity for a hearing, finds that a State agency, in the administration of an application approved under paragraph (1) has failed to comply with any requirements set forth in such application, the Secretary, after giving appropriate notice to the State agency, shall make no further payments to such State agency under section 415 of this part until the Secretary is satisfied that there is no longer any failure to comply with the requirements involved.

(3) If any State is dissatisfied with the Sec-

retary's action under paragraph (1) or (2) of this subsection, such State may appeal to the United States district court for the district where the capital of such State is located and judicial review of such action shall be on the record in accordance with the provisions of chapter 7 of title 5, United States Code (5 U.S.C. 701).

PAYMENTS TO STATES

SEC. 415. (a) From the amounts allotted to each State pursuant to section 413 of this part, the Secretary shall pay to that State an amount equal to the amount expended by the State for carrying out the purposes of this part in such State, including expenditures for the administration for the reading services program, except that the total of such payments to such State for any fiscal year may not exceed its allotment for such year under section 413 of this part.

(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

DEFINITIONS

SEC. 416. For the purposes of this part—

(a) The term "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether a person is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the person shall select.

(b) The term "reading services" means—

(1) employment of persons who through reading aloud can afford blind persons ready access to printed information.

(2) transcription of printed information into braille or sound recording if such transcription is performed pursuant to individual requests from blind persons for such service,

(3) the storage and distribution of braille materials and sound records,

(4) the purchase, storage, and distribution of equipment and materials necessary for the production, duplication, and reproduction of such braille materials and sound recordings, and

(5) the purchase, storage, and distribution of equipment provided to blind persons that affords such persons private individual access to printed materials by mechanical or electronic means.

(c) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(d) The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and for the purpose of American Samoa and the Trust Territory of the Pacific Islands, the appropriate State agency designated as provided in section 514(a)(1) shall by the Governor of American Samoa or the High Commissioner of the Trust Territory of the Pacific Islands, as the case may be.

PART B—INTERPRETER SERVICES FOR THE DEAF

FINDINGS AND PURPOSES

SEC. 421. (a) The Congress finds that—

(1) section 504 of the Rehabilitation Act of 1973 has provided a mandate that barriers to handicapped individuals must be removed;

(2) most efforts for the removal of such barriers have been directed toward the removal of architectural barriers; and

(3) there is a need to remove communications barriers which affect deaf individuals wherever they exist.

(b) It is the purpose of this part—

(1) to provide for the training of a significant number of interpreters to meet the needs of deaf individuals throughout the Nation; and

(2) to establish a mechanism for the efficient delivery of interpreter services to deaf individuals.

INTERPRETER SERVICES

SEC. 422. Title II of the Rehabilitation Act of 1973 is amended—

(1) by redesignating section 205 (as added by section 110(b) of this Act) as section 206;

(2) by redesignating section 204 as section 205; and

(3) by inserting immediately after section 203 the following new section:

"INTERPRETER SERVICES

"SEC. 204. (a) The Secretary, through the Office for Handicapped Individuals in the Office of Human Development Services (hereinafter referred to as the 'Office for Handicapped Individuals'), may establish not more than twelve programs under this section for the purpose of training a sufficient number of interpreters to meet the communications needs of deaf individuals. Such programs shall be established at locations throughout the Nation which are designed to provide for the most efficient delivery of interpreter services.

"(b)(1) The interpreter training programs specified in paragraph (2) shall be eligible to serve as base centers for purposes of providing services under this section, upon meeting the requirements established in this section.

"(2) The programs referred to in paragraph (1) are the interpreter training programs maintained at the following institutions: Gallaudet College in Washington, District of Columbia; Saint Paul Technical Vocational Institute in Saint Paul, Minnesota; California State University in Northridge, California; Seattle Central Community College in Seattle, Washington; Delgado College in New Orleans, Louisiana; and the National Technical Institute for the Deaf in Rochester, New York.

"(c) The Secretary may establish six additional centers which have ongoing operating programs for training interpreters and are so situated that they can provide training for individuals in States in geographic areas to insure that every part of the Nation is served.

"(d) Any base center or additional center which desires to maintain a program under this section may submit an application to the Office for Handicapped Individuals. Such application shall be submitted in such form, and in accordance with such procedures, as the Secretary may require. Any such application shall—

"(1) provide for the development of a five-year program which—

"(A) demonstrates the capacity to provide interpreter services to deaf individuals in need of such services; and

"(B) includes plans for the delivery of such services in specific areas of need designated by the Secretary; and

"(2) contain such other information as the Secretary many require.

"(e) The Office for Handicapped Individuals shall approve any application which meets the requirements of this section.

"(f)(1) Any base center or additional center which maintains a program under this section may, in connection with such program, provide for the training or retraining of teachers who are involved in providing instruction to deaf individuals but who are not certified as teachers of deaf individuals. Short-term, in-service training may also be provided to teachers of deaf individuals.

"(2) Interpreters who provide services required under the Education for All Handicapped Children Act of 1975 may be trained in any program maintained by a base center or additional center under this section, except that funds for such training shall be drawn from funds appropriated under the Education for All Handicapped Children Act.

"(g) Any base center or additional center maintaining a program under this section may provide for the establishment and operation of satellite centers for the training of interpreters, upon a determination that such satellite centers are necessary or appropriate for the efficient delivery of interpreter services to deaf individuals in need of such services.

"(h) Any interpreter trained in any program maintained by a base center or additional center under this section shall be required to meet minimum standards established in the Registry for Interpreters of the Deaf.

"(i) There is authorized to be appropriated to carry out the provisions of this section $8,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, and September 30, 1983.".

"NATIONAL NETWORK OF SERVICES FOR DEAF INDIVIDUALS

SEC. 423. Title III of the Rehabilitation Act of 1973 is amended by redesignating section 306 as section 307, and all cross-references thereto, and by inserting immediately after section 305 the following new section:

"NATIONAL NETWORK OF SERVICES FOR DEAF INDIVIDUALS

"SEC. 306. (a) The Secretary shall establish a program under this section designed to provide for the establishment of information and referral centers, and interpreter referral centers for deaf individuals, in each State.

"(b) From sums appropriated under this section for any fiscal year, each State shall be entitled to an amount which bears the same ratio to such sums as the number of deaf individuals residing in such State bears to the number of deaf individuals residing in all States.

"(c) Any State which desires to receive funds under this section may submit an application to the Secretary. Such application shall be submitted in such form, at such times, and in accordance with such procedures, as the Secretary may require. Such application shall—

"(1) provide assurances that such program will be operated throughout the State in areas specifically selected to provide central locations for the provision of services to deaf individuals;

"(2) include a plan which describes, in sufficient detail, the manner in which information and referral services, and interpreter referral services, will be provided to deaf individuals;

"(3) provide assurances that the State agency responsible for the program operated under this section will seek to enter into contractual or other arrangements, to the extent appropriate, with private nonprofit organizations comprised of deaf individuals (or private nonprofit organizations which have the primary purpose of providing assistance or services to deaf individuals) for the operation of such programs; and

"(4) contain such other information as the Secretary may require.

"(d) The Secretary shall approve any application which meets the requirements of this section.

"(e)(1) Interpreter referral services which are provided through any program operated under this section shall be designed to provide a pool of available interpreters for specific geographical areas. Such services may be made available to any public agency or private nonprofit organization which is involved in the delivery of assistance or service to deaf individuals, in order to assist in the efficient delivery of such services.

"(2) The costs of providing interpreter services may be defrayed by the referral center responsible for the provision of such serv-

ices, during the first year in which such center in operation. At the end of such period, agencies receiving such services through referrals made by the center shall reimburse the center for the cost of such services.

"(f) Any interpreter who desires to participate in services provided under this section shall be required to meet minimum standards established in the Registry for Interpreters for the Deaf.

"(g) Any funds allocated under this section for use by an interpreter referral center may be used only for the provision of interpreter services. Such funds shall not be used to defray administrative or related costs.

"(h) No funds made available under this section may be used for the provision of assistance or services to deaf individuals who are receiving rehabilitation services as clients under any other provision of this Act.

"(i) Funds made available under this section may be used for the purchase or rental of equipment necessary to provide assistance or services to deaf individuals.

"(j) There is authorized to be appropriated to carry out the provisions of this section $15,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, and September 30, 1983.".

PART C—REHABILITATION SERVICES FOR OLDER BLIND PERSONS

DECLARATION OF PURPOSE

SEC. 431. The purpose of this part is to authorize grants to States—

(a) to assist in the development of plans for meeting the needs for services of older blind persons;

(b) for evaluation of the needs of older blind persons for rehabilitation services and personal adjustment services; and

(c) for the provision of rehabilitation and personal adjustment services for older blind persons in order to assist such persons to adjust to blindness and to render such persons more capable of caring for their individual needs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 432. In order to carry out the purposes of this part, there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, and $30,000,000 for the fiscal year ending September 30, 1981. For each of the succeeding fiscal years, there are authorized to be appropriated such additional sums as may be necessary to carry out the provisions of this part.

SCOPE OF REHABILITATION SERVICES FOR OLDER BLIND PERSONS

SEC. 433. (a) Rehabilitation services for older blind persons provided under this part are any goods or services necessary to assist an older blind person to adjust to blindness and to render such person more capable of caring for his individual needs, including—

(1) prevention of blindness services, including outreach services, visual screening, surgical or therapeutic treatment necessary to prevent, correct, or substantially modify eye condition and other disabilities, and necessary hospitalization in connection therewith;

(2) provision of eyeglasses and other visual aids, and mobility and self-help aids;

(3) adjustment services such as mobility training, Braille instruction and equipment;

(4) daily living activities and other rehabilitation teaching services;

(5) individual and family counseling; and

(6) supportive services such as guide services, reader services, and transportation services necessary to assure delivery of services.

(b) Whenever rehabilitation services are provided for a group of older blind persons, such services may include—

(1) the establishment and maintenance of a register of the blind;

(2) the establishment and the maintenance of materials, equipment, and textbook centers and the distribution of such materials, equipment, and textbooks, including talking book machines, cassette tape players, brailled and large print books, special aids such as needles and Braille typewriters, talking books, and tapes;

(3) the warehousing, sale, and distribution of aids, appliances, and devices used by blind persons; and

(4) necessary costs of administering programs providing services for the blind under the State application approved in accordance with section 435.

(c) Any medical or medically related services (other than those related to screening and evaluation) or any supportive services related to maintenance under subsections (a) and (b) of this section shall be provided only after full consideration of eligibility of the blind individual for any similar benefit by way of pension, compensation, and insurance.

STATE ENTITLEMENTS AND ALLOCATIONS

SEC. 434. (a) From the sums authorized under section 432, each State shall be entitled to an amount which bears the same ratio to the total amount of such sums as the population of the State bears to the population of all the States which apply for funds pursuant to section 435.

(b) Whenever the Secretary determines that any amount of a State's allocation for any fiscal year will not be utilized by such State in carrying out the provisions of this part, he shall make such amount available for carrying out the provisions of this part to one or more other States which he determines will be able to use additional amounts during such year for carrying out such provisions.

STATE APPLICATIONS

SEC. 435. (a) Any State that desires to receive an allocation pursuant to section 434 for any fiscal year shall submit an application to the Secretary. Such application may be a part of the State's plan for vocational rehabilitation services submitted to the Secretary pursuant to section 101(a) of the Rehabilitation Act of 1973. The application must—

(1) designate to administer the older blind persons rehabilitation program established under this part—

(A) the State blind commission or other agency which administers the State plan for vocational rehabilitation services to the blind pursuant to section 101(a) of the Rehabilitation Act of 1973 if such agency includes an identifiable administrative unit that—

(i) is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of the blind and is responsible for the vocational rehabilitation program provided to the blind by such State agency.

(ii) has a full-time director who is directly responsible to the chief administrative officer of such agency and whose functions may not be delegated to any other officer not directly responsible to such director,

(iii) has a staff employed on such rehabilitation work of such identifiable administrative unit all or substantially all of whom are employed full time on such work,

(iv) is located at an organizational level and has an organizational status within such State agency comparable to that of the other major organizational units of such agency, and

(v) develops and administers its own budget; or

(B) an agency of the State, other than an agency described in subparagraph (A) of this paragraph, if such agency is a State agency primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and includes a bureau, division, or other identifiable administrative unit that meets the requirements set forth in clauses (i) through (v) of paragraph (1)(A) of this subsection;

(1)(A) of this subsection;

(2) set forth the plans, policies, and methods to be followed in providing services for rehabilitation of older blind persons and for the administration and supervision of the program;

(3) describe the quality, extent, and scope of rehabilitation services for older blind persons through any other federally or nonfederally assisted program and how funds allotted to the State pursuant to section 434 of this part will be used to complement and augment rather than duplicate or replace the services provided by such other programs;

(4) describe the conditions for eligibility for participation of blind persons in the rehabilitation services program authorized under this part and, where appropriate, a statement of the priorities for services that are based on an assessment of the need of the blind for such services as determined by the State, and a procedure to insure that such conditions and priorities will be developed in consultation with interested blind persons and organizations of blind persons;

(5) provide assurance satisfactory to the Secretary that eligibility of blind persons for rehabilitation services authorized under this part shall be determined without regard to individual economic need;

(6) provide assurances satisfactory to the Secretary that no residence requirement will be imposed that excludes from services under this part any older blind person who is present in the State;

(7) provide assurances satisfactory to the Secretary that the views of blind persons and organizations of blind persons will be taken into account in resolving matters of general policy arising in the administration of the rehabilitation services under the program established under this part;

(8) provide for cooperation by the State agency designated under paragraph (1) with other public and private agencies concerned with the blind or older persons and for joint undertakings among such agencies to further the effectiveness of rehabilitation services for older blind persons;

(9) provide such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Secretary to be necessary for the proper and efficient administration of the program;

(10) contain provisions relating to the establishment and maintenance of minimum standards governing facilities and personnel utilized in the provision of rehabilitation services for older blind persons consistent with the provisions of the State program for vocational rehabilitation services under title I of the Rehabilitation Act of 1973;

(11) provide that the State agency designated under paragraph (1) will make such reports in such form and containing such information as the Secretary may from time to time reasonably require to carry out his functions under this part, and comply with such provisions as he may from time to time find necessary to verify the correctness of such reports;

(12) provide assurances satisfactory to the Secretary that funds paid to the State under this part will be disbursed and accounted for in accordance with necessary fiscal control and fund accounting procedures.

(b)(1) The Secretary shall approve any application submitted by a State under subsection (a) if, after review of such application, he determines that it meets the requirements of subsection (a). The Secretary shall disapprove any application submitted by a State under subsection (a) if, after review of such application, he determines that

it does not meet the requirements of subsection (a).

(2) Whenever the Secretary, after reasonable notice and opportunity for a hearing, finds that a State agency, in the administration of an application approved under paragraph (1) has failed to comply with any requirements set forth in such application, the Secretary, after giving appropriate notice to the State agency, shall make no further payments to such State agency under section 435 of this part until the Secretary is satisfied that there is no longer any failure to comply with the requirements involved.

(3) If any State is dissatisfied with the Secretary's action under paragraph (1) or (2) of this subsection, such State may appeal to the United States district court for the district where the capital of such State is located and judicial review of such action shall be on the record in accordance with the provisions of chapter 7 of title 5, United States Code (5 U.S.C. 701).

PAYMENTS TO STATES

SEC. 436. (a) From the amounts allotted to each State pursuant to section 434 of this part, the Secretary shall pay to that State an amount equal to the amount expended by the State for carrying out the provisions of this part in such State, including expenditures for the administration of the rehabilitation services for the program established under this part, except that the total of such payments to such State for any fiscal year may not exceed its allotment for such year under section 434 of this part.

(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Secretary may determine to be necessary.

DEFINITIONS

SEC. 437. (a) The term "blind" means a person who is blind under State law, including such a person who has one or more other disabling conditions.

(b) The term "older blind person" means individuals whose combination of blindness and age makes gainful employment unattainable.

(c) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(d) The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands, and for the purposes of American Samoa and the Trust Territory of the Pacific Islands, the appropriate State agency designated as provided in section 435(a)(1) shall be the Governor of American Samoa or the High Commissioner of the Trust Territory of the Pacific Islands.

Mr. STAFFORD. Mr. President, I am delighted that the chairman of the Subcommittee on the Handicapped of the Committee on Human Resources, the distinguished Senator from West Virginia (Mr. RANDOLPH), is now here. I know that he has been detained by his necessary attendance at a meeting of his party's Policy Committee. Otherwise, he would have been here earlier. I am happy to welcome Senator RANDOLPH to the proceedings on S. 2600.

Mr. RANDOLPH. Mr. President, there is continuing appreciation by me of the utmost cooperation by the ranking minority member of the Subcommittee on the Handicapped, Senator ROBERT STAFFORD of Vermont.

All of the members of our Subcommittee on the Handicapped of the Committee on Human Resources approach this subject matter today, as other subject matter that we bring into this forum, with no partisanship whatsoever. It does not surface in our subcommittee. I have stressed that in the past, and I reinforce it today.

The pending measure, S. 2600, as reported from the Committee on Human Resources, has within it the Rehabilitation, Comprehensive Services, and Developmental Disability Amendments of 1978.

This legislation represents the culmination of efforts which began June 17, 1977, the date on which S. 1712, the Rehabilitation Amendments of 1977, was introduced.

Since the introduction of that bill, joined by the knowledgeable Senator from Vermont, who is the ranking member of the subcommittee, we have held 18 hearings and taken testimony from 201 witnesses.

The recommendations of each of the witnesses, the reports of the U.S. Department of Health, Education, and Welfare, and the recommendations of the White House Conference on Handicapped Individuals, which was held in May of 1977, have been carefully studied.

In addition, during the 95th Congress, I personally have spoken with several hundred persons who are handicapped themselves or who are in the field of the handicapped.

This has been a very moving experience for me, as I know it has been for the Senator from Vermont (Mr. STAFFORD) to have discussed all of these recommendations with a wide variety of people who are involved with programs for the handicapped and with parents of young handicapped children.

The one basic fact that came through to me as perhaps the largest gap that we now have in our services to and for the handicapped are those severely handicapped children and adults who, despite our several efforts, remain unserved. By unserved I mean that they are receiving, and I make this statement with vigor, they are receiving no services at all.

I truly believe it is this population to which Secretary Califano of the Department of Health, Education, and Welfare, was referring when he said in a recent speech:

> Handicapped Americans have been an oppressed and often hidden minority beset by demoralizing indignities and who are detoured out of the mainstream of life.

It is my genuine hope that Secretary Califano give top priority to those severely handicapped individuals who are excluded from programs because they have, as several witnesses stated in our hearings, the "wrong" disease or because they are stricken with a handicap after they have become adults. This action would reflect positively the policy of recognizing the human rights of all as proclaimed by this administration.

This measure contains the major thrust of the policy of the Committee on Human Resources, which is equality for all handicapped Americans. In addition to the reauthorization of the Vocational Rehabilitation Act, the provisions include comprehensive services and training for severely handicapped, the developmentally disabled, and protection and advocacy for all handicapped Americans.

As lawmakers and as citizens we must help protect the rights of these severely handicapped persons. Equity for severely handicapped Americans is essential to our national security.

If we violate the rights of our fellow citizens we violate our commitment to the principle which protects us all. Our work on this measure affirms not only the rights of these severely and profoundly handicapped individuals but also strengthens the rights and protection of all citizens.

Mr. President, as chairman of the Subcommittee on the Handicapped of the Committee on Human Resources, I will highlight some of the provisions of the pending measure, which the subcommittee developed.

Mr. President, S. 2600, as reported, the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, represents the culmination of efforts which began June 17, 1977, the date of which S. 1712, the Rehabilitation Amendments of 1977, was introduced. Since the introduction of that bill I have held 18 hearings and taken testimony from 201 witnesses. The recommendations of each of the witnesses, the reports of the Department of Health, Education, and Welfare, and the recommendations of the White House Conference on Handicapped Individuals, which was held in May of 1977, have been carefully studied. In addition, during this 95th Congress I personally have spoken with several hundred people who are handicapped themselves or who are in the field of the handicapped.

It has been a great experience for me to have discussed all of these recommendations with a wide variety of people who are involved with programs for the handicapped and with parents of young handicapped children. The one fact that came through as perhaps the largest gap in our services to the handicapped is those severely handicapped children and adults who despite our efforts remain unserved. And by unserved I mean they are receiving no services at all.

REHABILITATION ACT AMENDMENTS

Title I of S. 2600 extends the Rehabilitation Act for 5 years and provides for increases in the authorization levels for these vitally important programs. There are a number of amendments which have as their purpose addressing a need or sharpening the focus of a program. For example, we have attempted to alleviate the problems experienced by the minimum allotment States by increasing their proportion of the funds to one-third of 1 percent of $3 million, whichever may be greater. Another amendment removes the limitation on the number of client assistance projects. Other amendments propose refinements to the research and training programs in title II of the Rehabilitation Act of 1973. There are also changes which will strengthen the role of the Architectural

and Transportation Barriers Compliance Board.

COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED

As chairman of the Subcommittee on the Handicapped, I have had major concerns about the needs of the severely handicapped and about how best to approach meeting the multitude of needs that these persons may have. As this legislation was developed, it became clear that if this Nation was to make a commitment to provide comprehensive services to severely handicapped persons, this commitment should be made to all severely handicapped persons, not just to persons with a specific disability.

For this reason, the committee has adopted a functional definition. At the outset, it must be clear that section 119 of title I of S. 2600 is targeted on those very severely handicapped persons who need multiple, continuing, and probably lifelong services and treatment and who may have little or no vocational potential. It is well to note, however, that there are severely handicapped persons who have much to contribute—if they have access to necessary support services.

Title I of S. 2600 adds a new title VI to the Rehabilitation Act which authorizes a State grant program; it is intended that both the increase in authorizations and the additional service requirements will stimulate the States to immediately provide more services as well as work toward a goal of comprehensive services to all severely handicapped persons. Each State must have as a goal the provision of comprehensive services to all severely handicapped persons residing within their State. Each State, however, does have the flexibility to decide its own time lines and develop a long-range plan attuned to its needs in order to meet the goal of full service. States will be required to spend a specified amount of their State allotment to develop a detailed long-range plan with the goal of comprehensive services to all severely handicapped persons, and will be further required to annually reassess the planning activities and update the long-range plan. These planning activities are to be done in consultation with severely handicapped persons, organizations representing such persons, and service providers.

This legislation also includes a section entitled "Demonstrations and Models for Centers and Services To Meet Special Needs of Severely Handicapped Individuals." The discretionary programs authorized by this part would assist not only in providing models of exemplary services but also by providing services to severely handicapped persons.

One of the areas where handicapped Americans have been subjected to unconscionable discrimination, in that they have been unable to secure their rightful role as independent citizens, has been in the area of employment. It is the judgment of the committee that many severely handicapped individuals are judged to be unemployable while in school and therefore are never given the training necessary for employment. Then, because they have no employable skills, they are relegated to activity or developmental centers or workshops to do arts and crafts with no further attempt at training. Giving up too early on these individuals is inconsistent with the committee's belief that every severely handicapped person is entitled to an opportunity to develop to the greatest extent possible.

The committee concurs with the statement of the Industry-Labor Council of the White House Conference on Handicapped Individuals that:

> Problems facing handicapped persons in the work place are not industrial problems, and are not labor problems. They are people problems, requiring cooperation and good will if solutions are to be found.

This section was developed as an instrument to meet some of those needs.

A model for the centers intended in this section is Human Resources, Inc., located in Albertson, N.Y. Dr. Henry Viscardi, director of this center, who served on the Industry-Labor Council and as chairman of the White House Conference on Handicapped Individuals, has demonstrated that if reasonable accommodations can be made to an individual's handicap, the goal of a productive life can be achieved by handicapped Americans.

It is the expectation of the committee that a center such as this one should set the pattern for any additional area centers in the future: This would assure:

First, maximum effectiveness in the organization and operation of such a center;

Second, building upon previous experience and existing facilities, especially in the special education-vocational rehabilitation interface; and

Third, the most substantial skill, experience, and capacity in providing a broad program of service, research, training, technical assistance, and utilization in the field of rehabilitation of severely handicapped youth and adults.

The area centers for the handicapped would create and use the best methods of appraising and developing the employment potential of severely handicapped persons. In addition to providing model training programs for the severely handicapped, the centers would also serve as training programs for rehabilitation workshop and other employment personnel.

The model training programs for the severely handicapped would not just be limited to those persons who would be placed in sheltered workshops; training programs would also be developed for persons who have the potential for placement in competitive employment. Another equally important objective of the program would be to develop new approaches and techniques for the placement and followup of severely handicapped individuals in competitive employment.

Of equal importance is the independent living program. This program would emphasize the development and demonstration of a continuum of alternative living arrangements for severely handicapped individuals including the establishment of group homes and other community living arrangements or facilities. During the hearings in the first session of this Congress, many witnesses noted the need for independent living programs. Presently, severely handicapped adults have few choices in living arrangements. They may live at home with a relative; they may be relegated to a nursing home or an institution; and perhaps, if they are very fortunate, and in rare instances, they may reside in a community based living situation. This program is a vital part of this new legislative thrust.

The community service center program is intended to stimulate community-based activities to meet the social, psychosocial, recreational, and informational needs of severly handicapped individuals and their families.

The models for services for preschool severely handicapped children will develop and demonstrate services in the areas of early intervention, parent counseling, infant stimulation, early identification, diagnosis and evaluation. The value of these services has been well demonstrated in other programs.

In testimony presented by Dr. Robert Hawakins and Dr. Joseph B. Moriarty of West Virginia University, the committee was impressed with the desperate need for a variety of services for severely handicapped children below the age of 3. Dr. Hawkins' presentation spoke to the critical need for comprehensive integrated services that would address the problems of identification, treatment, and the prevention of either the handicap itself or the needless hardship that the handicap produces later on in life for the handicapped individuals, their families and society at large. Dr. Hawkins made clear the need for a modest program to establish a small-scale innovative approach that will experiment to find the best solutions to these problems. A limited number of comprehensive early childhood centers for handicapped chilen would represent a significant step in the right direction.

RESEARCH AND TRAINING

The committee bill extends the authorization in the section on "Research and Training." The research progam assists in the development of improved service and treatment programs and other activities. The training progam emphasizes the training of both professional and paraprofessional personnel who can serve the handicapped in a wide variety of ways.

An important addition to this section is an amendment to permit the eligibility of private, profitmaking agencies or organizations as recipients for grants or contracts under this section since the Rehabilitation Services Administration has been unable to avail itself of the expertise and ingenuity of the private for-profit sector. The committee charges the Department of Health, Education and Welfare and the Commissioner of the Rehabilitation Services Administration with the responsibility to insure

that funds granted or contracted under this amendment are used for the benefit of handicapped individuals and that patents and development rights remain with the public. The committee bill further amends section 202 of the Rehabilitation Act of 1973 to clarify that research activities may include basic medical and scientific research.

An example of the benefit which can be gained was brought to the attention of the Subcommittee on the Handicapped by Mrs. Nanette Fabray MacDougall. In her testimony she related her own experience at the Ear Research Institute which is located in the St. Vincent Medical Center in Los Angeles. The Ear Research Institute's activities include clinical and applied research in diagnosis, treatment and rehabilitation of patients with disorders of the ear. Its major purpose is to bridge the gap between advances made in basic research and their widespread application to persons suffering from hearing impairment and other disorders of the ear.

The Walt Disney Hearing Rehabilitation Research Center is a separate wholly-owned, nonprofit subsidiary of the Ear Research Institute. This center conducts hearing rehabilitation research and focuses on rehabilitation of profoundly deaf adults who have undergone cochlear implant, a surgical technique which restores partial hearing to aging deafened persons. This center is unique and would serve as a model for other hearing rehabilitation centers.

FEDERAL COUNCIL ON THE HANDICAPPED

Title II of this bill establishes a Federal Council on the Handicapped which is to provide advice and assistance to the President on the problems and needs of handicapped and severely handicapped individuals. This council will serve as the focal point for coordinating programs and efforts on behalf of handicapped individuals. The chairperson is expected to function at the executive level in the policy and decisionmaking process. The Federal council is to constantly review and evaluate all policies, programs, and activities affecting handicapped and severely handicapped persons, is to serve as an ombudsman on behalf of the handicapped and severely handicapped, is to inform the public about the problems and needs of these persons, and provide public forums for discussing the problems and needs of handicapped and severely handicapped persons.

The Federal Council on Handicapped Individuals created in this bill is one of many responses to recommendations of the White House Conference on Handicapped Individuals; the estabilshment of this council will fulfill a promise made to the White House Conference delegates. The work of this council should begin immediately. For this reason I am asking that the Secretary of Health, Education and Welfare assign the staff of the Office for Handicapped Individuals to the task of initiating the establishment of the council. This experienced staff can begin immediately to work on the implementation of this essential part of our new legislation. In this way, we will not experience the usual delays because of lack of personnel; we can begin immediately with the vital and necessary work of establishing this Council.

REHABILITATION SERVICES FOR OLDER BLIND PERSONS

The committee recognizes that older blind persons in the United States generally do not receive rehabilitation and adjustment services which are as complete as those provided to younger blind people who are in school or who are working. The comprehensive service needs study, which was set up by the Congress in the Rehabilitation Act of 1973 to determine the direction in which future rehabilitation services should go, stressed that care for the older blind was a neglected area. The committee has therefore prepared legislation addressing the special needs of the aged blind, and intends that the funds allocated be used to supplement rather than replace vocational rehabilitation resources which presently aid the older blind.

In 1972 and 1973, Congress attempted to meet the needs of the older blind by supplying amendments to the Rehabilitation Act which were later compromised away because of a Presidential veto. However, in 1978, with the documentation of the Congress' own comprehensive service needs study and the example of numerous successful demonstration projects showing that the needs can easily be handled with techniques already in use, the committee intends to establish the authority for programs which will specifically help the older blind.

More than half of the nearly 500,000 blind persons in this country are past retirement, and are in need of a whole spectrum of special services related to their age. Because their blindness has descended upon them in their later years—usually due to degenerative diseases such as diabetes, cataracts, and glaucoma—they must undergo reorientation and adjustment training which is geared to their unique circumstances. In addition, they will need special services related to housing, transportation, recreation, and reading which younger, active blind persons already have access to through vocational rehabilitation programs.

Legislation addressed to the elderly in general, such as that in the Older Americans Act or in title XX of the Social Security Act, has been inadequate in providing solutions to the special problems of blindness in older persons. The loss of eyesight affects an older person's ability to function more acutely than other conditions of advancing age, but even further, blindness will often impair an older person's desire to live independently and constructively. Untreated blindness in an unrehabilitated older person will almost always lead to total dependence and depressing isolation from normal social activity.

While allowing for overall Federal supervision of the rehabilitation of older blind persons programs through the Rehabilitation Services Administration, the committee has chosen to utilize the State vocational rehabilitation agencies serving the blind as primary administrative authorities, responsible for developing the eligibility criteria and priorities for service—in consultation with interested blind persons and organizations of blind persons within each State; insuring that rehabilitation services for the older blind are provided so as to complement, to the maximum extent possible, existing services for the blind, rather than duplicate them; insuring that eligibility conditions will not include economic need or length of residency; establishing preventions of blindness services, sight restoration and visual aids and medical services in connection therewith, mobility training and personal adjustment services, self-help aids, counseling, guide, and reader services, and transportation services necessary to assure the availability of other services.

Also, the committee calls for provisions to strengthen library services to the older blind within each State.

The committee is cognizant of the specialized nature of rehabilitation services for the older blind and therefore regards it as essential that knowledgeable administrators and personnel skilled in rehabilitation and related services for the blind have direct supervisory control over these programs. To assure that this will be the case, the committee had included the requirement that the vocational rehabilitation agency serving the blind which is designated to administer the older blind program must be at least an identifiable administrative unit with a full-time director and staff which develops and administers its own budget.

All of the provisions of this bill, and in particular those which impact on the severely handicapped, not only provide opportunities to handicapped Americans to aspire to certain goals but also provide the means by which they can reach those goals.

Remembering the statement by President Carter at the White House Conference on Handicapped Individuals, where he expressed his strong desire to see the role of the Federal Government in helping handicapped individuals significantly enhanced, I feel confident the programs we have authorized in S. 2600 will assist in achieving that desire.

Mr. President, since I first brought to the Congress, in 1936, the Randolph-Sheppard Act for the Blind, I have made a deep and personal commitment to do my utmost to alleviate inequities which cause discrimination against and among handicapped individuals. If there were a legacy for posterity that I, as chairman of the Subcommittee on the Handicapped, could leave I would want it to be full service for all severely handicapped individuals in the next 5 years. I think it is one which all of us would deem our finest accomplishment.

Mr. President, in order that all Senators and the public may have full understanding of the various major new

provisions of this measure, I ask unanimous consent that there be printed in the RECORD at this point pertinent excerpts from the committee report 95–890 accompanying S. 2600 as reported.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

[Excerpts from Committee Report No. 95–890]

COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS ACT OF 1978

Section 119 of the bill adds a new title VI to the Rehabilitation Act of 1973, as amended, entitled "Comprehensive Services for Severely Handicapped Individuals."

COMPREHENSIVE SERVICES

This title establishes a new program which has as its thrust the delivery of comprehensive services to the severely handicapped individuals of this Nation. It is intended that this title will help resolve the multiple problems experienced by severely handicapped Americans as they seek services so necessary to their health and well being. The intent of this legislation is to build State services and service systems to increase the number of and improve the quality of services for severely handicapped individuals and to assist the States in developing and implementing comprehensive services for all severely handicapped persons.

The committee has major concerns about the needs of the severely handicapped and about how best to approach meeting the multitude of needs of severely handicapped individuals. As this legislation was developed, it became clear that if this Nation were to make a commitment to provide comprehensive services to severely disabled persons, this commitment should be made to all severely handicapped persons.

For this reason, the committee has adopted a functional definition of severely handicapped individuals. At the outset, it must be clear that this bill is targeted on those very severely handicapped persons who need multiple, continuing, and probably lifelong services and treatment and who may have little or no vocational potential. It is well to note, however, that there are severely handicapped persons who have much to contribute—if they have access to necessary support services.

SCOPE OF COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

This part establishes that severely handicapped individuals have access to services and right to treatment required to minimize, to the extent possible, the debilitating effects of their handicaps. Advances in modern technology, treatment, and teaching techniques have demonstrated that investing in appropriate services and treatment, particularly early in life, can substantially reduce the cost of supporting and caring for severely handicapped individuals over their lifetimes.

The committee recognizes that the services to the severely handicapped to be provided under this title are many and varied. Such goods and services are those as may be necessary (a) to enhance the ability of a severely handicapped individual to live independently, to function in society, and to secure and maintain appropriate employment, (b) to have improved access to recreation and leisure-time activities, and (c) to participate, where appropriate, in preschool developmental activities. Such services include but are not limited to the following:

(1) Evaluation of functional level, strengths, and weaknesses for program planning purposes including diagnosis and related services;

(2) Vocational, self-care, independent living, and other training services including the provision of such services to parents and/or guardians as necessary to improve the care, training, and functioning ability of such severely handicapped persons;

(3) Physical, mental and psychotherapeutic services, including, but not limited to, (a) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which constitutes a substantial handicap to the further development of an otherwise severely handicapped individual, (b) necessary hospitalization in connection with such surgery or treatment, (c) prosthetic orthotic devices, (d) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye, (e) special services (including transportation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals suffering from endstage renal disease;

(4) Interpreter services for deaf individuals and reader services for individuals determined to be blind;

(5) Telecommunications, sensory, and other technological aids and devices;

(6) Preschool services when included but are not limited to, physical therapy, development of language and communication skills, and general child development services;

(7) Training in recreational and leisure-time activities including the training of personnel to provide such services to severely handicapped individuals;

(8) Supervised living arrangements;

(9) Independent living services; and

(10) Transportation in connection with any habitation or rehabilitation services.

ANNUAL STATE PLANS

It is the intent of the committee that the agency or agencies administering the vocational rehabilitation plan designated under section 101(a)(2)(A) of the Rehabilitation Act of 1973, be designated as the State agency or agencies to administer comprehensive services for severely handicapped individuals under the provisions of this title.

The reason for this is that the State vocational rehabilitation agency presently has the responsibility to provide comprehensive services to severely handicapped individuals with vocational potential, and the acumen, expertise, and specialty resources required for effectively serving the severely handicapped individuals already exist primarily in State vocational rehabilitation agencies. Since the essential requisites for the effective provision of such services are closely related to the basic components of effective vocational rehabilitation services, it is logical to place primary responsibility for comprehensive services for the severely handicapped in the state vocational rehabilitation agency. The potential for costly duplication of effort and resources is also minimized, which is extremely important to the committee.

The committee emphasizes that the State plan be designed to serve first those severly handicapped individuals who are found to be unserved. It is the intention of the committee that priorities be adhered to during the period of time covered by the plan. It has come to the attention of the committee that rehabilitation agencies operating within larger "umbrella" agencies occasionally find their funds shifted to meet some funding emergency in another State agency. In the view of the committee, this would constitute a shift of priorities which would have to be reviewed and approved by the Secretary. The committee wishes to note that a broader philosophy in the administration of the title VI program must be applied by the State vocational rehabilitation agencies as compared to the more narrow vocational approach of the title I program.

In order to encourage coordination between services provided under this act and other social services, this legislation provides in section 615(b)(6) for the maximum feasible utilization of resources available under community education programs. Under the Community Schools and Comprehensive Community Education Act (title X of the Elementary and Secondary Education Amendments of 1978, as reported by this committee in S. 1753), community education funds granted under the Elementary and Secondary Education Act may be credited as non-Federal matching funds for community services (including those provided under this act) implemented in a community school and where there is a necessary relationship with community education.

The consequence of this provision would be to encourage related community services to work out collaborative agreements with community education programs. By so doing, the related community service program (such as those funded under this act) is able to credit the amount of the community education grant received by the State or local education agency under the Elementary and Secondary Education Act as non-Federal local matching money. This incentive becomes operative only pursuant to an agreement with such a school. Where applicable, the committee believes that this provision, in conjunction with the provision for maximum use of community education resources in section 615(b)(6) of this act, can generate important incentives to coordination of service and efficient use of school facilities. The use of community education funds as non-Federal matching funds was included in title X of the Elementary and Secondary Education Act.

Community education emphasizing the coordination of community service within the school holds promise as a possible avenue for alleviating the problem of fragmentation of services. For many segments of the American population, including many handicapped individuals, such fragmentation is a major obstacle to receipt of expected benefits of Government programs.

The committee believes that the needs of handicapped persons should be met through the use of all available resources, including community education, and that education policies, systems, and facilities should contribute fully to local community well-being. School facilities should be available, where appropriate to provide such services.

It is the purpose of section 615(b)(6) of this legislation and the expressed intent of the committee, therefore, that where services to handicapped individuals are determined to be a desirable element of the community education program, these services be provided in collaboration with existing local delivery services. "Collaboration" means that specific agreements between the schools and other public agencies will be developed and implemented, including contractual arrangements. Agreements should address issues of program content, personnel, and facility use, among others.

The act requires the States, as a condition to receiving funds under part B of the act, to provide assurances that the State has established as a goal the provision of comprehensive services to all severely handicapped individuals residing within the State and that the State is developing timetables to

meet this goal. It is the intent of the committee to alert the States that all severely handicapped persons have a right to appropriate services and that such services must become available, if not immediately, at some specified time in the future. The timetable for meeting this goal is left to the individual States. However, it is expected that the States will move as quickly as possible to implement this requirement. It can be anticipated that subsequent revisions and extensions of this act will take cognizance of the progress made toward this goal and respond accordingly.

This section further requires the State plan to specify a program to (A) eliminate inappropriate placement of severely handicapped individuals in institutions, and (B) improve the quality of care provided in institutions caring for severely handicapped individuals. There has been a tendency to assume that anything done in the community satisfied the requirement of part A and a general resistance to allocating funds for part B.

The committee recognizes that residential facilities and institutions continue to be a component of the service system for those severely handicapped individuals who require such specialized 24-hour-a-day services. The committee does not intend to ignore the plight of the many severely handicapped individuals for whom such services are appropriate and necessary. Therefore, it is required that States indicate in their State plan how the quality of care provided by such institutions is to be improved and what funds are to be used for this purpose.

LONG-RANGE PLAN

The committee intends that the States develop effective long-range plans for services to severely handicapped individuals and that sufficient funds for that purpose be made available. There is a general tendency for States to focus on the provision of direct services to the exclusion of planning. The legislation requires that within 18 months of the date of enactment of this title, each State receiving funds under the State grant program shall submit to the Secretary a long-range plan for the provision of appropriate services for all severely handicapped individuals residing within that State.

Such long-range plan should:

(1) Establish a goal of providing comprehensive services to all severely handicapped individuals residing within the State.

(2) Set forth priorities, policies, and procedures for the expenditures of funds under the plan which the Secretary determines are designed to assure effective and continuous State planning, evaluation, and delivery of services (both public and private) for severely handicapped individuals.

(3) Specify the number and kind of services and facilities available and accessible to severely handicapped individuals, as well as a breakdown of the types of agencies providing services to severely handicapped individuals.

(4) List the number of severely handicapped individuals residing within the State, specified according to age groups such as preschool, elementary, and secondary school age, young adult, adult, and elderly.

(5) Identify the gaps in the provision of comprehensive services provided to severely handicapped individuals residing within the State, together with a breakdown of such service gaps by type and geographical location.

(6) Set forth solutions for remedying the service gaps so identified, including, but not limited to:

(a) The initiation of new projects;

(b) The development of cooperative relationships between agencies in order to assure the availability of services to severely handicapped individuals;

(c) The coordination of all available resources in the public and private sectors for the provision of comprehensive services to severely handicapped individuals; and

(d) The development of a plan to facilitate access to comprehensive services by severely handicapped individuals and their families.

(7) Specify the activities by the State to insure the provision of comprehensive services to all severely handicapped individuals residing within the State in each of the following major service areas:

(a) Alternative community living arrangement services for the purpose of providing suitable residential arrangements in the community, such as in-home services, foster care services, protective services, group living services, respite care, staff training, placement, and maintenance services, and family support services;

(b) Infant and preschool services, such as early intervention, parent training and counseling, infant stimulation, and early identification, diagnosis, and evaluation;

(c) Nonvocational, social developmental assistance, such as training in daily living activities, day activity centers, mobility training, transportation assistance, and recreation and leisure activities; and

(d) Individualized case management, including, but not limited to, the assessment of a severely handicapped individual's developmental and vocational potential, counseling, referral and regular follow-along activities; and

(8) Provide assurances that the long-range plan be developed and annually updated in consultation with the State Council on Severely Handicapped Individuals.

The committee bill has provided that of each State's allotment not more than 10 per centum or $60,000, whichever is the greater, for the fiscal year ending September 30, 1979, and not more than 6 per centum or $35,000, whichever is the greater, for the fiscal year ending September 30, 1980, shall be used by each State for developing the long-range plan requirements.

INDIVIDUALIZED WRITTEN PROGRAMS

The individualized program is the primary vehicle for accountability in this program. The intent of this provision is to insure that these programs are developed through a careful analysis of the capabilities and needs of each individual, that this analysis is translated into specific short- and long-term goals and objectives, that specific procedures are identified to achieve the objectives, and that criteria are developed to permit evaluation of progress.

The committee wishes to clarify that the State, in assuring to the Secretary that the State has such individual programs in effect for each severely handicapped individual, is also responsible for insuring that the individualized programs are developed in accordance with the provisions of section 615. Although the program is to be developed by the program or agency primarily responsible for delivering or coordinating services, it is the State which is responsible for the quality and effectiveness of the programs.

The committee intends that the individualized program be comprehensive enough to address all of the needs of the severely handicapped person and not just those needs which can be met by the agency developing the program. For example, if an individual is enrolled in a workshop with the program developed by workshop personnel but the person requires speech therapy (or other service) which is not provided through the workshop, the program must account for this need and show how the need is to be satisfied. An individualized program which does not address all of the service needs of the individual will not satisfy the requirements of this act.

PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

It is the intention of the committee that severely handicapped individuals have available to them the resources of a protection and advocacy system. The States are required to assure to the Secretary that such a system is established in order to receive an allotment. It is the intent of the committee that the States have the option to either develop separate advocacy systems for the severely handicapped or incorporate such services within existing advocacy programs, which in the judgment of the States best meets the needs of the severely handicapped as required in section 604.

INDEPENDENT LIVING AND OTHER SERVICE PROGRAMS FOR SEVERELY HANDICAPPED INDIVIDUALS

The committee is concerned that there are inadequate numbers of exemplary service centers throughout the country to meet the needs of severely handicapped individuals. Independent living centers and exemplary service centers have been developed throughout the country—a few of them in universities—and the committee now wants to see these models of service training in community settings. The committee wants to make clear that the purpose of this section is to provide the opportunity for program development by local public agencies and private nonprofit organizations and certain Indian tribes. The committee seeks to provide diversification in the delivery of these much needed services.

In the use of the term "comprehensive" the committee intends that such service centers respond to the broad range of needs of this severely handicapped population through the direct provision of services or through appropriate review and follow-up services. It is the hope of the committee that Federal funds authorized under this section will be used to expand and coordinate services at existing programs, as well as encourage the development of new programs; however, States should undertake to assure that services are not duplicative or other resources in the community.

The ultimate goal of the committee is to assure that severely handicapped individuals within the area served by these centers receive the services so desperately needed. The method for accomplishing this will naturally vary in accordance with community needs and existing resources. Diversity is to be encouraged.

STATE COUNCILS

The committee believes that there is a need for handicapped individuals and providers of services to the severely handicapped to be actively involved in the development of activities and programs to serve the severely handicapped. The committee views the State councils as a partnership between consumers and providers which has been organized to serve as cooperative planners of activities to meet the special needs of the severely handicapped.

The committee expects that the State council will fulfill its major role of advising regarding the development of the State plan.

Input from the consumers represented on the council should reflect priorities of service to those severely handicapped who are receiving no services.

DEVELOPMENT AND REMONSTRATION OF MODELS FOR CENTERS AND SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

1. *Training centers.*—It is the judgment of the committee that many severely handicapped individuals are judged to be unemployable while in school and therefore never given the training necessary for employment. Then, because they have no employable skills, they are relegated to activity or development centers or workshops to do arts and crafts with no further attempt at training. Giving up too early on these individuals is inconsistent with the committee's belief that every severely handicapped person is entitled to an opportunity to develop to the greatest extent possible.

The committee concurs with the statement of the Industry-Labor Council of the White House Conference on Handicapped Individuals that, "problems facing handicapped persons in the work place are not industrial problems, and are not labor problems. They are people problems, requiring cooperation and good will if solutions are to be found." This section was developed to meet some of those needs.

A model for the centers intended in this section, located in the Northeast, currently carries on many of these activities. It is the expectation of the committee that a center such as this one could be funded under these amendments so as to set the pattern for any additional area centers in the future. This would assure:

(1) maximum effectiveness in the organization and operation of such a center;

(2) building upon previous experience, and existing facilities, especially in the special education-vocational rehabilitation interface; and

(3) the most substantial skill, experience, and capacity in providing a broad program of service, research, training, technical assistance, and utilization in the field of rehabilitation of severely handicapped youth and adults.

Applied research at a northwest university over the past years has demonstrated without a doubt that moderately and severely retarded individuals can be trained for jobs and placed successfully in such jobs. Individuals with IQ's in the forties and fifties, after an average of only 7 months of training, are now employed and earning at least the statutory minimum wage in the food service industry. These are individuals who had been in workshops for years and supported under Supplementary Security Income benefits before training.

This training program costs approximately $5,500 per individual for evaluation, training, placement, and followup for 2 years. When one compares these cost figures it becomes evident that the procedures developed at this center are remarkedly cost efficient. The cost of training through the CETA program, for example, averages $8,500 per individual for a full year which is sometimes extended beyond the initial year. The Job Corps provisions of the Labor Department estimate the cost of training at $7,700 per individual.

The committee emphasizes that these centers are not meant to reduce or relieve the responsibilities with respect to the employment or advancement in employment of an otherwise qualified severely handicapped individual.

2. *Independent living and community service centers for severely handicapped individuals.*—Testimony at committee hearings suggested that a tendency existed for some States and communities to find a community living model that appeared to satisfy the needs of severely handicapped individuals without making the effort to determine whether or not that was the best model or whether a variety of models might serve better than a single model.

Severely handicapped individuals face a variety of complex problems in attempting to become as independent as possible. Many, if not most, of these individuals could be gainfully employed, with certain limitations, or a part-time basis, but the complexities of daily living can force them into a totally dependent situation.

The purpose of this section is to provide funds for the exploration of new models of independent living and community centers. Such models, supported under grants or contracts, are expected to be innovative and explorative in nature and designed to provide States and communities with reasonable, alternative strategies for rehabilitation of severely handicapped individuals to become as independent and self-sufficient as possible.

The Commissioner is given the broadest possible discretion for the use of funds appropriated under this section in an effort to encourage the development of creativity and imaginative plans and ideas. Regulations and guidelines issued with reference to this section should maintain and encourage this flexibility.

This flexibility in funding, however, is to be counterbalanced by a strong commitment to evaluation of the effect of the project. A strong and effective evaluation plan is to be included as a part of all project support under this section. The Commissioner is encouraged to develop an overall evaluation strategy to determine the relative benefits derived from the various models.

The commitee directs the Commissioner to provide assurances in the regulations that the various independent living programs, models, and activities in this act are coordinated by the State agency.

3. *Models of services for preschool age severely handicapped children.*—Severely handicapped children below the age of 3 years and their parents are desperately in need of a variety of services. The children require very careful evaluation from several professional disciplines and educational/treatment services appropriate to meet their needs. The parents require some assistance to fulfill the 24-hour responsibility for the care of these children, some instruction in how to cope with these children in the homes, and often psychological and psychiatric counseling to help them to adjust to the trauma of having become parents of a severely damaged child.

There are currently private nonprofit organizations which attempt to provide services to handicapped children below the age of 3 years. Many of these were parent initiated and designed along educational models. Such programs often do not have the professional resources to serve any but the moderately handicapped, yet often find themselves attempting to care for children who are at high risk. For example, within the area around Seattle, Wash., there are 12 preschools serving children within this age range. The children in these schools are most often moderately retarded with very secondary handicaps. Some of these children, however, are multiple handicapped and require a full range of health-related services as well as instructors and attendants.

The model programs envisioned by this legislation would provide facilities to serve these seriously damaged children who require extension health-related services. It can be expected that some of these programs would be attached to children's hospitals or similar facilities. The purpose of these model programs would be to demonstrate how to provide direct care, training, and services to this select population of severely damaged children, to provide technical assistance, and resources to other preschool programs within the community serving this age range, and to provide services, either directly or indirectly to the families of such children.

The committee is aware that the Office of Education has the authority to support preschool programs for handicapped children, both on a formal basis and project grant basis. However, the concept of "education" is far too limited when one considers the complexities of very young, severely handicapped children. The physical and developmental problems of these infants and young children are often life threatening to the extent that skilled management is essential. Care for the physical development of these children must take precedence over the development of educational, treatment or developmental programs.

The purpose of these models programs for severely handicapped children is to obtain experience with broad based comprehensive services for these children.

These very young, very handicapped children will be entering public school programs at the age of 3. These preschool programs will be able to assist the public schools in providing services to all these children. The children will enter the schools with the best possible medical, psychiatric, and educational evaluation and with from 1–3 years experience under the guidance of experts in early child development. Furthermore, the preschool program will be in a position to assist the schools in planning for these children, in the delivery of services to these children, and in insuring that appropriate health resources are available as the child goes through the early school years.

It should be noted that the committee expects close coordination and cooperation between Rehabilitation Services Administration and the Bureau of Education for the Handicapped on these projects.

The committee wants to make it clear that the purpose of this section is to determine the feasibility of initiating and expanding service programs at the community level rather than in universities. Universities are ideal settings for the development of new models of services, but ultimately these models must be tried in other settings.

RESEARCH, TRAINING AND EVALUATION

Severely handicapped individuals and their problems have been ignored to a great extent by our society. Because of this, there is a limited base for knowledge on which to build cost effective, practical programs to meet the needs of these individuals. There have been years of research on the problems of mildly and moderately handicapped people and this research has led to improvement in all aspects of life for this population. This section represents a new beginning designed to build a knowledge base to eventually improve the life situation for the severely handicapped.

Research.—Effective research takes time, money, and above all, knowledgeable and committed researchers. With the significant exception of medical research, there are very few researchers experienced in research with this population. Experience with the Office of Education programs for the severely and profoundly retarded has demonstrated a willingness of grant applicants to become experts on a moment's notice, but this is a far cry from a researcher who has spent years in the development of his own knowledge and skills in the pursuit of solutions to very difficult problems.

The Secretary is cautioned that a new field of study will develop and will progress only

as experts within that field have the time to develop their own skills and knowledge. There will be no quick solution to complex problems which have existed since the beginning of our industrialized society. Research programs should be built with care; expanding as the knowledge base expands. Programmatic grants of 5-year duration with option for 5-year renewal should be given serious consideration. A critical mass of investigators sharing and building knowledge together often can accomplish more in less time than individual investigators working alone on a short-term projects.

The committee expects that programs of research will be developed in all of the areas listed in the legislation but not necessarily limited to those areas.

An effective, national research program requires both a carefully conceived plan of action plus the flexibility to move quickly into new areas as new ideas emerge. This means that a plan of action is to be developed prior to committing Federal funds but that some percent of the funds must be kept apart from the plan for investment in new ideas on a moment's notice. Strict adherence to a formalized plan could mean as much as a two-year delay in getting out new ideas, something considered totally inappropriate from a research and development point of view.

Federal research programs have been plagued throughout their history by the problems of life continuing costs which limit flexibility and available funds in years subsequent to the awarding of initial grants. The Secretary should consider the development of a process for committing funds out of 1 fiscal year for the full, multipe-year term of a project. This would result in less (and hopefully higher prioritized) projects for funding in any given year but with funds available each year to support new projects. This approach assures that funds will be available each year for the support of new ideas.

Training.—The committee has noted that almost without exception federally supported training programs relating to handicapped individuals are focused on children. Both the Maternal and Child Health and Office of Education programs support the training of professional personnel to work with children.

Federal programs which support training of personnel to work with handicapped children do not have an emphasis on children with severely handicapping conditions.

The value of federally supported training programs has been to attract personnel into areas which would otherwise be a low priority. This approach was very successfully demonstrated through the Office of Education's training program to prepare teachers of handicapped children. It should have the same effect in attracting handicapped as well as nonhandicapped students into work with the severely handicapped.

The provisions of tihs section are designed to do for the severely handicapped, both children and adults, what the Office of Education's program did in the development of teachers for handicapped school children. The committee recommends that the structure of training programs managed for the Maternal and Child Health Agencies be used as a model for the training programs under this authority.

The committee wishes to emphasize that this authority allows for the provision of stipends for traineeships. This is very important for attracting people into this field and must not be ignored by the administrative agencies.

The committee believes that the Secretary in the making of grants or contracts should consider the following three items. These items are listed in order of priority. The first is that there is a need for a balanced program; the second is that these programs will be interdisciplinary in nature; and the third allows for training within the individual disciplines and for paraprofessionals.

It is not expected that each grantee will offer training in all of the areas listed but that the Secretary will assure that training programs will be supported at one or more institutions in the various areas. Priority must be given, however, for those programs which offer interdisciplinary training and cut across several areas.

Research and Training Coordination.—It is a well known fact that services to the severely handicaped call for interdisciplinary efforts. It is our hope that by requiring coordination of research and training programs we will not only encourage but also prioritize programs which are truly collaborative activities.

Evaluation and Studies.—The committee continues its interest in the evaluation of effectiveness of federally assisted programs but is disappointed in the efforts to date to accomplish this. It is possible that the mandate to evaluate federally assisted programs has not been taken seriously and that funds have not been allocated in sufficient amounts for this purpose. The committee recognizes that evaluation studies are complex and expensive and that funds expended for evaluation efforts are not then available for direct services to handicapped individuals. It is the opinion of the committee, however, that a prudent investment in evaluation activities will increase the availability of funds for direct service through the redirection of funds from ineffective and wasteful programs to those that have demonstrated their value. There are several areas of specific concern which have been brought to the attention of the committee as needing evaluation. These include the large expenditure of funds over the past several years for the numerous conferences, symposiums and meetings which seem to absorb an ever increasing amount of Federal dollars. It is the hope of this committee that the Secretary will provide this committee with objective data on the extent to which programs achieve objectivity and whether the objectivity will be worth the cost.

The committee expects the Secretary to obtain the best possible advice from experts in the field of evaluation in order to mount the most effective evaluation program.

The committee further recommends that the Secretary provide for the conduct of an objective collaborative study of the consequences of deinstitutionalization. The committee has concern for the welfare of severely handicapped individuals who now live within communities. There is a normal fear that these individuals, particularly those with severe intellectual limitations, might become lost in the community, not receive the services they need, and actually be further disadvantaged. There is some question as to the effectiveness of the services delivery system to assure that each and every one of these individuals continues to receive the attention required. There have been reports of problem areas because community services were inadequately prepared to receive large numbers of individuals returning from institutions. At least one State agency has reported that lack of adequate staffing has made it impossible to develop an appropriate individualized plan for all severely handicapped individuals and to insure that plans were appropriately executed when they were developed.

Good intentions, as important as they are, cannot substitute for appropriate services. The study will assist the committee to learn if these good intentions have helped or hurt the severely handicapped.

The committee intends that this study shall be detailed and that it will provide longitudinal data from many parts of the country and from many different settings. The committee must know in detail the problems experienced by the severely handicapped in the areas of training opportunities, home situations, employment, health and mental health, and leisure time.

The committee is aware of the problems associated with possible invasion of privacy and the Secretary is cautioned that such a study must be designed in such a way as to protect the rights of the individuals involved. It is expected that this study will continue for 4 or 5 years or more. A study of this magnitude can normally be done only once and must be carefully designed at the outset. Experience with similar studies has indicated the need for careful planning; pilot studies and training of cooperative personnel are of utmost importance.

There have been a number of highly useful studies completed during recent years which can provide important guidelines for the method to be used in the proposed study. These include the Office of Education's project PRIME, the Head Start Follow Through, and the NINCDS perinatal study. Investigators associated with these studies could provide valuable advice and assistance in the planning and development of this study.

The committee has been impressed with the ability of some Federal agencies to manage and coordinate studies of this type. The most recent example has been the Office of Education's intermural research program for the research on the education of handicapped children in the conduct of project PRIME. A combination of Federal management, planning, development, coordination, and data analysis, with data collection accomplished through grants or contracts with participating agencies seems a reasonable approach to studies of this sort. The committee would like to encourage the Secretary to look into his own resources within the Department of Health. Education, and Welware for the development and management of this study, making use of grants and contracts for the actual conduct of this study. The committee requests that in addition to an annual status report of this study interim reports of the progress of this project be sent to the Subcommitee on the Handicapped on a more frequent basis.

TITLE II OF S. 2600—FEDERAL COUNCIL ON HANDICAPPED INDIVIDUALS

The committee is concerned that the needs of handicapped and severely handicapped individuals are not being communicated adequately at the highest levels of government. This fact was documented by those attending the White House Conference on Handicapped Individuals and is reflected in their recommendations. The views of the handicapped must be heard by those in a position to respond. For this reason, the committee has established a Federal Council on Handicapped Individuals, which will provide advice and assistance to the President and the administration. The primary responsibility of the Council will be to develop a national policy regarding all handicapped Americans.

Additional functions of the Council are detailed in the legislation. In essence, this Council will review and comment on all programs of the Federal Government relative to handicapped individuals and will serve as an ombudsman and an information source to promote the cause of handicapped individuals throughout the United States. It is expected that the Council will develop mechanisms for obtaining information and advice from other handicapped groups and individuals to assist in the formation of recommendations and plans for the future. The

Federal Council is expected to maintain a liaison with the State councils on the severely handicapped to receive and react to their recommendations.

It is the intent of the committee that the Council will function as an independent body responsible for its own rules, bylaws and operating procedures and will not be under the control of any one agency of the Federal Government. The Council shall have its own staff and its own budget. Furthermore, it is the express wish of the committee that the Council not be co-located with any agency of the Government responsible for the administration of legislation relating to handicapped individuals. Experience from the past has indicated that when such councils are co-located with an administrative program, too much attention is given to that particular program at the exclusion of the other, broader concerns which are the rightful responsibilities of such councils.

The committee bill provides $1,200,000 for the Council to carry out its responsibilities and further directs that $200,000 is to be made available for the employment of staff for the Council. The committee intends for the Council to be adequately staffed so that it may effectively carry out its mandate.

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TITLE IV OF S. 2600—READER SERVICE FOR THE BLIND: INTERPRETER SERVICES FOR THE DEAF AND HEARING IMPAIRED

Title IV of S. 2600 has three major provisions: (1) Reader services for the blind, (2) interpreter services for the deaf, and (3) rehabilitation services for the older blind.

READER SERVICES FOR THE BLIND

The committee received testimony from organizations representing the blind which pointed out the communication barriers faced by blind persons who are not able to read ordinary inkprint. The committee is concerned that these barriers are most commonly confronted in elementary, secondary, and postsecondary education and in employment. It has been estimated that 70 percent of the employable blind population is either unemployed or underemployed, but regardless of the exact statistic, there is ample evidence to substantiate our Nation's failure to utilize the productive capacity of employable blind persons.

The committee believes that there are many causes for this, but a major one relates to the communication barriers which are imposed by lack of sight. Much activity in education, public service, business, and industry necessarily involves paperwork and recordkeeping, a factor which places blind persons at a disadvantage unless they have access to alternative methods for receiving the information (for example, by means of a sighted persons to read the print material). In adopting legislation, such as the provisions of title V of the Rehabilitation Act of 1973 as amended and the Education for All Handicapped Children Act, the Congress has made a commitment to the handicapped that, to the maximum extent possible, they shall be fully integrated into the mainstream of life in America. The committee recognizes this commitment and the need for continuing the process of removing barriers which impede the progress of our handicapped citizens.

Access to printed information imposes a unique problem for the blind, and the committee feels that this is an area which requires special legislation. With the single exception of reader services for blind clients of vocational rehabilitation, assistance to the blind in overcoming the communication barriers imposed by lack of sight is minimal. The library service programs which do exist offer a general reading collection without the flexibility necessary to meet the specialized educational and employment related reading needs of an increasingly active blind population.

The committee sees reading assistance for the blind as an important support service which can enable blind persons to participate more effectively in education and employment opportunities. Reading demands for anyone are highly individualized; it is intended therefore that reading services be offered so as to respond to individual needs. It is also intended that reading services to be provided will not duplicate or replace those programs already operational; rather the new authority is designed to augment and supplement current effort.

While allowing for overall Federal supervision of the reading services program through the Rehabilitation Services Administration, the committee has chosen to utilize the State vocational rehabilitation agencies serving the blind as primary administrative authorities, responsible for developing the eligibility criteria and priorities for service (in consultation with interested blind persons and organizations of blind persons within the State); ensuring that the reading services are provided so as to meet (to the maximum extent possible) the individualized reading needs of the blind of the State who are participating in elementary, secondary, postsecondary education, and employment; ensuring that eligibility conditions will not include economic needs or length of residency; establishing (where sighted readers are employed to provide service to the blind) guidelines for compensation of such readers; and performing other administrative functions necessary for the effective delivery of reading services to the blind. The committee intends that reading services programs will be conducted in a creative and responsive fashion, including where appropriate (1) employment of persons who through reading aloud can afford blind persons ready access to printed information, (2) transcription of printed information into Braille or sound recording, pursuant to the individual requests of blind persons, (3) the storage and distribution of Braille materials and sound recordings, (4) the purchase, storage, and distribution of equipment and materials necessary for the production, dupl'cation, and reproduction of such Braille materials and sound recordings, and (5) the purchase, storage, and distribution of equipment provided to blind persons that affords such persons private individual access to printed materials by mechanical or electronic means. The committee is cognizant of the specialized nature of reading services for the blind and therefore regards it as essential that knowledgeable administrators and personnel (skilled in rehabilitation and related services for the blind) have direct supervisory control over these programs. To assure that this will be the case, the committee has included the requirement that the vocational rehabilitation agency serving the blind which is designated to administer the reading services program to the blind must be at least an identifiable administrative unit with a full-time director and staff which develops and administers its own budget. The Federal funds authorized for the reading services program are to be allocated to the States on a population basis with the proviso that no State shall be entitled to less than $25,000 annually.

PROGRAMS FOR DEAF AND HEARING IMPAIRED INTERPRETERS FOR THE DEAF

The committee bill adds a new section to title II of the Rehabilitation Act of 1973 to provide for the establishment of not more than 12 programs for the purpose of training interpreters for the deaf and authorizes $8 million for fiscal year 1979 through 1983.

The committee notes that a study, "The Deaf Population of the United States," by Jerome D. Schein and Marcus T. Delk, Jr., cites the following statistics:

PREVALENCE AND PREVALENCE RATES FOR HEARING IMPAIRMENTS IN THE CIVILIAN NONINSTITUTIONALIZED POPULATION, BY DEGREE AND AGE AT ONSET: UNITED STATES, 1971

Degree	Age at onset	Number	Rate per 10,000
All hearing impairment	All ages	13,362,842	6,603
Significant bilateral	do	6,548,842	3,236
Deafness	do	1,767,046	873
Do	Prevocational [1]	410,522	203
Do	Prelingual [2]	201,626	100

[1] Prior to 19 years of age.
[2] Prior to 3 years of age.

In spite of the obvious need for interpreters for the deaf indicated above, there are only approximately 1,600 certified interpreters in the United States. In response to this need for additional interpreters and in response to the requirements imposed by section 504 and Public Law 94–142, the committee has authorized the Secretary, through the Office for Handicapped Individuals in the Office of Human Development Services to establish not more than 12 programs for the purpose of training a sufficient number of interpreters to meet the communication needs of deaf individuals. The committee intends for base centers to be maintained at the following locations: Gallaudet College in Washington, D.C.; Saint Paul Technical Vocational Institute in Saint Paul, Minn.; California State University in Northridge, Calif.; Seattle Central Community College in Seattle, Wash.; Delgado College in New Orleans, La.; and the National Technical Institute for the Deaf in Rochester, N.Y. An additional six centers may be established by the Secretary if such centers have ongoing operating programs for training interpreters and if such centers are geographically situated so that every part of the Nation is served.

Centers which wish to maintain a program pursuant to this new authority may make application for the development of a 5-year program to provide interpreter services to deaf individuals in need of such services in specific geographic areas of need as identified by the Secretary.

In addition, centers maintaining programs under this authority may provide for short-term and inservice training and training or retraining of teachers who instruct deaf individuals and who are not certified as teachers of deaf individuals.

The committee notes that interpreters who provide services required under the Education for All Handicapped Children Act of 1975 may be trained in the centers established pursuant to the committee bill, except that funds for training such interpreters shall be drawn from funds appropriated under the Education for All Handicapped Children Act.

Any centers maintaining programs established under the committee bill may provide for the establishment and operation of Satellite centers for training of interpreters if such satellite centers are necessary or appropriate for the efficient delivery of interpreters services to deaf individuals in need of such services.

The committee intends that interpreters trained in any base center or additional center authorized by the committee bill shall be required to meet minimum standards established in the Registry of Interpreters for the Deaf.

NATIONAL NETWORK OF SERVICES FOR DEAF INDIVIDUALS

The committee bill amends title III of the Rehabilitation Act of 1973 by adding a new section 306 which authorizes the Secretary to establish information and referral centers and interpreter referral centers for deaf individuals in each State. The committee

bill authorizes $15 million for fiscal year 1979 through 1983 to carry out these activities.

The committee expects that such State programs will be operated throughout the State in areas specifically selected to provide central locations for the provision of services to deaf individuals and that the State agency responsible for the program will involve, through contractual or other arrangements, to the extent appropriate, private, nonprofit organizations comprised of deaf individuals or which provide assistance or services to deaf individuals as a primary organizational purpose. The committee intends that the interpreter services provided under this new program are to be made available to any public agency, or private nonprofit organization which is involved in the delivery of assistance or services to deaf individuals. It is expected that the cost of these interpreter services may be defrayed by the referral center during the first year in which the center is in operation; however, at the end of the first year of operation, any agency receiving interpreter services is expected to reimburse the referral center for the cost of interpreter services.

Funds allocated under section 306 for use by interpreter referral shall not be used (1) to defray administrative or related costs and (2) to pay for the provision of assistance or services to deaf individuals receiving rehabilitation services as clients under any other provision of the Rehabilitation Act. Funds may, however, be used for the purchase or rental of equipment necessary to provide assistance of services to deaf individuals.

The committee expects any interpreter participating in services provided under this authority to meet the minimum standards established in the Registry of Interpreters for the Deaf.

REHABILITATION SERVICES TO OLDER BLIND PERSONS

The need for a special direct service program to older blind persons has long been recognized in the Congress, and an attempt was made in rehabilitation bills in 1972 and 1973 to provide the necessary legislative authority. Unfortunately, these rehabilitation bills were vetoed by the President, and in the 1973 compromise which resulted, the older blind persons program was almost entirely excluded.

Section 304(b) of the Rehabilitation Act of 1973 does contain authority for special projects to demonstrate how services can be provided to the older blind. During fiscal year 1978, there are six such projects, having total appropriations of $769,000. These projects have been highly successful, demonstrating techniques required to assist this largely unserved population.

The committee's awareness of these unmet needs of older blind persons has resulted in the inclusion of a provision in the committee bill establishing a new program of rehabilitation services to older blind persons whose combination of age and blindness makes gainful employment unattainable.

The committee is concerned that more than half of the blind population (approximately 265,000 of the estimated 500,000 legally blind persons) in the United States are over age 65. Diseases such as cataracts, glaucoma, and diabetes are prevalent among this group, and for many persons, there is no cure. Older blind persons are forced to depend on family members, friends or custodial care. Existing assistance to the older blind person amounts to income maintenance, health services and library services. Programs such as social services, housing assistance for elderly and handicapped, and older Americans program do not address the special problems of dependency (the loss of ability and the will to function) which confront older blind citizens.

Older blind persons have not had access to the rehabilitation and adjustment services provided to blind adults of working age. The comprehensive service needs study, mandate by the Congress in the Rehabilitation Act of 1973, commented on the lack of rehabilitation and adjustment services to older blind individuals and recommended that older blind persons should have available to them a broad range of services. The committee bill includes in its scope of services to be made available to older blind persons a wide range of services and goods to assist the older blind person to adjust to his blindness and to increase his independence.

The committee bill establishes a nationwide rehabilitation program for older blind individuals, authorizes an allotment of Federal funds for each State or initiating such services, requires the administration of the program to be placed in the State Blind Commission or other agency administering the State plan for vocational rehabilitation services to the blind, and provides authorizations in the amount of $10 million for fiscal year 1979, $20 million for fiscal year 1980, and $30 million for fiscal year 1981.

Mr. STAFFORD. Mr. President, as the ranking member of the Subcommittee on the Handicapped and a chief cosponsor of S. 2600, I join with my distinguished colleague and chairman of the subcommittee (Mr. RANDOLPH), in giving my full support to this bill. The reservations I expressed at the introduction of S. 2600 no longer exist.

S. 2600 extends the vocational rehabilitation program and the developmental disabilities program for 5 more years. Also, the bill creates new programs to provide more and better services to handicapped individuals. The bill allows the rehabilitation program to grow and serve more handicapped individuals and provide these individuals with greater opportunities to maximize their potential.

Since Senator RANDOLPH has so ably summarized the bill, I will now direct my remarks to a few issues and programs which should be highlighted.

PROCEDURAL SAFEGUARDS

The procedural safeguards section of S. 2600 is designed to provide a formal process to protect the rights of the vocational rehabilitation client participating in the program. This section is similar in function to the due process language adopted by the Congress in the Education for all Handicapped Children Act, Public Law 94–142.

The procedural safeguards provision establishes the following client rights: First, access to records respecting the development and implementation of an individualized written rehabilitation program; second, written prior notice whenever a providing agency refuses to initiate, develop, change or implement the individualized written rehabilitation plan; third, an opportunity to present complaints with reference to any matter regarding the individualized written rehabilitation program; and fourth, the right to an impartial due process hearing.

If the client's objections or complaint cannot be resolved on an informal basis, then the client has the right under the procedure established by this section to an impartial due process hearing to be conducted by the State agency. If the matter is not satisfactorily resolved in the hearing, then the person may appeal the decision to an arbitration panel. Further appeal may be made to any State court of competent jurisdiction or to a district court of the United States.

It is important to note that this section applies to the handicapped individual who is an "accepted" vocational rehabilitation client and is a participant in the program. Procedural safeguards under section 105 do not apply to an applicant for the vocational rehabilitation program.

A responsive State rehabilitation agency should have no problems with such a procedural safeguards system, and in fact, should be instrumental in planning and implementing this program. While some States, such as Oregon, have already incorporated procedural safeguard programs into their State plans, this is not the case for the majority of the States. The procedural safeguards program is supportive of the vocational rehabilitation system's desire and effort to better serve their clients. Since the decisions made by the vocational rehabilitation agency are significant and of lifelong impact, I feel that the handicapped individual's rights should be protected by the establishment of a formal process to protect them.

RECREATION PROGRAM

Participation in sports and other forms of recreation are points of common interest in our country. For the handicapped individual, recreation is now available due to advances in technology and equipment and the concerns of people in the physical education and recreation areas.

In recognition of the recreational and social needs of handicapped individuals, a new section has been added to the Rehabilitation Act entitled "Recreation Programs for Handicapped Individuals." This section authorizes the Secretary of HEW to make grants to States and public nonprofit agencies and organizations for the purpose of initiating recreation programs for handicapped individuals.

At the present time, recreational programs for the handicapped are limited. This section is intended to stimulate the development of existing community-based recreation programs for use by handicapped individuals. These programs should also be coordinated with other recreational activities in the community.

Handicapped individuals should participate in existing recreation programs to the maximum extent feasible. However, realistically speaking, the handicapped do have specialized needs that necessitate adaptive equipment and programming as well as personnel attuned to their needs. This section is designed to support the handicapped individuals' desire to participate in regularly scheduled recreation programs. Simply stated, Mr. President, the goal of this section is to provide new and expanded recreational activities to handicapped individuals in all areas of the country.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

The committee bill contains several amendments to the Architectural and Transportation Barriers Compliance Board established by section 502 of the Rehabilitation Act of 1973. These amend-

ments make the following changes in section 502: First, add six public members to the Board, five of whom are disabled; second, add a representative of the U.S. Postal Service; third, provide for technical assistance to public and private agencies and institutions for the removal of architectural and transportation barriers to accessibility; and fourth, provide the Board the ability to enforce its compliance orders.

Mr. President, the committee's actions to involve handicapped consumers on the board is a result of our recognition that architectural and transportation barriers affect a small group of our population in a very significant way. It is the disabled who are most adversely affected by the barriers which inhibit their mobility in this society. While a 3 to 6 inch step is no barrier to the vast majority of the population of the United States, it is an insurmountable barrier to someone in a wheelchair. The reality of barriers may only be a passing thing to the nondisabled individual, but it is a constant concern and frustration to the handicapped individual. By placing handicapped individuals on the Board in a decision-making role, it is the committee's hope that the board will approach the matter of barrier removal in a realistic manner without unnecessary delay.

With the implementation of section 504, many individuals, institutions and States are at a loss as to how they can meet the compliance standards. In taking these problems into consideration, the bill provides the board with a technical assistance capability to assist any public or private entity in the removal of architectural and transportation barriers which impede the mobility of handicapped individuals.

The committee bill also gives the board the right to issue compliance orders to enforce the standards of the Architectural Barriers Act of 1968. Under the committee amendments, the board must insure that all waivers and modifications of the act are based upon findings of fact. Also to provide for better enforcement of the act and to strengthen the activities of the Board, the committee bill provides that the board can sue and be sued in its own name and be represented by its own legal counsel in the courts.

The committee feels that these modifications of the law are necessary to assist the Board in accomplishing its goal of a barrier-free environment for handicapped individuals. Under existing law, the Board has no formal legal avenue available to enforce its judgments. Quite frankly, Mr. President, if the Board's orders are to have meaning, they must be enforceable.

The committee bill provides for the Board to be represented by its own counsel because it is an independent regulatory agency enforcing accessibility and usability standards. This type of independent agency traditionally is represented by its own lawyers. For example, the Federal Trade Commission, Interstate Commerce Commission, and the Security and Exchange Commission have the same type of authority as we are granting the Board.

An important factor in the decision to give the Board independent legal counsel was the fact that the Board is a unique agency enforcing architectural barrier standards against the Federal Government. The Board must have power to represent itself to maintain its independence from Federal agencies against whom the Board enforces the law. If the Department of Justice had control over Architectural and Transportation Barrier Compliance Board litigation, then the Board would be forced to reprove its causes before the Justice Department in order to get the order enforced against another Federal agency.

Also, the creation of self-representation for the Board helps avoid a potential conflict of interest for the Department of Justice. For example, it is conceivable that the Justice Department could be the recipient of an order by the Board to enforce accessibility, in a courthouse, prison, jail, police station, or other Federal buildings which the Justice Department occupies. Also, the Justice Department may provide financial assistance through the Law Enforcement Assistance Administration to a State agency, which may be subject to compliance orders issued by the Board.

Mr. President, I will offer an amendment later in the debate to clarify the language of the committee bill in regard to the Board's self-representation and the relationship to the Department of Justice's responsibility in this area.

DEVELOPMENTAL DISABILITIES

In keeping with the advancement of awareness and mainstreaming of handicapped individuals, the Developmental Disabilities Act is extended for 5 more years by S. 2600.

The major change in the existing law by the committee bill is the definition of developmental disabilities. A broader and more functional definition of developmental disabilities is adopted in S. 2600, rather than the categorical definition of the existing law. The new functional definition is intended to cover everyone under the current definition and to add other individuals with similar characteristics.

A specific listing of disabilities in a definition may wrongly assume that any person with that disability is developmentally disabled. The new definition is a functional definition and thus avoids stereotyping individuals by their disability. The new definition should lead to better access and appropriate services for individuals, rather than a categorical label for people.

Mr. President, I ask unanimous consent that the portion of the committee report stating the committee's view of the new definition be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFINITION OF DEVELOPMENTAL DISABILITIES

The major change adopted by the committee (section 301 of the committee bill) is the revised functional definition of developmental disabilities contained in the ABT Developmental Disabilities Definition Task Force Report and supported by a majority of the task force. This report was developed under a contract by the Developmental Disabilities Office of the Department of Health, Education, and Welfare to ABT Associates, Inc. of Cambridge, Mass. for the purpose of conducting a study in accordance with Section 301(b) of Public Law 94–103 with respect to the definition of developmental disabilities. The task force produced two definitions: One definition is functional in nature and was supported by the majority of the task force, and the second definition is categorical in nature and was supported by the minority of the task force.

The committee adopted the majority definition of the ABT task force because it is more inclusive than the present definition of a developmental disability.

According to the ABT Report, a developmental disability is a form of inability or limitation in performing roles and tasks expected of an individual within a social environment (ABT, p. 11).

The phrase "disability of a person which" is meant to convey the point that the term "developmental disability" is not a general catchall for an arbitrary collection of existing labels attached to diseases, condition or syndromes, such as cerebral palsy or mental retardation. Mental retardation is not a developmental disability per se. Some people with mental retardation, on the other hand, have a developmental disability if their situation reflects all aspects of the definition. The "developmentally disabled" are a group of people with their experiences circumscribed by the definition. They are not defined by inference drawn from a clinical label. (ABT, p. 11).

A developmental disability is characterized by the cumulative effect of meeting all of the criteria listed in the definition.

The phrase "is attributable to a mental or physical impairment or a combination of mental and physical impairments" is to show that the mental or physical impairment is greatly involved in the person's disability. The terms "mental" and "physical" are used because they are commonly used and accepted in the field (VR, social security). The impairment requirement of the definition is intended to be very broad and nontechnical, extending to all neurological, sensory, biochemical, intellectual, cognitive, perceptual, and affective impairments. While the term, "impairment" is intended to have the broadest application possible in the mental and physical domains, it is not intended to include social problems.

The language relating to combination of physical and mental impairments is utilized to avoid the debates of recent years over whether a particular impairment should be characterized as physical or mental. In many cases impairments are interrelated, falling into both domains (ABT, p. 12).

The overwhelming majority of task force members felt that functional limitations should be included as an element in the definition and specified in enough detail to help focus on the population of concern. "Functional limitations" are based on the individual's inability to meet age-specific expectations in certain performance areas. A 3-year-old may not be proficient in many critical performance areas (independent living capacity, for example) but if they are not substantially below the norm of the performance of 3-year-old for independent activity, then they are not "functionally limited" within the meaning of the definition (ABT, p. 16).

The majority recommendation of the task force was that the appropriate basis for the definition should be the characteristics of the disability and its impact on the person's ability to function, not the specific conditions or diagnostic categories of the individual with a disability. The definition, therefore, is intended to cut across a wide number of specific diagnostic conditions to include a subgroup of individuals within these categories of conditions who met certain criteria as spelled out in the definition (ABT, p. 18).

The definition is intended to cover everyone currently covered under the definition and is also intended to add other individuals with similar characteristics. In this definition, individuals with the conditions currently listed in the law—autism, cerebral palsy, dyslexia, epilepsy, or mental retardation—would be included if they meet the following criteria: Manifestation prior to age 22, expectation of continuing indefinitely, substantial functional limitation, and need for multiple services for an extended period. It is not the intent, however, to exclude anyone who legitimately should have been included under the current definition (ABT, p. 19).

The committee would further add that the original Developmental Disabilities Act was enacted in 1970—over 8 years ago. Since that time great strides have been made in making society aware of the fact that handicapped people exist and can be productive citizens if provided the appropriate programs and opportunities. Also, a great deal of progress has been made in the legal rights area with the enactment of section 504 of the Rehabilitation Act of 1973 and other laws affecting the handicapper regarding affirmative action in employment and accessibility to programs and activities and buildings.

By using the ABT majority definition, the committee feels that the common needs of the develcpmentally disabled can be met, without the potential antagonisms between groups representing conditions included in the definition in the existing law groups excluded from the definition.

The functional definition of developmental disabilities used by the committee in title III should lead to better access and appropriate use of services rather than categorical labeling of individuals.

The revised definition used by the committee in title III will expand the target group to be served by the act by approximately 300,000 to 400,000 persons. The following table represents estimates developed by ABT Associates of the population to be served, utilizing the new definition. Although the estimate totals 2.8 million persons, an actual population of approximately 2 million persons constitute the target group since there is a considerable number of multiple handicapped persons with overlapping impairments within the group.

Estimates of the population to be served within the proposed definition of developmental disabilities include:

	Percent	Millions
Mentally retarded (profound, severe, moderate, a few mild)	0.5	1.0
Cerebral palsy	.3	.6
Epilepsy	.25	.5
Autism	.05	.1
Learning disabled (chronic, socially impaired)	.2	.2
Other severe chronic (e.g., deaf-blind, multiple handicapped, deaf, osteogenesis imperfecta, cystic fibrosis, spina bifida, muscular dystrophy)	.2	.4
Total (plus or minus 2,000,000 allowing for overlaps)		2.8

Since 1974, Congress has appropriated almost level funding for the Developmental Disabilities Act. The committee is also aware that during that same period, the Congress expanded the population to be served under the act by amending the definition in 1975, and now again in 1978. Because of these facts, the committee wishes to make clear that the gap-filling services provided under the Developmental Disabilities Act to individuals already receiving service should not be diminished as a result of the revised definition; however, the committee does expect that the planning process will immediately address all disability groups covered by the functional definition. In addition, developmentally disabled individuals with those disabilities named in the existing law are to receive a proportionate share of any new funding.

To insure equity, the committee has instructed the Department of Health, Education, and Welfare to report to the Congress within 2 years (with interim reports every 6 months), following enactment of this legislation on the numbers of individuals served, by disability category, under this legislation with its revised definition. The report is to focus on whether the revised definition results in a diminution of services to individuals with disabilities specifically mentioned in current law.

Mr. STAFFORD. Mr. President, the original Developmental Disabilities Act was enacted in 1970—over 8 years ago. Since that time, great strides have been made on behalf of handicapped individuals and by the disabled themselves for better programs, more consumer involvement and more awareness on the part of society. This extension of the Developmental Disabilities Act should help continue the progress.

As a final note, I would like to mention that the State minimum allocation for the developmental disabilities program has been raised to $250,000 by the committee bill. This will help to provide increased programing and gap filling services to those developmentally disabled individuals living in small rural States.

COMPREHENSIVE SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS

Mr. President, before closing, I would like to mention one more very significant new initiative of the committee bill.

The new "Comprehensive Services for Severely Handicapped Individuals" title establishes a new program directed to serve the most severely handicapped individuals.

The disabled population to be served by this new title of the Rehabilitation Act of 1973 are those individuals who are currently not being served by the vocational rehabilitation programs. These unserved individuals are the severely handicapped, and are usually found in our residential institutions. These severely handicapped individuals are going without the necessary support services to aid in maximizing their potential.

In the past, the severely handicapped have been shoved into the background because of the length of time and cost factors required to help them gain their maximum independence. Severity of the handicap and cost factor should not be a requirement as to whether or not an individual is eligible for services.

This new title will bring services to those severely handicapped individuals who have not been able to receive services. This program should have a major impact on the lives of severely handicapped Americans.

Mr. President, other new programs including grants to American Indians, independent living program, interpreters for the deaf, reader services for the blind, and older blind services will greatly benefit handicapped individuals and are in keeping with the progressive movement of the U.S. Congress to insure that handicapped individuals receive the best in programing and services.

Mr. President, I hope that all my fellow colleagues will join with the committee in passing S. 2600.

Mr. JAVITS. Mr. President, as the ranking minority member of the Human Resources Committee, which reported S. 2600, as a staunch advocate of the rights of disabled Americans, and as the author of numerous provisions of law which have expanded opportunities of the handicapped for rehabilitation, employment, and independent living, I support strongly this legislation.

S. 2600 provides for the critical improvement and refining of service programs for the handicapped and the developmentally disabled, and properly expands structures currently in place to protect the rights of these citizens, who for so long were neglected members of our society. This bill, Mr. President, is the fruit of the labors of the chairman of the full Human Resources Committee, Senator WILLIAMS, and especially, the chairman of the Subcommittee on the Handicapped, Senator RANDOLPH, and the ranking member of that subcommittee, Senator STAFFORD. The subcommittee held 18 days of hearings during this Congress on programs for the handicapped. Testimony was heard from numerous witnesses, both the handicapped themselves and those representing handicapped individuals whose suggestions were most beneficial to the gestation of this bill.

Mr. President, one of the most significant features of S. 2600 is the modification of the State allocation formula for basic services, section 110 of the Rehabilitation Act. Before proceeding to a consideration of the programmatic and administrative provisions of the bill, I should like to discuss with my colleagues the action taken by the Human Resources Committee in reporting S. 2600 with this moderate formula change and the reasons therefor.

The current formula has been extant in the vocational rehabilitation program since 1954, when it was adopted from the Hill-Burton Hospital Survey and Construction Act. This formula is based on relative State population multiplied by an inverse factor of State per capita income relative to national per capita income. But the per capita income factor is squared, thereby giving much greater weight to that element of the formula, causing the development of a serious inequity among the States over the last 24 years. For, when the Hill-Burton formula was introduced into this program in 1954, it served, properly, to stimulate the growth of vocational rehabilitation activity in States where progress had only materialized slowly—specifically, the low per capita income States.

Since the introduction of the formula for "startup" allocations in 1954, major changes of both an economic and programmatic nature have occurred which, the committee found, necessitated a change in the formula:

First, the use of this formula to encourage States to provide rehabilitation services began in 1954 when the Federal share for the vocational rehabilitation program was only $21.8 million. The fiscal year 1978 appropriation for this program is $760 million, a Federal commitment 34 times larger than in 1954. The need for the Federal Government

to encourage startup of basic rehabilitation services no longer is a valid basis for allotting funds among the States.

As Federal appropriations for the vocational rehabilitation program have increased since 1954, the effect of the formula has been to increase the disparity of funding among the States. By fiscal year 1973, for example, the 25 States receiving the lowest per capita allotments for vocational rehabilitation services contained virtually 75 percent of the Nation's population. The committee did not believe that this perpetually increasing disparity was the intent of Congress in its authorization of the formula in 1954, or in subsequent reauthorization.

Second, the committee found that per capita income is, at best, an imprecise measurement of a State's relative ability to pay for vocational rehabilitation services, and is weighted in current law so heavily as to discriminate against the majority of handicapped persons who live in higher per capita income States.

In testimony before the Subcommittee on the Handicapped on March 14, 1978, the vocational rehabilitation directors of the States of California, Illinois, and New York stated that their States could, cumulatively, provide services to an additional 68,000 handicapped persons in need of such services, if these States received even the national average per capita allocation.

Third, administrators of State vocational rehabilitation programs indicated to the committee that annual fluctuations in per capita income within and among States make State planning for anticipated Federal funds in this program most difficult. Population trends tend to be more stable than those of per capita income, and some administrators have indicated a preference for greater stability of funding based upon the population factor, which will assist States in short- and middle-term program planning.

Fourth, the difference in ability to pay between low and high per capita income States is not nearly so great now as it was in 1954. Higher taxation and costs of living, and massive public debts due to the provision of essential social services in the higher per capita income States have eroded a once substantial gap among States in relative ability to pay for vocational rehabilitation and other social services.

Mr. President, on August 5 of last year, I introduced, with Senator WILLIAMS, chairman of the Human Resources Committee, and five other members of this body, S. 2042, which would have phased in a population-based formula over a 5-year period. S. 2042 was, in part, based on the findings of a study authorized by the Rehabilitation Act of 1973, to evaluate the allotment of funds under part B.

That study, prepared for HEW by JWK International Corp., and completed in 1974, found that the best general measure of an allocation's equity is the extent to which the allocation matches the relative size of the population of citizens to be rehabilitated. The current Hill-Burton allocation formula "deviates significantly" from this "equity index," according to the study, and "introduces substantial inequities in allocating funds to States."

Both Senator WILLIAMS, the other cosponsors, and I, believe that S. 2042 would have provided handicapped individuals who require rehabilitation services a more equitable opportunity to obtain these services regardless of their State of residence, and would have offered a reasonable solution to this longstanding formula dilemma.

However, Mr. President, we realized that although S. 2042 contained a provision to "hold-harmless" State allocations at the fiscal year 1978 level, certain States would receive no additional funding over the 5-year phase-in period. As sponsors of S. 2042, we seriously considered the impact this might have on those States' programs, particularly assuming increased costs of providing rehabilitation services in all States. Thus, the Human Resources Committee, taking into account such concerns during markup of S. 2600, arrived at what it believes to be a fair and equitable formula which provides for annual program growth in all States.

Specifically, S. 2600 provides that the existing Hill-Burton formula is utilized to determine State allotments in appropriations to the fiscal year 1978 level of $760 million. Appropriations above this level ($53 million authorized in the first year), will be distributed on the basis of relative population among the States. This will insure that all States will receive increasing annual allotments.

Again, S. 2600 provides that the Hill-Burton formula in present law will remain in effect each year for the first $760 million of appropriations. Only new funds appropriated above that amount will be distributed on a proportional population basis. Those States with per capita incomes below the national average will continue to receive a far greater distribution per capita than States with per capita incomes above the national average. Therefore, no substantial change in the relative disparities among the States in per capita allotment will occur.

Mr. President, the principal objective of the Federal vocational rehabilitation program is to make services available to eligible persons. The Human Resources Committee, in favorably reporting S. 2600 with this modest formula change, intends that services be equitable regardless of a handicapped individual's State of residence, and believes that the formula revision included in the bill will increase such equity.

I ask unanimous consent that two charts, done for the Committee by the Congressional Research Service, indicating the current per capita allocation for States under the existing formula, and the per capita allocations for 3 years with the committee formula and authorization levels in S. 2600, be printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

APPROXIMATE ALLOCATIONS (DOLLARS PER PERSON) FISCAL YEAR 1979-83 FOR SEC. 110(A) OF REHABILITATION ACT OF 1973 AS AMENDED BY S. 2600

[Fiscal 1979: Hypothetical $760,000,000 in current formula; $53,000,000 in population formula: Total appropriation $813,000,000. Fiscal year 1980: Hypothetical $760,000,000 in current formula: $120,000,000 in population formula: Total appropriation $880,000,000. Fiscal year 1981: Hypothetical $760,000,000 in current formula; $185,000,000 in population formula: Total appropriation $945,000,000. All appropriations are reduced by a constant percentage for grants to territories other than Puerto Rico: 0.3182 percent. Minimum: $3,000,000 or ½ of 1 percent of appropriation, whichever is greater. Warning: All estimates based on 1974-76 per capita income and 1977 population data. Population not reduced as provided in sec. 130(E), American Indian Year program.]

State	Fiscal year— 1978	1979	1980	1981
Alabama	4.91	5.08	5.37	5.67
Alaska	4.91	7.37	7.37	7.74
Arizona	3.71	4.09	4.40	4.69
Arkansas	4.88	5.17	5.48	5.78
California	2.60	2.82	3.12	3.42
Colorado	3.17	3.46	2.77	4.06
Connecticut	2.26	2.55	2.85	3.15
Delaware	3.44	5.15	5.15	5.41
District of Columbia	7.87	7.64	7.96	8.26
Florida	3.45	3.80	4.11	4.41
Georgia	4.19	4.47	4.78	5.08
Hawaii	2.58	3.35	3.35	3.52
Idaho	3.90	4.25	4.57	4.86
Illinois	2.45	2.61	2.92	3.22
Indiana	3.56	3.78	4.09	4.39
Iowa	3.14	3.62	3.93	4.22
Kansas	3.10	3.44	3.75	4.04
Kentucky	4.60	4.70	5.02	5.31
Louisiana	4.61	4.76	5.08	5.37
Maine	4.58	4.76	5.07	5.37
Maryland	2.77	3.01	3.32	3.62
Massachusetts	3.15	3.30	3.61	3.91
Michigan	2.95	3.27	3.57	3.87
Minnesota	3.35	3.64	3.95	4.25
Mississippi	5.61	5.81	6.12	6.42
Missouri	3.79	4.00	4.32	4.81
Montana	3.79	4.16	4.47	4.77
Nebraska	3.22	3.73	4.04	4.33
Nevada	3.16	4.74	4.74	4.98
New Hampshire	3.87	4.00	4.31	4.60
New Jersey	2.51	2.58	2.88	3.18
New Mexico	4.75	4.83	5.14	5.44
New York	2.66	2.84	3.14	3.44
North Carolina	4.43	4.60	4.91	5.21
North Dakota	3.79	4.59	4.59	4.82
Ohio	3.42	3.55	3.86	4.15
Oklahoma	4.10	4.27	4.59	4.88
Oregon	3.41	3.68	3.99	4.29
Pennsylvania	3.39	3.52	3.83	4.12
Puerto Rico	6.98	7.64	7.96	8.26
Rhode Island	3.49	3.65	3.96	4.26
South Carolina	4.83	4.95	5.27	5.56
South Dakota	4.06	4.65	4.98	5.26
Tennessee	4.48	4.72	5.03	5.32
Texas	3.64	3.85	4.16	4.46
Utah	4.38	4.75	5.06	5.36
Vermont	4.40	6.21	6.21	6.52
Virginia	3.41	3.81	3.92	4.21
Washington	3.03	3.15	3.46	3.75
West Virginia	4.59	4.69	5.00	5.30
Wisconsin	3.61	3.83	4.14	4.44
Wyoming	4.93	7.39	7.39	7.78
Total Federal	3.45	3.69	4.00	4.29

Mr. JAVITS. Mr. President, S. 2600 amends the Rehabilitation Act of 1973, reauthorizes programs established by the act, establishes a comprehensive services program for the severely handicapped, and extends the Developmental Disabilities Assistance and Bill of Rights Act. One of its most significant provisions, previously discussed, which the Human Resources Committee saw fit to add to the bill during markup, makes more equitable the allocation of Federal funds under title I of the act, public law 93–212.

S. 2600 extends the authorizations under the Rehabilitation Act for 3 years, through 1981.

Section 102 of the bill provides for specific arrangements for the coordination of services provided under the act and under the Education of the Handicapped Act and the Vocational Education Act of 1963.

Section 104 of the bill adds procedural safeguards to State rehabilitation activities. These safeguards include: first, the right to review relevant records, and to submit complaints, regarding the development and implementation of individualized written rehabilitation programs, and to receive prior notification from a providing agency of any difficulties involved in the implementation of individualized written rehabilitation programs; second, a listing of the rights to be accorded to any party granted a hearing because of a complaint (including the right to informed counsel, impartial judgment, and to appeal); and third, the right to subsequent civil action for such relief as the court may determine is appropriate, excepting that no civil action may be brought under this section for monetary damages.

Section 107 amends title I to provide authorization for a program of grants to tribal organizations of Indian tribes located on Federal and State reservations to pay 90 percent of the costs of vocational rehabilitation services for handicapped American Indians residing on such reservations. The allocation thus given to American Indians is computed by means of a formula which subtracts the number of American Indians who will be served under the provisions of the act from the total number of handicapped individuals in the State. S. 2600 also insures that State plans will include assurances that services provided to handicapped American Indians in each State are comparable to those provided to other groups.

Section 108 of the bill amends title I of the act by including "special programs for independent living" as a fundable activity under part C, the component of innovation and expansion grants to States of title I.

Section 109 of the bill extends authorization for appropriations for training and research through fiscal year 1983, as follows:

RESEARCH

Fiscal year 1979, $38 million; fiscal year 1980, $44 million; and fiscal year 1981, $51 million.

TRAINING

Fiscal year 1979, $34 million; fiscal year 1980, $38 million; fiscal year 1981, $41 million.

Section 110 expands the universe of eligible research grantees to include private, profitmaking agencies or organization, as well as supporting public and/or nonprofit agencies or organizations.

Section 111 of the bill repeals the requirement that a certain percentage (20 percent in the first fiscal year, 25 percent thereafter) of appropriations for research must be set aside for the establishment and support of rehabilitation engineering research centers. This setaside is no longer necessary because of increased funding resources.

The bill also broadens the research component of the act to provide for the utilization of psychiatric theory and knowledge in research projects, demonstrations, solving rehabilitation problems, and other related activities, and provides that rehabilitation psychiatry be included as a field eligible for training grants or contracts.

Section 116 of S. 2600 makes organizational improvements regarding the role of the Architectural and Transportation Barriers Compliance Board, strengthening it so that it might more fully enforce the Architectural Barriers Act of 1968 and broadening its base and scope of activities. Heretofore, the Board was composed of members drawn from HEW and the Departments of Transportation, Housing and Urban Development, Labor, the Interior, Defense, and the General Services Administration and Veterans' Administration. Added to this Board is the U.S. Postal Service and six "general public" members, five of whom must be handicapped. Furthermore, the bill establishes a voting procedure which would give the public members a majority voice. This will expedite and make more efficient the removal of architectural and transportation barriers to the handicapped.

The addition of the U.S. Postal Service to the Board, and the addition of clarifying language to the provision makes clear that the Postal Service must comply with requirements for architectural accessibility of buildings to handicapped citizens.

This section also provides that the Board may offer technical assistance, and develop such assistance, to any public or private individual or entity with respect to the removal of architectural and transportation barriers. Such technical assistance, however, will not include assistance in effecting the removal of nonstructural barriers (for example, reassigning classes or other services to accessible sites, delivery of health, welfare, and other services to alternate accessible sites), as such activity does not fall within the Board's jurisdiction.

The bill further provides that the Board must establish minimum guidelines and requirements for the standards issued pursuant to the Architectural Barriers Act of 1968; and that the Board must assure that public conveyances, including rolling stock, are readily accessible to, and usable by, handicapped persons.

Finally, section 116 increases the authorization of appropriations for the Board to $3 million per year through 1981.

Section 118 amends title V of the act to provide that the remedies, procedures, and rights in the Civil Rights Act of 1964 shall be available with respect to complaints under section 501 and 504 of the Rehabilitation Act (section 501 concerns employment and section 504 concerns federally assisted programs). Further, the new section provides that a reasonable attorney's fee may be allowed as part of the costs.

TITLE VI

Section 119 of the bill adds a new title VI to the Rehabilitation Act, entitled "Comprehensive Services for Severely Handicapped Individuals." Using a functional rather than a categorical definition of "severely handicapped", this new title will extend services to meet the needs of all individuals who have "a mentally or physically handicapping condition or combination of such conditions which are expected to continue indefinitely; indicate a need of lifelong or extended duration for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services; require the provision of comprehensive services because of significant functional limitations in at least two of the following life activities which are self-care communication, learning, mobility, capacity for independent living, and constitute a substantial barrier to such individual's ability to function in society."

The new title VI requires, as a condition of a State's receiving Federal funds, that the State provide the Secretary satisfactory assurances that the State has in effect a system designed to protect and advocate the rights of severely handicapped individuals, and that such system has authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of those individuals receiving services within such State.

This system must be independent of any State agency which provides services under this title, and must be coordinated with the similar State system established under section 113 of the Developmental Disability Assistance and Bill of Rights Act.

The new title VI also requires that all recipients of Federal assistance take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals under the provisions of the Rehabilitation Act which govern employment by State rehabilitation agencies and rehabilitation facilities, and under Federal contracts and subcontracts.

The administration of this title is to be conducted along the same lines as the administration of the activities established pursuant to the existing rehabilitation program.

Allotments to States are based on a population formula, with each State's allocation based upon its relative share of total national population, with a small State minimum of one-half of 1 percent of the total appropriation.

Furthermore, section 614(d) provides for the combining of portions of State

funds for States involved in cooperative or joint efforts under the provisions of this title, or between or among agencies, public or private, in more than one State.

Section 613 of the new title VI details the scope of comprehensive services for severely handicapped individuals, including "any goods or services as may be necessary to enhance the ability of a severely handicapped individual to live independently or to function in society and, if appropriate, secure and maintain appropriate employment".

Long-range planning will further enhance the ability of severely handicapped individuals to live independently. Section 616 of the new title VI provides that, 18 months after enactment, each State, as a condition of receipt of its allotment under this title, shall submit to the Secretary a long-range plan outlining its planned provision of maximized services under this title.

Section 617 of the new title provides that States shall make grants to local public agencies, private nonprofit organizations, or tribal organizations located on Federal and State reservations, for the establishment or operation of independent living centers, or any centers which provide services to severely handicapped individuals. These centers are designed to enable the severely handicapped to develop employment skills, find employment, and live independently.

Section 618 establishes Federal share and nonduplication guidelines for the comprehensive services program. The Federal share may not exceed 80 percent of the project's total cost, except if such project is located in urban or rural poverty areas—if so, the Federal share may not exceed 90 percent. The non-Federal share of the cost of any project federally assisted under this title may be provided in kind.

Section 619 provides that there shall be, for States receiving assistance under this title, a State Council on Severely Handicapped Individuals, which will serve as an advocate of the interests of the severely handicapped. Members of this Council shall be appointed by the Governor, and at least one-half of the members will be severely handicapped individuals or the parents or guardians of such individuals.

The Council's purpose to develop and approve the State plan required by this part of the title, implementing such plan, and advise the Secretary and the Federal Council as to its effectiveness and as to future planning.

Section 621 of the new title authorizes the Secretary to provide grants and contracts for the development and demonstration of models for centers to provide services to the severely handicapped. Such models will concern themselves with employment, independent living, and services for preschool age severely handicapped children.

Of the funds authorized to be appropriated under this section, not more than 10 percent shall be used for the renovation or modernization of facilities. This section authorizes to be appropriated: $50 million for fiscal year–1979; $55 million for fiscal year–1980; and $60 million for fiscal year–1981.

Heretofore, all provisions for activities concerning severely handicapped individuals established in the act have been based on categorical definitions of "severely handicapped", and have been scattered haphazardly and relatively ineffectively throughout the act. Furthermore, where there has been an emphasis on the needs of severely handicapped individuals, that emphasis has been on vocational training and placement, rather than on more basic living needs. The new title VI will remedy the flaws implicit in the current approach to the needs of the severely handicapped by consolidating, coordinating, and making more effective all definitions, services, training and research concerning such individuals, and by establishing a new orientation towards helping such individuals live independently in society.

Mr. President, such a drive to enable severely handicapped individuals to live independently is absolutely essential to the welfare of these individuals and to the integrity of the rehabilitation program. Employment for the severely handicapped is a worthy goal, and under the new title VI will remain a primary objective. But first things must come first; before one may engage in gainful and meaningful employment, one must have the means simply to live, independently and with dignity. The ability to live with the elemental independence and dignity which we so often take for granted is the hope and dream of our severely handicapped citizens—and the new title VI represents an important step towards the realization of that dream.

S. 2600—TITLE III

Title III amends the Developmental Disabilities Facilities and Construction Act, first enacted in 1963. Existing law defines "developmental disability" as "a disability of a person which: first, is attributable to mental retardation, cerebral palsy, epilepsy or autism; second, is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment or services similar to those required for such persons; or third, is attributable to dyslexia resulting from such a disability; originates before such person reaches the age of 18; has continued or can be expected to continue indefinitely; and constitutes a substantial handicap to such person's ability to function normally in society."

S. 2600 revises the definition of "developmental disability" to provide that "the term developmental disability" is a severe chronic disability of a person which is attributable to a mental or physical impairment, or combination of mental and physical impairments; is manifested before such person attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction capacity for independent living; economic self-sufficiency; and reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment, or other services to be individually planned and coordinated during the lifetime of such person or for an extended period of time."

The amended version of the definition of "developmentally disabled" as adopted by the committee, S. 2600, is the revised functional definition recommended by the National Task Force on the Definition of Developmental Disabilities established pursuant to Public Law 94–103.

This functional definition recognizes the developmentally disabled as a group of people with their experience circumscribed by the definition and not defined by a clinical label. In order to be "developmentally disabled," an individual, however labeled, must exist in a situation which reflects all aspects at the functional definition. Functional limitations are included in order to assure that the basis for the definition rests on the characteristics of the disability and the impact on the person's ability to function, not the specific conditions or diagnostic categories of the individual with a disability. (Functional limitations are based on the individual's ability to meet age-specific expectations in certain areas.) The definition is intended to include everyone currently served under the existing definition. This functional definition will expand the target group to be served by the act by approximately 300,000 to 400,000 persons. According to estimates developed by the Developmental Disabilities Task Force, 2 million persons will be served by utilizing the new definition.

By using the functional definition, the common needs of all the developmentally disabled can be met and better access and appropriate use of services rendered.

To ensure that all those currently served through the developmental disabilities program continue to be served and to determine the impact of the revised definition, title III provides that the Secretary make a special report to Congress concerning the modification of the definition of "developmentally disabled." Such reports shall include: first, an analysis of the impact of the modification of such definition in all categories of persons with developmental disabilities receiving services under the act prior to the date of enactment of such modification for each of the 2 succeeding fiscal years, and second, an assessment, evaluation, comparison of services provided for the same time period, and shall be submitted within 30 months of the date of enactment.

Title I, section 108 of the Developmental Disabilities Services and Facilities Construction Act is repealed by title III, section 302 of S. 2600. Title III repeals the National Advisory Council on Services and Facilities for the Developmentally Disabled in favor of the new Federal Council on Handicapped Individuals, a recommendation of the White House Conference on the Handicapped.

Title III authorizes $10,000,000 to assist States in establishing systems to protect and advocate the rights of developmentally disabled persons for fiscal year September 30, 1979, and $12,000,000 and $13,000,000 for the 2 succeeding years. This additional authorization for funds is necessary to assist States to implement and expand this vitally important protection system.

The revised functional definition of "developmentally disabled" (section 301) enlarges the developmental disability target population and thus requires a larger and continued allotment to meet the needs of developmentally disabled persons.

Thus section 308 extends State allotments under the developmental disabilities program for 3 years and provides for the following authorizations: $45 million for fiscal year ending September 30, 1979, $45 million for fiscal year ending September 30, 1980, $45 million for the fiscal year ending September 30, 1981. Minimum State allotments are increased from $150,000 to $250,000.

Section 311(a) amends the existing State Developmental Disability Planning Council provision to provide for the rotation of membership on the council of each State, and that at least one-half of the membership of such council instead of one-third as required by the present law, shall consist of persons with developmental disabilities or the parents or guardians of such persons, and of persons who are not officers or employees of any State agency or any other entity which receives funds or provides services under this act.

Section 312 extends for 3 years the authorization for special projects grants and authorizes $20 million for each of these fiscal years.

Section 313 of S. 2600 amends section 101 of the Developmental Disabilities Services and Facilities Act to change the title thereof to the "Developmental Disabilities Assistance and Bill of Rights Act."

Mr. President, I urge my colleagues to support S. 2600.

Mr. President, I ask unanimous consent that Robert Wenger, of the staff of the Subcommittee on Handicapped of the Committee on Human Relations, may be granted the privilege of the floor during consideration of this bill and votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I ask unanimous consent that Pamela Melton of Senator THURMOND's staff have the privileges of the floor during the consideration and votes on S. 2600; additionally, Mr. President, I ask unanimous consent that Jane Yanulis of Senator DURKIN's staff, Larry Patton of Senator PROXMIRE's staff, Tom Polgar of Senator MORGAN's staff, and Ted Blanton of Senator MOYNIHAN's staff have the privileges of the floor during the consideration of S. 2600.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Ed King, of my staff, have the privileges of the floor during the consideration of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, once again, the Senate, as well as all handicapped Americans, owes thanks to the floor manager of S. 2600, Senator RANDOLPH, whose vision and leadership have done so much to improve the lives of the handicapped.

The bill he brings before us today would reauthorize the Vocational Rehabilitation Act and the Developmental Disabilities Act, the two major Federal programs designed to aid the disabled. The bill would also authorize new programs to expand services to special populations, such as the blind.

In addition, the bill would establish a major new program which would provide comprehensive services to severely handicapped individuals.

The vocational rehabilitation program is one of the oldest and most successful Federal programs, and I wholeheartedly support its continuation. Several cost benefit analyses of this program have been conducted, and they all conclude that the benefits derived from the vocational rehabilitation program are worth many times its cost.

For example, the 303,000 people rehabilitated in 1976 earned $1.3 billion in that year, a net increase of $1.1 billion over their earnings prior to entering the rehabilitation system. If we assume that these clients return roughly 6 percent of their additional earnings to the Federal Treasury in taxes, then rehabilitation results in a net gain of $66 million in Federal revenue alone.

This contribution is over and above the savings that result from the removal of handicapped people from public assistance rolls and public institutions.

The new program of services to the severely handicapped proposed in S. 2600 would represent a major expansion in Federal resources committed to the estimated 7.5 million severely handicapped who have received few, if any, rehabilitative services under existing programs.

Ostensibly, many of the activities provided for in this program are already underway in the developmental disabilities program, which would be reauthorized by this bill through fiscal year 1983.

A few weeks ago, in recommending favorably on a resolution waiving a provision of the Budget Act with regard to this bill, the Budget Committee expressed its concern over the possible duplication of programs extended and proposed in this bill.

The Budget Committee's report on the waiver resolution stated in part:

> The Budget Committee has a continuing concern about the pressure on Federal spending created by duplication and overlap in authorized spending.

The Budget Committee, in expressing this concern, was not voicing opposition to any one program or beneficiary group. The committee neither intends that any essential services for the developmentally disabled be eliminated nor that services be deprived to those severely handicapped who remain unserved.

Rather, it was expressing its belief that true control over Federal spending—rather than being achieved through across-the-board spending cuts such as those passed by the Senate in recent weeks—can only come through careful evaluation of Federal programs to eliminate duplication and waste.

I understand that the sponsors of this bill have included language to foster coordination among programs included in the bill. I applaud these attempts and will support any efforts at further coordination as the programs are implemented.

In that same waiver report the Budget Committee also recommended that the authorization period for the vocational rehabilitation program be shortened from 5 to 3 years.

The reason for this recommendation, as stated in the committee's report on the waiver resolution, is the Budget Committee's concern over "long-term commitments involving increasing expenditures in entitlement programs." The report goes on to say:

> Such programs should be reviewed more frequently in light of changing needs and condition.

Mr. President, in expressing these concerns, the Budget Committee does not deny the need of the handicapped for assistance. To the contrary, the committee is very much aware of the needs of the handicapped and supports funding for programs for the handicapped.

Moreover, I believe that the vast majority of Americans wholeheartedly support these programs.

For these reasons I intend to support this bill.

VINLAND NATIONAL CENTER

● Mrs. HUMPHREY. Mr. President, today while we are considering S. 2600, which extends and establishes a comprehensive services program for the severely handicapped, it provides an opportune time to tell my colleagues of a unique facility which is being established in the State of Minnesota. The facility is known as Vinland National Center. And, although it is in the initial stages of planning, it will in time offer to persons who are handicapped a program of sports training and health-care skills.

In 1976, when we celebrated our Nation's Bicentennial, the people of Norway presented a gift of $200,000 to the citizens of our Nation. The gift was to signify the strong bonds of friendship that exist between the Norwegian and American people.

It was the wish of the Norwegian Storting (parliament) that the gift would help establish in Minnesota a health sports center for the handicapped. The Vinland National Center is to be patterned after the successful Health Sports Center at Beitostolen in Norway.

The Beitostolen Center operates from the premise that sports provide a positive contribution to improving an individual's health and well-being. Health sports are viewed as physiologically and psychologically strengthening, and therefore, enhance occupational and social opportunities for the handicapped.

Thus, the purpose of Vinland National

Center is to provide an opportunity for the handicapped to participate in a rigorous program to build and maintain health. Life enrichment programs will also be a substantial part of this innovative approach.

The center will be a national model and a unique resource as it moves the handicapped person from the level of traditional rehabilitation process to that of participating in physical activities and health care training. Minnesota's magnificent changing panorama of seasons provides ample opportunity to learn and become skillful at a variety of sports. In addition to the physical regimen, a life enrichment program of the arts would be an integral part of a stay at Vinland Center. A provision has been made to collect the data learned from participating in this type of health maintenance program, and to disseminate the material gathered, so that all of society may benefit from the information.

It is anticipated that approximately 1,500 residents and 50 nonresidential participants with disabilities from throughout the Nation will be at the center for periods of 2 to 4 weeks. Approximately 50 people will be associated with the permanent staff in specialized education and internship programs for periods of varying duration.

The center will be located in Lakeland, Minn., about 25 miles south of Minneapolis and St. Paul. The Lakeville site is characterized by rolling, open fields and steep slopes, both forested and clear, with frontage on Marion Lake. The terrain is well-suited to the variety of seasonal sports in which one can participate in Minnesota.

The program that is being developed at Vinland Center is comprehensive, and the progressive dissemination of public information on its activities can have a beneficial impact on the health of our society itself. I believe that through this type of program the benefits to the handicapped and to society that are being developed in Minnesota, will truly benefit the Nation.●

● Mr. WILLIAMS. Mr. President, I ask my colleagues to join me in voting for the passage of the Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978. This bill is vital to the realization of the goals of all disabled Americans.

In recent years, there has been a growing awareness of the rights and the needs of persons with disabilities which have not been adequately addressed. The concept of rehabilitation has changed in this decade from a system that "helps and takes care" of disabled persons to one that provides services to enable them to live independently and reach their full potential.

S. 2600 would extend the programs that are authorized under the Rehabilitation Act of 1973 for 5 more years. Further, S. 2600 would establish comprehensive services for the severely handicapped which would encourage States to meet the needs, for the first time, of persons who are not currently served. The programs provided under this act include independent living, employment training, and other such services with the primary objective of enabling persons to live with dignity within their own communities.

S. 2600 would provide authority to establish model centers and demonstration programs to serve the severely handicapped, including models for training centers, models for services to preschoolage severely handicapped children, and models for independent living.

S. 2600 would also establish, at the recommendation of the White House Conference on Handicapped Individuals, a Federal council on the handicapped. The council would advise the President and Congress of the needs of handicapped individuals, drawing on their experiences, and I am certain that such consumer input will enable the Federal Government to be more responsive to the needs of disabled citizens.

S. 2600 would extend for 5 more years the Developmental Disabilities Act with a broader, more functional definition of developmental disability. This will insure that this vulnerable population will receive the planning services which are contemplated by the act. The Developmental Disabilities Act has enabled States to adequately plan for serving this segment of our population, and I strongly support the extension of this important legislation.

In addition, S. 2600 would establish reader services for the blind, interpreter services for the deaf, and rehabilitation services for old blind Americans. These ancillary services would assist these segments of the disabled population to remain independent and to live with dignity.

Over the last year we have seen many encouraging developments for our Nation's disabled. With the signing of the regulations implementing section 504 of the Rehabilitation Act of 1973 by the Secretary of Health, Education, and Welfare, this administration has assured prohibitions on discrimination for persons with disabilities by anyone receiving Federal funds. In addition, Public Law 94–142, the Education for All handicapped Children Act, although still in its initial stages of implementation, mandates that our Nation's handicapped children receive a free, appropriate public education in the least restrictive environment. Such comprehensive laws are commendable accomplishments.

Mr. President, in the past the Congress has provided opportunities which enable disabled persons to fully participate in society. S. 2600 continues to carry out our national commitment to developing a comprehensive policy for the disabled. I urge my colleagues to enact this most worthwhile legislation.●

UP AMENDMENT NO. 1856

(Purpose: Defining the term "Reservation")

Mr. BARTLETT. Mr. President, I have an unprinted amendment which I send to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. BARTLETT) proposes an unprinted amendment numbered 1856:

On page 163, line 11, insert the following:

"(e) The term "Reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and lands held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act."

Mr. BARTLETT. Mr. President, on page 77 of this legislation, part D, it deals with American Indian vocational rehabilitation programs and the vocational rehabilitation services grants.

I think it is very important, and I want to compliment the chairman and the ranking member of the committee, to be including this because the American Indians normally are made a part of all the various programs of this kind, and I certainly think it is most important and vital to them and their future that they also be included.

There is a problem, however. It provides that the commission is authorized to make grants to tribal organizations on Federal and State reservations. All the Indians are not on Federal and State reservations. So we have followed in this amendment the customary language which defines "reservation" to include Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

So this amendment has the effect of having this provision on page 77, which starts on page 77, to include all Indians, including Oklahoma Indians and the Alaska Natives, as well as others.

My understanding, I will say to the floor manager of the bill, is that this is acceptable, and I will be happy to yield the floor.

Mr. STAFFORD. Mr. President, just for clarification, I might ask the distinguished Senator from Oklahoma on his amendment, as we have it, it refers to page 163, line 11, but I assume he is talking about an amendment which would be on page 77 of the bill.

Mr. BARTLETT. The substance of the bill that deals with the American Indians is on page 77, and that was my reference. However, the amendment goes into definitions which start on page 162, section 437, and would be subparagraph (e) actually continuing on page 163, as the Senator from Vermont has said.

Mr. STAFFORD. I might say, Mr. President, we are prepared to accept the amendment. I can speak both for the majority manager of the bill and myself, but I think we had better have a quorum call to clarify where we understand it is going to go in the bill.

Mr. BARTLETT. It clearly goes on page 163. It is a new subparagraph (e), and it goes just as you say. It relates to provisions in the bill that affect the Indians on page 77.

Mr. STAFFORD. With that understanding, Mr. President——

Mr. BARTLETT. You can put it any place you want it. It should be in the definition section because it clearly is a definition.

Mr. STAFFORD. Mr. President, I think, to make sure we get this exactly in the right place, that I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BARTLETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I would like to amend my unprinted amendment No. 1856 to read as follows:

On page 75, between lines 17 and 18, insert the following:

"(f)"

That is the only change.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The amendment is so modified.

The amendment, as modified, is as follows:

On page 79, between lines 17 and 18, insert the following:

"(f) The term "Reservation" includes Indian reservations, public domain, Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act."

Mr. BARTLETT. Mr. President, I think that satisfies the distinguished Senator from Vermont, and I thank him for bringing this to our attention. Certainly this is the proper place in the bill. The place where we had placed it was not the proper place.

Mr. STAFFORD. Mr. President, in behalf of the minority, I am ready to accept the amendment, and I believe my partner is also.

Mr. RANDOLPH. Yes; we think the amendment is helpful. We are grateful that the Senator from Oklahoma has brought it to our attention, and it will be incorporated, we hope, in the bill as passed.

Mr. BARTLETT. I thank the chairman and the ranking minority member of the committee for their consideration.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment (UP No. 1856) was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1857

(Purpose: To reduce the number of years for which appropriations are authorized from five to three, and to reduce the amounts for which appropriations are authorized in certain programs)

Mr. RANDOLPH. Mr. President, I send to the desk an amendment in the form of a committee amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH) proposes an unprinted amendment numbered 1857 on behalf of himself and the following other members of the committee: Mr. STAFFORD, Mr. WILLIAMS, Mr. JAVITS, Mr. PELL, Mr. KENNEDY, Mr. NELSON, Mr. EAGLETON, Mr. CRANSTON, Mr. HATHAWAY, Mr. RIEGLE, Mr. SCHWEIKER, Mr. HATCH, Mr. CHAFEE, and Mr. HAYAKAWA.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 69, line 24, insert the word "and" immediately after "1980,".

On page 70, beginning with "1981," on line 1 strike out through "1983" on line 2 and insert "1981".

On page 70, line 5, strike out "$50,000,000" and insert "$45,000,000".

On page 70, line 6, strike out "$60,000,000" and insert "$50,000,000".

On page 70, line 7, strike out "$70,000,000" and insert "$55,000,000".

On page 70, beginning with the second comma on line 8, strike out through "1983" on line 9.

On page 70, lines 17 and 18, strike out "fiscal year 1980 and thereafter" and insert "for the fiscal years 1980 and 1981".

On page 70, line 22, strike out "1983" and insert "1981".

On page 76, line 10, strike out "1983" and insert "1981".

On page 78, line 19, strike out "1983" and insert "1981".

On page 79, line 19, strike out "forty-two" and insert "thirty".

On page 80, beginning with the word "by" on line 21 strike out through the end of line 22.

On page 81, line 2, strike out "1983" and insert "1981".

On page 81, line 7, strike out "$40,000,000" and insert "$38,000,000".

On page 81, line 8, strike out "$46,000,000" and insert "$44,000,000".

On page 81, line 9, strike out "$53,000,000" and insert "and $51,000,000".

On page 81, beginning with the second comma on line 10, strike out through "1983" on line 12.

On page 81, line 15, strike out "$35,000,000" and insert "$34,000,000".

On page 81, line 16, strike out "$40,000,000" and insert "$38,000,000".

On page 81, line 17, strike out "$46,000,000" and insert "and $41,000,000".

On page 81, beginning with the second comma on line 18, strike out through "1983" on line 20.

On page 84, line 6, strike out "1983" and insert "1981".

On page 84, line 9, strike out "1985" and insert "1983".

On page 84, line 14, strike out "1983" and insert "1981".

On page 84, line 21, strike out "1983" and insert "1981".

On page 85, line 22, strike out "1983" and insert "1981".

On page 86, line 4, strike out "1983" and insert "1981".

On page 86, line 8, strike out "1983" and insert "1981".

On page 92, lines 4 and 5, strike out "$3,500,000" and insert "$3,000,000".

On page 92, line 5, strike out "four" and insert "two".

On page 99, line 7, strike out "$20,000,000" and insert "$12,000,000".

On page 99, line 8, strike out "$20,000,000" and insert "$15,000,000".

On page 99, line 9, strike out "$25,000,000" and insert "and $18,000,000".

On page 99, beginning with the second comma on line 10, strike out through "1983" on line 12.

On page 100, line 13, strike out "$110,000,000" and insert "$90,000,000".

On page 100, line 14, strike out "$170,000,000" and insert "$110,000,000".

On page 100, line 15, strike out "$230,000,000" and insert "and $150,000,000".

On page 100, beginning with the second comma on line 16, strike out through "1983" on line 18.

On page 110, line 6, strike out "1981," and insert "1980,".

On page 110, line 14, strike out "6" and insert "3".

On page 110, line 14, strike out "$35,000," and insert "$17,500,".

On page 110, strike out lines 19 through 24 and insert the following:

"(2) From the funds allotted and paid to a State under section 614—

"(A) not more than 3 per centum or $17,500, whichever is the greater, for the fiscal year ending September 30, 1980, and

"(B) not more than 6 per centum or $35,000, whichever is the greater, for the fiscal year ending September 30, 1981,

shall be used by each State for updating the long-range plan as required under subsection (a)(2).

On page 119, line 9, strike out "$60,000,000" and insert "$50,000,000".

On page 119, line 10, strike out "$85,000,000" and insert "$55,000,000".

On page 119, line 11, strike out "$115,000,000" and insert "and "$60,000,000".

On page 119, beginning with "1981," on line 11, strike out through "1983" on line 14 and insert "1981".

On page 121, line 24, strike out "$12,000,000" and insert "$7,000,000".

On page 121, line 25, strike out "$15,000,000" and insert "$9,000,000".

On page 122, line 1, strike out "$18,000,000" and insert "and $11,000,000".

On page 122, beginning with "1981," on line 1, strike out through "1983" on line 4 and insert "1981".

On page 127, line 13, strike out "1983" and insert "1981".

On page 131, line 3, strike out ", and $12,000,000" and insert "$10,000,000".

On page 131, beginning with the word "and" on line 4, strike out through the word "years" on lines 5 and insert "$12,000,000 for the fiscal year ending September 30, 1980, and $13,000,000 for the fiscal year ending September 30, 1981".

On page 131, line 16, strike out "$12,000,000" and insert "$8,000,000".

On page 131, line 17, strike out "$14,000,000" and insert "$10,000,000".

On page 131, line 18, strike out "$16,000,000" and insert "and $12,000,000".

On page 131, beginning with the second comma on line 19, strike out through "1983" on line 21.

On page 131, beginning with line 22, strike out through the end of line 7 on page 132.

On page 132, line 9, strike out "Sec. 308." and insert "Sec. 307.".

On page 132, line 13, strike out "$65,000,000" and insert "$45,000,000".

On page 132, line 14, strike out "$70,000,000" and insert "$50,000,000".

On page 132, line 15, strike out "$75,000,000" and insert "and $55,000,000".

On page 132, beginning with the second comma on line 16, strike out through "1983" on line 19.

On page 132, line 21, strike out "Sec. 309." and insert "Sec. 308.".

On page 133, line 2, strike out "Sec. 310." and insert "Sec. 309.".

On page 133, line 18, strike out "Sec. 311." and insert "Sec. 310.".

On page 135, line 7, strike out "Sec. 312." and insert "Sec. 311.".

On page 135, strike out lines 22 through 24 and insert the following:

(4) by striking out the word "and" after "1977," in subsection (e), and by inserting immediately before the period in such subsection a comma and the following: "$20,000,000 for fiscal year 1979, $22,000,000 for fiscal year 1980, and $26,000,000 for fiscal year 1981".

On page 136, line 2, strike out "Sec. 313." and insert "Sec. 312.".

On page 137, line 14, strike out "$5,000,000" and insert "$4,000,000".

On page 137, line 15, strike out the semicolon and "$10,000,000" and insert a comma and "$6,000,000".

On page 137, beginning with the semicolon on line 16, strike out through the word "necessary" on line 19 and insert a comma and the following: "and $8,000,000 for the fiscal year ending September 30, 1981".

On page 150, beginning with "$8,000,000" on line 10, strike out through "1983" on line 13 and insert the following: "$7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, and $8.000,000 for the fiscal year ending September 30, 1981".

On page 153, beginning with "$15,000,000" on line 13, strike out through "1983" on line 16 and insert the following: "$12,000,000 for the fiscal year ending September 30, 1979, $13,000,000 for the fiscal year ending September 30, 1980, and $14,000,000 for the fiscal year ending September 30, 1981".

On page 154, line 10, strike out "$10,000,000" and insert "$8,000,000".

On page 154, line 11, strike out "$20,000,000" and insert "$10,000,000".

On page 154, lines 12 and 13, strike out "$30,000,000" and insert "$12,000,000".

On page 154, beginning with the word "For" on line 13, strike out through the period on line 16.

Mr. RANDOLPH. Mr. President, this amendment to the pending measure (S. 2600) is one that has the approval of all of the members of the authorizing committee, the 15 members of the Committee on Human Resources.

The amendment reduces the number of years for which the authorizations are made, and reduces the authorizations themselves. This committee amendment responds to budgetary concerns, which have been brought to our attention by the administration and by our own Senate Budget Committee.

The amendment reduces the number of years authorized by S. 2600 from 5 to 3, thereby eliminating authorizations totaling approximately $3.4 billion for fiscal years 1982 and 1983. It further reduces the authorizations for fiscal years 1979, 1980, and 1981 by approximately $500 million.

I think that we should have the record very clear in connection with this amendment. In making these reductions we considered each program carefully and acted only after determining that services to handicapped individuals would not—I emphasize would not—be curtailed as a result of these reductions.

Mr. STAFFORD. Does the distinguished Senator yield the floor?

Mr. RANDOLPH. Yes, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, before I comment on the pending committee amendment, I ask unanimous consent that Maria Falcone of Senator LUGAR's staff, Eileen Winkelman of Senator DOMENICI's staff, Emily Root of Senator TOWER's staff, and Mary Ann Simpson of Senator STEVEN's staff be granted the privilege of the floor during the consideration of and votes on the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, the committee amendment will reduce the number of years of authorizations in S. 2600 from 5 to 3 and the authorization level for the 3 years by $471,900,000.

The committee's amendment to reduce the authorization levels in addition to the number of years is aimed at accommodating the administration and avoiding a Presidential veto. The President is seeking for lower authorization levels in all programs contained in S. 2600 and all legislation that is being considered by the Congress this year and in succeeding years. I feel that the reduction contained in the committee amendment will aid in this goal.

I must note, however, that no program has been eliminated by this amendment. All programs contained in S. 2600 as reported have received cuts in authorization levels by this amendment. The committee's intent is to see that all existing and new programs receive some funding in order to carry out the intent of this legislation. By reducing all programs we have insured that the new programs will have a chance to get off the ground to advance the rehabilitation of handicapped individuals.

Mr. President, I feel that the committee has made a significant effort to accommodate the wishes of this Congress and I ask my fellow Senators to support the committee's amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment (UP No. 1857) of the Senator from West Virginia.

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3441

(Purpose: To establish a National Institute of Handicapped Research, and for other purposes)

Mr. RANDOLPH. Mr. President, I send to the desk a printed amendment, introduced on August 4, for myself, Mr. WILLIAMS, Mr. STAFFORD, Mr. JAVITS, Mrs. HUMPHREY, and Mr. MATHIAS and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH) for himself, Mr. WILLIAMS, Mr. STAFFORD, Mr. JAVITS, Mrs. HUMPHREY, and Mr. MATHIAS proposes an amendment numbered 3441.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 81, beginning with line 3, strike out through line 3 on page 82 and insert the following:

"DECLARATION OF PURPOSE

"SEC. 109. Section 200 is amended to read as follows:

"'DECLARATION OF PURPOSE

"'SEC. 200. The purpose of this title is to—

"'(1) provide for a comprehensive and coordinated approach to the administration and conduct of rehabilitation research, rehabilitation demonstration projects, and related activities for the rehabilitation of handicapped individuals, including programs designed to train persons who intend to provide rehabilitation services and persons who intend to conduct rehabilitation research by authorizing Federal assistance in accordance with a plan for rehabilitation research developed under this title;

"'(2) facilitate the distribution of information concerning developments in rehabilitation procedures, methods, and devices to rehabilitation professionals and to handicapped individuals to assist such individuals to live more independently;

"'(3) improve the distribution of technological devices and equipment for handicapped individuals by providing financial support for the development and distribution of such devices and equipment; and

"'(4) increase the scientific and technological information presently available in the field of rehabilitation.'.

"RESEARCH AND TRAINING: AUTHORIZATION OF APPROPRIATIONS

"SEC. 110. Section 201(a) is amended to read as follows:

"'AUTHORIZATION OF APPROPRIATIONS

"'SEC. 201. (a) There are authorized to be appropriated—

"'(1) for the purpose of providing for the expenses of the National Institute of Handicapped Research under section 202, other than expenses to carry out sections 203 and 204, such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years;

"'(2) for the purpose of carrying out section 203, $40,000,000 for the fiscal year ending September 30, 1979, $46,000,000 for the fiscal year ending September 3, 1980, $53,000,000 for the fiscal year ending September 30, 1981, $60,000,000 for the fiscal year ending September 30, 1982, and $69,000,000 for the fiscal year ending September 30, 1983;

"'(3) for the purpose of carrying out section 204, such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years; and

"'(4) for the purpose of carrying out section 205, $35,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending September 30, 1980, $46,000,000 for the fiscal year ending September 30, 1981, $52,000,000 for the fiscal year ending September 30, 1982, and $60,000,000 for the fiscal year ending September 30, 1983.'.

"NATIONAL INSTITUTE OF HANDICAPPED RESEARCH

"SEC. 111. Title II is amended—

"(1) by redesignating section 202 as section 203, by redesignating section 203 as section 205, and by redesignating section 204 as section 206; and

"(2) by inserting immediately after section 201 the following new section:

"'NATIONAL INSTITUTE OF HANDICAPPED RESEARCH

"'SEC. 202. (a) In order to promote and coordinate rehabilitation research and to more effectively carry out the programs under sections 203 and 204, there is established a National Institute of Handicapped Research

(hereinafter in this title referred to as the "Institute"). The Institute shall be headed by a Director (hereinafter in this title referred to as the "Director"). In the performance of his functions, the Director shall be directly responsible to and shall report to the Secretary.

"'(b) The Institute shall be responsible for—

"'(1) administering the programs under sections 203 and 204;

"'(2) disseminating information acquired through rehabilitation research funded by the Institute to other Federal, State, and local public agencies and to private organizations engaged in research relating to rehabilitation or providing rehabilitation services;

"'(3) coordinating Federal programs and policies relating to research in rehabilitation;

"'(4) disseminating educational materials to primary and secondary schools, institutions of higher education, and to public and private entities concerning the improvement of the quality of life of handicapped individuals;

"'(5) conducting an education program to inform the public about ways of providing for the rehabilitation of handicapped individuals, including information relating to family care and self care;

"'(6) conducting conferences, seminars, and workshops (including in-service training programs) for rehabilitation personnel concerning advances in rehabilitation research and rehabilitation engineering; and

"'(7) producing, in conjunction with the Department of Labor, the National Center for Health Statistics, the Bureau of the Census, the Social Security Administration, and other Federal departments and agencies as may be appropriate, statistical reports and studies on the employment, health, income, and other demographic characteristics of handicapped individuals and disseminating such reports and studies to rehabilitation professionals and others to assist in the planning and evaluation of vocational and other rehabilitation services for the handicapped.

"'(c)(1) The Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. The Director shall not delegate any of his functions to any officer who is not directly responsible to him.

"'(2) There shall be a Deputy Director of the Institute (hereinafter in this section referred to as the 'Deputy Director') who shall be appointed by the President and who shall serve at the pleasure of the President. The Deputy Director shall be compensated at the rate provided for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, and shall act for the Director during the absence or disability of the Director, exercising such powers as the Director may prescribe. In the case of any vacancy in the office of the Director, the Deputy Director shall serve as Director until a Director is appointed under paragraph (1). The position created by this paragraph shall be in addition to the number of positions placed in grades GS–18 of the General Schedule under section 5108 of title 5, United States Code.

"'(3) The Director may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may compensate, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, such technical and professional employees of the Institute as he deems necessary to accomplish the functions of the Institute, in a number not in excess of one-fifth of the number of full-time, regular technical, and professional employees of the Institute. The Director may not appoint any employee under this paragraph for a term in excess of three years.

"'(d) The Director may establish and maintain research fellowships in the Institute, with such stipends and allowances, including travel and subsistence expenses, as the Director considers necessary to procure the assistance of highly qualified research fellows from the United States and foreign countries.

"'(e) The Director shall, by regulation, provide for scientific review of all research grants and programs over which he has authority by utilizing, to the maximum extent possible, appropriate peer review groups established within the Institute and composed of non-Federal scientists and other experts in the rehabilitation field.

"'(f) Not less than 90 per centum of the funds appropriated under paragraph (2) of section 201(a) to carry out section 203 shall be expended by the Director to carry out such section through grants or contracts with qualified public or private agencies and individuals.

"'(g) The Director shall develop and submit to the appropriate committees of the Congress within one year after the effective date of this section a long-range plan for rehabilitation research which shall—

"'(1) identify any additional research which should be conducted respecting the problems encountered by handicapped individuals in their daily activities, especially problems related to employment; and

"'(2) determine the funding priorities for research activities under this section and explain the basis for such priorities, including a detailed description of any new types of research recommended under this subparagraph for funding.

The plan required by this paragraph shall be developed by the Director in consultation with the Federal Council on Handicapped Individuals established under title II of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, and with any other persons or entities the Director considers appropriate. Such plan shall be reviewed at least once every three years and may be revised at any time by the Director to the extent he considers necessary.

"'(h)(1) The Institute shall conduct a study of the special problems and needs of handicapped individuals who reside in rural areas in the United States. Upon the completion of such study, but not later than eighteen months after the effective date of this section, the Director shall submit the results of such study, together with his recommendations, to the Secretary, the President, and the Congress.

"'(2) The Institute shall conduct a study of possible ways to restructure Federal programs providing benefits to handicapped individuals in order to eliminate any disincentives for individuals receiving benefits under such programs to obtain and continue in employment. Upon the completion of such study, but no later than twenty-four months after the effective date of this section, the Director shall submit the results of such study, together with his recommendations, to the Secretary, the President, and the Congress.

"'(i)(1) In order to promote cooperation among Federal departments and agencies conducting rehabilitation research programs, the Director shall consult with the administrators of such programs regarding the design of research projects conducted by such entities and the results and applications of such research.

"'(j)(1) The Director shall take such action as he considers appropriate to provide for a comprehensive and coordinated rehabilitation research program under this title. In providing such a program, the Director may undertake joint activities with other Federal agencies engaged in rehabilitation research and with appropriate private entities. Any Federal agency proposing to establish any research project related to the purposes of this Act shall consult with the Director before establishing the project and provide the Director with sufficient opportunity to comment on the project.

"'(2) Any person responsible for administering any program of the National Institutes of Health, the Veterans' Administration, the National Science Foundation, the National Aeronautics and Space Administration, the Bureau of Education for the Handicapped, or of any other Federal agency, shall consult and cooperate with the Director in carrying out such program if the program is related to the purposes of this section.'.

"RESEARCH BY PRIVATE ORGANIZATIONS

"SEC. 112. (a) Section 203(a) (as redesignated by section 111(1) of this Act) is amended by striking out 'public or nonprofit' and inserting in lieu thereof 'public or private'."

On page 82, line 7, strike out "SEC. 205." and insert "SEC. 207.".

On page 82, strike out lines 11 through 16 and insert the following:

"RESEARCH AND TRAINING CENTERS

"SEC. 113. (a) Section 203(a) (as redesignated by section 111(1) of this Act) is amended—

"(1) by striking out "The Secretary, through the Commissioner, and in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to' and inserting in lieu thereof 'The Director may'."

On page 82, line 17, strike out "(1)" and insert "(2)".

On page 82, line 19, strike out "(2)" and insert "(3)".

On page 82, between lines 20 and 21, insert the following:

"(b) Section 203(b) (as redesignated by section 111(1) of this Act) is amended by striking out 'the Secretary, through the Commissioner, and in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to' and inserting in lieu thereof 'the Director may' ".

On page 82, line 21, strike out "(b) Section 202(b)(1)" and insert "(c) Section 203(b)(1) (as redesignated by section 111(1) of this Act)".

On page 83, line 1, strike out "(c) Section 202(b)(2)(A)" and insert "(d) Section 203(b)(2)(A) (as redesignated by section 111(1) of this Act)".

On page 83, line 4, strike out "(d) Section 202(b)" and insert "(e) Section 203(b) (as redesignated by section 111(1) of this Act)".

On page 83, line 14, strike out "SEC. 113. (a) Section 203(b)" and insert "SEC. 114. (a) Section 205(b) (as redesignated by section 111(1) of this Act)".

On page 83, line 17, strike out "Section 203" and insert "Section 205 (as redesignated by section 111(1) of this Act)".

On page 84, line 2, strike out "SEC. 114." and insert "SEC. 115.".

On page 85, strike out lines 19 through 22 and insert the following:

"HELEN KELLER NATIONAL CENTER FOR DEAF-BLIND YOUTHS AND ADULTS

"SEC. 116. (a) Section 305 is amended—

"(1) by amending subsection (a) to read as follows:

"'SEC. 305. (a) The purpose of this section is to provide for the establishment and operation of the Helen Keller National Center for Deaf-Blind Youths and Adults. Any funds appropriated under this title for construction of the Center shall remain available until expended.'; and

"(2) by adding at the end thereof the following new subsection:

"'(d) To the extent feasible, the Helen Keller National Center for Deaf-Blind Youths

and Adults shall seek to recover from States, private insurers, and other participating public and private agencies the costs of services provided to individuals by the Center.'.

"(b) The section heading of section 305 is amended to read as follows:

"'HELEN KELLER NATIONAL CENTER FOR DEAF-BLIND YOUTHS AND ADULTS'.

"(c) The Rehabilitation Act of 1973 is amended (1) by transferring section 305 to title II, and (2) by redesignating such former section 305 as section 204."

On page 85, line 24, strike out "SEC. 115." and insert "SEC. 117.".

On page 86, line 11, strike out "SEC. 116." and insert "SEC. 118.".

On page 92, line 8, strike out "SEC. 117." and insert "SEC. 119.".

On page 93, line 16, strike out "SEC. 118." and insert "SEC. 120.".

On page 95, line 12, strike out "SEC. 119." and insert "SEC. 121.".

On page 147, line 2, insert "(a)" immediately after "SEC. 422.".

On page 147, line 4, strike out "section 205" and insert "section 207".

On page 147, line 5, strike out "section 206" and insert "section 208".

On page 147, line 6, strike out "section 204 as section 205" and insert "section 206 (as redesignated by section 111(1) of this Act) as section 207".

On page 147, line 7, strike out "section 203" and insert "section 205 (as redesignated by section 111(1) of this Act)".

On page 147, line 10, strike out "SEC. 204." and insert "SEC. 206.".

On page 150, between lines 13 and 14, insert the following:

"(b) The items relating to title II in the table of contents of the Rehabilitation Act of 1973 are amended to read as follows:

"'TITLE II—RESEARCH AND TRAINING

"'Sec. 200. Declaration of purpose.
"'Sec. 201. Authorization of appropriations.
"'Sec. 202. National Institute of Handicapped Research.
"'Sec. 203. Research.
"'Sec. 204. Helen Keller National Center for Deaf-Blind Youths and Adults.
"'Sec. 205. Training.
"'Sec. 206. Interpreter Services.
"'Sec. 207. Reports.
"'Sec. 208. Definitions.'".

On page 150, line 15, insert "(a)" immediately after "SEC. 423.".

On page 150, beginning with the word "redesignating" on line 16, strike out through the word "by" on line 17.

On page 150, line 18, strike out "section 305" and insert "section 304".

On page 150, line 21, strike out "SEC. 306." and insert "SEC. 305.".

On page 153, between lines 16 and 17, insert the following:

"(b) The item relating to section 305 in the table of contents of the Rehabilitation Act of 1973 is amended to read as follows:

"'Sec. 305. National Network of Services for Deaf Individuals.'".

Mr. RANDOLPH. Mr. President, the rehabilitation research program relates to the improving of the quality of life and participation in active life of handicapped persons and it is of great importance. We feel that we are at a point where major new ideas, technologies, and products can be developed if there is what I call realistic Federal support. That is the reason for the amendment.

The existing Rehabilitation Services Administration program, very frankly, is not at this time able to provide the leadership necessary to maximize the benefits of rehabilitation research.

There are about 30 million handicapped persons in the United States, and the Federal rehabilitation research effort has been a limited and inadequate response, I think, to the pressing needs of this large group of persons.

The rehabilitation research program had a budget of $31.5 million in fiscal year 1978, less than it was in fiscal year 1969, when it was $32 million. It is estimated that other agencies, such as the Bureau of Education for the Handicapped, NASA, and the Veterans' Administration, spent about $10 million on rehabilitation research. However, it is further estimated that expenditures for financial assistance, medical, and other services to handicapped individuals totaled about $20 billion. The findings of rehabilitation research could be used to strengthen the independence of handicapped individuals and thus decrease their dependence on the welfare system.

An independent living project funded out of research moneys demonstrates the value of searching for innovative solutions to the problems of handicapped individuals. Some 40 individuals with severe handicaps participated in the program. The mean income at entrance was $122.59 monthly which increased to $496.91 monthly during the course of the project. I think it would be wise to shift funding priorities to those areas which hold potential for enhancing independence rather than fostering dependence on the Federal welfare system.

I think the establishment of the institute, which was one of the recommendations of the White House Conference on Handicapped Individuals, is a very needed procedure.

There might be those who would say that the separation of the research program from the service program might impact negatively on the total Federal effort in rehabilitation.

First, I would say in answer that the Research Institute is mandated to involve the Federal Council on Handicapped Individuals in its long-range planning activities. This requirement will strengthen the linkage between the research and service programs, since the Council includes service providers as members.

In fact, the Institute, because it is mandated to include the Council in its long-range planning activities will, I believe, be more responsive to the needs of handicapped individuals as well as more aware of the needs of service providers than the existing research program.

Since the Director of the Institute is to report directly to the Secretary, opportunities for further coordination of the entire Federal research effort on behalf of handicapped individuals should be facilitated.

Mr. President, we are advised that the assistant majority leader has a problem which he wants to discuss relating to the amendment presently under consideration. Therefore I ask unanimous consent that this amendment temporarily be laid aside so that we may accommodate Senator CANNON with his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1858

(Purpose: To exclude alcoholics and drug abusers from certain employment provisions of the Rehabilitation Act of 1973 for which they are not qualified)

Mr. CANNON. Mr. President, I send an amendment to the desk, on behalf of myself and Senator WILLIAMS, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON), for himself and Mr. Williams, proposes an unprinted amendment numbered 1858.

Mr. CANNON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 92, between lines 22 and 23, insert the following:

(3) Section 7(6) is amended—

(A) by striking out "The term" and inserting in lieu thereof "(A) Except as otherwise provided in subparagraph (B), the term";

(B) by striking out "(A)" after "individual who" and inserting in lieu thereof "(i)" and by striking out "(B)" after "and" and inserting in lieu thereof "(ii)"; and

(C) by striking out the last sentence and by adding at the end the following new subparagraph:

"(B) Subject to the second sentence of this paragraph, the term 'handicapped individual' means, for the purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of sections 503 and 504, the term 'handicapped individual' does not include any person who is an alcoholic or who is a drug abuser and whose condition of alcoholism or drug abuse renders that individual not qualified for employment by preventing him from performing the essential functions of the job in question.".

On page 92, line 23, strike out "(3)" and insert in lieu thereof "(4)".

Mr. CANNON. Mr. President, I am taking the liberty of bringing to the attention of this body a potentially serious problem which could affect public confidence in the safety and reliability of air transportation.

The problem arises from regulations and rulings of the Department of Labor and the Department of Health, Education, and Welfare having the effect of compelling airlines, among other companies holding Federal Government contracts, to actively recruit and employ alcoholics and drug addicts. While it is questionable whether Congress intended such a result when the underlying legislation was adopted, it has been determined by the two Federal departments that alcoholics and drug addicts are to be considered as handicapped individuals under the Rehabilitation Act of 1973, and the affirmative action provisions of that act requiring their employment must be applied without regard to the character or sensitivity of the work involved.

During its recent consideration of legislation to extend certain rehabilitation programs, the House approved an amendment to the Rehabilitation Act of 1973 which addresses this problem. While preserving other essential rehabilitation and treatment programs for the handicapped, the House amendment contained in H.R. 13467 would exclude alcoholics and drug addicts from the definition of handicapped individuals required to be employed by Federal contractors, including the airlines.

As chairman of the Commerce, Science and Transportation Committee, I have purview over aviation matters and have consistently demonstrated an overriding priority for air transportation safety. However, since action taken under the Rehabilitation Act of 1973 could compromise that overriding priority, appropriate clarifying legislation is necessary to assure that the highest standard of competence and reliability continue to be met by airline employees in their highly sensitive work assignments and responsibilities. Accordingly, I submit an amendment which differs somewhat from the House solution to exclude alcoholics and drug abusers from certain employment provisions of the Rehabilitation Act of 1973.

My amendment differs in that it does not exclude everyone. For example, baggage handlers could be employed whereas pilots could not. For purposes of section 503 and 504 the term handicapped individual does not include any person who is an alcoholic or who is a drug abuser and whose condition of alcoholism or drug abuse renders that individual not qualified for employment by preventing him from performing the essential functions of the job in question. That clarifying definition provides the flexibility missing in the House amendment.

Mr. President, I hope the Senate will adopt the amendment.

Mr. RANDOLPH. Mr. President, I feel that the amendment should be accepted and taken to conference with the House. I have listened to the able Senator from Nevada, who is a very knowledgeable person with reference to the operation of the scheduled airlines and general aviation as well in this country. We have an appreciation of the problems as outlined by him. We want to take care of handicapped individuals, as the Senator wants to. Is that correct?

Mr. CANNON. Yes; it is correct. As I said, I think the House amendment goes a little farther than it needs to go, but ours restricts it so we would not have the safety of the operation of an air carrier compromised by having to employ someone who would not be of the highest reliability.

Mr. RANDOLPH. I think we desire—I know the majority does—to accept this amendment. It will be helpful to us as we go to conference with the House.

Mr. STAFFORD. Mr. President, will the majority manager on this bill yield to me?

Mr. RANDOLPH. I yield.

Mr. STAFFORD. I concur that we should recommend the adoption of this amendment and take it to conference.

● Mr. WILLIAMS. Mr. President, I support the amendment offered by the Senator from Nevada (Mr. CANNON). It is unfortunate that any group of handicapped persons should be singled out for special treatment under the nondiscrimination provisions of the act. However, because of misunderstandings and distortions concerning employment rights of alcoholics and drug dependent persons, Members of the Senate have been under pressure to adopt language that would exclude alcoholics and drug dependent persons from all protection under sections 503 and 504 of the Rehabilitation Act. Indeed, the House-passed bill, H.R. 12467, includes such language.

The amendment offered by Senator CANNON is a compromise that would protect such persons from discrimination but would reassure employers that it is not the intent of Congress to require any employer to hire a person who is not qualified for the position or who cannot perform competently in his or her job. Moreover, an employer would remain free to consider past employment and work performance records of all applicants and to fire any employee whose job performance is unsatisfactory.

The provision of the House bill in this matter is ill advised and unwarranted for several reasons.

H.R. 12467 would exclude alcoholics and drug abusers "in need of rehabilitation" from the definition of "handicapped individuals" for purposes of sections 503 and 504. The House committee report on the bill says this exclusion would apply only for the purposes of sections 503 and 504 as they relate to employment. However, there is no such limitation in the language of the bill itself nor any clarifying floor discussion. Thus, as passed by the House, H.R. 12467 would deny alcoholics and drug dependent persons full protection against discrimination in federally assisted education, health, housing, rehabilitation, and other social services and programs, as well as in employment.

Section 503 of the act requires that all Federal contracts in excess of $2,500 require that, in employing persons to carry out the contract, affirmative action be taken to employ qualified handicapped individuals.

Section 504 of the act requires that otherwise qualified handicapped individuals shall not, solely by reason of handicap, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The significant word here is "qualified." Sections 503 and 504 both state explicitly that covered employers need hire and retain only "qualified" handicapped individuals. All the authorities interpreting current law have clearly understood that handicapped individuals can be held to the same performance standards that an employer demands of all employees. The Attorney General, in an April 12, 1977 opinion, stated:

Our conclusion that alcoholics and drug addicts are "handicapped individuals" for purposes of section 504 does not mean that such a person must be hired or permitted to participate in a federally assisted program if the manifestations of his condition prevent him from effectively performing the job in question or from participating adequately in the program. A person's behavioral manifestations of a disability may also be such that his employment or participation would be unduly disruptive to others, and section 504 presumably would not require unrealistic accommodations in such a situation. Nor do we read the Act to prevent the application to persons suffering from alcoholism or drug addiction of reasonable rules of conduct, such as prohibitions against the possession or use of alcohol or drugs on the location of the federally assisted project. But in our opinion, section 504 does in general prohibit discrimination against alcoholics and drug addicts in federally assisted programs solely because of their status as such, just as it prohibits discrimination solely on the basis of other diseases or conditions covered by the Act.

The Secretary of Health, Education, and Welfare reached the same conclusion. In a statement released in May of 1977, when he issued the regulations implementing the nondiscrimination provisions of the act, Secretary Califano said:

It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the workplace, provided that such rules are enforced against all employees.

Mr. President, as the Attorney General has noted, the statute does not require the impossible. It does not unrealistically require the recipients of Federal contracts and grants to ignore all the behavioral or other problems that may accompany a person's alcoholism or drug addiction if they interfere with the performance of his job or his effective participation in a federally assisted program.

Public health authorities recognize that the most effective approach to treating drug addiction or alcoholism is to maintain some form of treatment or counseling long after the client has ceased to abuse drugs or alcohol and is

perfectly capable of safe, effective job performance. For example, many persons whose disease has been in remission for many years remain active in such organizations as Alcoholics Anonymous or Narcotics Anonymous. Such employees are often more reliable in jobs that require quick judgment and care to safety than nonalcoholics who drink socially and who may have a drink or two at lunch or come to work suffering from the effects of drinking the night before. H.R. 12467, as passed by the House, would provide no more guidance or protection to the employer. It simply states that alcoholics and drug abusers "in need of rehabilitation" are not protected. This phrase, nowhere defined, adds only confusion. It would appear that the House language would require that anyone who wants protection against discrimination must quit any counseling or aftercare program for fear of being labeled "in need of rehabilitation," which would deny him the protection.

Many authorities, including the Federal courts, have recognized that persons stabilized in methadone maintenance treatment are fully employable. If the House-passed amendments became law, such persons might be denied employment rights because they are taking a drug for their condition and therefore "in need of rehabilitation."

The legitimate concern of the employer should be the employee's capacity for safe, effective job performance. The use of the word "qualified" in sections 503 and 504 already serves this purpose. But since many employers are insisting on further clarification, the amendment which Senator CANNON has offered speaks in terms of ability to meet performance standards, not in the vague and confusing form of the House-passed bill.

Mr. President, experts also have known that finding or holding a stable job is vital to treating drug and alcohol abuse. The House bill would allow an employer to exclude persons with a condition of alcoholism or drug addiction who are qualified for safe, effective job performance but can in some way be said to "need rehabilitation" for their condition. The consequence of rejecting or firing such people is clearly to remove one of the most important stabilizing influences in any individual's life.

Indeed, hundreds of corporations across the country have found that having an enlightened policy toward alcoholics and drug-dependent employees is cost effective. Many employers attempt to retain such employees while they seek treatment, and by providing opportunities to stabilized alcoholics and drug-dependent persons, they have retained valuable employees.

The Rehabilitation Act grew from such developments. It expresses a general preference, in terms of social costs and the quality of individual lives, for integrating the handicapped into productive society, rather than shunting them aside and spending billions for poor custodial care. There is no good reason to abandon that policy where alcoholics or drug-dependent persons are concerned.

Again, the current law protects only those persons who can meet job performance standards applied to all employees. The confusing phrase "in need of rehabilitation" would leave many employees uncovered, despite their job qualifications. It would violate the spirit of the act in general and would only increase the incidence and social costs of addiction and alcoholism.

Mr. President, perhaps the major obstacle in controlling alcoholism and drug abuse is the continued stigma from these illnesses. It has been proved over and over again that alcoholics and drug addicts, properly treated, can and do recover to become productive members of society. To add to the stigma by excluding such persons from protection under this law would only serve to encourage them to deny they have a problem rather than to admit it and to seek treatment. This would be a dangerous step backward in the Nation's efforts to bring alcoholism and drug abuse under control.

Mr. President, the amendment offered by Senator CANNON makes clear that the intent of Congress is not to force employers to hire alcoholics or drug-dependent persons to perform jobs for which their condition makes them unsuited. It merely reconfirms that, for purposes of sections 503 and 504 as they relate to employment, the term "handicapped individual" does not include any person who is an alcoholic or drug abuser and whose condition of alcoholism or drug abuse renders that person not qualified for employment by preventing him from performing the essential functions of the job in question.

I urge my colleagues to accept this amendment as a substitute for the language contained in the House-passed bill and to urge their counterparts in the House to accept this substitute language in the conference on this bill.●

● Mr. HATHAWAY. Mr. President, I rise in support of the pending amendment to S. 2600 to clarify the application of sections 503 and 504 of the Rehabilitation Act of 1973 to alcoholics and drug addicts.

While I do not believe that a clarifying amendment really is necessary, I support the pending amendment as a vast improvement over the corresponding language in the House-passed bill.

Section 503 of the Rehabilitation Act requires Federal contractors to take affimative action to employ and advance in employment qualified handicapped individuals. Section 504 prohibits discrimination solely by reason of handicap in any program or activity receiving Federal financial assistance, against any otherwise qualified handicapped individual. Both sections have been interpreted to include alcholics and drug addicts in the definition of "handicapped individual."

The purpose of the pending amendment is to meet the concerns of employers, programs, and the general public that persons whose alcholism or drug abuse impairs their capacity to perform particular jobs or participate in particular activities need not be employed in those jobs or be permitted to participate in those activities.

Regulations implementing sections 503 and 504 already address these concerns. They make clear that the protections of sections 503 and 504 only apply to otherwise qualified individuals. That means alcoholism or drug addiction alone may not be the sole basis for discrimination.

It also means, however, that distinction on the basis of qualification is perfectly justifiable. Regulations implementing section 503 define "qualified handicapped individual" as a handicapped person who is capable of performing a particular job, with reasonable accommodation to his or her handicap. Regulations implementing section 504 define qualified handicapped person as a handicapped person who meets first, essential eligibility requirements for receipt of services, and second, academic and technical standards necessary for admission or participation in the educational program or activity or—with respect to employment—who can perform the essential functions of the job in question.

The effort to amend the Rehabilitation Act with regard to alcoholics and drug addicts is based in part on widely held—but erroneous—assumptions that as long as a person remains an addict or alcoholic, his or her ability to perform satisfactorily is in doubt. In fact, this is very often not the case. Many "active" alcoholics and drug addicts hold jobs and perform them satisfactorily. Sections 503 and 504 of the Rehabilitation Act protect such persons employed by agencies which receive Federal funds or employers which have Federal contracts from being fired solely because of their alcoholism or drug addiction.

There is much misunderstanding and confusion about the implications of including alcoholics and drug abusers under sections 503 and 504 of the Rehabilitation Act. In fact, under both these sections of law as well as the regulations which implement them, drug addicts and alcoholics may be held to the same standards of performance and behavior to which others are held, even if unsatisfactory performance or behavior is related to their addiction or alcoholism.

This interpretation was made by the Attorney General in an opinion to the Secretary of Health, Education, and Welfare Califano on April 12, 1977. According to the Attorney General:

Our conclusion that alcoholics and drug addicts are "handicapped individuals" for purposes of Section 504 does not mean that such a person must be hired or permitted to participate in a federally assisted program if the manifestations of his condition prevent him from effectively performing the job in question or from participating adequately in the program. A person's behavioral manifestations of a disability may also be such that his employment or participation would be unduly disruptive to others, and section 504 presumably would not require unrealistic accommodations in such a situation. Nor do we read the Act to prevent the application to persons suffering from alcoholism or drug addiction of reasonable rules of conduct, such as prohibitions against the possession or use of alcohol or drugs on the location of the federally assisted project. But in our opinion, section 504 does in general prohibit discrimination aganst alcoholics and drug addicts in federally assisted

programs solely because of their status as such, just as it prohibits discrimination solely on the basis of other diseases or conditions covered by the Act.

Thus, I believe it is clear that the Rehabilitation Act has been interpreted to permit a distinction to be made with respect to the employment of alcoholics and drug addicts on the basis of one's inability to perform the essential functions of the job in question. The pending amendment would write that interpretation into the law.

This approach will clarify the intent once and for all without being overbroad and vague, and will allay the concerns which have been expressed today. Consequently, I urge my colleagues to support this compromise amendment.

There are a few additional points which require clarification.

In defining "handicapped individuals" for the purposes of sections 503 and 504, the law does not list specific impairments or disabilities to be covered. Instead, it defines handicapped individual as any person who has a phvsical or mental impairment which substantially limits one or more of such person's major life activities, and has a record of such an impairment, or is regarded as having such an impairment. There is a very substantial body of authority that alcoholism and drug addiction are physical and/or mental impairments. This authority includes the American Medical Association, the American Psychiatric Association, and the World Health Organization. If alcoholism and drug addiction are clearly physical and/or mental disorders, alcoholics, and drug abusers are clearly handicapped individuals for the purposes of sections 503 and 504. To exclude from the protection of this law only persons suffering from these two two impairments solely on the basis of the impairments is plainly discriminatory.

Furthermore, the Rehabilitation Act expresses a general preference, in terms of social costs and the quality of individual lives, for reintegrating the handicapped into productive society, rather than shunting them aside and spending millions for poor custodial care. There is no reason to reverse that preference where alcoholics or drug abusers are concerned. This is especially important now that it is generally recognized that alcoholism, for example, is an illness or disease.

Congress has repeatedly affirmed that drug abuse and alcoholism present such serious threats to the health and well-being of individuals and society that they warrant an annual investment of hundreds of millions of dollars for treatment, rehabilitation and research. Moreover, the Federal drug and alcohol rehabilitation strategies call for the full utilization of all relevant Federal assistance programs to supplement treatment services. There is ample evidence that addicts and alcoholics are subject to discrimination in access to benefits, services, and employment. Even before enactment of the Rehabilitation Act, Congress provided certain protections against such discrimination in Federal civilian employment and in hospital and outpatient services through the Drug Abuse Office and Treatment Act and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act. We must take care not to provide for treatment and to encourage the utilization of other relevant services for the rehabilitation of alcoholics and drug abusers and then turn around and deny those same individuals the right to equal access to such services under section 504.

It should be noted that inclusion of alcoholics and drug abusers within the coverage of section 504 does not confer upon them any special privilege or right. It simply requires that they be afforded equal access to federally assisted programs and activities.

The services encompassed by section 504 include all federally-assisted post-secondary education, medicaid and medical treatment at federally-assisted hospitals, federally-subsidized housing, and alcohol and drug abuse treatment itself. Drug and alcohol abusers are among the intended recipients of many of these services, and there is no reason to exclude them from any of them.●

Mr. CANNON. I move the adoption of the amendment, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HATCH. Will the Senator yield to me?

Mr. STAFFORD. As I understand it, there is no controlled time, so I either have to yield the floor or yield to Senator HATCH.

Mr. HATCH. Mr. President, I stand here today as a cosponsor of S. 2600, the Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978. As a member of the Subcommittee for the Handicapped, it has been an honor to serve under the leadership of my good friends (Mr. RANDOLPH and Mr. STAFFORD).

For over the last year and a half, many days of hearings have been held and, after studying the testimony presented, I feel that S. 2600 will not only satisfactorily extend the present programs but expand them. The time has been long coming that our handicapped citizens are given the opportunities which every American citizen has the right to enjoy. It is our intention not only to help those in need of rehabilitation but to help the many severely handicapped to live a more independent existence and not to be confined to a cell in an institution. It is important that the research, training, and related activities be authorized to help meet their special needs.

This legislation will establish a Federal Council on the Handicapped, which will bring the needs and problems of the handicapped directly to the President and the Congress so this population might be better served.

It is also important to mention that, for the purposes of the Developmental Disabilities Act, the committee has agreed to expand the definition to include those having a disability which is attributable to a mental or physical impairment and not limited to mental retardation, cerebral palsy, epilepsy, or autism.

There is a provision in S. 2600 which was created as a result of testimony presented by various Indian tribes, including the Navaho Nation. As the Navaho Nation pointed out, reservations located in more than one State face extreme difficulties because of the problems encountered in coordinating services when more than one State has responsibilit for providing services. The Navaho Tribe spans three States: Utah, New Mexico, and Arizona.

Presently, there is a provision in the Rehabilitation Act that allows a "local agency" to contract with the State to conduct a vocational rehabilitation program under the supervision of the State. This mechanism has proved to be an inadequate means of addressing the problems experienced by reservation-based Indians, particularly those located on reservations spanning more than one State. It is our intent that the Indians will have the option to provide services directly to their people, but that the tribal organization should develop its application in consultation with the appropriate State agency so that it may benefit from the State's experience in planning and operating of vocational rehabilitation services and prevent the duplication of services.

It is important to note that the committee also expects the vocational rehabilitation services provided by the tribal organization to be comparable to the services provided to other handicapped individuals residing in the State, but does not intend for this requirement to restrict the tribe's freedom to develop innovative approaches to meet the unique needs of Indians or to restrict their right to define priorities in service delivery.

There is one more provision that I should like to briefly discuss—university affiliated facilities.

Utah State University houses one such facility, which they call the Exceptional Child Center, directed by Dr. Marvin Fifield. While visiting this center, I was most impressed by the program and without hesitation recommend its reauthorization.

I hope that my colleagues will agree with me that this is a good piece of legislation and one which is worthy of their support.

I believe it is one that all Americans should give some consideration to and should be proud of.

I compliment not only the distinguished chairman of our subcommittee (Mr. RANDOLPH) but my dear friend, the distinguished ranking member of our subcommittee (Mr. STAFFORD). They have both worked long and hard and, I think, tirelessly on behalf of those who are in need of rehabilitation and comprehensive services for developmental disabilities. I think they are two very great people in this field and deserve the commendation of all of us, especially those who have suffered so much as a result of the inabilities that they have either been born with or acquired.

Mr. President, I recommend the passage of this piece of legislation as an inordinately good, humane piece of legislation, geared to take care of those who literally are in great need and which any great society should take care of.

I thank the Chair.

Mr. STAFFORD. Mr. President, I want to express my appreciation to the distinguished Senator (Mr. HATCH) who is a very valuable member of the Subcommittee on Handicapped of the Committee on Human Resources.

I yield the floor.

UP AMENDMENT NO. 1859

(Purpose: To include the Department of Justice in the Architectural and Transportation Barriers Compliance Board)

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. (Mr. PROXMIRE). The pending business is the Randolph amendment. Is there a unanimous request that that be laid aside?

Mr. STAFFORD. Mr. President, my recollection is that the Randolph amendment was laid aside until the assistant majority leader might get here. He had some problems he wished to work out.

The PRESIDING OFFICER. The amendment was laid aside for consideration of an amendment by Mr. Cannon.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Randolph amendment be temporarily laid aside and that the Senate be allowed to proceed to consider other amendments to the bill for the time being.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment of the Senator from Kansas.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 1859.

Mr. DOLE. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 87, between lines 6 and 7, insert the following: "(vii) Department of Justice.".

On page 87, line 7, strike out "(vii)" and insert "(viii)".

On page 87, line 8, strike out "(viii)" and insert "(ix)".

On page 87, line 9, strike out "(ix)" and insert "(x)".

Mr. DOLE. Mr. President, my amendment is simple and straightforward: It adds the Department of Justice to the Architectural and Transportation Barriers Compliance Board.

It is my understanding that there is no objection to this amendment.

FUNCTION OF THE BOARD

This Board is charged with the responsibility of seeing that the Architectural Barriers Act of 1968, Public Law 90–480, is enforced. This is a law which says that public facilities being built, renovated, or leased with Federal funds must be accessible to the handicapped. In addition, the Board is to study alternatives to the barriers caused by architecture, transportation, and attitudes in our society. The legislation recognizes that these barriers have kept the handicapped from participating in employment, recreational, educational, and residential opportunities.

MAKE-UP OF THE BOARD

Currently, the Board is comprised of members from the following Departments and Agencies: HEW, Transportation, HUD, Labor, Interior, Defense, General Services Administration, and Veterans' Administration. S. 2600 proposes to add the U.S. Postal Service to the list of Federal representatives, and also directs the President to appoint public members to the Board.

After reviewing the list of members, I believe that the absence of the Department of Justice creates a significant void since they are going to be charged with enforcement. The Department of Justice is recognized as the largest law firm in the Nation. It is charged with enforcing law in the public interest, as well as insuring Federal enforcement of civil rights. In very general terms, it serves—or should serve—as counsel to U.S. citizens.

As the legislation we are considering deals with civil rights of the handicapped, I feel it appropriate to involve the Justice Department at this level. In the past, the Justice Department has been accused of lacking sensitivity to the issues confronting handicapped citizens. I think that acceptance of this amendment will precipitate a better understanding by the Department of the problems caused by barriers.

CONCLUSION

I realize that the addition of the Department of Justice to the compliance Board is not a major change. However, it reflects my feeling that most barriers are erected not because of intentional forethought, but simply because of a lack of thought. If, by participation on this board, the Justice Department will increase its consciousness to the problems handicapped citizens face, then I believe its inclusion is legitimate.

We will be considerably closer to accessible environment when the general public becomes aware of the alternatives to barriers. Until then, perhaps our first objective should be to educate the Federal Government.

I do not know of any objection to this amendment.

Mr. STAFFORD. Mr. President, the manager of the bill for the majority (Mr. RANDOLPH) and I have both examined the amendment. We both recommend to our colleagues it be accepted and taken to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (UP No. 1859) was agreed to.

Mr. DOLE. Mr. President, I thank my distinguished colleague. Not only that it go to conference, but that it come back from conference.

In any event, it will be a nice trip.

Mr. STAFFORD. If the distinguished Senator will yield, I think it will not only go to conference, but come back.

Mr. DOLE. The Senator from Kansas is especially interested in a particular provision in S. 2600 relating to funding for rehabilitation engineering research centers. Current law mandates that 25 percent of the money appropriated for research under the Rehabilitation Services Administration goes to these engineering centers.

These centers have been charged with the responsibility of serving as a liaison between technological developments and their application to rehabilitation problems. Organizations designated as engineering centers were created to apply the latest developments in medical technology, scientific achievement, and psychological and social knowledge to address the needs of handicapped individuals. Also, centers work to eliminate environmental barriers which keep disabled persons from assuming their due role in society.

It is my understanding that S. 2600 removes the requirement that 25 percent of research dollars under title II of the rehabilitation act must go to engineering centers. This is of particular concern to me because Kansas has a fine engineering center which has gained international attention. It has distinguished itself through the innovative ways in which it has adapted industrial equipment to match the capabilities of physically handicapped persons.

My question to the Senator from West Virginia is this: why was the 25 percent set aside for engineering centers deleted from S. 2600, and what effect do you anticipate that this will have on funding for these centers?

Mr. RANDOLPH. I thank the Senator from Kansas for raising these questions, for I feel they are ones which should be addressed. In the past, there has been some feeling that the 25 percent set aside has been used as a ceiling on the amount of funding going into rehabilitation centers. This meant that as the centers become better developed and as more centers are constructed, funding becomes increasingly tighter because it has been limited in practice to an arbitrary 25 percent set aside.

Mr. DOLE. If I understand the Senator from West Virginia correctly, you are saying that while once the set aside needed to insure adequate funding for engineering centers, it now serves as a funding limitation.

Mr. RANDOLPH. That is correct. It has become a funding ceiling rather than a floor. By removing the 25 percent limitation, we are removing a legal restriction that in its interpretation has served to hinder—rather than to help—the development of research engineering centers.

Mr. DOLE. It is your intention, then, that the removal of the set aside is not to be interpreted as a withdrawal of support. Rather, you envision that the funding for engineering centers will be maintained at a level sufficient to continue and expand the programs presently offered through these centers. In doing this, it is likely that the funding level will pass the 25th percentile?

Mr. RANDOLPH. That is the intention of the Human Resources Committee.

Mr. DOLE. To the best of your knowledge, is this HEW's understanding?

Mr. RANDOLPH. To the best of my knowledge, it is.

Mr. DOLE. Mr. President, I thank the Senator from West Virginia for his statements and clarifications on this issue. As I indicated before, the continuation of adequate funding for rehabilitation engineering research centers has long been a priority of mine.

After the productive investments which have been made in these centers up until this point, it would be a grave

loss to disabled persons if this support were no longer continued. I am reassured by the comments of my distinguished colleague.

I commend him for his attention to the field of research for the handicapped. It has long been an interest of mine, particularly because my State has one of the outstanding engineering research programs in the country. Improving the management of research for the handicapped and developing a more comprehensive research program between the various Federal agencies interested in research for the handicapped are therefore goals to which I adhere. However, I want the legislative history of the institute to be clear with regard to the area of technology development and applied engineering research. Are those areas priority missions of the new institute?

Mr. RANDOLPH. Senator DOLE, I wish to assure you that they are. The purpose section of my amendment creating the institute stresses four basic purposes, one of which is improving the distribution of technological and communication devices and equipment by providing support for the development and distribution of such products. The engineering programs have been among the most productive of the research areas and are to be a major part of the institute program. The House Science and Technology Committee stressed the importance of technology development for the handicapped in its recommendations for a new research organization. The intent is to improve management and expand research for the handicapped in all areas, providing a balanced program of technological, communication, engineering, medical, vocational, and psychological and social research.

Mr. DOLE. Is the focus of this institute on research which has direct application to the problems of handicapped people and their rehabilitation, particularly the most severely handicapped?

Mr. RANDOLPH. Yes it is. Senator DOLE. We want to accomplish major advances in the application of new technology and new treatment methods and services to the severely handicapped to enable them to be employed, or if they are not employable, to live independently in their own dwellings rather than institutions. I also wish to assure you that the existing engineering centers supported by RSA, such as the one in Kansas, are intended to receive continued and expanded support under this new authorization.

Mr. DOLE. Again, I thank the distinguished Senator from West Virginia for his remarks of clarification. While I want to encourage new research in the field of rehabilitation, we cannot sacrifice or neglect the continuing achievements being made under ongoing projects. I appreciate his comments, and am satisfied that S. 2600 safeguards the continuation of research engineering centers.

Mr. President, in addition, I also support S. 2600.

I think perhaps it is another indication of the distinguished chairman's interest in the handicapped and also the distinguished Senator from Vermont's interest in the handicapped. It is always a pleasure to work with these two distinguished colleagues.

There is no doubt about the need for the legislation.

S. 2600

Mr. President, the bill we are considering today, the Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978, is one of utmost importance to the disabled community. This bill provides a host of opportunities for the handicapped, and enables them to receive training and services best suited to their needs.

HISTORICAL TREATMENT OF THE HANDICAPPED

In 1920, legislation was first passed which embodied the philosophy that handicapped individuals are entitled to receive both State and Federal efforts aimed toward vocational rehabilitation. The bill before the Senate today, S. 2600, continues the customary services to traditional vocational rehabilitation clients. In addition, it provides assistance to severely disabled persons with little evidence of vocational potential; to the developmentally disabled; to older blind persons; and to preschool children. In fact, almost all disabled persons benefit from this legislation.

Historically, handicapped persons have been treated in either one of two ways: they have been ignored or they have been pampered. Both types of treatment are equally discriminatory, for they deny recognition of handicapped individuals as persons capable of self-determination and self-support. In other words, we have exhibited a protective, paternalistic attitude toward these persons.

CONSUMER INPUT

In preparing for this legislation, the Subcommittee on the Handicapped held 16 days of hearings. Dozens of handicapped consumers and advocates had the opportunity to express their views, and I think their contributions can be easily recognized throughout the bill. New programs have been created, tailored to the needs of persons who have previously been unserved by the Rehabilitation Act. Specifically, it has been the most severely handicapped who have been largely unaddressed by past legislation, primarily because they did not demonstrate a capacity for vocational rehabilitation.

NEED FOR FISCAL RESPONSIBILITY

In the past, I have been concerned by the excessively high levels of spending authorized for rehabilitation programs. Mr. President, this attitude of indulgence troubles me, for it seems to imply—either consciously or unconsciously—that the disabled are immune from the fiscal problems which hit the rest of society. The implication seems to be that however irresponsibly the Congress acts with regard to fiscal matters, the handicapped will be sheltered from the fallout. This simply is not true.

As the disabled continue their successful entry into the work-a-day world, we must realize that fiscal responsibility is in their best interest too. Rising inflation, high interest rates, and excessive spending will wreak havoc with anyone's budget—regardless of whether or not one is disabled. Surely, no one understands this better than the handicapped themselves.

Along this line, there have been serious questions raised about the wisdom and justification of the original authorization levels. I appreciate the fact that the committee's authorization levels have been scaled down to somewhat more realistic amounts. This action should not only make the bill more acceptable to my colleagues, but also to the President. Moreover, I maintain that in the long run, a bill which strikes the balance between fiscal responsibility and program growth is in everyone's best interest.

So, while I support the concepts and programs incorporated in this bill, I do so with the hope that we are not making promises we cannot deliver. It is unfair to raise expectations without knowing we can deliver the necessary expenditures.

NEW PROGRAMS

The bill itself makes several noteworthy changes in the rehabilitation program. The new provisions will enable disabled Americans to receive better and more appropriate services. For example, specific programs are created to provide reader services to the blind and interpretor services to the deaf. There is also authorization in the bill for various recreational programs to cultivate social and physical skills among disabled persons. There is a provision for services to older blind persons, coupled with new emphasis on serving preschool children as well.

Throughout the bill, there is an obvious effort made to administer to the needs of the individual as a whole. The emphasis is on comprehensive services, with the idea that health, employment, training, housing, recreational and social needs are all legitimate areas which merit being addressed as a set of issues.

I hope that this can be accomplished, for many of our Federal programs are disjoined and confusing to the individual seeking services. So many persons have written to me complaining of the lack of coordination from one office to another, from agency to another, and from one department to another. I hope this bill will help reduce some of the confusion.

ADVOCACY PANELS

Also pertinent to the bill are the provisions which strengthen and protect advocacy opportunities. For years now, there have been good, legitimate laws on the books governing treatment of the handicapped. Although the Architectural and Transportation Barriers Compliance Board was created primarily to enforce the Architectural Barriers Act of 1968 (Public Law 90–380), it has had little muscle with which to carry out its mandates. S. 2600 strengthens the compliance board and also provides for consumer representatives on the Board. The Board is further authorized to provide technical assistance regarding barrier removal to public or private concerns.

CONCLUSION

In general, this legislation provides more complete service to all disabled persons than that which is accorded under current law. It addresses special needs of specific disability groups. The bill makes appreciable progress toward the goal of recognizing and addressing the total needs rather than the topical

needs of handicapped individuals. I am pleased to support S. 2600, the Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1860

(Purpose: To authorize the Board to participate in certain civil actions)

Mr. STAFFORD. Mr. President, I have an unprinted amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Vermont (Mr. STAFFORD) proposes an unprinted amendment numbered 1860.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 89, lines 10 and 11, strike out "and 'and'".

On page 89, line 12, beginning with the word "sue" strike out through "(8)" on line 14.

On page 89, line 17, strike out "(9)" and insert in lieu thereof "(8)".

On page 90, line 12, beginning with the word "The" strike out through line 19 and insert in lieu thereof end quotation marks, a period, and the following:

(5) Section 502 (d) is further amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraphs:

"(2) The Executive Director is authorized, at the direction of the Board, to bring a civil action in the appropriate United States district court to enforce, in whole or in part, any final order of the Board under this subsection.

"(3) The Executive Director is authorized, at the direction of the Board, to intervene, appear, and participate, or to appear as amicus curiae, in any court of the United States or in any court of a State in civil actions which relate to this section, or to the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968.

"(4) Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Executive Director may appear for and represent the Board in any civil litigation brought under this section.

On page 90, line 20, strike out "(2)" and insert in lieu thereof "(5)".

Mr. STAFFORD. Mr. President, I have offered this amendment for myself, Senator RANDOLPH, and Senator CRANSTON, on the bill under consideration.

Mr. President, this amendment is offered to clarify the roles of the Architectural and Transportation Barriers Compliance Board and the Department of Justice. The Architectural and Transportation Barriers Compliance Board is established as an independent agency to enforce accessibility and usability of federally occupied and federally funded buildings.

This amendment supports the Board's need for power to enforce its orders and make sure its views are represented by its own attorneys.

The Department of Justice cannot always represent the real interest of the Board because it also must represent the Federal agency being sued.

The Board and the Justice Department can work together in several areas where there would be no conflict of interest in the Department handling the Board's case. I speak for the committee when I say that the Board and the Department of Justice should cooperate and work jointly on litigation wherever possible. The committee also feels that the Board and the Justice Department should work out a cooperative agreement which keeps the Justice Department fully informed of litigation undertaken by the Board and allows for their participation whenever possible.

Under this amendment the Justice Department would be the Board's representative on all tort claims, Freedom of Information, privacy and other general administrative matters. The Justice Department will also do all cases before the Supreme Court.

As I stated at the beginning of my statement, Mr. President, the intent of this amendment is to clarify the language already adopted by the Subcommittee on the Handicapped and the Committee on Human Resources, therefore I urge its immediate adoption.

I have offered this amendment, as I say, for Senator RANDOLPH, as well as myself, and Senator CRANSTON.

The PRESIDING OFFICER. Is there further discussion of the amendment?

The question is on agreeing to the amendment.

So the amendment (UP No. 1860) was agreed to.

UP AMENDMENT NO. 1861

(Purpose: To modify the authorization of funds for in-service training for deaf interpreters)

Mr. STAFFORD. Mr. President, I have another unprinted amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Vermont (Mr. STAFFORD) proposes an unprinted amendment numbered 1861.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 149, line 17, strike out "Education for All Handicapped Children Act of 1975" and insert in lieu thereof "Education of the Handicapped Act".

On page 149, line 19, beginning with "except" strike out through "Act" on line 21, and insert in lieu thereof the following: "except that funds for in-service training under this paragraph shall be drawn from funds appropriated under the Education of the Handicapped Act".

Mr. STAFFORD. Mr. President, in response to such important legislation now on the books such as section 504 of Public Law 93–112, the base line civil rights provision for handicapped Americans as well as Public Law 94–142, the Education for All Handicapped Children Act of 1975, S. 2600 includes a title for "Reader Services for the Blind; Interpreter Services for the Deaf." I commend the Chairman, Mr. RANDOLPH, for his initiation of this new service component.

Permit me to read from the committee bill on page 149 subsection (f):

(2) Interpreters who provide services under the Education for All Handicapped Children Act of 1975 may be trained in any program maintained by a base center or additional center under this section, except that funds for such training shall be drawn from funds appropriated under the Education for All Handicapped Children Act.

I would certainly endorse the first clause of that sentence, which would seek to guarantee that properly trained interpreters would be available to our school age population of deaf children. However, the second clause, ordering that funds for such training be drawn from appropriations under Public Law 94–142, needs to be clarified. As a major author along with myself of the landmark Public Law 94–142, the distinguished chairman will recall that the fiscal authority of Public Law 94–142 for both the State education agencies and the local school districts is a near total program authority. The only training which we allowed in that legislation is to be of a rather immediate inservice nature, especially affecting the mandate to educate in the least restrictive learning environment.

Therefore I am offering this amendment to clarify the intent of this section. The amendment would add the words "in service" into the second clause of the sentence.

Mr. President, I believe that Senator RANDOLPH, the manager of the bill and the chairman of the subcommittee, is agreeable to this clarification.

I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1862

(Purpose: To require that State plans provide assurances that facilities used in the delivery of services under certain programs will comply with the Architectural Barriers Act)

Mr. STAFFORD. Mr. President, I have one more unprinted amendment, which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Vermont (Mr. STAFFORD) proposes an unprinted amendment numbered 1862.

Mr. STAFFORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 70, between lines 23 and 24, insert the following:

SEC. 102. (a) Section 101(a)(6) is amended—

(1) by inserting "(A) after "(6)";

(2) by inserting after the semicolon the word "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(B) provide satisfactory assurances that facilities used in connection with the delivery of services assisted under the plan will comply with the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;".

On page 70, line 24, strike out "Sec. 102. (a)" and insert "(b)".

On page 71, line 6 strike out "(b)" and insert "(c)".

On page 71, line 12, strike out "(c)" and insert "(d)".

On page 71, line 15, strike out "(d)" and insert "(e)".

On page 107, line 13, insert "(A)" immediatey after "(2)".

On page 107, line 18, insert the word "and" immediately after the semicolon.

On page 107, between lines 18 and 19, insert the following:

"(B) provide satisfactory assurances that facilities used in connection with the delivery of services assisted under this title will comply with the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;

On page 133, between lines 1 an 2, insert the following:

SEC. 310. (a) Section 133(b)(6) of the Developmental Disabilities Services and Facilities Construction Act is amended—

(1) by inserting "(A)" after "(6)";

Mr. STAFFORD. Mr. President, the purpose of this amendment is to provide assurances that all facilities used in the delivery of services under the State plans in vocational rehabilitation, comprehensive services, and developmental disabilities will comply with the 1968 Architectural Barriers Act. The Architectural Barriers Act requires that all buildings or facilities be accessible to the public so that physically handicapped persons will have ready access to, and use of, such buildings.

It has come to my attention that not all of the facilities are barrier free. For example, a vocational rehabilitation office in Virginia is located in a building to which stairs are the only means of gaining entrance. I am sure that this is not the only case.

Many State agencies receiving Federal funds rent office space. I feel strongly that these offices, especially those concerned with the needs of the handicapped, be accessible to all persons. A disabled individual should be afforded the opportunity to enter a door of the agency where services and appointment can be attained without having to question their accessibility. This is part of being independent. Each one of us strives for independence but for the disabled the process is more difficult, especially when the agencies serving them are not barrier free.

This amendment makes certain that the State plans contain the assurance that the agencies directly involved in providing services are accessible to all people.

Mr. President, I hope that the floor manager of the bill, my distinguished colleague from West Virginia, Mr. RANDOLPH, will accept this amendment and that my fellow colleagues will join us in this matter.

I urge the adoption of the amendment.

Mr. RANDOLPH. Mr. President, I join the able Senator from Vermont. As I have said many times, and I reaffirm, it is my personal good fortune to work with the Senator in these matters.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STAFFORD. Mr. President, it is a great privilege for me to have had the opportunity during the last several years to work with the distinguished senior Senator from the State of West Virginia, the chairman of the subcommittee, on matters which we feel are of real importance to advancing the cause of handicapped people in this country.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1863

(Purpose: To authorize research programs to develop methods of attracting professionals to serve in rural areas)

Mr. RANDOLPH. Mr. President, I send an amendment to the desk on behalf of our colleague, Senator HATHAWAY. I am presenting it for him, as it is impossible for him to be in the Chamber.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH), on behalf of the Senator from Maine (Mr. HATHAWAY), offers an unprinted amendment No. 1863:

On page 83, line 5, strike out "new paragraph" and insert "new paragraphs".

On page 83, line 12, strike out the quotation marks and the period the second time it appears.

On page 83, lines 12 and 13, insert the following:

"(7) Conduct of a research program to develop and demonstrate innovative methods to attract and retain professionals to serve in rural areas in the rehabilitation of handicapped and severely handicapped individuals.".

On page 135, line 7, strike out "Section 145" and insert "(a) Section 145(a)".

On page 135, between lines 12 and 13, insert the following:

(2) by striking out the word "and" at the end of paragraph (8);

(3) by striking out the period at the end of paragraph (9) and inserting a semicolon and the word "and"; and

(4) by inserting after paragraph (9) the following new paragraph:

"(10) developing or demonstrating innovative methods to attract and retain professionals to serve in rural areas in the habilitation of persons with developmental disabilities.".

(b) Section 145 of such Act is amended—

On page 135, line 13, strike out "(2)" and insert "(1)".

On page 135, line 15, strike out "(3)" and insert "(2)".

On page 135, line 22, strike out "(4)" and insert "(3)".

Mr. RANDOLPH. Mr. President, I offer what I believe to be an amendment that is noncontroversial. It gives to the Secretary of HEW authority to fund projects to demonstrate methods of attracting and retaining professionals who serve handicapped individuals and individuals with development disabilities to practice in the rural areas of our country.

The amendment would accomplish this goal by authorizing such projects under section 202(b) of the Rehabilitation Act of 1973, which provides for specified research activities, and under section 145 of the Developmental Disabilities Act, which provides for a special project grants authority.

The amendment entails no additional funding. It allows the Secretary, at his discretion, to fund the projects I have mentioned, in the rural areas of the country.

Mr. STAFFORD. Mr. President, I join the distinguished chairman in urging the adoption of this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1864

(Purpose: To revise the definition of preschool age children)

Mr. RANDOLPH. Mr. President, I send to the desk another amendment that I offer on behalf of our colleague, Senator HATHAWAY.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH), on behalf of the Senator from Maine (Mr. HATHAWAY), offers an unprinted amendment numbered 1864.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 118, line 6, strike out "three" and insert "five, with a special emphasis on severely handicapped children up to the age of three".

Mr. RANDOLPH. Mr. President, this amendment relates to the provision in S. 2600 authorizing the Secretary to fund models of services for preschool age severely handicapped children.

This provision would create a new section 621 of the Rehabilitation Act of 1973.

For the purpose of these model projects, "preschool age" is defined in the bill to include children from birth to age 3.

This amendment, which I present for our able colleague Senator HATHAWAY, would revise that definition to include children through age 5, rather than age 3, with special emphasis on the birth to 3-year-old bracket.

Mr. President, I think all members of our subcommittee believe that the adoption of this amendment is worthwhile.

I ask unanimous consent that a statement by Mr. HATHAWAY be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY MR. HATHAWAY

I have 2 non-controversial amendments to S. 2600.

The first amendment gives the Secretary of HEW authority to fund projects to demon-

strate methods of attracting and retaining professionals who serve handicapped individuals and individuals with developmental disabilities to practice in rural areas. The amendment would accomplish this goal by authorizing such projects under Sec. 202(b) of the Rehabilitation Act of 1973, which provides for specified specialized research activities, and under Sec. 145 of the Developmental Disabilities Act which provides for a Special Project Grants Authority.

This amendment entails no additional funds. It simply allows the Secretary, in his discretion, to fund these projects.

The second amendment I am offering today relates to the provision in S. 2600 authorizing the Secretary to fund models of services for preschool age severely handicapped children. (This would create a new section 621 of the Rehabilitation Act of 1973.)

Such model projects would include a variety of services such as early identification and evaluation, physical therapy, health and psychiatric services for the children, and appropriate services for the parents.

As the Human Resources Committee noted in its report on the bill, the purpose of these models is to obtain experience with broadbased comprehensive services for these children. This program will enable children served to enter school with the best possible medical, psychiatric, and educational evaluation and with the benefit of several previous years of development under the guidance of experts in early child development. This is indeed a laudable goal and I commend the Senator from West Virginia for his fine efforts in this regard.

The only difficulty with this provision—and one that is easily corrected—is that it defines "preschool age" to be from birth until the age of three. I believe that this definition is too restrictive and am offering an amendment to increase the age to five years, with special emphasis on children up to age three.

There are several reasons for this. Most important, this preschool program is to be a demonstration; it is not a service program. Because it is meant to be broadbased and comprehensive, it should have the flexibility to include a wide age group.

This flexibility is particularly important for programs in states where handicapped children are not admitted to school until the age of 5. By limiting the model projects program to children under the age of 3, we would be providing services for children until age 3, then denying services from 3 to 5 at which point they could enter public school. Of course, it must be made clear that this provision is not intended to provide duplicative services. Rather, it is intended to provide services for those individuals who are not being served under existing programs.

In addition, in order to have a demonstration project, one needs a sufficient number of subjects. Limiting the eligible age to 3 years old could effectively deny participation in the program to areas with small populations.

Finally, in some instances, handicapped children are not identified by age 3. I do not think we would want to deny such individuals the services offered by these model projects. Doing so could handicap them further.

By extending the definition of preschool age, as my amendment would do, we would not be increasing the amount of funds authorized. We would simply be making the program a bit more flexible, which is what a demonstration project of this sort should be.

I have discussed these amendments with the floor managers, and understand they are prepared to accept it.

Mr. STAFFORD. Mr. President, I join the chairman of the subcommittee, Senator RANDOLPH, in urging the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3424

Mr. GRIFFIN. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. GRIFFIN) proposes an amendment numbered 3424:

On page 107, line 12, after the word "title" insert ", unless the goals and objectives of this title can be more appropriately achieved through another State agency or agencies as certified by the Governor and approved by the Secretary:".

Mr. GRIFFIN. Mr. President, the amendment I offer to this measure is simple and straightforward. It would give the Governor of each State the option—with the approval of the Secretary of Health, Education, and Welfare—to determine which State agency or agencies would have responsibility for coordinating and delivering the "Comprehensive Services for Severely Handicapped Individuals" programs established by the new title VI of the committee bill.

In adding these new programs to existing vocational rehabilitation programs, the committee has recognized that the needs of handicapped individuals extend far beyond traditional notions of vocational rehabilitation services. In order even to begin to prepare for employment appropriate and suitable to their capabilities, severely handicapped individuals often require physical, mental, and psycho-therapeutic services to help them learn such basic skills as self-care, communication, mobility and other fundamental activities to allow them to function in society. Severely handicapped individuals have much to contribute if the necessary support services are made available to them.

The committee recognized this in recommending the establishment of the new title VI programs. Unfortunately, the committee has, in effect, mandated that these new services be lumped together with traditional vocational rehabilitation services. The committee bill says that every State desiring to participate in these new programs must submit to the Secretary of HEW a detailed plan to "provide for a program of comprehensive services for severely handicapped individuals to function in society and, if appropriate, secure and maintain appropriate employment."

I have no quarrel whatsoever with the requirement of such a State plan. But, the committee bill goes further: It mandates that such a plan designate the State agency or agencies currently administering vocational rehabilitation programs as the agency or agencies to administer these new comprehensive services programs. The effect of this mandate is to tie a Governor's hands as to the administration of these programs in his own State and force the programs into existing vocational rehabilitation systems.

I believe that State Governors—who are closer to their own State programs for the handicapped than Federal bureaucrats—should have the option of determining which State agencies are to administer these new programs. I am supported in this belief by the National Governors' Association and the Southern Governors' Conference. In fact, Governor Milliken—the chairman of the National Governors' Association—directed a letter to the distinguished chairman of the committee, Senator WILLIAMS, strongly urging that a "Governor's Option" provision be included in the bill. Unfortunately, it was not.

I want to stress that my amendment would not automatically remove these new comprehensive service programs from State vocational rehabilitation offices. Many Governors may very well elect to have these programs included in their vocational rehabilitation portfolio.

But, I strongly believe that the Governor of each State should be permitted to determine how his or her State can best maximize its handicapped program resources and can most effectively organize its delivery systems.

I might mention for the benefit of some of my colleagues that leaders of the handicapped and the Governors of a number of States—including Tennessee, Georgia, Florida, North Carolina, Louisiana, Illinois, Maryland, Minnesota, New York, and Utah, as well as my State of Michigan—have voiced particular alarm and concern about the effect on their States' handicapped programs of a congressional mandate to put these new programs under the State vocational rehabilitation agency. In these States, many of the functions contemplated by title VI are already proceeding apace independently of vocational rehabilitation programs, and to now direct by Federal edict the placement of these programs under the vocational rehabilitation agency would throw things into a state of disarray and confusion.

We can avoid this by giving the Governors the option of placing these new programs—which may supplement existing programs—where they determine the programs can be most advantageously administered and coordintated.

At this point, I would like to reemphasize the fact that under my amendment Governors wishing to exercise their option and place these new programs in State agencies other than vocational rehabilitation must affirmatively show the Secretary of HEW—and receive his approval—that the goals of this new title can be more appropriately achieved through another State agency or agencies.

I believe this will insure that only those States which provide adequate justification will be able to have programs placed outside of vocational rehabilitation offices.

Mr. President, before closing I would like to assure my colleagues and dedicated friends in the vocational rehabilitation field that my amendment is not intended as an indication of a lack of confidence in their work or the admirable

record they have compiled. Indeed, by all accounts, progress in this area over the years has been laudable and most impressive. I would only say that the programs created by this new title VI—programs such as counseling, independent living centers, and recreational activities—are not traditional vocational rehabilitation services and may require capabilities that some vocational rehabilitation programs have had little or no experience with. These new programs are a different kettle of fish, and I believe the Governor of each State is in the best position to determine where and how they can be most effectively administered.

I might also note that a number of handicap groups in my State—including the Michigan Federation for the Blind and the Handicapped Advocacy Alliance—have contacted me and urged support for a Governor's option provision.

My amendment would provide this option and I urge my colleagues to support this effort.

But in some States the Governor should have the option if he believes it is in the State's interest to select another agency, but I emphasize that under this amendment he could only do so with the approval of the Secretary of Health, Education, and Welfare.

I know that the Governors of a number of States are interested and support this amendment. The Governor of my own State, Governor Milliken, is very interested in it.

I urge the distinguished chairman and the floor manager and the ranking minority member of the committee to consider accepting the amendment.

Mr. STAFFORD. Mr. President, we have examined the amendment offered by the distinguished Senator from Michigan and, while this Senator has some problems with the amendment, we believe it has sufficient merit to take it to conference and to try to work out the matter in conference with the Representatives of the House. So for the minority I am prepared to accept the amendment.

Mr. RANDOLPH. Mr. President, there is a desire for the consideration of this amendment. With misgiving, I will agree to take the measure to conference. In February when I first introduced this bill, I took the position that the able Senator from Michigan has taken in his amendment. But after many conferences with people who are very knowledgeable in this area and in whom I have the greatest confidence, I became convinced that the more preferable approach would be that which is contained in the present bill. The State vocational rehabilitation agencies presently have the responsibility to provide services to severely handicapped individuals with a vocational potential and I think they also have the understanding, expertise, and resources that are required for effective serving of severely handicapped persons who may not have vocational potential, particularly in the area of independent living programs. This was the rationale that the Council of State Administrators of Vocational Rehabilitation outlined in their support of the placement of the comprehensive services program in the vocational rehabilitation program.

The essential requisites for the provision of comprehensive services are closely related to the basic components of effective vocational rehabilitation services. Very frankly, I think it would be logical to place the primary responsibility for these comprehensive and independent living services in the State vocational rehabilitation agency.

I think it is understandable that I feel this way after consultation with the rehabilitation administrators of my own State of West Virginia who support the provision in S. 2600 as reported from the Committee on Human Resources.

Undoubtedly, most, if not all State administrators have taken this position. I assume the administrator in Michigan has taken the position that I have taken in this matter. Is the Senator from Michigan apprised of that feeling?

Mr. GRIFFIN. Yes, I understand that was the case, and I suppose it is not too surprising that the State director of that particular agency would like to protect his jurisdiction. I just wish to say that I understand the concern and the expressions of the distinguished Senator from West Virginia particularly in light of all the work he has done through the years in this area of vocational rehabilitation. I commend him for it.

I do think that what we are trying to do here is just preserve a little bit of flexibility for the few situations perhaps where it might be more appropriate for the work to be done in another agency. As I emphasize in here this cannot be done by the Governor alone. It can only be done, the option exercised, with the approval of the Secretary of HEW.

I thank the distinguished Senator.

Mr. RANDOLPH. What about the Commissioner of Rehabilitation at HEW's Rehabilitation Services Administration? Will he be consulted? Will his approval be necessary?

Mr. GRIFFIN. I understand he will be consulted at the point where the State plan is submitted for approval.

Mr. RANDOLPH. He will be part of the approval process?

Mr. GRIFFIN. So he will be a part of the process, yes.

Mr. RANDOLPH. I think it is important. As I recall, the testimony from the Michigan State director of vocational rehabilitation during our hearings was in accord with what very frankly I still feel is best. I want it clearly understood, although I think under the circumstances we will take the amendment to conference. The ranking minority member of the subcommittee has stated he also wishes to do this.

Mr. GRIFFIN. In doing so we will be supporting the Governors of our two States as well.

Mr. RANDOLPH. I shall have to ask if Governor Rockefeller has contacted me in reference to this matter. I am told that he has not done so.

Mr. GRIFFIN. I see.

Mr. RANDOLPH. I do not think the Governor has contacted me in reference to the matter.

Mr. GRIFFIN. I am even more grateful to the Senator from West Virginia because I had been under the impression that that was the case.

Mr. RANDOLPH. I understand that the Governor's staff was in communication on this matter but that he did not take a position either way. I am willing, although reluctantly, to take the amendment to conference and then we will have a chance to look at it again. With that understanding I am agreeable.

Mr. GRIFFIN. I thank the chairman very much.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment was agreed to.

Mr. GRIFFIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1865

(Purpose: Relating to reading services for certain blind persons)

Mr. JAVITS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an unprinted amendment numbered 1865.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 85, line 2, add after the word "subsection" the letter "s".

On page 85, between line 18 and line 19, add the following new subsection:

"(g) The Secretary, subject to the provisions of section 306, may make grants to any State agency designated under section 101, or existing private nonprofit national agencies or organizations—

"(1) to provide reading services to blind persons who are not otherwise eligible for such services through State and Federal programs; and

"(2) to expand the quality and scope of reading services available to blind persons, and to assure to the maximum extent possible, the services provided under this act will meet the reading needs of blind persons attending institutions providing elementary, secondary, or post-secondary education, and will be adequate to assist blind persons to obtain and continue in employment."

Mr. JAVITS. Mr. President, I am offering to S. 2600 an amendment to section 304 of title III of the Rehabilitation Act of 1973. This amendment will improve and strengthen the Rehabilitation Act by authorizing the Rehabilitation Services Administration to provide grants to private nonprofit organizations which offer reader services to the blind to assist them in the improvement of such services.

Thus, these providers of essential services to visually impaired Americans will be able to meet a vastly increased demand for such services, a demand which has been generated largely through the landmark nondiscrimination provisions, sections 503 and 504, of the Rehabilitation Act.

I am particularly concerned that, to the greatest extent possible, the Government utilize the excellent services of existing private, nonprofit organizations with proven records of providing essential reading services to the blind.

One such organization is Recording for the Blind, incorporated in the State of New York. Recording for the Blind was born to meet a need created by a predecessor to the Rehabilitation Act of 1973, the GI bill of rights. RFB offered more than 1,400 blind veterans of World War II the right to equal education at the college level. It opened the door to higher education to an unprecedented number of blind students. RFB was created to provide them with the educational reading they needed in college.

Today RFB continues to provide a unique service exceptionally well. RFB's purpose continues to be to provide free taped educational books to blind and print-handicapped students and professionals. Last year, RFB provided 12,650 borrowers in all 50 States with nearly 90,000 taped books. Since its founding, RFB has served 52,000 men and women. RFB produces its books through a corps of 4,800 trained volunteer readers in 29 studios in 15 States. Last year these volunteers gave 350,000 hours of their time to recording 4,476 new titles. RFB's master tape library now contains 42,000 titles. Today RFB is truly a national educational asset upon which thousands of American men and women are dependent for their education. There is no other comparable organization in the world.

Due largely to section 504 of the Rehabilitation Act an even larger number of young blind and print-handicapped persons enter the educational and economic mainstream. For this, they need reading tools. In the year section 504 was passed, RFB provided 10,146 users with 64,275 free books for educational purposes. This year it will supply more than 13,000 users with 100,000 books. That means 28 percent of the users required 54 percent more books.

Therefore, RFB is presently strapped to meet the demands placed on it. It is for this reason that I propose an amendment to the act so that organizations like RFB can receive Government support in expanding the quality and scope of their reading services available to blind and print-handicapped students and professionals.

It is important that the Senate be aware how Recording for the Blind relates to the other two large national programs providing reading services for the blind and print-handicapped. The National Library for the Blind and Physically Handicapped of the Library of Congress (the talking books program) and the Printing House for the Blind are both funded by annual appropriations from Congress and pay the people who produce their recorded, braille, and large-print books. RFB cooperates closely with, but does not duplicate the work of, these organizations: The talking book program provides first-rate recreational reading; RFB's books are aimed at education only. RFB raises its funds mostly from private sources and uses volunteers to produce its recorded books. It seems obvious to me that Congress should encourage such private nonprofit organizations with proven records of fulfilling the goals of sections 503 and 504 of the Rehabilitation Act.

Let me mention a statistic I find remarkable—the estimated present dollar value of RFB's taped library of 42,000 titles. This figure is reached by multiplying the hourly estimated dollar value of a volunteer's time ($12.50) times the 125 hours volunteers take to produce an average book times the 42,000 titles in RFB's library. This figure comes to a staggering $65,625,000 and represents the services donated by RFB's volunteers. It also represents what it would cost to duplicate RFB's library, if indeed it initiative—RFB's volunteers, many of whom hold graduate degrees, are capable of reading in any discipline or language no matter how difficult—could occur only in America.

Mr. President, I ask unanimous consent to insert into the RECORD a summary of the service improvements RFB could accomplish with modest Federal assistance which this amendment would authorize.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY

1. Accelerated Book-Processing System:

Speed is essential to enable students to keep current with their assignments. Most are in the regular school and university systems. At peak times at the opening of semesters, book requests pour into RFB at the rate of more than two per minute, or better than a thousand a day. Yet, current production capability is only 500 per day. The investment in a medium-sized computer and a braille printer for labels will enable RFB to reduce the turnaround time to five working days.

The installation of a WATS line will permit students to telephone orders at no cost.

2. Full Library Reference Service:

RFB's catalog currently lists books by author and title under the general discipline, i.e., biology, physics, etc. A computerized catalog will enable RFB to offer blind students far more bibliographical information by identifying to them all the titles of books available on any subject about which they inquire. Such full library reference service—not now available to the blind—would be of enormous value to students assigned to independent papers or research.

3. Creation of a Standby Library:

At present, RFB waits until an order is received from a student before making duplicates of master tapes. The computer already mentioned would make it possible to identify the titles of books for which demand can be anticipated on the basis of past experience. The slack periods could then be used to duplicate and stockpile such books against demand.

4. Balanced Production Capability:

The duplication of the Master Tape Library is now more than 80 percent complete. (This is a precaution against its destruction by fire, an event which would be disastrous for those students so dependent on RFB.) When finished, it can be transformed from dead storage to an active back-up production facility by adding personnel and duplicating equipment. During peak periods it would relieve pressure on headquarters production.

5. Demographic Analysis:

RFB's files contain much valuable information on the 52,000 past and present users, but processing this information manually is prohibitively time consuming and costly. Computerized data retrieval will enable RFB to analyze and anticipate demographic or academic trends among the blind. It can provide the answers to such questions as: What fields of study are attracting blind and print-handicapped students? What sort of specialized readers will be required for these fields? How is educational direction matching employment goals and placement patterns?

6. Building Renovation:

Each of the above projects will require some modification to the RFB headquarters building.

Mr. JAVITS. No authority exists in the act as it now stands for helping RFB—or similar organizations—to bring about improvements in their services, like those I have just described for you, through a one-shot investment of capital. My amendment will rectify this.

I am firmly convinced that helping organizations like RFB to improve themselves is a cost efficient and practical course to follow. If RFB did not exist as a private, not-for-profit organization to provide the texts to educate the blind, the Government would have to provide these texts—and at a greatly larger cost to the taxpayers. RFB is very cost efficient, largely because of the millions of dollars of time given free by its 4,800 volunteers. For every dollar donated to RFB, the volunteers donate $2 in time. Through this amendment, Congress can help to assure that this service—free to its users and very inexpensive to our taxpayers—continues and improves.

Mr. President, the amendment proposes to give the Secretary authority to make grants to existing private nonprofit agencies or national organizations, to better provide reading services to blind persons. That is the essence of the amendment.

There is a great demand for such services, largely generated through the landmark title V provisions of the Rehabilitation Act, which have now been put into effect under regulations of HEW.

One such organization, about which I know a great deal, is Recording for the Blind, which specializes in this particular service.

A tremendous amount is being done not only in educational fields but fields of the economy by means of education for the purpose of equipping the blind to do better in earning their own living and in self-maintenance.

The Library of Congress, for example, maintains the National Library for the Blind and the Physically Handicapped. The Printing House for the Blind, which prints in braille, is funded both by annual appropriations from Congress. The agency which I have described, Recording for the Blind, is not

so funded, but cooperates closely with these programs.

Mr. President, this represents a unique panoply of services.

No authority exists in the law as it stands for helping Recording for the Blind and similar organizations.

I hope very much the managers of the bill who, I understand, are sympathetic to this amendment, will agree that the authority should be granted to the Secretary to give such assistance. There are 4,800 volunteers who function in Recording for the Blind and, therefore, the leverage which aid of this kind will produce is enormous because these services are free as far as the blind are concerned.

Under all those circumstances, I hope very much the managers will see fit to accept the amendment.

Mr. RANDOLPH. Mr. President, the amendment offered by the knowledgeable Senator from New York (Mr. JAVITS) is a further evidence of his understanding of the problems of the handicapped—in this instance, the problems of the blind.

Mr. RANDOLPH. I think you used the term that it is a unique approach, and it is certainly a practical approach, because I think those persons who are blind, who are attending institutions, need this assistance which they do not have at the present time.

Your amendment would encourage an expansion of the scope of the reading services for the blind within our college population; is that correct?

Mr. JAVITS. That is correct.

Mr. RANDOLPH. I am fully in accord.

I would ask my colleague, Senator STAFFORD, to express himself with reference to the amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. I thank the Chair.

I would say to my distinguished friend from New York, Senator JAVITS, that, as always, he has added to our legislation. I think this is a very constructive amendment, and I join with the chairman of the subcommittee and the manager of the bill, Senator RANDOLPH, in urging our colleagues in the Senate to accept the amendment.

Mr. JAVITS. I thank my colleagues very much, and I deeply appreciate their assistance, and am glad they feel it is a constructive amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3342.

The PRESIDING OFFICER. A quorum call is in progress.

Mr. ROBERT C. BYRD. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

STANDING BEAR LAKE

Mr. ROBERT C. BYRD. Mr. President, I believe that S. 3342 is at the desk; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3342) to name a lake which has been completed as part of the Papillion Creek basin project as the "Standing Bear Lake".

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

UP AMENDMENT NO. 1866

Mr. CURTIS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. CURTIS) proposes an unprinted amendment numbered 1866.

Mr. CURTIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 3, insert the following: an "(a)" after the word "That" and by inserting after line 10 a new subsection (b) as follows:

"(b) The lake known as the Irvington Lake, which has been completed on site 11 (as described in House Document Numbered 349, Ninetieth Congress) of the Papillion Creek basin project authorized under the heading Missouri River basin in section 203 of the Flood Control Act of 1970 (82 Stat. 743), shall, as of September 10, 1982, be known and designated as the "Glenn Cunningham Lake". Any reference in any law, map, regulation, document, record, or other paper of the United States to such lake shall be held to be a reference to the Glenn Cunningham Lake after September 10, 1982.".

Mr. CURTIS. Mr. President, this amendment would name what is now known as Irvington Lake in the Papillon Creek Basin in Nebraska in honor of former Congressman Glenn Cunningham. This change would take place, under the amendment, on September 10, 1982, the date when Representative Cunningham reaches the age of 70.

The Committee on Environment and Public Works, which reported S. 3342, has a committee rule that projects can be named for living persons only if they are former Presidents or Vice Presidents or if they are former Members of Congress who have reached the age of 70.

This amendment conforms with that rule, and I am informed that the committee supports this amendment in the form it is now written.

Mr. President, let me also take this occasion to express my profound thanks to the distinguished majority leader (Mr. ROBERT C. BYRD) for his help in allowing us to reconsider this matter in this manner. I also wish to express my thanks to the distinguished chairman of the committee, and I move the adoption of the amendment.

The PRESIDING OFFICER. Does the Senator yield back the remainder of his time? There is a 30 minute time limitation pending on this amendment.

Mr. CURTIS. Yes, I yield back the remainder of my time.

Mr. RANDOLPH. Mr. President, we are in full accord with the action being taken on this proposal on the naming of this project. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Nebraska.

The amendment (UP No. 1866) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 3342) was passed, as follows:

S. 3342

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a) the lake known as the Military Lake, which has been completed on site 16 (as described in House Document Numbered 349, Ninetieth Congress) of such Papillion Creek basin project, shall hereafter be known and designated as the "Standing Bear Lake". Any reference in any law, map, regulation, document, record, or other paper of the United States shall be held to be a reference to the Standing Bear Lake.

"(b) The lake known as the Irvington Lake, which has been completed on site 11 (as described in House Document Numbered 349, Ninetieth Congress) of the Papillion Creek basin project authorized under the heading Missouri River basin in section 203 of the Flood Control Act of 1970 (82 Stat. 743), shall, as of September 10, 1982, be known and designated as the "Glenn Cunningham Lake". Any reference in any law, map, regulation, document, record, or other paper of the United States to such lake shall be held to be a reference to the Glenn Cunningham Lake after September 10, 1982.".

Mr. CURTIS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. What is the pleasure of the Senate?

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MOYNIHAN). Without objection, it is so ordered.

REHABILITATION, COMPREHENSIVE SERVICES, AND DEVELOPMENTAL DISABILITIES AMENDMENTS OF 1978

The Senate continued with the consideration of the bill.

UP AMENDMENT NO. 1867

(Purpose: To make technical corrections)

Mr. RANDOLPH. Mr. President, I send technical amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH) proposes technical amendments, unprinted amendment numbered 1867.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 70, line 15, strike out "Twenty" and insert in lieu thereof "Not less than twenty".

On page 71, line 4, after "personnel" insert a comma and the following: "to the maximum extent feasible,".

On page 73, line 25, insert a comma after "grantee".

On page 74, line 1, strike out "which is" and insert "who is or was".

On page 75, line 3, strike out "a third" and insert "one".

On page 75, line 4, strike out the comma and insert a period.

On page 75, line 5, strike out "Who" and insert "The person selected by the State agency and the individual".

On page 75, strike out the matter between lines 19 and 20.

On page 75, between lines 21 and 22, insert the following:

"Sec. 105. Procedural safeguards.".

On page 76, line 5, immediately after "amended" insert "(1) by striking out '(1)' and '(2)' and inserting '(A)' and '(B)', respectively, (2)".

On page 76, line 6, insert immediately after "designation" a comma and "(3)".

On page 79, line 20, insert a comma after "Rehabilitation".

On page 111, line 16, strike out "exclusively".

On page 133, line 2, strike out "13(b)" and insert in lieu thereof "133(b)".

On page 158, strike out line 18.

Mr. RANDOLPH. Mr. President, these are purely technical corrections. I move the adoption of the amendment.

Mr. STAFFORD. Mr. President, I join Senator RANDOLPH in urging adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS, 1979—CONFERENCE REPORT

Mr. PROXMIRE. Mr. President, I submit a report of the committee of conference on H.R. 12936 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12936) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 14, 1978.)

Mr. PROXMIRE. Mr. President, the report now before us sets forth the decisions of the House and Senate conferees on fiscal year 1979 funding for the Department of Housing and Urban Development, the Veterans' Administration, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, and the Consumer Product Safety Commission, as well as a number of other smaller agencies. The bill the conferees are reporting on, H.R. 12936, also covers the general revenue sharing program administered by the Department of the Treasury.

The pending conference report recommends that the Congress provide a total of $67,911,419,000 in new budget authority in fiscal year 1979 for these various Departments and agencies. The recommended amount is $7,233,296,000 less than the Congress provided in fiscal year 1978, due in large part to an estimated carryover of $6,400,000,000 in assisted housing funds from the current fiscal year, a reduction of $1,000,000,000 in new borrowing authority for the Government National Mortgage Association (Ginnie Mae), and a delay in the authorization for an antirecession financial assistance program that we appropriated $1,400,000,000 for in fiscal year 1978.

More importantly, the conferees have agreed on a figure that is $1,606,115,000 below the administration's budget estimate although the recommendations contained in the conference report would add $254,795,000 to the funding contained in H.R. 12936 as it passed the Senate. I should quickly add that $1,000,000,000 of the recommended budget cut is somewhat illusory since it actually results from a technical adjustment that requires the administration to use recaptured, rather than new, budget authority.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Almost half of the funding recommended in the report is for the Department of Housing and Urban Development—$31,957,925,000 to be exact—and the great bulk of this support is for assisted housing. The conferees have proposed a $24,395,848,000 assisted housing program in fiscal year 1979. Of course this figure represents the maximum Federal commitment under contracts of up to 40 years in length. If we were to express this commitment in terms of maximum obligations over a period of 1 year, the total would be $1,322,297,000.

At the same time we must recognize that in addition to providing HUD with the authority to enter into these new contracts, we are appropriating the liquidating cash HUD needs to honor commitments made under authority provided by the Congress in past years. As contract commitments expand, this funding requirement escalates. It will increase by $78,000,000 in fiscal year 1979 to a total of $4,460,000,000—a cut of $3,000,000 in the House-approved amount due to the elimination of special shopping subsidies for section 8 tenants who choose to remain in their present location.

In any event, the new budget authority the conferees are recommending for the section 8 and conventional public housing programs today would result in a cut of approximately 9,000 subsidized housing units, both new and existing, below the number that could have been supported with the administration's budget request. The figure we are recommending represents almost an exact split between the House and Senate figures—$255,102,000 below the House and $255,103,000 above the Senate.

The House conferees agreed to accept a Senate set-aside of $50,000,000 in annual contract authority for public housing modernization. This is a significant increase over the administration's $37,500,000 budget request, and is a tribute to Senator BROOKE's efforts on behalf of public housing. The conferees also agreed to strike language added by the Senate which would maintain public housing set-asides from past years. This deletion will give the Department more flexibility in the use of assisted housing funds.

The conferees also agreed to fund a new program to provide congregate services for elderly tenants living in subsidized housing units. Although no funds for this program were included in the House version of H.R. 12936, the $10,000,000 agreed upon by the conferees—a cut of $10,000,000 in the amount recommended by the Senate—should permit the initiation of a congregate housing services program on a pilot basis.

The other significant change in the HUD portion of the bill, as recommended by the conference committee, was the provision of $1,000,000,000 in special stand-by mortgage purchase assistance

authority to be used only in the event of a housing recession. The House had provided no funds for this program and the bill as passed by the Senate included $4,000,000,000 for this emergency mortgage purchase assistance account.

The conferees made a number of relatively minor recommendations for HUD programs, including the appropriation of the full $400,000,000 budgeted for urban development action grants, a slight reduction in the budget request for the rehabilitation loan program to $230,000,000, which would allow the program to triple next year, and the provision of $53,000,000 for section 701 planning grants. Other compromises included a proposed $85,000,000 for flood insurance, $9,000,000 for housing counseling assistance with $1,000,000 of the total to be earmarked for prepurchase counseling and $57,500,000 for research and technology.

Finally the conferees agreed to a budget of $524,065,000 for HUD's salaries and expenses instead of $521,808,000 as proposed by the House and $526,106,000 as proposed by the Senate. Along with this dollar cut the conferees agreed to deny 150 positions requested by the administration with the vast bulk of this reduction—115 positions—taking place in the community planning and development area. These particular slots are new positions, by the way, and our action will not result in a reduction in community development staff below current levels. In fact community planning and development staffing is scheduled to increase by 298 positions despite the reduction recommended by the conferees.

INDEPENDENT AGENCIES

The committee of conference resolved a number of differences between the two Houses regarding the programs of the Environmental Protection Agency.

The conferees agreed on the Senate figure of $328,528,000 for research and development but recommended a number of adjustments within the total amount. The conferees have suggested the following changes in the administration's budget request:

Minus $2,000,000 for contractual efforts;

Minus $4,000,000 for monitoring and technical support;

Minus $6,000,000 for anticipatory research with $1,100,000 to be earmarked for groundwater research on the Gerber-Wellington aquifer in Oklahoma;

Plus $8,000,000 for research on wastewater reuse for potable and/or agricultural research and demonstrations;

Plus $2,500,000 for integrated pest management;

Plus $2,400,000 for Chesapeake bay research;

Plus $1,500,000 for Great Lakes research;

Plus $1,000,000 for microwave radiation research;

Plus $400,000 for mosquito control; and

Plus $600,000 for aquatic weed control.

The conferees settled on a total budget of $692,915,000 for EPA abatement and control programs as compared with a House recommendation of $664,115,000 and a Senate-approved figure of $710,940,000. Again changes were recommended in the projected budgets of a large number of programs. The changes in the administration's request as proposed by the conferees included:

Minus $18,000,000 for areawide waste treatment planning under section 208 of the Federal Water Pollution Control Act.

Minus $3,000,000 for the interagency agreement with the U.S. Army Corps of Engineers;

Minus $2,000,000 for personnel costs;

Plus $33,000,000 for solid waste and air quality maintenance planning with up to $4,000,000 of the total to be used on a matching basis to abate chemical contamination in the Love Canal area of Niagara Falls, New York;

Plus $5,000,000 for State air grants;

Plus $3,000,000 for the Great Lakes program;

Plus $2,500,000 for Chesapeake Bay activities;

Plus $2,500,000 for marine secondary waiver activities;

Plus $2,300,000 for the section 404 dredge and fill program;

Plus $1,500,000 for academic training;

Plus $611,000 for environmental impact studies of the Flathead River Basin and the Poplar River, both in Montana;

Plus $300,000 for certification review under the mobile source emission certification and testing program; and

Plus $275,000 for an in-place toxic pollutants study involving the Saginaw and Pine Rivers in Michigan.

I am sure my colleagues will want to know that a Senate cut of $10,000,000 in the proposed budget for State water grants under section 106 of the Federal Water Pollution Control Act, as amended, was restored in conference. Consequently State water pollution control agencies will continue to be funded at current year levels.

Of course the waste treatment construction grant program is a matter of great interest to all Senators, since it provides substantial amounts of money to all States. Although the conferees settled on a recommended appropriation of $4,200,000,000 for the program in fiscal year 1979—$50,000,000 below the amount approved by the Senate—the Senate's decision to require a one-half of 1 percent minimum allocation to each State was endorsed in conference.

The conferees had a number of difficult issues to tackle in handling the budget for the National Aeronautics and Space Administration. Although the Senate receded to the House in approving a total of $3,292,200,000 for NASA's research and development efforts, the Senate position was endorsed in a number of instances. For example the Senate provided $20,500,000 for a teleoperator retrieval system to reach Skylab before it falls to Earth. Although the House had deleted these funds from the budget the conferees agreed to their restoration. The conferees also agreed that funds would not be taken from the Solar Polar, Galileo, and space telescope missions to form a shuttle reserve.

The conferees recommended the following changes in the administration's budget request for research and development spending:

Plus $4,000,000 for a fifth shuttle orbiter;

Plus $2,000,000 for the development of a 25 kilowatt power module to support longer duration shuttle flights;

Plus, $2,000,000 for a solar satellite power generating system;

Plus $500,000 for Stereosat;

Minus $4,700,000 for lunar sample analysis;

Minus $5,000,000 for expendable launch vehicles;

Minus $3,000,000 for development, test and mission operations;

Minus $1,000,000 for tracking and data acquisition;

Minus $2,000,000 for the search for extraterrestrial life;

Minus $1,200,000 for procurement of a second spacelab; and a general reduction of $4,500,000 with report language insuring that none of this reduction is applied to Congressional initiatives.

In dealing with NASA's budget the conferees also proposed the restoration of $12,810,000 deleted from the construction account by the House. The funds are to be used to proceed with the construction of a second shuttle launch pad at Cape Kennedy. Finally the conferees restored $3,500,000 of the $7,000,000 cut by the House from the budget for NASA's program support activities.

The National Science Foundation did well in conference. The conferees agreed to restore $20,600,000 of the total cut by the House from the NSF budget for research and related activities. The recommended total for this account was $827,000,000—a mere $9,400,000 below the Senate-approved amount. The conferees also agreed to recommend a $55,500,000 limitation on applied science and research applications, (ASRA), compared with a House limitation of $48,100,000, and to retain limits placed by the House on a number of component ASRA programs.

The conferees recommended $80,000,000 for science education and agreed that this increase of $2,400,000 over the budget should be applied to undergraduate research participation, student originated studies and the instructional scientific equipment program.

Finally the conferees provided $4,000,000 for the Foundation's foreign currency program and agreed to Senate language putting a $47,500 lid on the salaries of investigators with an amendment giving the director of the Foundation the discretion to waive this ceiling in special cases.

The conferees recommended a total VA budget of $18,355, 691,000; $20,044,000 above the budget estimate. This total includes some very significant increases in medical care programs while endorsing a Senate reduction of $49,300,000 in the GI bill account, reflecting a tightening up of the education loan program. In the medical care area the conferees have suggested an add-on of $32,300,000 for 1,500 additional staff years to keep open existing hospital beds; a budget increase of $18,000,000 for 700 additional staff years to meet anticipated increases in the VA's outpatient caseload; and an additional $4,375,000 for staffing new medical facilities.

A number of unbudgeted medical facility construction projects were approved by the conferees including the following:

A clinical support building at Mountain Home, Tenn. ($9,809,000).

A 208 bed domiciliary at Bath, N.Y. ($9,402,000).

A 120 bed nursing home care facility at Livermore, Calif. ($6,351,000).

A 120 bed nursing home care facility at Wilkes-Barre, Pa. ($5,230,000).

A clinical laboratory, radiology suite and dental clinic at Cincinnati, Ohio ($2,746,000).

A 120 bed nursing home care facility at Temple, Tex. ($4,586,000).

An ambulatory care addition and space renovation at Dallas, Tex. ($6,544,000).

Other recommended increases in the VA's medical care programs included a boost of $10,180,000 in the medical and prosthetic research budget for a total appropriation of $122,847,000 and a total of $10,000,000 for the construction of State extended care facilities as compared with a budget request of $5,000,000.

The conferees resolved a number of differences between the two Houses involving budgets for smaller, yet nonetheless important, agencies. The committee of conference has recommended a budget of $7,045,000 for the Selective Service System—$2,455,000 below the budget estimate. The conferees have concurred with the Senate in proposing a $3,026,000 budget for the Council on Environmental Quality and a $1,146,000 budget for the Consumer Information Center. The National Institute of Building Sciences would receive $750,000 in Federal support if the conference agreement is approved. Finally the conferees have concurred in a limitation on the Federal Home Loan Bank Board's nonadministrative expenses of $29,895,000 in the hope and expectation that the use of State bank examiners will result in a reduction in Bank Board costs.

The conferees have accepted two Senate additions to the general provisions contained in Title IV of the bill. The first addition, section 407, would require cost sharing by those who receive Federal research support through the bill to the extent that these recipients have an interest in the sponsored research. The second provision added by the Senate places a $47,500 ceiling on the salary of certain consultants.

Mr. President, this conference report, in my estimation, represents a fair accommodation of the conflicting interests of the two Houses. I ask unanimous consent that a tabulation of the results of the conference be printed in the RECORD at this point.

There being no objection, the tabulation was ordered to be printed in the RECORD, as follows:

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY

	New budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
TITLE I									
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Annual contributions for assisted housing (contract authority)	$31,483,563,000	$24,650,950,000	$24,650,950,000	$24,140,745,000	$24,395,848,000	−$7,087,715,000	−$255,102,000	−$255,102,000	+$255,103,000
(increased limitation for annual contract authority)	(1,184,295,000)	(1,334,950,000)	(1,334,950,000)	(1,310,424,000)	(1,322,297,000)	(+138,002,000)	(−12,653,000)	(−12,653,000)	(+11,873,000)
Rent Supplement (contract authority)	24,300,000					−24,300,000			
Housing payments (appropriation to liquidate contract authority)	(4,382,000,000)	(4,503,000,000)	(4,463,000,000)	(4,460,000,000)	(4,460,000,000)	(+78,000,000)	(−43,000,000)	(−3,000,000)	
Housing for the elderly or handicapped (authority to borrow)	750,000,000	800,000,000	800,000,000	800,000,000	800,000,000	+50,000,000			
Congregate services program				20,000,000	10,000,000	+10,000,000	+10,000,000	+10,000,000	−10,000,000
Payments for operation of low-income housing projects	685,000,000	729,000,000	723,000,000	729,000,000	727,000,000	+42,000,000	−2,000,000	+4,000,000	−2,000,000
Troubled projects operating subsidy		74,000,000	74,000,000	74,000,000	74,000,000	+74,000,000			
Federal Housing Administration Fund	15,000,000	352,290,000	352,290,000	352,290,000	352,290,000	+337,290,000			
Government National Mortgage Association									
Emergency mortgage purchase assistance (recapture of repayments)				(4,000,000,000)	(1,000,000,000)	(+1,000,000,000)	(+1,000,000,000)	(+1,000,000,000)	(−3,000,000,000)
Special assistance functions: (authority to borrow)		1,500,000,000	500,000,000	500,000,000	500,000,000	+500,000,000	−1,000,000,000		
(recapture of repayments)	(2,000,000,000)	(500,000,000)	(1,500,000,000)	(1,500,000,000)	(1,500,000,000)	(−500,000,000)	(+1,000,000,000)		
Payment of participation sales insufficiencies	16,587,000	20,477,000	20,477,000	20,477,000	20,477,000	+3,890,000			
Total, Housing Programs	32,974,450,000	28,126,717,000	27,120,717,000	26,636,512,000	26,879,615,000	−6,094,835,000	−1,247,102,000	−241,102,000	+243,103,000
Community Planning and Development									
Community development grants	3,600,000,000	3,750,000,000	3,750,000,000	3,750,000,000	3,750,000,000	+150,000,000			
Urban development action grants	400,000,000	400,000,000	400,000,000	380,000,000	400,000,000				+20,000,000
Comprehensive planning grants	57,000,000	57,000,000	50,000,000	57,000,000	53,000,000	−4,000,000	−4,000,000	+3,000,000	−4,000,000
Rehabilitation loan fund		245,000,000	245,000,000	230,000,000	230,000,000	+230,000,000	−15,000,000	−15,000,000	
Urban homesteading		20,000,000	20,000,000	20,000,000	20,000,000	+20,000,000			
Total, Community Planning and Development	4,057,000,000	4,472,000,000	4,465,000,000	4,437,000,000	4,453,000,000	+396,000,000	−19,000,000	−12,000,000	+16,000,000
Federal Insurance Administration									
Flood insurance	91,000,000	114,000,000	90,000,000	85,000,000	85,000,000	−6,000,000	−29,000,000	−5,000,000	
Neighborhoods, Voluntary Associations and Consumer Protection									
Housing counseling assistance	5,000,000	8,000,000	10,000,000	8,000,000	9,000,000	+4,000,000	1,000,000	−1,000,000	+1,000,000

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY—Continued

	New budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
Policy Development and Research									
Research and technology	52,000,000	62,000,000	56,000,000	59,000,000	57,500,000	+5,500,000	−4,500,000	+1,500,000	−1,500,000
Management and Administration									
Salaries and expenses, Department of Housing and Urban Development	237,534,000	279,570,000	271,553,000	275,851,000	273,810,000	+36,276,000	−5,760,000	+2,257,000	−2,041,000
(by transfer, FHA funds)	(239,929,000)	(250,255,000)	(250,255,000)	(250,255,000)	(250,255,000)	(+10,326,000)			
Total, Department of Housing and Urban Development	37,416,984,000	33,062,287,000	32,013,270,000	31,501,363,000	31,757,925,000	−5,659,059,000	−1,304,362,000	−255,345,000	+256,562,000
FUNDS APPROPRIATED TO THE PRESIDENT									
Federal Disaster Assistance Administration									
Disaster relief	$450,000,000	$200,000,000	$200,000,000	$200,000,000	$200,000,000	−$250,000,000			
Total, title I, Department of Housing and Urban Development:									
New budget (obligational) authority	37,866,984,000	33,262,287,000	32,213,270,000	31,701,363,000	31,957,925,000	−5,909,059,000	−$1,304,362,000	−$255,345,000	+$256,562,000
Appropriations	5,609,121,000	6,311,337,000	6,262,320,000	6,260,618,000	6,262,077,000	+652,956,000	−49,260,000	−243,000	+1,459,000
Contract authority	31,507,863,000	24,650,950,000	24,650,950,000	24,140,745,000	24,395,848,000	−7,112,015,000	−255,102,000	−255,102,000	+255,103,000
Authority to borrow	750,000,000	2,300,000,000	1,300,000,000	1,300,000,000	1,300,000,000	+550,000,000	−1,000,000,000		
(appropriation to liquidate contract authority)	(4,382,000,000)	(4,503,000,000)	(4,463,000,000)	(4,460,000,000)	(4,460,000,000)	(+78,000,000)	(−43,000,000)	(−3,000,000)	
(increased limitation for annual contract authority)	(1,184,295,000)	(1,334,950,000)	(1,334,950,000)	(1,310,424,000)	(1,322,297,000)	(+138,002,000)	(−12,653,000)	(−12,653,000)	(+11,873,000)
(limitation on corporate funds to be expended)	(239,929,000)	(250,255,000)	(250,255,000)	(250,255,000)	(250,255,000)	+(10,326,000)			
TITLE II INDEPENDENT AGENCIES									
AMERICAN BATTLE MONUMENTS COMMISSION									
Salaries and expenses	6,463,000	6,240,000	6,240,000	6,240,000	6,240,000	−223,000			
CONSUMER PRODUCT SAFETY COMMISSION									
Salaries and expenses	40,461,000	41,463,000	40,000,000	40,000,000	40,000,000	−461,000	−1,463,000		
DEPARTMENT OF DEFENSE—CIVIL									
Cemeterial Expenses, Army									
Salaries and expenses	5,000,000	5,200,000	5,100,000	5,100,000	5,100,000	+100,000	−100,000		
ENVIRONMENTAL PROTECTION AGENCY									
Agency and regional management	76,046,000	84,185,000	84,185,000	84,185,000	84,185,000	+8,139,000			
Research and development	319,547,000	324,128,000	328,028,000	328,528,000	328,528,000	+8,981,000	+4,400,000	+500,000	
Abatement and control	526,173,000	664,929,000	664,115,000	710,940,000	692,915,000	+166,742,000	+27,986,000	+28,800,000	−18,025,000
Enforcement	72,837,000	95,555,000	94,555,000	94,755,000	94,755,000	+21,918,000	−800,000	+200,000	
Buildings and facilities		2,563,000	1,063,000	1,063,000	1,063,000	+1,063,000	−1,500,000		
Construction grants:									
Appropriation	4,500,000,000	4,500,000,000	4,200,000,000	4,250,000,000	4,200,000,000	−300,000,000	−300,000,000		−50,000,000
(appropriation to liquidate contract authority)	(5,000,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(−3,600,000,000)			
Scientific activities overseas (special foreign currency program)	4,000,000	4,000,000	2,500,000	2,500,000	2,500,000	−1,500,000	−1,500,000		
Total, Environmental Protection Agency	5,498,603,000	5,675,360,000	5,374,446,000	5,471,971,000	5,403,946,000	−94,657,000	−271,414,000	+29,500,000	−68,025,000
EXECUTIVE OFFICE OF THE PRESIDENT									
Council on Environmental Quality and Office of Environmental Quality	2,854,000	3,126,000	2,926,000	3,026,000	3,026,000	+172,000	−100,000	+100,000	
Office of Science and Technology Policy	2,800,000	2,621,000	2,476,000	2,476,000	2,476,000	−324,000	−145,000		
Total, Executive Office of the President	5,654,000	5,747,000	5,402,000	5,502,000	5,502,000	−152,000	−245,000	+100,000	
GENERAL SERVICES ADMINISTRATION									
Consumer Information Center	4,700,000	1,186,000	1,166,000	1,146,000	1,146,000	−3,554,000	−40,000	−20,000	
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE									
Office of Consumer Affairs	1,800,000	1,737,000	1,700,000	1,700,000	1,700,000	−100,000	−37,000		

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY—Continued

	New budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION									
Research and development	$3,013,000,000	$3,305,100,000	$3,292,200,000	$3,290,700,000	$3,292,200,000	+$279,200,000	−$12,900,000	----------	+$1,500,000
Construction of facilities	160,940,000	152,500,000	134,690,000	148,500,000	147,500,000	−13,440,000	−5,000,000	+$12,810,000	−1,000,000
Research and program management	889,761,000	914,000,000	907,000,000	914,000,000	910,500,000	+20,739,000	−3,500,000	+3,500,000	−3,500,000
Total, National Aeronautics and Space Administration	4,063,701,000	4,371,600,000	4,333,890,000	4,353,200,000	4,350,200,000	+286,499,000	−21,400,000	+16,310,000	−3,000,000
NATIONAL COMMISSION ON AIR QUALITY									
Salaries and expenses	500,000	4,000,000	2,000,000	2,000,000	2,000,000	+1,500,000	−2,000,000	----------	----------
NATIONAL INSTITUTE OF BUILDING SCIENCES									
Salaries and expenses	1,000,000	----------	1,000,000	500,000	750,000	−250,000	+750,000	−250,000	+250,000
NATIONAL SCIENCE FOUNDATION									
Research and related activities	785,050,000	850,400,000	806,400,000	836,400,000	827,000,000	+41,950,000	−23,400,000	+20,600,000	−9,400,000
Science education activities	73,200,000	77,600,000	82,600,000	77,600,000	80,000,000	+6,800,000	+2,400,000	−2,600,000	+2,400,000
Scientific activities overseas (special foreign currency program)	4,900,000	6,000,000	4,900,000	3,000,000	4,000,000	−900,000	−2,000,000	−900,000	+1,000,000
Total, National Science Foundation	863,150,000	934,000,000	893,900,000	917,000,000	911,000,000	+47,850,000	−23,000,000	+17,100,000	−6,000,000
SELECTIVE SERVICE SYSTEM									
Salaries and expenses	6,633,000	9,500,000	7,045,000	9,500,000	7,045,000	+412,000	−2,455,000	----------	−2,455,000
DEPARTMENT OF THE TREASURY									
Payments to State and local government fiscal assistance trust fund	6,854,924,000	6,854,924,000	6,854,924,000	6,854,924,000	6,854,924,000	----------	----------	----------	----------
Antirecession financial assistance fund	1,400,000,000	(4)	----------	----------	----------	−1,400,000,000	----------	----------	----------
Office of Revenue Sharing, salaries and expenses	7,500,000	7,493,000	7,200,000	7,200,000	7,200,000	−300,000	−293,000	----------	----------
New York City seasonal financing fund, administrative expenses	1,150,000	1,150,000	1,050,000	1,050,000	1,050,000	−100,000	−100,000	----------	----------
Total, Department of the Treasury	8,263,574,000	6,863,567,000	6,863,174,000	6,863,174,000	6,863,174,000	−1,400,400,000	−393,000	----------	----------
VETERANS ADMINISTRATION									
Compensation and pensions	9,606,400,000	9,577,300,000	9,577,300,000	9,577,300,000	9,577,300,000	−29,100,000	----------	----------	----------
Readjustment benefits	2,665,225,000	2,193,300,000	2,193,300,000	2,144,000,000	2,144,000,000	−521,225,000	−49,300,000	−49,300,000	----------
Veterans insurance and indemnities	3,465,000	5,750,000	5,750,000	5,750,000	5,750,000	+2,285,000	----------	----------	----------
Medical care	4,924,649,000	5,279,699,000	5,362,618,000	5,299,699,000	5,334,374,000	+409,725,000	+54,675,000	−28,244,000	+34,675,000
Medical and prosthetic research	111,053,000	112,667,000	127,607,000	120,212,000	122,847,000	+11,794,000	+10,180,000	−4,760,000	+2,635,000
Medical administration and miscellaneous operating expenses	43,316,000	47,855,000	47,058,000	47,058,000	47,058,000	+3,742,000	−797,000	----------	----------
General operating expenses	581,850,000	622,074,000	616,258,000	615,670,000	615,964,000	+34,114,000	−6,110,000	−294,000	+294,000
Construction, major projects	393,689,000	295,855,000	348,890,000	330,701,000	365,560,000	−28,129,000	+69,705,000	+16,670,000	+34,859,000
Construction, minor projects	95,234,000	121,147,000	119,297,000	85,401,000	85,401,000	−9,833,000	−35,746,000	−33,896,000	----------
Grants for construction of State extended care facilities	15,000,000	5,000,000	15,000,000	5,000,000	10,000,000	−5,000,000	+5,000,000	−5,000,000	+5,000,000
Assistance for health manpower training institutions	53,411,000	75,000,000	47,437,000	47,437,000	47,437,000	−5,974,000	−27,563,000	----------	----------
Grants to the Republic of the Philippines	1,700,000	----------	----------	----------	----------	−1,700,000	----------	----------	----------
Loan guaranty revolving fund (limitation on obligations)	(575,000,000)	----------	----------	----------	----------	(−575,000,000)	----------	----------	----------
Supply fund	20,000,000	----------	----------	----------	----------	−20,000,000	----------	----------	----------
Total, Veterans Administration	18,514,992,000	18,335,647,000	18,460,515,000	18,278,228,000	18,355,691,000	−159,301,000	+20,044,000	−104,824,000	+77,463,000
Total, title II, Independent Agencies:									
New budget (obligational) authority	37,277,731,000	36,255,247,000	35,995,578,000	35,955,261,000	35,953,494,000	−1,322,737,000	−301,753,000	−42,084,000	−1,767,000
(appropriation to liquidate contract authority)	(5,000,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(1,400,000,000)	(−3,600,000,000)	----------	----------	----------
(limitation on obligations)	(575,000,000)	----------	----------	----------	----------	(−575,000,000)	----------	----------	----------

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY—Continued

	New budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
TITLE III									
CORPORATIONS									
FEDERAL HOME LOAN BANK BOARD									
(limitation on administrative expenses)	($17,367,000)	($18,258,000)	($17,793,000)	($17,793,000)	($17,793,000)	(+$426,000)	(−$465,000)		
(limitation on nonadministrative expenses)	(27,800,000)	(30,290,000)	(30,290,000)	(29,895,000)	(29,895,000)	(+2,095,000)	(−395,000)	(−$395,000)	
Federal Savings and Loan Insurance Corporation: (limitation on administrative expenses)	(899,000)	(960,000)	(940,000)	(940,000)	(940,000)	(+41,000)	(−20,000)		
Total, title III, Corporations	(46,066,000)	(49,508,000)	(49,023,000)	(48,628,000)	(48,628,000)	(+2,562,000)	(−880,000)	(−395,000)	
RECAPITULATION									
Grand total, titles I, II, and III: New budget (obligational) authority	75,144,715,000	69,517,534,000	68,208,848,000	67,656,624,000	67,911,419,000	−7,233,296,000	−1,606,115,000	−297,429,000	+$254,795,000
Appropriations	42,886,852,000	42,566,584,000	42,257,858,000	42,215,879,000	42,215,571,000	−671,781,000	−351,013,000	−42,327,000	−308,000
Contract authority	31,507,863,000	24,650,550,000	24,650,550,000	24,140,745,000	24,395,848,000	−7,112,015,000	−255,102,000	−255,102,000	+255,103,000
Authority to borrow	750,000,000	2,300,000,000	1,300,000,000	1,300,000,000	1,300,000,000	+550,000,000	−1,000,000,000		
(appropriations to liquidate authority)	(9,382,000,000)	(5,903,000,000)	(5,863,000,000)	(5,860,000,000)	(5,860,000,000)	(−3,522,000,000)	(−43,000,000)	(−3,000,000)	
(increased limitation for annual contract authority)	(1,184,295,000)	(1,334,550,000)	(1,334,950,000)	(1,310,424,000)	(1,322,297,000)	(+138,002,000)	(−12,653,000)	(−12,653,000)	(+11,873,000)
(limitation on corporate funds to be expended)	(285,995,000)	(299,763,000)	(299,278,000)	(298,883,000)	(298,883,000)	(+12,888,000)	(−880,000)	(−395,000)	
(limitation on obligations)	(575,000,000)					(−575,000,000)			

● Mr. MUSKIE. I want to begin by complimenting the chairman of the subcommittee for his diligent effort in keeping this conference report within the targets established by the budget process while finding ways to include funds for some badly needed program increases in the environmental area. The bill represents a significant improvement over some of the stark budget years faced by EPA in the recent past. As is usually the case, there are areas that need increases that do not receive additional funds in this conference report.

My interest in environmental protection programs has a long history. I have had to scrutinize that interest carefully under my responsibilities as chairman of the Senate Budget Committee. I have reviewed the items which fund environmental programs in this bill with particular care. They are clearly within the targets established by the budget process, and there is even room for additional increases beyond those made by the conference.

The Environment and Public Works Committee made an intensive effort to identify the needs of the programs under its supervision this year and to cut those requests to the bone in its report to the Senate Budget Committee. It is that report that I have used in assessing the actions taken by the conference.

Five members of the Environment and Public Works Committee appeared together before the Subcommittee on HUD-Independent Agencies of the Senate Appropriations Committee on Thursday, April 27, to reiterate our support for carefully selected increases in the EPA appropriations. The recommendations on April 27 had been cut back slightly from the March 15 report in order to keep it consistent with the first concurrent resolution.

The product of the Environment and Public Works Committee deliberations on the fiscal year 1979 budget was not a "wish list." In writing the March 15 report to the Senate Budget Committee, the Environment and Public Works Committee forced itself to take a serious look at optimum funding levels, competing program needs, and scarce Federal resources. After beginning with a fairly comprehensive statement of program potentials, the committee produced a realistic, but genuinely constrained, estimate of budget requirements for fiscal year 1979. This is the budget process working as it should.

There are a number of pluses in the conference report before the Senate today. There is $25 million in this bill for grants to local governments to carry out the processes that will lead to new control programs in the areas of the country with the worst air pollution problems. This money is badly needed. An additional $29 million is available for the administration to use in either solid waste or air planning. I urge the administrator to use this for air planning. The Clean Air Act Amendments of 1977 authorized $75 million for this program. There is no doubt that the $29 million will accomplish a great deal. Yet, without full funding, States with serious air problems will be severely crippled in providing creative solutions to solve the clean air crisis. I would have preferred that the conference report contain all the funds in the Senate bill.

The increase of $5 million provided for State air control agency grants will bring these grants to a total of $80 million in fiscal year 1979. This will provide funds to State agencies to further implement the Clean Air Act Amendments of 1977. Only 2 years ago, the funding level was approximately $55 million. The Federal Government has gone considerable distance in fulfilling its obligation to assist States in this area.

In the area of solid waste, where the chairman of the full Environment and Public Works Committee (Senator RANDOLF) has worked so diligently, the Conference Committee has approved the President's budget. This includes $15 million for facility planning and feasibility studies—section 408(a)(2) and $11.2 million in program support grants for State and local governments to develop solid waste plans. It would be my hope that the States would use some of these funds to assist small communities. It is unfortunate that funds were not included for section 4009 of the Resource Conservation and Recovery Act, and the rural community program. This would have been useful in assisting with the phaseout of open-burning dumps, which is required under section 4009 and under some State plans for clean air implementation. But the funds available under section 4008 are broad enough to be used for some aspects of this purpose.

The Senate Appropriations bill provided a $50 million increase beyond the President's budget for State and local government air quality and solid waste planning efforts—$35 million more for air quality planning grants under section 175 of the Clean Air Act and $15 million more for solid waste planning grants under section 4008(a)(1) of the Resource Conservation and Recovery Act. Regrettably, the conference bill provides only $29 million extra for these two functions together. This will probably slow the accomplishment of these important and worthwhile goals.

In water pollution, the Senate provided a restoration of some of the cuts made by the House Appropriations Committee in the regional planning programs un-

der section 208 of the Clean Water Act. The House cut $25 million, and the Senate bill restored $14 million of that cut. The conference agreement provides for an $18 million cut from the President's request of $50 million. My preference would have been to see the full cut restored, but I appreciate the efforts of the Senate Committee in restoring a portion of the cut.

I regret the Senate position restoring the funds for the construction grant program, which were cut by the House, was not maintained in conference. Among other pressing needs, there is a need for greater attention to the advanced wastewater treatment program. Eliminating $300 million in funds is not an appropriate way to accomplish that objective. I am disturbed by the language of the report directing the Administrator to review all project proposals with effluent limitations more stringent than secondary treatment. First, it should be stressed that this direction adds nothing to existing law. Such review is already within the Administrator's discretion. Further, it is important to clarify that advanced wastewater treatment projects are still eligible for funding up to the treatment level required by State water quality standards. Also, the provisions of this bill cannot alter the provisions of the Clean Water Act giving States primary administrative responsibilities for making grants under title II of that act.

However, I am pleased to see that $2.5 million has been placed in the bill to review application and conduct analysis relating to ocean outfall applications under section 301(h) of the Clean Water Act of 1977.

America's wetlands have been disappearing at an alarming rate. The $2.5 million and 60 positions added by the Senate Committee and maintained in conference to implement section 404 of the Clean Water Act will be very useful.

In the research and development area, the $8 million cut made by the House Appropriations Committee in anticipatory research would have done substantial damage, particularly to the acid rain program. I appreciate the efforts of the Senate Appropriations Committee in restoring $2 million of those cuts, but the Environment and Public Works Committee recommendations are still far above those established in this conference report.

The administration has requested $4 million in fiscal year 1979 to begin the activities of the National Commission on Air Quality. This body was established in the Clean Air Act Amendments of 1977 which were signed into law August 7 of that year. The Commission will play an important role in evaluating air pollution problems and strategies for clean-up over the next 2 to 3 years.

Unfortunately, the Commission is getting started almost a year after the enactment of the law, and this will necessarily delay the reports due from the Commission. It is necessary to provide the funding to help the Commission begin its activities immediately. The administration requested $4 million and both committees allocated $2 million for this purpose. There may be a need for a supplemental in the future if the Commission does begin moving rapidly to catch up for the time that has been lost.

There are some programs that still need increases in funds, and those increases are not contained in this legislation. Let me briefly touch on some of those.

I am disappointed that there are so few resources available to implement the basic regulatory programs required under the Clean Water Act. The 1977 amendments were signed after the President's budget was completed; therefore, that budget needs to be increased. EPA needs more money and manpower to do an adequate job in producing rigorous and scientifically sound regulations. There is a large effort needed in developing regulations to control the discharge of toxic pollutants, and the Environment and Public Works Committee recommended a $20 million increase in this area. The committee also recommended $30 million for additional money and manpower in abatement, control, and enforcement. This is not contained in this bill.

The statement of Senator CULVER before the Appropriations Subcommittee details a number of increases needed in ecological effects, water quality research, and research in toxic pollutants, radiation, and noise. I will not repeat those requests here, but the funds are needed and are not contained in the legislation.

One issue of particular concern relating to research and development is the proposed transfer of some of EPA's program to the Department of Energy. That action stands contrary to the law that created the Energy Research and Development Administration and which has now become part of the Department of Energy. The transfer is contrary to the congressional intent associated with that legislation. It is contrary to the actions taken by the Senate Environment and Public Works Committee and the Senate Energy Committee this year. I have communicated frequently with the administration on this subject and reiterate once again that the EPA programs must be left intact and cannot be transferred to the Department of Energy. This is the sense of H.R. 11302, the conference bill which was reported to the House and Senate this week. That bill specifies that all funds appropriated in this bill for energy-related pollution control technology shall be spent by EPA.

The House and Senate reports accompanying this appropriation bill contain negative statements regarding the safe drinking water regulations to control organic chemical contaminants. These regulations have been proposed by the Environmental Protection Agency. The Subcommittee on Environmental Pollution held 2 days of oversight hearings on the Safe Drinking Water Act in late July. Those hearings satisfied me that this regulatory program should go forward. The control strategy of using granular activated carbon filtration to control organic chemicals that may produce long-run health effects, such as cancer, seems basically sound. The technology has been used in Europe for many years and has been used in American industrial processes. We will learn ways of improving on the technology as it is adopted, but in most cases, it is better to proceed with the application of the technology than to wait years for small improvements in the technology.

The Environmental Protection Agency is charged, under the Safe Drinking Water Act, with the responsibility of protecting drinking water. The regulations dealing with organic chemical contaminants seem to be a useful step in fulfilling that obligation. Because of the strong interest in this regulation, I have added a supplement to my statement which elaborates the issues and includes the regulations in question.

Mr. President, I am concerned that the Senate committee report on page 35 criticizes EPA for sending out questionnaires to a number of companies, both large and small, for the purpose of receiving financial data. This information-gathering process is provided for under section 308 of the Clean Water Act and is essential to the proper operation of the act. I do not believe that committee's criticism is justified. I am pleased that the conference report omits any reference to this matter.

EPA is required by sections 301 and 304 of the act to promulgate uniform national effluent guidelines for major industrial dischargers. In 1976, the U.S. District Court for the District of Columbia in the case of *NRDC, et al.* v. *Train* ordered the EPA to develop or revise best available technology economically achievable effluent limitations (BAT) for at least 21 major industrial categories covering 65 classes of toxic pollutants.

In order to develop appropriate BAT guidelines, EPA must determine what is "economically achievable." This is done by gathering the necessary financial information from affected industries. Without this information, the guidelines might not adequately reflect the financial capability of a particular industry, and an unfair burden could be placed on that industry. Also, EPA must be able to justify each BAT guideline, and that would be difficult without a complete financial picture of each particular industry.

The agency has taken a number of precautions to see that any information submitted will be kept confidential and has established detailed rules and regulations governing protection of this type of data. In addition, EPA has indicated that industries with many small businesses will not have to produce as much detailed information as that required of larger industries.

Several months ago, the Office of Management and Budget reviewed EPA's requests for information under the Federal Reports Act and officially approved the necessity for this information. There is some question whether OMB approval was needed at all since the financial information was required

by the law and a court decree. OMB's regulations under the Federal Reports Act do not require review under such circumstances.

Based on the mandates of the Clean Water Act, EPA had no choice but to collect financial information from affected industries. I think the record clearly shows that the requests for information were proper and in the best interests of all the covered industries to respond as completely as possible.

I will ask unanimous consent to place in the RECORD a letter from Thomas C. Jorling, assistant administrator for Water and Hazardous Materials, describing the information-gathering process and the OMB clearance request and notice of action approving the EPA plan of data collection. Hopefully, this letter will clear up any confusion which has arisen.

In summary, the Appropriations Committee has increased the EPA programs in some areas and has stayed well within the budget targets established in the first concurrent resolution. I commend them for that and hope that the Senate will support this legislation. The chairman of the subcommitee (Senator PROXMIRE), the ranking Republican (Senator MATHIAS) and the chairman and ranking member of the full committee (Senators MAGNUSON and YOUNG) are all to be commended for their work on this bill. Their efforts are appreciated.

Finally, Mr. President, I ask unanimous consent that there be printed at this point in the RECORD certain materials to which I earlier referred relevant to the fiscal year 1979 appropriations for the Environmental Protection Agency.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ATTACHMENT A—SAFE DRINKING WATER

One of the major factors which influenced the passage of the Safe Drinking Water Act of 1974 was the detection of organic chemical contaminants in drinking water. The Act, and the Committee Report which accompanied it, stressed the significance of organic chemical contamination of drinking water, and the concern of Congress can be found in Section 1442(a)(9) of the Act:

"Not later than six months after the date of enactment of this title, he (the Administrator) shall transmit to the Congress the initial results of such study (of organic chemical contamination), together with such recommendations for further review and corrective action as he deems appropriate."

In the debate that has ensued since the Environmental Protection Agency (EPA) proposed a regulation to control synthetic organic chemicals in drinking water, the National Cancer Institute and the National Academy of Sciences have supported the basic health premises of this regulation, as have the Food and Drug Administration, Occupational Safety and Health Administration and Consumer Product Safety Commission. In developing the proposed regulations in drinking water, EPA has gathered, from every known source, all of the information available on health risks, effectiveness of treatment methods, potential hazards associated with treatment methods, and economic impacts. While the background data are more than adequate in quantity and significance, it is always possible to carry out more research and to acquire more data and indeed this is continuing. In this regard, the U.S. Court of Appeals for the District of Columbia Circuit in the case of *EDF* v. *Costle* has stated:

"In light of the clear language of the legislative history, the incomplete state of our knowledge regarding the health effects of certain contaminants and the imperfect nature of the available measurement and treatment techniques cannot serve as justification for delay in controlling contaminants that may be harmful."

EPA has carefully analyzed the costs of compliance with the proposed regulations and estimates the total capital cost at $616–831 million. Although there is still some disagreement with the industry about the unit costs of treatment, the range of estimates is much narrower than the Senate Report suggests. The water supply industry estimates of $4–5 billion are based on an incorrect assumption that all or most of the 390 water systems exceeding 75,000 population covered by the regulations would be required to install granular activated carbon. However, the proposed regulations set out a process whereby the States (or EPA where the State has not assumed primary under the Act) would make a case-by-case decision as to which system needs the treatment. EPA estimates that only about 60 systems will be required to install the added treatment. EPA has also analyzed the ability of cities to finance the capital costs and concluded that there would be a significant problem only in a few cases; in these cases, the system could obtain an exemption under the Act.

The added costs of treatment, in those cities which do install granular activated carbon, would amount to a rate increase of only $10–$20 per family per year in most cases. EPA has judged this to be a reasonable cost for the health benefits obtained. Its acceptability to the public is indicated by the fact that many consumers are now paying much higher amounts for bottled water or for home treatment devices of unknown effectiveness. These expenditures are estimated to be about $300 million per year and rising rapidly.

The proposed regulations are currently open for public comment. Eight public hearings have been held around the country where almost 300 witnesses have been heard. In addition about 500 written comments have been received so far and more are expected by the September 1 close of the comment period.

During this period, EPA is soliciting suggestions, data and constructive comment on all aspects of the control or organic chemical contaminants in drinking water including alternative regulatory approaches. The information gained will be evaluated and where applicable, utilized in the development of final regulations. Meanwhile EPA research and development efforts on the health, technology and economic aspects are continuing.

There has been a great deal of misinformation disseminated about this regulation. There is no question about the potential risks involved from drinking water contaminated by organic chemicals. There is also no real dispute as to the effectiveness and safety of granular activated carbon systems. Finally, as indicated above, the cost to the individual consumer will be quite small and health protection bought will be large.

The Safe Drinking Water Act is a preventive health statute. This regulation definitely carries out the purposes of that Act. It is premature to question the utility of this regulation.

EPA has prepared a whitepaper discussing all aspects of these regulations. It answers many of the questions raised in the Committee report. I ask unanimous consent that excerpts from this paper, which have appeared in the Federal Register, be placed in the RECORD.

EXCERPTS

THE HEALTH BASIS OF THE PROPOSED REGULATATIONS

EPA has received many comments questioning whether enough information on health effects of organic contaminants exists to justify the proposed regulations. These comments have generally accepted the fact that chloroform and other compounds present in some drinking water have caused tumors in laboratory tests when fed to animals at high doses, but they do not agree that this information forms a valid basis for reducing the levels of these compounds beyond the already low levels that occur in drinking water.

A frequent comment is that the National Academy of Sciences, in its report, "Drinking Water and Health," recommended against the establishment of a maximum contaminant level (MCL) for trihalomethanes and instead urged that further research be done. EPA believes this is a misinterpretation of the report. While the Academy did identify research needs, it clearly felt that the available information on chloroform (which forms the bulk of the trihalomethanes) was sufficient of justify regulation. After the Academy summarized this data, it concluded (p. 717):

* * * it is suggested that strict criteria be applied when limits for chloroform in drinking water are established.

The health basis for the proposed standards has been fully supported by Federal agencies experienced in dealing with environmental carcinogens. These agencies include the National Cancer Institute, the National Institute of Environmental Health Sciences, the Food and Drug Administration, and the Occupational Safety and Health Administration. The approach EPA is taking in the drinking water proposal is consistent with the approach which these and other health-concerned agencies have taken in regulating human exposure to carcinogens, that is, to reduce human exposure to the extent feasible, provided the costs are reasonable.

The remainder of this section briefly summarizes the scientific basis of this approach and particularly of the judgment that even very low exposure to carcinogens poses a risk to public health. Since this basis applies equally well to all exposure routes, most of the discussion is general and does not refer specifically to the contaminants found in drinking water. Ample documentation of the occurrence of synthetic organic chemicals in drinking water and of the toxicological and epidemiological studies of them is contained in the preamble to the proposed regulations and the supporting materials referenced therein.

Several important scientific conclusions about the nature of cancer have played a role in this approach. First, there is the simple fact that exposure to some chemicals can cause cancer. The first evidence of chemical carcinogenesis in humans dates back to 1775, when Percival Pott noted that there were high rates of scrotal cancer in men who had been exposed to soot as chimney sweeps. During the 20th century, a number of industrial chemicals, such as benzidine, asbestos, and vinyl chloride, has been shown to produce cancer in workers exposed to high levels. In addition, it is generally agreed that cigarette smoking and excessive exposure to sunlight can cause lung and skin cancer, respectively.

Second, there is evidence that environmental rather than genetic factors are causing a significant amount of human cancer. A classic epidemiological study was done of Japanese immigrants to the United States and their descendants. Japan has higher rates of stomach cancer and lower rates of colon cancer, compared to the United States. When the Japanese immigrated to the

United States, their rates of stomach cancer fell and their rates of colon cancer increased. Among their children, the difference was even more marked: closer to the U.S. pattern and further from the Japanese pattern.

Something about the U.S. diet, lifestyle, or environment produces lower rates of stomach cancer and higher rates of colon cancer, while the same factors in Japan produce the opposite pattern. We don't know what these causative factors are but we can presume that it is something in the environment, since there was little change in the genetic makeup of the populations studied. A similar pattern has been observed in other studies. (The term "environment" in this context refers to everything humans are exposed to, including such things as cigarette smoking, food, and sunlight, as well as the results of environmental pollution in the usual sense.)

Third, scientists have developed methods for testing suspected carcinogens in laboratory animals. Since studies of cancer patients have only led to the identification of a small number of human carcinogens, usually in cases where there was a well-defined group exposed to high levels, and since we as a society do not allow intentional testing of humans with suspected carcinogens, some means was necessary to test the many thousands of chemicals used in our society and the new ones that are constantly being developed to determine their potential for harmful effects on humans.

Although the differences between humans and test animals (rats and mice) introduce an element of uncertainty in the use of animal data, the test results have been well confirmed: Of the known human carcinogens, all but a few also cause tumors in laboratory animals. Therefore, it is reasonable and prudent to place significant weight on animal data showing carcinogenic effects. These tests have been criticized for using doses much higher than those actually encountered by people. The high doses are necessary to produce a statistically valid response in enough of the animals so that conclusions can be reasoned without requiring many thousands of animals be tested. Additionally, the size of the dose is less important than its effect: If the result is cancer and not simply an overburdening of the animal's system, there is reason for concern. In view of the conclusion discussed below that even very small doses of carcinogens carry some risk, the animal tests at high doses are valid for indicating the presence of a cancer risk and the relative potency of the chemical tested.

In the case of organic contaminants in drinking water, there are also a series of human epidemiological studies that have attempted to relate human cancer rates to indicators of such contamination. This research has generally shown such a relationship. Such studies are difficult to interpret because other factors which may be related to cancer rates are also likely to be present in the large cities where high levels of organics have been found in drinking water. However, the research tends to reinforce the concern resulting from the presence of substances known to cause cancer in animal tests. They therefore serve as valid additional support for EPA's proposed regulations.

Finally, and perhaps the most controversial, is the conclusion that there is no safe level for a carcinogen and that any exposure, no matter how small, will result in some risk of cancer. This conclusion is based on the best available and generally accepted scientific knowledge concerning cancer and its causes. Cancer is believed to be the result of a small number of discrete events in the structure of a single cell which transform it into a cancer cell that can evade the body's defenses and grow in an uncontrolled way ultimately producing death. Very little is understood about how a chemical carcinogen interacts with a cell's DNA to cause the transformation, but it is believed that any case of chemical carcinogenesis is the result of a single molecule (or a small number of them), interacting with a single cell. It follows that exposure to a small amount of a carcinogen produces some small risk of cancer.

In addition, none of us is exposed to just one chemical or just one set of conditions, but rather many different chemicals and situations every day. The combined effects of many factors and chemicals may ultimately produce a cancer, so it is unrealistic to think of risks in terms of just one chemical.

The "no safe level" conclusion has important consequences. It means that exposures of large numbers of people even to very low levels of carcinogens are still a matter of concern, even if the risk to any particular individual appears negligible. For example, if everyone in the United States had a 1-in-100,000 chance of getting cancer as a result of such an exposure, certainly a very small risk, that would still mean 2,200 or so additional cases of cancer nationwide. It also means that the animal tests are valid bases for inferring human risk even with the very high doses which must be used in those tests for technical reasons. Although the environmental exposures are usually orders of magnitude lower than those used in the animal tests, the number of people exposed is orders of magnitude higher.

It should be noted that there are reputable scientists who do not accept the "no safe level" conclusion. Neither school of thought can be said, as a matter of scientific certainty, to have proven its case, and the disagreement is not likely to be resolved in the foreseeable future. Nevertheless, the regulatory agencies have found it prudent, as a matter of public policy, to take the conservative position of accepting the "no safe level" conclusion, since this position is more protective of public health and the preponderence of scientific opinion supports it.

To summarize, we know that a great deal of human cancer is caused by unknown factors in the environment. We also know that certain chemicals which cause cancer in animals are found in low levels in air, food, and drinking water and have reason to believe that low levels of animal carcinogens pose a risk to humans. These chemicals, and others which have not yet been tested, must be presumed to contribute to the total incidence of cancer, although the magnitude of the impact of each is unknown. They therefore warrant regulatory control to minimize long-term adverse effects on human health.

Since exposure to any amount of a carcinogen carries some risk, regulatory decisions cannot be based on determination of a safe level. But in many cases, complete elimination of the chemical from the environment is not feasible or has costs that society would be unwilling to pay. EPA and other regulatory agencies have therefore evolved the approach of minimizing any human exposure to carcinogens: *Provided*, The costs are reasonable. This is the approach that has guided the development of the proposed regulations to limit organic contaminants in drinking water.

EPA's evaluation of the health risk has been endorsed by the Director of the National Cancer Institute, Dr. Arthur C. Upton, and the Director of the National Institute of Environmental Health Sciences, Dr. David P. Rall. The texts of their letters to EPA Administrator Douglas M. Costle are reprinted in Appendix A.

Additional information on these and related issues may be found in the preamble to the Occupational Safety and Health Administration proposed regulations on Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational carcinogenic Risk (42 FR 54148–83, Oct. 4, 1977), which is hereby incorporated by reference in this notice. Further discussion is contained in the comments made to OSHA by Arthur C. Upton, Marvin A. Schneiderman, William Lijinsky, Richard R. Bates, Umberto Saffiotti, Richard Peto, and Samuel S. Epstein (OSHA Docket No. 090), which are also incorporated by reference in this notice.

ECONOMIC IMPACT OF THE PROPOSED REGULATIONS

Since the U.S. Environmental Protection Agency (EPA) proposed a regulation for the control of organic chemical contaminants in drinking water in February 1978, the Agency has received a number of comments regarding the costs and financial feasibility of compliance with the regulations. This notice presents the results of an 8-week reassessment of the economic analyses prepared in 1977 as the regulation was being developed.[1] These results are fully documented in a report entitled "revised Economic Impact Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," available on request.

The focus has been on the costs and financing of granular activated carbon (GAC) treatment systems. Although not the only treatment technique available for reduction of THM, GAC is the most expensive treatment technique contemplated under these regulations and the one on which the greatest number of public comments has been received thus far in the public comment period.

Three specific subjects have been addressed in this review:

The capital and operating costs for granular activated carbon treatment installed at individual water systems.

The implications of changes in those unit costs for the economic impact of the proposed regulation at the national level and to residential customers of affected water systems.

The ability of water systems to raise the capital which would be needed to install GAC treatment.

The examination included five major activities. First, selected equipment manufacturers and carbon suppliers were again contracted to verify or supplement previous data. Second, GAC cost estimates submitted to EPA by some water utilities were analyzed. An effort was made to fully understand the basis of estimates developed by three cities which had prepared the most thorough projections: New Orleans, Indianapolis, and Louisville. In fact, two of them were visited in person and the third was contacted by telephone in this process. This effort was meant to supplement four case studies conducted in 1976 as a basis for the costing methodology.

A recognized consulting engineering firm, Gannett, Fleming, Corddry, and Carpenter, Inc., was engaged to visit New Orleans and to prepare an independent preliminary estimate of capital costs of GAC treatment at New Orleans. The purpose of this element of the review was to have a consulting engineering firm examine the specific costs encountered at one water system. It was felt that this would help reconcile differences between EPA and the industry in this instance and could provide some feedback on more general assumptions.

In the evaluation of national and customer level impacts of the revised cost es-

[1] "Economic Impact Analysis of a Trihalomethane Regulation for Drinking Water," prepared by Temple, Barker & Sloane, Inc. for EPA, Office of Water Supply, August 1977; and "Economic Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," prepared by Temple, Barker & Sloane, Inc. for EPA Office of Water Supply, December 13, 1977.

timates, the Temple, Barker & Sloane, Inc. computerized Policy Testing Model (PTM) [2] of water utilities was again utilized. The model traces the effects of construction and operating cost impacts through the industry's financial structure to identify those economic effects.

Finally, to address the capital markets issues regarding the financing of GAC installations, EPA's consultants contacted representatives of Moody's Investors Service and two other financial institutions. These discussions identified the key financial ratios by which the financial investment community evaluates water utility bond issues. The project team then analyzed those ratios and the general financial condition of a sample of 27 water systems to determine the relative ease or difficulty such systems would have financing GAC installations at a range of costs.

The actual costs faced by a water system installing GAC would vary widely depending on a variety of factors. Perhaps most important is the quality of its raw water, which will be reflected in the contact time and regeneration frequency resulting from the pilot studies. Another is the layout of the existing treatment plant and the ease or difficulty of modifying it to accommodate the GAC equipment. Finally, each water system will have to make certain policy decisions concerning such matters as the amount of growth in demand to provide for, the amount of redundancy to allow in contactors and furnaces, etc. The cost estimates presented here reflect more conservative assumptions in all these areas. The Agency believes that, even with these more conservative assumptions, the final cost to the consumer is still of the same order of magnitude as the original estimates. The higher cost estimates presented here do not, therefore, change our judgment that the cost of GAC treatment, where required by the proposed regulations, is fully justified by its public health benefits.

The major findings of this review process are:

The unit costs for GAC installations are now being revised upward from the figures published in 1977. Capital costs are being increased generally by 50 to 80 percent, primarily to adjust for inflation, to allow for contingencies and higher design, legal and financing fees, and to incorporate somewhat more conservative design parameters. Operating and maintenance expense estimates remain at levels very close to the former estimates.

The range of technical assumptions has been narrowed somewhat in this review with a resulting impact on the change in the national cost estimates. The lower end of the previous cost estimate has been raised because a 6-month regenerations frequency is no longer included in these conservative estimates, although it may be enough in some cases. The higher end of the range has been reduced somewhat to reflect the estimate that 11 systems affected only by the THM regulation and 50 systems impacted by the GAC requirement, 61 systems in total would install GAC treatment. The national capital costs based on these assumptions and the December 1977 unit costs would be $352 to $585 million. The new unit costs presented in this report raise this range to $616 to $831 million.

The estimates of local residential costs for model water systems of GAC treatment have also been increased generally by approximately 30 to 50 percent and could be higher for systems with significant site specific problems in implementation. The effect on residential bills for the average family of three will range from $7 to $26 per year depending upon system size, design parameters, and local conditions.

Financing in the capital markets should be possible through normal financing channels for almost all of the systems under either a low or high GAC cost scenario presuming that rates are increased to cover the annualized capital costs and the O/M expenses associated wtih GAC treatment addition. Under the low cost scenario almost all could finance GAC with little or no difficulty, but under the high cost scenario about half of the systems would have some difficulty and would have to phase in their financing, suffer some decline in financial strength, and/or perhaps increase revenues more than just the amount required to cover GAC capital and operating costs. A small number of systems would have major difficulty in financing and probably would have to arrange special financing or apply for relief under the Safe Drinking Water Act.

The analysis performed during this economic review will continue as more comments are received by EPA during the remainder of the public comment period.

ATTACHMENT B—SECTION 308 OF THE CLEAN WATER ACT

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., August 4, 1978.

HON. EDMUND M. MUSKIE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MUSKIE: This will respond to your inquiry concerning the Agency's request for financial data pursuant to Section 308 of the Clean Water Act from those companies which are members of one or more of the 21 major industrial categories specified in the Clean Water Act.

Sections 301 and 304 of the Clean Water Act mandate that the Environmental Protection Agency develop uniform, national effluent standards for major industrial categories covering waste waters discharged into streams and rivers or to municipal treatment facilities. In June 1976 this basic mandate was reinforced as a result of a judgment in the U.S. District Court for the District of Columbia in *NRDC et. al. v. Train*. Under the court order the Environmental Protection Agency is required to develop or revise "best available technology economically achievable" (1983) effluent limitations, new source performance standards (NSPS) and pretreatment standards for at least 21 major industrial categories covering 65 classes of potentially toxic polluants.

To ensure that the information needed to develop these regulations is both thorough and timely, the Environmental Protection Agency must engage in a wide range of information gathering, monitoring, sampling, and inspection activities. Section 308 of the Clean Water Act authorizes the Environmental Protection Agency to require owners or operators of any point-source to maintain records, submit any information necessary to develop a regulation, sample effluents, and install and maintain monitoring equipment. This authority includes requests for financial information pursuant to the regulatory process.

Rules and regulations concerning the confidentiality of business information of this type have been promulgated and can be reviewed in full in the *Federal Register* of September 1, 1976. The Environmental Protection Agency is fully aware of the sensitive nature of the financial information being requested and every precaution allowed by law has been taken to maintain confidentiality of the information received.

40 CFR 2.2111 provides for penalties for wrongful disclosure of business information. Under that Section any Environmental Protection Agency employee who fails to properly safeguard confidential information shall be liable to dismissal, suspension, fine or other adverse personnel action. Use of business information, gained in the Environmental Protection Agency employee's official capacity, for private gain or advantage of that employee may result in criminal prosecution under 18 U.S.C. 1905. Contractors who use or disclose information in ways other than permitted by the contract under which the information was gathered shall be liable to debarment, suspension, or criminal prosecution.

The Environmental Protection Agency's request for financial information is to assure that regulations ultimately promulgated are both fair and economically achievable by the industry. Without an accurate assessment of industry's financial capabilities to meet potential pollution control requirements, there remains a risk that the technology based limitations ultimately recommended could place an unreasonable hardship on industry members. The Environmental Protection Agency is concerned that hardship to the industry may result from the closure of facilities that find it impossible to expend funds to comply with effluent regulations.

The Environmental Protection Agency has attempted to design survey instruments which are adapted to the industry being surveyed. Thus, when requesting information from an industry with many small businesses, the questionnaire will be much simpler to fill out. However, the effects of regulations are generally most severe on small businesses. In order to prevent closures it is necessary to predict the number of closures which might be expected to result from various regulations under consideration: prediction is possible only with the financial data collected in the economic surveys. Regulations developed without such data and analysis might be more stringent than those based on such data and could be expected to result in larger number of closures of small businesses.

The most accurate method of determining "affordability" at the plant level is to evaluate historical financial data, including data on sales, costs and profits, in order to determine what level of technology is economically achievable. Much of this data is not available to Environmental Protection Agency from any source except the firms within the industry. Industry members have the best information on the needs and capabilities of firms affected by Environmental Protection Agency's regulations.

Therefore, the Environmental Protection Agency needs access to plant level information in order that an adequate economic and financial data base exists to evaluate the regulatory options and in effect to select regulatory options that are justifiable by careful analysis of costs and other factors.

Besides the Environmental Protection Agency's own internal checks on its data collection activities, all of the surveys, in particular those requesting financial information, are reviewed by the Office of Management and Budget. This added clearance process insures that only the minimum amount of information is requested of industry for the development of defensible regulations. Enclosed is a copy of Environmental Protection Agency's clearance procedure and our agreement with OMB.

I hope this response is helpful to you and gives you a clearer picture of the Agency's activities. If I can be of any further service, please do not hesitate to contact me again.

Sincerely yours,

THOMAS C. JORLING,
Assistant Administrator,
for Water and Waste Management.

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[2] For a description of PTM see Appendix A, "Economic Impact Analysis of a Trihalomethane Regulation for Drinking Water," prepared by Temple, Barker & Sloane, Inc. for EPA, Office of Water Supply, August 1977.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., June 1, 1978.

HON. JOHN J. STANTON,
Director, Program Report Division, Environmental Protection Agency, Washington, D.C.,

DEAR MR. STANTON: The request for clearance of a Plan of Data Collection for Sections 301, 304, 308, and 307 of the Clean Water Act of 1977 is not disapproved for use. It may be used to develop specific data collection instruments and procedures to be used to gather information for the purpose of developing new effluent limitations guidelines and other standards. Each such data collection instrument used for this purpose is to bear OMB No. 158-R0160 in the upper right hand corner of the instrument.

This clearance is made subject to the following conditions to assure that implementation of this plan is consistent with that plan and the requirements of the Federal Reports Act (44 U.S.C. 3501 *et seq.*).

As conditions of clearance the Agency shall:

A. Beginning June 30, 1978 and in January and June of 1979, 1980, and 1981 publish in the Federal Register a schedule containing the following information:

(1) a list of all anticipated data collection activity to be conducted during the subsequent six month period;

(2) the type and estimated number of respondents for each data collection activity; required of each respondent; and

(3) the estimated reporting hour burden required of each respondent; and

(4) the identity, address, and phone number of the official responsible for each data collection activity.

If EPA wishes to perform a data collection activity not described in accordance with the above procedure, it shall publish in the Federal Register the above information with respect to the particular data collection activity no less than thirty days prior to its initiation. This provision shall not apply to data collection activities initiated prior to June 30, 1978.

B. Prior to the distribution of any questionnaire or other instrument, EPA will transmit in duplicate to OMB the following information to enable OMB to verify that it is consistent with this clearance:

(1) the questionnaire or other information collection instrument;

(2) the identity of those industry representatives consulted by EPA in connection with the preparation of the instrument.

(3) certification by the data collection officer of the Office of Water Planning and Standards that the data collection instrument will result in valid and reliable information and that although reasonable efforts have been made to obtain this information from other public sources, such information is not reasonably available; and

(4) a description of any special attention that has been given to the reporting problems of small businesses (firms with fewer than 100 employees).

OMB will review all submitted instruments within ten working days after receipt. Such review shall be aimed at determining consistency with the conditions of this clearance and the Federal Reports Act. Any instrument to which OMB does not object in writing within said ten day period may be used for its stated purpose.

Sincerely,

ROYE L. LOWRY,
Clearance Officer.●

Mr. STAFFORD. Mr. President, I ask unanimous consent that a statement by Senator BROOKE in connection with the conference report on which Senator PROXMIRE recently spoke, be printed in the RECORD following the statement by Senator PROXMIRE.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR BROOKE

I am pleased that the conferees have agreed to include the provision of $1 billion of authority for the Department of Housing and Urban Development to use recaptured payments for the GNMA emergency mortgage purchase assistance program, commonly called the "Brooke-Cranston" program. I believe that the Department of Housing and Urban Development should have the standby authority to commit these funds in the event that a depressed housing market threatens to lower housing production to unacceptable levels. These funds may be utilized only upon a finding by the Secretary of HUD that conditions justify the release of this authority.

I note that a statement was placed in the Congressional Record on the day when the Senate considered the FY 79 HUD Appropriations bill which indicated that no funds should be released without the approval of the Appropriations and Budget Committees of both Houses of Congress. There was no opportunity for other Senators to be heard on this issue since it was not raised orally on the floor. I would note that the Minority floor manager did not concur in this statement of legislative intent.

I certainly could not agree that approval of the Appropriations Committees and/or Budget Committees would be required in order for the Secretary of HUD to release these funds. The Conference Report contains no statement which would indicate that the conferees intend that prior Congressional approval is needed or required. I hope that this statement will clarify that no prior Congressional approval is required to release these funds if the Secretary of HUD makes the statutory finding that conditions justify such release.

● Mr. JAVITS. Mr. President, I would like to comment briefly on the agreement to provide emergency funding for abatement of chemical contamination in the Love Canal area of Niagara Falls, N.Y. I would like to thank Senators PROXMIRE and MATHIAS, respectively chairman and ranking minority member of the Senate HUD-Independent Subcommittee, as well as all Senate conferees on this bill, for their efforts in achieving this funding so necessary to help relieve the devastating effects to the health and well-being of our people in Niagara Falls, N.Y.

The funding of up to $4 million is provided on the basis of a 50 to 50 match with New York dollars. The conference report language directs that the Federal funds shall be made available from appropriations in this bill for abatement and control activities administered by the Environmental Protection Agency. This action by the conferees assumes full congressional commitment to this funding, and assures the residents in the Love Canal area of Niagara Falls, N.Y. of the support necessary to help meet the challenges before them. ●

● Mr. WILLIAMS. Mr. President, I am pleased to express my full support for the conference committee report providing appropriations for fiscal year 1979 for the Department of Housing and Urban Development, as well as for independent agencies such as the Veterans Administration, NASA, and the Environmental Protection Agency.

Among the most important sections of the legislation are those which provide funds vital to the strengthening of the Nation's housing efforts. Let me touch briefly on a few of the programs receiving appropriations through this measure. An additional 350,000 new, substantially rehabilitated, and existing units of assisted housing under the section 8 rental assistance and public housing programs will be funded during fiscal year 1979. While I supported somewhat higher unit levels, I feel that the number of assisted housing units that can be produced as a result of this appropriation demonstrates the continuing congressional commitment to better housing conditions for the country's low and moderate income citizens.

The State of New Jersey is among the most successful producers in the country of housing utilizing section 8 rental assistance. Between October 1977, and November of this year, the New Jersey State Housing Finance Agency, which finances the lion's share of assisted housing units started in the State, will finance construction starts for 7,200 new and substantially rehabilitated section 8 units.

HUD's new Urban Development Action Grant program (UDAG), first enacted last year, will receive an appropriation of $400 million, which is equal to the program's full authorization for fiscal year 1979. This program is designed to provide special assistance to our most severely distressed communities to enable them to undertake specific neighborhood reclamation and economic revitalization projects that these communities could not otherwise initiate. Each UDAG project must be able to generate significant amounts of private investment, and a glance at the record of the program during its first year of operation reveals that it has successfully accomplished this purpose. In my own State of New Jersey, nine projects totaling $24.8 million have been awarded to date. Jersey City, for example, received a $7 million grant during the first round of grant awards in order to rehabilitate housing and generate commercial activity in an area of the city now characterized by vacant lots and abandoned, deteriorated structures. This particularly fine project, which I believe to be one of the best in the country, has been able to attract more than $25 million in private commitments of funds.

I am especially pleased that the conference committee agreed to fund the Congregate Housing Services Act, which I authored this year. My distinguished colleague from Indiana (Mr. BAYH), who served as one of the conferees, should be commended for his diligent, and, happily, successful efforts on behalf of this appropriation. Congregate housing offers people who are limited in their ability to perform normal daily tasks the opportunity to remain independent within their own households. It is meant to combine a residential environment with basic support services such as meals and housekeeping assistance.

It is important to note that testimony before several congressional committees over the last couple of years has demonstrated beyond doubt that it is substantially cheaper to provide necessary

social services to a person living at home than it is to place that individual in an institution. In fact, some witnesses have testified that we can save $2 or $3 in medicaid expenditures for each dollar spent for congregate housing services. Congregate housing is a wise and prudent investment.

Unfortunately, although Congress has repeatedly expressed its support for the development of congregate housing for low-income people, such housing has failed to materialize, except in certain isolated instances. The problem has been our inability to provide the link between shelter and services essential for the production of congregate housing.

The Congregate Housing Services Act establishes this link. It does so by locating funds within the Department of Housing and Urban Development in order to fund packages of social services that local nonprofit housing sponsors develop in conjunction with local social service agencies to address the service needs of their functionally impaired tenants. It is a program designed to supplement, not supplant, existing social service programs. The funds provided in the appropriations legislation are sufficient to get this new approach to congregate housing development off the ground and running, and the conference committee deserves to be applauded for its action.

Mr. President, in our Nation's housing and community development programs lie the hopes of millions of this country's people for a decent, safe place to live and work. The appropriations conference report now under consideration has a crucial role to play in the fulfillment of these hopes, and I heartily support its adoption.●

● Mr. CHILES. The Members of the Senate will already have noted the statement of the Appropriations Committee, in its report on H.R. 12936, calling attention to EPA's proposed drinking water regulations and urging further research, particularly on the granular activated carbon treatment systems ("GAC") which these proposed regulations would require.

On August 23, 1978, following a 2-day meeting to consider EPA's proposed drinking water regulations, the National Drinking Water Advisory Council, established by the Safe Drinking Water Act and appointed by EPA itself in consultation with the Secretary of HEW, recommended abandonment of the costly GAC requirement. Instead, consistent with the Appropriations Committe report, the Council proposed further research and establishment of plant-scale GAC pilots. (This recommendation was made orally to EPA, at the conclusion of the Council's meeting, and I understand the Council will soon have its report reduced to writing.)

Additionally, on September 1, 1978, the Council of Wage and Price Stability, in comments on EPA's proposals, has criticized the EPA proposals, pointing out that the EPA economic analyses "shed no light on the reasonableness (that is. the cost effectiveness) of these decisions." The Council on Wage and Price Stability recommended that EPA consider plant-scale testing of GAC, again in accord with what the Appropriations Committee had recommended earlier.

Finally, the House Appropriations Committee also has included language in its report on this bill which cited these proposed regulations as an "example of proposed regulations issued without substantive supporting evidence." The House Committee's report "urged" EPA to "thoroughly test" the GAC strategy "in actual plants before mandating that it be adopted on a nationwide basis," for "there remain too many unanswered questions concerning cost, effectiveness, and potential health hazards."

The Appropriations Committee should be congratulated for calling attention to this important problem, and it should be gratified to see that others in the Federal Government, and EPA's own advisory council, seem in accord with the committee's major recommendations.●

The PRESIDING OFFICER. The question is on the adoption of the conference report.

The conference report was agreed to.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

CONGREGATE SERVICES PROGRAM

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs as authorized by the Congregate Housing Services Act of 1976, $10,000,000, to remain available until September 30, 1984.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

EMERGENCY MORTGAGE PURCHASE ASSISTANCE

The aggregate amount of purchases and commitments authorized to be made pursuant to section 313 of the National Housing Act, as amended (12 U.S.C. 1723e), out of recaptured Emergency Mortgage Purchase Assistance authority, is increased by $1,000,000,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 32 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

: *Provided further*, That none of the funds provided by this Act shall be used to pay an investigator, through a grant, at more than the maximum rate paid for GS–18, unless expressly approved by the Director of the National Science Foundation

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 42 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $365,560,000

Mr. PROXMIRE. Mr. President, I move that the Senate concur in the amendments of the House to the amendments of the Senate numbered 6, 9, 32, and 42.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Wisconsin.

The motion was agreed to.

PRIVILEGE OF THE FLOOR—HOUSE JOINT RESOLUTION 1088

Mr PROXMIRE. Mr. President, I ask unanimous consent that Elinor Bachrach of the Banking, Housing, and Urban Affairs Committee staff, be granted the privilege of the floor during the consideration of House Joint Resolution 1088.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS, 1979—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

Mr. PROXMIRE. Mr. President, I am going to make a motion to reconsider, but I want to make sure that it is not misunderstood and that someone else does not move to table this motion.

One of the Members wants a rollcall, which, of course, is his right. For that reason, I am going to move to reconsider. Then I hope we can have an up or down vote on passage. Perhaps after I move to reconsider, we can have an affirmative vote of the Senate to reconsider. That would mean that a vote on passage of the conference report would be before us. Is that right?

The PRESIDING OFFICER. The Senator is correct. If the Senator moves to reconsider, then the conference report would be before the Senate for adoption.

The question recurs on the motion to reconsider.

The motion to reconsider was agreed to.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr PROXMIRE. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PROXMIRE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the conference report be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

REHABILITATION, COMPREHENSIVE SERVICES, AND DEVELOPMENTAL DISABILITIES AMENDMENTS OF 1978

The Senate resumed the consideration of the bill.

UP AMENDMENT NO. 1868

(Purpose: To provide that funds appropriated under the Rehabilitation Act, the Older Americans Act and the Child Abuse Prevention and Treatment Act cannot be obligated or expended for activities not carried by the offices charged with responsibility for these programs and not authorized in full by one or more such Acts)

Mr. STAFFORD. Mr. President, on behalf of Senator CRANSTON and Senator RIEGLE, I send an unprinted amendment to the desk and ask for its immediate consideration. This is in connection with S. 2600.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of S. 2600.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Vermont (Mr. STAFFORD), for Mr. CRANSTON and Mr. RIEGLE, proposes an unprinted amendment numbered 1868.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 163, after line 10, insert the following new title:

TITLE V—PROHIBITION AGAINST CERTAIN RESEARCH AND DEMONSTRATION PROJECTS

PROHIBITION

SEC. 501. No funds appropriated under the Rehabilitation Act of 1973, the Older Americans Act of 1965, or the Child Abuse Prevention and Treatment Act may be obligated or expended for research, demonstration, or evaluation programs or projects which are not directly managed and monitored by the office charged by law with direct responsibility for carrying out such research, demonstration, or evaluation programs or projects under such Acts and which are not specifically authorized in full by one or more such Acts.

Mr. STAFFORD. Mr. President, very briefly, this amendment provides that funds appropriated under the Rehabilitation Act, the Older Americans Act, or the Child Abuse Prevention and Treatment Act cannot be obligated or expended for research, demonstration or evaluation programs or projects which are not directly managed and monitored by the offices charged by law with direct responsibility for carrying out these functions nor for activities which are not authorized in full by one or more such acts.

Mr. President, this amendment appears to state the obvious: that funds appropriated under these programs cannot be used for activities which are not authorized in full by one or more acts and not carried out in the offices charged by law with responsibility for these programs. The necessity for this amendment is the result of certain activities which have recently taken place within the Office of Human Development Services. Funds authorized for expenditures under the Older Americans Act, the Rehabilitation Act, and the Child Abuse Prevention and Treatment Act have been "transferred" administratively from these program offices to the Office of Planning, Research, and Evaluation in Office of the Assistant Secretary for Human Development Services for so-called "cross-cutting" research activities carried out in that office.

I urge the adoption of the amendment.

Mr. RANDOLPH. Mr. President, the explanation of the amendment offered by the able Senator from Vermont (Mr. STAFFORD) for the majority whip, the Senator from California (Mr. CRANSTON), indicates that it is a corrective amendment. I believe it is necessary and we are delighted to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (UP No. 1868) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, there is a great new civil rights struggle going on in our country. Long-neglected Americans are seeking, with good reason, their full and equal share of the rights to which all are entitled in our land. Accessibility for handicapped individuals must be viewed in that context—it is an issue of civil and human rights. I believe strongly that we must assure that the rights and opportunities accorded every other American are accorded to handicapped Americans.

The bill before us today—S. 2600—represents an important effort on behalf of the Senate to aid these long-neglected Americans and assist in assuring that handicapped individuals have the same rights and opportunities as other Americans.

There are a number of provisions of the bill that I would like to highlight. Let me emphasize, Mr. President, my continuing interest in and involvement with assisting handicapped individuals in this civil rights struggle.

ATTORNEYS' FEES

Mr. President, an amendment which I have authored, contained in section 505 (b) of the reported bill, provides for the allowance of attorneys' fees by a court as part of the costs to the prevailing party, other than the United States, and parallels the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559). Such allowance of attorneys' fees would be an important step in assisting all handicapped individuals in their struggle by permitting equal access to the courts to enforce the provisions of title V of the Rehabilitation Act of 1973. As my colleagues are aware, Public Law 94–559 provides that the court, in its discretion, may allow the prevailing party other than the United States, a reasonable attorney's fee as part of the costs in any action or proceeding to enforce the provisions of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes and title IX of Public Law 92–318, the Education Amendments of 1972.

Mr. President, the rights extended to handicapped individuals under title V of the Rehabilitation Act of 1973—Federal Government employment, physical accessibility in public buildings, employment under Federal contracts, and nondiscrimination under Federal grants—are and will continue to be in need of constant vigilance by handicapped individuals to assure compliance. Private enforcement of these title V rights is an important and necessary aspect of assuring that these rights are vindicated and enforcement is uniform. The availability of attorneys' fees should assist substantially in this respect. As noted in the report to accompany S. 2278, the Civil Rights Attorneys' Fee Awards Act of 1976 (S. Rept. 94–1011):

(A)ll * * * civil rights law depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate congressional policies which these laws contain.

Mr. President, in many, many cases arising under title V of the Rehabilitation Act of 1973, the handicapped individual has little money to hire and pay an attorney. The 1976 committee report (S. Rept. No. 94–1011 noted):

If private citizens are to be able to assert their civil rights, and if those who violate the nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs to vindicate these rights in court.

The amendment adopted by the committee would help assure that handicapped individuals will be able to have access to the judicial process in order to assert their rights under title V.

Mr. President, I emphasize that it is intended that interpretation of the attorney's fees provision in the committee bill be analagous to interpretations of the Civil Rights Attorney's Fees Act of 1976, Public Law 94–556. The legislative history and expressions of legislative intent with respect to Public Law 94–556 are applicable to the new section 505(b). Thus, for example, the discussion of "prevailing party" and "reasonable fees" found in the Senate committee report to accompany H.R. 15460 (H. Rept. No.

94–1558), in particular pages 6 to 9, would be applicable whenever there is judicial consideration of the handicapped attorney's fees provision contained in proposed section 505(b).

Mr. President, there are a number of points I would like to highlight. I stress that I raise these particular points solely for the purpose of highlighting them and in no way intend to imply that other pertinent points not mentioned are not applicable.

First, a party seeking to enforce the rights protected by title V, if successful, should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust. An unsuccessful litigant seeking to enforce rights protected under title V should be assessed his or her opponent's attorney's fees only where it is shown that the suit was clearly frivolous, vexatious, or brought for harassment purposes. Any other interpretation would have a chilling effect on the good-faith efforts of individuals seeking to enforce rights under title V.

Second, a party should be considered to have prevailed when rights are vindicated under title V through a consent judgment or, even, without the granting of formal relief.

Third, with respect to State and local bodies or State and local officials, attorney's fees, similar to other items of cost, would be collected from the official, in his official capacity from funds of his or her agency or under his or her control; or from the State or local government—regardless of whether such agency or Government is a named party. The authorization of attorney's fees under proposed section 505(b) in cases brought to enforce title V is within the power of Congress under among other things, section 5 of the 14th amendment. Thus, in accordance with the Supreme Court's decision in *Hutto* v. *Finney*, No. 77–1660, June 23, 1978, the 11th amendment is no bar to the recovery of attorney's fees under proposed section 505(b) from State government as a result of an action or proceeding to enforce or change a violation under title V of the Rehabilitation Act of 1973.

Fourth, proposed section 505(b) is intended to apply to all cases pending on the date of enactment of the provision.

Mr. President, I believe this amendment is much needed. To date, we have permitted certain private enforcement of title V and, yet, we have not provided the means by which such private rights of action are meaningful. This amendment—providing attorneys' fees on the same basis as attorneys' fees are provided under Public Law 94–559—will go a long way toward assisting long-neglected Americans—handicapped individuals—in their efforts to achieve their full and equal share of the rights to which they are entitled.

APPLICATION OF TITLE VII

Mr. President, in addition to the attorney's fees provision, S. 2600 includes important provisions, which I authored, to make available, in appropriate instances, the remedies, procedures, and rights available under titles VI and VII of the Civil Rights Act of 1964, as amended, to certain complaints and actions brought under title V of the Rehabilitation Act of 1973.

Proposed section 505(a)(1) would make available the remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 with respect to any complaint under section 501—Employment of Handicapped Individuals—to any employee or applicant for employment aggrieved by the final disposition of such complaint or by the failure to take final action in such complaint.

Mr. President, under section 501 of the Rehabilitation Act of 1973, all departments, agencies, and instrumentalities of the executive branch of the Federal Government are required to submit to the Civil Service Commission annual affirmative action program plans for the hiring, placement, and advancement of handicapped individuals within such agency, department, or instrumentality. Mr. President, as one of the principal authors of section 501, I can say with some authority that it was enacted, in large part, as a result of the belief, on the part of Congress, that it was the responsibility of the Federal Government to be an "equal opportunity employer." The legislative history of the section 501 illustrates that with respect to the employment of handicapped individuals, Congress expected the Federal Government should be a leader.

Mr. President, to date, the record of the Federal Government in the employment of handicapped individuals has been disappointing. Testimony before the Subcommittee on the Handicapped revealed that in the first 2 years after enactment of section 501 only 12 Federal agencies have increased their rate of hiring disabled employees by more than 3 percent.

Mr. President, my amendment making available the remedies, rights, and procedures of title VII of the Civil Rights Act of 1964 should aid the Federal Government tremendously in attaining the goal of being "an equal opportunity employer" and in fulfilling its leadership responsibilities in this area.

On July 6, 1978, the General Accounting Office, after examining the Federal Government's efforts in employing handicapped individuals, arrived at the same conclusion as the committee, and also recommended the application of title VII to section 501 in its report, "Federal Employment of Handicapped People," July 6, 1978.

In addition, as my colleagues are aware, Mr. President, under Reorganization Plan No. 1, on January 1, 1979, administrative responsibility for section 501 will be transferred from the Civil Service Commission to the Equal Employment Opportunity Commission. The application of title VII to section 501 actions will assure that similar procedures will be followed by EEOC with respect to all appropriate Federal Government employment complaints. I intend to monitor very closely assumption of this responsibility in an area in which it has no present expertise.

Making title VII remedies, procedures, and rights applicable to complaints filed under section 501 would make available "back pay"—up to 2 years—as a remedy for prevailing handicapped individuals. The award of back pay would, of course, be subject to the same limitations and qualifications as provided in title VII. In addition, application of title VII would make specific the right to bring a private right of action with respect to section 501, subject, of course, to the provision for exhaustion of administrative remedies and other rules and procedures set forth in title VII. Additionally, application of title VII would make specific, in appropriate instances, the availability of affirmative action remedies with respect to either attitudinal or physical barriers.

ARCHITECTURAL BARRIERS BOARD

Mr. CRANSTON. Mr. President, I join with Senators STAFFORD and RANDOLPH in an amendment to make specific the role of the Architectural Barriers Transportation and Compliance Board with respect to litigation authority. As reported, among other things, S. 2600 would have amended section 502 of the Rehabilitation Act of 1973 to include among the designated functions of the Board the authority to "sue and be sued" in its own name and be represented by its own legal counsel in all Federal, State, and local courts. In addition, as reported, the committee bill would authorize the Executive Director, at the direction of the Board, to bring a civil action to enforce, in whole or in part, any final order of the Board issued pursuant to the Architectural Barriers Act of 1968 or of standards prescribed pursuant thereto.

Mr. President, since the time the Committee on Human Resources considered S. 2600, however, concern has been expressed that the mandate of the Board could be better accomplished with changes in the statutory language designed to enable the Board to utilize, to the maximum extent feasible, as applicable, the resources of the Justice Department. Thus, the amendment we offer today would strike the "sue and be sued" provision, retain the authority for the Executive Director, at the direction of the Board, to bring a civil action in the appropriate U.S. district court to enforce, in whole or in part, any final orders of the Board and to represent the Board on appeal before the appropriate Federal court of appeals, and authorize the Executive Director, at the direction of the Board, to intervene, appear, participate, or to appear as amicus curiae, in any court of the United States or in any court of a State in any civil action which relates to section 502 of the Rehabilitation Act of 1973 or to the Architectural Barriers Act of 1968.

In addition, in the place of the "sue and be sued" authority, the amendment we offer would provide that, except as provided in section 518(a) of title 28, United States Code—relating to litigation before the Supreme Court—the Executive Director may appear for and represent the Board in any civil litigation with respect to the Board's responsibilities under section 502. As my colleagues are aware, section 518(a) provides that, except when the Attorney General in a particular case directs otherwise, the Attorney General and the

Solicitor General shall, when the United States is interested, conduct and argue suits and appeal in the Supreme Court and suits in the court of claims.

Mr. President, the amendments contemplate that final compliance orders of the Board, directed against other Federal departments or agencies, as well as against private parties, will be enforced, at the discretion of the Board, through litigation conducted either by the Executive Director, at the direction of the Board or by the Department of Justice. With respect to litigation before the Supreme Court, the Solicitor General, at his or her discretion, would represent the Board in any action in which the Board may have an interest.

Mr. President, I emphasize that nothing in this amendment is meant to preclude the exercise by the Attorney General or his or her designee of any authority granted by law or practice to the Attorney General to initiate civil actions or to petition for intervention or amicus status. The Attorney General may petition for intervention or amicus status in any civil action brought to enforce the provisions of the Architectural Barriers Act of 1968, section 502 of the Rehabilitation Act of 1973, or any implementing standards.

Mr. President, I expect the Board and the Attorney General to work closely together to assure the best possible representation whenever the Board is involved in litigation. There will be instances when the Board would be represented best by the Department of Justice. In such instances, I expect the Board to delegate to the Department the authority to conduct the litigation.

Mr. President, the amendment we offer is designed to clarify the relationship between the Architectural Barrier and Transportation Compliance Board and the Justice Department with respect to representation involving the Architectural Barriers Act or section 502.

As reported, the bill did not give sufficient flexibility to the Board and the Attorney General to develop a working relationship. The amendment we offer would provide that opportunity—most ideally, through the adoption by the two of a memorandum of understanding.

Under our amendment, responsibility for the enforcement, intervention, or involvement in any litigation—except, of course, before the Supreme Court—would continue to be posited.

INDEPENDENT LIVING SERVICES

Mr. President, I was principally responsible for authoring, along with Senator RANDOLPH, the provisions in S. 2600 to provide independent living services under the proposed new title VI, Comprehensive Services for Severely Handicapped Individuals. In addition, I strongly support the independent living provisions proposed by Senator STAFFORD to be provided under current title I of the Rehabilitation Act of 1973.

The provisions with respect to independent living are important steps forward in our efforts to assure that all handicapped individuals have the opportunity to be eligible for services designed to enhance their ability to live independently or to function in society and, if appropriate, secure and maintain appropriate employment.

In addition, Mr. President, I highlight the importance of the inclusion in the new title VI of a set-aside—a minimum of 30 percent of the funds paid to a State—for the purpose of making grants to local public agencies and private nonprofit organizations for the support of funding, coordination, and development of projects and programs with respect to independent living and other programs.

Mr. President, I cannot emphasize too strongly the importance and value of independent living services and programs to assist handicapped individuals in learning to live with problems of everyday life.

In the State of California, the director of the department of rehabilitation, Ed Roberts, was part of a group that established the Independent Living Center in Berkeley. Recently, in a magazine interview, Ed, who is handicapped himself, responded to a question as to how the idea for an independent living center developed:

It came out of necessity. We wanted to be independent and we didn't want to live in a nursing home or hospital the rest of our lives. I remember times when I was young that my biggest fear was what was going to happen when my parents die.

So we began to just build our own idea set of service—things that we needed to become independent in the community, and it was all based on an integrated model: that is how do we find our attendant; how would we get our wheelchairs repaired quickly, not sent off for up to six months; how we would get help with welfare advocacy to get the maximum amount of money so we could go to independent living; and how would we find accessible housing. This is how the whole thing began.

Mr. President, recently, I was visited in my office by a number of handicapped individuals from the Berkeley Independent Living Center (ILC). They were in town to visit legislators about employment disincentives. One of the group, Hale Zukas, had a number of trials and tribulations including the breakdown of his wheelchair at the airport and toppling over in the metro. Despite these problems, he continued his efforts. Hale is a cofounder of the Independent Living Center in Berkeley, along with Ed. Roberts and others. Without the services that ILC has been able to provide, it is likely that Hale would never have had the opportunity to come to Washington and share with legislators his views on a matter with which he is most familiar—the problems handicapped individuals have.

Mr. President, independent living centers and programs can offer a valuable chance for the establishment of projects and programs to assist us in providing vital services necessary to handicapped individuals. I strongly support this initiative to make available the opportunities, as appropriate, for all handicapped individuals to become involved in and benefited by independent living services and programs.

FORMULA

Mr. President, I believe strongly that there is a need for changing the method by which funds authorized for the vocational rehabilitation program under title I are distributed to States. Under the current formula for fiscal year 1978, the per capita allocation in the State of California is $2.60; for the State of Mississippi, the per capita allocation is $5.61. That is a difference of a little over $3 per person.

Mr. President, I recognize that there are differences among States with respect to the amounts of money needed to be provided in order to assist them in doing the best possible job to serve their citizens. However, with respect to the distribution of rehabilitation moneys, I believe the disparity between the amounts provided is clearly inequitable.

Currently, vocational rehabilitation funds are allocated on the basis of the Hill-Burton formula. My colleagues will recall that the formula adopted in the Hill-Burton Hospital Survey and Construction Act of 1954 was used as a model for the allotment formula and the variable matching ration proportions adopted in the 1954 Rehabilitation Act (Public Law 85–565). The Hill-Burton formula is based on population weighed to give additional weight to per-capita income.

An amendment that will be considered tomorrow would set a maximum on the allotment percentage which can be used in the formula. Setting such a maximum allotment percentage does not terminate the Hill-Burton formula. The formula, as modified by the offered amendment, would continue to recognize that there are differences in the funds available among States to provide support of vocational rehabilitation programs.

Currently, there is a maximum allotment percentage of 75. The higher the allotment percentage, the greater the allocation to the State in relation to its proportion. This limitation of "75" in current law is a recognition that a ceiling should be set on the allotment percentage level. The amendment offered today would, in line with this precedent, reduce the maximum from 75 to 55 and thereby reduce disparities among States in terms of the amounts of dollars. I believe all agree that our obligation to provide assistance to handicapped individuals is one which must be met by a partnership between the Federal and State governments. The problems faced by handicapped individuals in the country are roughly synonymous. The disparities under the current formula has meant that the quality of or extent of services provided to handicapped individuals suffers in those States not receiving their fair share.

With respect to the needs of California, testimony before the Handicapped Subcommittee of the Committee on Human Resources, presented by Ed Roberts, Commissioner of Rehabilitation for the State of California, strongly supported the need for additional moneys there. For example, Commissioner Roberts testified, "If California received $3.48 per capita—the national average— it would be possible for the State to serve an additional 28,483 handicapped persons.

Thus, Mr. President, I support this change in the formula as an equitable

step toward diminishing the present large disparity. The reduction of the allotment percentage assures that consideration of per-capita income will continue to be considered, but the impact of the per-capita income factor would be reduced.

DEVELOPMENTAL DISABILITIES EXTENSION

Mr. President, in addition to the extension of and amendments to the Rehabilitation Act which this bill proposes, title III of S. 2600 as reported would extend and amend the Developmental Disabilities Services and Facilities Construction Act.

The DD program was first developed to provide a comprehensive service planning system to meet the special needs of the developmentally disabled population. Prior to the genesis of this program, services to the developmentally disabled were fragmented or totally absent in many communities. As a result of a coordinated planning process carried out in concert by the State Developmental Disability Council and the designated State agency, established pursuant to the Developmental Disabilities Services and Facilities Construction Act, the service outlook for developmentally disabled persons has greately improved.

In addition to establishing a planning mechanism to insure that services are made available to this population group in the most effective and accessible manner possible, the Developmental Disabilities Act also requires protection and advocacy programs for developmentally disabled individuals.

Because of their unique need for habilitation—the development of skills and abilities—rather than rehabilitation—the improvement or adjustment of existing skills and abilities in order to maintain satisfactory functioning—and because of the frequent inability of the individuals affected to advocate and plan for themselves, the DD population needs a system of protection and advocacy as well as a State planning mechanism that will have particular sensitivity to their peculiar needs.

For example, the ability of a mentally retarded young man with a severe seizure disorder to demand unbiased treatment in the employment market may often be very different from that of a rehabilitated spinal cord injury victim.

Mr. President, I am convinced that these differences must continue to be recognized and dealt with.

I am convinced that we must extend the developmental disability program, as it would be in the bill reported by the Human Resources Committee, with appropriate funding levels for a significant period of time so that the system will be able to continue to develop, improve, and serve the unique needs of developmentally disabled individuals in our country.

Mr. BAYH. Will the Senator from California yield for a question?

Mr. CRANSTON. I yield to the Senator from Indiana.

Mr. BAYH. Senator CRANSTON, is my understanding correct that section 505 merely extends to the handicapped the same remedies, procedures and rights already extended through titles VI and VII of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972 to individuals discriminated against on account of race, color, religion, sex or national origin?

Mr. CRANSTON. My colleague from Indiana (Mr. BAYH) is correct.

Mr. BAYH. When title VI was first enacted in 1964, Congress intended to create a private right of action for aggrieved individuals. The circuit courts of the United States have clearly acknowledged this congressional intent in such cases as *Bossier Parish School Board* v. *Lemon*, 370 F.2d 847 (5th Cir. 1967), *Alvarado* v. *El Paso Indep. School Dist.*, 445 F. 2d 1011 (5th Cir. 1971), *Kelley* v. *Altheimer, Arkansas Pub. School Dist.* No. 22, 378 F.2d 483 (8th Cir. 1967) and *Cypress* v. *Newport News Gen'l and Nonsect. Hosp. Assoc.*, 375 F.2d 648 (4th Cir. 1967). As the Senator knows, the Supreme Court recently spoke on this issue in the Bakke case.

Mr. CRANSTON. I agree with my colleague from Indiana (Mr. BAYH). In the recent court case of Bakke against Regents of the University of California, eight Supreme Court Justices determined that, with respect to the availability of a private right of action, the question was raised too late in the proceeding and that Bakke had a private right of action available under title VI. Of the eight, four justices specifically concluded that an individual private cause of action was amply supported in the title VI legislative history and four assumed for purposes of the case that Bakke did have a private right of action. Only Justice White concluded that there was no cause of action.

Mr. BAYH. My colleague from California is correct, and the same private right of action exists under title IX. When Congress enacted title IX of the Education Amendments of 1972 to close the loophole created by the lack of reference to sex discrimination in title VI. this body deliberately created enforcement rights and remedies identical to those which had been established, tested, and interpreted under title VI. Indeed, when I first introduced the sex discrimination legislation in 1971, I noted:

> The same procedure that was set up and has operated with great success under the 1964 Civil Rights Act, and the regulations thereunder would be equally applicable to discrimination in this respect. 117 Cong. Rec. S13555 (Aug. 6, 1971).

The link between title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972 is so strong that in its initial House consideration title IX was prepared from a retyped, altered photocopy of title VI, as noted in the hearings on House Concurrent Resolution 330 before the Subcommittee on Equal Opportunities of the House Committee on Education and Labor, 94th Congress, 1st Session, at 16 (1975).

Mr. CRANSTON. I thank my colleague (Mr. BAYH) for reminding us of this history. I might also mention that it was in order to encourage appropriate private litigants to bring actions under titles VI and VII of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972 that Congress recently enacted the Civil Rights Attorney's Fees Awards Act of 1976, Public Law 94–559. Similarly, an important reason for the inclusion of the attorneys' fees provision in S. 2600 is to encourage appropriate private litigants to bring actions under title V of the Rehabilitation Act.

Earlier amendments to the bill presently on the floor have recognized its reliance on earlier civil rights statutes. In its report on the Rehabilitation Act Amendments of 1974, the Senate Labor and Public Welfare Committee noted:

> Section 504 was patterned after, and is almost identical to, the anti-discrimination language of Section 601 of the Civil Rights Act of 1964 . . . and Section 901 of the Education Amendments of 1973 . . . This approach to the implementation of Section 504, which closely follows the models of the above-cited anti-discrimination provisions, would . . . permit a judicial remedy through a private action. S. Rep. No. 1297, 93rd Cong., 2nd Sess. (1974), quoted in U.S. Code Cong. and Adm. News (1974) at 6390–6391.

Mr. BAYH. I thank the distinguished Senator from California for taking time to make clear the continuing intention of Congress that private actions be allowed under titles VI and VII of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972 and title V of the Rehabilitation Act of 1973.

Mr. CRANSTON. Mr. President, enactment of the provisions I have outlined and other features of S. 2600 as reported promises a major step forward in our continuing efforts to assist handicapped individuals in their long struggle to seek their full and equal share of the rights to which all are entitled in our land. I am proud to be able to play a part in this movement—one that has only just begun.

Mr. President, I thank my colleague from Vermont (Mr. STAFFORD) for offering on my behalf the amendment with respect to the conduct of so-called cross-cutting research. I do not question the value, in certain instances, of engaging in research activities which cut across the various programs in HEW. However, I do not believe that scarce funds should be diverted from congressionally authorized programs into these activities. The best example of the problems this causes is illustrated by what has happened to the child abuse program by virtue of this diversion of funds. The Child Abuse Prevention and Treatment Act has a very small appropriation—$18.9 million in fiscal year 1978—of which approximately half, or $9 million goes into research/demonstration programs. Under the original cross-cutting research proposal developed in the Office of Human Development Services, $1.5 million was to be taken from this total appropriation of $9 million and combined with another $700,000 from child welfare research funds, approximately $760,000 from the Administration on Aging and $650,000 from the rehabilitation program. The total proposal was for $3.7 million, of which $2.2 million, or nearly two-thirds, came from funds which would otherwise be expended on child abuse and child welfare research. Some

of the proposed areas for research in the cross-cutting proposal included such items as employment opportunitiles for low-income women and conceptualization of quality of human services. While research in these areas might have some connection—however remote—with the devastating phenomenon of child abuse, there is clearly a lot more than needs to be done that directly relates to child abuse.

Mr. President, Representative JOHN BRADEMAS, who chairs the Select Education Subcommittee of the House Education and Labor Committee, which has jurisdiction over each of the programs involved—aging, rehabilitation, and child abuse—and I recently sent Arabella Martinez, Assistant Secretary for Human Development Services, a letter expressing our opposition to her proposal to divert funds from these programs into this cross-cutting research proposal. Despite our opposition, which was also expressed at the time of passage of the Child Abuse Prevention and Treatment Act of 1978, HEW has expressed its intention to move forward with this proposal.

Mr. President, I ask unanimous consent that the letter which Mr. BRADEMAS and I sent to the Assistant Secretary, our subsequent correspondence and AGAO opinion be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, let me reiterate that I am not basically opposed to cross-cutting research. I would be supportive of a direct administration request for a modest authorization and appropriation to carry out these activities. I strongly feel, however, that limited funds should not be diverted from the specific purpose for which they were appropriated to fund cross-cutting research which has not been specifically authorized, approved, or funded by the Congress.

EXHIBIT 1

JUNE 22, 1978.

HON. ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services, Department of Health, Education, and Welfare, Washington, D.C.

DEAR ARABELLA: Over the past month, the staffs of the Senate Child and Human Development Subcommittee and the House Select Education Subcommittee have been meeting with you and your representatives concerning your "cross-cutting research" proposal for the Office of Human Development Services (OHDS). On June 5, the Department published in the Federal Register (Vol. 43, No. 108, Page 24472-75) a Program Announcement soliciting grant applications for this program.

This letter is to clarify in writing what has already been conveyed to you by the Subcommittee staffs—that we have grave concerns about both the legality and the propriety of this proposal, particularly since it would utilize significant sums of the already limited funds available for research activities under the Child Abuse Prevention and Treatment Act.

As you are aware, Congressional opposition to the diversion of child abuse funds into this activity was expressed at the time of passage of P.L. 95-266 in the Joint Explanatory Statement of the House and Senate authorizing Committees.

Although the concerns expressed in this letter are focused primarily upon the utilization of the child abuse funds for this proposal, we do not intend to convey approval of the utilization of funds appropriated for aging, handicapped persons, or Native American programs for these purposes.

We understand that you have reduced the proposed proportions to be taken out of funds appropriated for carrying out the Child Abuse Prevention and Treatment Act. But the present proposal would still significantly reduce the funds appropriated for child abuse programs. When combined with the proposed transfer of child welfare research monies appropriated under section 426 of the Social Security Act, the present proposal for cross-cutting research—ostensibly to benefit the programs carried out by each of the Administrations within OHDS—appears to be financed primarily from funds which would otherwise be allocated to the Administration for Children, Youth, and Families for research directly focusing upon child abuse and child welfare issues.

This is particularly distressing since child abuse funds are so limited and subject already to so many demands for demonstration or research projects. As a policy matter, we, thus, find it difficult to justify your proposal.

On the question of the legality of the proposed diversion of child abuse funds into the "cross-cutting research" proposal, the Comptroller General has been requested to provide an expedited legal opinion on the issue. Hence, we request that you take no further actions in implementing this proposal pending issuance of an opinion from the Comptroller General. We would appreciate receiving a legal opinion also from the H.E.W. General Counsel on the statutory authority for your proposal.

Arabella, in closing let us say that our objections to this proposal should not be viewed as opposition to what you are trying to achieve by cross-cutting research. Much may be learned from such activities, and there is certainly a need for greater sharing of research activities between the various programs within OHDS. We would tend to be supportive of a Departmental request for specific authority and specific authorization of modest appropriations for such research. As you know, this type of provision is included in H.R. 1267. However, we do have major reservations about diverting for this purpose funds authorized and appropriated for specific programs. As you may know, the Child Abuse Prevention and Treatment Act was passed in 1973 over the opposition of the then Administration because of Congressional concern that there was insufficient focus upon the problem of child abuse. A proposal to transfer child abuse funds into activities which may touch upon child abuse problems only in the most indirect fashion—at a time when there remains much to do and learn that is directly related to child abuse—appears to many to be a step backwards in our efforts to deal with the devastating problems facing so many children and their families.

We would appreciate your attention to this letter and a reply at your earliest convenience.

With best wishes,

Cordially,

ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., July 18, 1978.

HON. ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development, Human Resources Committee, U.S. Senate, Washington, D.C.

DEAR ALAN: This is in response to your letter of June 22, expressing your concern about our cross-cutting research program.

I want to assure you that not one cent of child abuse research funds will be diverted to projects that do not meet the statutory research objectives and conditions of the Child Abuse Prevention and Treatment Act. We have carefully structured our cross-cutting research program to ensure that funds appropriated for each of the OHDS programs will be used only for those programs and will remain subject to the direction and control of the Commissioners who administer those programs.

The Commissioner, Administration for Children, Youth and Families, or her designee, will personally approve each cross-cutting project for which child abuse funds are used, and the exact amounts of those funds. You can be assured that she will not give her approval unless she is fully satisfied that the project meets the statutory research objectives and conditions of the Child Abuse Prevention and Treatment Act to the extent of the funds she approves. Exactly the same procedures and safeguards will be used by each of the other OHDS Commissioners with research and demonstration authority for the programs he administers. If Dr. Cardenas (or any other Commissioner) does not approve cross-cutting up to the full amounts that she has made available for the cross-cutting program, she will withdraw the remaining funds from the cross-cutting pool and use them for regular child abuse research projects.

The primary reason that all of the OHDS Commissioners have agreed to participate in our cross-cutting program is that they are convinced, as I am, that properly structured cross-cutting projects will increase the ability of each program to meet its research objectives. Scarce resources can be pooled to fund projects that benefit several programs but are beyond the budget of any one of those programs. I am delighted that you agree that much may be learned by cross-cutting activities.

As you requested, I am enclosing an opinion from our General Counsel's Office confirming our statutory authority for the cross-cutting program. I hope that this letter and the opinion will satisfy your concerns as to both propriety and legality. I will, of course, be glad to meet with you and your staffs, together or separately, as you wish, to discuss this matter further.

Sincerely,

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Enclosure.

OFFICE OF THE GENERAL COUNSEL,
June 30, 1978.

To Arabella Martinez, Assistant Secretary for Human Development Services.

From Galen D. Powers, Assistant General Counsel.

Subject Statutory Authority for OHDS Cross-Cutting R. & D.

This is in response to your request for a legal opinion on the statutory authority for your proposed OHDS cross-cutting research and demonstration contract and grant program, the grant portion of which was an-

nounced on June 5, 1978 (43 F.R. 24472). It is our view that there is clear statutory authority for your proposal, as we understand its functioning.

PROGRAM DESCRIPTION

As we understand your cross-cutting proposal, each of the OHDS components that has research and demonstration authority for its programs has agreed to contribute funds to a pool from amounts appropriated for research and demonstration allocated to it by the HEW budget proposals and approved by the appropriations committees for that purpose.[1] Following announced grant and contract specifications, proposals for cross-cutting projects are to be submitted in a number of priority cross-cutting areas. These projects are intended to further the research objectives of two or more OHDS programs by benefiting two or more of those programs' "target populations," such as the aged and handicapped. Examples of proposed priority project areas are "Assessment of individual readiness for employment," (CC–78–1), and "Adolescent community services" (CC–78–10). Each applicant would be required to estimate quantitatively the degree to which each "target population" would be affected by the proposed project.

As we understand your proposal, each OHDS component will designate research staff to participate on panels to evaluate the proposed projects against the stautory research objectives and conditions of its program(s) and the cross-cutting project specifications. If the project meets those objectives and conditions, the panel would recommend funding from the cross-cutting set-aside "pool." Funding would be in relationship to the degree to which the project was expected to benefit the OHDS programs' target populations and existing levels of available set-aside funds. Each Commissioner or his designee would then approve the project and the amount of the funds contributed to it from his portion of the set-aside funds.[2]

ANALYSIS

There have apparently been questions raised on two grounds concerning the statutory authority for your proposed cross-cutting program. First, it has been suggested that the appropriations statute will somehow be violated by your pooling and proportionate funding arrangement. Second, it has been suggested that the substantive statutory responsibility of several of the OHDS Administrations will be violated.

On the first point, we believe that it is irrelevant whether R & D funds allocated for a particular statutory program, such as child abuse, are used as the sole funding for a project, or are used in combination with other funds, as long as the project furthers a statutory R & D objective of the Child Abuse Prevention and Treatment Act to the extent of contributions from appropriations for that Act. In our view, this would be the case even if R & D funds for the various OHDS programs were specifically earmarked in the appropriations statute, which, of course, they are not. You have informed us that in your view, pooling, rather than diluting the effect of scarce funds allocated to a given program such as child abuse, is at least equally likely to enhance the effectiveness of those funds by enabling funding of projects useful to several programs, including child abuse, that would be beyond the resources of that one program.

On the second point, it is true that several OHDS components have direct statutory R & D authority for their programs, rather than authority vested only in the Secretary and delegated to them. The Commissioner on Aging, for example, has statutory authority to make research or demonstration grants or contracts under the Older Americans Act, 42 U.S.C. § 3035, as does the Commissioner of the Rehabilitation Services Administration under the Rehabilitation Act, 29 U.S.C. § 762.

But as we understand this proposal, nothing in it will violate those authorities because the individual with statutory R & D responsibility for a given OHDS program ensures that each project for which funds allocated to that program are approved furthers the statutory R & D objectives of that program and meets its statutory conditions.[3]

U.S. SENATE,
Washington, D.C., September 20, 1978.

Hon. ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services, Department of Health, Education, and Welfare, Washington, D.C.

DEAR ARABELLA, Thank you for your response of July 18 to our letter of June 22 expressing our opposition to your proposal to divert funds from regular child abuse research and demonstration projects into your "cross-cutting" research proposal.

We are enclosing a copy of the decision of the Comptroller General of the United States which, based on certain assumptions derived from H.E.W.'s assertions to the GAO, upholds the legality of your proposal subject to the approval function for the allocation of child abuse funds being assigned to the Director of the National Center for Child Abuse and Neglect, rather than to the Commissioner for the Administration on Children, Youth, and Families, and subject to compliance with section 101 of P.L. 95–266 requiring the Secretary of HEW, through the National Center, to establish research priorities for grants and contracts made by the Center and requiring publication of the proposed priorities for public comment at least 60 days prior to their establishment. We would appreciate your advising us as to whether and how compliance has been accomplished by HEW with respect to this provision of P.L. 95–266, what public comments were received, and whether the National Center participated in publication of priorities, as required by section 101 of P.L. 95–266.

In as much as your proposal and the Comptroller General's opinion are predicated upon assurances that each project applicant will be required to estimate quantitatively the degree to which each of the "target populations" will be affected by the proposed project and assurances that "projects will then be evaluated, approved, and funded according to procedures designed to guarantee that research funds allocated to each OHDS program are spent properly", we would appreciate your providing us with detailed breakdowns and supporting justification for each approved project with respect to the amount of child abuse funds utilized for each such projects.

We would also appreciate receiving similar breakdowns for the allocation of funds or "cross-cuttting" research from the Administration on Aging and the Rehabilitation Services Administration, as well as allocation of non-child abuse funds from the Administration on Children, Youth, and Families, for this purpose.

With best wishes,
Cordially,

ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development, Committee on Human Resources.

JOHN BRADEMAS,
Chairman, Subcommittee on Select Education, Committee on Education and Labor.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., Aug. 17, 1978.

Hon. ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development, Committee on Human Resources, U.S. Senate.

DEAR MR. CHAIRMAN: This decision is in response to your letter of June 14, 1978, asking us to determine the legality of a proposal by the Department of Health, Education, and Welfare (HEW) to transfer $750,000 in fiscal year 1978 child abuse and neglect research and development funds to the Office of the Assistant Secretary for Human Development Services (HDS), to be used for "cross-cutting" research activities. The purpose of these activities is to fund research or demonstration projects which benefit more than one HDS target population (the aged, children, Native Americans) and which approach problems related to long-range HDS goals.

The Child Abuse Prevention and Treatment Act (CAPTA), Pub. L. No. 93–247, 88 Stat. 5, January 31, 1974, 42 U.S.C. § 5101 *et seq.* (Supp. V. 1975), was enacted to provide financial assistance for research and demonstration projects concerning the causes, prevention, identification, and treatment of child abuse and neglect. The Act established

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[1] These R. & D. allocations are not, of course, reflected in the appropriations statute, with certain earmarkings not here relevant, appropriates lump sums for carrying out the statutes presently administered by OHDS. See P.L. 95–205 December 9, 1977, Joint Resolution incorporating H.R. 7555.

[2] As we understand your funding arrangement, the contribution from each OHDS component remains specifically identified, and funds may not be used from that contribution without the approval of the appropriate component. In our view, since each Commissioner retains full control over his contributed funds, and will spend them only on projects that meet the statutory research objectives and conditions of his programs, your proposal is not inconsistent with the expectations expressed in the Joint Explanatory Statement on the Child Abuse Prevention and Treatment Act Amendments, P.L. 95–266, U.S.C.C.A.N., No. 4, May 1978, p. 1085.

[3] In our view, as long as the appropriations statute appropriates a lump sum to the Office of Human Development Services for carrying out the statutory programs it administers, without earmarking specific amounts for R & D activities, you would have sufficient authority under sections 1110 and 1115 of the Social Security Act for your cross-cutting program even if the OHDS components involved were not approving the grant awards and the use of R & D funds allocated in the budget to their programs. We do not need to reach that question here, however.

You should, however, structure your grant and contract approval process so that there will be no possibility of unauthorized funding. The notice of grant award or contract should specify each statutory authority under which it is made and the exact dollar amount awarded under that authority. Although the June 5 announcement indicated that grants were being made only under sections 1110 and 1115, they are in fact, if we have correctly described above the functioning of the system, being made under additional R & D authorities in OHDS, and the contract or grant award notices should appropriately reflect each of the authorities being used.

the National Center on Child Abuse and Neglect which, *inter alia*, administers programs of research, demonstration, and State assistance grants, Pub. L. No. 93–247, §§ 2–4, and compiles and maintains a clearinghouse of resource information on child abuse and neglect activities throughout the nation, *id.*, section 2.

The Congressional intent in enacting this legislation was to provide adequate resources to deal specifically with the problems of child abuse and neglect, problems which had received limited attention and funding under previously existing statutes such as title IV of the Social Security Act, 42 U.S.C. §§ 601, 620. CAPTA was to operate in addition to, and to provide additional resources for, such existing programs. H.R. Rep. No. 93–685, Committee on Education and Labor, 93 Cong., 1st Sess., pp. 3–5; S. Rep. No. 93–308, Committee on Labor and Public Welfare, 93 Cong., 1st Sess., p. 5. Fifty percent of appropriations authorized for CAPTA are to be spent on demonstration projects, 42 U.S.C. § 5104.

On April 24, 1978, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 was enacted, Pub. L. No. 95–266, 92 Stat. 205, title I of which amended CAPTA (Amendments). In the Amendments, a higher priority was given to research activities. To this end, the previous requirement that at least 50 percent of appropriated funds be used for demonstration projects, 42 U.S.C. 5104, was amended to include research activities within this earmarked expenditure, Pub. L. No. 95–266, section 104. The Amendments also required the establishment of research priorities developed through utilizing public comments and suggestions from experts in the field of child abuse, 42 U.S.C. 5101, as amended by Pub. L. No. 95–266, section 101.

The expanded priority given to research activities was emphasized by the House Education and Labor and the Senate Human Resources Committees. In the Joint Explanatory Statement on the CAPTA Amendments, the Committees stated, with respect to the utilization of research funds:

"The Committees would like to make clear that they expect that no funds appropriated under this Act would be utilized for research programs or activities which are not specifically authorized by this Act, nor would such funds be transferred to any office or other activity of the Department of HEW which is not directly responsible to the Commissioner of the Administration for Children, Youth, and Families or other successor office or activity which performs substantially similar functions with respect to the child abuse and neglect programs. The Committees have been assured that no such diversion of research funds appropriated under this Act has been implemented with respect to fiscal year 1978 appropriations, and the Committees expect that this situation will continue thereafter." Joint Explanatory Statement of House Bill, Senate Amendment, and Compromise Agreement, 124 Congressional Record S. 5336 (daily ed., April 12, 1978)

In June, 1978, HEW published an announcement of grant availability for fiscal year 1978 for cooperative research or demonstration projects which support the long-range goals of HDS and which "crosscut" HDS's component administrations and the populations they serve (including the Administration for Children, Youth, and Families which administers CAPTA), 43 Fed. Reg. 24472 (June 5, 1978). As stated in this announcement, these "cross-cutting" grants are authorized and are to be funded by HEW under sections 1110 and 1115 of the Social Security Act, 42 U.S.C. §§ 1310, 1315, and are to be administered by HDS's Office of Planning, Research and Evaluation (OPRE).

Section 1110 authorizes the Secretary of HEW to make grants to, and to enter contracts and jointly financed cooperative arrangements with, State and public and private nonprofit organizations and agencies to pay for part of the cost of research and demonstration projects for programs carried out under or related to the Social Security Act, 42 U.S.C. § 1110(a). Section 1115 contains special provisions for projects carried out by the States.

In your letter of June 14, you ask whether HEW legally may "transfer" fiscal year 1978 CAPTA funds to OPRE to be utilized in "crosscutting" grants, particularly in light of the Congressional intent, as expressed in the portion of the Joint Explanatory Statement quoted above.

In order to respond adequately to your inquiry, we requested a report on the issues raised from the Secretary of HEW. In a report dated July 7, 1978, the Acting General Counsel of HEW provided us with a detailed explanation of the purpose and of the administrative mechanism to be implemented for the "cross-cutting" projects, pertinent parts of which are set forth below:

"* * * The underlying rationale of the 'cross-cutting' program is that properly structured 'cross-cutting' projects will increase the ability of each program to meet its research objectives, since scarce resources can be pooled to fund projects that benefit several programs but are beyond the budget of any one of those programs."

* * * * *

"Each project applicant will be required to estimate quantitatively the degree to which each OHDs 'target population' will be affected by the proposed project. These projects will then be evaluated, approved, and funded according to procedures designed to guarantee that research funds allocated to each OHDS program are spent properly."

* * * * *

"Under the 'cross-cutting program', each of the OHDS Commissioners with research and demonstration authority for his or her programs has agreed to contribute to a 'cross-cutting' set aside pool a portion of appropriated funds allocated to him or her for research and demonstration. At the request of each Commissioner, the Budget and Financial Management Division reduces that Commissioner's allowance by the set aside amount, and increases the allowance to the Office of Planning, Research, and Evaluation (OPRE). (OPRE is a part of the Office of the Assistant Secretary.)

"Each OHDS Commissioner will designate research staff to participate on panels to evaluate the proposed 'cross-cutting' projects against the statutory research objectives and conditions of his or her program(s) and the 'cross-cutting' project specifications. If the project meets those objectives and conditions, the panel will recommend funding from the 'cross-cutting' set aside pool. Funding would be in relationship to the degree to which the project was expected to benefit the OHDS programs' target populations and existing levels of set-aside funds. Each Commissioner or his or her designee would then approve the project and the amount of the funds contributed to it from his or her portion of the set aside funds. Finally, a grant award or contract would be executed in the amounts approved by each Commissioner under each research authority.

"OPRE will keep records on the total amounts contributed by each Commissioner, and the amounts approved by each for each 'cross-cutting' project. If any Commissioner does not approve 'cross-cutting' funding up to the full amounts that he or she has contributed, the remaining amount will be reallocated to the contributing Administration."

For fiscal year 1978, HEW's funds were appropriated by Joint Resolution, Pub. L. No. 95–205, 91 Stat. 1460, December 9, 1977, incorporating H.R. 7555, the Departments of Labor, Health, Education, and Welfare, and Related Agencies Appropriations Act of 1978. Child abuse activities are among a group of programs financed by Pub. L. No. 95–205 under a lump sum appropriation for "Human Development" in H.R. 7555. The total amount appropriated under this heading is $2,195,978,000, with no funds specially earmarked for the Child Abuse Prevention and Treatment Act.

Also included in this lump-sum appropriation are funds for programs such as Title VII of the Older American Act of 1965, 42 U.S.C. § 3011, the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601 note, Sections 106, 107, and 306 of the Comprehensive Employment and Training Act of 1973, 29 U.S.C. §§ 816, 817, and 875, and the Rehabilitation Act of 1973, 29 U.S.C. § 701 note. Funds for activities under sections 1110 and 1115 of the Social Security Act (HEW's stated authority for the "cross-cutting" project) were appropriated by Pub. L. No. 95–205 under the headings "Social and Rehabilitation Service—Public Assistance", and "Departmental Management—Policy Research," and not under "Human Development."

References in the legislative history of Pub. L. No. 95–205 (H.R. Rep. No. 95–381, 95th Cong., 1st Sess., p. 90; S. Rep. No. 95–283, 95th Cong., 1st Sess., pp. 124 and 172) indicate that HEW and the House and Senate Appropriations Committees were in agreement that $18,928,000 of the total fiscal year 1978 "Human Development" appropriation should be applied to CAPTA. There are no statutory provisions requiring HEW to spend this amount on CAPTA activities, however.

Our Office has traditionally taken the position that, in a strict legal sense, the total amount of a lump sum appropriation may be applied to any of the programs or activities for which it is available in any amount, absent further restrictions provided by the appropriations act or another statute. See, LTV Aerospace Corporation, 55 Comp. Gen. 307, 318–319 (1975). Thus, any of the funds appropriated for HDS under "Human Development" for fiscal year 1978 may be used by HEW to finance the activities of any program included in that appropriation. Neither the budget estimates allocating funds within the appropriation, nor the restriction on the use of CAPTA research funds set forth in the Joint Explanatory Statement constitute legally binding limits on HEW's actual internal allocations of the funds made available to HDS. 55 Comp. Gen. 307, 315–327, supra; 55 Comp. Gen. 813 (1956); 17 Comp. Gen. 147 (1937); B–149163, June 27, 1962; B–164031(3), April 16, 1975.

"Cross-cutting" grants for programs and projects that are not within the scope or purpose of the HDS appropriation may not, however, be funded with CAPTA or other HDS programs funds. Such use of appropriated funds is prohibited by 31 U.S.C. § 628, which states:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no other."

See, e.g., 19 Comp. Gen. 774 (1940); 36 Comp. Gen. 240 (1946).

A determination of the legality of the use of CAPTA research and demonstration funds in "cross-cutting" grants, then, depends on the authority and appropriation under which grants are to be made, and the objectives to be met by them.

As described by HEW in its July 7th report, it is apparent that the proposed grants will be awarded under the research and demonstration authority of the various HDS components, and not under the general authority of sections 1110 and 1115 of the Social Security Act, as was indicated in the June 5th announcement. A memorandum enclosed with the HEW report indicated that the citations of authority in the announcement were erroneous and will be corrected to reflect the proper HDS authority in each grant or contract award notice. It was also stated that the Commissioner of each HDS Administration, or his designee, would retain adminis-

trative control over program funds through the authority to approve the funding of projects which meet program requirements, and the amount of program funds allocated to any particular grant or contract.

With respect to whether the use of "cross-cutting" projects is consistent with the joint explanatory statement, HEW states:

"As I have explained above, child abuse funds will not be approved for any 'cross-cutting project unless that project meets, in the judgment of the Commissioner, Administration for Children, Youth and Families, the statutory objectives and conditions of the Child Abuse Prevention and Treatment Act to the extent of the funds approved. . .

"OPRE uses those funds subject to, and only with, the personal approval of Dr. Gardenas, or her designee. It is our view, therefore, that the OHDS 'cross-cutting' program is not inconsistent with the concerns expressed in the Joint Statement."

Accordingly, we agree that, as explained by HEW, the concerns expressed in the joint explanatory statement essentially have been complied with, and no funds which are allocated to CAPTA will be spent without the approval of the Commissioner of the Administration for Children, Youth, and Families.

One of your staff members stated orally that you are concerned about the function of the Director of the National Center on Child Abuse and Neglect (the National Center) under the "cross-cutting" project. HEW's child abuse program under CAPTA is authorized to be carried out by the Secretary through the National Center, 42 U.S.C. 5101, *et seq.*; the proposed "cross-cutting" projects containing child abuse elements apparently are to be administered by the Commissioner, Children, Youth and Families, and not specifically by the Director of the National Center. We agree that the administrative mechanism to be employed by HEW for its "cross-cutting" project would have to recognize the statutory functions of the Director of the National Center. We suggest that the Commissioner, Children, Youth, and Families, delegate to the Director the authority to approve projects incorporating child abuse research and the amount of CAPTA funds to be contributed to them, if this has not already been incorporated into the proposal.

Finally, section 101 of the CAPTA Amendments, Pub L. No. 95–266, requires the Secretary of HEW, through the National Center, to establish research priorities for grants and contracts made by the Center and to publish the proposed priorites for public comment at least 60 days prior to their establishment. HEW will need to determine if its June 5, 1978, announcement of "cross-cutting" grants and the priorities stated therein satisfy this publication requirement.

Assuming that the proposed projects will be administered under the research and demonstration authority of HDS's offices, in compliance with the respective authorizing legislation for each HDS component, it is our opinion that CAPTA and other HDS Administrations' fiscal year 1978 funds may legally be used to finance relevant portions of "cross-cutting" research projects.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS 1979—CONFERENCE REPORT

Mr. PROXMIRE. Mr. President, what is the parliamentary situation? Is the conference report now pending before the Senate? Does it automatically recur?

The PRESIDING OFFICER. No, it requires unanimous consent to go back to the conference report.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Senate resume consideration of the conference report.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senate continued with the consideration of H.R. 12936.

Mr. PROXMIRE. Mr. President, it is my understanding that the Senator who wished a rollcall is ready to go ahead. I do not know of any Senator who wants to delay on this. I think we are ready to vote.

Mr. BELLMON. Mr. President, the House-Senate conference on the HUD and independent agencies appropriation bill has reached agreement. I was a conferee for the Senate, but because of the difficult conference on the second fiscal year 1979 budget resolution, I was unable to participate personally in the conference on the appropriation bill. Therefore, I want to take this opportunity to share with my colleagues my reactions to the conference agreement.

First, I am pleased that the bill as it came out of conference is well within the assumptions reflected in the Senate-passed second budget resolution. It provides budget authority of $67.9 billion, and will result in outlays of $44.8 billion in fiscal year 1979. Both of these figures are below the targets assumed in the second budget resolution. Even considering possible later requirements, it does not appear that the HUD and Independent Agencies Appropriations Subcommittee will exceed its allocations under section 302(b) of the Budget Act.

Let me turn now to some comments on specific aspects of the conference agreement:

ASSISTED HOUSING

The Conferees added approximately $24 million in contract authority and $255 million in budget authority to the Senate-approved figures for assisted housing. While I would have preferred that the Senate figures be maintained, I am pleased that the conferees were able to retain one-half of the cut which was made by Senator PROXMIRE's amendment when the appropriation bill was acted on by the Senate. I continue to believe there are serious longrun financing problems in our current approach to housing assistance. I am also concerned by HUD's inability to get section 8 housing completed expeditiously. As Senator CHILES pointed out during debate on the Proxmire amendment, HUD is actually further behind this year in completing contracts and getting construction started under this program than it was a year ago this time. At the end of fiscal year 1977, HUD had unused budget authority of $6.4 billion in this program. It now appears that the unused balance in fiscal year 1978 will be even larger.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE

Mr. President, I would like to congratulate the conferees on their action regarding the release of recaptured budget authority for the emergency mortgage purchase assistance program of GNMA.* By reducing the released authority from $4 billion to $1 billion and by stipulating that these funds "not be available in the absence of a recession in the housing industry," the conferees have struck a significant blow for congressional control over a potential budget buster.

CONGREGATE HOUSING

I am not so pleased, however, with the conference committee's decision to cut in half the appropriation for the congregate services program—from $20 million to $10 million. Although Congress attempted to establish such a program in the 1970 Housing Act, it has not yet been utilized to its full potential. It was my hope that this year Congress would remedy that 8-year oversight and finally lay a solid foundation for what can be a viable alternative to expensive nursing homes and other institutionalized care for the elderly.

URBAN DEVELOPMENT ACTION GRANTS

I am also disappointed that the conferees restored the $20 million cut made in the urban development action grant (UDAG) program by the Senate when it passed the Proxmire amendment. The Community Development Act of 1977 required that funds under this program be allocated—

In a manner which achieves a reasonable balance among programs that are designed primarily (1) to restore seriously deteriorated neighborhoods, (2) to reclaim for industrial purposes underutilized real property, and (3) to renew commercial employment centers.

This balance, however, was not achieved by HUD in grants made under the program's first round of funding. Of the first round grant awards, over 70 percent of the funds went to downtown commercial projects, and less than 12 percent went to neighborhoods. Many of us have been concerned over the emphasis on commercial projects so far in this program. Many of these projects, I believe, could and would proceed without the UDAG support. Even though it is encouraging that more funds in the second round urban development action grants were awarded for neighborhood oriented projects, I believe it is wise to keep pressure on HUD at this time to assure this trend continues. This is a relatively new program, Mr. President, and I think we should be tight-fisted in releasing funds until it has demonstrated an effective track record.

ENVIRONMENTAL PROTECTION

The conference agreement reduces funding for the Environmental Protection Agency by more than $68 million from the Senate version of the HUD and independent agencies bill—down $18 million for abatement and control activities and down $50 million in the construction grant program.

The decision to reduce the amounts allocated to these two programs from the Senate figures represents, in my judgment, sound thinking on the part of the conferees. The decrease in funding for EPA construction grants is particularly appropriate in light of demonstrated inadequacies in that program. For example, over two-thirds of the municipalities par-

*Government National Mortgage Association.

ticipating in the construction grant program failed to meet the stated goal of at least secondary levels of treatment for effluent discharges by July 1, 1977. Further, both historically and as recently as the current fiscal year, the program has experienced significant lags in construction starts, resulting in a shortfall in obligation rates and a carryover of funds from year to year. Again, it is my belief that the decision to fund this program at a reduced level represents a clear effort on the part of the Congress to encourage EPA to identify the deficiencies in the program and to interject positive change during the coming fiscal year. The goals of the program are both reasonable and necessary, and achieving them is important to the people of this country. It is the methods which have been used in that endeavor which merit examination.

I am very pleased that the conferees agreed to earmark $1.1 million from EPA's anticipatory research allocation for groundwater research on the Garber-Wellington aquifer. This research is to be conducted at the Robert S. Kerr Environmental Research Laboratory in Ada, Okla.

NATIONAL SCIENCE FOUNDATION

The conferees cut $6 milion from National Science Foundation programs. As I tried to indicate when the HUD bill was pending in the Senate, I believe much deeper cuts in National Science Foundation funding would have been justified. I continue to consider this agency to be mismanaging, and using on low priority projects, a substantial part of the resources available to it.

VETERANS' HEALTH CARE

With regard to Veteran's health care, I was pleased that the conferees emphasized the importance of expanding ambulatory care. This should help reduce costs as outpatient services can be substituted, where appropriate, for more expensive in-hospital care.

I am concerned, however, about some of the funds for increases in VA health care personnel in light of a National Academy of Sciences (NAS) study which found that, nationwide, there are adequate personnel for the patients being treated. The NAS study found uneven workloads between and within hospitals, inappropriate criteria for allocating staff, and inadequate utilization of allied health professionals such as nurse practitioners, physicians' assistants, and dental hygienists.

I am also concerned, Mr. President, about several studies by the General Accounting Office which suggest that the VA has been slow in implementing several needed reforms which could both save money and improve the quality of care provided to needy veterans. I call attention especially to GAO's recommendations that the VA eliminate unnecessary and underutilized facilities and that it step up its cooperation with other health care facilities. Finally, I believe the VA should review the voluntary cost-saving efforts currently being carried out in the private sector to see where similar reductions in the rate of inflation in VA health care costs may be achieved.

Mr. President, despite these concerns, on balance, I believe the Senate conferees have represented us well in their work on the HUD and independent agencies appropriation bill. I shall vote to approve the conference report. I will try to assure that the problems I discussed receive appropriate attention by the Senate and by the executive branch in the months ahead.

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the conference report. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent on official business.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Minnesota (Mrs. HUMPHREY) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Delaware (Mr. ROTH), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The result was announced—yeas 75, nays 6, as follows:

[Rollcall Vote No. 381 Leg.]

YEAS—75

Bartlett	Gravel	Morgan
Bayh	Griffin	Moynihan
Bellmon	Hansen	Muskie
Bentsen	Hart	Nelson
Biden	Haskell	Nunn
Bumpers	Hatfield, Mark O.	Packwood
Burdick	Hatfield, Paul G.	Pell
Byrd, Harry F., Jr.	Hathaway	Percy
Byrd, Robert C.	Hodges	Proxmire
Cannon	Hollings	Randolph
Case	Huddleston	Riegle
Chiles	Inouye	Sarbanes
Church	Jackson	Sasser
Clark	Javits	Schmitt
Cranston	Kennedy	Stafford
Culver	Leahy	Stennis
Danforth	Long	Stevens
DeConcini	Lugar	Stevenson
Dole	Magnuson	Stone
Domenici	Matsunaga	Talmadge
Durkin	McGovern	Thurmond
Eagleton	McIntyre	Tower
Eastland	Melcher	Weicker
Ford	Metzenbaum	Williams
Glenn		Young
		Zorinsky

NAYS—6

Curtis	Goldwater	Laxalt
Garn	Hatch	Scott

NOT VOTING—19

Abourezk	Heinz	Ribicoff
Allen	Helms	Roth
Anderson	Humphrey	Schweiker
Baker	Johnston	Sparkman
Brooke	Mathias	Wallop
Chafee	McClure	
Hayakawa	Pearson	

So the conference report on H.R. 12936 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. PROXMIRE. Mr. President, will the Senator from West Virginia yield to clarify action on the conference report?

Mr. ROBERT C. BYRD. I yield.

Mr. PROXMIRE. Mr. President, it is my understanding we have to move again to concur in the amendments of the House to the amendments of the Senate. Is that correct?

The PRESIDING OFFICER. No. That has already been done. There was that motion and that was not reconsidered.

Mr. PROXMIRE. I thank the majority leader.

Mr. ROBERT C. BYRD. I thank the Chair.

AUTHORIZATION TO PRINT ADDITIONAL COPIES OF EULOGY TO SENATOR HUBERT H. HUMPHREY

Mr. ANDERSON. Mr. President, I have a concurrent resolution which has the support of the leaders on both sides I ask unanimous-consent that it be considered right now. It deals with a request that an additional 5,000 copies of a tribute to Hubert H. Humphrey be printed. It has clearance on both sides.

The PRESIDING OFFICER. Is there objection?

Mr. RANDOLPH. Mr. President, reserving the right to object, and I will not object, what is the document and what is the authority for the document?

Mr. ANDERSON. It is customary when a tribute has been paid to a Senator who has passed away that 1,000 copies be printed.

This is a request that an additional 5,000 copies of the eulogy that was paid here on the floor to Hubert Humphrey be printed.

The PRESIDING OFFICER. Is there objection?

Mr. RANDOLPH. I have no objection.

The PRESIDING OFFICER. There being no objection, the clerk will state the resolution by title.

The legislative clerk read as follows:

Concurrent resolution authorizing the printing of 5,000 additional copies of the eulogies to the late Senator Hubert H. Humphrey.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Con. Res. 106) was agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That there shall be printed 5,000 additional bound copies of the eulogies to Hubert H. Humphrey, late a Senator from the State of Minnesota, to be furnished to his successor in office.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 12508, which is at the desk, and that upon the disposition of that bill, still working within the constraints of the time agreement on the natural gas conference report, the Senate proceed to the consideration of H.R. 12443, which is at the desk, which bills have been cleared by the minority.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate H.R. 12508, an act to amend the Immigration and Nationality Act to facilitate the admission into the United States of more than two adopted children, and to provide for the expeditious naturalization of adopted children.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the bill will be considered as having been read twice by its title, and the Senate will proceed to its consideration.

● Mr. KENNEDY. Mr. President, this is a noncontroversial, but extremely important bill reforming the immigration law. It repeals the current arbitrary limitation on the number of international adoptions permitted a single American family.

Currently, the Immigration and Nationality Act contains a limitation of only two adoptions. But there was, and is, no rational basis for this number or any other arbitrary limitation. The sole criteria should be the ability of the petitioner family to care and provide for an adopted child, and this must be governed by valid home studies conducted by State or recognized private agencies, or authorized individuals.

That is what this bill does. It writes this home study requirement into law—and makes this the sole basis for granting a petition under the immigration law. This will also go a long way toward eliminating some abuses that can occur under existing law.

Mr. President, this bill has strong support from many quarters—from the voluntary agencies and church groups involved in international adoption, to professional persons and others involved in the administration of intercountry adoption programs. It eliminates an arbitrary provision of law, and replaces it with sound requirements that protects the interests of all adopted children.

Finally, this action is in keeping with our Nation's effort to respond to the "International Year of the Child"—by recognizing the special needs of orphans around the world, and their need for an opportunity to share life with a family instead of alone in an orphanage.

This bill is also in keeping with the spirit of the action we took 2 months ago on an amendment I offered to the foreign assistance bill to provide a special $2 million fund to assist disadvantaged children and orphans in Asia. I am gratified that this provision was sustained in conference and that it will soon be signed into law.

Mr. President, our Nation has a long and proud tradition of humanitarian concern for the needs of orphans and children around the world. I am confident this bill will help us better fulfill this tradition.●

● Mr. ANDERSON. I am pleased to join with Senator KENNEDY in supporting legislation which will facilitate the adoption of foreign children by American families and provide for their expeditious naturalization. This legislation which removes several serious obstacles for American families seeking to adopt foreign children, passed the House under suspension of the rules on July 18 by 413 votes. Not a single Member of the House of Representatives voted against the measure.

Among the important modifications embodied in the bill are provisions of S. 987, which removes the limitation in the Immigration and Nationality Act which now restricts the number of foreign adopted children which may be granted an immigration preference. As original Senate sponsor of S. 987, I am very gratified that these long-overdue changes are now before the Senate.

Under the present law, only two foreign adopted children can immigrate to the United States on immediate relative status. The alternative immigration status—nonpreferred—routinely results in delays of a year or even several years before a third child can be admitted to this country. This arbitrary limit is troublesome at the least, and at the worst can have tragic effects due to illness or failure to thrive of foreign children awaiting entry into the United States. In the past, the only other alternative to parents seeking to adopt a third child has been to request a private bill waiving the two-petition limit, a procedure which in itself can be prolonged and time-consuming. American families who choose to open their homes and hearts to foreign children clearly should not have to face these unnecessary burdens and bureaucratic obstacles any longer.

The bill now under consideration would protect the well-being of foreign adoptees by requiring a valid adoption home study by a licensed state agency or U.S. licensed agency abroad prior to granting either a nonpreference or immediate relative status visa for an alien child adopted abroad or coming to the United States for adoption. These required studies would insure that families seeking a third child would have the financial and emotional resources to meet his or her needs.

The legislation, including this home study requirement, has been strongly endorsed by a number of organizations including the Organization for United Response (OURS), which is a national group of some 4,500 adoptive parents and child welfare professionals. OURS, headquartered in my home State of Minnesota, has been enormously helpful to the progress of the bill through public education and information. It has been a privilege to work with the members of OURS, and I am very hopeful that this Congress will bring good news to them and to the other adoptive parents who have waited so long for this bill's passage. I strongly urge my colleagues to pass this important measure.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 12508) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate H.R. 12443, an act to amend sections 201(a), 202(c), and 203(a) of the Immigration and Nationality Act, as amended, and to establish a Select Commission on Immigration and Refugee Policy.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second time and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the bill will be considered as having been read twice by its title, and the Senate will proceed to its consideration.

● Mr. KENNEDY. Mr. President, I am pleased to support the House-passed bill to establish a worldwide ceiling on immigration, and to create a Select Commission on Immigration and Refugee Policy. These are two proposals that I have strongly advocated for a number of years, and I am gratified that we are able to act expeditiously upon them today.

The establishment of a worldwide ceiling corrects an anomaly in the law, and is a logical step in consequence of the major immigration reforms Congress enacted in 1965—which I served as floor manager at the time.

In the long-term, this reform makes more flexible the provisions of the preference system, and in the short-run it has the likely effect of allowing the use of more nonpreference visas next year for the backlog in the Western Hemisphere and the use of more conditional entry visas for Indochina refugees—a need that is extraordinarily urgent in Southeast Asia today. All this will not involve, however, any increase in the total annual immigration authorized under the law.

Regarding the establishment of a Select Commission on Immigration and Refugee Policy, I have long urged the formation of a high level commission to take a thorough look at the immigration and nationality statutes. The time is

past due for us to approach the revision of our antiquated immigration law like we have approached the revision of the criminal code—to dump the old law, and start anew. To do this, we need to have an objective and thorough study of current immigration law and practice—a review that is beyond the capacity and scope of a single agency of the executive branch or a committee of Congress, and which must involve a broad spectrum of opinion and groups concerned with immigration reform. I would hope the Select Commission could begin functioning by the beginning of next year.

It is for these reasons that I strongly support the creation of the Select Commission envisioned in H.R. 12443, and why I have sought to expedite the legislation before us.

In the days ahead, I will look forward to working with the voluntary agencies, various immigration and citizenship groups, and other citizen organizations deeply concerned over immigration policy and practice, to seek their counsel in the organization and functioning of this Select Commission once it is established next year. For the Select Commission to do its job, it must look as widely and as deeply as possible into the many different views that exist over immigration reform.

Mr. President, I move the adoption of this bill.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 12443) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Arizona.

NAVAHO AND HOPI INDIAN RELOCATION COMMISSION

Mr. DECONCINI. Mr. President, I rise to make a unanimous-consent request affecting H.R. 11092, which the Senate amended and passed last night. I ask unanimous consent that the motion to table the motion to reconsider the vote, the motion to reconsider the vote, final passage, third reading of the bill, and passage of the committee amendment all be vitiated; further, that an amendment which is at the desk be agreed to and the committee amendment, as amended, be agreed to, that the bill be considered read for a third time, that the bill be passed, and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment follows:

UP AMENDMENT NO. 1869

On page 2, beginning with line 12, strike out all through line 15 and insert in lieu thereof the following:

SEC. 4. Section 13(c)(5) of the Act of December 22, 1974 (88 Stat. 1712, 1718), is amended to read as follows:

"(5) take effect one hundred and twenty days (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) after the date of submission to the Congress pursuant to subsection (a) of this section, unless during such one hundred and twenty day period one House of the Congress adopts a resolution disapproving such plan: *Provided, however*, that the Commission is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.".

At the end of the bill, add the following:

SEC. 7. (a)(1) Notwithstanding the provisions of the Act of December 22, 1974 (88 Stat. 1712), in any case in which a Navajo or Hopi individual believes that he or she can qualify as an eligible applicant (as defined by subsection (e)(1) of this section), such individual is authorized, within the forty-eight month period following the effective date of the relocation plan pursuant to the Act of December 22, 1974, to file an application with the Navajo and Hopi Indian Relocation Commission requesting that he or she be granted a life estate in lands in accordance with this section. Such application shall be submitted in such manner, and contain such information, as the Commission shall prescribe.

(2) If the Commission determines, on the basis of such application, timely filed, that the applicant is an eligible applicant, the Commission shall make available to such applicant a limited tenure, of such land as the Commission determines necessary, in order to avoid the necessity of relocating such applicant, and his or her spouse and dependents, if residing with such applicant. Such tenure shall consist of the right of use and occupancy of such land, including a grazing area of such size as the Commission determines necessary in order to enable such applicant to raise livestock in such numbers as are necessary to meet a subsistence level for such applicant, his or her spouse, and dependents residing with such applicant, for a term ending at the death of the applicant or the death of the spouse of the applicant, whichever last occurs. Nothing in this Act shall preclude such applicant from making improvements within the area covered by such tenure. Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon relinquishing such estate, by such means or instrument as the Secretary of the Interior shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary of the Interior comparable to those provided by subsections (b), (c), and (d) of section 15 of such Act of December 22, 1974.

(b) The Secretary of the Interior is authorized to receive, consider, and pay any claim received by it from the Navajo Tribe, or Hopi Tribe, for compensation for any losses or other expenses incurred by such tribe by reason of such life estates conferred pursuant to this section. Such claims shall be submitted at such time, in such manner, and contain such information, as the Secretary of the Interior may prescribe. Any payment made pursuant to a claim filed under this subsection shall be in lieu of rental payments under section 16 of the Act of December 22, 1974, with respect to lands covered by such claims.

(c) Notwithstanding any other provision of law, the Secretary of the Interior shall compensate the head of each household, who receives a life tenure of land under an application submitted pursuant to this section, for the fair market value of the habitation and other improvements owned by such head of a household within the area from which he, but for such tenure, was required to relocate. Such compensation shall be paid to the estate of such head and shall be based on the fair market value of such habitation and improvements as of the time of the expiration of such tenure, and, except as hereinafter provided, shall not be payable until such time. Any such compensation or assistance owing to the estate of any such head shall be paid and distributed in accordance with the last will and testament of such head, or in the event no such valid will and testament is left, such compensation shall be paid and distributed to his heirs in accordance with the laws of the tribe of which such head is a member. Notwithstanding the foregoing provisions of this subsection, in any case in which any such compensation would be payable to the estate of any such applicant, such compensation shall, in the event such applicant relinquishes such life estate prior to its termination in accordance with subsection (a) (3) of this section, be payable to such applicant at the time of the relinquishment of such life estate. Such payment shall be in lieu of any other payment pursuant to subsection (a) of section 15 of the Act of December 22, 1974.

(d)(1) Any such eligible applicant, and his or her spouse and dependents so living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and any such eligible applicant and his or her spouse and dependents so living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe, except that the land laws of the Navajo Tribe shall not be applicable to any tenure granted to a member of the Hopi Tribe, and the land laws of the Hopi Tribe shall not be applicable to any tenure granted to a member of the Navajo Tribe.

(2) Within ninety days following the date of the enactment of this subsection, the Secretary shall promulgate such regulations as may be necessary to assure that in the case of a life estate granted pursuant to this section, no person may reside on the land covered by such life estate other than the applicant, his or her spouse, and the applicant's dependents, except that such regulations may provide that in case of illness or disability persons necessary to attend upon and care for such applicant, spouse, or dependent may reside on such lands during such illness or disability. Such regulations shall further provide for the right of all residents and visitors to the lands covered by such life estate to have access thereto by use of all established roads or ways leading thereto.

(3) The Secretary of the Interior is authorized to take such action as may be necessary in order to assure the protection, until relocated, of the rights and property of individuals subject to relocation pursuant to the Act of December 22, 1974, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to this section.

(4) With respect to any individual referred to in paragraph (3) of this subsection, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

(e) As used in this section, the term—

(1) "eligible applicant" means, with respect to a Navajo or Hopi individual, an individual—

(A) who on December 22, 1974, maintained a place of abode in an area from which such applicant, but for this section,

would be required to relocate, and who, but for this section would be relocated in an area other than an area comprising a part of the reservation of which such individual is a member or an area made a part of any such reservation by reason of a final judgment of partition or the Act of December 22, 1974; and

(B) who on or before the date of application for a life estate, was at least forty years of age; and

(C) with respect to whom the Commission determines, if required to relocate, would most likely be unable to earn a livelihood by reason of age, mental or physical disability, inability to adequately speak the English language, lack of education or skill, or otherwise;

(2) "Commission" means the Navajo and Hopi Relocation Commission;

(3) "dependent" shall have the same meaning as that provided by section 152 of the Internal Revenue Code of 1954.

(f) Notwithstanding any other provision of this section, any applicant who meets the requirements of clause (C) of subsection (e) (1) by reason of his or her mental or physical disability shall not be required to meet the requirements of clause (B) of subsection (e) (1).

(g) The Secretary of the Interior is authorized to make available to applicants receiving a life tenure under this section such assistance, during that tenure, as may be necessary to enable such applicant to feed and maintain that applicant's livestock.

(h) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Sec. 8(a) The Commission is authorized to purchase, with appropriated funds, such lands, not to exceed 25,000 acres, in the aggregate, as the Commission determines necessary to enable it to relocate members of the Navajo tribe pursuant to the Act of December 22, 1974. Title to such lands so acquired by the Commission, if contiguous or adjacent to the Navajo Reservation, shall be taken by the United States in trust for the benefit of the Navajo tribe. With respect to such lands so acquired which are not so contiguous or adjacent to such reservation, the Commission is authorized to transfer title to such lands to the head of a household and his or her spouse so relocated thereon.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Sec. 9. Effective December 22, 1974, paragraph (4) of section 5(a) of the Act of December 22, 1974, is repealed.

Sec. 10. Notwithstanding any other provision of law to the contrary, the Commission shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of section 15 of the Act of December 22, 1974, to the head of each household of members of the Navajo tribe who were evicted from district 6 of the Hopi Indian Reservation as a consequence of the survey conducted by the Department of the Interior in 1972: *Provided*, That such heads of households have not already received equivalent assistance from Federal agencies.

NEW YORK CITY LOAN GUARANTEES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1116.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 1088) providing financial assistance for the City of New York.

The PRESIDING OFFICER. Without objection, the joint resolution will be considered as having been read the second time by title.

Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. HARRY F. BYRD, JR. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HARRY F. BYRD, JR. Mr. President, we have before us today the final act in a play that I believe the Senate should have closed down rather than extend its life for at least 3 more years.

The play is that comic-tragedy euphemistically called New York City Financial Assistance Act of 1978 and the final act is the approval of appropriations for that play in the form of House Joint Resolution 1088.

This play has been running since 1975. Unlike the promise that was made to the Senate in that year that the play would run its course, we found just the opposite. The plot had expanded, the cast of characters had gotten larger, and the problem had grown in complexity.

The city presented a new "script" to the Senate in the forms of a proposed 4-year plan and a fiscal budget for 1979 which ideally were to take care of the city's problems, provide a balanced budget in 1982, and bring down the final curtain on the play.

My examination of this led me to the conclusion that they were founded upon some rather shaky assumptions and that, most likely, they would not bring about a balanced budget in 1982 without increased and expanded Federal aid above and beyond that which was being sought by the city in the New York City Financial Assistance Act of 1978.

The General Accounting Office in a lengthy report dated July 26 pointed out many concerns it has with the city's fiscal practices.

During the months of June and July when the New York City "bail-out" bill was before the Senate, I, and many other Senators, pointed out the many problems we had with this new "script".

Doubt was voiced of the city's ability to manage its financial affairs in a fiscally responsible manner.

Nevertheless, the play was given new expanded life with the passage of the financial aid bill.

In the time that has elapsed between the Senate's passage of the conference report on New York City aid and our final act of voting on appropriations for this bill, certain events have occurred which cast further doubt upon the city's "script".

A Wall Street Journal article of September 8 entitled "New York City's Budget Faces Problems If Expected U.S. Aid Doesn't Materialize" noted:

New York City's tidy budget package, which seemed all wrapped up a few months ago, is in danger of coming undone.

Some of the federal revenues counted on in the city's current budget may not show up. While one budget official says New York City's loss could total $200 million, the city won't know for sure how big its budget hole is until Congress acts on some key urban aid programs.

Philip Toia, the city's deputy mayor for finance, says New York faces "a serious budget problem".

The Wall Street Journal in its September 15 edition in an article entitled "This Is Bargain Day In New York City For Property Taxes" noted that the city was attempting to overcome a severe cash shortage by emergency measures:

Facing a possible $100 million cash shortage today, New York City is staging a one-day drive to get property owners to pay $175 million to $200 million in real estate taxes ahead of time.

Because of slow progress in completing the city's $4.5 billion, four-year financing plan, the city has been forced to delay a major sale of bonds to New York banks and public employee pension funds originally scheduled for next week. This accounts for the city's current cash problems.

The article went on to point out that the city's fiscal distress is continuing to increase.

Fiscal analysts continued to express concern over the current city budget. Sidney Schwartz, the special deputy state comptroller, warned in a report that New York City faced a potential $317 million budget gap and said strong corrective measures were needed if the city wanted to avoid finishing the year with a deficit.

On September 18 the Wall Street Journal reported:

Despite success in getting federal guarantees for city bonds, the city clearly faces serious difficulties in reaching its goal of a truly balanced budget in four years. Budget balance, financial experts say, is critical to restoring access to the public credit market.

The lengthy article noted the fiscal problems that the city was currently facing summed up by the deputy mayor:

Philip Toia, deputy mayor, finance, said the city may face a $500 million budget gap for fiscal 1980.

The Fiscal Observer, an objective biweekly which reports on New York City's finances in a detailed analysis of the city's revised 4-year plan which appeared in the September 7 issue, pointed out that the budget gaps in the plan have increased by up to 35 percent.

The Wall Street Journal article of September 18 stated:

The city currently balances its budget with the aid of state-sanctioned accounting loopholes. Under generally accepted accounting principles, the city's current budget, if "balanced" still would show a $560 million deficit.

Mr. President, the Appropriations Committee in its report on House Joint Resolution 1088 states emphatically:

The Committee believes it is absolutely crucial that the city comply with the balanced budget requirements.

The success of a guarantee program in restoring New York City to full market access is dependent on the city's ability to achieve a budget which is balanced in accordance with generally accepted ac-

counting principles no later than fiscal year 1982.

It appears that there is considerable doubt that the city, even with the passage of the Financial Assistance Act and the aid it will provide, will be willing to clear up its fiscal problems and have a balanced budget by 1982.

I shall vote against this $1.65 billion appropriation bill.

Mr. President, I ask unanimous consent that the Wall Street Journal and Fiscal Observer articles referred to in my speech be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 8, 1978]

NEW YORK CITY'S BUDGET FACES PROBLEMS IF EXPECTED U.S. AID DOESN'T MATERIALIZE

(By Daniel Hertzberg)

NEW YORK.—New York City's tidy budget package, which seemed all wrapped up a few months ago, is in danger of coming undone.

Some of the federal revenues counted on in the city's current budget may not show up. While one budget official says New York's loss could total $200 million, the city won't know for sure how big its budget hole is until Congress acts on some key urban aid programs.

Philip Toia, the city's deputy mayor for finance, says New York faces "a serious budget problem." While New York's $13.5 billion budget far outstrips spending by other cities, the Big Apple isn't alone in its steadily increasing dependence on federal aid.

Some top New York officials, including Mayor Edward Koch, have even begun talking about enforced furloughs for city workers as a last resort to avoid a budget deficit.

But this has angered others in the city government, who say the furloughs are simply scare talk and fear the subject has damaged the city's reputation. New York is busy polishing its image to try to reenter the public lending market, after three years absence, with a $100 million sale of notes in November.

City Comptroller Harrison J. Goldin, who was drumming up support for the city this week at a meeting of financial analysts, says the idea of furloughing workers is "ridiculous." Another city official questioned why New York would want to revive "a desperation measure that wasn't even seriously considered in 1975," when the city tottered on the brink of bankruptcy.

Indeed, Mr. Toia stresses that New York would first look to increasing attrition in the city's work force, a hiring freeze and other measures before considering the more drastic step of giving city employes unpaid time off.

In revising its four-year financial plan, New York already has projected a $75 million cutback for the year in the city's share of federal antirecession area aid. The city also faces possible losses under the Comprehensive Employment and Training Act, which the Carter administration is using as a major weapon in the war against unemployment. New York gets $310 million in direct support for city workers under the program. The city says restrictive guidelines proposed in Congress, which would limit the time that CETA workers can remain on the city payroll and end aid for higher-paid jobs, could force a serious cutback in the city's CETA funding. Even under more favorable terms a city aide said, New York can expect to lose $20 million to $40 million in CETA funds this year.

In addition, New York's current budget counts on $80 million from the sale of land for a major highway project, the Westway. But federal environmental officials are seeking to block the roadway.

[From the Wall Street Journal, Sept 15, 1978]

THIS IS BARGAIN DAY IN NEW YORK CITY FOR PROPERTY TAXES

NEW YORK.—Facing a possible $100 million cash shortage today, New York City is staging a one-day drive to get property owners to pay $175 million to $200 million in real estate taxes ahead of time.

A similar prepayment drive earlier this year netted the city over $300 million.

Because of slow progress in completing the city's $4.5 billion, four-year financing plan, the city has been forced to delay a major sale of bonds to New York banks and public employe pension funds originally scheduled for next week. This accounts for the city's current cash problems.

The failure of Congress and the state legislature to enact needed legislation, plus delays in negotiating long-term loan agreements with banks, insurance companies and pension funds, all are contributing to the city's current cash crisis. However, city officials believe the problems will soon be ironed out and the bond sale will go forward.

As an inducement, the City Council yesterday approved a bill granting a discount to property owners who pay their tax bills today, two weeks before the Oct. 1 deadline. The discount is 9¼% when figured on an annual basis.

Meanwhile fiscal analysts continued to express concern over the current city budget. Sidney Schwartz, the special deputy state comptroller, warned in a report that New York City faced a potential $317 million budget gap and said strong corrective measures were needed if the city wanted to avoid finishing the year with a deficit. City officials met earlier this week with members of the Emergency Financial Control Board, a state watchdog body, and may offer to make up to $100 million in budget cuts soon.

[From the Wall Street Journal, Sept. 18, 1978]

NEW YORK CITY FREEZES HIRING IN BID TO FIGHT GROWING BUDGET CRISIS

NEW YORK.—New York Mayor Edward I. Koch imposed a freeze on city hiring and promotions as a first step in fighting a growing city budget crisis.

The mayor pledged to announce further budget cuts within a few days to close an immediate $60 million to $90 million gap in the current budget, created by the city's failure to receive expected federal revenue.

The hiring freeze, the mayor's toughest budget step yet, comes with the city under pressure from budget watchdogs to close gaping holes in its spending plans.

Conditions are likely to get worse for New York in fiscal 1980, which starts next July. Philip Toia, deputy mayor, finance, said the city may face a $500 million budget gap for fiscal 1980.

Despite success in getting federal guarantees for city bonds, the city clearly faces serious difficulties in reaching its goal of a truly balanced budget in four years. Budget balance, financial experts say, is critical to restoring access to the public credit market.

EXTENSION WILL BE SOUGHT

The hiring freeze was imposed on city agencies under the mayor's direct control, which employ about 200,000 workers. The mayor will seek to extend the policy and a similar freeze on promotions to such independent city agencies as the school and hospital systems. The city expects to save $25 million this year through the hiring freeze.

Reporters asked the city to supply a figure for New York's work force, but the city's budget director said the city would need several days to find out.

New York's $13.5 billion budget, half of which is supplied by federal and state governments, is particularly vulnerable to cutbacks in federal aid. The latest budget crisis was heralded when city officials projected a $75 million cutback for the year in the city's share of federal antirecession area aid.

The city also faces possible losses under the federal Comprehensive Employment and Training Act.

The city's losses may extend further. A dispute over a highway project could cost the city another $80 million included in the current budget. To handle such problems, Mr. Koch said the city will produce a contingency plan for another $100 million in possible budget cuts.

IMPORTANT FINANCIAL EVENTS

Unless they are solved, the budget problems could jeopardize two important financial events for New York. The conclusion of negotiations for the city's $4.5 billion financing package, and the planned sale of $100 million in notes later this fall, the first public sale of city securities since 1975.

The Treasury Department has been pressing the mayor to produce a list of budget cuts. The Treasury monitors the city's compliance with conditions set for receipt of federal loan guarantees.

Mr. Koch stressed during a news conference that the fiscal 1979 budget gap is small when compared with the budget. "We aren't in what I consider to be an emergency situation," he said.

The hiring freeze will accelerate existing efforts to save money by failing to replace all workers who leave the city work force. Mr. Toia estimated that the hiring freeze, if extended for the rest of fiscal 1979, will increase the annual attrition rate to 5 percent from 1 percent. The mayor hasn't set a time limit on the hiring freeze. Budget watchdogs criticized the mayor earlier this year for deferring the bulk of the planned attrition in the city's work force until later years of the city's four-year financial plan.

This plan calls for New York's budget to be truly balanced by fiscal 1982. The city currently balances its budget with the aid of state-sanctioned accounting loopholes. Under generally accepted accounting principles, the city's current budget, if "balanced," still would show a $560 million deficit.

[From the Fiscal Observer, Sept. 7, 1978]

BUDGET GAPS IN 1980–82 INCREASE IN REVISED FOUR-YEAR PLAN

Just before Mayor Koch returned from his Parisian trip in late August, his budget office released a four-year plan revision that may make Koch wish he had stayed in what he calls "the most beautiful city in the world," rather than returning to "the most exciting city in the world." The collective bargaining reserve the city put in the previous revision (the mayor's April budget message) turns out to have been too small, and the city's projections of unrestricted aid were too optimistic.

Although the city says its 1979 budget is still balanced—even after removal of all but $45 million in countercyclical aid—the legal budget gaps in the next three years are larger than Koch previously projected. The 1980 projected gap of $488 million is $128 million (34.8 percent) larger than projected in April, the $782 million gap in 1981 is $189 million (31.9 percent) larger, and the $868 million gap in 1982 is $166 million (23.6 percent) larger. As before, the revised 1981 and 1982 projections do not take into account $160 million per year needed to continue the 1979-80 bonuses as well as the costs of any new general wage increases, which the city and unions will negotiate 18 months from now. Nor does this revision include a firm debt package—which is still being worked out.

BUDGET PROBLEMS

Although the city council and board of estimate juggled some items in the 1979 plan when they adopted the year's budget, the new revision is the first formal change in the plan since the mayor's April message (see The Fiscal Observer, II-10, p. 1, and II-14, p. 3).

Revenues: Net revenues drop by $70 mil-

lion in 1979 and $35 million in 1980 and increase by $9 million in 1981 and $3 million in 1982. The biggest change is the elimination of $120 million in unrestricted aid in 1979 and $55 million in 1980. (The 1979 adopted budget removed $20 million of federal countercyclical funds.) In addition, expected receipts from both property taxes and categorical grants are slightly less in each of the four years.

Projected revenue gains offset these reductions in 1981 and 1982 but not in 1979 and 1980. On the basis of revised economic projections, the city now expects receipts from other city taxes to increase. It projects stock transfer, general corporation, and sales tax revenues will be more than it expected in April, although receipts from the financial corporation and personal income taxes will be lower. Miscellaneous revenues may grow by $89 million in 1979, mainly because of an anticipated $66 million from the sale of Educational Construction Fund bonds in 1979 rather than in 1978 as well as greater interest earnings and housing revenues in each of the four years.

Expenses: The city now expects its net expenses in 1979 will be $70 million less than projected in April but $91 million more in 1980, $198 million more in 1981, and $169 million more in 1982.

Personal services. PS costs in 1979 are $19 million less than in the April revision, because of the city's civilianization, 1 percent attrition, and other savings programs. But the labor agreement pushes up costs after this year. In sum, PS costs are $284 million more in 1980 than projected in the April revision, $362 million more in 1981, and $404 million more in 1982. The new revision includes $187 million for Board of Education increment and longevity payments in 1980–82 excluded from the April revision. Although fringe benefit assumptions have not changed, the reserve for labor during the four-year period increases by $321 million.

Other-than-personal services. OTPS costs are now smaller in each year than projected in April: down $69 million in 1979, $141 million in 1980 and again in 1981, and $188 million in 1982. These reduced estimates result from the assumed continuation of underspending that created the 1978 "surplus" and from newly instituted cost-containment programs. The most important assumptions behind public and medical assistance estimates and subsidies to the covered organizations are an annual 2.5 percent decline in the public assistance caseload and no change in the Health and Hospitals Corporation's caseload and PS costs.

City debt service and MAC funding. The new revision projects less city debt service each year and greater MAC funding. After a net total increase of $3 million in 1979, the combined total declines by $56 million in 1980, $28 million in 1981, and $51 million in 1982. The reductions during the last three years of the plan reflect the city's scaled-down financing plans. Generally, debt service costs assume an 8 percent interest rate on both bonds and notes. The costs also assume the city will pay MAC $61 million in interest per year on $1.013 billion in city bond anticipation notes MAC holds, as well as interest on $719 million in bonds the city plans to issue to MAC in 1980–82 to mirror the same amount of MAC bonds.

Closing the gaps: The city plans an additional $43 million in actions in 1980, $87 million in 1981, and $100 million in 1982, mainly by boosting annual work force reduction from 3 percent to 4 percent. The city asks Washington and Albany to provide the same share of total actions that the city requested in the previous revision—another $83 million in unspecified actions in 1980, $102 million in 1981, and $66 million in 1982.

FINANCING PLANS

The scaled-down financing plan—similar to the one MAC Chairman Felix Rohatyn presented to Congress in June—anticipates a greater amount of city and MAC debt issues in 1979–80 than in 1981–82. The early issues will contribute to budget savings and clean up leftover financing problems.

Long-term purposes: The revised estimate of $2.3 billion in capital expenditures is $490 million less than projected in April. In addition, the city plans to use $900 million in MAC bond issues for expense items remaining in the 1979–81 capital budgets and $400 million to bond half of the 1978 state advance. (The city plans to liquidate the rest of the advance with its own cash.) MAC would also issue $900 million—$90 million more than previously projected—for refunding outstanding bonds ($600 million) and for filling its capital reserve and the 5 percent state reserve for guaranteed city bonds ($300 million).

Long-term sources: The city pension funds have indicated they could buy $375 million in guaranteed city bonds and $625 million in MAC bonds. The three state pension funds have been asked to buy another $375 million in guaranteed city bonds.

In May, local financial institutions agreed to buy $1 billion in MAC bonds over the four years. The revision calls for an additional $125 million commitment from the clearinghouse banks and $50 million from the savings banks and insurance companies.

The city needs to issue about $1 billion in unguaranteed bonds per year after 1982. As steps toward this goal, it plans to issue $300 million in 1981 and $650 million in 1982. The city is counting on the pension funds to pick up guaranted bonds if any of the bonds issued fizzle. Before the city tries to issue any unguaranteed bonds, MAC will issue $500 million per year to the public.

Short-term: By scaling down its 1979 seasonal needs from $1.8 billion to $800 million, the city has skirted the problem posed by the ending of the federal seasonal loan program. The city would like to issue notes to the public before January, and it plans to issue $300 million during fiscal 1979. The other $500 million in seasonal financing would come from private placements with the city pension funds and clearinghouse banks. City officials don't want to resort to guaranteed note sales to state pension funds.

Cash flow: The new revision projects $438 million cash on hand at the end of fiscal 1979, $378 million after 1980, $352 million after 1981, and $324 million after 1982. The updated 1979 cash flow picture shows larger balances at the end of July and August than the city projected on July 28, primarily because it will delay until at least October paying into the new debt service fund. (The EFCB must certify the guarantees are in effect before the city must put restricted cash in the fund.)

After August, the city's cash position is not so secure. The city projects $212 million in September bond sales and $275 million in MAC transfers to end the month with $256 million in cash. After $400 million in November seasonal loans, the city projects only a $95 million balance. December is little better; after $100 million in bond sales and $332 million in transfers from MAC, the city's projected cash balance on Dec. 31, 1978, is only $108 million.

Spending: The new revision goes far beyond any previous city document in projecting capital spending of city and noncity funds. Planned appropriations (authorizations) range from $1.1 billion in 1979 to $2.4 billion in 1981. Commitments (signed contracts) range from $1.2 billion in 1980 to $2.6 billion in 1981. Cash expenditures (actual payments) range from $0.8 billion in 1979 to $1.5 billion in 1982.

OUTLOOK

The projected budget gaps are troublesome, especially because major questions have already been raised over the 1979 budget (see Briefing, p. 4). Future plans include items for which the city will have to struggle—especially no increased labor costs and much new aid.

Immediate cash prospects are almost as gloomy, even though the city has delayed tying up cash in the new restricted debt service fund. The city is relying on real estate tax prepayments to meet a $108 million September 15 payroll. A $230 million payroll comes up on September 29, when the city hopes to have the first 1979 financing installments.

To reach this goal, Congress will have to pass two bills. The first, to appropriate the $1.65 billion for the loan guarantees, is not in trouble, but the full House cannot vote until after it reconvenes on September 6. Then the Senate must act. Senator Proxmire (D-Wis.) has indicated he will not hold up the bill by insisting on separate appropriations for each year's guarantees. The second, the pension bill, may pose problems. The new Senate version, worked out between Senators Moynihan (D-N.Y.) and Bentsen (D-Tex.) and approved by the Finance Committee on August 10, includes pension fund audit requirements to which fund managers may again object.

Still, once the city has financing, can it effectively complete the ambitious capital plan?

Mr. PROXMIRE. Mr. President, is the pending business House Joint Resolution 1088, the New York City loan guarantee?

The PRESIDING OFFICER. That is the pending business.

Mr. PROXMIRE. Mr. President, House Joint Resolution 1088 is an appropriation needed to implement the New York City loan guarantee legislation, which was signed into law on August 8.

The HUD-Independent Agencies Appropriations Subcommittee, which has jurisdiction with respect to this matter, held hearings on this resolution on August 18, and it was reported by the full Appropriations Committee by an 8 to 6 vote last week.

Although I voted against the resolution, I recognize the fact that the Congress has spoken favorably on loan guarantees by passing the authorizing legislation. Consequently I believe it is important that we move quickly to send this resolution to the White House so that the final details of a long-term financing plan for the city can be worked out.

The resolution simply authorizes the Secretary of the Treasury to guarantee the payment of principal and interest on loans of up to $1.65 billion. It further appropriates, as of October 1, 1978, such sums as may be necessary to pay the principal and interest on any guaranteed loans that may go into default—in other words it provides the dollars necessary to back up the guarantees. The funds could remain available up to September 30, 1998.

Although there was some discussion of doling the guarantee authority out on a year-to-year basis, the bill as reported provides a 4-year appropriation of the full amount of guarantee authority authorized. We took this step for three reasons:

The Treasury Department stated in the course of our hearing on the resolution that it was necessary to provide the full amount of the guarantee to gain the participation of the pension funds and financial institutions that will be involved in the loan package.

Second, the authorizing legislation

provides for a one House legislative veto of any particular guarantees, which should allow adequate congressional oversight.

Third, by following the approach endorsed by the House we are avoiding a conference and speeding enactment of the legislation, thus expediting the putting together of a loan package and avoiding a possible financial crisis for the city.

Mr. President, it is our conclusion that the $1.65 billion authorized is far more than is likely to be used. Much of this guarantee authority will be just a backup. Treasury officials told the subcommittee they intend to provide $500 million in guarantees in fiscal 1979—that is this year; $250 million in fiscal 1980; and then to hold the rest of the guarantees on standby to use only if needed. Language in the report on the bill indicates that this remaining $900 millon in guarantees is available on a stand-by basis only.

There is every indication that it will not be needed. In fact, Mr. Rohatyn, who is the outstanding expert in this matter, felt there was some question as to whether even the amount of guarantees proposed to be provided will be necessary. But it is vital to have the full amount of the guarantee authority appropriated, in the view of most experts on New York, in order to persuade the pension funds and the banks to provide the capital that New York will need due to the fact that it does not yet have access to the capital markets.

There are provisions in the authorizing legislation which are intended to limit any potential losses by the Federal Govment. One provision requires the establishment of a State reserve fund equal to 5 percent of the principal of and 1 year's interest on the guaranteed obligations outstanding. This fund is to be used first to make payments in the event of a default. Another provision authorizes the withholding of Federal payments to the city or the State under other programs to cover any losses due to a default.

Mr. President, I am pleased that we have been able to move on this legislation reasonably quickly, and I appreciate the cooperation of the leadership and of my colleagues on the Appropriations Committee. I personally am opposed to Federal guarantees for New York City, because I think that they should not be needed and that they set a dangerous precedent for other cities. However, I know that the Administration and the various parties in New York feel that the guarantees are necessary, and they have told us that enactment of this appropriations bill is essential to put together the financing arrangements to see New York City through the next 4 years.

Now that Congress is winding up its part of the financing package, I certainly hope that the parties in New York—the city, the State, the financial institutions and the pension funds—will stop haggling over details and work out a final agreement on the financing arrangements. New York City is scheduled to run out of money on September 29, and although the city has squeaked through before and probably can again, it would be good if they could finally get things set in place.

As I understand it, the financing arrangements will include $4.5 billion in long-term financing through June 30, 1982, and 82 percent of that will be raised on an unguaranteed basis. Specifically, $1.8 billion of MAC bonds will be sold privately to financial institutions and pension funds, and $1.95 billion in MAC and city bonds is expected to be sold to the public. In addition, the city will need about $800 million a year in seasonal financing. Under the provisions of the guarantee legislation, the financing arrangements must insure that the city will be able to meet all of its financing needs, both long-term and seasonal, over the full 4-year period, other than those which are guaranteed, through private placements or through expected public sales of its obligations. The committee has directed the Treasury Department to carry out this requirement to the letter, including obtaining commitments for seasonal financing in those years in which public sales are expected to fall short of the city's needs.

Mr. President, I think it is most important to minimize the extent of the Federal Government's involvement in New York City's financial affairs from hereon in, and the committee has directed the Treasury Department to do this, in accordance with the provisions of the authorizing legislation.

First, the committee directed that the guarantees authorized for the latter two city fiscal years, 1981 and 1982, be available on a standby basis only. If the city complies with the other requirements of Federal and State law regarding a balanced budget and other matters, then these additional guarantees are not likely to be needed.

Second, the Treasury should work to get the city back in the credit markets on its own as rapidly as possible. This would include urging the city to attempt to sell notes in this 1979 fiscal year, as I understand they intend to do later this fall. It also means that the city should be encouraged to sell bonds as early as market conditions permit, preferably sometime next year, 1980.

Third, the committee indicated that it takes very seriously the requirement that the city be directed to refund all of the guaranteed obligations outstanding as rapidly as possible once the guarantee program ends on June 30, 1982. That is the best way to get the Federal Government out of New York City.

Mr. President, it is absolutely crucial that New York City achieve a balanced budget in accordance with generally accepted accounting principles by fiscal year 1982. This is required by Federal law; it is required by State law. Both the State's Emergency Financial Control Board and the Treasury Department have recently told the city that it has to make additional budget cuts, in light of probable reductions in Federal aid and other revenues. I am pleased to note that Mayor Koch has responded very quickly and positively and has imposed a freeze on hiring and promotions in the city government. I have great respect for Ed Koch's ability, and this is an excellent indication of his commitment to restoring New York City to financial soundness.

Mr. President, there is another issue I have to mention, because it is a matter of some concern. I understand that the banks and the other New York financial institutions involved are demanding that the city pay all of their legal fees connected with the financing arrangements, as a condition for their participation. These costs could run as high as $1 million or more, and obviously there will be no incentive whatsoever for the banks to hold down expenses if they are not directly responsible for paying them.

This is outrageous. Here Congress has gone and passed legislation to get New York City back on its financial feet, and now the banks want to impose additional burdens on the city's budget. The banks will already be getting huge amounts of money out of the city in the form of high tax-exempt interest rates charged on the MAC bonds they are going to buy. In addition, the banks will get more fat fees from underwriting public sales of MAC and city securities over the next 4 years, and the existence of the Federal guarantee program will be a real selling point.

Now on top of this, the banks want the city to pay their legal fees too—to the tune of about $1 million. This may be conventional practice for private placements, but the financing arrangements involved here—including $1.65 billion in Federal guarantees—are most unusual, indeed unprecedented. Therefore, conventional norms should not apply.

I strongly believed that the financing arrangements worked out should not include any requirement that the city pay unlimited legal expenses on behalf of the financial institutions or any other party to the arrangements, and I should point out that the committee report directs the Treasury to refuse to agree to any such requirement.

Mr. President, I think in view of the fact that we have had extended debate on this matter in the Senate, both at the time we passed the authorizing bill and at the time we passed the conference report on the authorizing bill, and the fact that we have had very careful hearings on the bill in the Senate, the Senate may be prepared to vote up or down on this now.

Mr. JAVITS. Mr. President, it would be expected, of course, that I would favor this resolution, and I shall not detain the Senate long in discussing it.

My colleague, Senator PROXMIRE, notwithstanding his vote against it and his position against it, in my judgment, has been one of the principal reasons why we are where we are, because he has realized once we decided on the issue of policy, and the Senate did decide that after careful deliberation, we should follow through to see that the policy is successfully implemented. That is what I want to say today.

Mr. President, I see a new spirit in my native city. I was born there. I have lived there all my life, and I think it is finally coming together.

I cannot promise great successes for

New York financially. We were too deeply in the hole.

The PRESIDING OFFICER. Will the Senator withhold for a minute? May we have order in the Senate? The Senator is addressing the body.

Mr. JAVITS. I say I cannot promise brilliant financial successes for New York City. We were too deeply in the hole. We have had highly difficult and incompetent and sometimes corrupt administrations in New York. We have been terribly wasteful, thinking there was no end to the resources of the city, and the demography turned against us in a great shift in its population following the middle 1950s, and the grave welfare load which that introduced, includ'ng the load of crime and other difficulties which New York City has carried.

But, Mr. President, with the inspiration of the fact that the people of the United States expressed their confidence in us through this legislation to aid us, I see a new spirit in the city. It is manifested in many volunteers to do municipal work. It is manifested in a much tighter municipal administration which, I think, Mayor Koch is running, and very effectively.

It is manifested in a determination to use the resources which we have effectively.

It was manifested in the great cooperation by the trade unions. It is very interesting that at one and the same time that the most heated collective bargaining was going on with municipal employees, their pension funds agreed to insert the essential keystone of the arch which is represented by this particular measure which is before us today.

Finally, Mr. President, there has been a new feeling by the people of the country about New York City. It began with the Democratic National Convention in 1976 from which great satisfaction was derived by practically everybody who attended it.

It has continued with an enormous influx of visitors and with a recognition of the fact that New York City is in real terms a great hub of the universe, and also the truly national city of the United States in terms of many of the manifestations of art, culture, business, finance, literature, transportation, education, and health in which we consider the American aspiration to mainly reside.

Mr. President, I will dedicate myself, and I know Senator MOYNIHAN will speak just as eloquently for himself, to see that the implication that we would personally ride herd on this situation to see that New York did not get dumped again by itself, that this will not recur, and I am very hopeful that with this new spirit in the city, notwithstanding our unbelievable and monumental troubles, and they are still there, that we will utilize the opportunity which the United States has given us to make of the city an even richer ornament for our country, be an even greater contributor to its stability, to its progress, and, yes, to its financing, as we are one of the major sources in this country for the generation of revenue for the Federal Government.

May I express, too, as I see my colleague, Senator MOYNIHAN, on the floor, the great pleasure and satisfaction I have derived from working in the most brotherly way with him in this very difficult problem. I think it fair to say we have never tried, and I hope Senator Proxmire will feel that way about both of us, to gild the lily or to color up the facts, but really tried to convince our colleagues realistically that in the interest of our Nation, in the true national interest, this was the way to go.

We both owe him, Senator MOYNIHAN and I, a deep debt of gratitude not only for his patience but also for his persistence and a little bit of cynicism, and the demand that we prove our case. I think that is what enabled us to do it.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that Tim Russert, Mike Hodin, Elliott Abrams, and Martin Katz of my staff be given the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I would like to join with my revered senior colleague in expressing our gratitude to the Senator from Wisconsin, and our appreciation for the rigor which he has brought to our not-always-rigorous discussions of the affairs of the city of New York.

I would like to thank my colleague, Senator JAVITS, for his avuncular and kind remarks about me.

Mr. President, just yesterday the second of the three pieces of legislation necessary for this enterprising program was adopted. At the time, I commented on the reappearance of a fiscal crisis in the city of New York—a crisis that was attendant upon a seeming loss of momentum of the President's urban policy.

Mr. President, we have before us today House Joint Resolution 1088, the bill appropriating funds for the New York City Loan Guarantee Act of 1978. I should like to address some remarks first to my colleagues here in the Senate, who must vote on this legislation, and then to my fellow New Yorkers, who must live under it.

I wish, of course, to ask my colleagues to support this bill, as they have supported H.R. 12426, the Loan Guarantee Act, and H.R. 4007, the bill authorizing continuing city employee pension fund investments in city securities. I do not do so with the view that we need have no concern for the security of the Federal Government's position or of its funds. I do so rather with the view that both the "loan bill" and the "pension bill" contain extraordinary protections for the Federal Government. Let me be specific, for the range of protective provisions is extraordinary. In the Appropriations Committee's brief and concise report on House Joint Resolution 1088, a summary of the conditions and protections which surround the loan guarantee takes an entire page.

The "pension" bill, H.R. 4007, contains many clauses protecting the pension fund beneficiaries. As part of this plan, the bill requires that an independent public accountant audit the city's financial statements, and that these be prepared in accordance with generally accepted accounting principles. It also requires that, each year, the Secretary of the Treasury make a determination as to whether the city is making substantial progress toward a balanced budget.

The primary protections are contained in the Loan Guarantee Act. I can do no better than to quote from the report of the Banking Committee on the bill, Report 95–952:

> There are a number of conditions which must be met before the guarantees can be provided. The Secretary must determine that there is a reasonable prospect of repayment of the guaranteed obligations and that credit is not otherwise available on reasonable terms. Interest rates established shall take into consideration current average market yields on other federally guaranteed obligations of comparable maturities, and there shall also be an annual guarantee fee of not less than one-half of 1 percent. The city must demonstrate that it has in place a plan for bringing its budget into balance according to generally accepted accounting principles by fiscal year 1982 and for making substantial progress toward this in the intervening years. There must be an independent fiscal monitor established under State law which is requiring the city to adopt and adhere to such a plan. There must be independent audits of the city's financial statements conducted in accordance with generally accepted accounting principles at the end of each of the city's fiscal years, and an audit committee must be established to review the progress and evaluate the results of such audits. The Secretary must determine that the city's remaining long-term borrowing needs and all of its seasonal borrowing needs will be met through commitments from the State, an agency of the State, or private sources (including financial institutions and pension funds), or through public credit markets in amounts sufficient to enable the city to meet all of its financing needs, both long term and short term, the public credit markets after the guarantee authority expires on June 30, 1982.

In addition, the Loan Guarantee Act provides a one-house veto, under which either House of Congress could disapprove any increase in guarantee authority in fiscal years 1980 or 1981.

Finally, the bill mandates that the Treasury, in the event the Government is required to honor guarantees, withhold Federal transfer payments to New York City and to New York State.

The committee, rightly in my view, describes these conditions as "onerous" and as "stringent." "The city," as the report states, "has been required to surrender much of its real spending power * * * [and] is also subject to continual monitoring by the Treasury and the General Accounting Office." The State of New Yorks' Emergency Financial Control Board, whose life has been extended for up to 30 years, retains extraordinary powers: to approve or disapprove or to change the city's financial plan; to approve or disapprove city contracts, including labor contracts; to approve or disapprove long-term borrowings; and if need be, to maintain a separate fund

through which the cash resources of the city may be controlled. Every dollar of real estate tax revenues is taken, not by the city, but for a special fund under the control of the Special Deputy State Comptroller, and applied to the repayment of city notes and bonds.

Now this is all unprecedented and extraordinary. No other city has ever operated under such restrictions. I say this not by way of complaint or criticism. On the contrary, I think we owe a debt to the Committee on Banking and to its incomparable chairman, Senator PROXMIRE, for having crafted a bill which allows New York the help it needs while providing the U.S. Government with the security it needs.

But let us all be very clear on the situation which has now emerged. New York City has occupied an extraordinary amount of the time of three committees of this body, all of which are said to have voted "for" New York, and we are now debating what, I hope and trust, will be the third "famous victory" for New York on the floor of the Senate. This victory will transfer no Federal resources to New York; rather it will allow the city of New York to go $4.5 billion further into debt. If I may quote Pyrrhus, "Another such victory * * * and we are undone." The bill we have before us appropriates $1.65 billion to allow loan guarantees for New York. The Loan Guarantee Act was signed by the President on August 8, 1978. Four days earlier, to quote from the New Yorker magazine of September 4, 1978, "The President * * * signed into law a bill that will provide financially troubled American farmers with Federal loan guarantees of up to $4 billion * * * the $4 billion worth of what amounts to Federal loan insurance for farmers will apply to their routine borrowing transactions and will be limited by nothing like the strictures that New York City had to agree to before it was voted its much smaller amount of loan guarantees."

What is truly remarkable here is that it has taken such a lengthy amount of the Senate's time to give New York so little. And now, we face the prospect that that which has been done for New York will prove to have been done not as part of a broader urban policy, but instead of one. Last week, I led the debate on behalf of the President's labor-intensive public works program. I made the point that this was a test of support for the President's urban policy. The Senate will recall that the test was failed: we obtained 21 votes.

I do not know quite what to make of that vote. But I do know that there are those who feel that the Senate has heard all that it ought to hear about the plight of New York City for the time being. The report of the Banking Committee, states clearly that "This is the last time." I must frankly say that if the Senate has heard all it wants to hear about urban problems, and done all that it cares to do about them, then the city of New York may well be doomed to insolvency.

We have before us today, I wish to repeat, not a substitute for a national urban program. We have before us a measure which will permit the city of New York to go even further into debt in a last ditch effort to achieve financial stability.

I urge my colleagues to be guided by the wisdom and the work of the Committee on Banking in their judgment that the Loan Guarantee Act provides adequate security for the United States, and deserves your approval.

The appropriations bill before us has been approved by the Subcommittee on HUD and Independent Agencies, which has the distinction to be chaired by the self-same Senator from Wisconsin, and by the full Committee on Appropriations. I believe it to be responsible legislation, and would wish to thank Chairman MAGNUSON for his unfailing courtesy and assistance.

I should like, at this point, to address a few remarks to my fellow New Yorkers.

The passage of this legislation will mark the completion of Senate action on all parts of the legislative package designed to deal with the New York City crisis. Not the completion for this year, but the final act. In its report, the Banking Committee said that:

> The Committee wishes to make the point as forcefully as possible that this is the last time.

I do not doubt this, and would warn my fellow New Yorkers not to doubt it either. The future of our city is now in our hands.

In his testimony to the Banking Committee, Mayor Koch said that:

> I want you to know that we are not looking for a handout. We are not asking for welfare. Rather we ask you to allow us to help ourselves.

Such help will, when both Houses have passed and the President has signed these bills, be available to us.

But this is not the end of our financial crisis; rather it is the start of what must be our own mastery of it—or our defeat by it. Already the mayor has announced, this week, a hiring freeze. This is but the first of what I fear, but am near certain, must be a series of extraordinary austerity measures we will need if we are to keep city's budget in balance.

The city of New York has already begun to take action, as under these strictures it must, to assure that its budget is balanced. I ask unanimous consent to include in the RECORD, at the conclusion of my remarks, the letter to me from Mayor Koch dated September 19, 1978, and the statement by Mayor Koch made September 15 on the same subject. The mayor notes that a hiring freeze has been imposed and that additional expenditure cuts will be imposed to whatever extent is necessary. The mayor explains, and I think it important to read this paragraph from his letter:

> I think it should be emphasized that in no way are our budget difficulties attributable to expenditures in excess of budgeted amounts. Rather, we are faced with the prospect of diminishing revenues from Federal and State sources, and we feel we must take action now to bring our expenditures into line.

The revisions in the financial plan reflect, that is, no failure on the part of the city except the failure to be insufficiently pessimistic about the fate of President Carter's urban policy. The public works jobs program, the CETA program, and the countercyclical revenue sharing program, all crucial to the President's urban policy, have been unfavorably treated in the Congress, with rather dire results for New York City and other distressed cities. The situation, then, is that New York City is attempting to return to budgetary stability at precisely the moment at which vital Federal assistance is being cut back. Thus is the city forced to revise its financial plan and make even further cuts of its own, to accommodate the cuts we make here. And Mayor Koch assures us that these cuts are now under way, stating flatly that:

> I would like to assure you that we will take whatever actions are necessary to keep our budget in balance and meet the requirements of Federal and State law.

He can, of course, do no less under the comprehensive system of restrictions, and monitors under which the city now operates. I do not pretend to know what measures will be needed, nor is it my responsibility—nor, yet at least, that of the Federal Government—to choose these. That responsibility lies with the city's elected government acting within the constraints which State and Federal law now impose.

But let us understand the precise nature of the situation in which we find ourselves. Seemingly, endless hours of debate were required before the Congress would approve, not a transfer of a dollar in resources to us, but instead merely a guarantee program allowing us to go further into debt. Meanwhile, the President's urban policy program does not fare well. Events are not moving with us.

I began last January to offer an explanation of how we got to where we are.

I submit to you that what now unfolds before us originates, in fact, in the 1975 settlement affecting the seasonal loan program. The central, though unstated, axiom of that legislation was that a short term solution, one of 3 years' duration, would be adequate—because within 3 years there would be changes in the National Government that would redound overwhelmingly to the benefit of New York City and all cities.

I believe the settlement of 1975 and the expectations for 1978 can be explained by reference to two "grand illusions." I refer, first, to the belief in a general, nationwide "urban crisis." It was once fashionable to think—indeed, obligatory to think—that the case of New York was but one instance of a national urban crisis. That is to say, the condition of New York, no matter how advanced, was but one symptom of a larger problem, and that the response to the large problem would, as a matter of course, also rescue New York.

I cite the especially illuminating remarks of Mr. Richard Nathan, of the Brookings Institution, in his testimony before the House Budget Committee on February 3, 1978. Mr. Nathan points out that a tendency to see nothing but a "national" crisis and create

Federal policy accordingly could well make our problem worse, not better. Nathan says:

Though the United States does not have a national urban crisis, we face a situation in which some—by no means all—big cities and a few older and larger suburban cities are experiencing what can be called 'urban crisis conditions'. . . . A national policy of aiding all regions—and focused on regions as such—may just exacerbate the special and deep problems of the true hardship cases—Detroit, New York, New Orleans, Newark, St. Louis, Buffalo, East St. Louis, Yonkers, Camden and Trenton, New Jersey, to name some obvious ones.

I believe this realization, that there is no national urban crisis, has taken hold, to a large degree, the difficulties of the administration's urban policy.

Second, and perhaps even more pertinent, was the expectation as to how a new administration would behave once installed in power.

The persons who put the emergency arrangements together assumed that in 3 years' time—in 1978—there would be a Democratic administration in office and that it would take care of the problem with a massive infusion of Federal funds.

It was possible for responsible men in 1975 to think that with a change of administrations there would be a great release of funds.

Well, this just is not happening. President Carter in his economic message for 1978 observed that in fiscal 1976 Federal outlays amount to 22½ percent of the Nation's gross national product. He proposed to reduce this proportion.

In formulating my recommendations for the 1979 budget, I have exercised very strict controls over spending. Adjusted for inflation, the increase in outlays has been held to less than two percent and the share of Federal expenditures in GNP will fall to 22.0 percent. I intend to continue prudent expenditure controls in the future. With good management we can, I believe, achieve our Nation's important social goals and still reduce over time the share of gross national product committed to Federal expenditures to about twenty-one percent.

Now there is something deep in the political imagery of the country, and therefore, something in the political typology of the country, which says to us that Democratic administrations are activist, expansionist, and, so to say, free spending, whereas Republican administrations emphasize retrenchment and frugality. So wedded are we to this typology that it often takes years to realize that such assumptions can be and have been wrong.

Samuel Huntington has spoken of two great "shifts" in public spending—the "defense shift" of the 1950's and the "welfare shift" of the 1970's. Both these shifts, although each began under a Democratic predecessor, were substantially completed during periods of Republican ascendency. Instead a similar pattern obtains in both—especially in the proposition put forward by Democratic presidential candidates. One thinks of Presidents Kennedy and Carter. In 1960 President Kennedy made much of the "missile gap." In 1976 the Official White House "compilation of Campaign Promises" runs to 120 mimeographed pages. Both assumed that their predecessors of the opposite party had not spent enough money in the areas of special concern to them. Both took office to discover that not only had their predecessors spent a lot of money, but that indeed, in a sense they had spent all the money that reasonably could be spent for purposes.

What does this mean? It means that the specific measures required to prevent New York City from going bankrupt will not flow from general measures which the administration will put in effect to overcome the "crisis of the cities," the decline of employment in the northeast, or whatever.

Few such measures will be proposed and fewer still will succeed in Congress.

The lesson for New Yorkers is plain: We cannot act under the assumption that significant amounts of additional help from Washington are at hand. There are significant problems, indeed crises ahead—and in them we will be on our own.

I would only state what all New Yorkers must know. We have given our word and now we must keep it. It will be difficult. It will require actions that cause sacrifice and discomfort, at levels which will at times seem to some of us near tragic.

The alternative is the loss—at the same time—of both our independence and our honor. The mayor has pledged that he will never allow this, and I know that he means to keep his pledge. As Mayor Koch said at City Hall on the day the Loan Guarantee Act was signed by President Carter, "The struggle for a sound City is not over. It is just a beginning." He will need the help of all of us, and I would say to my fellow New Yorkers that, if our city is to survive as the city we love, he must have it.

I ask unanimous consent that the following statement of Mayor Edward I. Koch of New York City, be included in the RECORD. In it, he announced, in effect, a freeze on hiring and promotions in the city in response to these new developments: The potential failure of the measure concerning CETA funds, that of the countercyclical fund, as well as that of the labor-intensive public works fund.

I also ask unanimous consent that a letter from the mayor to me describing the situation be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY MAYOR EDWARD I. KOCH

Last January, during my first month in office, my administration submitted to the Emergency Financial Control Board and the United States Treasury a Financial Plan for the fiscal years 1979 through 1982. That Plan, aimed at bringing the City's budget into balance, was predicated on a series of City, State and Federal actions to reduce City expenditures and increase City revenues, as well as a program of Federal loan guarantees.

In the eight months since the submission of that Plan, much has been accomplished. With the support of President Carter, the Congress has approved the loan guarantee program. We in the City of New York have taken those actions required of us by the Plan. The State of New York, under the leadership of Governor Carey, has done its share. Unfortunately, however, some of the reasonable assumptions of January have not become the realities of September.

It is clear, following discussions with EFCB and Federal officials, that our original estimates for receipts from Federal assistance—which were based on existing legislation—must be adjusted downward to account for likely Congressional reductions in receipts expected from countercyclical and CETA funds. In other words, the City will in all likelihood not achieve the revenue levels from these programs in fiscal years 1979 and 1980 which had been forecast originally. While the precise magnitude of this shortfall is not known at this time, it is imperative that we take immediate actions to reduce expenditures so as not to jeopardize the City's continuing fiscal recovery.

On August 24th, my administration submitted to the EFCB a series of expenditure reductions, over and above those already taken in the Financial Plan. At that time we said we would devise further plans to meet contingencies as they arise. In this regard, I am now announcing steps to deal with a probable budget gap for fiscal 1979, and plans to develop contingencies for potential shortfalls in 1979 and later years.

Effective immediately, a hiring and promotion freeze shall be imposed on all agencies over which I exercise direct control. In addition, my staff will be seeking agreement with the so-called "non-mayoral" agencies, such as the Board of Education and the Health and Hospitals Corporation, for the imposition of a similar freeze in those agencies. I also am asking the City's other elected officials to institute a freeze on their staffs.

This freeze, I realize, is a drastic action, but it is necessary as an immediate answer to our apparent problems. Other actions also will be taken. These actions currently are being drawn up by the Office of Management and Budget and will be presented to the EFCB by Friday, September 22.

The hiring and promotion freeze will affect most City agencies. Some agencies—a limited number—will be excepted on account of fixed or legally mandated managing requirements, such as the Fire and Correction Departments, or because of revenue producing activities. Other exceptions may be granted providing that the agency can justify the exception to me in writing. In justifying the exception, the agency must identify an amount of savings equal to the cost of hiring involved. I have asked Deputy Mayors David Brown and Philip Toia to review these requests for exception; I will make the final decision.

This hiring and promotion freeze, although drastic, will help achieve the sort of savings necessary to meet our immediate problem and to give us the recurring savings necessary to assist us in fiscal 1980. Although I recognize that a hiring freeze is one of the least desirable approaches from a management standpoint, it will initiate immediate savings while giving the City administration time to develop, evaluate and impose additional programs of savings. In this regard, I must emphasize that this problem of Federal revenue shortfalls is not one of fiscal 1979 alone, since the Financial Plan envisioned increasing levels of Federal assistance in each ensuing year.

Since the President has indicated his intention of balancing his budget, and since this includes a "no growth" policy for local assistance, it is clear that shortfalls of expected Federal revenue will occur in future fiscal years. For this reason, the Office of Management and Budget will be working with City agencies to identify areas of further savings. This process, which is part of the ongoing budget cycle for fiscal 1980 that began in August will be completed in December at which time we will identify those actions which can, or will, be taken to meet this problem.

Let me state this very clearly: I am committed to the goal of a balanced budget for the City of New York. I will take those actions which are necessary to achieve that goal. We

have made such progress in our struggle for fiscal recovery; we must and we can do more.

Last month, in front of City Hall, the President of the United States signed the bill authorizing the Federal loan guarantees for which we had fought so hard. At that time, while I acknowledged the end of that struggle, I said:

". . . there remains the challenge of getting back on our feet. This will mean more sacrifices in the years ahead. The struggle for a sound City is not over. It is just beginning."

THE CITY OF NEW YORK,
New York, N.Y., September 19, 1978.

Hon. Senator PATRICK MOYNIHAN,
Dirksen Senate Building,
Washington, D.C.

DEAR PAT: I would like to bring you up to date on the August 24, 1978 revision of the Four Year Financial Plan that we submitted to the EFCB and the selective hiring freeze imposed on September 15. I enclose some background material which goes into considerable detail on these subjects.

The freeze is part of our program to prepare for the large budget gap projected for Fiscal Year 1980 as well as to take account of certain potential revenue shortfalls in Fiscal Year 1979. The full program, which will be submitted to the EFCB on September 22, will update earlier revenue and debt service estimates and will reduce expenditures for both personnel and non-personnel costs such as materials, supplies, and energy to the extent necessary to resolve the uncertainties with respect to the Fiscal Year 1979 budget. The attachment highlights some of the major uncertainties cited by the EFCB and the U.S. Treasury.

We feel that Fiscal Year 1979 does not pose too large a problem. It is even possible that we may ultimately end up with a surplus. However, in order to close the gaps projected for subsequent years, we need to start shrinking our current budget in ways that will yield recurring savings.

The Office of Management and Budget is now working with the agencies to determine how the hiring and promotion freeze can be implemented so as to interfere as little as possible with vital services and with revenue-generating activities. Many factors, such as fixed post requirements and court-and legislatively-mandated services, must be taken into account. Besides the freeze, other areas of savings are being explored with the agencies.

The selective freeze and other savings actions will be put into effect immediately and will remain in place for an indefinite period. During the next three months, we will develop a comprehensive program for dealing with the remainder of Fiscal Year 1979 and all of Fiscal Year 1980. This means working out a formal "Program to Eliminate the Budget Gap" similar to the PEG program incorporated into the Fiscal Year 1979 Budget.

I think it should be emphasized that in no way are our budget difficulties attributable to expenditures in excess of budgeted amounts. Rather, we are faced with the prospect of diminishing revenues from Federal and State sources, and we feel we must take action now to bring our expenditures into line.

As you know, we maintain a general reserve of $100 million to cover uncontrollable expenditure increases or revenue reductions and an additional $100 million reserve for disallowance of claims. The actions we are taking are over and above these reserves. I would like to assure you that we will take whatever actions are necessary to keep our budget in balance and meet the requirements of Federal and State Law.

Behind our budget cuts will be the secondary defenses for both Fiscal Years 1979 and 1980 of contingency programs capable of being activated if necessary. These will be submitted to the EFCB on September 22 as well.

If you have any questions as to our intentions, our plans or actions, I would be very happy to respond promptly.

Thank you for the magnificent help you have given us thus far. I look forward to continuing to work closely with you in the future on these matters of vital concern to the City.

Cordially,

EDWARD I. KOCH,
Mayor.

MAJOR REVENUE UNCERTAINTIES IN FY 1970

COUNTERCYCLICAL AID

The FY 1979 Financial Plan originally approved by the EFCB in July included $120 million of countercyclical aid based on the administration's bill. However, under the terms of the legislation which is currently being proposed in Congress, it is estimated that the City will receive approximately $45 million during Fiscal Year 1978.

CETA

On September 12 the Mayor wrote to Congrssman Delaney expressing his concern about the CETA program. In that letter he estimated that the impact of the recently passed Obey and Jeffords amendments combined could cost the City as much as $88 million and the loss of 8,000 CETA positions with corresponding losses in essential services. The costs to the City in 1979, however, were estimated to be in the range of $20 million. A copy of the Mayor's letter is attached.

WESTWAY

The City has included $80 million from the sale of the Westway right-of-way in its FY 1979 Financial Plan. While the City intends to continue to push forward in its efforts to complete the sale and begin construction of Westway, certain administrative and legal issues must be resolved which may delay the actual sale until after Fiscal Year 1979.

OTHER FEDERAL ACTIONS

Approximately $18 million of Federal assistance to the City was included in the FY 1979 Budget and Financial Plan on the basis of commitments made by the administration when the Four Year Plan was prepared in January. Extensive discussions between the City and the administration have taken place to identify these actions. While several alternative actions have been proposed and are being reviewed, specific programs have not been agreed to by the City and the administration.

Mr. MOYNIHAN. I would like those Senators who are present in the Chamber to realize that this extensive statement is bearish. It suggests that the difficulties of the city are in no sense behind us.

At the same time, I am well aware that this is not a moment at which any Member of this body wishes to hear them detailed at length. I am obviously available to anyone who would like to discuss them.

I simply want it understood that as we conclude this phase of our efforts, we have by no sense concluded our involvement. Some day, some administration is going to find out that unless the political economy of New York City is changed in some fundamental way with respect to the problem of welfare, that problem will continue to grow; indeed, it has already, a crisis of national proportions, and it may well persist for the rest of this century. But this is not the time to dwell on that sad fact; it is the time to thank my colleagues, and especially, once again, the Senator from Wisconsin.

I yield the floor.

The PRESIDING OFFICER (Mr. GLENN). The question is, Shall the joint resolution pass? The yeas and nays have been ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, in order to dispose of a matter that can be taken up and disposed of in 2 or 3 minutes, I ask unanimous consent that the Senate go into executive session for not to exceed 5 minutes to take up a nomination at the desk, reported favorably today by the Committee on the Judiciary.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the nomination.

THE JUDICIARY

The second assistant legislative clerk read the nomination of Richard S. Arnold, of Arkansas, to be U.S. district judge for the eastern and western districts of Arkansas, favorably reported earlier in the day by the Committee on the Judiciary.

Mr. BUMPERS. Mr. President, I will only take a couple of minutes to share with the rest of my colleagues my thoughts about this nomination.

Richard Arnold comes from Texarkana, Ark., and joined me on a temporary basis in 1972 just before I began my second term as Governor. Then he stayed with me permanently after that in the Governor's office, and when I came to the Senate I asked him if he would consider coming to Washington with me as my legislative aide.

Much to my surprise, he agreed. I would like to share with my colleagues a little of Richard Arnold's background which will point up the fact that my nomination of him was one of the most selfless and incidentally, painful acts I have ever committed.

Richard's academic background was Exeter, Yale, and Harvard. I doubt whether there is another person in the United States who could say he was second in his class at Exeter, first in his class at Yale, and first in his Harvard Law School class. Those are certainly the most impeccable academic credentials I have ever heard described in this body.

But that tells only a small part of the story of Richard Arnold because, unlike most people with that kind of academic credentials, I have never seen him display the least impatience, and I have never heard him utter a word in hostility or vindictiveness. He is a warm, kind, sensible, thoughtful, commonsense man, who is going to reflect great credit on the Federal judiciary. The truth of the matter is that if I were President of the United States, he would be my first pick to serve on the Supreme Court of the United States when the first vacancy occurred, and I hope and believe that some day Richard Arnold will be on the U.S. Supreme Court.

This loss to me, of course, is devastating in my office. He has been at my right hand for almost 6 years now, and I will hardly know how to conduct myself

without him. I have learned to depend upon him. With all due deference to the Senate Parliamentarian, if there is another man in Washington who is as skilled in the rules of the Senate, Richard is.

But even so, Mr. President, the loss to me personally and the loss to the Senate is a great gain to the Federal judiciary and to the people of the State of Arkansas. One hears a lot of talk around here about creating panels to pick Federal judges. That has some merit, but you do not need a panel when you have a man of this quality and this ability available. I predict that he will become veritably legendary in the Federal judiciary, and I appreciate the opportunity to say these few words of tribute to my friend: a superior person—one of the few I have ever known—and to wish him godspeed on his new job.

Mr. HODGES. Mr. President, I join my senior colleague and good friend from Arkansas in strongly urging the Senate to approve the nomination of Richard Arnold. You have heard his academic qualifications. Not only that, he is a very fine person. He has unusual common sense. Most very bright people do not, but he does.

Sometimes we hesitate, on appointments for life, to wonder, will they change? I submit to you Richard Arnold will not. I submit to you that he will make an outstanding judge. I think it is simply a matter of time until he comes to the attention of all of this country, and he will be elevated, I would hope and trust, one day to the U.S. Supreme Court.

I am proud to have shared in this nomination. I, too, regret, for the sake of Arkansas and our legislative task, the loss of his wise counsel, for I have called upon him for assistance also. But we in Arkansas will be blessed by his presence on the Federal bench, as will the entire Nation.

I join with Senator BUMPERS in paying tribute to Richard Arnold, asking for his speedy confirmation, and wishing him godspeed also.

Mr. HART. Mr. President, will the Senator from West Virginia yield me 30 seconds?

Mr. ROBERT C. BYRD. Yes.

Mr. HART. Mr. President, although this nomination does not affect my State, obviously, it has been my privilege and pleasure to know Mr. Arnold and work with him for the last 4 years.

In a word, I cannot think of anyone I know of who is better qualified to be a U.S. district judge.

Mr. ROBERT C. BYRD. Mr. President, the Senate is ready to vote on the nomination.

Mr. BUMPERS. Mr. President, I move the confirmation of the nomination of Richard Arnold.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. ROBERT C. BYRD. I move to reconsider the vote by which the nomination was confirmed.

Mr. HODGES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed, for not to exceed 2 minutes, to consideration of the nomination of Bruce S. Jenkins, of Utah, to be U.S. district judge for the district of Utah, reported favorably and I believe unanimously by the Committee on the Judiciary today. I ask unanimous consent for the immediate consideration of that nomination.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the nomination.

The assistant legislative clerk read the nomination of Bruce S. Jenkins, of Utah, to be U.S. district judge for the district of Utah.

Mr. HATCH. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am very pleased to move the confirmation of the nomination of Bruce Jenkins, who has been the bankruptcy referee and judge out in Utah for a number of years and he is an excellent person of high moral character. He will be impartial, decent, honest, and hardworking and I am sure he will be one of the best district judges on the Federal bench.

The reason why we are particularly interested in getting this appointment speedily approved at the present time is because our lone Federal district judge in Utah, Chief Judge Aldon Anderson, has been unduly burdened for more than a year now. He has a tremendous backlog of litigation, and desperately needs assistance.

Senator GARN is not here on the floor, his presence being required in committee, but he heartily joins with me in recommending the confirmation of the nomination of Bruce Jenkins as a U.S. district judge for the district of Utah, and I move the confirmation of his nomination at this time.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

NEW YORK CITY LOAN GUARANTEES

The Senate continued with the consideration of the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, a rollcall vote has been ordered on the New York City legislation, but I understand that the distinguished Senator from Texas (Mr. TOWER) wants to make some remarks before that vote. Therefore, I suggest that the cloakroom notify Mr. Tower.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SCHEDULE

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, there will be a Saturday session, and I would anticipate rollcall votes.

It is the intention of the joint leadership of the House and the Senate to adjourn sine die by October 14. This would mean that the Senate will have to work every Saturday between now and that date to get its work done.

REHABILITATION, COMPREHENSIVE SERVICES, AND DEVELOPMENTAL DISABILITIES AMENDMENTS OF 1978

The Senate continued with the consideration of the bill.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the vocational rehabilitation bill, Calendar Order 820, and which is pending business, the following amendments be in order, and no others: Amendments by Mr. BUMPERS, Mr. JAVITS, Mr. MCCLURE, Mr. CRANSTON, Mr. RANDOLPH, Mr. BELLMON, and Mr. STAFFORD.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Will the Senator yield for clarification?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. In some cases there may be perfecting amendments or amendments to amendments.

Mr. ROBERT C. BYRD. Yes. This is talking about amendments to the amendments at the desk, too.

Mr. JAVITS. Or perfecting amendments?

Mr. ROBERT C. BYRD. According to the agreement that I thought had been cleared——

Mr. JAVITS. It has been cleared. I just wanted to be sure it was accurately expressed as it may involve a perfecting amendment.

Mr. ROBERT C. BYRD. If it did, it would have to be offered by one of the Senators named.

Mr. JAVITS. That is correct.

Mr. SCOTT. Mr. President, reserving the right to object. I fail to see why a unanimous-consent request of this nature would be made that would rule out the right of some other Senator to offer an amendment if he sees fit. I do not personally intend to offer an amendment,

but there are 100 Senators. It may well be that before a Senator comes to the Senate floor they will review the bill and review the report, and want to offer an amendment.

I hesitate to agree to a request like this. Perhaps the distinguished majority leader could enlighten us.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Virginia (Mr. SCOTT), who makes a very justifiable and good point.

I had been advised that only amendments by these Senators were going to be offered, but I think the Senator makes a good point. There may be a Senator around, or not around, who will want to offer an amendment. I therefore withdraw the request.

I think it is an excellent point.

Mr. HARRY F. BYRD, JR. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HARRY F. BYRD, JR. I think it is an excellent point. I commend my colleague from Virginia and say as a matter of policy it is probably not a desirable thing to do.

Mr. ROBERT C. BYRD. I thank the Senator.

NEW YORK LOAN GUARANTEES

The Senate continued with the consideration of the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, I understand that under the Senate rules, if no Senator seeks recognition, the Chair is under an obligation to put the question.

The PRESIDING OFFICER. The question is on the third reading of the joint resolution.

The joint resolution was read the third time.

The PRESIDING OFFICER. The question is on agreeing to the joint resolution.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Pennsylvania (Mr. HEINZ), the Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Delaware (Mr. ROTH), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The result was announced—yeas 51, nays 28, as follows:

[Rollcall Vote No. 382 Leg.]

YEAS—51

Bayh	Hatfield, Paul G.	Nelson
Biden	Hathaway	Packwood
Bumpers	Hodges	Pell
Byrd, Robert C.	Huddleston	Percy
Case	Inouye	Randolph
Clark	Jackson	Riegle
Cranston	Javits	Sarbanes
Culver	Kennedy	Schmitt
Danforth	Leahy	Stafford
Dole	Long	Stennis
Durkin	Lugar	Stevens
Eagleton	Matsunaga	Stevenson
Ford	McIntyre	Stone
Glenn	Melcher	Weicker
Gravel	Metzenbaum	Williams
Hart	Morgan	
Haskell	Moynihan	
Hatfield, Mark O.	Muskie	

NAYS—28

Bartlett	DeConcini	Nunn
Belimon	Domenici	Proxmire
Bentsen	Garn	Sasser
Burdick	Goldwater	Scott
Byrd, Harry F., Jr.	Hansen	Talmadge
Cannon	Hatch	Thurmond
Chiles	Hayakawa	Tower
Church	Hollings	Young
Curtis	Laxalt	Zorinsky
	Magnuson	

NOT VOTING—21

Abourezk	Griffin	McGovern
Allen	Heinz	Pearson
Anderson	Helms	Ribicoff
Baker	Humphrey	Roth
Brooke	Johnston	Schweiker
Chafee	Mathias	Sparkman
Eastland	McClure	Wallop

So the joint resolution (H.J. Res. 1088) was passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COAL LEASING AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1092.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3189) to further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201 (a)), to authorize the Secretary of the Interior to exchange Federal coal leases and encourage recovery of certain coal deposits, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201 (a)(1) is further amended by adding the following paragraph at the end thereof:

"Notwithstanding the requirement in this section that leases be awarded by competitive bidding or any other competitive bidding requirement of this or any other Act to the contrary, the Secretary is authorized to acquire Federal coal leases or rights to Federal coal leases, existing as of the date of enactment of this section, by purchase at fair market value as determined by him, or by exchange for another coal lease, subject to the provisions of subparagraphs (i) through (iv) of this paragraph. The authority granted by this paragraph is in addition to and does not restrict the existing authority of the Secretary to acquire coal and other mineral leases and rights to leases by exchange for another Federal mineral lease, or for modification of an existing coal lease. Nothing herein shall be construed as superseding, modifying, restricting, amending, or repealing the authority of the Secretary under any provisions of the Surface Mining Control and Reclamation Act of 1977 to purchase, acquire, or condemn lands adversely affected by past coal mining, to exchange coal leases involving alluvial valley floors or to designate any Federal lands as unsuitable for mining coal of other minerals.

"(i) The acquisition authority granted in this subsection may be exercised by the Secretary only upon a determination by him that (a) coal mining would result in unacceptable social, economic, or environmental impacts in the vicinity of the lands covered by a lease or proposed lease and that such impacts cannot be prevented or adequately mitigated under the authority of the Surface Mining Control and Reclamation Act of 1977, or other Federal laws, or (b) development of the lease would conflict with a specific proposal for use of the land for a public purpose and such use was not considered by the Secretary prior to issuance of the prospecting permit or lease.

"(ii) This section does not require the Secretary to exchange or purchase any lease. The authorities in this section may be exercised by the Secretary as to an applicant for a preference right lease only upon a determination by him that the application and permit upon which it was based has, in fact, met all of the requirements for a lease under the Mineral Leasing Act of 1920 (30 U.S.C. 201).

"(iii) If the Secretary decides to acquire an outstanding coal lease or right thereto by exchange, he is authorized to accept relinquishment of a lease issued under this Act, the Mineral Leasing Act for Acquired Lands (30 U.S.C. 271–276), or the Railroad and Other Right-of-Way Leasing Act of May 1, 1930 (30 U.S.C. 301–306) or a right to issuance of such a lease, in whole or in part, and to issue to the lessee or lease applicant, in exchange therefor, a coal lease which is to be a lease of equal value. If the value of the leases to be exchanged is not equal, the value shall be equalized by the payment of money to the grantor or to the Secretary as long as the payment does not exceed 25 percent of the total value of the lands or interest transferred out of Federal ownership. The Secretary shall try to reduce the amount of payment to as small an amount as possible. Leases issued pursuant to the exchange provisions of this subsection are subject to the provisions of this Act except as otherwise

provided expressly in this subsection. A new lease issued in accordance with this subsection shall become effective only upon relinquishment of the outstanding lease or right to a lease.

"(iv) The Secretary shall issue such rules and regulations and establish such procedures within one hundred and eighty days as he deems necessary to carry out the provisions of this section. Such rules and regulations shall include but need not be limited to the standards that the Secretary shall employ for making the determination of those conditions under which he will purchase at fair market value, or exchange for another coal lease, requirements concerning information which must be submitted by a lessee or lease applicant, and requirements for public participation with respect to any proposed exchange including public meetings or hearings where the Secretary deems them necessary.".

SEC. 2. Section 2(a)(1) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 201(a)(1)) is further amended by striking the period at the end of the first sentence and inserting in lieu thereof the following: "Provided, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976.".

SEC. 3. Section 3 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 203) is further amended by adding, after the word "contiguous", the words "or cornering" and by deleting the period at the end of the second sentence thereof and adding the following clause: "except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of section 2(d)(2) and 7(c) of this Act (30 U.S.C. 201(d)(2) and 207(c)). The minimum royalty provisions of section 7(a) of this Act (30 U.S.C. 207(a)) shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease has expired.".

SEC. 4. Section 37 of the Mineral Leasing Act of 1920 (30 U.S.C. 193) is further amended by the addition of the words "except as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 2757–2758), and" after "only in the form and manner provided in this Act," and before the word "except".

SEC. 5. Section 30 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 187) is further amended by striking the word "boy" and inserting in lieu thereof "child" and by striking the phrase "or the employment of any girl or woman, without regard to age,".

SEC. 6. (a) The Secretary of the Interior is authorized and directed within nine months of the date of enactment of this Act, to evaluate and review the scenic, recreational, fish and wildlife, cultural, historic, and other public values of the reservoir in Johnson County, Wyoming, known as Lake DeSmet and the adjoining and adjacent coal properties. The Secretary's review and evaluation shall be for the purpose of determining whether the Lake DeSmet property shall be acquired for public use and enjoyment by exchange for Federal coal lands.

(b) If the Secretary determines that the Lake DeSmet property should be acquired, he is authorized, with the agreement of the owners of the property, to acquire the Lake DeSmet property by exchanging Federal coal lands, interests in Federal coal lands, or Federal coal leases.

(c) The exchange authorized by this section shall be for equal value. To the extent, if any, the value of the lands or interests exchanged are not equal the difference may be adjusted by the payment of money so long as the payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the Lake DeSmet property, the Secretary is authorized and directed to include the fair market value of the property, considering the acquisition cost of the lands, the value of the coal deposits, water rights and water resource developments, and capital and other appropriate improvements. The exchange of such properties shall be carried out expeditiously in accordance with the provisions of this section and other Federal land exchange authority to the extent such authority is applicable and consistent with this section.

(d) The Secretary is authorized to transfer any property acquired pursuant to this section (1) to the appropriate agency in the Department of the Interior for management and administration, or (2) to the State of Wyoming for recreational purposes and fish and wildlife management.

(e) There are authorized to be appropriated for fiscal year 1980 to the Secretary such sums as are necessary to carry out the purposes of this section.

Mr. HASKELL. Mr. President, I would like to lay this matter aside for the moment so the distinguished Senator from New Jersey may conduct some business on the floor, but I would like to, obviously, keep this matter pending after Senator WILLIAMS finishes.

The PRESIDING OFFICER. The Senator reserves the right to the floor, yields to the Senator from New Jersey without losing his right to the floor.

Mr. HASKELL. That is right.

Mr. WILLIAMS. I greatly appreciate the cooperation of the Senator from Colorado.

SECURITIES AND EXCHANGE AUTHORIZATIONS, 1979

Mr. WILLIAMS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 11567.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the text of the bill (H.R. 11567) entitled "An Act to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal year 1979–1981, and for other purposes", with the following amendment:

Page 2, line 3, of the Senate engrossed amendments, strike out "$2,500,000", and insert: "$2,000,000"

Resolved, That the House agree to the amendment of the Senate to the title of the bill.

Mr. WILLIAMS. Mr. President, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

Mr. STEVENS. Is that a motion?

Mr. WILLIAMS. Yes.

The PRESIDING OFFICER. Will the Senator send the amendment to the desk, please?

Mr. STEVENS. Mr. President, I understand this matter has been cleared with the minority on the committee, but I am wondering about the amendments. That is all I wish to ask the Senator from New Jersey. What amendments are there that we are talking about?

The PRESIDING OFFICER. Does the Senator wish to send the amendment to the desk?

Mr. WILLIAMS. We are agreeing to the House amendment to the Senate amendment.

Mr. STEVENS. I see. I beg the Senator's pardon.

I understood there was an amendment to be presented to this and I did misunderstand. I am sorry.

Mr. WILLIAMS. It is to concur in the amendment of the House to the amendment of the Senate. That is the motion I make.

The PRESIDING OFFICER. Is there further discussion?

The question is on agreeing to the motion to concur in the amendment of the House to the amendment of the Senate.

The motion was agreed to.

Mr. WILLIAMS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COAL LEASING AMENDMENTS OF 1978

The Senate continued with the consideration of the bill.

Mr. HASKELL. Mr. President, the Subcommittee on Energy Production and Supply, which I chair, held a series of oversight hearings on Federal coal leasing policy in October and November 1977 and February 1978. During the course of these hearings, representatives of the many groups which have an interest in coal development suggested changes in Federal policy. The bill before the Senate today, S. 3189, represents those changes for which a general consensus exists.

The bill is supported by the mining industry, the utilities, environmental groups and the administration. The existence of this rare coalition suggests the wisdom of the bill's provisions. S. 3189 was ordered reported unanimously by the Committee on Energy and Natural Resources on August 23, 1978.

S. 3189 would accomplish the following:

First, give the Secretary of the Interior the authority to acquire coal leases or rights to leases by purchase or exchange for other coal leases in instances when he determines that development of the lands to be acquired would result in unacceptable impacts which could not be avoided or mitigated under the Surface Mining Control and Reclamation Act of 1977.

Second, permit the Secretary to sell coal the removal of which is necessary for the exercise of a right-of-way issued under the Federal Land Policy and Management Act of 1976.

Third, permit the Secretary to modify existing leases by adding lands at the corner of a lease, not only contiguous to it, and prohibit the imposition of the minimum royalty established by the Federal Coal Leasing Amendments Act of 1975 on the lands of the modified lease prior to its modification. Also, the Secretary is given the discretion not to apply the production and mining plan

requirements of the Coal Leasing Amendments Act to such lands.

Fourth, clarify that federally-owned minerals covered by the Mineral Leasing Act of 1920 may be exchanged by the Secretary as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976.

Fifth, repeal an archaic prohibition against employment of women in underground mines on Federal lands.

Sixth, direct the Secretary to study certain land in Johnson County, Wyo. to determine its public value and whether it should be acquired by exchange for other Federal lands. The Secretary is given the authority to make the acquisition if he deems it appropriate.

The legislation is important to our continuing effort to structure a rational national energy policy since it will give the Secretary more latitude to manage Federal coal lands. Its passage will help to avoid the bypass of Federal coal deposits by making their recovery more attractive to the mining industry. Coal production will also be assisted by the exchange of leases on which mining is environmentally unsatisfactory for those on which mining is consistent with environmental goals. One provision will permit easier access to privately owned coal by amending the Secretary's authority to dispose of Federal coal underlying rights-of-way.

I would like to thank Senator HANSEN and the Department of the Interior for their cooperation in perfecting this legislation. Its passage will help us establish a workable Federal coal leasing policy.

Mr. President, I am submitting for the RECORD a letter and a cost estimate from the Congressional Budget Office that has not been put in the RECORD before. I ask unanimous consent that that material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C. September 6, 1978.

HON. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 3189, a bill to further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201(a)), to authorize the Secretary of the Interior to exchange federal coal leases and to encourage recovery of certain coal deposits, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 6, 1978.

1. Bill number: S. 3189

2. Bill title:

A bill to further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201(a)), to authorize the Secretary of the Interior to exchange federal coal leases and to encourage recovery of certain coal deposits, and for other purposes.

3. Bill status:

As reported by the Senate Committee on Energy and Natural Resources, August 25, 1978.

4. Bill purpose:

This bill authorizes the Secretary of Interior to purchase or exchange federal coal leases to avoid adverse environmental and social impacts which would result due to mining operations. The Secretary is also directed to study Lake DeSmet in Wyoming for possible use as a recreation area. The bill authorizes the Secretary to acquire the lake area through coal land exchange if the lake is found to be of recreational value. In addition, the bill amends certain provisions of the Mineral Leasing Act of 1920 to be consistent with the Federal Coal Leasing Act Amendments of 1975 and removes a provision prohibiting women miners from underground mines under federal lease.

5. COST ESTIMATE

[By fiscal years, in thousands of dollars]

	1980	1981	1982	1983	1984
Estimated authorization level	600	----	----	----	----
Estimated cost	600	----	----	----	----

This estimate does not include the possible impact of lease purchases or of equalization payments made by or to the government as part of lease exchanges. No estimate of the number or amount of such payments can be made at this time; however, the net cost to the government is not expected to be substantial.

The costs of this bill fall within budget function 300.

6. Basis of estimate:

The bill auhorizes such sums as may be necessary for the study of the Lake DeSmet area in fiscal year 1980. The Department of Interior estimates this study will cost approximately $600,000. The study will involve several agencies, including the Bureau of Land Management, the United States Geological Survey, the Heritage Conservation and Recreation Service and the Fish and Wildlife Service.

Additional costs of approximately $3.4 million would be concurred should the lake area be acquired, because extensive coal evaluation studies would have to be conducted at the lake site and at a coal land exchange site. In addition, use of the site as a recreation area would preclude coal excavation. Consequently, this would result in a potential revenue loss to the federal government. The value of coal at the lake area has been estimated to be as high as $1 billion.

No costs are estimated to be incurred as a result of the other provisions of the bill. The lease transactions authorized by the bill are expected to be primarily exchanges, rather than acquisitions. While equalization payments on certain coal lease exchanges may have to be made by or to the government, most exchanges are expected to be made without the need for such payments. It is not possible at this time to estimate the number and value of such exchanges or the amount of equalization payments that will be paid or received by the government.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mark Berkman (225–7760).

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

Mr. HASKELL. Mr. President, the pending Senate bill is a technical bill which amends the Leasing Act in certain regards to facilitate the administrative problems involved in the coal leasing amendments.

The hearings have been held in the Energy Committee on this matter. It is my understanding that my distinguished colleague, the Senator from Wyoming, concurs in the product of the committee.

It is also my understanding that the distinguished Senator from Montana has an amendment which he wishes to propose.

Mr. HANSEN. Mr. President, if the distinguished floor manager of the bill would yield for a unanimous consent regarding privilege of the floor, I ask unanimous consent that Tony Bevinetto of my staff, and Fred Craft, be granted privilege of the floor during debate and any votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HASKELL. I also ask unanimous consent that Dan Dreyfus, Tom Laughlin, and Mike Harvey of the Energy Committee staff have the privilege of the floor during the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. HASKELL. I yield.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Darla West, of my staff, have the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HASKELL. Mr. President, I yield to the Senator from Montana, who I believe desires to propose an amendment.

UP AMENDMENT NO. 1870

(Purpose: To provide for the readjustment of certain coal leases)

Mr. MELCHER. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is the Senator referring to a printed amendment already submitted?

Mr. MELCHER. No; it is an unprinted amendment, and I just brought it to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 1870.

Mr. MELCHER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, add a new section 9 to read as follows:

SEC. 9. Section 7 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 207) is further amended by adding the following three subsections at the end thereof:

"(d) All Federal coal leases issued prior to August 4, 1976, shall be subject to a royalty of 12.5 per centum of the value of the coal as determined by regulation on all coal produced by surface mining after the date of enactment of this amendment if:

(1) the lease was subject to readjustment prior to the enactment of this amendment;

(2) the Secretary has not:

(A) readjusted the lease; or

(B) informed the lessee that the lease will not be readjusted; and

(3) the Secretary has approved a mining plan for all or part of the lease.

"(e) The Secretary shall readjust the royalty rate of all other Federal coal leases issued prior to August 4, 1976, which are or become subject to readjustment in accordance with this Act. In all instances, this readjustment shall be done before the Secretary approves a mining plan for the lease.

"(f) This amendment does not affect the Secretary's authority to readjust terms and conditions of a lease other than those involving the royalty rate.

Mr. MELCHER. Mr. President, when we passed the Federal Coal Leasing Act a couple of years ago, we increased the royalties that were required to be collected from any Federal mine to the customary 12.5 percent similar to other minerals. That is a minimum, of course; and the Secretary, if he felt he could get more, could receive above the minimum. However, there were a number of coal leases that were outstanding at that time.

The usual terms of the coal lease, I think in all cases, was that every 20 years they would have to be renewed. The effect of the bill passed in 1976 was that, as those leases became renewable at the end of 20 years, the terms of the lease would be changed to 12.5 percent royalty. There were a few leases, however, that had not had to be renewed prior the passage of the act, and the requirements of the bill seemed a little fuzzy.

So this closes the gap and says that if any of those leases were renewable prior to, I believe, August 4, 1976, the passage of the act, and had not been renewed, and are not renewed now, they will be renewed by notice and proper procedure, and the payment of the royalty will be set at 12.5 percent. It will be the Secretary's duty to make sure that the readjusted royalty rate of all these leases has been accomplished, that the readjustment of the royalty rate in the leases is accomplished prior, in any event, to the issuance of approval of a mining claim.

I think it is entirely what Congress intended in the 1976 act, and I believe this amendment will make sure that that clear intent is followed and accomplishable under the law.

Mr. HASKELL. Mr. President, I agree with my distinguished colleague that existing law requires this; but, in case there should be any ambiguity whatsoever, the amendment of the Senator from Montana would clear it up.

However, I stress that his amendment is entirely in accordance with existing law. Therefore, so far as I am concerned, I am pleased to accept the amendment.

Mr. HANSEN. Mr. President, if the Senators would be willing to wait just a few moments, we have a staff member, Ted Orf—for whom I ask unanimous consent to have the privilege of the floor—coming over. We have been informed that there are those who think changes could be made in the language, I say to the Senator from Montana, under section (D)(3), which we would like to offer for his consideration before we take final action on the amendment.

If the Senator from Montana would be willing to withhold—if it would be his wish—I would be happy to suggest the absence of a quorum, or whatever he would like.

The PRESIDING OFFICER. Did the Senator ask unanimous consent for privilege of the floor?

Mr. HANSEN. For Ted Orf.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HANSEN. Mr. President, I withhold the indication that I might suggest the absence of a quorum.

Would the Senator from New Mexico like to speak?

Mr. DOMENICI. I am waiting to see the exact language of the measure. We have something with respect to paleontological finds, and I have to see that.

Mr. MELCHER. Mr. President, I wish to modify my amendment as follows:

I add (e) "Before approving a mining plan for the lease,". Add those eight words immediately after (e).

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. MELCHER. Mr. President, I further modify my amendment by striking the last sentence in (e).

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 10, add a new section 9 to read as follows:

SEC. 9. Section 7 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 207) is further amended by adding the following three subsections at the end thereof:

"(d) All Federal coal leases issued prior to August 4, 1976 shall be subject to a royalty of 12.5 per centum of the value of the coal as determined by regulation on all coal produced by surface mining after the date of enactment of this amendment if:

(1) the lease was subject to readjustment prior to the enactment of this amendment;

(2) the Secretary has not:

(A) readjusted the lease; or

(B) informed the lessee that the lease will not be readjusted; and

(3) the Secretary has approved a mining plan for all or part of the lease.

"(e) Before approving a mining plan, for the lease, the Secretary shall readjust the royalty rate of all other Federal coal leases issued prior to August 4, 1976, which are or become subject to readjustment in accordance with this Act.

"(f) This amendment does not affect the Secretary's authority to readjust terms and conditions of a lease other than those involving the royalty rate.

Mr. MELCHER. Mr. President, this is in better form and clearly accomplishes the purpose that we are attempting to arrive at by the amendment.

Mr. HASKELL. I have no objection to the amendment as modified.

Mr. HANSEN. There is no objection from this side of which I am aware.

Mr. HASKELL. Under those circumstances, will the Senator from Montana move the amendment?

Mr. MELCHER. Mr. President, I yield back the remainder of my time and move the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Montana.

The amendment, as modified, was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. HASKELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HANSEN. Mr. President, S. 3189 would amend the coal provisions of the Mineral Leasing Act of 1920. The bill contains three major provisions which would give the Secretary of the Interior additional administrative latitude to manage Federal coal lands.

The first change would permit the Secretary of the Interior to exchange existing coal leases or permits covering lands which, in his judgment, should not be developed for environmental reasons or because of conflicts with other land uses, for new leases on which development would not involve unacceptable environmental consequences.

President Carter's May 23, 1977, environmental message stated that he was directing the Secretary of the Interior to review existing leases and preference rights and to consider a program of exchange of environmentally unsatisfactory leases for environmentally acceptable coal lands of equivalent value. I have worked with the Secretary in drafting the provisions permitting such exchanges which are incorporated in the bill under consideration.

The authority which the Secretary would receive should this legislation be enacted would be supplementary to his existing authority pursuant to the Surface Mining Control and Reclamation Act of 1977.

By providing the Secretary of the Interior additional authority to exchange leases and permits, it is my belief that existing rights on Federal coal lands can be rearranged such that the amount and nature of the coal under lease will more closely reflect the production requirements from Federal coal lands.

A second change in the law which would be made by this bill, deals with rights-of-way across Federal land. The Federal Land Policy and Management Act of 1976 gives the Secretary the authority to grant rights-of-way over, upon, under or through Federal lands. However, this act also provides that any minerals extracted as a result of exercise of a right-of-way permit may only be removed subject to the laws governing removal of such minerals.

A number of coal companies have advised me that they require Federal rights-of-way to obtain access to coal deposits for mining purposes. However, to exercise these rights-of-way, it will be necessary to remove small amounts of Federal coal. The Mineral Leasing Act of 1920 provides that coal can be leased only through competitive bidding. In instances where mining of small amounts of Federal coal would be necessary incidental to exercise of a right-of-way, it does not make sense to require an applicant to go through the competitive leas-

ing process. Therefore, this bill would give the Secretary the authority to negotiate the sale of the coal which would be removed. Such a change in the law should facilitate the more rapid development of both Federal and non-Federal coal deposits.

A third change which this legislation would make in the Mineral Leasing Act of 1920 has to do with the ability of a Federal lessee to obtain a modification of his lease by obtaining up to an additional 160 acres of Federal land. The provision permitting lease modifications was retained by the Federal Coal Leasing Amendments Act of 1975 to avoid bypassing small amounts of Federal coal which, should modification not be possible, might never be mined.

In retaining this provision in the law, the Congress determined that, should a lessee obtain a lease modification, both the additional lands and the lands of his original lease would become subject to the new provisions of the act, including a provision placing a mandatory 12.5-percent royalty on all surface-minded coal.

Several companies have indicated that this provision encourages bypass situations because they are unwilling to pay a higher royalty rate on existing leases in exchange for obtaining the rights to an additional small parcel of Federal coal land.

The bill would change this situation by providing that leases which are modified would not become subject to the requirement of 12.5-percent royalty as a result of a modification. However, any lands obtained by modification would be subject to this requirement. This change should encourage companies to apply for lease modifications since the favorable terms of their existing leases would not be jeopardized.

Mr. HANSEN. Mr. President, I wish to comment on section 6 of this bill and then ask the distinguished floor manager if he and I share the same understanding concerning the operation of this section.

Section 6 offers a unique, and I believe appropriate, opportunity for our Nation to evaluate the public values of a large bloc of privately owned coal lands located in Johnson County, Wyo. The lands include a reservoir, known as Lake DeSmet, which could offer a significant new water-based recreational facility and fish and wildlife management resource for the growing population of Wyoming as well as all the citizens of our Nation. At the same time, however, the Lake DeSmet area offers a combination of energy resources rare in our Western States: An available supply of water and abundant supplies of bituminous and subbituminous coal. The combination of resources makes the Lake DeSmet area a candidate for the location of a mine-mouth electric power generating facility or a coal-gasification facility or both. I would like to discuss briefly the background of the area.

Among the several landowners in the area, Texaco, Inc., has the most extensive holdings. In December 1973 Texaco purchased for approximately $125 million the interests of the Reynolds Metal Co. in 37,000 acres of land located in Johnson County near Buffalo, Wyo. Their interests include fee title, coal leases, and certain water rights granted under the laws of Wyoming. The property contains an estimated 2.3 billion tons of subbituminous and bituminous coal and include a major 239,000 acre-foot water impoundment known as the Lake DeSmet Reservoir.

In early 1975, my good friend and colleague in the House, Congressman TENO RONCALIO, proposed an exchange of Texaco's interests in the Lake DeSmet area for Federal coal interests near Gilette or elsewhere in the State of Wyoming. Congressman RONCALIO's proposal was then, and is now, based on his view that the Lake DeSmet area contain scenic, recreational, fish and wildlife, cultural, historic, and other public values which should be preserved for the public and that industrial development should not occur in the foothills of the Big Horn Mountains. Section 6 of this bill is a direct result of Congressman RONCALIO's persistent and effective efforts to achieve such an exchange.

I might add at this point that although Texaco strongly desires to pursue its energy development plans for the Lake DeSmet area, they have cooperated fully with Congressman RONCALIO, the Senate Energy and Natural Resources Committee, the Department of the Interior and myself and we have explored the possibility of such an exchange.

With this background in mind, the Senate Energy and Natural Resources Committee voted to include in this bill section 6 which authorizes and directs the Secretary of the Interior to evaluate and review the Lake DeSmet area, within 9 months after enactment of this bill, to determine whether the public values of the area are such that the area should be preserved for public use. If the Secretary determines that the area should be preserved for the public, he is authorized, under section 6, to acquire the Lake DeSmet properties through the exchange of Federal coal lands, interests in Federal coal lands or Federal coal leases.

Because I believe such a review and evaluation is in the interest both of Wyoming and the Nation, I strongly support section 6 as reported by the committee. However, in order that there be no misunderstanding concerning the operation of section 6, I would like to state my understanding of the operation of section 6.

Section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 deals with "alluvial valley floors" and contains an exchange provision.

Whatever rights section 510(b)(5) of that act may create and whatever obligations it imposes on the Secretary it should be clear that section 6 of this act grants the Secretary of the Interior new and separate authority to exchange Federal fee coal lands and interests in Federal fee coal lands for the private fee coal lands located in the Lake DeSmet area.

Pursuant to section 6, the Secretary of the Interior may exchange Federal fee coal lands and interests in Federal coal lands for all the Federal fee coal lands in the Lake DeSmet area if he finds that the scenic, recreational, fish and wildlife, cultural, historic and other public values of the area should be preserved for public use and enjoyment. The Secretary could, of course, discharge whatever exchange obligations he may have to owners of property in the DeSmet area under section 510(b)(5) of the Surface Mining Act by making a larger exchange encompassing the alluvial valley floor area under section 6 of this act.

The exchange authorized in section 6 is a voluntary exchange in which the owners of the private land which the Secretary seeks to acquire in the Lake DeSmet area must concur.

If the Secretary is unable to assemble a suitable block of Federal fee coal lands for such an exchange, section 6 authorizes the Secretary to include in the exchange Federal coal leases and other interests in Federal coal lands if such inclusions are necessary to assemble economic and contiguous mining units.

The standard for an exchange under section 6 is "equal value." In determining the value of the property the Secretary is directed to include the "fair market value" of the properties to be exchanged, considering the acquisition costs of the lands, the value of the coal deposits, water rights, water resource developments, and capital and other appropriate improvements the owner or owners have made on the property. If the Secretary is unable to assemble a block of Federal interests which are of equal value with the private interests to be exchanged, the difference in value between the properties may be adjusted by the payment of money if the payment does not exceed 25 percent of the total value of the Federal interests to be exchanged.

The Secretary is directed to complete his evaluation and review within 9 months after enactment of this bill. It is intended that the Secretary then make his determination concerning acquisition as quickly as possible and if he determines that acquisition is appropriate, that he then immediately commence negotiations for such acquisition and vigorously pursue such negotiations in order that an orderly and expeditious exchange may be effected. In order to expedite any exchange, it is intended that the Secretary set forth in his initial determination to acquire the property, the formula or criteria he proposes to apply to ascertain equal value and the general location or locations of the Federal lands he will consider for exchange. Any exchange should be effected in the most direct, efficient, and uncomplicated manner possible.

Subsection 6(d) authorizes the Secretary to transfer the acquired property either to an agency of the Department of Interior for management or to the State of Wyoming for recreational use and fish and wildlife management. This subsection does not require that the State of Wyoming be a party either to the Secretary's decision to acquire the property or to the negotiations concerning the exchange. However, if both the Sec-

retary of the Interior and the owner or owners of the private property to be exchanged consent to include the State in their discussions concerning the exchange, they may do so.

Subsection 6(e) authorizes the appropriation in fiscal year 1980 of such funds as are necessary for the Secretary to carry out the purposes of this section. This includes the costs of conducting the evaluation and review, any costs necessary for the Secretary to make his determination concerning acquisition and any other sums required by the Secretary to evaluate the Federal coal lands and interests in Federal coal lands which may be considered for the exchange, including, but not limited to, the costs of geophysical work, assessments, core drilling and other such activities.

Finally, I would comment on the uniqueness of the authority granted the Secretary to evaluate and review these privately owned coal lands. Other than those areas in which mining cannot occur due to the operation of the "alluvial valley floor" prohibition contained in section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977, there appears to be no present legal impediment to the development of the energy resources in the Lake DeSmet area. Therefore, his authority should be viewed as a unique opportunity for the Federal Government to review the public values of privately owned coal properties and, perhaps, to acquire these properties for public use and enjoyment through an exchange of properties. However, the exchange authority granted in section 6 should not be viewed as a precedent for future similar Federal actions.

I ask the distinguished manager of this bill if he concurs in these observations concerning the operation of section 6.

Mr. HASKELL. I do.

Mr. HANSEN. I thank the distinguished manager of the bill for concurring in my observations. I commend him for including section 6 in this bill.

Mr. HASKELL. Mr. President, I have two technical amendments which I wish to send to the desk and ask to be considered en bloc.

The PRESIDING OFFICER. Until the amendment of the Senator from Montana has been acted upon, it will take unanimous consent to consider the technical amendments.

UP AMENDMENT 1871

(Purpose: Technical amendments to the Coal Leasing Amendments Act of 1975)

Mr. HASKELL. Mr. President, I ask unanimous consent that my technical amendments be considered at this time prior to the amendment of the Senator from Montana.

The PRESIDING OFFICER. Without objection, it is so ordered.

They will be considered en bloc.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL) proposes unprinted amendment numbered 1871, technical amendments en bloc.

Mr. HASKELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, add a new section 7 to read as follows:

"SEC. 7. The title of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1083) is amended by striking '1975' and substituting '1976.'"

On page 10, delete subsection "(e)" and substitute a new section 8 to read as follows:

"Sec. 8. The acquisition authority granted to the Secretary in sections 1 and 6 of this Act shall be limited to such amounts as are provided in advance by appropriations Acts, and there are hereby authorized to be appropriated, beginning in fiscal year 1980, such sums as may be necessary to carry out the purposes of sections 1 and 6."

Mr. HASKELL. Mr. President, it is my understanding that these technical amendments have been cleared with the staff and with the distinguished Senator from Wyoming.

Therefore, if this be the case, I ask that they be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

The amendment was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HASKELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I wish to discuss a matter of concern with both the Senator from Colorado and the Senator from Wyoming.

In New Mexico we have a situation that has some rather significant national proportions.

On one of our Federal leases up in the Star Lake Basti area we have discovered some rare, extremely rare paleontological and archeological remains on a Federal lease, dinosaurs, just a rather incredible find.

Over a period of time the lessee coal company has been very diligent in trying to work a mining plan around protecting and preserving these rare paleontological finds, and what we want to know is does the language in this bill provide for an exchange in the event there are paleontological remains in an area?

We have been negotiating, asking questions of the Secretary and other experts, and we still cannot get a firm answer.

It was our hope—that is why we worked with the Senators on this bill—that this would indeed be justification for trying to work out an exchange, and I wonder if the Senators who are managing the bill could answer that question?

Mr. HASKELL. It would be the opinion of this Senator that that would be grounds. I refer in the bill to subsection (i). It appears in the print commencing on line 19, of page 8.

The acquisition authority granted in this subsection may be exercised by the Secretary only upon a determination by him that (a) coal mining would result in unacceptable social—and I underline the word "social"—economic or environmental—and I underline and underscore the word "environmental"—impacts in the vicinity of the lands.

The instance cited by the distinguished Senator from New Mexico would clearly appear to me to come within the impact of this language.

Mr. DOMENICI. I wonder if the Senator from Wyoming concurs with that?

Mr. HANSEN. Mr. President, I am happy to respond and to state that I do concur with my distinguished friend from Colorado. It seems clear to me, and I think it should be inferred from his statement and mine, that it is the intent of Congress to address the problem that is of concern to the distinguished Senator from New Mexico.

It certainly is my full considered opinion that this language indeed does cover the situation to which the Senator has referred.

Mr. DOMENICI. I thank the Senator from Wyoming.

I have one other question. The bill requires 180 days. Is it our intent to assure that that time limit is an outside limit and that the Department will not have a year and a half to come up with rules and regulations?

Mr. HASKELL. If the Senator will give me an opportunity to find the section of the bill he is referring to——

Mr. DOMENICI. I say to the Senator we cannot cite the exact section because we just got the bill also, but we will find it. There is a requirement of 180 days, page 7.

Mr. HASKELL. Yes; I found it. The operative section, I believe the Senator is referring to, starts on line 9, page 7 of the bill and says:

The Secretary shall issue such rules and regulations and establish such procedures within 180 days.

Now, a clear reading of that section to this Senator is that he has 180 days from the time the bill becomes law to promulgate regulations. That means, it is very, very clear, that he must do it promptly and must do it within 180 days.

Mr. DOMENICI. I thank the Senator.

I have one last question: Does the company or the entity that is making the exchange for the social, economic, and other reasons prescribed get compensated for such money they have spent for a mining plan or the like?

Mr. HASKELL. I do not think I can answer that question. Would the Senator mind repeating that question?

Mr. DOMENICI. Does the company get compensated for the exchange—as an example, if they have expended money in the preparation of a mining plan and it is discovered that rather than proceed there ought to be an exchange because of the reasons prescribed in this bill, that there are the social or economic reasons that do not justify proceeding with the plan, do they get compensated for the expense of preparing that plan?

Mr. HASKELL. I think the Senator, if he would give me a little opportunity to study it, I might find that I would be able to at least hazard a guess.

Mr. HANSEN. Mr. President, if the distinguished manager of the bill will permit, I might observe that, in my opinion, work done on a lease does en-

hance its value, and it would be the opinion of the Senator from Wyoming that in considering an exchange that should be taken into consideration and, indeed, adjustment made so as to reflect the enhanced value of the lease commensurate with the expenditure of time and money that may have gone into that type of work. That is the opinion of one Senator.

Mr. DOMENICI. I thank the Senator from Wyoming.

I wonder if the Senator from Colorado has an opinion on that?

Mr. HASKELL. I would say this: I would say to the Senator from New Mexico that basically this is a voluntary exchange, and the market value of the item to be exchanged is considered. Now, the market value, I suppose, is the coal in place. I am not sure, I say to my friend from New Mexico, whether or not in taking into consideration the market value you go to the expenditures. That would almost be going to a cost test as opposed to a market value test.

Mr. DOMENICI. Let me say to the Senator from Colorado I am not disagreeing with him. I may take a little time and try to provide some language, but I think it is unfair, even though this is voluntary, not to permit the lessee who is proposing this exchange which, obviously, is in the public interest, to be made whole in this exchange.

If you are just going to say it is 10 acres of a certain amount of coal that you are swapping, and say, "We will give you 10 acres someplace else," but if the mining company had expended money on a mining plan, getting ready for all this that is clearly discernible, and then goes and makes a proposal for an exchange, I am wondering whether it would be fair for the Secretary not to take that added amount of expenditure into consideration in arriving at what a fair exchange would be?

It would appear to me it would be the only fair way to do it, even though it is voluntary.

Certainly in the case I have been working on there has been a considerable amount of money expended in this very large claim.

They want to go ahead and swap these very valuable acres for ecological reasons, but it might be difficult for them to do that without losing significant resources unless we say here the swap can take into consideration the expenditures that were justifiably made on that land they are now willing to exchange.

Mr. HASKELL. Would the Senator have any objection to my suggesting the absence of a quorum while I give this a little further thought?

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAVEL). Without objection, it is so ordered.

Mr. DOMENICI. Might I say to my good friends from Colorado and Wyoming, on page 5 of the bill before us, line 4, the following reference is found:

. . . by purchase at fair market value as determined by him, or by exchange for another coal lease, subject to the provisions of subparagraphs (i) through (iv) . . .

And it goes on.

As I understand, the Senator from Colorado is saying that the test will be fair market value; and to the extent that there has been expenditures made by a lessee operator, if they were reflected in the market value of the leasehold, that is what the Secretary would take into consideration?

Mr. HASKELL. Yes; I thank the distinguished Senator.

Mr. President, we used the test of fair market value; and expenditures for discovery, for example, could immeasurably improve the fair market value. Or if exploration were made and ore body was disproved, obviously it would have an adverse effect on the fair market value; but the whole thrust is through fair market value, and it would have an influence one way or the other, depending on the type of expenditures or lack of expenditures.

Mr. DOMENICI. Therefore, money expended for mining plans, exploration, geological work, and the like could very well affect what that particular lease is worth at any point in time, but the fair market value would not necessarily be reflected by just showing the expenditures themselves; is that correct?

Mr. HASKELL. I concur completely with the distinguished Senator.

Mr. DOMENICI. I thank my friend from Colorado. I assume the Senator from Wyoming agrees?

Mr. HANSEN. I share the view of my friend from Colorado.

Mr. HASKELL. Mr. President, if there are no further amendments I suggest third reading of the bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. HASKELL. I move to reconsider the vote by which the committee amendment was agreed to.

Mr. HANSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

The bill (S. 3189) was passed, as follows:

S. 3189

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1) is further amended by adding the following paragraph at the end thereof:

"Notwithstanding the requirement in this section that leases be awarded by competitive bidding or any other competitive bidding requirement of this or any other Act to the contrary, the Secretary is authorized to acquire Federal coal leases or rights to Federal coal leases, existing as of the date of enactment of this section, by purchase at fair market value as determined by him, or by exchange for another coal lease, subject to the provisions of subparagraphs (i) through (iv) of this paragraph. The authority granted by this paragraph is in addition to and does not restrict the existing authority of the Secretary to acquire coal and other mineral leases and rights to leases by exchange for another Federal mineral lease, or for modification of an existing coal lease. Nothing herein shall be construed as superseding, modifying, restricting, amending, or repealing the authority of the Secretary under any provisions of the Surface Mining Control and Reclamation Act of 1977 to purchase, acquire, or condemn lands adversely affected by past coal mining, to exchange coal leases involving alluvial valley floors or to designate any Federal lands as unsuitable for mining coal or other minerals.

"(i) The acquisition authority granted in this subsection may be exercised by the Secretary only upon a determination by him that (a) coal mining would result in unacceptable social, economic, or environmental impacts in the vicinity of the lands covered by a lease or proposed lease and that such impacts cannot be prevented or adequately mitigated under the authority of the Surface Mining Control and Reclamation Act of 1977, or other Federal laws, or (b) development of the lease would conflict with a specific proposal for use of the land for a public purpose and such use was not considered by the Secretary prior to issuance of the prospecting permit or lease.

"(ii) This section does not require the Secretary to exchange or purchase any lease. The authorities in this section may be exercised by the Secretary as to an applicant for a preference right lease only upon a determination by him that the application and permit upon which it was based has, in fact, met all of the requirements for a lease under the Mineral Leasing Act of 1920 (30 U.S.C. 201).

"(iii) If the Secretary decides to acquire an outstanding coal lease or right thereto by exchange, he is authorized to accept relinquishment of a lease issued under this Act, the Mineral Leasing Act for Acquired Lands (30 U.S.C. 271–276), or the Railroad and Other Right-of-Way Leasing Act of May 1, 1930 (30 U.S.C. 301–306) or a right to issuance of such a lease, in whole or in part, and to issue to the lessee or lease applicant, in exchange therefor, a coal lease which is to be a lease of equal value. If the value of the leases to be exchanged is not equal, the value shall be equalized by the payment of money to the grantor or to the Secretary as long as the payment does not exceed 25 percent of the total value of the lands or interest transferred out of Federal ownership. The Secretary shall try to reduce the amount of payment to as small an amount as possible. Leases issued pursuant to the exchange provisions of this subsection are subject to the provisions of this Act except as otherwise provided expressly in this subsection. A new lease issued in accordance with this subsection shall become effective only upon relinquishment of the outstanding lease or right to a lease.

"(iv) The Secretary shall issue such rules and regulations and establish such procedures within one hundred and eighty days as he deems necessary to carry out the provisions of this section. Such rules and regulations shall include but need not be limited to the standards that the Secretary shall employ for making the determination of those conditions under which he will purchase at fair market value, or exchange for another coal lease, requirements concerning

information which must be submitted by a lessee or lease applicant, and requirements for public participation with respect to any proposed exchange including public meetings or hearings where the Secretary deems them necessary.".

SEC. 2. Section 2(a)(1) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 201 (a)(1)) is further amended by striking the period at the end of the first sentence and inserting in lieu thereof the following: "*Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976.".

SEC. 3. Section 3 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 203) is further amended by adding, after the word "contiguous", the words "or cornering" and by deleting the period at the end of the second sentence thereof and adding the following clause: "except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of section 2(d)(2) and 7(c) of this Act (30 U.S.C. 201(d)(2) and 207(c)). The minimum royalty provisions of section 7(a) of this Act (30 U.S.C. 207(a)) shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease has expired.".

"SEC. 4. Section 37 of the Mineral Leasing Act of 1920 (30 U.S.C. 193) is further amended by the addition of the words "except as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 2757–2758), and" after "only in the form and manner provided in this Act," and before the word "except".

SEC. 5. Section 30 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 187) is further amended by striking the word "boy" and inserting in lieu thereof "child" and by striking the phrase "or the employment of any girl or woman, without regard to age,".

SEC. 6. (a) The Secretary of the Interior is authorized and directed within nine months of the date of enactment of this Act, to evaluate and review the scenic, recreational, fish and wildlife, cultural, historic, and other public values of the reservoir in Johnson County, Wyoming, known as Lake DeSmet and the adjoining and adjacent coal properties. The Secretary's review and evaluation shall be for the purpose of determining whether the Lake DeSmet property shall be acquired for public use and enjoyment by exchange for Federal coal lands.

(b) If the Secretary determines that the Lake DeSmet property should be acquired, he is authorized, with the agreement of the owners of the property, to acquire the Lake DeSmet property by exchanging Federal coal lands, interests in Federal coal lands, or Federal coal leases.

(c) The exchange authorized by this section shall be for equal value. To the extent, if any, the value of the lands or interests exchanged are not equal the difference may be adjusted by the payment of money so long as the payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the Lake DeSmet property, the Secretary is authorized and directed to include the fair market value of the property, considering the acquisition cost of the lands, the value of the coal deposits, water rights and water resource developments, and capital and other appropriate improvements. The exchange of such properties shall be carried out expeditiously in accordance with the provisions of this section and other Federal land exchange authority to the extent such authority is applicable and consistent with this section.

(d) The Secretary is authorized to transfer any property acquired pursuant to this section (1) to the appropriate agency in the Department of the Interior for management and administration, or (2) to the State of Wyoming for recreational purposes and fish and wildlife management.

SEC. 7. The title of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1083) is amended by striking "1975" and substituting "1976."

SEC. 8. The acquisition authority granted to the Secretary in sections 1 and 6 of this Act shall be limited to such amounts as are provided in advance by appropriations Acts, and there are hereby authorized to be appropriated, beginning in fiscal year 1980, such sums as may be necessary to carry out the purposes of sections 1 and 6.

SEC. 9. Section 7 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 207) is further amended by adding the following three subsections at the end thereof:

"(d) All Federal coal leases issued prior to August 4, 1976 shall be subject to a royalty of 12.5 per centum of the value of the coal as determined by regulation on all coal produced by surface mining after the date of enactment of this amendment if:

"(1) the lease was subject to readjustment prior to the enactment of this amendment;

"(2) the Secretary has not:

"(A) readjusted the lease; or

"(B) informed the lessee that the lease will not be readjusted; and

"(3) the Secretary has approved a mining plan for all or part of the lease.

"(e) Before approving a mines plan, for the lease, the Secretary shall readjust the royalty rate of all other Federal coal leases issued prior to August 4, 1976, which are or become subject to readjustment in accordance with this Act.

"(f) This amendment does not affect the Secretary's authority to readjust terms and conditions of a lease other than those involving the royalty rate.".

Mr. HASKELL. I move to reconsider the vote by which the bill was passed.

Mr. HANSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HASKELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRIBUTION OF YAKIMA AND MESCALERO INDIAN MINORS' JUDGMENT FUNDS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1117.

There being no objection the Senate proceeded to consider the bill (H.R. 10581) to provide for the distribution of certain judgments funds awarded by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation, which had been reported from the Select Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert the following:

That (a) for purposes of this Act, the term—

(1) "tribe" means the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation;

(2) "tribal governing body" means the governing body of a tribe or a committee of the members of such body designated by such body for purposes of this Act;

(3) "Secretary" means the Secretary of the Interior acting through (unless otherwise determined by the Secretary) the Superintendent of the Bureau of Indian Affairs Agency serving the tribe involved;

(4) "minor" means a member of a tribe, or descendant of a member of a tribe, who has not attained the age of eighteen years and who has a minor's share;

(5) "minor's share" means the per capita share of a judgment award, and the investment income accruing thereto, which is held in trust by the Secretary for a minor; and

(6) "parent" means the biological or adoptive parent or parents, or other legal guardian, of a minor.

(b) Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466), the Act of March 12, 1968 (82 Stat. 47), or any other law, or any regulation or plan promulgated pursuant thereto, the minor's share of judgment funds heretofore or hereafter awarded by the Indian Claims Commission or the United States Court of Claims to a tribe may be disbursed to a parent of such minor pursuant to this Act.

(c) The minor's share of judgment funds may be disbursed in such amounts deemed necessary by such parent for the best interest of the minor for the minor's health, education, welfare, and emergencies under a plan governing such funds for each minor (or a plan governing funds of all minors in a family) approved by the Secretary and the tribal governing body of the minor's tribe.

(d) The Secretary shall provide a monthly report to each tribal governing body which has approved one or more plans pursuant to subsection (c). Each such report shall include the amount and purpose of every disbursement made during each month under such plans.

SEC. 2. Any part of any of the judgment funds referred to in the first section of this Act that may be distributed per capita to, or held in trust for the benefit of, the members of a tribe, including minor's shares, shall not be subject to Federal or State income tax, and the per capita payment shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, or any other Federal or federally assisted program.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read:

An Act relating to judgment funds awarded by the Indian Claims Commission to certain Indian tribes, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1193), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 10581 as amended is to provide that, notwithstanding existing law, the shares of minor Yakima Indians and Mescalero Apache Indians in any judgment fund awarded to the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation by the Indian Claims Commission or the Court of Claims may be disbursed to the parents or legal guardian of such minor under an approved plan.

BACKGROUND AND NEED

Funds appropriated to satisfy judgments of the Indian Claims Commission or the Court of Claims on behalf of Indian plaintiffs are deposited in the U.S. Treasury to the credit of the plaintiff tribe. Prior to 1960, under an opinion of the Interior Solicitor, these funds were distributed by the Secretary of the Interior without further congressional action.

Beginning in 1960 and ending in 1973, each Interior Department Appropriation Act has included the following proviso:

Provided further, That nothing contained in this paragraph or in any other provision of law shall be construed to authorize the expenditure of funds derived from appropriations in satisfaction of awards of the Indian Claims Commission or the Court of Claims. * * * until after legislation has been enacted that sets forth the purposes for which said funds will be used * * *

Under such provisos, every individual judgment in favor of an Indian tribe had to be distributed under authority of a specific act of Congress.

In 1973, Congress passed the act of October 19, 1973 (Public Law 93–134) delegating much of Congress' authority to the Secretary of the Interior. The Secretary is required to develop a plan for distribution of Indian Claims awards and submit such plan to the Congress. If neither House disapproves the plan within a certain time, the plan becomes effective.

Section 3(b)(3) of the act requires that the Secretary in preparing such plan, must be assured that "the interest of minors and other legally incompetent persons who are entitled to receive any portion of such funds as are subsequently distributed to them, are and will be protected and preserved . . .". It was the intent of the Congress that the Secretary preserve the minors' shares through investment in some income-earning trust account. This intent is carried out in Departmental regulations.

H.R. 10581 was introduced in the House at the request of the Yakima Tribe and was amended to include the Mescalero Apache Tribe at the request of Senator Pete Domenici acting on behalf of the Mescalero Apache Tribe. Both tribes, through testimony and correspondence, referred to many situations where the health, education, and other needs of minors of the Yakima and Mescaleo Apache Tribes have gone unmet due to a lack of funds by the parents, even though these minors had funds held in trust but unavailable to them. Furthermore, history has shown that releasing such funds in a lump sum to a minor upon his or her reaching majority has often proved to be imprudent.

H.R. 10581 as amended would authorize the per capita shares of Yakima Indian minors in Yakima Indian claims awards and Mescalero Apache Indian minors in Apache Tribe of the Mescalero Reservation claims awards to be paid the parents or guardians of such minors under a plan approved by the Secretary of the Interior and the tribal governing body of the minor's tribe. Minor's funds could be used by such parent or guardian for health, education, or welfare and emergency needs.

LEGISLATIVE HISTORY

H.R. 10581 was introduced by Representative Mike McCormack on January 26, 1978, and referred to the Committee on Interior and Insular Affairs. A hearing was held before the House Interior Subcommittee on Indian Affairs and Public Lands on April 4, 1978. The House Committee on Interior and Insular Affairs reported H.R. 10581 on June 19, 1978. The House of Representatives passed H.R. 10581 on July 17, 1978, and on July 19, 1978, the bill was referred to the Senate Select Committee on Indian Affairs.

At the request of Senator Domenici and on behalf of the Mescalero Apache Tribe, the committee was requested to amend H.R. 10581 to include the Mescalero Apache Tribe within its provisions. This amendment is being offered in lieu of S. 2587 introduced by Senator Domenici on February 24, 1978, which would in effect provide that Mescalero Apache minors' shares of judgment funds may be expended for any purpose authorized by the Mescalero Apache Tribal Council and approved by the Secretary of the Interior. All parties involved in these two pieces of legislation (including the Yakima and Mescalero Apache Tribes, Congressman McCormack, who introduced H.R. 10581, and Senator Domenici) have no objection to consolidating the two bills by a Senate amendment to H.R. 10581.

The Select Committee on Indian Affairs held no hearings on H.R. 10581 or S. 2587.

ROUTINE MORNING BUSINESS

(Routine morning business transacted today follows:)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

AMENDMENT TO REORGANIZATION PLAN NO. 4 OF 1978—MESSAGE FROM THE PRESIDENT—PM 216

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

I herewith transmit an amendment to Reorganization Plan No. 4 of 1978. Except as specifically amended hereby, Reorganization Plan No. 4 remains unmodified.

JIMMY CARTER.

THE WHITE HOUSE, *September 20, 1978.*

PROPOSED CONSTITUTION FOR THE VIRGIN ISLANDS—MESSAGE FROM THE PRESIDENT—PM 217

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers, which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

I am today transmitting to the Congress the proposed constitution for local self-government for the Virgin Islands, as authorized by Public Law 94-584. Until now, an organic act of the Congress provided the basis for local government in this unincorporated territory of the United States.

A locally elected constitutional convention drafted the constitution over a period of several months and held a series of public hearings and meetings throughout the Virgin Islands. The constitutional convention approved the constitution in April 1978. On July 20, 1978, the Governor of the Virgin Islands officially presented me with the constitution.

By law, I must transmit the constitution to the Congress, along with comments, within 60 days of the document's receipt. The Congress then has 60 more days to amend, modify, or approve it. As approved or modified, the constitution will be submitted to a referendum in the Virgin Islands for acceptance or rejection.

Several Federal agencies have commented on the constitution for the Executive Branch that it meets the criteria established by the Public Law 94–584: it is consistent with sovereignty of the United States, its constitution, and its laws applicable to the Virgin Islands; it provides for a republican form of government with executive, legislative, and judicial branches; it contains a bill of rights; it sets up a system of local courts; and it deals with those portions of the revised organic act related to local self-government.

However, the agencies commenting on the constitution noted several matters that the Congress may wish to alter. Those comments are attached.

I commend this accomplishment of the members of the constitutional convention and the other citizens of the Virgin Islands who helped to draft the constitution. It is a significant step toward greater local self-government. It is therefore wholly appropriate that the electorate of the Virgin Islands, and not the Federal Government, has the ultimate right to accept or reject it.

To facilitate congressional deliberations, I have asked that the Attorney General and the Secretary of the Interior offer their advice and technical assistance to the committees that review the document.

JIMMY CARTER.

THE WHITE HOUSE, *September 20, 1978.*

PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on September 19, 1978, he approved and signed the following act:

S. 3454. An act to amend the act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes.

MESSAGES FROM THE HOUSE

At 10:05 a.m., a message from the House of Representatives delivered by

Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3040) to amend the Rail Passenger Service Act to extend the authorizations of appropriations for an additional fiscal year, to provide for public consideration and implementation of a rail passenger service study, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 12222, an act to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that act and the Agricultural Trade Development and Assistance Act of 1954, to improve the coordination and administration of U.S. development-related policies and programs, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 12598, an act to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the foreign service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to H.R. 1445, an act conferring jurisdiction upon the U.S. Court of Claims to hear, determine, and render judgment upon the claim of Comdr. Edward White Rawlins, U.S. Navy (retired).

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 12936, an act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes; that the House recedes from its disagreement to the amendment of the Senate numbered 8, 47, and concurs therein; that the House recedes from its disagreement to the amendments of the Senate numbered 6, 9, 32, and 42, and concurs therein each with an amendment in which it requests the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 1678. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

S. 2701. An act to amend the Water Resources Planning Act (79 Stat. 244, as amended);

S. 3069. An act to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members;

S. 3468. An act to amend the Agricultural Act of 1949 to ensure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities;

H.R. 7814. An act to authorize Federal agencies to experiment with flexible and compressed employee work schedules;

H.R. 7819. An act to compliment the Vienna Convention on Diplomatic Relations; and

H.R. 12860. An act to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. HODGES).

At 3:55 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to H.R. 8149, an act to provide customs procedural reform, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 11401, an act to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes.

The message further announced that the House has passed the following bill and joint resolution, without amendment:

S. 3002. An act to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes; and

S.J. Res. 133. A joint resolution to authorize and request the President to issue a proclamation designating September 24, 1978 as "National Good Neighbor Day."

The message also announced that the House has passed the following bills, each with an amendment in which it requests the concurrence of the Senate:

S. 703. An act to improve the administration and operation of the Overseas Citizens Voting Rights Act of 1975, and for other purposes;

S. 2507. An act to authorize the Smithsonian Institution to acquire the Museum of African Art, and for other purposes; and

S. 2916. An act to amend the Drug Abuse Office and Treatment Act of 1972 to extend the programs of assistance under that act for drug abuse prevention, education, treatment, and rehabilitation, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to H.R. 1920, an act to amend section 5064 of the Internal Revenue Code of 1954 to provide for refund of tax on distilled spirits, wines, rectified products, and beer lost or rendered unmarketable due to fire, flood, casualty, or other disaster, or to breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief while held for sale, with amendments in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to H.R. 11005, an act to provide authorization of appropriations for the U.S. International Trade Commission for fiscal year 1979, with an amendment in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to H.R. 11400, an act to authorize the appropriation of specified dollar amounts for each of the National Science Foundation's major program areas—and certain subprograms—and to provide requirements relating to periods of availability and transfers of the authorized funds, with an amendment in which it requests the concurrence of the Senate.

At 4:50 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1446. An act for the relief of Lester Bruce Friday:

H.R. 11451. An act to establish the true location of a portion of northerly boundary of the Angeles National Forest, located in Los Angeles County, Calif., on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino meridian, and to establish the center quarter corner of said section 16.

H.R. 12258. An act to amend title 38, United States Code, to increase the maximum amount which the Administrator of Veterans' Affairs may pay for the funeral expenses of a veteran from $250 to $350.

H.R. 12556. An act for the relief of Batavia Turf Farms, Inc.

H.R. 13349. An act to repeal certain sections of title III of the Immigration and Nationality Act, and for other purposes;

H.R. 13715. An act to improve the operational weather programs of the National Oceanic and Atmospheric Administration, to affirm the Federal responsibility for the provision of effective weather and related services, to assure to the maximum possible extent that all available Federal resources are utilized in a coordinated manner for weather-related research, development, and technology, and for other purposes;

H.R. 13745. An act to authorize appropriations to carry out conservation programs on military reservations and public lands during fiscal years 1979, 1980, and 1981; and

H.R. 14125. An act to amend chapter 87 of title 5, United States Code, to provide that Members of Congress may elect at retirement partial (in lieu of full) conversion from group life insurance to individual life insurance.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 1446. An act for the relief of Lester Bruce Friday; to the Committee on the Judiciary;

H.R 11451. An act to establish the true location of a portion of northerly boundary of the Angeles National Forest located in Los Angeles County, Calif., on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino merid-

ian, and to establish the center quarter corner of said section 16; to the Committee on Energy and Natural Resources;

H.R. 12258. An act to amend title 38, United States Code, to increase the maximum amount which the Administrator of Veterans' Affairs may pay for the funeral expenses of a veteran from $250 to $350; to the Committee on Veterans' Affairs;

H.R. 12556. An act for the relief of Batavia Turf Farms, Incorporated; to the Committee on the Judiciary;

H.R. 13349. An act to repeal certain sections of title III of the Immigration and Nationality Act, and for other purposes; to the Committee on the Judiciary;

H.R. 13715. An act to improve the operational weather programs of the National Oceanic and Atmospheric Administration, to affirm the Federal responsibility for the provision of effective weather and related services, to assure to the maximum possible extent that all available Federal resources are utilized in a coordinated manner for weather-related research, development, and technology, and for other purposes; to the Committee on Commerce, Science, and Transportation; and

H.R. 14125. An act to amend chapter 87 of title 5, United States Code, to provide that Members of Congress may elect at retirement partial (in lieu of full) conversion from group life insurance to individual life insurance to the Committee on Governmental Affairs.

HOUSE BILL HELD AT THE DESK

The following bill was read by title and held at the desk, pursuant to unanimous consent:

H.R. 13745. An act to authorize appropriations to carry out conservation programs on military reservations and public lands during fiscal years 1979, 1980, and 1981.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 20, 1978, he presented to the President of the United States the following enrolled bills:

S. 1678. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

S. 2701. An act to amend the Water Resources Planning Act (79 Stat. 244, as amended);

S. 3069. An act to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members; and

S. 3468. An act to amend the Agricultural Act of 1949 to insure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–4323. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting work plans for upstream watershed protection projects. Deposit Creek in New York, and Wet Walnut Creek No. 1 in Kansas; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4324. A communication from the Chairman, U.S. Consumer Product Safety Commission, transmitting the Commission's request for a supplemental appropriation for FY 1979 of $2,950,000 and 38 positions; to the Committee on Appropriations.

EC–4325. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a construction project to be undertaken by the Naval and Marine Corps Reserve; to the Committee on Armed Services.

EC–4326. A communication from the Chairman, Cost Accounting Standards Board, transmitting, pursuant to law, a proposed standard: PART 416—ACCOUNTING FOR INSURANCE COSTS—a Cost Accounting Standard which establishes criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods and their allocation to cost objectives; to the Committee on Banking, Housing, and Urban Affairs.

EC–4327. A communication from the Secretary of Commerce, transmitting, pursuant to law, the National Marine Fisheries Services report for the calendar year 1977; to the Committee on Commerce, Science, and Transportation.

EC–4328. A communication from the Secretary, Federal Energy Regulatory Commission, transmitting, pursuant to law, final valuations of properties of certain carriers subject to the Interstate Commerce Act; to the Committee on Commerce, Science, and Transportation.

EC–4329. A communication from the Chairman, U.S. Consumer Product Safety Commission, transmitting, pursuant to law, the Commission's FY 1980 budget estimates; to the Committee on Commerce, Science, and Transportation.

EC–4330. A communication from the Secretary of Energy, reporting, pursuant to law, (1) on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy; (b) study of the purchase by the Federal Government of the products of any alternative fuel facilities constructed under a program as a direct or alternate form of Federal assistance; and (c) a comprehensive plan and program to acquire information and to evaluate various impacts of the Federal financial assistance program; to the Committee on Energy and Natural Resources.

EC–4331. A communication from the Deputy Assistant Secretary of the Interior, reporting, pursuant to law, that the Secretary of the Interior has determined that certain lands in the States of Colorado, Idaho, Nevada, Oregon, and Wyoming are considered not suitable for disposal under the provisions of the Act of September 26, 1968 (43 U.S.C. 1431–1435), the Unintentional Trespass Act (UTA); to the Committee on Energy and Natural Resources.

EC–4332. A communication from the Chief Commissioner, U.S. Court of Claims, reporting, pursuant to law, concerning the allowance of attorney expense claim in proceedings conducted pursuant to the Alaska Native Claims Settlement Act in docket No. F–15; to the Committee on Energy and Natural Resources.

EC–4333. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law. eleven work plans for upstream watershed protection projects; to the Committee on Environment and Public Works.

EC–4334. A communication from the Executive Secretary, Agricultural Policy Advisory Committee for Trade Negotiations. Foreign Agricultural Service, Department of Agriculture, transmitting, pursuant to law, the committee's report on the U.S.-Indian Tropical Products Agreement which was consummated by an exchange of letters on July 26, 1978; to the Committee on Finance.

EC–4335. A communication from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, reporting, pursuant to law, on an increase in the funding level of the proposed FY 1978 program in Mali; to the Committee on Foreign Relations.

EC–4336. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days after the execution thereof; to the Committee on Foreign Relations.

EC–4337. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would provide for the transportation of District of Columbia students on the Metrobus and Metrorail Transit Systems at a reduced fare of ten cents and to authorize the payment of a School Transit Subsidy to the Washington Metropolitan Area Transit Authority (Act 2–270); to the Committee on Governmental Affairs.

EC–4338. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would increase the single-family residential real property tax exemption; to classify real property in the District of Columbia for purposes of establishing real property tax rates; to provide an expanded property tax credit for certain renters and homeowners in the District of Columbia, and for other persons (Act 2–268); to the Committee on Governmental Affairs.

EC–4339. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would amend the District of Columbia Air Quality Control Regulations Relating to the Sulfur Content of Fuels (Act 2–269); to the Committee on Governmental Affairs.

EC–4340. A secret communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the effectiveness of the Navy's undersea surveillance system and evaluating the programs and projects initiated to address problems confronting the Navy in undersea surveillance; to the Committee on Governmental Affairs.

EC–4341. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 25, 1978, which would amend the District of Columbia Unemployment Compensation Act (Act 20267); to the Committee on Governmental Affairs.

EC–4342. A communication from the U.S. Commissioner of Education, Department of Health, Education, and Welfare, transmitting, pursuant to law, suggested questions to consider in preparing an application for a grant under the Teacher Corps Program; to the Committee on Human Resources.

EC–4343. A communication from the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), transmitting, pursuant to law, a report of audit of the American National Red Cross for the year ending June 30, 1977; to the Committee on Human Resources.

EC–4344. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, 596 reports covering the period of August 15 through August 31, 1978, concerning visa petitions which the Service has approved according the beneficiaries of such petitions third and sixth preference classification under the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–794. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works:

"SENATE JOINT RESOLUTION NO. 47

"Whereas, oil pollution resulting from the production, refining, transport, transfer and storage of oil on or near the waters of the State of California may be harmful to the natural resources and wildlife of the state, to persons who derive their livelihood from marine-related activities, to recreational opportunities, and to private property; and

"Whereas, the production, refining, transport, transfer and storage of oil are of vital importance to the economy of the State of California; and

"Whereas, Federal law applicable to liability and compensation for oil pollution should be rationalized and expanded by enactment of a unified comprehensive federal law to avoid duplication and to assure adequate and timely compensation for all losses caused by oil pollution; and

"Whereas, any such federal law should set a standard of strict liability for oil pollution, consistent with the Clean Water Act of 1977; and

"Whereas, any such federal law should provide maximum incentives for all persons producing, refining, transporting, transferring, or storing oil to follow all feasible steps necessary to prevent oil pollution; and

"Whereas, any such comprehensive federal law should not prohibit states from imposing liability for oil pollution, so long as duplicative requirements are not imposed and double recovery is not permitted; and

"Whereas, the claims procedures established by any such federal law should not unnecessarily delay imposition of liability by prohibiting claimants from bringing actions directly against parties who may be liable but deny liability; and

"Whereas, at the request of several legislators there was recently established a California Interagency Tanker Task Force, composed of legislators and interested state agencies; and

"Whereas, The California Interagency Tanker Task Force has studied proposals for a comprehensive federal law now pending before the Congress of the United States and has made recommendations supporting the principles set forth in this resolution; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California supports the enactment of a unified comprehensive federal law on liability and compensation for oil pollution; and be it further

"Resolved, That the Legislature of the State of California urges the Congress of the United States to set a standard of strict liability in such legislation including only the defenses to liability now set forth in the Clean Water Act of 1977; and be it further.

"Resolved, That the Legislature of the State of California urges the Congress of the United States not to adopt any provision which would prohibit states from imposing liability for loses caused by oil pollution, so long as duplicative requirements are not imposed and double recovery is not permitted; and be it further

"Resolved, That the Legislature of the State of California urges the Congress of the United States not to adopt any claims procedure which prohibits the claimant from proceeding directly against any party who may be liable, and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Chairman of the President's Council on Environmental Quality, to the Administrator of the Environmental Protection Agency, to the Administrator of the National Oceanic and Atmospheric Administration, to the Secretary of the Interior, to the Secretary of Transportation, to the Commandant of the United States Coast Guard, to the Speaker of the House of Representatives, to the Chairman of the House Committee on Merchant Marine and Fisheries, to the Chairman of the Senate Committee on Commerce, Science, and Transportation, to the Chairman of the Senate Committee on the Environment and Public Works, and to each Senator and Representative from California in the Congress of the United States."

POM–795. A joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources:

"SENATE JOINT RESOLUTION NO. 51

"Whereas, the Congress of the United States is currently considering legislation authorizing the designation of several National Historic Trails; and

"Whereas, Juan Bautista de Anza opened the first overland passage from Arizona to Monterey; and

"Whereas, following the arrival of the settlers in Monterey in March 1776, he set out with a small exploratory troop to examine the San Francisco Bay region, and the people brought by de Anza ultimately settled that area with the establishment of Mission Santa Clara in January 1777, and the founding of Pueblo San Jose in November 1777; and

"Whereas, the explorations of Juan Bautista de Anza are of great historical significance to, and form an important part of the heritage of, the people of the State of California, as well as of the people of the United States as a whole; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President to support, and the Congress of the United States to enact, legislation designating the de Anza Trail in California as a National Historic Trail; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the Interior."

POM–796. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"SENATE JOINT RESOLUTION NO. 52

"Whereas, under Army Regulation 601–210, an unmarried person with one or more dependents under 18 years of age is disqualified from service unless the person gives up custody of the child and is relieved of all support obligations; and

"Whereas, this regulation applies to members of the United States Army, the Army Reserve, and the Army National Guard; and

"Whereas, this inflexible rule hinders an important policy of this state, which is to encourage increased enrollment in the California National Guard by a broad cross-section of the population, including single parents with children; and

"Whereas, in contrast to the other branches of service, the United States Air Force has modified its rules to allow pregnant women to remain enrolled in the Air Force Academy and on active duty; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California memorializes the Department of the Army to amend Army Regulation 601–210 so that it no longer disqualifies a single parent from service in the California National Guard; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Department of the Army."

POM–797. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations:

"SENATE JOINT RESOLUTION NO. 53

"Whereas, during the aftermath of the 1970–75 war in Cambodia, the Khmer Rouge, the zealous Marxist revolutionaries, have engaged in indiscriminate mass slaughter on a scale that in modern times can be compared only to that in Hitler's and Stalin's concentration camps; and

"Whereas, this genocide in Cambodia has been carried out during the almost total isolation of the country since the communists took full control there in April 1975; and

"Whereas, it is a chilling truth that this callous destruction of over one million human beings during the last three years has been carried out with a lackadaisical, ho-hum response from the rest of the world; and

"Whereas, On April 21, 1978, President Carter denounced the Cambodian regime as "the worst violator of human rights in the world today," but media coverage of the events in Cambodia has been minimal; now therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to mobilize public opinion and bring pressure to bear upon the Cambodian government by way of the United Nations or other suitable forum to stop the mass killing of Cambodian people presently being carried out by that repressive regime; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM–793. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"SENATE JOINT RESOLUTION NO. 46

"Whereas, the United States Department of Defense has begun a study aimed at the possible closing of the Presidio of San Francisco and Letterman Army Hospital; and

"Whereas, the Presidio employs over 3,300 military personnel, with 7,000 dependents, and almost 3,500 civilian personnel; and

"Whereas, the closing of the Presidio of San Francisco and Letterman Hospital would result in a loss of over 3,000 jobs in San Francisco; and

"Whereas, the Presidio is part of the historical heritage of San Francisco, having served as a military base since 1776; and

"Whereas, the Presidio is an important municipal asset to the City of San Francisco and its neighbors; and

"Whereas, the Sixth Army based at the Presidio has played an important and positive role in donating its services for the good of the community; and

"Whereas, it is essential that the Presidio

retain its natural beauty and not be destroyed by land development; now, therefore, be it

"*Resolved by the Senate and the Assembly of the State of California, jointly,* That the Legislature of the State of California urges the United States Department of Defense not to close the Presidio of San Francisco or Letterman Army Hospital; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Defense, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-799. A resolution adopted by the Coal Marketing Subcommittee of the Virginia Coal and Energy Commission, State of Virginia, concerning the Norfolk and Western Railway strike; to the Committee on Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Res. 553. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 2852 (Rept. No. 95-1201).

S. Res. 551. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2 (Rept. No. 95-1202).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

H.R. 9071. An act to confere jurisdiction upon the U.S. Court of Claims to hear, determine, and render judgment upon the claim of John T. Knight (Rept. No. 95-1203).

By Mr. PAUL G. HATFIELD, from the Committee on the Judiciary, with an amendment:

S. 2079. A bill for the relief of Lawrence Youngman (Rept. No. 95-1204).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Richard S. Arnold, of Arkansas, to be U.S. district judge for the eastern and western districts of Arkansas.

Patricia J. E. Boyle, of Michigan, to be U.S. district judge for the eastern district of Michigan.

Harold A. Baker, of Illinois, to be U.S. district judge for the eastern district of Illinois.

Bruce S. Jenkins, of Utah, to be U.S. district judge for the district of Utah.

Julian A. Cook, Jr., of Michigan, to be U.S. district judge for the eastern district of Michigan.

Theodore McMillian, of Missouri, to be U.S. circuit judge for the Eighth Circuit.

Mariana R. Pfaelzer, of California, to be U.S. district judge for the central district of California.

By Mr. EASTLAND, from Committee on the Judiciary:

Andrew L. Metcalf, Jr., of Michigan, to be U.S. marshal for the western district of Michigan.

Robert J. Cindrich, of Pennsylvania, to be U.S. attorney for the western district of Pennsylvania.

(The above two nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

W. K. Smith, of Minnesota, to be Chairman of the Board of Directors of the U.S. Railway Association.

The following-named persons to be Members of the Board of Directors of the U.S. Railway Association:

Stanton P. Sender, of the District of Columbia;

Nathaniel Welch, of Georgia;

James E. Burke, of New Jersey; and

Robert G. Flannery, of California.

(The above nominations from the Committee on Commerce, Science, and Transportation were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before duly constituted committees of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HATHAWAY:

S. 3506. A bill to amend the Social Security Act with respect to health programs authorized under it and for other purposes; to the Committee on Finance;

S. 3507. A bill to amend title XVIII of the Social Security Act to remove the 3-day prior hospitalization requirement for coverage of extended care services; to the Committee on Finance; and

S. 3508. A bill to amend title XVIII of the Social Security Act to include homemaker service as a home health service; to the Committee on Finance.

By Mr. JOHNSTON:

S. 3509. A bill to amend the Internal Revenue Code of 1954; to the Committee on Finance.

By Mr. HART (for himself and Mr. HASKELL):

S. 3510. A bill to provide for the orderly construction, operation and maintenance of the previously authorized Fryingpan-Arkansas Federal reclamation project in Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HUDDLESTON:

S. 3511. A bill to amend the Federal Crop Insurance Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOMENICI (for himself and Mr. SCHMITT):

S. 3512. A bill to authorize the Secretary of the Interior to consider a petition for reinstatement of a certain oil and gas lease; to the Committee on Energy and Natural Resources.

By Mr. HANSEN:

S.J. Res. 162. A joint resolution to authorize the President to issue a proclamation designating March 1979, as "Youth Art Month"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATHAWAY:

S. 3506. A bill to amend the Social Security Act with respect to health programs authorized under it and for other purposes; to the Committee on Finance.

EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

● Mr. HATHAWAY. Mr. President, today I am introducing a bill to expand participation in the Professional Standards Review Organization (PSRO) program under the Social Security Act to include a broader range of health care practitioners.

The PSRO program was created in 1972 to assure that health services which are reimbursed under the medicare, medicaid, and maternal and child health and crippled children's programs are medically necessary, meet professionally recognized standards of care, and are appropriately provided in the most economical settings.

Under current law, PSRO's are required to be composed solely of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in the PSRO area. Similarly, the National Professional Standards Review Council, also created in 1972, is limited to physician members. Given the fact that other health care practitioners play a vital role in the organization and delivery of health care services, it would clearly be useful to expand membership in the PSRO's to include these other professionals. This is especially important since physicians may not always have the expertise to review the broad range of health services which come within the purview of the PSRO. By giving these practitioners a voice in the PSRO program, genuine peer review will be assured.

In addition to physicians, there are at least 15 other health professions, each of which has its own professional standards and none of which is currently represented on PSRO's. The largest of these professions is nursing, with over 900,000 professional registered nurses and numerous more licensed practical nurses. These individuals perform a broad range of extremely valuable services essential to the health care system. Yet they have no voice in PSRO's. The contradiction to peer review is obvious when decisions about the standards of nursing practice and equally important, the sanction procedures, are made without nursing representation.

The dentistry profession offers another clear example of the need to expand PSRO participation to nonphysicians. Unlike many other health professionals, dentists perform unique services which are usualy beyond the training and professional involvement of physicians. Yet the services they perform are subject to PSRO review. A significant number of dentists are engaged in hospital practice. In fact, over $500 million worth of medicare and medicaid services are performed by dentists. It is apparent that the peer review process would benefit from the participation of dentists.

The many other health professions also contribute invaluable services for the health of our Nation. These include clinical psychologists, dieticians occupational, physical, respiratory, and speech therapists, optometrists, pharmacists, podiatrists, radiological technologists, social workers, and audiologists, among others. Providing for their

input in the peer review process is also critical if that process is to be effective. Furthermore, professional involvement should help bring about acceptance of the peer review program.

The legislation I am introducing today attempts to establish genuine peer review by providing for nonphysician participation at the local, State and national levels. Specifically, the bill amends the PSRO membership requirements to allow PSRO's to invite as members other health care practitioners who hold independent hospital admitting privileges. This will allow such practitioners, particularly dentists, to review at the local level health care services provided by such practitioners under medicare, medicaid, and maternal and child health programs.

Second, the bill requires the advisory group to statewide PSRO councils to include at least one registered nurse and one dentist. Third, the National Professional Standards Review Council would be expanded to include three nonphysician members including a registered professional nurse, a dentist, and one other nonphysician health care practitioner. This will provide nonphysician practitioners, whose role in the delivery of services is so crucial, a policymaking voice at the national level. Finally, the bill establishes an advisory committee to the National Professional Standards Review Council composed of nonphysicians health professionals whose service payments may be made under the Social Security Act. This advisory committee, which has already been implemented on a temporary basis by the Department of Health, Education, and Welfare, would provide for expanded participation of nonphysician practitioners in the PSRO program.

Mr. President, I believe that the bill I am introducing will improve the ability of the peer review system to assure quality care in the most efficient manner possible. It has the support of the Department of Health, Education, and Welfare as well as many health care practitioners. A companion bill, H.R. 13817, was introduced in the House by Representatives ROSTENKOWSKI and KEYS. I am pleased to report that this bill was passed by the House yesterday. I hope it will enjoy similar support in the Senate.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SECTION 1. Section 1152(b)(1)(A) of the Social Security Act is amended—

(1) by inserting "and of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges and who are invited to become members by the organization," after the comma in clause (ii); and

(2) by inserting "(except as otherwise provided under section 1155(c))" after "does not" in clause (vi).

REGISTERED NURSE AND DENTIST MEMBERSHIP STATEWIDE COUNCIL ADVISORY GROUP

SEC. 2. Section 1162(e)(1) of the Social Security Act is amended by inserting "(including at least one registered professional nurse and at least one doctor of dental surgery)" after "representatives".

NONPHYSICIAN MEMBERSHIP ON NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

SEC. 3. (a) Section 1163(a)(1) of the Social Security Act is amended by inserting "one doctor of dental surgery, one registered professional nurse, and one other health practitioner (other than a physician as defined in section 1861(r)(1))" after "physicians,".

(b) Section 1163(a)(2) of such Act is amended by striking out "four members" and inserting "five members" in lieu thereof.

(c) Section 1163(a)(3) of such Act is amended by inserting "physician" after "the".

(d) Section 1163(b) of such Act is amended by striking out "Members" and inserting in lieu thereof "Physician members".

(e) Section 1173 of such Act is amended by striking out "(except sections 1155(c) and 1163)" and inserting in lieu thereof "(except section 1155(c))".

ADVISORY COMMITTEE TO THE NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

SEC. 4. Section 1163 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f)(1) The Council shall be advised and assisted in carrying out its functions by an advisory committee (of not less than seven nor more than fifteen members) which shall be made up of representatives of health care practitioners (other than physicians) for whose services payment may be made (in whole or in part) under any program established by or pursuant to this Act.

"(2) The Secretary shall by regulations provide the manner in which members of such advisory committee shall be selected and the terms of service.

"(3) The expenses reasonably and necessarily incurred, as determined by the Secretary, by such committee in carrying out its functions shall be considered to be expenses necessarily incurred by the National Professional Standards Review Council."●

By Mr. HATHAWAY:

S. 3507. A bill to amend title XVIII of the Social Security Act to remove the 3-day prior hospitalization requirement for coverage of extended care services; to the Committee on Finance; and

MEDICARE SKILLED NURSING FACILITY BENEFITS

● Mr. HATHAWAY. Mr. President, I am pleased to offer a bill which would amend the Social Security Act to eliminate the current requirement that a medicare beneficiary spend 3 days in a hospital before he or she can be eligible for skilled nursing facility benefits.

This amendment will encourage the use of medically appropriate and more economical alternatives to hospital care while making skilled nursing facility care more readily available to those in need. It would allow physicians to determine the appropriate level of care required by a patient without imposing an unnecessary statutory requirement that placement in a skilled nursing facility (SNF) be preceded by 3 days of hospitalization whether or not hospitalization is necessary.

Currently, 9 million people, or 26 percent of the patients in hospitals, are medicare beneficiaries, while less than 2 percent of nursing home patients fall into this category. While there are no systematic data available, it is clear that a substantial number of these 9 million hospitalized patients might be better, more appropriately, and less expensively served in a skilled nursing facility. This observation is supported by the 1976 "Forward Plan for Health" of the Department of Health, Education, and Welfare which reported "experience suggests that significant numbers of medicare beneficiaries now receiving hospital care would benefit as much from SNF care. Clearly, some patients in need of institutional care do not require the complete—and costly—diagnostic and therapeutic resources available in hospitals."

Mr. President, we are all thoroughly aware of the enormous costs of hospitalization today. It is clear that we must take advantage of alternative, medically appropriate and more economical types of care such as skilled nursing care without encouraging unnecessary hospitalization.

Without hard data to support the claim that patients are hospitalized for 3 days because of the lack of incentives SNE's, some people argue that patients are not in fact hopitalized for the purpose of qualifying for skilled nursing facility care. However, in reality, the opposite may well be the case. It is quite likely that individuals are hospitalized when they only need SNF care, but are not subsequently transferred after the 3 days because of the lack of incentives on the part of the hospital and the patient to make such a transfer. This is supported by HEW's Forward Plan which concluded "it is probable that patients in need of only skilled nursing care, and who are now instead hospitalized, are never subsequently transferred to an SNF because of the paperwork—for example, transfer of medical records, treatment plan—and the lack of any financial incentives or disincentives—for example, no cost sharing is required after the first hospital day and until the 61st day."

Given these indicators, we must take steps to encourage use of more appropriate and less costly health care. Eliminating the 3-day hospitalization requirement would do just that.

The average medicare cost of a covered day in an SNF is a fraction of the routine cost-per-day in a hospital. The amount saved from 5 unnecessary hospital days would pay for the total stay in a skilled nursing facility for most medicare patients since the average medicare stay is only 24 days.

Based on statistics compiled by the National Capital Medical Foundation, the Professional Standards Review Organization for the District of Columbia, over $500,000 in medicare dollars were spent last year for patients in hospitals who could have instead been in nursing homes. This same care would have cost one-fifth as much in a nursing home. These statistics are based on data from

only 13 hospitals. How much more are we spending unnecessarily in the 7,000 plus hospitals in our country?

Current medicare law is intended to link skilled nursing facility care to acute illness requiring hospitalization. Eliminating the 3-day hospitalization requirement would change the focus somewhat. As a result, those individuals requiring skilled nursing care but, not hospital attention could be served. While this would involve additional costs for the medicare program, these costs should be offset in part by reductions in medicare payments for more costly hospitalization, as I have outlined above.

The need for this amendment was supported at hearings of the Senate Subcommittee on Aging which I recently cochaired with Senator EAGLETON in Portland, Maine.

Mr. President, we must begin to seek solutions to the many inequities and inconsistencies which plague our health care system. The bill I am introducing today would contribute in part to that solution by permitting medicare patients who require only a skilled level of care to enter a nursing home directly, thus preventing unnecessary and costly hospitalization.

Mr. President, I ask that the entire text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3507

A bill to amend title XVIII of the Social Security Act to remove the 3-day prior hospitalization requirement for coverage of extended care services

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1811 of the Social Security Act is amended by striking out "post-hospital".

(b)(1) Section 1812(a)(2) of such Act is amended by striking out "post-hospital".

(2) Section 1812(b)(2) of such Act is amended by striking out "post-hospital".

(3) Section 1812(e) of such Act is amended by striking out "post-hospital" the first place it appears.

(c) Section 1813(a)(3) of such Act is amended by striking out "post-hospital".

(d)(1) Section 1814(a)(2)(C) is amended—

(A) by striking out "post-hospital"; and

(B) by striking out all that follows "inpatient basis" and inserting in lieu thereof a semicolon.

(2) Section 1814(a)(2)(D) is amended by striking out "post-hospital extended care services" and inserting in lieu thereof "extended care services".

(3) Section 1814(a)(6) of such Act is amended by striking out "post-hospital".

(4) Section 1814(a)(7) of such Act is amended by striking out "post-hospital" each place it appears.

(5) The heading of section 1814(h) is amended by striking out "Posthospital".

(6) Section 1814(h)(1) is amended by striking out "posthospital".

(e)(1) Section 1861(i) of such Act is repealed.

(2) Section 1861(v)(2)(A) of such Act is amended by striking out "post-hospital".

(3) Section 1861(v)(3) of such Act is amended by striking out "post-hospital".

(4) The heading of section 1861(y) of such Act is amended by striking out "Post-Hospital".

(5) Section 1861(y) is amended by striking out "post-hospital" each place it appears.

(f) Section 1866(d) of such Act is amended by striking out "post-hospital".

(g) Section 226(c) of such Act is amended by striking out "post-hospital extended care services" and inserting in lieu thereof "extended care services".

(h) Section 7(d)(1) of the Railroad Retirement Act of 1974 is amended by striking out "posthospital extended care services" and inserting in lieu thereof "extended care services".

Sec. 2. The amendments made by this Act shall be effective with respect to services provided on or after the date of the enactment of this Act.●

By Mr. HATHAWAY:

S. 3508. A bill to amend title XVIII of the Social Security Act to include homemaker service as a home health service; to the Committee on Finance.

MEDICARE HOMEMAKER SERVICES

● Mr. HATHAWAY. Mr. President, I am pleased to introduce an amendment to the medicare law which our Nation's elderly have long needed for their safety, their health, and their independence; that is, to change the title of "home health aide" under section 1861m(4) of the Social Security Act to "homemaker-home health aide."

The development of home health care in recent years represents an attempt to redirect the Nation's health resources to decrease dependence on costly institutional-based modes of care, and provide a broad continuum of services for America's increasingly large elderly population. Home health care delivery encourages more efficient utilization of institutional beds through earlier discharge of patients from the institution to home care. Conversely, home health care is a potential method of preventive medicine which can delay or even prevent institutionalization of the patient. Consequently, a home health program can relieve pressures to expand institutional facilities.

In many cases, home health services ought to be seen as the primary form of treatment with institutionalization being the alternative. Since elderly people do not always have specific disease episodes that lend themselves to neat actuarial predictions, their care does not necessarily demand skilled nursing service on a daily basis. However, many chronic diseases to which older persons are prone demand sustained attention of a less than skilled nursing nature to prevent health care crises requiring institutionalization.

The need for expansion of Medicare coverage to include homemaker services was emphasized clearly during recent hearings of the Subcommittee on Aging which I was pleased to cochair with Senator EAGLETON in Portland, Maine. It is further supported in a draft of the report which the Department of Health, Education, and Welfare is preparing pursuant to the mandate of Public Law 95–142. The report cites three large home health care programs' reports of patients' ability to perform certain activities of daily living. These three studies show that 86.1 percent of in-home health care consumers are independent in eating ability, but only 43.1 percent are independent at bathing, 57.9 percent are independent at dressing, and 57.1 percent can walk without help.

It is clear that many of our elderly patients on home health care programs need the services of a homemaker to assist them with walking, dressing, and particularly bathing. In addition, assistance is often required with shopping and cooking meals as well as doing laundry and other such household tasks. Without such homemaker help, an elderly person may not be able to maintain his or her independence and therefore may be forced to go to an institution by default.

The medicare guidelines state that a home health aide may perform certain homemaker—that is, household—tasks in the home as long as these do not substantially increase the time the aide spends there to deliver home health care. Mr. President, the minimal personal and chore services which homemakers provide can be just as critical to an older person's health, independence, and self-respect as so-called health care services given by an aide.

In fact, before passage of the medicare law in 1965, most aide level personnel in home health agencies were called homemaker-home health aides. Even today, these people are one and the same. The bill I am introducing today would formally recognize this fact by changing the title of "home health aide" to "homemaker-home health aide," thus permitting medicare reimbursement for homemaker services provided by these individuals.

Mr. President, this legislation, supported by the major national home health associations, will enable us to provide the elderly with the home care services they actually need, rather than simply those that are currently reimbursed.

I welcome the support of my colleagues and look forward to the prompt enactment of this measure.

Mr. President, I ask unanimous consent that the full text of the amendment be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3508

A bill to amend title XVIII of the Social Security Act to include homemaker service as a home health service

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1861(m)(4) of the Social Security Act is amended by inserting "homemaker" before "home health aide".

SEC. 2. The amendment made by this Act shall be effective with respect to services provided on or after the date of the enactment of this Act.●

By Mr. JOHNSTON:

S. 3509. A bill to amend the Internal Revenue Code of 1954; to the Committee on Finance.

CONSTRUCTIVE OWNERSHIP OF STOCK

● Mr. JOHNSTON. Mr. President, today, I am introducing legislation to amend section 302 of the Internal Revenue Code to limit the application of the attribu-

tion rules with respect to interests in an estate or trust.

Under present law it is the position of the Internal Revenue Service that a redemption of stock held by an estate will not qualify for sale or exchange treatment as a termination of a shareholder's interest in a corporation. This result occurs because the constructive ownership rule of the Code provides that stock owned, directly or indirectly, by or for a beneficiary of an estate is considered to be owned by the estate and it is the service's position that an estate or trust cannot execute the agreement on reacquisitions that individuals can execute to waive attribution of ownership. Under the service's position the redemption may be treated as a dividend included in ordinary income and not as an exchange of a capital asset.

The Tax Court has rejected the Service's very literal reading of the law. In a case styled Lillian M. Crawford the Court held that an estate could execute an agreement on reacquisitions within 10 years so that the redemption of the shares held by the estate qualified for capital gains treatment. In that case, shares owned individually by the beneficiary of the estate were also redeemed. The court stated that the literal reading of the law advocated by the service would lead to nonsensical results.

As a consequence of the very literal reading of the law by the IRS, other taxpayers are faced with situations similar to that presented in the Crawford case. In effect, these taxpayers are prohibited from doing directly that which might be done indirectly if other purely technical aspects of law were not involved.

Mr. President, I am introducing this legislation today because I am now aware of how highly technical language of the code relating to stock redemption is a trap for the unwary. I am particularly incensed because the Service's literal reading of the code relating to stock redemptions may force one of our Nation's oldest continuous operating companies in the construction industry into liquidation. The Wilson Contracting Co., Inc. (WCCI) was organized and has been continuously operating since 1908. The stock of Wilson and another related company, Barriere Construction Co., Inc., represent a substantial minority interest in the estate of Gaines P. Wilson, Sr.

The will of Gaines P. Wilson, Sr. leaves his minority stock interest in Wilson and Barriere in part to family interests in Kentucky and Louisiana. The Louisiana family members wish to continue the operation of the businesses. The present Kentucky family interest have had no active involvement in operating the businesses. The executor of the estate wishes to terminate the interests of the estate in the corporations in a manner which will accord the beneficial interest of the Kentucky family members treatment under section 302(b)(3) of the Internal Revenue Code, relating to complete termination of a shareholders' interest. This amendment provides such treatment.

In many instances, an estate cannot meet the sale or exchange requirements for redemptions of stock to pay death taxes and does not have sufficient cash to pay its expenses or to meet specific cash bequests of the decedent.

Under the amendment attribution of ownership to or from an estate or trust will be inapplicable for the termination of interest provision and thus the proceeds received in a redemption will be treated as an exchange of a capital asset and not as a dividend. This treatment will be available only to the extent the distribution would have been made to an exempt organization if the stock had been transferred to the organization immediately prior to the redemption and then the stock had been redeemed, and to the extent the distribution would have been made to an individual who has either a direct or beneficial interest in the proceeds if the stock had been transferred to the individual immediately prior to the redemption and then the stock had been redeemed in a transaction that would result in a complete termination of the individual's interest in the corporation. The individual would be required to comply with the current provisions. Thus, he could not retain an interest in the corporation other than as a creditor, and he could not acquire any interest other than by bequest or inheritance for a 10-year period from the date of redemption. Furthermore, the individual would be required to notify the Secretary of an acquisition of any such interest within the 10-year period.

To the extent an individual would be unable to qualify for a complete termination of interest in the corporation, proceeds received in redemption of stock held by the estate equal to the individual's interest in the estate would be treated as a dividend received by the estate.●

By Mr. HART (for himself and Mr. HASKELL):

S. 3510. A bill to provide for the orderly construction, operation and maintenance of the previously authorized Fryingpan-Arkansas Federal reclamation project in Colorado, and for other purposes; to the Committee on Environment and Public Works.

FRYINGPAN-ARKANSAS WATER PROJECT

Mr. HART. Mr. President, Senator HASKELL and I are today introducing legislation to remove a technical objection to operation of a previously authorized and largely constructed portion of the Fryingpan-Arkansas water project in Colorado.

This legislation is supported by the State of Colorado and the conservancy district which will operate the project when it is completed. The administration has not completed the full review, including Office of Management and Budget clearance, necessary for endorsement of legislation, but the Department of the Interior is satisfied that this legislation clarifies the original congressional authorization for the project, as requested by the Department's Solicitor.

In 1962 Congress authorized the Department of the Interior to construct the Fryingpan-Arkansas project. A portion of that project will divert water from the Hunter Creek watershed on the western slope of the Continental Divide and transport the watershed to the eastern slope of the Divide. The Department has almost completed construction of that portion of the project.

This year, however, the Solicitor of the Department decided that there is ambiguity about the amount of water which Congress authorized the Department to divert from the Hunter Creek watershed, and about the purpose to which the Department can apply the water that it diverts.

This ambiguity exists because Congress had before it different descriptions of the project when it passed the authorizing legislation. Congress directed the Department to build the project "in substantial accordance" with an early feasibility report and "in accordance" with more recent project operating principles and Colorado water law. The feasibility report, prepared in 1950, described the Hunter Creek portion of the project as diversions of about 3,000 acre-feet for exchange with the holder of senior water rights. The operating principles, agreed to in 1960, modified the plan for the project to reach agreement among various parties who had been in conflict over the 1950 plan. This agreement did not restrict the Hunter Creek portion of the project as the feasibility report had. Likewise, State courts issued decrees for the project water which did not restrict the Hunter Creek diversions as the feasibility report had.

After the congressional authorization, the Department proceeded to construct the Hunter Creek portion of the project as reflectd by the operating principles and State decrees. This year, however, the Solicitor questioned this approach, and, noting the "ambiguities" in the congressional legislation, decided that "It is, in close cases, the better rule to seek additional and clarifying Congressional authority." The legislation that we are introducing provides that clarifying authority.

We do not want to create the impression that we share the Solicitor's questions over the meaning of the original congressional authorization. To the contrary, we think that a better examination of the historical record would indicate that Congress always intended the Hunter Creek portion of the project to be constructed and operated as the Department has built it. We introduced our legislation only to further clarify that original intent and to remove the Solicitor's objection, not to ratify the merits of the Solicitor's opinion.

Mr. HASKELL. Mr. President, today I join my colleague from Colorado, Senator HART, in introducing legislation to permit the Fryingpan Arkansas water project to be operated as authorized by Congress. This project is more than 90 percent completed and will provide

needed water for Southeastern Colorado and Colorado Springs.

The legislation provides assurance that the laws of Colorado relating to the establishment of minimum stream flows will be followed and provide for a limit of 270 cubic feet of water on the rate at which water can be diverted. This bill also establishes and protects the minimum flows on No Name, Midway Creek and Hunter Creek. Of course, minimum flows established by this bill can be implemented by agreement under State law; negotiations have been and are now taking place to do so.

Given the background against which this legislation is offered, passage of this bill will be an important step in assuring that the affected jurisdiction will be assured delivery of water in the amounts agreed and the rate of diversion will not do damage to the stream from which the water is taken.

It is unfortunate that uncertainty was created by the issuance of a Solicitor's Opinion which was prepared without any consultation with Congress and without regard to full legislative history. This practice of attempting to determine the intent of Congress by examining preselected documents is one which I find suspect.

We are interested in seeing that this project be operated in the matter intended with protection for the minimum flows of the stream. Arguments as to the maximum flows are properly the subject of State law and jurisdiction. It is best that they be so resolved.

It is my hope that the Senate will adopt this essentially technical legislation and permit the project to be completed as authorized by Congress.

By Mr. HUDDLESTON:

S. 3511. A bill to amend the Federal Crop Insurance Act, and for other purposes; to the Commtitee on Agriculture, Nutrition, and Forestry.

FARM CROP INSURANCE ACT OF 1978

● Mr. HUDDLESTON. Mr. President, the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, which I chair, has been involved for 2 years in studying the problems of Federal crop insurance. I do not think a single colleague of mine would disagree that the time has come for revision of portions of the USDA-operated crop insurance program.

My subcommittee has held 3 days of hearings in Washington in order to begin determination of the direction we should take to solve the problems of the Federal Crop Insurance Corporation. Also, 2 days of field hearings have been held to hear some of the suggestions of producers.

The measure I am introducing today was developed at my request by an ad hoc group from the private crop-hail insurance industry. The approach differs from other bills that are before the Senate.

This is the third crop insurance bill I have introduced. My reason for introducing each of these measures has been an effort to stimulate discussion and get all possible alternatives before the Senate. I intend to continue to work toward a viable and equitable legislative solution and I plan to have a disaster-crop insurance measure before the full Agriculture Committee early in the 96th Congress. This means that extensive crop insurance hearings will begin late this year or early next year.

Mr. President, S. 3511, which I introduce today, if enacted, would amend the Federal Crop Insurance Act to expand the Federal crop insurance program to all crops and all counties in the United States for which an insurnace program is feasible. The bill also removes the existing 20 county limit on the program for Federal reinsurance of private insurors. And the measure excludes from the Federal crop insurance program hail, fire, and lightning insurance.

This bill would—

First. Increase the authorized capital stock of the Federal Crop Insurance Corporation from $200 million to $400 million;

Second. Beginning with the 1979 crop year, require the Corporation to insure producers of all agricultural crops, wherever they are grown commercially. Beginning with the 1982 crop year, the Corporation could limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved;

Third. Exclude hail, fire, and lightning coverage from the Federal crop insurance program;

Fourth. Delete the existing provision of law restricting to not more than 20 counties the Federal reinsurance of private insurors of producers of agricultural crops;

Fifth. Authorize a new Federal crop insurance program covering prevented planting losses;

Sixth. Require that Federal crop insurance premiums be increased to cover administrative and operating costs of the Corporation, as well as claims for losses and the establishment of a reserve against unforseen losses;

Seventh. Provide that the Federal Government, in order to encourage the broadest possible participation in the Federal crop insurance program, pay up to 50 percent of the premium of Federal crop insurance policies;

Eighth. Provide that Federal reinsurance of private crop insurors will be provided only in the reinsurance deemed necessary is not available from recognized private sources at reasonable cost;

Ninth. Effective October 1, 1979, establish a revolving fund in the Treasury to be available without fiscal year limitation to the Federal Crop Insurance Corporation to carry out the Federal Crop Insurance Act. Amounts received by the Corporation as premiums from farmers and other income from its operations would be deposited in the fund, and appropriations to the fund to restore the expenses of the Corporation for Federal premium payments would be authorized; and

Tenth. Authorize the Corporation to borrow from the Treasury as necessary if moneys available in the revolving fund are insufficient to enable the Corporation to meet its responsibilities under the Federal Crop Insurance Act.

Mr. President, I ask unanimous consent that S. 3511 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Crop Insurance Act of 1978".

CAPITAL STOCK

SEC. 2. Section 504(a) of the Federal Crop Insurance Act is amended to read as follows:

"SEC. 504. (a) The Corporation shall have a capital stock of $400,000,000 subscribed by the United States of America, payment for which shall, with the approval of the Secretary of Agriculture, be subject to call in whole or in part by the Board of Directors of the Corporation.".

BOARD OF DIRECTORS—COMPENSATION AND REIMBURSEMENT FOR TRAVEL EXPENSES

SEC. 3. The second sentence of section 505 (c) of the Federal Crop Insurance Act is amended to read as follows: "The members of the Board who are not employed by the Government shall be paid such compensation for their services as directors as the Secretary of Agriculture shall determine, but such compensation shall not exceed the daily equivalent of the rate prescribed for grade GS–18 in section 5332 of title 5, United States Code, when actually employed, and shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.".

PERSONNEL

SEC. 4. Section 507 of the Federal Crop Insurance Act is amended by—

(1) striking out ", and county crop insurance committeemen" in subsection (a);

(2) striking out the comma immediately after "title" in subsection (b) and all that follows down through the end of subsection (b) and inserting in lieu thereof a period;

(3) striking out subsection (c) in its entirety;

(4) redesignating subsection (d) as subsection (c) and amending such subsection (as redesignated) to read as follows:

"(c) The Corporation may contract with, and transfer funds to, other agencies and offices of the Department of Agriculture or the county committees established under section 8 of the Soil Conservation and Domestic Allotment Act for assistance in implementing this title; but any employees of such other agencies and offices responsible for performing functions under this title shall be responsible directly to the Corporation without the intervention of any intermediate office or agency."; and

(5) redesignating subsection (e) as subsection (d).

CROP INSURANCE PROGRAM FOR 1979 AND SUBSEQUENT CROP YEARS

SEC. 5. Effective beginning with the 1979 crop year, section 508 of the Federal Crop Insurance Act is amended to read as follows:

"CROP INSURANCE

"SEC. 508. To achieve the purposes of this title, the Corporation—

"(a)(1) shall for the 1979 and subsequent crop years insure producers of agricultural crops wherever grown commercially, as determined by the Board, subject to the limitations herein. The insurance for any agricultural crop shall be offered under any plan or plans determined by the Board to be adapted to the agricultural crop. Such insurance shall be against loss of the insured agricultural crop due to one or more unavoidable causes, including drought, flood, wind, frost, winterkill, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes, other than hail, lightning, or fire, as may be determined by the Board: *Provided*, That such insurance shall not extend beyond the period the insured agricultural crop is in the field. Any insurance offered against loss in yield shall not cover more than 75 percent of the average yield for a representative period of years for a farm, or area in which the farm is located, as determined by the Corporation on the basis of recorded or appraised yields, subject to such adjustments as may be necessary to the end that the average yield fixed for farms in the same area, which are subject to the same conditions, may be fair and just. Insurance provided under this subsection shall not cover losses due to the neglect or malfeasance of the producer, or to the failure of the producer to reseed to the same agricultural crop in areas and under circumstances where the Corporation determines it was practical to so reseed, or to the failure of the producer to follow established good farming practices. Beginning with the 1982 crop year, the Board may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved. For each agricultural crop insured, the Corporation shall not offer insurance on any acreage not suited to the production of such agricultural crop or in any county where the planted acreage of such agricultural crop is below a minimum county acreage as established by the Corporation, except that it may, if it is deemed practical to do so, offer insurance on acreage in such county through the office serving another county that meets the minimum requirement. The Corporation shall report annually to Congress the results of its operations on each agricultural crop insured.

"(2) may insure producers against losses that they may incur when they are unable to plant an agricultural crop because of weather conditions. Insurance issued under authority of this paragraph shall be subject to the applicable provisions of paragraph (1) of this subsection.

"(b) shall fix adequate premiums for insurance at such rates as the Board deems sufficient to cover all direct and indirect costs of acquisition, loss adjustment, crop inspection, actuarial, underwriting, and administration costs, and claims for crop losses on such insurance, and establish as expeditiously as possible a reasonable reserve against unforeseen losses. For the purpose of encouraging the broadest possible participation in the Federal crop insurance program, not exceeding 50 percent of each participant's calculated premium shall be paid by the Federal Government. The remaining portion of the premium shall be paid by each participant and such premiums shall be collected at such time or times and shall be secured in such manner as the Board may determine.

"(c) may adjust and pay claims for losses under rules prescribed by the Board. In the event that any claim for indemnity under the provisions of this title is denied by the Corporation, an action on such claims may be brought against the Corporation in the United States district court, or in any court of record of the State having general jurisdiction, sitting in the district or county in which the insured farm is located, and jurisdiction is hereby conferred upon such district courts to determine such controversies without regard to the amount in controversy: *Provided*, That no suit on such claim shall be allowed under this section unless the same shall have been brought within one year after the date when notice of denial of the claim by registered mail is sent to the claimant.

"(d) may provide, upon such terms and conditions as the Board may determine to be consistent with subsection (b) of this section and sound reinsurance principles, reinsurance to private insurance companies, or groups or pools of such companies, that insure producers of any agricultural crop under contracts acceptable to the Corporation: *Provided*, That no application for reinsurance shall be approved unless the Corporation shall have determined that the reinsurance deemed necessary is not available from recognized private sources at reasonable cost.".

ADVISORY COMMITTEE—COMPENSATION AND REIMBURSEMENT FOR TRAVEL EXPENSES

SEC. 6. The second sentence of section 515 of the Federal Crop Insurance Act is amended to read as follows: "The compensation of the members of such committee shall be determined by the Board, but shall not exceed the daily equivalent of the rate prescribed for grade GS–18 in section 5332 of title 5, United States Code, when actually employed, and be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.".

FUNDING AND REGULATIONS

SEC. 7. Effective October 1, 1979, section 516 of the Federal Crop Insurance Act is amended to read as follows:

"FUNDING AND REGULATIONS

"SEC. 516. (a) There is hereby created within the United States Treasury a separate fund (hereafter in this section referred to as the 'fund') that shall be available to the Corporation without fiscal year limitation as a revolving fund for achieving the purposes of this title. A business-type budget for the fund shall be prepared, transmitted to Congress, considered, and enacted in the manner prescribed by sections 102, 103, and 104 of the Government Corporaion Control Act for wholly-owned Government corporations.

"(b)(1) There are authorized to be appropriated to the fund such amounts as may be necessary to restore the expenses of the Corporation for Federal premium payments and redemption of notes or obligations issued under subsection (c) of this section. All amounts received by the Corporation as premiums, fees, and other moneys, property, or assets derived by it from its operations in connection with this title shall be deposited in the fund.

"(2) All expenses, including reimbursements to other Government accounts, and payments pursuant to operations of the Corporation under this title shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Corporation shall pay from the fund into the Treasury as miscellaneous receipts interest on its outstanding capital stock and outstanding borrowings from the Treasury, less the average undisbursed cash balance in the fund during the year and Federal premium payments due the Corporation. The rate of such interest shall be determined by the Secretary of the Treasury and shall be not less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with comparable maturities. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest. If at any time the Corporation determines that moneys in the fund exceed the present and any reasonably prospective future requirements of the fund, such excess may be transferred to the general fund of the Treasury.

"(c) If at any time the moneys available in the fund are insufficient to enable the Corporation to discharge its responsibilities under this title, it shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Corporation from appropriations or other moneys available under subsection (b) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States with comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any note or other obligation issued hereunder for that purpose. The Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any note or other obligation acquired by the Secretary of the Treasury under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(d) The Secretary of Agriculture and the Corporation, respectively, are authorized to issue such regulations as may be necessary to implement the provisions of this title.".

DEFINITION OF "AGRICULTURAL CROP"

SEC. 8. Section 518 of the Federal Crop Insurance Act is amended by striking out "SEC. 518. 'Agricultural commodity'," and inserting in lieu thereof "SEC. 518. 'Agricultural crop',".●

By Mr. DOMENICI (for himself and Mr. SCHMITT):

S. 3512. A bill to authorize the Secretary of the Interior to consider a petition for reinstatement of a certain oil and gas lease; to the Committee on Energy and Natural Resources.

● Mr. DOMENICI. Mr. President, together with my distinguished colleague from New Mexico, I am introducing today a bill to authorize the Secretary of the Interior to consider a petition for reinstatement of a certain oil and gas lease for the benefit of a small New Mexico gas and oil firm. A brief description of the events relating to this lease is presented now to indicate my reasons for introducing this bill.

The New Mexico gas and oil company, Atom Inc., has a gas and oil lease on Federal land in Sandoval County, N. Mex. The company was drilling a gas well on the lease on the expiration date of the lease, February 28, 1978, an action by which officials of the company felt the lease would be extended and the company's rights thereunder preserved. The officials of the company were aware

that royalty payments on the lease were required, but they understood, incorrectly as it turned out, that this lease fell into the category of "minimum royalty," meaning that the company would be billed for royalty payments by the appropriate Federal Government agency.

Unfortunately, as to this lease, royalties were not billed but due on a certain date, February 28, 1978, in this case. On April 12, 1978, the company was notified that the lease would be terminated for nonpayment of the royalty. The company immediately ceased operations on the well they were drilling and sent a check that same day for the amount of the rental fee, $401.50, seeking to have the lease reinstated.

The Bureau of Land Management determined, in accordance with the provisions of 43 CFR 3108.2–1(c), that it was without power to reinstate the lease because "the rental was tendered more than 20 days after the anniversary date of the lease."

Mr. President, I feel there are extenuating circumstances in this matter which justify the enactment of a bill which simply gives the Secretary of the Interior more flexibility than he and his subordinates have under existing regulations. Specifically, this bill would authorize the Secretary to reinstate the lease in question if the Secretary is satisfied that the "failure to pay timely was either justifiable or not due to lack of reasonable diligence."

In this case, it is obvious and everyone agrees that there was no intention or effort to avoid payment of the royalty since it was tendered immediately when the company was advised that it was overdue. Further, Mr. President, when the company had already spent over $37,000 on the lease, there would be no reason to fail to pay the royalty payment of only $401.50, an amount that is only 1.1 percent of the total invested in the lease. That entire investment will have been for nothing if the lease is not reinstated and that just doesn't seem fair or reasonable to me.

Finally, I have checked with the responsible Federal agency on another relevant question, namely, would anyone be adversely affected by the reinstatement of this lease? I have been advised by the Albuquerque Office of the U.S. Geological Survey that there would be no adverse effect on any person or business firm that can be presently identified since no one else is automatically entitled to the lease. Since no one else would be hurt by the reinstatement and since no one else has invested in the lease, it seems entirely fair and reasonable to provide the flexibility for the Secretary to reinstate the lease to the people who have invested over $37,000 in its development for energy production.

Stated another way, Mr. President, in the absence of intention not to pay and when no one else is hurt, it just seems unfair and illogical to me to take the lease away from people who, but for this unintentional mistake, would be entitled to whatever benefits may flow from their investment, an investment which is now in jeopardy because a royalty payment of only 1.1 percent of that investment was not sent in when due.

Mr. President, I ask unanimous consent that the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3512

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall receive, consider, and act upon any petition of Atom, Incorporated, Farmington, New Mexico, filed within one hundred eighty days after the effective date of this Act, for reinstatement of a United States oil and gas lease designated NM 4565, and accompanied by the required rental, including back rental accruing from the date of termination, and shall reinstate such lease in accordance with the provisions of section 31(c) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (c)), if it is shown to the satisfaction of the Secretary that the failure to pay timely was either justifiable or not due to lack of reasonable diligence.●

By Mr. HANSEN:

S.J. Res. 162. A joint resolution to authorize the President to issue a proclamation designating March 1979 as "Youth Art Month"; to the Committee on the Judiciary.

YOUTH ART MONTH

● Mr. HANSEN. Mr. President, Americans are increasingly becoming culturally aware. We have a growing appreciation for art, music, and theatre, and these endeavors no longer are being shrugged off as playthings for only the rich.

Art, in particular, is gaining ground in our educational systems. Painting, sculpture and the gamut of other visual arts are earning a rightful place in all levels of our schools because students and teachers are taking art seriously. Not only is art an expression of oneself and a reflection of others, it is a tool for personal development.

Because of the importance of recognizing the value of art in our children's education, I am today introducing a resolution calling for the designation of March as National Youth Art Month. The Wyoming Federation of Women's Clubs each year since 1961 has been at the forefront in focusing attention on the development of art appreciation in our young people. The Governor of Wyoming the last 3 years has declared Youth Art Month and the governors of several other States are following suit with the support and encouragement of the National Art Education Association and the National PTA.

Our American heritage is rich with various art forms and our European ancestry offers the finest art background in the world. But to many of us, understanding and appreciation of this art is limited, and thus is our knowledge and understanding of the people somewhat incomplete.

Through art a child can learn sensitivity and awareness of feelings—both his own and others, of history, the world and the environment. Designating March as Youth Art Month will reaffirm our commitment to development of these finer human qualities in our children. I hope the Senate will act quickly to pass this resolution.●

ADDITIONAL COSPONSORS

S. 2474

At the request of Mr. KENNEDY, the Senator from California (Mr. CRANSTON) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 2474, a bill to amend the Public Health Service Act.

S. 3359

At the request of Mr. CHILES, the Senator from New Mexico (Mr. SCHMITT) and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. 3359, a bill to amend the Miller Act to raise the dollar amount of contracts to which such act applies from $2,000 to $25,000.

S. 3425

At the request of Mr. HATHAWAY, the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New Hampshire (Mr. MCINTYRE) were added as cosponsors of S. 3425, the Community Mental Health Assistance Act of 1978.

AMENDMENTS SUBMITTED FOR PRINTING

MILITARY PROCUREMENT AUTHORIZATIONS—S. 3486

AMENDMENTS NOS. 3622 AND 3623

(Ordered to be printed and to lie on the table.)

Mr. TOWER submitted two amendments intended to be proposed by him to S. 3486, a bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes; to the Committee on Armed Services.

FOREIGN ASSISTANCE APPROPRIATIONS—H.R. 12931

AMENDMENTS NOS. 3624 AND 3625

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted two amendments intended to be proposed by him to H.R. 12931, an act making appropriations for Foreign Assistance and related programs for the fiscal year ending September 30, 1979, and for other purposes.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and

Transportation be authorized to meet during the session of the Senate today to hold an oversight hearing on the National Tourism Policy Study.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

AMENDING OF THE FEDERAL CONSTITUTION

● Mr. GARN. Mr. President, perhaps the best single source for information on the amending of the Constitution is Lester B. Orfield's "The Amending of the Federal Constitution," first published in 1942 and recently reprinted by DaCapo Press, New York, N.Y. Professor Orfield has performed an excellent service with this well-researched and clearly written book. Certainly those persons interested in the issues raised by House Joint Resolution 638—extending the deadline for ratification of the equal rights amendment—will wish to refer to the Orfield text.

Particularly interesting is Professor Orfield's analysis of the question whether a State legislature may change its action on a proposed constitutional amendment, that is, whether a legislature that has once rejected an amendment may later ratify it and whether a legislature that has ratified may change its mind and rescind. Professor Orfield sets out the three views regarding this question and, in this case, the third view is especially interesting because of its relevance for the present debate. The third view is that a State may reject an amendment, despite a prior ratification, so long as the amendment has not received ratification by the constitutionally required three-fourths of the States. Professor Orfield holds that this third view is the superior view for the following reasons:

First. Ratification should not be more final than rejection—and ratification by less than three-fourths of the States is ineffectual.

Second. It is more democratic to allow the reversal of prior action.

Third. A truer picture of public opinion at the final date of ratification is obtained.

Fourth. No great confusion is likely to result from such a rule.

Fifth. Not to allow reversal of an acceptance may cause a cautious legislature not to act.

Mr. President, I urge our colleagues to study the Orfield analysis because it will provide important insight into some of the policy questions raised by House Joint Resolution 638. I express my earnest hope that our colleagues are studying these issues carefully and not reflexively reacting to the partisan political pitch that some are holding out as the law of the Constitution. In fact, the status of the constitutional law is unclear and this Congress is charged with the high duty of participating in debate and decisions that may establish a precedent for decades to come. I hope we will discharge our duty in a manner consistent with constitutional and legislative history and that, when we have made our decisions, we will have a policy that will be fair, that will stand the test of time, and that will be consistent for both those amendments we favor and those we do not.

I ask that the relevant pages from the Orfield book be printed in the RECORD, together with footnotes.

The excerpts follow:

A problem which has several times come up in practice is whether a legislature may change its action with respect to an amendment. One view with respect to ratification by state legislatures is that the first action by the legislature of a given state is conclusive and binds future legislatures, even though the first action was that of rejection. This view, which has received but small support, was taken in *Wise* v. *Chandler* [99] by the highest state court of Kentucky. It was argued that a convention ratifying a Federal amendment could not change its action; hence rejection by a convention would be final; and that a state legislature had no greater power than a convention. It should be noted that treating both acceptance and rejection as conclusive is logically consistent and insures protection of minority rights.[100]

The Supreme Court of Kansas disagreed with the Kentucky court and held an original vote of rejection not conclusive, though stating an original vote of ratification would be conclusive.[101] The Kansas view is supported by Congressional practice as to the Thirteenth and Fourteenth Amendments,[102] and by the legal theory that the Constitution creates only a power to ratify and not a power to reject.[103] It is also supported on the ground of public policy in that less delay results and that it is less confusing than counting subsequent reversals.[104] To allow a rejection to be final is to make the amending process less deliberate. There might also be some difficulty as to the meaning of rejection, as for instance, is rejection by one house of the state legislature a rejection? However, this difficulty might be readily resolved by adopting the view that only an affirmative vote of rejection by both houses of the legislature is binding.

In declaring the adoption of the Fourteenth Amendment, Congress counted two states which had first rejected and then ratified. The Kentucky court sought to explain this by saying that the rejections should not count as rejections because they were by illegal governments.[105] But it by no means follows that an illegal government may not perform some valid acts, such as ratification of a federal amendment.[106] The Supreme Court has stated in a leading case: [107] "acts necessary to peace and good order among citizens . . . which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government. . . ." Action on a constitutional amendment may be included within such acts.

A third possible view is that a state should be able to reject, despite prior ratification, before three-fourths of the states had ratified.[108] Of course, such subsequent rejection could not come after three-fourths of the states had ratified. Under this view, both the Kentucky and the Kansas courts were in error as to the effect of prior ratification. Ratification should not be more final than rejection. Ratification by less than three-fourths of the states is ineffectual. Such is the theoretical approach. But there are even stronger practical arguments. It is more democratic to allow the reversal of prior action. A truer picture of public opinion at the final date of ratification is obtained. No great confusion is likely to result from such a rule.[109] Not to allow reversal of an acceptance may cause a cautious legislature not to act.[110]

It would seem to follow from the recent decision of the Supreme Court that the fact of rejection by more than one-fourth of the states does not bar ultimate ratification of an amendment if Congress deems the amendment still open for ratification. The view that rejection by more than a fourth of the states destroyed an amendment has been taken by the Kentucky Court.[111] The Kansas Court took the opposite view.[112] Since rejection by a single state was not conclusive, it logically followed that rejection by a group of states carried no greater weight. Thus the fact that twenty-one states had rejected the child labor amendment and notified the secretary of state and four states had rejected without such notice did not destroy the amendment. That the present Article Five does not allow rejection by one-fourth of the states plus one to defeat the amendment permanently was to some extent indicated by the Wadsworth-Garrett Joint Resolution in 1926 proposing an amendment which would expressly permit one-fourth of the states plus one to kill the amendment. In the case of the Fourteenth Amendment ten states out of thirty-seven, or more than one-fourth, had rejected, yet Congress treated it as ratified.[113] Thus the prevailing view seems to be that a rejection is not final,[114] but there has as yet been no test of the finality of a ratification.

FOOTNOTES

[99] (1937) 270 Ky. 1, 108 S. W. (2d) 1024, noted or discussed (1938) 18 BOST. U. L. REV. 169; (1937) 37 COL. L. REV. 1201; (1937) 26 GEO L. J. 107 at 118; (1938) 6 GEO. WASH. L. REV. 218; (1938) 26 KY. L. J. 364; (1938) 22 MINN. L. REV. 269; (1938) 17 NEB. L. BULL. 81; (1938) 11 SO. CAL. L. REV. 472; (1937) 24 VA. L. REV. 194; (1937) 23 WASH. U. L. Q. 129; (1937) 47 YALE L. J. 148; Dowling, "Clarifying the Amending Process," (1940) 1 WASH. & LEE L. REV. 215.

The same view was also taken by Cadwalader, "Amendment of the Federal Constitution," (1926) 60 AM. L. REV. 389 at 393; Grinnell, "A 'Point of Order' on the Child Control Amendment," (1934) 20 A. B. A. J. 448, reprinted in (1934) 19 Mass. L. Q. No. 5, p. 22.

[100] (1938) 11 So. CAL. L. REV. 472.

[101] Coleman v. Miller, (1937) 146 Kan. 390, 71 P. (2d) 518.

[102] (1938) 11 So. CAL. L. REV. 472.

[103] Dodd, "Amending the Federal Constitution," (1921) 30 YALE L. J. 322; (1940) 24 MINN. L. REV. 393 at 395–396. In opposition it was argued to the Kentucky court that Van Devanter, J., had stated in Rhode Island v. Palmer (National Prohibition Cases), (1920) 253 U.S. 350 at 386, 40 S. Ct. 486, 588: "The referendum provisions of state constitutions and states cannot be applied, consistently with the Constitution of the United States, in the ratification or rejection of amendments to it." See also the view of Senator Garrett Davis, CONG. GLOBE, 41st Cong., 2d sess. (1870) 1479–1480.

[104] (1938) 11 So. CAL. L. REV. 472.

[105] This distinction is approved in (1937) 24 VA. L. REV. 194.

[106] See (1937) 37 COL. L. REV. 1201 at 1203, note 21; (1938) 22 MINN. L. REV. 269.

[107] Texas v. White, (1868) 7 Wall. (74 U.S.) 700 at 733.

[108] Miller, "Amendment of the Federal Constitution," (1926) 10 MINN. L. REV. 1858 at 188; (1938) 18 BOST. U. L. REV. 169; (1938) 22 MINN. L. REV. 269; (1938) 17 NEB. L. BULL. 81; (1937) 23 WASH. U. L. Q. 129; NICHOLAS MURRAY BUTLER, HEARINGS ON S. J. RES. 134, 75th Cong., 3d sess. (1938) 41–42; ROTTSCHAEFER, CONSTITUTIONAL LAW (1939) 395. The solicitor general in his brief in Coleman v. Miller at p. 26 admitted that ratification should be rescindable.

[109] (1938) 18 BOST. U. L. REV. 169.

[110] (1938) 11 So. CAL. L. REV. 472.

[111] Wise v. Chandler, (1937) 270 Ky. 1, 108 S. W. (2d) 1024. It had earlier been claimed that rejection by more than one-fourth of

the states would defeat the proposal until it was resubmitted to the states by Congress. Statement by Special Committee of the American Bar Association, "The Federal Child Labor Amendment," (1935) 21 A. B. A. J. 11 at 12; Grinnell, "A 'Point of Order" on the Child Control Amendment," (1934) 20 A.B.A.J. 448.

[113] Coleman v. Miller, (1937) 146 Kan. 490, 71 P. (2d) 518.

[113] FLACK, THE ADOPTION OF THE FOURTEENTH AMENDMENT (1908) c. 4.

[114] See discussion in (1940) 24 MINN. L. REV. 393 at 395. Professor Noel T. Dowling believes that much can be said for making it final. Dowling, "Clarifying the Amending Process," (1940) 1 WASH. & LEE L. REV. 215 at 222.●

THE SUCCESS OF THE USDA'S FARM STORAGE FACILITY LOANS

● Mr. McGOVERN. Mr. President, one of the quiet successes of the Food and Agriculture Act of 1977 which we enacted last year amid some controversy is the farm storage facility loan program administered by the Department of Agriculture.

This Congress convened last year, and a new administration took office, facing a difficult legacy: approximately 1 billion bushels each of wheat and corn more than the market could reasonably use.

We had three options.

First, we could have ignored the existence of these grain stocks, cut prices and adopted a "fire sale" technique that would have collapsed farm prices and caused widespread farm bankruptcy.

Second, the Government could have taken over the grain, contracted for storage or built its own facilities as we have done in the past—an option almost nobody likes.

Third, we had the option of developing a system to handle this carryover grain in a manner that would be useful both to producers and users of American grain.

I am pleased that the Congress and the administration worked together to adopt the third option, through the use of a farmer-owned grain reserve program that recognizes that grain stockpiles can be a blessing and not simply a price-depressing curse.

As of the end of last week, farmers had put almost 400 million bushels of wheat and nearly 260 million bushels of corn into their own grain reserve—they own it, they control it, and they will get the benefit from increased prices in the future. And it is largely on the farm, in normal market channels, as a hedge against disaster or shortage some time from now.

Key to the success of this reserve program has been the companion farm storage facility loan program, which Secretary of Agriculture Bob Bergland implemented shortly after he assumed office last year and which was strengthened in law by last year's farm bill.

Availability of credit to finance on-farm storage facilities gives grain growers an important tool in holding and managing their grain stockpiles, an ability to hold them on the farm where they can insure quality and quantity.

The September issue of "Leadership," a publication of Farmland Industries Inc., tells of the experience of the South Dakota Wheat Growers Association's office in Redfield, S. Dak., in providing storage facilities for farmers in my State.

Mr. President, I ask that the article entitled "Government Program Spurs Grain Bin Growth" be printed in the RECORD.

The article follows:

GOVERNMENT PROGRAM SPURS GRAIN BIN GROWTH

Ron Ohm, manager of the South Dakota Wheat Growers Assn. Spink County Co-op Service Co., Redfield, S.D., sold 130 to 140 farm bins since September 1. In an average year the co-op sells 50 to 60 bins.

"I'd attribute this increase to four things," Ohm said. "First, we've had exceptional crops around here. Then there's the transportation problem and the full elevators in the area. But, most important, is the government storage program."

Under the new farm storage program—a part of the new Carter farm program—land owners are eligible for loans for on-farm storage facilities based on their two-year production. The farmer puts up 15% of the cost and the government stands up to 85%. This includes cost of the bins, concrete and all installation. It does not include installation if the farmer does the work himself. Interest rate on the 5 to 8-year loans is 7%.

According to a spokesman for the ASCS office in Leavenworth, Kan., farm storage loans are running from $10,000 to $25,000. Farmers may receive as much as $50,000, but would be required to put up collateral. County ASCS loan committees decide the amount each farmer can borrow, the spokesman said.

The steel bin business has been so good in the Redfield area that Ohm has three construction crews working full time this summer. He has a concrete crew and two erection crews composed of seven full-time employees working with college students.

"There's more to putting one of these bins up than you'd think," Ohm said. "It takes special tools, a compressor and air impact wrenches for example."

A crew that already has the concrete laid can erect a 3,300-bushel bin in about 7 hours.

Ohm said every crew has a full time employee as foreman. "It's a must that your foreman be well informed about the erection of these bins. A misplaced piece of filler or a bolt tightened too much can result in problems right away."

"It's a hot job," said one of the members of the Redfield crew. "We had a thermometer inside one of the bins one day and when the temperature got to 120 degrees we took it out. We didn't want to know how much hotter it was going to get."

One of the best selling points of co-op bins is the sealed roof. Where the roof sections meet the sides, the edge of the roof section curves and is bolted to the side to insure a sealed fit. Other bins have a hang over where the edges meet and a gap of as much as an inch or two allows snow and blowing debris to get into the grain stored within.

Farmland's larger bins have the sealed roof as an option.

The foundations are four inches thick on an 8 x 8-foot footing, reinforced with wire.

Ohm said there really hasn't been the need for a sales promotion for the steel bins. "It seems like once they are out on the farms they pretty well speak for themselves," Ohm said. "Neighbors see one and ask how the farmer likes his and that's all it takes."

In Redfield, the steel bin business has been a life-saver for the cooperative. "The grain bin business has kept us out of deep water, financially," Ohm said. "We had $350,000 in steel sales last year and 90% of that was bins."

One of the biggest problems suppliers of farm bins are having this summer is convincing farmers to place their orders early. "We've got farmers who wait and wait before deciding to go with farm bins," Ohm said, "and when they do place their order they can't understand why they can't have a bin out there right away." On the average, orders were being filled two weeks after being placed from Redfield.

Russ Johnsen, a supervisor of one of the Redfield crews, said they wait three to seven days after concrete has been laid before starting to erect a bin. "We also tell the farmers to lay down a sheet of plastic on the concrete before the first fill to keep the moisture from moving from the concrete into the grain."

With the tremendous surge in the grain bin demand this summer, Roy Martin, Farmland fieldman, said there has been an increased number of new bin suppliers hitting the market.

"You've got to watch, for example, where bin capacity is measured," Martin said. "Farmland's 3,300 bushel bins mean they hold 3,300 bushels to the eve—not to the tip of the bin."

Martin said ASCS recommends, and Farmland agrees a farmer should never fill a bin to the top. In order to work with the grain, you've got to have space at the top.

At the Raymond, S.D., Cooperative Elevator Co., Larry Jahnig, general manager, just started ordering Farmland steel bins this year.

The Raymond cooperative received five loads of bins this summer—around 70 bins. Most have a capacity of 3,300 bushels.

Jahnig subcontracts all the labor for the bin construction. He said the labor situation in his area made subcontracting a more workable way of handling the bins.

"Most of the farmers in our area already had bins on their farms," Jahnig said. "They needed more with the government programs and all. A lot of our farmers had the bins on their farms already filled with last year's grain and needed new storage for the new crops."

Myron Walth, Brown County Co-op Association, Aberdeen, S.D., was not in the steel bin business until this year. "We had been out of the business four years until this summer.

Then this summer, Walth put one salesman into the country with exclusive responsibility for selling bins. Not only was he responsible for the sales, but also acquiring the subcontractors for the concrete and erection. All follow-up calls concerning the bins were his responsibility. "It's a good arrangement," Walth said. "Here, the salesman is really watching over the job since he's the one who will get the calls if something goes wrong."

Walth said grain bins are a commodity nearly impossible to inventory on the local level. "For one thing we don't have the space to hold that kind of stock in any quantity and you can wrap up a pile of money in no time with bins," he said.

Walth said he will usually buy an entire load of bins if he has half of them sold—the others are usually bought by the time the load arrives, he says.

This summer the Brown County Cooperative ordered 65 bins—the majority 3,300 bushel capacity. Walth said a lot of bin orders didn't come in until after July 15. He attributed that to the government storage program.

"We really need to have someone go out and convince farmers that they need to assess their needs in matters like this in advance." Walth said. "Farmers in many cases, still, like to have the dollars in their pockets before they make a purchase."

Walth said on the average farmers in the Aberdeen area have a five-week wait for bins once they place their order.

The Aberdeen Co-op has two crews, subcontracted, made up of college and high school men.

Walth said the majority of farmers in his area see on-farm storage as a long-term concept. "Our farmers expect to store grain on their farms indefinitely irrespective of the government programs," Walth said. "Our crops used to be considered strictly on a cash basis, now farmers are storing them and doing some marketing."

He said most of the younger farmers in the area have incorporated with their fathers and the cash needs aren't as stringent as if they were just starting our fresh and buying new farms.●

REPORT OF THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE ON VARIOUS BUILDING PROSPECTUSES

Mr. RANDOLPH. Mr. President, the Public Building Act of 1959 authorizes the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation to approve by resolution, public buildings projects proposed by the General Services Administration.

In May 1978, new procedures were promulgated requiring the Senate committee to submit a formal report to the Senate, describing the projects authorized and outlining the reasons for the project. The following proposals were approved by voice vote of the committee.

REPAIR AND ALTERATION PROSPECTUSES OLD U.S. CUSTOMHOUSE, NEW YORK, N.Y.

This is a prospectus for the general upgrading of the U.S. Customhouse situated adjacent to Bowling Green in lower Manhattan in New York. The alterations proposed would provide more than 249,000 square feet of office space for the U.S. Courts, Departments of Health, Education and Welfare, Department of Treasury, Department of Interior, Federal Maritime Commission, International Trade Commission, Equal Opportunity Employment Commission and the Consumer Products Safety Commission. The work will also preserve this architecturally and historically significant building.

Designed by Cass Gilbert and constructed in 1907, the building is an excellent example of Beaux Arts style and is listed in the National Register of Historic Places. Corinthian columns surround the building emphasizing its structural solidity while the cavernous entrance hall gives it a graceful, light effect. Among many distinctive features of the structure are exterior sculptural panels by Daniel French, who is best known for his statue of Abraham Lincoln in Washington, D.C. Artistic amenities such as these are the mark of architectural excellence and buildings which adorn them should be preserved and utilized.

Major items to be included in the work are the installation of a new heating, ventilating, and air conditioning system; upgrading the electrical system; installing fire and life safety items; replacing the roof; improving the elevators; replacing the windows; renovating the restrooms and plumbing system; and installation of new flooring. Total authority required for the project is $23,720,000.

The committee continues to express its interest in the restoration of architecturally or historically significant buildings to house Federal agencies, including the restoration of such buildings under the Public Buildings Cooperative Use Act.

LEASE EXTENSION PROSPECTUS: 120 CHURCH STREET, LOWER MANHATTAN, N.Y.

The Internal Revenue Service presently occupies 348,700 square feet of space in this privately owned building and Government pays an annual rental of $2,626,376, including services and utilities for this space.

Although the present lease provides a 5-year renewal option, certain alterations are necessary in the building to meet IRS requirements. The lessor will not undertake the needed work unless a new lease is negotiated. Consequently, a new lease is proposed for a firm term of 10 years at an annual rate of $2,902,160 including services and utilities. In addition, two 5-year renewal options are proposed.

BALLSTON CENTRE TOWER 1, ARLINGTON, VA.

The Departments of Defense, and Health, Education, and Welfare currently occupy 140,981 square feet in this building for which an annual rental of $651,168.04, including services and utilities is paid. This space has been occupied by various agencies since 1968 and continues to be geographically convenient to both agencies presently in the building.

General Services Administration proposes renewal for a term of 5 years at an annual cost of $1,141,803, including services and utilities.

CRYSTAL PLAZA 2, ARLINGTON, VA.

The U.S. Patent and Trademark Office has occupied 153,550 square feet of space in this building since 1963 for which $731,184.96 per annum in rent is currently charged by the owner. This space is part of a large Patent Office enclave in Crystal City, where the agency is consolidated.

General Services Administration proposes a 5-year renewal at an annual cost of $1,289,820 which includes all services.

FAMILY LIFE

● Mr. McGOVERN. Mr. President, a thoughtful and intriguing article appeared recently in the Washington Post. It addresses the role of the father in childrearing.

The man described in the article is trying to spend as much time as possible with his son, and oftentimes takes him on business trips. The arrangement works beautifully for both father and son.

This man has experienced the kindness and generosity of people in the business world who consider day care an important fact of life. Mr. Ken Fisher suggests that the business world begin to think in terms of day care: "Just as you plan your keynote speaker, your dinner, your conference location, you should plan for day care. We should think more about giving parents the opportunity to bring their kids along."

I feel it is important for both Government and business to begin to consider the effects its policies have on families. Hearings held in 1971 by the Subcommittee on Children and Youth, chaired then by Senator Mondale, concluded that "existing public policies do affect the health and well-being of families, both positively and negatively."

The family described in this article is benefiting from openminded people who understand what families need. We in Congress need to be as understanding and as aware of the impact our legislation has on family life.

I ask that this enlightening article be printed in the RECORD.

The article follows:

TRAVELING WITH HIS SON MAKES FATHER INVOLVED

(By Judy Mann)

Matthew Fischer is 4 years old. He has milked cows in California, played with goats in Florida, visited music camps in Michigan and New York, not skied ("the mountains were too big") in Colorado, toured the New England Aquarium and the Children's Museum in Boston.

Matthew goes on business trips with his father. Matthew's parents, Penny and Ken Fischer, both work. She is a flautist, studying for her doctorate in music at the University of Maryland, teaching 3 private students a week, traveling between three college campuses and a music school. Ken Fischer works for the Institute for Educational Leadership, a part of George Washington University, designing and managing conferences between public officials and educators. It is a job that takes him traveling across the country and in the past two years he has taken Matthew with him 15 times.

"It began as a necessity," Fischer says, "in 1975, when Penny wanted to go to a workshop in upstate New York. I had to do some traveling at the same time. It was an opportunity for her really to get into her music. I said, why not take Matthew with me?" Matthew was 21 months old.

"I did it once and found it worked. I've just been amazed by how things have been able to work out. It's been a very pleasurable thing from the beginning."

Ken and Penny Fischer are an attractive, friendly couple. Their son is what a 4-year-old boy should be: outgoing, a little devilish, a little shy. Very small. It is clear Matthew has been around strangers and is quickly at ease with them.

"We took him around right from the beginning," says Penny Fischer. "He grew up with lots of other people. A lot of kids wouldn't be comfortable with this arrangement. He felt comfortable with strangers."

Penny and Ken Fischer have been married for 12 years. They live in a house in Falls Church. The cushion on their living room sofa says I love You. For the first two years after Matthew was born they had what Penny Fischer calls a "more traditional" arrangement. She was primarily responsible for Matthew's care, frequently taking him to the University of Maryland where students would care for him. "But now Ken does more than I do. Everyone's sort of winning in this situation."

Last year Matthew commuted to Washington with his father, traveling by car, bus or subway downtown to the Foundry Methodist Church pre-school at 16th and P streets in the morning and returning home at night. "It gave Matthew and me another chance to spend an hour and a half together. Commuting time is quality time. You can talk. He met all kinds of people on the bus and the subway.

"Fathers are always getting criticized for not spending enough time with their kids. These are some things we can do," says Fischer.

"There is increasing interest on the part of fathers of young children to be part of their rearing," says Dr. Michael Lamb, a psychologist who has been studying young families for four years, initially at the University of Wisconsin and currently at the University of Michigan. "One of the ways it's manifested is how delighted they are to be considered by researchers. Another indication is the increase in the number of parenting books that are directed at fathers. Another index of the trend, I believe, is for more fathers to want custody. Courts are increasingly willing to grant custody to the father."

James A. Levine, author of "Who Will Raise the Children? New Options for Fathers (and Mothers)", agrees that more fathers are sharing child raising responsibilities with their wives. "They present new models which encourage other men who might have wanted to try it out to try it out."

"One of the things I'm trying to do now in the meetings I'm planning for the future is to think and to get my colleagues to think about day care," says Ken Fischer. "Just as you plan your keynote speaker, your dinner, your conference location, you should plan for day care. We should think more about giving parents the opportunity to bring their kids along."

On Matthew's first trip, to Northern Michigan, Ken Fischer said he called a contact who runs a college student center. "I said I'm bringing Matthew. I have business to take care of. I'd like to have child care." Fischer says he found students to care for his son. On other trips he has, again, called ahead and arranged for Matthew to stay with students or in day care centers near the conference while he has been working.

"There are a number of trips Matthew hasn't gone on. I ask myself do I want to bring him along? Is what I'm doing at the meeting so critical that he would be a distraction? Am I prepared for the meeting? If I'm going to have to work on the plane, that's robbing the kid of half the trip—the flight."

On a trip to Berkeley, Calif. Matthew stayed at a day care center while his father worked. "Matthew and I slept together, swam together every morning and evening. One night I went into the city and he stayed at the child care center. Another night, he went with me.

"If I'm going to a city where I don't know anybody, I try to be resourceful. I call church secretaries, deans of colleges. I find they just seem to know what's going on in their community, In the case of one dean, he interviewed prospective sitters."

Don't people find this an imposition? They not only felt it wasn't an imposition, they found it a neat idea and they wanted to help.

"Every major city's going to have colleges, churches and synagogues. Women's centers are popping up all over. If women can call them to find out about day care, why not have men call and say what can I do with my kids?"

Matthew rode in a backpack until he was 2½ "because I had a lot of luggage to carry." Fischer found he was best off ignoring airlines advice to sit in the front, behind the bulkhead of the plane. "I say make reservations as far back in the plane as possible where you are near the lavatories, near the galley where the food is served first and near the flight attendants. There is space for changing diapers or for the child to play around. If the child cries and you're in the front, attention is focused on the parent, who just wishes the child would shut up. If you're in the back you're near the engine, there's lots of noise, you have space to play. You can have a great time."

"People really want to help a man with a child," says Penny Fischer who has also travelled with Matthew and sees the difference. "If you're a mother with a baby, forget it. The businessmen get up and move away from you. But a man has an advantage. There's a maternal reaction.

"There's the assumption," says Ken Fischer, "that seeing a man with a child he somehow needs help, that somehow he can't handle this situation. I must say, I take advantage of it."●

ACTION TO REDRESS A REGRETTABLE INCIDENT

● Mr. CRANSTON. Mr. President, recently there has been considerable discussion of the unauthorized distribution of cartoons maligning the Catholic Church by an employee of a Planned Parenthood affiliate.

This was indeed a most regrettable incident.

At that time, Planned Parenthood moved quickly to repudiate the material, reprimand the employee concerned, and took steps to see that such an action would not occur again.

I believe it would be useful to clarify the circumstances under which those cartoons were distributed, and the subsequent actions taken by Planned Parenthood and other affected parties with respect to the incident.

Mr. President, I ask that there be printed in the RECORD a letter distributed by Planned Parenthood to all Members of Congress explaining the circumstances under which the unauthorized distribution of the cartoons was made to a small select group, my correspondence with Planned Parenthood, the Department of Health, Education, and Welfare, the National Committee of Catholic Laymen, and replies from those organizations, as well as letters between those organizations, and the new directive circulated by Planned Parenthood governing dissemination and publication of materials.

The material follows:

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.,

May 19, 1978.

DEAR MEMBER OF CONGRESS: It has come to our attention that a letter has been sent to you and other members of Congress by Rep. Robert K. Dornan, in which some very serious allegations are made about our organization. I would like to take this opportunity to set forth the record and explain the situation in detail.

The incident related to you by Rep. Dornan began late last year with the creation, by an individual employee in one of Planned Parenthood's 191 affiliates, in Denver, Colorado, of a set of satirical cartoons on the abortion issue. The cartoons—one of which featured the Secretary of Health, Education and Welfare, and another, the hierarchy of the Roman Catholic Church—clearly went far beyond the bounds of good taste. The author was advised of this by several other Planned Parenthood employees in other parts of the country to whom the cartoons were sent for comment, and it seemed that the idea had been rejected as it deserved. Then, just a few weeks ago an employee in our Chicago affiliate, seeing the cartoons for the first time, decided to circulate them on her own initiative to the editors of some college newspapers in several states. The matter later became the basis of an editorial column in the Chicago Tribune, May 1, which first brought the matter to national attention.

Since then, the Board of Directors of our Chicago affiliate has publicly repudiated the cartoons and the philosophy underlying them, and its counterpart in Denver has both repudiated the cartoons and severely reprimanded the individual who was responsible for them. Moreover, the employee concerned has been directed to submit all proposed public information materials in future to the Board for review prior even to informal distribution to others.

In addition, I have expressed my personal apologies, in writing, both to DHEW Secretary Joseph A. Califano and to Archbishop John R. Quinn, President of the National Conference of Catholic Bishops, and have released these letters, along with a news release, to religious newspapers and magazines. Copies of my letters and press statement are enclosed for your information.

Just prior to this incident, it also came to our attention that an educational comic book on the subject of abortion, the content of which had been reviewed favorably in a national Planned Parenthood newsletter, had on its back cover a highly irreverent cartoon depicting the Virgin Mary. The booklet, entitled "Abortion Eve," was published in 1973 by a group in California unrelated to Planned Parenthood. When we were alerted, by individuals within Planned Parenthood, to the highly offensive back cover, we prepared a statement which repudiated the booklet and called on all organizations involved in the reproductive health field "to confine their public messages within the bounds of decency and respect both for truth and for the religious and other sensitivities of their aud'ence."

We profoundly regret these two incidents. Although occasional lapses of judgment on the part of individuals are inevitable in an organization as large and decentralized as ours, they are totally at odds with our official policies and normal practices—as well as with the spirit of trust we have painstakingly sought to build over the years with public agencies, religious groups and other community organizations with which we have worked. The high respect in which we hold the personal views and consciences of those with whom we may disagree, on certain issues is the basis and cornerstone of our efforts, and any action or sentiments which undercut that respect have no place in those efforts. On behalf of the Planned Parenthood Board of Directors, staff, volunteers and our more than one million clients across the country, I pledge to you that I will take every precaution to see that such incidents do not happen again.

Planned Parenthood Federation of America is the nation's oldest and largest voluntary family planning organization, founded more than 60 years ago. We have been at the forefront of many social debates in the past and are therefore accustomed to criticism and sometimes false and serious accusations. It is our normal practice to ignore such accusations, despite the fact that in recent months, as you may be aware, there has been what appears to be an organized national effort to discredit our good name. We have preferred to let our record of community service stand on its own. We point this out, not to weaken the force of our apology for those two unfortunate incidents, which is unqualified, but because recent experience suggests that there may be occasions in the future when attempts may be made to discredit Planned Parenthood with unfounded charges—and even threats to our ability to deliver services—some of which may come to your attention. If they do, we would appreciate it very much if you would let us know of them, so that we may take appropriate action. In the meantime, I hope that you will take a look at the enclosed documents including our 1976 annual report which will tell you more about who we are and our record of accomplishments.

Sincerely yours,

FAYE WATTLEMAN,
President.

FACTS ABOUT PLANNED PARENTHOOD FEDERATION OF AMERICA

We are the nation's largest non-profit voluntary health agency providing medical services to individuals, and among the top ten in terms of financial support from individuals and private sources.

A Federation of 191 independently chartered affiliates in 43 states and the District of Columbia, each of which is governed by elected volunteer boards representing the communities they serve.

Over 60 years old. Two former U.S. presidents (Truman and Eisenhower) have served on our Honorary Sponsors Council.

We believe that family planning is a profoundly moral responsibility for all couples, essential to the dignity of individuals, the stability of the family, and the health and well-being of children.

We affirm the right of individuals to follow their own consciences in reproductive matters, as guided by their religious and ethical beliefs and by the families and communities of which they are a part.

We offer medically-supervised family planning services to an estimated 1,100,000 persons each year in more than 700 clinics around the country. Approximately 95 percent of our clients come to us for contraceptive services which include screening for such conditions as venereal disease, sickle cell anemia, and breast and cervical cancer. The remainder come for pregnancy counseling and help with abortion, prenatal care or adoption or for infertility therapy.

Education and training in family planning in communities around the country;

Information to community leaders about the needs of the family planning field.

U.S. headquarters revenues for domestic programs of $6.4 million (1976) were derived from private contributions and other income (58%); government grants and contracts for special projects (22%); and income from our own affiliates (20%).

Local community revenues of $76.2 million (1976) were derived from government grants mostly channeled through state and local health and welfare agencies, and reimbursements for contraceptive and educational services provided to poor women (53%); clinic fees from those who can afford to pay (26%); and private contributions (21%).

PLANNED PARENTHOOD REPUDIATES CONTROVERSIAL CARTOONS

NEW YORK, May 10.—The top official of the Planned Parenthood Federation of America has issued a strong denunciation of a series of editorial cartoons disrespectful of various governmental and religious institutions which were recently found to have been circulated by its Chicago affiliate. PPFA President, Faye Wattleton offered unqualified apologies for the incidents both to the U.S. Secretary of Health, Education, and Welfare, and to the President of the National Conference of Catholic Bishops.

In similar letters to Secretary Joseph A. Califano and Archbishop John R. Quinn, of San Francisco, both dated May 5, Ms. Wattleton noted that "a set of cartoons dealing editorially with the abortion issue has been circulated in the Chicago area by the local Planned Parenthood Association", and expressed her "profound apologies, both official and personal, for any embarrassment that may have been caused by this inappropriate and irresponsible action." She noted that the action was "totally at odds with the official policies and normal practices of Planned Parenthood", and said she wished to "repudiate both the actions themselves and the philosophies and the feelings they may reflect." She noted that both in Chicago, where the cartoons were distributed, and in Denver, where they originated, equally strong repudiations had been expressed by the boards of directors of the Federation's local, semi-autonomous affiliates at there unauthorized actions. In Denver, she said, the staff member responsible has been "severely reprimanded"; in Chicago, the staff member responsible is no longer employed with the agency.

Planned Parenthood Federation of America is the national, voluntary family planning organization whose community-based affiliates in 43 states and the District of Columbia provided medically-supervised family planning services to more than 1.1 million clients in 1977.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 11, 1978.

DEAR COLLEAGUE: Recently I brought to your attention the Congressional Quarterly "asterisk" next to the names of Catholic House Members listed in the tally of each vote on the Hyde Amendment (February 4 issue). The only good comment which can be made about that incident is that it was not funded by taxpayers' money.

I think that we can all agree, however, that that kind of prejudice has no place in the public forum and, above all, should never be underwritten by the Federal Government. Yet it annoys me to report that this is exactly what is being done in a more insidious way. Moreover, those who are spreading blatant anti-Catholic prejudice are at this moment petitioning for even larger public tax support under Title X of the Comprehensive Family Planning Services Act which the Congress will soon consider during the authorization process.

These are harsh accusations but well-founded. Attached you will find a column by Joan Beck which appeared in the Chicago Tribune early this month. It shocked me, as I am sure it will you, to learn that some chapters of Planned Parenthood, an organization that derives substantial amounts of its funding from the Federal Treasury has adopted shabby tactics in attempting to gain adherents.

Legislators should think twice before helping to propagate anti-Catholic prejudice. Especially in the wake of the frightening television reminder of the nightmarish toll of bigotry run wild, the superb 4 day series "Holocaust".

There are far reaching implications to the accusations included in this column which should be investigated before we in the House of Representatives unquestioningly vote further public funding of tax dollars.

Sincerely,

ROBERT K. DORNAN.

[From the Chicago Tribune, May 1, 1978]

A TASTELESS ANTI-CHURCH TIRADE—WITH TAX SUPPORT

(By Joan Beck)

The cartoon comes as part of an ugly package sent to editors of college newspapers and others who are invited to publish it freely. The six-panel strip shows an official-looking seal of the Department of Health, Education and Welfare. The words, presumably spoken by HEW secretary Joseph A. Califano Jr., read:

"I was raised in a very devout family. So was my wife. Of course we have a very religious home and accept the teachings of the church about birth control and abortion. When we had all the children we felt we should, my wife and I talked it over. She chose total abstinence for the rest of her fertile years. I respect her choice.

"Of course my mistress feels differently about it."

Another of the half-dozen cartoons pictures a Catholic bishop holding matches and a can of gasoline. Slyly he says the church is not worried about abortion because "we've got the faithful out burning down the clinics."

The package also contains blatant and nasty anti-Catholic and anti-religion blasts editors are urged to use as "background materials for your editorials."

What surprises is the source of the package. Newspaper columnists and editors are accustomed to getting ugly, inflammatory material on abortion from both supporters and opponents. But these cartoons and editorial copy come from the Planned Parenthood Association/Chicago Area with a cover letter signed by its public education director.

With the bishop cartoon, for example, additional copy reads. "Yes, they're burning down the clinics. In Minnesota. In Ohio. In Vermont. Fanatics, stirred into activity by the bombast of 'churchmen' are running about with matches. Why?

"Because some people, some religious and semi-religious groups dominated by elderly men, simply cannot deal rationally with sex. They can't talk about it rationally, can't think about it rationally, and above all can't give up the power which controlling other people gives them. They control other people through sex.

"What groups? The Roman Catholic Church . . . the Mormon Church . . . certain fundamentalist churches. . . . All of these groups control people through controlling their sexual activity. . . . They want to force their beliefs on you and they are very likely to succeed."

The cartoons and copy were originally produced by Planned Parenthood of the Rocky Mountains, in Denver, and circulated within that group and other chapters of the Planned Parenthood Federation of America.

Planned Parenthood groups get extensive funding from HEW—some of the money directly and other sums from state pass-through organizations. About 25 per cent of the groups also participate in United Way and similar fund-raising organizations.

It's disturbing that an organization getting federal tax money would push such crude anti-religious views under its letterhead. And it's foolish for one dependent on public contributions to let such hatred seep out under its name.

Queries to Planned Parenthood/Chicago first brought a defense of the package [it was time "to take the offensive against the Catholic Church in desperation because of its severe and sustained attacks on Planned Parenthood," and Califano's view on abortion justified the snideness against him.]

A spokesman for Planned Parenthood Federation of America agreed the material is tasteless, unfortunate, and offensive, but pleaded local jurisdiction. Finally, the Chicago chapter issued a statement repudiating the cartoons and saying they do not represent either the Chicago or national organization.

Abortion is an excruciating issue, a national trauma that must be resolved in science and in sorrow—not in a fury of religious bigotry and hate. Americans have a constitutional right to views based on religion and opposition to abortion is no more solely a Catholic stance than is agreement with "Thou shalt not kill" in other contexts.

It will be difficult enough to settle the abortion dilemma without the complication of irrelevant passions. But our national nerves are already rubbed so raw we must try—especially those, like Planned Parenthood, who are already committed to a publicly-funded position.

U.S. SENATE,
Washington, D.C., June 7, 1978.

MS. FAYE WATTLETON,
President, Planned Parenthood—World Population, 810 Seventh Avenue, New York, N.Y.

DEAR MS. WATTLETON: I was deeply shocked at the irresponsible action taken by employees of Planned Parenthood in encouraging the publication of materials attacking the

Catholic Church and so shamefully insulting the character of a public official.

Such actions severely threaten Congressional efforts to ensure that voluntary family planning services are available to all those individuals who want them but either cannot afford them or lack ready access to them. It is indeed regrettable that an association will be made between Federal support of voluntary family planning programs and the distribution of this scurrilous material.

In a notice circulated to all members of Congress, you indicated that the individual who authored the cartoons has been severely reprimanded and that the employee has been directed to submit all proposed public information to the Board of Directors of the Denver affiliate for review prior to any distribution, including informal distribution, to others. That notice also indicates that the staff member in Chicago responsible for circulating the materials to editors of college newspapers is no longer employed with the agency, although it is not clear whether the termination of employment was related to the extremely poor taste shown by the employee in distributing the material.

I would very much appreciate it if you would be willing to share with me a copy of the reprimand which was given to the employee in Denver, with the identity of the employee appropriately protected and advise me why stronger measures than a reprimand were not taken. Please also advise me if the Chicago employee's termination of employment was related to this incident.

I would also appreciate your advising me what steps you are taking to prevent a repetition of this most disgraceful episode by an affiliate of your organization. Enclosed for your information is a copy of a letter I have written to HEW Under Secretary Champion on this situation.

Sincerely,

ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development.

U.S. SENATE,
Washington, D.C., June 6, 1978.

Hon. HALE CHAMPION,
Under Secretary of Health, Education, and Welfare, Washington, D.C.

DEAR HALE: Attached is a letter I received from Mr. Michael Schwartz, Associate Executive Director of the Catholic League for Religious and Civil Rights, protesting the regrettable distribution by an affiliate of Planned Parenthood of cartoons maligning the Catholic Church and Secretary Califano.

Mr. Schwartz asks, among other questions, if public funds were used to pay for the production and distribution of these cartoons, and if any Federal regulations were violated. I'm confident no Federal regulations would sanction distribution of materials of this caliber, but would appreciate your checking to determine if indeed any Federal funds were involved in this public information activity. If it should be found that Federal funds were involved, what steps have been taken by HEW with respect to the recipients of Federal funds, and what steps can be taken by HEW to remedy this unfortunate incident? Also, please advise me of what steps were taken by Planned Parenthood to discipline those responsible.

I'm sure you were as shocked as I was at the extremely poor taste evidenced by the distribution of these materials. In my judgment, this action constitutes an inexcusable breach of public trust which must be dealt with by all concerned in the most direct, immediate, and definitive way consistent with individual rights.

As you know, S. 2522, the proposed "Voluntary Family Planning Services, Population Research, and Sudden Infant Death Syndrome Amendments of 1978", has been favorably reported by the Human Resources Committee and is now pending on the Senate calendar. I look forward to your most immediate response to this letter and the matters raised by Mr. Schwartz.

With best wishes,

Cordially,

ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development.

CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS,
Milwaukee, Wis., May 22, 1978.

DEAR SENATOR: The enclosed cartoons were widely distributed last month by the Planned Parenthood Association/Chicago Area, along with highly inflammatory textual material accusing Catholics and other religious groups of violent and illegal behavior.

I hope that you will examine them carefully and consider some of the questions they raise about the propriety of a federally-funded agency producing anti-religious propaganda and invading the privacy and defaming the character of a high government official.

Rocky Mountain Planned Parenthood, where the cartoons allegedly originated, received $420,000 in HEW Title X funds in 1976. Planned Parenthood Association/Chicago Area, which distributed the cartoons for publication, has received $763,000 in grants from the U.S. Agency for International Development, as well as a major share of the $2,976,000 in HEW Title X funds that went through the Illinois Family Planning Council. These grants represent just a portion of the federal funding each of these agencies receives annually.

We call upon Congress to investigate this situation and to seek answers to the following questions. First, whether public funds were used to pay for the production and distribution of these cartoons. Second, whether any Federal laws or regulations have been violated by this incident. Third, whether any public purpose has been served by this defamation of individuals and religious bodies. And fourth, whether an agency which engages in such tactics ought to continue to receive federal funding.

We deeply appreciate your attention and cooperation in this matter.

Sincerely,

MICHAEL SCHWARTZ,
Associate Executive Director.

U.S. SENATE,
Washington, D.C., June 6, 1978.

Mr. MICHAEL SCHWARTZ,
Associate Executive Director, Catholic League for Religious and Civil Rights, Milwaukee, Wis.

DEAR MR. SCHWARTZ: I can well understand your outrage at the cartoons which were distributed by the Planned Parenthood Affiliate in the Chicago area. I share your dismay and indignation.

These cartoons and the employees responsible for them have been publicly repudiated by the Planned Parenthood Association. It is indeed most unfortunate that any affiliate of this association would have permitted the circulation of this material.

I have expressed my extreme unhappiness at this regrettable incident to the Under Secretary of Health, Education, and Welfare, and to the Planned Parenthood Association and asked them to take steps immediately to deal with those responsible and to ensure that such an incident cannot occur again.

I have also forwarded your letter to H.E.W. asking that agency to ascertain whether any public funds were used to pay for the production and distribution of the material. Enclosed is a copy of my letter. When that agency responds, I will be back in touch with you.

With best wishes.

Sincerely,

ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development.

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.,
New York, N.Y., June 22, 1978.

Hon. ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development, U.S. Senate, Washington, D.C.

DEAR SENATOR CRANSTON: This is to acknowledge with thanks your letter of June 6, requesting further information on the profoundly regrettable incident involving preparation and some distribution of a set of highly offensive cartoons dealing with the subject of abortion.

As I indicated in my previous letter to members of the Congress, we are extremely distressed at this incident and are taking immediate steps to forestall the occurrence of any such incidents in the future. Some of these, including the formal reprimand of our executive director in Colorado and the repudiation of the materials by the Boards of Directors in both Denver, where the cartoons originated, and Chicago, where they were distributed, have already been taken. Others, including the development of guidelines to govern what is written and spoken by persons associated with Planned Parenthood, and review mechanisms for Planned Parenthood publications, are at present under development.

Given the gravity of the offenses and the urgent need for public assurances that such publications and ways of thinking have no place in the Planned Parenthood Federation, I look forward to meeting with you and I have asked our Washington Office to set up an appointment with you. I hope that we can discuss the events around the current situation; and what specifically we have done to rectify the situation; and what we are planning to do in the future to forestall further occurrences of this nature. It would also be most helpful for us to have the opportunity to seek your counsel on certain specific aspects of the procedures we plan to establish.

Our Washington Office will be calling on you to see what date might be convenient for an appointment to discuss this matter. In the meantime, let me restate my profound distress that such actions should ever have been taken under the name of Planned Parenthood, and our vigorous intention to see that they do not happen again.

Many thanks for your kind attention.

Sincerely yours,

FAYE WATTLETON,
President.

HEADQUARTERS OF PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.,
New York, N.Y., July 24, 1978.

Senator ALAN CRANSTON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR CRANSTON: Thank you for the time you gave us on the 17th of July to discuss the unfortunate situation which led to our May 5th letter of apology to Secretary Califano. As you know, on the same date, we also made a public apology to the National Conference of Catholic Bishops, whose General Secretary graciously accepted it in a letter dated May 17th (a copy enclosed).

There seems little need to restate the facts which were contained in our earlier communications. But certain points which were mentioned at the meeting are probably worth summarizing:

The Denver director who drafted and originally circulated the cartoons internally within the organization has been severely reprimanded by her board. The Chicago staff members who subsequently forwarded the cartoons to the press are beyond the disciplinary reach of the affiliate as they had submitted their resignations prior to their unapproved initiative. However, a national headquarters staff person who had displayed

similar lack of judgment is no longer employed by us.

With the Chairperson of the National Board, I have journeyed personally to the two affiliates involved to discuss the matter with their boards and to assist them in devising stricter controls on the review of materials issued locally. Similarly, a review of publications and other educational materials prepared or circulated by the national organization itself has been initiated.

We are also in the process of developing guidelines for our national and local communications around sensitive and controversial issues of public policy. Of course, a central principle to be emphasized in this document is an absolute prohibition, regardless of circumstances, against even the appearance of bias vis-a-vis any religious, national, or ethical group.

Finally, while we would condemn the use of any funds, private or public, for inappropriate or offensive materials such as the ones at issue here, we believe we have a special responsibility for the stewardship of public funds. We are therefore very concerned by charges made in the press and elsewhere that federal funds may have been used to prepare and/or circulate the offending cartons. We have reviewed this matter with the two affiliates involved. Rocky Mountain Planned Parenthood (Denver) has an annual budget of $1.9 million of which $404,000 were federal grant funds. We are convinced that the expenditure connected with the cartoons which were mailed to some 25 persons are not only minimal but cannot be attributed to any federal grant(s). As far as Planned Parenthood of Chicago is concerned, its annual budget is approximately $1.4 million which includes $324,000 in federal grant funds. Again, the cost of mailing the cartoons to 125 student newspapers would have to be miniscule in relation to the overall budget of the agency. In any event, such an expense would be allocated to the budget of a department which is entirely supported by private funds. We hope that with these explanations, and the steps we have taken to prevent the occurrence of such incidents in the future, the matter will be considered closed.

I also want at this time to take the opportunity to express my own and my organization's appreciation of your fine and invaluable support over the years for family planning programs and much needed research in human reproduction.

Sincerely,

FAYE WATTLETON,
President.

PLANNED PARENTHOOD-WORLD POPULATION,
New York, N.Y., May 5, 1978.

Hon. JOSEPH A. CALIFANO,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. SECRETARY: It has just come to our attention that a set of cartoons dealing editorially with the abortion issue has been circulated in the Chicago area by the local Planned Parenthood Association. Among the cartoons, which present satirical views of various aspects of the abortion debate and in different ways feature the Church, Congress, the military and other institutions, is one featuring the official seal of the Department of Health, Education, and Welfare and, by implication, the Secretary.

I want to take this early opportunity to express to you, as we are to others who may have been offended by this material, our profound apologies, both official and personal, for any embarrassment that may have been caused by this inappropriate and irresponsible action. Though I am sure you understand that such an action is totally at odds with the official policies and normal practices of Planned Parenthood, I am afraid that in an organization as complex and decentralized as ours there may be occasions—we hope very rare—when an individual associated with us shows a serious lapse of judgment of which we may not become aware until the action has been taken and the damage done. This is evidently what happened in this instance.

Material which originated with the Planned Parenthood affiliate in Denver, Colorado and was circulated informally among a few colleagues was subsequently released publicly by a staff member of our affiliate in Chicago. Though the material was never actually completed or published by those who originated it—and was in fact excoriated by most of those who reviewed it—the Board of Directors in Denver has repudiated the material; severely reprimanded the employee concerned; received an unqualified apology from that employee; and taken steps to see that such an action does not occur again. In Chicago, meanwhile, the staff member responsible for the material's release is no longer with the agency, but as in Denver the Directors have issued a formal repudiation of the material, and a statement that it is entirely inconsistent with Planned Parenthood's philosophy and operating style.

On behalf of our national headquarters, I wish now myself to repudiate both the actions themselves and the philosophies and feelings they may reflect. We are profoundly aware that behavior such as this is in direct violation of the trust we have painstakingly built over the years with public agencies, religious groups and other community organizations with whom we have worked. An important aspect of this trust has been the respect in which we hold the views and consciences of those with whom we work, and the implicit resolution that disagreement on any particular point of philosophy should never be reason for violating that respect or resorting to dishonorable tactics. Incidents such as the one at issue serve only to redouble our commitment to this principle.

Iho e you will be so gracious as to accept apologies, and our assurances that we shall do everything possible to prevent any future occurrences of this nature.

Sincerely yours,

FAYE WATTLETON,
President.

AUGUST 18, 1978.

Mrs. FAYE WATTLETON,
Planned Parenthood Federation of America, Inc., New York, N.Y.

DEAR MRS. WATTLETON: Thank you for your letter which extended apologies on behalf of the Planned Parenthood Federation of America for the series of cartoons dealing with abortion which circulated in the Chicago area.

Let me say at the outset that I share your deep concern over the events leading to the publication of these ill-advised cartoons. It is most regrettable that such an incident occurred and while it is reassuring to know that Federal funds were not used, nevertheless, the publication of this material is most disturbing.

I appreciate receiving your explanation of this incident and your assurances that appropriate steps are being taken to prevent such an occurrence in the future. I am also pleased to learn that your public apology to the National Conference of Catholic Bishops was graciously accepted. Certainly this should put the matter to rest.

Sincerely,

JOSEPH A. CALIFANO, Jr.

PLANNED PARENTHOOD-WORLD POPULATION,
New York, N.Y., May 5, 1978.

Most Rev. JOHN R. QUINN,
President, National Conference of Catholic Bishops, Archdiocese of San Francisco, San Francisco, Calif.

YOUR EXCELLENCY: It has just come to our attention that a set of cartoons dealing editorially with the absortion issue has been circulated in the Chicago area by the local Planned Parenthood Association. Among the cartoons, which present satirical views of various aspects of the abortion debate and target various religious and governmental institutions, is one featuring an official of the Church.

I want to take this early opportunity to express to you, as we are to others who may have been offended by this material, our profound apologies, both official and personal, for any embarrassment that may have been caused by this inappropriate and irresponsible action. Though I am sure you understand that such an action is totally at odds with the official policies and normal practices of Planned Parenthood, I am afraid that in an organization as complex and decentralized as ours there may be occasions—we hope very rare—when an individual associated with us shows a serious lapse of judgment of which we may not become aware until the action has been taken and the damage done. This is evidently what happened in this instance.

Material which originated with the Planned Parenthood affiliate in Denver, Colorado and was circulated informally among a few colleagues was subsequently released publicly by a staff member of our affiliate in Chicago. Though the material was never actually completed or published by those who originated it—and was in fact excoriated by most of those who viewed it—the Board of Directors in Denver has repudiated the material; severely reprimanded the employee concerned; received an unqualified apology from that employee; and taken steps to see that such an action does not occur again. In Chicago, meanwhile, the staff member responsible for the material's release is no longer with the agency, but as in Denver the Directors have issued a formal repudiation of the material, and a statement that it is entirely inconsistent with Planned Parenthood's philosophy and operating style.

On behalf of our national headquarters, I wish now myself to repudiate both the actions themselves and the philosophies and feelings they may reflect. We are profoundly aware that behavior such as this is in direct violation of the trust we have painstakingly built over the years with public agencies, religious groups and other community organizations with whom we have worked. An important aspect of this trust has been the respect in which we hold the views and consciences of those with whom we work, and the implicit resolution that disagreement on any particular point of philosophy should never be reason for violating that respect or resorting to dishonorable tactics. Incidents such as the one at issue serve only to redouble our commitment to this principle.

I hope you will be so gracious as to accept these apologies, and our assurances that we shall do everything possible to prevent any future occurrences of this nature.

Sincerely yours,

FAYE WATTLETON,
President.

NATIONAL CONFERENCE OF CATHOLIC BISHOPS,
Washington, D.C., May 17, 1978.

Ms. FAYE WATTLETON,
President, Planned Parenthood-World Population, 810 Seventh Avenue, New York, N.Y.

DEAR MS. WATTLETON: I am writing on behalf of Archbishop Quinn to acknowledge your letter of May 5th, and thank you for its explanation of the recent regrettable incident.

The National Conference of Catholic Bishops and United States Catholic Conference are deeply concerned about the growing incidence of anti-Catholicism in the context of the abortion controversy. Occurrences such as this can only exacerbate the situation.

We are pleased, therefore, to learn that Planned Parenthood will work to discourage religious bias of any kind in the future.

With every good wish, I am

Sincerely yours,

THOMAS C. KELLY, O.P.,
General Secretary.

COMMITTEE ON HUMAN RESOURCES,
Washington, D.C., June 6, 1978.

Mr. J. P. MCFADDEN,
Chairman, The National Committee of Catholic Laymen, New York, N.Y.

DEAR MR. MCFADDEN: I can well understand your outrage at the cartoons which were distributed by the Planned Parenthood Affiliate in the Chicago area. I share your dismay and indignation.

These cartoons and the employees responsible for them have been publicly repudiated by the Planned Parenthood Association. It is indeed most unfortunate that any affiliate of this association would have permitted the circulation of this material.

I have expressed my extreme unhappiness at this regrettable incident to the Under Secretary of Health, Education, and Welfare, and to the Planned Parenthood Association and asked them to take steps immediately to deal with those responsible and to ensure that such an incident cannot occur again.

Enclosed are copies of those letters for your information.

With best wishes,

Sincerely,

ALAN CRANSTON,
Chairman, Subcommittee on Child and Human Development.

THE NATIONAL COMMITTEE
OF CATHOLIC LAYMEN,
New York, N.Y., June 16, 1978.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CRANSTON: Believe me, I thank you heartily for your letter of June 6: it is far and away the most impressive letter I have ever received from anyone in the Congress. I am also impressed by your obvious and strong interest in the matter involved. I am thereby emboldened to send along a few other items that might also interest you. Knowing how busy you are, I will merely note briefly what I have enclosed:

Exhibit A: some copies of the *Abortion Eve* "comic book" Miss Wattleton says a Planned Parenthood newsletter praised

B: that newsletter and "review," plus a listing showing that HEW also offers the booklet

C: an indication of just how *much* US AID money goes to the Chicago/PP group

D: some additional relevant "art" guaranteed, in my judgment, to offend a great many people—and by no means Roman Catholics only

E: some examples of the way PP "handles" the undeniable health hazards of the pill

F: How the drug companies—after full-color come-hither ads to the doctors (the ad pages are clipped from the current issue of the trade magazine *Private Practice*) describe, in very fine print, what PP blatantly disregards

G: an anti-abortion newsletter's treatment of the current controversy; while it makes no attempt to be anything but partisan, I believe that it *does* make a very strong point (which my illustrations support): "bad taste" is endemic at PP

I can well understand that I may be supplying more than anyone really wants to know about such disagreeable subjects, but I had it all handy, and thought at least some of it might prove useful to you.

Finally, I enclose a copy of our own latest publication, which I hope you (or someone on your staff) may also find of interest.

Again, I thank you for your good letter.

Sincerely,

J. P. MCFADDEN,
Chairman.

COMMITTEE ON HUMAN RESOURCES,
Washington, D.C., July 24, 1978.

Mr. J. P. MCFADDEN,
Chairman, The National Committee of Catholic Laymen, New York, N.Y.

DEAR MR. MCFADDEN: Thank you so much for your letter and the enclosures. The development of informational materials on family planning methods suitable for adolescents is a difficult process. The information should meet standards of good taste and accuracy and be presented in a way that will interest and be understandable to very young adolescents.

It is unfortunate that some of the examples, enclosed in your letter, of efforts to reach these young people may have failed to meet those standards.

I have forwarded your letter with its enclosures to Planned Parenthood for their response.

With best wishes and many thanks for your very kind remarks.

Sincerely,

ALAN CRANSTON.

COMMITTEE ON HUMAN RESOURCES,
Washington, D.C., July 24, 1978.

Ms. FAYE WATTLETON,
President, Planned Parenthood—World Population, 810 Seventh Avenue, New York, N.Y.

DEAR FAYE: Mr. J. P. McFadden, Chairman of the National Committee of Catholic Laymen, has sent me the enclosed letter and accompanying materials. I would appreciate your comments on the statements made in his letter.

With best wishes,

Cordially,

ALAN CRANSTON.

Enclosures.

PLANNED PARENTHOOD-WORLD
POPULATION,
New York, N.Y., August 8, 1978.

Hon. ALAN CRANSTON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR CRANSTON: We have received your letter of July 24 enclosing a June 16 letter and asking for our comments on the charges made by J. P. McFadden, Chairman of the National Committee on Catholic Laymen.

At our recent meeting, we presented to you both the facts surrounding the circulation of the cartoons which were the subject of your letter of June 6 and the inappropriate review given "Abortion Eve" by a former staff member of our organization. We also discussed our public apology in regard to both incidents, the disciplinary personnel actions taken at the affiliate and national levels, and the measures under way to prevent such unfortunate lapses of taste and judgment in the future. In this context, you may be interested in a memorandum, "Communications Guidelines: What We Say and How We Say It," intended for use in the preparation of our own publications and our review of materials prepared by other organizations and outlining the values which must be emphasized in our programs and publications and our responsibilities towards our patients, the community at large and the government.

Mr. McFadden's letter, besides the material referred to above, referred to and enclosed a series of cartoons with which I and others in our organization were totally unfamiliar, but which undeniably mentioned Planned Parenthood by name. Regardless of "authorship" I would concur with their characterization by Mr. McFadden as offensive (as they deal with religious matters) and misleading as they deal with birth control methods. In regard to authorship, however, the drawings were eventually traced to the University of Chicago which uses the symbolic triangle which appeared in each of the cartoons next to "Planned Parenthood" in its communications programs. They are apparently part of "Relevant Posters for Family Planning" produced by the Communications Laboratory of the University's Community and Family Study Center. The authors are listed as Björn Berndtson, Donald J. Bogue and George McVicker.

While "Planned Parenthood" is used by many people interchangeably with "birth planning" or "family planning" to denote a goal, concept or even a service, it is also the legally protected name of a national agency and its local affiliates. Its unauthorized use is impermissible and, in this case, unforgivable. Our staff counsel has notified the Community and Family Study Center and the authors that they must immediately cease distribution of the book as well as any other use of the Federation's registered service mark (copy of letter enclosed) and we are considering other legally appropriate steps.

We welcome having this kind of incident called to our attention so that we may be able to protect our agency's good name and its integrity and therefore appreciate your sharing Mr. McFadden's letter with us.

Sincerely,

FAYE WATTLETON,
President.

PLANNED PARENTHOOD-WORLD
POPULATION,
New York, N.Y., August 10, 1978.

COMMUNICATION & FAMILY STUDY CENTER and
Messrs. BJORN BERNDSTON, DONALD J.
BOGUE, and GEORGE MCVICKER,
University of Chicago,
Chicago, Ill.

GENTLEMEN: I am Director of Legal Services for the Planned Parenthood Federation of America, Inc. Our attention has just been called to "Relevant Posters for Family Planning" which appears to be Media Monograph 4 copyrighted and published by the Community & Family Study Center of the University of Chicago. The authors are listed as Bjorn Berndtson, Donald J. Bogue and George McVicker.

"Relevant Posters for Family Planning" contains numerous drawings which include the words "Planned Parenthood". These words constitute a service mark of the Planned Parenthood Federation of America, Inc., registered in the United States Patent Office. You are, of course, in no way affiliated with the Planned Parenthood Federation, nor have you been granted permission to use the words "Planned Parenthood" in any context whatever. Your use of the words in the drawings and the book in question are in clear derogation of the rights of Planned Parenthood Federation of America, Inc. and have resulted in harm for which we shall look to you for full reimbursement.

We ask that you immediately cease distribution of this book and any and all use of the words "Planned Parenthood" and that you give us immediate written assurance that no further use will be made of the Federation's service mark.

Please let us know whether you have circulated any written or published material in addition to "Relevant Posters in Family Planning" and please advise us as to any other use you may have made of the mark.

We would appreciate an immediate response to this letter and hope that this matter may be amicably settled without the necessity of more formal action.

This letter is, of course, written without

prejudice to any of the Federation's rights in the premises.

Very truly yours,

EVE W. PAUL,
Director of Legal Services.

MEMORANDUM

To: National Board of Directors, PPFA Department Heads, Regional Directors, Executive and Chapter Directors, State Public Affairs Directors.

From: Faye Wattleton, President, Planned Parenthood Federation of America.

Date: July 25, 1978.

Re: Communications Guidelines: What we say and how we say it.

Recent incidents involving publication and/or distribution under Planned Parenthood's name of material which included some extremely offensive references to specific individuals, groups and religious symbols have highlighted the importance of paying special attention to what we say and how we say it. This is especially important for the printed publications and audiovisual materials we produce and use.

Guarding against such errors has always been, and must continue to be, a matter of the highest concern for an organization such as ours which prides itself on a reputation for an operating style characterized by respect for, and sensitivity to, the personal views of other people. What has changed over the past few years has been the emergence of a campaign, led by segments of the "anti-choice" movement, to discredit Planned Parenthood by using our own materials against us.

The vast majority of such initiatives are baseless, ill-informed and often malicious. Many of you at the community level are already too familiar with the propagandistic exploitation that has been made of such publications as our 1976–80 Five-Year Plan, a 1971 Family Planning Perspectives article on population policy, and a number of responsible educational publications in the area of human sexuality. For these, we make no apology. But there have been a few, rare occasions when materials produced and distributed under our name have in fact seriously and gratuitously offended some individual or group. In guarding against the recurrence of such incidents, the following checklist of guidelines for Planned Parenthood's communications may help. You will note that the central themes in them are not new. In essence, they represent a reaffirmation of principles or behavior that are worthy of our traditions, our reputation and our cause.

I. PLANNED PARENTHOOD'S OWN PUBLICATIONS

Planned Parenthood's published statements should emphasize issues, rather than the people and organizations who hold them and promote them.

On abortion, for example, our mission is to secure acceptance of the principle that women of all economic and religious backgrounds should be truly free to make decisions in accordance with their own beliefs and consciences. Our principal focus should be on this issue—rather than upon organizations or individuals who may oppose us.

When in a specific instance there is reason to make an exception to this rule—that is, when references to people or groups are essential to our arguments—such references should be confined exclusively to the merits of their strategies. For example, references to the political (as distinct from spiritual) activities of the hierarchy of the Roman Catholic and other churches may be perfectly proper in a statement analyzing the politics of the abortion issue. Such references, where appropriate, should be framed with the utmost respect for accuracy, context and balance. Above all, they should not be said or written so that they could be interpreted either as:

Dishonoring any religious symbol or system of beliefs, or the persons who espouse such beliefs;

Dishonoring any religious, ethnic or social group, or to the individuals who make up such a group;

Personally insulting or libelous to a specific individual.

II. USING OTHER AGENCIES' PUBLICATIONS IN OUR OWN PROGRAMS

In reviewing the publications of other agencies for possible use in Planned Parenthood's own programs, the standards we apply should be as stringent as those we apply to our own publications.

Many of the printed and audiovisual items used in Planned Parenthood's programs are the work of others—university centers, commercial publishers, and community education groups. This is entirely proper for an organization that strives to give its clients the best that there is to offer from all available sources. The crucial question is what criteria and processes we use in the evaluation of such materials. The diversity of such materials is too broad to permit detailed treatment in a memorandum such as this. But a few general observations may help:

The principal criterion for the use or nonuse of a specific educational item in a Planned Parenthood program should be its appropriateness, *overall*, to the goals of the program and the needs of the audience. Where there is one potentially controversial section, responsibly handled—as, for example, in the case of one widely-used and highly-regarded film about human sexuality in which there appears one brief scene of sexual intercourse—the presence of such a section, if it is deemed essential to the message of the material, should not be considered sufficient reason for boycotting the material. However, when such a controversial section is neither essential to the purpose or spirit of the material, nor responsibly handled—as, for example, in the case of a recent publication on abortion, which featured a highly irreverent cartoon treatment of a religious symbol—then the inclusion of such a segment should certainly be reason for rejecting the material.

Responsibility for the selection of such materials should not be left to a single individual within an affiliate, or a department of the headquarters. It should be shared among qualified individuals who are broadly representative both of the community we serve, and of the discipline most directly involved in the activity at issue (e.g. doctors, educators, community information specialists).

III. "POSITIVE THINKING"

In all our communications programs, we must vigorously assert the relationship of our cause to such basic American values as the "stability of the family;" "morality;" "tolerance;" "compassion;" and "life."

Our recent setbacks in political and public arenas have been caused in part by our opposition's success in claiming some basic American values as its own, and by our own failure to promote or emphasize the central place of these values in our own philosophy and program. Among them:

"Family." Both in the ends we seek (giving tomorrow's adults a better opportunity for true choice about parenthood), and in the means we adopt (working closely with today's parents in the design of our school and community education activities) the Planned Parenthood program has a crucial role to play in the promotion of a stable, enriched family life.

"Morality." Moral concepts are the foundation of this organization's program. For various reasons—perhaps because we fear that morality seems to connote one person "telling" another what he or she should not do—we avoid reference to the moral component in our programs. Yet it is fundamental. Nothing in the spectrum of human behavior is more profoundly moral than the obligation of careful consideration and planning before bringing a new life into this world. Or the obligation of one human being to respect the wishes of another; and the obligation of private institutions and governments to respect the religious and personal values of individuals.

"Life." Family planning and responsible parenthood are direct reflections of a respect for life, and conditions of a setting in which life may flourish and prosper, both here and around the world. Our belief that the birthright of every child is a welcoming and loving home is profoundly "pro-life", by any reasonable definition. And I don't just mean "the quality of life;" I mean simply "life"—human life, in all its richness and complexity.

IV. PLANNED PARENTHOOD'S SPECIAL RESPONSIBILITIES

One question that has come up in different ways several times over the past several weeks is why, when our opposition has so often been willfully manipulative of the truth in its own writings about Planned Parenthood and pro-choice issues in general, do *we* have to be so careful and measured in our own writings and statements, and apologize when we err?

There are several reasons for this. The first and most important, is that we have an obligation to see that nothing we say or write is disrespectful of individuals or their beliefs, and this has nothing whatever to do with whether or not our opposition maintains similarly high standards. We march not to the drums of these people, but to those of our traditions and principles; to those of the many thousands of people who have over the years come to expect high standards of behavior from us; and to those of our more than one million clients.

There are other reasons, too, why Planned Parenthood needs especially strict standards for its own behavior. One is that our organization is fundamentally different from those who oppose us on reproductive issues. Unlike most anti-abortion groups, for example, we are:

A service organization. As such, our clients must come first, and nothing we say in our information programs must violate their needs, concerns, privacy or dignity. An organization whose whole purpose and activity is information is not bound by such constraints;

An organization whose principal strength is in its record of long and distinguished service to people, and breadth of support. Our reputation is in what we do and have done in hundreds of communities around the country; in what we do in our medical practice (more than 1.1 million clients per year); in what we know about family planning practice, about needs and services, about sex education, and a host of other issues; and in the caliber and range of our supporters, both the "inner circle" of support (membership of our boards, etc.) and the "outer circle" of favorable opinion in the community;

A recipient of public funds. Our position as an organization which receives large amounts of public money for expenditure on important medical services for people makes us much more visible, and in a sense vulnerable, than organizations which do not have the same direct link with government. A libellous publication from an anti-abortion organization is redressable only through the courts. A similar piece published by Planned Parenthood would be answerable not only in the courts, but in Congress and a much broader forum of public opinion.

Our objective in our own information strategy should not be to "match" the activities of anti-choice groups—however frustrating sometimes it may be to see distortions recurring in the "letters to the editor" of our local newspapers, and harassment of our contributors and our clients. We must begin instead to build on Planned Parenthood's real, and unique, basis of strength: our focus upon tolerance, compassion and reason as principles of social and public policy; our experience with medical and human service; our command of the science of the field; our public reputation as a legitimate health and educational agency; and the potential breadth of support for our positions among community and leadership groups, the religious community, and others.

V. LOCAL STATEMENTS ON NATIONAL ISSUES

One problem we encounter occasionally is the issuance by an affiliate of a statement on a public issue which conflicts with some previously-established national (PPFA) policy or position on the same issue. An example of this occurred recently when one affiliate issued a news release praising the Administration's "adolescent pregnancy initiative"—just days after our national headquarters had come out publicly against the bill in testimony before a Congressional Committee. Such actions can of course lead to embarassment or worse, and create an image of Planned Parenthood as a house divided.

We cannot afford this. For our part at National, we will do all we reasonably can to convey word of positions taken on public issues promptly to all affiliates, regions, state offices and the National Board. For affiliates in each local community, I urge that you check with us before issuing a statement on any national issue if you are in any doubt as to whether we have taken a position on that issue, or as to what that position may be.

* * * * *

I hope these observations are helpful to you all in your own community educational efforts. At the national level, I plan to put them into effect immediately, along with a mechanism for advance review of materials prior to publication. Apply them to your own situation as appropriate, and add to them as necessary. I would appreciate your sharing with me any thoughts you may have as to how they may be improved or strengthened. Above all, I ask you to see them not as constraints to promoting the visibility of our cause, but as prudent guides to a higher and more vigorous level of public visibility than we have ever had before.●

ADDRESS OF ERLE COCKE, JR., BEFORE THE 11th INTERNATIONAL MICROGRAPHICS CONGRESS

● Mr. TALMADGE. Mr. President, a distinguished fellow Georgian, Erle Cocke, Jr., in a thoughtful and perceptive speech before the 11th International Micrographics Congress in Johannesburg, South Africa, on September 20, offers some keen insights into current relations between that country and the United States. He also comments on the current U.S. political scene and the profound impact of the unprecedented number of voluntary retirements on the organization of the next Congress. Mr. Cocke is a past national commander of the American Legion and a partner in an international management consulting firm.

Mr. President, I ask that the text of Mr. Cocke's remarks be printed in the RECORD.

The remarks follow:

REMARKS OF ERLE COCKE, JR.

Mr. Chairman, distinguished delegates and and guests, ladies and gentlemen: It is heartwarming, so far from home, to be introduced so generously. Thank you very much.

I am pleased and honored by the invitation to be your luncheon speaker today. For many weeks I have looked forward to visiting this friendly and hospitable country, whose gracious people have made all of us feel very much at home.

Although this is my first visit to South Africa, it is not my first contact with South Africans. My first acquaintance occurred during World War II in Europe when I observed first hand—as did Winston Churchill a half century earlier—that South Africans are superb soldiers. In a sense I was more fortunate than Mr. Churchill in that they were on my side!

In recent years I have come to know well, to respect and greatly admire two able representatives in Washington of the Republic of South Africa—Ambassador Donald B. Sole and Mr. John H. Chettle, a private citizen who serves as Director for North and South America of the South Africa Foundation. In their difficult and demanding assignments, both have contributed significantly to better understanding between our two countries.

Earlier this week, during an audience with Foreign Minister Pik Botha accorded a small group of delegates to this Congress, I was pleased to tell Mr. Botha how effectively Ambassador Sole and Mr. Chettle are serving their country in Washington. I am sure their services are appreciated by their government and their fellow countrymen.

The observation has been made, not without a touch of irony, that the average "Tourist Americanus" requires a minimum of time—estimated at shortly under two weeks—to become an instant expert on the flora, fauna and domestic politics of any given country visited.

Since our residence in South Africa fell a day or two short of the required minimum, our delegation felt constrained not to advise the Foreign Minister on quick-fix solutions to the problems with which he is grappling these days.

However, I have the distinct impression that Mr. Botha does not feel deprived, in view of the unsolicited advice he is receiving these days from certain segments of Congress, our State Department—and particularly from our Ambassador to the United Nations. In all fairness, I should include among those volunteering counsel—however dubious its quality—to Foreign Minister Botha, a host of syndicated columnists and television commentators in the United States.

Even so, on occasion some of our columnists reveal some prescience. As an example, I cite James Reston of the New York Times, who in a column written three years ago made this sage observation: "It is a mistake to see the future in terms of the gloomy present."

For once, at least, Mr. Reston did not succumb to pessimism. Nor will I on this occasion. In my experience as a soldier and as a businessman and corporate counselor I have seen absolutely hopeless situations, even catastrophic defeat, turned to victory through sheer human will. The doom-savers will be with us always. But we do not have to heed them.

In my brief remarks, I will carefully adhere to Scotty Reston's admonition while avoiding any inclination—as a born optimist—to "gild the lily."

First, a comment about U.S.-South African relations.

It is an understatement to describe current relations between our two countries as "strained" and deteriorating. But I would point out that coolness set in several administrations before James Earl Carter—that is his name—was inaugurated as the 39th president of the United States. I attribute the worsening of relations primarily to electoral pressures—in our own country. You may well surmise the source.

I deplore this development, as do a vast majority of Americans. This is apparent to anyone who travels outside of Washington, New York or Boston.

There is a huge reservoir of goodwill toward South Africa throughout the United States. This fact is recognized by a number of prominent South Africans, including the current president of the South Africa Foundation, Mr. Basil E. Hersov.

In his inaugural address last March, Mr. Hersov, perceptively observed, and I quote: "The (Carter) Administration has not been able to impose its policy on an unresisting American public . . . The American people, despite the torrent of bad publicity to which South Africa has been subject, have retained their natural sense of proportion."

No less perceptive in this regard is Professor Dick Kunert, of the faculty of the University of Witwatersrand. Dr. Kunert, writing in a recent issue of the quarterly, South African International, had this to say: "A wide gulf separates the majority of Americans from the New Class of liberal verbalists who have infested federal and state bureaucracies, the middle echelon of the Executive branch, the foundations and research institutions, the communications media, the nationwide educational establishment, and the Democratic Party." Professor Kunert's pithy observation is especially significant since he is a graduate of Georgetown University in Washington, D.C. and knows the United States at first hand.

Most Americans will concede that—in our overly moralistic and highly evangelical zeal—we have gotten "carried away". In fact, we have begun—albeit selectively up to this point—to meddle in other countries' internal affairs. It is bad policy—and I think we ought to back off. Responsible diplomacy—of which we see little evidence on our part in Africa today—demands that we do so.

Even that paragon of the liberal Eastern press, The Washington Post, termed the Administration's Africa policy "grossly interventionist."

It is regrettable that we persistently ignore the wise counsel of some of our ablest diplomats and statesmen. More than a decade ago, the late Dean Acheson, former Secretary of State, cautioned against allowing "an excess of moral or ethical enthusiasm or idealism to shape the formulation of foreign policy." We ought not, he warned, "try to make the world over in the American image."

Today we appear to be still trying.

Former Undersecretary of State George W. Ball, now a Washington lawyer, more recently in a magazine article put the matter more bluntly.

"We should not permit the pressures of our domestic politics to engage us too deeply in Africa's agonies.

"Above all, we should avoid a display of moral superiority. . . . Our best chance to discourage any adventures by the Soviets, the Chinese, or their surrogates is for us to hold firm to the thesis that this is a South African problem which the people of South Africa must settle in their own way.

"We can maintain such a position only if we reject the temptation to put South African policy at the service of our domestic politics."

Mr. Ball, in the vernacular, has "been through the mill". He knows the difference between a démarche and a disaster even if some of our current Senior State Department officials do not.

On the subject of American investment in South Africa, Mr. Ball also has some refreshingly candid thoughts. I quote him again.

"To throttle the effectiveness of our own companies"—and I might add, parenthetically, he means in bringing about gradually some of the changes in South African society which our State Department insists must occur—"by forbidding further American investment would merely nullify a helpful influence."

Mr. Ball in his article went on to add, "Nor has much note been taken of the puzzling paradox in the orthodox liberal view that America should expand trade with the Soviet Union so as to expose the Russian people to the sweet breath of liberalism, while hermetically sealing off South Africa to promote the same liberalism. Is it possible that some who advance these inconsistent positions are interested less in reforming Pretoria than in gaining approbation at home?" The implications of his question are sobering.

Which brings us back to domestic politics, U.S. brand.

Let us consider for a moment the prospects for the November election.

As an "off-year" election, 1978 must be recorded as epochal. Never in the history of the Republic have so many incumbents voluntarily stepped down from office.

A total of 59 Members of the Congress—10 in the Senate and 49 in the House of Representatives—announced they would not seek reelection. During the past year, three Senators and two members of the House died in office. Six House members resigned during the year and were replaced. Thus the number of "vacancies", or wide-open seats is unprecedented.

Political pundits will find grist for their typewriters for some time to come in explaining this phenomenon.

There are several possible explanations. One may be that the politicians took to heart the stern admonition of Magnus Johnson, a former Minnesota Congressman, who some years ago declared on the floor of the House, "What we have to do is take the bull by the tail and look the situation in the face."

It is also possible that the retirees recall a unique characterization once employed by the late former President Lyndon Johnson, who compared a certain Senator to a steer. The president explained, "That's a bull who's lost his social standing."

Whatever the reason for the unprecedented number of retirements, they point to profound changes on Capitol Hill.

For one thing, the average age of Congress will be dramatically lowered. Many of the retiring members hold senior status on key committees. Chairmanships of key committees will change, and new alliances will be formed. The method of conducting business will be profoundly altered, in many cases. Party loyalty will be further diminished as new and different constituencies assert themselves.

All 435 seats of the House are to be filled, along with 34 seats in the Senate. In addition, the electorate will select 36 governors and members of a like number of State legislatures. Many country and city government officials will also be chosen.

In the privacy of the voting booth, Americans from every walk of life will mark their ballots—and point the direction in which our country will move in the critical years immediately ahead.

What course will be charted by the voters of the United States who go to the polls on November 7?

I do not look for major upsets—although we have witnessed a few in the primaries—and certainly not loss of control of Congress by the Democratic majority. But I do expect that majority to be narrowed, particularly in the House. A major shift is less likely in the Senate, in my opinion. The Republicans may pick up a seat, but they will be lucky to hold their own.

I detect a conservative groundswell across the length and breadth of America. There is the unmistakable message from California on Proposition 13—tax reform—and on numerous bond issues defeated in various states. Disenchantment is growing with the activities of the United Nations—including the incredible antics of our ambassador there.

The American people are beginning to complain bitterly not only about the high taxes they pay, but also about much of the social engineering on which these taxes are being squandered.

Americans are concerned over the defense posture of the United States relative to the Soviet Union.

It goes without saying that the American voted in alarmed over deficit spending by his government—and the impact of that deficit on the shrinking value of the dollar. And he is concerned over our faliure to solve our energy problems.

Millions are filled with what a senior government official in a gaffe at a public meeting, described at "outrighteous outrage" over the failure of the United States to move boldly to deal with Cuba's stalking horse operations on this continent.

At long last Americans are coming to realize that, although we live in an interdependent world, our foreign policy must be compounded of something more than idealism. A little pragmatism is in order. Ideological lobbies will not indefinitely be permitted to exercise undue influence on our foreign policies. It is high time—and past—to be a little more even-handed in our relations with other countries. Above all, we ought by now to be able to recognize our friends.

I do not suggest that this is the issue uppermost in the mind of the American voter on the eve of the 1978 election. But the issue is in mind. And it will be a major issue in the Presidential campaign of 1980.

In 1974, the last off-year election, 60 percent of Americans classified themselves as conservatives. That figure today is 72 percent. For the Democratic party to alienate the country's conservative majority is to court disaster.

In conclusion, let me emphasize, the critical question in 1978—and the *crucial* question in 1980—in domestic politics as in our foreign relations, should be: "What is best for the United States?"

Permit me to say, also, that in departing this friendly country which has accorded us so warm a welcome, all of us can be heartened by the word of South Africa Foundation President Basil Hersov spoken earlier this year: "I believe it is a tragic mistake to regard the USA as an enemy and to attack it in that vein, a badly advised and misguided friend perhaps, but certainly not an enemy."

Thank you.●

STATEMENT BY SENATOR BARTLETT BEFORE THE FIDDLER'S ELBOW COUNTRY CLUB

● Mr. BELLMON. Mr. President, one of the strengths of this body is the fact that many Members bring to the Senate the training and experience gained through years of successful activities in the private sector. Such is the case with my colleague from Oklahoma whose expertise and practical knowledge of the energy industry has come to be highly regarded by all those who work closely with him.

On September 12, Senator BARTLETT appeared on a panel in Bedminster, N.J., where the energy situation was discussed in considerable depth. Senator BARTLETT's remarks present additional valuable insights into the energy problems which face this country. I believe Members will benefit greatly by reading his comments.

Mr. President, I ask that the text of Senator BARTLETT's statement be printed in the RECORD.

The statement follows:

REMARKS BY SENATOR DEWEY F. BARTLETT

The "energy problem" has been a focus of national concern since the 1973 Arab Oil Embargo. Unfortunately, it has been treated as a mysterious problem, somehow divorced from all other human experience. This is not so. Rather, we have had a short-term shock, in the midst of a long-term mishandling of the energy situation, primarily by the Federal Government. The Congress and various administrations, who share the blame, in turn, protect themselves by blaming the oil and gas industry.

Similarly, some have approached the situation in more cosmic terms, saying, "We have passed out of the era of cheap and abundant energy." I do not believe the facts support this idea. When you discount for inflation, most forms of energy are cheaper at the retail level today than they were 20 years ago. Many are cheaper than 10 years ago. And although the 1973–74 price increases did administer a severe shock to our system, oil, gasoline and electricity prices have been stable in real terms since then, as the market system, although constrained, has been able to work.

In 1942, my mother and I bought a new Ford with a sticker price of $690.00. Gasoline was 19¢/gal. Today a Ford LTD costs $5,398.00 and gasoline averages 61.7/gal. Ford has gone up over 7½ times, gasoline less than 3½ times. Both, of course, are greatly improved in quality.

Relatively speaking, the price of energy has fallen almost continuously over the past 200 years. And so, while I have no doubts that gas and oil will eventually "run out", it will only be in the sense that newer energy sources have been developed that will be more economical and efficient to use than the remaining oil and gas deposits.

So, what is to blame for our recent energy difficulties? To understand the situation, you must recall that oil and gas production is a long-term proposition. The oil we use today is largely the result of discoveries made 10–15 years ago.

In 1956, over 58,000 wells were drilled in the United States looking for oil and gas. Drilling then entered a long period of decline, finally hitting rock bottom in 1971 and 1973 when less than 28,000 wells were drilled. Thus, even though production of oil and gas rose throughout the 1960's, we were sowing the seeds of our present problems. And even though drilling and finding have risen dramatically in response to increased prices since 1973. 1978 will probably see only a little over 50,000 wells drilled. Perhaps, by 1979, we will have reached the level of drilling effort we had in 1956. But the domestic demand for gas and oil today is more than twice that of 1956 and both are harder to find, deeper, and more expensive to find.

Just reflect on that. What would be your opinion of the health of the auto industry if it produced today only the same number of cars as in 1955? Or agriculture if we produced no more food than we did 20 years ago. So in this perspective, the major reason for a problem with oil and gas production and exploration is that we just have not been trying as hard as we could.

And why not? The answer is primarily government controls and action. In 1954, the Supreme Court placed price controls on interstate gas production, bringing considerable confusion and uncertainty to exploration for gas.

In the case of natural gas, we have had practically a laboratory experiment. Because the Supreme Court's decision rested on a law governing interstate commerce, the extension of regulation did not reach gas produced and consumed within the same state. There thus arose an *intrastate* gas market, free of controls, side by side with the controlled market.

Under free market conditions, the intrastate market prospered. Each year, the amount of gas found through new exploration just about equalled the amount being used. Total production in the instrastate market has continued to increase, even during the last few years when total gas production declined. And there were no shortages in the intrastate market.

The experience in the controlled market was quite different. Since 1970, total production in that market has declined. In fact, by 1976, gas reserves in the interstate market were only about half of what they were a decade earlier.

In addition, the interstate market has been subject to grave shortages. At the artificially low prices of recent years, consumers have wanted to use lots of natural gas, frequently for wasteful purposes, while producers have had little incentive to produce. In the free intrastate market, it has been quite the opposite. Realistic prices for gas have lead to conservation, while production has been enhanced.

The one most frequently heard argument against free enterprise is that "It's too expensive." In the short-term, it is true, it is possible to keep prices down by using up reserves while depressing new exploration. But in the long-run, the society is going to have to pay the costs associated with finding new energy, if they want to use that energy. The fact that we have "shortages" now means that people are willing to pay high OPEC prices for imported oil to obtain what they need.

The problem is a shortage of energy—not high prices to the poor and those on low fixed incomes. We are currently importing forty percent of our current oil consumption—about 7 million bbls.

Even in terms of the effect of energy prices on the poor, artificially low prices are not a solution. To the extent the poor and those on low fixed incomes should be subsidized, it should be a subsidy related to their needs, not to the level of their energy use and at the expense of adequate domestic energy supplies and sensible conservation.

A second argument made is that oil and gas companies are monopolies which will reap "excess profits" if a free market price is allowed. Measured as a percentage of return on capital, however, the petroleum industry has been almost exactly in line with the average for all American business, when measured over any reasonable period of time. If Congress, sitting in the cat bird seat, would decide that new profits were not spent on exploration and development, it could increase taxes on energy companies at anytime.

And few industries are actually as competitive as oil and gas production. In virtually every phase of the industries, the top 8 companies have barely 50% of the business in any particular activity. Compare this with autos, steel, soup, computers or what-have-you, and you find far less concentration in oil and gas.

Finally, there is the argument that higher prices simply will not bring results. Here I would again point to the intrastate market where higher prices, fair prices, have brought results.

Now, I'd like to talk a little bit about oil, because the situations in oil and gas are different in some important respects. In the early 70's, the gas market was about 40% free, while the oil market was entirely free, except for the effects of the oil import program. However, with the imposition of price controls by President Nixon in 1971, followed by the Emergency Petroleum Allocation Act in 1973 and the Energy Production and Conservation Act in 1975, oil came under overwhelming and universal control. There is no free intrastate market in oil to allow a contrast. And as you might expect, oil production under controls has suffered. One of the few bright spots has been the so-called "Stripper" oil program.

This allows the sale of oil at uncontrolled prices if it comes from wells producing less than 10 barrels per day. Once a well is so classified, if the operator can use new techniques to raise production, he does not lose the benefits of free market pricing. A little over one-eighth of American production now comes from stripper wells, and that was held steady, while other categories have declined.

Many of us in the Senate have been supporting what we call a "Deep Stripper" amendment, which would allow stripper treatment for wells producing larger amounts of oil, if they are at greater depths. If this amendment is adopted, about another one-eighth of production can be freed from controls. This would enable production at or near its economic limit, to produce much longer and in some cases, to be increased by enhanced recovery methods.

There are many, many techniques that can be used to expand production, but they cannot be used under current regulated prices. Wells that appear played out can be made to flow again by waterflooding and other secondary and tertiary recovery techniques. But these operations cannot take place at the price of $5.25 per barrel that is now allowed for old oil. So we see the strange sight of American production being shut in or plugged because we can't pay more than $5.25 for it, while we are cheerfully paying $14 and more for imports. It just doesn't make sense.

With many of the things I have said thus far, I am sure my good friend Jim Abourezk will disagree. I'd like to finish up my talk on a topic on which we do agree, and that is the Natural Gas Bill now pending before the Senate. It seems strange to some that we should be on the same side of this issue, but I think that is explained by what we have in common. I think we can agree, as Senator Long has said, that this bill is like a two-headed horse, trying to ride off in two different directions. It tries to espouse the philosophy of deregulation while imposing a regime of incredibly complex regulation. Senator Abourezk would like complete regulation and I want complete deregulation. The bill does neither.

A brief summary of the bill is totally impossible, so I will merely give a few of the high points. The bill immediately places control on all gas, so that the over 40% of the gas market that is now free—the intrastate market—will disappear for at least 7 years, possible 8½ years. When "deregulation" does occur in 1985, less than 40% of the domestic gas then producing will be deregulated, less than is unregulated now.

Some Senators who supported the Pearson-Bentsen bill—a deregulation bill—said they were willing to have at least 7 years of total price controls if eventually we have deregulation. But we won't have deregulation with this conference report.

During the period between now and 1985, gas will be subject to a bewildering variety of price categories. Even gas that is "new" in the sense that it is produced by putting down your drill bit next week will be subject to at least 5 different prices, and the producer may not know which one he will get until he finds the gas, and until long regulatory proceedings are held at both the state and federal level.

Under the present system, the intrastate market is free, while even in the interstate market, whatever gas you find comes under the single price set by the Federal Energy Regulatory Commission based on the cost of finding gas during that particular period.

Although the bill is now touted by the administration as a "deregulation bill", even in 1985, after deregulation is supposed to occur, less than 40% of gas will be deregulated, or even less than what we have now. This is because only certain categories of narrowly defined gas are deregulated. Equally important, deregulation is only guaranteed for 6 months. After that, the President may reimpose controls simply by signing an order, and he may be overridden only by an affirmative vote of both Houses of Congress.

We see this as a bill that will not provide additional gas supply. It places controls on the uncontrolled market, and exchanges a system of regulation on the interstate market which is at least well understood for one that is equally stringent but totally unknown and unworkable.

Nor will this bill advance the dollar or our international prestige. If the bill is a bad bill, it is very hard to believe that foreigners will not see through it in very short order.

Milton Friedman, the Nobel-prize-winning economist, said recently in a letter to our committee:

"In any event, the dollar has not been weak because of the energy problem, and no amount of tinkering with energy legislation will have any significant or lasting effect on the dollar. The dollar is weak because of bad economic policy, policy which is destroying the unrivalled capacity for growth of American free enterprise . . . policy which is producing inflation through excessive government spending and excessive creation of money."

And I would note that Canada, which is a net exporter of energy, has seen its dollar fall even against the American dollar in the last year.

So, this bill is bad on its merits, will have no favorable effect on our economic condition, and should be rejected.

Sen. Abourezk and I both want to kill parts of the conference report—and we plan to accomplish this with a motion to recommit. We will add instructions to the recommital motion which would authorize the President to: (1) declare an emergency and then to price and allocate natural gas; and, (2) with approval by the Federal Energy Regulatory Commission, authorize an intrastate pipeline to sell to an interstate pipeline or utility without coming under federal jurisdiction. Our alternative propcsal would assure that all uncommitted or unused gas can reach an interstate consumer in need.

This legislation, coupled with the setting of reasonable prices for 1977–78 and 1979–80 by FERC could increase substantially the domestic natural gas supplies available to the interstate market. The potential involved here can be seen in earlier pricing decisions by the Federal Power Commission. Price increases to 52 cents in late 1974, and up to $1.42 in 1976, resulted in an increase in dedications to 3 trillion cubic feet in 1976 and to 8.6 trillion cubic feet in 1977. The passage of our alternative to the Natural Gas Conference Report, accompanied by pricing incentives by FERC, would constitute a very good interim solution.

For the long run, the Congress as a whole should do what the Senate has twice done—pass a simple and fundamental new gas deregulation bill. The Pearson-Bentsen substitute, passed by the Senate a year ago, provided for immediate new gas deregulation with an interim price ceiling for two years onshore and five years offshore. Just as important, it left the free and vital intrastate natural gas market intact. The only workable way to alleviate our long-term gas supply problems is to eliminate regulation, not expand it; to build upon the freedom of the intrastate market and provide for simple, general deregulation of new natural gas in a reasonable period of time.●

GENERAL ALLEN'S ADDRESS TO AIR FORCE ASSOCIATION

● Mr. HART. Mr. President, I would like to bring to the attention of my colleagues a speech delivered yesterday by Gen. Lew Allen, Chief of Staff of the Air Force, to the Air Force Association National Convention.

I believe this most thoughtful and significant speech is worthy of the Senate's attention. It justly praises the efforts of the men and women in the Air Force to achieve ever higher standards of readiness and efficiency—efforts which have been successful. It notes in particular the success in the Air Force of the total force concept. The performance of Air Force guard and reserve units has consistently been outstanding, often exceeding the already high performance of regular units.

General Allen correctly notes the concern within the Air Force about possible future erosion of compensation and benefits. This concern is widespread. Air Force personnel who are attempting to determine whether to make the Air Force a career find it difficult to make their decision in light of uncertainty about future compensation. The Members of the Congress must consider this very real problem as we examine proposals for changes in military compensation and benefits.

General Allen also takes note of the increasing Soviet military challenge. The existence of this challenge is indisputable.

The reality of this threat makes it all the more important that we seek to increase our security through negotiation. Here General Allen makes a very important statement, which is parallel to my own belief:

> The Air Force supports a reasonable Strategic Arms Limitation agreement—and I believe negotiations are moving us toward such an agreement. It must be recognized that we live in a world of competition and cooperation with the Soviets. Negotiation and strength are not contradictory—they are complementary. We have not lost ground to the Soviets because of arms limitations, but because the Soviets have pursued force modernization within the limits of those agreements more aggressively than we have. To continue to seek lower aggregate force levels—while maintaining a verifiable and equitable balance—does serve our national interest.

Far from contradicting the need for adequate national strength, an equitable SALT agreement would free defense dollars from strategic systems which could be allocated to general purpose forces, where our needs are many. General Allen's appreciation of the complementary nature of negotiation and strength shows the increasing awareness of this fact by our military leadership.

As General Allen notes, the Soviet threat raises serious challenges for us in planning our future strategic forces. The best way to respond to these challenges is by no means self-evident. The current struggle to find a secure basing mode for our land-based intercontinental missiles is a case in point. The continuous trench system, once so widely heralded, has proven technically impractical. A number of complex technical, military and other questions regarding Multiple Aim Point basing have yet to be resolved. General Allen is nevertheless greatly optimistic that they can be resolved. We all look forward to reviewing the details of future proposals to this end in next year's budget.

General Allen discusses these and other issues in a cogent and thoughtful fashion. His views will be useful to the Members of the Senate, and I hope the membership will give them careful attention.

Mr. President, I ask that the remarks of Gen. Lew Allen to the Air Force Association convention be printed in the RECORD.

The statement follows:

ADDRESS BY GENERAL LEW ALLEN, JR.

Today's United States Air Force is the product of the efforts of many people—past and present military and civilian. The Air Force Association consists of people interested in airpower and the defense of our country, and you have played a significant role in forming today's Air Force. Your interest and enthusiasm have helped the Air Force grow in effectiveness for the defense of our country. Thank you for that support—I am honored to be your speaker today.

The invitation is particularly welcome since the AFA is a powerful voice in conveying information to the total Air Force and its key supporters.

I have two topics I want to address today. First, I want to give you my assessment of the "State of the Air Force." Then, I want to share some thoughts about the threat presented to United States security by the continuing development of military power by the Soviet Union and about the actions that are required of our Nation to insure that we have a military capability that is adequate to maintain the peace. You—the AFA—can help.

The United States Air Force remains the strongest and best in the world today. As an institution, as an organization, and as a fighting force, we are in excellent condition. There are needs for improvement and problems to solve, but do not confuse our attention to those with a notion that we are not a great Air Force. We are, and we must continue to be.

Last month, I visited our Red Flag operation in Nevada, and I have just returned from a trip through the Pacific. Readiness is a watchword—in each Headquarters and Unit I saw. The readiness we have achieved in our Strategic, Tactical and Airlift Forces is a remarkable accomplishment and a tribute to the support of this audience as well as past Air Force leadership.

Our aircraft modernization program is giving us the superior equipment we need at an acceptable rate. Our training is intense and realistic—we are training the way we plan to fight. Supply stocks are improving, along with the efficiency of our supply system. Advances in both system design and work procedures have brought a more efficient maintenance operation.

The Total Force concept—the integration of Guard, Reserve and active forces into a solid, modern team of equals—is a resounding success.

We are focused on readiness in our thinking—and we are exercising our concepts. We practice quick reaction. We practice the surge of activity that would be required if we were called upon to fight. Our readiness is an unprecedented achievement—a matter in which we can take great pride even as we seek further improvement.

This peacetime intensity places heavy demands on our people. Realistic training is challenging and more risky—most flights are planned for events which tax our crews continuously—alerts are tough—maximum surges are plain hard work—we have Air Reserve Forces units that stand alert in SAC and ADCOM and others that are tasked with and practice early deployment to Europe. We have fewer people doing more work—and doing it better than ever before. I am proud to say that our people have met this challenge extremely well.

The Air Force is fortunate, in that our mission, our equipment and our way of life both require and attract people with a mix of talent and attitude that we summarize as quality. Air Force jobs have become more demanding. At the same time, we have continued to meet recruiting goals. Discipline and professionalism are at an all-time high. The all-volunteer concept is working well for us.

The lesson in these successes is that quality pays. We need it. This is an age in which deterrence relies on ready, sophisticated forces. The Air Force is a technologically intense force—that is, we have relatively few people, and they are responsible for complex, expensive equipment. Our people must be good in technical skills and proficiency. We will not improve our nation's defenses—or lower its taxes—by lowering our standards.

Improvement can continue. We know the limits of most of our machines, but we don't know the limits our people can reach if we can maintain their quality and continue to improve our training and leadership. General McBride told the outstanding airmen here last year that he was honoring members of the second best Air Force, second best because it wasn't as good as next year's force would be. I share those sentiments, and it will be my policy to argue for and defend the Air Force quality of people and those people things that can help. My report, then, is that we have today a superb Air Force. But it must get better, and I will begin my second topic by explaining why I feel so strongly that we must continue to improve the Air Force's capabilities in the years ahead.

Our nation has great intrinsic strengths, including political institutions built on our concern for basic human values, the world's strongest economic system, and friends and allies world-wide who share many of our beliefs. We are a nation that can afford strong military forces, and it is my belief that taking the steps needed to maintain military equality with the Soviet Union offers the only real hope for prolonged peace. Up until the past two years, however, our nation economized on defense for over a decade. Purchasing power for defense programs fell annually. We compensated with technology, with management initiatives, and with step by step sacrifice of the margins of our superiority over the Soviet Union.

We have now reversed direction, and are on a track of modest increases in spending.

We were forced to make this turn—just as we have been forced to modernize and to pursue a vigorous readiness effort—by Soviet emphasis on military programs, and by their success in those programs.

There are many points one can make about Soviet strength. It seems quite clear, though, as you look at the record, that the Soviets have stressed military forces, have achieved overall equivalence with the United States, and have tremendous momentum for continuing growth and modernization.

They have simply invested more in armaments than we have—significantly more, each year for over a decade. Their effort appears out of proportion to their needs for deterrence or defense, and the strength they are systematically achieving could be a major factor in world affairs if unchecked or unchallenged by the U.S. and our allies and friends.

While we have compensated for reduced quantity with quality, the Soviets have enriched their quantity with quality.

That year-by-year differential in the emphasis on defense has led to changes in the weight and character of the military balance between our nations. The Soviets

have improved, and are seen internationally as stronger, relative to the United States, than in the past.

They also remain an ideological, opportunistic power. They inject change. They do not abhor violence when it serves a political end. They do not respect human rights in the sense that we do. They retain and attempt to export a particular, repressive form of communism with its vision of economy and society.

The trends and realities that we see converge, in my view, and give some clear indications about the future that we must account for in our planning.

The first is that we are in for a long competition. Our superpower relationship with the Soviet Union dominates the world scene. The Soviet Union does not appear headed for economic disaster—they can support the levels of defense spending they choose and support an expansionist foreign policy. They may have been revolutionary, but for decades now they have been steady and predictable in their relentless pursuit of their goals. They will not fade, they will not change their basic character, they will continue to be a threat to world stability, and the majority of the burden of resistance will continue to fall on our shoulders.

My second prognosis is that security will continue to require sacrifice on our part. To maintain equality against as determined and capable an opponent as the Soviet Union will be challenging and expensive. The notion that there is an easy way to reduce the expense—which some suggest could be realized through unilateral disarmament or one-sided arms reductions—just seems to me to be wishful thinking. We must gird ourselves for a long haul at a high price. It is not a matter of "What the Pentagon wants." It is a matter of what the nation needs for defense. The Soviet military threat determines most of these needs.

Persevering will be a tough problem, but it's not a new problem. The historian, Barbara Tuchman, was writing about a different age when she said "one constant among the elements of 1914—as of any era—was the disposition of everyone on all sides not to prepare for the harder alternative, not to act upon what they suspected to be true."

One part of the harder alternative we must sustain is the will to take initiatives in response to the growth of Soviet military power. Let me comment, in that context, on three of the issues confronting the Air Force and the nation—SALT, the increasing vulnerability of our ICBM force, and the retention of high-quality people. These issues involve choices—all difficult—and of vital importance to our nation.

The Air Force supports a reasonable SALT agreement—and I believe negotiations are moving us toward such an agreement. It must be recognized that we live in a world of competition and cooperation with the Soviets. Negotiation and strength are not contradictory—they are complementary. We have not lost ground to the Soviets because of arms limitations, but because the Soviets have pursued force modernization within the limits of those agreements more aggressively than we have. To continue to seek lower aggregate force levels—while maintaining a vertifiable and equitable balance—does serve our national interest.

Maintenance that balance, however, is an imperative. Soviet arms are the reality of the threat—negotiations qualify and help to contain the threat, but they should not obscure the need for strength.

One of the keys, in my view, to retaining the strategic nuclear balance lies in either redressing or offsetting the predicted vulnerability of our minuteman missile force. Basically, our country is in the unfortunate position of relying heavily on a strategic missile basing system which will become vulnerable. Our ICBMs have been a key leg of the Triad for many years. By the early 1980's or thereabouts, Soviet developments will give them the capability to strike our ICBMs with sufficient accuracy and throwweight to destroy a large percentage of our Minuteman force—while still retaining large numbers of reentry vehicles to use as they choose, either against U.S. cities or other military targets, or coercively to discourage U.S. retaliation.

What does one do? The evolution of Soviet technology has been systematic and visible so that we know, with considerable certainty, that they will soon have this capability.

All indicators signal that the time to act is now.

We have viable options for changes that can solve the problem. We are studying them. The multiple aim point ICBM basing system appears to be the best of the options for redressing the vulnerability concern. By basing and moving our ICBMs among a large number of aim points, we force the Soviets to target all aim points—so that attempting a pre-emptive, disarming first strike would be unacceptable.

To attack us, the Soviets would have to exhaust their resources to the extent that they would end the initial wave of attack relatively worse off than when they began it. Therefore, they would not be well advised to attack in the first place. They would be deterred.

This is not an easy solution, we'd rather fly airplanes or retain our current ICBMs, but we must meet the threat. The Soviets maintain more than 80 percent of their stategic nuclear strength in their ICBMs, while our ICBMs contribute about 30 percent of the Triad's punch. We cannot default that leg to them.

There are technical complexities and political issues still to be resolved. They are, in my view, workable if we are determined to find an answer to the Soviets' threatening development.

We also have available other options for offsetting Minuteman vulnerability, including building the air-launched cruise missile in various forms, increasing the effectiveness of our B–52 forces, and developing a cruise missile carrier. I call on your support as we ponder these issues, and weigh the price of the various options against one another, to join me and resolve that our nation will not allow the Soviet arms build-up to place us in a position where they see themselves as substantially superior.

Let me turn now to the subject of people. Our readiness, our deterrent strength, our entire defense fabric depends upon people of the highest caliber working and serving day after day to tend our strength and our future.

We are fortunate, in the Air Force, to have eager, talented people who put mission and service first.

Our participation in the all volunteer force has been the continuation of a success story that began in 1947. I am very proud of our Air Force men and women; they inherited a great professional legacy and continue to improve on it.

The evolution of the All Volunteer Force has been curious. We, as a nation, tired of the draft and voted to rescind it. We offered a compensation system and level designed to attract high-quality people to military careers—based on a balance of reasonable living standards and the inherent satisfaction of a life in service.

The program succeeded—but in the infancy of its success we saw the beginnings of retreat, so that our people, from their perspective, reached equity only to have it taken away by inflation and withdrawal of benefits—at the same time their workloads in a peacetime environment were intensifying, in part because we in the Services were saving money through force cuts. I see throughout the Air Force a sense that there has been erosion of benefits and concern that this will continue.

We need a top-quality force to cope with the requirements of modern weapons and a ready posture. Our people are our greatest ultimate advantage over the Soviet Union—an advantage we cannot lose.

As the trends we have been in compensation and benefits have continued, we have reached a point where either recruiting and retention will fail or standards will have to give way. Our experience in the Air Force clearly teaches us that when standards of quality decline, performance declines as well. When our commanders have to give added attention to discipline and training fundamentals, attention to readiness suffers.

This is a complex issue—one that differs from service to service, and one in which perceptions and emotion play a large part. The Air Force success story is underwritten by the dedication, motivation and talent of our people. They sacrifice for our country. They deserve—and should expect—a reasonable measure of sacrifice from the country in return.

It will be my policy to fight for the rewards our people deserve for voluntary service and for the rewards which will help maintain the Air Force life as one of quality and opportunity—for by so doing I know I am fighting for the strongest Air Force and the best defense for our nation.

We must pay a price for people.

But not all of that price has to be spent in compensation. Our military forces—many of you—have served this country well without visions of wealth.

The private esteem of a career in uniform—reinforced by public esteem for what the uniform represents—can help us meet our needs in recruiting and retention.

The Air Force Association already helps by reaching out to our people in uniform and to many in public life, but today I would like to urge you to do even more. I plan to work through my senior commanders to ensure that each Air Force officer and airman is challenged to better our already enviable record of productivity. Our people work hard, and the work they do preserves our nation's strength. Our airmen and officers need the encouragement that a pat on the back can lend, and the Air Force story needs to reach more of those the Air Force serves and protects. The AFA, with its knowledgeable membership and chapters throughout the nation, can affect both. I know you will.

Today, I have raised some concerns—and cited the need to pay a price for security.

I am not a pessimist about our future. If the times and issues we face are complex, they are not bad times or impossible issues. We are addressing them from a base of strength and in a positive manner.

If we continue to be vigilant—and continue to meet the Soviet challenge with modest changes in the pace, direction and size of our defense effort—I am convinced that this nation will deny Soviet ambitions on their terms.

We have a greater system, the richer culture, the higher vision of our, and mankind's future.

The Soviets will not "just go away" or become overnight friends. They will, in my view, come to a reasonable understanding with western societies and accept an age of essentially cooperative relationships—if and only if we pay the price to frustrate the present Soviet belief in the rewards of military power.●

URANIUM MILL TAILINGS

● Mr. GRAVEL. Mr. President, the distinguished floor managers for S. 2584, which authorizes appropriations for the Nuclear Regulatory Commission, are to be commended for their tireless efforts in bringing this important legislation be-

fore the Senate. Of particular interest to me was the amendment regarding the licensing of uranium mill tailings which was proposed by Senators HART, DOMENICI, STAFFORD, and RANDOLPH. This amendment was considered and adopted by the Environment and Public Works Committee prior to being offered here on the floor.

The implied health hazards associated with the wastes from uranium mill sites are appearing increasingly more severe. Although there has not been a proven link between the uranium mill sites and cancer, many scientists are convinced that the connection exists. In Mesa County, Colo., the leukemia rate is twice the State average. Mesa County also happens to be the site of a presently inactive uranium mill which processed uranium ore for 19 years.

The Environmental Protection Agency has fears that mill tailings may encompass the most severe radiation hazard that the country has to contend with. For this reason, it seems only logical that a careful review of the environmental impact of mill tailing operations should be required, not only for States where NRC conducts the licensing and rulemaking processes, but for States who conduct their own NRC-approved programs for regulation. The tailings can constitute an environmental hazard for a long period of years; all possible environmental implications should be thoroughly and completely examined.

Quite a large amount of radioactivity which occurs naturally in uranium remains in the tailings after undergoing mill processing—up to 85 percent. The impact of this radioactivity on the public health is likely to be severe; since many of the effects are not immediately apparent, the full consequences have not yet been determined. Whatever the extent of such effects, they will all be absorbed by the public. For this reason, public involvement in the licensing and rulemaking processes regarding mill tailing stablization should not only be encouraged but required. This issue will be addressed in the conference committee on this bill. The public's right to participate in decisionmaking which affects their lives so acutely should be upheld.●

IMPROVEMENTS FOR CETA PROGRAM ADMINISTRATION

● Mr. WILLIAMS. Mr. President, the Senate recently approved a bill to revise and extend the programs authorized under the Comprehensive Employment and Training Act of 1973 (CETA). During consideration of this legislation, both in the Human Resources Committee and in the Senate, great care was exercised to insure that misuse of Federal funds and abuses in the CETA programs would be eliminated.

The House and Senate bills both contain new provisions that would strengthen the authority of the Secretary of Labor to investigate and take action against program abuses. Provisions that establish strict new guidelines for audits, investigations, and program management would hold local program operators accountable to aide by CETA regulations regarding acceptable program activity and proper handling of funds.

The Secretary would be required to issue regulations to control abuses such as political activities, nepotism, kickbacks, the use of CETA funds for lobbying, and expenditures for activities outside those specified in the act. The Secretary would have authority to subpena records and witnesses for investigations. New provisions would require bonding of persons who manage CETA funds to recover any Federal money that may be lost through fraud.

In addition to criminal sanctions against embezzlement and misuse of funds in current law, a new provision was added making it a criminal offense to obstruct a CETA investigation. Also, the Secretary would have the authority to terminate any program found in violation of the act.

The House and Senate bills also would establish a new Office of Management Assistance in the Department of Labor to provide the resources and guidance needed by local program administrators for effective program operation.

The combined effect of these new provisions would give the Department of Labor and the prime sponsors the resources they need to protect the integrity of CETA programs.

Although this legislation has not yet been enacted into law, the Department of Labor has expanded its audit and investigation activity. The Secretary of Labor, Ray Marshall, established a new Special Office of Investigations charged with reporting directly to him on a regular basis on irregularities in program operation.

Ernest Green, Assistant Secretary of Labor for Employment and Training, drew a clear picture in his testimony before the House Government Operations Subcommittee on Manpower and Housing to highlight the important safeguards built into the new CETA legislation, and the steps already undertaken by the Department of Labor to eliminate abuses under CETA programs.

Mr. President, I ask that the text of his statement be printed in the RECORD.

The statement follows:

STATEMENT OF ERNEST G. GREEN

Madam Chairwoman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the Comprehensive Employment and Training Act and to answer the specific questions concerning CETA that were raised in your letter of invitation. I will address those questions that are within ETA's responsibility; Mr. DeMarco, Director of the Office of Special Investigations, in his statement will address those that affect his office.

As you know, the CETA legislation expires at the end of the current fiscal year and bills to reauthorize it are now pending in both Houses of the Congress. While the final outcome of the CETA reauthorization is uncertain at this time, we should keep in mind that the Administration proposed, and the House Senate committees adopted, many changes in the current law strengthening the Secretary's authority to manage the CETA program.

I would now like to turn to the specific questions raised in your letter of invitation.

IMPROVING THE DEPARTMENT'S MONITORING SYSTEM

I am pleased that the Subcommittee has requested that I address how the Department can improve its monitoring system in order to further prevent, detect and correct abuses in implementing the CETA legislation. This question is one to which both the Secretary and I have personally given a lot of consideration and as a result many new actions have been taken.

Over $28 billion has been allocated under CETA since its inception. I am confident that most of these funds have been spent appropriately and that most CETA programs are administered efficiently with both program and fiscal integrity. I further believe, based on our review of specific programs, that the actual level of fraud and misuse of funds is extremely low.

The Secretary has stated that fraud in the CETA program is less than one percent. This estimate is based on our experience under audits of CETA programs and the evidence that we have garnered in our monitoring of the programs.

The Department has increased its CETA audit activities. These audits, conducted in accordance with accepted accounting standards, focus and follow through on any costs that have been questioned until such time as the Department is satisfied with the fiscal integrity of the program. Audits over the last four years have identified about 67 million dollars in what we technically call "questionable costs." I want to emphasize that the term "questionable costs" is not synonymous with misuse of funds or with fraud. Costs can be questioned for a variety of reasons. Perhaps, the program participant was a month too young for the program, or had been unemployed 29 rather than 30 days, etc. The costs may also be questioned because the prime sponsor's books were unavailable during the time that the auditor wished to examine them, or the accounting was not entirely current, or there appeared to be a bookkeeping error or the like.

We are in the process of examining the 67 million dollars in questioned costs in detail. A decision will be reached with respect to whether each questioned cost should be allowed or disallowed. Costs are disallowed for many reasons. These may include substitution of CETA workers, political activities in the conduct of the program, technical ineligibility of CETA participants, and other nonfraudulent violations of the statute and regulations.

We are aware that there has been misuse of funds in some CETA programs. The Department has taken rapid steps to correct these abuses as we identify them or as they are called to our attention. I do not want to leave the impression that any level of abuse of funds is acceptable. Where we have found proven cases of abuse we have moved rapidly to terminate financial assistance or take other appropriate action.

This Administration's immediate concern when it came into office was to help the unemployed as quickly as possible. The Department devoted its full resources to that effort. We know that the structural and countercyclical training and public service employment programs in CETA have made a contribution to the improvement of the American workers' immediate and long term prospects for employment. Since we took office the unemployment rate has dropped from 7.4 percent to 6.2 percent.

As I stated, we recognize that further improvements in the monitoring of CETA are necessary. We are continuously undertaking these needed actions administratively. We have also proposed legislative changes to further strengthen the Secretary's authority to manage the program.

The Administration's legislation for the reauthorization of CETA, forwarded to Congress earlier this year, contained a number of amendments which would increase the Department's ability to investigate and take action against abuses and to establish standards to eliminate further abuses. The Administration's proposals, which have been incorporated into both the House and Senate

committee bills, require the Secretary to issue strict regulations to control abuses such as political activities, nepotism, kickbacks, unionization and antiunionization activities, religious and antireligious activities, and the use of CETA funds for lobbying. The amendments strengthen the CETA complaint and grievance system, grant the Secretary subpoena powers to compel the production of records and witnesses, require bonding of persons who manage CETA funds, and specifically allow the Secretary to impose sanctions directly on subgrantees and subcontractors. They also require the Secretary to impose program performance standards on prime sponsors, taking into account local labor market conditions. In addition to the existing provision which makes it a criminal offense to willfully misapply or embezzle CETA funds, the amendments also make it a criminal offense to obstruct a CETA investigation.

Finally, the amendments specifically allow the Secretary to immediately terminate a grant, subgrant or subcontract in whole or in part, with opportunity for a hearing afterwards, if the Secretary determines that emergency action is necessary to protect the integrity of the funds or program. The combined effect of these new amendments will be to give the Department the power it requires to further eliminate misuse of CETA funds.

Also, I can assure the Subcommittee that the Department is constantly reviewing and strengthening, where necessary, our administrative procedures for managing the program. As a result of such review a number of administrative actions have recently been undertaken to improve the Department's monitoring system.

First, the Department has recently established an Office of Special Investigations (OSI). The Office is responsible for investigations to identify fraud and program deficiencies, and for recommending corrective action and monitoring its implementation. It is responsible directly to the Secretary and reports directly to him on a regular basis. Mr. DeMarco, who heads OSI, will further discuss its responsibilities.

Other steps which have recently been taken to improve the Department's monitoring system include:

Establishing continuous in-depth assessment of prime sponsor's practices, covering at least 24 prime sponsors during FY '79 and at least 50 during FY '80.

Establishing a training program for prime sponsors to increase their capability to detect fraud or mismanagement in subcontractor performance.

Improving assessment criteria and technical assistance to develop ETA management capability to anticipate and take early action in mismanagement cases.

Strengthening an "Early Warning System" by use of what we call Questionable Activities Reports from regional offices to alert the national office to actual or alleged irregular activities.

IMPROVING THE PRIME SPONSORS PLANNING PROCESS

Regarding the second issue raised in your letter, the Department of Labor has recognized the need for continued improvement in the administration of the prime sponsor planning and plan approval process and for minimizing paperwork requirements.

As this Subcommittee is well aware, the Department has at times been called upon to quickly implement new employment and training programs in response to legislative mandates, sometimes in the face of uncertain funding. The Department makes every effort to develop program guidelines and regulations rapidly in order to give prime sponsors sufficient lead time to plan innovative, effective programs; however, in a case such as the title VI PSE buildup, the congressional mandate was for as rapid an implementation as possible.

Also, CETA's planning and operating requirements are subjected to annual review and revision; prime sponsors' recommendations are solicited in the process. As an example of the changes resulting from this process, the Department last year adopted a new funding method which eliminated most of the duplicative aspects of the previous grant application process. Now, once the basic agreement has been submitted, only information that changes from year to year will require annual submissions. This revised process has reduced significantly the paper flow for prime sponsors without diminishing accountability for performance and compliance.

As the Administration drafted its CETA reauthorization legislation, which was submitted to Congress earlier this year, we considered the reduction of the paperwork burden on local jurisdictions to be a primary objective of the legislation. This legislation eliminated nonessential data, reduced duplicative applications, and made the process more understandable. The CETA reauthorization bills, now under consideration in both the House and Senate, have incorporated these reduced paperwork measures.

APPROVAL OF PLANS

Your next question concerns the Department of Labor's role in approval of prime sponsors' annual plans. A prime sponsor's application for a grant is approved if it meets the requirements of CETA and other applicable laws, the regulations, and if the Regional Administrator determines that the prime sponsor has demonstrated a maximum attempt to meet the goals of the prior year's annual plan. This latter determination is made based on an assessment of the prime sponsor's prior year's performance in five specific areas: program activities, outcomes, utilization of funds, grant management, and compliance with the Act and regulations.

Prime sponsors can receive three ratings based on the assessment of performance: Eligible for Immediate Funding, Problems Identified, or Serious Problems. In the first case, the prime sponsor is found to have substantially achieved the goals in its approved plan. In the second case, problems have been identified but are of the type and degree that it is anticipated that they will be substantially or totally overcome through mandated corrective actions and technical assistance prior to the start of the next fiscal year.

In the case of a "Serious Problems" rating, it is not anticipated that the problems can be corrected prior to the start of the next fiscal year. The problems are of the type and severity that they present major barriers to the accomplishment of program goals and/or to the capability of the sponsor to carry out its legal responsibilities. In Fiscal Year 1977, 20 prime sponsors (4.7 percent) received this "Serious Problems" rating under title I and 15 (3 percent) received it under title II. Where a "Serious Problems" rating is given, full funding is delayed until the problems are corrected, although in some cases partial funding may be provided. In extreme circumstances, an alternative prime sponsor may be designated.

An example of a case where the Department withheld funds from a prime sponsor due to serious problems being identified is Ulster County, New York. As a result of the Fiscal Year 1977 performance assessment, the Ulster County prime sponsor was authorized to use only Fiscal Year 1977 carry-in funds pending successful completion of a corrective action plan. The problems identified were in the areas of grant management, outcomes and program activities.

Corrective actions taken by this prime sponsor included appointment of a strong CETA director, institution of an internal management reports, and establishment of an onsite monitoring system. The New York Regional Office provided intensive technical assistance to the prime sponsor in implementing the plan. By the second quarter of FY 1978, appropriate corrective actions had been taken and the prime sponsor was fully funded with FY 1978 funds.

Similar situations occurred with the Ocean County, New Jersey and Buffalo, New York programs. In both cases, approval was granted to continue programs subject to implementation of corrective actions. Both prime sponsors were successful in correcting identified problems and full authorization was subsequently granted.

The Department has also had to take steps to terminate a city's prime sponsorship. This has recently occurred with respect to the city of East St. Louis. The city failed to correct abuses in program operations which were identified by the Department. An Administrative Law Judge reviewed this case and rendered a decision supporting the Department's position. The city has now appealed this decision to the Secretary and we anticipate final action on the appeal shortly.

In answer to your final question on this subject, each time a prime sponsor modifies its plan, the modifications are reviewed using the same criteria as were used for the original plan.

FEDERAL REPRESENTATIVES

Your fourth question concerns Federal Representatives, and how they are picked, trained, promoted or removed. Federal Representatives are located in regional offices only, and represent the "front line" contacts with local prime sponsors and subgrantees and contractors. They are initially appointed from Civil Service Commission certificates of eligibles or under special hiring authority granted by the Commission, at the GS–7 or GS–9 levels into positions classified as Manpower Development Specialists. These are designated as "career ladder" positions to the journeyman level of GS–12.

Greater weight is given in the selection process to candidates with education and/or experience in such fields as social and behavioral sciences, public administration, and in such related fields as industrial psychology or sociology, employee development and training. They receive closely supervised and monitored on-the-job training in working with higher grade specialists until such time as they progress to a satisfactory level of individual performance. There is currently underway the development of an intensive, formal training program for all Federal Representatives that will be conducted by the Employment and Training Administration's National Training Center. The training program will include critical aspects of a Federal Representative's responsibilities for grant management.

Federal Representatives are promoted progressively through the career ladder levels to the journeyman level as they acquire the knowledge and demonstrate the skills and abilities for competent service at the next higher grade. All staff must compete under merit procedures for promotion beyond the GS–12 level.

Removal of Federal Representatives follows the normal Civil Service Commission procedures, should that be necessary. However, removal for cause has not been a problem. We have experienced situations where it was necessary to shift Federal Representatives where personality conflicts occurred. Such situations were resolved by reassigning the individual to another prime sponsor assignment or staff position. More commonly, staff is shifted to broaden their knowledge of problems in other areas and to bring their special areas of expertise to bear on a problem being experienced by a particular sponsor.

BLACK YOUTH UNEMPLOYMENT

Your final question concerns what is being done under CETA to attack the problem of black youth unemployment.

The alarming statistics on black teenage unemployment are well known. But let me add that we do have reason to be encouraged. While the black teenage unemployment rate

has gone down only a percentage point to an unacceptably high 37 percent, black teenage employment has increased 27 percent in the first 18 months of this Administration. Particularly noteworthy is the fact that many of the decreases in black unemployment and increases in black employment have come in the 20–24 age group.

Much of the improvement in the youth employment situation can be attributed to our initiatives under the Youth Employment and Demonstrations Project Act (YEDPA) passed last year. The funds we are spending for these initiatives are expected to create some 160,000 new job and training opportunities by the end of this year, and it should be noted that The New York Times terms the initiatives "a fast, creditable start in attacking the many facets of the problem." Yet, YEDPA itself acknowledges that we do not know how to best approach this problem. It simply stresses knowledge development through pilot and demonstration projects in employment and training policy.

Among the many reasons currently cited by experts for the high black teenage unemployment rate are faults in the educational system and the resulting high dropout rate, a lack of vocational skills and work habits, motivational factors and the unresponsiveness of the private sector to this group. Through various discretionary and nondiscretionary programs, the YEDPA addresses these and other problems.

For example, the Youth Incentive Entitlement Pilot Project, one part of YEDPA, tests the notion of whether a job guarantee to 16–19 year old disadvantaged youths will increase high school retention, return and completion.

Youth Community Conservation and Improvement Projects, another part of YEDPA, seeks to employ unemployed youth in well supervised work situations where the output provides tangible benefits to the community. The work itself is the source of training, with academic credit arranged where appropriate. Most of the resources have been targeted to out-of-school youth, with the balance being used for work-study programs for in-school youth.

Under YEDPA's Youth Employment and Training Programs, linkages between local educational associations and CETA prime sponsors have been fostered to create greater coordination between the employment and educational institutions at the local level. We feel this will improve the school-to-work transition process, often mentioned as a major stumbling block for black youth.

The Young Adult Conservation Corps (YACC) provides jobs for unemployed youth to accomplish needed conservation work, while providing as many other services as possible to maximize the benefits of the experience for participants. Specific skills are developed in a work environment in conjunction with counseling.

The Office of Youth Program (OYP) together with the nonprofit Corporation for Public/Private Ventures (CPPV) has embarked on new private sector initiatives to increase the employment of black youth. Notable among these is the Youth Enterpreneurship Program which seeks to involve youth in the running of their own businesses under the guidance of local businessmen. In addition, a Youth Preemployment Service initiative seeks to improve motivation, instill good work habits and skills which will make the youth more attractive to an employer.

We must again stress that these programs are experimental and that the first year necessarily concentrated on design and start up. In Fiscal Year 1979 and 1980, we should begin to see results and be in a position to evaluate them, enabling us to fill in the the knowledge gap.

In addition to the new program for youth that were added to CETA by YEDPA, minority youth are served by other ongoing CETA programs for youth, such as the Summer Program for Economically Disadvantaged Youth and the Job Corps. Youth also represent a significant portion of those served by CETA programs not specifically targeted to youth. For example, we anticipated that an estimated 668,000 young persons will be served under title I of CETA and another 265,000 under titles II and VI during the current fiscal year. Overall, we expect CETA programs to serve 4.0 million persons in Fiscal year 1978. About 56 percent or 2.3 million of these individuals will be young persons (under 22 years old)—over 40 percent of whom will be minority youth.

Madam Chairwoman, this concludes my prepared statement. At this time I would be pleased to answer any additional question that you or other members of the Subcommittee may have.●

ANNOUNCEMENT OF POSITION ON VOTE—SENATE RESOLUTION 562

● Mr. CLARK. Mr. President, if I had been here on Thursday, September 14, I would have voted for the Muskie resolution (S. Res. 562), which was rollcall vote No. 377.●

(The following statement was inserted in the RECORD by Mr. STEVENS for Senator HEINZ:)

TRADE ADJUSTMENT ASSISTANCE

Mr. HEINZ. Mr. President, it is imperative that the Senate act promptly on H.R. 11711, Adjustment Assistance for Workers and Firms, which the House passed on September 8 with only 24 dissenting votes. This bill, which is similar in many respects to legislation I introduced last year (S. 1658), is of considerable importance to trade-impacted industries, such as steel and related products, copper, zinc, footwear, textiles and apparel, among others.

Adjustment assistance has often been cited as an effective and necessary approach to dealing with trade and import problems. Though I would prefer to see such problems prevented in the first place through more aggressive enforcement of our trade laws—and in fact have introduced other legislation to accomplish that objective—I also believe that there is inevitably a need for domestic adjustment to changing economic conditions in any dynamic economy, and that the Federal Government has a responsibility to assist workers and firms in such adjustment when it is caused by imports.

At present, unfortunately, our programs of assistance have been seriously deficient. Aid to workers has all too often been only a dole instead of providing meaningful help for job retraining and relocation. The program for businesses has been chronically a case of too little too late, mired in red tape that has resulted in many applicants going out of business before they ever receive any assistance.

Changes made by the Trade Act of 1974 made some significant improvements in the program—which had scarcely been used prior to that time—serious problems remain, which H.R. 11711 will help correct.

The bill broadens the adjustment assistance program for workers by extending eligibility to workers in firms which provide services or articles which are essential to the production of import-impacted products, and to workers manufacturing component parts in a subdivision of an impacted company. In addition, benefits are extended for older workers, job search and relocation benefits are increased, and the threshold of eligibility is lowered somewhat for senior workers. Finally, eligibility is extended retroactively to certain workers who were denied in the past because of a time limitation, notwithstanding the fact that the layoffs were import related.

With respect to assistance for firms, the bill broadens eligibility criteria to conform with the changes in the worker program, makes it easier to obtain technical assistance in preparing a proposal, and increases to 90 percent the proportion of cost of that assistance the Commerce Department will bear. In addition, the effective rate on loans and guaranteed loans to impacted businesses is decreased and the ceiling on loans and loan guarantees is increased.

Finally, with respect to both programs, the bill broadens eligibility to include workers and their firms threatened with an absolute decrease in sales or production, rather than limiting it to those which have experienced an absolute decrease. This expansion will insure that the programs are timely and that assistance does not arrive, as has been alleged, only in time for "burial."

Mr. President, H.R. 11711 is not identical to my own legislation. In some respects it is broader; in others it is noticeably narrower. In any event, I believe it is so important to promptly correct the deficiencies in the current program that the most efficient course of action at this point is to simply pass the House bill. Accordingly, I am indicating to Senator LONG and Senator RIBICOFF my support for the House bill, H.R. 11711 and my strong hope that the Finance Committee will be able to find time in its busy schedule to take it up during this session of Congress. I urge my colleagues to do likewise and am today sending to each office some additional information on the bill.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

H. Brooks Phillips, of Mississippi, to be U.S. Marshal for the northern District of Mississippi for the term of 4 years (reappointment).

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Wednesday, September 27, 1978, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ORDER TO HOLD H.R. 13745 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as it is received, H.R. 13745 be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO HOLD H.R. 8812 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as it is received, H.R. 8812 be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT—H.R. 6536—APPOINTMENT OF CONFEREE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senator PERCY be added as a conferee on the part of the Senate for the conference on H.R. 6536 to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits.

The PRESIDING OFFICER. Without objection, it is so ordered.

TIME-LIMITATION AGREEMENT—S. 1185

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 1038, S. 1185, a bill to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes, is made the pending business before the Senate, there be a 1-hour time limitation for debate on that measure, and that the time be equally divided between Mr. MAGNUSON and Mr. PEARSON; that there be a time limitation of 30 minutes on any amendment; that there be a time limitation on any debatable motion, appeal, or point of order if such is submitted to the Senate for consideration, of 20 minutes, provided further, that on each of two amendments by Mr. STEVENSON there be a 1-hour time limitation, and that the agreement be in the usual form.

Mr. STEVENS. Reserving the right to object, Mr. President, did the majority leader mention 20 minutes?

Mr. ROBERT C. BYRD. I will change that to 15 minutes on debatable motion, appeal, or point of order if such is submitted.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Senate proceeds to the consideration of S. 1185 (Order No. 1038), a bill to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes, debate on any amendment (except two amendments to be offered by the Senator from Illinois (Mr. Stevenson), on each of which there shall be 1 hour) shall be limited to 30 minutes to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 15 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and cor olled, respectively, by the Senator from Washington (Mr. Magnuson) and the Senator from Kansas (Mr. Pearson): *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

TIME-LIMITATION AGREEMENT—S. 3486

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the military procurement bill, S. 3486, Calendar Order No. 1121, is called up and made the pending business before the Senate, there be a 1-hour time limitation on the bill, to be equally divided between Senator STENNIS and Senator TOWER; a time limitation on any amendment of 30 minutes; a time limitation on any debatable motion, appeal, or point of order of 15 minutes, if such is submitted to the Senate, with the following exception: that there be a 2 hour limitation on an amendment by Mr. TOWER; a 2-hour limitation on an amendment by Mr. PROXMIRE; that there be a 40 minute time limitation on each of three other amendments by Mr. PROXMIRE, and that the agreement be in the usual form.

Mr. STEVENS. Reserving the right to object, Mr. President, the time would be divided between the Senator from Mississippi and the Senator from Texas; is that correct?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Senate proceeds to the consideration of S. 3486 (Order No. 1121), a bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes, debate on any amendment (except an amendment to be offered by the Senator from Texas (Mr. Tower), on which there shall be 2 hours; an amendment by the Senator from Wisconsin (Mr. Proxmire), on which there shall be 2 hours; and three amendments to be offered by the Senator from Wisconsin (Mr. Proxmire), on each of which there shall be 40 minutes) shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 15 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Mississippi (Mr. Stennis) and the Senator from Texas (Mr. TOWER): *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the special recognition of Senators tomorrow morning?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER OF PROCEDURE—S. 991

Mr. ROBERT C. BYRD. Mr. President, today there was an agreement entered into with respect to the Department of Education bill. I ask unanimous consent that the agreement with respect to the three amendments by Mr. SCHMITT govern at such time as the Senate resumes consideration of the Department of Education bill, with the understanding that the action on those amendments will occur prior to the action on the amendment by Mr. STEVENS.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, in conformity with the agreement that has been reached on the natural gas conference report, the Senate, on tomorrow morning, after the two leaders have been recognized under the standing order, or their designees, return to the consideration of the vocational rehabilitation bill, which is Calendar Order No. 820.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, it is hoped that, upon the disposition of the vocational rehabilitation bill tomorrow, the Senate can then proceed to the consideration of the foreign assistance appropriations bill, in conformity, of course, with the general agreement on the natural gas conference report. I say this so that Senators who are involved in managing that bill and who may have amendments that they want to call up will be duly notified in a timely fashion.

RECESS TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock tomorrow morning.

The motion was agreed to; and, at 6:31 p.m., the Senate recessed until tomorrow, September 21, 1978, at 9 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate September 20, 1978:

THE JUDICIARY

Richard S. Arnold of Arkansas, to be U.S. district judge for the eastern and western districts of Arkansas.

Bruce S. Jenkins, of Utah, to be U.S. district judge for the district of Utah.

HOUSE OF REPRESENTATIVES—*Wednesday, September 20, 1978*

The House met at 10 a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Thus saith the Lord: "I am the Lord your God, who leads you in the way you should go."—Isaiah 48: 17.

Breathe on us, Breath of God,
Fill us with life anew,
That we may love what Thou dost love,
And do what Thou wouldst do.
Breathe on us, Breath of God,
Until our hearts are pure,
Until with Thee we will one will,
To do or to endure.

Receiving Thy spirit may we be made ready for the labors of this day. Strengthen us for our work, control our feelings, calm our fears, and grant us wisdom, grant us courage for the facing of these hours and the living of these days.

In the spirit of Him who went about doing good we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 1007. Joint resolution authorizing and requesting the President to proclaim the 7-day period beginning on May 1, 1979, as "Asian/Pacific American Heritage Week."

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 3375. An act to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12935) entitled "An act making appropriations for the legislative branch for the fiscal year ending September 30, 1979, and for other purposes."

The message also announced that the Senate insists upon its amendment to the bill (H.R. 9214) entitled "An act to amend the Bretton Woods Agreements Act to authorize the United States to participate in the Supplementary Financing Facility of the International Monetary Fund," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SPARKMAN, Mr. CHURCH, Mr. SARBANES, Mr. PROXMIRE, Mr. STEVENSON, Mr. CRANSTON, Mr. CASE, Mr. JAVITS, Mr. BROOKE, and Mr. HEINZ to be the conferees on the part of the Senate.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4007. An act to amend the Internal Revenue Code of 1954 to dsignate the home of a State legislator for income tax purposes, and for other purposes.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2584. An act to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes.

RESIGNATION FROM COMMITTEE ON INTERNATIONAL RELATIONS

The SPEAKER laid before the House the following resignation from the Committee on International Relations:

WASHINGTON, D.C.,
September 18, 1978.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, The Capitol, Washington, D.C.

DEAR MR. SPEAKER: I hereby tender my resignation from the International Relations Committee, effective September 20.

With best wishes, I am,
Sincerely,

SHIRLEY N. PETTIS,
Member of Congress.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

ELECTION AS MEMBER OF COMMITTEE ON INTERNATIONAL RELATIONS

Mr. MICHEL. Mr. Speaker, I offer a privileged resolution (H. Res. 1358) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That Joel Pritchard, of Washington, be and he is hereby elected a member of the Committee on International Relations.

The resolution was agreed to.

A motion to reconsider was laid on the table.

RETIREMENT OF THE HONORABLE BILL WALSH FROM THE HOUSE OF REPRESENTATIVES

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, we are all aware of the decision of our colleague from New York, BILL WALSH, to retire from the House of Representatives at the end of the 95th Congress. BILL WALSH has devoted much of his career to public service, including the last 6 years as a Member of Congress. His endeavors on behalf of the American people are a credit to this institution. This House is indebted to BILL WALSH for his labors, and its Members are sincerely grateful for his service, his dedication, and his counsel. We will miss him, and our jobs will be more difficult without his able assistance.

But if I may be allowed a personal note. I have a special debt to BILL WALSH. It was my good fortune on becoming a subcommittee chairman nearly 2 years ago to find BILL WALSH sitting next to me as ranking minority member. During the 95th Congress we have labored together, through long hours and complex issues. I have come to count on his experience, his diligence, and his fairmindedness.

I have also come to expect that, whatever our minor differences of opinion or method, that our objectives will be virtually identical. Perhaps one reason we work so well together is that we are both former mayors, and are both accustomed to viewing problem-solving in a nonpartisan, managerial perspective. When a citizen in your community has a complaint about the trash collection service, that citizen is not interested in your partisan loyalties or philosophy—they just want the sanitation department managed in such a way as to provide efficient service.

Good management and efficiency in government should be our main concerns at any level of government. Bill Walsh has worked hard in the Congress and on the subcommittee at that kind of nonpartisan problem solving. He has never lost sight of the fact that the primary purpose of our efforts should be to improve the efficiency of government, to pare away the nonessentials, and to deliver a sound product at a reasonable price. These goals are never easily achieved, but BILL WALSH has never relented in that quest. He has never diluted his purposes with partisan rancor or personal aggrandizement.

BILL WALSH is, to my mind, a model of the kind of hard-working, thoughtful, problem-solving Representative that is characteristic of the Congress at its best. He will certainly serve as a model to me for years to come.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. MINETA. I am pleased to yield to my colleague, the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I would like to join in the remarks just made by the gentleman from California (Mr. MINETA). It has been my privilege and pleasure to serve with the gentleman from New York (Mr. WALSH). We shall miss him. I would like to commend the gentleman from California (Mr. MINETA) upon his excellent statement.

TRIBUTE TO ERWIN T. KIRKWOOD OF FLINT, MICH., ON RETIREMENT

(Mr. KILDEE asked and was given permission to address the House for 1 min-

use and to revise and extend his remarks.)

Mr. KILDEE. Mr. Speaker, I want to bring to the attention of my colleagues in the Congress the very capable career of union leadership that will be marked this weekend with a retirement tribute to Erwin T. Kirkwood of Flint, Mich. Mr. Kirkwood is retiring after 12 years as president of UAW local 651 at the AC Spark Plug plant in Flint. A recent feature story on Mr. Kirkwood's retirement in the Flint Journal aptly described him as "one of the area's most respected labor leaders." This certainly expresses my feelings also toward Mr. Kirkwood, who has given so many years of extraordinary leadership to the working people of Flint and to the ideals for which he so often battled.

Mr. Kirkwood has been active in the labor movement ever since 1937, when he was a member of the American Tire Worker's Union while employed at the B. F. Goodrich Co. After serving his country in the Navy during World War II, Mr. Kirkwood came to Flint and worked at the Buick plant as a member of local 117, Plant Guards of America. He joined the AC Spark Plug Division of General Motors in 1950, and soon became an active leader in the UAW. From 1953 to 1958 Mr. Kirkwood was a district committeeman for AC local 651, and from 1963 to 1966 he was chairman of the shop committee. He served as the local's president from 1966 to the present. Mr. Kirkwood also has been active in civic affairs, serving for several years with both the Big Brothers and Big Sisters programs. He and his wife, Margaret, have been married for 27 years and have a daughter and three sons.

Members of the United Auto Workers can take pride in the knowledge that theirs is a progressive union that is universally recognized for its social leadership as well as for its dedication to the well-being of its members. The UAW has this reputation because of the leadership that has been given to it by the Erwin Kirkwoods in its ranks.

ELECTION AS MEMBER OF COMMITTEE ON VETERANS' AFFAIRS

Mr. FOLEY. Mr. Speaker, by direction of the Democratic Caucus, I offer a privileged resolution (H. Res. 1359) designating membership on a certain standing committee of the House, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1359

Resolved, That DAVID L. CORNWELL, of Indiana be, and he is hereby, elected to the Committee on Veterans' Affairs of the House of Representatives.

The resolution was agreed to.

A motion to reconsider was laid on the table.

NATIONAL GOOD NEIGHBOR DAY

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 133) to authorize and request the President to issue a proclamation designating September 24, 1978, as "National Good Neighbor Day" and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES 133

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating September 24, 1978, as "National Good Neighbor Day", and calling upon the people of the United States and interested groups and organizations to observe such day with appropriate ceremonies and activities.

The SPEAKER. The gentleman from Florida (Mr. LEHMAN) is recognized for 1 hour.

Mr. LEHMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate Joint Resolution 133, as introduced by the Honorable MAX BAUCUS, proclaims September 24, 1978, as "National Good Neighbor Day."

Prior to its consideration, commemorative legislation must receive the cosponsorship of 218 Members of the House under the policy adopted by the Post Office and Civil Service Committee.

Mr. Speaker, this resolution has 224 signatures.

Mr. Speaker, I yield such time as he may consume to the gentleman from Montana (Mr. BAUCUS).

Mr. BAUCUS. Mr. Speaker, this is a very simple resolution. It designates this coming Sunday as National Good Neighbor Day.

I would like to present here the resolution, which is quite short, in its full text:

H. J. RES. 826

Whereas our society has developed highly effective means of speedy communication around the world, while failing to insure communication among human beings who live side by side; and

Whereas the development of human values and consideration for others is of prime importance if civilization is to survive; and

Whereas being good neighbors to those around us is the first step toward human understanding: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating Sunday, September 24, 1978, as "National Good Neighbor Day", and calling upon the people of the United States and interested groups and organizations to observe such day with appropriate ceremonies and activities.

Similar resolutions have passed the Senate on at least two separate occasions. This year the resolution was sponsored by Senator MELCHER and passed the Senate 2 months ago. Senator Mansfield also successfully sponsored the legislation through the Senate on at least one earlier occasion.

However, because of the rules of the House, a resolution of this type is much more difficult to pass, for it is required that a majority of the Members of the House cosponsor any resolutions seeking to designate a commemorative holiday.

In the 94th Congress I introduced the resolution, but failed by a mere 10 Members to achieve the 218 majority required cosponsors.

However, I am proud to announce that this year I was able to obtain 224 cosponsors, whose names I would like to list here:

LIST OF THE COSPONSORS FOR NATIONAL GOOD NEIGHBOR DAY

Mr. Addabbo.
Mr. Akaka.
Mr. Alexander.
Mr. Ambro.
Mr. Andrews of North Carolina.
Mr. Andrews of North Dakota.
Mr. Annunzio.
Mr. Applegate.
Mr. Ashley.
Mr. Aspin.
Mr. AuCoin.
Mr. Bafalis.
Mr. Baldus.
Mr. Baucus.
Mr. Beard of Rhode Island.
Mr. Bedell.
Mr. Beilenson.
Mr. Benjamin.
Mr. Bennett.
Mr. Bevill.
Mr. Biaggi.
Mr. Blanchard.
Mr. Blouin.
Mr. Boland.
Mr. Bonior.
Mr. Brademas.
Mr. Breaux.
Mr. Breckenridge.
Mr. Brinkley.
Mr. Brodhead.
Mr. Brown of California.
Mr. Brown of Michigan.
Mr. Brown of Ohio.
Mr. Buchanan.
Mrs. Burke of California.
Mr. Burke of Florida.
Mr. Burton, John L.
Mr. Byron.
Mr. Carney.
Mr. Carter.
Mr. Chappell.
Mrs. Chisholm.
Mr. Clawson, Del.
Mr. Clay.
Mr. Cohen.
Mr. Conte.
Mr. Conyers.
Mr. Corcoran of Illinois.
Mr. Corman.
Mr. Cornell.
Mr. Cornwell.
Mr. Corrada.
Mr. Daniel, Dan.
Mr. Daniel, Robert W., Jr.
Mr. De La Garza.
Mr. DeLugo.
Mr. Dent.
Mr. Derrick.
Mr. Dicks.
Mr. Diggs.
Mr. Dodd.
Mr. Downey.
Mr. Duncan of Oregon.
Mr. Eilberg.
Mr. Emery.
Mr. English.
Mr. Ertel.
Mr. Evans of Delaware.
Mr. Evans of Georgia.
Mr. Fary.
Mr. Fauntroy.
Mr. Fithian.
Mr. Flood.
Mr. Florio.

Mr. Ford of Michigan.
Mr. Forsythe.
Mr. Fountain.
Mr. Fraser.
Mr. Frey.
Mr. Fuqua.
Mr. Garcia.
Mr. Gephardt.
Mr. Ginn.
Mr. Gonzalez.
Mr. Grassley.
Mr. Guyer.
Mr. Hall.
Mr. Hanley.
Mr. Harris.
Mr. Hawkins.
Mrs. Heckler.
Mr. Hefner.
Mr. Hightower.
Mr. Hillis.
Mr. Holland.
Mr. Hollenbeck.
Mr. Horton.
Mr. Howard.
Mr. Hughes.
Mr. Hyde.
Mr. Ichord.
Mr. Ireland.
Mr. Jacobs.
Mr. Jeffords.
Mr. Jenkins.
Mr. Johnson of California.
Mr. Jones of Tennessee.
Mr. Kastenmeier.
Mr. Kazen.
Mr. Kelly.
Mr. Kemp.
Mrs. Keys.
Mr. Kostmayer.
Mr. Krueger.
Mr. LaFalce.
Mr. Lagomarsino.
Mr. Lederer.
Mr. Le Fante.
Mr. Leggett.
Mr. Lloyd of California.
Mrs. Lloyd of Tennessee.
Mr. Long of Maryland.
Mr. Luken.
Mr. Lundine.
Mr. McDade.
Mr. McFall.
Mr. McHugh.
Mr. Mann.
Mr. Markey.
Mr. Marlenee.
Mr. Martin.
Mr. Mazzoli.
Mr. Metcalfe.
Mrs. Meyner.
Ms. Mikulski.
Mr. Miller of California.
Mr. Mineta.
Mr. Mitchell of Maryland.
Mr. Mitchell of New York.
Mr. Montgomery.
Mr. Moorhead of Pennsylvania.
Mr. Mottl.
Mr. Murphy of Illinois.
Mr. Murphy of New York.
Mr. Murphy of Pennsylvania.
Mr. Myers, John T.
Mr. Myers, Michael O.
Mr. Natcher.
Mr. Neal.
Mr. Nichols.
Mr. Nolan.
Ms. Oakar.
Mr. Oberstar.
Mr. Patten.
Mr. Patterson of California.
Mr. Pepper.
Mr. Perkins.
Mrs. Pettis.
Mr. Pickle.
Mr. Price.
Mr. Pursell.
Mr. Quie.
Mr. Quillen.
Mr. Rahall.
Mr. Railsback.
Mr. Reuss.
Mr. Richmond.
Mr. Rinaldo.
Mr. Risenhoover.
Mr. Robinson.
Mr. Rodino.
Mr. Roe.
Mr. Rogers.
Mr. Roncalio.
Mr. Rooney.
Mr. Roybal.
Mr. Rudd.
Mr. Runnels.
Mr. Ruppe.
Mr. Russo.
Mr. St Germain
Mr. Sawyer.
Mr. Sebelius.
Mr. Shipley.
Mr. Sikes.
Mr. Simon.
Mr. Sisk.
Mr. Skelton.
Mr. Solarz.
Mrs. Spellman.
Mr. Spence.
Mr. Staggers.
Mr. Stanton.
Mr. Steed.
Mr. Steiger.
Mr. Stokes.
Mr. Thone.
Mr. Traxler.
Mr. Tucker.
Mr. Vento.
Mr. Waggonner.
Mr. Walgren.
Mr. Watkins.
Mr. Waxman.
Mr. Weiss.
Mr. White.
Mr. Whitehurst.
Mr. Whitley.
Mr. Whitten.
Mr. Wilson, Charles H. of California.
Mr. Wilson, Charles of Texas.
Mr Winn.
Mr. Wirth.
Mr. Wolff.
Mr. Won Pat.
Mr. Wylie.
Mr. Yates.
Mr. Yatron.
Mr. Zablocki.
Mr. Zeferetti.

The following are National Good Neighbor Day cosponsors. They agreed to be cosponsors after I had submitted the original list:

Mr. Bowen.
Mr. Mikva.
Mrs. Fenwick.
Mr. Frenzel.
Mr. Wright.

Mr. Speaker, I would like to give credit for the inspiration of National Good Neighbor Day to Mrs. Becky Mattson, a constituent of mine, who lives in Lakeside, Mont.

Becky conceived the idea of holding a Good Neighbor Day each year. Since 1971 she and her husband have dedicated their lives to working with people throughout the country in organizing events to be held on the fourth Sunday of each September in an effort to show productive things that neighbors can do.

Becky sees National Good Neighbor Day as an opportunity to provide a partial solution to some of the common and depressing problems and needs of localities, both urban and rural, throughout America.

She also sees it as one more opportunity to use through voluntary efforts the ingenuity and vitality of our young people. This group of perspective volunteers number some 30 million in our schools. And these young people can be reached through schools, community groups, and clubs — where volunteer projects are most often organized.

The State departments of education from a number of States as well as the national and international media have contacted Mrs. Mattson's Good Neighbor Day Foundation in Lakeside, Mont., expressing their interest in helping to promote this worthwhile endeavor.

But Becky's work on Good Neighbor Day has not focused only on school children being neighborly among themselves. For example, she told me of a previous Good Neighbor Day where one Ohio school district hosted 300 senior citizens, who toured the facilities and had an opportunity to observe and communicate with young people, to the benefit of both generations. Also she told me about a pilot project where communities on and surrounding one Western Indian Reservation conducted four consecutive work/play activities which were held for area schoolchildren to "promote understanding." This project was apparently so successful and productive and popular that new and expanded activities are now planned.

Not all projects, however, involve large groups. In communities in Montana, Texas, and elsewhere local merchants donated shrubbery and shade trees which were planted by young volunteers who worked in groups of 4 and 5 to improve their communities.

The nonprofit National Good Neighbor Day Foundation in Lakeside, Mont., serves as a National clearinghouse for information regarding volunteer projects. Civic and educational groups throughout the United States obtain information on establishing or coordinating activities by writing the Good Neighbor Day Foundation at Drawer R, Lakeside, Mont. 59922.

Mr. Speaker, I know we cannot legislate morality in this country. And by the passage of this legislation, I do not seek to require that people be good neighbors. No, Mr. Speaker, what I wish to accomplish by passing this legislation today, is to provide an opportunity for those people throughout the country who would like to provide a spark to peoples' lives who would not otherwise be thinking of activities they could engage in to help their neighbors.

Mr. Speaker, as I mentioned before, National Good Neighbor Day has had substantial widespread national support. I would like to list for my colleagues a few of the entities throughout the country who have proclaimed and followed National Good Neighbor Day in earlier years. The list follows:

NATIONAL GOOD NEIGHBOR DAY—HOUSE JOINT RESOLUTION NO. 826

STATES IN WHICH GUBERNATORIAL PROCLAMATIONS HAVE BEEN ISSUED:

Alabama, Arizona, Delaware, Hawaii, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Tennessee, Utah, Virginia, Washington, and Wisconsin.

STATE DEPARTMENTS OF EDUCATION WHICH ENDORSED NATIONAL GOOD NEIGHBOR DAY:

Florida, Illinois, Maine, Minnesota, Texas, Utah, Virginia, Washington, and Wisconsin.

EXAMPLES OF THE VARIETY OF LOCALES WHERE ACTIVITIES HAVE TAKEN PLACE:

Anchorage, Alaska; Butte, Montana; Carney's Point, New Jersey; Decatur, Alabama; Fayette County, Ohio; Flathead Indian Reservation, Montana; Ft. Wainwright, Arkansas; Great Falls, Montana; Groves, Texas; Kalispell, Montana; Phoenix, Arizona; Scranton, Pennsylvania; Stillwater, Oklahoma; and Tulsa, Oklahoma.

ORGANIZATIONAL ENDORSEMENTS: (Partial List)

National PTA Congress.
National Association of Secondary School Principals.
Council of State School Officers.
International Soroptimists.
Kiwanis Clubs of Baton Rouge, Louisiana, Des Moines, Iowa, and Montana District.

MAJOR MEDIA ENDORSEMENTS: (Partial List)

Woman's Day.
World.
Canadian Broadcasting Corp.
Instructor (Journal for teachers).
Scholastic Magazines (School Publications).
National Association of Secondary School Principals' Communications.
Salvation Army's War Cry.
On the Line (Children's Publication—Scheduled for September, 1978).
Various State Superintendents of Public Instruction journals.
My Weekly Reader (School Publication).
Covenant Companion.

Mr. Speaker, in short, I do not expect everyone to be good neighbors after the passage of this legislation. On the other hand, some more people may become more considerate and concerned about the plight of their neighbors. If that happens, this resolution has been successful.

● Mr. MARLENEE. Mr. Speaker, I rise to express my support for National Good Neighbor Day. I am also a cosponsor of this resolution, and am proud to add my support for it.

As my colleague from Montana has noted, the primary supporter of this legislation and of the whole idea of designating the fourth Sunday in September as National Good Neighbor Day is Mrs. Becky Mattson from Lakeside, Mont.

Mrs. Mattson has worked tirelessly on this project, and she feels certain that if we can obtain congressional and Presidential approval of her proposed Good Neighbor Day, it will generate a widespread national following.

Actually, Mr. Speaker, Good Neighbor Day already has a substantial following. I would like to present for the RECORD an article which appeared in this month's edition of Student Advocate, published by the National Association of Secondary Principals. This article highlights many of the activities that have been ongoing in the observance of National Good Neighbor Day since it was initially introduced in 1971:

BE A GOOD NEIGHBOR

America is a transient nation. People are always on the move. In the early 1970's, statistics indicated that nearly one out of every five Americans changed his residence each year.

With all this moving about, it's not surprising that many people don't establish roots within a community. Many may not even know their neighbors. To give people a sense of community and an opportunity to say "hello" to the person next door or down the block, the National Good Neighbor Day Foundation is asking everyone to participate in National Good Neighbor Day Sunday, September 24th.

National Good Neighbor Day is becoming a new tradition. The idea for it began in 1971. Since then legislation to give formal recognition of the day has been introduced into Congress. Mrs. Becky Mattson, who coordinates National Good Neighbor Day with her husband Dr. Richard C. Mattson, notes, however, that neither congressional approval or a presidential proclamation are necessary to make National Good Neighbor Day a traditional day. What is needed, she says, "is response from people across the country."

Being a good neighbor means more than keeping your lawn mowed and your walk clean. It means establishing a sense of community and respecting the people in your neighborhood and their property.

National Good Neighbor Day is an easy way for every member of every family to get involved and establish neighborhood roots. Plan a block party, a picnic or barbecue. Invite your neighbors and get to know them. Knowing your neighbors can increase your security and theirs.

Students may be interested in sponsoring other community oriented projects, including helping the handicapped or the elderly. You can perform a skit or hold a song fest at a resthome or hospital. A year-round project could be to help run errands or perform chores for the elderly or handicapped. You and your family may want to welcome a new family to your community and help make them feel at home.

Being a good neighbor also means taking an interest in your community by keeping it clean, accepting responsibility for your pets and reporting to the appropriate authorities possible hazards to take care of.

Your school group can help win a Good Neighbor Designation for your town by participating in the 1978 National Good Neighbor Day Project Contest. With community cooperation and media coverage, you can perform a project to benefit your neighborhood and receive recognition for your valuable service.

First, receive permission from school authorities to sponsor a community oriented project. Then, find a need within your community. Organize your group to fulfill the need, making sure that one part of your organization notifies both the school and outside media.

The ideas for projects are unlimited. In Phoenix, Ariz., students at Thunderbird HS helped clean and paint a local rehabilitation center for their project last year. Other projects include planting trees, shrubs or flowers in parks or other civic areas, reading to and assisting senior citizens in resthomes, organizing a taxi or errand running service for the elderly, cleaning and fixing rundown city areas, or organizing and manning a booth dispensing information and directions in your town to visitors.

Help create a good neighbor town and help create a good atmosphere in which to live.

For more information on how your school group can get involved and how you can be a good neighbor, write to the Good Neighbor Day Foundation, Drawer R, Lakeside, Mont. 59922.

Mr. Speaker, I would also like to note in closing that the National Good Neighbor Day Resolution has the widespread support of Congress. I understand that 224 of my colleagues have cosponsored this legislation. A brief review of these Members will demonstrate that it not only has strong bipartisan support, but widespread geographical support. Indeed, it looks as though nearly every State in the Union has had one of its representatives cosponsor this resolution.

I do hope the House acts favorably on this resolution today.●

Mr. LEHMAN. Mr. Speaker, I have no further requests for time.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the Senate joint resolution just passed.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

CALL OF THE HOUSE

Mr. CHARLES H. WILSON of California. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 803]

Ambro	Florio	O'Brien
Ammerman	Flowers	Pepper
Anderson, Ill.	Ford, Mich.	Pike
Andrews, N.C.	Fraser	Pressler
Archer	Gammage	Quie
Armstrong	Garcia	Railsback
AuCoin	Gibbons	Rhodes
Beard, R.I.	Goldwater	Risenhoover
Beard, Tenn.	Harrington	Rodino
Beilenson	Heftel	Roe
Boggs	Hollenbeck	Roncalio
Bonior	Howard	Rosenthal
Breaux	Hughes	Rudd
Brown, Ohio	Ireland	Runnels
Burke, Calif.	Kemp	Russo
Burton, John	Krueger	Santini
Burton, Phillip	LaFalce	Sarasin
Byron	Leggett	Scheuer
Caputo	Livingston	Shipley
Chisholm	Lujan	Shuster
Clay	McCloskey	Skubitz
Collins, Ill.	McHugh	Slack
Conyers	McKinney	Steed
Cornwell	Markey	Stockman
Davis	Meeds	Stokes
Dellums	Meyner	Teague
Dent	Mikva	Thompson
Derwinski	Milford	Tsongas
Dickinson	Miller, Calif.	Tucker
Diggs	Minish	Udall
Dodd	Mollohan	Waxman
Eckhardt	Murphy, N.Y.	Whitehurst
Evans, Colo.	Neal	Wiggins
Evans, Del.	Nichols	Wilson, Tex.
Findley	Nolan	Young, Tex.

The SPEAKER pro tempore (Mr. CAVANAUGH). On this rollcall 327 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceeding under the call were dispensed with.

PROVIDING FOR CONSIDERATION OF H.R. 1, ETHICS IN GOVERNMENT ACT OF 1977

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up

House Resolution 1323 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1323

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1) to require candidates for Federal office, Members of the Congress, and officers and employees of the United States to file statements with the Comptroller General with respect to their income and financial transactions. After general debate, which shall be confined to the bill and to the amendments made in order by this resolution and shall continue not to exceed two hours, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, and thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Select Committee on Ethics, the bill shall be read for amendment under the five-minute rule. In lieu of the amendment now printed in the bill, it shall be in order to consider the text of the bill H.R. 13850 if offered as an amendment in the nature of a substitute for the bill, said substitute shall be read for amendment under the five-minute rule as an original bill by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived. No amendments to said substitute shall be in order except pro forma amendments for the purpose of debate and amendments printed in the Congressional Record at least one legislative day prior to their consideration. After the disposition of all other amendments to title I of said substitute, it shall be in order to consider, any rule of the House to the contrary notwithstanding, the following amendment if offered as a new section to title I of said substitute: "Section (a) The Rules of the House of Representatives are amended by striking out rule XLVII and renumbering the following rule accordingly, effective immediately. (b) The provisions of this section are enacted by the Congress (1) as an exercise of the rulemaking power of the House of Representatives; and (2) with full recognition of the constitutional right of the House of Representatives to change its rules at any time.". Said amendment shall not be subject to amendment except pro forma amendments for the purpose of debate, and following the disposition of said amendment no further amendment to title I of the substitute shall be in order and no further amendment shall be in order to the substitute changing or affecting the provisions of title I of said substitute or changing or affecting the rules of the House. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 1, it shall be in order, sections 401(b)(1) and 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, to take from the Speaker's table the bill S. 555 and to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 1 as passed by the House.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Tennessee (Mr. QUILLEN) pending which I yield myself such time as I may consume.

Mr. Speaker, if anybody listened to the reading of the rule, they will know that this is a complicated rule. It provides for the dividing of 2 hours among four committees. In other words, a half hour for each committee on general debate. The committees involved are: The Committee on the Judiciary; the Committee on Armed Services; the Committee on Post Office and Civil Service, and the Select Committee on Ethics. Each gets a half hour to be controlled, as usual, by the chairman and the ranking minority member.

Then the bill H.R. 13850, if offered, is in order as a substitute for the bill. It is a bill which includes a good many modifications of the bill that would otherwise be before the House. It is generally, as I understand it, agreed upon by majorities in each of the committees that have jurisdiction over the various sections.

The only amendments that are in order to that substitute are pro forma amendments for the purpose of debate, and amendments printed in the CONGRESSIONAL RECORD at least 1 legislative day prior to our consideration. I understand that a number of such amendments have appeared in the RECORD.

Then, in addition to that, there is made in order the so-called Quillen amendment, which appears on the top of page 3 of the rule. It is, in effect, a motion to strike rule XLVII.

That amendment is not amendable. At the conclusion of the consideration of the bill a motion to recommit is in order and the bill is sent to conference with a similar Senate bill.

I have received no request for time. I do not know of any great controversy over the resolution. There is a great deal of controversy over the bill that it brings up.

I therefore reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the distinguished gentleman from Missouri, Mr. BOLLING, has ably explained the provisions of House Resolution 1323. This is a 2-hour, modified open rule providing for the consideration of H.R. 1, the so-called Ethics in Government Act. The rule provides that the text of H.R. 13850 may be offered as an amendment in the nature of a substitute for H.R. 1, and states that only amendments printed in the CONGRESSIONAL RECORD at least 1 day prior to the bill's consideration will be in order.

I wish to particularly draw to the attention of Members that this rule further provides that it shall be in order for the House to reconsider the outside earned income limit contained in House Rule 47. House Rule 47, which is now set to become effective with the 96th Congress, imposes an outside earned income limit of 15 percent of the congressional salary and also limits honorarium fees to $750.

At the appropriate time during debate, I intend to offer the amendment now printed in the rule which will repeal House Rule 47. As Members are aware, House Rule 47 places no restrictions on the amount of unearned income a Member may receive. The 15 percent limit deals only with earned income. I propose striking House Rule 47 so that earned income and unearned income will be treated equally under the rules of this body. A vote for my amendment is a vote that says that earned income is as ethical as unearned income—a judgment which seems logical enough.

I look forward to the debate on this issue, confident that logic, rationality and fair play reside with those of us who seek to repeal House Rule 47.

Mr. Speaker, I urge adoption of the rule.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, I thank the gentleman for yielding.

As I understood the statement of the gentleman from Missouri, only amendments appearing in the RECORD 1 day preceding the legislative date on which we consider the bill would be in order?

Mr. QUILLEN. That is my understanding.

Mr. ASHBROOK. I wish to ask if this is becoming a legislative precedent. I think there have been a lot of unfair legislative positions develop on account of that. I know I have been in a position where I have offered an amendment part of which would be ruled out of order and then I could not amend the amendment.

I would like to express for the record my opposition to that type of gagging of Members. We are always talking about wanting cooperation. It just seems to me that it well behooves those who bring in this type of rule to ask for the cooperation of Members in other instances that would require unanimous consent. I have an amendment I wanted to offer. Members hear our constituents complaints about bureaucracy's moving targets and the difficulty of knowing what rules and regulations are at any given time. The Rules Committee is becoming a moving target for the Members. You have to get a scorecard every day to see what new wrinkle they are trying out in the continuing effort to limit debate and gag the Members. I studied House Resolution 1128 which was the original rule for H.R. 1. It had no provision regarding 24-hour printing of amendments. Now House Resolution 1323 changes the whole ball game and I now cannot offer my amendment, the same amendment on limiting outside earned income for Federal employees that I offered on the civil service reform bill.

I want to know if we are going to start to do this. If we are, we ought to know it and Members who are on the floor can know this is going to be a procedure. I myself find it a trend which certainly will not expedite the legislative business.

Mr. QUILLEN. The gentleman has made a very good point. Actually such a measure affecting every Member of this House should have been brought to the floor with an open rule. I notice particularly here in the last few months that amendments are being limited to those which have had prior printing in the CONGRESSIONAL RECORD, and it is not a good trend. The gentleman has made a good point.

Mr. ASHBROOK. I thank my colleague for yielding. That is the old saw that it cuts both ways, as we might see later.

Mr. QUILLEN. I agree.

Mr. ASHBROOK. I thank the gentleman from Tennessee for yielding.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Speaker and Members, I am taking a few moments under the rule because the time is to be divided in general debate among four committees and therefore the opportunity for debate by individual Members will necessarily be limited.

I would like the attention of the Members during these remarks since I am going to be talking about their future in government and, more importantly, about the way the public perceives their performance in government.

Mr. Speaker, we are today about to consider a bill which is intended to promote ethics in government. This great goal of ethical conduct is to be achieved, under the bill, by a comprehensive scheme of disclosure of personal assets, liabilities, gifts received, income earned, and transactions of designated individuals.

Accordingly, Mr. Speaker and Members, it is at once apparent that ethics is to be gained at the expense of privacy. There is no question about that. Privacy is to be surrendered in part because we believe that such a surrender will achieve a higher and greater goal of ethical conduct in government.

Privacy is not something, Mr. Speaker and Members, which is to be surrendered easily. Privacy is a value of constitutional significance. It has been recognized in several important opinions of the United States Supreme Court as a right protected under several amendments of the Constitution. Therefore I hope that the Members will commence their deliberations under this bill with a respect for this constitutional value of privacy and a commitment not to surrender it easily, but rather to surrender this constitutional right grudgingly and only to do so if the Members are convinced that it is necessary to achieve an overriding and compelling governmental interest, namely the attainment of ethical conduct by those who serve in government. I hope the Members will agree as well that when we are infringing upon a constitutional right for the purpose of achieving a higher goal that we should do so only to the extent necessary to attain that goal. We should not make wholesale intrusions into constitutional rights unless it is necessary. The bill, accordingly, must be carefully and narrowly drawn.

These are basic principles, Mr. Speaker, which must underlie our consideration of the legislation which will be pending this morning and this afternoon.

The basic question before us which each of us must answer is whether or not a detailed disclosure of the personal finances of those who serve in government, even though such transactions have nothing to do with their official performance will achieve the objectives of the legislation. That is to say, is it necessary to deter improper dealings by government officials or—and perhaps this is really the underlying premise of the legislation—will it enhance the public's credibility of those who serve in governmental institutions?

I am going to take only a moment to question the second premise that a full disclosure will enhance the credibility of government.

It has been said, I think, by Justice Brandeis in another context, that "sunshine is the best disinfectant."

That is a beautiful phrase, but let us examine it. Has it been the Members' experience in life that a minute inspection of anything of beauty and of value has enhanced its beauty and its value?

The SPEAKER pro tempore (Mr. CAVANAUGH). The time of the gentleman from California (Mr. WIGGINS) has expired.

Mr. QUILLEN. Mr. Speaker, I yield 5 additional minutes to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Speaker, I thank the gentleman for yielding me this additional time.

To continue, Mr. Speaker, do we really believe that a minute inspection of the personal assets, finances, and transactions of those who serve in Government will enhance the public credibility of Government?

If we do believe that, may I say with all due respect, I think we are terribly naive.

Mr. Speaker, let me call upon tthe Members' recent experience. They have filed recently their first disclosure statement. Who looked at it? Let me say that in general two categories of people looked at it. A Member's opponent looked at it; and if he issued a public statement commending the Member for it, I will be utterly surprised. In other words, if there was anything good in it, nothing was said.

On the other hand, the other broad category of people who find interesting these disclosure statements is the press.

What has been the Members' personal experience? Did the press report that any particular Member was an honest man? Did the press report that any Member had conducted himself or herself with propriety or discretion? Did the press report that any Member was a person of modest circumstances?

The press does not report the average. The press of necessity—and I mean no disrespect, but I do mean what I say—reports the bizarre, the unusual.

The public message which went out from that first disclosure statement was that there were a half dozen or so millionaires in the House. There were people digging and probably there are people still digging trying to find a conflict of interest where one never really existed as a result of that public disclosure.

Mr. Speaker, I am telling the Members what they know. Therefore, I think it is important that we go back to the basic question: Is the image of Government enhanced or improved as the result of this minute disclosure of the personal assets, finances, and transactions of those who serve in Government? I think that is not a clear question; but if we come down on the side of finding that it is, in fact, degrading, then we ought to vote against this bill.

Mr. Speaker, I will give the Members other reasons in the course of the debate for voting against the bill; but these are threshold questions that we must answer.

I shall now conclude, Mr. Speaker. In my view, the concept of achieving ethics by baring one's soul will, in the long run, be counterproductive with respect to the image of this institution and will deter good people, men and women, from entering this institution and making a contribution to it.

Mr. WYDLER. Mr. Speaker, will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Speaker, I thank the gentleman for yielding.

The gentleman from California is pointing out something very important today.

A lot of attention has been directed to the battle we are going to have over the Quillen amendment and the limitation on outside earnings in certain categories for certain people under certain conditions, very limited and specified conditions which exist in the present rules of the House. I think that is right and as it should be, to some extent. Of course, I believe that rule is very unfair, but the gentleman is pointing out that this bill goes far, indeed far, far beyond that in its implications, not only to the Members sitting in this Congress, but to the Members who will be elected and who will sit in the Congresses in the years to come. Furthermore, I believe that the requirements we are setting up at this time under the name of ethics for Members to meet are most far-reaching and important to all Members. We should consider each of the provisions of this bill most carefully and listen attentively to many of the amendments that will be offered to other parts of the bill, amendments which are wise and thoughtful. I trust that every Member will give them serious consideration.

I also, if the gentleman will yield further, would like to say that as I understand this rule, although it is called a modified open rule, it is shot through with restrictions. We know the gentleman appeared before the Committee on Rules on a number of occasions and pointed out such obvious defects in the

bill that they withdrew the request for a rule and went back to the drawing board, so to speak, to rewrite the bill. I do not know fully what the condition is of the one that we now have before us. It must be many versions later. I do not know fully and exactly where we are with it. The gentleman knows better than I.

Mr. WIGGINS. It is better.

Mr. WYDLER. It is better?

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. QUILLEN. I yield 2 additional minutes to the gentleman from California.

Mr. WYDLER. If the gentleman would yield further, I point out that although they call this particular rule that was finally given for this particular version of the bill open, it is really very closed. It waives points of order, and I believe this is not the proper way to consider a bill that will have the impact that this one will have on the legislative branch of Government. So, I personally do not believe it is a good rule. But I would like the gentleman, if he could, to tell us something about the experience he had in appearing before the Committee on Rules on previous occasions.

Mr. WIGGINS. I can do so and I can do it very briefly. I want to commend the gentleman from California (Mr. DANIELSON) and the gentleman from North Carolina (Mr. PREYER) and the members of the Committee on Rules for being tolerant of my appearances, repeated appearances, before the Committee on Rules criticizing the substance of the legislation, and as a result of those appearances, I think—and, of course, in part their own good efforts—this bill has been modified in many ways. The substitute which will be offered by the gentleman from California (Mr. DANIELSON) is a superior product to that which was originally proposed as H.R. 1, but I do not, of course, admit, with some 50 amendments printed in the RECORD, that it is perfect.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

How does the gentleman reconcile his contentions with the language in the report which indicates that there are numerous court decisions—not U.S. Supreme Court—numerous court decisions which sustain the disclosure rules and disclosure legislation throughout the United States?

Mr. WIGGINS. I am not declaring that disclosure per se is unconstitutional. A narrowly and carefully drawn statute, I think, probably would withstand constitutional scrutiny, but we have at least a two-level inspection to be made here. One is a constitutional level, and that is going to turn on whether this is a narrowly drawn piece of legislation, and then, more fundamentally, we have a policy question to decide. I will make my arguments primarily on the policy side.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. WIGGINS. I thank the gentleman for yielding time.

Mr. BOLLING. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. PIKE).

Mr. PIKE. Mr. Speaker, I thank the gentleman from Missouri for yielding to me. I am going to vote against this legislation, and the gentleman from California (Mr. WIGGINS) is going to vote against this legislation, and this legislation is going to pass. It is going to pass not because it is good Government but because it is good politics. The gentleman from California (Mr. WIGGINS) and I can afford to vote against this legislation because Mr. WIGGINS and I are not running for reelection. Therefore, we can honestly say what we honestly think about this legislation. I believe those Members who come up and say quietly to me, "OTIS, I agree with you and I only wish I could vote with you, but I cannot because it will hurt me politically."

I think it is very sad that the likes of the gentleman from California (Mr. WIGGINS) are leaving this institution. The gentleman is a thoughtful, wise and articulate contributor to this body.

I told you if I left this institution, I would leave laughing and I will, because it is my hope and my intention to leave it by going up about 20 feet into the press gallery, where I hope to write about this institution. I will sit up there and look down upon you with scorn and amusement as you continue to degrade yourselves in the House of Representatives.

I think you know what your speeches are worth and if you think that your speeches are not worth more than $8,625 a year, I am not prepared to quarrel with that judgment. You are probably right. I can only say that they are going to get worse in the years to come, because what you are going to do here is build a monument to mediocrity.

There is nothing in this legislation that says you cannot be a businessman and serve in the Congress of the United States. All it says is that you cannot be a successful businessman and serve in the Congress of the United States. If you are a successful businessman, you are by definition unethical and you will be barred. If you are an unsuccessful businessman, you will be ethical and welcomed with open arms and the room will abound with the likes of you.

This does not augur well for the future of the Republic. It is no real tragedy as to those of us who are leaving. The real tragedy will occur throughout the length and breadth of this land through all our people who will never enter the system, not the dozens of us who are going out, but the millions of future people who will simply say, "I would rather have my privacy than be a part of the political system."

One of the major diseases with which we are confronted in the political system today is a feeling of alienation of the people from the system. It is "the Government" against "us." It is "them" against "us," and this legislation is going to drive more and more people out of the system. It is going to keep millions and millions of people from ever entering the system.

Earned income is not a major thing. It is not earning income when you are speculating in real estate around here now, so thanks to the beneficence of the Committee on Ways and Means, that is what all good businessmen are doing, anyway. We stop earning income. We have capital gains and that is what it is going to be, so you will have plenty to keep you occupied to earn more money and still be ethical. You can write books. You can go all through the loopholes that are written into this legislation. That is not the major thing. The major thing is that millions and millions of Americans will opt for their privacy, rather than opt for joining the political system, and that is the tragedy.

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from North Carolina (Mr. PREYER), the chairman of the Select Committee on Ethics.

Mr. PREYER. Mr. Speaker, this is not really the time to fully debate this bill, and I will not attempt to do that; but I do just want to make one point in response to the comments that have been made here. It has been said that this is not good Government, that this is just good politics; that this bill does not do anything: that it does no good, it only makes us look good on the political stump when we say we voted for it.

I want to suggest to you this bill does do something and call your attention to a very specific case. We have all been going through the trauma of the Korean investigation in this House recently. I would submit to you if these rules had been in effect from 1970 to 1976, there would have been no Koreagate. A Tongsun Park could not have flourished in the way he did under the new rules that are in this bill and the new changes made by the Committee on Administration Reform of the gentleman from Wisconsin (Mr. OBEY). We have abolished the so-called official office account, the so-called slush fund.

That would have eliminated one aspect of the Korean problem. Second, we have made it flatly illegal to receive any campaign contributions from a foreign national. It was not illegal at that time, so, therefore, there was a gray area.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. PREYER. I yield to the gentleman from California.

Mr. ROUSSELOT. I thank the gentleman for yielding. Mr. Speaker, let me ask, does this bill eliminate the slush fund?

Mr. PREYER. This particular bill does not.

Mr. ROUSSELOT. I am glad to have that cleared up; this bill does not really address that problem.

Mr. PREYER. That is accomplished by the Obey commission reform.

Mr. ROUSSELOT. I see. So this bill does nothing to prevent the so-called Korea-gate actions.

Mr. PREYER. Mr. Speaker, what this bill does is a third thing that affects the Korean situation. It requires disclosure of the source from which a Member is receiving income, and that would have indicated payments from Tongsun Park. I think we would all have felt a

lot better if we had not had this gray area, and I submit to the Members that if we had had this bill, Tongsun Park could not have flourished in this Congress.

So I suggest to the Members that what we will be considering and voting on later today is a real bill. It is not just politics. Later we will go into the question of whether it invades privacy at the expense of ethics. We tried to strike a balance on that.

This bill does not get into such technicalities as the cost of a Member's personal residence, what kind of a car he drives, whether his children smoke, or anything of that sort. Nor is there any question the bill is constitutional. We will go into that aspect of it later. On the earned income limitation, we will debate that more fully later.

Mr. Speaker, I hope the Members will understand this as a serious bill, not just politics. It will change and improve the way this body operates.

Mr. BOLLING. Mr. Speaker, I yield myself such time as I may consume, and then I am going to move the previous question.

Mr. Speaker, I do not know two Members in the House that I like and respect more than the gentleman from California, CHUCK WIGGINS, and the gentleman from New York, OTIS PIKE. I am not going to debate the bill with them, but I absolutely believe that they are wrong in their views and conclusions. That, of course, is their right.

I think this is a serious bill. I think it is a constitutional bill. I think it is an important step in American democracy, and I do not have to vote for it or for any other bill for political reasons. I hope that the rule will be approved by a very large majority.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. YATES). The queston is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WYDLER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 331, nays 50, not voting 51, as follows:

[Roll No. 804]

YEAS—331

Abdnor	Beard, R.I.	Brinkley
Addabbo	Bedell	Brodhead
Akaka	Beilenson	Broomfield
Alexander	Benjamin	Brown, Calif.
Anderson, Calif.	Bennett	Broyhill
Andrews, N. Dak.	Bevill	Buchanan
Annunzio	Biaggi	Burgener
Applegate	Bingham	Burke, Fla.
Archer	Blanchard	Burke, Mass.
Ashley	Blouin	Burleson, Tex.
Aspin	Boggs	Burlison, Mo.
AuCoin	Boland	Burton, John
Bafalis	Bolling	Butler
Baldus	Bonior	Carney
Barnard	Bonker	Carr
Baucus	Bowen	Carter
	Brademas	Cavanaugh
	Breckinridge	Cederberg
Chappell	Hollenbeck	Pickle
Chisholm	Holtzman	Poage
Clausen, Don H.	Horton	Pressler
Clay	Hubbard	Preyer
Cleveland	Huckaby	Price
Cochran	Hyde	Pritchard
Cohen	Ichord	Pursell
Coleman	Jeffords	Quie
Collins, Ill.	Jenkins	Quillen
Conable	Johnson, Calif.	Rahall
Conte	Johnson, Colo.	Rangel
Corcoran	Jones, Tenn.	Regula
Corman	Jordan	Reuss
Cornell	Kasten	Richmond
Cornwell	Kastenmeier	Rinaldo
Cotter	Kazen	Roberts
Coughlin	Keys	Rogers
D'Amours	Kildee	Roncalio
Daniel, Dan	Kindness	Rooney
Daniel, R. W.	Kostmayer	Rose
Danielson	Krebs	Rosenthal
de la Garza	LaFalce	Rostenkowski
Delaney	Lagomarsino	Roybal
Dellums	Latta	Runnels
Dent	Le Fante	Ruppe
Derrick	Leach	Russo
Derwinski	Lederer	Ryan
Devine	Lehman	Santini
Dicks	Levitas	Sarasin
Diggs	Livingston	Sawyer
Dingell	Lloyd, Calif.	Scheuer
Dodd	Lloyd, Tenn.	Schroeder
Downey	Long, La.	Sebelius
Drinan	Long, Md.	Seiberling
Duncan, Oreg.	Lott	Sharp
Duncan, Tenn.	Luken	Sikes
Early	Lundine	Simon
Eckhardt	McClory	Skelton
Edgar	McCloskey	Skubitz
Edwards, Ala.	McCormack	Smith, Iowa
Edwards, Calif.	McDade	Smith, Nebr.
Ellberg	McEwen	Snyder
Emery	McFall	Solarz
English	McHugh	Spellman
Erlenborn	McKay	Spence
Ertel	McKinney	St Germain
Evans, Colo.	Madigan	Staggers
Evans, Ga.	Maguire	Stangeland
Evans, Ind.	Mahon	Stanton
Fary	Mann	Stark
Fascell	Marks	Steed
Fenwick	Marlenee	Steers
Fish	Marriott	Stokes
Fisher	Martin	Stratton
Flippo	Mathis	Studds
Flood	Mattox	Stump
Flynt	Mazzoli	Taylor
Foley	Metcalfe	Thone
Ford, Mich.	Mikulski	Thornton
Ford, Tenn.	Mikva	Traxler
Fountain	Miller, Ohio	Treen
Fowler	Mineta	Trible
Fraser	Mitchell, Md.	Tucker
Frenzel	Mitchell, N.Y.	Udall
Frey	Moakley	Ullman
Fuqua	Moffett	Van Deerlin
Garcia	Mollohan	Vander Jagt
Gephardt	Montgomery	Vanik
Giaimo	Moorhead, Calif.	Vento
Gibbons	Moorhead, Pa.	Walgren
Gilman	Mottl	Watkins
Ginn	Murphy, Ill.	Waxman
Glickman	Murphy, N.Y.	Weaver
Gore	Murphy, Pa.	Weiss
Gradison	Murtha	Whalen
Grassley	Myers, John	White
Green	Myers, Michael	Whitley
Gudger	Natcher	Whitten
Hagedorn	Neal	Wilson, Bob
Hall	Nedzi	Wilson, C. H.
Hamilton	Nolan	Wilson, Tex.
Hanley	Nowak	Winn
Hannaford	Oakar	Wirth
Harkin	Oberstar	Wolff
Harrington	Obey	Wright
Harris	Ottinger	Wylie
Harsha	Panetta	Yates
Hawkins	Patten	Yatron
Heckler	Patterson	Young, Fla.
Hefner	Pattison	Young, Mo.
Heftel	Pease	Young, Tex.
Hightower	Perkins	Zablocki
Hillis	Pettis	Zeferetti

NAYS—50

Ashbrook	Davis	Hansen
Badham	Dornan	Holland
Bauman	Edwards, Okla.	Holt
Brooks	Evans, Del.	Jacobs
Brown, Mich.	Forsythe	Jenrette
Clawson, Del	Gonzalez	Jones, N.C.
Collins, Tex.	Goodling	Jones, Okla.
Crane	Hammer-schmidt	Kelly
Cunningham		Lent
McDonald	Robinson	Volkmer
Michel	Rousselot	Waggonner
Moore	Schulze	Walker
Moss	Shuster	Walsh
Myers, Gary	Sisk	Wampler
Nix	Slack	Wiggins
Pike	Steiger	Wydler
Quayle	Symms	Young, Alaska

NOT VOTING—51

Ambro	Flowers	Minish
Ammerman	Gammage	Nichols
Anderson, Ill.	Gaydos	O'Brien
Andrews, N.C.	Goldwater	Pepper
Armstrong	Guyer	Railsback
Beard, Tenn.	Howard	Rhodes
Breaux	Hughes	Risenhoover
Brown, Ohio	Ireland	Rodino
Burke, Calif.	Kemp	Roe
Burton, Phillip	Krueger	Rudd
Byron	Leggett	Satterfield
Caputo	Lujan	Shipley
Conyers	Markey	Stockman
Dickinson	Meeds	Teague
Findley	Meyner	Thompson
Fithian	Milford	Tsongas
Florio	Miller, Calif.	Whitehurst

The Clerk announced the following pairs:

Mr. Byron with Mrs. Meyner.
Mr. Florio with Mr. Beard of Tennessee.
Mr. Gammage with Mr. Roe.
Mr. Howard with Mr. Findley.
Mr. Miller of California with Mr. Goldwater.
Mr. Minish with Mr. O'Brien.
Mr. Nichols with Mr. Fithian.
Mr. Pepper with Mr. Meeds.
Mr. Rodino with Mr. Risenhoover.
Mr. Shipley with Mr. Rudd.
Mr. Teague with Mr. Satterfield.
Mr. Thompson with Mr. Leggett.
Mr. Ammerman with Mr. Guyer.
Mr. Ambro with Mr. Flowers.
Mr. Ireland with Mr. Anderson of Illinois.
Mr. Hughes with Mr. Stockman.
Mr. Markey with Mr. Whitehurst.
Mrs. Burke of California with Mr. Milford.
Mr. Breaux with Mr. Lujan.
Mr. Brown of Ohio with Mr. Phillip Burton.
Mr. Conyers with Mr. Andrews of North Carolina.
Mr. Gaydos with Mr. Dickinson.
Mr. Krueger with Mr. Railsback.
Mr. Tsongas with Mr. Caputo.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. BOLLING. Mr. Speaker, I ask unanimous consent that House Resolution 1128 be laid upon the table. It is another rule bringing up the ethics bill, and is no longer of any use.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Missouri?

There was no objection.

REQUEST TO APPOINT CONFEREES ON H.R. 7010, PAYMENT OF COMPENSATION TO PERSONS INJURED BY CERTAIN CRIMINAL ACTS AND OMISSIONS.

Mr. MANN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I do so for the purpose of asking my distinguished colleague, the gentleman from South Carolina (Mr. MANN) whether or not this has been cleared with the ranking minority member, the gentleman from Virginia (Mr. BUTLER)?

Mr. MANN. Mr. Speaker, if the gentleman will yield, I cannot tell the gentleman whether it was or not, frankly.

Mr. ASHBROOK. Then, Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

ETHICS IN GOVERNMENT ACT OF 1977

Mr. DANIELSON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1) to require candidates for Federal office, Members of the Congress, and officers and employees of the United States to file statements with the Comptroller General with respect to their income and financial transactions.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIELSON).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LEVITAS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 361, nays 4, not voting 67, as follows.

[Roll No. 805]

YEAS—361

Abdnor	Brooks	Danielson
Addabbo	Broomfield	Davis
Akaka	Brown, Calif.	de la Garza
Alexander	Brown, Mich.	Delaney
Anderson, Calif.	Broyhill	Dellums
Andrews, N. Dak.	Buchanan	Derwinski
Annunzio	Burgener	Dicks
Applegate	Burke, Fla.	Diggs
Archer	Burke, Mass.	Dornan
Ashbrook	Burleson, Tex.	Downey
Ashley	Burlison, Mo.	Drinan
Aspin	Burton, Phillip	Duncan, Oreg.
AuCoin	Butler	Duncan, Tenn.
Badham	Byron	Early
Bafalis	Carr	Edwards, Ala.
Baldus	Carter	Edwards, Okla.
Barnard	Cavanaugh	Eilberg
Baucus	Cederberg	Emery
Bauman	Chappell	English
Beard, R.I.	Chisholm	Erlenborn
Bedell	Clausen, Don H.	Ertel
Bellenson	Clawson, Del	Evans, Colo.
Benjamin	Cleveland	Evans, Del.
Bennett	Cochran	Evans, Ga.
Bevill	Cohen	Evans, Ind.
Biaggi	Coleman	Fary
Bingham	Collins, Ill.	Fascell
Blanchard	Conable	Fenwick
Blouin	Conte	Fish
Boggs	Corcoran	Fisher
Boland	Corman	Fithian
Bolling	Cornell	Flippo
Bonior	Cornwell	Flood
Bonker	Cotter	Flynt
Bowen	Coughlin	Foley
Brademas	Crane	Ford, Mich.
Breckinridge	Cunningham	Ford, Tenn.
Brinkley	D'Amours	Fountain
Brodhead	Daniel, Dan	Fowler
	Daniel, R. W.	Fraser
	Derrick	Frenzel
	Devine	Frey
	Dickinson	Fuqua
	Dingell	Garcia
	Dodd	Gaydos
	Eckhardt	Gephardt
	Edgar	Giaimo
	Edwards, Calif.	Gibbons
	Findley	Gilman
	Florio	Ginn
	Flowers	Glickman
	Forsythe	Gonzalez
	Gammage	Goodling
	Goldwater	Gore
	Guyer	Gradison
	Howard	Grassley
	Hughes	Green
	Kemp	Gudger
	Krueger	Hagedorn
	Leggett	Hall
	Lujan	Hamilton
	McCloskey	Hanley
	Markey	Hannaford
	Meeds	Hansen
	Meyner	Harkin
	Milford	Harrington
	Miller, Calif.	Harris
	Minish	Harsha
	Mitchell, Md.	Hawkins
	Nichols	Heckler
	O'Brien	Hefner
	Oakar	Heftel
	Pepper	Hightower
	Railsback	Hillis
	Rhodes	Holland
	Risenhoover	Hollenbeck
	Roberts	Holt
	Rodino	Holtzman
	Roe	Horton
	Roncalio	Hubbard
	Rosenthal	Huckaby
	Rudd	Hyde
	Ruppe	Ichord
	Russo	Ireland
	Ryan	Jacobs
	Santini	Jeffords
	Sarasin	Jenkins
	Sawyer	Jenrette
	Scheuer	Johnson, Calif.
	Schroeder	Johnson, Colo.
	Schulze	Jones, N.C.
	Sebelius	Jones, Okla.
	Sharp	Jones, Tenn.
	Shuster	Jordan
	Sikes	Kasten
	Simon	Kastenmeier
	Sisk	Kazen
	Skelton	Kelly
	Skubitz	Keys
	Slack	Kildee
	Smith, Iowa	Kindness
	Smith, Nebr.	Kostmayer
	Snyder	Krebs
	Solarz	LaFalce
	Spellman	Lagomarsino
	Spence	Latta
	St Germain	Le Fante
	Staggers	Leach
	Stanton	Lederer
	Stark	Lehman
	Steed	Lent
	Steers	Levitas
	Steiger	Livingston
	Stratton	Lloyd, Tenn.
	Studds	Long, La.
	Stump	Long, Md.
	Symms	Lott
	Taylor	Luken
	Thone	Lundine
	Thornton	McClory
	Traxler	McCormack
	Treen	McDade
	Trible	McDonald
	Tucker	McEwen
	Udall	McFall
	Ullman	McHugh
	Van Deerlin	McKay
	Vander Jagt	McKinney
	Vanik	Madigan
	Vento	Maguire
	Volkmer	Mahon
	Waggonner	Mann
	Walgren	Marks
	Walker	Marlenee
	Walsh	Marriott
	Wampler	Martin
	Watkins	Mathis
	Waxman	Mattox
	Weaver	Mazzoli
	Weiss	Metcalfe
	Whalen	Michel
	White	Mikulski
	Whitley	Mikva
	Whitten	Miller, Ohio
	Wiggins	Mineta
	Wilson, Bob	Mitchell, N.Y.
	Wilson, C. H.	Moakley
	Wilson, Tex.	Moffett
	Winn	Mollohan
	Wirth	Montgomery
	Wolff	Moore
	Wright	Moorhead, Calif.
	Wydler	Moorhead, Pa.
	Wylie	Moss
	Yates	Mottl
	Yatron	Murphy, Ill.
	Young, Alaska	Murphy, N.Y.
	Young, Fla.	Murphy, Pa.
	Young, Mo.	Murtha
	Young, Tex.	Myers, Gary
	Zablocki	Myers, John
	Zeferetti	Myers, Michael
		Natcher
		Neal
		Nedzi
		Nix
		Nolan
		Nowak
		Oberstar
		Obey
		Ottinger
		Panetta
		Patten
		Patterson
		Pattison
		Pease
		Perkins
		Pettis
		Pickle
		Pike
		Poage
		Pressler
		Preyer
		Price
		Pritchard
		Pursell
		Quie
		Quillen
		Rahall
		Rangel
		Regula
		Reuss
		Richmond
		Rinaldo
		Robinson
		Rogers
		Rooney
		Rose
		Rostenkowski
		Rousselot
		Roybal
		Runnels

NAYS—4

Collins, Tex.	Lloyd, Calif.
Hammer-schmidt	Quayle

NOT VOTING—67

Ambro	Dickinson	Leggett
Ammerman	Dingell	Lujan
Anderson, Ill.	Dodd	McCloskey
Andrews, N.C.	Eckhardt	Markey
Armstrong	Edgar	Meeds
Beard, Tenn.	Edwards, Calif.	Meyner
Breaux	Findley	Milford
Brown, Ohio	Florio	Miller, Calif.
Burke, Calif.	Flowers	Minish
Burton, John	Forsythe	Mitchell, Md.
Caputo	Gammage	Nichols
Carney	Goldwater	O'Brien
Clay	Guyer	Oakar
Conyers	Howard	Pepper
Dent	Hughes	Railsback
Derrick	Kemp	Rhodes
Devine	Krueger	Risenhoover
	Roberts	Satterfield
	Rodino	Seiberling
	Roe	Shipley
	Roncalio	Stangeland
	Rosenthal	Stockman
	Rudd	Stokes
		Teague
		Thompson
		Tsongas
		Whitehurst

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 1, with Mr. BOLAND in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Without objection, the first reading of the bill will be dispensed with.

Mr. ASHBROOK. Mr. Speaker, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk proceeded to read the bill.

Mr. DANIELSON (during the reading). Mr. Chairman, I rise to respectfully request that, now that we have determined that the Clerk does read and read well, we not commit an act of masochism and kill ourselves sitting here and listening to the remainder of the reading.

For that reason, Mr. Chairman, I respectfully renew the request and ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. ROUSSELOT. Mr. Chairman, on behalf of my distinguished colleague, the gentleman from Ohio (Mr. ASHBROOK), I respectfully object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued the reading of the bill.

The text of H.R. 1 reads as follows:

H.R. 1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Financial Disclosure Act".

DEFINITIONS

SEC. 2. As used in this title—

(1) the term "agency" means each authority of the Government of the United States;

(2) the term "commodity future" has the meaning set forth in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(3) the term "candidate" has the meaning set forth in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431);

(4) the term "Comptroller General" means the Comptroller General of the United States;

(5) the term "dependent" has the meaning set forth in section 152 of the Internal Revenue Code of 1954;

(6) the term "employee" includes, for purposes of section 3, any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;

(7) the term "immediate family" means—

(A) the spouse of an individual,

(B) the child, parent, grandparent, grandchild, brother, or sister of an individual or of the spouse of such individual, and

(C) the spouse of any individual designated in clause (B);

(8) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;

(9) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;

(10) the term "officer" includes, for purposes of section 3, any officer designated under section 2104 of title 5, United States Code, and any officer of the United States Postal Service or of the Postal Rate Commission;

(11) the term "Presidential nominee" means an individual appointed by the President to an office for which confirmation, by and with the advice and consent of the Senate, is required, or an individual nominated by the President to serve as Vice President pursuant to the twenty-fifth amendment to the Constitution of the United States;

(12) the term "political contribution" means a contribution as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431);

(13) the term "political expenditure means an expenditure as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431);

(14) the term "security" has the meaning set forth in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(15) the term "transactions in securities and commodities" means any acquisition, transfer, or other disposition involving any security or commodity; and

(16) the term "uniformed services" means any of the Armed Forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration.

INDIVIDUALS REQUIRED TO FILE REPORT

SEC. 3. (a) Any individual identified in subsection (b) shall file each calendar year a report containing a full and complete financial statement for the preceding calendar year if such individual has occupied or been a candidate for the office or position for a period in excess of ninety days in such calendar year.

(b) The individuals referred to in subsection (a) are—

(1) the President and any candidate for that office;

(2) the Vice President and any candidate for that office;

(3) each Member of Congress and any candidate for Congress;

(4) each justice or judge of the United States;

(5) each Presidential nominee;

(6) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–15 of the General Schedule or any higher grade or position (as determined by the Comptroller General regardless of the rate of compensation of such individual); and

(7) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O–6 or any higher grade of pay established under chapter 3 of title 37, United States Code.

CONTENTS OF REPORTS

SEC. 4. (a) Each individual shall include in each report required to be filed by him under section 3 a full and complete statement, in such manner and form as the Comptroller General may prescribe, with respect to—

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received from any member of his immediate family) received during the preceeding calendar year which exceeds $100 in amount or value, including any fee or other honorarium received for or in connection with the preparation or delivery of any speech or address, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication, and the monetary value of subsistence, entertainment, travel, and other facilities received by him in kind;

(2) the identity and the category of value, as designated under subsection (b), of each asset, other than household furnishings or goods, jewelry, clothing, or any vehicle owned solely for the personal use of the individual, his spouse, or any of his dependents, held during the preceding calendar year which has a value in excess of $1,000 as of the close of the preceding calendar years;

(3) the identity and the category of amount, as designated under subsection (b), of each liability owed which is in excess of $1,000 as of the close of the preceeding calendar year;

(4) the identity, the category of amount, as designated under subsection (b), and date of any transaction in a security of any business entity or any transaction in a commodity futures during the preceding calendar year if the aggregate amount involved in transactions in the securities of such business entity or in transactions in commodities futures exceeds $1,000;

(5) the identity and the category of value, as designated under subsection (b), of any purchase or sale of real property or any interest in any real property during the preceeding calendar year if the value of property involved in such purchase or sale exceeds $1,000;

(6) any patent right or any interest in any patent right, and the nature of such patent right, held during the preceeding calendar year;

(7) a description of, the parties to, and the terms of any contract, promise, or other agreement between individual and any person with respect to his employment after such individual ceases to occupy his office or position with the Government, including any agreement under which such individual is taking a leave of absence from an office or position outside of the Government in order to occupy an office or position of the Government, and a description of and the parties with any unfunded pension agreement between such individual and any employer other than the Government; and

(8) the identity of any position held as an employee, officer, owner, director, trustee, partner, adviser, or consultant of any corporation, company, firm, or other business enterprise or partnership.

Each individual designated under paragraphs (5) and (6) of section 3(b) shall also include in such report the identity of any person, other than the Government, who paid such individual compensation in excess of $5,000 in any of the five years prior to the preceding calendar year and the nature and term of the services such individual performed for such person. The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(b)(1) For purposes of paragraphs (2) through (5) of subsection (a), an individual need not specify the actual amount or value of each asset, each liability, each transaction in securities of any business entity or in commodities futures, or each purchase or sale required to be reported under such paragraphs, but such individual shall indicate which of the following categories such amount or value is within—

(A) not more than $5,000,

(B) greater than $5,000 but not more than $15,000.

(C) greater than $15,000 but not more than $50,000,

(D) greater than $50,000, but not more than $100,000, or

(E) greater than $100,000.

(2) Each individual shall report the actual amount or value of any other item required to be reported under this section.

(c) For purposes of paragraphs (1) through (6) of subsection (a), an individual shall include each item of income or reimbursement and each gift received, each item received in kind, each asset held, each liability owed, each transaction in commodities futures and in securities, each purchase or sale of real property or interest in any real property, and each patent right or interest in any patent right held by him, his spouse, or any of his dependents, or by him and his spouse or dependents jointly, or by any person acting on his behalf or for his benefit.

FILING OF REPORTS

SEC. 5. (a)(1) Each individual required to file a report under section 3(a), other than a candidate, a Presidential nominee, or an individual excepted under paragraph (4) of this subsection, shall file such report with the Comptroller General not later than May 15 of each year. Each such individual, other than the President, Vice President, a Member of Congress, a justice or judge of the United States, any officer or employee of the Senate or the House of Representatives or any court of the United States, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or each full time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the head of the agency in which such individual occupies any office or position at the same time as such report is filed with the Comptroller General.

(2) Each Member, officer, and employee of the House of Representatives and the Senate required to file a report under section 3(a) shall file a copy of such report with the Clerk of the House of Representatives and the Secretary of the Senate, respectively, and each justice, judge, officer, and employee of any court of the United States shall file a copy of such report with the Director of the Administrative Office of the United States Courts at the same time as such report is filed with the Comptroller General.

(3) The head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, and each full time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the Chairman of the Civil Service Commission at the same time such report is filed with the Comptroller General.

(4) The President may exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged exclusively in intelligence activities in any agency of the United States from the requirement to file a report with the Comptroller General if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. Each individual exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position or, if an individual described in paragraph (3), with the Chairman of the Civil Service Commission.

(b)(1) Each individual required to file a report under section 3(b) as a candidate shall file such report with the Comptroller General within one month after such individual becomes a candidate and on May 15 in any succeeding year if such individual is a candidate on such date.

(2) Each individual required to file a report under section 3(b)(5) as a Presidential nominee shall file such report with the Comptroller General and with the appropriate committees of Congress within ten days after the nomination is submitted.

(c)(1) Any individual who ceases prior to May 15 of any calendar year to occupy the office or position the occupancy of which imposes upon him the reporting requirement contained in section 3(a) shall file such report for the preceding calendar year and the period of such calendar year for which he occupies such office or position on or before May 15 of such calendar year.

(2) Any individual who ceases to occupy such office or position after May 15 of any calendar year shall file such report for the period of such calendar year which he occupies such office or position on the last day he occupies such office or position.

(d) The Comptroller General may grant one or more reasonable extensions of time for filing any report but the total of such extensions shall not exceed ninety days.

(e) The Comptroller General shall promulgate such rules and regulations as are required to carry out the provisions and purposes of this title no later than sixty days after the date of the enactment of this Act.

FAILURE TO FILE OR FALSIFYING REPORTS; PROCEDURE

SEC. 6. (a)(1) Any individual who knowingly and willfully falsifies or fails to report any information such individual is required to report under section 4 shall be fined in any amount not exceeding $10,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 3 or who fails to report any information which such individual is required to report under section 4. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $5,000.

(b) The head of each agency, the Clerk of the House of Representatives with respect to any Member, officer, or employee of the House of Representatives, the Secretary of the Senate with respect to any Member, officer or employee of the Senate, and the Director of the Administrative Office of the United States Courts with respect to any justice, judge, officer, or employee of any court of the United States shall submit annually to the Comptroller General a complete list of individuals who are required to file a report under section 3 and shall submit at the close of each calendar quarter a list of individuals who have begun or have terminated employment with such agency, the House of Representatives or the Senate, or any court in such calendar quarter.

(c) The Comptroller General shall refer to the Attorney General the name of any individual the Comptroller General has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported. In addition, if such individual is a Member, officer, or employee of the Senate or the House of Representatives, the Comptroller General shall refer the name of such individual to the Senate Select Committee on Standards and Conduct or the Committee on Standards of Official Conduct of the House of Representatives, whichever is appropriate.

(d) The President, the Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of each agency or the Civil Service Commission may take any appropriate personnel or other action against any individual failing to file a report or information or falsifying information.

CUSTODY AND AUDIT OF, AND PUBLIC ACCESS TO, REPORTS

SEC. 7. (a) The Comptroller General shall make each report filed with him under section 5 available to the public within fifteen days after the receipt of such report from any individual and provide a copy of such report to any person upon a written or oral request.

(b) The Comptroller General may require any person receiving a copy of such report under subsection (a) to supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting such copy and to pay a reasonable fee in any amount which the Comptroller General finds necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. The Comptroller General may furnish any copy of such report without charge or at a reduced charge if he determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the public.

(c)(1) It shall be unlawful for any person to inspect or obtain a copy of any report—

(A) for any commercial purpose;

(B) to determine or establish the credit rating of any individual; or

(C) for use dirctly or indirectly in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action in any district court of the United States against any person who inspects or obtain such report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $1,000.

(d) Any report received by the Comptroller General shall be held in his custody and made available to the public for a period of five years after receipt by the Comptroller General of such report. After such five year period, the Comptroller General shall destroy any such report.

(e) The House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency shall make provisions to assure that each report shall be reviewed in accordance with any law or regulation with respect to conflicts of interest or confidential financial information of officers or employees of the House of Representatives, the Senate, the United States courts or each such agency or in accordance with such rules and regulations as may be prescribed.

(f)(1) The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of aproximately 5 per centum of the reports filed with him under section 5(a)(1).

(2) The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual under section 5(a)(1) during such term.

(3) The Comptroller General shall, during each six year period beginning after the date of enactment of this Act, audit at least one report filed by each Member of the Senate and the House of Representatives during such six year period.

(4)(A) In conducting an audit under paragraph (1), (2), or (3), the Comptroller General is authorized to require by subpena the production of books, papers, and other documents. All such subpenas shall be issued and signed by the Comptroller General.

(B) In case of a refusal to comply with a subpena issued under subparagraph (A).

(i) the Comptroller General is authorized to seek an order by any district court of the United States having jurisdiction of the defendant to require the production of the documents involved; and

(ii) such district court may issue such order and enforce it by contempt proceedings.

RECOMMENDATIONS ON FINANCIAL CONFLICTS OF INTEREST

SEC. 8. The Civil Service Commission and the Department of Justice shall each analyze regulations and procedures presently in effect with regard to financial conflicts of interest among employees of the Federal Government and recommend to the appropriate committees of Congress for their consideration such legislation as may be necessary. Such reports shall be delivered within six months of the enactment of this Act.

SEPARABILITY

SEC. 9. If any part of this Act is held invalid, the remainder of this Act shall not be affected thereby. If any provision of any part of this Act, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

DATE DUE FOR FIRST REPORT

SEC. 11. The first report required by this Act shall be due ninety days after the date of the enactment of this Act.

The CHAIRMAN. Under the rule, the gentleman from California (Mr. DANIELSON) will be recognized for 15 minutes; the gentleman from California (Mr. MOORHEAD) will be recognized for 15 minutes; the gentleman from New York (Mr. STRATTON) will be recognized for 15 minutes; the gentleman from Virginia (Mr. ROBERT W. DANIEL, JR.) will be recognized for 15 minutes; the gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 15 minutes; the gentleman from New York (Mr. GILMAN) will be recognized for 15 minutes; the gentleman from North Carolina (Mr. PREYER) will be recognized for 15 minutes; and the gentleman from California (Mr. WIGGINS) will be recognized for 15 minutes.

The Chair now recognizes the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on May 3, 1977, the President transmitted a message to the Congress recommending the enactment of a bill for financial disclosure relating to the executive branch and for amendments to section 207 of title 18 concerning contacts between former officials and employees and the agencies in which they worked. I joined with the distinguished chairman of the Committee on the Judiciary, the Honorable PETER W. RODINO, JR., and the distinguished Member from Colorado, the Honorable PATRICIA SCHROEDER, in sponsorting the bill H.R. 6954 which embodied the recommendations of the President. That bill was referred to the Committees on the Judiciary, the Post Office and Civil

Service, and the Armed Services. The President's recommendations are the basis of both title II and title III of H.R. 1 as it was reported to the House by the Committee on the Judiciary.

In his message, the President pointed out that his recommendations would establish far-reaching safeguards against conflicts of interest and abuse of the public trust by Government officials. He noted that these provisions incorporate the standards the President has required of his own appointees, and extends their coverage to other high ranking officials. If further was intended to build upon the Comptroller General's 2-year investigation of conflict of interest enforcement in the executive branch, and parallels the efforts the Congress has made to strengthen ethical standards for its Members. In this connection, the President noted that both Houses have adopted new codes of conduct to prevent actual or potential conflicts of interest.

As was recommended by the President, H.R. 1, as amended, calls for a three-part program of financial disclosure, creation of a new Office of Ethics in the Civil Service Commission, and strengthened restrictions on postemployment activities of Government officials.

The bill H.R. 13850, which is made an order as a substitute for the bill H.R. 1, as reported by the Committee on the Judiciary, follows the basic approach of H.R. 1, with the addition of the language recommended by the Select Committee on Ethics with conforming amendments as title I of the bill. The bill H.R. 13850 differs from the provisions of the bill H.R. 7401 as reported by the Select Committee on Ethics, and H.R. 1 as reported by the Committee on the Judiciary, H.R. 6954 as reported by the Post Office and Civil Service Committee and the Armed Services Committee in that the substitute bill contains compromise provisions resolving the differences between the several bills.

As is the case with the same title of H.R. 1, title II of the bill H.R. 13850 contains provisions for financial disclosure by executive personnel, including the President and Vice President and other officials, employees in the executive levels, those classified as GS–16 and above and members of the armed services in pay grade O–7 and above. They would be required to file financial reports containing the information provided for in the bill. The bill also would require similar reports by persons nominated to positions requiring confirmation by the Senate and persons becoming candidates for election to President or Vice President.

The persons covered by the provisions of the title would be required to report as to income, gifts, liabilities, property—both real property and business-related personal property, positions in business enterprises and other organizations and also any agreements relating to post-Government employment. Express provisions are included concerning reporting of trust interests and income.

One of the fundamental differences of H.R. 13850 is that the disclosure provision in title I relating to the legislative branch, title II relating to the executive branch, and title III relating to the judicial branch now provide that provisions of the bill do not provide for a criminal penalty but do provide for a civil penalty for failure to comply with the disclosure provisions. Each of these titles provide that the Attorney General may bring a civil action against an individual who knowingly and willfully falsifies or who knowingly or willfully fails to report information required to be reported under the provisions of the bill.

Part B of title II provides for the creation of an Office of Government Ethics in the Civil Service Commission to be headed by a Director appointed by the President and confirmed by the Senate. The bill details the functions and responsibilities of the Director.

With a corrective amendment as to the date which I intend to submit, the bill will authorize appropriations of $1 million for the fiscal year 1979 and for the four subsequent fiscal years.

Part C of title II provides for the amendment of section 207 of title 18 which deals with conflict of interest and disqualification of former officers and employees from certain contacts with their former agencies. The revised language incorporates much of the present language of the section while making those provisions more inclusive and effective. Subsection (a) bars any future contact by a former officer or employee of the executive or judicial branch with reference to a matter in which he participated personally and substantially. Subsection (b), which bars contact with reference to a matter which had been under the general supervision of the former officer or employee, now bars that contact for 1 year. The amended language would increase the period to 2 years. Subsection (c) is a new section which bars former executive level officials and political appointees whose former positions were GS–16, 17, and 18, or Armed Services officers in pay grade O–6 or above, and certain other designated persons exercising policymaking functions from representing any other person before their former department or agency for 1 year.

In addition, the Director of the Office of Government Ethics could designate a limited number of sensitive career positions to be covered by the 1-year ban if he determines that the employees in the positions have a role in the formulation of agency policy that is substantially similar to that exercised by political appointees and uniformed services personnel who are automatically covered.

Specially designated positions might include bureau directors in independent regulatory commission or heads of comparable offices who hold career positions but who have significant final decisionmaking authority. However, this provision for special designation is not intended to extend to management officials, attorneys, or other senior professional personnel merely because they have some input into policy decisions.

An example may serve to illustrate the coverage of the 1-year ban. At present four U.S. attorneys are paid an executive level salary and are therefore automatically covered by the 1-year ban after they leave Government service. The remaining 90 U.S. attorneys are paid a lower salary and are not automatically covered by the section, but they could perhaps be designated for coverage by the Director of the Office of Government Ethics because they have a role in the formulation of Department of Justice policy that is substantially similar to that exercised by the four U.S. attorneys who are paid at the executive level. But assistant U.S. attorneys, who serve under the supervision of U.S. attorneys, do not have a similar policymaking role and would therefore not be subject to designation by the Director for coverage under the 1-year contacts ban.

Title III of the amended bill provides for financial disclosure by judicial personnel, including judges and top level employees compensated at the equivalent of grade 16 or above. The provisions of this title of the bill parallel those relating to the executive branch and contain substantially the same requirements and sanctions as provided in title II for the executive branch. The difference is that the reporting and administration will be matters for the judicial branch and will be under the supervision of the Judicial Conference of the United States. The bill provides that the responsible administering authority will be the Judicial Ethics Committee established by the Judicial Conference.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield for a very brief question?

Mr. DANIELSON. I yield to the gentleman from California.

Mr. WIGGINS. I thank the gentleman for yielding.

With respect to 207(c), the 1-year cooling off period that has just been described by the gentleman in the well, as the gentleman knows, that section prevents certain designated officers from making appearances before the department or agency in which he previously served. I would like the record to be made clear as to the meaning of the words, "department or agency in which he served." For example, does that mean the Cabinet-level agency, or does that mean a more narrow subdivision within that agency? By way of making my point clearer, let us suppose that an official was a high-level official within the Social Security Administration, which is under the umbrella authority of HEW. Would that preclude such official from making a communication on behalf of a client before the Food and Drug Administration, for example, which is another HEW agency?

Mr. DANIELSON. My understanding, if the gentleman will permit, is that he would be banned from appearing before the agency in which he played a role, that is, a department.

Mr. WIGGINS. A subdivision?

Mr. DANIELSON. Yes, but I am not able, in response to the gentleman's question, to make an absolute definition.

The bill uses the terms "department or agency" but I point out that proposed section 207(e) of title 18 would authorize the Director of the Office of Government Ethics, when a subdivision within an agency exercises functions which are

distinct and separate from the other functions of the agency, to designate the subdivision as a separate "department or agency for the purpose of subsection (c) of section 207. This would provide a degree of flexibility to meet the situation which the gentleman has outlined. I think it should be reasonably interpreted on the basis of the requirements of subsection (e) of revised section 207.

Mr. WIGGINS. That is the point.

Mr. DANIELSON. What we are talking about here is that people who have operated at a policymaking level should not subsequently be able to appear representing someone else other than themselves before that agency within the period of the ban.

Obviously, if the input of policy is not in the subportion of the agency or Department in which he is appearing, I just do not think that will be a reasonable application.

Mr. WIGGINS. I hope it will be so construed. It is a bit ambiguous the way it is now drafted.

Mr. DANIELSON. I am not able, as I stand here, to give a more definitive answer, but we are trying to reach people who are at the policy-making level and by providing a reasonable limit upon their use of whatever good will or influence they have built up to further the interest of persons they may represent after they have left Government service. service.

Mr. WIGGINS. Before that agency or subagency in which they exercise that policy?

Mr. DANIELSON. That is the purpose of the policy.

Title III of the amended bill provides for financial disclosure by judicial personnel, including judges and top level employees compensated at the equivalent of grade 16 or above. The provisions of this title of the bill parallel those relating to the executive branch and contain substantially the same requirements and sanctions as provided in title II for the executive branch. The difference is that the reporting and administration will be matters for the judicial branch and will be under the supervision of the Judicial Conference of the United States. The bill provides that the responsible administering authority will be the Judicial Ethics Committee established by the Judicial Conference.

I might add that we also made some adjustment to accommodate the fact that the nature of the work in the judicial branch is to some extent different than that in the executive branch; but the thrust of the bill remains the same.

Mr. MOORHEAD of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on numerous occasions I have described financial disclosure legislation as "inevitable," which it most certainly is. But more than that, it will be a statutory representation of the principle of the public's right to know. So, in this sense, it is the direct descendant of the Freedom of Information Act and the Government in the Sunshine Act.

I support many of the provisions contained in H.R. 1, and the substitute bill, H.R. 13850, we are considering today. In fact, the substitute contains a number of major improvements—most notably, the deletion of unnecessary criminal penalties with respect to financial disclosure section. But I would be less than candid if I did not state that I have some serious reservations about certain provisions in both bills.

First of all, this legislation is far broader than necessary. It is far broader, in fact, than can be justified by any "compelling" or "overriding" public interest. Simply put, too many people are covered. Far more Government officials and employees are covered by this legislation than is really necessary to assure public confidence. Conflicts of interest or self-dealing by Government employees can occur at any level of Government service. The breakoff point for coverage at GS–16—and O–7 in the military—was an arbitrary decision. The fact is that one could argue that many public servants to be covered by these disclosure requirements are less likely to be susceptible to conflict problems than numerous lower Government officials.

For example, a Government contracting officer, grade GS–11 or 12, is at least as vulnerable as a GS–16. The Civil Service Commission has estimated that approximately 20,000 individuals will be required to file annual statements once this legislation becomes law. The Congressional Research Service, in a study done especially for the Judiciary Committee, estimated that some 14,000 public officials would be covered. But, whichever figure is accurate, one can argue with considerable validity that too much disclosure results in no disclosure at all. I would question whether a warehouse filled with these reports will represent very effective public disclosure.

Second, too much unnecessary detail would be required in the reports. For example, the categories of value in H.R. 1 are overly detailed to the point of being ridiculous. Our subcommittee's bill provided for incremental reporting by category up to the level of $100,000. Now, as a result of an amendment in the full Judiciary Committee, the incremental reporting categories go up to $5 million. Obviously such detail will have little effect on most of us. Beyond that, this overcategorization will only serve misplaced public curiosity, while certainly giving no more additional evidence with regard to potential conflicts of interest. I would point out that the substitute—H.R. 13850—would return the categories to the more reasonable $100,000 breakoff point and I support this change.

Reporting with respect to real property is similarly overdone. While this category does not cover a personal residence of an official, its disclosure requirements go beyond properties used solely for commercial purposes. Consequently, a weekend or vacation home could become the subject of public disclosure. As my eloquent colleague from California (Mr. WIGGINS) has repeatedly stated: How does such a property present a potential for a conflict of interest? Real property reporting should be cut back to those properties that represent an investment for solely commercial purposes.

Also, it is my firm belief that the interference with the personal privacy of the official's spouse and children far exceeds that necessary. There are some serious constitutional questions raised by spouse and dependent disclosure requirements. Does an individual, simply by being married to a public official, correspondingly give up the same degree of privacy as the official himself? At the very least, the spouse and dependent disclosure requirements should be modified. Disclosure should be limited to those kinds of property that could be enhanced or materially affected in some way by the reporting person's official duties. Perhaps the "constructive control" standard in House Rule 44 should be utilized.

Another troublesome provision is section 207 in both bills. It gives the President far-reaching discretion to extend financial disclosure requirements to any executive branch employee that he may choose. This includes, under the substitute, persons serving in the armed forces and all postal employees. This is an ill-advised concept which invites the potential misuse of a financial disclosure statute for partisan political reasons or punitive purposes.

Finally, I come to what I consider the most objectionable feature. Section 241 contains amendments to section 207 of title 18, United States Code. The existing law deals with conflicts of interest arising out of former employment by a Government agency. The existing law contains prohibitions against formal representational activity by a former employee in court proceedings or hearings before Federal agencies. The law would be changed, under both H.R. 1 and the substitute, to expand the coverage of section 207 beyond formal representational situations to those which would be informal in nature, such as meetings, telephone conversations, and so forth.

The existing prohibitions in title 18 permanently bar a former officer or employee from acting in matters in which he was "personally and substantially" involved during Government service. It similarly provides that the former official could not become involved in any such matter that was "pending under his official responsibility" for 1 year after leaving Government. Now, H.R. 1 would add yet another prohibition. A new subsection (c) would prohibit all contact by a former Government officer or employee on behalf of another, with his former Government agency for a period of 1 year after leaving that agency. This blanket, 1-year, "no contact" ban has no counterpart in existing Federal law—it is a so-called "cooling off" period that the Carter administration views as one means of dealing with the "revolving door problem." This blanket restriction is imposed without reference to the subject matter with which the contact may be concerned. The subject, in fact, could be a

totally new issue never dealt with by the agency before. Or, it simply could be a noncontroversial or uncontested subject. The net result of this provision will be to reduce the attractiveness of Government service and certainly reduce the ability of Government to recruit good people.

The 1-year, no-contact prohibition applies only to certain designated officials. Specifically, the following would be covered:

(i) Presidential appointees—Levels I–V (5 U.S.C. 5312–5316);

(ii) "Schedule C" employees compensated at the rate of GS–16 and above;

(iii) Members of the military—grade 0–6 or above; and

(iv) Additional persons designated by the Director of the Office of Government Ethics because of an important policy-making role.

Proponents argued that this means that only high level political appointees will be subject to the no contact restriction. But this is an oversimplification, given the extensive coverage of military personnel and the broad discretion granted the Director of Government Ethics to extend section (c) coverage to additional persons.

I am very concerned that the amendments proposed to title 18 would severely restrict the employment activities and potential of persons who may choose to leave Government service. Even more importantly, these changes in the law must result in discouraging bright, young people as well as experienced professionals from taking Government jobs. Later during the 5-minute rule, I intend to offer an amendment which will remove the blanket, 1-year "no contact" provision from this legislation. Reasonable restrictions on the so-called revolving door are desirable. The "no contact" rule is punitive and ill-advised.

Again, in general, I want to emphasize that I support the overall intent of both H.R. 1 and H.R. 13850—and much of what they contain. With a few essential revisions, this legislation can satisfy the public's right to know without unnecessarily interfering with the privacy rights of covered public officials.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from California.

Mr. WIGGINS. I thank the gentleman for yielding.

Mr. Chairman, I want the Members to take the time to read these amendments to title 18 dealing with post-employment contacts by high officials of the Government.

Let us take an attorney general in the next administration, as an example.

The next President ought to seek a competent, qualified attorney to represent the United States as its Attorney General. But the President in the future is going to have to tell that person that he not only must surrender his law practice for the period of his service as Attorney General, but for not less than 1 year, and possibly for 2 years, thereafter he cannot even write a letter to the Department of Justice on behalf of a client.

I ask the question: Is the section under discussion going to inhibit the opportunity of a President in the future to recruit a competent person? I think it will.

Last night I spoke with a former Member of Congress who is now practicing law in Washington. He is a Democrat. He told me he is being considered by the Carter administration with respect to a high-level position in the administration. I told him that before he succumbs to the President's request that he ought to take a look at 18 U.S.C. 207, and more particularly the bill now pending before the House, because he is not only giving up what he now has, but he is giving up a piece of his life in the future. And he thanked me for that advice, which was good advice.

We should not, by the hasty enactment of these sections, which establish a simple indirect contact rule as distinguished from the former representation rule, inhibit the power of the Executive to recruit good people in Government.

Mr. MOORHEAD of California. Mr. Chairman, I yield the balance of my time to the gentleman from Illinois (Mr. MCCLORY), the ranking minority member on the Committee on the Judiciary.

The CHAIRMAN. The gentleman from Illinois (Mr. MCCLORY) is recognized for 3 minutes.

Mr. MCCLORY. Mr. Chairman, first of all, let me commend the Chairman of the Judiciary Subcommittee, the gentleman from California (Mr. DANIELSON) and the ranking member, our colleague from California (Mr. MOORHEAD) for their conscientious efforts to produce a measure covering governmental ethics which appears to be in response to a public demand.

Having said that, I would like to express my reservations about this legislation as discussed by our colleague from California (Mr. WIGGINS). There is logic and wisdom in the words Mr. WIGGINS has uttered. I doubt that we can legislate public morals. We may well be discouraging from useful public service, many desirable persons who would not care to experience an invasion of their privacy which this legislation mandates—on the limitations on employment following governmental service which this legislation would impose.

Mr. Chairman, the purpose of the "Ethics in Government Act" is to establish uniform, comprehensive financial disclosure requirements for all three branches of the Federal Government. The information disclosed is then to be made available to the public for its scrutiny and judgment.

I support the general intent of H.R. 1 and the amendment in the nature of a substitute (H.R. 13850). The American people have a right to this knowledge—a right to be assured that conflicts of interest do not exist at the highest levels of Government. In short, they have a right to confidence in their own public servants.

But disclosure also raises some important questions about the rights and privacy of those in Government service. How much disclosure is necessary to assure citizen confidence? Should this legislation go beyond disclosure to include prohibitions against certain kinds of activities? What are the constitutional implications of some of these disclosure requirements—particularly, those relating to the property of a spouse or the dependents of a Government employee?

I understand that the rule for consideration of this legislation has made in order an amendment which would repeal the outside income limits soon to be imposed on Members of the House under House Rule XLVII. This limitation applies to outside income earned as a salary, fee, or honorarium. However, ironically, it does not apply to "unearned income," such as rent, interest, or stock dividends. The ethical distinction between "earned income" and "unearned income" has always escaped me. As I do not have any outside earned income—the limitations in the bill do not affect me personally—at all. However, is it not possible for conflicts of interest to arise out of the ownership of stocks or the receipt of rents as well as from income that is earned? As we all know, the terms of the limitation on outside income favor the wealthy, who inherited their money, while they penalize those members who may retain an interest in a legitimate business.

I intend to support the amendment to be offered by the gentleman from Tennessee (Mr. QUILLEN) to repeal the limit on outside, earned income. If full disclosure is made, prohibitions on outside income are unnecessary. The voters can make their decisions based upon the information provided through public financial disclosure.

H.R. 1 and the substitute also require the disclosure of certain financial interests of the spouse and dependent children of the reporting employee or official. These spouse and dependent disclosure requirements dramatically point up the inherent conflict that exists between the public's right to know and the individual's right to privacy. While coverage of the official's immediate family seems necessary to fill an otherwise obvious loophole—that is, avoiding disclosure by transfering ownership or control—troublesome legal questions remain. How far does the right to know extend beyond the official himself? At what point does the right to know outweigh the right of privacy accruing to the public official's family? Does the individual, simply by being married to a public official or being the child of one, give up the same degree of privacy as the official himself? Does the same constitutional standard for invasion of privacy apply equally to the official and his immediate family? Unfortunately, these questions have never been adequately considered.

The constitutional right of personal privacy has been recognized in recent years in a number of notable Supreme Court decisions. *Griswold* v. *Connecticut*, 381 U.S. (1965); *Stanley* v. *Georgia*, 349 U.S. 557 (1969); *Roe* v. *Wade*, 410 U.S. 113 (1973). More to the point, there have been State court decisions that have overturned financial disclosure requirements because they contained spouse-dependent disclosure provisions. In one instance, they were determined to be an unconstitutional "Intrusion into the

right of privacy." *Carmel-by-the-Sea* v. *Young*, 466 P.2d 225, 227 (1970). Another State court decision reasoned that husbands and wives have no legal responsibility to disclose their total assets to one another and, consequently, criminal sanctions could not be imposed on a public official to disclose information to which he had no right of access. *Lehrhaupt* v. *Flynn*, 129 N.J. Super. 327, 323 A.2d 537 (1974). This financial disclosure legislation would be far less constitutionally suspect if the spouse and dependent disclosure requirements were removed from the bill.

I also have some strong reservations about the conflict of interest provisions in title II of the bill. First of all, these so-called "revolving door" prohibitions are applied to only two of the three branches of Government, that is, executive and judicial. What is the justification for their uneven application? Second, these provisions go so far that they clearly will result in making Government service less attractive to established professionals and promising young people. We are making a serious mistake if in the name of disclosure we end up discouraging careers in the Government service. For that reason, I intend to support an amendment to be offered by the gentleman from California (Mr. MOORHEAD) which will remove some of the most objectionable features from these post-Government employment restrictions.

One last point. In the Judiciary Committee much was made of section 205(a) of the bill. This provision reflects an attempt to reconcile disclosure requirements with the modern realities of intelligence gathering and our national security. It is possible that an amendment will be offered to alter this provision but I urge this House to reject it. We are talking here about the personal safey of some individuals, employed by the intelligence agencies. It also should be emphasized that the bill clearly requires full financial disclosure by such undercover personnel to their employer-agency, but without threatening their personal safety or our national security.

In conclusion, I urge my colleagues to consider all the provisions of H.R. 1 and the substitute, as well as the amendments, carefully. While we are voting for a principle, we are also imposing some highly detailed and strict requirements on officials in all three branches of the Federal Government. While the principle of disclosure remains valid, not every provision in this legislation is of equal validity.

Mr. DANIELSON. Mr. Chairman, I have no further requests for time.

Mr. MOORHEAD of California. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. STRATTON) for 15 minutes.

Mr. STRATTON. Mr. Chairman, as I am sure Members are aware—and perhaps this accounts for the fact that not too many are actually on the floor—we have before us a very complex item, a very complex set of bills, a very complex process, and a very complex rule. We have before us actually some four different bills, and it is a little bit difficult, I think, perhaps to know exactly where we are zeroing in in the course of our discussion and later on when it comes to the amending procedures.

I am appearing today, for example, on behalf of the Armed Services Committee, to whom the original bill was referred. I also happen to be a member of the Select Committee on Ethics, which drafted the legislative portion of this particular bill, and as a member of that committee I support that part of the legislation.

The Armed Services Committee was originally given H.R. 6954, the bill that was referred jointly as an ethics bill to our committee, to the Committee on the Judiciary, and to the Committee on Post Office and Civil Service. We considered that particular bill solely with respect to its impact on the Armed Services, both the uniformed personnel in the Armed Services, and also the civilian employees of the Defense Department. This is a different bill, I would point out, than H.R. 1, the bill which is before the House today and which was referred only to the Judiciary Committee. While these bills have a number of substantial differences, they are nevertheless similar in their basic structure.

The amendments that the Armed Services Committee made were made primarily then to H.R. 6954. For example, we offered a group of amendments to part A of title II of H.R. 6954 which had to do with the requirements for filing financial reports. That group of amendments have now been incorporated in H.R. 13850, which is going to be offered under the 5-minute rule, as an amendment in the nature of a substitute to H.R. 1. We also considered another set of amendments which related to part C of title II of H.R. 6954, the conflict-of-interest section.

This may sound a little bit confusing, but I point that out because the first group of amendments that the Armed Services Committee offered to the ethics bill, are now incorporated in the substitute bill. Therefore, we have no objection to that portion of the substitute bill and have joined in supporting it.

Its filing provisions, incidentally, would require a financial disclosure report from each officer of the Armed Services who is serving in or who is nominated for promotion to the grade of brigadier general and above in the Army and the Air Force and the Marine Corps; rear admiral and above in the Navy and Coast Guard and the National Oceanic and Atmospheric Administration; and the rank of assistant surgeon general or above in the Public Health Service. Each of these officers would be required to file his disclosure report with the Secretary of his own department rather than, as provided under other legislation, with an Office of Government Ethics.

The remaining amendments that the Armed Services Committee offered to this basic legislation relate to the conflict-of-interest feature of the bill and are not included in the provisions of H.R. 13850, but will be offered in two separate amendments by me on behalf of the Armed Services Committee at the appropriate time under the 5-minute rule. That is provided for in the rule itself.

The first amendment would correct an inconsistency in H.R. 13850 relative to the application of the prohibition on former employees contracting the departments or agencies in which they were formerly employed. This is the matter on which the gentleman from California (Mr. MOORHEAD) and the gentleman from California (Mr. WIGGINS) have already commented at some length. H.R. 13850 would apply the prohibition of no contacts with the agency in which one has been employed to former civilian officers at grade levels GS–16 and above. But the inconsistency is that it would also apply it to former members of the uniformed armed services in the grade of O–6 level and above. Now, O–6 represents colonels in the Air Force and in the Army and captains in the Navy. Thus, there is a disparity between the way we treat the uniformed services and the way we treat civilian employees, since the comparable grade to GS–16 is not O–6 but O–7.

Grade O–7 is a brigadier general or a rear admiral, lower half, in the armed services.

Our committee believes that if we are going to apply these requirements, we ought to apply them at the same comparable level for those in uniform as for those in civilian capacities. Accordingly, our amendment would correct that inconsistency and require these no-contact conflict-of-interest provisions apply only to pay grade O–7 and above. Which is the same level, incidentally, as applies already in the substitute legislation, to the filing of reports. In other words, our amendment would apply the conflict-of-interest restrictions to those pay grades in the uniformed services which are generally considered to be the equivalent of grade 16 and higher in the classified service.

I might point out, Mr. Chairman, that the administration, in the "poop" sheet they sent out yesterday to Members of the House, indicated their support for this amendment and we are grateful for that support.

The second amendment the Armed Services Committee will offer to H.R. 13850 will be directed toward two particular things—and goes, incidentally, directly to the heart of the point that the gentleman from California (Mr. WIGGINS) was making just a moment ago. It would be directed toward assuring that this legislation does not interfere with the free flow of scientific information directly to Government agencies, particularly the Department of Defense where, heaven knows, we need the best scientific and technical information we can get. Our amendment would also insure that the Department of Defense could continue to call on the services of the Nation's most competent scientific and technical people from time to time, as it is now possible to do and has been the case for as long as anybody in this body can remember.

We do have many competent people who come into Government service from time to time on a temporary basis. The gentleman from California (Mr. WIGGINS) talked a moment ago about those attorneys who come into the Department of Justice. Fortunately, we are also able to call on trained scientific and technical people

to come into the Defense Department from time to time and help us meet some of the technical and scientific challenges that are required for our defense capabilities to stay even with those of the Soviet Union, which spends two or three times every year the amount of money that we now spend on research and technology. Certainly we do not want these conflict-of-interest provisions in this bill to deny the Defense Department the capabilities of these technical and scientific people who are urgently needed as Assistant Secretaries for Research and Development, or Assistants to the Assistant Secretaries. They may be there for only one administration and then they go back into the private sector, with General Electric, for example, or General Dynamics, or some other company.

But H.R. 13850 as now written, and without any amendment, would make it virtually impossible for us to get any of these young, capable, scientific or technical individual to agree to spend any time in the Defense Department at all, because, as the bill is now drawn, that individual would recognize that it would be almost impossible for him to get a job after he left Government service if he was henceforth forever banned from any contact with the Defense Department.

As the gentleman from California (Mr. WIGGINS) has already pointed out, persons covered by these provisions could not make any contact at all with any agency for a certain specific period of years, depending on exactly what his level of responsibility had been in the Government service.

Our amendment would change the section to say that the ban on "contacts" does not apply to the supplying and dissemination of strictly scientific and technological information.

During the course of our hearings on this legislation, scientists, both those employed by the Government and those on the outside, and particularly from agencies like the Advanced Research Projects Agency, expressed great concern to our committee that the language of the bill as originally drafted would clearly interfere with the free flow of scientific and technological information to the Department of Defense and to the United States, and could seriously impair with our ability to get the best qualified technical skills which we need from time to time on a temporary basis.

Our committee firmly believes that in the area of national defense, a free exchange of information between the scientific community and the Government is essential. To achieve that objective, we propose to amend the bill to exclude from this prohibition "communications solely for the purpose of furnishing scientific or technological information under the procedures acceptable to the agency concerned."

In other words, some Ph. D. who may be working for the Assistant Secretary of Defense for Research would be able, after he had left the Government, to visit the Department of Defense "under regulations acceptable to the Department," to inform them what would happen, for example, if they put so much of chemical "C" into chemical "D." That would be the extent of his "contact." He could not go in to urge acceptance of a contract. He could not go in to buttonhole a contracting officer. But he might well be the one who could best explain the scientific result of such and such an experiment which the Department might seriously need to know about.

Mr. Chairman, this is a very narrow and limited exemption. In fact, I am inclined to share the reservations of the gentleman from California (Mr. WIGGINS) that the bill itself goes too far in these matters; but at the very least, we cannot afford to deny our defense forces urgently needed scientific information; and this narrow exemption would go exclusively to that end.

Mr. PIKE. Mr. Chairman, will the gentleman yield for a question?

Mr. STRATTON. I am glad to yield to the gentleman from New York.

Mr. PIKE. Mr. Chairman, it is my understanding that the bill before us limits what members of the executive and the judicial branch may do when they leave Government service, but does not limit what Members of the legislative branch may do when they leave Government service.

Would the gentleman explain to me the rationale behind the theory that we here, in the legislative branch, say that members of the executive and judicial branches may not appear before any Federal agencies or courts or what have you when they leave, but Members of the legislative branch have no such restrictions?

Mr. STRATTON. I am afraid I am not in a position to explain that because that feature was not included in the legislation which came before our committee and to which I am now addressing myself. Likewise, it was not a subject that was taken up in the bill which the gentleman from North Carolina (Mr. PREYER) was responsible for developing.

Mr. PIKE. If the gentleman will yield further, would it not be fair to say, then, that the ethics in Government bill is somewhat more ethical for the executive and judicial branches than it is for the legislative branch?

Mr. STRATTON. I am not sure that looking at the bill in toto one could say that, because the gentleman has just made a very eloquent statement here in the well of the House that this bill is even tougher than provisions that apply elsewhere.

The CHAIRMAN. The time of the gentleman has expired.

The Chair recognizes the gentleman from Virginia (Mr. ROBERT W. DANIEL, JR.).

Mr. ROBERT W. DANIEL, JR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support the actions of the Committee on Armed Services to the Ethics in Government Act.

Since our committee's action on financial reporting are included in the provision of H.R. 13850 which I expect will be offered as an amendment in the nature of a substitute to H.R. 1, I will devote the balance of my time to the committee's perfecting amendments to part C of title II, the conflict of interest section of that bill.

The first of those perfecting amendments would change the level at which the 1-year "cooling off' period would apply to commissioned officers of the uniformed services. At present the bill would prohibit officers at the level of O–6; that is, colonels in the Army, Air Force, and Marine Corps or captains in the Navy and Coast Guard, from appearing before, or communicating with, their former departments or agencies. The bill applies that same restriction to former civilian employees who were in positions classified at GS–16.

My objection to that situation is that it affects uniformed services personnel at a lower level than it does civilian personnel. I understand that GS–16 in the classified civil service is the equivalent of O–7 in the uniformed services. Since no reason has been given for the discriminatory application of that prohibition to a lower rank among the uniformed services personnel, I believe that the bill should be amended to insure equal application.

I note that the ethics in Government legislation prepared by the executive branch recommended that the prohibition be applied to uniformed services officers at the O–7 level. That recommendation was consistent with the recommendation for applying the prohibition at GS–16. Since no rational basis has been offered for the distinction contained in the bill. I believe the amendment should be adopted to eliminate the discrimination against officers of the uniformed services.

The second amendment of our committee is of immense importance since it if is not adopted there is a possibility that the Government's access to a vast store of scientific information could be jeopardized. Part C of title II of H.R. 13850 would affect the post-employment prospects of Government officers and employees, since it is aimed at closing the "revolving door" between Government and industry. While that objective has great merit, our committee became concerned that the provisions of the bill might deprive the Government of valuable scientific contributions which some of its former employees might be able to offer.

Scientific personnel of the Department of Defense expressed concern that the bill as submitted would prohibit them from any contacts with their former colleagues if they returned to employment in private industry after their service in the Department. They feared that contacts which they might have with personnel of their former Departments and agencies, even though they were purely scientific or technological in nature, might be considered as a violation of that section. The committee was informed by scientific personnel that the threat was sufficient to cause some scientists currently in Government service to leave immediately in order to avoid the possibility of being entangled in its prohibition. It was also claimed that the threat would deter other scientists from entering Government service. The result would be that the Government could be deprived of the services of some of the outstanding scientific and technological minds in the nation.

In order to alleviate the concern of those scientists, the committee amended the section at page 49, line 16, to exempt from its prohibition, "communications solely for the purpose of furnishing scientific and technological information under procedures acceptable to the agency concerned." We believe that this narrow exemption will promote the national interest by enhancing the flow of scientific information between Government and industry.

It is an absolute requirement to our defense posture that the Government have access to all the scientific and technological knowledge presently available. To achieve that end, it is incumbent that Government employees have open lines of communication with the private sector to exchange information and ideas purely on a professional scientific basis. I appeal to all to understand that we must allow this interchange of scientific information to continue for the benefit of the nation.

Mr. Chairman, I strongly urge the adoption of each of these amendments at the appropriate time for the reasons I have just discussed.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. ROBERT W. DANIEL, JR. I would be pleased to yield to the chairman of our subcommittee.

Mr. STRATTON. Mr. Chairman, the distinguished chairman, the gentleman from New York (Mr. PIKE) a moment ago asked me about whether there might be some discrepancy in the fact that these limitations were placed on members of the Executive Department, but were not applied to Members of Congress. I am not sure that this point applies throughout the entire bill, but with most of these conflict of interest situations spelled out in the bill the ban has to do, as provided, for example, on page 45 of H.R. 1, with "the department or agency in which he served as an officer or employee, or any officer or employee thereof."

Also in the case of one of three types of bans, the bill refers to those items "in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation," et cetera.

In other words, what this is doing really is preventing an employee from going back to the agency in which he served in a responsible position with some kind of business with that same agency. As a practical matter, a former Congressman coming back here into the Congress has also had a limitation placed on what he can do. We passed a rule earlier this year that no former Member could be on the floor lobbying on behalf of an item in which he had a personal interest, which was currently under consideration. So while the two situations are not comparable, the problem really has to do with contacts between former Members and this body in which they originally served.

We have, in fact, recognized a potential conflict of interest by the rule that was adopted earlier this year. and have tried to do something about it.

Mr. ROBERT W. DANIEL, JR. Mr. Chairman, I think the gentleman from New York has performed a useful service in pointing out the distinction between the legislative and the other two branches and pointing out that, while our safeguards might not be identical to those of the other two branches, they do exist and they would appear to be effective.

The CHAIRMAN. The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER) for 15 minutes.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am very happy to rise in support of the Ethics in Government Act. It has taken my colleagues and myself months to arrive at this point, but I believe it has been time well spent. We have arrived at a product in the substitute bill (H.R. 13850) to be offered today for consideration which we are all, retaining some differences, but pleased because it will allow all Members of the House to focus on those big issues remaining without plodding through a fog of minor ones. Although quite a few amendments have been printed in the RECORD, most of these amendments do relate to those major issues with which the House should deal.

Mr. Chairman, I want to stress that absent from the vehicle we are considering are a couple of points upon which the gentleman from California (Mr. DANIELSON) and I have "agreed to disagree" because they are the kinds of issues on which the House should quibble. These two absentees are represented by my amendment to section 206, to require review of financial disclosure forms which are filed in the executive branch and my substitute amendment for part B of title II creating an Office of Government Ethics. On these two amendments I will say more at the appropriate time.

At this time, as the chairwoman of the Subcommittee on Employee Ethics and Utilization in the House Post Office and Civil Service Committee, I want to point out some of the good provisions of the substitute which came from the work of this committee as shown in H.R. 6954, part I, the bill we reported and one of the three we have passed over for the substitute.

First, in section 203(f)(3) we have assured an easy classification device for civil service employees who will be required to file.

Second, in section 203(f)(6) we have assured that Postal Service personnel will file reports.

Third, in section 203(f)(7) we have assured that those personnel responsible for ethics programs will file even if they fall below grade GS–16.

Fourth, within the contents of report provisions (section 202) we assure that avoidance of reporting will not be possible through a multitude of loans from the same person each of which does not exceed the threshhold amount. We also assure that certain pre-Government employment associations will be reported. We also lump property reporting groups together into one more easily manageable category. We also do not require reporting of categories over $100,000.

Fifth, the blind trust definition carries over from the post office and civil service bill the requirement that a blind trust administrator be someone unassociated with those reporting. This should make "back door" blind trust disclosure more difficult.

Sixth, there is no specific criminal sanction for misfiling.

Seventh, there is provision for confidential filing by lower level personnel, but it must be done, as the Post Office and Civil Service Committee's bill required, according to the same form as public filings will be.

Mr. Chairman, I think this bill is one with which all the committees can be pleased and all Members should support as they have in the past its predecessors.

Mr. Chairman, for the benefit of my colleagues, and those who will be faced with interpretations of the language of title II, part A, the following summary of the intentions of this part will be of use:

SUMMARY

APPLICATION OF SUBCHAPTER

Section 201 describes the individuals who are subject to the financial reporting requirements. Section 201(f) of this section sets forth seven specific groups, and section 201(f)(5) provides that the Director of Government Ethics may exclude certain individuals or groups of individuals from coverage under certain circumstances.

The provisions of section 201 apply only to individuals in the executive branch of the Government, including employees of the Postal Service. Section 201 is not intended to apply to employees of the District of Columbia or employees of certain legislative branch agencies, such as the General Accounting Office, which for many other purposes are treated as executive branch agencies (see, 5 U.S.C. 105, which specifically includes the General Accounting Office as an Executive agency).

Section 201 (a), (b), and (c) assure that persons entering, nominated, or running for positions, the incumbents of which must file forms, are included in coverage.

Paragraphs (1) and (2) of section 201(f) provides that the President and Vice President are subject to part A, and section 201(c) includes candidates for those offices with the part's coverage. An individual is deemed to be a candidate if he meets the definition of "candidate" in section 301 of the Federal Election Campaign Act of 1971.

Paragraph (3) of section 201(f) provides that the part shall apply to each individual holding a civil service position in the executive branch whose position is classified at GS–16 or above, or the rate of basic pay for whose position is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay for GS–16. The current rate of basic pay for GS–16, step 1, is fixed at $42,423. Although the rate of pay for a position is not always an accurate measure of its duties and responsibilities, basing coverage on a fixed rate of pay will result in the most uniform application of financial reporting and disclosure requirements, and will eliminate the necessity of making numerous administrative determinations with respect to whether given positions are in fact "comparable" to GS–16, 17, or 18 positions. Only in cases where an obvious inequity is present, such as the case of certain U.S. Attorneys, need a determination be made under the last sentence of paragraph (3).

The phrase, "rate of basic pay for whose positions is fixed" is deliberately used so that the rate of pay (be it daily, weekly, monthly, or annually) which is actually set by statute or otherwise for the position, as distinguished from the amount of pay which may

actually be payable, will determine coverage. Thus, should a pay compression situation similar to that which occurred in 1976, again occur, individuals who are receiving pay equal to that actually received for GS–16, 17, or 18 would not be included under paragraph (3), unless the rate of pay actually fixed for their positions was also equal to or greater than the rate of pay fixed for GS–16.

Paragraph (4) provides coverage for all Administrative Law Judges, including those paid at GS–15 rates.

Paragraph (5) provides that any employee in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy-making character is subject to a part. That this paragraph will bring within the subchapter's coverage the so-called schedule C positions (positions which are essentially political in character and which are classified at GS–15 and below) as well as similar supergrade political positions (formerly designated as "noncareer executive assignment," see, 5 CFR § 9.20). Although noncareer executive assignment positions would also be covered under paragraph (3) above, since such positions by definition are classified at GS–16 or above, the intention is that paragraph (4) be the operative provision for bringing noncareer executive assignment employees within coverage.

Paragraph (6) assures that the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors and each GS–16 or above equivalent at the Postal Service are subject to the subchapter. This paragraph is necessary because section 410(b) of Title 39, United States Code, would otherwise exclude coverage of officers and employees at the Postal Service. Paragraph (6) provides that the Director of Government Ethics and each designated agency official (even if below GS–16) are subject to the subchapter.

Section 201(f)(5) provides that the Director may, by regulation, exclude from the application of the part, any individual or group of individuals who is in a position which has been excepted from the competitive service by reason of being of a confidential or policy making character, as provided in paragraph (5) of section 201(f). This exemption authority permits the Director to exclude employees such as chauffeurs, who although politically appointed, have no policy or decisionmaking responsibility. Before the Director may exclude any individual or group of individuals from the coverage of the part he must determine that the exclusion would be consistent with the purposes of the part. In making these determinations, intrusions into individual privacy and paperwork burdens involved in reporting and disclosure as well as any impact on public confidence which would result, should be considered.

REPORTING OF FINANCIAL INTERESTS

Section 202 sets forth those financial interests which are required to be reported by an individual who is subject to the part. Subsection (a) of section 202 describes seven separate categories of financial interests which must be reported.

INCOME RECEIVED AS COMPENSATION

Paragraph (1) requires that the source, type, and amount of income from any source received during the calendar year must be reported. Aggregate amounts received from any source which do not exceed $100 for the calendar year need not be reported. It should be noted that income must be reported for the year in which it is actually received. Current U.S. salary is excluded.

Income as used in this section is defined by section 209(1). It is intended that any amount which is received by the individual during the calendar year and which is attributable to personal services rendered by that individual at any time be considered income. Thus, continued payments to a pension plan or health insurance plan by a former employer must be reported. Any salary received (except the individual's current U.S. Government salary) must be reported. Income from a trade or business in which the individual participates must be reported. In the case of a self-employed individual, all income received from the activity in which he is self-employed must be reported. Also, honoraria received by the individual must be reported.

Income from any source need not be reported if the aggregate amount received does not exceed $100 for the calendar year. The term "source" means the employer in the case of an individual employed by another. In the case of an individual who is self-employed, the source will be the individual himself. It should be noted that the activities engaged in either as an employee, or as a self-employed individual, are required to be reported under section 201(a)(6).

It should also be noted that the exact amount of income subject to paragraph (1) must be reported. Income covered by this section results from activities by the reporting individual which are in addition to normal Government service. These activities necessarily require the devotion of time which could impair the individual's ability to perform the duties and responsibilities of his Government position. Therefore, it is important to know the extent of the activities which result in income received as compensation for personal services. The amount received is one indication of the extent of outside activities. As discussed above, under paragraph (a)(6) of this section an individual is required to report a general description of the activities engaged in, in carrying out duties of positions held outside Government service. These two requirements should enable the public to determine whether or not an individual's outside employment or other activity is so extensive as to impair his ability to perform the duties and responsibilities of his Government position in a satisfactory manner.

Paragraph (1) also requires the reporting of each source of income received during the calendar year which is not compensation for personal services [or under paragraph (3) as a gift.] The term "source," means the name of the person from whom the income is received. The source of income need not be reported if the aggregate amount received from such source does not exceed $100 for the calendar year.

Examples of income which would be required to be reported under this paragraph include, but are not limited to: dividends; interest; long- and short-term capital gains; income derived from the sale of personal property; rents; royalties; and income from copyrights and patents. Section 201(e)(3), however, excludes, alimony or support received by a child as reportable income.

GIFTS

Paragraph (2) requires that the source of most gifts received during the calendar year must be reported. It also requires that the amount and a description of certain gifts must be reported.

Subparagraph (B) of paragraph (3) specifically excludes certain types of gifts from the reporting requirements. Gifts which need not be reported are: (i) any gift (other than transportation, food, lodging, or entertainment) from any source if the aggregate amount received from that source during the calendar year does not exceed $100; (ii) any gift which constitutes personal hospitality, or is from a relative; (iii) any political contribution otherwise reported as required by Federal law; and (iv) gifts of lodging, transportation, food, or entertainment or reimbursements less than $250.

The "personal hospitality" exemption only covers food, lodging, or entertainment at a personal residence of the person providing the hospitality. So, if a reporting individual visits someone at that person's summer home for a week, the value of the food and lodging received would be personal hospitality and need not be reported even if the value of such hospitality exceeds $100. Travel on a boat or airplane owned by an individual is included in the exemption for personal hospitality unless such travel is substituted for commercal transportation. Similarly, the occasional use of an individual's car would be exempted. Entertainment in a "house" owned by a corporation, not an individual, would not constitute personal hospitality. The intention is that the term "personal hospitality" to be given the same interpretation as that intended by the Senate (see S. Rept. 95–170, 95th Cong., 1st Sess., p. 115).

The term "gift" is defined elsewhere in section 209(3) as including the value of any transportation, lodging, food, entertainment, or other property, services, or money, to the extent it is obtained for less than full consideration, whether obtained directly, or indirectly by means of reimbursement or otherwise. The key phrase in the definition is "unless consideration of equal or greater value is received by the donor." Anything received for other than full payment or other consideration shall be deemed a gift. The definition includes reimbursements, other than reimbursements for Government travel, inheritances, honoring momentos, food at banquets, etc. The full consideration requirement permits an individual to offset the value of gifts received from an individual by the value of any gifts given to that individual, unless the consideration is unlawful, and therefore void.

Unless a gift is within one of the exemptions described above, the source (the identity of the donor) and description must be reported. The value of the gift, however, need not be reported except with respect to gifts other than of food, transportation, lodging, or entertainment, and the like.

In an effort to minimize the accounting necessarily required by any gift reporting provision, the provision requires only reporting the source and description of the vast majority of gifts. It is important that the public be aware of the source of all gifts so that it may determine for itself whether an individual is accepting gifts from any person who could be affected by the performance of the reporting individual's duties and responsibilities.

REAL AND PERSONAL PROPERTY

Paragraph (3) of section 202(a) requires the reporting of property, both real and personal, held during the reporting year in a trade or business or for investment or the production of income.

This provision is intended to cover all personal property other than property in the nature of household goods, furniture, clothing, and other personal property which is not principally held for the production of income. Thus, a painting in a home would not have to be reported even though the painting when sold might produce substantial income.

However, if a reporting individual is in the business of buying and selling paintings for profits, that individual would have to list that he held a certain number of paintings with the category of value of that holding being indicated. In addition, income from the sale of such paintings would have to be reported under section 202(a)(1). This paragraph does not require the listing of a life insurance policy even if the policy has a cash value since the policy is held for the principal purpose of life insurance protection and not the production of income. However, a savings account would have to be reported under this paragraph even though there might be purposes for the savings account other than the production of interest income.

In reporting under this paragraph, a person could have one listing for "farm equipment" and it would not be necessary to list each tractor, manure spreader, or combine separately. However, it would not be acceptable to simply list "stocks"—the name of each company in which stock worth over $1,000 is held must be listed separately.

The provision treats real property the same as personal property. Thus, only real property which is held during the calendar year in a trade or business or for investment or the production of income must be reported. Accordingly, a summer home which is held and maintained purely for recreational or vacation purposes need not be reported. It is, of course, a personal residence. A summer home which is rented, however, is held for the production of income and must be reported. Reporting is not required with respect to any real or personal property which is less than $1,000 in value.

The value of property need not be determined precisely. Reporting with respect to value is by category of value and reasonable informal methods of appraisal should be acceptable. The intention is to detect possible conflicts of interest, not to give professional appraisers business.

LIABILITIES

Paragraph (4) of section 202(a)(4) requires the reporting of a description of liabilities owed during the calendar year and the identity of the persons to whom such liabilities are owed (if known). The exact amount of the liabilities is not required to be reported, only the category of value.

Certain liabilities are excluded from the reporting requirement. A liability secured by the personal residence of the reporting individual or a member of the individual's immediate family, if the liability is secured by that residence, it need not be reported. Thus an individual generally does not have to report his home mortgage. If the financing was not secured, the mortgage must be reported. This provision has like exceptions for motor vehicles and furniture and appliances.

A liability owed to a relative (as defined in section 209(2)) and liabilities owed to any one person during the calendar year which do not aggregate more than $5,000 need not be reported. It should be noted that the applicability of the $5,000 exclusion is determined by the amount owed to any one person, not the amount of any single liability.

Thus, under the substitute an individual who held ten separate $1,000 notes payable to ABC Bank would have to report each of the liabilities since the aggregate amount owed ABC exceeds $5,000. Under S. 555, for example, the notes would not have to be reported since none of them exceeds $2,500. Clearly, the latter case provides a large loophole through which reporting of liabilities could be avoided.

TRANSACTIONS

Paragraph (5) for a description, the date, and category of value to be reported on certain transactions during the calendar year which exceed $1,000. The transactions are those involving real property, stocks, bonds, commodities futures, and other forms of securities. No reporting is required concerning any transactions solely by and between the reporting individual, or his spouse or dependent children. No reporting is required with regard to any otherwise reportable real property transactions which involve the reporting individual or his spouse's personal residence.

DESCRIPTION OF PAST AND PRESENT ACTIVITIES

Paragraph (6) of section 202(a) requires reporting of the identity of all positions held during the calendar year (and during the immediately preceding 2-year period) as an officer, director, trustee, partner, proprietor, agent, employee, representative, or consultant of any person (including any governmental entity). In addition, the report must include a general description of the activities engaged in, in carrying out the duties and responsibilities of the positions. The term "governmental entity" refers to State or local governmental entities. An individual is not required by this paragraph to provide a description of the activities required by his Federal Government position. That information is specifically required under section 205(a). This provision should not be construed to require a finely detailed description of activities. It does, however, intend that the description be sufficient to provide an indication of how much time and energy is devoted to the activities.

Reporting is not required with respect to positions held in any religious, social, fraternal, or political group or association. In addition, it is expected that the Director will by regulation place groups such as parent-teacher associations or civil associations in this category when they are of the nature of the organizations actually listed.

CONTRACTS OR AGREEMENTS WITH RESPECT TO POST-GOVERNMENT EMPLOYMENT

Paragraph (7) of section 202(a) requires the reporting of a description of, and the identity of the parties to, any contract agreement, with respect to employment after the reporting individual leaves Government service. This provision includes not just formal contracts for future employment, but informal understandings as well. Also, if an individual is on leave of absence from private industry, that fact would have to be reported. Agreements with respect to any continuation of payments by former employers and continuing participation in employee welfare or benefit plans maintained by a former employer need not be reported under this provision. The source and amount of such continued payments or benefits would have to be specified, however as "income for personal services" under section 202(a)(1).

OFFICIAL POSITION DESCRIPTION

Paragraph 205(a) requires that a copy of a current official position description, if any, of the Government office or position currently held or held during the preceding calendar year by the reporting individual be included with the financial report. Most section 202(f) (3), (4), (5), and (6) individuals hold positions for which "official position descriptions" should be available.

CATEGORIES OF VALUE

Subsection (d) of section 202 sets forth the categories of value which are to be used for purposes of reporting amounts. The categories of value which must be used for reporting are as follows:

(1) not more than $5,000,

(2) greater than $5,000 but not more than $15,000,

(3) greater than $15,000 but not more than $50,000,

(4) greater than $50,000 but not more than $100,000, and

(5) greater than $100,000.

ESTIMATED VALUE

Section 202 provides generally that for purposes of reporting the value of items other than money, the value of the item shall be reported on the basis of value of the item on the last day of the calendar year for which the report is submitted. Items which are acquired or disposed of during the calendar year are to be reported at the value for which they were so disposed of or acquired.

It is expected that the Director in prescribing the manner and form of statements will establish a variety of methods by which an individual may value the financial interests required to be reported. For example, value could be based upon the known sale price of a comparable item, or on the replacement cost of a particular item. The cost could be determined on a historical basis by increasing the purchase price by the cost of any improvements and adjusting the final value to reflect reasonable appreciation (or depreciation). With respect to certain property the assessed value for tax purposes, adjusted appropriately, could be used. See also the definition of estimated value, section 209 (5). In the vast majority of instances the value of a financial interest need not even be known in order to determine weather or not a conflict of interest may exist. It is the nature of the financial interest that is important. If an individual owns stock in a company it is important that the identity of the company be known in order to determine whether or not the individual could affect that company through the performance of his Government job. If the business of the company is totally unrelated to the individual's job, however, it makes no difference, from a conflict-of-interest standpoint, whether the individual owns 1 share or 1 million shares. Accordingly, the importance of having precise values reported is such as to warrant putting reporting individuals to the expense of formal appraisals.

INTERESTS OF MEMBERS OF THE SPOUSE AND CHILDREN

Paragraph (e) of section 202 provides that the financial interests of a member of the reporting individual's spouse and dependent children must be reported. An exception is made for the interests and categories of unearned income received by such family members. The source and amount of such income need not be reported. Holdings of assets creating income will be.

The reporting of financial interests of family members is a very sensitive matter. But the provisions do not require that the reporting individual report the interests of family members, it only requires that such interests be included as part of this report. Thus, in a situation where a family member interests be included as part of his report. does not wish the reporting individual to know directly about certain financial interests, the family member may submit the information directly to the appropriate reviewing official for inclusion. Of course, this confidentiality cannot be maintained with respect to that information which is required to be publicly disclosed, but confidentiality is possible for information required to be reported by family members of individual described and for actual values of the categories of value reported by family members of individuals described.

There are two specific exceptions with respect to reporting financial interests of family members. First, section 202(e)(3) provides that the financial interests of a spouse need not be reported with respect to a spouse who is legally separated under a decree of divorce or separate maintenance from the individual submitting the report or living apart with the intention of such marital disharmony. Second, subparagraph (C) provides that reporting of specific information on items relating to any member of the individual's family is not required if the individual submitting the report certifies that: (i) the individual has no knowledge of the information; (ii) the individual has made every reasonable effort to obtain the information; (iii) the individual derives and expects to derive directly or indirectly from income, property, or liabilities formerly owned or controlled by the reporting individual.

FILING OF FINANCIAL REPORTS

(a) Section 201 and 202 sets forth requirements with respect to when financial reports must be filed by individuals required to report. Paragraph (1) provides three different points in time by which covered individuals must report: (A) not later than 30 days after assuming the duties of the individual's of-

fice or position; (B) not later than May 15 following any calendar year during which the individual held an office or position for more than 60 days; and (C) not later than 30 days after leaving the office or position. Reports filed upon assuming office [subparagraph (A)], and on each May 15 [subparagraph (B)] are required to cover the preceding calendar year. Reports filed upon leaving office [subparagraph (C)] are required to cover the period of the current year which elapsed before the individual left the office and the preceding calendar year if that year has not been previously reported on in a May 15 report or a report filed upon assuming office.

Section 206 requires that those officers responsible for receiving reports assure that such reports are filed.

DISCLOSURE OF REPORTS

Section 205 provides for disclosure and public availability of information contained in reports filed pursuant to the part.

An exception with respect to the disclosure requirements is provided in subsection 205(a) and relates to national security concerns. Subsection 205(a) provides that the President may provide for exceptions from the public availability requirements in the case of any office or position in the Central Intelligence Agency, the Defense Intelligency Agency, or the National Security Agency, or any other individual engaged in intelligence activities and that the President may provide for additional (fake) reports as are required for protection.

Subsection (b)(1) of section 205 provides that any person receiving a copy of a report or inspecting a report (1) must supply his name and address and the name of person or organization, if any, on whose behalf he is requesting the report, and (2) may be required to pay a reasonable fee, in any amount that is found necessary, to recover the cost of reproduction or mailing of the report. The reasonable fee may not include any cost attributable to the pay of any employee involved in the reproduction or mailing of the copy. Subsection (c) further provides that a report may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public's interest.

The last sentence of subsection (c) of section 205(b)(3) requires that the names and addresses of persons or organizations inspecting or receiving a copy of a report shall be disclosed to the reporting individual. This provision requires notification to the reporting individual of the name and address of persons or organizations inspecting or receiving a copy of his report. This notice is required in the case of former employees even if it is extremely difficult for an agency to locate former employees. I will offer an amendment to correct this situation.

Subsection (c)(2) relates to unlawful acts with respect to inspecting or obtaining information from reports made available to the public. Paragraph (1) of subsection (c) provides that it shall be unlawful for any person to inspect or obtain such information (A) for any unlawful purpose, (B) for any commercial purpose, (C) for determining or establishing the credit rating of any individual, or (D) for use directly or indirectly in the solicitation of money or assistance for any political, charitable, or other purpose. Paragraph (2) provides that the Attorney General may bring a civil action against any person (A) who inspects or obtains information for those purposes prohibited by paragraph (1), discussed above, (B) who inspects or obtains information by falsifying his name or address, (C) who inspects or obtains information on behalf of another person or organization without disclosing the name of such person or organization, or (D) who fails to comply with any term or condition under which such information is made available to the individual. Section 205(c)(2) provides that the court in which any civil action is brought by the Attorney General may assess a penalty in an amount not to exceed $5,000.

Section 205(d) provides that information filed under subchapter VI shall be made and held available to the public for a period of 5 years, and then destroyed, except in the case of unsuccessful candidates for President or Vice President or unsuccessful nominees, such reports shall be destroyed one year after consideration or candidacy has ended.

LIABILITY UNDER OTHER AUTHORITY

Section 207(a) states that the reporting requirements established under this part to supersede reporting requirements under existing laws (see e.g., Public Law 95-87, sec. 201(f), approved August 3, 1977; Public Law 95-91, section 601 et seq., approved August 4, 1977), Executive order (e.g., Executive Order No. 11222), or regulation (e.g., CFR Part 735). The provisions of the part should, of course, not be construed to prevent any congressional committee from requesting any additional information from any nominee whose nomination has been referred to that committee, or to prevent an appropriate Congressional, Judicial, or Executive branch official from requesting of any specific individual confidential financial information in the course of a specific investigation or inquiry.

Subsection (b) of section 207 provides that the provisions of the part that require the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for the purposes of preventing conflicts of interest or apparent conflicts of interest. An exception is provided with respect to reporting under section 7342 of title 5, United States Code (as amended by Public Law 95-105, section 515(a)(1), approved August 17, 1977), relating to foreign gifts and decorations.

Section 207(c) provides that nothing in the part shall be construed to affect or modify any administrative, civil, or criminal liability to which a person required to submit a report may be subject. By no means is this bill meant to tell executive branch personnel that something like the acceptance of a less than $35 gift from a prohibited party is meant now to be permissible.

FAILURE TO FILE OR FALSIFYING REPORTS

Subsection 204(a) authorizes the Attorney General to bring a civil action against any person who knowingly or willingly fails to file a report which is required or to report any information which that person is required to report, and provides for a penalty of not to exceed $5,000 in such cases. Subsection (b) directs the head of each agency, by himself or at the request of a designated agency official or the Director, to refer to the Attorney General the name of any individual who he has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported.

Although civil penalties and referrals to the Attorney General are provided for in cases of reporting violations, inadvertent or technical violations should be handled by the agency's ethics counselor or the Director, as appropriate, through informal means or administrative action short of seeking either a civil penalty or disciplinary action as provided for under subsection (c) of section 204. Proper respect for human error must guide us all here.

EFFECTIVE DATE

Section 208 of title II provides that the amendments made by section 101 shall take effect on January 1, 1979.

DEFINITIONS

Section 209 provides eleven definitions of terms used in the part.

Mr. Chairman, I now yield such time as he may desire to the gentleman from Virginia (Mr. HARRIS), who has been very helpful in this entire area.

Mr. HARRIS. Mr. Chairman, I am pleased to support title I of the Ethics in Government Act today, which will require annual financial disclosure reports by Members of Congress and candidates for Congress. This bill will place in law the tough requirements we imposed on ourselves last March. I supported these reforms because they will help restore confidence in the integrity of Congress.

The American people have had enough Watergates, Koreagates, and behind-the-scenes influence peddling. I think the American people will applaud our action today as we undergird our own rules by putting the force of law behind them.

As a public official, I have always felt it my duty to disclose my income, assets, and liabilities. My constituents have had access to my tax returns. My financial affairs are not hidden from their view. I think public officials should accept public accountability when they seek public office. And I believe one's private financial interests can have some bearing on public policy actions. The citizen should be able to view votes alongside finances. But the important point, I think, is that knowing one's financial interests will be made public is a deterrent to questionable acts. Quite simply, sunlight is the best disinfectant.

NO SPECIAL INTEREST TIES

Last year, we imposed on ourselves a 15-percent limit on outside income. At the time, I said that I thought we should have a flat prohibition on outside earned income. I continue to hold that view. I understand that an effort will be made to strike the limit on outside income and the ban on Members' accepting speaking fees over $750 per year. I will vigorously oppose efforts to weaken those important prohibitions.

I am against allowing elected officials outside income for several reasons. First, the job of a Member of Congress is a full-time job. People elect us to represent them, to conduct the public's business. An outside law practice or paid position on a corporation board competes for the official's time, attention and priorities. It can rob the people of the representation they deserve.

Second, such outside financial ties can create conflicts of interest. We must deal with virtually every problem and issue the Federal Government deals with. And while many times a bill may have no bearing on the Member's "outside" job, the appearance of impropriety is still there. This appearance in and of itself can undermine confidence in elected officials.

Third, we should not "cash in" on our position. We are in the business of formulating policy—not making money for personal gain. We should not use the prestige of our position to engage in profit-making ventures. We should be required to cut off all special interest ties.

Our adoption of this legislation today will be a milestone. It will show the public we are serious about ethics, that we are willing to discipline ourselves. Above all, it is my hope that we can reverse the

people's growing distrust of Government and restore faith in the people's Government.

Mr. GILMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 13850, a compromise forged by the Committees on Post Office and Civil Service, Judiciary, and Armed Services. I wish to compliment the members from those respective committees who labored so diligently to achieve this compromise bill.

H.R. 13850, the Ethics in Government Act of 1978, requires designated officers and employees of the United States, and candidates for Federal office, to file reports as to their income and financial holdings and transactions, places long-needed prohibitions on postemployment practices of certain officers and employees in the executive branch, and provides for civil penalties for failure to adhere to the requirements of this legislation.

Like all compromises, H.R. 13850 will not please everyone. That this legislation is needed is obvious and I urge its adoption.

H.R. 13850 artfully preserves the constitutional balance of power arrangement in our Government by insuring that the same prohibitions and restrictions, with several necessary exceptions, are applied equally and fairly across the board upon all three branches of Government.

I do have one serious reservation regarding the compromise embodied in this bill. H.R. 13850 does not contain the Committee on Post Office and Civil Service's proposal regarding the organizational structure of the Office of Government Ethics. Rather, this legislation perpetuates a system of part-time ethics counselors organizationally located in departments and agencies under the control of the respective department secretary or agency head.

The confidential financial reporting system now operating in the executive branch is a disaster. In the past 3 years, the GAC has issued 21 reports testifying to its faults. GAO has found that conflict-of-interest rules are not evenly applied in all agencies and that agency ethics counselors only work part-time on their responsibilities. Both these faults are the result of agency heads being responsible for governing their own ethics programs. We need look no further than the recent disclosures of activities of the General Services Administration to see how bad things can be.

The substitute (H.R. 13850) continues to place ethics program responsibility upon agency heads and to envision part-time ethics counselors. The Schroeder amendment creates a limited number of full-time ethics counselors under the complete control of the Director of the Office of Government Ethics. We want to point out that although the administration opposes the Schroeder amendment, the President himself, in employing Charles Kirbo to step into the GSA scandals, is following its philosophy. The amendment is also quite similar in concept to the independence we voted overwhelmingly to give agency inspector generals.

Second, the Schroeder amendment does not hide the cost of administering the ethics program in the form of agency budget submissions for their own ethics counselors all over the budget.

Third, the reason for the Ethics in Government Act is to assure the public that Federal employees are not financially involved in decisions they make. The Schroeder amendment requires all executive branch regulations concerning the act to be made subject to the rulemaking procedures of the Administrative Procedures Act, gives the right to interested persons to go to court to modify or enforce the rules, and finally, permits Congress to veto the rules.

To correct this situation, the gentlelady from Colorado, the honorable chairperson of the Subcommittee on Employee Ethics and Utilization, will offer an amendment to title II, part B, of this bill that will embody the committee's proposal. I urge support for the adoption of this amendment, and I will speak further on this amendment at the appropriate time.

Mr. Chairman, I now yield 2 minutes to the gentleman from Illinois (Mr. CORCORAN).

Mr. CORCORAN of Illinois. Mr. Chairman, I rise in support of H.R. 1, the ethics in Government bill, which I believe is necessary for the simple reason that the people of this country need to have their faith in the integrity of Congress restored. Too many people believe that politicians are scoundrels seeking their own personal interest at the expense of the public interest. Each new national public opinion survey conveys this growing lack of confidence in our Government. To reverse this growing cynicism, we need this landmark legislation before us today.

Some argue that, with the electoral process we have, nothing more needs to be done. Unfortunately, there are times when this option is not sufficient. When people begin to believe that the institution itself causes unscrupulous behavior or attracts unscrupulous people, it is not enough to give the citizens an opportunity to reject these people. Then it is a choice between the lesser of two evils, not the better of two good choices.

When people doubt the integrity of the institution, the Government itself, it is a sign that it is time for the Government to take extraordinary steps to address this concern. We must take matters into our hands and make some meaningful changes. I am not suggesting changes so major as to change the structure of Government, but I am suggesting changes that will work to instill faith in our Government once again.

H.R. 1 embodies a technique which is already working well to eiminate abuses in campaign financing—disclosure—and I heartily endorse the disclosure provisions of H.R. 1. We cannot legislate faith, but we can legislate conditions conducive to faith—conditions that inhibit actual violation of the public trust, conditions that enable people to scrutinize public officials and determine for themselves whether these officials are deserving of trust. H.R. 1 does just this.

I am aware that some of my colleagues believe that the provisions in this bill constitute a violation of the right to privacy. We all prefer privacy; it is only natural. But the right to privacy regarding personal financial status that each of us had before becoming Members of Congress must now be weighed against another right—the right of the people of this country to have a reasonable and practical means of insuring that the public representative's interest squares with the public interest.

Just as every right carries with it a corresponding responsibility, so the right to make decisions that affect the people of this country carries with it the obligation for us to insure that these decisions are in the best interests of all the people in this country. I believe the price one must pay in exchange for the honor of serving the people is the obligation of demonstrating that one is deserving of and will not abuse this honor. The rhetoric about the right of privacy must not be a shield behind which public officials hide personal gain or give the appearance of so doing.

Mr. Chairman, H.R. 1 legislates the structure and standards so that the right of the American people to honest government can be preserved; I urge my colleagues to support it.

Mr. GILMAN. Mr. Chairman, I now yield 3 minutes to the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Chairman, I think this bill is going to be—and I anticipate that the bill will pass—one of the most unfortunate pieces of legislation we pass this year. It is misdirected. We do not yet understand the problem right here in the Congress. We are talking about this ethics bill, and it comes basically from three background situations. One of them is Watergate; another is Koreagate; and another one is this GSA situation.

Let us look at the three of them. Watergate, what was that? That was one political party trying to put an electronic bug in another political party's ceiling, and they did not succeed. What has that got to do with an ethics bill, or information?

No. 2, Koreagate, we had one country trying to reach directly through to people who serve in these bodies, and trying to assert themselves. What a person had or what his resources were had no bearing on Koreagate. It is just a question of one foreign power trying to work this way.

What was the third? It was GSA, where people working for civil service were trying to figure some way to make a quick buck, but not an honest buck—they are very much under the table. In no way does this bill cover any of the three situations.

We are not facing the facts. What we are trying to do is find a way to level America down. The only way the country can go up is if everybody moves forward. The part that disturbs me the most about the bill is what we are going to do to the executive appointments. Many of the great leaders of this country are also successful financially. They might make $200,000 or might make more.

With this bill, the way it is drawn up,

if President Carter or any future Presidents want to appoint really outstanding business leaders or executive leaders, they are going to be required to file a disclosure that will not only hurt them personally, but hurt the associates with whom they have been doing business. The impact these requirements will have in future years on attracting good people to top Government posts will be profound.

I have read this bill over. I do not see how it affects me. I do not have an outside salary; I do not have commissions; I am not a lawyer; I do not receive honorariums. Yet, I think many times we think, "How does this affect us?" What we really ought to think about is, how does this affect the country. And this bill is not good for America. We should not place these limitations on selecting future leadership.

Mr. Chairman. In an herculean effort to legislate morality and confidence in our Government four separate committees of the House—Post Office and Civil Service, Armed Services, Judiciary, and Select Committee on Ethics—have drafted language to require detailed financial disclosure to top officials and employees of executive and judicial branches of our Government, as well as top officers of the military departments. The legislative branch is already required to file such disclosure reports, and this bill will merely codify into law these requirements.

These reports include such items as real estate, personal property, certain gifts, certain liabilities, liabilities, financial interest of spouse and immediate family, and other areas of an essentially private nature.

Some place along the way, we seem to have confused the words "conflict of interest" with the words "public interest," and that in which the public is interested.

It is the legitimate concern of Government to protect the public from "conflict of interest" among its legislators, officials, and employees. To that end, there are numerous criminal statutes which prohibit Government employees from engaging in matters in conflict with their official duties. If found guilty, severe penalties are available.

Beyond this point, we should tread carefully. To require career merit appointed employees, Presidential appointees to Government posts, and other top officials and employees to disclose publicly their personal financial holdings in detail is, I believe, unnecessary and an invasion of privacy.

Such requirements, which serve little purpose except to bare one's financial soul to anyone who has a passing curiosity, are counter-productive. These requirements will deter successful, able persons from entering public service.

Mr. Chairman, the "need or right to know" of the public must be carefully balanced against the individual's right to privacy. In the rush to report this bill to the House to satisfy the administration's mandate to put some kind of "ethics law" on the books, the several committees of Congress appear to have failed to carefully consider this important point.

The CHAIRMAN. The Chair now recognizes the gentleman from North Carolina (Mr. PREYER) for 15 minutes.

Mr. PREYER. Mr. Chairman, the Select Committee on Ethics has worked very hard on this bill for about 20 months now, that part of the bill which will be title I.

I want to thank all the members of the committee for all the hard work they have done and I particularly want to thank the ranking minority member of the committee, the gentleman from California (Mr. WIGGINS), for all of the work he has put in on this bill to improve it and to refine our advisory opinions, even though he disagrees with much that is in the bill. We always had his cooperation although we did not always have his agreement.

I want to thank the staff of the Select Committee on Ethics and particularly our Chief Counsel Don Terry, who did a really outstanding job on a very complicated subject.

Finally, I would like to call attention to the fundamental role of the Obey Committee on Administrative Reform and particularly the role of their chairman, the gentleman from Wisconsin (DAVE OBEY), and the chairman of the Subcommittee on Legislative Ethics, the gentleman from Indiana (Mr. HAMILTON).

It was that committee which basically put up the framework of this ethics building and our committee fitted out the details of that framework. We owe those gentlemen and that committee a great debt.

Those of us who serve in this body and who respect it and who love it know that the overwhelming majority of the Members of Congress do not peddle influence, do not accept expensive gifts from lobbyists, and do not abuse the public trust. The gentleman from Louisiana (Mr. WAGGONNER) said not long ago that he would rather lose his wallet on the floor of the House of Representatives than any place else he can think of. Well, I concur with the gentleman from Louisiana (Mr. WAGGONNER). Members of Congress do not come to Congress in order to get rich. The motivation that makes people come to Congress is something quite other than financial gain. It is usually excitement. It is power, yes. Also it is a desire to try to improve our country a little bit, to try to make this a better place to live, and the satisfaction one gets from that is one of the motivations.

Unfortunately this is not the public perception of the Members of Congress. It has become a cliche to say that we have a crisis of confidence in our institutions.

This bill is an effort to improve the effectiveness of this body but it is also an effort to improve the credibility of this body. A democratic society has got to have a minimum level of credibility in its institutions. If we were a totalitarian society, it would not matter if there was no credibility in the Congress of that socitey, but in a democratic society we have got to have that confidence. The public cynicism about Congress directly affects our ability to do our job here, so that is one of the things these rules are trying to be directed at.

These new rules will not assure that power is never abused. Ethics reform also is not going to assure us that the public is going to have affection for us in the future. Only a series of positive achievements are going to bring this about. But minimizing conflicts of interest, increasing public accountability, and providing the public with the necessary information to monitor conflicts of interest.

As Justice Brandeis said, sunshine is the best disinfectant and electric light is the best policeman; setting high standards by which we conduct ourselves; eliminating those gray areas where a Korean scandal can take place; by making clear that no Member of Congress can cash in on his position of influence. In short, by treating a public office as a public trust; treating it as if we are trustees for others and are not here to enrich ourselves—doing all these things will certainly help to restore full public confidence in this body.

Mr. HYDE. Mr. Chairman, would the gentleman yield?

Mr. PREYER. I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would ask the gentleman from North Carolina (Mr. PREYER) would it not be also laudable, and ought it not be our goal, to try to make service in this body an attractive, desirable thing, for a wide variety of people, cross section of Americans?

I just fear that we are penalizing the successful, middle-level person, who has a young family, who has three or four children he is trying to put through school, and who must maintain two homes, and that we are almost mandating that the only persons who can serve are the very wealthy, who have independent means of income, or to young people just out of college, looking for dragons to slay—and that is fine—but do we not need the successful person who has been in business and must be capable of supporting his family, must we rule those people out economically because of a desire to measure up to a mere perception that the media has assisted in creating? Is quality not as important as perception?

Mr. PREYER. I would certainly agree with the gentleman that we do want the type of people he has indicated. I think where we might disagree is that I think the way we are going to get those people and keep them is by paying Members of the Congress an adequate salary. But I do not think the way to do it is to pay them an inadequate salary and ask them to supplement their salary on the outside.

But I can understand the gentleman's position. I hope that the salaries of Members of Congress will be adequate for the kind of job they must do, and to support the kind of Members the gentleman is talking about.

Mr. HYDE. I thank the gentleman.

Mr. HOLLAND. Will the gentleman yield?

Mr. PREYER. I yield to my colleague, the gentleman from South Carolina (Mr. HOLLAND).

Mr. HOLLAND. Mr. Chairman, I thank my colleague for yielding and I rise, somewhat reluctantly. I heard the gentleman say that there is a great public cynicism about the Congress. I do not know the basis of or the origin for the statistics, or where those allegations have come from. We have just gone through a rather difficult period of the reelection process in which, again, the vast majority of the Members of the Congress were reelected, which rebuts completely any statement that there is a public cynicism of the Members of the Congress because if it was that bad, they would all have been turned out in the recent primary elections.

Second, I admire the gentleman's purpose, but I do not think we can create an impression in the public's mind that this is an institution of purity and righteous people by passing this law. I think we, individually, have a duty to behave in an acceptable fashion to show the public that we are ethical. So I am a little bit concerned that we are creating a law here that is going to make more headlines as Members make an error here and there. That it is going to drive people away from even thinking about running for Congress. Following the Watergate era, I am told, there were speeches being made by the members of the Committee on the Judiciary all around the country to describe Watergate and its ramifications. I am told there were honoraria paid for those speeches, so that the Members derived some personal income from that unfortunate experience. But the public, I believe, derived a far greater benefit from that type of exposure. And I suppose the day will come where the next big problem occurs and it will again bring about the participation of the Members and another demand around the country for more speeches and more honoraria.

So I do not think the Members should be deprived of that privilege by earnings limitation.

Mr. PREYER. Mr. Chairman, if I might reclaim my time, I only have a few more minutes. I would like to complete my statement.

Mr. Chairman, let me emphasize that the purpose in drawing up these rules and in making these changes is not to punish the Members of Congress for some alleged past misconduct. The committee does not view itself as some sort of avenging angels of disclosure. We are not trying to impose some sort of Cromwellian new Puritanism on this body; but we are seeking to set up rules of conduct which are reasonable and which will make this institution work better, not just rules which are ideal, but rules which work.

We appreciate the comment which was made by the gentleman from South Carolina that we cannot legislate morality. We cannot change the human heart, but we can change conduct, we can change the way people act. Anyone who doubts that should just take a look at what has happened as a result of passing the Civil Rights Act.

We would establish some rules here which change and affect conduct. They set some high standards, higher standards than the general public is asked to live up to. There is a kind of double standard between public officials and the members of the public. There ought to be. Those who serve in public office are expected to set an example.

As Chaucer said, "If gold ruste, what shal iren do?"

Nevertheless, we are trying to keep these rules simple and to minimize the reporting requirements. We do not want to turn each Member into an accountant. We are concerned over invasions of privacy; and in drafting these rules, we tried to give the public the information it needs to monitor potential conflicts of interest.

But we were not interested in requiring Members to disclose their entire net worth or what kind of cars they drive or how much their personal residence cost. There is no publication of Members' tax returns. We have tried to be reasonable.

Finally, Mr. Chairman, I would like to make some more specific comments on this legislation.

Title I would enact into statute the financial disclosure provisions of House rule XLIV, with several clarifying amendments and definitions consistent with the select committee's interpretation of the disclosure rule. The bill makes no substantive changes in the reporting requirements under rule XLIV. I am sure that most of my colleagues will agree, having already filed a disclosure statement under House rules, that the existing requirements are not overly burdensome and do not unnecessarily invade the privacy of the reporting individual or his family.

The bill also extends financial disclosure requirements to nonincumbent candidates in any primary or general election for Congress, and it provides certainty of coverage by applying the disclosure law to all congressional employees earning at least the GS–16 salary level.

The compliance and enforcement provisions in title I will help to insure that Members will not be subject to any civil penalty under the act for inadvertent error or omission in the disclosure report. The House Committee on Standards of Official Conduct and the Senate Ethics Committee are required to review the reports for completeness and to direct the individual to take corrective action if a report is not complete and in proper form.

In addition, the bill specifies that the Ethics Committees are authorized to issue advisory opinions to any Member with respect to the disclosure requirements, and that any Member who acted in accordance with an advisory opinion would not be subject to any sanction under the act. Title I establishes a maximum civil penalty of a $5,000 fine for knowing and willful falsification or knowing and willing failure to report the required information. These enforcement provisions would clearly not apply to any inadvertent error or omission arising from a misunderstanding of the disclosure requirements.

Mr. Chairman, I believe that this substitute bill meets the test of commonsense reasonableness in assuring the public that it will have the information necessary to monitor potential conflicts of interest, while minimizing the reporting burden and avoiding unnecessary invasions of privacy. Financial disclosure legislation has been pending in the Congress for years. It is essential that the Ethics in Government Act be passed and signed into law this year in order to help restore public confidence in Government. At the conclusion of my remarks I would like to insert into the RECORD a summary and section-by-section analysis of title I of H.R. 13850, along with some additional comments which clarify particular provisions of the bill.

Mr. Chairman, Members will also be voting today on an amendment to strike the outside earned income limitation in House rule XLVII. Last year, this same amendment was defeated by an overwhelming vote of 344 to 79. I am confident that those who supported the earned income rule last year continue to recognize the importance of this key ethics reform and will vote against the Quillen amendment.

One of the arguments against the earned income limitation is that it will change the nature of the body because it will deter successful businessmen and professionals from running for Congress. But there is no evidence to suggest that this would be the case. The fact is that about 90 percent of all current Members totally severed their former business relationships or professional careers when they entered Congress, and the vast majority of Members have no outside earned income in excess of the limitation. Thus, it is clear that most Members recognize that congressional office is a full-time responsibility and believe that it is inappropriate to continue earning substantial income from private sources while serving in the Congress.

The earned income rule reflects reality; it would not affect the current practice of the overwhelming majority of Members. Therefore, there is no reason to believe that the income rule will result in a Congress composed of only the very weathy or the young and inexperienced. Indeed, there is no indication that individuals are reluctant to run for Congress because of the earned income rule, nor has the rule had any influence on the number of retirements from the House.

The earned income limitation is the heart of the ethics code. Unlimited earnings from outside sources creates at least the appearance of impropriety and invites public suspicion of conflicts of interest. It is essential that the rule be retained in order to assure the American public that Members of Congress are not using their positions of influence for personal gain or are being affected by the prospects of outside income. I strongly urge my colleagues to vote "no" on the Quillen amendment.

The material follows:

H.R. 13850—TITLE I

SECTION-BY-SECTION ANALYSIS

Section 101: Coverage.

Sec. 101 provides that each Member and

officer of the Congress; each principal assistant to a Member or officer; each employee of a Member, officer, or committee compensated at the GS–16 salary level or above; and any candidate for the office of Member must file a disclosure statement as prescribed by section 102. If no employee in a Member's office is compensated at a level of GS–16 or above, the Member is required to designate at least one principal assistant to file a disclosure statement.

Section 102: Filing of Reports; Duties of Clerk and Secretary.

Sec. 102 specifies when and where disclosure reports are to be filed, and details the responsibilities of the Clerk and Secretary.

Subsection (a)(1) provides that, except for candidates, individuals shall file, not later than May 15 of each year, a report on a form developed and made available by the Clerk or Secretary. Individuals whose compensation is disbursed by the Clerk or Sergeant at Arms shall file their report with the Clerk of the House; those compensated by the Secretary of the Senate shall file with the Secretary.

Subsection (a)(2) provides that candidates, and any individual who did not hold his position for the entire reporting period, need not disclose gifts and reimbursements received while they were not subject to the discolsure requirements.

Subsection (b) provides that any individual who becomes a candidate in any election for the office of Member shall file a disclosure report by October 1, 1978 or within 15 days after becoming a candidate, whichever occurs later. The term "candidate" is defined in section 108 similar to the Federal Election Campaign Act definition.

Subsection (c)(1) requires that a copy of reports filed by Members and candidates shall be sent by the Clerk or Secretary within seven days of the date of filing to the appropriate state officer designated under the FEC Act to receive campaign reports.

Subsection (c)(2) requires the Clerk and Secretary, by June 15 of each year, to compile and publish all reports filed by Members and Senators, respectively, as a public document.

Subsection (d) provides that the Clerk and Secretary shall send a copy of each report, within seven days of the date of filing, to the House Committee on Standards of Official conduct and the Senate Select Committee on Ethics, respectively.

Subsection (e) directs the Clerk and Secretary to avail themselves of the assistance of the Federal Election Commission to assure candidate disclosure.

Subsection (f) authorizes the Clerk and Secretary, after consultation with the appropriate House and Senate committees, to promulgate rules and regulations in carrying out their responsibilities under the Act.

Section 103: Contents of Reports.

Sec. 103 (a) provides that each report shall contain the following information:

(1) Income: The source, type, and amount of income from any one source (other than from current employment by the U.S. Government) received during the preceding calendar year aggregating $100 or more in value. The term "income" is intended to be all-inclusive, as defined in Section 108. The "type" of income means that the reporting individual should identify income as salaries and fees, honoraria, interest, dividends, capital gains, rental income, etc.

(2) Gifts: (A) The identity of the source and a brief description of any gifts of transportation, lodging, food or entertainment aggregating $250 or more in value received from any one source, except that any food, lodging or entertainment received as personal hospitality of an individual need not be reported; (B) the identity of the source, a brief description, and the estimated value of all other gifts aggregating $100 or more in value received from any one source. Gifts from relatives (as defined in section 108) are exempted, and any gifts with a fair market value of $35 or less are exempted and need not be aggregated towards the $250 or $100 disclosure threshold.

The term "gift" is defined in section 108, and certain categories of gifts are specifically exempted from disclosure. The personal hospitality exemption is essentially limited to food, lodging, or entertainment provided at the personal residence or other property owned by the individual providing the hospitality. It would not extend to hospitality in facilities owned or provided by a corporation. Travel on a boat or airplane owned by an individual is included in the exemption for personal hospitality unless such travel is substituting for commercial transportation.

In disclosing gifts of entertainment or travel-related expenses, the individual, should include a brief description of the itinerary or the nature of the expenses provided. In disclosing tangible gifts, if the value of a gift is not reasonably ascertainable, the individual should provide a good-faith estimate of the fair market value.

(3) Reimbursements: The identity of the source and a brief description of reimbursements received from a single source aggregating $250 or more in value. The term "reimbursements" is defined in section 108 to exempt payments for travel expenses provided by federal, state, and local governments, by a foreign government within a foreign country (such expenses are disclosed under the Foreign Gifts and Decorations Act), and campaign reimbursements reported to the FEC. This provision requires disclosure of such items as travel-related expenses provided in connection with a speaking engagement or fact-finding event related to official duties, whether those expenses were reimbursed to the individual or paid directly by the sponsoring organization. As with disclosure of gifts of travel expenses, only a brief description of the itinerary or the nature of the expenses is required, rather than an itemized accounting of the expenses provided to the reporting individual.

(4) Holdings: The identity and category of value of any interest in property held in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year. Only property held as of the end of the year must be disclosed.

This provision does not cover property in the nature of household goods, furniture, clothing, or other personal property which is not principally held for the production of income. Thus, a painting in a home would not have to be listed even though the painting when sold might produce substantial income.

However, if a reporting individual is in the business of buying and selling paintings for profit, that individual would have to list that he held a certain number of paintings with the category of value of that holding being indicated. This paragraph does not require the listing of a life insurance policy even if the policy has a cash value since the policy is held for the principal purpose of life insurance protection and not the production of income. However, a savings account would have to be reported under this paragraph even though there might be other purposes for the savings account other than the production of interest income. A typical loan made by the reporting individual to another person must be listed since such an arrangement involves personal property held for the production of income. However, specifically excluded from disclosure is any liability owed to the reporting individual by a relative. In such a case, the typical loan is usually not for the production of income.

In reporting under this paragraph, a person could have one listing for "farm equipment" and it would not be necessary to list each tractor or combine separately. However, it would not be acceptable to simply list "stocks"—the name of each company in which stock worth over $1,000 is held must be listed separately. Similarly, it is not acceptable to simply list "John Jones Trust"—the identity of each investment holding in the trust, if known, must be listed separately.

This provision treats real property the same as personal property. Thus, only real property held in a trade or business or for investment or the production of income must be reported. Accordingly, a personal residence would not be subject to disclosure under this provision. Likewise, a summer home or other property which is held and maintained purely for recreational or vacation purposes need not be reported. A summer home which is rented, however, is held for the production of income and must be disclosed.

The value of property held in a trade or business or for investment or the production of income should reflect the fair market value as of the end of the calendar year. It should not be necessary to obtain an appraisal to determine the fair market value since the value of property holdings are disclosed only within certain broad categories. However, in those instances where it is difficult to make even a good-faith estimate of the category of value of an asset, the individual may use any generally recognized indication of value provided that the method of valuation is indicated on the disclosure form. Where the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, the individual may list the category of value of the original purchase price, and indicate the date of purchase, instead of specifying the current category of value.

(5) Liabilities: The identity and category of value of the total liabilities owed to any creditor, other than a relative, which exceeds $5,000 as of the close of the preceding calendar year, excluding (A) any mortgage secured by a personal residence of the reporting individual or his spouse; or (B) any loan secured by a personal motor vehicle or household furniture or appliances. This provision requires disclosure of all personal loans, whether secured or unsecured, and regardless of the repayment terms or interest rates. The exemption for a mortgage on a personal residence applies to the individual's principal place of residence as well as to a summer home. If the vacation property is not subject to disclosure under paragraph (4) as property held for production of income, any mortgage on that property need not be listed as a liability. A contingent liability (e.g., if the individual co-signs a note), and the liabilities of a business, corporation, partnership, etc., in which the reporting individual has an interest also need not be disclosed. The identity of a personal liability should include the name of the individual or organization to which the liability is owed.

(6) Transactions: A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—(i) in real property, other than a personal residence, or (ii) in stocks, bonds, commodities futures, and other forms of securities. Exempted are any transactions solely by and between the reporting individual, his spouse or dependent children. A typical listing under this provision would be that a 10% interest in an office building at 1500 Connecticut Avenue, Washington, D.C., was purchased on November 15, 1978, and the reporting individual's interest in that purchase had a category of value between $50,000 and $100,000; or that ABC stock had been purchased on December 1, 1978, and the category of value of the purchase

was between $5,000 and $15,000. The amount listed is the category of value of the purchase price or sales price and is not related to any capital gain or loss on the transaction.

Subsection (b) provides that for purposes of pargaraphs (4), (5), and (6) in subsection (a), the individual need not specify the exact amount or value of each item, but only its "category of value". Categories of value are: (1) not more than $5,000; (2) $5,000 to $15,000; (3) $15,000 to $50,000; (4) $50,000 to $100,000; and (5) greater than $100,000. Since the purpose of disclosure of holdings, liabilities, and transactions is to identify potential conflicts of interest, the exact value of the holdings, liability or transaction is not needed. The use of categories of value fully meets the legitimate public purpose of identifying potential conflicts and the magnitude of those conflicts, while not requiring a yearly appraisal of each holding and also minimizing the invasion of privacy involved. Once a financial interest of liability exceeds $100,000 in value, the potential conflict is considerable, and there is no need to extend the categories of value into the millions of dollars.

Subsection (c) provides that campaign receipts or expenditures are not to be included in the disclosure statement since that information is reported to the Federal Election Commission.

Subsection (d) provides for disclosure of the interests of the spouse and dependent children of the reporting individual, as follows: (A) The source, but not amount, of spouse earned income from any person in excess of $1,000; (B) The source and a brief description or the estimated value of any gift to the spouse which is not received totally independent of the spouse's relationship to the reporting individual; (C) The source and a brief description of any reimbursement to the spouse which is not received totally independent of the spouse's relationship to the reporting individual; (D) The assets, liabilities, and transactions of the spouse and dependents unless the reporting individual certifies that such interests represent the spouse or dependent's sole financial interest or responsibility and are not in any way derived from the assets or activities of the reporting individual, and the reporting individual neither derives, not expects to derive, any economic benefit from such interests. In no case would gifts and reimbursements to the spouse be disclosed if received prior to the time the reporting individual held a position subject to the disclosure law.

The term "dependent child" is defined in section 108 to mean a son, daughter, stepson or stepdaughter of the reporting individual, who is unmarried, under age 21, and living in the household of the reporting individual, or is a dependent within the meaning of section 152 of the IRS Code.

This subsection explicitly exempts from disclosure the interests of a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation, and also exempts any income or obligations of the individual arising from a divorce or permanent separation from the spouse.

Subsection (e) provides that the holdings of and income from a trust must be disclosed unless the reporting individual, his spouse, and dependent children have no knowledge of the contents or sources of income of the trust. In such, cases, the reporting individual must list the category of value of his interest in the total trust holdings and the income from the trust.

Section 104: Accessibility of Reports.

Subsections (a) and (b) require the Clerk and Secretary, within 15 calendar days after a report is filed with their office, to make the report available for public inspection, and to provide a copy of any report to any person upon written request.

Subsection (c) authorizes the Clerk and Secretary to require any person requesting a copy of a report to supply his name and address, and the names of any person or organization on whose behalf he is requesting the report. The Clerk or Secretary may also assess a fee for reproduction or mailing of a report, and may waive or reduce the fee if they determine it is in the public interest to do so.

Subsection (d) provides that reports will be available for public inspection for five years, after which time they will be destroyed. Except that any report filed by a candidate who was not subsequently elected shall be destroyed one year after the individual is no longer a candidate.

Subsection (e) states that it is unlawful for any person to obtain or use a report for any unlawful purpose; for any commercial purpose, other than by the news media; for determining or establishing the credit rating of any individual; or for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. The Attorney General may bring a civil action against any person who obtains a report for any prohibited purpose. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000.

Section 105: Review and Compliance Procedure.

Subsection (a) directs the Committee on Standards of Official Conduct of the House and the Select Committee on Ethics of the Senate to establish procedures for review of reports sent to them to determine whether they are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action. This review by the appropriate committee should minimize the number of inadvertent errors that may be made in filing the disclosure form.

Subsection (b) states that the House and Senate Ethics Committees have power to render advisory opinions to persons covered under the Act, and provides that any individual who acts in accordance with any such advisory opinion shall not be subject to any sanction provided under the Act. This provision assures reporting individuals that so long as they file a disclosure form in good faith reliance upon an advisory opinion, they have fully complied with the Act.

Section 106: General Accounting Office Study.

Subsection (a) requires the Comptroller General of the United States to conduct a thorough study before November 30, 1980, and regularly thereafter, to determine whether this Act is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this Act.

The review by GAO shall cover such areas as: (a) adequacy of the coverage provisions; (b) whether all persons required to file have done so; (c) the extent to which candidates have complied; (d) reasonableness of the filing deadlines; (e) whether the Clerk and Secretary have carried out their responsibilities; (f) reasonableness of the content requirements of the reports; (g) accessibility of the reports to the general public; (h) whether the appropriate State officer has effectively carried out his responsibilities; and (i) the role of the Justice Department in enforcing compliance and the extent and success of its involvement.

Subsection (b) states that within 30 days after completion of the study, the Comptroller General shall transmit a report to each House of Congress detailing his findings and conclusions, together with his recommendations for any legislative and administrative changes deemed appropriate. This subsection also requires the first such study to include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under the Act.

Section 107: Failure to File or Falsifying Reports.

Section 107 provides civil penalties in the case of an individual who knowingly and willfully falsifies or fails to report any of the required information. The court in which action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

Section 108: Definitions.

Paragraph (1) defines the term "candidate" to mean any individual other than a Member, who seeks nomination for election, or election, whether or not such individual is elected. An individual is considered to seek nomination for election, or election, if he has taken the necessary action under the law of a State to qualify for nomination for election, or election, or if he or his principal campaign committee has taken action to register or file campaign reports required by Sec. 304(a) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434(a)).

Paragraph (2) defines the term "Clerk" to mean the Clerk of the House of Representatives.

Paragraph (3) defines the term "committee" to mean any committee of the Senate or the House of Representatives, any subcommittee of any such committee, any joint committee of Congress, or any subcommittee of any joint committee.

Paragraph (4) defines the term "dependent child" to mean a son, daughter, stepson or stepdaughter who is unmarried, under age 21, and is living in the household of the reporting individual; or is a dependent as defined in section 152 of the IRS Code.

Paragraph (5) defines the term "election" to mean a general, special primary, or runoff election; or a convention or caucus of a political party which has authority to nominate a candidate.

Paragraph (6) defines the term "employee" to mean any individual, other than an officer or Member, whose compensation is disbursed by the Clerk of the House of Representatives or the Secretary of the Senate.

Paragraph (7) defines the term "estimated value" to mean a good-faith estimate of the dollar value if the exact value is neither known nor easily obtainable.

Paragraph (8) defines the term "officer" to mean an elected officer of the House of Representatives or the Senate who is not a Member. The committee does not intend that the Vice President be required to file under this Title. Officers included are, in the House, the Clerk, the Sergeant at Arms, the Doorkeeper, the Postmaster, and the Chaplain; and in the Senate, the Secretary of the Majority, the Secretary of the Minority, the Secretary of the Senate, and the Sergeant at Arms.

Paragraph (9) lists the persons included in the term "relative".

Paragraph (10) defines the term "Secretary" to mean the Secretary of the Senate.

Paragraph (11) defines the term "Member" to mean a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico.

Paragraph (12) defines the term "gift" to mean a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor. Certain categories of gifts are exempted since they would not constitute any potential conflict of interest and it would be difficult to

keep accurate records of such items. Therefore, the definition of gift does not include:

(A) inheritances;

(B) political contributions;

(C) food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments or political subdivisions thereof; and food, lodging, transportation, and entertainment provided by a foreign government within a foreign country;

(D) in the case of a Member, communications to the office of a Member in Washington or in his district, including subscriptions to newspapers and periodicals.

(E) suitable mementos of a function honoring the Member, officer, or employee;

(F) in the case of a Member, consumable products provided by homestate businesses located in the state from which the Member is elected and which are primarily intended for consumption by individuals other than the Member or his staff;

(G) food and beverages consumed at banquets, receptions, or similar events.

Paragraph (13) defines the term "reimbursement" to mean any payment or other thing of value received by a reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(a) provided by the United States Government, the District of Columbia, or any state or political subdivision thereof;

(b) required to be reported by the reporting individual under the Foreign Gifts and Decorations Act in the case of travel expenses provided by a foreign government within a foreign country; or

(c) required to be reported under section 304 of the Federal Election Campaign Act of 1971.

Paragraph (14) defines the term "honoraria" to mean payments of money or anything of value for an appearance, speech, or article. Necessary travel expenses provided in connection with the honorarium are not to be taken into account for reporting of the honorarium as income, but such travel expenses would be subject to disclosure as a reimbursement.

Paragraph (15) defines the term "income" to mean all income from whatever source derived, including the following items: net income for services; net income derived from business; gains derived from dealings in property; interest; rent; royalties' dividends; annuities; income from life insurance and endowment contract; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust.

Section 109: Supremacy Clause.

Section 109 provides that the provisions of Title I shall supercede and preempt any state or local law with respect to financial disclosure by reason of candidacy for federal office or employment by the United States Government.

CLARIFICATION OF REPORTING REQUIREMENTS

The following information is provided to clarify some of the disclosure provisions and certain exemptions to the reporting requirements.

REPORTING "TYPE" OF INCOME

The requirement that the type of income be disclosed means that the reporting individual should identify income as salaries and fees, honoraria, interest, dividends, capital gains, rental income, etc. In most cases the type of income received will be obvious from the disclosure statement, but a specific requirement that the income be identified will assure that there will be no confusion or misinterpretation of the income received.

CONTINGENT LIABILITIES EXEMPTION

The reporting of liabilities applies only to personal loans owed by the reporting individual, and not to contingent liabilities. For example, if the individual co-signs a note, he need not disclose that loan as a personal liability. Similarly, if an individual owns an interest in a business, corporation, partnership, etc., he need not report a liability of that organization. Business loans would be reflected in the disclosure of property holdings since the liabilities would be factored into the assets of the business to determine the value of the individual's holding. It is not the intention of financial disclosure legislation to require an itemized listing of each liability owed by a partnership or corporation in which the reporting individual has an interest. Only the personal indebtedness of the individual should be disclosed.

VALUATION OF PROPERTY HOLDINGS

The value of property held in a trade or business or for investment or the production of income should reflect the fair market value as of the end of the calendar year. It should not be necessary to obtain an appraisal to determine the fair market value since the value of property holdings are disclosed only within certain broad categories. However, in those few instances where it is difficult to make even a good-faith estimate of the category of value of an asset, the individual may use any generally recognized indication of value provided that the method of valuation is indicated on the disclosure form. Where the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, the individual may list the category of value of the original purchase price, and indicate the date of purchase, instead of specifying the current category of value.

PERSONAL RESIDENCE EXEMPTION

The reporting of property holdings applies only to property held in a trade or business, or for investment or the production of income. Accordingly, a personal residence would not be subject to disclosure under this provision. This applies to the individual's principal place of residence as well as to a summer cottage or other property used for vacation or recreational purposes. For example, if the individual owns farm property where he spends some time during the year, and the farm is not intended to produce income from crops or livestock, that property would not be listed under this provision. The same applies to a vacation home so long as the property is not rended at any time during the year. In such situations, the property is not considered to be principally held for the production of income, and is thus not subject to disclosure.

In addition, any mortgage on a personal residence is specifically exempted from reporting of liabilities. This exemption applies to any personal residence, including a vacation home, in the same manner as described above. If the property is not subject to disclosure as property held for production of income, any mortgage on that property need not be listed as a liability.

GAO STUDY OF DISCLOSURE LAW

The GAO is directed to conduct a study and report to Congress on the effectiveness of the financial disclosure law and to determine whether "timely and accurate" reports are being filed. In the first study, GAO is directed to include recommendations on the feasibility and potential need for a random audit requirement. This authority for a GAO study should not be interpreted to authorize GAO to conduct an audit of reports filed pursuant to the disclosure law.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. PREYER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

I would just like to take a few moments, first, to commend the gentleman from North Carolina (Mr. PREYER), the chairman of the Select Committee on Ethics, for the outstanding job he has done for the House in producing this bill.

I serve on his committee and also I am a member of the Committee on the Judiciary, working with the gentleman from California (Mr. DANIELSON).

Mr. Chairman, I think we can take real pride in the bill we have produced.

With special reference to the outside income limitation provision I know this has been the most agonizing problem which we have had to face. The gentleman is absolutely correct. I know full well that if this bill is adopted today, it will not make everything right. It will not provide all of us with outstanding public relations with the public.

However, I do think there is a distinct difference between unearned income and earned income. I think it is clearly the province and prerogative of this House to make certain rulings as to earned income and to refrain from making the same rulings as to unearned income.

Mr. Chairman, I think the gentleman and our committees, given what we have had to work with, have come up with a workable solution to a very difficult problem.

Again, Mr. Chairman, I want to commend the gentleman and I support his remarks.

Mr. PREYER. Mr. Chairman, I thank the gentleman from Kentucky (Mr. MAZZOLI).

Mr. Chairman, I would like to yield the balance of my time to the gentleman from California (Mr. PANETTA).

The CHAIRMAN. The gentleman from North Carolina (Mr. PREYER) has 1 minute remaining.

Accordingly, the gentleman from California (Mr. PANETTA) is recognized for 1 minute.

Mr. PANETTA. Mr. Chairman, the issue here is, I think, not a choice between good government or good politics. I think that if we improve the ethics of the House we, indeed, provide for good politics.

It is not a choice between the right to privacy or the willingness to run for public office. We are in a free country. There is a free press. Those who run for office to some extent sacrifice their ability to have total privacy in this business.

Surely it is not a choice between mediocrity or the quality of representation, or the question of whether we are going to have excellence in the House, because the decision as to whether someone will run for the House is not based solely on income. It is based on the desire to serve, the willingness to sacrifice, the regard of the public for this institution, and the trust of the public. So I do not think it is just solely a question based on how much the Members of the House are paid.

The choice here is between serious ethics reform and the question of whether we are just going to talk about it. That is really no choice and for that reason I would strongly endorse passage of H.R. 1.

The CHAIRMAN. The Chair recog-

nizes the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Chairman, I shall confine my remarks, of course, to title I which deals with us, the legislative branch. The comments of my friend, the gentleman from North Carolina (Mr. PREYER) have described in general terms the provisions which we all will be subjected to if we have the good fortune of returning to the next Congress.

I previously asked the question, Why do we do this to ourselves? And the answer must be in your minds that it is necessary in order to insure your own ethical conduct, or perhaps the appearance of that ethical behavior in the minds of the people whom you represent. I would like to believe that there is not a soul in the chamber who feels that it is necessary to disclose his income, assets, liabilities, gifts received, reimbursements received, and so forth, in order to behave properly as a Member of Congress. In short, this bill is not necessary, I trust, in order to induce you to do that which you should do. The only other justification that I understand or can believe is that it may enhance your credibility. It may make people think you are as good as you really are. I previously stated that I doubt that it will have that effect and probably will be counterproductive as the press examines in minute detail the sources of your income and the assets which you own.

I stated a few moments ago in my remarks under the rule that there were certain principles which should guide our consideration of this bill. One such principle is that it should be narrowly drawn and not compel the disclosure of more than is necessary to serve the purpose of the bill. With that in mind, I advise the Members that they probably will be compelled to disclose the balance in any savings account which you own. I think that that is not a matter fraught with potential for conflict, and I would like to think that many of you would have the strength to state if asked by a member of the press what was the amount of your savings, "That is none of your damned business." Mr. Chairman, many things are really not the legitimate business of those who would wish to pry into your conduct.

This bill has been proposed under the banner of "The public's right to know." Well, I am prepared to concede that the public has a right to know what it wishes and is able to find out; but you see, this bill moves forward from the public right to know by imposing a duty of disclose. That is something else. The press has a perfect right to know anything that it can find out; but do you have a duty to disclose all that they want to find out? No, you do not. You do not and should not be subjected to that duty to disclose, unless an important or overriding governmental interest is served by it. As I previously said, I do not see that interest in this situation.

To go on, with respect to the narrowness of the bill before us, in many cases you will be required to disclose categories of value, if you can determine what those values are. The categories range from less than $5,000 to greater than $100,000. Now, that is better, in my view, than the Senate bill which had a category which exceeded $5 million; but I hope you will agree with me that at some point you are disclosing far more than is necessary in order to disclose any conflict or potential conflict that might exist. It is like being a little bit pregnant. If you have a conflict at $50,000. I am not sure your conflict is significantly greater at $75,000 or $100,000 or at $200,000.

You see, if we go beyond that which is necessary to disclose what the public might legitimately inquire into, we are simply pandering to curiosity, voyeurism, as it were. I do not characterize pandering to public voyeurism as an important and overriding public interest. I hope that my colleagues will not pander to that insatiable curiosity simply because it is there.

In title II, the executive branch provisions, we compel those designated officials in the executive branch to disclose whether they hold any titles or positions with other entities. We compel officials in the executive branch to disclose whether they are the beneficiaries of a post employment contract. Now, there is an opportunity for real conflict. If an official in the executive branch has a contract providing for his future employment after he leaves the Government by a particular business entity, that is a potential conflict; but if one of us were to have a contract after we leave Congress to work for Exxon at $200,000 a year, that little piece of information would not be subject to disclosure.

Well, I will offer an amendment later on to correct that problem.

Mr. PIKE. Mr. Chairman, will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from New York.

Mr. PIKE. Mr. Chairman, the gentleman is addressing a matter I raised earlier. The gentleman is addressing a possible contract with a future employer. Would the gentleman also address himself to the problem of why Congressmen are allowed to appear before congressional committees at any time after they leave office under this legislation and members of the executive or judicial branches are prohibited from appearing before the departments or agencies in which they have had an interest?

Mr. WIGGINS. I cannot answer adequately, because I cannot think of a good reason for excluding Congressmen from the provisions which now apply to the executive branch; but the response is not to include Congressmen, but rather to exclude those in the executive branch—to raise them to our level, rather than to sink to theirs.

There are some other problems in the bill. The whole idea here is to get the information out to the public, right? That is what it is all about.

And yet any member of the public who has the temerity to seek it has to supply his name, his address, and the organization he represents. Why would one have to do that? I would think the principal consequence of that would be to impose a chill which would deter those who might wish the information. There is no justification for that in the bill. It is in title II even more inappropriately than it is in title I.

Some Members have been concerned about their criminal liability. Well, they should be concerned about their criminal liability. I hope they have not been led to believe that by eliminating the criminal sanctions in this bill they have been relieved of vulnerability, because they have not.

Title 18 contains a section 1001 which makes it a felony subject to 5 years' imprisonment to willfully and knowingly file a false document or false statement. That is general law. It continues in effect, and that will apply with respect to the statements filed here. Therefore, even though there are no explicit criminal penalties in this bill, the Members will all be subject to criminal penalties if the Attorney General elects to proceed under 18 U.S.C. 1001.

Let me give the Members a little scenario on how this is apt to apply. You file your statement, you make a good faith estimate of the value with respect to an asset you own. It is a good faith estimate in your own mind, but one of the persons who reads your statement is an opponent or a member of the press. He does not agree that your estimate is in fact in good faith; he thinks it is grossly understated. The press or your opponent goes to a U.S. attorney and says that he believes you have made a willfully false statement because you have significantly understated the value of an asset on your report.

What is the position of the U.S. attorney? He has a hot potato in his hand. He has a Member of Congress who is being accused. If he pooh-poohs the allegation, he fears the publicity of coverup, particularly if the complaint comes from the press. On the other hand, if he proceeds, he fears the problem of discrimination against a sitting Member of Congress, political manipulation, and the like.

What does he do? Well, I will tell the Members what the typical U.S. attorney will do. He will pass the buck to the grand jury. He will in effect say, "I am not going to decide this difficult case. We will let the grand jury make a decision."

Well, that is just hunky-dory, is it not? That means that whatever your legal difficulty, you are in deep trouble politically, with the grand jury being impaneled to consider a complaint made against you with respect to a misstatement or alleged misstatement filed under this section.

So I am only reminding the Members of the vulnerability they are assuming for themselves if they adopt these provisions.

There are some other problems with the bill, and I have a bunch of amendments to offer that would correct them. I will mention only one, and then I will sit down. This amendment covers candidates.

I have not talked to a Member of Congress who does not agree that his opponent ought to be subject to these rules. The only reason assigned for that attitude is one of "misery loves company" and "by golly, if I have to do it, my opponent ought to."

I understand that feeling, but what does that have to do with ethics in Government? The Member's opponent is not in Government. The opponent, I think, ought to be responding to political pressures to disclose rather than a legal duty to bare his soul simply because he has the temerity to offer himself for public service.

The rationale for a disclosure of one's assets, liabilities, and transactions in order to avoid a conflict of interest or the appearance of a conflict of interest simply does not apply with respect to one who is not in a position to have a conflict of interest. If he is elected, he will be covered soon enough, but if he is not elected, he ought not to be covered.

Mr. Chairman, I do not expect to get much support for that amendment, but I hope it will tug on the consciences of some of the Members, and some of the Members may wish to support my amendment eliminating candidates from the scope of this bill.

As my friend, the gentleman from New York, Mr. OTIS PIKE, said, he and I are leaving, and perhaps we ought to be indifferent to what is being done here under title I since he and I and several other Members will not have to live under it.

But it is not the personal burden to the Members that I am worried about. We are doing something to our institution. Congress may be affected for years as a result of what we do. The effect is going to be measured in the quality and competence of the people who serve. I hope the Members will reflect upon what they are doing to the Government of the United States by the imposition of what I regard to be these arbitrary and capricious rules.

Mr. Chairman, I yield the balance of my time to the gentleman from Minnesota (Mr. FRENZEL).

The CHAIRMAN. The gentleman from Minnesota (Mr. FRENZEL) is recognized for 1 minute.

Mr. COUGHLIN. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Pennsylvania.

Mr. COUGHLIN. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the bill.

Mr. Chairman, the American people, disillusioned by the continuing accounts of scandal, question the very integrity of the U.S. Government. The conflicts of interest, the misuse of public moneys and the allegations of personal enrichment while in Government service undermine the public faith. In March of 1977, we committed ourselves to a new code of financial ethics with the approval of House Resolution 287, the omnibus ethics resolution. Today we prove that we will stand by our pledge to the American people by codifying into law the provisions of that resolution, on a government-wide basis, with the passage of the Ethics in Government Act.

The most effective remedy against unethical or financially questionable activities is the requirement of public disclosure. Restrictions on disclosure merely reinforce public cynicism and foster the misperception of conflicts of interest in the dispatch of Government business. The public has the right to be given an honest appraisal of their Government officials' financial situation.

Perhaps the most controversial feature of the bill is the amendment to repeal the limitation on outside earned income. This limitation has already been approved by the House. It bears no relation to this legislation. To repeal it now would only serve to make a travesty of the House of Representatives.

While it may seem unfair that the alleged abuses of a few tar the reputations of all Members, and indeed of the Government itself, that is the way it is. We, in turn, must take the responsibility for correcting potential abuses as an institution. We cannot allow Government officials to use their positions of public trust for personal gain. I urge the Members of this Chamber to have the courage to oppose the Quillen amendment to repeal the outside earned income limitation and to have the courage to vote for the Ethics in Government Act. We are fighting for the integrity of the entire Government and we must not allow this opportunity to clear any misperceptions of conflicts of interest to slip by.

Mr. FRENZEL. Mr. Chairman, it has been approximately 19 months since the House passed the Commission on Administrative Review's recommendations on legislative financial disclosure. I want to take a few moments to commend the gentleman from North Carolina (Mr. PREYER) and the gentleman from California (Mr. WIGGINS). Their leadership on title I has been exemplary and their patience never-ending in this lengthy, complicated legislative procedure to convert the House rule into law.

In March of last year, the House passed House Resolution 287 by a vote of 402 to 22. It was highly touted as a landmark legislative achievement of this Congress. By a stroke of the pen, or rather through a single vote, Members of Congress became ethical.

I served as ranking minority member of the Commission on Administrative Review. It is no secret that House Resolution 287 was flawed in that it was incomplete. The proposal did not attempt to provide for a regular audit procedure for all congressional expenses. It did not grapple with the flaws of the existing personnel system. It did not provide a better guarantee for the full availability to the public of the required disclosures. Nor did it provide a mechanism for a vote by the Congress on any salary increase.

The worst flaw was bringing that measure to the floor under a gag rule. My compliments are extended to the gentleman from North Carolina for bringing H.R. 1 under an open rule which will allow for extended debate and equal participation in this procedure.

Title I represents the codification of the action taken a year ago. On July 12, the House passed the franking provisions of House Resolution 287. Although, I am generally supportive of this title, and of the bill, I believe there are several areas which deserve special attention.

The provision providing for spouse disclosure if the spouse's financial interests are derived from the assets, or activities of the reporting individual; and from which the reporting individual derives or expects to derive any financial or economic benefit runs counter to my sense of privacy and equal rights. While there may be some public benefit to the disclosure of an "officeholder's" financial interests, I do not believe that public benefit extends to knowledge or information about the spouse's financial interests, I do not believe that public benefit extends to knowledge or information about the spouse's financial interests, especially when the spouse's assets are derived separately and the only connection is that the officeholder might someday inherit them.

I intend to offer an amendment to delete that portion of the language that deals with the broad standard of expectation of deriving any financial or economic benefit. It would leave intact that language which would require reporting if the spouse's financial interest is derived in any way, past or present, from the income, assets, or activities of the reporting individual.

Another provision which troubles me is the application of the financial disclosure requirements to candidates for Congress. With the myriad of reporting requirements required by the Federal Election Campaign Act and the difficulty most challengers have in meeting those requirements, I believe that the additional reports required to be filed goes beyond reason. If the compelling reason for financial disclosure is because an officeholder occupies a position of public trust, we are putting the cart before the horse in the case of challengers, who are not yet in a position of trust.

No conflict of interest, real or hypothetical, exists until one becomes eligible to vote. This ought to be called the "misery loves company" provision. It is just additional recordkeeping thrust upon a group of individuals to satisfy incumbents' feelings that because we have to do it, they should have to do so, too. I intend to support my colleague from California's amendment exempting candidates from this onerous and unnecessary obligation.

Now that the criminal penalties have been removed from this legislation, against my wishes, I might add, there is only a civil penalty to deter a potential nondiscloser. The net result will be that disclosure will not apply to many candidates. Minor candidates, nuisance candidates and primary losers simply will ignore it.

My third objection, and one shared by many in this Chamber, is the limitation on outside earned income. I continue to believe that this 15 percent limitation is inequitable, discriminatory, and ill-conceived.

The limitation has several significant exclusions. First, it excludes some kinds of income earned from a family trade or business, if personal services do not generate a significant amount of income. This distinction creates a massive loophole. It makes farm or business income more ethical than law income, or board fees.

Also, the limitation places no restrictions on unearned income—income from stocks, bonds, and other investment resources. Members with inherited wealth and substantial investment income are thus favored over the majority of Members who earn relatively small sums from speeches, small businesses, law firms, and certain trades while serving in Congress. In other words, Mr. Speaker, this limit is only a limit for some of us.

I voted against this limitation when the House rule was passed, and I intend to support the gentleman from Tennessee's amendment to strike the outside income limitation. It is said that this limitation is some kind of trade-off for a congressional pay raise. That is nonsense, of course. Many of us voted against the pay raise. Those who need the income limit for an excuse for voting themselves a pay raise will find it is a pretty limp excuse. I hope that none of us really needed a pay raise and an income limit to be ethical.

Again, Mr. Chairman, I believe this bill represents positive improvements and should be passed. Its imperfections are only reflections of our own.

● Mr. BENNETT. Mr. Chairman, I rise in support of H.R. 1, the Ethics in Government Act as amended by H.R. 13850. This legislation caps a 2-year effort by Congress to restore the public confidence in Government so badly shaken by scandals involving unethical use of Federal funds by public officials.

I have long been interested in Government ethics and, in fact, it was my legislation that created the Code of Ethics for Government Service in the late 1950's. In 1966, it was my bill that established the House Select Committee on Standards of Official Conduct that drew up a blueprint for creation of a permanent committee. The Committee on Standards of Official Conduct was established by Congress the following year. And we all know of the important work now underway in that committee.

I believe that the Ethics in Government Act is a natural extension of the earlier congressional achievements in the field of ethics; and to a large degree, the Ethics in Government Act builds upon the work of the Commission on Administrative Review that was created by the House in 1976 to recommend a new code of financial ethics for the House of Representatives.

Last year, the House passed House Resolution 287 embodying the Commission's recommendations. That resolution amended House rules to strengthen financial disclosure requirements, prohibit unofficial office accounts and lame-duck travel, tighten restrictions on franking, and limit Members' outside earned income.

The Ethics in Government Act codifies the financial disclosure requirements adopted by the House last year. In addition, the bill also extends financial disclosure requirements to candidates for Federal office and to top level officials of the executive and judicial branches.

For the first time, the Government's policymaking officials would be required to meet a strict set of financial disclosure requirements. I believe this requirement will help to reduce the temptation of some Federal officials to enter into financial dealings that could lead to conflict of interest situations. This, in turn, would heighten public confidence in Government; and more importantly would justify that confidence.

The bill also sets up an Office of Government Ethics in the Civil Service Commission to administer disclosure requirements for the executive branch. In addition, the bill strengthens current conflict of interest laws by restricting contacts between former executive branch employees and the agencies in which they worked. Last year, the Senate passed similar legislation by a vote of 74 to 5. I urge my colleagues to support this needed legislation so that the Ethics in Government Act can be enacted before adjournment of the 95th Congress.●

● Mr. HAMILTON. Mr. Chairman, three main reasons have traditionally been offered to explain why we have felt that it is legitimate to limit outside earned income. They try to show why it is that after someone has become a full-time Member of the U.S. House of Representatives, he should be restricted on the amount of income he can receive from practicing law, selling real estate, sitting on boards of directors, giving speeches, offering consulting services, and

1. TO MINIMIZE THE POSSIBILITIES FOR CONFLICTS OF INTEREST

If a Congressman is receiving substantial income working from a private source, it might be difficult for him to vote for legislation that will harm it.

Moreover, even if his noncongressional job does not clearly alter his votes, the appearance of conflicts of interest can often arise in the public's mind, for example, if a committee member is employed by a firm under his committee's jursdiction, or if a Member has received large sums for speaking before a special interest group. The public has a right to be guaranteed that their Congressman has only their interests in mind.

2. TO AVOID TAKING TIME AWAY FROM CONGRESSIONAL WORK

Being a Representative should be a full-time job and outside jobs would only take time away from it. Public opinion polls clearly indicate that constituents feel that Congressmen are being paid enough to devote full time to their job.

If a Congressman receives $57,500 for his congressional work, but large sums from his private law practice, his constituents might worry about which one is receiving his principal attention.

Even though we are not in session every day of the year, it could be argued that a Congressman spending the recess time working for private businesses is not providing as good a service to his constituents as one who spends the recess time in his district discussing congressional matters with his constituents and working on future legislation for their benefit.

3. TO AVOID THE APPEARANCE OF CASHING IN ON THE CONGRESSIONAL POSITION

Receiving thousands of dollars in overpaid honoraria, in consulting fees for little work done, in salaries for adding one's name to the law firm—all strike the American citizen as someone trying to exploit his current status for financial gain.

GENERAL ACCEPTANCE OF THESE ARGUMENTS

On the basis of such arguments, other branches of Government have placed limitations on outside earned income, and we followed suit a year ago by overwhelmingly adopting the limitations which are supposed to go into effect next year.

Moreover, by their past actions most Members have concretely shown their agreement. About 90 percent of all Members totally sever their former business or professional careers after they enter Congress. An equal number do not have earned income from any outside sources in excess of the limitation. For example, there are 222 lawyers in the House, but the recent disclosure statements indicate that only about a dozen continue to receive substantial income from law practices. Thus it is clear that the vast majority of Members recognize that being a Congressman is a full-time job and that it is inappropriate to continue earning substantial income from private sources while serving in the House of Representatives.

II. DISTINCTION BETWEEN EARNED AND UNEARNED INCOME

One of the main objections to rule 47 is that it allows a Congressman to make little money from earned income sources but unlimited amounts from unearned sources (such as rent, interest on savings accounts, or dividends from stocks and bonds). The objection is then that it discriminates against those who cannot simply live off investment but must work for their extra income

This objection seems implausible:

1. COURT RULING

First of all, it should be noted that on March 13 of this year the courts agreed (in Laxalt against Kimmitt) that the rule's distinction between earned and unearned income does not constitute unlawful discrimination.

2. ISSUE IS NOT EQUITY

The aim of the limitations was to place all Members on an equal financial standing (there was clearly no public outcry for that). Rather, our concern was to limit abuses, and it seemed to us that earned outside income has a far greater potential for abuse than investment income has, and hence required stronger restrictions.

3. PUBLIC OPINION POLLS

Our investigation began with an analysis of public opinion polls indicating that there was a high percentage of people who thought that it was improper for Congressmen to have other jobs while they were supposed to be their full-time representatives. However, there was comparatively little concern about Congressmen having investment income. We became convinced that the public perception of earned income as a much more serious problem had a reasonable basis. Parallel limitations on unearned income did not seem realistic (for example, a Congressman could not sell his home for more than a $8,625 profit), but, more importantly, they did not seem warranted, for the following reasons:

4. ARGUMENT FOR THE DISTINCTION

The three reasons I mentioned in Part I will help to explain why we thought it reasonable to apply the 15 percent limit to earned income and not to unearned income. Of the three main reasons for limiting earned income, the only one that applies also to unearned income is the possibility of conflicts of interest. Both someone directly working for a company and someone investing heavily in the company might have difficulty voting for measures that would harm it. However, the other two problems with outside earned income simply do not apply to unearned income:

A. UNEARNED IS LESS TIME-CONSUMING

Unlike earned income, unearned income does not take much time away from congressional duties. Rather than, say, spending several days preparing a legal defense for a client, the Congressman typically is now simply receiving money from previous investments. The time typically involved in unearned income is obviously much less than the time it takes to earn income.

B. UNEARNED INVOLVES LESS CASHING-IN

Further, with earned income the Congressman might be "cashing-in" on his role and influence to get extra jobs, extra cases, etc. But with unearned income there is little "cashing-in" since he is typically living off investments made before he was a Congressman, before he had any congressional statute to exploit. Congressional stature may be exploited in sweetheart deals and excessive honoraria, but not in buying a portfolio of stocks.

Since two out of the three main problems with earned income do not seem to arise in typical cases of investment income, we thought that financial disclosure might be sufficient to deal with the latter.

5. DIFFICULTY OF LIMITING INVESTMENTS

Moreover, we frankly thought that it would be difficult to put specific limits on investment income, because that would involve our attempting to restrict the legitimate financial dealings that a Congressman had before he was elected. On the other hand, with an earned income we are only trying to monitor his activities once he becomes a full-time Congressman.

6. THIS OBJECTION IRRELEVANT TO ISSUE AT HAND

Finally, if the concern over unearned income is the main objection to rule 47, then we are simply considering the wrong amendment. We should not be considering an amendment to backtrack on our beginning steps toward ethical reform, but should instead be considering an amendment to perhaps extend some sort of limitations to investment income. For the above reasons, I personally do not feel that the potential for abuse from outside investment income is sufficient to warrant stricter limitations. However, if other Members disagree, that clearly does not mean that we should repeal these much needed limitations on earned outside income; it only means that we might want to consider these further, additional limitations later. It is an odd line of argument to claim that this rule does not do enough limiting, and then conclude that we should do no limiting.

III. WHY SHOULD WE NOT SIMPLY DISCLOSE AND LEAVE IT TO VOTERS

The second main objection to the outside earned income limit is the claim that it would work just as well to have full financial disclosure of outside earnings and then, when the Congressman comes up for reelection, let his constituents vote on whether or not the earnings were justified.

However, this alternative seems inadequate:

1. IT MIGHT BE THE CONGRESSMAN'S LAST TERM

If a Congressman in his last term decided to amass a fortune in honoraria, consulting fees, and partnership income (accepting the deals and speaking engagements that other Congressmen could not), the voters would simply have no election at which to vote against his conduct.

2. TWO PROBLEMS EVEN WHEN CONGRESSMAN RUNS AGAIN

A. LACK OF INFORMATION

Even with full financial disclosure, the average constituent often lacks sufficient information about his Congressman's outside earned income:

A large percentage of the voters do not even know the name of their Representative. They should not be expected to know all of the relevant information concerning his outside earned income or be able to pull this from his financial disclosure statement.

Moreover, a sound judgment would also require sufficient awareness of many other different cases of outside earnings to help reach an accurate decision about whether his Congressman's earnings are actually excessive.

Plus, it could be up to 2 years from the time that any excessive earnings are first discovered to the time of the election, and in the meantime the furor might die down and the details could be forgotten.

B. COMPLEXITIES OF VOTING DECISIONS

But even if the voter does have enough information to know that his Congressman's outside earnings were clearly excessive, there are many reasons why the voter understandably might vote against his Congressman at election time.

This is simply because the Congressman's personal integrity is not the only issue they are voting on. The Congressman might have done something good for the district, such as getting new Federal jobs for them, which might outweigh the impropriety in their minds so they vote for him overall. But that clearly does not mean that they think that his outside earned income abuses are legitimate or acceptable.

Moreover, voters might think that even though he was guilty of impropriety, it is too strong to throw him out of office. In terms of the powers that the House Standards Committee has, voters have only the power of expulsion (which the House has never used since the Civil War, so the voters might not use it much); at election time the voters have no powers corresponding to the more realistic House powers of reprimand and censure.

In short, there is a good reason to think that many constituents will lack sufficient data to make an informed decision; and even if they do have it, there are many other factors in election voting which understandably might lead them not to remove him from office, even if they think that his outside earnings were clearly excessive. If we are looking for a procedure that will assure Americans that abuses will not be tolerated, this one will not suffice. It reflects on the integrity of the House as a whole if there is good reason to think that Members guilty of outside earnings improprieties are allowed to remain. And the integrity of the House as a whole should be paramount in our considerations.

IV. BACKTRACKING ON ETHICAL REFORM

Finally, let me mention an entirely new aspect to the problem that was not present when we debated last year these outside earned income limitations. It arises from the simple fact that we have since enacted the limitations, so now we are debating whether we should *reverse* ourselves on our action to implement ethical reform.

1. OUR STRONG ACCEPTANCE OF THESE LIMITS

On March 2, 1977, when we considered the amendment not to put these outside earning limitations into the House Rules, we showed the American people our strong support of the limitations by rejecting the amendment 79 to 344. But certainly serious doubts will arise in their minds concerning our integrity and concerning how carefully we make our decisions if the same Congress now votes simply to reverse itself—even before the provisions of the earlier bill could take effect and we could have a chance to see how well they work.

2. GENERAL ACCEPTANCE OF OUR REFORM

Public opinion polls have shown strong public desires for limits to their Congressman's outside earnings. And other branches of government have agreed: Presidential appointees cannot have any outside earned income and most other high-level officials of the executive branch are also severely restricted in their ability to earn income from private sources. Rules totally prohibiting almost all forms of outside earned income are in effect in the judicial branch. And even some State legislatures have placed some limits on the outside earnings of their State congressmen. Plus in the private sector, many employers ban outside earned income as a consideration of employment. We are not asking the House to keep limitations that others have not seen to be totally legitimate.

3. SENATE WILL NOT BACKTRACK

The Senate has enacted limitations on outside earned income similar to ours; but they will probably not rescind it. They have found it justified and can live with it. Apparently only the House is considering reversing itself. The American people appreciated it when we did pass the outside earnings limit. They would certainly question why the House alone now decides that it cannot live within limits that others accept as quite legitimate and that we ourselves overwhelmingly accepted as legitimate a year

ago. Frankly, it is my opinion that our act of reversing and backsliding on our position on rule 47 would cause more damage to the integrity of the House than the very problem of outside earned income itself ever would have done.

I would like to end on a personal note by mentioning that throughout my years in Congress I have felt that my fellow Members have operated under unusually high ethical standards, and I have always been extremely proud to have been privileged to be a Member of this body. I would hope that our actions today do nothing to subtract from its integrity.●

● Mr. KASTENMEIER. Mr. Chairman, the most serious charge which can be made against a public official is that he betrays the public's trust in him by using his position to advance his own financial interests at the expense of the public. All three branches of Government have suffered embarrassments over the years because of the acts of a few. These actions, however, have given government a bad name, and they have contributed to the widespread public disenchantment with Government officials. While I do not contend that the fate of our Republic rests solely upon the enactment of financial disclosure legislation, I do believe that financial disclosure is an important and necessary step toward assuring the integrity of the public service. It is the most effective deterrent to potential conflicts of interest, and it is crucial to the process of rebuilding public confidence in the Congress and in government in general. By allowing the public access to basic information regarding the financial interest of public servants we will enable citizens to determine for themselves whether or not such interests could possibly affect the judgments and actions of Members of Congress and other Government officials. It is a privilege to occupy public office, and those of us who hold such positions of trust must never lose sight of the fact that we constantly owe an accountability for our actions and conduct to the public.

The effort to win congressional approval for financial disclosure legislation has followed a long and arduous trail. During recent times, however, it became apparent, in view of the general climate of public cynicism and distrust toward the Congress, that the continued failure to consider financial disclosure legislation would serve only to reinforce the public's worst suspicions about their elected representatives. The 95th Congress is responding to the public's demand for higher standards of ethics for the Congress. Both the House and the Senate have adopted new rules of financial ethics which include public disclosure. The Senate-passed bill, S. 555, provides for governmentwide public disclosure, and our consideration, today, of H.R. 1, is a culmination of this process.

On the opening day, January 4, 1977, of the 95th Congress, Congressman TOM RAILSBACK and I introduced H.R. 1 which requires governmentwide public financial disclosure. This measure has been cosponsored by more than 170 House Members. Shortly thereafter, on January 13, 1977, Speaker O'NEILL told the Commission on Administrative Review, U.S. House of Representatives:

I intend, by the end of 2 years as Speaker of the House, that this House will have the strongest code of ethics of any constitutional legislative body in America. That is my intent and that is what I expect to see put into law. That is what I expect of the recommendations of this commission and I will do everything humanly possible as Speaker of the House to not only have them adopted as rules, but to have them adopted as laws of this country.

The Commission on Administrative Review, under the chairmanship of our able colleague from Wisconsin, DAVE OBEY, was charged with the responsibility of writing a good, tough code of financial ethics for the House. This was not the easiest of assignments, but the Commission, led by DAVE OBEY, took its task seriously and went about its work in a diligent manner. The Commission's Task Force on Financial Ethics, headed by our distinguished colleague from Indiana, LEE HAMILTON, proposed House Resolution 287 which amended House Rule LXIV by providing for public financial disclosure by Members, officers, principal assistants to Members and officers, and professional staff of committees. The new financial disclosure provisions of rule XLIV were based upon the disclosure requirements proposed in H.R. 1. The House adopted the new rule on March 2, 1977.

The disclosure reports filed under rule XLIV require the following information:

Income—the source and amount of all income, including honoraria from a single source aggregating $100 or more during the preceding calendar year;

Gifts—the source and value of gifts aggregating $100 or more during the preceding calendar year from a single source, excluding relatives, or $250 for gifts of transportation, lodging, food, or entertainment;

Reimbursements—the source and amount aggregating $250 or more from a single source during the preceding calendar year;

Financial holdings—the identity and category of value of any property held, directly or indirectly, in a trade or business or for investment or the production of income which has a fair market value of at least $1,000 as of the close of the preceding calendar year;

Liabilities—the identity and category of value of each liability owned, directly or indirectly, which exceeds $2,500 as of the close of the preceding calendar year, excluding mortgages on personal residences;

Securities transactions—the identity, category of value and date of any transaction, directly or indirectly, in securities or commodities futures during the preceding calendar year which exceeds $1,000, except for transactions donating such securities to charitable or tax-exempt organizations; and

Real estate—the identity and category of value of any purchase or sale, directly or indirectly, of real property during the preceding calendar year and which exceeds $1,000 in value as of the date of such purchase or sale, excluding personal residences.

The first disclosure statements required by the new rule XLIV, which covered the last 3 months of 1977, were filed last April 30. Now that the first reports have been made, I think we have found that public disclosure has not been as painful as some would have led the House to believe.

After the House passed House Resolution 287, the Select Committee on Ethics, under the chairmanship of our respected colleague from North Carolina, RICHARDSON PREYER, was established for the purpose of writing into permanent law the new House rule on financial disclosure. The work of the Select Committee has become title I of H.R. 1, which incorporates into statute, with some necessary modifications, the financial disclosure requirements contained in House Rule XLIV. Title I provides for public financial disclosure by Members of Congress, elected officers of the House and Senate, employees of a Member, officer or committee compensated at a rate equal to or greater than grade GS–16, and candidates in any primary or general election for the House or Senate.

Titles II and III of H.R. 1, the Ethics in Government Act, were reported from the Judiciary Committee where the bill was superbly managed by the distinguished gentleman from California, GEORGE DANIELSON. These titles extend the financial disclosure provisions which will govern the Congress to the executive and judicial branches, persons nominated to positions requiring confirmation by the Senate and candidates for President and Vice President. In addition, title II contains President Carter's requests for establishing an Office of Government Ethics in the Civil Service Commission and strengthening the conflict of interest statutes covering post-employment practices of former Government officials.

Mr. Chairman, we all are well familiar with the reasons why the former House disclosure rules needed to be reformed. The present financial disclosure standards for the executive branch also are inadequate.

Officials in the executive branch, excluding the President and Vice President, basically are governed by Executive Order 11222 which sets forth requirements and guidelines for the confidential reporting of certain financial disclosure information. The purpose of this Executive order is to insure that such persons required to file the disclosure statements avoid any action which might result in or create the appearance of using public office for private gain. But, this worthy goal has not been achieved. In a series of reports covering more than 20 Government agencies, the General Accounting Office has revealed numerous deficiencies in the reporting systems and exposed blatant conflicts of interest or potential conflicts of interest.

The GAO concluded that the existing system is not effectively designed and operated. It is managed with limited support and insufficient resources. It lacks the teeth of enforcement since the disclosure requirements generally are not based upon any statute. There is little

or no effective agency oversight, and, most importantly, the financial disclosure statements are kept confidential, thus unavailable for public inspection. The President has recognized the weaknesses of the present system, and he has stated his strong support for public disclosure.

With respect to public disclosure and the Federal judiciary, the Judicial Conference Code, since 1973, directs Federal judges to file periodic public reports disclosing gifts of more than $100 and income from nonbench work. The judges are to deposit these statements with the judicial conference, the judicial council of their circuit or the appropriate court and clerk of the court of which the judge is a member. The judicial conference, however, cannot enforce this directive, and a reading of the semiannual reports of the proceedings of the judicial conference of the United States will reveal the names of those judges who refuse, for whatever reasons, to make such disclosures. Further, Supreme Court Justices are not covered by the directive of this Code.

Mr. Chairman, there are those who do oppose public financial disclosure. Some argue that the executive and judicial branches should somehow be treated in a manner different from that of the legislative branch. We must remember, however, that officials of all three branches of Government are public servants. Everything we do is connected with the public interest and the public trust.

When an individual accepts the responsibilities of public service, that person also assumes the benefits as well as the burdens of that public service. The disclosure provisions of H.R. I treat all three branches of Government fairly and equitably. This uniform approach to disclosure coverage was supported by the Commission on Executive, Legislative, and Judicial Salaries. The Commission, appointed by President Ford, recommended public disclosure of assets, financial affairs and financial statements and income by source and amount for all senior public officials in all three branches of Government. In addition, the Senate-passed bill, S. 555, the Public Officials Integrity Act of 1977, requires uniform disclosure for high ranking officials of the three branches of Government.

Another argument made against public financial disclosure is that some good people will either leave Government service or it will be difficult to recruit such persons for Government employment. On the other hand, we should recognize that public disclosure can have the beneficial effect of deterring those who should not be entering public service from doing so. The experience, however, in those States having financial disclosure laws and regulations has shown that most public officials have complied and cooperated with such rules. In Washington State, for example, the financial disclosure statute applies to over 7,000 officials, from Members of Congress to those serving on mosquito control boards and fire districts. Prior to the adoption of the financial disclosure requirements, there were predictions of mass resignations. No such action took place. Only 1 of the 275 elected State officials resigned and only 2 of the 378 county officials resigned.

Mr. Chairman, although the idea that a public office is a public trust is not a new one, the assumption that the officers of representative government will view themselves as trustees for the public has, only in recent years, emerged as a basis for what we hope will be the adoption of strong and workable rules of financial ethics for Government officials. Also, an increasing citizen awareness of the conduct of public officials and the growing public expectations of those entrusted with power have combined to produce new demands for higher standards of ethics in government.

It is now approaching 27 years since a special message was sent by President Truman to the Congress recommending conflict-of-interest legislation. On September 27, 1951, Mr. Truman called upon the Congress to enact legislation requiring officials in all branches of the Government to place on the public record each year full information concerning their incomes from all sources, public and private. President Truman told the Congress:

> Public office is a privilege, not a right and people who accept the privilege of holding office in the Government, must of necessity accept that their entire conduct should be open to inspection by the people they are serving. With all the questions that are being raised today about the probity and honesty of public officials, I think all of us should be prepared to place the facts about our income on the public record. We should be willing to do this in the public interest, if the requirement is applied equally and fairly to the officials of all three branches of our Government.

The words of President Truman are as relevant today as when they were issued in 1951. A law governing the financial ethics of the Congress, as well as the executive and judicial branches, will reassure the American people that their Government insists upon high standards, and it will make sure that those high standards continue to be maintained by those individuals who hold public office. The American people and their elected representatives should accept nothing less.

Mr. Chairman, the moment of truth is now upon us. The acceptance of the Ethics in Government Act will put new life in the precept that a public office is a public trust. I strongly recommend that the House pass H.R. 1.●

The CHAIRMAN. Pursuant to the rule, it shall be in order to consider by titles as an original bill for the purpose of amendment the text of H.R. 13850, in lieu of the amendments now printed in the bill, if offered as an amendment in the nature of a substitute. No amendments to said substitute shall be in order except pro forma amendments for the purpose of debate and amendments printed in the CONGRESSIONAL RECORD at least 1 legislative day prior to their consideration. After the dispositon of all other amendments to title I of said substitute, it shall be in order to consider an amendment printed in House Resolution 1323 if offered as a new section to title I.

Said amendment shall not be subject to amendment except pro forma amendments for the purpose of debate, and following the disposition of said amendment no further amendment shall be in order to the substitute changing or affecting the rules of the House.

PARLIAMENTARY INQUIRY

Mr. ASHBROOK. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ASHBROOK. Mr. Chairman, under the rule and the statement of the Chair, must the committee substitute which appears in the text of H.R. 1 be read first, or is the amendment in the nature of a substitute, H.R. 13850, in order at any point?

The CHAIRMAN. No. The Danielson amendment in the nature of a substitute will be read in lieu of the committee amendment now printed in the bill as a substitute amendment for the original bill.

Mr. ASHBROOK. I thank the Chairman.

The CHAIRMAN. The Clerk will read section 1 of the original bill.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ethics in Government Act of 1977".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DANIELSON

Mr. DANIELSON. Mr. Chairman, I have an amendment in the nature of a substitute which is made in order by House Resolution 1323, and I offer it as an amendment in the nature of a substitute for the committee amendment, to be read by titles under the 5-minute rule as an original bill.

The CHAIRMAN. The Clerk will read by titles the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. DANIELSON: Strike all after the enacting clause and insert in lieu thereof the following:

Mr. DANIELSON (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Yes, Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk concluded the reading of title I.

Title I of the amendment in the nature of a substitute reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Ethics in Government Act of 1978".

TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

COVERAGE

SEC. 101. Each Member, officer, principal assistant to a Member or officer, employee of a Member, officer, or committee who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for

grade GS–16 of the General Schedule, and any individual who becomes a candidate in any election for the office of Member shall file annual reports as prescribed by section 102. Each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule shall designate at least one principal assistant on his personal staff for purposes of this section.

FILING OF REPORTS; DUTIES OF CLERK AND SECRETARY

SEC. 102. (a)(1) Except as provided in paragraph (2), each individual required to file a report under section 101, other than an individual who becomes a candidate in any election for the office of Member, shall not later than May 15, 1979, and by May 15 of each year thereafter, file a report on a form developed and made available by the Clerk or Secretary, disclosing certain financial information as provided in section 103 in the following manner:

(A) Each individual whose compensation is disbursed by the Clerk or the Sergeant at Arms shall file the report with the Clerk.

(B) Each individual whose compensation is disbursed by the Secretary shall file the report with the Secretary.

(2)(A) Any individual who becomes a candidate in any election for the office of Member need not include in the report any information referred to in paragraph (2) or (3) of section 103(a).

(B) Any individual who holds a position or office referred to in section 101 need not include in any report any items referred to in paragraph (2) or (3) of section 103(a) and receive while such individual does not hold any such office or position.

(b) Each individual who becomes a candidate in any election for the office of Member shall, not later than October 1, 1978, or within fifteen calendar days after becoming such a candidate, whichever occurs later, file a report disclosing certain financial information as provided in section 103 in the following manner:

(1) Each individual who becomes a candidate in any election for the office of Senator shall file the report with the Secretary.

(2) Each individual who becomes a candidate in any election for the office of Representative in the Congress or Delegate or Resident Commissioner to the Congress shall file the report with the Clerk.

(c)(1) A copy of each report filed by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk or Secretary, as the case may be, to the appropriate State officer as designated in accordance with section 316(a) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 439(a)) of the State represented by the Member or in which the individual is a candidate, as the case may be, within the seven-day period beginning the day that the report is filed with the Clerk or Secretary.

(2)(A) Before June 15, 1979, and by June 15 of each year thereafter, the Clerk shall compile all reports filed with him by Members within the period beginning on January 1 and ending on May 15 of such calendar year and have them printed as a House document, which document shall be made available to the public.

(B) Before June 15, 1979, and by June 15 of each year thereafter, the Secretary shall compile all reports filed with him by Senators within the period beginning on January 1 and ending on May 15, of such calendar year and have them printed as a Senate document, which document shall be made available to the public.

(d)(1) A copy of each report filed under this title with the Clerk shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the seven-day period beginning the day that the report is filed.

(2) A copy of each report filed with the Secretary shall be sent by the Secretary to the Select Committee on Ethics of the Senate within the seven-day period beginning the day that the report is filed.

(e) In carrying out their responsibilities under this title, the Clerk of the House and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis, a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

(f) In order to carry out his responsibilities under this title,

(1) the Clerk may, after consultation with the Committee on Standards of Official Conduct of the House of Representatives, and

(2) the Secretary may, after consultation with the Select Committee on Ethics of the Senate,

promulgate rules and regulations.

CONTENTS OF REPORTS

SEC. 103. (a) Each report required to be filed under this title in a calendar year shall contain the following:

(1) The source, type and amount of income from any one source (other than from current employment by the United States Government), including honoraria, received during the preceding calendar year aggregating $100 or more in value.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any one source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported.

(B) The identity of the source, a brief description, and the estimated value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any one source other than a relative of the reporting individual during the preceding calendar year.

(C) Any gift with a fair market value of $35 or less need not be aggregated for the purpose of this paragraph.

(3) The identity of the source and a brief description of reimbursements received from a single source aggregating $250 or more in value and received during the preceding calendar year.

(4) The identity and category of value of any interest in property held in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative

(5) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $5,000 as of the close of the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; or

(B) any loan secured by a personal motor vehicle or household furniture or appliances.

(6) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(i) in real property, other than a personal residence of the reporting individual or his spouse, or

(ii) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(b) For purposes of paragraphs (4), (5), and (6) of subsection (a) or subsection (d) the person reporting need not specify the actual amount or value of each item required to be reported under such paragraphs, but such person shall indicate which of the following categories such amount or value is within:

(1) not more than $5,000,

(2) greater than $5,000, but not more than $15,000,

(3) greater than $15,000, but not more than $50,000,

(4) greater than $50,000, but not more than $100,000,

(5) greater than $100,000.

(c) Campaign receipts or expenditures shall not be included in this report.

(d)(1) Each report shall also contain information listed in paragraphs (1) through (6) of subsection (a) respecting the spouse of the reporting individual as follows:

(A) The source of items of earned income from any person in excess of $1,000.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description or the estimated value of the gift.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (4), (5), and (6), all information required to be reported other than items which the reporting individual certifies represent the spouse's sole financial interest or responsibility and which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual; and from which the reporting individual neither derives, not expects to derive, any financial or economic benefit.

(2) Each report shall also contain all information listed in paragraphs (4), (5), and (6) of subsection (a) respecting any dependent child of the reporting individual other than respecting items which the reporting individual certifies represent the dependent child's sole financial interest or responsibility and which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual; and from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(3) No report shall be required with respect to the interests of a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(e) Except as provided in this paragraph, each report shall also contain information respecting the holdings of and income from a trust or other financial arrangement from which the reporting individual or the spouse or dependent children of such individual receives income or in which such person has a beneficial or equity interest. The identity of the holdings and the sources of a trust's income need not be disclosed if the reporting individual, his spouse, and dependent children have no knowledge of the contents or sources of income of the trust. However, where the identity of the holdings and the sources of income of a trust need not be disclosed, the reporting individual must list the category of value of his interest in the total trust holdings under paragraph (4) and must

list the amount of the income from the trust under paragraph (1).

ACCESSIBILITY OF REPORTS

SEC. 104. (a) Within fifteen calendar days after a report is filed with the Clerk under this title, the Clerk shall make such report available for public inspection at reasonable hours. A copy of any such report shall be provided by the Clerk to any person upon written request.

(b) Within fifteen days after a report is filed with the Secretary under this title, the Secretary shall make such report available for public inspection at reasonable hours. A copy of any such report shall be provided by the Secretary to any person upon written request.

(c) Any person requesting a copy of a report may be required by the Clerk or Secretary to supply his name and address and the names of the persons or organizations, if any, on whose behalf he is requesting such copy and to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

(d) Any report filed under this title with the Clerk or Secretary shall be available to the public for a period of five years after receipt of the report. After such five-year period the report shall be destroyed, except that in the case of an individual who filed the report pursuant to section (102)b and was not subsequently elected, such reports shall be destroyed one year after the individual is no longer a candidate for election to the office of Member.

(e)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communication media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000.

REVIEW AND COMPLIANCE PROCEDURES

SEC. 105. (a) The Committee on Standards of Official Conduct of the House of Representatives and the Select Committee on Ethics of the Senate shall establish procedures for the review of reports sent to them under section 102(d) (1) and section 102(d) (2) to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) In order to carry out their responsibilities under this Act the Committee on Standards of Official Conduct of the House of Representatives and the Select Committee on Ethics of the Senate, have power, within their respective jurisdictions, to render any advisory opinion, in writing, to persons covered by this title. Notwithstanding any other provisions of law, the individual to whom an advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this ttile who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any sanction provided in this Act.

GENERAL ACCOUNTING OFFICE STUDY

SEC. 106. (a) Before November 30, 1980, and regularly thereafter, the Comptroller General of the United States shall conduct a study to determine whether this title is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this title.

(b) Within thirty days after completion of the study, the Comptroller General shall transmit a report to each House of Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative actions as he deems appropriate. The first such study shall include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under this title, including a thorough discussion of the type and nature of audits that might be conducted; the personnel and other costs of audits; the value of an audit to Members, the appropriate House and Senate committees, and the public; and, if conducted, whether a governmental or nongovernmental unit should perform the audits, and under whose supervision.

FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 107. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report under section 103. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

DEFINITIONS

SEC. 108. For purposes of this title, the term—

(1) "candidate" means an individual, other than a Member, who seeks nomination for election, or election, whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434(a));

(2) "Clerk" means the Clerk of the House of Representatives;

(3) "committee" means any committee of the Senate or House of Representatives or any subcommittee of any such committee or any joint committee of Congress or any subcommittee of any such joint committee;

(4) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter, and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(5) "election" means (A) a general, special, primary, or runoff election, or (B) a convention or caucus of a political party which has authority to nominate a candidate;

(6) "employee" means any individual, other than an officer or Member, whose compensation is disbursed by the Clerk or Secretary;

(7) "estimated value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(8) "officer" means an elected officer of the Senate or House of Representatives who is not a Member;

(9) "relative" means an individual who is related to the reporting individual as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(10) "Secretary" means the Secretary of the Senate;

(11) "Member" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(12) "gift" means a payment, advance, forebearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received, but does not include—

(A) inheritances;

(B) political contributions;

(C) transportation, lodging, food, and entertainment provided (i) by Federal, State, and local governments, or political subdivisions thereof, or (ii) by a foreign government within a foreign country;

(D) communications to the offices of a Member, including subscriptions to newspapers and periodicals;

(E) suitable mementos of a function held in honor of the Member, officer, or employee;

(F) consumable products provided by home-State businesses to a Member's office for distribution; and

(G) food and beverages consumed at banquets, receptions, or similar events;

(13) "reimbursement" means any payment or other thing of value received by a reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5 of the United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(14) "honoraria" means payments of money or any thing of value for an appearance, speech, or article, except that there shall not be taken into account for reporting purposes any actual and necessary travel expenses incurred by such person to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that they are not paid or reimbursed; and

(15) "income" means all income from whatever source derived, including but not limited to the following items: net compensation for services, including fees, commissions, and similar items; net income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

SEC. 109. The provisions added by this title, and the regulations issued thereunder, shall supersede and preempt any State or local law with respect to financial disclosure by reason of candidacy for Federal office or

employment by the United States Government.

The CHAIRMAN pro tempore (Mr. EVANS of Colorado). Title I has been read. Are there any amendments to title I?

AMENDMENT OFFERED BY MR. PREYER

Mr. PREYER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PREYER: Page 3, lines 16 and 17 strike "October" and insert "November".

Mr. PREYER. Mr. Chairman, this is a largely technical amendment which I have discussed with the gentleman from California (Mr. WIGGINS) and the gentleman from Minnesota (Mr. FRENZEL).

It simply extends the date for candidates to file under the bill from October to November. I think it is apparent that because of the delay in getting the bill to the floor that it might be October before the bill is finally signed into law, so that this simply changes that to accord with reality from October to November.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield?

Mr. PREYER. I yield to the gentleman from California.

Mr. WIGGINS. Mr. Chairman, does this section mean that every person who is a candidate, including those Members who are running for reelection, must file the reports required by this bill if the gentleman's amendment is adopted, by November 1 of this year?

Mr. PREYER. No; it does not include Members of Congress. I believe the definition of candidate says that it is other than Members of Congress who are running for reelection, or words to that effect.

Yes, on page 15 it says:

(1) "candidate" means an individual, other than a Member, who seeks nomination for election, or election,

And so forth.

Mr. WIGGINS. Mr. Chairman, if the gentleman will yield further, then the situation will be that Members of Congress who are candidates, but not as defined under this bill, will not have to file by November 1; rather, the public will rely upon those previous reports which have been filed, I presume; but a non-Member candidate will have to file all the reports required by this section by November 1; is that correct?

Mr. PREYER. That is correct. There has been, of course, earlier filing for Members, but no filing for candidates.

Mr. WIGGINS. Well, as the gentleman knows, I will in short order attempt to remove that coverage of candidates by kind of looking at the political dynamics of this. Your opponent gets zapped on November 1, 7 days before the election, if the press can get access to him quickly enough, that is; whereas a seated Member has taken his lumps back in June or whenever it was—perhaps it was May—and the furor has died down.

Mr. Chairman, I do not regard that to be exactly politically equal but indeed to be skewed against the nonincumbent candidate.

Mr. PREYER. Mr. Chairman, if the gentleman will allow me to answer, the candidate could file earlier than November, of course, and thus avoid that situation. I regret that there has been this delay in getting to the passage of the bill so that we would not have this sort of dynamic political issue indicated, but I think it would be even more unfair if a Member of Congress had to file and get zapped and there is no opportunity to receive any filing from a candidate. This, it seems to me, is the only way we can get a balanced solution to the problem.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. PREYER. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, what the gentleman from California (Mr. WIGGINS) points out concerns me to some extent.

Has there been any information given to any of the candidates who are running for one-third of the Senate and the whole House that they may have to file this type of report?

Mr. PREYER. Under the Senate rules, the Senate candidates have already filed.

Mr. VOLKMER. So those candidates have filed?

Mr. PREYER. Right.

Mr. VOLKMER. But my opponent or the gentleman's opponent or any other opponent for a House seat has no information, nothing at all, except perhaps from what they may have learned or from what some consulting firm has advised them as to whether they may have to do this? Other than that, they have no information right to this day that they may have to prepare and file such a report; is that right?

Mr. PREYER. The gentleman is correct. We will make them available promptly and get them mailed out, and hopefully they will get about 30 days' notice.

Mr. VOLKMER. I just wonder if it is really necessary to do that.

The CHAIRMAN pro tempore (Mr. EVANS of Colorado). The time of the gentleman from North Carolina (Mr. PREYER) has expired.

(On request of Mr. VOLKMER, and by unanimous consent, Mr. PREYER was allowed to proceed for 2 additional minutes.)

Mr. PREYER. Mr. Chairman, I believe the amendment I have offered addresses the problem.

Mr. VOLKMER. Mr. Chairman, if the gentleman will yield further, the amendment is better than what we have in the bill, I will not argue that. But is it possible that we just exempt the provision for this year's election rather than have that included? Otherwise I am afraid this may happen:

Let us say we pass this bill and it is signed by the President sometime in the first week or the end of the first week in October, and then all of a sudden these candidates get a notice a week later or so that they are going to have to file this report. They have to file it as of this time, but we have already filed ours and that is on record. We do not have to bring ours up to date; is that correct?

Mr. PREYER. Yes, that is correct.

Mr. VOLKMER. So it may look a little bit like we are saying, "Hey, we are trying to play the game a little bit different for one than for the other." I do not like that idea.

Sure, it may mean it is to my advantage, but as to the image of Congress, I question whether we may be saying that "we want to do things a little differently for you than for us because we are in and you are out." I do not want anything to be interpreted in that way.

Mr. PREYER. Mr. Chairman, I believe the gentleman from California (Mr. WIGGINS) will offer an amendment to strike the whole provision for candidate filing, and perhaps that would meet the gentleman's objection.

Mr. VOLKMER. No. I believe that candidates should file in the future. At the same time I believe basically we should and that everybody should.

Mr. PREYER. Mr. Chairman, I think the gentleman from California (Mr. WIGGINS) also has a more limited amendment which would just strike the filing for candidates for this election, and that may meet the gentleman's objection.

Mr. VOLKMER. Mr. Chairman, I thank the gentleman.

Mr. PREYER. Mr. Chairman, I ask for the adoption of my amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from North Carolina (Mr. PREYER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WIGGINS

Mr. WIGGINS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WIGGINS: On page 2, lines 8 and 9, strike out ", and any individual who becomes a candidate in any election for the office of Member".

On page 2, lines 17 and 18, strike out "(1) Except as provided in paragraph (2), each" and insert "Each".

On page 2, lines 19 and 20, strike out ", other than an individual who becomes a candidate in any election for the office of Member,".

On page 3, strike out lines 6 through 9, and on line 10 strike out "(B)" and insert "(2)".

On page 3, strike out line 15 and all that follows thereafter through page 4, line 2.

On page 4, line 3, strike out "(c)" and insert "(b)".

On page 4, lines 3 and 4, strike out "or an individual who is a candidate for the office of Member".

On page 12, line 4, after the word "destroyed" strike out the comma, insert a period, and strike out all that follows through and including line 8.

On page 15, strike out lines 12 through 22, and redesignate the succeeding paragraphs accordingly.

Mr. WIGGINS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read, and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WIGGINS. Mr. Chairman, this amendment is simplicity itself. It takes out all references to candidates in title I. In other words, candidates who do not occupy a position of trust in the Federal Government shall not be compelled, in the name of avoiding a conflict of interest—which is something they do

not have—to file those statements which will be required of those of us who do serve in the Federal Government.

I have nothing more to say about it. I really believe it has merit. Its intellectual merit is self-evident. Its political demerits are also self-evident. I hope, however, that, as between those two choices, the Members will opt for the intellectual argument.

Mr. PREYER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think to require disclosure by candidates does enable the public to predict the type of conflict of interest that might lie in the situation of a candidate, just as it would in the case of an incumbent. And I do not see why they should be treated differently. I would hope that we will treat candidates and treat Members equally. I think the principle behind conflict of interests is the same, and I would hope that this amendment would be defeated.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield?

Mr. PREYER. I yield to the gentleman from California.

Mr. WIGGINS. I thank the gentleman for yielding.

Mr. Chairman, the public can make whatever demands it wants, in terms of whether to vote for or against the candidate, They can make the most outrageous demands upon a candidate and withhold their vote if that request is not honored. That is a political pressure that is asserted by a constituency upon one who seeks their favor. I do not in any way affect that. Of course, the people can make any inquiry with regard to assets, liabilities, holdings, indeed matters of a very personal nature, as a condition of granting their vote. But now we are talking about the Government interceding in that equation between the candidate and the people, and we are having the Government exercise its judgment as to what the people ought to know and compelling disclosure of certain facts in the name of ethics. I think this is an area in which the Government ought not intrude.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, the provision in this bill requiring the same reporting of Members of Congress for candidates for Congress troubles me deeply. We already have a myriad of reporting requirements made by the Federal Elections Commission under the Federal Election Act.

These requirements pose difficulty for challengers who are less sophisticated than many Members who are better equipped to handle these reporting requirements. I think the additional reporting for candidates required by this act goes well beyond reason and will undoubtedly add to the burden that is already occasioned by the FECA requirements on candidates.

It is becoming more and more difficult to recruit able people to want to serve in this body. And the more reporting that we require of candidates, the less anxious they are going to be in the future. There may be plenty of candidates for the Congress, but the total possible universe of candidates will undoubtedly be reduced.

It has already been pointed out that if there is a compelling reason for financial disclosure for Members of Congress, it is because that person occupies a position of public trust. Obviously, a challenger occupies no position of trust. There is no reason to require disclosure of that challenger. There is no conflict of interest, either real or hypothetical, until a person does become eligible to vote.

The gentleman from California has properly described this feature of the bill as a "misery loves company" provision. Because we are obliged to fill out all of these onerous reports, therefore we are going to fix all of the guys who are running against us. They will have to fill them out too. We are simply placing an additional burden upon a group of persons to comply with this onerous and unnecessary reporting.

Since this bill has no criminal penalties, the practical effect is that candidates are not going to report unless they have a good chance of winning.

So, the law will simply apply to some of us, but not all of us, who seek office. Those who are frivolous candidates or candidates with little chance of winning will probably not file these reports anyway since there is no criminal penalty.

Mr. Chairman, in my judgment this is make-work for the Clerk of the House and for the Ethics Committee. It is an attempt to justify an extra load we put on ourselves by laying it on somebody else.

It is unworthy of the purposes of the ethics resolution that we passed in the House. It is unworthy of the House, and it is unworthy of this bill. I hope the amendment offered by the gentleman from California will be adopted.

Mr. PIKE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this troubles me because, really, until now in the debate I have agreed wholly with what the gentleman from California has said, and tended to disagree with what the gentleman from North Carolina has said. I agree wholly with the gentleman from California when he says that what we are doing here is an act of political voyeurism, but when he says that we are only going to allow the voyeurs to examine one side, this troubles me. I think that the voyeurs in the press and in the media generally should have the same rights—and of course this may be my new career rather than my old career creeping into the fore here—but I cannot accept anything which is going to allow either Members of Congress or candidates to cover up their financial situation.

Therefore, I do think that the voyeurism should apply with regard to both the sitting Members and those who would take their places. I oppose the gentleman's amendment.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. PIKE. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Is the gentleman saying, then, two wrongs will make a right?

Mr. PIKE. No; but I am saying that if we have not got the guts—and we have not—to cut the one, let us at least make it equal.

Mr. FRENZEL. So long as we have abused ourselves, we should abuse this whole other universe of individuals?

Mr. PIKE. I think that if the gentleman is going to accept the doctrine of the public's right to know—and that is the whole philosophy on which this legislation is based—the public has the right to know from both sides, and not simply from one side.

Mr. FRENZEL. If the gentleman will yield further, it seems to me we can make a good case that it is all right to abuse ourselves because we occupy a special position, but to lay an extra effort or an extra burden on those who seek to have our position I think is pure self-interest. Or maybe it is some kind of comfort just because we are a little nervous about what we have done for ourselves.

Mr. PIKE. Well, I am not nervous about what you have done to yourselves. As a hopeful member of the press, I look forward to it with some enthusiasm, to tell the honest truth. But, to say that my sources are to be cut off as to all the people who are running against you, I would hate that.

Mr. FRENZEL. I wish the gentleman a successful career.

Mr. DANIELSON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the gentleman from New York did a very able job of pointing out one good reason for leaving the reporting by prospective sitters in the bill, and the gentleman from Minnesota, did an excellent job of pointing out some reasons why we should favor the amendment. But, we should remember that in this bill we are not concerned only with the Members of the Congress and the voyeurs in the press.

There are, hopefully, members of the general public who wish to know what will be reported. The justification for knowing is to enable them to make up their minds as to the person for whom they are going to vote in the forthcoming election. Now, the Members of the Congress must report their assets, their transactions, their income and the like, and this may effect whether the citizen is going to vote for him.

But, how can he make an evenhanded judgment as to who is the better candidate if he cannot also examine those same factors with respect to the other person who is running for the office? I think we should be evenhanded here, and evenhandedness requires that the citizen preparing to vote should be able to examine potential conflicts of interest of both candidates, those who are sitting and those who want the seat.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to my colleague from California.

Mr. WIGGINS. Mr. Chairman, I could not argue against evenhandedness.

But just 5 minutes ago in a spirit of

evenhandedness we told our opponents to file their reports 7 days before the election but we file ours 5 months before the election. We tolerated that just a few minutes ago, and if there is any equality in that, real or political, and especially political equality, it escapes me. I think we have got to be fair all of the time or else acknowledge that we cannot be fair all of the time. In my view, as I said, fairness would require removing these people altogether from the burden of reporting.

Mr. PIKE. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from New York (Mr. PIKE).

Mr. PIKE. Mr. Chairman, it seems to me we could solve that problem by requiring the sitting Members again to file 7 days before the election.

Mr. DANIELSON. Let me recapture my time before this becomes too perfect. As I said to the gentleman from California, the public has had the opportunity for the last 7 months to examine the records of the sitting Members of Congress and it will be restricted to only about a week to examine the records of those who aspire to the Congress.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I am not sure I am going to vote for the amendment, but it seems to me there are different reasons for disclosure by Members of Congress as well as high-level officers than there are for people running for Congress. It seems to me there may be political reasons for disclosure for people running for Congress, to determine where they are coming from for the purpose of determining whether to vote for them or not, but for incumbents and high-level Federal bureaucrats it is to determine whether or not we have a conflict of interest in order for the voters to determine how they should vote. Does the gentleman agree?

Mr. DANIELSON. I agree, but it does not in any way nullify my argument that Members of Congress are required to make public disclosure and that is a matter of public record.

Mr. GLICKMAN. By the same rationale for requiring Members of Congress or candidates to disclose their finances in advance would be true also of somebody going after a GS–16 or a GS–17 job to make financial disclosure before he gets that job, or a person who may be merely testifying before a committee to make the same kind of disclosure before he or she could prevent that testimony. There may be two reasons for that disclosure by candidates and if there are, the amendment offered by the gentleman from California may make some kind of sense.

Mr. DANIELSON. We would have to get to title 2 for the GS–16's.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words.

I rise in opposition to the amendment.

I would like to address the gentleman from Kansas who asked an interesting question. I am not sure I can answer directly or fully, but I think what the gentleman states is probably true. There may be different perspectives by which the voting public will view financial disclosures.

For sitting Members, it may be to judge whether we, in the discharge of our voting trust, have perhaps committed a conflict of interest of sorts. With respect to prospective Members of Congress of the United States, the public might examine financial disclosure from the standpoint of possible future conflicts of interest, what they have been doing in their private life and whether or not they have the background to handle financial matters in the Congress.

But I would like to make one additional statement. My friend, the gentleman from Minnesota (Mr. FRENZEL), mentioned that one of the fears he had, if this amendment were not adopted, is that there would be a paucity of candidates for the Congress. We might have a party and nobody shows up.

I think the gentleman ought to rest easy. I have no doubt that upon the retirement of the gentleman from Minnesota (Mr. FRENZEL) or that of the gentleman from Kentucky, I am convinced that there will be a long string of people who will seek our seats, and our jobs, in spite of any impediment we might attach to them in the form of financial disclosure.

But if I did share the gentleman's fears, I would be willing to vote for this amendment because we are not trying, by this bill, to place a lot of heavy baggage on the public and a lot of heavy baggage on the Members of the Congress.

We are trying to make it easier for the public to cast an intelligent, thoughtful vote and, at the same time, place people in a position, if they aspire for public office, of knowing early on that they will be living in a fishbowl as long as they are in public life.

Mr. FRENZEL. Mr. Chairman, if the gentleman will yield, I do not believe that anybody's rationale in support of the bill is that we have some obligation to inform the public. Are we next going to demand that candidates file questionnaires with answers on issues as well?

I think the reason we have instituted disclosure is the matter of public trust. It had nothing to do with reasoning that we are going to force candidates, by law, to inform the public. That is not the rationale. I do not understand the gentleman.

Mr. MAZZOLI. Maybe we are looking at the bill from different standpoints. I certainly think that part of it is the public trust, the gentleman is correct. But, part of it, it seems to me, is public information and public knowledge. It is the willingness to be forthcoming, both those in office and those who aspire to office.

Mr. FRENZEL. I agree with the gentleman on that point, and I agree with the gentleman on disclosure for elected public officials. If we do not choose to be forthcoming, nobody can force us. And if the public does not like a candidate, it does not have to elect the person.

Mr. WYDLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman. I rise in support of this amendment. Frankly, I came here ready to vote against it. I liked the idea when I heard that it would make our opponents in the political campaigns, and that is what we are talking about, do the same things we are required to do, that the opponents sit down and disclose their financial affairs to the general public. And if I can try to reconstruct my thinking, it was this: If I have to do it, why should not he or she have to do it, too? It is just fair play.

But, when you really analyze it, and I have listened to the debate, there is no real justification to force people into that predicament that I can think of other than some general, vague notion that has been suggested here that thereby the public will find out about "potential" conflicts of interest. I do not know what that means, but I suppose it means that as far as the incumbent goes, we will be able in examining those reports to dig up something that we can charge him with. I do not know that this is a good idea; although I agree there will be plenty of people in line to take my seat, or anybody else's seat, the question is not how many people get on the line, the question is who gets on the line, what kind of people get on the line to be in the Congress of the United States.

I believe this is very much the same argument that the gentleman from New York (Mr. PIKE) made relating to outside income earnings limitations. Certainly there are a great number of people who have little or very little, maybe because they had so little when they started out in life, or so very little because of some failures.

They will disclose with pleasure and they will be able to file reports all over the place. However, for the man who has had considerable success in life and has made a lot of diverse investments with his money, yes, surely, it could be embarrassing for him to have to show that he might own some oil stock because he thought it was a good investment 20 years ago.

Those people are the ones we push out of the picture with respect to coming to this Congress.

Mr. Chairman, the question is, Whom do we want in this Congress? Whom do the people want in this Congress to represent them, the ones who have acquired something, who have achieved something, who do have some property of some substance, or do the people just want the others?

Therefore, Mr. Chairman, I am going to support the amendment. I believe, on reflection, even though it is nice to make my opponents, whoever they may be, go through a lot of agony because I had to, it just does not make good sense; and in good conscience, I cannot oppose this amendment.

Mr. GLICKMAN. Mr. Chairman, I move to strike the requisite number of words.

The point I was trying to make before is that, obviously, I think there is a rationale for candidates to disclose, but I think that we may be getting to the

point where anybody who has anything to do with the Government will be required to disclose in advance of their contact with the Government their financial circumstances and related things which are nobody's damn business.

Mr. Chairman, all I am trying to get at with my comments is that I think there is rationale for candidates; but we really have to be extremely cautious about bringing everybody who even walks by the Federal Trade Commission into the picture.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to address my remarks particularly to those previously made by the gentleman from New York (Mr. WYDLER), for whom I have great respect.

This statement is also addressed to my colleague, the gentleman from Minnesota (Mr. FRENZEL). He says that this is a "misery-loves-company" amendment. I do not think that is true at all.

Mr. Chairman, it seems to me that candidates are subject to conflicts of interest, that is, conflicts which pull them one way or the other if they get elected.

If they have a pocketbook issue interest, it may very well conflict their duty to their constituents.

Mr. Chairman, I have an example to clarify what I am driving at. Suppose a candidate says that he has $400,000 worth of natural gas stocks, and he is in favor of deregulation of natural gas prices. I think the public is entitled to know that this candidate may be influenced by his private interest, to the dertiment of the public interest. I think the public is entitled to know how any candidate might be influenced, whether the candidate is an incumbent or not.

Mr. Chairman, the purpose of the provision on candidates is not to impose burdens on candidates. It is to allow the public to know what private interest each candidate has so as to determine whether the candidate would be voted for. Disclosure after the election comes too late.

Mr. Chairman, I yield back the balance of my time.

Mr. KREBS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman and members of the committee, I would like to associate myself with the remarks just made by the gentleman from Maryland (Mr. STEERS). I think he hits the nail right on the head.

The general public is entitled to know whether there is any conflict of interest or possible conflict of interest, not only on the part of incumbents, but on the part of candidates as well.

Furthermore, as far as any fear is concerned that we are going to discourage people who have accumulated wealth from running for office, I am convinced we will do no such thing.

Certainly, the statistic which I have read about the assets of Members of this House indicates that there is no shortage of millionaires as well as very wealthy individuals in the House of Representatives, 95th Congress.

The same would be true in the 94th Congress.

Beyond this there is one further issue that I think should be kept in mind. There is no question that come election time a challenger will look at the incumbent's reports that are currently required. He has every right to discuss anything that has to do with the incumbent's report and with the information so made available. But by the same token the incumbent should have the same right and should have the right to make an issue of any possible conflict of interest that might arise from the details set forth in the report of the candidates. Consistent with the public; demand for openness, I think the same requirement that is imposed on an incumbent should also be imposed on a challenger.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. KREBS. I yield to the gentleman from New York.

Mr. WYDLER. I thank the gentleman for yielding.

What I do not understand is this continual talk about potential conflicts of interest. Suppose my opponent were to file a financial statement and he had stock in an oil company. How would we know that he owned it at the time he was to take office, assuming he were the winner of the election? We do not know if that is a conflict of interest. He is not even in office. He may never be. He may sell the stock before he becomes an officeholder. How can it become a conflict of interest? That is what bothers me. I do not understand what the gentleman is talking about.

Mr. KREBS. I will try and clarify it for the gentleman. Let us take the gentleman's example, or the example of the gentleman from Maryland (Mr. STEERS) about the candidate who owns $400,000 of natural gas stock. Certainly the general public in having that information available would then be in a position to ask the candidate, Are you going to dispose of these shares of stock come election time, should you be fortunate enough to be elected? That is certainly a legitimate question to such a candidate. But under the amendment that would be foreclosed. Once the person is elected, he would still own the stock, could continue to own the stock, and he certainly would be in the House of Representatives for at least 2 years before the public gets another crack at him.

Mr. KASTENMEIER. Mr. Chairman, would the gentleman yield?

Mr. KREBS. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I thank the gentleman for yielding.

I wish to associate myself with the gentleman's statement and that of the gentleman from Maryland (Mr. STEERS). The Committee on the Judiciary, when it examined two candidates for very high Federal office in the past few years, the gentleman from Michigan, Mr. Ford, and the gentleman from New York Mr. Rockefeller, required a great deal of them in terms of financial disclosure. Indeed, one of those two candidates who was confirmed by the Congress to the Office of Vice President of the United States did in fact own a great deal of oil stock. That was considered a relevant point in terms of the examination by the Committee on the Judiciary and perhaps even in subsequent confirmation. He was, indeed, confirmed. He elected quite voluntarily to place that stock in a blind trust, but the mere fact of ownership of such an interest was of public interest, and I believe justified its disclosure.

But it suggests, indeed, that someone need not occupy the office in order for there to be a public interest in what the assets of that individual might be for purposes of public policy. Therefore, I oppose the amendment.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. KREBS. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

It seems to me we are operating on two avenues.

Mr. BIAGGI. Mr. Chairman, I move to strike the requisite number of words.

One is the narrow concern of the gentleman from California (Mr. WIGGINS), who asks, "What is the purpose of this legislation?" To avoid conflict, conflict of interest. I believe the more compelling reason for voting against the amendment on a practical basis is the political dynamics of the issue. That is why I believe this amendment will fail. But as far as the more appropriate reason that should be attached to our considerations, the gentleman from California, I believe, is absolutely correct.

It is a question of conflict of interest. The gentleman from California (Mr. KREBS) stated that the candidate may have possession of securities, oil, specifically, or whatever. If you say oil stock, you make it ipso facto an evil possession; but aside from that, any security by itself creates a conflict of interest. If that be the case, then how come this legislation fails completely to deal with the securities held by many Members of this House?

Moreover, it fails to deal effectively with the blind trusts, the so-called blind trusts. My experience with blind trusts is that many of them have 20–20 vision; so the fact that you own securities does not mean that necessarily is a conflict. If the individual holding the securities was to deal ethically in relation to his possessions, then you would see on the board more Members voting "present" than you do. Right now they vote in the affirmative or in the negative.

Now, I do not impugn those individuals, but there is a possibility they vote for self-interest. I have been here 10 years and I have not seen one occasion where in excess of four or five people have voted "present" on issues that might be controversial, issues that might relate to securities.

This bill is double standard in nature It fails of its target. This particular provision from a political point of view, I believe, is acceptable; but from a moral point of view, it is completely reprehensible.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Chairman, I certainly agree with the gentleman's characterization of the double standard argument we have heard in this debate today. The same dual standard was heard when certain reforms were adopted in 1977. We have placed the approval of the House on that double standard. It is in our rules. Today we are hearing the argument that the holding of stocks and bonds is perhaps inherently evil and creates a conflict of interest; but this same House voted to exempt the income from stocks and bonds, placing them outside the earned income limits. But the rule does not permit those who work weekends to make earnings from speeches and articles. You cannot have it both ways. If there is a conflict because of owning stocks and bonds, certainly there is a conflict from unearned income that would affect a Member's votes.

Mr. BIAGGI. Mr. Chairman, that is exactly the point. I am sure there are fine people voting to strike the amendment, voting against it on political grounds; yet we hear them arguing to strike it on a moral basis, but it has no moral basis. On that same basis, when it comes to voting on the Quillen amendment, dealing with limitations on outside earnings, they will vote against it. Once again we have double standards. It is the kind of dilemma we have been confronted with in the House of Representatives in the 10 years I have been here that turns off people.

It is not this kind of legislation we need. It is honesty, moral honesty in Government we need on every issue.

Mr. KREBS. Mr. Chairman, will the gentleman yield since the gentleman mentioned my name?

Mr. BIAGGI. I did not, but I will be happy to yield.

Mr. KREBS. Well, the gentleman did, but perhaps the gentleman forgot.

I merely used the example of securities because that was the example used by the gentleman from New York.

Let us take the example of Joe Smith, who owns an office building and who happens to be a very wealthy individual. He is in a certain income bracket where he might just as well for income tax or other consideration lease this particular building out on a very nominal figure, say $1 a year, to a labor union.

The CHAIRMAN pro tempore. The time of the gentleman from New York has expired.

(At the request of Mr. KREBS, and by unanimous consent, Mr. BIAGGI was allowed to proceed for 2 additional minutes.)

Mr. BIAGGI. Mr. Chairman, I yield to the gentleman from California.

Mr. KREBS. Mr. Chairman, he leases it to a given labor union, take the UAW, you name it. Do you mean to tell me that this information should not be available to the general public for the purpose of considering whether this person would be objective on an issue affecting labor or that particular union? In the final analysis whether a conflict of interest exists becomes a question of fact; but the facts should be available to the general public, from an incumbent running for reelection, as well as a candidate running for the first time.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I do not understand that situation at all. You would not have to disclose that you are renting it out for $1.

I do not understand where that would come in, but that would really take some investigative reporting. Although they have been rather put down a little bit here today, that would take a little investigative reporting to dig up facts like that. That happens in the system, and it will happen in the future, with or without this kind of disclosure statement.

The real question is: Just because we have to file these kinds of statements, are we going to require our opponents to do the same thing in a way that it may give us some advantage, as well as having the disadvantage of having to file the reports?

Mr. Chairman, I just do not think it is fair on that basis, and that is why I am going to support the amendment.

Mr. BIAGGI. Mr. Chairman, my problem with transactions of this type is that if a man of moderate means engages in these tactics, he is suspect, but if a man of extreme wealth engages in them, that is all right it is the currency of the realm in his milieu. So again we are dealing with double standards.

Mr. BURLISON of Missouri. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to direct a question to the author of the amendment, the gentleman from California (Mr. WIGGINS).

I have not been on the floor during all the debate, but while I have been here I have not heard the constitutional question addressed about which I would like to ask the gentleman from California.

Would not the equal protection clause of the 14th amendment make the gentleman's proposal unconstitutional, and is this not on the face of it quite discriminatory against a class of individuals?

Mr. WIGGINS. Mr. Chairman, if the gentleman will yield, is the gentleman asking me about my amendment's constitutionality?

Mr. BURLISON of Missouri. Yes. I am asking the gentleman if his amendment is legally valid in view of the equal protection clause of the Constitution.

Mr. WIGGINS. Mr. Chairman, as the gentleman knows, the equal protection clause does not require that all people be treated alike.

Mr. BURLISON of Missouri. Yes.

Mr. WIGGINS. It does, however, require that if we treat them differently, there must be a reason. In deciding whether there is a legitimate reason for such treatment, we examine the classifications and the differences in the classifications.

Now, I think there is more than a dollop of difference between an incumbent Member of Congress and one who is not an incumbent Member of Congress. If we legislate differently with respect to them, I would have no difficulty in terms of equal protection, because we are not comparing apples with apples; we are comparing apples with oranges, as it were.

Mr. Chairman, I do not subscribe to the equal protection argument, but I commend the gentleman for his ingenuity.

Mr. BURLISON of Missouri. Mr. Chairman, the statement of the gentleman from California (Mr. WIGGINS) is certainly not very convincing in defense of the constitutionality of his amendment. I question whether the distinction he draws is relevant or valid. But even if we disregard the constitutionality of this amendment, it is clear from the debate that on the basis of fairness and reason, this amendment should be defeated.

Mr. WYDLER. Mr. Chairman, will the gentleman yield to me?

Mr. BURLISON of Missouri. I would be delighted to yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, the gentleman is not suggesting here, is he, that every requirement in this bill that places limitations of one kind or another on Members of Congress or on the executive branch should be extended to all people in the country?

Mr. BURLISON of Missouri. No. The gentleman missed the point if he draws that conclusion.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from California (Mr. WIGGINS).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WIGGINS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 34, noes 365, not voting 33, as follows:

[Roll No. 806]

AYES—34

Anderson, Calif.	Hall	Quillen
Burgener	Hammer-schmidt	Roncalio
Burleson, Tex.	Kelly	Rostenkowski
Burton, Phillip	McClory	Steiger
Butler	McDonald	Symms
Cleveland	Moorhead, Calif.	Treen
Collins, Tex.	Murtha	Vander Jagt
Conable	O'Brien	Wampler
Coughlin	Pattison	Waxman
Dornan	Poage	Wiggins
Early	Pursell	Wydler
Frenzel		

NOES—365

Abdnor	Beard, Tenn.	Brown, Calif.
Addabbo	Bedell	Brown, Mich.
Akaka	Bellenson	Brown, Ohio
Alexander	Benjamin	Broyhill
Ambro	Bennett	Buchanan
Andrews, N.C.	Bevill	Burke, Fla.
Andrews, N. Dak.	Biaggi	Burke, Mass.
Annunzio	Bingham	Burlison, Mo.
Applegate	Blanchard	Burton, John
Archer	Blouin	Byron
Ashbrook	Boggs	Carney
Ashley	Boland	Carr
Aspin	Bolling	Carter
AuCoin	Bonior	Cavanaugh
Badham	Bonker	Cederberg
Bafalis	Bowen	Chappell
Baldus	Brademas	Chisholm
Barnard	Breckinridge	Clausen, Don H.
Baucus	Brinkley	Clawson, Del
Bauman	Brodhead	Clay
Beard, R.I.	Brooks	Cochran
	Broomfield	

Cohen	Howard	Pike
Coleman	Hubbard	Pressler
Collins, Ill.	Huckaby	Preyer
Conte	Hyde	Price
Conyers	Ichord	Pritchard
Corcoran	Jacobs	Quayle
Corman	Jeffords	Quie
Cornell	Jenkins	Rahall
Cornwell	Jenrette	Rangel
Cotter	Johnson, Calif.	Regula
Crane	Johnson, Colo.	Reuss
Cunningham	Jones, N.C.	Richmond
D'Amours	Jones, Okla.	Rinaldo
Daniel, Dan	Jones, Tenn.	Roberts
Daniel, R. W.	Jordan	Robinson
Danielson	Kasten	Rodino
Davis	Kastenmeier	Roe
de la Garza	Kazen	Rogers
Delaney	Keys	Rooney
Dellums	Kildee	Rose
Dent	Kindness	Rosenthal
Derrick	Kostmayer	Rousselot
Derwinski	Krebs	Roybal
Devine	LaFalce	Runnels
Dicks	Lagomarsino	Ruppe
Dingell	Latta	Russo
Dodd	Le Fante	Ryan
Downey	Leach	Santini
Drinan	Lederer	Satterfield
Duncan, Oreg.	Leggett	Sawyer
Duncan, Tenn.	Lehman	Scheuer
Eckhardt	Lent	Schroeder
Edgar	Levitas	Schulze
Edwards, Ala.	Livingston	Sebelius
Edwards, Calif.	Lloyd, Calif.	Seiberling
Edwards, Okla.	Lloyd, Tenn.	Sharp
Eilberg	Long, La.	Shuster
Emery	Long, Md.	Sikes
English	Lott	Simon
Erlenborn	Luken	Sisk
Ertel	Lundine	Skelton
Evans, Colo.	McCloskey	Slack
Evans, Del.	McCormack	Smith, Iowa
Evans, Ga.	McDade	Smith, Nebr.
Evans, Ind.	McEwen	Snyder
Fary	McFall	Solarz
Fascell	McHugh	Spellman
Fenwick	McKay	Spence
Findley	McKinney	St Germain
Fish	Madigan	Staggers
Fisher	Maguire	Stangeland
Fithian	Mahon	Stanton
Flippo	Mann	Stark
Flood	Markey	Steed
Florio	Marks	Steers
Flynt	Marlenee	Stokes
Foley	Marriott	Stratton
Ford, Mich.	Martin	Studds
Ford, Tenn.	Mathis	Stump
Forsythe	Mattox	Taylor
Fountain	Mazzoli	Thompson
Fowler	Metcalfe	Thone
Fraser	Meyner	Thornton
Frey	Mikulski	Traxler
Fuqua	Mikva	Treible
Gammage	Miller, Ohio	Tucker
Garcia	Mineta	Udall
Gaydos	Minish	Ullman
Gephardt	Mitchell, Md.	Van Deerlin
Giaimo	Mitchell, N.Y.	Vanik
Gibbons	Moakley	Vento
Gilman	Moffett	Volkmer
Ginn	Mollohan	Waggonner
Glickman	Montgomery	Walgren
Gonzalez	Moore	Walker
Goodling	Moorhead, Pa.	Walsh
Gore	Moss	Watkins
Gradison	Mottl	Weaver
Grassley	Murphy, Ill.	Weiss
Green	Murphy, N.Y.	Whalen
Gudger	Murphy, Pa.	White
Hagedorn	Myers, Gary	Whitehurst
Hamilton	Myers, John	Whitley
Hanley	Myers, Michael	Whitten
Hannaford	Natcher	Wilson, Bob
Hansen	Neal	Wilson, C. H.
Harkin	Nedzi	Wilson, Tex.
Harrington	Nix	Winn
Harris	Nolan	Wirth
Harsha	Nowak	Wolff
Hawkins	Oakar	Wright
Heckler	Oberstar	Yates
Hefner	Obey	Yatron
Heftel	Ottinger	Young, Alaska
Hightower	Panetta	Young, Fla.
Hillis	Patten	Young, Mo.
Holland	Patterson	Young, Tex.
Hollenbeck	Pease	Zablocki
Holt	Perkins	Zeferetti
Holtzman	Pettis	
Horton	Pickle	

NOT VOTING—33

Ammerman	Hughes	Railsback
Anderson, Ill.	Ireland	Rhodes
Armstrong	Kemp	Risenhoover
Breaux	Krueger	Rudd
Burke, Calif.	Lujan	Sarasin
Caputo	Meeds	Shipley
Dickinson	Michel	Skubitz
Diggs	Milford	Stockman
Flowers	Miller, Calif.	Teague
Goldwater	Nichols	Tsongas
Guyer	Pepper	Wylie

Ms. MIKULSKI and Messrs. ABDNOR, CAVANAUGH, and SCHEUER changed their vote from "aye" to "no."

Mr. WAXMAN changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ERTEL

Mr. ERTEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERTEL: Page 8, immediately after line 5, insert the following:

"(7) In the case of a Member, each fundraising instance activity in which the Member knowingly allows the use of a designation or insignia which appears, or purports to appear, to indicate that it is an official communication, document, or other material of the Congress;"

Mr. ERTEL. Mr. Chairman, this amendment simply requires that any Member of Congress who knowingly allows the use of a facsimile of House stationery or any other House designation or insignia for fund-raising activities must list such instances in their financial disclosure report. My amendment would not prohibit this practice, nor would it place any constraint upon it. It simply requires that these cases must be reported.

Mr. Chairman, while I stress that this amendment does not stop a Member from allowing a noncongressional group or organization to use a facsimile of official House stationery, nor does the amendment indicate that such practice is improper, I would point out that the Senate Ethics Committee took up the question of this practice by Senators earlier this year.

On May 24 this Senate committee issued an advisory opinion which I would like to read from. It states as follows:

It is the opinion of the Select Committee that it is improper conduct which reflects upon the Senate for a Senator to authorize or allow a non-Senate individual, group, or organization to use the words "U S. Senate" or "official business" or any combination thereof on any letterhead or envelope.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I would appreciate it if the gentleman would read that statement again.

Mr. ERTEL. Certainly; I would be happy to.

This is the opinion by the Senate committee. It reads as follows:

It is the opinion of the Select Committee that it is improper conduct which reflects upon the Senate for a Senator to authorize or allow a non-Senate individual, group, or organization to use the words "U S. Senate" or "official business" or any combination thereof on any letterhead or envelope.

This advisory opinion became effective on August 4 of this year. Personally, I believe it is similarly improper for a Member of the House to permit this practice. However, some of my colleagues would disagree with this assessment.

Mr. Chairman, I believe that allowing an outside group or organization to use a facsimile of official House stationery is clearly a misrepresentation which is engaged in purely to mislead the recipient of the letter.

It has been the position of those who might oversee this activity that as long as the letterhead facsimile states that it was not printed or mailed at Government expense, there is nothing to stop this practice in the House. I might point out that House rule XLIII states that a Member of the House of Representatives shall conduct himself at all times in a manner which will reflect creditably on the House of Representatives. The rules also state that Members shall adhere to the spirit of this provision.

Mr. Chairman, it is my opinion that this matter constitutes grounds for a House Ethics Committee advisory opinion similar to that issued by the other body. I have been informed, however, that it does not.

I would also stress that the amendment does not relate to a Member using his name in fundraising activities, if he chooses to do so, or supporting someone or writing a letter on another's group's own letterhead.

The use of a facsimile of House stationery, however, is a significant practice which could be of direct or indirect benefit, including a financial benefit in the form of future contributions to a Member. As such, I believe that at the very least we should require that at any time a Member knowingly allows an outside group or organization to use a facsimile of official House stationery, or any other House designation or insignia, for a fundraising activity, this activity should be included in the Member's report. If we cannot determine the propriety of this activity, at least their own constituents should be allowed to make this determination.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from New Jersey.

Mr. THOMPSON. I thank the gentleman for yielding.

I would like to express my appreciation for the gentleman for this amendment. While I realize that it does require reporting, that is the extent to which one can go now, as I understand the gentleman's amendment. There is no prohibition; am I correct?

Mr. ERTEL. The gentleman is correct, and we cannot in this bill go further and prohibit, because I have been advised by the Parliamentarian that would be nongermane.

Mr. THOMPSON. The other body has gone a step further and has prohibited such use of the facsimile in the mails; is that correct?

Mr. ERTEL. That is correct. Their opinion by their Senate Ethics Committee prohibits it.

Mr. THOMPSON. I would like to thank the gentleman and point out, as I am sure all of us on either side of the aisle are well aware, we receive frequently pieces of mail with the names of Members of this body on the stationery.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. THOMPSON, and by unanimous consent, Mr. ERTEL was allowed to proceed for 3 additional minutes.)

Mr. THOMPSON. If the gentleman will yield further, we receive frequently pieces of mail with the names of Members of this body and of the other body, and it is obvious that they go out in enormous numbers, especially in direct mail fundraising activities all across the spectrum. I hope that not only the gentleman's amendment carries now, but at a later time that we follow the other body's rule and prohibit the use of facsimile mail or our official stationery for any purpose except official business. Otherwise, the mails can be inundated with facsimile appeals of all sorts without really the person whose name appears on the envelope as a Member of the House or of the other body actually knowing in all circumstances what goes into that envelope.

I commend the gentleman.

Mr. ERTEL. I thank the gentleman, and I agree with him.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from Iowa.

Mr. BEDELL. I thank the gentleman for yielding.

I would like to associate myself with the remarks of the gentleman from New Jersey. I certainly would hope that we would go further than this in the future, because I have constituents who have received such mail, and those constituents thought that this was actually a request from the Congress for funding for special interest projects.

I commend the gentleman for his amendment. I would hope that we would still go further in the future to where we would be certain that when people get mail that would appear to be official stationery or official mail from the United States Congress, they would know that that is what it is.

Mr. ERTEL. I thank the gentleman for his comments. I would indicate to him that I wish we could have gone further and prohibited it, but this bill would not allow us to do so. Disclosure is the only means at this point to at least point out to our constituents what is going on.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield for a question?

Mr. ERTEL. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman for yielding.

The gentleman has certainly raised a legitimate issue but I would like to ask him the meaning of his phraseology. He talks about a "designation" that in some way purports to give the impression of an official communication. Does that mean, for instance, that if a Member of Congress served on the board of directors of Americans for Democratic Action, or a conservative group, that he could not be identified on the masthead, if it were a fundraising letter, as a Member of Congress from Minnesota?

Mr. ERTEL. No. I do not believe that would be reportable. It says "official communication, document, or other material of the Congress." One may be on the advisory committee of the American Cancer Society and appear there as the Member from Maryland. It applies just when it appears to be a piece of mail from the Congress.

Mr. BAUMAN. Does that mean the Member who signs a fundraising letter for the Sierra Club would be prevented from signing his name and under it designating "Member of Congress"?

Mr. ERTEL. If it does not appear to be an official communication from the Congress, nor does it appear with the insignia of the Congress, he would not have to report it.

Mr. BAUMAN. What would the gentleman have placed at the top where his ordinary letterhead is?

Mr. ERTEL. Ordinarily, it would be like some of the mail we see going out that says, "Congress of the United States, House of Representatives, Washington, D.C." It has the man's name in the upper left hand corner. This would be a classic example.

The CHAIRMAN pro tempore. The time of the gentleman from Pennsylvania has expired.

(At the request of Mr. BAUMAN, and by unanimous consent, Mr. ERTEL was allowed to proceed for 1 additional minute.)

Mr. BAUMAN. Mr. Chairman, if the gentleman will yield further, that is what the gentleman seeks to prohibit; but what would the gentleman, if this amendment is passed, perceive as acceptable? Would the phrase "Member of Congress of the United States" and the Member's name under that on the letterhead be acceptable?

Mr. ERTEL. This would not appear to be official stationery of the House and I would think that is acceptable.

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from Pennsylvania.

Mr. GARY A. MYERS. Mr. Chairman, I receive mail which implies to me that it is from a Member and it is in the form of an invitation to attend a fund raiser for another Member or a couple other Members, or it may be in the form of an invitation for a group which is having a fund raiser. It would be my hope that it would extend to the Members as well that we could not use the insignia and the appearance of official business to invite each other.

The CHAIRMAN pro tempore. The time of the gentleman from Pennsylvania has again expired.

(At the request of Mr. GARY A. MYERS, and by unanimous consent, Mr. ERTEL was allowed to proceed for 2 additional minutes.)

Mr. GARY A. MYERS. Mr. Chairman, if the gentleman will yield further, that it would extend to ourselves in that there is the implication of official business where Members are, in fact, benefiting through a fundraiser.

Is it the gentleman's intention to require that type of reporting as well in the future have it prohibited; is that the intention of the gentleman from Pennsylvania, to cut out that practice of the House?

Mr. ERTEL. I am not quite certain I understand the question of the gentleman from Pennsylvania, because I do not have the piece of literature in front of me that the gentleman described; but if it says that the minority leader of the House of Representatives invites you to a fundraiser, that is not improper. That does not appear to be official stationery of the House.

Mr. GARY A. MYERS. Mr. Chairman, if the gentleman will yield further, if the majority leader were to invite me to a function which would yield campaign funds to a Member, whether it would be on the majority or the minority side, and on the top of that invitation there was the embossed insignia of the House of Representatives, or the seal, is that to be reported and is that not also offensive to the gentleman from Pennsylvania, as it is to me, and should be prohibited in the future?

Mr. ERTEL. Again, I would have to look at the piece of literature; but apparently what the gentleman describes purports to be an official communication, using the insignia and using the idea it is official business of Government, and that is reportable.

Mr. GARY A. MYERS. Mr. Chairman, if the gentleman will yield further, if the seal is on there, I should assume that would be reported if it is going to yield campaign funds.

Mr. ERTEL. I would think it would not be appropriate.

Mr. PHILLIP BURTON. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from California.

Mr. PHILLIP BURTON. Mr. Chairman, is the gentleman aware of the small beige personal stationery that a good number of us use?

Mr. ERTEL. Yes. I am aware of that.

The CHAIRMAN pro tempore. The time of the gentleman from Pennsylvania has again expired.

(At the request of Mr. PHILLIP BURTON, and by unanimous consent, Mr. ERTEL was allowed to proceed for 3 additional minutes.)

Mr. PHILLIP BURTON. Mr. Chairman, if the gentleman will yield further, would the use of that stationery, if not paid for by any public funds, but by personal funds or campaign funds, is that stationery, and it is a standard form, and I am doing this just in part so the history

on this is clear, is the use of that stationery permitted under the gentleman's amendment? It does not contain the flowery language, as I recall, in blue ink, "Congress of the United States," at least, that is my recollection at this point. I would be interested in the gentleman's reaction to that question.

Mr. ERTEL. As I remember, that usually has the gold seal at the top and has the Member's name underneath and off to the side your name as a Member of Congress.

Mr. PHILLIP BURTON. Yes, it is personal, I think.

Mr. ERTEL. I would think if you used that for fund raising activities and sent out a fund raising letter under that, you would have to report it; but I think it is marginal.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. Yes, I will yield, but first, does the gentleman from California (Mr. BURTON) have another question?

Mr. PHILLIP BURTON. I may have in a few moments, but not now.

Mr. ERTEL. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I have a question to ask.

If a Member of the House should write a letter to a very important civic group or organization, complimenting for instance, the "Sunnyside Community Group" for its endeavors, for its high social purposes, and for the many ways in which it has been helpful to the community, and then that letter is reproduced without the Member's knowledge and inserted in a fundraising package, what burdens then fall on the Member?

Mr. ERTEL. None whatsoever.

Mr. VANIK. Well, wait a minute. He can still be cited, and he may have to come in and show that the fundraising use was not disclosed to him.

Mr. ERTEL. A Member can be cited for any alleged violation, even though he knows nothing about it.

Mr. VANIK. Mr. Chairman, it seems to me, then, that we simply ought to pass a law forbidding the reproduction of any congressional letter. Once a Member sends a letter to a person, he loses control of it. That person has the letter and can reproduce it. He can do anything he wants with it. Should we expose the Member for citation or explanation before the Ethics Committee to explain that he did not know it was a fundraising operation? That exposes every Member to a very unfair publicity assault.

Mr. ERTEL. Mr. Chairman, if I may reclaim my time, I do not believe a complaint would ever be brought against a Member in such an instance as a result of the adoption of this particular reporting requirement because, No. 1, the Member would have to have the knowledge, and under the gentleman's hypothesis the Member would not know.

Secondly, this would not be a fundraising letter or activity. Somebody in another office is using it, but the Member is not aware of it, and the Member was not allowing it to be used for fundraising activities. The letter was not sent for the purpose of fundraising. If I send a letter to the "Sunnyside Community Group" saying "you are doing an excellent job," that is not a fundraising activity.

Mr. THOMPSON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wish to make a statement, and I will yield to the gentleman from Pennsylvania (Mr. ERTEL) later for a reply.

In looking over the original language of the gentleman's amendment, which was printed in the RECORD on September 12, 1978, on page H9612, I persuaded the gentleman to strike a clause which perhaps, on second thought, should be reintroduced as an amendment or modification to the language.

If I may have the attention of the Members, I think that clause would take care of the question with respect to fundraising.

The gentleman's original amendment, as it was drafted, includes a semicolon and has the following language added:

> Except that the Member is not required to list instances in which the Member uses such designation or insignia in fund-raising activities for his own campaign.

Mr. Chairman, that would seem to answer virtually any question except that of the gentleman from Ohio (Mr. VANIK) with respect to whether it is official or not. If that language were added, it would be my understanding that the prohibition would go only to the unlimited use by other persons of stationery, facsimile stationery or otherwise, for purposes of fundraising or other purposes really beyond the Member's control.

In a word, if Members do have the control and were to write "thank you" letters to people, they could use their official stationery, even though they might have to put postage on them.

Mr. ERTEL. Mr. Chairman, if the gentleman will yield, if that provision had been in there, the Member could use that stationery and not have to report it, if it was for one's own fundraising activities, just as the gentleman from California (Mr. WIGGINS) said.

Mr. Chairman, if the gentleman is offering that as an amendment, I would accept it.

Mr. THOMPSON. Mr. Chairman, would it be appropriate to ask unanimous consent to add the following words to the gentlman's amendment as a modification:

After the word, "Congress," add a semicolon and the words: "except that the Member is not required to list instances in which the Member uses such designation or insignia in fund-raising activities for his own campaign"?

Mr. Chairman, I make that as a unanimous consent request.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. WIGGINS. Mr. Chairman, reserving the right to object, under my reservation, may I urge all the Members to take a deep breath and think about what is going on here. We are asked to clutter up the United States Code with a matter which is appropriately addressed to our own rules, and that is on the use of House stationery.

Moreover, the United States Code provisions carry criminal penalties for failure to comply adequately with them. And given the uncertainty here, I just cannot believe the Members would heap that risk upon themselves. The place to deal with this problem is in our rules. Now, we can do that in very short order, without cluttering up the United States Code.

One final remark under my reservation of objection: The only thing that the amendment does is to compel disclosure. Disclosure of what? Disclosure of a highly public, highly visible mass mailing. Well, that is like compelling disclosure of a parade. There is no public served by compelling disclosure of something that is very visible and in the public. I think the problem to which the amendment is addressed is a real one, but let us not put it forth in perpetuity in the United States Code but, rather, let us deal with it in the rules, where it belongs.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. WIGGINS. Further reserving the right to object, Mr. Chairman, I yield to the gentleman from New Jersey.

Mr. THOMPSON. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has made a very important point. For a moment I lost track, candidly, that this does become a part of the United States Code, that it does involve a criminal penalty. As much as I think we need it, it should certainly be done elsewhere, in my judgment.

Mr. WIGGINS. Mr. Chairman, I would hope that the gentleman from Pennsylvania would withdraw his amendment. But if he does not, then we should vote against it.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. GARY A. MYERS. Mr. Chairman, reserving the right to object, I would like to address a comment to the gentleman from New Jersey (Mr. THOMPSON).

Mr. Chairman, it seems to me that the gentleman's unanimous-consent request goes in the reverse direction to which the gentleman from Pennsylvania (Mr. ERTEL) and I have already indicated. I think the Congress would be misread if we reserved for ourselves the ability to use official-looking paper for fund raisers, and I think that that makes the amendment even more offensive.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. GARY A. MYERS. Further reserving the right to object, Mr. Chairman, I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, what I am trying to say now is that I hope there will be an objection to my unanimous-consent request.

Mr. GARY A. MYERS. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. WYDLER. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Objection is heard.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, it is my understanding that the gentleman will take this up in his committee within the next year, will have hearings on it, and will bring out a similar type of legislation, to prevent the use of a facsimile.

Mr. THOMPSON. Mr. Chairman, the appropriate forum of jurisdiction should certainly have hearings, and I rather fervently hope I will be here next year to help to conduct them or to conduct them. But I do think the matter needs further study, and I, for my part, would like to withdraw my addition and suggest to the gentleman from Pennsylvania that he withdraw his amendment, and that we look at this matter very carefully, with a view toward accomplishing exactly what we do want to accomplish without messing up the United States Code in the process.

Mr. ERTEL. Mr. Chairman, I ask unanimous consent to withdraw my amendment at this time.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENTS OFFERED BY MR. GARY A. MYERS

Mr. GARY A. MYERS. Mr. Chairman, I offer amendments which apply to both title I and title II, and I ask unanimous consent that they be considered en bloc.

Mr. DANIELSON. Mr. Chairman, I reserve a point of order on the amendments.

The Clerk read as follows:

Amendments offered by Mr. GARY A. MYERS:

Page 3, line 8, strike out "(2)" and insert in lieu therof "(1) (other than the identity of the source of income), (2),".

Page 3, line 12, strike out "(2)" and insert in lieu thereof "(1) (other than the identity of the source of income, (2),".

Page 23, line 11, strike out the period at the end thereof and insert in lieu thereof a comma and the following: "except that this paragraph shall not require the reporting of the amounts of income received while the reporting individual was not holding any office or position described in section 201 (f).".

Page 26, line 13, strike out the period at the end thereof and insert in lieu thereof a comma and the following: "except that this paragraph shall not require the reporting of the amounts of income received while the reporting individual was not holding any office or position described in section 201(f).".

The CHAIRMAN pro tempore. The gentleman from Pennslyvania has asked unanimous consent to consider the amendments en bloc in spite of the fact that one of them applies to title II.

Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. DANIELSON. Mr. Chairman, I reserve a point of order. My point of order, I believe, goes to the request.

The CHAIRMAN pro tempore. Does the gentleman reserve or assert his point of order?

Mr. DANIELSON. I will state my point of order, with the Chair's permission.

That is, that the amendments apply to both title I and title II of the bill. We are now considering title I.

The CHAIRMAN pro tempore. The Chair would advise the gentleman from California that before his point of order was made, the gentleman from Pennsylvania had asked unanimous consent that the two amendments be considered en bloc, notwithstanding the fact that one of the amendments extended to another title.

Mr. DANIELSON. Mr. Chairman, I will withdraw my point of order, and I will not object to considering the amendments en bloc.

The CHAIRMAN pro tempore. The gentleman from Pennslyvania (Mr. GARY A. MYERS) is recognized for 5 minutes in support of his amendments.

Mr. GARY A. MYERS. Mr. Chairman, these amendments are relatively simple amendments that would apply to candidates in title I for the legislative position as well as in title II to those people who would be in a status of an appointee to the executive branch. The amendments would simply relieve those individuals from disclosing the size of income under the reporting of this bill.

The reason I seek to do that is, to some extent, address the concern that has been expressed here, that we have to realize that there are certain disincentives we are building for people who come as candidates for these positions. It seems to me we ought to recognize that the size of the salary of an individual is often a very confidential relationship between himself or herself and the employer; and that, while a person might want to, as a candidate, disclose it, he might also recognize that he or she might be creating some substantial problems for a third party, that being the employer, who is an innocent party in the whole thing.

I know from my own experience that I worked in a job in which I did not know the salary of the person who was my peer, and he was not supposed to know mine. If I were to disclose it, or if it were to be public knowledge information, it might create a problem for the employer to try to explain why the employer evaluated my service either as a more valuable or less valuable contribution.

So, what I am trying to do here is remove from the bill an impact on innocent parties, those being employers, and also remove a disincentive that a potential candidate might find would create difficulties for an employer. These amendments would still require those individuals to report the source of income and type of income, but really, I do not think it made much difference whether as a candidate I was earning $16,000 as a turn foreman at Armco or $19,000 or $20,000.

But that small difference might make a lot of difference in the opinion of the people who were my peers on that job if they were earning a $1,000 or $2,000 less than I was. That is the type of situation we might be creating if we do not adopt this amendment.

I make it clear, though, that if a person was to retain the employment after he or she was elected, that they would have to meet all reporting requirments and disclose the amount as well as the source of the income at that point. I repeat, once they become public officials either in the legislative branch or the executive branch, then that full reporting, including the amount of income would be required of them.

I yield back the balance of my time.

Mr. DANIELSON. Mr. Chairman, I rise in opposition to the amendments offered by the gentleman from Pennsylvania (Mr. GARY A. MYERS).

Mr. Chairman, I would like to point out, as the gentleman from Pennsylvania (Mr. GARY A. MYERS) has said, the first two provisions of his amendment, cover some of the same ground that we covered in our earlier debate on the question of whether or not a candidate for office should be compelled to report. It does not cover the identical ground but it would eliminate the requirement for reporting anything except the identity of the source of the income, the amount of the income would be eliminated under the gentleman's amendment. This would substantially nullify the value of reporting in the first place. For that reason the amendment should be turned down, if we are talking about candidates for the legislative branches of the Congress. The other two portions of the gentleman's amendment, relate to title II of the bill, where we would be interfering with the reporting requirement of the members of the executive branch of the Government.

The fourth branch of the amendment, would provide that, on page 26, line 13:

Except that this paragraph shall not require the reporting of the amounts of income received while the reporting individual was not holding any office or position described in section 201(f).

What we are talking about in this section of the bill are those persons who are either new members of the executive branch, or persons whose names are transmitted to the Senate by the President for the purpose of advice and consent or, under (c) persons who may be candidates for nomination to the office of President or vice president.

Mr. GARY A. MYERS. Mr. Chairman, if the gentleman will yield, the gentleman implies we are talking about people who are actually employed by the Federal Government.

Mr. DANIELSON. No, the gentleman does not imply that and did not mean to imply that and has not said that.

Mr. GARY A. MYERS. I think we should make it clear it applies to new individuals at the time between the time they are appointed and before they get to actually being in the employ of the Federal Government.

Mr. DANIELSON. That is correct.

Mr. GARY A. MYERS. I thank the gentleman.

Mr. DANIELSON. That is exactly what this gentleman has been arguing. This amendment would nullify the whole thrust of the requirement that

when the President takes the name of some individual and sends it over to the Senate for advice and consent, that that person is required to file a report stating his financial condition, et cetera, as of a date no longer than 30 days prior thereto. The gentleman's amendment would negate that, it would defeat the purpose of having this requirement in the first place.

Mr. GARY A. MYERS. If the gentleman will yield further, there is nothing in my amendment which would prevent any President from requiring a potential appointee from giving to him and to the Senate information that they would require and need to make a proper evaluation.

What it does do, it does prohibit, as a matter of course, making them disclose any information that may not have any bearing on their appointment, so that the President is not restricted. It is incorrect to imply that the President is restricted.

Mr. DANIELSON. Mr. Chairman, if I may recapture my time, the President himself requests that provision to be in the law. He already demands of his nominees that they make a financial disclosure, but he wants this to become a part of the law. The President fully supports this provision. The fact is that the President can already demand disclosure of his nominees and they are already disclosing what they have but the fact is that he wants to have that part of our present law, he is for all of the provisions of this statute and in support of fair, accurate and competent reporting.

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield very briefly.

Mr. GARY A. MYERS. Will the gentleman support my amendment if I ask unanimous consent to strike the reference to title II?

Mr. DANIELSON. No. I am opposed to it in title I for the reasons which I stated before. They are a lesser version of the amendment offered by the gentleman from California (Mr. WIGGINS), which was defeated by a vote of almost 11 to 1. Here we would be in effect reviving the Wiggins amendment in part, and I oppose that anyway.

The CHAIRMAN. The time of the gentleman from California (Mr. DANIELSON) has expired.

(On request of Mr. GARY A. MYERS, and by unanimous consent, Mr. DANIELSON was allowed to proceed for 1 additional minute.)

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Pennsylvania.

Mr. GRAY A. MYERS. Mr. Chairman, will the gentleman agree with me that by requiring people to disclose the amount of income that we are requiring them to disclose information which is confidential in nature, in many cases with a third party who is an innocent party to the election?

Mr. DANIELSON. I will respond very directly. There is some truth in what the gentleman says, but that truth runs throughout the length and breadth of this bill. I respectfully submit that if it is proper for a Member of Congress to report his financial transactions, then it is likewise proper for a person who may be appointed to an executive position to do so. The President himself wants us to put this in the bill. What we are doing, as was so ably stated during the general debate by so many people, is that we are opening this information up for public examination.

The CHAIRMAN. The time of the gentleman from California (Mr. DANIELSON) has again expired.

(On request of Mr. GARY A. MYERS, and by unanimous consent, Mr. DANIELSON was allowed to proceed for 1 additional minute.)

Mr. DANIELSON. Mr. Chairman, the onus, if there is one, of reporting one's assets and one's financial transactions should be borne evenhandedly by people in all the branches of Government. That is how this bill has been constructed. I know that it will impact some people but there is one thing to bear in mind. No one has to seek an executive job. No one has to run for Congress. So that when we do take these actions which put us on the treadmill, then we can in the future be expected to comply.

Mr. GARY A. MYERS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Pennsylvania.

Mr. GARY A. MYERS. I thank the gentleman for yielding.

I think the gentleman made my case in the last remark when he said the burden ought to be borne equally by all people in Government. That goes to the point of the amendment. The point of the amendment is that the people who would be affected by this amendment are not members of the Government. They are at the stage where they might become members of the Government.

The CHAIRMAN. The time of the gentleman from California (Mr. DANIELSON) has again expired.

(On request of Mr. GARY A. MYERS, and by unanimous consent, Mr. DANIELSON was allowed to proceed for 1 additional minute.)

Mr. GARY A. MYERS. Mr. Chairman, if the gentleman will yield further, it seems to me in an awful lot of legislation we make the decision whether we are going to encroach further and further on the people with our legislation. What this means is if there is a small businessman or a big corporate entity—and I think it will probably cause more problems for the small business people in one's district because they have confidential relationships between themselves and their employees they are going to be put in the position of having to explain why one person makes $200 more a month than another.

Mr. DANIELSON. Mr. Chairman, I have to recapture my time. This is simply another argument of another portion of the bill; namely, that it is going to bring forth public disclosures of certain facts which today are deemed confidential. We do have a difference of philosophy on this.

Mr. Chairman, I urge defeat of the amendment.

The CHAIRMAN pro tempore. The question is on the amendments offered by the gentleman from Pennsylvania (Mr. GARY A. MYERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GARY A. MYERS. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order a quorum is not present.

The CHAIRMAN pro tempore. The Chair will count. Seventy-two Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN pro tempore. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN pro tempore. The pending business before the committee is the demand of the gentleman from Pennsylvania (Mr. GARY A. MYERS) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 39, noes 353, not voting 40, as follows:

[Roll No. 807]

AYES—39

Ashbrook	Hansen	Satterfield
Brown, Ohio	Holt	Scheuer
Broyhill	Hyde	Shuster
Burgener	Kasten	Steed
Burleson, Tex.	Kindness	Steiger
Butler	Krebs	Symms
Cleveland	McClory	Taylor
Collins, Tex.	McDonald	Treen
Conable	Miller, Ohio	Van Deerlin
Crane	Myers, Gary	Vander Jagt
Frenzel	Pattison	Walgren
Goldwater	Quayle	Wydler
Hammer-schmidt	Robinson	
	Rostenkowski	

NOES—353

Abdnor	Boggs	Coleman
Addabbo	Boland	Collins, Ill.
Akaka	Bolling	Conte
Alexander	Bonior	Conyers
Ambro	Bonker	Corcoran
Anderson, Calif.	Bowen	Corman
Andrews, N.C.	Brademas	Cornell
Andrews, N. Dak.	Breckinridge	Cornwell
Annunzio	Brinkley	Cotter
Applegate	Brodhead	Coughlin
Archer	Brooks	Cunningham
Ashley	Broomfield	D'Amours
Aspin	Brown, Calif.	Daniel, Dan
AuCoin	Brown, Mich.	Daniel, R. W.
Badham	Buchanan	Danielson
Bafalis	Burke, Fla.	Davis
Baldus	Burke, Mass.	de la Garza
Barnard	Burlison, Mo.	Delaney
Baucus	Burton, John	Dellums
Bauman	Burton, Phillip	Derrick
Beard, R.I.	Byron	Derwinski
Beard, Tenn.	Carney	Devine
Bedell	Carr	Dicks
Beilenson	Carter	Dingell
Benjamin	Cavanaugh	Dodd
Bennett	Cederberg	Dornan
Bevill	Chappell	Downey
Biaggi	Chisholm	Drinan
Bingham	Clausen, Don H.	Duncan, Oreg.
Blanchard	Clawson, Del	Duncan, Tenn.
Blouin	Cochran	Early
	Cohen	Eckhardt
		Edgar

Edwards, Ala.	Keys	Pritchard
Edwards, Calif.	Kildee	Pursell
Edwards, Okla.	Kostmayer	Quie
Eilberg	LaFalce	Quillen
Emery	Lagomarsino	Rahall
English	Latta	Rangel
Erlenborn	Leach	Regula
Ertel	Lederer	Reuss
Evans, Colo.	Le Fante	Richmond
Evans, Del.	Leggett	Rinaldo
Evans, Ga.	Lehman	Roberts
Evans, Ind.	Lent	Rodino
Fary	Levitas	Roe
Fascell	Livingston	Rogers
Fenwick	Lloyd, Calif.	Roncalio
Findley	Lloyd, Tenn.	Rooney
Fish	Long, La.	Rose
Fisher	Long, Md.	Rosenthal
Fithian	Lott	Rousselot
Flippo	Lujan	Roybal
Flood	Luken	Runnels
Florio	Lundine	Ruppe
Flynt	McCloskey	Russo
Foley	McCormack	Ryan
Ford, Mich.	McDade	Santini
Ford, Tenn.	McEwen	Sawyer
Forsythe	McFall	Schroeder
Fountain	McHugh	Schulze
Fowler	McKay	Sebelius
Fraser	McKinney	Seiberling
Frey	Madigan	Sharp
Fuqua	Maguire	Sikes
Gammage	Mahon	Simon
Garcia	Mann	Sisk
Gaydos	Markey	Skelton
Gephardt	Marks	Skubitz
Giaimo	Marlenee	Solarz
Gibbons	Marriott	Slack
Gilman	Martin	Smith, Iowa
Ginn	Mathis	Smith, Nebr.
Glickman	Mattox	Snyder
Gonzalez	Mazzoli	Spellman
Goodling	Metcalfe	Spence
Gore	Meyner	St Germain
Gradison	Mikulski	Staggers
Grassley	Mikva	Stangeland
Green	Mineta	Stanton
Gudger	Minish	Stark
Hagedorn	Mitchell, N.Y.	Steers
Hall	Moakley	Stratton
Hamilton	Moffett	Studds
Hanley	Mollohan	Stump
Hannaford	Montgomery	Thompson
Harkin	Moore	Thone
Harrington	Moorhead, Calif.	Thornton
Harris	Moorhead, Pa.	Traxler
Harsha	Moss	Trible
Hawkins	Mottl	Udall
Heckler	Murphy, Ill.	Ullman
Hefner	Murphy, N.Y.	Vanik
Heftel	Murphy, Pa.	Vento
Hightower	Murtha	Volkmer
Hillis	Myers, Michael	Waggonner
Holland	Natcher	Walker
Hollenbeck	Nedzi	Walsh
Holtzman	Nix	Wampler
Horton	Nolan	Watkins
Howard	Nowak	Waxman
Hubbard	Oakar	Weaver
Huckaby	Oberstar	Weiss
Hughes	Obey	Whalen
Ichord	O'Brien	Whitehurst
Ireland	Ottinger	Whitley
Jacobs	Panetta	Whitten
Jeffords	Patten	Wilson, Bob
Jenkins	Patterson	Wilson, Tex.
Jenrette	Pease	Winn
Johnson, Calif.	Perkins	Wirth
Johnson, Colo.	Pettis	Wolff
Jones, N.C.	Pickle	Yates
Jones, Okla.	Pike	Yatron
Jones, Tenn.	Poage	Young, Alaska
Jordan	Pressler	Young, Fla.
Kastenmeier	Preyer	Young, Mo.
Kazen	Price	Zablocki
Kelly		Zeferetti

NOT VOTING—40

Ammerman	Meeds	Shipley
Anderson, Ill.	Michel	Stockman
Armstrong	Milford	Stokes
Breaux	Miller, Calif.	Teague
Burke, Calif.	Mitchell, Md.	Tsongas
Caputo	Myers, John	Tucker
Clay	Neal	White
Dent	Nichols	Wiggins
Dickinson	Pepper	Wilson, C. H.
Diggs	Railsback	Wright
Flowers	Rhodes	Wylie
Guyer	Risenhoover	Young, Tex.
Kemp	Rudd	
Krueger	Sarasin	

Mr. BURKE of Massachusetts changed his vote from "aye" to "no."

Mr. WALGREN changed his vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Chairman, I ask unanimous consent to offer an amendment.

The CHAIRMAN. The amendment is not printed in the RECORD?

Mr. FRENZEL. That is correct, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL: On page 7, line 10, immediately before the period insert "or any deposit of $5,000 or less in a personal savings account which bears interest".

Mr. FRENZEL. Mr. Chairman, this is an amendment proposed by our colleague from California (Mr. WIGGINS) which would have exempted from reporting amounts held in personal savings accounts, in interest-bearing accounts. Typically, this would cover an account in a savings and loan savings bank or commercial bank. As originally drafted, the amendment would have exempted any amount. However, after consultation with the distinguished chairman of the Select Committee on Ethics and by unanimous consent of this body I have changed it to a limit of $5,000 on the amount that could be held in these accounts without disclosure.

The reasons, of course, is that some Members may own securities, or any kind of assets, that they might consider would be a conflict. After this amendment is in effect, they could sell that asset, put the money in a savings account and rid themselves of the conflict of interest. There would be no reason, if it were a small savings account, to have to make a report on it.

Mr. PREYER. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from North Carolina.

Mr. PREYER. Mr. Chairman, the committee agrees with this amendment, and we accept it. A personal savings account is a borderline case in a conflict-of-interest situation anyway. The reason we felt it should be included was the fact that there could be a surge of an amount of money going into personal savings accounts which might have some bearing on the conflict of interest. But, if it is limited to savings accounts under $5,000, I do not see how there could be any serious conflict of interest, and we would agree to the amendment.

Mr. FRENZEL. I thank the Chairman.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, does this apply to deposits in all savings and loan institutions in America? Does the gentleman's amendment include deposits on credit union deposits? Are they included?

Mr. FRENZEL. Yes; they are.

Mr. VANIK. A person could distribute deposits among all the savings and loans in this area or in another area. Is this an aggregate figure or just an individual top?

Mr. FRENZEL. Mr. Chairman, I really had not considered this, but I would guess in the spirit of the discussion between the chairman and myself that it would be our intention that it would be an aggregate amount. It does not say that, but that would be the intention of the mover of the amendment.

Mr. VANIK. Why not amend your amendment to include deposits aggregating $5,000?

Mr. FRENZEL. I will yield to the gentleman.

Mr. VANIK. I thank the gentleman for his explanation.

Mr. FRENZEL. I think this discussion will make it clear.

The CHAIRMAN pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. FRENZEL).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL: On page 11, strike out lines 14 through 25, and insert:

(c) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

Mr. FRENZEL. Mr. Chairman, this is an amendment which has also been offered by our colleague, the gentleman from California (Mr. WIGGINS). It simply rewrites the section so that a person requesting information under this act may not or need not be required to leave his name and organization. Because of that requirement persons may be unwilling to make the request for information. The gentleman from California (Mr. WIGGINS) feared that particular feature, unless it was changed, might dissuade some people from seeking information under this act.

Mr. DANIELSON. Mr. Chairman, I would like to inquire, is this being requested similarly in title II?

Mr. FRENZEL. Will this also be requested in title II?

Mr. DANIELSON. I believe it is.

Mr. FRENZEL. If it is accepted here, there may be an attempt to make it acceptable in title II and title III. I would not say it will be done or not.

Mr. DANIELSON. I do not know that it will be acceptable in title II.

Mr. FRENZEL. I thank the gentleman.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Minnesota (Mr. FRENZEL).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL: On page 8, immediately after line 5, insert the following:

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employee.

Mr. FRENZEL. Mr. Chairman, this amendment simply conforms title I to titles II and III with respect to requiring disclosure of future employment. It is an amendment also of our colleague, the gentleman from California (Mr. WIGGINS). I would hope that the House would feel it is responsible to require the disclosure of future employment in the legislative branch as well as in the executive and judicial.

Mr. PREYER. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from North Carolina.

Mr. PREYER. Mr. Chairman, this same provision is included in the executive branch and the judicial branch of the bill and therefore we think it is appropriate that it also be included in the legislative branch and we would accept the amendment.

Mr. DANIELSON. Mr. Chairman, if the gentleman would yield, I would like to point out that we are talking about title I, the legislative branch, and this is imposing added responsibilities in reporting.

I will not debate it further.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Minnesota (Mr. FRENZEL).

The question was taken; and on a division (demanded by Mr. FRENZEL) there were—ayes 25, noes 2.

So the amendment was agreed to.

AMENDMENT OFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Chairman, I offer an amendment and I ask unanimous consent that I may be permitted to offer the amendment on page 9, line 18.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL: On page 9, line 18, before the second comma add the following language: "(except by inheritance)".

On page 10, line 4, before the second comma add the following: "(except by inheritance)".

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. FRENZEL. Mr. Chairman, I am sorry that I had to resort to these unanimous-consent requests. In both cases there were very slight modifications in amendments which have been entered in the record for a number of days, and in some cases, months. So the Members have had a good chance to at least consider the substantive matter that is encompassed within this amendment, just as was the case in the previous one. In this amendment, on page 9, line 18, I add the language "(except by inheritance)".

Some of the Members will recall that for spouses who have dependent children, certain disclosure requirements are required if the individual derives or expects to derive any financial or economic benefit.

My amendment does not change the requirement that disclosure must be made if the individual derives any economic benefit. However, if the assets owned by the spouse have been created or acquired without any effort on the part of the reporting individual, and the reporting individual acquires and derives no benefits from those assets, this amendment would allow that individual will not have to make a disclosure solely because he or she may someday inherit those assets.

It seems to me that there is no reason in the world to require that kind of disclosure when you may simply accidentally come into those assets somewhere later down the road.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I raise an issue on this amendment because it seems to me the issue is not how the assets are brought about. If they are brought about by gift or by inheritance, they are nevertheless there. The fact that they may not be of direct, immediate consequence to the person subject to the report is not the entire issue. It is incredible to me to believe that there is no advantage from an inheritance which may flow to another member of their family.

The fact of the matter is that the person affected by that kind of inheritance acts in a certain specific way on legislation, such as when it comes to tax legislation which might affect that inheritance.

What would a member endowed with inheritance wealth in his family do with respect to estate taxes, with respect to capital gains advantages, with respect to all of those many things which provide special privileges for wealth and large inheritances?

I think we ought to know in this chamber which Members of this House are influenced and affected by inherited wealth. It is all right to put it on the record. Anything which serves to affect the judgment of the legislator in acting upon a legislative matter ought to be put on the record so that his or her position can be tested on the basis of its objectivity.

Mr. Chairman, to provide an exemption for inherited wealth, provides a class distinction, a class discrimination, which we should not tolerate in the House of Representatives.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for his contribution.

I can understand his feeling. The intention of the amendment, however, is to say that if one has a spouse who has acquired assets on his or her own, he or she should have some privacy; and if one does not now derive benefit from those assets, but may only at some time in the future acquire them through inheritance—and there is no reason to believe necessarily that the person will, except that he or she may—one should not have to make that report.

The genesis of this amendment was that I thought spouses had equal rights, and others should not have to report by virtue of their job unless they were directly affected by it.

Mr. PREYER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, we debated this point at some length in the committee. The committee considered the arguments on it, and we voted against excluding inheritance from the two-prong test which we have as to spouse assets.

We think we have a balanced reporting situation now for spouse assets, and I would have to oppose the amendment.

Mr. JOHNSON of Colorado. Mr. Chairman, will the gentleman yield?

Mr. PREYER. Yes, I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Chairman, I thank the gentleman for yielding.

As I read the language on page 9, it says that the individual "expects to derive."

If my wife has a father who is alive, I assume that he will sometime, in due course, pass away; and I assume that in due course he will leave her some inheritance.

When do we have to start reporting under this language as long as any of us have parents or our wives have parents who are alive and who may leave anything?

It seems to me that under this "expectation to derive," we then have to report any of that; is that correct?

Mr. PREYER. No. It only relates to the assets which one's spouse may now have. It is not anything she may expect to derive from her father in the future.

Mr. JOHNSON of Colorado. If the gentleman will yield further, what does the language mean when it says "nor expects to derive"—"from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit"?

Mr. PREYER. That means that one may expect to derive in the future benefits from assets which his or her spouse now has, namely, by inheritance.

Mr. JOHNSON of Colorado. But it does not reflect, then, any requirement that we have to start reporting what our spouses will expect to derive at some time in the future through inheritance, does it?

Mr. PREYER. No, absolutely not.

Mr. JOHNSON of Colorado. Mr. Chairman, I thank the gentleman for the explanation.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Minnesota (Mr. FRENZEL).

The amendment was rejected.

AMENDMENT OFFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL: On

page 12, strike out lines 17 through 19 and insert the following:

(D) for use, directly or indirectly, in the solicitation of money for any purpose, other than for a political purpose.

Mr. FRENZEL. Mr. Chairman, this is another one of the amendments of the gentleman from California (Mr. WIGGINS). He was particularly concerned about the prohibition of the use of material developed in these disclosure statements for various purposes with respect to political campaigns. He devised this amendment as a way to insure that we or our opponents, the candidates, would be able to use those disclosures to attack us if they thought legitimate issues could be raised, and would be able to include those legitimate issues in letters to others, some of which might, in fact, ask for money.

It is my judgment that the amendment may not be necessary if the gentleman from North Carolina would give us a clearer idea of what section (D) on page 12, line 17, really means with respect to the use of this information.

I yield to the gentleman from North Carolina.

Mr. PREYER. I thank the gentleman for yielding.

I talked to the gentleman from California about this earlier. This provision is intended only to prohibit the use of the names of reporting individuals for a mass mail political fund-raiser. It is not intended to prohibit a candidate from using the information in a Member's disclosure statement as part of a campaign fund-raising appeal.

I think what the gentleman from California was concerned about was that a candidate could not use the information in one of our disclosure statements as a basis for arguing, "Give me x dollars to fight this man who has this conflict of interest." This does not reach that area at all.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman from North Carolina for that explanation. I think that is exactly what the gentleman from California (Mr. WIGGINS) was interested in. Because of that explanation, Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The CHAIRMAN. Are there further amendments to title I?

AMENDMENT OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VOLKMER: On page 8, strike lines 12 through 19 and insert in lieu thereof the following:

"(1) up to $5,000;
"(2) from $5,000 to $15,000;
"(3) from $15,000 to $50,000;
"(4) from $50,000 to $100,000;
"(5) from $100,000 to $250,000;
"(6) from $250,000 to $500,000;
"(7) from $500,000 to $1,000,000;
"(8) from $1,000,000 to $2,000,000;
"(9) from $2,000,000 to $5,000,000; and
"(10) greater than $5,000,000."

Mr. VOLKMER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. ASHBROOK. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Objection is heard.

The Clerk will read.

The Clerk concluded reading the amendment.

Mr. VOLKMER. Mr. Chairman, this is to increase the maximum amounts by categories from the $100,000 limit in the category that is presently in the substitute to the language that is actually in H.R. 1 as reported out of the House Committee on the Judiciary, and also as is contained in the Senate bill as to categories of reporting for assets and liabilities. I feel personally that the limit that is present in the substitute, just greater than $100,000, does not really cover the field as it should be covered, because we have many who have assets of $101,000, and they are going to be shown in the same category with the same reflection as the person who has $13 million or $5 million in a category.

This is to just carry on the category so that the assets and liabilities can be delineated better than presently in the substitute.

I believe that the Committee on the Judiciary when it reported out the language as contained in this amendment made a wise and right decision. I believe also that the Senate did the same. I am merely asking that the House also be willing to categorize up to the $5 million figure. There are Members not only in this body, but candidates running for Congress, plus several Members in the other body who do fall in the category considerably above $100,000.

I see no reason why there would be any objection to this amendment, because it merely categorizes above $100,000, where in the substitute there is no category whatsoever, although a person would still have to report over $100,000.

Therefore, I ask the House and request that it adopt the amendment.

Mr. PREYER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would strongly oppose adopting this amendment. What it would do is to tend to have all of us in Congress file a net worth statement. If you have to file in categories up to $5 million, that is going to include the net worth of most people who are Members of Congress.

Now, the purpose of disclosure is not to make net worth statements. The purpose is to point out potential conflicts of interest.

Now, "over $100,000," which is our highest category, is certainly a substantial potential for conflict of interest. The fact that it might be $1 million or $5 million, instead of $100,000, adds to the magnitude of the conflict, but not very much. What it would really do to require categories of value of this size would be to meet public curiosity, but that would not necessarily meet the public interest. We think the present categories of value deal with the question of whether there are potential conflicts of interest. To go this high on it is to get into the area where we are invading privacy and where we are really appealing to the curiosity of the public, rather than to their interest in conflict of interest; so I would hope this amendment would be defeated.

Mr. MOORHEAD of California. Mr. Chairman, I move to strike the last word.

I rise in opposition to the amendment.

Mr. Chairman, I feel that the $100,000 category is sufficient to bring to the American people all the conflicts that possibly exist, that all the detail required by this amendment would serve no real purpose and would unnecessarily violate the privacy of the individuals involved. There is just as much conflict at the $100,000 level as there is at $250,000, $500,000, or at the $1 million level.

It is our desire to see that all the potential conflicts be pointed out to the American people. That is done in the present wording of the bill.

Mr. Chairman, I would hope that this amendment will be rejected.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I have an amendment which would have lowered these categories, but in deference to the gentleman from North Carolina, I have decided not to offer it.

I think on more sober reflection that the categories that are in the Danielson substitute which the committee is now considering are adequate.

I echo the sentiments of the chairman, which are that if we expand the categories higher into those exotic $1, $3, and $5 million regions, we are not doing any good to anybody. When we have over $100,000, there is a potential for conflict, and we are only trying to pinpoint a potential for conflict. We are not trying to define it or describe it precisely, nor do we wish to offer any incentives to extortioners, kidnapers, and so forth.

Mr. Chairman, the amendment, I think, does no good for the purposes of disclosure, and I hope it will be defeated.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, is the gentleman, then, saying that if a person has over $100,000 in assets of a certain category, that person has a conflict of interest?

Mr. FRENZEL. The gentleman said no such thing. I merely said that we were trying to pinpoint or outline potential conflicts or areas that people might consider to be conflicts, and I think that can be described in $100,000 terms as well as million-dollar terms.

Mr. VOLKMER. Mr. Chairman, if a person has $100,000 worth of stock in one concern, whether it be an airline, manufacturing, shipbuilding, construction, steel, or what have you, as against $1 million or $4 million worth of stock in that concern, the gentleman would say there would be no difference in their conflict of interest?

Mr. FRENZEL. I said that the pinpointing of the holding of over $100,000 would, I am sure, spotlight a potential conflict to anybody just as well as it would if we were to go ahead and describe it in higher categories.

Mr. VOLKMER. Mr. Chairman, does the gentleman say that one is just as great as the other, that $100,000 is as great as $1 million?

Mr. FRENZEL. I do not say that one is as great or greater than the other, or do I necessarily think they are conflicts of interest at all. They are merely potentials. What we have is an ethics in government bill, and we are trying to adopt a disclosure clause without making people reveal total worth or tax incentives and without giving incentives to extortioners or kidnappers.

Mr. Chairman, we are trying to do this very delicately in this bill, and I hope the gentleman will support it.

Mr. VOLKMER. Mr. Chairman, may I ask the gentleman, is there not more potential conflict of interest if a person has a larger financial interest or a larger financial statement than if that person has a smaller one?

Mr. FRENZEL. I do not know if there is or not. I think what we are trying to do is to show that Members have a certain extent of interest.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I think the gentleman from Minnesota (Mr. FRENZEL) is absolutely correct. The point is that the conflict of interest could be significant in both instances. We are not interested in making Members reveal their net worth down to every last penny. We have no need to do that, although the Senate engages in its own one-upmanship. We have no need to engage in that.

Mr. Chairman, I hope the Members will reject the amendment.

Mr. FRENZEL. Mr. Chairman, we are trying to do the best we can and get the best disclosure section we can without trampling on the rights of privacy of Members, which all of us would like to enjoy.

Mr. FISH. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from New York.

Mr. FISH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think what has been fashioned here by the gentleman from California (Mr. DANIELSON) in his substitute is a very good provision, and since it is supported by the minority and by the gentleman from North Carolina (Mr. PREYER), the chairman of the Select Committee on Ethics, we should all support the substitute and vote down this amendment.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman, and I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Missouri (Mr. VOLKMER).

The amendment was rejected.

Mr. BAUMAN. Mr. Chairman, I ask unanimous consent that at the appropriate point in title II the gentleman from Ohio (Mr. ASHBROOK) be permitted to offer an amendment regarding outside earned income of executive branch personnel, as discussed just now with the gentleman.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Maryland?

Mr. DANIELSON. Mr. Chairman, reserving the right to object, I have already represented to the gentleman from Ohio (Mr. ASHBROOK) that I would not object to the gentleman's offering the amendment.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Maryland?

Mr. VOLKMER. Mr. Chairman, reserving the right to object, is this amendment to title I or title II?

Mr. BAUMAN. Mr. Chairman, if the gentleman will yield, the amendment is to title II, and the request is being made for the purposes of expediting the proceedings.

Mr. VOLKMER. Why can the request not be made when we get to title II?

Mr. BAUMAN. It is being made at this point for the purpose of expediting proceedings.

Mr. VOLKMER. Does the gentleman mean on this bill?

Mr. BAUMAN. The gentleman is correct.

Mr. VOLKMER. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

AMENDMENT OFFERED BY MR. QUILLEN

Mr. QUILLEN. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Chair will inquire, has the amendment been printed in the RECORD?

Mr. QUILLEN. No, Mr. Chairman, but it is made in order by the rule.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. QUILLEN: Insert after section 109 of title I of the amendment in the nature of a substitute:

"SEC. 110. (a) The Rules of the House of Representatives are amended by striking out rule XLVII and renumbering the following rule accordingly, effective immediately. (b) The provisions of this section are enacted by the Congress (1) as an exercise of the rulemaking power of the House of Representatives; and (2) with full recognition of the constitutional right of the House of Representatives to change its rules at any time."

(By unanimous consent, Mr. QUILLEN was allowed to proceed for 5 additional minutes.)

Mr. QUILLEN. Mr. Chairman, my amendment strikes rule 47 of the rules of the House. It repeals the outside earned income limit of 15 percent of the congressional salary, and it removes the limit of $750 for honorarium fees.

What it says is that earned income is as ethical as unearned income—a judgment which seems logical enough.

This amendment simply states that earned income shall be treated exactly the same as unearned income and that a Member has the right to engage in enterprises which have no conflict of interest with official responsibilities and which do not detract from time required for official duties, just as a Member has the right to receive unearned income from investments.

Mr. Chairman, it is entirely irrational to place a limit on earned income but to place none on unearned income—as though this income is somehow tainted but the other is pure. Such an action would be akin to Government outlawing all weapons because some people use some of them in committing crimes.

We addressed this same issue last week when the civil service reform bill was under consideration. The gentleman from Ohio (Mr. ASHBROOK) offered an amendment to limit outside earned income to 15 percent of salary for all civil service employees at grade 13 and above. It was, in effect, the equivalent of imposting House rule 47 on Federal civil servants. It would have applied to the civil servants the same standard which is to be applied to Members of Congress.

Fortunately for the civil service employees, the House rejected the amendment on a resounding vote of 254 to 134. I would hope that now, 1 week later, the vote for my amendment would be just as strong to repeal the outside earned income limit.

Certainly the issue is the same—and if we are right to reject such an income limit for the civil service, and we are right to do so, then we are surely right to reject it for ourselves as Members of this body.

This has nothing to do with corruption and conflict of interests—nothing to do with the ethics of a Member of the House.

But most importantly, such an illogical limit on earned income is constitutionally unsound because it establishes an income test on earned income for membership in the House that is not contained or mentioned in the Constitution of the United States.

I do not pretend to be a constitutional scholar, but I do know Madison and Hamilton addressed this issue of qualifications in the House in several of the Federalist papers.

The qualifications are fixed in the Constitution, and as Hamilton wrote in Federalist paper No. 60, these qualifications "are unalterable by the legislature."

Those are strong words. Here are others written by Madison in Federalist paper No. 52:

The qualifications of the elected . . . have been very properly considered and regulated by the convention. A representative of the United States must be of the age of 25; must have been 7 years a citizen of the United States; must, at the time of his election, be an inhabitant of the State he is to represent.

And these are the only requirements in the Constitution. There is no mention of

any income test for very sound and proper reasons.

The House of Representatives was and is intended to represent the broad body of the people of the United States. That means its Members should be drawn from all stations of life from as wide and as varied a background as possible.

But with this income limit you are going to restrict the membership of the House by excluding certain people—those people who are working for a living and know the full affect that Government has on the average citizen.

Listen for a moment to what Madison wrote in Federalist paper No. 53:

> No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it.

Clearly, it seems our forefathers wanted to encourage representation from all walks of life—not discourage it, as this limit would do.

Yes, from all walks of life—from the business sector, doctors, farmers, lawyers; yes, all walks of life, because of the experience that they have in those particular fields, facing the problems that face this great country of ours and solving them.

Mr. Chairman, I trust that we all realize that the retirement of many outstanding Members on both sides of the aisle is not completely unrelated to this irrational earned income limit which I am attempting to repeal with this amendment. The American people are losing some fine Representatives because they have tired of defending a way of life that has been ruled unethical by House rule 47.

I, for one, deeply resent the suggestion that earned income is unethical, and needs to be restricted. Good people are leaving, other good people will not want to seek membership in this body. The country will suffer for it.

I fear that before long the House membership will be composed of wealthy investors and of those who depend entirely on their political jobs to provide for themselves and their families.

That will be some House of Representatives, but it will not be very representative of the people of the United States. How ironic to achieve this result in the name of ethics.

This is not a question of whether a Member can live on $57,500 a year. I have lived on a whole lot less, and I opposed the last pay increase we received. I grew up on a small farm and started working as a very young boy, so I know the problems encountered by most working people.

The question is whether a working person is entitled to serve in this body, or whether his or her work will disqualify that person from such service.

We now have financial disclosure requirements for Members. I support such disclosure, and believe now as I did when I voted for it, that such disclosure is proper. But it is a dangerous step from the solid ground of disclosure to the quicksand of actually prohibiting a Member from earning money. That is a strange idea, I would think.

Should we impose an income test for membership in the House of Representatives—that is the issue.

I believe we are prohibited by the Constitution from imposing any income test.

My amendment offers the opportunity to stand for the idea that earned income is as ethical as unearned income, and that both should be treated in our ethics code exactly the same.

I sincerely hope that Members will reflect on the case for equitable treatment that I have attempted to make, and I urge the adoption of my amendment.

Mr. Chairman, we all understand that this legislative body of ours will be here long after we are gone and we must not let the membership be dependent wholly on the Federal Government. I know in Russia and the Eastern bloc countries they also have assemblies with members who come in to supposedly legislate, but the central governments of those countries control those members, and the only laws enacted are those the central government wants. So I do not want this body in years to come to be dependent on an all-powerful government, and I urge the adoption of my amendment.

Mr. STEERS. Mr. Chairman, I move to strike the last word. I am in opposition to the amendment. I am a great admirer of my very distinguished colleague from Tennessee (Mr. QUILLEN). As all of us know, the job of a Member of Congress is one that requires 100 percent of our time, effort, and concentration. We have been sent to this body by our constituents who do not have the time to follow legislation that affects them. These constituents have placed their trust in us to work here in their behalf. We have not been elected Congressmen to use our titles for our benefit, nor to spend our time on matters of personal gain.

By limiting our outside earned income, we can help assure that the important issues facing us will receive proper attention. The present salary of a Member of Congress is adequate, and this can be supplemented by 15 percent with outside earned income. To pass this amendment will be a signal to the country that Members of Congress cannot survive without more annual earned income and this may indicate that this Congress is out of touch with the people of the United States, the vast majority of whom earn much less money than Members of Congress. As the representative from Montgomery County, known as one of the wealthiest districts in the United States, I would like to point out to my colleagues that the median family income in Montgomery County is $26,709, less than one-half of our present salaries.

I feel the bottom line on this question is the fact that we are public servants, and we must relinquish many of the joys of private life when we assume office. If we pass this amendment today, we will raise the question of whom this House exists for—the people of the United States, or the Members of the House. I urge my colleagues to vote against this amendment.

The distinction between earned and unearned income lies in the fact that unearned income does not require the time of the recipient and hence does not impair the ability of the recipient to perform his job. Earned income requires the recipient to divert time from his job.

Mr. HOLLAND. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I suppose in slightly less than 4 years I have made fewer speeches than any Member of the Congress who came here in 1975. I would not take the time of the Members to make a speech today except that I believe that the gentleman from Tennessee (Mr. QUILLEN) has offered an amendment that deserves the support and the vote of the Members. Not that any Member of this House could stand rightfully accused, in my judgment, of using his or her position for personal gain or benefit, but I submit to my colleagues that this onerous House rule has lain across this body long enough and ought to be removed. I think we have all had time to consider how it will afflict each of us individually and it will impose difficulties or sometimes no difficulty at all on each of us in various ways.

I do not intend to talk about my own personal situation because this office I occupy is not my office. It belongs to the people of my district. I support H.R. 1 and the full disclosure thrust it has. I believe the people of my district approve of it.

When their Congressman is invited to such exotic places as New York or Canada or Florida to make a speech, to discuss with people all across this land those areas in which I have developed a small amount of expertise—as a matter of fact I feel my constituents are proud that they have hired a lawyer who can go around talking about South Carolina, talking about the United States, and talking about this great economy and this great body we have here—they do not object if somebody pays an honorarium. But I submit to the Members the Constitution in the fifth amendment does provide that this limitation we are attempting to impose is not unconstitutional by court decision over the past number of decades. The Supreme Court of this Nation has said time and again that the House may set the qualifications of its Members as long as those qualifications have a rational basis.

I submit to the Members this rule imposing a limitation has absolutely no rational basis. The rationality of following it to its logical conclusion should set a limit on how much one can owe or should set a limit on one's liabilities or potential liabilities. No citizen I know can send 10 children to college on this pay, and so maybe we should exclude everybody with over two children. I do not think the pay of this job provides enough so that many of us can buy big gas consuming automobiles, so perhaps the House rules ought to require our automobiles ought to be small and get maybe 25 miles to a gallon.

This rule is an invasion of the talents and the abilities of people who seek no more and certainly no less but to serve this great land in the Congress.

I have often said, like Billy Carter, if someone is crazy enough to pay me $2,000 to make a speech, then I am just dumb enough to take it, and my constituents do not object and I do not think yours do, either.

I have been looking at television of late and the other night I saw that the character in this country who invented sex and violence, and also trivia and absurdity, displayed across the television screen, has been appointed by another network at the annual salary of $1 million.

I read in yesterday's Washington Post that there are probably dozens of corporate heads in the Washington area who earn over $300,000 a year. I submit to you that none of those people occupy positions that are anywhere near as important as a position of a Member of this House.

I submit to you that when this House tells me that not only do I have to sacrifice my personal privacy, not only do I have to give up what I had built for 12 years as a practicing lawyer, of some expertise, which I, frankly, sell to other lawyers on Sunday. When this House tells me that my children have to have an absentee father because of this occupation, not only that, but now they tell me this——

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. HOLLAND was allowed to proceed for 1 additional minute.)

Mr. HOLLAND. Not only that, Mr. Chairman, but now they tell me that my children are probably going to have to go to institutions of lesser quality and of lesser desirability because I will not be able to pay the tuitions at the best colleges in this country.

Mr. Chairman, I was impressed by the prayer on the day our great President was inaugurated. Maybe most of you did not hear it or notice it, but the prayer said that we should not forget that this Government is of the people, by the people, and for the people and is no better than the people. By keeping absurd and irrational rules of the House of Representatives we are indeed looking ridiculous and in the eyes of the people, and therefore, by extension, worse than the people we represent.

Mrs. FENWICK. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I hope that I can speak to you today without consideration of any personal situation. Maybe that is difficult but I do ask you to consider this question purely on the basis of what we are doing here in this House and what we have done.

Just yesterday I received from a man I do not know, who sells pecans in Georgia, a copy of an editorial from the Moultrie Observer. The title is: "Toughest To Get Passed More Accurate Description."

It mentions the Speaker's words when this rule was adopted by the House, when the pay raise was adopted, and it winds up by saying:

Apparently what Speaker O'NEILL meant when he said "toughest code of ethics of any legislative body in the country" was that it is the toughest to get passed through the House.

It was good that we passed that limit on earned income, we were trying to tell the people of this country something. We were trying to say that those of us who are in this House are U.S. public servants, paid for by the people of this Nation, and we will not use that place in order for personal gain.

What did this man write to me on the side of this editorial? He wrote:

Dear Mr. Fenwick:

So that you can see that this is someone who does not even know me. He said:

Inserted herein is a copy of an Editorial Viewpoint published by the Moultrie Observer, September 9. This editorial details facts relating to your treatment of a new Code of Ethics Bill.

It seems to us that you are giving priority to your own interest. Your greed for money is evident. This appears to be the main controversy.

Now, I do know how your people back home feel, but I know how my people feel. They think they have had enough. They see no reason why we should come down here and take a salary of $57,000, plus $8,500, and then say that we ought to be able to earn more.

They do not see any reason for it.

If we have children who have to go through college, we might think of this, the Harrington-Silber bill would take care of that; the Federal Government would loan the children the money; they would pay it back, according to their income, after they get out of college.

Arrangements have to be made for all people, not just for us.

I do not know how to be persuasive on this point, and perhaps it is impossible for me to be persuasive; but I do think that we are going to have to think about the people and how we look to them.

A furious woman serving coffee behind a counter said to me when I got back home last weekend, "What are you doing down there? Is it never going to stop? Can't you stop these scandals and all this money going around in Washington?"

Mr. Chairman, can we not really take some stand, as the Speaker said on that good day when we voted on this, that we are going to limit ourselves and that we are going to have some moderation in what has been described by this gentleman from Georgia as our "greed"?

Mr. WYDLER. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, obviously I have to ask the gentlewoman from New Jersey (Mrs. FENWICK) this question: Does she believe that she herself should also limit her unearned income to 15 percent?

Mrs. FENWICK. I would be perfectly happy, my colleague, to do whatever the House felt correct in that regard, yes. If that vote came, yes, we should vote on that, just as we did on the other matter. If that is considered to be part of the code of ethics, as I understood it, when it was presented, I would say "yes." This new raise in the House was justified in part because of the requirement that we should limit our earned income to $8,500 a year. There are people living on that kind of money. There are people to whom that is a living wage.

We must begin to look at ourselves not as princes or princesses, but as part of the population.

Something was said earlier about the Founding Fathers. They thought of us as farmers and factory workers, and business people, some in the China trade, who would come to Congress and go back again. They thought we would stop our sessions in May and that we would not be here all year. Things changed. They never thought to limit outside income, but things changed. We know the evils of it; we know the evils of it very well.

The CHAIRMAN pro tempore. The time of the gentlewoman from New Jersey has expired.

(On request of Mr. WYDLER and by unanimous consent, Mrs. FENWICK was allowed to proceed for 1 additional minute.)

Mr. WYDLER. Mr. Chairman, will the gentlewoman yield further?

Mrs. FENWICK. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I am assuming all the things the gentlewoman is saying, especially with respect to the attitude of the people back home. As the gentlewoman says, some of them do not make $8,000.

However, is that the justification we used to raise the congressional salary to the sum of $57,500, and do we use it as the excuse or the reason that we are going to restrict a certain very small group of Members to 15 percent of that amount as outside earned income, not touching unearned income, not touching certain kinds of earned income?

Was that really playing fair and square with the people?

Mrs. FENWICK. Let me answer yes. The answer was that unearned income was not considered to be corrupting or dangerous to the general public and that earned income apparently could be. That is the rationale, as I understand it.

The CHAIRMAN pro tempore. The time of the gentlewoman from New Jersey (Mrs. FENWICK) has again expired.

(On request of Mr. LEVITAS and by unanimous consent, Mrs. FENWICK was allowed to proceed for 2 additional minutes.)

Mr. LEVITAS. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. Yes, I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, if a Member of Congress owns stock in a company which manufactures airplanes or if the Member owns stock in a bank or in some other commercial enterprise and receives a substantial income, is there not a conflict of interest created in the minds of some people if that person has to vote on bank regulatory matters or on the procurement of aircraft, for example?

Mrs. FENWICK. I understand the gentleman's question.

In our legislature at home, the conflict of interest was declared to be absent when one was part of a general class.

I do agree with the gentleman that a very large block of stock or a considerable block of stock should perhaps stop someone from voting on that particular measure if that person would benefit or might derive some benefit from a subsequent increase in that stock. We have gone into that matter in legislature after legislature. It is quite a simple matter to demand from the legislature that any income over a certain amount derived from stock be declared, and it should be, so that the people will know where this income came from. Then the conflict of interest is absent when one is a part of a general class. In other words, if one is a schoolteacher and votes as a general class for something that would benefit the teaching profession, that is not held to be a conflict of interest.

Mr. LEVITAS. If the gentlewoman would yield further, the only rationale that I have heard—and it may be a sufficient one; I do not know how I am going to vote yet—why we should not restrict unearned income is that there is just no practical way of doing it, not that it is not a corrupting influence or potentially so, and it is not a question of even the amount of income. The only argument that we should not limit unearned income that I have heard is they just have not figured out practically how it can be done. Maybe that is a sufficient reason.

Mrs. FENWICK. I do not know. One of our young colleagues spoke on the floor when this earned income restriction was placed, and he said, "I know it is necessary, and I will tell you why."

The CHAIRMAN. The time of the gentlewoman has expired.

(By unanimous consent, Mrs. FENWICK was allowed to proceed for one-half minute.)

Mrs. FENWICK. "I had a modest practice the day I was elected to Congress. Before I got down here in January, I was deluged"—does the gentleman remember that? Yes, and that is what I am talking about—"I was deluged with clients who had never come to me before." In other words, as a Member of Congress he has an advantage over the other lawyers in his hometown. I think that is what we are talking about.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Quillen amendment.

Mr. Chairman, it must be wonderful never to know the ravages of economic insecurity. It must be splendid to sit in one's living room and clip coupons and to know that the interest from one's investments or the income from one's apartment building will tide one over should a catastrophic disease strike, or should one's children need new shoes or need to have their tuition paid. The problem with this artificial limitation on income is it denies access to this body to a whole class of people, achieving people, successful people, people with young families which need an education, and people who find it difficult to maintain a home here, maintain a home back in one's district, who do not have this independent income, who have not married into wealth, who have not invested wisely, who have not inherited it, but who are successful, aggressive people, who need to make a living and yet who want to serve their country in this body.

We have driven out the gentleman from New York (Mr. PIKE). I do not like to mention anybody's name, but I do not think this body is richer for losing people of his talent and ability. How many other people of talent and ability can afford to serve in this body?

Sure, there are a lot of people to whom $57,000 is a fortune. But how many children do they have, and have they served here for a long time? Do they know the pangs and ravages of insecurity? Do they wake up and wonder what would happen to them if they got voted out the next election and they have no income, they have no source of income, and they have no way of making any?

As long as we are disclosing—and that is the thrust of this bill—from whence comes our income, who pays us these suspicious honoraria when we speak to them, the voters then are perfectly educated and informed as to whether this candidate or this public official is worthy of continued support.

I happen to think as a minority party Member that one of the new useful things we can do is to speak to groups around the country and explain to them our perspective on what is going on here. If we confine our information in this democracy to what the television news commentators give us, or what the newspapers will give us, we will be fractionally informed. I think we have a duty to educate the electorate on what is going on here. But it is a burden to go give a speech in many places if one is not going to get some honorarium for it.

We are denying to the country the services of people who have families and want to serve in this body, who would have something to contribute, but because of an artificially low ceiling on outside income, they cannot afford to serve.

It is just wrong and I think this body and, hence, the country is being deprived of the services of a whole class of people that we need desperately. We are going to be left with the very wealthy, whose perspective I suggest is not altogether that universal, or we are going to be left with social activists who leap from college, from working with Ralph Nader, and then into Congress; but there is a whole group of middle-class business people whose views and opinions we urgently need in this body; so I hope we will bite the bullet and remove this limitation.

I voted last time for this ceiling and I have thought less of myself ever since. I think it is wrong, and as long as we disclose from whence the money comes, the need is met. It will encourage good people to serve and it will encourage us to go out to the electorate and let them know what is going on.

Mr. STEERS. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Maryland.

Mr. STEERS. Mr. Chairman, I would like to ask the gentleman: Is there not another distinction between earned and unearned income? That is, earned income requires the usage of the recipient's time and that takes away from the time he spends as a legislator. To my surprise, nobody seems to be recognizing that fact.

Mr. HYDE. The gentleman has made the point, and let me suggest to the gentleman that I have an over 95-percent attendance record. I spend a lot of time on this and I am also able to speak before groups as well. I think the job of a legislator includes going out and letting people know your perspective on what is going on.

Mr. STEERS. I agree with that.

Mr. HYDE. But that is up to the electorate to decide whether you are attending to your business or not.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois has expired.

(At the request of Mr. BAUMAN, and by unanimous consent, Mr. HYDE was allowed to proceed for an additional 2 minutes.)

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Chairman, let me respond to the point of the gentleman from Maryland. This argument concerning a Member's time is one of the chief arguments used before the Obey commission, that the Members ought to devote their full time to the House. The fact is this year and last year as in most recent years, the House was in session only half the year. The rest of the time was used by Members for whatever they wanted, for junkets around the world, for going back and practicing law or clipping coupons; some of us worked in our districts as Congressmen; but for half the year we were not here. We were not meeting in session. Why deny a Member the right to go back home and practice law if that is his wish. The voters in his district will decide the Member's fate.

Mr. HYDE. Mr. Chairman, if I might reclaim my time, people with unearned income must spend a lot of time with their investment counselor. I do not know of anybody with money who just takes it out of an envelope.

Mr. FISH. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

Mr. FISH. Mr. Chairman, I want to address both the gentleman from Maryland, because it is my recollection when we voted on this rule in the spring of 1977, one of the major arguments was ours is a full-time job and we should be spending more time as legislators. But the figures we had at that time, 1976 figures showed that the House was in session a total of 177 days, or less than half the year. That is a flimsy reason to impose a rule on the Members, when the obvious solution to more work is for the leadership to schedule more work days.

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Illinois.

Mr. SIMON. Mr. Chairman, there is much validity in what my colleague has to say. I happen to believe that disclosure is the fundamental protection and if we go beyond that, we do work in inequities. The difficulty, as I see it, in the disclosure laws is that essentially they are inadequate, and until they become more adequate I am forced to vote against the Quillen amendment.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois has again expired.

(At the request of Mr. SIMON, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. SIMON. Mr. Chairman, if the gentleman will yield further, as I say, I am forced to vote against the Quillen amendment. I happen to think, for example, that spouses and minor children ought to be included. I think when you practice law, and this applies to other professions, you ought to disclose, you ought to be able to earn as much money as you want, but you ought to be required to disclose who your clients are.

Mr. HYDE. I agree with the gentleman completely; but I wish the gentleman would devote his energy and intellect toward getting adequate disclosure laws and not deny to this body, and hence to the country, the services of a whole group of people who might be willing to serve if we did not impose such a heavy penalty on them. That is the problem. It is tough to get people to run for this job.

Mediocre people, politically inclined social climbers, people who want to see their names in the paper—fine, we have lots of those. But what we need are people who have a broad prospective on life, on taxes, and on raising a family. But we are not getting them, we are locking the door, and we are hurting America. It is not worth it.

Mr. SIMON. Mr. Chairman, I agree with the gentleman from Illinois (Mr. HYDE). I am simply suggesting that we are putting the cart before the horse, at least for some of us, and once we have a more adequate disclosure requirement, then some of us are going to come aboard and say, "This is the direction we are going to take." But until we have that, I think there is the possibility we are going to invite more abuse.

Mr. HYDE. Mr. Chairman, I regret that I must disagree with the gentleman.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman for yielding, and I appreciate the observations of the gentleman from Illinois (Mr. HYDE).

The fact of the matter is that the disclosure provisions in this legislation should be a satisfactory answer. They are not the alpha and omega, but certainly they represent a very substantial step forward.

Mr. Chairman, the ethical purpose we seek will, I believe, be satisfied by full and complete disclosure, and if that is presented to the body in its pure form, I think there would be very substantial support of it.

Mr. HYDE. Mr. Chairman, I thank the gentleman from New York (Mr. BIAGGI).

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. HYDE) has expired.

(On request of Mr. DAVIS, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from South Carolina.

Mr. DAVIS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I really believe we need disclosure. I believe our constituents may worry about where our money comes from, but by the same token, if that is true, I would ask this: Why was this legislation not propelled that way? If that seems to be the wishes of many who have been involved in this legislation, why was it not done that way?

Here we are in a period right now rushing toward adjournment so that we will have the entire month of October, as well as the months of November and December, back in our districts after election.

Mr. HYDE. Mr. Chairman, if the gentleman will allow me to reply to that, I want to say that the reason that deal was made is because it was made by some people who have chauffeurs and whose children are all grown, and they traded off the pay raise for a limitation on outside income.

Mr. DAVIS. Mr. Chairman, I think it is time we let the people rule the House and not individual newspapers in Northeastern States. What we have got to do here today is to consider the need for ablebodied people in this House of Representatives.

If we want to make it a rich man's club, let us make it a rich man's club, and if we want to see good men like the gentleman from New York, OTIS PIKE, as well as others, leave, then let us put them out. But the question is, if we are worried about a conflict of interest: How can we vote on our own ethics? Is that not a conflict?

How can we vote on a tax bill? Do we all not pay taxes? Where are the conflicts?

Mr. Chairman, I believe the people at the polls should decide what the conflicts are, not some super-duper do-gooder.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to concur in all that the gentleman from Illinois (Mr. HYDE) has said with respect to this amendment. I might say that in my own case the outside earned income has no application whatsoever since I do not have any outside earned income.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. HYDE) has again expired.

On request of Mr. McCLORY, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. McCLORY. But, Mr. Chairman, if I may continue, I think that to deprive this body of the opportunity to have service from engineers, doctors, accountants, lawyers, hotel owners, manufacturers, and others who have outside earned income is to deprive this Nation of valuable service that I think this body was organized to accommodate.

It seems to me that we should have a broad cross section of representation here for the people of this Nation. I think if we were to take the position that just because a majority happen to be satisfied with the income they get from their salaries or because some might be satisfied because they have outside unearned income which enables them to run for this office and to satisfy their material needs, it seems to me that would be very shortsighted to oppose the amendment for those reasons.

Mr. HYDE. Mr. Chairman, if I may reclaim my time, I want to say this: We are limiting the qualifications for admission to this body to either those who are independently wealthy and hence consumed with liberal guilt or those who are social activists but who have never made a payroll.

Mr. Chairman, I yield back the balance of my time.

Mr. OBEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition of the amendment.

Mr. Chairman, I really had not intended to speak on this amendment today. As sick as all of you are of this whole question, because it has been around here for a year and a half, let me say that there is no Member of this House who is more sick of this question than I am. I understand the pain that this limitation has caused some people, because a number of you have made it very clear to me day after day after day. And that is your right. But I just want to address a few of the myths which are being peddled about the tremendous damage that this income limitation is allegedly going to do to this House.

We are told that it is going to change the nature of Congress and shut off access to a whole class of people. Well, I would like to point out a couple of facts. Ninety percent of the Members of this House have already severed their past relationships with their previous businesses or have ended their previous professional careers. Ninety percent. If you want to talk about lawyers, the most obvious problem, there are 222 lawyers in this House. A handful, just a bare handful, as near as can be determined—somewhere around a dozen, based on disclosure statements already filed—only about a dozen continue to receive substantial income from law practices and continue as Members of the House. What this rule does, in plain English, is to reflect what is already reality for about 90 percent of the House. I do not think that it therefore changes dramatically the character of this place or the people who come to serve in it.

Second, we are told we should not discriminate between invested income and earned income. I do not have much of either. But let me say this, because I think every person, every practical per-

son, in this House knows it already: You cannot deal with the question of invested income in this manner unless you are willing to say—and I doubt that anybody really is—that if a Member sells his own house, he cannot make more than $8,600 a year on the sale of that house. Or if a Member has investments, you would require that Member—if you apply the same rules for invested income—to get rid of all of his holdings, to put them in a noninterest-bearing account so that he would be within the limit. I think the House recognizes that that is just a straw argument, a strawman, and I would request you to treat it accordingly.

I would like to make a couple other points. We are not unique. The distinction between earned and invested income is already being recognized by the judicial branch and by the executive branch of Government. In the Supreme Court only two Justices of the Supreme Court had outside earned income last year. One made 500 bucks, the other made 2,500 bucks. That is all. In terms of the executive branch of the Government, if you are a Presidential appointee you can earn zero in earned income in addition to your salary.

They cannot practice any law. House Members are allowed to practice up to $8,600. Presidential appointees cannot practice any law. If one is a presidential employee, one can earn no honorarium; one can belong to no corporate board. If one is a member of an independent regulatory agency, one can have no outside income. So, we are not discriminating against Members of Congress.

The CHAIRMAN pro tempore. The time of the gentleman from Wisconsin has expired.

(By unanimous consent Mr. OBEY was allowed to proceed for 3 additional minutes.)

Mr. OBEY. Mr. Chairman, I want to make one other point to the Members of this House. There are a lot of lawyers in this House. Most of them are my friends and I have great respect for them. But I simply want to say this: The House rule is more generous than the Senate rule on the question of law practice. The Senate allows no income from law. We did not do that. As I said earlier, we did not think we had to follow the Senate in their practice of one-upmanship. But, if Members think the House rule is tough, why do we not talk about how tough the Senate rule is, because it is a lot tougher for lawyers. We are trying to be rational about this.

I want to say one other thing for those who say that this rule is unfair because it treats some earned income different from others, if one owns a hardware store or is a farmer. I want to make two statements. Members are not forced to divest their holdings for reasons I have just described. They can protect their equity, but if their compensation is received because of the value of services which they render, then that income is limited. If personal service generates income, regardless of what you call it, dividends or anything else, it is covered by this limitation. I think that is perfectly clear.

I want to make one other point, and then I will stop. I do not support this limitation because I have so little regard for the House and its Members. I support it because I have so much regard for this House and its Members. I have forgotten who it was who made the statement earlier, that there are a lot of people in the Washington area who make a lot more than the Members of Congress—I think it was the gentleman from Illinois (Mr. HYDE). He said that there are a lot of people in the Washington area who make a lot more than the Members of Congress, and went on to make the statement that none of them had positions as responsible as Members of Congress. I agree with that, and that is why I oppose this amendment. I oppose the amendment because this job is so important and its duties so precious it deserves our full and undivided attention, and we need to assure the public that it has our full, undivided attention. That is why the amendment ought to be defeated.

Mr. FISH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have a great deal of respect for the gentleman who just preceded me in the well, and we know that he is one of the authorities on statistics having to do with the Members of the House. It does occur to me that if 90 percent of the Members of the House would not be affected by the existing House rule, then I must ask myself the question, What is the justification for it in light of the purpose of this legislation?

Mr. Chairman, the bill before us is supposed to provide uniform public disclosure. Yet an outside earned income limitation is not uniformly applied. It is imposed solely on the legislative branch. There is no such restriction on most officials of the executive branch.

We are dealing with a double standard. A Member who spends time and energy to earn money for family expenses is penalized. If he enjoyed a large unearned outside income he is not.

Mr. Chairman, we properly seek disclosure to deter and expose conflicts of interest. Full disclosure of assets will allow the voters in the advisory process of an election to pass judgment on a Member's financial ethics. This is the proper, traditional way. Weak Members, I might add, who are susceptible to conflicts of interest, will not be helped by an outside earned income limitation.

• Mr. VENTO. Mr. Speaker I rise in opposition to the Quillen amendment.

This initiative represents a withdrawal from a commitment that members approved in 1977.

The disparity that is alleged to exist between earned and unearned income is more imagined than real. As Members we can and should limit our primary effort to the work of Congress. Our effort should not be disipated on other endeavors and the inevitable conflict that will be represented by these earned income sources.

While the current proposed remedy may not be perfect in this measure, the intent is clear, and further qualifications can be reviewed as we encounter specific problems.

Repudiation of this earned income limitation in this measure, at this juncture, will be interpreted as a lack of commitment to essential reforms that have been accomplished in recent years.

I urge the defeat of this amendment.•

The CHAIRMAN pro tempore. The Committee will rise informally in order that the House may receive a message.

MESSAGES FROM THE PRESIDENT

The SPEAKER pro tempore (Mr. BRADEMAS) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Marks, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills of the House of the following titles:

On September 15, 1978:

H.J. Res. 773. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning September 17, 1978, as "National Port Week";

H.R. 8342. An act to amend title 5, United States Code, to provide for the application of local withholding taxes to Federal employees who are residents of such locality; and

H.R. 8771. An act to amend title 5, United States Code, to authorize the Civil Service Commission to comply with the terms of a court degree, order, or property settlement in connection with the divorce, annulment, or legal separation of a Federal employee who is under the civil service retirement system, and for other purposes.

On September 17, 1978:

H.R. 2931. An act to amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State or local laws which are inconsistent with such contracts, and for other purposes;

H.R. 2952. An act for the relief of M. Sgt. William E. Boone, U.S. Army, retired;

H.R. 6669. An act to establish a comprehensive and coordinated national climate policy and program, and for other purposes;

H.R. 10899. An act to provide for Federal regulation of participation by foreign banks in domestic financial markets; and

H.R. 12240. An act to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

On September 18, 1978:

H.J. Res. 1014. Joint resolution designating April 28 and 29 of 1979 as "Days of Remembrance of Victims of the Holocaust";

H.R. 10878. An act to extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, and for other purposes;

H.R. 12927. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes; and

H.R. 13468. An act making appropriations for the government of the District of Columbia and other chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER pro tempore. The Committee will resume its sitting.

The Committee resumed its sitting.

ETHICS IN GOVERNMENT ACT OF 1977

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, I move to strike the requisite number of words.

Mr. BINGHAM. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New York (Mr. BINGHAM).

Mr. BINGHAM. Mr. Chairman, I thank the gentleman from Texas for yielding.

I am constrained to vote against the Quillen amendment because it makes no distinction between earned income derived from sources totally unconnected with the Congress, and income derived from the Members' "positions of influence" as Representatives.

I would have supported a lifting of the limit on the former type of income, and I had understood that an amendment to that effect might be offered. However, no such amendment has been offered, perhaps because (as I found myself) it is very difficult to adopt.

Since adoption of the Quillen amendment would leave Members free to "cash in" on their positions in the Congress, I believe the American people rightfully expect the House not to abandon the restraint it had earlier imposed on its Members.

Mr. ECKHARDT. Mr. Chairman, Alexander Hamilton in introducing the Congress of the United States to a foreigner said:

Sir, here the people rule.

The people rule much more firmly and much more assuredly if the people also are the sole persons who pay for the actual work of their servants.

I speak somewhat against interest here, I know. I thought at one time I was going to be the first octogenarian freshman in the House of Representatives because I stood in line behind a very popular and effective Congressman, Albert Thomas. So, I practiced law for 18 years in a very specialized field of law, labor law. Had I come to Congress some 12 years ago and should I have continued in my practice of labor law, gone on the Committee on Education and Labor, retained my practice in Houston—I had a lot of good clients, I am sure many of them would have stuck with me; and I had a good partner, but I would not have been able to serve my clients in the same way I had in the past.

I would however have had a very lucrative practice. But had that occurred there would have been no limitation either on my personal earnings as a lawyer to those clients, that is no limitation on the money I put in my own pocket, nor any limitation on the amount the labor unions could have paid me in order to get me elected to office if these amounts were paid to me as a fee for legal services.

I have friends in Houston that represent corporations. Some of them are in the rather lucrative field of antitrust. Had one of these persons come to Congress and maintained a law office in Houston, he would really have been in a position to take not just a limited amount of money from his original clients as campaign contributions, but whatever he could reasonably justify as a fee to his partners, and he would not be limited to using that money for campaign purposes. He could stick it in his pocket or he could use it to be reelected.

I think that is an enormous loophole and I think it is corrupting.

I recognize that there are also corrupting influences in connection with the unearned income. I, unfortunately, have very little of that, but I think I can get along with the pay that I am receiving here.

There is another area in which I am speaking against interest, and that is in the field of honoraria. I taught for about a month or two this year in Haverford University. I got $5,000 for 18 lectures, which is not a great deal of money as honoraria go, and I did the same thing at the University of Houston, where I think I made about $2,000 for four lectures. That is pretty small pickings compared with what is ordinarily paid as an honorarium for a subcommittee chairman by those who have an interest in the legislation he handles.

Now quite truthfully I can and I have earned honoraria at a value of two to three times as much as I will be limited to by this provision of $8,625.

But I think I can work all of the honoraria that I can possibly get from public institutions and agencies into that $8,625, but I could not work into that $8,625 all of the honoraria of institutions and groups that have an interest in legislation.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. ECKHARDT. Now, I am not here saying that anyone in this institution corruptly accepts honoraria but I am saying that it is better that any substantial amount of money that we receive for our efforts, once we are elected to Congress, come from the people themselves.

There is a leeway. There is the $8,625. I believe that is computed as 15 percent of salary. I think within that leeway we may do the legitimate types of honoraria that I have referred to.

I think we ultimately need to review these rules to define those areas which are, in fact, at least subject to corrupting. I think we ought to exempt honoraria solely from institutions of learning that have no relationship with the activities that we engage in in our committees, but, in the meantime, I think we should keep this limitation as it is.

Mr. BAUMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I had the good fortune to serve as a member of the Commission on Administrative Review, which was headed by the distinguished gentleman from Wisconsin. I listened to a great many of the witnesses testify on this issue which, in the overall context of 2 years work really did not occupy that much of the Commission's time. And I must confess that at no time was any evidence shown why outside income constituted a threat to the House of Representatives as an institution or to the people of the United States. We should go back and look at the origin of this entire reform movement in the House.

No one could foresee that the joint venture formed by Wayne Hays and Elizabeth Ray would result in raising outside income to the status of a major issue. Obviously many felt that we in the House of Representatives should make changes in a manner that would provide increased confidence in the Congress. That was one need that was mentioned over and over in our Commission hearings.

The second point was that the reformers wanted to maximize the effectiveness of the individual Members and, therefore, increase the time devoted to their job. I hope the time issue that has been laid to rest by the obvious fact that the House is not in session half of the year, whatever we call our recess procedure. What we are really restricting is what Members do on the outside during those recesses. I work in my district as a Congressman, but others junket at the taxpayers' expenses or do as they will.

So the effective use of their time has not become really an issue. Members do as they choose.

What we have then is an unfair classification excluding a number of people from service in this House who voluntarily will not submit themselves to this kind of income restriction.

But let me raise the question of whether this dichotomy, this double standard that has been mentioned earlier, and is imbeded in the rules of the House, is proper. This rule will take effect on January 1, 1979.

Let me give you some examples of what has been going on and will go on after the first of January, even though this rule limits outside income.

One Member from the West draws $35,000 a year from an insurance company which his family controls. That is perfectly all right under clause 4 of the rule.

Another Member from the South will draw $40,000 in dividends from a coal business in which he owns a part interest.

The rule allows another Member from the West to draw $39,000 from a title company that the Member founded, but does not directly manage.

The rule allows another Member from the South to draw $26,000 annually from a radio station that the Member and the Member's wife own, but which he does not manage.

It will allow another gentleman from the East who owns a controlling interest in a rather large corporation to draw $422,000 a year in dividends, and that gentleman admitted to a reporter that he could freely convert $100,000 of his current salary to dividends and increase his total annual amount.

So you can see what the double standard is here, and you can also see the probability of conflicts of interest in unearned income, but under this rule all of this is perfectly legal and ethical.

Or you can write a book, as some have

done on both sides, and you can draw all of the royalty from that book under this rule in whatever amount. But you cannot write an article for a magazine if the fee puts your income beyond a 15-percent limit. The rule is totally inconsistent and conveniently so.

Mr. Chairman, let me raise another point. Will this rule prevent individual Members of the House from committing criminal or unethical acts?

If the Members go back over 10 years of history, as I did at the time the debate occurred in 1977 on this rule, you would find convictions of Members of Congress for accepting a gratuity, for income tax violations, for tax evasion, bribery, conspiracy to take bribes, mail fraud, obstruction of justice; but never was there a case where coming outside income was the source of a criminal conviction.

Mr. Chairman, I heard the statement made here yesterday by the distinguished gentleman from North Carolina that if these rules had been in effect in the last 2 or 3 years, the Korean scandal would not have occurred. However, all the charges made against current Members who have been investigated in the Korean matter are totally unrelated to this rule on outside earned income.

Mr. Chairman, if a Member is going to take a bribe of a hundred thousand dollars from someone, he does not care whether it is to be reported or not. He does not care whether it exceeds a particular limit. Quite obviously, the rule would not have prevented any of these violations of the public trust.

Suppose one falls into the category of one of the Members accused of selling his congressional services to help groups or businesses, or of one whose law firm had been used for funneling money to him in return for getting bills passed. None of that is touched by the outside income rule.

Mr. Chairman, I do not know whether the gentleman from Wisconsin is right with his 90-percent figure. Many people in this House are affected. I am not affected. I do not have any outside income that falls within this limit and have no prospects for it. I just know that many good Members will be affected by it.

We heard the name of the gentleman from New York (Mr. PIKE) and others mentioned.

Mr. Chairman, we ought to let the voters in each district decide the issue of a Member's conduct and finances. Under the full disclosure provision which this bill makes, a substantial civil penalty is provided. It would have been a criminal penalty, but it was changed to get the bill through the House. This bill provides for full disclosure. I think that solves the problem, but to penalize even a few is a mistake.

The argument is true that by this income limitation we are going to remove a great many people from public office who should serve. The wealthy and those whose need for their House job destroys their independence will remain. That is not good for representative government.

Mr. Chairman, I hope that the Quillen amendment is adopted.

The CHAIRMAN pro tempore. The time of the gentleman from Maryland (Mr. BAUMAN) has expired.

(On request of Mr. WYDLER and by unanimous consent, Mr. BAUMAN was allowed to proceed for 2 additional minutes.)

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I agree with the gentleman from Maryland (Mr. BAUMAN).

I just want to explore with the Members what I think was the thrust of the remarks regarding the 90 percent and the 10 percent of the Members. Although there is no way to know what the statistics are based on, it would seem to me that what the speaker simply did with those figures was to say that 90 percent of the current Members do not report any outside earned income; and therefore, they gave up all their earned outside income. That is what he did, of course.

Mr. Chairman, that is totally misleading, and I am sure that everybody realizes that because, obviously, a lot of the Members who were elected to the House did not work before they came here. They were living on unearned income. A lot of the Members of the House had full-time jobs They obviously were glad to give up those jobs when they came here. They did not really give up anything. They wanted this job, and they had to give up their 9-to-5 job or whatever they had back home. They did not give up anything, in that sense of the word. They could not perform those services anymore.

Mr. Chairman, I am sure that there are many categories when we get down to it.

Let us take the gentleman from Texas. He did not really tell us, but I presume that he gave up his law practice. That is fine. I give him credit for that. I give him credit for doing that. That is his judgment.

The thing I resent along with other Members who are speaking, those of us who are in that limited classification, is that we finally refined this thing down to those who are going to be affected. There are not that many of us left, considering all of the exceptions, but those few of us left resent that you want to impose your standards, your judgments, and your decisions, which might have been right, but we do not feel that you should do that.

We feel that our ethics are either matters within ourselves or, as elected officials, between ourselves and the people who elected us, and they should be the final judgment makers as to whether we are being ethical in what we are doing, whether it is with respect to an additional 15 percent or not.

Mr. KREBS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, to begin with, let me confess that I am a little disturbed by some of the comments that have been made here. Needless to say, this is an issue on which reasonable people can very well disagree, but to listen to some of the comments here—and I take issue with these comments—one may think that the 435 Members of the House of Representatives are by and large composed of either activists for some far-out organization, or incompetents, who could not make it on the outside and who were fortunate enough to find shelter in the House of Representatives, or misfits of some other kind. I do not think I have to respond any further to such ludicrous observations.

I will be the first to admit that a good argument can be made and has been made already today, and approximately a year or a year and a half ago, on the question of whether it is fair to place a restriction on earned income and not place a restriction on unearned income. This is a very close question and a question which I would merely respond to by saying that to be on the safe side, this House should have imposed a restriction or limitation on unearned income as well. I am sure that there are enough attorneys who know much more about trusts than I do, because all I did for 17 years was represent insurance companies in defense cases. But the distinction shown between earned and unearned income really begs the question.

I was also somewhat amused, if you will pardon the use of the term, by those who say that unless you let us engage in these outside activities which produce x number of dollars for us a year, we cannot make it in this House. Oddly enough, and I am not going to mention any names, these were basically the same people who stood in the well when we discussed the last pay raise. At that time the press gallery was full because there is nothing that, at least in the minds of some people, is of greater interests than the question of a pay raise.

If we want to attract people, who are neither poverty stricken nor of great wealth, we have to pay a legislator a decent salary, and this is exactly what we tried to do approximately a year ago.

This brings me to the next point, and this is the point of a commitment that we made to the American people. The American people do not look at an individual legislator when they think of the Congress of the United States. Sure, they look at their Congressmen when they think of them in terms of reelection, but when they think of the House of Representatives, they think of an entire entity, and this entity by a comfortable margin made a commitment to the American people that we were going to increase our salary by 29 percent, if my memory serves me right—and I supported that increase, I might say—and in return took upon us this obligation and made the commitment that we were not going to scurry from organization to organization in order to pick up a thousand dollars or $1,500 in speaking fees, and that we were not going to continue practicing law on weekends, or practice medicine, or whatever. I firmly believe we have the responsibility to stick by that commitment.

Last, but not least, if it needs to be said in that connection, the image of this House, certainly can stand substantial additional improvement. In the final analysis, it is really not only the question of an actual conflict of interest, but the appearance of or possible conflict of interest that I think all of us collectively should be concerned about.

Mr. McDONALD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment and note historically that in 1776 at the Declaration of Independence with the 56 signers, 5 or 6 were physicians. I would say, that 24 out of the 58 were lawyers or judges. Throughout the 19th century there were usually between 10 and 15 physicians in the House. Today we have two physicians in the House.

To my knowledge, we have no Members of the House who are practitioners of the healing arts who were dentists prior to coming to this body.

I think for those who are truly concerned about the honest issue of conflict of interest, a major gap is left open for the possibility of conflict within the news media, to which we make no effort to correct. I have seen pieces of legislation affecting my home State of Georgia where individual families in the news media were directly involved and the paper took a stand that greatly benefited the family, but no disclosure was made.

The rule we have today, I feel, is very discriminatory against many businessmen and certain professions, most particularly, for example, the healing arts. I think the figures speak for themselves, when we have no dentists and a dwindling down of physicians to only two.

The majority of the House today consists of attorneys. I do not speak of that point with any malice, because I feel that a fine constitutional lawyer is worth his weight in diamonds, or worth his weight in gold. He is a great asset to the House; but we also need individuals in the House who have a background in medicine, dentistry, or business. Remember, as we have it today, an attorney leaving the House is benefited in setting up a future practice; but as a physician and as a specialist in one of the subspecialties of surgery, I leave the House at a detriment. I must return at very low pay to a residency type program for perhaps 1 or 2 years before I am able to go back into practice. As far as my own situation, and I am sure there are many others who might come here to serve that realize they are placed at a selective disadvantage that is not found with those who might be attorneys.

The gentleman from Texas (Mr. ECKHARDT) made some very compelling arguments with regard to attorneys, but those arguments do not apply to many other professions or to many businessmen.

I go home and practice on weekends. It is not a matter of monetary return, but to me it is an effort to try to maintain some degree of skill. I am fortunate that I can return to a group where a senior member of the group and one of the other members happen to be my father and brother, respectively. I am fortunate to have that relationship, but other physicians or dentists do not have that opportunity and are discouraged.

Once again, we are down to two physicians and no dentists and, to my knowledge, very few engineers. We are becoming a body of attorneys. I do not say that again with malice, but in the last Presidential campaign when President Carter, then candidate Carter was running, he received standing ovations when he said, "I am not part of that mess in Washington and I am not an attorney."

I think people are beginning to view with a degree of rancor the feeling this is becoming a select group and we do injustice to ourselves if by certain rules we squeeze out a certain class. I feel the current law is going to benefit ultimately three groups. It will be a benefit to an attorney or lawyer. It will be of benefit to those of significant wealth who can continue a lifestyle based upon unearned income, and it will be of benefit to that group I am sure that none of us would like to develop, those who would be puppets to special interest groups.

But, Mr. Chairman, as far as so many Members of productive elements in our society are concerned, they will be squeezed out, and I urge support for the amendment.

Mr. SNYDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. I am compelled to make a few remarks, basically because of the conclusion that my friend, the gentleman from Illinois (Mr. SIMON), arrived at a while ago when he spoke and said that he was probably going to vote against this amendment until we had full disclosure.

I want to say that I believe in disclosure. I think that is the way to go at the thing. But what we do by keeping to this rule and not adopting the amendment is this: We make a mockery of disclosure.

The Members can just look at the record. They can look at my own disclosure in the book that is laying in their own offices. I look at it frequently in my office just for amusement, and I know I have disclosed a lot more than was necessary.

I have disclosed some of the major clients of my individual proprietorship that owe me money. I think that is proper and right so that my constituents and others can determine whether or not they think I am doing what is right. That is the purpose of disclosure.

But do the Members know what they are going to do now by saying that unearned income is exempt from the rule and earned income is to be limited? They are going to make us readjust our financial affairs in order to comply, not to get around the rule, but to comply with the rule.

So when I go back home after the election, if I am successful and find I am going to be back here in January, and assuming the Quillen amendment is not adopted, is this: I am going to form two corporations. I or some good friend will probably be the president, and I am not going to have any earned income from those corporations. My disclosure statement then will not show nearly as much as it does now.

I can live on $57,500, but I just do not want to. It is that simple. I think most of us could if we had to.

But what we do by this rule is we deceive the electorate. We say to the people back home, "Now we have got reform and we have got disclosure, and we are putting a limit on our earned income so we will spend full time for the public."

Let me say to my friends that I do not play tennis and I do not play golf. My hobby is going out peddling real estate and messing around in the coal market a little bit. That has been my hobby for a lot of years.

I am anxious to disclose. I have done it, and I will do more if they say we should. I have done more than the rule says now.

I am not anxious to incorporate my businesses, but I will because you are going to say to me that in order to comply with the new rules, I must limit my earned income. I am willing to comply with the new rules, but I would rather not. I would rather let all the facts out, let it all hang out, and let my constituents decide whether I am doing what is right or wrong and decide whether what I am doing is honest or not honest.

But you are saying now that I should make it unearned income, and then I can draw my dividends, and that will be unearned income. And that will not affect me taxwise either, because the tax man that prepares my return tells me I can declare my dividends under chapter S of the Internal Revenue Code and be taxed as though it were earned income. If I receive dividends and it is unearned income, that complies with the rules of the House.

So what we are doing is fooling the people. We ought not to do that. We ought to have full disclosure and let our people make the decisions as to whether what we are doing is right or wrong.

We should not have to go through this charade of setting up corporations and taking money in dividends that are unearned income.

Mr. Chairman, let me just say this to the Members: This is my personal situation, and I make no bones about it. If the Quillen amendment is not adopted, I will have to comply. I do not want to, and it ought not have to be done that way.

Years ago we had a bill that we considered here that had to do with heavy trucks and the size of trucks. I voted "present" on that bill, not because I had earned income from the trucking industry. I voted "present" because at that time I owned a large block of stock in a trucking company that produced dividends for me which were unearned income. The conflict was not arising out of something I was doing over the weekends when some of the others were doing what they wanted to do: Going out and playing golf, playing tennis, taking a trip, going swimming, doing whatever they wanted to do and including in whatever their hobby is. I will tell the Members, I am a workaholic. I really believe I am. I enjoy my work. My hobby is my work.

My pleasure is going out and peddling real estate and coal and things of that nature. I get a kick out of it.

Yet I have an attendance record in this session of Congress, I believe, of something around 98 or 99 percent. I have never missed a vote in this House of Representatives because of my outside business activities. I have missed some because I have had commitments to meet speaking engagements. I have missed some for campaigns and things of that nature, but never because of any outside interests. I say to the Members that there is as much conflict in owning large blocks of stock in companies, such as in trucking companies, as I had at one time, as there is in receiving earned income.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. SNYDER) has expired.

(By unanimous consent, Mr. SNYDER was allowed to proceed for 1 additional minute.)

Mr. SNYDER. There is a lot more conflict in what you own in large corporations or in small corporations that produce you income that is unearned, a lot more conflict than there is in going out and peddling a piece of real estate and making a real estate commission or making a fee for writing a will. Sure, the gentleman from Texas made a very compelling argument in regard to his specialized law practice. I think you have to look at what you do and see if there is a conflict and weigh it in your conscience, and if there is a conflict I think you have to put it up on the board and vote present on such bills as the truck bill. And if your constituents think there is a conflict of interest there, they will make that decision in November of an even year. There is nothing wrong with making an executor's fee for an estate. But that is earned income, not unearned income. There is less conflict in that than holding stocks and bonds, as many of us do. If you want to be honest about disclosure, if you want to let it all hang out, then you adopt the Quillen amendment and make us disclose everything.

Mr. HAMILTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, in the course of this debate this rule of limiting outside-earned income has been called ridiculous and irrational. It has been called the product of superduper do-gooders.

What I would like to do is try to express if I can, in just a few minutes, the principal reasons for the rule, why many of us feel that it is important to have a limit on outside-earned income.

Now, first of all, we believe that we need this rule to minimize the possibilities for conflicts of interest. If a Congressman is receiving large amounts of money from a private source, then it might be very difficult for him to vote for legislation that would harm that source. But even if his noncongressional job does not clearly alter his votes, the appearance of a conflict of interest can often arise in the public's mind. If a committee member is employed by a firm which comes under his committee's jurisdiction, or if he receives large sums for speaking before a given group, then the public has a right to be suspicious of the integrity of his vote. The public has the right to be assured that their Congressman has only their interests in mind.

The second reason for the earned-income limitation is this: To avoid taking time away from congressional work.

The public believes that this is a full-time job. The argument has been made here that we are only in session so many days a year, one-half or two-thirds of the time. But the fact is that Congressmen know that they need to devote their full time to working for their constituents. And even though we are not in session every day, a Congressman spending the recess time working for his own private reward is not providing as good a service to his constituents as he would provide were he doing so. Our constituents have the right to have an exclusive call on our services.

There is a third reason: For the outside-earned income limitation, and that is to avoid the appearance of cashing in on the position. When we receive thousands of dollars for honoraria, in consulting fees and in salaries, that strikes the American citizen as trying to exploit the current status of our job for financial gain.

These general reasons for the limitation have been accepted by most of the Members, in practice, as statistics already quoted would suggest.

There are a couple of main objections to this earned-income limitation. One is that it discriminates against those who cannot simply live off of their investment and must work for extra income. It seems to me that there are several responses to that. First, the courts have already acknowledged the distinction between earned and unearned income, and they say that it does not constitute unlawful discrimination.

Second, the issue here and the aim of the limitation is not to place all Members on an equal financial status.

There is no public outcry for that. Our concern is to limit abuses. It seems to me that with earned outside income you have a far greater potential for abuse than you do with investment income; hence, you require stronger restrictions.

There is a third reason: That is simply that public opinion polls show a very high percentage of the people think that it is improper for congressmen to have other jobs. One may dismiss lightly the public opinion polls, but we are dealing here basically with the question of the public's perception of this body.

Now, of the three reasons that I gave for the limitation on earned income, only one of them applies to unearned income, and that is the possibility of a conflict of interest.

The CHAIRMAN pro tempore. The time of the gentleman from Indiana has expired.

(By unanimous consent Mr. HAMILTON was allowed to proceed for 3 additional minutes.)

Mr. HAMILTON. Since two out of the three main problems with earned income do not arise in the typical case of investment income, financial disclosure should be sufficient to deal with the latter.

There is another reason also for this limitations: it is just the difficulty of limiting investments. It is a hard thing to do.

Now, the other objection to the limitation is the argument that disclosure in itself is sufficient. The argument is that if we have full financial disclosure on outside income, then our constituents will be able to make a judgment. It seems to me that there are a couple of things wrong with that. Even with the full financial disclosure, the average constituents lacks sufficient information about his congressman's earned income. A large percentage of the voters do not know the name of their representative.

The other point is the complexity of the voting process. If the voter does have enough information to know his congressman's earnings were clearly excessive, there are still many reasons for a voter not to vote against his congressman, just because of the complexity of issues in an election. If we are looking for a procedure that will assure Americans that abuses will not be tolerated, then disclosure is not going to be sufficient.

There is another argument in support of the limitation, and I think it has not been mentioned thus far in debate. That is, that if we now turn around, after having adopted this earned income limitation, and reject it, the signal is going to go out from this Chamber that we are backsliding on ethical reform. We passed this measure on March 2, 1977. We did it by a vote of 344 to 79. The polls again have shown a strong acceptance of that action. Editorial comment across the country has approved it. It would be a very serious signal to send from this Chamber that we are changing our position on ethical reform at the very time when the image of this body needs to be strengthened.

Finally, may I simply observe this: I have felt that most of my colleagues in this House have operated with unusually high ethical standards, and I have always been proud to serve as a Member of the body. I would simply hope that we do nothing today that would subtract from the integrity of the institution.

Mr. EVANS of Delaware. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise this evening as one who in March of 1977 voted to limit earnings of Members of Congress. But I guess everyone on this Earth has human frailties and anyone can make a mistake at that time because in the intervening 18 months I have come to the conclusion that this particular provision is robbing the Congress of some of its most effective and articulate Members and I definitely do not think that is in the best interest of America.

The Congress, if it is to properly represent America, must be a cross-section of our country. We need individuals in the House of varied backgrounds, varied ages, and varied incomes, because that is America. But the current income limitation, if it is allowed to stand, could result in a House where Members are rich,

Members are retired, or Members are so dependent on this job and this salary that they might be afraid of exercising their independent judgment for fear of losing their job. A Congress comprised solely of the rich, the senior citizens, and the very nervous cannot represent America very well.

I stand here, Mr. Chairman, as one who is exempt from the earnings limitation because of a family-held business. I stand here as one who resigned from the boards of three corporations prior to coming to the Congress of the United States. But I did so out of my own free will. I made that choice, and I think we should retain that freedom of choice.

What concerns me the most and prompts me to take this well is the exodus of highly competent Members of the House of Representatives. Our Nation needs the most qualified individuals possible, particularly in this day and time, and just because a person cannot send his children to college or meet two mortgage payments on a congressman's salary is no reason to prevent him from serving in Government.

I believe we must restore confidence in all institutions and particularly in Government, and I believe that full disclosure is the way to do that because it brings accountability. But we should allow our constituents, the American people, to make the determination as to whether or not an individual is representing them well and effectively in the Congress of the United States.

So I rise strongly in favor of and urge my colleagues to vote for the Quillen amendment.

Mr. STEERS. Mr. Chairman, will the gentleman yield?

Mr. EVANS of Delaware. I yield to my friend, the gentleman from Maryland.

Mr. STEERS. Mr. Chairman, the distinguished gentleman from Delaware is indeed persuasive, but I just want to remind him of what the gentleman from Illinois said about clipping coupons. I remind this body that clipping coupons really does not take much time.

I also remind the gentleman from Delaware that the other gentleman from Maryland said that, well, we are sometimes here only about half the time. Apparently he is of the opinion that the rest of the time Members can spend their time as they wish, able to spend that free time earning income.

I suggest to the gentleman, and I wonder if he does not agree, that the time when we are not here is time when we are also working. I know the gentleman from Maryland works hard when we are in session and when we are not. We do have duties other than legislative, it seems to me, and I ask the gentleman's concurrence, that if somebody is getting $66,000 a year—and Montgomery County's median income, and we are supposed to be this affluent county, is $29,500, it seems to me if we are able to take $66,000, which is $57,500 plus the $8,500, it seems to me maybe our constituents are entitled to somebody who can more closely approximate their needs and not somebody who is able to earn vast sums which put us out of touch with reality. Does the gentleman agree?

Mr. EVANS of Delaware. Mr. Chairman, if the gentleman will yield back my time, the gentleman has presented some very interesting suggestions.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. ROUSSELOT, and by unanimous consent, Mr. EVANS of Delaware was allowed to proceed for 2 additional minutes.)

Mr. EVANS of Delaware. Mr. Chairman, I thank the gentleman for the additional time.

May I say, in answer to my friend the gentleman from Maryland (Mr. STEERS) that I think his question was answered by a number of speakers who have preceded me. For instance the gentleman from Illinois (Mr. HYDE) indicated that we should not penalize successful people; just because an individual is earning $57,500, or $157,500 does not make him less competent than someone who is earning $29,000 a year.

Frankly, this is a full-time job for me. Even though I do have a family owned business, I probably have spent no more than a total of perhaps 12 or 13 hours in that business, maybe six times in the last 2 years have I been in an office where I spent probably 12 hours a day before, because I find it is necessary to spend about 80 hours a week working on this job. But there are some individuals who, because of their experience here in this body, might be able to be very effective in 40 hours or 50 hours a week. But I believe that the vast majority spend substantially more than 50 hours a week. However, I do not think that you can equate effectiveness totally on the number of hours actually spent in the office or on the floor of this House.

Mr. ROUSSELOT. Mr. Chairman, if the gentleman will yield, I know that the gentleman from Maryland (Mr. BAUMAN) is very capable of speaking for himself, and does not need my help, but the gentleman did not imply that Members should only work 50 percent of the time on this job. The gentleman also well knows, because the gentleman comes from nearly the same area as does the gentleman from Maryland (Mr. BAUMAN) that he does in fact work full time on this job. Mr. BAUMAN was not suggesting that this new rule limiting outside-earned income would make it easier to take time away from this job. That was not his point. Mr. BAUMAN's point was that a 15-percent limitation on earned income does not guarantee that Members will be more ethical or perform their jobs in a more competent manner.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. MAZZOLI. Mr. Chairman, I would like to see if there is any reasonable way in which we could conclude debate on this amendment. We have been on it for over an hour and I would suggest, just for the purpose of getting the ball started, that I ask unanimous consent that all debate on the Quillen amendment and all amendments thereto, cease at 7 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. ROUSSELOT. Mr. Chairman, I object.

Mr. WYDLER. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. MAZZOLI. Mr. Chairman, let me suggest another unanimous-consent request.

I ask unanimous consent that all debate on the Quillen amendment and all amendments thereto, cease at 7:15 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. ROUSSELOT. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. MAZZOLI. Mr. Chairman, let me try one more time for a unanimous-consent request, and then I would be constrained to make a motion, because obviously we have thoroughly debated this issue and I believe we have all pretty well made up our minds. So I would ask unanimous consent that all debate on the Quillen amendment and all amendments thereto, cease at 7:30 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. ROUSSELOT. Mr. Chairman, reserving the right to object, the only reason I have objected, is that many of us have been sitting here very patiently while members of the committee have had their chance to talk—and the chairman has been very fair—but this issue some of us feel does have some importance, especially when the claim is that making $8,700 of earned income is not ethical. I really believe we ought to settle that.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I know that there has been much debate today, and some of it has been probably what I would call intemperate, and perhaps unavoidably self-righteous but I do believe that the main points have been discussed at legnth—although the gentleman from California (Mr. ROUSSELOT) has not spoken at length, and I might add I have not either—but I believe if we have 45 minutes more time we could conclude debate. I would hope the gentleman will accept that as being a realistic time in which to fully complete debate on the issue, and I would hope that the gentleman would not object to the unanimous-consent request.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I will be glad to yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman for yielding, and I am glad the gentleman raised the reservation of objection because I have on two occasions asked two members of the committee to yield and on both occasions they have failed to do so. I thought that was, to say the least, intemperate.

I think this is of sufficient importance that we should provide each Member with as much time as is required. To place a limitation on at this time, or at any time, would not be ethical.

Mr. MAZZOLI. Mr. Chairman, again I would ask the gentleman from Califor-

nia (Mr. ROUSSELOT) if he would yield on his reservation of objection.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Chairman, I am glad to yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for yielding.

I just want to address my friend, the gentleman from New York (Mr. BIAGGI). He did seek recognition, and I am sure that the gentleman who perhaps did not recognize him did so inadvertently and perhaps in the anxiety to wrap up our remarks. However, certainly in the next 45 minutes—and I know the Chair has called on Members as he has seen them standing—the gentleman from New York (Mr. BIAGGI) would have a chance to put forth his remarks.

Mr. Chairman, I would again ask my friend, the gentleman from California, if he would withhold objection to the unanimous-consent request.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Chairman, could we have some indication as to the number of Members who intend to speak? Perhaps that would be a way to tell.

I would suggest that the gentleman make it 1 hour.

Mr. MAZZOLI. Mr. Chairman, let me say that the gentleman from California has been very helpful.

Mr. Chairman, I ask unanimous consent that all debate on the Quillen amendment and all amendments thereto end in 50 minutes, or at about 7:35 p.m.

Mr. ROUSSELOT. At 7:35?

Mr. MAZZOLI. At 7:35, Mr. Chairman.

Mr. ROUSSELOT. In that event, Mr. Chairman, I will withdraw my reservation of objection.

Mr. MAZZOLI. I thank the gentleman.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The CHAIRMAN pro tempore. Members standing at the time the unanimous-consent request was made will be recognized for approximately 3 minutes each.

POINT OF ORDER

Mr. BIAGGI. Mr. Chairman, I have a point of order.

The CHAIRMAN pro tempore. The gentleman will state his point of order.

Mr. BIAGGI. Mr. Chairman, if my observation was correct, when the gentleman from California (Mr. ROUSSELOT) agreed to 7:35 p.m., there were seven Members standing, and then suddenly that number was doubled.

The CHAIRMAN pro tempore. The Chair will advise the gentleman that that is a very frequent occurrence in the House.

The Chair recognizes the gentleman from New York, Mr. WYDLER.

Mr. WYDLER. Mr. Chairman, the issue that we are voting on tonight is the issue of fairness. It is whether some of the Members of this body are going to be singled out and in a way offered up as a sacrifice for an idea in someone's mind that we are making the Congress ethical as a result, and we are taking certain of our Members and doing this to them for that purpose.

The point was well made by the speaker who preceded me who said we made a deal with the public. I do not know who made the deal, but, anyway, let us assume he was right. The deal was that we were going to get a pay raise, and the price that was going to be paid for that was an outside income limitation on a very few Members of the House of Representatives. I do not believe that deal was ever made. I do not believe it really exists. I believe it is a fiction and a figment of some people's imagination.

There was, indeed, some connection between the passage of the ethics bill and the pay raise, and certain Members have justified what they did on that basis. That is their business.

But for them to say to the general public, which is what I understand they are trying to say, that I voted for the pay raise so that somebody else would have his income limited as a result is a pretty rotten deal they made with the American publlic.

All I am asking for the Members to do—and I know it is difficult because of the political pressures—is not to listen to the polls, if indeed there are such polls, but think in fairness why, when we talk about outside income, we start out by eliminating most of it right off the bat: All the unearned income, and then categorize everything that is left in the earned category down and down the line until only a few Members are left to suffer and to be restricted. That really should be something between the Representative and the people he represents; these are the people who have the right to question him about it. They have a right to hear his answers to those questions. But this is not a decision that should be made in some kind of a congressional deal where 15 percent is the right amount. Why? What does it mean? This is a decision for the people that we are representing to make, and that is where it should be left. I hope the Members will support the Quillen amendment.

The CHAIRMAN pro tempore. The time of the gentleman from New York (Mr. WYDLER) has expired.

The Chair recognizes the gentleman from Georgia (Mr. MCDONALD).

Mr. MCDONALD. Mr. Chairman, I just could not help but observe that during the debate—and I hope that he is still in the chamber—the gentleman from Montgomery County, Md., did speak to the question of the immediate income in that nearby area. The overwhelming majority, almost the totality of the Members of this body, must maintain two separate residences—one in the general proximity of the Capitol and the second in their distant districts. I was just wondering if that same situation prevails with the case of the gentleman from Maryland. I would hope that he might be here in the Chamber and be able to clarify that, just to complete the record.

Mr. WALSH. Mr. Chairman, will the gentleman yield?

Mr. MCDONALD. I yield to the gentleman from New York.

Mr. WALSH. I thank the gentleman for yielding.

Mr. Chairman, I am going to be leaving this House at the end of this term. I strongly feel that the Members have made a mistake in supporting the income limitation. I am going to have to miss this vote, but I want to go on record as saying I strongly support the Quillen amendment.

(By unanimous consent Mr. MCDONALD yielded the remainder of his time to Mr. DELLUMS.)

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from California (Mr. DELLUMS).

Mr. DELLUMS. Mr. Chairman, I have several thoughts that I would like to share with all of the Members. Here is another issue that is breaking down liberal versus conservative. As the person they referred to as the Vito Marcantonio of this Congress, I do not think that my left credentials can be challenged by anyone here. Several colleagues have made the statement that this speaks to the integrity of the House. I would suggest to them that if I had to do battle, the utimate fight to change the nature of this country and the world, and I had to choose between taking a group of professed liberals and ideologically committed politicians, I would take the latter rather than the former, because the question of integrity in this House, I would suggest to my distinguished colleagues has to do with whether or not on any given day or any given motion before this body all of us in unison actually vote our honest beliefs.

The question of integrity in this House, I would suggest to my distinguished colleagues, has to do with whether or not on any given day, on any given motion before this body, all of us in unison actually vote our honest beliefs. That would be integrity. Each of us know, many of our colleagues go around saying, "RON, you are right. You are right, but I can't vote that way politically."

We talk about integrity. Integrity is expressing your honest views, rather than tapdancing for the next election, but let us not vote to the issue being right.

I am not a lawyer. I am not a business person. I own no stocks, no bonds. I have less than $300 in the bank. I spend my weekends talking to many groups, the NAACP, the Student Union League, the Urban League. none of which can corrupt me. I have not been here long enough to have any power.

This issue is a monument itself to mediocrity, because it has not been thought through. First of all, we have this because we say the time of our colleagues should be full time, and I agree; but one of the amendments in the Constitution says that there shall not be involuntary servitude. I do not owe anyone 7 days a week, 24 hours a day. Maybe that is why there are so many divorces. That is why we have lost our sensitivity, we have lost our humanity, because we have forgotten that we are human beings and this job is the cause of it.

On Saturday and Sunday, if I want to water my flowers, scream at my children, that is my business, not yours, because nobody can commit me to work 24 hours

a day. I have gray hair and lines in my face. You have seen me age before you. I get damn emotional about this job and I put my gut into it.

Here is my question: If you are concerned about corruption, the ability to buy politicians, why not specifically deal with how Members of Congress are bought and deal with that question in a straight-on legislative statement? If you are concerned about the issue of conflict of interest, I would suggest that the Black Student Union I was speaking before recently is just as interested in it as you are. Why do we not address this conflict of interest?

What is this 15 percent? As my colleague said, at $8,700 you are pristine; at $8,800 you are corrupt. What kind of income is proper?

I am here to challenge wealth. I came from an impoverished family. I am not interested in wealth.

What did the committee do, tell us our rich get richer, but if you are out there on Saturday or Sunday earning your income, that is illegal. Where is the ethics involved in that?

If you want to stop people being bought, then legislate on the question. If you want to stop conflict of interest, you say if a Member serves on this committee, you cannot speak here.

The CHAIRMAN pro tempore. The time of the gentleman from California has expired.

Mr. ROUSSELOT. Mr. Speaker, I ask unanimous consent to yield my time to my colleague from California. I do not always agree with the gentleman, but I think the gentleman is coming on pretty good.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DELLUMS. Mr. Chairman, I appreciate that from my distinguished colleague. One other point. I would just like to indicate that some of us here are reasonably young people that still have young children. Some of the old codgers here that have put their children through college and paid off the mortgage, you do not care. All my life and all my children are in front of me. Do not make those cavalier statements on the floor. If you want to challenge corruption, challenge criminality, do it with a straightforward vote.

It amazes me when we give a few speeches, my colleague, the gentlewoman from New York, SHIRLEY CHISHOLM, the gentlewoman from Texas, BARBARA JORDAN, or RON DELLUMS, we make a few speeches to the Student Union, to the NAACP, this black group or that black group, where is that corrupting? We do not have the power to be corrupt.

This 15-percent notion, someone thinks is magical if you go to 15.1.

The final point my wife wanted me to make, now, understand, this is one of the great legislative bodies in the world that does not care about our families. It is male chauvinism and sexism in its highest form. I have three children. They cannot go back to California. Do you know how much money it costs to take a wife and three children back to California? If they want to call their friends, it is long distance. If you live in Maryland, it is 20 cents. Our entire lives are radically changed.

I am not here in opposition to money, but I am opposed to people with great wealth. I think it is violative of the democratic process.

But I do not want to have to survive here. I came here as a fighter, I came here as a revolutionary; I did not come here to be a businessperson, I did not come here to serve my economic purposes. If I were in Berkeley, I could go about wearing nothing but jeans, but they sent me here to the highest cost-of-living city in America, and then we talk about these kinds of issues. If you want to challenge criminality, there is a way to attack that, not by amendments such as this.

I think the amendment is mediocre. It is an amendment offered to thwart our purposes, and it is not something brought on the floor that Members can actually deal with.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thank my colleague on the Committee on the District of Columbia with whom I have fought some battles over the years and I thank him for his statements today. The gentleman is as usual very eloquent.

However, I think the gentleman has misunderstood the direction and the thrust of our bill. It does not seek to discriminate between those who earn under a certain amount or those who earn over a certain amount. This is a fallible effort by a number of fallible people.

Mr. DELLUMS. There is no doubt that it is fallible.

Mr. MAZZOLI. Exactly, and I would be the first to admit it. It is a fallible effort to make some sort of a work product which we can live with and at the same time be responsive to our constituencies.

Mr. DELLUMS. Mr. Chairman, I simply say that all the amendment has done is to allow the wealthy people to remain here to continue to be wealthy and stay here.

Mr. MAZZOLI. Mr. Chairman, if the gentleman will yield further, as I started to say, this product, as I guess is the case with any important piece of legislation, solves not every problem, and it does not necessarily satisfy all the people who helped to draft it.

What it does do is it makes an effort in the right direction. As I said before, it is fallible, but it is intended to try to solve the problem.

The gentleman from California (Mr. DELLUMS) has pointed out some of the difficulties of the bill. It does serve certain people better than others and, I think some of the statements and some of the debate has been intemperate and sometimes perhaps a bit self-righteous.

Mr. DELLUMS. Mr. Chairman, if I may reclaim my time, I have met with Common Cause people, and I have asked them, "Do I have free time?"

They say, "Of course you do. You are a human being, and you have a private life." So then they stipulate that I have the advantages of those words, "free time." All right, that time is mine to do with what I will.

But then they said, "What are the areas you do not want to deal with?" We talk about being "bought" and engaging in conflicts of interest. When they look at our reforms, they ask, "What about these conflicts of interest?"

Then I ask, "What about young families?"

I think if we have these conflict of interest laws and if we spell out ways that Members can clearly and inequivocally make income, if we have public disclosure laws, since we have millions of criminal laws now, if we engage in criminality, ostensibly we are supposed to be prosecuted and the adjudication process will take its place.

But what about this 15 percent, where our colleagues are engaging in all this emotion of waving the flag, these Members who think they are liberal. That is process liberalism. Process liberalism will not change America, and all these phony reforms are not going to change America either.

I would like to see the process liberals get down to the gut issue where they are not tapdancing around the vote and dig into the issue. Then we could go out to America and say we have accomplished something, but they have tapdanced all around the issue and not addressed themselves to the criminalities involved.

Mr. Chairman, we should not engage in these kinds of things.

Mr. MAZZOLI. Mr. Chairman, if the gentleman will yield further, I am sure that certain Americans would agree that we have worked hard and not tapdanced around the issue. If we put a limit on what we are allowed to earn that is not tapdancing around the issue.

Mr. DELLUMS. But let us do it in an honest way. This is a mediocre issue.

As the gentleman from Maryland (Mr. BAUMAN) pointed out, they did not even spend much time on this question. They could spend more time on this issue because it is a very difficult process, and they could really think it out carefully.

If we do not have laws to stop these conflicts of interest, we can stop them. If we do not have laws for conflicts of interest in corporations, we can stop them. If we want to stop conflicts of interest, we can do it.

Mr. GOLDWATER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first let me point out that I believe my colleague, the gentleman from California (Mr. DELLUMS), has very directly addressed himself to this problem.

Mr. Chairman, I rise in support of the Quillen amendment to remove the outside earnings limitation on Members of Congress. I voted against the imposition of this limitation last year, and 1 year later, I am more convinced than ever that this prohibition does not serve the interest of advancing ethics in Congress.

Aside from the peculiar application of this limitation—an application which designates that only certain types of income are unethical—my greatest prob-

lem with the prohibition is that it seeks to control specific activities rather than ethics.

Ethics is a branch of philosophy which deals with moral principles, or more specifically with the principles governing ideal human character.

Now, obviously, what constitutes this state of being depends on which school of philosophy you subscribe to, and it is an area that is so far removed from any absolute rules that arguments on all sides can only be termed esoteric.

There is certainly nothing unethical about giving a speech or writing a book or practicing law or running a business. There is nothing unethical about accepting a fee or earning a salary for performing any of these activities, And, there is absolutely no evidence that earning outside income represents any more danger of a conflict of interest than unearned income from corporate dividends: partnerships and stocks and bonds.

What, then, is the purpose of the outside earnings limitation? It is nothing more than an attempt to control what Members of Congress do with their time.

It is an attempt to make sure that Members treat their congressional duties as a full-time job.

But, if that is the purpose, there are better ways to go about it. Would it not be better to require mandatory office hours, complete with a timeclock? The classical definition of a full-time job is a 40-hour workweek. I do not think there is one Member of this House who works less than 40 hours a week—and if he or she manages to hold this job working those kind of hours, I would be interested in knowing how they do it.

I have never seen a precise "job description" for a Member of Congress and I imagine that if we each had to write such a description, we would have had 435 different answers. In other words, each of us uses our time in different ways—we set our own priorities and we determine our own working hours. We perceive the relative importance of our different duties in various ways.

If some of us choose to spend what we can legitimately call our "own" time or our "spare" time performing a service for a fee, how is this any more of an interference with our official duties than a Member who chooses to spend spare time on the golf course? The answer is obvious if we are talking about how we use our time.

The ultimate judgment on this issue should be in the hands of the people who send us to Congress. I strongly support furnishing these people with the facts about my income. I support full disclosure, and I believe my constituents should use this information to make a determination about my qualifications and eligibility for public office. In a representative government, this is how the system should work.

If my constituents choose to judge my outside earned income as an ethical matter, then so be it—I must accept that judgment. But that is who should make the judgment, and we should not be imposing some arbitrary and unfair rules on how some Members spend their time nor should we accept this kind of double standard in judging outside income.

I urge my colleagues to support the Quillen amendment.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Missouri (Mr. TAYLOR).

Mr. TAYLOR. Mr. Chairman, I am very concerned at the direction that this House is going on this income limitation. I suppose that each one of us has a philosophy that is molded somewhat by what our personal background is. I happen to have been born on a small farm in Missouri to a family that was so poor that poor people called us poor. But I have seen the opportunity of America unfold for me and I have had opportunities that have been afforded me by this great Nation and by the great country in which we live and the free enterprise system, and I went into business on borrowed money and was a moderate success. I sought this office because I believed that I would have an opportunity to maybe help preserve and defend the great institutions upon which this Nation was founded.

Mr. Chairman, I believe it is inherently wrong for this Congress to pass a law to tell any American that his income will be limited. This is not in keeping with the dream of America. I believe that it is important that we look back to the Founding Fathers of this country, to Jefferson, to Madison, and to the philosophy that they espoused when they said that the Congress would be composed of men and women who would come down to Washington from every walk of life and make the laws of this Nation—hopefully, not any more than needed to be made—and then go home and live under the laws that they had made. I fear, Mr. Chairman, that we are getting away from this philosophy, and I believe it is disturbing to the American people.

So I would certainly support the Quillen amendment. I know there are ways of circumventing the provisions of this bill. I believe in openness. I still have a business. It is still making a profit. I still take money from it. I do not work in that business, but my investment and my life are there. I think I am entitled to that, and one day I want to go back to that business if it is still there and can stand the ravages of what is happening in this country. But I think it is important that we perceive here today that we are doing something that can very well alter the face of this Nation when you play the hull and pea game. Some Members who opposed the Quillen amendment said there are ways you can circumvent it. Friends, I do not want to circumvent anything. I want to be open. For those with a halo over their head, I simply say that if we reject this Quillen amendment—we will have betrayed our responsibility to be open with the American people.

The CHAIRMAN pro tempore. The time of the gentleman from Missouri (Mr. TAYLOR) has expired.

(By unanimous consent, Mr. MARRIOTT yielded his time to Mr. TAYLOR.)

Mr. TAYLOR. I can circumvent it. Of course I can circumvent it. I can play the hull and pea game. I can fool my people. I can take dividends, I can buy my building out of my corporation and rent it back. But that is not right. That is not fair to my constituents or in the interest of openness in which I believe very deeply.

I will stand on my record as a former businessman who gives all of his time to serving as a Member of Congress from the Seventh Congressional District, and upon that service I will submit myself to the voters of my district and let them make the decision as to whether or not I have a conflict of interest.

Mr. Chairman, I believe we are dealing with a very serious subject that may well alter the course of this great body, which I am very proud to serve; and ultimately, the course of this Nation. I urge adoption of the Quillen amendment.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I thank the gentleman for yielding. I think the gentleman's statement was a good one. I just wanted to bring to the Members' attention, if I could, a letter I got from the Community College Student Association. They are in favor of this outside earnings limitation, and they say the reason is because they do not want to have to pay their lecturers any more money than they are paying them now. That is serious—that is in a letter. I imagine everyone in this House got that letter. That is the kind of ridiculous nonsense we are being exposed to and exposing our Members to by putting in these arbitrary, totally pulled-out-of-the-air numbers as figures at which a person becomes ethical or unethical. I just hope the Members of the House will listen to what the gentleman said and vote for the Quillen amendment when it comes to final passage.

(By unanimous consent Mr. HOLLAND yielded his time to Mr. BIAGGI.)

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Chairman, I have been listening throughout this entire debate, and the most refreshing contribution was made by the gentleman from California (Mr. DELLUMS). His statement was spiritually elevating, dealing with principle—principle. When we are dealing with this legislation, I ask, what happened to principle? What happened to morality? I charge that there is an absence of morality in the compilation of this legislation, a violation of the 14th amendment, equal application of law to all people.

Let us deal with just one small area of conflict of interest. Mr. BAUMAN pointed out that of all the charges and all the crimes of Congressmen, not one dealt with conflict of interest. We are providing a remedy where we do not have an ailment.

Let us get with one group—those that have unearned income as contrasted to the other aspect mentioned earlier in connection with this issue. Why do we conceive or how do we conclude that those who have securities. the wealthy, if you will, are not engaged or at least

have the potential of conflict? I believe, as most Members do, that our Members are ethical, but we are talking about perception, are we not?

Perception is the word I kept hearing round and round during this debate.

Let me tell the Members, tell the people of this Nation if they dare, that the wealthy, the millionaires in this place, those who have limitless securities, are voting on issues that touch their lives every day, and try to convince them that these Members are not voting for self-interest, because it enhances their securities, that is perception. That is the reality of life.

I know some who say, "You know, it is not fair but I am going to vote against the Quillen amendment." It is not fair, I agree; it is not fair, but I am voting against it. Where is the morality, the principle, the ethics?

Others say, "Well, if we vote for the Quillen amendment we will never get a raise any more." How do you like that? Now, they are talking about future raises, the possibility of future raises which are as remote as the galaxies. Some of those very people voted against the last raise, and are enjoying the benefits.

Let us talk about some of these individuals with securities, because that is where it is, and using the committees to fix a thrust on earned income as contrasted with unearned income confounds me. The logic confounds me.

Let me tell the Members that is the area of conflict. I heard Members talk about stock and the effect of legislation on stock. I heard that on this floor. Yes, I did in my time hear that on this floor. It may be of no consequence and does not necessarily mean they voted as if they were motivated by self interest, but they were talking about stock issues and the effect of legislation on those stock issues and how some of them would benefit. That is real. That is fact.

Let us talk about trusts, blind trusts. I have been around here a little bit. I do not profess to know all, but a few things I know. Some of these blind trusts have 20–20 vision. They see better than you and I. Yet some of the very people who have the trusts will vote against the Quillen amendment because that is the type of professed liberalism that the gentleman from California (Mr. DELLUMS) was talking about. That is right. They tiptoe around the voting arena. It is election time. If we had this discussion after the election, the Quillen amendment would fly. It absolutely would fly.

But we are brought down to the crunch, because they say we do not have the courage to vote for the Quillen amendment.

Let me tell the Members we come to this day on the Quillen amendment. But what was the genesis of the Quillen amendment? Was it the Hays affair? Was it the Mills difficulty? Was it the Korean problem? Whatever, we dealt with each one of them in order. We do not have a problem to resolve as far as the Members are concerned on earned income. That is clearly enunciated. But this is ethical. They would compel us—I should not say me, because I can accommodate, but they would compel a man like Senator CLAUDE PEPPER to do this.

The CHAIRMAN pro tempore (Mr. ROSTENKOWSKI). The time of the gentleman from New York (Mr. BIAGGI) has expired.

(By unanimous consent, Mr. MAZZOLI yielded 1 minute of his time to Mr. BIAGGI.)

Mr. BIAGGI. But they compel a gentleman like Senator CLAUDE PEPPER, who made the point very graphically with us. If we lose an election, we are out. A prudent man must prepare for that day. Members have families. Senator PEPPER went up and scrounged, he told us the last time around, and built that practice up.

I heard a member of the committee say we can protect our equity if we do not render personal services. He does not contribute personal services. I would like to put that question to the Chair or to the committee as far as Senator PEPPER's position, where he does not have an equity and he does not give any personal services, is he protected on his income?

Mr. PREYER. Mr. Chairman, if the gentleman would yield, just because the gentleman does not give personal services does not automatically protect him on his income. I would hesitate as one member of the committee to give an official ruling on the treatment of legal income under the facts you mentioned.

Mr. BIAGGI. The gentleman says he cannot give that answer. Another member of the committee, the gentleman from Wisconsin (Mr. OBEY) said he can. The Members heard it and I heard it. There is obfuscation, and I urge the Members to vote for the Quillen amendment on the basis of principle and morality.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Florida (Mr. BENNETT).

Mr. BENNETT. Mr. Chairman, I had not intended to speak on this but I have some experience about some of the things that have been said here and so I will talk about it.

Some years ago when we had the first Ethics Committee, the most controversial thing I did as chairman of that temporary select committee was to observe that lawyers ought to stop practicing law if they are going to be Congressmen. I think that in large part resulted in my not being chairman or even on the committee when the new permanent committee was appointed. So I am conscious of the fact that one can lose friends if one takes the position I take.

I am now on the Standards Committee but not on the Legislative Ethics Committee which has brought this bill to floor. But this legislative committee has done its best to find a good answer to this problem. The problem is not in all areas of employment. It is primarily in law and in public relations and in honoraria and a few other areas mentioned here, where a person can almost be bribed by the normal processes of the work that he does and the Member may not realize this. That is the reason why that type of conflict of interest situation should be excluded.

The committee studied various ways of protecting against such abuses and came up with this answer: and this pending amendment would eliminate this answer—It is the best I can think of unless we are going to actually prohibit some of the professions from being practiced by Congressmen—such as law and public relations and lecturing for fees. As one gray-haired Member and also as the father of young children—and I have young children at home—I have other observations to make. When I came to the Congress I think the salary was in the neighborhood of $10,500. We Congressmen then lived modest lives. Our family had only one car, a very old car, and my house was a very modest one, close to the Capitol. In every way, my family lived very modestly—like most of my constituents whom I represented.

We have now greatly improved the benefits of Members of the Congress. We are now not living like most of our constituents live. When I came here we lived like most of our constituents did then live and do now live and that has been greatly changed. I think that says something in itself. In other words, I think we have priced ourselves out of the mainstream concept of representation; and I think that is a bad thing.

I think our salaries are too high, very much too high. I think we have done a disservice to this country by raising them as we have raised them.

Some observations were made here about the necessity of raising extra money by going out and working, as if that were going to help your children. Well, I have been through all the pains of childhood you can be put through, including extended and expensive hospital bills, and I can assure you that the children need their fathers and mothers more than they need those extra dollars.

I urge the defeat of the Quillen amendment.

The CHAIRMAN pro tempore. The Chair now recognizes the gentleman from California (Mr. PANETTA).

Mr. SISK. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I am happy to yield to my colleague, the gentleman from California (Mr. SISK).

Mr. SISK. Mr. Chairman, I appreciate my colleague, the gentleman from California (Mr. PANETTA) yielding me this time.

Mr. Chairman, I rise in support of the amendment.

Mr. PANETTA. Mr. Chairman, I think there is a simple issue that faces the House here. It is really a question of whether we are going to implement the ethics reform bill that was adopted overwhelmingly by the House last year, or whether we are going to retreat from that commitment.

The fact is that this House overwhelmingly adopted this legislation by a vote of 403 to 21. And on the question of eliminating the earned income limitation it rejected that effort by a vote of 344 to 79.

I think if we reverse ourselves in the

House on this issue it is a clear signal to the country that we are indeed backing away from the commitment we made on ethics reform only a few short months ago.

Second, there is good reason for ethics reform. Ethics reform did not just fall down out of the sky; it was the result of concern about conflicts of interest, about prosecutions and investigations of House Members. The public was concerned about the issues they were reading about daily and seeing on television daily. That is why we decided to try to put some limitation on the potential of conflicts, particularly with regard to earned income.

Let me say on the record once again and make no mistake about it, the role of a Congressman is a full-time job. It does involve sacrifice of family and children. It does involve sacrifice of one's own profession or business, but that is the choice we make. It is a choice the people want, because the people want full-time legislators; they do not want them depending on other sources of income. That is what the pay raise issue was all about and that is why 90 percent of the Members today have severed all of their relationships with their professions or their businesses so that they could devote full time here.

I think, very simply, the choice is whether the House will back away from the commitment that we made in the ethics reform bill last year, or whether we will stand by that commitment. Frankly, there is no choice. We ought to reject this amendment.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from California (Mr. PATTERSON).

Mr. PATTERSON of California. Mr. Chairman, I rise in opposition to the Quillen amendment.

There are two questions that I think are important to me and I hope they are to you. The first one has been addressed many times, and that is: Is the job of a Member of Congress full time? I submit that it is. I think every Member in this room has agreed and has concurred in that.

The point that has been made is that outside earned income can somehow be earned in our offdays, whatever time that time is, and I submit that this job means to be on duty all of the time.

Let us just suppose you could take 85 days off—and I doubt if any one Member of Congress has taken 85 days off in the last 365, but if you could, and you earned $100 every day, you would still fall within the purview of the bill as it is, you would still earn $8,500 and still be allowed to earn that.

How much do you want to earn?

What we are trying to prevent is not criminal action. What we are trying to prevent is the excesses.

The second question is, Will the average American be driven out of office, or will those of us who have some special stature and who are such great Members of Congress be driven out of office?

Mr. Chairman, I submit that half of our membership are lawyers, such as me. That is enough.

What about a teacher? What about a carpenter? What about a truckdriver? What about a nurse? Can they earn money on their off-duty times? How do they do that, I ask?

Mr. Chairman, maybe some of the rich can stay in office, and maybe some of the young activists will run; but I submit that those who teach school, those who are carpenters, those who are nurses, or those who are in any of the average American occupations, but who are not in Congress, work their jobs. Therefore, I see nothing at all wrong in the restrictions on outside earned income.

Let us be full-time, proud Members of this great body.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Tennessee (Mr. QUILLEN).

Mr. QUILLEN. Mr. Chairman, it is now 7:30. We have been debating this amendment for 2½ hours, and yet the arguments against the amendment are absolutely irrational.

I feel that those who would be against the amendment, who would be for keeping House rule XLVII would be for changing the complexion of this House in years to come. They are saying, in effect, go ahead, that we should have a "professional"—and I put the "professional" in quotes—a "professional" legislature members beholden entirely to a government instead of to the people.

Mr. CHAPPELL. Mr. Chairman, will the gentleman yield?

Mr. QUILLEN. I am happy to yield to the gentleman from Florida.

Mr. CHAPPELL. Mr. Chairman, I appreciate the gentleman's yielding.

What would be the situation if a businessman was elected to Congress, and he was the sole owner of the business; he employs a manager to take care of his business, and he instructs that manager not to make more than 15 percent above what the Member's salary would be; but in spite of all that, in spite of the fact that he comes to Congress and devotes no time or effort to the business at all, he still makes $30,000 in that business that year? It is not a corporation. What is he supposed to do, I ask, with respect to some $22,000 earned in his business? How can he comply with the law if we do not adopt the amendment offered by th gentleman from Tennessee (Mr. QUILLEN)?

Mr. QUILLEN. Mr. Chairman, that is a very good question.

As a matter of fact, I have posed several questions to members of the committee, including the gentleman stand ing, the gentleman from North Carolina (Mr. PREYER); and I have yet to get a final judgment.

Mr. Chairman, I would yield to the gentleman from North Carolina (Mr. PREYER) if he could answer that question.

Mr. PREYER. Mr. Chairman, I thank the gentleman for yielding.

The income of the gentleman in the example he gives would not count as earned income. It would be a return on equity. He would not be limited by our rules in receiving that income.

Mr. CHAPPELL. If the gentleman will yield further, Mr. Chairman, I ask the gentleman from North Carolina how that can be because it is earned income. He owns a business. It is not a corporation. He is not taking the dividends his business has earned. It is not a corporation. It is his. What is he going to do with the business? What happens to that difference, that $22,000?

Mr. PREYER. Whether it is incorporated or not has nothing to do with whether it is earned income or whether it is a return on equity. The only question is how the income was generated—whether it was generated from personal services or not.

Mr. QUILLEN. Mr. Chairman, there have been no clear answers whatsoever in regard to the enforcement of the rule. I have heard the proponents and the members of the committee say farmers are not included; yet the last time they were before the Committee on Rules, they said farmers are included and their income cannot be excluded.

Mr. Chairman, I urge the adoption of my amendment for the benefit and the future of this great body.

The CHAIRMAN pro tempore. The time of the gentleman from Tennessee (Mr. QUILLEN) has expired.

The Chair recognizes the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I would just like to make a couple of comments.

One is, as much as I try to empathize, I simply cannot share the feelings of my colleagues here who say that this body will go into ruin and that we will have difficulty securing good Members of Congress if the Quillen amendment is defeated. I think we now have good Members of Congress. I think we will retain good Members of Congress, and I think we will secure in the future good Members of Congress without the Quillen amendment, which I hope is defeated.

My friend, the eloquent gentleman from California (Mr. DELLUMS), in his statements talks about tapdancing and the fact that the House too often tapdances around the tough issues.

I agree with him. We do. It is inevitable in the political process, but it certainly is not to be desired. I would, however, suggest that the House would be considered as again tapdancing around a tough issue if here, in the 11th hour, 18 months after it adopted strong rules, correct rules on outside earnings, if we now abandon ship and revoke the rules, I think that would be the ultimate in tapdancing.

I think, Mr. Chairman, that if I had had my own way we would have covered unearned income in the bank. I have no unearned income. I have no earned income. But, I think correctly the limit should be across the board.

But we on the committee had to make political judgments. We had to make a realistic political appraisal of what could pass. So we decided that of the two of them, it was the earned income that would cause the most potential for problems, both as to conflict of interest and as to the consumption of time.

It seems to me that we, by looking at the earned income coverage. have sought to control at least the most blatant case.

All in all, it is the best we could do under the circumstances. I hope that the amendment is defeated.

The CHAIRMAN pro tempore. The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

The Chair recognizes the gentleman from California, Mr. MOORHEAD.

Mr. CORMAN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from California.

Mr. CORMAN. I thank the gentleman for yielding.

I want to associate myself with the remarks of the gentleman from California (Mr. GOLDWATER) and the gentleman from California (Mr. DELLUMS) and make one observation I have not heard.

If one earns $8,625 in a year and pays his taxes, as most of us do who live on earned income, he will pay $5,952 of that in taxes, leaving a net of $2,648 for the year. I approve of those tax laws. I have voted for them. But we should keep in perspective what the amount of the outside earned income really is. I would vote that many with unearned income pay little or no taxes on it. I urge a yes vote for the Quillen amendment.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. of California. I yield to the gentleman from California.

Mr. ROUSSELOT. I thank the gentleman for yielding.

The answer to the question of how can we turn around on this issue if Members voted for it before is: That it was a bad idea previously and now is a bad idea whose time is past. I am sorry that many Members were not here to hear the comments of our colleague, the gentleman from Delaware (Mr. EVANS). Mr. EVANS voted for it previously and has now admitted he made a mistake. Why? The title of this bill is "Ethics in Government." How do we have ethics in Government guaranteed at 15 percent but not at 15.1 percent? It is an absolutely wrong, upside-down argument. As the gentleman from California (Mr. DELLUMS) said—and we do not quote each other too often, but I think he was brilliant tonight—we cannot guarantee ethics at a percentage figure. I believe the original limitation was a mistake. We ought to admit it, and I believe the voters of this country will applaud us for doing so. I support the Quillen amendment.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from New York.

Mr. WYDLER. I thank the gentleman for yielding.

Mr. Chairman, I am just going to remind all of the Members who are here and listening in that later on in the course of this evening we are going to vote on a 15-percent outside limitation for Federal executive branch employees. The Members might consider whether they want their votes to be consistent tonight. I think they should consider that. There is no reason in the world why a Congressman who is elected should be under a different rule than a person who holds his job by appointment—none that I can see.

So I would hope every Member would think seriously about the fact that later this evening they will be voting on a 15-percent earnings limitation for other Federal employees of the executive branch.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Tennessee (Mr. QUILLEN).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MAZZOLI. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 97, noes 290, answered "present" 1, not voting 44, as follows:

[Roll No. 808]

AYES—97

Annunzio	Flynt	Moorhead, Pa.
Badham	Ford, Mich.	Mottl
Bauman	Forsythe	Murphy, Ill.
Biaggi	Frenzel	Murphy, N.Y.
Boggs	Gibbons	Murtha
Bowen	Goldwater	O'Brien
Brooks	Gonzalez	Ottinger
Brown, Calif.	Goodling	Pettis
Brown, Ohio	Gradison	Quayle
Burke, Mass.	Hammer-schmidt	Quillen
Burleson, Tex.	Hansen	Railsback
Carter	Harrington	Robinson
Chappell	Harsha	Rostenkowski
Chisholm	Hightower	Rousselot
Clawson, Del	Holland	Russo
Clay	Holt	Shuster
Cleveland	Hyde	Sikes
Collins, Ill.	Jeffords	Sisk
Collins, Tex.	Jones, N.C.	Snyder
Corman	Kindness	Stanton
Cotter	LaFalce	Steiger
Crane	Leggett	Stokes
Daniel, Dan	Livingston	Stump
Daniel, R. W.	Lott	Symms
Davis	McClory	Taylor
Delaney	McDonald	Vander Jagt
Dellums	McEwen	Waggonner
Dornan	Mann	Wampler
Duncan, Oreg.	Mathis	Wilson, C. H.
Erlenborn	Milford	Wilson, Tex.
Evans, Del.	Moorhead, Calif.	Wydler
Fary		Young, Alaska
Fish		Zeferetti

NOES—290

Abdnor	Buchanan	Edgar
Akaka	Burgener	Edwards, Ala.
Alexander	Burke, Fla.	Edwards, Calif.
Ambro	Burlison, Mo.	Edwards, Okla.
Anderson, Calif.	Burton, John	Eilberg
Andrews, N. Dak.	Burton, Phillip	Emery
Applegate	Butler	English
Archer	Byron	Ertel
Ashbrook	Carney	Evans, Ga.
Ashley	Carr	Evans, Ind.
Aspin	Cavanaugh	Fascell
AuCoin	Cederberg	Fenwick
Bafalis	Clausen, Don H.	Findley
Baldus	Cochran	Fisher
Barnard	Cohen	Fithian
Baucus	Coleman	Flippo
Beard, R.I.	Conte	Florio
Beard, Tenn.	Conyers	Foley
Bedell	Corcoran	Ford, Tenn.
Beilenson	Cornell	Fountain
Benjamin	Cornwell	Fowler
Bennett	Coughlin	Fraser
Bevill	Cunningham	Frey
Bingham	D'Amours	Fuqua
Blanchard	Danielson	Gammage
Blouin	de la Garza	Gephardt
Boland	Derrick	Giaimo
Bolling	Derwinski	Gilman
Bonior	Devine	Ginn
Bonker	Dicks	Glickman
Brademas	Diggs	Gore
Breckinridge	Dingell	Grassley
Brinkley	Dodd	Green
Brodhead	Downey	Gudger
Broomfield	Drinan	Hagedorn
Brown, Mich.	Duncan, Tenn.	Hall
Broyhill	Early	Hamilton
	Eckhardt	Hanley
		Hannaford
Harkin	Martin	Santini
Harris	Mattox	Satterfield
Hawkins	Mazzoli	Sawyer
Heckler	Metcalfe	Scheuer
Hefner	Meyner	Schroeder
Heftel	Mikulski	Schulze
Hillis	Mikva	Sebelius
Hollenbeck	Miller, Ohio	Seiberling
Holtzman	Mineta	Sharp
Horton	Minish	Simon
Howard	Mitchell, Md.	Skelton
Hubbard	Mitchell, N.Y.	Slack
Huckaby	Moakley	Smith, Iowa
Ichord	Moffett	Solarz
Ireland	Mollohan	Spellman
Jacobs	Montgomery	Spence
Jenkins	Moore	St Germain
Johnson, Calif.	Murphy, Pa.	Staggers
Johnson, Colo.	Myers, Gary	Stangeland
Jones, Okla.	Myers, Michael	Stark
Jones, Tenn.	Natcher	Steed
Jordan	Nedzi	Steers
Kasten	Nolan	Stratton
Kastenmeier	Nowak	Studds
Kazen	Oakar	Thompson
Kelly	Oberstar	Thone
Keys	Obey	Thornton
Kildee	Panetta	Traxler
Kostmayer	Patten	Treen
Krebs	Patterson	Trible
Lagomarsino	Pattison	Udall
Latta	Pease	Ullman
Le Fante	Perkins	Van Deerlin
Leach	Pickle	Vanik
Lederer	Poage	Vento
Lehman	Pressler	Volkmer
Lent	Preyer	Walgren
Levitas	Price	Walker
Lloyd, Calif.	Pritchard	Watkins
Lloyd, Tenn.	Pursell	Waxman
Long, La.	Quie	Weaver
Long, Md.	Rahall	Weiss
Lujan	Rangel	Whalen
Luken	Regula	White
Lundine	Reuss	Whitehurst
McCloskey	Richmond	Whitley
McCormack	Rinaldo	Whitten
McDade	Risenhoover	Wilson, Bob
McFall	Roberts	Winn
McHugh	Rodino	Wirth
McKay	Roe	Wolff
McKinney	Rogers	Wright
Madigan	Roncalio	Wylie
Maguire	Rooney	Yates
Mahon	Rose	Yatron
Markey	Rosenthal	Young, Fla.
Marks	Runnels	Young, Mo.
Marlenee	Ruppe	Zablocki
Marriott	Ryan	

ANSWERED "PRESENT"—1

Hughes

NOT VOTING—44

Addabbo	Gaydos	Rhodes
Ammerman	Guyer	Roybal
Anderson, Ill.	Jenrette	Rudd
Andrews, N.C.	Kemp	Sarasin
Armstrong	Krueger	Shipley
Breaux	Meeds	Skubitz
Burke, Calif.	Michel	Smith, Nebr.
Caputo	Miller, Calif.	Stockman
Conable	Moss	Teague
Dent	Myers, John	Tsongas
Dickinson	Neal	Tucker
Evans, Colo.	Nichols	Walsh
Flood	Nix	Wiggins
Flowers	Pepper	Young, Tex.
Garcia	Pike	

The Clerk announced the following pairs:

On this vote:

Mr. Addabbo for, with Mr. Ammerman against.

Mr. Breaux for, with Mr. Neal against.

Mr. Nichols for, with Mr. Flood against.

Mr. Jenrette for, with Mr. Meeds against.

Mr Roybal for, with Mr. Pepper against.

Mr. Dent for, with Mrs. Burke of California against.

Mr. Shipley for, with Mr. Teague against.

Messrs. BURKE of Florida, MARLENEE, DINGELL, WINN, and LE FANTE changed their vote from "aye" to "no."

Mr. CARTER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read title II.

The Clerk read as follows:

TITLE II—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

PART A—FILING REQUIREMENTS

PERSONS REQUIRED TO FILE

SEC. 201. (a) Upon assuming the position of an officer or employee designated in subsection (f), an individual shall file a report as required by section 202(b).

(b) Upon the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O–6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report as required by section 202(b).

(c) Upon becoming a candidate for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, an individual shall file a report as required by section 202(b).

(d) Any individual who is an officer or employee designated in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report as required by section 202 (a).

(e) Any individual who occupies a position designated in subsection (f), shall on or before the thirtieth day after termination of employment in such position, file a report as required by section 202(a), unless such individual has accepted employment in another position designated in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, whose position is classified at GS–16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS–16; each member of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined to be of equal classification;

(4) each officer or employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS–16; and

(7) the Director of the Office of Government Ethics and each designated agency official.

(g) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Director of the Office of Government Ethics established by part B of this title, but the total of such extensions shall not exceed ninety days.

CONTENTS OF REPORTS

SEC. 202. (a) Each report filed under subsections (d) and (e) of section 201 shall include a full and complete statement, in such manner and form as the Director of the Office of Government Ethics may prescribe, with respect to the following:

(1) The source, type, and amount of income from any one source (other than from current employment by the United States Government), including honoraria, received during the preceding calendar year aggregating $100 or more in value.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any one source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the estimated value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any one source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(C) The identity of the source and a brief description of reimbursements received from a single source aggregating $250 or more in value and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $5,000 as of the close of the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle or household furniture or appliances.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(i) in real property, other than a personal residence of the reporting individual or his spouse; or

(ii) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year (and, for the initial report, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, charitable, or political entity.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed under subsections (a), (b), and (c) of section 201 shall include a full and complete statement in such manner and form as the Director of the Office of Government Ethics may prescribe, with respect to information required by paragraphs (3), (4), (6), and (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to the date of filing, and the sources and amounts of income for the year of filing and the preceding calendar year.

(c) In the case of any individual described in section 201(e) of this Act, any reference to the preceding calendar year shall be considered to include that part of the current calendar year up to the date of the termination of employment.

(d) The categories for reporting the amount or value of the items covered in paragraphs (3), (4) and (5) of subsection (a) or in subsection (e) are as follows:

(1) up to $5,000;

(2) from $5,000 to $15,000;

(3) from $15,000 to $50,000;

(4) from $50,000 to $100,000; and

(5) greater than $100,000.

(e)(1) Each report shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse of the reporting individual as follows:

(A) The source of items of earned income from any person which exceed $1,000.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description or the estimated value of the gift.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported other than items (i) which the reporting individual certifies represent the spouse's sole financial interest or responsibility, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(2) Each report shall also contain all information listed in paragraphs (3) through (5) of subsection (a) respecting any dependent child of the reporting individual other than items (A) which the reporting individual certifies represent the dependent child's sole financial interest or responsibility, (B) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (C) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(3) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his

marriage or the permanent separation from his spouse.

(f) The holdings of and the income from a trust or other financial arrangement from which the reporting individual, spouse, or dependent child receives income or in which such person has a beneficial or equity interest must be reported according to the provisions of this section; except that if the trust or financial arrangement is a blind trust approved under regulations promulgated by the Civil Service Commission, with the concurrence of the Attorney General, as necessary to avoid potential or apparent conflicts of interest under section 208 of title 18, United States Code, and other applicable laws and regulations, the report shall so indicate and need only include (in addition to a statement of the income from the blind trust in accordance with section 202 of this Act) a copy of the instrument or agreement establishing such blind trust and, to the extent known or readily ascertainable, the identity and category of value of assets contained in the trust or arrangement at the time it became a blind trust, and the identity and category of value of assets subsequently added to the blind trust.

(g) Political campaign funds received by a reporting individual or political campaign funds of such individual shall not be reported under this part.

FILING OF REPORTS

SEC. 203. (a) Except as otherwise provided in this subsection, the reports required under this part shall be filed by the reporting individual with the designated agency official at the agency by which he is employed or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President and the Vice President shall file reports required under this part with the Director of the Office of Government Ethics only.

(c) Copies of the reports required to be filed by candidates for the office of President or Vice President, the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency officials, and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress shall be transmitted to the Director of the Office of Government Ethics.

(d) Reports required to be filed by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this part.

(e) Each individual identified in section 201(c) shall file the report required by this part with the Federal Elections Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 204. (a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfuly fails to file or report any information that such individual is required to report under section 101. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(b) The head of each agency, each Secretary concerned, and the Director of the Office of Government Ethics shall refer to the Attorney General the name of any individual they have reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, the Vice President, the Secretary concerned, and the head of each agency, or the Civil Service Commission, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 205. (a) Each agency shall make each report filed with it under this title available to the public in accordance with the provisions of subsection (b) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individual's designated agency official or Secretary concerned, except that this section does not require public availability of the report filed by any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would compromise the national interest of the United States. In addition, such individuals may be authorized, notwithstanding section 204(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest.

(b)(1) The agency shall require each person requesting inspection or a copy of a report under subsection (a) of this section to execute an application stating—

(A) his name, occupation, address, and telephone number;

(B) the name, address, and telephone number of the person or organization, if any, on whose behalf he is making the request; and

(C) that the information obtained by such inspection or from such copy shall not be used for any purpose prohibited by subsection (c) of this section.

(2) Upon receipt of an application required by paragraph (1) of this subsection, the agency shall promptly forward a copy of such application to the reporting individual. The agency shall permit inspection by or furnish a copy of the report to any requesting person within fifteen days after the report is received by the agency. The agency shall require such requesting person to pay a reasonable fee in an amount which the agency finds necessary to cover the costs of reproduction and mailing of such report.

(3) Once the requesting person has inspected or received a copy of a report, his name and address and the name and address of the person or organization, if any, on whose behalf the inspection or copy was requested, shall be made available to the public.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000.

(d) Any report filed with an agency, or transmitted to the Director of the Office of Government Ethics, pursuant to this part shall be retained by such agency or the Office of Government Ethics, or both, as the case may be. Such report shall be made available to the public for a period of five years after receipt of the report. After such five-year period the report shall be destroyed, except that in the case of an individual who filed the report pursuant to section 201(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 201(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President.

COMPLIANCE WITH FILING REQUIREMENTS

SEC. 206. The Director of the Office of Government Ethics and the head of each agency or the Secretary concerned shall assure that each report required to be filed under subsections (a), (b), and (f) of section 203 is filed and each copy of a report required to be transmitted under section 203(c) is transmitted. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

ADDITIONAL REPORTING REQUIREMENTS

SEC. 207. (a) The President may require officers and employees in the executive branch (including the United States Postal Service and members of the uniformed services) not covered by this part to submit confidential reports in such form as is required by this part.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, or regulation.

EFFECTIVE DATE

SEC. 208. The provisions made by this part shall take effect on January 1, 1979, and the reports filed under section 201(d) on May 15, 1979, shall include information for calendar year 1978.

DEFINITIONS

SEC. 209. For the purposes of this part, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: net compensation for services, including fees, commissions, and similar items; net income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

(3) "gift" means a payment, advance, for-

bearance, rendering, or deposit of money, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country; or by the United States Government; or

(D) food and beverages consumed at banquets, receptions, or similar events.

(4) "honoraria" means payments of money or any thing of value for an appearance, speech, or article, except that there shall not be taken into account for reporting purposes any actual and necessary travel expenses incurred by such person to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that they are not paid or reimbursed;

(5) "estimated value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "blind trust" means a trust or other financial arrangement administered by a trustee independent from and unassociated with the reporting individual and such individual's spouse and dependent children and administered in a manner which insulates the reporting individual, such spouse, and dependent children from the knowledge of the holdings and sources of income of the trust;

(8) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(9) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(10) "Secretary concerned" has the meaning set forth in section 101(8) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(B) the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service; and

(11) "designated agency official" means an officer or employee who is designated to administer the provisions of this part within an agency.

PART B—OFFICE OF GOVERNMENT ETHICS

OFFICE OF GOVERNMENT ETHICS

SEC. 221. (a) There is established in the Civil Service Commission (hereinafter referred to as the "Commission") an office to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS

SEC. 222. (a) The Director shall provide, under the general supervision of the Commission, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing and recommending to the Commission, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Commission pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by part A of this title;

(2) developing and recommending to the Commission, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Commission pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of part A of this title by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available such statements;

(4) conducting the review of financial statements required by section 206(b) to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the Commission governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(9) requiring such reports from executive agencies as the Director deems necessary;

(10) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(11) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Commission and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(12) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code; and

(13) providing information on and promoting understanding of ethical standards in executive agencies.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected, and the Attorney General.

(d) Pursuant to the Director's responsibilities under subsection (b)(1), the Director shall, within one hundred and twenty days after the date of enactment of this Act, develop and recommend to the Commission, and the Commission shall promulgate, a regulation establishing a method or methods for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this Act.

ADMINISTRATIVE PROVISIONS

SEC. 223. Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

AUTHORIZATION OF APPROPRIATIONS

SEC. 224. There are authorized to be appropriated to carry out the provisions of this title, and for no other purpose—

(1) not to exceed $1,000,000 for the fiscal year ending September 30, 1978;

(2) not to exceed $1,000,000 for each of the four fiscal years thereafter.

ANNUAL PAY

SEC. 225. Paragraph (122) of section 5316 of title 5, United States Code, is amended to read as follows:

"(122) Director of the Office of Government Ethics.".

PART C—CONFLICT OF INTEREST

AMENDMENT TO TITLE 18, SECTION 207

SEC. 241. (a) Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Disqualification of former officers and employees: disqualification of partners of current officers and employees

"(a) Whoever, having been an officer or employee of the executive or judicial branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents any other person (except the United States) in any formal of informal appearance before, or, with the intent to influence, makes any written or oral communication on behalf of any other person (except the United States) to—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (1) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or,

with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed in a position designated pursuant to subsection (c) of this section, within two years after his employment has ceased, knowingly aids or assists in representing any other person (except the United States) in any formal or informal appearance before—

"(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

"(c) Whoever, having been so employed—

"(i) at a rate of pay specified in subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under authority; or

"(ii) at a rate of pay equal to or in excess of the minimum established for positions classified at GS–16 of the General Schedule prescribed by section 5332 of title 5, United States Code, and in a position excepted from the competitive service by reason of being of a confidential or policymaking character; or

"(iii) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0–6 or above as described in section 201 of title 37, United States Code; or

"(iv) in a position designated by the Director of the Office of Government Ethics pursuant to subsection (d) of this section—

within one year after his employment under these circumstances has ceased, knowingly acts as agent or attorney for or otherwise represents any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to—

"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(d) Within six months of the effective date of this Act, the head of each department or agency shall recommend to the Director of the Office of Government Ethics which positions in the department or agency in addition to those designated pursuant to clauses (i), (ii), and (iii) of subsection (c) are occupied by an officer or employee who has a role in the formulation of agency policy that is substantially similar to that exercised by persons designated pursuant to clauses (i), (ii), and (iii) of subsection (c) of this section. After reviewing such recommendations and consulting further with the heads of the departments and agencies, the Director shall, within one year of the effective date of this Act, publish regulations designating the additional positions referred to in paragraph (iv) of subsection (c). The Director, upon the recommendation of or in consultation with the head of the department or agency concerned, may thereafter publish such amendments to the list of positions designated pursuant to this subsection as are necessary to satisfy the purposes of this subsection.

"(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agencies exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate 'department or agency': *Provided*, That this designation shall not apply to former heads of designated bureaus or agencies or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other specialized discipline and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for any other person (except the United States) before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath or from making statements required to be made under penalty of perjury, or from giving any testimony or making any statement or communication, if such former officer or employee receives no compensation for such testimony, statement, or communication, other than that regularly provided by law or regulation for witnesses.".

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees: disqualification of partners of current officers and employees.".

APPLICABILITY

SEC. 242. The amendments made by section 241 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to paragraph (iv) of subsection (c) of section 207, title 18, United States Code, prior to the effective date of such designation: *Provided*, That any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

EFFECTIVE DATE

SEC. 243. The amendments made by section 241 shall be effective on January 1, 1978.

Mr. DANIELSON (during the reading). Mr. Chairman, I ask unanimous consent that further reading of title II be dispensed with, that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENTS OFFERED BY MR. DANIELSON

Mr. DANIELSON. Mr. Chairman, I offer a series of amendments.

The Clerk read as follows:

Amendments offered by Mr. DANIELSON: Page 27, line 2, strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 27, after line 23, insert "Each report referred to in subsection (b) of this section shall, with respect to the spouse of the reporting individual contain information listed in paragraphs (1), (3), and (4) of subsection (a) only.".

Page 27, line 24, strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

Page 28, line 7, after "benefit." insert "Each report referred to in subsection (b) of this section shall, with respect to any dependent child, contain information listed in paragraphs (3) and (4) of subsection (a) only.".

Page 30, line 21: Strike "101" and insert "202".

Page 34, lines 21 and 22: Strike "the appropriate committee shall so inform the reporting individual and direct him" and insert: "the reporting individual shall be informed and directed".

Page 41, line 9: Strike "the" and insert "a".

Page 41, line 10: Strike "required by section 206(b)".

Page 44, line 2: Strike "1978" and insert "1979".

Mr. DANIELSON (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with, and I also ask unanimous consent that these four sheets of amendments, all of which are technical amendments, be considered en bloc, and I will explain them.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, are they explainable?

Mr. DANIELSON. They are explainable.

Mr. FRENZEL. I withdraw my reservation of objection, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANIELSON. Mr. Chairman, these are technical amendments. The first ones appear on page 27.

On page 27, line 2, we strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

The purpose of this amendment is simply to recognize the fact that there is an exception to that provision in subparagraph 202(e)(1). It has no change at all in substance.

The second one, on page 27, after line 23, provides that we insert "Each report referred to in subsection (b) of this section shall, with respect to the spouse of the reporting individual contain information listed in paragraphs (1), (3), and (4) of subsection (a) only.".

The purpose of this amendment is to conform the reporting by the spouse to that of the reporting individual's spouse. Otherwise the way it reads the spouse's report would have to be more extensive than the Government employee. It should not have to be more extensive.

On page 27, line 24, we strike out "Each" and insert "Except as provided in the last sentence of this paragraph, each".

That is exactly the same as the first amendment I read and simply makes recognition of the fact that there is an exception.

Then on page 28, line 7, after "benefit." insert "Each report referred to in subsection (b) of this section shall, with respect to any dependent child, contain information listed in paragraphs (3) and (4) of subsection (a) only.".

Again the purpose of this is to conform the provision as to a child to those of the child's parent. Without this amendment the reporting on the child would be greater than that of the parent who is a Government employee.

The next amendment is on page 30 where on line 21, we strike "101" and insert "202". This is an error in composition. We are referring actually to section 202 and not 201, and this makes the correction.

On page 34, lines 21 and 22: Strike "the appropriate committee shall so inform the reporting individual and direct him" and insert: "the reporting individual shall be informed and directed".

This simply conforms the legislative branch language to that of the executive branch. The language pertinent to each branch of the Government would be the same.

On page 41, line 9, we strike "the" and insert "a", which is necessary for grammatical purposes.

Page 41, line 10: Strike "required by section 206(b)". This is because section 206(b) has heretofore been stricken.

On page 44, line 2: Strike "1978" and insert "1979". This is because of the fact that the appropriation-authorization for the fiscal year for which it is referred is the one ending September 30, 1979, rather than 1978.

Mr. Chairman, I am aware of no objections to these amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California (Mr. DANIELSON).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. DANIELSON

Mr. DANIELSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DANIELSON: Page 51, line 22: Strike "January 1, 1978" and insert "July 1, 1979".

Mr. DANIELSON. Mr. Chairman, the purpose of this amendment, I believe, is obvious. The effective date of the particular portion of the bill could not possibly be January 1, 1978, and the date which should be applied here is July 1, 1979.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. DANIELSON).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MOORHEAD OF CALIFORNIA

Mr. MOORHEAD of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOORHEAD of California: Page 46, line 22, strike out "; or" and insert in lieu thereof a dash.

Page 46, strike out line 23 and everything that follows through line 7 of page 48.

Page 48, strike out line 10 and everything that follows through line 14 on page 49.

Page 49, line 15, redesignate subsection (f) as subsection (c) and strike out "(a), (b), or (c)" and insert in lieu thereof "(a) or (b)".

Page 49, line 15, redesignate subsection (f) as subsection (d) and on page 50, line 21, redesignate subsection (h) as subsection (e).

Mr. MOORHEAD of California. Mr. Chairman, my amendment is intended to remove a particularly punitive and ill-advised provision from this legislation. I speak of a subsection which would totally prohibit any contact by a former Government employee with his old agency, for 1 full year after leaving Government service. My amendment would strike this so-called 1-year "cooling off" period.

Title II of both H.R. 1 and the substitute (H.R. 13850) would extensively amend the existing law dealing with potential conflicts of interest arising out of previous Government employment. These provisions can be found in section 207, of title 18, of the United States Code. The current law prohibits former Federal employees from acting in a formal, legal capacity on subjects directly connected with their former Government duties. I would emphasize that the existing law solely prohibits formal representational activity.

Now, this legislation would add a totally new dimension. A new subsection (c) would prohibit all contact by a former Government officer or employee on behalf of any other person, with his former Government agency for a period of 1 year after leaving that agency. This blanket, 1-year, "no contact" ban is unprecedented under Federal law. It is a so-called cooling off period which is viewed by the Carter administration as a means of dealing with the "revolving door problem." This blanket restriction is imposed without reference to the subject matter of the contact. The subject, in fact, could be a totally new issue, never before dealt with by the agency. Or, it simply could be a noncontroversial or uncontested subject. Both formal and informal communications are barred.

I would point out that these conflict of interest provisions are the one remaining portion of this ethics bill, where criminal penalties are involved. A waiver of these requirements is only possible under the most restrictive circumstances. That is, the person involved must possess "outstanding qualifications in a scientific, technological or other specialized discipline" and the agency involved determines that such a contact is in the "national interest." This national interest test is an extremely heavy burden to meet and would rarely be applicable.

Proponents have argued that subsection (c) will not be unduly burdensome since it only applies to high level officials. However, this is misleading. Broad discretion is granted to the Director of the Office of Government Ethics to extend these prohibitions to any additional positions it deems appropriate. Also, former servicemen are singled out for particularly harsh treatment. The 1-year, no-contact prohibition covers everyone serving in grades 0–6 and above. This means those at the rank of colonel in the Army, Air Force, and Marine Corps, and the rank of captain in the Navy. The financial disclosure provisions of H.R. 1 only extend to grade 0–7 and above. By extending the post-Government employment restrictions to 0–6, an additional 14,379 members of the Armed Forces are affected.

The principal objective of Congress and the executive branch should be to improve the quality of Government service by attracting bright, young people, as well as experienced professionals for high-level policy positions. This section will do precisely the opposite—the net result will be a reduction in the attractiveness and the effectiveness of Government service.

I want to express my appreciation to the distinguished gentleman from Texas (Mr. ECKHARDT) for assistance and support in this effort. Very early in the consideration of this legislation, Congressman ECKHARDT recognized the danger of overly rigid reactions to the "revolving door syndrome." In testifying before our subcommittee, he stated: "Whatever the possible benefits of blanket restrictions * * * they are far outweighed by the potential disadvantages." I could not agree more with his assessment.

I would note that the administrative law section of the American Bar Association has urged Congress to move very, very cautiously in the conflict of interest area. More specifically, they have asked that before any extensive changes in the existing criminal laws are made that Congress defer action for a period of 2 years, pending completion of study by the new Office of Personnel Management on this subject. The ABA has called the conflict of interest standards in H.R. 1 "overly broad" and has urged that they not be enacted. The prestigious association of the bar of the city of New York has described the non-contact concept as "extremely dangerous and perniciously ambiguous."

One final point, as offered, my amendment simply would strike the 1-year prohibition on contact. It contains no language permitting the waiver of the other two, already existing conflict of interest standards.

I urge my colleagues to support this amendment to strike the 1-year, "no-contact" provision from this bill.

Mr. GLICKMAN. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this amendment to a certain extent can be called the "anti-revolving door amendment." However, I think it might be worthwhile to explain it to the Members of the House.

What we are talking about, Mr. Chairman, is found on pages 45 to 47 of the bill which contain revolving door prohibitions for the following things:

If a high-level Government person personally participated in a decision, he obviously is precluded for a period of time from participating after he leaves. That is fine.

No. 2, if something was directly under his responsibility he is prohibited or forbidden from participating in the private sector after he leaves the Government service. I think this a very important amendment because it relates to the ability of government to function with competent, able people, with incentive to do the right thing realizing that someday those people might go into the private sector.

What the gentleman from California (Mr. MOORHEAD) proposes to remove from the bill is a section which prohibits for 1 year after Government service a person from making any formal or informal appearances with the agency that he dealt with before, period, if he is basically a GS–16 or higher and serves in a policy-level position. I call this the Arnold and Porter amendment, that is, I call the bill the Arnold and Porter bill because what it does is this: If those people who serve, who work their way up in Government and serve for several years and decide to leave, and the only skill they have is working in that particular agency, want to go out into the private sector, under this bill, unless the amendment shall take effect, the only place that person can go and practice his skill is with a large firm like Arnold and Porter, that is, for the first year, or General Motors, or Exxon, where there are lots of other lawyers or lots of other people in the business to actually make the informal or formal contacts for that person. If the person wants to go back to a small town to practice law in the only subject that that person has done for years and years and years, that person is precluded from dealing in any way with the agencies that he worked for 1 year on any matter. That is overkill.

I think this is a very, very bad way to instill positive confidence in the Government, and the effect is to cause people who leave Government to go with big business, big institutions, big labor. One can go into Arnold and Porter if one, say, left the SEC, because one of their partners can represent you in a case, but you cannot. But it does not matter because you will communicate in the hallways of Arnold and Porter.

But if one wants to go back to Peoria, Ill., or Butte, Mont., or Wichita, Kans., and open a law practice and practice before the SEC if he or she worked there previously, one is barred for 1 year. I think that is not only unfair but it encourages a kind of slothful Government performance with people who will only go out of Government to work for big industries. What happens is that a bill that regulates and tends to have a prophylactic effect overall has a chilling effect on small business, small firms. A person who works for the SEC and then wants to become a compliance director for a small brokerage firm, under the bill if he or she is a GS–16, or higher, for 1 year cannot have any contact whatsoever with the Securities and Exchange Commission, so he ends up with E. F. Hutton where people go to listen, but he is not performing a service for his clients back home.

The only way I can support an anti-revolving-door policy with the 1-year prohibitive requirement is to make it apply to all partners and all associates of the person who left that Government service. Then it is fair, because the person is equally treated whether he works for a large or a small entity. I believe, and I share the views of the gentleman from California, this kind of amendment reduces the attractiveness and effectiveness of Government service.

I worked at the SEC. I was a bureaucrat, and I went home to Wichita, Kans., to practice law. I immediately went into practice on securities matters. I had dealings with the SEC, and while I do not know whether I was the greatest lawyer in the world, I would like to think I helped people comply with the securities laws, and there is nothing wrong with that.

The main bill, without this amendment, insures that people will not be able to do that. They can just go to work for the big entities.

Mr. Chairman, I urge adoption of the Moorhead amendment. I think it is responsible. I think it makes sense, and I think the public is adequately protected with the other sections of the bill in.

Mr. ECKHARDT. Mr. Chairman, I move to strike the last word, and I rise to speak in favor of the amendment.

Mr. Chairman, I rise to speak in favor of the Moorhead amendment and to totally agree with the gentleman from Kansas (Mr. GLICKMAN) who just spoke before the House. My subcommittee probably deals with more regulatory agencies than any subcommittee in Congress. It has under its jurisdiction the SEC, the Federal Trade Commission, some reach into EPA, and we deal with other agencies of Government.

On the staff of the subcommittee and formerly on the staff of the full Committee on Interstate and Foreign Commerce have been some of the most effective young lawyers who have worked on the Hill.

Some have received a very specialized experience with those agencies. That experience can only be used before some of the agencies before whom they would be excluded from practice for 1 year had they left the agency and gone into the private sector directly rather than to the committee. The securities field almost requires that a person, to be valuable to a firm, be able to appear before the SEC.

I have done some administrative practice myself. I know that whatever side you may be on, it is well that your opposition in the case know something about that technical field, because, believe me, you are a whole lot safer and your client is a whole lot safer if you are up against one of the most well-trained lawyers in the field you can find. It is the lawyer that is not experienced in these fields that may pull down the house on both litigants.

I suggest to you that it is extremely important that we get high-class people in the agencies. If we are going to get high-class people in these agencies, we are going to have to permit them to proceed from that agency to a practice in which they can be useful and effective. That does not mean that merely because they are representing a private litigant their effect will be antisocial. The important thing is that they know the field. Their experience before the agencies is the only manner in which they can become fully acquainted with that field or can fully participate in the field.

This amendment does not eliminate the bar against these people dealing with the agencies in matters in which they were substantially involved or which were pending under their official responsibility. That is left intact.

All this does is remove the blanket restriction against a person going before an agency on matters in which he was not involved. Frequently, he will appear before a different division of the agency in which he was employed. This simply eliminates that blanket restriction.

Now, the agencies themselves in many instances have rules with respect to employee conduct. I suggest that it is far better to keep the present limitations of law and further encourage the agency itself to work out the fine tuning of the ethical limitations than to come in with this broad and restrictive amendment, which in my opinion does much more harm to topnotch governmental representation that it does to what is called closing the revolving door.

Now, I know there is a kind of knee jerk immediate reaction to terms like the revolving door. Really what I am concerned about when we talk about the revolving door is a situation like the person who wants to retire and has been a purchasing officer with respect to companies which sell to the agency of the Government for whom he works. We should deal with such problems by writing specific legislation to touch specific situations.

Mr. BROYHILL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I support the amendment offered by the gentleman from California. In my view, the proposed amendments to section 207 represent an inappropriate response to the so-called revolving door problem. Specifically, the proposed new subsection (c) states that for 1 year after a Federal employee specified in the bill leaves his agency he may not have any contact with the agency on any matter. This restriction is a total one, rather than referring to issues on which that official may have worked or had some responsibility.

I believe that this total limitation is inappropriate for several reasons. First,

I do not see how this subsection furthers, in any logical way, the intent and purposes of the bill. Subsections (a) and (b) completely foreclose any opportunity that former officials may have to influence agency decisions over which he may have had some responsibiltiy when he worked at the agency. That is the evil we are addressing, and that evil is addressed completely. The problem is, subsection (c) forecloses a former official from addressing issues which may be completely noncontroversial or problems which did not exist at the agency when he was employed. In these cases, I do not see how the public good would be served by foreclosing his participation.

Finally, I am concerned that the enactment of this subsection may result in the Federal Government not being able to attract young, highly qualified individuals to Government service, at least in certain areas. For example, the Securities and Exchange Commission and the Internal Revenue Service deal with highly technical and narrow questions. Once a young lawyer becomes a securities expert, he or she does not have the latitude to practice some other kind of law—domestic relations, for example—waiting for the year cooling-off period to expire. Instead, that young person will probably choose to forego Government service altogether.

Further, the subsection deters a business person from entering Government for a limited period, bringing with him valuable knowledge and expertise, and then, after a period of public service, going back to business. I do not believe that this result is a good one, but it is sure to flow from enactment of the proposed subsection (c).

I urge my colleagues to support this amendment.

Mr. DANIELSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in very strong opposition to the amendment, and in the hopes that the Members will agree with me, let me point out a couple of salient points.

No. 1, this provision in the bill and in the law would not have the effect of inhibiting the recruiting of new employees. In the present administration President Carter's office has informed me that the appointees whom he has placed in these positions have voluntarily agreed to the 1-year bar.

This is not an inhibition. It has practically no impact upon recruiting.

I want to point out a couple of good reasons why that is true. It is not just because they have some young man or woman out of law school who has a choice between handling defaults and divorces and going to work for the SEC. These are top level positions. These are not beginners at the bar, these are not law clerks, these are not notaries public; these are top level positions. These are positions that have sufficient prestige that people are not deterred from accepting the jobs in the first place, and they have enough influence within their departments so that after they leave they still have a psychological advantage within the agency.

The Members will note that on line 25 of page 46 we are there talking about people compensated under chapter 53 of title 5, and we are talking about that rate of pay. Just what is chapter 53 of title 5? It is the executive schedule.

The pay is high. It is very rewarding. It is the kind of job many people look for. It includes such people as the Deputy Secretary of Defense, the Deputy Attorney General, the Chairman of the Interstate Commerce Commission, the Chairman of the Commodity Futures Trading Commission, the assistant secretaries of the different branches of the armed services, it includes the Commissioner of Food and Drugs, and so forth. These are not beginners in the Government service, my good friends; these are top-level people.

Moving over to page 47, line 3, there we talk about GS–16 and above. What is GS–16 and above? Let us take a look. Under the current law, a GS–16—this is the beginning wage before they got the October 1 cost-of-living raise—the beginning wage for a GS–16 is $42,423. Now, what little kids out of law school are getting that kind of money, I ask you? We are not talking about young people who are just beginning their careers in the Government service. We are talking about top-bracket wage earners. What do we do to them here? We do not do much. We tell them, "Look, for 1 year—for 12 months—you cannot come back and act as the agent or the attorney to represent someone else in an appearance before the agency or department where you served as an officer or employee in connection with the rulemaking proceedings, et cetera."

In other words, he can work for Arnold & Porter, but he has to work downtown in the office, and he can draft their contracts, he can draft their prospectuses, he can draft documents, but Mr. Arnold or Mr. Porter have to come up to the agency and make the presentation. The man who was the Commissioner of Food and Drugs cannot come up and do it, but someone else in his employment can. This is a very wholesome, very realistic restriction on conflict of interest. And, Mr. Chairman, if we are going to stop that revolving door which preys upon the well-being of our Government by allowing people who have had controlling policy in those agencies to leave one day and come in the next and exercise their influence over the Government agencies, this is the way to do it. It is reasonable.

I urge a "no" vote on the amendment.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Kansas.

Mr. GLICKMAN. I thank the gentleman for yielding.

Mr. Chairman, I am not too concerned about the top-level GS–18.

Mr. DANIELSON. I knew the gentleman would not be, and I am glad he joins me.

Mr. GLICKMAN. But I want to tell the gentleman that you can go to an agency, be a competent, dedicated public servant, work for 7 or 8 years, and become a GS–16 if you are able, competent and want to move yourself ahead. And that is the kind of thing.

The CHAIRMAN. The time of the gentleman from California (Mr. DANIELSON) has expired.

(On request of Mr. GLICKMAN and by unanimous consent, Mr. DANIELSON was allowed to proceed for 2 additional minutes.)

Mr. GLICKMAN. At that point in time, unless a person makes a decision to stay with the Government the rest of his life, they leave. I do not know the numbers, but a lot of people do not wish to stay with the Government because they feel they can make a contribution in the private sector, and they depart Government service.

If we look at page 47, if a person goes up to GS–16, he or she is not permitted to make any formal or informal appearance before the place that they worked in connection with any application, request, contract, claim, controversy, investigation, charge, and so forth.

Now, in the name of providing prophylactic prohibition against a conflict of interest, we have essentially prevented that person from making a telephone call to the agency. And I am saying that I do not think that is the responsible way to go, and I do not think it is responsibility in Government.

Mr. DANIELSON. If I may reclaim my time, we are talking about formal or informal appearances before those agencies. We are not talking about a phone call. However, if I had thought of it, I would have put "phone call" in the bill.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Virginia.

Mr. HARRIS. I thank the gentleman for yielding.

Mr. Chairman, I appreciate the gentleman's statement. He has analyzed it very carefully. There are points of time when I take an interest with regard to how Federal employees are treated in various pieces of legislation, but I wonder if we might ask the gentleman from Kansas if he would give us a list of those people who entered the Government and became grade 16 in 7 years. Grade 16 is a super grade. As I understand the gentleman's comment, this restriction would only apply to supergrades and executive level personnel. The notion we are talking about, some young attorney who went into some agency and worked for 7 years and got a grade 16, I have known some folks around town here, and I have not known of any who have done that well.

Mr. GLICKMAN. The gentleman may have a point. It may be 10 or 12 years. There may be people who came in at GS–11, but it may be 13 because of prior service.

The CHAIRMAN. The time of the gentleman from California has again expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. DANIELSON was allowed to proceed for 1 additional minute.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I think the gentleman in the well has made the point Mr. GLICKMAN was making a moment ago. If a person wants to go to Arnold & Porter, he may go over there and work on the files for a year and then go before the agency, but suppose he, like a number of young men I know here on the Hill, set up his own law office. What we are doing is forcing them to go to Arnold & Porter or someone else who is not formally related to the agency.

Mr. DANIELSON. That is not the case. You know, Eckhardt and Danielson can start a law firm, and we can hire some man with expertise to do the appearing for us. It is not unusual for a law firm to have someone who is pretty good at the bar, pretty persuasive, to go to court or go to the agency and make the formal presentation.

Mr. ECKHARDT. Not in these areas. The persons who actually know the technical line are the ones that have got to present it.

The CHAIRMAN. The time of the gentleman from California has again expired.

(At the request of Mr. MOORHEAD of California and by unanimous consent, Mr. DANIELSON was allowed to proceed for 2 additional minutes.)

Mr. MOORHEAD of California. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from California.

Mr. MOORHEAD of California. In talking about the formal and informal appearance, the gentleman did not go quite far enough. It says, "or, with the intent to influence, make any oral or written communication on behalf of any other person * * *"

So, there is far more to it than the formal or informal appearances.

Mr. DANIELSON. I thank the gentleman. I thought I left out those phone calls, but they are here, and that makes the bill better.

Mr. MOORHEAD of California. I have one more thing I want to ask the gentleman about. Is it not true that under the gentleman's legislation it is not just the GS-16's that have been involved; is it not true that the Director of the Office of Government Ethics can put anyone or any large group of people under that?

Mr. DANIELSON. That is not quite true. The provision to which the gentleman refers appears on page 48, and it does permit the Director of the Office of Government Ethics to make some specifications of certain persons who should be added into the sensitive category. There is quite a long detail of what he has to do in order to do so. It cannot be done frivolously.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I will try to be brief. I think there are several points I want to underline. If Members will read the bill at page 47, I just want to underline the fact that these people that will be affected by this provision will be schedule C employees, because the same cannot be in positions excepted from the competitive service by reason of being in a confidential or policymaking position. So, I think that is a very important point.

In my subcommittee, we took a lot of testimony on the "revolving door" horror stories that everyone has heard, and many Congressmen appeared from this body and presented different stories that they had heard about. I think so much of what is important in government is the appearance of government, the appearance that it is fair and the appearance that it is independent. There have been many incidents where it appears that the regulators have been able to consume the regulatees, that is, governing those different agencies supposedly overseeing them.

If Members will look in the private sector—and I used to work there in negotiating these contracts—we used to negotiate these contracts all the time with noncompetitive contracts which did affect all sorts of people. There were constitutional limitations, but they could go much longer than 1 year. If we allow private contractors to protect themselves, I cannot imagine why we would not allow the President, with his schedule C people, to be protected also.

We want to be very careful to discourage contractors placing people in the Federal Government so that it looks like they have a farm club there, and rotate back and forth through a turnstile. It is the same thing with the regulators.

We heard a lot of comments about the SEC, and I would like to point some of those out that we had in our subcommittee. Congressman ROSENTHAL brought them to our subcommittee, and it was done by our House Interstate and Foreign Commerce Committee in 1975.

It showed that 39 top employees of the SEC had been earlier employed by brokerage firms, investment bankers, or investment advisers, and were planning to return to those offices.

I think if we did a survey, and we have all sorts of lists here of other agencies, we would find the same thing. I do not think the 1-year provision is that serious for people of that level. Again I remind the Members we are talking about schedule C employees and a very high level of pay.

I would urge people to turn down this amendment.

Mr. FOLEY. Mr. Chairman, I move to strike the necessary number of words.

Mr. Chairman, I rise in support of the amendment. I know it goes against the philosophy of many in this Chamber, but is it possible that we should encourage people who have specialized knowledge, experience or training to enter Government service? Is it so shocking to recruit to positions in the Government those who may wish after a time to return to the private sector? Why should we so axiomatically condemn this movement from public to private life. Is the "revolving door" always bad? On the contrary, if no one from the security industry can accept a schedule C appointment or a supergrade appointment in the Securities and Exchange Commission, or no one who may have been exposed, however remotely, to the energy business shall have any possibility of responsibility in the Department of Energy, without suffering a penalty, may we not reach a point where we discourage many among the most able and competent from Government service. This is costly posturing—nothing more.

Few are likely to accept a responsibility in the Federal Government without considering what mortgage they put on their future profession by doing so.

The revolving door is less of a problem than many believe. In many cases it is not a problem at all. It is a blessing. We should encourage people to come into the Government from the private sector when they have experience, or special capacity to serve honorably and effectively.

The bill retains certain restrictions on people who have had a direct responsibility, who have been involved in the supervisor role in a particular area of Government, and this amendment would not touch those restrictions. It strikes the 1-year restriction on appearing before the agency after one has been a GS-16 or schedule C employee. If we have any concern about the efficiency and effectiveness of Government, let me plead with Members to stop this useless and foolish idea that we should bar or discourage from Federal service those people who have expertise or special knowledge. The Federal taxpayers and citizens of this country have a right to the best management and the most capable service we can obtain to serve in their Government.

We represent their interest poorly by encrusting and encumbering the statutes with disincentives to the exceptionally able appointee. The fact is the so-called revolving door is not itself an evil practice but overall a healthy one. We must appoint able and honorable persons to Government without these pointless restrictions.

I strongly urge adoption of this amendment. The gentleman from California is right and the amendment should be adopted.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the gentleman is precisely correct. As a matter of fact the gentlewoman from Colorado gave a good example of what the gentleman from Washington is talking about, these persons who came out of the private sector into the SEC. I have known many of them personally and they have been among the most knowledgeable people that have worked for the SEC because they have got practical experience.

Of course they rise fast in that agency with that experience. But to tell them that they may not go back into the private sector is to prevent them from going into the private sector in the beginning and that is the problem. And the theory that those who go into the private sector again come carrying secrets from the Government is, if I may say so, poppycock. What they carry to the private sector is experience and knowledge and flexibility which are extremely important contributions to the private sector.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MOORHEAD).

The question was taken, and on a division (demanded by Mr. DANIELSON) there were—ayes 36, noes 24.

RECORDED VOTE

Mr. DANIELSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 112, noes 259, not voting 61, as follows:

[Roll No. 809]

AYES—112

Alexander	Glickman	Moorhead, Calif.
Archer	Goldwater	Murtha
Ashbrook	Gonzalez	O'Brien
Ashley	Gradison	Pettis
Badham	Guyer	Pickle
Bauman	Hall	Pritchard
Beard, Tenn.	Hammer-schmidt	Quillen
Boland	Hansen	Regula
Bowen	Hillis	Roberts
Breckinridge	Holland	Robinson
Brooks	Hyde	Roncalio
Broyhill	Jeffords	Rose
Burgener	Jones, Okla.	Rousselot
Carter	Jones, Tenn.	Satterfield
Cederberg	Jordan	Sebelius
Chappell	Kasten	Shuster
Clawson, Del	Kazen	Sikes
Cochran	Kindness	Snyder
Collins, Tex.	Lagomarsino	Spence
Daniel, Dan	Latta	Stangeland
Daniel, R. W.	Lent	Stanton
Davis	Livingston	Steed
Devine	Lloyd, Tenn.	Steiger
Dornan	Lott	Stratton
Duncan, Oreg.	McClory	Stump
Duncan, Tenn.	McCormack	Taylor
Eckhardt	McDonald	Treen
Erlenborn	McEwen	Van Deerlin
Evans, Del.	McFall	Waggonner
Evans, Ind.	McKay	Wampler
Findley	Martin	White
Fish	Mathis	Whitehurst
Flynt	Milford	Whitten
Foley	Miller, Ohio	Winn
Forsythe	Mitchell, N.Y.	Wirth
Frenzel	Montgomery	Yatron
Frey	Moore	Young, Fla.
Gammage		

NOES—259

Abdnor	Chisholm	Flippo
Akaka	Clausen, Don H.	Flood
Ambro	Clay	Florio
Anderson, Calif.	Cleveland	Ford, Mich.
Andrews, N.C.	Coleman	Ford, Tenn.
Andrews, N. Dak.	Collins, Ill.	Fountain
Applegate	Conte	Fowler
Aspin	Conyers	Fuqua
AuCoin	Corcoran	Gephardt
Bafalis	Corman	Giaimo
Baldus	Cornell	Gibbons
Barnard	Cornwell	Gilman
Baucus	Cotter	Ginn
Beard, R.I.	Coughlin	Goodling
Bedell	Crane	Gore
Beilenson	Cunningham	Grassley
Benjamin	D'Amours	Green
Bennett	Danielson	Gudger
Bevill	Dellums	Hamilton
Biaggi	Dent	Hanley
Bingham	Derrick	Hannaford
Blanchard	Derwinski	Harkin
Blouin	Dicks	Harris
Bolling	Diggs	Harsha
Bonior	Dingell	Hawkins
Bonker	Dodd	Heckler
Brademas	Downey	Hefner
Brinkley	Drinan	Heftel
Brodhead	Early	Hightower
Broomfield	Edgar	Hollenbeck
Brown, Mich.	Edwards, Ala.	Holtzman
Brown, Ohio	Edwards, Calif.	Horton
Buchanan	Edwards, Okla.	Howard
Burke, Fla.	Eilberg	Hubbard
Burke, Mass.	Emery	Huckaby
Burlison, Mo.	English	Hughes
Burton, John	Ertel	Ichord
Burton, Phillip	Evans, Ga.	Ireland
Butler	Fary	Jacobs
Carney	Fascell	Jenkins
Carr	Fenwick	Johnson, Calif.
Cavanaugh	Fisher	Jones, N.C.
	Fithian	Kastenmeier
	Keys	Kelly
	Kildee	Murphy, Pa.
	Kostmayer	Myers, Gary
	Krebs	Myers, Michael
	LaFalce	Natcher
	Le Fante	Nedzi
	Leach	Nolan
	Lederer	Nowak
	Lehman	Oberstar
	Levitas	Obey
	Lloyd, Calif.	Ottinger
	Long, La.	Panetta
	Long, Md.	Patten
	Lujan	Patterson
	Luken	Pattison
	Lundine	Pease
	McCloskey	Perkins
	McDade	Poage
	McHugh	Pressler
	McKinney	Preyer
	Madigan	Price
	Maguire	Pursell
	Mahon	Quie
	Mann	Rahall
	Markey	Railsback
	Marks	Rangel
	Marlenee	Reuss
	Marriott	Richmond
	Mattox	Rinaldo
	Mazzoli	Risenhoover
	Metcalfe	Rodino
	Meyner	Roe
	Mikulski	Rogers
	Mikva	Rooney
	Mineta	Rosenthal
	Minish	Rostenkowski
	Mitchell, Md.	Runnels
	Moakley	Ruppe
	Moffett	Russo
	Mollohan	Ryan
	Moorhead, Pa.	Santini
	Mottl	Sawyer
	Murphy, Ill.	Scheuer
	Murphy, N.Y.	Schroeder
		Schulze
		Seiberling
		Sharp
		Simon
		Skelton
		Smith, Iowa
		Solarz
		Spellman
		St Germain
		Staggers
		Stark
		Steers
		Stokes
		Studds
		Thompson
		Thone
		Thornton
		Traxler
		Trible
		Ullman
		Vander Jagt
		Vanik
		Vento
		Volkmer
		Walgren
		Walker
		Watkins
		Waxman
		Weaver
		Whalen
		Whitley
		Wilson, Bob
		Wilson, C. H.
		Wilson, Tex.
		Wolff
		Wright
		Wydler
		Wylie
		Yates
		Young, Alaska
		Young, Mo.
		Zablocki
		Zeferetti

NOT VOTING—61

Addabbo	Gaydos	Rhodes
Ammerman	Hagedorn	Roybal
Anderson, Ill.	Harrington	Rudd
Annunzio	Holt	Sarasin
Armstrong	Jenrette	Shipley
Boggs	Johnson, Colo.	Sisk
Breaux	Kemp	Skubitz
Brown, Calif.	Krueger	Slack
Burke, Calif.	Leggett	Smith, Nebr.
Burleson, Tex.	Meeds	Stockman
Byron	Michel	Symms
Caputo	Miller, Calif.	Teague
Cohen	Moss	Tsongas
Conable	Myers, John	Tucker
de la Garza	Neal	Udall
Delaney	Nichols	Walsh
Dickinson	Nix	Weiss
Evans, Colo.	Oakar	Wiggins
Flowers	Pepper	Young, Tex.
Fraser	Pike	
Garcia	Quayle	

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Addabbo against.
Mr. Nichols for, with Mr. Roybal against.
Mr. Shipley for, with Mr. Neal against.
Mr. Johnson of Colorado for, with Mr. Pepper against.
Mr. Symms for, with Mr. Jenrette against.

Mr. PATTISON of New York and Mr. HUBBARD changed their vote from "aye" to "no."

Messrs. LENT, HAMMERSCHMIDT and McEWEN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. DANIELSON. Mr. Chairman, I move to strike the last word.

In a moment, Mr. Chairman, I am going to move that the Committee now rise, but first I yield to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Chairman, I would like to take this opportunity to commend the manager of the bill, the gentleman from California (Mr. DANIELSON), for his excellent work and for his patience and persistence in getting this bill enacted.

Every Democrat on the Subcommittee on Civil and Constitutional Rights joined me in signing additional views in the committee report, expressing our concern about the relationship between this bill and the fifth amendment to the Constitution. I hope that the manager of the bill will answer a couple of questions that may alleviate our concerns.

I think the Members might be interested in this, because we are dealing with a matter of constitutional rights. My first question is this:

May an employee assert the fifth amendment privilege against self-incrimination as the basis for refusing to provide specific information relating, for instance, to his outside income?

Mr. DANIELSON. Of course. This bill is not intended to be inconsistent with the fifth amendment, nor is it inconsistent. The answer to the gentleman's question is that a person may assert a valid fifth amendment privilege as the basis for refusing to disclose specific information which may tend to incriminate him.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield further?

Mr. DANIELSON. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Could an employee be fired for asserting a valid fifth amendment privilege?

Mr. DANIELSON. Again, if the assertion of the fifth amendment privilege is valid, an employee could not be penalized in any way for asserting the privilege. However, if the Government were to grant immunity from criminal prosecution the privilege would no longer be valid. In such a case, the employee could be forced to disclose the information, and he could be fired or otherwise disciplined for continuing to refuse to disclose the information after receiving immunity.

Mr. SEIBERLING. Mr. Chairman, I think that the gentleman's explanation does indeed alleviate my concerns, and I certainly agree with his analysis.

Mr. DANIELSON. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. BOLAND, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1) to require candidates for Federal office, Members of the Congress, and officers and employees of the United States to file statements with the Comptroller General with respect to their income and financial transactions, had come to no resolution thereon.

REQUEST FOR PERMISSION FOR COMMITTEE ON THE JUDICIARY TO MEET ON TOMORROW MORNING DURING THE 5-MINUTE RULE

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may be permitted to

meet on tomorrow morning during the 5-minute rule.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, has the gentleman checked this out with our distinguished ranking minority member, and does he agree to it?

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I am always delighted to yield to the gentleman from California.

Mr. DANIELSON. Mr. Speaker, I cannot tell a lie. I have not checked with the gentleman. There is a reason for that, and that is because I did not know before that I was going to make the request.

Mr. ROUSSELOT. Mr. Speaker, I have just received word that the gentleman does not want to meet tomorrow, and he would like to talk to the gentleman from California (Mr. DANIELSON) about it.

So, Mr. Speaker, could the gentleman come in here and get permission tomorrow?

Mr. DANIELSON. Mr. Speaker, I will try to do that.

The SPEAKER. Does the gentleman from California (Mr. ROUSSELOT) object to the request?

Mr. ROUSSELOT. I am trying to work it out, Mr. Speaker.

Mr. DANIELSON. I will be here.

The SPEAKER. Does the gentleman from California (Mr. DANIELSON) withdraw his request?

Mr. DANIELSON. Mr. Speaker, I withdraw the request, inasmuch as the Committee on the Judiciary will meet at 9 o'clock tomorrow morning and will hopefully get some work done.

Mr. ROUSSELOT. That is the spirit.

The SPEAKER. The gentleman's request has been withdrawn.

PERMISSION TO FILE CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 683, SECOND CONCURRENT BUDGET RESOLUTION FOR FISCAL YEAR 1979

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the concurrent resolution (H. Con. Res. 683) the second concurrent budget resolution for fiscal year 1979.

The SPEAKER. Is there objection to the request of the gentlemen from Connecticut?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, can the gentleman tell us the progress of the committee?

Did they get the aggregates worked out with the Senate?

Mr. GIAIMO. If the gentleman will yield, yes, we have. We have completed the conference report.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, how about the functional categories?

Mr. GIAIMO. We have done that, too.

Mr. ROUSSELOT. All of the functional categories?

Mr. GIAIMO. Yes.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

MAKING IN ORDER CONSIDERATION OF CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 683 AND AMENDMENT IN DISAGREEMENT ON TOMORROW OR ANY DAY THEREAFTER

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent that it may be in order on tomorrow, Thursday, September 21, 1978, or any day thereafter, to consider the conference report and the amendment in disagreement on the concurrent resolution (H. Con. Res. 683) the second concurrent resolution on the budget for fiscal year 1979.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, my understanding is that the resolution is coming up; is that correct?

Mr. GIAIMO. If the gentleman will yield, that is right, if the gentleman does not object.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, I do not want to object if it is going to come up tomorrow. The gentleman said "or any day thereafter." Is it going to be tomorrow for sure?

Mr. GIAIMO. If the gentleman will yield, hopefully, it will be tomorrow for sure. If for some reason it would not be, I would like to have the opportunity to bring it up on a day thereafter.

Mr. ROUSSELOT. Further reserving the right to object, my understanding is that it is the first order of business. Is that correct?

Mr. GIAIMO. The gentleman is privy to more information than I have. I understand it might be the first order of business.

Mr. ROUSSELOT. Further reserving the right to object, let us ask the Speaker. The Speaker is right here.

Mr. GIAIMO. I understand it will come up tomorrow.

Mr. ROUSSELOT. The Speaker can tell us if we ask him.

The SPEAKER. The Chair will advise the gentleman that it will come up tomorrow.

Mr. ROUSSELOT. The Speaker has assured us that it will come up tomorrow.

Mr. GIAIMO. I understand it will come up tomorrow.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

REQUEST TO APPOINT CONFEREES ON H.R. 7010, VICTIMS OF CRIME ACT OF 1977

Mr. MANN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina.

Mr. ASHBROOK. Yes, Mr. Speaker, I object.

The SPEAKER. Objection is heard.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 11302, ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS AUTHORIZATION ACT OF 1979

Mr. MICHAEL O. MYERS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 11302) to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1979, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENT TO REORGANIZATION PLAN NO. 4 OF 1978—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95–384)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Government Operations and ordered to be printed:

To the Congress of the United States:

I herewith transmit an amendment to Reorganization Plan No. 4 of 1978. Except as specifically amended hereby, Reorganization Plan No. 4 remains unmodified.

JIMMY CARTER.

THE WHITE HOUSE, *September 20, 1978.*

PROPOSED CONSTITUTION FOR LOCAL SELF-GOVERNMENT FOR THE VIRGIN ISLANDS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95-385)

The SPEAKER laid before the House the following message from the President

of the United States; which was read and, together with the accompanying papers, referred to the Committee on Interior and Insular Affairs and ordered to be printed:

To the Congress of the United States:

I am today transmitting to the Congress the proposed constitution for local self-government for the Virgin Islands, as authorized by Public Law 94-584. Until now, an organic act of the Congress provided the basis for local government in this unincorporated territory of the United States.

A locally elected constitutional convention drafted the constitution over a period of several months and held a series of public hearings and meetings throughout the Virgin Islands. The constitutional convention approved the constitution in April 1978. On July 20, 1978, the Governor of the Virgin Islands officially presented me with the constitution.

By law, I must transmit the constitution to the Congress, along with comments, within 60 days of the document's receipt. The Congress then has 60 more days to amend, modify, or approve it. As approved or modified, the constitution will be submitted to a referendum in the Virgin Islands for acceptance or rejection.

Several Federal agencies have commented on the constitution for the executive branch that it meets the criteria established by Public Law 94-584: it is consistent with sovereignty of the United States, its constitution, and its laws applicable to the Virgin Islands; it provides for a republican form of government with executive, legislative, and judicial branches; it contains a bill of rights; it sets up a system of local courts; and it deals with those portions of the revised organic act related to local self-government.

However, the agencies commenting on the constitution noted several matters that the Congress may wish to alter. Those comments are attached.

I commend this accomplishment of the members of the constitutional convention and the other citizens of the Virgin Islands who helped to draft the constitution. It is a significant step toward greater local self-government. It is therefore wholly appropriate that the electorate of the Virgin Islands, and not the Federal Government, has the ultimate right to accept or reject it.

To facilitate congressional deliberations, I have asked that the Attorney General and the Secretary of the Interior offer their advice and technical assistance to the committees that review the document.

JIMMY CARTER.

THE WHITE HOUSE, *September 20, 1978.*

GREEN DISCUSSES THE MEDICARE AMENDMENTS OF 1978

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. GREEN) is recognized for 10 minutes.

Mr. GREEN. Mr. Speaker, on September 18, the House of Representatives passed H.R. 13097, the Medicare Amendments of 1978. I was among the 398 Members of Congress who voted in favor of this legislation.

The Medicare Amendments of 1978 would provide for a number of improvements in medicare benefits including liberalization of the home health benefits, elimination of the second waiting period for reentitled disability beneficiaries, coverage for services furnished in community mental health centers and outpatient rehabilitation facilities, and authority for the President to enter into reciprocal agreements with other countries to provide hospital and medical services to medicare beneficiaries while outside the United States. The bill also expands benefits for services furnished by dentists, optometrists, and chiropractors. In addition, the measure makes a number of improvements in the administration of the medicare program.

Earlier in this session of Congress, I cosponsored H.R. 13131, a bill which incorporates recommendations made by the Select Committee on Aging with respect to making home health care more available to senior citizens and to the disabled. I am pleased that the Medicare Amendments of 1978 includes some of the key provisions of H.R. 13131.

Under present law, beneficiaries are eligible for 100 visits per benefit period during the year following a hospital stay of at least 3 days under part A of medicare, and 100 visits per calendar year under part B of medicare. Both my bill, H.R. 13131, and the Medicare Amendments of 1978 would eliminate the limitation on visits under each part. Further, both bills would remove the 3-day hospitalization requirement under part A.

I regret that the Medicare Amendments of 1978, as recommended by the House Ways and Means Committee and as passed by the full House, does not provide the benefit coverage for homemaker and periodic chore services contained in H.R. 13131. However, I am glad that H.R. 13097 takes the additional step of eliminating the $60 deductible under part B of medicare. Elimination of the part B $60 deductible would remove the remaining patient cost sharing on home health services.

The Medicare Amendments of 1978 also contains provisions to encourage disabled individuals to attempt to return to work without fear of forfeiting entitlement to medicare benefits if the attempt is unsuccessful. The bill does this by eliminating the second waiting period for reentitled disability beneficiaries. Under this legislation, entitlement to medicare benefits would be provided for persons who have been entitled to disability payments for a total of 24 months, regardless of whether those 24 months were consecutive. Thus, a person who has once satisfied the 24-month requirement and attempts without success to return to work would immediately be eligible for medicare benefits without having to fulfill a second waiting period.

This legislation importantly expands medicare coverage to include services provided in comprehensive outpatient rehabilitation centers. Eligible rehabilitation centers could be public or private institutions primarily engaged in providing under medical direction diagnostic, therapeutic, and restorative services to outpatients and would be required to meet specified conditions of participation.

As the cosponsor of H.R. 13709, a bill to authorize payment under the medicare program for occupational therapy services, I am pleased that H.R. 13097 provides medicare payment for occupational therapy services furnished by comprehensive outpatient rehabilitation centers. I find this encouraging and hope that in the future the Ways and Means Committee will recommend legislation to extend medicare eligibility to other occupational therapy services, such as those furnished in conjunction with home health care.

I believe the committee should be commended for including in H.R. 13097 provisions to expand medicare coverage to services provided in community mental health centers. Reimbursement would be made under part A of medicare on the basis of the cost incurred in providing the covered services. Up to 10 outpatient visits per year would be covered, and up to 60 partial hospitalization visits per year also would be covered. This represents a significant recognition of the important role carried out by community mental health centers.

The Medicare Amendments of 1978 eliminates the present exclusion of coverage for services related to the treatment of plantar warts. This would remove the discrepancy under present law whereby warts on the feet are excluded from medicare coverage, while warts on other parts of the body are covered.

I have cosponsored H.R. 13035 to make routine foot care eligible for medicare reimbursement. Hopefully, the coverage provided under H.R. 13097 for foot warts will signal more comprehensive foot care coverage under medicare.

The Ways and Means Committee acted in H.R. 13097 to expand benefits for services provided by dentists, optometrists, and chiropractors. While these improvements are important, I share the view of Chairman CLAUDE PEPPER of the Select Committee on Aging that favorable consideration should be given additionally to legislation to provide coverage for eyeglasses and eye examinations, hearing aids and examinations for hearing aids, and dentures and other services in connection with the care of teeth.

Overall, H.R. 13097 contains numerous provisions to improve the quality and scope of medicare coverage for our senior citizens and disabled persons. I believe the most significant feature of the bill is the strong support it gives to home health care. It represents a congressional com-

mitment to make more practical and more available the alternatives to institutionalization for our senior citizens.

By liberalizing home health care benefits, the bill increases the opportunity for our senior citizens to continue to live in their homes and apartments while receiving the medical and other services they need. Truly, broadened home health care benefits make possible a freedom of choice for our senior citizens with respect to their living arrangements.

In 1977, the General Accounting Office issued a report entitled, "Home Health—The Need for a National Policy To Better Provide for the Elderly." This report made the following conclusion:

Until older people become greatly or extremely impaired, the cost for home services, including the large portion provided by families and friends, is less than the cost of putting these people in institutions.

The GAO report made a number of recommendations to expand home health care services which served as the basis for the legislation proposed by the Select Committee on Aging of which I am a cosponsor.

According to the Congressional Budget Office, 20 to 40 percent of presently institutionalized senior citizens do not require institutional care and could remain at home if adequate funding for this purpose were available. I recently joined with my colleague from New Jersey, Representative MILLICENT FENWICK, to cosponsor H.R. 13981 to authorize demonstration projects wherein those eligible for medicare or medicaid nursing home care would be granted a tax-free stipend to finance noninstitutional care to meet their medical and other needs. I believe that public policy should encourage alternatives to institutionalization, particularly for those individuals who do not need or desire that form of care. The economic impediments to freedom of choice must be removed.

The Medicare Amendments of 1978 will help to make home health care a viable option for many of our senior citizens. Certainly, it reflects an appreciation of the fact that present medicare procedures and limitations have been blocking increased utilization of the home health care approach.

This legislation, of course, is only a beginning in the effort to upgrade and reform the medicare program. The Committee on Ways and Means noted this in the report to accompany H.R. 13097:

Your committee recognizes that, in addition to the provisions contained in this legislation, a number of other liberalizations in the medicare benefit structure also would be desirable. However, in recognition of the budgetary limitations which prohibit extensive benefit expansions at this time and because of the general concern about the present rapid rate of increase in health care costs, your committee has provided for only limited improvements in medicare benefits, often making difficult choices between equally meritorious and deserving alternatives in order to keep this legislation within the increase in medicare outlays that has been included in the congressional budget resolutions for Fiscal Year 1979 in anticipation of the enactment of this bill.

It is clear that much work remains ahead of us. Let us resolve to make enactment of the "equally meritorious and deserving alternatives" in regard to medicare reform a priority and a budgetary commitment in the next session of Congress.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. SARASIN) is recognized for 10 minutes.

● Mr. SARASIN. Mr. Speaker, on September 7, 1978, I was absent from part of the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 738: H.R. 11280: Civil service reform. The House agreed to resolve itself into the Committee of the Whole, "yes"; and

Rollcall No. 739: H.R. 11280: Civil service reform. The House agreed to table a motion to reconsider the previous vote, "yes."

Mr. Speaker, on September 8, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 740: H.R. 11711: Adjustment assistance programs. The House agreed to the rule (H. Res. 1288) under which the bill was considered, "yes";

Rollcall No. 741: S.J. Res. 4: Hawaiian Native claims. The House agreed to a motion to recommit the joint resolution, establishing the Aboriginal Hawaiian Claims Settlement Study Commission, to the Committee on Interior and Insular Affairs, "yes";

Rollcall No. 7442: H.R. 11711: Adjustment assistance programs. The House agreed to the committee amendment No. 1, that provides for an alternative eligibility requirement which permits workers to qualify on the basis of 40 weeks of employment in one or more trade-impacted firms in the preceding 2 years, "yes"; and

Rollcall No. 743: H.R. 11711: Adjustment assistance programs. The House passed the measure to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974, "yes."

Mr. Speaker, on September 11, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 744: H.R. 11280: Civil service reform. The House agreed to resolve itself into the Committee of the Whole, "yes";

Rollcall No. 745: H.R. 11280: Civil service reform. The House rejected an amendment that sought to require that each agency should establish a personnel office and appoint a chief personnel officer who is a career civil service person, "no";

Rollcall No. 746: H.R. 11280: Civil service reform. The House rejected a perfecting amendment that sought to extend veterans preference for Vietnam-era veterans for 15 years from the date of separation or until September 31, 1985, for Vietnam-era veterans who served in the Vietnam theater, "yes";

Rollcall No. 747: H.R. 11280: Civil service reform. The House agreed to an amendment that retains existing veterans preference standards, "yes";

Rollcall No. 749: H.R. 11280: Civil service reform. The House agreed to an amendment that sets a statutory ceiling on the total number of Federal employees in the executive branch, "yes";

Rollcall No. 750: H.R. 11280: Civil service reform. The House rejected an amendment that sought to permit the FBI to place 140 positions in GS–18 without regard to the provisions placing limitations on executive-level positions, "no";

Rollcall No. 751: H.R. 11280: Civil service reform. The House rejected an amendment that sought to strike the labor-management and employee relations language from the bill, "no"; and

Rollcall No. 752: H.R. 11280: Civil service reform. The House rejected a motion that the Committee of the Whole rise and report the bill back to the House with the recommendation that the enacting clause be stricken, "no."

Mr. Speaker, on September 2, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 754: H.R. 12860: Rhode Island Indian claims. The House passed the measure to settle Indian claim rights within the State of Rhode Island and Providence Plantations, "yes";

Rollcall No. 755: H.R. 13311: Port safety and tank vessel safety. The House passed the measure, amended, to amend the Ports and Waterways Safety Act of 1972, "yes";

Rollcall No. 756: H.R. 12026: Indian Peaks Wilderness Area. The House passed the measure, amended, to create the Indian Peaks Wilderness Area and the Arapaho National Recreation Area and to authorize the Secretary of the Interior to study the feasibility of revising the boundaries of the Rocky Mountain National Park, "yes";

Rollcall No. 757: H.R. 5265: Temporary suspension of fluorspar. The House failed to suspend the rules and pass the measure to provide for the temporary suspension of the duty on the importation of fluorspar, "yes";

Rollcall No. 758: H.R. 1337: Excise tax on trucks and buses. The House passed the resolution (H. Res. 1342) providing that the House agree, with amendments, to the Senate amendment to the text; and agree to the Senate amendment to the title to the measure, to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, "yes";

Rollcall No. 759: H.R. 13331: Federal district courts. The House passed the measure, amended, to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the division within judicial districts, and in judicial districts dividing lines, "yes";

Rollcall No. 760: S. 3119: Transfer of real property. The House passed the measure to amend the District of Columbia Self-Government and Governmental reorganization Act to repeal the authority of the President to sustain vetoes by the Mayor of the District of Columbia of acts passed by the Council of the District of Columbia and repassed by two-thirds of the Council, and to change the period during which acts of the Council of the District of Columbia are subject to congressional review, "yes"; and

Rollcall No. 761: S. 3075: International security assistance authorization. The House agreed to the conference report on the measure to amend the Foreign Assistance Act of 1961 and the Arms Control Act, "yes."

Mr. Speaker, on September 13, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 762: H.R. 11280: Civil service reform. The House agreed to resolve itself into the Committee of the Whole, "yes."

Rollcall No. 763: H.R. 11280: Civil service reform. The House rejected an amendment to the agreed-to substitute on labor-management relations that sought to prohibit Federal Election Commission employees from being represented by a union maintaining a political action committee or advocating the election or defeat of any candidate for Federal office, "yes";

Rollcall No. 764: H.R. 11280: Civil service reform. The House agrees to an amendment, as amended by a substitute, that provides compromise language between the bill's language and administration proposals for the labor-management provisions in the bill, "yes";

Rollcall No. 765: H.R. 11280: Civil service reform. The House rejected an amendment that sought to limit outside earned income of employees covered by this bill in pay grade GS–13 or above to not more than 15 percent of their salary, "no";

Rollcall No. 766: H.R. 11280: Civil service reform. The House agreed to an amendment that retains existing veterans preference standards, "yes";

Rollcall No. 767: H.R. 11280: Civil service reform. The House passed the measure to reform the civil service laws, "yes";

Rollcall No. 768: H.R. 8728: Airport and aircraft noise reduction. The House agreed to order the previous question on the rule (H. Res. 1293), "yes";

Rollcall No. 769: H.R. 8729: Airport and aircraft noise reduction. The House agreed to the rule (H. Res. 1293) under which the bill was considered, "yes";

Rollcall No. 771: H.R. 8729: Airport and aircraft noise reduction. The House rejected an amendment that sought to require a noise impact map and a noise compatibility plan from airports if aircraft noise of the airports affects individuals in other States, "no"; and

Rollcall No. 772: H.R. 8729: Airport and aircraft noise reduction. The House agreed to an amendment that authorizes an additional $25 million for 1979 and 1981, to be divided equally among the States, for the purpose of developing general aviation airports, "yes."

Mr. Speaker, on September 14, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 773: Journal. The House approved the Journal of Wednesday, September 13, "no";

Rollcall No. 774: H.R. 8729: Airport and aircraft noise reduction. The House agreed to the Ways and Means Committee amendment that strikes the aircraft revenue and credit provisions in the bill and substitutes language (text of H.R. 11986) making certain changes in taxes on transportation by air and providing credits or refunds of a certain portion of the taxes for expenditures to retrofit and replace noisy aircraft, "yes";

Rollcall No. 775: H.R. 8729: Airport and aircraft noise reduction. The House rejected a motion to recommit the bill to the Committee on Public Works and Transportation with instructions to report it back forthwith containing an amendment to strike the language in the bill (Ways and Means Committee amendment) making changes in taxes and providing for grants and refunds for expenditures to retrofit and replace noisy aircraft and substitute language that would reduce the 8-percent tax on domestic flights to 6 percent and the 5-percent tax on domestic freight to 3 percent, "no";

Rollcall No. 776: H.R. 8729: Airport and aircraft noise reduction. The House passed the measure to provide assistance to airport operators to prepare and carry out noise compatibility programs, and to provide assistance to aircraft operators to comply with noise standards, "yes";

Rollcall No. 777: H.R. 12928: Public works-energy research appropriations. The House agreed to the conference report on the measure making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1979, "yes";

Rollcall No. 778: H.R. 9214: International Monetary Fund. The House agreed to a motion to instruct the managers on the part of the House to agree to the provision in section 4 of the Senate amendment that instructs the U.S. Executive Director to oppose any Witteveen Facility or IMF loans to nations providing aid or assistance to terrorists, and to agree to section 7 of the Senate amendment that mandates a balanced budget beginning in fiscal year 1981, "yes";

Rollcall No. 779: H. Res. 1242: Emergency preparedness reorganization. The House failed to agree to House Resolution 1242, to disapprove Reorganization Plan No. 3 transmitted by the President on June 19, 1978, no";

Rollcall No. 780: H.R. 12611: Air service improvement. The House agreed to the rule (H. Res. 1324) under which the bill was considered, "yes"; and

Rollcall No. 781: H.R. 12611: Air service improvement. The House agreed to resolve itself into the Committee of the Whole, "yes."

Mr. Speaker, on September 15, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 782: Journal. The House approved the Journal of Thursday, September 14, "no";

Rollcall No. 783: S. 2701: Water resources planning. The House agreed to the conference report on the measure to amend the Water Resources Planning Act (79 Stat. 244, as amended), "yes";

Rollcall No. 784: H. Res. 1350: Contempt citation. The House agreed to the resolution that the Speaker of the House certify the report of the Committee on Standards of Official Conduct with respect to the proceedings against Hancho C. Kim, to the U.S. attorney for the District of Columbia, "yes";

Rollcall No. 785: H.R. 11733: Surface transportation authorizations. The House agreed to the rule (H. Res. 1326) under which the bill was considered, "yes"; and

Rollcall No. 786: H.R. 11733: Surface transportation authorizations. The House agreed to resolve itself into the Committee on the Whole, "yes."

Mr. Speaker, on September 18, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 788: Rollcall No. 13097: Medicare amendments. The House passed the measure, amended, to amend certain provisions of title XVIII of the Social Security Act as they relate to the medicare program established by part A of such title, "yes";

Rollcall No. 789: H.R. 13817: Health programs amendments. The House passed the measure, amended, to amend the Social Security Act with respect to health programs authorized under it, "yes";

Rollcall No. 790: H.R. 10792: Acquisition of African Museum of Art by Smithsonian. The House passed the measure, amended, to authorize the Smithsonian Institution to acquire the Museum of African Art, "yes";

Rollcall No. 791: H.R. 7819: Diplomatic immunity. The House agreed to a motion to suspend the rules and agree to the Senate amendments to the measure, to complement the Vienna Convention on Diplomatic Relations, "yes"; and

Rollcall No. 792: H.R. 11488: Health planning and resources development

amendments. The House failed to suspend the rules and pass the measure, amended, to amend titles XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development, "yes."

Mr. Speaker, on September 19, 1978, I was absent from part of the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 798: S. 3040: Amtrak improvement. The House agreed to the conference report on the measure to amend the Rail Passenger Service Act to extend the authorization of appropriations for an additional fiscal year, to provide for public consideration and implementation of a rail passenger study, "yes";

Rollcall No. 799: H.R. 12598: Foreign relations authorization. The House agreed to the conference report on the measure, Foreign Relations Authorization Act for fiscal year 1979, "yes";

Rollcall No. 800: H.R. 12222: Foreign aid authorization. The House agreed to the conference report on the measure, International Development and Food Assistance Act of 1978, "yes";

Rollcall No. 801: H.R. 11401: NASA authorization. The House agreed to the conference report on the measure to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, "yes"; and

Rollcall No. 802: H.R. 8149: Customs reform. The House agreed to the conference report on the measure to provide customs procedural reform, "yes." ●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. DRINAN) is recognized for 5 minutes.

● Mr. DRINAN. Mr. Speaker, due to a primary election in my congressional district, I was unavoidably absent from the House for a brief time late in the session of Tuesday, September 19. Had I been present, I would have voted as follows: Rollcall No. 800, adoption of the conference report on H.R. 12222, International Development and Food Assistance Act, "aye"; rollcall No. 801, adoption of the conference report on H.R. 11401, National Aeronautics and Space Administration Authorization Act, "aye"; rollcall No. 802, adoption of the conference report on H.R. 8149, Customs Procedural Reform Act, "aye." ●

EXPLANATION OF NEED FOR CONTINUING RESOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 5 minutes.

● Mr. NEAL. Mr. Speaker, I am today introducing a joint resolution which, if passed, would extend the life of the Export-Import Bank until December 31, 1978.

The statutory charter of Eximbank expires on September 30, 1978. While H.R. 12157, the bill to extend the life of the Bank for 5 years, has passed the House, the Senate has yet to consider S. 3077 which is its counterpart. Furthermore, there are enough differences between H.R. 12157 as passed by the House and S. 3077 as reported out of the Senate Banking Committee to indicate that a conference will be required. Because the legislation extending the Bank's life will not be passed in time, a continuing resolution is necessary, which would extend the life of the Bank until December 31. The additional 90 days should give the House and Senate time to complete final action on the Eximbank bill.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. CARR) is recognized for 5 minutes.

● Mr. CARR. Mr. Speaker, on Thursday, September 14, I had to leave early for a speaking engagement in my district, and I missed a number of recorded votes.

Had I been present, I would have voted "nay" on rollcall No. 777, the conference report to accompany H.R. 12928, the public works appropriations bill. I would also have voted "nay" on rollcall No. 779, a resolution disapproving of the President's Reorganization Plan No. 3.

I would have voted "aye" on rollcall No. 778, a motion to instruct the conferees to adopt certain Senate amendments to H.R. 9214. I would also have voted "aye" on rollcall No. 780 and rollcall No. 781.●

SOLID TOXIC WASTES—THE UNFORTUNATE LEGACY OF OUR HIGHLY INDUSTRIALIZED SOCIETY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. LAFALCE) is recognized for 10 minutes.

● Mr. LAFALCE. Mr. Speaker, the United States has always prided itself on its "Yankee Ingenuity" which in the 19th century brought us into the industrialized world with the industrial revolution taking hold in our country. The clock has not and cannot turn back—industry has grown by leaps and bounds over the last two centuries and has become overtaken by technology which only a few decades ago was considered in the realm of science fiction.

The results of our "Yankee Ingenuity" have been beneficial—our quality of living has become better and we have leisure time to enjoy the arts, sports and hobbies which our forefathers never had time to do because they were working 6 or 7 days a week. Now, however, we are able to accomplish all of our daily chores in short order due to the gadgets we have been clever enough to invent. But, did any of you stop to think that every time you turn on an electric beater to bake a cake in your home, little substances known as PCB's are being stirred up in the electrical transformer creating the electricity? PCB's are one of the major sources of toxic solid wastes which our society still has not found a safe method to dispose of in a cost-effective manner.

PCB's are only one substance which is now plaguing our society in the form of wastes which we readily use or have used in the home or sell in the marketplace. Clothes made out of synthetic fibers and plastic products are made from nonbiodegradable materials which are eventually deposited in landfills across the country if they are unable to be recycled. Thus, our "Yankee Ingenuity" has not only improved our society in many respects, but it also has simultaneously created an obligation for us to live in that highly technological society in a responsible fashion.

Congress in 1976 attempted to address this dilemma by passing the Resource Conservation and Recovery Act (RCRA), a law which regulates solid wastes from the "cradle to the grave." The U.S. Environmental Protection Agency, the Federal agency responsible for implementing this act, was to have issued regulations for this act within 18 months of enactment. The agency still has not promulgated these regulations and will not until 1980, claiming that it is very difficult for the agency to promulgate them because it needs to resolve very complex technical, financial, legal, and environmental issues. The EPA's main concern is to issue regulations which will not be tossed out by the courts.

The agency, along with other Federal agencies and departments, was instructed by the President to avoid issuing regulations which could prove to be adverse to the public interest, inflationary, or non-cost-effective. EPA, instead of following the President's wishes, ducked the major issues and confined itself to minor subjects. Thus, the EPA has not met the President's expectations since it failed to redirect its resources toward necessary regulations; simultaneously the agency failed to meet public expectations by failing to issue regulations which are essential to preserving public health and safety and the environment.

By delaying issuance of the RCRA regulations, EPA may be compounding its problems by allowing those who dispose of wastes in an unsafe manner to continue to do so. Additionally, those companies which are in the waste disposal business are hesitant to invest in new equipment for fear that the new facilities will not meet EPA standards when the regulations are promulgated in 1980. Also, since the laws concerning dumping now in effect are State laws rather than Federal laws, States with strict dumping regulations are hurting themselves because industries are moving to those States with weak laws so that they can dump without penalty.

EPA must issue its regulations as expeditiously as possible because, as I said in my opening remarks, industry and technology are here to stay. We cannot wish these wastes away—that is impossible; furthermore, they will not go away—they will only increase exponen-

tially in future years. Thus, in order to prevent landfill operators from being able to conduct their businesses in an irresponsible manner, EPA must regulate. The public fears the placement of these landfills in its own backyards because for the most part they have only experienced landfills which have created serious health and environmental problems for the surrounding areas due to a lack of regulation of the landfill's activities.

We cannot allow the public to remain fearful, because the solid waste landfill must exist as long as our society continues to manufacture products which are made from toxic materials which are nonbiodegradable. We can only stem the legitimate fears of the public if we insist that the solid waste producers, handlers, haulers, and landfill operators be forced to conduct their businesses in the safest manner known to man.

The Love Canal in the city of Niagara Falls is a prime example of a "ticking timebomb"—an abandoned landfill full of toxic substances. If RCRA had been on the books and had been enforced during the 1940's and 1950's when the indiscriminate dumping occurred in the canal, then we would not have had this "ticking timebomb" explode literally in the faces of so many people. If we are to prevent future Love Canals, then EPA must act and act immediately. Congress has passed a law which can at the very least protect the public from future disasters resulting from toxic wastes being produced and buried in the ground. However, without enforcement from the regulatory agency, the law remains meaningless.

RCRA is not perfect—but it is a good step. Next year Congress will be taking another look at RCRA when it comes up for reauthorization. We, as legislators, will have to ask many questions and consider many issues which have come to light as a result of the 1976 act. I plan to take an active role in Congress in the reevaluation of the law and during the legislative process.

Many of the problems which we will have to ponder have been put forth in articles by Michael Desmond which have been published recently in the Buffalo Courier-Express. I am inserting these articles in the RECORD so that my colleagues can also be aware of the difficult and perhaps tragic future we face if we do not act immediately to protect our citizens from the perils of improper treatment of toxic wastes from the "cradle to the grave."

[From the Buffalo Courier-Express, Sept. 16, 1978]

TOXIC WASTE DUMPS PERIL NATION—LOVE CANAL HAZARD IS SMALL PART OF NATIONAL PROBLEM

(By Michael Desmond)

There is a sea of hazardous chemicals washing across this nation, a sea which provides a huge threat to the health of present and future generations, an extensive investigation by The Courier-Express has discovered.

The U.S. Environmental Protection Agency (EPA) estimates 5.6 billion pounds of hazardous waste is properly disposed of each year. That is only six percent of the estimated 92 billion pounds of hazardous waste actually generated each year.

That leaves 86.4 billion pounds to peril the nation's populace.

Despite the clear numbers they are really guesses: No one knows what the real figures are.

The EPA estimates there are 20,000 dump sites for hazardous materials operating now, but has no idea how many other thousands have been used and closed. The former dumps may be at least as dangerous as the present ones. And no one knows how long a "secure" dump site will remain safe—a year, a decade, a generation.

NEW CHEMICALS

No one knows what to do about the new chemicals produced by industry each year.

There are thought to be 1,000 new chemicals born each year, on top of, the 70,000 which already exist, and no person or agency knows how to dispose of many of them safely and permanently.

In the Middle Ages, alchemists tried to turn base materials into gold. In a religious and superstitious age, the alchemists were playing in a field reserved to God.

Today, scientists are also alchemists. They take oil and gas and water and salt and burn them into profitable chemicals and plastics and textiles.

LEGACY OF POISON

But, behind them, they are leaving a legacy for untold generations. The waste materials of an industrial age are seeping into the air we breathe, the water we drink and the land on which we grow our food.

Once, people could flee a flood by going to the nearest high grounds and watch the furious waters simply lash unavailingly at them. In the industrial age, there is no high ground. Witness:

In an industrial area outside the small town of Washington, W. Va., workers at the L. B. Foster metal pipe manufacturing plant were shocked to discover the ground exploded if they tried to dig into it. No one was injured. Research disclosed that tract had been used in 1969 by Carborundum metal and radioactive ore from a nirconimum tube manufacturing plant. When Foster bought the site two years ago, it was a cornfield.

At a road intersection in the farm country of central Ohio, near Akron, a visit by The Courier-Express found thousands of drums and tanks of chemicals sitting on a former strip coal mine. They contain everything from paint thinner to a complicated chemical used to make the deadly pesticides Mitex and Kepone. The site isn't even fenced.

In the *aging industrial city* of Lowell, Mass., waste from a mismanaged waste treatment site is contaminating a river used downstream for drinking water. Chemicals found in the Merrimack river include two chemicals which cause cancer in laboratory animals, chloroform and dichloroethylene.

In Bayou Sorrel, La., a few weeks ago, a 19-year-old boy was killed when caustic chemicals he was dumping from a tank truck into a lake of chemicals reacted together producing a deadly gas. He died almost immediately. Government investigators were initially denied admission to investigate by the operator of the lagoon.

Not far from Bayou Sorrell, a 100-square-mile area around Darrow and Geismar was contaminated with the toxic chemical hexachlorobenzene several years ago. The material was dumped on the land and cattle were contaminated after they grazed on grass growing out of the soil.

Waste from the Rocky Mountain National Arsenal near Denver has contaminated 50 square miles of underground water, damaged 6.5 square miles of farmland and may have caused earthquakes. The Defense Department recently estimated it will cost $78 million to clean up the mess.

In Muskegon, Mich., a chemical company went broke. A subsequent site examination by a purchaser and the State Department of Natural Resources turned up thousands of drums of chemicals stashed in the woods behind the plant.

In the desert of southwestern Idaho, near Boise, Wescon Inc. has taken over a Titan missile silo and turned it into a giant mausoleum for dangerous wastes. Already, giant blast doors intended to protect missiles against atomic blasts have been closed over several silos of waste * * *.

A "midnight hauler" dumped toxic chemicals called PCBs along 250 miles of road near Raleigh, N.C., in early August.

In the Gulf of Mexico, along the Gulf Coast of Louisiana and Texas, drums apparently containing metallic sodium waste, have turned up in fishing nets. Some have exploded, wrecking nets and killing at least one fisherman.

In the chemical industry center of Niagara Falls, an abandoned chemical waste dump in the city's Love Canal neighborhood began to leak cancer-causing chemicals less than 25 years after the best technology of the day was used to seal it. This is what prompted the extensive look by The Courier-Express into the entire hazardous situation.

WIDESPREAD HAZARD

"I'm sure all the states are going to be facing these kinds of problems," commented Tom Cook, hazardous waste section chief for the Washington State Department of Ecology.

Hazardous materials can turn up anywhere. A once thriving fishing industry in Virginia's James River and in parts of Chesapeake Bay has been crippled by the intensely dangerous pesticide Kepone. This material leaked out of two manufacturing plants in Hopewell, Va. Some of it was simply dumped down the drain.

Subsequently, an EPA-report cited Life Science Products Co. for its "careless manufacturing and disposal practices" which led to "deleterious health effects on the production workers" of the Hopewell sewage treatment plant.

SHAKING PALSY

Many workers at the Life Science and the Semi-Works Plant of the Allied Chemical Corp., nearby, may never recover from a shaking palsy or the internal damage brought on in making the pesticide.

The pesticide Mirex has been found in significant quantities in Lake Ontario. Mirex and the Virginia pesticide were dumped from the Niagara Falls plant of the Hooker Chemicals and Plastics Corp. In addition, some scientists suspect natural action in the lake is turning some of the Mirex into Keponex.

Both are made from a chemical Hooker calls "C-56."

At a Hooker plant in Montague, Mich., a few miles north of Muskegon, waste material from the manufacture of C–56 was dumped on a site inside the plant not far from White Lake, a local source of water and recreation.

FOUND IN WELLS

The C–56 has turned up in wells in the immediate plant area and state officials say it is "migrating" toward White Lake.

Bruce Davis, executive vice president of the industrial chemicals group for Hooker, told The Courier-Express Mirex was never made, stored or handled in Montague. But, Mirex has been found in the dump site there.

There is speculation that somehow the C–56 molecules in the dump reacted together to form the dangerous Mirex.

More than two decades ago, the pesticide 2,4–D mysteriously turned up in ground water at Rocky Mountain arsenal. The 2,4–D

apparently was produced deep in the earth from a variety of pesticide and chemical warfare wastes dumped into lagoons on arsenal grounds.

DEEP WELL

After the lagoons were found to be defective because they leaked, the Arsenal drilled a well more than two miles into the ground and over a three year period pumped 165 million gallons of the wastes into the ground.

A series of earthquakes in the area began shortly after the waste began to be pumped down the well. Some scientists think the material in some way lubricated rock and caused the quakes.

This is the subject of wide dispute. However, EPA noted in a report on the waste problem at Rocky Mountain Arsenal, "Correlation of the injection of large volumes of liquid into the well with earthquakes in the Denver area caused this operation to cease in 1966."

PAYS PIPER

An industrial society is now paying the piper for the chemical wonders which surround us. * * *

* * * Without adequate federal regulation, states can attract industry by not checking too closely what industries are doing with their waste.

Some unscrupulous persons or companies proclaim themselves to be waste treaters or haulers and haul the waste off into the night, to dispose of the material by the side of the road, into regular garbage dumps or into scenic areas like the sandy forests of the Pine Barrens of southern New Jersey.

As long as industrial waste is produced, it has to go somewhere.

Perhaps the most truthful response to what happens then came from Burke Lokey, a public health engineer with the Radiation and Hazardous Waste Contamination Division of the Colorado Health Department.

He said, "We don't care as long as they take it out of states."

[From the Buffalo Courier-Express]

BEHIND SCHEDULE IN WRITING RULES

(By Michael Desmond)

The federal Environmental Protection Agency is so snarled in its own bureaucracy that it apparently has not yet realized it is at war with a deadly enemy: The mountains and rivers of toxic wastes that are threatening the nation's health and safety.

There is no other way to explain why fewer than 200 of EPA's nearly 11,000 employees have been mustered to fight the chemical foe.

The building in which the EPA is located in Washington, D.C., is a perfect match for the agency—almost totally confusing.

The structure, called the Waterside Mall, is a mixture of two towers with a low slung office and shopping section connecting them. Visitors are issued maps to try to help them around the complex and EPA workers admit they frequently get lost themselves.

EPA is a young agency with burgeoning responsibilities. It is supposed to do everything from checking gas mileage on cars to controlling the dumping of hazardous chemicals into the environment.

UNDER ATTACK

Nearly everything the agency does is controversial. Industry attacks EPA because proposals are too expensive. Environmentalists attack EPA because the agency isn't moving fast enough. Citizens attack EPA for not doing something about myriad problems.

And, even in an era of big government, EPA is big government.

Douglas M. Costle has been administrator of EPA since March 5, 1977.

In the federal fiscal year which starts Oct. 1. EPA will spend $1.2 billion. There are 10,946 budgeted EPA employes. Yet, only $25.2 million will be for hazardous wastes, and only 161 workers—in headquarters and in the 10 regional offices—are working on the problem. Of the $25.2 million, $15 million is going to the states to help them look into the problem.

Environmental groups have sued EPA for administrative sloth. On April 21, the agency was supposed to release regulations to put the Resource Conservation Recovery Act (RCRA) into effect. This was 18 months after President Gerald R. Ford signed the legislation into law. But EPA is 21 months behind schedule.

RCRA has three main goals. They are the encouragement of conserving resources rather than disposing of them; improving the disposal of all solid wastes to protect public health and environmental quality; and regulating hazardous wastes from generation to disposal. The laws encourage states to act on their own. But, if they don't EPA will enforce the act.

TARGET DATE

Gary Dietrich, associate deputy assistant administrator for solid waste for EPA, told The Courier-Express in his Washington office the current target for "promulgation" of the regulations is January 1980. He called that schedule "pretty damn tight" at the present rate of progress.

Neither the State of Illinois nor the dual group of Environmental Defense Fund (EDF) and Environmental Action (EA) have much sympathy for EPA.

Illinois Attorney General William J. Scott sued EPA on Sept. 7 over its failure to produce the regulation. He said:

"We've got to provide safe means for storage and disposal of toxic wastes in order to both serve our industry and to protect the health of citizens. We can do it. the law is on the books, and now is the time for the federal government and its employees to live up to the law and act." "The threat to health posed by hazardous waste is clear," said EDF Science Associate Leslie Dach.

"Unless properly taken care of, it will come back to haunt us and our children," the EDF official continued.

MAJOR PROBLEM

A. Blakeman Early, a legislative representative for EA, noted, "One major problem is that those disposal site operators who know they cannot meet EPA's regulations are loading toxic, poisonous wastes into their sites as fast as possible before these regulations are issued. The longer EPA waits to issue regulations, the more the toxic disposal problem grows."

Dach of EDF asked, "EPA acts as if the law were a meaningless scrap of paper. They sit around while nearly two billion more pounds of poisons are unsafely disposed of every week. How many more Love Canals do we need to get some action?"

The "Love Canal" refers to a former chemical waste dump in Niagara Falls. In 1976, for reasons which are not yet clear, the dump began to leak high concentrations of chemicals, some of which cause cancer in humans and laboratory animals. New York State is committed to moving 237 families away from the area and cleaning it up.

A number of other groups are expected to sue EPA over its failure to issue new, tough regulations.

LAW'S DELAY

Companies in the waste disposal field are reluctant to invest in new facilities to handle hazardous waste because they don't know if the facilities will meet the EPA regulations to be issued in 1980. Earlier proposed regulations have already been drastically changed and there will be more changes.

The money to go into hazardous waste management can be significant. Edward R. Shuster, vice president marketing sales for Newco Chemical Waste Systems, Inc., in Niagara Falls, told The Courier-Express it might cost $20 million to just build one incinerator which could properly handle the widespread pollutant PCB.

Carl Goslin, assistant technical director of the Manufacturing Chemists Association (MCA), in Washington, commented, "It takes $10 million to build a properly designed plant—at an offhand estimate." The MCA is the trade group for the great chemical companies.

There is no great rush into a field which remains so uncertain, without the final rules and regulations.

Much of the EPA effort has been fire fighting. Agency officials and workers are constantly being sent into areas where chemical situations have gone haywire.

In the old textile town of Lowell, Mass., a bankrupt chemical storage and treatment company site is leaking toxic chemicals into a nearby river which provides water for Lawrence, Mass., downstream. There are estimated to be 15,000 drums of a wide variety of chemicals on the site and hundreds of thousands of gallons of chemicals in storage tanks.

BIDS ASKED

Various chemical waste treatment companies have been asked for bids on cost of removal of the materials and cleanup of the site.

Even without the long-delayed regulations, EPA is stumbling into action. In the fiscal year which ends Sept. 30, the agency has given $3.8 million to states to survey chemical wastes and their ultimate disposal. In the fiscal year which starts Oct. 1, that will rise to $15 million.

According to Dietrich, EPA has to do this. "The statute it silent on inactive sites. It seems to deal with prospective problems," he noted. So, EPA is doing nothing itself about closed sites.

The view draws fire. Early, of Environmental Action, scoffs. "It's a reaction to a realization that there are more wastes out there than EPA can handle," he said. This group is part of the coalition which sued EPA on Wednesday

Some of the same groups sued EPA earlier over its failure to issue regulations under the Safe Drinking Water Act of 1974. Under a consent decree, the agency is still working to study a list of 129 pollutants.

CONTROL METHODS

EPA had been required to establish methods for control and analysis of toxic substances in waste water. When the agency failed to do it, it was sued. On June 7, 1976, EPA signed the consent decree agreeing to do what it was supposed to do.

Of the 129 chemicals, it has finally reached a decision on how it will analyze all of them. Now, it plans to start measuring them at various places around the country. Then, based on the results, rules and regulations will be written.

Since EPA can't meet various deadlines in the consent decree. Early commented to The Courier-Express, "It raises the question of what can be done with a lawsuit." He noted the agency is 18 months late on the consent decree.

Much of the problem is that many of these chemicals have been used for years, without anybody knowing very much about them. Now sophisticated procedures have to be used to set limits on them in water.

EPA is also facing some internal problems. Environmentalists claim some of its regions are not very active in dealing with the problems of hazardous chemicals.

One region often cited is that headquartered in Dallas which covers Texas, Oklahoma, New Mexico, Louisiana and Arkansas. This is the heartland of America's petrochemical industry.

Dietrich noted a recent telephone conference among all regional directors to discuss the hazardous waste situation and a

planned meeting this month in Washington. He wants all regions active on the problem.

But, the regional structural weaknesses of EPA were clear when he commented, "We at EPA headquarters don't know how many hazardous waste sites there are out there." He said it was up to the states and the regional offices to know, but most of them don't know either.

In an admission that cuts to the heart of the entire problem, Dietrich said, "We don't know very much about where people are tossing hazardous wastes."●

NEED FOR COMPREHENSIVE, RATIONAL U.S. REFUGEE POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. EILBERG) is recognized for 5 minutes.

● Mr. EILBERG. Mr. Speaker, the House of Representatives will soon consider an amendment on Cambodian refugees brought back in technical disagreement by the conferees on H.R. 12934, a bill making appropriations for the Departments of State, Justice, Commerce, the Judiciary, and related agencies for fiscal year 1979.

As chairman of the Subcommittee on Immigration, Citizenship, and International Law, which has been grappling with this difficult issue since the Communist takeover in Indochina 3 years ago, I intend to oppose adoption of this amendment for many reasons. Further, I intend to propose alternative language which would establish a more reasonable and more effective approach to the serious refugee problem in Indochina.

Mr. Speaker, my subcommittee has been diligently working to have the administration develop for this country a long-range, coherent, and humanitarian refugee policy. I have communicated this need to the President in a letter to him earlier this year, which will be inserted following my remarks. As a result of these efforts, we have noticed some encouraging signs which indicate that the administration has finally recognized this need and is working toward the development of such a policy.

This amendment, Mr. Speaker, would, if adopted, frustrate much of these efforts by perpetuating, the current administration policy of approaching refugees issue in an "ad hoc," piecemeal fashion.

Mr. Speaker, I urge my colleagues to read the material which is inserted following these remarks and to give careful consideration to the deleterious effect adoption of this amendment will have on our efforts to establish a comprehensive and consistent refugee policy.

On the other hand, the language which I intend to propose if the Senate language is defeated, will enhance the past efforts of our subcommittee, and at the same time give special consideration to Cambodian refugees by recommending a review and revision of current refugee eligibility criteria.

I, therefore, urge defeat of the motion which will be offered by Congressman SLACK on behalf of the House conferees on H.R. 12934 and I request your support for the adoption of my substitute language.

COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 7, 1978.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I remain deeply disturbed by the "ad hoc" response of the United States Government to refugee problems in general and to the Indochina refugee problem in particular.

I communicated this concern to you in a July 12, 1977 letter in which I stated that "it is imperative to end the haphazard, piecemeal approach which the U.S. has taken toward [Indochina] refugees." That same letter requested you to "take the lead in convening the nations of the world for an International Conference on Indochinese Refugees."

Based upon statements made last week by the Secretary of State during a meeting with the ASEAN ministers and my own discussions with the Foreign Ministers of Thailand and Malaysia, I continue to believe that such a Conference is essential in resolving this truly international problem. I therefore renew my request that the U.S. undertake immediate steps leading toward the convocation of a worldwide conference on this most serious problem.

I would also request that the Administration consider the urgent need for closer cooperation between the various Executive Departments involved in formulating and implementing administrative aspects of our refugee policies. Unfortunately, there appears to be little coordination between the Departments of State, Justice, and HEW in reaching decisions on: the number and categories of refugees to be admitted; the amount and method of funding their care and maintenance in asylum countries or their processing and movement to the U.S.; or the amount and type of assistance to be provided to voluntary agencies, to the States or to the refugees themselves to facilitate their resettlement in the United States.

For example, the Administration is now asking the Congress to once again extend the "Indochina Migration and Refugee Assistance Program" in a limited, "stopgap" manner. In my judgment it is unreasonable and inefficient to propose such an extension and at the same time support a continuing admissions program of 25,000 Indochina refugees per year. Certainly, the issues of refugee admissions and resettlement funding cannot and should not be separated—even though we have done so in the past. In order to promote a comprehensive, coordinated and unified approach to the Indochina refugee problem these matters must be submitted to, and considered by, the Congress simultaneously. It makes little sense for the Judiciary Committee to concur in the use of parole for certain Indochina refugees, when no monies exist to process, transport and resettle that group of refugees.

My concerns on this subject are shared by the ranking minority members of the full Judiciary Committee and the Subcommittee on Immigration, Citizenship and International law, which I chair. In fact, our views were expressed in a June 1, 1978 co-signed letter to the Attorney General regarding the use of parole for 25,000 Indochina refugees. In that letter we stated:

"We are also troubled by the lack of coordination in the Executive Branch in the development of policies and procedures for admitting and resettling Indochinese refugees. Apparently, decisions on the admission of refugees are finalized without adequate planning on the resettlement of such refugees. In our judgment, the presentation of detailed cost data and the submission to Congress of a definitive legislative proposal on financial reimbursement to State Governments would have greatly assisted us in our consideration of this parole request. Decisions to admit refugees must not be made in a vacuum. They must be accompanied by carefully-developed plans designed to facilitate their resettlement in this country."

This view is apparently shared by the House Committee on Appropriations, particularly its Subcommittee on Foreign Operations, chaired by the Honorable Clarence Long. In that Committee's report on H.R. 12931, the Foreign Assistance and Related Programs Appropriation Bill, 1979, it was stated:

"With the fiscal year 1980 justifications, the Administration must submit to this Committee a five year financial projection of the Indochinese program. This must include, at least, the numbers of refugees involved, those costs to be borne by this account and the Department of Health, Education, and Welfare. Further the Administration must submit evidence to this Committee that officials of the Department of HEW are participating at these preliminary stages, are cognizant of the ultimate costs and support this further admission of these refugees. Finally, the Administration must provide detailed documentation or testimony proving that they are working to achieve broader world support for these refugees."

I would therefore urge you to personally insure that these issues are better coordinated in the future and—if necessary—to establish a formalized mechanism in the White House to accomplish this objective. I strongly believe that these congressional concerns can only be alleviated if we receive the full support and cooperation of high-level officials from your Administration.

I am hopeful that such support could also extend to the enactment of comprehensive legislation on this subject, as well as to the convening of the International Conference on Indochina Refugees, mentioned earlier in this letter.

I can assure you, Mr. President, that I am committted to the establishment of a coherent, long-range and coordinated refugee policy for this country. I know that you share this view and I am most anxious to work with you and your Administration in accomplishing this humanitarian goal.

Sincerely,

JOSHUA EILBERG,
Chairman.

COMMITTEE ON THE JUDICIARY,
Washington, D.C.

Re: Cambodian Refugee Amendment in Conference Report on H.R. 12934

DEAR COLLEAGUE: Very shortly, the House of Representatives will be considering an amendment on Cambodian refugees brought back in technical disagreement by the conferees on H.R. 12934, the bill making appropriations for Departments of State, Justice. Commerce, the Judiciary and related agencies for fiscal year 1979.

The amendment recommended by the conferees is the result, and tracks the language, of a nongermane Senate amendment to H.R. 12934. Specifically, it expresses the sense of the Congress that the Attorney General exercise his parole authority under the Immigration and Nationality Act to admit, over a two year period, 15,000 Cambodian refugees presently in camps in Thailand. This amendment arises out of a deep concern, which I am sure all of us share, over the ruthless and brutal treatment of Cambodian citizens at the hands of Communist leaders in that country.

However, as Chairman and ranking minority Member of the Subcommittee on Immigration, Citizenship, and International Law, we are constrained to oppose this amendment. In our judgment, there are several reasons why this amendment must be defeated.

First of all, the amendment, while well-intentioned, will do absolutely nothing to

relieve the horrible suffering of millions of Cambodians who have been unable to escape from that country.

Secondly, the amendment will be detrimental to the efforts of our government to establish a reasonable, humanitarian and long-range refugee policy. Its effect would be to perpetuate the past policy of responding to refugee problems in an "ad hoc", piecemeal fashion. In fact, this amendment comes at a time when most interested parties from the Legislative and Executive Branches and from the private voluntary agency sector are agreed that we must have a carefully-developed, comprehensive, national refugee policy.

Thirdly, the amendment could clearly impede our efforts to "internationalize" the Indochina refugee situation—a development we believe is vital to any satisfactory resolution of this most serious problem.

Based upon a close scrutiny of this problem over the past three years by our Subcommittee and recent discussions that we have had with the Foreign Ministers of Thailand and Malaysia, we continue to believe that an International Conference on Indochina refugees among interested countries must be convened. It is imperative that we focus the attention—and the conscience—of the world community on this difficult problem in an effort to foster greater international cooperation and to increase resettlement opportunities for all Indochina refugees.

Finally, this amendment severely undermines the policies and procedures which have been established for the admission of Indochina refugees. These policies (including the selection criteria) have been developed by the Executive Branch following close consultation with Members of the House Judiciary Committee and the Subcommittee on Immigration, Citizenship, and International Law.

As a result, the current eligibility criteria gives priority to those who have had some past association with the U.S. or who are related to persons residing in this country. Special priority is also given to those refugees who find themselves in a particularly precarious position, such as Vietnamese "boat case" refugees who continue to be pushed "back to sea" by many countries in Southeast Asia.

It should be pointed out that the plight of the 15,000 Cambodian refugees in Thailand (notwithstanding the severe hardship which they have endured and escaped from) is indistinguishable from that of the over 100,000 Laotian refugees there, in terms of their humanitarian needs and their desire for permanent resettlement opportunities.

Rather than adopt an inflexible and absolute program to admit all Cambodian refugees, the preferable approach woud be to recommend review and revision of the current eligibility criteria applied under the present U.S. program in order to give special consideration to the unique situation presented by the Cambodian refugees in Thailand.

In order to carry out the views expressed in this letter, it is our intention to offer the following substitute amendment:

Sec. 605. It is the sense of the Congress that—

(1) the Attorney General, in consultation with the Congress, should develop special eligibility criteria under the current U.S. parole program for Indochina Refugees which would enable a larger number of refugees from Cambodia to qualify for admission to the United States;

(2) the Secretary of State should undertake immediately steps leading to the convening of an International Conference on Indochina Refugees; and

(3) the Attorney General and the Secretaries of State and Health, Education and Welfare should submit to the Congress, at the earliest possible time, a unified position on legislation which would establish for the United States a comprehensive and long-range policy for admitting and resettling refugees.

This substitute amendment can only be considered if the motion offered by Congressman Slack (to agree to the amendment suggested by the conferees) is defeated. We, therefore, urge your support for defeating that motion and for approving our substitute amendment.

Sincerely,

JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship, and International Law.

HAMILTON FISH, JR.,
Ranking Minority Member, Subcommittee on Immigration, Citizenship, and International Law.

REPORT OF THE SPECIAL COMMITTEE ON SOUTHEAST ASIA

(Mr. MONTGOMERY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MONTGOMERY. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following:

REPORT OF THE SPECIAL COMMITTEE ON SOUTHEAST ASIA, SEPTEMBER 7, 1978

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 7, 1978.

Hon. THOMAS O'NEILL,
The Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: On behalf of the members of the Special Committee on Southeast Asia appointed by you on August 16, we are transmitting to the House of Representatives a copy of the Committee's final report. The statements and recommendations included in this report are the result of our study of Southeast Asian matters, our own observations, as well as in-depth talks and discussions with high-ranking officials in the countries of Vietnam and Laos.

We believe that the trip was beneficial and necessary and feel that the information we brought back will be most helpful to our Government.

We appreciate your assistance as well as that of the other individuals directly involved in our efforts.

Sincerely,

G. V. MONTGOMERY,
Chairman.

JAMES T. BROYHILL,
Ranking Minority Member.

INTRODUCTION

In response to the invitation of the Vietnamese Vice Minister of Foreign Affairs, Phan Hien, a congressional delegation travelled to Vietnam and Laos during the period of August 18 to 28. Appointed by the Speaker of the House of Representatives, the delegation consisted of eight members: G. V. Montgomery (D-Miss.), George Danielson (D-Calif.), Antonio Won Pat (D-Guam), John Murtha (D-Pa.), Sam Hall (D-Tex.), Ike Skelton (D-Mo.), James Broyhill (R-N.C.), and Henson Moore (R-La.).

The group prepared in advance to seek additional information about servicemen listed as missing in action and to receive views from Southeast Asian officials pertaining to matters of our mutual interest. The committee was, of course, not authorized to negotiate on behalf of the United States Government.

Prior to its departure on August 18, the group met with representatives of the Department of State, the Central Intelligence Agency, and individuals who had recently visited in these countries. From these meetings, the members received background material on the MIA issue, as well as available information on existing conditions and relations with Vietnam and Laos.

The group visited the Joint Casualty Resolution Center in Honolulu and was briefed on the ongoing work identifying remains. Admiral Maurice Weisner, Commander-in-Chief, Pacific, arranged for a briefing on Southeast Asian matters which was presented by CINCPAC officials, also in Honolulu.

During the stopover in Manila, Philippines, Ambassador Richard W. Murphy briefed the delegation on United States relations with the Philippine Government including the future of U.S. military bases in that country.

During the course of its stay in Vietnam, the delegation met with Prime Minister Pham Van Dong, Vice Minister Phan Hien on two occasions, Mr. Vu Hoang, Director of Consular Affairs and their specialist in MIA matters, and Mr. Xuan Thuy, Vice Chairman of the National Assembly.

Other officials who participated in the meetings with Vice Minister Phan Hien were: Mr. Ngo Dien, Assistant to the Minister of Foreign Affairs for Press Relations; Mr. Tran Quang Co., Director of the North American Department, Ministry of Foreign Affairs; and Mr. Vu Song, Senior Official, Ministry of Foreign Affairs.

To provide additional background information on conditions in Vietnam, individual members of the group toured a hospital, a factory, a refugee center, and an orphanage, after our arrival in that country.

While in Laos, meetings with Mr. Khamphay Boupha, the Acting Minister of Foreign Affairs, H. E. Phoumi Vongvichit, Deputy Prime Minister and Minister of Education, and Mr. Sombat Chou Niamany, Director, Department No. 2, Ministry of Foreign Affairs, were held.

A number of American officials, as well as officials of other countries, with whom the delegation had contact expressed the feeling that the far eastern part of the Pacific was becoming a "forgotten area." They indicated that the United States seems to be overconcentrating its interests and efforts in other areas of the world, particularly in Europe and the Mideast.

The results of the mission and the delegation's findings are presented in this report and it is hoped that they will be useful to the Government and the people of the United States and will provide a basis for understanding our relations with the Southeast Asian nations.

The delegation wishes to express its thanks and appreciation for the full cooperation and assistance given by the Department of State and Department of Defense without which the mission could not have been accomplished.

Some members of the committee will issue statements including additional views.

MISSING IN ACTION IN VIETNAM

A large amount of the time of the committee was spent working on the MIA issue with Vice Minister Phan Hien and Mr. Vu Hoang, Chairman of the Missing Persons Search Committee in Vietnam. Mr. Phan Hien announced at our first meeting in Hanoi that the Vietnamese search group had recovered 11 more American remains. He was emphatic in stating that all American POW's were turned over to the United States at the end of the war and that none were now being held. Prime Minister Pham Van Dong also denied that American POW's were being held in Vietnam. Our discussions with United Nations representatives, church groups, and the International Red Cross officials in Southeast Asia revealed it was their feeling that no Americans are being held captive in Vietnam or Laos.

The technical help and information gathered by the Vietnamese search personnel at the Identification Laboratory in Honolulu was instrumental in recovery of the 11 re-

mains. Mr. Vu Hoang explained that the search for the remains is getting more difficult because of the time span and the location of the crash sites. He further explained that most of the sites in the fields have been investigated and the sites in the sparsely populated mountains and in jungles are very difficult to find.

Mr. Vu Hoang also stated that search teams are being organized for South Vietnam. He went on to say that the entire search effort is made more difficult because of the danger of unexploded mines and ordnance and that it is difficult to persuade citizens to continue to search.

We are still recovering American remains from World War II and it seems that the same thing will take place in Vietnam. It is a slow process and will take years. Only a small number of those missing might be recovered because of time, terrain, climate and losses at sea.

The delegation delivered to Mr. Vu Hoang 20 files relative to 37 missing individuals, including maps marking the crash sites. Mr. Vu Hoang stated that this additional information would be useful in continuing the search and that future discoveries or information would be passed on to the United States Government. The question was asked whether international search teams would be allowed to come into the country and the response was in the negative.

The committee asked Mr. Phan Hien to permit representatives of MIA families to visit Hanoi to meet and talk with Vietnamese MIA officials. Mr. Hien said that he would certainly take the matter up with the Prime Minister. The committee strongly urged that this group be permitted to visit Vietnam.

The committee agrees with the conclusions of the House Select Committee on Missing Persons in Southeast Asia and the findings of the Woodcock Commission that no Americans who fought in Vietnam are being held as captives. With regard to those Americans still listed as missing in action or prisoners of war, the committee also endorses the prior recommendation that the Department of Defense should, in the best interest of the families and the American people, proceed expeditiously with status change.

MISSING IN ACTION IN LAOS

The committee feels that the Lao Government's efforts in asking villagers to look for crash sites and turn over any remains recovered is a breakthrough in our previous attempts to gain information from Laos about servicemen still listed as missing in action whose remains may yet be found. The turning over of four remains to our committee can be seen as a humanitarian gesture.

It was indicated that as villagers report any information to Vientiane in the future, it will be turned over to our Government through the embassy in Vientiane. However, many factors make the recovery of remains very difficult—terrain, lack of roads, wild animals and sparseness of population in many areas.

Lao official indicated that unexploded bombs and other ordnance was a serious problem in their farm areas and was a deterrent in the search for remains. They said over 50 of their people had been killed by explosions of these items. Those officials requested assistance in the form of equipment to rid the areas of bombs and other ordnance but showed reluctance in considering assistance in the form of bomb disposal technicians. They were advised their request would be passed on to the Departments of State and Defense.

The Acting Prime Minister told the committee that no Americans are being held as prisoners of war and that all prisoners were released in 1973.

The committee suggested that it would be helpful to the Lao Government to send a group to the Joint Casualty Resolution Center in Honolulu as the Vietnamese had done. In addition, we informed them that the Vietnamese had indicated they would give technical assistance or other help to the Lao in searching for MIA's if it were requested.

To assist them in their future efforts, the committee left 10 files including crash sites and maps of exact locations where 25 men were downed. It is hoped that this information will be helpful in recovering more remains.

RECOVERY OF REMAINS

The committee feels that the recovery of remains by countries in Southeast Asia is a humanitarian issue and should never be linked with other matters between the United States and the Vietnamese and Lao.

The committee also believes that Vietnam and Laos are making efforts to recover remains.

Henceforth, it would be appropriate that the return of remains of Americans should be handled by the military in a dignified and regular manner. The Department of Defense, through the Joint Casualty Resolution Center, and the Department of State should be the two agencies responsible for working with the Vietnamese and Lao in their search and recovery activities.

FOREIGN POLICY

The following report is based upon conversations with numerous officials in the Vietnamese Government, including the following:

Mr. Pham Van Dong, Prime Minister;

Mr. Phan Hien, Vice Minister of Foreign Affairs;

Mr. Xuan Thuy, Vice Chairman, National Assembly of Vietnam;

Mr. Hoang Minh Giam, Member of the Standing Committee of the National Assembly and Chairman of the Committee on Foreign Relations;

Mr. Ngo Dien, Assistant to the Minister of Foreign Affairs and former Vietnamese Ambassador to Kampuchea; and

Mr. Tran Quang Co, Director of the Department of North American Ministry of Foreign Affairs.

Repeatedly throughout our discussions with the senior officials of Vietnam they stated that the foreign policy of Vietnam is to maintain "independence and sovereignty" and that every matter will be settled on that basis. They claimed that no one will be permitted to encroach upon that independence and sovereignty, which will be defended at any cost. "We are masters of our land," declared one top-echelon official.

The committee was told that all countries having diplomatic relations with Vietnam will be treated the same; that Vietnam seeks friendly relations with all nations, including China and the United States.

Officials stated that in the immediate past, the world perceived that Vietnam had the same relationship with the Soviet Union as with the People's Republic of China, but now that tensions exist between Vietnam and China, many people think that Vietnam has moved closer to the Soviet Union. They claimed that this is not the case and insisted that Vietnam seeks friendly relations on the same basis with all nations.

When asked what would be their policy if Vietnam's situation with China worsened, a senior spokesman replied that hopefully the situation will not worsen. However, he pointed out that although Vietnam has 60 million people and China has 1 billion. Vietnam is determined to defend her independence and sovereignty. He went on to maintain that in extreme circumstances the people of China would rise up against their leaders and world opinion would be against them should they attack Vietnam.

Vietnam and Kampuchea (Cambodia)

Vietnam acknowledged a serious border situation with Cambodia. Vietnam officials asserted that "we have no troops in Cambodia," and charged that Cambodia has occupied Vietnamese territory at 14 points along the border. Vietnam contends that Cambodia has increased her army from 3 divisions of 5,000 to 6,000 persons each in April 1975 to a present strength of 20 divisions which they maintain are well-equipped and well-trained. However, they asserted that these divisions include troops as young as 13 years of age. The charge was made that Cambodian forces are equipped and trained by the Chinese and have new, sophisticated Chinese artillery (130 millimeter). However, the Vietnamese alleged that the Cambodian forces are not able to fully utilize their modern weapons.

The Vietnamese stated that some days at the Cambodian border are quieter than others, but that there is some shooting every day. (Committee members heard the sound of distant heavy artillery while visiting a camp for Cambodian refugees near Ben Sang on August 24, 1978.) The committee members saw Vietnamese soldiers, tanks, and trucks moving near the border, but there was never any direct observation of combat operations.

International organizations

The Vietnamese informed the committee that they will participate in any international organization "provided our independence and sovereignty are respected" and that Vietnam will do "whatever is beneficial."

Vietnam has not joined ASEAN (Association of Southeast Asia Nations) but told us that Vietnam is trading with the ASEAN nations on a bilateral basis. Some ASEAN countries are assisting in economic development where they have an interest. For example, Malaysia is helping with the development of rubber production.

When asked why Vietnam joined COME CON (Communist East European countries), they replied that they joined because COME CON is helping them with direct aid and long-term credits to purchase needed supplies which they maintain is in the interest of Vietnam.

Foreign military bases in Vietnam

The committee closely questioned the Vietnamese officials as to whether there are Soviet bases at Haiphong and Cam Ranh Bay. The officials replied directly and emphatically that there are no Soviet bases at Cam Ranh Bay or elsewhere in Vietnam and that there are no plans for any in the future. They pointed out that at no time had they permitted foreign bases in their territory during the period of the war and that now the war is over and they have their independence and have weapons, there is no need to have such foreign bases in their territory.

The committee requested to go to Cam Ranh Bay but were not permitted to do so. However, from reliable sources it seems that Russian forces have not occupied Can Ranh or Haiphong.

Vietnamese troops in Laos

In reply to questions as to why there are Vietnamese troops in Laos, the Vietnamese stated that there is a legal basis for the presence of their troops in Laos; that there is a treaty of "peace, friendship, and cooperation between Vietnam and Laos"; and that Vietnam is assisting Laos economically by using troops to build roads and bridges in reconstruction. The committee was told by reliable sources that there are Vietnamese military forces being used against insurgents in certain parts of Laos.

United States-Vietnamese normalization

The committee members emphatically told the Vietnamese that the Congress would not provide reconstruction aid to Vietnam and that there could be no such preconditions to normalization of relations between the two countries. Committee members cited recent votes in the Congress to back up this assertion. In reply, the Vietnamese officials

stated that neither country should impose conditions on the other in negotiating a return to normal relations. They said that normalization should be of benefit to both parties and that solutions should be found which would be acceptable to both sides. "We know how to be flexible," they said.

NORMALIZATION OF UNITED STATES AND VIETNAM RELATIONS

It is our opinion there has been a dramatic and fundamental change in attitudes by the Vietnamese Government toward the United States Government.

During our conversations with Mr. Phan Hien. Vietnamese Vice Minister of Foreign Affairs, and other high Vietnamese officials, they clearly expressed a desire to normalize relations between the United States and Vietnam as soon as possible.

Mr. Phan Hien indicated he hoped for results by their rice harvest time (November). He further indicated that the previous precondition position of reconstruction aid was no longer valid or necessary. He expressed the view that negotiations should resume as soon as possible and that it would be in the mutual interest of both countries.

One conclusive indication of their desire is their cooperation in establishing a permanent team to help recover MIA remains. They returned eleven additional remains to the delegation. Another indication of cooperation in this area is the recent release of 27 American dependents to the United States.

Mr. Phan Hien also assured the delegation that they would continue to work on the American dependent refugee program (wives and children of American servicemen in Vietnam) and resolve this issue expeditiously.

In our opinion there are two compelling reasons for the change in Vietnamese attitudes toward the United States and their strong desire for normal relations:

(1) The recent change in Vietnamese-Chinese relations; and

(2) Their need for food, raw materials, insecticides, fertilizers, machinery, technical help, and equipment by means of full and open trade.

In light of these changes, the U.S. State Department should consider resumption of talks with Vietnam concerning possible normalization of diplomatic relations. We point out that whether or not our State Department should enter into talks is a decision of the administration. It should make this decision in light of what is best for the United States.

GENERAL COMMENTS CONCERNING LAOS

There was a marked change in the attitude of the Lao Government toward the United States Government. Although we still have lower level diplomatic ties with Laos, there is apparent interest in strengthening their relations with our country. Previously, the several attempts to learn about downed American fliers met with no response. On this occasion, however, the Lao Government delivered the remains of four American fighting men to the committee and expressed an interest in assisting in the recovery of additional remains. When this delegation left the Washington airport on its trip to Southeast Asia, the Lao Charge d'affairs in Washington came to the airport to wish us bon voyage.

Laos is poverty ridden. They are not as efficient in land use as are the Vietnamese. The business district in Vientiane is only partially open for trade or business. Flooding and drought have hampered agricultural production and a desire for greater production was expressed. Major flooding was occurring along the Mekong Delta during the visit causing major damage to crops and some loss of lives. Lao officials expressed appreciation for the rice that had already been committed to their country through the Humanitarian Aid Program.

We would be remiss if we did not mention the assistance and courtesy that the United States Chargé d'Affairs George Roberts and his staff extended to us while we were in Laos. His cooperation and assistance enabled our delegation to meet with the appropriate Lao officials and complete its business within the limited time we were in Laos.

TRADE AND AGRICULTURE

From all reports and conversations, not only with Vietnamese leaders but with representatives of other countries, Vietnam is methodically exploring the possibility of trade with many countries of the world. The economic recovery of their nation is dependent on foreign nations' furnishing such commodities as machinery, cotton, rice, agricultural chemicals, as well as technology. The Vietnamese number one domestic priority is the development of their agriculture production which is not meeting current needs. They presently are a net importer of food (rice) and desperately need insecticides, fertilizer, and farm machinery to achieve self-sufficiency. However, their potential for export (coal, timber, oil, etc.) has not been developed sufficiently to generate hard currency to finance urgent needs.

It was indicated that concessionary or long-term loans would initially be necessary to finance their purchases from the United States. Vice Minister Phan Hien agreed that future oil production in exportable quantities could be a source of hard currency for trade. However, such trading arrangements would not be a precondition to establishing normal relations.

Though the ultimate benefit of trade with Vietnam may be years away and the volume dependent on whatever trading arrangements are made, the committee is of the judgment that the President should consider the issue of lifting the trade embargo in conjunction with his decision to extend diplomatic recognition to Vietnam and negotiations on these two issues should be considered concurrently.

OIL AND GAS

In speaking with Vice Minister Phan Hien concerning oil and gas exploration in Vietnam, he indicated the following:

The Vietnamese Government has established an oil and gas ministry to encourage and promote the development of these resources in Vietnam.

Also, there has been limited offshore and onshore operations in the Mekong Delta. However, production has not been in commercial quantities. The Vice Minister further indicated that onshore exploratory operations have also been conducted in North Vietnam.

Several companies located in Germany, Italy, Canada, France, and Australia have expressed an interest in exploration for oil and gas possibilities in Vietnam. An American company has contacted officials of Vietnam in Paris but the differences in policy and relations now existing between the United States and Vietnam prevented them from taking any further action in attempting to work out any program for oil exploration.

The Vice Minister made it clear that his country intended to enter into long-term exploratory arrangements with some company in the near future and that whenever such an oil and gas agreement was developed it would possibly be too late for other companies to become involved in its exploratory operations.

It was indicated that the oil recovered in Vietnam contains a sulphur content of less than two percent (2%).

The Vice Minister stated that Vietnam was at the present time purchasing oil from two sources—from the Soviet Union on a grant-in-aid basis and from the Mideast on a credit basis with a long-term payout.

It is obvious that Vietnam does not have the technical knowledge or the capital to enter into a development program of its own. It must depend on the expertise of the major oil companies to furnish the knowledge and the capital to commence such operations.

The delegation feels that the proper officials of our government should be advised of the declarations of the Vice Minister concerning the possibilities of oil and gas developments in Vietnam.

An important reason why the exploration for oil would be of great importance to the United States is that it would give our country another source of supply of this valuable and critical commodity. It would likewise furnish capital to the Vietnamese Government to purchase needed goods from the United States.

ADDITIONAL VIEWS OF HON. SAM B. HALL, JR., AND HON. IKE SKELTON

A comprehensive and thorough report of the delegation's visit to Vietnam and Laos has been filed. Additional views have been filed to Hon. Henson Moore, a member of the delegation. We have read both reports, and substantially agree with what is included in both reports.

We wish to add, however, that we do not advocate the normalization of relations with Vietnam.

We do wish to suggest that the U.S. State Department consider talks with that country regarding this matter. Any decision made by the State Department concerning such talks should be made for the best interests of the United States. The State Department should keep in mind that it is dealing with a dedicated Communist country and that relations with such country, under all circumstances, may very well not be in the best interest of the United States.

ADDITIONAL VIEWS OF HON. W. HENSON MOORE

Although I agree with most of it, I did not sign the committee's report because there are several conclusions with which I do not fully agree. I, therefore, think it necessary to express additional views.

The trip was as worthwhile as I hoped it could be. I have complete respect for the hard work and dedication of my chairman and colleagues. The success achieved was due to the leadership of Chairman Montgomery and the compatibility of the members. I very much enjoyed and profited by being one of them.

The Vietnamese and Lao were very cooperative and congenial. It was clearly in their interest to be so. They need our relations and presence to offset that of the departing Chinese. They especially need our economic help, since their economies are struggling, and the respectability recognition by the United States would bring. There is a lot in it for them.

I believe that our foreign policy should be concerned first and foremost with what is in the best interest of the United States of America. Therefore, the bottom line of this journey's findings should be consideration of what is in it for us? To answer this question, several points should be considered.

(1) *Normalizing Relations.*—The Vietnamese are a tough and dedicated people half of whom chose communism with the other half being "liberated" to it in derrogation of our cherished freedoms of person and property. They are led by shrewd and capable leaders. We can be sure that their every concern is for what is in their best interest. Our relations with them are unrealistic if we perceive their motives as anything more.

The benefits for us could be a reduction of present tension in that part of the world, prevention of excessive Soviet influence, and creation of an opportunity to influence Vietnam's future action. Normalization means recognition or an exchange of ambassadors which we have done with some Communist nations already.

These benefits could be outweighed by the negative. Most Communist nations have a history of trying to expand their influence if not dominate. The present regime appears no different as it conquered South Vietnam,

controls Laos almost as a puppet, and in all probability has similiar designs on Cambodia. It has been reported that it supports insurrection in Thailand as well. Recognition could give respectability to such possible, but perhaps concealed, plans and cause concern to non-Communist nations. Recognition usually also opens the door to possible foreign aid. Vietnam needs aid and I remain opposed to it.

(2) *Soviet Bases.*—A fear has been expressed that Vietnam would grant the Soviets a naval base at Cam Ranh Bay which is definitely not in our interest. Normalized relations could, perhaps, insure that this would not occur, but I am convinced that Vietnam will not do so in any event. They did not grant bases during the war, so why now? Further, such action would appear most inconsistent with their expressed ardor for independence and would also exacerbate a deterioration of relations with China.

(3) *MIA resolution.*—This trip has succeeded in helping to convince the Vietnamese and Laos of the importance with which we hold this matter. Although there should be no direct connection between this issue and others, there is no question in my mind that the new interest we found in Vietnam and Laos is tied to others and that they have not yet given us all the information they could possess. Therefore, normalized relations and lifting the trade embargo would continue this new cooperation and contrary action could dampen this interest.

(4) *Trade.*—Vietnam badly wants us to lift the trade embargo as it is certainly in their interest. Their economy is foundering and both food and clothing is rationed. The problem is they have no money. They want to purchase items from us but they also want us to lend them the money on concessional or very favorable terms (40 to 50 years at 2–3 percent interest) or even outright grants to finance their trade. Since our Government has no surplus of funds, indeed a record debt, we would have to borrow the funds we lend them resulting in at least a substantial annual cost to us due to the interest differential, assuming they pay back all of the principal.

If all such loans or grants were required to be used to buy U.S. goods, it is possible that the cost could be offset by the profits earned and taxes paid thereon by the American producers of the items traded. We do need new export markets, but a careful economic analysis is needed since for the next foreseeable years trade with Vietnam would not be regular trade but subsidized.

(5) *Oil.*—If Vietnam has oil in exportable quantities, improved relations could result in American oil companies producing the oil and the United States acquiring a new source of imported oil. The more sources we have, the more secure we could be from future oil embargoes. Even with new relations, however, there is no present guarantee American companies would get the production rights, or even if they did, the United States would get any of the oil. A lot of "ifs" coupled with the fact we should not depend on a Communist nation for a strategic material cloud this as a benefit.

So what is in it for us? There are some possibilities, but it is not clear yet that even if all exist, they outweigh the costs. We should accept no proposition that is clearly not in our interest as much or more than theirs. And lastly, there is the important psychological factor that I do not believe our people are ready to deal with so recent an enemy unless it is overwhelmingly in our best interest.

I, therefore, conclude that it is too soon to make or infer such an affirmative finding.

CONFERENCE REPORT ON H.R. 11302

Mr. BROWN of California submitted the following conference report and statement on the bill (H.R. 11302) to authorize appropriations for environmental research, development, and demonstration for fiscal year 1979, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95–1593)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11302) to authorize appropriations for environmental research, development, and demonstration for fiscal year 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 5, 6, and 8.

That the House recede from its disagreement to the amendments of the Senate numbered 3, 7, 9, 10, and 11 and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

(1) $82,925,000 for water quality activities authorized under the Federal Water Pollution Control Act of which—

(A) $24,001,000 is for the Health and Ecological Effects program;

(B) $11,875,000 is for the Industrial Processes program;

(C) $5,539,000 is for the Monitoring and Technical Support program;

(D) $12,000,000 for the Public Sector Activities program; and

(E) $29,510,000 is for the Energy program.

(2) $11,998,000 for activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act of which—

(A) $10,798,000 is for the Health and Ecological Effects program; and

(B) $1,200,000 is for the Industrial Processes program.

(3) $20,150,000 for water supply activities authorized under the Safe Drinking Water Act in the Public Sector Activities program, including groundwater research.

(4) $12,782,000 for toxic substance control activities authorized under the Toxic Substances Control Act of which—

(A) $8,862,000 for the Health and Ecological Effects program;

(B) $720,000 is for the Industrial Processes program; and

(C) $3,200,000 is for the Monitoring and Technical Support program.

(5) $2,500,000 for radiation activities authorized under the Public Health Act, in the Health and Ecological Effects program.

(6) $159,952,000 for air quality activities authorized under the Clean Air Act of which—

(A) $37,414,000 is for the Health and Ecological Effects program;

(B) $6,000,000 is for the Industrial Processes program;

(C) $16,283,000 is for the Monitoring and Technical Support program; and

(D) $100,255,000 is for the Energy program.

(7) $11,912,000 for solid waste activities authorized under the Resource Conservation and Recovery Act in the Public Sector Activities program.

(8) $4,000,000 for noise control activities authorized under the Noise Control Act of which—

(A) $2,000,000 is for the Health and Ecological Effects program; and

(B) $2,000,000 is for the Industrial Processes program.

(9) $36,285,000 for intermedia activities, of which—

(A) $7,500,000 is for the Health and Ecological Effects program;

(B) $25,000 is for the Public Sector Activities program;

(C) $14,900,000 is for the Monitoring and Technical Support program; and

(D) $13,860,000 is for the Anticipatory Research program.

And the Senate agree to the same.

Amendment numbered 2: That the House recede from is disagreements to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

(d) (1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended, the Federal Water Pollution Control Act as amended, and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects which were authorized to be administered by the Environmental Protection Agency in fiscal year 1978 shall not be transferred administratively or through budget amendment to the Department of Energy, nor shall funding for future years for the Environmental Protection Agency for such projects under this Act be reduced as a result of any present or proposed administrative or budget transfer. No action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects.

And the Senate agree to the same.

Amendment numbered 4: That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

(d) (1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, $3,000,000.

(2) Grants under this subsection may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bona-fide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than $50,000 in any one year.

(7) No financial assistance provided under this subsection shall be used to support lobbying or litigation by any recipient group.

And the Senate agree to the same.

GEORGE E. BROWN, Jr.,
JEROME A. AMBRO,
TIMOTHY E. WIRTH,
DOUG WALGREN,
WES WATKINS,
BOB S. WALKER,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

JOHN CULVER,
EDMUND S. MUSKIE,
GARY W. HART,
MALCOLM WALLOP,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11302), to authorize appropriations for environmental research, development, and demonstrations for fiscal year 1979, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying Conference Report:

The Senate amended the House-passed bill. The Conferees agreed to some of these amendments and in other cases disagreed to or amended the Senate amendments. The following paragraphs describe and explain the recommendations of the Conferees on a section-by-section basis. Generally, only changes are explained, but sections of the House bill not changed by the Senate amendments are indicated.

SECTION 1. SHORT TITLE

The short title, was not changed and thus stands as passed by the House.

SECTION 2. AUTHORIZATION FOR APPROPRIATIONS

Section 2, Program Authorizations, was amended by the Senate and further amended by the Conferees. The Senate amendment was essentially a substitute for the House-passed version. This amendment had two principal effects: First, it related the research program activities to regulatory statutes. For example, water quality research was tied to the Federal Water Pollution Control Act. The Conferees agreed to this.

Second, the Senate amendment changed the funding levels for some of the program elements. The action of the Conferees with regard to each of these elements is described below along with other minor alterations.

The following table summarizes the amount of funds authorized by the conference recommendation.

COMPARATIVE TABLE—EPA BUDGET REQUEST, HOUSE AUTHORIZATION, SENATE AUTHORIZATION AND CONFERENCE AGREEMENT

	1979 request	House authorization	Senate authorization	Conference agreement
Energy:				
Health and ecological effects	55,200	70,000	*Senate bill and conference agreement split energy funds according to medium.	
Energy control technologies	57,820	65,370		
Monitoring and technical support	1,745	3,000		
Energy total	(114,765)	(138,370)	(115,765)	(129,765)
Air:				
Health and ecological effects	31,414	41,897	37,414	37,414
Industrial processes	5,000	13,610	5,000	6,000
Monitoring and technical support	16,283	16,283	16,283	16,283
Energy	*0	*0	86,255	100,255
Water quality:				
Health and ecological effects	21,001	25,001	24,001	24,001
Industrial processes	10,875	13,875	10,875	11,875
Public sector	10,940	15,214	10,940	12,000
Monitoring and technical support	5,539	5,539	5,539	5,539
Energy	*0	*0	29,510	29,510
Drinking water: Public sector	16,150	20,150	16,150	20,150
Solid waste: Public sector	11,550	11,912	11,595	11,912
Noise:				
Health and ecological effects			2,000	2,000
Industrial processes			2,000	2,000
Pesticides:				
Health and ecological effects	10,798	8,600	10,798	10,798
Industrial processes	1,200	1,200	1,200	1,200
Radiation:				
Health and ecological effect	930	2,500	1,930	2,500
Intermedia:				
Health and ecological effects	5,972	9,500	5,972	7,500
Public sector	25	25	25	25
Monitoring and technical support	14,900	14,900	14,900	14,900
Anticipatory	13,860	13,860	13,860	13,860
Toxic substances:				
Health and ecological effects	6,864	8,862	6,864	8,862
Monitoring and technical support	3,200	3,200	3,200	3,200
Industrial processes	400	150	1,440	720
Program management and support	23,060	23,060	23,060	23,060
Subtotal, program categories plus management and support	324,128	387,908	340,811	365,564
Special authorizations:				
Grants for long-term programs at universities	0	10,000	7,000	7,000
Sec. 403(d) Clean Air Act	0	3,000	3,000	3,000
Environmental research coordination study	0	[1] 2,000	[1] 2,000	[1] 2,000
Grants for futures studies	0	0	3,000	3,000
To National Bureau of Standards for environmental support and RCRA activities	0	5,000	5,000	5,000
Waste water reuse demo grants	0	25,000	15,000	15,000
Total	324,128	432,908	375,811	400,564

[1] $1,000,000 authorized each year for 2 yr; total $2,000,000 shown in table.

SECTION 2(a)(1) WATER QUALITY

(A) Health and Ecological Effects Program. The Conferees agreed to reduce the House-passed level by $1 million to $24,001,000. EPA requested $21 million.

The Conferees intend that $1,000,000 of the funds authorized be applied to the development of environmentally sound methods to control unwanted water weeds, and that funds be made available for the Great Lakes program and to study the effects of dumping waste in the oceans.

(B) Industrial Processes Program. The Senate authorized funds at the level of the EPA request, $10,875,000, while the House recommended an additional $3 million for extramural research to develop methods of controlling industrial non-point-source pollution. The Conferees agreed to recommend $1 million over the EPA request for this purpose, making a total funding level of $11,875,000.

(C) Monitoring and Technical Support Program. The House, Senate, and Conferees endorsed the EPA request of $5,539,000.

(D) Public-Sector Activities Program. The House bill included $15,214,000 for this program. This was $4,274,000 over the EPA request of $10,940,000, which was approved by the Senate. The Conferees agreed on a level of $12,000,000 with the increase to be used (1) to develop control technologies for urban runoff; (2) to fund work on innovative sewage treatment technology; and (3) to study various sludge disposal methods.

(E) Energy Program. The House bill conformed to the original EPA request which lumped all the energy research projects in EPA together instead of allocating them between two functions—one part dealing with energy/air, the other dealing with energy/water. The Conferees adopted the Senate approach. However, neither the House, Senate nor Conferees recommended any change in the level of funding requested for energy/water research, which was $29,510,000.

SECTION 2(a)(2) PESTICIDES

(A) Health and Ecological Effects Program. The House had recommended $8,800,000. The Conferees agreed to recommend the Senate-passed level of $10,798,000, which was consistent with EPA request.

(B) Industrial Processes Program. The Conferees, the House and the Senate versions authorized the level requested by the Agency, $1,200,000.

SECTION 2(a)(3) SAFE DRINKING WATER

Public Sector Activities Program. The Senate bill included the EPA requested level of $16,150,000. The House bill added $4 million for groundwater research, and the Conferees agreed to this addition.

The Conferees intend that the increase for groundwater research be assigned to the Kerr Laboratory, but that particular research projects be conducted at various sites around the Nation. The research program should address problems that are widespread such as saltwater intrusion or leachate contamination and should be conducted in cooperation with local agencies where possible.

The Agency should also direct research efforts into areas of need created by its own regulatory actions.

SECTION 2(a)(4) TOXICS

(A) Health and Ecological Effects Program. The Senate bill recommended $6,864,000. The House bill added $1,998,000 for development of improved screening methods of testing for determining the toxicity of chemicals. The Conferees agreed to this augmented level of $8,862,000.

(B) Industrial Processes Program. For this research activity EPA requested $400,000. The House bill recommended a reduction to $150,000 based on the fact that the program had not been fully developed. The Senate bill included $14,400,000 for this program. Subsequently available information convinced the Conferees that this section deserves additional support, and thus the Conferees agreed to an authorization of $720,000.

(C) Monitoring and Technical Support. The House, Senate, and Conferees recommended $3,200,000, which was requested by the Agency.

SECTION 2(a) (5) RADIATION

The House recommended $2,500,000 for the Health and Ecological Effects program, an increase of $1,570,000 over the EPA request, to provide for additional work on health effects of microwave radiation. The Senate bill authorized $1,930,000. The Conferees agreed to the House recommendation.

SECTION 2(a) (6) AIR QUALITY

(A) Health and Ecological Effects Program. The House bill included $41,897,000, compared to the EPA request of $31,414,000. The Senate recommended $37,414,000 for this program, and the Conferees approved this level of funding.

The Conferees believe that the increased funds should be used to support rigorous long-term research for improving our understanding of the relationship between adverse health effects and air quality. The Conferees intend that a major study of air pollution in the Denver area be undertaken as well.

The level of funding includes $1 million to restore cuts in the ecological effects program. The Conferees recognize that as a result of recent legislation the Agency must give increasing support to health-related research. Nevertheless, the Environmental Protection Agency is the lead agency, and in effect the only Federal agency responsible for overall environmental quality. The Public Health Service, the National Institutes of Health, the Food and Drug Administration, and the Occupational Safety and Health Administration are all concerned with aspects of human health. It seems inappropriate for EPA to shift its research activities toward health issues completely, at the expense of other environmental research. In addition to simply de-emphasizing this important area of inquiry, such an approach ignores the wealth of information derived from basic ecological research that ultimately applies to human health problems.

(B) Industrial Process Program. The Senate bill recommended $5,000,000, while the House approved an increase of $13,610,000 for additional work on development of emission control technology. The Conferees agreed to add $1,000,000 to the EPA request of $5,000,000 for development of control technology, thus approving a $6,000,000 level.

(C) Monitoring and Technical Support. The House, the Senate, and the Conferees approved the EPA-requested level of $16,283,000.

(D) Energy Program. The House bill conformed to the original EPA request which lumped all the energy projects together instead of considering them as two factions—one dealing with energy/air, the other with energy/water. However, as previously noted, changes by the House and the Senate occurred in the energy/air program. Thus, the House bill recommended an increase of $23,605,000 over the EPA-requested level of $85,255,000. The Senate bill recommended a $1 million increase. The Conferees have accepted $100,255,000 for the air/energy program, an increase of $15 million over the EPA request.

The conferees intend that these funds be used for increased work on energy-related emission control technology and energy-related health effects.

The Senate had authorized an additional $1 million for studies related to emissions controls associated with and for operation of refuse-derived fuel (RDF) facilities such as that at Ames, Iowa. The House had no such provision, but accepted these additional funds so that emissions control technologies for the combustion of municipal solid wastes may be carefully monitored and developed.

SECTION 2(a) (7) SOLID WASTE

The Conferees accepted a House authorization of $11,912,000 for solid waste research programs. This figure is $362,000 above the EPA request and $317,000 above that contained in the Senate bill. The additional funds are to be used for engineering development in the area of resource recovery.

SECTION 2(a) (8) NOISE

The Senate authorized $4 million for research on health effects of excessive noise and on noise control technologies. The House had no such provision, and the Conferees agreed to the Senate figure.

SECTION 2(a) (9) INTERMEDIA

The House bill contained $9,500,000 for the Health and Ecological Effects program and the Senate bill had $5,972,000, which was the administration proposal. Conferees agreed to an intermediate level of $7,500,000.

The Conferees strongly endorsed the recommendations of the EPA/Science Advisory Board Ecological Advisory Committee for intensified ecosystem research. Effects of perturbations of ecosystems can be observed most readily from changes in populations of living organisms and from changes in ecosystem outputs, energy, chemicals, and water. Changes in the functioning of ecosystems (degradation and improvement) may be determined from these sensitive indicators. Therefore, it is vital to initiate research programs to provide this information, including studies of changes in numbers and diversity of species, productivity, and the flow and cycling of nutrients and other materials through marine, freshwater, and terrestrial ecosystems, both natural and perturbed.

Ecosystem research, including experimental manipulation, on natural areas has substantially demonstrated that such methods can show cumulative effects of a wide variety of man-caused perturbations, including acid rain, cultural eutrophication, soil erosion, and forestry practices. These have provided an understanding of the changes in important community characteristics caused by manipulations of the ecosystems within the drainage basins. Specific examples include studies of the mangrove forests of southern Florida and Puerto Rico, and the recovery of Lake Washington in Seattle.

The Conferees further recommended that research be conducted on socioeconomic aspects of pollution control in order to reduce the amount of active governmental intervention necessary to protect the public health and welfare.

SECTION 2(b) PROGRAM MANAGEMENT AND SUPPORT

This section provides budget authority of $23,060,000 for program management and support. This figure was identical in both bills and represents the administration request.

SECTION 2(c) TRANSFER OF FUNDS BETWEEN PROGRAMS

The Senate and House bills contained identical language pertaining to a restriction on the transfer of funds from one research program to another. It is unchanged in the Conference Report.

SECTION 2(d) TRANSFER OF POLLUTION CONTROL RESEARCH

The Office of Management and Budget, in a January 11, 1978 memorandum, proposed a transfer of $14 million in pollution control research from the Environmental Protection Agency to the Department of Energy (DOE). The Department of Energy was to transfer $14 million in health effects research to the Environmental Protection Agency. The Senate bill included a provision which prohibited the transfer of the $14 million energy-related control technology program from the Environmental Protection Agency budget. The House bill had no similar provision. The Conferees have agreed to a modification of the Senate language.

A similar transfer proposed in 1974 was opposed by the Congress at that time and, as a result, it was not completed. The Congress in the Energy Reorganization Act of 1974 (Public Law 93-438), which established the Energy Research and Development Administration, defined in very specific language the proper roles for the concerned agencies. This conference agreement restates that position by making clear that DOE is the lead agency for research and development of environmental controls for new energy technologies, and that EPA is the lead agency for research and development of environmental controls for existing technologies. In rejecting the January 11, 1978 memorandum, the Conferees want to stress the importance of giving both agencies the necessary statutory authority to work in cooperation with other federal agencies to improve environmental control technologies. It is not enough for the Environmental Protection Agency to maintain an ability to "assess" pollution control. Therefore, the Conferees direct that the $14 million in the President's budget for pollution control technology and research to which the OMB memorandum of January 11, 1978 referred, must be expended by the Environmental Protection Agency; the Conferees also recommend that no projects in the area of health effects research be transferred from the Department of Energy to the Environmental Protection Agency.

The Conferees believed it is unsound public policy to separate pollution control technology from pollution control regulation. Regulations should be based on sufficient research and adequately demonstrated techniques, so that the Agency can make informed and dependable decisions as to pollution control regulations. The proposed pollution control transfer does not serve the public interest.

The Conferees do not question the importance of the Department of Energy having a strong environmental component. However, it should neither replace nor duplicate EPA's activities. Full coordination between the Environmental Protection Agency and the Department of Energy should be required to assure that EPA's research capability is utilized.

Furthermore, a transfer of this kind could actually delay the development of essential pollution control technology for several years. The Environmental Protection Agency needs a substantial research, development, and demonstration program because of its statutorily mandated responsibilities.

SECTION 3. SPECIAL AUTHORIZATIONS

The Senate amended subsection 3(a) which authorized funds for grants to universities for long-term research. The House had recommended $10 million for this program, and the Senate amendment reduced this level to $7 million. The Congress accepted the latter figure.

Subsection 3(b), which authorized $3 million for a study authorized in the Clean Air Act Amendments of 1977, and subsection 3(c), which authorized a special study of the coordination and application of environtal research, were not changed by the Senate and therefore appear in the Conference Report in the same form as passed by the House and Senate.

The Conferees have agreed to a modification of subsection 3(d), which was a Senate provision establishing a program of 75-percent matching grants to qualified citizens groups to conduct futures studies of the environment and the quality of life on a statewide basis. It is the intention of the Conferees that this program be an extension of EPA efforts in public participation already

authorized in the regulatory process. The Conferees further intend that in-kind contributions shall not be applicable as non-Federal matching share for Federal funds.

The Conferees expressly require that the citizen groups be broadly representative in nature and not be single-issue oriented. The Conferees further require that no funds provided under this Act may be used for the purpose of lobbying or for litigation. The intention of these provisions is to assure that these groups will undertake studies and make recommendations on a board range of issues, but will not become single-issue advocates.

SECTION 4. OTHER AUTHORIZATIONS

Section 4 deals wtih authorization for funds for environmental research to be carried out at the National Bureau of Standards. It was not amended by the Senate.

SECTION 5. MISCELLANEOUS REPORTS

Section 5 requires that miscellaneous reports on research activities be made by the Administrator of the EPA to the Congress. It was not amended by the Senate.

SECTION 6. STAFF MANAGEMENT

The House and Senate bills each contained provisions which provide flexibility for the Agency in meeting its staffing needs. These sections provided authority for academic training programs, the use of postdoctoral researchers, and the use of research associates sponsored by industry. The Conferees agreed to a Senate amendment giving special emphasis to education and training programs for women and minority groups.

SECTION 7. REUSE OF WASTEWATER

The House bill included budget authority of $25 million for grants to demonstrate technologies or techniques to increase the availability of safe, high quality drinking water. This research could include the interception of high quality water destined for agricultural use, the use of that water in a city drinking system, and then a return of that water, after sufficient treatment, to the agricultural use for which it was originally intended. The Senate bill included $15 million for that program, and the Conferees agreed to that figure, along with language related to protection of public health.

For projects in which the reuse of water is for human consumption, as opposed to agricultural irrigation, the Agency should develop and promulgate guidelines or treatment requirements for mocrobiological, viral, radiological, organic and inorganic contaminants. These guidelines must provide an adequate margin of safety to prevent adverse health effects for persons reusing the water.

Research coordination

The Conference Report does not include section 6 of the Senate passed bill, dealing with coordination of ocean pollution research and development and monitoring. The Conferees concluded that the current interagency coordinating committee now developing the required plan and priorities for ocean pollution research is carrying out a process substantially similar to that contemplated under section 6.

This process was designed in response to the concerns of the Senate Committee on Environment and Public Works expressed in this provision. Therefore, since an apparently satisfactory process is in operation, the section is not necessary. If, however, the current coordination mechanism for ocean pollution research does not prove adequate, the Senate Committee on Environment and Public Works, which has jurisdiction over this subject, intends further legislation.

The Conferees caution the Administrator of the National Oceanic and Atmospheric Administration and the Director of the Office of Science and Technology Policy to perform the functions authorized under section (4)(b)(4) of Public Law 95-273 only as a result of the work of the interagency coordinating committee and in accordance with the priorities established by it.

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Managers on the Part of the House.

JOHN CULVER,
EDMUND S. MUSKIE,
GARY HART,
MALCOLM WALLOP,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 683

Mr. GIAIMO submitted the following conference report and statement on the concurrent resolution (H. Con. Res. 683) revising the congressional budget for the United States Government for the fiscal year 1979.

CONFERENCE REPORT (H. REPT. NO. 95-1594)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 683) revising the congressional budget for the United States Government for the fiscal year 1979, having met, after full and free conference, have been unable to agree on a conference report because the conference decisions have adjusted certain budget figures and reduced total budget authority, outlays, the deficit and the public debt below the provisions enacted by either House. As set forth in the accompanying Joint Explanatory Statement, the conferees do propose a congressional budget, containing the adjusted figures, incorporated in a further amendment for the consideration of the two Houses.

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OMAR BURLESON,
BUTLER DERRICK,
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NORMAN Y. MINETA,
Managers on the Part of the House.

EDMUND S. MUSKIE,
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ERNEST F. HOLLINGS,
ALAN CRANSTON,
LAWTON CHILES,
JIM ABOUREZK,
HENRY BELLMON,
BOB DOLE,
JOHN HEINZ,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 683) revising the congressional budget for the United States Government for the fiscal year 1979, report that the conferees have been unable to agree. This is a technical disagreement, necessitated by the fact that in some instances the substitute language agreed to by the conferees includes figures which (for purely technical reasons) would fall outside the range of House and Senate provisions and would reduce total budget authority, outlays, the deficit and the public debt below the provisions of either House.

It is the intention of the conferees that the managers on the part of the House will offer a motion in the House to recede and concur in the Senate amendment to the House-passed resolution with an amendment (in the nature of a substitute) consisting of the language agreed to in conference. Upon the adoption of such amendment in the House, the managers of the Senate will offer a motion in the Senate to concur therein.

The substitute language which is to be offered as described above (and which should be considered the language of the concurrent resolution as recommended in the conference report for purposes of section 302(a) of the Congressional Budget Act of 1974)—hereinafter in this statement referred to as the "conference substitute"—is as follows:

That the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1978—

(1) the recommended level of Federal revenues is $448,700,000,000 and the amount by which the aggregate level of Federal revenues should be decreased is $21,900,000,000;

(2) the appropriate level of total new budget authority is $555,650,000,000;

(3) the appropriate level of total budget outlays is $487,500,000,000;

(4) the amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is $38,800,000,000; and

(5) the appropriate level of the public debt is $836,000,000,000, and the amount by which the temporary statutory limit on such debt should accordingly be increased is $38,000,000,000.

SEC. 2. Based on allocations of the appropriate level of total new budget authority and of total budget outlays as set forth in paragraphs (2) and (3) of the first section of this resolution, the Congress hereby determines and declares pursuant to section 310 (a) of the Congressional Budget Act of 1974 that, for the fiscal year beginning on October 1, 1978, the appropriate level of new budget authority and the estimated budget outlays for each major functional category are as follows:

(1) National Defense (050):

(A) New budget authority $127,000,000,000;

(B) Outlays, $112,40,000,000.

(2) International Affairs (150):

(A) New budget authority, $12,600,000,000.

(B) Outlays, $7,100,000,000.

(3) General Science, Space, and Technology (250):

(A) New budget authority, $5,200,000,000;

(B) Outlays, $5,000,000,000.

(4) Energy (270):

(A) New budget authority, $8,700,000,000;

(B) Outlays, $8,100,000,000.

(5) Natural Resources and Environment (300);

(A) New budget authority, $13,300,000,000.

(B) Outlays, $11,500,000,000.

(6) Agriculture (350):

(A) New budget authority, $9,200,000,000;

(B) Outlays, $7,500,000,000.

(7) Commerce and Housing Credit (370);

(A) New budget authority, $5,500,000,000;

(B) Outlays, $2,800,000,000.

(8) Transportation (400):

(A) New budget authority, $19,500,000,000;

(B) Outlays, $17,300,000,000.

(9) Community and Regional Development (450):

(A) New budget authority, $8,900,000,000;

(B) Outlays, $9,600,000,000.

(10) Education, Training, Employment, and Social Services (500):

(A) New budget authority, $32,900,000,000;
(B) Outlays, $30,300,000,000.
(11) Health (550):
(A) New budget authority, $52,000,000,000;
(B) Outlays, $48,100,000,000.
(12) Income Security (600):
(A) New budget authority, $191,800,000,000;
(B) Outlays, $159,300,000,000.
(13) Veterans Benefits and Services (700):
(A) New budget authority, $21,050,000,000;
(B) Outlays, $20,700,000,000.
(14) Administration of Justice (750):
(A) New budget authority, $4,300,000,000;
(B) Outlays, $4,200,000,000.
(15) General Government (800):
(A) New budget authority $4,100,000,000;
(B) Outlays, $4,000,000,000.
(16) General Purpose Fiscal Assistance (850):
(A) New budget authority, $8,800,000,000;
(B) Outlays, $8,800,000,000.
(17) Interest (900):
(A) New budget authority, $48,000,000,000;
(B) Outlays, $48,000,000,000.
(18) Allowances (920):
(A) New budget authority, $800,000,000;
(B) Outlays, $800,000,000.
(19) Undistributed Offsetting Receipts (950):
(A) New budget authority, —$18,000,000,000;
(B) Outlays, —$18,000,000,000.

ECONOMIC ASSUMPTIONS

The fiscal policy contained in the conference substitute is designed to maintain the economic expansion and further reduce unemployment without adding to inflationary pressures. The reduction in the deficit from $50.9 billion in the First Budget Resolution to $38.8 billion in the conference substitute will improve economic confidence both at home and abroad. The economic assumptions underlying the revenue and spending ceilings contained in the conference report are as follows:

[Calendar years; dollar amounts in billions]

	1978	1979
Gross national product:		
Current dollars	$2,092	$2,313
Constant (1972) dollars	$1,385	$1,438
Incomes:		
Personal income	$1,698	$1,882
Wages and salaries	$1,107	$1,228
Corporate profits	$186	$200
Unemployment rate:		
Calendar year average	5.9	5.7
4th quarter	5.8	5.6
Consumer Price Index (percent change; year over year)	6.9	6.7
Interest rate, 3-mo Treasury bills (monthly average)	6.8	7.4

BUDGET AGGREGATES

Revenues

The House resolution provided for Federal revenues of $450.000 billion, and to achieve that level, provided that revenues be decreased on a net basis by $19.900 billion. The Senate amendment provided for revenues of $447.2 billion with a net decrease of $23.4 billion.

The conference substitutes provides for Federal revenues of $448.7 billion, and to achieve that level, it provides that revenues should be decreased on a net basis by $21.9 billion. This revenue level assumes extension through fiscal year 1979 of temporary income tax rate reductions of $8.2 billion and additional tax reductions in fiscal year 1979 of $13.7 billion.

The conferees agree that all general income tax rate reductions become effective not earlier than January 1, 1979.

The conferees believe enactment of both a tuition tax credit and a college tuition assistance spending program would be inefficient and duplicative. The Congress should choose between these two proposals.

Budget authority

The House resolution provided for new budget authority of $561.019 billion. The Senate amendment provided for new budget authority of $557.7 billion.

The conference substitute provides for new budget authority of $555.65 billion.

Outlays

The House resolution provided for outlays of $489.790 billion. The Senate amendment provided for outlays of $489.5 billion.

The conference substitute provides for outlays of $487.5 billion.

Deficit

The House resolution provided for a deficit of $39.790 billion. The Senate amendment provided for a deficit of $42.3 billion.

The conference substitute provides for a deficit of $38.8 billion.

Public debt

The House resolution provided for a public debt level of $838.100 billion. The Senate amendment provided for a public debt level of $839.5 billion.

The conference substitute provides for a public debt level of $836.0 billion.

FUNCTIONAL CATEGORIES

050: National defense

The House resolution provided budget authority of $127.013 billion and outlays of $112.403 billion. The Senate amendment provided budget authority of $127.0 billion and outlays of $112.5 billion.

The Conference substitute provides budget authority of $127.0 billion and outlays of $112.4 billion.

150: International affairs

The House resolution provided budget authority of $12.365 billion and outlays of $7.119 billion. The Senate amendment provided budget authority of $12.6 billion and outlays of $7.2 billion.

The Conference substitute provides budget authority of $12.6 billion and outlays of $7.1 billion.

250: General science, space and technology

The House resolution provided budget authority of $5.146 billion and outlays of $4.991 billion. The Senate amendment provided budget authority of $5.2 billion and outlays of $5.0 billion.

The Conference substitute provides budget authority of $5.2 billion.

270: Energy

The House resolution provided budget authority of $9.601 billion and outlays of $8.684 billion. The Senate amendment provided budget authority of $8.9 billion and outlays of $8.9 billion.

The Conference substitute provides budget authority of $8.7 billion and outlays of $8.1 billion.

The Conference substitute reflects a $1.1 billion reduction in budget authority from the House resolution for the Strategic Petroleum Reserve, reflecting fiscal year 1979 needs of the program, rather than full-funding of the first 500 million barrels in the Reserve. The conferees note that the full-funding approach is one means of promoting early disclosure of total program costs, improved management and long-term savings for major construction and procurement programs. The action taken on this approach to this particular program is not intended to prejudice its application to appropriate programs, which both Committees will be reviewing in the context of the Budget Resolution for fiscal year 1980.

Also, the Conference substitute incorporates a technical reestimate, provided by the Congressional Budget Office, reducing estimated outlays in the Strategic Petroleum Reserve program by $0.6 billion.

300: Natural resources and technology

The House resolution provided budget authority of $12.963 billion and outlays of $11.380 billion. The Senate amendment provided budget authority of $13.6 billion and outlays of $11.7 billion.

The Conference substitute provides budget authority of $13.3 billion and outlays of $11.5 billion.

350: Agriculture

The House resolution provided budget authority of $12.225 billion and outlays of $7.628 billion. The Senate amendment provided budget authority of $12.2 billion and outlays of $7.2 billion.

The Conference substitute provides budget authority of $9.2 billion and outlays of $7.5 billion. The reduction in budget authority from the Senate and House levels reflects the conferees' estimate of the amount of new borrowing or contract authority required to carry out Commodity Credit Corporation programs.

370: Commerce and Housing Credit

The House resolution provided budget authority of $5.551 billion and outlays of $2.814 billion. The Senate amendment provided budget authority of $5.5 billion and outlays of $2.8 billion.

The Conference substitute provides budget authority of $5.5 billion and outlays of $2.8 billion.

400: Transportation

The House resolution provided budget authority of $19.451 billion and outlays of $17.063 billion. The Senate amendment provided budget authority of $19.5 billion and outlays of $17.5 billion.

The Conference substitute provides budget authority of $19.5 billion and outlays of $17.3 billion.

450: Community and regional development

The House resolution provided budget authority of $10.327 billion and outlays of $9.474 billion. The Senate amendment provided budget authority of $8.9 billion and outlays of $9.6 billion.

The Conference substitute provides budget authority of $8.9 billion and outlays of $9.6 billion.

The House conferees assume that within these amounts $0.7 billion in budget authority is available for public works.

The Senate conferees assume the amounts agreed to are necessary to fund existing legislation.

500: Education, training, employment and social services

The House resolution provided budget authority of $33.887 billion and outlays of $31.111 billion. The Senate amendment provided budget authority of $31.5 billion and outlays of $30.2 billion.

The Conference substitute provides budget authority of $32.9 billion and outlays of $30.3 billion.

The conferees believe enactment of both a tuition tax credit and a college tuition assistance spending program would be inefficient and duplicative. The Congress should choose between these two proposals.

The Conference substitute continues the First Resolution assumption of a significant shift in emphasis in CETA resources to provide employment and training services targeted to the structurally unemployed. In view of improvement in the overall employment situation, the conferees recognize the reduced need for public service jobs for the temporarily unemployed. The conferees, therefore, assume a phase-down in the number of such countercyclical public service jobs and increased emphasis on private sector initiatives and programs to serve youth, who continue to suffer high unemployment. This shift should result in significantly increased savings in public assistance costs under Function 600.

These totals include a reduction in outlays of $0.1 billion which the conferees expect to result from efforts by the Department of Health, Education, and Welfare to eliminate waste, fraud and abuse.

550: Health

The House resolution provided budget authority of $52.158 billion and outlays of $49.298 billion. The Senate amendment provided budget authority of $51.9 billion and outlays of $48.6 billion.

The Conference substitute provides budget authority of $52.0 billion and outlays of $48.1 billion.

These totals include reductions in outlays of $0.7 billion which the conferees expect to result from the voluntary efforts of hospitals to constrain cost increases and $0.6 billion from efforts by the Department of Health, Education and Welfare to eliminate waste, fraud, and abuse.

600: Income security

The House resolution provided $192.139 billion in budget authority and $159.650 billion in outlays. The Senate amendment provided $191.5 billion in budget authority and $159.6 billion in outlays.

The Conference substitute provides $191.8 billion in budget authority and $159.3 billion in outlays. These totals include reductions in outlays of $0.3 billion which the conferees expect to result from efforts by the Department of Health, Education and Welfare to reduce waste, fraud, and abuse.

700: Veterans benefits and services

The House resolution provided budget authority of $21.251 billion and outlays of $20.913 billion. The Senate amendment provided budget authority of $20.9 billion and outlays of $20.4 billion.

The Conference substitute provides budget authority of $21.05 billion and outlays of $20.7 billion.

750: Administration of justice

The House resolution provided budget authority of $4.163 billion and outlays of $4.173 billion. The Senate amendment provided budget authority of $4.3 billion and outlays of $4.2 billion.

The Conference substitute provides budget authority of $4.3 billion and outlays of $4.2 billion.

800: General Government

The House resolution provided budget authority of $4.09 billion and outlays of $4.035 billion. The Senate amendment provided budget authority of $4.1 billion and outlays of $4.0 billion.

The Conference substitute provides budget authority of $4.1 billion and outlays of $4.0 billion.

850: General purpose fiscal assistance

The House resolution provided budget authority of $8.931 billion and outlays of $8.959 billion. The Senate amendment provided budget authority of $8.8 billion and outlays of $8.8 billion.

The Conference substitute provides budget authority of $8.8 billion and outlays of $8.8 billion.

900: Interest

The House resolution provided budget authority of $48.000 billion and outlays of $48.001 billion. The Senate amendment provided budget authority of $48.1 billion and outlays of $48.1 billion.

The Conference substitute provides budget authority of $48.0 billion and outlays of $48.0 billion.

920: Allowances

The House resolution provided budget authority of —$1.087 billion and outlays of —$0.743 billion. The Senate amendment provided budget authority of $0.5 billion and outlays of $0.5 billion.

The Conference substitute provides budget authority of $0.8 billion and outlays of $0.8 billion. The Conference substitute distributes to the appropriate functions savings assumed in the House and Senate resolutions as a result of across-the-board cuts and efforts to eliminate waste, fraud and abuse in programs administered by the Department of Health, Education, and Welfare.

950: Undistributed offsetting receipts

The House resolution provided budget authority of —$17.163 billion and outlays of —$17.163 billion. The Senate amendment provided budget authority of —$17.3 billion and outlays of —$17.3 billion.

The Conference substitute provides budget authority of —$18.0 billion and outlays of —$18.0 billion.

[In billions of dollars]

	House passed	Senate passed	Conference agreement
Revenues	450.000	447.2	448.7
Budget authority	561.019	557.7	555.65
Outlays	489.790	489.5	487.5
Deficit	39.790	42.3	38.8
Debt subject to limit	838.100	839.5	836.0
050—National defense:			
Budget authority	127.013	127.0	127.0
Outlays	112.403	112.5	112.4
150—International affairs:			
Budget authority	12.365	12.6	12.6
Outlays	7.119	7.2	7.1
250—General science, space, and technology:			
Budget authority	5.146	5.2	5.2
Outlays	4.991	5.0	5.0
270—Energy:			
Budget authority	9.601	8.9	8.7
Outlays	8.684	8.9	8.1
300—Natural resources and environment:			
Budget authority	12.963	13.6	13.3
Outlays	11.380	11.7	11.5
350—Agriculture:			
Budget authority	12.225	12.2	9.2
Outlays	7.628	7.2	7.5
370—Commerce and housing credit:			
Budget authority	5.551	5.5	5.5
Outlays	2.814	2.8	2.8
400—Transportation:			
Budget authority	19.451	19.5	19.5
Outlays	17.063	17.5	17.3
450—Community and regional development:			
Budget authority	10.327	8.9	8.9
Outlays	9.474	9.6	9.6
500—Education, training, employment, and social services:			
Budget authority	33.887	31.5	32.9
Outlays	31.111	30.2	30.3
550—Health:			
Budget authority	52.158	51.9	52.0
Outlays	49.298	48.6	48.1
600—Income security:			
Budget authority	192.139	191.5	191.8
Outlays	159.650	159.6	159.3
700—Veterans benefits and services:			
Budget authority	21.251	20.9	21.05
Outlays	20.913	20.4	20.7
750—Administration of justice:			
Budget authority	4.163	4.3	4.3
Outlays	4.173	4.2	4.2
800—General government:			
Budget authority	4.098	4.1	4.1
Outlays	4.035	4.0	4.0
850—General purpose fiscal assistance:			
Budget authority	8.931	8.8	8.8
Outlays	8.959	8.8	8.8
900—Interest:			
Budget authority	48.000	48.1	48.0
Outlays	48.001	48.1	48.0
920—Allowances:			
Budget authority	—1.087	.5	.8
Outlays	—.743	.5	.8
950—Undistributed offsetting receipts:			
Budget authority	—17.163	—17.3	—18.0
Outlays	—17.163	—17.3	—18.0

ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS TO HOUSE AND SENATE COMMITTEES

Pursuant to section 302 of the Congressional Budget and Impoundment Control Act of 1974, the conference substitute makes the following estimated allocation of the appropriate levels of total new budget authority and total budget outlays for fiscal year 1979 among the committees of the respective Houses:

SENATE COMMITTEE ALLOCATIONS PURSUANT TO SEC. 302 OF THE CONGRESSIONAL BUDGET ACT, FISCAL YEAR 1979

[In billions of dollars]

	Direct spending jurisdiction		Entitlements funded in annual appropriation acts	
	Budget authority	Outlays	Budget authority	Outlays
Appropriations Committee	354.9	311.1		
Agriculture, Nutrition, and Forestry Committee	.6	6.5	9.2	9.3
Armed Services Committee	—.2	—.2	10.3	10.2
Banking, Housing, and Urban Affairs Committee	.2	—1.2		
Commerce, Science, and Transportation Committee	1.2	(1)	.2	.2
Energy and Natural Resources Committee	1.0	1.0	.1	(4)
Environment and Public Works Committee	8.2	1.9		
Finance Committee	213.6	202.9	34.3	34.7
Foreign Relations Committee	11.4	9.6		
Governmental Affairs Committee	26.1	17.9	(1)	(1)
Human Resources Committee	4.2	4.5	2.6	2.6
Judiciary Committee	.2	.2	.1	.1
Rules and Administration Committee	(2)	(2)		
Veterans Affairs Committee	1.1	.6	13.8	13.9
Select Committee on Indian Affairs	.3	.1		
Select Committee on Small Business	(1)			
Not allocated to committees	—67.2	—67.2		
Budget total	555.65	487.5	70.5	71.0

[1] Less than $5,000,000.
[2] Less than $50,000,000.
[3] Less than $10,000,000.
[4] Less than $45,000,000.

Note: Details may not add to totals due to rounding.

ALLOCATION OF SPENDING RESPONSIBILITY TO HOUSE COMMITTEES PURSUANT TO SEC. 302(A) OF THE CONGRESSIONAL BUDGET ACT

[In thousands of dollars]

House committee and function	Fiscal year 1979 Budget authority	Outlays
HOUSE AGRICULTURE COMMITTEE		
300: Natural resources and environment	$241,203	$193,286
350: Agriculture	89,072	6,072,771
450: Commun ty and regional development	214,260	133,191
850: General purpose fiscal assistance	237,829	237,829
900: Interest	−42,000	−42,000
Committee total	740,364	6,595,077
APPROPRIATIONS COMMITTEE		
050: National defense	127,590,312	112,979,714
150: International affairs	11,744,269	7,946,268
250: General science, space and technology	5,196,260	4,987,772
270: Energy	9,649,276	7,399,276
300: Natural resources and enviornment	14,847,225	13,152,107
350: Agriculture	9,176,035	1,492,336
370: Commerce and housing credit	4,444,951	4,096,045
400: Transportation	10,403,518	17,420,184
450: Community and regional development	7,867,003	9,331,994
500: Education, training, employment, and social services	32,142,507	30,267,874
550: Health	28,125,763	28,021,802
600: Income security	52,204,402	34,600,532
700: Veterans benefits and services	20,513,963	20,546,962
750: Administration of Justice	4,300,257	4,205,338
800: General government	6,439,314	6,379,274
850: General purpose fiscal assistance	7,811,208	7,814,013
900: Interest	0	0
920: Allowances	0	0
Committee total	353,458,263	310,641,401
HOUSE GOVERNMENT OPERATIONS COMMITTEE		
800: General government	1,230	1,142
850: General purpose fiscal assistance	6,854,924	6,852,294
HOUSE ADMINISTRATION COMMITTEE		
250: General science, space, and technology	70	72
500: Education, training, employment, and social services	5,351	5,666
800: General government	40,400	1,200
Committee total	45,821	6,938
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE		
270: Energy	2,480	2,480
300: Natural resources and enviornment	52,730	27,002
450: Community and regional development	256,331	135,127
800: General government	116,800	116,207
850: General purpose fiscal assistance	331,874	331,874
Committee total	760,215	612,690
HOUSE INTERNATIONAL RELATIONS COMMITTEE		
150: International affairs	11,214,902	9,512,903
370: Commerce and housing credit	4,800	6,000
600: Income security	208,517	118,030
Committee total	11,428,219	9,635,933
HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE		
300: Natural resources and enviornment	0	30
370: Commerce and housing credit	23,237	21,962
400: Transportation	420	420
550: Health	1,600	1,882
600: Income security	4,209,759	4,400,007
850: General purpose fiscal assistance	5,260	5,085
Committee total	4,240,276	4,429,386
HOUSE JUDICIARY COMMITTEE		
300: Natural resource and environment	165	380
600: Income security	7,135	2,124
750: Administration of justice	0	−5,081
800: General government	147,018	147,018
Committee total	154,318	144,441
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE		
300: Natural resources and environment	125,153	109,931
370: Commerce and housing credit	16,600	10,900
400: Transportation	305,504	−73,229
850: General purpose fiscal assistance	7,700	7,700
Committee total	454,957	55,302
HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE		
050: National defense (New entitlement authority)	(−124,000)	
300: Natural resources and environment	0	330
370: Commerce and housing credit	4,876	4,876
550: Health	0	−42,769
600: Income security	19,854,520	11,710,043
800: General government	6,247,000	6,247,000
(New entitlement authority)	(30,000)	
920: Allowances (New entitlement authority)	(−23,000)	
Committee total	26,106,396	17,919,480
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE		
270: Energy	0	1,650,000
300: Natural resources and environment	43,025	43,000
400: Transportation	8,835,189	−2,744
450: Community and regional development	46,233	45,822
950: Undistributed offsetting receipts	0	0
Committee total	8,924,447	1,736,078
HOUSE SCIENCE AND TECHNOLOGY COMMITTEE		
250: General science, space, and technology	5,300	4,500
270: Energy	20	20
300: Natural resource and environment	11,297	11,297
800: General government	0	1
Committee total	16,617	15,818
HOUSE SMALL BUSINESS COMMITTEE		
450: Community and regional development	300	0
Committee total	300	0
HOUSE VETERANS AFFAIRS COMMITTEE		
700: Veterans benefits and services	1,061,582	690,122
(New entitlement authority)	(54,000)	
Committee total	1,061,582	690,122
HOUSE WAYS AND MEANS COMMITTEE		
500: Education, training, employment, and social services	733,160	0
550: Health	31,650,000	27,897,101
600: Income security	118,838,950	112,032,226
800: General government	4,025	4,025
850: General purpose fiscal assistance	431,000	431,000
900: Interest	344,000	344,000
950: Undistributed offsetting receipts	0	0
Committee total	152,001,135	140,708,352
UNASSIGNED TO COMMITTEES		
050: National defense	−412,204	−412,204
150: International affairs	−10,359,171	−10,359,171
250: General science, space, and technology	−1,630	7,656
270: Energy	−951,776	−951,776
300: Natural resources and environment	−2,020,798	−2,037,363
350: Agriculture	−65,107	−65,107
370: Commerce and housing credit	−135,002	−135,002
400: Transportation	−44,661	−44,661
450: Community and regional development	466,552	−151,127
500: Education, training, employment and social services	−8,195	−8,195
550: Health	−7,777,363	−7,777,363
600: Income security	−3,567,690	−3,567,690
700: Veterans benefits and services	−528,557	−528,557
750: Administration of justice	−8,257	−8,257
800: General government	−8,898,787	−8,898,787
850: General purpose fiscal assistance	−6,877,283	−6,877,283
900: Interest	47,690,159	47,690,159
920: Allowances	800,000	800,000
950: Undistributed offsetting receipts	−18,000,000	−18,000,000
Committee total	−10,699,770	−11,324,728

R. N. GIAIMO,
JIM WRIGHT,
ROBERT L. LEGGETT,
PARREN J. MITCHELL,
OMAR BURLESON,
BUTLER DERRICK,
DAVID R. OBEY,
PAUL SIMON,
NORMAN Y. MINETA,
Managers on the Part of the House.

EDMUND S. MUSKIE,
WARREN G. MAGNUSON,
ERNEST F. HOLLINGS,
ALAN CRANSTON,
LAWTON CHILES,
JIM ABOUREZK,
HENRY BELLMON,
BOB DOLE,
JOHN HEINZ,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. EVANS of Delaware) to revise and extend their remarks and include extraneous material:)

Mr. GOLDWATER, for 5 minutes, today.
Mr. GREEN, for 10 minutes, today.
Mr. SARASIN, for 10 minutes, today.

(The following Members (at the request of Mr. MICHAEL O. MYERS) and to revise and extend his remarks and include extraneous matter:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. COTTER, for 30 minutes, today.
Mr. DRINAN, for 5 minutes, today.
Mr. NEAL, for 5 minutes, today.
Mr. CARR, for 5 minutes, today.
Mr. LAFALCE, for 10 minutes, today.
Mr. EILBERG, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. MONTGOMERY, printing of Report of the Special Committee on Southeast Asia, notwithstanding the fact that it exceeds two pages of the CONGRESSIONAL RECORD and is estimated by the Public Printer to cost $1,067.63.

(The following Members (at the request of Mr. EVANS of Delaware) and to include extraneous material:)

Mr. FORSYTHE.
Mr. MARLENEE.
Mr. SCHULZE.
Mr. MCCLOSKEY.
Mr. SARASIN.
Mr. QUIE in two instances.
Mr. SHUSTER.
Mr. DERWINSKI.
Mr. TAYLOR.
Mr. SKUBITZ.
Mr. ASHBROOK.
Mr. CONTE.
Mr. MARRIOTT.
Mr. HANSEN in three instances.

(The following Members (at the request of Mr. MICHAEL O. MYERS), and to include extraneous matter:)

Mr. ANDERSON of California in three instances.
Mr. GONZALEZ in three instances.
Mr. LEHMAN.
Mr. HARKIN.
Mr. HAMILTON.
Mr. MURPHY of Illinois.
Mr. ROE.
Mr. EDGAR in two instances.
Mr. OTTINGER in two instances.
Mr. DENT.
Mr. ASHLEY.
Mr. TEAGUE.
Mr. WAXMAN.
Mr. PATTERSON of California.
Mr. COTTER.
Mr. SIMON.
Mr. SANTINI.
Mr. SOLARZ.
Mr. SKELTON.
Mr. TRAXLER.
Mr. SISK.
Mr. EILBERG.
Mr. MITCHELL of Maryland.
Mr. MOORHEAD of Pennsylvania.
Mr. BRODHEAD.
Mr. FITHIAN.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 1678. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

S. 1896. An act to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1979;

S. 2701. An act to amend the Water Resources Planning Act (79 Stat. 244, as amended);

S. 3002. An act to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes;

S. 3069. An act to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members;

S. 3271. An act to amend the pilot project workfare provisions of the Food Stamp Act of 1977;

S. 3272. An act to amend the Packers and Stockyards Act, 1921, and for other purposes;

S. 3375. An act to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines; and

S. 3468. An act to amend the Agricultural Act of 1949 to ensure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities.

ENROLLED BILLS SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 7814. An act to authorize Federal agencies to experiment with flexible and compressed employee work schedules;

H.R. 7819. An act to compliment the Vienna Convention on Diplomatic Relations;

H.R. 8149. An act to provide customs procedural reform, and for other purposes;

H.R. 11401. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities and research and program management, and for other purposes;

H.R. 12860. An act to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes; and

H.R. 12935. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1979, and for other purposes.

ADJOURNMENT

Mr. MICHAEL O. MYERS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 15 minutes p.m.), the House adjourned until tomorrow, Thursday, September 21, 1978, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5010. A letter from the Chief Commissioner, U.S. Court of Claims, transmitting a report on the allowance of attorney's expenses claimed in docket No. F-15, Frederick Paul pursuant to section 20 of the Alaska Native Claims Settlement Act; to the Committee on Interior and Insular Affairs.

5011. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting his determination and certification that downward fluctuations in foreign currency exchange rates have made it necessary to provide additional funds to maintain the budgeted level of operation for Radio Free Europe/Radio Liberty, Inc., during the third quarter of fiscal year 1978, pursuant to section 8 of the Board for International Broadcasting Act of 1973, as amended; to the Committee on International Relations.

5012. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 program in Tunisia, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

5013. A letter from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting notice of a proposed increase in the funding level of the Agency's fiscal year 1978 program in Upper Volta, pursuant to section 653(b) of the Foreign Assistance Act of 1961, as amended; to the Committee on International Relations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. REUSS: Committee on Banking, Finance and Urban Affairs. H.R. 12900. A bill to provide for additional assistance for the preservation of historic structures under title I of the National Housing Act; with amendment (Rept. No. 95-1591). Referred to the Committee of the Whole House on the State of the Union.

Mr. TEAGUE: Committee on Science and Technology. Report on allocation of budget totals for fiscal year 1979 (Rept. No. 95-1592). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROWN of California: Committee of conference. Conference report on H.R. 11302 (Rept. No. 95-1593). Ordered to be printed.

Mr. GIAIMO: Committee of conference. Conference report filed in disagreement on House Concurrent Resolution 683 (Rept. No. 95-1594). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. COCHRAN of Mississippi:

H.R. 14132. A bill to amend the National Historic Preservation Act of 1966 to permit the Secretary of the Interior to make certain grants in excess of the 50-percent limitation contained in such act; to the Committee on Interior and Insular Affairs.

By Mr. COTTER:

H.R. 14133. A bill to amend section 501(c)(8) of the Internal Revenue Code; to the Committee on Ways and Means.

By Mr. GRASSLEY (for himself, Mr. HAGEDORN, Mr. STANGELAND, and Mr. LEACH):

H.R. 14134. A bill to amend the Internal Revenue Code of 1954 to clarify the eligibility for the investment tax credit of structures used for housing, raising, or feeding hogs; to the Committee on Ways and Means.

By Mrs. HECKLER:

H.R. 14135. A bill to provide for the striking of medals to commemorate Elizabeth Pole; to the Committee on Banking, Finance and Urban Affairs.

By Mr. SARASIN:

H.R. 14136. A bill to amend the Internal Revenue Code of 1954 to provide that serv-

ices performed for camps by certain students who generally are not eligible to receive unemployment compensation will not be subject to the Federal unemployment tax; to the Committee on Ways and Means.

By Mr. SCHULZE:

H.R 14137. A bill to amend section 105 of title 23, United States Code, to require the Secretary of Transportation to develop a formula for retroactive credit for funds already expended for highway construction projects which have received approval under the provisions under title 23; to the Committee on Public Works and Transportation.

By Mr. DENT (for himself and Mr. ERLENBORN):

H.R. 14138. A bill to provide for pension reform for State and local public employee retirement systems, to amend the Employee Retirement Income systems, to amend the Employee Retirement Income Security Act of 1974 to promote more efficient and satisfactory management of the functions of the Federal Government relating to employee pension and welfare benefit plans and more effectively carry out the purposes of such act, and for other purposes; jointly, to the Committees on Education and Labor, and Ways and Means.

By Mr. HANSEN:

H.R. 14139. A bill to require that certain procedures be followed with respect to the Internal Revenue Service's "Proposed Revenue Procedure on Private Tax-Exempt Schools"; to the Committee on Ways and Means.

By Mr. ICHORD (for himself, Mr. STUMP, Mr. HYDE, Mr. ASHBROOK, Mr. GILMAN, Mr. SPENCE, Mr. TREEN, Mr. MADIGAN, Mr. BENJAMIN, Mr. KRUEGER, Mr. MOORHEAD of California, Mr. LAGOMARSINO, Mr. CORCORAN of Illinois, Mr. SCHULZE, Mr. FARY, Mr. HARSHA, Mr. GUYER, Mr. BOB WILSON, Mr. BADHAM, Mrs. HOLT, Mr. KEMP, Mr. DERWINSKI, Mr. RUDD, Mr. YOUNG of Florida, and Mr. HAGEDORN):

H.R. 14140. A bill to amend the Export Administration Act of 1969 to prevent the export to certain countries of goods or technology which have any potential application for military, law enforcement or intelligence gathering purposes; to require the President to notify the Congress of any approval of a license for the export of goods or technology to such countries; to provide for congressional disapproval of any such license application; to require the Secretary of Defense to prepare a military impact statement for the Congress with respect to certain export license applications; and for other purposes; to the Committee on International Relations.

By Mr. LEACH (for himself, Mr. HARKIN, Mr. HILLIS, Mr. ROONEY, and Mr. TUCKER):

H.R. 14141. A bill to amend the Internal Revenue Code of 1954 to provide that certain farm buildings shall be eligible for the investment tax credit; to the Committee on Ways and Means.

By Mr. ROSTENKOWSKI (for himself, Mr. COTTER, Mr. TUCKER, and Mr. LEDERER):

H.R. 14142. A bill to exempt from duty certain watches and watch movements produced in insular possessions of the United States only if such articles do not contain any material which is the product of Communist countries; to the Committee on Ways and Means.

By Mr. NEAL:

H.J. Res. 1140. Joint resolution to amend section 8 of the Export-Import Bank Act of 1945; to the Committee on Banking, Finance and Urban Affairs.

By Mr. HILLIS (for himself and Mr. SISK):

H. Con. Res. 718. Concurrent resolution establishing the Claude Pepper Senior Citizen Congressional Intern program; to the Committee on House Administration.

By Mr. ZABLOCKI (for himself, Mr. FOUNTAIN, Mr. DIGGS, Mr. NIX, Mr. HARRINGTON, Mrs. COLLINS of Illinois, Mr. BONKER, Mr. BEILENSON, Mr. FOWLER, Mr. DANIELSON, Mr. WHALEN, Mr. GILMAN, Mr. GUYER, Mr. LAGOMARSINO, and Mr. GOODLING):

H. Con. Res. 719. Concurrent resolution commending President Carter of the United States, President Sadat of Egypt, and Prime Minister Begin of Israel for the courageous steps they have taken to resolve the differences between Egypt and Israel and to bring about a comprehensive, just, and durable peace in the Middle East; to the Committee on International Relations.

By Mr. BRADEMAS (for himself, Mr. ANDERSON of Illinois, Mr. MITCHELL of Maryland, Mr. DOWNEY, Mr. MAGUIRE, Mr. RODINO, Mr. STEERS, Mr. MCCLOSKEY, Mr. HAWKINS, Mr. REUSS, Mr. ROSENTHAL, Mr. WHALEN, Mr. PHILLIP BURTON, Mr. JOHN L. BURTON, Mrs. COLLINS of Illinois, Mr. EDWARDS of California, Mr. BUCHANAN, Mr. MOSS, Mr. DERWINSKI, Mr. BOLLING, Mr. THOMPSON, Mr. BINGHAM, Mrs. CHISHOLM, Mr. SEIBERLING, and Mr. MOFFETT):

H. Con Res. 720. Concurrent resolution expressing the concern of the Congress for the safety of the residents of the South African black community known as Crossroads and urging the Government of the Republic of South Africa to reconsider its plan to destroy Crossroads and to recognize the right of the residents of Crossroads to continue to live there; to the Committee on International Relations.

By Mr. BRADEMAS (for himself, Mr. STOKES, Mr. RANGEL, Mr. HARKIN, Mr. WEAVER, Mr. LE FANTE, Mr. EDGAR, Mr. SOLARZ, Mr. EVANS of Delaware, Mr. HOLLENBECK, Mr. MCKINNEY, Mr. BENJAMIN, Mr. GREEN, Mr. OTTINGER, Mr. SHARP, Mr. STARK, Mr. KREBS, Mr. PATTISON of New York, Mr. DICKS, Mr. WEISS, Mr. PANETTA, Mr. MAZZOLI, Mr. GARCIA, Mr. DELLUMS, and Mr. BRODHEAD):

H. Con Res. 721. Concurrent resolution expressing the concern of the Congress for the safety of the residents of the South African black community known as Crossroads and urging the Government of the Republic of South Africa to reconsider its plan to destroy Crossroads and to recognize the right of the residents of Crossroads to continue to live there; to the Committee on International Relations.

By Mr. BRADEMAS (for himself, Mrs. MEYNER, Mr. ADDABBO, Mr. HARRINGTON, Mr. METCALFE, Mr. MARKS, Mr. QUAYLE, Mr. HARRIS, Mr. PRITCHARD, Mr. DODD, Ms. MIKULSKI, Mr. CORNELL, Mr. STUDDS, Mr. GORE, Mr. GLICKMAN, Mr. RICHMOND, Ms. HOLTZMAN, Mr. PEASE, Mr. DIGGS, Mr. NOLAN, Mr. WAXMAN, Mr. FORD, of Tennessee, Mr. PATTERSON of California, Mr. CARR, and Mr. BONIOR):

H. Con. Res. 722. Concurrent resolution expressing the concern of the Congress for the safety of the residents of the South African black community known as Crossroads and urging the Government of the Republic of South Africa to reconsider its plan to destroy Crossroads and to recognize the right of the residents of Crossroads to continue to live there; to the Committee on on International Relations.

By Mr. BRADEMAS (for himself, Mr. KOSTMAYER, Mr. BEDELL, Mr. MINETA, Mr. DRINAN, Mr. CAVANAUGH, and Mr. WOLFF):

H. Con. Res. 723. Concurrent resolution expressing the concern of the Congress for the safety of the residents of the South African black community known as Crossroads and urging the Government of the Republic of South Africa to reconsider its plan to destroy Crossroads and to recognize the right of the residents of Crossroads to continue to live there; to the Committee on International Relations.

By Mr. GIAIMO (for himself, Mr. BAUCUS, Mr. BINGHAM, Mr. BONIOR, Mr. BRODHEAD, Mr. D'AMOURS, Mr. DOWNEY, Mr. EDWARDS of Alabama, Mr. EILBERG, Mr. FRENZEL, Ms. HOLTZMAN, Mr. LEACH, Mr. LONG of Maryland, Mr. MCKINNEY, Mr. MINETA, Mr. MOAKLEY, Mr. MOFFETT, Mr. MONTGOMERY, Ms. OAKAR, Mr. OTTINGER, Mr. PERKINS, Mr. RAHALL, Mr. RINALDO, Mr. ROE, and Mr. RYAN):

H. Res. 1360. Resolution expressing the sense of the House that the Reverend Sun Myung Moon appear before the Subcommittee on International Organizations investigating Korean-American relations; to the Committee on International Relations.

By GLICKMAN (for himself, Mr. BAUCUS, Mr. CAVANAUGH, Mr. CONTE, Mr. CORNELL, Mr. DUNCAN of Tennessee, Mr. EDGAR, Mr. ERTEL, Mr. GEPHARDT, Mr. GOODLING, Mr. HARKIN, Mrs. HOLT, Ms. HOLTZMAN, Mr. HUGHES, Ms. KEYS, Mr. KREBS, Mr. MATTOX, Mr. MCHUGH, Mr. PATTISON of New York, Mr. PEASE, Mr. PRITCHARD, Ms. SCHROEDER, Mr. STEIGER, and Mr. YOUNG of Missouri):

H. Res. 1361. Resolution to amend the Rules of the House of Representatives; to the Committee on Rules.

By Mr. LUKEN (for himself, Mr. GRADISON, Mr. APPLEGATE, Mr. GUYER, Mr. STANTON, Mr. MOTTL, Mr. HARSHA, Mr. WHALEN, Mr. REGULA, Mr. KINDNESS, Mr. ASHLEY, Ms. OAKAR, Mr. MILLER of Ohio, Mr. BROWN of Ohio, Mr. MOFFETT, Mr. HANLEY, Mr. YOUNG of Missouri, Mr. CARNEY, Mr. ECKHARDT, and Mr. BARNARD):

H. Res. 1362. Resolution expressing the appreciation of the House to Pete Rose for his dedication and service to baseball; to the Committee on Post Office and Civil Service.

By Mr. NIX:

H. Res. 1363. Resolution to provide funds for the investigations and studies to be conducted by the Committee on Post Office and Civil Service pursuant to House Resolution 1041; to the Committee on House Administration.

By Mr. STAGGERS:

H. Res. 1364. Resolution providing for the further expenses of the Committee on Interstate and Foreign Commerce; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. HAGEDORN introduced a bill (H.R. 14143) for the relief of Francisco da Conturbia, which was referred to the Committee on the Judiciary

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 10909

By Mr. BURLESON of Texas:

—Page 9, line 23, insert "and, with the approval of the Secretary, during subsequent two-year periods" before "the provisions".

—Page 56, line 8, strike out "three-year period" and insert in lieu thereof "one-year period".

Page 56, line 11, insert "on an experimental basis" after "competitive bidding process or otherwise".

Page 57, strike out lines 7 through 9 and insert in lieu thereof the following:

(2) Each State which has made arrangements under section 1902(a)(23)(B) for the purchase of laboratory services through a competitive bidding process or otherwise on an experimental basis shall report to the Secretary concerning the results of these experimental arrangements and the Secretary shall evaluate these arrangements and transmit

Page 57, line 12, strike out "twenty-four months" and insert in lieu thereof "18 months".

H.R. 11733

By Mr. EDGAR:

—Page 204, strike out line 12 and all that follows down through and including line 24 on page 206 and insert in lieu thereof the following:

"(a) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective, the Secretary shall cooperate with the State and local officials in the development of transportation plans and programs which are formulated on the basis of transportation needs, as determined by the State and local officials, with due consideration given to the national goals set forth in subsection (c) of this section.

"(b)(1) The transportation planning process for urbanized areas shall be carried on, in collaboration with the State, by local officials acting through a metropolitan planning organization or other instrumentality which, at the minimum, shall encompass the entire urbanized area within the State, as designated by the Bureau of the Census. Where an urbanized area encompasses communities in more than one State the Secretary may, at his discretion and upon the request of the responsible local officials, assist in the development of separate plans and programs for those parts of the urbanized area within a single State.

"(2) Within one year after the enactment of this section, in the absence of State law to the contrary, the local officials of an urbanized area for which a metropolitan planning organization has been designated prior to enactment of this section may, under rules established by the Secretary, redesignate the State or any representative regional instrumentality as the metropolitan planning organization for the purposes of this section.

"(c)(1) On a date established by regulation, and at subsequent two year intervals, the local officials of an urbanized area desiring to avail itself of Federal financial assistance under the Urban Mass Transportation Act of 1964 or under this title shall prepare and submit to the Secretary for approval a comprehensive transportation plan. The planning process on which such plans are based shall consider all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems. All plans submitted under this subsection for approval by the Secretary shall include both a long-range element and a short-range element.

"(2) The long-range element shall set forth a multiyear program of transportation improvement projects, staged according to priority. The long-range element shall include concise statements relating to multiyear program to each of the following objectives, which are declared to be in the national interest: (A) coordination of the urbanized area transportation system with the statewide transportation system; (B) development and implementation of strategies to reduce transportation improvement costs by making more effective use of existing transportation facilities; (C) development and implementation of strategies to coordinate various modes of passenger transportation; (D) development and implementation of strategies to reduce traffic fatalities and improve other aspects of transportation safety; (E) general improvement of mobility, with special attention paid to the needs of the transportation-disadvantaged; and (F) with respect to urbanized areas of 1,000,000 or more population, reduction of energy consumption and improvement of air quality by development and implementation of strategies to reduce peak hour single-passenger automotive travel to and from major centers of employment.

"(3) The short-range element shall set forth those transportation improvement projects, together with alternative transportation management strategies, proposed for the following two calendar years. The short-range element shall be developed, under supervision of the designated metropolitan planning organization, by an appropriate forum involving the State transportation department (or its equivalent), public operators of mass transportation, and other major factors responsible for implementation of the transportation policies of the urbanized area.

"(d) The Secretary shall approve a comprehensive transportation plan submitted pursuant to the preceding subsection unless he determines that the planning process on which the plan is based has not been carried out in conformance with this section, or unless he finds that the programs contained in the plan, when considered in the aggregate, are plainly inconsistent with and will not promote the national goals set forth under subsection (c)(2) of this section.

"(e) Concurrent with submission to the Secretary, transportation plans submitted to the Secretary pursuant to subsection (c) of this section also shall be submitted to the Governor of the State or States affected, to principal sponsors of projects proposed in the plan, and to the Environmental Protection Agency. If within thirty days thereafter any of the recipients submits comments to the Secretary, the Secretary shall consider such comments before taking final action on the plan. Nothing under this section shall be construed as limiting the authority of the State to develop and submit, pursuant to section 105 of this title programs for projects under this title.

"(f) Approval by the Secretary of any plan submitted under this section shall not prohibit the Secretary from subsequently disapproving any individual project proposed in the plan, pursuant to the provisions of the Urban Mass Transportation Act of 1964, this title, or any other Federal law. Approval by the Secretary of any plan submitted under this section shall not be considered an action or approval for the purposes of the National Environmental Policy Act.

"(g) No project under the Urban Mass Transportation Act of 1964 or under this title and within an urbanized area as designated by the Bureau of the Census, shall be approved by the Secretary after September 30, 1980, unless such project is part of the short-range element to the comprehensive transportation plan submitted by that urbanized area and approved by the Secretary. The Secretary may waive this requirement for projects designed to meet emergency needs.".

—Page 207, strike out line 7 and all that follows down through and including line 3 on page 209 and insert in lieu thereof the following:

"SEC. 8. (a) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective, the Secretary shall cooperate with the State and local officials in the development of transportation plans and programs which are formulated on the basis of transportation needs, as determined by the State and local officials, with due consideration given to the national goals set forth in subsection (c) of this section.

"(b)(1) The transportation planning process for urbanized areas shall be carried on, in collaboration with the State, by local officials acting through a metropolitan planning organization or other instrumentality which, at the minimum, shall encompass the entire urbanized area within the State, as designated by the Bureau of the Census. Where an urbanized area encompasses communities in more than one State the Secretary may, at his discretion and upon the request of the responsible local officials, assist in the development of separate plans and programs for those parts of the urbanized area within a single State.

"(2) Within one year after the enactment of this section, in the absence of State law to the contrary, the local officials of an urbanized area for which a metropolitan planning organization has been designated prior to enactment of this section may, under the rules established by the Secretary, redesignate the State or any representative regional instrumentality as the metropolitan planning organization for the purposes of this section.

"(c)(1) On a date established by regulation, and at subsequent two year intervals, the local officials of an urbanized area desiring to avail itself of Federal financial assistance under this Act or under title 23, United States Code, shall prepare and submit to the Secretary for approval a comprehensive transportation plan. The planning process on which such plans are based shall consider all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems. All plans submitted under this subsection for approval by the Secretary shall include both a long-range element and a short-range element.

"(2) The long-range element shall set forth a multiyear program of transportation improvement projects, staged according to priority. The long-range element shall include concise statements relating to multiyear program to each of the following objectives, which are declared to be in the national interest: (A) coordination of the urbanized area transportation system with the statewide transportation system; (B) development and implementation of strategies to reduce transportation improvement costs by making more effective use of existing transportation facilities; (C) development and implementation of strategies to coordinate various modes of passenger transportation; (D) development and implementation of strategies to reduce traffic fatali-

ties and improve other aspects of transportation safety; (E) general improvement of mobility, with special attention paid to the needs of the transportation-disadvantaged; and (F) with respect to urbanized areas of 1,000,000 or more population, reduction of energy consumption and improvement of air quality by development and implementation of strategies to reduce peak hour single-passenger automotive travel to and from major centers of employment.

"(3) The short-range element shall set forth those transportation improvement projects, together with alternative transportation management strategies, proposed for the following two calendar years. The short-range element shall be developed, under supervision of the designated metropolitan planning organization, by an appropriate forum involving the State transportation department (or its equivalent), public operators of mass transportation, and other major actors responsible for implementation of the transportation policies of the urbanized area.

"(d) The Secretary shall approve a comprehensive transportation plan submitted pursuant to the preceding subsection unless he determines that the planning process on which the plan is based has not been carried out in conformance with this section, or unless he finds that the programs contained in the plan, when considered in the aggregate, are plainly inconsistent with and will not promote the national goals set forth under subsection (c)(2) of this section.

"(e) Concurrent with submission to the Secretary, transportation plans submitted to the Secretary pursuant to subsection (c) of this section also shall be submitted to the Governor of the State or States affected, to principal sponsors of projects proposed in the plan, and to the Environmental Protection Agency. If within thirty days thereafter any of the recipients submits comments to the Secretary, the Secretary shall consider such comments before taking final action on the plan. Nothing under this section shall be construed as limiting the authority of the State to develop and submit, pursuant to section 105 of title 23, United States Code, programs for projects under title 23, United States Code.

"(f) Approval by the Secretary of any plan submitted under this section shall not prohibit the Secretary from subsequently disapproving any individual project proposed in the plan, pursuant to the provisions of this Act, title 23, United States Code, or any other Federal law. Approval by the Secretary of any plan submitted under this section shall not be considered an action or approval for the purposes of the National Environmental Policy Act.

"(g) No project under this Act or under title 23, United States Code, and within an urbanized area as designated by the Bureau of the Census, shall be approved by the Secretary after September 30, 1980, unless such project is part of the short-range element to the comprehensive transportation plan submitted by that urbanized area and approved by the Secretary. The Secretary may waive this requirement for projects designed to meet emergency needs.".

H.R. 11733

By Mr. FOWLER:

—Insert at the end of section 108 the following new subsection:

(f)(1) Section 103(e) of title 23, United States Code, is amended—

(A) in paragraph (4), by striking out the last sentence;

(B) by redesignating paragraph (5) as paragraph (7); and

(C) by inserting after paragraph (4) the following new paragraphs:

"(5) Notwithstanding any other provision of law—

"(A) upon the withdrawal of approval of any route or portion thereof on the Interstate System under this section, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

"(B) refund will not be required for the costs of construction items, materials, or rights-of-way of the withdrawn route or portion of the Interstate System which will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to such other public purpose as may be determined by the Secretary to be in the public interest: *Provided*, That the State shall make assurances satisfactory to the Secretary that such construction items or materials or rights-of-way have been or will be so applied by the State of any political subdivision thereof to a project under clause (i), (ii), or (iii) within 10 years from the date of the withdrawal of approval; and

"(6) Nothing in this subsection shall in any way alter rights under State law of persons owning property within the right-of-way immediately prior to such property being obtained by the State. The Federal share of the cost of property sold or otherwise transferred to previous owners under State law shall be refunded and credited to the unobligated balance of the State's apportionment for interstate highways."

(2) The amendment made by paragraph (1) of this subsection shall apply to any withdrawal of approval before the date of the enactment of this subsection.

H.R. 11733

By Mr. GARY A. MYERS:

—Page 97, strike line 9 and all that follows through line 4, page 100, and insert in lieu thereof the following:

"SEC. 108. Paragraph (4) of subsection (e) of section 103, title, 23, United States Code, is amended by adding at the end of such paragraph the following new sentence: "The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph."

H.R. 11733

By Mr. SHUSTER:

—Page 171, after line 14, insert the following:

PROHIBITION

SEC. 230. None of the funds authorized by this title (including any amendment made by this title) shall be expended for the purchase, directly or indirectly, of any passive restraint system for any motor vehicle owned by any State (including a political subdivision of a State) or by the United States, except for a motor vehicle primarily used in an educational program.

Redesignate the succeeding section and references thereto accordingly.

—Page 190, strike out line 22 and all that follows down through and including line 3 on page 193 and renumber succeeding sections and references thereto accordingly.

—Page 202, line 14, strike out the sentence beginning on that line and ending on line 16.

H.R. 12452

By Mr. WAXMAN:

(Amendment to the amendment in the nature of a substitute offered by Mr. JEFFORDS.)

—Insert at the end of section 308 of the Comprehensive Employment and Training Act as proposed by the amendment in the nature of a substitute offered by the gentleman from Vermont the following new section:

"PROJECTS FOR MIDDLE-AGED AND OLDER WORKERS

"SEC. 309. (a) The Secretary shall—

"(1) develop and establish employment and training policies and programs for middle-aged and older workers which will reflect appropriate consideration of these workers' importance in the labor force and lead to a more equitable share of employment and training resources for middle-aged and older workers;

"(2) develop and establish programs to assist workers over forty years of age in pursuing second careers, including, but not necessarily limited to, work experience, vocational education, public service employment, on-the-job training, occupational upgrading, and job search and placement; and

"(3) conduct research on the relationships between age and employment and insure that the findings of such research are widely disseminated in order to assist employers in both the public and the private sectors better understand and utilize the capabilities of middle-aged and older workers.

"(b) in carrying out the provisions of subsection (a) the Secretary shall provide for appropriate arrangements to be made with prime sponsors, members of the business community (including small business), labor organizations, local educational agencies, and community-based organizations as defined in section 125(4) of this Act. Such arrangements may include, but need not be limited to—

"(1) an analysis of the local labor force on the basis of such factors as age, educational background, income, race, and sex, focusing particularly on comparative rates of labor force participation and of unemployment and underemployment among the various demographic groups studied;

"(2) an assessment of each participant's skills and work experience for purposes of formulating realistic second career objectives, including formal vocational testing instruments supplemented by such functional assessment methods and techniques to detect those skills and abilities of a participant as may be related to desired second career and occupational upgrading objectives;

"(3) second career and occupational upgrading counseling by individuals knowledgeable about the employment and training needs of middle-aged and older workers;

"(4) the establishment of second career objectives which will—

"(A) provide reasonable assurances to the participant that public and private sector demand exists for the skills developed in the second careers program; and

"(B) enable the participant to compete successfully in the job market; and

"(5) establishment of formal second careers training agreements, between participants and program sponsors, which—

"(A) set forth the career objectives of the participants and the steps required of each participant and prime sponsor to achieve these objectives;

"(B) will remain in force until its terms are fulfilled, or renegotiated or terminated according to such procedures as shall be prescribed by the Secretary; and

"(C) may be renegotiated or terminated, at any time, by the participant, or by the program sponsor for good cause.

"(c) The Secretary is hereby authorized to pay program sponsors reasonable training costs to participants in second careers programs to the extent necessary to achieve the objectives of such programs in accordance with regulations prescribed by the Secretary, but in no case shall such payment exceed the permissible maximum under section 121(c)(1)(B). Such costs may include reasonable tuition for participants engaged in technical or other institutional training and payments to program sponsors providing on-the-job training, provided that such payments are based on the actual number of hours of such training given to the second careers program participant. The Secretary is authorized to pay for equipment, materials, and such other costs necessary for a participant to achieve the objectives of his second careers program.

"(d) Programs assisted under this section may provide for participation in employment and training programs on a part-time or flexible-time basis.

"(e) Participants in programs authorized under this section shall be individuals over the age of forty who are unemployed, underemployed, or economically disadvantaged, who have a family income (exclusive of any income received under a Federal or State welfare or unemployment program) which is not in excess of 125 percent of the Bureau of Labor Statistics lower living income level.

"(f) For the purposes of carrying out this section, the Secretary shall reserve from funds available for this title not more than 10 percent of the amount allocated pursuant to section 202(a).

"(g) No provision of this section shall be construed as intending any diminution of the employment and training opportunities available to workers over 40 years of age under titles II, VI, and VII of this Act."

Conform the table of contents accordingly.

H.R. 12452

By Mr. WOLFF:

—On page 72 between lines 12 and 13 insert the following new subsection:

"(28) The term 'special consideration' as used in section 121(b)(2)(A) means such employment, training, supportive services, technical assistance and training, support for community based veterans programs, and maintenance and expansion of private sector veterans employment and training initiatives and such other programs or initiatives as are necessary to serve the unique readjustment, rehabilitation, and/or employment needs of veterans."

H.R. 12611

By Mr. McHUGH:

—Page 117, line 14, at the end thereof, insert the following new subsections to the proposed new section 419:

"ESSENTIAL AIR TRANSPORTATION

"(e)(1) For the purposes of this section, 'essential air transportation' means scheduled air transportation of persons of the extent, character, and quality which the Board finds necessary to satisfy the needs of the community concerned for air transportation to one or more communities of interest and to insure the community's access to the Nation's air transportation at rates, fares, and charges which are not unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial."

"(2) In no case shall the extent of essential air transportation be determined by the Board to be less than two daily round trips, five days per week, to at least one community of interest.

"(3) In determining the criteria for the character and quality of essential air transportation, the Board shall consider the community's needs for among other services, the frequency of service, the advance reservation of passenger seats, baggage handling and insurance, pressurized or other specialized equipment, timely departures and arrivals, joint fares, and the establishment of single plane or connecting plane service to points beyond the primary community or communities of interest.

"(4) As soon as practicable after enactment of this section, but no later than January 1, 1980, the Board shall, by rule, and after the consultation required by subsection (c), establish the criteria for essential air transportation for all points specified in subsection (a)(1).

"CONTINUITY OF GUARANTEED ESSENTIAL AIR TRANSPORTATION

"(f)(1) No air carrier shall terminate, suspend, or reduce air transportation to any point specified in subsection (a)(1) below the standards of essential air transportation established by the Board unless such air carrier has given the Board, the appropriate State agency or agencies, and the communities affected at least 90 days notice of its intent to do so.

"(2) Upon receipt of a notice required by subsection (f)(1) for a point specified in subsection (a)(1), the Board shall require the air carrier to postpone such termination, suspension, or reduction in service until another air carrier has begun to provide essential air transportation. If the Board requires an air carrier to postpone an intended service change for more than 90 days, then the Board shall, in accordance with the procedures of subsection (b), compensate such air carrier for any losses that the air carrier demonstrates that it incurred in complying with this requirement, unless such air carrier is already provided compensation under this section or section 406.

"(3) With respect to any point specified in subsection (a)(1), unless the Board has completed the consultation required by subsection (c) and determined the essential air transportation for such point, either individually or by rules adopted under (e)(4), the Board shall, upon petition of any appropriate representative of such point, prohibit any termination, suspension, or reduction of air transportation which reasonably appears to deprive such point of essential air transportation, until the Board has completed such determination.

"(4) The Board's authority under this subsection shall cease to be in effect on the last day of the tenth year which begins after the date of enactment of this section."

Page 117, line 18, insert the following items at the end thereof:

"(e) Essential Air Transportation

"(f) Continuity of Guaranteed Essential Air Transportation

H.R. 13059

By Mr. FITHIAN:

—Page 39, after line 22, insert the following:

"(c) The Lafayette Dam and Reservoir, Wabash River, Indiana, authorized by section 204 of the Flood Control Act of 1965 (Public Law 89-298), is not authorized after the date of enactment of this Act."

H.R. 13850

By Mr. MAZZOLI:

—On page 32, strike out lines 2 through 6 and insert in lieu thereof:

"States. Notwithstanding any other provision of this part, reports filed by such individuals shall be reviewed solely by the Director of the Office of Government Ethics under security procedures determined by the Director of Central Intelligence and approved by the President. In addition, such individuals may be authorized, notwithstanding section 204(a), to file such additional reports reflecting an ostensible employer and salary as are necessary to protect the identity of such individuals from public disclosure if the President first finds that such filing is necessary in the national interest."

H.R. 14042

By Mr. ANDERSON of California:

—Page 39, after line 3, insert the following new section:

ASBESTOS STUDY

The Secretary of the Navy shall conduct a study analyzing the effects of asbestos on Naval civilian and military personnel, evaluating present standards of permissible levels of asbestos in shipyards, the need for asbestos in new ships, the feasibility of removing asbestos in presently commissioned ships, and promulgating a possible timetable for implementing such a removal.

This study shall be submitted to the President and the Congress not more than 180 days after enactment.

There are authorized to be appropriated such funds as may be necessary to conduct this study.

H.R. 14042

By Mr. WOLFF:

—On page 39 after line 3 add the following new section:

SEC. 818. (a) The Secretary of Defense shall report to the Congress at the end of fiscal year 1979 what efforts he has taken during the fiscal year to formulate a productivity plan with respect to personnel needs and what efforts he has taken during the fiscal year to gather productivity data under that plan upon which to base personnel requests for subsequent fiscal year authorizations.

(b) The Secretary of Defense shall make such plan and data available to the Congress at the end of fiscal year 1979."

H.R. 13059

By Mr. VOLKMER:

—Page 85, following line 12, insert the following new section:

SEC. 185. Section 221 of the Flood Control Act of 1970 (Public Law 91-611), as amended (42 U.S.C. 1962 d-5b) is further amended as follows:

Insert the following new sentence at the end of section 221(b): "Where the non-federal interest is the State itself, performance and payment of damages may be contingent upon the legislative appropriations process of the States."

Delete the period at the end of the sentence contained in section 221(f) and add the following words at the end of that sentence: "or to contract with non-Federal interests for water supply storage under the Water Supply Act of 1958 (Public Law 85-500), as amended, (43 U.S.C. 39b) or for recreational development under the provisions of the Federal Water Project Recreation Act of 1965 (Public Law 89-72), as amended (16 U.S.C. 4601-12 et seq.)

Renumber succeeding sections accordingly.

EXTENSIONS OF REMARKS

TRIBUTE TO REV. HENRY CLINKSCALE OF YOUNGSTOWN, OHIO

HON. CHARLES J. CARNEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. CARNEY. Mr. Speaker, on Sunday, August 27, 1978, the Reverend Henry Clinkscale, Jr., pastor of Elizabeth Baptist Church, was honored at a testimonial dinner at the Mahoning Country Club in Girard, Ohio.

The benedication was given by the Reverend Willie Mitchell, associate pastor of Elizabeth Baptist Church. The principal speaker for the occasion was the Reverend Lonnie A. Simon, pastor of New Bethel Baptist Church. Reverend Simon praised Reverend Clinkscale for his many good works—both church and civic—and also for the outstanding leadership he has provided to the community.

A city of Youngstown proclamation was presented to Reverend Clinkscale by Mayor J. Phillip Richley, Second Ward Councilman Herman "Pete" Starks, and Mahoning County Commissioner Thomas Barrett. In addition, an Ohio Senate resolution was presented to Reverend Clinkscale by State Senator Harry Meshel. On behalf of his church members, Mrs. Ora Lee Brown presented Reverend Clinkscale with a monetary gift as a token of their high esteem and appreciation of his services.

Rev. Henry Clinkscale, Jr., the son of the late Henry and Mattie Clinkscale, was born in Youngstown, Ohio. He attended Covington School, Hayes Junior High School, South High School, International Correspondence School, Youngstown State University, Malone College in Canton, Ohio, and 4 years at the Central Bible College in Cleveland, Ohio. He also attended the Human Engineering Institute of Niles, Ohio, for 3 years. In addition, he received a certificate for completing the course in hydraulic maintenance, I and II, which was sponsorsed by the Commercial Shearing & Stamping Co., where he is employed.

He served as an ordained deacon of the New Bethel Baptist Church for 6 years and was called to preach in 1965. He was licensed to preach by the New Bethel Baptist Church, where the Reverend L. A. Simon is the pastor. He served as assistant pastor of the Antioch Baptist Church, where the Reverend Alfred Ward is the pastor.

Ordained in 1967, Reverend Clinkscale was called to pastor the Beulah Baptist Church, where he served for 2 years. In September 1969, he was called to pastor the Elizabeth Baptist Church.

Under his pastorage, the present edifice was purchased, the mortgage was burned, and two additional lots were purchased for parking. Membership has increased by approximately 300 people. The Altar Guild and Junior Church are additional auxiliaries, as well as the newly organized Young Matrons Mission, and a minibus was purchased to transport members of the congregation.

Reverend Clinkscale is a member of Harvest Lodge Mason No. 26, the NAACP, the Urban League, the Baptist Ministers Alliance, and the Interdenominational Ministers Alliance.

He is married to the former Odessa Harris, and they have four daughters: Rose Clinkscale, Sandra Harden, Judith Paul of Youngstown, and Darnell Williams of Cleveland, Miss., and five grandsons.

Mr. Speaker, Reverend Clinkscale is a deeply religious man who has dedicated his life to serving God and his fellow man. Because of his work, the city of Youngstown is a better place to live. We are most fortunate to have him and his family as members of our community. It is fitting and proper that this testimonial dinner was held in his honor, and I take this opportunity to extend my sincere congratulations and best wishes to him.●

DONALD G. WEINERT APPOINTED EXECUTIVE DIRECTOR OF NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. FISHER. Mr. Speaker, the board of directors of the National Society of Professional Engineers (NSPE), at its annual meeting in St. Louis July 22, appointed Donald G. Weinert, P.E., successor to Paul H. Robbins, P.E., as executive director of the 76,000-member organization. Robbins will retire in August 1979 after 32 years as executive director.

Weinert is a graduate of West Point with a Masters Degree in Civil Engineering from Purdue University. He is retiring from the Army Corps of Engineers after 26 years' service. While in the corps, he attained the rank of Brigadier General and has most recently served as a Special Assistant to the Chief of Engineers in Washington, D.C. Previously he has served as an engineer unit commander and staff officer and as a contract construction manager at locations in Europe, Korea, Vietnam, and the United States. A member of NSPE and the Society of American Military Engineers, Weinert is a registered professional engineer and has served on several NSPE committees.

A search committee under the chairmanship of NSPE past president Harry E. Bovay, Jr., P.E., chairman of Bovay Engineers, spent nearly 6 months screening applicants and recommended Weinert for the position.

I am certain that my colleagues join me in wishing Mr. Weinert all the best in his new position.●

CITY ACTIVIST ROSALIE N. DEITZ, LEADER IN HISTORIC PRESERVATION

HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. THOMPSON. Mr. Speaker, my home city of Trenton, N.J., quite recently lost one of its most outstanding civic leaders with the death of Mrs. Rosalie N. Deitz. Mrs. Deitz did not hold an elective office in our city but her achievements in preserving Trenton's historic area around the statehouse will be remembered as long as the city endures.

Mrs. Deitz was an outstanding citizen whose regard and love for her community exemplified itself in her life. I have lost a personal friend and my city has lost one of its treasures. I commend to the House the following obituary from the Trenton Times:

[From the Trenton Times, Sept. 14, 1978]

CITY ACTIVIST ROSALIE N. DEITZ, LEADER IN HISTORIC PRESERVATION

(By Robert Joffee)

Rosalie N. Deitz, one of Trenton's most effective community activists, died last night at Mercer Medical Center after a long illness. She was 68.

Orland's Memorial Chapel is in charge of arrangements, which were still incomplete this morning.

Neighbors and civic leaders say Mrs. Deitz deserves most of the credit for obtaining hundreds of thousands of government dollars for preserving and rehabilitating the historic area around the New Jersey State House.

The success of those efforts was celebrated only last Sunday in a "State Street Stroll," a block party featuring guided architectural walks, home tours, mini-parades with antique cars and square dancing.

But Mrs. Deitz, who had organized the event to show off the neighborhood, wasn't there. By that time she had sunk into a coma and it was obvious that death was near.

She also is credited with being a prime mover behind such things as the sweeping revision of the Trenton city charter, the establishment of golden-age groups in the city, the founding of a Trenton city museum and many other civic and philanthropic projects.

Mrs. Deitz ran for City Council in 1966 and later considered running for mayor, but she never was elected to public office. She worked full-time on various pet projects for two decades, but never received money for her work.

Yet, as a self-proclaimed "professional volunteer," she was a formidable political force. She did her homework, mobilized her charm, made her phone calls, showed up with supporters at public meetings, and

made eloquent presentations for her causes. Politicians found it difficult to turn her down.

"It was hard to say no to her because she was so sincere and so dedicated," said Senate President Joseph P. Merlino of Trenton.

"She had a genius for organization," said Trenton Mayor Arthur Holland. "She was one of Trenton's greatest resources."

In 1973, Mrs. Deitz held a meeting in her living room and spearheaded the formation of the State House Historic District Association, a group of landlords and tenants who wanted to improve the State House area. Under her leadership, the group accomplished the paperwork needed to have the district declared historically valuable by the city, the state and finally the National Register of Historic Landmarks.

Landmark designation cleared the way for grants and low-interest loans to rehabilitate buildings in the area, which has fine examples of Federal, Greek Revival and Beaux Arts architecture.

The Deitz home, one of the most remarkable of those buildings, has eight rooms furnished in authentic Victorian period pieces, with gas-light fixtures, a gazebo and a formal garden. Mrs. Deitz, who had an irreverent sense of humor, used to say the inspiration for her decorating ideas came from Gay Nineties San Francisco bordellos.

Perhaps because of this irreverence in the face of pomposity and conservatism, Mrs. Deitz had some political enemies. But her persistence in bringing about change also won her lasting friends.

She made a name for herself in city politics in the early 1960s as a League of Women Voters' activist pushing for the city charter changes that gave Trenton its present mayor-council form of government. It was during that period that she became a close associate of Holland and also of S. Howard Woodson.

Woodson is now president of the state Civil Service Commission and the highest-ranking black in state government. But in 1962, the year of the first election under the revised city charter, no black had ever been elected to citywide office in Trenton. He said he wouldn't have won a city council seat that year had it not been for "Rosalie's insistence on the creation of an interracial ticket."

According to Jeffrey Laurenti, a Merlino protege, Mrs. Deitz's friends in city government and the Legislature "gave her access to the governor and commissioners at the state level." She used those friends to promote the cause of historic preservation.

Woodson, who had gone from City Council to the state Assembly, and Merlino, who had gone from city attorney to the Assembly to the state Senate, both helped her obtain state landmark designation for the Kelsey Building, the 60-year-old structure at the corner of West State and Willow streets.

"The Kelsey Building became a kind of anchor for having the rest of the State House area designated an historic district," Laurenti recalled. "What is remarkable is that an entire area is being transformed as a result of the actions of a single woman. It was her persistence that set things in motion."

"Rosalie not only had ideas, she carried them out," said another friend, retired Judge Sidney Goldmann of the Appellate Division. He recalled Mrs. Deitz' leadership of the Trenton chapter of the National Council of Jewish Women, and the active role she played in the sisterhood of Har Sinai Temple. "She originated the golden-age group in the Jewish community, an idea that later spread to other groups in the city," he said.

Goldmann said Mrs. Deitz also was a founder of the Nearly New Thrift Shop, which raised money for several Jewish philanthropies.

Mrs. Deitz was ever the optimist when it came to the future of Trenton. She had said of her efforts in the State House area, "We . . . created a neighborhood. People had not known each other. Now we had mutual self-help, cooperation with the police, and plans for outdoor lighting, parking, preserving facades and an off-street playground. We wanted to inspire other sections of Trenton to develop their latent possibilities.

"I do not think cities are dead," she continued. "And city living is a charmer. With no commuting we have lengthened the day. You lengthen your life. All of life is here in the city, so exciting—and so close." ●

BALANCE(S) OF POWER SERIES: BOOK IV(G)—MILITARIZATION OF SOVIET SOCIETY

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, since the expiration of the draft on June 30, 1973, the United States has been committed to the concept of an All-Volunteer Force (AVF). Despite initial success, however, the AVF remains the center of controversy. In general, debate has focused on four principal areas: First, whether the AVF can continue to attract sufficient numbers of young people; second, whether the AVF can attract the quality of personnel that can be both efficient and combat ready; third, whether the growing share of the defense budget allocated to manpower costs needed to implement the AVF could not be better invested in R. & D. as well as procurement; and, fourth, whether the AVF undermines a necessary public sense of duty to the country.

What has not received sufficient attention is the impact the AVF has had upon the Nation's mobilization capabilities in times of national emergency, its ability to fight a war, and its morale vis-a-vis national security issues.

This question is brought into better focus, perhaps, by recognizing the fact that, as the following article explains, the Soviet Union adopted over half a century ago the opposite policy of universal military training.

"Universal Military Training in the USSR" is an article by Harriet Fast Scott which describes in detail the steps taken in Russia today to maintain an omnipresent, broad-based, highly competent military structure. As the article indicates, universal military training not only affords the Soviet military machine a large manpower pool, but also creates a morale which lends broad national support to those measures the Soviet leadership finds necessary to the attainment of its strategic objectives.

The article, which first appeared in Air Force Magazine in March 1978, follows:

UNIVERSAL MILITARY TRAINING IN THE U.S.S.R.

(By Harriet Fast Scott)

Sometime this month, notices will appear all over the Soviet Union announcing the call-up of all males who will have turned eighteen by July 1. In September, the Defense Ministry will post another order calling up those who will reach eighteen by January 1, 1979. This twice-annual call-up is part of the Soviet military conscription that has existed in one form or another during the Soviet Union's sixty-year existence.

The Soviet Armed Forces consist of a relatively small cadre of regular officers, warrant officers, and "extended-duty" soldiers and sergeants, along with a constantly changing force of several million young men in training.

The number of officers is estimated to be between 600,000 and 1,000,000. The number of warrant officers and extended-duty servicemen is between 250,000 and 400,000. This permanent cadre is responsible for maintaining a combat-ready military force, and at the same time for training "almost all" Soviet males—to use the late Marshal Grechko's expression—and then discharging them into the Reserves. The Party leadership has said that any future world war will likely be nuclear and will "demand multimillion-man armies." This demand can be met only through the mobilization of millions of trained men.

This year, in response to the Defense Minister's order, approximately 2,600,000 young men born in 1960 will report to the local military office, called the military commissariat (*voyenkom*). Half this number reports in April and May, and the rest in November and December.

They will be examined by a call-up commission headed by the local military commissar, with representatives from the local Party organization, trade unions, the militia, and medical agencies. The military commissariat will have all of the conscript's records, including education, preliminary military training, and any specialist training he might have been given after he first registered for military call-up at age seventeen.

The call-up commission assigns each man to a service, branch, or arm. Physical characteristics have some bearing on assignment. For example, to qualify for flying duties, the eighteen-year-old must be between five feet two inches and six feet tall, weigh less than 176 pounds, and have legs at least thirty inches long.

Of major importance to the individual at the time of call-up is the fact that the call-up commission also designates noncommissioned officer candidates. These candidates are sent directly to sergeants school for approximately six months of training. For the remainder of their eighteen months in service these young men will be in charge of other eighteen- and nineteen-year-olds—the bulk of the Soviet Armed Forces.

CHANGING PATTERNS OF CONSCRIPTION

Conscription for the Red Army was decreed May 29, 1918, but nationwide military obligation was not introduced until September 1925, after the military reforms. Military obligation for all males aged nineteen to forty consisted of two years of Beginning Military Training, followed by five years of active duty starting at age twenty-one. This training was based on a territorial militia system of intermittent service or cadre service mixed with long leaves of one to three years.

A new Law on Universal Military Obligation was adopted September 1, 1939, almost two years before Hitler invaded the Soviet Union. This law required an annual call-up in September and October of all nineteen-year-olds except those receiving secondary education. After World War II, compulsory military service was three years for the Air Forces, Ground Forces, Troops of National Air Defense, and Strategic Rocket Forces, and four years for the seagoing components of both the Navy and Border Guards.

In 1967, the Law on Universal Military Obligation was rewritten. The age of induction was lowered to eighteen for all males. Two call-ups each year replaced the single,

annual call-up. Service was set at two years and, for those serving at sea, three years. Initially, those with higher education had to serve only one year, but this was raised in 1977 to two years for those serving at sea and eighteen months for all others.

Even before World War II, the Soviet Union had a system of Beginning Military Training in which youths were taught basic military skills before entering the Armed Forces. To help compensate for the 1967 reduction in length of service, Beginning Military Training was made compulsory for all males on reaching age fifteen. This training is given in the ninth and tenth grades. Though given in the schools, the Defense Ministry is responsible for instruction. Much of the training is conducted by Reserve officers. For those not in school, military study centers are established at factories or at other places of work. Instruction also is given at specially equipped schools by DOSAAF, the Voluntary Society for Cooperation with the Army, Aviation, and Fleet.

Some youths are designated for specialist training when they register with the military commissariat at seventeen, one year before they are due to be called up to active military duty. This training is given at professional technical schools or by DOSAAF.

The 1967 law also set a time limit on deferments. Those who are ill, or who for family or compassionate reasons have their call-up deferred, are exempt on reaching age twenty-seven. Those who are deferred to continue their education are excused on reaching age twenty-seven. There are limited-service positions for those not physically fit for combat-type duty.

Up to fifteen percent of young Soviet men may be permanently excused for physical reasons. Another five percent may have invalid parents or other reasons for deferment, and never serve. In all, about twenty percent will be fully excused from military service. This means that every six months about 1,000,000 youths will be entering the Soviet Armed Forces, and approximately the same number will be discharged into the Reserves. In 1978, about 4,000,000 conscripts will be serving in the Soviet Armed Forces, which include the Border Guards of the KGB and the Internal Security Troops of the MVD, though the latter two are not under the Ministry of Defense.

Although the rigors of military life are many, the average Soviet citizen sees them as necessary to defend the country and complains very little. After all, he and his peers are all in the same boat.

THE CALL-UP CENTER

Soon after being reviewed by the call-up commission, those without deferments or physical disabilities are notified to report to a collection center. The "young soldier," as all conscripts are called until they formally take their oath, is now on active duty in the Armed Forces of the USSR.

At the collection center he is issued a uniform and boots, a set of underwear, a towel, a spoon, a mug, and toilet articles. These are kept in a small suitcase or bag, together with documents from the call-up commission. He gets a short haircut and turns in his civilian clothes, which are sent home for the duration.

The young soldier turns in his internal passport, if he has one, to the military commissariat and is issued a military card. (Present plans call for internal passports, without which most travel and permission to live in cities is impossible, to be given to all citizens by 1981.) At the collection center, the young soldier gets his first taste of active military duty. He wakes up on schedule, eats on schedule, and drills on schedule. He gets more medical examinations, shots, and lectures.

Soon travel groups are formed to take the young soldiers to their units. According to Soviet accounts, the train platform overflows with local Party and city officials, parents, relatives, wives, and girl friends. The band plays loudly and off they go.

LIFE IN THE MILITARY

On reaching his military unit, the young soldier is assigned to a separate platoon where the fundamentals he has learned in Beginning Military Training are reviewed.

He is issued three uniforms (dress, service, field) and fatigues. The barracks where he will live has a large sleeping room, a room to shine shoes and press uniforms, and a shower and shaving room. Each conscript is given one large bar of household soap each month to use on his weekly visit to a communal steam bath—a Russian custom suited to the cold climate. Soldiers must wash their feet each night before going to bed.

Meals are served three times a day with the interval between meals not to exceed seven hours. The basic diet provides about 3,700 calories a day, and "norms" providing additional calories are calculated for abnormal environments and some kinds of work. Each serviceman is given the norm set for his type of work. Thus, those located at radar posts high in the mountains, or on flying crews, or in aviation ground crews of the engineer-techical service, get special high calorie diets, as do soldiers over six feet two inches tall.

There are forty different dietary norms operating today in the Soviet Armed Forces, according to the Chief of the Central Food Directorate. Each soldier's food allowance is given in carefully measured helpings; those entitled to higher caloric norms may have a fourth meal each day.

After several weeks, but no later than two months, the whole unit attends a ceremony where the young soldiers take the military oath of allegiance. This is done with great solemnity and is considered a holiday for the unit. Often a symbolic place is selected for the ceremony to make a lasting impression on the new privates: Red Square in Moscow or the battlefield memorial at Volgograd (Stalingrad).

The serviceman generally will spend his entire two years in the same unit. He will get no leave during this time, except for emergencies or as a reward for unusual achievement.

Candidates for sergeant attend a school that is run by the regiment. Specialists go to classes up to six months for additional training or are assigned to on-the-job training in the unit.

PAY AND BENEFITS

Young men leaving a job at a factory or a farm, or who are on a scholarship at school, are given two weeks of their civilian job pay as a bonus when they are called into service.

The monthly pay for privates, according to unofficial reports, is three rubles. Pay rates for the Soviet soldier and sergeant, however, are not published. Specialists get higher pay than others of the same rank. Additional pay also is given for exceptionally hard or dangerous work, including flying. Medical personnel get 15 percent higher pay. Soldiers and sergeants with second-class, first-class, or master's rating get extra pay as long as they hold a position for which that rating has been established. Bonuses, based on rank, are given at the end of service when servicemen are transferred into the Reserves. If the serviceman is returning to a distant area, the bonus is doubled.

If the conscript is married and has children, and his family lives in a city or town, his wife gets fifteen rubles a month for one child and twenty-two rubles for two or more children. A wife living in a rural area will get 7.5 rubles for one child and twelve rubles for two or more children. Wives of conscripts will be given special assistance in finding work, and places are provided in nurseries for children, if requested.

When released into the Reserves after two years, servicemen have certain privileges. Within one month they must be given jobs compatible with their specialty and experience. Those who were students have a right to return to the same course from which they were called. Servicemen have the right to keep their housing or position on the housing list while in service. Servicemen do not pay taxes, and they have free mailing privileges.

Servicemen are encouraged to offer suggestions for improving efficiency. Special commissions examine all suggestions and if accepted, make awards that can be large. A suggestion that results in a saving of more than 100,000 rubles a year can earn an award of as much as 5,000 rubles. There are lesser forms of encouragement and rewards such as citation at a parade, a two-day pass, or ten-day leave, or a decoration.

The backbone of Soviet military training is the proficiency rating for specialists. Third-, second-, and first-class ratings may be earned in that order by servicemen who are taking part directly in servicing armaments or military equipment, or training.

Soldiers who have finished either a course conducted by their unit or a school for specialists and who earn "good" or "excellent" scores on a test become third-class specialists. Those who receive a "satisfactory" score must get further on-the-job training. Some are given only on-the-job training and then take the examination. Their scores must be at least "good" to get a third-class rating.

Examinations are given at the end of the winter or summer study period. Those who pass are awarded certificates and badges. Those who fail to qualify may take the test again in five months.

Second-class, first-class, and master specialists must reconfirm ratings each year, higher ratings cannot be given in less than six months after the previous rating. Those who seek higher ratings must do well in both military and political training.

Commanders authorized to award ratings may also take them away for failure to take care of equipment or as punishment. Unsatisfactory ratings drop the specialist one grade. Tests to regain lost ratings may be taken after five months. All other things being equal, the serviceman with the higher class rating gets promoted first. For those who wish to enter officer commissioning schools, first-class and masters' ratings earn preferential treatment.

SOVIET DISCIPLINE

Discipline is very strict. For treason, i.e., acts resulting in damage to state independence, territorial integrity, or the military might of the USSR; defection; espionage; giving state or military secrets to foreign states; refusal to return from abroad; hostile acts against the USSR; and plots to seize power, punishment is ten to fifteen years' loss of freedom with confiscation of property and sometimes with exile from two to five years. The sentence for extreme acts of treason can be execution and confiscation of property.

For crimes against military order—insubordination, nonperformance of orders, AWOL, desertion, divulging military secrets—servicemen are punished according to military law. For instance, insubordination may be punished by one to five years' loss of freedom; group insubordination, three to ten years; insubordination in wartime or in combat, from five to ten years up to the death penalty. The penalty for AWOL in peacetime can range from three months' to two years' assignment to a disciplinary battalion. Time served in a disciplinary battalion does not count toward national service obligation.

REENLISTMENT POLICY

Several months before the end of his service obligation, the conscript may decide to stay on for additional duty. Certain positions can only be filled by extended-duty service-

men. Commanders encourage their best men to apply for these positions for two-, four-, or six-year enlistments. Reservists can also volunteer for active duty up to age thirty-five. Some specialist positions are handled by contract, usually for four years. These may be signed up for before the regular two-year service obligation is completed.

The regimental or equivalent level commander selects candidates for extended service. A board makes the final choice. Generally, men are expected to continue after reenlistment in the same unit.

On being accepted for extended service, privates are promoted to privates first class. Sergeants, who have held their rank for six months and whose position calls for higher rank, are also promoted.

Servicemen also may volunteer to become warrant officers. This rank was introduced in 1971 to replace extended servicemen. In 1973, the law was amended to include both extended servicemen and warrant officers. Candidates for warrant officer, if accepted, are sent to school for one or two years. Those with an equivalent civilian education in a military specialty may be given a warrant at once. The initial period of service for warrant officers is five years, with subsequent three- or five-year periods to age forty-five. A warrant officer can serve five additional years in special cases. Extended-duty servicemen can serve to age fifty.

Two years may seem a short time to produce a well-trained airman or soldier. However, premilitary training must be taken into account.

The Soviet citizen begins receiving military-related training from the age of seven, first as a member of the Octobrists, where patriotism and group discipline are taught, and later with the Pioneers, where instruction is given in rifle marksmanship and other military skills.

Nationwide military sports games are used to teach military skills to teenagers. The Zarnitsa games, for youths eleven to fifteen, include competitions in overcoming mock minefields and radioactive areas. The Orlenok games, for youths sixteen to eighteen, feature more advanced military exercises, including simulated nuclear attack drills.

Also, two years of Beginning Military Training is required of all boys in high school. For those who have dropped out of school, DOSAAF provides training in military and military-related skills.

Undoubtedly there are many weaknesses in the Soviet conscript military force. But as the Party leadership gives priority to research, development, and the production of weapon systems—such as the SS-20 and Backfire bomber—it gives equivalent attention to ensuring the combat readiness of its military personnel. The question is how effective—or ineffective—is the Soviet conscript force compared to the volunteer force of the United States. That is the context in which the vulnerabilities and strengths of the Soviet Armed Forces must be examined.●

NOW, AN INTERNATIONAL COMPANY

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. VANDER JAGT. Mr. Speaker, I have the privilege of representing a city in Michigan that boasts an unemployment rate of less than 3 percent. In fact, the city of Holland, situated on the shores of beautiful Lake Michigan, is one of the fastest growing, most productive cities in all of Michigan.

Among the leaders of the many energetic, innovative, and highly successful businesses operating in Holland is a family-started business (formerly known as Brooks Products), SquirtPak. Already the largest distributor of 7-Up in Michigan, SquirtPak is now international in scope. The "start-small-get-big-through-hard-work philosophy" of SquirtPak is best captured in the words of James Brooks, chairman of the board of the company. "Growth in business is not arbitrary," says Brooks. "It's mandatory." And for SquirtPak, that philosophy has produced a 25 percent compound growth rate.

Mr. Speaker, I submit for the record the following news article from a recent edition of "The Holland Sentinel" which explains the phenomenal and inspiring success of SquirtPak:

[From the Holland (Mich.) Sentinel, Aug. 21, 1978]

FROM BROOKS TO SQUIRTPAK: BIG CHANGES FOR LOCAL BOTTLER

(By Bob Niedt)

"Bio-Label Lathiated Lemon-Lime Soda"

How well does that go with a hamburger?

Today that not-too-familiar product is the familiar 7-Up, and probably when any resident of Holland thinks of 7-Up (or Squirt, Hires Root Beer, Crush, etc.) they would think of their very own local bottler, SquirtPak, formerly Brooks Products, Inc.

And well they should.

Brooks (SquirtPak) and Holland have had an interesting relationship. The company is another one of the area organizations which has grown up from a very small outfit to one of international recognition.

But success hasn't gone to the company's head. Although it's a company which has grown incredibly over the years, it still keeps that hometown Holland atmosphere, a cut above many organizations which could quickly become top heavy.

But to clear up any confusion the reader may be having, the record should first be set straight. Brooks Products, as it's been known to Hollanders for the past few decades, is now SquirtPak, one of the holdings of the multi-franchise holding company Squirt and Company, based in Holland.

The new name was announced in mid-July, after major re-structuring of Brooks Products, Inc., as a result of the purchase of The Squirt Company in Sherman Oaks, Calif. in 1977.

At the reigns of Squirt and Company is James F. Brooks, son of the founder of Brooks Products, Inc., Phillip Brooks.

James Brooks is the Chairman of the Board, President and Chief Executive Officer of the company, which own SquirtPak, SquirtFruit (the citrus processing and laboratory operation for Squirt, based in Glendale Ariz.), SquirtCo. (the new name for The Squirt Company which is the national Squirt franchiser, also based in Sherman Oaks) and a new SquirtCo subsidiary, Squirt International, Sherman Oaks, which will help develop and broaden distribution of Squirt on a domestic and international level.

SquirtCo also has an affiliate in Mexico, Refre-Mex, which markets Squirt, the leading carbonated soft drink in that country.

James Brooks, the head of SquirtCo, was asked why he decided to change the name of the company to SquirtCo instead of keeping his name at the top of the entire corporation.

"That's a natural question," said Brooks, "but the answer is really very simple: outside of the Holland area, who ever heard of Brooks? If one of our company representatives walked into a meeting in another state and said 'I'm from Brooks' they'd probably say 'Who?' But if he said 'I'm from SquirtPak,' that's a little more well known."

The restructuring of Brooks Products had been in the process for a while, especially after the acquisition of The Squirt Company. Brooks and other management personnel felt that it was necessary to unify the multiple beverage operations owned by Brooks Products under one name. It was a matter of bringing together the marketing, manufacturing, franchising and citrus technologies together into one company and under one parent name.

Brooks felt that it was necessary for people to become more aware of the company throughout the country, and to begin expanding into new national and international markets.

It was Walter Landor Associates, the internationally known and respected corporate design consultants, who studied the holding of Brooks Products and came up with the idea of putting Squirt at the head of each of the operational units of the company.

Walter Landor Associates, according to Brooks, have been responsible for corporate identity campaigns for the Bank of America, Marlboro cigarettes, Wells Fargo Banks and Miller Lite Beer. Their creativeness and international reputation persuaded Brooks to go to them.

"Their firm operates out of a ferryboat docked in San Francisco," said Brooks. "It's the same ferryboat which used to ply the waters of the San Francisco Bay before the Golden Gate bridge. That ferryboat is just the right atmosphere for creative people to work in. I thought that was interesting—and innovative, and for that and various other reasons we decided to retain them to come up with a corporate design for us."

Although the company is no longer Brooks Products, Inc., it still is a family operation, privately owned by the Brooks.

And the humble beginnings (if a cliche can be forgiven) started out right here in Holland in 1934.

It was in that year that Phillip Brooks was granted a franchise license to bottle 7-Up in Western Michigan. He had observed how well the new soft drink had been doing in Portsmouth, Ohio, when he decided to try his hand at bottling the lemon-lime drink known as "Bib-Label Lithiated Lemon-Lime Soda."

Brooks wanted a Michigan license for the new soft drink, and after receiving it, he bottled the drink through the Underwood Bottling Co. Family members, including young James, would help him by putting paper labels on the bottles with a paintbrush, one at a time, in the basement of their home.

For ten cents a case Brooks would get bottles from the Berghoff Bottle Co., and when the mix was bottled, Brooks would then deliver the product during the day from the back seat of a 1929 Buick sedan, which had the back seat removed in order to accommodate the cases of 7-Up.

Brooks lost $600 in his first year of operation, and in the second year made $600. Profits, as can be seen, were not too high. In fact there wasn't any.

So Brooks sold the business for $400. One year after that, after some persuasion from the man he sold it to, Brooks bought the business back and acquired property on River Ave. (which is still being used as a bottling plant).

By 1937, Brooks felt that he could bottle the drink better himself, so he borrowed the money to buy some used washers and fillers. Prior to this time he had been renting out the Grand Rapids Bottling Company facility at night to bottle the mix. Ironically, Brooks bought out the Grand Rapids Bottling Company years later, and members of that com-

pany who helped him out are still with SquirtPak.

World War II saw hard times for Brooks Products, especially when sugar rationing came along. This meant that they had to cut their volume by 50 percent of what they could produce.

James Brooks joined his father in the family business in 1945, after serving with the armed forces during the war. Going into the family business isn't exactly what James had in mind.

"I was going to be a doctor," said Brooks, "everyone in my family was all for it. But when I got out of the army and went back to the University of Michigan, I saw how many more years I would be in school. It was then that I decided to go into the business."

The company became incorporated in 1953, with James Brooks the President and his father, Phillip, became Chairman of the Board and Treasurer. Business was growing incredibly, and plant additions were tacked on.

Expansion was needed, and the company bought land on 32nd St. near U.S. 31 in the Industrial Park. Plans for the new facility were carefully layed out with the thought of expansion always in mind.

Because of the versatility and features of the new plant, Brooks Products and the 7-Up Bottling Company of Northern Michigan in Cadillac consolidated in 1967. Brooks territory increased from 19 counties to all of Western Michigan. It now encompasses 58 counties for distribution of 7-Up, the largest in Michigan.

Other franchises were acquired by 1968. The Grand Rapids Bottling Company, which at one time rented its facilities to Brooks at night, was bought out by Brooks Products, Inc., bringing with them the franchise rights to Hires Root Beer, Dr. Pepper and the Royal Blend Sun-Glo soft drink line, which was later shortened to Sun-Glo beverages.

Sun-Glo, as a point of interest, is marketed not only in the Western Michigan area, but five other states as well.

In 1969, Vernors Bottling Company of Southwestern Michigan became a part of Brooks, bringing in the unusual taste of Vernors along with Orange Crush.

When Brooks built the 105,000 sq. ft. facility in the Industrial Park near 32nd St., growth was anticipated. In 1977 an 87,500 sq. ft. addition was tacked onto the plant, and even that space was quickly filled.

The year 1977 also brought the acquisition of the Squirt Company, making it a subsidiary of Brooks Products. Growth of Squirt as a popular soft drink is now expected to accelerate even faster. There are plans to build a much stronger operating base for Squirt by adding more funds to expand Squirt staffing, advertising and marketing.

There's a lot of excitement at SquirtPak in Holland over the growth of Brooks, especially at the management level. Talking with James Brooks, one can see that he's done his homework thoroughly when it comes to Squirt—and grapefruits.

"We let nothing go to waste with our grapefruits," he beamed. "We are the largest grapefruit processor in Arizona. And do you know what we do with our grapefruit rinds when we're finished with them? They're used to make cattle food. Can you believe that?"

James Brooks has a good feeling about the change, as he sees that this brings a decentralized decision management to SquirtPak.

No longer are all the important decisions made by one person or the top level. Many important decisions, according to Brooks, are made at the lowest level of management, and accountability and responsibility for those decisions is adhered to by the decision-maker.

Adds Brooks: "This creates involvement and commitment on the part of more people. We needed this formal plant to pull through this planning management."

Right now SquirtPak is getting ready to gear up for the returnable bottles, which becomes mandatory in Michigan Dec. 3. Non-returnable bottles and cans will become a thing of the past.

Brooks was not happy about this decision by the voters to dump non-returnable bottles. "I don't think they know what they're getting themselves into," he says.

"It cost us a lot of money to change over our facilities recently. And it's going to cost a lot to maintain non-returnable bottles in the future. I don't think the consumer realizes that the cost of the changeover and maintaining of the returnable bottles is going to be borne by them."

But SquirtPak is ready for the change, which isn't so unusual. The company has always been known for it's innovations in the soft drink industry, and more likely than not will have some new concept in returnable soft drink containers or packaging in the works.

"We have to be innovative," says Brooks. "Growth in business is not arbitrary . . . it's mandatory.

"Right now we have to know where we are before we worry about anything else. It's like Roger Bannister (the runner) running the four-minute mile. He knows that he has to run that first half in two minutes . . . down to knowing how far he must be in the first thirty seconds . . . Let's not worry about anything except the first 30 seconds.

"That kind of thinking has enabled us to have a 25 percent compound growth rate."●

TRIBUTE TO MR. LEHMAN W. TOMLIN OF YOUNGSTOWN, OHIO

HON. CHARLES J. CARNEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. CARNEY. Mr. Speaker, on Friday, September 1, 1978, a testimonial dinner was held for Mr. Lehman W. Tomlin of Youngstown, Ohio. Mr. Tomlin was honored by the Clarence Robinson Center's advisory board in appreciation of his many years of service to the community.

Lehman Tomlin attended Youngstown public schools, where he graduated in the top 10 percent of his class. While a student at South High School, he was an all-city halfback, all-county for 2 years, and captain of the varsity track team. He attended Wilberforce University for 2 years on an athletic scholarship and played football. He continued his education at Youngstown State University, and also took special courses there in social services and recreation.

He went to work at the old Haselton Center in charge of boys' programs; he coached teams in basketball and football, running leagues and ping-pong tournaments. For 10 years, he served as a playground director for the Youngstown Parks and Recreation Department. From 1941 to 1948, he was in charge of athletics at Youngstown Sheet & Tube Co., and he is credited with organizing the athletic program at the Buckeye Elks, as well as initiating numerous other programs.

Mr. Tomlin began working with the associated neighborhood center programs in 1967 on a part-time basis. He served on the associated neighborhood center board for 7 years. In 1970, he resigned as first vice president of the associated neighborhood center board to become director of the Clarence Robinson Center. In March of this year, he retired and was honored by the council and administration of the city of Youngstown for his dedicated service to the community.

Mr. Tomlin and his wife, Katherine, reside on Glenaven Avenue; they are the parents of two sons and two daughters.

Mr. Speaker, Lehman Tomlin has given unselfishly of his time and energy in behalf of the youth of the city of Youngstown. His guidance and counsel have helped many boys and girls become responsible adults and good citizens. Accordingly, I want to take this opportunity to commend him for the great contribution he has made to the well-being of our community. I wish him good health and happiness in his retirement.

RENT AND REAL PROPERTY TAX RELIEF FOR THE ELDERLY

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. FISHER. Mr. Speaker, the following resolution was adopted by the American Federation of Government Employees recently at their 26th Biennial Convention in Chicago.

While the resolution does not necessarily represent my views on the subject, I thought it would be of interest to my colleagues:

RESOLUTION: RENT AND REAL PROPERTY TAX RELIEF FOR THE ELDERLY

Whereas, the elderly poor are being burdened with higher rents and higher real property taxes caused by the needs of state and local governments to raise revenues; and

Whereas Resolution No. 202, incorporating the above, was approved at the 23rd National Convention of AFGE in 1972 at Hollywood, Florida; and

Whereas, Senate Bill S. 1255 was introduced in the 93rd Congress, 1st Session, on March 15, 1975, by United States Senators Muskie, Percy, Mathias, Bayh, Humphrey, Metcalf, Ribicoff and Tunney to provide for a program of assistance to State and local governments in reforming their real property tax laws, as well as to provide rent and real property tax relief for low-income individuals including, but not limited to, the elderly, i.e., the needy and the disabled; and

Whereas, Senate Bill S. 1255 was defeated in a meeting of the Senate Committee on Government Operations; and

Whereas, the American Federation of Government Employees, affiliated with the AFL–CIO, adopted a similar resolution No. 414D at its 25th Biennial Convention in Las Vegas, Nevada, on September 24, 1976; and

Whereas, the American Association of Retired Persons at their 10th Biennial Convention in Chicago, Illinois, on May 1–4, 1978, adopted a similar resolution; and

Be it therefore resolved that this convention go on record that the AFGE will urge the AFL–CIO to petition Congress in its next session to enact legislation by the reintroduction of the earlier Senate Bill S. 1255 in both the Senate and the House of Representatives as an opening bill and that the AFL–CIO will actively seek passage of the

re-introduced bill so as to accomplish real property tax relief and rent relief for low income individuals, including but not limited to, the elderly poor; and

Be it further resolved that copies of this resolution be sent to Senators Muskie, Percy, Mathias, Bayh, Humphrey, Metcalf, Ribicoff and Hayakawa, Byrd (Va.), Scott (Va.) and to their counterparts in the House of Representatives.

Date: June 8, 1978.

KENNETH E. DUNLAP.●

PROPOSED SAFE DRINKING WATER REGULATIONS FOR ORGANIC SUBSTANCES

HON. PAUL G. ROGERS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. ROGERS. Mr. Speaker, on September 25, the Subcommittee on Health and the Environment will be holding oversight hearings on the Safe Drinking Water Act. At that time, the subcommittee plans to go into some depth on the proposed regulations for removing known and suspected cancer-causing organic contaminants from drinking water supplies.

As my colleagues will recall, this matter was given some attention during consideration of the fiscal year 1979 HUD-independent agencies appropriations bill, H.R. 12936. I commend the Committee on Appropriations for its handling of very difficult issues and problems in that bill.

I particularly want to express my appreciation to subcommittee chairman BOLAND and to the able members of the subcommittee and its staff, for their assistance on the portion of the bill relating to funding of transportation and air quality planning. I know that it is difficult to resolve competing claims for scarce funding. While I personally favored a more substantial appropriation for this purpose, I think the subcommittee and committee made a creditable and fair effort to meet the need in this important area.

There is one aspect of the committee report that I found quite troubling, however. And I call it to my colleague's attention in order to make clear that there are a substantial number in Congress who cannot now agree with some of the conclusions stated in the committee report. The aspect of the report that I find so troubling is on page 25 and relates to the proposed regulations on organics.

I am troubled by this language in the report for several reasons. First, the report language refers to a proposed rule not a final rule. I believe it is premature for Congress to reach conclusions on these difficult health, economic, and technological issues before the record of the rulemaking process is closed. In my view the administrative agency charged with implementing the law should be given the opportunity to reach its final judgment. Congress should have the whole record in front of it before Congress reaches any conclusions on the feasibility of, and necessity for, the rule.

Second, the committee report language is not based on oversight hearings on this issue. Neither the public, nor the Agency had an opportunity to present its views on the proposed rule to the Appropriations Committee. For the record, I would like to submit a copy of the Agency's response to my questions on the proposed rule.

In submitting this information from EPA for the record, I do not mean to imply that I necessarily agree or disagree with the tentative judgments of EPA or the other parties in this dispute. As I have mentioned, the Subcommittee on Health and the Environment will be holding oversight hearings on the Safe Drinking Water Act and the organics problem September 25.

After that a more complete basis for evaluation may be possible. In the meantime I introduce this response by the Agency merely to show that there are two sides to this question and to request my colleagues to reserve judgment pending completion of an orderly rulemaking and oversight process.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., June 14, 1978.

Hon. PAUL G. ROGERS,
House of Representatives,
Washington, D.C.

DEAR MR. ROGERS: This letter is in response to your inquiry on the status of the Proposed Amendments to the National Interim Primary Drinking Water Regulations. The proposal was published in the Federal Register on February 9, 1978, and consists essentially of two separate parts: (1) a maximum contaminant level for trihalomethanes of 0.10 milligrams per liter (100 micrograms per liter); and (2) Granular Activated Carbon (GAC) or its equivalent would be used to control pollution-related synthetic organic chemicals in those communities using significantly contaminated sources. A detailed synopsis of the regulations is included as Attachment A.

To date, seven public hearings have been held; the final hearing is scheduled in Washington on July 11 and 12. The public comment period has been extended through July 31, 1978, a total of six months. More than 300 additional comments have been received, as well as more than 180 congressional inquiries.

A very large portion of the comments received so far were generated by the strongly negative position taken by the American Water Works Association.

INDUSTRY COMMENTS RECEIVED

The comments received from the water utility industry have been generally negative. The most frequent concerns voiced, and our response, are listed below:

1. The health effects of organics in drinking water are small or non-existent, so action is not justified at this time.

Comment: EPA's regulations are based on the judgment that any human exposure to chemicals which cause cancer in laboratory animals presents some risks and should be reduced to the extent that it is feasible and the cost reasonable. This judgment has underlain all regulatory actions concerning carcinogens over the last decade. It is the course of action recommended by the NAS and has been endorsed by Dr. Arthur C. Upton, Director of the National Cancer Institute and Dr. David P. Rall, Director of the National Institute of Environmental Health Sciences (Attachments B and C). The AWWA has repeatedly misinterpreted the NAS Report "Drinking Water and Health" as recommending against establishment of an MCL for trihalomethanes, in spite of the clear statement that "strict criteria" should be applied for chloroform (p. 717). AWWA comments have focused on the need for more research contained in the NAS Report.

2. GAC treatment is new and unproven.

Comment: GAC treatment has been used (without frequent regeneration) in over 40 water utilities in this country for taste and odor control. It has been used, with frequent regeneration, for the last 10–15 years in Europe. It has also been used extensively with potable water in the beverage industry, in sugar refining and other food purification applications, as well as in municipal and industrial waste treatment. While the use of GAC, as proposed in the regulations, is not now current practice for U.S. utilities, it is not a new and unproven technology.

3. The costs of GAC treatment are exorbitant.

Comment: EPA's initial estimate of the costs of GAC were in the range of $6–$10 per family per year, which seemed to us to be a reasonable cost. Following industry claims of costs 6–10 times larger than the Agency's estimates, we asked our consultants to contact those water utilities that had made independent estimates to try to reconcile the differences. Numerous meetings with officials of these utilities have been held and detailed analyses are being conducted. While this work is just being concluded, the results so far indicate that our original estimate of an average cost of $6–$10 per family, per year was low and should probably be increased to perhaps $8–$13 per family per year—still on the order of a penny per person per day. This is far short of the large increases suggested by many utilities.

4. GAC can itself produce adverse health impacts.

Comment: None of the suggested adverse effects of GAC appear to warrant serious concern. Small amounts of heavy metals are contained in GAC and some might leach out into the water, but both laboratory measurement and worst case theoretical calculations show that the amounts would be orders of magnitude below levels allowed under the drinking water standards. Certain types of bacteria can grow on activated carbon, but there is no evidence of disease-producing organisms; in any case, the bacteria are easily controlled by normal disinfection practices. Some of the organic chemicals removed from the water might "desorb" slowly back into the water under certain conditions, but this is minimized by frequent regeneration. No one can seriously argue that GAC would not successfully remove most of the organics in the water.

5. GAC regeneration is energy-intensive and produces air pollution.

Comment: The total energy impact of the proposed regulations would be less than 1,400 barrels of oil per day; this is less than 0.01 percent of the Nation's daily oil consumption. While it will no doubt be a considerable increase in the energy consumption of the water utilities, it is negligible in relation to the national energy problem. With respect to air pollution, the regeneration furnaces would be equipped with pollution control devices which enable them to satisfy all air pollution requirements. Even the largest installations would have emissions so small they would not be covered by the "non-attainment" and "prevention of significant deterioration" offsets under the Clean Air Act.

EPA is currently putting together a White Paper on the above issues which we plan to release for public comment through the Federal Register. In this way, we hope to demonstrate our responsiveness to comments and our desire to overcome the tone of confrontation which has characterized much of the public comment period thus far.

We believe the public interest will be best served if the remainder of the public comment period is a time for thoughtful comments on feasible regulatory steps which

can be taken to begin to reduce harmful organic contaminants in drinking water. We believe that action in this area is necessary and hope that the final public comment record will provide us with reactions to the specifics contained in the proposed regulations as well as alternative approaches which should be considered.

Sincerely yours,

THOMAS C. JORLING,
Assistant Administrator.●

IMPROVING THE QUALITY OF LAW ENFORCEMENT

Hon. John E. (Jack) Cunningham

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. CUNNINGHAM. Mr. Speaker, recently I was privileged to have as a member of my staff Mr. Jim Lundin, a detective in the Seattle Police Department. Jim is also a member of the board of directors of the Seattle Police Officers Guild.

I submit for my colleagues the comments of Mr. Lundin on the issue of a bill of rights for public safety officers. Two bills have been introduced in the 95th Congress: H.R. 181 by Mr. BIAGGI of New York and H.R. 6716 by Mr. ANNUNZIO of Illinois. Both of these bills go considerably beyond the scope of the present bill of rights which is an integral part of the agreement between the city of Seattle and its police.

It is time, Mr. Speaker, to realize that public safety officers need the protection afforded in such agreements as those mentioned in Mr. Lundin's article. I thank Jim Lundin for giving me the opportunity to learn from him, and I recommend to my colleagues his thoughts on this important issue.

The article follows:

POLICE OFFICERS NEED A BILL OF RIGHTS

(By Jim Lundin)

Sometimes I wonder just how many of us have entertained the thought, at one time or another, of becoming a police officer. I will concede that for the majority of us, it was probably when we were seven or eight years old, but still there is something about being a police officer or a fireman that generates in each of us a feeling of adventure.

After nearly nine years with the Seattle police department, I have had the fortune or misfortune to witness first hand more segments of life than the majority of people will ever see in a lifetime. There is certainly adventure in being a policeman.

I am more fortunate than many of my brother officers throughout the Nation, for the Seattle police department is one of the most advanced law enforcement agencies in the United States. This was confirmed recently when I served as a delegate from the Seattle Police Officers Guild to the International Conference of Police Associations in Washington, D.C. I heard first hand from officers across the Nation who work for departments that are many years behind Seattle. With the exception of New York, Detroit, and California, police departments are in desperate need of revitalization to incorporate basic rights and benefits so important to the true professionalism of American police officers as fundamental rights.

Among the basic rights is the right to bargain collectively with the right of binding arbitration in lieu of striking, when an impasse occurs. In my mind, such a right would make city administrations more responsive to the needs and ideals of officers, and officers would feel more a part of the system which they serve.

Being a police officer is adventurous. At times it is downright hazardous. Occasionally incidents occur which involve the investigation of an officer by his fellow officers in the department. Such internal investigations are governed by tight rules in Seattle. However, officers in other regions of the country do not always have such protection.

These internal investigations often deprive officers of their basic legal rights. Officers are expected by some to be super humans. Most people only encounter policemen when they are involved in minor traffic infractions. Internal investigations often occur following a serious incident and the filing of a citizen or department complaint.

The premise of a police officer's Bill of Rights is that since the wide ranging powers and duties given to police officers can involve them in all manner of contacts and relationships with the public, it is therefore inevitable that questions will be asked concerning the actions of a given police officer. These questions often require swift investigation by the officer's superiors. The police officer's Bill of Rights is what I consider an effort to insure that the investigations conducted on the behalf of the complainant will be done in a manner which is conducive to good order, discipline, and respect for the police officer.

In Seattle, the following six articles are from the agreement between the Seattle Police Officers Guild and the city of Seattle. They appear to be very basic, yet these rights are denied to officers in many jurisdictions:

(1) The police officer shall be informed in writing if he so desires of the nature of the investigation and whether he is a witness or a suspect before any interrogation commences, including the name, address, and other information necessary to reasonably apprise him of the allegations of such complaint.

(2) Any interrogation of a police officer shall be at a reasonable hour, preferably when the officer is on duty unless the exigencies of an investigation dictate otherwise. Where practicable, interrogations shall be scheduled in the daytime.

(3) The interrogation (which shall not violate the officers constitutional rights) shall take place at a police station facility, except when impractical. The officer shall be afforded an opportunity and facilities to contact and consult privately with an attorney of his own choosing and/or a representative of his police bargaining, benevolent organization, or Guild who may be present during the interrogation, but not participate in the interrogation except to counsel the officer.

(4) The questioning shall not be overly long and the officer shall be entitled to such reasonable intermissions as he shall request for personal necessities, meals, telephone calls, and rest periods.

(5) The police officer shall not be subjected to any offensive language, nor shall he be threatened with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his resignation, nor shall he be intimidated in any other manner. No promises or rewards shall be made as an inducement to answer questions.

(6) It shall be unlawful for any person, firm, or corporation of the local, state, its political subdivisions or municipal corporations, to require any police officer to take or be subjected to any lie detector or similar tests as a condition of continued employment.

The Bill of Rights currently in force in Seattle says a lot, but is it any more than you as a non-police officer would expect of your profession? Due process is long overdue in the contractual rights of police officers. Police organizations with such contractual rights are all too few. It is time for localities, states, and possibly federal action to insure the basic rights of law enforcement officers throughout the Nation.●

THE CONGRESSIONAL RESEARCH SERVICE LOOKS AT AIRBUS INDUSTRIE

HON. MARK W. HANNAFORD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. HANNAFORD. Mr. Speaker, the sale of 23 A300 aircraft by Airbus Industrie to Eastern Airlines earlier this year raised several questions about the fairness of financing terms offered by the European consortium. My inquiries into the matter at that time raised even more fundamental questions about the nature of Airbus Industrie itself. Thus, I requested the Congressional Research Service (CRS) to investigate and analyze the corporate structure of Airbus Industrie in an attempt to clarify our understanding of it.

The CRS analysis, which I am inserting below, points out several areas where Airbus is definitely not a private corporation. I am convinced that it cannot be put into the same class as either our private aircraft manufacturers or the national aircraft manufacturers of Great Britain or France. Not only does it incorporate the advantages of participation by the national manufacturers (for example, Aerospatiale), it apparently enjoys indirect loans from the treasuries of the participating European governments (passed through private banks of the participating countries), direct loan guarantees from several European national governments, and advance orders for aircraft from several national airlines (that is, Air France, Lufthansa, and Iberia Airlines). Other than the $250 million loan guarantee that our Government extended to Lockheed several years ago, and which was terminated last year, our private aircraft manufacturers receive none of these advantages.

Airbus Industrie is perhaps a prototype of the kind of multinational, government-subsidized corporation of which we may see more and more as the European community welds itself together into a supranational entity. All protectionist rhetoric aside, we should begin now to consider how our traditional concepts of free enterprise will have to evolve to meet this challenge.

THE LIBRARY OF CONGRESS,
Washington, D.C., September 1, 1978.

To: The Honorable Mark W. Hannaford
Attention: Michael Lovendusky

From: Economics Division

Subject: Information on Airbus Industrie

This is in response to your request for information on Airbus Industrie. I am enclosing a pamphlet on Airbus Industrie that I received from the company which provides information on the structure and operations of this aircraft manufacturing consortium.

Major partners to Airbus Industrie represent three countries: France, Germany, and Spain. One of the major partners in Airbus

Industrie is Aerospatiale, the French national aerospace firm. Aerospatiale produces 36.1 percent of the components for the A300 aircraft. Another important partner is Deutche Airbus which is a joint venture of two privately owned German firms—Messerschmitt-Bolkow-Blohm and Vereiningte Flugzeug Werke-Fokker. This venture's share of the production is also 36.1 percent. The third member is a privately owned Spanish company, Construcciones Aeronauticas S.A. (CASA). CASA's production share is 4.2 percent. In addition to these member companies the consortium also includes two associates: Hawker Siddeley, a national English firm, that has a production share of 17 percent; and a privately owned Dutch firm, Fokker VFW, that has a 6.6 percent share.

The banks of the member countries finance each partner's contributions to A300 production. They also provide credit insurance and sales financing to customers. According to this pamphlet, the governments of the various countries mentioned act as bankers to the A300 program and do not get involved in detailed technical and commercial matters. Production of the A300 is backed by French and German goverment guarantees which insure that adequate funds are made available through normal commercial channels.

Unlike the Airbus consortium arrangement which involves considerable government support, U.S. aircraft producers operate with much less government involvement. Generally, the structure of the domestic aircraft industry promotes competition among individual producers as opposed to a consortium type arrangement like Airbus. Domestic manufacturers in the United States ordinarily develop specification for new aircraft through consultation with carriers that expect to be in the market. However, the carriers are not obligated to buy the aircraft.

Many of the domestic airlines use financing similar to the equipment trusts employed by the railroads; that is, title is held by a lessor, who will often mortgage the equipment as much as possible and then lease it to the air carrier. In this way the lessor receives the benefit of depreciation, and when applicable, the investment tax credit, both of which can be applied to reduce his liability on other income. This kind of financing is especially attractive to carriers that might encounter problems in financing the purchasing of equipment themselves.

The kind of subsidy that the United States government has provided our aircraft manufacturers has, with few exceptions, been indirect. The most important has been the technology, labor force and physical facilities that have evolved from the development and production of aircraft for military purposes since World War II.

Loan guarantee programs all embody elements of a subsidy. The amount of the subsidy represented by a loan guarantee is a function of the degree of risk of the project and the financial soundness of the borrower. The riskier the project or the riskier the borrower, the greater the subsidy.

The best known direct subsidy to a U.S. aircraft manufacturer was the $250 million government loan guarantee extended to Lockheed in 1971. Loans provided by the Export-Import Bank are another form of government subsidy. These loans assist in the sales of U.S. commercial aircraft to foreign nations. By providing loans to finance exports of commercial aircraft, the Bank has made it possible for foreign carriers to obtain U.S. produced aircraft at reduced cost. The activity of the Export-Import Bank in this area is covered in the report, The Importance of the Eximbank to the U.S. and Its Airplane Industry, which I sent you earlier.

GWENELL BASS,
Analyst in Industrial Organization, and Corporate Finance.●

RESOURCES, CLIMATE AND EXTINCTION

HON. LEO J. RYAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. RYAN. Mr. Speaker, I would like to bring to the attention of my colleagues articles appearing in the Los Angeles Times and a short article appearing in the September 18, 1978, edition of Time. The September 9 article by Sandra Blakeslee and the September 10 article by Robert A. Jones report on the First International Congress of Research in Conservation Biology, which was recently held in La Jolla, Calif.

The congress was held out of concern for the devastation of the tropical rain forests around the world by developing nations and exploitive multinational concerns. The combined activities of these institutions some estimate may cause millions of species of tropical plant and animal life to become extinct in less than 50 years. The loss of such plant and animal species would be one of the greatest tragedies in the history of this planet. The other concern of these scientists is the virtual halting of evolutionary processes on the Earth because of the destruction and reduction of wildlife habitation.

Because of the failure of governments and large corporations to engage in comprehensive long-range planning, we can only speculate on what the loss of the tropical rain forests will mean to life as we know it on Earth. Certainly there is a need to take stock of what exactly is being lost both in terms of plant and animal species and to seek a way to conserve such species in some way.

As noted in the Time article, there is an equally large problem with the increasing amount of carbon dioxide being released into the atmosphere as a by-product of man's activities. The Earth depends on plant life, largely in the tropics, and the oceans to remove most of the carbon dioxide in the atmosphere.

According to Jones, rain forests are "being reduced at a rate of 51 acres a minute, or 73,400 acres per day." Without the forests helping to take in the carbon dioxide spewing into the atmosphere at an ever increasing rate, then man may very well bring about a warming of the Earth and suffer the consequences. World governments and business need to control their activities that contribute to this problem. The United States must take the lead in calling for the conservation of plant and animal life and the study of the long-term effects of adding carbon dioxide at an increasing rate into the atmosphere.

The articles follow:

[From Time Magazine, Sept. 18, 1978]

WARMING EARTH? CO_2 MAY CHANGE WORLD CLIMATE

Nature could hardly have created anything that seems more innocuous. An invisible and odorless gas, carbon dioxide is a simple molecular linkup of just a single atom of carbon and two atoms of oxygen (CO_2). It constitutes a mere fraction of the atmosphere (.03 percent vs. about 78 percent for nitrogen and 20 percent for oxygen) but becomes dangerous to man and other air-breathing creatures when it accumulates in concentrations higher than 10 percent as, say, at the bottom of deep wells or mine shafts.

Yet CO_2 is vitally important to the earth's well-being. A key ingredient in photosynthesis—the miraculous process by which green plants grow and produce oxygen—CO_2 directly or indirectly sustains all terrestrial life. Now it appears that the gas may carry the potential for trouble as well. Accumulating in the atmosphere at an accelerating rate, carbon dioxide could significantly raise global temperatures by early in the next century and dramatically alter the quality of life. With such a prospect under study, a federal official says: "We have about ten years to come up with an answer."

As the density of CO_2 increases, the gas acts somewhat like a one-way mirror. Rays of life-giving sunlight can pierce it, heating the surface of the earth. But when this heat is radiated back by the ground in the form of longer infra-red waves, it is screened by the CO_2, which absorbs it, thereby raising its own temperature and that of the ground. This so-called greenhouse effect is dependent on the concentration of atmospheric CO_2: the greater the amount, the warmer the earth may become.

There is nothing mysterious about the buildup of atmospheric CO_2. All fires, from the smoky flames of cave dwellers to the searing hearth of a modern steel plant, produce CO_2. It makes no difference whether the fire is fueled by wood, coal, oil or gas. The inevitable byproduct is always dumped into what scientists sardonically call the "sewer in the sky."

Enormous quantities of CO_2 have been belched into the atmosphere since the start of the Industrial Revolution. But only recently has the increase become a cause of concern. In the past 20 years, it rose almost as much as it did in the century before. These measurements, made by the Scripps Institution of Oceanography atop Mauna Loa volcano on the island of Hawaii, are confirmed by similar readings at locations as far-flung as the South Pole, Alaska and Samoa.

Of the millions of tons of CO_2 poured into the atmospheric sewer each day, about half apparently remains there. Still unclear is where the rest goes. The oceans provide a major natural "sink," soaking up much of its solution, as do the world's great forested zones, which sop up CO_2 for photosynthesis.

But an increasing number of scientists maintain that the forests are being slashed and burned at a perilous rate. This is being done both to extend agriculture and, especially in the impoverished developing countries, to use the wood as a fuel. By desiccating and destroying the land, the ruthless felling of trees has still another harmful side effect: it exposes rich topsoil, or humus, and allows the escape of CO_2 formerly trapped in it.

Yet by far the most significant factor in the accumulation of CO_2 is the burning of fossil fuels. Especially worrisome is the Carter Administration's choice of coal as the U.S.'s great energy hope. Unlike competing nuclear power, which gives off no CO_2, coal will inevitably add to a buildup of the gas, as will the increased consumption of other fossil fuels. A National Academy of Sciences study panel warns that if the use of coal proceeds along the Administration's projections, atmospheric concentration of CO_2 might reach four to eight times that of the pre-industrial level by the year 2150. That, predicts the panel, could produce an increase in the global mean air temperature of more than 6° C (11° F.)—creating climatic conditions that the earth has not seen since the

age of the dinosaurs more than 70 million years ago.

Even if the hike in temperature were smaller—say only a degree or so—the effects might not be minor. Applied year round to the entire earth, such an increase could shift whole forests, grasslands and deserts. At the polar regions, enough ice could melt to elevate sea levels by as much as 5 m (16 ft.). That would eventually inundate low-lying coastal areas round the world, including parts of The Netherlands and the Atlantic seaboard.

There would be some benefits, to be sure. Heavier rainfall would possibly restore Africa's dry Sahel, the Sahara and the Arabian desert to their ancient fertility and make vast tracts in Siberia and Canada suitable for growing cereal grains. But the rich wheat and corn belt in the central U.S. would probably become too dry for these crops. Hundreds of millions of people might suffer from these dislocations.

Still, scientists are by no means certain that nature will follow their scenarios. The earth's climate is the product of such a complex mix of factors that it becomes impossibly difficult to isolate just one. For example, climatologists do not yet know the exact role of atmospheric dust. Dust can cool the earth by screening out warming sunlight, as has been noted after major volcanic eruptions like that of Krakatoa in 1883, yet also act as at atmospheric cap keeping in heat. Says Scripps' Charles Keeling: "Dust impedes radiation in both directions. We do not know if the net effect is heating or cooling." No less puzzling is the possible effect on world temperature of changes in the atmosphere's ozone layer.

There is another wrinkle in these climatological complications. For about two decades ending in the early 1970s, the earth was in what seemed to be a cooling phase. Some climatologists suggested that the chill marked the beginning of a "little ice age," like the one that persisted in Europe from about 1550 to 1850. If they are right, then the cooling forces—which could be attributable to anything from increased atmospheric dust to subtle changes in the amount of heat received from the sun—will be pitted against the warming force of the so-called greenhouse effect. For a while, at least, these two opposites might balance each other neatly.

But if the burning of fossil fuels continues to increase at an annual rate of 3% to 4%, as scientists like Stephen Schneider of the National Center for Atmospheric Research consider likely, then the greenhouse effect may well prevail. In that case, it will be a hot time on earth. And once the warming has taken place, even if all discharges of CO_2 into the atmosphere could be abruptly halted, it would take centuries for the excess gas to be absorbed by the oceans and dwindling forests.

[From the Los Angeles Times, Sept. 10, 1978]

RAIN FORESTS VANISHING—TROPICAL ANIMALS, PLANTS IN PERIL, BIOLOGIST WARNS

(By Robert A. Jones)

LA JOLLA.—A "terrific onslaught" is destroying the earth's tropical rain forests at such a rate that thousands of plants and animal species—some of which are still unknown to man—could disappear if preservation methods are not adopted soon, a British scientist has told a conference on conservation biology here.

Timothy Whitmore, a biologist at Oxford University, described the second half of the 20th century as "the brief period during which man reduced the area of the world's richest and most complex ecosystems to about one-third of their potential area."

The tropic regions of the earth are now estimated to contain about 90% of all plant and animal species and scientists believe that only half of those have been identified by man.

As late as 20 years ago, tropical forests were regarded as so vast that they would never be seriously diminished by man. But since 1960 the arrival of the lightweight chainsaw and bulldozer have made possible the clearings of enormous tracts of forest in Brazil, Malaysia and other countries for lumber products and for domestic agriculture.

At present, Whitmore said, rain forests are being reduced at a rate of 51 acres a minute, or 73,400 acres per day. And the rate itself is accelerating, he said, so that by the year 2000 only 30% of the present area will remain.

The result may be the tragic loss of "the most complex ecosystems which scientists are only beginning to investigate and which, because they are the most intricate ever to have existed on earth, have enormous value to the science of ecology," Whitmore said.

The three-day conference was the first such gathering of its kind. Michael Soule, one of the organizers, described the conference as an attempt to bring together population biologists with experts of other disciplines devoted to the conservation of natural areas. "What we're really trying to do is kick off a new biological discipline, that of conservation biology," Soule said.

While there have been many conferences devoted to wildlife species in the past, Soule maintained that scientists devoted to the study of entire ecosystems have largely remained uninvolved. "We've been reluctant to muddy our hands in applied conservation," he said, "but now we're going to try."

Significantly, all of the conference's presentations were devoted to work that has been carried out in the tropics. While temperate regions of the globe also have their problems, scientists here describe the tropics as the place where the earth's huge diversity of plants and animals will be saved or lost.

And clearly the trend that disturbs all of them is the disappearance of habitat. In some cases, the land is being cleared for the extraction of hardwoods, which are largely exported to Western industrial nations of Europe and North America. In other cases, land-hungry farmers of developing countries are making inroads into forests for subsistence cultivation.

"The basic problem is not biology, but the population explosion and multinational corporations exploiting tropical resources for the benefit of industrial countries," Soule said.

"There must be a counterbalance to human greed, and perhaps we are seeing the beginning of that," he added.

The consequences of overexploitation could go far beyond the loss of plants and animals, Whitmore speculated. Several studies have shown, he said, that the removal of forests from tropical areas could affect world climate, altering the present heat balance between different sections of the earth's surface.

The seriousness of the possible consequences, Whitmore noted, could possibly lead to countries altering the present course of large-scale land clearing. "Our argument may appeal to enlightened self-interest," he said, "if our leaders are convinced that this kind of thing is going to matter."

[From the Los Angeles Times, Sept. 9, 1978]

ANIMAL EVOLUTION ENDING, EXPERT SAYS

(By Sandra Blakeslee)

Five hundred million years of animal evolution are coming to a halt within this generation, a population biologist told a meeting of conservationists in La Jolla Friday.

Warning that the world is in the midst of a "biological holocaust without precedent," Michael Soule, a professor at UC San Diego, said that the evolution of vertebrates in the tropics will cease by the year 2000.

This does not necessarily mean that all of the animals will become extinct, Soule explained, although extinction is inevitable for many species. Rather, tropical mammals and birds will simply stop evolving—changing their genetic traits slowly through time within the trial and error laboratory of the natural world—for lack of enough space.

Soule addressed the first international congress of research in conservation biology in La Jolla.

His theme was reiterated by other experts in talks describing the state of wildlife on the planet.

Tropical forests are being cut down at unprecedented rates. Animal populations are diminishing from disease, predation and starvation as never before.

The earth's stock of living things is being rapidly depleted, Soule said. As many as a million species—ranging from insects to large animals—will become extinct in the tropics alone by the turn of the century—which is somewhere between 10% and 20% of all species on the planet. Nine-tenths of all species live in the tropics, he said.

The cause of the problem, according to the biologists at the meeting, is mankind itself. Rapidly expanding human populations are pushing the animals onto smaller and smaller parcels of land. As this occurs, there is simply less space for the natural processes of evolution to occur.

The crowding of species onto isolated preserves will not allow for one critical evolutionary process to continue, Soule said. It is called speciation.

Speciation is a process by which two or more groups of animals within the same species become separated from one another for long periods of time. Natural barriers such as mountains or streams are often enough to isolate groups. With time, genetic changes appear that will in some cases wipe out a population of animals and in some cases make the animals much more successful.

It is through speciation that the most important evolutionary changes have always occurred, Soule said. Other evolutionary changes, called adaptations, are often to a creature's advantage. But speciation is the driving mechanism behind evolutionary change, Soule said.

In the world today, where most of the wild animals in the tropics have been crammed into just a few small areas, speciation will stop, according to many biologists. Novelty in nature will be wiped out.

There is but one stopgap solution—the creation of as many animal preserves as possible.

However, there are many dangers for the animals even if such sanctuaries are formed. One is disease. If all the animals of a species are concentrated in one area, epidemic can destroy the entire population.

Also, animals kept in capitivity frequently lose natural resistance to diseases encountered in the wild. After several generations, because they are no longer continuously exposed to the disease, they lose the genetic defenses their ancestors evolved.

Another danger lies in natural catastrophes such as drought and floods. With "all the eggs in one basket," an entire population of an animal could be wiped out rapidly.

Another issue involves the speed with which species "collapse" once they are isolated. It has been observed that when animals are packed too tightly into small game reserves, the rate of extinction shoots up. Extinction begins to occur in decades, not millenia.

Extinction rates rise when population size is chronically small. Predictions are, for example, that one-half of the species present today in Kenya's largest game reserve will

be gone in 50 to 200 years. The large predators will go first. It is known, Soule said, that birds and mammals have higher extinction rates than other animals since they are warm blooded and need more territory in which to acquire enough food to meet their relatively high energy needs.

Inbreeding of captive animals is a dangerous business, Soule said, since it results in a loss of genetic variability. With continued inbreeding of a small number of animals, the litter size drops and the babies are less vigorous. There is a dramatic loss of productivity. "Inbreeding is like radiation," Soule said. "There is no harmless amount. It is also like cancer or slow poisoning. It sneaks up on you and by the time you notice, it's too late."

For many such reasons, biologists at the conference stressed that more animal preserves are needed in the tropics and they must be as large as possible.

Studies of island mammals and birds indicate that vast spaces are needed for speciation to occur, with Madagascar being the minimum size for optimum evolutionary health. No preserves in the tropics are that large.

There is but one interim solution, Soule and others said. Preserves must be carefully managed by trained biologists who will have to swap animals back and forth between preserves to keep genetic pools the genetic mix of each species—dynamic.

However, this strategy of animal management will not permit speciation. On the other hand, it will prevent animals from becoming extinct.

That is the choice which must be faced, Soule said. If many animals are to survive on the planet, they will not be able to continue evolving as in the past.●

BALANCE(S) OF POWER SERIES: BOOK II(I)(ii)—NATIONAL MORALE

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, in the last issue of the CONGRESSIONAL RECORD, I inserted the first part of an article entitled "The 'Militarization' of Soviet Society" by Col. William E. Odom which first appeared in Problems of Communism, September 1976. The conclusion of Colonel Odom's article follows:

THE CIVIL DEFENSE STRUCTURE

When General-Colonel A. T. Altunin made his public debut as Deputy Minister of Defense and head of "Civil Defense USSR" in October 1972, he did so with an article ostensibly occasioned by the 40th anniversary of civil defense in the Soviet Union.[56] The advent of nuclear weapons, he declared, meant that "defense must be conducted in every city, village, and production unit in the economy, on the entire territory of the state." In principle, Altunin was adding nothing to what Red Army leaders had said fifty years earlier about defense of rear areas.[57] Technically, however, nuclear weapons have complicated matters and made necessary a more complex system than the old tradition of localism in Soviet civil defense. Altunin explained it thus:

The tasks of defense of the population and the economy from contemporary weapons demanded the creation of a completely new all-state defense system which could, with the leadership of the Communist Party of the Soviet Union, under a unified military command, together with all the armed forces, with active participation of the entire people, secure the life activity of the state in conditions of severest war. That system emerged as Civil Defense USSR.

What is new in this system? Put briefly, two features are novel, both of which have developed within the last decade or so.[58] First, the dominant administrative role of the Ministry of Defense has gained more substance than ever before. Second, local civil defense organizations have been linked for the first time into an all-union system of command, control, and maintenance. While the subject is too vast for detailed treatment here, let us briefly examine some of the major evidences of these two features.

Although the structure of General-Colonel Altunin's Civil Defense staff in the Ministry of Defense is not public information, this staff is clearly the nerve center of a system with extensive linkages to the civil bureaucracy. It appears to be tied to the State Planning Committee (GOSPLAN) and the production ministries in the civil economic sector and to the General Staff of the Armed Forces in the military sector. It is probably also represented in most other ministries, but especially in the Ministry of Internal Affairs. This ministry controls all the nation's fire departments, most of which are staffed by the MVD troops under the ministry's jurisdiction.

The same close linkage with the civil bureaucracy is still more evident at the republic level, although the structure differs slightly from that at the center. Here, the formal "chief" of civil defense is normally the civilian chairman of the republic executive bureaucracy, but the real direction of civil defense activities is vested in a military "chief of staff" for civil defense—usually an officer of relatively senior rank, e.g., a General-Colonel in the Ukraine.[59] The pattern is the same at the oblast, district, and city levels. In Moscow, for example, the chief of civil defense is V. F. Promyslov, Chairman of the Executive Committee of the Moscow City Soviet (Mossovet gorispolkom), and General-Major S. A. Kuzovatkin is his chief of staff for civil defense.[60] Thus, there is an interlocking arrangement at every level from the all union center down to the lower echelons of the state territorial administration.

Moreover, Altunin does not simply sit at the top of an apparatus interwined with the state bureaucracy; he also has special troops under his command. Civil defense units are normally of battlation or company size, but there have also been occasional references which suggested the existence of regiment-size units.[61] Civil defense exercises are frequent, and the troops also participate occasionally in relief operations at times of natural disaster—as, for example, in operations to control the enormous forest fires around Moscow in the extremely dry summer of 1972.[62] To provide command cadre for these units and for the civil defense staffs, there is a relatively new civil defense officer-training school offering a three-year course.[63] Taken together, the staff hierarchy and network, the specially trained officers, and the civil defense troops add up to something like a sixth branch of service—not as large as the other five (Ground Forces, Air Force, Air Defense, Navy, and Strategic Rocket Forces) but with an institutional status that is outwardly similar to that of the others in many respects.

Altunin's organization, however, is only the taproot. It is surrounded and fed by a dense growth of ancillary organs. Every factory, school, institute, hospital, and collective farm is required to have a civil defense organization. The "chief" is normally the head of the institution, but he, too, depends on a "chief of staff" to do the real work. The main difference between these organizations and the local soviet executive committee's civil defense structure is that there are seldom any uniformed military personnel. A bakery, a tire plant, or a steel mill normally has a civilian chief of staff for civil defense, who takes charge of organizing all workers into teams, training them in the use of civil defense equipment, and preparing personnel evacuation plans. He is also concerned with ensuring that new construction takes into account civil defense criteria such as adequate water and fuel supplies, blast resistance, and so on."

Some might view all this as tokenism or wishful thinking rather than as a genuinely effective civil defense system. But even though it might prove defective in the event of war, it cannot be dismissed as less than a serious effort. Literally thousands of civil defense exercises are held each year, with city districts quite commonly stopping all activity for training exercises that last a full day.[65] Factories, plants, schools, and other such institutions hold still more frequent exercises.[66] According to press reports, the executive committees of local and regional governments perennially keep civil defense on their agenda of problems for discussion.[67] Conferences on civil defense occur rather frequently as well, reflecting efforts to achieve interdepartmental coordination, especially among the various ministries concerned.[68]

The new civil defense system, unlike the old, puts more than a formal effort into the rural areas.[69] One reason for this is fairly obvious. Radioactive fallout makes agriculture far more vulnerable than in the past; yet the damage can be greatly reduced if the farm population is effectively trained in defensive measures and decontamination techniques. Perhaps more important, however, is the potential role of the rural villages in receiving and housing evacuees from urban areas. This takes highest priority in village exercises and frequently ties the villages near an urban center into joint city-village exercises.[70] It is only with the planning of defense against nuclear weapons that it has become necessary to prepare for large urban evacuations. Naturally, such planning must include utilization of the agrarian sector in a supportive role.

Public education is, of course, a major prerequisite for making the whole civil defense system viable, and it takes up the largest part of day-to-day program activity. Courses in civil defense are taught in the public schools in the second and fifth grades of the standard academic curriculum—that is, to eight- and eleven-year-old children.[71] Public lectures play a key role not only in mass education but in organizing residential blocks for phased evacuation. The economic ministries are required to carry most of the financial burden involved in efforts to make civil defense "a way of life," [72] but they are frequently reluctant or slow to provide the funds needed to meet all the demands of the civil defense program.[73]

To sum up, this program amounts to a massive system of military education in peacetime. In wartime, it would play a key part in maintaining administrative control of the civil sector. The Ministry of Defense has been given the task of putting the core of the centralized structure together, but the costs in money, material, and labor are borne mostly by the civil sector—the economic ministries and state bureaucracy, production units, and the public schools. Administratively, the system creates a new military presence at all levels of the state bureaucracy, thus approaching Frunze's ideal of militarizing the population through the state apparatus.

CONCLUSIONS

One can hardly explore the labyrinth of Soviet military training programs and structures without coming away with a sense of their pervasiveness and integration into all

Footnotes at end of article.

aspects of Soviet life. By the time a child is in the second grade, he receives his first formal instruction in survival in nuclear war. He learns not only that survival is possible but also how to go about saving himself personally. By his midteens, he confronts the "military supervisor" of his secondary school. About the same time, the local military commissariat is suggesting that he "volunteer" for one or more of the specialized military training courses offered by DOSAAF organizations. By age 18 or 19, he expects to be called to two years of active military service. If he matriculates at an institute of higher learning, he implicitly commits himself to becoming a reserve officer. If he wants to pursue any of a number of engineering specialties at the graduate level, he will learn that the best training in those areas—sometimes the only training—is found in military research facilities and in the graduate programs of military academies and schools. Even if he is a gifted musician and makes his way to the Moscow State Conservatory, he will not escape the militarization of Soviet education, for there he will find a military music department with generals as professors of directing and composition.[74] If he becomes an economist and finds employment in GOSPLAN, discovering a General-Colonel in the post of a deputy chief would hardly surprise him.[75] Throughout his adult life, the omnipresence of the military will strike him as normal, to be expected. He does not see the military as a thing apart but as something of which *he* is a part.

He will not find it strange—even though he probably will consider it onerous—to be importuned for contributions of money and time to the local DOSAAF programs long after he has lost interest in "military sports" such as shooting, parachuting, and tank-engine repair. Nor will be be outraged at finding himself on a civil defense decontamination team in the factory, farm, institute, or school where he is employed. He may resent the training sessions and may not put his heart into such forms of "continuing adult education" in the arts of modern warfare, but it probably would not even occur to him that Soviet society is abnormal in displaying so many aspects of a "garrison state." [76]

We have suggested at least two sources of this militarization of Soviet society. First, socialism, as a political ideology and as a guide to social and economic organization, correlates highly with warlike states. It would, of course, be wrong to say that socialism per se causes a polity to militarize. As Quincy Wright has observed, "socialism is more often developed from necessity than from theory, though in recent instances the latter has played a part." [77] The necessities can vary, but leaders inspired by various necessities frequently turn to the same ideological banner to justify militarizing programs. The reason is not far to seek. Socialism emphasizes the social or public interest over the interests of individuals. And that is precisely what a state and its army must do in war—sacrifice individuals and their private interests for the state's political objectives.

When the Bolsheviks took power, the very act was a declaration of war on society throughout the old regime's imperial territories. The ensuing internal war has waxed hot and cold throughout the nearly sixty years of Soviet history. Army General V. G. Kulikov, Chief of Staff of the Soviet armed forces, declared in 1973 that the Soviet military's "internal" role had virtually ended, giving way in the present stage of "developed socialism" to a growing "external" role not simply to defend the Soviet Union but also to secure the expanding territories of the socialist bloc.[78] Kulikov may be excessively optimistic about the internal front, but his notion of a regime at war at home and abroad is instructive and cogent.

The second major source of the militarization of Soviet society has been the military-political tradition of the Tsarist empire. Before the advent of the Bolsheviks, the old regime had already been at war internally. If urban industrial strikes were relatively new in Russia at the turn of the century, peasant disorders and armed opposition by ethnic minorities in the borderlands were chronic. The empire ensured its own collapse when, in addition to internal struggles, it entered a vast foreign campaign on its European borders. The upshot was that the Bolshevik regime, arising amidst these unresolved and precarious military circumstances, both internal and external, had to accept as its birthright most of the tensions that had made militarization of the old state seem imperative to the imperial leadership.[79] Thus, the Tsarist military-political tradition was genetically transmitted to the Soviet regime.

One is forced to conclude, therefore, that the militarization of Soviet society is neither an aberration nor an unusual or extraordinary state of affairs. It is a traditional policy which is merely being currently express and justified in Marxist-Leninist ideological terms. When it comes to the future, it is important to recognize that the key problems that gave rise to the Tsarist military-political tradition in the first place and that were inherited along with that tradition by the Soviet regime—the peasant-agricultural problem, the nationality problem, and the foreign policy problem of a colonial, expansionist power—have remained largely unsolved despite the strong efforts of the Soviet leadership. If it cannot be said that the application of Marxist-Leninist ideology caused these problems, it can be argued cogently that it exacerbated them. Thus, both sources of the impetus to militarize persist today. We should not expect, therefore, that Soviet society will be spared the policies of militarization in the foreseeable future—unless there are significant changes either in the economic and social structure or in the ideology that shapes the leadership's thinking.

FOOTNOTES

[53] *Ibid.*, Oct. 4, 1972.

[57] *Cf. The Soviet Volunteers*, pp. 43–44.

[58] For a description of the civil defense system prior to these developments, see Leon Gouré, *op. cit.*

[59] *Krasnaya zvezda*, Jan. 15 and March 16, 1975.

[60] *Ibid.*, Jan. 15, 1975.

[61] See Altunin's reference to *chast'*, a somewhat imprecise term which normally is understood to mean "regiment," in *ibid.*, Oct. 4, 1972. Also see *ibid.*, March 17, 1973, for an editorial on civil defense troop training and pictures of such troops; and *ibid.*, Oct. 3, and Nov. 24, 1973, for other references.

[62] See *ibid.*, Feb. 7, 1973.

[63] *Ibid.*, March 7, 1973.

[64] N. P. Krechetnikov and N. P. Olivyanishnikov, *Grazhdanskaya oborona na mashinostroitel'nykh predpriyatiyakh* (Civil Defense in Machine-building Enterprises), Moscow, Izdatel'stvo "Mashinostroyeniye," 1972, pp. 32 ff; and *Grazhdanskaya oborona* (Civil Defense), Moscow, "Vysshaya shkola," 1973, pp. 6–11.

[65] See *Krasnaya zvezda*, June 13 and July 15, 1972; July 8, 1973.

[66] See *ibid.*, July 15, Aug. 5, Aug. 29, Sept. 7, and Nov. 15, 1972; May 16, Aug. 25, and Nov. 29, 1973; Feb. 8, 1974; and Feb. 8, 1975. Also *Sovetskiy patriot*, Aug. 30, 1972, and Feb. 14, 1973.

[67] See *Moskovskaya pravda* (Moscow), Jan. 17, 1973.

[68] See, *e.g.*, *Krasnaya zvezda*, July 19, 1972, and Jan. 17, 1975.

[69] See the chapter on agriculture in *Grazhdanskaya oborona, supra*, pp. 138–54. For an example of a rural civil defense exercise, see *Krasnaya zvezda*, Feb. 8, 1974.

[70] For examples of such joint city-village exercises, see *ibid.*, Aug. 5, 1972, and Feb. 8, 1974.

[71] *Sovetskiy patriot*, Aug. 16, 1972.

[72] *Krasnaya zvezda*, Feb. 13, 1975.

[73] For the candid remarks of the Chairman of the Lithuanian Council of Ministers on many of the problems of program implementation but particularly of funding by ministries and other state agencies, see *Sovetskaya Litva* (Vilnius), Oct. 4, 1972.

[74] See the obituary of General-Major I. V. Petrov in *Krasnaya zvezda*, June 6, 1975.

[75] For example, at the time of his death in July 1974, Engineer General-Colonel V. Ryabikov was serving as a first deputy chief of GOSPLAN. See *Krasnaya zvezda*, July 22, 1974.

[76] We are mindful of the special meaning which H. D. Lasswell has given to the concept of a "garrison state" in his *World Politics and Personal Insecurity*, New York McGraw-Hill, 1935. The likelihood of war and the threatening character of the international environment would, in his view, incline political leaders to become increasingly dependent on their military chiefs, allowing the latter to exert influence on the leaders to turn their societies into military camps continually preparing for war. In this scheme, international factors are the primary causes of domestic political changes leading to the garrison state. The present author would argue, however, that domestic rather than international factors are a more important primary cause of the garrison condition in the Soviet Union.

[77] *Op. cit.*, p. 1165.

[78] *Krasnaya zvezda*, Feb. 23, 1973.

[79] On the Bolshevik military birthright, see Bertram Wolfe, "The Influence of Early Military Decisions Upon the National Structure of the Soviet Union," *American Slavic and East European Review* (New York), No. 9, 1950, pp. 169–79.●

REFUGEES AND LIBERTY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. DORNAN. Mr. Speaker, last week I experienced the deep joy of a visit by a Hungarian refugee couple and their son whom I had the privilege of assisting to come to this great Republic of ours. Noting the hope and eager anticipation on the faces of these fortunate escapees from a land overshadowed by the triumph of tyranny, I could not help recalling the lofty sentiments expressed by that greatest of American orators, Mr. Daniel Webster, in his commemoration of the first settlement of New England: "Forever honored be this, the place of our fathers' refuge! Forever remembered the day which saw them * * * broken in everything but spirit, poor in all but faith and courage * * * their trust in Heaven, their high religious faith, full of confidence and anticipations, all of these seem to belong to this place, and to be present on this occasion, to fill us with reverence and admiration."

While sharing our thoughts and sentiments on this joyful occasion, these

youthful refugees spoke words that one hears only sparingly, Mr. Speaker, in these troubled days of our Republic: "We are beginning to understand the meaning of freedom." It is a tragic but commonplace observation, Mr. Speaker, that those of us grown accustomed to the delights of liberty may grow complacent and, at length, oblivious, as to its nature and the price, in vigilance, to be paid for its preservation. The distinguished English essayist, Mr. Hilaire Belloc, perhaps best put the matter when he wrote that: "Those of us in seemingly secure and comfortable circumstances sit around a cheerful campfire and laugh at the Barbarian. But from the shadows beyond the firelight, great grim faces stare at us. And on those faces there is no smile."

Mr. Speaker, too many of us have grown indifferent in the dry desert of our ignorance. We have forgotten that the springs of liberty nourish and vivify. But, then, we are periodically reminded, whether by a hero of the stature of a Solzhenitsyn or by a trio of young Hungarian refugees, that liberty is a wondrous thing, a thing to be contemplated often and deeply. Liberty, as the poet has said, will not descend to a people; a people must raise themselves to it; it is a blessing that must be earned before it can be enjoyed."

Mr. Speaker, the heart-felt words of that Hungarian family expressed in awe at the spirit of liberty which vivifies our great Republic, should serve as a daily reminder to those of us entrusted with keeping alive that spirit, of the solemn nature of our task. Let us dutifully heed the eloquent words of the American orator Mr. R. C. Winthrop: "This widespread Republic is the true monument to Washington. Maintain its independence. Uphold its constitution. Preserve its union. Defend its liberty. Let it stand before the world in all its original strength and beauty, securing peace and order, equality and freedom, to all within its boundaries, and shedding light and hope and joy upon the pathway of human liberty throughout the world * * *" ●

COMMITMENT TO LEBANON

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Ms. OAKAR. Mr. Speaker, last night one sentence of the President's speech before Congress was devoted to the country of Lebanon: The President said:

We must also join in an effort to bring to an end the conflict and terrible suffering in Lebanon.

It is my hope the President follows up this important statement with action. The sad fact is that our foreign aid appropriations bill contains absolutely nothing for this important ally while other countires receive millions and billions. The President has addressed the problem; let us pray that it is followed up with action. ●

ANOTHER REASON YOU SHOULD SIGN DISCHARGE PETITION NO. 1

HON. RONALD M. MOTTL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. MOTTL. Mr. Speaker, in case you missed it, the Washington Post on September 18 carried a thoughtful article about the noted University of Chicago sociology professor, Dr. James S. Coleman, and his views on forced busing.

Dr. Coleman was a prime architect of forced busing in the 1960's. But just recently this prominent educator has concurred that it is not the answer to the question of improving educational opportunities for our children.

His views are incisively set forth in the article by Lawrence Feinberg. I would like to share the piece with you, and once again urge you to sign discharge petition No. 1 on the Clerk's desk which is designed to put behind us once and for all the issue of court-imposed busing.

The article reads as follows:

DESEGREGATION DISCOUNTED

(By Lawrence Feinberg)

Sociologist James S. Coleman, whose massive study in the mid-1960s has been widely used to support school desegregation, now says it is a "mistaken belief" that black students learn better in integrated classrooms.

During the past decade, Coleman said, research throughout the country has shown that "it is not the case that school desegregation, as it has been carried out in American schools, generally brings achievement benefits to disadvantaged (black) children."

In some situations, Coleman said, desegregation has brought slight gains in black achievement, but in many others there has been no change or a slight loss.

Even though he had argued a decade ago that "integration would bring about achievement benefits," Coleman said, "It has not worked out this way in many of the school desegregtaion cases since that research. . . .

"Thus, what once appeared to be fact is now known to be fiction," Coleman said.

Coleman, a professor of sociology at the University of Chicago, presented his new conclusions in a paper in April. He repeated them in an interview this weekend.

"Desegregation has turned out to be much more complicated than any of us ever realized," Coleman said. "There appear to be beneficial effects for some black kids, those who are better students, and harmful effects for blacks who are poorer students. It all seems to balance out, which is quite the reverse of the implications of my own research" in the mid-1960s.

Coleman's 1966 report, called "Equality of Educational Opportunities," was authorized by Congress in the 1964 Civil Rights Act and sponsored by the U.S. Office of Education. It still is the most extensive piece of educational research ever conducted, involving tests and surveys of about 600,000 students and 60,000 teachers in 4,000 schools around the country.

Its most widely noted conclusions were that the social class composition of a school had more impact on student achievement than either resources or teaching methods, and that lower-class black children scored somewhat higher on standardized tests in schools with a middle-class white majority than they did in schools where all the children were poor and black.

Coleman stressed that the achievement gain occurred not because of skin color but because of the middle class background and "educational resources" that many white children bring from home.

After his report, Coleman expressed his views widely, not only in scholarly articles but also in testimony before congressional committees and in school desegregation cases in courts.

Among these was Julius Hobson's suit against the Washington school system. Coleman testified in Hobson's behalf and was cited by U.S. Judge J. Skelly Wright to support the court's finding that "Negro students' educational achievement improves when they transfer into white or integrated educational institutions."

Coleman said he now believes that this view is "incorrect . . . wishful thinking."

In the interview, Coleman said the difference between his conclusions a decade ago and the results of desegregation since then reflects two main factors—a difference in the way desegregation has been carried out, and the availability of new research.

When he collected his data in 1965, Coleman said, nearly all the black children attending integrated school in the South were well-motivated volunteers under "open enrollment" plans. In the north almost all integration had occurred in neighborhood schools where blacks and whites lived nearby.

Since then, Coleman noted, many school districts have been desegregated through mandatory busing programs, ordered by courts or state agencies, that bring children together from wide areas.

"Much of it has been accompanied by the kinds of things that don't foster achievement," Coleman said. "Often there's been some degree of turmoil and lower standards, with white teachers being afraid to apply the same standards to black students and therefore not teaching them as well."

Coleman said his 1966 report was based on data collected at one time, with conclusions drawn by comparing youngsters in schools with different proportions of black and white students.

Since then, he said, researchers have been able to follow children for several years after they switched to desegregated schools. Although Coleman has not been directly involved in any of this research, he said a review of over 100 desegregation studies in cities around the country—from Boston to Berkeley—shows "no overall gains."

"Some of the most carefully studied cases, such as in Pasadena and Riverside, Calif., Coleman said, "show either no achievement effects or else losses."

In the South some gains by blacks have been reported by the National Assessment of Educational Process, but Coleman said these occurred in both segregated and integrated classrooms. He said these gains probably are the result of "the broader impact of desegregation in the South . . . it drew a lot of attention to schools that used to be the worst in the nation," rather than a direct result of blacks and whites being taught together.

Before going to the University of Chicago in 1973, Coleman taught at Johns Hopkins University in Baltimore. He took part in civil rights demonstrations there, and was arrested in one of them.

He said he still strongly opposes legal segregation and strongly favors integrated schools. But he said mandatory busing in many cities has been "counter-productive" because it has been followed by an extensive loss of white students.

Coleman also rejects "the belief that an all-black school is inherently bad."

"That has a curiously racist flavor," Coleman said, "which I can't accept. There have been, and there are, all-black schools that are excellent schools by any standard."

"What is essential," he said, "is that if a child is in an all-black school, it should be because . . . his parents want him to be there,

not because it is the only school he has a reasonable chance to attend."

Coleman said he thinks the best ways of increasing school integration now would be to encourage voluntary transfers between city and suburban schools or to offer vouchers allowing parents to pick any school for their children but providing more funds for integrated schools.

"We ought to take measures so we can become a more integrated society," Coleman said, "but we ought to be clear that integrated education does not depend on maintaining romantic notions that are not true." ●

GUN CONTROLS AND CIVIL LIBERTIES

HON. EDWARD W. PATTISON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. PATTISON of New York. Mr. Speaker, the issue of "gun control" is always of interest to politicians, especially in an election year. It is one of those issues which is often thought to be on the "liberal" agenda. Those who are generally thought to be in the "liberal" camp, but who oppose handgun legislation, are often accused of abjectly surrendering their principles out of fear of the electoral strength of the "gun nuts" in their districts.

Such is not always the case by any means. I happen to oppose the registration and control of handguns. In explaining that positions I frequently make the point that the enforcement of a registration law would entail massive violations of other constitutional protections specifically, the protections against unreasonable search and seizure.

The September issue of Harper's contains an excellent article making this point, as well as a number of others of equal cogency. I recommend its reading to my colleagues.

The article follows:

AGAINST CIVIL DISARMAMENT—ON THE FUTILITY OF PROHIBITING GUNS

(By Don B. Kates, Jr.)

Despite almost 100 years of often bitter debate, federal policy and that of 44 states continues to allow handguns to any sane adult who is without felony convictions. Over the past twenty years, as some of our most progressive citizens have embraced the notion that handgun confiscation would reduce violent crime, the idea of closely restricting handgun possession to police and those with police permits has been stereotyped as "liberal." Yet when the notion of sharply restricting pistol ownership first gained popularity, in the late nineteenth century, it was under distinctly conservative auspices.

In 1902, South Carolina banned all pistol purchases, the first and only state ever to do so. (This was nine years before New York began requiring what was then an easily acquired police permit.) Tennessee had already enacted the first ban on "Saturday Night Specials," disarming blacks and the laboring poor while leaving weapons for the Ku Klux Klan and company goons. In 1906, Mississippi enacted the first mandatory registration law for all firearms. In short order, permit requirements were enacted in North Carolina, Missouri, Michigan, and Hawaii. In 1922, a national campaign of conservative business interests for handgun confiscation was endorsed by the (then) archconservative American Bar Association.

Liberals at that time were not necessarily opposed in principle to a ban on handguns, but they considered such a move irrelevant and distracting from a more important issue—the prohibition of alcohol. To Jane Addams, William Jennings Bryan, and Eleanor Roosevelt (herself a pistol carrier), liquor was the cause of violent crime. (Before dismissing this out of hand, remember that homicide studies uniformly find liquor a more prevalent factor than handguns in killings.) Besides, liberals were not likely to support the argument advanced by conservatives for gun confiscation: that certain racial and immigrant groups were so congenitally criminal (and/or politically dangerous) that they could not be trusted with arms. But when liberalism finally embraced handgun confiscation, it was by applying this conservative viewpoint to the entire populace. Now it is all Americans (not just Italians, Jews, or blacks) who must be considered so innately violent and unstable that they cannot be trusted with arms. For, we are told, it is not robbers or burglars who commit most murders, but average citizens killing relatives or friends.

It is certainly true that only a little more than 30 percent of murders are committed by robbers, rapists, or burglars, while 45 percent are committed among relatives or between lovers. (The rest are a miscellany of contract killings, drug wars, and "circumstances unknown.") But it is highly misleading to conclude from this that the murderer is, in any sense, an average gun owner. For the most part, murderers are disturbed, aberrant individuals with long records of criminal violence that often include several felony convictions. In terms of endangering his fellow citizens, the irresponsible drinker is far more representative of all drinkers than is the irresponsible handgunner of all handgunners. It is not my intention here to defend the character of the average American handgun owner against, say, that of the average Swiss whose government not only allows, but requires, him to keep a machine gun at home. Rather it is to show how unrealistic it is to think that we could radically decrease homicide by radically reducing the number of civilian firearms. Study after study has shown that even if the average gun owner complied with a ban, the one handgun owner out 3,000 who murders (much less the one in 500 who steals) is not going to give up his guns. Nor would taking guns away from the murderer make much difference in murder rates, since a sociopath with a long history of murderous assaults is not too squeamish to kill with a butcher knife, ice pick, razor, or bottle. As for the extraordinary murderers—assassins, terrorists, hit men—proponents of gun bans themselves concede that the law cannot disarm such people any more than it can disarm professional robbers.

The repeated appearance of these facts in studies of violent crime has eroded liberal and intellectual support for banning handguns. There is a growing consensus among even the most liberal students of criminal law and criminology that handgun confiscation is just another plausible theory that doesn't work when tried. An article written in 1968 by Mark K. Benenson, longtime American chairman of Amnesty International, concludes that the arguments for gun bans are based upon selective misleading statistics, simple-minded non sequiturs, and basic misconceptions about the nature of murder as well as of other violent crimes.

A 1971 study at England's Cambridge University confounds one of the most widely believed non sequiturs: "Banning handguns must work, because England does and look at its crime rate!" (It is difficult to see how those who believe this can resist the equally simple-minded pro-gun argument that gun possession deters crime: "Everybody ought to have a machine gun in his house because the Swiss and the Israelis do, and look how low their crime rates are!")

The Cambridge report concludes that social and cultural factors (not gun control) account for Britain's low violence rates. It point out that "the use of firearms in crime was very much less" before 1920 when Britain had "no controls of any sort." Corroborating this is the comment of a former head of Scotland Yard that in the mid-1950s there were enough illegal handguns to supply any British criminal who wanted one. But, he continued, the social milieu was such that if a criminal killed anyone, particularly a policeman, his own confederates would turn him in. When this violence-dampening social milieu began to dissipate between 1960 and 1975, the British homicide rate doubled (as did the American rate), while British robbery rates accelerated even faster than those in America. As the report notes, the vaunted handgun ban proved completely ineffective against rising violence in Britain, although the government frantically intensified enforcement and extended controls to long guns as well. Thus, the Cambridge study—the only in-depth study ever done of English gun laws—recommends "abolishing or substantially reducing controls" because their administration involves an immense, unproductive expense and diverts police resources from programs that might reduce violent crime.

The latest American study of gun controls was conducted with federal funding at the University of Wisconsin. Advanced computerized techniques allowed a comprehensive analysis of the effect of every form of state handgun restriction, including complete prohibition, on violence in America. Published in 1975, it concludes that "gun-control laws have no individual or collective effect in reducing the rate of violent crime."

Many previous studies reaching the same conclusion had been discounted by proponents of a federal ban, who argued that existing state bans cannot be effective because handguns are illegally imported from free-sale states. The Wisconsin study compared rates of handgun ownership with rates of violence in various localities, but it could find no correlation. If areas where handgun ownership rates are high have no higher per capita rates of homicide and other violence than areas where such rates are low, the utility of laws designed to lower the rates of handgun ownership seems dubious. Again, the problem is not the "proliferation of handguns" among the law-abiding citizenry, it is the existence of a tiny fraction of irresponsible and criminal owners whom the law cannot possibly disarm of these or other weapons.

Far from refuting the Wisconsin study, the sheer unenforceability of handgun bans is the main reason why most experts regard them as not worth thinking about. Even in Britain, a country that, before handguns were banned, had less than 1 percent of the per capita handgun ownership we have, the Cambridge study reports that "fifty years of very strict controls has left a vast pool of illegal weapons."

It should be emphasized that liberal defectors from gun confiscation are no more urging people to arm themselves than are those who oppose banning pot or liquor necessarily urging people to indulge in them. They are only saying that national handgun confiscation would bring the federal government into a confrontation with millions of responsible citizens in order to enforce a program that would have no effect upon violence, except the negative one of diverting resources that otherwise might be utilized to some effective purpose. While many criminologists have doubts about the wisdom of citizens trying to defend themselves with

handguns, the lack of evidence to justify confiscation requires that this remain a matter of individual choice rather than government fiat.

Nor can advocates of gun bans duck the evidence adverse to their position by posing such questions as: Why should people have handguns; what good do they do; why *shouldn't* we ban them? In a free country, the burden is not upon the people to show why they should have freedom of choice. It is upon those who wish to restrict the freedom to show good reason for doing so. And when the freedom is as deeply valued by as many as is handgun ownership, the evidence for infringing upon it must be very strong indeed.

If the likely benefits of handgun confiscation have been greatly exaggerated, the financial and constitutional costs have been largely ignored. Consider the various costs of any attempt to enforce confiscation upon a citizenry that believes (whether rightly or not) that they urgently need handguns for self-defense and that the right to keep them is constitutionally guaranteed. Most confiscationists have never gotten beyond the idea that banning handguns will make them magically disappear somehow. Because they loathe handguns and consider them useless, the prohibitionists assume that those who disagree will readily turn in their guns once a national confiscation law is passed. But the leaders of the national handgun prohibition movement have become more realistic. They recognize that defiance will, if anything, exceed the defiance of Prohibition and marijuana laws. After all, not even those who viewed drinking or pot smoking as a blow against tyranny thought, as many gun owners do, that violating the law is necessary to the protection of themselves and their families. Moreover, fear of detection is a lot more likely to keep citizens from constant purchases of liquor or pot than from a single purchase of a handgun, which, properly maintained, will last years.

To counter the expected defiance, the leaders of the national confiscation drive propose that handgun ownership be punished by a nonsuspendable mandatory year in prison. The mandatory feature is necessary, for otherwise prosecutors would not prosecute, and judges would not sentence, gun ownership with sufficient severity. The judge of a special Chicago court trying only gun violations recently explained why he generally levied only small fines: The overwhelming majority of the "criminals" who come before him are respectable, decent citizens who illegally carry guns because the police can't protect them and they have no other way of protecting themselves. He does not even impose probation because this would prevent the defendants, whose guns have been confiscated, from buying new ones, which, the judge believes, they need to live and work where they do.

These views are shared by judges and prosecutors nationwide; studies find that gun-carrying charges are among the most sympathetically dealt with of all felonies. To understand why, consider a typical case that would have come before this Chicago court if the D.A. had not dropped charges. An intruder raped a woman and threw her out of a fifteenth-floor window. Police arrived too late to arrest him, so they got her roommate for carrying the gun with which she scared him off when he attacked her.

Maybe it is not a good idea for this woman to keep a handgun for self-defense. But do we really want to send her to federal prison for doing so? And is a mandatory year in prison reasonable or just for an ordinary citizen who has done nothing more hurtful than keeping a gun to defend herself—when the minimum mandatory sentence for murder is only seven years and most murderers serve little more?

Moreover, the kind of nationwide resistance movement that a federal handgun ban would provoke could not even be broken by imprisoning a few impecunious black women in Chicago. Only by severly punishing a large number of respectable citizens of every race and social class would resisters eventually be made to fear the law more than the prospect of living without handguns in a violent society.

At a very conservative estimate, at least half of our present handgun owners would be expected to defy a federal ban.[1] To imprison just 1 percent of these 25 million people would require several times as many cells as the entire federal prison system now has. The combined federal, state, and local jail systems could barely manage. Of course, so massive an enforcement campaign would also require doubling expenditure for police, prosecutors, courts, and all the other sectors of the criminal justice administration. The Wisconsin study closes with the pertinent query: "Are we willing to make sociological and economic investments of such a tremendous nature in a social experiment for which there is no empirical support?"

The argument against a federal handgun ban is much like the argument against marijuana bans. It is by no means clear that marijuana is the harmless substance that its proponents claim. But it would take evidence far stronger than we now have to justify the enormous financial, human, institutional, and constitutional costs of continuing to ferret out, try, and imprison even a small percentage of the otherwise law-abiding citizens who insist on having pot. Sophisticated analysis of the criminalization decision takes into account not only the harms alleged to result from public possession of things like pot or guns, but the capacity of the criminal law to reduce those harms and the costs of trying to do so. Unfortunately most of the gun-control debate never gets beyond the abstract merits of guns—a subject on which those who view them with undifferentiated loathing are no more rational than those who love them. The position of all too many gun-banning liberals is indistinguishable from Archie Bunker's views on legalizing pot and homosexuality: "I don't like it and I don't like those who do—so it ought to be illegal."

The emotionalism with which many liberals (and conservatives as well) react against the handgun reflects not its reality but its symbolism to people who are largely ignorant of that reality. A 1975 national survey found a direct correlation between support for more stringent controls and the inability to answer simple questions about present federal gun laws. In other words, the less the respondent knew about the subject, the more likely he was to support national confiscation. Liberals advocate sefiscation only because the liberal image of a gun owner is a criminal or right-wing fanatic rather than a poor black woman in Chicago defending herself against a rapist or a murderer. Contrary to this stereotype, most "gun nuts" are peaceful hobbyists whose violence is exclusively of the Walter Mitty type. Gun owners' views are all too often expressed in right-wing terms (which does nothing for the rationality of the debate) because twenty years of liberal vilification has given them nowhere else to look for support. If only liberals knew it, handgun ownership is disproportionately high among the underprivileged for whom liberals traditionally have had most sympathy. As the most recent (1975) national demographic survey reports: "The top subgroups who own a gun only for self-defense include blacks (almost half own one for this reason alone), lowest income group, senior citizens." The average liberal has no understanding of why people have guns because he has no idea what it is like to live in a ghetto where police have given up on crime control. Minority and disadvantaged citizens are not about to give up their families' protection because middle-class white liberals living and working in high-security buildings and/or well-policed suburbs tell them it's safer that way.

A final cost of national gun confiscation would be the vast accretion of enforcement powers to the police at the expense of individual liberty. The Police Foundation, which ardently endorses confiscation, recently suggested that federal agencies and local police look to how drug laws are enforced as a model of how to enforce firearms laws. Coincidentally, the chief topic of conversation at the 1977 national conference of supporters of federal confiscation was enforcement through house searches of everyone whom sales records indicate may ever have owned a handgun. In fact, indiscriminate search, complemented by electronic surveillance and vast armies of snoopers and informers, is how handgun restrictions are enforced in countries like Holland and Jamaica, and in states like Missouri and Michigan.[2]

Even in England, as the Cambridge report notes, each new Firearms Act has been accompanied by new, unheard-of powers of search and arrest for the police.

These, then, are the costs of banning handguns: even attempting an effective ban would involve enormous expenditures (roughly equal to the present cost of enforcing all our other criminal laws combined) to ferret out and jail hundreds of thousands of decent, responsible citizens who believe that they vitally need handguns to protect their families. If this does not terrorize the rest of the responsible handgun owners into compliance, the effort will have to be expanded until millions are jailed and the annual gun-banning budget closely seconds defense spending. And all of this could be accomplished only by abandoning many restraints our Constitution places upon police activity.

What would we have to show for all this in terms of crime reduction? Terrorists, hit men, and other hardened criminals who are not deterred by the penalties for murder, robbery, rape, burglary, et cetera are not about to be terrified by the penalties for gun ownership—nor is the more ordinary murderer, the disturbed, aberrant individual who kills out of rage rather than cupidity.

What we should have learned from our experience of Prohibition, and England's with

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[1] I reach this estimate in this fashion: Surveys uniformly find a majority of gun owners support gun registration—in theory. In practice, however, they refuse to register because they believe this will identify their guns for confiscation if and when a national handgun ban eventually passes. In 1968, Chicago police estimated that two-thirds of the city's gun owners had not complied with the new state registration law; statewide noncompliance was estimated at 75 percent. In Cleveland, police estimate that almost 90 percent of handgun owners are in violation of a 1976 registration requirement. My estimate that one out of two handgun owners would defy national confiscation is conservative indeed when between two out of three and nine out of ten of them are already defying registration laws because they believe such laws presage confiscation.

[2] According to the ACLU, St. Louis police have conducted 25,000 illegal searches in the past few years under the theory that any black man driving a late-model car possesses a handgun.

Michigan court records indicate that almost 70 percent of all firearms charges presented are thrown out because the evidence was obtained through unconstitutional search.

gun banning, is that violence can be radically reduced only through long-term fundamental change in the institutions and mores that produce so many violent people in our society. It is much easier to use as scapegoats a commonly vilified group (drinkers or gun owners) and convince ourselves that legislation against them is an easy short-term answer. But violence will never be contained or reduced until we give up the gimmicky programs, the scapegoating, the hypocritical hand-wringing, and frankly ask ourselves whether we are willing to make the painful, disturbing, far-reaching institutional and cultural changes that are necessary.●

THE UNDERGROUND WAR

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. DORNAN. Mr. Speaker, in the game of narcotics trafficking the stakes are exceptionally high. With such vast amounts of money at issue, police apprehension of armed drug smugglers becomes an extremely dangerous venture. Those of us who have followed the narcotics problem in some detail know that Colombia has become the drug capital of the Western Hemisphere. Cocaine has been its major illegal export, but vast amounts of heroin and marihuana have also been confiscated. Traveling the high seas, Colombian narcotics are secreted into American ports, such as New York, Philadelphia, Baltimore, and New Orleans. Coast Guard officials have admitted that effective control of this influx is extraordinarily difficult.

The answer, ultimately, rests with Colombia herself. I sincerely hope that the reports of the recent crackdown are an indication of good faith on the part of the Colombian Government. But I realize that our best wishes are offered against the background of a political culture in which crime and politics have become entwined. Politically, Colombia remains a chaotic country. Despite a long tradition of civilian rule, the nation is plagued with guerrilla groups operating in the countryside. They are a mixture of bandits and left-revolutionaries and, at times, it is difficult to distinguish their political from their criminal interests and activities. Colombia is also burdened with the world's highest homicide rate, while kidnapping, as a criminal pastime, is almost as prevalent as it is in Italy.

Mr. Speaker, the problem is whether we can trust the man at the top. President Turbay Ayala, the leader of the Colombian Liberal Party, defeated Dr. Belisario Betancur of the Conservative Party in a democratic election last June. While his political preferences are similar to the left-of-center position of former President Lopez Michelsen, he himself has not escaped charges of being involved in illicit narcotics smuggling. I hope that the efforts of his Government are sincere, and that he can finally put a stop to these underground transactions in human destruction.

I ask that my colleagues give their attention to the editorial in the Washington Post of September 11, 1978, on this important subject:

COLOMBIA'S DRUG WAR

Statistics describing the volume of the international traffic in illicit drugs tend to have a numbing effect. They define huge, almost unimaginable quantities of both narcotics and money. For example, in June Colombian drug officials, with help from U.S. agents, seized the largest cache of illicit drugs ever confiscated in one raid—574 tons of marijuana that was about to be shipped to the United States. That amount, worth about $200 million wholesale, was enough to make 1 million cigarettes a day for an entire year.

It's no coincidence that the record haul was captured in the remote Colombian province of Guajira. Colombian authorities are literally at war with drug traffickers who have taken over vast tracts of land in the sparsely populated province along the Caribbean coast. Those traffickers are the reason Colombia in recent years has become the major source of marijuana and a major transit point for heroin and cocaine bound for the United States from South American countries. Next month peasants will start harvesting an area of new marijuana plants that is four times as large as the District of Columbia.

The harvest won't go unchallenged. Colombia's revitalized attorney general's office, which recently has seized or destroyed tons of marijuana and made several key arrests, has organized a special strike force to stop it. And Colombia's new president, Julio César Turbay, has signaled his commitment to the anti-drug campaign by urging the continuation of drug-control agreements between Colombia and the United States.

The situation in Colombia repeats the by-now familiar pattern of a developing country trying to rid itself of the corrosive presence of widespread drug production and trafficking. Experience indicates that Colombian authorities, while trying to root out the $1-billion-a-year drug industry, also must attempt to resolve some large related problems. These include 1) bringing the Guajira region under the authority of the central government and including it in national development programs, 2) developing crop-substitution programs for farmers now dependent upon marijuana as a cash crop, 3) building a network of roads and outlets for produce that make legitimate farming possible and profitable and 4) thereby trying to stem the flow of jobless peasants into the cities.

In short, Colombia's war against drugs is at bottom a war for development. That Colombian authorities recognize the problem in these true dimensions speaks well for their determination to attack it.●

THE CAMP DAVID SUMMIT: THE VIEW FROM CONGRESS

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. FINDLEY. Mr. Speaker, this fall marks the third anniversary of the Sinai II agreement between Egypt and Israel. The Sinai II agreement initiated the process which has led to the Camp David framework for peace. But the 1975 bilateral agreement was a benchmark of another sort. It was in connection with that agreement that Congress accepted the enlarged and direct U.S. role in the Middle East.

The growing U.S. role in the Middle East was inevitable after the October 1973 war. During that conflict, the economic threat to the West of the oil embargo and the strategic threat of Soviet intervention, stimulated an American appreciation of the risks involved and interests at stake in the Middle East. A new era of U.S. diplomacy and activity thus began in this region.

By lending its support to the Sinai II agreements, Congress signaled that it would concur in the American responsibility to promote a Mideast settlement. Congress participated in this responsibility by agreeing to a vast aid program to the region. Prior to 1975, U.S. economic and military assistance to the Middle East had averaged a few hundred million dollars a year, while since then Congress has authorized annual sums of $3 billion. And though the U.S. experience in Vietnam had made Congress hesitate to engage this country in new overseas commitments, by an overwhelming majority, it voted to approve the presence of U.S. technicians in the Sinai.

Frankly, however, I am not sure that, in the fall of 1975, most Members of Congress expected the U.S. role in the Mideast to grow even further. Many thought movement toward peace would reduce the large amounts of foreign aid we were channeling to the Middle East. Peace, we were once told, would be cheaper than war. Few Members now believe that peace will decrease the levels of U.S. aid to the Middle East. Indeed, U.S. aid may well increase. There is now discussion of supplemental economic aid for Egypt and additional funds for Israel to build airfields in the Negev to replace those vacated in the Sinai.

And the expectation that the U.S. technicians would be out of the Sinai within a few years has disappeared. Not only is it very possible that those already there will remain, but it could well be that others will join them in new locations in the Sinai.

Congress has approved, in large part, this growing U.S. commitment to the Middle East and the expanding ties we have forged in that region. Not only has Congress reaffirmed old links with Israel, it has sought new friendships with Arab States. Only a few years ago, the idea of Congress agreeing to the sale of advanced fighter aircraft to Egypt and Saudi Arabia would have been unthinkable.

Congressional support for the U.S. role in the Middle East will now extend to the most recent results of U.S. diplomacy: The Camp David summit.

Congress does, however, approach the Middle East peace process from a different perspective than does the executive branch. This will influence and shape the congressional response to Camp David:

First. Despite all the talk of congressional activism in foreign policy, there is a fear in Congress of rocking the boat. This pertains to the Middle East in particular, because of the potential for conflict that exists there. Thus, although there may be criticisms of various aspects of the Camp David agreements, criticism will probably be muted. Members of Congress are not in a position to renegotiate an agreement should they refuse to accept the one offered. They are, therefore, reluctant to play a purely negative role. And, there is the feeling

that it is, after all, up to Egypt and Israel to decide the terms under which they can coexist. If those two parties enthusiastically embrace this framework for peace, it is not up to Congress to withhold its support.

Second. Support will also derive from our great desire for peace and from our concern for the security and well-being of our friends, Egypt and Israel. The Camp David agreements are, in a sense, a separate agreement between Egypt and Israel which satisfies many of Israel's most ardent supporters. And among those who would have preferred and who continue to prefer a comprehensive agreement, there is an appreciation of the risks involved in these agreements for Egypt as well as for Israel. Should Members of Congress withhold their support for the initiative that President Sadat has taken, we could undermine him and destabilize the region. President Sadat is widely liked and admired by Members of Congress. He has made an extremely favorable impression during his visits to the United States and during congressional visits to Egypt. He has been responsible, more than any other single individual, in conveying to Congress not only the interests of Egypt but the interests of the Arab world as a whole. He is an invaluable resource in the Middle East and one whi:h Members of Congress would not want to jeopardize. There is a strong feeling, therefore, that Members of Congress should join in the jubiliation over the agreements that President Sadat has expressed these past few days no matter what reservations about the agreements they may privately feel.

Third. Congress will approach the details of the Camp David framework differently from the negotiators. In international diplomacy, ambiguity is a useful tool, sometimes making possible agreement where none would exist were all differences clarified. President Sadat and Prime Minister Begin have reached an agreement which masks many differences—on issues su:h as Jerusalem, the settlements on the West Bank, the role of the Palestinians in reaching a future West Bank settlement, and the withdrawal of Israeli troops after a 5-year interim period. These are fundamental questions. Where a certain amount of ambiguity may be necessary to the negotiators at this time to gloss over differences and to permit the peace process to go forward, Congress will approach the documents from the vantage point of wanting to know and understand all. Members will seek an explicit and detailed explanation of each point in the documents.

Fourth. Congress, never satisfied completely, will also ask incessantly, where do we go from here? What is the next step toward peace?

Attention will focus on the role of Saudi Arabia and Jordan. There is a hope and desire that these two countries will support and play an active role in the peace process. I would have to admit here that few in Congress fully appreciate the intricacies of the political and diplomatic life of Arab nations which have caused Jordan and Saudi Arabia to refrain from enthusiastic support of the Sadat initiative. However, there remains a strong feeling that the peace process is moving slowly forward and if Jordan and Saudi Arabia want to shape it and contribute to that process, they should find a way to join forces with Sadat and participate in the agreements. Surely, neither continuation of the status quo, the absence of their input, nor the risk of isolating Egypt in the Arab world could serve their needs.

Attention will also focus on the Palestinians and their role in the peace process. This framework does not present a solution to the question of the Palestinian refugees yet the Palestinians are and must be a central issue in any settlement. We have yet to grasp the difficult issue of the creation of a Palestinian homeland. Congress recognizes the existence, needs, and role of the Palestinians. It is less sure of exactly what comprises their rights. To date, most Members feel that the rights of the Palestinians confict with the rights of the Israelis within the State of Israel. Therefore, if the Palestinian people wish to see a more universal understanding and acceptance of their rights within the U.S. Congress, they will have to make a concerted effort to insert themselves into the peace process in a positive fashion. This will involve the willingness to accept the existence of Israel and to live with Israel peaceably. Leaders who advocate such peaceful ways rather than those who promote acts of terrorism will most successfully advance the interests and the legitimate rights of the Palestinian people. And they will gain the ear and interest of Congress.

Charles deGaulle once said that in diplomacy one must accept the inevitable and turn it to one's own advantage. The Camp David framework underlines the inevitability of a peace treaty between Egypt and Israel and the inevitability of Israel's survival. It is now up to the Arab States and to the Palestinian people to take these two facts as a starting point and build upon them to their own advantage. If the Palestinians were to accept Israel's existence and Sadat's initiatives, they would be signaling their own intention of promoting peace in the Middle East. The initial framework of Camp David may disappoint most Palestinians now. But it will only be by peacefully buttressing the efforts of President Sadat and of the United States to create a homeland that they will advance their own cause. If they continue to believe, as do many, that the forces of nationhood are irreversible, they should take positive steps toward this end.●

IN MEMORY OF VERNON TYRONE SCIPIO

HON. RON DE LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. DE LUGO. Mr. Speaker, 2 weeks ago the tragic crash of an Antilles airboat on a commercial flight from St. Croix to St. Thomas in the U.S. Virgin Islands took the life of a prominent St. Thomian, Vernon Tyrone Scipio.

At the time of his death, Mr. Scipio was an official of the Virgin Islands Department of Education as director of health and physical education.

But to citizens of St. Thomas Vernon was more than a government official. He was an integral and dedicated part of the civic fiber and a most respected member of our community. Throughout the years Vernon involved himself in so many community projects, so many community organizations, so many community needs that he became a symbol of what can be accomplished when citizens become involved with their society.

Vernon Scipio will not soon be forgotten because he has left so much of himself to us. It is my honor to insert in the CONGRESSIONAL RECORD, in his memory, an article in the September 9, 1978, issue of the Daily News. His contributions and his commitment to Virgin Islanders are well documented and a source of inspiration to all who knew him.

The article follows:

VERNON SCIPIO WILL BE REMEMBERED

(By St. Clair Murraine)

The ill-fated flight of an Antilles Airboat which crashed last Saturday took the life of Vernon Tyrone Scipio, health and physical education director for the Department of Education. Scipio was more than just an official with the department as he was the founder of a movement that is currently educating several of St. Thomas' delinquent youths while giving them a chance for a brighter future.

The movement began during the early 1970's when Scipio and his co-worker at the Charlotte Amalie High School, Arthur Jamison, decided it was time to get the troubled youths back in school. The program has already produced as Glen William, a recent graduate of St. John University, went through the movement and later advanced to a professional basketball career.

In 1970, Scipio recognized the potential of Williams and Robert Gumbs and decided that something should be done to help the two top cagers to develop their abilities. With that he remembered the Lauringburgh Prep school in North Carolina and knew it had helped the likes of top pro basketball players Jimmy Walker, Sam Jones and Charlie Scott.

The next move was to contact Dr. McDuffey, coach of the North Carolina, to inquire of the islanders chances. McDuffey warned Scipio of the financial burden and all of the other shortcomings he might encounter if the deal did not work.

McDuffey agreed to take the two students and put up three fourths of the $2,500 yearly tuition for each of the youngsters. The rest including transportation and all other expenses was up to Scipio and Jamison. They found the money and sent the first two players to North Carolina. But, it only went half way as Gumbs returned home after a brief stay at the school. Williams however, stayed on and it payed off.

Despite the halfway success Scipio encountered with his first try, he did not give up on the kids and the other island students who achieved academically. Sidney Bell and Arthur Solomon were among those who advanced their education and played basketball at their colleges with assistance from Scipio in getting funds.

Currently, Scipio's son, Darien, along with Willie Petersen, Sylvester Charles and several others are attending the Lauringburgh school.

At the time of his death, Scipio, 44, was returning to St. Thomas after attending a meeting with physical education program for this school year.

The North Carolina native came to St. Thomas during the late 1950's and worked as a teacher and chairman of the P.E. department at C.A.H.S. until he took over as director with the Department of Education in 1967. While at C.A.H.S., the West Virginia State College graduate began a program to upgrade the level of P.E. in the elementary as well as the secondary level of most of the islands' schools.

On his own time, Scipio served as president of the defunct St. Thomas Basketball Association. He also was a player with the Dukes in the association's league. The Dukes also participated in several other sports activities. Scipio was also active as a referee for the St. Thomas Basketball Players Association and the Inter-scholastic Association.

He was also a member of the Caribbean Olympic Committee, Columbus County Social Club of New York and the West Virginia State Alumni Association.

In memory of his many efforts for sports, the 1978 inter-scholastic football league will be played in his honor.

Scipio is survived by his wife, Naomi; two sons, Vernon Jr., sisters Margaret S. Stanley, Jacqueline Rienhardt, Evelyn S. Anderson and Dorris S. Dees, two brothers, Edwin and Rudolph, and several other relatives.

In view of Scipio's interest in promoting athletic development for the youth of the V.I., his family has requested that in lieu of flowers contributions be sent to the Vernon T. Scipio Memorial Athletic Scholarship Fund C-O the Department of Education.

Scipio will be buried in Chadborne, N.C. However, viewing of the body and memorial services are scheduled in St. Thomas. On Wednesday beginning at 2 p.m. until 5 p.m. viewing will be at the John Thomas Chapel. Thursday viewing is slated for 8 until 9:30 a.m. with services at 10 a.m. at St. Andrews Anglican Church.●

THE BLAME IN RHODESIA

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. McDONALD. Mr. Speaker, the idea current in American policymaking circles that Rhodesia is just another civil rights problem is certainly one of many American misconceptions on Africa in general and Rhodesia in particular. A case can be made that this and other mistaken notions of American policymakers will be responsible for additional bloodshed in Rhodesia. American support of the so-called Patriotic Front has encouraged the terrorists to believe that nothing they do will draw our criticism nor cause a withdrawal of American Government support. We even have the gross spectacle of the World Council of Churches subsidizing the people who are murdering missionaries and shutting down mission hospitals. A recent Washington Star editorial of Sunday, September 17, 1978, summed up this situation very well. I commend it to the attention of my colleagues. The editorial follows:

THE BLAME IN RHODESIA

The hopes for a negotiated settlement in Rhodesia were deteriorating last week—and, in fact, yielding to an unproductive quarrel about whose fault the breakdown may be.

Anglo-American diplomats, who have tried and failed to convene an "all-party" conference, were reportedly drawing back from their efforts, some of them feeling that civil war is now inevitable, and reluctant to face the possibility that they have contributed to that disturbing prospect.

Meanwhile, Prime Minister Ian Smith, still caught between militant white supremacists on the inside and militant black guerrillas on the outside, complains bitterly that "the greatest contributing factor to our failure (that is, of the experiment in multiracial transitional government) has been that the American and British governments, the leaders of the free world, have sided with our enemies, the Patriotic Front."

There is plenty of blame—if blame we must have—to go around for the dire situation in Rhodesia. Mr. Smith waited a long time, maybe too long, to make his peace with reasonable black nationalists, although it really isn't for outsiders to judge how much leverage he had at an earlier stage with his own following.

Britain, for its part, was too long guided by the belief that its former crown colony could be brought to heel by economic sanctions, following which a post-colonial settlement could be dictated from London. The failure of sanctions is partly explained by the discovery that the attempt to keep British oil out of the country was thwarted with the knowledge and acquiescence of high civil servants and government officials.

The attention of Americans might more profitably be drawn, however, to the curious role of the U.S. in Rhodesia. There was a promising interval in mid-1976 when Secretary of State Henry Kissinger, fresh from his success at Mideast shuttle diplomacy, took on the Rhodesian crisis for mediation. He was the first outsider to treat the Rhodesian problem as one susceptible to diplomatic management rather than high-toned posturing. But the interesting prospects opened by Dr. Kissinger faded when he left office in 1977 and the new Carter administration substituted officials who viewed Rhodesia in the context of American civil rights politics.

U.N. Ambassador Andrew Young, who was in the forefront, seemed to believe that the Rhodesian problem would yield to techniques that had proved useful in the Deep South in the mid-Sixties. The issue, as he saw it, was "majority rule"; and if guerrilla warfare and tribal rivalry for power divided various black factions and leaders in complex ways, that inconvenience could be ignored.

From the outset, Mr. Young also shared the British view that Mr. Smith's internal settlement of last March could not succeed, since it was unsupported by the Patriotic Front and the neighboring African governments; and this ultimately began to seem a self-fulfilling prophecy.

Mr. Smith may not be incontestably right in believing that U.S.-British support would have meant the difference between failure and success for the internal settlement. But in retrospect, it is probable that a valuable opportunity was missed when the U.S. and Britain shunned that half-a-loaf settlement and thus communicated to their friends in Africa the certainty that guerrilla warfare and terrorism could proceed without our disapproval.

Anglo-American policy in Southern Africa, as directed by Mr. Young and his colleague Dr. Owen, the British foreign secretary, must share the burden of failure. That policy undermined Mr. Smith's efforts to draw together moderate whites and moderate blacks, while at the same time it failed to bring the Nkomo-Mugabe guerrillas to collaborate in an alternative settlement.

The failure was a failure of perception and understanding. In the old days of outright colonialism imperial diplomats at least had a clear idea of what they sought and how to accomplish it. The new and idealistic interventionism practiced from Washington and London since early 1977 suffered from an excess of ambition and illusion. Because it was disinterested, or at least seemed so to its practitioners, there was the illusion that we had a better grasp of what might be best for Rhodesia's future. But that was not the case. It was an inept, if well-intended, form of meddling in problems rooted in an altogether different history and experience from our own.

To treat an Ian Smith as a kind of African George Wallace was not only mistaken but fraught with the risk of pointless bloodshed and strife. It is not strange that parentage of the risk is being disclaimed right and left.●

IT IS NOW OR NEVER FOR AN ENERGY PROGRAM DURING THE 95TH CONGRESS

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. SIKES. Mr. Speaker, for the greater part of 2 years, encompassing most of the life of the 95th Congress, the Congress has struggled to produce a workable concept of an energy bill. Time is running out. It is now or never for the 95th Congress. We now have a prospect of an early vote on a program before we adjourn. What will be before us is not a major accomplishment, but it is a beginning. Without it, there will be nothing on which to serve as a stepping stone in a future Congress for a more meaningful program. The entire monotonous procedure which we have experienced in the 95th Congress will have to be repeated if we fail to pass an energy bill this year.

It is not a question of whether the bill is adequate. It is not adequate to meet the Nation's energy problems, but it will aid in a significant way, particularly by helping to insure supplies of natural gas for the Nation's consumers. It also will provide price stabilization and new markets for the Nation's producers. This will be a good beginning.

We have fought the battle of deregulation on natural gas in Congress for a great many years. Time after time, efforts to produce a workable solution have failed. We cannot afford to fail now. We are an energy-deficient nation, simply because we use much more fuel than any other nation and we do not produce enough to meet our needs. Many nations are confronted with a much more critical energy problem than the United States in that they have no oil production of their own. Most of them have managed to put their house in shape by whatever stringent measures are necessary to reduce cash outflow. They restrict energy use and increase the price of fuel to the consumer. They are facing up to the problem; we are not.

These nations cannot comprehend our inability to cope with our own problem, blessed as we are with such great assets of coal and oil and with relatively untapped opportunities for the development of nuclear energy, alcohol for fuel from farm products, and solar energy. The fact is, we have simply assumed our problem will never reach crisis proportions. The near-crisis which developed during the Arab oil embargo was short-

lived and is generally forgotten. The fact remains it could happen again and we would be hit even harder than before because we use more fuel each year.

The plan before us is not a panacea. It falls far short of solving all our energy problems. It is little more than a start, but we cannot delay the initiation of the necessary efforts to respond to America's energy problems. Day after day, month after month, year after year, American dollars are leaving our Nation to purchase foreign oil. They add up to many billions in the course of a year, roughly $43 billion. Such an unfavorable balance cannot continue if we desire to maintain any semblance of the strong American economy which has led the world since the end of World War II. Each day that this Nation proceeds without an energy plan brings us all closer to a point of no return.

We must take steps now—and the proposal before us is the best that we can achieve after 2 years of work. I know it is not perfect. Seldom does compromise result in perfection. But compromise has given this Congress a workable energy plan—one which the Nation badly needs.

As I review this plan I see several significant benefits:

It would permit significant additional quantities of natural gas to flow between the States at prices below that of alternative fuels;

It will permit construction of an Alaskan natural gas pipeline which could easily result in increased supplies of natural gas on the order of 30 percent higher by 1985;

The increased natural gas flows would decrease the importation of foreign oil, at a potential savings of $7 billion a year in our balance of payments; and

It will protect home consumers and cost them no more than the existing law, as well as providing substantial quantities of gas for new home hookups.

Increased costs are inevitable, with or without this legislation. Supply will be more consistent. Passage of the measure signifies progress in a long delayed program essential to the Nation's interest in energy conservation.●

SOMEONE OUT THERE WANTS YOU

HON. JIM SANTINI

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. SANTINI. Mr. Speaker, those of us caught up in the toil and turmoil of our congressional labors are well aware of the record number of our House colleagues—55—who will be leaving the Congress at the end of this year.

I recently received a job inquiry letter from a national life insurance company, demonstrating that the private sector is only too well aware of our diminishing ranks and precarious existence.

I share this job solicitation letter in the hope that it may represent an employment alternative for our retiring Members or a future opportunity for those of us who fail the election test.

The material follows:

NEW YORK LIFE INSURANCE CO.,
Washington, D.C., September 5, 1978.

Mr. JAMES D. SANTINI,
Rockville, Md.

DEAR MR. SANTINI: Your name has come to my attention as someone who may possess the necessary qualities to fill a position currently open in our Sales and Sales Management Training Program.

I have no way of knowing whether this would be of interest to you, but I believe that it could be of mutual benefit for us to meet personally, to discuss this matter further.

Please call me at 337-7505 so that a satisfactory time can be arranged for an interview.

Sincerely,

JEREMIAH A. KELLEY,
Assistant Manager.

HOUSE OF REPRESENTATIVES,
Washington, D.C. September 19, 1978.

Mr. JEREMIAH A. KELLEY,
Assistant Manager, Washington General Office, New York Life Insurance Co., Washington, D.C.

DEAR MR. KELLEY: I appreciate your unsolicited expression of interest about my future employment. Your letter reflects the general state of awareness about the uncertainties of my present occupation. It is true that a record number of my co-workers have retired this year. However, I intend to continue in my present job if I get the approval of all my employers in November.

Nonetheless, please keep my name in your active interest file because if my present contract is renewed it will only extend for two more years. With these two-year cycles of survival, I must keep my options open.

We may get together soon.

I remain,
Sincerely,

JAMES D. SANTINI,
Member of Congress.●

KEYNOTE ADDRESS: THE FIRST NATIONAL CITIZENS CONFERENCE ON ENERGY FACILITY SITING; GLENWOOD, MINN.

HON. RICHARD NOLAN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. NOLAN. Mr. Speaker, this past weekend, I was privileged to deliver the keynote address to the very first national conference devoted to the growing crisis over how we produce and transmit energy in this country.

The conference was made up of 2 days of workshops, discussions, and demonstrations by individuals from over 30 States—each with special concern over the direction we are pursuing. Sponsors included the Environmental Policy Center, Washington, D.C.; United Church of Christ Board for Homeland Ministries, New York; Minnesota Council of Churches, Minneapolis; National Catholic Rural Life Conference, Iowa; the General Assembly To Stop the Powerline, Minnesota; and Counties United for a Rural Environment (CURE), Minnesota.

Since many of my colleagues will undoubtedly be asked to address the same issue in the future, I would like to share my remarks:

ADDRESS BY HON. RICHARD NOLAN

My friends, what we have witnessed here together this weekend is the birth of a movement!

There are farmers here today: environmentalists here today: consumers . . . local officials . . . and many many others who never had a common ground or a common goal before . . . here to begin what I predict will be a National debate . . . a public National debate . . . not just on whether a powerline in central Minnesota or a nuclear power plant in Seabrook serves the public convenience and necessity (as the utility executives are so fond of putting it) . . . but whether the real public interest and public needs are served by the entire direction we are pursuing in the way we produce and transmit energy in this country.

In fact, we are here to demand that the term "public convenience and necessity" take greater account of the necessity to preserve our land, in addition to the necessity to generate electricity; take greater account of the necessity to preserve our farms, in addition to the need to transmit that power:

We are here to say that the public convenience is also the convenience of the farmer and the environment . . . not just the power companies.

We are here to talk about a new set of priorities overlooked and undervalued for far too long.

And out of this debate, I predict, will come not only serious questions about policy . . . but serious questions about the policy makers and the policy making process . . . questions and challenges which must ultimately and fundamentally change the way the policy makers think and act to supply our energy needs.

Many of you here today are veterans of other battles, where you have learned not only how terribly difficult, but how terribly necessary it is to challenge the policy makers and challenge the old ways of doing things.

Farmers, for example, who continue to see family farms disappear by the tens of thousands because we waited too long to question the policy makers:

Environmentalists who continue to see the air fouled and waters ruined because for too long, no one questioned the way we designed our cars, produced our goods, and disposed of our waste;

Ordinary citizens who became anti-war activists because they realized what was happening to our country and our society in the 1960's when the policy makers were not questioned;

But whether you're a veteran or a newcomer, the fact is that we know the war has stopped . . . that there are laws now to begin to protect the environment . . . that committed individuals and organizations can and do change a course of events.

So in this debate . . . whether it is the powerline protest here in Minnesota . . . the clamshell alliance in Seabrook . . . whether it's those who are going to jail in Portland or in California . . . what's being said is "Hold on! . . . wait just a minute . . . let's pause just for awhile before we cover another land area the size of Connecticut with transmission right of ways . . . before we place anymore liquified natural gas plants in highly populated areas like Staten Island or Boston . . . and let's examine the consequences of our actions . . . so that we stop making public policy with the idea that the damage needs to be done before preventative measures are taken.

That's not radical;
That's not unreasonable;
That's not irresponsible;
That, my friends, is just using your head!

The real questions here go beyond *where* we put the next high voltage transmission line . . . or *where* we put the next nuclear power plant or *where* we put the next coal gasification plant. Because quite frankly, no one wants them. No matter where we put them, somebody gets angry.

The real question is whether the environment, the public health, farmers . . . consumers . . . in short whether the public interest . . . the public well-being . . . is served by continuing to rely on a relatively small number of huge, concentrated, monstrously expensive facilities which produce and transmit energy . . . or whether we should instead move in another direction . . . perhaps toward a point where our future energy needs recognize the limited resources of our planet . . . and whether we can decentralize and deconcentrate energy production in this country.

We don't have any final answers. But people all throughout the country are beginning to recognize that priorities must change . . . that alternatives must be found. They are beginning to ask the right questions.

People concerned with the public health are asking: What are the consequences of exposing 50,000 rural citizens to almost 10,000 new miles of high voltage transmission lines within 12 years . . . exposure that will last a lifetime for everyone of those people.

There are those who are *so ready* to assume all is safe until somebody proves otherwise: No doubt many of the same ones who are so ready to assume that it was safe to dump billions of tons of asbestos into Lake Superior . . . and who were so ready to assume that nitrites and cyclamates were safe enough to introduce into the entire food chain.

People inside and outside of government are asking: Does any government or any industry have the right to allow citizens to be exposed to unknown dangers of nuclear wastes and high voltage radiation without full disclosure of the consequences or an effective voice in the decision-making process.

Those who are concerned with how we use our land as a limited and precious resource are asking: What are the consequences of taking 4 million acres of prime farmland out of production by 1990 for pipeline and powerline rights of way when we are already losing 3 million acres of our most fertile land each year to developers and to urban sprawl.

What are the consequences of our plan to build 110 more nuclear power plants by the mid-1980's . . . and moreover . . . what are the consequences of burying 11 million cubic feet of high level nuclear wastes below the ground by the year 2000?

What are we going to do when the 50 year life expectancy of the storage tanks runs out and those poisons begin to soak through the ground and into the soil?

Those who are concerned with our National Security are asking: What are the consequences of perpetuating a system of producing energy which is controlled entirely by multi-national energy conglomerates with no allegiance to anything but a combined annual profit of tens of billion dollars

If one small electrical storm can black out New York City and vast portions of the northeast coast . . . how in the same of reason can that kind of system be strategically safe in time of war or national crisis?

Any, my friends, government . . . by in large . . . has not only failed to answer the questions. Government has failed to even consider the questions.

We are spending $4 billion dollars a year in energy research . . . and out of that total, only 18 percent is going toward developing any alternatives to the present system . . . alternatives like solar energy, wind energy, and geothermal energy.

And it's little wonder . . . because up until just a very short time ago, government has had no one else to listen to but the energy monopolies who spend millions of dollars and employ hundreds of technicians, experts, and lobbiests in Washington to see that the right questions are not asked.

So as you grow as a coalition and as a movement, you must begin to demand that public money be used to develop and realize alternatives in the public interest.

The truth is that there are alternatives. They aren't perfected. They may be somewhat elaborate or more costly, at least right now. But it is unacceptable for us to do anything less than pursue every alternative. It is unaccetpable for the policy makers to tell us any longer that we are wrong if they can't prove it.

Finally, let me just say that you aren't alone in your anger and your frustrations. Let me tell you . . . the victories are few and far between . . . whether you're pressing for decent, progressive alternatives as a congressman or as any one of you here today.

But be that as it may, we must continue to drive home the point, again and again and again, that the real test of public policy is not whether the boards and commissions and the councils correctly follow the procedures for hearing your side of the story . . . but whether the solutions which come as a result are acceptable and just.

And the fact is that what has come as a result of the procedures in Minnesota and in Seabrook and time and time again throughout the country are not acceptable or just.

Law-abiding citizens don't tear down transmission towers or occupy nuclear power plants or go to jail when they are presented with acceptable and just solutions, and when they are treated fairly.

So I challenge you to vent your frustrations and your anger not by threatening lives and property but by building public support for your position and by using the tools of this democracy which are here to help assure that the public will is carried out.

I'm talking about forming an organization;
Holding conferences like this one throughout the country;
Doing more research;
Generating more news coverage and getting your story out to the degree that you raise public awareness that generates public pressure and results in change.
Find out who your friends are.
Require your candidates for public office to state their positions;
Generate the kind of support that will force your State legislators to listen: Force Congress to listen: Force your Governors to listen; and force the President to listen.

At that point, I can guarantee you that Government will respond and change the way we go about supplying energy for people in this country. It can be done.

Tax money can go to research and develop alternatives—alternatives that encourage self reliance, not public dependence;
Alternatives that respect a man's farm and his property;
Alternatives that respect the environment;
Alternatives that respect the fact that our resources are limited in this world;
And laws can be changed to require that those alternatives, in fact be followed—that the power companies follow them—that Government agencies follow them.

Finally, let me add—don't become discouraged or lose heart.

People all over this country are being inspired by your example;
They are gaining strength and courage by your example;
They are renewing their own commitments because of your example;

As you leave this conference today, I challenge you to let everyone know that we are in this for the long haul. Because when your commitment has no time limit—your opposition knows that if they don't deal with you today—they will have to deal with more of you tomorrow.

We'll be seeing each other again.
Thank you very much!●

MIA SIGHTINGS—VII: TWO MORE STUNNING LETTERS

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. DORNAN. Mr. Speaker, through the good offices of the Defense Intelligence Agency, I have another translated letter from Vietnamese refugees on Americans listed "Missing in Action." This is a stunning letter. It reports live Americans, 15 of them, imprisoned in cells and properly fed.

I have only this to say: These documents alone are reason enough for us to refrain from hasty, ill-considered presumptions of death of Americans listed as "missing" in Southeast Asia. The fact that one letter reports good treatment illuminates the possibility that the Vietnamese may yet be forthcoming on this issue. I do not doubt that the diplomatic initiatives that the United States may have to undertake in this delicate area might be, under the ordinary canons of international diplomacy, rather bold. But I ask that Members of this House consider the need for us to press ahead in our search for a satisfactory solution to this grave problem, a problem that is, obviously, an agonizing trial for the families of these brave men.

Mr. Speaker, I know that some of us have been criticized for holding out hope. But I think that those who level this charge fail to remember that hope is a virtue. It is an optimistic vision that good may yet, no matter the darkness, prevail. We have no right to abandon a virtue. No, we have a duty to preserve it—even in the face of our blackest trials.

Mr. Speaker, I ask that every Member of this House give these letters their closest attention. And I ask them to remember these documents when they are called upon to employ their best judgment in making critical decisions in this area. They are a matter now of public record. And they will be forever viewed in that light. I insert letter No. 11 now into the RECORD:

DEAR MADAME: By accident, I read the short ad in the TRANG DEN newspaper. Knowing that you are interested in information about the U.S. POWs, I write you promptly and furnish you some simple details, and hopefully it will help to shorten the way of return to Vietnam to clobber the red communists of North Vietnam.

I want to introduce myself. Previously in Vietnam, I was a net chief, in charge of conducting research on the U.S. POWs (to verify that information is genuine, not fake).

In early spring 1975 (I do not remember dates because I've lost memory since 3 years,

due to a mental depression), I received intelligence information from our secret informant (double agent) in (deleted) hamlet (deleted) forest of (deleted). Early March 1975, the V.C. escorted 15 U.S. POWs, 5 black, 10 whites and incarcerated them in secret cells, fed them kindly. Our informant gave these details: one North Vietnamese platoon guarding the prisoners day and night and reportedly they will be for an eventual exchange. During the casual talks with the North Vietnamese our double agent reported overhearing that these precious customers should receive good treatment to be useful later.

I have reported this information to my superiors in Saigon, but they were all thrown in the waste basket because they had run away to the U.S. I was so eager in my work, therefore the net structure in U Minh, all fervent personnel were killed by the communists (letters from home said that my relatives were all dead after the red devils liberated our country).

After 3 years, I do not know whether these Americans were killed by them or moved anywhere. But one thing is certain that between January 1975 and March 1975, there was a presence of 15 Americans in the area mentioned in this letter.

If you do not believe me, if you have a capability to ask the present American in charge of POW to ask PHAM VAN DONG (Note: Source often refers to the communists including the North Vietnamese Prime Minister as having the head of a buffalo and the face of a horse, an insulting term) if he ever orders a move of a number of important POWs (all officers) to the south in the Uminh area or not.

I can guaranty my life to state with you that a number of U.S. POW's are still living and well fed by the North Vietnamese to coerce the U.S. government.

If you still doubt me then tell the Americans to send me back to RACH GIA for me to renew contact with the surviving personnel to realize this project, because I want to die in my country after having obtained tangible results that there are still surviving U.S. POWs.

Signed,

DELETED.●

BALANCE(S) OF POWER SERIES: BOOK III (H)—ASIAN RIMLANDS

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, as was shown in the preceding selections in the regional balance series, the military balance in Northeast Asia is a problem which will continue to directly involve the United States. Elsewhere around the Asian Continent, or in the Asian rimlands, military confrontations since the war in Vietnam have been shaped more by national antagonisms and attempts by China and the Soviet Union to gain advantage over each other in these regions. Their attempts have used domestic insurgencies which are still a source of concern to virtually all governments in Southeast Asia, as described in the following article by Nayan Chanda taken from the New York Times of March 27, 1977.

Recent developments in Vietnam only serve to emphasize that the growth of these regional imbalances into serious international crises is not an impossibility, and must remain a concern for the United States.

The article by Nayan Chanda, "South Asia Is Never Quite Free of Insurgencies," follows:

SOUTH ASIA IS NEVER QUITE FREE OF INSURGENCIES

(By Nayan Chanda)

HONG KONG.—Two years after victorious Communist armies marched into Saigon and Phnom Penh and the Communist-led Pathet Lao took over Laos, none of the other South Asian dominoes has "fallen," but real insurgencies do exist and the question of how to deal with them remains much in debate as it always was.

While Western analysts in the area approve the fact that the governments involved take seriously the threat posed by insurgent movements in Thailand and Malaysia, some are skeptical of the tactics chosen to counter the rebellions. These tactics are reminiscent of the search-and-destroy techniques of the United States forces in Indochina, failures by almost any measure.

The point is that military overkill could be counterproductive: Great popular advantage would accrue to the insurgents if government soldiers continue their mindless attacks. In the heat of military operations, little thought is being spared to removing the socio-economic roots of dissent.

Sometimes the rebellions overlap, but for the most part the threats to the deminoes are not directly related.

Thailand: One of the principal areas of military activity straddles the Thai-Malaysian border. The avowed purpose of the present joint Thai-Malaysian operation there is to destroy the revolutionary faction of the Communist Party of Malaysia believed to be taking refuge in Thai territory. Another drive is under way in Surat Thani, a province in south central Thailand, to turn large tracts of forested mountains into free-fire zones and so deny the insurgents food and other essentials. While such measures stand the risk of alienating the local people, little is being done to remove existing grievances. The secessionist movement of the four southern provinces of Thailand (80 percent of their population is Moslem and speaks a language akin to Malay) dates back to the beginning of the century. Years of neglect by Buddhist administrations in discrimination and corrupt and oppressive officials have aided the movement. Malay and Thai Communists have moved in to cash in on this potential.

More serious in terms of potential threat, however, is the insurgency in northeast Thailand where the number of armed guerrillas has almost doubled since 1973. The ethnic Lao population of Thailand's 17 northeastern provinces have a long tradition of resistance to the central authority in Bangkok. Long neglect of economic development in a region with arid soil and a fast growing population made it possible for the Communist insurgents to set up their first base. Apart from 4,000 armed insurgents in the northeast, the Thai Communist Party maintains 2,500 guerrillas in north Thailand, composed mainly of hill tribesmen who resent the central government's effort to resettle them in the plains and interfere in their traditional life-style.

The repression that accompanied the Oct. 6 anti-Communist coup in Bangkok, and the uncertainty caused by an unsuccessful coup attempt last week have given an unexpected boost to the insurgent cause. With several hundred students, intellectuals and parliamentarians going underground to join the Communists, the insurgents have gained a national constituency.

Malaysia: The occasional ambushes and assassinations committed by the 3,000 guerrillas under the three factions of the Communist Party of Malaysia are more of a nuisance than a threat. Despite the Communist effort to draw in ethnic Malays and Indians, the insurgency remains a dominantly Chinese phenomenon relying on poor Chinese peasants and rubber plantation workers discriminated against by the Government's policy of seeking privileges for the backward Malay community. However, as education increases among the poor rural Malays, thanks to the Government's own liberal education policy, there is a growing awareness of the economic gulf between the rich and poor and a puritanical concern about the mores of urban life not in conformity with Islamic faith.

Burma: More than a dozen insurgent groups ranging from the pro-Peking Burma Communist Party, ethnic Karen, Kachin, Shan and Mon rebels to associated opium runners, bandits and Kuomintang stragglers have been plaguing Burma for 30 years, especially since the 1962 coup by Gen. Ne Win. The Burmese Government has neither the will to accommodate the desires of autonomy expressed by diverse ethnic groups nor the capability to meet their challenge.

Vietnam and Laos: Tribal insurgencies have been a plague for non-Communist regimes alone. The two-year-old Communist governments of Vietnam and Laos have yet to control their own tribal resistance. Although dwindling in number and resources, some members of the anti-Communist Montagnard group known as Fulro are still believed to be operating in the central highlands of South Vietnam. Remnants of the formerly Central Intelligence Agency backed Meo secret army are active in the mountains of north Laos.

The Cambodian regime, too, has to deal with small bands of anti-Communist resistance fighters as well as smugglers from Thailand. Lao rebels in the Sayaburi area in the north are also believed to enjoy Thai support.

The Philippines: Amid all the sputtering guerrilla wars in Southeast Asia, one that might eventually end is the Moslem rebellion in the southern Philippines led by the Moro National Liberation Front. The Moslems, who have been fighting central control since the arrival of the Spanish in the 16th century, mounted an organized resistance against the Catholic government in Manila after the imposition of martial law in 1972. They have the direct backing of their fellow Moslem regime in Libya. After four years of conflict, causing 10,000 casualties, President Ferdinand E. Marcos is now willing to concede some kind of autonomy to the Moslems in exchange for economic aid for his regime from the oil-producing Moslem countries, and last week announced that the rebels had tentatively agreed to those terms too.

The fragile cease-fire in force since Jan. 20 could be broken if Mr. Marcos does not accept the outright grant of autonomy to 13 provinces in the south.

Indonesia: The only country in Southeast Asia that does not have to devote a major share of its budget to fighting insurgency (excepting of course in the still unsettled former Portuguese colony of East Timor) is Indonesia, where the killing of nearly half a million Communists and their sympathizers following the abortive coup in 1965 and the continued detention of nearly 30,000 political prisoners have virtually decimated the once powerful Communist Party. Tough measures to depoliticise the people and the omnipresent shadow of security organizations have kept the lid on dissidence.

Some diplomats in Jakarta, however, wonder if the frustrations born out of growing unemployment, population pressure, pervasive corruption and a widening gap between rich and poor is going to burst out in riots as it did in January 1974.

The withdrawal of United States forces from the mainland of Southeast Asia has taken away one handy target from the

region's insurgents but there are still plenty of factors to feed their campaigns. The faith in draconian law and military suppression shown by some governments is a reminder how reluctant the regimes are to learn from yesterday's experience.●

IS SOLAR POWER MORE DANGEROUS THAN NUCLEAR?

HON. GARY A. MYERS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1978

● Mr. GARY A. MYERS. Mr. Speaker, the public perception of risk involved with different systems of energy production is often influenced by the appearance of these systems instead of through an evaluation of the total risk. The total risk includes the occupational risk, or the risk incurred by those involved in producing and operating an energy system, and the public risk, which is the risk incurred by everyone else.

The following article examines the results of an accounting of the total risk involved in 10 technologies, of which 4 are conventional and 6 nonconventional. The results suggest that the public tends to overlook all parts of the energy cycle except the visual aspects of the energy systems.

When risk is properly defined in terms of unit energy output, energy svstems requiring large collection and storage apparatus rank high in total risk relative to conventional systems.

IS SOLAR POWER MORE DANGEROUS THAN NUCLEAR?

(By Dr. Herbert Inhaber)

Consider a massive nuclear power plant, closely guarded and surrounded by barbed wire. Compare this with an innocuous solar panel perched on a roof, cheerfully and silently gathering sunlight. Is there any question in your mind which of the two energy systems is more dangerous to human health and safety? If the answer were a resounding "No," the matter could end there, and the editors would be left with a rather unsightly blank space in their journal. But research has shown that the answer should be a less dramatic but perhaps more accurate "maybe".

How can this be? Consider another example. In the driveway we have two vehicles. One is a massive lorry, and the other a tiny Mini. Which of the two is more efficient? No. not larger—more efficient. Their relative size is easy to judge, but efficiency involves the amount of petrol used, the distance travelled, as well as the weight carried.

The moral? You can't judge the relative risk of an energy system merely by its size or fearsome appearance. You must find the risk per unit energy—that is, its total risk to human health divided by the net energy it produces. This is the only fair way of comparing energy systems.

In addition, we must consider the total energy cycle, not one isolated component. If you calculate the risk of only part of a system and compare it with the corresponding part of another, by judiciously choosing the component you could prove that any energy system is riskier (or safer) than any other system. You would obviously be proving precisely nothing.

You may wonder why the Atomic Energy Control Board (AECB), the main regulatory agency for nuclear power in Canada, is concerned with this question. We do our best to minimize nuclear risk, but we are not in the business of regulating other energy forms. The answer is simple: the AECB has been studying the risk of nuclear power, but the results will have more meaning if they are put into context. That is, finding that nuclear power produces a certain number of man-days lost per megawatt-year has only a limited meaning to non-specialists. Knowing that this value is twice (or half) that of other energy systems means a lot more.

We can calculate the net energy output easily enough. But what is the total risk? The new field of risk accounting addresses this question.

By now, most people working on energy questions have heard of energy accounting. This extension of the accountant's part adds up all the energy required for components of a system in order to determine the overall energy requirement. For example, a coal-burning electricity plant needs X kilowatt-hours of energy to mine each tonne of coal, Y to lay each kilometre of track to transport it, Z to construct each turbine, and so on. By summing the required energy inputs, we can compare the result to the output.

Risk accounting is based on the same principles. All sources of risk are evaluated in terms of the deaths, injuries or diseases they cause. This implies that we evaluate not only the final stage of energy production, but the initial and intermediate stages. For example, in the two cases mentioned in the first paragraph, we would evaluate the risk in mining the sand, copper, iron, coal, uranium and other raw materials that are required, as well as the risk due to fabricating them into glass, copper tubing, fuel rods, steel and all other necessary components. To this would be added the risk associated with transporting material, manufacturing components, and the more obvious risk of constructing and operating the nuclear-powered station or solar panel.

Risk accounting has been around a long time, in various guises. For example, nuclear power, coal, oil and natural gas were compared in terms of risk per unit energy by C. L. Comar and L. A. Sagan in a landmark article in the 1976 *Annual Review of Energy*. They found that, when all the major sources of risk for each technology were summed, nuclear power had a substantially lower risk than coal- or oil-burning stations. Other studies both before and after have confirmed this.

But those who are uneasy about nuclear power, or who even denounce it, rarely advocate a return to coal and the smoky cities we all faced a few decades ago. Rather, they usually propose the use of "alternative", "soft" or "conventional" technologies such as solar, wind, ocean thermal, methanol, geothermal and a panoply of others. The question then is, what is the risk of each of these technologies compared with conventional svstems like coal, oil and nuclear?

Results of our risk accounting are surprising, to say the least. They indicate that when all the sources of risk are accounted for, most non-conventional technologies fare rather badly in comparison with conventional ones. Figure I shows our results. The vertical axis refers to the total man-days lost by both workers and members of the public due to deaths, injuries or disease per unit net energy output for each system. To combine fatalities with less serious disabilities, an arbitrary number of man-days lost (6000) was assigned to each death.

[Figures 1 and 2 not in RECORD.]

Electricity produced from natural gas has the lowest risk of the 10 technologies (four conventional, six non-conventional). It is a factor of about two lower than the next highest, nuclear power. Third is a non-conventional system, ocean thermal, which can convent the temperature differences of ocean layers into electricity. Most other non-conventional systems have far higher risk. However, the highest of all are coal and oil, with risk about 400 times that of natural gas.

MATERIALS AND RISKS

What are the reasons for these surprising rankings? The details are contained in a recent (AECB) report.* The main reason why non-conventional systems have relatively high risk is the large amount of materials and labour they require per unit energy output. Why should solar need more materials than coal or oil? It's because of the diffuse nature of the incoming energy: solar and wind energy are weak, and require large collection and storage systems to amass an appreciable quantity of energy. Coal, oil and nuclear systems deal with concentrated forms of energy and so require less apparatus. This argument is simplistic and glosses over many lesser considerations, but is generally found to be true. Figure 2 shows the results of these calculations.

The large quantity of materials required for unconventional systems implies huge industrial efforts in mining, refining, fabricating, and constructing the collectors, storage systems and all related apparatus. Every form of industrial activity has an associated risk, which can be found through accident statistics compiled by national organisations. When all the multiplications and additions are done, we find that the risk from unconventional energy systems can be substantial.

This raises an interesting point. Although these systems are labelled unconventional, their risk comes, in the main, from highly conventional sources. In other words, the risk from windmills doesn't come primarily from a blade flying off and hitting you on the head, and the risk from solar space heating doesn't arise from falling off the roof as you make that last little adjustment. Rather, it comes from the more mundame tasks of mining the coal, iron and other raw materials and fabricating them into steel, copper and glass.

The overall risk, as shown in Figure 1, may be divided into two categories: occupational and public risk. Occupational risk is incurred by those connected to the process of producing and operating an energy system: public risk is incurred by everyone else. Because of the different mixes of materials and labour in each energy system, the rankings within each of the two risk categories are not necessarily the same as for the overall risk. Results for each of the two categories are given in the Table.

In terms of occupational risk, natural gas used to produce electricity ranks lowest, followed closely by nuclear. This occupational risk includes, for example, that incurred in drilling, building pipelines, constructing distribution networks, and so on. Coal risk is much higher. While the risk per hour spent in the mine is not strongly dissimilar for coal and uranium miners, the latter worker produces far more energy per unit time worked. As a result, his occupational risk per unit energy is much lower.

The remarkably high occupational risk for methanol is primarily due to one factor—logging. In Canada (and elsewhere in the world), this is a job with quite high accident rates. Plans for methanol plants have implied that large volumes of wood would be gathered, so the risk would be commensurately large.

However, in terms of public risk methanol ranks second lowest, behind natural gas used to make electricity. As far as is known, the combustion of methanol produces little or no air pollution, so the risk to the public is close to zero. On the other hand, most of

* Risk of Energy Production, 1978, No. AECB–1119. Atomic Energy Control Board, PO Box 1046, Ottawa, Canada, KIP 559.

the large public risk from coal and oil combustion is derived from air pollution.

How can unconventional technologies like wind or solar thermal (the "tower of power" concept) have substantial public risk? The answer is simple. The production of the metals needed in many unconventional technologies requires that coal is burned, and this coal will produce air pollution, which in turn causes public health effects. In addition, public risk is produced by the necessary back-up system, required for when the Sun doesn't shine and the wind doesn't blow.

It may well be contended that the first of these two sources takes the analysis too far back, that the coal, iron ore and other raw materials are too removed from the final production of energy to play a part in risk accounting. However, the role of basic materials in the analysis is important. If energy is needed, the nuclear plants or solar panels must be built. To produce the plants or panels, we need to mine, refine, fabricate, and install the raw and intermediate materials, the components and finished products. We cannot avoid risk by ignoring it just because it happens to somebody else.

Risk in man-days lost per unit energy output

	Occupational	Public
Coal	73	2,010
Oil	18	1,920
Nuclear	8.7	1.4
Natural gas	5.9	—
Ocean thermal	30	1.4
Wind	282	539
Solar:		
Space heating	103	9.5
Thermal	101	510
Photovoltaic	188	511
Methanol	1,270	0.4

The energy system with by far the greatest amount of controversy about its risk is undoubtedly nuclear power. In a study of this type, we could not review all the claims and counterclaims about nuclear risk which have been made, especially with respect to reports such as the 4000-odd pages of the Rasmussen study on nuclear reactor safety (WASH-1400). Instead, a survey was taken of the major papers in the scientific literature which had estimated aspects of nuclear risk, including a monograph written by a well-known nuclear critic, John Holdren of the University of California at Berkeley. For each component of risk, the highest value from the group of scientific sources was used. This procedure, not followed for any other energy system, was chosen as a way of removing suspicion of pro-nuclear bias which often clouds energy debate.

ACCOUNTING FOR HAZARDS

There isn't room here for a full discussion of the methodology—the full AECB report contains further details of its features—however, because material acquisition and construction produce large risk for some energy systems, a brief review may be useful. Suppose mining X tonnes of coal or any other material to produce a unit output of net energy requires Y man-years. If the number of man-days lost per year of work is Z, then the number of man-days lost per unit of energy output is YZ/X. A similar calculation is made for the number of man-hours per unit energy output and the risk associated with various required occupational categories such as engineering, construction, operation and maintenance, and so on. We find the risk associated with each part of the system in the same way, and add them to determine the total. The calculations require no advanced mathematics or abstruse models; merely the ability to multiply and add.

This type of calculation implies that certain data are available: the time required per unit of production; rates of industrial accidents, disease and death; construction times; and, raw material requirements for industrial processes. While none of these data is known absolutely, they are known adequately for purposes of a general study such as this. Because the same methodology was applied to all the systems, wherever possible, potential inadvertent bias was reduced to a low level. Different methodologies were used for such risk sources as transportation, air pollution and waste disposal. Every effort was made to ensure that all energy systems considered were treated as uniformly as possible.

Contrary to the intuition of many people, the risk to human health (and its resulting consequences) per unit energy from unconventional energy sources such as solar and wind are apparently higher than those of conventional sources such as electricity produced from natural gas and nuclear power. There are at least two reasons why intuition fails: first, we tend to ignore all parts of the energy cycle except the last, most visible aspect; and secondly, we forget that risk must be compared in terms of unit energy output.

The above conclusions have implications beyond that of energy. Many people have advocated the use of decentralised energy systems as part of a political and economic process. Due to the risk they entail, material requirements alone may preclude this option. Neither I nor the Atomic Energy Control Board propose the use or non-use of any particular energy system. However, all of us must have knowledge of the risks involved in order to make reasoned judgments on the technical acceptability of a particular system.●

RONALD WILLIAMS NAMED TO PRAIRIE-HILL SCHOOL BOARD

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. DERWINSKI. Mr. Speaker, I would like to call the attention of the Members to an outstanding young Vietnam veteran from my district, Mr. Ronald Williams. Mr. Williams is a good example of the dedicated young men who, after returning from Vietnam, have made many great contributions to their home communities.

I would like to take this opportunity to congratulate him on accepting the important civic responsibility of serving as a member of the Board of Education of his local school district. A fine tribute to Ron appeared recently in the Penny Saver publication, serving the south suburban area of Chicago, which I wish to insert at this point:

NAMED TO PRAIRIE-HILL BOARD

Mrs. Bettyanne Howard, the President of the Prairie Hills Elementary School District Board of Education this week announced the appointment of Ronald Q. Williams to the position vacated by Board Member George Ross.

Mr. Williams, a resident of Country Club Hills, is a Social Science Analyst with the U.S. Government's Bureau of Labor Statistics in Chicago.

Mr. Williams was active in the Winston Park Homeowners Association, and he has a B.A. degree in Public Administration and Management from the University of Missouri.

Ronald and Gilda Williams are the parents of a 10 month old Asha, a girl. The Williams have lived in the Winston Park area for 3 years. Gilda Williams, who was born in Evanston, was a professional journalist in Chicago.

The 30 year old Williams was a Communications Specialist with the U.S. Air Force in Thailand during the Viet Nam Conflict and he is still on active status with the Ill. Air National Guard.

Mr. Williams was born in Columbia, Miss., and his present management position with the Bureau of Labor Statistics consists of managing, planning and co-ordinating several major employment statistic programs, surveys and research projects in the Region V area.●

TRIBUTE TO HON. WM. LEHMAN

HON. SIDNEY R. YATES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. YATES. Mr. Speaker, a Middle East resolution was introduced by Representative WILLIAM LEHMAN on behalf of the U.S. delegation to the 65th Inter-Parliamentary Union Conference recently held in Bonn, Germany. The resolution which was offered by the United States and cosponsored by seven other nations was effective in setting the stage for a more moderate tone and political climate regarding the Middle East question, and resulted in a more favorable and less inflammatory Mideast resolution to be passed at the IPU than in any recent year. Because the U.S. resolution expressed not only Representative LEHMAN's views but those of so many of his colleagues, I would like to share with you the text of the formal draft resolution presented by the United States on the Middle East question.

THE MIDDLE EAST QUESTION

Draft resolution presented by the Groups of the United States of America, Austria, Belgium, Denmark, Germany (Federal Republic of), Luxembourg, Netherlands and United Kingdom.

The 65th Inter-Parliamentary Conference,

Considering that a peaceful resolution of the Middle East dispute is essential for world peace and security,

Considering that the peace negotiations are at a very sensitive stage in their development,

Noting that the President of Egypt and the Prime Minister of Israel have agreed to renew face-to-face discussions facilitated by the President of the United States of America,

Noting further that these discussions constitute a significant step towards the ultimate goal of a comprehensive settlement.

1. Commends the Governments of Egypt and Israel for their willingness to further the cause of peace in the Middle East;

2. Calls upon Parliaments and Governments to encourage the negotiation process, which has been facilitated by the Camp David Summit, to bring about a peaceful settlement in the Middle East;

3. Urges the parties involved in negotiations to commit themselves to a peaceful settlement through direct negotiations and mutual concessions based on UN resolution 242;

4. Urges all nations involved in the conflict in the Middle East to support and join the negotiation process leading to a comprehensive settlement;

5. Calls on all nations concerned to refrain from provocative declarations or actions which may upset the sensitive deliberations now in process, and to support efforts for continued negotiation by the nations involved.●

ENERGY ADVISORY COMMITTEE REPORTS ON THE NATURAL GAS COMPROMISE

HON. ROBERT W. EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. EDGAR. Mr Speaker, the Senate yesterday by a vote of 39 to 59 defeated a motion to recommit the natural gas compromise conference report back to the conference committee. It is likely that the other body will approve this report, and we in the House will have the opportunity to pass judgment on its merits.

I have shared with my colleagues various analyses on energy issues which were prepared by my Energy Advisory Committee. This committee is composed of energy producers, consumers, scientists, academicians, manufacturers, retailers, and representatives of labor, business, environmental and public interest groups with expertise in energy issues.

Last June, I wrote to the committee requesting an analysis of the natural gas pricing compromise. I received its report today, and I would like to share it with my colleagues.

I find the report most interesting in that it mirrors the uncertainty and lack of confidence in statistics which are being provided by proponents and opponents of this bill. Just as in the Congress and our Nation, there is no consensus on resolving this controversial issue. The only thing which the committee members agreed upon was that there was a need for an effective national energy plan. Those who supported this bill supported it not because the natural gas bill was a step in the direction of an effective plan; rather that approval of this bill would remove roadblocks to the enactment of the three other bills which the members see as part of such a plan.

I share the confusion of the committee as to why the other portions of the plan are being held up until there is a resolution of the natural gas pricing bill.

At this point, I would like to share with my colleagues the text of my letter to Mr. Joseph Woods, Chairman of my Energy Advisory Committee, and the response I received.

JUNE 30, 1978.

Mr. JOSEPH WOODS,
Corporate Manager,
Scott Paper Co.,
Philadelphia, Pa.

DEAR JOE: The House/Senate energy conference committee recently reached agreement on the complex and controversial issue of natural gas pricing. Within the next several months, I will be called upon to vote on this proposal.

I would appreciate it if you would convene the 7th Congressional District Energy Advisory Committee to analyze this agreement. Specifically, I would be interested in seeing a comparison of this compromise, the Carter energy bill, and current law, with respect to natural gas supply, demand, and costs. I would also like to have an analysis of the impact of this compromise on energy producers, retailers, utilities, residential consumers, business and industry consumers, and the Northeast region as a whole, compared to current law and the Carter energy bill.

Enclosed is a copy of a booklet prepared by the conference committee staff detailing the provisions of the agreement. I will send to you published analyses of the agreement from other sources as soon as they are made available to me.

Please contact Cary Ballou of my Chester office if you feel a meeting of the Energy Advisory Committee is appropriate. Thank you for your continuing leadership in this effort to educate me about energy issues.

Cordially,

ROBERT W. EDGAR.

WALLINGTON, PA.,
September 15, 1978.

Representative ROBERT W. EDGAR,
117 Cannon House Office Building,
Washington, D.C.

DEAR BOB: The 7th Congressional District's Energy Advisory Committee has met at your request to study natural gas pricing legislation.

Although we, like many others, were unable to agree on the effect of the current natural gas pricing proposals, we were in agreement on the pressing need for an effective national energy plan. Such a plan should: decrease our country's use of oil and natural gas; recognize the price system as the best method to encourage energy conservation, the substitution of existing non-petroleum fuels and the development of new non-petroleum technologies; and create new approaches to cut the waste now existing in our society.

The Committee's detailed report is enclosed. I hope that you will continue to call upon us for our thoughts in the energy area.

Sincerely,

JOSEPH M. WOODS.

REPORT ON THE NATURAL GAS PRICING BILL BY THE 7TH CONGRESSIONAL DISTRICT ENERGY ADVISORY COMMITTEE

The 7th Congressional District Energy Advisory Committee met on Thursday, August 24, 1978, to respond to a request by Bob Edgar to analyze the natural gas pricing compromise.

Bob had asked "Specifically, I would be interested in seeing a comparison of this compromise, the Carter Energy Bill, and current law, with respect to natural gas supply, demand and costs. I would also like to have an analysis of the impact of this compromise on energy producers, retailers utilities, residential consumers, business and industry consumers, and the Northeast region as a whole, compared to current law and the Carter Energy Bill."

The Committee recognized that Bob's request addressed the key issues, but no one on the Committee was expert enough to provide a documented analysis. There is doubt that anyone could provide an analysis that would win approval of a national majority. Several natural gas studies were presented at the Committee meeting, each with widely ranging projections. If several government agencies and responsible trade associations, each with large staffs and analytical resources, could not agree on future natural gas price, supply and demand, the Committee did not feel badly in their failure to do so.

The Committee did agree that, as a nation, we must attempt to decrease our use of petroleum fuels (oil and natural gas). Planned, definite increases in the prices of petroleum fuels to all users would encourage conservation, new non-petroleum technologies and substitution of existing non-petroleum fuels. Price increases, the Committee felt, would encourage additional production from new and existing fields (secondary recovery). Instant deregulation of petroleum fuel prices was unacceptable due to its shock on the economy. Deregulation by the 1985 horizon proposed in the natural gas bill, while not entirely satisfactory to everyone was not that objectionable.

The Committee expressed concern for the hardship that higher prices would place on some members of society. This is a legitimate concern and must be addressed, but the Committee felt that such a concern should not deter the use of the price system to encourage conservation, new technology development and substitution of non-petroleum fuels.

The pressing need for an effective national energy plan was recognized by all in attendance. All thought the natural gas compromise was complex and the wide diversity of opinion on the effect of the bill is further evidence of its complexity.

Those in favor of the bill thought that the need for a national energy plan was so great that they would accept the natural gas compromise in order to get a national energy plan although the Committee wondered why other portions of the Plan must be held up by a resolution of natural gas pricing. Potential administrative problems were far less a concern than another year or more without a national energy plan.

Those against the natural gas bill based their objection on the complexity issue. Two memos written by FERC officials were quoted. One was written by FERC Chairman Curtis. The other by Shiela Hallis, FERC's Director of the Office of Enforcement, described the bill as "an impossible administrative burden." The complexity issue could also drive the small wildcatter out of business leaving the gas exploration in the hands of only the large petroleum companies.

There was some concern about the bill's incremental pricing provisions where industry would absorb most of the higher prices. Earlier in this discussion the Committee expressed support of the price system to encourage conservation, technology advances and fuel switching. Those thoughts apply here also with concerns for low income members of society.

The current natural gas pricing law does provide some incentive for discovery and production of new natural gas. However, it appears that unless the natural gas bill is passed, that other energy-related bills may not be passed either. On the other hand, there is some doubt about the strength of a national energy plan consisting only of a coal conversion bill, electric utility rate "reform", some conservation measures and a natural gas bill.

The Committee then discussed the large amount of energy waste and the waste of finished goods which consumes energy and other resources in their production. Neil Finlayson gave several examples which he had already communicated to Bob Edgar. Other Committee members mentioned other situations where conservation was possible or might be possible with some research, but there was little or no incentive to conserve. The economics of supply/demand do provide some incentives, but these are far from a complete answer.

Committee members are going to continue considering how to meet this challenge, but the Chairman suggested challenging Bob and his staff to also develop methods to transform ideas into action and reality. This is not an easy assignment, but neither was Bob's assignment to the Committee to analyze the natural gas bill. The Committee hopes that Bob will be more successful in these endeavors than they were in providing him a clear-cut analysis of the natural gas bill.

The Committee would like to acknowledge the hospitality of Bill Shergalis who hosted this meeting at Widener College.●

THE SLIDE OF THE DOLLAR

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for September 20, 1978 into the CONGRESSIONAL RECORD:

THE SLIDE OF THE DOLLAR

What does the slide of the dollar mean, and what should be done about it?

It is clear to me that many people are bothered by those questions. They may not understand all the complexities of international finance, but it makes them uneasy when they learn that the once mighty dollar fell by about half its value against the West German mark, by 55% to 60% against the Swiss franc and by 35% to 40% against the Japanese yen over the last several years. The dollar has dropped roughly 15% against a basket of ten foreign currencies in the past year alone.

The slide of the dollar has reached a serious stage and it threatens the stability of the international monetary system and the world economy. The cheapening of the dollar may add up to 1.5% to this year's rate of inflation. It both raises the cost of imports into this country and prompts American manufacturers to increase prices on goods that compete against the imports. As the products of other nations become harder to sell in the United States, their economies are weakened. At worst, the process would lead to a breakdown of world trade and investment if allowed to continue. It would also lead to a U.S. recession, brought about by inflation or a sharp rise in interest rates. Letting the dollar continue to slide undermines America's political authority to an unmeasurable but certain degree. It causes other nations to doubt the strength of the U.S. economy.

The reason for the slide is simply an oversupply of dollars in the hands of foreigners. Experts estimate that persons and banks abroad now hold $600 billion in dollars, much of this because for years this country has bought more goods and spent more money overseas than it has taken in from foreign sales and investment. Rising inflation and the huge trade deficit are the chief causes of the oversupply and the dollar's difficult position. The dollar is just like other commodities that move in international commerce: when there are too many dollars around, their value falls.

Like most of our problems today, there is no quick and easy solution to the slide of the dollar. In the long term the solution is to achieve a lower rate of inflation and a balanced trade account. But what is needed now is evidence that the United States government is taking effective steps to deal with these issues. As soon as other nations believe that the United States is moving in the right direction, the value of the dollar will climb even before things are fully corrected. It is the perceived trend that is critical. Since permanent cures for inflation and the trade imbalance take time, short-term "bridging" actions are needed.

The general rise in interest rates brought about by the Federal Reserve's increase of the discount rate (the rate at which it lends to commercial banks) is an appropriate opening move. The adoption of an energy policy is also very necessary. It would show that this nation is serious about reducing its inordinate imports of oil land improving its balance-of-payments deficit. The United States could also assemble greater resources in hard currencies for intervention in the currency markets to prop up the dollar. Our basic policy of intervention only to modulate disorderly markets will continue, but it would become more credible if the funds for large-scale intervention were on hand. The United States could borrow from the International Monetary Fund or sell more gold to obtain hard currency. The stimulation of exports is another key element in the dollar support program. We should consider cutting taxes for exporters or issuing special securities to be paid off in foreign currency, steps which would help soak up excess dollars abroad. Other steps can be taken to make it more attractive for American banks to borrow funds in the Eurodollar market instead of at home, thus reducing the oversupply of dollars in Europe. Although controls on the export of capital have been proposed, I would not favor them. They can be too easily circumvented.

There is some hope that the dollar's slide will eventually correct itself. It would spur U.S. exports by making them cheaper and cut imports by making them more expensive, thus lowering the trade deficit. Then the dollar could rise again. There are some signs that this may already be happening. Inflation has at least stopped getting worse, a fact which may calm foreigners who have been dumping their dollars before they lose more purchasing power. The U.S. economy remains strong enough to attract investment, and most experts agree that the dollar is undervalued in terms of its purchasing power against other currencies.

But more important than any short-range measures the United States may take to prop up the sliding dollar is a more disciplined approach to the U.S. economy, especially to inflation and the trade deficit. With America no longer a low-inflation country, and with it fighting to maintain its technological edge, the U.S. economy is being challenged in ways it has not experienced in the post-war period. Failure to take the necessary steps to address these challenges would be extremely serious, if not disastrous, for the U.S. economy.●

SENATOR ROBERT STAFFORD ELECTED TO 11-MEMBER EXECUTIVE COMMITTEE OF THE INTER-PARLIAMENTARY UNION

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. LEHMAN. Mr. Speaker, it has been my recent privilege to serve as a member of the U.S. delegation to the 65th Inter-Parliamentary Union Conference (IPU) in Bonn under the leadership of the chairman of our delegation, Senator ROBERT STAFFORD of Vermont. It is also my pleasure to report to my colleague that Senator STAFFORD has brought prestige and honor to the U.S. Congress by his well earned and much deserved election to the Executive Committee of the Inter-Parliamentary Union at the IPU Bonn meeting.

The IPU, which was founded in 1889, is an organization of legislators from 76 nations who meet regularly to consider the important public policy questions which affect all peoples. There is no other international gathering where lawmakers, who often serve long terms even through significant changes in their respective executive administrations, can meet and confer and learn to understand both each other and the needs of each other's countries. Senator STAFFORD has been involved in such a leadership capacity in the IPU for a number of years. He headed the U.S. delegation to Bonn and was selected by the U.S. group to be the candidate for one of two vacancies on the 11-member executive committee.

The executive committee is the administrative organ of the Inter-Parliamentary Union, and its members are representative of the parliamentary delegations to the IPU. As a member of the executive committee, Senator STAFFORD will be in a key position to make judgments on budgetary matters and to recommend agenda topics for future meetings and study committees of the Inter-Parliamentary Union.

As a cochairman of the House delegation to the IPU in Bonn, I would like to say that I enjoyed working with Senator STAFFORD and look forward to our continued association with the Inter-Parliamentary Union.●

THE PUBLIC WORKS-ENERGY APPROPRIATIONS BILL IS A BUDGET-BUSTER

HON. ROBERT W. EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. EDGAR. Mr. Speaker, there was spirited floor debate last week during consideration of the conference report to the Public Works energy research appropriations bill, H.R. 12928. During that debate, it was correctly pointed out that the bill is almost $900 million under the President's budget. However, I pointed out there there were at least $1.14 billion in "paper savings" compared to the President's budget. When these "savings" are accounted for, the bill is actually $235 million in excess of the budget for programs, compared to the President.

There is some controversy over what is termed "paper savings." I would like to put aside this term for the moment and just relay to you the budget figures listed in this conference report. Make your own conclusions over whether this bill is a budget-buster or not.

I would like to underscore my statement last week that I do not feel the conference committee improperly overestimated certain receipts and unobligated balances which have nothing to do with actual program cuts during the coming fiscal year.

However, I continue to feel that it is misleading to declare this bill to be significantly under the President's budget without concurrently explaining that had the President followed the same nonprogram estimates of receipts, this bill would then be at least $235 million over the budget. I would also like to point out these figures were found by me and my staff solely from reviewing this conference report. Nothing is disguised. I have been informed that the Office of Management and Budget has located additional accounting differences in the

two budgets which favor the committee in its comparison, and which add more support to my view that the bill is a budget-buster.

Finally, it should be pointed out that the President's budget uses the same technique of applying anticipated unobligated balances and miscellaneous receipts and revenues to program levels. However, in pointing out the $1.14 billion in nonprogram accounting differences, I accounted only for differences between the administration's estimates and the conference report's. Otherwise, the $1.14 billion would be much higher.

The following information is taken directly from the conference report to H.R. 12928 (Report 95–1490):

Program	Fiscal year 1979 budget estimate	Conference allowance
DOE—operating expenses:		
Unobligated balances brought forward	−12,300,000	−172,770,000
DOE—plant and capital equipment:		
Unobligated balances brought forward	----------	−11,000.000
DOE—changes in inventories and working capital	+35,313,000	−6,000,000
Corps—Construction:		
Unobligated balances brought forward	----------	−85,000,000
Bureau of Reclamation:		
Unobligated balances	----------	60,000,000
Corps, Bureau, DOE:		
Full funding for construction projects	*+686,900,000	----------
DOE uranium enrichment revenues	−156,700,000	−256,700,000
Totals	+553,200,000	−591,470,000

*There is no actual line item for full funding in the report.

What these figures indicate is that the conference report has at least a $1.14 billion cushion resulting solely from accounting differences between the administration budget and the conference report budget.

Since the conference report budget is officially $879 million under the administration budget, this means that the report must be at least $235 million over the budget in program funds.

What also needs to be pointed out is that the administration budget allowed for 26 new construction starts (Corps of Engineers and Bureau of Reclamation) at a cost of $640.2 million. The conference report appropriates funds for 53 new construction starts, which will cost $1.8 billion when completed. Obviously, this conference bill will commit more spending in future fiscal years above the increases in spending I have documented for fiscal year 1979. This commitment, which according to the Office of Management and Budget exceeds $1.4 billion, will make it much tougher for the President to meet his commitment of balancing the budget in future years.●

ECONOMIES OF SMALL FAMILY FARMING

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. BROWN of California. Mr. Speaker, a few weeks ago an article in the Los Angeles Times, "Look What's Coming for Dinner, America," by Patricia Flynn, prompted me to discuss some of the adverse social effects of agribusiness on small family farming. Many people still minimize these effects and defend large-scale farming for economic reasons. They claim that small-scale family farming is now technically obsolete and an inefficient supplier of food. To quote former Secretary of Agriculture Earl Butz:

When I said we were going to have upwards of a million fewer farmers by 1980, that didn't mean necessarily that I approved of that. I simply was reporting what is going to happen. I think it is inevitable.

I have some doubts about these prior conclusions that I would like to discuss here today. First, several studies show that small farms can be technically efficient and provide their operators with average or better incomes. Second, agribusiness promoters do not consider several nonmarket factors, such as the social implications of large agribusiness—as I previously discussed—soil erosion, the environmental consequences of chemical fertilizers, pesticides and the like, management-labor problems, and the energy inefficiency of highly mechanized farming. I believe, indeed, that small farms are disappearing only because of unfair market conditions and government interference. Therefore, I feel the Family Farm Development Act, of which I am a sponsor, is necessary to help small farmers maintain and improve their positions in our rural society.

J. Patrick Madden, then an agricultural economist for the Farm Production Economics Division of the Department of Agriculture, found, in his 1967 study "Economies of Size in Farming," that "an average total cost as low as any of the larger farms" could be obtained on one person operated farms. Prices and technologies were based on 1962 levels. The efficient farms included a 440 acre Texas High Plains cotton farm, a 300 acre heavy soil, and a 240 acre light soil Fresno cotton farm. Madden found that the main advantage of large farms was higher profits rather than lower costs.

One of the more comprehensive studies I have seen on the economies of small-scale farming was published in 1973 by Warren Bailey, then the deputy director of the Commodity Economics Division of the Economic Research Service of the USDA, entitled "The One-Man Farm." Bailey found the seed, fertilizer, and pesticide costs per acre to be almost constant regardless of farm size. The advantage large farms received from discount or wholesale prices of some inputs did not exceed that which most farm cooperatives could also receive. Capital production costs were the main variable. Bailey thus defined a technically optimum farm as "the maximum acreage of a specified combination of crops that the man and his machines can produce—plant, cultivate, and harvest—annually." He then gave seven examples of technically optimum farms:

	Acres	Land value	Other capital	Net income
Montana: Wheat-barley	1,960	$245,000	$57,000	$9,500
Kansas: Wheat-grain sorghum	1,950	200,000	55,000	9,000
Indiana: Corn-soybeans	800	480,000	130,000	20,400
Louisiana: Rice-soybeans	360	108,000	50,000	15,200
Delta: Cotton-soybeans	600	255,000	80,000	17,600
California: Irrigated cotton	400	320,000	64,000	20,000
Vegetables	200	400,000	85,000	31,000

The technically optimum farm can still be operated by a single farmer, though its size has increased 50 percent in the past 10 years. This farm is larger and more capital intensive than many small farms existing today. This can be blamed partially on the unavailability of credit from traditional lending institutions for small farmers. President Carter signed into law the Agricultural Credit Act of 1978 on August 4, 1978, with title 4 of the Family Farm Development Act, sponsored by myself, incorporated into this legislation. This will provide ownership loans to help small farmers afford high-priced capital and land.

The Economics, Statistics, and Cooperatives Service of the USDA produced a study in February of this year entitled, "The U.S. Department of Interior's Proposed Rules for Enforcement of the Reclamation Act of 1902: An Economic Impact Analysis." Their optimum farm size was based on the "normal" implements of land, labor, machinery, build-

ings, and management found in each area studied. They found the following net returns for various small farms:

Area	160 acres	320 acres	640 acres
Westlands (California)	$25,000	$54,000	$81,000
Imperial (California)	6,000	21,000	61,000
North Platte (Nebraska and Wyoming)	7-8,000	14-15,000	23-25,000
Columbia Basin (Washington)	19,000	53,000	125,000

Of the areas studied, only the 160-acre Imperial farm was economically unstable. In California, it was found that the costs of producing cotton on a 320-acre farm was 3.6 cents per pound less in the Westlands area and 5.9 cents per pound less in the Imperial area than on a 160-acre farm. The cost differentials were greatly reduced, however, when the 320-acre farms were compared to 640-acre ones—1.9 and 2.2 cents less per pound. The total costs included in their study increased 10 percent as farm size decreased from 2,500 to 320 acres. The major result of enforcing the Reclamation Act of 1902 for consumers would be a slight price increase for some winter vegetables.

These studies show small farms can be economically viable and add little, if any, extra costs to consumers. There are also several diseconomies of size that should be accounted. Soil erosion, for instance, is most acute on large scale irrigated single crop farms. The problem was best summarized in a 1975 report prepared for the Senate Committee on Agriculture and Forestry, entitled "Conservation of Land, and the Use of Waste Materials for Man's Benefits." I would like to insert part of this summary here:

Average crop yields have tended to increase in the United States even though soil losses are often excessive. Use of modern technology, including fertilizers, is largely responsible. But this is a short-term effect. Over the long term, erosion decreases the yield potential and increases production costs.

Soil erosion creates a serious sedimentation problem. Sediment is by far the major pollutant of surface waters. Some of the highest sediment yields come from the most productive and most intensively cultivated soils. Water quality in lakes and streams is also reduced by the nutrients and pesticides carried there by the sediment and runoff water.

In recent years, there has been a shift away from soil conserving crop rotations. Much of the current production is from either a continuous single crop or, as in the Corn Belt, a rotation of two intensive row crops (corn and soybeans). Fertilizers and pesticides have made this system feasible. Although continuous single-cropping is efficient and profitable, it does increase the erosion hazard and the need for soil conservation practices.

Trends that could lead to another "dust bowl" in the Great Plains during a sustained drought include the following: (a) Elimination of strip-cropping for control of wind erosion as a result of change from a wheat-fallow system to continuous wheat production. (b) Shifting from soil-conserving, stubble-mulch tillage to plowing to help control dowy bromegrass as a weed in wheat. (c) Shifting to wheat production certain rangelands that would be relatively susceptible to wind erosion under conditions of drought because they occur in the drier regions. Such a trend will be fostered by continued high prices of wheat and low prices of cattle.

D. R. Marshall, in "The Advantages and Hazards of Genetic Homogeneity," discussed how large-scale farms are particularly susceptible to disease and pests. This is largely due to the cultivation of only a few crops, 15 major crops today as compared to 150 in the past, less crop diversification per acre and narrow genetic bases. Past farmers grew a mosaic of crops and farm animals on their land. Now, as Bailey explained, rising capital costs prevent most farmers from buying the machinery for more than one or two crops. Farmers are less self-sufficient and rely more on individual cash crops. Large single crop fields provide them the maximum profitability in the short run. These farms, though, are ideal breeding grounds for exotic diseases and pests.

A 1972 study by the Agricultural Board of the National Academy of Sciences, entitled "Genetic Vulnerability of Major Crops," found that a 1970 U.S. corn blight epidemic was caused in part by modern agricultural techniques. One particular Texas high-yield hybrid of corn was spread throughout the Nation. A fungus, called Helminthosporium maydis, mutated so that the Texas corn cytoplasm was susceptible. The blight, beginning in the South, destroyed 50 percent of the corn crop in some States and 15 percent nationwide. The study blamed the homogeneity of the corn and large single crop farms for the blight. American corn was previously much more varied and spread throughout other crops, so no particular disease could do much harm. Only heavy and consistent use of fungicides stopped the 1970 epidemic.

Current agricultural techniques and large-scale farming require increased usage of fertilizers, pesticides, and the like to maintain high crop yields. The abandonment of crop rotation has depleted soils and led to increased use of artificial fertilizers. There are questions concerning how this detracts from the nutritional value of foods. It does increase the likelihood of disasters, such as the one that occurred a few years ago in Decatur, Ill. Barry Commoner documented this crisis in his 1971 book, "The Closing Circle." Nitrates from farm water runoff were washed into the town's water supply. The nitrates mainly came from nitrogen fertilizers. The chemicals were converted by intestinal bacteria, especially common in infants, into poisonous nitrites. The use of artificial nitrogen fertilizers thus led in Decatur to a number of deaths. Various pesticides are also linked to cancer and other serious ailments. How much they are incorporated into the food humans eat is not known. Natural fertilizers and pesticides are being introduced, but, as long as current agricultural techniques are used and large farmers are most concerned with short-run profits, this will be a slow change.

There are also the problems of management and farm labor in large-scale farming. The major factor seems to be the separation of the farm owners from their lands. They cannot and do not become as personally involved in farming as small farmers can and do become involved. They have attempted to industrialize agriculture—thus the phrase "agribusiness"—to separate their farm employees by division of labor. A layer of highly skilled and high-salaried management usually is required. Since they do not have an actual stake in the success of the farm, they are motivated by monetary incentives. There is a small supply of good managers, and large farms occasionally suffer from this fact. Small farmers do not have to incur these extra labor costs. Agribusiness tries to minimize total labor costs by keeping farmworker wages as low as possible. The farmworkers thus live in great poverty. Their attempts at unionization have been highly discouraged. Boycotts and other forms of labor strife have been organized against several large farms. Agribusiness, with help from sympathetic agricultural researchers, increasingly are replacing workers with machines that do not create labor problems.

The displacement of farmworkers continues the trend I described in my previous discussion. The UFW estimates thousands of workers will lose their jobs in the next few years from machines like the tomato harvesters. This is a major social cost to our society that agribusiness and researchers do not consider.

The new machinery and fertilizers are highly energy intensive. Food prices thus will continue to rise rapidly while energy prices increase. This affects both consumers and the small farmers who cannot afford higher fuel costs. Pimental et al, in "Food Production and the Energy Crisis," calculated that the kilocalorie return of food per kilocalorie of input in production has decreased from 3.70 in 1945 to only 2.82 in 1970. Current agricultural techniques thus have greatly decreased the energy efficiency of farming. The equivalent of 80 gallons of gasoline per acre of food produced is now being used. This problem will only be worse as fuel prices continue to rise and more energy intensive machinery and techniques are introduced into farming.

Finally, large scale farms are more likely to produce highly processed and packaged foods. Preservatives, artificial coloring and flavoring, and chemical ripeners all have questionable effects on our health. Packaging, advertising, layers of management and monopoly actions increase the consumer food prices. The large horizontally integrated corporations which control each step of food production create the worst problems. Small farmers find it difficult to compete with these monopolizers.

The studies I have discussed here today show that small farms can be cost competitive and earn their owners sufficient incomes. Furthermore, the problems of soil erosion, energy inefficiency, social costs, environmental costs of artificial fertilizer, pesticide and the like use, management and labor strife probably outweigh any possible economic benefits of large scale farming. Small farms are hurt by lack of credit to buy equipment and land, unfair market practices and

agricultural research skewed to help large scale farmers. The high short run profits of current techniques are considered, but not the social and environmental costs. Therefore, I believe the Family Farm Development Act is necessary to promote small scale farming. Long run economic, social and environmental considerations have convinced me of the benefits to our society of small scale family farming. I thus urge my colleagues in Congress to give this their attention and support.●

OCEAN DUMPING

HON. EDWIN B. FORSYTHE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. FORSYTHE. Mr. Speaker, as a member of the Merchant Marine and Fisheries Committee I have been particularly concerned about the problem of ocean dumping in the New York Bight off the coasts of New York and New Jersey. Recently my distinguished colleague, Mr. JOHN WYDLER of New York, the ranking minority member of the Science and Technology Committee, had some important correspondence with the Environmental Agency on the status of ocean dumping. The December 1981 EPA deadline for a moratorium on ocean dumping can only be met if all communities involved step up their efforts to meet phaseout schedules. I share Mr. WYDLER's concerns that land-based disposal alternatives may not be available by 1981 for the large volumes of sewage sludge projected by EPA. I recommend Mr. WYDLER's letter to my colleagues since it states several of my own concerns about ocean dumping and puts the administration on notice that Congress is serious about terminating ocean dumping. The EPA response to Mr. WYDLER's letter gives an accurate picture of how far we have to go to solve this difficult problem.

HOUSE OF REPRESENTATIVES,
Washington, D.C., August 2, 1978.

Hon. DOUGLAS C. COSTLE,
Administrator, Environmental Protection Agency, Washington, D.C.

DEAR MR. COSTLE: I read with great interest the EPA news release material dated July 20 which noted some hopeful signs with respect to the ocean dumping problem. I am pleased that the number of dumpers and total tonnage have decreased over the past year. However, I am pessimistic that the 1981 moratorium deadline can be met. I am also concerned that the sewage sludge problem is increasing and may continue to do so for the foreseeable future.

As your agency's release also noted the volume of sludge increased due to two major factors. They are: (1) an increasing volume of treated sewage, and (2) higher level of applied treatments. It seems to me that the second factor will continue to lead to increased volume since communities are rightfully demanding better control of waste products. Thus, I fear we may have less and less dumpers but more sludge.

I hope you can provide me with detailed projections on the sewage sludge problem as well as meaningful estimates of the rate at which dumping will phase out and land based treatment take over in the New York area.

As you know, the problems of non-point source pollutants including urban runoffs have only recently surfaced as causes of major environmental episodes which threaten our beaches. In this regard, I feel it is mandatory that we maintain a healthy schedule for the complete phaseout of ocean dumping.

Thank you in advance for your cooperation in this matter.

Sincerely yours,

JOHN W. WYDLER,
Member of Congress.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., August 21, 1978.

Hon. JOHN W. WYDLER,
House of Representatives, Washington, D.C.

DEAR MR. WYDLER: Mr. Costle has asked me to respond to your letter of August 2, 1978, in which you expressed concern about increased volumes of sewage sludge which will be generated in the years between now and 1981 due to increased treatment.

At your request, I am enclosing a table showing estimated volumes of sludge which will be dumped in the New York Bight for the years 1977 through 1981. Also enclosed is a table which indicates the phase-out date for each of the municipalities currently ocean dumping their sludge.

Since August 1976, all permits issued by the Environmental Protection Agency (EPA) have required the selection and implementation of environmentally acceptable alternatives for sewage sludge on or before December 31, 1981. In addition, EPA's revised Ocean Dumping Regulations published in January 1977 required that, as of April 23, 1978, the permittees demonstrate best efforts to cease ocean dumping by 1981 and have an implementable schedule for effecting a land-based alternative. EPA's position to require the cessation of ocean dumping of sewage sludge by the end of 1981, if not before, was made statutory in November 1977 by the enactment of P.L. 95-153.

The enforcement strategy in the Regions concerning the compliance schedule is to strictly enforce permit conditions which require that the phase-out be accomplished in accordance with specific milestones and to make full use of all administrative and legal remedies if these milestones are not met. Failure to meet these milestones has already resulted in the issuance of complaints by Region II to 15 New Jersey communities. In addition, the City of New York and Westchester County are not in compliance with their phase-out schedules and have been informed of possible enforcement action by this Agency.

EPA's Sixth Annual Report to Congress on the administration of Title I of the Marine Protection, Research, and Sanctuaries Act (copy enclosed) includes a section on alternatives to ocean dumping. Examples of some of the alternatives being considered or implemented by communities in the New York-New Jersey metropolitan area are listed on page 45 of this report.

We share your concern about this matter and assure you that we are continuing to work diligently with these municipalities to ensure that they meet the 1981 deadline.

Sincerely yours,

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

ESTIMATED VOLUMES OF SEWAGE SLUDGE TO BE DUMPED IN THE NEW YORK BIGHT

[Thousands of wet tons]

Waste generator	1977	1978	1979	1980	1981
Glen Cove	6	13	15	15	15
Long Beach	7	9	10	10	10
Nassau County	378	424	463	482	502
New York City	2,212	3,965	4,837	5,137	6,544
Westchester County	157	380	590	757	779
New Jersey Communities	1,727	2,266	2,777	3,102	3,206
Total	4,487	7,057	8,692	9,503	11,056

MUNICIPAL OCEAN DUMPING PERMITS—REGION II

(As of August 1, 1978)

Permit number, waste generator, and phase out date

II-NJ-003: Passaic Valley Sewerage Comm., December 31, 1981.
II-NY-029: Westchester Co. Dept. Envir. Fac., December 31, 1981.
II-NJ-111: General Marine Transport Corp.:
Domestic Septic Tank Wastes, *April 23, 1978.
Morris Twp., December 31, 1981.
Wanaque S.A., May 30, 1980.
Wood-Ridge, December 31, 1981.
II-NJ-017: Modern Transportation Co.:
Domestic Septic Tank Wastes, December 1, 1978.
Asbury Park, December 31, 1981.
Atlantic Highlands, December 31, 1981.
Caldwell Boro, December 31, 1978.
Cedar Grove, December 31, 1981.
Chatham, *March 2, 1978.
Kearny, December 31, 1981.
Lincoln Park, July 31, 1979.
Neptune Twp.—Ocean Grove, *June 15, 1978.
Northeast Monmouth Reg. S.A., December 31, 1981.
Oakland Boro, *June 30, 1978.
Passaic, *February 28, 1978.
Pequannock Twp., December 30, 1980.
Pompton Lakes, *June 30, 1978.
Roxbury Twp., December 31, 1978.
Totowa Boro, December 31, 1981.
Washington Twp.—Morris Co., December 31, 1981.
Wayne Twp., *June 30, 1978.
West New York, December 31, 1981.
West Paterson, December 31, 1980.
II-NJ-019: Bergen Co. Sewer Authority, December 31, 1981.
II-NJ-012: Camden Dept. Public Works. * June 15, 1978.
II-NY-068: Glen Cove, City of, December 31, 1981.
II-NJ-022: Joint Mtg. of Essex & Union Co., December 31, 1981.
II-NJ-021: Linden-Roselle & Rahway Valley S.A., December 31, 1981.
II-NY-007: Long Beach, City of, December 31, 1981.
II-NJ-008: Middlesex Co. Sewerage Authority, December 31, 1981.
II-NJ-002: Middletown Twp. Sewerage Auth., December 31, 1981.
II-NY-028: Nassau Co. Dept. Public Works, December 31, 1981.
Bay Park STP.
Belgrave STP.
Cedar Creek STP.
Farmingdale STP.
Freeport STP.
Inwood STP.
Meadowbrook STP.
Roslyn STP.
W. Long Beach S. Dist.

*Phase out completed.

II-NY-009: New York City Dept. Water Resources, December 31, 1981.
Bowery Bay STP.
Coney Island STP.
Hunts Point STP.
Jamaica STP.
Newtown Creek STP.
Owls Head STP.
Port Richmond STP.
Rockaway STP.
Tallman Island STP.
26th Ward STP.
Wards Island STP.

(Excerpt from "Ocean Dumping in the United States" the Sixth Annual Report of the Environmental Protection Agency-Technology Alternatives.)

Examples of some of the technology being considered in the Facility Plans (Step 1 Grant) or currently being implemented are:

Composting: Camden, Middletown Township, Northeast Monmouth, Linden-Roselle, Nassau County.

Composing and use as landfill cover as an interim solution; co-recovery with solid wastes as a long-term solution: Bergen County.

Incineration: Joint Meeting of Essex and Union Counties, Rahway Valley, Wayne Township, Lincoln Park, Pequannock Township, Pompton Plains, Oakland.

Multiple hearth incineration or starved air combustion, Middlesex County.

Co-incineration with solid wastes: Glen Cove.

Composting or landfilling of digested dewatered sluge as an interim solution; utilization of other technology, (pyrolysis, co-recovery, etc.) or shipment out of the city area or composting as a long-term solution: New York City.

Use of existing excess capacity in solid waste incinerators and composting of remainder: Westchester County.

The other major ocean dumper of sewage sludge is the City of Philadelphia (Region III). The City is on an implementation schedule which requires total cessation of ocean dumping of sewage sludge by December 31, 1980. The implementation plan contains several interim steps which include dewatering of increased amounts of sludge, and pilot studies to a certain parameter for facilities to compost all sludge generated, to ascertain the feasibility and proper design parameters for facilities to make EcoRock (a highway aggregated made from sludge), and to demonstrate the feasibility of sludge application to strip mines.

In addition to plans and studies on the ultimate disposal of its sludge, Philadelphia has also begun a program to identify the sources of metal in its treatment plants. This program will survey possible controllable sources with a view to making the sludge more amenable to land-based alternatives.●

HOSPITAL COST CONTAINMENT

HON. JIM SANTINI

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SANTINI. Mr. Speaker, as a member of the Interstate and Foreign Commerce Committee who was deeply involved in the markup of H.R. 6575, the hospital cost containment legislation, I am concerned about the possibility that the committee process could be circumvented by a Senate amendment to a House-passed health bill other than H.R. 6575. This would avoid House consideration of the containment provisions prior to a vote on a conference report.

Yesterday we considered H.R. 13097, the Medicare Amendments of 1978. It is my hope that the Senate will make no effort to attach a nongermane amendment to such an important piece of legislation. In the event that the other body does take such an action, I trust that both the Ways and Means Committee and the Interstate and Foreign Commerce Committee will have a chance to review the amended measure.●

INFLATIONARY IMPACT OF GAS BILL STUDIED

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SIMON. Mr. Speaker, I have up to this point made no commitment on the natural gas bill now before the Senate. And one of my major considerations is the inflationary impact.

Pursuing that question, I asked Charles Schultze, Chairman of the Council of Economic Advisers, to give me a fill-in on the inflationary impact of the legislation.

I am inserting his letter into the RECORD. I would be interested in hearing from colleagues who may agree or disagree with his conclusions.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS,
Washington, D.C., September 18, 1978.

Hon. PAUL SIMON,
House of Representatives, Congress of the United States, Cannon House Office Building, Washington, D.C.

DEAR PAUL: This is in response to your inquiry about the inflationary impact of the Natural Gas Compromise reported out by the Energy Conference Committee.

On the basis of price estimates supplied by the Department of Energy (DOE), we estimate that the bill would have very little inflationary impact relative to the estimated course of prices that could be expected to occur without the bill. DOE has calculated that the average delivered residential price for natural gas in 1985 would be $3.31 per million BTU in 1985. In contrast, if no bill is passed, and if the Federal Energy Regulatory Commission (FERC) allows interstate gas prices to rise no faster than inflation, the same price in 1985 is estimated to be $3.22. The difference in prices is negligible.

Natural gas prices to industry will rise somewhat faster with the bill than without. But at the same time there will be more natural gas available to the interstate market, and even at the new prices, that gas will be cheaper than alternative sources of fuel. The substitution of newly available gas for other, higher cost energy sources—principally imported LNG and oil imports—will work to reduce the net cost of energy purchases.

With or without a natural gas bill, the price of natural gas will rise in the years ahead. But with the single national market made possible by the bill, additional natural gas will flow to the interstate market, and overall, additional supplies of natural gas will be forthcoming, at prices still below those of the LNG and imported oil which would otherwise be used. As a consequence, the natural gas bill will not raise the overall level of costs and prices in the economy by any significant amount, but will make possible significant savings in high-priced oil imports and imported LNG.

More generally, passage of the natural gas bill would strengthen the dollar and thereby make an important indirect contribution to the battle against inflation. The savings in imports of oil and LNG would allow substantial improvement in our balance of payments—over $7 billion in 1978 dollars by 1985. Equally important, enactment of natural gas legislation would bolster confidence in the dollar by clearly demonstrating to our trading partners the U.S. commitment to reducing the level of energy imports.

I would also like to comment on the claims by some opponents of the bill, that it will cost consumers $30 billion over the next seven years. This estimate is not correct. The Department of Energy has estimated that producer revenues will increase by $30 billion over this period. But most of the increase arises because the bill is expected to induce greater gas production. Only $9 to $10 billion represents the increase in revenues on the existing volume of production. In turn, because the added gas production will displace higher priced oil and LNG imports, the net effect on consumers will be much smaller than this.

I hope this information is useful. Please feel free to call me if you have additional questions.

Cordially,

CHARLES L. SCHULTZE.●

GILBERTO "BOB" PORTILLA, PRESIDENT, PHILIPPINE-U.S. VETERANS ASSOCIATION

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. PATTERSON of California. Mr. Speaker, I ask my colleagues to join me today in honoring Mr. Gilberto "Bob" Portilla, who was recently elected president of the Southern California Philippine-U.S. Veterans Association.

Mr. Portilla, who lives in Buena Park, Calif., retired from the U.S. Navy on September 30, 1975, after serving in defense of his Nation for 20 years. He enlisted in the U.S. Navy on June 24, 1955.

Mr. Portilla exemplifies the essence and spirit of the various ethnic groups which, by working together, have made the United States the great Nation which it is today. Although he was born in the Philippine Islands, Mr. Portilla's belief in and dedication to the American ideal of liberty moved him to become a naturalized American citizen.

I am certain that my colleagues join me in thanking Bob Portilla for his unselfish contribution to our country during his tour of military service and for his continuing contribution to society as president of his veterans organization.

Indeed, he and his family have proved to be productive and essential members of American society. His children attend local schools, including Cypress College, and his wife owns a small business.

Thank you, Bob, for working to make America a better place for all of us.●

PUBLIC EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1978

HON. JOHN H. DENT

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. DENT. Mr. Speaker, it is with a sense of satisfaction and conviction, Mr. Speaker, that I am today introducing the Public Employee Retirement Income Security Act of 1978.

This bill proposes Federal standards, for retirement plans of States and localities, in the areas of reporting, disclosure, fiduciary responsibility, and plan administration.

I would like to take a few moments to point out to my colleagues the firm basis on which the proposals in this legislation are based.

On March 15 of this year, my colleagues on the Subcommittee on Labor Standards unanimously approved the Pension Task Force Report on Public Employee Retirement Systems. Under my direction, as chairman of the subcommittee, and the direction of my colleague JOHN ERLENBORN, the Pension Task Force conducted an exhaustive study of the nearly 7,000 Federal, State, and local governmental retirement systems. Through this study effort, we have gained new insights into the practices and problems of governmental retirement systems.

Our study of the numerous Federal systems revealed an uncoordinated and inconsistent series of Federal retirement plans. Together with Congressman ERLENBORN, I introduced earlier this year H.R. 9701, which would establish uniform financial and actuarial practices for our Federal retirement systems. We have watched the progress of H.R. 9701 with keen interest, and hope that the administration will continue to support it and that it will be enacted into law soon. H.R. 9701 will not solve the problems with which our Federal retirement plans must deal. But it does represent a beginning toward understanding the true status of these plans.

Our study of State and local plans also revealed significant information regarding the universe of State and local government plans. The Pension Task Force Report shows in considerable detail that far too many State and local pension systems contain serious deficiencies with regard to reporting, disclosure, fiduciary, and plan administration practices. Although many systems do contain provisions in these important areas that adequately serve the needs of plan participants, plan sponsors, and most importantly, the taxpayers, the report clearly demonstrates that many systems do not, and that taxpayers as well as plan participants and their beneficiaries are thereby placed in jeopardy.

Too often participants have been denied vital information regarding the provisions of their plans, their pension entitlements, and so on. This bill provides that information in a sensible and reasonable manner.

Too often the true financial condition of State and local government plans has been unclear because of inconsistent and unprofessional actuarial, accounting, and auditing practices. This bill provides for improvements in these important areas in a sensible and reasonable manner.

Too often the assets of State and local governmental retirement ssytems have been managed and invested in a manner that does not reflect the relationship of trust that should exist between plan fiduciaries and plan participants, and the importance of the pension system to plan participants and beneficiaries. This bill addresses these problems in a sensible and reasonable manner.

It is important to note that this bill has been tailored to the precise characteristics of the public plan universe which we have so carefully studied and identified.

For example, we have observed that in many States a great number of local government pension plans may band together to provide for more economical plan administration. Accordingly, we wish to make it clear that in such instances, the reporting and disclosure provisions in this bill would apply only to the single large plan. We carefully noted the unique nature of plan sponsors in the public sector. State and local governments are far different from private corporations and partnerships. Accordingly, the fiduciary provisions in the bill make it clear the Government itself, and not plan fiduciaries who are Government employees, generally will be liable to the pension plan for losses caused by imprudent fiduciary actions by such Government employees. We noted that it is frequently Governors, mayors, State legislators, and other government officials who make decisions regarding funding and benefit levels in the course of their regular and necessary official duties. Appreciating the necessity of permitting such officials to discharge their official duties in a free manner, the bill does not provide for liability for such officials with regard to actions involving benefit levels and funding levels for benefits and administrative expenses.

It is also important to note that this bill reflects the experience the private sector has had under ERISA. For instance, certain reports have been eliminated from the reporting requirements, and other reporting requirements have been substantially consolidated and simplified. We have observed the unworkability of dual or multi-agency administration of ERISA, and so have proposed, as title II of the bill introduced today, the creation of a single, unified, Employee Benefit Administration to administer PERISA as well as to help in the formulation of a cohesive, workable Federal Government policy regarding retirement and retirement income. It should be noted that the board of directors of the Employee Benefit Administration, as proposed in today's bill, differs from the board proposed in H.R. 4340, introduced by Mr. ERLENBORN and me last spring. The composition of the board as contained in today's bill is, in my opinion, an improvement.

Mr. Speaker, I have attached to the end of this statement a detailed explanation of the Public Employee Retirement Income Security Act of 1978, and I urge my colleagues as well as the public plan community to carefully study it and the bill itself.

Enactment of this bill will not cure all of the ills of the public plan universe overnight. Funding, for instance, is not required in this proposal but is addressed by the actuarial disclosure requirements and by the ability of the Advisory Council on Governmental plans to develop voluntary guidelines in this area. But by enacting strict yet flexible fiduciary responsibility provisions, we can assure the taxpayers and plan participants that what is in the pension funds will be invested and managed appropriately. By requiring professional and informative reporting, we can learn enough about governmental plans to decide exactly what ought to be done with regard to funding, profitability, and other difficult issues. By disclosing to participants the important provisions in their plans and requiring that participants be treated by plan fiduciaries in a forthright and equitable manner, we can help our public servants to intelligently plan for their retirement and to enjoy their retirement years with a measure of dignity and decency.

I deeply regret, Mr. Speaker that I will not be here next Congress to see to a finish the legislative effort which is commencing today. I am hopeful, however, that we can make a good start in the remaininng weeks of this Congress. And I am certain that the cosponsor of this bill, my good friend JOHN ERLENBORN, together with our colleagues on the Committee on Education and Labor, will continue our efforts to accomplish meaningful and workable pension reform.

SUMMARY OF THE MAJOR PROVISIONS OF THE PROPOSED PUBLIC EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1978 (PERISA)

PURPOSES

The purposes of the proposed Public Employees Retirement Income Security Act of 1978 are to protect the interests of public pension plans participants and beneficiaries and to minimize the possible adverse impact of the operations of such plans on Federal revenues and expenditures and the national securities markets:

(1) by establishing minimum standards of fiduciary conduct for trustees, administrators, and others dealing with public pension plans;

(2) by requiring the disclosure of plan provisions to participants and beneficiaries and the reporting of financial, actuarial, and other information;

(3) by providing for appropriate remedies, sanctions, and ready access to Federal courts;

(4) by clarifying the application of the Internal Revenue Code to public pension plans and extending the tax benefits of qualified plan status to such plans; and

(5) by establishing an Employee Benefit Administration to effectuate a rational and coordinated regulatory system for private as well as public pension plans.

COVERAGE

The Act covers all pension plans not otherwise covered under ERISA which are established or maintained for the benefit of the employees of the government of any state or political subdivision, or any agency or instrumentality thereof, except:

(1) severance pay plans;

(2) unfunded plans maintained primarily for the benefit of a select group of management or highly compensated employees;

(3) plans consisting entirely of individual retirement accounts or annuity contracts described in sections 401(d), 403(b), 408, or 409 of the Internal Revenue Code; and

(4) certain "unfunded" deferred compensation plans having the nature of individual account plans.

A companion bill, H.R. 9701, covers the pension plans of the Federal Government under ERISA's financial and actuarial reporting requirements. The Employee Benefit Administration would administer the current provisions of the Internal Revenue Code applicable to such plans.

DISCLOSURE TO PARTICIPANTS

The administrator of a public pension plan covered by the Act is responsible for providing the following information to plan participants and beneficiaries:

A "summary plan description" or booklet providing a reasonably comprehensive summary of the important plan provisions and which is to be written in a manner so as to be understood by the average plan participant; the booklet is to be furnished to beneficiaries receiving benefits and to plan participants within one year and 90 days after the effective date or date of plan participation, if later; the booklet is to be updated to include all plan amendments at least every 10 years.

Within 210 days after the end of the plan year a summary of any material modification or change in the plan is to be furnished to each participant and to each beneficiary receiving benefits (whose future benefits can reasonably be expected to be affected by the change).

Upon written request (but not more than once a year) a statement is to be furnished within 30 days providing the participant with information as to total accumulated contributions, pension benefits, and vesting status.

Information as to a participant's pension benefits and rights is to be furnished a participant who terminates, makes a benefit election, or receives benefit or contribution payments.

Copies of the summary plan description, annual report, and other plan documents are to be available for examination in the principal office of the administrator and in other locations; copies of such documents, for which a reasonable charge may be made, are to be furnished to participants within 30 days after a written request.

A claims procedure is to be established to provide participants with a written explanation of benefit denials and a means of obtaining a full and fair review of any denial.

REPORTING

The administrator of a public pension plan covered by the Act is responsible for filing with the Employee Benefit Administration (EBA) an annual report and a copy of the summary plan description at the time it is furnished to participants. The EBA is directed to cooperate with State and local governments in the exchange of information on public pension plans.

The annual report which is to be filed within 210 days after the end of the plan year is generally to include the following information:

A financial statement and schedule including a statement of assets and liabilities, revenues and expenses, party-in-interest transactions, and loans and leases in default; the plan is to engage an independent qualified public accountant (as defined by the EBA) to audit the plan and render an opinion as to whether the financial statements are presented fairly and in accordance with generally accepted accounting principles.

An actuarial statement including the presentation of the actuarial present value of plan benefits allocated by retired life, active life—past service, and active life—future service categories; the plan is to engage an enrolled actuary to perform an actuarial valuation at least once every three years; the Act does not affect the actuarial or other basis on which a plan is currently funded, although for reporting purposes the enrolled actuary is to utilize assumptions (on an explicit basis) and techniques which represent his best estimate of anticipated experience under the plan; as under ERISA, the regulatory agency is given the sole authority to determine the scope, form, and content of the disclosure of plan benefit "liabilities".

Information on terminated vested participants who are to be notified of their public pension benefit eligibility when they apply for Social Security benefits.

Other information which the plan administrator may wish to include to further explain any matter in the report.

The EBA is to provide for simplified annual reports for plans with less than 100 participants. A plan to which many different employers contribute would file a single annual report and generally would be treated as a single plan under the other provisions of the Act.

FIDUCIARY RESPONSIBILITY

The Act's fiduciary provisions and requirement that plans assets be held in trust reflect the principle that public pension benefits are earned by plan participants and, therefore, that the associated plan assets belong exclusively to the participants rather than to the plan sponsor.

Fiduciaries are required to discharge their duties with respect to a plan for the exclusive benefit of participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Fiduciaries are also required to diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly not prudent to do so. An exception to this and the other fiduciary requirements applies in the case of individual account plans where the participant exercises control over the asset in his account.

A fiduciary is specifically prohibited from permitting the following transactions to occur in regard to a plan:

Dealing with the plan's assets for his own interest or account.

Acting in any plan transaction on behalf of a party adverse to the interests of the plan or its participants.

Receiving personal consideration from any party dealing with the plan in connection with a plan transaction.

In addition a test of adequate consideration is to be met regarding the following transactions:

Sale, exchange, leasing, or transfer of any property involving a party-in-interest.

Lending of money or other extension of credit involving a party-in-interest.

Furnishing of goods, services, or facilities involving a party-in-interest.

A plan is also prohibited in the future from acquiring employer securities and real property in excess of 10% of plan assets.

The above fiduciary requirements, as under ERISA, are intended to be interpreted so as to take into account the special nature and purposes of employee pension benefit funds.

In connection with the above duties, a fiduciary is defined as a person who exercises any discretionary authority or control respecting the management of a plan or the disposition of its assets, who renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan, or who has any discretionary authority or responsibility in the administration of a plan. Under the Act government officials are not to be considered fiduciaries with respect to official actions taken in connection with the establishment of plan benefit or funding provisions.

Trustees may allocate their responsibilities and other fiduciaries may allocate or delegate their responsibilities, however, a fiduciary remains liable for the illegal acts of a co-fiduciary if he knowingly participates in or conceals such illegal acts. A fiduciary is personally liable to the plan for any breach of a fiduciary or co-fiduciary duty or obligation. In the case of a breach by a government employee or official, an exception applies whereby the liability is passed through to the governmental employer (however, nothing would prevent the employer from recovering such an amount from the individual).

The Act further protects plans against loss by reason of fraud or dishonesty by requiring fiduciaries who handle funds to be bonded. Governmental employers are given wide latitude in making arrangements to secure adequate protection against such losses.

EXEMPTIONS AND ALTERNATIVE METHODS OF COMPLIANCE

The Employee Benefit Administration is given broad authority to provide for alternative methods of compliance regarding the reporting and disclosure standards in order to "tailor" such provisions and minimize costs. The EBA may also exempt certain plans from the reporting, disclosure, trust, and bonding requirements of the Act (for example, completely unfunded, noncontributory public pension plans which have no active employee participants).

EMPLOYEE BENEFIT ADMINISTRATION

Title II of the Act establishes an independent agency, the Employee Benefit Administration, not later than one year after the date of enactment. At the head of the EBA is a Board of Directors consisting of a special liaison officer to the Secretary of Labor, a special liaison officer to the Secretary of the Treasury, and three other members appointed by the President with the advice and consent of the Senate. The President is to designate one member to serve as Chairman.

The establishment of the Employee Benefit Administration is designed to increase the efficiency of the operations of the Federal Government relating to public pension plans and private employee welfare and pension benefit plans in order to further promote the expansion and growth of pension and welfare plans and to carry out more effectively the express purposes of this Act as well as the Employee Retirement Income Security Act of 1974 (ERISA). The EBA would administer all of the provisions of this Act, the provisions of ERISA, and the provisions of the Internal Revenue Code applicable to Federal pension plans.

INTERNAL REVENUE CODE QUALIFICATION AND ENFORCEMENT

The Act removes the present ambiguity of the Internal Revenue Code provisions as they presently relate to public pension plans. Plans subject to the Act are to be considered tax "qualified" and exempt from Federal income tax without regard to the current requirements of Section 401(a) of the Internal Revenue Code. The same Federal income and estate tax treatment afforded participants of qualified private pension plans is extended to public pension plan participants and beneficiaries.

Generally, the Act is to be enforced through civil actions brought by the Employee Benefit Administration. Pension plan participants and beneficiaries may also bring civil actions to enforce the Act and to en-

force their pension rights under the terms of their plans. Dollar assessments and the removal of fiduciaries are examples of the penalties that may result from such civil actions. Criminal sanctions may be imposed on persons who willfully violate the reporting, disclosure, or bonding requirements of the Act or who use coercive force to interfere with employee rights under the Act.

ADVISORY COUNCIL

An eleven member Advisory Council on Governmental Plans is established to advise the Employee Benefit Administration regarding public pension plans. The Council is authorized to establish voluntary guidelines for public pension plans with respect to matters for which requirements are not established under the Act (e.g. vesting and funding).

PREEMPTION

Generally, the Act would preempt state laws only to the extent of the fiduciary requirements of the Act. All other state laws would remain unaffected except to the extent that they would prevent the application of the other provisions of the Act.

EFFECTIVE DATES

Generally, the provisions of the Act are to take effect at the beginning of the second calendar year following the establishment of the Employee Benefit Administration. The Employee Benefit Administration is to be established not later than one year after the date of enactment.●

TAX EXEMPT STATUS FOR FRATERNAL SOCIETIES

HON. WILLIAM R. COTTER

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. COTTER. Mr. Speaker, I have been in contact with the Knights of Columbus who are concerned that they may be adversely affected by section 501(g) of the Internal Revenue Code which prohibits a tax exempt status for organizations which discriminate on the basis of religion. This situation was clearly not intended when the law was enacted, and I am introducing legislation to correct it.

The Knights of Columbus are exempt from Federal income tax law under section 501(c)(8) of the Internal Revenue Code. Because subordinate lodges of the Knights are unincorporated, those which desire to hold title to real property must form an affiliated corporation. Some 2,000 of these affiliated corporations are exempt from the Federal income tax law under section 501(c)(7) of the Code as "social clubs."

However, section 501(g) of the Code which was added in 1976 may prohibit a tax exempt status for social clubs which provide for discrimination against any person on the basis of religion.

It is clear that this is not what Congress had in mind when this provision was enacted. During committee hearings on section 501(g) the case of the Knights of Columbus was brought up several times. It was indicated at this time that since the Knights of Columbus were a fraternal society and not a social club, they would have no problems under this section. Information regarding potential conflicts resulting from the existing status of these affiliated corporations unfortunately was not made available at that time.

In order to be a member of the Knights of Columbus, and therefore a member of one of these affiliated corporations, an individual must be a practicing Catholic. Organizations which discriminate by providing that only members of a particular religion may join was not the type of discrimination envisioned by section 501(g). Rather, this section was aimed at organizations whose composition was not religiously centered, who had several religions represented among its members, but who refused membership to someone simply because they were a member of a particular religion.

The legislation which I am introducing would correct this situation by exempting affiliated corporations of an association from the Federal income tax under section 501(c)(8) of the Code. This would merely create a situation which was thought to exist during committee hearings.

Mr. Speaker, I have asked the Department of the Treasury for its comments on this legislation, and am including at this point in the RECORD a letter received from Mr. John M. Murphy, Esq., of the Knights of Columbus soliciting my help for these changes.

KNIGHTS OF COLUMBUS,
New Haven, Conn., September 6, 1978.

Re Legislative Definition of Lodge System Internal Revenue Code Section 501(c)(8).

Hon. WILLIAM R. COTTER, M.C.,
Room 2338, Rayburn Building,
U.S. House of Representatives,
Washington, D.C.

DEAR BROTHER COTTER: This letter and its enclosures come to enlist your aid in behalf of the Knights of Columbus on the above subject.

As you know, the Knights of Columbus and all of its state and subordinate councils throughout the country are exempt from federal income tax under Section 501(c)(8) of the Internal Revenue Code.

Because our local councils are regarded as unincorporated associations, we have over the years suggested that any local council wishing to acquire real estate for a council home or club form a corporation which can take title to the property for the benefit of the members. We have also suggested that they seek tax exempt status for those "home corporations" under Section 501(c)(7) of the Code.

You may recall that in 1976 P.L. 94-568 was enacted and included a Section 501(g) prohibiting discrimination on grounds of religious belief by certain social clubs, such as our so-called "home corporations." The problem which this change in the law created for our home corporations is summarized in the enclosed copy of a February 24, 1978 letter from Congressman Waggonner to the Chief Counsel of Internal Revenue Service. Mr. Waggonner points out that the kind of "religious discrimination" which Knights of Columbus exercises in its membership requirements was not the kind of discrimination Section 501(g) was intended to proscribe.

Mr. William J. Lehrfeld, a Washington tax attorney and a member of the Order, has been engaged by us to seek a change in Section 501(c)(8) of the Internal Revenue Code so that our home corporations can qualify for tax exemption under that section rather than under Section 501(c)(7). If we can effect this change in the law, we will then instruct all of our local councils throughout the country to seek exemption for their home corporations under Section 501(c)(8).

I enclose a recent letter from Bill Lehrfeld with a copy of the suggested amendment and an explanation. I also respectfully—and earnestly—ask your help in obtaining this change in the law, which will be genuinely appreciated by all our members and will have no adverse effect on tax revenue.

Would you be in touch with Bill Lehrfeld (his number is 785-9500)? I would be happy to meet with you at any time or place, in Washington or Hartford, which you can conveniently manage to discuss this important request.

All best wishes.

Fraternally yours,

JOHN M. MURPHY,
Supreme Advocate.●

A COMPILATION OF ACTION, INVOLVEMENT, AND COMMITMENT TO ISRAEL AND SOVIET JEWRY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. OTTINGER. Mr. Speaker, the following is a compilation of actions, involvement, and commitment to Israel and Soviet Jewry:

Met twice with Prime Minister Menachem Begin to hear and to discuss his views on Mideast problems.

Addressed House of Representatives objecting strongly to President Carter's proposed sale of F-15s to Saudi Arabia and calling upon colleagues to express outrage over the proposed Mideast arms sales package.

Sent letter to President Carter expressing alarm and outrage over proposed arms sales to Saudi Arabia and intention to treat Arab-Israeli sales as a package.

Met with Vice President Mondale as part of small group of congressional leaders on Middle East Affairs to advise him on peace seeking mission.

Called upon colleagues to join in censuring President Carter's Joint U.S.-Soviet Union communique on Middle East for undermining our firm commitment to Israel and for marking significant and unwise shift in U.S. policy toward Mideast.

Cosigned letter to President Carter urging him to reaffirm United States' complete support of U.S. Resolutions 242 and 338, and to reaffirm our firm support of Israel.

Cosponsored Resolution congratulating Israel and Egypt on beginning direct negotiations toward peace in the Mideast.

Met with Prime Minister Begin and President Sadat for briefing and discussion of the "framework" agreements at Camp David.

Cosponsored Resolution condemning PLO for its attack on Israeli citizens and expressing hope for successful conclusion of Mideast peace negotiations.

Called upon colleagues to oppose vigorously any amendments to Foreign Assistance Act which would adversely affect balance in Mideast and undermine security of Israel and our commitments to her.

As member of New York and International Committees to free Anatoly Shcharansky, sponsored letters to President Brezhnev urging permission for Shcharansky to emigrate from U.S S.R. (Signed by 11 other Congressmen who represent relatives of Anatoly.)

Met with Avital Shcharansky to discuss measures we might take to assist in release of her husband, Anatoly Shcharansky.

Cosponsored legislation to bar Nazi war criminals from sanctuary in this country.

Sponsored joint resolution prohibiting trade and cultural exchanges with U.S.S.R. until Shcharansky and Ginsburg are free and U.S.S.R. otherwise meets its obligations under Helsinki Final Act.

CONGRESSMAN RICHARD L. OTTINGER—A COMPILATION OF ACTIVITIES AND STATEMENTS

MEMBERSHIPS AND AFFILIATIONS

Member of the National Council of the American-Israeli Friendship League.

Member of the International Committee for the Release of Anatoly Shcharansky.

Honorary Sponsor and Member of the New York Committee to Free Anatoly Shcharansky.

Member of Temple Beth El of Northern Westchester.

Member of the Zionist Organization of America.

Member of the American Jewish Committee.

Member of the B'nai B'rith Upper Westchester Lodge.

Member of the Knights of Pythias Lodge No. 265.

Former Trustee of Jewish Board of Guardians and Linden Hill School.

Member of the Jewish War Veterans Post No. 70.

CHRONOLOGY OF ACTIVITIES AND STATEMENTS

January 1977

Initiated cosigned letter to Secretary Brezhnev protesting the imprisonment of Amner B. Zavurov (Signed by 23 other Members).

Cosigned telegram with Reps. Ambro and Eilberg to Secretary Brezhnev strongly protesting trial of Dr. Iosef Begun (Prisoner of Conscience).

Cosponsored with National Conference on Soviet Jewry a special briefing for Members of the House of Representatives on Soviet Jewry and U.S.-U.S.S.R. relations.

Cosigned letter with Rep. Fenwick to Ambassador Dobrynin expressing deep concern for the fate of Amner B. Zavurov.

Cosigned letter with Rep. Fish to Eli Flam, Director of Voice of America calling for better communication with the Greatest New York Conference on Soviet Jewry and continued coverage of plight of Soviet Jewish refuseniks in Europe.

Cosigned letter with Rep. Fenwick to Secretary of State Cyprus Vance commending the Administration for forthright stand on human rights and efforts on behalf of Andrei Sakhorov.

February 1977

Cosigned letter with Reps. Fraser and Jeffords to President Carter expressing support of human rights stand and urging President to press Soviets to comply with the Helsinki Final Act.

Cosigned letter with Reps. Dodd and Fenwick to Ambassador Dobrynin stating deep concern over the arrests of Aleksandr Ginsburg, Yuri Orlov, Mikola Rudenko and Oleksiy Tykhy.

Cosigned letter with Rep. Gilman to Secretary Brezhnev protesting disruption of symposium on "Jewish Culture in U.S.S.R." by Soviet authorities.

March 1977

Cosponsored with Rep. Moffet H. Con. Res. expressing the continued interest of the American people in the USSR's compliance with the Helsinki Final Act and the safety and freedom of Soviet Jews.

Addressed the House of Representatives as key participant in vigil entitled, "Helsinki's Unfulfilled Promise."

Cosigned letter with Rep. Florio to President Carter urging him to do everything possible to encourage the U.S.S.R. to remove ban on importation of flour and foods containing flour.

Addressed House of Representatives in statement appearing in Congressional Record in support of Moffet H. Con. Res. (see above) and stating strong objection to U.S.S.R.'s transgressions from obligations under Helsinki Final Act.

Sent letter to Ambassador Dobrynin stating objection to Dr. Iosef Begun's recent conviction and subsequent sentence.

Sent letter to Ambassador Dobrynin demanding the release of Anatoly Shcharansky.

May 1977

Joined the International Committee for the Release of Anatoly Shcharansky.

Sent letter to Ambassador Dobrynin expressing continued concern for Dr. Iosef Begun.

Addressed the House of Representatives in statement appearing in the Congressional Record on the plight of Dr. Iosef Begun.

Sent telegram to Secretary Brezhnev urging release of Dr. Iosef Begun.

June 1977

Addressed House of Representatives in statement appearing in Congressional Record expressing strong condemnation of Soviets' treatment of Dr. Iosef Begun and Anatoly Shcharansky.

Cosigned letter with Rep. Yates to Secretary Brezhnev in protest of charges to Anatoly Shcharansky.

Cosigned letter with Rep. Wolff to Delegations at the Belgrade Conference urging all delegations to insist upon a formal discussion of efforts to monitor governmental compliance with the Helsinki Final Act.

Sent letter to Spencer Oliver, Staff Director of Commission on Security and Cooperation in Europe documenting Soviet failure to adhere to Postal Treaties.

Cosigned letter with Reps. Steers and Sen. Humphrey to President Carter expressing support of U.S. Congress for positions taken by our government regarding human rights in relation to the Helsinki Final Act.

Cosigned letter to Secretary Brezhnev with Rep. Downey stating deep concern for fate of Lev Gendin.

Cosigned telegram with Rep. Waxman to Secretary Brezhnev objecting to detainment of Robert Toth, U.S. Reporter.

July 1977

Cosponsored resolution with Rep. Ertel which requests the President and the United States delegation to the 1977 Belgrade Review Conference to urge the Government of the Soviet Union to grant exit visas to the Emmanuil Smelinsky family.

Cosigned letter with Rep. Ertel to President urging him to bring the Smelinsky family's situation to the attention of the Soviet Government and to express the interest of the United States in Soviet compliance with the Helsinki Final Act.

Cosigned letter with Rep. Bonker to Secretary Brezhnev urging him to grant exit visa to Vladmir Lazaris.

Cosponsored resolution with Reps. Buchanan and Dodd calling for the release of Anatoly Shcharansky from custody and for permission for him to emigrate from the Soviet Union.

Met with Prime Minister Begin to hear and to discuss his views on Mideast problems.

Key participant in Vigil on House of Representative's floor entitled, "Helsinki's Unfulfilled Promise." Spoke on the plight of Mikhail Kornblit, Prisoner of Conscience.

August 1977

Cosigned letter with Rep. Weiss to Secretary Brezhnev urging him to grant exit visas to Vladmir Preston family.

Cosponsored resolution with Rep. Koch expressing Congressional concern for the plight of Mikola Rudenko and Oleksa Tykhy.

Cosponsored resolution with Reps. Koch, Fenwick and Dodd requesting that the Government of the Soviet Union provide Valentyn Moroz with the opportunity to accept the invitation of Harvard University for the 1977–1978 academic year.

Cosigned telegram with Rep. Steers to Secretary Brezhnev urging him to grant an exit visa to Isaac Zlotver.

September 1977

Cosigned letter with Rep. Waxman to Secretary Brezhnev urging him to grant exit visas to Dr. Viniamin Levich and wife.

Cosigned letters with Rep. Mikva to Secretary Brezhnev and Ambassador Dobrynin urging them to grant exit visas to Abe Stolar and family.

Cosigned letter with Rep. Kemp to Robert Kane, President of the U.S. Olympic Committee, expressing distress at reports of efforts to exclude Israel from 1980 Olympic Games in Moscow.

October 1977

Cosigned letter with Rep. Jeffords to President Carter expressing Congressional support for a strong U.S. position on human rights at the 1977 Belgrade Review Conference and concern for Aleksandr Ginsburg.

Cosigned letter with Rep. Schroeder to Ambassador Arthur Goldberg regarding the apparent reluctance of other Western signatories to the Helsinki Final Act to take a forthright stand on human rights.

Addressed colleagues on the House floor in statement that appeared in the Congressional Record as well censuring President Carter's Joint U.S.-Soviet Union Communique on the Middle East for undermining our firm commitment to Israel and for making a significant and unwise shift in U.S. policy toward the Mideast.

Cosigned letter with Reps. Bingham, Yates and Anderson to President Carter expressing concern over the Joint Communique and urging President Carter to reaffirm the U.S.'s complete support of U.N. Resolutions 242 and 338 and to reaffirm our firm support of Israel.

November 1977

Sent telegram to Secretary Brezhnev urging him to mark the 60th Anniversary of the Soviet revolution by granting amnesty to Soviet Jewish Prisoners of Conscience, approving emigration visas for refuseniks, dismissing the case of Anatoly Shcharansky and granting an exit visa to Mikhail Kornblitt.

Instrumental in securing Mikhail Kornblit's release from prison.

Sent letter to Mikhail Kornblit to give encouragement and continued commitment to seek his release and emigration papers.

Initiated letter to Secretary Brezhnev requesting permission for Shcharansky to emigrate from Soviet Union (sign by 11 other Congressmen who represent relatives of Shcharansky).

Sent press release regarding letter to Secretary Brezhnev asking for release of Shcharansky.

Cosponsored resolution with Rep. Dodd congratulating Egypt and Israel on beginning direct negotiations toward peace in the Mideast.

December 1977

Cosigned letter to Secretary Brezhnev with Rep. Cornwell urging him to grant an exit visa to Lev Ovsischer.

Sent letter to Secretary Brezhnev expressing profound distress over the arrest and imprisonment of Boris Penson and urging his release and permission for him to emigrate.

Sent letter to Dr. Iosef Begun, Prisoner of Conscience, expressing objection to the treatment he received and commitment to see that he is granted an exit visa.

Co-signed letter with Rep. Cotter to Soviet authorities calling for exit visas for the Leizer Falkovich family.

January 1978

Cosigned mailgram with Rep. Biaggi to Ambassador Dobrynin expressing objection to treatment of Edward Kuznetsov and urging his immediate release.

Cosigned letter with Rep. Brown to Secretary Brezhnev urging him to grant exit visa to Dr. Nahum Meiman.

Sent letters to G. D. Djavakhishvili, chairman Council of Ministers of Georgia, USSR and N. Muskheliashvili, Chairman Academy of Sciences of Georgia, USSR expressing profound distress over the arrest of Grigory Goldstein. (Copies sent to Secretary of State Vance, Special Representative of Trade Strauss, Secretary of Treasury Blumenthal and Ambassador Goldberg)

Met with Mrs. Avital Shcharansky to discuss measures we might take to assist in the release of her husband, Anatoly Shcharansky.

Cosigned letter with Rep. Heckler to Ambassador Dobrynin urging him to grant exit visa to Ida Nudel.

Cosponsored legislation with Rep. Heckler to bar Nazi War Criminals from sanctuary in this country.

February 1978

Made statement appearing in the Congressional Record giving an account describing the plight of Soviet Jews.

Sent letter to Ambassador Dobrynin urging him to grant exit visas to Dr. Joseph As and family.

Cosigned letter with Rep. Steers to Minister of Interior Shcholokov urging him to permit Isaac Zlotver to be reunited with his family in accord with the Helsinki Final Act and the Universal Declaration of Human Rights.

Sent letter to Secretary Brezhnev expressing strong objection to the continued detention of Anatoly Shcharansky.

Cosponsored resolution with Reps. Beilenson and Leach condemning the poisoning of Israeli oranges and urging that this incident be considered as an important agenda item at the Geneva Disarmament Conference and at the U.S. Special Session on Disarmament.

Addressed House of Representatives and made a strong statement appearing in the Congressional Record objecting to President Carter's proposed sale of F-15 aircraft to Saudi Arabia and called upon my colleagues to express outrage over the proposed arms sales to the Mideast as a package.

March 1978

Cosigned letter with Rep. Waxman to Secretary Brezhnev urging him to grant exit visas to Dr. Viniamin Levich and wife.

Cosponsored legislation with Rep. Kemp providing for the issuance of a U.S. postal stamp commemorating Israel's 30th Anniversary.

Sent letter to President Carter expressing alarm and outrage at his proposal to sell sophisticated offensive aircraft to Saudi Arabia and to treat the Arab-Israeli sales as a package.

Cosponsored resolution with Rep. Yates condemning P.L.O. for its attacks upon Israeli citizens and expressing hope for successful conclusion of Mideast peace negotiations.

April 1978

Sent letters to Secretary Brezhnev and Ambassador Dobrynin expressing objection to the banishment of Dr. Iosef Begun from Moscow and his separation from his family.

Sent letter to Mrs. Begun and family expressing hope for the reunion of the Begun family.

Cosigned letter with Reps. Zeferetti and Drinan to Secretary Brezhnev asking that the Soviet Government cease its harassment of Iosef Mandelevich, permit him to exercise the fundamental right of freedom of religion and reduce his sentence to its original term of twelve years.

Cosigned letter with Rep. Luken to Ambassador Dobrynin urging him to grant an exit visa to Jessica Katz.

Spoke at Westchester Conference Observance of Warsaw Ghetto Resistance Movement at Temple Israel in New Rochelle.

May 1978

Cosponsored Joint Resolution with Sen. Danforth, Sen. Chiles and Sen. Percy which designates the weekend of or preceding April 29 as "Days of Remembrance of Victims of the Holocaust."

Addressed the House of Representatives as a key participant on House floor Vigil entitled, "A Vigil for Freedom" for Soviet Jewry.

Initiated telegrams to Secretary Brezhnev, Prime Minister Rudenko and Ambassador Dobrynin urging the release of Dr. Iosef Begun and permission for him and his family to emigrate from the Soviet Union.

Sent letters to Secretary Brezhnev, Secretary of Interior Scholokov, Prime Minister Rudenko and Ambassador Dobrynin urging them to grant exit visas to Illy Essas and family.

Cosigned letter with Rep. Gradison to Secretary Brezhnev requesting assistance in obtaining medical care for Jessica Katz, if necessary in the United States.

Cosigned letter with Reps. Steers and Eilberg to Ambassador Dobrynin urging him to grant Hillel Butman amnesty and an exit visa.

Cosigned letter with Rep. Waxman to President of the Soviet Academy of Sciences and the Chairman of the State Committee of Science and Technology expressing concern for Dr. Viniamin Levich and other Soviet scientists wishing to emigrate.

Spoke with Jesse Robison (from the Robison family of Westchester campaign to free their two cousins) and offered commitment to ending the plight of the Podrabinek brothers.

June 1978

Cosigned letter with Rep. Bingham to Secretary Brezhnev regarding plight of Kyrill and Aleksandr Podrabinek.

Cosigned letter to Secretary Brezhnev with Rep. Waxman protesting arrest and detention of Vladmir Slepak and urging the Secretary to grant him an exit visa.

Initiated in conjunction with Rep. Downey letter to Ambassador Dobrynin expressing profound concern for Dr. Iosef Begun and urging the fulfillment of all his rights as guaranteed by the Helsinki Final Act.

Met with Vice President Mondale as a part of a small group of Congressional leaders on Middle East Affairs to advise the Vice President on his peace mission to the Mideast.

Cosponsored legislation with Rep. Dornan to exclude any known terrorist or terrorist organization from entering the United States, especially the Palestine Liberation Organization and other related restrictions.

July 1978

Sent letter to President Carter and Secretary of State Cyrus Vance expressing distress over absence of U.S. objection to the Palestine Liberation Organization's "Information Office" in Washington, D.C.

Cosigned letter with Rep. Kildee to Ambassador Dobrynin expressing concern for the health of Igor V. Ogurtsov.

Joined Rep. Steers in introducing resolution urging the Soviet Government to grant emigration visas to Isaac Zlotver.

Cosigned letter to Secretary Brezhnev with Rep. Blanchard requesting that Viktors Kalnins be allowed to emigrate immediately.

Sosponsored resolution with Rep. Tsongas condemning Soviet Union for its actions against Ida Nudel and other Soviet dissidents.

Cosponsored legislation with Reps. Green, Biaggi, Kemp and Bingham to call attention to the case of Dr. Semyon Gluzman.

Called upon colleagues in the House of Representatives to recognize the plight of the peoples of the Baltic Nations during Captive Nations Week in a statement appearing in the Congressional Record.

Called upon his colleagues in a statement appearing in the Congressional Record to vigorously support Senate Concurrent Resolution 95 which expresses the sense of the Congress that the trials of the dissidents are of deep concern to the American people and may impose obstacles to the future building of cooperation between the two countries.

Introduced in the House of Representatives a Joint Resolution prohibiting trade and cultural exchanges between the U.S. and the Soviet Union until Anatoly Shcharansky and Aleksandr Ginsburg are set free and the Soviet Union otherwise meets its obligations under the Helsinki Final Act.

Made a statement appearing in the Congressional Record calling upon colleagues in the House of Representatives to support the Joint Resolution prohibiting trade and cultural exchanges until the above noted conditions are met.

Submitted testimony before the Helsinki Monitoring Commission during hearings on the Soviet Union's compliance with the Helsinki Final Act and the trials of the dissidents.

Cosigned letter to Ambassador Dobrynin with Rep. Fenwick urging him to grant exit visas to the Mai-Seidel family.

Cosigned letter with Rep. Downey to Ambassador Dobrynin urging him to grant exit visa to Lev Blitshtein.

Cosigned letter with Rep. Schroeder to Lord Killinin, President of the International Olympic Committee, expressing conviction that the Olympic Games ought to be transfered from Moscow if the Soviet Union continues its policies regarding dissidents.

Joined New York State Democratic Delegation in initiating letter to President Carter commending him for cancelling computer equipment sale to the Soviet news agency, for placing oil technology on the commodities control list, and urging him to limit future U.S.-Soviet trade, cultural, scientific and other relationships.

Met with representatives from the National Conference on Soviet Jewry to discuss position on possible transfer of Olympic Games from Moscow.

August 1978

Worked with Leon Gildesgame and the White House to see that a sculpture of the "American Soldier at the Gate of the Dachau Concentration Camp" is donated to Israel as a tribute to those who survived the Holocaust.

Called upon colleagues in the House of Representatives in statement appearing in the Congressional Record to oppose vigorously any amendments to the Foreign Assistance Act which would adversely affect the balance in the Mideast and would undermine the security of Israel and our commitment to her.

Supported vehemently the amendment to the International Security Assistance Act of 1978 which expressed the sense of the Congress that the U.S. should be responsive to the defense requirements of Israel.

Cosigned letter with Rep. Green to Ambassador Dobrynin urging him to allow Kathleen Renck to visit Russia or to grant Knostantin Kutasov permission to leave the Soviet Union so that they may be married.

Cosigned letter with Rep. Edwards to Secretary Brezhnev urging him to grant exit visas to Lev Roitburd and family.

Cosigned letter with Rep. Drinan to U.N. Secretary General Waldhaim urging him to speak out against convictions of Anatoly Shcharansky, Aleksandr Ginsburg and others.

Cosigned letter with Rep. Brodhead to Ambassador Dobrynin urging him to grant exit visas to the Mai-Seidel family.

Sent letter to the Director of the Congressional Research Service along with the other members of the New York State Democratic Delegation which resulted in CRS initiating review of all U.S.-Soviet agreements and relationships to assess their results and efficacy.

Received personal letter Mrs. Avital Shcharansky expressing her deep appreciation for "your personal commitment and involvement in behalf of my husband."

Sent letters to Secretary Brezhnev and Ambassador Dobrynin strongly objecting to the unwarranted second arrest of Dr. Iosef Begun.

LEGISLATIVE ACTIONS AFFECTING ISRAEL DURING 95TH CONGRESS

Voted in favor of Export Administration Act which included anti-boycott provisions prohibiting compliance with secondary and tertiary boycott. Passed.

Voted in favor of International Security Assistance Act (foreign aid authorization bill) for fiscal year 1978 which included $1.785 billion in military and economic assistance to Israel. Passed.

Voted in favor of Foreign Assistance Appropriations Act (foreign aid appropriations bill) for fiscal year 1978 which included $1.805 billion in military and economic assistance for Israel. Passed.

Voted against Amendment by Rep. Clarence Miller (R-Ohio) to Foreign Assistance Appropriation Act for fiscal year 1978 stipulating 5 percent across-the-board reduction in the $8 billion bill, including the $1.805 billion for Israel.

Voted in favor Foreign Assistance Appropriations Conference Report for fiscal year 1978 which reinstated original aid levels for Israel. Passed.

Voted against Rep. Bauman (R-MD) amendment to International Development and Food Assistance Act for fiscal year 1979 stipulating a 5 percent across-the-board cut in the $3.7 billion authorization bill. The amendment cut $39 million from the $785 million economic assistance program for Israel.

Voted in favor of the International Development and Food Assistance Act for fiscal year 1979 which included (at that time) $785 million in economic assistance for Israel. Passed.

Voted in favor of the International Security Assistance Act for fiscal year 1979 which included $1 billion in military assistance for Israel. Passed.

Voted in favor of the Rep. Derwinski amendment (R-Ill.) to Foreign Assistance Appropriations Act for fiscal year 1979 which eliminated $90 million economic support fund for Syria. Passed.

Voted in favor of the Foreign Assistance Appropriations Act for fiscal year 1979. Passed.●

IRAN'S RISING OPPOSITION

HON. TOM HARKIN

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. HARKIN. Mr. Speaker, during the past months, numerous newspaper stories have appeared detailing the ongoing political strife in Iran. Questions concerning the accuracy of these stories have been raised. In fact, charges have been made that the American press is clearly "pro-Shah."

All of this is very troubling. On issues relating to foreign affairs, most Americans including Members of Congress rely very heavily on the American press for information. If newspaper reporting largely reflects Government propaganda, then all of us suffer. Those of us who operate on the basis of this misinformation may end up doing the Nation a great disservice. Hopefully, the charges leveled at the news media are invalid. Yet, in light of these accusations, responsible newspapers should take extra precautions to insure that their reports are not distorted.

One article which I found particularly interesting and objective was written by Max McCarthy, a former Member of Congress who was a press attaché at the U.S. Embassy in Tehran in 1975–76. This article which is reprinted below originally appeared in the Washington Post on July 9, 1978. I urge my colleagues to read it.

IRAN'S RISING OPPOSITION

(By Max McCarthy)

The Shah or Iran, in an interview in the June 26 issue of U.S. News & World Report, concedes that protests against his regime have increased but defiantly boasts: "Nobody can overthrow me. I have the support of 700,000 troops, all the workers and most of the people . . . I have the power."

Some well-informed Iranians here in Washington, others in Iran and a number of Americans familiar with the internal situation there think the shah may be whistling in the dark. They seriously question his assessment of the degree of support he enjoys. Should they, rather than the monarch, prove correct, there is a possibility that U.S. troops would be required to save his throne for him.

By personally approving the promotion of all officers from the rank of major or its equivalent on up, by paying handsome salaries to all officers and by providing them with the latest and most sophisticated weapons and equipment, the shah until recently was able to maintain almost total control over his burgeoning military establishment and internal security forces.

But a number of recent events have raised doubts about just how firm his control over his forces is at this time.

Late last year, for instance, Maj. Gen. Ahmed Mogharebi was charged with having spied for the Soviet Union. Sources with ties to the palace report that the shah was so depressed over the treason of a trusted and high-ranking officer that he secluded himself for several days. When he emerged, he ordered that the general be executed immediately. As a result, Mogharebi was killed before torture could extract from him the names of his fellow plotters.

"The regime never discovered the identities of Gen. Mogharebi's co-conspirators," Nasser G. Afshar, Washington-based publisher of the anti-Communist and anti-shah Iran Free Press, recently told me. "They still are in their key posts within the Iranian military. It is only a matter of time before they attempt to carry out Mogharebi's plan for a pro-Soviet coup d'etat."

Early this year, a high-ranking official of Savak (the Iranian secret police), Ali Naqi Rabbani, was condemned to death by a military court for spying for the Soviet Union. The investigation that led to Rabbani's arrest, according to Afshar, disclosed that approximately 18 other high officials of Savak and other sections of the government of Iran were working for the KGB (the Soviet secret police).

Another severe jolt involving Savak, on which the Shah relies heavily to deal with the political problems of one-party rule, came in early June when, following a general strike that shut down Tehran and three other cities, the shah fired the head of Savak, his friend and long-time confidant, Gen. Nematollah Nasseri.

An Iranian who formerly lived in the northern city of Tabriz told me that Iranian police "turned their backs" on rioters and that insurgent elements actually controlled that city for "five or six hours" during a mid-February uprising there.

COMPLAINTS AND HARASSMENT

The Shah's claim that he enjoys the support of "all the workers and most of the people" is also subject to question.

During a trip to Iran last April I heard widespread complaints about "guns rather than butter" priorities, political corruption, traffic congestion, pollution, poor sanitation, inflation, the decline in Iranian agriculture and industrial production as well as shortages or erratic supplies of water, roads, communications and electric power.

Education is scarce: The number of Iranians of high school age actually in high school declined from 30 percent in 1976 to 20 percent this year. The country has a severe housing shortage, with 6.7 million families but only 5.3 million urban and rural housing units, less than half of which have piped water. A common sight is families living in tents pitched in holes in the ground.

Despite talk of "human rights" which most observers ascribe to President Carter's influence, opposition leaders are harassed. On April 19 I visited the home of Rahmataollah Moghaddam-Maragheh, a member of the Iranian Committee for the Defense of Freedom and Human Rights, and saw a crater and other evidence of a bomb thrown into his property 10 days earlier. The homes of three of his colleagues on the committee, which includes prominent academic and professional figures, also were bombed. Another member sustained an explosion at his law office. Still another was forcibly taken from his dental clinic, a sack placed over his head, and severely beaten. Their explanation for these acts of violence was that they had sent a telegram to the government in behalf of some 200 political prisoners who staged a hunger strike to demand improved prison conditions.

Dariush Foruhar, a lawyer who heads the union of the National Front Forces, a coalition of opposition parties, recalled how Iran's dissident elements were united and galvanized into action after police invaded Tehran's Qasr Prison on March 15. The police officers, not the prison guards, beat up the fasting prisoners, Foruhar said, adding that mothers, sisters and other relatives of the inmates also were beaten when they showed up outside the prison, the nearby military tribunal and Tehran University.

Forunhar said the regime surrendered to the prisoner's initial demands four weeks after the strike began when it was faced with nationwide protests, sympathetic hunger strikes by young people, pleas from clergy and intellectuals and the threat of the striking prisoners to abstain from water as well as food. The regime gave in, he explained, because it feared that the prisoners' deaths might have provided the spark to set off the Iranian political powder keg.

An Iranian employe of the American Embassy, Reza Amini, told of tape cassettes containing recorded sermons by Moslem clergymen being secretly circulated throughout the country. He said the messages were being listened to by thousands of persons and their content relayed to thousands of others. The basic message of one of the sermons by exiled clergman Ayatollah Ruholla Khomeini calls for A "religious crusade" to topple the Shah.

THE OVERLOOKED MIDDLE GROUND

Most of the opposition leaders I spoke with emphasized that they are willing to see the monarchy retained but under the terms of the 72-year-old Iranian constitution which is still technically in effect. It provides for a largely ceremonial constitutional monarch; an independent judiciary; free press, assembly, political activity and elections. Under the provisions of the 1906 document, decisionmaking is vested in a freely elected par-

liament, from whose members could be chosen a prime minister with executive power.

One opposition leader told me:

"The average Iranian cannot forget the fact that the dictator responsible for most—if not all—of his miseries was put on the throne by the United States in 1953. But despite this universal sentiment, America and its democratic traditions are admired by Iranians.

"Whatever legitimacy the shah might pretend to have comes from abroad, principally the United States. Iranians of all descriptions, even the shah's supporters, attach to the U.S. word an importance far beyond the true leverage Washington can apply in Tehran.

"Thus, President Carter is in the unique position of being able to save Iranians from the claws of a CIA-imposed despot by practically empty words.

"A single statement from the White House, to the effect that the United States will not intervene in internal Iranian affairs, where peoples' right to choose their government is concerned, is enough to put the shah to flight."

Most Iranians are reluctant to speak so openly with Americans out of fear that their true feelings will find their way to Savak. In Tehran this year I found U.S. diplomats more remote from Iranians than ever. One embassy official did not know that the huge Qasr Prison—focal point of the hunger strike by political prisoners which was one of the most dramatic opposition moves in recent years—is located in the heart of Tehran, just a short distance from his home. Off the job, he said, he and his fellow diplomats play tennis and poker and have picnics with each other, their spouses and children. No Iranians are invited.

This increasing isolation of the official American community may well affect the accuracy of its reports to Washington on the current state of Iranian public opinion and its estimates of the degree of support the shah enjoys. Two U.S. officials told me that our current ambassador, William Sullivan, who served as ambassador to Laos during the Vietnam war, is continuing to urge the Carter administration to maintain its all-out support for the shah.

If that support is continued and if the intensifying hatred of the shah among Iran's Moslem clergymen, professional classes, former politicians and students produces armed rebellion against the Peacock Throne, we will be faced again with the prospect of the shah's overthrow. Secretary of Defense Harold Brown already has been discussing the possible "dispatch of appropriate U.S. forces to the scene [the Persian Gulf] in support of friends," and 100,000 U.S. troops are being trained for possible intervention in the Gulf.

President Carter also has talked about having "quickly deployable forces—air, land and sea" available for this and other contingencies.

But the Carter administration is overlooking a fundamental distinction and a third option. While Iran and its oil are vital to the United States and its allies, Iran and the shah are not synonymous. For the United States to have to choose between the shah and the Soviets would be the worst kind of choice.

Responsible, non-Communist opposition leaders such as Moghaddam told me they see no difficulty in achieving a reconciliation of Iranian democratic aspirations and the United States' national interest. They stress that their program calls for nothing more than what the United States now enjoys: a freely elected democratic government based on a constitution.

They believe that they can head off pressures which otherwise might lead to a Communist coup d'etat or a revolution and that they and their program represent a middle ground between the shah and the Soviets, a third choice for the United States in Iran.●

HON. DON FUQUA INTERVIEWED ON SPACE, ECONOMY, AND AQUACULTURE WITH THE FLORIDA BANKER

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. TEAGUE. Mr. Speaker, recently the publication "Florida Banker" interviewed the Honorable DON FUQUA of Florida on a multiplicity of subjects involving the space program and the economy to name a few. I need not tell the Members of this body of the ability and qualifications of DON FUQUA. As the ranking Democratic Member of my Committee on Science and Technology he has been a stalwart individual and a mainstay of the committee on not only the area of space technology, but in all issues. I believe that the interview which he accorded the "Florida Banker" more than proves his ability to speak to the various issues over which he has held jurisdiction for some time as well as those which are of major concern to the district and the people he represents.

Under leave to extend my remarks in the RECORD, I am pleased to include the aforementioned interview and commend it to the Members of this body.

CONGRESSMAN DON FUQUA ON SPACE, ECONOMY, AQUACULTURE AND OTHER TOPICS

FLORIDA BANKER. Congressman Fuqua, where is this country headed in terms of inflation and in relation to what is being done in Congress to attempt to curb inflation?

FUQUA. Inflation is caused by large deficit spending in government, and there certainly has been a large trade deficit because of this country's huge oil imports. We have been able this year to reduce the President's budget request on every appropriations bill, except the Defense budget. With improvement in the economy and appropriations reductions. the projected deficit has been reduced by $20 billion. There also are many governmental regulations which have been imposed on business which have caused economic barriers to business. We are trying to reduce some of those hindrances but, for the most part, our pattern has been to make regulations to cover large business interests without a great deal of concerned action to cover small business problems.

FLORIDA BANKER. Do you think that a regeneration of the space program on a larger scale to provide more jobs, particularly in Florida, and more scientific technology for our society, would be any great help in curbing inflation?

FUQUA. Well, I do believe we could do some more in our space program, but I don't see that a crash program such as the Apollo Program of going to the moon is necessary or that it would be that helpful in relation to curbing inflation that much. But, we are getting back our investment of going into space, and we don't want to lose our technological pace. We must keep our leading edge on new technology in comparison with the rest of the world, and I believe we can support it. The space program in general has added immensely to the amount of new technology we have, but we need more programs in the development of greater, more advanced technology to compete with other parts of the world. Right now, we get back about $7 for every one dollar we spend in high technology which is good, and we must be most mindful not to let our guard down here.

FLORIDA BANKER. How do you mean we should be careful not to let our guard down?

FUQUA. Well, look at the Chinese. They lost a generation of science during a cultural revolution and are now looking to the U.S. to teach their people in genetics, plant development, and mechanical engineering just so they can survive. That's a good example of their not keeping up with the pace of fast moving advances in technology.

FLORIDA BANKER. What is the present status of the Space Shuttle Program?

FUQUA. As you know, the Space Shuttle is the largest program NASA has today. Tremendous progress has been made since the nation committed to the Shuttle about six years ago in 1972. The first space flight of the Shuttle is now only about one year away. The landing tests last year proved to be successful. The orbiter's main rocket engines have been fired a number of times and the bugs are being worked out. The large solid booster motors have been successfully fired and full scale vibration tests are underway to check out the Space Shuttle launch configuration using the orbiter (Enterprise) that was used in the landing tests last year. As the program stands today, the development costs are expected to be somewhat above the estimates made back in 1971. The early cost estimate of the development phase in 1971 dollars was $5.15 billion. The estimate now, using the same 1971 dollar base, is $5.43 billion, or about a 5 percent increase on those terms. Facilities used for Shuttle development and to provide launch capability at Kennedy Space Center add another $466 million. The Space Shuttle is definitely a high technology program and NASA must continue to exercise strict cost discipline. Operations cost, in particular, will have major impact on the extent of Shuttle usage.

FLORIDA BANKER. NASA has launched items for divers users, hasn't it?

FUQUA. NASA has been launching some 15–20 spacecraft a year for commercial users, foreign users, other government agencies, as well as for NASA's own payloads. These spacecraft include communications satellites, earth sensing satellites and science and planetary exploration spacecraft. In addition, there are about 10 Department of Defense launches announced each year. This same type of traffic is expected in the future and there is reason to believe it will even grow in numbers. Added to this are the potentials offered by such new systems as the Spacelab, under development by the European Space Agency (ESA). Spacelab can provide the Shuttle with labortory and industrial facilities in earth orbit for extended periods of time exploring the scientific and commercial opportunities associated with operations in the space environment. We are only beginning to investigate the possibilities for this new capability from the viewpoint of what can be done and how such activities should be financed. It may be in the national interest for the government—through NASA or some other agency—to provide some form of trust fund arrangement which would allow risk sharing and promote commercial entry into exploiting the potentials of space.

FLORIDA BANKER. Is NASA giving sufficient attention to addressing problems here on earth?

FUQUA. I believe NASA is doing a commendable job in making space pay off here on earth in more ways than just providing immediate business and employment opportunities. It is applying space technology meaningfully to provide foundations for future, presently unanticipated opportunities.

FLORIDA BANKER. Are you satisfied with where we are now in the space program?

FUQUA. I cannot say I am totally satisfied with where we are now; but then, I can't see an end to the benefits which can accrue from further space activities, particularly applying expertise gained in science and

technology to solving problems on earth. The extent to which much of the modern world relies on space satellites for communications and weather forecasting is legend. Dramatic new opportunities in the future may equal and exceed these benefits.

FLORIDA BANKER. How will industry be affected by the Space Shuttle?

FUQUA. The Space Shuttle will likewise provide unique opportunities to NASA and private industries to investigate new materials and processes in the near weightlessness of space. Space industrialization has real potential for the future.

FLORIDA BANKER. Can you give a clearer understanding of NASA's total mission?

FUQUA. NASA is, by Congressional mandate, a high technology organization which is pushing back the limits of man's understanding of the natural processes and phenomena which pervade and control our universe and surrounding space environment. NASA's programs, correspondingly, require a balanced effort. The earth orbiting satellites supporting earth applications activities provide, on the one hand, direct benefits, and we expect relatively near-term results from these programs. These activities include the communications, weather, and earth sensing satellites—such as Landsat and Seasat—and even Space Shuttle operations intended to investigate the potentials for new materials and processes. Space sciences, including astrophysics and planetary exploration, are on the other side of the scale and are, at best, long-term investments. These programs may never provide direct applications, but they do create the necessary intellectual stimulation which may very well provide the critical understanding required to addressing future problems on earth. Examples are the discovery of nuclear fusion heat generation by the sun and the possibility that even more powerful processes may be discovered by attempting to explain energy output of some of the other stars. Other examples include the study of planetary atmospheres which exist under a wide and varying range of conditions and, thereby, provide insight into the mechanisms which are important in controlling weather and climate on earth. NASA applications' programs are receiving additional emphasis as new technology is developed and direct use of data is identified.

FLORIDA BANKER. Should you be reelected, what most concerns you that you would want to do something about?

FUQUA. I am Vice Chairman of the Committee on Science and Technology and have tremendous responsibility in that capacity. The Committee's jurisdiction covers, among other things, all research and development in the field of energy. Developing new sources of energy and practical sources that we can afford is vital. We have to make certain that these programs are followed through. Economic growth in this country is going to be very much tied to how much we do with our science and technology in general. The problem of minerals is going to be another priority area. We have to look for substitutes. However, a recent monthly survey of the Department of Interior, for June 1978, suggests that our slide toward becoming an ever greater import nation is continuing. Of the 35 crucial minerals and metals which are most used in industry, we import more than half the total supply we use in 20 categories. We import from 75–100 percent of our supply in 13 of these categories. Some of these—manganese, chromium, tin, nickel, etc.—are extremely critical materials, all fuels excluded.

FLORIDA BANKER. Has the Federal Government given enough support to solar energy in comparison to the support it has given to other energy technologies such as fossil and nuclear?

FUQUA. Solar energy research and development is a relatively new area of activity when you compare it to the conventional sources of energy such as fossil and nuclear. In fact, there was no coherent Federal program in solar research and development prior to the Arab oil embargo in 1973. At that time the total Federal effort for solar energy amounted to roughly $2 million a year. Since that time the federal solar effort has been consolidated with the lead role now in the Department of Energy with an annual budget of $500 million for fiscal year 1979. This was the amount recommended by the Committee on Science and Technology which was subsequently approved by the House July 17, 1978. This level of funding represents more than a 6,000 percent increase in Federal spending in solar research and development since the embargo. This is clearly progress in the right direction.

FLORIDA BANKER. You are one of the senior members of the Committee on Science and Technology. What specifically has the Committee done to accelerate solar energy technology?

FUQUA. The Committee has done more than just authorize increases in solar energy funding. It originated the enabling legislation which organized and initiated the entire Federal solar effort. Among the public laws are the Solar Heating and Cooling Demonstration Act of 1974 and the Solar Energy Research, Development and Demonstration Act of 1974, both of which I co-sponsored. The Solar Heating and Cooling Demonstration Act established the Federal Demonstration Program for solar hot water heaters, space heaters, and air conditioners. Through activities authorized by this law thousands of solar heating units have been installed throughout the nation and an increasing private solar industry has emerged. The Solar Energy Research, Development and Demonstration Act initiated aggressive programs in advanced solar technologies including wind energy, solar thermal electric conversion, photovoltaics (that is, solar cells like those used in space programs), ocean thermal energy conversion and fuels from biomass (which is the use of crops, agricultural residues and organic waste for the production of energy).

FLORIDA BANKER. You have recently strongly supported two pieces of legislation related to solar energy research. They are H.R. 12505, Solar Power Satellite Research and Development Act, and H.R. 12874, Solar Photovoltaic Energy Research Development and Demonstration Act. Will you discuss these bills and their relationship to the future of the Federal solar program?

FUQUA. The Solar Power Satellite Research and Development Act will establish a technology verification program on the concept of the solar power satellites. These satellites will be in stationary orbit above the earth and consist of a large structure with solar panels to collect the sun's energy and convert it to electricity. This electrical energy, beamed to earth in the form of microwaves, would be received by an antenna on the ground which would convert the microwaves into electricity to be fed into an electric utility grid. The program will investigate the possible environmental consequences of microwave radiation on the atmosphere and biological life and the information obtained will enable us to make informed future policy decisions on the viability of the solar power satellite and its practical development. The Solar Photovoltaic Energy Research, Development and Demonstration Act would establish an aggressive 10-year program in research and development of the terrestrial applications of photovoltaic as a source of electricity. The program to be set up in such a way as to develop low cost systems and demonstrate them in a series of market development situations. The development of a self-sustaining market for photovoltaics would allow an early end to Federal involvement. These two pieces of legislation which have passed the House and are presently being considered by the Senate—when coupled with the present Federal solar program—should lay the foundation from which solar energy can supplement an ever increasing proportion of our energy requirements.

FLORIDA BANKER. Are there any examples of problems in Florida where science is important in providing solutions that immediately come to your mind?

FUQUA. There is Florida's attempt to deal with the energy problem. Currently, all counties in the State are creating mandated energy resource recovery plans to be developed by July of next year. This is a cost being borne by citizens at the local level to solve a problem where expertise already existing at the Federal level could have been applied. The Science and Technology Committee is pushing the Department of Energy to more effectively utilize national and state universities in an energy extension network to cope with such problems. Another example is coastal zone management. Science can provide Florida with added ability to better manage those resources for maximum usage; also, NASA's cooperative program with the citrus industry in freeze line predictions.

FLORIDA BANKER. Are we behind the Soviet Union in technological information?

FUQUA. No. Our threat is coming from other parts of the free world—from Japan and West Germany, as well as other free world nations.

FLORIDA BANKER. In your estimation, will this nation ever have to capitulate completely to the Soviet Union?

FUQUA. I don't think so, but this country will have to change the trend of years gone by. We have in the past been able to convert to a war stance during war, but things may be somewhat different now. We may realize the importance of working carefully with the various alliances we have made in the free world. We must continue to modernize our strike force and never get caught in a defensive posture.

FLORIDA BANKER. In your opinion, is it possible to reduce the cost of operating the Federal Government?

FUQUA. Yes, if we can find and eliminate the waste and inefficiency which has permeated every level of the Federal Government, many millions of dollars would be saved. There was evidence of this a few years back when the House Government Operations Committee, on which I serve, insisted that there be placed within the Department of Health, Education, and Welfare an Inspector General. He has already identified over $7 billion in waste, inefficiency and fraud within that Department. Recent disclosures of the scandal in the General Services Administration here again point out fraud, waste, and inefficiency in that Agency. It is true throughout the entire Federal Government, and if there can be a firm handle put on this in making programs operate more efficiently, cost of operating the government can be reduced. Also, the setting up of better management procedures is a measure which can be utilized.

FLORIDA BANKER. What are your thoughts on President Carter's plan to create a senior executive corps to manage the U.S. Civil Service System?

FUQUA. In its inception, the civil service system was designed to remove politics and the spoils system from the hiring and firing of Federal employees and to create a career service. However, in so doing, it was not intended that a bureaucratic maze of inefficiency be built into the system. There has got to be a way that inefficient, unproductive employees can be removed from Federal employment. There has also got to be an incentive for the bright, energetic and innovative people to work within the Federal system and gain both satisfaction and reward for their hard, efficient work. I think that getting senior executive people who are

skilled in personnel management could improve the civil service system and make it what it was originally designed for and what it should be.

FLORIDA BANKER. What is the most important area of your work which relates most closely to the Florida banking community and what programs are under consideration in the Government Operations Committee which might reduce the increasing volume of government regulations bankers and other businessmen are required to cope with?

FUQUA. Well, bankers have been known for their concern and attention to economy and efficiency. We are trying to work towards these same objectives in operating the Federal Government and the banking community has expertise that is important for us to pay closer attention to. I think bankers are interested in good, honest government and are working in that area to try to make certain that the government subscribes to efficiency, economy and honesty. To address the second part of your question, there have been several studies made to eliminate duplication and excessive regulations and reports that all businessmen are required to complete and hand in to the Federal Government. There was a Commission on Paperwork recently which has some very specific recommendations and I am pleased to note that the Carter Administration is implementing a large number of the recommendations made by that Commission. We are constantly trying to review the number of regulations and reports which government agencies require. They somehow seem to grow like coathangers in the closet. You clean them out and improve the situation, and then in a few years you're right back where you were with too many coathangers once again. This is a constant problem—one which requires continuous attention.

FLORIDA BANKER. One problem every legislator seems to have is communication with his constituency. Is there something you can tell Florida bankers about how to let you know their feelings on the issues?

FUQUA. Communicating at early stages of legislation is important—that is, the bankers should tell me as soon as possible why they oppose or support something. For instance, we are sometimes down to the eleventh hour on legislation, and they say, "We need to kill that proposition because it will really cause Florida banking problems." In such a situation, I needed to know, perhaps, six months before.

FLORIDA BANKER. Do you want a lot of cards and letters?

FUQUA. We appreciate the letters and cards, especially the kind that say why someone is for or against a bill. They might continue, "My opinion as a banker is . . ." This is much more helpful than just threatening kind of correspondence. Hearing from bankers more often would be helpful. The more information I get and the earlier I get it would work out most advantageously for all of us. Explain why you think something is not good for banking or the public. We legislators have to answer to our constituency and they are not all bankers. When I receive a letter from a banker, I have to be honest and consider to the best of my ability all of the people I represent. I have to ask myself, "How would I feel about the issue if I were not a banker, or if I were in another fellow's position?" I think that is a problem every legislator has. But, communication is very important. My staff and I have to keep up with several thousand bills floating around and it is easy to get behind in your knowledge of the details of each and every bill. So, I appreciate people who take the time to communicate that which they take issue with and also when they look at the issue in terms of the public interest.

FLORIDA BANKER. What is our present course with Cuba?

FUQUA. I see no reason for this country to enter into any normal relations with Cuba. It does not appear that this would be an appropriate time to do so. Should they choose to live peaceably with other parts of the world, then negotiations could properly begin. We don't have a normal, recognized relationship with China yet and I surely don't know where in the future we will.

FLORIDA BANKER. What is Congress doing in relation to improving our ability to forecast severe weather?

FUQUA. Over the past few years there have been several serious disasters which have taken hundreds of lives. Most of these have been caused by severe storms and flash floods. Congress has provided the funds for the National Weather Service to establish a national weather radar network which is now nearing completion. This network will enable Weather Service meteorologists to identify and track severe storm systems and to give the public more adequate warning when danger threatens. The Committee on Science and Technology has been instrumental in promoting research concerned with weather modification and understanding the atmospheric phenomena associated with hurricanes and other severe storms. Existing research efforts in this area have been largely uncoordinated and diffuse. The Weather Modification Policy Act of 1976 directs the Secretary of Commerce to report to Congress on how we can better organize and manage our research activities so that eventually we will be able to better predict such occurrences and take positive, constructive steps to mitigate adverse impacts. Weather modification research on hurricanes has produced some encouraging results. As you may know, hurricanes are the most destructive of natural phenomena, causing annual losses of $800 million or more. Three storms since 1965 have resulted in losses of more than $1.4 billion. We know that cooling the ocean surface will probably moderate a hurricane's damaging winds. In addition, extensive experimentation with cloud seeding of immature hurricanes appears to reduce the windspeed in the formation of vulnerable atmospheric conditions. Although we don't, today, have proven techniques to prevent these disastrous events, we are gaining a better understanding of their dynamics so that we might eventually reduce these adverse impacts.

FLORIDA BANKER. What does aquaculture have to do with Florida?

FUQUA. In Florida, we are already pursuing its potential. We are now doing catfish, trout and salmon farming in the U.S. Each of these areas has become a real industry. All have problems associated with them, but nevertheless, they are commercially productive. Moreover, other species have potential, including shrimp, prawns and marine fish. The development of aquaculture is not without its troubles, though. There are legal problems, problems related to land and water use, and certain technical problems associated with breeding, nutrition and disease. Although there have been attempts within Congress and the Executive Branch to deal with aquaculture problems, the attempts have been broad in scope and have resulted in jurisdictional disputes between various governmental entities. The Committee on Science and Technology can play an important role in this area by examining some of the specific scientific problems which are likely to provide roadblocks to the development of aquaculture. For aquaculture to be effective, it is extremely important to take advantage of warm water and warm climate, both of which are common to Florida.

FLORIDA BANKER. Thank you.●

A LOOK AT THE REAL WORLD NEEDS IN HIGHWAYS

HON. GENE TAYLOR

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. TAYLOR. Mr. Speaker, as we attempt to conclude consideration of H.R. 11733, the Surface Transportation Assistance Act of 1978, I feel that an address recently made by Mr. Robert N. Hunter, chief engineer for the Missouri State Highway Department merits the attention of my colleagues.

I have worked with Bob Hunter many times since coming to the Congress and have found him to be a most knowledgeable and considerate man, easily one of the most competent, involved with our National Highway System today.

Mr. Hunter spoke recently to the National Limestone Institute's 33d Annual Convention. I believe that in reading his message we will be able to better understand the importance of the legislation on which we will be voting.

The message follows:

A LOOK AT THE REAL WORLD NEEDS IN HIGHWAYS

(By Robert N. Hunter)

I want to talk to you this morning about what I consider to be the real world situation on the highways of this country. I say the real world situation because we continue to hear too many misstatements about our roads and highways and there is still considerable evidence of a lot of misunderstandings about the status, the condition, the role, and the general acceptance of this most important segment of our national transportation system.

We have been through the 1960's and have heard a relatively small but vocal group condemn our American way of life and the so-called establishment. We, the highway engineers, together with the contractors, the producers, the equipment manufacturers, and the rest of the so-called highway industry, have been scorned by that vocal minority as the desecrators of this country along with most, if not all, technology—a technology that has afforded the people of this country the highest standard of living in the world. Far too many of the people in this country were swayed by those outcrys and by the failure of people like you and me, who know the situation best, to counter that condemnation with factual information.

The development of the highway system came in response to an expressed need in the early 1900's by the agricultural community of this developing nation for an efficient means of transportation of produce to the established and developing water ports and railheads. It was a most important phase of a transportation revolution whose beginnings reach back in history to the American Revolution.

A few of you will recall the establishment of State Highway Departments in the several states throughout the nation at about the time of World War I. More of you will remember the busy times of the 1920's and the 1930's into which those fledgling State Highway Departments immediately plunged—constructing the highway systems which linked cities to towns, and farmsteads to both. The first roads built weren't imposing by today's standards. But as the busy and productive years went by, the roads

got better fast: first just dirt, then some gravel, then macadem and bituminous surfaced highways, and finally the portland cement and asphaltic concrete pavements of today.

Although the type of highway facility provided could never keep up with the continuously increasing traffic thereon, the road network established then is the basic network of the road and highway system we enjoy today. The highway engineers of that era had remarkable vision and a keen sense of purpose. The contractors, the equipment manufacturers, and the many other representatives of that great free enterprise system which some of us still support played an equally important role in providing that economical system of surface transportation. All America owes that group, the highway industry, a lasting debt of gratitude.

Many of you here recall that in the 1940's during World War II, road building ground to a halt as we concentrated our efforts and resources elsewhere. The postwar period, however, brought rapidly accelerating motor vehicle registrations and travel. Road building, which had never kept up with demands, faced even more challenging pressures. It was evident that means had to be found to alleviate the horrible congestion which was prevalent on the two-lane roads throughout the nation. So we set about the task of upgrading and improving the most inadequate sections of the existing system to standards designed to cope with those increasing volumes.

Again, men of vision, men who had observed the famous German Autobahns and who had first-hand knowledge of the importance of an efficient road system in the logistics of war, began laying out a national system of interstate and defense highways which was to follow the most important segments of the then existing primary highway system.

This new freeway system was an entirely different concept in highway construction, save for a limited number of miles in the major metropolitan areas. It was proposed as the safest and most efficient travel known to any of us. It was going to be much more expensive to construct, as well as to maintain, than any road system we had constructed. It was determined, therefore, that 90 percent of the cost of construction would come from the Federal Highway Users Fund and that the states would assume the maintenance responsibility. It was also determined that the cost for constructing that established system would be made available with no ceiling on the pricetag. These kinds of funding programs tempt people.

The ambitious program begun in 1956 was to have been completed in 16 years or by 1972. The customary doubting Thomases said it couldn't be done. They questioned the ability of the states to accomplish the design and right-of-way acquisition. They said that there simply wasn't the skilled contracting force to accomplish the work and that the large equipment requirements simply could not be met by the equipment manufacturers. Well, as you know, it wasn't done. It was not completed in 1972, but not for the reasons voiced by the detractors. The contractors quickly demonstrated their ability to provide the trained forces and to handle the construction as rapidly as the projects could be made available to them. The equipment manufacturers not only tooled up to produce the then available equipment, but through research and development, continually improved equipment to more adequately handle the demands upon the contractor. The failure to complete that program on time was not due to inability to develop plans and to provide the necessary construction capability. It was due to funding delays and to continually changing standards, requirements, and procedures and the costs thereof.

Let's take a look then at that imposition of new procedures, requirements, and standards on the Interstate Program, as well as on the entire highway program; because in fact, when these changes came about through Federal-Aid Highway legislation, they applied to all Federal-Aid, not just that on the Interstate system. Since the Interstate system was the primary emphasis at the time and was to be funded at whatever cost, perhaps we did not give consideration that we should have given to the revised provisions being suggested and offered by people within and without the industry and to their particular impact on that fixed funding available for the system other than the Interstate.

The standards conceived initially for the construction of the Interstate freeway system were certainly the most advanced we had seen to that point in time. Yet we provided for added emphasis with safety sections and markedly increased safety standards that increased costs by one-third.

We had established right-of-way procedures which were working well. But we revised them to give even more consideration to the person displaced by the highway improvement with relocation assistance programs and other changes that could have doubled the cost of right-of-way acquisition.

Public involvement, which was part of the process in many states, became formal and stilted, resulting in costly and timely delays.

Then, of course, all of us are too familiar with the environmental impact procedures which required in far too many instances, dissertations on even the remotest aspect of the environment.

The equal employment opportunity program, worthy as it may be, injected governmental agencies into the determination of contractor and supplier work forces. Training, supportive services, and enhancement of minority business opportunities added to the highway contractor's responsibilities.

The increased interest in beautification resulted in more consideration of aesthetics and landscaping, as well as control of outdoor advertising and junkyards.

We saw the emphasis increase on historical preservation, particularly in the area of archaeology where procedures have involved an alarming increase in the requirement for surveys of highway corridors for items of archaeological significance. Where such a survey indicates even the slightest evidence of something of archaeological significance, a dig or other mitigation process is required.

More recently the 404 Permits required and administered by the Corps of Engineers where there is dredging or filling in the stream areas have resulted in extremely serious procedural problems and delay.

These provisions, and others like them, both directly associated with highway improvements and abstractly associated as social issues have certainly increased the cost of doing highway business. There is no question that some of these have been very worthy and in these instances the revisions in standards, procedures, and requirements should have been made. But in each instance, we should have determined the cost, made that information known, and exacted a commitment for the funding thereof before those provisions were accepted. Some of these provisions involved direct cost to the highway improvement. Some were not so direct, and in fact, have been funded with other than highway user funds. But even so, the administrative costs for these kinds of requirements have been substantial. I am sure you know that with such provisions, it has been necessary that a special section or division be established in the federal agencies involved, and in all too many instances, in the state and local agencies. So even where the impact isn't direct, it is real and it is costly. The serious end result of the kinds of activities we've been talking about is reduced productivity.

Our failure to recognize and make provision for the increased costs of these revisions in the highway program has brought us to a very serious predicament. We are now faced with a latest Interstate estimate which indicates the cost to complete the remaining 10 to 15 percent of that system will be at or near the original estimate for the entire system. Nationwide, and certainly in our state, we are looking at a situation where we are constructing annually only one-fourth of the mileage of the highway improvements that we constructed 15 years ago. In short, we are falling further and further behind in providing for the growing needs on the nation's highway system—a system that is indeed the backbone of the nation's transportation system.

Austerity has been a way of doing business in the highway program throughout its history. While the standards we have developed for new highway construction were accepted as most desirable, most of us in the State Highway Departments realized at least a quarter of a century ago that it was going to be impossible to afford such major improvements on extensive sections of our highway systems with the on-going funding restraints. Those were the standards, however, accepted as requirements for federal-aid participation in highway improvements. We, the states, seeing and knowing this, proceeded with a widening and resurfacing progam with state funds. That widening and resurfacing program extended the life of pavements and bridges, and those wider lanes resulted in considerably improved traffic operation and safety on many miles of those antiquated systems. We in the highway departments noting some of the developments we have just been discussing today, realized several years ago that more extensive application of stop-gap measures, such as the widening and resurfacing program, were going to be necessary if we were to take care of even the most critical needs on the extensive systems.

We solicited the assistance of the Congress and in the 1976 Federal-Aid Highway Act were successful in securing a modification of the definition of construction to include resurfacing, restoration, and rehabilitation which made this type of work eligible for federal aid. Throughout the country we heard state and federal people shortly thereafter expounding on the virtues of this type of work. But opposition to the proposed standards has all but halted implementation of that program. It is evident, in my opinion, that the people opposing those standards and the implementation of that program simply do not understand the situation.

Well, this is my appraisal of where we are and how we got there. I hope each and every one of us recognizes the implications of this predicament. We have saddled ourselves with additional federally imposed standards and procedural requirements without any provisions for the necessary increase in funding. We are in a position where we cannot provide for even the most pressing and critical needs within a reasonable time period.

Make no mistake about it, those needs are there. It is evident that there is a national awareness of the seriousness of the bridge situation. Many of those bridges and far too many miles of our existing systems have been in service for half a century. Most of us would agree that approximately 10 percent of the bridges on the systems definitely require major repair and replacement within the decade.

I think most of us would also agree that we have some very serious capacity problems that must also be met within the decade, to say nothing of the maintenance type of work that the 3R Program would provide. I am sure that every state which has taken a critical look at these most basic and urgent needs realizes that there is simply no way that work of even that magnitude can be carried out without marked increase in funding levels. At the same time, we are aware of

a present funding dilemma that results from more fuel efficient travel coupled with increasing vehicle miles of travel annually.

I mentioned earlier the vision, the character, and the sense of purpose of the people who carried out the early highway program. It takes top quality people to make these kinds of programs go. I am afraid that the irresponsible attacks and condemnations of our effort, together with our rather defensive response to them, has seriously eroded one of the finest professional groups in the history of our nation.

Our precedessors were generally regarded as outstanding contributors to the way of life of our developing nation. It was a positive mood. How can we expect a developing professional these days to aspire to participate in this program with the continued villification and abuse which are too often the cost of that participation? Where will we find the Thomas H. McDonald's, the DeWitt Greer's, the Alf Johnson's, the Rex Whitton's, the Dave Stevens' and a host of other very capable men that you and I have known?

Ladies and gentlemen, you and I fully recognize that transportation has played a most important, if not the primary role, in the economic and social development of this country, and that the predominant role in transportation has for a number of years been that of highways. With the demonstrated need, and an awareness of our current situation, we must take steps to move forward in a positive manner. Increased funding at both the state and national level is going to be necessary. The Interstate should be funded at the maximum level the Trust Fund will bear and completed now. We must draw the line on imposition of additional programs and provisions which are not accompanied by the necessary funds. We must also call for a hard look at the existing and ongoing programs to ascertain whether the provisions for those programs are being realistically administered and practically applied. Certainly we should take a look at benefits and costs and eliminate or reduce those activities unwarranted by that review.

We are talking, of course, of regulations and the legislative process. I am impressed with the people I have had an opportunity to meet in the United States Congress recently, particularly in the public works area. I am also impressed with the committee staffs. I don't know any of these people who want to enact bad legislation, and they are as concerned about some of the issues we have been discussing here today as are you and I. I think we must increase our efforts, however, to provide concise, factual information to the Congress in order that the legislation emanating from those halls continues to be in the best interest of all of the people of this country.

We have every reason to be proud of what we and our predecessors have provided in the way of highway transportation over the years for the people of this nation. We must, therefore, assume a positive attitude. Let us, you and I, resolve that we are going to redouble our efforts to tell the people of this nation the real facts in the road and highway situation. Let's tell it like it is.●

ROY CAMPANELLA

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. OTTINGER. Mr. Speaker, the name of Roy Campanella has become synonymous with the word courage. For the better part of a decade there was no one in baseball who gave more of himself than Roy. His great talent and desire to win earned him many great honors. He was three times the National League's most valuable player, and he achieved the ultimate in baseball, election to the Hall of Fame.

But Roy Campanella's courage has shown itself in a greater fashion off the field. A car accident left him paralyzed, a condition which would have made most people give up on life. But not Roy Campanella. Roy continued to show the great leadership that had been his trademark as a baseball player. He became a member of the advisory council to the New York Legislative Select Committee on the Mentally and Physically Handicapped. Roy went on to receive the New York Urban League's Whitney M. Young, Jr. Memorial Award in 1975.

A respected Westchester resident for a long time, Roy Campanella has shown that determination and courage can overcome any physical disability. Whether behind home plate or in a wheelchair Roy Campanella has set an example for all to follow.

Roy is a personal friend, last but not least. We worked together to successfully improve the town of Greenburgh, provide badly needed housing, day care services, a community center, health facilities and other vitally needed services. He is tops in my book and in wishing him well, I know I am joined by all the citizens of Westchester—indeed of the country and the civilized world.●

SUGAR FACTS AND FICTION

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. TRAXLER. Mr. Speaker, in the next few days, we will be voting on H.R. 13750, the Sugar Stabilization Act of 1978. I urge you to vote "yes" on H.R. 13750 as reported by the House Agriculture Committee.

This essential legislation is a realistic effort by the House Agriculture Committee through the leadership of our colleague, KIKA DE LA GARZA of Texas, to provide a realistic price for sugar in the marketplace, and to implement the terms of the International Sugar Agreement, agreed to in Geneva last year, but still not ratified by the Senate.

We tried last year to provide a temporary domestic support program of loans to sugar producers when we passed the de la Garza amendment to H.R. 7171, the Food and Agriculture Act of 1977. The House Agrictulture Committee describes the friuts of our efforts in its report on H.R. 13750:

Congress affirmed the seriousness of the economic crisis facing the domestic sugar industry by requiring the Secertary of Agriculture to undertake needed actions to support the price of sugar as part of the 1977 omnibus farm bill. However, *efforts to implement Congressional intent were long in coming and then so feebly begun as to be largely ineffectual.*

Some of our colleagues are of the mistaken impression that this bill is designed to guarantee producers a profit. It is easy to say that somebody else is getting rich when you have not examined the facts.

Fact: The International Trade Commission has determined in several instances that foreign sugar is being dumped on the United States.

Fact: Foreign producers can produce sugar more cheaply than American producers because they do not have to provide their workers with the standard of living that we expect for American workers, and do not have to comply with Federal regulations from EPA in the use of pesticides and other farm-essential chemicals.

Fact: Foreign countries charge their consumers more for sugar than consumers in the United States pay. While consumers in Michigan were paying 22 cents a pound retail for sugar, prices in foreign cities were 31 cents in Bonn; 45 cents in Brussels; 24 cents in Buenos Aires; 68 cents in Copenhagen; 28 cents in Paris; 31 cents in Rome; 37 cents in Stockholm; and 48 cents in Tokyo.

Fact: These prices overseas are earned by sugar producers through predetermined sugar contracts which guarantee sugar producers a profit. This sugar constitutes over 80 percent of the sugar produced in the world.

Fact: Even the opponents of the Sugar Stabilization Act of 1978 admit that the so-called "world market" is for only about 20 percent of the sugar produced in the world. This sugar is what is left over after the contracts have been filled, and is either sold for whatever price it will bring, or be thrown away as a total loss.

Fact: Even the U.S. Department of Agriculture admits that according to its figures, the cost of producing sugar in the United States is an average of 15.2 cents per pound. They further admit that using their own escalator formula, the cost of producing sugar in 1979 will be an average of 16.4 cents per pound. The letter you may have received from Barry Bosworth, Director of the Council on Wage and Price Stability, contained an error saying that production costs are an average of 14.05 cents per pound. If you read the Ways and Means Committee's report on this legislation, pages 24 and 25, you will see that this committee recognized the cost of production is about 15 cents per pound. The 14.05 cents per pound figure comes from calculations done by USDA to determine a base from which to make payments to sugar producers.

Fact: The entire domestic sugar industry is opposed to direct payments. They believe that they should get their price from the marketplace, not from tax dollars.

Fact: Sugar on the "world market" has sold for as little as 6 cents per pound this year, and Assistant Secretary of State for Economics and Business Affairs Julius Katz testified before the Ways and Means Committee that he did not believe any one was making any money at these prices.

Fact: The United States imports about half the sugar it uses. This means that

foreign producers know that they can make more money in the United States by selling their surplus sugar below the cost of production than they can by throwing away what is left over after the profit-guaranteed contracts have been filled.

Fact: There is no way that domestic sugar producers who have costs 2½ times the amount of the world dumping price of excess sugar can compete in the domestic market. No one can be expected to sustain losses year after year and remain in production.

The administration says that the way to protect our domestic industry is to implement the International Sugar Agreement which has yet to be ratified by our colleagues in the Senate. The administration claims that the International Sugar Agreement is better for our consumers.

Fact: The International Sugar Agreement is designed to raise prices to between 11 cents and 21 cents per pound. When adding in the basic U.S. import fees, this means that domestic prices would be between 14.5 cents and 24.5 cents per pound, if the agreement works.

Fact: The administration says that consumers should not pay higher prices, and prefers using a direct payments scheme to domestic producers to supplement their income, using tax dollars from consumers in order to prevent consumers from paying more in the grocery store.

Fact: Consumers are taxpayers. Taxpayers are consumers. They pay either way.

You cannot have it both ways! If the administration wants the international agreement, then it is saying that we need higher sugar prices. If it is saying that we need higher sugar prices, then it is saying consumers must pay more for sugar!

But look at the realistic point of the situation. No one wants to work for less than they feel they truly deserve. After all, that is exactly why the Congress has passed minimum wage legislation in the past.

Fact: The Sugar Stabilization Act of 1978 is designed to cover costs of producing sugar, and provide for annual adjustments in the price of sugar in accordance with the program the Congress had in force from 1934 to 1974. The primary reason why we stopped the other program was that some of our colleagues were misguided by then Secretary of Agriculture, Earl Butz who opposed the program, and

Fact: We have paid the price for our earlier mistake with the closing of several sugar beet and cane processing plants over the past several years.

Fact: Historically, no sugar processing plant that has ever been closed has ever reopened. The result is a loss of jobs, a loss of income to the communities that these plants served, and a corresponding decrease of our ability to meet our sugar needs with domestic supplies.

Some of our colleagues may even suggest that if a farmer cannot earn money from his sugar crop, he should grow something else. Off-the-cuff answers are always easy.

Fact: The only options for crops in sugar beet producing areas are for the most part other price-supported commodities. If every farmer grows soybeans, wheat, or corn, all that will happen will be that the glut in those crops will drive the price of those crops down again, and the farmer will still be no better off.

Fact: The Secretary of Agriculture through set-aside programs wants to reduce production of these crops, so beet areas really have no option.

Fact: Growers of sugarcane do not have any other options. The type of soil and climate conditions that are available in cane producing areas are rarely suitable for any other crops.

It is easy to say that we should not vote for this bill because we might save consumers a few pennies, and do not kid yourself because that is all this saving would be on the normal 5-pound bag of sugar.

Fact: If farmers go out of business because they cannot earn a living as farmers, who will provide our food? Sugar may be only one example, but the precedent value of the defeat of this bill would be enormous.

Do not let yourself be taken in by the purveyors of doom. Ask questions. Read the reports. The facts are on the side of support for the Sugar Stabilization Act of 1978.●

THE CAREER INTERN PROGRAM

HON. ALBERT H. QUIE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. QUIE. Mr. Speaker, I would like to take a moment to advise my colleagues about a program which has been working since 1973 to help high school dropouts or those who are in serious risk of dropping out before graduation. The program, the career intern progam (CIP) was developed by the Opportunities Industrialization Corporations of America, Inc., in Philadelphia.

The CIP has three phases: the first is 21 weeks in duration and includes classes which relate basic disciplines such as math, English and science to the world of work. The second phase lasts from 4 months to 1 year, depending on the number of credits necessary for graduation. During this phase students are exposed to at least two job experiences and to additional courses. Phase III provides additional counseling to help prepare the student for the transition from school to work or to additional education. Counseling continues for 6 months to a year after leaving the program, depending on the choice made by the student as to working or additional education.

In a study published recently by the National Institute of Education, some results of the CIP experiment were presented. Those results show that a high percentage of students enrolled in CIP stayed in school and graduated, graduates were employed, and additional graduates were enrolled in college or technical school. The costs of the program were only slightly more than the cost of a vocational education program in the city's public high schools, and the results seemed more successful.

In the report accompanying the Career Education Incentive Act of 1977, the Education and Labor Committee recommended this program as a model to be used by State education agencies. I now commend it to my colleagues as a program which does something positive for youth who might otherwise add to the high youth unemployment figures.●

CONGRESS HAS KEPT ITS HEAD

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SISK. Mr. Speaker, I would like to call to the attention of our colleagues the following article by Nick Thimmesch which appeared in the August 30 edition of the Chicago Tribune. I think the points made by Mr. Thimmesch are most timely and worthy of serious consideration.

DESPITE SCANDALS, CONGRESS KEEPS ITS HEAD ABOUT KOREA

WASHINGTON.—Despite the furor over "Koreagate" (a fading term), congressional threats to South Korea, and the exasperation which made Leon Jaworski's face wrinkle like a shrunken orange, Congress has kept its head.

The way it is headed now, South Korea will not be denied any military aid; thus rationality wins. Congress sensibly kept separate and distinct the emotional wrangling over the sins of certain South Korean agents and willing congressmen from the cold realization that South Korea has a serious security problem, one requiring continuing U.S. support.

The Senate and House have passed a bill authorizing the transfer of $800 million in U.S. weaponry to South Korea, to be tied in with a phased troop withdrawal. The bill also includes $269 million in foreign military sales aid. Final details for both measures are being ironed out in conference.

A House move to stop $56 million in concessional loans for South Korea to buy food from the United States succeeded (congressmen remember some hanky-panky rice business, but now the Senate is on the verge of putting the money back into its legislation. In any case, South Korea has $1 billion of its own to buy grains and other foods from the United States in 1979. Economically, South Korea stands on its own.

For many people, South Korea is off in the Orient, a peninsula hanging near Japan, a place where a violent war was fought and 53,000 Americans died over a Communist invasion one generation ago.

It is also the place which sent us Tongsun Park and his bags of money, thus setting off investigations and news stories laced with Korean names we can't pronounce and references to dead or fading congressmen. In sum, South Korea probably doesn't mean much to the majority of Americans.

South Korea is to be admired for the way it rebuilt itself after being reduced to rubble in the war with North Korea's Communists. South Korea today is a prosperous, hard-working nation, deeply grateful for the effort and sacrifice of the United Nations forces a generation ago.

But South Korea is also a tragic nation.

The two Koreas belong together. The Korean people are divided because of the blunder of allowing Soviet troops to move into Korea far enough to accept the Japanese surrender.

Naturally, the Communists wouldn't allow free elections, supervised by the United Nations, so the North Korean Communist regime was born, and South Korea remained the place where people were introduced to Western democratic ways.

U.S. troops evacuated South Korea in 1949 and, less than one year later, North Korean Communist troops invaded and overran South Korea. Thus began the "police action" by the U.S. and U.N. troops, a war that raged back and forth over the 38th Parallel for three bloody years. But the decades passed, and we forget.

Though the North-South situation is chronically tense, we paid relatively little attention to South Korea until the complicated story involving venality, favors, and bribery broke in 1976.

The revelations showed that the American art of public relations and wheeling-dealing had been exported to booming South Korea and returned as an import welcomed in some corners of Congress. What has passed as an investigation confounded and frustrated Jaworski, hero of the Watergate wars.

Concurrent with this lesson in human frailty was President Carter's badly executed, even premature announcement that he was going to order nearly all U.S. troops withdrawn from Korea by 1981. The shock of Koreagate was thus compounded. Fortunately, Carter reconsidered, and slowed the troop withdrawal.

Now South Korea does not measure up to what Pecksniffs like Rep. Donald Fraser (D., Minn.) demand in terms of a democratic government. President Park Shung Hee is a stern disciplinarian, perhaps too much so, and has dispatched a fair number of dissidents to the slammer.

But one day four years ago, President Park held his wife in his arms as she lay dying from the bullets of Red Guard terrorists in a Seoul theater. So he is strict about security. The DMZ is only 47 miles away, within easy range of Communist rockets.

I have met with South Korean dissidents in Seoul, and while they firmly oppose Park, they are just as opposed to the repressive North Korea regime of Kim Il Sung, and would fight any Communist invaders. Meanwhile, they hope for a more enlightened government in their own nation. The fact that I could talk with them, and we never find dissidents in North Korea to talk with about anything, tells the story.●

RETROACTIVE CREDIT FOR HIGHWAY PROJECTS

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SCHULZE. Mr. Speaker, today, I am introducing legislation which would require the Secretary of Transportation to establish a formula to give retroactive credit to those State highway projects which would have qualified for Federal matching funds.

I am deeply concerned that the highway trust funds have not been adequately used to the detriment of States and the National Highway System. Our original intent in passing Public Law 84–627 was to assist States in developing and maintaining a superior system of roads and highways. By requiring unused apportioned funds to be returned to the Federal Treasury, we are defeating the original intent of this legislation. Allowing the States to apply already expended funds as their share of the matching formula, the apportioned funds would be used in the construction of interstate and intrastate highway systems.

In Pennsylvania alone, there are several projects which in the absence of Federal matching funds remain incomplete to the economic detriment of the State. I am sure that many of my colleagues could cite similar examples where local leaders, hoping to avoid the long drawn out process and redtape of applying for Federal matching funds, initiated in good faith construction of desperately needed highway projects and now lack the funds to complete them.

I am convinced that available Federal funds should be applied to these worthy and necessary projects which would have qualified for Federal matching funds. My bill will make those funds available retroactively and insure the completion of many construction programs throughout the United States.●

COST OVERRUNS AT NEWPORT NEWS

HON. JOSHUA EILBERG

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. EILBERG. Mr. Speaker, those of us in the Congress who recognize the need to eliminate waste in Government spending are very much concerned about the enormous cost overruns in its construction and refitting of Navy ships at the Newport News Shipbuilding Co.

These overruns are of special concern to my colleagues from Philadelphia and me, because Newport News is contesting the Navy's assignment of the USS *Saratoga* for refitting to the Philadelphia Naval Shipyard.

Very clearly, Mr. Speaker, the Navy's decision is a sound one. The Philadelphia Naval Yard can accomplish the *Saratoga* overhaul in an efficient and economic manner.

In light of the tremendous pressure being brought to bear by Newport News to reverse the Navy's decision, I believe my colleagues should be aware of several portions of testimony offered in this Congress and the last by Admiral H. G. Rickover, Director of the Naval Nuclear Propulsion Program.

Admiral Rickover details the pressure which Newport News has applied to the Navy to settle these claims on a lump sum basis; the refusal of Newport News to certify its claims; the threats by the yard to stop work; and the unnecessary and deliberate paperwork and delays created by Newport News, forcing the Navy to devote massive amounts of time to settle cost overruns:

TESTIMONY BY ADMIRAL H. G. RICKOVER

Mr. Chairman, I was invited to testify today about procurement and related problems. Your staff, however, has asked me to focus on the shipbuilding claims problem, and particularly on the claims submitted by Newport News.

I have testified previously to this committee and to other committees of Congress regarding the shipbuilding claims problem. The current claims problem permeates nearly all aspects of my work. The Navy must rely on contracts in obtaining the ships, weapons, and the supplies it needs from industry. Contracts set forth the rules under which the work is to be done. The responsibility of Government officials involved in the administration of the work is twofold: First, to insure that the work is performed properly in accordance with the contract terms; second, to insure that public funds are legally spent.

DOD DECISION TO SHORT-CUT CLAIMS PROCESS

In the area of shipbuilding claims, the Defense Department has decided to shortcut this process in an effort to resolve quickly the current shipbuilding claims against the Navy. The Defense Department has notified Congress of its intent to settle claims with four shipbuilding companies by use of Public Law 85–804. This statute gives the executive branch authority to provide extracontractual relief whenever such action is deemed necessary to facilitate the national defense. Authority to provide such relief has been vested in senior officials of the Defense Department, but subject to congressional review.

PRESSURE ON NAVY TO SETTLE ON LUMP SUM BASIS

For years, the Navy has been under considerable pressure from some shipbuilders to settle claims on a lump sum or total cost basis which would make potentially unprofitable contracts profitable. These shipbuilders assemble large teams, comprised of lawyers, contract specialists and accountants, to draw up their claims. One shipyard used as many as 100 people to prepare a single claim.

To generate the basis for large omnibus claims, employees are encouraged to search out and report actions and events that may be used as the basis for a claim against the Navy. Even minor technical matters are now treated as contract matters.

CONTRACT CHANGES

As a result, settlement of contract changes has become increasingly difficult. Often the company either refuses to price the changes in advance, quotes excessive and unsupported prices, or demands the right to reopen contract pricing later for other reasons such as the cumulative or ripple effect of changes. Because of the length of time required for ship construction and the continued need to update ship specifications to meet new defense requirements, changes have been and always will be an inherent part of ship construction. Shipbuilders, from many years of experience, are well aware of this when they take Navy shipbuilding contracts. Historically, the changes amount to about 5 percent of the contract work. The Navy, of course, is contractually obligated to equitably adjust contract price and delivery date to reflect the impact of changes. Whenever possible, the Navy tries to reach agreement with the shipbuilder on price and schedule adjustment prior to authorizing the change. However, shipbuilder actions often make this impossible.

CONTRACTOR ACCUSATIONS

Along with the valid changes shipbuilders include in their claims, they include many allegations against Government administration of contracts. It is frequently difficult to sort out their various accusations, let alone

determine legal entitlement or assess cost impact. The evidence presented in the claims is from the viewpoint of the contractors, not from that of those paying the bills.

Shipbuilders have complained of untimely delivery of Government furnished equipment and drawings; defective specifications, excessive tests, trials, and inspections; constructive changes to work scope and letters of direction; Government insistence on erroneous contract interpretations; Government recruiting practices; Government interference with contract performance through imposed limitations on work methods and other shipbuilding operations; changes in health, safety, and pollution control laws; Government "abuse of discretion"; Government imposition of management systems; and the Government's unilateral revision of contract requirements.

Sometimes, the same complaint reappears under various descriptions, leaving the impression of widespread Government interference. Other elements of the claim are based on alleged "facts" which contradict one another. Claimed costs seem to increase exponentially as a function of the so-called cumulative or ripple effect. And all cost increases are compounded, it is claimed, by inflation.

Some shipbuilders defer the negotiating of certain changes for years, until they know what their total final costs will be. These changes are then consolidated into a general allegation of Government responsibility for all delays and increased costs experienced, without relating the individual causes to specific effects. The amount then claimed has often been inflated sufficiently to produce the profit desired by the shipbuilder, even though the claim is finally settled for but a portion of the claimed amount.

Some shipbuilders' claims contend that all delays and increased costs are the Government's fault, even when the shipbuilder must know that much of the delay and increased costs were caused by factors within his contractual responsibility.

NEWPORT NEWS REFUSAL TO CERTIFY CLAIMS

In this connection, it is important to note that Newport News, whose claims comprise the largest portion of outstanding shipbuilders' claims, still refuses to certify that its claims are current, accurate and complete. The Navy is required by Navy procurement directives to obtain such certification before devoting its energies to evaluating data. I believe the company's claims are substantially overstated.

The fact that shipbuilders have been willing to settle their claims for far less than the amount claimed should cause one to question the validity of the amounts our taxpayers are being asked to pay. This may also explain the reluctance of some company officials to certify the claims.

NEED FOR NAVY ANALYSIS

The Navy's normal claims evaluation procedure is to determine and pay only for items of Government responsibility. This requires the Navy to perform a rigorous analysis to determine the legal basis for payment. Theoretically, the burden of proof rests on the contractor to demonstrate legal entitlement. In practice, the Navy itself, to demonstrate that the contractor is not entitled to the larger amounts claimed, often ends up having whatever legitimate case the shipbuilder might have. The Navy analysis is time consuming and uses the time of many technical people, to the neglect of their proper work.

CONTRACTOR MAY CHANGE RATIONALE

Even when Government officials have spent months analyzing voluminous shipbuilders' claims, and have successfully demonstrated which elements of a claim are not valid, the contractor may then withdraw the claim, only to resubmit it based on a new rationale to support his contention that the Government owes him money. The result is to cripple Navy efforts to evaluate claims aind to prolong settlement.

CONTRACTOR THREATS TO STOP WORK

Knowing this, some contractors try to force a settlement by threatening to stop work if their claims are not paid quickly. Armed with voluminous, generally unsupported claims, some shipbuilders and their lobbyists at times take their case directly to Congress, to senior defense officials, and to the press. They accuse working level Navy personnel of wrongfully withholding funds and delaying settlements, of creating a litigious atmosphere, and of undermining good business relations. They allege that the company is in desperate financial straits. They threaten that, unless immediate relief is forthcoming, the Navy will not get its ships, and so on. By these means some shipbuilders believe they will be paid more than if their claims are settled on their legal merits.

A specific example will illustrate this. About 2 years ago, Newport News officials and their superiors at Tenneco began airing complaints cocerning the Navy before Congress and in the press. Company officials took the position that they should be guaranteed a 7-percent profit on all Navy shipbuilding contracts after paying interest and other allowable costs.

Despite Neport News' notification as early as October 1974 of its intention to submit claims, the company did not actually submit the claims until recently—$825 million of the $894 million total in the last year, of which $665 million was submitted in the last 6 months. But once these claims were submitted, the pressure to settle them began immediaely. On February 19, 1976, Newport News submitted its largest claim on a single contract; a $221 million, 16 volume claim against the carriers *Nimitz* and *Eisenhower*. The very next day the president of Newport News wrote to the chief of naval operations intimating that Newport News was considering stopping work on the aircraft carrier *Vinson* and not entering into new Navy shipbuilding contracts until its claims were resolved.

Six months earlier, Newport News had actually stopped work on a nuclear-powered cruiser, the CGN-41 claiming that the contract option for construction of that ship was invalid. Construction was resumed under court order. However, Newport News still refuses to recognize the validity of the option because they want a higher price than they had previously agreed to contractually. Although Navy lawyers are convinced that Newport News has no valid legal basis for its contentions, it could take years of litigation to establish that point. When Newport News appealed this matter to the GAO, the GAO decided in the Navy's favor. Newport News is now contesting the GAO decision in the Federal court.

NAVY LEGAL COUNSEL AT DISADVANTAGE IN CLAIMS NEGOTIATIONS

In this regard, it should be noted that the Navy is at a disadvantage in litigation of claims due to the imbalance in legal resources between the Government and the contractors submitting claims. In the case of the cruiser dispute, the brunt of the Navy's legal work is being handled by one lawyer, 2 years out of law school, as one of his several assignments. I am not questioning this individual's competence. I simply want to point out the disparity between the counsel representing the Government and the counsel representing Newport News. To date, Newport News charged the Navy over $175,000 for outside counsel fees pertaining to the CGN-41 dispute plus a 7-percent profit for Newport News itself. It is interesting to me that for several years I have been unable to get the Navy to hire outside counsel to help the Navy prepare its case, yet the Navy is paying Newport News for its outside counsel to fight the Navy, as well as a 7-percent profit for doing so.

NEWPORT NEWS BRINGS PRESSURE ON NAVY

Newport News officials have made their intentions clear. On March 15, 1976, the president of Newport News sent a publicly released letter to one Congressman in which he stated:

"I need to bring all the pressure to bear that I can for a prompt and equitable resolution of the differences between the company and the Navy. Time has run out."

Newport News has brought pressure to bear on the Navy through other public statement; by complaints to defense officials and to Members of Congress; by threats of not taking future Navy business; and by actually stopping work on the CGN-41.

There seems to be a tendency in some quarters to view the shipbuilding claims problem as simply one of human relations. In fact, some claimants would have you believe that the whole problem has been created by conflict of personalities. They have made shipbuilding claims a political and personal matter. In actuality it is strictly a matter of money. If a shipbuilder intends to hold out for more than he is legally owed, his relations with the Navy will deteriorate until either he convinces the Navy to pay whatever he wants regardless of legal entitlement; or, until the Navy convinces him he will get only what he is legally owed, regardless of the pressures the company may bring to bear. From the Government's standpoint, I view the issue this way: Why bother negotiating and signing contracts if they are not going to be enforced?●

UCLA's COMMUNICATIONS LAW PROGRAM

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. WAXMAN. Mr. Speaker, in 1972 the UCLA Law School initiated, with the strong financial support of the Markle Foundation, a unique scholarly endeavor in communications law: a program which combined study of law with both responsiveness to public interest concerns and practical experience for students and faculty. The program's students not only learn and evaluate critical issues in communications, but are placed by the program with interest groups and regulatory agencies involved in these matters. The program has made a major contribution to the House Commerce Subcommittee's work on the proposed rewrite of the Communications Act of 1934, and hosted a field hearing on this legislation in Los Angeles on August 25.

Under the able leadership of Professor Monroe Price, Geoffrey Cowan, and Charles Firestone, who is the current director, UCLA's communications law

program has established itself as the finest in the Nation. All associated with it should be deservedly proud of its accomplishments.

The Los Angeles Times recently featured the program and its work, and I am pleased to bring this article to the attention of my colleagues:

LAW STUDENTS CROSS-EXAMINE MEDIA LAW

(By Barbara Isenberg)

It was the first week of class at UCLA law school and from a small television monitor at the podium Prof. Charles Firestone had just cautioned his communications law class to please stand by. Said Firestone: "If you are enrolled in community property, you are in the wrong room."

If, on the other hand, they wanted to learn more about such things as the mass media and cable television, Firestone urged them to stick around. Everyone did, and by the time the 20-minute video tape ended they'd been informed not only that more U.S. homes have television sets than have indoor plumbing, but even that one television study found that 44% of the children sampled preferred television to daddy.

There is, of course, more to come. By the time the semester ends, Firestone's students will have discussed:

—Who controls the media?

—How is what you see or don't see on television regulated?

—What is the broadcaster's liability for how all that TV sex and violence affect our real lives?

—Who has the right of access to the media?

—What is the broadcaster's responsibility to the community?

Questions like that are being discussed in more and more law school classrooms, as the rules and policy governing broadcasting change as fast as the media. More than 30 law schools offer communications law courses of one kind or another, and UCLA's unique communications law program both reflects and encourages growing interest in the electronic media.

Begun with a $144,000 grant in 1972 from the John and Mary R. Markle Foundation in New York, the UCLA program has tried both to increase the number of well-trained people in the communications law field and to contribute to the laws and policy regulating broadcasting.

"One of the things we can do best is help people understand their rights," says 33-year old Firestone. The program does that by advising and representing citizen groups in the courts and before regulatory agencies like the Federal Communications Commission. Through such efforts and in special seminars, independent projects and internships with federal agencies and law firms, UCLA law students get a chance to influence directly national communications law.

Last year, for example, more than two dozen law students here tried rewriting the 1934 Communications Act, then sent their revisions to the House commerce subcommittee on communications, which was working on its own rewrite. Two UCLA students had earlier spent six months working with the House commerce subcommittee, and when it held local hearings on the 1978 Communications Act last month the subcommittee held them at the UCLA law school.

Students also participate in actual litigation, and Firestone says people in the program work on about six public interest cases each year. In its early years, the program helped get free TV advertising time for supporters of the coastal zone conservation act and received credit for helping that ballot proposition pass. More recently, students have done research and written briefs for the highly publicized family hour suit and for license renewal challenges.

The program operates somewhat like a public interest communications law firm, working on cases involving what director Firestone calls "novel and important questions of law where individuals couldn't adequately pursue their case without our representation." Firestone also brought several such cases with him from his former employer, Washington's Citizens Communications Center, including a newspaper-TV cross-ownership case that Firestone argued (and lost) before the Supreme Court earlier this year.

Similarly, the Coalition on Children's Television called on the program for help getting the FCC to reopen hearings on guidelines for children's television. By informally objecting to all the TV license renewals in Los Angeles, says CCT director Alice March, "we wanted attention drawn to the fact that children's TV is so unresponsive to children's needs." People in the UCLA program helped them prepare the brief to get that attention, says March, and the FCC has reopened the hearings.

More than 60 UCLA law students have also worked as interns at communications law firms and regulatory agencies, usually in Washington. During the last school year, for example, students worked with key people at such places as the FCC, Federal Trade Commission, Media Access Project, National Assn. of Broadcasters and Reporters Committee for Freedom of the Press.

The experience isn't wasted. Third-year law student Gary Meyer, for example, wound up working at Citizens Communications Center on a cable access case that had been just another final exam question to him a few weeks earlier. After working with both Citizens and the FCC in Washington drafting a petition for Supreme Court review, Meyer is back at school now doing a law review article on cable access regulations. The whole thing, says Meyer, was "a fortuitous transition from classroom theory to practical implementation."

Frank Lloyd, administrative assistant to FCC Chairman Charles Ferris, likes the West Coast input the UCLA program provides the FCC, and he and others speak favorably of its national impact. Not only have UCLA students participated by now in more than 60 legal proceedings before the FCC and federal courts, but many of them have gone on to communications-related jobs in federal agencies after graduation.

The program's two former directors, Geoffrey Cowan and Tracy Westen, have also continued influencing communications law and policy. Cowen is a presidential nominee for the board of the Corporation for Public Broadcasting; his book, "See No Evil: The Battle Over Sex and Violence on Television," will be published by Simon and Schuster this winter. Westen is now deputy director of the Federal Trade Commission's Bureau of Consumer Protection where he has been working on children's television advertising, among other things.

"The communications law program has become a foundation for ideas and experimental dialogues, and a lot of that has filtered out," says Westen. He points out, for example, that when former FTC Chairman Lewis Engman wanted to give a major talk on the fairness doctrine, he chose UCLA law school as the best place to do so. And the highly regarded Federal Communications Law Journal, formerly based in Washington, is now edited and copublished at UCLA.

The program has had its problems, of course. Monroe Price, the UCLA law school professor who founded the program in 1972, feels it has fallen short in attracting minority students, for example. And Cowen recalls that a major study of the Los Angeles television market never reached a stage where it could be published for the community at large. "It was a useful academic exercise, and that was really our principal interest," says Cowan, "but we were disappointed it never became a more public document."

Still, just doing the research provided law students here with considerable practical experience, and offering them that sense of their profession is what Price had in mind when he first took the idea to the Markle Foundation. Markle was looking then for ways to increase the number of competent people in the communications law field, says Markle president Lloyd Morrisett, and agreed to provide funding to get the program started.

Markle had poured nearly $285,000 into the program by the time he stepped out last June, and Morrisett says he's quite pleased with how it evolved. The foundation always had in mind that UCLA would take over the project, says Morrisett, and the university did so this fiscal year. UCLA and UCLA law school currently share his salary, says Firestone, adding that UCLA expects them to find other funding at the end of two years.

Firestone is currently investigating various funding sources, including an endowed chair for his successor and the possibility of being a communications backup for the federally funded Legal Services Corp. The program plans to sponsor a symposium next February on government regulation of the networks; Firestone is thinking about also putting it on in Washington, making it an annual event, and perhaps even using it as the basis for future funding.●

THE UKRAINIAN CONGRESS COMMITTEE PASSAIC-BERGEN COUNTIES, N.J., HOSTS STATEWIDE DEMONSTRATION IN COMMEMORATION OF THE VICTIMS OF THE UKRAINE IN FAMINE OF 1932–33

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. ROE. Mr. Speaker, on Sunday, September 24 in the city of Passaic, my congressional district, State of New Jersey, the Passaic and Bergen Counties Branch of the Ukrainian Congress Committee of America will host a statewide demonstration sponsored by the Ukrainian Committee of America Coordinating Council of New Jersey to call attention to the most despicable destructive famine that occurred in the Ukraine during the years 1932–33 and observe September 24 as a day of remembrance for the victims of the Ukraine who died of starvation during that period of history under the Government of the Union of Soviet Socialist Republics.

Mr. Speaker, at the outset may I commend to you the president of the Ukrainian Congress of the State of New Jersey, Dr. Merril Buich; the honored guest of the Ukrainian community, Gen. P. Grigorenko; program participants, the Ukrainian youth organizations, PLAST and SUM; and the following officers of the Passaic-Bergen Counties Branch of the Ukrainian Congress Committee of America who have been work-

ing diligently in organizing and seeking full citizens participation in this most important commemorative program: The Honorable Kenneth Wanio, president; Ihor Rakowsky, vice president; Helen Maksymiuk, treasurer; Irene Struk, secretary; Luba Ostapiak and Christina Buk, special events coordinators.

Mr. Speaker, the resolution adopted by the Ukrainian Congress of America which sets forth the tenets of this statewide demonstration which they have requested be placed on the agenda for consideration by you and our colleagues as well as our President, Secretary of State, and Ambassador of the United Nations, reads as follows:

RESOLUTION

Whereas in 1932–33 the Communist Kremlin deliberately created an artificial and political famine in Ukraine which claimed over seven million victims; and

Whereas the Soviet Communist plan was to collectivize the agricultural sector of the economy through confiscatory and brutal procedures and to destroy every vestige of Ukrainian culture, tradition, nationalism and self-determination; and

Whereas the Russian Communists still today inflict upon Ukraine a policy of national genocide and ethnocide in a myriad of forms in order to further subjugate the Ukrainian populace; and

Whereas the Soviet Communist action in 1932–33 and its policy today is commensurate with the most heinous crimes ever perpetrated upon a nation; and

Whereas these actions past and future shock the conscience of every freedom-loving American.

Be it therefore resolved that 1978 be and is hereby designated as the official 45th solemn anniversary of the Great Artificial Famine; and

Be it further resolved that the Helsinki accords and other treaties or international declarations and agreements be strictly monitored so as to avoid similar travesties and atrocities in the future in Ukrains and every other part of the world; and

Be it further resolved that the United States government support the wishes of all Ukrainians who wish to emigrate especially Ukrainian political prisoners and dissidents such as Lukianenko, Moroz, Tychiy, Father Romaniuk, Pastor Vins, Karavansky, Katerina Zarycka, Stus and other countless thousands.

Mr. Speaker, to understand the enormity of the purpose and resolve of the foregoing resolution, it is important to reflect upon the course of events that has prompted our citizens of Ukrainian heritage to participate in this statewide demonstration to memorialize what many noted historians refer to as "the Political Famine of 1932–33." May I insert at this point in our historic journal of Congress an excerpt from the book entitled "The Ukraine: A Submerged Nation," authored by the distinguished journalist, William Henry Chamberlin, and published in 1944 by the MacMillan Co., New York, which graphically and poignantly portrays this period of time in the history of the Ukraine, as follows:

EXCERPT—THE UKRAINE: A SUBMERGED NATION

Of all the regions of the former Tsarist Empire the Ukraine was one of the most important for the Soviet regime to hold, for strategic and economic reasons. It was also one of the most difficult to assimilate to the methods and psychology of a Communist dictatorship.

The Ukraine was traditionally both the bread basket and the sugar-bowl of Russia. Under normal conditions it produced a considerable surplus of wheat, sugar-beets, fruit, and vegetables. It was also the principal source of Russia's coal supply and in the twenties it was the principal center of the Russian iron and steel industry, although in more recent times it has been outstripped in this field by the development of mineral resources and big new factories in the Urals and Western Siberia. It is through the Ukraine that Russia possesses access to the northern coast of the Black Sea, and to its most important port, Odessa. For all these reasons the Soviet Government considered the possession of the Ukraine a vital national interest.

At the same time, as the account of the course of revolution in the Ukraine in the last chapter shows, communism was not congenial to the Ukrainian people. Opposition to the Soviet regime was prolonged and stubborn, especially (and this is rather significant) in the regions where the Ukrainians form the greatest part of the population. There were fewer Communists in the Ukraine, in proportion to population, than there were in Russia, and there were distinctly fewer Communists among the predominantly peasant Ukrainians than there were among the Russians, Jews and other nationalities in the cities and towns. The Ukraine would never have been Sovietized if it had not been for the intervention from Russia.

Because it was a new revolutionary regime, the Soviet Government went about its task of splitting the Ukrainian people and winning them over with propaganda of more skill and subtlety than the Tsarist regime had ever showed. At the same time methods of extreme brutality were employed whenever there was mass resistance to Soviet economic policies. . . .

This famine (of 1932–33) may fairly be called political because it was not the result of any overwhelming natural catastrophe or of such a complete exhaustion of the country's resources in foreign and civil war as preceded and helped to cause the famine of 1921–22.

Partly because of discontent with the new system of collective farming and the lack of manufactured goods, partly because the government had returned to methods of war communism, demanding arbitrarily all the peasants' surplus grain, without defining clearly what was supposed to constitute "surplus," the peasants in the Ukraine had slowed down their productive effort. Climatic conditions were also unfavorable, both in 1931 and in 1932.

The situation that had developed by the autumn of 1932 might be briefly summarized as follows. Despite the meager harvest, the peasants could have pulled through without starvation if there had been a substantial abatement of the requisitions of grain and other foodstuffs. But the requisitions were intensified, rather than relaxed; the Government was determined to "teach the peasants a lesson" by the grim method of starvation, to force them to work hard in the collective farms.

Early in 1933 the Ukraine was declared "out of bounds" for foreign correspondents, so that there could be no widely circulated accounts of the great human tragedy that was taking place there . . .

While no official statistics about this tragedy have been published there are two points of circumstantial evidence showing how the population growth of the Ukraine was retarded. The proportion of the Ukrainian population in the Soviet population, according to the census of 1939, was 17.5 per cent. It had been 20 per cent during the twenties. The absolute figure of the Ukrainian population reported in 1939 was 30,960,221, indicating a decline during the preceding decade.

There has perhaps been no disaster of comparable magnitude that received so little international attention. The Soviet method of stifling direct reporting of the famine by refusing permission to correspondents to visit the stricken regions until a new crop had been harvested and the outward signs of the mass mortality had been largely eliminated proved very effective. Officially Moscow officialdom continued to deny brazenly that there had been anv starvation. Few correspondents were inclined to risk difficulties with the censorship by sending the story of events which had occurred some months in the past.

The Ukrainians abroad, to be sure, learned through indirect channels of what happened in their homeland and made unavailable attempts to organize relief and to bring the inhuman government policy that had led up to the famine to the attention of public opinion. The Ukrainians across the border in Poland naturally received the fullest information and any enthusiasm that had existed among them for communism was considerably cooled . . .

In the light of past events, however, one may feel sure that the Ukrainians fought courageously for their homes, whether in regular units or in guerrilla bands. One may also feel sure that the Ukrainian problem in the future will be satisfactorily solved only if Communist dictatorship gives way to genuine democracy and if the full liberty of which the Ukrainian poets wrote, and for which so many Ukrainians died, becomes a reality. . . .

Mr. Speaker, this devastating toll of human suffering and death from starvation was embodied in a resolution introduced in the House of Representatives on May 28, 1934, which reads, as follows:

H. RES. 399

Whereas several millions of the population of the Ukrainian Soviet Socialist Republic, the constituent part of the Union of Soviet Socialist Republics, died of starvation during the years of 1932 and 1933; and

Whereas the Government of the Union of Soviet Socialist Republics, although being fully aware of the famine in Ukraine and although having full and complete control of the entire food supplies within its borders, nevertheless failed to take relief measures designed to check the famine or to alleviate the terrible conditions arising from it, but on the contrary used the famine as a means of reducing the Ukrainian population and destroying the Ukrainian political, cultural, and national rights; and

Whereas intercessions have been made at various times by the United States during the course of its history on behalf of citizens of states other than the United States. oppressed or persecuted by their own governments, indicating that it has been the traditional policy of the United States to take cognizance of such invasions of human rights and liberties: Therefore be it

Resolved, That the House of Representatives express its sympathy for all those who have suffered from the great famine in Ukraine which has brought misery, affliction, and death to millions of peaceful and law-abiding Ukrainians; be it further

Resolved, That the House of Representatives express its earnest hope that the Government of the Union of Soviet Socialist Republics will speedily alter its policy in respect to the famine in Ukraine, take active

steps to alleviate the terrible consequences arising from this famine, and undo so far as may be possible the injustices to the Ukrainian people; and be it further

Resolved, That the House of Representatives express its sincerest hope that the Union of Soviet Socialist Republics Government will place no obstacles in the way of American citizens seeking to send aid in form of money, foodstuffs, and necessities to the famine-stricken regions of Ukraine.

Mr. Speaker, as we pause in our deliberations today for this commemorative observance, we share with our people of Ukrainian heritage our renewed reverence for human life and pay tribute to the memory of the Ukrainian victims of the 1932–33 famine that took place in the U.S.S.R.-occupied Ukraine. These commemorative programs give all of us an opportunity to reflect on man's inhumanity to man and strengthen our determination and resolve to muster world opinion to help eliminate the human misery of the cruel exercise of governmental authority and the enormous waste of mind and body that hunger and poverty feed upon.

There is undying strength in the spirit of freedom and justice that can be achieved through the communion of understanding that is within the realm of all freedom-loving nations of people. In remembering the unwanton destructiveness of this dastardly act may today's commemorative salute help instill in the hearts and minds of all mankind that the true purpose and fulfillment of life's endeavors is within the domain of all human life—spiritual, moral, cultural, and social—if each and every human being practices the divine principle, "Do unto others as you would have done unto yourself."

Mr. Speaker, in reflecting and observing with all freedom-loving people throughout the world man's inhumanity to man we can take another step in our humanitarian ideals for a communion among all peoples of the world to achieve quality of life that will permit the widest possible expression of cultural and national heritage so important to mankind's purpose and objectives in attaining a rich and lasting peace throughout the world. To that end I appreciate the opportunity to seek this national recognition of the outstanding efforts of my constituents, the Ukrainian Congress Committee of Passaic-Bergen Counties, New Jersey on behalf of the courageous and valiant people of the Ukraine.●

RETIREMENT OF JUDGE PHIL H. COOK OF LEXINGTON, MO.

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SKELTON. Mr. Speaker, I take this opportunity to take note of the retirement of one of Missouri's finest trial judges. On September 1, Judge Phil H. Cook, of Lexington, Mo., retired after serving nearly 32 years as circuit judge for the 15th judicial district, which is comprised of Lafayette and Saline Counties.

Judge Cook was first elected in 1946, and was reelected on five successive occasions. Prior to serving as circuit judge, he was city attorney for Higginsville and prosecuting attorney of Lafayette County.

Judge Cook is highly regarded by the members of the bar as being one of the most able trial judges in the State. His keen intellect and sense of fairness were recognized by all attorneys who practiced before him. I had the privilege of practicing in his court. And I knew him always to uphold the finest ideals of the judiciary. His service to the citizens of western Missouri will be greatly missed.

I wish Judge and Mrs. Cook my best wishes in the days ahead.●

FOOD PRICE OUTLOOK: 1978–79

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. MOORHEAD of Pennsylvania. Mr. Speaker, we all know the importance of food prices in the inflation problem—psychologically as well as actually. As part of its oversight responsibilities in all aspects of inflation, the Subcommittee on Economic Stabilization of the Banking Committee, of which I am chairman, has paid close attention to food prices and recently completed a hearing to obtain the latest factual information on the situation and outlook. One witness was Howard Hjort, the widely respected Chief Economist of the Department of Agriculture.

I believe, Mr. Speaker, that it would be useful for Members of the House to have a summary of this information, which I am providing today. Though it involves some tentative predictions, based on current crop conditions here and abroad, the information is essentially factual and in no way political. It makes no judgments on the fairness of present prices being received by farmers nor on the farm policies of the administration. It is simply a report on the food price situation and how things are shaping up for next year.

I am purposely keeping this report brief. The picture can be summarized as follows:

Food prices are up about 10 percent in 1978, more than anticipated a year ago. Higher meat prices are the single most important cause of the rise.

For 1979, if prices at the farm do not rise at all, food prices will go up 4 to 5 percent because of inflationary forces in the economy at large. The cost of processing, transportation, packaging, retailing, et cetera, now amounts to two-thirds of the price of food to the consumer. The farmer gets only one-third on the average, though this portion varies among the different food products.

Fish and imported food will add another 1 to 2 percent in 1979, though coffee prices should again be stable or declining as in 1978.

Thus food prices next year will rise some 6 percent before considering what happens to prices of the U.S.-produced farm crops and livestock.

Beyond that basic increase, the key to food prices—a moderate year or another bad year like 1978—is in the livestock sector, and particularly pork and poultry. We already know that beef supplies, affected by a long-term cycle, will be reduced again and prices will probably be higher. But if there is plentiful pork and poultry, the overall increase in meat prices could be moderate.

The good news is that feed grain supplies are ample, with a probable record corn crop this year and sizable carryover stocks. Normally this good feed grain situation, with moderate prices, should lead to expanded production of poultry and pork. In 1978 it happened for poultry but not for pork, for various reasons including the effect of last winter's severe cold weather.

The chief hope for only a modest further increase in meat prices next year lies in expanded production of pigs, which could well happen. With world crops in good shape, along with our own good harvest, there is no reason to expect a big surge in prices of the basic grains.●

NATIONAL PORT WEEK

HON. THOMAS L. ASHLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. ASHLEY. Mr. Speaker, this week we are celebrating National Port Week to remind Americans of the importance of the U.S. port industry to our national life. It is my hope that this celebration will impress upon all citizens the numerous benefits that flow from the development of vital port facilities. These benefits redound not only to consumers and producers, but to labor, business and industry, and, indeed, to all segments of the American economy.

I am especially pleased during National Port Week to have the opportunity to highlight my hometown, the Port of Toledo, as the leading international tonnage port on the Great Lakes. Vessels have called at the Toledo harbor for nearly 150 years, providing thousands of employment and business opportunities for our city and the surrounding area. The Port of Toledo generates nearly $200 million in economic impact to our community each year, and provides the basis for a diversified regional transportation economy. Today the port lies at the hub of a transportation network that includes five rail systems and more than 120 motor freight carriers. Its geographic location has caused it to play a key role in the Great Lakes/St. Lawrence Seaway maritime activities, and to become an

important landmark on our Nation's "fourth seacoast." Its economic benefits have totaled over $3.5 billion in the last decade.

During National Port Week I am pleased to recognize the singular contribution made by the Port of Toledo to my district, and to our Nation's economy.●

CONSTITUTION DAY—THE HOLIDAY AMERICA FORGOT

HON. WILLIAM M. BRODHEAD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. BRODHEAD. Mr. Speaker, 17 years ago today an article by Delos G. Smith, "The Holiday America Forgot," appeared in the Detroit News. This article describes the events of the summer of 1787 in Philadelphia. The Founding Fathers who gathered in the City of Brotherly Love drafted the Constitution of the United States, a system of government for the Nation which has endured for 191 years. Mr. Smith makes an excellent case for designating Constitution Day as a national holiday.

I recommend the article to my colleagues.

THE HOLIDAY AMERICA FORGOT

(By Delos G. Smith)

On a certain day last week—Sunday, Sept. 17, to be specific—no flags were waved, no cannons were fired, there were no parades, and nowhere in this bastion of liberty did anything occur to indicate that a day to remember had come and gone.

Sept. 17, 1961, was much more than a mere tick in time, much more than an experience in living, much more than a day of anxiety, or a day of rest, or whatever it meant to the more than 180,000,000 free Americans to whom liberty is something just as casual as breakfast.

It was, as a matter of fact, the holiday America forgot.

It was, as a matter of fact, a day America has been forgetting for the last 174 years.

It was, as a matter of fact, a day only a handful among millions are even aware of, for, on this day in 1787 . . .

STREETS WERE MUFFLED

All around the State House in Philadelphia the cobblestone streets were covered with dirt and sod to deaden the sound of horse drawn traffic and the click of thousands of leather boots against pavement as Philadelphia pursued its normal business.

Sept. 17, 1787, fell upon a Monday and the city of brotherly love had stirred itself from the lethargic and somewhat somnolent Sabbath week end.

Inside the State House, in a room about 50 feet square, 42 men sat respectfully in their designated places, and the streets had been covered to deaden the sounds so that they could concentrate, without interruption, on one of the most fateful documents in human history.

At the head of the hall, a tall, handsome man with military bearing and somber face, rapped a gavel smartly on the table, calling this extraordinary meeting to order. He was, at that time, exactly 55 years old and in the prime of his life.

His name was George Washington, and he came from the sovereign state of Virginia.

Armed sentries stood at the door—on each side—and an air of secrecy and urgency was upon this group, as heavy as the hand of destiny.

The sergeant-at-arms, acting at Gen. Washington's order, called the roll of 55 Americans.

To 13 names there was no answer. Only silence. To 42, a crisp, "Here, sir."

THE JOB IS DONE

The day wore on slowly, and grim lines fell into the faces of men like Gunning Bedford, James Madison, Alexander Hamilton, Benjamin Franklin, and Robert Morris. For 123 days these men and their comrades had been at this task. And this crisp September Monday was the 124th day that they had been at it, away from their homes, their friends, their wives and children, and their businesses.

They had come to Philadelphia to draft a document, and at long last, the task was finished.

After 124 days of sweat, frustration and argument, and endless speeches, they had to show for their labors exactly 89 sentences containing approximately 4,000 words, four sheets of paper anyone can read in 15 minutes. It was a document without parallel in human events.

Gen. Washington called for the assembled group to sign it.

One by one they arose, walked to Gen. Washington's desk, and with the quill affixed their signatures.

Three refused.

But the deed had been done. A nation had been born.

America—the United States of America—was now a living entity in the world of nations.

It had a Constitution.

It now had meaning and purpose.

Monarchies have toppled around the world, dictators have risen and been overthrown, but the Constitution of the United States still exists as the most enduring document ever written as the framework for a nation's government.

REPUBLIC SET UP

This Constitution established a republic for a population of less than 4,000,000 persons. Today more than 180,000,000 are governed by its provisions.

It joined together 13 states which, since the Revolutionary War, had existed under a loosely knit confederation.

One state, Rhode Island, did not even bother to elect delegates to the historic convention that opened in Philadelphia on May 25, 1787.

Seventy-four delegates were elected by the legislatures of the other 12 states. Eleven refused to serve. Another eight did not bother to refuse, simply failing to attend. The convention was composed of the remaining 55.

MANY SKILLS THERE

The delegates consisted of merchants, farmers, doctors, educators and soldiers, but the majority were lawyers. Many had been members of the Continental Congress.

College graduates, led by nine Princeton alumni, predominated. There was one graduate each from Oxford, Cambridge, Glasgow and Edinburgh universities.

The four most famous were Washington, Franklin, Madison and Hamilton.

The average age of the 39 signers was 44 years. Three were still in their 20s. Franklin, 81, was the oldest.

All but five were native born. Four others were natives of Great Britain and one had been born at sea. Seven had been governors of their states. Eight had been judges of state courts. Two had represented the 13 states abroad. Six had signed the Declaration of Independence.

Even bigger things lay in store for many of them. Washington and Madison became presidents. Three became Cabinet members. Fifteen became U.S. senators. Eight more became governors. Three became ministers, to England, France and Spain. One became chief justice of the U.S. Supreme Court and three became associate justices.

They met in complete privacy by prior agreement. Sentries were posted to keep out visitors.

And at the delegates' insistence, not a word of this great democratic session was reported while the convention was in session.

The convention last 124 days, although it was in actual session only 81 days.

FEW KNOW OF IT

For generations we have celebrated July 4 as a national holiday, with booming of cannons, bonfires, blaring of bands, small and big-town orators making the eagle scream, down to the days of firecrackers and fireworks.

The Declaration of Independence, which is celebrated on this date, was a great idealistic document setting forth our grievances to the king and declaring that the Colonies should be free, but it did not establish a government for the people of the 13 colonies.

But there is no national holiday to honor and commemorate the 17th of September, 1787, when the Constitution of the United States was signed and, by its provisions, has kept us a nation all these years.

Schoolboys have been told that John Hancock, president of the Continental Congress when he signed the Declaration, said, "I will sign in such bold letters that George III will not need his spectacles."

But few schoolboys know that the president of the Constitutional Convention, who signed the Constitution, was George Washington, the former commander in chief of the Continental Army and later the first President of the new United States.

Twelve of the 13 states responded to the call for delegates—Massachusetts, New Hampshire, Connecticut, New York, Pennsylvania, Delaware, New Jersey, Maryland, Virginia, North and South Carolina and Georgia.

Rhode Island never elected delegates, and was the only state not represented.

The convention was called for May 14, 1787, but could not convene until May 25, 1787, until the proper number of state delegations were passed.

PLEDGE OF SECRECY

Many believe the success of the convention can be attributed to a great degree to the provision adopted at the beginning for secrecy, which states: "Nothing spoken in the house or printed or otherwise published or communicated without leave."

An unwritten understanding was created that when adjourned no disclosure of its proceedings should be made during the lives of its members.

The Journal, upon adjournment, was placed in the hands of Washington. The famous notes of Madison were not printed until after his death 49 years later. Most of the members never broke their pledge.

All of this was done so that the delegates would be protected from criticism and pressure, permitting them to engage in calm deliberation and discussion during 124 days. These men wanted to create something of enduring importance.

The delegates' work could not have been improved by the modern method of hordes of newspaper reporters inside and outside the

hall questioning the members and asking for statements, photographers taking pictures every few moments, movie and television operators on the scene, loudspeakers and microphones available, all of this for publicity purposes rather than permitting them to deliberate and think.

Delegates did not make speeches to get the headlines in the papers and worrying about keeping themselves in the public eye. This convention was imbued with an unusually serious spirit.

Secrecy did not prevent discussion. Governor Morris spoke 173 times, James Wilson 168 times, James Madison 161 times, and Roger Sherman 138 times.

IT LIVES ON

How well did the members of the convention perform their duties? Since the first president was inaugurated and the first Congress met in 1789, 172 years ago, the Constitution has only been amended 23 times.

The first 10 amendments were practically agreed upon during ratification prior to 1790 and submitted by the first Congress. They became effective 1791. Two more were adopted, one in 1798 and one in 1804.

It was 61 years after 1804 that the three Civil War amendments were added, 1865, 1868 and 1870.

Forty-three more years passed by before two more amendments were added in 1913. The last six amendments were added between 1917 and 1961.

NO HEADLINES

Actually, since the first year of government under our Constitution, only 13 amendments have been made. This must be considered most remarkable, for during all these years there has been a great increase in our population and an ever-changing condition of progress.

What other body of men has provided such a lasting document to govern free people?

For almost a century and three-quarters of unexampled civil and material advancement the Constitution has applied itself, amended itself, developed itself and even through stress of civil war, maintained its equilibrium.

American citizens have reason to believe the fundamental law has "the power of endless life."

This may be true if we regard it well and remember the duties of citizenship are as important as to assert our rights.

Rights imply equal duties.●

TOURISM: OUR NATION'S GREATEST ASSET—PART IV

HON. JOE SKUBITZ

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SKUBITZ. Mr. Speaker, yesterday, I described in considerable detail the functions and operation of one of the six regional offices of the U.S. Travel Service. I felt that it was important that the Members be made aware of the very vital service which this agency performs overseas in developing tourism for the United States.

Mr. Speaker, this office, in London, is to be closed by order of the State Department. Indeed, one of USTS's most successful operations, in a country with which we have the closest possible cultural, linguistic, and ethnic affinities, has been declared superfluous. Today, I shall dwell on the position of the Department of State, represented by our Embassy in London, and the reaction of the British travel trade, faced with the possible closing of the London office of the USTS.

THE U.S. EMBASSY POSITION

It is the stated position of our Embassy in London that virtually all the increased travel from the United Kingdom to our shores is stimulated by considerations outside the scope of the U.S. Travel Service activity in London. The Embassy contends that there is an unquestionable desire by most British to visit the United States. This desire is fueled, in our Foreign Service experts' view, by such well-known and popular TV serials as "Starsky and Hutch" and "Kojak", and hence, the part the USTS plays in this travel represents less than a drop in the proverbial bucket.

The Embassy has stated further that it believes the annual expediture of over $1 million in U.S. taxpayers' money by the U.S. Travel Service does not bring the increase in travel warranting the expenditure in the United Kingdom. It is suggested that these expenditures would be more productive in countries that do not have English as a native language or where other directly competing attractions for travel funds would have a more tangible effect. The fact that this would not reduce overseas personnel apparently is irrelevant.

The Embassy finally points out, with masterful logic, that in view of our balance-of-payments problem it is necessary to reduce U.S. personnel overseas and cease expenditures on such export promotional efforts as trade centers and the U.S. Travel Service. The Embassy and the State Department have indicated that if there is really a demand for the type of service that these non-State Department employees have been performing, then, of course, the Embassy would provide the services in-house and gear up to do it.

THE POSITION OF THE UNITED KINGDOM TRAVEL TRADE

Based on a survey which the chairman of my subcommittee, the Honorable FRED ROONEY, and I ordered to be conducted in London, of the 20 largest general and special interest tour operators, the retail and wholesale travel trade, the major airlines serving the transatlantic market, and the specialized press, I can categorically assure you of the unanimous support and endorsement of the efforts of the USTS London office.

It is the position of the private sector of the United Kingdom travel industry, which, by the way, was never consulted by our Embassy, that the closing of the USTS office in London would seriously impair the growth of tourism in the United States. The USTS performs a vital, industry-catalyst function without which the United States would lose a large share of the United Kingdom tourist market.

I have no doubt that the position of the U.K. travel industry is self-serving. If I were a travel agent, I, too, would strongly protest the loss of a generous advertiser, promoter, and handholder, which the USTS office in London has been to the travel trade. However, closing the USTS office on the grounds that it is helpful to the trade is incredibly shortsighted and, regretfully typical of our Foggy Bottom bureaucrats.

Never in the history of this country have we been in such need to increase our exports—so we close our London Trade Center. We are finally beginning to recognize the importance of tourism to our national economy and its contribution to a positive balance of payments—so we close one of the most successful USTS offices overseas.

Mr. Speaker, when we have cut through all the verbiage and all the expressions of concern over this Government's expenditures for personnel overseas, we get down to the real facts in this case. This is nothing but another attempt by the Department of State to regain control over positions and personnel which the Congress determined would best be filled or served by professional commercial officers—employees of various Federal agencies whose specialities or jurisdiction they were better able to represent.

Let us not be hoodwinked. Already the trade center in London, which prior to being closed was located just off Regent Street in an ideally located commercial building highly suitable to heavy equipment exhibits, has resurfaced within the Embassy building itself, necessitating in excess of $30,000 in structural changes to the building and security measures. The same fate awaits the Travel Service.

I can assure you it is not pleasant to go through the security checks at the American Embassy in London. Police state measures are regrettable although perhaps necessary to protect Embassy personnel. They do not, however, facilitate the conduct of commercial business and/or travel business.

I fully concur with the opinion expressed by the British travel trade that the attitudes of our Embassy personnel have always been aggressively negative. A person seeking to travel to the United States is suspect. He is a potential illegal emigrant. Such an attitude is totally unacceptable to the travel trade, and it is certainly unbelievable that in 1 day the State Department will make a 180 degree attitude change.

Thank you, Mr. Speaker.●

SUPPORT FOR OUR FRIENDS IN TIMES OF THEIR ADVERSITY

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. ANDERSON of California. Mr. Speaker, I think we are all familiar with the expression "a fair weather friend." As I have been following in recent months reports in the news media concerning riots in Iran and protests against the regime of the Shah, this expression "fair weather friend" comes to mind as, unfortunately, applying to some in this

country. The vast majority of the articles written recently, if not condemning the Shah, at least give favorable publicity to his opponents. But who are these opponents? Aside from a few disaffected Iranian students in foreign countries who march in protests with their faces covered with masks—and I am informed that at least some of these masked protesters are not Iranians—we find in Iran two major sources of opposition. The first and by far the smallest are those Marxists who wish to overthrow the government and establish a "people's republic" of some type, closely alined with their Communist supporters. The second and by far the largest group of opponents to the Shah are true reactionaries. This group, led by the Mullahs of the Islamic Church, would turn back the clock to the semifeudal life they enjoyed so much in earlier times, wherein they exercised tremendous control over the education, laws, and finances of the country and its people. They would stop the liberation of women which has been accomplished by the Shah. They would stop the modernization of Iran and the building of an economic infrastructure which the Shah is working hard to achieve. They would ban such devices they consider to be evil as motion pictures and television, which are now a part of the average Iranian's life.

In short, as I said earlier, return to the semifeudal life which was the lot of the Iranian peasant until the Shah began his own "revolution." The Shah is certainly not perfect. But he has proved over the years to have a sincere interest in the welfare of his people and in improving their standard of living. And he has proved himself to be a constant friend of the United States. I need not remind those familiar with the 1973 Middle East War that, after the Arabs imposed a boycott on oil sales to the United States and to Israel, he continued to supply oil to both countries. And the strategic position of Iran is obvious. The Strait of Hormuz is the chokepoint for the shipment of oil from the Persian Gulf fields. It is vital that control of this strait not pass into the hands of a Marxist power or a weak, ineffective government, unable to insure free and safe passage for the tankers of the world.

I would like to call to the attention of my colleagues an excellent article which appeared in the Washington Post this past Tuesday. Written by Joseph Kraft, with whom I sometimes strongly disagree, it is one of the few articles I have seen lately which takes an evenhanded approach to the problems in Iran. And in the same edition is an excellent editorial which I also commend to your attention. Under the misguided assumption that the Shah's opponents are struggling for the cause of human rights, let us not turn our back on our friend who for so long has been our supporter in the Middle East and whose country has been an island of stability in an area of turmoil.

THE U.S. STAKE IN BACKING THE SHAH

(By Joseph Kraft)

The latest outbreak of violence in Iran intensified a double confrontation. Internally, the shah, having failed to ease tensions by sweeping concessions, has been obliged by his own military to take on the dissidents in a test of strength. Externally, the critical importance of Iran in the global confrontation between Russia and the United States now asserts itself with a vengeance.

The source of trouble is the breakneck pace of modernization imposed upon the country by the shah. Among other things he has forced economic growth at a 10 percent clip, pushed education to the point where literacy has increased sixfold in the past 25 years, nationalized land, instituted a steel industry and an auto industry, and opened schools and jobs to women on a grand scale.

Inevitably, there have been terrible dislocations, especially for young people wrenched from village life and thrown into the crazy mix of corruption and congestion, shortage and vice, which characterizes Tehran and other cities. The disaffected youth, in schools and out, have provided foot soldiers for two groups interested in undoing the regime.

By far the most important are the Moslem clergy, or mullahs. Thanks to the shah, the mullahs have lost their lands, their dominant role in education and law, and the control they exercised, as leaders of land, over the bazaars. The more fundamentalist among the mullahs have actively opposed the shah's modernization program, especially the liberation of women.

Circumstances have driven into alliance with the mullahs a small group of Marxist revolutionaries organized into tiny cells for terrorist action. At the center of this strange combination has been Ayatollah Komeini, an Iranian religious leader who has been sheltered by the radical regime in Iraq. Komeini continues to be in touch with the Islamic fundamentalists in Iran, and with radical Arabs—notably the Libyan regime of Muammar Qadaffi and the Palestinian extremists—patronized by Moscow.

About six months ago a campaign of low-level violence in Iran flared to the surface with a series of demonstrations organized against the shah by Islamic fundamentalists. The shah met those troubles, which reached a crescendo during the holy month of Ramadan, by a policy of steady concessions.

He fired the head of the secret police, or Savak. He allowed freedom of the press, and decreed that several parties could present candidates in the elections due next month. He instituted a campaign against corruption that, according to some reports, was due to touch even members of the royal family.

On Aug. 27, a week before the end of Ramadan, he ousted an American-educated technocrat, Jamshid Amouzegar, as prime minister, and replaced him with a traditional figure, Jaafar Sharif-Emami. The new prime minister made even more concessions to the Islamic fundamentalists. He closed down casinos and other gambling places, arranged for the dropping of the court minister—Abbas Hoveyda, who was suspected by the Islamic fundamentalists of having connections with the Bahai cult—and started consultation with at least the more moderate mullahs.

Nevertheless, demonstrations continued following the end of Ramadan on Sept. 4. In two of the protests, students tried to lure soldiers to their side of the struggle. Faced with that kind of subversion, the army chiefs prevailed upon the shah to decree martial law before a massive protest scheduled for Friday, Sept. 8.

That day the soldiers and the protesting youths clashed in a bloody fracas. At least a hundred were killed. Now tight security prevails in Tehran, and though there has been relative calm, a single spark could set off a new wave of fighting.

For the shah has run the string on concessions. Not only has liberalization been taken as a sign of weakness by the opposition, but now the Iranian military is in the picture forcing the monarch to tough it out.

With the shah thus committed, the United States is inevitably involved. This country to some extent—and Japan and Europe far more—are heavily dependent on the Persian Gulf for oil. With weak regimes in Saudi Arabia, Pakistan and India, Iran is the only force for stability in the area.

The Russians have always looked on the shah's regime as, in Khruchev's words, "a rotten piece of fruit" ready to fall into their hands. The more so now, when trouble in the Persian Gulf presents probably the best way to break up the developing entente among the United States, China, Japan and Western Europe.

In these conditions the United States does not have the luxury of sniffing at corruption in Iran, or playing liberal missionary on human rights, not to mention being a supersleuth on weapon sales. If the shah has seemed depressed recently—and he has—it is in no small part because of the instinct of the Carter administration for building up popularity at home by playing to moralistic suspicion of this country's allies.

To be sure, President Carter called the shah over the weekend and expressed support. But that is only a beginning of the kind of American backing required if the shah is to play in global politics the role this country's interests demand.

THE TUMULT IN IRAN

The tumult in Iran has reached the point where a good many people, including Iranians sympathetic to the shah, have been forced to consider whether he can hang on. Certainly, with conditions approaching something like civil war, a ruler less devoted than he to holding on to power and pushing through his ambitious modernization program might already have been tempted to anticipate a coup and seek out plush exile. Yet the shah remains on the throne, and in the light cast by the fierce challenge to him, it is possible to see with new clarity why Americans have good reason to hope he rides out the storm.

Some part of the protests against Shah Mohammad Reza Pahlevi presumably arise from the license he has given the political police, from his virtually insatiable appetite for advanced military hardware, and from the family and upper-class corruption he has tolerated if not spawned. Yet the two main sources of popular opposition are, in their separate backhanded ways, tributes to his vision for Iran.

The shah has presided over headlong economic progress. In so doing he has excited expectations of quick individual benefit that even a far more competent government would have had trouble delivering. In modernizing, moreover, he has provoked frenzied opposition from traditional religious elements in a country long isolated and still largely rural. Those elements are opposed not just to the erosion of feudal ways but also to such basic policy planks as land redistribution and the granting of rights to women. If you throw in as well the third dimension of communist subversion—the shah, needless to say, tends to give high priority to this factor—you have a poisonous brew.

The causes of Iran's unrest are varied enough to have elicited suggestions for substantially different remedies from the shah's advisers, with military men emphasizing the immediate need for law and order and civilians tending to urge renewed attention to political liberalization. At the moment the government is on the military track, but the shah is reportedly bent on returning to the civilian track as soon as events allow. The prospect of being swept out of power by the masses in the streets is evidently less immediate to him than a right-wing coup.

Either way it would be a misfortune for the United States. For its oil, for the stability it lends to its exceedingly shaky region, for the bulwark it forms to the spread of Soviet influence, Iran matters greatly to this country. That is the rationale for the immense and pervasive American "presence" in Iran—political, military and economic. One can question whether all aspects of that

presence are equally wise and necessary; one cannot deny that it exists.

If the United States is in fact committed to Iran, what makes that commitment tenable is the leadership of the shah. Unquestionably, he is more likely to go in the modernizing direction most Americans would like to see Iran go than any of the elements clamoring for his removal. It helps if you think for a minute of the Libyan model of an oil-rich state led by a fanatical Iranian Qaddafi. That is a distinct possibility, and one truly threatening to American interests. Without the shah, it could come to be.●

EXCERPTS FROM SECRETARY CALIFANO'S ADDRESS AT THE ANNUAL CONVENTION OF THE NATIONAL MEDICAL ASSOCIATION, AUGUST 1978

HON. PARREN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. MITCHELL of Maryland. Mr. Speaker, HEW Secretary Califano addressed the annual convention of the National Medical Association in Washington, D.C., on August 1, 1978. At that meeting, he announced his Department is releasing $7.5 million in Federal aid to two important black institutions of higher education: Shaw University in North Carolina and Bishop College in Texas. For the coming academic year, HEW is awarding $3.5 million to Shaw and $4.4 million to Bishop.

Members of the Congressional Black Caucus met with Secretary Califano several months ago to discuss the financial problems facing black colleges in this country. He indicated HEW has and will continue to make every effort to be sensitive to the special problems and the unique role of these institutions. However, the Department must be assured that Federal moneys are expended in accordance with applicable laws and regulations, and that all funds are spent in a responsible manner. The administration and HEW have underscored and delivered on their commitment to helping traditionally black colleges and universities in this country maintain their viability in approving this release of Federal dollars to Shaw and Bishop. HEW is continuing to work with these schools to assist them with their longrun difficulties. Let us continue to work together to strengthen these institutions, as Secretary Califano stated in his address, "through hard work, dedicated talent, and imaginative intelligence."

I wish to share with my colleagues excerpts from the Secretary's address to the National Medical Association's annual convention as it represents a major statement by this administration on the issues of health and education and civil rights—a statement by an administration emphatically committed to equal rights and affirmative action. Excerpts of Secretary Califano's address follow:

STATEMENT BY SECRETARY CALIFANO

For several recent events—the Bakke case; the so-called taxpayers revolt in California and elsewhere, and the Nation's continuing economic problems—are causing many people to ask whether the movement toward full equality and full opportunity has slowed in America; whether the beacon of the civil rights movement, which glowed so brightly in the 1960's, has faded now.

I cannot tell you what the ultimate answers to those questions will be.

But because I have strong feelings about them, I can tell you what I think the answers should be.

And because I serve in an Administration that is emphatically committed to equal rights and affirmative action, I can tell you something about our efforts to shape those answers.

For years we have made the case for strong civil rights enforcement and progressive social programs on moral grounds: that no society committed to equality could countenance inequality.

Today, that case can be made on practical grounds as well. A great deal of evidence has accumulated over the past decade which underscores not only the morality, but the practicality of the efforts we launched in the sixties to help poor and minority Americans:

From 1965 to 1975, the number of American families living in poverty was reduced by half—from more than 30 million to about 15 million; from 15 percent of our population to about seven percent.

In roughly the past decade, the percentage of young Black Americans entering college has doubled. Today, a Black high school graduate is almost as likely to go to college as his white classmate.

Between 1960 and 1975, the infant mortality rate for Blacks fell from 44 per 100,000 to 26 per 100,000. The difference in infant mortality between Blacks and whites was literally cut in half.

In seven years—and largely because of efforts you have made—the percentage of minority students in the Nation's medical schools has more than tripled—from 2.4 percent in 1968–69 to 8.1 percent last year.

Each of these statistics signals a dramatic release of human potential. Each one can be traced, in part, to programs launched and vigorously pursued by the Federal Government: Medicaid, student financial aid, minority recruitment and affirmative action.

So my message—firmly grounded in practical gain to the Nation, and expressed in the most emphatic terms—is this: We have made great progress since the 1960's and we can make much more. It would be a tragedy indeed, if this Nation, having come so far in its quest for equal opportunity, should now abandon or falter in this quest.

We in this Administration do not intend to falter. We recognize that much remains to be done.

And in the aftermath of the Bakke decision, I want to add a special word on affirmative action programs. Since taking office 18 months ago, this Administration—and I personally—have been committed to supporting and encouraging affirmative action programs—programs to increase the number of qualified minority students in higher education. We see the Bakke decision as one which sanctions the affirmative action activities of many institutions across the Nation. The Court ruled that educational institutions may take race into account in the admissions process as part of an effort to obtain a diverse student body; and that when institutions have illegally discriminated against individuals from minority or disadvantaged groups, those institutions can, under the Constitution, be required by the Government to adopt and carry out affirmative action programs.

In these ways and others, we are supporting the education of trained professionals from minority groups—support that begins, as it should, even before grade one, and extends into graduate school.

As we pursue these efforts, we will do so with sensitivity to the historic role—and the continuing potential—of the Nation's predominately Black institutions—institutions which now find themselves sharply challenged by social and economic change.

It is not simply the future of MeHarry, or of other traditionally Black institutions, that is involved here: educational opportunity for hundreds of thousands of young people is also at stake.

Guarding and nurturing such opportunity, literally, is what this Nation is about. Our mission as a Nation is something more—far more—than defending ourselves, generating material prosperity, and delivering the mail. Our mission is individual fulfillment.

In the course of our efforts to guarantee every person's chance to develop his or her talents to their full potential, we have learned some important lessons about what one human soul can mean.

One man who left his imprint on our history—was a Black physician named Charles Drew: a member of this group. Dr. Drew, a distinguished member of Howard's Faculty, was a pioneer in blood plasma research. But his greatest contribution to his Nation was the concept of the blood bank. Ironically, at the time he set up the first blood bank, his own blood would have been rejected if he had offered it—because he was Black.

But Charles Drew, like so many Black Americans, gave to his Nation more than it was willing to give him. And we are all the richer for it.

I think he would say, if he were among us today, that we have come a long way—and that we have a long way yet to go.

We must travel that long way together. We must be resolute in our determination to achieve a society in which all of our Charles Drews can develop their full potential.

Only if we join hands in this quest for justice and human dignity for all can we hold our heads high and fulfill the trust we hold as leaders in the most affluent society in the World's history.●

NOTED ECONOMIST OPPOSES SUGAR PLAN

HON. FLOYD J. FITHIAN

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. FITHIAN. Mr. Speaker, the House soon will act on the Sugar Stabilization Act of 1978 (H.R. 13750), a bill which I supported in the House Agriculture Committee. Recognizing that many of my colleagues may have questions about this legislation, inasmuch as the administration is opposing it. I have sought to obtain economic information from a reputable and independent source to assist in evaluating the administration's arguments on this bill.

I wish to share with my colleagues an exchange of letters between myself and Eliot Janeway, president of Janeway Publishing & Research Corp., of New York. Mr. Janeway, one of the Nation's most respected economists, provides a persuasive case against the administration's proposed sugar policy of payments to sugar processors. He argues that the bill presented by the Agriculture Committee is far preferable.

Mr. Speaker, I was not initially convinced to support the Sugar Stabilization Act; my decision to vote for it in committee came only after careful deliberation and after some amendment. But after reading Mr. Janeway's response to my letter, I am convinced that my decision was correct. I believe that my col-

leagues will join me in supporting H.R. 13750.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 11, 1978.

Mr. ELLIOT JANEWAY,
East 80th Street,
New York, N.Y.

DEAR MR. JANEWAY: As a member of the House Agriculture Committee, I recently voted in favor of reporting the Sugar Stabilization Act of 1978 (H.R. 13750) to the House floor. However, the Carter Administration has cited several economic arguments against the bill, as noted on the enclosed material prepared by the executive branch and entitled, "Justification for Administration-Supported Amendments to the Trade Subcommittee Sugar Bill." This economic and statistical material represents the Administration's analysis of various legislative proposals. My interest relates particularly to H.R. 13750 as approved by the House Agriculture Committee and as amended by the Ways and Means Committee.

I am an economic historian by profession, and I believe that my support for H.R. 13750 is based on sound economic principles as well as the fact that I represent an agricultural district. The Administration, however, has not accepted the position of our committee regarding H.R. 13750.

You are one of the nation's leading economists, and your analyses are widely respected by business and governmental leaders. I would greatly value your analysis of the Administration's proposals (including a sugar payments program) versus H.R. 13750 as reported by the House Agriculture Committee. Specifically, I would appreciate your professional judgment in answer to these questions:

(1) Will the Administration proposals result in a "strong and viable domestic sugar industry," which the President has indicated should be our basic policy for sweeteners?

(2) What would be the effect of each Administration proposal on our imports and balance of trade?

(3) What would be the effect of each proposal on Treasury receipts and on our budget deficit?

(4) With current interest rates at high levels, how many years would it take for the Treasury outlays, as required under the Administration proposals (including the sugar payment program), to double?

(5) The Administration claims that a sugar payment program will hold down inflation; but if the payment program results in higher net budget costs and a larger trade deficit (as I suspect), what would be the inflationary impact?

(6) In comparison with 1973 and 1974, what effect have recent lower prices for sugar had on sugar-containing products?

(7) Which policy alternative—that embodied in H.R. 13750 or in the Administration proposal—would be more beneficial to the corn refining industry and corn farmers?

(8) For an average worker in the private, non-agricultural sector, what is today's purchasing power of an hour's work, as compared with 1947, when purchasing a pound of sugar at retail?

I would greatly appreciate your response to these questions as soon as possible. Thank you for your cooperation.

Sincerely yours,

FLOYD J. FITHIAN,
U.S. Congressman.

JANEWAY PUBLISHING
AND RESEARCH CORP,
New York, N.Y., September 18, 1978.

Representative FLOYD J. FITHIAN,
Congress of the United States, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FITHIAN: I hasten to acknowledge your provocative letter of September 11; and I am honored by your expression of confidence in my judgment. Over the years, I have felt obliged to be responsive to inquiries of this kind from public officials of both parties; and I am happy to put my studies of the overall economic situation at your disposal for purposes of focusing on the special case the Administration has made of its sugar policy.

The eight specific questions you have raised provide eloquent testimony to your professionalism as an economic historian and analyst. Before tackling them individually, however, I think it will be helpful for me to make two general points about the Administration's "memorandum of justification" referred to in your letter.

The first relates to the problem of inflation; and, therefore, to its main source: overborrowing, as measured by the rising trend of interest rates, especially long-term rates, which the Federal Reserve Board cannot control. It is axiomatic that any measure which calls for more borrowing will fuel "the engines of inflation"; and that any alternative expedient will cool them off. The Administration's policy of direct payments to processors would admittedly be financed by more government borrowing; and would, therefore, fuel inflation. Q.E.D.

The second relates to the real dimensions of the inflationary problem. The Administration's approach considers inflation in a purely domestic frame of reference—as if containing it called for merely an exercise in wage and price restraint. The evidence of the real world, however, reminds us every day that the problem is thoroughly international; and, consequently, that no purely domestic expedient will work. Certainly, the collapse of the dollar and the surge in the trade deficit are contributing to the disastrous spiral of higher interest rates which is at once the cause and consequence of accelerating inflation.

The House measure for which you voted would finance the relief the domestic sugar industry admittedly needs by means of a tariff; that is, it would tax foreign producers, and thus relieve the Treasury of the need to borrow the money. As an economic historian, you will, of course, agree that past claims about tariffs being inflationary are throwbacks to the pre-1929 era, before the financing of the government debt had mushroomed into the decisive cause of inflation. Now that it has, and now that the dollar has collapsed as a result, the historical rule has been reversed. Therefore, as an alternative to more government borrowing, a new tariff is not only not inflationary; it is positively anti-inflationary. The tariff approach guarantees that the United States will begin to get back the advantages we have given to our foreign competitors.

Now as to your specific questions, in the order in which you put them:

(1) Will the Administration proposal result in a "strong and viable domestic sugar industry?"

The double standard the Administration has adopted for grain and sugar farmers suggests a negative answer. The Administration has not insisted on direct payments to grain processors; but is pressing grain farmers to accept money in return for taking acreage out of production. Theoretically, beet growers could shift to grains or potatoes, and some cane farmers could shift to soy beans or rice (if they could get a rice allotment). While some farmers might save themselves in this way, they would make more financial trouble for the government than the Administration has yet stopped to count. The growers belong to co-ops which own sugar refineries, which, in turn, are in debt to the government. So, while farmers might no doubt be better off taking bankruptcy first and jobs afterwards, the government shares with the rural banks a common interest in keeping them going as sugar farmers. The price differential insisted on by the Administration, plus the processor payment technique stipulated, would drive a great many of them out of sugar. Those with no other crops to switch into would undoubtedly quit altogether.

I will stake my professional reputation on the premise that all of the country's sugar farmers are in debt; and, moreover, that none of them are managing to reduce their debt burdens. The regional Federal Reserve banks will affirm to you a drastic tightening of credit conditions in farm areas, due to a visible slowdown in interest and amortization collections from farmers. If farmers in crops enjoying better market conditions and expectations than sugar farmers are in money trouble and risking foreclosure, sugar farmers are bound to be in even worse shape.

Finance charges are now ruinous for any marginal operations. Any price margin which makes or breaks farmers needing to borrow more money will, in turn, force more sugar growers out of business. The cent or even half-cent cut insisted on by the Administration will make the critical marginal difference for a considerable portion of the country's sugar growers—none of whom are anticipating reductions in any of their operating or capital costs.

(2) What would be the effect of each Administration proposal on our imports and balance of trade?

The Administration proposal would step up sugar imports first by reducing the price, and second by reducing domestic production. Just as the Administration's domestic sugar policy is in contrast to its grain policy on the issue of processor payments vs. loans to farmers, its international sugar policy is in conflict with its international oil policy. On oil, the Administration is demanding an import fee—that is, tariff—to cut imports and improve our trade deficit. But on sugar, it is demanding *more* imports, at the price of a higher trade deficit, on the far-fetched theory that this would combat inflation. Oil, not sugar, is the basic commodity with which living and operating costs swing.

(3) What would be the effect of each proposal on Treasury receipts and on our budget deficit?

Import fees or tariffs are direct payments to the Treasury from non-income-taxpayers; they reduce the budget deficit without decreasing private sector purchasing power. But payments to processors, necessarily financed by Treasury borrowing, would increase the budget deficit dollar for dollar. Moreover, no guarantees are offered that every dollar of processor payments would be passed through to indigent farmers on the verge of bankruptcy or foreclosure; nor would they be reflected in reduced costs to consumers.

Farm debt is owed to profit corporations, banks and finance companies, which claim all losses on farm creditors as tax deductions. Moreover, under present credit and business conditions, auditors would readily approve corporate and bank decisions to raise reserves against future losses from farm debtors; and these reserves would become immediate tax deductions. A supporting point on processor payments: some processors happen to be rich, integrated companies, which use their grower operations (among others) as tax shelters; so that many of the dollars paid would neither be passed through to farmers nor come back to the Treasury as tax receipts.

(4) With current interest rates at high levels, how many years would it take for the Treasury outlays, as required under the Administration proposals (including the sugar payment program), to double?

Assuming a short-term bill rate of 8%, 9 years. With the Administration itself committed to trend-setting inflationary practices of this kind, I see no prospect for a return to tolerable interest rates.

(5) The Administration claims that a sugar payment program will hold down inflation; but if the payment program results in higher net budget costs and a larger trade

deficit (as I suspect), what would be the inflationary impact?

Covered in my two general points above.

(6) In comparison with 1973 and 1974, what effect have recent lower prices for sugar had on the prices of sugar-containing products?

Nil. Across the entire spectrum of the economy, raw material prices no longer exercise their traditional "swing" impact on manufacturing costs or consumer prices. As an economic historian, you will appreciate the reason for this momentous change. It set in when labor ceased to be a variable cost, as raw material prices are, and became a fixed cost. The freezing of an upward bias in long-term interest rates has made another decisive difference in the same direction. All food products are sold on premises which are financed on long-term leases and mortgages; and for all practical purposes, long-term rates have ceased to be a variable cost, too. With the cost of freight, packaging, insurance, taxes, fuel, utilities, overage to landlords and labor all fixed and inflating, no cuts in the prices of raw materials can realistically be expected to hold back manufacturing and distribution costs.

The last collapse in world sugar prices failed to interrupt a striking mark-up in the retail prices of sugar-containing products, although inflationary pressures then were much lower than now. I think it important to note here that sugar is not a special case. During the recent bear market in farm prices, all retail food profit margins narrowed, and all retail food prices rose. More than incidentally, recent price wars in the steel industry have failed to relieve the pressure on auto manufacturers to raise their selling prices.

(7) Which policy alternative—that embodied in H.R. 13750 or in the Administration proposal—would be more beneficial to the corn refining industry and corn farmers?

The House's. Of course, corn farmers are more numerous; and the Treasury's stake in the prosperity of the corn industry as a whole is immeasurably greater than in domestic sugar growing. My experience as a consulting economist, as well as my explorations on lecture trips, satisfy me that the cent or half-cent price margin that is crucial for sugar also makes a life-or-death difference for corn refiners.

The shutdown of a corn refinery in Iowa threw onto benefit 700 workers from whom the Treasury had been collecting withholding; and it entitled a prosperous company to take tax deductions or refunds. Fifteen thousand workers are employed by the corn refineries; the Administration's proposal will have the double effect of creating corn industry unemployment as well as bankruptcy among the nation's 13,000 sugar growers.

(8) For an average worker in the private, non-agricultural sector, what is today's purchasing power of an hour's work, as compared with 1947, when purchasing a pound of sugar at retail?

Adjustment for inflation against the Consumer Price Index (1967=100) shows that the "real" retail price of sugar today is below where it was in 1934, when President Roosevelt signed the first Sugar Act into law. In 1947, the retail price of sugar was 9.7¢ a pound, which adjusted for inflation is 14½¢. I reckon that it took about 5 minutes to earn that much in 1947. In 1977, the retail price of sugar was up to 21.62¢ a pound; but adjusted for inflation, the "real" price was down to 11.9¢. At 1977's cash wage levels, only a few seconds over 2 minutes would have earned enough to buy a pound.

Realistic assessment of this calculation calls for noting two additional sidepoints:

(1) The most rewarding wage increases today are in fringe, not cash payments, which means that a purely cash calculation understates the nominal cost of sugar at retail.

(2) Since 80% of all sugar is consumed as raw material in maufactured products, the Administration's insistence on payments to processors would have the effect of putting some of the country's richest corporations on welfare, while breaking farmers: a mind-boggling perversion of equity and practicality even in a year of minimal inflation and tolerable interest rates, let alone under present conditions.

Your questions have rightly concentrated on the economic problems, but the foreign policy aspect is also important. I am prompted to answer a question you have not raised. Would the elimination of our own sugar growing capability invite world sugar producers to jump prices on us? It certainly would. All it would take to start a sugar OPEC would be one dramatic announcement, such as a Russian-financed move by Cuba to dedicate its present sugar production to alcohol for fuel consumption.

The effect of any Administration policy which increases U.S. sugar imports from any source is to improve export marketing conditions for Cuba, and ease the pressure on Russia to continue paying 31¢ a pound for Cuban sugar. The Administration's proposal would offer Cuba an export marketing subsidy, paid for by Treasury borrowings!

I hope that you will find these responses helpful; and I will be happy to discuss them with you at your convenience.

Yours sincerely,

ELIOT JANEWAY,
President.●

STOPPING AN IRS THREAT TO PRIVATE SCHOOLS

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. HANSEN. Mr. Speaker, in the last several years, the progressive deterioration of public schools in many parts of the country have led to the establishment of private schools. When I speak of deterioration, I have reference not only to a lower level of learning achievement, but also to spectacular increases in crime at schools, and the progressive establishment of an atheistic and secularist religion to impart alien values to our young children. It is also true, and cannot be denied, that some schools were established for the sake of avoiding desegregation.

Comes now the Internal Revenue Service, which on August 22, 1978, proposed that all schools—I repeat, all schools formed or expanded at or about or after the implementation of desegregation plans in the respective communities will be presumed guilty of systematic racial discrimination and their tax-exempt status revoked retroactively.

Mr. Speaker, we have become inured to the routine contempt the IRS has chronically demonstrated for accepted civilized standards of fairness, something which has its roots in the regrettable presumption that in tax matters the citizen is guilty until proven innocent, an innocence that has to be proven at the expense of the taxpayer, no matter how groundless or frivolous the charges. The proposed regulation I have mentioned to you is a fresh example of this attitude. It proposes to make a blanket finding of racial discrimination and automatically harass all private schools, putting on its victims the onerous burden of proving their innocence. At the same time, it says that it will be practically impossible to refute the charge unless there is an affirmative action program operating.

I have objections to all of this, which forms the substance of the proposed regulation. But what shows truly brazen boldness on the part of the Internal Revenue Service, what puts all their previous efforts at trickery in the shade, is the fact that they have the astonishing gall to say that this is an insignificant regulation, a mere procedural change which does not merit public hearing.

If you will consult section 556 of title 5 of the United States Code, you will find that Congress insisted that rulemaking be done in the open. Only strictly internal and procedural matters—such things as meeting times and personnel matters—should be exempt. The regulation I have referred to was published August 22, 1978, in the "notices" section of the Federal Register, sandwiched between a docket notice and a notice about a certain pension plan's exemption from a particular rule. Despite its substantive nature, the proposed regulation was not published in the proposed rules and regulation section, but was buried in the back. Moreover, in the proposal itself, the IRS makes the absurd assertion that the proposed regulation is not significant, and thus that it does not come within the scope of 5 U.S.C. 556.

The position of the IRS is silly. There is no merely procedural matter, but a substantive proposition that calls into question the tax liabilities, supposedly long past settled, of hundreds of thousands of citizens for many years past. It obviously has the gravest conceivable implications for the survival of private schools, and certainly gives the IRS wide scope for abuse and harassment. It is nonsense to claim that the regulation, whatever its merits, is not significant.

What is involved here is not actually a matter of racial discrimination, nor is it really a tax matter. Since the regulation explicitly includes church-related schools, and since there is nothing in the regulation that could not later be applied to churches themselves, what is involved is a very deep first amendment question. It is a patent evasion to label this regulation "procedural" and claim that it is of no significance.

In this transparent maneuver, Mr. Speaker, the Internal Revenue Service is in violation of at least the spirit, if not the letter, of the law and Executive orders governing the making of administrative rules and regulations. To stop this outrageous flouting of congressional intent, I have today introduced legislation which takes no issue with the substance of the proposed regulation, but prohibits the so-called procedure from coming into effect until the IRS has complied with all the requirements of Treasury regulations for public notice and hearing. It states, in short, that this is indeed a significant regulation and must be treated as such.

If, after an open hearing in accord with the law and elementary canons of ordinary fairness, the IRS goes ahead with this proposed regulation, there will be nothing in my bill to prevent it. But that open hearing is the least that IRS can do to avoid disgracing itself and giving further impetus to the tax revolt.●

NO NEED FOR CABINET LEVEL OFFICE OF EDUCATION

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. McCLOSKEY. Mr. Speaker, I would hope the leadership will decide not to bring the proposed Department of Education bill to the floor in view of the time problems and heavy legislative schedule we face in the few days remaining prior to recess.

Creation of a new cabinet office is a serious issue which deserves serious consideration and full debate. I do not oppose taking the Office of Education out of Health, Education, and Welfare. Clearly the problems of health and welfare are so overwhelming that the attention of the Secretary of HEW can seldom be drawn to the small and relatively obscure Office of Education. I offered an amendment in the Committee on Government Operations to consolidate the Office of Education at below the cabinet level if consolidation were the true goal. That amendment was overwhelmingly defeated, however, by the proponents of this bill, and this would indicate that the goal is not simply consolidation, but a greater voice in and for education at the Federal level.

I offered a second amendment to limit the cost of the new Department of Education to the sum total of the offices which are brought together in the consolidation so we would be assured if we were to create a new bureaucracy it would not exceed the size of the office consolidated. This amendment was also defeated, leading to the inexorable conclusion that the proponents want to increase the size of the Federal education bureaucracy.

In reviewing the testimony in favor of a cabinet-level Office of Education, I found no evidence whatsoever to justify a cabinet-level Office of Education. The sole purpose of the bill appears to be to meet a campaign commitment the President made during his primary campaign to the Nation's teachers who obviously wanted a higher voice at the Federal level for education, and more Federal funds for education.

There were no substantive meritorius arguments that I could find other than taking education out from under the umbrella of HEW and constituting a separate Office of Education.

If, indeed, a new bureaucracy is to be created at this time in history that is bigger than the bureaucracy that now exists in the Office of HEW dealing with education, I would urge that Congress not consider it in an atmosphere of haste. I think the people of the United States have spoken clearly their desire that the size of the Federal establishment be cut back, rather than increased. It would be the height of folly to rush through an increase in size of the bureaucracy without full public debate and consideration.

With respect to education, there is no subject dearer to our hearts than excellence in education. A cabinet-level office, however, is a policymaking office. To date, we have not had the Federal Government involved in education policy. There is no reason to have a cabinet adviser to the President unless he is advising on Federal policy in education. I do not think there was a single witness before the Committee on Government Operations who suggested that excellence in education has ever come about because of Federal policy direction. Excellence comes from a good teacher, a good principal, a good local school board. When excellence is achieved by one teacher or school, it creates a natural competition and desire to excel in other local schools. The Federal Government has never been able to direct or obtain excellence in primary and secondary education, and I know of no testimony or opinion that the Federal Government can do so.

We have in every State I know of a local school board, a county school board, and a State department of education. We have a Federal Office of Education to coordinate and assist the dispensation of Federal assistance and information out to State and local systems. But the search in this area, it seems to me, as we try to cut down the size of Government, is to find one level of Government to attack one governmental problem, not to add an additional level of Government to do so. To create a cabinet-level Office of Education presupposes that the Federal Government intends a policy-making position with the other three levels of Government which have traditionally handled education.

Where is the public sentiment for such a proposal? I submit there is none, save amongst those who might financially gain by higher Federal funding to local schools.

Whatever may be the criticism of this country, we have the finest educational system in the world. There is no reason to create a cabinet-level office at the Federal level unless one assumes some Federal policy direction is necessary in the educational field. The President, whose ability to make decisions in the national interest may already be made more difficult by the sheer number of cabinet officers at any given meeting, would not benefit by the addition of a cabinet officer whose only position is in an area where no Federal policy-making role exists.

For that reason, Mr. Speaker, I think this piece of legislation should not be considered on the floor under the current pressure to adjourn and in view of all of the other serious issues we face in the few remaining days of this already hectic session.●

"121" AIR BRAKES

HON. DAN MARRIOTT

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. MARRIOTT. Mr. Speaker, several years ao I purchased an automobile battery which had a trade name of "Die-Hard," presumably because it would give long hours of service under arduous conditions. In my case, the battery served very well, and I thought to myself that the promotion staff had selected a quite appropriate name. In that usage the term "Die-Hard" denoted something favorable.

Unfortunately, we have a Government agency which has earned the name "die-hard," but in a context that is unfavorable and should be somewhat embarrassing to an administration whose campaign theme was sensible Government.

I am referring to the National Highway Traffic Safety Administration (those good people who tried to impose seat belt interlock on us), and its debacle with the air brake standard known as FMVSS 121. This regulation requires that air-braked vehicles be equipped with antilock brake systems, the antilock performance to be achieved by using an electronic computer to apply the brakes without lockup. No one would argue that the objective is highly desirable; however, the antilock systems that were manufactured and installed on trucks and buses were behind the state of the art and have proved defective, unreliable, and sometimes dangerous. Numerous comments, including results of proving ground accidents, were submitted to NHTSA prior to implementation of the standard. NHTSA ignored the data presented to it. After several months of bad experience and widespread complaints, NHTSA held a public hearing in October 1975 at which much testimony was presented concerning the unreliability and hazards of the system. NHTSA's response was to retain the system but allow a greater stopping distance and eliminate the requirement for buses, but still mandated it for heavy trucks traveling on the same highways.

NHTSA then appointed a Truck and Bus Safety Subcommittee to study the alleged problems with "121." After a year of studies and investigation, the subcommittee recommended a moratorium on the antilock brake requirement. NHTSA ignored its own subcommittee recommendation.

The trucking industry through the American Trucking Association offered to set up a test fleet to be monitored by NHTSA so that the problems with antilock computerized brakes could be identified and corrected. NHTSA refused this very earnest offer.

Following a series of tractor-trailer accidents in which the "121" brakes were suspected, over 100 Congressmen petitioned Secretary of Transportation Brock Adams to suspend the antilock portion of the standard until the bugs could be worked out. NHTSA ignored their creator, the U.S. Congress.

NHTSA again held another "121" hearing in December 1977 following a U.S. Senate hearing on the matter at which much unfavorable testimony developed and was presented to NHTSA. At the NHTSA hearing, all the manufacturers of the electronic brake systems admitted that a failure of the electronic component could increase the brake application time from 2 to 5 seconds despite the fact that regulation 121 states "failure of the electric system shall not increase the brake application time." Again, presented with negative evidence from two hearings, NHTSA did nothing.

In a recent 9th Circuit Court case, *Paccar et. al.* v. *NHTSA*, the court unanimously found the following:

In view of substantial evidence received by NHTSA that the "in use" performance of vehicles equipped with antilock was not consistent with the performance required by the Standard, and in some circumstances may have been more hazardous than the performance of pre-Standard vehicles, the agency's failure to conduct more intensive testing of trucks and tractor-trailers certified under the Standard was not only unreasonable, but also a legal abuse of its discretion . . . the comprehensive data before us indicate that there is a strong probability that the performance of a substantial number of vehicles whose braking systems have been altered to include overpowered front axles and antilock devices has created a potentially more hazardous highway situation than existed before the standard became operative.

The court declared the antilock portion of the standard should be suspended. NHTSA's response was to request a stay so that they would have time to appeal the court's ruling to the Supreme Court. This will in effect continue the antilock requirements of FMVSS 121 for some time to come. NHTSA's stubborn refusal to admit that there are problems with FMVSS 121 and to follow the advice of industry, State police agencies, the Congress, the courts, and their own subcommittee, has certainly earned them the name of "die hard." As was stated by the editor of a leading trucking magazine: "It is an arrogance not to be believed, an arrogance the likes of which have not been seen in the Western World since kings stopped ruling by divine right."

I noticed the last minute publicity stunt by NHTSA today. Three years after the system was prematurely made mandatory, NHTSA Administrator Joan Claybrook wants to assure us that under controlled circumstances these computer brakes work, which they do. But the real issue is whether they work in ice, rain, snow, on construction sites, garbage dumps, dusty roads, bumpy roads, and a thousand other places impossible to duplicate on a runway at Andrews Air Force Base, which they do not. I do not know what she is up to, but she has told me personally she is out to protect the manufacturers, and this is apparently a manifestation of that.

I heartedly recommend the 2-year moratorium on enforcement of these brakes contained in H.R. 11733. This is the proper time and place for Congress to act. The 2-year moratorium on the enforcement of these brakes will prevent their unsafe use. I have fought to get these brakes off school buses. It is time that Congress put its foot down with this moratorium. Unless Congress acts, we will go on endangering lives, destroying property, and flaunting the law which NHTSA is bound to obey.●

HEW EFFORTS IN OCCUPATIONAL SAFETY AND HEALTH

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. ANDERSON of California. Mr. Speaker, last week the Washington Post reported the results of a recent HEW study on the incidence of cancer in the United States attributable to exposure to cancer-causing agents in the workplace. As I pointed out at the time, this study concluded that at least 20 percent of all cancer in the United States—and perhaps more—may be work related.

In releasing the results of this study, HEW Secretary Joseph A. Califano, Jr., in a speech to the AFL–CIO National Conference on Occupational Safety and Health outlined the campaign his Department has undertaken to inform workers, doctors, and others about the grave risks of asbestos exposure.

A very large number of workers are affected: the total number exposed to asbestos just since the beginning of World War II is estimated at between 8 and 11 million. A great many of these workers are Federal employees in defense-related industries and particularly in our Nation's shipyards.

I have long been concerned for the health and safety of workers and the problems created by exposure to asbestos on the job. I applaud HEW Secretary Califano's campaign to alert American workers to the grave risks of asbestos exposure and to notify the medical profession of the nature of the risk and steps they might take to better diagnosis and treat patients exposed to asbestos. For the benefit of my colleagues I call to your attention the text of Secretary Califano's address to the AFL–CIO in which he stresses the need to change—from treatment to prevention—the way we think about health and safety, and the need to strengthen Government machinery in the field of occupational safety and health.

REMARKS OF SECRETARY JOSEPH A. CALIFANO, JR.

I am delighted to be here; to join the first meeting of labor's new Division of Occupational Safety and Health as you consider a subject of increasing importance in our national life: the health of American workers and the safety of the American workplace.

Before passage of the Occupational Safety and Health Act of 1970, the Federal government's involvement in this field was limited to Federal employees, a few specific industries like mining, and firms holding federal concontracts.

Today, largely because of your devotion to the cause, more than 85 million workers are protected by the Occupational Safety and Health Act. Because of you, employers generally are admonished by law to furnish each employee—and here I quote the Act—"a place of employment . . . free from recognized hazards that are . . . likely to cause death or serious physical harm."

We have made some progress toward that goal—but we have a long way yet to go. And just as the struggle has been marked by intense disagreements and controversies in the past, so it will be in the future.

But if there are still those who doubt the importance or question the necessity of this program, let them consider a few facts:

Fourteen thousand people die each year from occupational accidents alone.

The risks of occupational injury and illness are constantly growing. In the chemical industry alone, production has skyrocketed from one billion pounds of synthetic organic chemicals in 1940 to more than 300 billion pounds last year: many of them new and untested substances. And an estimated 390,000 new cases of work-related disease occur each year: a number equal to the population of Mobile, Alabama.

The conventional judgment has been that the fraction of cancer incidence in the United States attributable to occupational exposure to cancer-causing agents is quite small, somewhere between 1 and 5 percent. However, a new study by scientists at the National Cancer Institute and the National Institute of Environmental Health Sciences is nearing completion; it will be delivered to OSHA later this week. This new study indicates for the first time that the percentage is many times higher. Indeed, the study concludes: "If the full consequences of occupational exposures in the present and the recent past are taken into account, estimates of at least 20 percent appear much more reasonable and may even be conservative." This means that at least 20 percent of all cancer in the United States—and perhaps more—may be work-related.

Today, against the backdrop of these alarming facts, I want to speak about three things:

First, our need to change fundamentally the way we think about health and safety. We need to change our focus from treatment to prevention. And we need to consider what we gain from prevention programs—not just their costs.

Second, I want to outline some of HEW's recent efforts in the field of occupational safety and health—efforts that signal a new, more vigorous approach than you may have seen in the past.

Third, I want to talk about our need to strengthen HEW's institutional machinery in the field of occupational safety and health. And I will make a major announcement about the future leadership of the National Institute for Occupational Safety and Health.

THE IMPORTANCE OF PREVENTION

Our great need in America today is not just for a vigorous program of occupational health and safety; we need a broad national strategy of prevention for all our citizens.

You and I know that the greatest life-saving breakthroughs of this century have been breakthroughs in preventive, not curative, medicine: vaccines to eliminate diseases from smallpox to polio; pure water and pure food.

So successful have preventive public-health measures been that in this century, the pattern of crippling and killing diseases has shifted: At the turn of the century, the big killers and cripplers were infectious diseases. Today, the big killers and cripplers are related to environment and lifestyle; heart disease, cancer stroke, and accidents.

Yet our health policies and health budgets are focused almost obsessively on treatment, not prevention. The federal government will spend $48 billion on health care this year; of that amount, fully 96 percent is aimed at treatment; only four percent—less than $2 billion—is earmarked for programs to prevent disease or promote health.

You and I know that a strategy of prevention in the workplace can make not only medical but economic sense. Some 25 million workdays, after all, are lost each year because of occupational injuries and disease; the cost to employers of the workers' compensation system was nearly $11 billion in 1976.

Yet most of the arguments against occupational health and safety measures, as you know, focus on costs. And these arguments seldom focus on the tremendous gain that these programs can provide.

It is, in my judgment, myopic to argue that programs to protect workers are inflationary—if we do not count in our calculations what those programs buy: safety, health and often greater productivity.

It is time to take the blinders off: To count what these programs promise in ultimate savings. Which, after all, creates the greater burden: The cost of a program to protect workers from occupational hazards? Or the

staggering costs of treating workers for the consequences of these hazards? Our economists must join with our scientists and find a new way to calculate inflation related to occupational health and safety.

Finally, there is the matter of simple justice. We do not want an economy that buys goods at the expense of workers' health; an economy that asks workers to earn their livelihoods by endangering their lives. The workers of America are willing and able and eager to sweat on the job; we should not ask them to bleed.

So you and I have a job to do: a job of convincing the American public that programs of prevention and health promotion are not just an expense, but an investment; that they are worthwhile, desirable, economically feasible, and urgently needed—especially in the workplace. For it is in the workplace where many of the dangers are greatest.

And vigilance in the workplace is one way of detecting hazards that may otherwise spread from factory or laboratory to the world outside. We have learned, often by tragic experience, that kepone, undetected in the workplace today, flows insidiously into our rivers and streams tomorrow. The occupational exposure to asbestos today is tomorrow's exposure of our families at home and our children in school. Today's chemical dumping ground may be tomorrow's subdivision or school playground. By protecting workers today, we are likely to make the greatest gains in our efforts to protect the rest of society.

So I would argue first that we should take a broad view of occupational health and safety programs: These are not programs which benefit workers alone—they are for all of us. So they belong at the center of a broad new national preventive-health strategy.

ACTION AT HEW

What, then, are we at HEW doing to underscore these convictions with action? Over the past twenty months we have made major efforts in several areas.

The most important of these, as you know, is in the field of asbestos exposure.

Nearly two thousand years ago, Pliny the Elder and other ancient scholars recorded the first signs that asbestos might be harmful: a sickness of the lungs appeared in slaves who weaved asbestos into cloth.

Now scientific studies have demonstrated that asbestos creates an especially high risk of lung cancer and other serious lung diseases for workers heavily exposed to the substance.

But until last April, no systematic effort had ever been undertaken to notify physicians, former asbestos workers and others at risk of the hazards associated with asbestos exposure. Such notification is of special importance because the most serious diseases associated with asbestos take a long time to develop—from 15 to 35 years or more—and because recent studies have underscored that workers exposed in the past, especially during World War II, may just now be facing immediate, serious health threats.

We are dealing, as you know, with large numbers of workers: The total number exposed to asbestos just since the beginning of World War II is estimated at between 8 and 11 million.

And so last April 26, HEW launched a major campaign to inform doctors, workers, and others about the grave risks of asbestos exposure:

We sent a letter from the Surgeon General to every one of the nation's physicians, describing the nature of the risk, and outlining steps doctors could take in diagnosing and treating patients.

We put an Asbestos Education Task Force to work, developing aggressive public-education programs on asbestos.

We produced and distributed public service announcements to radio and television stations across the nation. 182 television stations and 550 radio stations have committed themselves to airing these spots nearly 60,000 times. If you watch "Good Morning, America" or "Starsky and Hutch" you may already have seen these announcements.

We distributed 2.5 million brochures answering questions about asbestos.

And on October 3 a warning flyer will be mailed to 30 million Social Security beneficiaries with their checks. By next January, 40 million people will have received notices.

Much of the success thus far of the asbestos public awareness campaign is a result of the cooperation and dedication of this country's trade unions. Last June 14, I discussed our efforts and outlined our plans to many of you who have been so helpful in this activity: George Taylor, Shelly Samuels, George Robinson, and many others too numerous to name. Today I want to thank them—and you—for your heroic efforts.

I cannot emphasize too strongly the importance of this effort. We are learning that the consequences of asbestos exposure are, if anything, even more serious than we originally suspected:

An estimated 5 million American men and women—workers in asbestos plants, insulation workers, construction workers, steamfitters, carpenters, tile setters, auto mechanics, and the like—breathe significant amounts of asbestos fibers. Each day.

On the basis of what we know today, it is estimated that 17 percent of all cancer deaths in the United States each year will be associated with previous exposure to asbestos.

And the problem of protecting workers is not yet solved. A new study from Utah reveals that a group of construction workers exposed to asbestos dust developed beathing obstructions not within years—but within a few months of their exposure. And these workers were probably not as heavily exposed as other workers in the past.

Another problem to which we are directing increased attention is radiation. Last May, the President directed that I undertake, with the Secretaries of Defense and Energy and the Administrator of Veterans Affairs, an effort to measure and deal with the effects of radiation exposure on participants in nuclear tests and workers in nuclear projects. We have since expanded our effort to include not just nuclear, but all ionizing radiation.

The purpose of our program will be:

To inform people who might have been affected by radiation, as well as the general public, of the probable risks;

To ensure that persons adversely affected receive the benefits to which they may be or should be entitled; and finally,

To take steps to minimize harmful exposures in the future.

This effort will necessarily be wide-ranging. Possible radiation sources include not only nuclear power plants, uranium mills, and gaseous diffusion plants but welding sites, medical settings and the transportation industry.

Our efforts will not be easy. The hazards of radiation exposure are still not precisely known. We must be careful—and we intend to take care—that our concern for safety be balanced with our concern for providing economically productive jobs, economic growth, and abundant energy and a strong national defense.

Let me mention one other area which is receiving increasing attention in HEW: occupational programs to deal with alcoholism and alcohol abuse.

Of the nation's more than 90 million employed workers, it is estimated that as many as 7 million have drinking problems. For this reason, occupational programs are among the most promising ways to identify, motivate and refer problem drinkers to treatment, especially early in their illness, before their work and job security are seriously affected.

Such programs are of particular value because they concentrate on job performance rather than on alcoholism or interference in private lives. They are available to all employees from the assembly line to the board room.

Along with George Meany and James Roche of GM, who recently launched a joint labor-management alcohol program, we at HEW are strong believers in these efforts.

In the last fiscal year, the National Institute on Alcohol Abuse and Alcoholism provided more than a million dollars to the labor movement for occupational alcoholism programs.

I have called on Dr. Gerald L. Klerman, Administrator of HEW's Alcohol, Drug Abuse and Mental Health Administration, to review all our activities related to alcoholism—and to develop a series of recommendations in this critically important area. His effort is now underway. And I think it is safe to predict that occupational alcoholism programs will be a key part of our preventive-health efforts in the future.

BUILDING INSTITUTIONAL CAPACITY

But our efforts at HEW to promote occupational health and safety can be no stronger, in the end, than our institutional machinery for dealing with these problems.

So I want to end by discussing very briefly the principal institutions at HEW that are working in this field.

The National Cancer Institute supports a wide range of work-related projects—from a study of cancer rates in workers exposed to benzidine to research on possible cancer-causing compounds in the metals industry. Many of the projects are epidemiological studies of cancer occurrence and death rates for specific jobs or in certain industries.

The National Institute of Environmental Health Sciences, though its mandate is a general one, is also deeply involved in the occupational field. Several current NIEHS studies, for example, deal with compounds such as PCB, PBB, vinyl chloride, and asbestos that are industrially used, as well as the chemicals such as Kepone to which workers have been accidently exposed.

Other NIEHS projects concern tests that could be used to screen workers, to screen new chemicals before workers are ever exposed to them, and to monitor work places for dangerous and possible cancer-causing chemicals. Similarly, work on toxicology testing systems may be used to detect exposures to heavy metals and other dangerous chemicals and to determine their effects.

But the HEW agency most directly concerned with occupational hazards is, as you know, NIOSH—the National Institute for Occupational Safety and Health. NIOSH was created by the same 1970 law that created OSHA in the Labor Department; it is the leading agency in the Federal government responsible for scientific research in the field of occupational safety and health. The Institute also has authority under the 1970 Act, for technical assistance and manpower development.

NIOSH has undertaken, in its relatively brief history, some large responsibilities:

Since 1970, the NIOSH budget has increased from $10 million to $65 million; its staff has increased from 240 to over 900. Last year NIOSH was given additional responsibility under the Federal Mine Safety and Health Amendments Act for research on the occupational health problems of the approximately 500,000 miners in the United States.

Its research projects include approximately 90 field studies of worker exposure to toxic substances, physical agents and safety hazards; approximately 70 studies conducted in NIOSH laboratories cover chemical and physical hazards to workers in the printing and painting trades; the plywood, pulp and paper industry; the steel industry; the effects of job stress on policemen and shift workers, and the reproductive effects of

working with pesticides, anesthetic gases, and lead.

NIOSH also conducts work place investigations. The results of these investigations, including recommendations for work practices, personal protective equipment, and engineering controls are reported back to workers, management, and the OSHA.

NIOSH publishes intelligence bulletins on toxic substances. The NIOSH Clearinghouse for Occupational Safety and Health Information responds to nearly 200 requests a year for technical information, primarily on the health effects of chemical exposures. The Institute also publishes about 120 technical reports each year which are widely distributed in the occupational safety and health community.

Finally, NIOSH provides research documents to OSHA which may be used in OSHA's enforcement and standard-setting.

But despite its commendable past efforts, NIOSH has, as you know, been hampered in the past by several problems: among them, official indifference, even hostility, to the main purpose of the program: fragmentation and dispersion of its facilities—and, by no means least, lack of a Director.

Today, I am happy to announce a major step forward for NIOSH: The selection of a new institute director. He is the able Executive Director of the Colorado Department of Health, Dr. Anthony Robbins.

Dr. Robbins is well-known as a physician, scholar, teacher and public health administrator. He is a worthy choice, we believe, for the job of helping build this nation's occupational health efforts on a secure base of scientific knowledge.

Dr. Robbins' appointment paves the way for reaching several goals we have set for NIOSH:

We want to improve the scientific basis for government actions and decisions in occupational health;

We want to draw occupational health efforts into the mainstream of public health practice:

And we want to strengthen the service role of NIOSH as well as its research role.

We are, in short, committed—at HEW and throughout this Administration—to a general strategy of prevention and health promotion. We intend to back that commitment with effective action on occupational health and safety.

We are acutely aware that even the most well-conceived Federal programs of occupational safety and health cannot succeed without strong support. There can never be enough official inspectors to visit and adequately monitor every single work site and enforce every single regulation.

But, with your help and that of labor across the nation, there is much that we can accomplish. Every American worker can, in effect, serve as inspector consultant, and monitor of safety in the work place. Organized labor can preach the gospel of prevention and protection. And we can advance the idea that safety in the work place is an investment, not just an expense.

With efforts like these, I have no doubt that we will write, in our crusade for a safe, healthier working environment, a record of vigilance—and victory.

Thank you.●

TRIBUTE TO A NEW PRESIDENT: MRS. EDWARD PLAUT BRINGS ENERGY TO NATIONAL EASTER SEALS AND HOPE TO ALL

HON. RONALD A. SARASIN

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SARASIN. Mr. Speaker, in the past several years, we have made great strides in providing responsive programs to meet the needs of the handicapped in our community. We have come a long way. But we have far to go, and I am proud to announce to you today that we are going to see even greater progress in the future.

The basis of this deep hope resides in the recent election of Mrs. Edward Plaut of New Canaan, Conn. as the new president-designate of the National Easter Seal Society. An alumna of Mt. Holyoke College, when she assumes her responsibilities in November she will be not only the first national society president from Connecticut, but she will be the first woman to serve in that position.

With years of experience behind her and endless visions before her, Mrs. Plaut brings to the national organization the same strong sense of purpose, dedication and service that guided her administration on the board of directors and as president of both the Stamford Easter Seal Rehabilitation Center and the Connecticut State Easter Seal Society. Combined with her keen sensitivity to the needs of the disabled, she will provide the energizing force behind progressive and innovative programs for the handicapped. Her contribution toward making the dream of Hemlocks Outdoor Education Center a reality is an exemplary demonstration of how imagination can really work toward providing effective and exciting programs. Here words are put into action to create an environment where the handicapped can "reach out and learn * * * feel free * * * and discover joy."

Mr. Speaker, there are an estimated 25–30 million Americans considered handicapped. One out of 10 persons are afflicted by limited mobility due to temporary or permanent physical disability. The National Easter Seal Society, as the largest and oldest health care organization in the Nation to attend the needs of the handicapped, has been instrumental in establishing a broad network of concerned organizations that accommodate this important segment of our society in creative and productive ways. Founded in 1921 as the National Society for Crippled Children, it has grown to become a full federation of 2,000 affiliates united under a common cause. Its efforts have far surpassed the immediate contribution of program structures and rehabilitative services for the handicapped. Through its information systems, by increasing public awareness and creating a total environment, both physical and attitudinal, where every individual is free to pursue his potential in the fullest of human dignity, this organization and its people have provided an invaluable hope to the disabled, sharing with them and the world the knowledge that they, too, have something precious to offer as productive and useful members of society.

The commitment of the National Easter Seal Society is the commitment which must underlie every effort of Congress, be it in removing environmental barriers or providing education, if we are to successfully achieve our goals. Perhaps it is best expressed in the bylaws of the national society, which states:

* * * the greatest need of disabled persons is to be part of their community life to the fullest extent of their physical and mental capabilities. This implies their acceptance by their community as individuals with rights and responsibilities.

I find great hope and encouragement in the work of the many individuals who channel their compassion into positive action through service to the handicapped community. Mrs. Plaut indeed exemplifies the many volunteers who overcome the limitations of self-interest to give of themselves freely for another. They are certainly the hope of tomorrow's world.

So it is with great pleasure that I congratulate Mrs. Plaut on her most recent achievement. I applaud her past accomplishments, but most of all I thank her for the vision she has dared to share with the entire community. I commend her many contributions to my colleagues, and urge their continual support of initiatives that would facilitate the very worthwhile efforts of this organization and others toward providing the handicapped with the opportunities they deserve.●

RAILROAD ELECTRIFICATION AND ENERGY CONSERVATION

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. SHUSTER. Mr. Speaker, I am pleased to call to the attention of my colleagues the article "Railroad Electrification and Energy Conservation" by Comdr. William D. Middleton in Traffic Quarterly. It is an excellent presentation of the situation. It is to be hoped that as our Nation moves closer to the definition and adoption of rational energy and transportation policies we may provide the framework needed by labor, industry, and finance leaders to move ahead in such promising areas as rail electrification.

RAILROAD ELECTRIFICATION AND ENERGY CONSERVATION

(By William D. Middleton)

Commander Middleton has paralled a long career in engineering and the U.S. Navy Civil Engineer Corps with a second career as a historian and journalist, primarily in rail transportation. He is currently assigned as public works officer and officer in charge of construction at the Marine Corps Air Station, Iwakuni, Japan. He has been a contributing editor to "Railway Age," and is a regional editor for "International Railway Journal." His eight books include "When the Steam Railroads Electrified," an illustrated history of railroad electrification in America. He received his B.C.E. degree from Rensselear Polytechnic Institute, Troy, New York, and is a registered professional engineer in Wisconsin.

The Federal Government's announced energy strategy is to promote use of energy sources other than oil and gas wherever possible. Central to such a strategy must be a significant change in use and sources of transportation energy, for while transportation consumes almost 25 percent of total energy in the United States, transportation energy—derived almost exclusively from oil—accounts for more than half of total U.S. oil consumption.

Today U.S. railroads are operated almost exclusively with diesel-electric motive power, and the industrialized nations of Europe and Asia have long since taken the lead in the technology and application of railroad elec-

trification. But there is evidence that a new era of railroad electrification may be starting in the United States. It holds promise of significant savings in use of oil as a transportation fuel and in minimizing the impact of future increases in oil fuel prices on total costs of transportation—particularly in freight movement.

HISTORY OF U.S. RAILROAD ELECTRIFICATION

In the late 19th century American inventors and engineers led the world in development of the electrical industry, and for nearly four decades the United States led the world in railroad electrification. In 1895 the world's first mainline railroad electrification was on the Baltimore and Ohio Railroad. The first major steam railroad to switch to electrification was the New York Central at New York City in 1906. And the first major mainline electrification with alternating current was on the New Haven Railroad line to New York City in 1907. By 1931 the total of nearly 5,000 electrified track-miles represented 20 percent of the world total.

But the last major U.S. electrification, on the eastern lines of the Pennsylvania Railroad, was completed in 1938. Since then, much of the original U.S. electrification has been abandoned. Today only 1 percent of the route-miles of U.S. railroads are electrified. In 18 other nations, each with more than 1,000 route-miles of electrification, an average of 28 percent of the rail mileage is electrified (see Table I).

Reasons for Decline in Electrification

What were the reasons for the decline in American railroad electrification? The greatest barrier of all was simply the enormous capital cost involved. The necessary power distribution systems cost anywhere from $50,000 a mile to several times that amount. In addition to distribution systems, the direct current or low-frequency alternating current systems that were needed for railroad use required costly special conversion equipment and transmission lines separate from regular power company supply lines. And aside from all of the fixed facilities, the railroads had to acquire entirely new motive power fleets.

Despite the cost, U.S. electrification proceeded at a brisk pace throughout the 1920s, when railroad traffic levels were high and earnings were good. But the economic depression of the 1930s dried up the capital needed for electrification projects. Even the then-powerful Pennsylvania Railroad was able to complete its eastern electrification project only with the help of federal Reconstruction Finance Corporation and Public Works Administration loans.

By the time the depression was over and railroad traffic had increased again, World War II intervened. After the war there were simply too many more pressing demands—to catch up with wartime-deferred maintenance and to replace equipment—to allow electrification financing.

By this time too, dieselization offered an attractive alternative. The diesel's oil fuel was cheap and abundant, and diesel-electric locomotives, a self-contained form of electrification, afforded many of the operating efficiencies of electrification without its huge capital investment.

Potential for Operating Economies

But even if U.S. electrification has languished in the face of these unfavorable circumstances, it continues to offer an opportunity for significant railroad operating efficiencies and economies. Some of the principal ones were enumerated by the late John W. Barringer, a well-known railroad executive and long-time electrification advocate.[1]

1. By continuous access through the power distribution system to all of the electric power that traction motors can use in the higher speed ranges, an electric locomotive can perform up to three times as much work in high-speed heavy haulage as a diesel-electric locomotive of the same horsepower rating.

2. Because of diversity in power demand, electrification requires an installed central station generating capacity equal to less than 25 percent of total electric locomotive horsepower, while each diesel-electric requires a generating capacity sufficient to meet the full power requirements of its traction motors.

3. Because electric locomotives lack high-wear components, such as the reciprocating engines of diesel-electrics, their useful life promises to exceed that of diesels by factors of two or three.

4. Lubricant and maintenance costs for electric power are only a fourth to a third as much as those for diesel-electric power, and the reduced maintenance requirements of electrics increase their availability by at least 10 percent as compared to diesel-electrics.

EFFECT OF ADVANCES IN TECHNOLOGY

These advantages of electric motive power can be attained, of course, only through the substantial fixed-plant investment required for electrification, and that investment will prove feasible only under conditions of extremely high traffic density. But over the past 30 years, substantial advancement in electrification technology has served to reduce significantly the potential cost of electrification.

The development of rectifier motive power in the late 1940s has permitted electrification at commercial alternating current frequencies directly from the power grids of the utility companies, eliminating the need for both power conversion equipment and special transmission lines. The development of higher voltage electrification systems, at 25 to 50 kilovolts (kV), has reduced distribution system conductor and substation requirements. This, together with the development of modern lightweight overhead catenary systems, has substantially reduced the cost of power distribution systems. For example, in Great Britain, which has been a world leader in the development of modern overhead catenary systems, improvements in catenary design have reduced the fixed installation costs of electrification per track-mile by close to 30 percent.

Growth of Railroad Electrification Overseas

These developments have contributed in large measure to an extraordinary growth in railroad electrification elsewhere in the world over the past 25 years. More than 90,000 route-miles—over 10 percent of the world total—are now operated with electric power, and nearly 3,000 additional miles are being added every year. Even oil-rich Iran has undertaken a major electrification project.

The Soviet Union, which leads the world with about 25,000 electrified route-miles, has installed more than 20,000 miles of that total since 1955 and will add another 2,800 miles in its current (1976 through 1980) 5-year plan. With the busiest 29 percent of its total rail network now electrified, the U.S.S.R. hauls more than half of its rail freight traffic with electric power.

Progress in cost reduction

Even more recently, the development of thyristor controls and solid-state rectifiers have afforded major advances in the operational efficiency of electric motive power as compared to diesel-electric power. The use of virtually maintenance-free solid-state components has further lowered the potential maintenance costs of electric locomotives. A recent estimate by engineers of a major producer of diesel-electric locomotives projected electric locomotive maintenance costs at only 60 to 65 percent of those for diesel-electric locomotives of comparable tractive effort—and even lower relative costs for electric locomotives when compared to diesels on the basis of horsepower capabilities.[2]

Simultaneous with these improvements in electric locomotive efficiency, the mass-production techniques of diesel-electric locomotive builders have developed many rugged, efficient, low-cost components that are equally applicable to the building of electric locomotives.

FACTORS IMPROVING FEASIBILITY OF ELECTRIFICATION

While an improving technology has been reducing the potential cost of electrification, changing traffic conditions on American railroads have substantially broadened the circumstances under which electrification becomes desirable and feasible.

A growing market for piggyback, container, and other fast-freight services has created a demand for high-horsepower, high-speed motive power that electrification is uniquely well equipped to provide.

At the same time, long-term traffic growth has significantly increased the railroad mileage for which electrification is potentially feasible. In the decade from 1963 to 1973, U.S. rail freight traffic increased by almost 37 percent to a record level of 852 billion ton-miles. And some forecasts predict a total U.S. rail freight demand of as much as 1,600 billion ton-miles—double the record 1973 level—by 1990.

A 1970 railroad electrification study[3] estimated that about 22,000 track-miles of the U.S. rail system carried a traffic density sufficient to warrant electrification. Even this figure may well prove to be conservative.

These considerations have been evident for some years. But today they are converging with the problems and opportunities presented by the critical long-term crisis of energy supply and cost in a way that makes U.S. railroad electrification a more immediate prospect than it has been for many years.

Impact of oil price increases

Heretofore, the primary advantages of electrification have been the greater operating speed and efficiency and the enhanced traffic-carrying capacity that it afforded rail lines, rather than a significantly lower energy cost. But this situation is now beginning to change.

For railroads the most immediate effect of the 1973–1974 oil embargo and the subsequent price increases by the oil-exporting nations was a drastic increase in the cost of diesel fuel—nearly 150 percent in only 2 years—after several decades of relative price stability. Given the continuing nature of the problem of oil supply versus demand, the long-term prospects for diesel fuel costs are hardly encouraging. One major railroad, for example, has projected that the diesel fuel that cost it less than 11 cents a gallon in 1973 and now costs 34 cents a gallon will rise to a level of between $1.35 and $1.65 a gallon by the year 2000.

While no energy source will be immune to significant price escalation in the years ahead, electric power, because it is not tied to any particular fuel source, promises at least relative price stability in comparison with petroleum fuels. According to a 1974 U.S. Navy projection for long-range economic analysis of energy conservation proj-

[1] Summarized from foreword by John W. Barringer to William D. Middleton, "When the Steam Railroads Electrified" (Milwaukee, Wisconsin: Kalmach Publishing Co., 1974).

[2] M. Ephraim, Jr. and H. E. Quinn, Electro-Motive Division, General Motors Corporation, "Electrification and New Electric Locomotive Designs" (Paper presented at the Winter Annual Meeting, The American Society of Mechanical Engineers, New York, New York, December 5, 1976).

[3] Edison Electric Institute, "Railroad Electrification," 3 vol. (New York: Edison Electric Institute, 1970).

ects, for example, electric power costs are expected to increase at an average rate of about 3 percent annually, compared to an annual rate of 9 percent for oil fuels.[4] Consequently, electrification has begun to gain a significant fuel cost advantage over diesel traction, and the margin is likely to increase steadily.

Impact of national energy policy

The federal energy policy, calling for both a reduction in oil imports and a long-term shift away from dependence on oil fuels, can be expected to add further impetus to railroad electrification. For within the limitations of presently available technology, such electrification offers the *only* opportunity to convert a significant share of transportation energy requirements from oil to coal, nuclear, or hydro energy sources.

The magnitude of this potential conversion is suggested by the 1970 railroad electrification study, which estimated that the U.S. railroad electrification that appeared economically feasible constituted a potential electrical energy market for 20 to 25 billion kilowatt-hours annually. This is an energy usage equivalent to about 85 to 105 million barrels of oil each year.

Potentials for energy savings in freight movements

The prospects for railroad electrification could also be enhanced by another aspect of the evolving administration energy policy. Most estimates place the energy efficiency of rail freight transportation at three to four times that of highway carriers. Thus the needs of the national energy policy, as well as the increasing cost of motor fuel, can be expected to redirect a substantial share of freight traffic from highways to the railroads.

A 1977 study by a market research firm forecasts just such a massive shift back to rail transportation.[5] The study projects that, by 1995, the railroad share of intercity-freight traffic passenger travel will increase from 38 to 52 percent, while intercity-rail will grow from its current minuscule level of 0.1 percent of the total to 3 percent. A shift to rail haulage of this magnitude would clearly further widen the circumstances under which electrification becomes feasible.

OBSTACLES FACING ELECTRIFICATION

Whereas the desirability for extensive electrification of U.S. railroads may be clear enough, there remain some serious obstacles to its achievement. Although there is general agreement that oil costs will rise more rapidly than those for electric power in the future, there remain grave uncertainties concerning future trends in electric power costs. The increasing opposition to nuclear power plant construction, and uncertain requirements—and costs—for environmental controls on new coal-burning plants, will have still unknown effects on the cost of electric energy production. At the same time there is a growing movement in some areas to force greater energy conservation by eliminating the discount power rates, based on lower costs of service, that the electric power industry has traditionally offered to bulk users, in favor of penalty rates for large power users. Understandably, these energy cost uncertainties make long-range economic analysis of any railroad electrification project a difficult business. * * *[6]

Capital Investment Requirements

But perhaps the greatest obstacle to widespread U.S. electrification remains simply that of the enormous captial investment that would be required to accomplish it. It has been estimated that it would cost as much as $8 to $10 billion to electrify about 20,000 of the highest density U.S. railroad lines. Long suffering from chronically poor earnings (the industry's overall rate of return in 1976, for example, was less than 1.5 percent) most railroads would find it exceedingly difficult at best to raise this kind of capital from traditional private financing sources.

Discussing the financing question at a 1977 railroad electrification conference, one investment banker suggested that, for a limited number of the healthiest railroads, private financing of electrification projects was possible and outlined four different forms that it could take: (1) the sale of mortgage bonds by the railroads, (2) offerings of new common stock equity by the railroads, (3) leasing of electrification systems, and (4) project financing under which the electrification system would be jointly owned or financed by the railroad, the utility companies supplying power, and/or institutional investors and leased to the railroad and possibly, in part, to the utilites as well.[7]

OUTLOOK FOR GOVERNMENT ASSISTANCE ON ELECTRIFICATION

But financing of a national program of electrification is clearly beyond the means of the railroad industry. If it is to be done, it will require government assistance. And despite a long history of governmental noninvolvement in railroad financing, changing government attitudes and evolving national transportation policy are today creating conditions more favorable to a solution to the electrification financing question—based on some such form of government help—than at any time in half a century. For in recent years the provision of governmental financial support to underwrite railroad improvements or services deemed to be in the public interest has become increasingly common.

Over a period of nearly two decades governmental support, or even ownership, of needed but money-losing rail commuter services has become all but universal. In 1970 federal legislation created the National Railroad Passenger Corporation (Amtrak) to preserve and improve—with government financial aid—intercity rail passenger services.[8] The Regional Rail Reorganization Act of 1973[9] authorized creation of the new Consolidated Rail Corporation (ConRail) from bankrupt eastern carriers and provided a basis for government financial aid.

This does not necessarily mean that government help for railroad electrification is likely to come about only after some sort of quasi-nationalization of railroads on the model of Amtrak or ConRail, with all their related potential ills of subsidies and political involvement.

The best form for this government assistance, according to investment bankers who have studied the problem, would appear to be federal guarantees of loans or leases made for the purpose of railroad electrification. Federal guarantees would provide an inducement to investors, since the obligations would be backed by the full faith and credit of the federal government, while at the same time encouraging railroads to electrify, since a federal guarantee program would ensure funds at a substantially lower cost than other long-term funds, improving the relative attractiveness of an electrification investment.

Still another advantage of a guarantee program would be that—since the obligations would still have to be repaid—railroads would be discouraged from investing in projects with a poor rate of return. And from the government's point of view, the program would have the advantage of not requiring the direct advancement funds.

Provisions of 1976 4–R Act

A prototype for such a program could well be found in the 1976 Railroad Revitalization and Regulatory Reform Act (4–R Act),[10] which, in addition to further financial aid for ConRail and an improvement project for Amtrak's Washington-Boston Northeast Corridor, provided for the general upgrade of property and equipment on other railroads through a combination of both loan guarantees and a device called redeemable preference shares, which are issued by the railroads and purchased from a special fund by the U.S. Department of Transportation (USDOT). Although the general aid from this 1976 4–R Act is limited to only $1.6 billion, the legislation clearly provides a format for a greater level of support—short of nationalization—to railroad electrification in the future.

Indeed, the 1976 act has already provided for a modest start to some new electrification activity. The $1.75 billion Northeast Corridor's existing 11–kV, 25–Hertz (Hz) sysact includes both the conversion of the corridor's existing 11–kV, 25–Hertz (Hz) system for the ConRail/Amtrak line between Washington, D.C., and New Haven, Connecticut, to a modern 25–kV, 60–Hz system, and its extension over the 157 miles of line between New Haven and Boston, Massachusetts.

Under other 4–R Act provisions the Federal Railroad Administration is preparing a report on the benefits of electrifying high-density rail lines in the United States, and ConRail is studying the feasibility of electrifying 300 miles of line westward from Harrisburg to Pittsburgh, Pennsylvania, as well as a portion of the former Reading line between Philadelphia, Pennsylvania, and the New York area, that would provide an electrified alternate route to the heavily traveled Northeast Corridor. The act provides $200 million in federal loan guarantees to ConRail for electrification if it can be shown to be economically feasible. * * *

Candidate Systems for Early Electrification

Who are the likely candidates for early electrification projects? Apart from the Northeast Corridor project, and ConRail projects, at least a half dozen U.S. and Canadian railroads have looked seriously at projects in recent years.

One northwest railroad has studied 1,200 miles of electrification for coal-hauling lines in Wyoming and Nebraska. Another has looked at 2,250 miles of electrification in Nebraska, Utah, and Idaho and has installed test sections of overhead catenary. A third railroad considered a Chicago-New Orleans electrification project, and another is studying a 500-mile Cincinnati to Atlanta project. Studies have been completed for a 760-mile line from Colton, California, to El Paso, Texas. A Canadian railroad that has a new, heavy export coal traffic in Western Canada has conducted studies for 850 miles of electrification in the Canadian Rockies.

It is still far from certain that these, or other, electrification projects will take place, but the prospects that they will are better than ever before. If and when it occurs, American railroads may well be on the threshold of a new era of enhanced efficiency and productivity through electrification that will have important benefits to the American economy and the national energy policy. * * *

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[4] Navy Facilities Engineering Command, Department of the Navy, "Energy Conservation Project Development Guidance" (enclosure 7 to NAVFAC Instruction 4100.6 of 29 March 1974, "Shore Facilities Conservation Survey Program"), Washington, D.C.

[5] Frost and Sullivan, "Transportation Markets in the USA to 1955," Report No. 473 (New York: Frost and Sullivan, July 1977).

[6] * * *

[7] Richard Fishbein, "Electrification: Who Will Pay—and How?" *Railway Age* 178 (July 11, 1977).

[8] Rail Passenger Service Act of 1970, Public Law 84–1327.

[9] Public Law 93–236, January 2, 1974.

[10] Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210.

CONGRESSMAN BILL LEHMAN'S ADDRESS TO 65TH INTERPARLIAMENTARY CONFERENCE

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. HAMILTON. Mr. Speaker, on September 5, at the 65th Interparliamentary Conference in Bonn, Germany, Congressman BILL LEHMAN, serving in my capacity as acting chairman of the House delegation to the IPU, made the U.S. delegation's introductory statement which presented not only his own position but also the views of many of our colleagues. I was very pleased to have these statements so fairly and adequately expressed before the representatives from 76 different nations. I would like to take this opportunity to place the text of Representative LEHMAN'S speech on record.

SPEECH OF REPRESENTATIVE WILLIAM LEHMAN

Mr. President, and Fellow Parliamentarians,

Before going into my statement, I want to call to the attention of the delegates the fact that the United States has offered several amendments to the draft resolution on disarmament which we believe will improve the proposals adopted in Lisbon. These amendments have been printed and are identified as Disarmament Amendment Number 7. The amendments are self-explanatory and I urge that they be given careful study by all delegates.

Although the aim of the United Nations is "to save succeeding generations from the scourge of war," the world's stock of weapons continues to grow and its destructive potential continues to increase.

Excessive military budgets take available resources from programs designed to improve the quality of life. Funding and manpower devoted to military programs are unavailable for improving such basic necessities as health, housing, nutrition, and education.

I deeply hope that this assembly will take the strongest possible stand against the accelerating arms race, and that my colleagues here will return to their countries to work for arms reduction.

In recent years, the United States and the Soviet Union, recognizing a special responsibility, have engaged in the Strategic Arms Limitation Talks (SALT) as a major effort to control the numbers and types of nuclear weapons.

The United States Congress has rightly taken intense interest in SALT. Both Houses of Congress have designated congressional advisors to the SALT negotiations, and constitutionally the Senate will have to approve any treaties concluded with the Soviet Union.

United States public opinion will be an important factor in final ratification of a SALT II agreement. And while it has been the policy of the United States to avoid linking SALT with other matters, the American public will clearly take into account other factors in our bilateral relationship such as human rights violations which might delay or prevent such an agreement.

The IPU Vienna resolution called on signatory nations to "promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms." Only if agreements already concluded are honored can we expect others to follow which will make us more secure, both against war and destruction and against the subtle erosion of every person's right to a decent life.

The response of the world community to a slow progress in nuclear arms control ought not to be the proliferation of nuclear weapons. In this regard, Congress has taken strong action through such measures as the recently enacted Nuclear Non-Proliferation Act. The U.S. is engaged in negotiations toward a comprehensive test ban, strongly endorsed by the recent United Nations Special Session on Disarmament. A treaty could emerge which will impose constraints on the capability of nuclear powers to make qualitative improvements in their nuclear weapons system.

Because of their potential for ending life on earth, nuclear weapons must be the first focus of our efforts, but we cannot ignore the proliferation of conventional weapons. The United States has moved in recognition of the importance of our arms traffic control. A provision of the Arms Control Export Act now gives Congres authority to disapprove sales proposals. Reducing the international arms traffic requires the cooperation of all nations. Tensions between nations and within regions must be reduced so that weapons needed for legitimate defense will not be so many or so powerful.

There is one region of the world which exemplifies much of what I have said, and that is the Middle East. Nowhere is tension between nations so great and the situation so volatile as in the Middle East. For countries of the Middle East the strains resulting from spiralling defense expenditures and the economic and social deprivation caused, should give real impetus to movement toward arms control through negotiation of political and military conflicts.

The discussions now under way at Camp David renew hope for peace. A year ago, when I attended the IPU meeting in Sophia, the mideast question was debated and a resolution was passed by this body which reflected a negative atmosphere in world opinion toward the possibility of a peaceful resolution of the Middle East conflict. Since Sophia, President Anwar Sadat of Egypt made the dramatic and courageous announcement that he was willing to go to Jerusalem. In an equally dramatic and courageous act, Israeli Prime Minister Menachem Begin invited the Egyptian President to Israel.

In the present meeting at Camp David, our President hopes to move forward the progress of a just peace. Because of the sensitivity of the Camp David talks, I propose that the IPU refrain from introducing any resolutions which might serve to undercut the ongoing peace efforts. Though the Mideast question should be fully debated, I hope that any resolution that results from our deliberations builds on positive peace efforts. In this spirit of optimism, the United States will offer such a resolution. I hope all of my fellow parliamentarians will be able to support this affirmative resolution.

Peace and arms control are international goals worthy of the cooperation of all nations. As parliamentarians, we carry the responsibility for policy decisions instrumental to achieving these goals. In recognizing that the race for security through weapons will only reduce security for us all, let us commit ourselves to resolving those conflicts that promise an end to the arms race.●

FOREIGN INTELLIGENCE SURVEILLANCE ACT

HON. MORGAN F. MURPHY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. MURPHY of Illinois. Mr. Speaker, on September 7 the House approved a bill that requires search warrants for most national security wiretaps. The bill (H.R. 7308), which passed by a vote of 246 to 128, would require U.S. intelligence agencies to get court clearance before wiretapping or bugging persons suspected of spying in the United States for foreign governments.

The Foreign Intelligence Surveillance Act, as it is formally known, will protect U.S. citizens from unwarranted invasions of their privacy without hampering the ability of our intelligence agencies to safeguard the national security. In addition, it will protect FBI and CIA agents from being sued for conducting surveillance that might later be judged illegal. The upshot of this is that intelligence gathering will actually improve, as agents will now be able to carry out monitoring activities without fear of legal repercussions.

Mr. Speaker, I would like to draw my colleagues' attention to an article by columnist Bob Wiedrich on the foreign surveillance bill, which appeared in the Chicago Tribune on September 14.

INTELLIGENCE AGENTS TO GET 'BILL OF RIGHTS'

(By Bob Wiedrich)

The Nation's intelligence agents will soon have protection against being jailed later for acts once considered on the square.

Assuming the House and Senate will get their act together, President Carter will be asked to sign a bill providing court-ordered safeguards for both intelligence gatherers and American citizens.

Then the agents charged with monitoring the affairs of foreign spies and their lackeys in the United States no longer will have to fear getting indicted a decade down the road for activities they thought had been presidentially authorized.

With little fanfare, considering the subject matter, the House passed the Foreign Intelligence Electronic Surveillance Act Sept. 7 by a vote of 246 to 128.

Because of differences with a similar Senate bill approved last April by a 95 to 1 vote, the legislation now goes to a joint congressional conference committee.

And assuming the minor differences can be ironed out, President Carter should have the bill on his desk by the end of the month.

Thus, if Carter signs the legislation, intelligence operatives wiretapping and bugging foreign espionage agents and their American consorts will do so with the legal protection of court-ordered warrants.

That will assure the agents that they are acting under the full color of American law. And it will protect American citizens from having their right to privacy violated for political purposes under the guise of national security.

That should satisfy all objections to electronic surveillance techniques of the past, and CIA and FBI agents responsible for combating foreign spies can get on with their business.

"Because of the controversy surrounding previous abuses, valuable intelligence has been going uncollected," Rep. Morgan Murphy Jr. [D., Ill.] said. "Agents have been reluctant to expose themselves to the threat of later criminal prosecution.

"Further, common carriers like the Bell Telephone System and the American Telegraph & Telephone Co. have been refusing to cooperate with agents seeking to use their facilities for electronic surveillance, because of the same fear.

"With this legislation, the United States will have for the first time in its history statutory standards covering foreign intelligence-gathering and surveillance within the domestic borders of the country."

Murphy, chairman of a House Intelligence

Subcommittee that drew up the bill managed the legislation on the House floor. He received congratulatory phone calls from the White House, Atty. Gen. Griffin Bell, and CIA Director Stansfield Turner, all of whom supported the bill.

But the greatest accolade I heard came from an American intelligence man, who declared: "All of us have been sitting around worrying what vehicle would be used to nail this generation of intelligence agents since the last batch was crucified for serving their country.

"Electronic surveillance tools are vital because they provide pure, first-hand intelligence information no other source can give you.

"The stuff is straight from the horse's mouth, uncolored by a third party. It has not been subjected to outside interpretation as often is the case with an informant.

"We need it for the nation's defense. It is fundamental. We have to play by the rules. The other side doesn't. And foreign spies have been raping this country of its secrets because we couldn't move for fear of going to jail."

During the subcommittee hearings, Atty. Gen. Bell pointed out that 60 past and present intelligence agents face possible disciplinary action or civil suits for illegal wiretaps.

Former Acting FBI Director L. Patrick Gray and two other former high-ranking bureau officials are under indictment for similar acts.

None of these events would have occurred, Bell told the subcommittee, had the new legislation been in force.

Under the bill, the government will be required to obtain a federal-court-ordered search warrant before conducting a surveillance that would directly or indirectly involve an American citizen.

The standard of proof in such proceedings will be similar to that required in obtaining a warrant in a criminal case.

However, in cases involving foreign nationals—espionage agents of foreign countries—a warrant also will be required, but the standards of probable cause will be less strict.

No warrants will be required for intelligence agents to monitor communications exclusively between foreign powers and their embassies in the United States.

In all cases, the warrants also will protect U.S. agents from being later charged with illegal entry while installing their electronic monitoring devices.

The House bill had the support of the White House, the American Bar Association, and the American Civil Liberties Union, plus the intelligence agencies themselves.

It was long overdue. And hopefully, President Carter will soon sign the legislation once Congress reconciles the differences between the House and Senate versions.●

ENDANGERED SPECIES ACT

HON. ALBERT H. QUIE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1978

● Mr. QUIE. Mr. Speaker, I wanted to share with my colleagues a paper written by Ed Grady, manager, Information Division, Minnesota Farm Bureau Federation. His paper follows:

NEEDED: A MORE FLEXIBLE ENDANGERED SPECIES ACT

(By Ed Grady)

The Endangered Species Act of 1973 is currently linked in the public mind with the recent blocking by a U.S. Supreme Court ruling (following the strict construction of the law) of the completion of a $116 million federal dam in Tennessee. If construction on the 80-percent completed structure were to proceed, the court said, the Act would be violated by destroying the natural habitat of the endangered snail darter, a 3-inch fish, an estimated 15,000 in number, which is one of some 130 species of perch.

SAVING EFFORTS LAUNCHED IN 1960's

Efforts to save endangered species began in the 1960s; the U.S. Fish and Wildlife Service in 1964 published a series of "red books" in which threatened wildlife was listed. The first congressional action came two years later with passage of endangered species conservation legislation. Under this act, an official list of endangered plants and animals was compiled—although there was no federal authority to prohibit hunting the species. However, funds were appropriated to begin acquiring habitats and the nucleus of a staff was formed—two people.

The endangered species conservation act was amended in 1969 to list endangered species from foreign countries and forbid their import. The budget jumped to $1.8 million and the staff expanded to 16 individuals. When the current act was adopted five years ago, $10 million a year was budgeted. However, the figure this year is $25 million.

RARE FORMS PROTECTED INITIALLY

Initially the law was intended to guarantee protection to rare forms of species, such as the bald eagle, America's symbol, and the rapidly disappearing whooping crane; both were threatened with extinction. Since that time, though, Congress has been closing loopholes in the basic law, legislating vast and sweeping powers to protect all plant and animal species in danger of extinction. That now includes "without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, and other invertebrates." And to be certain that there would be no mistaking its intent, Congress has included "any part, product, egg, offspring thereof, or the dead body or parts thereof." That takes in the "seeds, roots, and parts of plants" as well.

AN ALL-ENCOMPASSING LIST

Somewhere in that all encompassing litany of some 631 endangered species and more than 1,800 endangered plants, the snail darter was waiting. So were louse warts, pahrump killifish, the gila top-minnow, the Houston toad and—for all we know—red-breasted cockatoos.

Not only can a person, or a federal agency, run afoul of the Endangered Species Act by actually killing or destroying an endangered species. All that need be done to receive a year in prison or a fine of up to $20,000 is to be convicted of "taking" such animal or plant. By definition, the law says "take" is "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct."

EXTREME RIGIDITY ILLUSTRATED

To further illustrate the extreme rigidity of the Act, the habitat of an endangered species is also protected. Federal agencies are forbidden to carry out or fund programs that would jeopardize the natural home of, for example, the snail darter. In determining whether an area is a critical habitat, the Act stipulates that consideration is to be given only the needs of the species; not even the adverse impact that federal intervention might have on the human population, or the economy, is to be given any weight.

BASIC LAW IN NEED OF REWRITE

Against this background, the pressing need for rewriting the basic law should be readily apparent. The concept that preservation of endangered species has priority over all other considerations, and that irreconcilable conflicts be resolved on the side of the endangered species, is unreasonable and impracticable; the Act as it is now written does not allow any discretion or any balancing of the need for protecting the "species" against the needs in society.

Farm Bureau favors amending the inflexible Act. To us, uncompromising protection should give way to balanced protection. Allan Grant, president of the near 3 million member family American Farm Bureau Federation, said recently: "Congress should inject . . . some sanity to avoid conflict between endangered species and human needs such as energy and food production." In support also of introducing common sense into the Endangered Species Act is Roland C. Fischer of the Colorado River Conservation District. He says: "Municipalities, farmers and consumers of food and energy . . . should be able to get at least some of the consideration being given weeds and trash fish."

SERIES OF AMENDMENTS PROPOSED

Among a series of amendments we believe will provide for a more workable, realistic national policy for protecting rare plant and animal species are these:

First. Allowing exemption from law if an unbreakable impasse occurs in arbitrating conflicts between federal public works projects and endangered species.

Second. Permitting a project to continue if a 5-person majority of a 7-member cabinet level committee determines its benefits "clearly outweigh" the value of the endangered species.

Third. Modifying the existing definition of "taking of an endangered species" to require that the action must be intentional and must threaten the continued existence of the species.

Fourth. Exempting normal forestry, farming and ranching practices from being declared a "taking of an endangered species."●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 21, 1978, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 22

9:30 a.m.

Armed Services

To consider S. 1264, to establish policies, methods, and criteria for the acquisition of property and services by executive agencies.

212 Russell Building

Human Resources

Labor Subcommittee

To resume hearings on S. 3060, proposed National Workers' Compensation Standards Act.

4232 Dirksen Building

10:00 a.m.
Finance
To continue markup of H.R. 13511, to reduce income taxes.
2221 Dirksen Building
Judiciary
Administrative Practice and Procedure Subcommittee
To hold hearings on S. 2862, proposed Regulatory Control Act.
2228 Dirksen Building

SEPTEMBER 25

9:30 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To resume hearings to examine the Federal Government's role in food safety and quality, with emphasis on the nitrite situation.
324 Russell Building
10:00 a.m.
Special on Aging
To hold a business meeting to discuss committee activities through February 1979.
154 Russell Building
1:30 p.m.
Conferees
On H.R. 7577, extending through FY 1981 certain programs administered under the Economic Opportunity Act.
S-207, Capitol

SEPTEMBER 26

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on problems of small business defense contractors.
5302 Dirksen Building
Commerce, Science, and Transportation
To hold hearings on the nomination of Marvin S. Cohen, of Arizona, to be a Member of the Civil Aeronautics Board.
235 Russell Building
Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to receive testimony on nuclear reactor safety systems from NRC Chairman Hendrie.
4200 Dirksen Building
Finance
Public Assistance Subcommittee
To hold hearings on H.R. 10848 and H.R. 12972, to modify the disability aspects of the Supplemental Security Income program.
2221 Dirksen Building
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter concerning overall policy.
2228 Dirksen Building
Conferees
On H.R. 15, authorizing funds through FY 1983 for elementary and secondary education programs.
H-328, Capitol
2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 27

9:00 a.m.
Governmental Affairs
Civil Service and General Service Subcommittee
To hold hearings on S. 1390, to authorize certain National Guard employment to be credited for civil service retirement, and S. 1821, to provide paid leave for Federal employees participating in athletic activities as an official representative of the U.S.
3302 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on financing of future energy needs.
5302 Dirksen Building
1:30 p.m.
Conferees
On H.R. 15, authorizing funds through FY 1983 for elementary and secondary education programs.
S-207, Capitol

SEPTEMBER 28

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on national export policy.
235 Russell Building
10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on financing of future energy needs.
5302 Dirksen Building
Human Resources
To hold hearings on S. 2020, to clarify longshoremen's and harbor workers' compensation coverage to employees engaged in certain manufacture, repair, servicing, or sale of recreational boats.
4232 Dirksen Building
Select Small Business
To resume hearings to explore problems concerning capital formation of small independent enterprises.
424 Russell Building
2:00 p.m.
Commerce, Science, and Transportation
To resume hearings on the objectives a national tourism policy should seek to achieve.
235 Russell Building

SEPTEMBER 29

10:00 a.m.
Joint Economic
To hold hearings on the inadequacies of U.S. export policy.
S-207, Capitol

OCTOBER 3

9:30 a.m.
Human Resources
Labor Subcommittee
To hold oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 4

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the Council on Wage and Price Stability.
5302 Dirksen Building

OCTOBER 5

9:30 a.m.
Human Resources
Labor Subcommittee
To continue oversight hearings on the administration of the Occupational Safety and Health Administration Act (P.L. 91-596).
4232 Dirksen Building
10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To hold oversight hearings on international housing programs.
5302 Dirksen Building

OCTOBER 6

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To continue oversight hearings on international housing programs.
5302 Dirksen Building

OCTOBER 10

9:00 a.m.
Armed Services
Manpower and Personnel Subcommittee
To hold hearings on alleged abuses in U.S. Marine Corps recruiting practices.
1114 Dirksen Building

OCTOBER 11

9:00 a.m.
Armed Services
Manpower and Personnel Subcommittee
To continue hearings on alleged abuses in U.S. Marine Corps recruiting practices.
1114 Dirksen Building

CANCELLATIONS

SEPTEMBER 21

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

SEPTEMBER 22

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building